

# Shared Border, Shared Future

A Blueprint to Regulate US-Mexico Labor Mobility



Carlos Gutierrez and Ernesto Zedillo,  
co-chairs of the Working Group  
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## A Blueprint to Regulate US-Mexico Labor Mobility

The report of the Center for Global Development Working Group on innovations in bilateral cooperation to regulate US-Mexico labor mobility in the 21st century

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# Contents

Foreword	vii
Acknowledgments	viii
Abbreviations	ix
Executive summary	xi
Preface – Scope and Principles	xiii
Chapter 1 Bilateral Cooperation in the Past	1
Past US-Mexico BWAs responded to major events in both countries	1
Chapter 2 Cooperation Beats Unilateralism, and Now Is the Time	10
Prior efforts at bilateral cooperation had severe shortcomings—that can be addressed	10
The time for renewed cooperation is now	12
Chapter 3 A Blueprint for Better	14
Flaws in past agreements are not a reason to throw away cooperation	14
What a 21st-century US-Mexico bilateral worker agreement must do	14
Innovations for a 21st-century bilateral worker agreement	19
Appendix A A Model Term Sheet for US-Mexico Bilateral Worker Agreement	25
Appendix B Background and Profiles of the Working Group Members	32
References	39
Boxes	
1 The effect of past bilateral worker agreements on US wages	5
2 How contemporary observers viewed the end of bilateral cooperation	8
3 Comparing this proposal to related policies	18
4 The need for an independent and timely source of information on the bilateral labor market	22





# Foreword

Next to the United States there is an economic cliff. Just step across the border between the United States and Mexico, and you've step across the largest jump in average real incomes of any land border on earth. In politics, that cliff is often used to encourage fear. But I see opportunity: developing a bilateral agreement that is in the interests of both countries in building prosperity—at home and next door.

Mexico is not just the second-largest trading partner of the United States. In fact, the two countries are each other's top partners in labor mobility: almost 10 percent of people born in Mexico live and work in the United States, and Mexican-born individuals are by far the largest group of US immigrants. Even small improvements in the legal and regulatory approach to labor mobility could thus have outsize impacts in creating opportunities and raising living standards in both countries.

But for the last two generations, US-Mexico labor mobility has taken place in a harmful vacuum of bilateral policy. The US approach has created a vast black market in labor across the border, with major economic, fiscal, and security side effects in both countries. Cooperative and flexible regulation, instead, could turn the costs both societies and economies endure into enormous potential gains.

Back in 2008, the Center for Global Development (CGD) released the first edition of *White House and the World*, a suite of policies that the (then unknown) next US president could pursue to foster global development in the national interest. The chapter by Michael Clemens, who directed the working group that produced this report, set out the logic of a formal bilateral agreement with Mexico to regulate labor mobility in the two countries' shared interest. In the eight years since, Mexico-US migration flows have fallen. This has created breathing room to consider anew how to regulate ongoing and circular migration for mutual benefit.

At CGD, we convened this *Shared Border, Shared Future* group in 2015 with a simple question: Can the US and Mexico

agree on an approach to future lower-skill labor mobility? The group has answered that question with a clear yes. Beyond airy platitudes about working together, they have actually drafted a framework agreement that builds on detailed and mold-breaking policy ideas, while maintaining political practicality.

I hope the diversity and authority of this group will ensure its influence from the framework agreement in this report to the two democracies' capitals. Among the members of the group: a former president of Mexico and a former secretary of commerce of the United States—plus other former officials at the highest levels of both countries from the two major political parties in each. The group also includes labor advocates, employer advocates, and national security experts from both countries: a former head of the US Immigration and Naturalization Service and former sector chief of the US border patrol, as well as a former head of Mexico's intelligence agency. Expert scholars who specialize in the law, economics, and politics round out the group.

The fact that all of these experts agree on specific answers means that no serious future discussion of US-Mexico migration can ignore the force of their ideas. We have no illusions that developing better policy will be easy. But the future problems that would unfold from continued unilateralism would be harder.



**Nancy Birdsall**

Founder and President, 2001–2016  
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# Abbreviations

<b>BWA</b>	bilateral worker agreement
<b>INS</b>	Immigration and Naturalization Service, predecessor to US Citizenship and Immigration Services
<b>NAFTA</b>	North American Free Trade Agreement
<b>TAA</b>	trade adjustment assistance
<b>USCIS</b>	US Citizenship and Immigration Services



# Executive summary

We propose a new bilateral worker agreement (BWA) between Mexico and the United States. In this report we focus on temporary, employment-based, future flows—that is, future mobility by people who have not yet migrated. We see the root cause of many current problems in past failures to properly regulate future flows. And now—when Mexico-US migration pressure has eased—is the time to get future flows right. It can wait no longer. We propose an agreement that would regulate those flows in the shared interest of both countries. Some of us envision such an agreement as part of an overall legislative solution, but our focus is not on precisely how the agreement might be enacted. We focus on how it must be designed to be effective, and why that is so.

**We believe that working together to regulate labor mobility is in the national interest of both the United States and Mexico.** We come from both countries and differ widely in our perspectives—having worked with labor unions, employers, the border patrol, national governments, think tanks, and academia, with party affiliations across the political spectrum in both the United States and Mexico. We have watched for decades as the bilateral regulatory vacuum has brought great harm to both countries, and we believe there is a better way.

**The two countries' shared history points the way forward.** Temporary mobility between Mexican and US territory is older than either country, and requires regulations tailored to that shared history and destiny. Labor mobility between the two countries has brought shared economic benefits, and can bring much more. But the majority of the Mexico-US labor flow over the past 25 years has been unlawful, which has harmed workers and national security in both countries. Despite the rising importance of other countries, significant flows of Mexican labor will continue to supplement the US labor market. History teaches that flexible regulation and bilateral cooperation are the only lasting solutions, but the

limitations of past agreements show that they can fail without proper design.

**The two countries have worked bilaterally before, and they can do better.** The United States and Mexico have cooperated to regulate lower-skill labor mobility in the past, including for extended periods of the 20th century. That cooperation had serious, even critical, shortcomings, and it ended in 1964. But it points the way toward essentially eliminating unlawful labor mobility with renewed bilateral cooperation, designed for the 21st century and sustained by new, shared interests—with enormous benefits for both countries. The continuing bilateral regulatory vacuum that replaced bilateral cooperation has, in contrast, created decades of chaos and illegality at the countries' shared border. That has done far more damage to both countries than any flaw in the earlier agreements. This difficult experience shows that the flaws of earlier bilateral agreements are not a reason to discard all cooperation. Rather, those flaws are a reason to cooperate with better policy for a new century. Better policy can unlock tremendous benefits that both countries will share.

**A new BWA should pursue and balance several goals.** It should severely curtail unlawful cross-border mobility; preserve US worker priority for jobs in the United States, without proliferation of unnecessary bureaucracy; prevent spikes in labor inflows, but respond to market conditions; suppress abusive labor intermediaries; ensure employer compliance with labor standards for all workers; share across the border the responsibility for administration and enforcement of the agreement; prevent visa overstays by encouraging return migration and establishing a clear exit path; enhance common security on both sides of our border; encompass the sectors where Mexican labor adds value; provide for the acquisition of productivity-enhancing vocational skills by all workers; set transparent criteria for adjustment to shifting market conditions; and fund its mandate in both countries. In short, it

must win the support and trust of workers and employers in both countries by bringing them shared benefits.

**We set forth a package of policy innovations that would serve all of these goals.** Historical and global experience with BWAs shows that the details of their design are critical to their impact. We have gathered and modified the best features of past and present agreements to propose an innovative agreement designed for the 21st century. These features include a *US worker priority fee* to ensure that it is in employers' interest to recruit US workers first, a *decelerator safeguard cap* to protect against sudden inflows of workers while preserving responsiveness to changing conditions, systems of *sectoral visa portability* and *Mexican recruiter certification* to protect the rights of workers in both countries, and a *return or integration account* for each worker to create strong incentives for return, among others. These ingredients would support each other to accomplish what earlier agreements could not: capture shared economic benefits with flexibility to changing conditions, while protecting the rights of US and Mexican workers.

**Now is the right time.** Past generations have put off addressing future flows of labor. But the next several years offer an excellent opportunity to act. Economic and demographic shifts mean that there is less migration pressure between Mexico and the United States now than there has been for

decades, creating breathing room for rational policy. At the same time, continuing economic disparities between the countries mean that substantial labor mobility across the border has the potential to bring shared gains indefinitely. Immigration is at the top of the policy agenda in the United States, with the public demanding a long-term solution instead of another band-aid, and Mexico has a new law to regulate migration. And there is a new generation of policymakers and scholars who have seen the consequences of failed unilateralism and are ready to innovate.

**Proper design is one critical ingredient for a new bilateral cooperation to unlock shared prosperity.** Bilateral regulation can bring opportunity and security shared by both countries, protect workers' rights in both countries, cripple unlawful human trafficking activity on both sides of the border, and serve as a model for the region and the world. Leaders across the political spectrum, and on both sides of the border, have a responsibility to advance an enlightened alternative to dark, extremist visions with nothing to offer but militarized walls and vast deportation convoys. This report is that alternative. The shared history of the United States and Mexico shows that they have done better. Their shared future means that they must do better. And with shared responsibility, they can do better.

## Preface

# Scope and Principles

We came together because neighbors can and must cooperate.

We believe it is in the national interest of both the United States and Mexico to work together to regulate labor mobility. We come from both countries and differ widely in our perspectives—having worked with labor unions, employers, the border patrol, national governments, think tanks, and academia, and with party affiliations across the political spectrum in both the United States and Mexico. We have watched for decades as the policy vacuum across the border has brought great harm to both countries, and we believe there is a better way. Cooperative regulation can unleash tremendous shared benefits. We gathered to brainstorm, argue, and hash out details about how it could be done.

This report uses the past to offer a vision for the future. It draws lessons from how Mexico and the United States have cooperated to regulate temporary labor mobility in the past, and it recommends how they should regulate temporary labor mobility in the future.

The vision it offers is just one piece of a puzzle. The report makes no recommendation about whether the regulations it proposes should stand alone or be embedded in a comprehensive package. It makes no recommendation on permanent migration, family reunification, or the disposition of those who migrated unlawfully in the past. We understand it is likely that enactment of some provisions of the agreement we suggest may require any number of political compromises—including modification of other provisions of the agreement, enactment of other unilateral or bilateral reforms in migration policy, or enactment of other policies affecting the US-Mexico relationship beyond migration.

We focus on temporary, employment-based, future flows because we see the root cause of many current problems in past failures to properly regulate future flows. And now—when Mexico-US migration pressure has eased—is the time to get future flows right. We recognize the rising importance

of other countries in labor mobility, particularly in Central America, but cooperation must begin with two neighbors whose common destiny is self-evident.

We begin from five basic understandings about the shared future and shared responsibility of both countries:

**Temporary mobility between Mexican and US territory is older than either country, and requires regulations tailored to that shared history and destiny**

Anthropologists find that traders and laborers have moved across the region that now hosts the US-Mexico border for several thousand years.<sup>1</sup> In the 1800s some of the most important movements were from the United States into Mexico, as the Mexican government encouraged settlement immigration.<sup>2</sup> Major migration from Mexico into the United States began in the late 1800s and early 1900s. These were principally transitory flows, shifting with the seasons and with changing economic and political conditions in the two countries.<sup>3</sup>

This long history and shared geographic destiny mean that regulations on labor mobility at their common border can and should differ from each country's globally applicable regulations. It does not make sense for the United States to regulate labor mobility for people from Mexico on equal footing with people from, say, Andorra or Djibouti. History and geography mean that Mexican labor has been a unique driver of the US economy. And it does not make sense for Mexico to continue regulating Mexico-US labor mobility mostly via the “policy of having no policy.”<sup>4</sup> Well-regulated labor mobility offers an economic opportunity for Mexico on equal footing with

1. Vélez-Ibáñez, *Border Visions*, ch. 1–3.

2. Henderson, “Anglo-American Migration to Mexico.”

3. Clark, *Mexican Labor in the United States*; Gamio, *Mexican Immigration to the United States*, 2–12.

4. García y Griego, “Hacia una nueva visión.”

international trade, and in the context of the 21st-century rules-based system that both countries contribute to and aspire to build.

From 1909 to 1917, and again from 1942 to 1964, Mexico and the United States regulated temporary labor mobility across the border under an on-again, off-again series of bilateral worker agreements (BWAs). A worker under such an agreement was informally called a *bracero* (“one who works with his arms”)—a word that does not appear in any of the agreements—to distinguish him or her from a so-called *wet-back* (likewise a manual worker, but unsanctioned by the agreement). Here we avoid those terms, which in some circles have become pejorative. There has been no new BWA in a half-century.

### **Labor mobility between the two countries can bring shared economic benefits**

Compared with a sealed border, labor mobility between the United States and Mexico has brought large economic benefits to both countries. In the United States, lower-skill Mexican workers tend to specialize in different occupations, and different tasks within occupations, than similarly skilled US workers.<sup>5</sup> Thus they are generally not in competition with native workers in the labor market, and have tended to assimilate well into US society when they have lawful channels to do so.<sup>6</sup>

For these reasons, the immigration of Mexican labor to US states between 1960 and 2006 caused large increases in the productivity of US workers in those states.<sup>7</sup> This is why, though Mexican workers undoubtedly compete with small numbers of US workers for specific jobs in the short term, they have also been an essential ingredient in long-term economic

changes that have the net effect of creating more jobs for US workers.<sup>8</sup> That process is neither immediate nor costless, and thus proper management and regulation are critical.

Lower-skill labor mobility from Mexico also improves labor market conditions in Mexico, raising wages there.<sup>9</sup> Each year that typical Mexican workers spend in the United States raises their economic productivity after they return to Mexico.<sup>10</sup> Typical Mexican laborers use income from temporary labor in the United States to improve their housing and invest in their children’s education, and greatly prefer temporary lawful migration to unlawful migration.<sup>11</sup> Lower-skill Mexican workers who migrate to the United States typically complement US workers there, but those who do not migrate typically substitute for other Mexican workers at home. For example, a dishwasher at a restaurant in Mexico competes directly with other Mexican dishwashers there, but the same worker in the United States can complement US workers who play other roles in a restaurant, such as table service. This means that lower-skill labor mobility from Mexico to the United States has the economic potential to improve labor market conditions in *both* countries.

As North America continues to grow and become one of the main drivers of the global economy, thanks in great measure to integrated supply chains and joint production platforms up and down the region, finding forward-looking and visionary mechanisms for labor mobility (as the relevant but very small bilateral agreement on seasonal agricultural workers between Mexico and Canada) will only add to the future economic prosperity and social well-being of Mexico and the United States.

### **Most recent labor mobility has been unlawful, which has harmed workers and national security in both countries**

In recent history, cross-border mobility became more permanent and mostly unlawful. Since the 1980s, migration flows from Mexico to the United States have increasingly occurred

5. Peri and Sparber, “Task Specialization, Immigration, and Wages”; Hotchkiss, Quispe-Agnoli, and Rios-Avila, “Wage Impact of Undocumented Workers.”

6. Duncan and Trejo, “Low-Skilled Immigrants.”

7. Peri, “Effect of Immigration on Productivity”; Lewis and Peri, “Immigration and the Economy of Cities and Regions.” This occurred both through encouraging capital formation and by raising total factor productivity—the collective productivity of all inputs to production, including both capital and labor, through changes in the technology and organization of production.

8. Chassamboulli and Peri, “Labor Market Effects.”

9. Mishra, “Emigration and Wages in Source Countries.”

10. Reinhold and Thom, “Migration Experience and Earnings.”

11. Izcarra, “Los jornaleros tamaulipecos y el programa de visas H-2A.”



for permanent settlement.<sup>12</sup> While the settled Mexican-born population in the United States stayed near 700,000 for half a century up to 1970, it soared to 12.3 million by 2010.<sup>13</sup> Of those who arrived after 1990, more than 80 percent did not have legal authorization at the time they arrived.<sup>14</sup> Mexicans make up 49 percent of today's US residents who have entered or remained in the United States unlawfully.<sup>15</sup>

But the black market in labor has brought untold harm on both sides of the border. For the United States, which hosts approximately five million Mexican workers without legal status,<sup>16</sup> the black market can reduce wages and erode working conditions for *all* workers in many sectors of the economy, because unauthorized workers receive little protection from labor laws and thus tend to bid down wages and working conditions.<sup>17</sup> This reduces income tax revenue, hinders law enforcement, and raises the cost of healthcare—as people without legal status often recur to emergency rooms—among other harms. Unauthorized migrants from Mexico who overcome greater barriers to enter the United States remain there longer.<sup>18</sup> For this reason even well-intended surges of enforcement effort can perversely increase the stock of migrants in the United States who entered unlawfully, as well as funneling greater smuggling revenue to organized criminals,<sup>19</sup> increas-

ing document fraud, and raising deaths at the border.<sup>20</sup> The black market furthermore represents an important threat to the security of the United States, since it thrives on secrecy and anonymity for massive numbers of people entering and leaving the country.

For Mexico, the black market has brought frequent abuse and exploitation of its citizens, created large income streams for violent organized criminals, contributed to corruption of local officials, and tarnished the country's global image.<sup>21</sup> Most horribly, it has brought death: from 1998 to 2014, US Customs and Border Protection collected an average of 372 bodies each year in the Desert Southwest.<sup>22</sup> Over time, the black market has eroded support for cooperation between two neighbors that need each other.

### Despite the rising importance of other countries, cross-border flows of Mexican labor will continue

Recent economic, demographic, and policy changes mean that future flows of Mexican labor across the border will be different from those in the past. The number of unauthorized immigrants apprehended in the United States each year has fallen to its lowest level since the Nixon administration.<sup>23</sup> For most of the last decade the *net* flow of Mexicans into the United States has been *negative*: more were leaving than arriving.<sup>24</sup> For this reason, the stock of Mexicans in the United States has been falling steadily since 2007.

But a low or negative *net* flow masks large positive flows in each direction. Between 2009 and 2014, the number of Mexicans *arriving* each year averaged 174,000. Those continuing to arrive mainly do so for economic reasons; those leaving

12. Massey, Durand, and Malone, *Beyond Smoke and Mirrors*; Alba, *Mexico: A Crucial Crossroads*. Bracero workers were much less likely to settle in the United States, all else equal, than unauthorized workers (Massey and Liang, "Long-Term Consequences," 216).

13. Pew Hispanic Center, *The Mexican-American Boom*.

14. Passel, *Mexican Immigration to the U.S.* This figure does not reflect the fraction of Mexicans now in the United States who do not have legal authorization, since (1) those arriving before 1990 were much more likely to have acquired authorization by the 2000s—indeed only about one fifth of those arriving without authorization before 1990 remain unauthorized by 2002; and furthermore (2) some of those who arrived after 1990 have likewise acquired authorization.

15. Gonzalez-Barrera and Krogstad, *What We Know*.

16. Passel and Cohn, *A Portrait of Unauthorized Immigrants*.

17. Rivera-Batiz, "Undocumented Workers in the Labor Market."

18. Ortmeyer and Quinn, "Coyotes, Migration Duration, and Remittances."

19. Gathmann, "Effects of Enforcement on Illegal Markets."

20. Orrenius, "Enforcement and Illegal Migration."

21. Gathmann, "Effects of Enforcement on Illegal Markets"; Bjerk and Mason, "The Market for Mules."

22. Source: United States Border Patrol, "Southwest Border Deaths by Fiscal Year (Oct. 1st through Sept. 30th)" (2015). Raw data: 1998: 263, 1999: 249, 2000: 380, 2001: 340, 2002: 320, 2003: 338, 2004: 328, 2005: 492, 2006: 454, 2007: 398, 2008: 385, 2009: 420, 2010: 365, 2011: 375, 2012: 477, 2013: 445, 2014: 307. The principal causes of death are hypothermia, dehydration, sunstroke, and drowning (Cornelius, "Death at the Border").

23. Passel, Cohn, and Gonzalez-Barrera, "Net Migration from Mexico."

24. Gonzalez-Barrera, *More Mexicans Leaving*.

mainly do so voluntarily for family reasons, or involuntarily via deportation.<sup>25</sup> Mexico will be a less dominant source-country for future economic migrants, especially relative to Central America. But Mexico-US migration is very far from over. A study by two leading migration economists commissioned for this report finds that broad economic and demographic trends in the two countries are compatible with a Mexico-US flow of more than 100,000 per year through at least the year 2029.<sup>26</sup>

Past BWAs between the United States and Mexico were built exclusively for the provision of unskilled and undifferentiated manual labor. But an agreement for the 21st century must recognize that in the modern economy both the supply of skills and the demand for skills are rising on both sides of the border. Moreover, the very nature of skill is changing. Where 20 years ago operating an irrigation network often meant manually turning valves, today it can mean manipulating a digital control system. The parties to a modern agreement should explore avenues for fostering productivity-enhancing vocational skills for both US and Mexican workers authorized under such an agreement.

**History teaches that flexible regulation and bilateral cooperation are the only lasting solution, but the flaws of past agreements show that proper design is a necessary ingredient**

The last agreement between Mexico and the United States to seriously address the management of future labor mobility

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25. Ibid.

26. Orrenius and Zavodny, “Unauthorized Mexican Workers in the United States.” This figure is not a forecast or prediction, but a reasonable scenario relying on recent historical data. That is, based on the 1996–2014 relationship between economic and demographic forces in the two countries and Mexico-US migration, the authors find that a plausible future evolution of those forces is compatible with Mexico-US flows of 100,000 per year or more through at least the year 2029.

expired a half-century ago. Problems and crises will continue until the two countries adopt a new regulatory regime adequate to address future flows of labor across the border.

That new regime must strongly and predictably regulate future labor flows, due to the countries’ mutual interest in securing the border and preventing economic displacement from sudden shocks. And the new regime must be flexible to changing economic conditions, because rigid and politicized structures produce fragile regimes vulnerable to replacement with a dangerous black market. Under robust and adaptable regulation both countries can reap tremendous benefits for labor, business, security, diplomacy, and the rule of law.

Labor mobility across a shared border is an inherently bilateral issue, and regulation will be most effective and stable only when both sides contribute. Regulation requires enforcement; enforcement on both sides of the border is necessary; and only bilaterally agreed rules can be bilaterally enforced with impact and political legitimacy. The benefits of an improved regime will be shared, and thus responsibility for creating it must be shared.

But past efforts at bilateral cooperation had serious, even fatal, flaws. Fixing those flaws is possible and offers a better way forward than continued unilateralism and bilateral policy vacuum. Indeed, the regime of the past half-century has shown its fruits in the many harms of large-scale illegality. The two countries can cooperate to unleash tremendous shared benefits with a new regime. We begin by reviewing the history that points to that better path.

## Chapter 1

# Bilateral Cooperation in the Past

Twice in the 20th century, the United States and Mexico regulated labor mobility under a series of bilateral worker agreements (BWAs).<sup>1</sup> Those agreements operated first in 1909 and from 1917 to 1921, then again from 1942 to 1964. They were international accords specifying numbers of Mexican workers that could temporarily supply their labor in the US market, sectors of work, duration of stay, wages and other conditions of employment, housing, recruitment, and the responsibilities of both governments. The large majority of these jobs were in agriculture, with a lesser share on the railroads and in construction or mining.<sup>2</sup>

This chapter discusses how the earlier BWAs responded to major economic and demographic events on both sides of the border, and some of the flaws in those agreements that contributed to their undoing a half-century ago. It then reviews events within the bilateral policy vacuum that has prevailed since.

## Past US-Mexico BWAs responded to major events in both countries

### 1909 to 1921

The first BWAs, up until 1921, provided a regulatory framework that responded to major events that raised US demand for and Mexican supply of migrant labor. In the United States, the number of youths entering the labor force stagnated during the decade following 1910—for the first time in the country's history.<sup>3</sup> This can be seen in Figure 1, which shows changes in the youth population of the United States and Mexico. Labor supply in the United States was further reduced in 1917 by the simultaneous introduction of military conscription and a new Immigration Act to limit European immigration.<sup>4</sup>

This coincided with Mexico's 1910–1920 period of revolution, which brought widespread unemployment there and increased labor supply to the United States. This combined with conditions in the United States to create great pressure for labor mobility, to which these early agreements responded. But these first agreements were allowed to expire in 1921, principally because the US economy experienced a sharp recession during 1920–1921.<sup>5</sup>

The end of the first agreements illegalized the cross-border mobility of large numbers of Mexican workers, for the first time. The roaring US economy of the 1920s brought strong

1. The 1917–1921 agreements occurred largely between national US officials and local Mexican consuls—due to chaos in the Mexican national government arising from the Mexican revolution—but were nonetheless managed across the border through lawful channels (Alanís, *El primer programa bracero y el gobierno de México*). The first agreement of this kind occurred in 1909, when 1,000 sugar-beet harvesters migrated under an agreement between presidents William Howard Taft and Porfirio Díaz (Casarrubias, “El problema del éxodo de braceros,” 350).

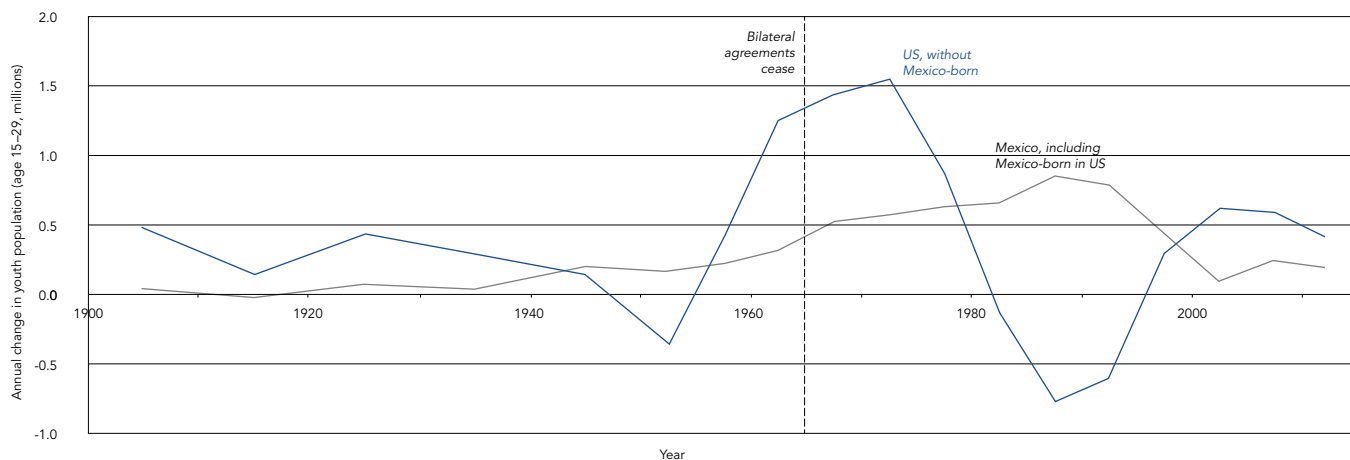
2. Scruggs, “Mexican Farm Labor Agreement of 1942”; Bickerton, “Bilateral Immigration Agreement.”

3. The youth population had grown by millions each decade from 1790 to 1910. US Bureau of the Census, *Historical Statistics of the United States, 1789–1945*, Series B: 81–144 (1949), 28.

4. Cardoso, *Mexican Emigration to the United States*; Romo, “Responses to Mexican Immigration, 1910–1930,” 117–121.

5. Strauss, *Relaciones entre México y los Estados Unidos: 1921, 177–196*; Durand, *Más allá de la línea*, 120–121.

Figure 1. Annual change in youth population of Mexico and the United States, 1900–2014\*



\*Data sources for population age 15–29: Data for people in the United States and people in Mexico 1950–2015, plus projections for 2020–2050, are from United Nations, Department of Economic and Social Affairs (DESA), Population Division, *World Population Prospects: The 2015 Revision* (2015), accessed March 8, 2016. (Figure for 2014 is interpolated using geometric average 2010–2015 annual growth rate.) US population age 15–29 during 1900–1940 is from US Bureau of the Census, *Historical Statistics of the United States, 1789–1945*, Series B: 81–144 (Washington, DC: Bureau of the Census, Dept. of Commerce), 28. Mexico population

age 15–29 during 1900–1940 is from INEGI, *Estadísticas históricas de México 2009* (Mexico City: Instituto Nacional de Estadística y Geografía, Cuadro 1.3, 2010). (Age-specific intercensal population growth rates from INEGI are used to backward-extrapolate the aforementioned 1950 figure from UN DESA.) Population of Mexico-born age 15–29 for the years 1900–2014 is calculated from microdata in the IPUMS-USA database (Ruggles, Integrated Public Use Microdata Series). (Mexico-born US resident population interpolated as arithmetic average in intercensal years.)

demand for labor, while a ready supply of Mexican labor was ensured by the instability of Mexico's postrevolutionary land reforms and coup attempts. A 1922 report commissioned by the US Labor Department recommended creating a federal agency to manage lower-skill labor flows in the Mexico border region, but no such action was taken.<sup>6</sup> An industry of professional human traffickers (*coyotes*) arose for the first time in 1924,<sup>7</sup> and the black market in labor flourished.

In the late 1920s, the first major academic study of US-Mexico migration concluded, "The origin of illegal immigration is to be found in the farmers and ranchers, and railroad, mining, and other enterprises to which Mexican labor is indispensable."<sup>8</sup> The same study recommended creating a

new program for lawful contract labor.<sup>9</sup> But that idea was soon moot: in 1929, the Great Depression sharply reduced demand for labor and led to the expulsion of hundreds of thousands of people of Mexican origin from the United States.<sup>10</sup> At the same time, by coincidence, the supply of labor from Mexico ebbed with the return of stability at the end of the Cristero conflict.

## 1942 to 1964

The story of the 1910s–1920s repeated itself in the 1940s–1960s: events in the United States and Mexico raised the demand for and supply of Mexican labor, and bilateral agreements at first responded—then collapsed.

6. Reisler, *By the Sweat of Their Brow*, 57.

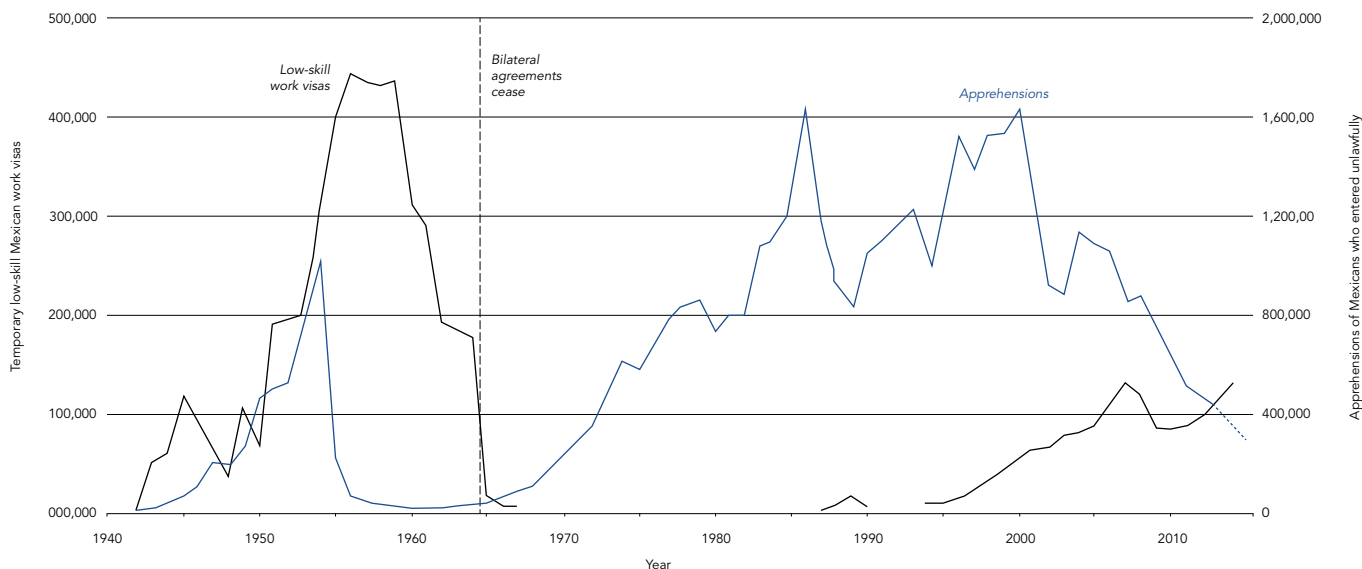
7. Cardoso, *Mexican Emigration to the United States*, 84.

8. Gamio, *Mexican Immigration to the United States*, 11.

9. Ibid, 185.

10. Balderrama and Rodríguez, *Decade of Betrayal*.

Figure 2. Mexico-US lower-skill work visas versus US apprehensions of Mexicans who entered unlawfully, 1942–2015\*



All numbers, both visas and apprehensions, are for Mexican nationals only. Lower-skill visas before 1965 reflect work permits under the bilateral worker agreements of 1942–1964. Visas after 1968 reflect H-2A and H-2B seasonal lower-skill visas given to Mexicans under a unilateral program. Separate vertical axes are used for visas and apprehensions because they are not directly commensurable; a lower-skill seasonal work visa here typically represents one person per year, whereas an apprehension could occur multiple times in a single year for the same person.

\*All figures are for Mexican nationals only. Data sources: Temporary low-skill Mexican work visas: 1942–1967: Bracero workers per year from María de los Angeles Gastelúm Gaxiola, *La migración de los trabajadores mexicanos indocumentados a los Estados Unidos* (Mexico City: UNAM, Cuadro 3, 1991), 54. 1984–2014: H-2 visas issued to Mexican nationals per year, from *Statistical Yearbook of the Immigration and Naturalization Service and Yearbook of Immigration Statistics*, 1984, 1987–1989, 1990, 1994–1996; and from Report of the Visa Office, 1997–2014. Apprehensions of unauthorized Mexican nationals (also “Mexican deportable aliens located”) from *Statistical Yearbook of the Immigration and Naturalization Service*

and *Yearbook of Immigration Statistics*, 1960–2013. Apprehensions for 2014 and 2015 are estimates (indicated by a dotted line) made as follows: we take the Customs and Border Patrol (CBP) apprehensions for 2014 and 2015, which do not include US Immigration and Customs Enforcement (ICE) apprehensions, and scale them up by the ratio of total (CBP + ICE) apprehensions to CBP apprehensions observed in 2013 ( $424,978/267,734 = 1.59$ ). CBP apprehensions of Mexican nationals in 2014 and 2015 are from US Border Patrol, *Total Illegal Alien Apprehensions by Fiscal Year (Oct. 1st through Sept. 30th)* (Washington, DC: US Customs and Border Protection, 2016), accessed March 8, 2016.

On the US side, the number of American youths entering the labor market stagnated in the 1940s and then began to fall—for the first time in history (Figure 1). This was a demographic aftershock of the Great Depression and further restrictions on US immigration that had been legislated in 1924.<sup>11</sup> Meanwhile labor demand in the United States soared in the late 1940s and 1950s as the postwar economy took off. And on the Mexican side, coincidentally, a surge of youths entered

the labor force as Mexico’s post-1930 demographic transition proceeded.<sup>12</sup> These forces combined to renew the potential for shared benefit from labor mobility across the border. Starting in 1942, the two countries again created a series of bilateral agreements to regulate that mobility.

Until 1951, under this new set of BWAs the US Immigration and Naturalization Service (INS) enforced a quota of roughly 100,000 on temporary work visas.<sup>13</sup> That cap was set politi-

11. It was too early to be caused by the Second World War; in the late 1940s and early 1950s, almost everyone age 15 to 29 was conceived before the war.

12. Feliciano, “Mexico’s Demographic Transformation.”

13. Massey, Durand, and Malone, *Beyond Smoke and Mirrors*, 37.

cally and without serious study of the demand for Mexican workers, which greatly exceeded it.<sup>14</sup> The design of the program furthermore dissuaded growers from using it: participating growers could not individually select workers to rehire year after year—as they could do with workers hired on the black market—but were required to hire different workers each year from a central pool.<sup>15</sup> The result was that many growers hired outside the program and a large fraction of the renewed cross-border mobility was illegalized. Unauthorized immigration rose sharply, partially reflected by a rise in the number of Mexican “deportable aliens” located by the INS (Figure 2).

During 1951–1954, the US and Mexican governments took a series of steps to alter their regulatory regime in ways that sharply reduced unlawful labor mobility across the border. First, they agreed that the United States would, for the first time, adjust the availability of temporary work visas to reflect demand for Mexican workers. The visa quota was doubled to 200,000 in 1951 by Public Law 78, then more than doubled again to 450,000 in 1954.<sup>16</sup> For the first time, the number of lawful work permits rose above a small fraction of US demand for—and Mexican supply of—Mexican workers. Second, in 1954 the INS made it much easier for employers to rehire specific Mexicans who had proven to be good workers.<sup>17</sup> Third,

14. Border Patrol officers reported in the late 1950s that the arrivals of lawful workers were “in sufficient numbers to keep the labor supply slightly ahead of demand” (Calavita, *Inside the State*, 89), showing that before the 1954 adjustment, the visa reflected only a small fraction of demand.

15. Lytle Hernández, *Migra! A History of the U.S. Border Patrol*, 188.

16. Massey, Durand, and Malone, *Beyond Smoke and Mirrors*, 37. For more on the 1951 renegotiation see Cardenas, “United States Immigration Policy toward Mexico.”

17. The INS adjusted the program in 1954 to facilitate employers’ rehire of preferred workers season after season: the *mica* card (or “I-100”), which allowed them to recontract a worker in the United States without requiring the worker to return first to Mexico, and “Specials” program, which allowed employers to select individual Mexican workers (Lytle Hernández, *Migra! A History of the U.S. Border Patrol*, 187–188). The head of the INS clearly stated the goal of these reforms: “The employment in the United States of Mexican laborers lawfully admitted temporarily for agricultural labor should be made as attractive as possible to employers and the employees by means such as (a) giving the employers the types of workers they need in

the US and Mexican governments in 1954 worked together in greatly scaling up a coordinated series of raids, roadblocks, and deportations known in the United States as “Operation Wetback.” The participation of Mexican authorities, alongside US authorities, was extensive.<sup>18</sup> The enforcement surge of 1954 has been sharply criticized as leading to the wrongful expulsion of significant numbers of US citizens of Mexican descent, in part because fewer than 1 in 50 deportees was removed through formal deportation proceedings.<sup>19</sup>

This problematic bundle of policy changes had the effect of greatly curtailing unlawful labor mobility across the border. One sign of this is in Figure 2: apprehensions of Mexicans migrating unlawfully plummeted. To be sure, measuring apprehensions is different from measuring unlawful flows. But it is quite clear from the historical record that unlawful flows, too, fell sharply after 1954. Political scientist Richard Craig, writing in 1971, found that after 1954 unlawful migration between the countries “had, for all practical purposes, ceased to exist.”<sup>20</sup> This experience is incompatible with the idea that migrant networks built during bilateral cooperation in the 1940s were the main cause of subsequent unlawful migration, as some have claimed.<sup>21</sup> The key role of a more flexible and usable visa program in curtailing unlawful migration has been underappreciated. But historian Kelly Lytle Hernández concludes that after 1954, “the modified Bracero program undoubtedly addressed the crisis of consent among South Texas farmers that had destabilized and undermined the practices and priorities of the Border Patrol ... for nearly a decade.”<sup>22</sup>

For short intervals during this period, relations between the United States and Mexico faltered and the parties flirted with reverting from bilateral to unilateral recruitment—that is, direct contracting of Mexican labor by US employers, under

the amount needed, and precisely when needed; (b) making that process as simple as possible” (Calavita, *Inside the State*, 92).

18. Lytle Hernández, “Crimes and Consequences of Illegal Immigration”; Lytle Hernández, *Migra! A History of the U.S. Border Patrol*.

19. Carrasco, “Latinos in the United States,” 84.

20. Craig, *The Bracero Program*, 129.

21. E.g., Martin and Teitelbaum, “Mirage of Mexican Guest Workers,” 122.

22. Lytle Hernández, *Migra! A History of the U.S. Border Patrol*, 189.

### Box 1 The effect of past bilateral worker agreements on US wages

The US Department of Labor pushed to end the bilateral worker agreement (BWA) in the early 1960s primarily to raise wages in agriculture.<sup>1</sup> Would the end of cooperation achieve this goal? The contemporaneous debate was politicized and lacked an objective standard of evidence. “Anti-braceroists produced statistics in support of their argument that increased employment of Mexicans had adversely affected the wages and working conditions of natives,” wrote political scientist Richard Craig, about the debate in 1958. “Those supporting [the program] presented equally elaborate data indicating that the bracero had, if anything, proved beneficial to the working conditions and wages of domestics.”<sup>2</sup> Anecdotal claims about harms to US workers from the 20th-century BWA have continued in recent times.<sup>3</sup>

But the only systematic, quantitative evidence in academic research indicates that ending the agreement failed to have a detectable effect on US workers’ wages. Two economists in the late 1970s at Louisiana State University tested for differences in farm wage trends in the several years before versus after the BWA ended in 1964, in states that were the heaviest users of the program. They found no significant differences, and concluded that “the effects of *bracero* exclusion did not substantially influence farm labor market variables” including wages.<sup>4</sup>

1. Garrett et al., *Mexican Farm Labor Program*.

2. Craig, *The Bracero Program*, 144.

3. E.g., Martin and Teitelbaum, “Mirage of Mexican Guest Workers,” 124.

4. Jones and Rice, “Agricultural Labor in the Southwest,” 86. Others had pointed out for individual states, such as California, that US workers’

Three main explanations for this finding are possible. First, Mexican workers under the BWA may have been filling jobs for which willing US workers were difficult to find at the time and place needed. Second, Mexican and US workers may have been in competition for manual-labor jobs, but Mexican labor shaped farm production in ways that generated other agriculture jobs for US workers. For example, Mexican laborers may have deterred the replacement of US farm jobs with mechanized production or imported produce, or allowed US farmworkers to adopt nonmanual roles of supervision or equipment operation.

Third, the demise of the BWA may have partially replaced regulated labor mobility with unregulated labor mobility. This would tend to limit any change in the de facto supply of Mexican labor after 1964. And even if supply fell, workers’ bargaining power also fell in the regulatory vacuum, blunting any corresponding rise in wages. All three of these explanations could have contributed to the result in some measure.

While the first two explanations are controversial and have not been settled by research, the third explanation—substitution with unlawful migration—was undoubtedly important. Figure 2 shows that after the last BWA ended in 1964, the bilateral regulatory regime was quickly replaced with a large black market. Those who had judged the effects of the BWA relative to no labor mobility turned out to be making a hypothetical comparison; those who had judged the effects of the BWA relative to black-market labor mobility turned out to be making the comparison of greater practical relevance.

wages in agriculture were unaffected by the end of the BWA in 1964 (Fuller, “A New Era for Farm Labor?” 288).

certification from the US Department of Labor but without involvement of the Mexican government. This occurred during 1949–1951 and briefly in both 1943 and 1954. Unilateralism was strenuously opposed by the Labor Department and by US and Mexican labor leaders including the American Federation of Labor. This was because a unilateral regime would remove

oversight of working conditions and recruitment by the Mexican government, and would lead the entire agreement to be seen as a tool for growers to undermine US workers’ unions and working conditions.<sup>23</sup>

23. Hazelton, “Open-Shop Fields,” 140–142.

## A third set of shocks across the border—but this time, no bilateral regulation

In 1964, the story of 1921 repeated itself: the last BWA was allowed to expire. The chief US proponent of ending the agreements was the US Department of Labor, which hoped that ending the program would curtail the supply of labor and the abuses of workers under the program, improving wages and working conditions for US workers.<sup>24</sup> The historical evidence suggests that ending the bilateral program failed to achieve those goals (Box 1).

What was clear to observers at the time, in both countries, was that replacing bilateral cooperation with a bilateral regulatory vacuum would lead to substantial unlawful migration (Box 2). But none predicted the magnitude of the wave of illegality that was to follow, because the supply of and demand for Mexican labor across the border were about to rise to levels never seen before.

A decade later came large economic and demographic shocks on both sides of the border, similar in nature but much greater in size than those that had arrived in the 1910s and 1950s. This time, however, there would be no third set of bilateral agreements to accommodate those shocks.

In the United States, in the late 1970s through the 1980s, the number of youths entering the labor force had its largest fall in history as the baby boom generation matured. And after 1982, the US economy experienced two decades of strong growth, with a short interruption, accompanied by strong labor demand. This was just the moment when Mexico's youth surge was peaking (Figure 1), and after strong job growth through the 1960s and early 1970s, the Mexican economy tanked following the 1982 Latin American debt crisis.<sup>25</sup> These forces, without an adequate regulatory framework, created an unprecedented wave of people migrating unlawfully (Figure 2).

The bilateral regulatory vacuum after 1964 was not sustained by one country alone. In 1964 and 1972, two presidents of Mexico proposed a new bilateral labor agreement, but each

time the US president rejected it.<sup>26</sup> An expert commission created by Mexican president Echeverría concluded in 1972, “We must convince American officials that the current situation of an unregulated migration flow will end up more harmful to them and to us than a flow regulated by a Bilateral Agreement.”<sup>27</sup> A counterpart commission created by US president Nixon rejected creating any such agreement, citing the belief that it would harm US workers, particularly minorities.<sup>28</sup>

But it was the Mexican president, in turn, who rejected proposals of BWAs from two US presidents in 1974 and 1979. In 1974, US president Ford proposed a new agreement on temporary lower-skill labor mobility in exchange for preferential access to Mexican oil. Mexican president Echeverría rejected the deal.<sup>29</sup> Echeverría had reversed his position after a meeting with labor advocate Ernesto Galarza convinced him—despite the experience of 1954–1964—that “such agreements have never succeeded in preventing undocumented immigration in

26. In 1964, Mexican president-elect Gustavo Díaz Ordaz proposed a new bilateral labor agreement to US president Lyndon Johnson. Johnson rejected the proposal—while expressing doubts that US workers could be found for the jobs in question (García y Griego, “The Bracero Program,” 1221). No agreement was made. In 1972, presidents Luís Echeverría and Richard Nixon responded to the surge in unauthorized mobility by forming separate commissions studying how to reduce it. Echeverría’s commission recommended creating a new bilateral agreement to regulate cross-border labor mobility (Cardenas, “United States Immigration Policy toward Mexico,” 86). Nixon’s commission unanimously rejected the option of a new bilateral agreement, citing its impressions of harm to US workers, particularly Mexican Americans and blacks (Cramton et al., *Program for Effective and Humane Action*, 35–37).

27. Comisión Intersecretarial, *Informe de Actividades y Recomendaciones*, 38. The original passage reads, “Sin embargo tenemos que convencer a los funcionarios norteamericanos de que la situación actual de una corriente migratoria incontrolada resulta más perjudicial para ellos y para nosotros que la que pueda ser regulada por un Acuerdo Bilateral y controlada mediante esfuerzos mutuos de cooperación.”

28. Cramton et al., *Program for Effective and Humane Action*, 35–37.

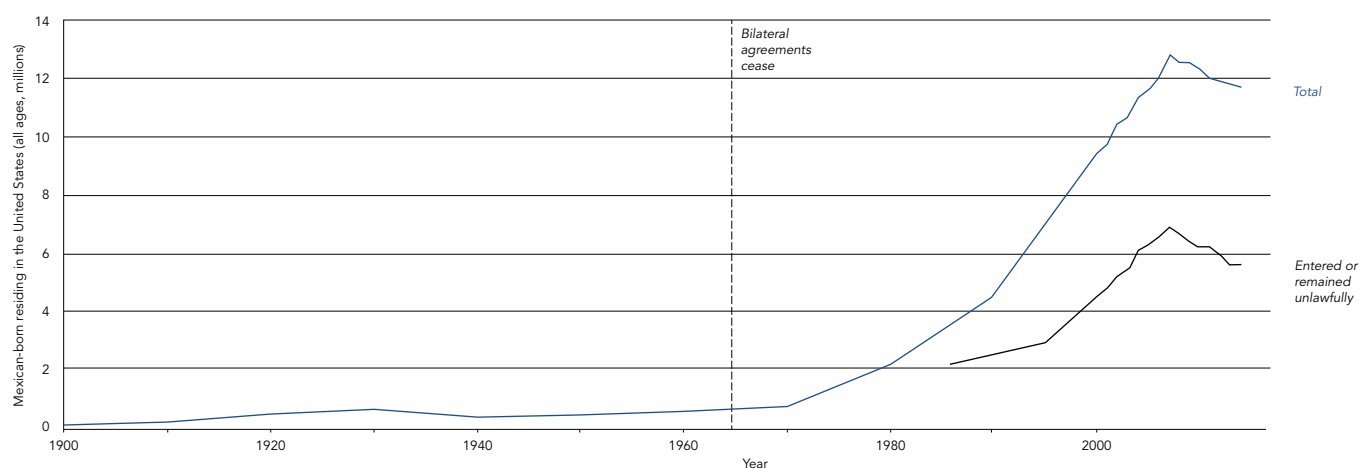
29. Délano, *Mexico and Its Diaspora*, 112.

24. Garrett et al., *Mexican Farm Labor Program*.

25. Martínez, “Migration and the Border, 1965–1985,” 103–105.



Figure 3. Mexican residents of the United States, all ages, 1900–2014\*



\*Data sources: Passel, Cohn, and Gonzalez-Barrera, *Net Migration from Mexico*, appendix tables 1 and 3; Passel and Cohn, *Unauthorized Immigrant Totals Rise*, fig. 3; Gonzalez-Barrera, *More Mexicans Leaving*, fig.

5 of the main report and fig. 2 of the accompanying blog post; Wasem, *Unauthorized Aliens*, fig. 2.

the past.”<sup>30</sup> His successor, President López Portillo, rejected a similar proposal from US president Carter in 1979.<sup>31</sup>

Even after the ballooning black market was widely recognized, contemporary experts presented no viable alternative to a bilateral regulatory vacuum. In the United States, influential US scholars in 1980 condemned creating any lawful channel for temporary labor mobility at the border.<sup>32</sup> The 1981 report of the Hesburgh Commission recommended against creation of a new temporary worker program.<sup>33</sup> The new US president, Ronald Reagan, campaigned on a platform of creating a new regulatory regime including a temporary labor mobility agreement.<sup>34</sup> But Reagan found little support in the US Congress, which changed immigration law in 1986

without substantial provision for future flows of labor.<sup>35</sup> The US Commission for the Study of International Migration and Cooperative Economic Development noted the failure of the 1986 reform to alter black market flows, but stated that it “firmly rejects suggestions for an expanded temporary worker program.”<sup>36</sup> In each case, opponents cited the idea of harm to US workers and the idea that temporary workers would necessarily become permanent workers. All of these analyses judged the effects of lawful temporary migration primarily by comparing it with no migration, rather than by comparing it with large-scale unlawful migration. The history since has given reason to question that perspective.

On the Mexican side, pressure for a bilateral labor agreement waned after the 1970s. Various presidents, from de la Madrid in the 1980s to Salinas in the 1990s, made it clear that they viewed labor mobility more as an embarrassing sign of economic failure than as a historic force carrying the potential for mutual gain.<sup>37</sup>

30. García y Griego, “Importation of Mexican Contract Laborers,” 73.

31. Délano, *Mexico and Its Diaspora*, 84.

32. Martin and Miller, “Guestworkers.”

33. Select Commission, *U.S. Immigration Policy*, 45; Briggs, “Report of the Select Commission,” 14.

34. Ronald Reagan, quoted in Theodore Rueter, ed., *Transcripts of the 1980 Presidential Debates* (Ann Arbor, MI: University Microfilms International, 1981), 321–322. See Turansick, “Critique of Proposed Amendments,” for details of the Reagan proposal.

35. Bush, McLarty, and Alden, *U.S. Immigration Policy*, 88.

36. Asencio, *Unauthorized Migration*, 9.

37. “And there is no doubt that as the Mexican economy improves, the migrant flows will tend to decline,” said Miguel de la Madrid Hurtado at a summit with Ronald Reagan (Reagan Library, “Remarks Following

## Box 2 How contemporary observers viewed the end of bilateral cooperation

Before and after the end of bilateral cooperation in 1964, it was broadly understood in both countries that change would make strong enforcement untenable and usher in an era of illegality.

- In 1958, Texas congressman William Poage asked Immigration and Naturalization Service (INS) official James Hennessy whether the near-elimination of unlawful entry would have been possible if “there had been no legal program for the entry of Mexican labor into the United States”; Hennessy replied, “No,” and Poage agreed this was “obvious.”<sup>1</sup>
- A 1958 Border Patrol report warned that without the program, “we can look forward to a large increase in the number of illegal alien entrants in the United States.”<sup>2</sup>
- A US Department of Labor commission in 1959 found that the bilateral agreement had been critical to eliminating the black market.<sup>3</sup>

1. US Congress, “Mexican Farm Labor,” 456.

2. Calavita, *Inside the State*, 89.

3. Garrett et al., *Mexican Farm Labor Program*.

- In 1963, the Mexican ambassador wrote to US secretary of state Dean Rusk, warning that “the absence of an agreement would not end the problem but rather would give rise to a de facto situation: the illegal introduction of Mexican workers into the United States, which would be extremely prejudicial to the illegal workers and, as experience has shown, would also unfavorably affect American workers.”<sup>4</sup>
- The US Department of Agriculture warned in 1965 that the end of the agreement would have the effect of illegalizing labor flows critical to the farm economy.<sup>5</sup>
- In 1968 the INS attributed the sudden spike in unlawful migration to the end of the bilateral worker agreement in 1964.<sup>6</sup>
- By 1974 a leading sociologist then at the University of Texas at Austin lamented the large numbers of Mexican workers migrating unlawfully, the “obvious outcome” of the end of the 1964 agreement, and which could only be stopped by creating a new “regulated entry program coupled with increased controls.”<sup>7</sup>

4. Carrillo, “Letter to U.S. Secretary of State.”

5. McElroy and Gavett, *Termination of the Bracero Program*.

6. INS, *Annual Report 1968*, 10–11.

7. Portes, “Return of the Werback,” 46.

There were hopes that the North American Free Trade Agreement (NAFTA) of 1994 would lead to wage convergence across the border and a diminished supply of Mexican migrant labor.<sup>38</sup> Looking back, we can now see that NAFTA failed

Discussions with President Miguel De la Madrid Hurtado of Mexico,” August 13, 1986). Carlos Salinas de Gortari said that “higher wages in Mexico ... will mean fewer migrants to the United States” (State Department, “Opening Remarks at the U.S. Binational Commission Mtg. Office of the Spokesman,” as delivered by US secretary of state Warren Christopher, June 21, 1993), and Salinas repeatedly said, “We want to export products, not people” (Patrick McDonnell, “Next Step: Border Towns Brace for Influx,” *Los Angeles Times*, April 2, 1991).

38. Clemens, “Does Development Reduce Migration?” 152–154.

to produce substantial wage convergence across the border,<sup>39</sup> and large-scale migration continued unlawfully.

The product of this bilateral regulatory vacuum was a vast black market in labor (Figure 3). From 1965 to 1986, about 28 million Mexicans entered the United States unlawfully (of which 23.4 million were temporary/circular migrants).<sup>40</sup> The fraction of unauthorized workers among hired crop farmworkers shot

39. Hanson, “Wages in Mexico since NAFTA?”; Gandolfi, Halliday, and Robertson, *Trade, Migration, and the Place Premium*.

40. Massey, Durand, and Malone, *Beyond Smoke and Mirrors*, 45. They were accompanied by 1.3 million who entered lawfully.

from 10 percent in the late 1980s to more than 50 percent by 2000.<sup>41</sup>

After the 1980s, several more opportunities to create a BWA were bypassed. The NAFTA negotiations, from the start, ruled out any discussion of low-skill labor mobility.<sup>42</sup> In 1995, a US presidential commission flatly recommended “the elimination of the admission of unskilled workers”—meaning any worker without a university degree.<sup>43</sup> In 2001, two prominent US opponents of a temporary worker agreement restated their view that the sole policy solution was expanded “prohibitions” on Mexican labor.<sup>44</sup> The grim legacy of this unilateralism, alongside that of the 1920s, is two historic periods of massive illegality: one following 1921, the other following the late 1960s.

The main instruments of unilateral policy in recent years have been the US seasonal lower-skill work visas, known as H-2A (agriculture) and H-2B (all other sectors), which are used principally by Mexicans. These substituted in small measure for the black market, and their use has risen in recent years due in part to increased law enforcement activity both at and behind the border—seen in Figure 2.<sup>45</sup> But they have been wholly inadequate to the nature and scale of the problem. They cover only seasonal work, and US demand for Mexican labor has been largest outside seasonal jobs; they put a major US trade, investment, and migration partner on equal footing with scores of other nations; and they contain no provision for cooperative regulation of recruitment, allowing substantial abuses in the recruitment process. We discuss these and other problems of the unilateral regime later in Box 3.

The most recent opportunity for a new and bilateral policy regime arrived in 2001. New presidents George W. Bush and Vicente Fox energetically and personally pursued negotiations on a bilateral deal to regulate labor mobility. The high-level US-Mexico Migration Panel, in a report to both presidents, urged the creation of a bilateral agreement including important numbers of new, temporary opportunities for temporary labor mobility.<sup>46</sup> The same analysts who had supported illegalizing the vast labor flows of the 1980s and 1990s fought back, declaring the sole policy solution to be continued and expanded “prohibitions” on those labor flows, describing any alternative policy as a “mirage.”<sup>47</sup>

The 2001 bilateral negotiations broke off after the terrorist attacks of September 11. Participants and observers have suggested various reasons why they never resumed: Bush was unable to acquire broad support in the US Congress;<sup>48</sup> bilateral relations in general soured over a perceived lack of Mexican solidarity following the attacks and a lack of Mexican support in the United Nations for armed intervention in Iraq.<sup>49</sup> Additionally, in more recent years, Mexican attention on migration policy has shifted toward Central America.<sup>50</sup>

Others have blamed forces internal to the 2001 negotiations: Mexican reliance on a single-undertaking negotiating framework or an all-or-nothing deal, without sufficient negotiating power to sustain the position.<sup>51</sup> The then US ambassador to Mexico, Jeffrey Davidow, wrote later about the collapse of negotiations that “as long as the Mexican government was unwilling to take strong steps to block its population from migrating, its contribution to the solution would be far less than the grand bargain would demand of the United States. ... One side, the United States, controlled almost all of the chips. The other, Mexico, had little to bring to the table for trading.”<sup>52</sup>

41. Kandel, “Hired Farmworkers,” 15.

42. Cameron and Tomlin, *Making of NAFTA*, 71; Mayer, *Interpreting NAFTA*, 111; Miller and Gabriel, “U.S.-Mexico Migration Honeymoon,” 149.

43. US Commission on Immigration Reform, *Legal Immigration*, xxiv. The directors of the commission were Susan Martin, Andrew Schoenholtz, and Paul Donnelly. The members of the commission were Shirley M. Hufstедler (chair), Richard Estrada, Harold Ezell, Lawrence H. Fuchs, Robert Charles Hill, Warren Leiden, Nelson Merced, Bruce Morrison, and Michael S. Teitelbaum.

44. Martin and Teitelbaum, “Mirage of Mexican Guest Workers.”

45. Roberts, Alden, and Whitley, *Managing Illegal Immigration*.

46. McLarty, DiMarzio, and Rozental, *Mexico-U.S. Migration*.

47. Martin and Teitelbaum, “Mirage of Mexican Guest Workers.”

48. Miller and Gabriel, “U.S.-Mexico Migration Honeymoon,” 153.

49. Rozental, “Mexico-U.S. Bilateral Relations.”

50. Alba and Castillo, *New Approaches to Migration Management*.

51. Baer, “Mexico at an Impasse”; Gustavo Mohar, quoted by Délano, *Mexico and Its Diaspora*, 96, 177.

52. Davidow, *Bear and the Porcupine*, 215.

## Chapter 2

# Cooperation Beats Unilateralism, and Now Is the Time

The United States and Mexico have cooperated to regulate lower-skill labor mobility in the past. Though that cooperation had critical flaws, the two countries can cooperate to suppress unlawful migration—with enormous benefits for both. The bilateral policy vacuum that later replaced bilateral cooperation has, in contrast, created decades of chaos and illegality at the countries' shared border. This difficult experience shows that the flaws of earlier bilateral agreements are not a reason to discard all cooperation. Rather, those flaws are a reason to cooperate with better policy. And better policy can unlock tremendous benefits shared by both countries.

In the last several years, there have been new calls for bilateral cooperation, including the creation of a substantial program to link opportunities for lawful temporary work to US demand for Mexican labor. The Mexican government published the statement “Mexico and the Migration Phenomenon” in 2005, unanimously adopted by both houses of the Mexican legislature in 2006.<sup>1</sup> The statement supported “a temporary worker program of the greatest possible scope” in an attempt to influence the US debate on unilateral immigration reform legislation in that year.<sup>2</sup> The Partnership for the Americas Commission recommended bilateral cooperation to more closely match US visa policy to international labor market forces across the hemisphere in order to address unlawful migration, “whose negative effects are a product of its illegal nature, not of immigration itself.”<sup>3</sup> A bipartisan commission at the US Council on Foreign Relations wrote, “Recognizing that the U.S. economy has had and will continue to have a

significant appetite for low-skilled workers is a critical part of gaining control over illegal immigration.”<sup>4</sup>

But bilateral cooperation on the creation of lawful opportunities for lower-skill labor mobility is commonly seen as infeasible. A “pragmatic” focus, says a report to the North American Competitiveness Council, requires the countries to “set aside ... issues such as immigration and labor mobility that are highly relevant to the challenge of North America’s competitiveness.”<sup>5</sup> Clearly, “the failure of the efforts of former presidents Fox and Bush to conclude a bilateral accord on migration has left both sides understandably wary of another effort.”<sup>6</sup>

We are more optimistic about the possibilities of renewed cooperation. In fact, recent developments imply that cooperation could bring greater benefits and face fewer obstacles now than in a generation.

## Prior efforts at bilateral cooperation had severe shortcomings—that can be addressed

The bilateral agreements of the early and mid-20th century have been heavily criticized for a number of major flaws. Many of these arose because the original negotiations generally excluded representatives of organized labor from both countries—contributing to a lack of effective safeguards for the wages and working conditions of contract workers.<sup>7</sup> Perhaps most damaging, all of the agreements bound lawful migrant workers to a single employer. Abuses of contracted workers

1. Alba, *Mexico: A Crucial Crossroads*. The full text of the statement can be found at <http://consulmex.sre.gob.mx/raleigh/images/stories/prensa/oct2013/mexfenmig.pdf>.

2. Délano, “From ‘Shared Responsibility’ to a Migration Agreement,” 51.

3. Zedillo and Pickering, *Re-Thinking U.S.–Latin American Relations*, 16.

4. Bush, McLarty, and Alden, *U.S. Immigration Policy*, 88.

5. NACC, *Secure and Competitive North America*.

6. Bush, McLarty, and Alden, *U.S. Immigration Policy*, 109.

7. Hazelton, “Open-Shop Fields,” 186, 189.

were widespread, including violating contract terms on wages, days of work, food, housing, and safety.<sup>8</sup>

In theory there was a process for workers to complain. For example, the 1949 BWA specified that contracted workers could not accept any job from any other employer. The agreement did promise that if employers did not honor the contract, “the United States Employment Service shall make every effort to transfer the worker” to a different employer.<sup>9</sup> But given the many barriers that workers would have had to overcome to effectively pursue such a complaint, especially during the four to six months they were allowed to be present in the United States, it is no surprise that this provision remained essentially dead letter. Workers frequently faced a de facto choice between accepting wages and conditions that violated the contract and going home to earn 90 percent less.<sup>10</sup> Large-scale abuses stoked widespread moral opposition to the agreements.<sup>11</sup>

Another critical failing of the earlier agreements was their rigid sectoral limits. Almost all Mexicans allowed to enter the United States during the BWAs of 1910–1921 and 1942–1964 were seasonal farmhands—though a small number also worked in railroad transport, mining, and construction. But this sectoral allocation of work permits under the BWA reflected more the political power of major agricultural employers than it reflected a factual assessment of the demand for Mexican labor across the US economy.<sup>12</sup> Agriculture has been very important, but since the 1920s and before, Mexican labor had been employed in year-round, urban, industrial

work all over the United States.<sup>13</sup> In 1955, 31 percent of apprehended unauthorized Mexican workers were discovered not at farmwork but at industrial jobs.<sup>14</sup>

A further and infamous flaw in the earlier agreements was substantially addressed over time: between 1942 and 1949, Mexican workers under the BWA had 10 percent of their wages withheld in a forced savings program that was never properly administered. This resulted in perhaps hundreds of thousands of workers simply having that portion of their rightful wages expropriated by US employers or Mexican officials, never to be seen again.<sup>15</sup> Such forced savings ended by 1950. And during 2007–2012, the Mexican government and Congress passed a series of bills to provide restitution payments to several thousand workers or their descendants.

In US politics, the most influential charge against the earlier BWAs was that they eroded the wages and working conditions of US workers.<sup>16</sup> As a question of fact, this remains controversial and hinges on the question of whether, in the absence of the BWAs, little Mexican migration would have occurred or large-scale unlawful migration would have occurred (see Box 2). The answer to this question of the 1960s is now apparent in hindsight: in the absence of the BWAs, vast migration occurred in a black-market context.

The aforementioned issues are well known and have been discussed for generations. But one flaw in the early agreements—one that was largely remedied after 1954—is less known. Prior to 1954, the number of work permits was set arbitrarily and rigidly, with the unintended consequence of encouraging black-market migration. Allowing for a more flexible regulatory regime, able to respond to economic and demographic shifts in the two countries, was critical to reducing unlawful migration.

None of these flaws is inherent to any effort at bilateral cooperation on labor mobility. They can be addressed by improving the design of bilateral cooperation. Better design is certainly only one ingredient for a successful return to cooperation, but it is an essential one. This report will specify several

8. Moore, *The Slaves We Rent*, 87–99; Bickerton, “Bilateral Immigration Agreement,” 909; Mitchell, *They Saved the Crops*, 372–380.

9. *Mexican Agricultural Workers: Agreement between the United States of America and Mexico, Effected by Exchange of Notes Signed at México August 1, 1949, Entered into Force August 1, 1949*, vol. 4284 of Publication, United States Department of State, vol. 2260 of Treaties and Other International Acts Series (Washington, DC: US Government Printing Office, 1952).

10. Hancock (*Role of the Bracero*, 29, 41) estimates that *bracero* workers’ wages in the United States were typically 10 times what they could earn in Mexico, and that roughly 10 percent of Mexico’s rural population was directly dependent, to varying degrees, on *bracero* income.

11. Craig, *The Bracero Program*, 150–197.

12. *Ibid.*

13. Taylor, *Mexican Labor in the United States*.

14. Rabb, “Report on the ‘Wetback’ and Bracero Programs,” 2.

15. Mitchell, *They Saved the Crops*, 6.

16. Craig, *The Bracero Program*, 160–197.

ways that renewed cooperation could be transformed with better design.

## The time for renewed cooperation is now

Today, though the two governments operate largely unilaterally on migration at the strategic level, they cooperate extensively at the tactical level. “Mexico already plays a key role in U.S. immigration enforcement and border security,” writes Marc Rosenblum and colleagues. “The United States and Mexico share information about transnational threats, Mexico combats unlawful migration by third country nationals, and Mexico supports certain U.S. enforcement efforts related to the repatriation of Mexican nationals.” And the authors identify “possibilities for additional bilateralism in these areas, including strategies to reduce recidivism among illegal migrants and to better manage U.S.-Mexican ports of entry.”<sup>17</sup>

The two governments also work together under bilateral agreements in several areas beyond migration—including the Border Environment Cooperation Commission, the International Boundary and Water Commission, and security cooperation under the Mérida Initiative.

The two countries’ shared interest in better regulation of future labor mobility has risen over time. Since 2007, the US Department of Labor and the Mexican embassy in Washington (and its network of 50 consulates throughout the United States), per a memorandum of understanding signed between both parties, have worked together to ensure, protect, and promote labor rights of Mexican workers in the United States. In April 2014 the US and Mexican secretaries of labor signed a joint declaration under the North American Agreement on Labor Cooperation to work together on informing Mexican workers on seasonal farmwork visas about their workplace rights (ILAB 2014). January of 2015 saw the second meeting of the US-Mexico High-Level Economic Dialogue. The Mexican government and the state of California recently signed a memorandum of understanding on the joint regulation of

worker recruitment, a useful indicator of feasibility of such an agreement between the two federal governments.<sup>18</sup> There are frameworks and goodwill for increased bilateral cooperation between the two countries in the future, however heavily history might weigh.

There is little alternative to creating major new channels for lawful labor mobility at the US-Mexico border, other than continuation of the black market, until wages converge between the two countries.<sup>19</sup> To date, there has been no overall convergence of wages for observably identical workers between the United States and Mexico since the advent of NAFTA.<sup>20</sup> This means that even as the conclusion of Mexico’s demographic transition will reduce the numbers of young Mexicans entering the labor force, their labor will continue to be demanded and supplied across the US border.<sup>21</sup>

Over the next several years, Mexico and the United States have a rare opportunity to start fresh. This is for at least four reasons:

- First, the years ahead will bring less migration pressure from Mexico. This is mainly because Mexico’s demographic transition is largely complete (Figure 1) and the two countries now have similar fertility rates. Reduced pressure will allow the two countries to discuss the shared future of their labor markets without an atmosphere of crisis. But there will be important labor mobility across the border indefinitely, given the huge Mexican and Mexican American diaspora in the United States and the societal transborder dynamics this triggers, and as gross flows in both directions will be substantial even though *net* flows may remain low.
- Second, both the United States and Mexico face increasing migration pressure from Central America, giving them shared incentives to cooperate that did not exist just a few years ago. In 2014 for the first time ever, more non-Mexican than Mexican unauthorized immigrants were apprehended

18. The text of the California-Mexico agreement can be found at <http://gov.ca.gov/news.php?id=18638>.

19. Martin, “Mexico-U.S. Migration.”

20. Hanson, “Wages in Mexico since NAFTA?”; Gandolfi, Halliday, and Robertson, *Trade, Migration, and the Place Premium*.

21. Roberts, Alden, and Whitley, *Managing Illegal Immigration*.

17. Rosenblum et al., *Mexican Migration to the United States*.

at the Southwest US border,<sup>22</sup> and Mexico is constructing mechanisms to regulate rising unauthorized entry from Guatemala; these are two facets of the same migration flows.<sup>23</sup>

- Third, the immigration reform debate in the United States and Mexico's new 2012 immigration law mean that policies affecting mobility are at the top of national agendas in both countries. Nationally prominent politicians in both countries have shown willingness to innovate in labor mobility regulation—including leaders of both US parties, as the 2013 US Senate bill demonstrated.
- Finally, a new generation of policymakers and researchers has seen the results of decades of illegalizing mobility across the border and is unsatisfied with continuing a failed policy of mutual unilateralism. In particular, the pessimism of an older generation about all temporary workers has given way to a new understanding that the success or failure

of temporary worker programs—relative to their realistic alternatives—depends on properly designing them.<sup>24</sup>

With proper design, bilateral regulation can bring opportunity and security shared by both countries, protect workers' rights in both countries, cripple unlawful activity in both countries, and serve as a model for the region and the world. Leaders across the political spectrum, and on both sides of the border, have a responsibility to advance an enlightened alternative to dark, extremist visions with nothing to offer but militarized walls and vast deportation convoys. This report is that alternative.

The shared history of the United States and Mexico shows that they have done better. Their shared future means that they must do better. And with shared responsibility, they can do better. The next chapter discusses several specific ways they can do that.

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22. López, Passel, and Rohal, *Modern Immigration Wave*.

23. Isaacson, Meyer, and Smith, *Increased Enforcement*.

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24. Ruhs, "Potential of Temporary Migration Programmes"; Luthria and Malaulau, "Bilateral Labor Agreements in the Pacific"; Gibson and McKenzie, "Impact of a Best Practice Seasonal Worker Policy."

## Chapter 3

# A Blueprint for Better

The United States and Mexico can do better, working together. The binational black market in labor was created and sustained by specific policy decisions: decisions to regulate large bilateral labor flows unilaterally, selectively, and with insufficient regard for the collateral impact of border security policies and the economic and demographic forces that drive labor markets.

This chapter describes how a new BWA between the United States and Mexico could unlock the tremendous shared benefits of labor mobility without repeating the mistakes of the past. It discusses several specific ways that a new period of bilateral cooperation could effectively regulate temporary lower-skill labor mobility. Appendix A presents these ideas concisely in the form of a draft *term sheet*—that is, an annotated outline of a hypothetical future agreement.

### Flaws in past agreements are not a reason to throw away cooperation

It has been clear for some time, as historian Oscar Martínez writes, “that only a binational comprehensive approach would have any chance of effectively managing the migration flow.”<sup>1</sup> With proper design, bilateral regulation can bring prosperity shared by both countries, secure workers’ rights in both countries, cripple unlawful activity in both countries, and serve as a model around the world.

Future cooperation must continue to address flows of *lower-skill* labor, as in the past. The mass media increasingly portray the US economy as driven by high-skill workers. In reality, lower-skill work will experience some of the most important increases in labor demand over the next several years. Occupations that require less than a high school degree will make up *more than half* of the growth in labor demand in the top 20

occupations with the greatest absolute growth over the next decade (Figure 4). Foreign workers in general, and Mexican workers in particular, will supply labor for many of those jobs in the future as in the past.

But it is clear that the way forward does not mean resurrecting the BWAs of the past. Those agreements failed to protect the rights of Mexican workers, with inevitable spillover effects on US workers. Those agreements focused almost entirely on seasonal agricultural workers, while today the large majority of Mexicans who add value to the US economy do so in sectors that are nonagricultural, nonseasonal, or both—such as food service, childcare, eldercare, construction, dairy, and meatpacking.<sup>2</sup> And past agreements were rigid and bureaucratic, contributing to their collapse and replacement with a unilateral regime that has resulted in a massive and harmful black market.

These are not reasons for the two countries to discard cooperation; rather, they are reasons to cooperate much differently than in the past. The design and terms of cooperation are critical to its success. In this chapter we enumerate the many goals of renewed bilateral cooperation, followed by the policy innovations we propose to reach those goals. Table 1 points out the limitations of earlier agreements, and the improvements proposed here, in connection with each goal.

### What a 21st-century US-Mexico bilateral worker agreement must do

New efforts at joint regulation must pursue and balance several goals. These goals were served inadequately by prior agreements and much less adequately by the bilateral regulatory vacuum of the past half-century. They include the following:

1. Martínez, “Migration and the Border, 1965–1985,” 121.

2. Chiquiar and Salcedo, *Mexican Migration to the United States*, 14.



Figure 4. Rising demand for relatively low-skill workers: The 20 occupations with largest projected absolute growth in US labor demand, 2014–2024, in thousands of new jobs\*

Education required: **None**  
**High School**  
**Postsecondary certificate**  
**Bachelor's**

Personal care aides 458.1	Home health aides 348.4	Food preparation and serving, incl. fast food 343.5	Registered nurses 439.3	General and operations mgrs 151.1	Nursing assistants 262.0	
					Medical assistants 138.9	Licensed practical/vocational nurses 117.3
					Accountants and auditors 142.4	Computer systems analysts 118.6
Retail salespersons 314.2	Construction labourers 147.4	Janitors and cleaners, except house-keeping 136.3	Software developers, applications 135.3	Customer service rep. 252.9	Supervisors of office/admin. support 121.2	Medical secretaries 108.2
Cooks, restaurant 158.9						

\*BLS, Employment Projections 2014–2024. Demand growth is the change in the absolute number of jobs (thousands) projected between 2014 and 2024. “Education requirement” is “typical formal educational credential at entry level” as assessed by the BLS.

- *Seek to eliminate black-market labor mobility.* A bilateral regulatory agreement can severely curtail the number of Mexican workers who migrate unlawfully for economic reasons, when robust enforcement is combined with flexibility to economic change. A bilateral regulatory vacuum, in contrast, encourages larger numbers of workers to migrate unlawfully.
- *Preserve US worker priority for jobs in the United States, without proliferation of unnecessary bureaucracy.* Viable cooperative regulation must and can create systems for Mexican workers and US workers to complement one another, rather than substitute for one another. Decades-old ideas about how to do this, exclusively with greater strictures on hiring, were well intended but have in fact harmed US workers and have been discredited by experience. There are better ways.
- *Prevent spikes in labor inflows, but respond to market conditions.* The last half-century has shown that rigid regulation

Table 1. Innovations for a new vision of bilateral regulation

Vision	Past agreements	Proposed innovations
<b>1. Flexible regulation of labor markets</b>		
<i>Eliminate unlawful labor mobility</i>	Rigidities and collapse that ultimately encouraged the black market	Displace black-market migration by flexible regulation with a <b>decelerator safeguard cap</b> and <b>US worker priority fee</b> , plus strong enforcement
<i>Preserve US worker priority, but limit bureaucratic expansion</i>	Ineffective foreign labor certification and spotty inspections	<b>US worker priority fee; labor condition application; database for employer-employee matching</b>
<i>Prevent spikes in labor inflows, but respond to market conditions</i>	Brittle, politicized quotas	<b>Decelerator safeguard cap with unemployment trigger</b>
<b>2. Workers' rights</b>		
<i>Suppress abusive intermediaries</i>	Recruitment by the Mexican government to displace human traffickers	<b>Mexican recruiter certification system; database for employer-employee matching</b>
<i>Ensure employer compliance with labor standards for all workers</i>	Workers tied to employer, no realistic enforcement of wages and conditions	<b>Sectoral visa portability</b> within broad sectors/areas, no restrictions on union representation
<b>3. Migration status</b>		
<i>Prevent overstays to foster temporary, circular mobility</i>	Sparse and ineffective enforcement of overstays	Worker and employer incentives for return: <b>return or integration account</b> and <b>return registry</b> ; travel cost sharing; repeat selection; <b>sectoral visa portability</b>
<i>Establish a clear exit path from temporary status</i>	De jure temporariness with de facto permanence, lawfully or unlawfully	Incentives for return through the <b>return or integration account</b> , but no exclusion from pursuing standard path to perm. residence
<b>4. Sectors and skills</b>		
<i>Encompass the sectors where Mexican labor adds value</i>	Restrict almost entirely to agriculture	<b>Sectoral visa portability</b> includes segments beyond seasonal agriculture
<i>Provide for vocational skill acquisition by all workers</i>	Exclusive focus on unskilled manual labor	Encourage vocational training for all workers, US in particular
<b>5. Governance</b>		
<i>Set transparent criteria for adjustment to market conditions</i>	Political battles without objective facts and rigid statute	New advisory body: <b>Bilateral Labor Markets Commission</b>
<i>Fund the mandate</i>	No funding mechanism for bilateral cooperation, de facto devolution to informality	Fiscal neutrality via <b>US worker priority fee</b> and <b>return or integration account</b>

of labor mobility can become brittle and shatter with economic and demographic change. This has badly degraded security at the border for both countries. Security and enforcement efforts work best when paired with systems that are flexible to large changes in the forces that drive labor mobility.

- *Suppress abusive labor intermediaries.* An important consequence of the bilateral regulatory vacuum has been the flourishing of unlawful and abusive recruiters (enganchadores) in Mexico. Charging large fees and making false promises to workers are widespread practices even for migration that is otherwise lawful, such as seasonal employment under the H-2A and H-2B visas, in violation of US and Mexican law.<sup>3</sup>
- *Ensure employer compliance with labor standards for all workers.* A critical flaw in prior agreements was the universal practice of tying migrant workers to a single employer. Experience shows that this had the effect of fostering practices abusive to Mexican workers whose effects have spilled over to US workers. Bilateral regulation of recruitment has likewise tended to reinforce basic rights for both Mexican and US workers.
- *Share responsibility across the border.* Regulation of cross-border labor mobility is an inherently bilateral issue. Current US visas like the H-2 lower-skill seasonal work visas were created and are managed with essentially no cooperation at all. They do not represent a modern version of the 20th-century BWAs, but reflect the absence of such an agreement. A critical ingredient of a new agreement is clear specification of Mexican responsibilities.
- *Prevent overstays to foster temporary mobility, and establish a clear exit path.* Prior agreements have failed to create a clear exit path for Mexican workers participating in the agreement. As a result, two de facto paths have predominated: either workers never exit the path of labor migrants and become an indefinite underclass, or they exit the path unlawfully by overstaying visas and entering the black market. Robust regulation must incorporate systems and incentives for workers to pursue two other exit paths from labor-migrant status: returning to Mexico and joining the

Mexican labor force, or applying for lawful permanent residence in the United States. These can complement and facilitate recent progress by US Customs and Border Protection in tracking visa overstays.<sup>4</sup>

- *Encompass the sectors where Mexican labor is demanded and supplied.* Prior efforts at bilateral cooperation have rigidly considered very limited parts of the economy, ignoring most sectors where Mexican labor has come to be important. A robust program and its associated regulation must address the needs and circumstances of the agricultural sector, yet must also consider nonagricultural and nonseasonal work, including food service, construction, personal care, and many others. The opportunity for mutual gain in these sectors is ongoing.
- *Encourage productivity-enhancing skill acquisition within occupations, for all workers.* Past BWAs between the United States and Mexico were built exclusively for the provision of unskilled and undifferentiated manual labor. Large amounts of lower-skill labor continue to be demanded, and that demand will grow (Figure 4).<sup>5</sup> But a BWA for the 21st century must recognize that in the modern economy both the supply of skills and the demand for skills are rising on both sides of the border: in the 1970s the fraction of new Mexican migrants to the United States with a high-school degree was just 4 percent,<sup>6</sup> but in 2013, it was 48 percent.<sup>7</sup> Moreover, the very nature of *skill* is changing. Where 20 years ago operating an irrigation network often meant manually turning valves, today it can mean manipulating a digital control system. Where personal care once meant keeping track of patients by scattered paper notes, today it often means record-keeping in an Internet-synchronized tablet app. Employees, employers, and the public can benefit when construction workers understand the subtleties of earthquake-resistance or historical preservation regulations; when landscapers understand precisely how and why to apply different pesticides safely; when home-health aides understand precisely when a doctor is needed; or

3. Owens et al., *Organization, Operation, and Victimization Process of Labor Trafficking*.

4. DHS, *Entry/Exit Overstay Report*.

5. See also Neumark, Johnson, and Cuellar Mejia, "Future Skill Shortages."

6. Alba-Hernández, "Éxodo silencioso," 163.

7. López, Passel, and Rohal, *Modern Immigration Wave*, 48.

### Box 3 Comparing this proposal to related policies

The proposal in this section differs markedly from other current or proposed policy regimes to regulate Mexico-US lower-skill labor mobility. Here we highlight how it differs from three of them.

- *The United States H-2 seasonal work visa differs* in numerous respects from the current proposal. It is a unilateral program; tightly restricted to seasonal jobs; tying workers to a single employer; limited by an inflexible visa quota (for nonfarm jobs); open to citizens of 83 countries from Belgium to Papua New Guinea; allowing frequent abuse of workers during the recruiting process because it relies on private Mexican recruiters that are practically unregulated by either government; and unpopular with employers due in part to its cumbersome and unpredictable system of annually recertifying that the supply of US workers is insufficient.
- *The Canada-Mexico Seasonal Agricultural Workers Program* is a series of bilateral agreements since 1974 to match Mexican lower-skill workers to Canadian employers. It differs in numerous respects from the current proposal. These include the fact that it ties workers to a single employer; it encompasses exclusively the agricultural sector, and exclusively seasonal jobs within that sector; it occurs in a context where history and geography limit the possibility of migrating unlawfully; and it requires the Mexican government itself to directly recruit workers. In its early years the program

operated under a strict visa quota far below demand, but that was dropped in 1987.<sup>1</sup>

- *The proposed United States “W” visa* appears in a bill that was passed by the Senate in 2013 (S.744) but never progressed to become law. That proposal shared some aspects with this one, including its provision for visa portability between employers (that have gone through an extensive process of proving need), its inclusion of nonseasonal lower-skill work by extending visa validity to three years, and its recommendation to create a “Bureau of Immigration and Labor Market Research.” But it too differs fundamentally from the present proposal. The W visa proposal would be a unilateral program with no provision to regulate recruitment, opening up workers to abuse by intermediaries; would have globally applicable rules not designed to consider the unique US-Mexico relationship; would enshrine in law a maximum number of visas that can be given to nonagricultural workers from all nations regardless of market conditions (200,000 per year in hypothetically optimal conditions, and usually far less); would require each employer for each position to go through a burdensome process of proving need, despite the fact that large fees would make the program unattractive to employers without need; and would either punitively fine or ban the hiring of W visa workers at firms if fewer than seven in 10 of their overall employees are Americans.

1. Verma, *Mexican and Caribbean Seasonal Agricultural Workers Program*.

when day porters at office buildings understand safe and orderly evacuation. None of these abilities is reflected in a worker’s school diploma or visa class, but enhanced worker productivity encourages growth, security, health, and job creation across the entire economy.

- *Set transparent criteria for adjustment to labor market conditions.* There is currently no source of timely but technocratic, nonpartisan information and advice on labor market conditions in the United States and Mexico that might

affect labor mobility across the border. Policy research is often politicized and of low quality, while more careful academic research often arrives years too late for use. A well-functioning BWA requires course corrections during economic changes, and those adjustments will not be sound if they rely on advocates’ narratives and anecdotes. A robust and modern BWA therefore requires an independent, technocratic specialist advisory body akin to the US Congressional Budget Office or the International Trade

Commission in its independence and gravitas. Because timely data from both countries would be essential to the functioning of such a body, it would require strong ties to both US and Mexican administrative agencies and research institutions.

- *Fund the mandate.* Administering bilateral regulation requires funding. A major opportunity to generate such funding lies in displacing the black market, which generates billions in revenue for smugglers and organized criminals.<sup>8</sup> Allocation of this revenue to US and Mexican federal governments, and to US and Mexican state and local governments, must reflect their relative participation in efforts that sustain the agreement.
- *Negotiate to earn trust outside the government.* This report focuses on technical characteristics that would make a BWA effective, rather than precisely how such an agreement is to be enacted. That said, history teaches that an effective agreement is more likely to arise from a negotiation process that includes major private organizations whose knowledge and trust are important to sustaining the agreement. A key reason that past BWAs between the two countries contained insufficient protections of labor is that labor organizations were not sufficiently included in their negotiation.<sup>9</sup> By the same token, the negotiation process is likely to address employers' labor needs adequately only if it involves major representatives of employers on both sides of the border, such as the US Chamber of Commerce and the Mexican Employers' Association (Coparmex).

## Innovations for a 21st-century bilateral worker agreement

The aforementioned goals are attainable—but not by just any agreement. The lesson of history is that details about the design of a BWA can be critical. The term sheet proposed here includes several policy innovations, for both countries, that

could be adapted to reach the goals we have outlined. The innovations are described below, and Table 1 maps how they serve the two countries' shared goals better than past efforts. Box 3 illustrates how these proposals innovate relative to other existing or proposed regulations.

- *US worker priority fee.* US employers must pay a transparent and universal surcharge to hire Mexican workers through the program. This is a straightforward and effective way to ensure that it is in employers' interest to hire US workers when available, guarding the legitimate interests of US labor while minimizing bureaucracy. As the economist Gordon Hanson has pointed out, such a fee has the side effect of raising US productivity by encouraging allocation of visas to employers that can use them most productively.<sup>10</sup> It also raises revenue for administration of the agreement, and makes compliance costs clear—unlike a quota system—and predictable—unlike an auction system.<sup>11</sup> The size of this fee must be negotiated to balance three main goals: it must be large enough to strongly deter the hiring of Mexican workers when US workers are available, according to evidence gathered by the proposed Bilateral Labor Markets Commission (see below); it must not be so high as to make use of the program untenable, especially for small businesses; and it must provide sufficient revenue to substantially offset the costs of implementing the agreement.
- *Decelerator safeguard cap.* It is important to cushion the labor markets of the United States and Mexico from sudden shocks that can displace workers unexpectedly, while it is also important to not fuel the black market by locking cross-border work under a quota too rigid to respond to changing conditions. A compromise formula is proposed to transparently and predictably limit the year-on-year *changes* in the number of new work permits granted. The cap incorporates a trigger to reset in times of high unemployment. It falls in years where the prior year's quota was not utilized,

8. Hanson, Robertson, and Spilimbergo, "Does Border Enforcement Protect U.S. Workers?"; Gathmann, "Effects of Enforcement on Illegal Markets."

9. Hazelton, "Open-Shop Fields," 186, 189.

10. Hanson, *Regulating Low-Skilled Immigration in the United States*, 25–27, 34–36.

11. *Ibid.*, 25–27, 34–36.

so that the change in visas used from that year to the next is subject to the same transparent limit.<sup>12</sup>

A hypothetical example illustrates how the decelerator safeguard cap formula would work. Suppose the parties agreed on a *start* cap of 100,000, a *step* cap of 100,000, and a *trigger* cap of 60,000. If the cap in the current year is not reached, the cap for the following year should be set at the actual number of visas used in the current year. This has the effect of reducing the cap when demand is low. If the cap in the current year is reached, then let  $d$  represent the number of days into a fiscal year that the year's cap was reached. Then the rise in the cap for the following year relative to the current year would be  $100,000 \times ((365/d) - 1)$ , or if that quantity exceeds 100,000, then the rise would be 100,000. This has the effect of relaxing the cap more, subject to a hard upper limit, when the prior year's visas were exhausted more quickly. For instance, suppose the initial cap in year 1 is 100,000. If only 83,000 visas are used in year 1, then the cap for year 2 would be 83,000. If the cap in year 2 runs out in nine months, then the cap for year 3 would rise from its level in year 2 by  $100,000 \times ((365/(9 \times 30)) - 1) = 35,185$ . Thus the cap for year 3 would equal  $83,000 + 35,185 = 118,185$ . If the *trigger* quantity were set at 60,000, then if US unemployment was very high in year 4, the visa cap would reset to 60,000, and proceed from there by the same *step* rule.

12. If the decelerator safeguard cap were not allowed to fall in times of limited demand, there could be scenarios in which sudden surges of migration occurred. For example, suppose that the cap stood at 200,000 in year 1, but only 50,000 visas were used. In the proposed formula, the limit for year 2 would be 50,000. If the cap were not allowed to fall in this fashion but remained at 200,000, then hypothetically the year-on-year change in migrant flows could exceed the *step* limit between years 2 and 3. Suppose that all 200,000 visas were used in year 3. Then, if the cap had not been allowed to fall to 50,000, the change in migrant flows between year 2 and year 3 would be an increase of 150,000—even if the agreed-upon *step* limit were 100,000. For this reason the formula for the decelerator safeguard cap proposes that, in this example, the cap fall to 50,000 in year 2, and rise by the *step* formula if demand exceeds supply in that year. Thus the year-on-year change in visas can never exceed the *step* limit.

The specific numbers for the *start*, *step*, and *trigger* should be subjects of negotiation. The credibility of the agreement would depend crucially on these numbers, so they should be chosen with due respect for changes and volatility in labor supply and demand observed in the past and plausible in the future.

- *Mexican recruiter certification.* The Mexican government currently has full legal authority to regulate international recruitment, including banning specific recruiters, under its 2012 Federal Labor Law.<sup>13</sup> It currently does little to exercise that mandate. Mexican enforcement would be a critical Mexican responsibility under a successful and lasting agreement, and could include enforcement actions against smugglers and unsanctioned recruiters both at the border and within Mexico. The US and Mexican governments would agree that workers could come exclusively through sanctioned recruiters known to respect the laws of both countries, a system that Jamaica has used successfully for many years.<sup>14</sup> The Mexican government would develop the list of sanctioned recruiters in cooperation with their US counterparts. The Mexican government has already agreed to cooperate in this fashion with the state of California, a strong indicator of the will, mandate, and capacity in Mexico to carry out this type of regulation (though, to be clear, we propose federal-to-federal cooperation, not federal-to-state).<sup>15</sup> Sanctioned recruiting organizations could include private firms, labor organizations, other nongovernmental organizations, and state and local government agencies—and should operate on both sides of the border, open to new entrants and with robust competition.
- *Database for employer-employee matching.* The full list of jobs covered by the program should be publicly accessible on the Internet in a transparent format. This would help to reduce US workers' concerns that they are not informed of the availability of jobs offered to Mexicans, help US

13. Articles 28, 28-A, 28-B, and 29.

14. The Jamaican Ministry of Labor and Social Security enforces a licensing system and publishes a list of licensed recruiters, along with ratings: [www.mlss.gov.jm/download/Employment\\_Agencies.pdf](http://www.mlss.gov.jm/download/Employment_Agencies.pdf).

15. The text of the California-Mexico agreement can be found at <http://gov.ca.gov/news.php?id=18638>.

employers find willing US workers, and greatly reduce the ability of black-market intermediaries to charge Mexican workers for information about available jobs.

- *Sectoral visa portability.* The most effective way to protect Mexican workers' rights, and the rights of US workers alongside them, is to ensure that workers can separate from employers without jeopardizing the opportunity to work in the United States. At the same time, allowing workers authorized under this agreement to take any other job they choose complicates the planning that is necessary for a viable agreement—for example, agricultural interests may balk at an agreement that allows all recruited agricultural workers to quit at will to become restaurant workers. A compromise measure is to allow work visas under the agreement to be fully portable across employers within segments—that is, broad sectors or delimited geographic areas, or both. These sectors and areas must be selected to represent most of those where Mexican workers are already important, including nonseasonal sectors. Such visa portability should admit limited exceptions in which Mexican workers could contract with one employer, where extraordinary characteristics of the job mean that it is normal for US workers also to sign fixed-duration contracts with a single employer (but these should never exceed one year). This is necessary in exceptional circumstances to protect the employer from excessive damages that could arise from unplanned worker separation—such as in sheepherding or some offshore fisheries. A BWA should furthermore place no restrictions on Mexican workers' ability to join Mexican or US labor unions.
- *Overstay regulation and disincentives: return or integration account.* A small portion of workers' earnings would be paid into an account, individual to each worker, that can be liquidated only upon the worker's return to Mexico within a short period of the end of their visa. If they instead remain in the United States—whether lawfully or unlawfully—the amount would be forfeited and transferred to US Citizenship and Immigration Services (USCIS) to cover costs associated either with the acquisition of lawful permanent residence or with unlawful presence.<sup>16</sup> The Mexican

government would agree to certify return at Mexican ports of entry at the workers' request, and share this information with US authorities. Funds would be held in an individual account for each worker by USCIS, allowing full transparency about whether employers had paid into the account; disbursements would be transferred directly to workers' personal accounts in Mexico. These provisions would suffice to eliminate most of the problems encountered with “forced savings” requirements of the 1940s that were often abused.

Global experience with temporary labor agreements has shown that other design features can similarly reduce overstay to negligible levels. In the Canadian Seasonal Agricultural Workers Program, employers share the cost of travel with workers and can select the workers they prefer from one year to return the next year. This reduces the time workers need to spend in Canada in order to recoup their travel investment, and allows them to depart counting on being able to return to work the next year.<sup>17</sup> In New Zealand's Recognized Seasonal Employer program, employers are required to pay for the removal of workers who overstay, giving employers an incentive to screen workers for their likelihood to return.<sup>18</sup> A further disincentive to overstay is sectoral visa portability, which allows workers to change employers without entering the black market, where return incentives are no longer effective.

Finally, as long as the United States and Mexico continue to lack an agreement on social security tax totalization, Mexican workers authorized under this agreement should be exempt from US Social Security taxes.<sup>19</sup> But the parties to an agreement might determine that if workers return to Mexico their return or integration account could be liable

16. A version of this proposal is made by Peri, *Rationalizing U.S. Immigration Policy*.

17. World Bank, *Pacific Islands at Home and Away*, 112, 120.

18. Gibson and McKenzie, “Impact of a Best Practice Seasonal Worker Policy.”

19. Social security totalization agreements are bilateral accords meant to prevent double taxation for citizens of one country working in another, and to maintain retirement protection for workers who have split their careers between the two countries. At the time of writing the United States has such agreements with 25 countries (listed here: [www.irs.gov/individuals/international-taxpayers/totalization-agreements](http://www.irs.gov/individuals/international-taxpayers/totalization-agreements)). No such agreement exists with Mexico. Background is available in GAO, *Social Security*.

#### Box 4 The need for an independent and timely source of information on the bilateral labor market

Proper regulation of a cross-border labor market requires independent, technocratic, timely statistical analysis of labor market conditions on both sides of the border. No organization inside the government, in either country, currently provides such information in a unified form usable to advise policymakers on the regulation of current flows. Nongovernmental organizations, when they are objective, often focus their analysis on one side of the border or retrospectively.

This group recommends creating a Bilateral Labor Markets Commission (BLMC) in the context of any bilateral worker agreement between the United States and Mexico. Such a commission would advise policymakers but not be empowered to set policy itself. Its role would be the collection, dissemination, and analysis of labor market and demographic conditions in both countries as they affect bilateral migration, in order to advise the US government (particularly US Citizenship and Immigration Services) and the Mexican government on how the parameters of the agreement might respond to future changes. Such recommendations might relate, for example, to future adjustments in the US worker priority fee or in the “step” quantity in the decelerator safeguard cap. Future conditions of demand for certain occupations, unemployment, and technological change are extremely difficult to predict

and cannot be addressed by policy adjustments without timely and objective information.

Numerous US federal government agencies have an analogous role—providing rigorous and independent policy advice, with a reputation for nonpartisan objectivity, but without themselves setting policy. These include the US Congressional Budget Office (CBO), the US International Trade Commission (ITC), and the Congressional Commissions on China. The CBO was created in 1974 to provide independent, nonpartisan, technocratic advice on the budget consequences of policy options, but does not itself set policy.<sup>1</sup> The ITC was created (under a different name) in 1916 to be an independent and bipartisan source of information on the effects of US trade policy. It too primarily advises the US government on the effects of trade policy but does not set trade policy.<sup>2</sup> The Congressional Commissions on China play a similar bipartisan, independent advisory role. For example, the Congressional-Executive Commission on China has the mandate of monitoring conditions in China as they relate to human rights and the rule of law, and making nonbinding recommendations on how US policy should respond.<sup>3</sup>

1. Joyce, *Congressional Budget Office*.

2. Ablondi and McCarthy, “Impact of the United States International Trade Commission.”

3. 22 U.S.C. 6911. Pub. L. 106–286, div. B, title III, §301, Oct. 10, 2000, 114 Stat. 895. Text of the 2000 law mandating the Congressional-Executive Commission on China is available at <http://uscode.house.gov/statviewer.htm?volume=114&page=895>.

for Mexican social security contributions as with any other Mexican employee.

- *Labor condition application*. The current US system of foreign labor certification places a formidable bureaucratic burden on employers to prove, year after year and for each job separately, that no willing US workers are available. This well-intended system has been criticized

by both workers’ advocates and employers as ineffective, driving both workers and employers away from legitimate channels.<sup>20</sup> A better alternative exists: the labor condition application. Employers attesting to scarce US labor can receive two- or three-year renewable hiring certifications, with heavy fines for misrepresenting US worker availability or using the certification during a strike or lockout.

20. Meissner et al., *Immigration and America’s Future*, 64–66.



The details of enforcement are critical so that employers face clear incentives: a system of this kind has functioned well in the bilateral labor agreement between Canada and Mexico, and currently functions well in New Zealand.<sup>21</sup>

- *Vocational skill acquisition.* Past BWAs have focused exclusively on matching employers to workers with little or no observable skill. The parties to a modern BWA should explore two avenues for fostering less tangible but productivity-enhancing skills both for US workers and for Mexican workers authorized under such an agreement. The first avenue is to encourage vocational upskilling training programs by employers, labor organizations, and other nongovernmental organizations. One respected example of such a program is the Building Service 32BJ Training Fund in the New York City area, jointly funded and operated by representatives of labor (the Service Employees International Union [SEIU]) and employers (the Realty Advisory Board), which for instance helps night janitors acquire the skills to become day porters or facilities managers.<sup>22</sup> Another is the SEIU Healthcare NW Training Partnership, likewise run jointly by labor and employers, which for instance helps home-care aides to acquire the skills to be certified as a nurse delegate, able to administer medicine to the person they care for.<sup>23</sup> Mexican workers authorized under a bilateral agreement should not be excluded from such opportunities, because their productivity while in the United States enhances US productivity, as well as enhancing productivity in Mexico upon their return.<sup>24</sup> Training in English as a second language for Mexican workers is likewise beneficial to their US employers, US co-workers, and the American public, and could be encouraged through a network of more than 400 adult education centers the Mexican government already operates in most US states.<sup>25</sup>

21. Luthria and Malaulau, “Bilateral Labor Agreements in the Pacific.”

22. Information on the 32BJ Training Fund is available at <http://training.32bjfunds.com/en-us/newyorkhome.aspx>.

23. Details of the SEIU Healthcare NW Training Partnership are available in Choitz, Helmer, and Conway, *Improving Jobs to Improve Care*.

24. Reinhold and Thom, “Migration Experience and Earnings.”

25. The 416 *plazas comunitarias* across the United States are operated by the Institute for Mexicans Abroad under the Secretariat of Foreign Affairs,

The second avenue is for the parties to consider directing fee revenue under the agreement to providing new training opportunities, in this case for US workers only, in relevant lower-skill sectors. Such training subsidies are currently given in higher-skill sectors for US workers using fee revenue from the US H-1B visa.<sup>26</sup> No analogous system exists to assist training for lower-skill US workers.

- *Bilateral Labor Markets Commission.* Data and analysis produced by a new Bilateral Labor Markets Commission would be critical to making recommendations to USCIS as it deliberates adjustments to the level of the US worker priority fee or the decelerator safeguard cap—considering their effects on US and Mexican labor markets and industry, and on both lawful and unlawful migration. In the United States, a similar gap for budget policy was filled with the creation of the Congressional Budget Office; a similar gap for international trade policy was filled with the creation of the International Trade Commission (see Box 4). To effectively gather information and to be viewed as legitimate, any Bilateral Labor Markets Commission should hold frequent consultations with nongovernmental and private-sector organizations—including labor organizations on both sides of the border and employer representatives such as the US Chamber of Commerce or the Mexican Employers’ Association (Coparmex).

The group recognizes that these proposals would require new bureaucratic infrastructure on both sides of the border: including new tasks for USCIS, new regulatory activity by the Mexican Secretariat of Labor and Social Welfare, and a new Bilateral Labor Markets Commission. This has also been the case with prior bilateral regulatory accords between the United States and Mexico, such as the Border Environment

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in partnership with the National Institute for Adult Education under the Secretariat of Public Education. The *plazas* offer Spanish literacy courses and both primary- and secondary-school diplomas for people age 15 or over. The first opened in 2002, and they now operate through the Mexican consulate system, in almost all US states with a significant Mexican population (SEP, *Evaluación del Desempeño*).

26. Background on the H-1B Technical Skills Training Grants is available in GAO, *Grants from H-1B Visa Fees Meet Specific Workforce Needs*, and at [www.doleta.gov/business/H1B\\_Tech\\_Skills.cfm](http://www.doleta.gov/business/H1B_Tech_Skills.cfm).

Cooperation Commission. It is an important cost. But the economic and social costs to both countries from perpetuating black-market unilateralism are far greater. A viable BWA would mean more security and more economic growth—and thus fiscal revenue—on both sides of the border. The necessary regulatory infrastructure would be a small price to pay for those tremendous benefits.

The Working Group also discussed, but did not ultimately recommend, innovations other than those previously described. One of those was the creation of a new US federal program of “labor mobility adjustment assistance” analogous to the trade adjustment assistance (TAA) the United States has carried out since the 1960s. TAA provides hundreds of millions of dollars each year in training and extended

unemployment insurance to US workers laid off due to new competition from imports. But TAA in practice has reached only a small fraction of its intended beneficiaries, touching less than 1 percent of unemployed US workers, and careful evaluations have not shown clear effects of TAA’s extended unemployment benefits or job training on employment four years after the initial job loss.<sup>27</sup>

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27. Alden, *Failure to Adjust*, offers a detailed review of the history and effectiveness of TAA. See also Baicker and Rehavi, “Policy Watch,” and D’Amico and Schochet, *Evaluation of the Trade Adjustment Assistance Program*.

## Appendix A

# A Model Term Sheet for US-Mexico Bilateral Worker Agreement to Regulate Lower-Skill Temporary Labor Mobility

*All terms that follow are proposals that would require adjustment and expansion in a real negotiated agreement.*

### 1. Scope

The Parties are the federal governments of the United States (US) and Mexico. This *Agreement* applies to measures taken between the Parties affecting future lower-skill nonimmigrant labor migration. It is intended to constitute only one part of each Party's overall migration regulation. *Labor migration* constitutes the physical movement of a person from one country to the other for the purpose of seeking or taking up employment. *Nonimmigrants* are persons working in a country without permanent resident status. *Lower-skill* refers either to workers that do not have university education or jobs that do not require university education.<sup>1</sup>

### 2. Principles

- a. Temporary labor mobility between Mexican and US territory is older than both countries, and requires regulations tailored to that shared history and shared destiny.
- b. Labor mobility between the two countries can bring shared economic benefits.
- c. Most recent labor mobility has been unlawful, which has harmed workers, employers, and national security in both countries.

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1. Following the Organisation for Economic Co-operation and Development's *International Migration Outlook* (Paris: OECD, 2008), 127. The determination of educational requirement for an occupation is made by the US Department of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook.

- d. Despite the rising importance of other countries, large cross-border flows of Mexican labor will continue.
- e. History teaches that flexible regulation and bilateral cooperation are the only lasting solution, but the flaws of past agreements show that they can fail without proper design.

### 3. Visa terms and governance

*Other visas.* The visas granted under this bilateral Agreement are not intended to directly replace or supersede any other visas created and regulated unilaterally.

*Duration and intent.* All visas issued under this Agreement have a maximum duration of three years, renewable two times. All visas are temporary but provisional, corresponding to the US legal doctrine of dual intent.<sup>2</sup> The conditions for any possible adjustment to permanent residency, for workers or family members, or both, will be determined in accordance with US immigration law and shall be clearly outlined in any final Agreement.

*Movement.* Visas allow unlimited, circular movement back and forth across the border during the term of validity.

*Labor market segments.* The Parties may negotiate limited numbers of segments of the labor market within which all terms of Sections 3, 4, and 8 (visa terms, employment permit, and employer regulation, respectively) can be separately negotiated—including visa fees, the safeguard decelerator, and the conditions of employment permits. These segments may include employment duration, broad economic sectors (such as agriculture), and/or employer size (two or three classes deter-

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2. Henry J. Chang, "Immigrant Intent and the Dual Intent Doctrine" (Chang and Boos' Canada-U.S. Immigration Law Center, 2011), accessed September 24, 2015.

mined by number of employees on payroll).<sup>3</sup> The Working Group, mindful that a proliferation of segments will encourage black-market activity, recommends at most four segments: (1) nonseasonal nonagriculture; (2) seasonal nonagriculture; (3) nonseasonal agriculture; and (4) seasonal agriculture.

*Employer portability.* A worker holding a valid visa granted under this Agreement has permission to work for any employer possessing an employment permit (see Section 4, Employment permit) within the same segment (see Section 8, Employer regulation). The Agreement should admit a few and tightly limited exceptions to this rule, for rare subsectors in which lower-skill US workers too commonly are required to sign fixed-term contracts with a single employer.<sup>4</sup>

*Decelerator safeguard cap.* To safeguard against sudden surges of new workers, the number of visas available under this Agreement each year will be limited by *start*, *step*, and *trigger* quantities. That is, the number of new visas available will begin at a fixed quantity in the first year (*start*), can rise only by a fixed quantity in each subsequent year (*step*), and will be reset to the *start* quantity in cases of very high US unemployment (*trigger*). Each of these quantities should be the subject of negotiation, and could be different for different market segments. For example, the cap on the number of nonseasonal nonagricultural visas might *start* at 100,000 in the first year of the Agreement.<sup>5</sup> In each year thereafter, this cap would either (1) fall to the number

3. Segments should be broad and few in number, or they are likely to undermine the Agreement's goal of remaining flexible in the face of economic change.

4. Such contracts should occur only in exceptional circumstances and should never exceed one year. Contracts are occasionally necessary to protect the employer from excessive damages that could arise from unplanned worker separation—such as in shepherding or some offshore fisheries. But in the vast majority of lower-skill employment subsectors, it is not common practice for US workers to have fixed-term contracts with a single employer and in all of these the employment for Mexican workers authorized under this Agreement should be on the same at-will basis faced by US workers.

5. The number 100,000 is an illustrative example, compatible with reasonable scenarios for future gross Mexico-US flows estimated by Orrenius and Zavodny, "Unauthorized Mexican Workers in the United States." The visas under this bilateral agreement do not necessarily replace existing US visas such as the H-2A and H-2B visas, which are available to scores of countries.

of visas actually used in the previous year, if the cap was not reached in the previous year, or (2) rise by a *step* amount that is calculated based on how quickly the cap was reached in the previous year. This *step* amount might be the *lesser* of (a) 100,000 and (b) 100,000 times the difference between 1 and the reciprocal of the ratio of the days it took to reach the cap and 365.<sup>6</sup> In the rare event of a major economic contraction in the United States, defined as a US civilian nonfarm unemployment rate of 9 percent or greater for three months or more,<sup>7</sup> US Citizenship and Immigration Services (USCIS) may reset the cap to a *trigger* quantity—such as the *start* limit, in this example 100,000. Renewed visas are not included in this cap.

## 4. Employment permit

*Labor condition application.* To employ workers under this Agreement, US employers must file an approved labor condition application (LCA) with their regional US Department of Labor (DOL) office. In the LCA, the employer attests that (1) they will pay foreign workers the prevailing wage received by

6. The safeguard decelerator cap formula reduces the following year's cap if the current year's cap is not fully used. It also imposes a hard maximum on the year-to-year increase in the number of visas granted, and would only allow an increase of that magnitude following a year in which the full year's cap was reached in six months or less. For example, suppose the parties agree on a *start* quantity of 100,000 and a *step* quantity of 100,000. If  $d$  is the number of days into a fiscal year that the year's cap was reached, then the rise in the cap for the following year relative to the current year would be  $100,000 \times ((365/d) - 1)$ , or if that quantity exceeds 100,000, then the rise would be 100,000. For example, suppose the initial cap in year 1 is 100,000. If only 83,000 visas are used in year 1, then the cap for year 2 would be 83,000. If the cap in year 2 runs out in nine months, then the cap for year 3 would rise from its level in year 2 by  $100,000 \times ((365/(9 \times 30)) - 1) = 35,185$ . Thus the cap for year 3 would equal  $83,000 + 35,185 = 118,185$ . Regardless of how quickly the year 3 cap was reached, the year 4 cap could not exceed 218,185. If the cap is reset to the trigger quantity by high US unemployment, the cap would proceed from that new level by the same *step* rule in subsequent years.

7. Such an unemployment episode would signify a major economic crisis in the United States. It has occurred five times since 1890.

US workers for the same work; (2) the working conditions of foreign employees will not undermine the working conditions and remuneration of similarly employed domestic workers; (3) there is no strike or lockout at the place of employment; and (4) employees have been notified of the filing of the LCA, either by posting notices at the workplace or with a union representative. LCAs cannot be transferred between employers and must be renewed every three years.<sup>8</sup>

*Employment permit.* Employment permits may be issued only to employers who have an approved LCA, have listed the job for one month in the database for employer-employee matching (see *Section 5, Labor protection*), and make the following payments:

- *US worker priority fee.* Employers must pay to USCIS a quarterly, nonrefundable US worker priority fee (WPF), per worker, in the amount of a fixed percentage of the wages paid to each worker that quarter. This amount may not be deducted from workers' wages; it is payable by employers above and beyond the wage that US workers would receive for identical work. The Parties should negotiate to set the fee, or establish a mechanism to adjust the fee, to balance three goals: (1) the fee must be high enough to make Mexican labor more expensive than US labor for the same job; (2) it must not be so high as to deter employers from using the program at all, particularly small businesses; and (3) it must raise revenue to substantially offset the costs of implementing the Agreement. Collection of the fee is carried out by the US Department of Homeland Security each year advised by the Bilateral Labor Markets Commission (BLMC) (see *Section 7, Advisory and governance bodies*).
- *Return or integration account.* Employers must pay a fixed percentage of the quarterly earnings of each worker into a return or integration account (RIA) specific to each worker, held and later disbursed by USCIS with accrued interest. The precise percentage, perhaps on the order of 10 percent, could be negotiated by the Parties and perhaps adjusted on the advice of the BLMC to ensure that it provides a meaningful incentive for return. The amount is deducted directly from the worker's wages. The full accumulated amount in

the RIA is payable to the worker three months after his or her return to Mexico during the period of visa validity or within three months of the end of visa validity. Payment of the RIA balance to a returned worker is not contingent on the reason for separation from the employer, and RIA funds may not be returned to the employer for any reason. If the worker enters the process of lawfully adjusting status to permanent US residence, the costs of adjusting status are deducted from the account and the balance returned to the worker with accrued interest. If no return is registered by Mexican authorities within six months of the end of visa validity and the worker has not begun a process of lawfully adjusting status to permanent residence in the United States, the full balance of the RIA for that worker is transferred to the US Treasury.<sup>9</sup>

- *Recruitment fee.* Employers must pay a one-time, nonrefundable recruitment fee (RF) to the Mexican government, for each newly arriving worker at the time of first visa issuance, amounting to a predetermined percentage of the wages that the worker will earn in the first 12 months of employment. The exact percentage fee is determined by USCIS, advised by the BLMC and in consultation with the Mexican Secretariat of Labor and Social Welfare.<sup>10</sup> The fee must be set in order to balance two competing goals: (1) it must be high enough to provide a meaningful incentive for employers to hire visa holders already in the United States, but (2) it must be low enough to reduce the incentive for some employers to "poach" new recruits from

8. Migration Policy Institute, *Immigration and America's Future: A New Chapter* (Washington, DC: MPI, 2006).

9. Proposed by Peri, *Rationalizing U.S. Immigration Policy*. In the case of adjustment of status to permanent residency, the transfer to the US Treasury will help offset the cost of entitlements gained by the new resident. In the case of visa overstay, the transfer to the Treasury will serve as a punitive tax.

10. The current simple average across US states of the agricultural Adverse Effect Wage Rate (AEWR) set by the Department of Labor is US\$11.30. The current simple average across US states of the minimum wage is US\$7.93. Thus the AEWR in agriculture exceeds the state minimum wage by roughly 40 percent.

other employers who paid the fee.<sup>11</sup> The RF should be set separately by segment.<sup>12</sup>

*Matching.* Workers holding visas granted under this Agreement may work only at US employers holding an approved LCA and an employment permit for the specific position in question. Visas may be issued only to workers listed in the database for employer-employee matching (DEEM). Worker listing in the DEEM is only possible via a recruiter accredited by the Mexican government.

## 5. Labor protection

*Built-in protections for US workers.* The wages of Mexican workers hired under this Agreement must be equal to or greater than the highest wage among the following three: (1) the median wage of US workers performing equivalent work in the same county as the work site; (2) the collectively bargained wage for other employees of the same employer; and (3) the minimum wage prevailing in the county. Other provisions of this Agreement to ensure US worker priority will not function as intended unless equal pay and equal conditions for Mexican and US workers are reliably and strongly enforced.

The WPF is a fee intended to make it more expensive for US employers to employ Mexican labor, on an ongoing basis, rather than otherwise equivalent US labor. The RF is designed to make it substantially more expensive for US employers to hire new recruits from Mexico than existing visa holders. Prospective visa holders under this Agreement may fill only jobs listed publicly in the job-matching database described below. The US government will also explore methods to assist US workers in upskilling in the relevant low-skill sectors, possibly

creating a lower-skill analog to the current H1-B Technical Skills Training Grants for higher-skill workers.<sup>13</sup>

*Protections for both Mexican and US workers.* Revenue from the WPF will be used to expand the capacity of federal and state labor regulators to conduct surprise on-site visits and confidential interviews with workers to assess earnings, terms of recruitment, and working conditions. Each employer should face a substantial chance of receiving an inspection in any given year, and fines for infractions should amount to several times reasonable DOL estimates of the amount the violating employer gained/saved via the infraction, in order to act as an effective deterrent. The Parties should explore ways to encourage joint union-employer-run vocational upskilling programs open both to US workers and to Mexican workers authorized under this Agreement.<sup>14</sup>

*Protections for Mexican workers.* Mexican workers authorized under this Agreement are subject to US labor law. Newly recruited workers should be required to undergo predeparture training in their rights under US labor laws, at which time they must be provided in writing the terms of employment offered by their prospective employer. These terms must specify wages, working hours, required rest/time off, other benefits, workers' rights, and any provisions for healthcare (all in compliance with US federal law), and maximum duration of employment, if any; and must assign responsibility for all expenses associated with reaching and staying at the work site. Employers must offer Mexican liaison officers a 48-hour period within which to evaluate grounds for the dismissal of any workers fired, during which time they can dispute the dismissal.

Recruits in Mexico applying for a visa at a US consulate must be accompanied by a representative of an accredited recruiting agency.<sup>15</sup> Accreditation of recruiters and Mexican enforcement efforts against human traffickers will increase the share of the benefits of labor mobility kept by Mexican workers. Mexican liaison officers in Mexico must conduct a

11. Getting workers to switch from a known employer to a less-known employer would likely require the “poaching” employer to offer a compensation premium over what the first employer offers. If the RF were kept lower than that premium, the incentive to poach would be low.

12. For seasonal agricultural visas, for example, it would be normal for workers to move frequently between employers—less so in nonseasonal nonagricultural jobs. The characteristics of each segment should be considered in setting, or establishing a mechanism to set, the RF.

13. The group's recommendations on fostering vocational skill acquisition are detailed in Chapter 3 of this report.

14. Examples of existing programs of this type are given in Chapter 3.

15. Without this requirement, it would be difficult for Mexican or US authorities to determine whether an unaccredited broker had carried out recruitment unlawfully.

program of predeparture training in workers' right and responsibilities, and Mexican liaison officers in the United States will create, maintain, and publicize an anonymous online system to report abuses.

*New job-matching database.* USCIS will manage a database for employer-employee matching (DEEM). Only job openings listed there will qualify for visas under this Agreement. Jobs registered in the DEEM will be publicly searchable by geographic area and sector, to facilitate the identification of job openings by US workers, and so that Mexican workers may easily determine which employers can lawfully hire them.

## 6. Recruitment and return

Only US and Mexican nationals fall under the terms of this Agreement. Under Mexican law, the Mexican government has the authority to organize and regulate international recruitment practices.<sup>16</sup> The Mexican government should maintain and widely disseminate a public list of accredited recruiting agencies, and cooperate with US authorities in restricting visa applications to workers accompanied by a representative of an accredited recruiter.<sup>17</sup> Checks on criminal record must occur as part of standard visa review at US consular posts, and the Parties will agree to a reasonable threshold for excluding a given worker based on criminal record.

The RIA exists to encourage return by temporary workers. This incentive could be strengthened if the Parties consider creating a program for reintegration of migrants returning to Mexico, including assistance with job search in Mexico and investment of their RIA balance and other savings.

16. Constitution of Mexico (Article 10) and 2012 Federal Labor Law (Articles 28, 28-A, 28-B, and 29).

17. Negotiating parties should weigh options including (1) restricting new visas to Mexicans physically present in Mexico, or (2) specifying different handling of new visa applications for Mexicans physically present in the United States, or both.

## 7. Advisory and governance bodies

*New Bilateral Labor Markets Commission.* The US government will create a bipartisan, independent Bilateral Labor Markets Commission (BLMC) with the mission of providing up-to-date data and advice to both governments on the need for adjustments in variable parameters of the Agreement in order to bring shared economic benefits to both countries, stabilize labor markets in both countries, and suppress black-market migration. The BLMC will conduct independent research about labor market and fiscal consequences of current policy, akin to the Congressional Budget Office or the International Trade Commission. This research will be sent to USCIS for consideration in setting the WPF and adjusting other variable parameters of the Agreement. The effects considered by the BLMC will include potential effects in both lawful and unlawful labor markets.

*Responsibilities of other agencies.* USCIS (Department of Homeland Security) will set the WPF, advised by the BLMC, and collect and disburse RIA funds. The Mexican Secretariat of Labor will maintain, disseminate, and enforce a list of accredited recruitment agencies in coordination with the DOL, and the US Department of State (Consular Services) will accept exclusively visa applicants who are accompanied by a representative of an accredited recruiter. The Mexican Secretariat of the Interior (National Migration Institute) will register and certify returns to Mexico by each worker, and will share that information with USCIS. The DOL will inspect work sites to determine violations of the LCA and levy fines on violating employers. US Customs and Border Protection (Department of Homeland Security) will work with the Mexican Federal Police to monitor visa overstays and track return migrants. US Immigration and Customs Enforcement (Department of Homeland Security) will cooperate with the Mexican Federal Police to identify and remove those who overstay visas.

## 8. Employer regulation

*Wages, transportation, and housing.* Employers must pay to visa holders at least the prevailing wage determined by the DOL

or the US Department of Agriculture, as appropriate; must pay to the US government the quarterly WPF; and must pay to the Mexican government the one-time RF. The Parties will assign responsibility for the costs of worker transportation.<sup>18</sup>

*Protection from early separation.* If a worker quits during the two-week trial period, Mexican liaison officers must reimburse the employer for that worker's RF.

## 9. Fiscal flows

*Revenue.* Visa holders pay federal, state, and local taxes on terms identical to US workers. The exception is Social Security taxes: as long as the United States and Mexico lack a social security totalization agreement, workers in the United States under this Agreement should be exempt from paying Social Security taxes.

Substantial revenue will be generated by the WPF and RF.<sup>19</sup> Fees will be set at a level that substantially offsets the direct fiscal costs of the Agreement for both Parties. The Agreement would also be expected to generate tax revenue indirectly by

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18. As discussed in the main report, global experience with temporary work visas suggests that the incentives for visa overstay are reduced when employers share with workers the cost of transportation from the home country to the work site. Options for assigning responsibility include these: (1) worker pays round-trip travel; (2) employer pays round-trip travel, reimbursed by the worker if separation occurs within a defined period; (3) employer pays round-trip travel if foreseen period of employment is sufficiently short (such as less than one year), worker pays otherwise.

19. *US revenue:* For example, a WPF set at 10 percent for 600,000 workers earning (a conservatively low) US\$15,000 per year would generate more than \$1 billion per year in revenue. The budget of the International Trade Commission is about \$100 million per year; the US Trade Adjustment Assistance program spends less than US\$300 million per year. The current DOL budget for federal and state foreign labor certification activities is roughly US\$60 million per year. The above revenue scenario would allow approximately a tenfold scale-up in DOL regulatory activities centering on unannounced visits to verify LCA compliance. *Mexico revenue:* If the RF were set at 10 percent, a flow of 100,000 new visa holders per year, earning US\$15,000 in their first year, would generate revenue of US\$150 million per year.

expanding the extent and productivity of economic activity. Any workers who adjust to permanent residence or overstay their visas will furthermore be a source of substantial revenue through coverage of those costs from their RIA.<sup>20</sup>

*Expenditure.* WPF revenue received by USCIS will be devoted to cover (1) administrative costs of USCIS and the Bilateral Labor Mobility Commission; (2) state and federal DOL expenses for increased surprise inspections; and (3) grants to state and local governments that bear substantial increases in budgetary expenditures arising from the Agreement. RF revenue will be transferred to the Mexican government for the purpose of offsetting all expenses related to the Agreement, including (1) recruiter accreditation and other related administrative expenses; (2) assistance for Mexican enforcement efforts including deterrence of extralegal crossings and reception of deported Mexican workers; and (3) the registration and sharing of data on worker return. Any revenue from RIAs will be used to offset entitlement benefits used by new permanent residents.

## 10. Security and enforcement

The Parties have a shared interest in joint border patrols and complementary enforcement efforts. The Parties should coordinate in a way that is mutually beneficial. The Mexican government will share data on return by temporary workers, and facilitate safe and orderly deportation of workers who enter the United States under the Agreement but violate the terms of their visa. Both countries will mutually share data on any criminal history of applicants for visas under the Agreement.

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20. For example, a Mexican worker earning US\$15,000 for two four-year periods on a visa under this Agreement would generate an RIA balance of US\$12,000. This would provide a sizable return incentive, on the order of a year's earnings, or a sizable revenue stream to more than offset costs associated with adjustment to permanent status.



## 11. Information exchange

*Mexican liaison network.* The Agreement must create a system of Mexican liaison officers based in the Mexican Ministry of Labor and in the US system of Mexican consulates, to assist with employer-employee dispute resolution, worker emergencies, arrivals and returns, and reports of abuse. This could be built on existing labor-issues services provided by the 51 consulates of Mexico across the United States.

*Information sharing.* Parties must share information regarding any verification system(s) used to implement programs related to this Agreement, including the DEEM. USCIS and the Mexican liaison network must create and maintain a private, binational database of worker and employer violations to be considered when issuing visas to workers or employment permits to employers.

## 12. Disputes

The Parties must establish a mechanism for dispute resolution. This could be created under the current legal mandate

of the North American Agreement on Labor Cooperation or by another agency.

## 13. Other entities

The Parties may delegate decision-making authority to particular subnational agencies, states, localities, and so forth, in accordance with their own laws. While each individual Party cannot invite external parties to participate or benefit from this specific Agreement, this Agreement does not prevent any Party from becoming party to or entering into similar but nonconflicting agreements with other governments or organizations. Parties may determine that additional government agencies in either country, such as the US Department of Agriculture, must be involved in implementation.

## 14. Duration

This Agreement is valid until dissolved by law by either Party.

## Appendix B

# Background and Profiles of the Working Group Members

The Center for Global Development (CGD) convened this working group, titled *Shared Border, Shared Future: A Blueprint for Regulating US-Mexico Labor Mobility*, from May 2015 – September 2016. Conceived by CGD Senior Fellow Michael Clemens, the working group was created to address a 50-year lapse in bilateral cooperation. The last cooperation on labor migration between the United States and Mexico ended in 1964, and since then unlawful migration from Mexico to the US has dramatically increased.<sup>1</sup> To help address this challenge, CGD brought together experts with a diverse array of expertise in business, economics, law, labor, policy, national security, and more. Together, the working group charted a rational, rigorous, and reasonable blueprint that could benefit both countries and their citizens.

The group held two plenary meetings, one at CGD in Washington, DC on May 13, 2015, and a second in Mexico City on October 9, 2015. In addition, the working group convened a US subgroup and Mexico subgroup. Each held individual meetings prior to the October Mexico City meeting to discuss issues of specific importance to each country's leaders, laws, regulations, etc. The CGD Secretariat complemented these meetings through individual consultations with influential thought leaders in the fields of immigration and bilateral cooperation. These combined efforts have resulted in this working group report, and we are extremely grateful for the time and commitment of all involved.

Members were invited to participate in a strictly personal and volunteer capacity, not as representatives of their employers or organizations. The co-chairs and members have endorsed the report, though not all necessarily agree with every statement and recommendation.

**Carlos Gutierrez**, Albright Stonebridge Group  
Carlos Gutierrez is chair of Albright Stonebridge Group (ASG). Secretary Gutierrez served as US Secretary of Commerce from 2005 to 2009 under President George W. Bush, where he worked with foreign government and business leaders to advance economic relationships, enhance trade, and promote US exports. Secretary Gutierrez also played a key role in the passage of landmark free trade agreements that remove trade barriers, expand export opportunities, and boost global investment.

Previously, Secretary Gutierrez spent nearly 30 years with the Kellogg Company. After assignments in Latin America, Canada, Asia, and the United States, he became president and chief executive officer of Kellogg in 1999—the youngest CEO in the company's hundred year history. In April 2000, he was named chairman of the Board of Kellogg Company. Secretary Gutierrez joined ASG from Citi, where he was vice chairman of the Institutional Clients Group and a member of the Senior Strategic Advisory Group.

He currently serves as the chair of the US Chamber of Commerce's US-Cuba Business Council. He also serves on the boards of Occidental Petroleum Corporation, MetLife, Time Warner, Viridis Learning, the US-Mexico Foundation, the George W. Bush Institute's Human Freedom Advisory Council, and Republicans for Immigration Reform.

Secretary Gutierrez is chairman of the Board of Trustees of Meridian International Center. He also serves on the Advisory Committee for Presidential Leadership Scholars and as a National Trustee at the University of Miami.

**Ernesto Zedillo**, Yale University

Ernesto Zedillo is director of the Yale Center for the Study of Globalization; professor in the field of International Economics and Politics, as well as International and Area Studies; and professor adjunct of Forestry and Environmental

1. The report contains further information on the statistics on this increase.

Studies at Yale University. He served as president of Mexico from 1994-2000.

Currently, he serves as chairman of the Board of the Natural Resource Governance Institute and co-chair of the Inter-American Dialogue. He is a member of the Global Commission on Drug Policy, The Elders, the 21st Century Council of the Berggruen Institute, the G30, and the Board of Directors of the Institute for International Economics. He has served on numerous international commissions, including as vice chair of the Global Commission on Elections, Democracy and Security with Kofi Annan. He is a distinguished practitioner of the Blavatnik School of Government at Oxford and in 2011 he was elected an international member of the American Philosophical Society.

**Edward Alden**, Council on Foreign Relations

Edward Alden is the Bernard L. Schwartz senior fellow at the Council on Foreign Relations in Washington, DC, and author of the forthcoming book *Failure to Adjust: How Americans Got Left Behind in the Global Economy, and How to Get Ahead in the Future* (Rowman & Littlefield, 2016). Prior to joining the Council, Alden was the Washington bureau chief for the Financial Times.

He was project director for the Independent Task Force on US Immigration Policy (2009), co-chaired by former Florida governor Jeb Bush and former White House chief of staff Thomas F. (Mack) McLarty, and co-author of the CFR report, *Managing Illegal Immigration to the United States: How Effective is Enforcement?* (2013). His book *The Closing of the American Border: Terrorism, Immigration and Security Since 9/11* (Harper Collins, 2008) was a finalist for the J. Anthony Lukas Book Prize for non-fiction. He has testified to Congress numerous times.

**Daniel Chiquiar**, Bank of Mexico

Daniel Chiquiar is currently general director of Economic Research in Mexico's Central Bank. During his career, he has worked on economic research concerning the Mexican Economy, both in the private and public sectors, and has held policy-related positions in that country. Among these positions, he served as director of Economic Policy from 1997 to 1999 in the Finance Ministry of Mexico.

Chiquiar has also taught at several Mexican universities at the undergraduate and graduate levels, and has published several papers in top economics academic journals.

Chiquiar received his PhD in Economics at UCSD.

**Luís Ernesto Derbez**, University of the Americas, Puebla  
Since April 1, 2008, Luís Ernesto Derbez has been president of Universidad de las Américas Puebla (UDLAP), one of the three top private universities in Mexico. He was first Minister of Economy (2000-2002), and then Minister of Foreign Affairs (2003-2006) in the Mexican Government under the administration of Vicente Fox.

From 1983-1997, Derbez worked as a staff member at the World Bank in Washington, DC. Between 1997 and 2000, he became an international consultant working for the Inter-American Development Bank (IADB), Corporación Andina de Fomento, and other international organizations. Since 2007, Derbez has worked as an international consultant or has served as a member of the Boards for the following companies: Bombardier Mexico, Banorte, S.A., Bx+ Bank, Intercam Bank, Mexican Institute of Water Technology (IMTA), State Council for Culture and Arts of Puebla, the Security and Justice Council of the State of Puebla in México, the Mexican Academy of International Law, and Corporación Andina de Fomento (CAF).

In May of 2007, Pope Benedict appointed Derbez as a full member of Vatican's Pontifical Academy of Social Sciences. He is fluent in Spanish, French, and English.

**Gerardo Esquivel**, El Colegio de México

Gerardo Esquivel is the Executive Coordinator of Research at the Belisario Domínguez Institute at the Mexican Senate. He is currently on leave of his position as Professor of Economics at El Colegio de Mexico, which he has held since 1998. He received his PhD in Economics from Harvard in 1997, an MA in economics from El Colegio de Mexico (1991), and he also holds a BA in economics from the National University Autonomous of Mexico (UNAM, 1989).

Previously, he worked as a senior macroeconomics researcher at the Harvard Institute for International Development (HIID). Esquivel has also been a consultant for many international multilateral organizations and he was economic

advisor for Mexico City's Secretary of Finance between 2004 and 2005. In 2011, Esquivel was Tinker Visiting Professor at the Harris School of Public Policy in the University of Chicago. Esquivel has written extensively on several economic issues and has received numerous distinctions for his research.

He was awarded the 2005 National Award for Research, which is given annually by the Mexican Academy of Sciences for the most outstanding scholar in the Social Sciences in Mexico under 40 years of age. He also received the National Award for Journalism in 2011 and the National Award for Public Finances in 2014. He lives in Mexico City.

**Tony Fratto**, Hamilton Place Strategies

Tony Fratto has accumulated decades of experience in domestic and international economic policy. In 2009, Fratto founded the communications consulting firm, Hamilton Place Strategies, which brings an analytical approach to solving complex public policy issues. At HPS, he directs the firm's business strategy and leads client teams in highly-regulated sectors, especially in finance and international economic policy.

Before founding HPS, Fratto worked at the White House as Deputy Assistant to the President and Principal Deputy Press Secretary. He has also served in senior roles with three US Treasury secretaries, including as Assistant Secretary of the Treasury.

Combining his work at the Treasury and the White House, Fratto directed and participated in communications efforts in more than 60 countries. He is especially proud of his work to advance major international initiatives, including multiple trade agreements and the creation of the Millennium Challenge Corporation.

Fratto serves on the board of World Food Program USA and is an on-air contributor with the CNBC Business News Network.

**Katie Hays**, Caterpillar Inc.

Katie Hays is a manager in the Washington, DC Government Affairs office of Caterpillar Inc., where she leads the lobbying efforts for the company on a range of issues including tax, trade, intellectual property, and pensions, in addition to overseeing international business advocacy.

Hays is actively engaged with numerous coalitions including the Alliance for Competitive Taxation, The Tax Council (Program Committee), the Pension Coalition, The TPP Coalition, Trade Benefits America, and the Coalition for 21st Century Patent Reform. She also represents Caterpillar on the tax and international committees of multiple trade associations including the US Chamber of Commerce, National Association of Manufacturers, and the Business Roundtable. Hays is a member of the Tax Coalition and serves on the boards of the National Foreign Trade Council and the Ford's Theatre.

Hays joined Caterpillar from the US Chamber of Commerce, where she served as executive director of Congressional and Public Affairs from 2004-2011. While at the Chamber, she spearheaded the lobbying efforts on health reform, forming and leading numerous coalitions focused on the business community, most recently working on the Patient Protection and Affordability Act and its implementation.

Before joining the Chamber, Hays served as director of legislative affairs for the Associated Builders and Contractors (ABC), and also worked at Akin, Gump, Strauss, Hauer & Feld law firm.

Hays is a graduate of the University of Alabama.

**Tamar Jacoby**, ImmigrationWorks USA

Tamar Jacoby is president of ImmigrationWorks USA, a national federation of small business owners working to advance better immigration law.

A former journalist and author, she was a senior writer and justice editor at *Newsweek* and, prior to that, the deputy editor of *The New York Times* op-ed page. Jacoby's articles have appeared in *The New York Times*, *The Wall Street Journal*, *The Washington Post*, *The Weekly Standard* and *Foreign Affairs*, among other publications.

Jacoby is also the author of *Someone Else's House: America's Unfinished Struggle for Integration* and editor of *Reinventing the Melting Pot: The New Immigrants and What It Means To Be American*.

**Lynnette Jacquez**, C. J. Lake LLC

Lynn Jacquez' professional background spans private law practice, government relations, and service in the Federal government. Upon graduation from the University of Notre

Dame School of Law, she served as counsel for the House Judiciary Committee. In her work for its Subcommittee on Immigration, Refugees, and International Law, she had primary responsibility for the drafting and processing of the Immigration Reform and Control Act of 1986 (IRCA) and refugee reauthorization legislation. After her tenure on the Committee, Jacquez entered private practice, formed a government relations firm and in 2011 established the law firm of CJ Lake LLC where she is now Managing Partner and Principal.

In her government relations practice, Jacquez advocates for federal funding and program authorizations on behalf of local governments, nonprofits, and private industry.

In her legal practice, she represents employers in individual and class action litigation involving MSPA, wage and labor and immigration law. Jacquez counsels employer clients on statutory and regulatory compliance with immigration laws including I-9 compliance and temporary foreign worker visa program compliance. She represents organizations seeking regulatory and legislative reform to address workforce issues and is actively engaged on behalf of employers in developing immigration program reform legislation.

**Eliseo Medina**, Service Employees International Union  
Eliseo Medina, former International Secretary-Treasurer of the Service Employees International Union (SEIU), chairs the Immigration and Latino Civic Engagement Initiative and leads the union's efforts to achieve commonsense immigration reform.

Medina's lifelong career as a labor activist began in 1965 as a 19-year-old grape-picker. Working alongside Cesar Chavez, he honed his skills as a union organizer and political strategist.

In 1996, he was elected an international executive vice president of SEIU; in 2010, he was elected International Secretary-Treasurer. He stepped down from this post in 2013 to focus his energies on immigration reform.

Later that year, Medina spearheaded the "Fast for Families" campaign during which he fasted for 22 days in a tent on the National Mall. His efforts reignited the debate for immigration reform.

**Doris Meissner**, Migration Policy Institute

Doris Meissner is a senior fellow at the Migration Policy Institute (MPI), where she directs MPI's US immigration policy work. Her responsibilities focus on the role of immigration in America's future and on administering the nation's immigration laws, systems and government agencies. Meissner's work and expertise also include immigration and politics, immigration enforcement, border control, cooperation with other countries, and immigration and national security.

From 1993-2000, Meissner served in the Clinton administration as Commissioner of the INS, then a bureau in the US Department of Justice (DOJ). Her accomplishments include reforming the nation's political asylum system; creating new strategies for managing US borders; improving naturalization and other services for immigrants; strengthening cooperation and joint initiatives with Mexico, Canada, and others; and managing the agency's growth.

Meissner first joined the DOJ in 1973 as a White House fellow and special assistant to the Attorney General. In 1981, she became acting commissioner of INS and then executive associate commissioner. In 1986, Meissner joined the Carnegie Endowment for International Peace as a senior associate, and created the Endowment's Immigration Policy Project, which evolved into the Migration Policy Institute (MPI) in 2001.

She earned her BA and MA from the University of Wisconsin-Madison. She also began her professional career there as assistant director of student financial aid. Meissner was also the first executive director of the National Women's Political Caucus.

**Gustavo Mohar Betancourt**, Grupo Atalaya

Gustavo Mohar is the founder and director general at Grupo Atalaya, a private consultancy firm specialized in non-technical risks and strategic intelligence. He is also a board member at the Migration Policy Institute, a think tank based in Washington, DC. With several published works on international issues, he has also been a lecturer at think tanks and universities in Mexico and the United States.

Until December 2012, he acted as Under Secretary for Migration, Population and Religious Affairs at the Interior Ministry (Gobernación) in Mexico. At the Center for Investigation and National Security (CISEN) Mohar served as

director for International Affairs, and subsequently as the Secretary General.

He was Mexico's Chief Negotiator for Migration Affairs during the Fox-Bush Administrations, leading the Mexican team responsible to reach agreement for a safer, orderly and legal migration flows between both countries. The Organisation for Economic Cooperation and Development (OECD) invited him to represent Mexico in the special task force for international migration.

At the Mexican Embassy in Washington, Mohar acted as representative of the Ministry of Governance, responsible for the migratory agenda, border security and bilateral cooperation on drug trafficking. He also attended Mexico-USA political affairs and relations with the US Congress. Beginning in 2001, Mohar was involved in Mexico-US efforts to prevent international terrorism and enhance security at the common border.

Previously, he was Petróleos Mexicanos (PEMEX) representative in Europe and Mexico's observer to the Organization of the Petroleum Exporting Countries (OPEC). Mohar worked in the Ministry of Finance on international finance and development banking.

#### **Alejandro Poiré**, Tecnológico de Monterrey

Alejandro Poiré is the dean of the School of Government and Public Transformation at Tecnológico de Monterrey. Poiré has dedicated his career to the study and construction of democracy in Mexico. He earned a BA in Political Science from the Instituto Tecnológico Autónomo de México (ITAM) and obtained a PhD in Political Science from Harvard University. Later he joined the ITAM's faculty, and led the Political Science department.

In 2007, he joined the administration of the President of Mexico, Felipe Calderon, where his positions included Undersecretary of Population, Migration and Religious Affairs; Technical Secretariat of the National Security Council; Speaker of the National Security Strategy; and Secretary of the Interior.

In 2005, he was awarded the Robert F. Kennedy chair for Latin American professors from Harvard University, and joined the university's faculty as visiting professor at the School of Government. He was appointed executive director

of Prerogatives and Political Parties in the Mexican Federal Electoral Institute in 2003.

In academia, Poiré has published widely on democracy, political parties, public opinion, security, and democracy; and he has lectured in the United States, Latin America, and Europe. He has also completed academic residencies at Stanford University and the MIT.

He is the founder of the social enterprise Mexico Crece, dedicated to finding innovative solutions to increase opportunities and enhance the academic performance of young students.

#### **Craig Regelbrugge**, AmericanHort

Craig Regelbrugge is AmericanHort's senior vice president, where he is responsible for industry advocacy and research programs. AmericanHort is the national trade organization representing the horticulture industry, striving to unite, promote, and advance the industry through advocacy, collaboration, connectivity, education, market development, and research.

Regelbrugge serves in national leadership positions representing the horticulture industry on matters relating to the labor force, plant health, and trade. He co-chairs the Agriculture Coalition for Immigration Reform, a broad-based coalition seeking legislation to ensure a stable and legal agricultural workforce, and is chairman of the board of the National Immigration Forum Action Fund. He also serves on the executive committee of the National Council of Agricultural Employers, and chairs NCAE's Immigration Committee.

Regelbrugge received his undergraduate degree in horticulture from Virginia Tech, and he worked in the retail nursery industry and served as a county horticultural extension agent in Virginia before joining the trade association community in December 1989.

He is a frequent presenter, author, and spokesperson on topics relating to the workforce and immigration, production, trade, and environmental issues impacting farmers and small businesses in and serving the horticulture industry.

#### **Silvestre Reyes**, former chair of the House Permanent Select Committee on Intelligence

Congressman Silvestre Reyes represented the 16th District of Texas for 16 years. He served 10 years on the House

Intelligence Committee, including four years as chairman. He also served on the Armed Services and Veterans Affairs Committees for 16 years. During his time in Congress Reyes was considered an expert on National Security, Foreign Affairs, Border Enforcement, and Homeland Security. Before being elected to Congress, he worked twenty-six-and-a-half years in the United States Border Patrol and Immigration Service including 12 years as a Border Patrol Chief, where he received National and International recognition for innovative border enforcement programs. Reyes is an Army veteran who served in Vietnam as a helicopter crew chief. He retired in 2013 and lives in El Paso, TX with his wife Carolina.

#### **Arturo Sarukhan, CMM**

Ambassador Arturo Sarukhan is an international strategic consultant based in Washington, and the former Mexican Ambassador to the US (2007-2013). He is a non-resident senior fellow at The Brookings Institution and distinguished visiting scholar at USC's Public Diplomacy Center. Sarukhan publishes columns with Univision Noticias and Mexico City's El Universal newspaper, as well as op-eds in US media.

A career diplomat for 23 years, he received the rank of Career Ambassador in 2006 and served as deputy assistant secretary for Inter-American Affairs, chief of Policy Planning, and consul general to New York City, among other positions. Sarukhan joined the presidential campaign of Felipe Calderón as foreign policy advisor and international spokesperson, then later led the foreign policy transition team. He holds a BA in International Relations from El Colegio de México and an MA in US Foreign Policy from SAIS-Johns Hopkins University, where he was a Fulbright scholar and Ford Foundation fellow.

Sarukhan has received numerous awards and honorary degrees and sits on boards including the Americas Society, the Inter-American Dialogue, and the National Immigration Forum. He has also been a distinguished diplomat in residence at the Woodrow Wilson Center and a Pacific Leadership fellow at UCSD.

#### **Joel Trachtman, The Fletcher School at Tufts University**

Joel P. Trachtman is professor of International Law at The Fletcher School of Law and Diplomacy. Authored books

include *The Future of International Law: Global Government* (Cambridge 2013), *The Tools of Argument* (Createspace 2013), *The International Law of Economic Migration: Toward the Fourth Freedom* (Upjohn Institute 2009); *Ruling the World: Constitutionalism, International Law, and Global Governance* (Cambridge 2009); *Developing Countries in the WTO Legal System* (Oxford 2009); and *The Economic Structure of International Law* (Harvard 2008).

Trachtman has served as a member of the Boards of the American Journal of International Law, the European Journal of International Law, the Journal of International Economic Law, the Cambridge Review of International Affairs, and the Singapore Yearbook of International Law.

He has also consulted for a number of governments and international organizations, including the United Nations, the World Bank, and the OECD. From 1998 to 2001, Trachtman was academic dean of the Fletcher School, and during 2000 and 2001, he served as dean ad interim. He has been a visiting professor at Basel, Hamburg, Harvard, and Hong Kong.

Trachtman graduated in 1980 from Harvard Law School, where he served as editor-in-chief of the Harvard International Law Journal, and practiced in New York and Hong Kong for nine years before entering academia.

#### **Rebeca Vargas, US-Mexico Foundation**

Rebeca Vargas is the president and CEO of the US-Mexico Foundation since April of 2014. Previously, she had senior executive positions at J.P. Morgan Chase, Citigroup, and BBVA, working in the US, Mexico, and Latin America.

At USMF, Vargas led the Organization's first strategic planning, redefining its vision and mission, and has achieved a 95 percent expansion of its social impact. Under her leadership, the USMF has evolved from a pure grant-giving organization to an organization that also operates unique binational educational programs.

Vargas was a Managing Director at JPMC for seven years during which she was most recently the head of Marketing, Communications and Philanthropy for J.P. Morgan Latin America. In this position, she was a member of the Latin America Regional Management Committee, and a member of the Investment Banking Operating Committee.

During her 8-year tenure at Citigroup, Vargas held several senior executive positions in the areas of Marketing and Communications, Corporate Mergers and Acquisitions, and Strategy and Business Development. As senior vice president, head of the Multicultural Segment for Citibank in the US,

she was responsible for developing several new bank products tailored to the needs of Latinos in the US.

Vargas holds a MBA from the Freeman School of Business at Tulane University and a BA in Accounting from the ITAM in Mexico.



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