

# The Need for a Bilateral Labor Agreement Between the US and Mexico, and the Responsibility for Leadership

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Mexico and the United States need a bilateral agreement to regulate the labor migration flows between these two neighboring countries. They have needed such an agreement my entire life.

In the year I was born, 1972, presidents Nixon and Echeverria were very worried about irregular labor migration. Irregular labor migration had spiked in the seven previous years, since the end of the last bilateral labor agreement in 1965. The two presidents, Nixon and Echeverria, each established their own commission to recommend what to do. Nixon's commission rejected any possibility of a new agreement.

Their Mexican counterparts, in contrast, concluded the following:<sup>1</sup>

"[I]t is considered indispensable to negotiate a Bilateral Agreement with the United States that regulates the hiring of Mexican laborers that temporarily go there ... It is known that the official attitude of the United States is reluctant to enter this Agreement, arguing that it has enough laborers, that there is unemployment ... that the unions and the Chicanos are opposed [etc.]. ...

"However, we have to convince the American officials that the current situation of an uncontrolled migratory stream is more damaging for them and for us than that which could be regulated by a Bilateral Agreement and controlled through mutual cooperative efforts."

In other words, Nixon's commission concluded, more or less, that the US no longer needed to bother with Mexican workers, thanks. Echeverria's commission, in contrast, concluded that without a bilateral agreement, the labor market between the two countries would become a vast and harmful black market.

Everyone already knows what happened after 1972. There is no ambiguity here. The commission on the American side was wrong; the commission on the Mexican side was right. By 1986 alone, 28 million Mexicans arrived in the US to work in a regulatory vacuum,

23 million of whom were temporary, and many millions more after the 1980s.<sup>2</sup> This exchange between the countries brought with it large mutual, economic, and cultural benefits. The illegal nature of this exchange was a political decision.

I am part of a bi-national group that believes that things can be done better. The members of this group came together because we have observed, over decades, the great harm that both countries have suffered due to the bilateral regulatory void. We come from both countries and we have very different perspectives: We have worked with unions, employers, the border patrol, nation-states, think tanks, and universities. Our partisan affiliations span the political spectrum in the United States as well as in Mexico.

Our co-chairs are President Ernesto Zedillo and the former Republican US Secretary of Commerce, Carlos Gutierrez. On the Mexican side, the members are Gerardo Esquivel (Colmex), Daniel Chiquiar (Bank of Mexico), Luis Ernesto Derbez (University of the Americas of Puebla), Gustavo Mohar Betancourt (Atalaya Group), Alejandro Poiré (Monterrey Institute of Technology and Higher Education), and Arturo Sarukhan (CMM). On the American side, we have Doris Meissner (former Director of the Immigration and Naturalization Service), Eliseo Medina (Service Employees International Union), and many others, including representatives of employers and experts in law and foreign relations. I, for my part, am an economist. We are a truly diverse, unprecedented, bi-national group.

Far beyond suggesting principles for cooperation with regard to labor mobility, in order to talk in extremely specific terms, we have actually written a draft bilateral labor agreement between Mexico and the US—built for the 21st Century.<sup>3</sup>

Obviously we know that we are now living through a political epoch that could be called, at a minimum, extraordinary. It is an epoch of fear, myopia, and mutual suspicion. Our vision, on the contrary, rests on **history, cooperation, and innovation**. I will explain each of these.

## The Basis for Our Vision

1. *Our vision rests on history because history teaches us that regulatory flexibility and bilateral cooperation are the only lasting solutions.*

Many recall the unilateral U.S. immigration reform of 1986. It included the regularization of the vast majority of the undocumented at the time, plus additional measures for border security. It failed, to a degree that is not commonly understood. This was supposed to be a once-and-for-all solution. But it lasted less than four years. Four years later, in 1990, there were already *more* undocumented in the US than prior to the reform.<sup>4</sup> Why did it fail so resoundingly? In broad terms, because it left out the key to success: a regulatory framework for *future, new, additional* flows of workers. Those flows arrived, as expected, but on an unregulated black market.

People were acting, at that time, as if cross-border migration was a phenomenon of the 1980s and 1990s. What a lack of vision. I wonder if anyone who participated in the political debate of the 1980s knew that the percentage of Mexicans in the labor force in the state of Kansas—Kansas!—was larger in 1920 than in 1990. The same goes for the states of Arizona, Colorado, and Texas: larger in 1920 than in 1990.<sup>5</sup> Labor mobility across the Mexico-US border is a phenomenon of our grandparents and great-grandparents. We are in today's situation because each time there was a chance for reform, very few were willing to plan for future flows of people. These two countries have a common destiny, and there will always be exchanges—including of labor.

*2. Our vision rests on cooperation because unilateralism and isolationism have failed.*

The U.S. immigration reform of 1986, fully unilateral, did nothing to diminish the black market for labor between the countries. The total silence in NAFTA about the mobility of unskilled workers did nothing to diminish that black market. That total silence is apparently going to continue in any new version of the treaty that may or may not emerge from the current renegotiations.

I'll be very specific about why bilateralism is indispensable. Labor mobility between the two countries is, by nature, a bilateral matter. This has nothing to do with politics. The political left in the US needs Mexican cooperation because one of its most important concerns regarding labor mobility is the abuses by recruiters of workers in Mexico. But the US cannot enforce compliance of US law within Mexico. Mexico alone bears the sovereign responsibility for regulating recruiters in Mexico. Likewise, the political right in the US also needs Mexican cooperation because one of its most important concerns is the growing irregular migration within Central America, which simply cannot be well-managed without Mexico.

Of course, American unilateralism is currently surging. But that does not change any of these facts. Unilateralism is a failed idea, snatched for the moment directly from the trash bin of history. No one can make a silk purse from this sow's ear. The only lasting solution for two permanent neighbors is cooperation. The two nations have cooperated before and can do so again.

*3. Our vision rests on innovation because the previous bilateral agreement, known as the Bracero program, had serious deficiencies.*

Perhaps the most harmful flaw in previous bilateral labor regulation has been the fact that they have tied workers to a single employer. This drastically reduces workers' bargaining power and encourages their abuse and exploitation. Nevertheless, such flaws are not inherent to bilateral labor regulation. The global experience with bilateral worker agreements shows how to overcome such flaws.

We propose the following three innovations that I will highlight, among others:

- First: In the past there was no serious mechanism to defend the rights of the Mexican worker in the US. We propose that Mexico be responsible for the *certification of labor recruiters* in Mexico, pursuant to the Federal Labor Law of 2012, and we propose a system of *visa portability within defined sectors* of the American economy so that no worker is obliged to remain with an abusive employer.
- Second: In the past there was also no serious mechanism to protect the priority of American workers for jobs in the US, without which no agreement is possible. We propose a *U.S. worker priority fee*, paid by the employer. This ensures that employers have a strong and transparent incentive to hire American workers when they are available, and generates revenue to offset the costs of implementing the agreement.
- Third: In the past there was no regulatory regime capable of reacting to economic and demographic changes in either country. To set the number of visas, we propose what we call a *decelerator safeguard cap*. This limits, in a transparent and predictable manner, the year-to-year changes in the number of new work permits granted. This proposal could mitigate the impact of unexpected events in the labor markets of the United States and Mexico, without a rigid absolute quota whose ultimate effect would be to feed the black market.

## Frequent Questions

I will respond to some good questions about this proposal that we often hear.

*Why bilateral and not multilateral?* A bilateral agreement is already complicated enough; a multilateral agreement would be exponentially more so. However, it bears mentioning that we, the members of this group, see a bilateral agreement between these two neighboring countries as a starting point for future possibilities of cooperation at the regional level.

*Why unskilled workers?* More and more the mass media present the American economy as driven by high-skill labor. The reality is that some of the most important increases in the demand for labor that will take place in the coming years will be for unskilled labor. Silicon Valley does not just run on software engineers; it also runs on workers specialized in child care, construction, cleaning, farmwork, security, transportation, warehousing, and many other occupations where learning largely occurs on the job rather than in formal educational institutions. Jobs that do not require full secondary education will represent more than half of the increase in the demand for labor in the US within the group of 20 jobs with highest absolute growth during the next decade. More than half do not even require secondary education.<sup>6</sup>

*Why go beyond agriculture?* At the last G20 Summit, in Hamburg, the Presidents of Mexico and the US spoke about a possible program for the labor mobility of agricultural workers. Bills to create new forms of agricultural work visas are currently circulating around Washington. These proposals for regulation are, of course, unilateral. The big problem is that just 12

percent of Mexicans in the US work in agriculture, and in the future, even less.<sup>7</sup> A program just for agriculture is not a serious and lasting response to today's challenges.

*Why now?* Clearly the current moment is not optimal to be discussing bilateral cooperation, in certain senses. I will offer no less than five reasons why the time to act is now.

First, the historical experience of the Bracero program can be interpreted in part as a natural outcome of the labor shortage due to the expatriation of hundreds of thousands of Mexicans in the US in the 1930s.<sup>8</sup> The historical myth is that the Bracero program arose from the labor shortage during the Second World War. But the war ended in the third year of the program, which continued for two more decades. The economic consequences of that massive expatriation in the 1930s obliged the US to search for a bilateral solution in the 1940s. After the current and growing wave of Mexican expatriations, it is plausible that we will witness something similar.

Second, economic and demographic changes have reduced migratory pressure between the United States and Mexico. There is now less pressure than there has been for decades. But the existence of a low or even negative *net* flow conceals large positive flows that are happening *in either direction*. Between 2009 and 2014, the average number of Mexicans who arrived each year was 174,000.<sup>9</sup>

Third, it is obvious that immigration sits among the highest priority issues in the United States' policy development agenda. The supposed solutions now on offer—unilateral moves to massively slash lawful migration to the US, or exclusively agricultural programs for temporary workers—are empty solutions, a political con of the good working people of both countries. Sooner or later those people will seek serious, real, lasting answers.

Fourth, both the United States as well as Mexico are faced with a growing migratory pressure arising from Central America, which gives them common incentives to cooperate that did not exist until a few years ago. In 2014, for the first time in history, there were more detentions of *non-Mexican* migrants than Mexican migrants on the southern border of the US. Mexico, for its part, is currently developing mechanisms to regulate the growing influx of undocumented workers from Guatemala. The two countries have renewed shared interests in regulating migration together.

Finally, there is a new generation of legislators and researchers who have seen the results of decades of making labor mobility on the border illegal who do not wish to continue this failed policy of mutual unilateralism and are ready to innovate.

## The Responsibility of Leadership

I began by pointing out that the leadership on this issue has come from the Mexican side, at least since 1972. This remains true. In 2005, the Mexican government published a legal brief, “Mexico and the Migration Phenomenon,” which was approved unanimously by both chambers of the Mexican legislature in 2006. This brief supports the creation of “a

temporary employment-based migration program of the broadest possible scope.” That the US federal government has, for now, clearly renounced bilateralism, the responsibility for leadership. That responsibility—which should be shared—therefore rests with Mexico.

In each conversation with this American administration and with those to come, Mexico must insist that joint regulation of labor mobility is the only way toward a future that the people of both countries deserve. The best and most specific proposal for this joint regulation is that of this bi-national group headed by Ernesto Zedillo and Carlos Gutierrez. I invite you to consider this proposal as one excellent tool to shape future policy proposals and negotiations.

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<sup>1</sup> Comisión Intersecretarial para Estudio del Problema de la Emigración Subrepticia de Trabajadores Mexicanos a Estados Unidos de América. *Informe de Actividades y Recomendaciones* (Intersecretarial Commission For Studying the Problem of Clandestine Immigration of Mexican Workers to the United States of America. Report on Activities and Recommendations). Tlatelolco, D.F.: National General Archives, 1972.

<sup>2</sup> Massey, D. S., J. Durand, and N. J. Malone. *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration*. New York: Russell Sage Foundation, 2002, page 45.

<sup>3</sup> Clemens, Michael A., Carlos Gutierrez, and Ernesto Zedillo. *Shared Border, Shared Future: A Blueprint for Regulating US-Mexico Labor Mobility*. Washington, D.C. Center for Global Development, 2016.

<sup>4</sup> Wasem, Ruth Ellen. *Unauthorized Aliens Residing in the United States: Estimates Since 1986*. Report RL33874. Washington, D.C. Congressional Research Service, 2012.

<sup>5</sup> Borjas, George J. and Lawrence F. Katz, “The Evolution of the Mexican-Born Workforce in the United States” in George J. Borjas, ed., *Mexican Immigration to the United States*, 2007, page 19.

<sup>6</sup> Clemens et al., *op. cit.* Page 18.

<sup>7</sup> Chiquiar, D., and A. Salcedo. “Mexican Migration to the United States: Underlying Economic Factors and Possible Scenarios for Future Flows.” Working Paper 2013-20. Banco de México, 2013, page 7.

<sup>8</sup> Gratton, Brian and Emily Merchant, “Immigration, Repatriation, and Deportation: The Mexican Origin Population in the United States, 1920–1950,” *International Migration Review*, 2013, 47 (4), 944–975.

<sup>9</sup> González-Barrera, Ana. *More Mexicans Leaving than Coming to the U.S.: Net Loss of 140,000 from 2009 to 2014; Family Reunification Top Reason for Return*. Washington, D.C. Pew Research Center, 2015.