

Statement of

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before the

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U.S. & Mexico Immigration Policy & the Bilateral Relationship

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Introduction

Mr. Chairman, Ranking Member, Members of the Committee on Foreign Relations.

Thank you for the invitation to comment on the President's immigration reform proposals in the context of the broader U.S./Mexico relationship.

In his far-reaching statement of January 7, 2004, President Bush returned to one of the earliest themes of his Presidency and to one of the country's most intractable policy and political dilemmas: how to manage better the U.S. immigration system. Echoing the refrain of "safe, orderly, and legal" immigration of his first meeting with Mexico's President Vincente Fox in February, 2001, Mr. Bush acknowledged again that while the U.S. "values" and "depends on" immigrants, our broken immigration system "condemns...millions of hardworking men and women" to working in a "massive, undocumented economy... [albeit in] jobs American citizens are not filling." Mr. Bush's prescription? A massive and apparently rolling temporary worker program both for currently unauthorized and new immigrants matching "willing workers" with "willing employers."

In doing so, the President jump-started a stalled national conversation on the role of immigrants in U.S. society and on the way forward on U.S. immigration reform. His acknowledgment that the immigration system is broken is fully consistent with the facts. There are currently as many as 10 million unauthorized immigrants in the United States; about three-fifths of them are Mexicans, while Central and South Americans provide another quarter of that total (see Chart 1). More than half of this illegally-resident population is found in just four states—California, with more than a quarter of the total, followed by Texas, Florida, and New York (see Chart 2). Furthermore, nearly half-a-million new unauthorized immigrants (mostly Mexicans) are added to our economy and society each year.

CHARTS 1 AND 2 ABOUT HERE

While Asians and the rest of the world are estimated to provide about one-in-five of the foreigners who are illegally-resident in the U.S., the U.S. unauthorized immigration problem is decidedly a hemispheric one. More precisely, it is a Northern Hemisphere one, and more precisely yet, a Mexican problem. Numbers and geography, as a result, mean that any attempt to manage unauthorized immigration to the United States must keep Mexico and Mexicans close in mind.

The Mexico Factor in U.S. Immigration Policy

Nor is this somehow a new phenomenon. In the last regularization of unauthorized immigrants, conducted under the 1986 Immigration Reform and Control Act (IRCA), about two million Mexicans received permanent lawful resident (LPR or "green-card") status—about 75 percent of the successful applicants. Since then, and in the largest part because of IRCA, legal migration from Mexico has come to comprise about one-sixth of total annual U.S. intakes. Illegal Mexican migration has also gained considerable

momentum, as the social and labor recruitment networks that help Mexican migrants come northward have become even more efficient and US employers have become even more accustomed to recruiting and employing Mexican workers. As a result, Mexicans already living in the United States have become even more embedded in U.S. society and Mexicans of all legal statuses have come to comprise increasingly large pluralities of workers in low-skill, low value-added economic sectors—and even to dominate many of them throughout the United States.

Beyond the numbers, however, many of the assumptions that are now driving U.S. thinking about immigration reform are directly informed by migration from Mexico. For example, every major immigration reform proposal introduced in the last year or so emphasizes, more or less directly, restoring the "circularity" of earlier migration patterns as a key goal of immigration reform. To be sure, immigrants from all countries often return to their home country and, increasingly, they may make this two-way trip repeatedly. However, Mexico's geographic proximity to and historically complicated migration relationship with the United States has shaped a tradition of circular migration that, until recently, had been far longer and stronger than any other nation's.

Furthermore, it is Mexico's (and, to a much lesser extent, Central America's) tradition of circular migration that can be most accurately described as having been most directly "disrupted" by the US border enforcement policies of the past ten or so years. Stepped-up enforcement on the United States' southern border has both preceded and, until the last two years or so, has been more intense than changes in controlling access by air and sea. This, in turn, has contributed to longer stays by unauthorized Mexican immigrants and has made the tendency toward longer—and essentially permanent—stays the key to understanding the Mexico-to-U.S. migration of the last decade or so. Not surprisingly, then, the success of any U.S. immigration reform effort will ultimately rest on the accuracy of our assumptions about the nature of Mexican migration and its place in the US economy and society.

Yet, so far, every major immigration reform proposal—including the President's—has been decidedly unilateral in expression. A combination of factors makes Mexico the most natural partner—a true *primus inter pares*—in a more realistic approach to our efforts to manage migration more effectively.

- First, since Mexico contributes a significant majority of the U.S.'s total unauthorized population, it is a logical major partner in a bilateral approach to resolving the illegal immigration puzzle.
 - Under the same logic, Central America must also remain within our proximate policy thinking on immigration reform, making “thinking regionally” on this issue simply compelling.
- Secondly, the United States and Mexico (as well as Canada) already have a well established relationship—they are partners in the North American Free Trade Agreement (NAFTA) and jointly manage many critical issues that relate to our border security and to law enforcement priorities for both countries.

- The United States and Mexico have also launched a modest joint program to promote economic development in Mexico called the “Partnership for Prosperity”—a program that acknowledges the importance of Mexican economic development in promoting the NAFTA region’s long-term economic and social well-being. So far, however, the program is mostly “aspirational” in nature but, with the help of this Committee, it can be moved off the political back-burner.
- Third, political and economic imperatives in both countries make thinking bilaterally (and, again, regionally) about migration and related issues particularly attractive: in few other countries is migration as potent a domestic political issue as in Mexico, Spanish-speakers power our labor intensive economic sectors, and Hispanics (and particularly Mexican-Americans) make up an already large and fast increasing part of the electorate in the United States.

These and many other factors like them make Mexico (and the region) the natural starting point for an open-ended conversation on migration. It is also the place where whatever immigration legislation emerges will be tested first, and most tellingly. Put differently, while Mexican cooperation may not guarantee the full and immediate success in whatever immigration reform objectives we set for ourselves, the failure to enlist Mexico’s *fullest* cooperation will make progress toward meeting those objectives much more expensive, much more difficult, and far less certain.

The Three-Legged Stool of Smart and Stable Immigration Reform

Almost regardless of the level of bilateral (and regional) coordination, any immigration reform package that aims for long-term success must deal with three very difficult issues more or less simultaneously: (a) accounting for and offering the opportunity to the currently illegally-resident immigrant population to earn green cards; (b) preventing future unauthorized immigration to the fullest extent possible through thoughtful policies and smart enforcement; and (c) providing adequate legal means for needed immigrants to enter the United States by expanding the number of visas of all types—permanent and temporary, for families and for workers.

These three policy goals must be understood as being fundamentally *indivisible*, at least if the policy aim is *stability* in, rather than simply another bite at, reform. A fully integrated approach to reform might thus be conceptualized best as a “three-legged stool” that will be by definition wobbly if any of its legs are significantly uneven and will simply topple if any one leg is removed. I will discuss each of these three “E”s of comprehensive reform—*e*arning legal permanent status, *e*nforcing the immigration laws better, and *e*xpanding visas in sequence below.

Leg One: Earning green cards must become an opportunity available to all illegally-resident immigrants

The domestic security agenda established after September 11 has cast the longstanding and growing unauthorized population in the US in a new light—as a potential hiding

place for terrorists. Analysts talk about the challenges of finding the "needle in the haystack" and hotly debate the appropriate and constitutionally sound ways to make that haystack significantly smaller. Ideas have included registration, deportation (focusing initially on criminal immigrants), increased enforcement measures internally and at the border, and attrition (as a collective result of these efforts).

As noted earlier, today's "haystack" is composed of nearly 10 million people who are living and working in American communities. Even the most "back-of-the-envelope" calculation shows that, even under the most favorable assumptions, a strategy designed to reduce the unauthorized population to publicly acceptable levels (if we knew what those might be) that utilized only enforcement and deportation methods would require tens of billions of dollars, decades of time, and significant damage to the nation's concept of civil and other rights. It would also require even more heroic assumptions about the United States' ability to keep new would-be illegal entrants and illegal stayers out.

It is in this context that we must evaluate the plan proposed by President Bush. According to that plan, the permission to stay legally would be contingent upon employment and initially last for three years, with the possibility of one (or more?) renewals. In order for that plan to succeed in its principal objective of "breaking the back" of illegal immigration, such an offer must be combined with a meaningful opportunity for unauthorized immigrants to remain in our country by "earning" their green cards. The White House is reported to be more open to this idea than the President's statement may have indicated at first.

The domestic security argument for following this, more expansive, course is as simple as it is compelling: the utility of the overall effort depends greatly on the level of participation. An effort that leaves millions of people unregistered (and hence un-vetted in security terms) still leaves a considerable security problem. In fact, a program that allows only temporary stays is not likely to prove a sufficient inducement to come forward either for those immigrants who have developed deep social and economic roots in our communities or who fear that registration could be used against them in other ways.

The level of participation in the regularization program will also influence the success of broader efforts to control illegal immigration. When Congress enacted IRCA in 1986, it thought of regularization only in classic amnesty terms, and extended its pardon to anyone "continuously" in the U.S. since before January 1, 1982. When the law was finally implemented in November, 1986, the previous five years of illegal arrivals did not qualify for regularization. At the same time, however, they had little incentive to leave.

These three million still-unauthorized immigrants simply burrowed into U.S. communities, continuing to do essential work, but in an even more unprotected legal environment. They continued to reunify with their families legally or illegally, build new families, and have American children. With millions of unauthorized residents continuing to live and work in the US, the IRCA legalization program never established a "clean slate" from which to launch its enforcement provisions, and the unauthorized immigrants

left behind by the law formed the nucleus for the even more spectacular growth of the unauthorized population in the 1990s.

Many unauthorized immigrants have spent years in the country, are working at permanent jobs, and are parents of citizen children. At the end of the last fiscal year, the Department of Homeland Security had more than 1.2 million pending green card applications and naturalization waiting times in the largest metropolitan areas are approaching four years. For most of these people, and many more, "restoring circularity" may not be a goal that will move them to register in a program like that proposed by the White House; they will need a real opportunity to obtain legal permanent residency instead. If offered regularization without the prospect of permanent residency, and even if they take that offer up front, many may simply choose to remain in the United States at the end of their allotted time, rather than return home after a decade or more of absence.

Leg Two: Enforcing our immigration laws better

Offering the currently illegally-resident population an opportunity to earn "green cards" will not amount to much of a reform if unauthorized immigration is not controlled more effectively during and following the regularization process. Effective enforcement, however, will not only require greater enforcement resources; it will demand a rethinking of enforcement strategies.

The US-Mexico border provides an important example. Beginning in the mid-1990s, spending on border enforcement was increased dramatically and the Border Patrol adopted a new strategy of "control-through-deterrence" that initially focused enforcement resources on regaining control over one sector at a time—starting with the sectors most in need of attention. In many ways, these efforts paid off: crossing successfully became gradually more difficult and the fees charged by smugglers rose accordingly. Yet, border-crossers shifted their efforts to other, less well-secured (but also more dangerous) areas and once over the line, unauthorized immigrants found jobs easily and faced little threat of apprehension and removal. As a result, many migrants continued to cross, but their passage became costlier and riskier—and deaths along the border mounted. Migrants who successfully ran the gauntlet of crossing the ever more heavily patrolled border started to defer trips back home, turning the enhanced border enforcement strategy into one that *effectively "locked people in," rather than keeping them out.*

Part of the lesson from this experience is that although border enforcement remains a necessary part of the strategy for controlling unauthorized immigration, it must be supplemented by a smart interior enforcement strategy. Until recently, this strategy has been based almost exclusively on penalizing employers for hiring illegal workers—an approach that has never developed roots and, as a result, it has never received adequate resources or worked particularly well even when resources were made available. A renewed commitment to manage migration much better will require more resources, a review of employer sanctions that re-examines US enforcement methods from the ground up, *and serious consideration of alternatives.* As we move toward a temporary work visa program, enforcement of labor standards and other workplace protections will also have

to be rethought and become essential parts of the enforcement agenda.

Leg Three: Expanding visa numbers must become a co-principal in the new policy architecture for recapturing control over unauthorized immigration

However generous the earned regularization provisions of a comprehensive U.S. response to immigration is, and however well-conceived and properly funded enforcement efforts come to be, *they will be for naught unless the number of available visas also expands.* Expanding visas will give American employers access to legal foreign workers while allowing would-be migrants a more realistic opportunity to migrate legally to work, to join family members, or both. Unauthorized immigrants, and the overwhelming majority of Mexicans and Central Americans in particular, are largely employed in low-wage, low value-added jobs, mostly but not exclusively in the service sector, making these positions a priority for additional visas. Temporary work visas will be an appropriate solution for some of these entries. For any large-scale visa program to maintain its integrity, however, it must be accompanied by tough but fair enforcement as well as by imaginative financial incentives to return. At the same time, we must also be clear that neither enforcement nor return incentives will work in every case; some workers will still want to stay and some employers will still want to keep their most reliable employees. Creating a clear, if demanding, path to permanent residency is the only way to address this policy challenge.

While more work visas are thus an essential migration management tool, family reunification will remain a core value in the U.S. immigration system (and it will continue to play a crucial role in fostering immigrant integration). As such, it must receive its share of attention in any serious effort at immigration reform. Our administrative failings in this regard are legion. As Chart 3 makes clear, the backlogs in out immigration adjudications' system are massive and contribute unnecessarily to unauthorized immigration.

CHART 3 ABOUT HERE

Part of the reason for the backlog is legitimate. Delivering immigration benefits must be accurate, security considerations must be satisfied to virtual certainty, and the service must be professional, courteous and above reproach. *But immigration benefits must also be delivered in a timely fashion.* The cost of failure in that last regard is not just longer waiting lines and the likely (but largely unnecessary and avoidable) swelling in the unauthorized population; it is the breeding of disrespect, if not disregard, for the rules, a phenomenon that has an hugely corrosive effect on the rule of law. That effect is not unlike that which offends so many law-abiding Americans when they see unauthorized immigrants come and/or stay in our country illegally.

A look at Chart 3, which tracks the total benefit applications received, completed (a number that reflects approvals *plus* denials), and pending since 1980, makes clear that until the early 1990s, pending applications were holding fairly steady both in absolute numbers (in the low hundreds of thousands) and relative to completion rates. So were the numbers of received *and completed* applications. Demand began to grow as those who received lawful permanent status under the Immigration Reform and Control Act of 1986

became eligible for benefits, primarily as petitioners for their immediate family members. Yet, for a period, the immigration service was more or less able to keep up with most of the additional demand.

Things started to fall apart, however, by the mid-1990s, when the IRCA-fueled demand for adjudications combined with the surge in naturalization petitions that resulted from what some analysts have characterized as that period's "assault on immigrants." That "assault" culminated in three pieces of legislation in 1996: The "Anti-Terrorism and Effective Death Penalty Act," the "Personal Responsibility and Work Opportunity Reconciliation Act," and the "Illegal Immigration Reform and Immigrant Responsibility Act."

Surges in demand, however, are not the only variable responsible for what happened to adjudications after 1996. The naturalization re-engineering that followed the political debacle of the Clinton Administration's efforts to promote naturalizations in 1995 and 1996, created a sharp completion trough that lasted until 1998. Following the re-engineering, completion rates increased again until FY 2002, when, in the painstaking review of all immigration procedures that 9/11 made necessary, they dropped precipitously once more—a drop from which they have shown no signs of recovering so far. In fact, at this time, the immigration benefits' overall adjudication backlog is *well over six million* (it stood at 6.2 million at the end of FY2003, with more than 1.2 million pending "green card" adjudications and multiyear naturalization delays).

Creating a system in which immigrants will "wait for their turn" requires renewed commitment on our part to adjudicate petitions for immigration benefits in a much more timely fashion. This includes the commitment to appropriate the requisite public resources to clear these backlogs.

Enacting the AgJobs as a downpayment toward comprehensive immigration reform

The three "E"s of reform set standards for judging not only the "completeness" of any reform proposal but especially the likelihood that we would control illegal immigration while promoting U.S. social goals and economic priorities. Viewed through the lenses of both human rights and economics, the three-legged stool of reforms proposed here will bring millions of hard working, law-abiding people "out of the shadows" with absolutely no disruption to the economy—and do so while building a deep reservoir of good will in the region whose returns will be counted in terms of increased security, greater stability, improved prosperity, *and good will*.

Do these lofty goals mean, then, there is nothing that can be achieved in this legislative session that is a downpayment for, rather than an excuse not to, undertake comprehensive reform? Put differently, are there no legislative "baby steps" that can be taken *now* that can set the table for more comprehensive reform after the elections? There is in fact one such well thought out piece of bipartisan legislation that is pending already before the Congress: The Agricultural Job Opportunity, Benefits, and Security Act, or "AgJobs." The President chose not to mention this bill in his statement on immigration but the

White House has apparently indicated to the Bill's authors that if the legislation is enacted, the President will sign it.

In essence, AgJobs would stabilize the agricultural workforce in perishable crops—a workforce that is almost entirely Latino and three-quarters or more unauthorized—while protecting better *in fact* all of that sector's workers. It would do so by allowing unauthorized workers to work legally and begin to earn lawful permanent residence if they have worked in U.S. perishable crop fields for 100 work days in 12 consecutive months during the 18 months prior to the legislation's enactment (thus targeting the more experienced workers). These newly legal temporary workers would be able to remain in the U.S. for up to three years and take any job. However, they would have to perform a minimum of 360 work days of agricultural work in the subsequent six years (and required minimums in the first three of these six years) before they can obtain lawful permanent residence.

New workers would also be able to gain legal access to this economic sector with fewer procedural requirements—thus guaranteeing growers more predictable access to the legal and stable workforce they seek. In return, work-related benefits, legal protections, and labor standards throughout the sector (such as wages, housing/housing allowances, collective bargaining rights, and, most notably from a worker protection perspective, a federal private right to action and the ability of third parties to bring complaints to the U.S. Department of Labor) would also be enhanced, in many instances dramatically so.

Agjobs has been painstakingly negotiated, has made its peace with American agriculture's long "exceptionalism" with regard to immigration rules, and, most importantly, it is a vast improvement over the status quo. It thus meets most criteria of what reform legislation on immigration must come to terms with—while its single sector focus tackles smartly and removes one of the toughest issues on which comprehensive immigration reform efforts have always stumbled.

Returning to Mexico: Being smart about and building upon the bilateral cooperation opportunities the NAFTA has created

At the moment, debate in the United States is largely focused on unilateral approaches to immigration control, including much-needed changes designed to "putting our own house in order." While some of the dimensions of a new approach to immigration must involve nationals of all countries—earning green cards, for instance—cooperation with Mexico (and Central America) continues to have distinct advantages.

A phenomenon as complex as migration, and in which so many sectors of American society—including "government at all levels"—are so deeply "implicated" (in the January 2001 words of former Texas Republican Senator Phil Gramm), cannot be managed as well unilaterally as it can with the cooperation of our neighbors. Pragmatism, even humility, is no weakness if the focus is on the right prize, an insight that is being reinforced everyday in our "war on terror" and one referred to explicitly in

the President's 2004 Budget Statement regarding the Department of Homeland Security. Furthermore, the North American Free Trade Agreement (NAFTA) has created a framework for cooperation on and, consequently, ample opportunities for joint action in the region that the U.S. Congress, most analysts, and key stakeholders on this issue did not have in their field of vision in the drafting and deliberations of the 1986 attempt at large-scale immigration reform. Nor were Mexico's or most notable Mexicans' public comments at the time particularly helpful or cooperation-inspiring. As a result, reaching out to Mexico (or Canada) 20 years ago was not a realistic option and few actors gave it serious consideration.

Today, ten years after NAFTA and two-plus years after the September 11, 2001, attacks on our homeland, there is a far greater appreciation of the fact that homeland security does not start at our borders. Border controls are in fact more effective the further away they begin from our physical borders, while the fight against human and other trafficking stands a much better chance at success when undertaken in cooperation with like-minded countries. Mexico and Canada are thus essential assets in *our* homeland security arsenal.

In this perspective, one of NAFTA's principal contributions to the U.S. is creating an environment in which deeper and broader bilateral relationships between the United States and Mexico (and the United States and Canada) on matters that go well beyond trade has become possible—and in some ways, even routine. This reality has set the stage for far greater cooperation on security, migration and other difficult issues. Whether we are able to draw out of these relationships what we need in terms of our security and our migration management aims is almost a direct function of how much capital of all types we are willing to invest and where we are willing to make these investments.

Specifically, working with the Mexican Government in the political context created, even if inadvertently, by NAFTA, can pay crucial security dividends for us. For instance, it can lead to agreements whereby Mexico can take an ever more active role in disrupting people-smuggling networks, the same networks that are often thought to be responsible for the smuggling of other illicit materials, and in controlling access to its territory by those seeking to use Mexico as a transit or staging area for people and goods seeking entry into the United States illegally.

Defeating these networks and disrupting illegal entry and passage routes—domains in which the Mexican Government is making substantial progress but receives little public credit in the U.S. (while simultaneously paying a significant political price in Mexico)—is not just a U.S. priority. The Fox Administration has an increasingly finely-tuned appreciation of the fact that, by undermining the rule of law and undercutting his government's credibility, smuggling syndicates and criminal networks make Mexico's own good governance aims more distant. Furthermore, Mexico's limited policing resources will be able to cover less ground if more people attempt to use it as a transit country into the United States. Hence the coincidence of bilateral policy interests—a

reality that Mexican leaders at times seem to appreciate more than their U.S. counterparts do, especially those in the U.S. Congress.

The most obvious way in which true, organic cooperation with Mexico can help the United States is with the management of our common border. Significant efforts to cooperate in border management are already underway, but can be expanded and deepened. Tying this cooperation to reforms in U.S. immigration policy may be the best way to give the Mexican government the political ammunition it needs to make *full and active* cooperation at the border even more possible.

The possibilities for mutually useful cooperation do not stop at the border. In the three-legged stool approach to immigration reform I have outlined, Mexico has much to offer. Its public records can be a valuable resource for verifying the backgrounds and eligibility of candidates both for legalization and temporary work program participants. The Mexican Government's cooperation in conceiving of and implementing a large scale temporary worker program must also not be underestimated.

Cooperation on all these fronts will require both the United States and Mexico to come to view stability and predictability in their bilateral migration relationship as a goal that brings enormous benefits to both countries. There is indeed evidence that this idea is beginning to take hold. In the United States, the language used to discuss the issue in some mainstream political circles has shifted from "illegal aliens" to "willing workers." Mexico, for its part, appears to understand better that policies that may appear to offer it the most immediate economic and domestic political rewards (such as arguing only for a temporary worker program or taking its part of the joint responsibility for managing the common border lightly) may prove to be shortsighted—and that working with the United States to build a common pillar of security and prosperity is indeed in the best interests of its citizens.

As the discussion over immigration reform moves forward in the United States, Mexico will continue to hold a prominent place both in the debates and the solutions. The extensive and complex migration relationship that has evolved between the two countries in the last 100 years may be the greatest obstacle facing immigration reform in the United States; their deepening and broadening political and economic relationship, however, may offer the best chance of surmounting this obstacle.