

The Fence Rebordering the Border

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The panic caused by the threat of fencing in even more the already “rebordered border” has had a terrible effect among Mexicans and sparked a loud debate in the United States.¹ Mounting border violence and the increase in the number of deaths of our compatriots who try to cross the border, recent incursions across the border by people who look like Mexican military personnel and the shameful incident involving the expulsion of 16 Cubans from Mexico City’s María Isabel Sheraton Hotel under U.S. Treasury Department orders to enforce the Helms-Burton Act

in Mexican territory are just a few examples of the many problems that continually tense bilateral relations between Mexico and the United States and that require not only practical solutions, but diplomatic measures.²

In the 12 years the North American Free Trade Agreement (NAFTA) has been in effect, important economic interaction and dynamic trade and investment have been generated, spurring the creation of new businesses and jobs. From 1994 to 2005, interdependence between the two countries grew significantly because of the broad technically sophisticated social networks that have increasingly rooted themselves in both labor markets, the huge remittances sent to Mexico from the U.S. (by 2005 they

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came to almost U.S.\$20 billion), but, above all, due to the important wage differentials that reached a ratio of up to one to ten.

There were great expectations that NAFTA would reduce the migration of Mexicans to the United States. However, not only did this not happen, but the flow of migrants actually rose substantially.³ During those years, policy discussions about border control, labor mobility and economic integration of Mexico and the United States have been separate. The logic of security imposed itself on the recognition that migration between the two countries is a function of the *de facto* labor markets based on the supply and demand of labor.

Since the terrorist attacks, Mexico has been collaborating with the United States to establish accords that would reinforce security on our shared border, an interminable source of tension between both countries. Today, different immigration reform bills are under discussion, including proposals that go from building almost 700 miles of fencing along the 1,920-mile border, which in recent years has already been laced with high-tech surveillance gadgetry, to setting up guest-worker programs and undocumented worker regularization plans, all proposals that deserve

the attention of our government officials and the Mexican public, given their transcendental impact.

THE FENCE BILL

The Border Protection, Anti-terrorism and Illegal Immigration Control Act (HR4437), better known as the Sensenbrenner Bill after its sponsor James Sensenbrenner (R-Wisconsin), chairman of the House Judiciary Committee, passed the House 239 to 182 in December 2005. The bill, pending Senate passage, authorizes the construction of a double fence with ditches mainly along the Arizona-Sonora border, where migration flows are larger since traditional crossing points through California and Texas have been closed. Undocumented migrants will be considered criminals and will be disqualified for obtaining a temporary work visa or qualifying for immigrant status. That is, illegal crossing would go from being a misdemeanor to a felony, incurring jail time.⁴ Inspired in the Clear Act, which turns all policemen into immigration officials,⁵ any foreigner can be detained and required to prove his or her legal status, and, if he/she does not do so, arrested.⁶

In addition, this law mandates employers to verify the authenticity of their employees' documents. To do so, they must send copies to Homeland Security, which has three days to notify them whether the documents are authentic or not.⁷ It also stipulates that any company that hires an undocumented worker can be fined up to U.S.\$25,000.⁸ These sanctions are much more rigid than those imposed by the Immigration Reform and Control Act of 1986 (IRCA), which includes

lower fines and does not require employers to demonstrate the authenticity of migratory documents displayed by employees when hired.⁹ That is, while the border is over-policed, the workplace has been practically un-policed given that employers have tended to dislike the provision for penalties against them.

The Sensenbrenner Bill is a clear manifestation of the conservative, extreme right-wing movements that have zealously emerged since the 2001 terrorist attacks. The fear of the "other", the "unknown" and, in general, the fear of insecurity has led these conservative citizens to greater isolationism and xenophobia. They see a very porous southern border penetrated by everything from drug trafficking gangs to what they call terrorists under the cover of illegals.¹⁰ However, these same citizens continue to hire undocumented Mexicans in their labor market. While many Democrats in the United States want to curb the inflow of foreign goods, many Republicans want to curb that of foreigners. The proposed fence shows U.S. isolationist feelings: allowing fewer foreigners in their country.¹¹

THE "REORDERIZATION" PROCESS

The climate created by the terrorist attacks is similar to the one prevalent in the early 1990s. At that time, people thought undocumented immigration was out of control and that what was required was fostering a "reborderization" process to dampen anxiety. To that end, costly border operations were approved and one of the most restrictive laws in the history of U.S. immigration was passed, the Illegal Im-

migration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).

From 1992 to 2005, the number of border patrol agents skyrocketed from 2,500 to 11,200.¹² The budget for reinforcing the southern border quadrupled in 12 years, jumping from U.S.\$1 billion to more than U.S.\$4 billion, accompanied by an increase in detentions and human rights violations.¹³ As controls increased, the number of deaths mounted.¹⁴

This brutal reinforcement of security after the terrorist attacks has brought about the “securitization” of the bilateral agenda.¹⁵ For three years after 9/11, immigration was put on the back burner and the only discussion was about how to strengthen weakened security. The Fox administration stopped pressuring for a migratory accord, thinking that the only way to advance on this issue was to establish accords about security in the hopes that eventually, at least part of the “enchilada” could be negotiated. Mexico’s government also stopped insisting on the tri-lateralization of a project that would include labor mobility or a NAFTA-Plus. In that vein, then, several agreements aimed at strengthening security mechanisms were signed. One of the most important initiatives has been the Security and Prosperity Partnership for North America. Despite these agreements, both organized crime in Mexico and border violence have increased significantly, indicating just how urgent it is that they be addressed and immediate action taken.

Contrary to the “reborderization policy,” market forces established their own rules: after the 1990s U.S. economic boom, U.S. employers stepped up their custom of hiring low-skilled and highly-skilled workers in several

sectors of the economy, registering important changes in traditional migratory patterns, moving away from mainly male, agricultural, temporary migration to a family-based, multi-sectoral, multi-spacial, and, above all, more permanent migration.¹⁶

Despite the process of “reborderization,” a large number of foreigners in general and Mexicans in particular enter the U.S. annually. From 1994 to 2004, about one million immigrants a year were admitted, among them an average of 150,000 Mexicans. Almost 600,000 legal residents were naturalized, an average of 100,000 of them Mexicans. And, in 2004, 630,000 temporary workers entered the country, 113,000 of them Mexicans who obtained various kinds of visas to work in different sectors of the labor market. These figures do not include the nearly 5.5 million undocumented workers living in the United States and the nearly 400,000 who enter yearly.

FOREIGN GUEST WORKER PROGRAMS AND REGULARIZATION BILLS

To counteract the Sensenbrenner Bill, Senate Judiciary Committee Chairman Arlen Specter (R-Pennsylvania) introduced a draft immigration bill on February 27, 2006. The bill proposes allowing employed illegal aliens to remain in the United States indefinitely but requiring them to return home before applying for citizenship. It also proposes an unlimited foreign guest worker program that gives access to nearly all American jobs.¹⁷ Specter’s plan also includes reinforcing the border through better use of technology for those seeking to enter the country, just like the Sensenbrenner Bill. It would

tighten deportation laws and would require employers to check the Social Security numbers of new employees against a computerized federal data base. Specter’s draft plan calls for an annual increase in green cards to 290,000 and more visas for unskilled workers.

The Sensenbrenner Bill and other instruments are part of the process of “reborderization”. By no means new, they are nonetheless much more brutal. While President Bush has toughened his position about migration and repeatedly come out for greater border control, he does not support building the fence. He is openly opposed to an amnesty because it would support “lawbreakers”, but he recognizes the need to make labor available, and therefore supports a Federal Guest Workers Programm (FGWP).

In the midst of an increasingly conservative environment that wants to impose greater security measures, President Bush has attempted to convince Republicans and Democrats alike of the importance of reforming the immigration system. Nevertheless, he has been sensitive to pressures from businessmen who for years have expressed their traditional, insatiable appetite for hiring cheap, undocumented labor, whether because they find no likely candidates for certain jobs or because

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it is a significantly cheaper and more easily exploitable work force than the domestic one, so they can remain competitive domestically and internationally.

It should be remembered that during President Bush's electoral campaign, he courted the Latino community by coming out in favor of a FGWP in January 2004. The "Bush Plan" was never sent to Congress for fear of it being rejected by the members of his own party, but he did send a signal about reviving the discussion on the issue. In addition to a reasonable increase in the number of visas issued annually, Bush supports the creation of a three-year FGWP, with the possibility of renewal. Since the president is opposed to an amnesty and is convinced of the temporary nature of migrants' stay in the U.S., he proposes that these employees be given credits toward their retirement as an incentive to return to their home countries.

The White House has been working with congresspersons from both parties to come to a consensus between its plan and other bills like the Cornyn-Kyl and the McCain-Kennedy bills.¹⁸ The Cornyn-Kyl bill stipulates stiffer border control measures, but also the creation of a FGWP that would demand migrants return to their countries of origin once the authorized stay was over, as Senator Specter proposes. The McCain-Kennedy Bill is bipartisan and less restrictive than the other. It is similar to the unsuccessful Migratory Accord Mexico proposed in 2001 and includes some of President Bush's proposals. That is, at the same time that it puts forward an increase in border security and the fight against smuggling of individuals, it proposes a FGWP that would allow for hiring up to 400,000 people a year who would be considered "guests."

The guests would have to work for four years and comply with a long list of prerequisites before obtaining permanent resident status.

The three bills have pro-business provisions that would guarantee a supply of foreign laborers, the aim of a host of businessmen. In order to bring 11 million undocumented aliens out of the shadows, the amnesty they propose is forward-looking, in contrast to the one established in 1986 by IRCA, which was backward-looking.

THE FENCE AND ITS CONSEQUENCES

For better or worse, the issue of migration has once again become a mat-

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ter of debate among Republican and Democratic leaders. The public is aware of the need to reform the immigration system and there is a willingness to discuss reforms that tend to both control border security and establish a kind of regularization that would satisfy the growing demand for foreign labor in the U.S., obtained by paying a fine for having entered and remained without immigration papers.

The "reborderization policy," which contradicts the spirit of NAFTA, has not significantly deterred illegal crossings, but has prompted shifts in migration

patterns. Continuing this virulent policy would probably prompt even more negative consequences, among them:

1. Shifts in the location and methods of entry, pushing migrants to cross at even more hazardous points.
2. A more permanent stay of Mexican undocumented immigrants, contrary to the spirit of migratory circularity, a consequence unforeseen by Americans, who like to play by the rules of "you work, then you leave."¹⁹
3. Strengthening the power of human traffickers who, the more the government reinforces the border, the more they charge for transporting undocumented migrants. In that sense, the Sensenbrenner Bill will end up being good business for smugglers.
4. Increasing the number of human rights and labor violations and, unfortunately, of deaths.

We hope that the Sensenbrenner Bill has little chance of passing the Senate since it is exaggerated, aggressive, un-NAFTA, unfriendly, and police-heavy. The Mexican government must invest time and effort in lobbying in favor of the McCain-Kennedy and Specter Bills and to discredit the Sensenbrenner Bill. The ideal situation would be to establish a well-defined lobbying campaign with concrete objectives to influence congressional leaders and policy makers. We must insist on legal access to the labor market through the issuance of more new temporary work visas, a regularization program that would eventually lead to naturalization. It is urgent that we emphasize the need to develop incentives for reestablishing circular migration, since one of the main problems of our towns, despite the large amounts of remittances sent by migrants

to support their families, is the absence of labor that has decided to migrate north and of productive projects to attract migrants to return to their places of origin.

Unfortunately, we are immersed in a presidential campaign in which the current administration, frustrated because it “migratized” the bilateral agenda, may not be willing to invest more

effort in migratory relations without getting anything back but security agreements. Recent statements by different members of Mexican society about Mexico’s being willing to discourage undocumented migration, without explaining how it would be done, is wishful thinking unless it is coercive or done through important investment in migrants’ places of origin. It is difficult to

establish a differentiated policy for those who go and those who stay. We must start from the premise that undocumented Mexican labor is an important piece of our nation’s human capital that we are increasingly losing. Unfortunately, it seems that this will continue to be dealt with as a border control issue instead of a labor market regulation problem. **MM**

NOTES

- ¹ The author thanks Érika Veloz for her efficient technical support.
- ² The 1996 Helms-Burton Act prohibits U.S. individuals and institutions from providing services to Cuban citizens, even outside U.S. territory, in accordance with the terms of the U.S. economic embargo of the island.
- ³ For more information, see Mónica Vereá, “10 Years of NAFTA = Migration Plus,” *Voices of Mexico* 70 (January-March 2005).
- ⁴ Rachel L. Swarns, “Bill on Illegal Immigrant Aid Draws Fire,” *The New York Times*, December 30, 2005, p. 24.
- ⁵ This law mandates police, courts and prosecutors to identify, investigate, detain and/or arrest all immigrants without proper immigration papers in U.S. territory.
- ⁶ Andrew Grove, “Keep America, America,” *The Wall Street Journal*, January 26, 2006, p. A10.
- ⁷ The proposal to speed up the process is to expand the data verification system from 5,000 to seven million employers over the next two years. “Bush and Congress: Action?” *Migration News* 13, no. 1 (January 2006) and <http://migration.ucdavis.edu/mn/comments.php?id=3155_0_2_0>; Kleibéel, Marcano, “Sensenbrenner pone en jaque a los empleadores,” *Ponte al día* (Philadelphia), January 29, 2006 <<http://www.pontealdia.com/article.php?article=20863&edition=292&shownav=1>>
- ⁸ That may explain why fines for hiring illegal immigrants can be as low as U.S.\$275 per worker, and immigration officials acknowledge that businesses often negotiate fines downward. And why, after the INS raided onion fields in Georgia during the 1998 harvest, a senator and four members of the House of Representatives from that state sharply criticized the agency for hurting Georgia farmers. Eduardo Porter, “The Search for Illegal Immigrants Stops at the Workplace,” *The New York Times*, March 5, 2006. Also at <http://www.nytimes.com/2006/03/05/business/yourmoney/05view.html?_r=1&oref=slogin>
- ⁹ For less than U.S.\$50, immigrants can buy a set of fake documents—usually a Social Security card and green card, indicating permanent residency—to get a job. The fake ID’s provide employers with crucial protection in the eyes of the law: companies can plausibly deny that they knew they were hiring people without legal permission to work. See Porter, *op. cit.*
- ¹⁰ One of these groups is Let Freedom Ring, which compares the functionality of a fence along the border with Mexico to the one that Israel is building in the West Bank which, in their opinion is a proven mechanism for reducing terrorist attacks. See their project at www.needafence.com
- ¹¹ See “The Isolationism Temptation,” *The Economist* 378, no. 8464, February 11, 2006.
- ¹² By 2006 there will be 12,600, of whom 10,000 are on the southern border. A proposed budget requests more than U.S.\$458 million to add 1,500 border agents in fiscal year 2007. The Department of Homeland Security is about to begin a U.S.\$35-million border security upgrade in the San Diego area. The money will be spent on new lights and on extending the triple-layered fence from nine to 14 miles, all the way into the Pacific Ocean.
- ¹³ In 1994, 1,294,000 Mexicans were deported; in 2001, 1,744,000; and in 2004, 1,143,000. See Mónica Vereá, “A 10 años del TLCAN = mayor migración,” Enriqueta Cabrera, comp., *Moverse para mejorar: el reto de la migración mexicana*, at press.
- ¹⁴ According to Mexico’s Foreign Affairs Ministry, in 2005, 451 persons died from drowning, freezing, sunstroke or being run over in their attempts to cross the U.S. border.
- ¹⁵ Several pieces of legislation were passed to tighten border security, like the USA Patriot Act, the US-Canada Smart Border Declaration of 2001, the US-Mexico Border Partnership Agreement of 2002, the Enhanced Border Security Act, the Visa Entry Reform Act of 2002 and the Homeland Security Act of 2002.
- ¹⁶ While in 1990, 58 percent of Mexican immigrants lived in California, in 2003, the figure dropped to 40 percent. Arizona doubled its rate from 3 to 6 percent in the same period, and the percentage of Mexicans residing outside the four traditional states doubled from 12 to 25 percent. Center for Strategic Studies, “Managing Mexican Migration to the United States: Recommendations for Policy Makers” (Washington, D.C.: CSIS-ITAM, April 2004).
- ¹⁷ Those illegal aliens who entered the United States before January 4, 2004 and are currently unlawfully employed would be allowed to legalize their status and their families and stay indefinitely without first returning home.
- ¹⁸ On May 26, Senators Cornyn and Kyl presented the Comprehensive Enforcement and Immigration Reform Act of 2005 before Congress. John McCain (R-Arizona) and Edward Kennedy (D-Massachusetts), backed by Congressmen Jim Kolbe, Jeff Flake and Luis Gutiérrez, presented the Secure America and Orderly Immigration Act. For more information, see Mónica Vereá Campos, “New U.S. Immigration Policies,” *Voices of Mexico* 72 (July-September 2005).
- ¹⁹ According to recent research, until before border operations began in the 1990s, 20 percent of migrants returned home after six months; in 1997, this figure had dropped to 15 percent; and by 2000, only seven percent followed a pattern of circulatory migration.