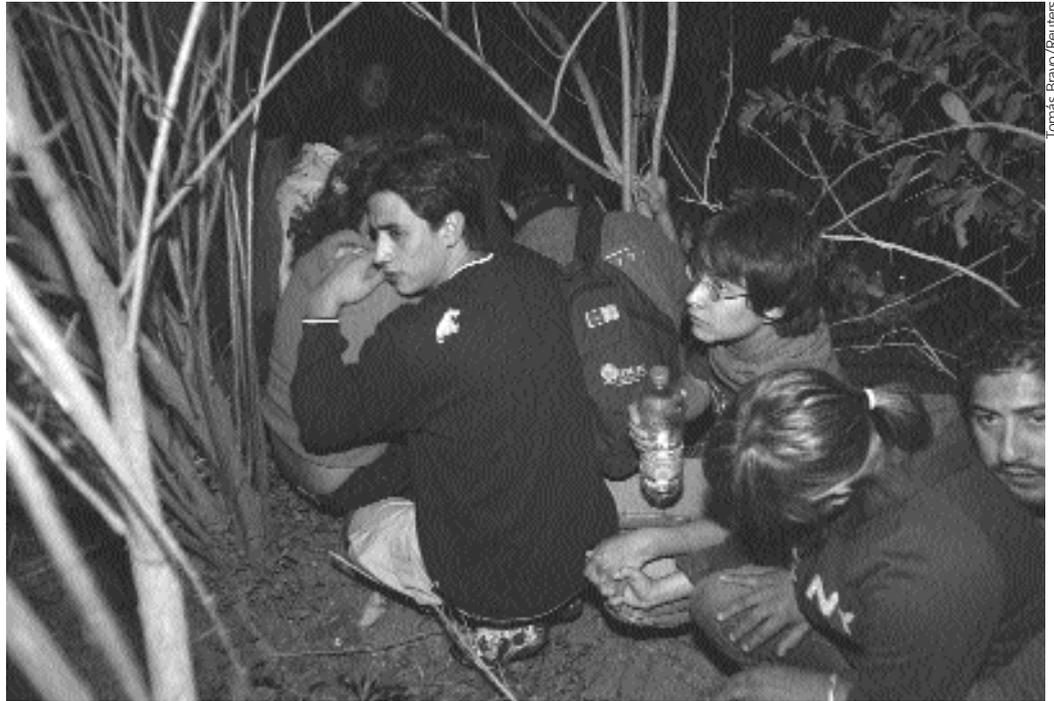


# The Real Reform “Enforcement Only”

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Tomás Bravo/Reuters

The U.S. Senate had the chance to pass the most ambitious bipartisan immigration reform ever conceived, but it was frozen last June 28.<sup>1</sup> Despite the fact that in the end President Bush supported the bill and invested a tremendous amount of political capital in what he dubbed the top priority of his second term, the Republicans were unable to persuade the majority of the Senate of the reform's importance.<sup>2</sup> The Senate was influenced by an increasingly conservative public, which lobbied by telephone, e-mail and fax to swing the vote against a bill that it considered flawed, expensive, ineffective and against the rule of law.

The main arguments against the reform came, on the one hand, from fervent conservatives who mainly opposed the amnesty program since they thought it offered “illegal” immigrants

a possible path to citizenship, which would automatically exempt them from responsibility for breaking the law. They are also skeptical about government competence in enforcing the border and an unfair legislative process, and are convinced that the procedure had been undemocratic because no open debate had been organized to discuss the reform. The more liberal were considering the possibility of granting more temporary work visas to foreigners, which in the conservatives' view would affect U.S. workers. They also thought that a guest worker program could separate families and leave a new group of temporary workers vulnerable to even more exploitation, and that the bill would also lead to hundreds of thousands of new illegal aliens overstaying their visa time limits (see Table 1).

This failure of the Bush administration and the Republicans will probably have an impact on the 2008 elections since the Latino minorities, a very important group of voters, negatively impacted by this bill not being passed, could vote against

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TABLE 1  
 MAIN IMMIGRATION PROPOSALS BEFORE THE U.S. SENATE  
 (2006-2007)

TOPIC	SENATE 2006	SENATE 2007
Legalization of undocumented immigrants	<p>Undocumented migrants who have lived in the United States</p> <ol style="list-style-type: none"> <li>1) 5 years or more will be eligible for temporary residence for 6 years;</li> <li>2) fewer than 5 but more than 2 years will be allowed to register at a border port of entry. They will qualify for a temporary work permit after residing 5 years;</li> <li>3) fewer than 2 years will have to leave the country.</li> </ol>	<p>Undocumented immigrants who entered the United States after January 1, 2007 will be given a Z non-immigrant visa. They will have to prove they are employed and pay a fine of U.S.\$5,000.00.</p>
Admission of immigrants and permanent residency	<p>After residing 6 years with a temporary work visa, they will be eligible for permanent residency and after 11 years, for citizenship.</p>	<ol style="list-style-type: none"> <li>1) A merit-point system will be established for the admission of immigrants.</li> <li>2) Beneficiaries will be able to obtain permanent residency in 8 to 13 years. Five years after getting their temporary residency, or green card, they will be able to start the naturalization process.</li> <li>3) Anyone with temporary residency will be limited in his/her ability to apply for the residency of parents, siblings and other relatives.</li> </ol>
Temporary workers programs	<ol style="list-style-type: none"> <li>1) A temporary worker program would be created for 1.5 million agricultural workers.</li> <li>2) 200,000 new non-immigrant visas would be issued for temporary workers.</li> </ol>	<ol style="list-style-type: none"> <li>1) A temporary workers program will be created for             <ol style="list-style-type: none"> <li>a) Seasonal, especially agricultural, workers, who will be authorized to stay 10 months, after which they will have to leave the country;</li> <li>b) Non-seasonal workers who will be given a Y visa, valid for 2 years and renewable twice after leaving the country for a year each time to return to their home country.</li> </ol> </li> </ol>
Border security	<ol style="list-style-type: none"> <li>1) Construction of 600 kilometers of border fence and 800 kilometers of new barriers.</li> <li>2) Increased budget for the Border Patrol to hire 4,000 surveillance agents and 2,500 inspectors for the ports of entry. The Border Patrol currently has 11,300 field employees; in five years it would increase to 18,000. Six thousand members of the National Guard would be sent to support Border Patrol activities.</li> </ol>	<ol style="list-style-type: none"> <li>1) Construction of a 375-mile (600-kilometer) barrier along the border with Mexico and 200 miles (320 kilometers) of moveable barriers.</li> <li>2) Construction of 70 radar towers on the Mexican border and the installation of surveillance cameras.</li> <li>3) Increased budget to raise the number of Border Patrol agents to 18,000.</li> </ol>
Sanctions for offenders		<p>Increase sanctions for foreigners accused of committing crimes like gang violence, forging documents, illegal entry into the United States and other offenses stipulated in immigration legislation.</p>
Employers	<p>Fines of up to U.S.\$20,000 per undocumented worker hired. Employers will have to verify on line whether employees are in the U.S. legally or not.</p>	<ol style="list-style-type: none"> <li>1) Severe punishment for employers who hire undocumented immigrants.</li> <li>2) The creation of a biometric Social Security ID card and a system of electronic verification for work permits to be used by employers.</li> </ol>

the Republicans.<sup>3</sup> It is also a defeat for Democratic Party allies, in particular for Majority Leader Harry Reid (D-Nev.) and Senator Kennedy, who had promoted the bill for several years.<sup>4</sup> But mainly, it is a defeat for the nearly 12 million undocumented immigrants (mostly Latin Americans, more than half of Mexican origin) who were hoping for a possible legalization and/or opportunity of getting a temporary work visa that would allow them to continue the work that they are doing anyway, but more safely.<sup>5</sup> This group increases by about 500,000 a year, 80 percent of whom are of Mexican origin. Mexican immigrants have vastly increased in number: in the 1960s, net migration was about 30,000 per year, but now, the figure has jumped to 400,000, setting off alarm bells in both countries.<sup>6</sup>

The reform bill's defeat in the Senate means that millions of undocumented immigrants will continue to be vulnerable. To many, the outcome is pernicious. For others, the bill was insufficient and flawed. The only real reform that has been implemented is the "enforcement only" policy, with the support of the U.S. public, Congress and the Bush administration. Employers of undocumented migrants have hardly been sanctioned at all; that is, the law of supply and demand continues to prevail.<sup>7</sup>

#### REBORDERING THE BORDERS

Borders represent a nation's statehood, as each state seeks to control entry into its sovereign territory. A government's ultimate responsibility is to safeguard the security and well being of its citizens.<sup>8</sup> Immigration enforcement is the action to protect the country through its boundaries or limits to prevent different kinds of illegal flows: arms, drugs, illegal immigrants, etc.

The border between Mexico and the United States is one of the world's most conflictive. Enormous numbers of individuals and goods cross it, countless activities coalesce, many of which are illegal, like drug trafficking and traffic in human beings. It has been guarded mainly by the Border Patrol, institutionalized in 1924, with the aim of effecting surveillance in the border area through a combination of personnel, technology, equipment and infrastructure deployment as well as intelligence efforts in partnership with other federal and local law enforcement agencies. The Border Patrol is responsible for enforcing border areas between legal ports of entry. Inspectors verify admissibility of entrants at official points of entry. Investigators apprehend unauthorized immigrants in the interior. Detention and removal officers are responsible for the custody and tracking of individuals in removal pro-

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ceedings. Immigration enforcement activities are carried out by Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE).<sup>9</sup>

During the 1990s, the perception that our border with the United States was neglected and porous increased among the U.S. public, which had an influence in the application of drastic measures during the Clinton administration, like costly border operations to control the growing flow of undocumented immigrants not only from Mexico but from many other countries. In that period, Congress also approved one of the most restrictive laws in the legislative history of immigration issues, the Illegal Immigration and Immigrant Responsibility Act of 1996 (IIRIRA), which created more surveillance and funded more inspectors and border patrols. This situation sharpened after the 9/11 terrorist attacks, intensifying a process of rebordering the borders, with the aim of getting more control over the country's fragile national security. Among the measures adopted are wider and taller fences, brighter lights, more patrols supported by the National Guard and equipped with sensors to identify the slightest movement, infrared video cameras, night-vision cameras, more border patrol checkpoints along highways and, above all, more agents to apprehend undocumented immigrants and detect "suspected terrorists."

To get an idea of the dimensions of this process, in 1985, the Border Patrol budget was U.S.\$203 million, similar to that earmarked for consular affairs (U.S.\$273 million) and inspections (U.S.\$146 million). However, by 1992 there were nearly 5,000 Border Patrol employees (40 percent of all Immigration and Naturalization Service [INS] staff), and its funding was around U.S.\$325 million. By 1998, the Border Patrol had grown to 8,000 employees (93 percent of whom were deployed on the southwest border), and the number of inspectors at land ports of entry had grown to 2,000 (75 percent of them on the southwest border). By 2002, the Border Patrol budget had risen to U.S.\$1.66 billion and its staff to 11,000; the budget for inspections had risen to U.S.\$879 million (with 6,000 inspectors) and that of consular affairs had remained more or less the same at U.S.\$303 million.<sup>10</sup> According to

Department of Homeland Security figures, by 2006, 12,000 border patrol agents were on payroll and the estimates for 2007 come to almost 15,000. By 2008, there are expected to be 18,000 in all.<sup>11</sup>

In September 2006, Congress passed the Secure Fence Act, providing a budget of U.S.\$1.2 billion to build a 700-mile-long, 30-meter-high double fence on the Mexico-U.S. border, just as Wisconsin Congressman James Sensenbrenner had proposed in December 2005 (HR4437).<sup>12</sup> This all jibes with the policy of “enforcement only.”

Despite the deployment of forces along the southern border with Mexico, the measures do not seem to have been effective: every year, immigration officials apprehend a large number of immigrants, not to mention the ones who manage to get in undetected. In 1994, almost a million people were apprehended; in 2000, the number was the highest in the last 15 years: 1,700,000. Nevertheless, after the terrorist attacks, detentions dropped substantially to about 1,100,000 in 2005, 92 percent by the Border Patrol, and 85 percent of whom were Mexican. Thus, since the beginning of the 1990s, crossing the border into the United States has become increasingly difficult, expensive and dangerous (see graph 1).

At the same time that U.S. immigration officials are catching, removing and deporting more people, the casualty list is also increasing: people who freeze to death, commit suicide, are hit by trains, cars or trucks, or are bitten by snakes.<sup>13</sup> Human rights violations have increased year by year, the same as deaths, which went from 30 to 60 a year before the border operations begun in the early 1990s, to more than 500 this year.

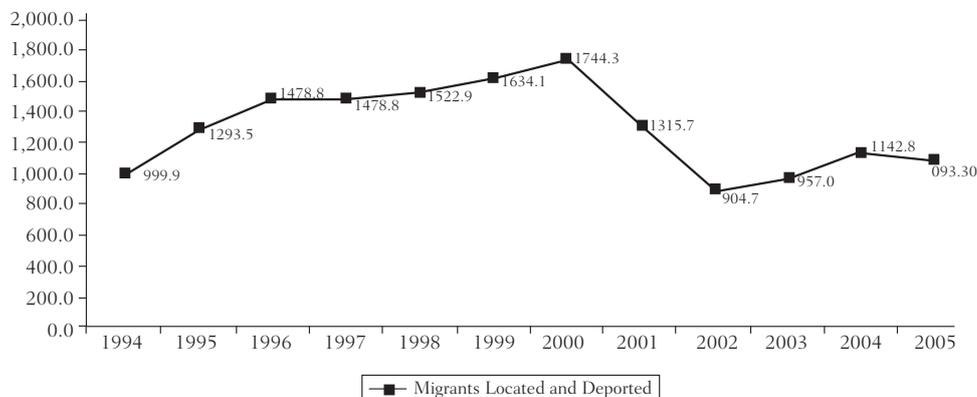
This means that technology and training for border surveillance has become more and more institutionalized and sophisticated. At the same time, the Bush administration has established an exclusive “enforcement-only” immigration reform, which it has assigned unprecedented amounts of funds in accordance with its “rebordering” policy, a national security priority since the 2001 terrorist attacks.

#### CROSSING WITHOUT DOCUMENTS IN THE AGE OF “ENFORCEMENT ONLY”

Thanks to support and organizational efforts both of the U.S. Embassy in Mexico and the University of Texas in El Paso, I was able to do a border tour in February 2007. Along with nine other Mexican researchers I had the privilege of having this experience and observing close up not only the important collaboration between the cities of El Paso, Texas, and Juárez, Chihuahua, but also the chance to see how migration was handled along a stretch of about 200 kilometers along the Chihuahua-Texas-New Mexico border.

Watching the National Guard supporting the Border Patrol’s more than 12 patrols out of the El Paso immigration offices had a big impact on me.<sup>14</sup> I was able to observe how suspected migrants were located and detained: a family hidden in the bushes waiting to cross the border was localized on the screens and the guard members sent a message to the Border Patrol with the coordinates of their exact location, so they could immediately be apprehended.

GRAPH 1  
IMMIGRANTS FROM MEXICO LOCATED AND DEPORTED (1994-2005)  
(Thousands of Immigrants)



SOURCE: 2006 Yearbook of Immigration Statistics.

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in the U.S. is urgently needed:  
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The land border between Mexico and the United States already has different barriers: from high-tech, intensely monitored triple fences in urban areas, to simple fences in unpopulated areas, plus the powerful surveillance equipment that detects and illuminates moving bodies. The recently established electronic surveillance Pilot Project 28 set up in Sasabe, Arizona, is a sample of the most up-to-date technology used to deter immigrants. It consists of nine mobile towers with cameras and sensors to detect arms, vehicles, drugs and, of course, body heat at a distance of 45 kilometers, in addition to its constantly watched screens which clearly show the bodies and satellite telephones for efficient communications.<sup>15</sup>

By law, immigrants must be asked for their passports and visas at the port of entry. U.S. immigration law establishes different punishments for those who cross the border without documents. For example:<sup>16</sup>

- Detention is the seizure and incarceration of an alien in order to hold him/her for judicial or legal proceedings, or while awaiting return transportation to his/her country;
- Expedited removal is the action to remove inadmissible aliens that do not have entry documents or have counterfeit, altered, fraudulent or improper documents; or because they commit fraud or willful misrepresentation. The Department of Homeland Security has the authority to order the removal, and the alien is not referred to an immigration judge, except under certain circumstances after an alien makes a claim to lawful status in the U.S. or demonstrates a credible fear of persecution if returned to his or her country.
- Voluntary departure is when the alien chooses to depart from the U.S. without an order of removal.<sup>17</sup>

Sometimes, some U.S. immigration officials break their own laws by mistreating, robbing, beating and even shooting undocumented immigrants. In addition, there are the U.S. civilian volunteers known as the Minutemen. They are angry

at their land being illegally crossed and sick of the “Mexicanization of their territory.” This makes them feel they have the right to apprehend, detain and even mistreat migrants (the “other”, the “outsider”), fired by a combination of repressed xenophobia and supposed respect for the rule of law. If we add to this tragic scenario the severe calamities migrants may have to go through during their risky crossing, like dehydration, drowning in the Rio Grande, animal bites or stings or the possibility of suffocating during a trip hidden among boxes of vegetables in trucks driven by human traffickers, better known as *coyotes* or *polleros*, the situation could not be worse.

On the Mexican side, citizens must show passports and visas only when they leave the country by air. This is not the case when they cross by land. It is the U.S. authorities who demand to see their passports and visas when they cross the border. Migrants who try to cross at unauthorized places and without visas may run into the Beta Group, an arm of the Ministry of the Interior’s National Migration Institute. This small group, scattered along the entire border, especially at key points, alerts potential Mexican migrants about the risks of crossing the border at unauthorized spots and without the required documentation. Their job consists of giving out pamphlets with the necessary survival information, as well as about the rights migrants can demand in the not-too-remote possibility that they are apprehended.<sup>18</sup> Unfortunately, the Beta Groups meet up with very decided migrants, few of whom change their minds about crossing the border even after they have been warned. Visible dust storms and the intense heat or cold that starts earlier than they had imagined will tire them out, but not even the risk of dying during their attempt to cross discourages them from trying to get to “the other side.”<sup>19</sup>

Given the increasing difficulty of crossing the border, the network for trafficking human undocumented migrants has also become more complex, despite the enormous sum thrown at this problem, but not well invested.<sup>20</sup>

“Enforcement only” has caused a change in the pattern of migrants’ stay: now they tend to remain longer, separating them from their families for longer periods. Unfortunately, many of our compatriots are willing to pay traffickers (many without much experience) whatever is necessary to cross to “the other side,” even if it is an enormous sum.<sup>21</sup> Therefore, many are reluctant to return to their places of origin, even temporarily.<sup>22</sup>

This complex network of traffickers is extremely varied and disjointed. Generally, the traffickers pay their border

contacts on both sides, including the famous runners (who cross the border at a run) or look-outs, to carry out the operations. The supposed “guides” establish signal codes, opening up trails on the U.S. side to establish a route for the immigrant to meet up with the *pollero* or *enganchador*, who will turn him/her over to his/her relatives or directly to an employer.

Unfortunately, most of the walkers die a short distance away from salvation.<sup>23</sup> After a day of literally frying in the scorching sun, these citizens begin to feel disoriented, dizzy and weak. By the second or third day of their journey, they are practically dying. In most cases, they die just a few feet away from roads, towns or sources of water without knowing it, tortured by the fear of meeting up with their enemy: the Border Patrol, the “cops”, “immigration” or even the Minutemen. Clearly, there is an impeccable hierarchy in this network, since trafficking in human beings is a very lucrative business because of the impressive increase in border surveillance.

#### FINAL THOUGHTS

We recognize that the United States is the country that issues the most visas to temporary workers from all parts of the world and that we Mexicans have benefited greatly from this. We also agree that any sovereign country is completely within its rights in exercising its statehood and controlling entry into its territory, protecting its borders from the entry of immigrants who do not have the required documentation. However, immigration reform in the United States is urgently needed: it is not happenstance that there are 12 million undocumented migrants living there, the vast majority with jobs, and who have shown themselves to be a work force the country needs for its economy to grow and to maintain its national and international competitiveness.

For that reason, the defeat of the immigration reform in the Senate has very dramatic consequences, particularly for undocumented migrants. For the time being, despite their expectations of being able to regularize and/or legalize their stay in the country thanks to the work they have done, there has been no recognition of their contribution to the U.S. economy, society and culture. This turns them into even more marginalized, vulnerable people and workers. The continuous “enforcement only” process along the southern border will probably intensify and be perfected. One or more physical and virtual fences will probably be built that will make the traditional crossings of undocumented migrants even more

difficult. Simultaneously, state and local governments will adopt more arbitrary, biased measures, as they have in recent years, using different approaches to impede and limit the stay of undocumented migrants in the U.S. The measures will consist not only of apprehending, deporting or removing migrants, but also of punishing them, making their stay miserable, regardless of how long they have been working there or how many employers they have served, simply for being “illegal aliens.” This situation will probably divide U.S. society even more since a marginalized, resentful community of undocumented migrants with fewer and fewer possibilities of being integrated into society continues to exist.

The increasing number of injustices and outrages will make their vulnerability more evident. Therefore, it is crucial that we insist that migration not be dealt with as a matter for unilateral border control, but as a phenomenon that implies the need to regulate regional labor markets and to recognize how Mexican labor complements the U.S. labor market. **MM**

#### NOTES

<sup>1</sup> The author would like to thank Érika Veloz for her efficient technical support.

<sup>2</sup> The Senate has discussed several bills in 2007 to effect a comprehensive reform to the immigration system (see Table 1). A bipartisan coalition led by Senators Edward Kennedy (D-Mass.) and Jon Kyl (R-Ariz) came to a supposed agreement supported by President Bush. The Senate voted on a series of amendments and the coalition failed to move the bill forward on June 7. Under pressure from the White House, on June 26 the Senate voted 64-35 to revive the debate, but two days later, it was stymied.

<sup>3</sup> According to the Pew Hispanic Center, Hispanics made up 8.6 percent of the nation’s eligible voters in 2006, up from 7.4 percent in 2000. In states like New Mexico, Texas and California, Hispanics make up well over 20 percent of eligible voters, though that number is a significantly smaller share of the overall Hispanic population than other ethnic groups. In 2004, 6 percent of all votes were cast by Hispanics

<sup>4</sup> A detailed analysis of the bills presented in both houses of Congress in recent years can be found in Mónica Vereá, “¿Hacia una reforma migratoria?” *Norteamérica, Revista Académica*, year 1, no. 2 (Mexico City/Washington, D.C.: CISAN-UNAM/CNAS-AU) (July-December 2006).

<sup>5</sup> Of the 37 million people born abroad who live in U.S. territory today, approximately 11.5 million have been naturalized; 11.8 million are legal residents; almost 1.3 million have temporary legal status; and more than 11 million are unauthorized or undocumented immigrants. Approximately 3.1 million undocumented immigrants entered the country from 1995 to 2000, and about the same number again from 2000 to 2005. Some of them have returned to their countries of origin or have regularized their immigration status.

<sup>6</sup> Mónica Vereá, “A 12 años de TLCAN = + migración,” Enriqueta Cabrera, comp., *Desafíos de la migración: Saldo de la relación México-Estados Unidos* (Mexico City: Planeta, 2007), pp. 339-374.

<sup>7</sup> Since IRCA passed in 1986, it is illegal for an employer to knowingly hire an undocumented immigrant.

<sup>8</sup> Deborah Meyers, “From horseback to high tech: U.S. border enforcement,” *Migration Information*, Migration Policy Institute, February 2006, at [www.migrationinformation.org/feature/display.cfm?ID=370](http://www.migrationinformation.org/feature/display.cfm?ID=370).