

# Congress, Border Security And Immigration Fences of Political Irresponsibility

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*For my godparents, Diamantina Múzquiz Martínez  
and Pedro Hernández Zavala*

## SECURITY AND IMMIGRATION POLICY

President Bush and the U.S. Congress's policies of building fences along the border to ensure security and their failed attempts to pass comprehensive immigration legislation are examples of their political irresponsibility. Neither branch of government has managed to propose coherent solutions to change North American integration with regard to non-economic issues. Until now, legislative action has consisted of passing bills about border security with an eye to the elections and postponing a real reform of the immigration system. And as for the executive branch, President Bush's plummeting national and international approval rating is the lowest ever registered in modern history.

There is a glaring lack of strategic vision to improve the country's security system and take substantive legislative action about immigration. Once again, both branches' political response to important, difficult problems like immigration seems to be more a way out of the political exigencies of the moment than responsible, orderly action. The U.S. economy has been in decline over the last seven years and poverty levels are increasing. In addition, its world leadership is weaker and weaker and lacks an economic policy that takes into account the new conditions of world competitiveness and fosters freedom of transit for labor. Accepting its social responsibility by granting legal status to millions of undocumented workers in the short, medium and long terms is far from being one of the priorities on its political agenda.

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Carlos Barria/Reuters

## BIPARTISAN EFFORTS WERE NOT ENOUGH

Until before security was folded into the issue of border control and therefore into the issue of undocumented immigrants crossing the border, it was no surprise that discussing and passing bills that one way or another touched on immigration would happen in every session of Congress. The bills might be presented by both parties or even in both houses of Congress, but the important thing is that they would be partial changes that would not cause electoral problems; plus the changes in legislation were not politicized to the extent that they became matters for national debate. Since

the 103rd Congress, everyone has worked on hundreds of bills pertaining to immigration policy, at least indirectly, and certain parts of that policy have been modified.

However, the first signs that it was necessary to make substantial changes in overall immigration legislation came after 9/11, when security became central to the national debate. The legislature designed measures to reinforce security along the border with Mexico and simultaneously resolve the situation of the illegal status of an estimated 10 to 12 million immigrants living in the United States.

What these bills and the administration mostly sought was greater control over different processes like issuing visas for visitors, terrorism, drug trafficking and immigration. The measures discussed were conservative, since they mainly aimed to impose limits, conditions or prohibitions affecting immigrants in areas like employment, education, health care and identification, and in several instances even criminalized the actions of the undocumented.<sup>1</sup>

A national political debate of this magnitude had not taken place for more than 20 years. Since the passage of the 1986 Simpson-Rodino Act, a comprehensive “omnibus bill,” all other debates on immigration have taken place within the confines of the Congress and have not drawn in the public. The most recent proposals, however, were discussed in a political context in which the different social actors, the business community and politicians were all vying to intervene directly or indirectly for their sectoral or vested interests.

In that sense, proposing a more profound change in immigration law was a national necessity; in addition, its comprehensive content increased the debate’s complexity. The legislators’ reaction is due largely to the fact that any attempt to significantly change immigration law becomes a major issue on the national political agenda, and many social and economic actors, who cover an extremely broad ideological spectrum, began to express their positions publicly in the media.

The lack of consensus among legislators from both houses, whether Republicans or Democrats, shows that the debate

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is happening not only on a federal but also on a state and district level. This is why the failures of both the 109th Congress (with its Republican majority) and the 110th Congress (with its Democratic majority) should not come as a surprise.

We should point out that the most conservative Republican legislators and their president did not agree. George W. Bush’s leadership has shrunk not only on the world stage, but also inside his own party. Even without the support of some of their members, the Republicans managed to pass a comprehensive bill in the House during the 109th Congress, despite its not being fully accepted by the president, at least according to political statements made at the time. The Sensenbrenner bill was introduced to Congress on December 6, 2005, and became H.R. 4437, The Border Protection, Antiterrorism, and Illegal Immigration Control Act, on December 16, 2005. This bill had its origins in a visit of administration officials to Congressman Sensenbrenner to talk about the position that would be taken in November, concretely about the way to handle the immigration crisis in order to secure the border and the country’s interior.

The bill was changed in committee after pressure from both sides of the aisle. The Immigration Reform Caucus (IRC) presented a good many of these changes. Although the tradition in the legislature is to respect the observations of the legislators with the greatest experience in a specific issue, in this case, custom was disregarded because of the ideological polarization among congresspersons.<sup>2</sup>

Highlighting the division along partisan and house lines, in the Senate, then under Republican control, a bill was presented that differed greatly from the one with majority backing in the House of Representatives. The differences between members of the House and the Senate about central, electorally sensitive points like the creation of a program to legalize undocumented migrants and protect their human rights, among others, were substantial. These issues made a bicameral agreement impossible despite the fact that there was a bipartisan majority in the Senate. With the approaching elections, the political out for both parties was to simply stop debating the issue, a decision that showed the members’ interest in safeguarding their constituencies. The many corruption scandals Republican leaders were involved in made them vulnerable to losing their majority, and in November 2006, they finally did. This also revealed Congress’s inability as a nationally representative political institution to propose an important reform of immigration legislation, an issue it has not dealt with comprehensively for over 20 years.

By contrast, the month it took to pass the Secure Fence Act of 2006 is a sign that the legislators have not understood the magnitude of the social and political aspects of the immigration problem, and have simply used the fence to ensure an electorally safe way out to “shore up” security.

#### THE QUICK, ILLUSORY WAY OUT WAS APPROVING THE FENCE

The Berlin Wall was torn down almost 20 years ago, and with it, the world thought that the time of building walls and fences between countries to allow them to coexist would never return. The U.S. government’s decision shows that those times are not yet gone.

The politicians argued that border security, involving ports, travelers and trade entering and leaving the country, is fundamental for the United States. As a result the 109<sup>th</sup> Congress paid special attention to border security, linking it to immigration after 9/11.<sup>3</sup> This concern and the “control” of the southern border were issues that created a consensus necessary for both houses to work very quickly—in about a month—to come up with a bill to define the operational control of border security.<sup>4</sup>

By May 17, 2006, the Senate had already approved a Republican amendment stipulating the construction of a 370-mile-long triple fence in urban border areas and 500 miles of anti-vehicle barriers, but it maintained the articles in the bill that had already been won, rejecting another Republican amendment that would have eliminated them. However, immigrants convicted of a felony or three misdemeanors, and, with certain exceptions, anyone who had disobeyed a deportation order were excluded from the legalization plan.<sup>5</sup> The most radical House Republicans posed harsh opposition to a comprehensive reform.<sup>6</sup>

In two days, the House of Representatives voted the bill to reinforce security along the border: 283 for, 138 against and one abstention.<sup>7</sup> The bill was so important that the Senate began its discussion September 29, 2006 and approved the bill 80 votes to 19.<sup>8</sup> President Bush signed it one month later, turning it into Public Law 109-367.

The most recent attempt to advance on the matter of immigration was made in the current 110<sup>th</sup> Congress, now with a Democratic majority. A proposal was again introduced to change the immigration system, stop illegal immigration and bring the millions of undocumented workers living in

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the United States out of the shadows.<sup>9</sup> The change in strategy did not work. Senate experts on the issue began the debate, but the bill failed again when the Democrats could not get it passed on the floor. Sixteen votes were said to be lacking.

Even though there is an almost even number of Republicans and Democrats in the Senate, despite his leadership, President Bush could not convince his fellow party members to vote in a conservative bill. Without them, the final passage and signing into law of this bill seems remote, and probably the most radical conservatives would have been sufficient to derail its passage.

#### THE MEXICAN GOVERNMENT’S LACK OF UNDERSTANDING

During the Vicente Fox administration, idealism prevailed over political prudence. At the beginning of his term, then-Foreign Affairs Minister Jorge Castañeda incorporated migration into the political relationship. This political decision was not backed by diplomats who adhered to a traditional vision of dependence regarding the bilateral agenda. The minister thought that seeking a new form of communication implied lobbying the Democrats—at that time a minority in Congress—Latinos, the Catholic Church and unions to try to set up a temporary program, and farmers, businessmen and the Republicans to achieve a regularization of the millions of Mexicans in the U.S.

His optimism truly overflowed when he invented the so-called “whole enchilada.”<sup>10</sup> His failure, even though he was one of Mexico’s academics most familiar with the way politics are done in the U.S., shows that it is not enough to have an expert head up the Foreign Affairs Ministry. What is more important is to have a permanent dialogue with the actors and sectors most representative in decision-making when dealing with issues on the bilateral agenda.

A migratory agreement about temporary workers continues to be more wishful thinking than a political reality

for PAN administrations. Without a doubt, the strategy must be different. It is necessary to constantly work with pro-immigrant and human rights groups. For decades Mexico's national interest has been linked to the defense of these issues. Those in charge of them in the new government must understand this principle of the U.S. political process: every political struggle is measured by its effectiveness in terms of being active and flexible.

#### HISTORY LEAVES US ANOTHER POLITICAL LESSON

Seven years after the National Action Party took office, the decision to build fences along the border with Mexico is a clear sign of a prevailing unilateral vision of security and migration. Whether because of ignorance or political expediency, the first PAN government immediately overestimated the possibilities for an immigration agreement. Despite expectations and promises, at least during its two first years, this would never go beyond being the rhetoric of a government saying it was doing a lot to change traditional forms of interdependence between the two countries without really achieving anything. At the end of Fox's term, the achievements were minimal and disappointment outweighed his demagoguery.

Now, while it has been more prudent and managed to not make immigration the center of the agenda, the second PAN administration has not gotten any better treatment for our fellow countrymen through other means either. So, the expectations of Mexican groups and federations in the United States of having a functional, intelligent ally to propose another way of working both internally and in bilateral governmental relations to improve their lot continue to be dashed.

The legislative system moved as it has historically in the last 20 years, rejecting proposals that would benefit a large number of undocumented immigrants and supporting restrictive, coercive measures. This only goes to show how divided the legislature is and how much it lacks the leadership needed to design national policies on priority issues like immigration. The next president will have to think about how to move forward with a visionary, inclusive policy that spans more than one term if he/she wants to continue grounding his/her mandate in the elementary principles of democratic government.

Yet again, the short-sighted pragmatism of conservative legislators led them to block a bill necessary to the social and legal life of millions of human beings. They acted in their short-term interests, among them, the midterm elections and

the leadership of conservative political groups. And they forgot about the changes in the world and the challenges they will be facing in the region in the immediate future. The consequence of this lack of political imagination is the inability to resolve the security and immigration questions, and this will have repercussions in the near future in other areas of domestic U.S. life, in bilateral relations with Mexico and in the construction of North America as a geo-strategic region. In addition to the millions of Latin American migrants, the governments of their countries of origin —among them, Mexico's— should step up regional efforts to negotiate the regularization of these citizens' migratory status and a temporary work program with the U.S. Their compatriots' legal immigration status, along with economic integration, is a regional necessity.

Given the complexity and importance of the region's political and social problems, the U.S. Congress is no longer politically capable of forging consensus on national issues. The political response for regulating immigration will come from the local and state levels and the differences among the states may lead to uneven political decisions. If the conservative positions that have prevailed electorally in the last seven years also dominate local and state decisions, undoubtedly, the United States' image of "liberal democracy," of being a place where the freedom and security of the individual is respected, will be seriously undermined. This will make it even clearer that if the federal governments of North America want to govern with greater certainty and consensus, they will have to continually deal with the issue of immigration and security by turning toward the citizenry as a collective body with irrefutable rights. **MM**

#### NOTES

- <sup>1</sup> Jon Kyl, "The Need for Immigration Reform and Improved Border Security," on line at [http://kyl.senate.gov/legis\\_center/border.cfm](http://kyl.senate.gov/legis_center/border.cfm).
- <sup>2</sup> "H.R. 4437 – Sensenbrenner/King Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005," *Federation Control Act of 2005*.
- <sup>3</sup> Blas Nuñez-Neto, "Immigration Related Border Security Legislation in the 109th Congress," *CRS Report for Congress*, December 9, 2005, on line at <http://fpc.state.gov/documents/organization/58262.pdf>.
- <sup>4</sup> <http://thomas.loc.gov/cgi-bin/109:H.R.066061>, consulted March 16, 2007.
- <sup>5</sup> Maribel Hastings, "Aprueban muro y vía de legalización," *La Opinión Digital*, Los Angeles, May 18, 2006, and "Senado de EE.UU aprueba reforzar cerca fronteriza," *La Voz Online*, May 18, 2006.
- <sup>6</sup> *Ibid.*
- <sup>7</sup> <http://thomas.loc.gov/cgi-bin/bdquery>.
- <sup>8</sup> [http://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm](http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm).
- <sup>9</sup> *Ibid.*
- <sup>10</sup> Jorge G. Castañeda, "Memorias diplomáticas anticipadas. Testimonio," *Enfoque*, February 10, 2006, p. 14.