

THE GUEST WORKER PROGRAM

**A Plan to Deal with Foreign Workers in the United States, and
a Review of Domestic and Foreign Effects of a Tight Border Policy**

Presented to Mr. Stuart Eizenstat

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AD HOC Committee to Review Mexican-American Relations

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ABSTRACT

A tight border policy will not succeed in stemming the flow of illegal immigrants into the United States. To the extent that such a policy is successful, the economic cost to the United States is substantial (1% or more yearly inflation), and the cost to Mexico is overwhelming, threatening the stability of the Mexican government.

A guest worker program is proposed that would legalize the status of aliens desiring work in the United States. Guest worker programs exist comfortably in West Germany, France, Switzerland, Sweden, and even East Germany. Such a program could permit pre-determined numbers of Mexicans to work in specified job categories for given time periods. Employers of aliens would pay a special tax in lieu of social security taxes. This money would accrue to a fund established to aid Mexican economic development. It could, however, be earmarked solely for purchase of U. S. produced goods, thereby aiding both economies.

To keep foreign workers from establishing permanent residency in this country, incentives for repatriation of aliens are needed. One possible incentive could be a relatively stiff tax to be paid if a permit renewal is sought after two years. The proposed program would not affect current immigration quotas.

A sensible immigration policy should take care not to exacerbate Mexico's already severe economic problems. The poorer economic conditions are in Mexico, the greater the pressure for northward migration.

DOMESTIC COSTS OF CURRENTLY DISCUSSED PLANS TO FORCE REPATRIATION OF ILLEGAL FOREIGN WORKERS

If a plan could be developed (which is unlikely) to force repatriation of all illegal aliens in this country, the cost to this country would be:

- Assuming 8,000,000 illegal aliens in the United States, from 5.85% to 8% more inflation than would otherwise occur;
- Assuming 4,500,000 illegal aliens, from 3.75% to 5.0% more inflation than would otherwise occur.

If the status of aliens already residing within the United States is legalized but the inflow is effectively stopped, the cost to this country would be:

- Assuming 500,000 new workers per year come into the country, approximately 1% more inflation than would otherwise occur.

(See Appendix for Methodology)

The above estimates assume, as Secretary Marshall does, that vacated jobs having been held by aliens would be filled one-for-one by presently unemployed U. S. citizens and that the U. S. citizens would be paid minimum wage.

In fact, the ratio of vacated jobs that could be filled by U. S. citizens is probably closer to one position for every three vacated by aliens, because either the U. S. employers could not afford (or would not pay) the higher wages; or the unemployed U. S. workers would not want to accept low wages for the work offered.

The surest domestic effect of a tight border policy is a net decline in production, which is inflationary, and a decrease in our standard of living. There is strong evidence that foreign workers in the United States actually increase total employment of U. S. citizens. Two examples are: Cannery workers depend on foreign laborers to pick the crops they process; domestic servants make it possible for thousands of young mothers to reenter the labor force.

Intangible Cost of Policing a Tight Border Policy:

If the burden of enforcement is on the employer by placing stiff sanctions on employment of illegal aliens, then there is the strong likelihood of job discrimination against dark skinned, Latin-type people.

As the INS increases its policing efforts along the Mexican border the seizure and surveillance measures will become more hostile. Since only a small percentage of the aliens could be caught, the cost per alien apprehended would be extraordinarily high. Inevitably, an increased presence of law enforcement officers and associated military paraphernalia along the border will further sour relations with Mexico.

COST TO MEXICO OF A TIGHT BORDER POLICY

A tighter border policy—in any manifestation—would exacerbate the serious economic problems that Mexico faces. As those problems increase, the pressure for northward migration increases, further straining the situation and creating a continuous downward spiral of economic repercussions on both sides of the border.

Consider:

1. Mexico has the highest birth rate in the world, its population is doubling every 20 years.
2. The Mexican government's economic policies have decreased agricultural employment. Mexico is now a net importer of beans, corn, and powdered milk—staples of Mexican diets.
3. Private domestic investment in Mexico is at a 20-year low and shows no signs of increasing.
4. Inflation in Mexico is more than 35% per year and shows no signs of abating. The poor of Mexico have been hit especially hard by the peso's devaluation because of increased reliance on imports of foodstuffs.
5. Both left-wing and right-wing extremists have been organizing during recent years. The amount of gun smuggling into Mexico suggests a sizeable portion of the population is armed.
6. Speculators are trading Mexican peso futures as low as \$.0323—a 28% discount from today's spot prices. This indicates heavy betting that further devaluations will occur. Further devaluation of the peso will create massive pressure for migration.

Under the Nixon and Echeverria regimes, relations between the two countries drifted further apart than they have since the Mexican Revolution. The primary casualty of Nixon's "War on Drugs" at the border has been trade between Mexico and the United States. Waging another war—a war on illegal immigration—could cause irreparable damage to already shaky relations. A tight border policy would increase Mexico's economic problems and could trigger a major political crisis.

No reasonable amount of economic aid to Mexico could offset the economic losses created by a tighter border policy. It simply is not feasible to pay Mexico to keep her workers home, because:

1. Mexico does not admit that large portions of her population are literally starving. Because of pride, Mexico may not accept aid that is earmarked or credited for the purpose of helping the poor.
2. Even if accepted, it is not likely to do much good because of graft or simple mal-administration.
3. Mexico has no welfare or unemployment programs of any kind. It is not feasible to expect the United States to impose one on Mexico.

This is not to say that Mexico could not use foreign developmental capital to increase its production of foodstuffs, industry, and its new-found oil riches. By shoring up the Mexi-

can economy, the confidence of Mexican private investors could be regained.

In short, Mexico can use the right kind of economic help, but no economic aid program could succeed in overcoming the economic chaos that a tight border policy would create.

Opportunity for Mutual Help:

In recent history, relations between the United States and Mexico have never been poorer. But the opportunities for mutual help have never been greater. Mexico has perhaps 100 billion barrels of oil reserves. However, most knowledgeable observers agree that Mexico alone cannot soon develop that production because of (1) insufficient capital, (2) insufficient technical expertise, and (3) poor administration.

On a recent air trip between Vera Cruz and Tampico we counted over 100 oil wells where the gas was being flared because insufficient capital exists to develop a gathering system.

At the very point in history when our mutual needs can be so easily satisfied by cooperation between the two countries, we must not initiate a policy that at best would continue the tense relations that the Nixon/Echeverria policies created and at worst could lead us to have—for the first time in our history—an openly hostile government at our Mexican border.

A GUEST WORKER PROGRAM

We propose the following "Guest Worker Program" that is akin to those in effect in most advanced countries of Europe. The Guest Worker Program would permit predetermined numbers of Mexicans to work in the United States in specific job categories and regions of the country for given time periods. It would have a major positive effect on the Mexican economy via a special purchase credit fund financed by taxes on employers of foreign workers in lieu of U. S. Social Security taxes.

Income from the tax levied on the employers of those workers would accrue to an account at the U. S. Treasury. Credit of that account would be in favor of the Mexican government— earmarked to be used solely for the purchase of U. S.-produced goods and services. Accordingly, for example, if Mexico wanted to purchase a pipe gathering system to collect the gas that it is now flaring, it could negotiate with any U. S. producer and give instructions to pay through the special development fund at the U. S. Treasury. If a 10% wage levy were imposed on wages, revenues to that account could exceed \$1 billion per year.

The Guest Worker Program could be substantially self-enforcing if the "special tax" were less than F.I.C.A. taxes.

The program would not change immigration quotas for permanent resident immigrants. Measures designed to prevent guest workers from establishing permanent residence in this country would have to be developed. One possible measure could be a stiff tax on a second renewal of a work permit.

Benefits of the Program would be:

1. Reduced domestic inflation in the United States and Mexico.
2. Greater productivity of goods and services in both economies.
3. Greater control of the number of aliens working in this country.
4. Development of Mexico's oil reserves would place considerable downward pressure on world oil prices.
5. Better relations between the two countries.

We have given considerable thought to this proposal and have explored various approaches to the basic program. We would be glad to explore these in greater detail.

METHODOLOGY

To calculate increased costs to the nation if all alien workers were deported and the same level of net production per capita is to be maintained:

$$I = \left[\frac{f}{T} \times e \times \frac{W}{\text{G.N.P.}} \right] - \left[\frac{C_f + \text{G.S.}}{\text{G.N.P.}} \right]$$

To calculate recurring inflation cost if illegal aliens that are now in this country are allowed to remain but the incoming flow of aliens is effectively stopped:

$$I = \left[\frac{\Delta f}{T} \times e \times \frac{W}{\text{G.N.P.}} \right] - \left[\frac{\Delta C_f + \Delta \text{G.S.}}{\text{G.N.P.}} \right]$$

where

I = inflation

f = number of illegal aliens

T = Total labor force of the United States

e = price elasticity of demand for labor $\frac{\Delta \text{ total labor costs}}{\Delta \text{ total number of workers}}$

W = total wages and salaries in the United States

G.N.P. = Gross National Product

C_f = Total consumption of illegal aliens.

G.S. = Unemployed compensation costs paid to displaced U. S. workers. (Assume government does not spend this savings.) If government spends savings, then $\frac{\text{G.S.}}{\text{G.N.P.}} = 0$

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I Welcome

Ruben Sand
653-1897-H
657-0026-0

II Come to grips with 2 thing Post + Present

III Also come here to discuss the Immig. issue

Pete Ibarra

Roberto Ruiz

IV

657-0026-H
224-1061

649-1321
223-9602

Objective

(1) Publicize, Travel to Europe, spinoff-communication, publicity,

(1) Getting 'em here = Ruben Mario will pay, ^{Ruben S.} (Ind. w. will pay)

(2) Arrival = New York - Washington Be in N.Y. ^{Aug.} on 24 - ^{Pris Cost} Conky will statement

(3) Target State ^{- since sep - Imm - so} C.C.R., C.L. Ligatua, Tucson, Coalition for Justice, Mid Co, N.M.

(4) Conclusion =

Chicago Nat'l Coord. Committee

Major Areas

Immigration - Border Violence - Police Brutality - Jud. Admin. Abuse -
Prisoner Rights - Show Pattern, Death Penalty,

6-21-80

2/F - 1/Coord
1/80

Aug. 25, 1980
Sept 6

(1) Who are we requesting this from - A.I. Fed. etc

(2) Who is going to be involved?

(3) Why are we doing it

(4) What other groups are we going to involve?

(5) Who is going to do what (cost, time etc)

(6) What doc. do we have C.R. - legislation Center

How much is going to cost? → Air fare - \$5000.00
 B - from Europe — 1 - Cond - \$10000.00

(1) ^{offer} Not to be used for political endorsement, fund, pers. engrandizement

(1) Morio - Ruben will bring in People from Europe

(2) Target State will be responsible for Guest

COMMUNITY RESEARCH ASSOCIATES

COMMUNITY RESEARCH ASSOCIATES
TESTIMONY
FOR THE
SENATE SUBCOMMITTEE ON IMMIGRATION
HEARING ON GUESTWORKERS

OCTOBER 22, 1981

One of the difficult points in reforming U.S. immigration law concerns the claimed need for migratory, foreign labor. The call for foreign labor by some American businesses, particularly in agriculture, challenges the common-place understanding of high unemployment rates: American workers, it has been asserted, do not want to engage in certain types of work, such as "stoop labor" farming, and if they could be convinced to take this type of work with high enough wages, the impact on farmers would be so onerous as to force them to go out of business. The present Administration's proposal for a guest-worker program is strongly influenced by this rationale.

At the same time, there may be other factors which could be used to argue for a guest-worker program: as a concession in bilateral agreements, as a recognition of long-term labor needs, as a way of handling the flow of undocumented migration, or as a way of maintaining the profitability of some businesses. None of these arguments has the persuasive force of "current labor shortages;" because these arguments are rhetorically weak, the principal justification that accompanies the call for a guest-worker program is the labor-shortage one.

Is there, though, a labor shortage in the United States--real or apparent? If there is a labor shortage, it should be measurable in specific, regional, labor markets. The key question is whether foreign labor would help fill existing labor shortages, or would these contribute to the displacement of domestic labor and add to the current unemployment rate?

Two back-to-back studies, conducted by Community Research Associates, Inc., provide a unique glimpse of this issue in San Diego, California. In the first study, the wage expectations of unemployed American workers were compared to the wages received by undocumented workers, revealing that slightly under 10% of the regional unemployment rate was attributable to the presence of undocumented workers in the San Diego labor market. The removal of these workers would disrupt the agriculture and tourist industries in San Diego with 50% to 62% of the jobs going unfilled in agriculture and 3% to 9% of the jobs going unfilled in tourism.

This analysis, however, assumes that the employer is neutral to the hiring process. The study, as then conceived and elaborated, could not answer the question, "To what extent do local businesses depend on undocumented workers for low-cost labor and, in turn, profitability? That is, how many firms would be unprofitable if they could not employ undocumented workers?"

The second study carried the analysis a step further by examining the employer's role in the labor market. The study found that most employers could, in fact, afford to hire American workers and not go out of business as a result of hiring domestic labor. Employers, in many instances, preferred foreign workers to domestic workers, especially to Black Americans. The "foreign worker" exhibited preferred worker attributes in the view of the employers--foreign workers generally being undocumented Mexicans in agriculture and restaurants, and Asian refugees in electronics assembly work. These workers were viewed as being more productive and more reliable. They represented lower labor costs

and were seen as being less likely to organize or speak up for themselves.

The comparative study of agriculture, restaurant, and electronics manufacturing employers shows that the claimed "need" for foreign labor results in the bypassing of available domestic labor, thereby contributing to the unemployment rate. Thus, the "need" for a guest-worker program cannot be justified from an objective analysis of the employer's view. (Admittedly, the issue is more difficult to judge in agriculture. "Some" need for guest workers may be called for in agriculture, but only after four important conditions are met. These conditions are described below.

Methodology

Employers in three industries were selected, based on their different degrees of dependence on undocumented workers: agriculture was most dependent, restaurants were moderately dependent, and electronics manufacturing was minimally dependent on undocumented workers in San Diego County. This comparative framework provides a way of testing the relationship between an employer's dependence on or use of undocumented workers and specific attitudes, such as whether the undocumented or American laborer "works harder," whether American workers can be substituted into jobs held by undocumented workers, whether there should be employer sanctions, and so forth. Furthermore, this framework permits a uniform comparison of agricultural and non-agricultural enterprises.

The jobs that were the focus of discussion were bottom-rung job categories in each industry: picker or general laborer in agriculture, dishwasher or kitchen crew in restaurants, assembler in electronics manufacturing. These were the jobs most likely to be held by undocumented workers.

The study integrated a wide variety of data sets: published and unpublished, time series data; national and regional comparisons of each industry; court testimony; and interviews with employers, trade association and union representatives, government analysts, and workers. The study also included a brief examination of Tijuana, the oft-stated complement to San Diego's regional economy, and how employers in Tijuana perceived the merits of a U.S. guest-worker program and the likely impacts it would have on their businesses.

The analytic framework broadened a narrow economic perspective to include attitudinal data. Profile of employers--emphasizing their personal views on their industry, their preferred workers, and the need for a guest-worker program--formed the centerpiece of the analysis: eight farmers, seven electronics manufacturers, and three restaurant employers are profiled in the study. These profiles were generally based on a series of interviews, structured and unstructured, together with observational data where possible.

Given the scant survey research available on employers of undocumented workers, an exploratory survey was developed. The number of employers interviewed (including most of those profiled) totaled thirty-seven: fourteen farmers, twelve electronics manufacturers, and eleven restaurant employers. Because of the sample size and possible sampling errors, the results of this survey should be considered to be

suggestive rather than compelling. It should be noted, though, that the survey results are consistent with the other collected data.

Findings

The findings will be divided into two sections. The first section will emphasize data drawn from the open-ended interviews with employers. The significance of these data is that they draw out the employer's view of the labor force in the context of the work place. As such, the study provides policy-makers with an objective and systematic framework for evaluating employer views. These are the views to which policy-makers should be privy but are not, because of the advocacy context in which employers and their representatives plead their case. The second section will present the quantitative data drawn from the structured interviews.

In Agriculture ...

A historical, ten-year analysis of tomato plantings shows how north, San Diego County surpassed south, San Diego County and became the dominant tomato producing area in the county. Farmers point to the higher costs that unionization brought upon south county agriculture as the reason for this change. However, union activity did not begin until after 1975, with the first contracts being signed in 1977. The critical change began earlier in 1972-3. Here, labor costs were also a factor. North county farmers were able to replace their domestic workers with undocumented workers, thereby lowering their labor costs in relation to south county farmers, who, because they were under the watchful eye of the Border Patrol, could not follow the same pattern of undocumented-worker substitution as north county farmers. If a guest-worker program were instituted in San Diego, and north county's illegal workers were suddenly transformed into legal workers with the salary level kept at the present minimum wage, the program would end up favoring north county farmers over south county farmers, who must pay the higher rate to their unionized workers. (Another option, of course, is to effectively lower the wage rate of south county farm workers by having guest workers there also--although, ostensibly, that is not the intent of a guest-worker program, namely, depressing the wages of legal workers.)

To farmers, the undocumented worker represents, by and large, the ideal general laborer. However, farmers recognize that the undocumented workers can quickly lose the very characteristics which make them preferred workers. One north county grower alludes to how the undocumented workers' illegal status serves to maintain them within the image of the ideal worker:

There is an invisible fence about five miles from here [the Orange County line]. Once our man crosses that fence and decides to venture into the whole different world of Anaheim, Santa Ana and L.A., and he lives there, say six months, when he comes back he would be a total misfit! The term is: he has had to adopt the "gringo way." He's also been exposed to things he has never heard of: fringe benefits, unionism, etc. These things occur almost magically, and you know there is a little reluctance to get legality to our man down here.

South county farmers, unlike north county farmers, have seen or experienced the successful unionization process with undocumented workers playing an active role and, as a result, are less likely to view undocumented persons as being uniformly docile workers. One south county farmer provides considerable insight into the feelings that farmers do not express in advocacy forums. After paying lip service to legitimizing undocumented workers, he shows a marked change in attitude in subsequent discussions as his own labor problems develop:

There is a danger of too much flow of people coming in. They have to scramble for survival in Mexico, and crookedness there is a way of life. With that same philosophy of life, if you make them legal that problem would probably intensify. In that sense, it would be better to keep them a little afraid and more polite. Even now, they know how far they can push it.

Nearly 100% of general farm labor in San Diego County is of Mexican origin, with a majority of these workers being undocumented (more so in north county than in south county). Any discussion of substituting "Americans" into farm work typically done by undocumented workers must recognize that legal, domestic, farm workers in this region have typically been U.S. legal-residents or U.S. citizens of Mexican-origin. (Ignoring this demographic fact makes suggestions of bringing unemployed workers off the street of Detroit to work on the farms in San Diego naive at best.)

The determination of the farmers' "need" for guest workers is difficult to establish because of the stated limitation of the labor force to workers of Hispanic (and primarily, Mexican) origin and the employer/domestic-worker contest for reasonable wages. "Some" need for guest workers may exist after the following four conditions are met:

1. That farmers pay a wage which does not depress the wages of legally available workers (generally above wages paid to undocumented workers and at a level near or equal to the union wage paid by south, San Diego County farmers); *
2. That farmers hire available domestic labor from this region (which includes farm workers from San Diego and Imperial Counties as well as "green-card, commuter workers" from Tijuana and Mexicali);
3. That it be determined that growers are not over-hiring, resulting in workers being hired for less than the normal work day, thereby inflating the "need" for workers; and,
4. That farmers have not and are not firing legal workers in order to hire illegal workers and to justify their "need" for guest workers.

* If current practices are followed, the wage offered would be comparable to the Department of Labor's adverse-effect wage rate. This wage rate is intended to avoid depressing the wages of legally available workers. Using the logic of the adverse-effect wage rate, the rate at which local wages would be depressed is found on south, not north county farms--the latter having a near 100% use of undocumented workers as general farm laborers.

In Restaurants ...

Undocumented workers in restaurants are generally limited to kitchen work, particularly dishwasher and prep cook with mobility up to cook. Undocumented workers fall into these job categories because of their particular characteristics: low visibility, no need for English language proficiency, and low-skilled at the entry-level positions. It can be argued that undocumented persons in these jobs are occupying a special niche that is ideally suited to the needs of both the employer and the undocumented employee. That niche was referred to by one owner as "behind the wall." Undocumented employees will sometimes decline job promotions to busboy and runner because the potential public contact calls for speaking English. One undocumented restaurant worker succinctly describes this limitation: "In the restaurant business, the easiest job for a non-English speaker is washing dishes; after all, one isn't speaking to them, the plates."

Restaurant employers, unlike farmers, have not been subject to Border Patrol raids nearly as much (or, in their situation, the "sweeps" of the INS Investigations Unit). Thus, restaurant employers can choose not to know the legal status of their workers; they can refer to social security numbers on job applications and not press the issue further. One former manager of a plush restaurant in La Jolla spoke about the issue of knowing his worker's legal status:

The restaurant business is kind of funny. In some ways, the management doesn't like to talk about something that might be illegal, especially to [just] anybody, freely and openly [and] especially when it comes to hiring undocumented workers. That's why I believe most managers don't check social security numbers, because they don't want to know if the guy's illegal or not.

Farmers, however, often see their workers carried off by the Border Patrol, so they can tell which of their workers are undocumented.

Restaurant employers point to a higher level of work intensity of Mexican (read: suspected undocumented) dishwashers than what they believe the American counterpart would show. Moreover, the turnover is lower: "With the Mexican worker, (dishwashing) is career-oriented, and you've got a guy for life." Restaurant owners in San Diego recognize and often develop a "Mexican connection," which supplies them with new workers. Some owners rely on labor contractors, while others turn to relatives in their present workers' family network.

An example of the family network is given by one employer:

We have a Huerta family that has eight Huertas working for us. They are our prep force--father, mother, brothers, sisters, cousins--the whole work force is the Huerta family. In fact, we just had a dispute with them the other day, where we're having problems because they're taking over the prep area. We have a hard time telling them what to do... They're a proud people and... the fact is, there's a hot sauce and it's homemade [at the restaurant]. If the Huertas walk out, they take the recipe.

Another employer compared two restaurants in the company chain of restaurants. In St. Louis, the restaurant had only Black Americans in their bus and dishwasher crews. He related that the restaurant is constantly having labor problems. "These guys always want more money and are constantly bellyaching about the job. They just feel it's beneath them--unworthy of them." By contrast, his own restaurant in San Diego has only Mexican workers in these job categories. He describes the greater flexibility he has in maintaining the type of worker he prefers:

I have a fellow. His name is Alberto. He takes care of all that for me. He's in the Mexican mafia... To get the [dishwasher] job, it costs the guy, say, \$200. Alberto brings them across [from Mexico] and gets them a job... So he owns the house they live in... They have to pay for transportation. When I say "Alberto, I'm firing this guy. I want another guy tomorrow--I want a good guy," he'll bring me a guy and say, "This is Roberto. He's starting today."

This same employer was quite specific about what he believed would happen if undocumented workers were removed from the regional labor force and he had to turn American workers:

If young Anglos or Blacks have to be hired for the job, the turnover in staff will be much greater. The Anglos or Blacks will get bored quicker. They feel this job is beneath their dignity. I'd have a much more difficult time finding dishwashers. I don't think the Americans will accept the job that well. It's really tough! I'd have to hire five Anglos for every Mexican I hired!

The survey of employers suggests that this view is broadly held. Nearly all the employers surveyed wanted a guest-worker program for restaurants. Nearly 80% of the employers stated as their primary reason for favoring such a program that either foreign workers were better than U.S. workers (44%) or that they represented a lower labor cost (33%). Only 22% felt that there were not enough U.S. workers available for these jobs.

The research did not explore the American worker's view in relation to the employer's preference for foreign workers for kitchen work. However, one telling letter, appearing in a local newspaper, forces recognition of a more complex situation than employers articulate:

My son was fired to make room for an illegal alien. He worked as a busboy in a restaurant... My boy was dismissed so the job could be given to the nephew of the head waiter. I phoned the owner of the restaurant. He said there was nothing anybody could do. He warned me that my son might be beaten or even stabbed if he got in the way of the Mexican group which controls the jobs at his place of business.

The employer profiles show that the niche occupied by Hispanic (frequently Mexican) undocumented workers in the kitchen area has often evolved through the extending of family networks or informal brokers who profit by finding the "right" employee. Whether the employer relies on labor contractors or recruits through family members already at work in the restaurant, the job niche (behind the wall) would be guarded by both the employers and undocumented employees against

outside encroachment--in many cases, from American teenagers.

In Electronics ...

Electronics manufacturing was chosen as a "negative case," one in which there were few undocumented workers. The response of employers show, as suggested by the research framework, that their lack of dependence on undocumented workers corresponds to their lack of valuing and preferring undocumented workers over American workers. The undocumented worker is not described as uniformly as having the necessary work skills, and there is some question about the substitutability of undocumented workers in the bottom-rung positions held by American workers.

Not unexpectedly, one employer found it difficult to comprehend what the removal of undocumented workers would mean to electronics manufacturing:

The question is illogical. If all the undocumented workers left electronics, the wages would not go up. I had a friend--I don't know if you want to take this down--up in the Bay Area, and he hired a lot of Hispanics, no undocumented. He didn't pay anyone over the minimum wage except the supervisors, and he had no problems getting workers in what's supposed to be a labor shortage area. He also had high worker morale, so there are plenty of American workers who would work at the minimum wage in electronics.

It is worth noting, however, that a major segment of the electronics assembly work in San Diego is done by Asians, many of whom are recently-arrived refugees from Southeast Asia. Interestingly enough, it is these workers who are the most preferred by employers. Figuratively, employers in the electronics industry already have a "guest-worker" program in force. Electronics manufacturing employers' preference for Asian workers is on a par with the farmers' and restaurant employers' preference for undocumented Mexican workers. In both instances, the employer has avoided turning to available segments of the American work force.

The assembly end of electronics manufacturing faces competition from offshore locations, such as Taiwan, Malaysia, and right across the border from San Diego--Tijuana, Mexico. Under an unrestricted, guest-worker program, the Mexican assembly worker could directly compete with the San Diego work force. The workers in Tijuana have far lower wage expectations than do their San Diego counterparts, as well as being recognized as dedicated workers (much like the Asian worker in San Diego). The availability of Mexican nationals from Tijuana under a guest-worker program would represent added competition to the San Diego work force. One employer voiced an opinion about "open borders" in the search for a truly free market place:

I'm in favor of an open border for selecting one's place of employment, and together with the open border, we should eliminate the minimum wage. We'd be a lot better off by removing the artificial line on the paper, and the worker would get what he's worth on the open market... American workers should be paid world-wide rates. We shouldn't be protecting

our low-skilled people here from low rates that are being paid down in Mexico. Some will be hurt by removing these protections, but others, I think, will realize when they are exposed to the harshness of things that they will have to work, and they will benefit from that.

It's the same with tariff protections. We should let Japan send in all the cars they want, and they should let us send in all the beef we want. There should be no tariffs.

Although electronics manufacturing served as a "negative case" with respect to dependency on undocumented workers, it reinforced an important issue in relation to a guest-worker program, namely, whether "guest workers" would be used as an alternative to the existing, American work force.

A Cross-Industry Analysis

The preceding analysis of each industry can be usefully re-examined from a comparative, cross-industry perspective. An exploratory survey was developed and administered to thirty-seven employers. Highlights of the results reveal cross-industry differences conforming to each industry's dependence on undocumented workers.

The survey focused in on job "X"--the bottom-rung, job category in each industry. Employers were asked, "What would happen if wages for job "X" went up by 25%?" "...by 50%?" and "At what wage would going out of business become a real possibility?" These questions sought to determine perceived business impacts and compare these impacts across the targeted industries. (A major part of the analysis is carried out in terms of whether job "X" represents a "restricted" or "extended" part of operational expenses. In a fine analysis, truck farms are more comparable to electronics assembly plants than they are to orchards or restaurants because of the dramatic difference in the percentage of labor costs represented by workers in job "X.")

The going-out-of-business wage level was compared to the wage expectations of unemployed workers (developed in the first study, Undocumented Immigrants: Their Impact on the County of San Diego). A first look at this comparison shows that employers in restaurants and electronics can afford to attract unemployed workers in San Diego County without having to reach the outcome of going out of business. In agriculture, however, the unemployed workers' wage expectations are apparently beyond the financial capability of farmers, more so among truck farmers. However, the results for farming require further analysis. These results should be considered to be good approximations of the local, labor force's wage expectations and an example of how one segment of the labor force can price itself out of the marketplace.

However, the comparison falters once it is realized that general farm laborers are nearly 100% Mexican, but that fewer than 25% of the unemployed workers interviewed were Mexican (and not all being farm workers). A more reasonable comparison for farm work would be to consider wages currently being paid to legally available workers, these being the wages near or at the level paid to union workers in south county (\$4.05/hour as the union rate; \$3.40/hour plus profit sharing to \$3.75/hour for non-union rates). The issue for determining the

<u>Industry</u>	<u>Wage Expectations Of Unemployed Workers*</u>	<u>Going-Out-Of-Business Wage</u>	<u>Falls Within Range</u>
Agriculture General Labor	\$4.93	\$4.26 - \$4.83	No
Restaurants Dishwasher	\$4.08	\$4.66	Yes
Electronics Assembler	\$4.58 - \$5.24	\$5 - Never	Generally

Figure 1. Comparison of Wage Expectations of Unemployed Workers and Employers' Going-Out-Of Business Wages.

* Note: The wage expectations of unemployed workers were developed from survey data collected for Undocumented Immigrants: Their Impact on the County of San Diego (May 1980). The minimum wage rate increased during the survey and once again since that time. A single adjustment has been made, following the previous study, to January, 1980. However, an additional amount could be added (20¢) to bring the minimum wage level back to that during the earlier part of the survey of unemployed workers. The adjustment would be minor and would not affect the argument made here.

"need" for guest workers becomes, then, whether farmers make a good-faith effort to hire legally available workers or whether they will seek any means possible to avoid this segment of the labor force to forestall unionization.

Thus, employers in each of the industries surveyed can afford to attract domestic workers. The extent to which there is an actual shortage of workers in agriculture can only be determined after the above-stated conditions are met (see page 4).

The attitudes employers have towards American workers closely parallel their degree of dependence on undocumented workers. The responses to the following questions show farmers generally at the polar extreme from electronics manufacturers with restaurant employers falling in between. (See Figure 2. Percentages represent responses within each industry.)

Farmers, who are in an industry which is highly dependent on undocumented workers, generally agree that undocumented workers represent lower labor costs, work harder than U.S. workers, would increase productivity, are not less reliable than U.S. workers, and farmers question whether U.S. workers could be substituted into the jobs undocumented workers now hold. Farmers strongly disagree with the idea of employer sanctions.

Employers in electronics manufacturing, where the use of undocumented workers is low, have opinions which are diametrically opposed to those of farmers. Restaurant employers generally fall in between these two extremes, paralleling the moderate use of undocumented workers in their industry.

<u>Question</u>	<u>Percent Agree/Yes Responses</u>		
	<u>Agriculture</u>	<u>Restaurants</u>	<u>Electronics</u>
1. The firm would have lower labor costs because U.S. citizens would not accept the work for the prevailing wage.	86%	45%	25%
2. Undocumented workers work harder than U.S. citizens.	86%	56%	11%
3. Would hiring undocumented workers increase productivity of businesses in your industry?	86%	27%	8%
4. Undocumented workers are less reliable than U.S. citizens?	36%	11%	56%
5. To what extent can U.S. workers be substituted for undocumented workers?			
Completely	31%	57%	100%
Somewhat	31%	43%	--
Hardly at all	38%	--	--
6. Do you feel that there should be employer sanctions or fines on U.S. employers who hire undocumented workers?	25%	45%	78%

Figure 2. Comparison of Agriculture, Restaurant, and Electronics Manufacturing Employers on Items Related to Undocumented Workers.

Having brought the employer into the process of what is needed to determine unemployment rates, it is clear that some employers are actively engaged in seeking out certain workers--in fact, preferred workers. By offering employment to some workers, others are displaced. The conclusion of the first study must be amended: the displacement of legally-available domestic workers is higher than that estimated in the first study. What is not clear, and what was beyond the scope of this study, is exactly how much more local unemployment there is as the result of the employer's preference for undocumented workers.

A Guest-Worker Program?

Should there be a guest-worker program? To be sure, there are various reasons that can be used to justify such a program. The response, based on the data used in this study, is focused only on the justification of short-term labor needs.

While employers in each of the industries studied give their overall support to a guest- or legalized, foreign-worker program, a systematic and comparative analysis of their business situation reveals that the employers could generally afford to attract American workers and substitute them into jobs held by undocumented workers. Thus, on the basis of "need" alone, a guest-worker program could not be justified for San Diego County (with the possible, minor exception for agriculture as stated above).

By way of conclusion, it is important to take note of contrary sentiments on the future of America's "new" labor: some employers express a need for foreign labor, while abjuring American labor as inadequate; others complain of the high rate of unemployment for U.S. workers, particularly among the youth. Something is clearly wrong.

By examining the employer's vantage point, one realizes that their pulling in of illegal labor from across the border is an excellent strategy for avoiding more expensive American labor. A foreign-worker program would simply legitimize this strategy. Such a solution to illegal migration is, of course, perfectly within the legislative rights of policy-makers to enact, given that they often function as mediators between competing economic forces.

This discussion does not question the ability or rationale of policy-makers to follow this course of action. Rather, it points to the implications of such a rationale: given that employers help to create American-worker displacement (by wanting, in this context, a "new," foreign-worker labor force), and given that a foreign-worker program will legitimize this displacement, how would policy-makers justify their hand in institutionalizing this displacement, and what remedial action would they plan to take to help rectify it? In short, what would legislators do with the discarded American worker?

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Opposition to a U.S. Temporary Worker Program

Prepared by Peter A. Schey (NCIR)
for the United Farmworkers' Union
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(December, 1980)

The Select Commission on Immigration and Refugee Policy voted to "streamline the H-2 [temporary worker] program." By "streamline" the majority of Commissioners meant *reduction* of the employers' responsibilities in locating domestic workers before importing foreign contract laborers. This policy decision ignores voluminous expert testimony and writings on the total failure of the H-2 program, the horrendous suffering endured by H-2 workers, the economic dependence on foreign workers which develops in employers of H-2 workers, and the social and political ramifications of expanding this program ...

The concluding words of an extensive 1980 report prepared by the Congressional Research Service, Library of Congress on temporary workers sum up the issue facing the Select Commission:

If the decision is made to move in the direction of an expanded temporary worker program, among the principal lessons to be learned from our 22-year experience with the bracero program and from the European guestworker experience is that *the seriousness, complexity, and far-reaching consequences of such an undertaking can hardly be overestimated.*¹

1. PAST U.S. TEMPORARY WORKER PROGRAMS

Only months after the United States enacted the most restrictive immigration legislation in its history, the Immigration Act of 1917, the first foreign labor program was devised and implemented.² In May 1917, a "temporary" farm worker program was established. This program lasted until 1922. As has been the historical experience with subsequent temporary foreign worker programs in the United States and Western Europe, rules and regulations promulgated to protect these early temporary workers from exploitation "were unenforced."³ And, as with later temporary worker programs adopted in the United States and abroad, large numbers of temporary workers in the 1917-22 program remained in the United States after the termination of the program. It is estimated that of the 76,862 Mexican workers involved in the program, only 34,922 ever returned to Mexico⁴

The Mexican Labor Program, commonly called the Bracero Program, was formalized in August 1942 as a result of a bilateral agreement reached between the U.S. and Mexico. Temporary workers admitted in this program were originally limited to agricultural work. Later the program was expanded into other sectors of the economy. Implementation of the Bracero program resulted in *massive* civil rights and labor law violations by employers. The Braceros were "captive workers who were totally subject to the unilateral demands of employers ..."

Both during the Bracero Program and following its termination in 1964, the United States experienced a continuing growth in the number of undocumented workers entering the country.⁵ During its twenty-two years of existence, approximately four million temporary workers entered the United States in the Bracero Program.⁷ Since the termination of the now discredited Bracero Program, the United States has continued to allow entry to temporary foreign workers under the "H-2" program⁸

2. H-2 TEMPORARY WORKER

The Immigration and Nationality Act of 1952 authorized the Attorney General, acting through the Immigration and Naturalization Service (INS), to admit temporary workers for temporary jobs "if unemployed persons capable of performing such service or labor cannot be found in this country."⁹ The legislative history of this law clearly demonstrates that it was intended to alleviate unusual domestic labor shortages during periods of exceptional production. The H-2 program was a response to the findings of the President's Special Commission on Migratory Labor that the large-scale employment of temporary foreign labor was displacing domestic workers and depressing wages and working conditions.¹⁰ The House Committee Report specifically states that

These provisions of the bill grant the Attorney General sufficient authority to admit temporarily certain alien workers ... for the purpose of *alleviating labor shortages as they may exist or may develop in certain areas of certain branches of American productive enterprises, particularly in periods of intensified production.*¹¹

The Attorney General may admit H-2 workers "after consultation with appropriate agencies of the Government, upon petition of the importing employer."¹² Under current regulations the employer's petition must be accompanied by

a certification from the Secretary of Labor ... stating that

*qualified persons in the United States are not available and that the employment of the beneficiary will not adversely affect the wages and working conditions of workers in the United States similarly employed ...*¹³

The courts have uniformly held that the H-2 program was intended to protect the jobs, wages and working conditions of domestic workers.¹⁴ In the past few years the H-2 program has been limited to approximately 25,000 workers per year.

3. IMPLEMENTATION OF THE H-2 PROGRAM, CONTRARY TO THE LEGISLATIVE INTENT OF CONGRESS, HAS DEPRESSED WAGES AND WORKING CONDITIONS

The fact that the H-2 program has had the unintended effect of depressing wages and working conditions is beyond dispute.¹⁵ The Department of Labor has conceded that "the influx of temporary foreign labor in agriculture has the effect of low-

...Opposition

ering prevailing wage rates ..."¹⁶ Earlier, in 1972, the Department of Labor stated that "foreign [H-2] workers do depress earnings."¹⁷ A comprehensive agriculture prevailing wage survey recently completed by the New York Department of Labor clearly illustrates the adverse impact from the presence of H-2 workers on the wages of domestic laborers.¹⁸ This survey compared wage rates in areas where employers used H-2 workers and areas where domestic workers were used. Wages were consistently depressed in areas where employers relied upon H-2 workers. As recognized by the Department of Labor, temporary workers can be made to work for lower wages and under depressed working conditions because they "fear repatriation."¹⁹

In the 1970's the Western European temporary worker programs were "exploding as a socio-political issue ..."

Despite its pronouncements on the depressing effects of the H-2 program, the Department of Labor has not been effective in countering these negative impacts felt by domestic workers. Employers, assured of a steady supply of cheap labor, do not "have to make the kinds of wage and working condition inducements that would attract indigenous workers to these jobs."²⁰

While the Western European temporary worker programs were "largely uncontroverted during the 1950's and early 1960's", in the 1970's they were "exploding as a socio-political issue ..."²¹ In contrast, the U.S. public and policy makers seem to be willing to live with an H-2 temporary worker program which exploits "indentured labor" (according to a leading proponent of a temporary worker model)²² and exacerbates the plight of the domestic rural poor. The labor shortages claimed by employers to promote an expanded (or continued) H-2 program are created and determined by preferences for temporary foreign workers and the increasing unwillingness of domestic workers to accept artificially low wages and working conditions brought about by a historical reliance on indentured foreign labor

4. TEMPORARY WORKER PROGRAMS HAVE NOT SERVED AS A TOOL TO REDUCE UNDOCUMENTED MIGRATION

There is strong empirical data which indicate that temporary worker programs may "compound the problem of illegal migration rather than solve it."²³ No country has yet developed a reliable method to ensure repatriation. As noted earlier in this article, massive numbers of workers in former U.S. temporary worker programs have remained in the United States or later entered in an undocumented status. This result is reflected in the fact that the INS now finds itself "in the legally dubious position of periodically renewing H-2 visas for aliens which it considers permanent residents of the Virgin Islands."²⁴

The consequences of Western European use of temporary worker program affirms the U.S. experience:

The Western European experience ... casts doubt upon the

starting assumption of a foreign worker policy that the programme and its workers are temporary ... [Millions of supposedly temporary foreign workers and their dependents have become long term of permanent residents of Western Europe.]²⁵

As the staff of the Select Commission states: "The only proven method of assuring compliance [with repatriation requirements] is the use of effective enforcement."²⁶ However, the history of temporary worker programs both here and abroad suggests that very substantial resources must be made available to ensure repatriation of temporary foreign workers. Governments have seldom committed sufficient resources for enforcement purposes except during times of economic down-swings.

5. THOSE SEEKING A CONTINUED OR EXPANDED TEMPORARY WORKER PROGRAM HAVE FAILED TO ESTABLISH THE ECONOMIC NEED FOR SUCH A PROGRAM

Those supporting the H-2 program have not established "the existence of a demonstrated need in the labor market."²⁷ This fact should not be surprising given that most H-2 workers enter to engage in agricultural labor, and unemployment rates in this sector of the market are among the highest in the country

When growers are currently able to claim that domestic workers cannot be located for particular harvest seasons, one need look no further than the insufficient recruiting efforts required under current D.O.L. regulations (coupled with depressed wages and working conditions caused by historical reliance on foreign labor) to explain this artificial shortage. For example, the Florida Department of Commerce, which recruits migrant farmworkers in a leading labor supply state, has specifically expressed a need for a D.O.L. rule requiring an *expanded* recruitment period.²⁸ As one expert has said:

The basic problem is that the Department's certification process ... is out of phase with the need of growers and farmworkers and the time table of commitments necessary to link American Workers with American jobs.²⁹

"The H-2 Program carries with it the serious problem of indentured labor."

While current recruitment is limited to 60 days, D.O.L. initially proposed a 90 day recruitment period "to allow the employment service system sufficient time to recruit U.S. migrant workers."³⁰ At that time (1978), the Department of Labor admitted that even the 90 day period would "not be long enough to recruit" domestic workers from two supply states, Florida and Texas.³¹ D.O.L.'s figures on the employment of H-2 workers shows that the numbers have not fluctuated widely and growers could easily begin recruitment for domestic workers more than 60 days before the needed date for workers. "Streamlining" the H-2 program to most Commissioners meant reducing recruitment efforts. In fact, as noted above, D.O.L. itself conceded that expanded recruitment would alleviate domestic unemployment and underemployment. The fact that growers have used H-2 programs in the past therefore does not point to a shortage of domestic workers but rather to the inadequacy of existing recruitment requirements and the artificially created low level of wage or working conditions which is precisely caused by the continued use of H-2 workers.

No available empirical data suggest an economic need for con-

... Opposition

tinuation or expansion of the H-2 program. The program should not be "streamlined" to reduce either the geographical range of recruitment (currently, recruitment theoretically is nationwide), or the time period during which recruitment must be undertaken.

6. TEMPORARY (H-2) WORKERS SUFFER SUPER-EXPLOITATION AT THE HANDS OF U.S. EMPLOYERS

The inability of employers who use H-2 workers and appropriate government agencies to ensure compliance with existing labor and immigration laws results in massive exploitation of temporary workers in the United States. One proponent of a temporary worker model states that expanding the H-2 program "carries with it the serious problem of indentured labor."³² As one economist points out, the H-2 worker "can only be assured of the opportunity to return again if his work and attitude please the American employer."³³ David North understates that point when he says, "it is little wonder that H-2 aliens are 'hard working and diligent.'"³⁴ As pointed out in the subsections above, rules and regulations aimed at protecting the rights and well-being of foreign workers have also generally gone unenforced in previous U.S. temporary worker programs

In response to a freedom of information request filed by the National Association of Farmworker Organizations (NAFO) on October 20, 1978, seeking records concerning D.O.L.'s imposition of sanctions against employers who have violated their obligations under the H-2 program, "the D.O.L. national office produced no documents."³⁵ Sanctions against employers currently threaten only denial of the use of H-2 workers for a one year period.³⁶ Suggestions have been made that compliance with H-2 laws will not be achieved unless D.O.L. imposed civil and/or criminal fines for violations.³⁷

The historical failure to effectively enforce the contract and statutory rights of H-2 workers significantly contributes to the employer's tendency to exploit these vulnerable workers. Housing and sanitation conditions in migrant camps where H-2 workers are often forced to live are unconscionable. Employers demand "speed-ups" and heightened productivity in a manner which often seriously endangers the health and well-being of H-2 workers. These are the experiences that the National Center for Immigrants' Rights and other service organizations consistently encounter in cases involving H-2 workers. This experience parallels the European guest worker programs where the maltreatment of foreign workers "has become the source of socio-political unrest ..."³⁸ Our inability or unwillingness to diminish the exploitation of H-2 workers mitigates in favor of elimination of the H-2 program

CONCLUSION

After considering a proposal for an expanded temporary worker program prepared for the National Commission for Manpower Policy,³⁹ Professor Eli Ginzburg, Chairman of the Commission, wrote to Secretary of Labor Ray Marshall that he was "strongly against" any expanded H-2 program.⁴⁰ With the Select Commission proposing a broad legalization ("amnesty") program, and increased lawful immigration, now is the time to face elimination of the temporary (H-2) worker program. No sound policy reasons support the proposal of the Select Com-

mission to streamline the H-2 program. Only the short-sighted economic greed of a handful of employers will be served by the continuation of this program. Forcing these employers to abandon their reliance of H-2 workers will not in any significant way increase consumer prices⁴¹

A non-exploitative temporary worker program could conceivably be designed if unions (from both the source country and the United States) were provided a major role in the development and implementation of the program. For now we can only urge that the H-2 program, the final remnant of the contract-labor Bracero Program, be phased out.

FOOTNOTES

1. *Temporary Workers Programs: Background and Issues*, prepared for use of the Select Commission on Immigration and Refugee Policy by the Congressional Research Service, Library of Congress, February 1980, hereinafter *Temporary Worker Programs*, at page 120.
2. See, e.g. Kiser & Kiser, *Mexican Workers in the United States: Historical & Political Perspectives*, Albuquerque, The University of New Mexico Press (1979) hereinafter *Kiser & Kiser*, at Chapter I.
3. *Id.* at page 10.
4. Henry Kiser, *Mexican American Labor Force Before World War II*, *Journal of Mexican American History*, Vol. 2 (1972), hereinafter *Kiser*, at page 130.
5. See Vernon Briggs, *Foreign Labor Programs as an Alternative to Illegal Immigration into the U.S.: A Dissenting View*, Center for Philosophy and Public Policy, University of Virginia, (1980), hereinafter *Briggs*, at page 4.
6. *Illegal Aliens: Estimating Their Impact on the United States*, Report of the Comptroller General to the U.S. Congress (Washington, D.C., U.S. General Accounting Office, 1980) at pages 82-83.
7. Jorge Bustamante, *Commodity Migrants: Structural Analysis of Mexican Immigration into the United States*, in S. Ross (ed.) *Views Across the Border: The United States and Mexico*, (Albuquerque, University of New Mexico Press, 1928), hereinafter *Bustamante*, at page 196.
8. U.S.C. § 1101(a) (15) (H) (ii) (1952).
9. *Ibid.*
10. See statement of Ronald L. Goldfarb, submitted during Rulemaking on Temporary Employment of Aliens in Agriculture, (July 1, 1977) at page 3.
11. H.R. Rep. No. 1365, 83d Cong., 2d Sess., reprinted in (1952) U.S. Code Cong. & Ad. News 1653, 1698 (emphasis added).
12. 8 U.S.C. § 1184(c).
13. 8 C.F.R. § 214.2 (h) (3) (1978) (emphasis added).
14. *Florida Sugar Cane League, Inc. v. Utery*, 531 F.2d 299, 300-01 (5th Cir. 1976); *Bustos v. Mitchell*, 481 F.2d 479, 482 (D.C. Cir. 1973).
15. See e.g., J. Medoff and K. Abraham, *An Economic Analysis of the Department of Labor's H-2 Program*, Harvard University & National Bureau of Economic Research (March 1979); *Review of the Rural Manpower Service*, Department of Labor (1972) at page 33; *Briggs, Supra*, at page 20; Miller and Yeres, *A Massive Temporary Worker Programme for the U.S.: Solution of Mirage?* World Employment Programme Research, Working Papers, Int'l. Labour Office, Geneva, (1979), hereinafter *Miller & Yeres* at pages 8-12.
16. 41 Federal Register 25017, 25018 (January 22, 1976).
17. *Review of Rural Manpower Service, supra*, at page 33.
18. *Agricultural Prevailing Wage Survey Summary Report*, 1978 Apple Harvest, New York State Department of Labor, Hudson Valley Apple Area (Feb. 15, 1979) and Clinton, Essex, and Washington Counties (Jan. 24, 1979).
19. *Review of the Rural Manpower Service, supra*, at 37.
20. *Nonimmigrant Alien Labor, supra*, at page 10.
21. Sinkin, Weintraub and Ross, *A Phased Out Guest Worker Proposal*, submitted to the Select Commission on Immigration & Refugee Policy (October 9, 1980), hereinafter *Weintraub*, at page 2.
23. *Miller & Yeres, supra*, at page 38.
24. *Id.* at 12.

25. *Id.* at 16.
26. *Questions & Answers—Temporary Worker Programs*, Select Commission on Immigration & Refugee Policy, staff memorandum (1980), at page 4.
27. *Briggs, supra*, at 16.
28. See *Second Report of Plaintiffs Representative on Brennan Special Review Committee*, (April 21, 1976), [appointed by the court in *NAACP v. Brennan*, Civ. No. 72-2010, 360 F.Supp. 1006 (D.D.C. 1973)], at page 6.
29. Statement of Ronald Goldfarb, *Rulemaking on Temporary Employment of Aliens in Agriculture* before D.O.L., (July 1, 1977) at page 6.
30. 43 Federal Register at 10,307 (March 10, 1978).
31. *Ibid.*
32. *Weintraub, supra*, at page 2.
33. *Briggs, supra*, at page 12.
34. Martin & North, *Nonimmigrant Aliens in American Agriculture*, Paper presented at the Conference on Seasonal Agricultural Labor Markets in the U.S., Washington, D.C. (January 10, 1980), at page 20.
36. 20 C.F.R. § 655.210.
37. *NAFO Request for Rulemaking, supra*, at page 81; see also R. Marshall, *Rural Workers in the Rural Labor Markets*, (1974), at 106.
38. *Miller & Yeres, supra*, at page 14.
39. Edwin Reubens, *Temporary Admission of Foreign Workers: Dimensions & Policies*, Special Report No. 34, National Commission for Manpower Policy (Washington, D.C. U.S. Government Printing Office, 1979).
40. Letter to Secretary of Labor from professor Eli Ginzburg dated May 1, 1979.
41. *NAFO Request for Rulemaking, supra*, at page 95; Podany & Fochs, *Cost of Harvesting, Packaging & Storing Apples for the Fresh Market with Regional and Seasonal Comparisons*, in USDA *Fruit Situation*, TFS-191, (1974), at page 17.

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**AMNESTY! BLESSING? OR..
IS IT JUST HONEY ON THE
CLAW?**

**WILL AMNESTY WARRANT
ACCEPTING A RODINO-TYPE
LAW AND ANTI-WORKER
IDENTITY CARDS?**

**READ AUSTRALIA'S
EXPERIENCE WITH
AMNESTY**



AMNESTY IN AUSTRALIA

by Desmond Storer

Once again, the United States is embroiled in the issue of illegal aliens. Commissioner for the Immigration Naturalization Service, Leonard F. Chapman, declaimed these people as "silent invaders" who presently number six to eight million in the United States and whose numbers increase by up to one million each year.

The accuracy of these figures is immaterial. There are large numbers of undocumented workers in the United States and controversies over these immigrants is neither new nor unique to this country. During periods of economic stability legal and clandestine immigrants are considered as meeting both the needs of the economy of the host country and the developmental problems of the sending nations. During periods of economic fluctuation, however, controversies over illegal immigrants inevitably intensify.

In Australia, as in the United States, these controversies were more acute during the depression years of the 1930s, the recession years of the 1950s and early 1960s, and during the economic stress period from 1972 to the present. Industrialist and capitalist countries which only a decade ago were competing to obtain migrant workers, are now concerned with the disposal of this surplus labor. Competition for employment and resources leads to conflicts for which government and bureaucracies require instant solutions. Scapegoats are consequently demanded and migrant workers are invariably among the first of these scapegoats. It does not matter if it is the Italians in Germany, the Turks in France, the Uruguayians in Argentina, the Koreans in Japan, the Polynesians in New Zealand, the Turks in Australia, or the Mexicans in the United States.

Numerous solutions to the problem of undocumented workers have been recommended. 1) Deportation, as it was carried out in

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the United States in the 1920s and, although subsequently defeated, has motivated recent initiatives proposed in Switzerland and other European countries; 2) the imposition of fines on employers who hire illegal immigrants: Rodino (H.R. 2643), such proposals were accepted by most countries represented at the recent International Labor Organization, World Employment Conference (Geneva, June 1976); 3) the issuance of identity cards, which snuffs of South African Policing tactics; 4) the reintroduction of temporary worker programs: Eastland (S. 3074), which is similar to the European guest worker situation; 5) the increase of policing services and budgets as requested by Commissioner Chapman for the Immigration Naturalization Service to stop entry of illegals; and 6) amnesty and/or regulation of status programs: Kennedy (S.561) which would determine the present state of illegal immigration and enable more effective planning and control.

These solutions deal with the interrelated problems of both the status of present illegals and the suspended entry of future illegal migrants (*International Migration Review*, Stoddard, Hohl, Kelly and Tomasi). Recently, Australia implemented an amnesty program for resident illegal aliens.

Australian Immigration Since World War II

In 1947 fewer than 3% of the population of Australia was non-Anglo Saxon by extraction. British migrants were unobtainable in the numbers required for the postwar reconstruction of Australia. Recruitment was, therefore, initiated in other European countries and resulted in the immigration of thousands of Germans, Dutch, Italians, Greeks, Yugoslavs, Turks and others. Later, South Americans were similarly encouraged. Since 1947, an approximate 3 million persons have entered Australia and they account for nearly 60% of the population growth since that time. By 1975, nearly 20% of the population was of non-Anglo Saxon extraction (see: National Population Inquire — *Population and Australia*, 1975). It is only in the past four years that this immigration growth has been curtailed.

Illegal Aliens in Australia

In late 1975, the consensus held that there were 35,000 to 45,000 illegal aliens resident in Australia, constituting 0.3% of the population. Unlike the United States, the number of illegals in Australia can be determined with a degree of accuracy by comparing the total population census figures against the incoming migration figures, voting figures and registered aliens lists (both the census and voting of citizens over 18 is compulsory in Australia). In any large immigration program a number of illegal entries is inevitable. Motivations for illegal entry can range from simple curiosity to the escape from political and economic oppressions.

Over the last four years, the number of illegal immigrants increased as the government reduced active recruitment and, for humanitarian reasons, introduced an easy-entry temporary visa system. This system although it enabled family reunions, was also used as an easy entrance to obtain permanent, if illegal, residence. Of 134,000 temporary visitor visas issued between July 1, 1973 and June 30, 1974 some 10,400 overstayed their visas (*Immigration Statistics, 1975/1976*).

Illegal entrepreneurial rackets also developed over the past four years where immigrants were issued temporary transit visas and told that these visas would enable them to stay in Australia. By



Migrant mine laborers in Australia

December 31, 1975, there were approximately 40,000 illegal immigrants resident in Australia.

Reasons for Amnesty in Australia

There were a number of interrelated historical, social and political reasons for the initiation of the amnesty program. Politically, the rationale ranged from broad historical political trends to individual ministerial ambitions.

Prior to 1972 there had been 23 years of conservative Liberal Government in Australia. This coincided with a mass migration which was dependent upon the demands of industry and the state of the economy. Conservative politicians determined the migration policies with a philosophical understanding that any non-British persons should and would "assimilate and integrate" into the "Australian cum British" way of life. Homogeneity in all respects of social life (education, legal, trade unions, etc.) was the "ideal". Consequently, cultures other than British were ignored or "devalued" and non-British immigrants remained silent. It was not until the advent of a Labor Government in 1972 that non-Anglo Saxon migrants began to articulate their grievances with their situation in Australia and began to challenge the homogeneous ideology which underscored the immigration policies of Australia. By 1975 a number of migrant groups had organized in numbers large enough to make their demands noticed and in the election of 1975 the two major political parties responded to these demands and promises such as amnesty were made. Amnesty had been promised by the Liberal/Country Party Coalition and, on forming a government, it appeared a relatively simple administrative task which would have the immediate advantage of gaining positive publicity after a bitter election.

Immigration has a low priority in the Australian government although, unlike the United States, a separate Ministry for Immigration is maintained. The position heading this office tends to be used to gain publicity, to enlarge contracts and to gain political prominence. I would suggest that the present Minister is no different, in this regard, from his predecessor, and the amnesty program was not exempt from the vested interests of individuals.

There were also economic dimensions to the political rationale for the amnesty program which was introduced. Initially, industrialists needed migrant labor and businessmen needed markets. Although unemployment was on the rise, immigration was rapidly decreasing in Australia with a net in-flow of 38,706 in the year 1974/1975, and 20,000 in the 1975/1976 compared to 73,237 in 1973/1974, and 109,000 in 1972/1973 (Immigration Press Release, August, 1976). The amnesty program then, could permit the government to show its humanitarian face to business interests in Australia, to potential immigrants and to its voting public. This set a framework for following immigration drives later in 1976 when the purpose was to provide the needed laborers and to stimulate the economy. Compared to this positive economic rationale there was yet a negative motive that had developed over the past 2 years, which also stimulated the amnesty program. Unionists and others had developed a campaign around the cry that "... 40,000 illegal persons are taking the jobs of Australian born and they should be deported". Although a common cry, in an election year when ethnic votes were important, this helped to provide a platform for the Liberal Party to point to the negative attitudes of unions while the Liberal Party displayed a more humane countenance.

Humanitarian reasons also aided to initiate the amnesty program. There had been much publicity about the "plight" of illegal aliens. Voluntary agencies, welfare and church groups were concerned, and lobbied for the readjustment of status of such illegals. Newspapers and other media periodically reported on the more spectacular situations such as some persons living in drainpipes. Other organizations described how illegals were heavily exploited and feared detection.

How the Amnesty was Conducted

The Minister of Immigration and Ethnic Affairs made his first announcement on December 31, 1975. There was to be a three month amnesty for all illegal aliens from January 26, 1976 to the end of April 1976.

Thus, all persons who were illegally residing in Australia could have their status adjusted to become legal residents if they were in good physical and mental health and if they had no criminal record either in Australia or in any other country in which they had previously resided. This initial announcement was followed by a series of media releases, media conferences and media human interest stories and discussions.

The announcement was also followed by immediate objections. Although ethnic organizations and other community groups considered the amnesty program a humane and sensible action, they expressed a series of objections. 1) The announcements were initially made in essentially English speaking media which excluded a wide range of ethnic media; 2) the amnesty period was too short a period to communicate with illegal non-English speaking persons and to convince them that this was a legitimate program; and 3) there would be confusion over the precise indications of the phrase "criminal record". Did this mean having parking offenses, or not having paid taxes? etc.

Similarly, there were a number of political objections. 1) Announcements were made in a paternalistic fashion which was not cooperative with ethnic persons or organizations; 2) there were no provisions made for appeal if an applicant were refused amnesty; and 3) this amnesty appeared to be a political ploy to encourage left wing illegal aliens to reveal themselves.

Many of these initial objections later proved valid, and some changes were initiated by the government. Subsequently, a large amount of publicity was issued through the ethnic media, resulting in some consultation with the more established and conservative ethnic organizations and "ethnic elites". The Minister made numerous statements to clarify that a criminal record referred only to "major offenses" such as smuggling, murder, embezzlement, etc. He noted that this was an honorable amnesty and in no way politically motivated.

Persons Applying for Amnesty

Figures released by the Minister for Immigration and Ethnic Affairs were concerned with those who had applied for amnesty prior to the end of April. An approximate 7,207 persons had applied for the amnesty of which 2,115 had been approved and a large number was deferred. These figures were issued with a press release from the Minister stating that persons from 82 countries had applied for amnesty; that there would be a brief extension of the program, and

that no one had been refused.

It is notable that in his most recent media release (November 20, 1976), the Minister noted that, "...because there are still 35,000 illegals in Australia, that the special Control Branch has been asked to step up entry controls and pursue illegals more thoroughly".

From this statement and the fact that the Minister has contended that there would be no more than 40,000 illegals in Australia in January 1977 we can deduce with probable certainty that not many more than the cited 7,207 persons applied for amnesty. Given the large publicity campaign, less than 20% of those eligible, applied for amnesty. There is little information available which could enable us to determine the characteristics of those who did and did not apply.



Demonstration of migrant workers' at a Ford motor Plant in Melbourne, Australia 1973.

The only figures released were on the residential areas of amnesty applications.

Table 1
Residential Areas of Amnesty

Areas where Amnesties Applied For	% of Total
Sydney	64.4%
Melbourne	22.1%
Perth	4.0%
Brisbane	3.7%
Adelaide	1.3%
Rural Areas & Smaller Towns	4.5%
Total 100. %	

(Source: Minister Immigration and Ethnic Affairs, *Media Release* 20th February, 1976.)

The most interesting point about this residential breakdown is that Melbourne, which has the highest number of immigrants in Australia had only one-third the number of illegals seeking amnesty as had Sydney which hosts slightly fewer immigrants resident. I would suggest that this is because Melbourne has historically been a more civil-issues/union/civil rights oriented City and migrant organizations tend to follow the same trend as other groups. Consequently, the more militant organizations are found in Melbourne and the most hostility to this amnesty came from the groups in this City.

Why Not Amnesty?

There are complex personal, social, cultural and political reasons for an illegal immigrant not to apply for amnesty. A two to three month period was not time enough to establish a rapport with those who are, by their very status, suspicious of most government actions. No attempts were made to work closely with the ethnic groups making fears, suspicions, and questions a natural development. A comprehensive communication and education program on the aims, reasons and specifics of amnesty was never attempted.

When the Liberal-Country Party Coalitions were in power many aliens were refused citizenship on grounds, thought by many, to be political. In Australia, an immigrant was eligible for citizenship when he had resided there five years and he met health conditions and maintained no criminal record. Over the period 1949-1970, an approximate 531 immigrants were refused citizenship on grounds of security (*Australian Consolidated Immigration Statistics, 1973*) and thousands had their applications deferred. Between 1966 and 1970, some 169 immigrants were refused citizenship on security grounds, 155 for being communists and 14 for being right wing extremists. Of the 155 "communists", 125 were Southern European. It must be noted these are only the official figures. It could be similarly argued that over a 21 year period when 635,555 persons were granted citizenship the number 531 appears small. Frequently, however, those who were refused citizenship were the most active people who might best represent the rights and interests of the ethnic minorities. This system of selective refusal contributed to the general distrust, in ethnic communities, of the motives of the Australian Government. This process of refusal magnified, for the ethnic communities, two procedural factors which helped to intensify suspicions: 1) There was no machinery for appeal as the Minister's word was final; and 2) there was considerable secrecy surrounding

LIVESTOCK TRANSPORTERS
 RECEIVAL HOURS ARE
 MON-FRI 6:00am - 11:30pm
 SUNDAYS & PUBLIC HOLIDAYS 12:00pm - 1:00pm
 TO AVOID ANNOYANCE
 TO RESIDENTS
 DO NOT PARK HERE



The Amnesty Program was an indication of the integrity of the new Australian government.

the actions of the Immigration Department and the use of Australian Security Intelligence Officers.

This record gave little cause for illegal immigrants to trust the intentions of the present Australian Government. That such distrust was warranted is illustrated in the case of Ignazio Salemi, an Italian illegal alien presently residing in Melbourne.

In June 1976 it was publicly announced that Ignazio Salemi was refused amnesty and would be required to leave Australia. Salemi harbored no criminal record and met all standards of health. No public explanation was given other than the termination of his temporary visa. This would appear, however, to be precisely the sort of "illegality" the government wished to grant amnesty. A number of ethnic communities protested the action suggesting that it was a political decision smacking of the left wing purges of the 1950s and 1960s. The accusations appear well founded.

In 1972 a group of Italians formed a branch of FILEF (a worldwide voluntary organization for the support of the rights of Italian immigrants which was founded largely by the Italian Government) in Melbourne, Australia. The group solicited support from the Rome head office. In March 1974 Salemi, an experienced journalist, was sent to give the group organizational support. Salemi developed a weekly newspaper, helped in research and surveys and acted as a catalyst. Salemi remained in Australia on various temporary visas until October 1975. From this point forward he became an illegal alien in Australia where he worked without remuneration for his work and obeyed the laws and regulations of Australia. When the amnesty program was announced, FILEF members were suspicious, but, Salemi entering in good faith opted to apply for amnesty. Subsequently, he was refused amnesty, with no cause shown.

A legal appeal to the High Court of Australia is now proceeding. The Salemi case alone indicates that decisions are still made in secrecy and the reasons for these judgments are still kept from the public. Similarly, it shows that there exists no public forum for appeal.

The Amnesty Program

Although largely unsuccessful, the amnesty program was important for Australia as an indication of the intentions and the integrity of the new government and as a signpost of the directions it intended to take.

Since the completion of the amnesty program there has been considerable attention paid to the curtailment of illegal entries, the strengthening of the Immigration Control Branch, the introduction of a series of regulations which would require the airlines to assume the return costs of any immigrants determined to possess irregular visas upon arrival, and a series of arrests of illegals (84 Chileans on May 31, 32 Indians on June 14).

The difficulties involved in the amnesty program have been indicated by recent statements. November 20 the Minister issued an attack on illegals arguing, that even after his amnesty, there remain 35,000 illegals in Australia and that harsher measures were being sought. He commented, "There will definitely be no more offers of amnesty."

Implications for the United States

Although differences exist, there are enough similarities between the immigration experiences of Australia and the United States to suggest that the United States might profit from the errors of the recent amnesty program in Australia. This assumes, of course, that the United States would be providing an amnesty program for undocumented migrants. The more important implications of this

program for American policy makers would include primarily the committed cooperation among policy makers, the bureaucracy and those individuals and groups for whom the amnesty program is intended. Government legislators must involve all concerned ethnic and migrant groups and not simply the self-appointed spokesmen for these groups. The participation of these groups assures: 1) The correct determination of the perceptions and the requirements of the people themselves; 2) it serves to overcome any possible cultural or social misconceptions in the wording of the legislation and the subsequent publicity; 3) it offsets as far as possible the fears and suspicions fostered by paternalism.

Thus, an extensive community education program in all appropriate languages to explain the aims, rights, entitlements and duties that are involved in an amnesty program is tantamount to the success of such a program. If amnesty is to be seriously implemented intensive campaigning is requisite. Illegal aliens must be assured that they will receive equitable treatment should they apply for amnesty and meet the necessary requirements.

That is, appropriate legislation must be developed with simple, yet precise wording. The involvement of immigrants groups and individuals must be maintained. A lengthy period of time of at least 12 months, must be provided during which illegals might apply for amnesty. The correct implementation of such actions could assure a successful amnesty program.

The success of such a program would aid in the ultimate determination of the number of illegal aliens in the country, the work they have been doing and the precise nature of their social situation. Only then will policy makers have a base from which to determine the type of immigration program it will support and, ultimately, the type of society it wishes to design. □