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Illegal Aliens: Analysis and Background

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FOREWORD

This report deals with the complex and emotionally charged subject of aliens who have entered this country in violation of the Immigration and Nationality Act or who have accepted employment in violation of their nonimmigrant status.

The issue of illegal aliens has received the close scrutiny of the Judiciary Committee, particularly the Subcommittee on Immigration, Citizenship, and International Law since 1971, and during the 92nd and 93rd Congresses the Committee produced legislation which was overwhelmingly approved by the House of Representatives.

The difficult task of drafting remedial legislation in this sensitive area has been compounded by the fact that a variety of diverse public policy issues must be addressed such as: the identification of illegal aliens by employers and government officials, the adjustment of status of illegal aliens who have developed equities in the United States, the use of social services by legal and illegal aliens, the effect of illegal Mexican immigration on our relations with that government, and employment discrimination against ethnic and minority groups.

This Library of Congress study, prepared in February of this year, presents a comprehensive and objective analysis of this pervasive problem and provides an excellent overview of Congressional activities in this area. The study describes the nature and scope of the problem with particular emphasis on the social and economic impacts caused by illegal aliens. It also provides background information on our general immigration law and traces the development of federal legislation establishing employer sanctions. More importantly, it analyzes the vexing issues which currently confront policymakers in both the Executive and Legislative Branches of the Government as they attempt to devise an appropriate solution to this serious problem.

It is the hope of the Committee that this report will assist the Members of Congress in achieving a thorough understanding of this multi-faceted problem.

The author of this study is Joyce C. Vialet, an analyst in social legislation in the Education and Public Welfare Division, Congressional Research Service, Library of Congress. Mrs. Vialet has worked closely with the Judiciary Committee over the years on this matter and has conducted extensive research on the subject of illegal aliens as well as on a variety of other immigration-related issues.

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Illegal Aliens: Analysis and Background

INTRODUCTION

Illegal aliens are persons of foreign nationality who have entered the United States unlawfully; or who, after legal entry, have violated the terms of their admission, generally by overstaying and/or accepting unauthorized employment. No reliable estimates are available on the total illegal alien population, although it is thought to number into the millions. The Immigration and Naturalization Service (INS), within the U.S. Department of Justice, maintains statistics on the number of deportable aliens apprehended each year. Recently apprehensions have been approximately double the number of legally admitted immigrants.

The primary impact of illegal aliens in the United States is believed to be on the labor market. Information on the nature of this and other impacts is inadequate, reflecting the observation of the U.S. Domestic Council Committee on Illegal Aliens that, "Research into the characteristics and impact of a clandestine population presents extraordinary difficulties." [1]

It is generally agreed that, in the words of the House Judiciary Committee, "the primary reason for the illegal alien problem is the economic imbalance between the United States and the countries from which the aliens come, coupled with the chance of employment in the United States." [2] However, there is disagreement about the appropriate U.S. policy toward illegal aliens, as reflected in the five-year debate in Congress over legislation establishing penalties for U.S. employers who hire illegal aliens.[3]

Increasingly, it is argued that long-term solutions to the illegal alien problem, particularly as it involves Mexico, must also be international in scope if they are to have any chance of success. Quoting from the report of the Department of Justice's Special Study Group on Illegal Immigrants from Mexico, "Because illegal immigration from Mexico is fundamentally an economic problem, it will persist as long as the great disparities between the United States and Mexico in employment opportunities and standard of living continue." [4]

As measured by the number of bills introduced, illegal aliens were the aspect of immigration of greatest general legislative interest during the 94th Congress. More than 50 bills, some identical, were devoted in whole or in part to this subject. Legislation aimed at controlling the illegal alien problem passed the House during the 92nd

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[1] U.S. Domestic Council Committee on Illegal Aliens. Preliminary Report, December 1976, p. 221. (Henceforth cited as the Domestic Council Committee on Illegal Aliens report (December 1976).)

[2] U.S. Congress. House. Committee on the Judiciary. Amending the Immigration and Nationality Act, and for other purposes; Report to accompany H.R. 8713. Washington, U.S. Government Printing Office, 1975. (94th Congress, 1st session. House. Report No. 94-506) p. 6. (Henceforth cited as H. Rept. No. 94-506 (1975).)

[3] For a review of the positions of some of the major interest groups on legislation pending before the 94th Congress, see "Illegal Alien Curbs: House Action Stalled," Congressional Quarterly, March 20, 1976, pp. 637-641.

[4] U.S. Special Study Group on Illegal Immigrants from Mexico. Final Report, A Program for Effective and Humane Action on Illegal Mexican Immigrants, Jan. 15, 1973, p. 40. (Popularly referred to as the Cramton Commission report, after its chairman, Roger C. Cramton, U.S. Department of Justice; henceforth cited as the Cramton report (January 1973).)

and 93rd Congresses. Similar legislation was reported, but not passed during the 94th Congress; and, for the first time during the past three Congresses, a related bill was given serious attention by the Senate Judiciary Committee. This paper is intended as a review and analysis of a number of issues relating to the illegal alien problem, as background for the legislative debate which may be expected to continue during the 95th Congress.

I. Numbers, Origins, and Characteristics of Illegal Aliens

NUMBERS

In fiscal year 1975, the Immigration and Naturalization Service (INS) located 766,600 aliens who were deportable under the Immigration and Nationality Act, either because of illegal entry (87 percent) or violation of the terms of their entry.[1] This figure represents a slight decrease from the 788,145 deportable aliens located in fiscal year 1974, the first decrease since fiscal year 1964 (see Table 1).

The statistics on apprehensions of illegal aliens have been dwarfed by the current estimates from various sources of the numbers of illegal aliens in the United States. Nonetheless, the apprehension figures are exceedingly high, both in terms of apprehensions in the recent past, and in terms of the number of immigrants legally admitted each year. Over the ten-year period 1966–1975, the number of deportable, or "illegal", aliens apprehended has increased by 453 percent; going back 15 years, to 1961, the increase is 762 percent.

TABLE 1.—ALIENS APPREHENDED, ALIENS DEPORTED, AND ALIENS REQUIRED TO DEPART, YEARS ENDED JUNE 30, 1892–1975

Period	Aliens apprehended [1]	Aliens expelled		
		Total	Aliens deported	Aliens required to depart [2]
1892–1975	9,982,524	10,300,195	681,959	9,618,236
1892–1900		3,127	3,127	
1901–10		11,558	11,558	
1911–20		27,912	27,912	
1921–30	128,484	164,390	92,157	72,233
1931–40	147,457	210,416	117,086	93,330
1931	22,276	29,861	18,142	11,719
1932	22,735	30,201	19,426	10,775
1933	20,949	30,212	19,865	10,347
1934	10,319	16,889	8,879	8,010
1935	11,016	16,297	8,319	7,978
1936	11,728	17,446	9,195	8,251
1937	13,054	17,617	8,829	8,788
1938	12,851	18,553	9,275	9,278
1939	12,037	17,792	8,202	9,590
1940	10,492	15,548	6,954	8,594
1941–50	1,377,210	1,581,774	110,849	1,470,925
1941	11,294	10,938	4,407	6,531
1942	11,784	10,613	3,709	6,904
1943	11,175	16,154	4,207	11,947
1944	31,174	39,449	7,179	32,270
1945	69,164	80,760	11,270	69,490
1946	99,591	116,320	14,375	101,945
1947	193,657	214,543	18,663	195,880
1948	192,779	217,555	20,371	197,184
1949	288,253	296,337	20,040	276,297
1950	468,339	579,105	6,628	572,477

See footnotes at end of table.

[1] U.S. Department of Justice. Immigration and Naturalization Service. 1975 Annual Report, 1976, p. 13. (Henceforth cited as 1975 INS annual report.)

TABLE 1.—ALIENS APPREHENDED, ALIENS DEPORTED, AND ALIENS REQUIRED TO DEPART, YEARS ENDED JUNE 30, 1892–1975

Period	Aliens apprehended [1]	Aliens expelled		
		Total	Aliens deported	Aliens required to depart [2]
1951–60	3,584,229	4,013,547	129,887	3,883,660
1951	509,040	686,713	13,544	673,169
1952	528,815	723,959	20,181	703,778
1953	885,587	905,236	19,845	885,391
1954	1,089,583	1,101,228	26,951	1,074,277
1955	254,096	247,797	15,028	232,769
1956	87,696	88,188	7,297	80,891
1957	59,918	68,461	5,082	63,379
1958	53,474	67,742	7,142	6,600
1959	45,336	64,598	7,988	56,610
1960	70,684	59,625	6,829	52,796
1961–70	1,608,356	1,430,902	96,374	1,334,528
1961	88,823	59,821	7,438	52,383
1962	92,758	61,801	7,637	54,164
1963	88,712	76,846	7,454	69,392
1964	86,597	81,788	8,746	73,042
1965	110,371	105,406	10,143	95,263
1966	138,520	132,851	9,168	123,683
1967	161,608	151,603	9,260	142,343
1968	212,057	189,082	9,130	179,952
1969	283,557	251,463	10,505	240,958
1970	345,353	320,241	16,893	303,348
1971	420,126	387,713	17,639	370,074
1972	505,949	467,193	16,266	450,927
1973	655,968	584,847	16,842	568,005
1974	788,145	737,564	18,824	718,740
1975	766,600	679,252	23,438	655,814

[1] Aliens apprehended first recorded in 1925. Prior to 1960, represents total aliens actually apprehended. Since 1960, figures are for total deportable aliens located, including nonwillful crewman violators.
[2] Aliens required to depart first recorded in 1927.

Source: 1975 INS Annual Report, table 23, p. 90.

In the words of the House Judiciary Committee, "This wholesale violation of the law disrupts that legal and orderly flow of aliens into the United States, and threatens the integrity of our system of immigration." [2] The 766,600 aliens apprehended in fiscal year 1975 is almost double the 386,194 immigrants admitted legally during the same year. Quoting from a report prepared recently for the U.S. Department of Labor, "In essence, escalating apprehension rates of illegals are a sign that there is a serious discrepancy between de jure and de facto immigration policy, and that this gap is widening." [3]

It is generally agreed that there is no reliable estimate of the total illegal alien population in the United States. Since 1973, the estimates of the Immigration and Naturalization Service have varied from just over 1 million to as high as 12 million, a range which has cast some doubt on their credibility. In late 1976, the INS estimate of the illegal alien population was 6–8 million.[4] INS is the first to acknowledge that its estimates are only educated guesses, based largely on the experience of INS officials in the field.

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[2] House Report No. 94–506 (1975), p. 5.
[3] David S. North and Marion F. Houstoun, "The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study," March 1976, p. 30. (Henceforth cited as North/Houstoun study (March 1976).)
[4] INS Commissioner Leonard F. Chapman, Statement before the Select Committee on Small Business, November 23, 1976, p. 2.

Ray Marshall, now Secretary of Labor and formerly an economist with the University of Texas, wrote in 1976:

> Leonard F. Chapman, Jr., director of the Immigration and Naturalization Service, said in 1975 that an estimated 12 million illegal aliens were displacing American workers, and were costing American tax payers millions of dollars each year; . . . While experts consider General Chapman's estimates to be exaggerations, they nevertheless agree that there are several million illegals in the country and that they constitute a serious national problem.[5]

In its December 1976 report, the Cabinet-level Domestic Council Committee on Illegal Aliens did not attempt to estimate the "significant and growing" illegal alien population. Instead, they concluded that "hard data on illegal aliens is virtually non-existent," [6] and that "current estimates of the stock and flow of illegal aliens are educated guesses at best." [7]

To date INS apprehension statistics remain the most reliable information available on illegal aliens. However, they are limited in usefulness as a basis for projecting the total illegal alien population for several reasons. First, they record offenses rather than offenders, and thus include repeaters, of whom there are many. Second, as the House Judiciary Committee has observed, they appear to be "primarily a function of the manpower and funds which are available to INS." [8] Third, since these resources are limited, the apprehension statistics are more reflective of INS's enforcement priorities than of the actual distribution of apprehended illegal aliens. As the Domestic Council Committee on Illegal Aliens observed, "the apprehension rate is biased by the emphasis of the INS enforcement activity," [9] specifically on the Southwest border. Thus, Charles Gordon, former General Counsel for INS, told the Senate Judiciary Subcommittee on Immigration and Naturalization at recent hearings:

> In other words, I do not believe the fact that 700,000 illegals from Mexico have been apprehended is a reliable index of the number of illegals actually in the United States. The published estimates are just guesses without any factual basis.[10]

In recognition of the absence of adequate data, INS is currently sponsoring a comprehensive study of the illegal alien problem, funded at $1 million and expected to be completed in about a year.[11] The study will include a residential survey to be conducted in the twelve most populous states, described by the Domestic Council Committee as "the first attempt to collect data on the number, characteristics, and impacts of illegal immigrants on a national scale." [12]

The first part of this projected seven part study is the "Fraudulent Entrants Study," released September 1976. Between September 1975

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[5] Ray Marshall, "Employment Implications of the International Migration of Workers," Illegal Aliens: An Assessment of the Issues, National Council on Employment Policy, October 1976, pp. 52–53. (Henceforth cited as Marshall (1976).)

[6] Domestic Council Committee on Illegal Aliens report (December 1976), p. 221.

[7] Ibid., p. 236.

[8] H. Rept. No. 94-506 (1975), p. 5.

[9] Domestic Council Committee on Illegal Aliens report (December 1976), p. 133.

[10] U.S. Congress. Senate. Committee on the Judiciary. Immigration 1976, Hearings, 94th Congress, 2d session on S. 3074. Washington, U.S. Government Printing Office, 1976, p. 219. (Henceforth cited as Senate Judiciary hearings, 1976.)

[11] Domestic Council Committee on Illegal Aliens report (December 1976), p. 229.

[12] Ibid., p. 131. Preliminary estimates of 5,222,000 Mexican illegal aliens and a total illegal alien population of 8,180,000 were arrived at by Lesko Associates in a report prepared under contract to INS ("Final Report: Basic Data and Guidance Required to Implement a Major Illegal Alien Study during fiscal year 1976," Oct. 15, 1976). However, the methodology used in the Lesko study came under heavy criticism by, among others, the U.S. Bureau of the Census (Congressional Record, Feb. 26, 1976, pp. E884–5) and the Congressional Research Service (Memo to Honorable Herman Badillo, Jan. 23, 1976). See also North/Houstoun study, pp. 153-154.

and February 1976, two teams of four INS inspectors, relieved of the customary time limits on individual inspections, throughly inspected random samples of entering aliens at the selected land ports and airports, The purpose of the study was "to provide a statistically valid estimate of the flow of illegal aliens through the international airports and Southern land border ports of entry"; the particular group of illegal aliens under study were "those attempting entry with counterfeit or altered documents, as impostors, by false verbal or documented claims to U.S. citizenship, or with valid documents, the terms of which the bearer had in the past or clearly intends to violate after entry, usually to work."[13]

The number of such malafide applicants denied admission because of more thorough inspections was "twelve to fourteen times those experienced during the routine operations of these ports."[14] Based on the results of the two teams, it was concluded that,

> * * * In excess of 500,000 malafide entries were projected to have successfully entered through the studied ports during fiscal year 1975, roughly 450,000 at the land ports and 50,000 at the international airports. This projection reflects *entries* rather than necessarily individual *entrants*, and is therefore not an estimate of a population.[15]

COUNTRIES OF ORIGIN AND STATUS AT ENTRY

A. INS apprehension data

Of the 766,600 illegal aliens apprehended in fiscal year 1975, approximately 89 percent (680,392) were Mexican nationals, the majority of whom entered the country without inspection. The number of Mexican nationals apprehended in fiscal year 1975 represents a 4 percent decrease compared to fiscal year 1974 which, in turn, accounts for the overall decrease in apprehension statistics. However, while apprehensions of aliens from other countries—"virtually every country of the world," according to the INS annual report[16]—have increased 10 percent, apprehended illegal entries continue to be predominantly Mexican. Mexicans as a percentage of the total illegals apprehended over the ten year period 1966–1975 are shown in Table 2.

TABLE 2.—DEPORTABLE ALIENS LOCATED, FISCAL YEARS 1966–75

	Total	Mexican	Mexican as percent of total
1966	138,520	89,751	65
1967	161,608	108,327	67
1968	212,057	151,705	72
1969	283,557	201,636	71
1970	345,353	277,377	80
1971	420,126	348,178	83
1972	505,949	430,213	85
1973	655,968	576,823	88
1974	788,145	709,959	90
1975	766,600	680,392	89

Source: U.S. Immigration and Naturalization Service, Annual Reports, fiscal years 1966–75.

[13] U.S. Department of Justice, Immigration and Naturalization Service, Illegal Alien Study, Part 1. Fraudulent Entrants Study, September 1976, p. vii. (Henceforth cited as INS Fraudulent Entrants Study (September 1976).)
[14] Ibid., p. 18.
[15] Ibid., p. viii.
[16] 1975 INS annual report, p. 13.

TABLE 3.—DEPORTABLE ALIENS LOCATED BY STATUS AT ENTRY AND NATIONALITY YEAR ENDED JUNE 30, 1975

Nationality	Number located	Status at entry										
		Agricultural worker	Visitor	Student	D–1 [1] crewmen		D–2 [1] crewmen		Immigrant	Stowaway	Entry without inspection	Other
					Nonwillful violator	Willful violator	Nonwillful violator	Willful violator				
All countries	766,600	814	55,294	8,869	10,692	4,144	168	123	3,502	385	667,689	14,920
Europe	17,766	62	8,239	758	4,448	2,225	66	48	150	35	367	1,368
Greece	5,300	7	846	113	2,155	1,659	32	30	21	9	90	338
Italy	1,941	2	1,042	43	475	87	6	5	16	6	55	204
Scandinavia [2]	787		194	33	459	22	7	3	3	1	1	64
Spain	982	41	323	25	267	185	7	4		1	15	114
United Kingdom	2,664	6	1,366	197	598	87	9	1	36	2	74	288
Yugoslavia	653	1	477	20	61	51		1	3	1	7	31
Other Europe	5,439	5	3,991	327	433	134	5	4	71	15	125	329
Asia	17,287	21	5,264	4,211	3,640	1,311	39	28	209	9	112	2,443
China	4,263	2	859	630	1,252	927	25	16	24	5	52	471
Philippines	3,164	8	1,314	207	539	117	3	3	102		13	858
Other Asia	9,860	11	3,091	3,374	1,849	267	11	9	83	4	47	1,114
North America	700,183	228	26,509	895	561	140	20	15	2,781	128	659,558	9,348
Canada	9,048	7		107	39	4			68		3,960	788
Mexico	680,392	18	16,124	294	65	9	4		2,591	4	654,836	6,447
Cuba	416		246	12		3			26	1	77	51
Dominican Republic	3,233	19	2,352	138	31	50		4	50	78	283	228
British West Indies and Belize	7,094	184	3,712	344	426	74	16	11	46	45	402	1,834
Other Western Hemisphere	26,270	494	13,069	1,483	1,271	338	41	29	336	198	7,604	1,407
Other nationalities	5,094	9	2,213	1,522	772	130	2	3	26	15	48	354

[1] D–1 crewmen have shore leave during the time their vessel or aircraft is in port, not to exceed 29 days; D–2 crewmen have shore leave allowing them to depart on another vessel or aircraft within 29 days.

[2] Denmark, Norway, Sweden, and Iceland.

Source: 1975 INS Annual Report, table 27B, p. 100.

The available information on the country of origin and status at entry of deportable aliens located in 1975 is summarized in Table 3, also reproduced from the INS 1975 annual report. A more precise breakdown of the second largest source, "other Western Hemisphere," is not available from INS. As an indication of the broad range of countries from which illegal aliens come, Commissioner Chapman told the Senate Judiciary Subcommittee on Immigration and Naturalization that in December 1975 in Dallas, Texas, the INS "apprehended illegal aliens working from 59 countries of the world, . . . that is just about half the countries in the world who were represented in Dallas, Tex., illegally working." [17]

Of the deportable aliens apprehended in fiscal year 1975, 87 percent had entered the country surreptitiously, and 99 percent of these entries were across the Mexican border. Of the 13 percent who violated the terms of their admission, more than half were temporary visitors, or tourists, followed by foreign students, immigrants, and alien crewmen.[18]

The predominance in the apprehension statistics of Mexican nationals entering without inspection undoubtedly reflects the extent to which the illegal alien problem continues to be a Mexican border problem. As noted above in the discussion of apprehension statistics, it also reflects the extent to which INS continues to concentrate its forces on the Southwest border. The relation between the deployment of INS forces and the characteristics of the illegal aliens it apprehends is addressed in the following recent statement by INS:

> The Southwest Region, for example, has the greatest concentration of Border Patrol Agents because the enforcement strategy of the Service is to prevent entry, where possible, and to apprehend illegal entrants as quickly as possible after entry. There were 690,000 aliens apprehended in that region in FY 1974, most of whom were stopped at the line or within 72 hours of entry. . . .
>
> The three other regions present an entirely different enforcement problem. In these three, there is no great push of entrants over the land border and illegal aliens tend, in the main, to concentrate in cities where job opportunities are available. The illegal alien population also differs in most respects from the Southwest profile which is preponderantly made up of Mexican males. In the northern and eastern cities, the illegal alien is typically a former temporary visitor who has overstayed his time, or who has violated his visitor status by taking a job. He also assimilates much more easily into the population at large, and is more difficult to detect and more expensive to detain and expel.
>
> The investigative forces are also spread thinly through these regions, as a consequence of the assignment of a limited number of enforcement personnel to tasks that obviously require a greater number.[19]

Regarding the origins of the non-Mexican contingent of apprehended illegal aliens, David North and Marion Houstoun point out, "the number of apprehensions of illegals from the Eastern Hemisphere and from Canada has remained virtually constant, while the number of illegals from other nations in the Western Hemisphere has progressively increased, and more than doubled, between the years 1968 and 1974." [20] This is documented by a statistical table reproduced here as Table 4.

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[17] Senate Judiciary hearings, 1976, p. 29.
[18] 1975 INS annual report, p. 13. See also Domestic Council Committee on Illegal Aliens report, pp. 142–143.
[19] U.S. Congress. House. Committee on the Judiciary. Illegal aliens. Hearings, 94th Congress, 1st session on H.R. 982 and related bills. Serial No. 8. Washington, U.S. Government Printing Office, 1975, p. 111. (Henceforth cited as House Judiciary hearings, 1975.)
[20] North/Houstoun study (March 1976), p. 46.

TABLE 4.—DISTRIBUTION OF REGION OF ORIGIN OF APPREHENDED ILLEGAL ALIENS, FOR SELECTED YEARS, FISCAL YEARS 1968–74

Region of origin	Fiscal year 1968		Fiscal year 1970		Fiscal year 1972		Fiscal year 1974	
	Number of apprehended illegals	Percent of total number	Number of apprehended illegals	Percent of total number	Number of apprehended illegals	Percent of total number	Number of apprehended illegals	Percent of total number
Western Hemisphere:								
Mexico	151,705	71.5	277,377	80.3	430,213	85.0	709,959	90.0
Canada	11,056	5.2	11,323	3.3	11,012	2.2	9,362	1.2
Other Western Hemisphere	16,186	7.6	23,320	6.8	28,119	5.6	34,948	4.5
Total	178,947	84.3	312,020	90.4	469,344	92.8	754,269	95.7
Eastern Hemisphere:								
Europe	15,520	7.3	16,111	4.7	15,462	3.1	15,031	1.9
Asia	15,488	7.3	14,613	4.2	18,733	3.7	14,633	1.9
Other nations	2,102	1.0	2,609	.8	2,370	.5	4,212	.5
Total	33,109	15.6	33,333	9.7	36,605	7.3	33,876	4.3
Total [1]	212,057	99.9	345,353	100.1	505,949	100.1	788,145	100.0

[1] Percentages may not add to 100 due to roundoff.

Sources: INS Annual Report, table 27B, for the years cited. North/Houstoun study (March 1976), table III–1, p. 47.

North and Houstoun also observe that, not surprisingly in view of its manpower allocation, INS statistics "do not substantiate the claim that a phenomenal increase in visa abusers [i.e., nonimmigrants who have failed to comply with the terms of their admission] now reside in the nation." However, it is noted further that the statistics do suggest "the nation of origin distribution of illegals in the United States is widening, to include increasing numbers of illegals from the Caribbean and from Central and South America," and that these countries are responsible for increasing numbers of tourist visa abusers.[21]

B. Mexico and other sending countries: other sources of data

The illegal alien problem appears increasingly to consist of two separate components: Mexicans, predominantly entering without inspection over the Southwest border; and non-Mexicans, predominantly entering with valid documents, who disappear into the job markets of our larger cities. The two groups present different enforcement problems, as indicated in the INS statement quoted above and, as will be discussed below, appear to differ in their characteristics and impact. However, very little information is available on the dimensions and sources of the non-Mexican illegal entries.

In a very limited study of national origins, a breakdown by nationality of the 185 malafide applicants denied entry at U.S. international airports by INS during the course of its study of fraudulent entrants indicates the Dominican Republic as the largest source (27), followed closely by Mexico (25), Haiti (21), and Jamaica (20).[22] Only 17 percent of the total number were from Europe. Quoting from the study,

> The majority carried *valid* nonimmigrant visas but intended to violate the terms of these admissions. A common violation of this kind involved unauthorized employment.[23]

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[21] Ibid., p. 49.
[22] INS Fraudulent Entrants Study (September 1976), p. 30.
[23] Ibid., p. ix.

Commenting on the INS apprehension statistics as a reflection of total population, the Domestic Council Committee on Illegal Aliens observed, "While it is reasonable to assume that Mexican nationals form the largest element within the the illegal alien population, it is probable that they constitute far less than ninety percent." The Committee noted that some researchers suggest that Mexicans make up about 60 percent, "but this appears to be no better than an educated guess." [24]

As a supplement to INS apprehension data, the Foreign Relations task force of the Domestic Council Committee on Illegal Aliens drew up a list of the 15 major illegal alien sending countries, "based on data from the refusal/deportation/visa issuance statistics of the Department of State and the Immigration and Naturalization Service." [25] The listed countries are Mexico, the Dominican Republic, Haiti, Jamaica, Guatemala, Colombia, Peru, Ecuador, the Philippines, Korea, Thailand, Greece, India, Iran and Nigeria (see Table 5). Quoting from the report:

> With few exceptions, the countries from which the majority of legal immigrants today come and which exhibit the greatest documented demand for legal immigration are also the countries from which the majority of illegal entrants come. While our knowledge of the illegal entrant is largely limited to information which can be developed about apprehended illegal aliens, it is safe to conclude that those countries which have a large documented demand for immigration also have a great hidden demand which is producing illegal entry to the U.S.[26]

It will be noted that the Domestic Council Committee's list omits three of the major illegal alien sending countries as measured by the INS apprehension statistics. These are Canada (the second highest country), China,[27] and the United Kingdom (see Table 3). No explanation is given for their omission.

TABLE 5.—MAJOR ILLEGAL ALIEN SOURCE COUNTRIES

Country	Population estimate mid-1976 (millions)	Rate of Population growth (annual, percent)	Number of years to double population	Population projection to 2000 (millions)	Population under 15 yr (percent)	Urban population (percent)	Per capita gross national product
USA (reference)	215.3	0.8	87	262.5	27	74	$6,640
Mexico	62.3	3.5	20	134.4	46	61	1,000
Dominican Republic	4.8	3.0	23	10.8	48	40	590
Haiti	4.6	1.6	43	7.1	41	20	140
Jamaica	2.1	1.9	36	2.8	46	37	1,140
Guatemala	5.7	2.8	25	11.1	44	34	570
Colombia	23.0	3.2	22	44.3	46	64	510
Peru	16.0	2.9	24	30.9	44	60	710
Ecuador	6.9	3.2	22	14.0	47	39	460
Philippines	44.0	3.0	23	86.3	43	32	310
Korea	34.8	2.0	35	52.3	40	41	470
Thailand	43.3	2.5	28	86.0	45	13	300
Greece	9.0	.4	173	9.7	25	53	1,970
India	620.7	2.0	35	1,051.4	40	20	130
Iran	34.1	3.0	23	67.0	47	43	1,060
Nigeria	64.7	2.7	26	135.1	45	16	240

Source: Domestic Council Committee on Illegal Aliens Report (December 1976), p. 46. Population data: Population Reference Bureau, Washington, D.C.

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[24] Domestic Council Committee on Illegal Aliens report (December 1976), p. 133.
[25] Ibid., p. 39.
[26] Ibid.
[27] China is included among the principal sources of immigration in the executive summary (p. vii), although not in the list or chart (reproduced here as Table 5) in the body of the text.

C. International causes of illegal migration

International migration, be it legal or illegal, is the result of a complex combination of economic, demographic, and other factors. Quoting from the Domestic Council Committee, "Illegal migration is a result of international push-pull forces which are stronger than the law and systems currently in place to control it." [28]

Based on extensive hearings during the 92nd Congress, the House Judiciary Committee concluded, "The economic imbalance between the United States and the countries from which illegal aliens come, coupled with the easy availability of employment here, accounts, in large part, for the current illegal alien problem." [29] Quoting further:

> During the course of the hearings in El Paso, Texas, dozens of Mexicans being held in detention camps waiting to be deported were asked whether they would come to the United States if they had a job, and, to a man, they said "no." The only reason they came was because they could find no work in Mexico. Under currently existing conditions, their entry will not be easily controlled unless the incentive to come to this country is removed. The reasons for leaving Mexico are very clearly poverty and unemployment. Since many aliens are driven to the United States by a desire to satisfy basic human needs, as long as there is a great disparity between wealth of the United States and the poverty of Mexico, and as long as employment is available here, the problem of the illegal entrant will continue to exist. . . .
>
> A second and related reason for the increasing number of illegal aliens is the willingness of U.S. employers to hire them, with or without knowledge of their illegal status. The vast majority of aliens enter this country illegally for the purpose of finding employment, and they would not come unless they were fairly certain of finding jobs.[30]

Viewing migration in a global context, Kingsley Davis wrote:

> Four New World countries—Australia, Canada, New Zealand and the U.S.—received a net total of 13.9 million migrants between World War II and 1972. The U.S. alone, still admitting more foreigners than any other nation in the world, received 9.2 million during that period. More surprising is the tide of migrants into industrial Europe; for example, Sweden, for centuries a country of emigration, became a country of immigration after 1930. Other advanced countries in Europe have shown a similar reversal, some more sharply than Sweden.[31]

Questioning the reasons for "the reversed migration into industrial Europe and the continued migration into New World industrial nations," Davis concluded "the driving force is the widening technological and demographic gap between the developed nations and the underdeveloped three-fourths of the world." [32] Davis continues:

> As a consequence of the gap as it is now constituted the advanced countries have on the average more resources per person, more workers in relation to dependents, more capital generated from savings and more investment and trade. They therefore have more jobs, and offer higher wages. Their native populations have become so educated, comfortable and upwardly mobile that in times of labor shortage they refuse to fill low-paying, low-status or disagreeable jobs. Millions of workers in the bulging underdeveloped countries are eager to take those jobs, and employers are anxious to hire them. Hence legally or illegally the migrants come, their transit facilitated by modern means of travel and communication and even by government and international assistance.[33]

The current illegal alien problem is examined by the Domestic Council Committee on Illegal Aliens in the context of international

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[28] Ibid., p. 51.
[29] U.S. Congress. House. Committee on the Judiciary. Illegal Aliens. (Committee print) Washington, U.S. Government Printing Office, 1973. p. 4. (Henceforth cited as Illegal Aliens, House Judiciary Committee print (1973).)
[30] Ibid., p. 5.
[31] Kingsley Davis, "The Migrations of Human Population," The Human Population, A Scientific American Book, 1974, p. 62.
[32] Ibid., pp. 62–63.
[33] Ibid., p. 63.

push-pull factors at some length. They note that the major illegal alien sending countries "exhibit striking similarities in the areas of economic expansion, population growth, and links with the United States". [34] (see Table 5).

A high level of out-migration is seen as an almost inevitable result of this particular combination of characteristics:

> These characteristics operate in concert to produce migration which functions as a safety valve for the sending country and contributes to postponement of necessary change. Under current conditions in the United States and abroad the potential number of aliens involved is staggering. If pressure to emigrate to the United States is indeed a function of certain patterns of development, we can expect to add other countries to the source list in the future.[35]

Quoting further:

> The economic push due to a lack of jobs and economic opportunity in source countries is met by strong pull forces in the United States. The major attraction for illegal immigration is available work. The illegal entrant risks detection but the risk is not great enough to prevent significant numbers from coming. This combination of international push and pull forces is the basic cause of illegal immigration.[36]

In the context of the above discussion of the forces underlying international migrations, it should be noted that the restriction or elimination of illegal immigration, particularly without a trade-off in increased legal immigration, may have a severe impact on the economies of the major sending countries, especially Mexico. The following conjecture by Ray Marshall is of interest here: "In 1976, . . . the Mexican government apparently cooled to the idea of a renewed bracero program, probably because it would result in fewer Mexican nationals finding work in the United States than is currently possible with the large flows of illegals into the country." [37]

Specifically, severely restricting or cutting off Mexican illegal immigration would cut off a major source of employment and indirect aid, in the form of remittances, for our economically-troubled Southern neighbor. Any assessment of the illegal alien problem must take into account the extent to which it impinges on our own foreign policy interests regarding political stability in this hemisphere.

PERSONAL CHARACTERISTICS OF ILLEGAL ALIENS

The economic impact of illegal aliens in the United States—the subject of the following section—depends both on their total numbers and on such personal characteristics as their age, education, and number of dependents here and abroad. As David North and Marion Houstoun note, "Fortunately, studies on the characteristics of illegals have been more extensive than those dealing with numbers." [38]

Recent studies of the existing characteristics of illegal aliens are reviewed and summarized in a paper by North and Houstoun. They note that a series of independent and internally consistent studies

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[34] Domestic Council Committee on Illegal Aliens report (December 1976), p. 62.
[35] Ibid., pp. 62–63.
[36] Ibid., p. 62.
[37] Marshall (1976), p. 54.
[38] David North and Marion Houstoun, "A Summary of Recent Data on and Some of the Public Policy Implications of Illegal Immigration," Illegal Aliens: An Assessment of the Issues, National Council on Employment Policy, October 1976, p. 38. (Henceforth cited as North/Houstoun "Summary" (October 1976), as opposed to the report prepared by North and Houstoun for the Labor Department, which is cited as North/Houstoun study (March 1976).)

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are creating a body of reliable information on the characteristics of illegal aliens. However, "more is known about the motivation, characteristics and activities of illegals than is known about their numbers and distribution." [39] This knowledge is limited almost entirely to illegal aliens from Mexico. "Little is known about the non-Mexican illegal aliens, though they are an interesting and apparently distinct group." [40]

David North and Marion Houstoun are also the authors of a major study of illegal aliens, the Labor Department-financed report of March 1976 entitled, "The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study." This study was based largely on interviews with 793 apprehended illegal aliens who had been employed for at least two weeks in the United States prior to their apprehension. This discussion and the following section on the economic impact of illegal aliens make considerable use of the Labor Department-financed study, referred to throughout this paper as the North/Houstoun study.[41]

In addition to their own study prepared for the Labor Department, the sources of information considered by North and Houstoun in their summary of recent data available on the characteristics of both Mexican and non-Mexican illegal aliens are the INS Fraudulent Entrants Study as well as unpublished INS wage data.[42] Other sources of data, limited to illegal Mexican aliens, considered by North and Houstoun include Julian Samora's Los Mojados: the Wetback Story;[43] published results of a survey by the Mexican Government in 1972 of 2,794 returning illegals;[44] and a study by Wayne Cornelius of migration to the United States from a sample of Mexican villages.[45]

Internally consistent data from these independent studies suggest that Mexican illegal aliens are:

1. young adults, predominantly but not exclusively male;
2. badly educated;
3. primarily but by no means entirely farmworkers from rural areas in Mexico;
4. economically motivated;
5. employed at or near the bottom of the U.S. labor market, i.e, generally low-pay, low-status, and low-skilled workers; and
6. likely to send a significant proportion of their U.S. earned income to dependents in their homeland.[46]

The average age recorded for the different study groups was 27–28. Men were heavily predominant in all but the fraudulent entry study, which showed more than half of the 716 fraudulent entrants at the

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[39] Ibid., p. 37.
[40] Ibid., p. 39.
[41] The Labor Department study was prepared for the Employment and Training Administration, U.S. Department of Justice, under research and development contract No. 20–11–74–21, with Linton & Co., Inc., Washington, D.C., a private consulting firm. This study is separate and distinct from the paper by North and Houstoun summarizing existing sources of data on the characteristics of illegal aliens, under general discussion above, and cited as North/Houstoun "Summary." This paper was included in the background papers published by the National Council on Employment Policy in their October 1976 publication, Illegal Aliens: An Assessment of the Issues, subtitled "A Policy Statement and Conference Report with Background Papers."
[42] For a discussion of the wage data collected by INS, see North/Houstoun study (March 1976), pp. 118–124.
[43] Notre Dame, University of Notre Dame, 1971.
[44] Resultados de la Encuesta Realizada por la Comision Intersecretarial para el Estudio del Problema de la Emigracion Subrepticia de Trabajadores Mexicanos a Estados Unidos de America.
[45] Wayne A. Cornelius, "Mexican Migration to the United States: The View from Rural Sending Communities" (April 1976).
[46] North/Houstoun "Summary" (October 1976), p. 39.

Mexican border to be women.[47] The great majority of the illegal Mexican aliens in all study groups had less than six years of schooling.[48]

In their study for the Labor Department, North and Houstoun observe that the illegal workers in their sample, and in particular those from Mexico, "were more like immigrants who entered the nation and its workforce in 1910 than they were like U.S. workers or immigrants today." [49] Few of the apprehended illegals would have been eligible for legal entry as immigrants on the basis of their occupational qualifications; the occupations of three-quarters of the sample would have resulted in automatic denials of labor certification under the administrative interpretation of that provision by the Labor Department.[50]

Another significant finding of the Labor Department-financed study was that the Mexicans in the sample were "consistently very different from the respondents from elsewhere in the world." This difference was found to be particularly pronounced in the case of those Mexicans living in the Southwest, paticularly in the counties bordering Mexico.[51]

The study group examined by North and Houstoun included 793 aliens from 53 countries, divided into three categories: Mexican (481), other nations in the Western Hemisphere (WH, 237), and Eastern Hemisphere (EH, 75). While similar in age to the Mexican group, the WH and EH aliens differed sharply from the Mexicans in terms of their educational attainment and ability to speak English. In contrast to the average of 4.9 years of school for Mexicans, WH aliens had an average of 8.7 years, and EH aliens had an average of 11.9 years, close to the U.S. labor market norm. Of the Mexican group, 76.4 percent did not speak English, compared to 53.2 percent of the WH group and 16.2 percent of the EH group.[52]

The non-Mexican sample had more dependents in this country and fewer back home than the Mexicans. They had also been here slightly longer than the Mexicans, but reported only one-eighth as many previous INS apprehensions, indicating that they were more successful than the Mexican group in assimilating into the U.S. population. This is clearly also due to INS's concentration of its law enforcement efforts on the Southwest border.

II. Impact of Illegal Aliens

This section is concerned with the effects, predominantly economic, of illegal aliens on: (1) the U.S. labor market, (2) public service and benefit programs and (3) money sent outside the United States. While there are many questions about the specific effects of illegal aliens in these three areas, there is no question that the overall economic impact of their presence here is significant, with deep-rooted causes and consequences. This is particularly true of their labor market impact, which is clearly considerable; and with regard to the money they send home to Mexico which, while adversely affecting

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[47] According to the Domestic Council Committee on Illegal Aliens, any studies based on illegal aliens apprehended by INS will necessarily be biased by INS's reluctance to apprehend women. "INS maintains no overnight detention facilities for women and consequently concentrates its efforts on the apprehension of males (except for individuals apprehended or turned back in the border zone)" (p. 137).

[48] North/Houstoun "Summary" (October 1976), pp. 39–40.

[49] North/Houstoun study (March 1976), p. 109.

[50] Ibid., p. 111.

[51] Ibid., p. 95.

[52] Ibid., p. 96.

our balance of payments, also constitutes a kind of underground foreign aid program.

IMPACT ON THE U.S. LABOR MARKET

The great majority of illegal aliens either enter the United States surreptitiously in search of jobs or violate the terms of their entry visas by accepting unauthorized employment. The economic motivation of illegal aliens is one of the few aspects about the problem about which there is universal agreement. There is less agreement about the number and nature of the jobs they hold, and their impact on the U.S. labor market.

The available evidence suggests that illegal aliens compete successfully with U.S. workers in the secondary labor market and that they tend to adversely affect the wages and working conditions in occupations where they are present in considerable numbers, most notably in the Southwest. Of considerable interest is the difference in impact between Mexican and non-Mexican illegal aliens. Vernon Briggs has observed, "It is probable that Mexican and non-Mexican [illegal] aliens present two situations that should be separately analyzed because their labor market significance is likely to be quite different." [1] However, as noted in the previous section, analysis of the impact of non-Mexican illegal aliens is particularly difficult because of the limited information available on them.

The most systematic examination to date of illegal aliens in the U.S. labor market is the March 1976 study conducted for the U.S. Labor Department by David North and Marion Houstoun of Linton & Co., Inc. entitled, "The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: an Exploratory Study" (see p. 12 above). The authors do not assert that their study is representative of the impact of illegal aliens on the U.S. labor market as a whole. On the other hand, they attempted to make their study group as representative as possible, and chose their interview sites in an attempt "to compensate for the bias introduced by the allocation of most of INS resources to the Southwest Region." [2]

Based largely on the results of a survey of 793 apprehended illegal aliens, North and Houstoun concluded generally that illegal aliens probably cluster both geographically and in the secondary labor market, and that they "appear to increase the supply of low-wage labor and compete with disadvantaged U.S. workers." [3] Data on the wages and occupations of the North/Houstoun sample, and on their investigation of the question of exploitation is summarized briefly below.

A. North/Houstoun study: wages and occupations

The North/Houstoun sample consisted of 793 apprehended illegal aliens, all of whom had been employed in the United States for at least two weeks prior to their apprehension by INS. As a group, they earned substantially less than their U.S. counterparts. Their average hourly wages in occupations for which comparable data was available was $2.66, compared to $4.47 for the U.S. workers (see Table 6).

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[1] Vernon M. Briggs, Jr., "Illegal Immigration and the American Labor Force: The Use of 'Soft' Data for Analysis," American Behavioral Scientist, vol. 19. January/February 1976, p. 358.
[2] North/Houstoun study (March 1976), p. 123.
[3] Ibid., p. 153.

TABLE 6.—AVERAGE GROSS HOURLY AND WEEKLY WAGE, AND WEEKLY HOURS, OF APPREHENDED ILLEGAL ALIEN RESPONDENTS IN THEIR MOST RECENT U.S. JOB AND OF U.S. PRODUCTION OR NONSUPERVISORY WORKERS (PNW), BY INDUSTRY IN 1975

Industry division	Average hourly wage		Average weekly wage		Average weekly hours		Number of illegals [1]
	Illegals	U.S. PNW	Illegals	U.S. PNW	Illegals	U.S. PNW	
Agriculture, forestry, and fisheries	$2.07	(2)	$110.57	(2)	53.6	(2)	134
Mining	2.00	$5.79	120.00	$244.92	60.0	42.3	1
Contract construction	2.98	7.15	126.39	265.27	42.8	37.1	124
Manufacturing	2.92	4.73	121.22	184.47	41.2	39.0	259
Transportation and public utilities	2.77	5.75	134.00	228.28	48.6	39.7	10
Trade: wholesale and retail	2.57	3.71	112.69	124.66	43.4	33.6	152
Finance, real estate, and insurance	3.32	4.08	117.00	148.10	36.0	36.3	6
Services, except private household	2.79	3.98	121.75	134.13	45.0	33.7	57
Private household services	1.63	(2)	66.30	(2)	42.4	(2)	23
All industries (excluding agriculture and private household)	2.66	4.47	117.03	160.47	44.5	35.9	609

[1] Data for 27 of the 793 respondents who were self-employed or omitted industry, wage, or hours are excluded. For comparative purposes, the total number of illegals excludes 134 respondents in agriculture and 23 in private households
[2] Not available.

Note: Note that average hourly wage times average weekly hours may not equal average weekly wage. In fact, for these data, that product is consistently greater than the average weekly wage, indicating a tendency for respondents with ower wages to work longer hours.

Sources: Column 1, 3, 5, and 7, Linton & Co. Illegal Alien Study; columns 2, 4, and 6, U.S. Department of Labor, Employment and Earnings, vol. 21, No. 12 (June 1975), tables C–1, C–2. North/Houstoun study (March 1976), table V–14, p. 125.

Average hourly wages differed significantly according to both the alien's region of origin and region of U.S. employment. Specifically, Mexican illegals reported the lowest hourly wage at $2.34, followed by $3.05 for other Western Hemisphere (WH) respondents, and $4.08 for Eastern Hemisphere (EH) respondents. The lowest average hourly wages were earned in the Southwest—$1.98 (223 respondents), compared to $2.60 in California (231), $3.18 in the Mid- and Northwest (104), and $3.29 on the East Coast (235). In terms of specific industry classification, the lowest hourly wage was $1.63 in private household services, earned by 23 of the sample.[4]

A direct correlation was found to exist between wage level and education. These factors, in turn, were associated with region of origin—the Eastern Hemisphere, and region of employment—the East Coast.[5] Other correlations of region of origin, region of employment, and wages are summarized in Table 7.

[4] Ibid., p. 125. (See Table 6.)
[5] Ibid., p. 117.

TABLE 7.—DISTRIBUTIONS OF GROSS HOURLY WAGE OF APPREHENDED ILLEGAL ALIEN RESPONDENTS IN THEIR MOST RECENT U.S. JOB, BY REGION OF ORIGIN, ENTRY TECHNIQUE, LOCATION OF U.S. JOB, YEARS IN U.S., AND TYPE OF U.S. EMPLOYMENT

[As percents of group responding]

Hourly wage	Total	Region of origin			Entry technique		Location of U.S. job				Years in U.S.		Type of U.S. employment	
		Eastern Hemisphere	Western Hemisphere excluding Mexico	Mexico	Entered without inspection [1]	Visa abuser	East coast	Mid/ Northwest	Southwest	California	Less than 2	2 or more	Agriculture	Other
$0 to $1.79	14.0	1.4	5.2	20.1	17.7	5.2	3.9	4.9	33.2	9.7	19.2	9.4	33.1	10.0
$1.80 to $1.99	4.2	4.2	3.0	4.8	4.7	3.0	4.3	4.9	4.1	4.0	5.2	3.4	6.6	3.7
$2.00 to $2.09	13.0	5.6	8.3	16.3	15.3	7.4	10.4	6.9	17.3	14.2	17.9	8.7	15.4	12.4
$2.10 to $2.49	20.0	5.6	19.6	22.4	22.8	13.5	16.9	16.7	22.7	22.1	23.6	16.9	19.9	20.1
$2.50 to $2.99	18.9	16.9	22.2	17.6	19.1	18.3	19.0	14.7	16.8	22.6	17.6	20.0	13.2	20.1
$3.00 to $3.99	17.7	32.4	25.2	11.9	13.3	28.3	24.2	31.4	4.1	18.1	10.7	23.9	6.6	20.1
$4.00 to $4.99	8.9	12.7	8.7	5.2	4.7	12.2	9.5	13.7	1.4	6.6	3.0	10.4	2.2	7.9
$5.00 plus	5.3	21.1	7.8	1.7	2.4	12.2	11.7	6.9	.5	2.7	2.7	7.5	2.9	5.8
Subtotal [2]	100.0	99.9	100.0	100.0	100.0	100.1	99.9	100.1	100.1	100.0	99.9	100.2	99.9	100.1
Number of respondents	779	71	230	478	549	230	231	102	220	226	364	415	136	643
Don't know/refuse to answer	1.8	5.3	3.0	0.6	1.1	3.4	1.7	1.9	1.3	2.2	1.6	1.9	0	2.1
Total number of respondents	793	75	237	481	555	238	235	104	223	231	370	423	136	657
Average hourly wage	$2.71	$4.08	$3.05	$2.34	$2.42	$3.40	$3.29	$3.18	$1.98	$2.60	$2.40	$2.97	$2.11	$2.83
Standard deviation	$1.54	$3.05	$1.54	$.93	$1.03	$2.19	$2.19	$1.42	$.72	$.95	$1.60	$1.44	$1.07	$1.59

[1] INS term for aliens who enter the U.S. without authorization.
[2] Percentages may not add to 100 due to roundoff.

Sources: Linton & Co. Illegal Alien Study, 1975. North/Houstoun study (March 1976) table V-8, p.116.

Regardless of region of origin or previous employment experience, most of the illegal aliens interviewed "were employed in the secondary sector of the U.S. labor market; i.e, most were employed in low-wage, low-skill, low-status jobs." [6] Fewer than one-quarter were employed in skilled jobs, and the majority of these (16 percent) were craft workers. More than three-quarters of the study group were in unskilled and semiskilled jobs, regardless of their educational and occupational attainments in their native countries. A significant number worked longer hours and were paid lower average hourly wages than U.S. workers similarly employed.[7] The possibility that unapprehended illegals may be significantly more successful was considered, but it was noted that "the apprehended illegal respondents who had been in the nation two or more years did not earn substantially higher wages than those who had been here less than two years, and the few unapprehended respondents reported earnings similar to those reported by apprehended respondents." [8]

B. North/Houstoun study: evidence of exploitation

It is commonly assumed that illegal aliens are attractive to some employers, and have a competitive advantage over U.S. workers, because of their vulnerability to exploitation. The question of actual exploitation of illegals was explored by North and Houstoun from several perspectives, and is of particular interest in view of the fact that their sample was generally low-paid, As indices of possible exploitation, they examined (a) minimum wage violations; (b) respondents' perceptions of substandard working conditions; (c) reports of the presence of other illegals; and (d) cash wage payments. Based on a fairly detailed analysis, summarized below, they found exploitation of illegals to be common only in the Southwest.[9]

Regarding minimum wage violations, it was concluded that less than one-quarter of those to whom the question applied appeared to have been paid less than the minimum wage. Respondents employed as domestics or farmworkers were more likely to have been paid illegal wages. Respondents employed in the Southwest, particularly in the 23 counties bordering Mexico, were significantly more likely to receive less than the minimum wage than those employed in other parts of the United States.[10]

Regarding the other indicators of possible exploitation examined, only 18 percent of the study group reported that they had been hired because they were illegal; this was two to three times more frequent in the Southwest. Of the total, only 3.5 percent reported that they had been "badly treated." [11] However, North and Houstoun note that "more exploitation may have occurred than our respondents reported—and perhaps more occurred than they ever perceived." [12]

Mexicans were three times more likely to have worked with other illegals than were EH or WH aliens. Those who had been employed on the East Coast were half as likely to have had illegal coworkers as those employed in other parts of the country.[13]

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[6] Ibid., p. 152.
[7] Ibid., p. 152–153.
[8] Ibid., p. 123.
[9] Ibid., p. 127–137.
[10] Ibid., p. S–12.
[11] Ibid., pp. S–12 through S–13.
[12] Ibid., p. 134.
[13] Ibid., p. S–13.

Cash wage payments are another possible indication of exploitation because of the opportunity provided for concealment of wage and other violations. More than one-fifth of the sample were usually paid in cash. Cash payments were most common in the counties bordering Mexico (63 percent), followed by the Southwest (36 percent), and the East (21 percent).[14]

In short, the North/Houstoun study found some correlation between employment of illegal aliens and exploitative wages and working conditions in the Southwest, particularly the counties bordering Mexico, and in certain occupations—domestic service and agriculture, but did not find substantial evidence of exploitation among most of the study group. Quoting the authors: "Thus, if we define an underground labor market as one in which illegal workers and illegal wages coincide, the findings of this study suggest that it is more likely to exist in the counties that border Mexico, in the Southwest itself, and in nonagricultural as well as agricultural employment." [15]

A higher degree of exploitation appears to be indicated by a Mexican government study in 1972. As reported by the Domestic Council Committee on Illegal Aliens, 67 percent of those interviewed by the Mexican officials said they were not paid regularly and/or were owed wages when apprehended. However, 80 percent said they were willing to go back to the United States.[16]

C. Competition in the secondary labor market

Other studies have generally corroborated North and Houstoun's findings regarding the low wages and occupational status of illegal aliens in this country.[17] For example, wage data collected by INS on 48,000 illegals apprehended during January through March, 1975 indicated that two-thirds of them were earning under $2.50 an hour, and less than 5 percent earned $4.50 or more.[18]

The principal labor market impact of the illegal aliens appears to be on the lower-paid, lower status jobs—the so-called secondary labor market, which can least afford such competition. Illegal aliens appear to be in direct competition with the young, the blacks, and members of other minority groups who are currently experiencing the highest unemployment rates.

The political implications of this situation have been commented on as follows:

> The native poor—those in marginal menial services and unskilled occupations—must, in contrast, compete directly with illegal labor. Since wetbacks are willing to work more hours for lower pay and no fringe benefits, the native worker finds himself at a disadvantage and is often completely displaced from his job. Only the poor pay the costs of illegal immigration; the sectors most seriously affected by the wetback flow are precisely the ones least able to wield effective political power in defense of their interests.[19]

A related point was made by Ray Marshall in a general discussion of the international movement of workers:

> . . . Those native workers threatened by competition from foreigners are not likely initially to have much political and economic power. Skilled and more highly educated workers are likely to feel that they benefit from the employment

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[14] Ibid.
[15] Ibid., p. 137.
[16] Domestic Council Committee on Illegal Aliens report (December 1976) p. 149.
[17] North/Houstoun "Summary" (October 1976), pp. 40–41.
[18] North/Houstoun study (March 1976), pp. 118–119.
[19] Alejandro Portes, "Return of the Wetback," Society, March/April 1974, p. 45. (Henceforth cited as Portes (1974).)

of foreign workers because the lower wages paid these workers (relative to wages natives of comparable productivity could have required for the same jobs) promotes faster economic growth and occupational upgrading of native workers.[20]

It is generally agreed that illegal aliens are able to compete very successfully in the secondary labor market:

On the one hand, current immigration legislation, which makes it illegal for most nonimmigrant aliens to work in the U.S. but specifically exempts employers from any violation of those laws, makes illegals attractive to employers of cheap labor. On the other hand, apart from any consideration of their illegal status, illegal workers appear to be like immigrant workers: highly motivated and hard-working employees, whom U.S. employers generally regard as exceptionally productive workers, despite the fact that few speak English.[21]

Furthermore, because they are prohibited by either Federal law or regulation from participation in most public assistance programs, illegal aliens do not generally have the option available to U.S. citizens and permanent resident aliens of not working, rather than accepting low-paid, low status employment.

In short, the available evidence indicates that illegal aliens take jobs in the lower-wage, secondary labor market. While the numbers involved are unknown, they would appear to be significant. Illegal aliens do not appear to be displacing U.S. workers from high-paying jobs in large numbers, although such displacements certainly are occurring in some instances, and may be increasing in frequency. Significantly, North and Houstoun's study bears out the belief that illegal aliens are increasingly moving out of agriculture—one of the lowest-paying occupations—and away from the Mexican border, the Southwest, and California. This was a conclusion of the House Judiciary Committee, on the basis of its extensive hearings during the 92nd Congress on the illegal alien problem:

The illegal alien problem is not limited to the Southwest border as had originally been anticipated, but extends to most of our major metropolitan areas. Related to this is the finding that the problem is no longer limited primarily to agriculture; considerable numbers of illegal aliens are now found in industry.[22]

Five years ago, Representative Peter W. Rodino, Jr. observed during the course of a hearing held in New York City:

When we first commenced these hearings it seemed that the problem was focused on the Mexicans and the illegal alien was the Mexican.

It was the judgment of this member, as the chairman of this committee, that as we went on it wasn't just the Mexican; that illegal aliens come from every area. We must remember that the visitor who overstays is also an illegal alien.[23]

The illegal alien of the East Coast and, to a lesser extent, many other metropolitan areas, appears to be predominantly the non-Mexican visa violator, generally better educated and more likely to have family ties than the Mexican who crosses the border illegally. Non-Mexican illegals apparently are present, and certainly are apprehended, in fewer numbers than the Mexican illegals; they also appear more likely to be holding higher paid, more attractive jobs. The limited information available specifically on non-Mexican illegal aliens indicates that they are somewhat more successful than Mexican

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[20] Marshall (1976), p. 58.
[21] North/Houstoun study (March 1976), p. 123.
[22] Illegal Aliens, House Judiciary Committee print (1973), p. 7.
[23] Ibid., p. 7.

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illegals in terms of wages and job status, and considerably more successful in avoiding apprehension by the INS.[24]

D. Depression of wages and working conditions

A second impact of illegal aliens appears to be the depression of the wages and working conditions in areas and/or occupations where they are present in large numbers. Thus, the House Judiciary Committee quotes Andrew J. Biemiller, testifying on behalf of the AFL–CIO, as follows:

> The net effect of the illegal's presence in the job market has been to depress and maintain low wage levels and substandard living conditions for American citizens, permanent residents, and illegal aliens alike, in areas where they are employed in large numbers. . . . Obviously too, the effectiveness of the rights of union organization and collective bargaining are seriously undermined.[25]

It has been argued that their adverse impact on limited labor markets is in fact the single most serious consequence of the illegal aliens' presence in this country. The Executive Secretary-Treasurer of the Los Angeles County Federation of Labor, AFL–CIO, testified before a House Judiciary Subcommittee that while the illegal alien's adverse effect on unemployment was very serious—

> . . . his real effect, the real impact, is on the lowering of wage standards. He works for less, he is in hiding, he doesn't complain. He doesn't demand what other workers get, because he is afraid that if he does, he will be deported. So he is here as a fearful person in hiding, and as such, most easily victimized.[26]

North and Houstoun suggest "that the most significant impact of the illegals is on the local labor standards in the areas where they congregate." [27]

The generally depressed economy of the Texas border area is cited as an example of the result of years of dependence on a low-wage, freely available labor force which includes, along with alien commuters, illegal aliens. Thus, South Texas has an unemployment rate which is consistently much higher than that of the State or the nation, the two poorest SMSAs in the nation, the poorest counties in Texas, and a very low level of union membership.[28]

Similarly, the long-time association of illegal aliens with agricultural employment is commonly believed to have contributed to its many ills. Quoting from a lengthy review of this subject in the New York University Law Review:

> There is substantial evidence . . . that the most serious difficulties of domestic farmworkers, especially those in the West and Southwest, are inextricably intertwined with the presence in the United States of large numbers of alien farmworkers willing to work for low wages under poor working conditions.[29]

Mexican Braceros have been both accompanied and followed in farm work by alien commuters and, in far larger numbers, illegal aliens. It is arguable that the ready supply of low-wage labor they have provided is a significant factor in farm workers' partial or complete

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[24] For an excellent anecdotal discussion, see Orde Coombs, "Illegal immigrants in New York: the invisible subculture," New York, v. 9, Mar. 15, 1976, pp. 31–41.
[25] H. Rept. No. 94–506 (1975), p. 8.
[26] Illegal Aliens, House Judiciary Committee Print (1973), p. 12.
[27] North/Houstoun study (March 1976), p. 159.
[28] Vernon M. Briggs, Jr., "Illegal Immigration and the American Labor Force: the Use of 'Soft' Data for Analysis," American Behavioral Scientist, Vol. 19, January/February 1976, p. 360.
[29] Notes, "Commuters, illegals, and American farmworkers: the need for a broader approach to domestic farm labor problems," New York University Law Review, v. 48, June, 1973, pp. 486–7.

exclusion from labor laws relating to minimum wages, collective bargaining, unemployment insurance, and workmen's compensation.[30]

On the other hand, from the point of view of the consumer, the downward pressure on wages and working conditions by illegal aliens is also a factor in the continuing comparatively low prices and ready availability of farm produce, as well as other goods and services with which illegal aliens are associated in significant numbers (e.g., domestic help, restaurants). It should be recognized that illegal immigration is not without economic benefits to some groups in the United States, including consumers and employers, at least on a short-term basis. Quoting from the Domestic Council Committee on Illegal Aliens:

> As relative wages for illegal aliens decline in response to an increase in their labor supply, the owners of firms employing illegal aliens and the consumers of the goods produced by illegal aliens tend to gain through higher profits and lower prices, respectively. On the other hand, the relative wages of legal resident workers who are close substitutes in employment for the illegal aliens also decline.[31]

MIT economist Michael J. Piore argues that, in fact, the impact of illegal aliens on those lower-skilled U.S. workers with whom they are in direct competition is not necessarily all bad.

> Instances where native workers share jobs with aliens and appear to suffer from the dampening effect upon working conditions are not uncommon, but in many of these cases higher wages would either drive the industry out of existence or force major changes in technology, either of which would leave the native jobless. In this sense, the presence of aliens serves to preserve native jobs, and the proper way to deal with the problems of the native workers trapped in such jobs would thus seem to be through equal employment opportunity, training and other programs which foster their upward mobility.[32]

In short, without attempting to argue the case for allowing illegal immigration to continue, it must be emphasized that stopping illegal immigration is not a cost-free decision, as was indicated earlier with reference to the potential foreign policy implications of the issue. If it were, it would not have proved to be as difficult to accomplish as it has.

IMPACT ON TAX-SUPPORTED SERVICE AND BENEFIT PROGRAMS

Even less information, and more difference of opinion, exists about the impact of illegal aliens on tax-supported service and benefit programs than about their impact on the labor market. Based on testimony received by the Subcommittee on Immigration, Citizenship, and International Law, the House Judiciary Committee concluded in September 1975:

> While the State of California, particularly the County of Los Angeles, has made diligent efforts to determine the fiscal impact of illegal aliens, the Committee is disturbed by the fact that federal, state, and local governments, in general, have little information on the participation of illegal aliens in public assistance programs. This lack of precise data has made it impossible to accurately estimate the effect of illegal aliens on either a regional or national basis. It is evident, however, that the impact is substantial and increasingly state and local governments are turning to the federal government for reimbursement for services provided to illegal aliens.[33]

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[30] See Ronald Goldfarb, "A Farm Workers' Bill of Rights." Washington Post, Dec. 20, 1976, p. A19.
[31] Domestic Council Committee on Illegal Aliens report (December 1976), pp. 155–156.
[32] Michael J. Piore, "Illegal Immigration in the United States: Some Observations and Policy Suggestions," Illegal Aliens: An Assessment of the Issuses, National Council on Employment Policy, October 1976, p. 28. (Henceforth cited as Piore (1976).)
[33] H. Rept. No. 94–506 (1975), p. 8.

Similarly, the U.S. General Accounting Office concluded in 1973 that illegal aliens were receiving welfare payments under government-funded programs, and that "providing welfare could attract illegal aliens and prolong their stay." However, they also noted, "No estimates of the number of illegal aliens on welfare are available." [34]

More recently, the Domestic Council Committee on Illegal Aliens observed:

> Allegations of heavy illegal alien use of tax-supported income transfer programs are common. An examination of these programs shows that the majority depend on characteristics such as old age, female head of households, or disabled for eligibility. Present information shows that illegal aliens are unlikely to be making heavy use of such programs due to very different personal characteristics. Our tentative conclusion is that the welfare use issue is overdrawn. However, final judgment is dependent on better information delineating the characteristics of the illegal population.[35]

In direct contradiction to the common assumption that illegal aliens constitute a drain on tax-supported services and programs, David North and Marion Houstoun found that the illegal aliens they interviewed were far more likely to have participated in programs that that involved the payment of taxes than they were to have been consumers of such programs or services.[36]

A. Responsibility for emergency medical treatment

The responsibility for the cost of emergency care of illegal aliens has been a matter of particular concern in recent years, highlighted by events in California. The Los Angeles County Board of Supervisors estimated the cost of illegal aliens to its hospitals in fiscal year 1974 at more than $8 million, and sent a bill for most of the cost to INS, on the grounds that INS was responsible for keeping the aliens out of the country. The accuracy of the Board's estimate is open to question; L.A. County Health Services Director Liston A. Witherill was quoted as saying, "Since proof of citizenship is not a routine requirement for medical care, it is not possible to accurately identify the number of illegal aliens receiving medical care." [37]

INS refused to reimburse L.A. County, indicating that while it sympathized with the request, "this service is responsible only for the medical expenses of aliens in actual custody of this service and no others." The letter from Leonard W. Gilman, Southwest regional commissioner of INS at the time, also said that, "one method of relieving this situation would be for health officers, hospitals and public health doctors to identify illegal aliens to this service so that their repatriation can be effected and their cost to county agencies thereby terminated." [38]

INS policy regarding illegal aliens undergoing emergency medical care has been the subject of criticism, and bills aimed at changing the policy have been introduced in the past several Congresses.[39] Briefly, the Public Health Service Act provides that, "at the request of the

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[34] U.S. Comptroller General, "More Needs to be Done to Reduce the Number and Adverse Impact of Illegal Aliens in the United States," July 31, 1973, p. 41.
[35] Domestic Council Committee on Illegal Aliens report (December 1976), p. 214.
[36] North Houstoun study (March 1976), p. 142.
[37] "Refund for Illegal Alien Medical Care Sougth," Los Angeles Times, June 26, 1974, pt. 2, p. 1.
[38] "United States Refuses to Repay County's Alien Health Bill," Los Angeles Times, Aug. 15, 1974, p. 1.
[39] Congressman B. F. Sisk has been the chief sponsor of these bills, which have included H.R. 5307 in the 93d Congress, and H.R. 2159, H.R. 3609, and H.R. 4807 in the 94th Congress.

Immigration and Naturalization Service, any person detained by that Service, may be treated and cared for by the Public Health Service." [40] Apparently, it is the policy of INS to request emergency medical care from Public Health Service hospitals only for illegal aliens in its custody. Reportedly, INS will not assume jurisdiction for illegal aliens not in its custody who are in need of emergency medical treatment until they have received the necessary care.[41] According to some sources, this is because INS lacks the necessary funds to reimburse the PHS hospitals, as also required by law.[42]

B. Findings of North/Houstoun study

Based on interviews with the 793 apprehended illegal aliens in their sample, North and Houstoun concluded that "the respondents were more likely to have participated in tax-paying systems (many of which are automatic) than to have used tax-supported programs." [43] Thus 77 percent of their respondents had Social Security taxes withheld; 73 percent had Federal income taxes withheld; and 44 percent had hospitalization payments withheld. The use of tax-supported health, education, and welfare programs was significantly lower. Except for hospitals and clinics, used by 27 percent of the respondents, no other tax-supported program was used by more than 4 percent of the respondents (see Table 8).

The authors note that their respondents were "typically young male workers, . . . not those of a population likely to receive income transfer payments." [44] As indicated in the preceding section, the available information indicates that the typical illegal alien *is* a young male worker in search of a job, although this information may be biased by INS's concentration on apprehending males.

Further, North and Houstoun emphasize that their analysis was not based on a random sample, but on

> . . . A group of illegals selected among those caught by INS, and selected precisely because they had been workers in the United States. It cannot therefore be regarded as a reliable indicator of the activities of all illegals in the nation.[45]

TABLE 8

Extent of participation of apprehended illegal alien respondents in tax-paying and tax-supported programs

Program activity	*Percentage of respondents participation*
Input:	
Social Security taxes withheld	77.3
Federal income taxes withheld	73.2
Hospitalization payments withheld	44.0
Filed U.S. income tax returns	31.5
Output:	
Used hospitals or clinics	27.4
Collected one or more weeks of unemployment insurance	3.9
Have children in U.S. schools	3.7
Participated in U.S.-funded job training programs	1.4
Secured food stamps	1.3
Secured welfare payments	0.5

Source: North/Houstoun study (March 1976), p. S-14.

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[40] Public Health Service Act, as amended, sec. 322(c); 42 U.S.C. 249(c).
[41] Jane Reister Conard, "Health Care for Indigent Illegal Aliens: Whose Responsibility?" University of California, Davis, Law Review, v. 8, 1975, pp. 112-113. See also, Gary Atkins, "Sick and illegal: it's a problem or everyone," Riverside Press-Enterprise, Mar. 10, 1974, p. 4.
[42] Public Health Service Act, as amended, sec. 502; 42 U.S.C. 220.
[43] North/Houstoun study (March 1976), p. S-14.
[44] Ibid., p. 142.
[45] Ibid., p. 149.

Differences between non-Mexican and Mexican illegal aliens are particularly significant here. Commenting elsewhere on the results of their study, North and Houstoun note:

> Ironically, however, it was the non-Mexican illegals, who were the least likely to be apprehended by the INS, who were the more likely to have taken advantage of tax-supported programs. In addition, and not surprisingly, the Mexican respondents were substantially more likely to have families in their home country and to move back and forth much more frequently than the non-Mexican respondents. The non-Mexican illegals, on the other hand (who, unlike the Mexicans, were for the most part visa abusers), were more likely to have families in the United States, were more likely to have children in U.S. schools, supported significantly fewer relatives in their homeland, and sent substantially less money to their country of origin than did the Mexican illegals.[46]

Despite these caveats, the authors concluded that the major impact of illegal aliens in this country was probably on the labor market, rather than on public service and benefit programs. Quoting:

> *The major immediate impact of illegals in the U.S. today is probably on the labor market.* Most respondents came to the United States explicitly to find employment. We suspect that most illegals who establish a residence in the U.S. similarly came to find jobs, and that those who did not are unlikely to remain in the nation without entering the labor force. Further, if the survey respondents are typical of illegals working in the nation, illegals in the U.S. labor force are substantially more likely to pay taxes than to use tax-supported systems and to support relatives in their country of origin than to have a spouse or children here.[47]

This finding is qualified by the observation that the direct and indirect impact of illegals who settle permanently in this country will be "more far-ranging and profound" than that of those here temporarily, and will include more use of public services.[48] Similar points have been made by economists Ray Marshall [49] and Michael Piore,[50] as well as by the Domestic Council Committee on Illegal Aliens, which concluded:

> The major impact of illegal aliens at this time seems to be in the labor market. This impact is likely to extend over time to other areas as the process of settlement proceeds.[51]

C. Federal bars against illegal alien participation in public assistance programs

Under legislation and a series of regulations adopted following the Supreme Court decision on June 14, 1971 in *Graham* v. *Richardson*, 403 U.S. 365, illegal aliens are now barred from participation in major Federal public assistance programs. These are Supplemental Security Income for the Aged, Blind, and Disabled (SSI), Aid to Families with Dependent Children (AFDC), Medicaid, and the Food Stamp Program. All are restricted by Federal law or regulation to U.S. citizens, aliens lawfully admitted for permanent residence, and to other aliens permanently residing in the United States "under color law," including specified categories of refugees (see p. 30).

Similarly, the Social Security Act Amendments of 1972 (Public Law 92–603; 86 Stat. 1329) contained provisions aimed at curtailing the participation of illegal aliens in Federally funded assistance programs (see p. 28). State courts and legislatures have also been active in excluding illegal aliens from public service and benefit

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[46] North/Houstoun "Summary" (October 1976), p. 41.
[47] North/Houstoun study (March 1976), p. 155.
[48] Ibid.
[49] Marshall (1976), pp. 57-58.
[50] Piore (1976), p. 28.
[51] Domestic Council Committee on Illegal Aliens report (December 1976), p. 237.

programs, such as unemployment insurance in California,[52] and the public schools in Texas.[53]

The opportunity for fraudulent participation in public assistance and service programs clearly continues to exist. However, in the opinion of a number of observers, illegal aliens are often reluctant to participate in such programs even if it is not clearly illegal for them to do so. Julian Samora wrote in 1971 that, "The wetback will avoid any situation which requires identification papers and he will avoid relationships with institutions generally." [54] If this line of reasoning is correct—and it is largely undocumented—presumably, illegal aliens would be even less likely to participate in government programs on a fraudulent basis.

D. Displacement effects unknown

Without question illegal aliens do displace some U.S. workers who, in turn, become legal recipients of public assistance. The Cramton report points out that: "While illegal Mexican aliens are generally relectant to seek benefits under Government welfare programs for fear of being discovered and returned to Mexico, it appears likely that they have a significant effect upon the total public assistance burden through displacement of citizens who are forced to resort to welfare." [55] However, virtually no reliable information is available on this phenomenon. Quoting again from North and Houstoun:

> We do not know, and cannot know, the extent to which the illegals we interviewed caused other workers to draw unemployment insurance benefits, or to rely on food stamps or welfare. Given the inadequate data on these indirect impacts, those who have written on the subject have been forced to use a process of building assumptions upon assumptions.[56]

We also lack adequate data about the actual motivation of U.S. workers, who may only appear to be displaced by illegal aliens and who may, in fact, prefer welfare to, for instance, stoop labor. The argument is made by economists as well as employers that many illegal aliens fill jobs that U.S. workers are unwilling and/or unavailable to take. Thus, Michael J. Piore writes:

> Industrial societies seem to generate a series of jobs, at the bottom of the social structure, which their own labor force is reluctant to fill. Such jobs are generally viewed as menial and demeaning; their chief economic characteristic appears to be a lack of job security and career opportunity. They are rejected in favor of higher level employment opportunities whenever the latter become available and, sometimes, even in period of unemployment when there are no alternatives. The rejection of these jobs by native workers leads industrialists to recruit migrants from underdeveloped rural areas. . . .
>
> This line of argument implies that the heavy emphasis in public policy discussions upon the competition between native and foreign workers is misplaced. Foreign workers are coming essentially to fill jobs which native workers have rejected. To the extent that these jobs are critical to the functioning of an industrial society—and, while there are exceptions, the jobs taken as a group do seem to be critical—the aliens are complementary to native workers and to domestic consumption patterns. Any wholesale attempt to end the migration is, therefore, likely to be exceedingly disruptive to the operation of the society and to

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[52] Alonso v. State, Department of Human Resources, 123 Cal. Reptr. 536 (Ct. of App., 2d Dist. July 30, 1975).

[53] Texas recently enacted legislation restricting public education to "all children who are citizens of the United States or legally admitted aliens." See Good Neighbor Commission of Texas, "1975 Texas Migrant Labor Report," p. 54.

[54] Julian Samora, Los Mojados: the Wetback Story. University of Notre Dame press, 1971, p. 97. (Henceforth cited as Samora (1971).)

[55] Cramton report (Jan. 1973), p. 10.

[56] North/Houstoun study (March 1976), p. 140. The authors cite as an example of this process "the 4 December 1975 letter from Richard D. Darman, Principal, ICF Incorporated, to General Leonard Chapman, Commissioner, Immigration and Naturalization Services, which INS released to the press."

the welfare of various interest groups within it, and to meet, for this reason, with widespread resistance. The gap between the *de jure* policy, which is one of virtual exclusion of unskilled migrants, and the *de facto* presence of large numbers of such workers is no doubt a result of this fact.[57]

PAYMENTS SENT TO HOME COUNTRIES BY ILLEGAL ALIENS

The amount of money sent to home countries by illegal aliens has important implications for U.S. foreign policy. Money sent home by aliens to their native countries contributes to the problems associated with an adverse balance of payments. However, it also constitutes an indirect form of foreign aid. By all reports the amounts involved are substantial, particularly as far as Mexico is concerned.

North and Houstoun found that out of an average gross weekly wage of $120, their study group sent home an average of $105 a month.[58] As shown in Table 9, the Mexican group reported both the lowest weekly wages and the highest monthly sums sent home. They also reported the heaviest family responsibilities in their home country. The Mexican group was supporting an average of 5.4 dependents outside the United States. In contrast, the other Western Hemisphere illegals were supporting an average of 3.6 dependents outside the United States, and the Eastern Hemisphere aliens were supporting 1.8 dependents abroad.[59]

North and Houstoun tentatively estimate that $1.5 billion annually may be sent by illegal aliens in the United States to Mexico, assuming that there were one million Mexican workers employed in the United States, and that the average figure of $129 a month reported by the Mexican illegals interviewed reflected the monthly average for all.[60]

This figure, the authors note, is considerably higher than the unpublished estimate by the Department of Commerce's Bureau of Economic Analysis. The Commerce Department's estimate of person-to-person remittances for 1974 was $73.9 million, and included remittances from all individuals in the United States (excluding only legal and illegal commuters), to all individuals in Mexico, including U.S. citizens.[61]

TABLE 9.—PAYMENTS MADE TO HOMELAND RELATIVES AND WAGES OF SELECTED GROUPS OF APPREHENDED ILLEGAL ALIEN RESPONDENTS

Groups of respondents	Average weekly wage	Average monthly payments [1]	Percentage of group making payments	Average monthly payments [2]	Total number of respondents
Region of origin:					
Mexican illegals	$106	$169	89	$129	481
Western Hemisphere illegals (excluding Mexico)	127	116	72	76	237
Eastern Hemisphere illegals	195	104	44	37	75
Entry technique:					
Entered without inspection [3]	108	162	87	124	555
Visa abusers	150	115	63	63	238
Illegals in southwest border counties	74	186	89	129	68
All apprehended respondents	120	151	79	105	793

[1] Average based on only those making such payments.
[2] Average based on all illegals, including those not paying.
[3] INS term for aliens who enter the United States without authorization.

Sources: Linton & Co. Illegal Alien Study, 1975. North/Houstoun study (March 1976), table IV–5, p. 80.

[57] Piore (1976), pp. 25–26.
[58] North/Houstoun study, p. S–6.
[59] Ibid., p. 79.
[60] Ibid., p. 81.
[61] Ibid., p. 79.

III. Existing Legislation and Recent Congressional and Federal Action

EXISTING FEDERAL LEGISLATION

A. Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1101 et seq.)

The basic U.S. law governing immigration is the Immigration and Nationality Act of 1952, as amended.[1] The most significant amendments to this act were those enacted in 1965 [2] and in 1976.[3] Among other things, the 1965 amendments abolished the national origins quota system and placed a numerical ceiling on Western Hemisphere immigration beginning July 1, 1968. The 1976 amendments extended equally to both hemispheres a slightly modified version of the seven-category preference system and a 20,000 per-country annual limit, both of which had previously been in effect only for the Eastern Hemisphere.

The Immigration and Nationality Act defines an alien as "any person not a citizen or national of the United States," and sets forth the conditions under which aliens may enter this country. A basic distinction is made between immigrants and nonimmigrants. Immigrants are those aliens admitted for permanent residence, as opposed to the different classes of nonimmigrants, who are granted temporary admission for specific purposes. As may be expected, far fewer immigrants than nonimmigrants are admitted, and the conditions of their admission are far more stringent. A total of 386,194 immigrants were admitted in fiscal year 1975. During the same year, 7,083,937 nonimmigrants were admitted, of whom more than 5 million were tourists.[4]

While some nonimmigrants are admitted for the express purpose of temporary employment, most nonimmigrants—including all tourists—are prohibited from accepting employment. Immigrants, on the other hand, may and do freely accept and change employment. All nonimmigrants are required to leave the country at the end of their allotted time. Immigrants, in contrast, are admitted permanently and may apply for U.S. citizenship after five years residence.

For the purposes of the provisions of law governing the entry of immigrants, the world is divided into the Western Hemisphere, which comprises the other countries of North and South America as well as the neighboring islands, and the Eastern Hemisphere. Western Hemisphere immigration is subject to a numerical restriction of 120,000 a year, and Eastern Hemisphere immigration to 170,000. Under these separate hemispheric ceilings, immigrant visas are distributed according to a seven-category preference system which gives priority to family members, those with needed skills, and refugees. Each country is limited to 20,000 immigrants a year, not including immediate relatives. The spouses and children of U.S. citizens and the parents of U.S. citizens who are over 21 are classified as immediate relatives, and are exempt from all numerical restrictions.

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[1] McCarran-Walter Act, Act of June 27, 1952, Public Law 414, 82d Congress, 66 Stat. 163.
[2] Immigration and Nationality Act Amendments of 1965, Act of Oct. 3, 1965, Public Law 89-236; 79 Stat. 911.
[3] Immigration and Nationality Act Amendments of 1976, Act of Oct. 20, 1976, Public Law 94-571; 90 Stat. 2703. This act went into effect Jan. 1, 1977.
[4] 1975 INS Annual Report, p. 31, p. 68.

Illegal aliens are aliens who have violated the immigration law. The phrase is a popular expression, rather than a term defined by the Immigration and Nationality Act. It refers to two categories of immigration law violators—those who have entered illegally, by-passing inspection; and the less common group who have entered legally, generally as nonimmigrants, and violated the terms of their admission.

The law includes criminal sanctions for illegal entry. Under section 275 (8 U.S.C. 1325), any alien who enters the United States without examination by INS or through misrepresentation or fraud, is guilty of a misdemeanor punishable by up to six months' imprisonment and/or a $500 fine. A second offense is a felony, punishable by not more than two years' imprisonment and/or a $1,000 fine. Section 276 (8 U.S.C. 1326) provides that an alien who was previously deported and who enters without permission from the Attorney General is guilty of a felony punishable by not more than two years' imprisonment, and/or a fine of $1,000.

Section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324) defines the smuggling, harboring, transporting, or encouraging of illegal entrants as felonies, punishable by a fine not exceeding $2,000 and/or by imprisonment for a term not exceeding five years, for each alien involved. However, the law specifically exempts the employment of illegal entrants from the penalties attached to harboring. Section 274(a)(4) contains the following proviso: "*Provided, however*, That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring." This is popularly referred to as the Southwest or Texas proviso, and was enacted in 1952,[5] prior to the enactment of the Immigration and Nationality Act, in which it was subsequently incorporated.

The Immigration and Nationality Act does not contain criminal sanctions for aliens who accept employment or otherwise violate the conditions of their admission. Such aliens are, however, subject to deportation under section 241(a)(9) of the Act (8 U.S.C. 1251(a)(9)), which provides that an alien shall be deported if he "was admitted as a nonimmigrant and failed to maintain the nonimmigrant status in which he was admitted or to which it was changed pursuant to section 248, or to comply with the conditions of any such status." Under the 1976 amendments, aliens who accept unauthorized employment are also prohibited from adjusting their status from that of nonimmigrant to that of permanent resident alien (immigrant) while remaining in this country. (Sec. 245(c); 8 U.S.C. 1255c).

B. Other Federal laws and regulations with a bearing on illegal aliens

As amended in 1974,[6] the Farm Labor Contractor Registration Act of 1963, as amended (7 U.S.C. 2041 et seq.), includes criminal penalties of up to a $10,000 fine and/or three years imprisonment for certain contractors who knowingly engage the services of illegal aliens. These penalty provisions are applicable to farm labor contractors who have

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[5] Act of Mar. 20, 1952, Public Law 283, 82d Congress, 66 Stat. 26. The debate preceding the enactment of the proviso was a heated one which in many ways prefigured the current debate about legislation which would establish penalties for the employment of illegal aliens.

[6] Act of Dec. 7, 1974, Public Law 93-518, 88 Stat. 1652.

not registered under the Act, or whose registration has been revoked or suspended.

Amendments to the Social Security Act (42 U.S.C. 301 et seq.) enacted in 1972 [7] included a new provision relating to the method of the issuance of social security numbers. The provision is aimed in part at curtailing the use of social security cards for employment purposes by noncitizens who are not legally entitled to work. It is also at least indirectly aimed at reducing the participation by illegal aliens in Federally-financed benefit programs.

The 1972 amendments to the Social Security Act require the Secretary of Health, Education and Welfare to take affirmative measures to assure that a social security number be assigned to a noncitizen at the time of his admission, provided he is entitled to work; or at the time of his subsequent change to a status which permits employment. Social security numbers are also required to be issued to individuals applying for or receiving benefits under Federally financed benefit programs. Further, all applicants for social security numbers are required to establish, among other things, their citizenship or alien status. Criminal penalties of $1,000 and/or imprisonment for up to one year are provided for willful fraud.

The Secretary of Health, Education and Welfare is also required to enter into such agreements as may be necessary in carrying out the requirements for the issuance of social security numbers with, among other officials, the Attorney General. Based on this legislative requirement, the regulations issued by the Social Security Administration currently provide that the Administration will notify the Immigration and Naturalization Service in the event social security records indicate that an alien is illegally employed; that documents submitted by aliens have expired or are otherwise invalid; or that an alien is requested to submit documentary evidence, and does not comply within a reasonable time.[8]

Aliens who have entered the United States illegally, as well as all nonimmigrants, are excluded from coverage under the three major public assistance programs authorized by the Social Security Act, as amended (42 U.S.C. 301 et seq.). These programs are Supplemental Security Income for the Aged, Blind, and Disabled (SSI), Aid to Families with Dependent Children (AFDC), and Medicaid. Illegal entrants and nonimmigrants are also excluded from participation in the Food Stamp Program, authorized by the Food Stamp Act, as amended (7 U.S.C. 2011–2025).

The alien eligibility requirements for the above programs are statutory only in the case of the Supplemental Security Income program, authorized by title XVI of the Social Security Act as amended in 1972.[9] In the case of the other three programs, the requirements for alien eligibility are set forth in the regulations, all of which were adopted after 1972.[10]

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[7] The provision referred to is contained in section 137 of the Social Security Act Amendments of 1972 (Act of Oct. 30, 1972, Public Law 92-603, 86 Stat. 1329), which amended section 205(c)(2) of the Social Security Act (42 U.S.C. 405).

[8] 20 C.F.R. 422.107(d).

[9] Section 1614(a)(1)(B); 42 U.S.C. 1382c(a)(1)(B).

[10] The alien eligibility requirement for AFDC appears in the regulations at 45 CFR 233.50; for Medicaid, it appears at 45 CFR 248.50; and for the Food Stamp Program, it appears at 7 CFR 271.1(e).

The basic requirements for alien eligibility are identical for the four public assistance programs. In each case, eligibility is limited to a U.S. resident who is either a citizen or . . .

an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act).

The citations to the Immigration and Nationality Act refer, respectively, to seventh preference refugees who are initially admitted on a two-year conditional basis; and to parolees admitted at the discretion of the Attorney General.

The Unemployment Compensation Amendments of 1976, enacted by the 94th Congress, amended the Internal Revenue Code of 1954 by the addition of language almost identical to that quoted above, restricting unemployment compensation to permanent resident aliens and other aliens permanently residing in the U.S. under color of law.[11] Additionally, the amendments include provisions designed to insure that unemployment compensation will not be inadvertently denied or delayed because of the ethnic, racial, or linguistic characteristics of those legally eligible for it. These provisions follow:

(B) any data or information required of individuals applying for compensation to determine whether compensation is not payable to them because of their alien status shall be uniformly required from all applicants for compensation, and

(C) in the case of an individual whose application for compensation would otherwise be approved, no determination by the State agency that compensation to such individual is not payable because of his alien status shall be made except upon a preponderance of the evidence.

These provisions go into effect Jan. 1, 1978 or, in the case of states whose legislatures do not meet in a regular session which ends in 1977, on Jan. 1, 1979.

Illegal aliens are also barred from participation in Medicare (Parts A and B),[12] as well as in programs authorized by Titles I and II of the Comprehensive Employment and Training Act (CETA) of 1973.[13]

RECENT CONGRESSIONAL ACTION

A. Penalties for the employment of illegal aliens

In addition to the enacted legislation included in the previous section, other legislation pertaining to the control of illegal aliens has been receiving serious attention by the Congress since 1971. Chief among the legislative approaches to the problem has been the proposed establishment of penalties for the employment of illegal aliens.

Extensive investigative and legislative hearings on the problem of illegal aliens were held during the 92nd Congress, beginning in 1971, by the House Judiciary subcommittee with special jurisdiction over immigration matters, then under the chairmanship of Representative Peter W. Rodino, Jr.[14] Quoting from a recent House Judiciary

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[11] Act of Oct. 20, 1976, Public Law 94-566; 90 Stat. 2680, Sec. 314; amends Internal Revenue Code, Sec. 3304(14), 26 U.S.C. 3304.

[12] Medicare Part A: Sec. 1818(a)(3), Social Security Act; Medicare Part B: Sec. 1836(2), Social Security Act.

[13] Title I: 29 CFR 95.32(d); Title II: 29 CFR 96.27(g).

[14] U.S. Congress. House. Committee on the Judiciary. Hearings, 92d Congress, 1st and 2d session. Serial No. 13, Pts. 1-5. Washington, U.S. Government Printing Office, 1971-72. A summary of the hearings was made available in the form of a Committee print entitled "Illegal Aliens: A Review of Hearing Conducted during the 92d Congress (Serial No. 13, Pts. 1-5) by Subcommittee No. 1," published February, 1973. (Cited as Illegal Aliens, House Judiciary Committee print (1973).)

Committee report, "The basic conclusion reached by the majority of the members of the Subcommittee as a result of the hearings was that the adverse impact of illegal aliens was substantial, and warranted legislation both to protect U.S. labor and the economy, and to assure the orderly entry of immigrants into this country." [15]

These hearings formed the basis for a series of bills prohbiting the knowing employment of illegal aliens, and establishing a graduated three-step series of administrative, civil, and criminal penalties for employers violating this prohibition. The basic raticnale for this approach was explained as follows during the 94th Congress by the House Judiciary Committee:

> The Committee believes that the primary reason for the illegal alien problem is the economic imbalance between the United States and the countries from which aliens come, coupled with the chance of employment in the United States. Consequently, it is apparent that this problem cannot be solved as long as jobs can be obtained by those who enter this country illegally and by those who enter legally as nonimmigrants for the sole purpose of obtaining employment.
>
> The Committee, therefore, is of the opinion that the most reasonable approach to this problem is to make unlawful the "knowing" employment of illegal aliens, thereby removing the economic incentive which draws such aliens to the United States as well as the incentive for employers to exploit this source of labor.[16]

Legislation embodying this approach received the continuous support of the Nixon and Ford Administrations. Bills were passed by the House during the 92nd Congress (H.R. 16188) and the 93rd Congress (H.R. 982). However, they received no Senate action.

A bill identical to the House-passed H.R. 982 of the 93rd Congress was introduced at the beginning of the 94th Congress, and hearings were held by the House Judiciary Subcommittee on Immigration, Citizenship, and International Law, under the chairmanship of Representative Joshua Eilberg.[17] A clean bill, H.R. 8713, was reported to the House on September 24, 1975,[18] but received no further action by the House. H.R. 8713 differed from earlier versions of the House Judiciary illegal alien bill most notably in the inclusion of a provision allowing for the regularization of status ("amnesty") for certain illegal aliens who had been in the country since July 1, 1968, as well as a provision intended to insure against employment discrimination those of foreign appearance who are legally entitled to work.

Bills providing for a graduated series of civil penalties for the employment of illegal aliens, in conjunction with amnesty provisions for certain illegal aliens presently in the country, were introduced by Senator Edward Kennedy, a member of the Senate Judiciary Subcommittee on Immigration and Naturalization, during the 93rd (S. 3827) and 94th (S. 561) Congresses. However, the first time illegal alien legislation received formal consideration by the Senate Judiciary Committee in recent years was during the 94th Congress. On March 4, 1976, Senator James O. Eastland, Chairman of the Senate Judiciary Committee and of its Subcommittee on Immigration and Naturalization, introduced an omnibus immigration reform bill, S. 3074. In addition to provisions which were similar to those enacted into law

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[15] H. Rept. 94-506 (1975), p. 3.
[16] Ibid., p. 6.
[17] House Judiciary hearings, 1975; see note I-19.
[18] H. Rept. 94-506 (1975); see note 2.

as the Immigration and Nationality Act Amendments of 1976 (Public Law 94–571; see p. 27 above), the bill included civil penalties for the knowing employment of illegal aliens as well as an amnesty provision for certain illegal aliens presently in the country. Hearings were held on S. 3074 in March and April, 1976,[19] but it was not reported.

Major provisions of H.R. 8713, as amended, are compared with those provisions of S. 3074 relating to illegal aliens in Appendix A. General arguments for and against employer sanctions and amnesty for illegal aliens presently in the country are discussed in Section V.

B. Operations of the U.S. Immigration and Naturalization Service (INS)

During the 93rd Congress (1973–1974), the Legal and Monetary Affairs Subcommittee of the House Committee on Government Operations held extensive hearings on INS.[20] The purpose of the hearings was to examine the operations of INS as they related to illegal aliens; and, in the final series of hearings, to review allegations of corruption within INS itself, and to monitor the progress of "Operation Clean Sweep," a Justice Department investigation of those allegations then underway.

Quoting from an Interim Report published in December 1974, "The Legal and Monetary Affairs Subcommittee conducted this study to determine whether operational and managerial weaknesses on the part of INS might be responsible for the tremendous growth in illegal alien presence in the United States in recent years." Based on testimony from "witnesses from all levels of INS," they concluded that INS was an agency "whose dimensions had increased dramatically within the past decade, but which was funded at a level that failed to provide the means of accomplishing its task." [21]

This, generally speaking, was the overall conclusion reached by the Committee, at least as reflected in its Interim Report. They found that, "The ever-increasing number of illegal aliens in this country appears to be due in great part to the inability of the Service to control and enforce immigration laws in every section of the country." [22] This, in turn, was found to be due largely to underfunding, and the resulting understaffing, of the agency. The House Government Operations Committee concluded that, "Fiscal policies and budget requests have consistently failed to provide INS with necesasry levels of support to maintain effective levels of enforcement activity," [23] a situation attributed to lack of support by the Department of Justice and the Office of Management and Budget (OMB), dating back over a ten-year period.[24] The Committee linked the need for increased funding and manpower primarily to the increase in the illegal alien problem.[25]

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[19] Senate Judiciary hearings, 1976; see note I–10.
[20] U.S. Congress. House. Committee on Government Operations. Legal and Monetary Affairs Subcommittee. Immigration and Naturalization Regional Office operations. Parts 1–5. Hearings, 93d Congress, 1st and 2d session. Washington, U.S. Government Printing Office, 1973 and 1974. 616 p.
[21] U.S. Congress. House. Committee on Government Operations. Interim report on Immigration and Naturalization Service regional office operations; twentieth report together with separate views. Washington, U.S. Government Printing Office, 1974. 59 p. (93d Cong., 2d session, House. Report No. 93–1623), p. 2.
[22] Ibid., p. 3.
[23] Ibid., p. 5.
[24] Ibid., p. 20.
[25] Ibid., p. 16.

C. INS authorizations and appropriations

The House Committee on the Judiciary has shared the Government Operations Committee's concern with what they have seen to be the inadequate funding of INS, and has also attributed this to lack of support for INS from Justice and OMB as reflected in the annual budget requests. Quoting from the House Judiciary Committee report on H.R. 8713, the illegal alien bill discussed above:

> For several years, the Committee has been deeply concerned by the inadequate funding of INS. The Committee believes that the lack of funds has greatly diminished the capacity of INS to properly and effectively administer the Immigration and Nationality Act.
>
> This problem can be traced directly to the failure of the Department of Justice and OMB to place sufficient priority on the enforcement of our immigration law.

H.R. 8713 contained a provision repealing INS' open-ended authorization and requiring annual authorizations by the Congress. Quoting further:

> As a result of this provision, the Committee and the Congress will be required to approve annual or periodic authorization bills for INS. In particular, the Subcommittee on Immigration, Citizenship and International Law will, by necessity, review the functions, programs, and activities of INS on a line item basis.[27]

While H.R. 8713 was not enacted, the provision under discussion has become law. As the result of another bill enacted by the 94th Congress, the Crime Control Act of 1976,[28] annual authorizations are now required for all Justice Department agencies, including INS, beginning with fiscal year 1979.[29]

The amount appropriated by Congress for INS for fiscal year 1977 was $234 million, $12.4 million more than the amount requested by the President. The Administration's budget request of $221,581,000 had represented a net increase of $7.4 million and a decrease of 111 positions compared to fiscal year 1976.

The unusual step of appropriating an amount for salaries and expenses which is higher than the amount requested originated with the House Appropriations Committee and was explained on the grounds of the Committee's concern about "workload backlogs." The additional funds were to be used primarily for increased manpower.[30]

RECENT EXECUTIVE BRANCH ACTION

Responsibility for administering the Immigration and Nationality Act is shared by the Department of Justice's Immigration and Naturalization Service and the Department of State's Bureau of Security and Consular Affairs, with participation of varying degrees by agencies of the Department of Labor, the Department of Health, Education, and Welfare, and the Treasury Department. The primary responsibility for most enforcement aspects of immigration, and hence for the illegal alien problem, rests with INS.

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[27] Ibid., p. 19.

[28] Act of Oct. 15, 1976, Public Law 94-503; 90 Stat. 2407. See Title II, Sec. 204; 90 Stat. 2427.

[29] For further discussion of this provision, see the House report on the legislation enacted as Public Law 94-503, H. Rept. No. 94-1155, pp. 15-16.

[30] U.S. Congress. House. Committee on Appropriations. Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Bill, fiscal year 1977; report to accompany H.R. 14239. Washington, U.S. Government Printing Office, 1976 (94th Cong., 2d session. House. Report No. 94-1226), p. 18.

A. INS priorities and budget

Since Commissioner Leonard F. Chapman took office on November 29, 1973, the illegal alien problem has been given top priority by INS. In his letter to the Attorney General accompanying the fiscal year 1974 INS Annual Report, Commissioner Chapman described "the continuing surge of illegal aliens into the United States" as "the most serious problem facing the Immigration Service, and one of the Nation's most pressing problems." [31] Commissioner Chapman reiterated this point many times in his frequent speeches and statements on the subject of illegal aliens.

Top priority within INS has been placed on Border Patrol and inspections activities aimed at preventing aliens from entering the country illegally. Quoting from the report of the Domestic Council Committee on Illegal Aliens, "In enforcing the nation's immigration laws, the prevention of illegal entry is of paramount importance to INS and involves almost 40 percent of its personnel." [32] They estimate that in fiscal year 1976, over 1,700 of the Border Patrol's 2,000 officers were located in the Southwest border area. However, this yielded about 200 men a shift, or "one patrolman for every ten miles of the 2,000 mile long border." [33]

Those aliens who escape detection while entering illegally or violate their status after legal entry are the responsibility of the investigative personnel of INS, who concentrate on illegal aliens seeking employment or employed, particularly in higher paying jobs. Other ongoing INS activities relating to the illegal alien problem include the alien documentation program, the purpose of which is to replace all existing INS identification cards with counterfeit-proof ID cards; expansion of detention and deportation facilities, including "interior repatriation" of deported Mexican aliens; and, as mentioned earlier, a comprehensive seven-part study of the illegal alien problem.[34] As a further indication of INS priorities, the appropriations and permanent positions available to INS during fiscal years 1976 and 1977 are summarized by major budget activities in Tables 10 and 11.

The extent of INS's activities is, of course, a function of its budget. In recent years, Congress has generally appropriated an amount very close to that requested for INS by the Administration. However, the Administration's request has generally been significantly lower than the amount originally requested by INS. For example, INS requested a manpower increase for fiscal year 1977 of 2,600 positions;the request submitted to the Congress by the Administration provided for a net decrease of 111 positions.[35]

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[31] 1974 INS Annual Report, p. iii.
[32] Domestic Council Committee on Illegal Aliens report (December 1976), p. 76.
[33] Ibid., p. 84.
[34] For a discussion of INS programs and priorities pursuant to the fiscal year 1977 budget request, see House Appropriations Subcommittee hearings entitled "Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriations for 1977," Part 4, pp. 628–719.
[35] Senate Judiciary hearings, 1976, p. 51. See also House Rept. No. 94–506 (1975), p. 18.

TABLE 10.—INS APPROPRIATIONS BY BUDGET ACTIVITY, FISCAL YEARS 1976-77

[Dollar amounts in thousands]

Budget authority	Fiscal year 1976 [1]	Fiscal year 1977 [2]	Percent change
1. Inspection for admission into the United States	$36,318	$37,936	4
2. Adjudications	15,466	19,666	27
3. Detention and deportation	26,309	37,885	44
4. Naturalization	10,147	10,488	3
5. Border patrol	64,877	64,459	–1
6. Investigating aliens' status	31,580	34,922	11
7. Immigration and naturalization records	17,747	15,909	–10
8. General administration	12,165	12,735	5
Total	214,609	23,000	9

[1] The total fiscal year 1976 appropriation of $214,609,000 includes the original appropriation of $208,000,000 (Public Law 94–121), plus a supplemental appropriation of $6,609,000 (Public Law 94–303). Data on the earmarking by budge activities has been derived from a combination of (1) the INS breakdown by budget activity of $213,609,000 contained in the hearings of the House Appropriations Committee entitled "Departments of State, Justice, and Commerce, the Judiciary and Related Agencies Appropriations for 1977" (pt 4, p. 633), 94th Cong. 2d sess; and (2) CRS computations based on information provided by the INS budget office on the distribution of the additional $1,000,000 obtained as part of a supplemental appropriation.

[2] The breakdown by budget activity of the fiscal year 1977 appropriation of $234,000,000 (Public Law 94–362) was provided by the INS budget office.

TABLE 11.—INS PERMANENT POSITIONS BY BUDGET ACTIVITY, FISCAL YEARS 1976–77

Budget activity	1976 [1]	1977 [2]	Percent change
1. Inspection for admission into the United States	1,491	1,591	7.0
2. Adjudications	685	785	15.0
3. Detention and deportation	827	1,031	25.0
4. Naturalization	473	473	----------
5. Border patrol	2,434	2,439	.2
6. Investigating aliens' status	1,304	1,504	15.0
7. Immigration and naturalization records	1,057	1,057	----------
8. General administration	561	571	2.0
Total	8,832	9,451	7.0

[1] House Appropriations Committee hearings "Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriations for 1977," 94th Cong., 2d sess. ,pt 4, p. 633.

[2] INS budget office.

B. Foreign policy

U.S. concern with illegal aliens in the context of foreign policy considerations is a fairly recent development and, to date, limited almost exclusively to Mexico. Quoting from the report of the Domestic Council Committee on Illegal Aliens:

> With the possible recent exception of Mexico, the control of illegal immigration has not been an item of concern to U.S. policymakers in the governance of our relations with sending countries. The State Department's country policy papers, which outline U.S. policy goals for the major sending countries, do not in any case cite illegal emigration as an issue although several accord priority to establishing effective visa issuing processes.[36]

The issue of illegal aliens was among those discussed Oct. 21, 1974 between President Ford and President Echeverria of Mexico. At that time, President Echeverria indicated that the Mexican Government

[36] Domestic Council Committee on Illegal Aliens report (December 1976), p. 56.

was not interested in a renewal of the Bracero program, allowing for temporary entry of Mexican agricultural workers on a contract basis;[37] the previous program ended in December 1964. The two Presidents agreed to reactivate a joint U.S.-Mexican commission to update existing data and to reanalyze the illegal alien problem from an international point of view.[38] The Interagency Committee on Mexican Migration to the United States, chaired by the Department of State, was established pursuant to this meeting, and subsequently doubled as the Foreign Relations task force of the Domestic Council Committee on Illegal Aliens.

A similar bilateral effort was conducted in the early 1970s. On the U.S. side, the Special Study Group on Illegal Immigrants from Mexico was chaired by Roger C. Cramton, of the U.S. Department of Justice, and included representatives from INS and the Departments of HEW, Agriculture, Labor, and State. Their Final Report, commonly referred to as the Cramton report, was issued January 15, 1973. A companion report was issued by Mexico's Interdepartmental Commission for the Study of the Problem of the Clandestine Emigration of Mexican Workers to the United States of America on December 14, 1972.

Since the meeting between the U.S. and Mexican presidents in 1974, the U.S. group and its Mexican counterpart, the Mexican Commission on Undocumented Workers, have continued discussions of the illegal alien problem. In 1976, a joint plenary session was held in Washington, with follow-up sessions at the border. The work of these groups is described by the Domestic Council Committee on Illegal Aliens as representing "initial steps toward meeting the serious need for cooperative efforts between the governments of both nations." [39]

C. Preliminary report of the Domestic Council Committee on Illegal Aliens

In January 1975, President Gerald Ford established the Domestic Council Committee on Illegal Aliens, chaired by the Attorney General, "to develop, coordinate and present to me policy issues that cut across agency lines to provide better programs for dealing with this National problem." [40] The Preliminary Report of the Cabinet-level Committee was released in early January, 1977.

The Committee concludes that "illegal immigration is significant and growing." [41] Generally speaking, however, its assessment of the volume and impact of illegal immigration is more tentative and qualified than that presented by Administration spokesmen, particularly those from INS, in the recent past. The report repeatedly emphasizes the inadequacy of existing information, observing in the concluding section that, "one clear theme of this report is that a dramatic lack of reliable information makes thorough analysis of illegal immigration impossible at this time." [42]

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[37] U.S. Congress. House. Committee on the Judiciary. Western Hemisphere Immigration. Hearings, 94th Congress, 1st and 2d sessions on H.R. 367, H.R. 981, and H.R. 10323. Serial No. 34. Washington, U.S. Government Printing Office, 1976, p. 240. (Henceforth cited as House Judiciary Western Hemisphere Immigration hearings, 1976).

"President Ford Meets with President Echeverria of Mexico," Department of State Bulletin, vol. LXXI. No. 1847, Nov. 18, 1974.

[38] Ibid., p. 241.

[39] Domestic Council Committee on Illegal Aliens report (December 1976), p. 55.

[40] Weekly Compilation of Presidential Documents, Jan. 13, 1975, p. 26.

[41] Domestic Council Committee on Illegal Aliens report (December 1976), p. 236.

[42] Ibid., p. 235.

The report reviews the illegal alien problem in the context of U.S. immigration law and policy, and considers the underlying "international push-pull" factors. Various domestic aspects of the problem are examined, including law enforcement, interagency cooperation, and existing research ("in its infancy"). The characteristics of illegal aliens are tentatively discussed, as are their domestic impact, with emphasis on employment, use of welfare, and social implications.

The Committee's general conclusions, described as tentative, follow:

1. Illegal immigration is rooted in powerful social and economic forces endemic to both host and sending countries. . . .

2. Illegal immigration is significant and growing. . . .

3. The major impact of illegal aliens at this time seems to be in the labor market. This impact is likely to extend over time to other areas as the process of settlement proceeds. . . .

4. The community-related implications of large numbers of illegal aliens are significant and merit government attention. . . .

5. Effective enforcement of the Immigration and Nationality Act must stress prevention above all other considerations. . . .

6. Effective enforcement is not enough. The illegal alien issue is ultimately an issue of immigration policy and will not be satisfactorily met until a thorough rethinking of our immigration policy is undertaken.[43]

The major recommendations of the Domestic Council Committee are summarized below:

1. "The issue of illegal immigration merits priority attention and requires Cabinet leadership," in order to provide "continued coordination and direction at the highest level." [44]

2. Aggressive pursuit by the executive branch of legislation relating to illegal aliens, including (a) penalties for the knowing employment of illegal aliens; (b) legislation, since enacted as Public Law 94–571, extending the preference system and 20,000 per-country limit to Western Hemisphere countries; (c) revision of the labor certification provision; (d) amnesty for otherwise eligible illegal aliens present in the country since July 1, 1968, through a permanent amendment of the Immigration and Nationality Act (Sec. 249, the "registry" provision); and (e) increased penalties for smugglers and others who facilitate illegal immigration.[45]

3. "An expanded government to government foreign worker program should not be sought at this time." An evaluation by the Committee of the adequacy of the existing provisions relating to temporary alien ("H–2") workers is recommended, as is an evaluation of the bracero program and foreign guest worker programs.[46]

4. INS and the State Department "should receive high priority in the allocation of resources directed at prevention of and screening for illegal entries, management and operational upgrading, and inter-Departmental coordination." [47]

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[43] Ibid., p. 235–239.
[44] Ibid., p. 241.
[45] Ibid., pp. 241–242.
[46] Ibid., p. 242.
[47] Ibid.

5. The Committee recommends against massive deportation as being "both inhumane and impractical." In addition to the amnesty recommendation (#2(d) above), it recommends evaluation and development of other policy approaches toward illegal aliens currently in the country.[48]

6. The Department of State should undertake negotiations with governments of the major illegal alien sending countries on illegal migration and related issues, in addition to those already underway with Mexico. U.S. foreign aid to less developed nations should be encouraged, with more emphasis on counteracting migration here.[49]

7. "The Committee and the cognizant Federal agencies should initiate and support a broad based research program to determine the nature and scope of various immigration related problems." [50]

8. A thorough reexamination of current U.S. immigration policy is recommended.[51]

U.S. Supreme Court decisions

Two major decisions with a direct bearing on the illegal alien issue were handed down by the U.S. Supreme Court during the 1975–1976 term. In *De Canas* v. *Bica*, 424 U.S. 351 (1976), the Court ruled unanimously that California and other states can constitutionally legislate prohibitions against the employment of illegal aliens. With specific reference to the California Labor Code, the Court held that the prohibition of the knowing employment of illegal aliens in order to protect workers within the State is within the police powers of the State, and does not constitute a violation of the Federal government's exclusive power over the regulation of immigration.

In a second case, *United States* v. *Martinez-Fuerte*, 428 U.S. (1976), the Court sustained the power of Border Patrol agents to make warrantless stops of cars at fixed checkpoints even without reason to believe that they contain illegal aliens. However, probable cause or consent is required for vehicle searches. Quoting from the discussion of this case by the Domestic Council Committee on Illegal Aliens:

> Whenever a vehicle is to be searched in any but a "border search" situation, the officer must be prepared to articulate a clear determination of probable cause, or the stated consent of the driver or owner. This is applicable to both checkpoint and roving patrol stops. To comply with the decisions in these cases, the Service revamped some of its Mexican border area highway operations; a case in point was the elimination of stopping cars by roving patrols.[52]

According to the Domestic Council Committee, the effect of this and related decisions affecting operations of the INS "has been to place even greater emphasis on preventing entry in the first place." [53]

IV. Historical Development and Background

DEVELOPMENT OF U.S. IMMIGRATION LAWS

A. General

During its first century, the United States permitted and, in fact encouraged free immigration. The only exception to this general rule

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[48] Ibid., p. 243.
[49] Ibid.
[50] Ibid.
[51] Ibid., p. 244.
[52] Ibid., p. 86.
[53] Ibid., p. 87.

was the Alien Act of 1798,[1] a part of the Alien and Sedition Laws, which authorized the President to expell dangerous aliens. However, this first deportation statute was very controversial and was not extended beyond its initial two-year term.

In 1875, as a result of increasing pressure for Federal controls on immigration after the U.S. Supreme Court had declared State statutes to be unconstitutional, the Congress began enumerating categories of aliens who were prohibited from entering the country. An 1875 statute[2] prohibiting the entry of convicts and prostitutes was followed in 1882 by legislation described as "the first general immigration statute," barring persons likely to become public charges, as well as idiots, lunatics, and convicts.[3] The Chinese Exclusion Act was also enacted in 1882,[4] and remained in effect until 1943. The contract labor laws of 1885 and 1887[5] prohibited the importation under contract of foreign labor.

An 1888 amendment[6] to the contract labor laws permitted the deportation within one year of aliens who entered in violation of the law—in effect, the first illegal alien statute.

Legislation enacted during World War I, the Immigration Act of 1917,[7] codified existing restrictions on immigration and added new ones. Enacted over President Wilson's veto, the 1917 Act included the controversial literacy requirement, prohibiting the entry of aliens over 16 who were unable to read, and established the Asiatic Barred Zone, which further restricted the entry of Orientals.

Until the 1920's, restrictions on immigration had been qualitative, rather than quantitative. That is, there were no restrictions on the number of aliens who could enter, provided they met the criteria set forth in the law. During the 1920s, numerical restrictions were placed on U.S. immigration, in the form of the national origins quota system. The temporary Quota Law of 1921[8] was followed by the permanent Immigration Act of 1924.[9] This Act assigned nontransferable quotas to Eastern Hemisphere countries, based on the number of persons of that national origin recorded as being present in the United States by the 1920 census. Immigration under the quotas was limited to approximately 150,000 a year. Numerical restrictions were not extended to the natives of other countries in the Western Hemisphere (see pp. 41–46 below).

The national origins quota system remained controversial from the time of its inception until its repeal in 1965. Pro and con arguments at the time of its permanent adoption in 1924 were summarized in a 1950 Senate report, in part as follows:

> The 1924 act had been hailed as the most far-reaching change that occurred in America during the course of that quarter century, in that it arrested the tendency toward a change in the fundamental composition of the American stock. It has been denounced as radically biased, statistically incorrect, and a clumsy instrument of selection which bars individuals by discrimination against nations instead of considering personal qualifications of immigrants.[10]

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1 Alien Act of 1798, Act of June 25, 1798, 1 Stat. 570.
2 Act of Mar. 3, 1875, 18 Stat. 477.
3 Act of Aug. 3, 1882, 22 Stat. 214. Charles Gordon and Harry Rosenfield, Immigration Law and Procedure, 1976, vol. 1, p. 1–7. See pp. 1–5 through 1–27 for a general survey of the development of immigration law through 1965.
4 Act of May 6, 1882, 22 Stat. 58.
5 Act of Feb. 26, 1885, 23 Stat. 332; Act of Feb. 23, 1887, 24 Stat. 414.
6 Act of Oct. 19, 1888, 25 Stat. 566.
7 Act of Feb. 5, 1917, 39 Stat. 874.
8 Act of May 19, 1921, 42 Stat. 5.
9 Act of May. 26, 1924, 43 Stat. 153.
10 Senate Rept. No. 1515, 81st Cong., 2d session, 1950, p. 64.

Together with the Immigration Act of 1917, the Immigration Act of 1924 constituted the basic U.S. immigration law until 1952. Legislation passed during the period preceding the major recodification of the law in 1952 included a series of temporary humanitarian measures designed to admit refugees in the aftermath of World War II. The most significant of these was the Displaced Persons Act of 1948, significantly amended in 1950.[11]

In 1952, Congress enacted the Immigration and Nationality Act [12] commonly referred to as the McCarran-Walter Act, after the chairmen of the Senate and House Judiciary immigration subcommittees, Senator Patrick McCarran (D. Nev.) and Rep. Francis Walter (D. Pa.). Enacted over President Truman's veto, the 1952 Act continued both the national origins quota system, as well as numerically unrestricted Western Hemisphere immigration. While it has been repeatedly amended, the Immigration and Nationality Act remains our basic immigration law today.

The four-title structure of the Immigration and Nationality Act has remained basically the same since 1952. However, the substantive immigration provisions were significantly amended in 1975 and 1976.

The Immigration and Nationality Act Amendments of 1965 [13] abolished the 40-year-old national origins quota system as the primary control on U.S. immigration, replacing it with an annual ceiling on Eastern Hemisphere immigration of 170,000 and a 20,000 per-country limit. Within those restrictions, immigrant visas are distributed according to a seven-category preference system. The 1965 amendments also provided a ceiling on Western Hemisphere immigration for the first time in our history, limiting total immigration from other countries in this hemisphere to 120,000 a year.

The Immigration and Nationality Act Amendments of 1976,[14] enacted by the 94th Congress, extended to the Western Hemisphere the preference system with minor modifications, and the 20,000 per-country limit previously in effect only in the Eastern Hemisphere. The House Judiciary Committee report on the bill enacted as Public law 94–571 quoted Chairman Joshua Eilberg of the House Judiciary Committee on Immigration, Citizenship, and International Law, as follows:

> It should be remembered that, with the abolition of the national quota system in 1965, Congress endorsed the principles of equity and family reunification as the basis of our immigration policy for the Eastern Hemisphere. It remains the unfinished business, therefore, of this subcommittee and the Congress to extend these principles to the natives of the Western Hemisphere.[15]

The elimination of the inequities in the regulation of immigration from the two hemispheres was the basic purpose of the 1976 amendments. As floor manager of the bill during its consideration by the House, Representative Joshua Eilberg reiterated its major objectives in his statement that it would "provide uniform treatment for all intending immigrants, and it is a major step forward in advancing the primary objective of our immigration law—the reunification of families." [16]

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[11] Act of June 25, 1948, 62 Stat. 1009; Act of June 16, 1950, 64 Stat. 219.
[12] Act of June 27, 1952, Public Law 82–414, 66 Stat. 163, 8 U.S.C. 1101 et seq.
[13] Act of Oct. 3, 1965, Public Law 89–236, 79 Stat. 911.
[14] Act of Oct. 20, 1976, Public Law 94–571, 90 Stat. 2703.
[15] U.S. Congress. House. Committee on the Judiciary. Immigration and Nationality Act Amendments of 1976; Report to Accompany H.R. 14535. Washington, U.S. Government Printing Office, 1976. (94th Congress, 2d Session. House. Report No. 94–1553) pp. 4–5. (Henceforth cited as H. Rept. No. 94–1553 (1976).)
[16] Congressional Record [daily ed.], Sept. 29, 1976: H11683.

B. Application of the 20,000 per-country limit to Mexico

The only provision of any real controversy in the Immigration and Nationality Act Amendments of 1976 was the extension of the 20,000 per-country limit to Mexico. As noted above, prior to this Act, which went into effect January 1, 1977, immigration from all independent countries in the Western Hemisphere had been numerically limited only by the overall ceiling of 120,000 immigrant visas exclusive of immediate relatives, with no per-country limitations. Mexican immigration under the Western Hemisphere ceiling has exceeded 20,000 every year since the ceiling went into effect on July 1, 1968 (Table 12).

TABLE 12.—MEXICAN IMMIGRATION, FISCAL YEARS 1966–75

	Total	Western Hemisphere ceiling	Eastern Hemisphere ceiling	Numerically exempt
1966	45,163	NA	NA	NA
1967	42,371	NA	NA	NA
1968	43,563	NA	NA	NA
1969	44,623	31,933	18	12,672
1970	44,469	27,044	20	17,405
1971	50,103	31,695	15	18,393
1972	64,040	41,694	13	22,333
1973	70,141	43,510	71	26,560
1974	71,586	45,156	91	26,339
1975	62,205	41,894	83	20,228

NA signifies not applicable.

Source: U.S. Immigration and Naturalization Service, annual report, fiscal years 1966–75.

Because of this high demand, there has been support in the past for a higher per-country allocation for the contiguous countries. In fact, this would have affected only Mexico; Canadian immigration under the Western Hemisphere ceiling has never even approached 20,000. However, as the House Judiciary Committee states, "During the 94th Congress, a general consensus has been reached that the 20,000 per-country limit should be extended to all countries of the world, including those geographically contiguous to the United States." [17] Included in this consensus was the Administration, which in previous Congresses had backed a 35,000 allocation for the two contiguous countries. In the 94th Congress, however, the Administration bill (H.R. 10323) included a 20,000 per-country limit for all Western Hemisphere countries, an approach defended as follows in a joint statement by the Departments of Justice and State:

> Based on a review of existing data, a uniform ceiling for each country . . . would be preferable. This would permit an equitable distribution of immigration from throughout the hemisphere and from throughout the world. Problems with illegal immigration will exist whether immigration from Mexico is limited to 20,000 or 35,000 per year or not at all. While permitting 35,000 immigrants a year from Mexico would ease their demand slightly, this would only increase the waiting lists and the demand throughout the rest of the hemisphere.[18]

However, this position was reversed by President Gerald Ford in his statement on signing the Immigration and Nationality Act Amendments of 1976 into law. At that time he voiced concern "about one

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[17] H. Rept. No. 94–1553 (1976), p. 8.

[18] Western Hemisphere Immigration hearings, 1976, pp. 362–363; quoted in H. Rept. No. 94–1553 97(16), p. 9.

aspect of the legislation which has the effect of reducing the legal immigration into this country from Mexico." Quoting further:

> The United States has a very special and historic relationship with our neighbor to the south. In view of this special status we have with the Mexican Government and the Mexican people, I will submit legislation to the Congress in January to increase the immigration quotas for Mexicans desiring to come to the United States.[19]

In support of its decision to limit all countries to 20,000, the House Judiciary Committee has argued, "The proposed legislation rejects the concept of a 'special relationship' between this country and certain other countries as a basis for our immigration law, in favor of a uniform treatment of all countries." [20]

In contrast to President Ford, the Domestic Council Committee on Illegal Aliens, which had been established by him, supported the extension of the 20,000 per-country limit to the countries of the Western Hemisphere without reference to special treatment for Mexico. They recommended executive branch support for "application of the preference system and foreign state limitations to Western Hemisphere immigration in a manner similar to that regulating Eastern Hemisphere immigration," and in a footnote indicated that Public Law 94–571, signed after the Committee's report was written and approved, contained these provisions.[21]

The factors involved in the illegal alien problem as it relates to Mexcio are so complex that it is impossible to predict the probable impact on it of the application of the 20,000 per-country limit to Mexico. On the one hand, assuming the pressure to come to the United States from Mexico continues at its present level, the reduction of the opportunity for legal immigration would, almost by definition, appear likely to increase the pressure for illegal immigration. Thus, it was reported that an INS spokesman "said that the pressures caused by the reduced quota for Mexico would probably produce an increase in the number of Mexicans seeking to enter the United States illegally." [22]

On the other hand, the number of legal immigrants affected by the new legislation is comparatively small in the context of the illegal alien problem. The number of Mexican illegal aliens apprehended in fiscal year 1975 was more than 10 times the total number entering legally as immigrants, including numerically exempt immediate relatives. As the State and Justice Departments noted in support of the uniform application of the 20,000 per-country limit, in their joint statement quoted above, "problems with illegal immigration will exist whether immigration from Mexico is limited to 20,000 or 35,000 per year or not at all." [23]

C. Western Hemisphere ceiling

The imposition of the numerical ceiling on Western Hemisphere immigration, resulting from the 1965 amendments to the Immigration and Nationality Act, is generally agreed to be one of the factors behind the current illegal alien problem, although there is disagree-

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[19] Weekly Compilation of Presidential Documents, Oct. 25, 1976, p. 1548.
[20] H. Rept. no. 94–1553, p. 9.
[21] Domestic Council Committee on Illegal Aliens report (December 1976), p. 241.
[22] "Ford signs revision in immigration law," New York Times, Oct. 24, 1976, p. 26.
[23] See quote accompanying footnote 18 on p. 41.

ment about the extent of its impact. Because of its relevance to the illegal alien issue, the historical development of the regulation of Western Hemisphere immigration is considered below in more detail.

Natives of other countries in the Western Hemisphere were omitted from the quota restrictions imposed on the Eastern Hemisphere in 1921 and 1924, according to Marion T. Bennett, for three main reasons:

> (1) Some of these countries had few or no nationals in the United States upon whom a national origin quota could be based and under the quota system they would have been totally excluded in the future.
>
> (2) The borders between this country and Canada and Mexico were considered too extensive to patrol against illegal entries effectively.
>
> (3) The desirability of continued favored treatment to sister nations of the Western Hemisphere. [24]

The issue of a numerical limitation on Western Hemisphere countries in general and Mexico in particular arose again in the mid-1920s and was the subject of a four-year debate described by Robert A. Divine as generating "a great deal of heat but very little light." Quoting further:

> When the committee hearings closed in 1930, very little had been achieved. The voluminous printed record, filling over 2,000 pages, revealed the wide disagreement between the opposing sides but contained little that would help legislators to form judicious conclusions on the question of Mexican immigration. . . . Most evident were the petty and narrow motives which inspired the antagonists. The supporters of restriction, posing as defenders of the American laborer and protectors of American society, seemed to be moved primarily by racial prejudice. Their opponents, ostensibly acting to prevent a serious dislocation in the nation's economy, appeared to be motivated by economic self-interest.[25]

Those attempting to restrict immigration were unsuccessful, due primarily to the strong opposition of the State Department, led by Secretary of State Kellogg, to a ceiling on Mexican immigration because of foreign policy considerations. Quoting again,

> The vital factor in defeating the restrictionist cause was the opposition of the State Department. Appealing to the traditional ideal of Pan-Americanism, a principle which was to develop into the Good Neighbor policy in the next few years, the officials of the State Department presented a powerful case against Western Hemisphere restriction. . . . Thus it was that considerations of foreign policy, based on a long-standing idea, prevailed over the previously dominant ideas of race and nationalism to halt the restrictionist surge.[26]

Proponents of numerical restrictions had argued that immigration was a domestic issue, to be determined by internal rather than international considerations. They also argued that every country objected to external bars to the emigration of its citizens, and hence it was foolish to consider other countries' views in determining immigration policy.[27]

The inclusion of a Western Hemisphere numerical restriction in the 1965 amendments appears to have resulted from a growing concern

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[24] Marion T. Bennett, American Immigration Policies: A History. Washington, D.C., Public Affairs Press, 1963, p. 61.

[25] Robert A. Divine, American Immigration Policy, 1924–1952. New Haven, Yale University Press, 1957, p. 61.

[26] Ibid., p. 67.

[27] Ibid., p. 64.

that immigration would increase significantly as a result of population pressure in Latin America, combined with political considerations relating to passage of the 1965 amendments as a whole. The political situation at the time is described as follows in a recent House Judiciary Committee report.

> To a considerable extent, passage of the provision for a ceiling on Western Hemisphere immigration came about because a sufficient number of those opposed to it agreed to accept it as the price that had to be paid in order to insure passage of legislation abolishing the national origins quota system which dated back to the 1920's. This latter goal was the primary purpose of the 1965 legislation since its inception, and this emphasis accounts in large part for the very limited consideration given to the actual implementation of the Western Hemisphere ceiling during the 1965 debate.[28]

However, the final inclusion of the ceiling in the enacted bill was not simply a *quid pro quo* in exchange for abolishment of the national origins quota system. The debate for and against the ceiling turned basically on the issue of how many more immigrants would be entering this country, on the one hand, versus foreign policy considerations on the other. There is considerable evidence that the majority in the Congress, as well as the American public, were in favor of restricting rather than liberalizing immigration, and felt that a ceiling on Western Hemisphere immigration was thus necessary. A Harris poll, cited in the Washington Post on May 31, 1965, indicated that people were against allowing more people in the United States by a margin of 2 to 1.[29]

The argument in favor of a quota on Western Hemisphere immigration given the most weight was population pressure. It was noted in the "Additional Views" appended to the House Judiciary Committee report that:

> The most compelling reason for placing a numerical ceiling upon the Western Hemisphere relates to the worldwide population explosion and the possibility of a sharp increase in immigration from Western Hemisphere countries. Testimony before the Judiciary Committee identified Latin America as the area of greatest future population growth.[30]

In opposition, the Johnson Administration was strongly opposed to the imposition of a ceiling on Western Hemisphere immigration on foreign policy grounds. The argument that such a ceiling would, in the words of Representative Emanuel Celler, "muddy the waters of foreign affairs," [31] combined with support for the Administration in its judgment on the conduct of foreign policy, formed the basis of the case against a numerical ceiling on Western Hemisphere immigration.

As enacted, the 1965 amendments provided for a ceiling of 120,000 on Western Hemisphere immigration to go into effect July 1, 1968 "unless legislation inconsistent herewith" was enacted. At the same time, the 1965 Act created a Select Commission on Western Hemisphere Immigration which was instructed to recommend "whether, and if so how, numerical limitations should be imposed upon immigration to the United States from the nations of the Western Hemisphere." The Select Commission had strong reservations about the ceiling, and recommended that the effective date be postponed for a

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[28] H. Rept. No. 94–1553 (1976), p. 2.
[29] Immigration, Hearings before the Subcommittee on Immigration and Naturalization of the Committee on the Judiciary, Senate, 89th Cong., 1st Sess., 1965, Part 2, pp. 666–667.
[30] House Report No. 745, 89th Congress (1965), p. 48.
[31] Congressional Record [daily ed.], Aug. 25, p. 20955.

year in order to permit further study.[32] This recommendation was not acted on, and the ceiling went into effect on July 1, 1968.

Events during the intervening years have tended to support the arguments of those who favored the Western Hemisphere ceiling. Quoting again from the 94th Congress House Judiciary Committee report:

> Since the establishment of the Western Hemisphere immigration ceiling, there has been no concerted attempt or public pressure to abolish it. In this regard, the Committee notes the recommendation made in 1972 by the President's Commission on Population Growth and the American Future, that "immigration levels not be increased." It is apparent from the estimated current Western Hemisphere backlog of approximately 300,000 active cases that immigration would have risen above the current level without the ceiling.[33]

The Committee went on to note that, "Attention is more appropriately focused on two aspects of the immigration law which received little discussion during the 1965 debate: the absence of a preference system and per-country limit for the Western Hemisphere." [34] As discussed above, the extension of these two provisions to the Western Hemisphere was the primary purpose of the Immigration and Nationality Act Amendments of 1976.

D. Restrictions on alien workers

Another aspect of immigration law of particular importance to the illegal alien issue is the parallel development of provisions safeguarding U.S. labor, together with sometimes complementary, sometimes contradictory provisions aimed at supplying U.S. employers with needed alien workers.

During the 19th century, successive waves of immigrants came to America, fleeing political unrest and economic disaster in their own countries, and seeking a better life here. The Germans in the 1840s, the Irish in the 1850s, the British, French, Swedes, and Norwegians, and after them the Eastern Europeans, the Chinese and the Italians, came to this country by the hundreds of thousands. They supplied the country with its labor force at a time when there were unlimited job opportunities and, particularly, an inexhaustible need for unskilled labor.

However, beginning in the 1860s, charges were made that alien laborers were being brought here by employers in excessive numbers and under false pretenses for the express purpose of keeping down wages. A dominant theme throughout the essentially one-hundred year development of restrictions on U.S. immigration, beginning in the 1870s, has been the need to protect American labor against adverse competition from alien workers. The discriminatory Chinese Exclusion Act was motivated in part by a desire to protect U.S. labor. The first laws aimed solely and specifically at protecting U.S. workers were the contract labor laws of 1885 and 1887, which prohibited the importation under contracts of foreign labor; and, under an 1888 amendment, permitted the deportation within one year of contract laborers who entered in violation of the law.

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[32] U.S. Select Commission on Western Hemisphere Immigration, Report, January 1968, p. 9.
[33] H. Rept. No. 94-1553 (1976), p. 3.
[34] Ibid.

As explained in a Senate report, the alien contract labor law:

> . . . was aimed at the practice of certain employers importing cheap labor from abroad. This importation practice began in 1869. Advertisements were printed offering inducements to immigrants to proceed to this country, particularly to the coal fields, for employment. Many advertisements asserted that several hundred men were needed in places where there were actually no vacancies. The object was to oversupply the demand for labor so that the domestic laborers would be forced to work at reduced wages.
>
> These abuses came to the attention of Congress about 1884. The House Committee on Labor found that the evils complained of by labor organizations existed to an alarming extent.[35]

The alien contract labor law made it unlawful to import or assist in the importation or migration of aliens under previously agreed upon contracts for the performance of labor or service of any kind in the United States. However, there were some significant exemptions. Foreigners temporarily residing in the United States, skilled workmen for any new industry not yet established in the United States, and artists, lecturers, and servants were not covered by the laws.

In particular, the exemption from the contract labor law of workers temporarily residing in the United States was a precedent for subsequent special measures for the admission of temporary alien workers, most notably the Mexican "Bracero" contract labor program, discussed in the following section. Provisions corresponding to those of the alien contract labor laws were included in the recodification of immigration law in the Immigration Act of 1917. However, as one commentator observed:

> The act revealed, even at this early date, the power of agricultural interests vis-a-vis organized labor. The statute, though highly restrictive, contained a loophole in the area of labor importation. Under the terms of the ninth proviso to Section 3 of the act, the commissioner general of immigration was authorized to admit for temporary employment various classes of workers, among them agricultural laborers.[36]

Since the enactment of the contract labor law in 1885, the permanent immigration law has always included provisionsex plicitly intended to protect U.S. labor from adverse competition from aliens. The present-day equivalent of the contract labor laws is the labor certification provision, which provides that aliens seeking permanent admission (i.e., as immigrants) for the purpose of performing skilled or unskilled labor may not enter unless the Secretary of Labor certifies that there is a shortage of willing and available, similarly qualified U.S. workers, and that the entry of the alien workers will not adversely affect the wages and working conditions of U.S. workers who are similarly employed.[37]

Additionally, under one of the nonimmigrant categories set forth in the Immigration and Nationality Act, temporary alien workers are admissible to perform service or labor of a temporary nature, "if unemployed persons capable of performing such services cannot be found in this country." [38] The law requires that the H–2 provision, as it is commonly referred to, be administered by the Attorney General in consultation with the appropriate agencies of Government, administratively interpreted to be the Department of Labor.[39]

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[35] Senate Report No. 1515, 81st Cong., 2d Sess., 1950, p. 50.
[36] Richard B. Craig. The Bracero Program; Interest Groups and Foreign Policy. Austin, University of Texas Press, 1971, p. 7.
[37] Immigration and Nationality Act, sec. 212(a)(14); 8 U.S.C. 1182(a)(14).
[38] INA, sec. 101(a)(15)(H)(ii)—hence the reference to "H-2" workers; 8 U.S.C. 1101(a)(15)(H)(ii).
[39] INA, sec. 214(c); 8 U.S.C. 1184(c). See 8 CFR 214.2(h)(3) (INS, Department of Justice), and 20 CFR 602.10, 621 (Employment and Training Administration, Department of Labor).

Both the labor certification requirement for immigrants, and the H–2 temporary worker provision have been criticised as being inadequately responsive to employers' needs, at least as presently administered. The labor certification provision has also been widely criticized as being ineffective as a protection of U.S. labor. The U.S. Department of Labor and the House Judiciary Committee have been in agreement that, in the words of Judiciary Committee Chairman Peter W. Rodino, Jr., "further modification of the labor certification program is unquestionably required." [40] Nonetheless, the protection of U.S. labor is the major objective of the labor certification provision, and the fact that organized labor has not been among its critics would appear to indicate at least a partial degree of success.

Provisions designed to protect U.S. labor have been accompanied over the years by a second series of provisions, either as part of the permanent law or on a temporary basis, allowing for, or not effectively prohibiting, admission of various categories of alien workers sought by U.S. employers, with little regard to their impact on U.S. labor. Two examples, spanning the history of immigration restrictions, have already been noted: the exemptions for certain workers under the contract labor laws, and the proviso in current law exempting employers of illegal aliens from the felony penalties attached to the harboring of illegal aliens (see above). The resulting conflict between efforts to protect U.S. labor and efforts to supply U.S. employers with needed workers has been a recurrent source of controversy in immigration policy over the past hundred years, of which the current illegal alien policy debate is the most recent example. This conflict is exemplified by the history of immigration from Mexico to the United States, which is discussed in detail in the following section because of its fundamental importance to the illegal alien problem.

HISTORICAL ANALYSIS OF MEXICAN IMMIGRATION TO THE UNITED STATES

As noted earlier, it appears from the limited data available that Mexican illegal immigration differs in some significant respects from illegal immigration from other countries. Certainly among the more important of these differences is the existence of a long history of legal and illegal work-related migration from Mexico to the United States.

Many of the pressures underlying this Mexican-U.S. migration are common to the immigration, either legal or illegal, from other countries. Quoting U.S. Secretary of Labor Ray Marshall:

> The main factors causing workers to move between countries, in the United States and other countries, have been associated with relative international disparities in economic conditions and job opportunities. This is especially true of the movement into the United States from Mexico.[41]

However, primarily because of the factor of geographical proximity, the patterns of Mexican migration to this country are unique. These patterns continue into the present, and are of particular importance

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[40] Hon. Peter W. Rodino, Jr. "The Impact of Immigration on the American Labor Market," Rutgers Law Review, v. 27, Winter 1974, p. 248. See also H. Rept. No. 94–1553, pp. 10–11.

[41] Marshall (1976), p. 53.

because, in the words of the Domestic Council Committee on Illegal Aliens, "Although Mexico is not the sole source of illegal entrants, it is the major source." [42] The following is a brief analysis of the historical development of Mexican immigration to the United States, with emphasis on the apparent interrelation between legal and illegal immigration.

It is increasingly argued that the laws and administrative practices regulating Mexican immigration have differed significantly from those applying to other countries, and make up a coherent pattern of their own. Gilberto Cardenas has suggested that:

> Since . . . [1918], the Department of Labor, the Department of Agriculture and the State Department, operating under various mandates and in conjunction with organized American interest groups, have invoked departmental policies and practices that have effectuated specific migration patterns of Mexican nationals and Mexican labor on both sides of the border. These migration patterns have taken various forms—be they legal immigration, bracero, commuter or illegal—and are sufficiently interrelated to be considered as part of an overall United States immigration policy toward Mexico.[43]

The current illegal alien problem, insofar as it concerns Mexico, is viewed by some observers as another phase in this pattern.

It is argued that the underlying rationale govering our immigration policy toward Mexico is the ebb and flow of the U.S. need for Mexican labor. The pattern has been a cyclical one, in which periods of a high demand for Mexican workers have been followed—coincidentally, at 20 year intervals—by periods when Mexican workers are more or less officially viewed as a threat to American labor generally because of disturbances in the U.S. economy. According to this argument, the "illegal alien problem" of the 1970s is the result less of a sudden upsurge in the number of illegals, but of a downturn in U.S. economic conditions.

A similar observation was made in general terms, without specific reference to Mexico, by the Domestic Council Committee on Illegal Aliens: "illegal migration in times of prosperity tends to be viewed as a handmaiden of economic growth but it becomes transformed into a threat in times of economic downturn." [44] North and Houstoun spell out the implications of this interpretation, again in general terms, as follows:

> Increasingly adverse public opinion should not, however be simply attributed to increasing adverse effect's of this underground and therefore obviously unknown phenomenon. The public outcry against illegal aliens too closely resembles the 1930s, when similar ascriptions of their adverse economic role, under all too similar conditions, led to the "repatriation" of tens of thousands of Mexicans, with little regard for their real legal status, or their legal relatives. Public concern with the economic adversities brought about by illegals today likewise coincides with a time of scarcity, both real and perceived, when the interests of all groups seem threatened.[45]

With specific reference to Mexico, far from blaming the illegal aliens for the present problem, Cardenas assigns much of the responsibility for illegal immigration to the past practices of the United States:

> . . . Mexican aliens in the United States have entered at the behest and through the active solicitation and encouragement of many of the same economic

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[42] Domestic Council Committee on Illegal Aliens report (Dec. 1976), p. 63.
[43] Gilberto Cardenas, "United States Immigration Policy toward Mexico: an Historical Perspective," Chicano Law Review, UCLA, Vol. 2, Summer 1975, p. 66. (Henceforth cited as Cardenas (1975).)
[44] Domestic Council Committee on Illegal Aliens report (Dec. 1976), p. 2.
[45] North/Houstoun study (March 1976), p. 29.

interests that today proselytize for their expulsion and exclusion through the rigorous application or change in immigration laws. For example, serving as open invitations to Mexican migration have been bracero type programs throughout this century, allowing commuter status, and utilization of illegals. In these forms Mexican aliens have been told that their labor is welcomed in the United States, and they have responded accordingly.

The "illegal alien" problem is therefore one whose seed has been planted time and again by the United States when it has been in need of Mexican labor. When expediency better serves, however, immigration laws have been administered and changed in response to a problem perceived as having been created by illegal aliens, when in fact it is largely of the United States' own making.[46]

Without question, the statistical pattern of Mexican entries to this ccuntry is unique, in terms of the heavy dominance of temporary workers and illegals. According to North and Houstoun, "Almost ten times as many Mexican nonimmigrant workers and apprehended illegals were reported to have crossed its 1,945-mile land border, as compared to the number of Mexican immigrants between the years 1870–1970." [47]

Julian Samora describes the problem in more detail:

> The number of illegal Mexicans reportedly located is particularly significant when compared to legal Mexican immigration. In the last 100 years, no more than 1,525,928 Mexicans were admitted into the United States as legal immigrants. In the twenty-six year period from 1942 to 1968, 5,050,093 Mexican nationals were imported into the United States as temporary contract laborers (braceros). Yet, in the forty-five year period from 1924 to 1969, 5,628,712 illegal Mexican aliens were reporedly located (apprehended) by the United States Immigration and Naturalization Service.[48]

Samora interprets these statistics as reflecting "the evolution of an immigration policy that may best be understood as an extensive farm labor program," and continues "This policy stands out as a legitimized and profitable means of acquiring needed labor without incurring the price that characterized the immigration, utilization, and the eventual settlement of European and Oriental immigrants." [49]

A related interpretation of the causes underlying the early development of the apparently symbiotic relationship between Mexican workers and certain U.S. employers is presented, in terms more favorable to the U.S., by North and Houstoun in their recent Labor Department-financed study, as follows:

> In brief, given the developing labor-intensive economy in the north and the pool of unskilled labor in the south, a historic precedent of northbound migration, the Spanish-speaking culture which bridged the border, and the political insignificance (for so many years) of the border itself, workers moved easily from their homes in Mexico to jobs in the States, as those jobs came into being.[50]

Mexican immigration to the U.S. during the period 1870–1970 is charted and summarized in Figure 1, reproduced from Samora's The Wetback Story. A brief review of the development of special U.S. legislative and administrative measures relating to the regulation of Mexican immigration follows.

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[46] Cardenas (1975), pp. 88–89.
[47] North/Houstoun study (March 1976), p. 9. ,
[48] Samora (1971), p. 57.
[49] Ibid.
[50] North/Houstoun study (March 1976), p. 11.

FIGURE 1

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Mexican Immigration to the United States 1870 - 1970

The history of Mexican immigration to the United States is related to the rise of great regional and national industries, i. e., agriculture, railroads, and mining, as well as the corresponding demand for a reservoir of cheap labor; the special administrative and legislative consideration given to immigration from the Western Hemisphere, particularly from Mexico, and the internal developments and changes in Mexico.

1850-1889 Undesirability of Mexicans for labor or settlement corresponded to the importation and utilization of European and Oriental laborers and settlers.

1900-1909 Continued economic development, particularly in the Southwest, and the decrease in the importation and utilization of Oriental labor due to the application and enforcement of the Chinese Exclusion Laws and the Gentleman's Agreement with Japan, led to a moderate increase in the volume of Mexican immigration.

1910-1919 Increased use of Mexican laborers was related to the decreasing volume of European immigration, World War I mobilization, rise of defense industries, completion of railroads linking the interior of Mexico to the U.S., and the revolutionary conditions in Mexico.

1920-1929 Quotas established. European and Asiatic immigration continued to decrease. Mexican immigration increased, reaching a peak in 1924. Increased restrictions affect immigration which decreases in late 1920's. Illegal Mexican aliens average 4000 per year.

1930-1939 Effects of Great Depression. Mexicans repatriated. Mexican immigration continues to decrease. Illegal Mexican aliens increase and average 10,500 per year. Mexican emigration increases.

1940-1947 World War II. Tremendous increase in demand for labor. U. S. and Mexico make agreement for temporary contract labor (Bracero Program). Illegal Mexican aliens greatly increases. Mexican immigration increases slightly.

1948-1951 Illegals legalized to become Braceros. "Braceros" increase. Mexican immigration remains stable. Public Law 78 enacted. Mexican illegal aliens greatly increase.

1952-1959 Korean War. Demand for labor. Braceros, illegals, and Mexican immigration increase dramatically. Illegal Mexicans constitute a high of 1,075,168 apprehensions when Operation Wetback inaugurated. Illegals expelled by the thousands.

1960-1970 Bracero Program terminated (1964) due to public pressure. Illegal Mexican aliens on a dramatic increase again. Mexican immigration steadily increasing. New immigration law (Public Law 86-236, passed in 1965, effective July 1, 1968) restricts immigration from Western Hemisphere.

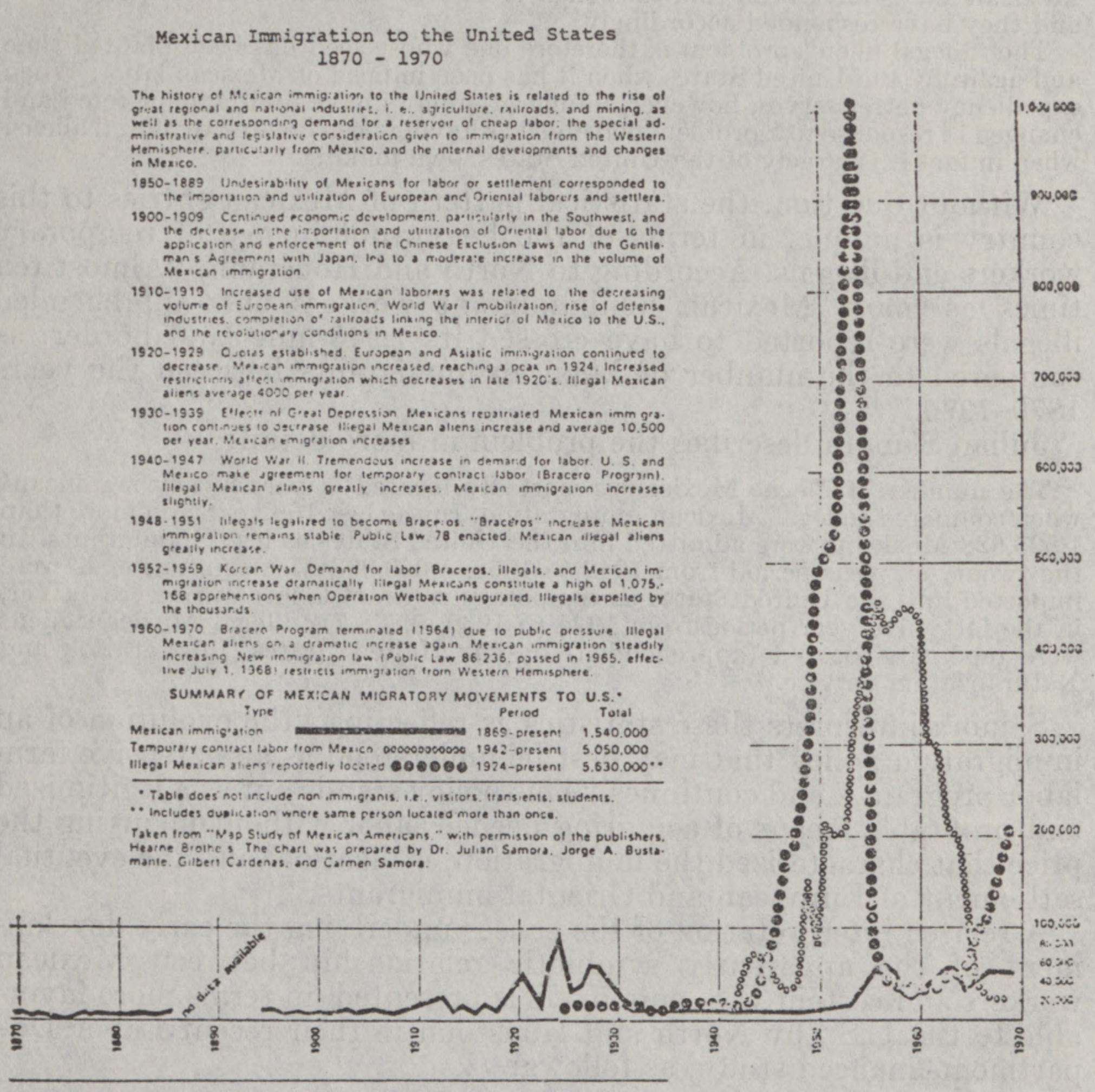
SUMMARY OF MEXICAN MIGRATORY MOVEMENTS TO U.S.*

Type	Period	Total
Mexican immigration	1869-present	1,540,000
Temporary contract labor from Mexico	1942-present	5,050,000
Illegal Mexican aliens reportedly located	1974-present	5,630,000**

* Table does not include non-immigrants, i.e., visitors, transients, students.

** Includes duplication where same person located more than once.

Taken from "Map Study of Mexican Americans," with permission of the publishers, Hearne Brothers. The chart was prepared by Dr. Julian Samora, Jorge A. Bustamante, Gilbert Cardenas, and Carmen Samora.



Source: Julian Samora, "Los Mojados: The Wetback Story" (Notre Dame, University of Notre Dame, 1971), app. II, pp. 195–196.
Reprinted from North/Houstoun study, p. 10.

A. 1917–1942

Mexicans were first made an exception to the general rule of U.S. immigration policy under an administrative Departmental Order of 1918 issued by the Commissioner General of Immigration, with approval of the Secretary of Labor.[51] This order waived the head tax, contract labor laws, and literacy requirements for Mexican laborers, under the authority of the ninth proviso to Section 3 of the Immigration Act of 1917.[52] The Departmental Order was a wartime measure as was, approximately 25 years later, the Bracero program. Both continued in effect well after the end of the immediate manpower shortages they had been created to meet.

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[51] Departmental Order No. 52461/202 U.S. Immigration Serial Bulletin, 1918, Vol. I, No. 3, pp. 1–4. (See Cardenas (1975), p. 68)
[52] Act of Feb. 5, 1917, 39 Stat. 878.

In 1929, in action apparently inspired more by a desire to head off restrictionist efforts to place a statutory ceiling on Mexican immigration than by an awareness of the impending economic depression, administrative control of the Mexican border was significantly tightened. As noted earlier, the State Department believed that such a ceiling would have a harmful effect on our relations with Mexico. During the lengthy debate on the subject at the end of the 1920s, the State Department combined an appeal to Pan-Americanism with more stringent enforcement of the provisions of existing immigration law in a successful attempt to decrease immigration levels in the opening years of the depression. According to a State Department press release in June 1930,

> . . . proper enforcement of existing immigration laws can and will be maintained in the future, in Mexico as in other countries, so as to prevent effectively the recurrence of conditions existing a few years ago, when the recorded admissions of Mexican laborers were very high.[53]

The public view of alien workers in the early 1930s, during the opening years of the Great Depression, is described by one commentator as follows: "In the manner of a crusade, the idea was promulgated that aliens were holding down high-paying jobs and that by giving those jobs to Americans, the depression could be cured." [54] The Los Angeles *Times* quoted the Los Angeles County Supervisor as saying, "If we were rid of the aliens who have entered this country illegally since 1931. . . . our present unemployment would probably shrink to the proportions of a relatively flat spot in business." [55]

During the 1930s, Mexican out-migration far exceeded immigration—more than 89,000 legally admitted Mexicans left the United States, compared to 27,900 who immigrated on a permanent visa.[56] The factors involved were many, including both the dismal employment prospects here, and wide-scale "repatriation." According to one author, "the outstanding feature of this troubled era, in the Southwest as well as elsewhere, was the repatriation of numerous people of Mexican descent—of legal and illegal immigrants, temporary workers and permanent residents, U.S. citizens and aliens." [57] Of those leaving, some were deported illegal aliens, and others were legally admitted Mexicans returning voluntarily or involuntarily, some with the assistance of the Mexican government. The withholding of U.S. welfare payments to which the "Mexicans" were legally entitled was among the means used to induce them to leave. The Mexican born population in this country declined from 639,000 in 1930 to 377,000 in 1940.[58]

B. Bracero program

In 1942, in response to the U.S. manpower shortage arising from World War II, the United States and Mexico negotiated a treaty permitting the entry of Mexican farm workers on a temporary basis

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53 U.S. Department of State, Press Releases, June 14, 1930, Vol. 2, pp. 304–503. (See Divine (1967), p. 63.)

54 Vilma S. Martinez, "Illegal Immigration and the Labor Force: An Historical and Legal View," American Behavioral Scientist, Vol. 19, Jan./Feb. 1976, p. 340.

55 Quoted ibid.

56 Leo Grebler, Mexican Immigration to the United States: the Record and its Implications. Mexican-American Study Project, Advance Report 2, Dec. 1965, p. 28.

57 Ibid., p. 25.

58 Ibid., p. 29.

under contract to U.S. employers. This emergency wartime measure was the beginning of the Bracero program, which continued under various legal authorizations for 22 years and involved approximately 4.8 million Mexican workers.[59]

The program operated on the basis of international treaty until 1951. On July 12, 1951, Congress enacted Public Law 78 (65 Stat. 119) authorizing the importation of temporary Mexican agricultural workers under the Agricultural Act of 1949, as amended. This authorization originally had an expiration date of Dec. 31, 1951. It was extended by successive amendments until Dec. 31, 1964, when it was allowed to expire.

The Bracero program's lengthy history is both complex and controversial. One of the more intriguing controversies is whether it was a cause or a cure of the illegal alien problem of the time. It appears to have been both. Without question, both its existence and its termination are causes of the current illegal alien problem.

The Bracero program is credited with "the dramatic reduction, if not the total elimination, of the Wetback traffic" by Ernesto Galarza in his otherwise highly critical examination of the program:

> Between 1920 and 1954 commercial agriculture in the border states, operating by its own admission above the law and beneath morals, had organized a freely flowing labor market that brought together rich lands and poor men. It was an arrangement that did not commend itself to many. Its beneficiaries were a small group of employers in a comparatively narrow belt of borderlands whose easy access to illegals gave them an advantage over their northern competitors. The incidents of the Wetback way of life made the governments of two great republics blush, the Mexican with indignation, the American with shame. The traffic was suppressed only when it became possible to assure farm employers, substantially on their terms, that they could have as many contract laborers as they might demand.[60]

Average annual apprehensions of illegal aliens were less than 80,000 during the ten-year period, 1956–1965, following Operation Wetback, the full-scale roundup of Mexican illegal aliens led by the Border Patrol in 1954–1955 (see Table 1). Commenting on the success of the INS Operation Wetback in dealing with the illegal alien problem in the mid-1950s, Galarza indicates that a key factor was

> . . . the change in attitude of farm employers, hundreds of whom had come to accept the legal *braceros* as a practical and safe alternative [to Wetbacks] and had joined associations to procure them. By the time the operation was launched the bracero system had shown its economic and political feasibility.[61]

On the other hand, Julian Samora, among others, argues that the Bracero program actually stimulated illegal migration to the United States, in part because more Mexicans wished to come than were legally permitted, and partly because it was often easier to enter illegally than legally.[62] Samora notes that during the 22-year life of the Bracero program, over 5 million wetbacks were apprehended, a figure exceeding the 4.8 million braceros contracted.[63]

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59 Samora (1971), p. 19.
60 Ernest Galarza. Merchants of Labor. McNally and Loftin, 1964, p. 255. (Henceforth cited as Galarza (1964).)
61 Ibid., p. 70.
62 Samora (1971), pp. 44–45.
63 Ibid., p. 19.

Regarding other aspects of the Bracero program, the 1951 President's Commission on Migratory Labor was among the many critics of what it saw to be the program's adverse impact on U.S. farm labor:

> It is our conclusion that the evidence demonstrates that the agencies of Government responsible for importing and contracting foreign labor have not been successful in protecting domestic farm labor from detrimental effects of imported contract alien labor. We find alien labor has depressed farm wages and, therefore, has been detrimental to domestic labor.[64]

Considering the program in the context of national immigration policy, the Commission was equally critical:

> Thus, temporary foreign laborers passing in and out of this country with little restriction have come to substitute for a supply subject to stringent numerical restrictions, thereby furnishing the very competition to American labor that it is the purpose of the immigration law to prevent.
>
> This undermining of national policy stands out more clearly in that it has been the negotiators for foreign governments, notably of Mexico, rather than our own representatives, who have secured reasonable limitation of numbers and some protection to labor standards. While their motive is primarily to protect the standards of their own nationals working in the United States, the effect of their concern, fortunately, is also to help sustain the tenets of American policy. The contrast in this curious difference of attitudes is heightened by the fact that through the negotiations of their governments, foreign laborers have actually achieved, in most instances, better living and working conditions than domestic workers whose protection is a main concern of American immigration law.[65]

It will be noted that the responsible U.S. administrative agencies, rather than U.S. employers or the braceros themselves, are the primary objects of the Commission's criticism. Thus, the passage quoted above is preceded by the following:

> . . . official vigilance for the protection of living and working standards of alien farm laborers was largely abandoned in the postwar phase. Responsible United States administrative agencies practically ceased to exert effective effort to preserve the requirements of national immigration policy. The same ineffectiveness or laxity that undermined protective standards in the contract spread also to the official scrutiny of the number of foreign laborers that employers claimed they needed.[66]

Similar observations are carefully documented by Galarza, who implicitly—and sometimes explicitly—charges collusion between the U.S. Department of Labor and U.S. employers involved in agribusiness in the administration of the Bracero program.

Apprehensions of illegal aliens began mounting steadily with the termination of the Bracero program in mid-sixties.Quoting from the INS 1970 *Annual Report*,

> Since expiration of the Mexican Agriculture Act on December 31, 1964, the number of deportable aliens located has continued an upward climb. For the 6-year period, fiscal years 1965–70, 71 percent of the 1,251,466 total deportable aliens located were of Mexican nationality. Year by year, the annual percentage of this nationality group has risen, from 50 percent in 1965 to 80 percent this year.[67]

The patterns of employment which grew up during the Bracero period, as well as the elimination of legal channels for temporary employment provided by the program, are viewed by many as signifi-

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[64] U.S. President's Commission on Migratory Labor, Migratory Labor in American Agriculture, Mar. 26, 1951, p. 59.
[65] Ibid., pp. 64–65.
[66] Ibil., p. 64.
[67] U.S. Immigration and Naturalization Service, 1970 Annual Report, p. 11.

cant causal factors in the current illegal alien problem. The case is well stated as follows:

> Another significant "pull" factor is a clear result of former American policy. Many Mexicans who were employed as braceros brought their families with them to the border areas and relied on American employment as their sole source of income. When the bracero program was terminated, the only work available to the ex-bracero was illegal employment in the United States. In short, the present influx of illegals reflects the operation of socioeconomic forces set in motion by the United States over two decades ago.[68]

This analysis is borne out by research cited by the Domestic Council Committee on Illegal Aliens:

> Several studies have also pointed out that the areas [in Mexico] from which many illegal aliens come are precisely those areas which provided the bulk of the "braceros" during the life of that program (1942–1964). One researcher [Wayne Cornelius] has suggested that the "bracero" program in a sense never stopped, but merely went underground.[69]

From the point of view of the U.S. employers who hire them, the illegal alien has replaced the legal bracero worker. Writing in 1960, Galarza noted:

> In considering alternatives to Public Law 78 [authority for the Bracero program], the return of the Wetback could not be ruled out. This did not seem probable, especially in the light of public reaction in the middle 1950's. The indignation of high federal officials, influential citizens, religious organizations and even farm employers over the evils of labor bootlegging might be aroused again. But the door was not entirely closed. When the immigration code was revised in 1952 it was carefully provided that employers could not be prosecuted for harboring illegals. . . . Senator Hayden once warned his colleagues that the demand for laborers north of the border and their abundance south of it would be brought together legally if possible, and outside the law if it could not be done otherwise. Congressman Poage of Texas urged the House of Representatives in June 1960 to extend Public Law 78 on the ground that otherwise "there is going to be a stream of wetbacks to fill all of the area close to the border." Braceros on their terms or Wetbacks remained a feasible choice, in the opinion of many employers.[70]

From the point of view of the aliens themselves, the 22-year program, in the words of the North-Houstoun report, "created patterns of explicitly work-related movements of aliens, from South to North." Continuing:

> . . . it created the braceros' expectations of higher wages than were possible within the Mexican economy; it provided them with U.S. job contacts and job skills; it exposed them to the Anglo demand for their labor; language and Anglo customs—including the work habits of INS. For many rural Mexican males, the bracero program was an eye-opener; they learned about American jobs and American wages; many responded to their U.S. employers' interest in bypassing the federally regulated program during its existence; and many kept traveling north after the program ended, despite the fact those trips were illegal ones.[71]

It can be argued that the bracero program reinforced rather than created these patterns which, in fact, originated not with the labor shortage of World War II, but of World War I. Thus, Cardenas describes the Departmental Order of 1918 as, "in terms of the United States immigration policy toward Mexico, . . . the first Bracero Program." [72]

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[68] Notes, "Commuters, Illegals and American Farmworkers: the Need for a Broader Approach to Domestic Farm Labor Problems," New York University Law Review, vol. 48, June 1973, p. 482.
[69] Domestic Council Committee on Illegal Aliens report (Dec. 1976), p. 135.
[70] Galarza (1964), pp. 251–252.
[71] North/Houstoun study (March 1976), p. 12.
[72] Cardenas (1975), p. 68.

C. Illegal aliens as black market guest workers

The Mexican component of the current illegal alien problem can be viewed as an unregulated and illegal continuation of the Bracero program, with all the evils this suggests, including the exploitation of alien workers, and the lack of protection of domestic workers from adverse competition. In the words of the Domestic Council Committee on Illegal Aliens:

> The forces which created and sustained the "Bracero" program continue to persist. There continues to be an economic demand induced by some employers in the United States for Mexican workers. That demand is being met by commuters and illegal aliens.[73]

The European experience with legal guest worker programs has been suggested as a useful model for understanding the U.S. illegal alien problem. Professor Richard Sterling described the "United States-Mexican international labor market" as "the largest two-nation exchange of labor for wages in the world," noting that the Mexican workers constitute "by far the largest alien labor pool, legal or illegal, now present in the United States." [74] According to Secretary of Labor Ray Marshall,

> Perhaps the most important difference between the U.S. and European experiences is the sheer size of the immigrant population. In absolute numbers, at least in this century, no other country in the world has experienced the influx of as many alien workers as has the U.S. Indeed, the number of illegal alien workers in the United States probably exceeds the total number of legal aliens in all Common Market countries combined.[75]

Marshall comments as follows on other significant differences between the European and American experience with legal and illegal guest workers:

> The workers who lose by the employment of immigrants are those who compete directly with them for jobs, housing, social services, and other amenities. European economists seem generally to have concluded that immigration has largely positive results for workers in the host countries, but this conclusion has to be modified when applied to conditions in the United States. American employers clearly gain and higher-paid workers move up faster in the short run but might face increasing competition in the long run as competition from immigrants increases. Moreover, the employment of illegal immigrant workers has a more depressing effect on wages than the use of legal aliens whose initial employment is ostensibly controlled in such a way as to prevent direct competition between immigrant and native workers. There have been such regulations in the United States but they have not been adequately enforced.[76]

Professor Sterling comments on the "ominous import" of the illegality that characterizes the U.S.-Mexican international labor market, unlike that of Western Europe:

> Of more ominous import is the illegality that stamps every phase of its operation, from labor recruitment practices to border crossing to employment arrangements, wage levels and living conditions. The violation and debasement of law

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[73] Domestic Council Committee on Illegal Aliens report (Dec. 1976), p. 71. Commuters are legally admitted aliens who live in Mexico and Canada and commute to work in the United States. The Domestic Council Committee reports that there were about 54,000 commuters in Dec. 1975, of whom 45,000 were from Mexico.

[74] Richard Sterling, "International Labor Markets: The United States-Mexican case in a comparative context with special reference to post–1945 Western European experience," Sept. 1974, p. 1. (Unpublished "statement of research purpose and procedures.")

[75] Marshall (1976), p. 62.

[76] Ibid.

in this massive and peculiar economic transaction between Mexicans and Americans unavoidably debase those involved in the exchange. With no laws to govern them, the relationships between alien migrants and the citizens of the alien society are ones of radical inequality, exploitation, fear, and endemic hostility.[77]

It does not necessarily follow from the above that a renewal of the Bracero program or some other form of legal guest worker program is the appropriate response to the current illegal alien problem, even if a decrease in the current concern about domestic unemployment made such a program politically feasible. (See below.) The nature of the truly difficult dilemma presented by the current situation has been well stated as follows:

In order to protect American labor from the influx of foreign workers, the United States is only able to institute policies on one side of the border. Many policies that would make the quota system more viable and stem the tide of illegal entries, such as lowering the minimum wage in this country to reduce the wage differential between the United States and Mexico, would hurt American labor. Conversely, policies designed to protect American labor from alien competition, such as the phasing out of the Bracero program, restricting commuters, placing numerical limitations on immigration, and requiring labor certification, tend to increase the number of illegal border crossings.[78]

V. Current Issues: Pro and Con

Possible solutions or approaches to the illegal alien problem which have been recommended, either singly or in combination, are discussed briefly below, along with arguments for and against them. As will be noted, most would involve Federal legislative action although in some cases this would be limited to increased appropriations.

PENALTIES FOR THE EMPLOYMENT OF ILLEGAL ALIENS

Legislation establishing penalties for the employment of illegal aliens passed the House during the 92nd and 93rd Congresses. Similar legislation was reported but not passed in the House in the 94th Congress and, for the first time in the past three Congresses, given serious consideration by the Senate Judiciary Subcommittee on Immigration and Naturalization. (See Appendix A for a comparison of the major House and Senate bills in the 94th Congress.)

The principal argument in favor of the establishment of penalties for the employment of illegal aliens is that the availability of possible employment appears to be the main reason for illegal immigration. Without the magnet of employment, it is argued, illegal aliens would not come to the U.S. or, in the case of nonimmigrants, violate their status. Quoting from the 94th Congress House Judiciary Committee report on H.R. 8713:

The Committee believes that the primary reason for the illegal alien problem is the economic imbalance between the United States and the countries from which the aliens come, coupled with the chance of employment in the United States. Consequently, it is apparent that this problem cannot be solved as long as jobs can be obtained by those who enter this country illegally and by those who enter legally as nonimmigrants for the sole purpose of obtaining employment.

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[77] Sterling, p. 1.

[78] Harvard Law School, Civil Rights-Civil Liberties Research Committee, "Proposed bills H.R. 981, H.R. 982, and S. 3827 [93rd Cong.]," unpublished memo to Senator Alan Cranston, Jan. 15, 1975, p. 19.

The Committee, therefore, is of the opinion that the most reasonable approach to this problem is to make unlawful the "knowing" employment of illegal aliens, thereby removing the economic incentive which draws such aliens to the United States as well as the incentive for employers to exploit this source of labor.[1]

Employer penalties have had the continuous support of the Nixon and Ford Administrations and, most recently, were endorsed by thə Domestic Council Committee on Illegal Aliens, established by President Ford.[2] The Cabinet-level Committee also observed, "Those agencies concerned with administering and regulating the flow of aliens into the country are convinced that only when we begin to cope with the economic magnet that draws individuals here will we be in a position to have some control of illegal immigration." [3]

Penalties for the employment of illegal aliens are generally viewed as being deterrent in nature. That is, it is assumed, in the words of the Domestic Council Committee that "such sanctions would achieve a high level of voluntary compliance simply by being legislated as Federal policy." [4] Those few who would violate the law, it is argued further, are generally already known to INS. Consequently, it is believed that enforcement would not be unduly costly or onerous.

Generally speaking, most opposition to employer penalties centers not on the aim—the curtailment of the employment, and thus the entry, of illegal aliens—but on the mechanism for accomplishing this aim. At issue, specifically, is the role of the employer in determining illegal status. Employers groups (e.g., the American Farm Bureau) and civil rights groups (e.g., ACLU, National Congress of Hispanic American Citizens) argue against penalty provisions in essentially identical terms—forming an unusual and powerful opposition. Quoting from North and Houstoun:

On the one hand, employers have argued that it is difficult to know who is an illegal and who is not; they have argued that the Immigration Service should keep the illegals out of the labor market by keeping them out of the country. On the other hand, those concerned with civil liberties and the rights of ethnic minorities have argued that certain classes of legal residents of the United States might not secure jobs because employers would turn them away, on the grounds that they might be illegal aliens. In short, both groups object to the proposed locus of responsibility for determining who can, and who cannot, work in the United States. Both groups object to employers playing this role.[5]

In addition, there are those—the Chairman of the Senate Judiciary Committee, Senator James Eastland among them—who have indicated a willingness to accept the penalty provisions only in conjunction with other amendments aimed at making legal temporary alien workers more readily available,[6] presumably on the grounds that the penalty provisions would reduce the number of alien workers available. In opposition to the bill, it has also been argued that, contrary to the assertions of its proponents, the penalty provisions would be both difficult and costly to enforce.

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[1] H. Rept. No. 94–506 (1975), p. 6.
[2] Domestic Council Committee on Illegal Aliens report (Dec. 1976), p. 241. See also pp. 111–116.
[3] Ibid., pp. 111–112.
[4] Ibid., p. 112.
[5] North/Houstoun study (March 1976), p. 178.
[6] S. 3074, Sec. 2 (94th Congress).

WORK PERMIT

Largely in response to the concern, noted above, of employers, civil rights groups, and others about the problems of identification and possible discrimination in hiring practices in connection with employer penalties for hiring illegal aliens, it has been argued that all aliens and citizens who are legally entitled to work should be issued work permits. It is further argued that the social security card comes close to serving this function today, particularly following the 1972 amendments, and that it should be converted into legal evidence of the right to work.

Thus, in a recent policy statement, the National Council on Employment Policy endorsed the basic concept of penalties for the knowing employment of illegal aliens, but stated, "The employer should . . . be required to obtain a standard proof of the applicant's legal residence." Quoting further:

> The most common document that each American must show before commencing employment is the social security card. By law, this is not to be issued to illegals, but the procedures for investigating applicants are not very rigorous. . . . If the integrity of the social security card were increased, it could serve more effectively as a work identification document.[7]

A work permit system, in conjunction with penalty provisions for the employment of illegal aliens, was supported by David North and Marion Houstoun on the grounds that, "despite its complex ramifications, the work permit program is more likely to inhibit illegal immigration than any other proposed program." They suggest that the "situation is sufficiently serious to call for the creation of a work permit system covering all U.S. workers, so that the Government bears responsibility for determining who is legally permitted to work in the U.S. labor market." [8]

Opposition to a work permit or identification card "runs the gamut from civil libertarians to organized labor," [9] in the words of the Domestic Council Committee on Illegal Aliens, which made no explicit recommendation on the issue. However, the U.S. Justice Department's Federal Advisory Committee on False Identification recommended in November 1976 against a national identification document.[10] In its report on H.R. 8713 in the 94th Congress, the House Judiciary Committee also indicated that it had rejected approaches which "may have far reaching implications and may be a step in the direction of a national identification or work permit system." [11]

With specific reference to the expanded use of the social security card in this context, the Social Security Administration has long opposed the use of its card as legal documentation of status for a variety of reasons, as explained recently by the Deputy Commissioner of the Social Security Administration in testimony before the House Judiciary Subcommittee on Immigration:

> I would say that personally I would, and on behalf of the Social Security Administration, we would, be very reluctant to see a numbering system which was designed essentially for recordkeeping purposes converted into a documentation system that would, in effect, mean that the carrier of this document or the

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[7] National Council on Employment Policy, "Public Policies toward Alien Workers," Illegal Aliens : An Assessment of the Issues, Oct. 1976, pp. 2–3.

[8] North/Houstoun study (March 1976), p. 179.

[9] Domestic Council Committee on Illegal Aliens report (Dec. 1976), p. 115. See also pp. 218–219.

[10] Report of the Federal Advisory Committee on False Identification, pp. 73–76.

[11] H. Rept. No. 94–506 (1975), p. 14.

holder of this number is bearing prima facie evidence of some status under law. It would, I suppose, in the last analysis, if that were to be taken seriously, it would drive us to having to recontact everybody who has a social security number and perhaps adjudicate certain evidence with respect to that number. Or if one did not want to go back and review all existing numbers, it would certainly require us to do things with respect to future enumeration which I think would be technically feasible, but which might cause people to go underground. It would increase the counterfeiting of numbers and cause people to go underground to get false identities, and to that extent degrade the number system for the purposes for which it was really created, and that is for us to keep the earnings records of the individual straight in connection with his potential benefit rights.[12]

AMNESTY

In the context of the illegal alien problem, "amnesty" refers to permitting illegal aliens to convert to legal status. The Immigration and Nationality Act includes two provisions which are at least theoretically relevant. These are the registry provision (Sec. 249; 8 U.S.C. 1259), which grants the Attorney General discretionary authority to establish a record of lawful admission for certain aliens who entered the country prior to June 30, 1948; and suspension of deportation (Sec. 244; 8 U.S.C. 1254), which has a seven or ten year residency requirement, depending on the offense. However, this provision is keyed into deportation hearings by the regulations, and is not used on a mass scale.

Legislation introduced in the 94th Congress included both temporary and permanent amnesty provisions, as well as a wide range of eligibility requirements relating to period of residency here, family ties, show of hardship, etc. In the major bills (H.R. 8713, S. 3074, S. 561), amnesty provisions were linked with penalties for the future employment of illegal aliens.

The principal argument in favor of an amnesty provision is that many aliens working here illegally have built up considerable equity—a significant factor in immigration law, particularly in the considerations of private immigration bills, which amnesty resembles on a mass scale. A major consideration in this respect are family ties with U.S. citizens and permanent resident aliens, as well as other community ties in the United States.

Generally speaking, argument during the 94th Congress turned on the details of the amnesty provision, such as the date of entrance which must be established, other conditions of eligibility, and the degree of discretion to be granted the Attorney General in the administration of the provision. For example, the U.S. Catholic Conference reportedly opposed H.R. 8713 largely because of its dissatisfaction with what it saw to be the bill's unduly limited amnesty provision. Concern was expressed that the mass expulsion that would follow the bill's enactment would result in the separation of families.

In its December 1976 report, the Domestic Council Committee on Illegal Aliens took a strong stand against massive deportations of illegal aliens already in the country as "both inhumane and im-

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12 Arthur E. Hess, House hearings, 1975, p. 227. See also Domestic Council Committee on Illegal Aliens report, pp. 89–95. Commenting on the less than successful "SSA/INS cooperative efforts" to date, that Committee observes, "future policymakers should be extremely wary of drawing agencies whose central purpose is not enforcement into arrangements which require them to act in ways contrary to their historical nature. The SSA has always seen itself as a service agency, and thus has been slow to adjust to the requirements inherent in the amendments of 1972" (p. 95).

practical." It recommended amnesty for otherwise eligible aliens who entered prior to July 1, 1968, the date the Western Hemisphere ceiling took effect, through a permanent amendment of the registry provision (Sec. 249) of the immigration law. Additionally, it recommended that "other policy approaches toward those illegal aliens currently in the country" be evaluated and developed.[13]

Opponents to amnesty for illegal alliens in any form have argued that it implicitly condones law breaking, past and future; and gives those aliens who break the law an advantage over those who comply with its provisions. One member of the House Judiciary Subcommittee on Immigration explained his opposition to the amnesty provision in H.R. 8713 in part as follows:

> It has been maintained that opposing the granting of amnesty is evidence of a lack of compassion for the hardship endured by those who have only sought to better their lives. It is my belief, however, that we do not resolve the problem generated by the presence (and ongoing infiux) of illegal aliens simply by removing the stamp of illegality. Indeed, we do little to maintain or restore a respect for our immigration laws by absolving those who have broken them.[14]

EXPANDED AVAILABILITY OF TEMPORARY ALIEN WORKERS

Particularly with regard to Mexico, it is arguable that there are two choices facing the United States: illegal aliens or an expanded legal temporary worker program—in effect, a renewal of the "Bracero" program. The argument that it is almost impossible to keep alien workers from entering the country given the present economic imbalance between the United States and Mexico, short of the construction of a "Berlin wall" between the two countries, is perhaps the strongest argument in favor of an expanded temporary worker program. Legality, it is argued, would afford both the aliens and the U.S. workers with whom they compete the protection from exploitation and adverse competition lacking in the current unregulated underground labor market situation.

The argument summarized above is presented by Alejandro Portes, in part as follows:

> . . . effective control of illegal crossings would require nothing short of drastic measures, given current pressures at the border. Sharply increased patrolling and control operations, much tougher penalties for violators, and even the physical closing of the border except at selected points would be required. Erection of a "Berlin wall in reverse" to prevent further illegal entries is not likely to occur at the present time.
>
> Short of this radical alternative, only two other channels seem open to deal with the problem. One is simply to allow the present situation to go on unheeded. This would mean ever-greater numbers of illegal entries and progressive reduction of border regulation to a purely "symbolic" function. The second alternative would involve stricter enforcement activities coupled with some program of regulated entry of Mexican labor. This would encompass not only agricultural labor but industrial and domestic service workers as well.
>
> There seem to be some advantages to such a controlled entry program. First, it would provide a less risky, legal alternative to Mexican workers seeking entry into this country. This should reduce the attraction of illegal migration and thus facilitate its control. Second, it would protect Mexican aliens against present uncontrolled exploitation by making provisions for minimum wages, accident insurance, and other benefits. Third, and most important in the domestic front, regulation of Mexican labor entry and wage and fringe benefit guidelines would alleviate the competition by the native poor against unregulated wetback labor.

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[13] Domestic Council Committee on Illegal Aliens report (Dec. 1976), pp. 242–243.

[14] "Additional Views of William S. Cohen on H.R. 8713." H. Rept. No. 94–506 (1975), p. 31.

Any controlled entry program should logically be accompanied by stiffer penalties for hiring wetbacks. The impunity with which employers have made use of this source of labor continues to be a major "pull" factor stimulating illegal migration. Moreover, unions of agricultural and industrial workers affected by Mexican labor should have an effective monitoring role as a way of protecting domestic labor interests and insuring proper application of the program.[15]

A "controlled entry program" of the type described above has been defended on economic as well as moral grounds. Quoting from a discussion of this viewpoint in a Harvard Law School Civil Rights-Civil Liberties Research Committee memo,

If Mexican aliens will enter the country, regardless of the legality of their status, it is to their advantage, to American labor's advantage, and to the advantage of the United States as a whole that they have some sort of legally recognized status. As illegals they are subject to exploitation by employers and do not enjoy the minimum protections afforded other residents of this country.[16]

A related view was expressed by Ernesto Galarza with reference to the Bracero program, "Morally, the system sought a pattern of control which would shield the Mexican migrant from the nauseous evils of the Wetback traffic, on the one hand, and which would on the other prevent a deterioration of employment conditions for domestic laborers." [17]

Opposition to an expanded temporary alien labor program is based, first, on the current high regional and national unemployment rates, particularly among those groups with whom the alien workers would be most likely to compete. Beyond this, and more specifically, it is based on the lengthy U.S. experience with the "Bracero" program (See pp. 102–108 above).

Based on that experience, it is in fact debatable whether the legalization of an expanded temporary alien worker program would increase or decrease illegal traffic. It is argued by, among others, Julian Samora and the Harvard Research Committee quoted directly above, that there would probably be more applicants than opportunities, thereby increasing the pull on Mexicans from the interior to the border and, eventually, the United States. On the other hand, Ernesto Galarza, generally a strong critic of the results of the "Bracero" program, argues that it eventually brought about a "dramatic reduction, if not the total elimination, of the Wetback traffic." [18]

However, according to Galarza, the success of the program was in large part the result of "the position of the bracero as a bound worker in a captive market," and the U.S. employers' resulting gradual acceptance of the program as a satisfactory alternative to illegal aliens as a dependable source of abundant cheap labor. Galarza generalizes as follows about the effect of the Bracero program in California, the subject of his study:

In a free labor market, particularly in one where the sellers are organized, workers withdraw their services until rates rise to meet their demands. This did not happen in California. When domestic workers held back they gave evidence of a shortage from the employer's point of view, and thus proved the need for

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[15] Portes, "Return of the Wetbacks," Society, March/April 1974, p. 46. While Mr. Portes believes that a controlled entry program offers the "greatest advantages," he concludes, "Until unionization of agricultural and urban unskilled workers in the United States changes present power arrangements, the sad but most realistic prediction is that the current situation will continue in the years to come" (p. 46).

[16] Harvard Research Committee, Jan. 15, 1975, p. 26. This passage does not necessarily reflect the committee's viewpoint. The next sentence reads, "However, two opposing arguments render this problem an insoluble dilemma."

[17] Galarza (1964), p. 199.

[18] Ibid., p. 255.

more braceros. It was not surprising that wage surveys regularly found rates on jobs where domestics and braceros both were employed to be lower than the average composite rates for farm work generally.[19]

In short, the Bracero program raises definite questions about whether the organized importation of temporary alien labor would in fact provide either the alien or U.S. workers with protection. It is arguable—and Galarza does so in documented detail—that the chief function of the Bracero program at least, was to provide U.S. employers involved in the program with a dependable supply of cheap labor.

In opposition to the expanded importation of temporary alien labor, the Harvard Research Committee argues that "it is eminently unfair to import, support, and employ foreign labor when the domestic labor force suffers from a high rate of unemployment." [20] Further, it has been argued by, among others, Michael Piore and Ray Marshall that it is in the nature of alien temporary labor to become permanent. Quoting from Marshall, "Despite attempts by host countries to limit the use of immigrants to prescribed occupations for certain lengths of time, these restrictions are rarely successfull in either halting the spread of immigrant workers from the initial penetration points or in preventing permanent settlements." [21] The current situation in the Virgin Islands of the United States is a particularly graphic illustration of both the tendency of a "temporary" labor force to become permanent, and the potentially undesirable consequences of this process for both the alien workers and the host society. Temporary workers brought into the U.S. Virgln Islands since the mid-1950s now make up approximately half of the Islands' work force, in an extremely volatile economic and political situation which has yet to be resolved.[22]

Finally, it can be argued, as North and Houstoun do by implication, that in fact there is little to choose between morally, and to some extent economically, in the use of illegal aliens and the legal aliens who are barred from full participation in the institutions of our society.

At bottom, a decision to use aliens—nonimmigrants or illegals—as a supply of cheap, low-skill labor is an attempt to acquire labor and to adjure its economic and its social costs. That is, of course, a form of exploitation, the de jure or de facto institutionalization of inequities.[23]

REASSESSMENT OF U.S. IMMIGRATION POLICY

A total reassessmcnt of U.S. immigration policy has been recommended recently by both the U.S. General Accounting Office and the Domestic Council Committee on Illegal Aliens. In a report entitled, "Immigration—Need to Reassess U.S. Policy," GAO stated:

U.S. immigration problems may be alleviated somewhat by changes to the current laws; however, to adequately cope with all the problems and to effectively regulate future immigration, we recommend that the Congress work with the administration to totally reassess U.S. immigration policy.[24]

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[19] Ibid., p. 145.
[20] Harvard Research Committee, p. 26.
[21] Marshall (1976), p. 59. See also Piore (1976), p. 28.
[22] See U.S. Congress. House. Committee on the Judiciary. Nonimmigrant alien labor program on the Virgin Islands of the United States. (Committee print) Washington, U.S. Govt. Print. Off., 1975.
[23] North/Houstoun study (March 1976), pp. 169–170.
[24] U.S. Comptroller General of the United States, "Immigration—Need to Reassess U.S. Policy," Oct. 19, 1976, p. 3.

In a similar vein, the Domestic Council Committee on Illegal Aliens concluded, "The illegal alien issue is ultimately an issue of immigration policy and will not be satisfactorily met until a thorough rethinking of our immigration policy is undertaken." [25]

The basic four title structure and many of the provisions of the Immigration and Nationality Act are 25 years old, and few would disagree that the Act includes obsolete, anachronistic, and unnecessarily complex provisions. Our basic immigration policy is of a more recent vintage, dating back to the 1965 amendments, which abolished the national origins system, and the 1976 amendments, which extended to the Western Hemisphere the preference system and 20,000 per-country limit which had previously regulated only Eastern Hemisphere immigration. It is certainly arguable that, as a result of these substantive amendments, the Immigration and Nationality Act now constitutes an imperfectly blended amalgam of provisions reflecting the very different needs and values of the early 1950s, the mid-1960s, and the present day,

The basic goals of our current immigration policy, as embodied in the Immigration and Nationality Act, as amended, are the reunification of family members, the uniform treatment of all countries, and numerical restriction. Other major goals include the protection of U.S. labor from adverse competition, the admission of workers in short supply, the admission of refugees, and the exclusion of undesirable aliens,

While there are a number of options which might be considered in rethinking and revising U.S. immigration policy, those which might predictably have a direct impact on illegal immigration would appear to be fairly limited. The expansion of a temporary worker program, discussed immediately above, is one such option.

A second major option would be increasing the number of immigrants who may enter annually, either across the board, or from countries of particularly high demand. While the Domestic Council Committee on Illegal Aliens in no way recommends a liberalization of the numerical restrictions, it posits a direct causal correlation between "a large documented demand for immigration" and "a great hidden demand which is producing illegal entry to the U.S." [26] With specific reference to Latin America and Asia, they note:

> Pressure to immigrate from these areas is intense with several high demand countries having up to two-year waiting periods for immigrant visas issuance. Such backlogs contribute to illegal immigration streams from these nations.[27]

Another major option would appear to be liberalizing existing work-related restrictions. In their Labor Department-financed study, North and Houstoun reported that three-quarters of the approximately 800 illegal aliens interviewed for their study had been working in occupations for which labor certification would have been automatically denied under the Labor Department's administrative interpretation of the labor certification provision at that time.[28]

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[25] Domestic Council Committee on Illegal Aliens report (Dec. 1976), p. 239.
[26] Ibid., p. 39.
[27] Ibid., p. 33.
[28] North/Houstoun study (March 1976), p. 111. North and Houstoun in no way recommended a relaxation of work-related restrictions.

It is arguable that a liberalization of numerical and/or work-related restrictions would increase opportunities for legal entry and thus, presumably—although not inevitably—reduce illegal entries. However, such measures would be likely to meet strong opposition on the grounds that they would exacerbate present unemployment and population problems.

On the other hand, it can also be argued that immigration tends to beget immigration, both legal and illegal, by attracting more intending immigrants than can legally be accommodated. It follows from this hypothesis that a more restrictive policy, combined with the allocation of greater resources to law enforcement, might be effective in reducing the total number of aliens entering this country legally as well as illegally. However, as with liberalization, any decision to restrict immigration would have to take into account many other factors besides illegal aliens, including the foreign policy implications.

ADEQUACY OF FINANCIAL RESOURCES FOR INS (JUSTICE) AND BUREAU OF SECURITY AND CONSULAR AFFAIRS (STATE)

As discussed in Section III, the need for increasing INS's appropriations has been argued by many, including INS itself, the House Judiciary Committee, the House Government Operations Committee, and numerous other commentators on the current illegal alien problem. For example, observing that "the level of effort expended on the enforcement of the immigration law is astonishingly minimal," North and Houstoun point out that INS investigative and Border Patrol agents numbered 2,739 in fiscal year 1974 and accounted for 788,147 apprehensions, compared to, for instance, the 4,750 members of the D.C. Metropolitan Police Force, and the 3,994 corrections officers in Federal penal institutions housing approximately 23,000 prisoners.[29] Quoting from the INS 1976 budget justification:

> With current manpower levels, the border patrol simply cannot handle the present volume of illegal entry. In the 15 years between 1960 and 1974, the authorized strength of the border patrol has been increased by only 349 positions (1,773 to 2,122) while border patrol apprehensions have increased by over 2,000 percent (29,881 to 640,913). It is only through the use of the sensor systems, and because the alien intrusion pattern has tended to be channeled in certain key sectors, that the border patrol has been able to achieve its current level of success.[30]

The need for additional INS inspectors at major Southern land border ports and international airports in this country would appear to have been clearly demonstrated by the recent INS Fraudulent Entrants Study, although this was not among its specific findings. As the result of the allotment of additional manpower, allowing for more thorough inspections, at selected high volume Mexican border ports of entry and international airports, the number of attempted fraudulent entrants apprehended was 12 to 14 times greater than the number apprehended at the same ports during routine operations.[31]

In a related point, it is argued that more resources and prestige should be allocated by the State Department to the visa issuance function abroad. Quoting from the Domestic Council Committee on Illegal Aliens,

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[29] North/Houstoun "Summary" (Oct. 1976), p. 46.
[30] House Appropriations Committee hearings, FY 1976, 94th Cong., 1st Sess., 1975, p. 897.
[31] INS Fraudulent Entrants Study (Sept. 1976), p. 18.

Prevention of entry should remain the foremost enforcement goal of both the INS and the Department of State from a cost, a legal, and a community impact point of view. To achieve an acceptable level of prevention will require additional resources for both agencies, and improved management techniques . . . , and higher priority for the visa function with the Department of State.[32]

Generally speaking, it is argued that greater expenditures on the enforcement of current immigration law may be potentially more effective and ultimately less costly than some of the alternate approaches to the illegal alien problem which have been proposed. In this vein, Representative Elizabeth Holtzman observed to Justice Department witnesses during hearings in the 94th Congress,

Is there anything we can learn from the mistakes that we have made in terms of screening potential tourists who come to this country? I mean, for you to say that we are going to enact a bill that is going to require every American to carry a nationality card for the first time in our history without at the same time saying that we have done everything in our power to enforce the laws and enforce them properly puzzles me. . . .[33]

In particular, tighter border security has been defended as lacking many of the disadvantages of alternative approaches. Shortly after Operation Wetback, the INS Commissioner at the time, General Swing, wrote in the INS Annual Report: "The prevention of illegal entries, as the major ingredient of border control, is more difficult, requires more ingenuity, more men and equipment, but is, in the long run, more economical and more humane than the expulsion process." [34]

Writing in 1973, in the context of the current illegal alien problem, the Cramton report concluded:

The Study Group is strongly of the opinion that substantially greater resources should be made available for the purpose of improving the effectiveness of border security. While the available data do not permit any precise quantitative assessment of the net effect that illegal Mexican aliens have on the economy of the United States, it seems clear that illegal Mexican workers adversely affect wages and working conditions in some areas of this country, and may force citizens to resort to welfare.[35]

Commenting further, they noted:

Preventing Mexican nationals from crossing the border illegally is one of the few alternatives which holds forth any significant hope of preventing abuses against them. . . .

Increasing the security of the border has few of the disadvantages which can be discerned in other alternatives. In an area where feelings and political opposition are often intense, this is one of the few options that will not threaten the legitimate interests of any affected group.[36]

The Domestic Council Committee on Illegal Aliens recommended similar measures for similar reasons in late 1976, without specific reference to Mexico. One of its major recommendations was that, "Effective enforcement of the Immigration and Nationality Act must stress prevention above all other considerations." Quoting further,

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[32] Domestic Council Committee on Illegal Aliens report (Dec. 1976), pp. 122–123.
[33] House Judiciary hearing, 1975, p. 52.
[34] Quoted by Samora (1971), p. 53.
[35] Cramton report (Jan. 1973), p. 17
[36] Ibid., pp. 17–18.

It is vastly more desirable from both a policy and a resources standpoint to prevent entry of the illegal or screen out potential illegals before arrival than to locate and apprehend the illegal once he is in the U.S. This strategy is currently accepted but it will require more adequate resources for both the State Department and the Immigration and Naturalization Service, improved management and tactics, legislation, and greater cooperation among federal agencies with related enforcement responsibilities to be effective.[37]

It is believed by some that illegal entries from other countries, most notably in the West Indies, are potentially more subject to control than those from Mexico, where the patterns of illegal entry and employment are firmly established. Thus, Michael Piore, writes,

For migrations already in process, the push factors. the pull factors, and the techniques of response are at their maximum. New migration streams should, by contrast, be relatively easy to forestall: and the payoff to doing so lies not only in those who are actually apprehended but in the prevention of the development of a long-term migration stream. This implies that enforcement resources should be concentrated on locating and halting the new.[38]

However, it can be argued that, ideally, given adequate resources, a choice need not be made between prevention of illegal entry and other enforcement efforts,

The general argument against increasing the INS budget appears to be the need for economy in government. Presumably, also, the Justice Department and OMB, at least during the past Administration, suspended judgment on the dimensions of the illegal alien problem until the completion of the comprehensive study currently underway by INS.

In more specific terms, it has been argued that it would be impossible to effectively close the U.S.-Mexican border, short of measures that we would be unwilling to undertake, This argument as stated by Alejandro Portes is quoted above. In a related point, INS has argued the need for the enactment of legislation establishing penalties for the employment of illegal aliens, if it is to successful in controlling their entry. Again the argument has been that employment opportunities here attract the clandestine workers in the first place, and that in the absence of legislation prohibiting their employment, the problem is essentially uncontrollable. Thus, the following exchange took place between Representative Joseph Early and INS Commissioner Leonard Chapman during hearings on the fiscal year 1977 INS appropriations:

Mr. EARLY. I can't understand why we are spending all of this money and still not getting at the root of the problem.

General CHAPMAN. The root of the problem is employment. That is the bottom line.

Mr. EARLY. Why won't someone in your position. Mr. Commissioner, say you don't care about the budget at all until you get an employment bill and put the heat on some people to get the bill moving?

General CHAPMAN. Well, I think in the past 2 years I have made something like 45 speeches, and I forget how many press conferences, all on that very point.

Mr. EARLY. You know what I think, General. No one is listening.

General CHAPMAN. I think I have been before congressional committees 35 or 40 times, in which I have made this same speech repeatedly.[39]

INCREASED ENFORCEMENT OF EXISTING RELATED LEGISLATION

It can be argued that, to a considerable extent, the adverse impact of illegal aliens in this country is the result of the violation of existing Federal legislation, in addition to the immigration law, by the aliens

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[37] Domestic Council Committee on Illegal Aliens report (Dec. 1976), p. 239.
[38] Piore (1976), p. 33.
[39] House Appropriations hearings, FY 1977, 94th Cong., 2d Sess., 1976, p. 704.

themselves, their employers, and/or administrators of public welfare programs. It is further arguable that concerted enforcement of existing tax and labor laws could significantly reduce the competitive advantage of illegal aliens in the labor market. Quoting again from North and Houstoun:

> The Government can discourage illegal immigration by discouraging employers from hiring illegals without the passage of additional legislation; it can do so, in many instances, by focusing tax and labor standards enforcement efforts on the employers of illegals.
>
> A significant minority of the respondents in our study reported that they were paid less than the minimum wage; some reported non-deduction of social security taxes and of income taxes.
>
> Further, our survey data suggest that an employer who hires illegals and violates one tax or labor standards law is likely to violate others.[40]

Similarly, the participation by illegal aliens in the major public assistance and service programs is prohibited by law or regulation. As noted previously, these include Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Medicaid, and the Food Stamp program. It is arguable that stricter enforcement of these restrictions, as well as those now attached to the issuance of social security cards, could effectively curtail the participation of illegal aliens in the programs, as well as enhance the reliability of the social security card as an indication that its bearer is legally eligible for employment.

However, it is also arguable that INS would first have to be provided with the necessary manpower to conduct prompt checks on all names and other information referred to it by other agencies for verification. Enforcement of the laws and regulations referred to above, as they pertain directly or indirectly to illegal aliens, requires a degree of cooperation from INS which is, according to all reports, currently lacking.

At the same time, other agencies have been criticized for their failure to cooperate with INS. Quoting from the House Judiciary Committee report on H.R. 8713 (94th Congress):

> The Committee continues to be disturbed by the evident lack of cooperation among the agencies and departments of federal and state governments whose programs and functions are impacted by illegal aliens. In our earlier reports in the 92nd and 93rd Congresses on similar legislation, we expressly recommended greater cooperation between the Immigration and Naturalization Service and the Department of Health, Education, and Welfare, particularly the Social Security Administration, the Department of Labor, and the Internal Revenue Service. To date, only minimal progress has been made in this area. . . . .
>
> It is apparent that the primary reason for the lack of cooperation stems from the fact that most government agencies do not feel obligated to cooperate with INS or question the benefits of such cooperation in terms of their own priorities and programs. Similarly, agencies are reluctant to initiate efforts to address the illegal alien issue believing that the INS has the sole jurisdiction and responsibility for dealing with this matter.[41]

The establishment of multi-agency strike forces in areas where illegal aliens are known to be concentrated has been recommended by North and Houstoun, to include enforcement officials from the following agencies:

> Employment Standards Administration, for minimum wage violations;
> Occupational Safety and Health Administration, for OSHA violations;
> State Employment Security Agencies, for violations of unemployment insurance tax laws;

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[40] North/Houstoun "Summary" (Oct. 1976), p. 47.
[41] H. Rept. No. 94–506 (1975), p. 10.

Internal Revenue Service, for Social Security tax and income tax withholdings; and

Immigration and Naturalization Service, regarding the presence of illegals on company payrolls.[42]

In order to broaden the scope of the strike forces to include illegal participation in public welfare programs where this is believed to be a problem, officials from the Departments of Health, Education and Welfare (SSI, AFDC, Medicaid) and Agriculture (Food Stamps) might also be included.

In addition to reducing the adverse domestic impact of illegal aliens on both the labor market and public welfare programs, the strict enforcement of the relevant existing laws—including the immigration law—has the additional advantage of having no overt adverse foreign policy implications. Furthermore, to the extent that there is a real need for alien labor, this approach would not necessarily result in the total elimination of that labor supply, as long as the clandestine workers were paid the minimum wage, complied with U.S. tax laws, etc. On the other hand, it is arguable that such an approach is deficient precisely because it could be expected to reduce, but not necessarily eliminate, the illegal alien traffic.

The principal argument against such an approach is probably contained in the passage from the House Judiciary Committee report quoted above, to the effect that most agencies do not feel obligated to cooperate with INS, and tend to believe that "INS has the sole jurisdication and responsibility for dealing" with illegal aliens. A coordinated multi-agency enforcement of the existing laws relating directly and indirectly to illegal aliens would require a degree of attention and support which has hitherto been lacking. The first of the major recommendations of the Domestic Council Committee on Illegal Aliens is directly relevant:

The issue of illegal immigration merits priority attention and requires Cabinet leadership. Actions to be taken cross many bureaucratic and agency lines and will require continued coordination and direction at the highest level.[43]

Increased appropriations for more effective enforcement of the applicable existing laws would also be required.

COMPARISON OF MAJOR PROVISIONS OF H.R. 8713, AS REPORTED, WITH S. 3074 (94TH CONGRESS)

Provision	Existing law	H.R. 8713, as reported (H. Rept. No. 94-506)	S. 3074 (Mr. Eastland)
Adjustment of status	Aliens who are natives of Western Hemisphere countries or the adjacent islands are prohibited from adjusting their status from that of nonimmigrant to that of lawful permanent resident while in the United States (sec. 245).	Also permits the adjustment of status in the United States of otherwise eligible natives of the Western Hemisphere and the adjacent islands. Prohibits the adjustment of status by aliens, other than close relatives of U.S. citizens, who have accepted unauthorized employment. Changes the date used to determine the availability of a visa number from the approval date to the filing date (sec. 1; substantially identical to H.R. 14535, sec. 6, enacted into law, Public Law 94-571).	Also permits the adjustment of status in the United States of otherwise eligible natives of the Western Hemisphere and adjacent islands, as well as alien crewmen. Prohibits the adjustment of status by aliens other than close relatives of U.S. citizens, who have accepted unauthorized employment. Changes the date used to determine both the availability of a visa number and the alien's date of lawful admission from the date his application is approved (current law) to the date it is filed (sec. 10).

[42] North/Houstoun study (March 1976), p. 173.
[43] Domestic Council Committte on Illegal Aliens report (December 1976, p. 241.

COMPARISON OF MAJOR PROVISIONS OF H.R. 8713, AS REPORTED, WITH S. 3074 (94TH CONGRESS)—Continued

Provision	Existing law	H.R. 8713, as reported (H. Rept. No. 94–506)	S. 3074 (Mr. Eastland)
Penalty provisions for the employment of illegal aliens (i.e., aliens not legally authorized to work).	None; provides that normal employment practices shall not be deemed to constitute harboring, and offense punishable by $2,000 and/or 5 yr imprisonment for each alien involved (sec. 274).	(1) Deletes the proviso that normal employment practices shall not be deemed to constitute harboring. (2) Makes unlawful the knowing employment, continued employment, or referral for employment of an illegal alien by an employer or his agent, or by any person who for a fee refers an alien for employment.	(1) Deletes the proviso that normal employment practices shall not be deemed to constitute harboring. (2) Makes unlawful the knowing employment, continued employment, or referral for employment of an illegal alien by an employer or his agent, by any person who for a fee refers an alien for employment, or by any representative of a labor organization who refers an alien for employment. Provides that persons making a bona fide inquiry as to whether employees are legally authorized to work will be exempt from liability; and further provides that the receipt by the employer, agent, or referrer of a statement on a form prepared by the Attorney General that the employee is authorized to work will be considered prima facie evidence of a bona fide inquiry.
		Establishes a 3-step procedure of administrative, civil and criminal sanctions: (a) Citation for knowing or unknowing employment, continued employment, or referral for employment of illegal aliens; (b) For knowing employment, continued employment, or referral for employment within 2 yr after citation, civil penalty of not more than $500 for each illegal alien involved; (c) Persons convicted of subsequent violations shall be guilty of a misdemeanor punishable by a fine of not more than $1,000 and/or imprisonment of not more than 1 year for each illegal alien involved.	Establishes a 2-step civil penalty structure for violations: (a) Civil penalty of not more than $500 for each alien involved; (b) For subsequent violation, civil penalty of not less than $500 and not more than $1,000 for each alien involved.
		(3) Grants the U.S. district courts jurisdiction to enjoin the knowing employment, continued employment, or referral for employment of illegal aliens (sec. 2).	(3) Grants the U.S. district courts jurisdiction to enjoin the knowing employment, continued employment, or referral for employment of illegal aliens (sec. 12).
Antidiscrimination	No comparable provision in Immigration and Nationality Act (see 42 U.S.C. 2000e–5).	Authorizes the Attorney General to bring civil actions against employers who are believed to discriminate on the basis of national origin (sec. 3).	No comparable provision.
Registry/"amnestry"	Authorizes the Attorney General, at his discretion, to create a record of lawful admission for certain aliens illegally in the United States who have resided here continuously prior to June 30, 1948. Aliens must not be inadmissible under the provisions of 212(a) relating to "criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens," and must not be ineligible for citizenship (sec. 249).	Does not amend the registry provision. Authorizes the Attorney General, at his discretion, to adjust the status of certain aliens illegally in the United States who entered prior to June 30, 1968, and who are either close relatives of U.S. citizens or permanent resident aliens, or whose departure would result in unusual hardship. Aliens must be admissible as immigrants under the provisions of the Immigration and Nationality Act, with the exception of the labor certification requirement and certain documentary requirements, and must apply within 1 year after the effective date of this bill (sec. 4).	Similar to existing law, except changes the cutoff date for eligibility for relief under this provision to July 1, 1968 (sec. 11).

COMPARISON OF MAJOR PROVISIONS OF H.R. 8713, AS REPORTED, WITH S. 3074 (94TH CONGRESS)—Continued

Provision	Existing law	H.R. 8713, as reported (H. Rept. No. 94–506)	S. 3074 (Mr. Eastland)
Disclosure of aliens illegally receiving assistance under the Social Security Act.	Requires the Social Security Administration, upon request, to notify the Justice Department of "available information" on the identity and location of aliens in the United States (sec. 290 (c)).	Adds a new provision requiring HEW to disclose to Justice the name and address of any alien, including any alien unlawfully in the United States, who is receiving assistance under specified titles of the Social Security Act for which he is not eligible (sec. 5).	Identical to H.R. 8713, as reported (sec. 13).
alsifying of alien documentation.	Imposes criminal penalties for knowingly falsifying certain immigration documents or for the knowing use of such falsified documents (18 U.S.C. 1546).	Amends 18 U.S.C. 1546 to make it also explicitly applicable to border crossing cards, alien registration receipt cards, or other entry documents (sec. 6).	Identical to H.R. 8713, as reported (sec. 18).
Authorization of Justice Department funds.	No comparable provision in Immigration and Nationality Act.	Requires that Justice Department appropriations for carrying out functions under the Immigration and Nationality Act must be specifically authorized by an act of Congress (sec. 9).	No comparable provision.
Grounds for deportation__	Makes deportable an alien who becomes institutionalized at public expense (sec. 241(a)(3)), or who becomes a public charge (sec. 241(a)(8)), in both cases within 5 yr after entry and for reasons which existed prior to entry.	Further stipulates that becoming a public charge is grounds for deportation regardless of whether the alien is legally liable for repayment or whether any request for repayment has been made (that is, amends sec. 241(a)(8), only) (sec. 10).	Further stipulates that becoming institutionalized at public expense or becoming a public charge are grounds for deportation regardless of whether the alien is legally liable for repayment or whether any request for repayment has been made (sec. 9).

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