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James A. R. Nafziger

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An Immigration Policy of Helping Bring People to the Resources

Keywords

Aliens, Children, Education Law, Public Education, State Action

An Immigration Policy of Helping Bring People to the Resources

JAMES A.R. NAFZIGER*

I. INTRODUCTION

The issue of undocumented aliens in the United States eludes resolution because of several factors. These include distorted, ritualized commentary, an incomplete and incoherent national policy framework, deficiencies in the federal immigration law and its implementation, and consequent public misperceptions which encourage more of the same. In response, the federal government desperately needs to formulate a coherent, informed immigration policy which rises above misplaced public fears to define the national interest more broadly in terms of emerging political, economic, and demographic realities and world order imperatives.¹ As a fulcrum of a new policy, the United States should assist in the rational process of human migration and the related redistribution of global resources. In general, people should be allowed, indeed encouraged, to migrate internationally, as they do domestically, in search of a better life.²

There is no dearth of legal techniques, actual and proposed, which address the issue of undocumented aliens. The threat of undocumented aliens, however, has been grossly exaggerated.³ The United States can, and should, revive its mori-

* Associate Professor of Law, Willamette University College of Law; Visiting (Fulbright) Professor, National Autonomous University of Mexico, 1978.

1. "It is not a question whether or not to act upon the national interest, but whether we perceive and define that national interest in terms broad enough to respond to the actual determinants of political behavior." Shulman, *On Learning to Live with Authoritarian Regimes*, 55 *FOR. AFF.* 337 (1977). The newly established Select Commission on Immigration and Refugee Policy will have an opportunity to formulate a new policy which takes account of emerging national and world order interests. Act of Oct. 12, 1978, Pub. L. No. 95-412, § 4, 92 Stat. 907.

2. See, e.g., the injunctions of the World Population Plan of Action, *infra* notes 85 and 86; President López Portillo of Mexico has emphasized the transnational consideration that "[i]t is not a crime to look for work [by Mexican immigrants] and I refuse to consider it as such," quoted in *Eying Mexico's Oil Bonanza*, *NEWSWEEK*, Feb. 19, 1979, at 31.

3. See W. Cornelius, *Migration to the United States: Causes, Consequences and U. S. Responses* (Center for International Studies, Massachusetts Institute of Technology, Monograph Series of the Migration and Development Study Group) (1978).

bund hospitality toward immigration and, in the process, legitimize the status of undocumented aliens in the country. Unnecessary immigration barriers serve neither national nor global interests.

A fortress mentality is especially detrimental to the interests served by Mexican migration.⁴ Although the presence of large numbers of undocumented Mexican aliens is not cost free to this country, on balance they have more than paid their way; they are more of a benefit than a burden.⁵

By official acknowledgement, the issue of undocumented aliens remains at dead center in relations between Mexico and the United States.⁶ The "special relationship" between the

4. Nafziger, *A Policy Framework for Regulating the Flow of Undocumented Mexican Aliens into the United States*, 56 OR. L. REV. 63 (1977).

5. *Id.*

6. Mexican President López Portillo, quoted in *Excelsior* (Mexico), Aug. 9, 1977, at 1-A, col. 4; U. S. Ambassador (to Mexico) Patrick J. Lucey, quoted in Hatch, *Illegal Aliens' Biggest Issue: Lucey*, *Capital Times* (Madison, Wisc.), Aug. 16, 1978, at 43, col. 1; Fagen, *The Realities of U.S.-Mexican Relations*, 55 FOR. AFF. 685, 688 (1977); *Excelsior*, May 6, 1978, at 6-A, col. 1. During 1978 the United States was increasingly preoccupied with the issue: Fagen, *The Carter Administration and Latin America: Business As Usual?* 57 FOR. AFF. 652, 656 (Special issue 1979).

The February 14-16, 1979 meetings in Mexico City between Presidents Carter and López Portillo seem to have featured three issues: trade, energy, and immigration, although others were discussed. Nelson, *Mexican President Delivers Blunt Warning to Carter*, *L.A. Times*, Feb. 15, 1979, at 1, col. 2; Nelson, *Carter Defends As "Fair" U. S. Dealings with Mexico*, *L.A. Times*, Feb. 16, 1979, at 1, col. 1; Greenwood and Nelson, *Carter Vows to Push for Mexican Gas Deal*, *L.A. Times*, Feb. 17, 1979, at 1, col. 5; *The Oregonian*, Feb. 17, 1979, at 1, col. 5.; Goodsell, *Mexico: Goodwill—but not Necessarily Oil for U.S.*, *Christian Sci. Mon.*, Apr. 6, 1979, at 7, col. 1. Leonel Castillo, Director of the Immigration and Naturalization Service, described the meeting as the most important development involving the two nations since Mexico nationalized American oil holdings in 1938. *L. A. Times*, Feb. 16, 1979, at 12, col. 1. Generally, however, appraisals of the meeting were less exuberant. See, e.g., Goodsell, *Little Enthusiasm for Carter in Mexico*, *Christian Sci. Mon.*, Feb. 16, 1979, at 1, col. 1. Whatever the final appraisal of the meetings, they did establish a process of better communication—a "joint consultant mechanism"—between the two countries on the issues of immigration and undocumented aliens. Del Olmo, *First Step Taken To Solve Alien Issue*, *L.A. Times*, Feb. 17, 1979, at 1, col. 16. In a joint communiqué following the meetings, Mexico for the first time agreed that it shares the migration problem with the United States. *The Oregonian*, Feb. 17, 1979, at 1, col. 5. The issue of undocumented Mexican aliens will apparently be a central consideration of the newly established Presidential Select Commission on Immigration and Refugee Policy. *L.A. Times*, Feb. 17, 1979, at 12, col. 1. On the background of the Carter-López Portillo meeting, including summaries of divergent views on the issue of undocumented aliens, see, e.g., Holt, *Carter in Mexico: It Could Be a Turning Point*, *Christian Sci. Mon.*, Feb. 7, 1979, at 23, col. 2; Goodsell, *Carter's Mexican Test: Coal Friend, New Riches*,

United States and Mexico,⁷ and the historical and geographical circumstances of Mexican migration (which is estimated to involve as much as one-quarter of the total Mexican work force⁸) should be instrumental in shaping a comprehensive, coherent immigration policy and law. In focusing on the issue of Mexican migration to the United States, it is recognized that undocumented aliens from other countries are more apt to be visa overstayers rather than, as is more typical of Mexicans, undocumented entrants at the border. A comprehensive national policy should consider what, if anything, this formal distinction among undocumented aliens implies.

Before examining the substantive issues, it will be useful to take note of recent commentary and studies as an indication of public and scholarly opinion. Throughout this article, special attention will be given to Mexican press commentary, in an effort to maintain a broad perspective.⁹ In surveying the domestic media, to which lesser attention is given, it is depressing to find very few items which offer new insights and abjure the familiar ritualized mythology.¹⁰ One can find several responsible press commentaries and several useful studies.¹¹ On

Christian Sci. Mon., Feb. 13, 1979, at 6, col. 1; and Goodsell, *Carter in Mexico: Warm Welcome, Cool Debate*, Christian Sci. Mon., Feb. 15, 1979, at 3, col. 1.

7. The relationship supposedly emanates from the social and economic ties of the border region and from the basic situation of 'neighborliness' that geography has imposed upon the two nations. By definition, goes the argument, neighbor nations enjoy a particularly intimate relationship exemplified by a plethora of favorable interactions, including voluminous trade, mutual investment, reciprocal tourism and cooperative efforts to resolve occasional problems.

Williams, *Oil in Mexican-U.S. Relations: Analysis and Bargaining Scenario*, 22 *ORBIS* 201 (1978).

8. For a summary of research leading to the estimate of Mexican workers in the United States, see *Excelsior*, June 1, 1978, at 1-A, col. 1. See generally J. SAMORA, *LOS MOJADOS: THE WETBACK STORY* (1971).

9. Of particular note is a column on these issues, usually appearing in the Monday edition of the Mexico City daily *Unomásuno*, written by Jorge Bustamante of El Colegio de México, the director of a \$1 million study involving interviews with some 800,000 Mexicans who have worked in the United States. *L.A. Times*, Feb. 17, 1979, at 16, col. 1.

10. For a description of this mythology, see Nafziger, *supra* note 4, at 64.

11. For salient press commentary, see especially, Kirsch, *California's Illegal Aliens: They Give More Than They Take*, *NEW WEST*, May 23, 1977, at 26; Cook, *How Illegal Aliens Pay as They Go*, *NEW WEST*, May 23, 1977, at 34; Critchfield, *They Still Come Home to Huecorio*, Christian Sci. Mon., Aug. 31, 1977, at 14, col. 1 (a concise, revealing account of migratory patterns involving one small town in the Mexican state

the other hand, there is a mass of regurgitated mythology, much of it expressed with apocalyptic vision,¹² which princi-

of Michoacan); Goodsell, *Why Paco Díaz Wants To Head Up North*, Christian Sci. Mon., Apr. 4, 1979, at 14, col. 1; Preston, *Why Mexico's Peasants Migrate North*, Christian Sci. Mon., Aug. 29, 1978, at 9, col. 3; Jacoby, *How Should We Deal with Illegal Aliens?*, Manchester Guardian, July 31, 1977, at 17, col. 1; Maxwell, *Illegal Immigration: The Mexican Perspective*, L.A. Times, July 15, 1979, Special Supp. at 30; Becklund, *Get Out If You Can: Mexico's Catch 22*, *id.* at 31; Green, *Unalienable Wrongs: Immigrants and the Law North of the Rio Grande*, 7 JURIS DOCTOR 37 (Nov. 1977); Wall St. J., June 18, 1976; Wall St. J., Feb. 14, 1979; Wachter, *Second Thoughts About Illegal Immigrants*, FORTUNE, May 22, 1978, at 80; and Riding, *Silent Invasion: Why Mexico is an American Problem*, SAT. REV., July 8, 1978, at 14. *Illegal Aliens: Invasion Out of Control*, U.S. NEWS & WORLD REP., Jan. 29, 1979, at 38; Velarde & Castillo, *How to Deal with Illegal Aliens*, Christian Sci. Mon., Mar. 14, 1979, at 22; Van Slambrouck, *New Study Rejects Old Views: Illegal Aliens Affect Small Part of Economy*, Christian Sci. Mon., Mar. 22, 1979, at 9, col. 4.

Among the scholarly studies, especially recommended is W. Cornelius, note 3 *supra*, which not only provides a thorough description and analysis, but an excellent bibliography. Also recommended are Bustamante, *Commodity Migrants*, in VIEWS ACROSS THE BORDER, (S. Ross ed. 1978); Catz, *Fourth Amendment Limitations on Nonborder Searches for Illegal Aliens: The Immigration and Naturalization Service Meets the Constitution*, 39 OHIO ST. L.J. 66 (1978); W. Cornelius, *Illegal Migration to the U.S.: Recent Research Findings, Policy Implications and Research Priorities* (unpublished, 1977); J. Reichert and D. Massey, *Patterns of Migration from a Rural Mexican Town to the United States: A Comparison of Legal and Illegal Migrants* (March 1979) (unpublished study, Princeton University); W. Cornelius, *Mexican Migration to the U.S.: The View From Rural Sending Communities* (MIT 1976); National Council on Employment Policy, *Illegal Aliens: An Assessment of the Issues* (1978); Ríos-Bustamante, *IMMIGRATION AND PUBLIC POLICY: HUMAN RIGHTS FOR UNDOCUMENTED WORKERS AND THEIR FAMILIES* (1978); Stoddard, *Illegal Mexican Labor in the Borderlands: Institutionalized Support of an Unlawful Practice*, 19 PAC. SOC. REV. 175 (1976). See also several unpublished papers presented or otherwise distributed at the First International Symposium on the Problems of Migratory Workers from Mexico and the United States (University of Guadalajara, July 11-14, 1978): J. Arroyo Alejandro & W. Winnie, *La Migración de los Trabajadores Rurales de Jalisco Hacia los Estados Unidos*; L. Estrada, G. Cardenas & L. Garcia y Griego, *Measuring the Volume and Social Impact of Undocumented Immigration: Confusion Leading to Unfounded Exaggerations*; C. Garcia, *Maximization or Survival?: The case of "Illegal Aliens" from Mexico*; R. Rochin, *Illegal Mexican Aliens in California Agriculture: Some Theoretical Considerations*; and J. Sommers, *The Problem of the Undocumented Worker: A View from the United States*.

For additional data, unfortunately marshalled in support of questionable conclusions, see D. NORTH & M. HOUSTON, *THE CHARACTERISTICS AND ROLE OF ILLEGAL ALIENS IN THE U.S. LABOR MARKET: AN EXPLORATORY STUDY* (1976); Salinas & Torres, *The Undocumented Mexican Alien: A Legal, Social, and Economic Analysis*, 13 HOUSTON L. REV. 863 (1976). The Centro de Inmigración, Georgetown University Law Center, Washington, D.C., has prepared a useful bibliography, *Undocumented Immigrant Resource Materials Available from Centro de Inmigración*.

12. See, e.g., Morris, *Texas-Chihuahua*, 177 NEW REP., Oct. 22, 1977, at 12; TIME, May 2, 1977, at 26; Strout, *Illegal Aliens Present U.S. with Problem of Huge Size*, Christian Sci. Mon., May 16, 1977, at 16, col. 1; Strout, *"Undocumented Workers" Swell U.S. Population*, Christian Sci. Mon., Nov. 2, 1978, at 7, col. 4; Strout, *The Undocumented Alien*, Christian Sci. Mon., Mar. 18, 1977 at 39, col. 1; Strout, *Labor*

pally serves to distort public opinion.

Written commentary is, however, only one factor in the vicious circle of current public concern. The Federal Government has also been instrumental.¹³ Finally, public opinion, doubtlessly fed by these first two factors, has become more hostile toward aliens. As an example of this trend, the United States public now seems to favor the requirement that all persons carry an identification card presumably unavailable to undocumented aliens, large-scale roundup of them, and a law penalizing employers who hire them. Public opinion also disfavors "amnesty" for undocumented aliens already in this country.¹⁴ Although these responses address specific policy propos-

Secretary Looks Hard at Illegal Alien Problem, Christian Sci. Mon., Nov. 17, 1978, at 10, col. 1; Strout, *Population Clock: The Impact of Immigrants*, Christian Sci. Mon., Nov. 17, 1978, at 31, col. 1; Strout, *U.S. Immigration Chief Criticized by Some as "Soft" on Mexicans*, Christian Sci. Mon., Nov. 27, 1978, at 7, col. 3; Lyons, *Inside the Volcano*, HARPER'S, June 1977, at 41 (although not addressed to the specific problem of undocumented aliens, the Lyons article presents a rather sensationalistic series of Mexican vignettes that make both indirect and direct reference to *bracero* migration to the United States). Of particular notoriety in the recent literature is a report, IMMIGRANTS AND IMMIGRANTS: PERSPECTIVES ON MEXICAN LABOR MIGRATION TO THE UNITED STATES (A. Corwin ed. 1978) [hereinafter cited as the Corwin Report]. Although its data (current as of 1975), legislative focus, and conclusions are by now outdated, it warrants special mention because of the recent impact it was reported to have had on initial positions taken by the Carter administration and because it only recently received attention (front page) in Mexico (Excelsior, Mar. 23, 1978, at 1-A, col. 1; *id.* Mar. 24, 1978, at 1-A, col. 4; *id.* Mar. 25, 1978, at 1-A, col. 1; *id.* Mar. 26, 1978, at 1-A, col. 1; *id.* Mar. 27, 1978, at 1-A, col. 2; and *id.* Mar. 28, 1978, at 1-A, col. 5). Couched in the most frenetic language, the report reportedly frightened the Carter administration with its forecast of a "Chicano Quebec" in the Southwest, Excelsior, Mar. 7, 1978, at 1-A, col. 4. Typical of the report's polemic, it nowhere considers the positive features of Mexican immigration nor the possible justifications of Chicano-Mexican claims for greater political power. See also the "leaky sieve" characterization of the U.S.-Mexican border in the Report of the House of Representatives Select Committee on Population, reported in Christian Sci. Mon., Dec. 20, 1978, at 2, col. 1.

13. Both Federal immigration laws and their enforcement are instrumental. One official responsible for regional enforcement of the Federal laws described them as "too harsh, too cumbersome" and "among the most difficult to administer." He added that the "law needs drastic revision." Remarks by Carl Houseman, Acting (Portland) District Director, Immigration and Naturalization Service (Willamette University, Apr. 16, 1979). See also notes 27-31, and 58-59 and accompanying text, *infra*. In addition, U.S. governmental spokesmen have asserted doubtful statistics and assumptions. See, e.g., statements of John J. Gilligan, Agency for International Development, Excelsior, May 3, 1978, at 3-A, col. 1; Griffin Bell, Attorney General, Excelsior, May 11, 1978, at 1-A, col. 6; and F. Ray Marshall, Secretary of Labor, Excelsior, May 12, 1978, at 1-A, col. 3.

14. GALLUP POLITICAL INDEX, Feb. 1978, at 3-5.

als and hence may be interpreted as *ad hoc*, it is important to note more generally, by contrast to an earlier poll,¹⁵ that a plurality of respondents now favors a decrease in the present level of immigration. Particularly in view of a disturbing current of nativism which may underlie some opinion,¹⁶ a sharp change in public attitudes is essential if the United States wishes to maintain its integrity in the promotion of human rights and otherwise to satisfy its responsibilities to the global community.¹⁷ Convincing the U.S. public and the Congress that opening the door to more immigrants is within the national interest¹⁸ will be difficult.¹⁹ The development of U.S. leadership toward a global accommodation of the rational process of human migration is both more important and more difficult to attain in view of the emerging sentiment against alien labor throughout the world. Xenophobia directed against aliens has increased in such western countries as Switzerland,²⁰ France,²¹ West Germany,²² the United Kingdom,²³ Can-

15. GALLUP POLITICAL INDEX, Aug. 1965, at 15 (during the intervening 12 years, respondents favoring a decrease in the immigration level increased from 33% to 42%, those favoring a retention at the present level decreased from 39% to 37%, those favoring an increased level decreased from 8% to 7%, and those voicing "no opinion" decreased from 20% to 14%).

16. See, e.g., the Corwin Report, *supra* note 12; Fernandez Ponte, *Nace el más espantoso Racismo en EU contra los Mexicanos y los Latinos*, *Excelsior*, Feb. 20, 1978, at 1, col. 6; and Cornelius, *supra* note 3, at 95.

17. See *Excelsior*, Aug. 9, 1977, at 6-A, col. 1. The U.S. has acknowledged that the welfare of undocumented aliens is a human rights matter. See *L.A. Times*, Feb. 17, 1979, at 1, col. 6; *id.* Feb. 17, 1979, at 16, col. 3; *The Oregonian*, Feb. 17, 1979, at 1, col. 6; Unomásuno, Aug. 14, 1979, at 1, col. 1; address by Herbert L. Hansell, *Legal Advisor*, Dept. of State, 71 *Proc. Am. Soc. INT'L L.* 207, 208 (1977); *Excelsior*, May 5, 1978, at 10-A, col. 1. *But see* note 36 *infra*.

18. See Cornelius, *supra* note 3, *passim*. On the national interest in a continuing supply of Foreign labor, see the views of Jorge Bustamante of El Colegio de Mexico, e.g., in Unomásuno, Aug. 13, 1979, at 2, col. 1.

19. *Id.* at 95.

Under the circumstances, there is serious doubt that the U.S. will be able to rise above scapegoating, political expedience, and racial prejudice to pursue an immigration policy which will serve its own long-term national interests as well as those of Mexico and other sending countries. Like some West European nations, the U.S. may well have lost the capacity to respond rationally, constructively, and humanely to large-scale migration from less developed countries. The implications of this are profoundly disturbing, but Mexico and other sending countries would be well advised to ponder them.

20. See Gregory, *The Migrants: Europe's Bitter Legions Head Home*, *Christian Sci. Mon.*, Apr. 25, 1977, at 22, col. 3.

21. *Id.*; *Excelsior*, Feb. 15, 1978, at 3-A, col. 4.

22. *Id.*

23. *Id.*; *Excelsior*, Mar. 23, 1978, at 3-A, col. 1.

ada,²⁴ New Zealand,²⁵ and Brazil.²⁶

II. CURRENT UNITED STATES LAW AND POLICY

The present immigration law²⁷ and its implementation contribute substantially to the perceived problem of undocumented aliens. Sheer chaos reigns. For example, not only does the law, carelessly amended in 1976, unwisely establish the unrealistically low annual quota of 20,000 Mexican documented immigrants,²⁸ but it is easily violated with impunity. Provisions for alien labor certification²⁹ have been improperly administered by the Department of Labor, to the detriment of both prospective immigrants and the nation's economy.³⁰ In flagrant violation of the law, the Federal Government has in effect converted prospective immigrants into undocumented aliens.³¹

The rights of undocumented aliens remain uncertain and their access to justice minimal.³² On the state level, *De Canas*

24. Noting a "fundamental ambivalence towards immigration which has characterized much of our history," a Canadian jurist observed that "we have reacted towards the immigrant with indifference, intolerance and fear, and even during periods when we officially embraced a policy of large scale immigration as the answer to our agricultural and manpower needs, we were frequently disinterested in the human dimensions of the migration process." Hucker, *Immigration, National Justice and the Bill of Rights*, 13 OSGOODE HALL L.J. 649 (1975). Canada cancelled a *bracero* program with Mexico in the face of fears of growing unemployment in that country. *El Nacional* (Mexico), June 15, 1978, at 9, col. 3.

25. Carthew, *New Zealand Puts Heat on Illegal-Alien Workers*, *Christian Sci. Mon.*, Nov. 23, 1977, at 13, col. 1.

26. Unomásuno, June 12, 1978, at 14, col. 1.

27. Immigration and Nationality Act, 8 U.S.C. §§ 1101-1503 (1970), see U.S. Immigration Law and Policy: 1952-1979, Library of Congress, 96th Cong., 1st Sess. (1979).

28. Pub. L. No. 94-571, 90 Stat. 2703 (1976). For a summary of the 1976 Amendments, see 56 CONG. DIG., Oct. 1977, at 230; Recent Developments, 18 HARV. INT'L L. J. 457 (1977).

29. 8 U.S.C. § 1182(a)(14) (1970) generally provides that an employer must hire U.S. nationals exclusively unless none are "able, willing, qualified and available" to fill an open position. See generally, Annot., 41 A.L.R. Fed. 608 (1979).

30. See Singhal, *Labor Certification Under Revised Regulations*, 51 S. CAL. L. REV. 823 (1978); Note, *Alien Labor Certification*, 60 MINN. L. REV. 1034 (1976).

31. A related problem is the discretion vested in consular officers abroad to decline visas. See Study, *Consular Discretion in the Immigrant Visa-Issuing Process*, 16 SAN DIEGO L. REV. 87 (1978); Note, *Judicial Review of Visa Denials: Reexamining Consular Nonreviewability*, 52 N.Y.U. L. REV. 1137 (1977). Unnecessary visa denials contribute to the stigmatization of aliens as "undocumented" and the lack of respect for the immigration laws. They are violated with a substantial measure of impunity. See, e.g., Wisc. St. J. (Madison), Aug. 22, 1977, at 1, col. 1.

32. See, e.g., Green, *supra* note 11, at 40 *et seq.* Williams, *Alien's Right to Unemployment Compensation Benefits*, Annot., 87 A.L.R.3d 694 (1978); Van Slambrouck,

*v. Bica*³³ permits legislation discouraging undocumented aliens. In ten states it is now illegal for employers knowingly to hire undocumented aliens.³⁴ All but two of these are on the East Coast, and six are in the New England and California of Robert Frost ("Good fences make good neighbors"). Other states are considering such legislation,³⁵ so that by the time of this article's publication, more may be on the list.

In no small part because of an inadequate policy framework, Federal legislative initiatives have been diffuse and generally unproductive, if not harmful. Although the Carter administration, with encouragement from the United States Embassy in Mexico and other quarters within the Department of State, is reevaluating its position, it initially assumed the rather extraordinary position that the mere presence of undocumented aliens violates the law and that, therefore they should have no rights.³⁶ Moreover, the Administration narrowly construed the criteria under recent Supreme Court opinions to the disadvantage of aliens and to the impairment of their rights so as, for example, to authorize arrests under the law on the basis of Mexican appearance alone.³⁷ At least one recent court decision has enjoined police entry of private dwellings when there are no other reasonable grounds for suspicion.³⁸ This re-

Texas Schools and Mexican Aliens, Christian Sci. Mon., Feb. 16, 1979, at 4, col. 2. In regard to civil action on behalf of and by undocumented aliens, see, e.g., *Zavala v. Bell*, 453 F. Supp. 55 (N.D. Cal. 1978); see *Excelsior*, Mar. 18, 1978, at 4-A, col. 1; *Capital Journal* (Salem, Or.), Oct. 20, 1977, at 5A, col. 1. But see the recent decision of the Wisconsin Supreme Court, reversing a unique 45-year precedent, which establishes that the "illegal" status of aliens can no longer bar access to the state's courts in civil actions. *Arteaga v. Literski*, 83 Wis. 2d 128, 265 N.W.2d 148 (1978). The 1933 decision which *Arteaga* overturned stood alone "for the proposition that an alien's status strips him of standing to maintain a suit." *Id.* at 149.

33. 424 U.S. 351 (1976). For an excellent commentary on this decision, see Note, 12 TEX. INT'L L.J. 87 (1977).

34. CAL. LAB. CODE § 2805 (West Supp. 1978); CONN. GEN. STAT. ANN. § 31-51K (West Supp. 1978); DEL. ANN. CODE tit. 19 § 705 (Supp. 1978); FLA. STAT. ANN. § 448.09(1) (West Supp. 1978); KAN. STAT. ANN. § 21-4409 (1974); ME. REV. STAT. ANN. tit. 26 § 871 (West Supp. 1978); MASS. GEN. LAWS ANN. ch. 149, § 19C (West Supp. 1978); N.H. REV. STAT. ANN. § 275-A: 4 & 275-A: 5 (Supp. 1977); VT. STAT. ANN. tit. 21, § 444a (Supp. 1978); VA. CODE § 40.1-11.1 (Michie Supp. 1977).

35. See Report of the Centro de Inmigración at 18 (Georgetown U. Law Center, Oct. 23, 1978); *Excelsior*, Mar. 2, 1978, at 1-A, col. 5; and *id.* Feb. 10, 1978, at 1-A, col. 5.

36. See *Excelsior*, Apr. 11, 1978, at 9-A, col. 1.

37. *Excelsior*, Feb. 25, 1978, at 1-A, col. 5.

38. *Illinois Migrant Council v. Pilliod*, 540 F.2d 1062, modified 548 F.2d 715 (7th

flects the hard line taken against undocumented aliens by the Carter administration, it is reported that 15,655 lawful residents were detained in the period from June to December 1977 alone, allegedly for "introducing, concealing, harboring, or shielding" aliens.³⁹ The opportunities for abuse are obvious.⁴⁰

A legislative proposal known as the "Carter Plan"⁴¹ provided "amnesty" in the form of permanent resident status for undocumented workers who have resided since January 1970 in the United States;⁴² nondeportable status for five years, without further rights, for all who have resided here since December 1976; civil injunctions and fines for employers who knowingly hire undocumented aliens; substantial expansion of border patrols and other police enforcement of the immigration laws; an increased enforcement of the Fair Labor Standards Act and the Federal Farm Labor Contractor Registration Act; a modest increase in the annual quota for Mexican and Canadian immigrants; and foreign aid designed to lessen the "push" factor of undocumented migration from economically depressed areas.⁴³ A proposal to require identification cards of all documented residents, urged by the Secretary of Labor and adopted in a draft proposal, was withdrawn, apparently in response to vigorous political opposition, although the public seems to favor such a card and the Secretary of Labor continues to propose it.⁴⁴

Cir. 1977); see also *Christian Sci. Mon.*, Nov. 17, 1977, at 6, col. 1. For an official position taken by one state, see 38 Op. Atty. Gen. (Or.) 759 (1977) which states that, within Oregon, not only do state and local law enforcement officers not have authority to arrest individuals on the sole ground that they are suspected of being "illegal aliens," but that presumably the Federal stopping and detention of such aliens involves a "higher standard" than that of appearance alone.

39. *Excelsior*, Feb. 28, 1978, at 10-A, col. 1. On the case of Mario Cantú, see *United States v. Cantú*, 557 F.2d 1173 (5th Cir. 1977); *Excelsior*, Mar. 7, 1978, at 2-A, col. 2.

40. See, e.g., Morehouse & Harsch, *Many Running a Risk by Befriending Illegal Aliens*, *Christian Sci. Mon.*, July 28, 1977, at 12, col. 1.

41. President's message to Congress (Aug. 4, 1977). On the background of the Carter Plan, see 35 CONG. Q. 822 (1977); and *NEWSWEEK*, July 4, 1977, at 16.

42. For arguments for and against the amnesty provisions of the Carter Plan, see 56 CONG. DIG., Oct. 1977, at 232. At *id.* is a quotation of the "amnesty" provisions of the Carter Plan.

43. The emphasis to be placed on foreign economic assistance is uncertain in view of President Carter's puzzling statement that the plan does not relate specifically to economic assistance. *Excelsior*, May 16, 1978, at 14-A, col. 3.

44. *Christian Sci. Mon.*, Mar. 17, 1977, at 9, col. 3; 35 CONG. Q. 823 (1977) (de-

Adverse reaction to the Carter Plan has been strong,⁴⁵ and the apparent result of its announcement ironically was a new flood of undocumented aliens, encouraged by the amnesty provisions, in the Mexican border communities.⁴⁶ The President clearly "stumbled into an emotionally charged minefield,"⁴⁷ perhaps because of exaggerated fears,⁴⁸ bureaucratic confusion,⁴⁹ a pragmatic commitment to whatever program is "politically viable,"⁵⁰ or simply the complexity of the perceived problem.⁵¹ Moreover, the uncertainty of valid data bearing on

scription of the original proposal for an identification card). On public approval of such a card, see GALLUP POLITICAL INDEX, note 14 *supra*; on the Secretary of Labor's continuing support of the cards, see Christian Sci. Mon., Nov. 17, 1978, at 10, col. 1.

45. See, e.g., Fagen, *The Carter Administration and Latin America: Business As Usual?*, *supra* note 6, at 656. For comments on the proposed "amnesty" provisions, see, 56 CONG. DIG., note 42 *supra*. On the apparent opposition to the Carter Plan of the AFL-CIO, see, statements of George Meany, quoted in Excelsior, May 10, 1978, at 16-A, col. 1; Stevens, *A Union View of Illegal Aliens Holding Jobs in the U.S.*, Christian Sci. Mon., Sept. 5, 1978, at 7, col. 1. See also Houston Chron., Aug. 5, 1977, at 1-1, col. 4; Kraft, *Alien Program Would Make Things Worse Yet*, Wash. Post syndicated column, Aug. 18, 1977; Excelsior, Apr. 5, 1978, at 1-A, col. 5; Unomásuno, Mar. 15, 1978, at 8, col. 1; Excelsior, May 5, 1978, at 4-A, col. 1. Detailed critiques of the Carter proposals have been prepared by the Centro de Inmigración, Georgetown Law Center, Washington, D.C.

46. Houston Chron., Aug. 5, 1977 at 1-4, col. 2; Wis. St. J. (Madison), Aug. 8, 1977, at 1, col. 4; Eugene (Or.) Register-Guard, Aug. 25, 1977, at 15-A, col. 1; and Excelsior, Aug. 8, 1977, at 1-A, col. 3.

47. The Sunday Oregonian, Sept. 11, 1977, at G1, col. 2.

48. See L. Estrada *et al.*, *supra* note 11, at 14.

49. E.g., according to the author's count, at various times there have been no fewer than 16 official, often contradictory, spokesmen for the plan.

50. Excelsior, Mar. 7, 1978, at 1-A, col. 4 (quoting Anne Gutierrez, then of the White House staff).

51. Despite the repeated concern over illegal aliens, few policies have been brought to bear on the attendant problems associated with the mass influx from Mexico. One difficulty lies in the inability to devise policies which do not provoke adverse responses from Mexico and domestic interest groups such as Chicanos and growers. Another difficulty is that "illegal" immigration cuts across a number of disparate areas of expertise and interests, ranging from the intricacies of immigration law, civil rights, law enforcement, and labor economics to the questions of foreign policy and the balance of payments. Further, the changing character of agriculture, the high levels of unemployment and a general national perception of an economy of increasing scarcity conspire to change not only the facts of illegal immigration, but also our perceptions of those changing problems.

Rochin, *supra* note 11, at 1. In another view of United States' relations with Latin America, the Carter administration "has failed, or is unwilling, to understand that the old forms of political and economic organizations are unable to deliver minimally acceptable conditions of life to millions of persons south of the border." Fagen, *The*

the issue has led to a chronic reliance by immigration policy-makers on questionable data and short-term responses. In its most recent efforts, the Federal Government seems to have acted responsibly in seeking a solution to what was metastasizing into a major public issue, but in doing so, it impatiently settled upon a grab bag of techniques without first going through the arduous task of constructing a comprehensive policy framework. Political efficacy rather than rigorous policy analysis seems to have governed the selection of items for the grab bag.

This country does not need further penal or civil sanctions against aliens. Nor does it need further fortification of the border—the so-called “tortilla curtain” established by the Carter administration.⁵² There is already one border trooper for every one-half mile of the border, and the Carter administration announced plans to more than double this concentration.⁵³ Nor does the United States need further dragnets of Mexican-appearing suspects;⁵⁴ a revival of the *bracero* program or a reliance upon *ad hoc* permits in times of agricultural emergency;⁵⁵

Carter Administration and Latin America: Business As Usual?, *supra* note 6, at 669. “One point most people who have studied the problem agree on is that an economic rather than an enforcement solution is required.” Smith, *Immigration Key Issue: Carter Faces Mexico Trip*, *The Sunday Oregonian*, Feb. 11, 1979, at A20, col. 2.

52. On the “tortilla” curtain, see *Excelsior*, May 5, 1978, at 1-A, col. 5; *Christian Sci. Mon.*, Nov. 7, 1978, at 28, col. 2; Bode, *Barrera Más Infranqueable Para Ilegales*, *Excelsior*, Mar. 18, 1979, at 1-A, col. 2. Blancornelas, *Brinca Ilegales la Cerca Impenetrable*, *Excelsior*, Aug. 16, 1979, at 1, col. 1. On its international significance, see Montemayer, *Border Fence May Be Tied to Carter Trip*, *L.A. Times*, Dec. 14, 1978 (Part II), at 1, col. 1.

53. *Excelsior*, Feb. 24, 1978, at 1-A, col. 3; *id.* Feb. 16, 1978, at 2-A, col. 2. In regard to the Carter administration’s program of building up electronic surveillance and patrols along the border, see *Excelsior*, Aug. 9, 1977, at 10-A, col. 3; *id.* Jan. 25, 1978, at 3-A, col. 1; Unomásuno, Mar. 15, 1978, at 9, col. 1; Medina y de Avalos, *1,500 Ilegales por día Detecta la “Border Patrol” en la Frontera de Baja California*, *Excelsior*, July 24, 1978, at 4-A, col. 4. On the futility of such measures, see Stevens, *Patrolling the Mexican “Siege”*, *Christian Sci. Mon.*, Feb. 20, 1979, at 2, col. 1; and Smith, note 51 *supra*.

54. See, e.g., *Nabbing 29 “Illegals” in One Illinois Town*, 83 *U.S. NEWS & WORLD REP.*, July 4, 1977, at 33 (note the date of the event). On the use of special agents appointed by the Department of Labor to investigate employers suspected of hiring undocumented aliens, see *Excelsior*, May 12, 1978, at 10-A, col. 4. The Carter administration has shunned massive deportation of undocumented aliens and has denied that its amnesty proposals imply deportation for those not granted amnesty. Unomásuno, June 7, 1978, at 1, col. 1; *id.*, at 10, col. 5. See also Bustamante, *Las Deportaciones Masivas desde E.U.*, Unomásuno, June 12, 1978, at 5, col. 2.

55. See McGhee, *Apple Picker Blues*, *NEW REP.*, Oct. 29, 1977, at 15 (Federal authorization of temporary work permits to apple pickers); *Excelsior*, Jan. 26, 1978,

an intensified inspection mechanism in Mexico;⁵⁶ nor any other such legislative agents of exploitation and harrassment. "At best, all such proposals treat symptoms or peripheral aspects of the real problem, and many carry with them serious potential for infringements of civil liberties."⁵⁷

Besides the probable inefficacy of such jerrybuilt measures, the Federal Government should remember the sobering lesson that each time it has for good reasons tinkered with the immigration laws, it seems to have created problems. Two examples are instructive. In 1965, Attorney General Katzenbach concluded that there was "not much pressure"⁵⁸ from Western Hemispheric immigration and, with complete lack of foresight, successfully promoted legislation which imposed an entry quota on inter-American immigration for the first time in history. In 1976 the next reforms, which improved the system in a number of respects, nevertheless adopted irresponsibly low annual immigration quotas of 20,000 even for Mexico and other major Western Hemispheric sources of immigration. Prior to 1965 there had been no per country quotas for Western Hemispheric immigration, only a single, overall ceiling; between 1965 and the 1976 reforms, the newly established quotas in effect permitted somewhat higher immigration from Mexico and other primary sources of immigration than from countries in the Eastern Hemisphere, for which the 20,000 ceiling already had been established. The 1976 reforms attempted to bring the flexible system governing immigration from within the Western Hemisphere into conformity with the more precisely regulated, uniform country-quota system for Eastern Hemispheric applications. In a number of respects the geographical uniformity of the law improved the prospects for Western Hemispheric applicants and achieved a greater overall fairness in the law, but the 20,000 per country limitation was an unfortunate result. The dynamics of immigration pressures and needs were thereby sacrificed to an unnecessarily artificial symmetry in

at 1-A, col. 4 (proposal by Robert Bergland, Secretary of Agriculture, apparently speaking without authority, for new *bracero* program).

56. *Excelsior*, Feb. 16, 1978, at 1-A, col. 4.

57. Fagen, *The Carter Administration and Latin America: Business As Usual?*, *supra* note 6, at 689. For a report on a spine-chilling proposal for cradle-to-grave registration, see *Excelsior*, Feb. 20, 1978, at 10-A, col. 5.

58. See *Wall St. J.*, June 18, 1976.

the law. A 1978 reform establishes a worldwide annual ceiling of 290,000 alien admissions.⁵⁹

III. NEW FEDERAL POLICY WITH EMPHASIS ON THE ACCOMMODATION OF DIVERGENT GLOBAL INTERESTS

United States policy on undocumented aliens should involve five measures:⁶⁰ the continued improvement of data and of a mechanism for data collection and dissemination; legitimation of the status of acceptable numbers of undocumented aliens; discouragement of labor exploitation and protection of indigenous labor; accommodation of divergent global interests; and improvement of law enforcement and discouragement of excessive migration.⁶¹ The accommodation of divergent global circumstances deserves particular emphasis.

A. *Unilateral Accommodation by the United States*

The United States should reassume its historic hospitality to prospective immigrants.⁶² Human migration is a natural, more or less biological pattern of manifest destiny;⁶³ it is a "familiar and healthy phenomenon."⁶⁴ The myopic vision of current U.S. immigration law and policy urgently needs correction; an accommodation of the manifest destiny of human migration is within both the national interest and the framework of global population policy and the new international economic order. More generally, the United States should commit itself to a more hospitable immigration policy to facilitate

59. Act of Oct. 12, 1978, Pub. L. No. 95-412 § 201, 92 Stat. 907. For a summary of this and other recent legislation see *Message From the Commissioner of INS, AINL Immigration Newsletter*, Dec. 1978/Jan. 1979, at 1.

60. See Nafziger, *supra* note 4, at 100 *et seq.*

61. On the problem of acquiring data, see, e.g., Williams, *Alien Survey: What Caused Breakdown?*, L.A. Times, Feb. 13, 1979, at 1, col. 1. On the renewed commitment of the U.S. to discourage labor exploitation and to protect indigenous (even undocumented) labor, see L.A. Times, Feb. 17, 1979, at 1, col. 5. *But see* on recent evidence of exploitation of undocumented aliens, *Excelsior*, Jan. 24, 1978, at 1-A, col. 3, 4; *id.* Mar. 25, 1978, at 1-A, col. 1; *id.* Mar. 25, 1978, at 6-A, col. 1; *id.* Apr. 8, 1978, at 1-A, col. 1; *id.* Apr. 9, 1978, at 3-A, col. 4; *Christian Sci. Mon.*, Sept. 5, 1978, at 7, col. 1; *id.* Feb. 8, 1979, at 5, col. 1; Mejias, *Los Intocables Explotación*, *Excelsior*, Aug. 10, 1979, at 1, col. 6. A U.N. General Assembly Resolution (G. A. Res. 3449, 30 U.N. GAOR, Supp. (No. 34) 90, U.N. Doc. A/10034 (1976), appeals to members to respect human rights of all workers, including undocumented ones.

62. See 56 CONG. DIG., Oct. 1977, at 226-229.

63. See Vásquez Amaral, *Espacio Vital y Destino Manifiesto*, *Excelsior*, June 25, 1978, *Diorama de la Cultura*, at 3; Bustos, *Immigration—The Human Journey and the Human Hunt*, 7 LA LUZ, Feb. 1978, at 11. *See also*, Portes, *Why Illegal Migration?* in *Human Rights and World Order* (A. Said ed. 1978).

64. Wall St. J., June 18, 1978.

substantially greater redistribution of the world's economic resources. One of the easiest, economically sensible, and effective ways to satisfy a commitment to international development is to rely less on transferring material and financial resources abroad and more on redistributing people on their initiative. Programs of economic development abroad would be greatly strengthened by putting greater reliance on transferring people to the resources. Foreign assistance could remain or could be further developed as an important element in national policy.⁶⁵

The impact of migration on economic development is impressive. Statistics show, for example, that money transfers by Third World aliens to their countries of origin do not present serious balance-of-payments problems for the host countries, but are of such enormous importance to the countries of origin as to equal net economic assistance from multilateral agencies and members of the Organization for Economic Cooperation and Development (OECD), comprised of Western, industrialized countries and Japan.⁶⁶

A broader, world order perspective which seeks to accommodate natural patterns of migration readily brings into question the validity of national immigration barriers. It is not inconceivable that comprehensive immigration barriers, a rather recent phenomenon in United States history, may be eliminated in time. Short of that, the Congress should amend

65. An official of the United States Agency for International Development, noting that this country does "pitifully little" in promoting economic development in Latin America, emphasized that "we need to stop thinking of meeting the problem [of undocumented aliens] by stopping or regularizing [their] flow into this country." Remarks by Abelardo L. Valdez, Annual Meeting, American Society of International Law, in Washington, D.C. (Apr. 26, 1979).

A combined program of highly targeted investment and relaxation of immigration barriers has been proposed, as follows:

Optimally, a well targeted program of rural and small-town investments in Mexico should be combined with steps by the U.S. to increase the number of opportunities to migrate legally to the U.S., for varying lengths of time: raising the legal immigration quota, administering the existing H-2 temporary worker visa in a less restrictive way, or better, instituting a new type of temporary worker program not modeled on either the H-2 system or the former "bracero" program. Such measures would create alternatives to illegal migration, for those who must continue to go to the United States.

Cornelius, *supra* note 3, at 95.

66. *Excelsior*, Aug. 11, 1977, at 14-A, col. 5.

the Immigration and Nationality Act⁶⁷ to allow substantially greater annual immigration, particularly from the Western Hemisphere. Total and per country levels can be determined on the basis of demographic and economic projections which would take full account of the true capacity of the United States to absorb immigrants rather than xenophobia which currently dominates United States immigration law and policy. The Federal Government should also relax its restrictive interpretation of the H-2 "temporary worker" visa standard.⁶⁸

B. *Source-Country and Bilateral Accommodation*

The political feasibility and operational success of a new emphasis on bringing people to the resources will depend greatly on the efforts and cooperation of immigrant-source countries, particularly Mexico.⁶⁹ Despite recently discovered Mexican oil, the United States will probably maintain its overwhelming comparative advantage in economic resources. Although a short-term *bracero* agreement is no longer a cornerstone of negotiations between the United States and Mexico, as it was as recently as 1974,⁷⁰ there is ample opportunity for bilateral accommodation of a range of interests which influence the flow of undocumented aliens into the United States. A linkage of divergent interests is essential, fully consonant with the mutual recognition that the problem of undocumented aliens is fundamentally a matter of the "push" factor of economic conditions in Mexico and ultimately must be solved there.⁷¹ Mexico's share of the problem seems to have two com-

67. 8 U.S.C. §§ 1101-1503 (1970).

68. *Id.* § 1101(a)(15)(H)(2), in conjunction with § 1182(a)(14), provides that visas may be given temporarily to aliens "if unemployed persons capable of performing such labor cannot be found in the United States."

69. See Williams, *supra* note 7, at 215. For a summary of differences between U.S. and Mexican academic viewpoints, see Bustamante, *Indocumentados: Problema Imparable*, Unomásuno, July 3, 1978, at 5, col. 1.

70. See El Universal, Aug. 30, 1974, at 1-A, col. 4.

71. See Cornelius, *supra* note 2, at 36; address to the U.S. Congress by President López Portillo, Wash. Post, Feb. 18, 1977, at A-9, col. 1; remarks by Leonel Castillo, Immigration and Naturalization Service, quoted in Excelsior, Nov. 22, 1977, at 5-A, col. 1; Excelsior, Mar. 18, 1977, at 20-A, col. 1; *id.* Apr. 7, 1978, at 1-A, col. 5; Christian Sci. Mon., July 8, 1977, at 31, col. 4 (remarks of Charles W. Yost, formerly U.S. Ambassador to the United Nations); Fagen, *The Carter Administration and Latin America: Business As Usual?*, *supra* note 6, at 689, (note the author's skeptical observation on the same page that "what is perhaps most important [from the perspective of the Mexican elite] is that the migration annually draws off hundreds of thousands of persons who would otherwise swell the ranks of the unemployed." On governmental

plementary facets: a structural one of chronic socio-economic debility and a geographical one of adjacency to the United States. With respect (or not) to the U.S.-Mexican border, "[t]here is no frontier in the world quite like it. It is as if Algeria were to border directly upon the South of France, or West Germany upon Zaire."⁷² That may be an exaggeration, but the truth remains that the U.S.-Mexican frontier is a rare instance of pronounced economic and world power contrasts demarcated by a single national boundary.

What can be done? As the Mexican Government acknowledges, that country desperately needs "very large scale and carefully designed programs of rural development and job creation."⁷³ First and foremost, the "bad foot" of the Mexican economy, its agrarian economy, must be treated.⁷⁴ Supplementary efforts toward population control will be helpful,⁷⁵ although the Mexican economy may suffer no more from excessive manpower than from economic and social disorganization.⁷⁶ The prospects of success in this developmental effort are uncertain: given the logic of Mexican politics, it may be that Mexicans

acknowledgement of the need for bilateral cooperation, see *Excelsior*, May 5, 1978, at 23-A, col. 1. Cf. Mejias, *Los Intocables: Soluciones*, *Excelsior*, Aug. 13, 1979, at 1, col. 6.

72. Lyons, note 12 *supra*.

73. Fagen, *The Carter Administration and Latin America: Business As Usual?* *supra* note 6, at 689.

74. Laviada, *Injusta Miseria en el Campo*, *Excelsior*, Aug. 8, 1977, at 7-A, col. 3; and *El Informador* (Guadalajara, Mexico), July 13, 1978, at 4-A, col. 1.

75. See *Excelsior*, Apr. 7, 1978, at 1-A, col. 3. On the Mexican Government's commitment to lower that country's annual birth rate from its current 3.2% to 2.5% or 2.6%, note the following:

One important difference between the mid-1970s and the mid-1950s is in the attitude toward population among Mexico's leaders Now the advantages of a lower birth rate are widely perceived. In 1974 a constitutional provision was adopted asserting that 'Every person has the right to decide in a free, responsible, and informed manner the number and spacing of his or her children.' There is now a National Council of Population in the Ministry of the Interior, and governmental as well as private programs for the promotion of family planning.

Finally, it appears that the birth rate has begun to go down.

Coale, *Population Growth and Economic Development: The Case of Mexico* 56 *FOR. AFF.* 415 (1978). See also *L.A. Times*, Dec. 14, 1978, at 1-2, col. 1.

76. See Aguilar, *Plan Carter Para Braceros*, *Excelsior*, Apr. 7, 1978, at 7-A, col. 1. "The Mexican Experience is a very useful counter to the over-simplified attribution to excess fertility of every impediment to social and economic development." Coale, *supra* note 75, at 423. "We find that the Mexican experience in the last 20 years in short [does not support] the simplistic view that population growth is the principal source of all difficulties in any low-income country." *Id.* at 425.

will continue to be the "cannon fodder rather than the beneficiaries of Mexican development."⁷⁷ In the long term, Mexico's anticipated oil boom and further energy sales to the United States may help,⁷⁸ not only in real economic terms but also in terms of correcting an imbalance of international trade which abates economic progress.

What role can the United States play? First, by special concessions to Mexican producers and exporters, it can encourage a healthier trade balance with Mexico. Although Mexico's trade deficit with the United States may at times be overemphasized by the Mexican Government as a primary factor contributing to the northward migration,⁷⁹ it is nevertheless a factor.⁸⁰ In undertaking major negotiations, such as those involving the sale of petroleum and natural gas, both countries should take a realistic account of the linkage between economic and energy issues and the migration of undocumented aliens, and both countries should negotiate accordingly.⁸¹ Second, without weakening its new commitment to bring people to the resources, the United States should continue to offer further economic assistance, particularly to develop small-scale, labor-intensive industry in those target areas which provide the largest number of undocumented aliens. Whenever it is feasible, such assistance should be channeled through multilateral lend-

77. Fagen, *The Carter Administration and Latin America: Business As Usual?*, *supra* note 6, at 700.

78. See, e.g., Grayson, *The Oil Boom: Mexico's Opportunity*, FOR. POL'Y (No. 29), Winter 1977-78, at 65; Williams, note 7 *supra*; Riding, *supra* note 11, at 17; Goodsell, *Mexico: The Next Oil Power*, Christian Sci. Mon., Nov. 16, 1978, at 1, col. 3; *Eying Mexico's Oil Bonanza*, note 2 *supra*; Capetillo, *Responsabilidad Mexicana*, El Occidental (Guadalajara), Dec. 6, 1978, at 2A, col. 4. *Mexico's Oil Power*, 26 ATLAS, Aug. 1979, at 31. *But see*, Cornelius, *supra* note 3, at 43-45; Van Slambrouck, *Mexican Oil Won't Stem Emigrant Flow, Some Say*, Christian Sci. Mon., Feb. 9, 1979, at 6, col. 1; and Goodsell, *Mexico—Oil: A Tiger by the Tail*, Christian Sci. Mon., Apr. 3, 1979, at 12.

79. See, e.g., statements of President López Portillo, quoted in Christian Sci. Mon., Sept. 14, 1977, at 7, col. 4; and *Tiempo* (Mexico) Feb. 21, 1977, at 9, col. 1.

80. See Williams, *supra* note 7, at 213; *El Sol de Mexico*, Aug. 7, 1977, at 4-A, col. 3. On congressional support for special trade concessions to Mexico, see *Excelsior*, May 4, 1978, at 1-A, col. 2.

81. Linkage of trade, energy, and immigration issues was accomplished during the Feb. 14-16, 1979 meetings between Presidents Carter and López Portillo, note 6 *supra*. *But see*, Grayson, *Mexico's Oil—No Reason To Tolerate Illegal Aliens*, Christian Sci. Mon., Jan. 3, 1979, at 22, col. 1 for the dissenting viewpoint. See Cornelius, *supra* note 3, at 94; see text accompanying note 65, *supra*. See also, Goodsell, *Oil Wealth and a Myriad of Problems*, Christian Sci. Mon., Apr. 2, 1979, at 1, col. 1.

ing agencies, to avoid rejection by the Mexican Government for longstanding, understandable reasons of national pride and fear of *dependencia*.⁸² For its part, Mexico may need to submit to certain economic requirements imposed by those agencies.

IV. CONCLUSION

Bilateral and multilateral developmental efforts focus almost exclusively on extending resources abroad.⁸³ If, however, charity begins at home, not only are the United States and other people-importing countries justified in taking care of even their undocumented own, but they would promote the global welfare by doing so. Rather than relying almost entirely on the distribution of foreign assistance abroad, developmental efforts should help bring people to the resources. This will involve some shift in the emphasis of immigration law, including its enforcement; cooperation with and by immigrant-source countries; and close coordination with programs of foreign assistance.

Although the international legal duty to do so is scant,⁸⁴ the United States and other developed countries have at least a moral obligation to assume greater responsibility in encouraging the rational process of migration for individual betterment. In regard to Mexican migration, the United States has more than a moral obligation. Despite its firm normative basis, there is little evidence that the World Population Plan of Action,⁸⁵ to which both the United States and Mexico are parties,

82. On Mexico's rejection of a recent offer of economic assistance by the United States, see *Excelsior*, Apr. 7, 1978, at 1-A, col. 5. See also Williams, *supra* note 7, at 214. On the U.S. Government's willingness to channel assistance through international development agencies, see *Excelsior*, May 11, 1978, at 1, col. 5; and *id.* Feb. 18, 1978, at 1-A, col. 3.

83. See, e.g., the Charter of Economic Rights and Duties of States, a nonbinding but important global instrument of the "new international economic order," which, as a United Nations General Assembly Resolution, was adopted by a vote of 120 in favor, and 6 against, with 10 abstentions. Article 17 defines the duties of international economic cooperation in terms of a duty of states to provide "favourable external conditions" and to extend "active assistance" to developing countries. U.N. Doc. A/RES/3281 (XXIX) (1975).

84. See Nafziger, *supra* note 4, at 83, *et seq.* For an interesting discussion of universal obligations, *erga omnes*, derived from the *Barcelona Traction Case*, I.C.J. REP. 1970, pt. 3, at 32, see GOODWIN-GILL, INTERNATIONAL LAW AND THE MOVEMENT OF PERSONS BETWEEN STATES 23 (1978).

85. U.N. Doc. E/CONF. 60/WG/L.55/Add. 3 (1974), reprinted in 71 DEP'T STATE BULL. 440 (1974). Although the World Population Plan of Action is not legally binding

has been, as it should have been, in the forefront of policy planning. The implications of international migratory labor legislation also warrant serious attention.⁸⁶

Even aside from broad humanitarian considerations within the framework of world order, the United States national interest would be served by new policy and laws which encourage immigration, rather than stifle it. The issue of undocumented aliens can be resolved in large measure if the United States and other people-importing countries commit

in the classical sense of an international agreement, it has much the same juridical weight as, for example, the Final Act of the Conference on Security and Cooperation in Europe. These "Helsinki Accords," upon which the United States Government has put such great emphasis, particularly in its program of advancing human rights, also establishes at least a moral obligation, in a number of its provisions, for the United States and other signatories to accord greater hospitality to immigration. For example: "The participating States will deal in a positive and humanitarian spirit with applications of persons who wish to be reunited with members of their family . . . They will deal with applications in this field as expeditiously as possible." Even though the Helsinki Accords apply primarily within a European context, it little behoves the United States, for example, to complain about Soviet emigration policy if it itself fails to assume a greater global commitment to the same provisions. The World Population Plan of Action recommends, *inter alia*, that governments facilitate migration, protect the rights and welfare of migrants, help prevent discrimination and prejudice against them, help reunite families, and provide proper and adequate welfare services for them in conformity with relevant conventions of the International Labor Organization. Where immigration has proved to be of a long term nature, countries are invited to extend national civil rights to immigrants. The document further urges countries affected by significant numbers of migrant workers to conduct bilateral or multilateral consultations with a view to harmonizing policies which affect these movements, and to conclude bilateral or multilateral agreements. The more developed countries are encouraged to cooperate through bilateral or regional organizations in creating favorable employment opportunities at the national level in countries concerned with the outflow of migrant workers.

86. *E.g.*, a recent resolution of the United Nations General Assembly:

1. *Calls upon* all States, taking into account the provisions of the relevant instruments adopted by the International Labour Organisation and of the International Convention on the Elimination of All Forms of Racial Discrimination, to take measures to prevent and put an end to all discrimination against migrant workers and to ensure the implementation of such measures; . . . 3. *Also invites* the Governments of host countries to adopt the necessary measures to prevent any activity that might be prejudicial to the interests of migrant workers; 4. *Again invites* the Governments of host countries to give consideration to adopting definitive measures to promote in their territories a normal family life for migrant workers by reuniting families.

The resolution, which was adopted by a vote of 124-0-14, makes no mention of nationality or distinctions based upon national immigration practice. *Measures to improve and ensure the human rights and dignity of migrant workers*, G.A. Res. 163, 33 U.N. GAOR 587, U.N. Doc. A/33/509 (1978).

themselves to more realistic, equitable levels of immigration. Three considerations are especially important: Significantly larger numbers of immigrants would contribute to the national well-being, undocumented aliens are in part the unnecessary creation of current policy and laws and their implementation, and helping to bring people to the resources would unquestionably resolve some of the nettlesome perplexity of economic development undertaken in the national interest. A constructive response to the issue of undocumented aliens will require a more generous and yet more realistic definition of the national interest, and the accommodation, unilaterally and bilaterally, of this interest to those of immigrant-source countries and global order.