

Mexico-U.S. Migration: A Shared Responsibility

The U.S.-Mexico Migration Panel

*convened by the
Carnegie Endowment for International Peace
(International Migration Policy Program)
and the
Instituto Tecnológico Autónomo de México
(Faculty of International Relations)*



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Selective Summary of Recommendations

Purpose of Report

A high-level panel composed of equal numbers of Mexican and American experts has been working together over the past six months to analyze and make recommendations regarding U.S.-Mexico relations with respect to migration and border issues. The purpose of this effort is to make the case for the gradual recasting of the U.S.-Mexico migration relationship as a true partnership and to offer the new presidents and their governments a menu of attainable ideas for doing so.

In anticipation of the meeting on February 16, 2001 between President Fox and President Bush, we offer this selective summary of our recommendations, the most important of which is to call on the two leaders to direct their administrations to enter serious discussions on migration. It is the view of the Panel that this dialogue should proceed from the fact that the long history of the U.S.-Mexico immigration relationship justifies a special bilateral arrangement. If properly crafted and implemented, both governments would be able to shift from enforcing contestable unilateral priorities—with very mixed results—to carrying out the terms of an agreement, and from asserting absolute notions of sovereignty to affirming the provisions of a mutually beneficial negotiated deal.

Why Now?

- The recent election of President Fox in Mexico, who has made migration a priority on the bilateral agenda, and of President Bush in the United States, who believes that immigration should be viewed as an opportunity rather than a problem, present both countries with an historic opportunity to initiate a fundamental review of the migration relationship.
- It is increasingly recognized that current enforcement policies regarding unauthorized migration from Mexico are broken. Presently, the United States maintains a rigid patchwork of laws and mounts extensive unilateral law enforcement efforts. These have proven largely ineffective at achieving the intended outcomes of channeling migration through legal entry points and reducing unauthorized migration, while unintentionally (but expectedly) spurring the growth of a migration black market. As a result, too many migrants die trying to cross into

the United States, too many hardworking immigrants are subject to exploitation, and too many decent employers in the United States are undercut by unscrupulous competitors who exploit unauthorized immigrants.

- In a process accelerated by NAFTA, the United States and Mexico have intentionally sought to deepen levels of economic integration and interdependence. However, conflict is generated by the fact that on the one hand, the free flow of capital, goods, and services has been institutionalized and expanded, and on the other hand, the flow of labor has been the subject of massive enforcement efforts and legal restrictions. If the United States and Mexico wish to reduce significantly the strain on their extraordinarily positive progress on integration, they must appreciate that it will be increasingly difficult to be partners on economic issues and antagonists on migration issues.
- With the rate of integration increasing apace, there is a clear convergence in the labor markets of both countries, as an ever more robust demand for low and medium skilled workers in the United States has relied increasingly on Mexican immigrants, both legal and illegal. This dynamic has led Federal Reserve Chairman Alan Greenspan, business associations, and organized labor to call for an overhaul of U.S. immigration policies. In fact, the U.S. Bureau of Labor Statistics predicts that by 2008 the United States will have over five million more jobs than people to fill them, and that very large proportions of the newly created jobs will require only high school level education and modest training.
- Both countries are in the grasp of important demographic transitions that modify the calculus both about the likely size of future emigration flows from Mexico and about their desirability in the United States. On the U.S. side, the baby boom generation will pass into retirement over the next fifteen years, and immigrants and their children will be needed to help pay the taxes that fund their retirement. On the Mexican side, after a period of intense population growth, analysts expect that the nation's declining fertility rate will continue to decrease. This means that the annual growth rate of the population segment most likely to emigrate, those between 15 and 44 years of age, will continue to decrease, and that the number of Mexicans entering the labor force for the first time will actually be

declining. If the Mexican economy experiences sustained growth, and if wise social investments in education and social protections are made, migration pressures are expected to recede gradually over the next 15 to 20 years.

The time is right to set the record straight and start anew. The Mexico-U.S. migration relationship needs to be viewed through a different lens: as a phenomenon that simultaneously reflects and strengthens what are fundamentally ordinary and organic labor flows within an increasingly integrated free trade area.

Toward a Grand Bargain

The basis for a grand bargain is the shared belief that migration from Mexico to the United States should be (a) mutually beneficial; (b) safe, legal, orderly, and predictable; and (c) that, over the long term, it should naturally decrease and stabilize at moderate levels. In addition, the grand bargain calls for the re-conceptualization of the common border and the border region as a line of convergence rather than separation.

The four components of a grand bargain should consist of: 1) improving the treatment of Mexican migrants by making legal visas and legal status more widely available; 2) helping to reduce unauthorized migration by cooperatively cracking down on criminal smuggling organizations and saving lives by preventing dangerous border crossings; 3) jointly building a viable border region; and 4) targeting development initiatives to areas of high out-migration and strengthening the Mexican economy—thus gradually reducing emigration pressures. All four of these components will need to be linked for the grand bargain to realize its promise.

IMPROVING THE TREATMENT OF MEXICAN MIGRANTS

The basis for transforming the U.S.-Mexico migration relationship is to make legality the prevailing norm. To achieve this, the United States should, over time, make legal status available to unauthorized Mexicans who are established and working (as well as other immigrants who meet the agreed upon criteria), and channel future flows of migrants through legal streams. Moving on one front and not the other will simply perpetuate the unacceptable status quo.

Making Legal Status More Widely Available

Although almost two-thirds of the Mexican immigrant population in the United States are legal permanent residents or U.S. citizens, an estimated half of the undocumented immigrants living in the United States

are Mexican-born. In recent years, Congress has taken positive steps to regularize the legal status of certain long-established immigrants, including many Mexicans. In contrast to these targeted measures, in 1986 President Ronald Reagan signed into law a comprehensive legalization program that enabled previously undocumented immigrants to secure permanent residence. Legalization measures enable employers to enjoy a more stable workforce, families to remain united, individuals to secure social protections, and, over time, immigrants to fully incorporate into and participate in their communities.

The panel recommends that the Bush Administration work with Congress to fashion measures that institute legalizing mechanisms for hard-working, taxpaying, and well-established undocumented immigrants. This could be accomplished through a variety of means, including expediting backlogged family visas, expanding employment visas, developing earned or targeted legalization programs, updating the registry date, or through more comprehensive legalization efforts. All of these measures should be designed to maximize the participation of eligible Mexican immigrants.

Making Legal Work Visas More Widely Available

For many intending migrants from Mexico, there is simply no available means to obtain a legal visa to enter and work in the United States. Initially, many migrants want to work in the United States for brief periods, usually a matter of months (a process referred to as “circularity”). Over time, some want to establish residence in the United States permanently. Annually, an estimated 150,000 Mexican migrants enter the United States without authorization and remain for longer than a year.

Currently, the H2A and H2B visa categories are used by a small number of U.S. employers and migrants from Mexico and elsewhere to enter and work legally in the United States for short periods of time. In recent years, attempts to change the H2A program to facilitate the utilization of visas have been the source of heated debates and conflicting points of view. Yet, properly constructed temporary worker programs should be part of the mutually beneficial migration relationship envisioned here. Recent debates surrounding temporary migration programs nonetheless suggest that the process of designing and refining thoughtful programs in the future will be difficult and will require consummate political and negotiating skills on the part of everyone involved.

As a starting point, the Panel believes that programs that bring in immigrant workers on temporary work visas in response to measurable labor market needs should strive to meet the following criteria: equitable labor rights that can be meaningfully enforced (including visa portability, when appropriate), access to social and health protections, and reasonable mechanisms for

securing permanent residence for migrants who qualify for it and choose to do so.

If the United States and Mexico attempt to negotiate specific bilateral temporary migration agreements, and in light of the history and complexity of such initiatives, it might be advisable to start with pilot and experimental programs. This would allow for the programs to respond to unique experiences and dynamics before expansion.

Special and Equal Treatment for NAFTA Partners

The panel believes that unequal treatment of the NAFTA partners is inconsistent with the spirit of the trilateral agreement and recommends equality of treatment with Canada as one of the central themes of the U.S.-Mexico relationship on legal immigration. The panel recommends that the Bush and Fox Administrations review the current NAFTA-related immigration provisions and discuss administrative changes on issues such as treating professionals from all NAFTA countries equally, expanding the professional occupations list, and offering employment rights to spouses of NAFTA professionals.

Furthermore, the panel believes that the special economic relationship institutionalized by NAFTA, based in large part on interdependence and geographic contiguity, warrant a broader and more special immigration relationship. One option that deserves serious consideration is removing both Canada and Mexico from the normal immigration formula (the per country limits that restrict permanent family and employment based immigrant visas per year for any one country to 25,620) as an expression of formally recognizing the special relationship of Mexico and Canada. Such an action would release the approximately 24,000 visas these two countries now use into the numerically limited global permanent visa stream which is hugely oversubscribed.

CRACKING DOWN ON SMUGGLING AND PREVENTING DANGEROUS BORDER CROSSINGS

The wider availability of legal visas is expected to create incentives for Mexican migrants to enter the United States legally rather than attempting difficult and dangerous border crossings. This should help the United States further one of its major immigration policy objectives—to reduce unauthorized immigration.

Nevertheless, unauthorized border crossings, although diminished by the availability of legal visas, will continue to challenge both countries. The response to them should be coordinated in order to achieve two primary goals: fighting smuggling and saving lives. To curtail the ability of organized criminal networks to smuggle persons, Mexican and U.S. law

enforcement authorities should devise joint strategies and mount coordinated operations. Showing progress on breaking up smuggling rings will build confidence and trust between partners, and would be a substantial and positive response to the American initiative to allow Mexican migrants greater access to the U.S. labor market.

In addition, Mexico and the United States should build upon previous efforts and dramatically expand the cooperative drive to reduce unauthorized migration and prevent migrants from suffering death and violence in the border region. For example, both governments should do much more to set up warning signs near and control access to difficult terrain, use all technological means available to them in remote areas as a means of reducing risks, work together and organize joint training on rescue operations, control unauthorized migration, and mount aggressive public education campaigns to warn migrants of the life-threatening risks to would-be border-crossers.

Finally, in the spirit of constructing a grand bargain based on shared responsibilities, the group recommends that the U.S. government freeze the building of additional fences pending review of its enforcement policies in the context of new bilateral arrangements.

JOINTLY BUILDING A VIABLE BORDER REGION

Much has been accomplished in the border region through the creative efforts of those who live there. Nevertheless, the panel recommends a re-conceptualization of all functions that the two states perform at the border, based on an understanding that borders between close partners are something other than a line that needs defending. In the medium term, encouraging, nurturing, and helping develop viable border communities could well be one of the most important initiatives to pursue and could form lasting legacies for both the Fox and Bush presidencies. Border communities should participate as full and equal partners in discussions about their future.

STRENGTHENING THE MEXICAN ECONOMY AND, OVER TIME, REDUCING MIGRATION PRESSURES

President Fox understands that the only long-term solution to unauthorized migration is sustained economic growth in both countries and has made it abundantly clear that it is Mexico's responsibility to create prosperity for all of its citizens. Development efforts targeting regions of high out-migration and robust economic growth will, over time, encourage Mexicans to remain at home and contribute to the well-being of their nation. A well-conceived grand bargain would help to advance this goal.

The wider availability of legal status for Mexican immigrants in the United States could, if previous experience holds, increase their wages by as much as 20 percent and stimulate higher levels of remittances. Currently, Mexican immigrants send between \$6 and \$8 billion dollars per year to their families and communities in Mexico.

The Fox Administration has shown intense interest in encouraging Mexican immigrants to increase their remittances, partly by reducing the transaction costs of such transfers, and in channeling some portion of such funds toward productive investments. Job-generating projects in sending regions could, over time, change the private calculus that leads households to decide whether a member should emigrate. Remittances and remittance-based development initiatives suggest that migration is not only a consequence of underdevelopment, but also an agent of enhanced development.

Mexico should not be expected to do all the required heavy lifting on its own. Special regional relationships typically include sharing associated burdens and responsibilities. The NAFTA partners should work with international and regional financial institutions to resource technical assistance and regional development, with a particular focus on amplifying the linkage between development and migration. In this context, the panel recommends that the mandate of the NADBANK should embrace an expanded vision of the Bank as a true North American border-development institution.

A Long-Term Vision

The panel believes that a worthwhile North American vision need not sacrifice national identities nor undermine the vitality of the region's nation states. In fact, the panel is convinced that, over the long term, it is possible to conceive of a North America with gradually disappearing border controls—in which each country takes responsibility for its people and their actions and is actively sensitive to the concerns of each partner on issues of national and economic security—and with permanent migration remaining at moderate levels. The European Union's experience is a good case in point, particularly for the long term. Such a vision both presupposes and calls for setting and working toward realization of long term goals that focus on shared responsibilities and priorities.

Crafting a grand bargain on migration and associated issues along the lines suggested in this summary would be an excellent way of setting both nations on that journey.

Overview

This document outlines the analytical judgments and presents the recommendations of a high-level Panel composed of equal numbers of Mexicans and Americans who came together to review the state of the bilateral migration relationship and closely-related border issues. The group was impaneled in the late spring of 2000 by the Carnegie Endowment for International Peace (International Migration Policy Program) and the Autonomous Technological Institute of Mexico (Faculty of International Relations).

The Panel's goal has been to make the intellectual case for recasting the relationship between the United States and Mexico on migration and border issues as a true partnership, and to offer the new presidents (and governments) of the two countries a menu of attainable ideas for doing so. The Group seeks to build upon the opportunity created by the two presidential elections (and particularly upon the sense that the outcome of Mexico's election has opened a new chapter in Mexican democracy), the robust economic performance of both countries in the past several years, and the already deep and growing economic integration of North America. In doing so, the Panel embraces a long-term vision not unlike that articulated by Mexican President Vicente Fox and frames the bilateral bargain that can help achieve that vision.

This report outlines the elements of an integrated policy package, suggests a set of parameters for negotiation, and identifies and discusses numerous concrete short- and medium-term initiatives for carrying the bargain forward. It also discusses some of the bilateral mechanisms necessary for managing the dialogue and coordinating the resulting policies and actions on migration and border issues.

By prior agreement, members of the Panel have participated in this effort as individuals, not as representatives of particular institutions. They have thus sought to be creative in their thinking and unconventional in their recommendations.

The U.S. government's current approach to illegal migration and the border is based on constantly shifting interior enforcement priorities and the ever-greater fortification and militarization of the border. This report's point of departure is the growing appreciation that the enforcement approach is failing to produce the promised outcome of reducing further unauthorized immigration. Moreover, it has perverse, if

predictable, consequences. Most troubling among them are a death-toll of would-be immigrants which has been rising by about 25 percent per year (and reached nearly 500 persons last year), a growth in organized crime as immigrants turn to smugglers to make the increasingly difficult journey across the border, increased violence at the border, and the conversion of a migration flow with traditionally strong back-and-forth movement into one of longer stays and increased permanence.

The Panel considers both the enforcement approach's thrust and its human costs to be broadly inconsistent with the reality of an increasingly integrated North America and with the Panel's conceptualization of the region as a space that shares a common destiny. A growing consensus around these perceptions sets the stage for the two new governments to engage in an open-ended conversation about two issues that obstruct progress toward a true partnership: migration and, by extension, the border.

RECASTING THE U.S.-MEXICO RELATIONSHIP IN THE CONTEXT OF THE BOND CREATED BY THE NAFTA

Although the inaugurations of the United States and Mexican presidents have coincided every twelve years since the 1950s, this is the first time that both elections brought to power the opposition political party. As a result, neither President is constrained by the policies of his predecessor. Furthermore, both Presidents have served as governors of states in many ways shaped by migration and the broader Mexico-U.S. economic relationship. These fortunate coincidences offer Vicente Fox and George W. Bush a special opportunity to recalibrate the relations between their two countries within the framework of the economic bond institutionalized by the North American Free Trade Agreement (NAFTA).

Both presidents have indicated an interest in doing so. President Fox has spoken explicitly about the importance he attaches to building further upon the NAFTA, referring to the future of the U.S.-Mexico relationship in terms of a "NAFTA-Plus". President Bush apparently envisions a relationship with Mexico that parallels the U.S. relationship with Canada or Great Britain. It is in fact no coincidence that the leaders of these countries are the first three foreign heads of state with whom

Mr. Bush has met. The Panel is convinced that getting to such a relationship requires a far-reaching re-conceptualization of the U.S.-Mexico relationship on migration and the common border.

A BROAD-BRUSH SKETCH OF THE U.S.-MEXICO RELATIONSHIP

For most of the post-WWII period, U.S. foreign policymakers gazed across the Atlantic and focused most of their attention on the Soviet ideological challenge and nuclear threat. U.S. policy toward Mexico in that period could be characterized as one of benign neglect—a policy that was well suited to Mexico’s protectionist trade policy and nationalistic foreign policy. The U.S. pursuit of global trade liberalization and Mexico’s unilateral decision to open its markets in the late 1980s, together with the end of the Cold War, helped turn this comfortable, arm’s-length relationship into a joint pursuit of economic integration. As a result, seven years after the NAFTA came into force, Mexico is the United States’ second largest trade partner and now registers two-way trade of more than \$600 million per day. (Two-way trade with Canada, the United States’ largest trade partner, stands at about \$1.1 billion per day.)

Smartly growing levels of economic interdependence and deeper integration, however, have not prevented certain chronic irritants like unauthorized migration and drug trafficking from posing a clear danger to the broader partnership envisioned by many of those who supported the NAFTA. Each time a border incident involves government personnel from either side, or a Mexican border-crosser dies in the desert, or a Mexican immigrant is mistreated by a U.S. official, the entire bilateral relationship is put at risk.

As an agreement designed to institutionalize the free flow of capital, goods, and services is made to coexist with saturation policing and militarized border control tactics designed to keep the other partners’ citizens out, the incompatibility between the two postures becomes glaring. The long and complicated history of the migration relationship between the two countries only serves to punctuate the contradiction further and to render an exclusive reliance on controls ineffective. U.S. labor market needs and deeply embedded Mexican social networks in the United States easily (but not without significant and increasing costs) defeat or circumvent the latest control methodology. In the process, the goal of transforming the NAFTA relationship into a mature partnership becomes more distant. Such a partnership would respect the sovereignty of each partner, while fully acknowledging the structures of social and economic interdependence between them. Both partners in this relationship could think and act strategically about how best to take advantage of the complementary resources (including labor) each brings to the broader relationship.

The recent relationship has been rather one-sided. It is under constant threat of being crippled by a miscalculation or overreaction from either side to one non-trade incident or another. That such an occurrence was avoided by the last Mexican Administration during a period of aggressive U.S. unilateralism in most non-trade issues is testimony to the value it attached to the relationship with the United States and reflects the painstaking way in which it inoculated the economic relationship from the much more contentious social and political one. This was accomplished, however, at the considerable cost of failing to develop a capacity to manage disagreements over non-economic issues in a more balanced way that could give each party at least some of what it wanted.

THE BILATERAL MIGRATION RELATIONSHIP

The migration of Mexicans to the United States began in the 1870s, when agents of U.S. employers recruited Mexican workers to build the Southwest’s railroads and to work on the region’s farms. Although Mexican immigration flows did not even approach the levels of migration from Europe until nearly one hundred years later, a trickle of Mexicans continued to enter the United States throughout this period. Typically, they came under special agreements and with a somewhat preferential treatment that freed immigrants from the Western Hemisphere from the labor market tests required of many other immigrants. Until the late 1970s, the hemisphere had its own preferential numerical ceiling. The trickle of Mexican immigrants turned into a stream during WWI and into a mighty river during WWII—when the enhanced production requirements and the labor market gaps created by the war effort combined to make Mexican workers essential.

The flow continued outside of formal channels after the War and was institutionalized again in the early 1950s as the *Bracero* Program, under which hundreds of thousands of Mexican workers labored in the United States each year, primarily in agricultural jobs. The *Bracero* Program ended in 1964. Throughout that entire period, variable but measurable shares of immigration from Mexico was unauthorized. The United States resorted to two major military-style removal campaigns (in the late 1930s and mid-1950s), which were most notable for their intensity, their indiscriminate removal of many legal and even citizen Latinos, and, ultimately, their pointlessness. It was not until the termination of the *Bracero* Program, however, that the employment of unauthorized immigrants swelled to the point of generating strong, if still intermittent, concern in the U.S. government. This concern provoked the nearly decade-long U.S. domestic debate that culminated in the Immigration Reform and Control Act of 1986 (IRCA).

The IRCA sought to address unauthorized immigration by

instituting for the first time a legal requirement that U.S. employers employ only persons with the legal right to work in the United States and establishing progressively more severe sanctions for those who “knowingly” violated the law. Simultaneously, IRCA offered legal permanent resident status to nearly 2.8 million persons—the overwhelming majority of whom were Mexican—out of a total undocumented population estimated at between five and six million. (The legislation’s third prong—a better funded and more rigorous border control effort—was largely ignored until Fiscal Year (FY) 1994.¹) The law’s legalization grant was particularly generous for those who had some recent work experience in U.S. perishable crop agriculture, in recognition of that sector’s deep reliance on unauthorized workers. One of the main outcomes of this legislation has been the dramatic increase in the size of the Mexican-born population legally residing in the United States, which has increased from about 1.2 million in 1980 to about 5.5 million today.

Unauthorized immigration has continued to grow largely unabated since IRCA, to the point where estimates of its size at the dawn of the 21st century are roughly the same as in 1986. This fact alone should give pause. In the 1980s, many thought that unauthorized immigration had grown so large because the government did not have the legislative and administrative tools—and the enforcement resources—to address it effectively. The IRCA was supposed to take care of these deficiencies and lead to different outcomes. Fifteen years later, the U.S. government finds itself in a similar quandary despite extraordinary growth in the array of legislative, judicial, and administrative mechanisms designed to deter unauthorized immigration.² These mechanisms go well beyond those created by the IRCA. The new tools include border fortifications, the near quadrupling of the U.S. Border Patrol, severe criminal penalties (including asset seizure and forfeiture laws) for violating certain parts of the immigration statute, and the incarceration and expedited removal of several classes of unauthorized or criminal immigrants. In addition, and unlike in the 1980s, the Immigration and Naturalization Service (INS) is an extremely well resourced agency with such a strong priority placed on enforcement that its capacity to deliver effectively most of its immigrant service functions has suffered enormously.³ In fact, the Border Patrol has more than doubled in size since 1993, when it had 4,036 agents, compared to the 9,212 it had in 2000. Overall, the INS’s FY 2001 budget stands at \$4.8 billion and the agency has 33,122 positions, compared with \$1.5 billion and 17,163 positions in FY 1993.

Remarkably, for most of this time the Mexican government has neither accepted responsibility for the domestic roots of its emigration problem (including limited economic opportunities, severe social and economic inequality, a weak social safety net, and low wages), nor taken many active measures to address the migration phenomenon. Essentially, until very recently, Mexico’s policy on migration had been to have no policy. This approach

changed somewhat in the 1990s, however, and particularly in the period after the NAFTA came into force. By the mid-1990s, the gradual thickening and deepening of formal and informal contacts between the two governments was perceptible, as was some, typically procedural, progress on migration issues.⁴ From the Mexican side of the ledger, two interrelated Mexican initiatives stand out: the systematic reaching out to Mexican and Mexican-American communities in the United States and the quantitative and qualitative growth in consular protection services offered to Mexican nationals in the United States. Mexico’s network of consular offices in the United States grew from about 39 in 1994 to 45 in 2000, while consular personnel (official and administrative staff combined with locally hired support staff) increased from about 550 at the end of the 1980s to about 700 in the mid 1990s and to 800 by the end of 2000.

While the US-Mexico Migration Panel focused its attention on the issue of Mexican migration to the United States, a sizable number of Americans also live and work in Mexico. Many also retire there. There are a number of legal and administrative challenges involved in those processes, including the ability to own certain types of property. Consistent with the new model of cooperation proposed in this report, in which the two countries develop a more balanced and mature partnership, the two governments should add this set of issues to their discussion agenda. The principle of reciprocity must also guide discussions on these issues as the two governments seek to address the challenges faced by both Mexicans and Americans who find themselves in each others’ countries.

WHY A NEW DIALOGUE AND WHY NOW?

The Panel believes that the confluence of several factors makes the need for a new and broader dialogue on migration issues both more urgent and more realistic. It recommends that the migration component of the overall relationship be regarded as the shared opportunity it has already become rather than as the almost permanent bilateral problem that both sides see when they sit down to discuss migration. We believe that both the United States and Mexico wish to reduce significantly the strain that migration disputes place on the extraordinarily positive progress to date on economic integration. In order to do so, *the two governments must appreciate better that it is not possible over the longer term to be partners on economic issues and antagonists on migration issues.* The border cannot continue to be the terrain where this basic contradiction is allowed to play itself out without much regard either to the fiscal cost of the process or to its consequences for human lives, human rights, and community development.

There are a number of important contextual factors that underpin our call for engaging in a new dialogue now. Most

notably, both countries are in the grasp of important demographic transitions that modify the calculus both about the likely size of future emigration flows from Mexico and their desirability in the United States.

On the U.S. side, as the baby boom generation passes into retirement over the next fifteen years (see Graphs 1 and 2), the country’s health and retirement systems will undergo extraordinary demand-driven strains. Supporting them without unacceptable increases in tax obligations, significant increases in the retirement age, and dramatic reductions in government-provided benefits will require a labor force that remains very productive *and continues to grow robustly*. (See Tables 1 [page 10] and 2 [page 11]) for projections on the relative and absolute growth in U.S. employment until 2008; occupations requiring skills similar to those of most Mexican immigrants are highlighted.)

Immigrants and their children will provide most of that growth and will come to dominate many labor markets over that same period. (See Tables 3 [page 13] and 4 [page 15]) for the share of the foreign-born in 20 high-education and 20 low-education occupations in which the foreign-born are extremely over-represented.) The extraordinary growth in all forms of immigration during the 1990s will reinforce the dominance of the foreign-born within these labor markets and strengthen their contributions across the economy. Latino immigrants, who are predominantly Mexican, will drive this process. Latino immigrants are on average much younger than the U.S. average age and tend to have more children. For instance, they are several times as likely as European-born households to live in households of five or more persons. They will thus provide ever larger shares of new and first time workers in the United States.

Continuing to marginalize Latinos and other immigrant minority populations based on citizenship status, as recent U.S. welfare legislation did, will thus likely prove to be extremely shortsighted both for the economic health of the country and for its social cohesion.

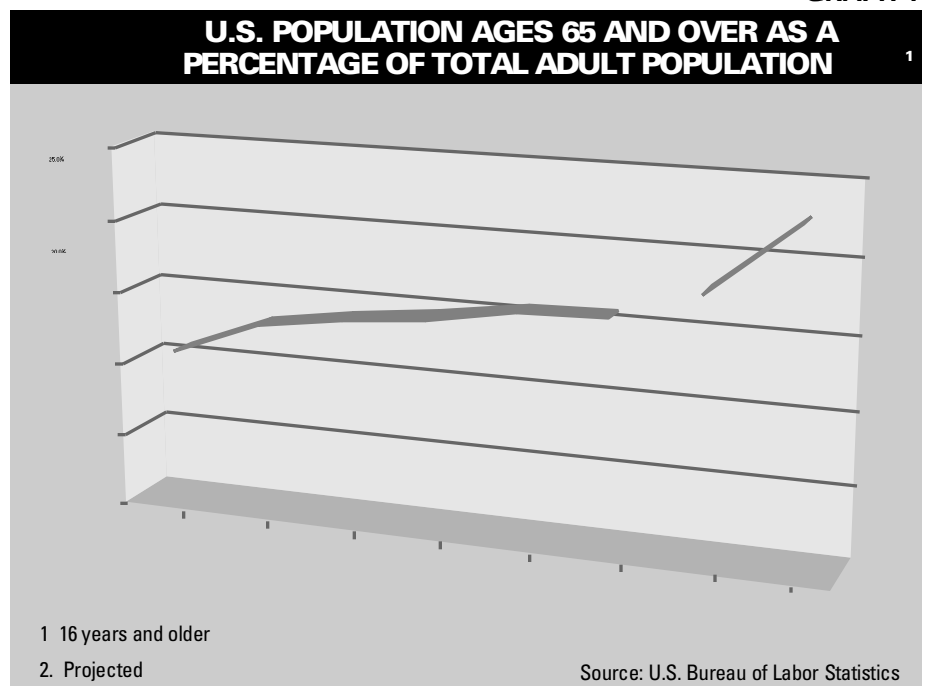
On the Mexico side, the demographic transition is likely to be equally consequential for the partnership, although its full impact is not likely to be felt strongly until twenty or so years from now. After a period of intense population growth, Mexico’s natural growth rate now stands at about 1.7 percent, considerably less than the 1970s rate of 3.5 percent. Most Mexican analysts expect that rate to continue to decrease, albeit slowly. At the same time, the Mexican population will

also be growing “older”—with the youth cohort (those less than 15 years old) growing more slowly relative to the working age cohort, and, eventually, relative to the elderly population (those over 64 years of age).

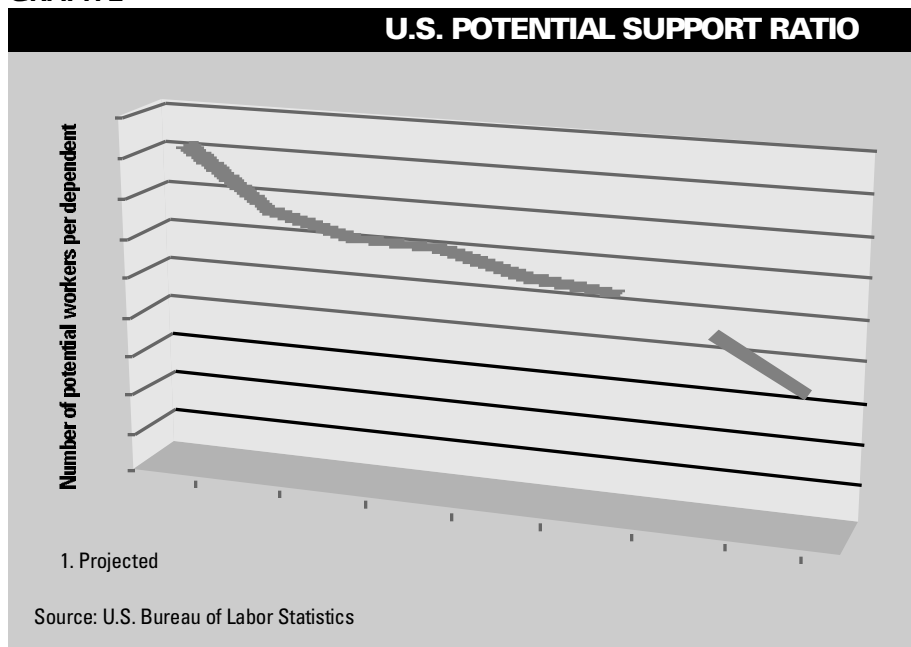
For the purposes of this analysis, these trends suggest two interrelated things. First, the annual growth rate of the population segment most likely to emigrate, those between 15 and 44 years of age, will continue to decrease. Second, the number of Mexicans entering the labor force for the first time will also be decreasing—from 1.2 million per year in the 2000-2005 period, to 1.1 million per year from 2005 to 2010, and to slightly less than 1 million from 2010 to 2015. (For the Mexican economy alone to absorb just these new workers it would need to grow by an average of five percent a year for the next fifteen years.)

These numbers do not take into account the millions of Mexicans who may be unemployed, underemployed, or working in the informal economy. Absorbing substantial segments of these workers would require Mexico to sustain an even higher economic growth rate. Still, if these expectations “hold”—an admittedly big “if” given the unreliability of demographic and economic growth projections—the pressures for emigration will diminish while Mexico will be offered a window of opportunity during which it can focus more on badly-needed social investments. (The Asian Tigers are estimated to have “collected” a similar demographic dividend between 1965 and 1990, at the rate of more than 15 percent of gross domestic product per capita.) Among them are providing much greater educational resources to

GRAPH 1



GRAPH 2



the high school and university levels (an absolute precondition to sustaining high growth rates), the creation of jobs, the strengthening of social protections, and the establishment of a viable retirement system. In the interim, however, and in the absence of a profound structural transformation in the Mexican labor market, Mexico will continue to need to send many migrants to the United States. (From 1995 to 2000 Mexico had a net migration rate of more than 1.8 million persons.)

The rate of integration between the Mexican and American economies is increasing apace. In particular, there is a clear convergence in the labor markets of both countries, as an ever more robust demand for low- and medium-skilled workers in the United States has relied increasingly on a Mexican supply of such workers—both authorized and unauthorized.

There is a sea-change in the way major United States and Mexican societal institutions, as well as many ordinary Mexicans and Americans, expect their governments to act on human and labor rights and social justice issues—and more specifically, in their willingness to hold government officials accountable in these matters. This sea-change augurs well for a different dialogue on migration and for the creation of a common front against the exploitative conditions under which many undocumented migrants toil.

There is an emerging sense that current public policy with regard to migration controls is not sustainable in the long run, due both to the ineffectiveness of these efforts and their high costs. Senator Phil Gramm, a senior Republican leader with a strong record of concern about unauthorized immigration, in January 2001 spoke eloquently and candidly about the depth of

the reliance of various U.S. labor markets on unauthorized immigrants. He acknowledged that this reality has come about “...with the implicit permission of governments at every level, as well as companies and communities.”

The orderly and transparent transition of power in Mexico has created an opportunity to support Mexico in its vigorous pursuit of the rule of law, social justice, and further economic liberalization. Both countries should embrace the opportunity for a new dialogue on migration issues that is honest in its analysis of the phenomenon’s causes and consequences. By building on earlier gains, they should seek to address the issue *jointly* and in ways which have never been possible before. Such a dialogue, if fruitful, can become one of

the earliest and more concrete “dividends” of President Fox’s democratic and peaceful transition to power while also helping to resolve one of the thorniest policy dilemmas in both countries.

Finally, the broader political moment also appears to be propitious. Both Presidents seem predisposed to improve bilateral relations, and President Fox has expressed his intention to initiate a fundamental review of the migration relationship. In pursuing this objective, Mr. Fox will be assisted by the robustness of recent U.S. economic growth that has had a positive impact on U.S. attitudes toward migration. The change is nothing less than remarkable when considering the aggressive anti-immigrant animus of a mere five years ago.

A number of confluent factors further enhance the opportunity. Among them are the remarkable fact that the leaders of both the U.S. Federal Reserve and the AFL-CIO—two institutions that rarely have such a meeting of the minds—agree that immigrants, regardless of status, have played an important role in sustaining the most recent period of U.S. economic growth. Furthermore, employers in several sectors, primarily in service industries, have organized themselves in an “Essential Workers’” coalition to advocate in support of expanded or new temporary worker programs and, secondarily, for certain targeted legalization programs.

More significantly, perhaps, employer sanctions, at least as presently instituted and implemented in the United States, seem to have lost their attraction as a policy or political platform for most institutional actors. This fact is punctuated by their always intermittent—and recently declining—enforcement. In fact, in an event as remarkable as any that relate to immigration, early last

TABLE 1

SELECTED OCCUPATIONAL EMPLOYMENT PROJECTIONS, 1998-2008
(NUMBERS IN THOUSANDS OF JOBS)

Occupation	Employment ¹		Projected Change		Total job opening due to growth and net replacements ²
	1998	2008	Number	Percent	
Service Occupations:	22,548	26,401	3,853	17.1%	11,112
Cleaning and building service, except private households	3,623	4,031	408	11.3%	1,164
Food preparation and service	8,735	9,831	1,096	12.6%	5,159
Personal Service Occupations	2,934	3,828	894	30.5%	1,413
Child care workers	905	1,141	236	26.1%	325
Personal care and home health aides	746	1,179	433	58.1%	567
Private household workers	928	751	-178	-19.1%	276
Operators, Fabricators, and Laborers:	18,588	20,341	1,753	9.4%	6,374
Sewing machine operators, garment	369	257	-112	-30.3%	50
Handworkers, including assemblers and fabricators	3,092	3,382	290	9.4%	967
Meat, poultry and fish cutters	143	178	35	24.2%	63
Taxi drivers and chauffeurs	132	158	26	20.0%	48
Truck drivers	3,274	3,782	507	15.5%	994
Helpers, Laborers and Material Movers, Hand	5,142	5,768	626	12.2%	2,342
Others:					
Farm workers	851	794	-57	-6.6%	262
Landscaping, groundskeeping, nursery, greenhouse and lawn service occupations	1,285	1,548	262	20.4%	626
Construction trades	4,628	5,018	390	8.4%	1,425
Cashiers	3,198	3,754	556	17.4%	1,950
Hotel, motel clerks	159	180	21	13.5%	82

- Growth for the period 1998-2008 is categorized as follows:
 - an increase of 36% or more equals much faster than average growth
 - an increase of 21-35% equals faster than average growth
 - an increase of 10-20% equals about as fast as average growth
 - an increase of 0-9% equals more slowly than average growth
 - a decrease of 1% or more equals a decline in growth.
- Many occupations with average or even below-average growth rates nonetheless provide more job openings than some of the fastest growing occupations because of their large size.

Source: U.S. Bureau of Labor Statistics

year, the Executive Council of the AFL/CIO unanimously renounced its long-held position in favor of sanctions and endorsed the full legalization of unauthorized immigrants. In place of employer sanctions, organized labor is pressing for the rigorous enforcement of workplace standards and for the prosecution of employers who exploit workers—regardless of a worker's immigration status. In fact, respect for the rights of *all* workers seems to be capturing not only the imagination of ever broader segments of the U.S. society but also to be energizing the creation of increasingly robust cross-border civil society coalitions.

EXTENT AND CHARACTERISTICS OF MEXICAN MIGRATION: A BRIEF OVERVIEW⁵

Mexican immigrants to the United States are not a homogeneous group. One can discern at least two major classes of migrants—although the boundaries of the two categories typically blur. “Sojourners” are workers who consider Mexico to be their country of residence and enter and exit the United States one or more times each year for work purposes. “Settlers” are immigrants who seek to establish residence in the United States—mostly in order to join family members. The distinction between the two types of flows frequently blurs. Many Mexicans begin as sojourners, but once they establish strong links to the United States they become settlers.

In recent years, Mexican sojourners have been estimated to make between 800,000 and one million back-and-forth border crossings per year. They tend to be predominantly male, are mostly between 12 and 34 years of age, and have average education levels that are slightly above Mexico's national average of 7.8 years

of schooling. Most sojourners come from the west and north-central regions of Mexico and almost all lack authorization to live or work in the United States. Settlers, on the other hand, have an annual net flow of about 300,000. One of the perverse consequences of the border enforcement strategies of the U.S. government in the 1990s has been to discourage the circular movement of sojourners to and from Mexico. As crossing the border has become more difficult, dangerous, and expensive, many unauthorized workers who may otherwise prefer to spend part of their time in Mexico have settled in the United States.

Altogether, more than 8 million Mexican-born persons are currently estimated to be living in the United States; of that total, more than one third lack legal status. But although most Mexican immigrants continue to be concentrated in a dozen or so metropolitan areas within a handful of states, of even greater analytical interest may be that they are already becoming more geographically (and socio-occupationally) dispersed, *both in terms of the areas of their origin and their destinations.*

TRADE IN PLACE OF MIGRATION?

The remarkable migration history between the United States and Mexico has generated remarkably little honest and hard-headed introspection about the fundamental ways in which the U.S. labor market has become dependent on Mexican workers. This dependence is partly the result of the complementarity of the two labor forces. It is clear that, notwithstanding much of the political and some of the economic rhetoric about the promise of NAFTA as a migration-stemming vehicle, free trade will not substantially moderate pressures for migration *as long as the social and economic fundamentals continue to encourage movement.*

These fundamentals will continue to support large-scale migration for a variety of reasons. For instance, interest in family reunification will continue to remain strong for the foreseeable future and the social networks that facilitate it have proven capable of circumventing most traditional immigration control initiatives. Furthermore, while the trend of Mexican demographic pressures may be pointing downward, Mexico's labor force is still expected to grow strongly during this decade—at a rate three times that of the average for member states of the Organization for Economic Cooperation and Development (OECD). At the same time, Mexican real wages have declined persistently—a decline that contributes to the maintenance of the large wage gap between the two countries. Finally, employment continues to play a complicated role in migration—although it may be less the direct cause that some observers suggest. During the 1990s, regional and sector disparities increased. While some states (particularly in the North and the new *maquila* regions in the South) experienced a strong employment expansion and tight labor markets, employment in other regions did not keep pace

TABLE 2

UNSKILLED OCCUPATIONS WITH THE LARGEST JOB GROWTH, 1998-2008¹ (NUMBERS IN THOUSANDS OF JOBS)

	Employment		Change	
	1998	2008	Number	Percent
Retail salespersons	4,056	4,620	563	14%
Cashiers	3,198	3,754	556	17%
Truck drivers, light and heavy	2,970	3,463	493	17%
Office clerks, general	3,021	3,484	463	15%
Personal care and home health aides	746	1,179	433	58%
Teacher assistants	1,192	1,567	375	31%
Janitors & cleaners, including maids & housekeeping	3,184	3,549	365	11%
Nursing aides, orderlies, and attendants	1,367	1,692	325	24%
Receptionists and information clerks	1,293	1,599	305	24%
Waiters and waitresses	2,019	2,322	303	15%
Guards	1,027	1,321	294	29%
Food counter, fountain, and related workers	2,025	2,272	247	12%
Child care workers	905	1,141	236	26%
Laborers, landscaping and groundskeeping	1,130	1,364	234	21%
Hand packers and packagers	984	1,197	213	22%
Adjustment clerks	479	642	163	34%

1. For the period, the projected increase in employment for all detailed occupations not requiring training is 7.6 million jobs.

Source: U.S. Bureau of Labor Statistics

with labor force growth. These labor supply pressures did not translate directly into much higher unemployment rates. Rather, they seemed to have led to a surge in precarious forms of employment or self-employment and to a correspondingly strong push for emigration. This observation appears to suggest that the proximate cause for emigration may not have been unemployment *per se*, but rather the search for higher income levels.

The quest for family reunification in the United States and economic and labor market circumstances in Mexico, however, are not sufficient to explain the scale of the out-migration of Mexican workers. It is the opportunities for work in the United

States that complete the picture of the U.S.-Mexico migration relationship. The second half of the 1990s registered a virtually unprecedented rate of U.S. job growth that led to a lengthy period of near-record low unemployment. Labor demand seemed to be exceeding the supply of available workers across virtually the entire job market. Immigrants at virtually *any* skill level, regardless of legal status, became essential employees in numerous economic sectors throughout the United States. Well-embedded, sophisticated networks of friends and relatives in different communities in Mexico and the United States and U.S. ambivalence about labor market controls helped to make this possible in a seemingly seamless fashion.

SETTING THE RECORD STRAIGHT... AND STARTING ANEW

Mexico-U.S. migration thus needs to be viewed through a different lens: as a phenomenon that simultaneously reflects and strengthens labor flows that are fundamentally ordinary and organic within an increasingly integrated free trade area. This is indeed a good starting point for an honest bilateral dialogue on migration as long as such an acknowledgment does not lead either party to expect the other to set its social and political responsibilities and priorities aside.

Nor does this change of perspective imply that Mexico should be less than fully accountable for the effects of its economic and social development policies on the employment prospects and economic survival opportunities of its people—particularly in the impoverished communities where most migration flows originate. Rescuing the discussion on Mexican emigration from the one-dimensional “escape valve” explanation (and the passivity it generates), and widespread reaction to increasing deaths at the border and to incidents of violations of the human and labor rights of Mexicans, creates at least the possibility for a more open-ended conversation. The Fox Administration is clearly committed to freeing the discussion from the extreme policy inertia of earlier Mexican governments.

For Mexico, the issues of migration and, less directly, the border are in some ways broader and more complex than they are for the United States. They are broader because the factors that have shaped the problem have ranged from fundamental issues of development writ large to even more fundamental issues of governance. The former includes such priorities as plugging the enormous gaps in human capital and physical infrastructure, devising efficient credit and products/services distribution mechanisms, nurturing substantial *and stable* producer and consumer classes, and building a social welfare infrastructure. Fair and transparent allocation of public goods, truly competitive and participatory politics, efficiency, and accountability are among the governance issues that also affect Mexican migration.

The issues are also more complex because they are symptoms of the same sets of broad forces. Hence, the resolution of migration and associated border challenges relies on making substantial and sustained progress in addressing the basic development and governance issues identified here—and needs a phased-in strategy. The depth of the emotional and symbolic contents of the immigration/border nexus (wrapped as they are into such complicated concepts as sovereignty, social and cultural identity, nationalism, and physical and economic security) complicates the task of the two governments further. Simultaneously, however, it will also provide the context in which the bilateral bargain outlined below will be examined by various societal institutions and the public at large in both countries.

The intellectual status quo on migration in the United States has also shown some movement. The lowest U.S. unemployment rates in a generation have put to rest (at least temporarily) the question of whether immigration is crucial to a dynamic economy that aspires to engage the global economy fully and directly. Following the bitter domestic “policy debate” about immigration in the mid-1990s, however, the United States is pursuing this aspiration with a better appreciation of the importance of managing immigration flows in ways that do not undermine basic domestic wage and labor standards, social policy and law-and-order priorities—and, increasingly, in ways that encourage robust circular migration. *It is hence in the vital interests of both countries to create an orderly system of migration flows that maximize the positive effects of these flows for each partner and for the participants in that process while minimizing their negative consequences.*

THE IMPORTANCE OF HAVING A VISION

As indicated, recent U.S.-Mexico discussions on migration are a marked improvement over decades of denial, recriminations, and intermittent communication—and they have led to some small but significant cooperative efforts. These have played an important role in immunizing the overall relationship from the infectious potential of disagreements over migration and related issues. The relevant question now becomes whether the many tiny steps that have been taken by the United States and Mexico can move both countries toward a different future. It is the judgment of this Panel that they cannot.

This is meant neither to criticize what has been accomplished so far nor devalue the diligence and imagination both sides have shown under extremely adverse political circumstances. Yet, as the new century begins, the state of the bilateral conversation in many ways resembles a classic “dialogue of the deaf”—with Mexico receiving relatively little substantive satisfaction on the issues of real concern to it and the United States unable to persuade observers that it has made

TABLE 3

**TOP 20 HIGH-EDUCATION OCCUPATIONS RANKED
BY IMMIGRANT SHARE OF HOURS WORKED**

	Share of Hours Worked National		Share of Hours Worked in 6 High Immigration States ¹	
	All Immigrants	Recent Immigrants as a Proportion of All Immigrants	All Immigrants	Recent Immigrants as a Proportion of All Immigrants
Men				
Foreign language teachers	38.5	33.2	37.1	42.8
Physics teachers	30.8	38.6	39.0	32.1
Health record technologists and technicians	29.6	39.2	46.9	40.3
Medical scientists	29.0	69.6	40.7	65.8
Dental assistants	25.4	71.6	38.3	73.0
Political science teachers	24.9	43.7	43.2	55.5
Social science teachers, not elsewhere classified (NEC)	21.8	32.8	47.5	74.7
Medical science teachers	21.2	20.9	24.6	17.1
Physicians	19.0	22.3	25.2	23.0
Engineering teachers	18.0	42.8	24.4	41.4
Computer science teachers	16.8	44.1	20.9	11.9
Economics teachers	16.5	31.9	27.1	34.1
Physicists and astronomers	16.0	45.1	20.2	50.1
Earth, environmental and marine science teachers	16.0	49.6	33.6	62.0
Postsecondary teachers, subject not specified	15.9	43.6	19.6	42.5
Chemists, except biochemists	15.8	38.6	21.6	37.5
Health specialties teachers	14.8	31.2	13.3	26.6
Chemistry teachers	14.4	26.6	19.0	16.9
Sociology teachers	14.2	14.5	21.7	0.0
Mathematical science teachers	13.8	59.2	14.4	55.2
Women				
Foreign language teachers	39.8	39.7	50.0	33.7
Political science teachers	31.9	43.3	53.0	100.0
Physicians	23.4	27.2	31.8	27.2
Dentists	23.4	29.1	35.8	30.8
Chemists, except biochemists	21.0	37.2	32.2	38.5
Artists, performers, and related occupations	20.5	31.0	25.1	31.2
History teachers	17.8	20.0	2.0	100.0
Social science teachers, NEC	17.0	64.9	38.3	100.0
Architects	16.2	37.5	25.4	40.4
Medical scientists	16.1	47.3	20.8	47.8
Actuaries	15.2	19.6	18.2	18.1
Biological and life scientists	15.1	41.0	21.6	42.9
Physicists and astronomers	14.7	47.7	18.1	25.4
Science technicians, NEC	14.4	48.3	26.9	46.9
Chemical engineers	14.3	24.9	17.3	19.9
Economics teachers	13.5	56.1	9.8	100.0
Social work teachers	13.4	0.0	22.3	0.0
Pharmacists	12.3	21.8	24.5	21.9
Computer science teachers	12.2	16.5	23.2	21.3
Statisticians	11.5	33.1	16.5	33.1

¹ High immigration states are California, Florida, Illinois, New Jersey, New York, and Texas.

Source: Smith, James P. and Barry Edmonston, eds. 1997. *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration*. Washington, D.C.: National Research Council, National Academy Press. Table 5.17. Tabulations from the 1970, 1980, and 1990 Public Use Samples of the U.S. Census of Population.

measurable progress toward its larger objective of controlling unauthorized migration despite enormous financial investments on enforcement. That is why the year 2001 is a good time for each side to take stock of the value of each initiative, strengthen the foundations of those gains it has made, and begin to direct part of its energy and political capital toward more ambitious goals. Hence the need for a “vision” to organize the new effort.

Visions, and “grand” visions in particular, are easy to dismiss as well-meaning but unrealistic on a number of counts.

- First, one can point to the vast developmental disparities, complicated histories, and immense differences in overall temper and world-view between the United States and Canada, on the one hand, and Mexico (and much of Central America and the Caribbean), on the other. On this basis, one could conclude that the relationship has gone as far as it can go.
- Second, one can downplay any vision’s prospects or desirability by pointing to the obstacles that earlier attempts at regional integration have faced, and to the ongoing travails of European integration.
- Third, one can also puzzle over how a “new” vision might be achievable in any foreseeable future, considering the difficulties in implementing the much more modest vision of the NAFTA and the limited impact of NAFTA cooperation on political dilemmas surrounding U.S. migration and border security.
- Finally, one might question whether it is possible to get from here to there: from the framework of today’s relationships and the substance of today’s conversations to the mutual resolve to test a new vision and give it a fair chance to succeed.

The Panel takes note of these and similar reservations but is convinced that having, and making explicit, a vision is indispensable to making substantial progress in complicated situations. What then, might such a vision be in the North American context? First of all, a worthwhile North American vision need not sacrifice national identities nor undermine the vitality of the region’s nation states. In fact, the Panel is confident that it is possible to conceive of a North America with gradually disappearing border controls, in which each country takes responsibility for its people and their actions, and is truly and actively sensitive to the vital concerns of each partner. Moreover, we expect that in that future scenario, *permanent migration within the “region” could remain at moderate levels.* (The European Union’s experience is a good case in point, particularly for the long run.)

Such a vision requires setting and working diligently toward the realization of long-term goals that focus on shared priorities. Among them will certainly be the following:

- security;
- protection of basic human and labor rights;
- protection from criminal organizations;
- the growth of robust civil societies founded on a real commitment to rights and social justice;
- a common agenda for improving peoples’ lives throughout the region; and
- the building of communities that work.

No regional vision of the kind proposed here would be complete if it did not include fair and consistent refugee protection as a central part of a regional commitment to human rights. Such mechanisms must aspire to and emulate the region’s higher, rather than lower or even average, standards and should be developed with the active participation of the region’s civil society institutions. In developing mechanisms for the protection of refugees and asylum-seekers, Mexico should be offered both technical and initial financial assistance from its NAFTA partners—much in the same way and for the same reasons that led Germany to help finance similar systems in Eastern Europe. Once common (high) standards are fully operational, NAFTA partners may wish to discuss how best to share responsibility, based on each country’s capabilities, for meeting the needs of bona-fide refugees and other persons in need of temporary or durable protection in the region.

Getting from Here to There

The difficulties in operationalizing this or any vision are certainly real. As a practical matter, the most important element in the conversation during its early stages is the building of a bridge of ideas, procedures, and structures that can move the relationship forward. This will not be an easy task. Too many ingredients can easily act as conversation-stoppers. For this reason, this report clearly identifies the steps the United States and Mexico might take individually and jointly to encourage their relationship to grow in positive directions, possibly even arriving at the new partnership for North America that the Panel envisions.

The Panel offers a number of suggestions to this end. Many of them are small, and some are already in various stages of consideration or implementation. Continuing such initiatives builds confidence and can solve small problems before they become bigger ones. Learning-by-doing allows both sides to develop a habit of thinking about difficult issues within a common framework, and, when appropriate, adopting joint responses to them. Some of the initiatives the Panel recommends, however, tend to be based on unconventional “out-of-the-box” thinking, which the members believe is necessary for the relationships to advance to the next level. These ideas have another purpose. They are intended to liberate and elevate the

TABLE 4

**TOP 20 LOW-EDUCATION OCCUPATIONS RANKED
BY IMMIGRANT SHARE OF HOURS WORKED**

	Share of Hours Worked National		Share of Hours Worked in 6 High Immigration States ¹	
	All Immigrants	Recent Immigrants as a Proportion of All Immigrants	All Immigrants	Recent Immigrants as a Proportion of All Immigrants
Men				
Tailors	58.8	29.5	75.1	31.7
Waiters'/waitresses' assistants	55.2	68.3	70.0	68.7
Cooks, private household	52.8	58.9	78.0	68.7
Dressmakers	49.5	58.9	74.1	54.6
Housekeepers & butlers	47.6	66.1	46.8	48.8
Graders and sorters, agricultural products	43.6	44.1	66.5	42.0
Nursery workers	41.9	56.1	61.0	54.4
Waiters and waitresses	40.5	50.7	53.7	49.8
Cooks	39.0	51.6	54.9	51.0
Miscellaneous food preparation occupations	38.1	65.5	59.9	65.8
Textile sewing machine operators	37.5	56.2	77.1	59.0
Precious stones and metals workers (jewelers)	35.3	41.3	53.4	43.1
Parking lot attendants	35.0	61.4	48.9	61.4
Shoe repairers	34.4	41.2	56.9	41.4
Taxicab drivers and chauffeurs	32.2	51.1	44.7	50.9
Kitchen workers, food preparation	31.9	52.1	46.0	52.3
Private household cleaners and servants	31.9	55.4	46.5	53.3
Solderers and brazers	31.5	50.1	60.3	49.8
Food counter, fountain & related occupations	30.2	49.7	44.7	51.3
Bakers	29.5	46.5	46.9	50.0
Women				
Production samplers and weighers	47.1	21.1	75.6	22.4
Housekeepers and butlers	45.8	63.2	62.4	62.8
Tailors	45.7	32.5	70.2	34.8
Miscellaneous precision apparel and fabric workers	43.5	31.1	60.2	35.8
Graders and sorters, agricultural products	43.4	39.8	62.3	37.9
Private household cleaners and servants	37.5	57.3	58.6	58.0
Dressmakers	37.2	35.4	60.2	38.8
Patternmakers, layout workers, and cutters	34.0	29.4	4.1	100.0
Cooks, private household	31.6	46.0	51.9	45.0
Numerical control machine operators	29.1	33.3	65.4	51.0
Textile sewing machine operators	27.3	41.1	72.9	43.2
Farmworkers	25.8	42.3	53.3	40.9
Child care workers, private household	24.8	68.1	44.3	69.1
Electrical and electronic equipment assemblers	23.4	34.1	42.3	36.6
Graders and sorters, except agricultural	23.1	35.6	49.4	35.1
Inspectors, agricultural products	23.1	53.0	32.6	54.7
Maids and housemen	23.0	45.0	42.2	45.3
Parking lot attendants	23.0	42.4	43.1	45.8
Precious stones and metals workers (jewelers)	22.8	45.6	40.0	43.2
Elevator operators	22.7	51.7	35.7	36.0

¹ High immigration states are California, Florida, Illinois, New Jersey, New York, and Texas.

Source: Smith, James P. and Barry Edmonston, eds. 1997. *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration*. Washington, D.C.: National Research Council, National Academy Press. Table 5.18. Tabulations from the 1970, 1980, and 1990 Public Use Samples of the U.S. Census of Population.

discussion from the morass of politically unpalatable options in which the conversation about Mexican immigrants finds itself most of the time. We aim to present “win-win” alternatives where interests may be less entrenched and the room for maneuvering may be correspondingly greater.

NOTES:

- ¹ The United States’ fiscal year runs from October through September.
- ² The estimate of unauthorized Mexicans today is around three million, compared to 1.2 million in 1980.
- ³ Many of these initiatives are of somewhat recent vintage (1996), when the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and two other pieces of legislation of enormous significance for immigrants—the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform Act)—became law.
- ⁴ For instance, in 1996, the two governments held three regional meetings in the United States between Mexican consuls and INS district authorities. The meetings focused on providing the means to evaluate and enhance the capacity of the two countries to communicate with each other; creating channels for the resolution of migration problems at the local level; and insuring that as they enforced the immigration law, U.S. authorities would respect the human rights of Mexican immigrants—legal or unauthorized. Mexico and the United States also agreed to participate in a series of international conferences to deal with the migration phenomenon at the northern hemispheric level with the additional participation of Belize, Canada, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama, and the Dominican Republic. Finally, in the mid-1990s, the two countries agreed to commence the first ever binational study of Mexico-U.S. immigration (see also Note 5).
- ⁵ The demographic and related profiles of Mexican migration to the U.S. rely on analysis produced in the mid-1990s for the “Binational Study on Migration,” a joint research effort between twenty U.S. and Mexican researchers. The data and estimates used here are, of course, updated.

New Directions in the U.S.-Mexico Relationship: The Elements of a Bargain

As noted, in the last few years the United States and Mexico have begun to talk about immigration and related border issues in terms of “management,” understood in large part as predictability, orderliness, and safety. This is an enormous improvement over earlier days, when there was no serious attempt to think jointly about the issue’s management, and each side acted as if it wished the issue simply would go away. However, for genuine progress to be made, neither side can paper over the axiomatic disagreement about the fundamental nature of undocumented migration.

At the risk of oversimplifying, Mexico has fundamentally viewed migration as a necessary, if complicated, element of its economic development and, during certain periods, its social peace. To a certain degree, this perspective continues to inform internal Mexican discussions and calculations. Furthermore, Mexico believes that undocumented workers present a largely “win-win” situation for the two countries: Mexican workers are needed (and valued) by U.S. employers and work hard for relatively low wages. In the process, they also benefit themselves and through their remittances, their families and their home communities.

For most of this century, the United States has in effect shared that view and has taken various programmatic steps to either facilitate movement or ratify its consequences (through temporary worker programs and legalization procedures, but also through only intermittent efforts at border controls). Since the mid-1990s, however, important sectors of U.S. opinion came to view undocumented migration as an affront to U.S. sovereignty and as increasingly inconsistent with its social and some of its economic priorities. What could be done?

There are several alternative discussion tracks outlined in this document, each one of which has the potential for making greater progress than has been made since regular contacts on these issues began between the U.S. and Mexican governments in the mid-1990s. The Panel’s most basic recommendation is that the United States and Mexico should enter into a dialogue that proceeds from the premise that the long history of their immigration relationship justifies a special bilateral (and eventually trilateral¹) arrangement. If agreement can be reached on a set of principles or guidelines, policies will follow. *Most importantly, subsequent actions would then be recast from enforcing contestable unilateral priorities to carrying out the*

terms of a bargain; from assertions of sovereignty to affirmations of a negotiated agreement.

Of course, any such deal must give to each party something of what it wants most. For the United States, this would include a clear statement by Mexico on the importance of channeling the migration flow into legal routes and increasingly robust efforts to do so. For Mexico, priority goes to legal status for more of its citizens in the United States, greater U.S. commitment to protect the rights of Mexican nationals, some increase in legal immigration numbers, and fair and equitable temporary worker programs.

The Panel believes that re-conceptualizing the relationship in terms of implementing the terms of a bargain on immigration and associated issues would move us toward the long-term vision suggested above: it would acknowledge the true character of the labor flows and would underscore the duty and responsibility of each state to deal with the issue in a manner that serves both its and its partner’s interests.

EQUALITY WITH CANADA

We propose “equality of treatment with Canada” as one of the central themes of a new U.S.-Mexico relationship on legal immigration. Underlying this theme is an important principle: *unequal treatment* in law or in the application of a law is inconsistent with the spirit of NAFTA. Equality of treatment on immigration issues, including those addressed in Chapter 16 of the NAFTA (regarding the movement of professionals), becomes a crucial axis around which Mexico and the United States can try to organize their relationship first on immigration and, gradually—as the changing migration dynamic allows the current border management paradigm to be altered—on border matters. (See Table 5 (next page) for a comparative look at Mexican and Canadian entries into the United States under the relevant provisions of the NAFTA.)

Matching the U.S. treatment of Mexico to that of Canada is a good agenda-setting theme around which the two sides can enter into meaningful discussions. Such discussions can then move to setting guidelines and agreeing on processes that will decide on timelines, deliverables, and the like. Small steps that build confidence on both sides and mutually agreed benchmarks which, when met by the party that undertakes a specific

TABLE 5

**ARRIVALS OF CANADIANS AND MEXICANS
BY SELECTED CLASS OF ADMISSION
UNDER NAFTA ARTICLE 1604**

<i>Canada</i> ¹	1994	1995	1996	1997	1998	1999	2000 ²
Treaty traders (E1)	187	185	211	281	269	221	135
Treaty investors (E2)	2,877	2,481	2,426	2,951	2,986	2,181	951
Intracompany transferees (L1)	6,617	7,386	7,075	10,724	12,322	12,366	6,868
Spouses and children of intracompany transferees (L2)	4,269	4,426	4,142	6,004	6,329	5,924	2,142
Spouses and children of NAFTA Workers (TD)	6,707	7,436	7,868	14,687	17,202	15,504	6,319
Professional workers, NAFTA (TN)	25,104	25,598	28,237	48,430	60,742	60,755	34,294
Total	45,761	47,512	49,959	83,077	99,850	96,951	50,709
<i>Mexico</i> ¹	1994	1995	1996	1997	1998	1999	2000 ²
Treaty traders (E1)	122	165	256	488	509	657	372
Treaty investors (E2)	237	520	778	1,103	1,237	1,437	755
Intracompany transferees (L1)	2,808	3,532	5,054	7,503	9,468	10,778	5,585
Spouses and children of intracompany transferees (L2)	1,550	1,971	2,898	3,833	4,547	5,465	2,850
Spouses and children of NAFTA workers (TD)	11	13	57	172	313	431	207
Professional workers, NAFTA (TN)	16	63	229	436	785	1,242	712
Total	4,744	6,264	9,272	13,535	16,859	20,010	10,481

1. The 1996 and 1997 calendar year admission data have been revised downward. Duplicate records of admission were discovered in the 1996 and 1997 data by examining the unique 11-digit admission numbers and the date of entry captured on the I-94 Arrival/Departure Records. The revised data include only one admission per admission number and date of entry. The 1998 data exclude duplicate records and have been revised to reflect final counts. However, the data for business persons may include more than one admission for an individual business person if the individual travels to and from the United States more than one time within the calendar year.

2. Data are for January - June 2000.

Source: U.S. Immigration and Naturalization Service.

responsibility lead to reciprocal steps by the other party on issues of importance to the first party, add up to a businesslike and methodical way to proceed.

Alternative paths that may encourage impatience in manner and overreaching in substance or timetable may squander an opportunity for real, if gradual, gains on the important issues that divide the two countries.

Methodical and orderly negotiations have another advantage. In an era of instant communications, each government can explain the rationale of the negotiations to its people in terms that they can understand and endorse. The essence of the explanation is that gradual but fundamental change in the nature of the conversation on migration between the United States and Mexico is a matter of personal security, quality of life, economic growth, viable communities, and good governance for both countries. The discussions can then proceed from a perspective that citizens of both countries can support, which includes respect for the rule of law and each country's sovereign choices; and respect for the desire (and right) of law-abiding members of each society to live free of the disruption and criminality associated with drugs, corruption, and some illegal immigration. Addressing these issues decisively has another powerful rationale: namely, that the failure of the authorities to do so effectively undermines public confidence in governmental institutions, erodes the ability of civil society to influence the shape of the resulting policies, and breeds generalized cynicism and contempt. All of these are inimical to democratic legitimacy.

There are several concrete ways in which symbolically important manifestations of equal treatment for Canada and Mexico might proceed. The Panel recommends that Chapter 16 of NAFTA be the starting point. The migration-related provisions of this chapter are an area in which the executive branches of all three governments have considerable latitude, because the NAFTA is an international agreement that falls most naturally

under the executive's power to conduct trade and foreign affairs. Under that power, three rather modest administrative changes in the provisions of the NAFTA should be implemented immediately—both as a matter of equity and in accordance with the promise of the NAFTA to promote greater growth and competitiveness within the region through greater economic integration. The immediate effect of each change on nationals of

TABLE 6

each NAFTA partner is likely to be initially small—making the value of these gestures at this time primarily symbolic.

Treating Professionals from all NAFTA Countries Equally.

The effective date for extending to Mexican professionals covered under the NAFTA numerical and procedural treatment equal to that extended to Canadian professionals should be advanced immediately. From Mexico's side, this will be initially a victory of principle over bureaucratic intransigence—because the currently available number for professional visas for Mexicans (5,500 per year) has been extremely under-subscribed. (See Table 6 for the number of Mexican entries in key occupations relative to those of Canadian entries).

The NAFTA already mandates that visa limits and associated procedures be lifted by January 1, 2004. Advancing dates on provisions that work smoothly has a long tradition in the implementation of all types of agreements.² The real difficulty will be the requirement that Mexican Chapter 16 professionals obtain a valid visa prior to entering the United States. Waiving that requirement may be legislatively tied to the “overstay” rates of a country's nationals. (Canadians and Americans enjoy treaty-based mutual visa-free access that is more than a century old.) Nonetheless, considering that those covered under Chapter 16 are professionals, no effort should be spared to streamline the requirement accordingly.

Expanding the Professional Occupations' List.

The list of about seventy professional occupations receiving special entry and employment treatment under the NAFTA (see Table 7, ext page) should be expanded more expeditiously. Since 1994, and as a result of the intransigence of the labor and immigration agencies that control this administrative process, only four occupations have been added to the list. Merits of specific occupations aside, the further integration of the NAFTA economies to which this provision

ARRIVALS OF CANADIAN & MEXICAN PROFESSIONALS BY SELECTED OCCUPATION UNDER NAFTA ARTICLE 1604

	1998		1999		2000 ¹	
	NUMBER	%	NUMBER	%	NUMBER	%
Canada						
Registered nurses	9,313	15.3	4,528	7.5	481	1.4
Executive, administrative, managerial	8,559	14.1	5,371	8.8	3,216	9.4
Computer, mathematical, & operations research scientists	8,302	13.7	5,217	8.6	1,397	4.1
Engineers	7,902	13.0	4,849	8.0	1,291	3.8
Technologists & technicians	4,642	7.6	3,037	5.0	784	2.3
Natural scientists (physical & life)	1,993	3.3	1,195	2.0	189	0.6
Teachers	1,629	2.7	863	1.4	102	0.3
Pharmacists, dieticians, physicians' assistants, & therapists (excluding physical)	1,348	2.2	617	1.0	77	0.2
Writers, artists, & composers	916	1.5	496	0.8	84	0.2
Social scientists & urban planners	738	1.2	472	0.8	74	0.2
Lawyers & judges	521	0.9	287	0.5	89	0.3
Marketing & sales personnel	37	0.1	19	0.0	201	0.6
Other	4,102	6.8	2,387	3.9	543	1.6
Unknown	10,740	17.7	31,417	51.7	25,766	75.1
Total	60,742	100.0	60,755	100.0	34,294	100.0
Mexico						
Executive, administrative, managerial	130	16.6	116	9.3	25	3.5
Engineers	119	15.2	81	6.5	15	2.1
Computer, mathematical, & operations research scientists	23	2.9	23	1.9	1	0.1
Technologists & technicians	14	1.8	13	1.0	7	1.0
Lawyers & judges	12	1.5	17	1.4	1	0.1
Teachers	11	1.4	2	0.2	2	0.3
Registered nurses	10	1.3	6	0.5	0	0.0
Marketing & sales personnel	4	0.5	7	0.6	4	0.6
Natural scientists (physical & life)	4	0.5	2	0.2	0	0.0
Writers, artists, & composers	4	0.5	2	0.2	0	0.0
Other	29	3.7	32	2.6	5	0.7
Unknown	425	54.1	941	75.8	652	91.6
Total	785	100.0	1,242	100.0	712	100.0

1. Data are for January - June 2000.

Source: U.S. Immigration and Naturalization Service

TABLE 7

PROFESSIONS COVERED UNDER CHAPTER 16 OF THE NAFTA A

GENERAL	Research Assistant (Working in a post-secondary educational institution)	Physiotherapist/Physical Therapist	Geochemist
Accountant	Scientific Technician/Technologist	Psychologist	Geophysicist (including Oceanographer in Mexico & U.S.)
Architect	Social Worker	Recreational Therapist	Horticulturist
Computer Systems Analyst	Sylviculturist (including Forestry Specialist)	Registered Nurse	Meteorologist
Disaster Relief Insurance Claims Adjuster	Technical Publications Writer	Veterinarian	Pharmacologist
Economist	Urban Planner (including Geographer)	SCIENTIST	Physicist (including Oceanographer in Canada)
Engineer	Vocational Counselor	Agriculturist (including Agronomist)	Plant Breeder
Forester		Animal Breeder	Poultry Scientist
Graphic Designer	MEDICAL/ALLIED PROFESSIONAL	Animal Scientist	Soil Scientist
Hotel Manager	Dentist	Apiculturist	Zoologist
Industrial Designer	Dietitian	Astronomer	TEACHER
Interior Designer	Medical Lab. Technologist (Canada)/Medical Technologist (US, Mexico)	Biochemist	College
Land Surveyor	Nutritionist	Biologist	Seminary
Landscape Architect	Occupational Therapist	Chemist	University
Lawyer (including Notary in the Province of Quebec)	Pharmacist	Dairy Scientist	
Librarian	Physician (teaching or research only)	Entomologist	
Management Consultant		Epidemiologist	
Mathematician (including Statistician)		Geneticist	
Range Manager/Range Conservationalist		Geologist	

Source: NAFTA, Appendix 1603.D1.

both responds and promotes should make the issue a priority for the more senior leadership of each country.

Offering Employment Rights to the Spouses of NAFTA Chapter 16 Professionals.

Offering derivative employment benefits to the spouses of Chapter 16 professionals has long been a major Canadian policy goal. In fact, and as a means of moving the issue out of the U.S. bureaucratic morass in which it has been stuck for more than a decade, Canada unilaterally extended this benefit to U.S. professionals about two years ago on a pilot basis. This is another matter which can be handled administratively. The merits are overwhelming. They include (a) economic competitiveness, arising from the fact that professionals are typically married to other professionals and they may be more amenable to moving if their spouses also have the right to be employed; (b) gender equality; and (c) reciprocity among the three NAFTA partners.

A GEOGRAPHIC CONTIGUITY-BASED PREFERENCE ON IMMIGRATION

The Panel proposes that the trilateral relationship on immigration and associated matters should go beyond the narrow terms of an important but perhaps less than crucial chapter of the NAFTA. In fact, the Panel believes that the special economic relationship that the NAFTA institutionalized, as well as the myriad of other, mostly bilateral practices that contiguity and interdependence have spawned, warrant a broader and more special immigration relationship. We are not promoting one or another set of recommendations at this time. We are offering, however, a negotiating premise from which the three governments might proceed: *taking the immigration component of the trilateral relationship out of each country's global immigration policy framework.*

For instance, the concept of a "geographic contiguity" exemption to certain legal U.S. immigration provisions has been discussed intermittently for nearly two decades. And a precedent

exists both in the “preferential” migration treatment accorded the Western Hemisphere until the late 1970s and in the numerous exceptions U.S. legislation regularly makes for the “favored” state of the moment.

This is also something that should be taken up at least as a matter of pragmatism. Mexico is already by far the heaviest user of U.S. family visas. Furthermore, three of the main provisions enacted under the Legal Immigration Family Equity Act (LIFEA) in December of 2000 are expected to benefit as many as half-a-million Mexicans.³ Similarly, Canada is both a significant user of legal permanent residence visas and the leading receiver of high-end H1B visas both under the regular U.S. temporary immigrant system and the NAFTA professionals’ designation. Taking both countries outside of the normal immigration formula (see Table 8, next page) would allow the United States to see its way clear in any discussions about a special immigration relationship (which, in any event, already exists), while creating some additional space for the rest of the world which, in the competition for numerically limited visas, often feels that it is being elbowed out by the 25,000 or so visas that Mexico and Canada uses annually. Such a conversation will make the discussion about the “bargain” being proposed by this Panel even more meaningful and offer each party to the conversation its own form of leverage.

PURSuing JOINT PRIORITIES COOPERATIVE Y

As indicated above, the terms for the bargain the Panel proposes may be difficult to negotiate and will be difficult to meet. They include several highly interrelated law-and-order priorities and a series of short- and longer-term objectives.

Address on a Priority Basis the Smuggler-Assisted Unauthorized Entries of Mexicans.

The U.S. and Mexican Governments should invest all necessary energy and resources to curtail substantially the ability of organized criminal networks to smuggle persons, as well as other illegal or dangerous items, into either country. Gaining greater control over unassisted unauthorized entries will be the second-order result of the broader package of recommendations proposed by the Panel as well as a natural by-product of such cooperation.

It is not clear how capable any two states with a 2000-mile land border can be in reducing unwanted traffic dramatically. The Panel is confident, however, that recasting the relationship along the lines it envisions can change the calculus for all protagonists sufficiently to make orderliness and legality gains which have proven elusive to date.

Until Mr. Fox assumed the Mexican presidency, the incentive for Mexico either to invest the political and material resources necessary to disrupt people-smuggling networks systematically or to interfere with unassisted entry had been low—except when tied with the public safety campaigns created recently in response to the deaths of border-crossers in inhospitable terrain. Endemic corruption, inadequate training and resources, and weak accountability of both investigative and enforcement personnel, particularly at state and local levels, has interfered further with obtaining consistent results. The status quo has thus had predictable consequences for the relationship.

The gravity that most advanced industrial democracies attach to the issue of organized unauthorized migration is nothing less than extraordinary. Mexico, a recent addition to the OECD—the so-called “club of the rich”—is not unaware of this priority. In most intelligence circles, the dominant working hypothesis is that the high profitability and relatively low cost of people-smuggling has made the activity extremely appealing to the same criminal networks that are also responsible for moving many other illegal, and/or dangerous items. These criminal networks operate in *both* countries, and their ability to corrupt public officials respects no borders. While consolidations of this nature may make such syndicates better targets for “classic” police intelligence work, it also makes them more efficient in each illegal activity in which they engage—by allowing them to build better infrastructure, invest in better intelligence gathering and improved technology, and dedicate whatever sums may be necessary to corrupting public officials. If the assumed relationship between some of the organized people-smuggling networks and other forms of illegal activity (ranging from forged documents to drugs) is even partially valid, pursuit and prosecution of these syndicates should be equally high priorities for both countries.

Simply put, the Panel recognizes that organized criminal activities have a deeply corrosive effect on the institutions of both countries and cooperation in their relentless pursuit should be as seamless as efforts are in other areas where there is an identifiable common threat, much as communicable diseases are in the public health arena. The additional incentives that the United States can put on the table in the form of much greater access to its labor markets, can reinforce the Fox Government’s determination to do *much better* than its predecessor. Showing measurable progress on this issue can change the deeply-held overall impression in the United States that Mexico has only a weak commitment to and, as a result, has been ineffective in attacking the organized criminal networks that have plagued the U.S.-Mexico relationship in recent years.

TABLE 8

THE U.S. PERMANENT IMMIGRATION FORMULA: AN OVERVIEW

Family-sponsored Immigration

CATEGORY	SPONSOR ¹	RELATIONSHIP	VISAS ALLOCATED
Immediate Relative	U.S. Citizen	Spouses, unmarried minor children and parents (if the U.S. citizen is 21 years or older)	Not numerically limited. ² Approximately 250-300,000 visas have been issued annually in recent years.
1st Preference	U.S. Citizen	Unmarried adult children (21 years or older)	23,400 visas/year, plus any visas left from the 4th Preference
2nd A Preference	Lawful Permanent Resident (LPR)	Spouses and minor children	87,900 visas/year
2nd B Preference	LPR	Unmarried adult children (21 years or older)	26,300 visas/year
3rd Preference	U.S. Citizen	Married adult children	23,400 visas/year, plus any left over from the 1st and 2nd Preferences
4th Preference	U.S. Citizen (21 years or older)	Brothers and sisters	65,000 visas/year, plus any left over from the previous Preferences

Employment-based Immigration³

1st Preference	40,000 visas a year (28.6% of the employment preference total) may be issued to priority workers—persons who have “extraordinary ability” or who are “outstanding professors and researchers” or “certain multinational executives and managers.” Any unused visas from the fourth and fifth employment-based preferences are added to this category.
2nd Preference	40,000 visas a year (28.6% of the total) plus any visas left over from the first employment-based preference may be issued to persons who are “members of the professions holding advanced degrees or aliens of exceptional ability.”
3rd Preference	40,000 visas a year (28.6% of the employment total) plus any visas left over from the first and second employment-based preferences may be issued to skilled workers, professionals, and “other workers.” Skilled workers must be capable of performing skilled labor requiring at least two years training or experience. The other workers category covers workers who are “capable of performing unskilled labor,” which is neither of temporary or seasonal duration. Workers in this category are limited to 5,000 visas per year.
4th Preference	Up to 10,000 visas a year (7.1% of the employment preference total) may be issued to certain “special immigrants,” including ministers, religious workers and others.
5th Preference	Up to 10,000 visas a year (7.1% of the total) may be issued to persons who invest between \$500,000 and \$3 million dollars in a job-creating/preserving enterprise. At least ten U.S. workers must be employed by each investor. The amount of money can vary depending on the area of the country that will benefit from the investment.

1. Citizens may sponsor their spouses, unmarried children, parents (if citizen is over 21 years), married children, and brothers and sisters (if the citizen is over 21 years). Lawful Permanent Residents (LPRs) may sponsor only their spouses and unmarried minor and adult children.

2. Immediate relatives are admitted as their application is processed.

3. Petitions for employment-based visas are made by the U.S. employer on the immigrant's behalf. Some priority workers may petition on their own behalf. For Second and Third Preference categories, the employer must first obtain a “labor certification” from the U.S. Department of Labor confirming that there are not sufficient U.S. workers who are able, qualified, and willing to perform the work.

Source: Adapted, with modifications, from the 1998 Statistical Yearbook, U.S. Immigration and Naturalization Service, Washington DC: November 2000, and Immigration Policy Handbook 2000, National Immigration Forum, Washington, DC: June 2000.

Cooperate Organically in Impeding the Ability of Third Country Nationals to Use Mexico either as a Transit Corridor or a Launching Pad for Unauthorized Entry into the United States.

Actively cooperating in taking responsibility for managing their common border jointly should become a public policy and political priority of the highest order for both governments. Such an effort, however, must be sensitive to the higher standards it imposes on both governments for safeguarding human rights and devising appropriate procedures for protecting refugees. Extensive joint training in this regard, as well as a commitment to transparency (so as to increase governmental accountability), should quickly become the prevailing norm.

The U.S. expends considerable intelligence and foreign-policy capital trying to identify the routes, understand the organization (so that it can disrupt it more effectively), and engage other states in a common effort to defeat people smuggling networks. For instance, the United States meets regularly in Geneva with most other advanced industrial countries in the Inter-Governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America, and Australia (also known as the IGC or Intergovernmental Consultations), an unusual grouping of about fifteen countries that focuses especially on issues of immigration control. A variety of other (mostly European) regional groups, in which both the United States and Canada have different levels of official standing, also receive high-level policy attention. And as of the late 1990s, the G-8's Justice and Interior Ministers have placed the smuggling of aliens (and the official corruption commonly associated with it) and the trafficking of women and children squarely on their agenda. Both topics received prominent attention in the group's meeting in February, 2001. The group's government experts (known as the "Lyons Group") have prepared papers on forged documents, smuggling routes, and the like.

Finally, in December 2000, 124 countries signed, in Palermo, Italy, the Convention Against Transnational Organized Crime. Both the United States and Mexico were signatories. More importantly, both countries signed two protocols to the Convention signed by a much smaller subset of the Convention's signatories: one on Trafficking in Persons, the other on Smuggling of Migrants. Making progress on the law-and-order issues discussed in this section of the report will thus also allow both countries to meet their new international obligations.

Doing better in these areas is also fully consonant with the aspirations of the Fox Administration in at least two additional ways. The first has to do with basic governance and human rights issues. Smuggling operations, by their very reliance on corrupt

public officials and on threatened or actual violence, undermine the rule of law and thereby a government's legitimacy. Furthermore, Mexico cannot have its territory become a transit corridor for large numbers of people whom it cannot protect (sometimes, not even from its own officials). The second has to do with public order and social service infrastructure matters. Mexico cannot possibly provide the necessary police protection and basic services to third-country migrants concentrating at its northern border as they prepare for an attempt to enter the United States or, more consequentially, after they are pushed back by U.S. officials. Such transit migrants, when pushed back, can and do create serious social service burdens for Mexican local authorities and border communities.

Convert Unauthorized Workers into Legal Temporary Workers and Provide Mechanisms for those Who Can Meet Reasonable Criteria to Earn Legal Permanent Residence Status if they Wish to Do So.

There are between five and six million immigrants residing without authorization in the United States. Probably as many as three-fifths of them are Mexicans. The economics and politics of the issue have created the following U.S. interior enforcement paradigm: the U.S. government has calibrated its enforcement effort toward identifying, detaining, and removing criminal aliens first and foremost. Other interior removals are tied to other enforcement activities, such as anti-smuggling and, rather infrequently, employer sanctions. Most sectors of the U.S. society, including large segments of both political parties in the Congress, seem to be acquiescing to this new standard.

Another near-consensus also seems to be emerging: for virtually all institutional actors involved, employing foreign workers who have legal status and who can thus speak out against abuse and be protected by U.S. labor laws and relevant social legislation is strongly preferred to employing unauthorized workers. In fact, after a bit of a detour in the 1990s, legal status seems poised again to be construed as a new—if soft—labor standard. (In fact, some see it as the ultimate labor right.) As noted already, organized labor has broken with past positions to speak very clearly on this issue. And U.S. employer groups in several industrial and service sectors, aware that severe worker shortfalls lead some employers to break the law by hiring undocumented or falsely documented workers, have come together to lobby for the legalization of their existing workers and more visas for new foreign workers.

Two things are increasingly clear. First, wages and other labor rights and standards can (and often do) suffer when a significant component of a workforce has no legal status and, as a result, must accept severely curtailed access to rights. Second, the

choice facing the United States is *not* between condoning illegal status and removing illegally resident immigrants. Rather, the real choice is, for some at least, much more Hobsonian. It is between the labor market *status quo* (i.e., a large unauthorized workforce that has spread across an ever widening circle of low value-added manufacturing and low-wage service sectors) and legal—and for those who meet pre-agreed criteria, legal *permanent*—status. The only “win-win” option may thus lie in a system that allows unauthorized workers to come out of the shadows and obtain first a legal temporary status which extends to them relevant labor market and associated social rights *and* sets forth a process whereby those newly legal temporary workers who choose to can earn U.S. legal permanent residence upon meeting a set of reasonable and clearly delineated standards.

Respect the Human and Labor Market Rights of Mexican and Other Foreign Nationals.

The U.S. and Mexican authorities at the highest levels have agreed that in all contacts with each other’s nationals, government authorities will adhere to basic human rights principles. Agreement on these matters goes beyond the bilateral relationship. For instance, in the Santiago, Chile Regional Preparatory Committee Meeting for the Americas for the U.N. World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, as well as in the U.S. Plan of Action for the same meeting, both governments have made explicit commitments to “... safeguard and protect the human rights of migrants living in their territory ...” (Article 35). Similarly, the Declaration from the 1998 Summit of the Americas commits governments to “... make a special effort to guarantee the human rights of all migrants ...” and makes the “promotion and protection of human rights ... the responsibility of every state.” In fact, the latter details seven extremely progressive steps each country commits itself to take.

Proper treatment has thus been a clear priority for both governments. While the record of implementation has been far from perfect, these commitments have been an important achievement. An example from the United States demonstrates their importance. There have been few incidents of improper treatment of Mexicans seeking to enter the U.S. through the jurisdiction of the El Paso INS District since 1994, despite that district’s early and ongoing commitment to enhanced enforcement. That becomes more remarkable when one considers the nature of the contact (often under adversarial conditions) and the troubling inadequacy of training.⁴

Both governments must also be persistent in their advocacy of minimum labor protections for Mexican and other foreign nationals—regardless of legal status—in accordance with both U.S. laws and international standards. This issue has gained in prominence in the United States, as is evident from the press

and popular reaction to a variety of extreme incidents in recent years. These include the ill treatment of garment workers in Los Angeles, New York, and the Northern Marianas (a U.S. territory in the Pacific); of domestic workers employed by international civil servants stationed in the United States; of the plight of the deaf-mute Mexican workers in 1997; of janitors in Los Angeles; or of delivery persons in New York.

Reach a Social Security “Totalization” Agreement.

The importance of engaging in negotiations about the social security benefits accrued by the nationals of one country working in another country temporarily is an important enough theme to have found its way into the 1998 Declaration of the Summit of the Americas. In fact, the United States has gone further. Seventeen countries, including Canada, have bilateral social security agreements with the United States. Agreeing to engage in the necessary exploratory discussions on this issue, and reaching agreement on it, would convey with clarity a mutual commitment to recast the relationship on more equal terms in which each party carries out a set of responsibilities. The importance of the gesture goes well beyond symbolism.

Potentially, tens of thousands of Mexicans could be eligible under such an agreement—an outcome fully consistent with several of President Fox’s priorities. Among them are advancing the interests of Mexican nationals who have been or are working in the United States and even more so, getting greater returns for Mexicans and Mexico from migration. Most important, however, is the difference such an agreement would make in the life of Mexicans who have worked in the U.S. for several years, who have paid into the U.S. social security system, and who now live in Mexico. (Under the U.S. social security system, the citizenship status of the employee is not relevant for receiving benefits as long as the legal qualifying requirements have been met. However, if one is deported or removed, payment of benefits ceases unless the person is readmitted.)

Social security agreements have two primary purposes—“dual coverage” and “totalization.” In the former, the agreement eliminates dual Social Security coverage and, hence, the relevant taxes for multinational companies and expatriate workers. The latter, totalization, is the more germane to this discussion. These agreements help people meet the minimum eligibility requirements in either or both countries, thus filling gaps in benefits protection for those who have divided their working lives between the United States and another country. For example, a person may not have worked long enough or recently enough to meet the minimum qualifications for retirement, survivors, or disability insurance in either country. Thus, for those workers who have paid into the system but would otherwise not be eligible for social security benefits, these

agreements can help them qualify “...for partial U.S. or foreign benefits based on their combined, or ‘totalized,’ coverage credits from both countries.” The credits are not transferred from one country to another; they simply are counted to help meet the eligibility requirements in either country so that a person can qualify for partial benefits based on the number of years worked in that country. It is thus possible for a person to meet the eligibility requirements in two countries and receive benefits from both countries, but the benefits are based only upon the actual work credits in each country.

Offer Long-Term Undocumented Populations Immediate Legal Permanent Resident Status.

In December 2000, the Legal Immigration Family Equity Act (LIFEA) addressed some of the issues relating to many of the groups of immigrants who had been unable to receive legal status under the Immigration Reform and Control Act (IRCA) of 1986 primarily because of contested administrative decisions by the INS. However, LIFEA may not actually close the books on all pending cases from the IRCA era. In particular, persons whose employment was legally grandfathered by the IRCA legislation (as long as the employment was with the same employer) have found themselves in extremely dependent employment relationships because the law offered legal protection to their employers but not to them. This was as intended at the time. Fifteen years later, however, the scales should be balanced more equitably.

An administrative instrument already exists for handling both issues. It is the “Registry,” a process that offers legal status to all immigrants who have resided “continuously” in the United States since a specific date, have built equities, and meet certain good character and economic independence criteria. The IRCA set the Registry date at 1972, where it currently stands. The Panel believes that a much more current date that levels the playing field *and* closes the books on various IRCA-related issues is warranted. Such a date, if thoughtfully set, will also allow both governments to focus on the relatively newer unauthorized immigrants whose roots in the United States may yet be as deep and whose linkages to Mexico are correspondingly more active.

Negotiate a Temporary Labor Program.

The re-emerging appreciation of the contributions of Mexican immigrants to U.S. economic performance clears the way for putting reliable and orderly access to legal Mexican workers on the bilateral negotiating table as another likely “win-win” proposition. This is reinforced by a growing recognition that the relationship between Mexican workers and entire U.S. economic sectors may be more organic than had previously been thought. The demographic estimates that undergird this analysis may well be too tentative to persuade skeptics. They are real enough,

however, for forward thinking U.S. and Mexican policymakers to keep their door open and their arguments well-honed.

Regulating and administering the temporary legal entry of one’s nationals into another country for work purposes in an initially limited number of labor market sectors is among the most difficult items in any migration relationship. When the sending and receiving countries share both a long border and a long migration history, temporary labor programs can become even more difficult to manage well. *They can be managed, nonetheless.* Different countries have handled temporary migration relationships with different legal and administrative instruments. For instance, most European states have developed and managed large-scale “guestworker” operations intermittently since the late 1950s. The programs were developed with the full input and participation of each state’s social partners—with the government giving a generally strong voice both to employer and worker groups.

Some of these programs were intended from the very beginning to lead, within specific time frames, to the free movement of workers among the member countries of the European Economic Community—and they did so in 1968, well in advance of the 1970 date the relevant provisions of the EEC Treaty provided. (The decision to advance the date was made despite a sharp European recession in 1967.) Other programs continued to be characterized as “temporary” long after it became clear that the need for such workers was both long-term and deeply embedded. The states that held on to the myth of temporariness clearly miscalculated the depth of their need for foreign labor as well as the speed and the degree to which temporary workers would build equities in the host society and prefer to stay there. As a result, a permanent immigrant class was formed throughout Western Europe for which the receiving societies found themselves to be completely unprepared. The legacy of these miscalculations is playing itself out even now.

Western Europe, however, is not the only region to have engaged the temporary migration system in very substantial ways. The Persian Gulf states have also relied extensively on foreign workers for many decades. In fact, in some Gulf states, the majority of the workforce—and, in a few instances, the majority of the population—is made up of foreign-born persons. Workers from the Middle-East region and, since the 1970s, from South and East Asia have made up the vast majority of that flow. Time-limited employment tied to specific projects has been the typical means through which foreign workers are engaged in that region. The strict administration of the contracts has allowed very few—and closely regulated—leakages into long-term status and even fewer conversions into permanent status.

These are not the only instances or the only programmatic variants under which temporary worker programs operate. The U.S. experience with such programs in perishable crop

agriculture is a principal example of a program that went awry. (A similar, but much smaller, agricultural worker program between Mexico and Canada gets generally good grades by all parties.) The experience with the politicization of another U.S. temporary worker program—for high-end workers in technology and related fields—suggests that the process of designing a thoughtful temporary worker program will be an extremely contentious one. It will require consummate political and negotiating skills on the part of everyone—particularly because many of Mexico’s explicit or implicit allies on most other issues in the United States may otherwise sit out the debate or oppose a temporary program. Any resulting program will also require enormous investments of management capital from all parties to the arrangement.

The size, and hence the utility, of such programs for Mexico will vary in accordance with the labor demand circumstances of specific U.S. labor market sectors *and the accompanying U.S. politics*. This means that any new temporary labor programs are likely to become the source of both gain and pain in the U.S.-Mexico relationship. Nonetheless, negotiating *proper* temporary labor programs with clear rules for entry and work and clear paths to legal permanent resident status for those electing to pursue such a course and meet its terms should be a natural short- to mid-term objective for both countries. The long-term objective should indeed be freedom of movement.

From the U.S. perspective, temporary programs would address labor market shortfalls most directly and fairly for all parties. They would at the same time offer U.S. policymakers a new tool for managing both illegal migration and the border more effectively. From the Mexican perspective, such programs would give Mexican consular authorities an important new tool for protecting the rights of Mexican nationals by focusing on the enforcement of a contract’s terms—while turning migration more explicitly into the development instrument it can be and has been in other parts of the world. Progress toward this goal can be made through larger remittances and the more systematic connection between temporary workers and the life of their households and communities back home. Considering the priority Mr. Fox attaches to turning remittances and the voluntary return of talented Mexicans into agents of development, such programs can be expected to assume crucial importance in Mexico’s negotiating stance.

Leaving aside for the moment questions of timing, pace, sectoral targets, and politics, any new temporary worker program (or programs) should be built around five sets of principles and associated expectations.

(a) Work standards and associated social protections should be fair enough to satisfy the legitimate concerns that temporary programs raise in the minds of important societal actors, such as the religious and social justice

communities and worker organizations. Among the issues that would have to be resolved equitably and with uncharacteristic clarity are proper wages and working conditions, better means for testing whether U.S. workers are available (most current systems are serving neither U.S. workers nor employers well), social and health protections that are appropriate to sector and task, a certain degree of visa portability (the portability issue becomes increasingly moot the closer a program moves to multi-year visas and freedom of movement), and a strong and independent mechanism for dispute resolution.

- (b) It should have adequate regulatory and enforcement mechanisms and a dedicated compliance officer corps that is properly funded and trained. As above, the less restricted temporary programs are (in terms of geography, duration, sector, etc.) the less instrumental the presence of a dedicated compliance corps becomes.
- (c) It should include realistic incentives for program participants to depart as agreed (so as to address legitimate concerns about program “leakage” into the unauthorized immigration stream), while also offering a clear but carefully constructed access to legal permanent resident status for some in this new class of temporary workers. The departure incentives will create an opportunity to re-establish a circular system for Mexican migrant workers which is an important element to the aspirations of the Fox Administration to turn migration into a more direct and reliable contributor to development. Put differently, the absence of incentives to return increases enormously the probability that the emigrant will, over time, become a loss to both family and community in Mexico. Simultaneously, return incentives also respond to those in the United States who are concerned about the non-work related costs associated with the migration of poorly educated and unskilled immigrants. The opportunity to earn legal permanent residence, on the other hand, will meet the concerns of many Americans about the dangers of separating too starkly the right to work from that of full societal membership. A balance between the two positions will clearly need to be struck if a successful program is to be constructed; such balance can best be achieved if they are broadly consonant with the facts on the ground.
- (d) Any agreed-upon program(s) must not overreach. It (they) should start small. Pilot and experimental programs focusing on specific sectors or a small group of U.S. states might be one way to test some key programmatic ideas. States that have actively courted immigrants, and many whose chief executives have actually held discussions with U.S. and Mexican authorities regarding such programs, might start first. Arizona, Minnesota, Iowa, and Colorado are among such states. Soon after, however, and if the pilots

succeed and the U.S. economy can accommodate them, the program(s) should become large enough to meet broader needs in both countries. Considering the political risks both governments will face in their relationships with many of their natural allies within both countries over such programs, constructing robust mechanisms of implementation should be a strongly shared objective.

- (e) Finally, both governments should expect to invest considerable amounts of *new* political, human and capital resources in the management of such programs. A variety of mechanisms, however, can lead to significant cost recoveries from program users, especially after the program's first year.

In general, the things to keep in mind when entering into negotiations on temporary labor programs are that the politics will be Byzantine and the likely outcome less agreeable than any of the parties would like—yet far more agreeable than either the status quo or the opponents of such programs would have one believe. The prospects for doing something that measurably improves upon the status quo for all concerned can be real, as long as the two governments do three things: follow an inclusive process in the development and administration of the program; realize that temporary worker programs are not the panaceas their most committed proponents will present them to be; and recognize that a bad program will be the source of constant friction and, as a result, will become a source of regret to both countries.

ADMINISTRATIVE AND RELATED ISSUES

The priorities outlined above fall into the realm of major policy issues which are clearly expected to command the attention of senior legislative and executive branch officials in both countries. They thus fall in the high-politics end of the relationship continuum outlined in this report. A number of additional issues, on the other hand, may not meet that threshold. Yet they are important to the overall U.S.-Mexico relationship for two main reasons. First, the willingness to address them makes a huge difference in the lives of those they affect. Second, addressing them builds the kind of good will that serves as the essential lubricant of the on-the-ground partnership.

Four somewhat interrelated issues fall under this, the lower-politics part of the continuum. In order of importance, they are (a) expedited removal, (b) detention, (c) joint training of line professionals, and (d) the return of some administrative discretion to the U.S. immigration authorities.

Expedited Removal.

The INS has had the explicit authority to remove inadmissible foreigners at ports of entry with a minimum of procedure since

April 1, 1997. For instance, the San Diego District alone removed approximately 41,000 persons in FY 1998, while the El Paso District removed 11,000 persons during the same period. In FY 1998, Mexicans accounted for 93 percent of expedited removals while Canadians were under one percent.⁵ Mexico's concern with expedited removal stems not from the act of removal itself but from the associated practice of barring the removed individual from legal entry into the United States for periods of time that range from five to twenty or more years. Repeat offenders also face criminal prosecution. Expedited removal, then, has the under-appreciated potential of making substantial segments of the Mexican population living at or near the border legally inadmissible to the United States for many years, virtually regardless of the reasons for such entry.

Most forms of family reunification, participation in a legal temporary labor program, engaging in a legitimate business activity, or simply visiting relatives would be impossible for these individuals. Unless the INS changes its guidance to the field (the law allows but does not mandate these precise actions), and considering that the millions of undocumented Mexican workers presently in the United States are also subject to automatic ten-year entry bans, significant proportions of those among the Mexican population wishing to come to the United States may be barred for extended periods of time from virtually any U.S. immigration benefit. Both the policy and the practice should be reviewed under the framework advocated in this report. Senior local management review of removal decisions alone can make an enormous difference. It is likely that this accounts for much of the decrease in expedited removals in the El Paso district from 11,216 in FY 1998 to 6,324 in FY 2000.

Detention.

The INS has evolved into a "mini-Bureau of Prisons" in a remarkably short period of time. In addition to the effect that the unplanned shift in the institution's persona is having on the agency's culture, this development creates the potential for a serious incident that can spill over into and affect the larger bilateral relationship.

Detention centers are often managed by INS personnel with little formal education in prison management and are often staffed by private prison guards. In addition, most of these facilities have not been designed with long-term incarceration in mind. Yet, significant numbers of prisoners are being held for longer, even indeterminate, periods of time.⁶ When one adds the fact that detention centers mix violent criminals with mere border crossers, one has a recipe for potential disaster, which is exacerbated by the frequent overcrowding of most detention facilities. Pending a negotiated resolution of these issues, Mexico should continue to facilitate the administrative removal

of Mexicans in an effort to keep facilities from becoming even more overcrowded while insisting on facilities and prison management systems that meet U.S. Bureau of Prison standards.

Joint Training of Line Professionals.

A properly trained cadre of inspection and enforcement personnel is essential to the maintenance of a good public image at home and proper bilateral relations on sensitive issues. It also enhances the ability of Consuls to discharge their protection duties more effectively. If the two countries agree to a negotiated deal and proceed to treat the border as a joint responsibility, the inspection and enforcement personnel of *both* countries will have to be much better trained in the joint mission than either country's officers are now.

Nor is it too early for the U.S. Border Patrol to begin to manage better what may be a built-in ambiguity in its mission. Is the Patrol a police force (a cadre of peace officers) or is it a military force (an organization whose mission is to defend the United States from a foreign threat)? It is clearly a hybrid of the two. Yet, notwithstanding this dualism, the rhetoric and expectations emanating from the U.S. Congress are moving the Patrol inexorably closer to the military, defense-force analog. (Images of a border being overrun, and talk about "regaining control of our border" and the "threat" of illegal immigration to U.S. national security make this point vividly.) As one might expect, the language and tactics of the institution have adjusted accordingly and tend to reinforce its view of unauthorized crossing not just as a prohibited activity but as a criminal one, and in more isolated instances, perhaps even as an "invasion."

Administrative Discretion.

In 1996, the INS lost virtually all discretion on most matters involving the treatment of immigrants who may have committed certain types of crimes—even if such crimes were committed before the adoption of the relevant law and involved rather minor illegal acts. Pending a legislative correction, the INS should lay claim to the *limited* discretion it does have and encourage its local managers to cooperate with Mexican immigrants, the Mexican American community, and Mexican consuls in the United States in carrying out small pilot programs that deal unconventionally but intelligently with the consequences of the new enforcement status quo.

NOTES:

- ¹ This envisions gradually extending the conversation to the United States' other contiguous neighbor: Canada.
- ² An example from another NAFTA issue may suffice to make the point. Late in 2000, the three countries eliminated tariffs on nearly \$900 million worth of such traded items as footwear, chemicals, pharmaceuticals, auto parts, and batteries in advance of the NAFTA's timetable.
- ³ These provisions are as follows. First, they offer special legal temporary visas to the nuclear family members of legal permanent residents who have been waiting for a permanent U.S. visa to become available (a work authorization is also part of that new temporary visa). Second, they allow certain would-be-immigrants with pending applications for legal status to pay a substantial fee and convert to that status from within the United States when a visa becomes available (the status of these applicants will continue to be unauthorized in the interim). Third, they offer certain categories of legalization applicants under the 1986 IRCA legalization program whose claims had been denied by the INS on questionable grounds the opportunity to gain legal permanent resident status.
- ⁴ The INS (and particularly the Border Patrol) has grown so fast that for much of the last several years, inexperienced and inadequately trained personnel is often supervising even less experienced and less well-trained personnel. Until very recently, when the introduction of private sector incentives in hiring and retention started to arrest this tendency, horrendous attrition rates for the Border Patrol (thought to be at least partly the result of pay inequality with other federal enforcement personnel and even with the pay rates of some local jurisdictions) further exacerbated this problem.
- ⁵ Of the just over 180,000 total removals from the United States in FY 1999 and FY 2000, approximately 81 percent were Mexican and one percent were Canadian.
- ⁶ Legal immigrants with aggravated felonies are held for extended periods of time during which they can challenge their deportation, while excludable aliens of unknown countries of origin or whose country of origin will not accept their return simply languish in jail indefinitely. Many in this latter category have in fact already served their sentences and have been released from U.S. prisons—only to be detained for an indeterminate period of time by the INS.

Implementation and Beyond

DEVELOPMENT COOPERATION

The best guarantor of a more equal partnership between the United States and Mexico is robust economic development in Mexico. Continuing U.S. economic growth also helps enormously. As a result, both countries stand to gain from programs that test a variety of hypotheses about the relationship between socio-economic development (defined very broadly) and the reduction of pressures for emigration. Other decisions will also need to be made and tested, such as where best to locate investments (and of which type) so as to change the private calculus that leads households to decide whether a member should emigrate.

Development is clearly a long-term process and it is tied organically to other important Fox Administration initiatives, including closer relationships with Mexicans abroad. Mr. Fox should build upon the initiatives of the previous Mexican government to upgrade the quality of his Administration's interest in the affairs of Mexican communities in the United States and nurture ever more mature and respectful contacts with the Mexican-American community. Such ethnic-solidarity-based contacts have played important roles as agents of development in many other large emigrant-producing states—from the European periphery to South and East Asia.

The Fox Administration has already shown intense interest in attracting greater amounts of remittance transfers from Mexicans in the United States and in channeling such funds toward productive investments. Some \$6 to \$8 billion a year are estimated to be remitted to Mexico from Mexican migrants in the United States—although some Mexican estimates put the amount as high as \$12 to \$14 billion. Using remittances as a development mechanism, however, is complicated. An individual migrant's remittances to his or her family in the home country—most often for supporting family members, building a new home or, after those needs have been met, beginning a business—does have some developmental effects. Yet, if remittances are to become a tool for sustained development, new ideas for their return and use must be explored. For example, remittances might be exchanged at preferential rates and should be transferred without excessive fees. Furthermore, batching the remittances by the central bank and giving preferential treatment to development projects in the area from which the migrant comes should also be explored, as are issues of matching funds by the government or private sector investors, etc.

Mexico should not be expected to do all the required heavy lifting entirely on its own. Special regional relationships have typically included variable elements of sharing associated burdens and responsibilities. A North American vision should aspire to nothing less. Mexico and the United States should elicit Canadian support for nudging the lending priorities of International Financial Institutions (IFIs) toward Mexico. The initial emphasis might be on technical assistance: that is, preparation of feasibility studies and proper business plans, training for prospective owners and managers, and so forth. Similar initiatives have proven useful in other settings. With the U.S. Treasury controlling the largest share of the voting blocs at the relevant IFIs, even a very modest shift in U.S. priorities could have significant positive consequences for the attention Mexico receives in multilateral technical assistance and lending programs.

In addition, the U.S. Agency for International Development should be enlisted to offer needed technical assistance that focuses on building up Mexico's skills' infrastructure. This may prove to be easier to accomplish than getting the U.S. Treasury to intervene with the IFIs. It is also one of many initiatives that demand both a single voice and a closely coordinated implementation by the Mexican and U.S. governments.

Finally, the mandate and institutional culture of the North American Development Bank (NADBank) must shift toward an expanded vision of the Bank becoming a true development institution for the border region. Whatever "re-programming" may be necessary must be put squarely on the bilateral table. If the NADBank is to become more than the half-hearted "price" for the unblocking of the opposition to the NAFTA by the environmental community in the United States, it must be supported by both Mexico City and Washington, D.C. as the instrument that effects environmental, economic *and* community development change along and across the entire border region.

THE RELATIONSHIP AT THE BORDER

The U.S.-Mexico migration relationship is simultaneously less and more complex than many other troubled bilateral relationships. It is less complex because the principal motive of Mexican emigrants is the desire for economic improvement, rather than overt social and political oppression or conflict. It is more complex because the ready availability of U.S. jobs for

poorly educated but hard working Mexicans and the existence of mature ethnic networks nurture and reinforce this movement. The main result is that a symbiosis has developed between the goals of Mexican migrant workers and the interests and expectations of employers in increasing numbers of U.S. economic sectors. Another important result is that U.S. consumers of both products and services throughout the society have benefited from migration's effect on prices.

After more than a century, the U.S.-Mexican immigration relationship has developed its own social rules and economic logic—*rules and logic which have been widely known and even more widely ignored by the U.S. policy community until now*. U.S. policy discussions about border controls and unauthorized immigration have rarely moved beyond unilateral actions, despite repeated demonstrations that such actions fall far short of the mark. It is the judgment of the Study Panel that at this time, and for the reasons laid out in this report, unilateralism must give way to thoughtful bilateral and regional initiatives if different outcomes are to become attainable.

Constructing a Viable Border Region

Understanding borders between close partners as something other than a line that needs defending requires the re-conceptualization of all functions that states perform at borders.¹ Encouraging, helping develop, and nurturing viable border communities underlies that re-conceptualization and may well be one of the greatest initiatives that the Bush and Fox Administrations may set as a shared principal medium-term goal. Joint pursuit of such a goal would require offering tax and related incentives for new investments along both sides of the border; the brokering of relationships between and among local and regional authorities, regional economic development organizations, tourism boards, trade and investment entities, businesses, and public and private educational entities; and the active encouragement of greater engagement by the two countries' civil societies. (Collaboration among civil society institutions may well be one of the least understood—and most underutilized—border assets, yet such organizations are well ahead of governments in breaking down barriers between the two sides of the border.)

The Panel is convinced that if the border is to become the viable single economic and social entity that many say it is or can be, those who live on the border must also act to take charge of their own fate. Supporting cross-border alliances of all types and investing in the vitality of various forms of cooperative efforts—such as Canada does with the United States on the northern border²—should become an ongoing priority. Decisions in the two countries' capitals should *not* only not interfere with this process—they should also actively promote and facilitate it.

That effort will not be starting from scratch. It will build

upon the painful gains made over the last few years in returning order where chaos ruled. Considerable progress also has been made in such areas as achieving marked reductions of average waiting times at ports of entry and in establishing certain forms of official cross-border cooperation. Now it is time to think more boldly about turning two-way flows into ordinary affairs and giving much greater substance to the rhetoric about the border region as a single sociocultural and economic community.

Allowing Border Communities to Participate in the Management of their Fate

Encouraging border communities to participate in discussions about their future as full partners, and even to propose their own limited forms of local governance on migration issues, should also be put on the bilateral agenda. If two adjoining communities can agree on an experiment that changes the current formula of “control-through-deterrence,” the two Administrations should allow them to test out their ideas by effectively moving border controls sufficiently “inland” so as to facilitate cross-border transactions while still exercising necessary controls. There have been suggestions that the El Paso/Juarez area may indeed have the proper geography for such an experiment—as long as it is the local communities that agree to initiate such an experiment (and specify its terms), not the two countries' central governments. These efforts would signal movement toward the broader vision of the future favored by the Study Panel, a vision based on understanding and describing the border not as a barrier but as a common social and economic space. The more limited Arizona/Sonora experiment on loosening certain immigration controls so as to facilitate travel and economic exchange within an area of about 100 kilometers on either side of the border can be an initiative upon which one can build.

The gradual devolution of authority to the local communities would also initiate and nurture a systematic conversation between local authorities on both sides of the border about shared interests and concerns. The Panel believes that the on-the-ground situation at the border can be changed more effectively if public and private sector interests at the level of the affected communities help to change it. This analysis is consistent with the policy of “devolution” that is so much in vogue in the United States now (and is also occurring in Mexico) and accords with the reality that central governments in all previously unitary states—even France—have systematically devolved power to “states” and localities, both in fact and in law. The transition to greater local control proposed here must also begin to incorporate into the conversation both non-governmental organizations (NGOs) and community-based organizations (CBOs). This may be one of the greatest investments that both sides can make in the long-term resolution of some of the seemingly intractable issues facing U.S. and Mexican border communities.

Averting Human Tragedy, Managing Conflict, and Addressing Frustration at the Border

There is little doubt that, almost independently of the tone and substance of the discussions recommended herein, enforcement at the border will continue apace and its effectiveness may actually even increase. There are three main factors that support this hypothesis. The first has to do with the constant improvement in physical infrastructure, such as roads, observation towers, the modernization of Border Patrol equipment, and the like. The second factor revolves around the sheer sophistication of the technology being deployed and the cumulative effect it is having on the ability to monitor events at the border—a sort of “technology-bonus effect.” These include night vision cameras, seismic sensors, instant telecommunications and, perhaps most importantly, the strengthened capacity for “real-time” intelligence capabilities of all forms. The third factor is somewhat less tangible and has to do with the emerging realization that it takes more human resources to gain control of an area than to maintain control over it—suggesting that effective control over more areas could be sustained with somewhat fewer new human resources than are necessary to gain control in the first instance.

As noted earlier, greater progress in disrupting and diverting illegal traffic has at least two interrelated effects with severe human and political costs. It forces the traffic further into inhospitable terrain and increases frustrations among those seeking to enter the United States illegally. These two effects are concurrent and mutually reinforcing. Together, they are responsible for the increasing human toll among those attempting to cross the border and for increasing prospects for border violence.

Until the bargain recommended in this report is actually struck and begins to be implemented, the Mexican Government should do three things which are easier to pursue diligently within the context of a bargain but must nonetheless begin now. The public safety rationale is as simple as it is compelling—and it is a shared one. First, Mexico should expand cooperation with the United States in setting up warning signs and controlling access to difficult terrain—a policy which has been in place for more than a year but needs to be expanded. Second, it should impress upon the United States the continuing need to install detection equipment (and to act on the information it generates) in the most treacherous areas, as a means of reducing the risks associated with crossing through unforgiving territory. The recent improvements in the search-and-rescue and public safety preparedness of the Border Patrol reflect the sensitivity of the U.S. Government to the issue. Third, the Mexican Government should develop contingency plans for managing a significant public order incident at the border. These plans should include a public information campaign and an emergency response process designed to cool tempers and stop the incident from escalating.

There is little doubt that the vast increases in fortifications and policing have led to a siege mentality in the border region. These have challenged some public safety priorities, while dramatically reducing those aspects associated with the chaotic situation of the early to mid-1990s. They have also impeded legal crossings in some ways and have sown discontent and distrust among residents of the border communities. More consequentially, rather than helping resolve the underlying problems, the effort has itself become an impediment to addressing many other pressing issues on a binational basis. Regaining lost ground and moving forward quickly should become mutually urgent priorities.

The order of the top agenda items is obvious. First, work in concert to avoid additional deaths of would-be border-crossers. Second, freeze the building of additional fences pending review of the policy and the conclusion of that phase of bilateral discussions. Third, facilitate further legal traffic at the border.

MECHANISMS, PROCESSES, AND COMMON CHALLENGES

Both countries have derived some benefit from the various bilateral consultative mechanisms in which the last Mexican Administration invested an extraordinary amount of political capital. Among those have been the Working Group Regarding Migration and Consular Affairs (which is part of the U.S.-Mexico Binational Commission); the Border Liaison Mechanisms and their working groups; the Interior Consultation Mechanisms on INS Functions and Consular Protection; the Safe and Orderly Repatriation Arrangements; the Joint Presidential Statement on Migration; and the Memorandum of Understanding on the Protection of Mexicans and U.S. Nationals. There are also many other formal, as well as less formal—even verbal—agreements and information exchange, such as between the INS and the Federal Preventive Police and between the U.S. and Mexican immigration agencies. Both governments should review these mechanisms, eliminate those which have served their purpose already or have had little payoff, strengthen those that need it, and, if necessary, create new ones.

The various consular protection mechanisms and related memoranda of understanding deal with issues that range from border violence and consular protection to consultations regarding “grave violations of human and civil rights.” Even if they are imperfectly drawn or implemented, they are important tools for addressing issues before they become major problems. They too should be reviewed, strengthened as needed, and those which have proved useful should be continued.

Similarly, the so-called “Puebla Process”—formally known as the Regional Conference on Migration—should continue to be pursued as an important vehicle for the discussion of issues and

initiatives of a regional character. Inducing the United States to continue to take these fora seriously should be an important ongoing objective of the Mexican Government, as should be advocating for additional outreach efforts toward other actors. Most notably, greater representation from relevant public agencies that are not yet engaged in these efforts and from the civil society sector should become a priority. Considering Mr. Fox's strong interest in Central America and the U.S. Government's long-standing relationship with the region, expanding the scope of and participation in the RCM should receive some priority.

In the Panel's view, the challenge does not stop at the specific issues addressed in this report. In fact, both governments must engage certain larger issues which their predecessors have avoided systematically—and must do so in a manner that is, at a minimum, politically unorthodox. Three such larger issues are priorities.

Both governments must truly attend to the politics of the issue—and particularly to their public education responsibilities—if we are to have a chance to see a thoughtful and productive bilateral discussion about immigration and borders.

Mexico's entry into a period of truly competitive politics should be used as an opportunity to develop a Mexican national political constituency on immigration that allows the Mexican Government to go beyond the sterile (and constitutionally complex³) rhetoric

of non-interference with the right of Mexicans to leave their country. Similarly, the U.S. Government must itself strive to re-create a non-partisan consensus that focuses on restoring equity in U.S. immigration laws (and the immigrant-specific provisions of the welfare laws) and reintroduces common sense into its treatment of unauthorized immigrants.

Both countries must invite and embrace actively the participation of their civil society institutions in shaping responses to immigration and border issues.

For Mexico, this may require more time and more effort as government and civil society learn for the first time how to work together toward building a truly democratic future. But there is plenty of room in the United States to learn better how to work closely with its non-governmental sector on issues as difficult as immigration.

Both countries must work diligently to separate the border and unauthorized immigration issues into their respective component parts.

Doing so will allow them to reinforce and share credit for what works (particularly in the facilitation arena) while enticing them to work harder to find approaches and step-by-step solutions to things that remain problematic.

NOTES:

- ¹ Depending on how one counts, the interests of nearly two dozen agencies are represented in a border inspection system.
- ² Ironically, many of the initiatives in the Northern Border (e.g., the CANAM Border Trade Alliance in the Detroit-Windsor Area, the BORDERNET in Buffalo and others) have been modeled on the private-sector Southern Border Trade Alliance that has been based in Phoenix, Arizona, since the mid 1980s! This is another sign of how far Mexico has fallen behind Canada on many of these issues since the passage of the NAFTA.
- ³ Recognizing the difficulty of re-interpreting constitutional prescriptions does not lessen the importance of doing so when circumstances render the meaning of a prescription obsolete.

Conclusion

A well-managed and orderly migration system serves all who engage it—sending communities, receiving communities, and the immigrants themselves. While it does not eliminate the need for constant attention to policy and administration, it does make such associated issues such as border controls more rational and allows a management approach, rather than militarization and police actions, to dominate the policy discourse. Of course, a system of credible border controls and interior inspections must remain in place for some time both as a means of safeguarding the integrity of the agreements that may be reached and, perhaps more importantly, as a political fail-safe device for those who will oppose any deviation from the unilateral control model. Orderly movement should thus be the principal short-term objective of a new U.S.-Mexican migration relationship. The medium-term objective, in turn, should be turning the management of the common border into a shared objective consistent with the circumstances and *requirements* that the NAFTA relationship has created.

How, then, does one get to a dialogue that gives roughly proportional weight to the priorities of each country while respecting the sensitivities of both sides? The previous Mexican and United States Administrations deserve credit for a promising conceptual innovation that sought to focus attention on “border management”—a concept that is broader and with a different dynamic than “border controls.” This innovation, however, was never able to transcend the narrow confines of what the Clinton Administration perceived as politically feasible during its tenure, namely, an effort to accomplish simultaneously two competing tasks: facilitating legal access while controlling unauthorized entry. Even more fateful, however, may have been the attempt to match that effort with a “control through deterrence” model that became little more than a unilateral, targeted, saturation enforcement effort that concentrated on “gaining control” over one segment of the border at a time.

About five years into this dual strategy, it is clear that the effort has neither reduced overall unauthorized immigration nor increased significantly the likelihood that violators will be either deterred or kept out of the United States, despite enormous investments in technology, personnel, and physical control infrastructure. Furthermore, in an enforcement-dominated management model that also tries to be mindful of the need for facilitation, once the momentum of the first wave of technology’s effect on facilitation dissipates, revolutionary thinking and actions will be required *just to keep up with the increasing volume of legitimate border crossings*. What, then, might be the alternative?

The Panel calls for initiating a process of honest and constructive dialogue between senior representatives of U.S. and Mexican authorities on recasting entirely the overall

relationship. The general roadmap and the many policy options outlined in this document give an ample sense of and offer many “new” ideas around which the dialogue might be built. The urgency of our call proceeds from the following calculations.

- First, that it is not clear that the U.S. government or U.S. taxpayers will be willing to continue to make the ever higher financial commitments a saturation enforcement strategy requires, *or that they should*.
- Second, that it is rather clear that the U.S. political establishment, affected ethnic communities, civil society institutions, employers, and popular opinion cannot speak with a single, consistent voice about interior controls, especially with regard to such controls’ implications for privacy, civil rights, and civil liberties.
- Third, that it is equally clear that the Mexican government does not wish to continue to live either with the rising death-toll of its nationals at the Mexico-U.S. border or with the domestic political fallout from the increasingly militarized U.S. approach to border and immigration controls.
- Finally, as President Fox has made clear, that the status quo is completely inconsistent with the North American future envisioned by the NAFTA.

Changing the terms and direction of complex relationships is never an easy task. This is in part because those who engage the issue on a continuous basis are all too often weighed down by the pressures of responding to yesterday’s problems. What is needed is a dual strategy that continues to address the day-to-day challenges and opportunities the U.S.-Mexico relationship generates, while treating the process of dialogue as an investment in a better future. Crafting a vision of that future and suggesting how we might move toward it more effectively is a worthwhile endeavor for all those who are interested in the issues at hand.

Appendix I: Memorandum to Presidents George W. Bush & Vicente Fox

12 February 2001

To: Presidents George W. Bush and Vicente Fox

From: Co-Chairs, U.S.-Mexico Migration Panel
Ambassador Andrés Rozental, Mr. Mack McLarty,
and Bishop Nicholas DiMarzio

Purpose: To call on Presidents Fox and Bush to commit their governments to begin discussions recasting our bilateral migration policy when they meet on 16 February 2001.

The Issue.

An opportunity exists for both Presidents to capitalize on the increasing economic integration of our nations and the historic confluence of business, labor, and social sector views on migration, by changing the terms of the discussion from one of confrontation to one of neighborly partnership and cooperation. This can be done by crafting a “migration grand bargain” transforming the way this issue is viewed based on the belief that migration should be safe, legal, orderly, and predictable through cooperative border management.

Migration between our countries is increasingly viewed as an opportunity rather than a problem. Record employment and worker shortages, coupled with U.S. labor needs as its baby boom generation moves into retirement over the next 15 years, make clear the need for a new approach to migration. All sectors recognize the limitations of current enforcement procedures and the tragic results of driving migrants into the hands of a migration black market.

Principles.

The following four fundamental principles form the basis for the new agenda and hang together as integrated elements of the grand bargain:

- Improved treatment for Mexican migrants by making visas and legal status more widely available.

- Helping to reduce unauthorized migration by cooperatively cracking down on criminal smuggling organizations and saving lives by preventing dangerous border crossing.
- Jointly building a viable border region.
- Targeting development initiatives to regions with high rates of emigration and strengthening the Mexican economy over time, thereby reducing migration pressures.

Actions.

Both Presidents can set the tone by showing determination and leadership and committing their governments to a new approach to the issue. Additionally, several actions could be taken to demonstrate their commitment. Among them are the following (details are at enclosure):

- Make legal status more widely available for established, employed, and taxpaying (but undocumented) immigrants by following on Congressional action in recent years.
- Expand permanent family visas for Mexico.
- Make work visas more widely available.
- Commit law enforcement on both sides of the border to protect migrant human rights and strengthen cooperation against criminal smuggling networks.
- Sign a bilateral social security totalization agreement (as exists between the United States and many other countries, including Canada).

Appendix II: Selected Background Documents

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