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## **The New Meaning of the Border: U.S. - Mexico Migration Since 9/11**

By

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**ABSTRACT:** This paper examines the evolution of U.S. immigration policy since September 11, the new meaning of the U.S.-Mexico border, and the consequences of counterterrorist policies on Mexican migrants living in the U.S., and Mexico’s response to recent U.S. policy changes. Finally, it the paper examines at the future of a migration deal between the two nations.

## I. INTRODUCTION

Immediately prior to the September 11, 2001 terrorist attacks, President George W. Bush and Mexico's President Vicente Fox met to set forth principles from which further migration discussions might proceed. Their discussions showed real promise in constructing comprehensive reforms in the difficult area of migration policy, including regularizing the status of millions of undocumented immigrant workers currently living in the U.S. and bringing additional temporary workers to the U.S. to fill labor shortages through a significantly reformed program. Their discussions envisioned immigration issues within the broader landscape of foreign policy, recognizing the responsibilities for migration flows in both "receiving" and "sending" countries.

On September 6, 2001, during President Fox's State Visit to the U.S., Presidents Bush and Fox issued a joint statement proclaiming that:

...U.S.-Mexican relations have entered their most promising moment in history. Our governments are committed to seizing the opportunities before us in this new atmosphere of mutual trust. The depth, quality, and candor of our dialogue is unprecedented. It reflects the democratic values we share and our commitment to move forward boldly as we deepen this authentic partnership of neighbors.<sup>i</sup>

The Presidents also agreed to a set of "guiding principles" for migration that included: a humane approach, protection of American workers, fairness, joint commitment, and a new temporary worker program.

Within days of the State Visit, the unthinkable happened: 19 foreign nationals engineered the worst terrorist attacks in our nation's history.

By February 2003, new Mexican Foreign Minister Luis Ernesto Derbez said that a plan to legalize could take up to 30 years, and that "our societies are not yet ready to sign (a deal) but what they are ready for is the concept."<sup>ii</sup> The months since the terrorist attacks have witnessed a complete halt of the U.S.-Mexico migration negotiations and a deterioration in the treatment of Mexican nationals living in the U.S. This time has also been marked by a transformation of the U.S.-Mexico border and migration policy. Prior to the terrorist attacks, the countries' rhetoric focused on public safety and the need to educate migrants about the potential dangers of crossing the border, in addition to ongoing concerns over drug and human trafficking. That language has been completely replaced by national security concerns, and attempts to regulate the flow of Mexican migrants – and more alarmingly, the treatment of Mexicans living in the U.S. – are now conducted in the name of counterterrorism.

This is not the first time immigration has been seen through the lens of national security. Beginning as early as the Alien and Sedition Acts of 1798, the U.S. has continually banned groups or individuals based on some perceived threat to U.S. security – security being defined in an appropriate manner to suit current threats. The Chinese Exclusion

Act, 1891 laws excluding polygamists, “persons suffering from a loathsome or a dangerous or contagious disease,” and those convicted of a misdemeanor involving moral turpitude, and national-origins quota systems restricted immigration by certain persons defined to endanger national security.<sup>iii</sup> After the assassination of President McKinley in 1901 by Leon Czolgosz, the son of recent Polish immigrants, Congress immediately acted to exclude the entry of “anarchists or persons who believe in, or advocate, the overthrow by force and violence of the government of the U.S., or of all government, or of all forms of law, or the assassination of public officials.” After WWII, laws barring the admission of foreigners engaged in activities “which would be prejudicial to the public interest or would endanger the welfare or safety of the U.S.” as well as Communists, Nazis, or whose future activities might be “subversive to the national security” were passed.<sup>iv</sup> More recently, national security has also been defined as to include the trafficking of drugs and persons, and immigration laws and policies – particularly along the U.S.-Mexico border – have reflected those perceived threats.<sup>v</sup> The terrorist attacks of September 11 changed the U.S.’s view of national security and those who were threatening the U.S. New threats include immigrants, regardless of country of origin, and the U.S.-Mexico border has become a key front on the U.S.’s war against terrorism.

This paper examines the evolution of U.S. immigration policy since September 11, the new meaning of the U.S.-Mexico border, and the consequences of counterterrorist policies on Mexican migrants living in the U.S., and Mexico’s response to recent U.S. policy changes. Finally, I reflect on the future of a migration deal between the two nations.

## **II. THE BORDER SINCE SEPTEMBER 11**

Since September 11, the U.S.-Mexico border region has received new attention because now, in addition to controlling illegal migration, drug trafficking, the trafficking of people, organized crime, and the like, the border region is considered to be an important element of the U.S. war on terrorism.

Immediately following the September 11 attacks, there was an initial drop in unauthorized border crossings, due primarily to fear of enhanced enforcement and the loss of jobs in key industries including tourism, restaurants, and construction. The stepped-up security along the border also caused undue delays for those legally entering the country. Observers report that increased security also created many instances of INS abuse of authority at the point of entry. Border crossers and permanent residents coming into the country were faced with arbitrary confiscation of entry documents with no due process, and there were searches of personal items. Others were denied entry into the country because they did not have enough money in their possession to warrant their entry. While this is typical of border behavior, instances of harassment reportedly increased in the months immediately following the terrorist attacks. According to community-based organizations located near the border, the main problem was the attitude of the Border Patrol agents who feel that they have been “given a green light to go ahead and terrorize as many Mexicans as possible” in the words of one staff member.

Border Patrol agents have a tremendous amount of discretionary power and have used it to threaten and intimidate border crossers. For example, border crossers were routinely threatened with arrest for interfering with a federal officer. Another form of harassment is to send border crossers to secondary inspection, which takes 30-45 minutes. Finally, increases in INS and Customs personnel, local police, and even military personnel along the border intimidated border crossers.

In addition, increased inspections resulted in lengthy waits of four or five hours which backed up traffic for miles. At the Laredo point of entry, the line was so long that at times it spanned across to the toll booths on the Mexican side. There were also several wait-related deaths, specifically young children who died of carbon monoxide poisoning as their parents waited in their vehicles to cross the border.

Since September 11, several legislative measures have been taken to increase security and antiterrorist activities along the U.S. borders with Canada and Mexico. The Enhanced Border Security and Visa Entry Reform Act, signed into law in May 2002, provides for increases in intelligence-gathering and information-sharing among government agencies, creates layers of security with multiple opportunities to stop someone from entering who intends to do the U.S. harm, and focuses on regional security arrangements between the U.S., Mexico, and Canada so that our nation's gatekeepers have more tools and information to keep terrorists out.<sup>vi</sup> Furthermore, the Bush Administration signed "Smart Border" agreements with both Mexico and Canada to create regional security zones and to prevent terrorists from using our neighbors as staging areas to attack the U.S. These have been positive measures that address real dangers and provide governments with the tools necessary to identify those who wish to do Americans harm and to stop them before they are able to attack the U.S.

While border activity has returned to "normal" in recent months, the fact that the Border Patrol, Customs, and other agencies with a presence at the border have been consolidated into the new security-focused Department of Homeland Security is likely to have a tremendous impact on border flows in the near future (discussed below).

Enforcement, however, has moved well beyond the border. The following section discusses new immigrant enforcement policies initiated since September 11, 2001.

### **III. COUNTERTERRORISM'S EFFECTS ON U.S. LATINOS**

The U.S.'s response to the terrorist attacks has had far-reaching effects on its policy agenda and on a wide variety of communities across the U.S. The impact on immigrant communities is worth noting: many foreign nationals were included among the victims and heroes of the attacks. In the immediate aftermath, however, family members of some immigrant workers were hesitant to report missing loved ones out of fear of the Immigration and Naturalization Service (INS), and the identities of some of these workers may never be known. Furthermore, many immigrants and their family members, due to restrictions on eligibility for public services, were unable to access public assistance programs intended to aid the victims. Many more immigrant workers found

themselves among the unemployed as a result of cutbacks in travel and other affected industries. And despite strong statements from leaders urging racial and ethnic tolerance, reports of violence, harassment, and hate crimes against Arab Americans, Muslim Americans, Latinos, and other minorities mistaken for “terrorists” were distressingly common.

In the immediate aftermath of the attacks, some people called for severe restrictions on immigrant admissions to the U.S. and the further curtailment of the rights of immigrants already in the country. Immigration restrictionists have taken advantage of the opportunity to push forward their agenda – the same anti-immigrant agenda they have advocated for decades – under the guise of preventing terrorism. Preying upon the fears of ordinary Americans, anti-immigrant groups and opportunistic political leaders have portrayed ordinary immigrants as terrorists and have sought to deny immigrants the opportunity to make the U.S. their home and exercise their rights.<sup>vii</sup>

However, some of the new counterterrorism measures go far beyond reforming the nonimmigrant visa process and providing useful intelligence information and have had profound negative effects on immigrant and refugee communities. The majority of these new policies have been initiated by the Administration, specifically the Department of Justice (DOJ), and not Congress. While individual policy changes may initially seem reasonable, the new anti-immigrant policies are ineffective as deterrents to terrorism, have negative consequences for innocent immigrants, and result in the marginalization and alienation of immigrant communities.

Beginning with the USA-PATRIOT Act, which was signed into law weeks after September 11, the rights of noncitizens have been seriously undermined. Organizations including the American Civil Liberties Union (ACLU) and Human Rights Watch have documented the infringements on the civil rights of all Americans since September 11, 2001.<sup>viii</sup> Over a thousand people have been detained and many deported in secretive conditions with little or no due process. The government has been granted far-reaching powers to track and monitor Americans’ phone and e-mail communications, banking transactions, and charitable contributions. While immigrants have received the brunt of these counterterrorism measures, the civil rights and civil liberties of all Americans have been jeopardized.

While the new immigration policies appear to be targeted at Arab American and Muslim American communities,<sup>ix</sup> the government appears to be granting itself broad new authority that could be used against anyone. As discussed below, many of the newly-enacted policies have had a detrimental effect on Latinos – effects that will continue to be felt for many years. Since 35 million Latinos make up the nation’s largest minority, and because 40% of the Latino population is foreign-born,<sup>x</sup> these changes have caused serious concerns in the Latino community. Furthermore, since many Latinos live in mixed-status households<sup>xi</sup> and communities, meaning that undocumented immigrants, lawful residents, and U.S. citizens live interdependently, even measures that are aimed at the undocumented population have huge spillover effects on the larger Latino community. According to the 2000 U.S. Census, almost three-fifths – 59.5 % -- of U.S. Latinos are of

Mexican origin, so these changes have a potentially enormous effect on the U.S.-Mexican community, and therefore are of great concern to President Fox.

## **A. Viewing Immigration as a National Security Issue**

Perhaps the change that will have the most far-reaching impact on the Latino community is the creation of a broad, new national security agency. The law creating the Department of Homeland Security (DHS), signed in December 2002, abolishes the INS and incorporates immigration services and enforcement into DHS. Since its creation, INS and its predecessors have been housed in the Departments of Treasury, Commerce, Labor, Justice, and now Homeland Security, each move symbolic of the lens through which immigration is seen at the time. Placing immigration within a national security agency is a clear, physical manifestation of the new reality that the border and migration are to be viewed first and foremost as issues of national security.

The Homeland Security Act of 2002 creates a mammoth Border and Transportation Security Directorate (BTS), under which immigration enforcement functions are housed. The statute also creates a separate Bureau of Citizenship and Immigration Services to house the immigration service functions. Effective March 1, 2003, five federal agencies (Border Patrol, INS, Animal and Plant Health Inspection Service, Customs, and Federal Protective Service) are integrated into two border units: a Bureau of Customs and Border Protection that merges Customs, INS, including Border Patrol, APHIS, and Animal and Plant Health and Inspection Service into one face at the border, and a Bureau of Immigration and Customs Enforcement that enforces the laws once the borders are crossed. It remains unclear how this new configuration will affect the U.S.-Mexico border and Mexican nationals in the U.S. However, it is likely that civil rights violations will increase and customer service will deteriorate. Furthermore, the lack of a single office responsible for U.S. immigration policy will make continuation of bilateral migration discussions even more difficult.

## **B. New Change of Address Requirements**

In a move touted as a counterterrorism device, the Department of Justice (DOJ) announced that it would renew enforcement of Section 265(a) of the Immigration and Nationality Act, a 50 year-old law requiring all noncitizens to report a change of address within ten days of moving. The law also attaches criminal penalties to failure to submit a change of address, and may even lead to deportation. The first high-profile application of the law was the case of a Palestinian man who was stopped for driving four miles over the speed limit and then placed in removal proceedings for retroactively failing to file a change of address form.<sup>xii</sup> This policy subjects millions of Latino immigrants to deportation simply because they were unaware of this rule at the time they moved. Even those who correctly submit the forms may experience problems because the INS has not been able to process the forms that it has received by mail. In July 2002, the press reported that the INS had 200,000 unprocessed change of address forms sitting in boxes in an underground storage facility. Since then, the number of forms received by the INS has skyrocketed from 2,800 per month to 30,000 per day. The nearly one million additional forms that the INS has received are now also sitting in storage, exposing a

large number of immigrants to potential deportation for allegedly failing to comply with the law. It is unclear how enforcement of Section 265(a) aids in the war against terrorism. What is clear is that this policy provides the INS and its successor agency with more information than they can handle, and potentially criminalizes the activities of millions of immigrants.

### **C. State and Local Police Enforcement of Federal Immigration Law**

Another new measure promulgated after September 11 has been to enlist state and local law enforcement officers in a variety of activities. Immigrant advocates fear that new policies allowing local police departments to enforce federal civil immigration law may hinder terrorist and other criminal investigations and have a serious negative impact on Latino communities.

In June 2002, Attorney General John Ashcroft declared that state and local police have the authority to enforce civil and criminal immigration violations of immigration law. In the months since that announcement, state and local police have been called upon to catch violators of the new registration and change of address requirements. In April 2002, several months prior to Ashcroft's announcement, the press reported that the DOJ was poised to issue a new legal opinion. This new, unreleased Office of Legal Counsel (OLC) opinion purportedly declares that state and local police have the "inherent authority" to enforce civil and criminal immigration violations of immigration law. While the legal opinion has never been made public, this announcement indicates that the DOJ has reinterpreted the law and overturned decades of legal precedent. Ashcroft's June 2002 announcement appears to be based on this unreleased legal opinion.<sup>xiii</sup>

The mere suggestion that local police may have the authority to enforce immigration law has sent a chill through Latino and immigrant communities resulting in increased unwillingness to cooperate with law enforcement, to report crimes, and to come forward as witnesses. Millions will be affected by this rule as law enforcement officers, who are untrained in immigration law, stop and question Latinos and other Americans who "look" or "sound" like they might be foreign. Unlike federal immigration officials, police departments do not have training in or understanding of the complexities of immigration law. As a result of these problems, trust and communication between the police and large segments of the community erode. Many police departments across the country have publicly opposed the DOJ proposal and have stated that they will not involve themselves in immigration enforcement because they recognize the detrimental effects that the loss of community trust can have.<sup>xiv</sup> Litigation aimed at forcing the DOJ to release its legal opinion has been initiated.

### **D. Restrictions on Identification Documents**

Policies surrounding the issuance and acceptance of identification documents have been emphasized since the terrorist attacks. This is another clear instance where concerns over public safety have been eclipsed by national security rhetoric.

The issue of restrictions on eligibility for driver's licenses has been one of the most important and broadly-felt problems for the Latino community because driver's licenses



are necessary for participation in many facets of daily life including driving, banking, renting an apartment, and establishing service for utilities. Prior to September 11, there were efforts in many states to improve road safety by broadening access to driver's licenses to undocumented immigrants who live and work in the community so that they may obtain proper driver training and vehicular insurance. However, the revelations that some of the 19 terrorists had state-issued driver's licenses caused many states to propose and enact restrictions on immigrant access to driver's licenses despite the fact that all of the 19 had other valid documents, such as passports, that could serve as identification. Not only have these practices prohibited many undocumented immigrants from getting licensed, but many legal residents and even U.S. citizens have been caught in the restrictions because of harassment and discrimination, or because poorly-conceived policies deny licenses to lawful residents.

In addition to battles over the issuance of driver's licenses, Mexican consular IDs have recently come under attack. Mexican consular IDs (or *matriculas consulares*) have been issued to Mexican nationals in the U.S since the 19th century. Recently, over 60 U.S. banks and several hundred local police departments have begun to accept consular IDs as proper forms of identification. Yet, immigration restrictionists attacked the consular IDs, claiming that they provide "quasi-amnesty" to unauthorized migrants and pose a security threat to the U.S.<sup>xv</sup> Legislation restricting the use of Mexican consular IDs – and any other foreign government-issued ID – has been introduced at the federal level and in several states. In addition, a multiagency task force including the Departments of Treasury, State, Homeland Security and Justice are expected to issue a report on the use of consular IDs in the near future. These policy changes have gotten the attention of the Mexican government, which has been actively attempting to quell the attacks on consular IDs and driver's licenses.

In addition to the "counterterrorism" measures listed above, a variety of other policy changes and Supreme Court decisions in the past year and a half have seriously undercut the rights of immigrant workers and created an increased climate of fear in the workplace.

#### **E. Social Security Administration No Match Letters**

For the past several years, the Social Security Administration (SSA) has issued "no match" letters to employers who employed workers whose names and Social Security Numbers do not match the SSA's database. In past years roughly 100,000 letters were sent annually. In 2002 the program was expanded and SSA issued approximately 750,000 letters to employers, each containing at least one employee name. The SSA's objective is to clear up its database and reduce the "Earnings Suspense File"<sup>xvi</sup> so that SSA benefits can be allocated to their rightful contributors.

Although the letter clearly states that the employer is simply to report the mismatch to the employee, many employers have used these letters as a pretext to fire the employees listed on the no match letter. Many Latino workers, immigrant workers, and workers involved in union activities have been fired. Other workers simply do not show up for work once they know a letter has been received out of fear of entanglements with

government agencies. Often, many of the employees listed on the no match letters are lawful residents or even U.S. citizens whose names are misspelled or whose information has not been updated. As a result, the no match letters have been incredibly disruptive to immigrant communities and to employers who are faced with losing valued workers.

#### **F. Worker Rights and *Hoffman Plastics v. NLRB***

In addition to the policies of the legislative and executive branches of government, the U.S. Supreme Court has also proven unfriendly to immigrant workers in recent months. In March 2002, the Supreme Court handed down a decision that overturned the long-standing precedent that all workers are covered equally by labor laws, regardless of their immigration status. In the *Hoffman Plastics v. National Labor Relations Board (NLRB)* decision, the Court decided that employees working in the United States with false documents are not entitled to back pay from employers, even if they are fired illegally. By denying a remedy to one group of workers, the *Hoffman* decision undermines the status of all workers and strengthens employers' incentive to hire unauthorized workers because they can fire these employees when they engage in any activity they deem unfit without suffering any legal ramifications. Furthermore, the *Hoffman* decision sends the message that immigrant workers' rights are not valued. This results in a situation in which immigrant workers now have reason to disregard the workplace rights they do possess, and may hesitate to report unlawful or unsafe work conditions or civil rights violations because they are ineligible for remedies. Thus, the *Hoffman* decision hurts all American workers because it lowers wages, reduces working conditions, and discourages organizing, and it also harms law-abiding employers who receive unfair competition from unscrupulous employers who take advantage of undocumented labor.

In summary, whether they are real efforts at enhancing security, publicity stunts aimed at making people feel safer, or conscious efforts to enforce immigration laws against Latino immigrants, recent measures taken by the U.S. in the name of counterterrorism have had an extremely harmful effect on the country's Latino population. Moreover, in the current anti-immigrant, prosecurity atmosphere, several policies have been enacted that go well beyond counterterrorism and harm immigrant communities and, indeed, entire communities. While the immigration restrictionists in Congress and anti-immigrant interest groups have not been entirely successful in their attempts to capitalize on anti-immigrant sentiment post-9/11, U.S. treatment of immigrants and civil liberties is decidedly worse. Since the largest group of migrants to the U.S. are Mexican, and Mexican Americans make up the majority of U.S. Latinos, these new policies have caught the attention of the Mexican government. In turn, the relationship between the U.S. and Mexico has deteriorated in the past 18 months. The lack of progress on the binational migration negotiations combined with new U.S. "counterterrorism" policies and labor rights policies have caused a rift in U.S.-Mexico relations and have spurred Mexican lobbying efforts within the U.S. as well as international retaliation. The next section documents U.S.-Mexico relations since 9/11.

#### **IV. U.S.-MEXICO RELATIONS SINCE 9/11**

U.S.-Mexico migration relations have always been complicated, but new security issues have had an enormous effect on the binational migration agenda. U.S.-Mexico relations appeared to be at an all time high on September 10, 2001; the terrorist attacks ended that as President Bush immediately put the migration agenda on the back burner and turned his attention to the war on terror – looking to the Mexican border as a front line for the war, and turning to Mexico as an ally. The only progress on immigration issues has been in terms of border security agreements, and issues of broader reforms remain stagnant while conditions for Mexican nationals in the U.S. continue to deteriorate. Furthermore, the Mexican government has taken multiple steps to alienate and embarrass the U.S., particularly with regard to international human rights litigation and military action in Iraq. These actions have not pushed the U.S. toward resuming bilateral negotiations, but rather have made the possibility of future discussions even more remote.

Within the new security-conscious environment, attention immediately turned toward the 3,000- mile border, and the U.S. and Mexico embarked on plans to increase border security and begin to look at security from a regional perspective. In March 2002, the two countries signed a “Smart Border” declaration and action plan stating that

...the international campaign to eradicate terrorism requires us to address pressing new priorities and shared goals central to defending our societies and ways of life. At the same time, we recognized that the events of September 11 underscore more than ever the importance of the U.S.-Mexican relationship, as partners and neighbors, in the attainment of those goals and in realizing the vision we have set forth for our countries’ future...We will build a border that protects our societies against those who would do us harm, and that truly serves the human and economic needs of our dynamic relationship.<sup>xvii</sup>

The 22-point border partnership action plan includes measures for creating a secure infrastructure while securing the flow of goods and people. The two nations also launched “Partnership for Prosperity” which seeks to “leverage private resources to create jobs and promote prosperity in less developed areas of Mexico,” particularly in large migrant-producing states. The Partnership would facilitate capital for small companies, bring down the cost of migrants’ remittances to Mexico, and create scholarship programs for Mexicans to attend higher education institutions in the U.S. To this extent, modest plans for broader development did move forward, but only within the context of a border security arrangement.

With regard to the broader bilateral migration negotiations, prior to September 11, the Mexicans and Mexican Foreign Minister Jorge Castañeda had their sights set on comprehensive immigration reform. The so-called “whole enchilada” was a grand bargain that included an earned legalization program for unauthorized migrants living in the U.S. and a new temporary worker program that would bring needed workers to the U.S. to fill labor market shortages. Mexican officials attempted to keep migration negotiations alive after September 11, but are frustrated that there has been no real progress, and believe that immigration is no longer a U.S. priority. Frustration mounted after the U.S. refused to appoint a chief negotiator, despite Mexican pressures. In

January 2003, Mr. Castañeda resigned in frustration at the lack of progress on immigration reform negotiations with the U.S. As indicated above, immigration is a priority for U.S. officials, but only as it refers to perceived enhanced security measures, and not comprehensive immigration reform.

It is thought that the Mexicans, under their new Foreign Minister, may be willing to live with “half an enchilada,” or less. Much to the dismay of U.S. immigrant advocates, the Mexicans may be willing to negotiate a temporary “guestworker” deal with the U.S. which would send Mexican workers to the U.S. for short periods of time to fill alleged labor shortages. Other short-term measures include passage of legislation to legalize the status of immigrant students attending college, opposition to Social Security Administration “no-match” letters, and promoting the use of Mexican consular IDs. While Mexican officials repeatedly claim that the best immigration reform approach is to create both a comprehensive long-term goal as well as several short-term achievable goals that move them toward the former, immigration reform advocates fear that both governments might settle on lesser policies thereby leaving comprehensive reform undone.

The Mexican government has also taken other steps that have angered the U.S. and made relations even more difficult, including filing several legal claims against the U.S. in international judiciary bodies opposing the death penalty and treatment of migrant workers in the U.S. First, on January 21, 2003, Mexico asked the International Court of Justice to rule against the execution of 51 Mexicans on death row in U.S. prisons. Mexico has argued that the U.S. has violated international law by failing to inform or grant access to consular officials when Mexican migrants are arrested or sentenced to death.<sup>xviii</sup> In August 2002, Fox turned down an invitation to a summit at Bush’s ranch to protest the execution of a Mexican national in Texas who was convicted of a 1988 murder. Mexico has also filed suit against the U.S. in the InterAmerican Human Rights Court of the OAS, charging that U.S. treatment of migrant workers is in violation of international law.<sup>xix</sup> While neither decision may have an impact on U.S. policies, it appears that Mexico has gone out of its way to publicize alleged U.S. violations of international law and defy its powerful neighbor to the north.

Mexico also increased its issuance of consular ID cards, or *matriculas*, and has actively lobbied banks, local governments, and other institutions to accept them, leading to accusations of meddling in the internal affairs of the U.S. As described above, *matriculas* have come under fire from immigration restrictionist groups who claim that it is an attempt by the Mexican government to provide a “stealth amnesty” to its nationals living in the U.S. While these claims are unfounded, they, along with new Census data reporting increases in the number of unauthorized Mexican immigrants, have brought a great deal of attention to undocumented immigration from Mexico. Post-September 11, anti-immigrant groups have repeatedly painted unauthorized Mexican migration as a security threat, once again changing the focus of the issue away from economic and humanitarian concern to one of national security, leaving President Bush and the American public leery of a migration deal with Mexico.

Most recently, the friendship between Presidents Fox and Bush has been further tested by differing opinions over action in Iraq. As a nonpermanent member of the U.N. Security Council, Mexico holds an important vote on Iraqi policy. In fall of 2002, Mexico lobbied alongside France for language in an initial resolution authorizing U.N. weapons inspections in Iraq before war. Despite strong pressure from the U.S., to date President Fox has remained firm in his antiwar convictions. Fox wants to appear strong in the face of U.S. opposition and is clearly unwilling to be perceived as doing the bidding of the U.S. on foreign policy; doing so could have dangerous political consequences for the already-shaky President Fox and his party.

Meanwhile, some immigration reform advocates, hoping to jump-start migration discussions, have taken on the language of security. Recognizing the necessity to frame issues from a security standpoint, immigrant advocates have argued that comprehensive immigration reform remains clearly necessary, and the current security-conscious environment should facilitate reform rather than stymie it. Furthermore, they point out that the increasingly obvious hypocrisy in the nation's immigration policy has led to calls from a variety of sectors, including the business community, labor movement, religious community, and ethnic groups, for reforms that better align immigration laws with the dynamics driving migration.<sup>xx</sup> These calls have taken on a new urgency since September 11 because the existence of a large undocumented population in the nation's neighborhoods and workforce, which fears contact with civic authorities and is increasingly isolated by virtue of changes in driver's license policy and local police practices, is clearly inconsistent with U.S. security objectives. There are no indications that the flow of migrants into the United States is slowing; indeed the trends continue largely as they have for the last 20 years, due to U.S. law failings to accommodate the economic realities of migration. Therefore, comprehensive immigration reform along the lines of the discussion initiated by Presidents Bush and Fox could have an enormous impact, allowing the U.S. to regulate migration flows and legalize the existing workforce in a way which would allow authorities to know more reliably who is here in the U.S. and who is entering. From the security perspective, the ability to conduct background checks and obtain other information from migrants who are present in or will soon enter the U.S. workforce is preferable to the current situation, in which those who survive the dangerous trek to the U.S. strive to live and work invisibly within its borders.

## V. CONCLUSION

Immediately prior to the terrorist attacks in New York and the Pentagon, the U.S. and Mexico were on the verge of an historic opportunity to rewrite immigration laws and fundamentally alter the migratory relationship between the two nations, legalizing the vast majority of unauthorized migration flows that currently exist. It appears clear that relations between the U.S. and Mexico have deteriorated since September 11, 2001. Not only have bilateral negotiations over migration policy come to a screeching halt, but the treatment of Mexican nationals in the U.S. has also suffered as measures touted as countersecurity measures have had harmful effects on the U.S.'s Latino community. The Mexican government is certainly aware of the dangers its nationals encounter in the U.S.

and has taken several steps to address their concerns, resulting in more unpleasantness with the Bush Administration. While current disagreements between the two countries on Iraqi policy may appear to offer a trade-off – legalization for support on Iraq – the impasse appears to be resulting in less cooperation. And statements by Mexican authorities indicate that Mexico is not going to push for comprehensive immigration reform in the near future and will concentrate on efforts to protect Mexican nationals currently living in the U.S., such as promotion of consular ID cards.

As this paper has indicated, protection of immigrants within the U.S. is necessary given the post-September 11 policies that have had enormously negative effects on immigrants and the entire Latino population. These policies are not expected to improve given continued emphasis on the war against terrorism, the probability of war with Iraq, and the placement of immigration policy within the Department of Homeland Security.

In 2003, immigration and national security are intermingled in the U.S. in unprecedented ways. New visa issuance procedures and the move of immigration functions are concrete measures of the security lens through which immigration is now seen; increased enforcement against unauthorized workers and identification document restrictions in the name of security are examples of the broader effects of anti-immigrant opportunism in a post-September 11 world. Finally, comprehensive immigration debate points to both the stagnation of such discussion in light of security concerns and the change in rhetoric by the immigrant rights community which now prioritizes the pro-security arguments in favor of immigration reform.

While the terrorist attacks on the U.S. were not connected to Mexican nationals in any way, the long-term consequences on Mexican nationals and U.S.-Mexican migration relations are going to be felt for decades.

## Endnotes

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<sup>i</sup> Joint Statement Between the United States of America and the United Mexican States. September 6, 2001, Washington, DC.

<sup>ii</sup> “Mexico Says U.S. Immigration Deal May Take 30 Years.” Reuters News Service, Feb. 7, 2003.

<sup>iii</sup> National Immigration Forum, “Chronology: Changes in Immigration and Naturalization Law.” Washington, DC: National Immigration Forum, 2001.

<sup>iv</sup> Daniels, Roger, “Two Cheers for Immigration” in *Debating American Immigration, 1882 – Present*. Lanham: Rowman & Littlefield Publishers, Inc., 2001.

<sup>v</sup> See generally Andreas, Peter. *Border Games: Policing the U.S.-Mexico Divide*. Ithaca: Cornell University Press, 2000.

<sup>vi</sup> See National Immigration Forum, 2002. *Background: Immigration and National Security, The Enhanced Border Security and Visa Entry Reform Act*. Washington, DC: National Immigration Forum.

<sup>vii</sup> *Combating Anti-Immigrant Opportunism Post- September 11*. Washington, DC: National Council of La Raza, 2002.

<sup>viii</sup> See American Civil Liberties Union. *Insatiable Appetite: The Government’s Demand for New and Unnecessary Powers After September 11*. Washington, DC: ACLU, 2002; *Presumption of Guilt: Human Rights Abuses of Post-September 11 Detainees*. New York, NY: Human Rights Watch, 2002; Schulhofer, Stephen J. *The Enemy Within: Intelligence Gathering, Law Enforcement, and Civil Liberties in the Wake of September 11*. New York: Century Foundation Press, 2002; Lawyers Committee for Human Rights. *A Year of Loss: Reexamining Civil Liberties Since September 11*. New York: Lawyers Committee for Human Rights, 2002.

<sup>ix</sup> Hate crimes and racial profiling against Arab and Muslim Americans has affected families across the country, and the Department of Justice (DOJ) has actively singled out immigrants of Arab or Muslim descent. Since September 11, hundreds of immigrants have been taken into custody, often without being told why, without access to a lawyer, without anyone knowing where they are being held. Immigration judges closed to the public all immigration-related trials of individuals picked up in connection with the September 11 investigations. The order has applied to more than 600 “special interest” immigration cases. Not only is the courtroom closed to visitors, family, and the press, but the restriction extends to even “confirming or denying whether such a case is on the docket.” Because they are being held in secret, there is no way to determine if these trials are being conducted fairly, or if immigrants are being given proper due process as the government tries to deport them. In addition, the DOJ began to track down and interview up to 8,000 Arabs in the U.S. who were interviewed not because they were suspected of having a connection to terrorism, but because they were Arab, in a certain age range, and were newly arrived in the U.S. And in each of its enforcement initiatives since September 11, the DOJ has made it a point to enforce the law first on immigrants of Middle Eastern descent. For example, an effort to track down 300,000 immigrants who have been given final deportation orders has focused first on Middle Eastern men. For more see *Healing the Nation: The Arab American Experience After September 11*. Washington, DC: Arab American Institute, 2002.

<sup>x</sup> *Beyond the Census: Hispanics and an American Agenda*. Washington, DC: National Council of La Raza, August 2001.

<sup>xi</sup> According to the Urban Institute, one in ten children in the U.S. lives in a mixed-status family in which at least one parent is a noncitizen and one child is a citizen. “Children of Immigrants Fact Sheet,” Washington, DC: The Urban Institute, 2001.

<sup>xii</sup> Bixler, Mark. “Minor immigration slip becomes costly to INS: Palestinian faces ouster on little-used law,” *Atlanta Journal-Constitution*, Wednesday, July 10, 2002.

<sup>xiii</sup> For more information see Waslin, Michele. *Immigration Enforcement by Local Police: The Impact on the Civil Rights of Latinos*. NCLR Issue Brief Number 10, February 2003.

<sup>xiv</sup> “From Community Policing to Community Profiling: The Justice Department’s Proposal to Have Local Police Enforce Immigration Laws.” The National Immigration Forum Background, May 10, 2002.

<sup>xv</sup> See Dinerstein, Marti. “IDs for Illegals: The Matrícula Consular Advances Mexico’s Immigration Agenda.” Washington, DC: Center for Immigration Studies, January 2003.

<sup>xvi</sup> Title II of the Social Security Act requires the Social Security Administration (SSA) to maintain records of wage amounts employers pay to individuals. Employers report their employees’ wages to SSA at the

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conclusion of each tax year. Wages on those employer reports containing invalid names and/or Social Security Numbers cannot be posted to an individual's earnings record in SSA's Master Earnings File. Instead these wages are placed in the Earnings Suspense File – a repository for unmatched wages. See "Congressional Response Report: Status of the Social Security Administration's Earnings Suspense File" (Document A-03-03-23038). Washington, DC: Office of the Inspector General, Social Security Administration, November 2002.

<sup>xvii</sup> Joint U.S.-Mexico Statement, Monterrey, Mexico, March 22, 2002.

<sup>xviii</sup> "Half an Enchilada: Mexico and the United States." *The Economist*, January 23, 2003.

<sup>xix</sup> "Mexico Takes Problem of Migrant Workers to OAS Tribunal." Associated Press, February 24, 2003.

<sup>xx</sup> Yzaguirre, Raul. "Testimony on Immigration Policy." Senate Judiciary Committee Hearing: *U.S. Mexico Migration Discussions: An Historic Opportunity*, September 7, 2001.