

Evaluating Guest Worker Programs in the U.S.: A Comparison of the Bracero Program and President Bush's Proposed Immigration Reform Plan

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I. INTRODUCTION

In January 2004, President Bush proposed a temporary guest worker program that will match foreign workers with U.S. employers when no domestic workers are found to fill the positions.¹ By devising a system to reform immigration and serve the economy, the Administration seeks to implement a plan that will create a source of laborers for U.S. employers and entice immigrants working illegally to “come out of hiding and participate legally” in the workplace and society.² The proposed plan does not specifically address a particular economic sector, but speaks generally about matching workers and employers.³ Therefore, if implemented it would seemingly be available for any American employer willing to participate, which will likely have a broad impact on both immigration and the economy.

While also not expressly directed at any particular group of foreign workers,⁴ this plan undoubtedly targets labor from Mexico. The contiguous border with the U.S., the disparity in economic wealth of citizens in the U.S. and Mexico, and most importantly Mexico's history as a supplier of cheap labor for the American market and as a source of a large number of illegal immigrants all indicate that this program is aimed primarily at the Mexican migrant. Because the likely beneficiaries of Bush's proposed plan will be Mexican citizens and undocumented immigrants, a discussion of the relationship between Mexico and the U.S. regarding immigrant workers, specifically in the context of the Bracero Program, a guest worker program implemented by the U.S. in the 1940s and 1950s, is particularly relevant, as it may well reveal the advantages and disadvantages of such programs generally.

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1. Press Release, White House Office of the Press Secretary, Fact Sheet: Fair and Secure Immigration Reform (Jan. 7, 2004), available at <http://www.whitehouse.gov/news/releases/2004/01/20040107-1.html> [hereinafter Immigration Reform Fact Sheet].

2. *Id.*

3. *Id.*

4. *Id.*

The purpose of this article is to persuade readers that the U.S. should not adopt President Bush's temporary guest worker program. In order to achieve this goal, a comparative analysis of the Bracero Program and the Administration's newly proposed plan follows. First, this article will recount the history and dynamics of the Bracero Program and then detail the particular advantages and disadvantages to the U.S., Mexico, and the migrant worker. Second, this article will describe and comment on the purposes and framework of President Bush's immigration reform plan and then note the advantages and disadvantages of this program in light of those already mentioned regarding the Bracero Program. Ultimately, I argue that evaluating the temporary worker plan in light of the Bracero Program demonstrates that the disadvantages to the domestic and migrant worker and to the U.S. and Mexico outweigh the advantages and compel a conclusion that reintroducing a guest worker program is not a good idea.

II.

A BRIEF HISTORY OF MEXICAN IMMIGRATION TO THE U.S. IN THE EARLY 20TH CENTURY

While the Bracero Program is perhaps the most well-known instance of Mexican immigration to the U.S. specifically for the purpose of filling a labor shortage, the relationship between the two countries concerning immigrant workers actually precedes the contract labor program of the 1940s and 1950s. In fact, it was a pre-existing pattern of Mexican migration to the U.S. to fill a need for labor that prompted the creation of the Bracero Program. Before the U.S. established the Border Patrol in 1924, citizens in Mexico and the U.S. moved freely between the two countries with little difficulty.⁵ Mexico was not subject to the country quotas of the National Origins Act that controlled immigration in the U.S. before 1965, and Mexican immigration reached significant proportions during the late 19th century and early 20th century.⁶ These Mexican migrants compensated for the labor shortages caused by the restrictions on immigrants from Europe and Asia.⁷ More importantly for understanding the Bracero Program, they mitigated the labor shortage caused by America's involvement in World War I.⁸ Simply put, Mexican immigrants became a source of valuable, cheap labor.⁹

When the Great Depression beset the U.S., Mexican immigrants paid a price for the quota exemptions and relatively free migration they had enjoyed. During this period, many people were unemployed and were aided, at least somewhat, after 1935 by a public welfare system.¹⁰ When officials in cities with large immigrant populations decided that it would be cheaper to send Mexican immigrants back to Mexico rather than attempt to support them with social welfare,

5. JULIAN SAMORA & PATRICIA VANDEL SIMON, A HISTORY OF THE MEXICAN AMERICAN PEOPLE 136 (1977).

6. DESMOND KING, MAKING AMERICANS: IMMIGRATION, RACE, AND THE ORIGINS OF THE DIVERSE DEMOCRACY 227-35 (2000).

7. *Id.* at 231.

8. SAMORA, *supra* note 5, at 134.

9. KING, *supra* note 6, at 233.

10. SAMORA, *supra* note 5, at 136.

they urged, and the federal government developed, a system of repatriation.¹¹ Hundreds of thousands of Mexican immigrants and Mexican-American citizens were sent back,¹² and immigration from Mexico virtually ceased during the 1930s.¹³

A. *The Bracero Program*

Immigration of Mexican workers to the U.S. revived, however, with the inception of World War II.¹⁴ As during World War I, the domestic labor shortages resulting from World War II created a need for migrant workers.¹⁵ Allowing growers to contract with Mexican immigrants during World War I was the precedent growers used to demand foreign workers again.¹⁶ Under pressure from growers, the Immigration Service and the Departments of State, Labor, and Agriculture, along with the War Manpower Commission, signed a bilateral agreement, with Congressional approval, with Mexico in 1942 to bring workers into the U.S.¹⁷ The 1942 agreement initiated the Bracero Program, which was putatively created to alleviate the manpower shortage caused by World War II and therefore should have expired with the war's end. However, the program lasted 22 years. In April 1947, Public Law 40 was passed, which allowed the program to continue until December 1947, at which time it would expire.¹⁸ While the Bracero Program ended in December 1947, recruitment of Mexican workers did not, as contracting by U.S. growers continued.¹⁹ Recruitment of Mexican nationals by private employers instead of the U.S. government served as the basis for bringing in workers after World War II.²⁰ In 1951, Congress adopted Public Law 78, which passed as a result of another wartime labor shortage.²¹

This time the demand for labor resulted from U.S. involvement in the Korean War. In 1951, the U.S. and Mexico signed an agreement that adopted provisions of Public Law 78 as the contract between them.²² Renegotiation of this agreement hinged on an attempt by the U.S. to do something about its "citizens trafficking in wetbacks."²³ This agreement differed from the Bracero Agreement of 1942 and lasted only until February 1952. In order to deal with the flow of citizens out of Mexico illegally into the U.S., which developed despite the adoption of the Bracero Program, Congress adopted S. 1851,²⁴ which eventually became Public Law

11. *Id.* at 136-37.

12. KING, *supra* note 6, at 233.

13. SAMORA, *supra* note 5, at 137.

14. ROGER L. JUNGMEYER, *THE BRACERO PROGRAM, 1942-1951: MEXICAN CONTRACT LABOR IN THE UNITED STATES* 47 (1988).

15. *Id.* at 46-47.

16. *Id.* at 49-50.

17. KITTY CALAVITA, *INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION, AND THE I.N.S.* 2 (1992).

18. *Id.* at 25.

19. See PHILIP L. MARTIN, *TRADE AND MIGRATION: NAFTA AND AGRICULTURE* 61 (1993).

20. RICHARD B. CRAIG, *THE BRACERO PROGRAM: INTEREST GROUPS AND FOREIGN POLICY* 52-53 (1971).

21. *Id.* at 70-71.

22. Mexican Agricultural Workers, Aug. 11, 1951, U.S.-Mex., T.I.A.S. No. 2331.

23. CRAIG, *supra* note 20, at 93-94. The term wetback was used to denote illegal Mexican immigrants to the United States because most of them either swam or waded across the Rio Grande River.

24. *Id.* at 95.

283 and made it a felony to aid anyone entering the country illegally or to harbor an illegal immigrant.²⁵ However, under this law, *employing* an undocumented immigrant did not constitute harboring,²⁶ a fact which underscores the half-heartedness, if not the hypocrisy, of PL 283. As a result of U.S. efforts to control the flow of Mexican citizens across its border, the accord of 1951, which was supposed to expire in February 1952, was extended for another 18 months.²⁷ Subsequent negotiations for renewal broke down after a failure to reach an agreement on border recruitment centers, the prevailing wage, and subsistence payments for unemployed braceros. The U.S. threatened to begin unilateral recruitment.²⁸ In January 1954, when Mexico and the U.S. failed to renegotiate the 1954 accord,²⁹ the U.S. began unilaterally recruiting workers at the border.³⁰ The scene was virtual chaos, as recruitment was on a first-come-first-serve basis that created riots and confrontations between the prospective braceros and both U.S. and Mexican agents.³¹ This attempt by the U.S. to obtain workers without the consent of Mexico lasted only a few weeks.³² After this incident, Mexico and the U.S. resumed negotiations for another bilateral worker program, which resulted in the re-implementation and extension of the migrant worker plan.³³

In the midst of negotiations and renegotiations between the U.S. and Mexico for contract labor, the undocumented alien population in the U.S. continued to increase significantly. The proportion of undocumented aliens to braceros rose drastically during the early 1950s. In 1950 there were 458,215 illegal Mexican aliens and 67,500 braceros.³⁴ By 1954, those numbers were even more disparate as there were 1,075,168 known undocumented aliens and comparatively only 309,033 braceros.³⁵ While perhaps filling a labor shortage, the Bracero Program was clearly not working to curb the increased numbers of undocumented aliens crossing the border, and this increase was problematic for both countries. Mexico saw the large number of its citizens essentially fleeing their home as embarrassing and a "sad commentary of life in rural Mexico," while the U.S. regarded the influx of undocumented aliens as a blatant violation of national immigration law that needed to be dealt with swiftly and firmly.³⁶ The response to these concerns materialized in 1954 in "Operation Wetback," an official, government-sponsored plan designed to find undocumented aliens and return them to Mexico. Roadblocks were set up, trains and neighborhoods were inspected, and local police were instructed to detain suspected illegal aliens and turn them over to Border Patrol agents.³⁷ Any

25. An Act to Assist in Preventing Aliens From Entering or Remaining in the United States Illegally, Pub. L. 283, 66 Stat. 26 (1952).

26. *Id.*

27. CRAIG, *supra* note 20, at 99.

28. CALAVITA, *supra* note 17, at 65-66.

29. James F. Smith, *A Nation that Welcomes Immigrants?: An Historical Examination of United States Immigration Policy*, 1 U.C.DAVIS J. INT'L. L. & POL. 244 (Spring 1995).

30. CRAIG, *supra* note 20, at 111.

31. CALAVITA, *supra* note 17, at 66.

32. *Id.*

33. Mexican Agricultural Workers, *supra* note 22.

34. CRAIG, *supra* note 20, at 125.

35. *Id.* at 126.

36. *Id.*

37. CALAVITA, *supra* note 17, at 54.

undocumented alien apprehended was then bussed to the interior of Mexico in order to make reentry into the U.S. more difficult.³⁸ With the undocumented alien or “wetback” problem stifled, and the governments of Mexico and the U.S. in effect forcing migrant workers to participate in the Bracero Program, the program reached its height in the mid- and late-1950s, as approximately 2.5 million Mexican braceros came to the U.S. legally during this period.³⁹

While the Bracero Program reached its zenith in the late 1950s, the early 1960s saw it come to an end. Social and political changes led to the demise of the program as American citizens began to learn of the plight of the bracero, and a new president and administration entered office. Concern for the migrant worker in the U.S led to the deterioration of the Bracero Program. Americans reacted strongly to a documentary produced by CBS entitled “Harvest of Shame” that depicted the terrible conditions facing migrant workers and “‘touched off a reaction of astonishing proportions,’ swamping both the television network and members of Congress with mail from an outraged and conscience-stricken public.”⁴⁰ In contrast, political concerns were not for the bracero, but for the adverse effects the Bracero Program was having on domestic workers. In 1961, President Kennedy recommended amendments conditioning the renewal of Public Law 78 that were designed to counteract the adverse effects that the Bracero Program had been known to have on domestic workers.⁴¹ Such amendments included a limit on the number of braceros growers could hire, a requirement that natives receive the same conditions of employment as braceros, a prohibition on hiring braceros for anything but temporary or seasonal work, and an equalization of wages between braceros and domestic workers.⁴² With none of these amendments included, President Kennedy in 1961 reluctantly signed H.R. 2010 that extended Public Law 78 once again.⁴³ Finally, in 1963 the House voted not to extend Public Law 78,⁴⁴ thus effectively ending the Bracero Program 22 years after its inception as a wartime measure for labor shortage. Another extension was simply not feasible since the last two renewals in 1961 and 1963 had barely passed and adverse-effect policies aimed at countering the program’s effect on domestic wages and working conditions (instituted by the Department of Labor) had drastically reduced bracero contracting.⁴⁵

B. The Dynamics of the Bracero Program

During varied history, the Bracero Program dynamically took two different forms. For braceros working under the original agreement of 1942, the contract was between the worker and the U.S. government, not the specific grower for whom the bracero worked.⁴⁶ According to this contract, the U.S. as employer obligated itself to

38. *Id.*

39. CRAIG, *supra* note 20, at 130.

40. CALAVITA, *supra* note 17, at 143.

41. CRAIG, *supra* note 20, at 164.

42. *Extension of Mexican Farm Labor Program: Hearing on H.R. 2010 and S. 1945 Before the Subcommittee on Agricultural Research and General Legislation of the Committee on Agriculture and Forestry*, 87th Cong. 159-66 (1961).

43. CRAIG, *supra* note 20, at 172-73.

44. *Id.* at 195.

45. *Id.* at 195-96.

46. JUNGMEYER, *supra* note 14, at 56.

pay the transportation, living, and repatriation expenses for the bracero, not to engage in discrimination, and to pay the same wage rate as that paid to domestic workers (but never less than 30 cents per hour).⁴⁷ In addition, the U.S. guaranteed employment for at least 75 percent of the contract period and subsistence payments for any of the 25 percent of the contract period a worker was unemployed, provided housing and medical services equivalent to those of domestic workers, and deposited a portion of the bracero's pay in a savings fund established for them.⁴⁸

The post-World War II accords, primarily Public Law 78, differed in that the braceros contracted individually with the growers directly instead of with the U.S. government. The U.S. was not responsible for contract fulfillment, a minimum hourly wage was not set, and no unemployment payment was available.⁴⁹ In addition, employers hiring undocumented aliens were ineligible to receive braceros.⁵⁰ These agreements were much more detailed regarding worker recruitment procedures, and the braceros were given certain guarantees regarding wages, work, insurance, housing, tools and equipment, along with the right to elect a representative to intercede with the employer on their behalf.⁵¹ Nevertheless, after the implementation of a grower-worker contract system, working conditions greatly deteriorated,⁵² as there was no assurance that the grower would actually meet its obligations.

Even though the Bracero Program took two major forms over the course of its 22-year history, its essential functions remained virtually the same. First, the U.S. government placed an order for workers with the Mexican government. Mexico then selected candidates from various regions, and representatives from the U.S. and Mexico chose workers from this group and sent them to their new employer.⁵³ The first center was at the National Stadium in Mexico City.⁵⁴ Thousands of people seeking work from all over Mexico converged on the city.⁵⁵ Most had no means of support and no facilities had been prepared for food and housing.⁵⁶ During the day, the applicants looked for work or handouts and at night slept in public parks, railway stations, or vacant lots.⁵⁷ To alleviate this problem, more recruitment centers were eventually opened—first in Guadalajara and Irapuato, and then in Zacatecas, Chihuahua, Tampico, and Aguascalientes.⁵⁸ By 1950, however, all recruitment was done at three major centers in Chihuahua, Hermosillo, and Monterrey.⁵⁹ Usually, the prospective worker went to one of these recruitment centers, and if he obtained employment, he would then be transported, initially at the expense of the U.S. government and then of the grower, by train from the center to his workplace.⁶⁰

47. *Id.* at 56-57.

48. *Id.*

49. CRAIG, *supra* note 20, at 54.

50. *Id.*

51. *Id.* at 79-81.

52. CALAVITA, *supra* note 17, at 63.

53. *Id.* at 20.

54. JUNGMEYER, *supra* note 14, at 93.

55. ERNESTO GALARZA, MERCHANTS OF LABOR 52 (1962).

56. *Id.*

57. *Id.*

58. JUNGMEYER, *supra* note 14, at 93.

59. *Id.*

60. CALAVITA, *supra* note 17, at 20.

C. The Effects of the Bracero Program

A discussion of the effects of the Bracero Program on the U.S., the migrant worker, and Mexico may reveal the advantages and disadvantages to implementing a future guest worker program. Problems with the Bracero Program were first noted publicly in 1951 when President Truman's Commission on Migratory Labor reported that employer abuses and lax enforcement had contributed to terrible working and living conditions, that ineffective border control and the legalization policies of the Bracero Program had actually increased the number of undocumented aliens entering the U.S., and that the increase in braceros and undocumented workers "had depressed wages and undermined collective bargaining efforts by domestic farm workers."⁶¹ However, these were not the only problems noted during the program's operation. A particular disadvantage of the Bracero Program to the U.S. espoused at the time was that it was unfair to domestic workers. Critics, such as the AFL-CIO and its affiliates, claimed that the fringe benefits offered to the braceros, things like medical care, free transportation, tools, and equipment, were not similarly offered to domestic workers in the same position.⁶² In addition, social and moral opposition groups in the U.S. and Mexico focused on its disadvantages to the migrant worker. Claiming disruption of family life, opponents of the Bracero Program argued it separated workers from their families for long periods of time, as often they would return to the U.S. for more work after they completed an initial contract.⁶³ They were introduced to gambling, drinking, and prostitution, and their absence from home is said to have contributed to an increase in juvenile delinquency in children and in the sexual promiscuity of wives.⁶⁴ Finally, Mexico was disadvantaged economically as the best of its harvest labor workforce was lured away, forcing the country to depend even more on the U.S.⁶⁵

If the Bracero Program caused such ill effects, then what factors drove each country to continue exporting and importing immigrant workers? In other words, for whom was the program so valuable that it could win sufficient support for 22 years? As previously explained, the start of World War II and the labor shortage it created prompted the U.S. to look for a source of workers. Mexico's proximity and history as a supplier of cheap labor made it a perfect choice. For the U.S., the economic advantage of adopting the program with Mexico was that it supplied low-wage workers accustomed to working in agriculture that could be obtained relatively easily and at little expense. According to some characterizations, domestic laborers who were willing to take the work, which was often hard, physically laborious, and conducted in extreme weather conditions for long hours, lacked skill, dependability, and character.⁶⁶ The ability to perform the agricultural work growers demanded required great skill to do well or at least to do well enough to generate a profit.⁶⁷

61. *Id.* at 2.

62. CRAIG, *supra* note 20, at 30-1.

63. *Id.* at 31-32.

64. RICHARD H. HANCOCK, *THE ROLE OF THE BRACERO PROGRAM IN THE ECONOMIC AND CULTURAL DYNAMICS OF MEXICO: A CASE STUDY OF CHIHUAHUA* 38-39 (1959). Hancock's study focuses on a particular state of Mexico, Chihuahua, as a microcosm of the country to demonstrate the effects of the Bracero Program.

65. *Id.* at 39-40.

66. CRAIG, *supra* note 20, at 25.

67. HANCOCK, *supra* note 64, at 128 n.2. Hancock argues that there was a tendency among

Braceros formed an efficient workforce for growers.⁶⁸ Additionally, the Bracero Program helped promote a healthy agricultural market in the U.S.⁶⁹ The farms that hired braceros did not pull domestic labor away from the smaller farms that did not; had it gone otherwise, the small farms might not have enough field laborers. Because of the efficiency of bracero labor, the grower was able to produce a crop at a lower cost, which translated to lower prices for the individual consumer.⁷⁰ Finally, although not an economic advantage, the Bracero Program was a way the Immigration and Nationalization Service (I.N.S.)⁷¹ could control immigration in the face of “powerful economic forces driving ... migration” into the U.S.⁷² By securing the cooperation of growers who were hiring workers illegally, the I.N.S. could potentially solve the problem of increasing illegal immigration.⁷³

The effects on the workers recruited to the U.S. were overall negative, but the migrant workers also retained certain benefits as participants in this program. For instance, the braceros earned more than what they would have earned in Mexico,⁷⁴ and those workers who returned to Mexico with money from working in the U.S. were better able to sustain themselves and their families.⁷⁵ In 1942, Mexico’s Ministry of Labor and Social Welfare began a study of braceros.⁷⁶ It provided individual information on the worker and about his stay in the U.S.⁷⁷ The study found that the average bracero was between 17 and 22 years old. Most said the reason they accepted work in the U.S. was to earn money; others said they worked to support their family; some were looking for adventure; and a few cited educational reasons like learning English.⁷⁸ On questioning the workers upon their return to Mexico, the study discovered that the average stay for a bracero was a period of eight months with an average daily salary of \$4.76, that over 96 percent sent money back to their families, that almost half said that they had a favorable to moderately favorable impression of the U.S., and that 59 percent said that the trip was

non-farmers to underestimate the skill required to do the work braceros performed. He offers cotton picking as an example, claiming it often took many years to develop the right technique in order to be able to harvest it effectively. Hancock also insinuates that braceros worked more diligently than domestic workers because they held their position with more esteem than their domestic counterparts.

68. *See id.*

69. CRAIG, *supra* note 20, at 27-28.

70. *Id.*

71. The Immigration and Naturalization Service was formerly responsible for providing immigration-related services and benefits in the United States. As of March 1, 2003, that work was transferred to the Bureau of Citizenship and Immigration Service (B.C.I.S.), now the U.S. Citizenship and Immigration Service (U.S.C.I.S.), which is a bureau of the Department of Homeland Security.

72. CALAVITA, *supra* note 17, at 9.

73. *Id.*

74. HANCOCK, *supra* note 64, at 29, 37. The average prevailing minimum wage for Mexico for the 1958-59 biennium was \$.63 per day, with some workers not even receiving the minimum wage. The average daily wage for a bracero was \$5.00, and while the bracero had expenses, his net income for a year averaged \$275.

75. *Id.* at 41. Hancock notes that there are no statistics recording the number of people supported by braceros. However, he contends that it is likely that in 1957, approximately 2,250,000 people received all or part of their support from braceros’ earnings and that from 1956 through 1958 over 10 percent of Mexico’s rural population directly depended on bracero income.

76. SECRETARIA DEL TRABAJO Y PREVISION SOCIAL, LOS BRACEROS 60-61 (1946).

77. JUNGMEYER, *supra* note 14, at 94.

78. *Id.* at 94-95.

economically beneficial.⁷⁹ Most contemporary writers argue that the effects of the Bracero Program on the worker overall were detrimental and that the advantage of earning a wage was far outweighed by the deplorable circumstances in which the worker found himself. In fact, one commentator described the plight of the bracero as “a virtual state of physical and mental peonage.”⁸⁰

The Mexican worker, however, saw himself and his situation quite differently. To the braceros, the overwhelming advantage of coming to the U.S. was to earn money. Workers recognized the extreme difficulty of earning a living in an economy that no longer had a place for them and accepted the long working hours. According to them, they were there to work and were accustomed to working in harsh conditions.⁸¹ In fact, when something out of the ordinary happened that precluded the braceros from working, a sense of worry developed because they came to these contracts with the hope of earning money so that they could support themselves and their families in Mexico. Ultimately, the bracero considered himself a man making a conscious decision to leave home and work in the U.S., knowing both the hardships and the dangers. He made that choice, however, because he felt that he was better off taking his chances in the U.S., where he was guaranteed work and pay, than staying in Mexico to suffer the exploitation and adversities there.

Further analysis reveals that the program benefited Mexico as well. Despite the advantages and disadvantages, the Bracero Program could not have flourished as it did without forces in Mexico encouraging millions of its citizens to seek work, oftentimes on several occasions, in a foreign country where they did not know the language, where they would be transported to, or the conditions under which they would work. Mexico had begun to disfavor agriculture and, in its place, decided to focus on industrial development.⁸² As a result, only a small segment of the country realized the prosperity of economic growth, which led to worse living conditions for those in the lowest economic levels.⁸³ Moreover, most of the land was not arable and could not support a large rural population,⁸⁴ and many people did not own land to cultivate because it was largely concentrated within a small number of private individuals.⁸⁵ Finally, overpopulation also led large numbers of Mexican citizens to seek work in the U.S.⁸⁶ By exporting workers, the country alleviated conditions of domestic unemployment, and the economy profited as workers often sent money back home to their families and returned to Mexico with new skills that could be used in the livestock, dairy, and poultry industries.⁸⁷

79. *Id.* at 95.

80. CRAIG, *supra* note 20, at 15.

81. MARIA HERRERA-SOBEK, *THE BRACERO EXPERIENCE: ELITELORE VERSUS FOLKLORE* 39-74 (UCLA Latin American Center Publications, 1979). During the summer of 1969, Herrera-Sobek visited Huecocrio, Michoacan, Mexico and interviewed those there who had worked as braceros. She selected common experiences to form a composite bracero view told by the fictional “Pedro.” She recounts his time as a bracero, his experiences as a worker in different parts of the U.S., what made him go and return, how he thought of himself, what those left behind in Mexico thought of him, his relationships with fellow braceros and with those for whom he worked, and what it took to survive.

82. CRAIG, *supra* note 20, at 15.

83. HANCOCK, *supra* note 64, at 29-33.

84. CRAIG, *supra* note 20, at 13-14.

85. See HANCOCK, *supra* note 64, at 33-34.

86. *Id.* at 35.

87. *Id.* at 36-38.

III. PRESIDENT BUSH'S PROPOSED PLAN

A look at President Bush's guest worker proposal in light of the effects of the Bracero Program on the U.S., Mexico, and the migrant workers reveals that it will most likely generate similar advantages and disadvantages. The President's program seems to have two general purposes: to match searching employers with willing workers and to allow those working illegally in the country to "come out of hiding" and participate legally in the workforce and society.⁸⁸ While those purposes sound legitimate, evaluated in the context of the Bracero Program, it seems that they really amount to providing a cheap labor source for employers and to monitoring illegal immigration, both of which were reasons behind the first government-sponsored migrant worker plan.

A. The Purposes of President Bush's Proposed Plan

The first purpose behind the proposed guest worker plan is to match searching employers with willing workers.⁸⁹ The language used in the proposed plan is that domestic workers are "not willing."⁹⁰ But, is it really the case that domestic workers are not willing to take low paying jobs? Two alternative answers emerge: 1) perhaps domestic workers are disadvantaged by living in the U.S. and cannot take low-paying jobs or 2) perhaps in reality there is already a large group of Americans filling these positions.

While it may be argued that domestic workers are not filling these positions, which are mostly low paying, the label "not willing" should be reconsidered. Perhaps U.S. workers are not taking these positions simply because they cannot afford to do so, since most of these jobs are at the lowest end of the wage scale. Employers are not going to pay the wages needed by domestic workers when they can employ migrant workers willing to work for a lesser amount. While the Bush program does not specify to what particular sector the plan will apply, the Bracero Program presents a good example of the likely effects of the Bush proposal on domestic workers, since the majority of Mexican border commuters will work in agriculture.⁹¹ For instance, the federal minimum wage for hired farm workers is \$5.15 per hour.⁹² Furthermore, agricultural employers are not required to pay overtime under federal law.⁹³ It is unlikely that domestic workers, particularly those

88. Immigration Reform Fact Sheet, *supra* note 1.

89. *Id.*

90. *Id.*

91. VERNON M. BRIGGS, JR., IMMIGRATION POLICY AND THE AMERICAN LABOR FORCE 233 (1984).

92. DALE ARRISON GROSSMAN & JASON D. MINARD, FARM LABOR REGULATIONS 8 (Department of Applied Economics and Management, College of Agriculture and Life Sciences, Cornell University, July 2002). The Fair Labor Standards Act first covered farm workers in 1967. As of September 1, 1997, it established the minimum wage for covered, non-exempt employees at \$5.15 per hour, which remains current today. 29 U.S.C. § 206(a)(1) (2004); *see also* U.S. Dept. of Labor, Minimum Wage, <http://www.dol.gov/dol/topic/wages/index.htm> (last visited Jan. 13, 2005).

93. *See* U.S. Dept. of Labor, Fact Sheet #12: Agricultural Employers Under the Fair Labor Standards Act (FLSA) (Jan. 25, 2004), *available at* <http://www.dol.gov/esa/regs/compliance/whd/whdfs12.htm>.

supporting families, will be able to subsist on such a small wage, especially with no opportunity to earn overtime pay. Moreover, domestic workers face even more challenges as “the law provides that wages may include board, lodging, and other benefits customarily provided as compensation to the employee.”⁹⁴ Because the domestic worker will most likely not need room and board, s/he will not be able to take a position where this is included as part of the compensation. A migrant worker, however, maybe able to do so and indeed will most likely benefit from an arrangement like this because it will decrease his or her expenses. While s/he will actually receive less money, it is still likely more than what s/he would earn in a similar position in Mexico. Furthermore, “[d]ue to the extreme difference between the standard of living of Mexico and that of the U.S., commuters from Mexico are often willing to work for wages and under conditions that a person who must confront the daily cost of living in the U.S. on a permanent basis would find impossible to accept.”⁹⁵ In short, the domestic worker is, at least in the agricultural sector, at a disadvantage for simply residing in the U.S.

Alternatively, perhaps there really are Americans filling these positions, and an influx of people into the labor force will make it more difficult for domestic workers to compete for these jobs. By claiming that domestic workers are not working in low-paying jobs, the Administration espouses a plan that will correct this problem by supplying a workforce that will take such positions. However:

there are millions of Americans who are already doing precisely these kinds of jobs. In March 2003, there were 8.8 million native-born full-time workers without a high-school education, 1.3 million native-born dropouts unemployed, and a further 6.8 million not even in the workforce. There is a good deal of evidence that these workers are in direct competition with Mexican immigrants—i.e., these are jobs that Americans will do and are doing already.⁹⁶

President Bush’s new plan will in effect infiltrate the low-wage sector with more individuals willing and able to take a position at the minimum wage, which will increase competition for employment. In fact, “with the exception of agricultural labor, unskilled native-born and Mexican-born workers have a similar distribution across occupations.”⁹⁷ Furthermore, research has shown that unskilled natives and immigrants are almost “perfect substitutes for one another in the labor market” and compete for the same jobs.⁹⁸ President Bush’s plan will succeed in its purpose to match searching employers with willing workers, but in doing so it will likely take jobs away from certain Americans or at least make it more difficult for them to obtain employment.

The second purpose advanced for the new plan, while couched in terms of protecting undocumented aliens already working in the U.S., seems really intended as a solution to an immigration problem. Bush’s proposal, like the Bracero Program, appears to seek to control illegal immigration. Enticing illegal workers to come out

94. *Id.* at 9.

95. BRIGGS, *supra* note 91, at 232.

96. Mark Krikorian, *Flawed Assumptions Underlying Guestworker Programs*, BACKGROUND (Center for Immigration Studies, Washington, D.C.), Feb. 2004, at 3.

97. *Id.*

98. *Id.*

of hiding will make it easier for the government to identify and ultimately repatriate them, if and when necessary, because it will now have their names, addresses, social security numbers, and pictures.⁹⁹ However, the legalization of workers, who would have otherwise been undocumented, neither relieved the immigration problem facing the I.N.S during the Bracero Program, nor made it disappear. In fact, the Bracero Program over time actually increased illegal immigration because it created a dependency on Mexican labor.¹⁰⁰ Bush's new plan, by luring illegal workers to come out of hiding in order to receive the benefits of living legally in society, ultimately seeks to produce a means of controlling illegal immigration through creating a system that identifies and keeps track of the workers.

B. The Dynamics and Effects of President Bush's Proposed Plan

The proposed plan would allow the federal government to issue those already working here illegally, and those in foreign countries that have been offered work in the U.S., temporary worker status for three years. Those granted temporary status would pay a one-time fee, receive a card that allows travel between countries, and would be required to return home after their period of work expired though they would be given an opportunity for renewal. The plan proposes that employers must make every effort to ensure that there are no Americans to take a job before offering it to foreign workers. Additionally, the program ensures that enforcement against companies that hire illegal immigrants will increase and purports to offer incentives for workers to return home such as home-country savings accounts.¹⁰¹ The basic elements of this plan—offering temporary status, returning workers home, and requiring employers to fill positions with Americans first—sound strikingly similar to the Bracero Program, which demonstrated that granting temporary worker status to foreigners created an assortment of disadvantages for the U.S., Mexico, and the worker. Those same disadvantages will most likely recur, particularly with regard to the U.S. and the guest workers.

1. The Proposed Plan's Likely Effects on the U.S.

In the U.S. the likely primary disadvantages are diminished wages and employment opportunities for domestic workers. Although the plan maintains that workplace enforcement of immigration laws will increase, it is probable that such enforcement will not happen and if it does so it will likely not be enough. Employer sanctions have not been successful in deterring undocumented immigration.¹⁰² Employers who need these workers are faced with, on the one hand, hiring undocumented workers and pretending their work-authorization documents are legitimate, or, on the other hand, with a reduction in production because of a lack of employees.¹⁰³ Facing such a predicament, employers often knowingly accept false

99. David Abraham, interview by Jack Cafferty, *CNN In The Money*, Cable News Network, January 17, 2004.

100. See MARTIN, *supra* note 19, at 63.

101. Immigration Reform Fact Sheet, *supra* note 1.

102. Karen Fleshman, *Abrazando Mexicanos: The United States Should Recognize Mexican Worker's Contributions to Its Economy by Allowing Them to Work Legally*, 18 N.Y.L. SCH. J. HUM. RTS. 258 (2002).

103. *Id.*

documents and employ undocumented workers even with the possibility of facing sanctions.¹⁰⁴

Despite enforcement provisions, the introduction of a group of workers willing to work for a minimum wage will likely diminish domestic wages. As the Bracero Program demonstrated, wages tended to stagnate or fall in areas where braceros worked.¹⁰⁵ In fact, according to a report issued by the Department of Agriculture, between 1953 and 1959, farm wages increased except in areas where there was a concentration of braceros.¹⁰⁶ This phenomenon left domestic workers with no choice but to accept positions at the prevailing rate or have braceros hired in their place.¹⁰⁷ This same effect on domestic wages will likely result with the proposed plan.

Additionally, it is also likely that domestic workers will be unable to protect themselves collectively by gaining bargaining power against employers. The inability of domestic workers to gain any effective bargaining power against growers is not an aspect confined to the Bracero Program. Cesar Chavez's¹⁰⁸ United Farm Workers (UFW) union exemplifies this inequality in bargaining power and its effects on wages in the agricultural setting. Despite their efforts to organize and collectively negotiate with growers, domestic farm workers could not achieve any long-term effects regarding wages.¹⁰⁹ In fact, "the 'outsider' status of most union organizers and the usual surpluses of immigrant farmworkers kept worker protests and strikes from generating lasting collective bargaining agreements."¹¹⁰ The result is that while the UFW and farm worker unions still enjoy periods of effectiveness, "farmworker organizing and negotiating activity has virtually stopped," as union activity has become less important than immigration reform.¹¹¹ Whether this inability of effective unionizing will appear in every sector touched by the newly proposed plan is uncertain, but likely.

Furthermore, President Bush's plan purports to ensure that employers attempt to fill positions with Americans first. Under this plan, as in the Bracero Program, growers will be allowed to determine when there is a labor shortage. By offering a position at a given wage and finding a shortage at that rate—because it was unacceptable to the domestic worker—the employer was then free to hire braceros.¹¹² This ability to determine artificially when a shortage of labor existed facilitated wage depression and reduced employment opportunities for the domestic worker. In the case of the currently proposed plan's effects on domestic wages, "[b]y artificially increasing the supply of low-skilled workers, it would short-circuit any market incentives for employers to increase the wages and benefits, or improve

104. *Id.*

105. CALAVITA, *supra* note 17, at 70.

106. 107 CONG. REC. 20,757-74 (1961).

107. Lorenzo A. Alvarado, *A Lesson From My Grandfather, The Bracero*, 22 CHICANO-LATINO L. REV. 64 (Spring 2001).

108. Chavez was a community organizer and a former farm worker in California who in 1962 founded the Farm Workers Association, later renamed the United Farm Workers union.

109. MARTIN, *supra* note 19, at 65-67. It should be noted that braceros and former braceros did not join the unionizing farm workers in their efforts.

110. PHILIP L. MARTIN, ET AL., UNFULFILLED PROMISE: COLLECTIVE BARGAINING IN CALIFORNIA AGRICULTURE 41 (1988).

111. *Id.* at 41-42.

112. CALAVITA, *supra* note 17, at 63.

working conditions, for entry-level blue-collar workers.”¹¹³

What happens then, when those who obtain temporary status complete their three years and decide to stay? Historically, guest workers do not want to leave¹¹⁴ and generally “stay long after the party is over—precisely because people are not things, and have their own plans and purposes.”¹¹⁵ For example, after recognizing that the opportunities available in the U.S. greatly outweighed those offered in Mexico, some braceros left their contracts and did not return to Mexico.¹¹⁶ Also, “once farmers became addicted [to having a supply of cheap, efficient labor] they devoted resources to lobbying to keep [the Program] rather than to mechanization and innovation.”¹¹⁷ The White House press release outlining the current program maintains that some workers will want to pursue citizenship and may be allowed to do so provided they meet the requisite conditions. It maintains that there will be incentives for workers to return home by establishing savings accounts in their home countries and by allowing them to travel freely between the U.S. and their home country in order to maintain roots there.¹¹⁸ The Bracero Program similarly had a savings account provision,¹¹⁹ and the braceros likewise had roots in Mexico as most of their families remained behind. Still, these inducements did not stop braceros from abandoning their contracts or returning to live in the U.S. illegally. Furthermore, the bracero’s contract had transportation, subsistence, and living provisions for any family members that might accompany him to the U.S.¹²⁰ In the proposed plan, family members who cannot secure employment under the program will be faced with the choice of staying in Mexico and being separated for a significant amount of time or trying to join their family member illegally.

Some temporary workers may arrive in the U.S. without family, but over the course of their stay marry a U.S. citizen and have children. Under this program, what happens to his or her family? What choices do they have? The worker must attempt to obtain legal status in order to remain with his spouse and child who are U.S. citizens. The problem with trying to gain legal status is that for the most part it is likely that these jobs will be filled with those who can least afford to pay for the process of legalization.

Having addressed some of the proposed plan’s disadvantages to the U.S., what will be its advantages? First, the program proffers that the economy will prosper since employers and workers will be matched more quickly, cheaply, and easily.¹²¹ Second, the plan will create a stronger homeland security by more efficiently managing border crossings, including better identification of entering

113. KRİKORIAN, *supra* note 96, at 2.

114. David Abraham, *It Didn't Work in Europe, and It Won't Work in the U.S.: US Immigration Reform*, THE INT'L HERALD TRIB., Jan. 10, 2004, (Opinion), at 6. Abraham cites the more than two million people of Muslim Turkish background living in Germany today whose families immigrated there as guest workers forty years ago.

115. KRİKORIAN, *supra* note 96, at 5.

116. HERRERA-SOBEK, *supra* note 81, at 49, 55, 66-67, 73-74.

117. KRİKORIAN, *supra* note 96, at 5.

118. Immigration Reform Fact Sheet, *supra* note 1.

119. The 1942 Bracero Agreement contained a provision that provided for deposits to be made by the U.S. government into a savings fund established for the bracero.

120. JUNGMEYER, *supra* note 14, at 194.

121. Immigration Reform Fact Sheet, *supra* note 1.

foreigners.¹²² Third, the proposed plan will offer a more compassionate system where workers will be able to go home more frequently and return to the United States, where they will be covered by U.S. labor laws, which benefits the U.S. by ensuring fair wages and healthy working environments.¹²³ Fourth, the program will supply companies with a “more stable supply of low-wage labor, with fewer hiring hassles and most likely, less turnover.”¹²⁴ However, even the Bush administration concedes that in the long run the influx of cheap labor into the U.S. will hold down wages among the working poor.¹²⁵

While these advantages are not exactly the same as those proffered by supporters of the original Bracero Program, they nevertheless do not outweigh the disadvantages. While it appears that the guest worker plan is economically beneficial, it does not consider the long-term effects. “[B]ecause of the inevitable large-scale settlement of guestworkers and their families, friends, acquaintances, and fellow countrymen, the long-term budgetary fallout of a guestworker program would likely be enormous.”¹²⁶ For instance, because of a lack of education and the likelihood that these jobs will mostly go to those in the low-wage sector, it is likely such migrants would remain at the poverty level and in turn need to rely on a public service program during their employment period. In fact, a majority of Mexican immigrant households already rely on welfare programs. According to the Center for Immigration Studies, “33.9 percent of households headed by a legal Mexican immigrant and 24.9 percent headed by an illegal Mexican immigrant used at least one major welfare program.”¹²⁷ It is unlikely that the guest workers who participate in this program will be denied public service benefits, but such reliance will increase the number of those relying on welfare and therefore the burden on the American economy. Additionally, granting temporary worker status to undocumented aliens and foreigners who wish to enter the U.S. will not solve the homeland security problem. Trying to keep tabs on everyone already in the country or those who subsequently enter is simply not feasible. An already administratively burdened Department of Homeland Security will be under “pressure to move things through the system” in order to cope with its new responsibilities, which is likely to result in “rampant and pervasive fraud.”¹²⁸ Finally, despite implementation of the program, many workers who are not documented will choose to remain anonymous because the plan does not contemplate amnesty.¹²⁹ A Mexican immigrant who has lived illegally in the U.S. for years and developed a family, some of whom may be born in the U.S., will be unlikely to participate in the program because doing so will require him or her to return to Mexico without his or her loved ones in three years.¹³⁰

122. *Id.*

123. *Id.*

124. Aaron Bernstein, et al., *This Plan May Not Get a Green Card: Bush's Proposal Would Help Immigrants, But Congress Will Weigh In*, BUS. WK., Jan. 19, 2004, at 34.

125. *Id.*

126. KRİKORIAN, *supra* note 96, at 5.

127. *Id.* at 6.

128. *Id.* at 8.

129. Immigration Reform Fact Sheet, *supra* note 1.

130. *Migrant Policy Just a Start*, LOS ANGELES TIMES, Jan. 9, 2004, at B18.

2. The Plan's Likely Effects on Mexico

The advantages and disadvantages facing Mexico in this program are somewhat similar to those of the Bracero Program. However, of all the primary participants in this program, besides the employers who will benefit directly from the huge supply of cheap labor, Mexico ironically seems to benefit most from it. Mexico's citizens will be given an opportunity to secure potentially higher-paying jobs in the U.S. Mexico's economy will likely benefit because the plan essentially allows workers to commute between the two countries, and such workers will likely spend their earnings in Mexico to support their families. Although braceros similarly took their earnings back to Mexico, the effect of spending that money in Mexico is different today for the simple fact that it is forty years later and there are now more ways to spend one's wages. Also, migrant workers will likely come from many different parts of the country. During the Bracero Program, these earnings were the primary means of supporting a worker's family—not just for the period of the contract but also for a significant period beyond it.¹³¹ In the case of the newly proposed program, part of the workers' U.S. wages will likely be used to support a family back home in Mexico, but because opportunities like college may not have been as widely available in the 1940s and 1950s, the family will likely be able to do more with the money. This ripple effect will ultimately benefit Mexico.

Noting the benefits that will likely accrue to Mexico as a result of the proposed plan is not to say that it will not also produce disadvantages. Because the prospects of working in the U.S. and earning higher wages is a highly favorable opportunity, a large number of Mexico's citizens will likely migrate north. The Bracero Program demonstrated that increased migration results from a U.S. guest worker program, and it is possible that Mexico's workforce could once again be adversely affected—depriving the country of ambitious people and fostering an even greater economic dependence on the U.S. Furthermore, workers who choose to emigrate to the U.S. from the interior of Mexico will likely have to leave behind their families. While not a problem for an individual with the means to travel, most of the guest workers will probably be comprised of impoverished citizens seeking to subsist. The likelihood, therefore, of separating families seems great, and with disconnected families, the lack of the worker's presence and regular communication suggests potential social problems, as spouses drift apart, perhaps seeking extramarital relationships, and children are left with less stable homes. Furthermore, some workers who participated in the Bracero Program deserted their contracts, deciding to stay illegally in the U.S. An analogous situation in this era and with this new program is the worker who decides not to return to Mexico and abandons his or her family perhaps because s/he discovers that the freedom and opportunity in the U.S. outweigh the burdens of returning to Mexico. These disadvantages no doubt present serious potential social problems for Mexico, but it is likely that the economic benefits will overshadow the policy's ill-effects. After all, the impoverished worker and his or her family, already among the least privileged people in Mexico, will bear the brunt of these emotional disadvantages; the country as a whole will only suffer the consequences indirectly.

131. HANCOCK, *supra* note 64, at 36-37.

3. The Effects on the Migrant Worker

Fittingly, the effects on the guest workers further demonstrate that implementing this new temporary worker program will create more harm than good. For a final example of why the new guest worker program is not a good idea, shifting focus to the individual will reveal perhaps the most persuasive reasons for not adopting this plan. Arguably, the discussion of the benefits and disadvantages of temporary worker programs to the respective countries intrinsically includes the individual, as any such plan could not work without the willing migrants who participate in the actual program. The problems these programs generate, however, go beyond the effects on the participating countries. For example, the abuses that arose under the original Bracero Program occurred primarily under Public Law 78, when the workers contracted directly with the growers instead of with the U.S. government.¹³² Bush's plan also seems "to put employers in charge," since workers will be chosen by employers and can only remain in the U.S. as long as they are employed.¹³³ The plan thus creates a dynamic of considerably unequal power.

One proposed purpose of the President's guest worker policy is to enable illegal aliens working in the U.S. to come out of hiding and work legally so that they may obtain the benefits and protections of American labor laws.¹³⁴ However, with their ability to stay in the country contingent on whether they have a job, they might be less willing to report abuses by employers for fear of retaliatory discharge. Participants in the Bracero Program who complained about working conditions were sent home,¹³⁵ and employers threatened braceros with returning them to Mexico if they did not comply with their demands.¹³⁶ In the case of the migrant worker and particularly the undocumented alien who most likely has roots in the U.S., dismissal means not only not going back to work but also being deported.¹³⁷ As was seen with the braceros of the 1940s and 1950s, for the worker, "deputiz[ing] all of American business"¹³⁸ sets up a situation for potential exploitation, as employers have a significant tool with which to leverage workers.

While perhaps workers will have substantive rights under Bush's program to guard against such maltreatment, they will most likely still have no recourse because they will be caught in a system that inhibits them from enforcing those rights. A guest worker program already in place in the U.S. demonstrates that in practice those participants have no way to effectuate the protections supposedly afforded to them. The H-2A program allows employers to bring in nonimmigrant workers to the U.S. to fill labor shortages in the agricultural sector.¹³⁹ Under this program, employers must comply with mandatory recruitment procedures and wage

132. CALAVITA, *supra* note 17, at 63.

133. David Abraham, *American Jobs but not the American Dream*, N.Y. TIMES, Jan. 9, 2004, at A19.

134. Immigration Reform Fact Sheet, *supra* note 1.

135. Michael Holley, *Disadvantaged by Design: How the Law Inhibits Agricultural Guest Workers from Enforcing Their Rights*, 18 HOFSTRA LAB. & EMP. L.J. 585 (2001).

136. HERRERA-SOBEK, *supra* note 81, at 39-74.

137. Interview by Jack Cafferty with David Abraham, Professor of Law, University of Miami (Jan. 17, 2004).

138. *Immigrant Realities*, WALL ST. J., Jan. 9, 2004, at A10.

139. Laura C. Oliveira, *A License to Exploit: The Need to Reform the H-2A Temporary Agricultural Guest Worker Program*, 5 SCHOLAR 163 (2002).

guidelines, provide housing and food for employees, advance or reimburse the worker's transportation costs, provide free insurance to cover injury or disease arising from employment, and guarantee work for at least three-fourths of the workdays during the contract period.¹⁴⁰ Although the H-2A program grants these rights to temporary workers, enforcement is almost impossible because H-2A workers are not entitled to sue in federal court, which leaves them with the state's court system as the only forum in which to seek relief, which is more likely to be biased.¹⁴¹ Furthermore, because of limited resources and the fact that most are "poor, Spanish-speaking, and unfamiliar with American institutions," the H-2A worker is likely only to be able to secure representation from a legal services program if any at all.¹⁴² While the H-2A program specifically enumerates certain rights for its participants, it is likely that if Congress implements President Bush's proposal, the plan will have similar provisions regarding a worker's ability to sue under U.S. labor laws. Furthermore, the same major problem of the H-2A program will be evident: under the Bush plan, the majority of temporary workers will likely be "poor, Spanish-speaking, and unfamiliar with American institutions[.]"¹⁴³ They will likely be unable to obtain adequate legal representation, and where able, they may be unwilling to use it, e.g., fearing retaliation by their employer. In either case, they will likely be unable to enforce their rights. The inequity between the worker and the employer, and the worker's inability to enforce any rights granted to him or her will combine to produce a vulnerable "permanent underclass" that has "no benefits, no rights," and "is considered a second class," as workers in this position will effectively be on the bottom of a what will be a "two-tier workforce: Americans on top; foreign, mostly Latino workers, on the bottom."¹⁴⁴

IV. CONCLUSION

Suggestions have been offered for what conditions must exist in order for guest worker programs to be successful. First, in order for a migrant worker plan to succeed there must be adequate control over unauthorized entry.¹⁴⁵ A second prerequisite for a guest worker system to work is "an effective remedy to labor shortages, such as mechanization, prior to hiring foreign workers."¹⁴⁶ A final suggestion is that "protections must be in place to protect the rights of temporary workers and the communities in which they work."¹⁴⁷

These requisite conditions are unattainable precisely because it is the proposed guest worker program that will be used to achieve them. Ineffective border

140. *Id.* at 166-67.

141. Holley, *supra* note 135, at 608

142. *See id.* at 613-15. In addition to legal limitations, growers sometimes attempt to constrain what legal assistance LSC-funded legal services programs may offer to H-2A workers.

143. *Id.* at 613

144. *Bush Immigration Proposal Unlikely to Emerge Unscathed from Congress*, THE BULL.'S FRONTRUNNER, Jan. 9, 2004, (Leading the News).

145. Michael J. Mayerle, *Proposed Guest Worker Statutes: An Unsatisfactory Answer to a Difficult, If Not Impossible, Question*, 6 JOURNAL OF SMALL & EMERGING BUS. L. 577 (Fall 2002).

146. *Id.*

147. *Id.* at 578.

control and an expansion in undocumented immigrants resulted in the U.S. militarizing its border with Mexico in an attempt to deal with this influx.¹⁴⁸ Apparently this approach did not succeed in curbing illegal immigration, as the Bush White House proposes, under the guise of homeland security, to implement a plan “to control our border through agreements with countries whose nationals participate in the program.”¹⁴⁹ Furthermore, Bush’s guest worker plan attempts to “provide a labor supply for American employers” to quell a supposed labor shortage created by American workers who are unwilling to fill the positions¹⁵⁰ and seeks to afford currently undocumented workers who choose to come out of hiding the protections of mainstream society and labor laws. Controlled immigration, alternative remedies for labor shortages, and protected rights for illegal and migrant workers, must be in place *before* an effective and legitimate guest worker program can be implemented. The failed Bracero Program demonstrated this, and the new plan will likely also not work unless this distinction is finally acknowledged.

Ultimately, the relationship between the U.S. and Mexico has been and remains such that both nations have pushed and pulled Mexican migrants from their homes to perceived opportunity and potential prosperity. What these immigrants discover, however, is that they easily become entrenched in a system that exploits and abandons them.

As “[t]he U.S. and Mexico have become more than neighbors and free trade partners[,] they have evolved into a common labor market.”¹⁵¹ Nothing illustrates this more clearly than the countries’ continued willingness to adopt and participate in guest worker programs. The Bracero Program materialized as a result of economic need and political cooperation. Today, similar political and economic conditions exist that make the execution of another guest worker program a likely reality.¹⁵² “NAFTA has opened up trade between Mexico and the U.S., so cooperation is at a level similar to that experienced during World War II and the Korean War,”¹⁵³ and the stable and profitable U.S. markets that have developed since the Bracero Program induce interdependence and interaction regarding immigration “[j]ust as the war economies opened up room for cooperation on migration.”¹⁵⁴ Seeking to take advantage of these conditions, President Bush is attempting to improve relations with Mexico through his proposed guest worker plan, which ironically exploits its citizens, and to gain favor with the American public by using terms like “a more prosperous economy,” “a more secure homeland,” and “a more compassionate system.”¹⁵⁵

While it might be argued that favorable political and economic conditions exist that make implementation of a temporary worker program feasible because of trade agreements like NAFTA, the requisite conditions that might reduce some of the disadvantages of such programs are not present—controlled immigration, alternative

148. Fleshman, *supra* note 102, at 257.

149. Immigration Reform Fact Sheet, *supra* note 1.

150. *Id.*

151. Fleshman, *supra* note 102, at 237.

152. Maria Elena Bickerton, *Prospects for a Bilateral Immigration Agreement with Mexico: Lessons from the Bracero Program*, 79 TEX. L. REV. 911 (2001).

153. *Id.*

154. *Id.* at 913.

155. Immigration Reform Fact Sheet, *supra* note 1.

remedies for labor shortages, and protected rights for illegal and migrant workers. Adopting Bush's proposed plan for temporary workers will result in the U.S. implementing a program with disadvantages that outweigh its advantages. The Bracero Program demonstrated that despite the proposed and actual benefits of a guest worker program, the detriments to participating countries and particularly to migrant workers are simply too great to risk trying it again.