

2007

Immigration Policy and Immigration Flows: A Comparative Analysis of Immigration Law in the U.S. and Argentina

Adela de la Torre

Julia Mendoza

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/tma>



Part of the [Immigration Law Commons](#)

Recommended Citation

De la Torre, Adela and Julia Mendoza. "Immigration Policy and Immigration Flows: A Comparative Analysis of Immigration Law in the U.S. and Argentina." *The Modern American*, Summer-Fall, 2007, 46-52.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *The Modern American* by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

Immigration Policy and Immigration Flows: A Comparative Analysis of Immigration Law in the U.S. and Argentina

Keywords

Immigration policy, Immigration law, Latino community, Argentina's immigration policy, Race-neutral federal immigration policy

IMMIGRATION POLICY AND IMMIGRATION FLOWS: A COMPARATIVE ANALYSIS OF IMMIGRATION LAW IN THE U.S. AND ARGENTINA

By Adela de la Torre, Ph.D.
and Julia Mendoza *

SPECIAL INSERT COMMEMORATING THE TENTH ANNUAL HISPANIC LAW CONFERENCE

Lawyers and policy experts within the Latino community need to foster cultural responsibility for immigration reform by participating in the policy dialogue. Although Latino lawyers do not represent the broad American population, they do represent American communities that have been discriminated against because of their cultural and racial heritage. It is important to uphold the diverse cultural identities of Latinos while asserting policies that will not only benefit Latino communities but also conciliate past discrimination.

One important country in the Western Hemisphere that has developed a more forward-thinking immigration strategy is Argentina. Like the United States, Argentina experienced massive European immigration at the end of the nineteenth and early twentieth centuries. Unlike the United States, however, it has developed a more open approach toward its bordering nations and natural trading partners. Argentina's strategy to develop a more balanced and race-neutral federal immigration policy has resulted in a more humane and economically sound approach to immigration reform in comparison to the United States. In order to fully compare the two countries' immigration policies, it is important to summarize the historical development of U.S. immigration policy.

HISTORICAL SUMMARY OF SIGNIFICANT IMMIGRATION POLICIES

The U.S.-Mexico immigration relationship began after the Mexican Revolution, in response to the disarray of the post-revolutionary years. In an attempt to establish stability after years of war, many Mexican migrants moved up to the North, hoping to establish themselves economically. At the same time, many American employers ran recruitment campaigns to acquire cheap, dispensable labor.¹

In addition to significant economic "pull-factors,"² Mexican migrants were also drawn to the United States by the change in American immigration policies. During this time in the U.S., public fear evolved in response to the Eastern and Southern Europeans, the Chinese, and the Japanese. This fear was not only expressed on the streets by racial violence and segregation, but also conveyed in immigration legislation. The immigration laws of this era imposed significant restrictions on the type of immigrants that were able to come to the United States.³ This

racialized hatred focused on select minorities opened space in the American economy for an alternative source of low-skilled labor: Mexican immigrants. Although the need for labor ceased during the Great Depression, recruitment was revived during World War II.⁴

*They had the ability to
participate economically in the
United States, but were unable to
participate politically.*

In 1942, the United States negotiated a treaty with the Mexican government in an attempt to fill labor shortages created by the draft. The Bracero Program was implemented to supply the United States with temporary agricultural work-

ers. Although the initial intent of the Bracero Program was to supply labor to the United States during the war, the program was so advantageous for American employers that it continued until 1964.⁵

Under the Bracero Program, nearly five million Mexican migrants came to the United States.⁶ Under the program, the Department of Labor would certify an American employer's estimation of labor needs and then make a request to the Mexican government, which in response transferred the migrants to the United States. Once the workers arrived, the Department of Labor placed them with private American employers.⁷

The Bracero Program established migratory patterns for both documented and undocumented immigrants. Although the Bracero Program established a legal avenue for Mexican immigrants to come to the United States, it also created many pull-factors to encourage those who did not qualify under the program requirements to come as well. The United States was aware that its recruitment activities promoted Mexicans' belief that the United States was the land of opportunity, which enticed many migrants to enter illegally or without inspection.⁸

Despite the necessity of low-wage workers during this era, Mexican immigrants lacked basic rights. They had the ability to participate economically in the United States, but were unable to participate politically.⁹ This political disenfranchisement in addition to the blatant racism created an incredibly hostile environment for these immigrants. In this environment "Operation Wetback" was spawned.¹⁰ In response to public concerns over loose border policies and the frenzy caused by the increasing employment of Mexican immigrants, Operation Wetback deported over one million Mexicans, including many documented Mexicans, under the supervision of the Immigration and Naturalization Service.¹¹ Federal strategies, such as border

patrol profiling, employed in the 1950s to target Mexican immigrants, are still used today and have been protected under the most recent U.S. Supreme Court decisions.¹²

CURRENT U.S. IMMIGRATION LEGISLATION

Given the primacy of popular opinion in determining federal immigration policy in the United States, it is not surprising that the racialized tone and anti-immigrant rhetoric of the past has prevailed in the formulation of policies during the last two Administrations. The Bush Administration has placed the immigration problem at the forefront of its policy concerns. In response to the presence of an estimated 12 million undocumented immigrants in the United States, President Bush has attempted to create a solution that not only resolves the national political divide but also pacifies international trade partners. The solution proposed is another guest worker program.¹³

On June 7, 2007, the Senate quashed the program, and the prospects of comprehensive immigration reform, by a fifteen-vote margin.¹⁴ The outcome resulted in an overwhelming amount of criticism from core Republican voters and liberal Democrats.¹⁵ Despite support from President Bush, Democratic leaders of the Senate, and some prominent senators from both parties, the bipartisan plan never came to life.¹⁶

One of the most problematic aspects of the bill was a proposal that would shift policy preferences away from the naturalization of applicants with family ties in the United States toward the employment of immigrants with advanced skills, college degrees and English-speaking ability.¹⁷ Supporters of this proposal claim that immigrants would still be able to bring close family members into the country.¹⁸ However, opponents of the proposal argue that countless families would be split apart in exchange for a very selective admissions process based on classist and racist preferences.¹⁹

Another problematic issue with the proposed legislation was the guest-worker proposal. Despite a desperate struggle from both sides of the Senate and a cut of the initial proposal of 400,000 two-year guest worker visas into half, there wasn't enough cumulative support to satisfy the political expectations of the entire electorate.²⁰ This political crisis raises concerns for policy analysts, such as the Immigration Policy Center, which cites the Bureau of Labor's recent findings and concludes that not only would a guest worker program be desirable but also necessary to sustain current economic growth²¹:

A key component of the immigration reform bill now being debated in Congress is a new temporary worker program that, ostensibly, would replace the current stream of undocumented migration with a regulated flow of less-skilled immigrant workers. However... the temporary worker provisions of the legislation, as they now stand... would not respond to the growing demand for less-skilled workers to fill permanent jobs in high-growth industries like construction. In fact, the temporary program taking shape in the Senate would have the effect of cycling less-skilled

immigrant workers in and out of the lowest rungs of the U.S. labor force without creating any longer-term investment in the workers or the industries in which they are employed....An alternative program that allows workers to apply for permanent status would better address industry's need for a larger and more settled less-skilled workforce and would more likely discourage undocumented immigration in the future.²²

Given the current political tenor and the historical record on immigration policy, the United States appears inclined to continue to subordinate basic human rights issues and hamper strategies to integrate immigration with the needs of the economic sector.

Although a comprehensive immigration reform plan has yet to be approved, the Bush Administration has managed to subdue the immigration problem by increasing physical deterrents to illegal migration through an enhanced border-enforcement system. On October 26, 2006, George Bush signed the Secure Fence Act.²³ During the inauguration of this bill, the president declared, "This bill will help protect the American people. This bill will make our borders more secure. It is an important step towards immigration reform."²⁴ This measure reflected the Republican House leaders' attempt to fulfill their promise to 'crack down' on immigration.²⁵

The Secure Fence Act authorizes a 700-mile border that would stretch around the town of Tecate, California, and build an expansion between Calexico, California, and Douglas, Arizona. In addition, the bill provides funding for more sensors, satellites, radars, lighting, cameras, and other detection devices for the 2,000-mile U.S.-Mexico border.²⁶ The scope of the immigration protection and enforcement budget for the 2007 fiscal year is estimated at \$21.3 billion dollars, not including the two to nine billion-dollar estimated cost of building the fence.²⁷

Until the underlying political motivation for immigration policy changes, U.S. immigration policy will further alienate low-wage, largely Mexican immigrants from mainstream U.S. society and continue the growing racial and economic divide of Mexican immigrants vis-à-vis the majority of the U.S. population.²⁸ The proposed wall on the US-Mexico border illustrates, both symbolically and politically, the moral dilemma that U.S. policymakers face with regard to immigration policy relative to other countries in the Western Hemisphere. As stated below by one critic, the wall is a "vivid demonstration of the moral bankruptcy of American politics," and it is an offense against humanity by separating families and dividing those who wish to be joined.²⁹

AN ALTERNATIVE MODEL FOR ADDRESSING AND INCORPORATING IMMIGRANTS IN LATIN AMERICA: THE CASE OF ARGENTINA

Although the United States is often viewed as a model for incorporating diverse immigrants, it may lag behind other "less developed" countries in its strategies to address economic needs while maintaining humane and equitable treatment of immigrant

populations. Historically, the United States has developed ad hoc and often overtly racist immigration policies, accompanied by federal legislation that limits equal access to programs that would speed up immigrant assimilation into American society.³⁰ There has been no successful solution to address the competing political forces within the immigration debate, and there is growing alienation across constituent groups that could be disproportionately supported by the racist rhetorical discourse.³¹

When looking at other countries that still rely on immigrant labor, it is opportune to review Argentina in a comparative framework with the United States, as both nations share similar histories of European immigration in the latter part of the nineteenth century.³² However, there are clear divergences in immigration policy at the federal level in these two countries. For example, in Argentina, unlike the United States, popular racist rhetoric about immigrants has never overwhelmed its overall federal policy strategy of providing relatively easy mechanisms for immigration and citizenship for immigrants. This is demonstrated not only in the Argentinean Constitution, but also within the immigration laws sanctioned by Congress in 2003, the implementation of the *Patria Grande*, and the economic influences of the MERCOSUR.

ARGENTINA'S LEGAL FRAMEWORK FOR IMMIGRANTS

The Argentinean Constitution features three primary sections within the first articles that illustrate the foundational hegemony that influenced Argentinean immigration policy.³³ In Article 25, the Argentinean Constitution states its desire to promote immigration from Europe.³⁴ Many have chosen to look at this declaration as creating the foundational rhetoric to promote preferential treatment for European immigrants over the surrounding indigenous communities from other countries.³⁵ Although it is impossible to deny that the mainstream Argentinean sentiments towards immigrants have been historically pro-European, the Argentinean political and social discourse did not historically produce xenophobia in the same infringing manner as was produced within the U.S. context.³⁶ Additionally, unlike the Constitution of the United States, the Argentinean Constitution granted protection of basic rights to all the inhabitants of the country, not only to its citizens, protecting immigrants' basic rights.³⁷

In recent years, Argentina has expanded upon its legal foundation of immigrants' rights through its Civil Code.³⁸ This development of a pro-immigration policy came into full force during the Kirchner Administration. In 2003 President Nestor Kirchner introduced into legislation a law that reduced the restrictions on immigration from other South American countries and guaranteed access to public health and education for both documented and undocumented immigrants.³⁹ By introducing *La Ley de Migraciones* 25.871 and creating *El Programa Na-*

cional de Normalización Documentaria Migratoria, the Kirchner Administration constructed a legal and political framework to support the basic human rights of immigrants and to complement the international framework asserted under the MERCOSUR and the pressures of globalization.⁴⁰

ECONOMIC INFLUENCES ON ARGENTINEAN IMMIGRATION POLICY

Globalization and the effects of the MERCOSUR agreement have played a significant role in establishing both push and pull factors for migrants within Latin America. Although Argentinean economy is not comparable to that of the United States, it still provides an interesting vantage point to compare immigration policies, as both economies receive immigrants from geographically neighboring countries and feature relative wage differentials as strong pull factors.

MERCOSUR is a regional integration organization in which Argentina, Brazil, Uruguay, and Paraguay are member countries and Chile and Bolivia are associate countries. It was established in the Southern Cone region in an attempt to generate intra-regional trade while encouraging the liberalization achievements needed to compete in a global market.⁴¹ MERCOSUR has contributed to the significant flow of immigrants from neighboring countries such as Bolivia, Paraguay, Uruguay and Chile.⁴² MERCOSUR has also managed to catalyze hundreds of cross-border investments within the Southern Cone region. This phenomenon was virtually unknown in the economic history of South America prior to the 1990s and was "necessary to create internationally competitive sub regional firms. Furthermore, MERCOSUR has widened the scope and deepened the level of intraregional relations through regional infrastructure initiatives, cooperative agendas in education and culture, and heightened interaction among political actors of the member states."⁴³

When Argentina signed MERCOSUR, it signed a trade agreement that acknowledged the need for residency on behalf of immigrants.⁴⁴ The agreement establishes a manner in which temporary residents have access to residence for up to two years in the country that they desire. This legal framework coincides well with the existing Argentinean immigration legal system. The agreement embraces a unified effort to deter employment of illegal immigrants by providing sanctions for those employing illegal workers and guaranteeing that such sanctions will not have repercussions on the rights of immigrant workers.⁴⁵

Argentina's legislative history and case law enforces immigration in a manner that complements MERCOSUR's economic goals. Unlike other international trade agreements, MERCOSUR and the Argentinean legal system enforce an immigration framework that supports a humanitarian

Unlike other international trade agreements, MERCOSUR and the Argentinean legal system enforce an immigration framework that supports a humanitarian immigration doctrine.

immigration doctrine. By contrast, this was not the case when the North American Free Trade Agreement (hereafter NAFTA) was passed in the 1990s absent any easing of immigration restrictions for Mexican workers as a result of greater economic integration through trade among the three member countries.

Unlike NAFTA, the *Patria Grande* furthered the intent of Argentina to enforce laws and employ its economic policies in a humanitarian manner. The *Patria Grande* was created to address the widespread abuse of undocumented immigrants in response to a tragic fire in a Buenos Aires sweatshop that caused the deaths of several undocumented Bolivian immigrants.⁴⁶ By giving undocumented immigrants within the Southern Cone region a legal avenue to obtain residency, the plan attempted to ease the bureaucratic process of documentation and was aimed at promoting human rights for the residents within the MERCOSUR region.

As a result of the Argentinean government's efforts, 350,000 residence visas were issued to undocumented immigrants in 2006 – eight times the 2005 total.⁴⁷ Currently, Argentina's federal government is planning to offer amnesty to approximately one million undocumented immigrants that work in the country. The *Patria Grande* also set a legal course for an estimated 700,000 to one million illegal immigrants to eventually seek citizenship.⁴⁸ Legal scholars anticipate future legal discourse on how to construct legally immigrants' citizenship after two years. Nevertheless, the *Patria Grande* should create an environment in which undocumented immigrants avoid victimization and will provide a vehicle for citizenship for undocumented workers in Argentina.

Although the historical Argentinean sentiment linked to immigration policies targeted preferred racial groups of immigrants, Argentina is currently moving forward with immigration policies that promote the political, social, and economic cohesion of the Southern Cone region. In order to fully appreciate the differences between United States and Argentinean immigration policies, it is critical to place these cultural differences within a comparative historical framework.

CONCLUDING THOUGHTS: LESSONS TO BE LEARNED

In a United Nations Press Release announced on September 15, 2006, in reference to Global Migration Policy, Vice-Minister for Latin American Policy of the Ministry of Foreign Affairs of Argentina, Leonardo Franco, commented that policies similar to *Patria Grande* need to be used as an outline for immigration policy.

Argentina had participated in this high-level session in the context of regional integration that addressed migration from a human rights perspective, he said. His country had also decided to promote the issue of

migration multilaterally, and not on a vision based exclusively on sovereignty and the State. As proof of this, he cited the important agreements of MERCOSUR and the South American Conference of Migration that had already achieved advances. The search for better conditions of life in other countries must not be reproachable, much less criminalized, he continued. Countries should address the issue by searching for mechanisms of cooperation and integration. He noted that Argentina had sealed that spirit into its migration policies in the National Law of Migration in 2004. That had affirmed Argentina's commitment to guaranteeing the human rights of migrants, while establishing mechanisms to regulate migration, thereby minimizing discrimination and xenophobia.⁴⁹

Franco eloquently echoes the Argentinean attitude towards immigration policy, which includes concern for the equitable

Beyond the more balanced immigration approach supported by the MERCOSUR agreement, Argentina has continued to support a race-neutral and humane approach to addressing new immigrants — both legal and undocumented.

treatment of undocumented immigrants. Franco states that immigration policy experts should recognize the basic desire that all individuals have to improve their economic well-being, which provides the underlying incentive for immigrant flows. In addition, given his analysis of the

broader economic problems, immigration solutions require cooperative partnerships across neighboring countries. Multilateralism in trade and immigration is a logical policy outcome from the MERCOSUR agreement.

Beyond the more balanced immigration approach supported by the MERCOSUR agreement, Argentina has continued to support a race-neutral and humane approach to addressing new immigrants – both legal and undocumented. Argentina has refused to allow either hostile popular opinion about immigrants or cyclical crises to affect its federal policies. Thus, there is little legislative evidence of unilateral and/or hostile immigrant policies unlike the ones documented in the United States. Finally, Argentina has maintained its core cultural values for incorporating new immigrants within its social milieu.

Although there are a handful of cases in which immigrants have struggled to receive residency, generally Argentina supports immigrants by maintaining a legal structure that theoretically guarantees their human and civil rights.⁵⁰ This general structure has been realized in the recent implementation of the *Patria Grande* Agreement and the recently enacted immigration laws that value the human rights of undocumented immigrants. As a result, on an international level, this agreement has become a model for how other countries should treat their immigration 'problem.'

The United States, by contrast, continues to maintain a unilateral and racialized policy with regard to immigration reform. Human rights issues are of secondary concern in light of recent

terrorist attacks, and popular sentiment continues to view low-income Mexican immigrants as inferior, illegal, and therefore unworthy of any federal legal status.⁵¹ Furthermore, there are few attempts to address the challenge of a meaningful political and economic incorporation of these new immigrants into American society.

The popular dialogue regarding immigration policy in the U.S. is easily captured within the news media, which often report on smuggling, interception, or raids of undocumented workers in the key employment sectors of the U.S. economy. This manner of portraying “The Immigration Debate” not only infringes upon the everyday struggle of undocumented immigrants, but upon *all* Latinos as well. Press coverage of federal immigration raids in Georgia during September 2006 is one clear example. In these illegal raids, federal immigration agents swept through towns in southeastern Georgia, relying heavily on racial and ethnic profiling.⁵² A lawsuit brought forth by the

Southern Poverty Law Center states that United States Immigration and Customs Enforcement agents illegally detained and unlawfully searched documented Latinos, violating their Fourth and Fifth Amendment rights. Illegal immigration raids reinforce the narrow, nationalistic perspective that unilateral solutions form the appropriate response to immigration reform. This manner of approaching immigration reform not only hampers the basic rights of undocumented immigrants, but also effects the entire Latino community.

CONCLUSION

Economic globalization requires states to move from ad hoc, self-interested and racist immigration policies to a balanced, multilateral and mutually beneficial policy that protects human rights and individual economic security.

*Adela de la Torre is the Professor of Chicana/o Studies and Director of the Center for Public Policy, Race, Ethnicity and Gender at the University of California, Davis. Dr. de la Torre received her Ph.D. in Agricultural and Resource Economics in 1982 from the University of California, Berkeley. Her research interests include: border/immigration policies, health-care access/finance issues, Latina/o health, as well as the risk and cultural factors associated with HIV/AIDS transmission. Julia Mendoza is a third-year law student at the University of California-Davis King Hall Law School. Ms. Mendoza is a student attorney at the King Hall Law School Civil Rights and Immigration Clinic.

¹ Leo R. Chavez, *Borders and Bridges: Undocumented Immigrants from Mexico and Central America*, in ORIGINS AND DESTINIES: IMMIGRATION RACE AND ETHNICITY IN AMERICA 254-255 (Eve Howard ed., Wadsworth Publishing Company 1996).

² A “pull factor” is a common term used to describe a strong factor for encouraging or attracting immigrants.

³ BILL ONG HING, *DEFINING AMERICA THROUGH IMMIGRATION POLICY* 68-70 (Temple University Press 2004).

Historically, the United States has lagged in developing a forward thinking, multinational immigration policy. Argentina, however, has provided an interesting template for addressing immigration that supports both economic success for employers and immigrant employees as well as a process for rapid normalization of legal and undocumented immigrants. Unlike the case of NAFTA, the MERCOSUR agreement included specific labor market policies that were mutually beneficial for participating countries.

Thus, although both countries may be motivated by self interest and a degree of popular support with regard to immigration policy, the U.S. has lagged in its ability to handle

It is the responsibility of lawyers and policy analysts in the Latino community to encourage a political shift toward developing meaningful immigration reform and to create immigration legislation that values the maintenance of our communities.

meaningful reform that addresses key economic domestic interests and is placed within the context of meeting minimum human rights needs. The United States’ immigration policy response may be seen as a protectionist strategy that undermines its position within a global and free trade environment. Within the context

of greater economic and political cooperation across the Americas, U.S. policymakers can learn some important lessons from its sister nations about humane, competitive immigration policies.

It is the responsibility of lawyers and policy analysts in the Latino community to encourage a political shift toward developing meaningful immigration reform and to create immigration legislation that values the maintenance of our communities. As the cultural makeup of the United States continues to evolve, policies and laws are still constructed within a racist rhetoric from the past. There is a huge political cleavage in this country regarding how the immigration ‘problem’ will affect our future. It is important to realize that at the core of this problem is the protection of our communities.

ENDNOTES

⁴ Philip Martin, *Does the U.S. Need a New Bracero Program?* 9 U.C. DAVIS J. INT’L L. & POL’Y 127, 128-29 (2003).

⁵ Kristi L. Morgan, *Evaluating Guest Worker Programs in the U.S.: A Comparison of the Bracero Program and President Bush’s Proposed Immigration Reform Plan*, 15 BERKELEY LA RAZA L.J. 125, 127-29 (2004).

⁶ Jorge Durand et. al., *Mexican Immigration to the United States, Continuities and Changes*, 36 LAT. AM. RES. REV. 107, 109 (2001).

⁷ Shannon Leigh Vivian, *Be Our Guest: A Review of the Legal and Regulatory History of U.S. Immigration Policy Toward Mexico and Recommendations for Combating Employee Exploitation of Nonimmigrant and Undocumented Workers*, 30 SETON HALL LEGIS. J. 189, 197-98 (2005).

⁸ HING, *supra* note 3, at 129.

⁹ Christopher David Ruiz Cameron, *Borderline Decisions: Hoffman Plastic Compounds, the New Bracero Program, and the Supreme Court’s Role in Making Federal Labor Policy*, 51 UCLA L. REV. 1, 25-26 (2003).

¹⁰ *Id.* at 3.

¹¹ HING, *supra* note 3, at 130.

¹² *See United States v. Brignoni-Ponce*, 422 U.S. 873 (1975). In this case the officers relied on a single factor to justify stopping respondent’s car: the apparent

ENDNOTES CONTINUED

Mexican ancestry of the occupants. On certiorari, the Supreme Court held that except at the border and its functional equivalents, officers on roving patrol could stop vehicles only if they were aware of specific articulated facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicle contains undocumented immigrants. Although Mexican ancestry alone could not be sufficient basis to warrant the stop, it is allowed as a significant factor and is the most significant factor in practice. In the dicta of the holding, the court acknowledges its acceptance of the 'modest' imposition on the Fourth Amendment Right guaranteed under the Constitution.

¹³ In his recent visit to Mexico, President Bush left Mexico without reaching concrete agreements with the new Mexican president on a host of issues, from greater cooperation on attacking drug traffic to extending protections for Mexican farmers who grow corn and beans. But as he sought to mend ties with Mexico, Bush vowed to step up his efforts to persuade Congress to approve a bigger guest worker program for Mexican migrants and to provide a path to citizenship for millions of immigrants living in the United States illegally, most of them from Mexico and Central America. Alfredo Corchado, *Calderón: My relatives may be in U.S. illegally On last day of Bush visit, Mexican president looks at positive aspects*, THE DALLAS MORNING NEWS, Mar. 15, 2007.

¹⁴ Carl Hulse and Robert Pear, *Immigration Bill, Lacking 15 Votes, Stalls in Senate*, N.Y. TIMES, June 8, 2007.

¹⁵ Michael Falcone, 2008: *Immigration Fall Out*, The Caucus, N.Y. TIMES, June 8, 2007, available at <http://thecaucus.blogs.nytimes.com/2007/06/08/2008-immigration-fallout/> (last visited Oct. 15, 2007).

¹⁶ *Id.*

¹⁷ Teresa Watanabe, *Businesses, Families Have a Lot Riding on Immigration Change*, L.A. TIMES, May 21, 2007.

¹⁸ Editorial, *The Immigration Deal*, N.Y. TIMES, May 20, 2007.

¹⁹ Sen. Robert Menendez, D-N.J., attempted to push an amendment that would encourage the shifting U.S. immigration policy away from keeping families together in favor of attracting more foreign workers. The Mexican-American Political Association and other immigrant right advocates called this proposal "the New Anti-Family 'Point System.'" Despite a desperate push, Senator Menendez acquired seven votes short of the 60 needed. Voting against him were 44 senators. The Menendez amendment would have allowed more than 800,000 people who had applied for permanent legal status by the beginning of 2007 to obtain green cards based purely on their family connections. This would have eliminated the family preference for most relatives who have been waiting for green cards on or after May 2005. Mexican American Political Association, *The Immigration Debate Update*, June 7, 2007, http://www.mapa.org/_06_07/debate.html (last visited Aug. 15, 2007).

²⁰ Will Sullivan, *This Bargain Wouldn't Sell*, U.S. NEWS & WORLD REP., June 18, 2007.

²¹ "The Bureau of Labor Statistics (BLS) projects that nearly 6 million new jobs will be created between 2004 and 2014 that require only short-term on-the-job training. However, the available supply of native-born workers to perform this labor is shrinking. Among the native-born population, fertility rates are falling, workers are growing older and better educated, and labor force participation rates are flattening. Immigrants, in contrast, are more likely to be younger and to have only a high-school education or less. The temporary worker program currently under consideration, which is capped at 200,000 per year, is unlikely to accommodate even the current level of demand for less-skilled workers. Moreover, because none of the workers who enter the country under the new temporary program would be permitted to stay, the program cannot contribute to the long-term growth of the U.S. labor force and cannot respond to increasing demand for workers in the future. Under the temporary worker program, no more than 400,000 less-skilled immigrant workers are added to the U.S. labor force each year because all temporary workers have to return home after 2 years." Bureau of Labor Statistics, *Occupational Employment, Training, and Earnings database*, available at <http://www.bls.gov/emp/home.htm> (last visited Aug. 15, 2007).

²² Stewart Lawrence et al., *Out of Sync: New Temporary Worker Proposals Unlikely to Meet U.S. Labor Needs*, American Immigration Law Foundation, June 2007, available at http://www.aifl.org/ipc/policybrief/policybrief_060707.shtml (last visited Aug. 15, 2007).

²³ Secure Fence Act of 2006, 42 WEEKLY COMP. PRES. DOC. 1891, 1891 (Oct. 26, 2006).

²⁴ *Id.*

²⁵ Jonathan Weisman, *With Senate Vote, Congress Passes Border Fence Bill*, WASH. POST, Sept. 30, 2006.

²⁶ Editorial Pages Desk, *Fencing over Immigration*, L.A. TIMES, Sept. 21, 2006, at B14.

²⁷ Nicole Gaouette, *Border Bill Takes a Detour; The Senate Moves to Vote on a 700-mile fence, but a Farm worker Program is Now at Issue*, L.A. TIMES, Sept. 29, 2006, at A1.

²⁸ Mexican-American Political Association, *supra* note 21.

²⁹ Jim Chen, *Yo Soy Peregrino Fronterizo*, Jurisdynamics, Nov. 1, 2006, available at <http://jurisdynamics.blogspot.com/2006/11/yo-soy-peregrino-fronterizo.html> (last visited Aug. 15, 2007).

³⁰ The treatment of Chinese immigrants by federal, state, local governments and the public in the 1800s represented society's desire for Anglo-Saxon homogeneity and constitutes an important example of "racialized" practices of U.S. immigration law (Johnson 16-18). The now infamous Chinese exclusion laws essentially barred all immigrants of Chinese ancestry, and those Chinese immigrants that violated those laws faced serious repercussions. The efforts to exclude Chinese immigrants from the United States were fueled by the negative attitude toward people of Chinese descent (Johnson 17).

Another group that suffered the racist intent of U.S. immigration laws was the Japanese. What is important to note in this case is that both legal immigrants and citizens of Japanese ancestry were denied basic civil rights during this period. The decision to intern Japanese Americans and Japanese immigrants during World War II exemplified the difficulty in drawing legal distinctions between citizens and non-citizens who share the same ancestry. Subsequently, the U.S. government placed all Japanese in a homogenous category of "enemy" regardless of citizenship (Johnson 21).

Anti-immigrant laws historically have been influenced by the political climate. An end to the exclusion of Chinese immigrants from the U.S. shores resulted during World War II when China became an important ally in the war effort. As a result, in 1943 Congress allowed a minimum quota of Chinese immigrant visas and naturalization for Chinese immigrants (Hing Table A-1). The exclusion laws were relaxed only when the U.S. saw the political advantages of the strategy.

Another important example of how race impacted treatment of immigrants is the case of the internment of the Japanese during WW II. After the Japanese were placed in internment camps (which included small farmers and agricultural workers), the farm labor shortage in the U.S. became acute, particularly with the onset of the War and the subsequent adverse impact on the labor supply for U.S. agricultural production. It is during this period that the U.S. established a significant guest worker program that would set the political tone for low-wage immigrant labor in the United States, that is, the Bracero Program. From 1942 to 1964 the Bracero Program became the primary vehicle for legal entry from Mexico for low wage immigrant labor. It provided an important magnet for Mexican migration to the US as well as an important stimulus for continued legal and undocumented migration to the US to address the shortage of low skill labor in targeted sectors of the economy. (Acuña 286). In 1964, the Bracero program ended during a period of massive and successful civil rights and labor union mobilization in the United States (United Farm Workers-AFL-CIO). Nevertheless, the legacy of this period was immigration policy that was largely influenced by popular sentiment. This occurred despite the fact that Federal law continued to provide no real mechanism to sanction employers in their use of immigrant labor, particularly undocumented labor in key low wage sectors of the economy. Sources: RODOLFO ACUÑA, OCCUPIED AMERICA: A HISTORY OF CHICANOS 285-289 (4th ed., Longman 2000); HING, IMMIGRATION AND CIVIL RIGHTS 16-21 (Temple University Press 2004).

³¹ In response to the recent attempt to formulate a comprehensive immigration plan, Senator Feinstein (D-Calif.) reported, "[I]n my 15 years I've never received more hate or more racist phone calls and threats." Janet Hook and Nicole Gaouette, *Immigration Bill Drew Fire from Both Sides*, L.A. TIMES, June 9, 2007.

³² Argentina experienced its most significant immigration surge from 1857 to 1913 from mostly Spain and Italy; the country still is a site of migratory flows due to migration networks and macroeconomic economic conditions within Latin America. Conformación de la Población Argentina, available at <http://www.argentina.gov.ar/argentina/portal/paginas.dhtml?pagina=1669> (last visited Oct. 16, 2007).

³³ Argentina's Constitution is the second oldest constitution in the Americas. Although it was influenced by the Constitution of the United States, it is argued that the Argentine Constitution guarantees more rights than those set forth in the U.S. Constitution's Bill of Rights. The Argentine Constitution was revised extensively in 1994 to further emphasize the allotment of economic and social rights not only to citizens, but to all inhabitants of Argentina. See Alberto F. Garay, *Federalism, the Judiciary, and Constitutional Adjudication in Argentina: A Comparison with the U.S. Constitutional Model*, 22 U. MIAMI INTER-AM. L. REV. 161, 201-02 (1991).

ENDNOTES CONTINUED

³⁴ “The Federal Government shall foster European immigration; and may not restrict, limit or burden with any tax whatsoever, the entry into the Argentine territory of foreigners who arrive for the purpose of tilling the soil, improving industries, and introducing and teaching arts and sciences.” CONST. ARG. Article 25 (1994).

³⁵ According to a recent empirical study by Julia Albarracín, between 1970 and the 1990s there was ample evidence in the Argentine popular press to suggest that both political actors as well as the general population preferred European immigration over non-European immigration from bordering Latin-American countries. Her study also suggested that Argentine immigration policies during the study period were developed to allow for preferential treatment and more liberal incorporation policies for European immigrants as compared to non-European immigrants, which appear to be independent of macroeconomic conditions during the study period. Julia Albarracín, *Explaining Immigration Policies in Argentina during the 1990s: European Immigration, “a Marriage in Sickness and in Health”* 4 (presented at the 2003 meeting of the Latin American Studies Association, Dallas, Texas), available at <http://lasa.international.pitt.edu/Lasa2003/albarracinjulia.pdf> (last visited Oct. 16, 2007).

³⁶ Both the *CIA World Factbook* and the *Censo Nacional de Población* (National Census conducted by the Argentine National Institute of Statistics) assert that the ethnic make-up of Argentina constitutes of 97-98% ‘white’/ ‘European.’ Although there are no studies that discuss the ‘Social Construction of Whiteness’ within Argentina, the authors suggest the theory that, considering the similar histories of immigration and the documented existence of the Argentine indigenous make-up of the country, the definition of ‘White’ and ‘European’ as identities might be different in Argentina than the United States. The authors suggest that what may be described as racism in Argentina against immigrants from bordering nations may reflect classism, which is rather pronounced in Argentine culture. It is clear that given the lower class position of most immigrants that migrate from bordering countries such as Bolivia, this influences the cultural interpretation of immigrants in Argentina. Immigrants that are perceived to move successfully up the economic ladder are largely viewed in a more favorable light than those groups that do not economically assimilate into the mainstream. Thus, although racism does exist within certain segments of Argentine society, these beliefs have less influence on current immigration policy that targets or discourages certain groups of immigrants. *Censo Nacional de Población*, available at <http://www.indec.gov.ar/webcenso/index.asp> (last visited Oct. 16, 2007); *CIA World Factbook*, Argentina, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ar.html> (last visited Oct. 16, 2007).

³⁷ “All inhabitants of the Nation are entitled to the following rights, in accordance with the laws that regulate their exercise, namely: to work and perform any lawful industry; to navigate and trade; to petition the authorities; to enter, remain in, travel through, and leave the Argentine territory; to publish their ideas through the press without previous censorship; to make use and dispose of their property; to associate for useful purposes; to profess freely their religion; to teach and to learn.” CONST. ARG. Article 14 (1994).

³⁸ The Argentinean constitution provides a very liberal framework of rights for immigrants. In the Constitution of 1994 [Article 20], it is clearly stated that foreigners are entitled to the same civil rights as citizens. The law frames immigrants into three categories: transitory residents, temporary residents, and permanent residents. Those who are not able to fit into any particular category are able to apply under an optional category which is maintained by the Ministry of the Interior, who is able to admit a transitory resident for any given reason. Those who do not fit under these specified immigration categories are defined as “inhabitants” under Article 14. “Inhabitants” are defined within the Argentinean Constitution to include foreigners, so that immigrants that do not fit within the constraints of the specific categories are able to acquire additional constitutional

and civil rights, including the right to enter and live in Argentina.

The manner in which these categories are implemented and defined is for the most part left to the discretion of the Executive Branch and to the Department of Immigration, which is able to admit migrants who do not qualify under a particular category. The Supreme Court of Argentina also maintains discretion as to how the immigration laws are implemented. Yet despite the Supreme Court’s maintained right to monitor immigration proceedings, there are only a handful of cases in which the Supreme Court has granted for judicial review. When the Supreme Court of Argentina has chosen to grant judicial review, it has mostly been for the objective of giving definition to the elusive categories that the Constitution defines. Yet its current discretion has been in regards to whether or not immigrants are from the MERCOSUR region. Barbara Hines, *An Overview of Argentine Immigration Law*, 9 IND. INT’L & COMP. L. REV. 395 (1999).

³⁹ Editorial, *An Open Door*, , March 8, 2007.

⁴⁰ Programa Nacional de Normalización Documentaria Migratoria, available at <http://www.patriagrande.gov.ar/> (last visited Oct. 16, 2007).

⁴¹ Laura Gomez Mera, *Explaining Mercosur’s Survival: Strategic Sources of Argentine—Brazilian Convergence*, 37.1 J. LAT. AM. STUD. 109, 109 (2005).

⁴² Andrés Solimano, *Development Cycles, Political Regimes and International Migration: Argentina in the Twentieth Century* 10, Macroeconomía del Desarrollo, Economic Development Division, Santiago Chile January 2003.

⁴³ Thomas Andrew O’Keefe, *Economic Integration as a Means for Promoting Regional Political Stability: Lessons from the European Union and Mercosur*, 80 CHI-KENT L.REV. 187, 205 (2005).

⁴⁴ Law No. 25903, July 13, 2004, B.O., (ratifying Agreement Regarding Residency for Nationals of MERCOSUR Party States).

⁴⁵ Maria Pabon Lopez, *The Place of the Undocumented Worker in the United States Legal System After Hoffman Plastic Compounds: An Assessment and Comparison with Argentina’s Legal System*, 15 IND. INT’L & COMP. L. REV. 301, 329-330 (2005).

⁴⁶ Brian Byrnes, *Making Room; Argentina finds a place for its local immigrants*, NEWSWEEK, Sept. 11, 2006.

⁴⁷ *An Open Door*, supra note 39.

⁴⁸ James Scott, *Argentina a magnet for working poor; New immigration policy drawing thousands with lure of jobs, security*, The Post & Courier, May 28, 2006 at AA1.

⁴⁹ United Nations, *Broad Agreement Emerges That, with ‘Right Set of Policies,’ Global Migration Can Boost Development as Historic Debate Concludes*, Sept. 15, 2006, available at <http://www.un.org/News/Press/docs/2006/ga10496.doc.htm> (last visited Oct. 16, 2007).

⁵⁰ Maria Pabon Lopez, supra note 45, at 327.

⁵¹ In a New York Times commentary, James M. Broder suggests that, “sometimes seems that it takes a catastrophe to create consensus. The Great Depression, Pearl Harbor and Sept. 11 all shattered partisan divisions and led, at least for a time, to enhanced presidential power and a rush of bipartisan lawmaking (some of which political leaders later came to regret). Today, however, the partisan chasm in Washington is deeper than it has been in 100 years, according to some academic studies, as moderate blocs in both parties have all but vanished.” John M. Broder, *Why Washington Can’t Get Much Done*, N.Y. Times, June 10, 2007.

⁵² Mary Lou Pickel, *5 Citizens Sue over Tactics Used Over Immigration Raids*, ATLANTA J. CONST., Nov. 2, 2006.