

Guest Workers and the New Transnationalism: Possibilities and Realities in an Age of Repression

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Introduction

GUEST WORKER PROGRAMS HAVE GENERALLY RAISED THE IRE AND OPPOSITION OF immigrant rights activists in the United States, particularly those most rooted in Mexican and Mexican-American communities. Recalling the abuses of the Bracero Program, worried about the reduced legal protections that might be afforded to those deemed “guests” rather than residents, and concerned about the competition to domestic and immigrant worker incomes that would be induced by a “permanent temporary” labor force, many advocates have publicly resisted discussions of the design of an “acceptable” program.

In the last several years, however, two phenomena have contributed to a quiet softening of the progressive opposition, both in private conversations and increasingly in the public sphere. The first has been the realization of an increasingly transnational existence on the part of immigrants — not just from Mexico, but also from many other parts of the world.¹ Although it has always been the case that many immigrants are sojourners, fully intending to return to their home country and staying only long enough to earn the savings necessary to secure a better existence at home, the increasing depth of immigrant social networks, the continuing U.S. demand for unskilled labor, more established but circular flows of migration, and other factors seem to have given rise to a more transnational population.² Indeed, many believe that even more immigrants would be sojourners

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if not for the increased securitization of the border, with enhanced enforcement operations along the U.S.-Mexico *frontera*, and at airports and other points of entry, inducing immigrants to stay put rather than risk arrest and deportation (Massey, 2003).

The increasingly transnational realities and desires of Mexican workers have given rise to new needs and demands. It is no longer safe to assume that immigrants are on a trajectory to gain legal residency and eventually citizenship, although many do continue to follow that path. Recognizing that some immigrants will choose to be in circulation rather than in residence, some Mexican nationals have, for example, fought for the right to vote in Mexican elections and there has been an upsurge in hometown associations, cross-border indigenous groups, and other trends that suggest a growing identification as trans- or bi-nationals. Meanwhile, activists and others have fought directly for immigrant rights per se, reflecting a political identity that is formed, in part, through the cross-border flow itself.³ To the extent that immigrant rights advocates wish to continue to protect and reflect this population and its needs, new strategies and concepts need to be in place, ones that go beyond obtaining legalization and amnesty and make it possible for some to realize their transnational dreams.

The second phenomenon prompting a questioning of the usual progressive opposition to guest worker strategies was the attempt by President Vicente Fox of Mexico to secure a historic agreement with the United States for an “orderly framework for immigration” (Krikorian, 2001). Fox’ initial elevation of the issues reflected domestic concerns within Mexico, particularly the desire to secure some political advances in the realm of rights for Mexican nationals in the U.S. that would not only regularize the flow of remittances southward, but also make up for the limited probability of rapid reform in Mexico itself in light of a recalcitrant Congress, an unresolved indigenous uprising, and a stubbornly slow economy. The resurrection of the issue in January 2004 by U.S. President George W. Bush — after years of putting off Fox in order to focus his administration’s attention on military interventions in the Middle East — likewise reflected a domestic calculus, particularly the desire to cultivate Latino votes as the 2004 elections approached.

The resurrection of interest in guest worker programs was entirely predictable, and not simply because of the electoral calculus. The longer-term trends that have driven interest in a guest worker program in North America — U.S. reliance on Mexican labor, the failure of the Mexican economy to generate sufficient employment, and the need to protect migrant workers versus the desire of employers to clarify the rules of engagement in their favor — remain in full force. Moreover, the U.S. labor union forces that have often been implacably opposed to such programs in the past have been struggling to take a more sympathetic position toward immigrants in general and toward some sort of “earned legalization” program in particular, a position not entirely at odds with Fox’ original strategy of trading off a guest worker arrangement for “regularization” of existing Mexican migrants.⁴

Of course, the urgency of developing a progressive position on this issue was seemingly derailed by the collapse of U.S.-Mexico talks on this issue in the wake of the 2001 attacks on New York and Washington. With the subsequent militarization of U.S. immigration policy, immigrant rights advocates went on to more immediate issues, such as protecting the employment of immigrant airport workers, fighting for adequate civil rights protection for those picked up by the Immigration and Naturalization Service, and preventing a spillover of such enforcement to a broader targeting of undocumented residents. But the Bush proposal has forced the issue back on the table: with temporary work across borders an increasing norm, and guest worker programs clearly on the agenda, it is important for progressives to define their own vision and policy recommendations.

Anticipating this evolution and hoping to explore the parameters that might define a reasonable position with regard to guest worker programs, in fall 2001 we entered into a research partnership to investigate the question. The research team included Susan Alva, a long-time activist engaged in issues of immigration with a history of organizing with the United Farm Workers and an institutional base at the time of the partnership in the Coalition for Humane Immigrant Rights in Los Angeles, and Manuel Pastor, a university professor who has published in Latin American Studies and U.S. urban issues and who also has a history of activism around issues of Latino economic and political empowerment in California. We worked together to design an interview strategy and instrument to gauge the opinions and ideas of leading activists on the potential for guest worker programs. The interviews were conducted by Susan Alva, who relied on her history as an advocate to generate the appropriate list of leaders, secure interview appointments, and gain the trust of the interviewees — especially necessary since we were seeking to explore privately held positions to determine what might eventually emerge in the public debate that is beginning to unfold.

The results were perhaps surprising. Activists expressed the usual worries about labor exploitation, but they also recognized that permanent residence might not be the goal of some immigrant workers and that creating easier mechanisms for such transnational existence might therefore be important. In short, “behind the scenes,” there was some support for such a guest worker program, including one based on a certain hierarchy of rights, ranging from those considered baseline for humane existence, such as labor protections, to more extensive provisions, such as the right to vote, that might be more reasonably limited.

However, certain essential elements were stressed as necessary to make such a program acceptable. These included avoiding ties to specific employers or industries, allowing guest workers to follow a path to permanent residence should they change their mind in mid-visit or wish to return subsequent to their time as a “guest,” and securing adequate guarantees of rights for guest workers and their families. In short, beyond the solid wall of public opposition stood a more nuanced view, and the interesting question is whether such nuance will be allowed

to emerge in the context of the debate on the Bush plan and the alternatives being crafted by others in Congress.

We begin the article with a brief review of contemporary U.S. guest worker programs and their characteristics. We then outline the key questions and principles that should guide an evaluation of such programs and new alternatives, drawing on the results from our interviews with immigrant rights advocates. We close by considering the recent Bush proposal and other emerging plans. In our view, the Bush proposal falls far short of the ideal, but we suggest that a nuanced opposition that accepts transnational realities will better challenge the administration's unilateralist thinking on immigration reform.

Guest Worker Programs in the U.S.

Guest worker programs create the opportunity for migrants to obtain temporary legal employment in another country. The most significant guest worker program to take place in the U.S. was the Bracero Program, under which 4.6 million Mexicans were admitted to work in U.S. agriculture between 1942 and 1964 (Martin, 2000: 1).⁵ Initially launched to alleviate wartime labor shortages in agriculture, the number of workers under *bracero* contracts peaked at just over 60,000 in 1944 and tapered to 20,000 by 1947. Agricultural interests were, however, interested in maintaining a ready supply of labor and the program requirements were revised to allow even more workers entry. By 1955, the number of *braceros* reached nearly 400,000 and did not fall below that level until 1961, when a public outcry over conditions in the fields led to new public policy attention.⁶

The public outcry rose from stories of abuse, including those documented in Ernesto Galarza's landmark 1956 study, *Strangers in Our Fields*, and a highly influential Edward R. Murrow 1960 documentary entitled *Harvest of Shame* (Leiken, 2002: 20).⁷ Both documented terrible conditions, including workers who were routinely denied full pay, partly through charges for meals and other camp provisions. For some, the struggle about the program continues to this day, with a vibrant movement of *ex-braceros* still seeking back payment for work conducted under contract and held back as forced savings.⁸

Since employer desire for an exploitable workforce did not evaporate with the disappearance of the Bracero Program, undocumented immigration filled the bill, particularly in agriculture.⁹ Some of this was the direct substitution of legal guest workers with undocumented replacements. However, the process of undocumented immigration was also spurred by other changes in the immigration system. Nearly simultaneous with the ending of the Bracero Program came the 1965 amendments to the 1952 Immigration and Nationality Act (INA), which repealed the old national quota system and created new opportunities for migration from Mexico and elsewhere. While this fueled legal immigration, it also created the opportunity for increased undocumented immigration by those riding the social networks established by documented migrants.¹⁰

As undocumented immigration from Mexico continued to grow, U.S. policy-makers, after sharp debate, decided to try to craft a historic compromise, one that combined tightening future immigration with a regularization of the situation of currently undocumented migrants. The result was the Immigration Reform and Control Act (IRCA) of 1986. But the extensive, albeit imperfect, amnesty for the undocumented embodied in IRCA did not prevent new flows as anticipated, nor did the dependence on Mexican and other low-skilled labor disappear; indeed, as Cornelius (1998) has argued, the demand for Mexican immigrant labor has become “structurally embedded,” particularly in places like California.¹¹

Undocumented migration continued to address some of this labor need, but there are also several contemporary guest worker programs in the U.S. in the post-IRCA period. The first is the H-2A visa program, under which agricultural employers who can certify that domestic workers are unavailable at the prevailing wage (termed the Adverse Effect Wage Rate) are allowed to contract with temporary workers to fill available spots. The H-2 program has a long pedigree, having started with the importation of Caribbean workers during World War II, and expanded as the Bracero Program came to a close. However, the program never really took off until IRCA led to a revision in labor standards within the H-2 program.

Even now, the program remains small. According to Yeoman (2001: 42), there are only 42,000 workers on these visas; an even more generous estimate by the Employment Policy Foundation (2002) puts the number at about twice that. Still, the operation of the H-2A program has been important to agriculture — and its operation has frightened immigrants’ rights activists. There are countless tales of abuse, including forced and unpaid overtime, as well as employers who intentionally cut the harvesting season short, forcing guest workers to pay their own way home since the requirements of the program allow employers to forego that cost if the season is unexpectedly short. As even the U.S. General Accounting Office reports, workers in the program “are unlikely to complain about worker protection violations, fearing they will lose their jobs or will not be hired in the future.” In the words of one worker, “what you see, you must remain silent” (Yeoman, 2001: 42).

Related to the H-2A program is the H-2B program, which is designed for seasonal workers who are not in agriculture. To hire an H-2B worker, employers must certify that the demand is temporary and that they have tried to find U.S. workers. Examples here include workers at ski resorts, musicians for concert seasons, etc. The numbers in this category have grown in recent years to rival those under H-2A visas; generally, these workers have fewer formal protections than do H-2A workers, but they are also generally more skilled, improving their bargaining power in the labor market and labor process.

The third important contemporary guest worker program in the U.S. involves the H-1B visa (Udansky and Espenshade, 2001).¹² A key distinction, aside from

the skill level of the temporary worker (an H-1B worker must have at least a B.A. degree and be fulfilling a job that requires that degree), is that it is explicitly possible for an employer to petition to adjust the guest workers' status from temporary to permanent resident or immigrant while the guest worker is still employed in the U.S. As Martin, Chen, and Madamba (2000: 13) note, this makes the program akin to a "probationary immigrant" program. In addition, employers simply need to "attest" that they have been unable to find U.S. workers at the prevailing wage, versus the more complicated labor certification process. Finally, H-1B workers are allowed to bring spouses and children, with the spouses precluded from obtaining employment (unless they obtain their own H-1B visas), but the children have the right to attend school in the U.S. H1-B workers are allowed three-year stays, with a renewal available so that the total stay can be six years.

As with the H2-A program, there are abuses, especially with young professionals who work for long hours at relatively low pay. The lower attestation standards allow employers to more easily claim that no U.S. workers are available. Even a U.S. Department of Labor student concluded that the H-1B program "serves as a probationary try-out employment program for illegal aliens, foreign students, and foreign visitors to determine if they will be sponsored for permanent status" (in Martin, Chen, and Madamba, 2000: 19). Given the high benefits of legal residence at the end of the program, power imbalances are natural — would-be residents aim to please — and the structure is thus a recipe for domination.

Still, the relatively high wages earned by H1-B workers (even if garnered under conditions of relative exploitation) allow them to return to their home countries with significant amounts of financial capital, as well as new connections to marketing opportunities in the U.S. Moreover, the elements of a guest worker program that benefit workers most — the possibility of adjusting to permanent residence and the ability to bring one's family — are only built into a program that is available to "skilled" workers, suggesting something about relative bargaining power and the interests of employers.

Evaluating Contemporary Programs

There are as many objectives behind guest worker programs as there are interests. Host country employers like programs that structurally tip power in their favor and hence further both the exploitation of migrant labor and the ability to leverage migrants against domestic workers. Sending-country governments appreciate programs that insure return, so that remittance flows and investments from migrant savings return as well. Workers are immediately hoping to maximize their income and their choice. Immigrant rights activists and immigrants themselves are concerned with worker exploitation and ways to stabilize distressed communities.

Our objective in evaluating programs is squarely with the worker and community side of the picture: Which program features help or hinder the welfare of

those (and their families) that undertake the migratory risk and the work? To get at this, we think it useful to interrogate existing guest worker programs and the proposed alternatives with the following questions:

- How Is the Demand for the Worker Established?

Under current law, the need for workers can be determined by either certification or attestation. The standards of certification are higher — the employer has to establish that an effort was made to recruit local workers — while attestation relies on the good faith declaration that no one else is available. Unions and other labor advocates worry that the looser standards of attestation can lead firms that become dependent on immigrant labor to never make an effort to find others in the labor market, much less improve labor conditions, and that this will deepen their dependence on this labor and worsen conditions for migrants themselves.

- Who Contracts — Private Actors or the State?

Relationships with guest workers are currently determined through a mix of labor contractors working with private employers in the U.S. or through government-based brokering of demand and supply. Although the Bracero Program is widely recalled as a negative experience, some authors have contended the early years were marked with better protections for Mexican workers, including a refusal to send *braceros* to areas marked by anti-Mexican discrimination (García y Griego, 1996). Others have spoken positively of the Canadian guest worker program, in which Mexican consular officials help to administer the program and inform workers of their rights, and Canadian officials play a role in labor protection as well.¹³

- Is the Contract Tied to a Particular Employer?

All current guest worker programs in the U.S. tie the worker to a particular company or employment sponsor. This creates a disincentive for workers of whatever skill-level to protest ill treatment; lacking the capacity to exit, such workers lose their voice as well as their rights.

- Is the Program Limited to Particular Sectors?

Limiting guest worker programs to particular sectors of the economy is less onerous than limiting the employment relationship to one firm. Still, constraining workers' mobility is likely to limit options and power — and such sectoral agreements are also likely to have negative consequences for productivity growth in any particular sector. Agriculture, for example, has become reliant on immigrant labor, particularly undocumented labor, and this has impeded investment in mechanization that might raise skills and hence wages. Instead, employers invest resources in pushing for more open borders, larger guest worker programs, or reduced INS enforcement. When capital has mobility but labor does not, power is necessarily imbalanced.

- Are There Labor Protections and Enforcement Mechanisms?

All current guest worker programs contain language that addresses labor rights and protections. The problem is the inherent risks in asserting those rights and insufficient resources and political will to implement and protect against retaliation. It is critical to ascertain enforcement mechanisms and assure that unions and other actors from civil society are invited to play a role in securing labor standards.

- Are There Broader Family Rights?

Because current guest worker programs are intended for sojourns, such programs generally actively discourage or forbid bringing family members. The notion is that this will cause the guest to set roots, thus undermining the temporary nature of the stay. The fact that the H-1B program allows this is of interest; we explore this below, but it suggests how the H-1B is often a practice run for regular immigrant status.

- What Are the Paths for Eventual Legal Residency?

Currently, guest worker programs are not intended to be entry points for eventual residency. However, this is the *de facto* case for those with H-1B visas. The broader question from the view of workers' interests is whether participation in a guest worker program necessarily precludes a decision to stay and/or return to become a resident. We noted above that the old model of immigration — in which an immigrant made a one-way trip to the United States with permanent residency the goal — is not necessarily the case for new transnational workers. On the other hand, programs that only allow circularity preclude worker choice.

How do the currently existing programs — those prior to the new Bush alternative — stack up along these dimensions? H-2A worker demand is set via certification, although the active presence of undocumented workers in the agricultural sector drives wages downward and makes it easy to prove that few U.S. workers are interested in employment. Such workers are obviously tied to the agricultural sector, but they are also tied to a particular employer; if the employer is no longer interested in the worker's services, the guest worker must return to the home country. Contracting is done privately, with no formal state intervention along the lines of the Canadian program. H-2A workers cannot bring along family and have no path to eventual legal residency. This is very much like indentured servitude, but with no possibility of residence for good behavior.

H-1B workers are recruited via attestation, a lower standard than that faced by H-2A workers. Although the contract is tied to a particular employer, the sectoral range is broader in terms of the range of industries and the requirement that the worker have a B.A. and a job that requires it. Over 50% percent of H1-B visa holders work in computer-related industries, suggesting a *de facto* sectoral bias (Employment Policy Foundation, 2002). Still, the sectoral spread is broader.

Contracting is also done privately, but the relative skill of the workers makes them stronger agents in the bargaining relationships. Finally, it is possible to bring family along and though the formal structure is limited to temporary work, the reality seems to be that these contracts are precursors to permanent residency.

Interviewing Advocates

Which principles do those active in the immigrant rights movement think could inform a decent guest worker program? Traditionally, immigrant advocates have been implacably opposed to such programs. Yet as one activist put it at a May 2002 conference on advancing the rights of immigrant workers, "If cross-border life is irreversible, then maybe we need cross-border institutions." Another national-level activist attending the event echoed this view, noting the contradiction of celebrating the right to mobility and yet insisting on a unidimensional view of the migratory experience, in which the main defense of immigrant rights involved legalization, ending employer sanctions, and other measures focused on those already here. In this leader's words, "If we support the right of mobility, we must support the right of temporary work."¹⁴

Such comments, made in early 2002 in the wake of September 11 but well before the unveiling of the Bush plan, seemed to mark a sea change in the attitudes of immigrant advocates toward guest worker possibilities. That they were issued in a closed meeting reflects an underlying political reality: advocates have been worried that any softness on their part toward guest worker programs will be interpreted as a go-ahead signal to conservative forces, and will create a backward-looking struggle on how to resist business initiatives to exploit domestic and immigrant workers alike.

Yet in this era the changing transnational life of migrants, the political possibilities opened up by Fox' initial effort to couple regularization with a guest worker program, and the AFL-CIO's increasing interest in some version of a similar coupling was leading some advocates to quietly consider and discuss the parameters of a good program. In this context, we decided to organize our interviews and other research activities around two key questions: (1) Given the transnational existence of many individuals, is some form of guest worker program actually appropriate? (2) Acknowledging the strategic value of public positions against guest worker programs, is there some space for reforms and program designs that would garner some support among immigrants rights advocates?

Together we created an interview instrument with a series of questions that would allow interviewees to identify key immigration issues, particularly in the wake of September 11 (as part of a related effort to gauge the broad state of the field), and then to clarify their stance regarding guest worker programs. Alva first field-tested the survey with several individuals. Then we collectively revised the survey instrument in light of her experience; the final version is included as an appendix. Alva's long-term history in the movement engendered trust by the

respondents, so we probed behind the public positions of groups and leaders. We eventually completed interviews lasting from two to four hours with six immigrant rights activists/organizers. We also conducted a focus-group-style interview at the annual gathering of the National Day Laborer Organizing Network, with perspectives ranging from recent arrivals to long-time residents, legal residents to the undocumented, and single workers to workers with families. Finally, we collected information using participant observation at various meetings of immigrant rights advocates.

Among the general themes to emerge from these conversations was perhaps the surprising degree of support for guest worker possibilities. This was not simply due to a view that “it’s coming, so let’s make the best of it.” Rather, there was a sense that a recognition of transnational existences needed to replace older approaches, including the view that migrants to the U.S. would eventually stay, making passage to citizenship and full rights the key issue. Practicality set in: many supported an ideological view of “hemispheric citizenship” *a la* Jonas (1999), but this was not on the agenda of any nation-state. Moreover, there was a sense that individuals should be more decidedly focused on where to plant their roots to enjoy full enfranchisement. Surprising to us was the view of some that extending voting rights in the host country might be impractical, even undesirable.¹⁵

Much more thought has gone into guest worker strategies than is readily apparent from more public discussions and meetings. Several interviewees went into significant detail about possible features and referenced guest worker programs in other countries. A few had a wistful sense about the Bracero Program, due partly to its connection to their family migration histories, and could even enumerate positive aspects of that arrangement. Significant thought had gone into the dimensions of a guest worker program that would best protect workers and communities, which we discuss below.

Finally, the intrigue with, and support for, guest worker programs was always coupled with a great deal of caution about the impacts or repercussions of this “break in resolve.” One fear was that an indication of potential support for a *particular* guest worker program could be seen as a green light to move ahead with *any* type of program. Given the lack of clear consensus on this topic among activists — partly because the open conversations during the interviews and focus group are so uncommon — there was concern regarding a limited capacity to combat negative or limited guest worker programs should an opening be afforded. This is a useful warning to progressives in the current debate on the Bush proposals.

Translating to Policy

Which general principles might structure a decent guest worker program? Many activists insisted that the fundamental goal of a guest work program must not be to solve illegal immigration or address particular labor shortages, but rather to facilitate cross-border existence. However, even if this broad goal is

paramount, the introduction of such workers can dampen wages within the U.S. Thus, a related goal is to insure that efforts to maximize the welfare and choice sets of guest workers are consistent with improvements in the standard of living for domestic workers, be they citizens or longer-term immigrants. Activists insisted on this, partly to avoid the native-born versus immigrant clashes the right wing seems to thrive on.

Which program features might address these concerns? Ruhs' (2002) remedy is to insure that guest workers be allowed a degree of mobility between employers, a feature missing from current guest worker regimes. He stresses the importance of creating clear avenues for permanent residence and family reunification, a point echoed by many activists. For Ruhs, the sharp dichotomy between skilled and unskilled workers is unfair and future programs ought to take a more even-handed approach. Ruhs proposes mechanisms that would channel the "economic rents" or superprofits generated from using foreign workers to alleviate any negative consequences for domestic workers — that is, to overcome the resistance of domestic workers through side-payments for displaced workers and perhaps through funds invested in productivity to reduce dependence on low-wage labor. Unfortunately, Ruhs' discussion is too vague for us to ascertain how to effectively shield domestic workers from wage competition.

Durand and Massey's (2001) approach is specific to Mexican migrant labor, and it finds modest echoes in the proposed Bush initiative. They suggest two-year visas that would be renewable once, but only after the migrant has returned home. The visa would not be tied to a specific employer or position, and workers would have a right to visit and find employment. Mexicans using this system would pay the U.S. Treasury a fee of \$300 to cover administrative costs and perhaps to fund certain cross-subsidies to the losers from immigration mentioned by Ruhs. These measures would be coupled with "regularization" of the status of long-term Mexican migrants in the U.S., a recommendation that differs from Bush's proposal (which seems to offer to a very limited subset of the people already here vague and limited promises regarding immigration status). Regularization would enhance the bargaining power of such migrants, and counter downward pressures on wages from new guest workers, particularly if the latter are protected by new government standards.

Our view and that of the activists we contacted is that a decent program would explicitly include legalization to improve the situation of those who are here, regardless of country of origin. Undocumented individuals could choose to apply for permanent legal residence, or enter a formal guest worker program that permits them to return to their home country or apply for permanent residence at a later date. To facilitate this broad program, other impediments to permanent legal residence would be dropped, including financial requirements.

We think — and our informants insisted — that certain features would be critical for future flows. Any guest worker program needs constant, aggressive, proac-

tive, and adequately funded public-sector vigilance regarding labor protections. Government regulation is thus a significant component and is key to protecting labor rights. Since the sending and host governments have a stake in the success of these programs in terms of meeting employer interests, it is inadequate to leave the defense and protection of workers' rights solely in governmental hands.

Our interviewees and focus group participants suggested several prescriptions for monitoring labor rights. For example, nongovernmental organizations and other members of civil society should help to assure proper implementation and worker protections. Similarly, nontraditional partners such as unions, academics, and immigrant worker associations are needed to develop more objective and sound methods for determining the need for guest workers. Collective bargaining should be encouraged, building on the wave of organizing already underway among immigrants. Finally, to advance the protection of labor and collective bargaining rights, visas should be issued and the notion of contracts between guest workers and employers, labor contractors, or the state eliminated.

It is critical that fees for participation in the guest worker program (*a la* Durand and Massey) apply to migrants and employers alike. Fees could cover implementation costs, but there should be an additional tax on employers. The regulation scheme we envision would be more extensive and would include significant efforts to facilitate labor organizing and other ways of protecting worker rights; making employers pay for this levels the playing field. Employer fees would tend to reduce dependence on guest workers and help to clarify, for the purpose of sharing, economic rents derived from this labor force.

Durand and Massey are silent on two critical issues: family unification and the right of return. Guest worker programs for the unskilled preclude family participation partly in the fear that family ties will foster permanent residence (that the H-1B program allows for family members indicates it was largely designed to "field-test" workers who may have permanent jobs). In our view, it is inhumane to exclude families. Few guest workers would choose to bring their entire family, but those who wish to should be allowed. The right of return involves what happens when one's time as a "guest" is over. Banning the possibility of permanent residence is a recipe for exploitation and is antithetical to a strategy of improving the lot of transnational workers. Even if required to return home after a particular employment sojourn as guest workers, they should not be denied the right of return as a migrant. Indeed, there should be a process by which guest workers can apply for permanent residency should family and neighborhood ties lead to a decision that staying would be better. To prevent abuse of the program, criteria for granting such requests could be developed and they should apply equally to skilled and unskilled workers.

Many of our interviewees raised two final points. The first notion is that although guest worker programs should not be limited to any one nationality, it is worth exploring the logic of testing new programs with certain regions, perhaps

coordinated with regional trade agreements. The second point is that all immigration reforms, including guest worker programs, should address root causes, such as economic development programs in the sending or home country. This call for a positive regional approach to development is also stressed in Jonas (1999).

The New Terrain

Our suggested principles are not the only guidelines being offered for guest worker programs. In its push for a guest worker program and regularization before September 11, the Mexican government seemed willing to trade away principles that we and immigrant activists believe to be essential: the right of return, full labor protection, and family unification. Although Mexican and U.S. government interests were quite compatible, the U.S. administration resisted Mexico's entreaties due mostly to concerns over domestic backlash. As Ayon (2001) suggests, the Mexican government's chief interest was in regularizing the flow, not the current immigrants in the U.S. Mexico seeks to assure a significant return. The U.S. government was equally interested in alleviating labor shortages in agriculture and other low-wage sectors, and hoped to do so without triggering a massive and expensive amnesty for current residents.

Of course, the anti-immigrant hysteria following the September 11, 2001, attacks on New York derailed the discussion of guest worker programs. Immigrant advocates turned their attention to the basic protection of immigrants under siege, continued to make progress with new labor union allies, and in fall 2003 staged an Immigrant Workers' Freedom Ride modeled after the Freedom Rides of the 1960's Civil Rights Movement. The Mexican government kept up pressure to resolve migration issues, but the Bush administration's foreign policy focus centered on mobilizing military and diplomatic momentum for its interventions in Afghanistan and Iraq.

Several factors would assure the return of guest worker issues: the transnational realities of workers and employers would demand it and Latino political forces, important to presidential campaigns, had a vested interest in how it might serve and expand their constituencies. Not surprisingly, immigration reform resurfaced in the 2004 presidential election year, with guest worker proposals front and center in that debate.

In 2003, border-state Republicans kicked off a stream of proposals, first from Texas Senator John Cornyn in the summer and from Arizona Representatives Jim Kolbe and Jeff Flake in the fall. Their proposals focused on expanding and streamlining guest worker programs; the few possibilities for this to lead to permanent residence relied heavily on ambiguous criteria such as employer cooperation and economic indicators. Neither bill created any other mechanism for incorporating the millions of undocumented immigrants currently residing in the U.S. These bills generated little media attention or support, even among Republicans, but they did set the stage for what followed.

During this period, farm worker organizations and unions again entered negotiations with growers over a permanent residency program for farm workers. Described as “a major compromise between grower and farm worker advocates,”¹⁶ AgJOBS, as it is popularly known, was introduced by Democratic Senator Ted Kennedy and Republican Senator Larry Craig. The effort has enjoyed unusual bipartisan support. The bill falls short of our standards since it does nothing for the bulk of immigrants in the non-agricultural sector of the economy. However, two of its major features have intrigued and displeased immigration advocates. The first allows eligible farm workers currently in the U.S. to “earn” permanent residence by working at least three more years in the fields. Since no such mechanism is envisioned for guest workers that come later, the bill fails to meet our criterion of creating a pathway for such guest workers to decide their own transnational futures.

The second component of AgJOBS substantially streamlines the current H-2A guest worker program for farm workers, making it easier for growers to use the program. It does this by narrowing the pool of domestic workers from which growers are required to recruit, as well as the pool of domestic workers protected against displacement by guest workers. Growers would be allowed simply to declare that they are in compliance with these requirements, with review limited to “completeness and obvious inaccuracies.” Current law requires the Department of Labor to certify the accuracy of the statements, based on evidence submitted by the grower. This bill falls far short of protecting domestic workers, but some argue that there are so few such workers in agriculture that further protections would be window dressing.

AgJOBS has prompted much soul-searching and debate among immigrant rights activists. Well-respected organizations such as the United Farm Workers Union, FLOC (Farm Labor Organizing Committee), and PCUN (Pinos y Campesinos Unidos del Noroeste) are promoting the bill and seeking support from colleagues; indeed, support for AgJOBS from such authentic groups and voices has compelled some who usually reject a limited sectoral approach to immigration reform to consider backing it. MALDEF and LULAC, for instance, have issued statements of support “with concerns.” Other advocacy groups, such as the National Immigration Forum and the National Immigration Law Center, are actively promoting the bill in their meetings, conference calls, newsletters, and e-mail lists. In these spaces, AgJOBS is being coupled with another bill, the DREAM Act (which grants permanent legal residence to eligible young students), as the two most important bills for immigrant communities to pass.

Other national and regional coalitions, such as the National Network for Immigrant and Refugee Rights and the American Friends Service Committee, are caught between the need to support organizations that represent constituencies that would benefit from parts of AgJOBS, and others who have raised concerns and alarm. There is some worry that the generally hostile environment for im-

migrants is causing advocates to set their standards too low, but farm worker groups have countered that they are merely dealing with the immediate realities and needs of their constituents.

Farm worker groups covered significant new ground in negotiating AgJOBS. It includes more mechanisms for workers to assert their labor rights; protects spouses and children against deportation, makes them eligible for permanent residence along with the qualifying worker, and gives them the right to self-petition for permanent residence; and allows federally funded legal services offices to represent AgJOBS applicants, creating an exception to the 20-year-old prohibition against assisting undocumented immigrants in any legal matter. Other important provisions are lifted from IRCA, the 1986 amnesty program, such as confidentiality and proactive outreach requirements.

Even AgJOBS supporters acknowledge that the bill is far from perfect. In contrast to the principles and criteria outlined above, and to IRCA, AgJOBS raises significant policy concerns, such as conditioning permanent residence on future employment within the same industry and creating a substantially streamlined guest worker program with no path to permanent residence.

After over two years of silence on the subject, President Bush's first major policy statement of election-year 2004 centered on matching willing employers with willing workers. He acknowledged the contributions made by immigrants and the economic dependence on them, as well as the failures of the current system, but reiterated that he is "firmly against blanket amnesty." Instead, his proposed guest worker program for current and future undocumented immigrants consisted of three-year visas, possibly renewable, followed by a mandatory return to their home country.

Citing his resolve not to "give unfair rewards to illegal immigrants," Bush made clear there would be no amnesty or legalization program allowing any of the millions of undocumented immigrants currently in the U.S. to apply for permanent residence. Their only option, even for the many who have resided in the U.S. for decades, would be to apply for a temporary guest worker visa and return to their home country upon its expiration. From there, permanent residence could only be sought through "normal channels," although Bush stated a willingness to increase the number of permanent resident visas being issued. He offered little clarity regarding legal and labor protections for guest workers, a fact that worries many who have seen abuses under the current and much smaller guest worker programs.

Immigrant rights activists uniformly praised the president for acknowledging the immigrant experience and the failures of the current system, but they strongly criticized the actual proposal. Policy analysts considered it to be little more than a rehash of the Kolbe-Flake bill and called on Bush to support DREAM and AgJOBS as a sign that he was not just engaging in election-year pandering. Mexican President Vicente Fox praised the proposal, but many groups in Mexico have been

critical. Fox' praise was suspect since the bill fell far short of what he had called for two and one-half years earlier; the Mexican leader, it was suspected, had set standards too low, having little to show otherwise in his presidency so far.

After Bush's announcement, Senator Kennedy failed to take the much-anticipated lead beyond AgJOBS. Instead, Senate Democratic Leader Tom Daschle and Republican Senator Chuck Hagel from Nebraska introduced the most comprehensive reform bill to date, which consisted of three main features. First, permanent residence could be granted to persons who have been in the U.S. at least five years, with Transition Visas for persons with at least two years of residence. Second, its two-part "Willing Worker Program" granted short-term guest worker visas and longer-term, renewable guest worker visas that could lead to permanent residence after three years. Third, and most unique, are provisions dealing with the family visa backlog. These would exempt spouses and minor children of permanent residents from the quota system, just as immediate family members of U.S. citizens are currently exempted, making them eligible to immigrate immediately. Additionally, these visas would no longer be counted against the worldwide quota, thereby freeing up visas for other family members, some of whom have been waiting in line for decades. This provision has spread to non-Latino migrants and helps to broaden the constituency for immigration reform.

As comprehensive as the Daschle-Hagel proposal is, it is flawed when compared to the principles and criteria described above. For example, the permanent residence program for current residents requires the rather onerous "continuous physical presence" for the last five years, as well as proof of past and future employment. The proposal also calls for additional resources for border enforcement. Other shortcomings are that the bill "leaves in place the damaging Supreme Court decision in *Hoffman Plastic Compounds v. NLRB*, in which the Court restricted the remedies available to an undocumented worker whose employer violates worker protection laws," that it "relies too heavily on employer attestations," and that the earned legalization component fails to provide permanent residence opportunities for all currently undocumented immigrants.¹⁷

It is worthwhile to try to get a sense of the moral and political challenges currently facing immigrant rights activists in this new political quicksand. Some of the groups most supportive of AgJOBS have pointed to flaws in the Daschle-Hagel proposal that also exist in AgJOBS. Contrast the effusive language applied to AgJOBS with the rather lukewarm reception the more comprehensive Daschle-Hagel proposal has received. Recall that farm worker groups condemned guest worker programs wholesale at the May 2002 conference in which some leaders called for consideration of new transnational realities, and that some farm worker advocates argued, "there are no labor shortages, a stable work force comes from improved wages and working conditions, and guest worker programs undermine organizing efforts."

Conclusion

Given these divergent positions and interests, what sort of guest worker program is likely to emerge? It depends, of course, on the balance of forces. Part of this is international: the most humane periods of the Bracero Program seem to have come when Mexico was sufficiently strong to protect its nationals. However, the interests of the Mexican government and those of the U.S. have become increasingly aligned and President Fox, whose power inside and outside Mexico has been diminished by his party's poor showing in the 2003 legislative elections, is not in a strong bargaining position. (Evidence of this is his enthusiastic embrace of a Bush program he formerly might have rejected.) Yet, national power may not be crucial. Instead, the balance of class power and the relative strength and clarity of immigrants and their advocates may insure better outcomes.

We embarked on this project partly for that reason: part of a group's power derives from its capacity to organize and pressure policymakers, but power is often enhanced when advocates can demonstrate that they have an alternative approach that makes sense and is realistic or *factible* in the political realm. We believed that behind public proclamations against guest worker programs might lay a serious and honest interest by advocates in thinking through the best possible program. Our research process, which coupled activist and academic methodologies, helped to create a way in which central concerns could surface and, we hope, eventually inform the public debate.

In doing this, we have uncovered a set of basic principles that advocates seem to accept and that could help to structure positions in the future. Progressives, in our view, cannot afford pure, unadulterated opposition to the emerging guest workers alternatives. We must understand the emerging transnational realities and propose nuanced alternatives that resonate with those most affected. We must be willing to engage in real debate, even as we rely on a firm compass and set of beliefs regarding the rights of transnational workers.

Currently, this willingness to be visionary and pragmatic is especially critical. Advocates may disagree on the relative merits of AgJOBS versus the Daschle-Hagel proposal, but we cannot afford the fragmentation that would let the flawed Bush plan pass unchallenged through the political currents. In a world in desperate need of more humane policies for immigrants and non-immigrants alike, creativity in our thinking and action will be necessary to carve new approaches that can benefit all residents.

NOTES

1. See, for example, Rivera-Salgado (1999) on the Mexican case, Chinchilla and Hamilton (1999) on Central Americans, Jonas (1999) and Veléz-Ibáñez and Sampaio (2002) on the Americas, and Sassen (1996) on an international view.

2. Foner (1997) rightly notes that transnationalism is not an entirely new phenomenon and that immigrants at the turn of the 20th century also led transnational existences. Although this is a

useful caution against the enthusiasm that this is an entirely new trend (for one of the most powerful statements of this position, see Glick Schiller et al., 1992), even Foner acknowledges that the current period, with its improvements in transport and communication, is likely to deepen the phenomenon (see also Vertovec, 1999, and Weber, 1999, with the latter focusing on the antecedents in the Mexican case).

3. For one of the clearest articulations of this position on a theoretical level, see Jonas (1999).

4. As noted, the Mexican government was suggesting, at least initially, that any temporary guest worker program would be coupled with some “regularization” of the status of nationals already in the United States. Thus, amnesty for currently undocumented immigrants was part of the framework and was generally seen as a key starting point for establishing a new program (see Muñoz, 2001). Of course, given political opportunism, the extent of an amnesty might have been traded off for a more extensive guest worker program and so “regularization” might have been largely a bargaining chip.

5. Martin (2000) notes a program during World War I in which the entry requirements for Mexican immigrants were eased if they were coming to work in the United States with contracts of less than 12 months. See also Basurto et al. (2001).

6. García y Griego (1996) notes that Mexican figures for the numbers of *braceros* differ from the U.S. numbers used here during the wartime period, but the two sets of figures are nearly identical during the 1950s.

7. The Galarza volume, *Merchants of Labor: The Mexican Bracero Story*, was published in 1964 as the program was coming to an end; *Strangers* was a research study published in 1956 (see García y Griego, 1996: 69).

8. See, for example, the Alliance of Braceros in the Salinas Valley; information at www.new-citizen.org/english/bracero_eng.htm.

9. Martin (2001) suggests that the Bracero Program bred a dependence on low-wage foreign labor and hence induced the subsequent wave of undocumented migration once the flow was cut in 1964.

10. See Massey’s (1999) discussion on how relative wages seem to drive immigration from Mexico less than preexisting social networks do; as Massey notes, “the steady accumulation of social capital through the progressive expansion of interpersonal networks between migrants and nonmigrants yields a powerful feedback loop that results in what Gunnar Myrdal called the ‘cumulative causation’ of migration over time.” Massey (1999: 10) estimates that 20% of all Mexicans aged 15 to 64 made at least one trip to the United States, with the percentage rising to 41 for heads of households. This has implications for the impacts of guest worker programs over time, a point we return to later.

11. Subsequent federal legislation, such as the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996, has made it even more difficult for undocumented residents, showing that the “grand bargain” may have been intended to create an even weaker, albeit structurally embedded, labor force.

12. Formally, there are two other programs, one for transfers of foreign workers within multi-nationals and a small program for individuals who have, for example, excelled in the arts. These are not central to our concerns here.

13. According to the Mexican government, 80% of Mexican workers are repeat hires, reflecting at least some degree of satisfaction on the part of employers and workers. Yet the program is quite small, bringing in less than 10,000 Mexican workers in the year 2000 (about 55% of all the workers in that program), and there are numerous restrictions, including requirements that guests be married or have children (to induce return) and that they have no more than an elementary school education (to insure that the migrants will be less mobile while in Canada); see *Rural Migration News* 7,3 (July 2001), at http://migration.ucdavis.edu/rmn/Archive_RMN/jul_2001-11rmn.html. All this limits the potential applicability and desirability of the Canadian model. A follow-up set of discussions with Canadian activists suggests problems in the program.

14. Comments made at the conference, “Advancing Policy-Relevant Research of the Problems

of Immigrant Workers,” Institute of Industrial Relations, University of California, Berkeley, California (May 4, 2002).

15. This may reflect a concern that nascent Latino political power might be diminished by new voters less steeped in contemporary political struggles of U.S. minorities and less identified with the demands associated with that group. We disagree with this perspective, but some activists expressed this concern.

16. The phrase comes from a National Immigration Forum Policy Update memo dated October 17, 2003.

17. The quotes come from the National Immigration Law Center Update No. 3–27 (January 23, 2004), and the analysis of the failure to provide residence opportunities comes from a nationwide conference call sponsored by the National Immigration Forum and the National Council of La Raza on January 21, 2004.

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Appendix: Interview Instrument

Name of organization:
 Name of interviewee:
 Name of interviewer:
 Date and location of interview:

Basic description of organization

1. How long has your organization been around?
2. How large is it?
3. Who are its constituents?

If immigrant community, generally what:

- Nationalities
- Length of residence
- Family situation (here alone? with family?)
- 4. What are its areas of work?
- 5. What activities does it engage in to carry out its work?

Organization's goals and strategies

6. What are your organization's goals, both short term and long term?
7. What are your strategies for achieving those goals?
8. How will Sept. 11 impact those goals and strategies?

Policy questions

9. Putting aside (looking beyond?) the current political climate, what do you believe to be the long-term policy issues?
10. If you had the power, what do you believe should be the long-term policy solutions or goals?

If they identify a #1 issue, follow up with questions.

"Guest worker" programs

(Confirm that this is a confidential interview; we are interested in your views and not just your public position.)

11. What has been your thinking on "guest worker" programs?
12. How would you reconcile opposition to "guest worker" programs with support for the right of mobility?
13. How would you reconcile opposition to "guest worker" programs with the possibility that some immigrants may not want to live permanently in the U.S.?
14. Is there such a thing as a decent "guest worker" or temporary worker program?
15. Could such a program be pursued in the current political climate?

Employer sanctions

16. What, if anything, do you propose as a replacement for employer sanctions?
 If answer is more and better enforcement of labor protections, ask how such a scenario would play out.
17. What do you think of proposing a strengthening of anti-trafficking and anti-smuggling laws?
18. Do you think you even need to propose any replacement for employer sanctions? If so, why?

Future thinking

19. How do your short-term strategies tie in with your long-term vision? (How do your long-term objectives frame your immediate responses in order to set the stage?)
20. How would you revise or reframe your strategies? Any reframing of alliances? Political realities?