

# OTHER AUTHORITIES

## Part I

## OTHER AUTHORITIES

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## **2011 UPCOMING SESSION ISSUES**

This document is a report of selected issues that are likely to be addressed during the 2011 Session of the Georgia General Assembly, and is solely intended to provide a general overview. If more information on a particular area of interest is needed, please contact the Senate Research Office.

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## **2011 UPCOMING ISSUES**

### **BANKING AND FINANCIAL INSTITUTIONS**

#### **Georgia Foreclosure Process/MERS**

The conveyance of real property involves two instruments in Georgia: the mortgage and the Deed to Secure Debt or Security Deed (Deed). The Deed conveys title from the borrower (mortgagor) to the lender (mortgagee) and is a promise to repay the debt. The Deed contains the terms of the debt obligation, including the terms of default. The mortgage is the security for the debt which creates a lien on the property and allows the holder of the mortgage to initiate foreclosure upon default.

All mortgages can be foreclosed judicially; nonjudicial foreclosures are allowed only when specifically permitted by the security deed or mortgage. Because judicial foreclosures are costly and time consuming, most lenders in Georgia use the Fannie Mae/Freddie Mac Uniform Security Deed Instrument which provides for nonjudicial foreclosures. The majority of foreclosures in Georgia are nonjudicial foreclosures.

#### **I. Nonjudicial Foreclosure**

Once the borrower defaults, the secured creditor<sup>1</sup> must advertise the foreclosure sale notice in the local legal organ for four consecutive weeks. The secured creditor must mail notice of the foreclosure sale to the borrower 30 days before the sale is to take place. The borrower is not required to receive actual notice of the sale. The notice mailed to the borrower must contain the contact information of the entity that has the authority to negotiate the terms of the mortgage with the borrower; however, such negotiation is not required. The law does not establish a specific remedy when the notice does not contain this information. Subprime borrowers are entitled to additional notice of the right to cure and the intent to foreclose.

Foreclosure sales are conducted on the county courthouse steps on the first Tuesday of each month. If the sale price does not cover the cost of the borrower's debt, the lender may seek a deficiency judgment by reporting the sale to the superior court within 30 days of the sale. The judge will hold a hearing, which the borrower may attend, to determine whether the house was sold for its true market value. The judge will also determine whether the notice, advertisement, and the sale followed state law. If the lender does not seek a deficiency judgment, the sale is complete and the foreclosure is recorded with the clerk of the superior court.

#### **II. Borrower's Remedies in a Nonjudicial Foreclosure**

The borrower has limited remedies available in nonjudicial foreclosure proceedings. Prior to the foreclosure sale, the borrower can redeem the property by curing the default. Alternatively, the borrower may file an injunctive suit to stop the foreclosure process before the sale has taken place. After the foreclosure sale, the borrower may file a wrongful foreclosure suit. There is no statutory right of redemption which would allow the borrower to redeem their property after the foreclosure sale.

#### **III. Judicial Foreclosure**

Lenders may foreclose upon the mortgage by filing a petition for foreclosure with the superior court. Once a petition has been filed, the court issues a rule nisi (an order to show cause) that requires the principal, interest, and costs of the mortgage to be paid to the court. The rule nisi must be published twice a month for two months or served on the borrower at least 30 days before the money must be paid to the court.

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<sup>1</sup> Georgia statutes do not specifically define secured creditor. O.C.G.A. §44-16-162 indicates a secured creditor is a creditor who holds title to the security instrument.

After the rule nisi is published or served on the borrower, the borrower may file objections and claim any defenses.

If the borrower files objections or presents a defense, the issue is tried by a jury. If the borrower fails to pay the money into the court as required by the rule nisi, and also fails to maintain a defense against the foreclosure, there is no issue for trial by jury, and the court may render judgment for the amount due on the mortgage and may order the mortgage property sold.

#### IV. Mortgage Electronic Registration System and Foreclosures

Mortgage Electronic Recording System (MERS), which operates nationwide, was created by mortgage bankers in the 1990s to reduce the paperwork involved in transferring mortgages. Approximately 60 percent of the nation's residential mortgages are recorded in the name of MERS, Inc. According to legal scholars, the MERS results in unpaid recording fees, lack of clarity in land title records, and improper foreclosures.

MERS has no employees and its parent company, MERSCORP, has approximately 50 employees. Despite having no employees, MERS has "thousands" of assistant secretaries and vice presidents. These secretaries and vice presidents are actually employees of financial institutions that register loans with MERS. MERS permits these non-employees to register as officers of MERS and sign and record loan documents as officers of MERS.

MERS does not systematically track beneficial ownership rights of the mortgages registered on its system. Individual members have the responsibility of maintaining records of ownership on MERS. MERS does not keep digital or hard copies of documents. Additionally, MERS members are not legally bound to update the information on the database<sup>2</sup>.

According to critics, MERS allows non-employees to identify as officers in order to avoid paying recording fees after the mortgage is assigned to a trust or other business entity. The loan originator should pay a recording fee to assign the mortgage to the trust or business entity, but instead, they pay a fee to MERS to record the mortgage in MERS's name. From that point on, no additional mortgage assignments will be recorded because MERS will remain the mortgagee of record throughout the life of the loan, although in reality, the mortgage may change hands several times.

Critics question whether MERS has a meaningful economic interest in the repayment of mortgages recorded under their registration system and whether they have the authority to initiate foreclosure proceedings. It is unclear whether MERS is an agent or the actual mortgagee. The company claims to be both; however, a company cannot be both an agent and a principal with respect to the same right. If they are the mortgagee, then the mortgage has been separated from the Deed (promissory note). *Carpenter v. Logan*, an 1872 Supreme Court case, held that a mortgage assigned without the note (Security Deed or Deed to Secure Debt) "is a nullity." When the note and the mortgage are split, only the person holding the mortgage has a legal right to foreclose. However, the mortgage holder will never experience default because the promise to repay is in the note which they do not hold. Likewise, the note holder may experience default as they hold the promise to repay, but they do not hold the mortgage lien which grants them the right to foreclose. If MERS does not hold both the note and the deed, they may lack standing to initiate foreclosure proceedings in Georgia.

In 2008, the Georgia Senate attempted to address the issue of who has authority to initiate foreclosure proceedings. Senate Bill 531 originally contained language which invalidated foreclosure sales not conducted in the name of the individual or entity holding the legal rights of the secured creditor. The House Judiciary removed this language based on concern about the

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<sup>2</sup> O.C.G.A. §44-16-64



possible effects on the secondary mortgage market<sup>3</sup>. The Senate agreed to the House substitute bill and it passed into law.

Senate Bill 531, as passed, requires foreclosure notices sent to borrowers to contain the contact information for a party with full authority to modify the terms of the loan, and the security instrument must be recorded with the county clerk's office prior to foreclosure. These requirements simplify matters for borrowers and decrease the confusion over who owns the loan.

## **ECONOMIC DEVELOPMENT**

### **Preparing the Savannah Port for the Future**

The Savannah Port is one of Georgia's major economic engines. Georgia's deepwater ports and inland barge terminals support more than 286,476 jobs throughout the state annually and contribute \$14.9 billion in income, \$55.8 billion in revenue and \$2.8 billion in state and local taxes to Georgia's bustling economy. The port activity accounts for 7 percent of Georgia's total employment, more than \$60 billion in sales and nearly \$27 billion in gross state product. The port handled more than \$46 billion in cargo last year, or nearly 8 percent of all cargo containers shipped to and from the U.S.

According to the Georgia Ports Authority, deepening the harbor approaching the Port of Savannah is essential to ensuring long-term growth for the nation's fourth busiest container port. A 48-foot depth would allow the port to handle the super-sized container vessels that will begin traversing an expanded Panama Canal in 2014. The super-sized container ships are referred to as post-Panamax ships. This project is known as the Savannah Harbor Expansion Project.

About 70 percent of Savannah's container traffic comes through the Panama Canal, mostly from Asia. If Savannah, the second busiest East Coast port, is not ready when the larger lanes open in 2014, business would inevitably go elsewhere. Currently, the Port of Norfolk can accommodate post-Panamax ships and certain terminals at the Port of New York can accommodate post-Panamax ships.

The U.S. Army Corps of Engineers has been studying the deepening project for more than a decade. It has now reached the final engineering and design phase and is weighing various plans for increasing the depth from the current 42 feet to 44-48 feet. If the necessary federal funding can be secured, deepening of the Savannah River should begin in 2012. The project, expected to be completed by 2014, will cost an estimated \$450 million over time. The Georgia legislature in recent years has provided \$150 million for the initial stages project because of the economic importance of the port.

### **The Success of Georgia Tax Credits for the Film Industry**

In 2008, Georgia enacted House Bill 1100, the Entertainment Industry Investment Act. We are now seeing the benefits of this legislation across the state. In Fiscal Year 2010, more than 348 productions were shot in Georgia. Production budgets increased from \$647.6 million to \$744.3 million during the same time. Altogether, the industry's economic impact in the state in FY10 came in at \$1.33 billion, up from \$1.1 billion the previous year. According to the Georgia Department of Economic Development, Georgia is now ranked number one in the Southeast, and among the top five states in the nation for film and TV productions.

The foundation of the Act is a 20 percent transferable income tax credit. Production companies that spend a minimum of \$500,000 in the state on qualified production and post production

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<sup>3</sup> 25 Ga. St. U. L. Rev. 265

expenditures are eligible for this credit. This includes most materials, services and labor. The 20 percent credit applies to both residential and out-of-town hires working in Georgia with a salary cap of \$500,000 per person, per production, when the employee is paid by "salary," which is defined as being paid by W2. If the production company uses a 1099 or a personal services contract to hire someone this limit does not apply. The Act also provides an additional 10 percent tax credit if a production company includes a Georgia promotional logo in the qualified finished feature film, TV series, music video or video game project.

## **EDUCATION AND YOUTH**

### **Education Overview**

In the last eight years, Georgia has seen growth in almost every major educational category, including enrollment growth from 1.4 to 1.6 million students. Notably, Georgia's graduation rates have increased from 63 percent to 80 percent, and our dropout rates for 9-12<sup>th</sup> graders decreased from 5.5 percent to 3.6 percent. Along the way, Georgia has increased school choice options with the Georgia Special Needs Scholarship, created 121 charter schools with almost 70,000 students enrolled, and passed school board governance legislation that addresses district accreditation and establishes codes of conduct for school board members.

Additionally, Georgia was recently awarded \$400 million from the federal Race to the Top fund. The monies will be partially dispersed among 25 school systems state-wide who partnered with the Georgia Department of Education to: recruit, prepare, reward and retain effective teachers and principals; adopt standards and assessments that prepare students to succeed in college and the workplace; build data systems that measure student growth and success; and turn around our lowest-achieving schools. These will be evaluated and best practice models will ensue from those that were found to be highly effective.

Georgia continues to struggle state-wide with the SAT. The state-wide average dropped from 980 in the 2002-2003 school year to 976 in the 2008-2009 school year. However, on a positive note, the percentage of African-American seniors in the state taking the test increased from 25 to 30 percent between 2006 and 2009, and Hispanic students also increased their percentages.

Local school governance has been in the papers recently, starting in 2008, when Clayton County Schools saw their accreditation revoked. It was the first in the United States since 1969 to lose accreditation. It should be noted however, that Clayton County has seen their accreditation restored on a probationary basis. Recently, the Southern Association of Colleges and Schools and its parent organization, AdvancED, announced they would be formally reviewing the accreditation of DeKalb County schools and the Atlanta public school system, citing specifically, governance issues within the systems' school boards. If either of these systems have their accreditation revoked, it will trigger provisions found in Senate Bill 84, which passed in the 2010 Legislative Session, allowing the State Board to recommend to the Governor the suspension of all members of the board and the appointment of temporary members to serve in their place.

### **Charter Schools**

In 2008, the General Assembly passed House Bill 881, creating the Georgia Charter Schools Commission (Commission). The Commission, with members appointed by the Governor, Lt. Governor, Speaker of the House, and the State Board of Education Superintendent has the power to approve or deny petitions for Commission charter schools and renew, not renew, or terminate Commission charter school petitions.

In 2009, the Commission approved and provided funding in the amount of \$850,000 for Ivy Prep Academy which is a girl's school with about 300 students in Gwinnett County. Ivy Prep had

been previously denied a charter by the local board in June 2007. Gwinnett, joined by six other systems, filed a lawsuit challenging the Commission's authority to divert to charter schools an amount of funding equal to what the local districts spend on students in their traditional schools. The argument is that the law violates the constitution by diverting what they say amounts to local money. Additionally, the transfer of the students and the funds disrupts the districts' plans for covering fixed costs, such as buildings and central-office personnel. Additionally, it was argued that the law was drafted to broaden the definition of "special schools" further than would be allowed in the 1983 Constitution; such definition only applied to schools for the deaf and blind and vocational schools.

Ivy Prep's attorney argued that the local school districts do not like the new law because it ends the windfall of funding the districts receive from the state through the appropriation of funds based on students who had transferred to charter schools. Additionally, it was argued that the term "Special School" was left broad on purpose in the Constitution, allowing the General Assembly to define it in the Code.

Superior Court Judge Wendy Shoob surprised attorneys on both sides by ruling from the bench in favor of the state and charter schools. The case is now before the Georgia State Supreme Court, with a final ruling expected after January.

## **FINANCE**

### **Georgia Tax Reform Council**

Georgia enjoys a AAA credit rating, and is one of just a few states to have received the latest highest rating. This is very important, for it affects Georgia's ability to borrow and provide for bonded projects. Georgia maintains a balanced policy of revenue primarily through sales and income tax, and this portfolio is one of the primary reasons Georgia enjoys the AAA credit rating; it is a highly valued asset.

House Bill 1405 created the 2010 Special Council on Tax Reform and Fairness for Georgians and further creates the Special Joint Committee on Georgia Revenue Structure which will be authorized to stand only during the 2011 Legislative Session

The Tax Reform Council members include:

**AD Frazier (Chair):** Partner in Affiance, LLC, a Georgia based bank consulting firm, and served as Senior Executive Vice President and Chief Operating Officer of the Atlanta Committee for the Olympic Games.

**Governor Sonny Perdue:** 81<sup>st</sup> Governor of Georgia;

**Brad Dickson:** Maintains a tax practice at Tarpley & Underwood, P.C., an Atlanta based top 25 certified public accounting firm;

**Gerry Harkins:** Partner of LBG Properties, B&G Properties, and Rager Equity Partners and he is currently serving as Managing Partner of Partnerships;

**Jeffrey Humphreys:** Director of the Selig Center for Economic Growth at the University of Georgia's Terry College of Business;

**Roy Fickling:** Owner and President of Fickling & Company in Macon, Georgia;

**Skeeter McCorkle:** President and CEO of McCorkle Nurseries;

**Dr. Christine Ries:** Professor in the School of Economics at Georgia Tech;

**Suzanne Sitherwood:** President of Atlanta Gas Light and 2010 Chair of the Georgia Chamber of Commerce;

**David Sjoquis:** Professor of Economics, and Director of Domestic Programs and Director of the Fiscal Research Program for the Andrew Young School of Policy Studies, at Georgia State University; and

**Roger Tutterow:** Professor of Economics at Mercer University. He previously served as Dean of the Mercer's Stetson School of Business.

The Tax Reform Council has convened six meetings in order to receive economic and industry input from a myriad of professionals, business leaders, state officials, and local government representatives. Additionally, the Tax Reform Council has held eight fact-finding sessions across the state.

The Special Joint Committee on Georgia Revenue Structure will consist of:

- the President Pro Tempore of the Senate;
- the House Speaker Pro Tempore;
- Majority and Minority Leaders of the House and Senate;
- Chairpersons of the Senate Finance and the House Ways & Means Committees (who will serve as Co-Chairpersons); and
- Two members each from the Senate and the House representing both the majority and minority parties in each chamber.

Legislation stemming from the Special Council will be introduced in the House and referred to the Special Joint Committee; legislation receiving do pass and substitute recommendations will be sent directly to the House for an up-or-down vote with no amendments.

The legislation passed by the House will be reported directly to the Senate Floor, where it will receive an up or down vote.

Legislation must be read by each chamber three times on three separate days.

## **HEALTH AND HUMAN SERVICES**

### **Implementing Federal Health Care Reform in Georgia**

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act (PPACA), one of the most sweeping developments in U.S. domestic policy in recent times and a law that is likely to have a profound effect on state policymaking for years to come. According to proponents, the PPACA will extend health care coverage to an additional 32 million Americans. This is to be accomplished through reforms such as an expansion of Medicaid eligibility to individuals under the age of 65 with incomes up to 133 percent of the federal poverty line (FPL) and the establishment of health care exchanges that are intended to make the purchasing of insurance more affordable for individuals (who may qualify for subsidies) and small businesses. Both of these reforms take effect in 2014, as does a mandate that most Americans obtain health insurance or face an annual financial penalty. While the new law does not technically have an employer mandate, it does establish a "pay or play" system beginning in 2014 in which employers with more than 50 employees must offer coverage to their employees or pay fees for employees who receive federal subsidies for health insurance. The PPACA also imposes several new requirements on private insurers, several of which have already gone into effect, including, but not limited to, the following: a ban on lifetime limits on coverage (effective September 23, 2010); a ban on annual limits on coverage (effective in 2014); bans on denying coverage based on preexisting conditions (effective on September 23, 2010, for children and effective for all other persons in 2014); and a requirement that plans allow adult children to remain on their parent's policy up to their 26<sup>th</sup> birthday (effective September 23, 2010). The mammoth new law includes numerous other provisions that touch on a wide range of health policy areas, such as numerous provisions related to Medicare (including a plan to close the Medicare "donut" hole by 2020), the establishment of a national insurance program for long-term care in 2011, and even a mandate that chain restaurants and vending machines display nutritional information (proposed regulation due next year). To pay for itself, the PPACA

provides for approximately \$500 billion in Medicare cuts over the next ten years, including cuts to the Medicare Advantage program, as well as several new taxes and cuts to current tax deductions.

There is no question that the PPACA will drive many important policy decisions made in Georgia in the near future, from readying our Medicaid program for the expansion of eligibility to insuring that the State Health Benefit Plan complies with the law's insurance provisions. Among the most pressing issues that the new Governor and lawmakers will have to contend with is the establishment of a health insurance exchange, an online marketplace that will allow Georgians to purchase insurance coverage based on qualitative rankings of plans. The exchanges are to open in 2014, and Georgia must decide how, if at all, it will operate an exchange of its own. By January 2013, states that plan on operating an exchange must be able to demonstrate to the U.S. Department of Health and Human Services that their exchange is "functional" and will be ready to be up and running by 2014. States have the option of operating their own exchange or joining with other states to establish a regional exchange. States also have the option of doing nothing at all, in which case the U.S. Department of Health and Human Services will operate an exchange in the state. Assuming Georgia wishes to operate its own exchange, key decisions that must be made soon include, but are not limited to, the following:

- What agency within state government or non-profit entity is to oversee the administration of the exchange;
- Whether to operate a single exchange for the individual and small group markets or to operate separate exchanges for individuals (the American Health Benefit Exchange) and for small businesses (the Small Business Health Options Program (SHOP) Exchange);
- Whether to operate a Basic Health Plan. The PPACA gives states the option to create a Basic Health Plan for uninsured individuals with incomes between 133 percent and 200 percent of the Federal Poverty Line (FPL) who would otherwise be eligible to receive premium subsidies in the Exchange. The Basic Health Plan must provide at least the essential health benefits and must meet certain requirements for premiums and cost-sharing. If Georgia chooses to operate a Basic Health Plan, individuals with incomes between 133 percent and 200 percent of the FPL will not be eligible for subsidies in the exchange; and
- Whether to allow the exchange to selectively contract with health insurance plans, limiting the number of plans selling insurance within the exchange, or to accept all plans that seek to do business within the exchange.

Whatever course Georgia's policy makers choose, implementing the provisions of the PPACA will have a substantial effect on the state's budget. Especially of concern to observers is the mandatory expansion of Medicaid eligibility at a time when most states are struggling to maintain their current obligations. The federal government will provide 100 percent funding for the costs of newly eligible individuals for the three years, after which federal funding will gradually decline to 90 percent for 2020 and subsequent years. To provide for the nearly 774,000 Georgians<sup>4</sup> who will be newly eligible for Medicaid, the state will have to make significant new investments in administrative capacity. Although the state has not yet released an official estimate of the fiscal impact of the PPACA on the Georgia Medicaid Program, a report by the Urban Institute for the Kaiser Commission on Medicaid and the Uninsured estimates that Georgia will spend an additional amount in the range of \$714 million to \$1.2 billion on Medicaid between 2014 to 2019 as a result of federal health care reform.

In the immediate future, the PPACA will have a significant effect on the budget for the State Health Benefit Plan (SHBP) as it seeks to comply with the new requirements imposed on insurance plans. The requirement that insurance plans cover dependents until the age of 26 will likely cost the state \$54.4 million in FY2011 and \$113 million in FY2012, though some of this

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<sup>4</sup> As estimated by the Urban Institute.



cost will be borne by higher premiums.<sup>5</sup> The PPACA also calls for insurance plans to cover 100 percent of preventative care costs. Although the SHBP already covers preventative care for members with little or no out-of-pocket cost, this new requirement is projected to cost the state nearly \$5 million in FY2011 and \$10.3 million in FY2012.<sup>6</sup>

As Georgia and other states grapple with implementing the many provisions of the PPACA, they are also mounting challenges to the law's constitutionality. At the heart of most of the litigation is whether Congress has the constitutional authority to require individuals to purchase health insurance. Georgia is one of 21 states currently suing the federal government over the PPACA. Other states pursuing lawsuits include: Alabama; Alaska; Arizona; Colorado; Florida; Idaho; Indiana; Louisiana; Michigan; Mississippi; Nebraska; Nevada; North Dakota; Pennsylvania; South Carolina; South Dakota; Texas; Utah; Virginia; and Washington.<sup>7</sup> In addition to court challenges, at least 40 state legislatures have considered or are considering legislation to limit, alter, or oppose certain state or federal actions to implement the provisions of the PPACA.

## HIGHER EDUCATION

### **Board of Regents' New Policy on Nondocumented Students**

Beginning in Fall 2011, applications to University System of Georgia (USG) institutions will include language that outlines the legal penalties for "false swearing," or knowingly providing incorrect information on the forms. The applications will also require applicants to state whether they are seeking in-state tuition. All USG institutions will be required to verify whether admitted applicants are lawfully present in the United States. Students who are not lawfully present in the United States are ineligible for admission to any institution which did not admit all academically qualified applicants for the two most recent academic years. Five of the 61 USG institutions currently meet that definition: the University of Georgia, Georgia State University, Georgia College & State University, Georgia Institute of Technology, and the Medical College of Georgia.

### **Board of Regents Announces Search for New Chancellor**

On October 7, 2010, Chancellor Erroll B. Davis announced his plans to retire at the end of his current contract year, June 30, 2011. On November 4, Willis Potts, chair of the Board of Regents announced the appointment of a 20 member Search Committee chaired by Regent Sterling. The Committee will develop a job description and list of preferred qualifications for the new chancellor. An executive search firm will assist the Committee's national search. Candidates can be nominated on the website established by the regents for the search, and the Committee will be responsible for narrowing the national field of candidates down to a maximum of five unranked candidates. The credentials of the five unranked candidates will be presented to the full Board of Regents, from which the board will likely select a replacement for Chancellor Erroll B. Davis. At this time, the Committee's first meeting has not been set and a timeframe for the selection process has not been established. Several other universities and university systems are also conducting national searches for new chancellors or presidents, including the Arkansas State University System and University Massachusetts System.

### **Helping Outstanding Pupils Educationally (HOPE)**

Since its creation, HOPE has served over 1.2 million students, providing more than \$5 billion in benefits through the HOPE Scholarship, Grant and GED programs. Recently, the Georgia Student Finance Commission (Finance Commission), which oversees the HOPE program, testified before members of the state Senate and House Higher Education Committees that the

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<sup>5</sup> As reported by the Georgia Senate Budget and Evaluation Office on November 16, 2010.

<sup>6</sup> Ibid.

<sup>7</sup> As reported by the National Conference of State Legislatures as of September 2010.

HOPE program is facing a financial crisis. According to the Finance Commission, HOPE expenditures will exceed lottery funds by \$243 million in 2011 and by \$317 million in 2012. While HOPE does maintain a reserve account for shortfalls, projections indicate a depletion of the reserve account by 2012.

Under Georgia law, the lottery proceeds are the property of the Lottery Corporation<sup>8</sup>. The State of Georgia takes ownership of any net proceeds which are transferred into the general fund by the Lottery Corporation. State law mandates net proceeds contributed to education must equal 35 percent of the lottery proceeds. However, the law also grants the Lottery Corporation discretion to give a lower amount by specifying the 35 percent should be contributed “as practical.” The Lottery Corporation has sole discretion over what amount is “practical.”

Since 1994, the Lottery Corporation has remitted an average of 29.3 percent of lottery funds to the state per year, and the dollar amount remitted to the HOPE program has increased every year except 1998. In 1998, the Lottery Corporation experimented with decreasing the prize-payouts in an effort to remit more money to the HOPE program. According to the Lottery Corporation, granting the Lottery Corporation flexibility over remittance percentages allows them to meet their mission of maximizing revenues for the HOPE Scholarship and Pre-Kindergarten Programs.

## **INSURANCE AND LABOR**

### **Insurance Coverage for Orally Administered Anticancer Medication**

During the 2009-2010 legislative session, Senator Don Thomas introduced Senate Bill 245 which would have required individual and group health benefit plans that provide coverage for cancer chemotherapy treatment to provide coverage for a prescribed, orally administered anticancer medication used to destroy or slow the growth of cancerous cells on a basis identical to intravenously administered or injected cancer medications that are covered as medical benefits. Although the bill was never addressed in committee, similar legislation is expected to be introduced in 2011.

Many believe this legislation is necessary because the economics and practice of cancer medicine have not caught up with the convenience of oral drugs. The oral drugs can free patients from frequent trips to a clinic for IV chemotherapy treatment. Fewer visits might save the health system money as well as time. Moreover, the pills represent an early step toward making cancer a manageable chronic condition, like diabetes.

However, drugs that are infused at a clinic are typically paid for as a medical benefit, like surgery. Pills, though, are usually covered by prescription drug plans, which are typically much less generous; for expensive cancer pills, patients might face huge co-payments or quickly exceed an annual coverage limit. Although sometimes a single insurer is involved, many times, a separate company — a pharmacy benefit manager (PBM) — provides the prescription drug coverage. PBMs continue to treat orally administered anticancer medication as a prescription drug, and thus reject coverage for such pills.

Although Oregon was the first state to pass legislation requiring insurance companies to provide equivalent coverage of oral and intravenous cancer drugs, several other states have followed, and many more states have introduced similar legislation.

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<sup>8</sup> O.C.G.A. §50-21-13

### **Unemployment Insurance Program**

Unemployment insurance (UI) pays temporary cash benefits to workers who have lost jobs through no fault of their own. The UI system is administered as a federal-state partnership. To finance the program, the State levies and collects payroll taxes from employers. The State undertakes most UI administrative activities related to both paying benefits and collecting from employers the payroll taxes that support the program. The funds collected are managed in a trust fund administered by the federal government.

Although Georgia has the lowest unemployment insurance tax rates in the Southeast, the fund has been kept solvent through an influx of federal stimulus funding as well as loans from the federal government. The fund's balance stands at \$431 million, although \$407 million of that are from federal loans. To put this into perspective, the fund's balance stood at \$1.1 billion with no outstanding loans only five years ago. Clearly, the current economic downturn has shown that the trust fund's solvency is fleeting and can become very unstable during periods of high unemployment. Some of the specific questions that may be addressed by the 2011 legislature concerning the unemployment insurance program include:

- The UI system operates counter-cyclically, paying out benefits during recessionary times and collecting revenue during recovery times. Is there a better alternative to this pattern which would provide for a more stable trust fund balance in times of recession and recovery periods?
- How many months' worth of benefit payments should Georgia's UI trust fund maintain to provide an adequate reserve of money available to be paid as benefits?
- What is the ratio of Georgia's UI trust fund balance to Georgia's annual total wages in covered employment that would fund an adequate reserve?
- Is Georgia's UI experience rating system and benefit financing model sound and sustainable? Should the system and the model be amended or revamped?

## **JUDICIARY**

### **Evidence Code Revision**

The current Georgia Evidence Code, which governs the admissibility of evidence in civil and criminal trials, has not been substantially updated since its adoption by the General Assembly in 1863. Because trial practice has changed significantly in that time, judges have had to adjust the rules via case law rather than by statute. This common law approach has been essentially effective, but can lead to confusion and uneven results since the rules that are actually in use are not necessarily those found in the code.

The Federal Rules of Evidence, approved by the United States Supreme Court in 1972 and officially enacted by the United States Congress in 1975, are the result of years of study by law professors, attorneys and judges. Today, the Federal Rules of Evidence have been adopted by 42 states, including every state surrounding Georgia. All courts in these states use the same set of evidence laws when the federal rules have been implemented. By contrast, Georgia lawyers must abide by one set of rules in state court, and different rules in federal court.

The State Bar of Georgia has been studying the issue of updating the evidence code off and on since 1986, and there were several unsuccessful attempts to pass legislation in the early 1990s. For the most part, the Federal Rules of Evidence have been praised as being well-organized, clear, specific and easily accessible. A current legislative proposal before the General Assembly



would adopt the Federal Rules of Evidence almost in their entirety, while retaining a few of the most well-liked Georgia rules.

Opposition to these changes has come mainly from prosecuting attorneys. Their two chief concerns are: the legislation has not been subjected to sufficient debate and discussion from all interested parties; and such major changes to the law will render all prior case law inapplicable, leading to a lack of guidance in using the new laws. Proponents of the Federal Rules of Evidence insist that the changes have been circulating in the legal community for years, despite having been reduced to actual legislation only recently. As to the second argument, having a concise and widely used set of rules will be beneficial to lawyers, because the Georgia case law that exists is often contradictory. In fact, there is abundant federal case law concerning the Federal Rules of Evidence due to its decades of use.

Below is a brief explanation of a few of the major differences between current Georgia evidence law and the changes proposed by the State Bar of Georgia Evidence Study Committee, also known as House Bill 24 from the 2009-10 legislative sessions:

- Hearsay<sup>9</sup>: Georgia is the only state that maintains hearsay evidence as inadmissible in all instances, even if there is no objection at trial. The new law would allow a court to base a decision on hearsay if there is no objection.
- Expert Opinion Testimony: The federal rules regarding expert testimony were adopted in Georgia in 2005 for civil court; the new law would extend it to criminal court, as well.<sup>10</sup>
- Best Evidence Rule<sup>11</sup>: Georgia's version of the rule has not been updated to include photographs, recordings, etc.; the proposed rule applies to all types of recordings, not merely writings.
- Preliminary Question on Admissibility: There are still a few areas of Georgia law that require a jury to decide on the admissibility of evidence; this is an outdated practice. The new rule leaves all admissibility questions to the trial judge; however, the jury remains the final authority of the weight given to admitted evidence.

There are several other sections where Georgia evidence law would be amended in favor of the more modern Federal Rules of Evidence. The proposed changes are widespread and would benefit from further debate to avoid unexpected consequences in our state courts. Overall, however, bringing the Georgia evidence code in line with the federal rules would likely promote consistency with the federal courts and allow Georgia lawyers to become well-versed in only one set of rules.

### **Juvenile Code Revision**

There has been a movement over the past several years to substantially revise the current Georgia Juvenile Code, found in Chapter 11 of Title 15 of the O.C.G.A. The original focus of criminal punishment for juveniles was on rehabilitation. However, an increase in juvenile crime during the 1980s and early 1990s led most states to pass much stricter laws that, in many cases, treated juveniles as adults for sentencing purposes.

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<sup>9</sup> According to Federal Rule 801(c), hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

<sup>10</sup> Code Section 24-9-67.1 governs the use of expert testimony in civil court; the pertinent section closely mimics Federal Rule 703: If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case."

<sup>11</sup> The best evidence rule generally means that a party must produce the original writing, recording or photograph in order to prove its contents, unless it is unavailable. In that case, secondary evidence *may* be admitted.

Here in Georgia, the Juvenile Justice Reform Act of 1994 placed jurisdiction over juveniles aged 13 to 17 who commit one of the “seven deadly sins” in superior court, rather than juvenile court. The seven deadly sins are: murder, rape, armed robbery (with a firearm), aggravated child molestation, aggravated sodomy, aggravated sexual battery and voluntary manslaughter. Juveniles can be sentenced to life without the possibility of parole under this law. The stated goal of the bill was retribution and deterrence, as opposed to rehabilitation.

Many believe these reforms have led to unjust results, including high rates of recidivism in children who do obtain parole, and a disproportionate effect on minority juveniles. African American and Latino juveniles are 45% of Georgia's youth population, but comprise 77.2% of those arrested under current law. There is growing research to suggest that the adolescent brain is not sufficiently developed for mature decision-making, therefore making prosecution as an adult unfair.

A recent study released by the MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice found that a third of children aged 11 through 13, and a fifth of those aged 14 or 15, understood the justice system at a similar level as mentally ill adults who have been found incompetent to stand trial. Also, placing teenagers in adult prisons raises serious safety concerns. According to studies by the U.S. Justice Department, juveniles imprisoned with adults are five times more likely to report being sexually assaulted, and eight times more likely to commit suicide than those held in juvenile facilities.

Beginning in 2004, stakeholders from across the state, including prosecutors, public defenders, juvenile court judges, law professors and the State Bar of Georgia, collaborated to create a proposed model code. The model code became the foundation for Senate Bill 292, introduced by Senator Bill Hamrick at the end of the 2009 legislative session. SB 292 did not move forward during the 2010 legislative session.

The juvenile code is a comprehensive set of laws that governs how our state responds to abuse and neglect of children, violations of criminal law by children, and other issues that require court involvement. Under the current statutory scheme, these issues are improperly commingled. One of the main goals of the juvenile code revision is to create a new organizational structure that separates different types of cases, therefore allowing greater flexibility and fairness. The different juvenile court case types include:

- Deprivation cases involve children who are abused or neglected by their caregivers;
  - Some deprivation cases will lead to Termination of Parental Rights;
  - Foster children nearing age 18 will need Independent Living Services;
- Children in Need of Services are those who commit minor juvenile infractions, such as truancy, disobedience, and running away from home;
- Delinquency cases involve acts that would be crimes if committed by an adult;
  - Notably, SB 292 would have eliminated exclusive jurisdiction in superior court for a juvenile who has committed one of the seven deadly sins; instead, superior court retains original jurisdiction, but the bill would have allowed such cases to be remanded to juvenile court.
  - Due process requires that courts determine whether a juvenile in a delinquency case is Competent to participate;
- Access to Records and Hearings is an issue in juvenile court;
- Emancipation cases, which release parents and caregivers from their obligations to a child, and allow juveniles to take on adult responsibilities.

One major purpose of the juvenile code revision was to ensure that our juvenile court system continues to receive federal funding. States must meet certain federal requirements, and the law as it stands today places that revenue stream at risk. SB 292 would have brought Georgia into compliance with these federal requirements, with such changes as:

- When a child is placed in out-of-home care, the court must ensure the use of case plans and periodic reviews of the case and the placement;
  - Courts cannot place a child in long-term custody without creating a legal guardianship;
- In delinquency cases, the circumstances and amount of time for which a child can be held in an adult detention facility are strictly limited;
  - Children who are in these facilities must be kept completely separated from the adult residents;
  - A child in need of services can be held in secure detention no more than 24 hours before a court hearing and 24 hours after, unless certain exceptions apply.

## **NATURAL RESOURCES**

### **Water Issues**

On July 17<sup>th</sup>, 2009, U.S. District Judge Paul Magnuson ruled that water supply, in the form of withdrawals from Lake Lanier, was not a Congressionally-authorized purpose of Lake Lanier. Authorized purposes were hydropower, navigation, and flood control – water supply was only an “incidental benefit.” Additionally, the Judge determined that the U.S. Army Corps of Engineers (Corps) in its operation of Lake Lanier for water supply exceeded its authority under the Water Supply Act of 1958. The Judge delayed enforcement of the ruling for three years to allow the states to negotiate an allocation agreement or to allow Congress to reauthorize Lake Lanier to be used for water supply. By mid-July 2012, if there is no resolution, the operation of Buford Dam on Lake Lanier will return to 1970s baseline levels. That is, except for certain limited withdrawals that predate construction of the reservoir (namely for the cities of Gainesville and Buford), all withdrawals directly from Lake Lanier will be prohibited, and releases from Buford Dam on Lake Lanier will be severely curtailed.

Governor Perdue outlined a four-pronged strategy to address the Judge’s ruling which consisted of: (1) Appealing the ruling in court<sup>12</sup>; (2) Negotiating a mutually-agreeable water allocation scheme with Florida and Alabama; (3) Pursuing Congressional reauthorization of Lake Lanier for water supply; and (4) Developing a contingency plan, to be implemented if the Judge’s ruling were to take effect. The Water Contingency Task Force was created to evaluate various options for a contingency plan and to make recommendations to the Governor.

In its December 2009 recommendations, the Task Force concluded that it did not foresee the ability of the metro region to meet the potential water shortfall in 2012, even with aggressive mandated conservation measures. Within this timeframe, no new supply options could offer a significant increase in water supply. By 2015, there is a potential contingency solution; however, it requires significant upfront capital of approximately \$890 per million gallons of water. By 2020, a broader set of more cost-effective options exists, as reservoirs could be built or expanded.

The Task Force recommended significant conservation policies regardless of the outcome of lawsuit. In response to this recommendation, the General Assembly passed the Water Stewardship Act of 2010 that creates a “culture of conservation.” It curtails outdoor watering, directs several state agencies to develop incentives for voluntary water conservation, requires the establishment of best management practices for public water supply systems, and requires builders and apartment building owners to more efficiently manage water usage. Additionally in 2010, the General Assembly passed Senate Bill 380, the Water System Interconnection, Redundancy and Reliability Act. This legislation requires the Georgia Environmental Facilities

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<sup>12</sup> On October 5<sup>th</sup>, 2009, Judge Magnuson issued an order asserting that “no injunctive relief was ordered or intended by the court’s July 17, 2009, order.” He stated that an appeal “will only delay and further complicate the resolution of the important claims at issue.”

Authority to complete a thorough and detailed engineering study that develops an emergency water supply plan for all qualified water systems within the Metropolitan North Georgia Water Planning District.

Georgia is also continuing to develop and expand reservoirs within the state as directed by Senate Bill 342, the Georgia Water Supply Act of 2008. A Joint Water Supply Study Committee was created in the Water Stewardship Act which is charged with studying the current status of our state's reservoir system and its needs for additional water supply, including the identification of creative financing options for water reservoirs. Currently, 94 reservoirs are permitted in the state – 78 were permitted and constructed before 2000, 11 have been constructed since 2000, and five have been permitted, but are not in use. There are seven applications for reservoirs, and 25 other potential reservoirs exist, but have not been evaluated for reservoir development. A report is expected to be completed by December of this year.

As of January 2011, no Congressional actions have been adopted to reauthorize Lake Lanier for water supply purposes. Furthermore, there is no public knowledge as to an allocation agreement among Georgia, Alabama, and Florida.

Georgia began taking the necessary steps to manage its current and future water resources years ago by developing a Statewide Water Management Plan (Water Plan). The purpose of the Water Plan, as stated in its enabling legislation, the 2004 Comprehensive Statewide Water Management Planning Act, is to guide Georgia in managing water resources in a sustainable manner to support the state's economy, to protect public health and natural systems, and to enhance the quality of life for all citizens.

The Water Plan provides for: (1) Development of regional resource assessments to determine the quantity of surface and groundwater available to support current and future water uses; (2) Ten, 20, 30, and 40-year forecasts of future population expectations, water demands, wastewater returns, and employment characteristics; and (3) Regional planning – each of the 10 regional water planning councils, with the Metropolitan North Georgia Regional Water Planning District acting as a separate water planning entity, are preparing Water Development and Conservation Plans which will identify the steps and practices to be taken to ensure that the forecasted water needs can be met. The plans are to be finalized and adopted by June 30, 2011.

Over a decade ago, the Atlanta Regional Commission (ARC) realized that the solution to metro Atlanta's water shortage was an interbasin water transfer from the Tennessee River. When ARC (ARC) approached Chattanooga's water supplier about purchasing water, the State of Tennessee responded by unanimously passing its InterBasin Water Transfer Act of 2000, for the admitted purpose of blocking any water transfers to Georgia. Tennessee believes that it can restrict these transfers because Georgia is not riparian to, or located on, the Tennessee River. However, history has shown us that the true boundary line between Georgia and Tennessee is actually north of its current location, at the true 35<sup>th</sup> parallel in the center of the Tennessee River at Nickajack Lake.

In 1802, Georgia ceded the Mississippi Territory to the United States, under an express agreement providing that Georgia's border would reach and cross the Tennessee River at Nickajack Lake. In 1818, Georgia and Tennessee commissioned a joint survey of their border, its mission was to find the 35<sup>th</sup> parallel and mark it on the ground. Due to poor equipment and outdated astronomical charts, the survey party mistakenly placed the line a mile south of its actual location at Nickajack Lake. Tennessee subsequently claimed this faulty survey line to be the border; however, Georgia has never officially accepted it, and instead has repeatedly tried to get Tennessee to correct the mistake. As recently as 2008, the General Assembly passed a resolution urging the Governor of Georgia to initiate negotiations with the Governor of

Tennessee for the purpose of correcting the flawed 1818 survey. If this boundary line is corrected, Tennessee will have no basis for its interbasin transfer ban because Georgia will be riparian to the river.

The resolution also urged the Attorney General to pursue the matter in the U.S. Supreme Court because the Tennessee Valley Authority, which built the reservoir at Nickajack Lake in the 1960s, as a federal entity, must use its own federal water rights in the Tennessee River to satisfy the federal government's promise, in the 1802 Cession Agreement, that Georgia's original riparian access to the Tennessee River would be reserved at Nickajack Lake.

## **PUBLIC SAFETY**

### **Immigration**

#### **Background**

Despite a temporary federal injunction, the recent passage of Senate Bill 1070 (and subsequently amended by House Bill 2162), Arizona has strengthened what most observers have already recognized as the strictest immigration enforcement laws in the nation.

However, a July 28<sup>th</sup> injunction blocked the most controversial provisions just hours before it was to take effect, in the first stage of a legal battle expected to end up in the U.S. Supreme Court. U.S. District Court Judge Susan Bolton in Phoenix issued a temporary injunction against parts of the law that would require police to determine the status of people they lawfully stopped and suspected were in the country illegally. Bolton also forbade Arizona from making it a state crime to not carry immigration documents.

On July 29<sup>th</sup>, Arizona Governor Jan Brewer asked the 9<sup>th</sup> Circuit Court of Appeals to lift the judge's order and allow the law to take effect. If the state loses before the 9<sup>th</sup> Circuit, it is almost sure to appeal to the Supreme Court.

The U.S. Department of Homeland Security (DHS) estimates that Georgia has an illegal immigrant population of 480,000. This population places a financial and logistical burden on State and local government agencies as well as posing public safety issues. In response, the Georgia General Assembly is expected to introduce legislation similar to Arizona's.

The Arizona law was born of understandable frustration over the failure at the federal level to secure the southern border. Illegal immigration, and crime spawned by it, has surged in the state. While Georgia itself has a very comprehensive anti-illegal immigration law, it falls short of Arizona's current laws. At the heart of the new Arizona law, illegal immigration is treated as a state crime, and legal immigrants are required to carry proof of their immigration status. But its most controversial and publicized provision directs local and state police to check the immigration status of anyone whom they reasonably suspect of being in the country illegally and who they have already stopped or arrested for a separate crime. Although critics argue that this will lead to rampant profiling, the law does prohibit law enforcement agencies from considering "race, color, or national origin in implementing" these provisions. Legal analysts disagree whether this language will, in practice, rule out profiling. Critics also argue that this kind of immigration law enforcement is normally left to federal authorities. However, federal law actually allows states to enforce certain aspects of immigration control. In fact, this is something Georgia and Arizona are already doing under the Section 287(g) program.



### Section 287(g) Program

The 287(g) program was established by the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* and authorizes the Secretary of the Department of Homeland Security (DHS) to enter into agreements with state and local law enforcement agencies. Under these agreements, designated state and local officers perform immigration law enforcement functions, provided that the officers receive appropriate training and function under the supervision of Immigration and Customs Enforcement (ICE) officers.

Currently, the Georgia Department of Public Safety, and the Sheriff's offices of Cobb, Gwinnett, Hall, and Whitfield counties participate in the 287(g) program. Arizona's Department of Public Safety, Correction's Department, as well as several local agencies also participate in the program. The difference between the 287(g) program and Arizona's new law is that the 287(g) program carries out this task once the inmate has been charged, booked, and admitted into a local jail. Arizona, however, will require the law enforcement officer to make a reasonable attempt, when practicable, to determine the immigration status of a person involved in a stop, detention, or arrest in the enforcement of any other state or local law or ordinance where reasonable suspicion exists that the person is an alien and is unlawfully present.

A stopped person is presumed to be lawfully present if that person provides any of the following:

- A valid Arizona driver's license or ID card;
- A valid tribal enrollment card; or
- A valid federal, state, or local government issued identification, if the issuing entity requires proof of legal presence before issuance.

If it is discovered that the individual is unlawfully present in the U.S., the law enforcement agency will securely transport the alien to a federal facility or to any other point of transfer into federal custody.

### Willful Failure to Complete or Carry an Alien Registration Document

Aside from being transferred to federal officials, the penalty provision for violating Arizona's law is tied to the person's "willful failure to complete or carry an alien registration document" in violation of federal statutes 8 U.S.C. § 1304(e) or 1306(a). These federal statutes require aliens to be registered and, if 18 years of age or older, to carry, at all times, any certificate of alien registration or alien registration receipt card issued to them by the federal government. A first-time violation of these provisions will result in a misdemeanor conviction, a fine of up to \$100, and up to 20 days in jail. Second and subsequent violations are punished by a similar fine and up to 30 days in jail. In addition to these penalties and fines, the incarcerated person is required to pay all jail costs.

### Employee Verification and Employer Sanctions

As mentioned earlier, even prior to the passage of SB 1070, Arizona already had the strictest immigration laws in the nation that imposed severe sanctions on employers who hire illegal aliens. When much of these employer sanction laws were enacted in 2007, most critics at the time believed they would be overturned since this should be a federal rather than a state responsibility. Despite several legal challenges, federal courts have twice upheld Arizona law in 2008.

What happened in 2008 is instructive. Current federal law penalizes employers who knowingly hire illegal immigrants with monetary fines. But illegal immigration opponents were dissatisfied with the federal law because the fines are nominal and because employers are not truly required to verify that a worker is in the country legally.

In response to lax federal enforcement, Arizona enacted a law that penalizes any employer who hires illegal workers with something far more severe – a suspension of their business license. It

also requires that employers use a voluntary federal online program known as "E-Verify" to determine whether prospective workers are in the country legally. E-Verify is an alternative to the I-9 system. After an employer submits a verification request for an employee, E-Verify either issues a confirmation or a tentative non-confirmation of work-authorization status. If a tentative non-confirmation is issued, the employer must notify the employee, who has eight days to challenge the finding. The employer cannot take any adverse action against the employee during that time. If an employee does challenge the tentative non-confirmation, the employer will be informed of the employee's final work-authorization status.

In 2006, Georgia enacted a similar law ahead of Arizona, but Georgia's law only applies to state and local government, and businesses that contract or subcontract with those governments.

Critics argued that Arizona had no right to pass its own employer sanctions law because immigration is regulated by the federal government and federal law tacitly preempted states from doing so. Moreover, since E-Verify is a voluntary program, the state was exceeding its authority to mandate that E-Verify be used in Arizona.

But two federal courts, including the 9<sup>th</sup> Circuit Court of Appeals, ruled in favor of Arizona. According to the court, the 1986 *Immigration Reform and Control Act*, while specifically preempting state laws that would fine businesses, had not extended that preemption to licensing, since, as the court noted, states, not the federal government, typically have responsibility for this area.<sup>13</sup> The 9<sup>th</sup> Circuit Court also defended Arizona's use of E-Verify, noting that while Congress never mandated its use, "that does not, in and of itself, indicate that Congress intended to prevent states from making participation mandatory." In other words, unless Congress explicitly preempted it, Arizona could tailor E-Verify to suit its own needs. The legal battle over the employer-sanction law is not over; the Supreme Court will hear a challenge to it late this year and the outcome could shape the battle over the newer law.

### **Conclusion and a Look Ahead**

In any event, Arizona's new immigration enforcement law, like its employer sanctions law, is based, in part, on current federal law. As previously noted, Arizona already has an agreement with ICE under the 287(g) program. This raises the same question seen earlier with employer sanctions: if Arizona's role in routine immigration law enforcement is already federally mandated, how can the federal government move to pre-empt that role now? Arizona will argue that it cannot. However, the U.S. Department of Justice will argue that Arizona is exceeding federal authority by defining an illegal alien's "unlawful presence" as a state crime. Under current federal law, unlawful presence is a civil violation, not a crime – federal or otherwise. Civil violations are not punishable with criminal sanctions, such as jail time. Those caught are simply deported. Nevertheless, it is debatable whether this is unconstitutional. Federal law may define "unlawful presence" as a civil violation, but paradoxically, it also defines the prior act of "illegal entry" as a crime, not a civil violation. Arizona may simply argue that the distinction between the two is meaningless. Moreover, Congress has never expressly forbidden states from imposing their own criminal sanctions on aliens.

Note: Please see the following chart at the end of the document: A Comparison of Select Arizona, Georgia, and Federal Immigration Control Statutes.

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<sup>13</sup> *Chicanos por la Causa Inc. v. Napolitano*, 9th Cir., No. 07-17272 [Sept. 17, 2008]

## REAPPORTIONMENT AND REDISTRICTING

### Census/Redistricting

Population data collection is mandated by the U.S. Constitution to ensure fair and equal representation in the state legislatures and Congress.

A decennial census is required by the Constitution for the primary purpose of the federal government allocating congressional seats to the states (the process referred to as reapportionment).

The count of the population is used to apportion the number of seats in Congress among the states and provides the state and local governments with the population counts necessary to redraw their legislative districts.

The number of members of the U.S. House of Representatives is prescribed by law and has been set at 435 members since 1912. Each state is entitled to at least one representative and the remaining members are apportioned among the states in accordance to their relative populations.

So the number of congressional seats to be apportioned among the states based on population is that number-- 385.

Over the years, four different apportionment formulas have been used to apportion seats to the states on the basis of population:

- From 1790 to 1840, Congress used a method proposed by Thomas Jefferson, sometimes called the "method of greatest divisors." This method divided the total population by the number of seats and assigned each state its quota, disregarding any fractional remainder. The number of members was adjusted so that every state was awarded exactly the number of seats it was entitled to on the basis of its quota.
- From 1842 to 1850, Congress used a formula proposed by Daniel Webster, sometimes called the "method of major fractions." This method gave an additional member to any state whose quota included a fraction greater than one-half. The number of members was adjusted accordingly.
- From 1850 to 1910, Congress used a formula that had originally been proposed by Alexander Hamilton for the apportionment of 1790. Under that formula, members were first apportioned according to each state's quota, disregarding any fractional remainders, and then any leftover seats were assigned to the states with the largest fractional remainders.
- Between 1911 and 1930, Congress reverted to using the Webster method.
- After the 1930 census, Congress adopted the "method of equal proportions." The formula uses the state's population divided by the geometric mean of that state's current number of seats and the next seat; this formula allocates the remainders among the states in a way that provides the smallest relative difference between any pair of states in the population of a district and in the number of people per representative.

Several significant United States Supreme Court decisions were made during the 1960s:

--In 1962, the U.S. Supreme Court ruled in *Baker v. Carr* that "malapportioned" legislatures are "justiciable issues."

--In 1963, in *Gray v. Sanders*, the Court struck down a redistricting plan with districts that were not equal in population.



--In 1964, in *Wesberry v. Sanders*, the court held that Article 1, Section 2 of the Constitution required that "...as nearly as is practicable one person's vote in a congressional district is to be worth as much as another's." Again, in 1964, the court held in *Reynolds v. Simms* that state legislative districts must be "...as nearly of equal population as is practicable."

Following the enactment of the 1965 Voting Rights Act, the courts ruled that the use of racial criteria in drawing districts was constitutional.

By 1966, state officials had approached the Census Bureau to express their need for small-area data. As state and local officials began to use the 1970 census data, they found that the data often did not match the maps or vice-versa.

In 1975, Congress passed a law that requires the Census Bureau to provide state legislatures with the small area census population tabulations necessary for legislative redistricting. The law also specifies:

- The states choosing to participate in this voluntary program will define the small areas for which specific data tabulations are desired and submit these areas following timelines established by the Census Bureau. These small areas include census block boundaries, voting districts, and state legislative districts.
- The Census Bureau must transmit the total population tabulations to the states by April 1, 2011.

Election Data Services (EDS) recently released a preliminary report of its reapportionment estimates.

Ahead of the release of U.S. Census data collected earlier this year, the EDS used population estimates from July 2009 to conclude that 11 states could lose at least one seat in the U.S. House after reapportionment:

- Illinois;
- Iowa;
- Louisiana;
- Massachusetts;
- Michigan;
- New Jersey;
- New York; and
- Pennsylvania.

Ohio will likely lose two seats. Rhode Island, Missouri, and Nebraska may also lose a seat, depending on the final results of the census data.

Arizona, Florida, Georgia, Nevada, South Carolina, Utah and Washington are all set to gain a seat. Texas could gain as many as four seats.

For the first time since it became a state in 1845, California will not add a new congressional seat.

Consider that the State of Utah missed an extra seat in Congress following the 2000 Census by about 850 people; North Carolina received that extra congressional seat instead.

In 2000, the average population of a congressional district was 646,952; in 1990, the average population was 572,466. In 1900, the average population of a congressional district was 193,167.

Georgia should have a total of 14 seats in the House of Representatives, and each district, following the Census results, should have approximately 703,000 people.

It is expected for Georgia to show up to 11 million residents—almost doubling the state's population since the 1980 Census (somewhere between 10.5 million and 10.85 million is the educated guess).

Georgia had approximately 8.422 million people in 2002 and grew by almost 150,000 people per year during this decade (14.5% from the 2000 Census).

If Georgia tops out near 11 million residents-- that means each of Georgia's State Senators will represent just fewer than 200 thousand people, and each State House seat will cover about 61 thousand persons.

That means that South Georgia's representation under the Gold Dome will decrease because of larger districts while metro Atlanta's districts contract in size and increase in number.

It is possible that South Georgia will lose up to two Senate seats and six or more House seats.

#### **UPDATED INFORMATION:**

New Congressional Apportionment:

Georgia picks up one House seat along with South Carolina (+1), Florida (+2), Texas (+4), Utah (+1), Nevada (+1), Arizona (+1), and Washington (+1).

Losing House seats are Louisiana (-1) , Missouri (-1) , Illinois (-1) , Iowa (-1) , Ohio (-2) , Michigan (-1) , New York (-2) , New Jersey (-1) , Pennsylvania (-1) , and Massachusetts (-1) .

[http://2010.census.gov/news/img/apport\\_chart4\\_appttot.jpg](http://2010.census.gov/news/img/apport_chart4_appttot.jpg)

[http://2010.census.gov/news/img/apport\\_chart3\\_appt.jpg](http://2010.census.gov/news/img/apport_chart3_appt.jpg)

Georgia grew by 18.3% during the 2000s (the US rate of growth was 9.7%).

2010 Georgia: 9,687,653

Each of Georgia's 14 congressional seats will have about 692,000.

That means each state senate seat will comprise 172,994, and each state house seat 53,820.

[http://2010.census.gov/news/pdf/apport2010\\_map1.pdf](http://2010.census.gov/news/pdf/apport2010_map1.pdf)

## **RETIREMENT**

### **The Legislative Process for Retirement Bills**

Retirement bills face a unique and often lengthy process prior to enactment because of requirements contained in the Georgia Constitution, which requires that retirement bills be treated differently from other legislation.

Retirement legislation that has a fiscal impact can only be introduced during the first year of a two-year session and can only be acted on during the second year; therefore, any retirement bills with fiscal impact introduced during the 2011 legislative session will not be acted on until the 2012 session. The earliest effective date of any such legislation would be July 1, 2012.

In Georgia, each bill having a fiscal impact on any public retirement system must be funded in the year of its enactment. This requirement ensures that future benefits are already paid for and do not depend on future appropriations. Thus, any bill that increases the liability of the retirement system must be funded at the time of enactment. This process ensures the financial stability of the state's retirement systems.

In compliance with the Georgia Constitution, the General Assembly in 1983 enacted the Public Retirement Systems Standards Law, Chapter 20 of Title 47 of the Official Code of Georgia Annotated. The "Standards Law" as it is commonly known, establishes the procedures required for the consideration and enactment of retirement legislation.

After Legislative Counsel drafts a retirement bill, it is sent to the State Auditor for a certificate stating whether the bill is a fiscal or a non-fiscal bill. According to the Office of Legislative Counsel, a "fiscal retirement bill": (1) increases a retirement benefit, (2) increases the actuarial accrued liability of a retirement system, or (3) increases the normal cost of the retirement system. These definitions are outlined at O.C.G.A. § 47-20-30.

The certificate of the State Auditor must be attached to the bill when it is introduced, whether or not it is a fiscal bill. If no certificate is attached when a bill is introduced, it should not receive further consideration. The certificate of the State Auditor is yellow analysis typically placed behind the copy of the bill.

If the State Auditor determines that a retirement bill is a non-fiscal retirement bill, the bill becomes similar to other legislation; however, non-fiscal retirement bills must be introduced in the first 20 days of either year of the biennium.

If the State Auditor certifies that the bill is a fiscal retirement bill, its treatment becomes more complex. A fiscal retirement bill may be introduced during the first year of the biennium at any time. No fiscal retirement bill may be introduced during the second year and no committee action will take place in either chamber during the first year of the biennium.

Because of the requirement that fiscal retirement bills be funded concurrently with their enactment, it is necessary for an actuary to conduct a study to determine how much must be appropriated to the retirement system to pay the benefits granted by the legislation. An actuarial study costs approximately \$5,000 per fiscal bill. The House and Senate Retirement Committees meet individually during the interim to determine which bills from their respective chambers should move forward for an actuarial study. If a fiscal bill does not receive approval for an actuarial study, it cannot move forward in the legislative process.

For all fiscal bills that receive approval for an actuarial study, by November 1, the State Auditor provides the respective chairpersons with copies of each bill's actuarial study showing the cost amortized over 20 years. A copy of the study is commonly stapled to the back of the retirement bill and travels with the bill through the remainder of the legislative process. After the actuarial study is completed, the bill may be amended only in such a manner as to reduce the cost of the bill. Any substitute or amendment must be accompanied by a certificate from the State Auditor certifying whether the substitute or amendment changes the cost reflected in the actuarial study. If there is an increase in costs, a new actuarial study is required.

It is the responsibility of the sponsor of any fiscal retirement bill to ensure that a funding provision appears in the Appropriations Act for the bill. Upon final passage of the Appropriations Act, the State Auditor provides a certificate stating whether funding provisions exist for each fiscal retirement bill enacted. Any bill that does not have a funding provision is automatically repealed as required by the Standards Law.

### **The Status of Georgia's Pension Funds**

Over the past few years, public pension funds have received a great deal of attention in the media because many states will not be able to cover the costs of the future payment of benefits to their retirees. However, there is good news in Georgia regarding our largest state retirement systems known as the Employees' Retirement System (ERS) and the Teachers' Retirement System (TRS). They each have an actuarial rate of over 80 percent. When looking at the health of pension systems, most experts agree that an actuarial baseline for a safe and secure funding level is 80 percent.

As of June 30, 2009, ERS had an actuarial funding ratio of over 89.4 percent and TRS had an actuarial funding ratio of 91.9 percent. According to the Pew Center on the States, which monitors pension systems nationwide, Georgia is a consistently solid performer. The chart below shows how we compare to other southern states.

<b>Plan Name</b>	<b>Actuarial Funding Ratio</b>	<b>Actuarial Assets</b>	<b>Actuarial Liabilities</b>	<b>Unfunded Liability (Surplus)</b>	<b>Actuarial Valuation Date</b>	<b>For FY ending</b>
Alabama Teachers	77.6	\$20,812,477	\$26,804,117	\$5,991,640	9/30/2007	9/30/2008
Alabama ERS	75.7	\$9,905,766	\$13,078,687	\$3,172,921	9/30/2008	9/30/2008
Arkansas Teachers	84.9	\$11,319,000	\$13,334,000	\$2,015,000	6/30/2008	6/30/2008
Arkansas PERS	78.0	\$5,413,000	\$6,938,000	\$1,525,000	6/30/2009	6/30/2009
Florida RS	87.1	\$118,764,692	\$136,375,597	\$17,610,905	7/1/2009	6/30/2009
Georgia ERS	89.4	\$14,017,346	\$15,680,857	\$1,663,511	6/30/2008	6/30/2008
Georgia Teachers	91.9	\$54,354,284	\$59,133,777	\$4,779,493	6/30/2008	6/30/2009
Kentucky ERS	54.2	\$5,820,925	\$10,747,701	\$4,926,776	6/30/2008	6/30/2008
Kentucky Teachers	63.6	\$14,885,981	\$23,400,426	\$8,514,445	6/30/2009	6/30/2009
Louisiana Teachers	59.1	\$13,500,766	\$22,839,411	\$9,338,645	6/30/2009	6/30/2009
Louisiana SERS	60.8	\$8,499,662	\$13,986,847	\$5,487,185	6/30/2009	6/30/2009
Missouri Teachers	79.9	\$28,826,075	\$36,060,121	\$7,234,046	6/30/2009	6/30/2009
Missouri State Employees	83.0	\$7,876,079	\$9,494,807	\$1,618,728	6/30/2009	6/30/2009
Mississippi PERS	67.3	\$20,597,581	\$30,594,546	\$9,996,965	6/30/2009	6/30/2009
North Carolina Teachers & State Employees	99.3	\$55,127,658	\$55,518,745	\$391,087	12/31/2008	6/30/2009
South Carolina RS	69.3	\$24,699,678	\$35,663,419	\$10,963,741	7/1/2008	6/30/2009
TN State and Teachers	96.2	\$26,214,995	\$27,240,151	\$1,025,156	7/1/2007	6/30/2009
Texas Teachers	83.1	\$106,384,000	\$128,030,000	\$21,646,000	8/31/2009	8/31/2009
Texas ERS	87.4	\$23,509,622	\$26,907,779	\$3,398,157	8/31/2009	8/31/2009
Virginia Retirement System	84.0	\$52,548,000	\$62,554,000	\$10,006,000	6/30/2008	6/30/2009

## **SPECIAL JUDICIARY**

### **Summary of Recently Enacted Georgia Firearms Legislation**

#### **House Bill 89: Business Security and Employee Privacy Act (2008)**

- House Bill 89 makes it a felony for any person to solicit or encourage any firearms dealer to transfer or convey a firearm other than to the actual buyer. Law enforcement officers are exempt.
- Any person who has been issued a license to carry a weapon may do so in all parks, historic sites, or recreational areas under the control and custody of the Department of Natural Resources, all wildlife management areas, and on public transportation, except where prohibited by federal law.
- “Public gathering” includes establishments where alcoholic beverages are sold for consumption and which derive less than 50 percent of their total annual gross food and beverage sales from the sale of prepared meals.
- All law enforcement officers may carry pistols in publicly owned buildings, except as may be provided in a courthouse security plan.
- Probate judges must begin the firearms license application process within two business days of receipt, and the judge will only have 10 days, instead of 60, to issue the license unless facts establishing ineligibility have been reported.
- When an eligible applicant who is a United States citizen fails to receive his or her license and the application was properly filed, such applicant may bring action in mandamus or other legal proceeding in order to obtain the license.
- No private or public employer may enforce any policy or rule that allows such employer to search the locked privately-owned vehicles of employees, and no private or public employer may condition employment upon any agreement that prohibits an employee from entering the parking lot when the employee’s car contains a firearm that is locked out of sight, provided the employee possesses a valid Georgia firearms license;
  - The law provides limited civil liability for the employer;
  - Nothing restricts the rights of private property owners to control access to their property.

#### **Senate Bill 308: Common Sense Lawful Carry Act (2010)**

- Any person who is not legally prohibited from possessing a handgun or long gun may carry a weapon<sup>14</sup>:
  - on his or her property and inside his/her home, motor vehicle or place of business without a carry license;
  - He/she may also carry a long gun on his/her person without a carry license, but if the long gun is loaded, it must be carried in an open and exposed manner;
  - He/she may carry any handgun or long gun without a carry license if it is enclosed in a case and unloaded; and
  - He/she may transport a handgun or long gun in any private passenger vehicle, except on private property if the owner or lessor forbids it.
- Allows a person licensed to carry in another state to also carry a handgun in this state, *if* that state recognizes the Georgia carry license. Licensees from other states must comply with Georgia’s laws when carrying here.
- Persons with a valid hunting or fishing license, or anyone not legally required to have such licenses, who are legally hunting, fishing or sport shooting with the landowner’s permission may have or carry a handgun or long gun without a carry license.

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<sup>14</sup> 16-11-125.1: ‘Weapon’ means a knife or a handgun.

- In general, no one without a valid carry license may carry a weapon unless in an open and fully exposed manner. The offense of carrying a weapon without a license is a misdemeanor the first time and a felony for a second or subsequent offense within 5 years.
- “Public gatherings” is changed to “unauthorized location.” A person is guilty of a misdemeanor carrying a weapon in an unauthorized location if he/she carries a weapon in a:
  - 1) government building;
  - 2) courthouse;
  - 3) jail or prison;
  - 4) place of worship;
  - 5) state mental health facility;
  - 6) bar<sup>15</sup>, unless permitted by the owner;
  - 7) on the premises of a nuclear power facility; or
  - 8) within 150 feet of any polling place.
- The criminal penalty for carrying in unauthorized locations will not apply to:
  - weapons used as exhibits in a legal proceeding, if the weapons are secured and handled as directed by courthouse security;
  - license holders who approach and notify security personnel of the weapon and follow instructions for removing and storing it; nor
  - a licensee’s weapon under the licensee’s control in a motor vehicle, in a locked compartment of a vehicle, or in a locked container or locked firearms rack on a motor vehicle parked in a government parking facility.
- The prohibition against carrying a weapon within 1000 feet of any real property owned by or leased to any public or private elementary or secondary school, public or private college or university campus is repealed. Instead, “school safety zone” means carrying a weapon actually on or in any real property owned by or leased to schools. Any person who is not a license holder and violates this statute will be guilty of a felony; license holders who violate the statute will be guilty of a misdemeanor.
- Weapons carry licenses will *not* be issued to any person:
  - A. under 21 years old;
  - B. who has been convicted of a felony anywhere and who has not been officially pardoned;
  - C. against whom felony proceedings are pending;
  - D. who is a fugitive from justice;
  - E. prohibited from possessing a firearm under 18 U.S.C. § 922(g) and (n);
  - F. convicted of an offense related to the unlawful manufacture or distribution of a controlled substance or dangerous drug;
    - a. if the person successfully completed first offender treatment and has not had any other conviction for at least 5 years, he/she will be eligible for a carry license;
  - G. who has had his/her carry license revoked;
  - H. who has been convicted of pointing a gun at another person, carrying a weapon without a carry license, or carrying a weapon in an unauthorized location, and who has not been free from conviction for at least 5 years;
  - I. convicted of any misdemeanor involving the use or possession of a controlled substance who has not been free from *any* conviction for at least 5 years;
    - a. if the person successfully completed first offender treatment and has not had any other conviction for at least 5 years, he/she will be eligible for a carry license; or

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<sup>15</sup> 16-11-127: ‘Bar’ means an establishment devoted to serving alcoholic beverages for guest consumption on the premises, and where serving food is incidental to the alcoholic beverages.



- J. who has been hospitalized as an inpatient at any mental hospital or alcohol or drug treatment center within 5 years of the license application.
- On or after January 1, 2012, all new or renewed weapons carry licenses must have overt and covert security features to prevent imitation, replication or duplication, including a color photograph on both sides of the license.

## **TRANSPORTATION**

### **Transportation Issues**

Over the past few decades, Georgia's population and economy have grown rapidly. However, Georgia has been under-investing in its transportation infrastructure. Today, our state invests less than the national average as a share of its Gross Domestic Product (GDP) and devotes fewer resources per capita to transportation than any U.S. state except Tennessee. This lack of investment and improvement has eroded our state's transportation performance and its resulting ability to remain economically competitive. This is clearly evident from the traffic congestion issues facing the Atlanta region.

Last June, Governor Perdue and the State Transportation Board officially adopted Georgia's first Statewide Strategic Transportation Plan (Plan) which evaluates the return on investment from funding various transportation methods or modes. The process of developing goals and objectives for the Plan began in 2008, with the launch of Governor Perdue's initiative: Investing in Tomorrow's Transportation Today (IT3). IT3 used a collaborative, inclusive, and data-driven process to develop a set of transportation goals and objectives. Senate Bill 200, which passed in the 2008 Legislative Session, charged the Department of Transportation (DOT) with development of the Plan. The Plan concluded that a new investment strategy supported by additional resources could transform our transportation network and create over \$480 billion in GDP growth for Georgia over the next 30 years and generate up to 425,000 new jobs. These new resources should be invested across three broad categories: (1) Statewide freight and logistics – new, limited-access bypasses and rail capability improvements; (2) People mobility in metro Atlanta – managed lanes and rail transit; and (3) People mobility in the rest of the state – coordinating transportation services.

The legislature has debated ways to fund transportation investments over the last few years. The Joint Study Committee on Transportation Funding was created by Senate Resolution 365 during the 2007 Legislative Session to examine the state's transportation funding needs, recommend any actions or legislation necessary for alternative funding mechanisms, and to improve the state's transportation systems and infrastructure. The idea of a regional transportation tax in some form was proposed and considered in the following years until last year when the General Assembly passed House Bill 277<sup>16</sup> which, if approved by the voters in a referendum in the 2012 election, provides for a 1 percent regional transportation sales and use tax to be imposed for a period of ten years in 12 newly created special districts, the geographical boundary of each corresponds with and is coterminous with the geographical boundary of the 12 regional commissions. As of November 2010, the DOT's Director of Planning has submitted the recommended investment criteria for each district. The first meeting of each roundtable has since been held.

Georgia is using other innovative financing methods to invest in our transportation infrastructure. The DOT solicited its first public-private partnership (P3) in March of this year to develop 39 miles of tolled highway lanes, or "managed lanes," in the northwest metro area of Atlanta. P3s allow the state to leverage limited funds by partnering with a private sector partner to finance and develop the project. The managed lanes will be new, separate roadways where drivers pay

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<sup>16</sup> See 2010 Session Highlights document for more information on House Bill 277.

tolls that rise and fall according to the level of traffic. The idea is to keep traffic moving at a steady pace, thereby easing congestion. The managed lanes would also be reversible, meaning that they could be used for inbound traffic in the morning and then reversed to let commuters use them for their trips back home later in the day. This concept is also being addressed with a federal Congestion Reduction Demonstration Program grant to convert HOV lanes on I-85 to managed lanes. Other P3s currently being pursued by DOT include the development of a multimodal passenger terminal in downtown Atlanta which will serve as a hub for rail and bus services, as well as a project to develop a rest area advertising program.

Georgia is also continuing to develop and improve transit services. During the fall of 2010, U.S. Transportation Secretary Ray LaHood announced that our state will receive a \$4.1 million grant for a new high-speed rail system that would connect Atlanta to Charlotte, North Carolina. This announcement is in addition to an award of a federal grant totaling \$47 million for a streetcar system in Atlanta. Federal grants are imperative for the development of transit because the Constitution prohibits DOT from spending money on anything but roads and bridges. DOT is studying other high speed rail corridors as well, including one from Atlanta to Chattanooga. A passenger service train from Macon to Atlanta is also being developed by DOT.

The metro Atlanta region has spent the last several years working to improve and expand its existing transit services. In 2006, metro Atlanta's major transportation entities created a new special-purpose agency known as the Transit Planning Board (TPB). A key task of the TPB was the development of a long-range regional transit system, known as Concept 3, which was completed in 2008. The TPB also recommended establishing a permanent, legally-constituted transit governance structure. To address this issue, the Joint Transit Governance Study Commission was created in House Bill 277. The Commission released a preliminary report on the feasibility of combining all of the regional public transportation entities into an integrated regional transit body in December 2010.

The ability of DOT to finance and construct projects that take multiple years became a significant issue in the 2010 Legislative Session. The Constitution prohibits any agency from budgeting funds for projects more than one year out. However, major transportation improvements and projects require several years to construct. Senate Resolution 821 sought to amend the Constitution to allow DOT to budget for one project over several years rather than just one year. However, this amendment was not approved by the voters and it is unclear whether or not this issue will be addressed in the 2011 Legislative Session.

## **VETERANS, MILITARY, AND HOMELAND SECURITY**

### **Delayed Foreclosure Proceedings for Certain Service Members**

Foreclosures have impacted Americans regardless of their profession or income. But it is a much more difficult and stressful issue for active duty military personnel stationed overseas to manage and work through. In response to this, states are enacting legislation to delay or extend the time it takes for lenders to carry out foreclosure proceedings anywhere from 90 to 120 days.

Such legislation would put Georgia's foreclosure law in parallel with federal regulations. Although new legislation would not prevent lenders from foreclosing on military personnel properties, it would help slow the process which could give the owner more time to find ways to solve the problem. Moreover, legislation recently enacted in North Carolina requires a service member's property under foreclosure to be handled by a judge, which entails a longer process than a foreclosure put in front of a court clerk.



## A COMPARISON OF SELECT ARIZONA, GEORGIA, AND FEDERAL IMMIGRATION CONTROL STATUTES

ISSUE	ARIZONA	GEORGIA	FEDERAL
<b>Employee Verification</b>	<p>Arizona requires every public and private employer to participate in the E-verify program.</p> <p><b>Penalties</b> For a first violation of knowingly or intentionally hiring an unauthorized alien, the court:</p> <ul style="list-style-type: none"> <li>Orders the employer to terminate the employment of all unauthorized aliens;</li> <li>Subjects the employer to a three year probationary period for the business location where the unauthorized alien performed work;</li> <li>Orders the employer to file a signed sworn affidavit within three business days after the order is issued that states that the employer has terminated the employment of all unauthorized aliens in the state and that the employer will not intentionally or knowingly employ an unauthorized alien. The court will order the appropriate agencies to suspend all licenses that are held by the employer if the employer fails to file the affidavit within three business days.</li> <li>May order the appropriate agencies to suspend all licenses that are held by the employer for up to ten business days.</li> </ul> <p>For a second violation, the court will order the appropriate agencies to permanently revoke all licenses that are held by the employer specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific to the business location, but a license is necessary to operate the employer's business in general, the court will order the appropriate agencies to permanently revoke all licenses that are held by the employer at the employer's primary place of business.</p> <p>The violation is considered:</p> <ul style="list-style-type: none"> <li>A first violation by an employer at a business location if the violation did not occur during a probationary period for that employer's business location.</li> <li>A second violation by an employer at a business location if the violation occurred during a probationary period ordered by the court.</li> </ul> <p>Proof of verifying the employment authorization of an employee through the e-verify program creates a rebuttable presumption that an employer did not knowingly employ an unauthorized alien. (<i>Article 2 of Title 23</i>)</p>	<p>Georgia requires public employers and all contractors and subcontractors wishing to do work for public employers to participate in the E-verify program to verify employment eligibility of all newly hired employees.</p> <p>Before a bid for any such service is considered by a public employer, the bid must include a signed, notarized affidavit. (<i>O.C.G.A. 13-10-91 et seq.</i>)</p> <p><b>Penalties</b> Contractors and subcontractors convicted for false statements based on a violation of this subsection shall be prohibited from bidding on or entering into any public contract for 12 months following such conviction. (<i>O.C.G.A. 13-10-91(b)(5)</i>)</p>	<p>Under the Immigration and Nationality Act (INA), employers may hire only persons who may legally work in the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). Employers must keep each I-9 on file for at least three years, or one year after employment ends, whichever is longer. I-9s are not filed with the federal government but must be retained by the employer.</p> <p><b>Civil Penalties</b> Requires the employer to cease and desist from such violations and to pay a civil penalty in an amount of:</p> <p>1<sup>st</sup> Offense: From \$250 to \$2,000 for each unauthorized alien; 2<sup>nd</sup> Offense: From \$2,000 to \$5,000 for each unauthorized alien; or 3<sup>rd</sup> and Subsequent Offense: From \$3,000 to \$10,000 for each unauthorized alien.</p> <p><b>Criminal Penalties</b> Any person or entity which engages in a pattern or practice of violations will be fined up to \$3,000 for each unauthorized alien, imprisoned for up to six months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.</p> <p>Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral, the A.G. may bring a civil action requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity. (<i>8 USC 1324a</i>)</p>
<b>Payroll Tax Reporting</b>	<p>None, but may be prosecuted under the state's tax evasion statutes as well as its employee verification laws.</p>	<p>No payment or compensation paid for labor services to an individual totaling \$600.00 or more in a taxable year, may be claimed and allowed as a deductible business expense for state income tax purposes unless such individual is an</p>	<p><b>Tax Evasion:</b> Any person who willfully attempts in any manner to evade or defeat any tax will, in addition to other penalties provided by law, be guilty of a felony and, upon conviction, fined up to \$100,000 (\$500,000 in the case of a corporation),</p>

ISSUE	ARIZONA	GEORGIA	FEDERAL
		<p>authorized employee. This provision applies whether or not an IRS Form 1099 or W-2 is issued in conjunction with such payments.</p> <p>However, this provision does not apply:</p> <ul style="list-style-type: none"> <li>▪ To any business that has enrolled and participates in E-verify program; or is exempt from compliance with federal employment verification procedures;</li> <li>▪ To any individual hired prior to January 1, 2008;</li> <li>▪ To any taxpayer where the individual being paid is not directly compensated or employed by the taxpayer.</li> <li>▪ To payments, compensation, or other remuneration paid for labor services to any individual who holds and presents to the taxpayer a valid license or identification card issued by the Georgia Department of Driver Services. <i>(O.C.G.A. 48-7-21.1)</i></li> </ul> <p><b>Penalties</b> None specific to provision, however, a violation would fall under current state tax evasion laws (felony if over \$3,000) and failure to supply proper information (misdemeanor). <i>(O.C.G.A. 48-7-2 and 48-7-5)</i></p>	<p>or imprisoned up to 5 years, or both, together with the costs of prosecution. <i>(26 USC 7201)</i></p> <p><u>Perjury</u>: Any person who willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter will be guilty of a felony and, upon conviction, will be fined up to \$100,000 (\$500,000 in the case of a corporation), or imprisoned up to 3 years, or both, together with the costs of prosecution. <i>(26 USC 7206)</i></p>
<p><b>Anti-Sanctuary Policies</b></p>	<p>Arizona law prohibits state or local officials or agencies from limiting or restricting the enforcement of federal immigration laws. It also allows Arizona residents to bring an action to challenge any official or agency that adopts or implements a policy that limits or restrict the enforcement of federal immigration law.</p> <p><b>Penalties</b> Violations are subject to civil penalties of \$500 to \$5,000 for each day the policy remains in effect after the action is filed.</p> <p>The money collected from these penalties is deposited in the Gang and Immigration Intelligence Team Enforcement Mission Fund. The fund is for: (1) gang and immigration enforcement; and (2) county jail reimbursement costs relating to illegal immigration.</p> <p>The law does allow recovery of court costs and reasonable attorney's fees by a: (1) person, including state or local officials; or (2) state or local agency, that prevails on the merits in a proceeding. It also indemnifies law enforcement officers against reasonable costs and expenses, including attorney's fees, incurred in any proceeding against them, unless the officer acted in bad faith. <i>(11-1051)</i></p>	<p><b>Penalties</b> Local governments that violate this provision will be subject to the withholding of state funding or state administered federal funding. DCA, DOT, or any other state agency that provides funding to local governing bodies may require certification of compliance with this legislation as</p>	<p>None.</p>

ISSUE	ARIZONA	GEORGIA	FEDERAL
<p><b>Determination of Person's Immigration Status Due to Reasonable Suspicion and Arrests</b></p>	<p>During a lawful stop, detention, or arrest in the enforcement of another state or local law, law enforcement are required to make a reasonable attempt to determine the person's immigration status where reasonable suspicion exists that the person is unlawfully present in the country. Law enforcement should only make this attempt when practicable and when doing so would not hinder or obstruct an investigation. Anyone arrested cannot be released until his or her immigration status is determined and verified with the federal government. Law enforcement may not consider race, color, or national origin when implementing this provision.</p> <p>A person is presumed to be lawfully present if the person provides to law enforcement: (1) a valid Arizona driver's license or identification card; (2) a valid tribal identification; or (3) a valid United States, state, or local government-issued identification that requires lawful presence before issuance.</p> <p>Immigration status may be determined by: (1) a law enforcement officer authorized by the federal government to do so; or (2) U.S. Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP) pursuant to federal law.</p> <p><b>Penalties</b> Requires ICE or CBP to be immediately notified when someone unlawfully present is convicted of a violation of state or local law, discharged from prison, or assessed a fine.</p> <p>If a law enforcement agency verifies that someone in its custody is unlawfully present, the agency may transport the person to federal custody. <i>(11-1051)</i></p>	<p>a condition of funding. <i>(O.C.G.A. 36-80-23)</i></p> <p>Although Georgia law does not authorize a law enforcement officer to confirm lawful presence prior to an arrest, state law, in compliance with Article 36 of the Vienna Convention on Consular Relations, does require jailers to make a reasonable effort to determine the nationality of any incarcerated person. If the prisoner is a foreign national charged with a felony, DUI, driving without a license, or with a misdemeanor of a high and aggravated nature, the jailer must make a reasonable effort to verify that the prisoner has been lawfully admitted into the U.S. <i>(O.C.G.A. 42-4-14)</i></p> <p>Arizona and Georgia laws do overlap somewhat with the Section 287(g) program as well (See Below).</p>	<p>This is not addressed by federal law in the same detail as in Arizona's. However, federal law does authorize law enforcement officers to make an arrest for violating immigration laws. <i>(8 USC 1324(c))</i></p> <p>Another existing federal statute related to falls under <i>Willful Failure To Register and Personal Possession of Registration. (8 USC 1306(a))</i> – (See Below)</p>
<p><b>Willful Failure to Complete or Carry Immigrant Registration</b></p>	<p>A person commits the offense of the willful failure to complete or carry an immigrant registration document if the person violates certain federal requirements for noncitizens to register and carry registration paperwork. Immigration status may be determined by: (1) a law enforcement officer authorized by the federal government to do so; or (2) ICE or CBP pursuant to federal law. Law enforcement may not consider race, color, or national origin when implementing this provision</p> <p><b>Penalties</b> The offense is a misdemeanor with a maximum fine of \$100 and maximum imprisonment of: (1) 20 days for a first violation; or (2) 30 days for a subsequent violation. The individual must also pay jail costs. Violators are ineligible for a suspended sentence, probation, pardon, commutation of sentence, or early release, with exceptions.</p> <p>Records relating to a person's immigration status are automatically admissible without further foundation or testimony if the government agency responsible for maintaining the records certifies their authenticity.</p>	<p>None.</p>	<p><u>Personal possession of registration:</u> Every alien, eighteen years of age and over, must at all times carry and have in his or her personal possession any certificate of alien registration or alien registration receipt card issued to them. Any alien who fails to comply with this provision will be guilty of a misdemeanor and be fined up to \$100 or be imprisoned up to thirty days, or both. <i>(8 USC 1304(e))</i></p> <p><u>Willful failure to register:</u> Any alien required to apply for registration and to be fingerprinted in the U.S. who willfully fails or refuses to make such application or to be fingerprinted, and any parent or legal guardian required to apply for the registration of any alien who willfully fails or refuses to file application for the registration of such alien will be guilty of a misdemeanor and be</p>

ISSUE	ARIZONA	GEORGIA	FEDERAL
	The law provides that this offense does not apply to persons who maintain authorization from the federal government to remain in the country. (13-1509)		fined up to \$1,000 or be imprisoned up to six months, or both. (8 USC 1306(a))
<b>Section 287g Program</b>	Arizona's Department of Public Safety, Correction's Department, as well as several local agencies participate in the Section 287(g) program. The difference between the Section 287(g) program and Arizona's new law is that the Section 287(g) program carries out this task once the inmate has been charged, booked, and admitted into a local jail. The Arizona law, however, requires the law enforcement officer to make a reasonable attempt, when practicable, to determine the immigration status of a person involved in a stop, detention, or arrest in the enforcement of any other state or local law or ordinance where reasonable suspicion exists that the person is an alien and is unlawfully present.	Currently, the Georgia Department of Public Safety, and the Sheriff's offices of Cobb, Gwinnett, Hall, and Whitfield counties participate in the Section 287(g) program.	The 287(g) program was established by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and authorizes the Secretary of DHS to enter into agreements with state and local law enforcement agencies. Under these agreements, designated state and local officers perform immigration law enforcement functions, provided that the officers receive appropriate training and function under the supervision of ICE officers.
<b>Removal of Criminal Aliens from Prisons and Jails</b>	In 1996, Arizona implemented Release to Detainers/Deportation Orders from the Arizona Department of Corrections (ADC). This form of unsupervised release authorizes the deportation of foreign-born inmates upon completion of one-half of the imposed sentence(s) pursuant to the Arizona Revised Statutes. This release is granted solely for deportation purposes to all foreign-born inmates who do not have any previous felony or sexually based convictions and have a final order of removal. The ICE field office in Phoenix has removed a total of 2,678 criminal aliens through this program since 2005. (41-1604.14)	On October 3, 2008, ICE and Georgia signed an agreement to implement the Rapid REPAT program, similar to the program Georgia has had in place since 1995. Through the Rapid REPAT program and its predecessor, the state of Georgia has removed 3,612 criminal aliens for an estimated cost savings of \$204 million as of August 2009. (O.C.G.A. 42-1-11.1)	The ICE Rapid REPAT (Removal of Eligible Parolees Accepted for Transfer) program is designed to expedite the process of removing non-violent criminal aliens by allowing selected criminal aliens incarcerated in U.S. prisons and jails to accept early release in exchange for voluntarily returning to their country of origin.  Eligible aliens agree to waive appeal rights associated with their state conviction(s) and must have final removal orders. If aliens re-enter the United States, state statutes must provide for revocation of parole and confinement for the remainder of the alien's original sentence. Additionally, aliens may be prosecuted under federal statutes that provide for up to 20 years in prison for illegally reentering the United States. (8 USC 1231)
<b>Gang and Immigration Intelligence Team Fund</b>	Arizona has established a Gang and Immigration Intelligence Team Enforcement Mission Fund to be used for gang and immigration enforcement and for county jail reimbursement costs relating to illegal immigration. It is funded through fines levied against public entities with sanctuary policies and monies appropriated by the legislature. (41-1724)	Georgia does have a "Georgia Street Gang Terrorism and Prevention Act," but the act does not have a funding mechanism similar to Arizona's. (O.C.G.A. 16-15-1 et. Seq.)	N/A
<b>Human Smuggling<sup>17</sup></b>	It is unlawful for a person to intentionally engage in the smuggling of human beings for profit or commercial purpose. A violation is a: <ul style="list-style-type: none"> <li>Class 4 felony (1.5 to 3 years in prison for first time offender);</li> <li>Class 2 felony (4 to 10 years in prison for first time offender) if the human being who is smuggled is under eighteen years of age and is not accompanied by a family member over eighteen years of age or the offense involved the use of a deadly weapon or dangerous instrument; or</li> </ul>	None.	It is a violation to transport or attempt to transport unauthorized aliens to or into the U.S., transport them within the U.S., harbor unlawful aliens, encourage entry of illegal aliens, or conspire to commit these violations, knowingly or in reckless disregard of illegal status.

<sup>17</sup> Human smuggling is the facilitation, transportation, attempted transportation or illegal entry of a person(s) across an international border, in violation of one or more countries laws, either clandestinely or through deception, such as the use of fraudulent documents. Unlike human trafficking, human smuggling is generally with the consent of the person(s) being smuggled, who often pay large sums of money. Unlike smuggling, which is often a criminal commercial transaction between two willing parties who go their separate ways once their business is complete, human trafficking specifically targets the trafficked person as an object of criminal exploitation. This document only addresses human smuggling and not the more complex and more serious issue of human trafficking. Please note, however, that Georgia does have an anti-trafficking law found under O.C.G.A. 16-5-46.



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	<p>▪ Class 3 felony (2.5 to 7 years in prison for first time offender) if the offense involves the use or threatened use of deadly physical force.</p> <p>Notwithstanding any other law, in the enforcement of this provision a peace officer may lawfully stop any person who is operating a motor vehicle if the officer has reasonable suspicion to believe the person is in violation of any civil traffic law.</p> <p>"Smuggling of human beings" means the transportation, procurement of transportation, or use of property or real property by a person or an entity that knows or has reason to know that the person or persons transported or to be transported are not U.S. citizens, permanent resident aliens, or persons otherwise lawfully in this country or have attempted to enter, entered, or remained in the U.S. in violation of law. (13-2319)</p>		<p><b>Penalties</b> Penalties vary widely, but can be as high as 30 years, depending on circumstances, or even life in prison or a death sentence if death results from this crime. There are also provisions for seizure and forfeiture of property including any vessel, vehicle, or aircraft that has been used in the commission of the crime. (8 USC 1324)</p>
<p><b>Unlawfully Stopping to Hire and Pick Up Passengers for Work and Unlawfully Applying for or Soliciting Work</b></p>	<p>It is a misdemeanor for an occupant of a motor vehicle stopped on a street, roadway, or highway to hire or attempt to hire and pick up passengers for work at a different location if the motor vehicle blocks or impedes traffic. The passengers who enter such a motor vehicle to be hired and transported for work commit a misdemeanor. It is also a misdemeanor for an unlawfully present and unauthorized person to knowingly apply for work, solicit work in a public place, or perform work in Arizona. Law enforcement may not consider race, color, or national origin when implementing this provision.</p> <p>An alien's immigration status may be determined by:</p> <ul style="list-style-type: none"> <li>▪ A law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status.</li> <li>▪ The United States immigration and customs enforcement or the United States customs and border protection pursuant to 8 USC 1373(c).</li> </ul> <p><b>Penalties</b> Violators can face up to six months' imprisonment for a first offense. (13-2928)</p>	None.	None.
<p><b>Unlawfully Transporting, Concealing, or Encouraging</b></p>	<p>It is unlawful for a person who is in violation of a criminal offense to:</p> <ul style="list-style-type: none"> <li>▪ Transport or attempt to transport an illegal immigrant in Arizona in furtherance of the immigrant's illegal presence in the country if the person knows or recklessly disregards that the immigrant is in the U.S. unlawfully;</li> <li>▪ Conceal, harbor, or shield an illegal immigrant from detection (or attempt to do so) in any place in Arizona, including a building or means of transportation, if the person knows or recklessly disregards that the immigrant is in the U.S. unlawfully; or</li> <li>▪ Encourage or induce an illegal immigrant to enter or reside in Arizona if the person knows or recklessly disregards the fact that such entering or residing would violate law.</li> </ul> <p>Immigration status may be determined by: (1) a law enforcement officer authorized by the federal government to do so; or (2) ICE or CBP pursuant to federal law.</p>	None.	<p>It is illegal for any person to:</p> <ul style="list-style-type: none"> <li>▪ Know or in reckless disregard of the fact that an alien has come to, entered, or remains in the U.S. in violation of law, transports or moves, or attempts to transport or move such alien within the U.S.;</li> <li>▪ Know or in reckless disregard of the fact that an alien has come to, entered, or remains in the U.S. in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;</li> <li>▪ Encourage or induce an alien to come to, enter, or reside in the U.S., knowing or in</li> </ul>

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	<p>These provisions do not apply to: (1) child protective services workers acting in their official capacity; or (2) first responders, ambulance attendants, or emergency medical technicians who are transporting an illegal immigrant pursuant to law.</p> <p><b>Penalties</b> Violations are misdemeanors subject to a maximum of six months' imprisonment for a first offense. Violators are also subject to a fine of at least \$1,000. However, a violation that involves 10 or more illegal immigrants is a felony subject to a maximum of one and a half years' imprisonment for a first offense and a fine of at least \$ 1,000 for each illegal immigrant involved.</p> <p>Any means of transportation used in committing such a violation is subject to mandatory immobilization or impoundment. <i>(13-2929)</i></p>		<p>reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law;</p> <ul style="list-style-type: none"> <li>Engage in any conspiracy to commit any of the preceding acts; or</li> <li>Aid or abet the commission of any of the preceding acts.</li> </ul> <p><b>Penalties</b> Penalties range from fines to up to 20 years in prison, depending on the circumstances and numbers of illegal aliens involved. A life imprisonment or death sentence may be handed down if any of the above violations result in a death. <i>(8 USC 1324)</i></p>
<b>Arrests Without a Warrant</b>	Under Arizona law, a peace officer may arrest someone without a warrant if he or she has probable cause to believe that the person has committed a public offense that makes the person removable from the United States. <i>(13-3883)</i>	None.	N/A
<b>Immobilization or Impoundment of Vehicles</b>	<p>A peace officer must cause the removal of and either immobilize or impound a vehicle if the officer determines that it is used by someone to:</p> <ul style="list-style-type: none"> <li>Transport or attempt to transport an illegal immigrant in Arizona to further an illegal immigrant's illegal presence in the U.S. in violation of a criminal offense when the person knows or recklessly disregards the fact that the illegal immigrant has come to, entered, or remains in the U.S. in violation of law; or</li> <li>Conceal, harbor, shield from detection, or attempt to do so, an illegal immigrant in Arizona in a vehicle if the person knows or recklessly disregards the fact that the illegal immigrant has come to, entered, or remains in the U.S. as a violation of law. <i>(28-3511 and 13-2929)</i></li> </ul>	<p>None. However, in 2008, House Bill 978 would have required law enforcement officers to impound any motor vehicle whose driver is not licensed to drive. The vehicle can only be released to the owner or the owner's spouse, child, or parent upon proof of relationship and upon displaying an unexpired driver's license.</p> <p>This legislation was VETOED.</p>	<p>This would fall under <i>8 USC 1324</i> as noted above. It is a violation to transport or attempt to transport unauthorized aliens to or into the U.S., transport them within the U.S., harbor unlawful aliens, encourage entry of illegal aliens, or conspire to commit these violations, knowingly or in reckless disregard of illegal status.</p> <p>This statute includes provisions for seizure and forfeiture of property including any vessel, vehicle, or aircraft that has been or is being used in the commission of the crime. <i>(8 USC 1324)</i></p>
<b>Public Benefits</b>	<p>Except where exempted by federal and any other state law, legal residents of the U.S. or otherwise lawfully present in the U.S. must submit at least one of eleven approved identification documents to the entity that administers a federal, state, or local public benefit demonstrating lawful presence in the U.S. Any person who applies for public benefits must sign a sworn affidavit stating that the document presented is true under penalty of perjury.</p> <p>Failure to report discovered violations of federal immigration law by an employee of a public agency that administers any public benefit is a class 2 misdemeanor. If that employee's supervisor knew of the failure to report and failed to direct the employee to make the report, the supervisor is guilty of a class 2 misdemeanor.</p> <p>For the purposes of this section, "public benefit" has the same meaning prescribed in 8 USC 1611 and 1621. <i>(1-501 and 1-502)</i></p>	<p>Except where exempted by federal and any other state law, every agency or political subdivision must verify the lawful presence in the U.S. of any applicant for public benefits.</p> <p>For any applicant who has executed an affidavit that he or she is lawfully present, eligibility for public benefits will be made through the Systematic Alien Verification of Entitlement (SAVE) program operated by DHS. Until such eligibility verification is made, the affidavit may be presumed to be proof of lawful presence. <i>(O.C.G.A. 50-36-1)</i></p>	<p>Georgia's law essentially mirrors federal law. <i>(8 USC 1611, 1621, or 1623)</i></p>
<b>Post Secondary</b>	Arizona law denies in-state college tuition and other state-funded financial aid to illegal immigrants.	Georgia law mirrors federal law and prohibits illegal immigrants from receiving state-funded	Illegal immigrants are prohibited from receiving federally- and state-funded student financial aid as

ISSUE	ARIZONA	GEORGIA	FEDERAL
Education	<p>In addition, every college must report on December 31 and June 30 of each year to the joint legislative budget committee the total number of students who were not entitled to classification as an in-state student and the total number of students who did not qualify for state-funded financial aid because the student was not a citizen or legal resident of the U.S. or is without lawful immigration status. (15-1802, 15-1803, and 15-1825)</p>	<p>student financial aid. (O.C.G.A. 50-36-1)</p> <p>Under a Board of Regents' directive, illegal immigrants do not qualify for in-state tuition. The Board also approved policy 4.1.6 that prohibits illegal immigrants from attending any public college that does not have the space to admit all academically qualified applicants</p>	<p>they fall under the definition of a "Federal public benefit" and "State public benefit." (8 USC 1611 and 18 USC 1621)</p>







Woodrow Wilson  
International  
Center  
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*Mexico Institute*

# MORE THAN NEIGHBORS:

An Overview of Mexico and U.S.–Mexico Relations



**Andrew Selee**

Woodrow Wilson Center



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## OVERVIEW

This publication is intended as a brief and accessible introduction to U.S.–Mexico relations and to Mexico’s politics, economy, and society for a U.S. audience. It is meant as a quick reference guide for policymakers, civic leaders, businesspeople, journalists, students, and anyone who is not a specialist in Mexican affairs but wants to know something about our neighbor to the south and the relationship between our two countries. The first section deals specifically with issues in the bilateral relationship, while the second section provides information on Mexico specifically. Whenever possible, this publication prefers to present facts rather than take sides in controversial arguments. Despite that, there is an underlying argument that guides the volume: the economies and societies of the United States and Mexico are increasingly intertwined, and our two countries face challenges that we can only address if we find ways of cooperating. Although each country enjoys sovereignty to act as it pleases, common sense requires us to pursue joint efforts to deal with economic growth and development, security, migration, and the management of shared natural resources. To do this, we need to get to know

each other better and understand the challenges we have in common. For many years, we believed that we were “distant neighbors” who had little need to bridge the historical, cultural, and political divides that separate us. Today, we have an opportunity to be strategic partners who face common challenges creatively; in other words, to be “more than neighbors.”

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# INTRODUCTION

Mexico and the United States are more than neighbors. They are two countries that are increasingly *interdependent*. The two countries share a border of almost 2,000 miles, which has grown in importance for trade, transit, and security. Mexico is the United States' third largest trading partner, and second market for exports, while the U.S. represents over 75% percent of Mexico's trade. Over nine percent of the U.S. population is of Mexican descent (including nearly four percent born in Mexico), while ten percent of Mexico's population lives in the United States. There is hardly a person in Mexico who does not have a relative in the United States or an American who does not know someone from Mexico.

The relationship between the two countries is, however, highly *asymmetrical*. The GDP of the United States is eighteen times greater than that of Mexico and wages in the U.S. average six times those in the neighboring country to the south. While the United States remains the world's lone superpower, Mexico plays a highly cautious role in world affairs. For many Mexicans the memories of a disastrous war with the United States (1846–48), in which Mexico lost half its territory, and several subsequent invasions remain fresh. To a large extent, Mexican nationalism has been constructed as a reaction first to the fear of invasion and later to the resistance against undue influence from the north. In contrast, for the United States, Mexico has often been afterthought. Americans register warm feelings towards the country in national surveys, but the country is only occasionally at the center of U.S. foreign policy considerations. While Mexicans are apt to worry about the United States' role in their country, Americans frequently forget about their neighbor to the south.

However, these trends have been shifting. As the two countries become more interdependent, there are an *increasing number of U.S. and Mexican stakeholders* in the relationship who pay close attention to issues on the other side of the border and to cooperation between the two countries. Mexicans and Americans increasingly see each other as *strategic partners* with common issues that they need to address through greater cooperation. These issues are generally bread-and-butter issues that affect key constituencies in each country: trade and economic growth; terrorism and drug trafficking; immigration; and, on the border, environmental and health concerns. Indeed, almost all the issues on the U.S.–Mexico bilateral agenda are actually major domestic issues in each country, which have binational dimensions. Although sometimes each country needs to pursue its own strategies on these issues, there are many aspects that can only be dealt with through bilateral cooperation.

This convergence of international and domestic agendas means that the profile of the relationship has risen considerably as policy-makers seek to deal with the international dimensions of these high-profile issues. It also means that diplomatic relations between the two countries are constantly influenced by domestic politics in each country. Every agency of the federal government has some dealing with its counterpart in the other country and most U.S. politicians, including many governors, mayors, and state legislators, have positions on issues vital to the relationship. Business leaders, unions, and civic organizations all have strong opinions on issues on the bilateral agenda and often make their opinions known. It is a relationship that is both intense and complex, filled with possibilities and fraught with challenges.

## PART I: AN OVERVIEW OF U.S.–MEXICO RELATIONS

### THE ECONOMIC RELATIONSHIP

Mexico is one of the United States' **leading trade partners**. Both countries are increasingly interdependent economically, and this interdependence is particularly noticeable for many U.S. states.

Mexico is the United States' third largest trading partner (far after Canada but very close behind China). Mexico is the second market for U.S. exports and the third source for imports to the United States. Overall Mexico accounts for 11.5% of U.S. trade and almost 13% of exports.

Several U.S. states depend heavily on Mexico as an export market, including Texas (36.4%), Arizona (29.4%), Nebraska (22.1%), California (15.4%), and Iowa (15.3%). Twenty-two states depend on Mexico as either the primary or sec-

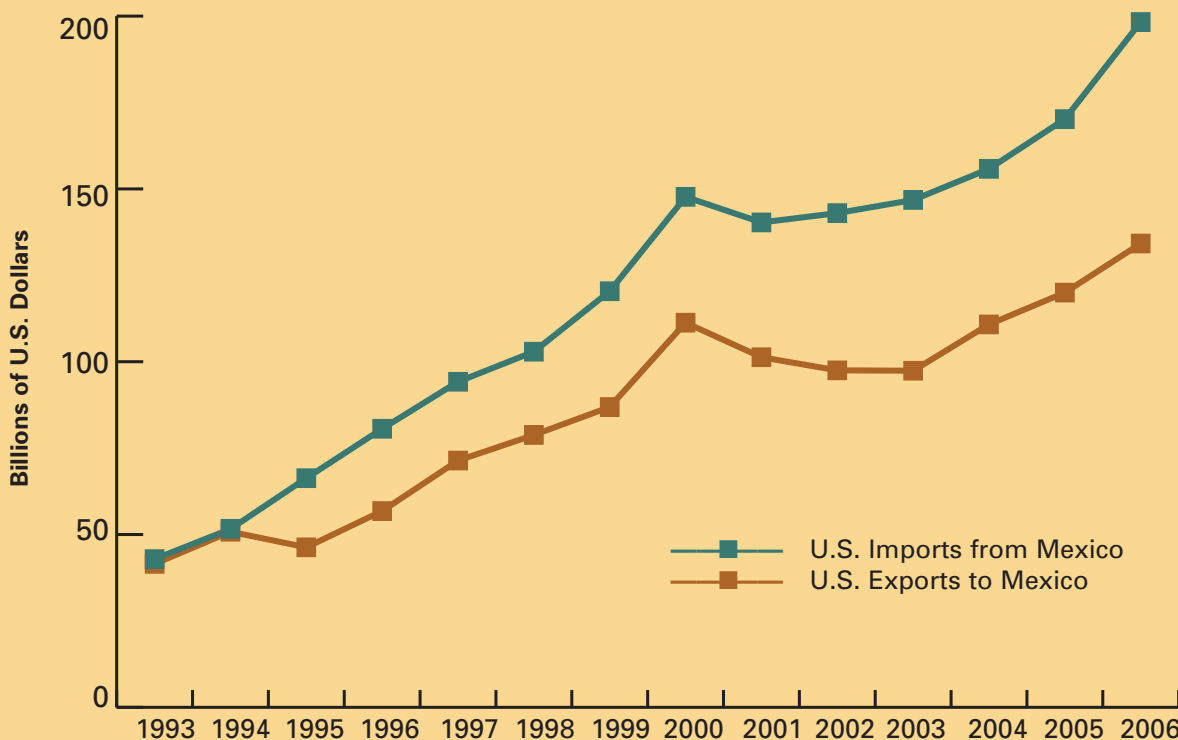
ondary destination for state exports: California, Texas, Arizona, Ohio, Georgia, Pennsylvania, Illinois, North Carolina, Kentucky, Tennessee, Rhode Island, Indiana, Wisconsin, Oklahoma, Kansas, Michigan, Arkansas, Colorado, Mississippi, South Dakota, Nebraska, and Iowa.

Trade between Mexico and the United States has increased more than three times since the North American Free Trade Agreement (NAFTA) was implemented in 1994.

The United States receives roughly 85% of Mexico's exports and is the source of 51% of its imports.

Mexico is the **second source of oil** for the United States (after Canada and narrowly ahead of Saudi Arabia) and accounted for 15.4% of all U.S. crude oil imports in 2005.

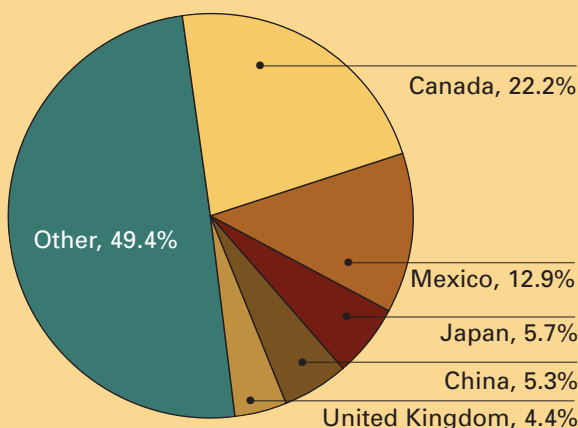
U.S. Trade with Mexico, 1993–2006



Source: U.S. Census Bureau, Foreign Trade Statistics.

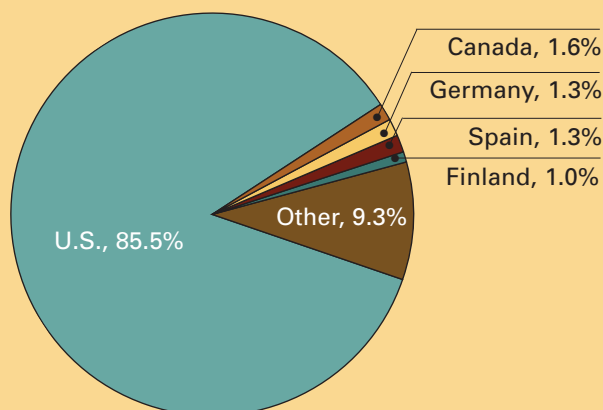


Top Markets for U.S. Exports  
as Percent of Total Exports  
(January–December 2006)



Source: U.S. Census Bureau, Foreign Trade Statistics.

Top Markets for Mexican Exports as  
Percent of Total Exports  
(January–December 2006)



Source: Ministry of Economy with data from Banco de México, 2006.

U.S. foreign direct investment in Mexico has increased dramatically since 1990 as well. Mexican foreign direct investment in the United States has also risen noticeably over this period, especially in cement, bakery goods, glass, and other areas where major Mexican multinationals have made entries into the U.S. market.

Several **challenges for trade and investment** remain, however:

- Insufficient border infrastructure slows cross-border trade daily and interferes with planning for just-in-time manufacturing.
- Trade disputes in trucking, sugar, high-fructose corn syrup, and other products have slowed the implementation of NAFTA.
- Different standards, including sanitary requirements, packaging regulations, and subsidies in agriculture, have limited free trade of some products.

Moreover, trade has not solved Mexico's **development challenges** as many hoped during the NAFTA negotiations.

Exports to Mexico as Percent  
of State Exports, 2006

STATE	PERCENTAGE
Texas	36.4%
Arizona	29.4%
Nebraska	22.1%
California	15.4%
Iowa	15.3%
South Dakota	14.5%
Mississippi	14.4%
Colorado	12.8%
Arkansas	12.4%
Michigan	11.6%
Kansas	11.1%
Oklahoma	11.0%
Wisconsin	10.8%
Indiana	10.7%
Kentucky	10.4%
Tennessee	10.3%
Missouri	9.7%
Louisiana	9.3%
New Mexico	8.9%
North Carolina	8.4%

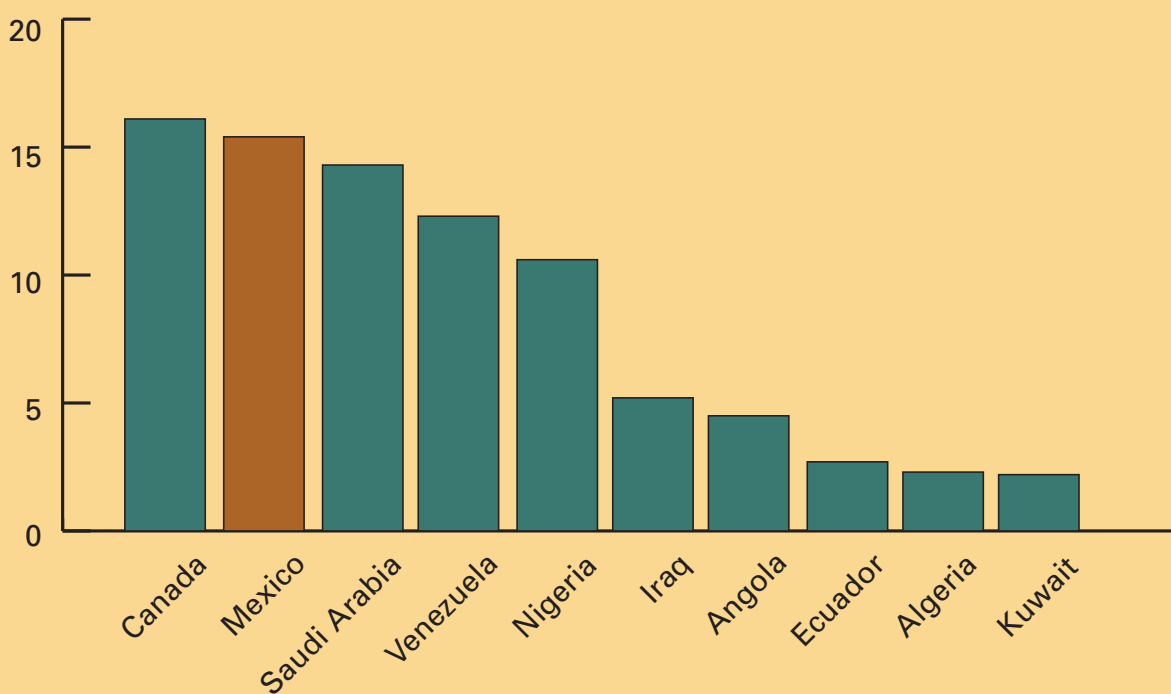
Source: U.S. Census Bureau, Foreign Trade Statistics.



- The ratio of GDP/capita between the two countries remains around six to one, only a slight improvement over the 1990 ratio.
- Some regions in Mexico, especially in the north, have seen significant growth over the past decade; others, including most of the country's south, have not.
- A lack of infrastructure and investments in human capital in many regions of Mexico has inhibited growth and development. While states in the north have taken part successfully in the export-oriented economy, those of the south have not.
- Although only 25% of Mexicans live in rural areas, they account for 60% of those living in extreme poverty and 44% of all migrants to the United States.
- Increased imports of basic grains, especially corn, from the United States and Canada appear to have undercut producer prices for these products for small farmers. Many of Mexico's small farmers fear that the full liberalization of agricultural trade between Mexico and the United States, set to take place in January 2008, will undermine their livelihood even further, especially the 15% of Mexico's population who depend on corn production.

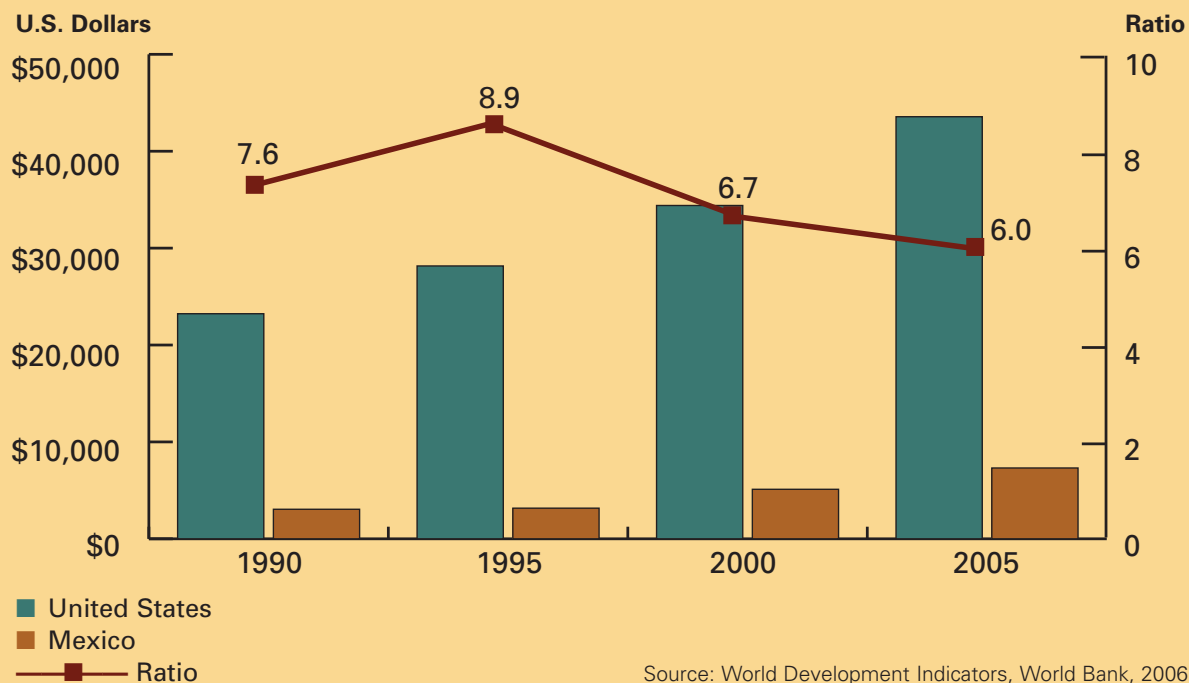
**Agricultural trade** is a particular focus of concern for poverty alleviation:

#### Imports of Crude Oil into the U.S. by Country of Origin, 2005

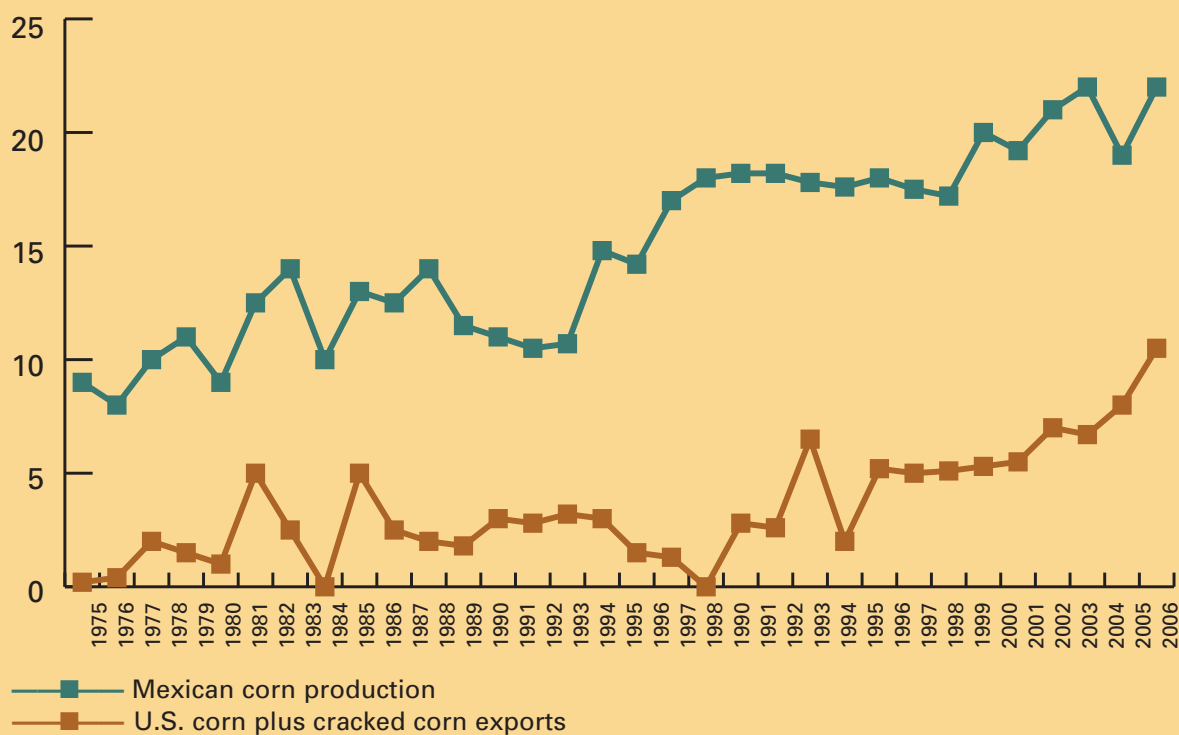


Source: U.S. Department of Energy, available at [www.eia.doe.gov](http://www.eia.doe.gov).

## U.S. GDP per capita vs. Mexico GDP per capita, 1990–2005

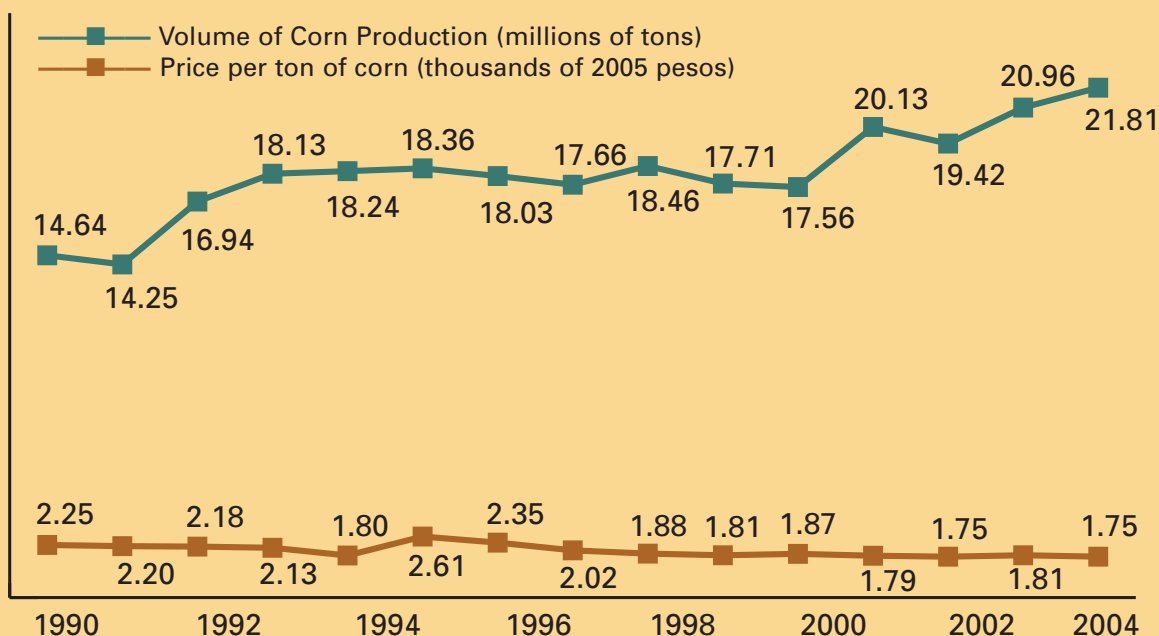


## Mexican Corn Production and Corn Imports from the U.S.



Source: John Burstein, *U.S.–Mexico Agricultural Trade and Rural Poverty in Mexico*, Washington: Wilson Center and Fundación IDEA, 2007.

## Corn Production and Price per Ton in Mexico



Source: Fundación IDEA, based on OECD, *Agricultural and Fisheries Policies in Mexico*, 2006.

### MIGRATION

Mexicans are by far and away the **largest immigrant population** in the United States.

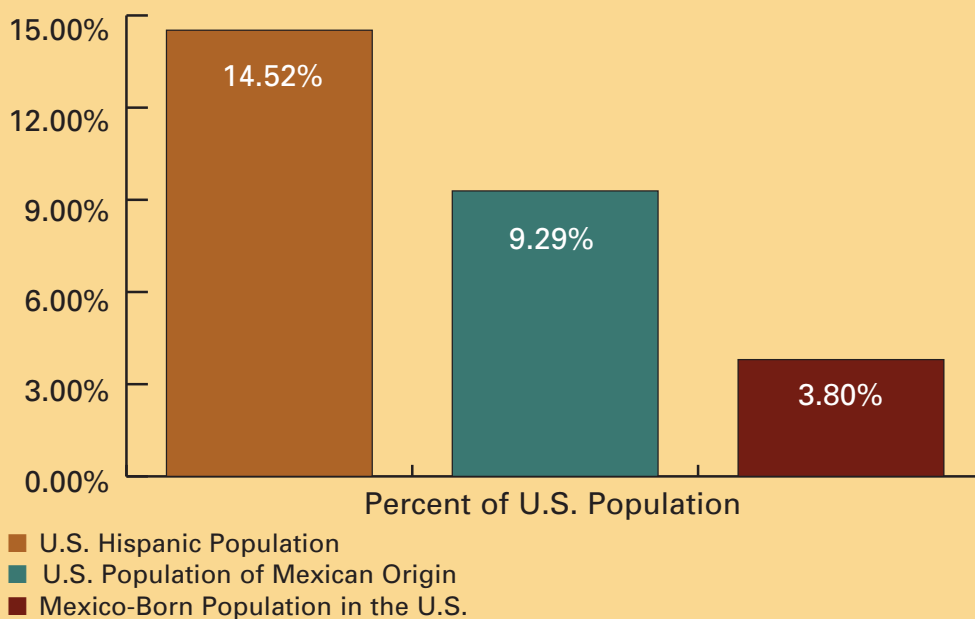
- Almost a third of all immigrants in the United States were born in Mexico (32%). Mexico is the source of the greatest number of both authorized (20%) and unauthorized (56%) migrants who come to the United States every year.
- There are almost 27 million people of Mexican descent in the United States (9% of the U.S. population). Roughly twelve million people in the United States were born in Mexico (3.8%).
- Since the early 1990s, Mexican immigrants are no longer concentrated in California, the Southwest, and Illinois, but have been coming to new gateway states, including New York, North Carolina, Georgia, Nevada, and Washington, in increasing numbers.

- Historically most Mexican migration to the United States came from only a handful of states in the north and center-north of Mexico; over the past ten years, migration has increased from other states, especially those in the south of Mexico.

Several factors drive Mexican migration:

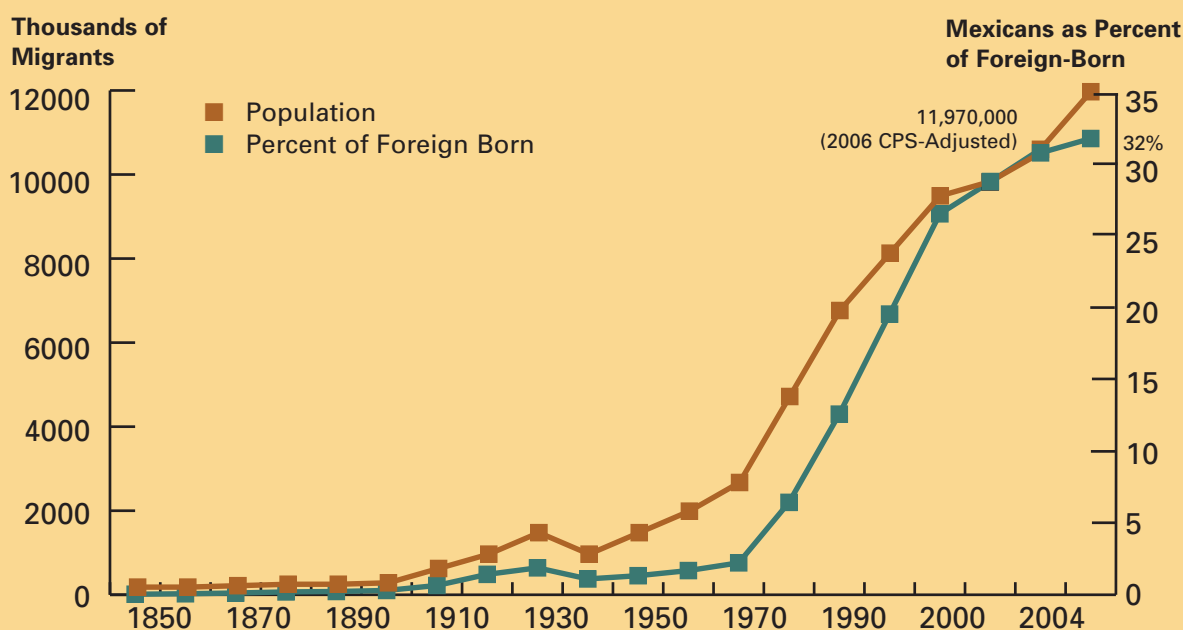
- Poverty in Mexico, especially the lack of opportunities in the agricultural sector.
- The growing demand for unskilled labor in the United States as the U.S. population grows older and more educated.
- The difference in wages between the two countries.
- The existence of established family and community networks that allow migrants to arrive in the United States with people known to them.

## U.S. Population of Mexican Origin (U.S. Census, 2005 figures)



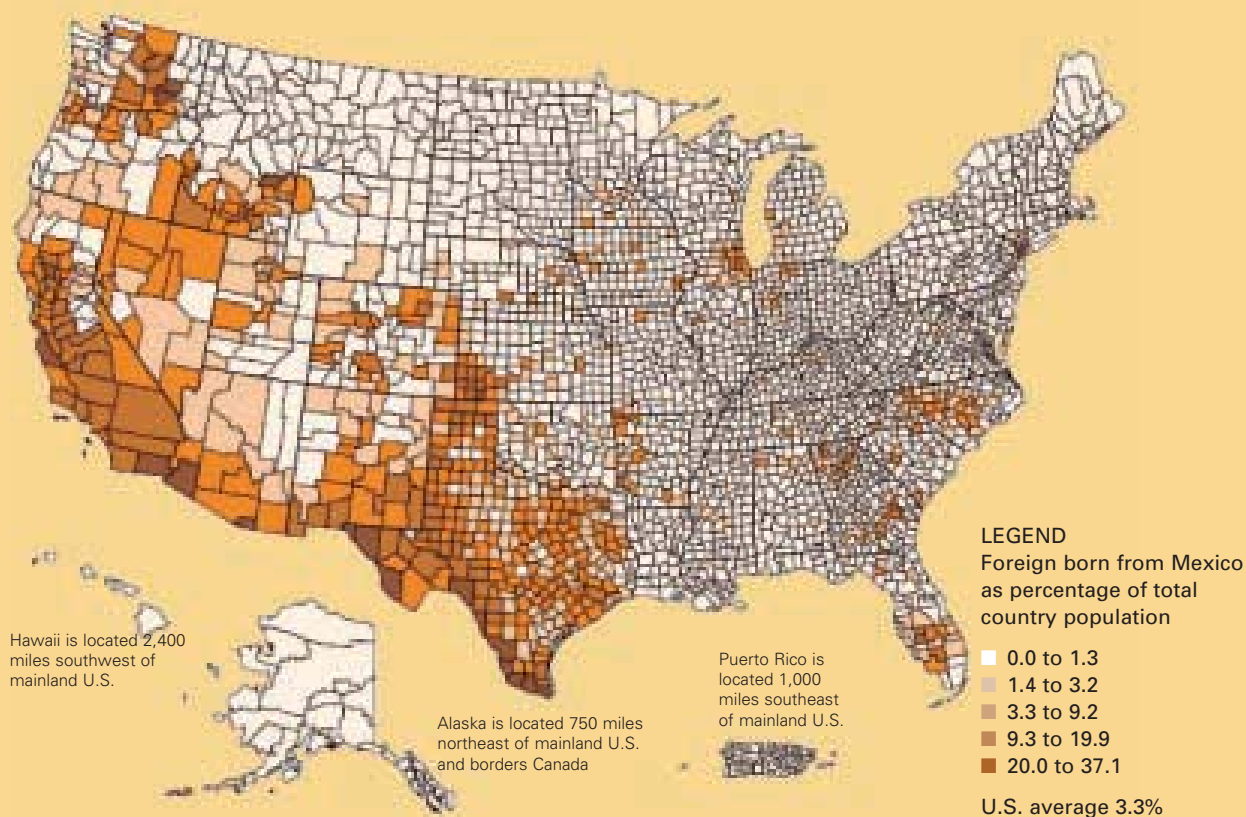
Source: U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau.

## Mexican-Born Population in U.S. and as Percent of Foreign-Born Population, 2006



Source: Jeffrey Passel, *Unauthorized Migrants: Numbers and Characteristics*, Washington, D.C., Pew Hispanic Center, June 14, 2005 with data from the 2004 Current Population Survey.

## The Foreign Born from Mexico in the United States As Percentage of Total Country Population, 2000



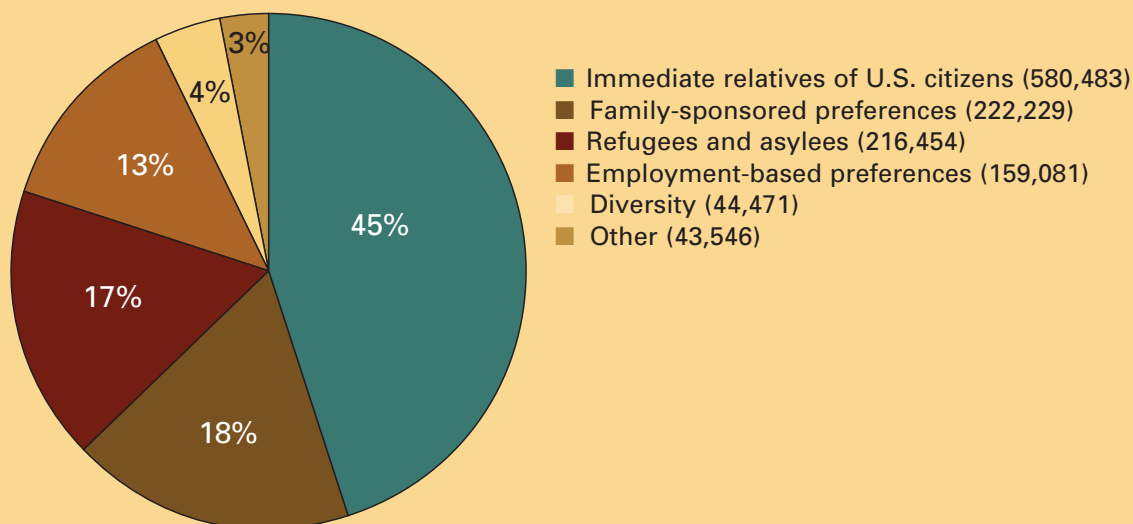
Source: Elizabeth Grieco, "The Foreign Born from Mexico in the United States," Migration Policy Institute, October 2003

The framework of **U.S. immigration law** has largely remained the same since 1965. However, both the economy and the demographics of the United States have changed over the past four decades. The U.S. economy needs both high-skilled and low-skilled immigrant workers to remain competitive and to have enough workers who continue to pay into Social Security and Medicare as the U.S. population grows older. Nonetheless, there are currently very few channels for immigration to the United States for work-related reasons under current law.<sup>1</sup>

- Almost two-thirds of all new legal permanent residents in the United States last year (64%, 2006) obtained residency through family ties; only 13% did so through employment-related adjustments.
- The unauthorized immigrant population in the United States has grown to close to 12 million people.
- Over half of unauthorized immigrants (57%) are believed to be Mexican.

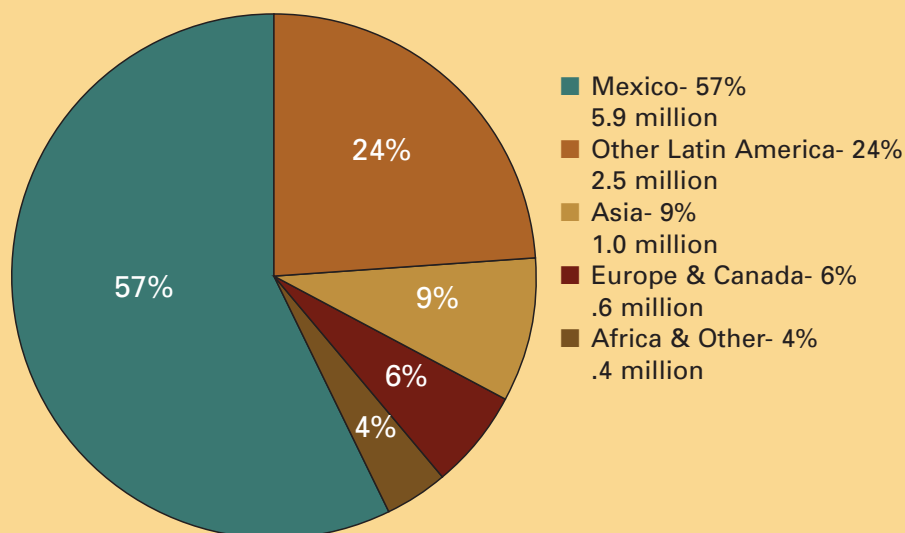
1. For an analysis of possible ways to reform the U.S. immigration system, see *Task Force on Immigration and America's Future*, Spencer Abraham and Lee H. Hamilton, co-chairs, Migration Policy Institute, Manhattan Institute, and Woodrow Wilson Center, 2006. The summary of the report and background materials are available at [www.migrationpolicy.org](http://www.migrationpolicy.org).

## Persons Obtaining Legal Permanent Resident Status by Class of Admission (Fiscal Year 2006) Total of 1,266,264



Source: Immigration Statistics and Publications, U.S. Department of Homeland Security, 2006.

## Unauthorized Immigrants in U.S. by Country of Origin



Source: Jeffrey Passel, *Unauthorized Migrants: Numbers and Characteristics*, Washington, D.C., Pew Hispanic Center, June 14, 2005 with data from the 2004 Current Population Survey.



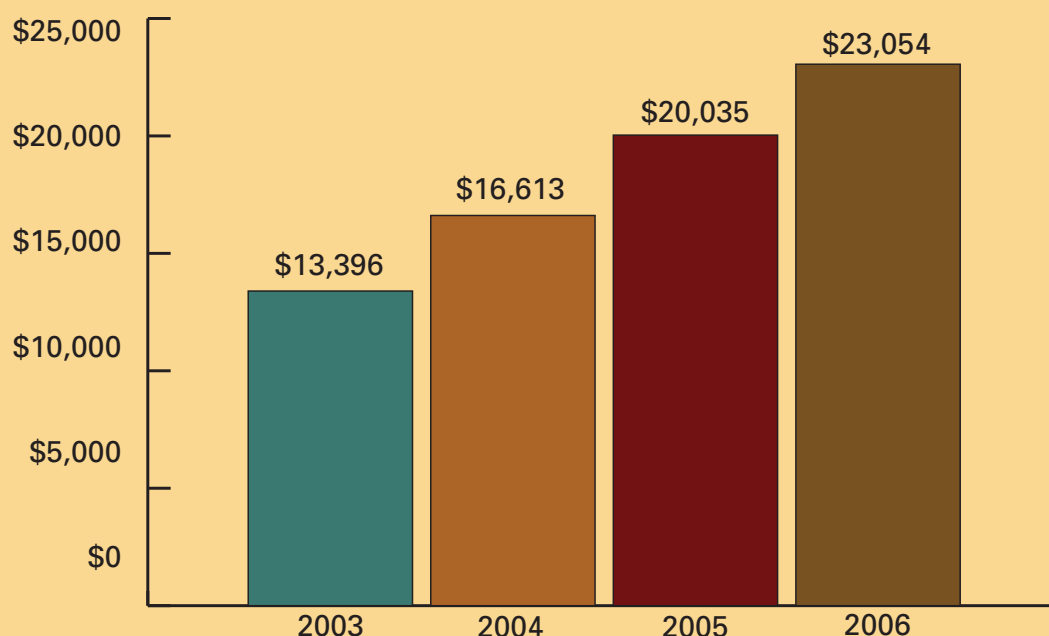
The **Mexican government position** on migration has shifted in recent years. For many years, the Mexican government showed limited interest in the issues. However, past President Vicente Fox actively sought to recognize the contribution of migrants to Mexico and to pursue, at least initially, a bilateral migration agreement with the U.S. government. The failure to reach a bilateral migration agreement led to a gradual shift in emphasis, however, to a greater focus on how the Mexican government can create opportunities in Mexico. The current administration of President Felipe Calderón, in particular, has placed an emphasis on how to create jobs in Mexico, enhance border security, and protect Mexican citizens living abroad. Since roughly half of Mexicans have relatives in the United States, this issue remains a highly sensitive one.

**Mexican immigrants themselves** often became deeply engaged in their new home communities in the United States and also remain connected to their communities of origin:

- Remittances from Mexican migrants now top \$23 billion per year and help sustain many local communities in Mexico's poorest regions.
- Funds raised by migrant organizations also help develop local communities. One Mexican government program, known as "Three for One" provides matching funds from the federal, state, and local governments to any investments made by migrant organizations in the infrastructure of their communities of origin.
- Mexican migrants are also deeply engaged in educational, religious, and civic activities in their home communities in the United States.<sup>2</sup>

2. See Xóchitl Bada, Jonathan Fox, and Andrew Selee, eds., *Invisible No More: Mexican Migrant Civic and Political Participation in the United States*, Washington, DC: Woodrow Wilson Center and University of California, 2006.

### Remittances to Mexico, 2003–2006



Source: INEGI, Estadísticas Económicas, with data from Banco de México.

## SECURITY

Security remains a key issue on the U.S.–Mexico agenda and produces one of the most difficult shared challenges. Mexico is a key **transshipment point for narcotics** being transported from South America and a producer of some illegal drugs that are consumed in the United States:

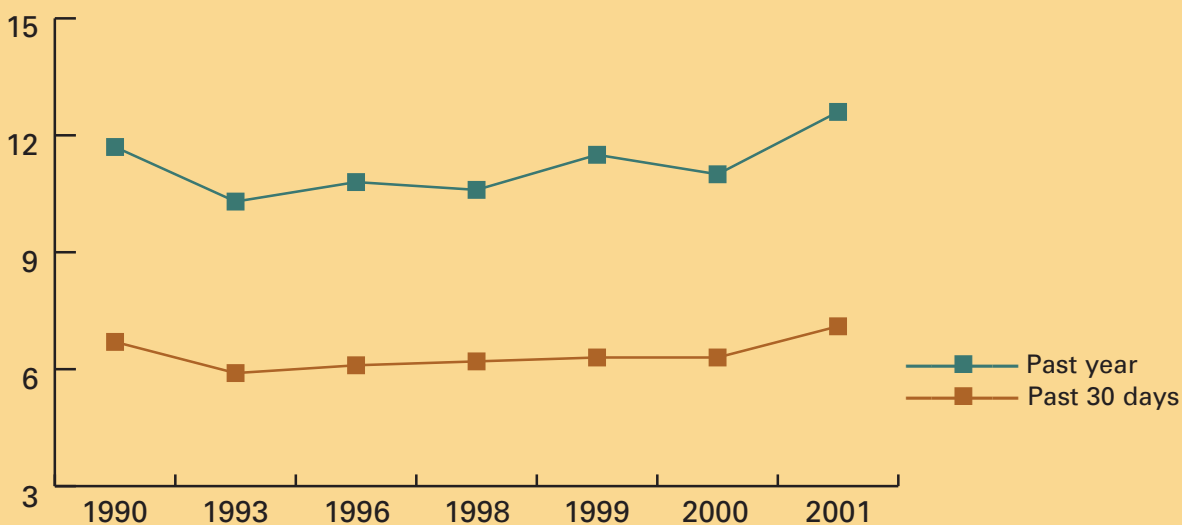
- Roughly 90% of all cocaine from South America passes through Mexico.
- Mexico is the leading foreign producer of both marijuana and methamphetamines imported to the U.S. (the U.S., however, produces more of both).
- Mexico is also the second supplier of heroine to the U.S. market (although it accounts for only a very small percentage of worldwide heroine production).
- While cocaine is handled primarily by several large cartels, other narcotics are sometimes managed by smaller operations.<sup>3</sup>

At the same time, **U.S. consumption, arms, and cash** fuel the drug trade:

- U.S. consumption is, of course, the principal reason why drug trafficking exists. Consumption has remained steady in the United States since the late 1980s and efforts to address this are severely deficient. Drug consumption has also increased in Mexico in recent years.
- U.S. arms dealers supply a majority of weapons smuggled into Mexico to be used by drug traffickers.
- Many of the chemical inputs for methamphetamines are either produced in the U.S. or shipped through U.S. ports to Mexico.
- U.S. financial institutions are used to launder the proceeds from drug trafficking that sustain the cartels.

3. For further information, see United States Department of State, Bureau for International Narcotics and Law Enforcement Affairs, *International Narcotics Control Strategy Report*, Volume I, Drug and Chemical Control, March 2007.

### Percent of U.S. Population Consuming Drugs in Past Thirty days and in Past Year, 1990–2001



Source: Drug Use Trends, The White House Office of National Drug Control Policy (ONDCP) Information Clearinghouse, October 2002, available at <http://www.whitehousedrugpolicy.gov/publications/factsht/druguse/>.



Source: Stratfor

**Cooperation in fighting drug trafficking** has increased dramatically in recent years:

- The Fox administration (2000–2006) had close working relations with the United States in trying to dismantle the drug cartels. Significant advances were made in intelligence sharing and joint strategies to fight drug trafficking.
- Since taking office, President Felipe Calderón has made his top priority the fight against organized crime. He has launched several high-profile law enforcement operations against the drug cartels, using joint efforts by the military and police.
- Civic organizations have raised concerns about the possibility of human rights abuses against civilians during these operations and expressed concern that extensive army involvement in law enforcement operations could have negative effects on already weak civilian oversight of the military.
- Extraditions of narcotics traffickers have increased dramatically. In late 2005 the Mexican Supreme Court overturned an existing prohibition on extraditing fugitives who could face the death penalty or life in prison. As a result, extraditions increased from 41 in 2005 to 63 in 2006. Another 150 non-Mexicans were deported to face drug charges in the United States during 2006.

- In January 2007, the new Calderón administration deported 15 top cartel leaders who were wanted in the United States, representing the highest level series of deportations to date. This appears to mark a new interest by the Calderón administration in extraditing high-level criminals to face prosecution in the United States rather than holding them in Mexican jails.<sup>4</sup>
- The Mexican government in 2007 decided to ban all cold medicines that use pseudophedamines, because these can be used for methamphetamines.

However, most analysts agree that the only way to combat drug trafficking in Mexico in the long-term will be address **consumption** and **reforms to the police and justice system**.<sup>5</sup>

- A reduction in consumption in the United States would be the most effective way to combat drug trafficking. As long as demand remains high, cartels will continue to thrive.
- Police capabilities in Mexico need to be significantly upgraded. The current use of the military is only a stop-gap to reestablish order, but long-term strategies to address organized crime will require a larger and more effective federal police force, increased investigative capabilities in state police forces, greater accountability of police at all levels, and better coordination among federal, state, and local police forces.
- Mexico needs to reform its justice system dramatically to ensure effective prosecution of criminals and protection of the innocent. Proposals for reforms include oral trials, the constitutional recognition of the standard of

innocence until proven guilty, professional standards for lawyers and judges, and the implementation of a professional public defender system.

- Although most of these measures will require changes within one country or the other—addressing consumption in the United States and addressing judicial and police reform in Mexico—these efforts also provide opportunities for bilateral cooperation. There are already successful examples of bilateral cooperation to promote justice reform. Any security agenda should contemplate both demand-reduction and institutional reform.

Cooperation against **potential terrorist threats** has also increased since 9/11:

- The U.S. and Mexican governments have worked closely together to upgrade Mexico's capabilities to screen passports of people entering Mexico from third countries and check them against the U.S. terrorist watch list.
- The U.S. and Mexican governments have worked together to screen passenger lists on flights between the two countries.
- In 2002 the two governments signed the Smart Border Agreement (parallel to the similarly named agreement between the U.S. and Canada) to provide for a more secure border while facilitating the movement of people and goods. The Smart Border Agreement has helped increase the number of secure transit documents for frequent border crossers, improved sharing of intelligence on potential terrorist threats, and helped improve screening of third-party travelers.<sup>6</sup>

4. State Department, *International Narcotics Control Strategy Report*.

5. For proposals on how to reform the police and justice systems in Mexico, see Wayne A. Cornelius and David A. Shirk, editors, *Reforming the Administration of Justice in Mexico*, South Bend, IN: University of Notre Dame Press, 2007 and, in Spanish, [www.juiciosorales.org](http://www.juiciosorales.org).

6. See Deborah Meyers, *Does Smarter Lead to Safer? An Analysis of the Smart Border Accords with Canada and Mexico*, Washington, DC: Migration Policy Institute, 2003.

## Smart Border Agreement: U.S.–Mexico Border Partnership Action Plan, March 2002

Secure Infrastructure	Secure Flow of People	Secure Flow of Goods
Long Term Planning	Pre-Cleared Travelers	Public/Private-Sector Cooperation
Relief of Bottlenecks	Advanced Passenger Information	Electronic Exchange of Information
Infrastructure Protection	NAFTA Travel	Secure In-Transit Shipments
Harmonize Port of Entry Operations	Safe borders and deterrence of alien smuggling	Technology Sharing
Demonstration Projects	Visa Policy Consultations	Secure Railways
Cross-Border Cooperation	Joint Training	Combating Fraud
Financing projects at the border	Compatible Databases	Contraband Interdiction
	Screening of Third-Country Nationals	

Source: White House (<http://www.whitehouse.gov/infocus/usmxborder/22points.html>)

- There are several additional forms of **coordination** between the two governments on security, including several working groups set up within the framework of the Security and Prosperity Partnership.

### COOPERATION BETWEEN THE UNITED STATES AND MEXICO

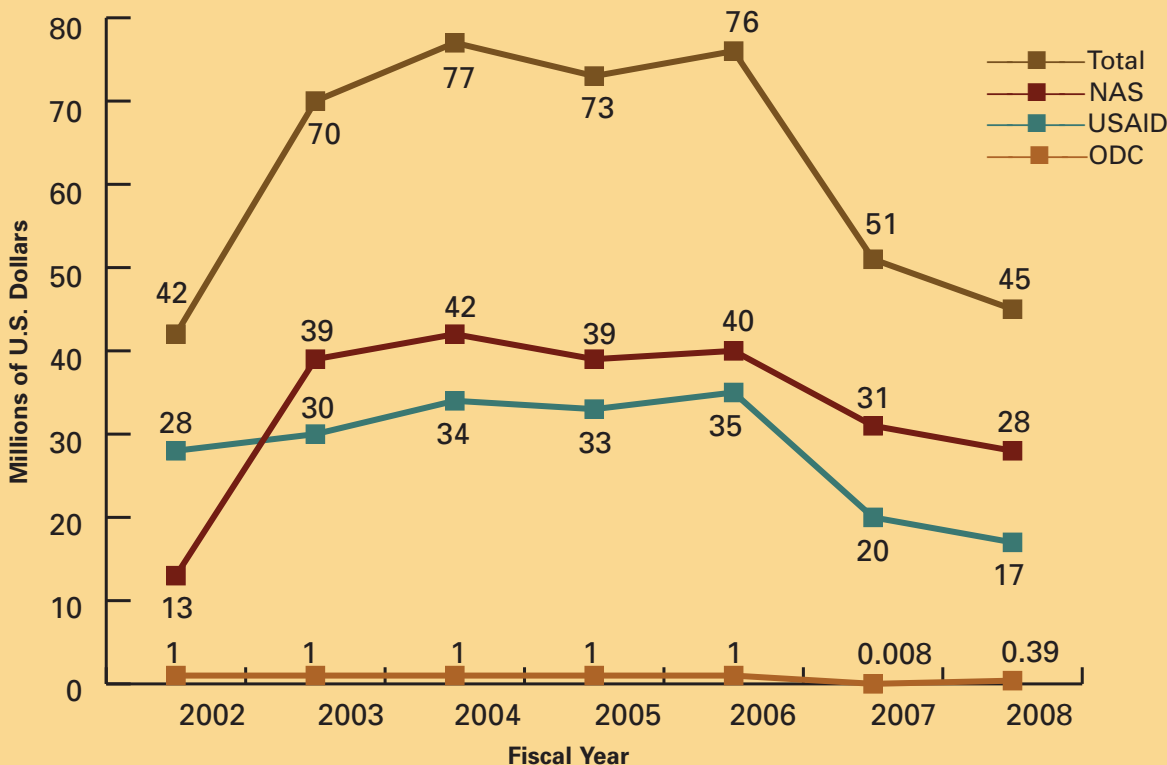
The U.S.–Mexico relationship is unlike almost any other relationship the United States has with another country (except, perhaps, with Canada). Although the U.S. State Department and Mexican Foreign Affairs Ministry play an important role in charting a course for the official government-to-government relationship, almost every agency in both governments deals to some extent directly with its counterpart across the border. In addition, dozens of state and local governments as well as civic organizations, business associations, and other non-

governmental groups deal with issues in the binational relationship and often work closely with counterparts across the border.

***Coordination between the Executive Branches of the Two Countries:*** The Mexican Embassy in Washington is the country's largest anywhere and it has a network of 46 consulates across the United States. The U.S. Embassy in Mexico is one of the largest the U.S. government has anywhere and almost every major federal government agency has a representative there.

Several mechanisms exist to provide continuity to issues on the bilateral agenda. The Binational Commission (BNC), started in 1981, is a yearly meeting among cabinet secretaries and key agencies between the two countries. The Security and Prosperity Partnership, an initiative of the U.S., Mexican, and Canadian governments launched in 2005, brings agencies of the three governments

## U.S. Foreign Assistance to Mexico, FY2002–FY2008



Source: U.S. Department of State

NAS - Narcotics Affairs Section; USAID - U.S. Agency for International Development; ODC - Office of Defense Coordination

together regularly to discuss key economic and security issues and includes occasional summits among the heads of state of the three countries. Both of these mechanisms serve to provide structure to the range of cooperative efforts carried out on a daily basis by agencies in the two (and often three) countries.

In addition, almost every agency of both governments has some dealing with the other country. Cabinet secretaries from both countries visit each other frequently. There are particularly strong relations of coordination between the U.S. Department of Homeland Security and Mexico's Interior Ministry and between the U.S. Department of Justice and Mexico's Attorney General's Office (PGR).

Despite this level of ongoing communication, U.S. foreign assistance to Mexico to support both social development and law enforcement has actually dropped in recent years.

### *Relations between the Two Congresses:*

From the 1920s until 1997 a single party dominated Mexican political life and controlled both the presidency and the Congress. As a result, Congress was largely subordinate to the executive branch and played little role in foreign policy. Since 1997, however, the Mexican Senate and Chamber of Deputies have become important players in foreign policy decisions and in the relationship with the United States.

The U.S.–Mexico Interparliamentary Group is the main formal linkage between the



## XLVI United States–Mexico Interparliamentary Group

U.S. Participants	Mexican Participants
<b>Senate</b>	
Sen. Chris Dodd (D-CT)	Sen. Manlio Fabio Beltrones Rivera (PRI)
Sen. John Cornyn (R-TX)	Sen. Ricardo García Cervantes (PAN)
	Sen. Gustavo Madero Muñoz (PAN)
	Sen. Adriana González Carrillo (PAN)
	Sen. Rosario Green Macías (PRI)
	Sen. Eloy Cantú Segovia (PRI)
	Sen. Tomás Torres Mercado (PRD)
	Sen. Ludivina Menchaca Castellanos (PVEM)
	Sen. José Luis Lobato Campos (Convergencia)
	Sen. Josefina Cota Cota (PT)
<b>House of Representatives/Chamber of Deputies</b>	
Congressman Ed Pastor (D-AZ)	Dip. Antonio Valladolid Rodríguez (PAN)
Congresswoman Linda Sanchez (D-CA)	Dip. Cruz Pérez Cuéllar (PAN)
Congressman Bob Filner (D-CA)	Dip. José Jacques Medina (PRD)
Congressman Silvestre Reyes (D-TX)	Dip. Raymundo Cárdenas Hernández (PRD)
Congresswoman Hilda Solis (D-CA)	Dip. Enrique Serrano Escobar (PRI)
Congressman Ciro Rodríguez (D-TX)	Dip. Edmundo Ramírez (PRI)
Congresswoman Gabrielle Giffords (D-AZ)	Dip. Erika Larregui (PVEM)
Congressman David Dreier (R-CA)	Dip. José Luis Varela Lagunas (Convergencia)
Congressman Jerry Weller (R-IL)	Dip. Rodolfo Solís Parga (PT)
Congressman Luis Fortuño (R-PR)	Dip. Irma Piñeyro Arias (NA)
Congressman Connie Mack (R-FL)	Dip. Armando García Méndez (ASD)
Congressman Michael McCaul (R-TX)	

Congresses of the two countries and has existed since 1960. However, numerous informal linkages exist among Members of Congress and Senators of the two countries, and key committees of the two Congresses weigh in frequently on matters that affect the other country.

**State and Local Governments:** There are almost 13 million people in both countries who live in towns, counties, and municipalities at the shared border, and over 78 million who live in border states. As a result, border governors from both countries gather every year for the Border Governors' Conference and mayors

from border communities meet occasionally as well. In addition to this, mayors and governors in neighboring towns across the border often have intense working relationships to resolve everyday issues, from planning economic development strategies to tracking stolen cars. Some partnerships, such as the Arizona-Sonora Commission, started in 1959, and the relationship between Tijuana and San Diego, have deep roots; others are more tenuous.

Increasingly governors and mayors from outside the border region are also involved in bilateral issues and visit each other's country.

Sometimes this interest stems from the desire to attract investment or open new markets for local products. In other cases, U.S. governors and mayors are responding to the interest of their constituents of Mexican origin, and Mexican governors and mayors are visiting communities in the United States where their constituents have relatives.

### *The North American Development Bank*

In 1994 the two federal governments established, in a side agreement to NAFTA, a North American Development Bank to fund environmental projects within a narrow radius of the border. Legislation in both countries in 2004 expanded the mandate to

projects within 300 km miles of the border on the Mexican side. It left the geographic limit in the United States unchanged at 100 km. To date 88 projects worth over \$865 million have been funded, mostly dealing with water, wastewater, solid waste, and air quality.<sup>7</sup> Roughly 60% of the projects funded are in Mexican border communities and 40% in U.S. border communities.

Some analysts have suggested that the two governments should expand the mandate of the NADBank beyond the immediate border region and allow infrastructure and productive projects as well as environmental ones. This is a highly contentious issue and unlikely to advance unless the current level of fund-

7. Data from the most recent Annual Report of the North American Development Bank, available on its website [www.nadbank.org](http://www.nadbank.org).

## Population of the Border States and Border Counties or Municipalities United States and Mexico, 2000

	State	Counties/Municipalities
<b>United States</b>		<b>(44 counties)</b>
Arizona	5,130,6321	1,159,908
California	33,871,648	2,956,194
New Mexico	1,819,046	312,200
Texas	20,851,820	2,125,464
Border Area	61,673,146	6,553,766
<b>Mexico</b>		<b>(80 Municipalities)</b>
Baja California	2,487,367	2,487,367
Chihuahua	3,052,907	1,363,959
Coahuila	2,298,070	387,922
Nuevo León	3,834,141	116,556
Sonora	2,216,969	607,508
Tamaulipas	2,753,222	1,387,549
Border Area	16,642,676	6,350,861
United States-Mexico Border Area	78,315,822	12,904,627

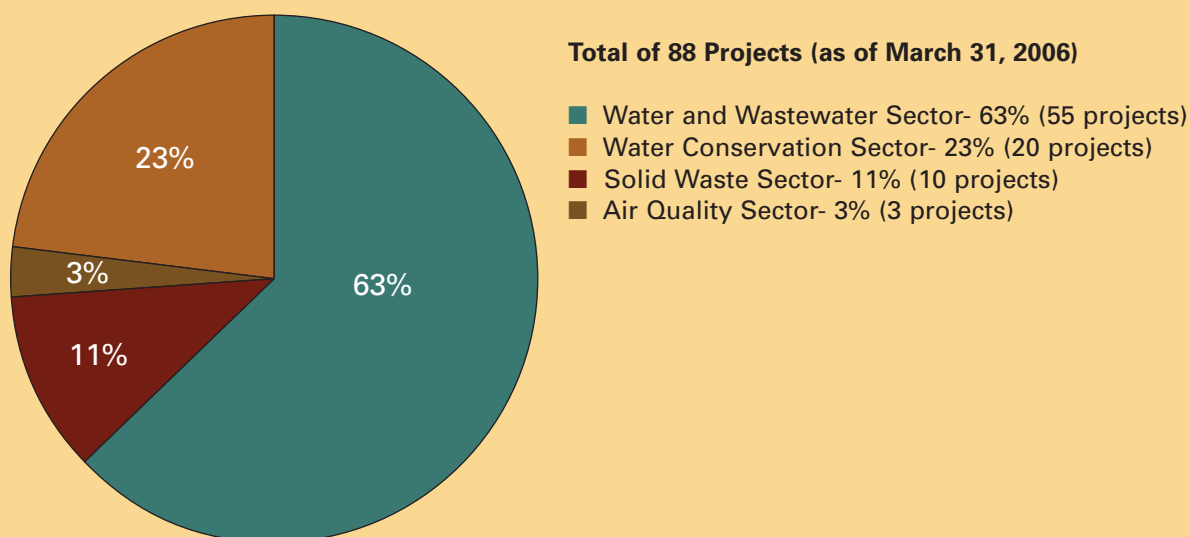
Source: United States Census Bureau: State and County QuickFacts; Instituto Nacional de Estadística, Geografía y Informática (INEGI), XII Censo General de Población y Vivienda 2000.

## Recent Border Governors Conferences

	Site of Recent Border Governors Conferences	
2006	XXIV Border Governors Conference	Austin, Texas
2005	XXIII Border Governors Conference	Torreón, Coahuila
2004	XXII Border Governors Conference	Santa Fe, New Mexico
2003	XXI Border Governors Conference	Chihuahua, Chihuahua
2002	XX Border Governors Conference	Phoenix, Arizona
2001	XIX Border Governors Conference	Tampico, Tamaulipas
2000	XVIII Border Governors Conference	Sacramento, California

Source: Office of the Governor of Texas, Texas Border & Mexican Affairs

## Projects with North American Development Bank Approved Financing by Type



Source: North American Development Bank, Annual Report 2006.

ing for border environmental projects is sustained since many border communities rely on access to funds to upgrade their systems. However, the NADBank is the only existing binational government effort to promote development, even within a highly limited mandate, and so the prospect of using it more broadly to promote economic development, especially in migrant-sending communities, is frequently floated.

***Educational and Cultural Exchange:*** For many years Mexicans have come to the United

States for undergraduate and especially graduate education and U.S. citizens have spent semesters abroad in Mexico. There are also thousands of Americans who travel to Mexico for shorter periods to study Spanish, and teachers, artists, and scholars who spend periods in each other's country for professional development, research, and cultural exchange. There are several programs that facilitate these exchanges, including, mostly significantly, the joint Fulbright-Garcia Robles program funded by the two governments through Comexus. However, these efforts have

never received more than scant attention within the bilateral relationship. Today Mexico ranks seventh among countries sending students to the United States, with 13,063 in 2005, while it is the sixth destination for U.S. students, with only 9,244 in 2005. Universities and private foundations have generated new initiatives for exchange, but the two governments have not increased their investment in the Fulbright program, the flagship for bilateral cooperation, since 1995.

**Non-Governmental Organizations:** A number of civic organizations maintain close ties across the border. This is especially true of migrant-led organizations, such as hometown associations and migrant federations, which are often involved in development projects in both Mexico and the United States. A summit in 2007 in Michoacán, organized by the National Association of Latin American and Caribbean Communities, brought together hundreds of these organizations to discuss their political role in both the United States and Mexico.<sup>8</sup> Similarly, many border organizations maintain close working relationships, including environmental organizations. Business organizations and labor unions also weigh in on binational issues of concern to them. Churches, both Catholic and Protestant, often maintain close relationships across the border as well.

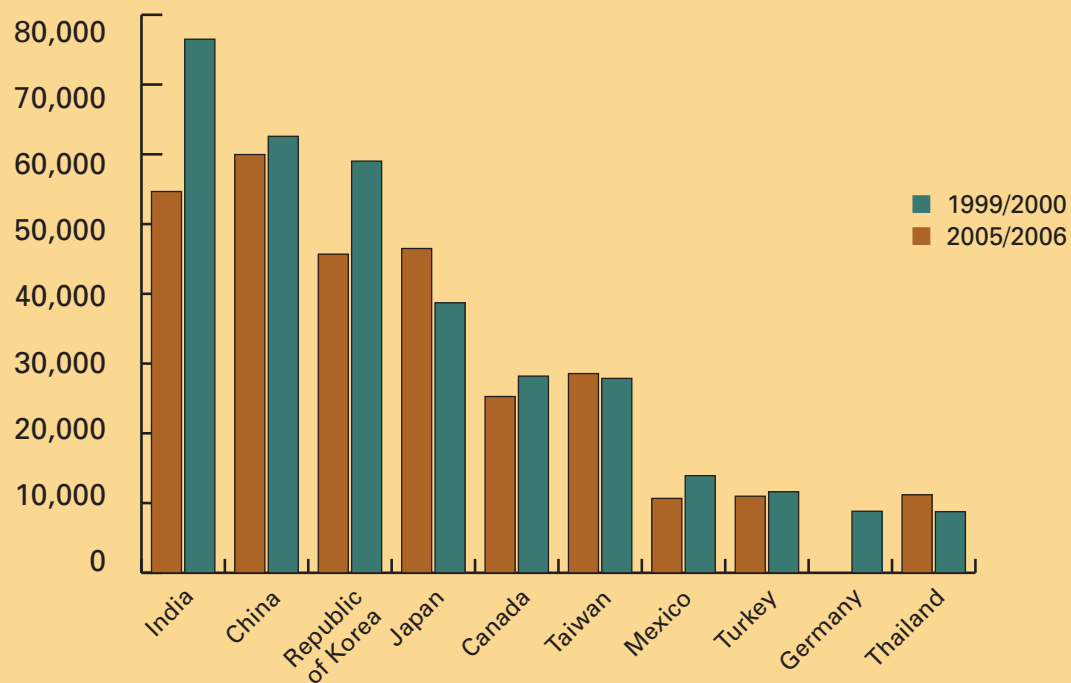
**Media across the Border:** The media in both countries pay attention to what happens in the other country; however, there are important asymmetries. The Mexican media pays a great deal of attention to what happens in the United States but has few resources for in-depth coverage. Only the national wire service, Notimex, the two principal television networks,

and a handful of major newspapers and magazines (including *Reforma*, *El Universal*, *La Jornada*, and *Proceso*) have reporters in the United States. Most of these reporters are concentrated in Washington, DC, although a few media companies have reporters in New York, Los Angeles, or other cities (or use local stringers). The U.S. media pay far less attention to Mexico but overall devote more resources. Associated Press, CNN, NPR, and several newspapers (*New York Times*, *Washington Post*, *Dallas Morning News*, *Los Angeles Times*, *La Opinión*, *Chicago Tribune*, *Houston Chronicle*, *Wall Street Journal*, and others) have major bureaus in Mexico, some with more than one reporter. Unlike most Mexican reporters they often have budgets to travel around the country and do investigative reporting. However, the major U.S. television networks (other than CNN) maintain a limited presence on the ground in Mexico except when there is a breaking story. It is worth noting that the media in both countries tend to have relatively limited coverage of the U.S.–Mexico border despite the growing importance of this region for both countries.

**Public Opinion:** Citizens of both countries register warm feelings for the other; however, Americans tend to pay minimal attention to Mexico while Mexicans are circumspect in their relations with their neighbors to the North. Public opinion surveys suggest that Mexicans often distrust the intentions of their neighbors to the north and are highly nationalistic, but they are also highly pragmatic in their desire for cooperation on specific issues. Americans have overwhelmingly positive views of Mexico, but do not

8. See information on the Latin American Migrant Community Summit, available at <http://www.cumbredemigrantes.org>.

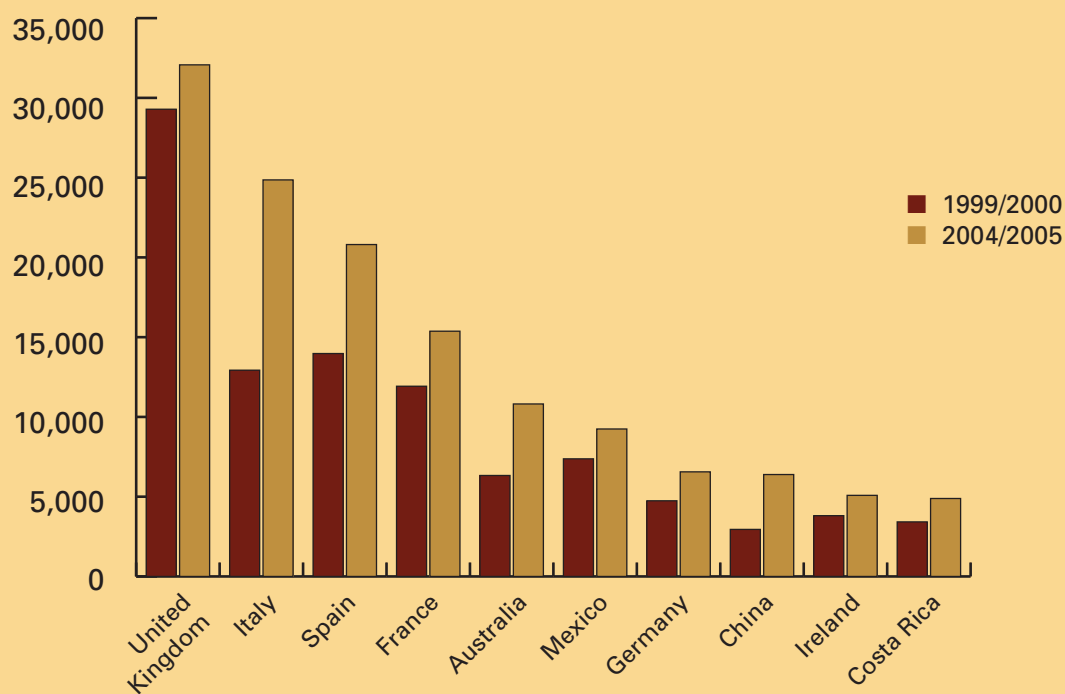
Origin of International Students in the U.S.,\* 1999/2000 vs. 2004/2005



\* At both undergraduate and graduate level

Source: *Open Doors*, Institute of International Education, 2006.

Origin of International Students in the U.S.,\* 1990/2000 vs. 2004/2005



\* At both undergraduate and graduate level

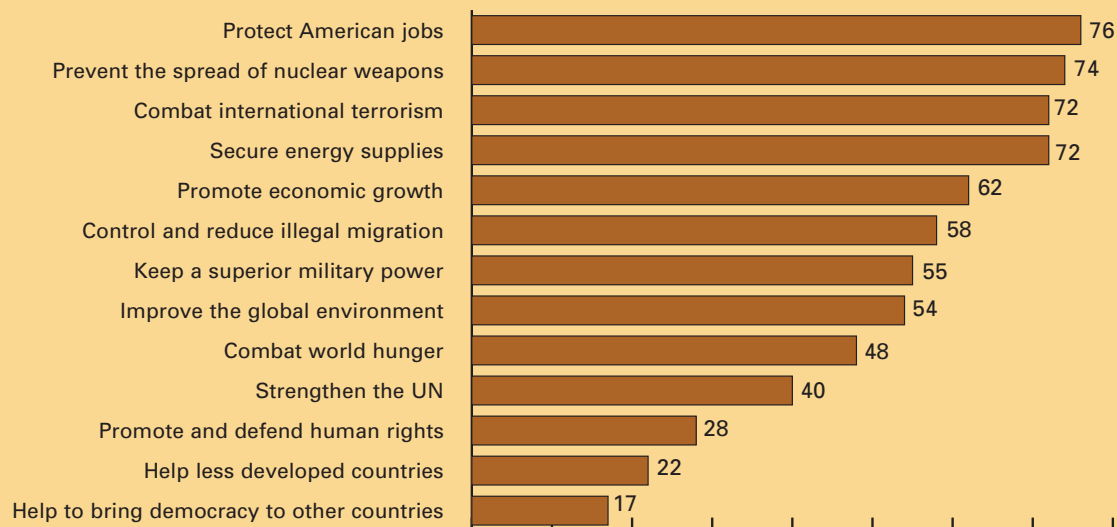
Source: *Open Doors*, Institute of International Education, 2006.

## Foreign Policy Goals (Mexico)



Percentages reflect those respondents who said that each goal should be a major foreign policy objective of their country.

## Foreign Policy Goals (U.S.)

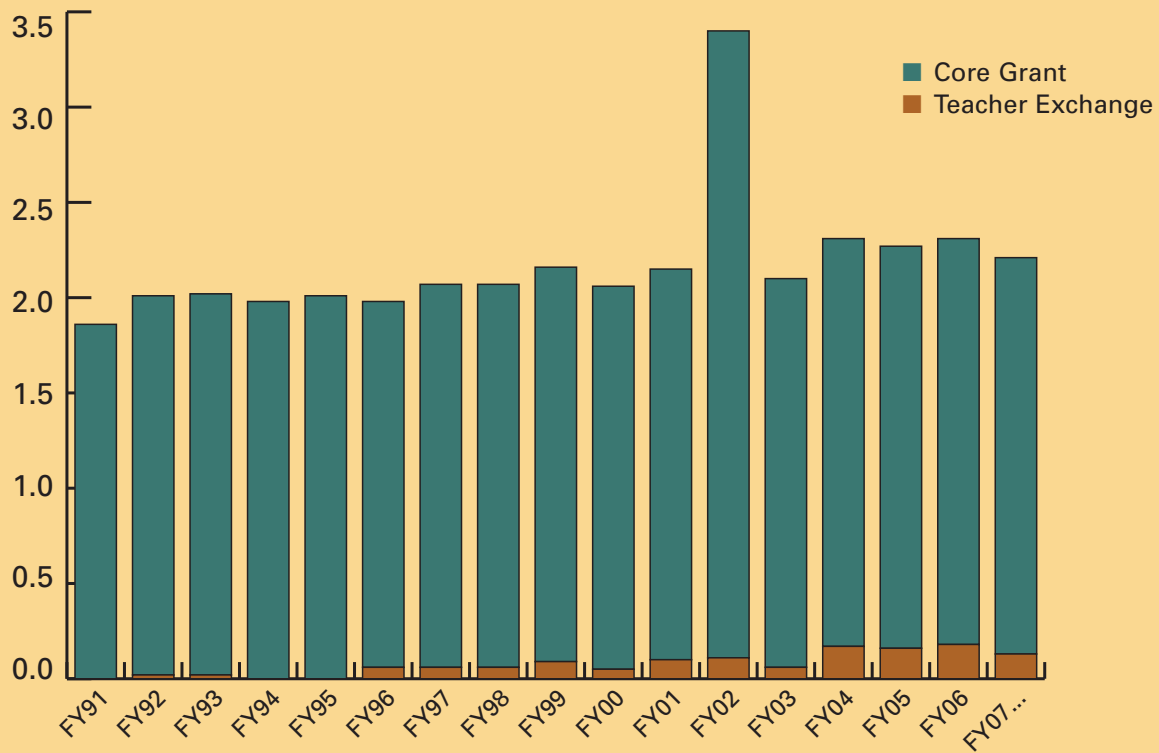


Percentages reflect those respondents who said that each goal should be a major foreign policy objective of their country.

Source: Guadalupe González and Susan Minushkin, editors, *Mexico and the World 2006*, Mexico City: Centro de Investigación y Docencia Económicas and Comexi, 2006, p. 49.



## U.S. Government Contributions to the U.S.–Mexico Fulbright Program (in Millions of Dollars)



\* In FY 02, the U.S. Government made a special contribution of \$1,169,910.  
Source: Comexus

## PART II: AN OVERVIEW OF MEXICO'S POLITICS, ECONOMY, AND SOCIETY

### A BRIEF POLITICAL HISTORY OF MEXICO

Mexico's politics have undergone a dramatic transition from a one-party dominant system that prevailed from the late 1920s until 2000 to a highly competitive multiparty system. This gradual transition, which took most of the 1990s, has left Mexico stronger and better poised to face the future, but also created new challenges as Mexican political leaders learn to govern in a pluralistic society and address the challenges of development and growth.

***From One-Party Rule to Democracy:*** For 71 years Mexico was governed by a single party, the Institutional Revolutionary Party (PRI), which was formed in the aftermath of the ten-year civil war known as the Mexican Revolution (1910–20). Formed in 1929, the party brought together most of the different sides that had fought in the war and helped forestall further armed conflict. While other parties were still allowed, the PRI won all presidential elections from its creation in 1929 through the 1990s, maintained an overwhelming majority in the Congress (until 1997), and controlled all governorships (until 1989) and most municipalities. It did so through a mixture of fraud, intimidation, and effective politics.

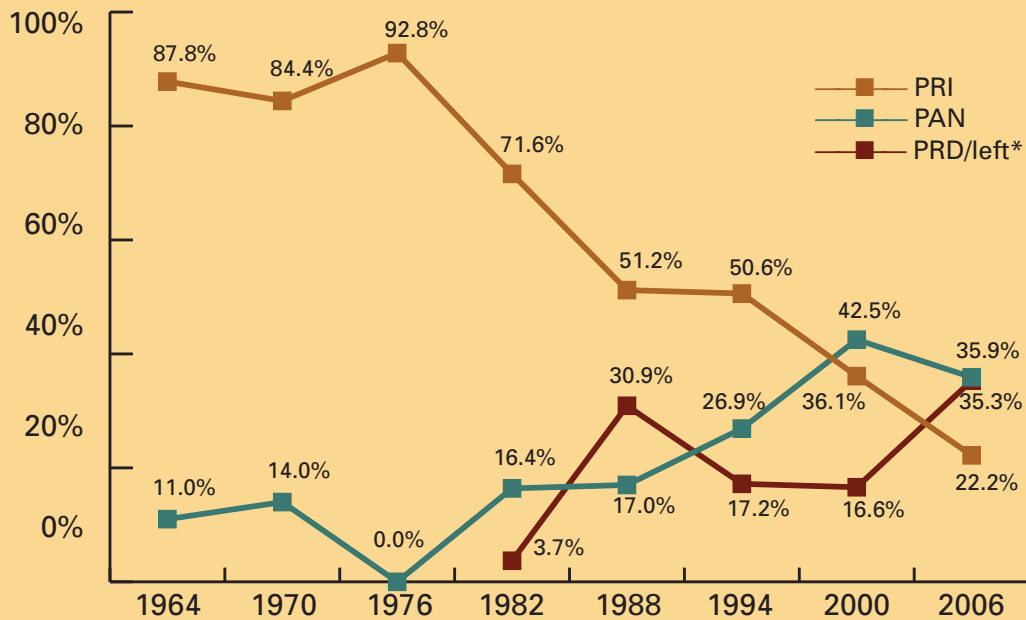
The single-party system proved useful in several ways: it avoided another civil war, subjected the military to civilian authority, and shared the wealth of a growing economy among competing local leaders. Mexico avoided the frequent coups and military dictatorships that took place in other countries in the region and achieved a degree of economic growth (especially from the 1940s through the 1960s). However, this stability came at the price of political freedom, produced a great deal of corruption among leaders of the PRI, and allowed for selective violence

against opposition leaders. By the early 1980s, as Mexico's economy went into a tailspin, opposition to the single-party system had grown.

The PRI responded at first by allowing the opposition parties to win elections at a local level. In 1988 a strong challenge in the presidential elections from a left-wing candidate, who had split from the official party, almost toppled the PRI. As opposition leaders won local elections and seats in the Congress and the Mexican government became more sensitive to world opinion (especially during the NAFTA negotiations), election rules were changed to ensure increasingly freer and fairer elections. By 1997 opposition parties had won a majority of seats in the Congress and the mayor's office in Mexico City; in 2000, an opposition candidate, Vicente Fox, won election as Mexico's first President not from the PRI since the 1920s.

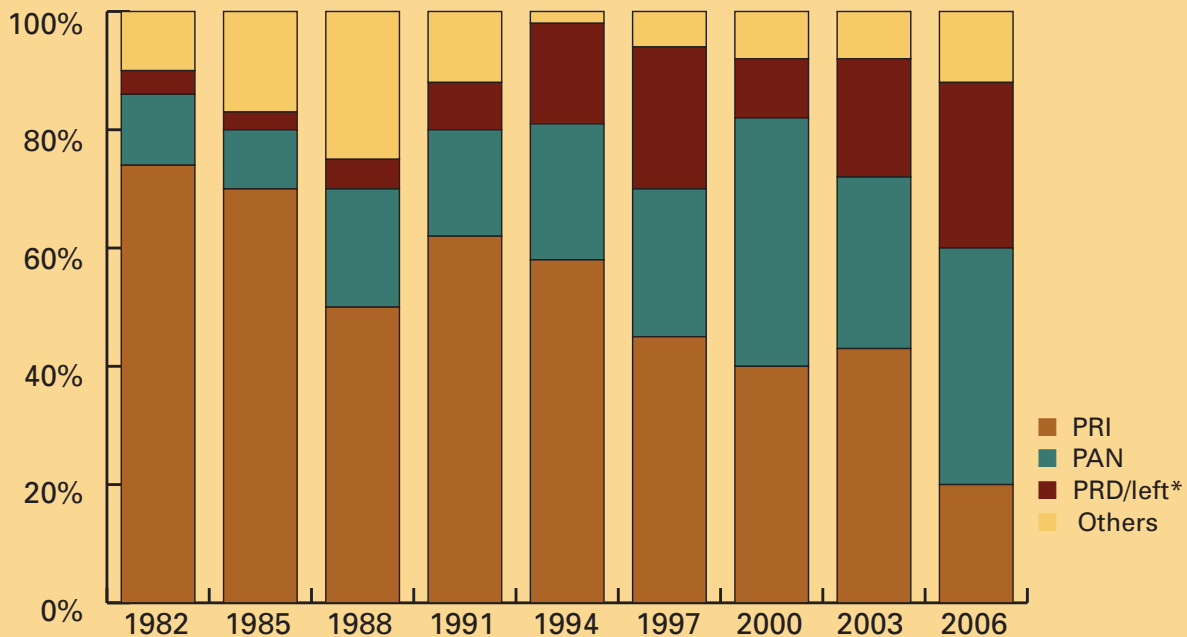
***Vicente Fox (2000–2006):*** Vicente Fox, a former governor, won election as a candidate from the right-of-center National Action Party (PAN) thanks to a mix of his own charisma, modern campaign techniques, and growing citizen frustration with the PRI. As President, he faced a divided political landscape where the formerly all-powerful PRI and the left-of-center Democratic Revolutionary Party (PRD) dominated Congress and ran most state and local governments. Although Fox maintained very high popularity throughout his six-year term, he was unable to make many inroads in policy that required congressional approval. His hopes to pass a major tax reform that would raise Mexico's public sector revenue floundered in his first year, and he had little success in efforts to reform the energy sector, overhaul the public pension system, change labor laws, or implement a new regime for

### Presidential Elections by Percent of the Vote Received, 1964–2006



Source: Instituto Federal Electoral, 2006

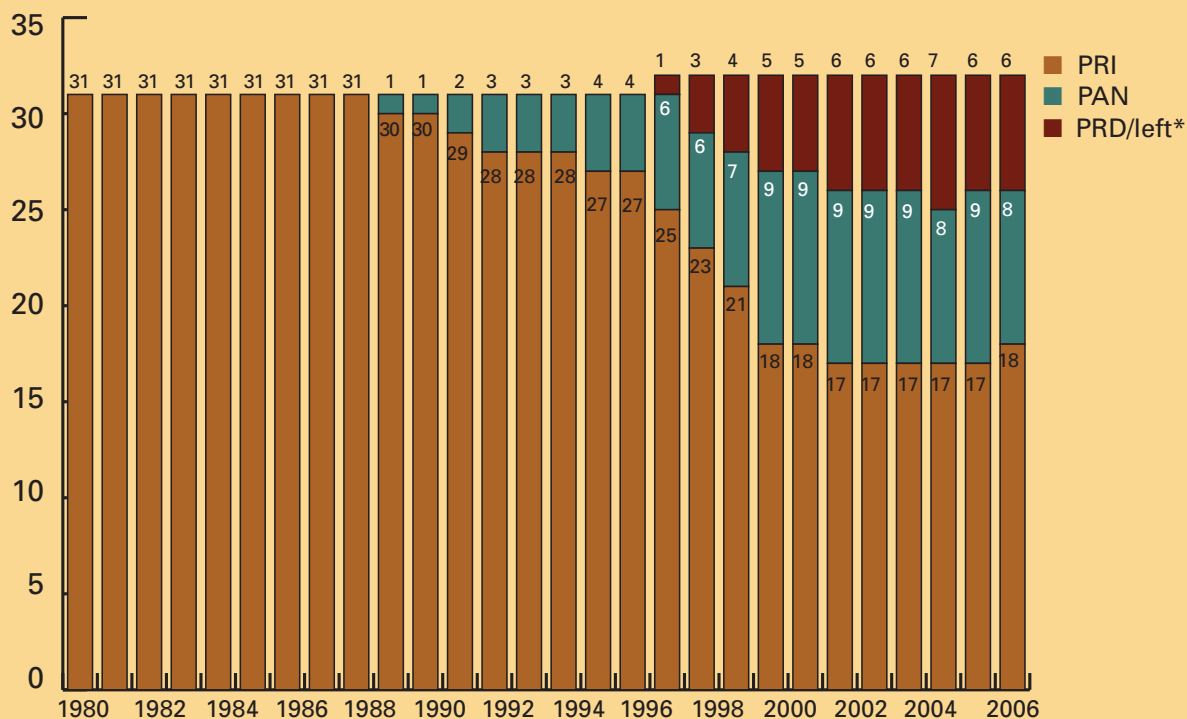
### Composition of the Chamber of Deputies, 1982–2006



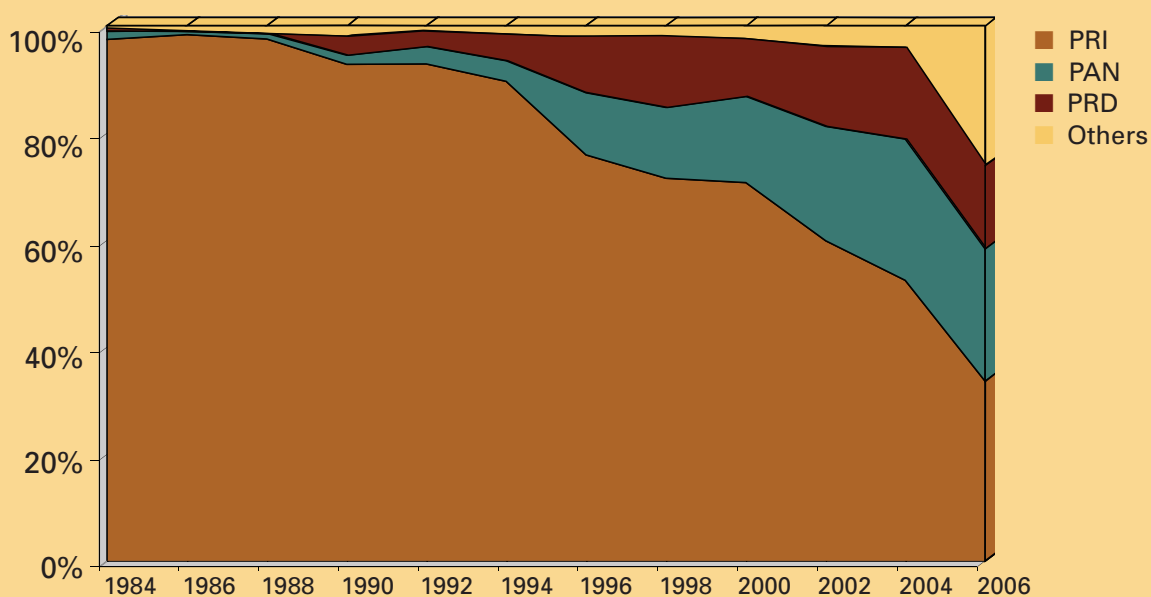
Note: In 1988, the size of the Chamber was increased from 400 to 500 deputies. The PRD was founded in 1989; percentages for the "left" in previous years refer to an aggregate of several parties on the left that later joined the PRD.

Source: Cámara de Diputados, 2006

### Mexicans Governors by Party, 1980–2007



### Municipal Mayors by Party, 1984–2004



Source: CIDAC, "Elecciones municipales, 1980–2004," available at [www.cidac.org](http://www.cidac.org), and Sergio Aguayo Quezada, *Almanaque Mexicano*, Mexico City: Aguilar, 2007, with data from Instituto Nacional para el Federalismo y el Desarrollo Municipal, 2006.

indigenous rights. His one major legislative reform was a *transparency law* to allow citizens' access to most public documents (similar to the U.S. Freedom of Information Act), a significant achievement after decades of authoritarian rule. He also succeeded in increasing federal social programs gradually, especially the cash-transfer program *Oportunidades*, which doubled its coverage to almost one in four Mexican households by the end of his term.

**2006 Elections: Close and Disputed:** President Fox's inability to get legislation through Congress was often contrasted with the successes of the Mayor of Mexico City, *Andrés Manuel López Obrador*, whose six-year term coincided with Fox's. López Obrador of the left-leaning PRD, succeeded in creating a pension program for seniors and improving the capital city's infrastructure. President Fox unsuccessfully sought the mayor's impeachment on charges of disobeying a court order, a

highly unpopular move that increased the mayor's popularity even further. It was hardly surprising when López Obrador became his party's presidential nominee for the 2006 elections and the leading candidate in all early polls. In Fox's PAN, *Felipe Calderón*, a 42-year old former Congressman and party leader, won the party's presidential nomination in a surprise come-from-behind primary election victory. Largely unknown outside the party, Calderón was seen as a long-shot to win the presidency but gained support throughout the months prior to the election, while López Obrador's support weakened.

Official results indicate that Calderón won the election by just over a half percentage point, roughly 233,000 votes. López Obrador claimed electoral fraud and demanded a recount. The electoral court conducted a partial recount, which produced no significant change in results, and ruled that Calderón had won the

2006 Presidential Election States by Party



election. López Obrador refused to recognize the election results without a full recount and formed his own parallel government.

***The Calderón Administration and Politics Today (2006–Present):*** Felipe Calderón became President on December 1, 2006. He faces a Congress where his party holds 41% of the seats, with the possibility of building occasional coalitions with the once powerful PRI and several smaller parties to pass legislation. The PRD, the largest opposition party, controls slightly less than a third of seats (together with its two coalition partners) and is willing to negotiate on specific issues, but significant tensions remain over different interpretations of the election results.

Mexico today faces several challenges. Most political actors agree on the nature of these challenges but frequently differ on the right solutions to address them or the priority they should be given:

- ***Fiscal policy:*** Mexico collects only 11% of GDP in taxes, one of the lowest rates in the hemisphere. This is supplemented by oil revenues, but the total, roughly 19% of GDP, is still very low compared to other countries in the region. Most political leaders agree that the government will have to raise additional revenue in order to reduce poverty, improve education, and address crime.
- ***Reducing Poverty:*** Around half of all Mexicans live in poverty and almost a fifth live in extreme poverty, according to official figures. Political leaders differ on how best to approach this, but all agree that there is an urgent need to generate employment, improve access to credit, support rural producers, invest in infrastructure, and ensure social safety nets for the poorest citizens.
- ***Energy policy:*** Mexico is the world's fifth largest producer of oil but its existing reserves are dropping quickly and the state-run oil company has limited capacity in exploration. To maintain competitiveness in energy, Mexico will need to find ways to promote more effective exploration, extraction, and refining of oil and gas. There is an ongoing debate on whether to allow private investment in some sectors of the oil industry.
- ***Regulatory and Labor Reform:*** Both the private sector and labor are dominated by monopolies and oligopolies left over from the period of one party rule. Better regulations are needed to promote both competition in the private sector and the creation of a modern labor movement.
- ***Rule of Law:*** Mexico's police and judiciary have a limited capacity to deal with the challenges they face. Mexico has a confusing maze of federal, state, and municipal police forces, with low wages, limited investigative capacity, anachronistic rules that govern jurisdictional authority, and perverse incentives to violate citizens' basic rights to extract confessions. The court system is plagued by inefficiency, a lack of autonomy (except for the Supreme Court), and the lack of standards for the presumption of innocence.
- ***Political Reform:*** With the transition from a one party system to a multiparty democracy, many political rules and institutions need to be updated. These include the rules that set the relationship among the federal, state, and municipal governments; the rules that govern relations between the legislative and executive branch; procedures for the budget process; and even state and municipal electoral rules and institutions.



MEXICO'S POLITICAL SYSTEM

Mexico, like the United States, has a federal system. It includes the federal government, 31 states, 2,416 municipalities, and one large federal district where the capital of Mexico City is located. The federal government itself has three branches (executive, legislative, and judiciary), modeled on the U.S. system, along with several autonomous federal agencies.

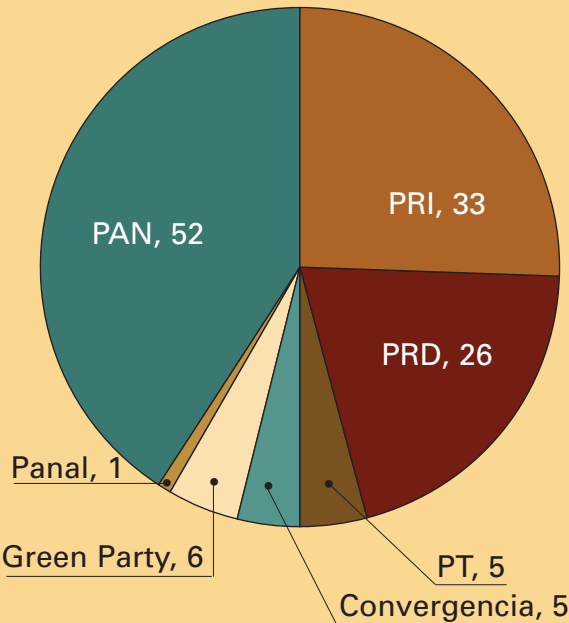
**The Presidency:** The President is elected for a six-year term, with no possibility of reelection, through direct popular vote. As long as Mexico was ruled by a single party, the President appeared to be all powerful: he could remove governors at will, select candidates for Congress, and pass almost any legislation he wanted. With the advent of multi-party democracy, the President still remains the most important single decision-maker in the federal government, but his powers are

roughly similar to that of the U.S. President and he must negotiate any policies that require legislation with Congress.

**The Congress:** The Congress has two chambers, the Senate and the Chamber of Deputies. Senators are elected for a six year term and Deputies for a three year term. Neither can be reelected to a consecutive term. Congress had little power as long as a single party ruled Mexico and Members of Congress owed their candidacies to the President. However, since 1997 no single party controls Congress and the legislature has become increasingly influential in setting policy.

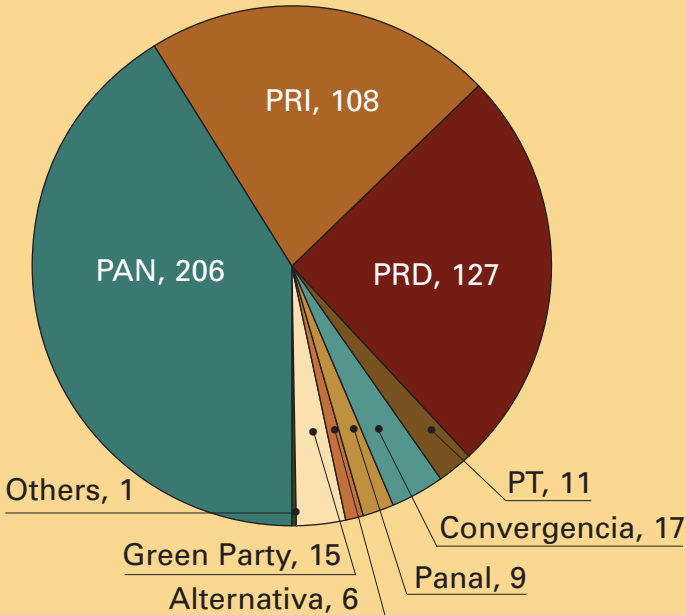
The Congress still has a very limited institutional structure, with comparatively few professional staff or research capabilities. Since no reelection is allowed for any elected position in Mexico, it is not uncommon for a career politician to serve in Congress, rise to

Mexican Senate by Party and Number of Seats Held, 2006–2009



Source: Senado, 2006

Mexican Chamber of Deputies by Party and Number of Seats Held, 2006–2009



Source: Cámara de Diputados, 2006

## Mexican Cabinet Officials

Francisco Javier Ramírez Acuña	Secretariat of the Interior (SEGOB)
Patricia Espinosa Cantellano	Secretariat of Foreign Affairs (SRE)
Agustín Carstens Carstens	Finance and Public Credit Secretariat (SHCP)
General Guillermo Galván Galván	Secretariat of National Defense (SEDENA)
Admiral Mariano Francisco Saynez Mendoza	Secretariat of the Navy (SEMAR)
Eduardo Sojo Garza-Aldape	Economy Secretariat (SE)
María Beatriz Zavala Peniche	Secretariat of Social Development (SEDESOL)
Eduardo Medina-Mora Icaza	Attorney General's Office (PGR)
Genaro García Luna	Secretariat of Public Safety (SPP)
Germán Martínez Cazares	Department of Civil Service (SFP)
Luis Téllez Kuenzler	Communications and Transport Secretary (SCT)
Javier Lozano Alarcón	Secretariat of Labor and Social Security (STPS)
Juan Rafael Elvira Quesada	Secretariat of the Environment and Natural Resources (SEMARNAT)
Georgina Kessel Martínez	Secretariat of Energy (SENER)
Alberto Cárdenas Jiménez	Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA)
Josefina Vázquez Mota	Secretariat of Public Education (SEP)
José Ángel Córdoba Villalobos	Secretariat of Health (SSA)
Rodolfo Elizondo Torres	Secretariat of Tourism (SECTUR)
Abelardo Escobar Prieto	Secretariat of Agrarian Reform (SRA)
General Jesús Javier Castillo Cabrera	Chief of Presidential Staff (EMP)
Carlos Gutiérrez Ruiz	National Housing Commission
Sergio Vela Martínez	National Council for Culture and the Arts (CONACULTA)
Maximiliano Cortázar Lara	Media and Communications Director
Gerardo Ruiz Mateos	General Coordination of Cabinets and Special Projects
Juan Francisco Molinar Horcasitas	Mexican Social Security Institute
Jesús Reyes-Heroles González Garza	Petróleos Mexicanos (PEMEX)
Miguel Ángel Yunes Linares	Institute of State Workers, Social Security and Services
Alfredo Elías Ayub	Federal Electricity Commission (CFE)
Jorge Gutiérrez Vera	Luz y Fuerza del Centro
Alonso García Tamés	National Bank of Public Works and Services (BANOBRA)
Mario Martín Laborín Gómez	Banco Nacional de Comercio Exterior (BANCOMEXT)
Enrique de la Madrid Cordero	Rural financing department
José Luis Luege Tamargo	National Water Commission (CNA)
Miguel Gómez-Mont Urueta	National Fund for the Promotion of Tourism (FONATUR)
María Cecilia Landerreche Gómez Morín	DIF
Ignacio Loyola Vera	PROFEPA
Víctor Manuel Borrás Setién	Institute of the National Housing Fund for Workers (INFONAVIT)
Gilberto Calvillo Vives	National Institute of Statistics, Geography and Informatics (INEGI)
Luis Héctor Álvarez Álvarez	National Commission for the Development of Indigenous Peoples
Carlos Manuel Hermosillo Goytortua	National Sports Commission (CONADE)
Ernesto Velasco León	Airports and Auxiliary Services (ASA)
Juan Camilo Mouriño Terrazo	Head of the President's Office
Cesar Nava Vazquez	Private Secretary
Alejandra Sota Mirafuentes	General Coordination of Public Opinion and Image
Daniel Francisco Cabeza de Vaca Hernández	President's Legal Counsel
Dionisio Pérez-Jácome Friscione	Coordination of Advisers
Patricia Flores Elizondo	General Administration Coordinator
Antonio Morales de la Peña	Federal Consumers Bureau (PROFECO)

Source: <http://www.presidencia.gob.mx/en/cabinet/>

Note: Accurate as of September 2007.

be Governor of his or her state, and then return to Congress again; or be a Cabinet Secretary and then a Member of Congress. As a result, those Senators and Deputies who have held significant other positions in government or within their parties tend to hold the most influence in Congress, while the rest have much less influence.

Currently the PAN (Calderón's party) is the largest party in the Congress with just over 40% of the seats. The left-of-center PRD is the second largest party and forms a bloc with the smaller Workers' (PT) and Convergencia (PC) Parties. The PRI, which ruled Mexico for 71 years, now has only a fifth of the seats, but it has maintained considerable influence by becoming the deciding vote on key issues. Several smaller parties also have seats and occasionally succeed in exerting influence on specific issues.

**The Judicial System:** Mexico's Supreme Court, with eleven justices, is the highest court in the land. After years of subservience to the President, during the period of one-

party rule, it has gradually established itself as an independent arbiter of constitutional law and gained considerable credibility. Not so for the country's remaining courts. The Mexican legal system was constructed for an authoritarian system and retains many of the same ambiguities it has for decades. Most court decisions can be stayed by judicial orders in other courts, with low standards of proof, and most citizens express limited confidence in the courts, other than the Supreme Court. Mexico has both federal courts and state courts with separate jurisdiction.

Several states have been innovating in ways to improve the justice system, including allowing oral arguments for the first time, providing legal services in indigenous languages, and hiring public defenders. However, judicial reform remains one of Mexico's most important future challenges.

**State and Local Governments:** Under the one-party system, state and local governments operated largely as extensions of the federal government with few resources or real powers. Since the mid-1990s, however, state and local governments have gained resources, functions, and powers and now represent around a third of all public expenditures. Most education and healthcare has been decentralized to state governments, and municipalities are responsible for most basic city and county services. States and municipalities remain dependent on federal transfers for a majority of their budgets. While some argue for giving them more power of taxation, others worry that the vast economic inequalities would mean that poorer states and municipalities would be unable to raise sufficient tax revenue.

Composition of the Supreme Court

Chief Justice
Guillermo I. Ortiz Mayagoitia
Justices
Mariano Azuela Güitrón
José de Jesús Gudiño Pelayo
Juan N. Silva Meza
Olga María del Carmen Sánchez Cordero de García Villegas
José Ramón Cossío Díaz
Margarita Beatriz Luna Ramos
Sergio Armando Valls Hernández
Genaro David Góngora Pimentel
Sergio Salvador Aguirre Anguiano
José Fernando Franco González Sala

State governors are becoming increasingly influential actors in national politics and their association, the National Governors' Congress (CONAGO), has become a force to reckon with in national political decisions, including in debates on fiscal, education, and energy reform.

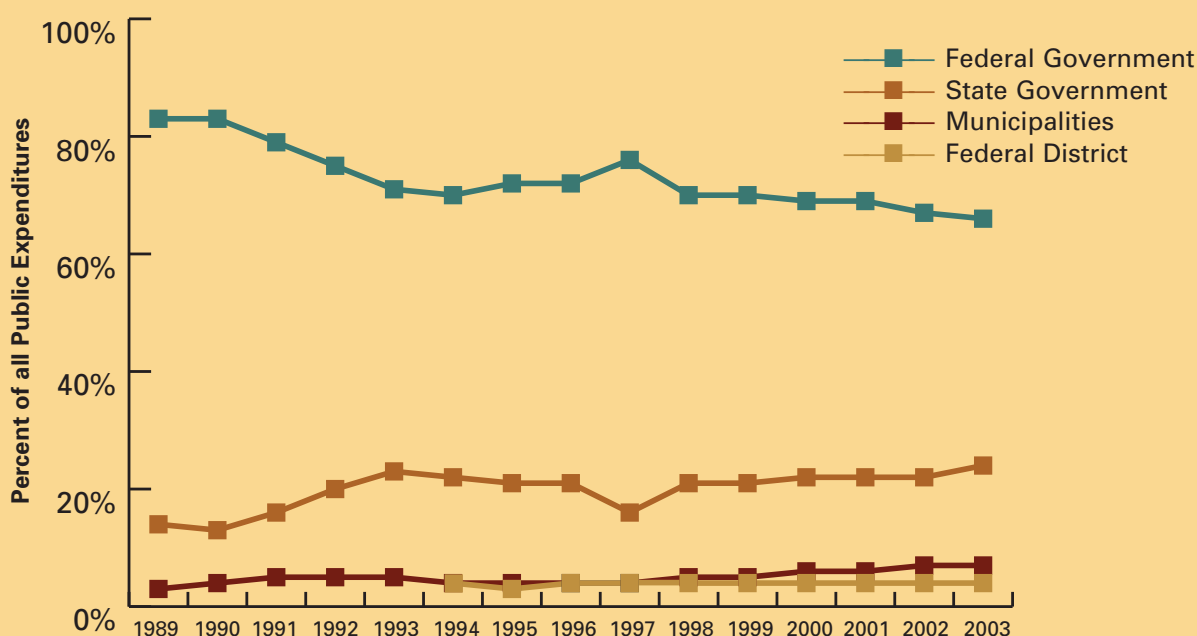
The growing strength of state and local governments contrasts with important institutional weaknesses that they face. Most state and municipal police forces are highly ineffective and some have been subject to cooption by organized crime; transparency in budgeting is often deficient and funds can be subject to misuse; and electoral laws for municipalities are archaic and privilege local powerholders over real democratic competition. However, even with these deficiencies, many state and local governments are also increasingly becoming sites of experimentation in judicial and police reform, social policy, and economic development.

## MEXICO'S ECONOMY

**Brief Historical Overview:** Mexico's economy has gradually become one of the most open in Latin America with sustained growth in recent years. However, roughly half the population still lives in poverty and inequality appears to be increasing.

From the 1950s to the 1970s, Mexico's economy grew robustly, averaging over 7% annual growth, on average, during the same period as the United States' post-war economic expansion. During this period, Mexico followed a policy of Import-Substituting Industrialization (ISI) with high tariffs for imported goods and government support for domestic industries. However, despite overall growth, the country experienced repeated economic crises, often linked with the transfer of power between Presidents. In 1982, a particularly sharp economic crisis took place, driven by the drop in world oil prices and the rise in international interest rates. Mexico declared a

Public Spending by Level of Government, 1983–2003



Source: Author's calculation from INEGI public finance statistics.

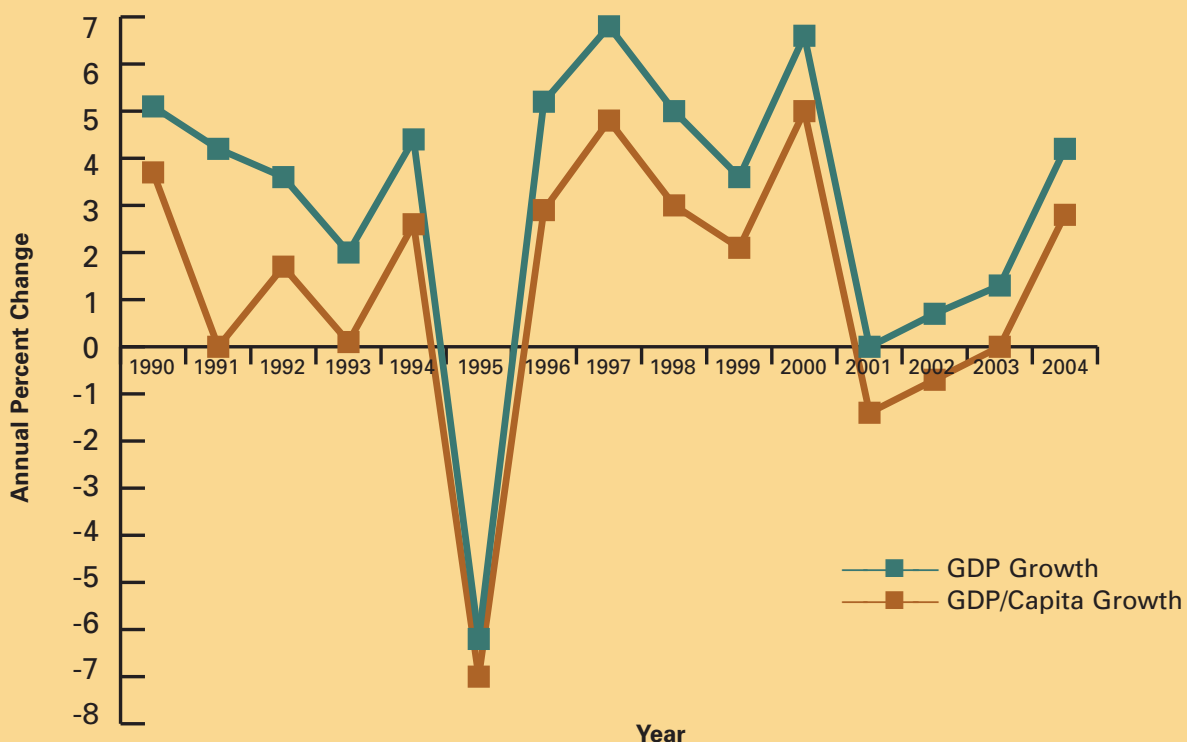
moratorium on its debt payments. Although the government eventually reached agreements with major lenders and the IMF, the economy remained in crisis throughout most of the 1980s, with a significant deepening of poverty.

In 1990, then President of Mexico, Carlos Salinas de Gortari, hoping to stabilize the Mexican economy by attracting foreign investment, approached then U.S. President George H.W. Bush about signing a free trade agreement, similar to the one the U.S. had just completed with Canada. The Bush administration, in search of new economically-based policies in the hemisphere to respond to the realities of the post-Cold War world, agreed. The Canadians joined as well. The North American Free Trade Agreement (NAFTA) was negotiated throughout 1990–92, signed by the three countries in

1992, and took effect on January 1, 1994. The NAFTA negotiations initially helped jumpstart economic growth in Mexico, but insufficient regulation and poor management led to a severe financial crisis in 1994–95. The country began to recover after 1997 with slow but sustained growth over the subsequent years.

**Poverty and Inequality:** Mexico is one of Latin America's more unequal countries with zip codes as wealthy as parts of the United States and others as poor as Haiti. While it boasts several highly successful multinational corporations (e.g. Cemex, Femsa, Telmex, Vitro, Grupo BAL) that compete globally and six citizens on the list of Forbes 200 wealthiest people worldwide (including the world's wealthiest person, Carlos Slim), almost half of the population lives in or near poverty according to official statistics.

### Growth in GDP and GDP/Capita, 1990–2004



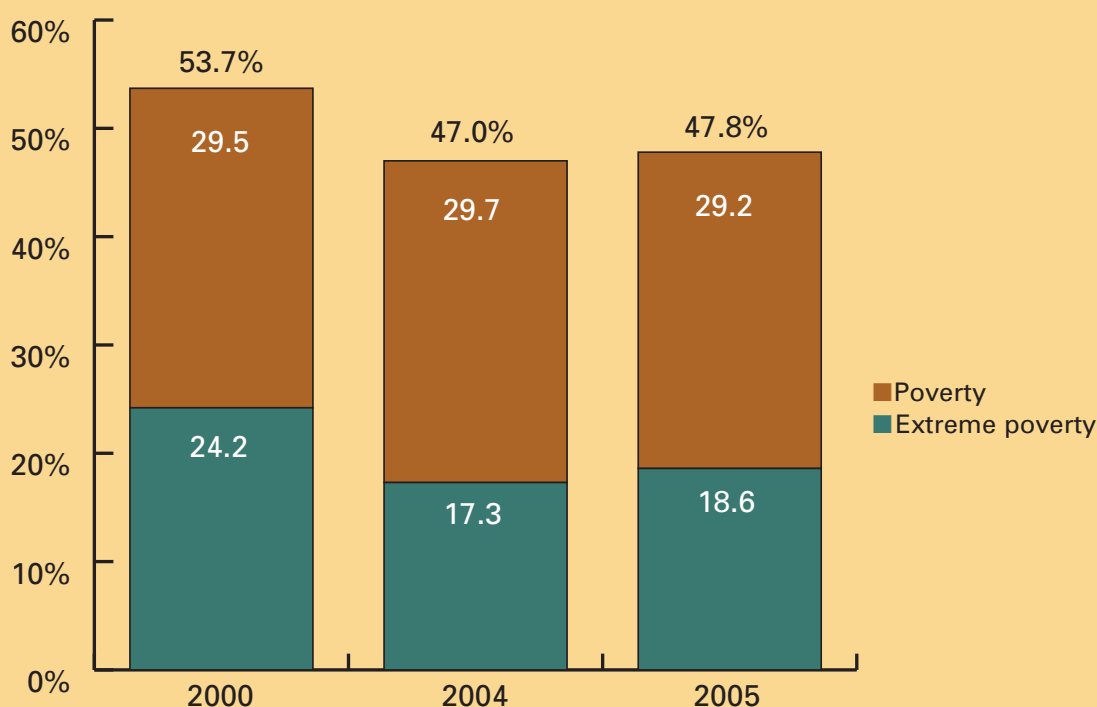
Source: World Development Indicators, World Bank, 2006.

There are important regional and state-to-state differences, however. GDP per capita in Mexico's five wealthiest states, mostly in the north, is three times that in the five poorest states, mostly in the south. The north of Mexico, which has long-standing economic ties to the United States, and fairly good infrastructure, has been able to take advantage of many of the opportunities created by NAFTA. The south, with limited infrastructure and less access to education, as well as a large number of people who live off of subsistence or near-subsistence agriculture, has been largely unable to participate in the economic opening. Moreover, the agricultural chapter of NAFTA, which allowed for importation of more heavily subsidized U.S. corn and beans, appears to have undermined further the farm economy in the south while

stimulating export-oriented farming in the north. It was perhaps not surprising that President Calderón won almost all of the northern states of Mexico, which were anxious to continue his predecessors' policies of market opening, while almost all of the southern states voted for López Obrador, who promised more active state intervention in the economy.

One of the government's most effective social policies has been *Oportunidades*, a cash-transfer program for the country's poorest households. Families that qualify receive monthly payments for their minor children on condition that they remain in school and participate in regular medical check-ups. The program, originally started in 1995 as *Progresá*, was extended from rural to urban areas under the Fox administration.

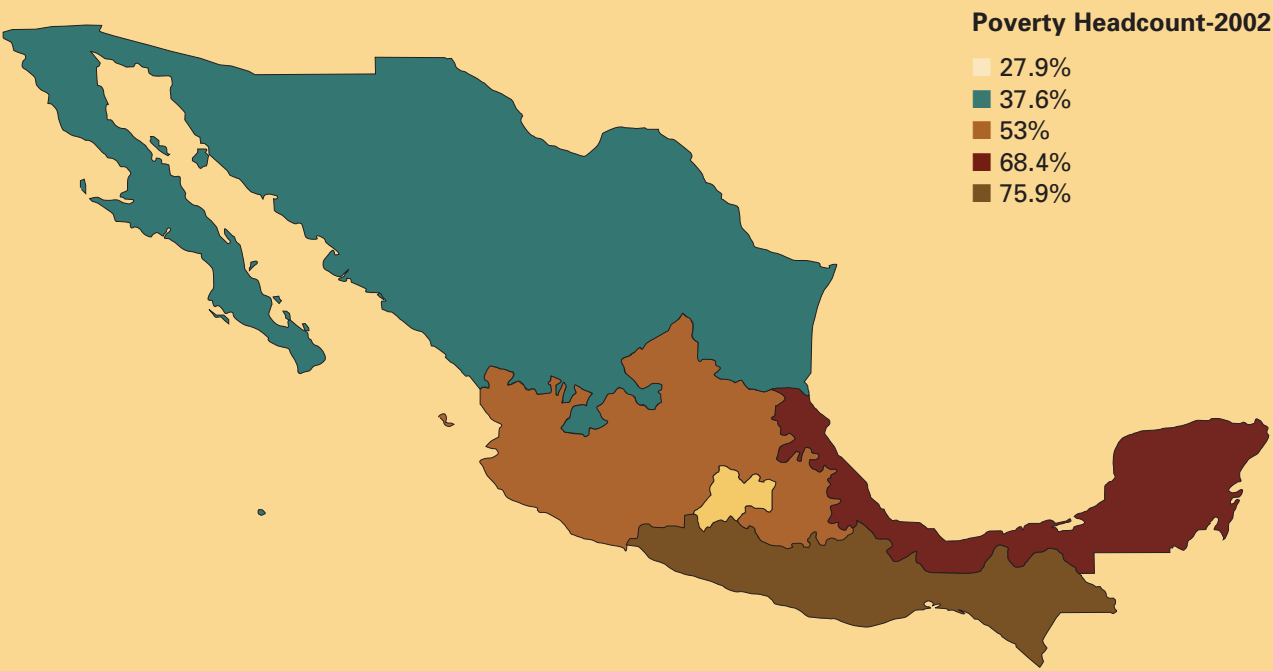
Percent of Mexicans Living in Poverty and Extreme Poverty, 2000–2005



Source: Secretaría de Desarrollo Social, 2006.

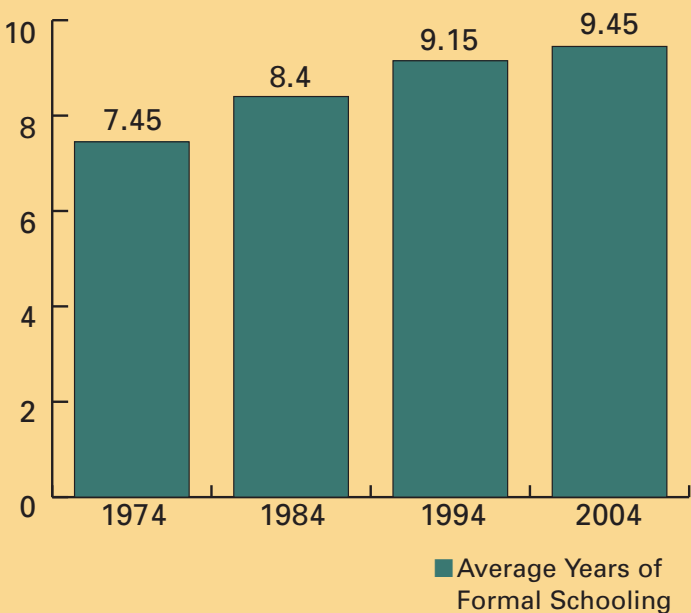


Mexico Poverty Headcount-2002



Data from "Poverty in Mexico: Conditions, Trends, and Government Strategy" World Bank Poverty Assessment, 2004

Average Number of Years of Successfully Completed Formal Education, 25–34 year olds

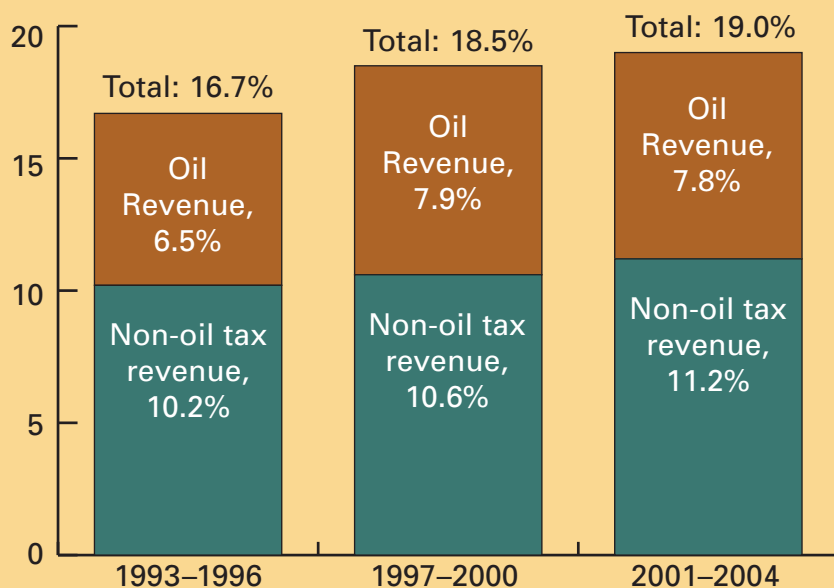


Source: OECD Education Database

*Oportunidades* now covers five million households, almost a quarter of all Mexican families. Similar programs have now been started in Brazil, Sri Lanka, and several other countries, based on the success of the Mexican model. The program is credited with reducing extreme poverty in Mexico considerably. However, it is no substitute for generating employment opportunities or stimulating investment in productive activities.

**Education:** Education indicators in Mexico have improved noticeably in recent years, rising from 7.45 years of education in 1974 to over 9.45 years in 2004. However, these numbers are still low and only 14% of the population completes college. Resistance from the teacher's union, which has strong ties to political power, as well as inertias in

## Tax Revenue as a Percent of GDP in Mexico: Oil vs. Non-Oil Revenue 1993–2004



Source: Secretaría de Hacienda y Crédito Público, 2005; Organization for Economic Cooperation and Development, 2005.

the system and limited funding, have prevented more successful outcomes in the educational system.

**Telecommunications:** Many Mexican industries remain dominated by only a handful of companies. This is perhaps most evident in the telecommunications industry where there are only two private television stations (Televisa and TV Azteca) and in telephones, where a single company (Telmex) controls almost all of the market. In 2006 the Mexican Congress passed a law to regulate radio and television that appeared to consolidate the control of the two private networks; however, a 2007 Supreme Court decision may overturn some elements of this law.

**Energy:** Mexico is the world's fifth largest oil producer and the second largest supplier to the United States (after Canada). However, the country's production has been unable to keep pace with demand, and it is now a net

importer of both gasoline and natural gas. Since the Mexican government expropriated all energy production and marketing from private companies in the 1930s, these functions have remained a monopoly of Mexico's government-controlled oil company, Pemex. Both the Fox and Calderón administrations have been interested in encouraging private investment in some aspects of oil exploration, without giving up overall control; however, this remains a highly controversial issue, with a vast majority of Mexicans opposing significant private investment.

Revenues from Pemex also supply over a third of the federal budget. Most experts recognize that Pemex's contribution to the government's operating expenses have often come at the expense of needed reinvestment in the company itself. Taking advantage of high oil prices, the Mexican Congress passed legislation in 2006 to allow for greater rein-

vestment of oil revenues within Pemex to upgrade capabilities for exploration.

**Fiscal Policy:** Due in large part to the availability of oil revenues for public expenditure, Mexico has one of the lowest tax rates of any major country in the Western Hemisphere. Taxes comprise only 11.2% of GDP, although high international oil prices have increased overall public revenues in recent years to around 19% of GDP. Low public finances have meant a limited ability to engage in needed investments in education, infrastructure, social development, and the modernization of the police and judicial systems.

### CULTURE AND SOCIETY IN MEXICO

Mexico's population is around 103 million people. The country has a rich and varied cultural heritage, with roots in indigenous and Spanish traditions, as well as those of Africa, the Caribbean, South America, and other parts of Europe. The original encounter between indigenous peoples and Spanish settlers has been augmented by centuries of immigration and contact with other parts of the world.

Today around 7–12% of Mexicans are indigenous, and they speak over sixty different indigenous languages. Most of the rest of the population is considered *mestizo*, that is, of mixed indigenous and European heritage, although there are many who trace their ancestry to Africa as well as many families who have immigrated more recently from Europe, South America, or the United States. Indeed, there is a community of several hundred thousand Americans who live in Mexico today (somewhere between 300,000 and one million).

Mexico has a long tradition in the arts and literature.

**Mexican Cinema:** Mexico's cinema set the standards for Latin America in the 1940s and 1950s before going into a long period of decline. In the 1990s Mexican cinema returned with three major directors on the international scene: Alejandro González Iñárritu (*Babel*, *Amores Perros*), Guillermo del Toro (*Pan's Labyrinth*, *Hellboy*), and Alfonso Cuarón (*Y Tu Mamá También*, *Harry Potter and the Prisoner of Azkaban*), all of whose movies were nominated for Oscars in 2007. Mexican actors and actresses, including Salma Hayek and Gael García, have also been highly successful internationally.

**Music:** Mexico is home to a variety of musical styles from classical music to love ballads to punk rock. Among Mexico's most popular singers on the international scene are Juan Gabriel and Luis Miguel (romantic ballads); Paulina Rubio (pop); Maná (rock); Maldita Vecindad (hard rock), and Los Tigres del Norte (*norteña*).

**Painting:** Frida Kahlo is among Mexico's most celebrated painters and her work has gone through an international revival in recent years. Her husband, Diego Rivera, was among an influential group of mural painters who had a huge impact on Mexican art in the period from the 1920s through the 1950s. Other leading muralists included José Clemente Orozco and David Alfaro Siqueiros. Rufino Tamayo was one of the best known contemporary painters in Mexico. Francisco Toledo is perhaps the most influential living Mexican painter.

**Literature:** Mexico has a long literary tradition that spans poetry, short-stories, novels, drama, and non-fiction writing. Among the most well-known writers abroad are poet

Octavio Paz, author of *The Labyrinth of Solitude*, and novelist Carlos Fuentes, author of *Artemio Cruz* and *The Crystal Frontier*.

**Architecture:** Mexico has had several well-known architects, but perhaps none better known than Ricardo Legorreta, who has designed the Museum of Modern Art in Monterrey and the Camino Real Hotel in Mexico City, among many other buildings in Mexico, as well as several homes in the United States.

**Folk art:** Mexico boasts of an extensive array of folk art, including brightly colored *alebrijes* (woodcarvings of animals) in Oaxaca, beautiful Talavera pottery in Puebla and Guanajuato, decorated carnival masks in Guerrero, and painted clay figures from Puebla. Indigenous peoples in Chiapas produce traditional textiles, stunning for their intricate designs and beautiful colors.

## FURTHER READING AND WEB RESOURCES

A list of readings and useful websites in English for those who wish to do additional research on the issues in this volume:

### THE DYNAMICS OF U.S.–MEXICO RELATIONS

- Ventana a México: a Web Resource on U.S.–Mexico Relations, [www.wilsoncenter.org/mexico](http://www.wilsoncenter.org/mexico)
- Jorge Domínguez and Rafael Fernández de Castro, *The United States and Mexico: Between Partnership and Conflict*, New York: Routledge, 2001.
- Jeffrey Davidow, *The Bear and the Porcupine*, Princeton: Markus Wiener Publishers, 2004.
- Guadalupe González and Susan Minushkin, editors, *Mexico and the World 2006*, Mexico City: Centro de Investigación y Docencia Económicas and Comexi, 2006.
- Sergio Aguayo, *Almanaque México – Estados Unidos*, San Diego: Fondo de Cultura Económica USA, 2005.
- Andrew Selee, ed., *Perceptions and Misconceptions in U.S.–Mexico Relations*, Washington, DC: Woodrow Wilson Center and Letras Libres, 2005. Available at [www.wilsoncenter.org](http://www.wilsoncenter.org).
- Josefina Vázquez and Lorenzo Meyer, *The United States and Mexico*, Chicago: University of Chicago Press, 1987.
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**ANDREW SELEE** has been director of the Woodrow Wilson Center's Mexico Institute since its founding in 2003. The Institute seeks to build dialogue and communication between Mexico and the United States in a plural and non-partisan environment and to promote a greater understanding of Mexico in the United States.

Selee is an Adjunct Professor of Government at Johns Hopkins University and a former visiting scholar at El Colegio de México. He serves on the board of Comexus, the Mexico–U.S. Fulbright Commission and is a term member of the Council on Foreign

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He is the editor or co-editor of several publications including *Perceptions and Misconceptions in U.S.–Mexico Relations* and *Mexico's Politics and Society in Transition*. He is also a contributing editor to the Library of Congress's Handbook of Latin American Studies.

Selee holds a Ph.D. in Policy Studies from the University of Maryland and an M.A. in Latin American Studies from the University of California, San Diego.

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## **[Policing Immigration. A Job We Do Not Want](#)**



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The job of law enforcement is to keep communities safe. When legislators require state and local law enforcement to enforce federal immigration policy, they make it much harder for officers to do their job. Sheriffs and chiefs have long voiced their concerns that asking officers to be immigration agents will scare undocumented community members out of calling on law enforcement for help. The story is even more severe. Police who are required to look for illegal immigrants are going to find fewer drug dealers.

A Consortium for Police Leadership in Equity report has found that 1 in 3 Salt Lake City, Utah residents are unwilling to report drug-related crimes when law enforcement can detain someone based on their immigration status. According to the report, submitted to the House Judiciary Committee in advance of our testimony next week, not only are undocumented immigrants less likely to report crime in the face of officers who can ask for their papers--but both Latino citizens and Whites are more likely to leave drug crimes unreported. These data echo the concerns that law enforcement executives have expressed for the past decade and communicated again to Attorney General Holder earlier this week.

The report also sheds light on Arizona's controversial State Bill 1070, signed into law by Governor Jan Brewer on April 23, 2010. The law requires that Arizona law enforcement also do a job that, until now, has been reserved for federal immigration agents, namely identifying and detaining individuals whose immigration status may be in question. And doing the job of immigration enforcement makes it harder for law enforcement to keep their communities safe.

It is intuitive that undocumented immigrants would be reluctant to report crimes if they feared deportation. But, according to the CPLE report, a significant segment of Whites would lose so much respect for law enforcement that they would refuse to report drug offenses.

And this is why the Arizona SB 1070, and similar policies like federal 287(g) and Secure Communities initiatives, are so troubling to many in law enforcement. Fighting crime without the help of one's community is like trying to disarm a hidden mine by stomping on the ground. By the time you have found the problem, it is already too late.

This places law enforcement in a precarious--and all too familiar situation. Law enforcement executives agree that officers should enforce and uphold the law regardless of race, ethnicity, gender, religion, sexual orientation, or national origin. However, law enforcement is formally tasked with enforcing the laws that legislators sign. Consequently, if the law of the land is racist, it becomes the job of law enforcement to enforce racism.

Given law enforcement's history as an effective tool of social oppression, it should not be surprising that many law enforcement officials across the nation are troubled at the proposition of mandatory immigration enforcement practices that appear motivated by prejudice--a point the report also supports--and are likely to result in increased crime. The profession of law enforcement has long struggled to regain the trust it lost when it was directed to detain runaway slaves, patrol Japanese internment camps, and enforce laws that kept water fountains and schools racially segregated.

Yet, despite these historical injustices, individuals become officers out of a desire to assist others and make a difference in society. That is why it is so discouraging for officers to show up to work knowing that the community they serve suspects them of racism. It is even more disheartening to realize that by doing their jobs, they are compromising the civil rights of community members. It is the intention of officers to serve the public with integrity. That is why so many in law enforcement are voicing their objection to a change in their jobs that would once again institutionalize racial profiling and biased policing--while depriving the public of their safety.

*Chris Burbank is the Chief of the Salt Lake City Police Department in Salt Lake City, Utah. Phillip Atiba Goff is the co-founder and executive director of research for the Consortium for Police Leadership in Equity, and Assistant Professor of Psychology at UCLA. Tracie L. Keesee is the co-founder and executive director of operation for the Consortium for Police Leadership in Equity, and Division Chief of Research, Training, and Technology of the Denver Police Department*





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## EMBASSY OF MEXICO PRESS RELEASE ON THE PASSING OF IMMIGRATION LAWS IN UTAH



Miércoles, 16 de Marzo de 2011 14:21

### EMBASSY OF MEXICO PRESS RELEASE ON THE PASSING OF IMMIGRATION LAWS IN UTAH

Washington, D.C.

March 16, 2011

The Embassy of Mexico expresses its concern regarding the impact of a package of laws approved yesterday by the Government of Utah and the potential negative consequences certain aspects of those laws may have on the rights of Mexican nationals.

With the signing into law of this legislative package, policies which seek to criminalize migration and potentially allow for selective application of the law will likely come into effect. Through our Consulate in Salt Lake City, we will carefully follow the implementation of these new laws in order to prevent the violation of civil rights of our nationals, as well as to avoid that they become victims of frauds perpetrated by unscrupulous individuals who might unduly profit or take advantage of regularization and temporary employment provisions that may not be put into practice.

At the same time, the Embassy would like to recognize the efforts of a large coalition of civil society groups and the public sector in the state of Utah for promoting a thoughtful dialogue based on principles that recognize the complexity of the immigration phenomenon. The reasoned and informed debate that took place in the state is a constructive process that contrasts with the proliferation of exclusively restrictive policies that have been presented in several other states throughout the country.

A series of parallel measures promoted in Utah respond to the importance of creating safe, orderly and legal channels for effective labor mobility in North America, something urgently required for the continued growth and economic development of Mexico and the United States. While certain provisions will face legal obstacles regarding state implementation of these programs, Utah is the first state to send an unmistakable message regarding the urgent need to provide a comprehensive solution to immigration, including regularization policies as well as safe, transparent, orderly, and legal mechanisms for temporary employment.

The Embassy of Mexico reiterates the commitment of the Mexican federal government to comprehensive solutions and shared responsibility with regard to migration. Likewise, it reaffirms that in accordance with the legal norms of both our countries, a comprehensive response to the challenges and opportunities that human migration presents falls exclusively under federal jurisdiction. We therefore recognize and applaud the decisive legislative action in various other US states in 2011 that have rejected anti-immigrant initiatives in this country.

Through its wide consular network, and particularly our Consulate in Salt Lake City, Utah, the Government of Mexico will continue to provide the assistance and protection that our citizens require in order to guarantee the respect and exercise of their fundamental rights, regardless of their immigration status.

\* \* \*

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STATEMENT BY THE EMBASSY OF MEXICO ON LAWSUIT FILED AGAINST HB 497 IN UTAH



Martes, 03 de Mayo de 2011 18:59

Washington D.C.  
May 3rd, 2011

STATEMENT BY THE EMBASSY OF MEXICO ON LAWSUIT FILED AGAINST HB 497 IN UTAH

The Embassy of Mexico welcomes the lawsuit filed in District Court today by several civil society organizations against HB 497, a bill recently passed in the state of Utah. On March 16<sup>th</sup> the Embassy expressed its concern regarding certain provisions of this law that could adversely affect the civil rights of Mexican nationals living in Utah, further criminalize immigrants and may lead for the selective application of the law.

The Embassy reiterates that Utah's actions on this specific issue are detrimental to the robust relationship that Mexico and the United States have built as partners and neighbors in such important issues as enhancing economic competitiveness and trade, cooperating against transnational organized crime, promoting clean energy and combating climate change, and creating a more modern and efficient border. As has unfortunately been the case in other states in this country, where similar bills have been enacted, the Government of Mexico is concerned about the adverse impact initiatives such as Utah's HB 497 may have on the breadth and scope of our bilateral relationship.

Therefore, the Embassy of Mexico and its consular network in the United States will continue to promote a clear understanding of the positive contributions our nationals make to the communities they live in this country and will spare no effort to protect their fundamental rights regardless of their immigration status.

\* \* \*

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# The Federalist No. 4

## Concerning Dangers From Foreign Force and Influence (continued)

*Independent Journal*  
Wednesday, November 7, 1787  
[John Jay]

**To the People of the State of New York:**

MY LAST paper assigned several reasons why the safety of the people would be best secured by union against the danger it may be exposed to by *just* causes of war given to other nations; and those reasons show that such causes would not only be more rarely given, but would also be more easily accommodated, by a national government than either by the State governments or the proposed little confederacies.

But the safety of the people of America against dangers from *foreign* force depends not only on their forbearing to give *just* causes of war to other nations, but also on their placing and continuing themselves in such a situation as not to *invite* hostility or insult; for it need not be observed that there are *pretended* as well as just causes of war.

It is too true, however disgraceful it may be to human nature, that nations in general will make war whenever they have a prospect of getting anything by it; nay, absolute monarchs will often make war when their nations are to get nothing by it, but for the purposes and objects merely personal, such as thirst for military glory, revenge for personal affronts, ambition, or private compacts to aggrandize or support their particular families or partisans. These and a variety of other motives, which affect only the mind of the sovereign, often lead him to engage in wars not sanctified by justice or the voice and interests of his people. But, independent of these inducements to war, which are more prevalent in absolute monarchies, but which well deserve our attention, there are others which affect nations as often as kings; and some of them will on examination be found to grow out of our relative situation and circumstances.

With France and with Britain we are rivals in the fisheries, and can supply their markets cheaper than they can themselves, notwithstanding any efforts to prevent it by bounties on their own or duties on foreign fish.

With them and with most other European nations we are rivals in navigation and the carrying trade; and we shall deceive ourselves if we suppose that any of them will rejoice to see it flourish; for, as our carrying trade cannot increase without in some degree diminishing theirs, it is more their interest, and will be more their policy, to restrain than to promote it.

In the trade to China and India, we interfere with more than one nation, inasmuch as it enables us to partake in advantages which they had in a manner monopolized, and as we thereby supply ourselves with commodities which we used to purchase from them.

The extension of our own commerce in our own vessels cannot give pleasure to any nations who possess

territories on or near this continent, because the cheapness and excellence of our productions, added to the circumstance of vicinity, and the enterprise and address of our merchants and navigators, will give us a greater share in the advantages which those territories afford, than consists with the wishes or policy of their respective sovereigns.

Spain thinks it convenient to shut the Mississippi against us on the one side, and Britain excludes us from the Saint Lawrence on the other; nor will either of them permit the other waters which are between them and us to become the means of mutual intercourse and traffic.

From these and such like considerations, which might, if consistent with prudence, be more amplified and detailed, it is easy to see that jealousies and uneasinesses may gradually slide into the minds and cabinets of other nations, and that we are not to expect that they should regard our advancement in union, in power and consequence by land and by sea, with an eye of indifference and composure.

The people of America are aware that inducements to war may arise out of these circumstances, as well as from others not so obvious at present, and that whenever such inducements may find fit time and opportunity for operation, pretenses to color and justify them will not be wanting. Wisely, therefore, do they consider union and a good national government as necessary to put and keep them in *such a situation* as, instead of *inviting* war, will tend to repress and discourage it. That situation consists in the best possible state of defense, and necessarily depends on the government, the arms, and the resources of the country.

As the safety of the whole is the interest of the whole, and cannot be provided for without government, either one or more or many, let us inquire whether one good government is not, relative to the object in question, more competent than any other given number whatever.

One government can collect and avail itself of the talents and experience of the ablest men, in whatever part of the Union they may be found. It can move on uniform principles of policy. It can harmonize, assimilate, and protect the several parts and members, and extend the benefit of its foresight and precautions to each. In the formation of treaties, it will regard the interest of the whole, and the particular interests of the parts as connected with that of the whole. It can apply the resources and power of the whole to the defense of any particular part, and that more easily and expeditiously than State governments or separate confederacies can possibly do, for want of concert and unity of system. It can place the militia under one plan of discipline, and, by putting their officers in a proper line of subordination to the Chief Magistrate, will, as it were, consolidate them into one corps, and thereby render them more efficient than if divided into thirteen or into three or four distinct independent companies.

What would the militia of Britain be if the English militia obeyed the government of England, if the Scotch militia obeyed the government of Scotland, and if the Welsh militia obeyed the government of Wales? Suppose an invasion; would those three governments (if they agreed at all) be able, with all their respective forces, to operate against the enemy so effectually as the single government of Great Britain would?

We have heard much of the fleets of Britain, and the time may come, if we are wise, when the fleets of America may engage attention. But if one national government, had not so regulated the navigation of Britain as to make it a nursery for seamen -- if one national government had not called forth all the national means and materials for forming fleets, their prowess and their thunder would never have been celebrated. Let England have its navigation and fleet -- let Scotland have its navigation and fleet -- let Wales have its navigation and fleet -- let Ireland have its navigation and fleet -- let those four of the

constituent parts of the British empire be under four independent governments, and it is easy to perceive how soon they would each dwindle into comparative insignificance.

Apply these facts to our own case. Leave America divided into thirteen or, if you please, into three or four independent governments -- what armies could they raise and pay -- what fleets could they ever hope to have? If one was attacked, would the others fly to its succor, and spend their blood and money in its defense? Would there be no danger of their being flattered into neutrality by its specious promises, or seduced by a too great fondness for peace to decline hazarding their tranquillity and present safety for the sake of neighbors, of whom perhaps they have been jealous, and whose importance they are content to see diminished? Although such conduct would not be wise, it would, nevertheless, be natural. The history of the states of Greece, and of other countries, abounds with such instances, and it is not improbable that what has so often happened would, under similar circumstances, happen again.

But admit that they might be willing to help the invaded State or confederacy. How, and when, and in what proportion shall aids of men and money be afforded? Who shall command the allied armies, and from which of them shall he receive his orders? Who shall settle the terms of peace, and in case of disputes what umpire shall decide between them and compel acquiescence? Various difficulties and inconveniences would be inseparable from such a situation; whereas one government, watching over the general and common interests, and combining and directing the powers and resources of the whole, would be free from all these embarrassments, and conduce far more to the safety of the people.

But whatever may be our situation, whether firmly united under one national government, or split into a number of confederacies, certain it is, that foreign nations will know and view it exactly as it is; and they will act toward us accordingly. If they see that our national government is efficient and well administered, our trade prudently regulated, our militia properly organized and disciplined, our resources and finances discreetly managed, our credit re-established, our people free, contented, and united, they will be much more disposed to cultivate our friendship than provoke our resentment. If, on the other hand, they find us either destitute of an effectual government (each State doing right or wrong, as to its rulers may seem convenient), or split into three or four independent and probably discordant republics or confederacies, one inclining to Britain, another to France, and a third to Spain, and perhaps played off against each other by the three, what a poor, pitiful figure will America make in their eyes! How liable would she become not only to their contempt but to their outrage, and how soon would dear-bought experience proclaim that when a people or family so divide, it never fails to be against themselves.

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# The Federalist No. 42

## The Powers Conferred by the Constitution Further Considered

*New York Packet*  
Tuesday, January 22, 1788  
[James Madison]

**To the People of the State of New York:**

THE *second* class of powers, lodged in the general government, consists of those which regulate the intercourse with foreign nations, to wit: to make treaties; to send and receive ambassadors, other public ministers, and consuls; to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations; to regulate foreign commerce, including a power to prohibit, after the year 1808, the importation of slaves, and to lay an intermediate duty of ten dollars per head, as a discouragement to such importations.

This class of powers forms an obvious and essential branch of the federal administration. If we are to be one nation in any respect, it clearly ought to be in respect to other nations.

The powers to make treaties and to send and receive ambassadors, speak their own propriety. Both of them are comprised in the articles of Confederation, with this difference only, that the former is disembarassed, by the plan of the convention, of an exception, under which treaties might be substantially frustrated by regulations of the States; and that a power of appointing and receiving "other public ministers and consuls," is expressly and very properly added to the former provision concerning ambassadors. The term ambassador, if taken strictly, as seems to be required by the second of the articles of Confederation, comprehends the highest grade only of public ministers, and excludes the grades which the United States will be most likely to prefer, where foreign embassies may be necessary. And under no latitude of construction will the term comprehend consuls. Yet it has been found expedient, and has been the practice of Congress, to employ the inferior grades of public ministers, and to send and receive consuls.

It is true, that where treaties of commerce stipulate for the mutual appointment of consuls, whose functions are connected with commerce, the admission of foreign consuls may fall within the power of making commercial treaties; and that where no such treaties exist, the mission of American consuls into foreign countries may *perhaps* be covered under the authority, given by the ninth article of the Confederation, to appoint all such civil officers as may be necessary for managing the general affairs of the United States. But the admission of consuls into the United States, where no previous treaty has stipulated it, seems to have been nowhere provided for. A supply of the omission is one of the lesser instances in which the convention have improved on the model before them. But the most minute provisions become important when they tend to obviate the necessity or the pretext for gradual and unobserved usurpations of power. A list of the cases in which Congress have been betrayed, or forced by the defects of the Confederation, into violations of their chartered authorities, would not a little surprise those who have paid no attention to the subject; and would be no inconsiderable argument in favor of the new Constitution, which seems to have provided no less studiously for the lesser, than the more obvious and striking defects of the old.

The power to define and punish piracies and felonies committed on the high seas, and offenses against

the law of nations, belongs with equal propriety to the general government, and is a still greater improvement on the articles of Confederation. These articles contain no provision for the case of offenses against the law of nations; and consequently leave it in the power of any indiscreet member to embroil the Confederacy with foreign nations. The provision of the federal articles on the subject of piracies and felonies extends no further than to the establishment of courts for the trial of these offenses. The definition of piracies might, perhaps, without inconveniency, be left to the law of nations; though a legislative definition of them is found in most municipal codes. A definition of felonies on the high seas is evidently requisite. Felony is a term of loose signification, even in the common law of England; and of various import in the statute law of that kingdom. But neither the common nor the statute law of that, or of any other nation, ought to be a standard for the proceedings of this, unless previously made its own by legislative adoption. The meaning of the term, as defined in the codes of the several States, would be as impracticable as the former would be a dishonorable and illegitimate guide. It is not precisely the same in any two of the States; and varies in each with every revision of its criminal laws. For the sake of certainty and uniformity, therefore, the power of defining felonies in this case was in every respect necessary and proper.

The regulation of foreign commerce, having fallen within several views which have been taken of this subject, has been too fully discussed to need additional proofs here of its being properly submitted to the federal administration.

It were doubtless to be wished, that the power of prohibiting the importation of slaves had not been postponed until the year 1808, or rather that it had been suffered to have immediate operation. But it is not difficult to account, either for this restriction on the general government, or for the manner in which the whole clause is expressed. It ought to be considered as a great point gained in favor of humanity, that a period of twenty years may terminate forever, within these States, a traffic which has so long and so loudly upbraided the barbarism of modern policy; that within that period, it will receive a considerable discouragement from the federal government, and may be totally abolished, by a concurrence of the few States which continue the unnatural traffic, in the prohibitory example which has been given by so great a majority of the Union. Happy would it be for the unfortunate Africans, if an equal prospect lay before them of being redeemed from the oppressions of their European brethren!

Attempts have been made to pervert this clause into an objection against the Constitution, by representing it on one side as a criminal toleration of an illicit practice, and on another as calculated to prevent voluntary and beneficial emigrations from Europe to America. I mention these misconstructions, not with a view to give them an answer, for they deserve none, but as specimens of the manner and spirit in which some have thought fit to conduct their opposition to the proposed government.

The powers included in the *third* class are those which provide for the harmony and proper intercourse among the States.

Under this head might be included the particular restraints imposed on the authority of the States, and certain powers of the judicial department; but the former are reserved for a distinct class, and the latter will be particularly examined when we arrive at the structure and organization of the government. I shall confine myself to a cursory review of the remaining powers comprehended under this third description, to wit: to regulate commerce among the several States and the Indian tribes; to coin money, regulate the value thereof, and of foreign coin; to provide for the punishment of counterfeiting the current coin and securities of the United States; to fix the standard of weights and measures; to establish a uniform rule of naturalization, and uniform laws of bankruptcy, to prescribe the manner in which the public acts, records, and judicial proceedings of each State shall be proved, and the effect they shall have in other States; and to establish post offices and post roads.



The defect of power in the existing Confederacy to regulate the commerce between its several members, is in the number of those which have been clearly pointed out by experience. To the proofs and remarks which former papers have brought into view on this subject, it may be added that without this supplemental provision, the great and essential power of regulating foreign commerce would have been incomplete and ineffectual. A very material object of this power was the relief of the States which import and export through other States, from the improper contributions levied on them by the latter. Were these at liberty to regulate the trade between State and State, it must be foreseen that ways would be found out to load the articles of import and export, during the passage through their jurisdiction, with duties which would fall on the makers of the latter and the consumers of the former. We may be assured by past experience, that such a practice would be introduced by future contrivances; and both by that and a common knowledge of human affairs, that it would nourish unceasing animosities, and not improbably terminate in serious interruptions of the public tranquillity. To those who do not view the question through the medium of passion or of interest, the desire of the commercial States to collect, in any form, an indirect revenue from their uncommercial neighbors, must appear not less impolitic than it is unfair; since it would stimulate the injured party, by resentment as well as interest, to resort to less convenient channels for their foreign trade. But the mild voice of reason, pleading the cause of an enlarged and permanent interest, is but too often drowned, before public bodies as well as individuals, by the clamors of an impatient avidity for immediate and immoderate gain.

The necessity of a superintending authority over the reciprocal trade of confederated States, has been illustrated by other examples as well as our own. In Switzerland, where the Union is so very slight, each canton is obliged to allow to merchandises a passage through its jurisdiction into other cantons, without an augmentation of the tolls. In Germany it is a law of the empire, that the princes and states shall not lay tolls or customs on bridges, rivers, or passages, without the consent of the emperor and the diet; though it appears from a quotation in an antecedent paper, that the practice in this, as in many other instances in that confederacy, has not followed the law, and has produced there the mischiefs which have been foreseen here. Among the restraints imposed by the Union of the Netherlands on its members, one is, that they shall not establish imposts disadvantageous to their neighbors, without the general permission.

The regulation of commerce with the Indian tribes is very properly unfettered from two limitations in the articles of Confederation, which render the provision obscure and contradictory. The power is there restrained to Indians, not members of any of the States, and is not to violate or infringe the legislative right of any State within its own limits. What description of Indians are to be deemed members of a State, is not yet settled, and has been a question of frequent perplexity and contention in the federal councils. And how the trade with Indians, though not members of a State, yet residing within its legislative jurisdiction, can be regulated by an external authority, without so far intruding on the internal rights of legislation, is absolutely incomprehensible. This is not the only case in which the articles of Confederation have inconsiderately endeavored to accomplish impossibilities; to reconcile a partial sovereignty in the Union, with complete sovereignty in the States; to subvert a mathematical axiom, by taking away a part, and letting the whole remain.

All that need be remarked on the power to coin money, regulate the value thereof, and of foreign coin, is, that by providing for this last case, the Constitution has supplied a material omission in the articles of Confederation. The authority of the existing Congress is restrained to the regulation of coin *struck* by their own authority, or that of the respective States. It must be seen at once that the proposed uniformity in the *value* of the current coin might be destroyed by subjecting that of foreign coin to the different regulations of the different States.

The punishment of counterfeiting the public securities, as well as the current coin, is submitted of course to that authority which is to secure the value of both.

The regulation of weights and measures is transferred from the articles of Confederation, and is founded on like considerations with the preceding power of regulating coin.

The dissimilarity in the rules of naturalization has long been remarked as a fault in our system, and as laying a foundation for intricate and delicate questions. In the fourth article of the Confederation, it is declared "that the *free inhabitants* of each of these States, paupers, vagabonds, and fugitives from justice, excepted, shall be entitled to all privileges and immunities of *free citizens* in the several States; and *the people* of each State shall, in every other, enjoy all the privileges of trade and commerce," etc. There is a confusion of language here, which is remarkable. Why the terms *free inhabitants* are used in one part of the article, *free citizens* in another, and *people* in another; or what was meant by superadding to "all privileges and immunities of free citizens," "all the privileges of trade and commerce," cannot easily be determined. It seems to be a construction scarcely avoidable, however, that those who come under the denomination of *free inhabitants* of a State, although not citizens of such State, are entitled, in every other State, to all the privileges of *free citizens* of the latter; that is, to greater privileges than they may be entitled to in their own State: so that it may be in the power of a particular State, or rather every State is laid under a necessity, not only to confer the rights of citizenship in other States upon any whom it may admit to such rights within itself, but upon any whom it may allow to become inhabitants within its jurisdiction. But were an exposition of the term "inhabitants" to be admitted which would confine the stipulated privileges to citizens alone, the difficulty is diminished only, not removed. The very improper power would still be retained by each State, of naturalizing aliens in every other State. In one State, residence for a short term confirms all the rights of citizenship: in another, qualifications of greater importance are required. An alien, therefore, legally incapacitated for certain rights in the latter, may, by previous residence only in the former, elude his incapacity; and thus the law of one State be preposterously rendered paramount to the law of another, within the jurisdiction of the other. We owe it to mere casualty, that very serious embarrassments on this subject have been hitherto escaped. By the laws of several States, certain descriptions of aliens, who had rendered themselves obnoxious, were laid under interdicts inconsistent not only with the rights of citizenship but with the privilege of residence. What would have been the consequence, if such persons, by residence or otherwise, had acquired the character of citizens under the laws of another State, and then asserted their rights as such, both to residence and citizenship, within the State proscribing them? Whatever the legal consequences might have been, other consequences would probably have resulted, of too serious a nature not to be provided against. The new Constitution has accordingly, with great propriety, made provision against them, and all others proceeding from the defect of the Confederation on this head, by authorizing the general government to establish a uniform rule of naturalization throughout the United States.

The power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may lie or be removed into different States, that the expediency of it seems not likely to be drawn into question.

The power of prescribing by general laws, the manner in which the public acts, records and judicial proceedings of each State shall be proved, and the effect they shall have in other States, is an evident and valuable improvement on the clause relating to this subject in the articles of Confederation. The meaning of the latter is extremely indeterminate, and can be of little importance under any interpretation which it will bear. The power here established may be rendered a very convenient instrument of justice, and be particularly beneficial on the borders of contiguous States, where the effects liable to justice may be suddenly and secretly translated, in any stage of the process, within a foreign jurisdiction.

The power of establishing post roads must, in every view, be a harmless power, and may, perhaps, by judicious management, become productive of great public convenience. Nothing which tends to facilitate the intercourse between the States can be deemed unworthy of the public care.

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## The Effect of Immigrants on U.S. Employment and Productivity

BY GIOVANNI PERI

The effects of immigration on the total output and income of the U.S. economy can be studied by comparing output per worker and employment in states that have had large immigrant inflows with data from states that have few new foreign-born workers. Statistical analysis of state-level data shows that immigrants expand the economy's productive capacity by stimulating investment and promoting specialization. This produces efficiency gains and boosts income per worker. At the same time, evidence is scant that immigrants diminish the employment opportunities of U.S.-born workers.

Immigration in recent decades has significantly increased the presence of foreign-born workers in the United States. The impact of these immigrants on the U.S. economy is hotly debated. Some stories in the popular press suggest that immigrants diminish the job opportunities of workers born in the United States. Others portray immigrants as filling essential jobs that are shunned by other workers. Economists who have analyzed local labor markets have mostly failed to find large effects of immigrants on employment and wages of U.S.-born workers (see Borjas 2006; Card 2001, 2007, 2009; and Card and Lewis 2007).

This *Economic Letter* summarizes recent research by Peri (2009) and Peri and Sparber (2009) examining the impact of immigrants on the broader U.S. economy. These studies systematically analyze how immigrants affect total output, income per worker, and employment in the short and long run. Consistent with previous research, the analysis finds no significant effect of immigration on net job growth for U.S.-born workers in these time horizons. This suggests that the economy absorbs immigrants by expanding job opportunities rather than by displacing workers born in the United States. Second, at the state level, the presence of immigrants is associated with increased output per worker. This effect emerges in the medium to long run as businesses adjust their physical capital, that is, equipment and structures, to take advantage of the labor supplied by new immigrants. However, in the short run, when businesses have not fully adjusted their productive capacity, immigrants reduce the capital intensity of the economy. Finally, immigration is associated with an increase in average hours per worker and a reduction in skills per worker as measured by the share of college-educated workers in a state. These two effects have opposite and roughly equal effect on labor productivity.

### The method

A major challenge to immigration research is the difficulty of identifying the effects of immigration on economic variables when we do not observe what would have happened if immigration levels had been different, all else being equal. To get around this problem, we take advantage of the fact that the increase

in immigrants has been very uneven across states. For example, in California, one worker in three was foreign born in 2008, while in West Virginia the comparable proportion was only one in 100. By exploiting variations in the inflows of immigrants across states at 10-year intervals from 1960 to 2000, and annually from 1994 to 2008, we are able to estimate the short-run (one to two years), medium-run (four years), and long-run (seven to ten years) impact of immigrants on output, income, and employment.

To ensure that we are isolating the effects of immigrants rather than effects of other factors, we control for a range of variables that might contribute to differences in economic outcomes. These include sector specialization, research spending, openness to trade, technology adoption, and others. We then compare economic outcomes in states that experienced increases in immigrant inflows with states that did not experience significant increases.

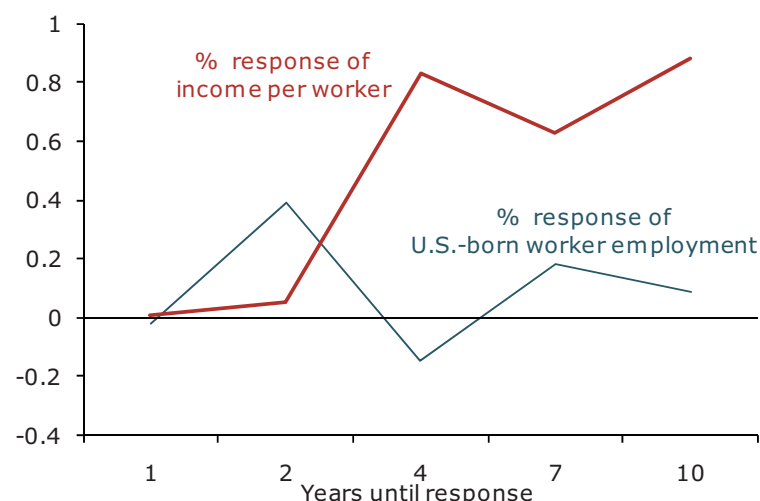
As a further control for isolating the specific effects of immigration, we focus on variations in the flow of immigrants that are caused by geographical and historical factors and are not the result of state-specific economic conditions. For example, a state may experience rapid growth, which attracts a lot of immigrants and also affects output, income, and employment. In terms of geography, proximity to the Mexican border is associated with high net immigration because border states tend to get more immigrants. Historical migration patterns also are a factor because immigrants are drawn to areas with established immigrant communities. These geography and history-driven flows increase the presence of immigrants, but do not reflect state-specific economic conditions. Hence, economic outcomes associated with these flows are purer measures of the impact of immigrants on economic variables.

### The short- and the long-run effects of immigrants

Immigration effects on employment, income, and productivity vary by occupation, job, and industry. Nonetheless, it is possible to total these effects to get an aggregate economic impact. Here we attempt to quantify the aggregate gains and losses for the U.S. economy from immigration. If the average impact on employment and income per worker is positive, this implies an aggregate “surplus” from immigration. In other words, the total gains accruing to some U.S.-born workers are larger than the total losses suffered by others.

Figures 1 and 2 show the response of key economic variables to an inflow of immigrants equal to 1% of employment. Figure 1 shows the impact on employment of U.S.-born workers and on average income per worker after one, two, four, seven, and ten years. Figure 2 shows the impact on the components of income per worker: physical capital intensity, as measured by capital per unit of output; skill intensity, as measured by human capital per worker; average hours worked; and total factor productivity, measuring productive efficiency and technological level. Some interesting patterns emerge.

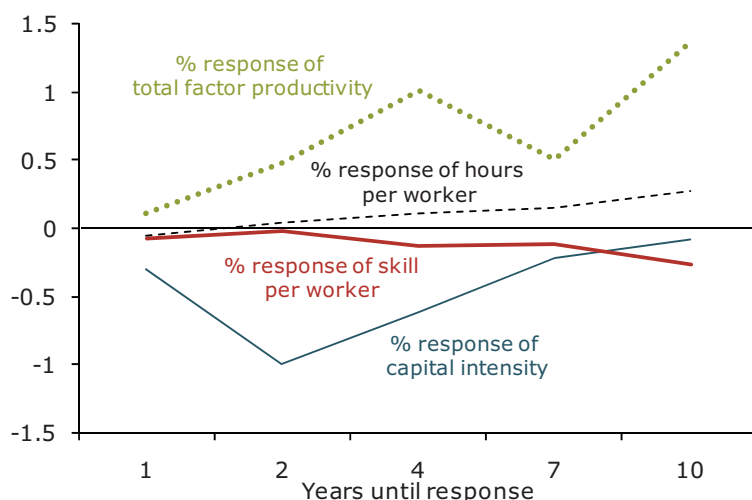
**Figure 1**  
**Employment and income**





First, there is no evidence that immigrants crowd out U.S.-born workers in either the short or long run. Data on U.S.-born worker employment imply small effects, with estimates never statistically different from zero. The impact on hours per worker is similar. We observe insignificant effects in the short run and a small but significant positive effect in the long run. At the same time, immigration reduces somewhat the skill intensity of workers in the short and long run because immigrants have a slightly lower average education level than U.S.-born workers.

**Figure 2**  
**Capital intensity, hours per worker, and total factor productivity**



Second, the positive long-run effect on income per U.S.-born worker accrues over some time. In the short run, small insignificant effects are observed. Over the long run, however, a net inflow of immigrants equal to 1% of employment increases income per worker by 0.6% to 0.9%. This implies that total immigration to the United States from 1990 to 2007 was associated with a 6.6% to 9.9% increase in real income per worker. That equals an increase of about \$5,100 in the yearly income of the average U.S. worker in constant 2005 dollars. Such a gain equals 20% to 25% of the total real increase in average yearly income per worker registered in the United States between 1990 and 2007.

The third result is that the long-run increase in income per worker associated with immigrants is mainly due to increases in the efficiency and productivity of state economies. This effect becomes apparent in the medium to long run. Such a gradual response of productivity is accompanied by a gradual response of capital intensity. While in the short run, physical capital per unit of output is decreased by net immigration, in the medium to long run, businesses expand their equipment and physical plant proportionally to their increase in production.

### How can these patterns be explained?

The effects identified above can be explained by adjustments businesses make over time that allow them to take full advantage of the new immigrant labor supply. These adjustments, including upgrading and expanding capital stock, provide businesses with opportunities to expand in response to hiring immigrants.

This process can be analyzed at the state level (see Peri and Sparber 2009). The analysis begins with the well-documented phenomenon that U.S.-born workers and immigrants tend to take different occupations. Among less-educated workers, those born in the United States tend to have jobs in manufacturing or mining, while immigrants tend to have jobs in personal services and agriculture. Among more-educated workers, those born in the United States tend to work as managers, teachers, and nurses, while immigrants tend to work as engineers, scientists, and doctors. Second, within industries and specific businesses, immigrants and U.S.-born workers tend to specialize in different job tasks. Because those born in the United States have relatively better English language skills, they tend to specialize in communication tasks. Immigrants tend to specialize in other tasks, such as manual labor.

Just as in the standard concept of comparative advantage, this results in specialization and improved production efficiency.

If these patterns are driving the differences across states, then in states where immigration has been heavy, U.S.-born workers with less education should have shifted toward more communication-intensive jobs. Figure 3 shows exactly this. The share of immigrants among the less educated is strongly correlated with the extent of U.S.-born worker specialization in communication tasks. Each point in the graph represents a U.S. state in 2005. In states with a heavy concentration of less-educated immigrants, U.S.-born workers have migrated toward more communication-intensive occupations. Those jobs pay higher wages than manual jobs, so such a mechanism has stimulated the productivity of workers born in the United States and generated new employment opportunities.

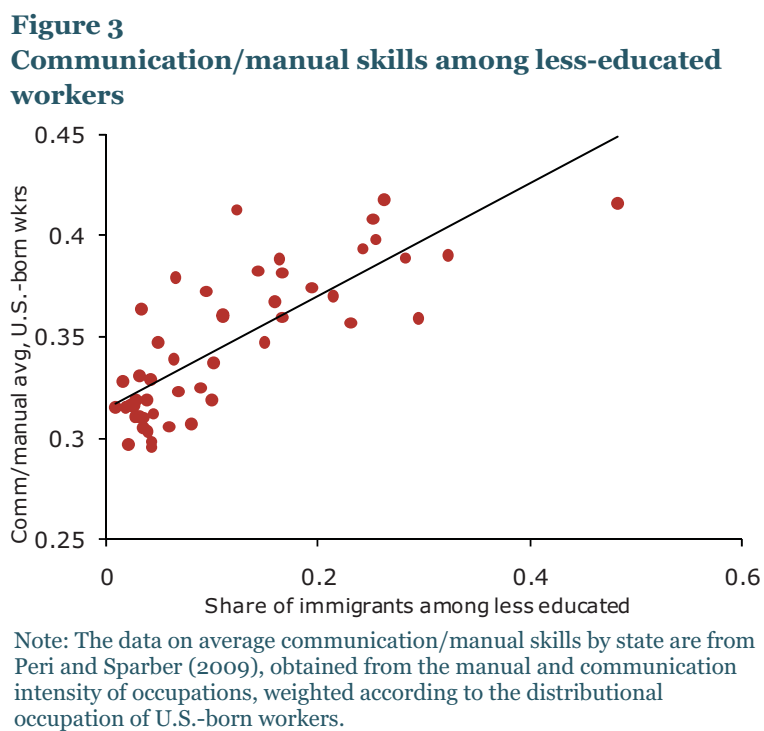
To better understand this mechanism, it is useful to consider the following

hypothetical illustration. As young immigrants with low schooling levels take manually intensive construction jobs, the construction companies that employ them have opportunities to expand. This increases the demand for construction supervisors, coordinators, designers, and so on. Those are occupations with greater communication intensity and are typically staffed by U.S.-born workers who have moved away from manual construction jobs. This complementary task specialization typically pushes U.S.-born workers toward better-paying jobs, enhances the efficiency of production, and creates jobs. This task specialization, however, may involve adoption of different techniques or managerial procedures and the renovation or replacement of capital equipment. Hence, it takes some years to be fully realized.

## Conclusions

The U.S. economy is dynamic, shedding and creating hundreds of thousands of jobs every month. Businesses are in a continuous state of flux. The most accurate way to gauge the net impact of immigration on such an economy is to analyze the effects dynamically over time. Data show that, on net, immigrants expand the U.S. economy's productive capacity, stimulate investment, and promote specialization that in the long run boosts productivity. Consistent with previous research, there is no evidence that these effects take place at the expense of jobs for workers born in the United States.

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## Governor Herbert Signs Immigration Reform Legislation

Mar 15 2011

Salt Lake City - Late this morning, Utah Governor Gary R. Herbert signed four immigration reform bills, which combined, constitute what he calls "the Utah solution." He said, "Utah has taken a thoughtful, rational approach and found common ground."

Flanked by business, religious, and legislative leaders in the Gold Room of the Utah Capitol, the Governor touted the day as an historic one. "Utah did the right thing. We did the hard thing," he said. "Today I challenge our federal delegation and those who work alongside them in Washington, D.C.: It is time to get off the sidelines and have a meaningful dialogue about immigration in this country."

While most acknowledge immigration is primarily a federal issue, Governor Herbert said these bills provide him some leverage at the federal level to engage the federal government in addressing Utah's challenges.

After citing his six guiding principles for immigration reform, the Governor signed the following bills:

- HB 116: Utah Immigration Accountability and Enforcement Amendments  
House sponsor, Representative Bill Wright  
Senate floor sponsor, Senator Stuart Reid
- HB 466: Migrant Workers and Related Commission Amendments  
House sponsor, Representative Stephen Sandstrom  
Senate floor sponsor, Senator Curtis Bramble
- HB 469: Immigration Related Amendments  
House sponsor, Representative John Dougall  
Senate floor sponsor, Senator Wayne Niederhauser

- HB 497, Utah Illegal Immigration Enforcement Act  
House sponsor, Representative Stephen Sandstrom  
Senate floor sponsor, Senator Margaret Dayton

The Governor referred to the summit he convened last summer to lay the groundwork for finding legislative solutions to the challenges of illegal immigration. "Stakeholders from all sides of this complex issue came together to discuss options," he said, citing the process as one which has been "open, transparent, and civil."

"There are those who will say these bills may not be perfect, but they are a step in the right direction and they are better than what we had," said the Governor. "Thanks to the vision and determination of these local leaders, what we have begun today is a framework for a national conversation about immigration and a means to engage the federal government. Once again, Utah leads the nation in finding solutions and making tough choices."

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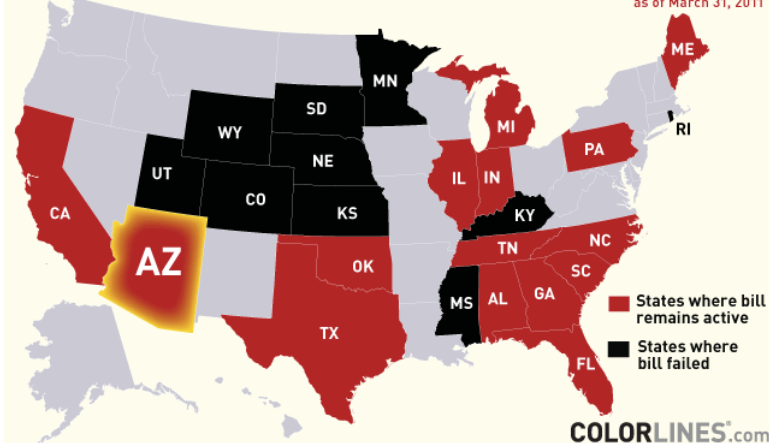
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## Arizona SB 1070 Copycats Fall Flat in Most State Legislatures

STATE IMMIGRATION ENFORCEMENT BILLS STYLED AFTER ARIZONA'S SB 1070  
as of March 31, 2011



Infographic: Hatty Lee

by Seth Freed Wessler

Thursday, March 31 2011, 12:37 PM EST

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At the start of the year, it appeared that Arizona's SB 1070 would spread the country like wildfire, with at least 24 state legislatures having introduced copycat "show me your papers" bills since the original passed in spring 2010. But to date, none of those states have passed the bills and at least 10 legislatures have killed the bills altogether. Now, with many state legislative sessions coming to a close, the fight against SB 1070 copycat legislation appears contained to just a few key battlegrounds.

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Converging forces have blocked the copycat bills' success. On the one hand, the bills have spurred broad opposition from immigrant and civil rights groups, as well as from business interests. On the other, a ticking clock killed several bills as legislative sessions end before lawmakers have had time to pass the controversial laws—particularly in a season in which most state political debates are dominated by budget battles.

This week in Mississippi, a state where many feared the legislation could pass, the bill died after it failed to come to a vote before the session ended. The same outcome is expected in almost all of the 14 states with remaining bills this session.

Bill Chandler, executive director of the Mississippi Immigrants Rights Alliance, attributed the Mississippi bill's failure to the breadth of the coalition opposing it. "It's taken the leadership of the Mississippi Legislative Black Caucus and the African American community together with immigrants, not just Latinos, to mobilize people," he said.

Business lobbies have come out against the bills as well, arguing that the legislation hurts the economy. They look to Arizona, where the Center for American Progress estimates that boycotts against Arizona in response to SB 1070 could cost the state more than \$250 million in taxes, tourist spending and wages. As a result, Arizona business lobbyists played a key role in killing a suite of new anti-immigrant bills this session.

"The tide is starting to turn," says Marisa Franco, an organizer with the National Day Laborer Organizing Network, an immigrant rights groups that's helping lead the national fight against SB 1070-style bills. "In a period where many states are worried about budgets, they are starting to see that the economic costs of passing the bills is too great."

While copycat legislation remains formally alive in as many as 14 states, few of the bills are expected to move forward. In some states, like California, the votes simply aren't there to pass the bill. Earlier this month, the California bill's author cancelled a committee hearing on the law.

### Bills Still Moving in the South

The SB 1070-style laws remain alive primarily in a few southern states where conservative lawmakers continue pushing.

Georgia is currently closest to passing a bill. With only a handful of working days left before the state's legislative session ends on April 14, a state senate committee approved a bill on Wednesday that looks very similar to one passed by the house side earlier this week. The bills will now have to be reconciled and voted upon again. If the state passes the legislation, it will become the country's first SB 1070 copycat bill.

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According to Azadeh Shahshahani of the ACLU of Georgia, the bill is precariously close to passing, even after months of organizing against the legislation. In the past several weeks thousands of people arrived to protest at the state capitol and a coalition of groups including the state's NAACP have come out in strong opposition.

"The civil rights groups are concerned, especially with increased racial profiling," said Shahshahani. "That's brought us together."

Immediately to the north in Tennessee, where many believed a bill would pass, it is now looking less likely to do so, according to advocates who are organizing against the law. The state has postponed deliberations on the matter until after it passes a budget, which is expected to leave little time for other bills.

South Carolina's copycat bill already passed the senate and is now in the house's hands. That state's legislative session does not end until June and opponents of the bill worry it could become law there.

Florida's immigrant rights groups and business groups have built a strong opposition to the bill there, and momentum for passage is waning. Notably, the state's Chamber of Commerce came out against the legislation, arguing that immigrants bolster local economies.

#### Beyond SB 1070-Style Bills

Beyond SB 1070 copies, other anti-immigrant legislation is also failing to pass in state legislatures.

Even Arizona tossed out a round of bills this year that would have barred undocumented immigrants from using hospitals, and attending public schools. Another bill would have done away with birthright citizenship for the children of undocumented immigrants.

The failure of these bills made it seem that the state of Arizona might have hit bottom and that those leading the anti-immigrant charge were losing support. Paying little attention to the shift, notorious Maricopa County's Sheriff Joe Arpaio on Tuesday announced the launch of "Operation Desert Sky." The program will deploy 30 pilots into the air with M-16s to hunt border crossers.

Meanwhile, the federal government appears committed to pursuing another year of record setting deportations.

New data released this week by a coalition of immigrants and civil rights groups shows that the Obama administration's signature deportation program is not targeting serious criminals, as has been claimed, but rather functioning as a deportation dragnet for all non-citizens. Most of those detained and deported as a result of the program, misleadingly called Secure Communities, have been convicted of no crime at all or of some low level violation.

*Asraa Mustufa contributed reporting to this article.*



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**AccidentalCollegeGirl** 1 month ago

I wish they would start shifting more of the burden on to employers of undocumented immigrants, they're usually doing much worse stuff beyond simply hiring UI's. Most people who seek to hire people off the books are also paying their employees unlivable wages, making them work overtime without extra pay, unsafe working conditions, etc. etc. Not all, of course, but most.

I want to tell our government here in CA that probably at least half of the residents in the town where my parents live are hiring people off the books for things like gardening or raising their children, uh, sorry, "childcare." Then they could collect all the back taxes plus some hefty fines from these people who are so arrogant they think the laws don't apply to them. They could also put a few people in jail just to set an example. I know this is just a fantasy though, because if I really did rat people out, the people who would actually end up getting punished the most would be the immigrants, and they're mostly just desperate people trying to do what they can to survive. They probably heap most of the punishment onto the immigrants because they can't vote.

Wow, I got off on a rant there. Sorry.

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**Virginia NewMajority** 1 month ago

for some reason, the article and map here don't include the amazing victory we had in Virginia. Anti-immigrant elected officials in Virginia tried to pass a whole range of anti-immigrant bills that would have introduced 1070-like conditions through piece-meal legislation. All in all, over 20 laws were considered in this legislative session, and all but one were defeated. The people of Virginia spoke up, and won a huge victory in Richmond!

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**sethfreedwessler** 1 month ago in reply to Virginia NewMajority

The defeat of the bills in VA is definitely an important part of the picture. This map and article focus tightly on bills that were crafted to look like SB 1070 but as you make clear, that's definitely not the whole story. Thanks for the addition!

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**Sivelakes** 1 month ago

For some reason, the links didn't post, but you should be able to find the NPR article/show "Shaping State Laws with Little Scrutiny" and the excellent blog post "Yes, Prof. Cronon, Let's Talk About ALEC" on [bigthink.com](#).

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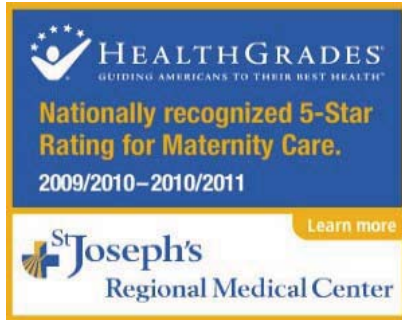
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## Minority population growing, census says

Young Hispanic parents driving surge in numbers

June 11, 2010 | Hope Yen, Associated Press



WASHINGTON — The nation's minority population is steadily rising and now makes up 35 percent of the United States, advancing an unmistakable trend that could make minorities the new American majority by midcentury.

As white baby boomers age past their childbearing years, younger Hispanic parents are having children — and driving US population growth.

“The aging of baby boomers beyond young middle age will have profound impacts on our labor force, housing market, schools, and generational divisions on issues such as Social Security and Medicare,” said William H. Frey, a demographer at The Brookings Institution. “The engine of growth for the younger population in most states will be new minorities.”

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New Census estimates show minorities added more than 2 percent in 2009, to 107.2 million people, boosted by a surge in Hispanic births and more people who described themselves as multiracial. During this time, the white population remained flat, making up roughly 199.9 million, or 65 percent, of the country.

By comparison, whites made up 69 percent of the total population in 2000, and minorities 31 percent.

Currently four states — Hawaii, New Mexico, California, and Texas — as well as the District of Columbia have minority populations that exceeded 50 percent. That's one state more than in 2000, when Texas was not on the list.

About 311 of the 3,143 counties — 1 in 10 — have minority populations of 50 percent or greater. That's up from around 250 counties in 2000.

The census estimates released yesterday documented a widening age and race divide. They are the last government numbers before completion later this year of the 2010 Census, which could change the balance of political power when legislative districts are redrawn based on population and racial diversity.

A key factor in the demographic transformation is aging baby boomers, a predominantly white group now shepherding college children instead of starting young families.

Since 2000, the number of whites under age 45 decreased by 8.4 million, while the number of whites over that age rose by 12.6 million.

The result is that the number of white younger adults and children fell in 42 states. Fifteen states — led by California, New York, Pennsylvania, and Michigan — have lost more than 10 percent of their younger white population since 2000.

Locally, the changing race dynamics were widespread.



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Seven US counties last year saw their minority populations become the majority: Gwinnett County, Ga.; Titus and Victoria counties in Texas; Finney County, Kan.; Saguache County, Colo.; Contra Costa County, Calif.; and Yakima County, Wash.

The rise in the minority population is due to recent sharp increases in minority births, especially among Hispanics, who accounted for more than half of the total US population gains last year.

There are now roughly 9 births for every 1 death among Latinos, compared with a roughly 1-to-1 ratio for whites.

Based on current rates, data from the 2010 Census could show a new "tipping point" in which babies born to minorities outnumber that of babies born to whites.

About 1 in 4 counties now have more minority children than white children or are nearing that point.

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# U.S.-Latin America Trade: Recent Trends and Policy Issues

**J. F. Hornbeck**

Specialist in International Trade and Finance

February 8, 2011

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## Summary

Trade is one of the more enduring issues in contemporary U.S.-Latin America relations. Latin America is far from the largest U.S. regional trade partner, but historically is the fastest growing one. Between 1998 and 2009, total U.S. merchandise trade (exports plus imports) with Latin America grew by 82% compared to 72% for Asia (driven largely by China), 51% for the European Union, 221% for Africa, and 64% for the world. Mexico composed 11.7% of total U.S. merchandise trade in 2009 and is the largest Latin American trade partner. It accounted for 58% of the region's trade with the United States, the result of a long history of economic integration between the two countries. By contrast, the rest of Latin America together makes up only 8.3% of U.S. trade, half of which is trade with Brazil, Colombia, and Venezuela.

Latin American countries have made noted progress in trade liberalization, reducing tariffs significantly and entering into their own regional agreements. This development presented an opportunity for the United States, which has supported deeper regional integration because it has been widely viewed as beneficial for both economic and foreign policy reasons. The United States has implemented comprehensive bilateral or plurilateral reciprocal trade agreements with most of its important trade partners in Latin America. These include the North American Free Trade Agreement (NAFTA), the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), and bilateral FTAs with Chile and Peru. FTAs with Panama and Colombia have been signed but not implemented, pending congressional action.

Some of the largest economies in South America, however, are not part of U.S. FTAs and have resisted a region-wide agreement, the Free Trade Areas of the Americas (FTAA), in part because it represented an extension of the same trade model used by the United States in bilateral agreements. Many countries south of the Caribbean Basin have been reluctant to enter into such a deal because it does not meet their primary negotiation objectives. Brazil, Argentina, and Venezuela are less compelled to capitulate to U.S. demands because they are far less dependent on the U.S. economy than countries in the Caribbean Basin, do not rely on U.S. regional unilateral preferential arrangements (e.g., the Caribbean Basin Initiative or Andean Trade Preference Act), and would have to redefine their subregional trade pacts.

The result in the Western Hemisphere has been an expansive system of disparate bilateral and plurilateral agreements, which are widely understood to be a second best solution for reaping the benefits of trade liberalization. Alternatives to a new round of currently unpopular FTAs are being debated. It has been suggested, for example, that FTAs be revised, enhancing controversial environment, labor, and other chapters. The response in Latin, however, has been tepid. Another option is to move incrementally toward harmonization or convergence of the many trade arrangements in the Western Hemisphere by adopting administrative solutions where possible. One example is to expand rules of origin and cumulation provisions.

With respect to FTA implementation, another critical issue is the provision of trade capacity building and other technical assistance to address supply-side constraints in areas such as port and customs operations modernization, infrastructure investment, technology enhancement, and development of common standards in general. These are often major constraints to the more fluid movement of goods in Latin American countries. It is uncertain what the next step in Western Hemisphere economic integration may be, and these alternatives may be difficult to implement and monitor. But at the margin, they could provide benefits in light of the apparent hiatus in moving ahead with either a multilateral or hemispheric trade accord.

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Trade is one of the more enduring issues in contemporary U.S.-Latin America relations. Historically, growth in U.S. trade with Latin America has outpaced that of all other regions, and over the last 15 years, the United States has signed reciprocal free trade agreements (FTAs) with 11 Latin American countries and implemented with nine of them. Nonetheless, a hemispheric-wide Free Trade Areas of the Americas (FTAA) has eluded the region and there appears to be little interest in pursuing the current U.S. FTA model by those countries that have yet to sign on to one. Under these circumstances, the future for deepening regional economic integration is uncertain. This report provides a summary to the U.S.-Latin American trade relationship, looking primarily at trade data and trends, and highlights some current policy options for enhancing U.S.-Latin American trade agreements.

## U.S.-Latin America Trade Agreements

Latin American countries have made noted progress in trade liberalization over the past three decades, reducing tariffs significantly and entering into multiple subregional agreements of their own. Early Latin American trade agreements (1960s), however, were inward looking, defensive in nature, exclusive of industrialized countries, and so minimally successful in leading to lasting regional integration and facilitating development. Agreements struck more recently, under the rubric of the “New Regionalism,” have gone farther, cultivated by the desire to integrate more fully, and by the growing belief that trade liberalization can be a cornerstone for promoting structural reform, development, and international competitiveness.<sup>1</sup>

This development in thinking presented an opportunity for the United States, which has supported deeper regional integration, in part because it has been widely viewed as beneficial for both economic and foreign policy reasons. The United States has implemented comprehensive bilateral or plurilateral reciprocal trade agreements with most of its important trade partners in Latin America. These include the North American Free Trade Agreement (NAFTA), the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), and bilateral FTAs with Chile and Peru. FTAs with Panama and Colombia have been signed but not implemented, pending congressional action.

For the United States, reciprocal FTAs liberalize trade in U.S. goods and services in a region with declining, but still relatively high applied tariff rates. In many cases, these same countries already had preferential access to the U.S. market under unilateral arrangements such as the Generalized System of Preferences (GSP), the Caribbean Basin Initiative (CBI), or the Andean Trade Preference Act (ATPA), so moving to a reciprocal agreement opened markets for U.S. goods as well. It has also been argued that progress made at the regional level can provide incentives to “sustain” multilateral negotiations at the World Trade Organization (WTO),<sup>2</sup> although the disappointing pace of Doha Development Round may point to the limits of this influence. FTAs with Latin America also support U.S. foreign policy, which has historically viewed much of the region as a strategic “backyard.” Enhancing social stability through trade-led growth and development has been one long-term goal of FTAs, and thereby more broadly supportive of U.S. regional security goals.

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<sup>1</sup> Robert Devlin and Paolo Giordano, “The Old and New Regionalism: Benefits, Costs, and Implications for the FTAA,” in *Integrating the Americas: FTAA and Beyond*, ed. Antonio Estevadeordal, Dani Rodrik, Alan M. Taylor, and Andrés Velasco (Cambridge: Harvard University Press, 2004), pp. 145 and 160.

<sup>2</sup> *Ibid.*, pp. 166 and 173.



As for the Latin American countries, economic gains provide the overriding rationale for entering into an FTA with the United States. The United States is by far their largest export market and the primary investor in the region, particularly in Mexico and the Caribbean Basin region (Central America, Panama, and the Caribbean Islands). For these countries, moving to a reciprocal FTA provides permanent rules of trade that do not require periodic reauthorization by the U.S. Congress, as do the unilateral preferential arrangements. This feature of FTAs and its rules-based framework provide a greater incentive for foreign investors and gives the Latin American countries more control over their trade relationship with the United States. Many see FTAs as anchors to broader economic reform and providing greater opportunity for production-sharing technology transfer that can improve economic competitiveness. Lower costs of imports from the United States is another tangible benefit.

U.S.-Latin American FTAs, however, have also been criticized from various perspectives. Many economists are skeptical of their benefits given the discriminatory, complicated, and at times inefficient trading network they create.<sup>3</sup> Latin Americans point to other problems like asymmetrical negotiation power, where the United States has been able to unilaterally limit the scope of discussion, for example, by excluding agricultural subsidies and antidumping policies, and limiting access to key import sensitive products such as sugar and apparel. The United States has also had increasing success in forcing accommodation on issues not addressed in the multilateral arena such as labor and environment provisions. In the United States, many have criticized these agreements for not going far enough on these same issues and also risking the possibility of increasing job losses and lower wages. Trade liberalization also creates adjustment, if not distributional issues in some cases that generally lead to the call for complementary domestic policies.

The FTAA encountered resistance in part because it represented an extension of the same trade model used by the United States in bilateral agreements. Many countries south of the Caribbean Basin have been reluctant to enter into such a deal because it does not meet their primary negotiation objectives. Brazil, Argentina, and Venezuela are less compelled to capitulate to U.S. demands because they are far less dependent on the U.S. economy than countries in the Caribbean Basin, do not rely on U.S. regional unilateral preferential arrangements (e.g., the Andean Trade Preference Act or the Caribbean Basin Initiative), and would have to redefine their subregional trade pacts. Failure to find accommodation on agricultural trade, in particular, presented one insurmountable obstacle. In short, in light of the failure to conclude an FTAA, and given increasing skepticism over the U.S. FTA model, the next step in Western Hemisphere economic integration is ripe for discussion.

## Trends in U.S.-Latin American Trade

Latin America is far from the largest U.S. regional trade partner (see **Figure 1** for U.S. direction of trade), but it has long been one of the fastest growing ones. Between 1998 and 2009, total U.S. merchandise trade (exports plus imports) with Latin America grew by 82% compared to 72% for Asia (driven largely by China), 51% for the European Union, 221% for Africa, and 64% for the world (individual country data appear in **Appendix A** and **Appendix B**). Only trade with Africa has grown faster, and this represents growth from a very small base and variations in the price

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<sup>3</sup> For a detailed critique, see: Jagdish Bhagwati, *Termites in the Trading System: How Preferential Agreements Undermine Free Trade* (London: Oxford University Press, 2008).

and volume of a single product, crude oil, which represents three-quarters of U.S. imports from the region. Within the Latin American region, trade trends reflect Mexico's historically dominant position as the largest U.S. trade partner.

**Figure 1. U.S. Direction of Total World Trade, 1996 and 2009**



**Source:** U.S. Department of Commerce data as presented in World Trade Atlas.

**Note:** LAC = Latin America and the Caribbean, except Mexico.

In 2009, U.S. trade worldwide declined sharply as it had in the second half of 2008 in response to the deep recession that followed on the heels of the 2007 global financial crisis. In 2009, U.S. exports to the world fell by 18.0% after rising by 11.8% in 2008. Among the larger U.S. trade partners, exports fell by 21.6% to Canada, 21.5% to Japan, 18.8% to the EU-27, but only 0.3% to China. U.S. exports to Latin America fell in tandem with the world, declining by 17.6%. By major Latin America trade partner, exports fell by 14.9% to Mexico, 20.6% to Brazil, 25.3% to Argentina, 30.6% to Honduras, and 22.3% to Chile. Of note, exports to Mexico fell on average less than many other countries in the region. These trends reflect collapsed demand commensurate with the worldwide recession, including major U.S. exports to the region such as machinery, computers, aircraft engines and parts, and refined petroleum products. Falling prices and selective use of protectionist policies compounded the falloff in trade in some cases.<sup>4</sup>

On the import side, U.S. demand for foreign goods worldwide fell by 25.9% in 2009 compared to an increase of 7.3% in 2008. Among the larger U.S. trade partners, imports fell 33.4% from Canada, 12.3% from China, 23.3% from the EU-27, 18.4% from South Korea, and 31.2% from Japan. Imports from Latin America declined 24.2% on average and by 45.3% from Venezuela, 43.6% from Costa Rica, 32.8% from Argentina, 41.1% from Ecuador, 27.6% from Peru, 13.7% from Colombia, and 39.2% from Mexico. Those countries exporting commodities such as crude petroleum, agricultural products, and precious stones experienced the largest declines.

<sup>4</sup> Michael J. Ferrantino, "The Global Trade Contraction: How Much Is 2008-09 Like 1929-33," USITC Executive Briefings on Trade, Washington, DC, April 2009.

Mexico composed 11.7% of total U.S. merchandise trade (exports plus imports) in 2009 and is the largest Latin American trade partner, accounting for 58% of the region's trade with the United States. These trends point to a long history of economic integration between the two countries, in part the result of their deliberate trade liberalization efforts, including the North American Free Trade Agreement (NAFTA). By contrast, the rest of Latin America together makes up only 8.3% of U.S. trade, leaving significant room for growth. Brazil, for example, has the largest economy in Latin America, is the second largest Latin American trade partner of the United States, but accounts for only 10.4% of U.S. trade with Latin America, or only 18% that of Mexico.

In the United States, total merchandise trade (goods) has become an increasingly important component of the economy, growing from 8.0% of gross domestic product (GDP) in 1970 to 18.3% in 2009, down from 23.6% in 2008. Latin America's growing importance as a U.S. trade partner is a key aspect of this trend. Since the 1980s, many Latin American countries have adopted trade liberalization as part of broader economic reform programs. Average Latin American import tariffs declined from 45% in 1985 to 9.3% by 2002, although the rates varied among countries.<sup>5</sup> Trade reform, however, has not been embraced with equal vigor by all countries and U.S. exports are not all treated equally under various liberalization schemes. Also, trade reform has stalled or even reversed in some countries when faced with economic instability or changing political philosophy.

In addition to tariff rates, which have generally fallen throughout Latin America, differences among individual countries in achieving economic integration with the United States may be seen in other trends. Two simple measures of trade openness appear in **Table 1** and point to cases where trade liberalization may be more apparent than in others. For example, Mexico, Costa Rica, and Chile are considered among the early and more successful reformers of trade policy. For each in 2008, total merchandise trade exceeded 50% of GDP. By contrast, in two countries historically associated with incomplete trade reforms, total trade accounted for a much smaller 26% of GDP in Brazil, and 39% in Argentina.

**Table 1. Measures of Trade Openness for Seven Top U.S. Trading Partners in Latin America**

	Trade in Goods (% of GDP) 1996	Trade in Goods (% of GDP) 2008	Per Capita Imports from U.S. 1996	Per Capita Imports from U.S. 2008	Per Capita GDP 2008
Mexico	55.8%	55.4%	\$611	\$1,394	\$10,005
Costa Rica	65.8%	79.8%	\$516	\$1,262	\$6,567
Chile	45.3%	74.4%	\$284	\$706	\$10,084
Dom. Rep.	57.9%	50.6%	\$393	\$687	\$4,723
Colombia	24.7%	31.5%	\$122	\$247	\$5,390
Brazil	13.1%	25.6%	\$77	\$168	\$7,545
Argentina	17.0%	38.8%	\$128	\$188	\$8,224

**Data Sources:** Calculations by CRS from Global Trade International Services (GTIS) and United Nations Economic Commission on Latin America and the Caribbean (ECLAC) data.

<sup>5</sup> Data provided by Inter-American Development Bank.

The trade-to-GDP ratio, however, may reflect other than trade policy factors. The ratio can be smaller for those countries with large domestic markets that are less trade dependent. This may be the case for Brazil, which has a large domestic manufacturing base. Conversely, the ratio may be larger for small economies that are relatively more trade dependent, such as the Dominican Republic, which as part of its pursuit of trade liberalization, has also developed a manufacturing export base tightly linked to the United States. Still, the lower trade-to-GDP ratio for Brazil is telling.

The per capita dollar value of goods a country imports from the United States is another particular measure of trade openness (**Table 1**). Brazil and Argentina increased their per capita dollar value of U.S. imports from 1996 to 2008, but to only a fraction of that for Mexico, Costa Rica, Chile, and the Dominican Republic. Mexico's high figure again reflects an evolving trade liberalization policy dating to the mid-1980s and its historical ties with the U.S. economy. Costa Rica's high per capita consumption of U.S. goods reflects a similar relationship that has seen enormous growth in recent years, including strong intra-industry trade in integrated circuits. Brazil and Argentina, by contrast, have a more diversified trade relationship with the world. The low number for U.S. imports also points to their higher restrictions on trade with the United States and other countries, in part reflecting both a tradition of industrial policy and a tendency toward defensive trade policy, in part the result of the regional customs union, Mercosur.<sup>6</sup> Differences in income can also be an important factor explaining variations in consumption of U.S. imports, but per capita GDP data shown in **Table 1** suggest that they do not stand out in this case.

The trade data suggest that there may be room for growth in trade between South America and the United States. Trade policy changes could provide some of the basis for growth in U.S.-South American trade, but they may not be immediately huge given South America's historically small interest in the United States and the limited size of its markets. Still, many economists believe that lowering barriers to U.S. exports and guaranteeing market access may generate long-term trade and investment opportunities, which in turn could lead to higher growth in productivity and output, with both producer and consumer benefits. Similarly, the prospect for even greater access the large U.S. market presents attractive opportunities for South American countries, as well.

## The Future of U.S.-Latin America Trade Relations

The United States and Latin America have pursued trade liberalization through multilateral, regional, and bilateral negotiations, with mixed results. In part this reflects divergent priorities that have been difficult to fully reconcile. For many Latin American countries, reducing barriers to agricultural trade is top of the list for a successful agreement. This goal includes reducing market access barriers (peak tariffs and tariff rate quotas—TRQs), domestic U.S. subsidies, and nontariff barriers (administrative rules, antidumping provisions). Although there are many other issues, agriculture policy has played a big part in slowing progress in the World Trade Organization (WTO) Doha Development Round and halting the Free Trade Area of the Americas (FTAA).<sup>7</sup> The United States has made clear its unwillingness to address most agricultural and

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<sup>6</sup> For more, see CRS Report RL33258, *Brazilian Trade Policy and the United States*, by J. F. Hornbeck and CRS Report RL33620, *Mercosur: Evolution and Implications for U.S. Trade Policy*, by J. F. Hornbeck.

<sup>7</sup> In fact, some see the stalemate over the FTAA as due in part to the United States and Brazil being unable to address protectionist policies that most affect the other's main exports. See Abreu, Marcelo de Paiva. *The FTAA and the Political Economy of Protection in Brazil and the US*. Inter-American Development Bank. Washington, DC, March 2006. pp. 1-4, 61-62.

antidumping issues in a regional agreement like the FTAA to preserve its bargaining leverage in the WTO against other subsidizing countries such as the European Union and Japan. Latin American countries have their own sensitive issues and a particular concern in some countries for easing its subsistence agricultural sectors slowly toward trade liberalization.

In addition to market access, the United States has focused its trade negotiating goals on areas where it is most competitive such as services trade (e.g., financial, tourism, technology, professional); intellectual property rights (IPR); government procurement; and investment. Not surprisingly, these are areas where many Latin American countries are more reluctant to negotiate. Hence, there is a near reversal of priorities that has slowed the progress of comprehensive agreements at the multilateral and regional levels, reflecting inherent differences between many developed and developing countries.

The result in the Western Hemisphere has been the proliferation of reciprocal bilateral and plurilateral agreements. The United States has implemented FTAs with Mexico, Central America, the Dominican Republic, Chile, and Peru, but Congress has not acted on the proposed FTAs with Panama or Colombia, despite changes agreed to even after the formal negotiations concluded. Currently, congressional reticence awaits further commitments in areas that fall outside the negotiated text of the FTAs, such as tax law in Panama and human rights improvements in Colombia, raising questions for some over the ability of the United States to consummate trade negotiations.<sup>8</sup>

The prospects are limited at best for exploring reciprocal FTAs with Brazil, Argentina, Ecuador, Bolivia, and Venezuela. Brazil, as the major regional economy not in a unilateral preferential arrangement with the United States, has abandoned the FTAA model and moved ahead separately by adding associate members to Mercosur, supporting Venezuela's accession to Mercosur as a full member, and leading in the formation of broader economic and political integration pacts in South America. Venezuela's President Hugo Chávez has taken a decidedly more confrontational approach in establishing the Bolivarian Alternative to the Americas (ALBA), enticing Cuba, Nicaragua, Bolivia, Dominica, and Honduras to join with subsidized oil trade.<sup>9</sup> Although these are neither deep nor comprehensive trade arrangements, they do signal a political will to consolidate regional bargaining interests in juxtaposition to the U.S.-designed FTAA.

Three clear challenges emerge from this picture. First, Brazil and the United States have demonstrated a prolonged reluctance to move off their respective positions, which bodes poorly for resurrecting the FTAA.<sup>10</sup> The addition of Venezuela and possibly other countries with less than sympathetic attitudes toward the United States as full Mercosur members could solidify this standoff. Nationalizations of key industries and other efforts to increase the role of the state in managing the economies of Venezuela, Bolivia, and Ecuador also do not augur well for broadening support for market-based trade solutions.

Second, multiple FTAs, by definition, promote an inefficient and cumbersome trading system with each FTA having its own rules of origin (to deter non-member transshipment of goods) and

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<sup>8</sup> Micahel Shifter and Daniel Joyce, "No Longer Washington's Backyard," *Current History*, February 2009, p. 55.

<sup>9</sup> *Ibid.*, p. 53.

<sup>10</sup> The ongoing WTO case brought by Brazil is another indication of the difficulty in reconciling respective agriculture and trade policy positions. See, CRS Report RL32571, *Brazil's WTO Case Against the U.S. Cotton Program*, by Randy Schnepf.



related customs administration and enforcement requirements that can complicate trade and investment decisions. It is not without reason, therefore, that many interest groups wish to find a way to rationalize such a convoluted system. Third, Latin America is expanding its trade to other countries in the world. China, in particular, has increased its trade and investment relationship with the region. From 2000 to 2009, total trade has grown by a factor of ten, and investment has poured into the region. In both cases, China is in search of long-term, reliable sources of basic commodities. In 2009, over 70% of Latin American exports to China were in basic ores, copper, grains, and mineral fuels. While this trade structure is currently lucrative, it does nothing to diversify Latin America's exports into more value added goods, and leaves the fortunes of these countries to the often volatile commodities markets.

Reconciling the disparate trade arrangements in the Western Hemisphere will be difficult and perhaps impossible in the absence of a complementary multilateral solution. For example, conventional wisdom argues that without advancement in agricultural issues at the WTO, action on a comprehensive FTAA (or something like it) is unlikely. Further, a less comprehensive FTAA has so far been rejected and offers a far less compelling alternative to a multilateral agreement on economic grounds. Therefore, the FTAA may not emerge in the near future, despite the logical solution that a hemispheric-wide agreement presents to improving the flow of trade (and investment) over existing arrangements.

Without a hemispheric-wide solution and given the limitations to further expansion of U.S. bilateral FTAs, alternatives are being debated on how to deepen hemispheric trade relations. One emerging line of thinking calls for reform of the U.S. FTA template, including reopening existing FTAs to revise and deepen labor and environment chapters, among others. The evolving nature of commitments to these disciplines continues, as evident in congressional insistence on revising bilateral agreements already negotiated, as was the case with Peru, Colombia, Panama, and South Korea. The consensus from Latin America countries, however, appears to be that such a task would be too difficult, could lead to a wholesale renegotiation of an FTA, and has little to offer those countries that have already implemented agreements with less stringent provisions.<sup>11</sup>

Another option is to move incrementally, where possible, toward harmonization or convergence of the vast array of trade arrangements in the Western Hemisphere, which may be more widely acceptable at some point. One train of thought suggests that progress might be made by working with administrative solutions in trade agreements, without opening them up for renegotiation. One example would be to expand rules of origin and cumulation provisions incrementally to broaden the allowable movement of goods from and through countries with reasonably similar agreements. An incremental administrative approach would allow broader integration with relative ease in trade disciplines where there is fundamental agreement.<sup>12</sup>

In the area of trade agreement implementation, another critical issue in the U.S. Congress, some Latin American countries have advocated increasing trade-for-aid and technical assistance. This would provide capacity building and help overcome supply-side constraints in areas such as port and customs operations modernization, infrastructure investment, technology enhancement, and

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<sup>11</sup> Jose Raul Perales, *Introduction*, Woodrow Wilson International Center for Scholars, *A New Trade Policy for the United States: Lessons from Latin America*, Washington, DC, September 2010, p. 3.

<sup>12</sup> Anabel Gonzalez, *The Road to Free Trade with the United States: Making Trade Work for Families in the Americas*, Woodrow Wilson International Center for Scholars, *A New Trade Policy for the United States: Lessons from Latin America*, Washington, DC, September 2010, p. 9 and Thomas Andrew O'Keefe, "Free Trade Alternatives in the Western Hemisphere for a New Administration," *Latin American Law & Business Report*, September 30, 2008.

development of common standards in general. These are often major constraints to the more fluid movement of goods in Latin American countries.<sup>13</sup>

It is uncertain if any of these alternatives will lead to a new chapter in trade relations between the United States and Latin America. For one, they may be difficult to implement and monitor, but nonetheless could provide marginal benefits in light of the apparent hiatus in moving toward a broad and comprehensive hemispheric trade agreement. In the meantime, trade remains foundational to good U.S.-Latin America relations, an important consideration in the contemplation of future U.S. trade policy.

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<sup>13</sup> Ibid., p. 8 and Lee, Nancy. *Now More than Ever: The Case for a New Integration Strategy for the Americas*. Focal and Center for Global Development. March 2009. The United States supports many of these measures already, see: Office of the United States Trade Representative. *2009 Trade Policy Agenda and 2008 Annual Report of the President of the United States on the Trade Agreements Program*. March 2009. p. 4.



## Appendix A. U.S. Merchandise Exports to Latin America and the Caribbean, 1998-2009

(in U.S. \$ billions)

Country	1998	2000	2002	2004	2006	2008	2009	% Change 2008-2009	% Change 1998-2009
Brazil	15.2	15.4	12.4	13.9	18.9	32.9	26.1	-20.6	71.7
Colombia	4.8	3.7	3.6	4.5	6.7	11.4	9.5	-13.3	97.9
Chile	4.0	3.5	2.6	3.6	6.5	12.1	9.4	-22.3	135.0
Venezuela	6.5	5.6	4.5	4.8	9.0	12.6	9.3	-26.1	43.1
Argentina	5.9	4.7	1.6	3.4	4.8	7.5	5.6	-25.3	-5.1
Dom. Rep.	4.0	4.4	4.3	4.4	5.4	6.6	5.3	-19.7	32.5
Peru	2.1	1.7	1.6	2.1	2.9	6.2	4.9	-7.5	133.3
Costa Rica	2.3	2.4	3.1	3.3	4.1	5.7	4.7	-17.5	104.3
Panama	1.8	1.6	1.4	1.8	2.7	4.9	4.3	-12.2	138.9
Honduras	2.3	2.6	2.6	3.1	3.7	4.9	3.4	-30.6	47.8
Other	14.4	13.4	13.4	21.4	23.7	36.2	27.0	-25.4	87.5
Total LAC*	63.4	59.3	51.7	61.5	88.4	137.9	109.5	-20.6	72.7
Mexico	79.0	111.7	97.5	110.8	133.7	151.5	128.9	-14.9	63.2
Total Latin America	142.4	171.0	149.2	172.3	222.1	289.4	238.4	-17.6	67.4
CAFTA-DR	12.4	13.5	14.1	15.8	19.6	25.4	19.9	-21.6	60.5
Caricom	5.0	5.4	5.0	5.8	8.6	11.0	8.6	-21.8	72.0
Mercosur	22.4	21.0	14.6	18.2	25.1	43.0	33.8	-21.4	50.9
Andean Com	15.5	12.2	11.4	13.2	21.6	34.1	28.1	-17.6	81.3
World	680.5	780.4	693.1	818.8	1,026.0	1,287.4	1,056.0	-18.0	55.2

**Source:** Table created by CRS from U.S. Department of Commerce data.

\* LAC = Latin America and the Caribbean, except Mexico.

## Appendix B. U.S. Merchandise Imports from Latin America and the Caribbean, 1998-2009

(in U.S. \$ billions)

Country	1998	2000	2002	2004	2006	2008	2009	% Change 2008-2009	% Change 1998-2009
Venezuela	9.3	18.7	15.1	24.9	37.1	51.4	28.1	-45.3	202.2
Brazil	10.1	13.9	15.8	21.2	26.3	30.5	20.1	-34.1	99.0
Colombia	4.7	7.0	5.6	7.3	9.3	13.1	11.3	-13.7	140.4
Chile	2.5	3.2	3.8	4.7	9.6	8.2	6.0	-26.8	140.0
Costa Rica	2.8	3.6	3.1	3.3	3.8	3.9	5.6	43.6	100.0
Ecuador	1.8	2.2	2.1	4.3	7.1	9.1	5.3	-41.8	194.4
Trin. & Tobago	1.0	2.2	2.4	5.8	8.4	9.0	5.2	-42.2	420.0
Peru	2.0	2.0	1.9	3.7	5.9	5.8	4.2	-27.6	110.0
Argentina	2.3	3.1	3.2	3.8	4.0	5.8	3.9	-32.8	69.6
Dom. Rep.	4.4	4.4	4.2	4.5	3.7	4.0	3.3	-17.5	-25.0
Other	7.6	11.7	10.8	18.4	18.4	29.7	15.9	-46.5	109.2
Total LAC*	50.4	73.3	69.6	98.7	133.6	160.0	108.1	-32.4	114.5
Mexico	94.7	135.9	134.7	155.9	198.3	215.9	176.7	-39.2	86.6
Total Latin America	145.1	209.2	204.3	254.6	331.9	375.9	284.8	-24.2	96.2
CAFTA-DR	13.7	16.1	16.0	17.7	18.6	19.4	18.8	-3.1	37.2
Caricom	2.6	4.0	4.0	7.7	10.4	11.4	7.6	-33.3	192.3
Mercosur	12.6	17.3	19.2	25.5	30.9	36.6	24.3	-33.1	93.9
Andean Comm.	17.8	30.0	24.9	40.4	59.7	79.9	49.4	-38.2	177.5
World	913.9	1,216.9	1,161.4	1,469.7	1,853.9	2,103.6	1,559.6	-25.9	70.7

**Source:** Table created by CRS from U.S. Department of Commerce data.

LAC = Latin America and the Caribbean, except Mexico.

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## Obama blasts Georgia bill targeting illegal immigrants

By Jeremy Redmon/Cox Newspapers  
Thursday, April 28, 2011

ATLANTA — President Barack Obama has waded into the fierce debate over illegal immigration in Georgia, strongly criticizing the state's Arizona-style legislation on immigration enforcement.

In an interview with WSB-TV, Obama said of House Bill 87: "It is a mistake for states to try to do this piecemeal. We can't have 50 different immigration laws around the country. Arizona tried this, and a federal court already struck them down."

"The truth of the matter is that we've done more on enforcement than any previous administration," he said. "We have more border patrols. We have been engaging in serious enforcement crackdowns on employers who are hiring undocumented workers."

The author of HB 87 -- Republican Rep. Matt Ramsey of Peachtree City -- issued a prepared response Wednesday, saying Georgia has been forced to take action because the federal government has failed to secure the nation's borders. Illegal immigrants, Ramsey said, are sapping Georgia's taxpayer-funded resources.



"Unlike the federal government, the state of Georgia actually balances its budget each year and we simply cannot afford to wait on solutions from Washington, D.C.," Ramsey said in an e-mail. "We will continue to take decisive and necessary action as a state to enforce the rule of law and protect our citizens from the problems posed by the federal government's failure to live up to its most basic responsibility to secure our nation's borders."

Meanwhile, a spokeswoman for Gov. Nathan Deal has confirmed the Republican governor intends to sign the bill some time in the first two weeks of May.

Like Arizona's law, Georgia's measure would empower state and local police to investigate the immigration status of certain suspects.

The Obama administration sued to block Arizona's law last year, arguing it is pre-empted by federal law. A federal judge sided with the White House and put some elements of Arizona's law on hold. Arizona appealed that decision. A federal appeals court recently upheld the lower court's decision, keeping much of the law on hold pending the outcome of the federal lawsuit.

Georgia has the ninth-largest population among states, but it is home to the seventh-largest number of illegal immigrants, estimated at 425,000, according to the Pew Hispanic Center.

During the recently concluded state legislative session, supporters of HB 87 argued that illegal immigrants are burdening the state's public schools, jails and hospitals.

Some business owners, however, expressed concern that a crackdown would harm the state's agricultural, landscaping and restaurant industries, which partly depend on migrant labor.

Opponents of HB 87 are now ratcheting up their pressure on Deal to not sign the bill. At a news conference at the state Capitol on Wednesday, a small group of Hispanic businessmen decried HB 87, saying the publicity surrounding it is hurting the state's economy. Fearful of the crackdown, Hispanics have stopped shopping and some are fleeing the state, the businessmen said.

Julio Penaranda, general manager of the Plaza Fiesta mall near Atlanta, said he has noticed an impact at his shopping center, which mostly includes stores owned and operated by Hispanics.

"We have seen a slight increase in sales this year, but as soon as this bill was passed that has dropped," Penaranda said. "So we are back to levels of sales that we saw when the recession was just starting to come in."

Other critics of HB 87 are hanging up banners in Atlanta that are critical of the measure. Immigrant rights activists are planning to rally against the legislation Sunday morning outside the Capitol.

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March 6, 2011

# Utah G.O.P. Adopts Immigration Alternative

By JULIA PRESTON

In the first move by a state to extend legal recognition to illegal immigrant laborers, the Utah Legislature has passed [immigration](#) bills that include a guest worker program that would allow unauthorized foreigners to work legally in the state.

With the immigration package, passed in both chambers of the Republican-controlled Legislature late Friday, Utah made a sharp break with the hard-line trend in state immigration legislation that has been led by Arizona, which passed a strict enforcement law last April.

Utah's package includes measures to tighten enforcement against illegal immigrants that echo Arizona's tough stance — like a requirement that the police check the immigration status of anyone arrested on a felony or a serious misdemeanor charge.

But supporters said the hybrid package offered an alternative to states, including those controlled by Republicans, that are seeking to avoid the costly political polarization and legal challenges that followed Arizona's law and that also want to recognize the need of some businesses for immigrant labor in spite of high unemployment nationally.

The guest worker bill came after intense lobbying by business and farm groups as well as by some immigrant advocates, and it enjoyed the quiet but all-important endorsement of the Mormon Church. It is likely to raise many of the same constitutional questions as the Arizona law, including whether it intrudes on areas of immigration law reserved exclusively for the federal government. Central provisions of Arizona's law, known as S. B. 1070, were suspended by federal courts pending a lawsuit by the Obama administration.

But in contrast to Arizona's approach, Utah lawmakers framed their bill to set up a negotiation, rather than a confrontation, between the governor and the federal authorities. Gov. Gary R. Herbert, a Republican who handily won election in November, is expected to sign the bill.

"Utah is the anti-Arizona," said Frank Sharry, executive director of America's Voice, a group in Washington that favors legislation by Congress to grant legal status to illegal immigrants. "Instead of indulging the fantasy that you can drive thousands of people out of your state, it combines enforcement with the idea that those who are settled should be brought into the system."

Under one bill approved on Friday, Utah would issue a two-year work permit to illegal immigrants who could prove that they had been living and working in the state. To qualify, immigrants would have to pass a criminal background check and pay fines of up to \$2,500.

The bill gives the governor until 2013 to negotiate with federal immigration authorities for a waiver for the guest worker program. Under federal law, it is a violation for an employer to knowingly hire an illegal immigrant. If no waiver has been obtained by then, the guest worker program would go into effect anyway.

Under a separate bill, also approved Friday, officers would be required to check the immigration status of anyone they arrest on a felony or serious misdemeanor charge.

Lawmakers revised that bill to remove terms borrowed from the Arizona law that would have allowed the police to ask immigration questions based on a "reasonable suspicion" that a person they stopped was an illegal immigrant. That provision, among others, was strongly opposed by Latinos in Arizona, who said it would lead to racial profiling.

State Representative Bill Wright, a Republican who was the sponsor of the guest worker bill in the House, said it was intended to be a practical way to deal with illegal immigrants in the state. "I'm a very conservative Republican; I'm not moderate at all," he said. But, he said, "we literally do not have the ability to remove those who are here illegally."

The enforcement measure was sponsored by State Representative Stephen Sandstrom, a Republican who has been an outspoken proponent of following Arizona's lead on immigration.



Many groups in Utah hoped to avoid the expense and furor provoked by Arizona's bill. In November, a range of groups signed a proposal called the Utah Compact, which laid out principles that included respect for the law but also supported a free-market business approach and opposed measures that would separate families by deportation. It was signed by the Salt Lake Chamber, a statewide business group; the [Roman Catholic Church](#); the Salt Lake City Police Department and mayor's office; and local immigration advocate groups.

The Mormon Church, which had been cautious on the issue, did not sign the compact but immediately endorsed it.

Not everyone in Utah was happy with the new immigration measures. Several hundred protesters from immigrant organizations demonstrated outside the Capitol on Saturday, calling the enforcement bill racist and urging Mr. Herbert to veto it, The Salt Lake Tribune reported.

David Leopold, the president of the American Immigration Lawyers Association, said Utah's bills were "another ill-advised attempt by a state to regulate immigration." He warned that the effort "dangerously treads into a policy area that is the sole province of the federal government."

The Utah measures, coming from one of the most conservative states in the nation, open an avenue for action for Republican politicians who have been concerned that the strident tone of supporters of Arizona's law — including Gov. [Jan Brewer](#) and [Russell Pearce](#), the Arizona Senate majority leader who wrote the bill — has alienated Latino voters.

Some Republican leaders have argued that to win the presidency in 2012, they need to increase Latino support in states like California, Nevada, New York and Texas. Among others, [Newt Gingrich](#), a potential presidential candidate, and [Jeb Bush](#), the former governor of Florida, have pressed fellow Republicans to moderate their speech on immigration.

"Utah thought Arizona's law would backfire," said Alfonso Aguilar, executive director of the Latino Partnership for Conservative Principles, a Republican group that has been working to draw the party toward an immigration policy with more appeal to Hispanics. "It was not business-friendly, and it would drive away workers and investment. Utah has provided conservative arguments for passing a different kind of measure."

Arizona's immigration enforcement law drew a boycott by the nation's most prominent Latino organizations and cost the state \$86 million in lost convention and tourism business, according to an estimate by the Center for American Progress, a group that opposed the measure. Mr. Pearce has proposed a new package of immigration restrictions that go far beyond last year's.

Another bill that passed the Utah House and is likely to be approved next week in the Senate would set up a partnership with Nuevo León State in Mexico to bring temporary farm workers to Utah through the existing federal guest worker program.

Supporters of the bills in Utah said they should be a model for action on immigration by Congress. "It's doable," said Wesley Smith, director of public policy for the Salt Lake Chamber. "The extremes have dominated the immigration debate for so long, it makes it so refreshing to see that a practical solution is possible."





# **U.S.-Mexico Economic Relations: Trends, Issues, and Implications**

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## Summary

The bilateral economic and trade relationship with Mexico is of interest to U.S. policymakers because of Mexico's proximity to the United States and because of the strong cultural and economic ties that connect the two countries. Also, it is of national interest for the United States to have a prosperous and democratic Mexico as a neighboring country. Mexico is the United States' third-largest trading partner, while the United States is, by far, Mexico's largest trading partner. Mexico ranks third as a source of U.S. imports, after China and Canada, and second, after Canada, as an export market for U.S. goods and services. The United States is the largest source of foreign direct investment (FDI) in Mexico. The 112<sup>th</sup> Congress will likely maintain an active interest in Mexico on issues related to cross-border trade between the two countries, the implementation of NAFTA trucking provisions, economic conditions in Mexico, migration, counternarcotics, and border issues.

The United States and Mexico have strong economic ties through the North American Free Trade Agreement (NAFTA), which has been in effect since 1994. Prior to NAFTA, Mexico had followed a strong protectionist policy for decades until it began to unilaterally liberalize its trade regime in the late 1980s. Not all trade-related job gains and losses since NAFTA can be entirely attributed to the agreement because of the numerous factors that affect trade, such as Mexico's trade liberalization efforts, economic conditions, and currency fluctuations. NAFTA may have accelerated the ongoing trade and investment trends that were already taking place at the time. Most studies show that the net economic effects of NAFTA on both countries have been small but positive, though there have been adjustment costs to some sectors within both countries.

The current trade issue of most concern to Members of Congress involves NAFTA trucking provisions. Under NAFTA, Mexican commercial trucks were to have been given full access throughout the United States by 2000 but the United States did not implement these provisions due to alleged safety concerns. Mexico objected and a NAFTA dispute resolution panel supported Mexico's position in 2001. In 2009, the Mexican government began imposing retaliatory tariffs on certain U.S. products with a value of \$2.4 billion in exports to Mexico. In January 2011, the Obama Administration released a concept document for a proposed program to implement the trucking provisions. Numerous Members of Congress oppose the implementation of the trucking provisions because they are concerned about the safety of Mexican trucks in the United States. Others support a resolution to the issue and contend that Mexico's retaliatory tariffs are having strong negative effects on local U.S. industries and affecting U.S. jobs.

Also of interest to many policymakers are the economic disparity between the two countries and migration issues. The United States and Mexico have been involved in ongoing efforts to address economic prosperity and regulatory economic cooperation. In 2009, President Barack Obama met with Mexican President Felipe Calderón and Canadian Prime Minister Stephen Harper in Guadalajara Mexico to discuss issues of prosperity and security in North America. In May 2010, Mexican President Calderón made a state visit to the United States in which he emphasized the need for increased cooperation in North America to increase the competitiveness of the region. In a meeting hosted by President Obama, the two leaders reaffirmed their shared values and the need for focusing on economic growth. They vowed to enhance and reinforce efforts to create jobs, promote economic recovery and expansion, and encourage prosperity across all levels of society in both countries. President Obama underscored his commitment to comprehensive immigration reform in the United States while President Calderón stated that his administration was committed to creating more job and educational opportunities in Mexico.

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## Introduction

The bilateral economic relationship with Mexico is of key interest to the United States because of Mexico's proximity and because of strong cultural and economic ties between the two countries. Mexico has a population of 113 million people, making it the most populous Spanish-speaking country in the world and the third-most populous country in the Western Hemisphere (after the United States and Brazil). The economic relationship with Mexico has developed strong ties under the North American Free Trade Agreement (NAFTA). Trade between the two countries more than tripled since the agreement was implemented in 1994. Through NAFTA, the United States, Mexico, and Canada form the world's largest free trade area, with about one-third the world's total gross domestic product (GDP).

The United States and Mexico share many common interests related to trade, investment, and regulatory cooperation. The two countries share a 2,000 mile border and have extensive interconnections through the Gulf of Mexico. There are links through migration, tourism, environment issues, health concerns, and family and cultural relationships.<sup>1</sup> The economic relationship with Mexico is important to U.S. national interests and to the U.S. Congress for many reasons. The 112<sup>th</sup> Congress will likely maintain an active interest in Mexico on issues related to cross-border trade between the two countries, the implementation of NAFTA trucking provisions, economic conditions in Mexico, migration, counternarcotics, and border issues. This report provides an overview of U.S.-Mexico trade and economic trends, the Mexican economy, the effects of NAFTA, and major trade issues between the United States and Mexico.

## U.S.-Mexico Economic Trends

The size of the Mexican economy is much smaller than that of the United States. Mexico's gross domestic product (GDP) was an estimated \$1.0 trillion in 2010, about 7% of U.S. GDP of \$14.6 trillion. Mexico's economy was hit harder than most Latin American countries during the global recession of 2009 but showed strong economic growth in 2010. In 2009, Mexico's the percent change in Mexico's real GDP growth was -6.1%, while that of the United States was -2.6%. In 2010, Mexico's economy experienced a higher than expected growth rate of 5.0%, while the U.S. economy experienced a somewhat lower growth rate of 2.8%. Although the Mexican economy appears to be recovering, job creation in Mexico's manufacturing sector remains weak and could dampen Mexico's economic prospects over the long-term.<sup>2</sup>

The immigration issue has received much attention by political leaders in recent years, and it is one that can be linked to the economic situation in Mexico, although it has social and political aspects as well. In March 2008, there were approximately 12 million unauthorized immigrants living in the United States, with 59% from Mexico.<sup>3</sup> Economic conditions in Mexico, as well as in other countries, such as poverty and unemployment, are a major factor related to the migration issue. Per capita income in Mexico is significantly lower in Mexico than in the United States. In

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<sup>1</sup> For more information on issues related to Mexico, see CRS Report RL32724, *Mexico-U.S. Relations: Issues for Congress*, by Clare Ribando Seelke.

<sup>2</sup> The Economist Intelligence Unit (EIU), "Mexico economy: better outlook, with caveats," February 9, 2011.

<sup>3</sup> Pew Hispanic Center, *Trends in Unauthorized Immigration: Undocumented Inflow Now Trails Legal Inflow*, October 2, 2008.

2010, Mexico's per capita GDP in purchasing power parity<sup>4</sup> was \$15,720, or 67% lower than U.S. per capita GDP of \$47,160. Ten years earlier, in 2000, Mexico's per capita GDP in purchasing power parity was \$10,561, or 70% lower than the U.S. amount of \$35,265. The lower income levels in Mexico, combined with higher poverty rates, have contributed to the migration of workers from Mexico to the United States. These workers often send money to their families in Mexico to help provide food and shelter. Although there is a notable income disparity with the United States, Mexico's per capita GDP is relatively high by global standards and falls within the World Bank's upper-middle income category.<sup>5</sup>

The Mexican economy is very much tied to the U.S. economy because of Mexico's reliance on the United States as an export market and the relative importance of exports to its overall economic performance. Exports accounted for 32% of Mexico's GDP in 2010 (see **Table 1**). The United States is, by far, Mexico's most important partner in trade and investment, while Mexico is the United States' third-largest trade partner after China and Canada. Many economists and other observers have focused much attention on the ongoing transformation of Mexico into a manufacturing-for-export nation since the late 1980s and the importance of exports to its economy. After oil and gas, most of Mexico's exports are manufactured goods. Over 80% of Mexico's exports are headed to the United States.

Mexico's reliance on the United States as a trade partner appears to be diminishing, although slightly. Between 2004 and 2009, the U.S. share of Mexico's total imports decreased from 56% to 48%, while the share of total Mexican exports going to the United States decreased from 89% to 81%.<sup>6</sup> Mexico's share of the U.S. market has lost ground since 2002. In 2003, China surpassed Mexico as a top supplier of U.S. imports, and Mexico now ranks third, after China and Canada, as a source of U.S. imports. Because over 80% of Mexico's exports are destined for the United States, any change in U.S. demand can have strong economic consequences in Mexican industrial sectors.

Mexico ranks second among U.S. export markets and is the United States' third-largest trading partner in total trade (exports plus imports). In 2010, 12% of total U.S. merchandise exports were destined for Mexico and 12% of U.S. merchandise imports came from Mexico. After the significant decrease in trade in 2009 that resulted from the global economic downturn, U.S.-Mexico trade increased considerably in 2010. U.S. exports to Mexico increased 25% in 2010 from \$105.7 billion to \$131.6 billion. U.S. imports from Mexico increased 40% in 2010, from \$176.3 billion to \$228.8 billion. In 2009, U.S. exports to Mexico decreased by 19.6%, while imports from Mexico decreased by 18.5%. Mexico's second-largest trading partner is China, accounting for approximately 6% of Mexico's exports and imports.

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<sup>4</sup> Purchasing power parity (PPP) reflects the purchasing power of foreign currencies in their own markets in U.S. dollars.

<sup>5</sup> The World Bank utilizes a method for classifying world economies based on gross national product (GNP). Mexico is one of 48 economies classified as upper-middle-income, or countries which have a per capita GNP of \$3,946 to \$12,195 per year. The United States is one of 69 economies classified as a high-income, or countries which have a per capita GNP of more than \$12,195 per year.

<sup>6</sup> Data compiled by CRS using Global Trade Atlas database. Mexican direction of trade data were not available for 2010 at the time of this report update.

**Table 1. Key Economic Indicators for Mexico and the United States**

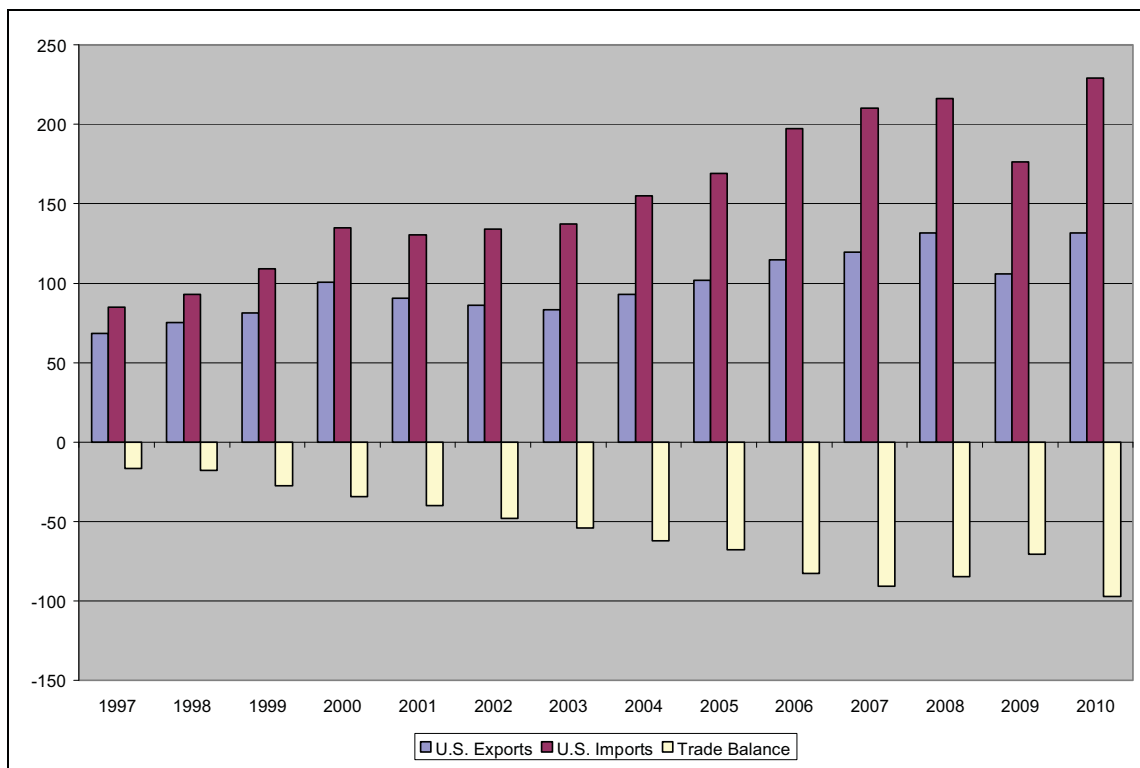
	Mexico		United States	
	2000	2010 <sup>a</sup>	2000	2010 <sup>a</sup>
Population (millions)	100	113	282	310
Nominal GDP (US\$ billions) <sup>b</sup>	672	1,005	9,952	14,598
Nominal GDP, PPP <sup>c</sup> Basis (US\$ billions)	1,055	1,768	9,952	14,598
% Change in Real GDP (per annum)	6.0%	5.0%	4.1%	2.8%
Per Capita GDP (US\$)	6,726	8,930	35,265	47,160
Per Capita GDP in \$PPPs	10,561	15,720	35,265	47,160
Total Exports of Goods and Services (US\$ billions)	179	321	1,093	1,885
Exports as % of GDP <sup>d</sup>	27%	32%	11%	13%
Total Imports of Goods and Services (US\$ billions)	191	330	1,475	2,545
Imports as % of GDP <sup>d</sup>	28%	33%	15%	17%

**Source:** Compiled by CRS based on data from Economist Intelligence Unit (EIU) online database.

- a. Most figures for 2010 are estimates or forecasts.
- b. Nominal GDP is calculated by EIU based on figures from World Bank and World Development Indicators.
- c. PPP refers to purchasing power parity, which reflects the purchasing power of foreign currencies in U.S. dollars.
- d. Exports and Imports as % of GDP derived by EIU.

Although some of the increase in U.S.-Mexico trade since the 1990s could be attributable to NAFTA, there are other variables that affect trade, such as exchange rates and economic conditions. Mexico's currency crisis of 1995 limited the purchasing power of the Mexican people in the years that followed and also made products from Mexico less expensive for the U.S. market. Economic factors such as these played a role in the increasing U.S. trade deficit with Mexico, which went from a \$1.4 billion surplus in 1994 to a \$97.2 billion deficit in 2010 (see **Figure 1**). U.S. imports from Mexico increased from \$85.0 billion in 1997 to \$216.3 billion in 2008, and then decreased to \$176.3 billion in 2009 before increasing to \$228.8 billion in 2010. U.S. exports to Mexico increased from \$68.4 billion in 1997 to \$131.5 billion in 2008, and then decreased to \$105.7 billion in 2009 before increasing to \$131.6 billion in 2010.

**Figure 1. U.S. Merchandise Trade with Mexico**  
(U.S. \$ in billions)



**Source:** Compiled by CRS using USITC Interactive Tariff and Trade data.

Several studies between 2003 and 2004 on the effects of NAFTA found that U.S. trade deficits with Mexico were largely driven by macroeconomic trends, and, in the case of U.S.-Mexico trade, caused by the respective business cycles in Mexico and the United States.<sup>7</sup> Strong U.S. growth in the 1990s, combined with Mexico's deep recession in 1995, were the main factors cited for the large deficits. None of the studies attributed the peso crisis to NAFTA, but to structural misalignments in the Mexican economy combined with political events.<sup>8</sup>

The leading U.S. imports from Mexico in 2010 were oil and gas imports, which amounted to \$29.3 billion, or 13% of total U.S. imports from Mexico (see **Table 2**). These imports decreased sharply in 2009 (44% decline), but increased by 38% in 2010. The next leading import items in 2010 were motor vehicles (\$27.5 billion); motor vehicle parts (\$23.4 billion); audio/video equipment (\$16.5 billion); and communications equipment (\$14.0 billion). After sharp decreases in 2009, all leading imports from Mexico increased in 2010. The highest increase was in motor vehicles parts (52%) and motor vehicles (49%).

<sup>7</sup>See CRS Report RS21737, *NAFTA at Ten: Lessons from Recent Studies*, by J. F. Hornbeck.

<sup>8</sup> *Ibid.*

**Table 2. U.S. Imports from Mexico: 2004-2010**  
(U.S. \$ in billions)

Leading Items (NAIC 4-digit)	2004	2005	2006	2007	2008	2009	2010	% Change 2009- 2010
Oil and Gas	17.2	22.5	29.4	30.3	37.9	21.2	29.3	38%
Motor Vehicles	18.8	18.4	23.2	23.1	22.0	18.4	27.5	49%
Motor Vehicle Parts	17.8	19.3	20.8	22.7	20.6	15.4	23.4	52%
Audio/Video Equipment	8.2	9.9	13.9	17.1	17.8	15.6	16.5	6%
Communications Equipment	7.5	7.3	8.7	13.1	13.0	12.8	14.0	8%
Other	85.5	91.8	101.0	104.0	105.0	92.9	118.2	38%
Total	155.0	169.2	197.1	210.2	216.3	176.3	228.8	30%

**Source:** Compiled by CRS using USITC Interactive Tariff and Trade DataWeb at <http://dataweb.usitc.gov>: NAIC4-digit level.

**Note:** Nominal U.S. dollars.

**Table 3. U.S. Exports to Mexico: 2004-2010**  
(US\$ Billions)

Leading Items (NAIC 4-digit)	2004	2005	2006	2007	2008	2009	2010	% Change 2009- 2010
Motor vehicle parts	7.6	7.4	8.6	9.4	10.1	8.8	12.6	43%
Petroleum and coal products	2.8	4.7	5.0	5.7	9.6	6.6	11.9	81%
Basic chemicals	4.4	5.0	5.7	6.5	7.2	6.2	7.0	14%
Resin, synthetic rubbers and related products	3.6	4.5	5.4	5.4	6.0	4.9	6.2	26%
Oilseeds and grains	2.6	2.5	3.1	4.0	5.9	4.2	4.5	8%
Other	72.1	77.5	86.8	88.4	92.8	75.1	89.1	24%
Total	93.0	101.7	114.6	119.4	131.5	105.7	131.6	25%

**Source:** Compiled by CRS using USITC Interactive Tariff and Trade DataWeb at <http://dataweb.usitc.gov>: NAIC4-digit level.

**Note:** Nominal U.S. dollars.

The leading U.S. export item to Mexico in 2010 was motor vehicle parts (10% of total U.S. exports), as shown in **Table 3**. After a 13% decrease in 2009, U.S. exports to Mexico in 2010 in motor vehicle parts increased by 43% to \$12.6 billion. The next leading U.S. export items in 2010 were petroleum and coal products (\$11.9 billion); basic chemicals (\$7.0 billion); resin, synthetic rubber and related products (\$6.2 billion); and oilseeds and grains (\$4.5 billion). All leading exports to Mexico decreased markedly in 2009, but then recovered in 2010, as shown in **Table 3**. The highest increase was in petroleum and coal products (81% increase). Total U.S. exports to Mexico increased 25% in 2010.

## Mexico-U.S. Bilateral Foreign Direct Investment

Foreign direct investment (FDI) has been an integral part of the economic relationship between the United States and Mexico since NAFTA implementation. FDI consists of investments in real estate, manufacturing plants, and retail facilities, in which the foreign investor owns 10% or more of the entity. The United States is the largest source of FDI in Mexico. U.S. FDI on a historical cost basis in Mexico increased from \$17 billion in 1994 to \$97.9 billion in 2009, a 477% increase (see **Table 4**).

Mexican FDI in the United States is much lower than U.S. investment in Mexico, with levels of Mexican FDI fluctuating over the last 10 years. In 2009, Mexican FDI in the United States totaled \$11.4 billion (see **Table 4**).

**Table 4. U.S.- Mexican Foreign Direct Investment Positions:  
1994-2009 Historical Cost Basis**  
(U.S. \$ in millions)

Year	Mexican FDI in the U.S.	U.S. FDI in Mexico
1994	2,069	16,968
1995	1,850	16,873
1996	1,641	19,351
1997	3,100	24,050
1998	2,055	26,657
1999	1,999	37,151
2000	7,462	39,352
2001	6,645	52,544
2002	7,829	56,303
2003	9,022	56,851
2004	7,592	63,384
2005	3,595	73,687
2006	5,310	82,965
2007	7,688	91,046
2008	9,444	89,610
2009	11,361	97,897

**Source:** U.S. Department of Commerce, Bureau of Economic Analysis.

The sharp rise in U.S. investment in Mexico since NAFTA implementation is also a result of the liberalization of Mexico's restrictions on foreign investment in the late 1980s and the early 1990s. Prior to the mid-1980s, Mexico had a very protective policy that restricted foreign investment and controlled the exchange rate to encourage domestic growth, affecting the entire industrial sector. Mexico's trade liberalization measures and economic reform in the late 1980s represented a sharp shift in policy and helped bring in a steady increase of FDI flows into Mexico. NAFTA provisions on foreign investment helped to lock in the reforms and increase investor confidence. Under NAFTA, Mexico gave U.S. and Canadian investors nondiscriminatory treatment of their investments as well as investor protection. NAFTA may have encouraged U.S. FDI in Mexico by increasing investor confidence, but much of the growth may have occurred anyway because Mexico likely would have continued to liberalize its foreign investment laws with or without the agreement.

Nearly half of total FDI investment in Mexico is in the manufacturing industry of which the maquiladora industry forms a major part. (See "Mexico's Export-Oriented Assembly Plants" below.) In Mexico, the industry has helped attract investment from countries such as the United States that have a relatively large amount of capital. Therefore, Mexico is able to attract some of the foreign direct investment it was seeking when it liberalized trade and investment barriers. For the United States, the industry is important because U.S. companies are able to locate their labor-intensive operations in Mexico and lower their labor costs in the overall production process. Many economists believe that maquiladoras are an important part of U.S. corporate strategy in achieving competitively priced goods in the world marketplace.<sup>9</sup> Other analysts are concerned that the industry has caused U.S. companies to move their manufacturing facilities to Mexico at the expense of U.S. workers.

## **Mexico's Export-Oriented Assembly Plants**

Mexico's export-oriented assembly plants are closely linked to U.S.-Mexico trade in various labor-intensive industries such as auto parts and electronic goods. These export-oriented plants generate a large amount of trade with the United States and a majority of the plants have U.S. parent companies. Foreign-owned assembly plants, which originated under Mexico's *maquiladora* program in the 1960s,<sup>10</sup> account for a substantial share of Mexico's trade with the United States. The border region with the United States has the highest concentration of assembly plants and workers. The Mexican cities with the highest manufacturing activity as of December 2009 were the Mexican border cities of Tijuana, Baja California, 590 plants with 136,957 employees, and Cd. Juárez, Chihuahua, 339 plants with 168,011 employees.<sup>11</sup> Prior to NAFTA, a

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<sup>9</sup> Federal Reserve Bank of Dallas, "The Binational Importance of the Maquiladora Industry," *Southwest Economy* Issue 6, November/December 1999.

<sup>10</sup> Mexico's export-oriented industries began with the maquiladora program established in the 1960s by the Mexican government, which allowed foreign-owned businesses to set up assembly plants in Mexico to produce for export. Maquiladoras could import intermediate materials duty-free with the condition that 20% of the final product be exported. The percentage of sales allowed to the domestic market increased over time as Mexico liberalized its trade regime. U.S. tariff treatment of maquiladora imports played a significant role in the industry. Under HTS provisions 9802.00.60 and 9802.00.80, the portion of an imported good that was of U.S.-origin entered the United States duty-free. Duties were assessed only on the value added abroad. After NAFTA, North American rules of origin determine duty-free status. Recent changes in Mexican regulations on export-oriented industries merged the maquiladora industry and Mexican domestic assembly-for-export plants into one program called the Maquiladora Manufacturing Industry and Export Services (IMMEX).

<sup>11</sup> Data from Mexico's Instituto Nacional de Estadística y Geografía (INEGI).



maquiladora was limited to selling up to 50% of the previous year's export production to the domestic market. Most maquiladoras export the majority of their production to the U.S. market.

Private industry groups have stated that these operations help U.S. companies remain competitive in the world marketplace by producing goods at competitive prices. In addition, the proximity of Mexico to the United States allows production to have a high degree of U.S. content in the final product, which could help sustain jobs in the United States. Critics of these types of operations argue that they have a negative effect on the economy because they take jobs from the United States and help depress the wages of low-skilled U.S. workers.

Some observers believe that the correlation in maquiladora growth after 1993 is directly due to NAFTA, but in reality it was a combination of factors that contributed to growth. Trade liberalization, wages, and economic conditions, both in the United States and Mexico, all affected the growth of Mexican export-oriented assembly plants. Although some provisions in NAFTA may have encouraged growth in certain sectors, manufacturing activity has been more influenced by the strength of the U.S. economy and relative wages in Mexico.

### **Mexico's Regulations for Manufacturing Plants**

Changes in Mexican regulations on export-oriented industries after NAFTA merged the maquiladora industry and Mexican domestic assembly-for-export plants into one program called the Maquiladora Manufacturing Industry and Export Services (IMMEX). In 2001, the North American rules of origin determined the duty-free status for a given import and replaced the previous special tariff provisions that applied only to maquiladora operations. The initial maquiladora program ceased to exist and the same trade rules applied to all assembly operations in Mexico.

NAFTA rules for the maquiladora industry were implemented in two phases, with the first phase covering the period 1994-2000, and the second phase starting in 2001. During the initial phase, NAFTA regulations continued to allow the maquiladora industry to import products duty-free into Mexico, regardless of the country of origin of the products. This phase also allowed maquiladora operations to increase maquiladora sales into the domestic market. Phase II made a significant change to the industry in that the new North American rules of origin determined duty-free status for U.S. and Canadian products exported to Mexico for maquiladoras. The elimination of duty-free imports by maquiladoras from non-NAFTA countries under NAFTA caused some initial uncertainty for the companies with maquiladora operations. Maquiladoras that were importing from third countries, such as Japan or China, would have to pay applicable tariffs on those goods under the new rules.

Mexico had another program for export-oriented assembly plants called the Program for Temporary Imports to Promote Exports (PITEX) that was established in 1990 to allow qualifying domestic producers to compete with maquiladoras. In 2007, a new set of government regulations on export-oriented industries merged the maquiladora industry and PITEX plants into the Maquiladora Manufacturing Industry and Export Services, or IMMEX. Industry data regarding Mexico's export-oriented assembly plants no longer distinguish maquiladora plants from other Mexican manufacturing plants.<sup>12</sup>

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<sup>12</sup> Federal Reserve Bank of Dallas, "Spotlight: Maquiladora Data, Mexican Reform Clouds View of Key Industry," *Southwest Economy*, Issue 3, May/June 2007.

## Plants and Employment Levels

The number of maquiladora plants expanded rapidly in the 1990s after NAFTA implementation. Plants increased from 1,920 at the end of 1990 to 3,590 in 2000, and then fell to 2,860 in 2003. Between 2004 and 2007, the last year maquiladoras were classified as such by the Mexican government, the number of plants stayed at approximately the same level, about 2,819.<sup>13</sup> After July 2007, the Mexican government published statistics for all manufacturing plants in Mexico under the IMMEX program (which combined maquiladora data with other manufacturing).

The 2009 downturn in the Mexican economy, combined with the increased violence along the U.S.-Mexico border, has hurt the manufacturing industry, and many IMMEX plants have shut down as a result. In Cd. Juárez, Chihuahua, the city with the highest number of jobs in export assembly plants, IMMEX employment decreased from 214,272 in July 2007 to 168,011 in December 2009, a loss of 46,261 jobs (22% decrease). In Tijuana, Baja California, employment decreased from 174,105 in July 2007 to 136,957 in December 2009, a loss of 37,148 jobs (21% decrease). The total number of IMMEX plants in Mexico increased from 5,083 in July 2007 to 5,245 in December 2009. However, employment decreased from 1,910,112 million in July 2007 to 1,641,465 in December 2009, a loss of 268,647 jobs (14% decrease).<sup>14</sup> Estimates for 2010 show that the manufacturing plants may be on the rebound. In Cd. Juarez, maquiladoras reportedly added about 26,000 new jobs from July 2009 through August 2010.<sup>15</sup>

## Worker Remittances to Mexico

Remittances are the second-highest source of foreign currency for Mexico, after oil and tourism. Most worker remittances to Mexico come from workers in the United States who send money back to their relatives in Mexico. Mexico receives the largest amount of remittances in Latin America and the third-largest in the world, after India and China. On January 27, 2010, the *Banco de México*, Mexico's Central Bank, reported that remittance inflows fell 16.0% in 2009 to \$21.1 billion. The decline in remittances is at least partially due to the global financial crisis and the slowdown in the U.S. economy as the rising jobless rate has taken a toll on Mexican immigrants in the United States. Mexico's close economic ties to the United States, particularly in the housing and services sectors, which have both been negatively affected by the financial crisis, contributed to the decline. Approximately 239,000 immigrant Hispanics lost their jobs in 2008, with almost 100,000 of these jobs in the construction industry, according to one estimate.<sup>16</sup>

For a number of years, remittances were considered a stable financial flow for Mexico as workers in the United States made efforts to send money to family members, especially to regions of the country experiencing economic crises or natural disasters. Annual remittances to Mexico grew substantially between 2001 and 2008, from \$8.9 billion to \$25.1 billion, an increase of 182.0%. The annual growth rate reached a high of 26.3% in 2003, then continued at a slower rate until 2009 (see **Table 5**). There is an interrelationship between remittances to Mexico and economic growth in the United States, such as 2004 and 2005, in which the U.S. economy grew by 3.6%

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<sup>13</sup> Based on data from INEGI, at <http://www.inegi.org.mx>.

<sup>14</sup> Ibid.

<sup>15</sup> Will Weissert, "Juarez maquiladoras recovering despite bloodshed," *Miami Herald*, January 23, 2011.

<sup>16</sup> Joel Millman, "Remittances to Mexico Fall More than Forecast," *Wall Street Journal*, January 28, 2009, p. A3.

and 3.1%, respectively, but not much is known about the extent of this relationship.<sup>17</sup> Although the relationship between GDP growth and the level of remittances is not very clear, the Mexican government attributed the 2009 decline to the global financial crisis.<sup>18</sup>

**Table 5. Percent Changes in Remittances to Mexico**

(U.S. \$ in billions)

	2001	2002	2003	2004	2005	2006	2007	2008	2009
Amount	8.9	10.5	13.3	16.6	20.0	23.7	24.0	25.1	21.1
% Change	—	18.5%	26.3%	25.2%	20.6%	18.5%	1.0%	4.9%	-16.0%

**Source:** Compiled by CRS using data from the Inter-American Development Bank, The Multilateral Investment Fund.

Worker remittance flows to Mexico have an important impact on the Mexican economy, in some regions more than others. Some studies on remittance flows to Mexico report that in southern Mexican states, remittances mostly or completely cover general consumption and/or housing. One study estimates that 80% of the money received by households goes for food, clothing, health care, and other household expenses. Another study estimates that remittances in Mexico are responsible for about 27%, and up to 40% in some cases, of the capital invested in microenterprises throughout urban Mexico.<sup>19</sup> The economic impact of remittance flows is concentrated in the poorer states of Mexico. The government has sponsored programs to channel the funds directly to infrastructure and investment rather than consumption.<sup>20</sup>

## Economic Regulatory Cooperation

At the 2009 North American Leaders Summit in Guadalajara, Mexico, President Barack Obama met with Mexican President Felipe Calderón and Canadian Prime Minister Stephen Harper to discuss issues of prosperity and security in North America. The three leaders renewed their commitment to regulatory cooperation by instructing ministers to build upon previous efforts, develop focused priorities, and form a specific time line. The three countries confirmed their commitment to regulatory cooperation at an October 2009 meeting of the Free Trade Commission (FTC).

The ongoing efforts to increase North American cooperation began with the Security and Prosperity Partnership of North America (SPP), a trilateral government initiative launched in March 2005. The main goal was to increase and enhance prosperity in the United States, Mexico, and Canada through regulatory cooperation. Though the SPP forum, which began under the Bush Administration, is no longer active, much of the prior work on the underlying issues is continuing under the Obama Administration.

<sup>17</sup> Migration Policy Institute, *Migration Facts*, “Variable Impacts: State-level Analysis of the Slowdown in the Growth of Remittances to Mexico,” September 2007.

<sup>18</sup> E. Eduardo Castillo, “Mexico Sees Record 15.7 percent Annual Drop in Money Sent Home by Migrants,” Associated Press, January 27, 2010.

<sup>19</sup> The Federal Reserve Bank of Dallas report “Workers’ Remittances to Mexico” (2004) evaluated the economic impact of worker remittances to Mexico and cites a number of reports by the World Bank and the Mexican government.

<sup>20</sup> *Ibid.*, p. 4.

The SPP was endorsed by all three countries, but it was not a signed agreement or treaty and, therefore, contained no legally binding commitments or obligations. It could, at best, be characterized as an endeavor to facilitate communication and cooperation across several key policy areas of mutual interest. Although the SPP built upon the existing trade and economic relationship of the three countries, it was not part of NAFTA. The efforts to increase North American cooperation under the SPP were *not* an effort to create a common market in North America. Such a move would require a government approval process within each of the three countries.

Efforts to increase North American regulatory cooperation have mostly focused on the recommendations of special working groups created under the SPP. The latest recommendations came in 2008 when the groups agreed to continue to identify and focus on a set of high priority initiatives to: 1) increase the competitiveness of North American businesses and economies through more compatible regulations; 2) make borders smarter and more secure by coordinating long-term infrastructure plans, enhancing services, and reducing bottlenecks and congestion at major border crossings; 3) strengthen energy security and protect the environment by developing a framework for harmonization of energy efficiency standards and sharing technical information; 4) improve access to safe food, and health and consumer products by increasing cooperation and information sharing on the safety of food and products; and 5) improve the North American response to emergencies by updating bilateral agreements to enable government authorities from the three countries to help each other more quickly and efficiently during times of crisis.

North American efforts related to increasing prosperity within the region have mainly consisted of increasing cooperation in information sharing, harmonization of standards, productivity improvement, reductions in the costs of trade, and enhancement of the quality of life. The three countries have also addressed the need to enhance North American competitiveness through compatible regulations and standards that would help them protect health, safety and the environment, as well as to facilitate trade in goods and services across borders.

Some critics of the Obama Administration's efforts on North American regulatory cooperation contend that it is a continuation of President Bush's SPP initiative and an attempt to create a common market or economic union in North America. Others contend that past efforts under the SPP were contributing to the creation of a so-called "NAFTA Superhighway" that would link the United States, Mexico, and Canada with a "super-corridor". Proponents of North American competitiveness and security cooperation view the initiatives as constructive to addressing issues of mutual interest and benefit for all three countries. Business groups generally support increased North American cooperation and believe that it is necessary to enhance the competitiveness of U.S. businesses in the global market.

The U.S. government has made no plans to pursue a "North American Union" with Mexico and Canada. Neither has the federal government made any plans to build a "NAFTA Superhighway," nor for a super-corridor initiative of any sort. Further, no legal authority exists and no funds have been appropriated to construct such a superhighway. If the United States were to potentially consider the formation of a customs union or common market with its North American neighbors, it would require approval by the U.S. Congress.

## The Mexican Economy

Mexico has a free market economy with a strong export sector, but this has not always been the case. The transformation of Mexico into an export-based economy began in the late 1980s when the government started to liberalize its trade policy and adopt economic reform measures. The Mexican economy is highly sensitive to economic developments in the United States because of its dependence on the United States as an export market. The state of the Mexican economy is also important to the United States, because of the close trade and investment ties between the two countries, and because of other social and political issues that could be affected by economic conditions, particularly those related to social stability and immigration.

### History of Economic Reforms

In the late 1980s and early into the 1990s, the Mexican government implemented a series of measures to restructure the economy that included steps toward trade liberalization. For many years, Mexico had protectionist trade policies to encourage industrial growth in the domestic economy, but the policies did not have the expected positive results on industrial growth. The 1980s in Mexico were marked by inflation and a declining standard of living. After the 1982 debt crisis in which the Mexican government was unable to meet its foreign debt obligations, the country began experiencing a number of economic challenges. Much of the government's effort in addressing the challenges was placed on privatizing state industries and moving toward trade liberalization. Efforts included privatization of sea ports, railroads, telecommunications, electricity, natural gas distribution and airports. The negotiation and implementation of NAFTA played a major role in Mexico's changing economic policy in the early 1990s.

Mexico's economic reforms initially attracted a large amount of private foreign investment, but by 1993 the inflow of foreign capital began to slow down. By the end of 1994, Mexico faced a currency crisis, putting pressure on the government to abandon its previous fixed exchange rate policy and adopt a floating exchange rate regime. As a result, Mexico's currency plunged by around 50% within six months, sending the country into a deep recession.<sup>21</sup> Several factors influenced the decision to float the peso: overspending in the economy had generated a significant current account deficit; the Mexican government had accumulated large levels of debt with insufficient reserves; and the banking system was facing a crisis due to overexposure.<sup>22</sup> Mexico's finance minister at the time, Guillermo Ortiz, stated later that Mexico had "no choice" but to float the peso because the government had run out of reserves.<sup>23</sup>

In the aftermath of the 1994 devaluation, Mexican President Ernesto Zedillo took several steps to restructure the economy and lessen the impact of the currency crisis among the more disadvantaged sectors of the economy. The goal was to create conditions for economic activity so that the economy could adjust in the shortest time possible. The United States and the IMF assisted the Mexican government by putting together an emergency financial support package of up to \$50 billion, with most of the money coming from the U.S. Treasury. The Zedillo Administration wanted to demonstrate its commitment to fulfill all its financial obligations

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<sup>21</sup> The Economist Intelligence Unit (EIU), "Mexico Finance: The Peso Crisis, Ten Years On," January 3, 2005.

<sup>22</sup> Agustín G. Carstens and Alejandro M. Werner, "Mexico's Monetary Policy Framework Under a Floating Exchange Rate Regime," Banco de México, May 1999.

<sup>23</sup> EIU, "Mexico Economy: Mexico Begins to See Benefits of Free-Floating Peso," December 20, 2004.

without a default on its debt by adopting tight monetary and fiscal policies to reduce inflation and absorb some of the costs of the banking sector crisis. The austerity plan included an increase in the value-added tax, budget cuts, increases in electricity and gasoline prices to decrease demand and government subsidies, and tighter monetary policy.<sup>24</sup>

Following the lead of former President Ernesto Zedillo, former President Vicente Fox continued efforts to liberalize trade, privatize government enterprises, and deregulate the economy. Through tighter monetary and fiscal policies, the Fox Administration was able to decrease the fiscal deficit, control inflation, and help economic growth.

The peso steadily depreciated through the end of the 1990s, which led to greater exports and helped the country's exporting industries. However, the peso devaluation also resulted in a decline in real income, hurting the poorest segments of the population and also the newly emerging middle class. NAFTA and the change in the Mexican economy to an export-based economy helped to soften the impact of the currency devaluation.

After a real decline in GDP of 6.22% in 1995, the Mexican economy managed to grow 5%-6% in each of the three years to 1998. The combination of a stronger peso and the slowdown in the U.S. economy in 2001, which worsened after the September 11 terrorist attacks, hit Mexico's economy hard. Real GDP growth dropped from 6.2% in 2000 to -0.16% in 2001. Improving economic conditions in the United States helped Mexico's economy improve as well. Real GDP growth in 2004 was 4.37%, up from 1.41% in 2003 and 0.81% in 2002 (see **Figure 2**). Real GDP went from a 4.8% growth rate in 2006 to a contraction of 6.9% in 2009.

## Current Economic Conditions

The global financial crisis, and the subsequent downturn in the U.S. economy, resulted in the sharpest economic contraction in the Mexican economy in twenty years. It is estimated to have contracted by 6.6% in 2009, as shown in **Table 1**, while the Mexican peso depreciated against the dollar by 25%.<sup>25</sup> However, economic growth in 2010 was 5%, higher than the expected growth rates of 3% to 4%. Mexico's policy measures in response to the crisis and its prior economic performance have helped the economy begin to recover and the exchange rate to improve. However, the partial recovery of the economy in 2010 was mostly due to an increase in external demand, which has driven up manufacturing exports, rather than from internal demand.<sup>26</sup> Sectors of the economy that depend significantly on domestic demand, such as utilities, construction, and retail, are struggling, though an improvement is expected in coming months. The Economist Intelligence Unit (EIU) projects GDP growth at 3.9% for 2011.<sup>27</sup>

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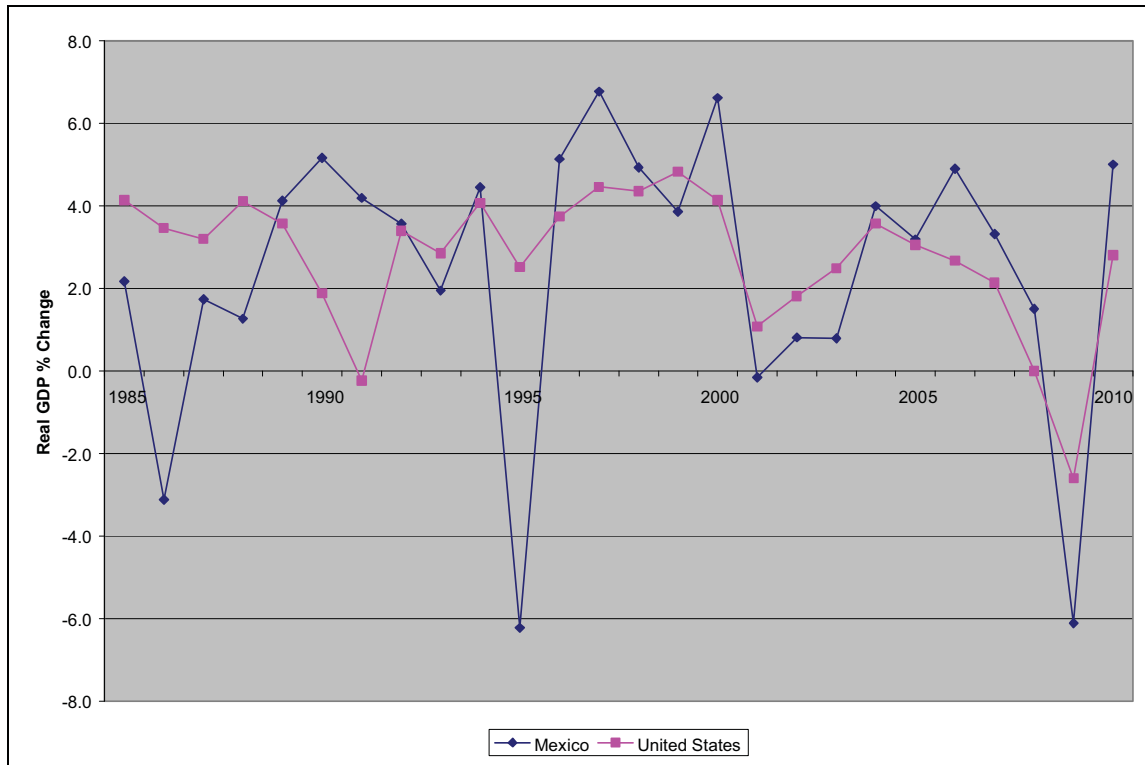
<sup>24</sup> Joachim Zietz, "Why Did the Peso Collapse? Implications for American Trade," *Global Commerce*, Volume 1, No. 1, Summer 1995.

<sup>25</sup> International Monetary Fund (IMF), "IMF Executive Board Concludes 2010 Article IV Consultation with Mexico," Public Information Notice (PIN) No. 10/39, March 16, 2010, p. 2.

<sup>26</sup> EIU, "Mexico economy: Better outlook, with caveats," February 9, 2011.

<sup>27</sup> Ibid.



**Figure 2. GDP Growth Rates for the United States and Mexico**

Source: Economist Intelligence Unit.

Mexico experienced the deepest recession in the Latin America region following the crisis. This is largely due to its high dependence on manufacturing exports and its ties to the U.S. economy, though other factors have also contributed. Other Latin American countries experienced negative economic consequences from the global financial crisis, but to a lesser extent. In Central America, the economy of Honduras was the most affected, with a contraction of 4.4%. Economic growth in most South American countries was affected by the crisis, but because most of these countries were experiencing high levels of growth prior to the crisis, the effect was not as severe. Paraguay was the country most adversely affected in South America, with a -3.8% change in real GDP.

President Calderón of Mexico implemented a number of measures to help cushion the Mexican economy from the fallout of the global economic crisis. Mexico's policy measures in response to the crisis and its prior economic performance helped the economy begin to recover and the exchange rate to improve.<sup>28</sup> Mexico's Central Bank made substantial interventions to stabilize conditions in the foreign exchange market and secured lines of credit through the U.S. Federal Reserve swap line and the International Monetary Fund (IMF) to improve confidence in the economy. The IMF set up flexible credit lines to help countries deal with the effects of the global recession and provided a credit line of \$48 billion for Mexico in 2009, which was renewed in March 2010. In early 2011, Mexico secured a new flexible line of credit from the IMF for \$72 billion, the largest credit line that the IMF has ever extended to protect Mexico from possible

<sup>28</sup> IMF, "IMF Executive Board Concludes 2010 Article IV Consultation with Mexico," PIN No. 10/39, March 16, 2010.



external shocks.<sup>29</sup> Mexico has indicated that it does not intend to draw on the resources, but sought the renewal to provide confidence to investors and financial markets in the event that global conditions were to deteriorate.<sup>30</sup>

The Mexican government has also taken a series of measures to strengthen the economy. The FY2010 budget included a substantive tax reform that was designed to offset the revenue losses from lower oil production. Mexico's requirements on corporate disclosure of derivative exposures have been tightened. In addition the government has made structural reforms to enhance growth potential, most recently in the electricity sector, and announced plans to gradually increase foreign exchange reserves.<sup>31</sup> However, Mexico's dependence on falling oil revenues and weak prospects for reforming the oil industry may continue its vulnerability to future external shocks.<sup>32</sup>

## Poverty in Mexico

Poverty has been one of Mexico's more serious and pressing economic problems for many years. The Mexican government has made progress in its poverty reduction efforts over the last ten years, but poverty continues to be a basic challenge for the country's development. The authors of a World Bank study note that poverty is often associated with social exclusion, especially of indigenous groups of people who comprise 20% of those who live in extreme poverty.<sup>33</sup> In 2002, over half of the population lived in poverty. According to World Bank estimates, the percentage of people living in extreme poverty, or on less than \$1 per day, fell from 24.2% of the population in 2000, to 20.3% in 2002, and 18% in 2005. Those living in moderate poverty, or on about \$10 a day, fell from 53.7% in 2000 to 51.7% of the population in 2002 and 45% in 2005. Mexico's continuing problem of poverty is especially widespread in rural areas and remains at the Latin American average.<sup>34</sup>

The alleviation of poverty has been a high priority for the Mexican government. Mexico's main program to reduce the effects of poverty is the *Oportunidades* program (formerly known as Progresa). The program seeks to not only alleviate the immediate effects of poverty through cash and in-kind transfers, but to break the cycle of poverty by improving nutrition and health standards among poor families and increasing educational attainment. This program provides cash transfers to families in poverty who demonstrate that they regularly attend medical appointments and can certify that children are attending school. The government provides educational cash transfers to participating families. The program also provides nutrition support to pregnant and nursing woman and malnourished children. Monthly benefits are a minimum of \$15 with a cap of about \$150. The majority of households receiving *Oportunidades* benefits are in Mexico's six poorest states: Chiapas, Mexico State, Puebla, Veracruz, Oaxaca, and Guerrero.<sup>35</sup>

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<sup>29</sup> Ibid.

<sup>30</sup> IMF, "Mexico Recovering, but Crisis Spotlights Challenges, says IMF," *Survey Magazine: In the News*, March 16, 2010.

<sup>31</sup> IMF, "IMF Executive Board Concludes 2010 Article IV Consultation with Mexico," PIN No. 10/39, March 16, 2010, p. 2.

<sup>32</sup> EIU, *Country Report: Mexico*, March 2010.

<sup>33</sup> The World Bank Group, "Mexico Makes Progress and Faces Challenges in Poverty Reduction Efforts," press release, July 2004.

<sup>34</sup> Ibid.

<sup>35</sup> Santiago Levy, *Progress Against Poverty*, Brookings Institution, 2006.

## Mexico's Regional Free Trade Agreements

Since the early 1990s, Mexico has had a growing commitment to trade liberalization, and its trade policy is among the most open in the world. Mexico has pursued free trade agreements (FTAs) with other countries as a way to bring benefits to the economy and also to reduce its economic dependence on the United States. By early 2006, Mexico had entered into a total of 12 FTAs involving 42 countries. The Mexican government has negotiated bilateral or multilateral trade agreements with most countries in the Western Hemisphere, including the United States and Canada, Chile, Bolivia, Costa Rica, Nicaragua, Uruguay, Colombia, Guatemala, El Salvador, and Honduras.<sup>36</sup>

Mexico has ventured out of the hemisphere in negotiating FTAs, and, in July 2000, entered into agreements with Israel and the European Union. Mexico became the first Latin American country to have preferred access to these two markets. Mexico has also completed an FTA with the European Free Trade Association (EFTA) of Iceland, Liechtenstein, Norway, and Switzerland. The Mexican government has continued to look for potential free trade partners, and expanded its outreach to Asia in 2000 by entering into negotiations with Singapore, Korea and Japan. Mexico and Japan signed a free trade agreement, formally called an Economic Partnership Agreement (EPA) in September 2004. The EPA was Japan's second free trade agreement, but its most comprehensive bilateral agreement at that time.<sup>37</sup> Mexico's negotiations on FTAs with Korea and Singapore are stalled.

In addition to the bilateral and multilateral free trade agreements, Mexico is a member of the WTO,<sup>38</sup> the Asia-Pacific Economic Cooperation forum, and the OECD.<sup>39</sup> In September 2003, Mexico hosted the WTO Ministerial Meeting in Cancun.

## NAFTA and the U.S.-Mexico Economic Relationship

The North American Free Trade Agreement (NAFTA) has been in effect since January 1994. There are numerous indications that NAFTA has achieved many of the intended trade and economic benefits as well as incurred adjustment costs. This has been in keeping with what most economists maintain, that trade liberalization promotes overall economic growth among trading partners, but that there are significant adjustment costs.

Most of the trade effects in the United States related to NAFTA are due to changes in U.S. trade and investment patterns with Mexico. At the time of NAFTA implementation, the U.S.-Canada Free Trade Agreement already had been in effect for five years, and some industries in the United States and Canada were already highly integrated. Mexico, on the other hand, had followed an

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<sup>36</sup> Organization of American States, Foreign Trade Information System (SICE), at <http://www.sice.oas.org>.

<sup>37</sup> "Japan, Mexico Ink Landmark Accord," *The Asahi Shimbun*, September 20, 2004.

<sup>38</sup> The WTO allows member countries to form regional trade agreements, but under strict rules. The position of the WTO is that regional trade agreements can often support the WTO's multilateral trading system by allowing groups of countries to negotiate rules and commitments that go beyond what was possible at the time under the WTO. The WTO has a committee on regional trade agreements that examines regional groups and assesses whether they are consistent with WTO rules. See The World Trade Organization, "Understanding the WTO: Cross-Cutting and New Issues, Regionalism: Friends or Rivals?" <http://www.wto.org>.

<sup>39</sup> U.S. Commercial Service, *Country Commercial Guide: Mexico*, August 13, 2004, p. 6.

aggressive import-substitution policy for many years prior to NAFTA in which it had sought to develop certain domestic industries through trade protection. One example is the Mexican automotive industry, which had been regulated by a series of five decrees issued by the Mexican government between 1962 and 1989. The decrees established import tariffs as high as 25% on automotive goods and had high restrictions on foreign auto production in Mexico. Under NAFTA, Mexico agreed to eliminate these restrictive trade policies.

Not all changes in trade and investment patterns between the United States and Mexico since 1994 can be attributed to NAFTA because trade was also affected by other unrelated economic factors such as economic growth in the United States and Mexico, and currency fluctuations. Also, trade-related job gains and losses since NAFTA may have accelerated trends that were ongoing prior to NAFTA and may not be totally attributable to the trade agreement. Overall, Mexico has experienced a slight shift in the composition of trade with the United States since the late 1980s from oil to non-oil exports. In 1987, crude oil and natural gas comprised 17% of Mexico's exports to the United States. The percentage of oil and natural gas exports had declined to 11% in 2004, increased to 14% in 2007 due to higher oil prices, and went back down to 12% in 2009.

## **Effects on the U.S. Economy**

The overall effect of NAFTA on the U.S. economy has been relatively small, primarily because two-way trade with Mexico amounts to less than 3% of U.S. GDP. Thus, any changes in trade patterns with Mexico would not be expected to be significant in relation to the overall U.S. economy. In some sectors, however, trade-related effects could be more significant, especially in those industries that were more exposed to the removal of tariff and non-tariff trade barriers, such as the textile and apparel, and automotive industries.

Since NAFTA, the automotive, textile, and apparel industries have experienced some of the more noteworthy changes in trading patterns, which may also have affected U.S. employment in these industries. U.S. trade with Mexico has increased considerably more than U.S. trade with other countries, and Mexico has become a more significant trading partner with the United States since NAFTA implementation.

In the automotive industry, the industry comprising the most U.S. trade with Mexico, NAFTA provisions consisted of a phased elimination of tariffs, the gradual removal of many non-tariff barriers to trade including rules of origin provisions, enhanced protection of intellectual property rights, less restrictive government procurement practices, and the elimination of performance requirements on investors from other NAFTA countries. These provisions may have accelerated the ongoing trade patterns between the United States and Mexico. Because the United States and Canada were already highly integrated, most of the trade impacts on the U.S. automotive industry relate to trade liberalization with Mexico. Prior to NAFTA Mexico had a series of government decrees protecting the domestic auto sector by reserving the domestic automobile market for domestically produced parts and vehicles. NAFTA established the removal of Mexico's restrictive trade and investment policies and the elimination of U.S. tariffs on autos and auto parts. By 2006, the automotive industry has had the highest dollar increase (\$41 billion) in total U.S. trade with Mexico since NAFTA passage.

The main NAFTA provisions related to textiles and apparel consisted of eliminating tariffs and quotas for goods coming from Mexico and eliminating Mexican tariffs on U.S. textile and apparel products. To benefit from the free trade provision, goods were required to meet the rules of origin

provision which assured that apparel products that were traded among the three NAFTA partners were made of yarn and fabric made within the free trade area. The strict rules of origin provisions were meant to ensure that U.S. textiles producers would continue to supply U.S. apparel companies that moved to Mexico. Without a rules of origin provision, apparel companies would have been able to import low-cost fabrics from countries such as China and export the final product to the United States under the free trade provision.<sup>40</sup>

While some U.S. industries may have benefitted from increased demand for U.S. products in Mexico, creating new jobs, other industries have experienced job losses. Data on the effects of trade liberalization with Mexico are limited and the effect on specific sectors of the U.S. economy is difficult to quantify. Trade-related job gains and losses since NAFTA may have accelerated trends that were ongoing prior to NAFTA and may not be totally attributable to the trade agreement.<sup>41</sup> Quantifying these effects is challenging because of the other economic factors that influence trade and employment levels. The devaluation of the Mexican peso in 1995 resulted in lower Mexican wages, which likely provided an incentive for U.S. companies to move to lower their production costs. Trade-related employment effects following NAFTA could have also resulted from the lowering of trade barriers, and from the economic conditions in Mexico and the United States influencing investment decisions and the demand for goods.

## Effects on the Mexican Economy

A number of studies have found that NAFTA has brought economic and social benefits to the Mexican economy as a whole, but that the benefits have not been evenly distributed throughout the country. Most studies after NAFTA have found that the effects on the Mexican economy tended to be modest at most.<sup>42</sup> While there have been periods of positive growth and negative growth in Mexico after the agreement was implemented, much of the increase in trade began in the late 1980s when the country began trade liberalization measures. Though its net economic effects may have been positive, NAFTA itself has not been enough to lower income disparities within Mexico, or between Mexico and the United States or Canada.

A 2005 World Bank study assessing some of the economic impacts from NAFTA on Mexico concluded that NAFTA helped Mexico get closer to the levels of development in the United States and Canada. The study states that NAFTA helped Mexican manufacturers to adopt to U.S. technological innovations more quickly and likely had positive impacts on the number and quality of jobs. Another finding was that since NAFTA went into effect, the overall macroeconomic volatility, or wide variations in the GDP growth rate, has declined in Mexico. Business cycles in Mexico, the United States, and Canada have had higher levels of synchronicity since NAFTA, and NAFTA has reinforced the high sensitivity of Mexican economic sectors to economic developments in the United States.<sup>43</sup>

Several economists have noted that it is likely that NAFTA contributed to Mexico's economic recovery directly and indirectly after the 1995 currency crisis. Mexico responded to the crisis by

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<sup>40</sup> See CRS Report RL31723, *Textile and Apparel Trade Issues*, by Bernard A. Gelb.

<sup>41</sup> See CRS Report 98-783, *NAFTA: Estimates of Job Effects and Industry Trade Trends After 5 1/2 Years*, by Mary Jane Bolle.

<sup>42</sup> See CRS Report RS21737, *NAFTA at Ten: Lessons from Recent Studies*, by J. F. Hornbeck.

<sup>43</sup> Daniel Lederman, William F. Maloney, and Luis Servén, *Lessons from NAFTA for Latin America and the Caribbean*, The World Bank, 2005.

implementing a strong economic adjustment program but also by fully adhering to its NAFTA obligations to liberalize trade with the United States and Canada. NAFTA may have supported the resolve of the Mexican government to continue with the course of market-based economic reforms, resulting in increasing investor confidence in Mexico. The World Bank study estimates that FDI in Mexico would have been approximately 40% lower without NAFTA.<sup>44</sup>

One of the main arguments in favor of NAFTA at the time it was being proposed by policymakers was that the agreement would improve economic conditions in Mexico and narrow the income gap between Mexico and the United States. Studies that have addressed the issue of economic convergence<sup>45</sup> have noted that economic convergence in North America might not materialize under free trade as long as “fundamental differences” in initial conditions persist over time. One study argues that NAFTA is not enough to help narrow the disparities in economic conditions between Mexico and the United States and that Mexico needs to invest more in education; innovation and infrastructure; and in the quality of national institutions. The study states that income convergence between a Latin American country and the United States is limited by the wide differences in the quality of domestic institutions, in the innovation dynamics of domestic firms, and in the skills of the labor force.<sup>46</sup> Another study also notes that the ability of Mexico to improve economic conditions depends on its capacity to improve its national institutions, adding that Mexican institutions did not improve significantly more than those of other Latin American countries during the post-NAFTA period.<sup>47</sup>

Mexican wages rose steadily from the early 1980s until the mid-1990s, when the currency crisis hit. After a drop in average real wages in 1996 of 15.5%, real wages increased steadily until 2000, when the average rate of growth was 11.8%. Since then the average rate of growth has only varied slightly. Mexico’s trade liberalization measures may have affected the ratio between skilled and non-skilled workers in Mexico. In 1988, the real average wage of skilled workers in Mexico’s manufacturing industry was 2.25 times larger than that of non-skilled workers. This ratio increased until 1996, when it was about 2.9, but then remained stable until 2000.<sup>48</sup> The World Bank study found that NAFTA brought economic and social benefits to the Mexican economy, but that the agreement in itself was not sufficient to ensure a narrowing of the wage gap between Mexico and the United States. The study states that NAFTA had a positive effect on wages and employment in some Mexican states, but that the wage differential within the country increased as a result of trade liberalization.<sup>49</sup>

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<sup>44</sup> Ibid.

<sup>45</sup> Economic convergence can be broadly defined as a narrowing of the disparities in the economic levels and the manufacturing performances of particular countries or their regions. The goal of the theory of economic convergence is to research and analyze the factors influencing the rates of economic growth and real per capita income in countries.

<sup>46</sup> Daniel Lederman, William F. Maloney, and Luis Servén, *Lessons from NAFTA for Latin America and the Caribbean*, The World Bank, 2005.

<sup>47</sup> William Easterly, Norbert Fiess, and Daniel Lederman, “NAFTA and Convergence in North America: High Expectations, Big Events, Little Time,” *Economia*, Fall 2003.

<sup>48</sup> Esquivel, Gerardo, and José Antonio Rodríguez-López, “Technology, trade, and wage inequality in Mexico before and after NAFTA,” *Journal of Development Economics*, 2003.

<sup>49</sup> Daniel Lederman, William F. Maloney, and Luis Servén, *Lessons from NAFTA for Latin America and the Caribbean*, The World Bank, 2005.



## **Mexican Trucking Issue**

The most recent U.S.-Mexico trade issue of concern to Members of Congress has been the implementation of NAFTA trucking provisions. Under NAFTA, Mexican commercial trucks were to have been given full access to four U.S. border states in 1995 and full access throughout the United States in 2000. Citing safety concerns, however, the United States refused to implement NAFTA's trucking provisions. The Mexican government objected and claimed that U.S. actions were a violation of U.S. commitments under NAFTA. A NAFTA dispute resolution panel supported Mexico's position in February 2001. President Bush indicated a willingness to implement the provision, but the U.S. Congress required additional safety provisions in the FY2002 Department of Transportation Appropriations Act (P.L. 107-87). The United States have worked to resolve the trucking issue since 2004 and have engaged in numerous talks regarding safety and operational issues. The Mexican government has argued that any deal must provide its industry with full access to the U.S. market and greater "certainty" that it will continue to have access in the future.<sup>50</sup>

### **U.S. Pilot Program for Mexican Trucks**

On November 27, 2002, with safety inspectors and procedures in place, the Bush Administration announced that it would begin the process that would open U.S. highways to Mexican trucks and buses, but environmental and labor groups went to court in early December to block the action. On January 16, 2003, the U.S. Court of Appeals for the Ninth Circuit ruled that full environmental impact statements were required for Mexican trucks to be allowed to operate on U.S. highways. However, the U.S. Supreme Court reversed that decision on June 7, 2004.

In February 2007, the Bush Administration announced a pilot project to grant Mexican trucks from 100 transportation companies full access to U.S. highways. In September 2007, the Department of Transportation (DOT) launched a one-year pilot program to allow approved Mexican carriers beyond the 25-mile commercial zone in the border region, with a similar program allowing U.S. trucks to travel beyond Mexico's border and commercial zone. Over the 18 months that the program existed, 29 motor carriers from Mexico were granted operating authority in the United States. Two of these carriers dropped out of the program shortly after being accepted, while two others never sent trucks across the border. In total, 103 Mexican trucks were used by the carriers as part of the program.<sup>51</sup>

In the FY2008 Consolidated Appropriations Act (P.L. 110-161), signed into law in December 2007, Congress included a provision prohibiting the use of FY2008 funding for the establishment of a pilot program. However, the DOT determined that it could continue with the pilot program because it had already been established. In March 2008, the DOT issued an interim report on the cross-border trucking demonstration project to the Senate Committee on Commerce, Science, and Transportation. The report made three key observations: (1) the Federal Motor Carrier Safety Administration (FMCSA) planned to check every participating truck each time it crossed the border to ensure that it met safety standards; (2) there was less participation in the project than

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<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

was expected; and (3) the FMCSA implemented methods to assess possible adverse safety impacts of the project and to enforce and monitor safety guidelines.<sup>52</sup>

In early August 2008, DOT announced that it would be extending the pilot program for an additional two years. In opposition to this action, the House approved on September 9, 2008 (by a vote of 396 to 128) H.R. 6630, a bill that would have prohibited DOT from granting Mexican trucks access to U.S. highways beyond the border and commercial zone. The bill also would have prohibited DOT from renewing such a program unless expressly authorized by Congress. No action was taken by the Senate on the measure.

On March 11, 2009, the FY2009 Omnibus Appropriations Act (P.L. 111-8) terminated the pilot program that began in September 2007. The FY2010 Consolidated Appropriations Act passed in December 2009 (P.L. 111-117) did not preclude funds from being spent on a long-haul Mexican truck pilot program, provided that certain terms and conditions were satisfied.<sup>53</sup> Numerous Members of Congress have urged President Obama to find a resolution to the dispute in light of the effects that Mexico's retaliatory tariffs are having on U.S. producers.

A truck safety statistic on "out-of-service" rates indicates that Mexican trucks operating in the United States are now safer than they were a decade ago. The data indicate that Mexican trucks and drivers have a comparable safety record to U.S. truckers. Another study indicates that the truck driver is usually the more critical factor in causing accidents than a safety defect with the truck itself. Service characteristics of long-haul trucking suggest that substandard carriers would likely not succeed in this market.<sup>54</sup>

## Mexico's Retaliatory Tariffs and Efforts in the United States to Resolve the Issue

In response to the abrupt end of the pilot program, the Mexican government announced in March 2009 that it would retaliate by increasing duties on 90 U.S. products with a value of \$2.4 billion in exports to Mexico. The tariffs, effective as of March 19, 2009, ranged from 10% to 45% and covered a range of products that included fruit, vegetables, home appliances, consumer products, and paper.<sup>55</sup> Subsequently, a group of 56 Members of the House of Representatives wrote to United States Trade Representative Ron Kirk and DOT Secretary Ray LaHood requesting the Administration to resolve the trucking issue.<sup>56</sup> The bipartisan group of Members stated that they wanted the issue to be resolved soon because the higher Mexican tariffs were having a "devastating" impact on local industries, especially in agriculture, and area economies in some

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<sup>52</sup> Department of Transportation, "Cross-Border Trucking Demonstration Project," March 11, 2008.

<sup>53</sup> See CRS Report RL31738, *North American Free Trade Agreement (NAFTA) Implementation: The Future of Commercial Trucking Across the Mexican Border*, by John Frittelli.

<sup>54</sup> See CRS Report RL31738, *North American Free Trade Agreement (NAFTA) Implementation: The Future of Commercial Trucking Across the Mexican Border*, by John Frittelli.

<sup>55</sup> Rosella Brevetti, "Key GOP House Members Urge Obama to Develop New Mexico Truck Program," *International Trade Reporter*, March 26, 2009.

<sup>56</sup> Amy Tsui, "Plan to Resolve Mexican Trucking Dispute 'Very Near,' DOT's LaHood Tells Lawmakers," *International Trade Reporter*, March 11, 2010.



states. One reported estimate stated that U.S. potato exports to Mexico had fallen 50% by value since the tariffs were imposed and that U.S. exporters were losing market share to Canada.<sup>57</sup>

On August 16, 2010, the Mexican government announced a new list of retaliatory tariffs on imports from the United States. The new list added 26 products to and removed 16 products from the original list of 89, bringing the new total to 99 products from 43 states with a total export value of \$2.6 billion. Products that were added to the list include several types of pork products, several types of cheeses, sweet corn, pistachios, oranges, grapefruits, apples, oats and grains, chewing gum, ketchup, and other products. The largest in terms of value are the two categories of pork products, which had an estimated export value of \$438 million in 2009.<sup>58</sup> Products that were removed from the list include peanuts, dental floss, locks, and other products.<sup>59</sup> The new retaliatory tariffs are lower than the original tariffs and range from 5% to 25%. Mexico rotated the list of products to put more pressure on the United States to seek a settlement for the trucking dispute.<sup>60</sup> U.S. producers of fruits, pork, cheese, and other products that are bearing the cost of the retaliatory tariffs have reacted strongly at the lack of progress in resolving the trucking issue and have argued, both to the Obama Administration and to numerous Members of Congress, that they are potentially losing millions of dollars in sales as a result of this dispute.<sup>61</sup>

The Mexican government has indicated it is willing to resolve the ongoing dispute with the Obama Administration but that is not willing to agree to another pilot program such as the one that was terminated in March 2009.

## U.S. Concept Document for Long Haul Trucking

In January 2011, the Obama Administration took a step forward to resolve the trucking issue by presenting an “initial concept document” to Congress and the Mexican government on a new long-haul trucking program with numerous safety inspection requirements for Mexican carriers. The concept document would put in place a new inspection and monitoring regime in which Mexican carriers would have to apply for long-haul operating authority. The proposed project would not be a pilot program but an initial stage that would include several thousand trucks and eventually bring as many vehicles as are needed into the United States.<sup>62</sup> A DOT press release from January 6, 2011 stated that a formal proposal on which the public would have the opportunity to comment would be released in the coming months.<sup>63</sup>

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<sup>57</sup> Ibid.

<sup>58</sup> *Inside U.S. Trade's World Trade Online*, “Pork, Cheeses, Fruits to Face new Tariffs Due to Mexico Trucks Dispute,” August 17, 2010.

<sup>59</sup> Ibid.

<sup>60</sup> *Inside U.S. Trade's World Trade Online*, “New Mexican Retaliatory Tariffs in Trucks Dispute Designed to Spur U.S.,” September 3, 2010.

<sup>61</sup> See “Sen. Murray Holds Meeting with LaHood, Farmers on Mexican Truck Dispute Duties,” *International Trade Reporter*, September 16, 2010; “U.S. Confectioners Hurt by Mexican Trucking Tariffs,” *International Trade Reporter*, September 9, 2010; and U.S. Dairy Export Council, “NAFTA Trucking Dispute’s Negative Spillover on U.S. Dairy Exports,” available at <http://www.usdec.org>.

<sup>62</sup> Rosella Brevetti and Nacha Cattán, “DOT’s LaHood Presents ‘Concept’ Paper on Resolving NAFTA Mexico Truck Dispute,” January 13, 2011.

<sup>63</sup> U.S. Department of Transportation Press Release, “U.S. Cross-Border Trucking Effort Emphasizes Safety and Efficiency,” January 6, 2011.

The Mexican government responded positively to the initiative, stating that it would not continue rotating the list of retaliatory tariffs. The government stated that because the concept document was only an initial step, Mexico would keep the current tariffs in place until a final accord was reached.<sup>64</sup> Mexico's Trade Minister Bruno Ferrari reportedly stated that the Mexican government sent comments and reservations on January 10 to the United States about the U.S. proposal. He stated that once the United States responds to these reservations and both parties discuss a timeline to implement the program, Mexico will present a plan to lift the tariffs.<sup>65</sup>

The U.S. concept document outlines a proposed program with three sets of elements. The first set of elements, pre-operations elements, include an application process for Mexican carriers interested in applying for long-haul operations in the United States; a vetting process by the U.S. Department of Homeland Security and the Department of Justice; a safety audit of Mexican carriers applying for the program; documentation of Mexican commercial driver's license process to demonstrate comparability to the U.S. process; and evidence of financial responsibility (insurance) of the applicant. The second set of elements, operations elements, include the following: monitoring procedures that include regular inspections and electronic monitoring of long-haul vehicles and drivers; a follow-up review (first review) to ensure continued safe operation; a compliance review (second review) upon which a participating carrier would be eligible for full operation authority; and a Federal Motor Carrier Safety Administration (FMCSA) review that includes insurance monitoring and drug and alcohol collection and testing facilities. The third set of elements, transparency elements, would require Federal Register notices by the FMCSA; a publically accessible website that provides information on participating carriers; the establishment of a Federal Advisory Committee with representation from a diverse group of stakeholders; periodic reports to Congress; and requirements for DOT Office of the Inspector General reports to Congress.<sup>66</sup>

## Other Trade Issues

The United States and Mexico resolved a long-standing trade dispute in 2006 involving sugar and high fructose corn syrup. Mexico argued that the sugar side letter negotiated under NAFTA entitled it to ship net sugar surplus to the United States duty-free under NAFTA, while the United States argued that the sugar side letter limited Mexican shipments of sugar. Mexico also complained that imports of high fructose corn syrup (HFCS) sweeteners from the United States constituted dumping, and it imposed anti-dumping duties for some time, until NAFTA and WTO dispute resolution panels upheld U.S. claims that the Mexican government colluded with the Mexican sugar and sweetener industries to restrict HFCS imports from the United States.

In late 2001, the Mexican Congress imposed a 20% tax on soft drinks made with corn syrup sweeteners to aid the ailing domestic cane sugar industry, and subsequently extended the tax annually despite U.S. objections. In 2004, the United States Trade Representative (USTR) initiated WTO dispute settlement proceedings against Mexico's HFCS tax, and following interim decisions, the WTO panel issued a final decision on October 7, 2005, essentially supporting the

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<sup>64</sup> Josh Mitchell, "U.S. Jump-Starts Bid to End Truck Dispute with Mexico," *The Wall Street Journal*, January 7, 2011.

<sup>65</sup> Rosella Brevetti and Nacha Cattani, "DOT's LaHood Presents 'Concept' Paper on Resolving NAFTA Mexico Truck Dispute," January 13, 2011.

<sup>66</sup> U.S. Department of Transportation, *Concept Document: Phased U.S.-Mexico Cross-Border Long Haul Trucking Proposal*, January 6, 2011, at <http://www.fmcsa.dot.gov>.

U.S. position. Mexico appealed this decision, and in March 2006, the WTO Appellate Body upheld its October 2005 ruling. In July 2006, the United States and Mexico agreed that Mexico would eliminate its tax on soft drinks made with corn sweeteners no later than January 31, 2007. The tax was repealed, effective January 1, 2007.

The United States and Mexico reached a sweetener agreement in August 2006. Under the agreement, Mexico can export 500,000 metric tons of sugar duty-free to the United States from October 1, 2006, to December 31, 2007. The United States can export the same amount of HFCS duty-free to Mexico during that time. NAFTA provides for the free trade of sweeteners beginning January 1, 2008. The House and Senate sugar caucuses expressed objections to the agreement, questioning the Bush Administration's determination that Mexico is a net-surplus sugar producer to allow Mexican sugar duty-free access to the U.S. market.<sup>67</sup>

On tuna issues, the Clinton Administration lifted the embargo on Mexican tuna in April 2000 under relaxed standards for a dolphin-safe label in accordance with internationally agreed procedures, and U.S. legislation passed in 1997 that encouraged the unharmed release of dolphins from nets. However, a federal judge in San Francisco ruled that the standards of the law had not been met, and the Federal Appeals Court in San Francisco sustained the ruling in July 2001. Under the Bush Administration, the Commerce Department ruled on December 31, 2002, that the dolphin-safe label may be applied if qualified observers certify that no dolphins were killed or seriously injured in the netting process, but Earth Island Institute and other environmental groups filed suit to block the modification. On April 10, 2003, the U.S. District Court for the Northern District of California enjoined the Commerce Department from modifying the standards for the dolphin-safe label. On August 9, 2004, the federal district court ruled against the Bush Administration's modification of the dolphin-safe standards and reinstated the original standards in the 1990 Dolphin Protection Consumer Information Act. That decision was appealed to the U.S. Ninth Circuit Court of Appeals, which ruled against the Administration in April 2007, finding that the Department of Commerce did not base its determination on scientific studies of the effects of Mexican tuna fishing on dolphins. In late October 2008, Mexico initiated World Trade Organization dispute proceedings against the United States, maintaining that U.S. requirements for Mexican tuna exporters prevents them from using the U.S. "dolphin-safe" label for its products.<sup>68</sup>

On other issues, in early October 2002, the U.S.-Mexico working group on agriculture dealt with major agricultural issues, including Mexico's anti-dumping decisions on apples, rice, swine, and beef, and safeguard actions on potatoes. In January 2003, the countries agreed to permit Mexican safeguard measures against U.S. imports of chicken legs and thighs, and in July 2003, these safeguard measures were extended until 2008, with tariffs declining each year. In September 2006, Mexico revoked anti-dumping duties imposed on U.S. rice imports in 2002 following rulings by the WTO and WTO Appellate Body in 2005, which found that the duties were contrary to WTO rules. Mexico banned beef imports from the United States in December 2003 following the discovery of one cow infected with mad cow disease in Washington State. Mexico resumed

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<sup>67</sup> See "Bush Administration Defends Sugar Deal to Congress," *Inside U.S. Trade*, November 3, 2006; "Grassley, U.S. Industry Welcome Agreement with Mexico on Sugar, HFCS," *International Trade Reporter*, August 3, 2006; and, "U.S., Mexico Reach Agreement on WTO Soft Drink Dispute Compliance Deadline," *International Trade Reporter*, July 13, 2006.

<sup>68</sup> Daniel Pruzin, "Mexico Initiates WTO Dispute Proceeding Against U.S. 'Dolphin-Safe' Label for Tuna," *International Trade Reporter*, October 30, 2008.

importation of boneless beef in early March 2004, and bone-in beef in February 2006, in response to improved beef cattle screening.

## Issues for Congress

The economic relationship with Mexico is important to U.S. policymakers because of the implications it has for bilateral trade, economic conditions in both countries, economic competitiveness, and border security. Mexican President Felipe Calderón made a state visit to the United States in May 2010 in which he emphasized the need for increased cooperation in North America to increase the competitiveness of the region.<sup>69</sup> In a meeting hosted by President Barack Obama, the two leaders discussed numerous key bilateral and hemispheric issues affecting both countries. The leaders reaffirmed their shared values and the need for focusing on economic growth. They vowed to enhance and reinforce efforts to create jobs, promote economic recovery and expansion, and encourage inclusive prosperity across all levels of society in both countries.<sup>70</sup> The two leaders also underscored the importance of human capital and touched upon the issue of immigration. President Obama underscored his commitment to comprehensive immigration reform in the United States while President Calderón stated that his administration was committed to creating more job and educational opportunities in Mexico. Both leaders acknowledged the importance of taking actions to address illegal immigration, border security, and human trafficking groups, and agreed to set priorities for the future.<sup>71</sup>

The 112th Congress may consider legislation to implement the NAFTA trucking provisions. As stated earlier, numerous Members of Congress continue to oppose the implementation of the trucking provisions because they are concerned about the safety of Mexican trucks in the United States, while others want the issue to be resolved. They argue that Mexico's retaliatory tariffs are having strong negative effects on local U.S. industries and affecting U.S. jobs, especially in the agricultural sectors. U.S. producers of fruits, pork, cheese, and other products that are bearing the cost of the retaliatory tariffs have been very vocal about the lack of progress in resolving the trucking issue and argue that the issue is having a devastating impact on local industries. The Teamsters and U.S. independent truckers strongly oppose the initiative proposed by the Obama Administration to phase in the NAFTA trucking provisions. The Teamsters General President Jim Hoffa reportedly issued a statement warning that a program would threaten the traveling public in the United States and open the southern border to increased drug trafficking.<sup>72</sup> He also argues that the DOT proposal would threaten jobs of U.S. truck drivers and warehouse workers and that Mexican trucks are not safe. The Owner-Operator Independent Drivers Association, the largest trade association representing independent truckers, opposes the Obama Administration proposal stating that it would cost many U.S. driver jobs.<sup>73</sup>

The economic hardship in certain sectors and regions of Mexico has been a major reason behind unauthorized Mexican migration to the United States. President Calderón made his first official

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<sup>69</sup> CSIS Americas Program, *Hemisphere Highlights*, May 2010, pp. 1-2.

<sup>70</sup> The White House, "Joint Statement from President Barack Obama and President Felipe Calderón," press release, May 19, 2010.

<sup>71</sup> Ibid.

<sup>72</sup> Rosella Brevetti and Nacha Cattán, "DOT's LaHood Presents 'Concept' Paper on Resolving NAFTA Mexico Truck Dispute," January 13, 2011.

<sup>73</sup> Ibid.

visit to the United States as President-elect in early November 2006, after first visiting Canada and several Latin American countries. During his visit, Calderón criticized the recent authorization of fencing along the U.S.-Mexico border and noted that it complicated U.S.-Mexico relations. He asserted that job creation and increased investment in Mexico would be more effective in reducing illegal migration from Mexico than a border fence. Calderón signaled a shift in Mexican foreign policy when he noted that while immigration is an important issue in the bilateral relationship, it is not the only issue, as trade and economic development are also important.

Mexico voiced concern in the past about alleged abuses suffered by Mexican workers in the United States and for the loss of life and hardships suffered by Mexican migrants as they use increasingly dangerous methods to cross into the United States. During his administration, former Mexican President Vicente Fox held the view that the migrants are “undocumented workers” and that because the U.S. market attracts and provides employment for the migrants, it bears some responsibility. He pressed proposals for legalizing undocumented Mexican workers in the United States through amnesty or guest worker arrangements as a way of protecting their human rights. In 2004, President Bush proposed an overhaul of the U.S. immigration system to permit the matching of willing foreign workers with willing U.S. employers when no U.S. documented workers could be found to fill the jobs.

Another policy issue is related to the changing trade trends throughout the world that are affecting North American trading patterns. Some observers have analyzed the possibility of furthering economic integration with Mexico as the influence of China and other low-wage countries increases. According to a recent study on economic integration in North America, a major shift is under way in trade patterns among NAFTA partners with exports among NAFTA economies growing more slowly than their exports with the rest of the world, reversing the previous 10-year trend. The report finds that lower-cost suppliers, primarily China and India, are displacing North American imports and could weaken North American integration. The report states that furthering continental integration would require “renewed efforts at resolving long-standing trade disputes, new liberalization initiatives, or greater policy harmonization in areas such as border security, labor mobility, or corporate taxation.”<sup>74</sup>

If the United States continues to deepen economic integration with Mexico, one area that may need more attention is the issue of the difference in income levels between the two countries. The economic relationship with Mexico is unique because of Mexico’s proximity to the United States, but also because of the wide differences in levels of economic development between the two countries. Mexico is the first developing country with which the United States entered into a free trade agreement. In Mexico, NAFTA has had an uneven effect in different parts of the country and it has not been a solution to the problem of poverty and unemployment. Mexico’s problem with poverty cannot be attributed directly to NAFTA because it was in existence prior to the agreement. At the time of NAFTA there was hope that Mexico’s economy would grow sufficiently to create jobs in urban areas and help alleviate poverty in rural areas. However, the economy did not expand as expected and the problem of poverty continues.

Another policy issue relates to whether trade agreements are enough, or are the appropriate policy instrument, to resolve income disparities among trading partners or even within a developing

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<sup>74</sup> ITR, “North American Integration Slipping Due to China’s Strong Growth, Report Says,” Volume 22, Number 8, February 24, 2005.

country. A World Bank study on the effects of NAFTA on Mexico concluded that NAFTA has helped to improve economic conditions in Mexico but it has not been enough to narrow the economic disparities with the United States. The authors of the study stated, among other things, that Mexico needs to invest more in education, infrastructure, and institutional strengthening to benefit more fully from freer trade.<sup>75</sup> A possible consideration for policymakers is whether to help Mexico improve the quality of education and strengthen its national institutions through foreign aid programs or other mechanisms.

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<sup>75</sup> Daniel Lederman, William F. Maloney, and Luis Servén, *Lessons from NAFTA for Latin America and the Caribbean*, The World Bank, 2005.





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## Meet the Press with Secretary Clinton

May 2, 2010

tags: [Hillary Clinton](#), [media](#), [Secretary of State](#), [Video](#)

by stacyx

This is the whole program, not just the segment with Secretary Clinton- her interview starts at 10:46.



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Transcript:

*UESTION: Welcome back. Thanks for being here.*

*SECRETARY CLINTON: Well, David, I'm thrilled to be here on the new set. Thank you.*

*QUESTION: Thanks very much. There's a lot of important issues to talk about with certainly in the headlines this weekend is this oil spill off the coast of Louisiana and Mississippi. And it becomes a bigger issue, and even a national security issue, as it applies to climate change, which is an issue that you've dealt with. How will the Administration approach this particularly given the President's interest in offshore drilling? Does that have to stop now?*

*SECRETARY CLINTON: Well, David, I think that the President has ordered the departments that deal with this – Homeland Security, Interior, Environmental Protection, Defense – to all immediately not only do everything possible to mitigate the effects of this spill, but to try to come up with recommendations going forward. The first order of business, however, is to try to get this spill under control, which has been, as you know, very difficult, and to prevent further damage to the coastline along Louisiana to the fishing waters, to the wildlife.*

*I think it does raise questions which the President has said have to be answered. He put forth a very comprehensive approach that included the potential of drilling off of our own shore. That is a national security concern because we have to do better to lessen our dependence on foreign oil. But it has to be done safely. It can't be done at the risk of having to spend billions of dollars cleaning up these spills.*

*So as with so much in these difficult areas, it's going to require a balancing act.*

*QUESTION: Another area that has become a domestic political debate over immigration has also taken on some international ramifications. Mexico, because of the law – the stringent law against – the anti-immigration law passed in Arizona, has issued a pretty unusual alert to its own citizens traveling to Arizona. I'll put it up on the screen. This is the alert – a travel alert over Arizona immigration law. This is how the USA Today reported it on Wednesday: "The country warned that the state's adoption of a strict immigration enforcement law has created 'a negative political environment from migrant communities and for all Mexican visitors.' 'It must be assumed that every Mexican citizen may be harassed and questioned without further cause at any time,' according to the foreign ministry."*

*The president, President Calderon, with whom you will meet soon, has talked about criminalizing – this law criminalizes a largely social and economic phenomenon of migration. This is a pretty big shot across the bow to America here.*

*SECRETARY CLINTON: Well, it is. And I think if you look at it, again, you have a lot of unanswered questions. This law, which is clearly a result of the frustration that people in Arizona and their elected officials feel about the difficulty of enforcing the law along our border and preventing the continued immigration of people who are not documented, but on the other hand, it is written so broadly that if you were visiting in Arizona and you had an accent and you were a citizen from my state of New York, you could be subjected to the kind of inquiry this law permits.*

QUESTION: Do you think it invites profiling, racial profiling?

SECRETARY CLINTON: I don't think there's any doubt about that, because clearly, as I understand the way the law is being explained, if you're a legal resident, you still have to carry papers. Well, how is a law enforcement official supposed to know? So, again, we have to try to balance the very legitimate concerns that Americans – not just people in Arizona but across the country have about safe and secure borders, about trying to have comprehensive immigration reform, with a law that I think does what a state doesn't have the authority to do, try to impose their own immigration law that is really the province of the federal government.

QUESTION: That is important. Do you think this law will not stand up legally?

SECRETARY CLINTON: Well, I don't want to offer a legal opinion. I think I'll leave that to the Justice Department. But I know the Attorney General of Arizona has raised questions about the legality. And you're right; we have a visit from President Calderon coming up, a state visit. He's a very important partner to us on trying to stop illegal activity along our border – the importation of drugs, of arms, of human beings – all of the crime that that's associated with. And we believe that he has really done the best he can under very difficult circumstances to get this under control. We don't want to make his life any harder either. We want to try to support him in what has been a courageous campaign against the drug traffickers.

QUESTION: Let me move on to some other issues that are obviously on your plate, which is a big plate of issues. Let's talk about Afghanistan. A big offensive is being planned for Kandahar. A very important visit by President Karzai is coming up after a period of turbulence between the U.S. and Karzai which I know the Administration has tried to tamp down. And yet, it's the nature of the insurgency that our fighting men and women are dealing with. And the Pentagon issued a report that was reported on by the Los Angeles Times on Thursday. Let me put it up on the screen. It says the report presented a sobering new assessment Wednesday of the Taliban-led insurgency in the country, saying that its abilities are expanding and its operations are increasing in sophistication despite major offenses by U.S. forces in the militant heartland, like Marjah. The new report offers a grim take on the likely difficulty of establishing lasting security, especially in southern Afghanistan, where the insurgency enjoys broad support. The conclusions raise the prospect that the insurgency in the south may never be completely vanquished, but instead must be contained to prevent it from threatening the government of President Hamid Karzai.

A narrow question here: Are you resigned to the fact that the Taliban, the insurgency, will have to be a part of this government in the future?

SECRETARY CLINTON: No. And let me start by putting the recent report from the Pentagon into context. It was a look-back. It goes from last October through March. When we were devising the strategy that the President announced at West Point in early December, it was during the August, September, October, November period, and there was no doubt that the Taliban had the initiative, that there was a very serious threat to not only our forces, obviously, on the ground, but to the stability and security of Afghanistan.

QUESTION: But you hear all this talk and Karzai wants some kind of reconciliation with the Taliban as well.

SECRETARY CLINTON: Well, but, David, I think that we have to sort of sort out what we mean by that. We talk about reconciliation and reintegration. They may sound the same, but they're somewhat different concepts. Reintegration refers to the foot soldiers on the field who are coming in increasing numbers and saying, look, we're fighting because we get paid, we're fighting because we were volunteered to fight because the Taliban came to our village and intimidated our elders. So there seems to be an ongoing movement of people sort of out of the battlefield. And General McChrystal and his commanders on the ground are seeing that and kind of organizing and running that.

The larger question about reconciliation – I don't know any conflict in recent times that didn't have some political resolution associated with it. People either got tired of fighting and decided they would engage in a peace process; they were defeated enough so that they were willing to lay down their arms. What President Karzai is saying – and we agree with this direction – is that you've got to look to see who is reconcilable. Not everybody will be. We don't expect Mullah Omar to show up and say, oh yeah, I'm giving up on my association with al-Qaida, et cetera. But we do think that there are leaders within the Taliban – in fact, there are some already – who have come over to the other side.

Now, if they do so, they have to renounce al-Qaida, they have to renounce violence, they have to give up their arms, and they have to be willing to abide by the Afghan constitution.

QUESTION: Another adversary, of course, gets us to Iran and the fact that President Ahmadinejad from Iran will be coming to New York to the UN for a nonproliferation meeting.

SECRETARY CLINTON: Right.

QUESTION: You're moving down a path of sanctions. We understand what that is. Do you feel like he's going to try to show up here the early part of next week and steal the show?

SECRETARY CLINTON: I don't know what he's showing up for, because the purpose of the Nonproliferation Treaty Review Conference is to reiterate the commitment of the international community to the three goals: disarmament, nonproliferation, the peaceful uses of nuclear energy. So the vast majority of countries are coming to see what progress we can make. And this is a very high priority for President Obama. It's why he pressed so hard for the START treaty, which he signed with President Medvedev in Prague. It's why we convened a Nuclear Security Summit to highlight the threat posed by nuclear terrorism. It's why we have begun to work out deals with India and others for the peaceful use of nuclear energy, which countries are entitled to under the nonproliferation regime.

If Iran is coming to say we're willing to abide by the Nonproliferation Treaty, that would be very welcome news. I have a feeling that's not what they're coming to do. I think they're coming to try to divert attention and confuse the issue. And there is no confusion. They have violated the terms of the NPT. They have been held under all kinds of restrictions and obligations that they have not complied with by the IAEA, the International Atomic Energy Agency, by the UN Security Council. So we're not going to permit Iran to try to change the story from their failure to comply and in any way upset the efforts we are in the midst of, which is to get the international community to adopt a strong Security Council resolution that further isolates them and imposes consequences for their behavior.

QUESTION: Madam Secretary, I'd like to spend a couple minutes on some other global hotspots which you're dealing with.

The first one is actually with America's strong ally. In the UK, in Great Britain, very interesting election going on. You've got three candidates, a resurgent third party in the Social Democrats, televised debates. You know something about those.

SECRETARY CLINTON: I do.

QUESTION: And as you watch what's going on there, do you think there's a movement that could spread? Do you see a third party becoming viable in the United States?

SECRETARY CLINTON: Well, let's see whether it's viable in the UK. I don't know the answer to that. We've had in my lifetime, and certainly long before, viable third-party candidates. We had Ross Perot, John Anderson just within my voting history. I think there's always room in democracy for people to bring their views to the forefront. But I think one of the real strengths of our system has been our two-party approach, where each party may frustrate some of its own members because they do have a broad cross-section of voters and opinions.

*But look, I'm going to be as interested as anybody to see what happens in the election in Great Britain.*

*QUESTION: Final one has to do with the election in Sudan, where you have Bashir as the victor, and yet this is Sudan, is a sponsor of state terror, according to the State Department, and this is someone who is boasting about the results and keeping the United States at bay. Nicholas Kristof wrote this in The New York Times: "Until he reached the White House, President Obama repeatedly insisted the U.S. apply more pressure on Sudan so as to avoid a humanitarian catastrophe in Darfur and elsewhere. Yet as president, Mr. Obama and his aides have caved, leaving Sudan gloating at American weakness. President Bashir, al-Bashir of Sudan, a man wanted for crimes against humanity in Darfur, has been celebrating. His regime called itself the National Congress Party, or NCP, and he was quoted in Sudan as telling a rally in the Blue Nile region: 'Every America – even America is becoming an NCP member, no one is against our will.'*

*"Memo to Mr. Obama, when a man who has been charged with crimes against humanity tells the world that America is in his pocket, it's time to review your policy."*

*What do you say?*

*SECRETARY CLINTON: Well, I would say that, number one, I can't take anything seriously that Bashir says. He is an indicted war criminal. The United States is very committed to seeing him brought to justice. But let's look at what's happening in Sudan, because I have the greatest respect, of course, for Nick Kristof and others who share my deep dismay at events in Sudan.*

*But here's what we're trying to do. When we came into office, Bashir threw out the groups, the nongovernmental organizations, who were providing most of the aid in the camps in Darfur, which could have been a disastrous humanitarian crisis. We were able to get a lot of the help back in and we're beginning to see some slight progress in Darfur. I don't want to overstate it because it is still a deplorable situation. But we are working to try to get the people back to their homes, out of the camps.*

*At the same time, you had this election going on. It was, by any measure, a flawed election. There were many, many things wrong with it. But there hadn't been an election in many years, and so part of our goal was to try to empower opposition parties, empower people to go out and vote. Thousands and thousands did. The result, I think, was pretty much foreordained that Bashir would come out the winner, and that's unfortunate. We are turning all of our attention to trying to help the South and to mitigate against the attitudes of the North. I can't sit here and say that we are satisfied, because I'm certainly not satisfied with where we are and what we're doing, but it is an immensely complicated arena.*

*Now, the United States could back off and say we won't deal with these people, we're not going to have anything to do with them, Bashir is a war criminal. I don't think that will improve the situation. So along with our partners – the UK, Norway, neighboring countries – we are trying to manage what is a very explosive problem.*

*QUESTION: Just a couple minutes left. I want to ask you about another big thrust of your time as Secretary of State, and that is forging – well, I should say a realization that there are limits to what government can accomplish around the world. You have spent a lot of time working with the private sector to achieve certain commercial goals, also to achieve goals like the empowerment of women. You've got an announcement this weekend having to do with the China Expo and the U.S. role in the China Expo, as well as efforts to empower women around the world in developing countries through the help of the private sector.*

*Why is this really the route of the future for the government?*

*SECRETARY CLINTON: Thank you for asking me that, because that is exactly what I believe, that diplomacy today is not just government-to-government. Part of what I had to do when I became Secretary of State was to rebuild America's image, standing, and leadership in the world. And certainly, President Obama is our greatest advocate at that. But you can't just do that by the government saying things or even by our President making incredibly important speeches. You have to begin to engage the people in other countries. And in order to do that effectively, I want more people-to-people contacts, I want more private sector partnerships with our public sector and with people around the world.*

*Let me give two quick examples. You mentioned the Shanghai Expo. There'll probably be 70 million-plus people who go through that Expo. When I became Secretary of State, there was no money raised because we don't put public money into a project like that. So with the help of a lot of very dedicated corporate sponsors, we now will be a player in that Expo.*

*Now, what does that mean? Well, when those 70 million Chinese – mostly Chinese but people from elsewhere in the world go through, they're going to learn something about America. They're going to learn something about our values, about our products, about how we live. I think that helps to build the kind of understanding and connection that is at the root of good relations.*

*And on women's issues, we just had a great announcement through the combined efforts of a number of corporate sponsors, foundations like the Rockefeller Foundation, we're going to be working to help empower women doing what they do best and to try to up their education levels, their health levels.*

*Why does this matter? Because it's the United States doing it. And it's not just the United States Government. It's the people of the United States.*

*QUESTION: Before you go, a question about whether you think it's realistic that you will stay on as Secretary of State for the balance of the first term.*

*SECRETARY CLINTON: (Laughter.) Well, I intend to. Yeah, I intend to.*

*QUESTION: You do intend to?*

*SECRETARY CLINTON: Yeah. But I mean, people have been asking me this. And in the interest of full disclosure, it is an exhausting job. But I enjoy it. I have a great time doing it. I feel like we're making a difference around the world, that I'm a big believer in setting goals, having a vision of where we're trying to get, but then trying to translate that into what we do today and what we do tomorrow. And we've made a lot of progress. We face incredibly difficult problems.*

*QUESTION: So you think you'll stay for the whole first term?*

*SECRETARY CLINTON: Well, I think so. I think so. I mean, look, ask me next month and the month after that, but that certainly is my intention.*

*QUESTION: And yet you don't care to be on the Supreme Court?*

*SECRETARY CLINTON: Oh, never. I mean, I'm glad you (inaudible).*

*QUESTION: You're a lawyer with all that background.*





*SECRETARY CLINTON: I am – I do not and have never wanted to be a judge, ever. I mean, that has never been anything that I even let cross my mind, because it's just not my personality.*

*QUESTION: Do you think the President should pick another women – woman this time?*


SECRETARY CLINTON: *I think he should pick a very well-qualified, people-savvy, young person to be on the Court to really help to shape the jurisprudence going forward. I think that it's not a surprise that there's a real division on the Court, and a lot of decisions that have great ramifications for the people of our country that I would like to see someone put on the Court who can really try to shift the direction of the current Court.*

QUESTION: *Secretary Clinton, thank you, as always.*

SECRETARY CLINTON: *You're welcome.*

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1. [HillaryFan](#) [permalink](#)  
May 3, 2010 6:21 am

Thanks for posting this, I knew you'd have it up!

It was a great interview and I continue to be amazed at how well she explains things- she's much more "real" than Obama IMO.

One thing though- did anyone else find her statements about the two party system interesting? Towards the end when they were talking about the possibility of their ever being a viable third party candidate and she kind of rallied around the two party system? As someone who used to be a Republican, then became a Democrat and then became disgusted with them in this last election, I find myself more interested in an alternative to the two parties.

[Reply](#)



2. [stacyx](#) [permalink](#)\*  
May 3, 2010 6:31 am

HillaryFan- yes, I thought that was interesting too but not surprising. She didn't diss the idea of a third party and gave former third party candidates credit. But lets be honest, the Clintons are now a Democratic institution, there is now way she would break away from that.

I'll be honest, I get frustrated with the two party system because I think it tends to just enable the status quo in Washington. While there are obviously very big differences on some issues between the Dems and the GOP, when it comes to things like lobbyists and corporate influence, deregulation and even foreign policy, the differences become less apparent. And what I find so ironic is on the issues where Democrats DO have a very different philosophy, like abortion rights, gay rights, health care- they seem to be trying to run away from that except during primaries. For example with gay rights, their platform is certainly more pro-gay rights than the GOP but when it comes to DOING something to end the discrimination, they tend to become weak-kneed.

By the way, on that subject I read an infuriating article the other the other day where Secretary Gates sent a letter to members of Congress telling them not to "rush" on legislation overturning DADT. Rush? It's been over a decade that this nonsense has been going on and repeated studies have shown that having openly gay soldiers won't hurt morale or anything else for that matter. Nonetheless, Gates wants to do more studies and to get the reaction of the men and women in the military- you know, to see what they think about it. When I told my dad, who is a veteran of the Korean War that, he was disgusted-he pointed out that the military doesn't go around making sure everyone is comfortable with their changes- they give an order and people follow it. What Gates and the Joint Chiefs etc. need to do is reign in the top brass who are sending out signals they don't approve of this. THEY are the real problem.

Obama is dragging his feet to bet past the midterms even though a majority of Americans support the repeal. I don't get it.

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## The White House

Office of the Press Secretary

For Immediate Release

May 19, 2010

### Remarks by President Calderón of Mexico at Official Arrival Ceremony

South Lawn

His Excellency Mr. Barack Obama, President of the United States of America  
Mrs. Michelle Obama;  
Ladies and Gentlemen,

I appreciate the kind invitation of President Barack Obama to carry out this State Visit. Mexico and the United States.... We are friend and partner nations; nations that work together and trade... And that complement each other economically; nations that dialogue and that are intertwined by geography and history.

As you pointed out Mr. President, while in Mexico, "what makes us good neighbors is a simple truth: our peoples share way beyond our common challenges and interests." Indeed, we also share common values and principles such as freedom, justice, legality and democracy.

Today, Mexicans and Americans share a decisive moment for our respective countries. We face common challenges of great magnitude: organized crime, economic crisis, climate change, migration. These monumental challenges place us at a crossroads: either we return to mutual recrimination, which has been so useless and so damaging in previous times, or we face and overcome these challenges together, and from there, we begin a new chapter of shared prosperity.

This is the choice: look toward the future, and begin a new era in the strategic partnership between the United States and Mexico based upon shared responsibility.

I am sure that by working with shared responsibility, our governments will be able to open new paths for a more secure, more sustainable, more competitive and more prosperous North America.

We can do it if together we face and combat transnational organized crime. This is our common enemy and the greatest threat to our peoples.

We can do it if together we support a new model for economic development, in harmony with the environment.

We can do it if we know how to make the most of how our two economies complement each other. If we take advantage of our trade and integration to create more and better jobs in both countries. If we can work together to encourage the successful integration of the Mexican-American and Latino communities in this country. We will do it, if we know how to add up our strengths to make North America the most competitive and prosperous region in the world.

We can make it, if we continue building a safer border and if we transform it in a border that does not divide our peoples, in a land of opportunities and progress. We can make it, if we develop a comprehensive, fair and long term solution to the challenges that migration currently poses. I know that we share the interest in promoting dignified, legal and orderly living conditions to all migrant workers. Many of them, despite their significant contribution to the economy and to the society of the United States, still live in the shadows and, occasionally, as in Arizona, they even face discrimination.

Divided we cannot overcome these enormous challenges. A prosperous North America that benefits both Americans and Mexicans is only feasible if we work shoulder to shoulder, and if we confront these challenges decisively and courageously.

Mr. President,

I come today to seal the pact of friendship that a year ago you offered to Mexico and to the Mexican people. Mexicans and Americans, we are faced with major common problems and challenges, but at the same time, we have the possibility of shared success in the horizon.

#### WATCH THE VIDEO



May 19, 2010 4:24 PM

[Official Arrival of President Calderón](#)

#### BLOG POSTS ON THIS ISSUE

May 25, 2011 2:56 PM EDT

[President Obama Speaks to the Parliament in London: "The Time for Our Leadership is Now"](#)



As President Obama spoke to "the Mother of Parliaments" at Westminster Hall, it was a stark reminder of just

closely linked our fates are.

May 23, 2011 5:55 PM EDT

[President Obama in Dublin: "Never Has a Nation So Small Inspired So Much in Another"](#)



The President embraces Ireland's heritage before a crowd of thousands in Dublin, Ireland.

May 20, 2011 5:54 PM EDT

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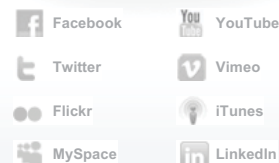


Your quick look at the week that was at Whitehouse.gov.

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Can we overcome these challenges? Can we build that future of prosperity we want for our people? Yes we can, if we work together.

Thank You Mr. President for your kind invitation.

END

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The White House

Office of the Press Secretary

For Immediate Release

March 03, 2011

**Remarks by President Obama and President Calderón of Mexico at Joint Press Conference**

East Room

\*\*\*Please note the correction to the President's remarks below.

1:17 P.M. EST

PRESIDENT OBAMA: Good afternoon. I am delighted to welcome my friend and partner, President Calderón, back to the White House. I want to discuss our meeting today and then address the situation in Libya.

President Calderón was last here, along with First Lady Señora Zavala, for a very productive state visit last spring — a visit that reflected the new era of respect and cooperation and partnership between our two countries. We've since worked together as global partners at the G20 summits in Toronto and Seoul and at the APEC Summit in Yokohama. And I very much appreciate President Calderón being here today to deepen the cooperation that is so essential to the prosperity and security of both of our countries.

Of course, the relationship between the United States and Mexico isn't measured just in the partnership between two Presidents. It's evident every day in the strong bonds between our two societies. It's the thousands of people who work together, at every level — federal, states and community levels — to keep our citizens safe, to keep our economies growing. It's the tens of thousands of students and teachers and researchers in exchanges between our schools and our universities.

It's the one million people who cross our shared border every day — tourists and business people — sustaining one of the largest trading relationships in the world. And it's our families and our friends — the many Americans living in Mexico, and the tens of millions of Mexican Americans who make outstanding contributions to this country every single day.

As I said, we're also global partners. As part of the G20, we're advancing the global economic recovery, and I look forward to visiting Mexico when President Calderón hosts the G20 next year. Together, we've responded to the earthquake in Haiti, and we're securing the world's vulnerable nuclear materials. I especially want to commend President Calderón for Mexico's successful leadership of the Cancun Conference, including progress toward a Green Fund that he himself helped to get started and champion and which will help developing countries adapt to climate change.

Most recently, our governments have spoken out forcefully for the human rights of the Libyan people, and Mexico played a leading role at the United Nations in suspending Libya from the Human Rights Council.

President Calderón, this not only reflects our commitment to the shared values of freedom and justice and rule of law. It's also another example of Mexico's global leadership — as you said in your address to our Congress last year — that "Mexico is standing tall" and ready to take its "rightful place in the world."

It is this appreciation of the great bonds between Americans and Mexicans, and the values and responsibilities that we hold in common that allowed us to make progress once again today.

We're working to expand the trade that creates jobs for our peoples. Remember, Mexico is the second largest market for American exports. It supports some 1 million American jobs. And our exports to Mexico are growing faster than they are with the rest of the world.

So we're moving ahead with plans for a 21st century border so people and goods can cross securely and efficiently. We're working to coordinate and streamline regulations and get rid of unnecessary trade barriers to make it easier to do business together. We're making new investments in clean energy partnerships, including green buildings and smart grid technologies. And based on negotiations so far, I'm hopeful that we can conclude an agreement by the end of the year to develop new sources of energy in the Gulf of Mexico.

I'm especially pleased to announce that, after nearly 20 years, we finally have found a clear path to resolving the dispute over trucking between our two countries. I thank President Calderón and his team — as well as my

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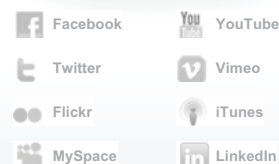
May 26, 2011 2:09 PM EDT

[President's Advisory Commission on Educational Excellence for Hispanics: The Next Step in Improving the Academic Achievement of Latino Students](#)

Today, the President's Advisory Commission on Excellence for Hispanics were announced at the White House and held their inaugural meeting at the White House.

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**STAY CONNECTED**



Transportation Secretary, Ray LaHood, and our U.S. Trade Representative, Ambassador Ron Kirk — for reaching this proposed agreement. I look forward to consulting with Congress and moving forward in a way that strengthens the safety of cross-border trucking, lifts tariffs on billions of dollars of U.S. goods, expands our exports to Mexico, and creates job on both sides of the border.

We're also deepening our cooperation against the drug cartels that threaten both our peoples. As I've said before, President Calderón and the Mexican people have shown extraordinary courage in the fight for their country. Tens of thousands of Mexicans — innocent citizens and dedicated security forces — have lost their lives. I have reaffirmed to President Calderón that in this cause, Mexico has a full partner with the United States. Because whether they live in Texas or Tijuana, our people have a right to be safe in their communities.

So we are continuing to speed up the delivery of equipment and training that our Mexican partners need to keep up this fight. As President Calderón cracks down on money laundering in Mexico, we're putting unprecedented pressure on cartels and their finances here in the United States. And we thank our Mexican partners for their close cooperation following the murder of one of our immigration and customs agents, Special Agent Jaime Zapata.

I reiterated that the United States accepts our shared responsibility for the drug violence. So to combat the southbound flow of guns and money, we are screening all southbound rail cargo, seizing many more guns bound for Mexico and we are putting more gunrunners behind bars. And as part of our new drug control strategy, we are focused on reducing the demand for drugs through education, prevention and treatment.

We have also discussed immigration, an issue on which both countries have responsibilities. As I told President Calderón, I remain deeply committed to fixing our broken immigration system with comprehensive reform that continues to secure our borders, enforces our laws — including against businesses that break the law — and requiring accountability from undocumented workers. And we have to conduct this debate in a way that upholds our values as a nation of both laws and immigrants. So I'm eager to work with Republicans and Democrats to get this reform done, which is vital to the U.S. economy.

Finally, I'm looking forward to receiving insights from the President as I prepare for my trip to Latin America this month, which will be an opportunity to strengthen our security cooperation throughout the region.

Mr. President, thank you for your partnership and for deepening the bonds between our countries, which only grow stronger each time that we meet.

Now, before I turn it over to President Calderón, I want to address the situation in Libya.

The United States, and the entire world, continues to be outraged by the appalling violence against the Libyan people. The United States is helping to lead an international effort to deter further violence, put in place unprecedented sanctions to hold the Qaddafi government accountable, and support the aspirations of the Libyan people.

We are also responding quickly to the urgent humanitarian needs that are developing. Tens of thousands of people — from many different countries — are fleeing Libya, and we commend the governments of Tunisia and Egypt for their response, even as they go through their own political transitions. I have, therefore, approved the use of U.S. military aircraft to help move Egyptians who have fled to the Tunisian border to get back home to Egypt. I've authorized USAID to charter additional civilian aircraft to help people from other countries find their way home, and we're supporting the efforts of international organizations to evacuate people as well.

I've also directed USAID to send humanitarian assistance teams to the Libyan border, so that they can work with the United Nations, NGOs and other international partners inside Libya to address the urgent needs of the Libyan people.

Going forward, we will continue to send a clear message: The violence must stop. Muammar Qaddafi has lost the legitimacy to lead and he must leave. Those who perpetrate violence against the Libyan people will be held accountable. And the aspirations of the Libyan people for freedom, democracy and dignity must be met.

President Calderón.

PRESIDENT CALDERÓN: (As translated) Thank you very much, President Obama. Thank you so much for your hospitality. Ladies and gentlemen of the media, good afternoon.

President Barack Obama and I have held a very valuable conversation concerning the status of our bilateral cooperation and many aspects of this. As always, it has been very satisfying for me to see that we agree on the basic principle of co-responsibility. And I thank you, Mr. President, for your invitation to hold this working visit here in the city of Washington.

Some of the things that we evaluated is that our governments have progressed substantially on many of these aspects. The results of our cooperation in some aspects, unprecedented cooperation, have been translated into concrete examples, such as the opening last year in 2010 of the three first new border crossings over the past 10 years.

My state visit last year, as you mentioned, Mr. President, and the ongoing meetings that we have held and that we will continue to have in the immediate future have been especially important to our bilateral relationship so as to generate confidence -- the confidence that we have today. We know today that we need to continue to be personally involved so as to ensure that the objectives that we trace are reached, such as those dealt with today. And we have broached the following subjects today.

First, internationally, at the international level, we have reiterated that Mexico and the United States are authentic, strategic partners, as can be seen by our joint work on the global and regional agendas. We have achieved substantive progress, as mentioned by President Obama, in matters such as climate change during the Conference of the Parties 16. And now we have made efforts to make the agreements reached in Cancun operational and as well as to adopt the next steps for the Conference of the Parties 17 in Durban.

Both countries will also play an important role within the G20, a mechanism that Mexico will be presiding over next year and in which we have reached important agreements for stability and recovery of the international economy. And in this context I would like to congratulate President Obama for the visit that he will be making to Brazil, Chile and El Salvador in a few weeks' time. Greater dialogue among the United States and Latin American nations will always be beneficial to the hemisphere, and beneficial not just for Latin American countries but also for the United States.

The specific case of Central America, in addition here we've agreed to continue to work with the U.S. government so as to achieve more determined cooperation in support of regional efforts to strengthen the rule of law and the fight transnational organized crime.

Secondly, in terms of the border, both President Obama and I agree that we must turn this area into the land of opportunities and not of conflict. Last year we adopted a declaration on the administration of a 21st century border, which we want both for the United States and Mexico. And since then, the bilateral executive committee entrusted with that implementation has agreed to a plan of action in addition to issuing a joint declaration to prevent border violence, so as to enable us to avoid tragic events such as those that we've seen on both sides of the border.

Thirdly, in terms of immigration, President Obama has always recognized, invariably recognized the contributions of immigrants to the economy and society of the United States, and I recognize and value his clear and determined support for the adoption of a comprehensive migratory reform in this country, as well as his firm commitment to the human and civil rights of communities, regardless of their point of origin. I've expressed to him my concern for the proliferation of local initiatives that are against the interests or the rights of immigrant communities.

Fourth, in terms of competitiveness, Mexico has a regional perspective. The United States and Mexico can and must make the most of the comparative advantages that make us unique as a region and that would enable us to convert, to turn North America in its entirety into the most competitive region of the world. I am convinced that together we can achieve this.

The North America Free Trade Agreement was a great step forward for the commercial trade integration of the region. It generated hundreds of thousands, even millions, of jobs in the United States and in Mexico. And we are ready to deepen and to make the most of this relationship.

We must work efficiently to take advantage of the relative abundance of capital in the United States with the labor manpower available in Mexico through productive actions, investments in our countries, as well as the access that is secure, orderly and legal of national workers from Mexico in the U.S. market.

Our governments, something that is very important to us, have today reached an agreement, an agreement to solve our differences with respect to cross-border cargo trucking that had existed for many years. As I said, this has existed for a long time despite the fact that we had -- that the integrated system for transportation existed and benefited both countries. It was strengthening our competitiveness and it generated jobs and it existed since 1994 when we agreed on the NAFTA.

In this sense, Mexico will be suspended -- will be phasing out reprisals after non-compliance of the free trade agreement of North America by the United States and will be ending -- and as a result of this, will be furthering liberalization of cargo transportation. The objective of my government has always been to reach a solution that's mutually acceptable in this field.

And fifth, in the chapter of security, both governments have taken on our positions as co-responsible parties in the fight against transnational organized crime. This is a paradigm change in our relationship. And today we have reached increased levels of exchange of information that are unheard of in the past. I would like to thank President Obama for the clarity with which he speaks of the effects that the consumption of drugs has on his country, as well as the illegal traffic of weapons and of monies into Mexican territory. I know that together we can achieve ever greater results.

Last year was the year where we had the greatest number of achievements in the capture of the number of criminals -- unprecedented number of criminals were caught, and this is the result of the increase of the institutional capacity of our agencies as well as international cooperation in terms of information and intelligence.

I also truly value the clear effort of the United States through transfer of equipment and training programs to our

efforts -- added to our efforts of institution -- institutional efforts. And this I am sure will further our efforts tremendously. And I thank you for your support there, Mr. President. And I also am grateful for the clarity with which President Obama has recognized the great sacrifices that the Mexican society has had to make in view of organized crime and our fight of drug trafficking.

In the fight for the security of Mexico, thousands of military officers and members of the police force have died in Mexico. They fall in the line of duty. And to these deaths we add the death of Agent Jaime Zapata from the Immigration and Customs Enforcement Agency of the United States. And I would like to add my deepest condolences to his relatives, to the people and government of United States in view of his death.

I would like to tell you that the suspected perpetrator of his murder and his gang has been arrested and we hope to bring them to justice. His death must urge us to continue to work together so as to ensure a prosperous and peaceful future for our region.

Ladies and gentlemen, today I'd like to say that I thank the hospitality of President Obama, and I would reiterate my trust, my confidence in the government and institutions of this country. This country is a good friend to Mexico, as is President Obama. This opportunity represents for me a chance to strongly renew our efforts and to redouble our efforts to accomplish the security that our peoples deserve.

At the same time, I would like to congratulate President Obama for the leadership that he has shown in the problem of concern to all of us in North Africa, heading up the responsible efforts of the people and government of the United States to quickly find solutions to this problem.

Mr. President, once again, thank you ever so much for your hospitality, the friendship that you have always shown to Mexico, the responsibility that your government, your administration has unprecedentedly taken on in the subjects, the issues that are of common interest to us. Our bilateral relationship, my friends, does not only have a huge impact on the lives of Mexicans and Americans, but today it's taken on with increasing strength and clarity and coordination by both of our governments.

Once again, thank you for your personal commitment, the cooperation, and co-responsibility of your government. We will continue to work together and harder to achieve the prosperity of both the Mexican and U.S. peoples. Thank you very much.

PRESIDENT OBAMA: I think we're going to take one question each. Ben Feller, AP.

Q Thank you very much, Mr. President. I have a question for both Presidents -- and in your case, sir, I suppose it's a classic two-parter. (Laughter.)

PRESIDENT OBAMA: With a follow-up? So making it a three-parter? (Laughter.)

Q Thank you, sir. On Libya, I wanted to follow up on your comments. Colonel Qaddafi is vowing to fight to the end, and in the meantime, the people of his country are dying. Now, I know that you've admonished the press corps about impatience and I know that the international community and the United States have taken several steps, and you've named many of those today. But I'm wondering while this is happening, if you fear this is headed for a bloody stalemate. And more specifically, is a no-fly zone something that you're actively considering? And can you talk about what you see is your broader doctrine for military intervention in a crisis like this?

The other topic is something that is quite different but does matter to millions of Americans. The National Football League is on the brink of a complete shutdown as of tonight over a labor dispute. Obviously that's an economic issue for cities but also something that a lot of people just care about. And I'm wondering if it's something that you'd be willing to personally intervene on. And if not, why not?

President Calderón, sir, I was wondering your thoughts on an issue that's come up about potentially arming U.S. agents in Mexico. It's come up here in the U.S. Attorney General Holder has raised it as at least something that should be considered. I'm wondering if you will consider it, and if that came up with President Obama.

Thank you both.

PRESIDENT OBAMA: All right. Let me deal with football first. (Laughter.) You've got owners, most of whom are worth close to a billion dollars. You got players who are making millions of dollars. My working assumption at a time when people are having to cut back, compromise, and worry about making the mortgage and paying for their kids' college education is, is that the two parties should be able to work it out without the President of the United States intervening.

I'm a big football fan, but I also think that for an industry that's making \$9 billion a year in revenue, they can figure out how to divide it up in a sensible way, and be true to their fans who are the ones who obviously allow for all the money that they're making. So my expectation and hope is, is that they will resolve it without me intervening, because it turns out I've got a lot of other stuff to do. (Laughter.)

With respect to Libya, I think you asked about do I have a doctrine. My approach throughout the convulsions that have swept through the Middle East is, number one, no violence against citizens; number two, that we stand for

freedom and democracy. And in the situation in Libya, what you've seen is, number one, violence against citizens, and the active urging of violence against unarmed citizens by Qaddafi; and number two, you have seen with great clarity that he has lost legitimacy with his people.

And so let me just be very unambiguous about this. Colonel Qaddafi needs to step down from power and leave. That is good for his country. That is good for his people. It's the right thing to do.

Those around him have to understand that violence that they perpetrate against innocent civilians will be monitored and they will be held accountable for it. And so to the extent that they are making calculations in their own minds about which way history is moving, they should know history is moving against Colonel Qaddafi, and that their support for him and their willingness to carry out orders that are direct violence against citizens is something that ultimately they will be held accountable for.

With respect to our willingness to engage militarily, what I've instructed the Department of Defense as well as our State Department and all those who are involved in international affairs to examine is a full range of options. I don't want us hamstrung. I want us to be making our decisions based on what's going to be best for the Libyan people, in consultation with the international community.

And we are doing that not just here in the United States within our own agencies, but we're also doing it in consultation with NATO. We have already engineered the most rapid and forceful set of sanctions that have ever been applied internationally. We started unilaterally freezing \$30 billion worth of assets, imposing severe sanctions against those in the Libyan government who've been carrying out some of these crimes. And as a consequence of that leadership, what we've seen is I think broad-based mobilization around the international community.

You are right that there is a danger of a stalemate that over time could be bloody, and that is something that we are obviously considering. So what I want to make sure of is that the United States has full capacity to act potentially rapidly if the situation deteriorated in such a way that you had a humanitarian crisis on our hands, or a situation in which civilians were -- defenseless civilians were finding themselves trapped and in great danger.

I think it's very important for us to do this in consultation, though, with the international community. One of the extraordinary successes of Egypt was the full ownership that the Egyptian people felt for that transformation. That has served the Egyptian people well. It serves U.S. interests well. We did not see anti-American sentiment arising out of that movement in Egypt precisely because they felt that we hadn't tried to engineer or impose a particular outcome, but rather they owned it.

The same is happening in Tunisia. And I think that the region we'll be watching carefully to make sure we're on the right side of history but also that we are doing so as a member of the world community, and being willing to act on behalf of these values but doing so in a way that takes all the various equities into account.

So just to put sort of the final point on it, we are looking at every option that's out there. In addition to the non-military actions that we've taken, I want to make sure that those full range of options are available to me. Some of them may end up being humanitarian. I mean, the biggest priority that we have right now is you've got tens of thousands of people -- tens of thousands of people who are gathered at a border and we've got to make sure that they can get home.

And that's why we -- we're using some of our military aircrafts in addition to civilian aircrafts to help on that front. There may be situations in which Qaddafi is hunkered down in his compound but the economy or food distribution systems in Tripoli, for example, start deteriorating, and we're going to have to figure out how do we potentially get food in there.

So there are a whole range of options, military and non-military, that we're examining and we'll be making these decisions based on what's best for the Libyan people and how can we make sure that we're minimizing the harm to innocent civilians during this process. Throughout all this, we will continue to send the clear message that it's time for Qaddafi to go.

Q And a no-fly zone is one of those options still under consideration?

PRESIDENT OBAMA: That is one of the options that we would be looking at.

PRESIDENT CALDERÓN: (As translated.) First, in terms of Libya, I recognize and applaud the efforts undertaken by President Obama, as I said previously, to seek a solution in line with international law for this situation. For Mexico it's absolutely clear that we cannot -- it's not possible that civilians be massacred and not go punished [sic], using weapons that are for the exclusive use of war. We must do everything that we can to avoid or stop that massacre.

Mexico indeed has presented a resolution within the framework of the Human Rights Commission of the United Nations. And in this Libya has been sanctioned by the Commission. And we are of course taking part, insofar as we are able to, in the search for a solution to this problem.

I believe that today it is -- problem to re-value the principles and the values of human rights anywhere in the world -- the principles and values that we recognize and value. We have them in North American society and people, in

terms of that we condemn any act of violence against people where people are risking their lives, in terms of the use of weapons.

We condemn any act of violence against these people, and we believe that people must have the best conditions to guarantee their work, including their personal security. And in this effort I know that we have the support of different agencies of the government of the United States who have contributed enormously to the solution of the problems that we are facing together under the principle of shared responsibility that we are consolidating.

I must nonetheless clarify that there are very important legal restrictions in this matter in Mexico, as is probably the case in other countries, and most likely the United States, with respect to the actions of foreign agents in Mexican land. The law does not allow agents of the United States or of any other country to take part in tasks involving justice enforcement in our territory. As a result, they cannot carry weapons or undertake operational tasks. Their functions, in line with our treaties, are limited to the exchange of information, and technical assistance to support Mexican authorities in these tasks. So there's an important legal restriction that exists.

But it's very clear for me, as well, that we must find the way of enhancing the level of protection of any and all agents who are acting within the framework of the law against crime. And of course, we are deeply analyzing alternatives for this, and in dialogue with the Mexican Congress who is the party that has the final word, the final say on this matter.

And finally on the issue of football, I'm not an expert -- my wife is, though. And I will ask her about it. I'm sure that she's very concerned about the situation. But allow me to say that football is very important for many Mexicans.

(In English.) With the exception of Barney, you can count on us. (Laughter.)

PRESIDENT OBAMA: I will say that at the state dinner, the First Lady of Mexico seemed quite excited to see Mark Sanchez there. I don't know if that was of concern to you. (Laughter.)

PRESIDENT CALDERÓN: (As translated.) You've already flipped the coin in a Jets game -- Mrs. Zavala did.

Q Taking advantage of the moment and continuing the subject matter, I'm not going to ask many questions, but I will be very concrete. First, directly for President Obama, the Second Amendment of the United States Constitution allows American citizens to carry weapons and this principle is defended. However, President Calderón has said that this law in Congress -- this could actually go against U.S. agents, and this has happened. So, President Obama, in Mexico we have the veto, the power of veto. I don't know how far you have the ability to veto that law that has been approved. And if you have that responsibility, why don't you do so, sir? How long are we going to allow Mexicans to be murdered -- and not just Mexicans, but now Americans, as well?

Now, with respect to the Secretary of Homeland Security Janet Napolitano has sent a bill or spoken to Congress with respect to the possibility of allowing U.S. agents to bear arms in our country -- President Calderón has already answered this to a certain extent, but he's also said that he will be searching for mechanisms. What types of mechanisms can be found so as to keep them safe? And the people who murdered Zapata -- well, in Mexican terms -- who was the alleged murderer of Zapata, the extradition of this man, of this alleged perpetrator has been requested. Madam Napolitano has mentioned this. President Calderón, how far are you going to go in those efforts? And there you would have my questions.

PRESIDENT OBAMA: Well, the Second Amendment in this country is part of our Constitution and the President of the United States is bound by our Constitution. So I believe in the Second Amendment. It does provide for Americans the right to bear arms for their protection, for their safety, for hunting, for a wide range of uses. That does not mean that we cannot constrain gunrunners from shipping guns into Mexico. And so we believe that we can shape an enforcement strategy that slows the flow of guns into Mexico, while at the same time preserving our Constitution.

You asked whether I have veto power over a particular bill. I think that the challenge that we have right now is not a particular bill, but rather that we are trying to work our way through more effective enforcement mechanisms to prevent straw purchasers from buying caches of weapons, transporting them across the border.

We've made progress on that front, given the authority and administrative power that we already possess. We have seen a significant increase in the number of weapons that have been confiscated. We have put more and more people behind bars for the transfer of weapons across the border into Mexico. We recognize that it's not enough and that we've got to do more.

Part of that job is to enforce the laws that are already on the books more effectively. Part of it may be to provide additional tools to law enforcement so that we can prevent the shipment of these weapons across the border.

But I do want to emphasize -- and I emphasized this privately with President Calderón -- we are very mindful that the battle President Calderón is fighting inside of Mexico is not just his battle; it's also ours. We have to take responsibility just as he's taking responsibility. And that's true with respect to guns flowing from north to south; it's true about cash flowing north to south. And so we've stepped up our enforcement and monitoring of bulk cash transfers across the borders that oftentimes finance these cartels.



So we're putting more and more resources into this. One of the things that I think that President Calderón and I have discussed is how we can strengthen border security on both sides, so that drugs flowing north or guns and cash flowing south, that we are able at all these points to intervene, interdict in a way that doesn't, on the other hand, slow the commerce and trade that is so important between our two countries.

It's a challenging task. We have a big border. We have a lot of people going back and forth. It's very important economically. But it is something that we have to continue to work on.

And I just want to say to all the people in the Mexican press that I have nothing but admiration for President Calderón and his willingness to take this on. The easy thing to do would be for him to ignore the corrosive, corrupting influence of these drug cartels within Mexico. That would be the easy thing to do. He's taking the hard path. And he's shown great courage and great risk in doing so.

And the United States will support him in any ways that we can in order to help him achieve his goals, because his goals are our goals, as well. And they should be the goals of the Mexican people -- because the notion that you would want these drug cartels to become more and more powerful and have greater and greater influence in the political life and the economic life and the cultural life of your country I think is something that nobody would want.

With respect to arming our agents, I think President Calderón was very clear. There are laws in place in Mexico that say that our agents should not be armed. The relationship that we have is, as President Calderón, described it: When it comes to our partnership, our cooperation in battling the drug cartels, our job is to help with information, it's to help with equipment, it's to help in coordination. We are in an advisory capacity; we do not carry out law enforcement activities inside of Mexico.

What we can do is to make sure that our cooperation is strengthened and deepened and becomes more effective over time. And we're constantly refining how we do that in a way that is respectful of Mexico's sovereignty. And obviously I'm concerned about our own agents who are down there. And so I assure you that we will be examining all our procedures and protocols in terms of how our agents travel throughout Mexico. And we'll be working in close contact with Mexican law enforcement who I'm sure will have important advice in terms of how we operate in that region.

But this cooperation has made great progress. We expect it to continue to make more progress in the future.

PRESIDENT CALDERÓN: (As translated.) I'd like to thank President Obama for this wonderful support in terms of weapons. Others have made similar efforts before his administration in terms of deterring the flow of weapons to Mexico, but we know that what has to do with internal homeland security and the Attorney General are making important efforts and we know that even more weapons traffickers, gunrunners, have been caught than ever before.

There's a great deal that has to be improved in terms of how to share information, how to trace the weapons. And I also recognize, as I said, the efforts, knowing the large restrictions that President Obama and his administration have at a political level. They're making great efforts internally so that through administrative measures we can broach this matter.

One of the things that I suggested during our conversation -- and I think we still have to look at this very carefully -- is if we can find a means of sealing ports of entry along the border. As the President said and as I said, through the use of non-intrusive mechanisms for detection, we could assuredly have the safe and secure border that both nations want, that both peoples want. We all want to have a safe border. I believe it's possible, although it will require huge technological and financial resources to achieve it. But I think it's a way of ensuring security without affecting the Second Amendment rights of U.S. citizens, and at the same time stop the flow of drugs northbound, monies and guns southbound.

I would insist upon the legal restrictions that exist in Mexico as in other countries with respect to intervention and the bearing of arms by U.S. agents. But on this subject, I'll have to speak to members of Congress, particularly the Senate, to explore different alternatives. And I think we have to look at all alternatives that are enabled to us by the Constitution and the law, mechanisms of protection -- special mechanisms of protection, clear delineation of the areas where we can collaborate, for instance.

The criminals themselves, they tell us that they didn't know that they were attacking U.S. agents in their attack, so it's not that that's what they wanted to do. But I think at any rate this is still a very important sign -- a warning sign to all of us where we have to be -- indicating that we have to be very careful about how we care for all of our agents -- not just Mexican, American -- all agents. We have to have a specific policy that's much more daring in this sense.

And I think that here, not just in terms of weapons, guns, we have to think in a much more open manner and seek much more creative solutions. It seems to me that we are experiencing extraordinary circumstances that call for extraordinary actions by our governments.

Now, with respect to the extradition of this criminal, it's something that we hadn't really discussed. I don't know if President Obama wanted to discuss this. We still have not finished our meetings yet. Although we have to review what the law stipulates in terms of the extradition for each case of it, I'm, in truth, very convinced that these cases have to be brought to trial. There is the political will, full political will, that this individual be brought to justice with the full weight of the law, whether that be in the United States or in Mexico, if the law allows it. In terms of a request for

extradition, I'd have to reserve my opinion in this sense because it will depend on what the law stipulates in this sense. Of course there is a political will to cooperate in this matter as well as on many others.

PRESIDENT OBAMA: I didn't comment on the extradition issue. Let me just emphasize [\*\*\*that] we ~~have made a request for extradition~~ [\*\*\*intend to seek the extradition of those involved]. I think beyond that it's probably not appropriate to comment. Okay? But we expect the full weight of the law to be brought against this perpetrator.

Thank you very much, everybody.

END

2:03 P.M. EST

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## A Year After SB 1070, the Deportation Pipeline Still Begins in Washington



An undocumented family sits in the living room of their home in Tucson, Arizona. They are anxious over the passage of SB 1070. Photo: Getty Images/John Moore

by **Seth Freed Wessler**

Monday, April 25 2011, 10:52 AM EST

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One year ago, late on the Friday night in April when Arizona's governor signed SB 1070 into law, I found myself looking north at that state. I'd traveled to see some friends on the southern Mexican state of Oaxaca and was there while the infamous bill became law. Almost every conversation I had included at least a passing comment about SB 1070: a sense of disgust, confusion or fear. Sitting in plastic chairs at a food stand on the edge of the city's colonial center, one friend, a young Oaxacan political nerd and student, said, "It's amazing that they despise us so much." He pointed at the aproned women laying strips of chorizo on the cooking fire and to the dozen others lined up to eat there and said, "From here, we think we're talking about normal people who travel there, and then maybe travel back. In Arizona, they look like monsters."

North of the border, all across the United States, -citizens have just survived a year during which their status as "normal people" has been aggressively challenged. On April 23, 2010, when Gov. Jan Brewer signed SB 1070 into law, it seemed that the situation could get no worse: a state had passed a bill that facilitated racial profiling while criminalizing the very existence of a whole population of people. In the following months, other states—at least 24 of them—began to consider similar laws. It appeared that a checkerboard of anti-immigrant laws might be passed, one legislature at a time, until they consumed the country.

But for all the attention Brewer's law and its spawn have drawn, and despite all of its toxic implications, the SB 1070 wave of the past 12 months isn't what's made the day-to-day lives of non-citizens in places like Arizona so unstable lately. Indeed, before SB 1070 took effect, a U.S. District Court judge blocked most of the law. Two weeks ago, a 9th U.S. Circuit Court of Appeals upheld that injunction. And most of the copycat bills in other states have failed to pass. (See map below.)

Rather, the perils immigrants face today are mostly the result of an increasingly aggressive approach to immigration enforcement pursued primarily by the federal government. Contrary to the claims of anti-immigrant state-level politicians such as Brewer, the Obama administration has led an unprecedented expansion of mass deportation and racial profiling, lethal border enforcement and opaque detention centers. What's becoming clear is that the president, his government and the bulk of Congress are all interested primarily in detaining and deporting massive numbers of people—and not just instrumentally, as a means of looking tough enough on immigrants to garner support for broader reform, but also in principal. The federal government's demonstrable commitment today is terrorizing immigrant communities.

### The Deadly Divide

Just a few hundred dusty yards south of the border check point into Nogales, Ariz., close to 100 people packed 10 to a side at picnic tables in a blocky concrete and corrugated metal structure. It was an Arizona morning in February that was so cold the cactus had started to freeze and the men, women and some children, small ones who grasped tightly to their mother's fingers, had come there for a hot meal at the Kino Border Project *comedor*, a Jesuit-run respite for recently deported people. They'd all been deported days or hours before, some at 4 a.m. that morning. Many had spent months in detention centers before their eventual deportation and others were picked up by border patrol officers while attempting the journey north through the desert. Before filling their stomachs, a priest led those gathered there in prayer. Tired and hungry, the space was quiet as they ate.

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When the meal was over, most everyone walked back to the street, prepared to make another difficult trip to the cities and towns they'd come from. For some, this meant heading back into Mexico and for others it was a return north, over the border, into the United States where their lives remain.

Santiago Urbina was one of the men who had not made it north on this attempt. The 22-year-old sat alone at a table after the others had filed out, his face covered in creeping scabs and long red scratches, like a map of his horrific journey from southern Mexico near Oaxaca to the northern border.

At midnight, three nights earlier, in a clearing among the cactus and shrubs, two men carrying *cuernos de chivo*, which translates to "goat horn" but means Ak-47, chased him down, beat him and left him for dead, after they'd taken the \$40 in his pocket. Border Patrol found him, carried him into their wagon and detained him for the night, before throwing him back to Mexico in the morning. A nun had just wrapped Urbina's arm in bandages and given him a sling.

Urbina had come north to find work picking vegetables in the Arizona fields, so that he could send money to his wife and baby. He says he will not try to cross again, feeling lucky to still be alive this time.

Risks grow daily for hundreds of thousands of people like Urbina—determined, desperate fathers and mothers who are willing to endure the hard life of migrant labor in order to feed their families on the low-wage jobs our economy has created for them. Our creaking, restrictive immigration system leaves them with no route to those jobs but to cross the desert on foot; there they meet armies of people, both official and illicit, who threaten their lives as much as the desert heat.

Customs and Border Patrol officers make up the largest uniformed federal law enforcement agency in the country. Last year, in addition to providing hundreds of millions of dollars in added funding for the agency, the Obama administration sent 1,200 National Guard troops to the border. In Urbina's case, Border Patrol found him and brought him out of the desert, but it was the militarized border buildup that pushed him further into the dangerous terrain in the first place.

Just down the road from the Nogales soup kitchen is a parking lot that's been transformed into another gathering site for deportees. There, No More Deaths, an organization run by young American volunteers, provides basic medical care for migrants who have spent days walking through the desert and collects information on their treatment by Border Patrol. As I arrived at the gates leading into the lot, two young men and two young women stood together chatting in English. I assumed they were all volunteers but soon found out that one of them had been deported just a couple weeks earlier. The man, who asked his name not be used, was at work at his Phoenix tattoo parlor when a group of deputies for Maricopa County Sheriff Joe Arpaio rushed through the doors and began arresting the men inside.

Dressed in baggy pants and a hoodie, the tattoo artist has no childhood memories of Mexico. He'd come to Phoenix when he was 2 years old. His 1-year-old daughter is now an impossible four hour drive north.

The federal government's culpability for this man's deportation—and the deportations of almost 400,000 people in fiscal year 2010, which is a record—gets obscured by the glam notoriety of Sheriff Joe Arpaio and Arizona's anti-immigrant lawmakers. And it was Arpaio's deputies who, the man says, barged into the tattoo parlor, guns blazing. But he exists with the feds' support; until recently, the federal government authorized Arpaio's antics by deputizing his officers as immigration officers. The deputizing program, called 287(g), makes local cops into immigration agents. Arpaio's clear abuses of that power have forced Immigration and Customs Enforcement to suspend partly his authorization under the program, but he continues to act as if it's in place. And ICE continues, happily, to deport the people he rounds up.

It's a similar situation in Georgia, the first and only state to have actually **passed an SB 1070 copycat bill** through both legislative houses; the bill currently awaits Gov. Nathan Deal's signature. Four Georgia counties and the state police have signed 287(g) agreements and those deputized by with immigration enforcement powers have engaged in unchecked racial profiling, according to ACLU of Georgia. This has been possible in Georgia because the federal government has authorized it. As in Arizona, the courts will likely block the most aggressive parts of Georgia's own *show me your papers* law, but the federal programs that preceded and will live beyond these laws do the trick on their own.

#### 'They're Leaving in Droves'

All of this is not to suggest, however, that SB 1070 has done no harm. It has done plenty. And so will the law in Georgia, even if it is partially blocked by the courts, too. The impact of these bills, even if they never go into effect, is that they send waves of fear and confusion into immigrant communities, indeed into whole states. In the period since SB 1070 passed, uncounted numbers of immigrants have fled their homes in Arizona. Social service providers and community organizers there told me that, since the bills passed, families have just disappeared—packed their bags and left the state. A worker at a Head Start in Phoenix said that numerous children of undocumented parents have been left with documented family members because undocumented parents felt they had to flee the state or risk deportation. And the provisions in the law that were not blocked by the court, including one that makes it a crime to harbor or transport undocumented immigrants, put everyone at risk.

There are now 12 states, in addition to Georgia, where SB 1070-like bills are still being considered. Versions of the law have died everywhere else they've been introduced. While the bills are unlikely to pass in most of these places—eyes are still on Alabama, South Carolina and few others hot states—their introduction in the first place and serious debate about their passage function as a sort of threat, a tool of intimidation that can be nearly as powerful of a tool for terrorizing immigrant communities as actually passing bills.

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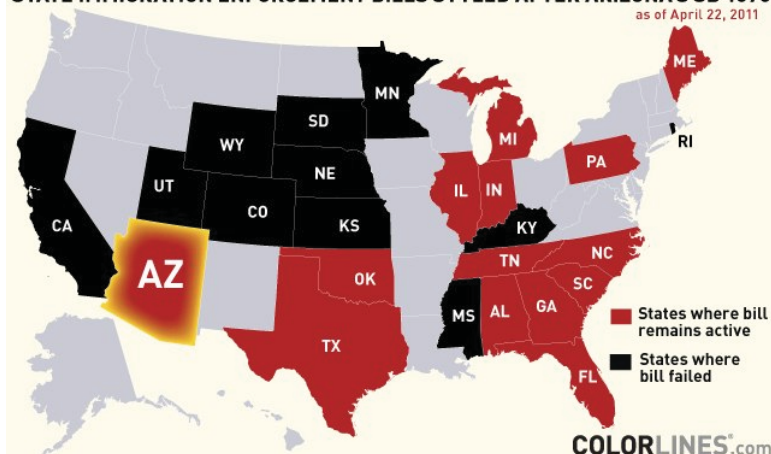
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by Seth Freed Wessler on March 31 2011  
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## STATE IMMIGRATION ENFORCEMENT BILLS STYLED AFTER ARIZONA'S SB 1070

as of April 22, 2011



The core supporters of SB 1070 applaud this. Russell Pearce, the right-wing Arizona state senate president, said joyously to the Arizona Daily Star, "They're leaving in caravans"

"I've talked to a U-Haul dealer," Pearce continued. "He said business has never been better."

Meanwhile, the Obama administration's deportation pipeline keeps pumping. President Obama has refused pleas that he halt deportations of the young people who would gain a path to citizenship if Congress passes the DREAM Act, which the administration vocally supports. If the president were to change his posture, the young tattoo artist I met in the No More Deaths parking lot would likely have remained in his home. Now, he must figure out a life in a place he left as a toddler.

The administration has also lifted a moratorium on the deportation of Haitians, which it put into place following the country's earthquake in 2010. A recently deported man died of Cholera while locked up in the Haitian prison that deportees are held in when they arrive there.

In a county jail in northern Florida, a petite 21-year-old women whom I'll call Natalia sat at a metal table in the center of her cell block, which holds a few dozen detained women. Natalia told me that she was born in the Bahamas, but to Haitian parents. Because of Haitian and Bahamian laws, she is a citizen of Haiti. She came to the United States, she says, at 2 days old. Natalia, whose girlish voice is accented by her southern upbringing, pushed off tears and told me that she had to leave her 1-year-old baby with her mother near Miami. She and her boyfriend, the baby's father, were both arrested after stealing clothes from a mall. Her appointed public defender, a private attorney with a state contract, told her to take a plea to get a lower sentence. The lawyer failed to tell Natalia that the plea would result in detention and likely deportation.

When I met her, she awaited deportation to Haiti—a place she has never been and in which she has no remaining family. She speaks no Creole. If she's deported, she does not expect to see her baby again. It's a remarkable penalty for shoplifting. In the room with her were at least two other women who similarly feared that they'd be separated from their children.

Natalia's passage from the criminal justice system to deportation is an increasingly common route. By 2013, the Department of Homeland Security hopes to have activated a program to facilitate this process in every jail in the country. It's already operating 1,210 jurisdictions in 41 states. The program, misleadingly called Secure Communities, sends print data to Immigration and Customs Enforcement on anyone booked into any participating jail. While ICE claims it is meant to target people convicted of serious crimes, only a relatively small number of those deported fit into that category. The majority are convicted of a low-level violation like shoplifting, or of no crime at all.

For the last year, the country's stare has focused on Arizona as it has vied for most fantastically anti-immigrant state in the country. This month, that designation has shifted to Georgia, and the fight is on to ensure that it's the last place where this show unfolds. But whether or not the SB 1070 wave has finally crested, little will change unless immigration policy changes at the federal level, where the ultimate the power lies.

At the Nogales soup kitchen, a man named Lucio talked about his home in Oaxaca, where he had not been in a decade. "I don't know what is there for me to go back to. My family is in California, my wife and my kids," he said, describing his terribly normal life in the home from which he'd been ejected. It was hardly the story of the monster he must be to deserve this.

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YaliLincroft 4 weeks ago

Hi Seth -

Thank you for sharing your heartbreaking stories of poverty and heartbreak ... The analogy I use when encountering ugly anti-immigrant rhetoric is "what if this same thing happened to your child, your family, if they over-stayed their visitor's visa in Canada or in Europe?" As an Asian-American, I view our current treatment of immigrants in the same category as the internment of Japanese Americans during WWII - a shameful episode in U.S. history!

We need more stories like yours, and leadership moving us towards immigration reform!

PS - First Focus, a Washington DC based children's advocacy organization, has developped a series of policy brief

focused on the intersection of immigration and child welfare, on the DREAM Act, and the needs of immigrant children on its website at [www.firstfocus.net](http://www.firstfocus.net).

Like Reply



**Harley** 4 weeks ago

It's so terribly sad that anyone would be treated in such a manner. Our country needs to start dealing with immigration issues from a humanitarian perspective and stop demonizing these people. Wouldn't any of us do the same thing, if it was the only way to provide for our families? I can't even imagine the anguish these people feel in being forced to leave their children or spouses behind. Obviously this is a very complicated matter, but our current approach is horrific and inhumane.

Like Reply



**Daren Garshelis** 1 month ago

FYI: If Natalia's attorney advised her to plea without telling her it could result in deportation, Natalia has a constitutional claim to re-open the case. <http://www.law.cornell.edu/sup...>

1 person liked this.

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**Californianurse** 1 month ago

Thanks for posting Seth Wessler's beautiful and thought-provoking article. Immigration Reform is so badly needed for many reasons but especially for humanitarian reasons. It is fear that drives the prejudice, but we should not fear the Latinos who only come here to work hard for their families--something any one of us would do if we were in their shoes.

1 person liked this.

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**Fernando** 4 weeks ago in reply to Californianurse

"Ellos han querido convivir con nosotros, devolvamos la sonrisa"

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