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A Demographic and Sociological Perspective on *Plyler*'s Children, 1980-2005*

Jorge Chapa**

I. INTRODUCTION

¶1 The Supreme Court's 1982 *Plyler v. Doe* decision gave school-age undocumented immigrants the right to attend public schools.¹ At that time, the number of undocumented immigrants and undocumented children was a small fraction of current estimates. Estimates presented later in this Article indicate that in 1980 the total number of undocumented immigrants was about two million. In 2005, the estimated population was greater than eleven million.² While the resident undocumented population has grown, the legal rights and privileges of undocumented immigrants have neither kept up with their population growth nor with the growth of their economic importance. Many occupations and industries are largely staffed by undocumented immigrant workers, yet few of the recent laws and policies that apply to undocumented immigrants follow the precedent set by *Plyler* of recognizing the human needs of this population and also recognizing that many undocumented immigrants are working and living in the United States on a long-term basis.

¶2 One example of a recent law that denies the human needs of undocumented immigrants is the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).³ It was passed as part of an anti-immigrant fervor that swept the country after Proposition 187 was approved by California voters in 1994.⁴ Section 505 of IIRIRA specifies that unauthorized aliens "shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount,

* This paper was originally prepared for: "The Education of All of Our Children: The 25th Anniversary of *Plyler v. Doe*," a Symposium at the Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity at the University of California, Berkeley Law School, May 7, 2007.

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¹ *Plyler v. Doe*, 457 U.S. 202, 230 (1982).

² See Table 4, *infra* notes 88-89.

³ 8 U.S.C. § 1101 *et seq.* (1996).

⁴ See *id.*

duration, and scope) without regard to whether the citizen or national is such a resident.”⁵ Because of Section 505, states wishing to give undocumented immigrants the right to pay in-state tuition at public universities have passed laws providing this right.⁶ In addition to this federal law, over one hundred municipalities have passed anti-immigrant laws, including Farmers Branch, Texas, and Carpentersville, Illinois.⁷

¶3 The goal of this Article is to provide demographic information and sociological perspectives that can help fill an apparent gap in the minds of many lawmakers and policymakers. The demographic information consists of estimates of the undocumented immigrant school-age population around the time of the *Plyler*⁸ decision and in the present day. This Article presents sociological perspectives of undocumented immigrants with the hope that they will help give future judicial decisions some of the informed and generous appreciation of the humanity of undocumented immigrants that is evident in *Plyler*.⁹ One of the sociological perspectives presented examines the racialization of undocumented immigrants. An important cause of the gap in the understanding of undocumented immigrants is that they are all falsely assumed to all be Mexican. This Article also offers a sociological perspective on guest worker programs. Part of the explanation for the assumption that undocumented immigrants are from Mexico may be that it is the only country that has had a formal guest worker arrangement with the United States, known as the Bracero Program.¹⁰ While this guest worker program ended in 1964, many aspects of our current immigration system have attributes of a de facto guest worker program. This Article explains how the role of many employers in recruiting and encouraging undocumented immigrants further supports the contention that undocumented immigrants are de facto guest workers. Finally, this Article examines the role of undocumented immigrants in the meatpacking industry to demonstrate their importance to certain industries.

II. DEMOGRAPHIC PERSPECTIVES ON UNDOCUMENTED CHILDREN

¶4 It is a myth that a large proportion of United States school children are undocumented immigrants. In 2000, undocumented children accounted for only one and one-half percent of all children enrolled in kindergarten through fifth grade and three percent of children in grades six through twelve.¹¹ In addition, less than five percent of the kindergarten through twelfth grade students had undocumented parents.¹²

⁵ *Id.* § 1623(a).

⁶ NATIONAL IMMIGRATION LAW CENTER, BASIC FACTS ABOUT IN-STATE TUITION FOR UNDOCUMENTED IMMIGRANT STUDENTS 1-3 (2006).

⁷ See CRISTINA RODRÍGUEZ, MUZAFFAR CHISHTI, & KIMBERLY NORTMAN, MIGRATION POLICY INSTITUTE, TESTING THE LIMITS: A FRAMEWORK FOR ASSESSING THE LEGALITY OF STATE AND LOCAL IMMIGRATION MEASURES 23, 30 (2007); Alex Kotlowitz, *Our Town*, N.Y. TIMES, Aug. 5, 2007, § 6 (Magazine).

⁸ *Plyler v. Doe*, 457 U.S. 202, 230 (1982).

⁹ See *id.* at 219 (stating that ineffective enforcement of immigration laws “raises the specter of a permanent caste of undocumented resident aliens, encouraged by some to remain here as a source of cheap labor, but nevertheless denied the benefits that our society makes available to citizens and legal residents.”).

¹⁰ Initiated in 1942, the Bracero Program operated for two decades as a labor program between the Mexican and U.S. governments and brought approximately five million agricultural laborers from Mexico to work temporarily in the United States. Muzaffar Chishti, *A Redesigned Immigration Selection System*, 41 CORNELL INT’L L.J. 115, 118 n.16 (2008).

¹¹ RANDY CAPPS & MICHAEL FIX, UNDOCUMENTED IMMIGRANTS: MYTHS AND REALITY 1 (2005).

¹² *Id.*

¶5

The proportion of the United States population comprised of immigrants is now approaching the historic high level of about fifteen percent, which the United States experienced as the wave of European immigrants crested around the beginning of the twentieth century.¹³ There is a major difference between the new immigration and the old. Now, most of the immigrants are Latino rather than European.¹⁴

Table 1: Racial-ethnic composition of the U.S. foreign-born population, 1970-2005

Year	Total Foreign-Born	White, not Hispanic Origin	Black	Asian and Pacific Islander	Hispanic Origin (of any race)
1970 ¹⁵	9,619,302	7,056,104 (73.4%)	253,458 (2.6%)	544,437 (5.7%)	1,802,332 (18.7%)
1980 ¹⁶	14,079,906	6,954,062 (49.4%)	815,720 (5.8%)	2,182,639 (15.5%)	4,172,851 (29.6%)
1990 ¹⁷	19,767,316	6,167,343 (31.2%)	1,455,294 (7.4%)	4,558,744 (21.7%)	7,841,650 (39.7%)
2000 ¹⁸	31,107,890	6,840,530 (22.0%)	2,099,865 (6.8%)	7,012,200 (22.5%)	14,157,815 (45.5%)
2005 ¹⁹	35,689,842	7,459,177 (20.9%)	2,997,947 (7.6%)	8,565,566 (23.5%)	16,667,156 (47.0%)

¶6

Mexico is the largest source of all immigrants in the United States and more than half of undocumented immigrants are from Mexico.²⁰ Information on the origins of the non-Latino undocumented immigrants is difficult to find. As shown in Table 2, the 2005 estimates indicate that about seventy-eight percent of undocumented immigrants are from Latin America.

¹³ JEFFREY PASSEL & D'VERA COHN, PEW RESEARCH CTR., U.S. POPULATION PROJECTIONS: 2005-2050, at 2, 13, and Figure 2 (2008), available at <http://pewhispanic.org/files/reports/85.pdf> (last visited Aug. 6, 2008).

¹⁴ See Tables 1 and 2.

¹⁵ Campbell J. Gibson & Emily Lennon, *Historical Census Statistics on the Foreign-born Population in the United States: 1850-1990* Table 8 (U.S. Bureau of the Census, Population Division Working Paper No. 29, 1999), available at <http://www.census.gov/population/www/documentation/twps0029/twps0029.html> (last visited Aug. 6, 2008).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ U.S. CENSUS BUREAU, PROFILE OF SELECTED DEMOGRAPHIC AND SOCIAL CHARACTERISTICS FOR THE FOREIGN-BORN POPULATION 1 (2000), available at <http://www.census.gov/population/cen2000/stp-159/foreignborn.pdf> (last visited Aug. 6, 2008) [hereinafter FOREIGN-BORN POPULATION].

¹⁹ Calculated from data presented in U.S. CENSUS BUREAU, SELECTED CHARACTERISTICS OF THE NATIVE AND FOREIGN-BORN POPULATIONS [hereinafter NATIVE AND FOREIGN-BORN POPULATIONS].

²⁰ KARINA FORTUNY, RANDY CAPPS & JEFFREY S. PASSEL, THE CHARACTERISTICS OF UNAUTHORIZED IMMIGRANTS IN CALIFORNIA, LOS ANGELES COUNTY, AND THE UNITED STATES 5 (2007), available at http://www.urban.org/UploadedPDF/411425_Characteristics_Immigrants.pdf (last visited Aug. 6, 2008); see also Table 2, *infra* notes 21-25.

Table 2: Undocumented Immigrants Residing in the U.S. from Mexico, Latin America, and All Countries, 1980-2005

	1980 ²¹	1990 ²²	1996 ²³	2005 ²⁴
All countries	2,057,000	3,500,000	5,000,000	11,100,000
Mexico	1,131,000	2,040,000	2,700,000	6,200,000
Other Latin American Countries listed in report²⁵	351,000	706,000	725,000	2,500,000
Total Latino Origin Countries	1,482,000	2,746,000	3,425,000	8,700,000
Latino Origin as % of Total	72.0%	78.4%	68.5%	78.4%

¶7

Table 3 presents the estimated growth of the number of undocumented residents for the states with the largest populations.

Table 3: States with the Largest Number of Undocumented Residents, 1980-2005

	1980 ²⁶	1990 ²⁷	1996 ²⁸	2004 ²⁹
California	1,024,000	1,476,000	2,000,000	2,450,000
Texas	186,000	438,000	700,000	1,380,000
New York	234,000	357,000	540,000	635,000
Florida	80,000	239,000	350,000	885,000
Illinois	135,000	194,000	290,000	405,000
Arizona	25,000	88,000	115,000	450,000
North Carolina	-	-	-	395,000
New Jersey	37,000	95,000	135,000	355,000
Georgia	-	-	-	350,000
Colorado	19,000	31,000	45,000	230,000
New Mexico	13,000	-	37,000	50,000

²¹ See Jeffrey S. Passel & Karen A. Woodrow, *Geographic Distribution of Undocumented Immigrants: Estimates of Undocumented Aliens Counted in the 1980 Census by State*, 18 INT'L MIGRATION REV. 642, 644-49, 651-54 (1984).

²² OFF. OF POL'Y AND PLAN., U.S. IMMIGR. AND NATURALIZATION SERVICE, ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION RESIDING IN THE UNITED STATES: 1990 TO 2000, Table B (2003), available at http://www.dhs.gov/xlibrary/assets/statistics/publications/III_Report_1211.pdf (last visited Aug. 6, 2008) [hereinafter ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION].

²³ U.S. IMMIGR. AND NATURALIZATION SERVICE, ILLEGAL ALIEN RESIDENT POPULATION 6 (Table 1) (1996), available at <http://www.dhs.gov/xlibrary/assets/statistics/illegal.pdf> (last visited Aug. 6, 2008) [hereinafter ILLEGAL ALIEN RESIDENT POPULATION].

²⁴ JEFFREY S. PASSEL, THE SIZE AND CHARACTERISTICS OF THE UNAUTHORIZED MIGRANT POPULATION IN THE U.S.: ESTIMATES BASED ON THE MARCH 2005 CURRENT POPULATION SURVEY 4-5 (Pew Hispanic Center 2007).

²⁵ These countries include El Salvador, Guatemala, Colombia, Honduras, Ecuador, Dominican Republic, Brazil, Haiti, and Peru.

²⁶ Passel & Woodrow, *supra* note 21.

²⁷ ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION, *supra* note 22, at 7-8 (Table A).

²⁸ ILLEGAL ALIEN RESIDENT POPULATION, *supra* note 23.

²⁹ FORTUNY, CAPPS & PASSEL, *supra* note 20, at 43.

III. RACIALIZATION OF MEXICANS, LATINOS AND UNDOCUMENTED IMMIGRANTS

¶8 Even though Mexicans comprise a little more than half of undocumented immigrants, Mexicans and undocumented immigrants are often conflated as one and the same. It is interesting that this conflation can be seen in the Texas lower court decisions that preceded the United States Supreme Court's ruling in *Plyler*:

[S]ection 21.031 of the Texas Education Code violates the equal protection clause of the Fourteenth amendment and hence is unconstitutional. Therefore, the defendants will be permanently enjoined from applying Section 21.031 of the Texas Education Code and the policy adopted by the Board of Trustees of the Tyler I.S.D. on July 21, 1977, so as to deny free public education to any children in the Tyler I.S.D. solely on the basis of their status as undocumented *Mexican* aliens.³⁰

¶9 Although the decision applied to all undocumented children, the generally well-written and sympathetic opinion assumed that all undocumented children in Tyler, Texas were Mexican. However, the history of the *Plyler* case and future decisions that revisit the same issue will be shaped and colored by the same two-way identification of Mexicans and undocumented immigrants; i.e., the common assumption that undocumented immigrants are from Mexico and that Mexican immigrants are in the United States illegally.

¶10 Moreover, the label "Mexican" is commonly applied to Latinos regardless of their national origin and descent. Only some are actually "Mexican," i.e., former or current citizens of Mexico. Latinos are racialized as (a) non-white people, (b) all of whom are from Mexico, (c) illegal aliens, (d) having few rights because of their illegality, and (e) encroaching on the United States for exploitative purposes. That is, they are commonly viewed as part of a subordinate, non-white group which, because of their presumed illegal status, has diluted claims to rights and privileges that many Anglo Americans take for granted. The fact that many Latinos are given the label "Mexican," even though some are U.S. citizens and U.S.-born children of U.S.-born parents, demonstrates that they are racialized. As shown in other research,³¹ this social construction is a major factor in determining where Latinos live, what work they can do, their privileges as citizens, and the educational opportunities available to their children. My analysis documents the racialization³² of Latinos with data from the rural Midwest

³⁰ *Doe v. Plyler*, 458 F. Supp. 569, 593 (E.D. Tex. 1978) (emphasis added).

³¹ See, e.g., ANN MILLARD & JORGE CHAPA, ET AL., *APPLE PIE AND ENCHILADAS: LATINO NEWCOMERS IN THE RURAL MIDWEST* (2004) (presenting research explaining the causes and consequences of the Latino influx into Midwestern villages and towns, particularly exploring interactions of Anglos and Latinos in daily life and their division of labor in local economies).

³² Although they do not focus on Latinos, Omi and Winant lay out an approach to race that describes the Mexican immigrant situation quite well. They define racial formation as "the process by which social, economic, and political forces determine the content and importance of racial categories, and by which they are in turn shaped by racial meanings." For them, race is the "fundamental organizing principle" of the American social order and is evident in "every identity, institution and social practice in the United States." For them and for us, race is a social and historical construct. The term racialization is used to "signify the extension of racial meaning to a previously racially unclassified relationship, social practice or group." MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S* 61-69 (1986).

and highlights the shortcomings of immigration policy that stem in part from that process. Moreover, throughout the twentieth century, United States immigration policy treated Mexicans differently than other groups. Generally, the exceptions in immigration policy were aimed at ensuring a plentiful supply of Mexican workers for agriculture and other industries—workers who could easily be sent back to Mexico when they were no longer needed.³³

IV. MEXICAN IMMIGRANTS AND DE JURE GUEST WORKER PROGRAMS IN THE UNITED STATES

¶11 One of the most important factors driving the immigration process is previous migration. The start of large-scale undocumented migration from Mexico to the United States came with the termination of the Bracero Program in 1964.³⁴ This program began during World War II as a way of permitting Mexican immigrants to work in the United States on a temporary basis.³⁵ This was a means of increasing the number of laborers who were then in very short supply. During World War II, braceros were used in agriculture and in the maintenance and repair of railroads.³⁶ The Bracero Program proved to be very popular with agriculture employers and was successively renewed until 1964.³⁷ It was then ended by Congress as part of major immigration reform because employers commonly violated provisions regarding wages, work rules, and housing conditions.³⁸

¶12 Likewise, the rapid increase of undocumented Mexican immigrants in areas in which there is no settled Mexican or Latino community has, in some cases, been tied to the hiring of documented temporary migrant workers under the H-2A labor contracting program.³⁹ Since the end of the Bracero Program, this has been the only de jure temporary foreign agricultural worker program in the United States. This program was started as the H-2 program in 1952 and changed to the H-2A program in 1986.⁴⁰ Like

³³ DANIEL J. TICHENOR, *DIVIDING LINES: THE POLITICS OF IMMIGRATION CONTROL IN AMERICA* 168-75 (2002).

³⁴ Jorge Durand, Douglas S. Massey & Rene Zenteno, *Mexican Immigration to the United States: Continuities and Changes*, 36 *LATIN AM. RES. REV.* 107, 111 (2001). Note that in Spanish, a bracero is a manual laborer.

³⁵ *Id.* at 110.

³⁶ See BARBARA A. DRISCOLL, *THE TACKS NORTH: THE RAILROAD BRACERO PROGRAM OF WORLD WAR II* ix-x (1999) (documenting railroad workers' participation in the Bracero Program).

³⁷ Durand, Massey & Zenteno, *supra* note 34, at 110-11.

³⁸ Jorge Durand, Douglas S. Massey & Fernando Charvet, *The Changing Geography of Mexican Immigration to the United States: 1910-1996*, 81 *SOC. SCI. Q.* 1, 2 (2000); ALMA M. GARCIA, *THE MEXICAN AMERICANS* 30-34 (2002).

³⁹ Wasem and Collver note the development of the H-2A program: "Since 1964, the only legal temporary foreign agricultural worker program in the United States has been the nonimmigrant visa program known as H-2/H-2A. A nonimmigrant is an alien legally in the United States for a *specific purpose* and a *temporary period of time*, such as foreign students, tourists, or diplomats. There are 70 nonimmigrant visa categories specified in the Immigration and Nationality Act (INA), and they are commonly referred to by the letter that denotes their section in the statute. The major nonimmigrant category for temporary workers is the H visa. The temporary foreign agricultural worker program was first authorized as the H-2 program in 1952 and amended as the H-2A program in 1986." RUTH ELLEN WASEM & GEOFFREY K. COLLVER, *IMMIGRATION OF AGRICULTURAL GUEST WORKERS: POLICY, TRENDS, AND LEGISLATIVE ISSUES* 2 (2003), available at <http://ncseonline.org/NLE/CRSreports/03Jun/RL30852.pdf> (last visited Aug. 6, 2008).

⁴⁰ *Id.* at 1-2.

most other temporary labor migration or guest worker programs in many different parts of the world, the H-2A temporary worker program led to permanent settlements of undocumented migrants in the United States.⁴¹

V. THE CONSEQUENCES OF THE IMMIGRATION REFORM AND CONTROL ACT AND OTHER ATTEMPTS TO SEAL THE BORDER WITH MEXICO

¶13 Efforts to decrease undocumented immigration may have prevented its further expansion, but they have not actually reduced it. For example, the Immigration Reform and Control Act of 1986 (IRCA) did not result in a decrease in undocumented immigration because the sanctions for employing undocumented immigrants were not consistently enforced.⁴² The huge increase in the number of undocumented immigrants reported in Tables 1 and 2 above strongly suggests that IIRIRA did not decrease the number of undocumented immigrants, despite its attempts to further restrict undocumented migration to the United States. The number of Border Patrol agents was increased substantially, and the increased level of surveillance at the border did result in a large increase in the death rate of border crossers.⁴³ One of the major factors behind this increased mortality is that border enforcement efforts in previously popular border crossings on California and Texas have increased the number of immigrants crossing through the Arizona border.⁴⁴ Before the increase in border surveillance, many undocumented immigrants were short-term sojourners who worked in the United States for short periods and then returned.⁴⁵ The strict border enforcement, however, ironically increased the number of Mexican and Central American immigrants staying in the United States for long periods of time.⁴⁶ The increased risk, cost, and difficulty of border crossing has turned them into long-term residents.⁴⁷

¶14 In addition to the wage differential, another important factor driving the immigration process is previous migration. Since IRCA was enacted in 1986, almost three million formerly undocumented immigrants have been given amnesty to remain in the United States, and many of them sponsored additional immigrants.⁴⁸ The way in which IRCA was formulated, implemented, and enforced (or not enforced) had a tremendous impact on increasing the size of the settled undocumented population. Note the following analysis:

⁴¹ Martin Ruhs, *Temporary Foreign Worker Programmes: Policies, Adverse Consequences, and the Need to Make Them Work* 38-44 (The Ctr. for Comparative Immigration Studies at the Univ. of Cal. at San Diego, Working Paper No. 56, June 2002), available at <http://www.ccis-ucsd.org/publications/wrkg56.pdf> (last visited Aug. 6, 2008).

⁴² Wayne A. Cornelius, *Controlling 'Unwanted' Immigration: Lessons from the United States, 1993-2004*, 31 J. OF ETHNIC & MIGRATION STUD. 775, 785-86 (2005).

⁴³ Wayne A. Cornelius, *Death at the Border: Efficacy and Unintended Consequences of U.S. Immigration Control*, 27 POL'Y POPULATION AND DEV. REV. 661, 669-76 (2001).

⁴⁴ *Id.*

⁴⁵ Cornelius, *supra* note 42, at 782; see also DOUGLAS S. MASSEY, BACKFIRE AT THE BORDER: WHY ENFORCEMENT WITHOUT LEGALIZATION CANNOT STOP ILLEGAL IMMIGRATION 6-7 (2005).

⁴⁶ Cornelius, *supra* note 42, at 782.

⁴⁷ *Id.*

⁴⁸ Susan Gonzalez Baker, *The "Amnesty" Aftermath: Current Policy Issues Stemming from the Legalization Programs of the 1986 Immigration Reform and Control Act*, 31 INT'L MIGRATION REV. 5, 6, 22-23 (1997).

The passage of IRCA inaugurated a new era of Mexico – United States migration in which the United States applied increasingly coercive sanctions and border controls in an effort to constrict established flows while offering regularization to undocumented farm workers and long-term settlers already in the country. The rising hazards of border crossing and the ongoing economic crisis in Mexico gave undocumented migrants new reasons to remain abroad and, when combined with IRCA’s legalization of 2.3 million persons, tilted Mexican immigration decisively toward permanent United States settlement. In a few short years it was transformed from a seasonal, undocumented, and regionally specific flow in which rural males predominated into an urbanized and substantially female population of permanent settlers who were increasingly dispersed throughout the United States. In the nine years from 1987 through 1995, 2.7 million Mexicans were admitted to permanent resident status, twice the number admitted over the prior twenty-two years.⁴⁹

IRCA was also a major contributor to the growth of the undocumented immigrant population as a national, rather than a regional, phenomenon.⁵⁰

VI. UNDOCUMENTED MEXICAN IMMIGRATION AS A DE FACTO GUEST WORKER PROGRAM

¶15 If an event occurs twelve million times, it is meaningless to call it an accident. Occurrences of this magnitude must be seen as part of a system. The twelve million or so undocumented immigrants have provided U.S. employers with a de facto guest worker system. In my view, U.S. employers who encourage, recruit, hire, advise, manipulate, and lobby for undocumented immigrant workers play a major role in making this system run. The system thrives in a context in which aspects of both U.S. immigration policies and economic policies work to increase the number of long-term undocumented residents in the United States.

¶16 For many years, undocumented immigrants have provided the United States with a de facto guest worker program. United States employers benefit from the ready supply of reliable workers who are willing to do onerous work for low wages.⁵¹ Also, the employers do not have to directly bear most of the costs associated with administering this “program” or the expenses involved due to the rapid increase in the number of immigrants living in the community where the employers are located.⁵² The communities to which immigrants migrate, however, do incur the costs associated with providing services to a rapidly growing, low-income, non-English speaking population.⁵³ The immigrants are motivated to participate in this de facto system because they can

⁴⁹ Jorge Durand, Douglas S. Massey & Emilio A. Parrado, *The New Era of Mexican Migration to the United States*, 86 J. AM. HIST. 518, 535 (1999).

⁵⁰ Durand, Massey & Charvet, *supra* note 38, at 9-13.

⁵¹ Wayne A. Cornelius, *The Structural Embeddedness of Demand for Mexican Immigrant Labor: New Evidence from California*, in CROSSINGS: MEXICAN IMMIGRATION IN INTERDISCIPLINARY PERSPECTIVES 125-28 (Marcelo M. Suárez-Orozco, ed., 1998).

⁵² MILLARD & CHAPA, *supra* note 31, at 204-21.

⁵³ Lourdes Gouveia & Donald Stull, *Dances with Cows: Beefpacking’s Impact on Garden City, KS, and Lexington, NE*, in ANY WAY YOU CUT IT: MEAT PROCESSING AND SMALL-TOWN AMERICA 85 (Donald D. Stull, Michael J. Broadway & David Griffith eds., 1995).

make much more money in the United States than they could in their home countries.⁵⁴ However, they also bear many of the costs and risks associated with immigration. Such risks include the actual financial cost of migrating, the risk of dying in the process, the inability to obtain drivers' licenses, and the myriad of other problems that stem from living in the United States without legal authorization.⁵⁵ Even considering the willingness of Mexican people to come here, Mexican immigrants are disposable and disrespected workers.

¶17 A unique and perverse aspect of this or any other de facto system, moreover, is that the terms and conditions of the system can be changed at any time. For example, changes in the enforcement policies under the Bush administration in 2006 (apparently to show that the Administration could indeed control the border and enforce immigration laws) resulted in an increase in the number of employers arrested for employing undocumented immigrants.⁵⁶ This is a huge increase over the twenty-five employers arrested a few years earlier, but close to insignificant compared to the "hundreds of thousands" of employers of undocumented immigrants nationwide.⁵⁷

VII. NAFTA AND MIGRATION

¶18 Increased international economic integration has contributed to the rise of Mexican immigration to the United States for several reasons. First, United States exports have undermined broad sectors of the Mexican economy, dislocated millions of workers and their dependents, and increased the motivation for emigration.⁵⁸ The sector that is most likely to be affected by the full implementation of NAFTA is agriculture.⁵⁹ NAFTA has increased migration from Mexico to the United States because the importation of government-subsidized U.S.-grown agricultural goods undermined the economic viability of many Mexican farmers.⁶⁰ Perhaps in the decades ahead, migration from Mexico may

⁵⁴ *Id.*

⁵⁵ MILLARD & CHAPA, *supra* note 31, at 204-21.

⁵⁶ Note the following quote from a recent report in the San Francisco Chronicle: "The administration's new policy intensifies an approach already in motion by U.S. Immigration and Customs Enforcement, which has stepped up criminal prosecutions of companies that conspire to employ illegal immigrants. In the first 10 months of the current fiscal year, ICE made 745 criminal arrests and 3,561 administrative arrests of employers and employees, eight times as many as in all of 2002." Tyche Hendricks, *Illegal Immigrants Choice: Work Underground or Leave*, S.F. CHRON., Aug. 27, 2007, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/08/27/MN0JRNMGF.DTL&tsp=1> (last visited Aug. 6, 2008).

⁵⁷ Cornelius, *supra* note 43, at 788.

⁵⁸ ALEJANDRO PORTES, CENTER FOR MIGRATION AND DEVELOPMENT, NAFTA AND MEXICAN IMMIGRATION 1-2 (2006), available at <http://cmd.princeton.edu/papers/NAFTA%20and%20Mexican%20Immigration.pdf> (last visited Aug. 6, 2008).

⁵⁹ Additional agricultural barriers and tariffs were lifted on January 1, 2008. As stated by the United States Department of Agriculture, "[t]he final provisions of the North American Free Trade Agreement (NAFTA) were fully implemented in 2008 With full implementation, the last remaining trade restriction on a handful of agricultural commodities such as U.S. exports to Mexico of corn, dry edible beans, nonfat dry milk and high fructose corn syrup and Mexican exports to the United States of sugar and certain horticultural products are now removed." U.S. DEPT. OF AGRIC., NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) FACT SHEET (2008) available at <http://www.fas.usda.gov/info/factsheets/NAFTA1.14.2008.pdf> (last visited Aug. 6, 2008).

⁶⁰ Louis Uchitelle, *Nafta Should Have Stopped Illegal Immigration, Right?*, N.Y. TIMES, Feb. 18, 2007, at WK4.

decrease as a consequence of economic and political reform, but the immediate question is how many more Mexicans will immigrate to the United States over the next decade.

¶19

It is generally agreed that there is a net economic benefit to the United States as a whole from undocumented Mexican migration. These migrants work very hard at generally undesirable jobs for wages that are low compared to others in the United States. At a national level, undocumented migrants pay far more in taxes than they consume in social services. In a recent review of the literature, Cornelius and Rosenblum say that immigrants to the United States are “net contributors to the federal treasury.”⁶¹ Also at the national level, despite numerous research efforts, undocumented immigrants have not been shown to have a major negative effect on the employment or earnings of U.S.-born minorities. Cornelius and Rosenblum assert that “negative wage effects in the U.S. case . . . are quite small . . . and their scope is mainly limited to recent migrants, African-Americans, and workers who lack a high school education.”⁶² Furthermore, access to government benefits, especially welfare, is not a motive for undocumented migration. Douglas S. Massey claims that it is a myth that “migrants are attracted to the United States by generous public benefits.”⁶³ He argues that:

Immigrants are less likely than natives to use public services. While 66 percent of Mexican immigrants report the withholding of Social Security taxes from their paychecks and 62 percent say that employers withhold income taxes, only 10 percent say they have ever sent a child to U.S. public schools, 7 percent indicate they have received Supplemental Security Income, and 5 percent or less report ever using food stamps, welfare, or unemployment compensation.⁶⁴

¶20

In the aggregate, minority workers have benefited from the economic contributions of undocumented immigrants.⁶⁵ While these policy decisions may have accelerated the settlement of undocumented immigrants in the United States, it is unlikely that *Plyler* would have ever been adjudicated if some undocumented immigrants and their undocumented children had not settled in Texas for the long term in the 1970s. Esteban Flores interviewed 105 parents of undocumented children attending private schools in Houston for that population. He reports that, “[m]ost of our sample of respondents were obviously here to stay”⁶⁶

⁶¹ Wayne A. Cornelius & Marc R. Rosenblum, *Immigration & Politics*, 8 ANN. REV. POL. SCI. 99, 103 (2005).

⁶² *Id.* at 104.

⁶³ Douglas S. Massey, *Five Myths about Immigration: Common Misconceptions Underlying U.S. Border-Enforcement Policy*, IMMIGR. DAILY, Dec. 7, 2005, available at <http://www.ilw.com/articles/2005,1207-massey.shtm> (last visited Aug. 6, 2008).

⁶⁴ *Id.*

⁶⁵ *Immigration: Economic Impacts: Hearing Before the S. Judiciary Comm.*, 109th Cong. 1-4 (2006) (testimony of Harry J. Holzer, Professor of Public Policy, Georgetown University).

⁶⁶ Estevan T. Flores, *Research on Undocumented Immigrants and Public Policy: A Study of the Texas School Case*, 18 INT’L MIGRATION REV. 505, 515 (1984) (emphasis added).

VIII. THE ROLE OF EMPLOYERS IN ENCOURAGING UNDOCUMENTED IMMIGRATION

¶21 Employers in the United States play a major role in sustaining high levels of undocumented Latino immigration. Employers typically perceive that Latino immigrants have the following traits: (1) they are willing to do low-pay work that is boring, dirty, or dangerous, with no prospects for upward mobility; (2) they are reliable, flexible, punctual, and will work overtime; and (3) immigrant transnational labor recruitment networks are a powerful means for “delivering eager new recruits to the employer’s doorstep with little or no effort on his part.”⁶⁷

¶22 Large-scale undocumented migration to the United States would not exist without a strong demand by employers.⁶⁸ The ubiquitous penetration of the transnational labor recruitment network drew Latino immigrants to areas where Latinos and Latino immigrants had previously been scarce.⁶⁹ Table 3 shows the growth of the undocumented immigrant population both in states that are common destinations (like California, Texas, and New York), and even more rapid growth of this population in states that previously had small numbers of undocumented immigrants. It is safe to conclude that some of the extremely high rates of growth in states with recent rapid Latino population growth like North Carolina (almost 400% increase between 1990 and 2000) and Georgia (almost 300% increase) are due in part to the migration and settlement of U.S.-born Latinos and the secondary migration of Latino immigrants who had first settled in traditional areas. While international migration was the major source of Latino population growth in the United States, secondary migration of U.S.-born Latinos to new states was also important,⁷⁰ as was growth due to births.⁷¹

IX. RURAL MEATPACKING TOWNS AS EXEMPLARS OF THE DE FACTO GUEST WORKER PROGRAM

¶23 One example of the growth of undocumented immigrant populations and the recruitment and employment practices of employers can be found in towns with new meatpacking or other agricultural processing plants. Often these plants are located in rural areas and the town residents and leaders welcome them as economic development engines that will create jobs and revive the generally lagging rural economy.⁷² Typically the town residents sour on these deals when they discover that the jobs created by these plants are unattractive to most local residents because they are difficult, dangerous, and pay low wages.⁷³ Despite these attributes, Latino immigrants are willing to move to these

⁶⁷ Wayne A. Cornelius, *The Structural Embeddedness of Demand for Mexican Immigrant Labor: New Evidence from California*, in *CROSSINGS: MEXICAN IMMIGRATION IN INTERDISCIPLINARY PERSPECTIVES* 114, 125 (Marcelo M. Suárez-Orozco, ed., 1998). One example in which the transnational recruitment network operates is richly detailed by Robert Suro. *See generally*, ROBERT SURO, *STRANGERS AMONG US: HOW LATINO IMMIGRATION IS TRANSFORMING AMERICA*, 31-55 (1998).

⁶⁸ Cornelius, *supra* note 51, at 125-28.

⁶⁹ LEIF JENSEN, *CARSEY INST., NEW IMMIGRANT SETTLEMENTS IN RURAL AMERICA: PROBLEMS, PROSPECTS, AND POLICIES* 17-21 (2006).

⁷⁰ Durand, Massey & Charvet, *supra* note 38, at 10-11.

⁷¹ PASSEL & COHN, *supra* note 13, at 15.

⁷² William Kandel and Emilio A. Parrado, *Restructuring of the US Meat Processing Industry and New Hispanic Migrant Destinations*, 31 *POPULATION & DEV. REV.* 447, 456 (2005).

⁷³ MILLARD & CHAPA, *supra* note 31, at 47-73.

towns and take these jobs.⁷⁴ While these rural towns often have experience with Latino migrant agricultural workers, the influx of Latino immigrants that come after the plant is built usually is the town's first experience with a resident Latino population that can grow to number up to half of the town's total residents.⁷⁵ Moreover, meatpacking creates unusually high population mobility. Employee turnover is very high, as workers have a hard time staying at the job for a long period of time because of injuries and dislike for the job.⁷⁶ Since plants constantly hire new workers, there is a constant stream of newcomers.⁷⁷

¶24 The educational needs of Latinos pose another challenge. Although *Plyler* guarantees the right of undocumented children to attend public schools, there is no guarantee that these children will find schools or teachers that are prepared to teach them in Spanish or to help them learn English.⁷⁸ When these new Latino workers, present in the meatpacking plants and numerous other jobs in the United States, immigrate to this country, they bring their children with them. The educational needs of these Latino children pose another challenge.

X. THE MIGRATION OF UNDOCUMENTED CHILDREN

¶25 I can offer two perspectives on the settlement process of undocumented immigrants and their children in the post-Bracero Program era. In the first part of this period, even though most undocumented immigrants were sojourners, or temporary migrants, some settled for the long term and subsequently brought their foreign-born children to live with them.⁷⁹ This settlement process brought the 10,000 or so undocumented children to the Houston area in the late 1970s.⁸⁰ These children were at the core of *Plyler*. The increased enforcement of the border in 1994 can be seen as resulting in a rapid acceleration and increase in the magnitude of a settlement process that likely would have occurred anyway. The data presented in Table 1 illustrates both of these increases.⁸¹

¶26 There are several accounts that suggest that post-1994 border crossers often come initially without their children and subsequently struggle mightily to bring their children too.⁸² One vivid example can be found in the CNN documentary, *Immigrant Nation: Divided Country*.⁸³ A story of one woman provides a compelling illustration of how migration can split families and how difficult it can be to reunite family members:

Rosa, 28 years old and a single mother[. . .] spends every waking moment working to bring her children across. Rosa first came to Georgia two years ago all alone. Last year, unable to bear the separation any

⁷⁴ Kandel and Parrado, *supra* note 72, at 456.

⁷⁵ MILLARD & CHAPA, *supra* note 31, at 1-21, 47-73, 125-48.

⁷⁶ Kandel and Parrado, *supra* note 72, at 457-60.

⁷⁷ MILLARD & CHAPA, *supra* note 31, at 1-21, 47-73, 125-48.

⁷⁸ MILLARD & CHAPA, *supra* note 31, at 149-68, 204-21.

⁷⁹ Flores, *supra* note 66.

⁸⁰ *Id.*

⁸¹ See *supra* notes 15-19.

⁸² *CNN Presents: Immigrant Nation: Divided Country* (CNN television broadcast Oct. 17, 2004), transcript available at <http://www.theamericanresistance.com/articles/art2005apr17.html> (last visited Aug. 6, 2008).

⁸³ *Id.*

longer, Rosa paid a smuggler \$5,000 to wade her children across the river at night. But they were caught at a checkpoint and immediately deported. Rosa faced a difficult decision. Rosa calculates it will take her several months to save enough to try the dangerous crossing again. Every day, [sic] she's able to work and make a few dollars is a day closer to a reunion with her children. Hers is a hard, lonely struggle.

Just last week, Rosa tried again to bring her children to the United States. Her mother and uncle drove the children more than 20 hours to the border town

Rosa's children were driven to the border by strangers and prepared to be smuggled by car. The smugglers would be paid almost \$6,000 by Rosa if they were successful, would show border agents false papers for the children. They didn't make it. Despite their fake papers, Junior and Rosita were detained. The smugglers were arrested. The children were returned to Mexico and reunited with their grandmother. Despite the setback, Rosa vows to try again.⁸⁴

The PBS documentary, *Maid in America*,⁸⁵ also covers similar ground:

Judith came to the United States with her husband in search of a better future for her four children and her elderly mother, who live in a shack in Guatemala. But when Judith gets pregnant again and can neither perform heavy manual labor nor afford childcare for new baby Everest, [she returns to Guatemala].

The film's website has an update:

After moving back to Guatemala, Judith returned to the U.S. in March 2005. Judith's daughters and family were heavily affected by the devastating rains in the Mexico/Guatemala border region a month or so ago [early October 2005]. When I saw Judith and her husband Alvaro last week, he was getting ready to go back to Guatemala to help their family rebuild.⁸⁶

These vignettes illustrate the fact that it is difficult for undocumented immigrants to subsequently bring their children. They also illustrate that many undocumented immigrants live transnational lives, with family, houses, and problems in both their home country and the United States.

⁸⁴ *Id.*

⁸⁵ MAID IN AMERICA (Impacto Films 2004), information available at <http://www.pbs.org/independentlens/maidinamerica/updates.html> (last visited Aug. 6, 2008).

⁸⁶ *Id.*

XI. *PLYLER'S CHILDREN AND THEIR U.S.-BORN BROTHERS AND SISTERS*

¶27 This Article has briefly addressed the major factors behind the growth and settlement of the undocumented immigrant population throughout the United States and the growth of the undocumented school-age population in several states.⁸⁷ Latino immigrants contribute to the growth of the school-age population in two ways. One is by giving birth to children in the United States who are American citizens and by bringing their foreign-born undocumented children to the United States. The increase in U.S.-born children of Latino immigrants may contribute to a relative diminution in the proportion of school-age children who are themselves undocumented. Table 4 shows that in 1980, 21.2% of the undocumented population was under age of 18.

Table 4: Undocumented Residents of the U.S. Under 18, 1980 and 2005

	1980 ⁸⁸	2005 ⁸⁹	Percent Increase 1980-2005
All ages	2,057,000	11,100,000	440%
Under Age 18	436,000*	1,800,000	313%
% Under Age 18	21.2%	16.2%	

(*interpolated)

Table 5: 2005 Estimates of Undocumented Residents Under Age 18 for States with the Largest Numbers⁹⁰

California	397,000
Texas	224,000
New York	103,000
Florida	143,000
Illinois	66,000
Arizona	73,000
New Jersey	58,000
Colorado	37,000
New Mexico	8,000

¶28 The data for 2005 suggests that only 16.2% of a much larger population was school-age children. There are several possible explanations that could be behind the lower proportion in 2005: (1) many undocumented immigrants are now sufficiently settled in the United States to have children born in the United States, (2) it may now be more difficult for undocumented immigrants to bring their children to the United States, (3) fertility rates may have fallen, (4) the composition of the adult population may have changed, and (5) some combination of the previous four factors. Detailed analysis by Passel shows that for families in which the head of the household is undocumented, two-thirds of the children are United States citizens and one-third are undocumented.⁹¹

⁸⁷ See Tables 4 and 5, *infra* notes 88 to 90.

⁸⁸ Passel & Woodrow, *supra* note 21, at 662 (Table 7).

⁸⁹ PASSEL, *supra* note 24.

⁹⁰ Assuming that 16.2% of undocumented residents of each state are under age 18. Calculated from FORTUNY, CAPPS & PASSEL, *supra* note 20.

⁹¹ JEFFREY S. PASSEL, PEW HISPANIC CENTER, UNAUTHORIZED MIGRANTS: NUMBERS AND

XII. CONCLUSION

¶29 In the rural Midwest, the century-long history of recruiting Mexican workers to factories and farms has been accompanied by civil rights abuses and Latino subordination, which I analyzed as part of the process of racialization, with significant consequences for United States immigration policy. The *Mexicanization* of undocumented immigration, both in terms of the growing proportion of this group who are from Mexico and in terms of the racialization of all Latino immigrants as “Mexicans,”⁹² along with a resurgent negative animus against Mexican immigrants suggests that a reconsideration of the issues resolved in *Plyler* may result in a negative outcome for undocumented children.

¶30 The sense of urgency for revisiting and rethinking that policy is increasing with the continuing growth of immigration from Latin America, the increasingly repressive practices on the United States-Mexico border, and the pressures to ensure homeland security. A future court decision or act of Congress could bar undocumented children from attending U.S. public schools. Such an action would punish children who themselves, as is commonly said, did no wrong since they were brought to this country by their parents. A restriction on the rights granted by *Plyler* would also punish the parents who were encouraged to migrate by U.S. employers, or forced to migrate as a consequence of policies such as NAFTA. We can hope that comprehensive immigration reform would result in immigration policies and practices that are consistent with the pressures and incentives created by U.S. economic policies and practices.

CHARACTERISTICS, BACKGROUND BRIEFING PREPARED FOR TASK FORCE ON IMMIGRATION AND AMERICA’S FUTURE 19 (2005).

⁹² This term is understood to refer to undocumented-Mexican-immigrants in the context of a history of prejudice and discrimination.