

Fordham International Law Journal

Volume 27, Issue 4

2003

Article 9

America's De Facto Guest Workers: Lessons from Germany's Gastarbeiter for U.S. Immigration Reform

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Abstract

Part I of this Note describes West Germany's post-war Gastarbeiter [guest worker] program from 1961 to 1972. Part II focuses on the long-term results of the Gastarbeiter program, with special emphasis on the legal status of Turkish Gastarbeiter in Germany. This assessment concludes that guest worker programs inevitably result in the permanent settlement of foreigners in the host country. If not properly anticipated and planned for, this settlement leads to social stratification and political divisiveness. Part II also presents for comparison U.S. immigration policies and their effect on Mexican immigrant workers. The section asserts that the United States over the past two decades has implemented a de facto guest worker policy, which led to many of the same adverse consequences wrought by Germany's Gastarbeiter program, including the permanent settlement and subsequent marginalization of undocumented immigrants from Mexico. Part III concludes that temporary worker programs, formal or de facto, have irreversible and adverse sociopolitical consequences for their participants and the countries that adopt these policies. Accordingly, this Note cautions against the adoption of a formal temporary worker program in the United States and argues that the permanent legalization of undocumented immigrants is the most judicious means of reversing recent trends.

AMERICA'S *DE FACTO* GUEST WORKERS: LESSONS FROM GERMANY'S *GASTARBEITER* FOR U.S. IMMIGRATION REFORM

Nicole Jacoby*

INTRODUCTION

In the summer of 2001, U.S.-Mexican talks on immigration reform reached a pinnacle.¹ In an address to a joint session of Congress in September 2001, Mexican President Vicente Fox pressed for the legalization of undocumented Mexican workers in the United States² and bilateral talks between the Mexican

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1. See Barbara Hines, *So Near Yet So Far Away: The Effect of September 11th on Mexican Immigrants in the United States*, 8 TEX. HISP. J. L. & POL'Y 39, 44 (2002) (noting that immigrant community felt renewed optimism regarding immigration reform in August 2001); see also *Keep Politics Out Of Immigration Policy*, BUS. WK., Sept. 10, 2001, at 146 [hereinafter *Keep Politics Out*] (noting that September 2001 meeting between U.S. President George W. Bush and Mexican President Vicente Fox promised to open dialogue that could lead to reform of American immigration policy); Lynn Brezosky, *Response To Terror: Amnesty Hopes Dashed By September 11*, L.A. TIMES, Dec. 30, 2001, at A10 (noting that illegal Mexican immigrants had high hopes of receiving amnesty from U.S. government in summer of 2001); Amy Borrus and Geri Smith, *Spotlight on The Border*, BUS. WK., Sept. 10, 2001, at 40-43 (reporting that current White House Administration had been laying groundwork for immigration reform prior to Mexican President Vicente Fox's September 2001 visit to United States).

2. See Hines, *supra* note 1, at 42 (noting that President Fox urged Congress to legalize Mexican workers in United States in September 2001); see also Ginger Thompson, *Fox Urges Congress to Grant Rights to Mexican Immigrants*, N.Y. TIMES, Sept. 7, 2001, at A6 (reporting on President Fox's request that Congress grant legal rights to undocumented Mexican workers); Cindy Rodriguez, *Immigrant "Normalization" Covers Many Needs*, BOSTON GLOBE, Sept. 7, 2001, at A2 (reporting that Mexican President Vicente Fox pressed U.S. President George W. Bush and Congress to resolve immigration issue by end of year); Bob Kemper & Frank James, *Fox Presses Congress On Immigration: Time to Put Aside Distrust He Says*, CHI. TRIB., Sept. 7, 2001, at 1 (reporting that President Fox sought overhaul of U.S. immigration laws in his speech before Congress); Mike Allen, *Fox, Bush Urge Route to Legalization For Immigrants*, WASH. POST, Sept. 7, 2001, at A16 (reporting that Mexican President Vicente Fox appealed to joint session of U.S. Congress to support President Bush's call for broad changes in immigration law); Karen Masterson, *Looking For New Game: Trust, Equity Top Fox Goals*, Hous. CHRON., Sept. 7, 2001, at 1 (reporting that Fox asked Congress to give dignity of legal status to illegal Mexican immigrants living and working in United States); Julia Malone, *Business, Unions Unite For Sake Of Illegal Workers*, ATL. J.-CONST., Sept. 8, 2001, at A6 (reporting that President Vicente Fox of Mexico asked Congress to legalize millions of illegal immigrants).

leader and his U.S. counterpart yielded promising results.³ U.S. President George W. Bush had agreed to a new immigration framework that would grant legal status to some Mexican workers in the United States, possibly through a temporary worker program.⁴ Immigration advocates, labor activists, and business leaders had high hopes that long-sought immigration reform might soon be at hand.⁵

The catastrophic events of September 11, coupled with a weakening U.S. economy, dulled these once high hopes,⁶ putting immigration reform proposals on the legislative backburner in favor of security bills, such as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept

3. See Hines, *supra* note 1, at 42 (noting that bilateral talks between Presidents Bush and Fox had resulted in renewed commitment to immigration reform); see also *Keep Politics Out*, *supra* note 1, at 146 (noting that September 2001 Bush-Fox meeting led to renewed hopes that two countries could reach agreement on new U.S. immigration policy); Patty Reinert, *Bush, Fox Vow to Better Treatment of Illegal Immigrants*, Hous. CHRON., Sept. 7, 2001, at 6 (reporting that President Bush and Mexican President Vicente Fox pledged to improve treatment of Mexicans working in United States while creating jobs south of border); *Senate OKs Plan for Undocumented*, L.A. TIMES, Sept. 7, 2001, at A22 (reporting that Senate voted to renew program allowing certain undocumented immigrants to apply for legal status as gesture of goodwill during Mexican President Fox's visit to United States).

4. See *Fact Sheet on Migration*, White House Press Release, Sept. 5, 2001, available at <http://www.whitehouse.gov/news/releases/2001/09/> (stating that United States was considering temporary worker program with Mexico); see also Hines, *supra* note 1, at 42 (noting that U.S. President George W. Bush had proposed a temporary guest worker program that would allow some workers to obtain permanent residence over period of time); *Keep Politics Out*, *supra* note 1, at 146 (reporting that U.S. and Mexican Presidents Bush and Fox started discussions that could lead to comprehensive immigration agreement, including guest worker program); Reinert, *supra* note 3, at 6 (reporting on President Bush's support for guest worker program that would link U.S. employers with Mexican workers).

5. See Hines, *supra* note 1, at 44 (noting that immigration advocates, labor leaders, and business leaders felt that immigration reform was imminent); see also Brezovsky, *supra* note 1, at A10 (reporting on optimism surrounding prospects for immigration reform prior to September 11 attacks); Malone, *supra* note 2, at 1 (discussing alliance between labor and business leaders on issue of immigration reform); *Keep Politics Out*, *supra* note 1, at 146 (noting that U.S. attitude toward immigration was undergoing major change).

6. See Hines *supra* note 1, at 44-45 (noting that tragedy of September 11 changed U.S. priorities and prompted calls for stricter immigration laws); *September 11, One Year Later*, 79 INTERPRETER RELEASES 1345, 1346 (Sept. 9, 2002) [hereinafter *One Year Later*] (stating that September 11 attacks permanently altered immigration debate); *Events of Sept. 11 Spur Revised Customary Procedures, Altered Legislative Landscape*, 78 INTERPRETER RELEASES 1493 (Sept. 24, 2002) [hereinafter *Events of September 11*] (noting that legislative agenda was rewritten for foreseeable future).

and Obstruct Terrorism Act ("PATRIOT Act"),⁷ that emphasized heightened enforcement of existing immigration laws.⁸ After a two-year hiatus, talk of immigration reform has resurfaced, and for good reason.⁹ The disappointing economic performance of the past two years has not altered the fundamental structure of the U.S. labor market.¹⁰ An array of industries,¹¹ such as ser-

7. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act [hereinafter PATRIOT Act], Pub. L. No. 107-56, 115 Stat. 272 (2001).

8. See Hines *supra* note 1, at 44-45 (noting that INS introduced new security measures following September 11 attacks); see also *One Year Later*, *supra* note 6, at 1345 (noting that September 11 attacks derailed immigration reform initiatives in favor of new anti-terrorism measures); *Events of September 11*, *supra* note 6, at 1493 (noting that lawmakers shifted their focus from guest worker and earned legalization programs to border build-up plans and heightened restrictions on immigration in aftermath of September 11 attacks).

9. See Joe Black, *Immigration Overhaul Urged*, HOUS. CHRON., Feb. 13, 2004, at 4 (noting that some U.S. senators found that existing immigration policies hurt homeland security efforts and were in need of immediate overhaul); see also Eunice Moscoso, *Immigration Plan Defended*, ATL. J.-CONST., Feb. 13, 2004, at A9 (noting that security concerns have driven resurgence in support for immigration reform); Jerry Gonzalez, *Dialogue Welcome on Immigrants*, ATL. J.-CONST., Jan. 26, 2004, at A9 (noting that Bush's immigration proposal has forced Americans to readdress immigration issue); Elisabeth Bumiller, *Politics At The Border*, N.Y. TIMES, Jan. 7, 2004, at A1 (discussing President Bush's renewed efforts to give legal status to millions of illegal workers); Allert Brown-Gort, *Seeking Balance In The Immigration Debate*, BOSTON GLOBE, Jan. 10, 2004, at A13 (noting that President Bush's immigration proposals brought to forefront long overdue debate); Ricardo Alonso-Zaldivar, *Bush Would Open U.S. To Guest Workers*, L.A. TIMES, Jan. 8, 2004, at A1 (noting that President Bush's 2004 initiative to overhaul U.S. immigration laws was prompted by continuing U.S. labor shortages in certain sectors).

10. See John Simons, *Even in Recession, the U.S. Economy Depends on Immigration*, FORTUNE, Nov. 26, 2001, at 92-98 (discussing importance of immigrant labor to success of U.S. economy, despite recent downturn); see also *United States: Who Goes There?*, ECONOMIST, Jan. 19, 2002, at 27-28 [hereinafter *Who Goes There*] (noting that underlying economic facts that drive migration have not changed since September 11); Milford Prewitt, *Many Borders to Cross: Immigration Reform On Rocky Road*, NATION'S RESTAURANT NEWS, July 7, 2003, at 1 (reporting that workforce shortages continue to be problem for many companies and will become more acute as U.S. economy improves); *Economic Focus/Immigrants: They Come Into America*, WALL ST. J., Feb. 13, 2002, at B13 (noting that immigration is expected to increase because of U.S. labor shortages despite recent slowdown); *Future Labor and Skill Shortages Jeopardize American Prosperity* (Employment Policy Foundation, Washington, D.C.), Oct. 23, 2001, at 1 [hereinafter *Future Labor*] (noting that United States will have shortage of thirty-five million workers by 2030 despite recent short-term weakening of economy); *Immigration Is Critical to Future Growth and Competitiveness*, (Employment Policy Foundation, Washington, D.C.), June 11, 2001, at 1 [hereinafter *Future Growth*] (noting that U.S. labor market will remain tight despite recent slowing of economic growth). But see *The Truth About Employment-Based Immigration*, (Federation For American Immigration Reform, Washington, D.C.), available at <http://www.fairus.org/Research/ResearchList.cfm?c=2> (arguing that high immigration

vices¹² and agriculture,¹³ face severe labor shortages irremediable without immigrant labor.¹⁴ Moreover, the aging of the U.S. population, combined with a declining national birthrate, promises to accelerate this trend and force policymakers to look beyond our borders for a workforce able to meet the demands of

is not necessary to maintain robust U.S. economy because U.S. workers could fill empty jobs).

11. See Cecelia Blalock, *Immigration Reform Can't Come Soon Enough For Hotel Industry*, HOTEL AND MOTEL MGMT., Sept. 3, 2001, at 10 (noting that lodging industry has had difficulties finding sufficient numbers of semiskilled and unskilled workers to meet its demands); Milford Prewitt, *Operators, Lobbyists Laud "Alien" Amnesty*, NATION'S RESTAURANT NEWS, Aug. 13, 2001, at 3, 98 (noting that many companies in food service, hospitality, retail, construction, and other industries support immigration reform as way to abate labor shortages); Stephen H. Daniels et al., *The Open Door Is Swinging Shut*, ENG'G NEWS REC., Oct. 22, 2001, at 36-39 (reporting that construction industry depends heavily on immigrant labor because no "Anglos" are available); Jay Holtzman, *Labor Strains*, BIG BUILDER, Dec. 2002, at 27, 28 (discussing current labor shortages in building sector and noting that building companies have stepped up recruiting efforts); Grace Hinchman, *Immigration Policy and the Cost of Doing Business*, FIN. EXECUTIVE, Oct. 2001, at 70 (discussing Iowa's example of hiring foreign workers to ease labor shortages, especially in healthcare field); Joel Millman, *The Great California Farmhand Debate — Growers Ask U.S. to Let In Mexican "Guest" Labor: Critics Call It Fruitless*, WALL ST. J., Feb. 12, 2001, at A17 (discussing labor shortages in farming industry in California and noting that lack of workers puts region's \$1 billion annual harvest at risk). But see *Immigration and Job Displacement* (Federation For American Immigration Reform, Washington, D.C.), available at <http://www.fairus.org/Focus.cfm?keyword=59> (noting that immigration displaces U.S. workers because immigrants are willing to work for lower wages than native workers).

12. See, e.g., Blalock, *supra* note 11, at 10 (noting that lodging industry has struggled to find sufficient numbers of semiskilled or unskilled workers to meet operational demands); see also Prewitt, *supra* note 11, at 3, 98 (noting that food services industry hires illegal immigrants out of economic necessity because no other workers are available); Hinchman, *supra* note 11, at 70 (noting that Iowa has begun recruiting foreign workers to ease worker shortages, especially in healthcare sector).

13. See Millman, *supra* note 11, at A17 (noting that California's Imperial Valley suffers from shortage in farm workers); see also Fred Alvarez, *Picking Fight Over Immigrant Farm Labor*, L.A. TIMES, May 19, 2002, at B8 (noting that California farmers depend on undocumented farm workers because legal immigrants are not available); Victor Epstein, *Farm Worker Shortage Looms*, J. OF COMMERCE., Mar. 29, 1999, at 4A (noting that some U.S. farmers had stopped planting crops out of fear that they would not have enough workers to harvest them).

14. See Blalock, *supra* note 11, at 10 (reporting that undocumented workers do not "steal" jobs from Americans because more jobs than willing workers exist in certain industries); see also Prewitt, *supra* note 11, at 3, 98 (noting that economic downturn would not alleviate worker deficiencies in many service industries because U.S. workers will not take certain jobs); Daniels, *supra* note 11, at 36-39 (reporting that construction would "shut down" without immigrant workers because no U.S. laborers are willing to take these positions); Alvarez, *supra* note 13, at B8 (discussing dependency of agricultural industry on immigrant labor).

the growing U.S. service economy.¹⁵

Among the most controversial immigration reform plans has been the White House's proposal for a guest worker program, which would grant temporary employment visas to Mexican workers.¹⁶ The idea is not novel.¹⁷ The United States and

15. See Daniel T. Griswold, *Willing Workers: Fixing the Problem of Illegal Mexican Migration to the United States* (Cato Institute, Washington, D.C.), Oct. 15, 2002, at 9 (noting that U.S. workers are becoming older and more educated and less willing to take on low-skilled jobs); see also Simons, *supra* note 10, at 92-98 (reporting that increasing life spans and declining fertility rates have made replacement migration economic necessity); Hinchman, *supra* note 11, at 70 (noting that changing composition of U.S. workforce is causing corporations, state governments, and Congress to take closer look at immigration policy); *Future Labor*, *supra* note 10, at 3 (noting that future U.S. labor shortages could be eliminated through increased immigration); *Essential Workers Help Our Economy* (American Immigration Lawyers Association, Washington, D.C.), Mar. 5, 2003, at 1 [hereinafter *Essential Workers*] (noting that United States is not producing enough new workers to compensate for retirement of Baby Boomers from workforce).

16. See *Fact Sheet on Migration*, *supra* note 4 (outlining U.S. President George W. Bush's immigration reform proposal, which calls for temporary worker program and humane approach to change).

17. Five main guest worker programs are in force in the United States presently, each targeted at different employer recruitment needs. See *Employment Categories and Required Documentation*, Bureau of Citizenship and Immigration Services, U.S. Department of Homeland Security, available at <http://uscis.gov/graphics/services/temptbenefits/ecrd.htm> (describing various U.S. temporary worker programs). The best-known U.S. guest worker visa is H-1B, which is aimed at highly educated and highly trained individuals. *Id.* The H-2 visa covers seasonal agricultural and non-agricultural workers. *Id.* The H-3 visa is reserved for international trainees. *Id.* The L-1 visa covers intra-company transferees working for multinational corporations. *Id.* The O-1 visa is aimed at individuals with extraordinary ability or achievement in the arts, sciences, education, or business. *Id.* See also *National Security and the Economy: The Numbers Behind Foreign Guest Workers* (Employment Policy Foundation, Washington, D.C.), Jan. 9, 2002, at 1 (noting that 970,045 resident guest workers generate 8% or U.S.\$82 billion of U.S. economy). Many Western European countries implemented guest worker programs after the Second World War. See, e.g., Stephen Castles, *The Guest-Worker in Western Europe — Obituary*, 20 INT'L MIGRATION REV. 761 (1986) [hereinafter *Obituary*] (noting that guest workers were recruited in Belgium, Britain, France, Germany, Netherlands, and Switzerland to remedy post-war labor shortages); see also Philip L. Martin & Mark J. Miller, *Guestworkers: Lessons from Western Europe*, 33 INDUS. AND LAB. REL. REV. 315-30 (1980) (noting that France, Switzerland and West Germany implemented guest worker programs after World War Two); STEPHEN CASTLES & MARK J. MILLER, *THE AGE OF MIGRATION: INTERNATIONAL POPULATION MOVEMENTS IN THE MODERN WORLD* 68 (1998) (noting that all highly industrialized Western European countries used temporary laborers for some time between 1945 and 1973); Friedrich Heckmann, *Temporary Labor Migration or Immigration? "Guest Workers" in the Federal Republic of Germany*, in GUESTS COME TO STAY: THE EFFECTS OF EUROPEAN LABOR MIGRATION ON SENDING AND RECEIVING COUNTRIES 69-83 (Rosemarie Rogers ed., 1985) [hereinafter *GUESTS COME TO STAY*] (noting that Germany recruited temporary laborers from Greece, Italy, Portugal, Spain, and Turkey); STEPHEN CASTLES & GODULA KOSACK, *IMMIGRANT WORKERS AND CLASS STRUCTURE IN WESTERN EUROPE* 40-41 (1985) (noting that German government formed

Mexico had instituted the Bracero guest worker program during World War Two,¹⁸ and guest worker policies were commonplace in many post-World War Two Western European countries experiencing labor deficiencies.¹⁹

These programs were fraught with problems.²⁰ In many cases, guest workers failed to return home once their usefulness as temporary laborers diminished, defeating the purportedly provisional purpose of the programs.²¹ In some cases, the per-

recruitment agreements with several countries in 1960s to meet Germany's growing labor demands).

18. See DOUGLAS S. MASSEY ET AL., *BEYOND SMOKE AND MIRRORS: MEXICAN IMMIGRATION IN ERA OF ECONOMIC INTEGRATION* 35-39 (2002) (noting that U.S. government signed labor recruitment arrangement with Mexico to address agricultural labor shortage in 1940s); see also PETER ANDREAS, *BORDER GAMES: POLICING THE U.S.-MEXICO DIVIDE* 33 (2000) (noting that Bracero program was established to meet labor demands of southwestern agribusinesses); *Suit Seeks Back Pay For Mexican Guest Workers During 1940s*, Hous. CHRON., June 13, 2002, at 17 (noting that Mexican guest workers were recruited to United States between 1942 to 1964 to harvest crops and maintain railroad tracks).

19. See generally *Obituary*, *supra* note 17, at 761 (noting that labor shortages in Belgium, Britain, France, Germany, Netherlands, and Switzerland compelled these West European countries to recruit workers abroad); see also Martin, *supra* note 17, at 315 (finding that labor deficiencies in France, Switzerland and West Germany led to implementation of guest worker programs); CASTLES & MILLER, *supra* note 17 at 68-73 (noting that rapidly expanding economies of several post-war European countries, such as Germany, France, and Switzerland, prompted these countries recruit temporary workers); Heckmann, *supra* note 17, at 69-83 (noting that migration of workers from Greece, Turkey, and other countries to Germany was result of country's guest worker program); CASTLES & KOSACK, *supra* note 17, at 39-43 (noting that Germany's guest worker program was established as result of late 1950s labor shortage).

20. See generally *Obituary*, *supra* note 17, at 761 (noting that one problem with guest worker programs is that participants become permanent settlers); see also Martin, *supra* note 17, at 318-19 (discussing how guest worker programs in France, Switzerland, and West Germany led to administrative problems, discrimination, and foreign labor dependency); CASTLES & MILLER, *supra* note 17, at 68-73 (describing Western Europe's post-war guest worker programs and their negative consequences, including restriction of workers' civil rights); Heckmann, *supra* note 17, at 69-83 (discussing problems with Germany's post-war labor recruitment program); CASTLES & KOSACK, *supra* note 17, at 40-43 (noting that Germany's purportedly temporary worker program resulted in permanent settlement).

21. See *Obituary*, *supra* note 17, at 761 (finding that guest workers frequently do not return to their native countries); see also David Abraham, *American Jobs But Not the American Dream*, N.Y. TIMES, Jan. 9, 2004, at A19 (noting that foreign workers are not good "guests" because they rarely want to leave their host country); CASTLES & MILLER, *supra* note 17, at 71 (noting that over time German government was forced to recognize that permanent immigration had taken place during its guest worker program); Ursula Mehrländer, *Second-Generation Migrants in the Federal Republic of Germany*, in *GUESTS COME TO STAY* 159, 160 (noting that *de facto* immigration had taken place in Germany despite German federal government's unwillingness to recognize it as such).

manent settlement of large numbers of guest workers led to widespread racial or ethnic discrimination.²² Lacking citizenship rights, guest workers were unable to advance their place in European societies,²³ and became convenient scapegoats for society's ills.²⁴

It is not surprising then that critics are wary of implementing a new guest worker program in the United States.²⁵ These

22. See *Obituary*, *supra* note 17, at 761-63 (noting that many of Western Europe's guest workers faced economic and social crisis as ethnic minorities in their host country); see also Martin, *supra* note 17, at 327 (noting that foreign guest workers have been subjected to widespread discrimination); CASTLES & MILLER, *supra* note 17, at 81 (noting that non-European foreigners experienced socioeconomic exclusion through discrimination and racism); WILLIAM A. BARBIERI, JR., *ETHICS OF CITIZENSHIP* 33 (1998) (noting increase in xenophobia and xenophobic acts against Turkish nationals in Germany); ULRICH HERBERT, *A HISTORY OF FOREIGN LABOR IN GERMANY, 1880-1980*, at 225-27 (1990) (discussing rise of xenophobic hostility toward foreigners in Germany in the aftermath of its guest worker program).

23. See, e.g., Czarina Wilpert, *Children of Foreign Workers in the Federal Republic of Germany*, 11 INT'L MIGRATION REV. 475, 476 (1977) (noting that Turkish teenagers have limited options upon leaving school); see also Richard D. Alba et al., *Ethnic Inequalities In The German School System*, in 5 PATHS TO INCLUSION: THE INTEGRATION OF IMMIGRANTS IN THE UNITED STATES AND GERMANY 130-31 (Peter H. Schuck & Rainer Münz eds., 1998) [hereinafter *PATHS TO INCLUSION*] (noting that many Turkish students leave German school system with limited or no credentials, so that they are ineligible for many jobs); BARBIERI, *supra* note 22, at 7 (stating that immigrant children's chances of finding apprenticeship or being admitted to university are slim); CASTLES & MILLER, *supra* note 17, at 194-95 (noting that structural factors made it difficult for guest workers to gain promotions in workplace); Mehrländer, *supra* note 21, at 168 (noting that many foreigners are only able to work as unskilled laborers because they have not finished elementary school).

24. See *Obituary*, *supra* note 17, at 775-77 (noting that guest workers were blamed for Germany's social problems); see also Martin, *supra* note 17, at 327 (stating that presence of foreign workers fostered right- and left-wing political extremism); CASTLES & KOSACK, *supra* note 17, at 270-71 (describing tendency of Germans to blame foreigners, rather than their landlords, for overcrowded housing); Alba, *supra* note 23, at 147 (characterizing Germany's Turks as highly visible, socially stigmatized, and legally disadvantaged group).

25. See Wayne Washington, *Bush Upsets Part of the Conservative Base*, BOSTON GLOBE, Jan. 9, 2004, at A1 (noting that many conservatives do not support President Bush's immigration plan); see also Frank Del Olmo, *Immigration Reforms Border on Good Proposal*, L.A. TIMES, Jan. 11, 2004, at M5 (noting that many Republicans, including key members of Congress, are dubious about U.S. President George W. Bush's immigration reform proposal); Elisabeth Bumiller, *Bush Would Give Illegal Workers Broad New Rights*, N.Y. TIMES, Jan. 7, 2004, at A1 (noting that conservative Republicans oppose immigration reform because they believe it constitutes amnesty for undocumented workers); T. Shawn Taylor, *Critics Bash Work-Visa Proposal*, CHI. TRIB., Jan. 13, 2004, at 4 (reporting that AFL-CIO president John Sweeney commented that White House proposal would not strengthen protections for wages, benefits, and other rights of immigrant and domestic workers); see also Janice Fine, *Bush's Plan Three Flaws*, BOSTON GLOBE, Jan. 11, 2004, at L11 (arguing that Bush's immigration proposals would give too much power to

concerns, however, are somewhat misdirected. A close look at recent U.S. immigration reforms through the lens of one of Europe's largest temporary worker programs, that of West Germany, reveals that the U.S. has implemented a *de facto* guest worker policy over the past two decades.²⁶

A comparison between the United States and West Germany is instructive because of these countries' many commonalities.²⁷ Among advanced industrial countries, the United States and Germany have the largest number of immigrants.²⁸ In the twentieth century, both countries experienced demographically

employers, risking exploitation of immigrant workers); Daniel B. Wood, *Do Citizens Really Want These Jobs? From Construction To Landscaping, Bush "Guest Worker" Plan Is Controversial*, CHRISTIAN SCI. MONITOR, Jan. 13, 2004, at 1 (quoting labor expert as stating that U.S. President Bush's plan gives employers greater opportunity to exploit immigrant workers).

26. See Griswold, *supra* note 15, at 4 (noting that policies of benign neglect created *de facto* guest worker program in United States); see also MASSEY, *supra* note 18, at 105 (noting that United States throughout twentieth century has made provisions to import Mexican workers while pretending not to); ANDREAS, *supra* note 18, at 34-35 (noting that formal U.S. guest worker program of post-World War Two era has merely been replaced by informal one).

27. See Klaus J. Bade & Myron Weiner, *Introduction*, in MIGRATION PAST, MIGRATION FUTURE: GERMANY AND THE UNITED STATES vii (Klaus J. Bade & Myron Weiner eds., 1997) [hereinafter MIGRATION PAST, MIGRATION FUTURE] (discussing similarities between United States and Germany and noting that both countries have large numbers of immigrants); see also T. ALEXANDER ALEINIKOFF, BETWEEN ALEINIKOFF: THE DIRECTION OF U.S. CITIZENSHIP POLICY 4 (Carnegie Endowment For International Peace, 1998) (noting that foreign-born populations in United States and Germany respectively constituted 10% and 8.5% of each country's total populations).

28. See Bade & Weiner, *supra* note 27, at vii (noting similarities of immigration patterns and policies in Germany and United States). In 1993, the U.S. had twenty-three million foreign-born residents, or 8.9% of the population. *Id.* The comparable figure for Germany (in 1994) was 6.8 million foreigners, or 8.6% of the population. *Id.* See also *Foreign Population, 1980 to 2002*, Federal Statistical Office, Germany 2003, available at http://www.destatis.de/basis/e/bevoe/bev_tab7.htm (reporting that Germany's foreign population in 2002 was 7.3 million); *Foreign-Born Population by Sex, Age, and Year of Entry*, U.S. Census Bureau, March 2000, available at <http://www.census.gov/population/socdemo/foreign/p20-534/tab0201.txt> (noting that U.S. foreign-born population totaled 28.3 million in March 2003); Thomas C. Heller, *Change and Convergence: Is American Immigration Still Exceptional?*, in CITIZENSHIP IN GLOBAL WORLD 196, 199 (Atsushi Kondo ed., 2001) (noting that one million immigrants enter United States annually with intent to reside indefinitely); Kay Hailbronner, *Citizenship Rights For Aliens in Germany*, in CITIZENSHIP IN GLOBAL WORLD 100 (Atsushi Kondo ed., 2001) (noting that Germany's foreign population was 7.32 million, or 9% of country's total population, by end of 1998); ALEINIKOFF, *supra* note 27, at 4 (noting that foreign-born populations in United States and Germany respectively constituted 10% and 8.5% of each country's total populations).

driven labor shortages²⁹ and began to admit large numbers of immigrants ethnically different from those that settled in the past.³⁰ The U.S. immigrant population became less European; most immigrants today come from Asia and Latin America, primarily Mexico.³¹ In Germany, Polish and Italian immigrants have given way to those from Turkey and southeastern Europe.³² The ethnic, racial, and religious composition of these new immigrants has raised issues of acculturation in both countries.³³ In

29. See Stephen Castles, *The Guests Who Stayed — The Debate on "Foreigners Policy" in the German Federal Republic*, 19 INT'L MIGRATION REV. 517, 518 (1985) (noting that Germany experienced labor shortages in aftermath of World War Two); see also Rainer Münz & Ralf Ulrich, *Changing Patterns of Immigration to Germany, 1945-1995: Ethnic Origins, Demographic Structure, Future Prospects*, in MIGRATION PAST, MIGRATION FUTURE 65, 79 (noting that Germany's booming post-war economy prompted labor shortages); Bade & Weiner, *supra* note 27, at ix-x (noting that both United States and Germany experienced post-war labor deficiencies); see also ANDREAS, *supra* note 18, at 33 (noting that post-WWII labor shortages in United States led to Bracero program); Blalock, *supra* note 11, at 10 (noting that United States is currently experiencing labor shortages in industries such as hotel and food services); see also Prewitt, *supra* note 11, at 3, 98 (noting that U.S. workforce shortages exist in certain industries despite weaker economy); Daniels, *supra* note 11, at 36-39 (discussing U.S. construction industry's dependence on immigrant labor due to worker shortages); see Alvarez, *supra* note 13, at B8 (noting that U.S. farms experience labor shortages).

30. See Bade & Weiner, *supra* note 27, at ix-x (noting that national origin of U.S. and German immigrants changed in second half of twentieth century); see also Peter Duignan & Lewis H. Gann, *Introduction*, in THE DEBATE IN THE UNITED STATES OVER IMMIGRATION 3 (Peter Duignan & Lewis H. Gann eds., 1998) [hereinafter DEBATE IN THE UNITED STATES] (noting that immigration patterns in Germany and United States changed in similar ways after World War Two in that both countries began to admit immigrants whose ethnic origin was different than those that had come before).

31. See Bade & Weiner, *supra* note 27, at xi (stating that most U.S. immigrants now arrive from Latin America and Asia); see also MASSEY, *supra* note 18, at 92 (noting that by late 1980s U.S. immigrants were coming overwhelmingly from Asia and Latin America); see also Heller, *supra* note 28, at 202 (noting that approximately 150,000 undocumented Mexicans enter United States annually); John Fraser, *Preventing and Combating the Employment of Foreigners in Irregular Situation in the United States*, in COMBATING THE ILLEGAL EMPLOYMENT OF FOREIGN WORKERS (2000) (noting that large number of illegal immigrants come to United States from Mexico and Central America).

32. See Bade & Weiner, *supra* note 27, at xi (stating that most immigrants to Germany originate from Turkey and Southeastern Europe); see also Veyssel Oezcan, *Germany: Immigration in Transition*, Migration Information Source, May 2002, available at <http://www.migrationinformation.org/Profiles/display.cfm?ID=22> (noting that by 1973 most immigrants to Germany came from Turkey rather than Italy); Hermann Korte, *Labor Migration and the Employment of Foreigners in the Federal Republic of Germany Since 1950*, in GUESTS COME TO STAY 29, 31 (noting that Turks have constituted largest number of foreign residents in Germany since 1972).

33. See Bade & Weiner, *supra* note 27, at vii (noting acculturation of immigrants has been political issue in both United States and Germany); see also Kevin R. Johnson, *Fear of "Alien Nation:" Race, Immigration, and Immigrants*, 7 STAN. L. & POL'Y REV. 111

both places, migration issues have dominated the political agenda,³⁴ amid similar public concerns that immigrants impose fiscal costs on local and national budgets and have an adverse effect on local labor markets.³⁵

Part I of this Note describes West Germany's post-war *Gastarbeiter* [guest worker] program from 1961 to 1972. Part II focuses on the long-term results of the *Gastarbeiter* program, with special emphasis on the legal status of Turkish *Gastarbeiter* in Germany. This assessment concludes that guest worker programs inevitably result in the permanent settlement of foreigners³⁶ in the host country. If not properly anticipated and planned for, this settlement leads to social stratification and political divisiveness. Part II also presents for comparison U.S. immigration policies and their effect on Mexican immigrant workers. The section asserts that the United States over the past two decades has implemented a *de facto* guest worker policy, which led to many of the same adverse consequences wrought by Ger-

(1996) (finding that immigration has played role in partisan and racial politics in United States); *Background Paper: The Debate On Immigration*, German Embassy, available at <http://www.germany-info.org/relaunch/info/archives/background/immigration.html> (noting that integration of foreigners within German society has been subject of "recurring debate"); see also Heller, *supra* note 28, at 209 (describing how growing influx of Asian and Latin American immigrants since 1965 has intensified U.S. politics of immigration).

34. See Bade & Weiner, *supra* note 27, at vii (noting that immigration has loomed large on political agenda in both United States and Germany); see also Johnson, *supra* note 33, at 111 (discussing immigration politics in United States and noting that immigrants are frequently blamed for taking away jobs from native workers, committing crimes, and consuming undeserved share of public benefits).

35. See David W. Haines & Karen E. Rosenbaum, *Introduction: Problematic Labels, Volatile Issue*, in *ILLEGAL IMMIGRATION IN AMERICA: REFERENCE HANDBOOK* 1, 8 (David W. Haines & Karen E. Rosenbaum eds., 1999) (noting that immigration debate always focuses on illegal, rather than legal, immigrants); see also MICHAEL WELCH, *DETAINED: IMMIGRATION LAWS AND THE EXPANDING INS JAIL COMPLEX* 15-22, 28-29 (2002) (discussing nativist efforts in United States to blame immigrants for society's ills); *Obituary*, *supra* note 17, at 776 (noting that right-wing politicians blamed immigrants for many of Germany's social problems); JOEL S. FETZER, *PUBLIC ATTITUDES TOWARD IMMIGRATION IN THE UNITED STATES, FRANCE, AND GERMANY* 132 (2000) (noting that German immigration debate has tended to focus on immigrants' use of social services, rather than on depletion of jobs); CASTLES & KOSACK, *supra* note 17, at 434 (discussing German poll in which respondents stated that foreign workers overstrain social services).

36. In the context of this Note, the word "foreigners" is used to denote German residents who are not of German origin. Although many so-called "foreigners" were once *Gastarbeiter*, many others were born in Germany as children or grandchildren of *Gastarbeiter*. Therefore, it is inappropriate to refer to them as "immigrants." In addition, many German-born foreigners maintain their foreign citizenship.

many's *Gastarbeiter* program, including the permanent settlement and subsequent marginalization of undocumented immigrants³⁷ from Mexico. Part III concludes that temporary worker programs, formal or *de facto*, have irreversible and adverse socio-political consequences for their participants and the countries that adopt these policies. Accordingly, this Note cautions against the adoption of a formal temporary worker program in the United States and argues that the permanent legalization of undocumented immigrants is the most judicious means of reversing recent trends.

I: WEST GERMANY'S GASTARBEITER PROGRAM

A. *The Recruitment of Foreign Workers*

Guest worker policies were commonplace in many Western European countries facing labor deficiencies after the Second World War.³⁸ West Germany's post-war *Gastarbeiter* program with Turkey was notable both for its scale and its failures.³⁹ It was a response to the country's rapidly expanding economy and con-

37. For the purpose of this Note, the term "immigrant" refers to people who have traveled to the United States to live or work, legally or illegally. The terms "undocumented" or "illegal" will be used to denote those immigrants that have traveled to the United States to live or work without authorization from the U.S. government.

38. See generally *Obituary*, *supra* note 17, at 761 (noting that Belgium, Britain, France, Germany, Netherlands, and Switzerland recruited guest workers to fill labor shortages after World War Two); see also Martin, *supra* note 17, at 315 (noting that post-war guest worker programs in France, Switzerland, and West Germany led to serious problems, including discrimination of workers); CASTLES & MILLER, *supra* note 17, at 67-73 (noting that Germany, France, and Switzerland recruited guest workers as result of their rapidly expanding post-war economies).

39. As result of its guest worker program, Germany's foreign population grew from 95,000 in 1956 to 1.3 million in 1996 and 2.6 million in 1974. CASTLES & MILLER, *supra* note 17, at 71 (noting that German guest worker system resulted in permanent immigration of millions of foreigners); see also Castles, *supra* note 29, at 519 (describing increase in number of foreigners in Germany as result of guest worker program); Münz & Ulrich, *supra* note 29, at 79 (discussing increase in number of foreigners in Germany in early 1970s as result of the country's guest worker program). West Germany's guest worker program has been considered failure on the grounds that its purportedly temporary immigrants settled permanently, leading to the immigrants' segregation and marginalization. Castles, *supra* note 29, at 524 (noting that Germany's attempts to limit immigration had opposite effect); see also CASTLES & MILLER, *supra* note 17, at 210 (concluding that failure of German policies to acknowledge permanent settlement of immigrants led to their marginalization and exclusion); *Obituary*, *supra* note 17, at 775 (noting that guest worker policies such as those implemented in Germany led to social stratification and foreign labor dependency).

sequent labor demands.⁴⁰ Propelled by U.S. investment, the German economy blossomed in the 1950s and full employment began to constrain growth.⁴¹ Accordingly, German employers started to call for the recruitment of foreign labor.⁴² German labor unions opposed the idea out of concern that wages and work conditions would decline,⁴³ but the federal government agreed to establish a state monopoly on recruitment and fix wages, working conditions, and housing for *Gastarbeiter* in advance of their arrival.⁴⁴

Initially, the government negotiated bilateral *Gastarbeiter* agreements with several Mediterranean countries throughout the 1960s.⁴⁵ These agreements gained particular significance af-

40. See Castles, *supra* note 29, at 518 (noting that surging German economy led to labor shortages); see also Münz & Ulrich, *supra* note 29, at 79 (noting that increased job vacancies in booming German economy prompted recruitment of foreign labor); CHRISTIAN JOPPKE, *IMMIGRATION AND THE NATION-STATE: THE UNITED STATES, GERMANY AND GREAT BRITAIN* 65 (1999) (stating that foreign labor recruitment was response to inflationary pressures of full employment economy).

41. See Castles, *supra* note 29, at 518 (finding that Germany's rapidly expanding economy led to labor deficiencies); see also Münz & Ulrich, *supra* note 29, at 79 (noting that growing number of unfilled jobs led to recruitment of foreign labor in Germany); JOPPKE, *supra* note 40, at 65 (stating that Germany's full employment economy and consequent inflationary pressures prompted German government to recruit foreign laborers).

42. See Castles, *supra* note 29, at 518 (noting that German businesses were in favor of recruiting foreign workers to cope with labor shortage); see also BARBIERI, *supra* note 22, at 28 (stating that employers anticipated labor shortage during this period); Mehrländer, *supra* note 21, at 159 (noting that German firms were forced to look abroad for workers because of their increasing demand for labor).

43. See Castles, *supra* note 29, at 518 (noting that German trade unions initially did not support plan to recruit foreign workers); see also JOPPKE, *supra* note 40, at 65 (noting that trade unions initially had reservations about recruitment of foreign labor); CASTLES & KOSACK, *supra* note 17, at 129 (noting that unions initially were concerned that foreign workers would be used to force wages down).

44. See Castles, *supra* note 29, at 518 (stating that German government leaders made deal with labor unions to give guest workers same wages and benefits as native workers); see also Münz & Ulrich, *supra* note 29, at 79 (noting that guest workers' wages were fixed after negotiations with German trade unions); JOPPKE, *supra* note 40, at 65 (asserting that trade union opposition faded after federal government agreed to grant equal wages and social benefits to foreign laborers); Mehrländer, *supra* note 21, at 159 (noting that federal government consulted with German trade unions in regard to its bilateral recruitment agreements); CASTLES & KOSACK, *supra* note 17, at 129 (finding that unions demanded that foreign workers be granted same wages and conditions as German workers).

45. See Castles, *supra* note 29, at 518 (noting that Germany negotiated guest worker agreements with several Mediterranean countries, including Turkey and Greece); see also Münz & Ulrich, *supra* note 29, at 78 (noting that Germany signed formal employee recruitment agreements with Italy, Greece, Morocco, Portugal, Spain,

ter 1961, when the German Democratic Republic closed its borders and constructed the Berlin Wall, halting the influx of immigrants (and prospective laborers) from East Germany.⁴⁶ *Gastarbeiter* agreements with Turkey were formed in 1961 and 1964.⁴⁷

Following these agreements, the *Bundesanstalt für Arbeit* [German Federal Labor Office] set up recruitment offices in Turkey⁴⁸ to select workers with the skills required in Germany.⁴⁹ Initially, the office recruited immigrants for agriculture and construction jobs,⁵⁰ but eventually the laborers were placed in all

Tunisia, Turkey, and Yugoslavia in 1950s and 1960s); JOPPKE, *supra* note 40, at 65 (finding that Germany established foreign labor recruitment agreements with several Mediterranean countries, including Greece, Italy, Spain, Tunisia, Turkey, and Yugoslavia); CASTLES & MILLER, *supra* note 17, at 71 (noting that Germany signed bilateral guest worker agreements with Italy, Greece, Morocco, Portugal, Tunisia, Turkey, and Yugoslavia); CASTLES & KOSACK, *supra* note 17, at 40 (noting that Germany's guest worker agreement with Italy was succeeded by agreements with Greece, Spain, Turkey, Portugal, and Yugoslavia).

46. See Bade & Weiner, *supra* note 27, at x (explaining that construction of Berlin Wall contributed to Germany's labor shortage because barrier restricted country's workforce); see also Münz & Ulrich, *supra* note 29, at 67 (noting that foreign labor was of no major importance in Germany until 1960-1961, when migration from German Democratic Republic to Federal Republic of Germany ceased with construction of Berlin Wall); BARBIERI, *supra* note 22, at 28 (listing building of Berlin Wall as one of primary factors leading to foreign labor recruitment policies).

47. See Castles, *supra* note 29, at 518 (noting establishment of Germany's guest worker program with Turkey in early 1960s); see also Münz & Ulrich, *supra* note 29, at 78 (stating that Germany formed bilateral guest worker agreement with Turkey in 1964).

48. See Castles, *supra* note 29, at 518 (noting that German federal government set up recruitment offices in Turkey); see also JOPPKE, *supra* note 40, at 65 (stating that West Germany's Federal Labor Office opened recruitment offices throughout Mediterranean, including in Istanbul); CASTLES & MILLER, *supra* note 17, at 71 (noting that Germany's Federal Labor Office recruited workers in Turkey); CASTLES & KOSACK, *supra* note 17, at 40 (noting that *Bundesanstalt für Arbeit* was responsible for setting up recruitment offices in each of migrant-sending countries).

49. See Castles, *supra* note 29, at 518-19 (describing functions of Germany's Turkish recruitment offices, which included selecting suitable workers, testing their work skills, and giving them medical checkups); see also JOPPKE, *supra* note 40, at 65 (explaining that recruitment offices selected suitable applicants, provided them with work and residence permits, and organized their collective transportation to West Germany); CASTLES & MILLER, *supra* note 17, at 71 (noting that Germany's Federal Labor Office selected workers, tested occupational skills, provided medical examinations, and screened police records); CASTLES & KOSACK, *supra* note 17, at 41 (stating that recruitment offices ensured that worker was suitable for job in question and that applicant did not have criminal record).

50. See Castles, *supra* note 29, at 519 (noting that guest workers were recruited at first for agriculture and construction); see also CASTLES & KOSACK, *supra* note 17, at 40 (noting that German government originally envisioned that guest workers would be placed in agricultural and building jobs).

kinds of industries, primarily in low-skilled manual positions.⁵¹

Gastarbeiter regulations were intentionally vague to give employers maximum flexibility in recruiting and controlling immigrants.⁵² The first set of regulations allowed immigrants to stay in Germany if their "personality and the purposes of their stay" made them "worthy of hospitality."⁵³ In the mid-1960s, the *Ausländergesetz* (Foreigners Law) was passed.⁵⁴ While it did not give foreigners automatic residency rights, it did grant residence permits where they did "not harm the interests of the German Federal Republic."⁵⁵ The presence of foreigners was generally seen as being in the country's interests only so long as employers required their labor.⁵⁶ Thus, residence permits were linked to labor permits and labor permits were often limited to a particular

51. See Castles, *supra* note 29, at 519 (noting that guest workers were placed mainly in low-skilled industrial positions); see also Münz & Ulrich, *supra* note 29, at 79 (characterizing guest worker jobs as generally unpleasant, unprestigious, and low-wage); CASTLES & MILLER, *supra* note 17, at 71 (finding that recruitment of foreign workers was result of shift to new methods of mass production that required large numbers of low-skilled workers).

52. See Castles, *supra* note 29, at 522 (stating that guest worker regulations were intentionally vague); see also JOPPKE, *supra* note 40, at 66 (noting that legal framework for handling presence of foreign workers in Germany was "meager"); CASTLES & MILLER, *supra* note 17, at 189 (noting that foreign workers' special legal status meant they had few labor market and social rights); CASTLES & KOSACK, *supra* note 17, at 126 (noting that restrictions on political activities of immigrants were so vague as to permit authorities to ban whatever activities they wished).

53. See Castles, *supra* note 29, at 522 (noting that earliest *Gastarbeiter* regulations were deliberately vague and gave authorities great latitude in granting or refusing resident permits); see also JOPPKE, *supra* note 40, at 66 (stating that earliest guest worker laws made entry and stay of foreigners contingent on their "worthiness").

54. See Castles, *supra* note 29, at 522 (noting that Foreigners Law of 1965 did not improve situation of guest workers because it did not give them residence rights); see also JOPPKE, *supra* note 40, at 66 (noting that 1965 Foreigners Law made residents permits contingent on State interests).

55. See Castles, *supra* note 29, at 522 (noting that 1965 Foreigners Law authorized work permits for guest workers so long as they did not harm interests of State); see also BÜLENT ÇİÇEKLI, *THE LEGAL POSITION OF TURKISH IMMIGRANTS IN THE EUROPEAN UNION* 103 (1998) (noting that Foreigners Act of 1965 did not grant foreigners automatic right of residence).

56. See Castles, *supra* note 29, at 522-23 (noting that presence of foreigners was generally seen as being in Germany's interests so long as companies needed their labor); see also ÇİÇEKLI, *supra* note 55, at 104 (explaining that administrative officials had great discretion in determining whether residence permit injured interests of country); CASTLES & MILLER, *supra* note 17, at 71 (noting that German policies conceived *Gastarbeiter* as temporary labor units that could be recruited, used, and disposed as employers required).

company, occupation, or area.⁵⁷ Administrative authorities always retained the power to revoke the permits at will.⁵⁸

The laws did not grant *Gastarbeiter* the right to freedom of movement, the right to assembly, freedom of association, place of work, or place of education.⁵⁹ *Gastarbeiter* were contracted for limited periods of time, usually one year.⁶⁰ The government believed it could maximize the flexibility of the foreign labor force and prevent immigrants from settling permanently if workers were regularly rotated.⁶¹ Additionally, the government discouraged immigrant workers from bringing family members to Germany.⁶²

Nevertheless, the existence of short-term contracts proved

57. See Castles, *supra* note 29, at 522-24 (noting that some rigid requirements were dropped after employers complained they made labor market too inflexible.); see also CASTLES & MILLER, *supra* note 17, at 71 (noting that residence and labor permits were granted for restricted periods and were usually valid only for specific jobs and areas). Work permits with geographic restrictions led to disproportionate concentrations of immigrant communities in certain areas. Martin, *supra* note 17, at 325 (noting that certain German states had larger foreign populations than others). See also HERBERT, *supra* note 22, at 238 (discussing how populations of foreign workers were concentrated in certain regions and neighborhoods); CASTLES & MILLER, *supra* note 17, at 207 (noting that existence of large Turkish communities contributed to notion among Germans that immigrants were "taking over").

58. See Castles, *supra* note 29, at 522-23 (noting that work and residency visas were revocable at any time); see also JOPPKE, *supra* note 40, at 66 (asserting that issuance of residency permits were virtually "acts of grace" by State).

59. See Castles, *supra* note 29, at 522 (noting that legal rights of guest workers were restricted, so that they did not have basic rights of freedom of assembly, freedom of association, freedom of movement, or free choice of occupation); see also ÇIÇEKLI, *supra* note 55, at 103 (stating that foreigners' rights were limited because they did not get automatic residence rights and could only assert some political rights); CASTLES & MILLER, *supra* note 17, at 189 (noting that foreign workers' special legal status gave them limited labor market and social rights).

60. See Wolfgang Seifert, *Social and Economic Integration of Foreigners in Germany, in PATHS TO INCLUSION* 83 (noting that most guest worker contracts were for limited period); see also Münz & Ulrich, *supra* note 29, at 79 (stating that, generally, work and residence permits issued to foreign laborers were valid for only one year); see also CASTLES & MILLER, *supra* note 17, at 71 (noting that residence and labor permits were granted for "restricted periods").

61. See Seifert, *supra* note 60, at 83 (noting that foreign workers were rotated so that they would not settle in Germany permanently); see also Münz & Ulrich, *supra* note 29, at 79-80 (noting that aim of West Germany's recruitment policy was to counterbalance cyclical and demographic bottlenecks in country's labor market); BARBIERI, *supra* note 22, at 29 (noting that Germany's guest worker rotation policy was imposed through use of short-term labor contracts).

62. See Castles, *supra* note 29, at 519 (noting that federal government did not intend for guest workers to bring their families to Germany); see also JOPPKE, *supra* note 40, at 67 (stating that 1965 Foreigners Law contained no provisions for reuniting guest

problematic for German employers.⁶³ Companies grew weary of continually training the new employees rotated through their factories.⁶⁴ Even in economically weak times, it became apparent that foreign workers were not readily replaceable by "native" employees.⁶⁵ Foreign *Gastarbeiter* filled primarily industrial jobs,⁶⁶ which required minimal qualifications,⁶⁷ and entailed low

workers with their families); see also CASTLES & MILLER, *supra* note 17, at 71 (noting that Germany's guest worker program discouraged entry of dependants).

63. See Seifert, *supra* note 60, at 84 (noting that rotation of laborers slowed in late 1960s and 1970s because industry did not want to train new workers); see also BARBIERI, *supra* note 22, at 29 (stating that rotation policy met with resistance from German employers who regularly renewed foreigners' short-term contracts rather than train new workers).

64. See Seifert, *supra* note 60, at 84 (stating that companies found it burdensome to continually train new guest workers); see also BARBIERI, *supra* note 22, at 29 (finding that German companies renewed temporary labor contracts on regular basis so they could avoid training new guest workers).

65. See Seifert, *supra* note 60, at 84 (stating that employers found it difficult to replace foreign workers with local employees); see also Münz & Ulrich, *supra* note 29, at 79 (noting that German workers were unwilling to accept unprestigious positions held by foreign workers); *Obituary*, *supra* note 17, at 775 (noting that indigenous workers were unwilling to fill low-skilled jobs, even when unemployment reached record levels in early 1980s); CASTLES & MILLER, *supra* note 17, at 196 (noting that foreign workers were segmented into specific forms of work so that they were irreplaceable by local labor, even in times of high unemployment); Martin, *supra* note 17, at 319 (asserting that native workers shunned low-paying, physically arduous jobs dominated by foreigners); Korte, *supra* note 32, at 48 (noting that Germans are unwilling to occupy positions predominantly filled by foreigners even when unemployment is relatively high). Despite their predominance in low-skilled jobs, Turkish immigrants have played important role in success of the German economy. *German Economy Dependent on Foreigners, Study Says*, THIS WEEK IN GERMANY, Sept. 18, 1992, at 4 (finding that foreigners have made important contributions to German economy because they have created jobs and helped finance German social security fund). In 1991, Germany's 33,000 Turkish-owned businesses generated 700,000 jobs, with sales of over DM 25 million (approx. U.S. \$17 billion). *Id.* In 1989, foreign workers' contributions to the German social security fund totaled DM 12 billion, while only about one quarter of that amount was paid out to foreigners in social security benefits. *Id.* See also BARBIERI, *supra* note 22, at 31 (noting that presence of foreign workers in Germany created jobs for Germans and helped fund German welfare system).

66. See ÇİÇEKLI, *supra* note 55, at 17-18 (noting that Turkish immigrants filled industrial jobs with little opportunity for advancement); see also CASTLES & MILLER, *supra* note 17, at 71, 194-95 (noting that immigrants were recruited to fill new abundance of low-skilled industrial jobs and that Germany's guest worker program led to labor market segmentation); CASTLES & KOSACK, *supra* note 17, at 74 (noting that foreign workers were strikingly underrepresented in white collar industries, such as services, commerce, and transport). In 1992, 56% of foreign workers and 16% of German workers were in unskilled or semiskilled positions. Münz & Ulrich, *supra* note 29, at 98 (discussing different labor trends among German and foreign workers). Germans far outnumber foreigners in white-collar jobs. *Id.* Thus, despite nominal equality, foreign immigrants are

wages and stressful working conditions.⁶⁸ Native German workers became ever less willing to accept such positions.⁶⁹

In 1971, under pressure from employers and trade unions to ease restrictions on foreign workers,⁷⁰ the German govern-

not able to improve their positions even after having worked in Germany for extended periods of time. *Id.*

67. See *Obituary*, *supra* note 17, at 775 (noting that guest workers primarily had low-skilled jobs); see also CASTLES & MILLER, *supra* note 17, at 71 (noting that immigrants were recruited to fill low-skilled jobs).

68. See HERBERT, *supra* note 22, at 241 (noting that wages for foreign workers were far below those for workers in comparable jobs); see also CASTLES & MILLER, *supra* note 17, at 194 (asserting that influx of foreign workers prevented upward pressure on wages); Korte, *supra* note 32, at 43 (noting that accident rates for foreigners working in many plants was much higher than accident rates for German workers); CASTLES & KOSACK, *supra* note 17, at 74 (noting that foreign workers tend to be employed in industries where no Germans work because conditions are poor); BARBIERI, *supra* note 22, at 34 (noting that employment of foreign workers was characterized by disproportionately hazardous conditions). The worker accident rate among foreigners in Germany was 25% higher than the rate for indigenous workers in the early 1970s. Martin, *supra* note 17, at 325 (discussing comparative workplace accident rates among Germany's native and foreign workers); see also BARBIERI, *supra* note 22, at 34 (noting that employment of foreign workers is characterized by disproportionately hazardous conditions); Korte, *supra* note 32, at 43 (noting that accident rates for foreigners working in many plants were much higher than accident rates for German workers); CASTLES & KOSACK, *supra* note 17, at 74 (noting that foreign workers are most frequently employed in industries which Germans are moving out of due to bad conditions). The availability of cheap foreign labor reduced incentives for employers to improve wages and working conditions. Martin, *supra* note 17, at 324 (noting that employers had little incentive to raise wages given availability of inexpensive foreign labor). See also HERBERT, *supra* note 22, at 241 (noting that wages for foreign workers were far below those for native workers in comparable jobs); CASTLES & MILLER, *supra* note 17, at 194 (asserting that influx of foreign workers prevented upward pressure on wages).

69. See Seifert, *supra* note 60, at 84 (noting that Germans would not fill positions that foreign workers occupied); see also Münz & Ulrich, *supra* note 29, at 79 (stating that Germans were not interested in jobs that guest workers held). Some economists have argued that the presence of low-wage foreign workers in the German economy prevented companies from investing in new technology and machinery. Martin, *supra* note 17, at 324 (noting that labor-importing societies inevitably become dependent on foreign labor); see also Korte, *supra* note 32, at 45 (discussing argument that import of foreign workers prevents rationalization of industrial population); HERBERT, *supra* note 22, at 221-22 (discussing how availability of cheap foreign labor had negative impact on productivity because companies delayed technological modernization). But see *Obituary*, *supra* note 17, at 773 (arguing that tight labor market also would have hindered rationalization); CASTLES & MILLER, *supra* note 17, at 194 (finding that some economists have suggested that failure to recruit foreign workers would have resulted in competitive decline of German industry); Martin, *supra* note 17, at 324 (noting that companies were able to lower costs by hiring foreign workers).

70. See Münz & Ulrich, *supra* note 29, at 82 (noting that trade unions, employers, and other groups were critical of rotational labor recruitment model); see also Seifert, *supra* note 60, at 84 (stating that companies found it burdensome to continually train

ment decided to grant five-year work permits to those foreigners who had already worked in the country for five years.⁷¹ The presence of foreign workers in the German Federal Republic increased dramatically in the subsequent decade.⁷² The figure grew from 95,000 in 1956 to 507,000 by 1961 and 1.3 million by 1966.⁷³ The figure briefly remained steady amid a recession in 1966-67,⁷⁴ as Germany successfully exported some of its unemployment by sending a portion of its *Gastarbeiter* home.⁷⁵ By mid-1973, however, the number of foreign workers in the Federal Republic had jumped to 2.6 million.⁷⁶ Turkish laborers constituted 605,000 of the total figure.⁷⁷

new guest workers); see also BARBIERI, *supra* note 22, at 29 (noting that German employers regularly renewed temporary labor contracts to avoid rotational system that forced them to retrain new workers).

71. See Münz & Ulrich, *supra* note 29, at 82 (noting that German federal government increased length of work permits to five years); see also ÇIÇEKLI, *supra* note 55, at 112 (stating that special permit was issued to foreign workers who had been employed in Germany for five years).

72. See Castles, *supra* note 29, at 519 (noting that number of Germany's foreigners grew from 95,000 in 1956 to 507,000 by 1961 and 1.3 million by 1966); see also CASTLES & MILLER, *supra* note 17, at 71 (noting that total number of foreign workers in West Germany increased from 95,000 in 1956 to 1.3 million in 1966 and 2.6 million 1973).

73. See Castles, *supra* note 29, at 519 (stating that total number foreigners living in Germany rose from 95,000 in 1956 to 507,000 by 1961 and 1.3 million by 1966); see also HERBERT, *supra* note 22, at 209 (noting that number of foreigners in Germany rose by one million between 1959-1965); CASTLES & MILLER, *supra* note 17, at 71 (noting that number of foreign workers in West Germany grew from 95,000 in 1956 to 1.3 million in 1966 and 2.6 million 1973).

74. See Castles, *supra* note 29, at 519 (finding that many Turkish guest workers returned home when German economy soured in mid-1960s); see also Münz & Ulrich, *supra* note 29, at 80 (noting that number of foreigners living in Germany from 1960 to 1994 declined slightly); BARBIERI, *supra* note 22, at 29 (noting that many guest workers went back to their countries of origin amid 1966-1967 recession).

75. See Castles, *supra* note 29, at 519 (stating that significant number of guest workers returned to Turkey amid economic downturn); see also Münz & Ulrich, *supra* note 29, at 80 (tracking number of foreigners and foreign laborers in Germany from 1960 to 1994 and finding that number of foreigners grew to seven million in mid-1990s); BARBIERI, *supra* note 22, at 29 (noting that many guest workers were compelled to return home during 1966-1967 recession).

76. See Castles, *supra* note 29, at 519 (noting that number of foreign workers in Germany had risen substantially by 1973); see also Münz & Ulrich, *supra* note 29, at 79 (discussing increase in number of foreigners in Germany in early 1970s); CASTLES & MILLER, *supra* note 17, at 71 (noting that Germany's foreign population had increased to 2.6 million by 1973).

77. See Münz & Ulrich, *supra* note 29, at 79 (explaining that Turkish laborers constituted majority of foreign workers during this period); see also HERBERT, *supra* note 22, at 230 (stating that number of Turkish workers in Germany reached 600,000 by 1973);

B. *The Termination of the Gastarbeiter Program*

Concerns about the global oil crisis⁷⁸ and its effect on the world economy prompted the West German government to abruptly end the *Gastarbeiter* program in 1973⁷⁹ and ban the entry of non-European Community workers.⁸⁰ The government aimed to reduce and consolidate the country's foreign labor force⁸¹ and hoped to encourage the remigration of foreign workers to their countries of origin.⁸² Social integration for those that stayed was a further aim.⁸³

CASTLES & MILLER, *supra* note 17, at 71 (noting that Germany's foreign population had increased to 2.6 million by 1973).

78. See Seifert, *supra* note 60, at 84 (noting that recruitment of foreign labor stopped after oil price shock of 1973); see also BARBIERI, *supra* note 22, at 29 (stating that recruitment of foreign labor was abruptly terminated in 1973 amid oil crisis); CASTLES & MILLER, *supra* note 17, at 71 (noting that abrupt halt of Germany's guest worker was both result of looming oil crisis and realization that permanent immigration was taking place); Mehrländer, *supra* note 21, at 160 (noting that 1973 recession and global oil crisis prompted decision to halt recruitment).

79. See Seifert, *supra* note 60, at 84 (stating that halt in recruitment of foreign labor occurred amid 1973 oil price shock); see also CASTLES & MILLER, *supra* note 17, at 71 (noting that looming oil crisis and realization that permanent immigration had taken place prompted abrupt halt of Germany's *Gastarbeiter* program); Mehrländer, *supra* note 21, at 160 (noting that decision to halt recruitment of foreign labor was result of 1973 recession and global oil crisis); BARBIERI, *supra* note 22, at 29 (finding that German government stopped foreign labor recruitment in 1973).

80. See Castles, *supra* note 29, at 519 (noting that 1973 ban on non-EC workers was designed to reduce Germany's foreign employment and foreign population). The ban on non-EU workers was in response to labor integration requirements of the European Union. *Id.* See also Seifert, *supra* note 60, at 84 (noting that recruitment of foreign labor stopped after oil price shock of 1973); BARBIERI, *supra* note 22, at 29 (stating that recruitment of foreign labor was abruptly terminated in 1973); CASTLES & MILLER, *supra* note 17, at 71 (noting that abrupt halt of Germany's guest worker was both result of looming oil crisis and realization that permanent immigration was taking place).

81. See Münz & Ulrich, *supra* note 29, at 83 (noting that recruitment stop was part of government package aimed at consolidating and decreasing foreign employment in Germany); see also Peter Kühne, *The Federal Republic Of Germany: Ambivalent Promotion of Immigrants' Interests*, in TRADE UNIONS, IMMIGRATION, AND IMMIGRANTS IN EUROPE, 1960-1993, at 45 (Rinus Penninx & Judith Roosblad eds., 2000) (discussing consolidation phase of Germany's guest worker policy).

82. See Münz & Ulrich, *supra* note 29, at 83 (noting that German federal government sought to encourage repatriation of its guest workers); see also CASTLES & MILLER, *supra* note 17, at 80 (noting that government hoped unwanted guest workers would just leave).

83. See Münz & Ulrich, *supra* note 29, at 83 (noting that federal government hoped to encourage integration of those foreigners who planned to remain in Germany); see also ÇIÇEKLI, *supra* note 55, at 108 (noting that Germany's foreigner policies broadened in 1970s to include social aims, such as integration, in addition to already established economic aims); Heckmann, *supra* note 17, at 82 (noting that in 1973 German state authorities adopted policy of integration for limited period of time); Mehr-

Immigration declined and remigration increased slightly during the recession of 1974-1975.⁸⁴ By 1977, the total number of foreigners had decreased by 200,000, and the number of foreign laborers fell by 706,000 to 1.9 million.⁸⁵ As early as 1976, a trend toward increased immigration was once again evident.⁸⁶ The number of newly arriving foreigners crept up and by 1980 4.5 million foreigners were living in Germany, comprising 7% of the country's population.⁸⁷ The foreign workforce was 2.1 million, of which 592,000 laborers were Turkish.⁸⁸ The number of foreigners remained fairly steady in the early 1980s, despite a recession and fewer jobs for foreign workers.⁸⁹ The figure dipped temporarily in the period between 1983 and 1984, when the German government began to offer financial incentives to en-

länder, *supra* note 21, at 160 (noting that federal government has enacted measures to integrate its foreigners since 1970s).

84. See Münz & Ulrich, *supra* note 29, at 83 (describing brief decline in migration of foreigners to Germany); see also W.E. Kuhn, *Guest Workers As Automatic Stabilizer of Cyclical Unemployment in Switzerland and Germany*, 12 INT'L MIGRATION REV. 210, 221 (1978) (noting that great number of guest workers left Germany to return to their home countries around 1975); CASTLES & MILLER, *supra* note 17, at 80 (noting that number of foreign men in FRG declined slightly between 1974 and 1981).

85. See Münz & Ulrich, *supra* note 29, at 83 (noting that by 1977 total number of foreigners living in Germany had declined significantly); see also Kuhn, *supra* note 84, at 221 (noting that in Spring of 1975 total number of foreign workers in Germany fell below two million).

86. See Münz & Ulrich, *supra* note 29, at 83 (noting that by late-1970s foreign migration to Germany was rising yet again); see also Ursula Mehrländer, *Federal Republic of Germany: Sociological Aspects of Migration Policy*, in THE POLITICS OF MIGRATION POLICIES 145, 152 (Daniel Kubat ed., 1979) [hereinafter POLITICS OF MIGRATION POLICIES] (discussing how recruitment ban failed to stop inflow of immigrants into Germany); CASTLES & MILLER, *supra* note 17, at 80 (noting that total number of foreign women and children living in Germany increased between 1974 and 1981).

87. See Münz & Ulrich, *supra* note 29, at 83 (noting that number of foreigners continued to rise throughout 1970s and 1980s); see also HERBERT, *supra* note 22, at 235 (stating that Germany's foreign population in 1980 was one million above what it had been in 1972); CASTLES & MILLER, *supra* note 17, at 189 (stating that number of Turkish residents in Germany grew to 1.6 million by 1982).

88. See Münz & Ulrich, *supra* note 29, at 83 (noting that Turkish nationals made up significant portion of foreigners in Germany in 1980s); see also *Foreign Population, 1980 to 2002*, Federal Statistical Office, Germany 2003, available at http://www.destatis.de/basis/e/bevoe/bev_tab7.htm (reporting that Germany's foreign population totaled 4.45 million in 1980).

89. See Münz & Ulrich, *supra* note 29, at 83 (noting that size of Germany's foreign population did not change dramatically during 1980s); see also *Foreign Population, 1980 to 2002*, *supra* note 88; CASTLES & MILLER, *supra* note 17, at 81 (noting that Germany's foreign population remained steady in late 1970s and increased again in early 1980s); ÇİÇEKLI, *supra* note 55, at 49 (noting that more than 370,000 Turks returned to Turkey between 1983-85).

courage foreigners to return home.⁹⁰

The ban on entries of non-EC workers created a dilemma for Germany's resident immigrants.⁹¹ Non-EC workers could "ride out" the recession jobless or risk a bar on return.⁹² Therefore, many of the same Turkish workers who willingly returned home during the 1966-1967 recession decided to stay in Germany during recessionary periods in the 1970s and 1980s, despite being unemployed.⁹³ They sought to bring their families to Germany.⁹⁴ Changing international norms in favor of family reunification facilitated this process.⁹⁵ In many cases, spouses

90. See Münz & Ulrich, *supra* note 29, at 83 (noting that financial incentives aimed at repatriation of guest workers resulted in decline in Germany's foreign population); see also Kühne, *supra* note 81, at 47 (noting that 300,000 foreign workers returned home as result of incentives offered by German government); Mehrländer, *supra* note 21, at 161 (noting that 1983 law provided incentives for unemployed foreign workers to return home).

91. See Münz & Ulrich, *supra* note 29, at 91 (explaining that Germany's foreigners faced difficult choices as result of ban on non-EU workers); see also ÇIÇEKLI, *supra* note 55, at 107 (finding that recruitment ban created catch-22 for Turkish workers living in Germany because leaving country might mean never being able to return); Heckmann, *supra* note 17, at 72 (noting that Germany's foreign population increased despite ban on new recruitment of foreign labor).

92. See Münz & Ulrich, *supra* note 29, at 91 (explaining that Germany's foreigners were concerned that they would not be able to return to Germany to work in future if they left); see also ÇIÇEKLI, *supra* note 55, at 107 (noting that even unemployed Turks were reluctant to return home for fear they would not be able to return to Germany).

93. See Münz & Ulrich, *supra* note 29, at 91 (noting that foreign workers remained in Germany despite recession and even though they did not have jobs); see also ÇIÇEKLI, *supra* note 55, at 107 (asserting that migrants' knowledge of advantages of German social system also drove them to postpone their decision to return); Korte, *supra* note 32, at 36 (stating that foreigners remained in Germany despite recruitment stop and sent for their families to join them).

94. See Castles, *supra* note 29, at 519 (noting that foreign workers began to send for their families after ban on non-EC workers went into effect); see also Alba, *supra* note 23, at 121 (stating that number of foreign women and children migrating to Germany increased after cessation of immigrant recruitment in early 1970s); BARBIERI, *supra* note 22, at 29 (explaining that Turkish immigrants brought their families to Germany after 1973 because they realized they were going to remain in Germany somewhat permanently); CASTLES & MILLER, *supra* note 17, at 80 (noting that total number of foreign women and children living in Germany increased from 1974 to 1981).

95. See *Obituary*, *supra* note 17, at 771 (noting that family reunification had begun to be seen internationally as human rights issue); see also POLITICS OF MIGRATION POLICIES, *supra* note 86, at 157 (noting that Germany was not exempt from a "general trend in family reunification"); Heller, *supra* note 28, at 198 (noting that humanitarian concerns for family reunification after termination of guest worker program in 1973 led to less restrictive immigration policies); CASTLES & MILLER, *supra* note 17, at 80 (noting that Germany grudgingly accepted family reunions as human right).

entered the country as *Gastarbeiter* themselves.⁹⁶ Additionally, many immigrants started new families, and birth rates among young immigrant families increased noticeably in the 1970s.⁹⁷

C. *Permanent Settlement and the "Racialization" of German Politics*

The first generation of *Gastarbeiter* consisted primarily of young, single males.⁹⁸ An increase in women and children characterized the second generation.⁹⁹ Initially, *Gastarbeiter* resided dormitory-style in huts or hostels near the factories they worked in.¹⁰⁰ They had little contact with Germans and did not compete for apartments or other facilities.¹⁰¹ Reunited with their families, many foreign workers began to seek housing in the inner

96. See Castles, *supra* note 29, at 519 (noting that frequently spouses came to Germany under auspices of guest worker program); see also ÇİÇEKLI, *supra* note 55, at 192 (noting that men encouraged their wives and daughters to sign up as guest workers in order to get work permits for themselves by association); CASTLES & MILLER, *supra* note 17, at 71 (noting that officially recruited immigrants asked their employers to request their wives and husbands as workers).

97. See Castles, *supra* note 29, at 519 (noting that number of German-born foreigners rose significantly in 1970s); see also Münz & Ulrich, *supra* note 29, at 92 (noting that 1.2 million of Germany's seven million so-called "foreign" residents were born in Germany); CASTLES & MILLER, *supra* note 17, at 71 (noting that immigrants increasingly established families and gave birth to children in Germany).

98. See Castles, *supra* note 29, at 520 (noting that guest worker program was dominated by young men); see also Alba, *supra* note 23, at 121 (noting that most foreign laborers migrating to Germany in 1950s and 1960s were men); Heckmann, *supra* note 17, at 70 (noting that great majority of immigrants to Germany in 1960s were men).

99. See Castles, *supra* note 29, at 520 (noting that second generation of sojourners was comprised primarily of women and children); see also Alba, *supra* note 23, at 121 (stating that number of foreign women and children migrating to Germany increased after cessation of immigrant recruitment in early 1970s); CASTLES & MILLER, *supra* note 17, at 80 (noting that number of women and children residing in Germany increased from 1974 to 1981); Heckmann, *supra* note 17, at 70 (noting that in 1970s immigrant population changed to include more women and children).

100. See Castles, *supra* note 29, at 521 (describing living conditions of first generation of guest workers); see JOPPKE, *supra* note 40, at 65 (noting that guest workers' provisional status was symbolized by their accommodation in army-style employer-provided mass quarters); CASTLES & MILLER, *supra* note 17, at 71 (noting that employers had to provide initial accommodation for guest workers); Heckmann, *supra* note 17, at 73 (noting that majority of guest workers lived in barracks or provisional accommodations in 1960s); CASTLES & KOSACK, *supra* note 17, at 130 (noting that employers were responsible for providing housing to immigrant workers).

101. See Castles, *supra* note 29, at 521 (noting that guest workers did not have much opportunity to socialize with Germans); see also HERBERT, *supra* note 22, at 218-20 (describing living conditions of Germany's foreign workers in 1960s); CASTLES & KOSACK, *supra* note 17, at 269 (describing how isolated many foreign families in Germany felt).

cities.¹⁰²

Immigrants became a convenient target for other marginalized groups, including the native unemployed and other low-income wage earners, who blamed foreigners for their economic woes.¹⁰³ Discrimination in housing was particularly severe.¹⁰⁴ Landlords regularly turned down prospective tenants because they were foreign,¹⁰⁵ and signs and notices declaring that apartment rentals were off limits to foreigners were not uncommon.¹⁰⁶ Government efforts to limit such discrimination¹⁰⁷ and

102. See Castles, *supra* note 29, at 521 (noting that foreigners sought housing outside factory barracks once their families joined them in Germany); see also BARBIERI, *supra* note 22, at 29 (discussing how Turkish immigrants began to put down roots in Germany during 1970s); CASTLES & MILLER, *supra* note 17, at 198 (noting that immigrants entered housing market because their need for family accommodation grew); Heckmann, *supra* note 17, at 73 (noting that during 1970s foreigners moved into apartments, usually under discriminatory conditions); CASTLES & KOSACK, *supra* note 17, at 270 (noting that foreign couples preferred any kind of accommodation to employer-sponsored hostels).

103. See Castles, *supra* note 29, at 521 (noting that Germany's foreigners became scapegoats for all of society's ills); see also ÇİCEKLI, *supra* note 55, at 49 (describing growing hostility toward foreigners amid economic crises in Germany in 1980s and 1990s); CASTLES & MILLER, *supra* note 17, at 81 (noting that non-European foreigners experienced socioeconomic exclusion through discrimination and racism); CASTLES & KOSACK, *supra* note 17, at 270-71 (describing tendency of Germans to blame foreigners, rather than their landlords, for overcrowded housing).

104. See Andrei S. Markovits & Samantha Kazarinov, *Class Conflict, Capitalism, and Social Democracy*, 10 COMP. POL. 373, 381 (1978) (stating that foreigners faced housing discrimination and noting that landlord signs prohibiting foreign renters were commonplace); see also FETZER, *supra* note 35, at 135 (noting that anti-immigrant sentiment increased in German neighborhoods whose population consisted heavily of immigrants); BARBIERI, *supra* note 22, at 35 (explaining that most Turkish immigrants must contend with poor living conditions); CASTLES & MILLER, *supra* note 17, at 198 (noting that discrimination and lack of local knowledge made it difficult for foreigners to find good housing); CASTLES & KOSACK, *supra* note 17, at 268 (noting that some German landlords have exploited foreign renters).

105. See Markovits & Kazarinov, *supra* note 104, at 381 (noting that discrimination made it difficult for foreigners to get apartments in Germany); see also CASTLES & MILLER, *supra* note 17, at 198 (noting that some landlords refused to rent to foreigners); CASTLES & KOSACK, *supra* note 17, at 268 (noting that foreign renters were regularly exploited by German landlords).

106. See Markovits & Kazarinov, *supra* note 104, at 381 (noting that signs and notices declaring that certain foreigners were not wanted were common); see also CASTLES & MILLER, *supra* note 17, at 198 (noting that some landlords would not rent apartments or rooms to foreigners); CASTLES & KOSACK, *supra* note 17, at 268 (noting that German classified ads for apartments frequently prohibited foreigners); see, e.g., HERBERT, *supra* note 220, at 225 (noting that restaurant signs prohibited Italians).

107. See Peter O'Brien, *Continuity and Change in Germany's Treatment of Non-Germans*, 22 INT'L MIGRATION REV. 109, 117 (1988) (noting that German government's involvement in protecting rights of foreigners at this time was very limited); see also

the subsequent "ghettoization" of foreigners¹⁰⁸ in the inner cities were nonexistent in the early years of permanent settlement.¹⁰⁹

In the workplace, employers did little to quell xenophobic tensions,¹¹⁰ fueling the racism of native workers to prevent the integration of immigrants into the working class movement.¹¹¹ Germans and foreigners rarely worked side by side.¹¹² By hin-

HERBERT, *supra* note 22, at 236 (noting that business and government leaders responded with bewilderment and astonishment to social problems resulting from large number of foreigners living in Germany). Leaders of West Germany's major political parties repeatedly asserted that Germany was "not country of immigration," ignoring fact that millions of foreigners had permanently settled there. Castles, *supra* note 29, at 517 (noting that German leaders refused to acknowledge that Germany had become multicultural society). See also Jonathan Kaufman, *The Issue Of Identity That Underlies Germany's Violence*, BOSTON GLOBE, Aug. 31, 1992, at 2 (noting that Germany's Constitution explicitly states that Germany is not immigration country); CASTLES & MILLER, *supra* note 17, at 186, 202 (noting that political leaders continue to assert that Germany is not country of immigration); Heckmann, *supra* note 17, at 69 (stating that official position of German federal government has always been that Germany is not immigration country). In 1979, the German federal government began to make more of effort to integrate foreigners. Castles, *supra* note 29, at 525 (noting that German federal government's earliest efforts to address permanent settlement of *Gastarbeiter* included proposals for introduction of definite legal rights for foreigners); see also O'Brien, *supra* note 107, at 122-26 (discussing federal and state efforts to integrate foreigners, including attempts to extend foreigners' residence permits).

108. See O'Brien, *supra* note 107, at 117 (noting that German government undertook no steps to help immigrants avoid housing discrimination and ghettoization); see also CASTLES & MILLER, *supra* note 17, at 198 (noting that ethnic ghettos developed in Germany).

109. See O'Brien, *supra* note 107, at 117 (noting that government's involvement in protecting rights of foreigners at this time was very limited); see also HERBERT, *supra* note 22, at 236 (noting that German government officials and company managers responded with "bewildered astonishment" to social problems resulting from the large number of foreigners living in the country).

110. See Markovits & Kazarinov, *supra* note 104, at 382 (noting that employers exploited anti-foreigner sentiment in workplace to prevent consolidation of foreign workers into larger working class movement); CASTLES & MILLER, *supra* note 17, at 206 (noting that evidence of institutional racism included discrimination in hiring and promotion and non-recognition of foreign workers' skills).

111. See Markovits & Kazarinov, *supra* note 104, at 382 (noting that employers were not interested in reducing anti-foreigner sentiment in workplace); CASTLES & MILLER, *supra* note 17, at 206 (noting that local workers and their unions initially supported workplace discrimination against foreigners). But see Kühne, *supra* note 81, at 43 (noting that over time German trade unions welcomed foreigners into their ranks); CASTLES & KOSACK, *supra* note 17, at 130 (noting German trade unions made considerable efforts to attend to special needs and problems of foreign workers).

112. See Markovits & Kazarinov, *supra* note 104, at 382 (noting that immigrants were excluded from complex jobs requiring communication with large numbers of people); see also Kühne, *supra* note 81, at 60 (explaining that even within trade unions

dering the development of friendships between immigrants and German employees, companies were able to limit the participation of foreign laborers in trade unions.¹¹³ In fact, German employers and labor unions regularly came together against the rights of foreign workers in the early years of the program.¹¹⁴

Discrimination was not limited to the workplace.¹¹⁵ Studies showed that media representations of foreigners, especially Turks, were notably negative.¹¹⁶ In times of economic decline, xenophobia manifested itself through anti-foreigner graffiti and, at its worst, physical attacks.¹¹⁷ Foreigners were more likely to be charged with crimes than Germans¹¹⁸ and to be treated poorly at the hands of government officials.¹¹⁹

foreigners tend to be isolated); CASTLES & KOSACK, *supra* note 17, at 131-32 (noting that many foreign workers feel that unions do not adequately represent their interests).

113. See Markovits & Kazarinov, *supra* note 104, at 382 (describing foreigners' limited participation in trade unions); see also Kühne, *supra* note 81, at 55 (noting that many young foreigners do not join trade unions); Seifert, *supra* note 60, at 98 (noting how few foreigners have German friends).

114. See O'Brien, *supra* note 107, at 117 (noting that trade unions were not very supportive of guest workers in early years of program). But unions, as well as churches and other advocacy groups, became more supportive of the immigrant cause in 1970s and 1980s. *Id.* at 122. See also CASTLES & MILLER, *supra* note 17, at 206 (noting that local workers and their unions initially supported workplace discrimination against foreigners). Over time, German unions realized that a split in the working class harmed local workers too, so they made efforts to organize immigrants and fight blatant exploitation. *Id.*

115. See BARBIERI, *supra* note 22, at 32-33 (describing daily discrimination Germany's Turks have had to endure); see also Alba, *supra* note 23, at 147 (characterizing Germany's Turks as highly visible, socially stigmatized, and legally disadvantaged group); FETZER, *supra* note 35, at 70 (noting that opinion polls, anti-Turkish hate crimes, and vicious "Turkish jokes" are evidence of strong public opposition guest workers and their families have confronted in Germany).

116. See BARBIERI, *supra* note 22, at 33 (noting that many studies have found that German media portrayed foreigners, especially Turkish nationals, in negative light); see also O'Brien, *supra* note 107, at 117 (noting that title of article in popular German magazine *Der Spiegel*, "The Turkish Invasion," articulated renewed fear of foreigners); CASTLES & MILLER, *supra* note 17, at 206 (noting that racism against foreigners escalated in 1970s when German unemployment rates soared).

117. See BARBIERI, *supra* note 22, at 33 (describing increase in xenophobia and anti-foreigner violence in German cities such as Hoyerswerda, Rostock, Mölln, and Solingen); see also HERBERT, *supra* note 22, at 225-27 (noting rise in xenophobic hostility toward foreigners in Germany); CASTLES & MILLER, *supra* note 17, at 204 (discussing murder of several Turkish immigrants in arson attacks).

118. See BARBIERI, *supra* note 22, at 33 (noting that foreigners were more likely than Germans to be charged with crimes); see also ÇIÇEKLI, *supra* note 55, at 44 (discussing factors that create impression of disproportionate criminality among Turkish immigrants in Germany).

119. See BARBIERI, *supra* note 22, at 32-33 (noting that Germany's Turks have had

German schools failed to provide any kind of special treatment or language training for Turkish children.¹²⁰ Unable to adjust quickly enough to a new language and culture, many foreign schoolchildren struggled academically and their failure rates in the 1970s were high.¹²¹ Because Turkish youths left secondary school without the qualifying certificate required to pursue apprenticeships or higher degrees,¹²² their career choices were limited to lower paying, blue collar jobs.¹²³ Moreover, a ban on work permits for children of immigrant workers coming

to face daily discrimination, including isolation in crowded subways and refusal of admission to discos); *see also* FETZER, *supra* note 35, at 70 (noting that Turkish nationals have been forced to endure racist jokes and hate crimes); CASTLES & MILLER, *supra* note 17, at 196 (noting that many young foreigners are refused training positions because of prejudice); Alba, *supra* note 23, at 147 (noting that Germany's Turks have been socially stigmatized and legally disadvantaged).

120. *See* O'Brien, *supra* note 107, at 117 (noting that Turkish school children rarely received any special training); *see also* Alisa Roth, *Bilingual Education: Berlin Wall For Turkish Children*, CHRISTIAN SCI. MONITOR, Dec. 21, 2000, at 7 (discussing challenges Turkish children have faced in German schools); CASTLES & MILLER, *supra* note 17, at 196 (noting that until mid-1980s many of Germany's foreign children were failing in schools); Mehrländer, *supra* note 21, at 167 (noting that German educational system was not prepared to handle influx of foreigners into German schools). Educational authorities had two aims: to integrate foreign children temporarily during their stay in Germany and to prepare them for return to their country of origin. CASTLES & MILLER, *supra* note 17, at 204 (discussing dual strategy federal officials used to deal with education of foreign children). Accordingly, foreign children were separated from German students and enrolled in "national classes," "preparatory classes," and "mother-tongue classes." *Id.* This isolation prevented many foreign students from achieving education success. *Id.*

121. *See* O'Brien, *supra* note 107, at 117 (discussing school failure rates among foreign children in Germany); *see also* Alba, *supra* note 23, at 118 (finding that educational accomplishments of foreign children in German school system do not match those of their German counterparts); Mehrländer, *supra* note 21, at 168 (noting that children of foreign workers were twice as disadvantaged in German school system and were frequently illiterate in two languages). *But see* CASTLES & MILLER, *supra* note 17, at 196 (noting that school achievement rates among foreign children in Germany have improved recently).

122. *See* Alba, *supra* note 23, at 130-31 (noting that many Turkish students are destined to leave school system with minimal credentials or no credentials whatsoever and that they are eligible for limited range of jobs); *see also* Mehrländer, *supra* note 21, at 168 (noting that many foreigners are only able to work as unskilled laborers because they have not finished elementary school).

123. *See* Wilpert, *supra* note 23, at 476 (noting that Turkish teenagers have limited options upon leaving school); *see also* Alba, *supra* note 23, at 130-31 (noting that many Turkish students are not eligible for many jobs upon leaving school because they have few qualifications); BARBIERI, *supra* note 22, at 7 (stating that foreign children's chances of finding apprenticeship or being admitted to university are slim); CASTLES & MILLER, *supra* note 17, at 196 (noting that far fewer Turkish students are granted apprenticeships than their German counterparts); Mehrländer, *supra* note 21, at 168 (noting that

to Germany after December 1, 1974¹²⁴ further limited the options of foreign children by making many of them ineligible for any jobs or social benefits.¹²⁵ In recognition of the problems the ban on work permits created, German policymakers abandoned the so-called *Schlüsseldatum* ["key date"] rule in 1978.¹²⁶

German politics eventually became radicalized and "racialized," with extremist politicians blaming foreign workers for the country's social and economic problems.¹²⁷ Right-wing politi-

many foreigners are only able to work as unskilled laborers because they have not completed grammar school).

124. Under the ban, non-EC youths who entered Germany after November 40, 1974 could not receive employment permits. Castles, *supra* note 29, at 524 (noting that ban on youth work permits was perfect recipe for juvenile delinquency because it left youths with nothing to do); see also HERBERT, *supra* note 22, at 247-48 (noting that 1974 ban on work permits led to socially and morally untenable situation); Korte, *supra* note 32, at 37 (noting that German federal government stopped issuing work permits to adolescents who joined their families after 1973); Mehrländer, *supra* note 21, at 176 (noting that prohibition on youth work permits prevented foreign youths from obtaining apprenticeships). Foreign youngsters rushed to enter Germany to beat the deadline for receiving work permit. O'Brien, *supra* note 107, at 121 (noting increase in migration to Germany among foreign youths during this time); see also HERBERT, *supra* note 22, at 247-48 (noting that 1974 ban on work permits did not have desired effect of reducing migration to Germany); Korte, *supra* note 32, at 37 (noting that federal government stopped issuing work permits to adolescents who joined their families after 1973). Similarly, a 1975 law limiting foreigners' childcare benefits to those children living in Germany had an almost identical effect. O'Brien, *supra* note 107, at 119 (noting that Turkish families sent for their children because they did not want to lose government assistance); see also ÇIÇEKLI, *supra* note 55, at 193-94 (discussing how changes in Germany's *Kindergeld* [children's benefits] program prompted Turkish families to send for their children); Korte, *supra* note 32, at 36-37 (noting that changes in conditions under which foreign workers could obtain financial aid for children caused foreigners to bring more children to Germany). Stricter limits on spouses' right to work caused many foreigners to migrate to Germany before the laws took effect. O'Brien, *supra* note 107, at 121 (noting that foreign workers' spouses' right to work was restricted by the German government); see also ÇIÇEKLI, *supra* note 55, at 229-31 (describing controls on admission of foreign spouses into Germany).

125. See Castles, *supra* note 29, at 524 (describing effects of so-called "key date" rule); see also HERBERT, *supra* note 22, at 247-48 (discussing socially and morally untenable situation wrought by 1974 ban on work permits); Korte, *supra* note 32, at 37 (noting that German federal government stopped issuing work permits to adolescents who joined their families after 1973); Mehrländer, *supra* note 21, at 176 (noting that 1974 ban on work permits prevented foreign teenagers from getting apprenticeships).

126. See Castles, *supra* note 29, at 524 (noting that ban on work permits led to juvenile delinquency); see also JOPPKE, *supra* note 40, at 77 (noting that denial of work permits to young foreigners created demoralized, crime-prone sub-proletariat in inner cities); Korte, *supra* note 32, at 37 (noting that restrictive immigration policy measures had to be repealed for legal reasons); Mehrländer, *supra* note 21, at 176 (noting that ban's cutoff date was changed to 1976 and liberalized in 1979).

127. See *Obituary*, *supra* note 17, at 776 (noting that German media and politicians

cians accused immigrants of depleting social security, overpopulating schools, and causing housing shortages and social unrest.¹²⁸ One conservative opinion leader warned against the "Orientalization" of Europe.¹²⁹ In turn, liberal politicians and activists challenged restrictive plans and policies regarding foreigners.¹³⁰ They criticized Germany's *jus sanguinis* (citizenship by blood) citizenship laws,¹³¹ which provided for citizenship by descent, and called for a *jus soli* (citizenship by birth) approach.¹³² By the early 1980s, the "foreigners" issue was a centerpiece of West German politics.¹³³ The two leading parties, the

presented image of foreigners as ethnic minorities that take away jobs, abuse social security, and overwhelm housing and schools); see generally JOPPKE, *supra* note 40, at 76-85 (noting that German political process and debate leading up to Foreigners Law of 1990 included characterizations of Turkish residents as undesired and difficult foreigner group); see also Castles, *supra* note 29, at 533 (noting that segregation led to xenophobia and political extremism); ÇIÇEKLI, *supra* note 55, at 49 (noting that presence of foreigners in Germany led to rise of extremist anti-immigrant political parties).

128. See *Obituary*, *supra* note 17, at 776 (noting that right-wing politicians blamed immigrants for many of Germany's social problems); see also FETZER, *supra* note 35, at 132 (noting that German immigration debate has tended to focus on immigrants' use of social services, rather than on depletion of jobs); CASTLES & KOSACK, *supra* note 17, at 434 (discussing German poll in which respondents stated that foreign workers overstrain social services).

129. Günther Gillissen, *Die Orientalisierung Europas*, *FRANFURTER ALLGEMEINE ZEITUNG*, Apr. 2, 1980, at 1 (warning against "Orientalization" of Europe). See also JOPPKE, *supra* note 40, at 78 (noting that German opinion leader had warned against "Orientalization" of Europe).

130. See O'Brien, *supra* note 107, at 122 (detailing public statements liberal groups made in support of less restrictive foreigners policy); see also Anne Marie Seibel, *Deutschland ist doch ein Einwanderungsland Geworden: Proposals to Address Germany's Status as "Land of Immigration,"* 30 *VAND. J. TRANSNAT'L L.* 905, 933-34 (1997) (discussing efforts by liberal Social Democratic Party and Greens to expand citizenship rights of foreigners in Germany); CASTLES & MILLER, *supra* note 17, at 204 (describing three dominant political positions regarding presence of foreigners in Germany prior to 1990s, which ranged from calls for exclusionary policies to calls for integration and recognition that Germany had become multicultural society).

131. See JOPPKE, *supra* note 40, at 206-08 (noting that liberal German politicians and activists criticized Germany's *jus sanguinis* laws); see also BARBIERI, *supra* note 22, at 42 (finding that Green party has lobbied to grant Germany's foreigners political rights).

132. See JOPPKE, *supra* note 40, at 206-08 (discussing Germany's once restrictive citizenship regime and noting that grassroots attempts to reform it were partially successful); see also BARBIERI, *supra* note 22, at 42 (noting that Germany's liberal Green party has pushed for full political rights for foreigners).

133. See Castles, *supra* note 29, at 527 (noting that immigration issue dominated political agenda by early 1980s); see also BARBIERI, *supra* note 22, at 55 (noting that German politicians capitalized on foreigners issue in early 1980s); CASTLES & MILLER, *supra* note 17, at 204 (explaining that national debate on foreigners policy started in 1970s and has continued up to present).

Christian Democrats¹³⁴ and the Social Democrats,¹³⁵ articulated three goals in light of the "problem:" (1) the integration of foreign residents, (2) the restriction of additional immigration, and (3) the encouragement of repatriation.¹³⁶

Today, more than seven million foreigners, two million of whom are Turks, live in Germany.¹³⁷ Although labor recruit-

134. See *Christlich Demokratische Union Deutschlands* (CDU), available at <http://www.cdu.de/> (outlining CDU's agenda and goals and reporting on latest partisan news).

135. See *Sozialdemokratische Partei Deutschlands* (SPD), available at <http://www.spd.de> (describing SPD's platform and discussing current political issues).

136. See Castles, *supra* note 29, at 528 (noting that German federal government's new initiative in regard to foreigners problem was aimed at integrating foreigners, restricting additional immigration, and encouraging of repatriation); see also BARBIERI, *supra* note 22, at 55 (stating that German government's new foreigners policy focused on restriction, repatriation, and integration). To encourage repatriation, the German federal government passed the *Gesetz zur Förderung der Rückkehrbereitschaft von Ausländern* [Law to Support Foreigners' Willingness to Return] in 1983. See Rosemarie Rogers, *Migration Return Policies and Countries of Origin*, in 3 IMMIGRATION ADMISSIONS: THE SEARCH FOR WORKABLE POLICIES IN GERMANY AND THE UNITED STATES 147, 154 (Kay Hailbronner et al., eds., 1997) (describing provisions of law); see also ÇIÇEKLI, *supra* note 55, at 49 (noting that 1983 law led to feelings of insecurity among Germany's foreigners and caused 370,000 Turks to return to Turkey); Mehrländer, *supra* note 21, at 161 (finding that repatriation law contributed to insecurity felt by foreigners living in Germany). The repatriation law offered the immediate repayment of social security contributions to non-EC foreigners on the condition that they leave Germany immediately and not return or seek work in Germany in subsequent years. Rogers, *supra* note 136, at 155 (noting that 1983 law's incentives were aimed at encouraging foreigners to return home); see also Kühne, *supra* note 81, at 47 (noting that foreigners could apply for reimbursement of their contributions to state pension scheme under 1983 law); Mehrländer, *supra* note 21, at 161 (noting that 1983 legislation provided cash incentives for foreign workers to return home). The repatriation program also offered financial incentives in the amount of DM 10,500 to foreign workers who had recently been laid off and were willing to return home. Rogers, *supra* note 136, at 155 (stating that foreign workers could receive a cash payment if they repatriated); see also ÇIÇEKLI, *supra* note 55, at 110-11 (noting that unemployed foreigners were offered DM 10,500 to return home); Mehrländer, *supra* note 21, at 161 (noting that foreign workers were eligible to receive DM 10,500 if they left Germany). Although as many as 247,000 foreign workers, primarily from Turkey, Portugal, and Tunisia, left Germany in 1984, at least one scholar has estimated that only 45,000 or so left purely due to the government's return incentives. Rogers, *supra* note 136, at 156 (discussing how few Turks actually took advantage of program); see also BARBIERI, *supra* note 22, at 30 (stating that cash incentives aimed at encouraging Turkish guest workers to return home were not particularly successful). Additional factors contributed to some foreigners' decision to leave Germany. Rogers, *supra* note 136, at 156 (noting that law did not prompt decision to return home, but gave some foreigners incentive to return home sooner than expected); ÇIÇEKLI, *supra* note 55, at 49 (noting that feelings of racial and economic insecurity also contributed to Turkish repatriation).

137. See *Quickfacts: Society*, German Embassy, Washington, D.C., available at <http://www.germany-info.org/relaunch/info/facts/society.html> (noting that Germany's Turkish population totals two million); see also Abraham, *supra* note 21, at A19 (stating that

ment of foreigners ended more than thirty years ago, much of Germany's foreign population remains marginalized.¹³⁸ Job and housing opportunities are limited, and prejudice lingers.¹³⁹ Caught between two cultures with little hope for the future,¹⁴⁰ Turkish children living in Germany face perhaps the most difficult challenge.¹⁴¹ The fall of the Iron Curtain,¹⁴² German Reunification, and the subsequent influx of asylum seekers into Germany¹⁴³ have exacerbated the plight of Turks in Germany,¹⁴⁴

more than two million people of Muslim Turkish origin live in Germany today); BARBIERI, *supra* note 22, at 27 (noting that more than seven million foreigners live in Germany).

138. See BARBIERI, *supra* note 22, at 32-33 (finding that Germany's Turks are subject to discrimination on a daily basis); see also Alba, *supra* note 23, at 147 (finding that Turks residing in Germany are socially stigmatized and legally disadvantaged); FETZER, *supra* note 35, at 70 (noting that Germany's Turks have faced severe public opposition that is reflected in negative opinion polls and hate crimes).

139. See CASTLES & MILLER, *supra* note 17, at 196 (noting that many young foreigners are refused training positions because of prejudice); see also BARBIERI, *supra* note 22, at 35 (discussing poor living conditions with which most Turkish immigrants must contend); Markovits & Kazarinov, *supra* note 104, at 381 (noting how difficult it is for foreigners to get apartments in Germany).

140. See generally Patrick Ireland, *Reaping What They Sow: Institutions and Immigrant Political Participation in Western Europe*, in CHALLENGING IMMIGRATION AND ETHNIC RELATIONS POLITICS: COMPARATIVE EUROPEAN PERSPECTIVES 233, 261 (Ruud Koopmans & Paul Staham eds., 2000) (noting that young Turks in Germany faced terrible plight as outsiders); see also BARBIERI, *supra* note 22, at 7 (describing children of Turkish immigrants in Germany as outsiders); ÇİÇEKLI, *supra* note 55, at 44 (discussing feelings of isolation and frustration expressed by many adolescent Turks).

141. See Alba, *supra* note 23, at 130-31 (finding that many Turkish students are eligible for limited range of jobs because they have few credentials when they leave school system); see also BARBIERI, *supra* note 22, at 7 (stating that immigrant children's chances of finding apprenticeship or being admitted to university are "slim"); CASTLES & MILLER, *supra* note 17, at 196 (noting that far fewer Turkish students are granted apprenticeships than their German counterparts).

142. See CASTLES & MILLER, *supra* note 17, at 186 (noting that end of Cold War and German reunification led to massive new population movements since 1989 that made immigration and ethnic diversity central political issues in Germany after 1989); see also Klaus J. Bade, *From Emigration to Immigration: The German Experience in the Nineteenth and Twentieth Centuries*, in MIGRATION PAST, MIGRATION FUTURE, at 24-28 (discussing how post-reunification alienation experienced by East Germans led to hostility and violence directed at foreigners).

143. See CASTLES & MILLER, *supra* note 17, at 186 (noting that influx of refugees from Eastern Europe forced immigration to top of German political agenda); see also *Anti-Immigrant Violence Increases In Germany: Neo-Nazi Attacks Prompt Public Debate*, S.F. CHRON., Oct 1, 1991, at A11 (reporting that influx of asylum seekers prompted anti-foreigner violence in some parts of Germany); see also Marc Fisher, *Expected Flood of E. European immigrants Is Trickle So Far*, WASH. POST, Sept. 22, 1991, at A29 (reporting that approximately 140,000 refugees asked Germany for asylum in 1990, increase of 18% from previous year).

despite government efforts since the early 1980s to better integrate the foreign population into Germany.¹⁴⁵

II: THE GUEST WORKER PARADOX

A. West Germany

Scholars have disagreed to what extent citizenship may have better facilitated the integration of foreigners into German society.¹⁴⁶ Many practitioners have preferred to emphasize the role of language skills and work qualifications,¹⁴⁷ and post-nationalist analysts have argued that the relevance of nation-state citizenship has declined as countries like Germany increasingly grant "equal" rights to their non-national residents.¹⁴⁸ To be sure, Germany's welfare State has been largely nationality-blind.¹⁴⁹ Of the 4.5 million foreigners residing longer than eight years in Germany in 1989, 3.5 million could assert many of the same so-

144. See BARBIERI, *supra* note 195, at 36-37 (noting that increase in number of non-Turkish immigrants has worsened situation for Germany's Turkish residents because it has adversely affected German opinions regarding all foreigners); see also CASTLES & MILLER, *supra* note 17, at 186 (noting that massive new population movements since 1989 made immigration and ethnic diversity into central political issues).

145. See O'Brien, *supra* note 107, at 125 (noting that German government made efforts to better integrate foreigners in early 1980s). As of early 1980s, the federal government made concerted effort to integrate its foreign population into society at large. *Id.* Federal expenditures for integration climbed after 1982, and Islamic instruction for Muslim pupils was instituted in public schools in several German states. *Id.* See also Bade, *supra* note 142, at 23 (discussing cautious government attempts to foster social integration of foreigners).

146. See BARBARA MARSHALL, *EUROPE IN CHANGE: THE NEW GERMANY AND MIGRATION IN EUROPE* 138 (2000) (discussing role citizenship plays in social integration); see also RIVA KASTORYANO, *NEGOTIATING IDENTITIES: STATES AND IMMIGRANTS IN FRANCE AND GERMANY* 117 (2002) (arguing that Turkish immigrant movement for German citizenship became means of guaranteeing residence and political rights, not ensuring cultural integration).

147. See MARSHALL, *supra* note 146, at 138 (noting that language and work skills play essential role in social integration); see also Seibel, *supra* note 130, at 942 (noting that citizenship does not lead to integration of foreigners unless it is otherwise legally, politically, and socially feasible).

148. See JOPPKE, *supra* note 40, at 190 (noting that Germany grants many social and labor rights to its foreign residents); see also KASTORYANO, *supra* note 146, at 142-43 (explaining that Germany's foreign workers, though not naturalized, have social citizenship).

149. See JOPPKE, *supra* note 40, at 190 (noting that Germany's foreign population generally qualifies for same public benefits as its citizen population); see also KASTORYANO, *supra* note 146, at 77 (stating that *Gastarbeiter* receive same social allowances as Germans); ALEINIKOFF, *supra* note 27, at 54 (noting that citizenship status has been of minor importance in Western Europe in terms of access to social services).

cial and labor market rights that German citizens did.¹⁵⁰

Critics of this paradigm, however, have argued that without citizenship, immigrants live in perpetual exclusion.¹⁵¹ Although non-national residents enjoy many rights that nationals do, full equality (i.e. full political participation) is reserved for national citizens.¹⁵² Critics argue that such a schism between political and economic membership is inconsistent with the values of a liberal democratic society.¹⁵³ The benefits a society draws from the presence of immigrants cannot be reduced to the economic sphere or plainly disentangled from the political arena.¹⁵⁴ For

150. See JOPPKE, *supra* note 40, at 190 (noting that Germany's foreigners have many of same social rights as German citizens); see also BARBIERI, *supra* note 22, at 35 (noting that foreigners with legal residence in Germany possess same rights as Germans); Abraham, *supra* note 21, at A19 (stating that Turkish immigrant workers get some benefits of citizenship, such as healthcare and unemployment insurance, without being citizens). But see Markovits & Kazarinov, *supra* note 104, at 382 (discussing sociocultural factors and economic disadvantages that ensure that foreign laborers will occupy lowest positions in labor force and in society); see also Seibel, *supra* note 130, at 912-13 (discussing difficulties foreign workers face in overcoming societal barriers).

151. See generally RUTH RUBIO-MARIN, *IMMIGRATION AS DEMOCRATIC CHALLENGE: CITIZENSHIP AND INCLUSION IN GERMANY AND THE UNITED STATES* (2000) (asserting that exclusion of non-nationals from sphere of civic equality provokes concerns about legitimacy of public authority and laws that shape these non-citizens' lives); JOPPKE, *supra* note 40, at 186 (arguing that citizenship is essential to preventing stigmatization of foreigners and their children); Abraham, *supra* note 21, at A19 (noting that Turkish immigrants are not allowed full membership in German society).

152. See RUBIO-MARIN, *supra* note 151, at 1 (noting that foreign nationals cannot vote in Germany regardless of their residency status); see also POLITICS OF MIGRATION POLICIES, *supra* note 86, at 152 (noting that foreign workers were to enjoy all rights and privileges of Germans, save suffrage); see also Heller, *supra* note 28, at 204 (noting that immigrants of any class are not entitled to vote in U.S. state or federal elections).

153. See RUBIO-MARIN, *supra* note 151, at 36 (discussing citizenship issue); see also Münz & Ulrich, *supra* note 29, at 103 (urging that citizenship question be addressed in light of size of Germany's foreign population). Münz has asserted that if government, institutions, and political parties cater mainly to the interest of their constituencies, then seven million foreigners are not only excluded from most forms of political representation but also have much smaller opportunities to fight for resources and defend their special interests. *Id.* See also Castles, *supra* note 29, at 533 (noting that principle of "no taxation without representation" is basic democratic freedom central to modern parliamentary states). Castles argues that the permanent exclusion of a large section of the population (7%), or sections of particular social class, is not acceptable. *Id.*

154. See RUBIO-MARIN, *supra* note 151, at 36 (arguing that benefits society receives from immigrants cannot be separated from political or economic spheres); see also KASTORYANO, *supra* note 146, at 140-41 (noting that foreign workers become part of political discourse despite their lack of citizenship). See also Castles, *supra* note 29, at 533 (noting that poor legal status is major factor in marginalization of immigrants within West German society, contributing to ethnic segregation and racism); CASTLES & MILLER, *supra* note 17, at 194-95 (noting that structural factors and discrimination which led to initial low status of guest workers resulted in enduring patterns of labor

example, the tax contributions of immigrants finance their social benefits as well as the system that ensures national peace and security for the entire country, but non-citizen immigrants cannot vote for or against these policies and programs.¹⁵⁵

Because they are subject to a political process from which they are excluded, non-citizen residents lack the socioeconomic security their work and residence permits theoretically grant them.¹⁵⁶ The threat of deportation, however distant, always looms.¹⁵⁷ Indeed, one-fifth of foreign residents living in Germany for ten years or more have expressed worries about their residency status.¹⁵⁸

The failure of Germany's federal government to promptly grant full citizenship rights to the children of its foreign workers has had a particularly adverse impact on that generation's well-being and on Germany's social fabric overall.¹⁵⁹ Stigmatized as

market segmentation); CASTLES & KOSACK, *supra* note 17, at 446-53 (discussing causes of social prejudice, especially among working class). Castles points out that it is not the employment of immigrants itself that causes social problems, but the attempt of guest worker policies to treat these workers as purely economic beings, isolating their labor potential from their other human attributes. *Obituary*, *supra* note 17, at 776 (noting that not all racial intolerance is inevitable).

155. See RUBIO-MARIN, *supra* note 151, at 36 (arguing that liberal democratic society cannot relegate one group of its members to single function, such as that of being only immigrant workers); see also KASTORYANO, *supra* note 146, at 158 (citing 1991 report that estimated economic contributions Turkish immigrant workers have made to German welfare State could be as high as DM 57 billion).

156. See RUBIO-MARIN, *supra* note 151, at 3 (noting that foreigners frequently lack feeling of socioeconomic security); see also Münz & Ulrich, *supra* note 29, at 103 (arguing that foreign residents cannot defend their special interests if they are excluded from political process).

157. See Castles, *supra* note 29, at 523 (stating that deportation was "permanent sword of Damocles" hanging over guest workers). Foreign workers were justified in feeling insecure because official German policy in the early 1980s requires that the powers of deportation be used to their fullest extent to limit the size of the immigrant population. *Id.* at 527. See also BARBIERI, *supra* note 22, at 36 (noting that foreigners have no legal right to stay in Germany and may be expelled for any number of reasons).

158. See Ireland, *supra* note 140, at 261 (noting that Germany's foreign residents still express concerns regarding their legal status); see also Castles, *supra* note 29, at 527 (noting that foreigners had every reason to feel insecure because officials were making fullest use of powers of deportation to cut immigrant population).

159. See JOPPKE, *supra* note 40, at 186 (arguing that without citizenship, second- and third-generation foreigners are forever kept separate and stigmatized); see generally BARBIERI, *supra* note 22, at 7 (describing children of Turkish immigrants in Germany as outsiders); see also ÇİCEKLI, *supra* note 55, at 44 (discussing feelings of isolation and frustration expressed by many adolescent Turks); Ireland, *supra* note 140, at 261 (noting that young Turks in Germany have expressed feelings of bitterness, disappointment, and insecurity and have turned to each other for protection).

"foreigners," despite living in Germany most or all of their young lives, the children and grandchildren of immigrant workers frequently express feelings of bitterness, insecurity, and disappointment.¹⁶⁰ The extent of this stigma became tragically apparent when xenophobic violence escalated in the early 1990s.¹⁶¹

Indeed, widespread agreement exists that the legal and political exclusion of an entire generation of foreigners has led to a dangerous sense of social isolation among younger foreigners, who have compensated for their isolation by joining militant ethnically or religiously based organizations.¹⁶² They have shunned the organizations that once linked them to German society and have withdrawn into their own communities for support.¹⁶³ They romanticize traditional lifestyles and have forged new multiethnic identities based on largely non-western reference points.¹⁶⁴ In response to neo-Nazi Skinheads, young Turks formed their own street gangs for reasons such as self-defense.¹⁶⁵ In 1990, an estimated 7,000 third-generation Turks were active in Berlin street gangs,¹⁶⁶ and a 1997 survey of third-generation

160. See Ireland, *supra* note 140, at 261 (noting that children and grandchildren of Germany's immigrants feel isolated); see also JOPPKE, *supra* note 40, at 186 (arguing that foreigners such as Turks are permanently excluded and stigmatized as outsiders when they are not granted citizenship); BARBIERI, *supra* note 22, at 7 (noting that children of Turkish immigrants in Germany are considered outsiders).

161. See JOPPKE, *supra* note 40, at 186 (noting that anti-foreigner violence increased in 1980s); see also Kaufman, *supra* note 288, at 2 (discussing sudden outbreak of anti-foreign violence in 1992); BARBIERI, *supra* note 22, at 33 (noting that German reunification revealed increased level of hostility to foreigners among East Germans); HERBERT, *supra* note 22, at 225-27 (noting rise of xenophobic hostility toward foreigners in Germany); CASTLES & MILLER, *supra* note 17, at 204 (discussing murder of several Turkish immigrants in arson attacks).

162. See MARSHALL, *supra* note 146, at 138 (noting that Turkish youngsters have joined extremist groups); see also ÇİÇEKLI, *supra* note 55, at 44 (explaining that feelings of isolation and frustration have led to aggressiveness and juvenile delinquency among adolescent Turks).

163. See Ireland, *supra* note 140, at 261 (noting that Turkish youths have withdrawn into their own communities); see also ÇİÇEKLI, *supra* note 55, at 43 (noting that development of foreign communities has led to residential segregation).

164. See Ireland, *supra* note 140, at 261 (noting that young foreigners identify strongly with non-Western reference points); see also ÇİÇEKLI, *supra* note 55, at 44 (discussing how hostility and discrimination have prompted foreigners to attach to their national culture and religious beliefs).

165. See JOPPKE, *supra* note 40, at 221 (noting that formation of Turkish street gangs was in part response to attacks by Nazi skinheads); see also HERBERT, *supra* note 220, at 252 (discussing eruption and spread of street battles between gangs of German and foreign unemployed youths).

166. See JOPPKE, *supra* note 40, at 221 (noting that high number of young Turks are

Turkish immigrants revealed an astonishing degree of nationalist and religious attitudes.¹⁶⁷

Ironically, the Turkish population did not embrace the government's earliest naturalization initiatives.¹⁶⁸ Although a combination of factors, including high fees and feelings of being "unwanted" in their host country, explained this phenomenon, the biggest reason for the resistance by far was a proscription on dual citizenship.¹⁶⁹ This prohibition was rooted in long-held beliefs that double citizenship inevitably leads to conflicts of national loyalty.¹⁷⁰

involved in Berlin street gangs); *see also* KASTORYANO, *supra* note 146, at 74-75 (noting that formation of Turkish youth gangs is in part result of rage among young foreigners at their treatment by skinheads).

167. *See* JOPPKE, *supra* note 40, at 222 (describing nationalist attitudes among young Turks). Fifty-seven percent of the interviewed youths agreed with the Turk Federation slogan: "Turkdom is our body, our soul is Islam. A body without a soul is a corpse." *Id.* Almost 66% of those surveyed agreed with the statement: "Every [Muslim] must know that the religions of other nations are null and void, and that their members are non-believers. Islam is the only right religion." *Id.* *See also* BETIGÜL ERCAN ARGUN, TURKEY IN GERMANY: THE TRANSNATIONAL SPHERE OF DEUTSCHKEI 70-71 (2003) (noting that Turkish immigrants strongly identify with their homeland). Restrictive immigration policies on the part of the German government, as well as foreigners' fear of losing their identity on foreign soil, have contributed to the self-segregation or ghettoization of the Turkish population in Germany. *Id.*

168. *See* BARBIERI, *supra* note 22, at 66 (noting that Turks initially were not interested in becoming German citizens). Although two-thirds of Germany's immigrant population qualified for naturalization, the country still had by far the lowest naturalization among European nations with guest worker policies. *Id.* *See also* Münz & Ulrich, *supra* note 29, at 100 (noting that from 1974 to 1992 annual naturalization rates in Germany were very low by international standards); *see also* Alba, *supra* note 23, at 121 (noting that only small fractions of foreign residents have naturalized); CASTLES & MILLER, *supra* note 17, at 202 (noting that only 14,000 of three million Turks eligible for German citizenship actually applied for it each year).

169. *See also* CASTLES & MILLER, *supra* note 17, at 200 (noting that formation of Turkish associations in Germany led to immigrant calls for political and social rights, including dual citizenship); *see also* William Safire, *Blood And Irony Help Decide Who Gets To Become German Citizen*, CHI. TRIB., June 18, 1993, at 23 (noting that Turks favor dual citizenship because they would lose property rights in Turkey if they became German citizens).

170. *See* BARBIERI, *supra* note 22, at 69 (discussing school of thought that person cannot simultaneously pledge allegiance to two Nations). Barbieri notes that critics of dual citizenship believe that the legal status of dual citizens is unclear, especially in the context of private international law. *Id.* In addition, dual citizens may be taxed twice or have dual military obligations. *Id.* Finally, dual citizens may not be able to receive diplomatic or consular protections in their second country of citizenship. *See also* Hailbronner, *supra* note 28, at 102 (noting that dual nationality has always been considered as inconsistent with concept of loyalty and attachment to Germany); *see generally* JOPPKE, *supra* note 40, at 203-04 (noting that German politicians who oppose dual citizenship have asserted that foreigners who want to acquire German citizenship must commit

The bar on dual citizenship ignored both the symbolic and material value inherent in Turkish citizenship, creating an impossible dilemma for Turks living in Germany.¹⁷¹ Because even the children of *Gastarbeiter* were not given an automatic right to live and work in Germany at this time and because deportation was always a lurking possibility, naturalization offered the only real security.¹⁷² However unrealistic, many Turkish workers adhered to the dream of returning to their homeland and saw the renunciation of their Turkish citizenship as a betrayal of their country, family, and people.¹⁷³ First-generation *Gastarbeiter*, in particular, were hesitant to break these ties, and many arranged to be returned to Turkey at least for burial after their death.¹⁷⁴ Moreover, substantial legal and financial dilemmas confronted Turks who abandoned their citizenship.¹⁷⁵ Visas were required for Turkish reentry, and Turks lost the right to operate businesses, own land, and inherit once they naturalized elsewhere.¹⁷⁶

themselves to national community). German opponents of dual citizenship believe that the toleration of dual citizenship can lead to the formation of permanent national minorities. *Id.*

171. See BARBIERI, *supra* note 22, at 67 (noting that Turks living in Germany did not want to give up their Turkish citizenship); see also ARGUN, *supra* note 167, at 69-70 (noting that without Turkish citizenship Turks might find it difficult to inherit land, own business, or be buried in Turkey); CASTLES & MILLER, *supra* note 17, at 204 (stating that Turks cannot easily give up their previous citizenship).

172. See Castles, *supra* note 29, at 527 (noting that naturalization was only mechanism by which Turks could lock in their social rights). More than two million foreigners had residence permits that could lead to deportation in wide variety of circumstances. *Id.* See also Alba, *supra* note 23, at 121 (noting that sojourner orientation existed among Turkish immigrants who felt they must be prepared for possibility of return); CASTLES & MILLER, *supra* note 17, at 202 (noting that even second-generation immigrants could be deported under German law).

173. See BARBIERI, *supra* note 22, at 66-67 (noting that nearly all foreigners living in Germany are reluctant to sever their ties to their homeland); see also Castles, *supra* note 29, at 527 (noting that many Turks were unwilling to surrender all hope of returning to their country of origin in exchange for German citizenship).

174. See Castles, *supra* note 29, at 533 (noting that many elderly Turks choose to be buried in their country of origin); see also Gerald L. Neuman, *Nationality Law in the United States and the Federal Republic of Germany: Structure and Current Problems*, in PATHS TO INCLUSION 274-75 (noting that both psychological and practical reasons explain why foreign workers are unwilling to relinquish their native citizenship).

175. See BARBIERI, *supra* note 22, at 67 (noting that Germany's official refusal to accept dual citizenship was main deterrent why Turks did not naturalize); see also Safire, *supra* note 169 (noting that naturalization rates among Turks historically have been low because many of them feared they would lose property rights in Turkey if they applied for German citizenship).

176. See BARBIERI, *supra* note 22, at 67 (noting that Turks who gave up their Turkish citizenship would need visas to return to Turkey and lose right to operate business,

A 1991 Berlin poll verified the strong deterrent effect of these factors: 61% of the poll's Turkish respondents said they would apply for German citizenship if they were not required to give up their old one.¹⁷⁷

After years of heated political debate, German citizenship rules were relaxed in the 1990s. The Foreigners Law of 1990 made naturalization the general rule rather than the exception and greatly lowered the costs associated with the process.¹⁷⁸ Moreover, the previously strict prohibition on dual citizenship was eased.¹⁷⁹ Subsequently, a growing number of long-term foreign residents naturalized, especially as more government administrators used their newfound discretion to allow for dual citizenship.¹⁸⁰

The political debate over the status of foreigners continued through the 1990s.¹⁸¹ The Christian Democrats rejected an ambitious reform proposal set forth by the Social Democratic Party

own land, or inherit); see also Safire, *supra* note 169 (noting that few Turks applied for German citizenship because they would lose property rights in Turkey).

177. See BARBIERI, *supra* note 22, at 67-68 (discussing 1991 poll in which 61% of Turks and 72% of Yugoslavs said they would apply for German citizenship if they could retain their current citizenship); see also ARGUN, *supra* note 167, at 69-70 (quoting Turkish immigrant who discusses his reluctance to break institutional and psychological ties with Turkey).

178. See KASTORYANO, *supra* note 146, at 148 (noting that price of citizenship was lowered to DM 100); CASTLES & MILLER, *supra* note 17, at 202 (noting that it became easier to obtain German citizenship in 1990s).

179. See Christian Joppke, *Mobilization of Culture and the Reform of Citizenship Law: Germany and the United States*, in CHALLENGING IMMIGRATION AND ETHNIC RELATIONS POLITICS: COMPARATIVE EUROPEAN PERSPECTIVES 145, 153 (Ruud Koopmans & Paul Staham eds., 2000) (noting that 1990 law increased number of permissible exceptions for dual citizenship); see also Neuman, *supra* note 174, at 275 (finding that special provisions allowing dual citizenship were increasingly invoked in 1990s). See also Hailbronner, *supra* note 28, at 103 (noting that certain exceptions in Foreigners Law led to increase in number of naturalizations with dual nationality). Government officials could grant exceptions if a foreigner was not able to renounce his previous nationality or could only do so only under particularly difficult conditions. *Id.* An exception was very likely to be granted if the original home country required military service. *Id.*

180. See Joppke, *supra* note 179, at 153 (noting that about half discretionary naturalizations in 1993 entailed dual citizenship with full knowledge of German State authorities). See also Hailbronner, *supra* note 28, at 104 (describing increase in naturalizations in the aftermath of citizenship reform). Of a total of 82,913 naturalizations resulting from the reformed provisions of the Foreigners Law, 39,111, or 47.2 %, involved Turkish nationals. *Id.* See also KASTORYANO, *supra* note 146, at 148 (finding that naturalizations surged in early 1990s).

181. See Ireland, *supra* note 140, at 263 (noting that Germany's Social Democrats wanted to end country's prohibition on dual citizenship); see also KASTORYANO, *supra* note 146, at 149 (discussing CDU's opposition to SPD's dual citizenship initiative).

that would have led to an official acceptance of dual citizenship once and for all and shortened the residency requirement for citizenship.¹⁸² Nonetheless, a compromise was reached. The 1999 legislation allows children of foreign workers to hold both German citizenship and that of their parents so long as one parent has lived in Germany for at least eight years.¹⁸³ The children must, however, choose one nationality by the age of 23.¹⁸⁴ The law permits dual citizenship in situations where it is impossible to renounce the citizenship of another country.¹⁸⁵

The Turkish government has aided its immigrant workers abroad by easing inheritance laws regarding former citizens and permitting former citizens to reacquire their Turkish citizenship.¹⁸⁶ As a result, most Turkish applicants for German citizenship divest themselves only temporarily of their old citizenship.¹⁸⁷ In turn, German authorities have become less vigilant in

182. See Ireland, *supra* note 140, at 263 (noting that SPD Party supported complete elimination of ban on dual citizenship); see also KASTORYANO, *supra* note 146, at 149 (noting that Germany's Christian Democrats opposed SPD's initiative to end country's prohibition on dual citizenship).

183. See Ireland, *supra* note 140, at 263 (noting that foreign children could attain German citizenship if one parent had lived in Germany for eight years or more); see also *Background Paper: Citizenship Reform and Germany's Foreign Residents*, German Embassy, available at <http://www.germany-info.org/relaunch/info/archives/background/citizenship.html> [hereinafter *Citizenship Reform*] (discussing German citizenship laws that became effective on January 1, 2000 and noting that main change in new regulations is substantial reduction in length of residency requirement for adult foreigners); Hailbronner, *supra* note 28, at 103 (discussing 1990 law that facilitated acquisition of German citizenship for foreigners aged sixteen to twenty-three).

184. See Ireland, *supra* note 140, at 263 (noting that foreign children must eventually choose which citizenship they wish to hold); see also *Citizenship Reform*, *supra* note 183 (noting that at age of twenty-three children must decide on one nationality).

185. See also Ireland, *supra* note 140, at 263-64 (noting that German authorities will tolerate dual citizenship only where it is not possible to renounce nationality of another country); see also JOPPKE, *supra* note 40, at 205 (noting that in practical terms dual citizenship has become commonplace, even in Germany). At least one-third of discretionary naturalizations of foreign residents in Germany lead to dual citizenship. *Id.*

186. See JOPPKE, *supra* note 40, at 205 (noting that Turkish government has made its inheritance laws less restrictive and that Turks can request to have their citizenship reinstated); see also *Einbürgern, Ausbürgern, Einbürgern*, DIE ZEIT, Mar. 28, 1997, at 69 [hereinafter *Einbürgern*] (noting that Turkey will reinstate citizenship to its former nationals).

187. See JOPPKE, *supra* note 40, at 205 (noting that many Turks only temporarily divest themselves of their Turkish citizenship); see also *Einbürgern*, *supra* note 186, at 69 (stating that Turks only renounce their original citizenship temporarily); Hailbronner, *supra* note 28, at 105 (noting that Turkish authorities assist their nationals in reacquiring their Turkish citizenship after they have gone through German naturalization process.)

actually checking whether the citizenship has been relinquished.¹⁸⁸

B. The United States

Although the United States has experimented with formal guest worker policies,¹⁸⁹ immigration in the United States traditionally has been an informal affair.¹⁹⁰ Nevertheless, U.S. immigration policies have had many of the same consequences as Germany's failed *Gastarbeiter* program.¹⁹¹

188. See JOPPKE, *supra* note 40, at 205 (noting that German officials have increasingly permitted exceptions to dual citizenship); see also Neuman, *supra* note 174, at 275 (noting that authorities increasingly relied on special provisions to allow dual citizenship in 1990s). But see Hailbronner, *supra* note 28, at 105 (noting increasing concern among German authorities regarding abuse of country's citizenship laws).

189. Under the Bracero program, the U.S. granted temporary employment visas to Mexican workers to alleviate WWII-driven labor shortages in the United States. The program was halted in 1964. See generally MASSEY, *supra* note 18, at 35-39 (discussing history of Bracero program). Currently, the United States grants temporary work visas to professionals in high-tech jobs and to seasonal agricultural workers. See generally Temporary Workers, Bureau of Citizenship and Immigration Services, available at <http://www.uscis.gov/graphics/services/tempbenefits/tempworker.htm>.

190. See ANDREAS, *supra* note 18, at 33 (noting that large numbers of Mexican workers historically made their way across U.S. border without going through formal channels); see also MASSEY, *supra* note 18, at 105 (noting that United States implicitly arranged to import Mexican workers throughout twentieth century); Griswold, *supra* note 15, at 6 (noting that for all practical purposes from 1964 to 1986 Mexican immigrants were free to cross border into United States with few obstacles).

191. Both Germany and the United States have experienced the permanent settlement of once temporary migrants. MASSEY, *supra* note 18, at 47 (noting that growing numbers of Mexicans began to settle permanently in United States in 1980s); see also ANDREAS, *supra* note 18, at 38 (noting that Mexican migration to United States has become more permanent); Griswold, *supra* note 15, at 6-7 (noting that U.S. immigration policies in 1980s and 1990s prompted immigrants to remain in United States more permanently); Obituary, *supra* note 17, at 761 (noting guest workers in Western Europe did not return to their native countries); POLITICS OF MIGRATION POLICIES, *supra* note 86, at 192 (noting that *de facto* immigration had taken place in Germany despite German federal government's unwillingness to recognize it as such). Both Germany and the United States have experienced native backlashes against their immigrant populations. See CASTLES & MILLER, *supra* note 17, at 275 (noting that right-wing Republican presidential hopeful Patrick Buchanan used anti-immigrant theme in his 1996 campaign); see also MASSEY, *supra* note 18, at 89 (noting that U.S. politicians have tried to outdo each other with symbolic gestures against undocumented migration); BARBIERI, *supra* note 22, at 33 (describing increase in xenophobia and xenophobic acts against foreign residents in Germany during times of economic downturn); HERBERT, *supra* note 22, at 225-27 (noting that xenophobic hostility toward Turks and other foreigners in Germany emerged in mid-1960s); CASTLES & MILLER, *supra* note 17, at 204 (noting that several Turkish residents were killed in arson attacks in Germany in early 1990s but these deaths were followed by large anti-racism demonstrations throughout Germany).

1. From Circular Migration to Permanent Settlement

Mexican workers rarely migrate to the United States with the intent of becoming permanent settlers.¹⁹² Their primary goal is to bolster family finances through higher wages and access capital not readily available to them in Mexico,¹⁹³ in large part because of an absence of commercial credit.¹⁹⁴ Money earned in the United States gets sent home in the form of remittances,¹⁹⁵ which provide investment funds to improve housing, pay medical bills, and finance community projects.¹⁹⁶ Most Mexicans see themselves as sojourners and plan to rejoin their families after a few months or years in the U.S. labor market.¹⁹⁷

Many Mexicans do remain in the United States indefinitely,

192. See Fraser, *supra* note 31, at 101 (noting that illegal immigrants from Mexico and Central America come to United States for seasonal employment); MASSEY, *supra* note 18, at 12 (noting that Mexican families send workers overseas so that they can earn higher wages to increase their savings in relatively short period of time).

193. See Griswold, *supra* note 15, at 6 (noting that need for credit and access to capital motivates Mexicans to come to United States); see also MASSEY, *supra* note 18, at 7-8 (noting that Mexican workers come to United States to take advantage of higher wages); Fraser, *supra* note 31, at 101 (noting that seasonal immigrants from Mexico come to United States to achieve target earnings).

194. See Griswold, *supra* note 15, at 6 (noting that need for credit and capital motivates Mexicans to come to United States); see also Douglas S. Massey & Kristin E. Espinosa, *What's Driving U.S.-Mexican Migration? Theoretical, Empirical, and Policy Analysis*, 102 AM. J. OF SOCIOLOGY 939, 987 (1997) (finding that Mexicans migrate to United States primarily for purpose of accessing scarce capital); Fraser, *supra* note 31, at 101 (stating that seasonal immigrants travel to United States to accumulate savings); MASSEY, *supra* note 18, at 12 (noting that Mexicans migrate to access capital that is scarce at home and to mitigate capital risks they would otherwise endure in Mexico).

195. See CASTLES & MILLER, *supra* note 17, at 220 (noting that most immigrant workers have to send money home); see also MASSEY, *supra* note 18, at 11 (noting that Mexican immigrants send home remittances to improve their lives at home); Griswold, *supra* note 15, at 5-6 (noting that Mexican families send workers to United States to earn money to send back as remittances).

196. See Griswold, *supra* note 15, at 6 (noting that Mexican immigrants send remittances home to their families who are often unable to obtain bank loans or other forms of commercial credit); see also Allert Brown-Gort, *Seeking Balance in the Immigration Debate*, BOSTON GLOBE, Jan. 10, 2004, at A13 (noting that Mexican workers sent estimated U.S. \$13 billion in remittances from United States to Mexico in 2003); MASSEY, *supra* note 18, at 11 (noting that Mexican immigrants send home billions of dollars in remittances to improve their lives at home).

197. See Griswold, *supra* note 15, at 6 (describing circular migration patterns among Mexican migrants); see also Francisco Alba, *Mexico: Crucial Crossroads* (Migration Policy Institute, Washington, D.C.), July 2002, available at <http://www.migrationinformation.org/feature/display.cfm?ID=211> (noting that many permanent immigrants began their journey to United States as circular migrants); Fraser, *supra* note 31, at 101 (noting that illegal immigrants from Mexico and Central America enter United States on seasonal basis for employment purposes); MASSEY, *supra* note 18, at 12 (noting that

for several reasons.¹⁹⁸ Some immigrants undoubtedly find greater possibilities for their economic well-being upon arriving in the United States.¹⁹⁹ Immigrants also depend heavily on social networks of friends and relatives who ease their journey and subsequent settlement by helping them find employment and housing.²⁰⁰ After several generations of migration, these networks have deepened and have laid a foundation for continuing migration, which cannot easily be reversed.²⁰¹

Third, government policies, particularly those aimed at halting illegal immigration, have played a facilitative role in immigrants' decisions to remain in the United States.²⁰² After the

Mexicans come to United States to work for short periods of time to bolster their savings).

198. See MASSEY, *supra* note 18, at 47 (noting that growing numbers of Mexicans began to settle permanently in United States in 1980s); see also ANDREAS, *supra* note 18, at 38 (noting that Mexican migration to United States became more permanent as immigrants began to fill year-round jobs instead of seasonal jobs); Griswold, *supra* note 15, at 6-7 (noting that U.S. immigration policies in 1980s and 1990s prompted immigrants to remain in United States longer).

199. See, e.g., Mary Beth Sheridan, *Invisible Community's Hushed Cheer: "Guest Worker" Plan Excites Area's Illegal Mexican Immigrants*, WASH. POST, Dec. 27, 2003, at A1 (quoting Mexican immigrant who laments lack of comparable economic opportunities at home); see also Heller, *supra* note 28, at 203 (noting that opportunity to work for extended periods may be more important to immigrants than political or social privileges); Fraser, *supra* note 31, at 101 (finding that about 5.5 million undocumented immigrants have lived in United States for more than one year).

200. See Griswold, *supra* note 15, at 6 (discussing important role social networks play in helping Mexican immigrants get established in United States); see also Richard Alba & Victor Nee, REMAKING THE AMERICAN MAINSTREAM 188-89 (2003) (explaining how Mexican social networks disseminate information on U.S. job opportunities and border crossings to Mexico); ANDREAS, *supra* note 18, at 38 (finding that immigrants legalized after IRCA aided a second wave of illegal immigrants).

201. See Griswold, *supra* note 15, at 6 (explaining that social networks reinforce current patterns of migration); see also Alba & Nee, *supra* note 200, at 188-89 (noting that existing social machinery will lead to continuation of large-scale immigration from Mexico for foreseeable future); Fraser, *supra* note 31, at 103 (noting that existing immigration flows can serve to establish migration pathways and networks that maintain and even expand migration flows); ANDREAS, *supra* note 18, at 38 (noting that those who were legalized under IRCA helped facilitate arrival of new illegal immigrants).

202. See Brown-Gort, *supra* note 196, at A13 (noting that tightened borders have prompted immigrants to stay in United States for longer periods of time); see also Del Olmo, *supra* note 25, at M5 (stating that tougher U.S. border enforcement in 1990s had unintended consequence of forcing immigrant workers to lengthen their stays in United States); Heller, *supra* note 28, at 206 (noting that various government efforts to halt illegal immigration have failed to reduce pool of undocumented workers); Griswold, *supra* note 15, at 7 (noting that increased border control has made Mexican immigrants less confident that they will be able to return to United States once they leave); Duignan & Gann, *supra* note 30, at 7 (stating that strengthened border patrols

passage of the 1986 Immigration Reform and Control Act ("IRCA")²⁰³ and the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA),²⁰⁴ both of which substantially increased Border Patrol spending,²⁰⁵ Mexican immigrants increasingly had to rely on costly smugglers to get into the United States.²⁰⁶ Tighter border controls in urban areas also drove immigrants to enter the United States in more remote, rural areas, where conditions for crossing were more dangerous.²⁰⁷ These translated into higher physical and financial costs of entry for immigrants, who began to stay in the United States longer out of uncertainty over whether they would be able to repeat the jour-

and fencing have prompted many illegals to remain in United States rather than risk being caught); ANDREAS, *supra* note 18, at 109 (noting that tightening of border controls has encouraged immigrants to stay longer in United States).

203. Immigration Reform and Control Act (IRCA) of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (codified in scattered sections of 8 U.S.C.) (providing for increased border control spending and enacting sanctions against employers that hire undocumented immigrants).

204. Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, 110 Stat. 3009, (Sept. 20, 1996) (bolstering number of border control personnel and increasing civil penalties for immigrants entering United States illegally).

205. See Heller, *supra* note 28, at 206 (noting that U.S. government has made substantial investments in improved border enforcement, especially along Mexico-California corridor); Fraser, *supra* note 31, at 103 (noting that effective control of borders and ports-of-entry is principal strategy for preventing illegal immigration); LEAH A. HAUS, UNIONS, IMMIGRATION, AND INTERNATIONALIZATION: NEW CHALLENGES AND CHANGING COALITIONS IN THE UNITED STATES AND FRANCE 67-68 (2002) (discussing new strategies implemented in 1990s aimed at reinforcing U.S. border with Mexico); ANDREAS, *supra* note 18, at 38 (noting that IRCA authorized expansion of U.S. Border Patrol).

206. See Griswold, *supra* note 15, at 6 (noting that smugglers are increasingly used to assist immigrants across U.S.-Mexico border). The share of illegal immigrants using smugglers to cross into the United States from Mexico increased from 70% to 90% in the 1990s. *Id.* Smuggler fees in the same period rose from \$500 to \$1,000 or more. *Id.* See also Jeffrey S. Passel, *Undocumented Immigration*, in *DEBATE IN THE UNITED STATES* 197 (noting that increased smuggling costs make border crossings more expensive and thereby encourage undocumented workers to remain in United States for longer periods of time); CASTLES & MILLER, *supra* note 17, at 97 (discussing emergence of migration industry that includes human smugglers who transport Mexicans across Rio Grande River); MASSEY, *supra* note 18, at 8-9 (noting that tougher border control measures failed to increase odds of immigrants returning home); ANDREAS, *supra* note 18, at 95 (finding that 75% of all illegal Mexican border crossers use service of smuggler).

207. See Griswold, *supra* note 15, at 7 (noting that remote topography and hostile desert climate resulted in 336 immigrant deaths in 2001, mostly from dehydration); see also MASSEY, *supra* note 18, at 113-14 (noting that diversion of undocumented workers to rugged terrain has increased risks of injury and death); ANDREAS, *supra* note 18, at 95 (noting that smuggling fees have increased from \$250 to \$1,500 at some part of U.S.-Mexico border).

ney.²⁰⁸ Longer stays also became necessary to save the money needed to pay off increasingly expensive smuggling fees.²⁰⁹ Accordingly, the median stay of undocumented immigrants from Mexico grew from 2.6 years to 6.6 years from 1986 to 1998,²¹⁰ and the number of undocumented immigrants doubled from four million to eight million after 1986, with the undocumented population growing at about 250,000 a year.²¹¹

Prior to 1986, migration patterns between the U.S. and Mexico were more circular.²¹² Of an estimated twenty-eight million Mexicans who had entered the United States from 1964 to 1986, 23.4 million, or more than 80%, went back to Mexico.²¹³

208. See Griswold, *supra* note 15, at 7 (noting that Mexican immigrants have become less confident that they will be able to return to United States once they leave); see also Duignan & Gann, *supra* note 30, at 7 (stating that strengthened border patrols and fencing have prompted many illegals to remain in United States rather than risk being caught); ANDREAS, *supra* note 18, at 109 (noting that tightening of border controls has encouraged immigrants to stay longer in United States). See, e.g., Sheridan, *supra* note 199, at A1 (quoting Mexican immigrant who states that she is reluctant to return home for fear she will not be able to cross border back into United States). Perversely, one of the effects of U.S. border enforcement strategies in the 1990s has been to reduce the previously circular movement of sojourners to and from Mexico. *New Directions in the U.S.-Mexico Relationship: The Elements of Bargain* (Carnegie Endowment for International Peace, Washington, D.C.), Feb. 14, 2001, at 11 [hereinafter *New Directions*] (noting that many undocumented workers who otherwise might have preferred to stay in Mexico have settled in United States because of danger and expense associated with crossing U.S. border).

209. See Griswold, *supra* note 15, at 7 (noting that increased cost of smuggling fees compelled many Mexican immigrants to stay in United States longer than in past); see also Passel, *supra* note 206, at 197 (noting that higher smuggling fees made border crossings more expensive for undocumented workers from Mexico); ANDREAS, *supra* note 18, at 95 (noting that smuggling fees have increased from \$250 to \$1,500 at some part of U.S.-Mexico border).

210. See Griswold, *supra* note 15, at 7 (noting that from 1986 to 1998 median stay of undocumented immigrants from Mexico grew from 2.6 years to 6.6 years); see also MASSEY, *supra* note 18, at 131 (noting that Mexican immigrants have increased length of their sojourns to United States); ANDREAS, *supra* note 18, at 109 (noting that increased risk and cost of crossing border increased incentive for many immigrants to extend their stays or settle permanently in United States).

211. See Griswold, *supra* note 15, at 5 (noting that number of undocumented immigrants doubled from four million to eight million after 1986, with the undocumented population growing at about 250,000 per year); see also Passel, *supra* note 206, at 194 (stating that undocumented U.S. immigrant population increases annually by roughly 200,000 to 300,000).

212. See Alba, *supra* note 197 (stating that IRCA unintentionally transformed Mexican migration from predominantly circular flow into more permanent move); see also MASSEY, *supra* note 18, at 101 (describing Mexican-U.S. migration in early 1980s as circulation of undocumented labor).

213. See MASSEY, *supra* note 18, at 45 (noting that number of Mexican immigrants

Because relatively lax border controls characterize this period,²¹⁴ the figures also indicate that immigrants were more willing to go back home so long as the option of returning to the United States in case of financial need remained open.²¹⁵

Notably, Mexican demographics are changing in a manner expected to reduce migration to the United States in the long run.²¹⁶ Immigrants tend to be between the ages of 15 and 44 years old, a segment of the Mexican population that is shrinking.²¹⁷ In the next ten to fifteen years, the number of working age Mexicans will drop from 1.2 million to as low as 600,000.²¹⁸ As a result, the number of Mexicans expected to seek employment across the border is projected to subside.²¹⁹ In the meantime, migration rates remain high, with 150,000 unautho-

that returned home prior to enactment of 1986 immigration laws was approximately 80%); see also *Migration Between Mexico And The United States* 9, Binational Study on Migration, U.S. Commission on Immigration Reform (1997), available at <http://www.utexas.edu/lbj/uscir/binational.html> (noting that increasing number of Mexican immigrants have decided to settle in United States permanently); ANDREAS, *supra* note 18, at 109 (noting that undocumented workers from Mexico have increasingly decided to settle down permanently in United States).

214. See MASSEY, *supra* note 18, at 71-72 (noting that border controls were lax prior to 1986); see also ANDREAS, *supra* note 18, at 33 (noting that in past large numbers of Mexican workers made their way across U.S. border without going through formal channels); Griswold, *supra* note 15, at 6 (finding that from 1964 to 1986 Mexican immigrants faced few obstacles crossing Mexican-U.S. border).

215. See MASSEY, *supra* note 18, at 71-72 (noting that lax border controls in mid-1980s encouraged circular pattern of Mexico-U.S. migration); see also Griswold, *supra* note 15, at 6 (stating that Mexican immigrants returned home with knowledge that they could return to United States for additional work whenever they wished to raise additional capital); ANDREAS, *supra* note 18, at 109 (noting that traditionally most Mexicans who came to United States illegally went back and forth between two countries).

216. See *U.S.-Mexico Migration Discussions: An Historic Opportunity*, Hearing of the Senate Judiciary Committee, 107th Cong., (Sept. 7, 2001) (comments by Dr. Demetrios Papandemetriou, Co-Director, Migration Policy Institute) [hereinafter Senate Hearings] (stating that changing Mexican demographics will reduce migration to United States over long run); see also *New Directions*, *supra* note 208, at 8 (noting that expected decline in Mexico's natural growth rate should reduce number of immigrant workers entering United States); Griswold, *supra* note 15, at 12 (noting that demographic and economic factors within Mexico are likely to reduce emigration pressures).

217. See Senate Hearings, *supra* note 216 (noting that number of young Mexicans is decreasing); see also Griswold, *supra* note 15, 12 (noting that declining birthrates in Mexico are reducing growth rate of Mexican workforce).

218. See Senate Hearings, *supra* note 216 (noting that number of working age Mexicans is declining); see also Griswold, *supra* note 15, at 12 (noting that number of young workers entering Mexican domestic workforce is expected to decline by half in next decade).

219. See Senate Hearings, *supra* note 216 (noting that number of Mexicans crossing U.S. border is expected to decrease); see also Griswold, *supra* note 15, at 12 (noting

rized Mexican immigrants crossing the border each year to satisfy the insatiable labor demands of U.S. industries.²²⁰

2. Labor Dependency and Social Stratification

For years, U.S. migration laws have existed in dissonance with the labor needs of American companies,²²¹ which changing U.S. demographics have made ever more dependent on immigrant workers.²²² As Baby Boomers near retirement, the median age of U.S. workers has risen.²²³ The Department of Labor expects the median age of U.S. workers to grow from 36.6 to 40.6 years old between 1990 and 2010.²²⁴ Moreover, U.S. workers are becoming more educated.²²⁵ The number of native-born men

that demographic and economic changes within Mexico are likely to reduce number of immigrants coming to United States).

220. See Senate Hearings, *supra* note 216 (noting that migration rates from Mexico to United States remain high); see also Griswold, *supra* note 15, at 12 (noting that current high levels of Mexico-U.S. migration represent peak in volume).

221. See MASSEY, *supra* note 18, at 73 (noting that United States has pursued "politics of contradiction" in its immigration policies); see also Griswold, *supra* note 15, at 1 (noting that U.S. immigration law contains virtually no legal channel through which low-skilled workers can enter United States to fill excess jobs); ANDREAS, *supra* note 18, at 88 (noting that anti-immigrant legislation ignored fact that employers in key sectors of California economy relied on illegal immigrant workers).

222. See Griswold, *supra* note 15, at 9 (noting that U.S. workers are becoming older and more educated while number of low-skilled jobs grows); see also *New Directions*, *supra* note 208, at 1 (noting that influx of immigrants and their children will be necessary to finance retirement of Baby Boomers); *Future Labor*, *supra* note 10, at 1-2 (noting that number of people aged sixty-five and older will double from 35.1 million to 70.3 million in next thirty years); *Essential Workers*, *supra* note 15, at 1 (noting that United States is not producing enough new workers to compensate for Baby Boom retirement); *Future Growth*, *supra* note 10, at 1 (noting that in next thirty years number of Americans aged thirty-five to forty-four will decrease).

223. See Griswold, *supra* note 15, at 9 (noting that median age of U.S. workers will rise to 40.6 years from 36.6 year); see also *New Directions*, *supra* note 208, at 1 (noting that immigrants and their children will be needed to fund retirement of Baby Boomers); *Future Labor*, *supra* note 10, at 1 (noting that retirement of Baby Boom generation and improvements in medical technology will result in growing number of older Americans); *Essential Workers*, *supra* note 15, at 1 (noting that reduction in total size of U.S. workforce will occur as Baby Boomers retire); *Essential Workers*, *supra* note 15, at 1 (noting that more than sixty million current employees will likely retire over next thirty years).

224. See Griswold, *supra* note 15, at 9 (discussing Labor Department study); see also *New Directions*, *supra* note 208, at 8 (stating that U.S. population is aging); *Future Labor*, *supra* note 10, at 1 (noting that United States will see increase in number of older Americans); *Future Growth*, *supra* note 10, at 1 (noting that number of Americans aged thirty-five to forty-four will decline in next thirty years).

225. See Griswold, *supra* note 15, at 9 (describing results of Labor Department study, which found that number of native-born adult males lacking high school diploma

without a high school diploma has fallen to 9% in 1998 from 53.6% in 1960.²²⁶ During the same period, the number of college degrees has risen from 11.4% to 29.8%.²²⁷ Meanwhile, the number of low-skilled jobs has increased by more than 700,000 a year.²²⁸

Because U.S. workers are increasingly unable or unwilling to fill the growing number of low-skilled positions,²²⁹ U.S. companies rely on immigrant labor to accept these jobs.²³⁰ Although some economists argue that U.S. workers would fill immigrant jobs at higher wages, they concede that many companies would

has fallen to 9% in 1998 from 53.6% in 1960); see also *Educational Level Of U.S. Work Force Rises, Report Shows*, WALL ST. J., Aug. 30, 1988, at 1 [hereinafter *Education Level*] (reporting significant increases in education levels of U.S. workers); Joseph E. Hight, *Young Worker Participation In Post-School Education And Training*, 121 MONTHLY LAB. REV. 14 (U.S. Dept. Of Labor, June 1998) (noting that levels of formal education attained by U.S. workers increased substantially during 1970s and 1980s); *Future Growth*, *supra* note 10, at 2 (noting that typical American worker in next generation will be manager rather than laborer).

226. See Griswold, *supra* note 15, at 9 (noting dramatic decline in number of U.S.-born men without high school diplomas from 1960 to 1998); see also *Education Level*, *supra* note 225, at 1 (reporting that proportion of workers without high school diploma declined from 24% in 1978 to 15% in 1998); *Future Growth*, *supra* note 10, at 3 (finding that higher levels of high school completion and post-secondary education among native-born Americans has prompted these workers to seek out higher paying and less physically demanding positions).

227. See Griswold, *supra* note 15, at 9 (discussing rise in number of college degrees awarded in United States); see also *Education Level*, *supra* note 225, at 1 (reporting that one out of four U.S. workers in 1988 was college graduate, compared with one out of five in 1978); *Future Growth*, *supra* note 10, at 3 (finding increased levels of high school completion and post-secondary education among native-born Americans).

228. See Griswold, *supra* note 15, at 9 (noting rise in low-skilled positions in U.S. labor market); see also *New Directions*, *supra* note 208, at 9 (noting that U.S. demand for low- and medium-skilled workers is on rise); *Essential Workers*, *supra* note 15, at 1 (noting that unskilled and semi-skilled occupations have highest projected growth rates).

229. See Blalock, *supra* note 11, at 10 (reporting that undocumented workers do not take away jobs from Americans because more jobs than willing workers exist in certain industries); see also Daniels, *supra* note 11, at 36-39 (reporting that construction would "shut down" without immigrant workers because no U.S. laborers are willing to take these positions); Prewitt, *supra* note 11, at 3, 98 (noting that economic downturn would not alleviate worker shortages in many service industries because U.S. workers will not take certain jobs); Alvarez, *supra* note 13, at B8 (noting that agricultural industry depends on immigrants to fill its labor force); *Future Growth*, *supra* note 10, at 3 (noting that native U.S. population has eschewed jobs in manual labor services industries).

230. See, e.g., Alvarez, *supra* note 13, at B8 (noting that as much as 70% of California's agricultural labor force consists of undocumented immigrants); see also *Future Growth*, *supra* note 10, at 3 (noting that immigrants have filled low-skilled labor gaps in recent years); *Future Labor*, *supra* note 10, at 3 (stating that increased immigration could help solve labor and skill shortage in United States).

ship low-wage jobs overseas rather than pay U.S. workers higher wages.²³¹

The Essential Worker Immigrant Coalition (EWIC),²³² an alliance of businesses, trade associations, and other industry organizations, has continued to lobby for immigration reform, noting the critical role foreign workers play in the many industries the coalition represents.²³³ According to the EWIC, businesses as varied as hotels, restaurants, construction companies, meatpacking plants, and nursing homes face severe labor shortages in the coming years as native U.S. workers become too elderly or too skilled to apply for these jobs.²³⁴

This unrelenting demand for immigrant labor was evidenced by industry behavior after the Immigration Reform and Control Act was passed in 1986.²³⁵ Companies continued to hire undocumented workers in droves, despite the prospect of facing stiff penalties under the new laws.²³⁶

231. See Duignan & Gann, *supra* note 30, at 25 (noting that in absence of immigrant labor, some U.S. jobs would likely move offshore); see also Wood, *supra* note 25, at 1 (finding that U.S. workers are willing to take jobs currently filled by illegal immigrants, but only at higher salaries); Del Olmo, *supra* note 25, at M5 (noting that most economists and demographers agree that immigrant labor is essential to filling low-wage U.S. jobs); Warren Vieth, *Economists See Benefits To Bush's Plan: In the Long Term, The Picture Looks More Complicated*, L.A. TIMES, Jan. 8, 2004, at A14 (stating that undocumented workers have become essential part of U.S. labor force).

232. Essential Worker Immigration Coalition, available at <http://www.ewic.org/> (describing EWIC as coalition of businesses, trade associations, and other organizations that is focused on resolving skilled and low-skilled labor shortage).

233. *Letter from the Essential Worker Immigration Coalition to the United States Senate* (February 24, 2003), available at <http://www.ewic.org/LettersofCongress.asp> (asking 108th Congress to reform U.S. immigration system).

234. *Documenting the Labor Shortage* (Essential Worker Immigration Coalition, Washington, D.C.), March 2002, available at <http://www.ewic.org/Usefulinks.asp> (noting that many industries, including construction, nursing, and food services, anticipate labor deficiencies as the U.S. workforce ages).

235. See Peter H. Schuck & Rainer Münz, *Introduction*, in *PATHS TO INCLUSION* vii, xvi (noting that employer sanctions did little to deter hiring of undocumented workers); see also Heller, *supra* note 28, at 206 (noting that IRCA imposed employer sanctions for first time on firms hiring illegal immigrants); Fraser, *supra* note 31, at 103 (noting that employer sanctions have been ineffective in preventing illegal employment of unauthorized workers). But see Louis Uchitelle, *Plan May Lure More To Enter U.S. Illegally, Experts Say*, N.Y. TIMES, Jan. 9, 2004, at A12 (finding that although employers faced up to \$10,000 fines and jail time, employer penalties were difficult to enforce because employers needed only to check job candidate's documents, not authenticity of worker's documents).

236. See Schuck & Münz, *supra* note 235, at xvi (finding that employers continued to hire workers despite IRCA's sanctions); see also Heller, *supra* note 28, at 206 (noting that IRCA imposed employer sanctions for first time on firms hiring illegal immi-

One study has estimated that a reduction in the undocumented Mexican population would produce a \$155 billion drop in U.S. economic output.²³⁷ The study also noted that the presence of undocumented workers enables native U.S. workers to move into more specialized positions.²³⁸ Additional research demonstrates that undocumented immigrants pay roughly \$7 billion in annual taxes, including \$2.7 billion to Social Security and \$168 million into state unemployment funds.²³⁹ Arguably, these payments serve as direct subsidies to these programs because undocumented workers are ineligible to collect from them.²⁴⁰

grants); Fraser, *supra* note 31, at 103 (noting that employer sanctions have been ineffective in preventing illegal employment of unauthorized workers); ANDREAS, *supra* note 18, at 101 (noting that IRCA-imposed employer sanctions are notoriously weak and minimally enforced with effect that employers regularly hire illegal immigrants).

237. See Raul Hinojosa Ojeda, *Comprehensive Migration Policy Reform in North America: The Key to Sustainable and Equitable Economic Integration*, (North American Integration and Development Center, UCLA, Los Angeles, California), Aug. 2001 (discussing study which found that reduction in illegal Mexican immigrant population would produce \$155 billion drop in U.S. economic output); see also *Mexican Immigrant Workers and the U.S. Economy: Increasingly Vital Role*, 1 IMMIGRATION POLICY FOCUS 6-8 (American Immigration Law Foundation, Sept. 2002) (noting that Mexican workers are integral to U.S. economic growth and are filling needed jobs in new geographic areas, such as Mississippi and Tennessee). See generally CASTLES & MILLER, *supra* note 17, at 165 (noting that on balance immigration had slight but beneficial overall effect on U.S. economy). A 1989 Department of Labor study found that foreign-born constituted nearly 7% of all U.S. workers and accounted for some 22% of annual growth of the workforce in the 1980s. *Id.* See also MASSEY, *supra* note 18, at 105 (noting that benefits of Mexico-U.S. migration have historically exceeded costs for all concerned).

238. See Ojeda, *supra* note 237, at 17 (explaining how presence of undocumented workers in economy leads native workers to seek better jobs); see also Duignan & Gann, *supra* note 30, at 25 (noting that competition from immigrants provides incentive for native U.S. workers to find better employment or acquire further training); Griswold, *supra* note 15, at 13 (noting that competition from immigrants gives native-born high school dropouts even greater incentive to complete their education and enhance their skills).

239. See David Bacon, *For Immigration Policy Based On Human Rights*, in IMMIGRATION: A CIVIL RIGHTS ISSUE FOR THE AMERICAS 157, 159 (Susanne Jonas & Suzie Dod Thomas eds., 1999) [hereinafter CIVIL RIGHTS ISSUE] (finding that illegal immigrants contribute approximately \$7 billion in annual taxes); see also MASSEY, *supra* note 18, at 150-51 (noting that U.S. citizens benefit from taxes paid by immigrants); Duignan & Gann, *supra* note 30, at 30 (asserting that overall, immigrants contribute more to public coffers than they receive).

240. See Bacon, *supra* note 239, at 159 (noting that undocumented workers pay estimated \$2.7 billion to Social Security and \$168 million into state unemployment funds); see also MASSEY, *supra* note 18, at 150-51 (noting that U.S. citizens benefit from taxes paid by immigrants); Duignan & Gann, *supra* note 30, at 30 (asserting that overall, immigrants contribute more to public coffers than they receive). See also David Wessel,

Despite such contributions, immigration rules treat undocumented workers as criminals, while overlooking the employers who hire and, in many cases, exploit these workers.²⁴¹ The uncertainty of their legal status prevents immigrants from asserting many rights in the workplace and society at large.²⁴² With the threat of deportation hovering over them, immigrants are unlikely to demand higher wages or better working conditions.²⁴³ Employers routinely use the threat of immigration raids to intimidate workers and prevent them from unionizing.²⁴⁴ Immigrants rarely, if ever, file complaints concerning unpaid wages or over-

Immigration's Attraction Lies In Its Boost to Economic Vitality, WALL ST. J., Feb. 27, 2003, at A2 (noting that immigrant workers help finance U.S. Social Security system). Every additional 100,000 immigrants shaves 3% off the seventy-five year cost of fixing Social Security because of payroll taxes that immigrant workers will pay to finance the retirement of the Baby Boomers. *Id.*

241. See, e.g., Ken Ellingwood, *Tyson Smuggled Help for Years, U.S. Alleges*, L.A. TIMES, Feb. 6, 2003, at A19 (discussing exploitation of undocumented workers at poultry company); see also Cindy Rodriguez, *Union Alleges, Plans Protest at Salem Site*, BOSTON GLOBE, Apr. 16, 2002, at B1 (noting alleged exploitation and undercompensation of immigrant construction workers); *System Fails the Exploited*, USA TODAY, Nov. 21, 2001, at A16 (reporting abuse of undocumented domestic workers); Fraser, *supra* note 31, at 104 (noting that employers have threatened their illegal workers with exposure to INS in order to elude demands for improved wages or working conditions).

242. See Heller, *supra* note 28, at 203 (noting that opportunity to work for extended periods may be more important to immigrants than political or social privileges); Fraser, *supra* note 31, at 104 (noting that illegal workers tend to be "hard working, docile and compliant" out of fear that they will be exposed, apprehended or deported); ANDREAS, *supra* note 18, at 35 (noting that illegal immigrants were less likely to organize or complain about working conditions because they lacked public support and State protection).

243. See generally Haines & Rosenbaum, *supra* note 35, at 351-52 (explaining that undocumented workers are unlikely to assert their rights at risk of being deported); see also Liz Spayd, *More Immigrants Speak Up About Bias: But Dependency On Employers Makes Some Afraid to Complain, Rights Lawyers Say*, WASH. POST, July 5, 1993, at A11 (quoting immigrant rights advocate who states that most immigrants are so grateful to have work that they do not want to complain); Fraser, *supra* note 31, at 104 (noting that illegal workers are usually hard-working and obedient because they are afraid of being arrested or deported); ANDREAS, *supra* note 18, at 35 (noting that illegal immigrants were less likely to organize or complain about working conditions because they lacked public support and State protection).

244. See Bacon, *supra* note 239, at 165 (noting that immigration raids deter immigrants from joining unions or otherwise asserting their rights); see also Stephanie Armour, *Immigrants Become Easy Targets For Abuse, Harassment On The Job: Workers Arrive For Employment, Find Exploitation Instead*, USA TODAY, July 27, 2000, at B1 (reporting that unscrupulous employers threaten to report immigrants workers to immigration officials if they complain or unionize); Fraser, *supra* note 31, at 104 (noting that some employers threaten to expose illegal workers to INS in order to elude demands for improved wages or working conditions).

time, violations of health and safety laws, or sexual harassment because they have no means of enforcing these claims.²⁴⁵ Undocumented workers are more likely than native workers to be subject to low wages and poor working conditions.²⁴⁶ In fact, wages among undocumented workers have declined in real terms.²⁴⁷

3. Anti-Immigrant Sentiments and the Rise of "Nativism" in U.S. Politics

The predominance of immigrants in low-skilled, low-paying jobs and low-income communities²⁴⁸ has led to the public perception that immigrants threaten the labor opportunities of similarly skilled U.S.-born workers and receive an undeserved share of public assistance.²⁴⁹ Conservative policymakers have intermittently exploited this apparent immigrant "threat" for political

245. See Bacon, *supra* note 239, at 161 (finding that immigrant workers rarely file claims against their employers); see also Fine, *supra* note 25, at L11 (noting that immigrant workers must endure low wages, forced overtime, high rates of workplace injuries, discrimination, sexual harassment, and unjust firings); Heller, *supra* note 28, at 204 (noting that willingness of immigrants to assert their civil rights is constrained by fear that they may be deported); Fraser, *supra* note 31, at 104 (finding that efforts to enforce labor standards have effect of discouraging exploited immigrant workers, both legal and illegal, from filing complaints about workplace abuses).

246. See Ojeda, *supra* note 237, at 29 (stating that undocumented workers tend to have lower wages and worse working conditions than native workers); see also Andrew Buchanan, *Agency Will Come To Aid Of Illegal Workers*, ATL. J.-CONST., Oct. 27, 1999, at A12 (noting that immigrant workers are often paid below minimum wage and suffer workplace discrimination); Fraser, *supra* note 31, at 104 (finding that undocumented workers are willing to work long hours for less than legal minimum wage).

247. See generally Bacon, *supra* note 239, at 163 (discussing falling wages of Los Angeles' immigrant industrial work force); see also MASSEY, *supra* note 18, at 120-21 (commenting that IRCA led to lowered wages not just for undocumented workers, but also for native employees); Griswold, *supra* note 15, at 7 (noting that employer sanctions have artificially depressed wages of undocumented workers by reducing their bargaining power and complicating task of hiring them).

248. See Fraser, *supra* note 31, at 101-02 (noting that most undocumented workers are employed in low-skill, low-wage sectors); see also Griswold, *supra* note 15, at 9 (noting that large number of undocumented workers from Mexico work in manufacturing, construction, restaurants, and agriculture); *Future Growth*, *supra* note 10, at 3 (noting that 1.1 million lower-skilled immigrants have filled jobs in United States since 1994).

249. See Haines & Rosenbaum, *supra* note 35, at 8 (noting that immigration debate tends to focus on undocumented workers, rather than on legal immigrants); see also CASTLES & MILLER, *supra* note 17, at 215 (noting that illegal immigration and costs of welfare for immigrants became major political issues in 1990s); Hugh Davis Graham, *Affirmative Action for Immigrants? The Unintended Consequences of Reform*, in *COLOR LINES: AFFIRMATIVE ACTION, IMMIGRATION, AND CIVIL RIGHTS OPTIONS FOR AMERICA* 67 (John David Skretny ed., 2001) (noting that by 1990s affirmative action and immigration poli-

capital,²⁵⁰ such as during the immigration controversy of the 1990s.²⁵¹

Historically, U.S. immigration policy and public opinion regarding immigration have been linked to economic growth.²⁵² When the economy is strong, citizens and policymakers are less concerned about high levels of immigration, legal or not,²⁵³ but when the economy falters, a backlash against immigrants is almost inevitable.²⁵⁴ The seeds of such a backlash were planted in the 1980s and flourished in the 1990s, culminating with restrictive immigration and welfare legislation in 1996.²⁵⁵

Public alarm concerning immigrants first became evident in the early 1980s, when levels of immigration surged amid generous asylum and refugee policies.²⁵⁶ As waves of asylum seekers

cies had converged and prompted public resentment toward both); MASSEY, *supra* note 18, at 150-51 (noting that although immigrants use public services, they also pay taxes).

250. See Lowell Sachs, *Treacherous Waters in Turbulent Times: Navigating the Recent Sea Change in U.S. Immigration Policy and Attitudes*, in CIVIL RIGHTS ISSUE 145, 147-48 (discussing how politicians and anti-immigrant lobbyists have used immigrants as scapegoats and calls for immigration reform as quick-fix solution); see also WELCH, *supra* note 35, at 15-22, 28-29 (discussing nativist efforts to blame immigrants for society's ills); CASTLES & MILLER, *supra* note 17, at 275 (noting that right-wing Republican presidential hopeful Patrick Buchanan made anti-immigrant theme key element of his 1996 campaign); MASSEY, *supra* note 18, at 89 (noting that U.S. politicians have competed with one another to offer symbolic gestures against undocumented immigration).

251. See Graham, *supra* note 249, at 53 (noting that public controversy over immigration policy intensified amid economic recession in early 1990s); MASSEY, *supra* note 18, at 8 (noting that restrictive sentiment toward immigration was evident in late 1980s and early 1990s).

252. See Sachs, *supra* note 250, at 146-47 (noting that economic conditions drive public opinion regarding immigration so that immigrants benefit in economically strong times and are targeted in economically weak periods); see also David Masci, *Debate Over Immigration*, CQ RESEARCHER, July 14, 2000, at 18-19 (noting that potential for anti-immigrant or anti-immigration backlash is stronger in weaker economic times).

253. See Sachs, *supra* note 250, at 146-47 (noting that when country's economic prospects are strong immigrants are free to pursue work without backlash); see also Masci, *supra* note 252, at 18 (finding that that immigration is non-issue when economy is doing well).

254. See Masci, *supra* note 252, at 18-19 (stating that opposition to immigration increases in weaker economic circumstances); see also JAMES G. GIMPEL & JAMES R. EDWARDS, JR., THE CONGRESSIONAL POLITICS OF IMMIGRATION REFORM 28 (1999) (noting that anti-immigrant feelings are stronger when economic conditions sour); Sachs, *supra* note 250, at 146-47 (stating that immigrants are targets of anger and frustration during periods of political or economic difficulties).

255. See HAUS, *supra* note 205, at 67 (noting that 1996 Act increased penalties against illegal migrants); see also MASSEY, *supra* note 18, at 8 (noting that late 1980s and early 1990s were time of restrictive sentiment toward immigration).

256. See DANIEL J. TICHENOR, DIVIDING LINES: THE POLITICS OF IMMIGRATION CONTROL IN AMERICA 244-45 (2002) (noting that sharp growth of refugee admissions and

entered the United States, illegal immigration became the focus of considerable media attention, and Americans began to express their anxieties about the issue.²⁵⁷ In one poll, more than 90% of respondents favored an “all-out effort to stop” unauthorized entries.²⁵⁸

At the same time, a small group of right-of-center conservatives began to develop politically viable anti-immigrant rhetoric,²⁵⁹ and two national lobbying organizations, the Federation for American Immigration Reform (“FAIR”)²⁶⁰ and the American Immigrants Control Foundation (“AICF”),²⁶¹ promoted their anti-immigrant policies to a larger constituency, mainly through direct mailings to right-of-center magazine subscribers.²⁶² Cultural homogeneity was the centerpiece of early anti-

grants of asylum in 1980s led to calls for reduction in immigrant admissions); *see also* MASSEY, *supra* note 18, at 101 (noting that undocumented migration became salient political issue during 1980s); CASTLES & MILLER, *supra* note 17, at 98 (noting that upsurge in refugee and asylum-seeker entries in mid-1980s became focus for aggressive campaigns from extreme right).

257. *See also* TICHENOR, *supra* note 256, at 243 (noting that growing opposition to immigration was evident among Americans in 1980s); *see also* GIMPEL & EDWARDS, *supra* note 254, at 28 (discussing how flow of Cuban and Haitian refugees into United States in 1980s and 1990s increased public’s support for change in Nation’s immigration policies); CASTLES & MILLER, *supra* note 17, at 98 (noting that migration became politicized in mid-1980s in part because of increase in number of refugees and asylum-seekers).

258. *See also* TICHENOR, *supra* note 256, at 243 (noting that more than 90% of respondents favored efforts to end illegal immigration); *see also* GIMPEL & EDWARDS, *supra* note 254, at 34 (stating that considerable consensus existed in 1980s that immigrants and refugees should be kept to minimum); CASTLES & MILLER, *supra* note 17, at 98 (noting that public pressure for migration control increased in mid-1980s).

259. *See* Sara Diamond, *Right-Wing Politics and the Anti-Immigrant Cause*, in *CIVIL RIGHTS ISSUE* 175, 177 (noting that during 1980s small group of political conservatives began to argue that United States should be defined on basis of white ethnicity and asserted that immigration posed threat to country’s cultural homogeneity); *see also* WELCH, *supra* note 35, at 38-39 (noting that nativists and restrictionists lobbied lawmakers to reduce immigration in 1980s and 1990s); CASTLES & MILLER, *supra* note 17, at 272 (noting that groups such as restrictionist Federation for American Immigration Reform called for immigration moratorium); HAUS, *supra* note 205, at 98 (noting that FAIR strongly denounced any form of amnesty or legalization program for immigrants through news releases and action alerts).

260. Federation for American Immigration Reform (FAIR), *available at* <http://www.fairus.org/About/AboutMain.cfm> (noting that FAIR aims to improve border security and stop illegal immigration and supports immigration levels at rates of about 300,000 entries annually).

261. American Immigrants Control Foundation (AICF), *available at* <http://www.immigrationcontrol.com/> (noting that AICF’s goal is to reduce immigration to “reasonable” levels and bolster security measures to deter illegal immigration).

262. *See* Diamond, *supra* note 259, at 177 (noting that anti-immigrant groups used tactics such as direct mailings to targeted groups to spread their message); *see also*

immigrant activity, as supporters of the movement alleged that the large influx of nonwhite immigrant groups threatened America's Anglo culture.²⁶³ These self-identified "paleoconservatives" believed that ethnicity, not a shared belief in core American values, determined the country's identity.²⁶⁴ Among the nativist arguments adopted by this group was the belief that affirmative action encouraged nonwhite immigrants to retain their distinctive racial and ethnic identities so that they could take advantage of racial preference entitlements.²⁶⁵ An antipathy toward non-English languages and a fear that this linguistic difference would undermine the American nation was another common conviction.²⁶⁶ This latter belief led to a successful movement to promote English as the national U.S. language.²⁶⁷

The well-funded organization, U.S. English, was founded in

WELCH, *supra* note 35, at 38-39 (noting that groups such as FAIR and AICF disseminated anti-immigration literature, organized rallies, lobbied lawmakers, and supported political candidates that oppose immigration); CASTLES & MILLER, *supra* note 17, at 272 (noting that FAIR lobbied for immigration moratorium that received minimal support in 1990s); HAUS, *supra* note 205, at 98 (noting that FAIR strongly denounced any form of amnesty or legalization program for immigrants through press releases and action alerts).

263. See Diamond, *supra* note 259, at 178 (noting that anti-immigration activists wanted to preserve "American" culture); see also WELCH, *supra* note 35, at 38 (noting that nativists believed that United States should remain country of predominantly white people of European origin).

264. See Diamond, *supra* note 259, at 178 (noting that "paleoconservatives" were not concerned about how immigrants impacted availability of jobs for U.S. workers, but rather were focused on threat immigrants posed to country's cultural homogeneity); see also Johnson, *supra* note 33, at 112, 114 (noting that nativists were interested in preserving ethnic homogeneity in United States).

265. See George J. Sanchez, *Face the Nation: Race Immigration, and the Rise of Nativism in Late Twentieth Century America*, 31 INT'L MIGRATION REV. 1009, 1020 (1997) (explaining nativist tenet that affirmative action provides incentive for non-white immigration); see, e.g., Johnson, *supra* note 33, at 114-15 (noting that Latin American immigrants have been blamed for affirmative action); Graham, *supra* note 249, at 53 (noting that critics of affirmative action thought it was absurd that immigrants could benefit from program).

266. See Sanchez, *supra* note 265, at 1020 (noting that anti-immigration activists were hostile toward bilingualism and feared that linguistic differences would "undermine" the United States); see also Johnson, *supra* note 17, at 115 (noting that nativists opposed bilingualism because it symbolized loss of cultural identity).

267. See JOPPKE, *supra* note 40, at 173 (noting that organization U.S. English was founded in 1983 with goal of declaring English national language of United States); see also *About U.S. English*, U.S. English, Inc., available at <http://www.us-english.org/inc/about/> (describing organization as citizens' group aiming to preserve English language in United States).

1983,²⁶⁸ and has lobbied legislatures and initiated public referendums to declare English the national language of the United States ever since.²⁶⁹ It also has worked to phase out bilingual programs and government services.²⁷⁰ As a direct result of these efforts, thirty-seven state legislatures have introduced Official English bills,²⁷¹ and more than half the states have passed laws or constitutional amendments declaring English their official language.²⁷² Although Official English measures have been largely symbolic and advisory,²⁷³ politicians did not fail to notice the measures' broad popularity, which at their core were a public referenda of the supremacy of Anglo culture.²⁷⁴

268. See JOPPKE, *supra* note 40, at 173 (noting that U.S. English aims to phase out most bilingual programs and government services); see also *About U.S. English*, *supra* note 267 (noting that U.S. English believes that the passage of English as country's official language will expand opportunities for immigrants to learn English); CASTLES & MILLER, *supra* note 17, at 215 (noting that U.S. English movement campaigned for Constitutional amendment to declare English country's national language).

269. See Diamond, *supra* note 259, at 178 (noting that Official English bills were introduced in thirty-seven state legislatures); CASTLES & MILLER, *supra* note 17, at 215 (noting that U.S. English succeeded in passing constitutional amendments making English official language in several states).

270. See JOPPKE, *supra* note 40, at 173 (noting that organization U.S. English hoped to eliminate bilingual programs, but failed to achieve an English Language Amendment to federal Constitution in 1983); see also Charlotte Libov, *Bilingual Programs Are Under Attack*, N.Y. TIMES, Feb. 22, 1987, at C1 (reporting that public opposition to bilingual education was becoming more widespread in 1987).

271. See Diamond, *supra* note 259, at 178 (noting that English-only legislation had succeeded in seventeen states by 1990). By the late 1990s, almost half of the states had declared English to be their official language, and the U.S. House of Representatives passed similar provision in 1996. Schuck & Münz, *supra* note 235, at xv (noting that about half of U.S. states have passed English-only bills); see also *States with Official English*, U.S. English Fact Sheet, available at http://www.us-english.org/inc/official/fact_sheets/ [hereinafter *States with Official English*] (noting that many states, including Georgia, Iowa, Missouri, Utah, and Virginia had passed English-only legislation).

272. See Diamond, *supra* note 259, at 178 (finding that more than half of U.S. states have passed laws or constitutional amendments declaring English their official language); see also Schuck & Münz, *supra* note 235, at xv (noting that about half of U.S. states have passed English-only bills); see also *States with Official English*, *supra* note 271 (listing those states that have passed English-only legislation, including Alabama, Alaska, New Hampshire, Montana, and Wyoming).

273. See Diamond, *supra* note 259, at 178 (noting that Official English measures have been largely symbolic and advisory); see also JOPPKE, *supra* note 40, at 173-74 (noting that effect of official language declarations has remained mostly symbolic because government agencies have not acted on these declarations and courts have stalled their implementation on Equal Protection grounds).

274. See Diamond, *supra* note 259, at 178 (finding that politicians capitalized on popularity of English-only bills); see also Robert Lindsey, *Debate Growing On Use of English: Drive On In Many Areas of U.S. To Make It Official By Law*, N.Y. TIMES, July 21, 1986, at A1

Interestingly, restrictive immigration reform proposals found little support among Reagan Republicans, who supported immigration as a means of accessing cheap labor.²⁷⁵ Media pressure and opinion polls, however, showing broad public concern about immigration reluctantly prompted the Reagan White House to support reform.²⁷⁶ After several years of political wrangling, the Immigration Reform and Control Act ("IRCA") passed in 1986.²⁷⁷ After intense lobbying by labor unions and civil rights groups, the final legislation was more expansive than restrictive,²⁷⁸ granting amnesty to three million undocumented immigrants while instituting sanctions against companies hiring undocumented workers.²⁷⁹

By the early 1990s, the tide had turned and public sentiment concerning immigrants grew increasingly negative.²⁸⁰ Sev-

(finding that English-only laws were becoming increasingly popular across United States).

275. See TICHENOR, *supra* note 256, at 255-57 (noting that Reagan Republicans supported immigration because it was consistent with free trade); see also KENNETH K. LEE, HUDDLED MASSES, MUDDLED LAWS 95-97 (1998) (explaining that *laissez-faire* conservatives support open immigration as element of free market system). But see MASSEY, *supra* note 18, at 87 (noting that Reagan administration introduced legislation granting president new authority to declare immigration emergencies and to seal border as early as 1982).

276. See TICHENOR, *supra* note 256, at 256 (noting that U.S. President Ronald Reagan was under pressure to introduce immigration reform bill); see also Robert Pear, *President Signs Landmark Bill on Immigration*, N.Y. TIMES, Nov. 7, 1986, at A12 (noting that President Reagan's support for immigration reform was mixed).

277. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (codified in scattered sections of 8 U.S.C.) (enacting sanctions against employers hiring illegal immigrants and granting amnesty to many illegal immigrants in United States) [hereinafter IRCA]. See also TICHENOR, *supra* note 256, at 262 (noting that IRCA was signed into law in 1986 after much political wrangling).

278. See Graham, *supra* note 249, at 66 (remarking that immigration rights coalition turned restrictive efforts into statutes in 1986 and 1990 that considerably expanded immigration); HAUS, *supra* note 205, at 66-67 (noting that IRCA had both restrictionist and non-restrictionist provisions); MASSEY, *supra* note 18, at 49 (mentioning that IRCA contained both deeply restrictive and wildly expansive provisions).

279. See TICHENOR, *supra* note 256, at 262 (noting that legislation's final form included massive amnesty that legalized three million undocumented immigrants); see also GIMPEL & EDWARDS, *supra* note 254, at 177 (expressing that final version of 1986 immigration legislation won over many Democrats who had previously dissented); see also Heller, *supra* note 28, at 203 (noting that status of 2.69 million undocumented immigrants was regularized by 1995 under 1986 law); HAUS, *supra* note 205, at 67 (noting that three million people obtained permanent residency status under IRCA's amnesty program); MASSEY, *supra* note 18, at 49 (noting that IRCA had effect of legalizing some 2.3 million undocumented Mexicans).

280. See Diamond, *supra* note 259, at 177 (discussing increase in anti-immigration

eral public opinion polls reflected this shift,²⁸¹ which occurred in the midst of an economic downturn.²⁸² A June 1993 poll reported that 61% of respondents favored a decrease in immigration rates, up from 49% in 1986.²⁸³ Another poll that same year found that while 59% of the American public thought immigration had been a "good thing" in the past, only 29% considered it a "good thing" today.²⁸⁴

By 1994, popular support for restricting immigration intensified, as voters increasingly linked their negative economic experiences to immigration.²⁸⁵ In a poll leading up the 1994 election, 72% of respondents contended that mass migration was a

views); see also GIMPEL & EDWARDS, *supra* note 254, at 35 (noting that U.S. anti-immigrant sentiment peaked in 1994 and 1996); CASTLES & MILLER, *supra* note 17, at 215 (observing that illegal immigration and costs of welfare for immigrants became major political issues in 1990s); Graham, *supra* note 249, at 67 (noting that by 1990s convergence of affirmative action and immigration policies drew increasing public resentment toward both); MASSEY, *supra* note 18, at 102 (noting that anti-immigrant hysteria reached its peak in mid-1990s).

281. See JOPPKE, *supra* note 40, at 54 (discussing poll that found only 29% of respondents considered immigration "good thing"); see also Diamond, *supra* note 259, at 180 (discussing 1993 poll in which 61% of respondents favored decrease in immigration rates, up from 49% in 1986); LEE, *supra* note 275, at 28 (describing 1992 poll in which 60% of respondents said they were "more concerned" about immigration than they were ten years earlier).

282. See Mike Dorning, *Key Indicator Shows Economy Boggling Down*, CHI. TRIB., Dec. 4, 1991, at 1 (reporting on weakened state of U.S. economy in 1991); see also David Wessel, *During Bush Presidency, U.S. Economy Has Remained Fundamentally Flat*, WALL ST. J., Oct. 1, 1992, at A18 (noting that U.S. economic growth had been flat for several years); Paul Blustei et al., *Economies Falter Around the World: Slowdown in U.S., Europe, Japan Has Global Ripple Effect*, WASH. POST, Sept. 20, 1992, at A1 (reporting on worldwide economic slowdown of early 1990s).

283. See Diamond, *supra* note 259, at 180 (discussing 1993 poll in which 61% of sample favored decline in immigration rates); see also LEE, *supra* note 275, at 28 (describing 1992 poll in which 60% of respondents said they were "more concerned" about immigration than they were ten years earlier).

284. See JOPPKE, *supra* note 40, at 54 (describing results of poll and noting that several polls in early 1990s found that American public had become increasingly restrictionist); TICHENOR, *supra* note 256, at 277 (noting that several polls in early 1990s revealed anti-immigration sentiments among U.S. public).

285. See TICHENOR, *supra* note 256, at 277 (noting that anti-immigration sentiments increased in 1990s); see also GIMPEL & EDWARDS, *supra* note 254, at 44 (stating that public increasingly favored reduction in immigration by early and mid-1990s); CASTLES & MILLER, *supra* note 17, at 215 (noting that illegal immigration and costs of welfare for immigrants became major political issues in 1990s); Diamond, *supra* note 259, at 177 (noting that anti-immigration views increased in early 1990s); ANDREAS, *supra* note 18, at 86 (noting that IRCA's perverse consequences helped set stage for powerful backlash against illegal immigration in 1990s).

"critical threat" to the country's "vital interests."²⁸⁶ Another survey found that 20% of respondents placed illegal immigration near the top of a list of issues that mattered to them the most; the highest ranked answer was crime at 33%.²⁸⁷

Anti-immigrant sentiments were strongest in the key immigrant-receiving states of California, Texas, and Florida.²⁸⁸ In California, a grassroots group named Save Our State (SOS)²⁸⁹ began to promote the now infamous Proposition 187,²⁹⁰ which passed with overwhelming support in 1994.²⁹¹ The ballot initiative eliminated most state-provided benefits for illegal immigrants, including non-emergency healthcare and school education, and was the showpiece of California Governor Pete Wilson's successful re-election campaign.²⁹²

286. Gallup/Chicago Council on Foreign Relations Poll, Oct. 7, 1994, *American Public Opinion and U.S. Foreign Relations, 1995*, (Chicago Council on Foreign Relations, John Reilly, ed., 1995), at 32 (noting that 72% of poll respondents described mass immigration as "critical threat" to "vital interests" of Nation). See also TICHENOR, *supra* note 256, at 277 (discussing 1994 poll results and noting that U.S. voters were increasingly linking poor state of U.S. economy to immigration); Stephen Dinan, *Americans Oppose Increase In Immigration*, WASH. TIMES, Jan. 8, 2004 (reporting on poll in which 60% of Americans stated that present immigration levels represent "critical threat to the vital interests of the United States").

287. NBC News/WALL ST. J. Poll, Oct. 14, 1994 (finding that illegal immigration was issue that mattered most to respondents). Welfare reform was second most popular response at 28%. *Id.* See also TICHENOR, *supra* note 256, at 277 (describing NBC News/WALL ST. J. poll and noting that popular support for restricting immigration intensified across country in early 1990s).

288. See TICHENOR, *supra* note 256, at 275 (noting that grassroots efforts opposition to immigration was successful in California, Florida, and Texas). But see GIMPEL & EDWARDS, *supra* note 254, at 16 (noting that growing strength of economies in Florida, Arizona, and Texas have prevented growth of anti-immigrant movements in those states); ANDREAS, *supra* note 18, at 110 (noting that anti-immigrant feelings ran high in California during 1996 presidential campaign).

289. Save Our State, available at <http://www.save187.com> (noting that organization has launched new initiative to limit public benefits to illegal immigrants).

290. Codified at Cal. Penal Code section 113 (Deering Supp. 1995), Cal. Penal Code section 114 (Deering Supp. 1995), Cal. Penal Code section 834(b) (Deering Supp. 1995), Cal. Welf. & Inst. Code section 10001.5 (Deering Supp. 1995), Cal. Health & Safety Code section 130 (Deering Supp. 1995), Cal. Educ. Code section 48215 (Deering Supp. 1995), Cal. Educ. Code section 66010.8 (Deering Supp. 1995), Cal. Gov't Code section 53069.65 (Deering Supp. 1995).

291. See TICHENOR, *supra* note 256, at 277 (noting that Proposition 187 passed with 59% of California vote); see also GIMPEL & EDWARDS, *supra* note 254, at 16 (noting that 59% of California voters supported Proposition 187); Graham, *supra* note 249, at 53 (noting that California passed Proposition 187 in 1994); JOFFKE, *supra* note 40, at 55 (noting that Californians voted overwhelmingly for Proposition 187).

292. See GIMPEL & EDWARDS, *supra* note 254, at 16 (noting Governor Wilson's support for ballot initiative Proposition 187); see also Graham, *supra* note 249, at 53 (noting

Although the courts quickly moved to strike down much of the legislation's harshest provisions as unconstitutional,²⁹³ the symbolic potency of Proposition 187 and Governor Wilson's success at the polls was not lost on politicians in other parts of the country.²⁹⁴ When Republicans regained control of both houses of Congress in 1994 for the first time in more than thirty years,²⁹⁵ they promoted a fresh round of restrictive immigration reform.²⁹⁶ These efforts resulted in the restrictive Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)²⁹⁷ and the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996,²⁹⁸ which denied public benefits to many legal immigrants and all illegal ones.²⁹⁹

that Proposition 187 helped Republican governor Pete Wilson win reelection); MASSEY, *supra* note 18, at 88-89 (noting that Governor Wilson used anti-immigration rhetoric to revive his struggling reelection campaign); ANDREAS, *supra* note 18, at 86-87 (noting that Pete Wilson revived his weakened gubernatorial campaign by supporting Proposition 187 and blaming state's difficulties on U.S. government's failure to secure border).

293. *Cf. League of United Latin Am. Citizens v. Wilson*, 908 F. Supp. 755 (C.D. Cal. 1995) (striking down several provisions of Proposition 187 as unconstitutional). *See also* Heller, *supra* note 28, at 209 (noting that Proposition 187 largely has been enjoined since its enactment); ANDREAS, *supra* note 18, at 86 (noting that Proposition 187 was declared unconstitutional).

294. *See* CASTLES & MILLER, *supra* note 17, at 275 (noting that right-wing Republican presidential hopeful Patrick Buchanan made anti-immigrant theme key element of his 1996 campaign); *see also* MASSEY, *supra* note 18, at 89 (noting that U.S. politicians competed with one another to offer symbolic gestures about undocumented migration); ANDREAS, *supra* note 18, at 86 (noting that Proposition 187 was designed and promoted as symbolic gesture to send message to U.S. federal government and its passage sent shockwaves through halls of Congress).

295. *See* Dan Balz, *Historic Republican Triumph: GOP Captures Congress, Party Controls Both Houses For First Time Since '50s*, WASH. POST, Nov. 9, 1994 (reporting on 1994 Republican victory in both houses of Congress); David M. Shribman, *GOP Captures Congress*, BOSTON GLOBE, Nov. 9, 1994, at 1 (reporting on Republicans' historical Congressional victory in 1994); Gerald F. Seib & John Harwood, *Shift in Power: Big Republican Gains Bring the Party Close To Control of Congress*, WALL ST. J., Nov 9, 1994, at A1 (reporting on Republican election successes in 1994 election).

296. *See* TICHENOR, *supra* note 256, at 277 (noting that Republican agenda focused on immigration reform among other issues); *see also* WELCH, *supra* note 35, at 14 (noting that Republican-dominated Congressional task force issued dozens of recommendations for cracking down on illegal immigration in 1995).

297. IIRIRA, *supra* note 204 (reducing immigrants' eligibility for public assistance and benefits).

298. Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (eliminating public assistance for many legal and illegal immigrants).

299. *See* Schuck & Münz, *supra* note 235, at xvi (noting that 1996 welfare reforms denied federally funded benefits to many legal immigrants and all illegal immigrants);

4. Citizenship and Socioeconomic Integration

One of the immediate results of the 1996 legislation was a surge in naturalizations,³⁰⁰ as immigrants once satisfied with permanent residence status suddenly felt compelled to protect their place in society.³⁰¹ Because the 1996 legislation limited public assistance to non-citizens,³⁰² citizenship was the only way immigrants could assure access to these important social rights.³⁰³

The families most adversely affected by the restrictions were among the neediest in the country.³⁰⁴ Immigrant children in the United States are more likely to be poor, live in overcrowded housing, and to report being in poor health than children of natives.³⁰⁵ They also are far less likely to be insured.³⁰⁶ By re-

see also Heller, *supra* note 28, at 207 (noting that PRWORA denied welfare benefits to both new and existing legal immigrants).

300. See TICHENOR, *supra* note 256, at 286 (noting rise in post IIRIRA naturalizations); see also Paul Van Slambrouck, *Immigrants Shift Status: No Longer Sojourners*, CHRISTIAN SCI. MONITOR, Sept. 21, 1999, at 1 (reporting increase in naturalizations among U.S. immigrants); ALEINIKOFF, *supra* note 27, at 16 (noting that naturalizations increased to 1.4 million in 1997 from 543,353 in 1994).

301. See Schuck & Münz, *supra* note 235, at xvi (noting that post-IIRIRA surge in naturalizations was result of revaluation of U.S. citizenship); see also Alba, *supra* note 197 (noting that IIRIRA convinced many Mexican U.S. residents to seek U.S. naturalization as way to protect themselves from curtailments of many of their social rights); ALEINIKOFF, *supra* note 27, at 17 (noting that many immigrants see attaining citizenship as way to protect themselves against unfriendly legislative and administrative policies); CASTLES & MILLER, *supra* note 17, at 269 (noting that increase in naturalizations in aftermath of 1996 welfare reforms resulted from legal changes that threatened to strip benefits from legally resident immigrants but not citizens).

302. See ALEINIKOFF, *supra* note 27, at 17 (noting that 1996 welfare reform legislation terminated eligibility of permanent resident immigrants for most means-tested benefit programs); MASSEY, *supra* note 18, at 95 (noting that IIRIRA declared illegal immigrants ineligible to receive Social Security benefits and limited their ability for educational benefits, even if they had paid requisite taxes).

303. See ALEINIKOFF, *supra* note 27, at 17 (linking post-1996 surge in naturalizations to immigrants' desire to protect their access to social safety net); see also MASSEY, *supra* note 18, at 96 (noting that 1996 provisions gave Mexican immigrants strong incentive to acquire U.S. citizenship).

304. See Michael Fix & Laureen Laglagaron, *Social Rights and Citizenship: International Comparison* (A Report of Working Group on Social Rights and Citizenship for Carnegie Endowment for International Peace Comparative Citizenship Project, Washington, D.C.), Aug. 2002, at 11 (finding that 1996 immigration legislation had greatest adverse impact on poorest U.S. families); see also Liza Cristol-Deman and Richard Edwards, *Closing the Door on the Immigrant Poor: Creating Permanent Underclass of Immigrants Residing in the U.S.: "Welfare Reform" May Deter The Entry Of Many Talented, Industrious And Valuable Individuals*, 9 STAN. L. & POL'Y REV 141, 151 (1998) (noting that immigrant welfare reform provisions had potential to push 1.2 million people below poverty line).

305. See Fix, *supra* note 304, at 11 (noting that immigrant children are more likely than children of natives to live in poverty and have poor health); see also Randolph

stricting access to publicly subsidized childcare, transportation, job and language training,³⁰⁷ the new legislation made it more difficult for immigrants to participate in the labor force and advance their socioeconomic standing.³⁰⁸

Notably, the 1996 reforms also had a negative impact on the U.S.-born children of immigrants.³⁰⁹ The U.S. Constitution's Fourteenth Amendment³¹⁰ automatically grants citizenship to children born within the country's national boundaries.³¹¹ As a result, more than three-quarters of all children in U.S. immigrant families are citizens.³¹²

Capps et al., *The New Neighbors* (Urban Institute, Washington, D.C.), Aug. 31, 2003, at 16-17 (noting that many immigrant children face economic hardship).

306. See Fix, *supra* note 304, at 11 (finding that immigrant children frequently do not have insurance or adequate care); see also Capps, *supra* note 305, at 17 (noting that children of immigrants are twice as likely as native children to lack health insurance).

307. See Fix, *supra* note 304, at 11 (noting that IIRIRA made it difficult for immigrants to pursue work); see also Cristol-Deman, *supra* note 304, at 152 (stating that, in absence of government aid, it is almost impossible for immigrants to acquire requisite English skills required for citizenship and noting that welfare reform has left immigrants with few options and facing insecure future).

308. See Fix, *supra* note 304, at 11 (noting that IIRIRA restricted access to childcare, transportation, and job and language training); see also Cristol-Deman, *supra* note 304, at 152 (discussing how absence of government aid limits immigrants' ability to learn English).

309. See Fix, *supra* note 304, at 12 (noting that welfare reform resulted in decline in use of benefits among immigrants' citizen children); see also Cristol-Deman, *supra* note 304, at 153 (noting that undocumented immigrant parents were reluctant to claim benefits for their citizen children); Jonathan Curiel, *Welfare Reform Hurts Immigrants' Children*, *New Research Says*, S.F. CHRON., June 24, 1999, at A7 (reporting that welfare reform measures aimed at illegal immigrants were inadvertently punishing those immigrants' children).

310. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." U.S. CONST. amend. XIV.

311. See Neuman, *supra* note 174, at 251 (noting that under Fourteenth Amendment's citizenship provisions U.S. citizenship can be attained at birth or through naturalization). Even during the raucous anti-immigrant debates of the 1990s, attempts to narrow the *jus soli* principle in United States through Constitutional amendment never gained momentum. JOPPKE, *supra* note 40, at 149-50 (noting that references to Germany's non-citizen immigrants or "permanent underclass" were frequent in Congressional hearings over proposed U.S. amendment).

312. See Fix, *supra* note 304, at 11-12 (finding that many immigrant children are U.S. citizens); see also Randy Capps, *Hardship Among Children of Immigrants: Findings From the 1999 National Survey of American Families* (Urban Institute, Washington, D.C.), Feb. 1, 2001, at 1 (stating that 80% of children with immigrant parents are themselves U.S. citizens); ALENIKOFF, *supra* note 27, at 28 (noting that in 1996 540,000 U.S.-citizen children under one year of age were living with at least one foreign-born parent who was not naturalized U.S. citizen).

After 1996, a reduction in the use of benefits occurred not just among the noncitizens that were the policies' targets, but among the large population of immigrants' citizen children as well.³¹³ One explanation for this may be that restrictive policies, such as those instituted in 1996, contribute to the alienation of the immigrant population.³¹⁴ Restrictions on public benefits can send the message to immigrants that they do not belong,³¹⁵ effectively discouraging the kind of feelings of membership that would ordinarily promote citizenship.³¹⁶ Indeed, studies have shown that even those immigrants eligible for public benefits often fail to apply on the assumption they will not qualify or out of fear that seeking out such benefits will have adverse effects on their precarious immigration status.³¹⁷

After more than three million illegal immigrants were granted amnesty in 1986 under IRCA,³¹⁸ immigrants increasingly

313. See Fix, *supra* note 304, at 12 (noting that welfare reform resulted in decline in use of benefits among immigrants' citizen children); see also Cristol-Deman, *supra* note 304, at 153 (discussing reluctance of undocumented immigrant parents to claim benefits for their citizen children); Curiel, *supra* note 309, at A7 (reporting that welfare reform measures aimed at illegal immigrants were inadvertently punishing those immigrants' children).

314. See Fix, *supra* note 304, at 12 (asserting that IIRIRA resulted in feelings of alienation among immigrants); see also Nora V. Demleitner, *The Fallacy of Social "Citizenship," or the Threat of Exclusion*, 12 GEO. IMMIGR. L.J. 35, 47 (1997) (noting that welfare reform increased immigrants' awareness of public hostility towards them).

315. See Fix, *supra* note 304, at 12 (arguing that restrictive welfare policies led to feelings of alienation among immigrants); see also Demleitner, *supra* note 314, at 50 (stating that reductions in public assistance cause immigrants to feel increasingly alienated from state which refuses to ensure barely minimal standard of living).

316. See Demleitner, *supra* note 314, at 50 (stating that reductions in public assistance cause immigrants to feel increasingly alienated from state which refuses to ensure barely minimal standard of living). But see ALEINIKOFF, *supra* note 27, at 17 (noting that anti-immigrant rhetoric of 1990s worked to increase number of citizenship applications in United States).

317. See Michael Fix & Jeffrey Passel, *The Scope and Impact of Welfare Reform's Immigrant Provisions* (Urban Inst., Washington, D.C.), Jan. 2002, at 13 (finding that immigrants will not seek benefits if they believe it could affect their immigration status); see, e.g., Cristol-Deman, *supra* note 304, at 153 (noting that many pregnant, undocumented women in California ceased to seek prenatal care after passage of Proposition 187 because they were under false impression that their medical benefits had been cut and they were afraid of jeopardizing their precarious living situations).

318. See Heller, *supra* note 28, at 203 (noting that under 1986 law immigration status of 2.69 million undocumented immigrants was regularized by 1995); see also HAUS, *supra* note 205, at 67 (noting that three million people obtained permanent residency status under IRCA's amnesty program); MASSEY, *supra* note 18, at 49 (noting that IRCA had effect of legalizing some 2.3 million undocumented Mexicans).

took their futures into their own hands.³¹⁹ A Department of Labor study discovered a surge in investment in language skills, education and training among legalized immigrants.³²⁰ The same study also found that newly legalized workers experienced a substantial wage increase.³²¹ Real wages of undocumented workers rose 15% in the five years following legalization.³²² The rise in wages reflects the increased bargaining power of immigrants, who could suddenly compete for jobs in the larger market if their current one was unsatisfactory.³²³ A high-level binational panel of Mexican and U.S. experts has estimated that the wages of Mexican immigrants could increase by as much as 20% if they attained legal status.³²⁴

Nonetheless, naturalization rates among Mexicans have historically been low.³²⁵ Some critics have argued that this phenomenon resulted from the fact that legal permanent residents have in the past enjoyed many of the same rights as citizens,³²⁶

319. Shirley Smith, et al., *Effects Of The Immigration Reform And Control Act: Characteristics And Labor Market Behavior Of The Legalized Population Five Years Following Legalization* (U.S. Dept. of Labor, Washington, D.C.), 1996, at 45 (noting that newly legalized immigrants worked to improve their skills after attaining legal status under IRCA); see also Griswold, *supra* note 15, at 10 (discussing U.S. Labor Department study that found surge in immigrant investment in language skills, education, and training after IRCA).

320. *Id.* (noting that 43% of Mexican males pursued skills training after being legalized); see also Griswold, *supra* note 15, at 10 (noting that 1995 Department of Labor study concluded that nearly half of Mexican men undertook some skills enhancement training after attaining legal status).

321. *Id.* (noting that wages among newly legalized workers rose noticeably); see also Griswold, *supra* note 15, at 10 (discussing U.S. Labor Department study which discovered increase in real wages among newly legalized immigrants).

322. *Id.* (noting that real wages of undocumented workers rose 15% within five years of being granted amnesty under IRCA); see also Griswold, *supra* note 15, at 10 (noting that U.S. Department of Labor found 15% increase in real wages of undocumented workers).

323. *Id.* (noting that rise in wages reflected greater bargaining power on part of immigrants); see also Griswold, *supra* note 15, at 10 (noting that legalization enabled previously undocumented immigrants to assert new leverage in workplace).

324. See *New Directions*, *supra* note 208, at 4 (discussing potential for higher wages among immigrants if they were legalized); see also Griswold, *supra* note 15, at 22 (noting that legalized system of Mexican migration would raise wages and working conditions for millions of low-skilled workers and spur investment in human capital).

325. Among 1977 cohort of immigrants, only 15% of Mexicans had naturalized by 1990, in contrast to 57% of Chinese immigrants. Neuman, *supra* note 174, at 259 (comparing U.S. naturalization rates among different immigrant groups). See also Del Olmo, *supra* note 25, at M5 (finding scant evidence that immigrant workers are interested in becoming U.S. citizens); MASSEY, *supra* note 18, at 96 (noting that Mexican immigrants have historically displayed very low rates of naturalization).

326. See Peter H. Schuck, *The Treatment of Aliens in the United States*, in *PATHS TO*

giving them little incentive to naturalize or assimilate.³²⁷ However, this theory discounts other factors that influence immigrant decisions to naturalize, including the prospects for dual citizenship.³²⁸

Although dual citizenship is generally accepted in the United States,³²⁹ it has traditionally not been allowed in Mexico.³³⁰ As a result, Mexican immigrants have been reluctant to acquire U.S. citizenship in the past for fear of losing property rights at home.³³¹ In 1998, however, Mexico enacted a constitutional amendment that allows its emigrants to keep their citizen-

INCLUSION 217 (noting that until recently differences in legal rights between legal permanent residents and citizens in United States were quite modest); *see also* Neuman, *supra* note 174, at 259 (noting that permanent resident immigrants already enjoy nearly all advantages that citizenship would entail). *Cf.* MASSEY, *supra* note 18, at 96 (noting that welfare reform reduced public benefits for legal immigrants who previously had been eligible); *see also* Fix, *supra* note 304, at 9 (noting that United States has restricted permanent residents' use of non-contributory benefits).

327. *See* Neuman, *supra* note 174, at 259 (noting that naturalization rates among Mexican migrants have been low compared to other U.S. immigrant groups); *see also* Cristol-Deman, *supra* note 304, at 153 (noting that many long-time residents who had resisted becoming U.S. citizens due to cultural, political, or other loyalties decided to start naturalization process after welfare cuts were reduced in 1996).

328. *See* Heller, *supra* note 28, at 203 (noting that rates of naturalization remain low in United States because restrictions on dual citizenship in other countries can adversely affect immigrants' property rights); *see also* Neuman, *supra* note 174, at 259 (noting that for long time many Mexicans were reluctant to naturalize because they would lose property rights in Mexico and were not allowed to be dual citizens).

329. *See* Joppke, *supra* note 179, at 150 (noting that dual citizenship has always been tolerated in United States); *see also* Neuman, *supra* note 174, at 257 (noting that Congress lacks power to denationalize U.S. citizen who voluntarily acquires new nationality by naturalization in foreign country). *But see* Schuck, *supra* note 326, at 237 (noting that United States officially opposes dual citizenship and requires those who naturalize to explicitly renounce all other allegiances).

330. *See* *U.S. Mexicans Gain Dual Citizenship*, N.Y. TIMES, Mar. 20, 2003, at A31 [hereinafter *Dual Citizenship*] (discussing 1998 Mexican law that ended prohibition on dual citizenship); *see also* ALEINIKOFF, *supra* note 27, at 30 (noting that until recently Mexicans who obtained citizenship in foreign country were deemed to lose Mexican nationality); CASTLES & MILLER, *supra* note 17, at 270 (noting that Mexican naturalization rates in United States have lagged in part because historically United States has not made it easy for Mexicans to acquire U.S. citizenship).

331. *See* Neuman, *supra* note 174, at 259 (noting that Mexicans have been reluctant to become U.S. citizens for several reasons, including fact that permanent residents get many of same rights as citizens and because Mexicans fear losing property rights in Mexico); *see also* *Dual Citizenship*, *supra* note 330, at A31 (noting that prior to 1998 many Mexicans were reluctant to become U.S. citizens for fear that they would lose real estate, inheritances or businesses in Mexico); CASTLES & MILLER, *supra* note 17, at 270 (noting that constitutional restriction on foreigners owning property in Mexico was major factor that Mexican immigrants chose not to acquire U.S. citizenship).

ship even after naturalizing abroad.³³² According to Mexico's Foreign Relations Ministry, more than thirty thousand Mexican-Americans have reclaimed their Mexican citizenship under the provision in the last three years alone.³³³

5. A New Wave of Immigration Reform

a. Background: Why Now?

A combination of political and economic factors has prompted recent calls for immigration reform.³³⁴ First, the 2000 Census made it increasingly obvious that immigrants in general, and Latinos in particular, were becoming an important and powerful political constituency.³³⁵ The Latino population grew to 32.8 million,³³⁶ a 46.4% increase since 1990,³³⁷ and Mexicans

332. See Joppke, *supra* note 179, at 151 (noting that Mexico now allows dual citizenship); see also Alba, *supra* note 197 (noting that IIRIRA's restrictive nature motivated Mexico to allow its nationals to retain double, or multiple, nationalities, and probably strengthened its determination to protect its nationals abroad in more systematic way); ALEINIKOFF, *supra* note 27, at 31 (discussing amendment to Mexican Constitution that transformed country's citizenship rules); CASTLES & MILLER, *supra* note 17, at 270 (noting that changes to Mexican Constitution were expected to increase naturalizations of Mexicans legally residing in United States).

333. See *Dual Citizenship*, *supra* note 330, at A31 (noting increase in number of Mexican immigrants that have reacquired their former citizenship); see also Edward Hegstrom, *Dual Citizenship: Many Here Are taking Advantage of Mexican Program*, Hous. CHRON., Mar. 18, 2003, at 19 (discussing rise in dual citizenship among Mexican-Americans); ALEINIKOFF, *supra* note 27, at 31 n. 52 (noting that significant numbers of Mexicans have obtained U.S. citizenship by naturalization in recent years).

334. The growing power of Latino voters is one factor that prompted reform. Masci, *supra* note 252, at 15-17 (discussing role immigration reform was likely to play in 2000 presidential election); CASTLES & MILLER, *supra* note 17, at 271 (noting that Latino voters have become focus of inter-party competition as both Democrats and Republicans attempt to woo them). A second factor prompting reform were the harsh effects of 1996 welfare and immigration reforms. Hines, *supra* note 1, at 40 (discussing how IIRIRA's dire consequences led some legislators to seek reform); see also WELCH, *supra* note 35, at 30 (noting that many lawmakers had begun to question 1996 immigration laws despite their original support for them).

335. See Hines, *supra* note 1, at 41 (noting that Latinos had become important political constituency in 1990s); see also Elizabeth A. Palmer, *Immigration Debate Gains Intensity As Hill Awaits Details from Bush*, CQ WEEKLY, Sept. 1, 2001, at 2 (noting that immigrants are fastest growing group of new voters in United States).

336. See Melissa Therrien & Roberto R. Ramirez, *The Latino Population in the United States, Population Characteristics* (U.S. Census Bureau, Washington, D.C., Mar. 2000), at 1 (noting that U.S. Latino population totaled 32.8 million in 2000); see also Lynette Clemetson, *Hispanic Population Is Rising Swiftly, Census Bureau Says*, N.Y. TIMES, at A22 (reporting that number of Latinos in United States reached 38.8 million in July 2002).

337. See Therrien & Ramirez, *supra* note 336, at 1 (noting that Latino population grew by 46.4% from 1990 to 2000); see also Clemetson, *supra* note 336, at A22 (noting

represented 66.1% of that figure.³³⁸ Accordingly, politicians began to court the Latino vote in the 2000 election and both Democrats and Republicans have broadened their parties' positions on immigration issues.³³⁹ President Bush's own advisors have stated that the growing power of Latino voters motivated the president to push an immigration reform agenda, despite opposition in his own party.³⁴⁰

A second factor was the unduly harsh aftermath of the 1996 legislation, especially the unexpected effects of IIRIRA.³⁴¹ The Act's most severe provisions eliminated discretionary waivers of deportation,³⁴² allowed for the retroactive deportation of immigrants for past crimes,³⁴³ and restricted judicial review.³⁴⁴ Subsequently, longtime permanent residents were separated from their families for crimes committed years past and noncitizens were indefinitely detained.³⁴⁵ Needless to say, the courts struck down several IIRIRA provisions as unconstitutional,³⁴⁶ and many

that number of Latinos in United States rose almost 10% in first two years of twenty-first century).

338. See Therrien & Ramirez, *supra* note 336, at 1 (noting that Mexicans constituted 66.1% of U.S. Latino population in 2000); see also *U.S. Born Hispanics Increasingly Drive Population Developments* (Pew Hispanic Center, Washington, D.C.), Jan. 2002, at 1 (noting that two-thirds of United States' thirty-five million Latinos are Mexican).

339. See Masci, *supra* note 252, at 15-17 (discussing role immigration reform was likely to play in 2000 presidential election); see also CASTLES & MILLER, *supra* note 17, at 271 (noting that both Democrats and Republicans have tried to win over Latino voters in recent years).

340. See Washington, *supra* note 25, at A1 (reporting on negative impact of president's immigration plan on some of his conservative supporters); see also Bumiller, *supra* note 25, at A1 (reporting that president's immigration reform proposals were designed to appeal to Latino groups).

341. See Hines, *supra* note 1, at 41 (discussing how IIRIRA's dire consequences led some legislators to seek reform); see also WELCH, *supra* note 35, at 30 (noting that 1996 immigration laws were later questioned by those lawmakers who originally supported them).

342. See 8 U.S.C. 1101(a)(43), 1227(a)(2)(A)(iii) (1996) (eliminating discretionary waivers of deportation).

343. See 8 U.S.C. 1229(a) (allowing for retroactive deportation of immigrants for past crimes). The Anti-Terrorism and Effective Death Penalty Act (AEDPA), April 24, 1996, 110 Stat. 1214, repealed the former waiver for permanent residents accused of crime.

344. See 8 U.S.C. 1252 (restricting judicial review of removal proceedings).

345. See Hines, *supra* note 1, at 40-41 (noting that immigrants were deported under most extreme provisions of IIRIRA); see also WELCH, *supra* note 35, at 35-36 (describing sweeps, round-ups, and raids that led to deportation of illegal immigrants under new legislation).

346. Cf. *INS v. St. Cyr*, 533 U.S. 289 (2001) (striking down some retroactive restrictions on discretionary relief and certain limitations on judicial review); *Zadvydas v. INS*,

legislators soon agreed that the Act had gone too far.³⁴⁷

Labor shortages arising from the 1990s economic boom also helped drive the discussion on immigrant rights and immigration reform.³⁴⁸ Figures as prominent as Federal Reserve Chairman Alan Greenspan argued that increased immigration could ease labor force deficiencies in the United States,³⁴⁹ and an unlikely alliance between business leaders, labor unions, and the immigrant community emerged.³⁵⁰ As corporate leaders looked to immigrants to fill their countless vacancies, the AFL-CIO organized membership drives in immigrant communities.³⁵¹ Although labor unions had traditionally opposed the employment of undocumented immigrants³⁵² and supported sanctions against employers hiring such workers,³⁵³ they began to view the large number of immigrant workers as a potential source of political strength.³⁵⁴

533 U.S. 678, 701 (2001) (finding that immigrant could be detained until determination has been made that no significant likelihood of removal exists in reasonably foreseeable future).

347. See Hines, *supra* note 1, at 40-41 (finding that legislators favored reform of IIRIRA's harshest provisions); see also *Events of September 11*, *supra* note 6, at 1495 (noting that lawmakers later sought to scale back or reverse overly broad measures of IIRIRA).

348. See Hines, *supra* note 1, at 41 (noting that economic boom of 1990s made immigration reform more politically viable); see also WELCH, *supra* note 35, at 31 (discussing how improved economic climate of late 1990s reduced opposition to immigration).

349. See Hines, *supra* note 1, at 41 (noting that Alan Greenspan favored increased immigration); see also Richard Stevenson, *Greenspan Holds Forth Before Friendly Panel*, N.Y. TIMES, Jan. 27, 2000, at C1 (reporting on Federal Chairman Alan Greenspan's statement that review of current immigration policies should be considered in light of U.S. labor shortages).

350. See Hines, *supra* note 1, at 41 (noting that organized labor, industry leaders, and immigrant community jointly support immigration reform); see also Malone, *supra* note 2, at 1 (noting existence of alliance between labor and business on issue of immigration reform).

351. See Hines, *supra* note 1, at 41 (noting that AFL-CIO has expressed interest in having immigrants join union ranks); see also WELCH, *supra* note 35, at 32 (stating that labor unions are eager to organize immigrants); Palmer, *supra* note 335, at 5 (reporting that AFL-CIO hopes to turn immigrant workers into new recruits).

352. See HAUS, *supra* note 205, at 95 (noting that AFL-CIO's position toward illegal immigrants changed in late twentieth century); Palmer, *supra* note 335, at 5 (noting that organized labor has drastically revised its views on immigration and now supports immigrants).

353. See HAUS, *supra* note 205, at 97 (noting that AFL-CIO had made efforts to enact employer sanctions prior to 1986); see also Hines, *supra* note 1, at 41 (noting that labor unions had historically supported employer sanctions).

354. See Palmer, *supra* note 335, at 5-6 (discussing shift in labor's stance on immigration issues and noting that labor unions now support immigrants' rights); see also

b. The Bush-Fox Alliance: Anticipation and Apprehension

The U.S. and Mexican presidents set forth to address the illegal flow of labor across their borders just months after taking office.³⁵⁵ They established a high-level binational working group, composed of the attorney generals and secretaries of state and labor from both countries, to work on the problem.³⁵⁶ The group established several principles that were to provide the foundation of any future migration policy.³⁵⁷

In a September 2001 joint statement issued by the United States and Mexico, Presidents Bush and Fox reasserted their commitment to promoting "safe, orderly, legal and dignified" migration.³⁵⁸ They advocated a framework that would match willing workers with willing employers,³⁵⁹ serve the social and economic needs of both countries, respect the human dignity of

WELCH, *supra* note 35, at 32 (explaining that labor unions have begun to organize immigrants).

355. See Griswold, *supra* note 15, at 2 (noting that two newly inaugurated presidents met in February 2001 to work together on immigration reform); see also Palmer, *supra* note 335, at 1 (reporting on presidents' unprecedented immigration negotiations that took place in February 2001).

356. See also Griswold, *supra* note 15, at 2 (discussing establishment of high-level U.S.-Mexican working group to focus on immigration); see also *Joint Statement of the US-Mexico High Level Working Group on Migration*, U.S. Department of State, Apr. 4, 2001, available at <http://www.state.gov/r/pa/prs/ps/2001/2013.htm> (noting that working group's agenda includes discussion of border safety issues, regularization of undocumented Mexicans in United States, and possible alternatives for temporary workers with emphasis on circularity issues).

357. See "Two Amigos" Meet Again: Bush and Fox Agree on Principles But No Proposal – Yet, 78 INTERPRETER RELEASES 1431 (Sept. 10, 2001) [hereinafter *Two Amigos*] (noting that U.S. and Mexican presidents had agreed on basic immigration principles on which both countries would build). The two leaders agreed that reformed immigration policies should match willing workers with willing employees, serve the social and economic needs of both countries, and respect the human dignity of all immigrants regardless of their legal status in the United States. *Id.* The leaders agreed their countries should share responsibility for ensuring that immigration took place through safe and legal channels. *Id.* See also Hines, *supra* note 1, at 42 (noting that Presidents Bush and Fox had agreed on immigration reform framework).

358. *Joint Statement Between the United States of America and the United Mexican States*, White House Press Release, Sept. 6, 2001, available at <http://www.whitehouse.gov/news/releases/2001/09/> [hereinafter *Joint Statement*]. (expressing commitment by Presidents Bush and Fox to promote safe and orderly migration between their two countries); see also Ronald Brownstein, *Political Realities Intrude on Promise of Change*, L.A. TIMES, Sept. 7, 2001, at A1 (reporting that Presidents Bush and Fox had discussed immigration reform during Mexican leader's State visit).

359. *Joint Statement*, *supra* note 358 (stating that White House guest worker plan aimed to match willing employers with willing employees); see also Brownstein, *supra* note 358, at A1 (reporting that President Bush's main priority has been to establish

all immigrants, regardless of their status,³⁶⁰ and recognize the contributions immigrants make to enrich both societies.³⁶¹ The leaders agreed that the United States and Mexico should share responsibility for ensuring that migration occurs through safe and legal channels.³⁶² They established a public-private "Partnership for Prosperity" alliance to spur private sector growth throughout Mexico in an effort to address some of the root causes of migration.³⁶³ They instructed the Cabinet-level working group to continue its discussions on several immigration issues, including a temporary worker program, and requested proposals "as soon as possible."³⁶⁴

Independently, the White House emphasized that any temporary worker program with Mexico would be carefully constructed to meet the needs of the U.S. economy and avoid disadvantaging U.S. workers.³⁶⁵ President Bush, however, also ex-

program that would permit low-wage U.S. service industries to import temporary workers from Mexico).

360. *Joint Statement*, *supra* note 358 (stating that proposed White House guest worker plan aimed to serve social and economic needs of all immigrants, regardless of legal status); *see also* Edward Epstein, *Fox Pushes Pact on Immigration: Congress Gives Mixed Reviews to Appeals As Mexico's President Wraps Up U.S. Visit*, S.F. CHRON., Sept. 7, 2001, at A3 (reporting on statements by President Bush that indicate U.S. president seeks immigration reform that addresses problems of both legal and undocumented immigrants from Mexico).

361. *Joint Statement*, *supra* note 358 (stating that Bush proposal planned to recognize contributions immigrants make to Mexico and United States); *see also* Epstein, *supra* note 360, at A3 (reporting that U.S. President Bush stated that he wanted immigration reform to recognize contributions undocumented workers have made to U.S. economy).

362. *Joint Statement*, *supra* note 358 (stating that Presidents Bush and Fox had agreed that their countries would share responsibility for ensuring safe and legal immigration between their countries); *see also* Epstein, *supra* note 360, at A3 (reporting that Presidents Bush and Fox focused on immigration reform that would provide legal means for Mexican laborers to work in United States).

363. *Joint Statement*, *supra* note 358 (stating that public-private alliance had been established to promote growth in some of Mexico's private sectors); *see also* Epstein, *supra* note 360, at A3 (reporting that Presidents Bush and Fox announced creation of public-private group called Partnership for Prosperity whose aim was to encourage U.S. businesses to set up in Mexico).

364. *Joint Statement*, *supra* note 358 (instructing high-level Mexican-U.S. working group to continue working on issues of immigration, including guest worker program); *see also* Brownstein, *supra* note 358, at A1 (reporting that Mexican and U.S. presidents had directed binational working group to discuss possibility and details of guest worker program).

365. *Fact Sheet on Migration*, *supra* note 4 (stating that any reform of U.S. immigration system should not disadvantage U.S. workers and that guest workers should be used in cases where U.S. workers are not available). The White House noted that it was

pressed a willingness to consider a temporary worker program resulting in permanent residency or citizenship.³⁶⁶ Although many Democrats supported the notion of a guest worker policy,³⁶⁷ they insisted that any such plan must avoid the “troubling legacy of exploitation and abuse” which characterized temporary worker programs in the past.³⁶⁸ They maintained that a temporary worker program must be market-focused to ensure that U.S. workers are not displaced or their wages undermined.³⁶⁹ These Democrats stressed that participants in any new temporary worker program must be given the same labor protections afforded U.S. workers, including the right to organize, the right to change jobs freely – not only between employers, but across eco-

working with Mexico on options for a new program for temporary workers and emphasized that the program should meet the needs of the U.S. economy. *Id.* The president's proposed temporary worker program would match willing workers with willing employees and would aim to recognize the contributions undocumented Mexicans make in the United States. *Id.* See also Brownstein, *supra* note 358, at A1 (reporting that Bush has proposed guest worker program that would allow U.S. businesses to import labor); see also Epstein, *supra* note 360, at A3 (reporting that President Bush stated that contributions of undocumented workers should be recognized).

366. *Presidents Bush, Fox Discuss State Visit*, White House Press Release, Sept. 6, 2001, available at <http://www.whitehouse.gov/news/releases/2001/09/> (noting that President Bush stated that he hoped to initiate reform plan that would provide guest workers with some sort of normalization of their legal status). The U.S. president stated that he was willing to consider ways for guest worker to earn green card status. *Id.* See also Brownstein, *supra* note 358, at A1 (reporting that U.S. President Bush had made public statements in which he said he was willing to consider means by which guest workers could attain green card status).

367. See Democrats Release “Principles” For Immigration Reform, While Restrictionist Caucus Calls For Moratorium, 78 INTERPRETER RELEASES 1268 (Aug. 6, 2001) [hereinafter *Democrat Proposal*] (summarizing Democratic House-Senate task force recommendations on immigration reform); see also Jonathan Peterson, *Democrats Push For Legalizing Workers*, CHI. TRIB., Aug. 3, 2001, at 20 (reporting that Democrats endorsed enhanced program of guest workers); Robert Collier, *Democrats, GOP in Tug-Of-War For Immigration Overhaul*, S.F. CHRON., Aug. 3, 2001, at A6 (reporting that Democrat proposal would allow large program of guest worker farm visas); Michael Hedges, *Democrats: Don't Limit Exemptions to Mexicans*, HOUS. CHRON., Aug. 3, 2001, at 1 (reporting on Democratic support for creation of temporary worker program).

368. See *Democrat Proposal*, *supra* note 367, at 1268 (reporting that Democrats are interested in ensuring that new guest worker program prevents exploitation and abuse that characterized previous temporary laborer program); see also Collier, *supra* note 367, at A6 (reporting that Democrats would allow guest workers to unionize); Peterson, *supra* note 367, at 20 (reporting that Democrats stated that immigrant employees should enjoy same labor rights as everyone else).

369. See *Democrat Proposal*, *supra* note 367, at 1268 (noting Democratic support for market-based temporary worker program); see also Hedges, *supra* note 367, at 1 (reporting that Democrats supported immigration policies that meet labor needs of America's economy).

conomic sectors – and the fully enforced legal protection of their wages, hours, and working conditions.³⁷⁰ Guest workers should have the opportunity to become both permanent residents and citizens,³⁷¹ and should be allowed to bring their families to the United States.³⁷² Democrats, as well as immigrant rights activists, have also argued that any guest worker program should not be limited to Mexicans.³⁷³

On the other end of the political spectrum, anti-immigration groups and some conservatives in President Bush's own Republican party have called for a restrained approach to temporary worker visas³⁷⁴ or have opposed the idea of a guest worker program altogether.³⁷⁵ Restrictionists absolutely contest the use

370. See *Democrat Proposal*, *supra* note 367, at 1268 (noting Democrat's focus on labor protections for U.S. workers); see also Collier, *supra* note 367, at A6 (reporting that Democrats would allow guest workers to unionize); Peterson, *supra* note 367, at 20 (reporting that Democrats stated that immigrant employees should enjoy same labor rights as everyone else).

371. See *Democrat Proposal*, *supra* note 367, at 1268 (reporting that Democrats wanted to grant citizenship rights to guest workers over long run); see also Peterson, *supra* note 367, at 20 (reporting that principles released by Democrats suggested more open approach to legalizing immigrants and aimed to ultimately grant immigrants citizenship).

372. See *Democrat Proposal*, *supra* note 367, at 1268 (noting that Democrats support family reunification for immigrants); see also Peterson, *supra* note 367, at 20 (reporting that Democratic lawmakers endorsed expansion of immigration to unify families); Collier, *supra* note 367, at A6 (reporting that Democrat proposal would lift caps on family reunification visas); Hedges, *supra* note 367, at 1 (reporting that principles endorsed by Democrats include policies that reunite immigrant families).

373. See Eric Schmitt, *Bush Says Plan for Immigrants Could Expand*, N.Y. TIMES, July 27, 2001, at A1 (noting that Democrats and other critics have complained that Bush's guest worker plan would exclude millions of non-Mexican illegal immigrants from equal treatment); see also Eric Schmitt, *Other Immigrants, Envy Mexican Demand Break, Too*, N.Y. TIMES, July 26, 2001, at A1 (reporting that many immigrant rights groups consider guest worker program aimed only at Mexicans unfair).

374. See *Bush Administration Considers "Regularization" Proposals in Advance of September Meeting With Mexican President*, 78 INTERPRETER RELEASES 1269, 1270 (Aug. 6, 2001) [hereinafter *Administration Considers Regularization*] (quoting Republican Representative Tom Tancredo as stating that guest workers must go home at end of their tenure); see generally Daniel B. Wood & Abraham McLaughlin, *Can U.S. Halt Illegal Immigrants By Hosting More "Guests"? U.S.-Mexico Talks May Center On Controversial "Guest Worker" Program That Neither Side Likes Very Much*, CHRISTIAN SCI. MONITOR, Sept. 7, 2001, at 2 (noting that groups on both ends of political spectrum have expressed opposition to temporary worker visas for different reasons); Palmer, *supra* note 335, at 3 (reporting that some conservatives in and out of Congress have been skeptical of President Bush's proposals on immigration).

375. See Wood & McLaughlin, *supra* note 374, at 2 (quoting Daniel Stein, president of anti-immigration group FAIR, as stating that he opposes guest worker programs because they are unenforceable and lead to amnesty for illegal immigrants); see also

of guest worker programs to extend permanent citizenship to any immigrants, undocumented or legal, arguing that guest workers must go home at the end of their visa tenure.³⁷⁶ In addition, opponents have been resistant to any mass amnesty or legalization program, which they equate with rewarding law-breaking behavior.³⁷⁷

Reaction among immigrant advocacy groups and Latino communities has been mixed.³⁷⁸ Many Mexican workers currently working illegally in the United States have supported reform, but their hope is for a program that normalizes their status through legal residency, work permits, or citizenship.³⁷⁹ They fear that the presence of temporary workers could suppress wages for all low-skilled labor.³⁸⁰ These workers, and the unions that represent them, also have advocated that undocumented workers currently in the country be legalized before a guest worker program is introduced.³⁸¹ Civil rights activists have emphasized that guest worker programs historically were inade-

Administration Considers Regularization, *supra* note 374, at 1270 (reporting that restrictionists oppose any new immigration or guest worker program); Palmer, *supra* note 335, at 4 (reporting on restrictionist opposition to Bush's guest worker proposal).

376. See *Administration Considers Regularization*, *supra* note 374, at 1270 (describing restrictionist opposition to toward temporary worker programs); see also Wood & McLaughlin, *supra* note 374, at 2 (reporting that those who oppose higher levels of immigration are not enamored of idea of expanding guest worker program); Palmer, *supra* note 335, at 4 (reporting that restrictionists in Republican Party were upset by Bush proposal).

377. See Jerry Seper, *Bush to Push For Amnesty*, WASH. TIMES, Nov. 23, 2002, at A1 (discussing opposition to amnesty among many Congressional Republicans); see also Amy Borrus & Geri Smith, *Spotlight On The Border*, BUS. WK., Sept. 10, 2001, at 43 (noting that amnesty provision would not be popular among Republican base).

378. See William Booth, *Immigrants Wary of Guest Worker Plan: Impact on Wages, Competition for Jobs, Permanent Residency Big Concern*, WASH. POST, Sept. 2, 2001, at A6 (describing mixed immigrant support for reform); see also David R. Ayn, *Immigration: Bush Can't Have Latino Support and Mexico, Too*, L.A. TIMES, Sept. 2, 2001, at M1 (reporting on reluctance of some Latinos to support guest worker program that does not lead to permanent resident status).

379. See Booth, *supra* note 378, at A6 (reporting on ambivalence immigrants feel toward immigration reform); see also Ayn, *supra* note 378, at M1 (noting that many Latino leaders are wary of guest worker program that does not lead to permanent resident status).

380. See Booth, *supra* note 378, at A6 (finding that Mexican workers are concerned about possibility of decreased wages); see also Wood & McLaughlin, *supra* note 374, at 2 (quoting immigrant advocate who states that guest worker programs create exploitable labor force and depressed wages).

381. See Booth, *supra* note 378, at A6 (noting that many immigrant workers and union leaders support legalization of immigrants already residing in United States); see also Wood & McLaughlin, *supra* note 374, at 2 (noting that Mexican American Legal

quate in protecting the rights of immigrant workers and have called for strong protections in regard to wages and working conditions.³⁸²

c. The Impact of September 11 on the Immigration Reform Debate

The terrorist attacks of September 11, 2001 had an immediate negative impact on public opinion regarding immigrants.³⁸³ A poll conducted in October 2001 found that 58% of the public believed that immigration levels should be reduced.³⁸⁴ The poll also found that 67% believed the U.S. government should not make it easier for illegal immigrants to become citizens.³⁸⁵ Another survey concluded that 76% of Americans thought the government was not doing enough to control the border or the admission of foreigners into the country.³⁸⁶ Moreover, 56% of respondents thought efforts by Presidents Bush and Fox to consider amnesty for as many as three million illegal immigrants was a "bad or very bad idea."³⁸⁷

Defense and Educational Fund supports broad-based reform that addresses undocumented workers already in United States).

382. See *U.S.-Mexico Migration Discussions: Historic Opportunity*, Hearing of the Senate Judiciary Committee, 107th Cong., (Sept. 7, 2001) (comments by Raul Yzaguirre, President, National Council of La Raza) (describing civil rights activist's concerns regarding temporary worker program); see also Palmer, *supra* note 335, at 1, 5-6 (reporting that Latino interest groups such as National Council of La Raza have historically opposed guest worker programs out of concern that they would not include any real worker protections).

383. See Sheridan, *supra* note 199, at A1 (noting that public opinion has swung against immigration since September 11 terrorist attacks); see also Hines, *supra* note 1, at 45 (discussing negative impact World Trade Center attacks had on public opinion about immigration).

384. CNN/USA TODAY/Gallup Poll, Oct. 26, 2001 (finding that 58% of public believed that immigration levels should be reduced). See also Hines, *supra* note 1, at 45 (discussing October 2001 poll and noting that almost 60% of respondents thought immigration rates should be reduced).

385. *Id.* (finding that 67% of public believed U.S. government should not make it easier for illegal immigrants to become citizens). See Seper, *supra* note 377, at A1 (reporting that poll found that 67% of respondents believed that U.S. government should not make it easier for illegal immigrants to become citizens).

386. Zogby International Poll, Sept. 28, 2001, available at <http://www.zogby.com/soundbites/ReadClips.dbm?ID=3954> (finding that 76% of Americans thought U.S. government was not doing enough to control border or admission of foreigners into United States). See also Evan Osnos, *Attacks Halt Movement Toward Migrant-Friendly Policies*, CHI. TRIB., Oct. 26, 2001, at 7 (reporting on Zogby poll findings that that seven in ten Americans favored stricter control of nation's borders).

387. *Id.* (finding that 56% of public believed that efforts by Presidents Bush and

Anti-immigration sentiment,³⁸⁸ combined with increased jobless rates,³⁸⁹ made the argument that immigrants are essential to the success of the U.S. economy less politically viable,³⁹⁰ even though the underlying factors that created demand for immigrant labor remained unchanged.³⁹¹ Many U.S. industries continued to depend on Mexican immigrant labor,³⁹² despite the crippled economy of the past three years³⁹³ because U.S. work-

Fox to consider amnesty for up to three million illegal immigrants was "bad or very bad" idea). See Seper, *supra* note 377, at A1 (reporting on Zogby poll that found that more than half of Americans thought amnesty for illegal immigrants was not good idea).

388. See Hines, *supra* note 1, at 45 (noting that public favored reduced immigration after attacks of September 11); see also Seper, *supra* note 411, at A1 (reporting that American public did not think U.S. government was doing enough to control country's borders in aftermath of September 11).

389. See Lisa Girion, *Firms Put Hiring In Holding Pattern*, L.A. TIMES, Oct. 5, 2001, at C1 (reporting that employers across country have frozen jobs and curtailed hiring since World Trade Center attacks); see also Jacob M. Schlesinger and Russell Gold, *Labor Lost: High-Employment Era Seems Over in Wake Of Terrorist Attacks*, WALL ST. J., Oct. 8, 2001, at A1 (reporting considerable weakening of labor market); Greg Ip, *The Economy: Jobless Rate Increases to 6%*, WALL ST. J., Dec. 9, 2002, at A2 (reporting that unemployment rate reached eight-year high in November 2002).

390. See *Who Goes There*, *supra* note 10, at 27-28 (explaining that prospects for immigration reform were dim following September 11 attacks); see also Hines *supra* note 1, at 44 (noting that tragic events of September 11 stunned nation and decisively changed its direction); *One Year Later*, *supra* note 6, at 1345 (noting that September 11 attacks permanently altered immigration debate); *Events of September 11*, *supra* note 6, at 1493 (noting that momentum toward more immigration-friendly climate was reversed in aftermath of World Trade Center attacks).

391. See Ricardo Alonso-Zaldivar, *Signs of Movement on Migrants: Guest-Worker Plan And Other Reforms On Hold Since 9/11 Are Gaining Support Again — But The President Appears Less Interested This Time*, L.A. TIMES, Sept. 6, 2003, at A1 (noting that regardless of economic conditions, low-wage jobs in certain U.S. industries remain unfilled); *Who Goes There*, *supra* note 10, at 27-28 (noting that underlying economic facts that drive migration have not changed since September 11).

392. See Simons, *supra* note 10, at 92-98 (noting that immigrant labor remains essential to success of U.S. economy, despite recent downturn); see also *Future Labor*, *supra* note 10, at 1 (noting that United States will have shortage of 35 million workers by 2030 despite recent short-term weakening of economy); Borrus, *supra* note 377, at 40-43 (noting that employers continued to clamor for low-wage Mexicans to work in restaurants, hotels, meatpacking plants, and construction despite U.S. slump); Alonso-Zaldivar, *supra* note 391, at A1 (reporting that business and labor still hoped for immigration reform bill that would help fill low-end jobs in aftermath of September 11th).

393. See Peter G. Gosselin, *Economic Growth Slows Sharply: Gross Domestic Product Rose At 0.7% Pace Last Fall, Its Smallest Gain In Year, As Consumers Cut Spending Amid Job, Stock And War Fears*, L.A. TIMES, Jan. 31, 2003, at C1 (reporting limited growth in U.S. economy and weak labor market); see also Jennifer Corbett Dooren et al., *The Economy: New Data Show Weak Creation Of Jobs, Production At Factories*, WALL ST. J., Oct. 4, 2002, at A2 (reporting weaknesses in job creation and factory production data); Michael E. Kanell, *Retailing Weakness Reflected In Jobs Data Weak Finish In December Leads To First Back-To-Back*

ers, who as a group are both aging and increasingly well educated,³⁹⁴ are unwilling to fill low-skilled vacancies.³⁹⁵ Accordingly, industry leaders continued to push for immigration reform during this time.³⁹⁶

After September 11, 2001, concerns about border security became an essential element of anti-immigrant sentiment, despite the fact that none of the nineteen hijackers involved in the World Trade Center attacks entered the United States illegally or as immigrants.³⁹⁷ In fact, by some estimates, a system allowing Mexican workers to enter the U.S. legally could free up thousands of government personnel and save an estimated \$3 billion a year, resources that might be diverted to fighting terror-

Yearly Declines Since 1957-58, ATL. J.-CONST., Jan. 11, 2003, at F1 (reporting on weakened state of U.S. economy).

394. See Griswold, *supra* note 15, at 9 (noting that U.S. workers are aging and becoming increasingly more educated); see also *New Directions*, *supra* note 208, at 1 (noting that immigrants and their children will be needed to fund retirement of Baby Boomers); *Future Labor*, *supra* note 10, at 1 (noting that retirement of Baby Boom generation and improvements in medical technology will result in growing number of older Americans); *Essential Workers*, *supra* note 15, at 1 (noting that reduction in total size of U.S. workforce will occur as Baby Boomers retire); *Education Level*, *supra* note 225, at 1 (reporting that proportion of U.S. workers without high school diploma declined from 24% in 1978 to 15% in 1998); *Future Growth*, *supra* note 10, at 3 (finding that higher levels of high school completion and post-secondary education among native-born Americans has prompted these workers to seek out higher paying and less physically demanding positions).

395. See Daniel T. Griswold, *Mexican Workers Come Here to Work, Let Them*, WALL ST. J., Oct. 22, 2002, at A18 [hereinafter Griswold, *Mexican Workers*] (reporting on Labor Department estimates that total number of U.S. jobs requiring only short-term training will increase from 53.2 million in 2000 to 60.9 million by 2010); see also Simons, *supra* note 10, at 92-98 (discussing importance of immigrant labor to success of U.S. economy, despite recent downturn). By 2008, the Bureau of Labor Statistics estimates that the United States will have a surplus of more than five million jobs, many of which will require only high school education and minimal training. *Id.* See also *Who Goes There*, *supra* note 10, at 27-28 (noting that basic economic factors that cause cross-border migration have remained the same since September 11).

396. See Griswold, *Mexican Workers*, *supra* note 395, at A18 (noting that business leaders continued to press for change in U.S. immigration policy after September 11, 2001); see also Alonso-Zaldivar, *supra* note 391, at A1 (reporting that business and labor still hoped for immigration reform bill that would help fill low-end jobs in aftermath of September 11); Borrus, *supra* note 377, at 40-43 (noting that employers continued to seek low-wage Mexicans to work in restaurants, hotels, meatpacking plants, and construction despite U.S. slump).

397. See Griswold, *supra* note 15, at 17 (noting that border security became primary concern after World Trade Center attacks); see also Hines, *supra* note 1, at 44-45 (discussing Congress' focus on increased border enforcement in aftermath of September 11th attacks).

ism.³⁹⁸ Even Homeland Security Director Tom Ridge has argued that effective border security requires separating "high risk traffic from low risk traffic."³⁹⁹

Nonetheless, repeated efforts by President Fox to reignite migration policy talks were until now largely unsuccessful.⁴⁰⁰ With the United States preoccupied with its global fight against terrorism,⁴⁰¹ Mexico's migration agenda took a backseat to conflicts in Afghanistan and Iraq.⁴⁰² Frustration over the inability to reach a migration deal with the United States prompted Mexican Foreign Minister Jorge Castaneda to resign in January

398. See Griswold, *Mexican Workers*, *supra* note 395, at A18 (discussing potential cost savings immigration reform could yield); see also Alonso-Zaldivar, *supra* note 391, at A1 (discussing how immigration reform would free up federal agents to focus their efforts on individuals who pose potential threat to national security); MASSEY, *supra* note 18, at 118 (noting that since enactment of IRCA INS has spent \$16.5 billion on border enforcement to no effect). One reason why increased border enforcement has not succeeded in stopping the flow of illegal immigrants into the United States is that many illegal immigrants enter the country legally and then remain illegally by overstaying their tourist visas. Griswold, *supra* note 15, at 5 (noting that many people who enter United States illegally do so by overstaying their visas); see also Heller, *supra* note 28, at 202 (noting that 2.1 million of United States' estimated five million illegal immigrants are non-immigrant overstayes); Fraser, *supra* note 31, at 102 (noting that 40% of undocumented immigrants illegally overstayed their authorized period of stay as tourists, business visitors, or temporary residents); Frank Davies, *Many INS Failures Found On Suspects*, BOSTON GLOBE, May 23, 2002, at A27 (reporting that half of 48 Muslim extremists later involved in terrorism who came into United States since 1993 entered illegally or overstayed their visas).

399. See *Move Forward On U.S.-Mexico Migration Deal*, ATL. J.-CONST., Dec. 9, 2002, at A17 (describing U.S. Director of Homeland Security Tom Ridge's support for border control reform); see also Philip Shenon, *Ridge Favors Status Short of Citizenship For Illegal Immigrants*, N.Y. TIMES, Dec. 11, 2003, at A30 (noting that Ridge has expressed his support for legalization of some illegal immigrants for purposes of homeland security).

400. See generally Ginger Thompson & Tim Weiner, *Mexico Struggles for the Attention of Preoccupied U.S.*, N.Y. TIMES, Oct. 13, 2002, at 4 (reporting decline of U.S.-Mexico relations after September 11); see also Ginger Thompson, *Mexico Leader Presses U.S. to Resolve Migrants' Issues*, N.Y. TIMES, Nov. 27, 2002, at 12 (reporting that U.S. Secretary of State Colin Powell urged patience on broad immigration reforms).

401. See Thompson & Weiner, *supra* note 400, at 4 (reporting that White House has been fiercely focused on war on terrorism at expense of other issues); see also Thompson, *supra* note 400, at 12 (reporting that Bush administration set aside immigration talks to focus on national security and fighting terrorism); Patty Reinert, *Mexico Tugs On Bush's Arm: Fox Hopes U.S. Will Finally Focus On Immigration*, Hous. CHRON., Oct. 26, 2002, at 27 (reporting terrorist attacks shifted America's focus away from Mexico).

402. See Kevin Sullivan & Glenn Kessler, *Fox Says It's Time To Reopen Talks On Immigration Concerns: Senior U.S. Delegation Gives Mexico No Signal of Action Soon*, WASH. POST, Nov. 27, 2002 (reporting that President Fox had little to show for his extensive efforts to improve relations with United States); see also Thompson, *supra* note 400, at 12 (reporting that efforts by President Fox to restart negotiations on immigration reform were met with reservations and pleas for patience by American officials).

2003.⁴⁰³ Relations between the two countries also chilled after President Fox cancelled a trip to the United States following the Texas execution of a Mexican national⁴⁰⁴ and after Mexico withheld its support for U.S. military action in Iraq.⁴⁰⁵

Meanwhile, President Fox began to take the migration issue quietly into his own hands.⁴⁰⁶ In 2002, the Mexican government started issuing consular identity cards to its citizens in the United States as a way to assist immigrant workers in opening bank accounts, obtaining driver's licenses, and facilitate other aspects of day-to-day life in the United States.⁴⁰⁷ Lobbying efforts aimed at getting local and state governments to accept the cards as valid identification were largely successful.⁴⁰⁸ The U.S. Citizenship and Immigration Services, formerly the INS, has taken a neutral

403. See Gretchen Peters, *Mexican Migration Moves Off Fast Track: Mexico's Foreign Minister Quit Last Week Following Frustration Over Border Issues*, CHRISTIAN SCI. MONITOR, Jan. 16, 2003, at 6 (reporting that Mexican Foreign Minister Jorge Castaneda resigned in January 2003); see also Tim Weiner, *Mexican Foreign Minister Quits: Critic of NAFTA Replaces Him*, N.Y. TIMES, Jan. 11, 2003, at A3 (reporting on Mexican Foreign Minister Jorge Castaneda's resignation and his disappointment in not reaching U.S.-Mexico migration deal).

404. See Marion Lloyd, *For Mexico's Fox, Change in Plans: Political Move Seen In Canceled U.S. Trip*, BOSTON GLOBE, Aug. 16, 2002, at A8 (reporting on U.S. refusal to halt execution of Mexican national and President Fox's subsequent U.S. trip cancellation); Karen DeYoung, *Differing Agendas Chill Relationship Between Bush, Fox: Mexicans Cite Stall On Border Issues*, WASH. POST, Oct. 28, 2002, at A13 (reporting that President Fox cancelled his U.S. visit after White House ignored his pleas not to execute Mexican national).

405. See Karen DeYoung & Colum Lynch, *Bush Abandons Bid to Win U.N. Backing for War: Failure to Garner Support Seen as Historic Setback for U.S. Diplomacy in International Body*, WASH. POST, Mar. 18, 2003, at A16 (reporting that Mexico questioned legality of U.S. military action in Iraq); see also Hugh Dellios, *Powell to Mexicans: Reform Will Be Slow, Smoother Flow Of Immigrants Still U.S. Goal, He Says*, CHI. TRIB., Nov. 26, 2002, at 4 (discussing Bush Administration's displeasure with Mexico for not cooperating on Iraq issue).

406. See T.R. Reid, *Identifying Way To Help Mexicans Living In The U.S.: Acceptance Of ID Card Is Spreading*, WASH. POST, Dec. 2, 2002, at A3 (reporting that President Fox has launched campaign to get consular identity cards accepted as valid for of identification in United States); see also Eduardo Porter, *Mexico Pushes ID for Migrants: Aim is To Integrate Workers In U.S. Locales As Amnesty Founders*, WALL ST. J., Oct. 25, 2002, at A2 (reporting issuance of Mexican consular identity cards to its citizens living in United States).

407. See Reid, *supra* note 406, at A3 (reporting on campaign to get Mexican consular identity cards recognized in United States); see also Porter, *supra* note 406, at A2 (reporting that Mexican consulates have begun to issue identification cards to its nationals in United States).

408. See Susan Ferriss, *Mexican ID opens Doors: Card Gives Immigrants Access to More Services in the U.S.*, ATL. J.-CONST., Nov. 17, 2002, at B5 (noting that more than 800,000 cards have been issued, with 800 U.S. police departments, fifteen cities, twenty counties in various states and thirteen states accepting cards as valid identification); see also Reid,

position in regard to the cards,⁴⁰⁹ noting that Mexico has the right to issue them but that possession of a card does not indicate an immigrant is in the United States legally.⁴¹⁰ Immigration opponents have denounced the cards.⁴¹¹ In the meantime, Mexican workers continued to stream across the U.S. border, with migration levels rebounding to pre-September 11 levels just one year after the attacks on the World Trade Center.⁴¹²

d. Recent Developments

After a more than two-year hiatus, the Bush Administration announced in January 2004 that it would renew its efforts to push an immigration reform agenda.⁴¹³ President Bush has revived his proposal for a temporary foreign worker program that promises to match "willing foreign workers with willing American employers."⁴¹⁴ The program aims to offer temporary legal status to millions of undocumented workers now employed in the United States and to those in foreign countries who seek to participate in the program and have been offered employment

supra note 406, at A3 (reporting that more than eighty cities and about 600 police departments had recognized consular identity cards in eight months).

409. See Porter, *supra* note 406, at A2 (stating that INS is officially neutral in regard to cards); see also Reid, *supra* note 406, at A3 (noting that INS has not taken position on cards).

410. See Porter, *supra* note 406, at A2 (reporting that Mexico has right to issue consular ID cards); see also Reid, *supra* note 406, at A3 (reporting that consular ID cards are not indication of whether immigrant has legal status in United States).

411. See Reid, *supra* note 406, at A3 (quoting Republican Congressman Tom Tancredo as calling cards "ploy" to keep illegals in United States); see also Seper, *supra* note 385, at A1 (reporting that twelve lawmakers stated that card existed only for express purpose of evading U.S. law).

412. See Jim Yardley, *Mexicans' Bids to Enter U.S. Rebound to Pre-9/11 Levels*, N.Y. TIMES, Nov. 24, 2002, at 24 (reporting that abrupt slowdown in illegal immigration from Mexico after September 11 had ended); see also Jacob H. Fries, *Business Of Human Smuggling Slowed Only Briefly After 9/11*, DENV. POST, Jan. 5, 2003, at A22 (discussing data which indicates that number of illegal immigrants has bounced back to and possibly surpassed pre-September 11 levels).

413. *President Bush Proposes New Temporary Worker Program*, Remarks by the President on Immigration Policy, White House Fact Sheet, Jan. 7, 2004, available at <http://www.whitehouse.gov/news/releases/2004/01/> [hereinafter *Bush Proposal*] (proposing U.S. guest worker program); see also Alonso-Zaldivar, *supra* note 9, at A1 (reporting that President Bush proposed new guest worker program for which illegal immigrants in United States and prospective workers abroad would be eligible).

414. *Bush Proposal*, *supra* note 413 (calling for guest worker program that matches willing workers with willing employers); see also Del Olmo, *supra* note 25, at M5 (noting that President Bush's proposed guest worker program seeks to link willing workers with willing employers).

in the United States.⁴¹⁵ Temporary worker visas, which shall be renewable, will be valid for three years.⁴¹⁶

President Bush, however, has emphasized that the program expects temporary workers to return permanently to their homes after their period of work in the United States has expired.⁴¹⁷ Moreover, the program does not purport to offer amnesty to existing undocumented workers, nor does it place temporary immigrant workers on an automatic path to citizenship.⁴¹⁸ As an incentive for workers to return home, the president's plan proposes that participants contribute a portion of their earnings to a tax-preferred savings account, which they can access after leaving the United States.⁴¹⁹

Under the Bush plan, temporary workers will have to apply for green cards and citizenship under existing laws,⁴²⁰ with no advantage over other applicants.⁴²¹ The Bush Administration has expressed its desire to increase the total annual number of green cards that can lead to citizenship, but has not indicated

415. *Bush Proposal*, *supra* note 413 (noting that both undocumented workers and workers abroad would be eligible for guest worker program); *see also* Alonso-Zaldivar, *supra* note 9 at A1 (reporting that White House guest worker plan would be open to both immigrants currently working in United States and those outside country).

416. *Bush Proposal*, *supra* note 413 (noting that temporary work visas would be valid for three years); *see also* Alonso-Zaldivar, *supra* note 9, at A1 (reporting that President Bush's guest worker proposal would grant three-year permits to participants).

417. *Bush Proposal*, *supra* note 413 (noting that guest workers must return home when work permit expires); *see also* Alonso-Zaldivar, *supra* note 9, at A1 (reporting that under President Bush's proposed guest worker plan most participants would be expected to go home eventually).

418. *Bush Proposal*, *supra* note 413 (noting that guest workers would not be eligible for U.S. citizenship automatically); *see also* Alonso-Zaldivar, *supra* note 9, at A1 (reporting that President Bush opposes immigration amnesty and that program would not guarantee of green cards or U.S. citizenship).

419. *Bush Proposal*, *supra* note 413 (noting that guest workers would be able to place U.S. earnings into tax-deferred savings accounts); *see also* Alonso-Zaldivar, *supra* note 9, at A1 (reporting that President Bush proposed tax-free savings accounts that guest workers could cash out when they returned home). U.S. Social Security taxes would be credited to workers under their home countries' retirement systems. *Id.*

420. *Bush Proposal*, *supra* note 413 (noting that temporary workers will have to apply for green cards and citizenship under existing legal framework); *see also* Alonso-Zaldivar, *supra* note 9, at A1 (reporting that legalization under President Bush's guest worker plan would occur under existing green card scheme but noting that U.S. president planned to ask for increase in total number of green cards).

421. *Bush Proposal*, *supra* note 413 (noting that guest workers will not receive priority over current applicants for U.S. citizenship); *see also* Alonso-Zaldivar, *supra* note 9, at A1 (reporting on President Bush's statement that undocumented immigrants would not be rewarded for violating U.S. immigration laws).

how many more green cards could be issued in the future.⁴²²

President Bush's latest proposal has met with notable opposition on both ends of the political spectrum.⁴²³ Conservative opponents of the Bush plan have asserted that the White House proposal is little more than an amnesty program that rewards illegal behavior.⁴²⁴ Conversely, labor leaders, civil rights activists, and immigrant rights advocates have criticized the plan as both exploitative and impractical.⁴²⁵

These critics claim that the president's plan will lead to even greater exploitation of immigrant laborers because temporary workers will fail to report employer abuses out of fear of losing their employer-sponsored work permits.⁴²⁶ Moreover, critics argue that tying temporary work visas to a single employer will not benefit the masses of immigrant laborers currently in the United States who work in the "informal" sector of the economy or who work for multiple employers for short periods of time.⁴²⁷ Many

422. *Bush Proposal*, *supra* note 413 (noting possibility of increasing total number of green cards available in United States); *see also* Alonso-Zaldivar, *supra* note 9, at A1 (reporting that Bush administration planned to ask Congress for increase in number of green cards for those seeking to work in United States).

423. *See* Washington, *supra* note 25, at A1 (noting that many conservatives do not support president's immigration plan); *see also* Del Olmo, *supra* note 25, at M5 (noting that many Republicans, including key members of Congress, oppose Bush's immigration reform proposal); Bumiller, *supra* note 25, at A1 (noting conservative Republicans' opposition to immigration reform); Fine, *supra* note 25, at L11 (noting that Bush's immigration proposals will give too much power to employers); Wood, *supra* note 25, at 1 (reporting on labor expert's statement that Bush's plan gives employers opportunity to exploit immigrant workers to even greater degree).

424. *See* Washington, *supra* note 25, at A1 (discussing negative impact of president's immigration plan on some of his conservative supporters); *see also* Del Olmo, *supra* note 25, at M5 (noting that some Republican Members of Congress do not support President Bush's immigration reform proposal); Bumiller, *supra* note 25, at A1 (noting some conservative Republicans' opposition to immigration reform).

425. *See* Fine, *supra* note 25, at L11 (reporting that White House immigration proposals will give too much power to businesses); Wood, *supra* note 25, at 1 (reporting on labor expert's concerns that White House plan will lead to greater exploitation of immigrant workers).

426. *See* T. Shawn Taylor, *Critics Bash Work-Visa Proposal*, CHI. TRIB., Jan. 13, 2004, at 4 (discussing labor leader's comments that White House proposal will not strengthen wage or benefit protections for immigrant workers); *see also* Fine, *supra* note 25, at L11 (reporting that President Bush's immigration proposals will leave companies that employ immigrant workers with too much power); Wood, *supra* note 25, at 1 (reporting that labor expert stated that Bush's plan gives makes it too easy for employers to exploit immigrant workers).

427. *See* Fine, *supra* note 25, at L11 (noting that many immigrants have little to gain from U.S. president's temporary worker program); Taylor, *supra* note 426, at 4 (explaining that immigrants in informal sector will not benefit from Bush plan because

illegal immigrants are employed as day laborers,⁴²⁸ construction workers, nannies, gardeners, and domestic workers.⁴²⁹ Many others work for subcontractors,⁴³⁰ and a large number are paid in cash by employers that do not report their employees' income.⁴³¹ It is doubtful, say critics, that these immigrants' employers will apply to sponsor them for temporary work visas.⁴³²

Although President Bush has asserted that temporary work visas should be renewable, he has made it plain that renewals will be finite.⁴³³ Accordingly, critics also have argued that long-term immigrants have no incentive to register for the temporary work program because they risk deportation once their permit expires.⁴³⁴ Many illegal immigrants will be unwilling to reveal their

they would not be able to attain guest worker status because they do not work for companies that could sponsor their visas).

428. See Brian Grow, *Day's Pay For Day's Work — Maybe: Outsourcing Means Explosion In Casual Labor. But It's Largely Unregulated World*, BUS. WK., Dec. 8, 2003, at 100 (reporting that United States has several million day laborers, most of whom are illegal immigrants, homeless, or poor); see also Evan Perez & Carlos Tejada, *Economic Slowdown Leaves Immigrant Day Laborers High and Dry: Idle and Strapped, Many Talk Of Giving Up, Going Home*, WALL ST. J., Aug. 29, 2001, at B1 (reporting that many day laborers are undocumented immigrants).

429. See Fine, *supra* note 25, at L11 (noting that undocumented workers are employed in variety of different sectors, many of which are informal); Wood, *supra* note 25, at 1 (noting that illegal immigrants dominate janitorial, restaurant, construction, and landscaping jobs); Fraser, *supra* note 31, at 101-02 (noting that immigrants are concentrated in low-skill, low-wage sectors, such as agricultural production, garment manufacturing, food processing, meatpacking, poultry processing, food service, hotels/motels, landscaping and construction); HAUS, *supra* note 205, at 66 (noting that undocumented workers are concentrated in service sector and agriculture).

430. See Fine, *supra* note 25, at L11 (noting that many undocumented workers are employed as subcontractors); see, e.g., Steven Greenhouse, *Middlemen In The Low-Wage Economy*, N.Y. TIMES, Dec. 28, 2003, at 4.10 (explaining how U.S. companies circumvent law prohibiting employment of illegal immigrants by hiring independent contractors).

431. See Fine, *supra* note 25, at L11 (stating that many employers do not report income of their immigrant employees). But see Mary Beth Sheridan, *Illegal Immigrants Paying Dues With Taxes: Workers May Be Contributing Billions*, Hous. CHRON., Apr. 15, 2001, at 3 (noting that many illegal immigrants receive paychecks from their employers who deduct taxes from their wages).

432. See Fine, *supra* note 25, at L11 (noting that many employers will be reluctant to sponsor immigrants for guest worker visas); see also Steven Greenhouse, *Business Cheers Bush's Plan To Hire Immigrants More Easily, But Labor Is Wary*, N.Y. TIMES, Jan. 12, 2004, at A1 (noting that Bush's guest worker program is geared toward larger businesses rather than small or individual employers).

433. See *Bush Proposal*, *supra* note 413; see also Alonso-Zaldivar, *supra* note 9 at A1 (reporting on President Bush's statement that three-year guest worker permits would be renewable at least once).

434. See Taylor, *supra* note 426, at 4 (noting that undocumented immigrants will not register for U.S. President George Bush's temporary worker program because they

identities to the U.S. government to acquire a temporary work visa if it increases their chance of deportation over the long run.⁴³⁵

Accordingly, some lawmakers have introduced their own immigration reform plans.⁴³⁶ The Border Security and Immigration Improvement Act, introduced by Republican Senator John McCain (R-AZ) and Republican Congressmen Jim Kolbe (R-AZ) and Jeff Flake (R-AZ) in the summer of 2003, contains a provision for temporary worker visas,⁴³⁷ but maintains that guest worker visas must be flexible, enabling participants to switch employers and acquire U.S. citizenship over time.⁴³⁸ Similarly, a more recent bipartisan proposal set forth by Senators Tom Das-

will be afraid of consequences of revealing identity to U.S. government); *see also* Ricardo Alonso-Zaldivar, *Catch-22 Seen in Immigration Plan: Limited Supply of Green Cards May Keep Illegal Immigrants From Applying For Status Under White House's Guest Worker Proposal*, L.A. TIMES, Jan. 9, 2004, at A14 (quoting immigrant rights advocate who states that long-term illegal immigrants are unlikely to apply for temporary work visas if they do not lead to green cards); Bill Ong Hing, *Legal Status: Amnesty or Deportation Trap?*, CHI. TRIB., Jan. 9, 2004, at 17 (calling Bush plan immigration trap that will result in deportation of those that participate); Brown-Gort, *supra* note 196, at A13 (noting that it is doubtful that many established immigrants will risk exposing themselves to authorities under Bush plan).

435. *See* Taylor, *supra* note 426, at 4 (noting that many undocumented workers will not want to reveal their identities or whereabouts to government officials); *see also* Fine, *supra* note 25, at L11 (discussing how fear of deportation will act as disincentive to participate in temporary worker program).

436. Republican Senator John McCain and Republican Congressmen Jim Kolbe and Jeff Flake have co-sponsored their own immigration reform plan. *See* The Border Security and Immigration Improvement Act, S. 1461, 108th Cong. § 1 (2003) (calling for guest worker program for which undocumented immigrants would be eligible); *see also* Rachel L. Swarns, *Republicans Put Immigration Laws Back on Political Agenda*, N.Y. TIMES, Aug. 4, 2003, at A9 (reporting that Senator John McCain and Representatives Jim Kolbe and Jeff Flake introduced bills that would grant permanent resident status to foreign workers who enter country legally and to illegal workers already in United States). Democratic Senator Tom Daschle and Republican Chuck Hagel have also sponsored their own immigration legislation. *See Hagel Introduces Comprehensive Immigration Reform Legislation*, Press Release From The Office Of U.S. Senator Chuck Hagel, Jan. 21, 2004, available at <http://hagel.senate.gov/Press/pressapp/releases/record.cfm?id=217240> [hereinafter *Hagel Release*] (calling for immigration reform that included proposal for guest worker visas); *see also* Helen Dewar, *Two Senators Counter Bush on Immigrants*, WASH. POST, Jan. 22, 2004, at A4 (reporting that Senators Daschle and Hagel had introduced guest worker bill).

437. The Border Security and Immigration Improvement Act, *supra* note 436 (calling for temporary worker visa program); *see also* Swarns, *supra* note 436, at A9 (reporting that Senator McCain's immigration proposal includes provision for temporary worker visas).

438. Border Security and Immigration Improvement Act, *supra* note 436 (supporting guest worker visa plan); *see also* Swarns, *supra* note 436, at A9 (reporting that under

chle (D-SD) and Chuck Hagel (R-NE) would allow illegal immigrants and their families to become "invested stakeholders" in the United States,⁴³⁹ putting them on track for permanent residence and eventual citizenship, if they meet certain criteria.⁴⁴⁰ Applicants would have to have lived in the United States for five years and worked in the country for four years, including one year after enactment of the bill.⁴⁴¹ They would have to pass national security and criminal background checks, pay federal taxes, demonstrate knowledge of English and American civics, and pay a \$1,000 fine.⁴⁴² The Daschle-Hagel measure would admit new temporary workers from abroad but limit their number to 350,000.⁴⁴³

For his part, Mexican President Vicente Fox has been supportive of the Bush plan.⁴⁴⁴ Although initially lukewarm, the Mexican leader more recently has expressed his support for the

Arizona Republicans' proposal guest workers could earn permanent residence status over time).

439. *Hagel Release*, *supra* note 436 (noting that Senators' proposed plan would allow illegal immigrants and families to become "invested stakeholders" in United States). *See also* Dewar, *supra* note 436 (reporting that Daschle-Hagel proposal would allow illegal immigrants and their families to become "invested stakeholders" in United States).

440. *Hagel Release*, *supra* note 436 (noting that Senators' proposal would make guest workers eligible for U.S. permanent residency or citizenship under certain conditions). *See also* Dewar, *supra* note 436 (reporting that Daschle-Hagel plan would put immigrant guest workers on track to get permanent residence and citizenship if they met certain requirements).

441. *Hagel Release*, *supra* note 436 (noting that applicants who lived in United States for five years and worked in United States for one year would be eligible for permanent residency). *See also* Dewar, *supra* note 436 (reporting that temporary workers would be eligible for permanent residence after living in United States for five years and working in United States for four years under Daschle-Hagel proposal).

442. *Hagel Release*, *supra* note 436 (noting that prospective guest workers would have to demonstrate knowledge of English language and U.S. civics, pass national security and criminal background checks, pay federal taxes and U.S. \$1,000 fine to be eligible for program). *See also* Dewar, *supra* note 436 (reporting that temporary workers would have to pass national security and criminal background checks, pay federal taxes, demonstrate knowledge of English language and American civics, and pay U.S. \$1,000 fine).

443. *Hagel Release*, *supra* note 436 (noting that Senators' plan would admit 350,000 temporary workers living outside United States). *See also* Dewar, *supra* note 436 (reporting that Daschle-Hagel measure would admit new temporary workers from abroad but limit their number to 350,000).

444. *See* Washington, *supra* note 25, at A12 (noting that President Bush had convinced President Fox to support his temporary worker plan); *see also* Bush, Fox Agree On Immigration Plan, CHI. TRIB., Jan. 13, 2004, at 9 [hereinafter *Bush, Fox Agree*] (reporting that President Fox wholeheartedly embraced Bush's guest worker proposal).

initiative⁴⁴⁵ and agreed to meet with President Bush at his Texas ranch in March 2004.⁴⁴⁶ Although talk of immigration reform did not loom large at the meeting, President Bush made a small concession to the Mexican leader when he agreed to stop requiring regular visitors from Mexico to be fingerprinted and photographed at the U.S. border.⁴⁴⁷

III: TOWARD A 21ST CENTURY IMMIGRATION POLICY: TRANSFORMING TEMPORARY WORKERS INTO CITIZENS

The ghosts of Germany's *Gastarbeiter* have been ever present in recent U.S. immigration history.⁴⁴⁸ Although none of the reforms of the past two decades formally involved temporary workers, the unintended consequences of several U.S. immigrant policies should sound hauntingly familiar.⁴⁴⁹ Undoubtedly, the experiences of Germany's Turkish guests and those of undocumented Mexican workers in the United States are strikingly similar, despite differences in the groups' legal status.⁴⁵⁰

Germany's experience with its *Gastarbeiter* indicates that the temporary migration of labor is an unattainable goal with unfa-

445. See Washington, *supra* note 25, at A12 (noting that President Bush won support President Fox's support for his plan); see also Bush, Fox Agree, *supra* note 444, at 9 (reporting that President Fox had decided to support President Bush's immigration proposal).

446. See Bob Kemper, *Fox Praises Bush Decision On Mexico Border Checks: Those With Special Visas Wouldn't Be Photographed Or Fingerprinted*, CHI. TRIB., Mar 7, 2004, at 7 (reporting on President Fox's March 2004 visit to President Bush's Crawford, TX ranch); see also Mike Allen, *Bush, Fox Settle Short-Term Visa Spat: Mexican Visitors Would Bypass Being Photographed, Fingerprinted At Border*, WASH. POST, Mar. 7, 2004, at A9 (noting that Mexican leader visited President Bush in United States in March 2004).

447. See Kemper, *supra* note 446, at 7 (reporting on President Bush's decision not to fingerprint or photograph short-term visitors from Mexico); see also Allen, *supra* note 446, at A9 (reporting that Mexicans who come to United States regularly will not have to be fingerprinted or photographed under new U.S. policy).

448. See *supra* notes 202-11, 229-36, 242-47, 248-99 and accompanying text (noting that U.S. immigration policies of past twenty years have led to permanent settlement, labor dependency, social stratification, and political extremism).

449. See *supra* notes 91-95, 202-11 and accompanying text (noting that German and U.S. efforts to restrict immigration actually led to greater number of immigrants in each country).

450. See *supra* notes 103-36, 235-36, 241-47 and accompanying text (noting that Germany's Turks and Mexican immigrants in United States have both suffered from discrimination and exploitation).

avorable consequences.⁴⁵¹ First, immigrants inevitably settle.⁴⁵² Second, the import of low-wage workers creates a dependency on foreign labor.⁴⁵³ These effects undermine the primary purpose behind guest worker policies: the ability to export unemployment in less favorable economic times.⁴⁵⁴ Third, because of the inability of policymakers to foresee long-term worker settlement, Germany's temporary worker program yielded a variety of social problems: ethnic stratification, juvenile delinquency, and political extremism.⁴⁵⁵ Unable to ignore these effects, Germany was forced to engage in a long and divisive political debate regarding the status of its foreign residents that has only in recent years begun to resolve itself.⁴⁵⁶

The *de facto* guest worker policies⁴⁵⁷ instituted in the United States over the past two decades have had similarly unfortunate consequences.⁴⁵⁸ U.S. companies are dependent on foreign labor, and immigrants, unable to improve their socioeconomic standing without legal status, have become handy scapegoats for all of society's ills.⁴⁵⁹ Attempts to reverse these trends through restrictive measures have merely resulted in the long-term settlement and marginalization of undocumented workers.⁴⁶⁰

451. See *supra* notes 98-136 and accompanying text (discussing adverse consequences of Germany's guest worker program).

452. See *supra* notes 86-97 and accompanying text (explaining why Germany's guest workers settled permanently).

453. See *supra* note 65 and accompanying text (noting that Germany's guest worker program led to dependency on foreign immigrant labor).

454. See *supra* notes 75, 84-93 and accompanying text (finding that Germany had limited success in exporting its unemployment during national recessions).

455. See *supra* notes 103-36 and accompanying text (discussing social and political marginalization of Turkish immigrants in Germany).

456. See *supra* notes 127-36, 178-83 and accompanying text (discussing immigration politics in Germany and noting that "foreigners issue" dominated German politics for many years even after *Gastarbeiter* program was abandoned).

457. See *supra* note 26 and accompanying text (noting that United States has implemented *de facto* guest worker program over last two decades).

458. See *supra* notes 202-11, 229-36, 242-47, 248-99 and accompanying text (noting that U.S. immigration policies of past twenty years have led to permanent settlement, labor dependency, social stratification, and political extremism).

459. See *supra* notes 229-36, 248-99 and accompanying text (discussing Germany's dependency on immigrant labor and explaining how politicians have exploited immigration issue).

460. See *supra* notes 202-11, 242-47 and accompanying text (discussing how U.S. policies led to permanent settlement and consequent marginalization of undocumented workers).

A. Germany

1. The "Temporary" Worker Myth

The German case illustrates that temporary worker programs counter the rational and human inclinations of immigrants to advance their place in society and reunite with their families.⁴⁶¹ Indeed, many of the steps the German government took to limit migration in fact led to increased settlement.⁴⁶² The 1973 ban on the migration of non-EC workers caused a rise in the number of foreigners, as they chose to make their homes permanently in Germany rather than leave and be barred from reentry.⁴⁶³ Similarly, after the German Minister of Labor proscribed work permits for non-EC youths who entered the country after November 40, 1974, foreign youngsters rushed to enter Germany to beat the deadline.⁴⁶⁴ A 1975 law limiting foreigners' childcare benefits to those children living in Germany had a similar effect.⁴⁶⁵ Rather than deprive dependents of precious economic aid, immigrants sent for their children from Turkey, so they could continue to qualify for the aid.⁴⁶⁶ Stricter limits on spouses' right to work caused many foreigners to migrate to Germany before the laws took effect.⁴⁶⁷

Efforts to encourage Turkish repatriation were similarly doomed.⁴⁶⁸ Hoping to reduce the number of foreigners in its midst, the Federal Republic passed the *Gesetz zur Förderung der Rückkehrbereitschaft von Ausländern* [Law to Support Foreigners'

461. See *supra* notes 94-102 and accompanying text (noting that Turkish guest workers sought to bring their families and provide for them in Germany).

462. See *supra* notes 91-93, 124-26 and accompanying text (noting that German federal government's immigration policies actually encouraged settlement).

463. See *supra* notes 91-93 and accompanying text (discussing Germany's ban on entries for non-EC workers and its effect on country's immigrant workers).

464. See *supra* note 124-26 and accompanying text (noting that 1974 ban on work permits for foreigners caused juvenile delinquency among Turkish youngsters living in Germany).

465. See *supra* note 124 and accompanying text (noting that ban prompted Turkish families sent for their children because they did not want to lose government assistance).

466. See *supra* note 124 and accompanying text (discussing effects of ban on benefits for children living outside of Germany).

467. See *supra* note 124 and accompanying text (noting that limits on spouses' right to work caused many foreigners to migrate to Germany before laws took effect).

468. See *supra* note 136 and accompanying text (noting that German government's efforts to repatriate its guest workers largely failed).

Willingness to Return] in 1983.⁴⁶⁹ The program was multifaceted, but had two primary financial components.⁴⁷⁰ It offered the immediate repayment of social security contributions to non-EC foreigners on the condition that they leave Germany immediately and not return or seek work in Germany in subsequent years.⁴⁷¹ The program also offered financial incentives in the amount of DM 10,500 to foreign workers who had recently been laid off and were willing to return home.⁴⁷²

Although as many as 247,000 foreign workers, primarily from Turkey, Portugal, and Tunisia, left Germany in 1984, at least one scholar has estimated that only 45,000 or so left purely due to the government's return incentives.⁴⁷³ At least one scholar has argued that the return incentives may have played a role in the timing of emigration, but not the decision to return home itself.⁴⁷⁴ Indeed, the influx of foreigners picked up again in 1985 and continued thereafter.⁴⁷⁵

2. The Politics of Marginalization

As is evident from the German case, as well as the experiences of other countries that have implemented guest worker programs, the temporary migration of laborers is an unrealistic objective.⁴⁷⁶ Whatever their personal ambitions, immigrants inevitably settle in order to achieve economic gains, and their families eventually join them.⁴⁷⁷ Consequently, it is vital that immi-

469. See *supra* note 136 and accompanying text (noting that *Gesetz zur Förderung der Rückkehrbereitschaft von Ausländern* offered financial incentives to encourage foreigners to leave Germany but it was mostly unsuccessful).

470. See *supra* note 136 and accompanying text (discussing *Gesetz zur Förderung der Rückkehrbereitschaft von Ausländern* and noting that foreigners were offered as much as DM 10,500 to return home).

471. See *supra* note 136 and accompanying text (noting that Germany's repatriation law offered immediate payment of social security benefits to foreigners).

472. See *supra* note 136 and accompanying text (noting that foreigners could receive DM 10,500 if they returned home).

473. See *supra* note 136 and accompanying text (noting that only about 45,000 foreigners left purely due to government's repatriation incentives).

474. See *supra* note 136 and accompanying text (noting that law prompted foreigners to return home sooner than expected).

475. See *supra* note 88 and accompanying text (noting that number of foreigners in Germany increased during 1980s).

476. See *supra* note 21 and accompanying text (noting that many guest worker programs have resulted in permanent settlement of their migrants).

477. See *supra* notes 86-102 and accompanying text (noting that immigrant workers almost inevitably settle in their host countries and send for their families to join them).

grant-receiving countries make provisions for the long-term settlement of their immigrants.⁴⁷⁸ In Germany, the failure to do so created a stratified society that facilitated xenophobia and political extremism.⁴⁷⁹

Although some racial intolerance may be unavoidable, it may be hindered.⁴⁸⁰ Foreign workers in Germany faced structural obstacles that made it impossible for them to integrate into society as a whole.⁴⁸¹ Because they lived and worked separately from natives, Turks were all the more seen as outsiders, and the German government did little to suppress that view prior to the 1980s.⁴⁸²

In fact, German government's refusal to characterize Germany as a multicultural or immigrant country validated anti-foreigner sentiment.⁴⁸³ Rather than tout the contributions foreigners made to the success of Germany's post-War economy, many German politicians focused on the pressures they claimed immigration was having on the country's social services.⁴⁸⁴ This failure to publicly recognize the contributions of foreign workers was particularly ironic since immigrant workers occupied largely the manual and unskilled jobs for which Germans themselves refused to apply.⁴⁸⁵ Additionally, foreign workers had played an important role in creating jobs and financing the welfare system of which Germans were and continue to be so proud.⁴⁸⁶

Another problem with Germany's temporary worker pro-

478. See *supra* notes 107-09 and accompanying text (noting that German government's failure to provide for permanent settlement of immigrants led to social stratification and political extremism in Germany).

479. See *supra* notes 103-29 and accompanying text (discussing xenophobia and political extremism in Germany).

480. See *supra* note 154 and accompanying text (noting that inclusion of foreigners through citizenship can help reduce racial intolerance).

481. See *supra* note 150 and accompanying text (noting that foreign workers were subject to sociocultural and economic disadvantages that made it difficult for them to advance their position in German society).

482. See *supra* note 107 and accompanying text (noting that German federal government stepped up efforts to integrate foreigners after 1979).

483. See *supra* note 107 and accompanying text (noting that German leaders refused to acknowledge that Germany has become multicultural society).

484. See *supra* note 35 and accompanying text (noting that German politicians blamed immigrants for straining country's public resources).

485. See *supra* note 65 and accompanying text (noting that Germans were unwilling to apply for jobs held by foreign migrants).

486. See *supra* note 65 and accompanying text (discussing contributions foreign immigrants have made to German economy).

gram was its rigidity. Most *Gastarbeiter* work permits were linked to specific companies, jobs, or regions, and in some cases, regulations forbade foreigners from taking up residence in areas that the government considered overpopulated.⁴⁸⁷ Inevitably, this system created a two-tiered labor force, in which foreigners occupied the least desirable, lowest-paying positions while indigenous workers advanced to white collar careers.⁴⁸⁸ Moreover, because some work permits were geographical in nature, certain areas of the country became disproportionately populated with foreigners, leading some Germans to feel that their towns were being "invaded" by outsiders.⁴⁸⁹

Needless to say, these economic and regional divisions contributed greatly to the country's social stratification and created a dependency on foreign labor in many German industries.⁴⁹⁰ As foreigners began to dominate positions at the lowest tier of the work force, Germans increasingly refused to apply for these jobs, even in times of economic downturn.⁴⁹¹ Therefore, a native labor "shortage" existed in certain industries even when German unemployment was high.⁴⁹²

Some economists have further criticized that the mass import of cheap, foreign workers hindered the rationalization of the German labor market.⁴⁹³ Rather than invest in new technology and machinery, companies lowered costs by hiring immigrant workers.⁴⁹⁴ Over time, the availability of cheap (and politically immobilized) foreign labor also reduced incentives to improve wages and working conditions.⁴⁹⁵

487. See *supra* note 57 and accompanying text (noting that Germany's guest worker permits restricted where and for whom foreigners could work).

488. See *supra* note 66 and accompanying text (noting that foreign workers were underrepresented in white collar industries).

489. See *supra* note 57 and accompanying text (noting that geographically restricted work permits led to disproportionate concentrations of immigrant communities in certain areas).

490. See *supra* notes 65, 103-36 and accompanying text (discussing problems of social stratification and foreign labor dependency in Germany).

491. See *supra* note 65 and accompanying text (noting that Germans were unwilling to apply for jobs held by foreign migrants).

492. See *supra* note 65 and accompanying text (discussing paradox of Germany's "native" labor shortage).

493. See *supra* note 69 and accompanying text (noting possibility that companies would have "rationalized" if cheap foreign labor were not available).

494. See *supra* note 69 and accompanying text (noting that companies lowered costs by hiring immigrant workers).

495. See *supra* note 68 and accompanying text (noting that availability of cheap

B. *Recommendations For U.S Immigration Reform*

In light of Germany's *Gastarbeiter* experiences, President Bush's calls for a temporary worker program⁴⁹⁶ as an immigration panacea are somewhat ironic. Generations of Mexican sojourners have settled in the United States,⁴⁹⁷ and the need for a more long-run approach to immigration has never been more evident.⁴⁹⁸ In contrast to the White House, many policymakers agree that temporary worker visas should be part of a larger immigration framework.⁴⁹⁹ Among the most sensible solutions are those that would elevate current immigrants (illegal immigrants) to guest worker status, allowing them to "earn" citizenship over time.⁵⁰⁰ Although critics bristle at the idea of another mass amnesty for undocumented workers,⁵⁰¹ legalization may be the most judicious way to reverse the adverse consequences of the poorly thought-out reforms of recent years.⁵⁰²

1. Restoring Circular Migration

A primary goal of immigration reform should be to restore the circular migration that existed between the U.S. and Mexico prior to 1986. The experiences of both Germany and the United States demonstrate that immigrants are more likely to return to their countries of origin if they believe they will not be cut off from future economic opportunities in their host countries.⁵⁰³ Measures restricting such access merely result in perma-

foreign labor reduced incentives for employers to improve wages and working conditions).

496. *See supra* notes 413-22 and accompanying text (discussing President Bush's guest worker proposals).

497. *See supra* notes 198-11 and accompanying text (discussing reasons why many Mexican immigrants have settled permanently in United States).

498. *See supra* notes 334-54 and accompanying text (noting why need for immigration reform has become more urgent in recent years).

499. *See supra* notes 367-73 and accompanying text (noting that Democrats, among others, have proposed guest worker programs in conjunction with other immigration reforms).

500. *See supra* notes 366, 371 and accompanying text (discussing proposals that would allow illegal immigrants to earn citizenship over time).

501. *See supra* notes 374-77 and accompanying text (noting that many politicians oppose legalization of undocumented workers).

502. *See supra* notes 202-11, 297-99, and 341-41 and accompanying text (noting that IRCA and IIRIRA had adverse effects on many immigrants).

503. *See supra* notes 91-95, 202-11 and accompanying text (noting that immigrants in both Germany and United States settled permanently after their options of returning freely to their host country were reduced).

nent settlement.⁵⁰⁴

Some immigrants undoubtedly will become permanent settlers regardless of opportunities to return.⁵⁰⁵ But at minimum these numbers could be largely reduced to those who genuinely want to build a life in the United States, rather than those feeling trapped by an unfair immigration system. Moreover, given changing demographics in both the United States and Mexico, such settlement should not be a cause for alarm. For one, the United States needs these immigrants to sustain its economy, as Americans workers grow older, become more educated, and are increasingly unwilling or unable to take on low-skilled positions.⁵⁰⁶ Secondly, demographic shifts in Mexico reveal that current migration trends are not without end. As Mexicans themselves age, the cohort of immigrants seeking work across the border is expected to decline.⁵⁰⁷

2. Reducing Labor Dependency and Improving Social Status

Although the current dependency on foreign labor is in large part related to demographics, the *status quo* cannot continue indefinitely at the expense of investments in fixed capital. A major criticism of Germany's *Gastarbeiter* program was that the wide availability of cheap, foreign labor provided a disincentive for companies to increase productivity by investing in new technologies.⁵⁰⁸

The best way to keep U.S. companies competitive is to put immigrant laborers on par with native workers. No longer worried about jeopardizing their legal status, immigrants are more likely to assert workplace rights.⁵⁰⁹ They are more likely to shop around for better wages and less likely to stay at jobs when condi-

504. See *supra* notes 91-95, 202-11 and accompanying text (discussing failed efforts in United States and Germany to reduce immigration).

505. See *supra* notes 198-201 and accompanying text (noting that some immigrants inevitably become permanent settlers).

506. See *supra* notes 221-32 and accompanying text (noting that many U.S. jobs will remain unfilled because of changing U.S. demographics).

507. See *supra* notes 216-19 and accompanying text (discussing changing demographics of Mexican population).

508. See *supra* note 69 and accompanying text (noting that some critics felt that Germany's guest worker program prevented rationalization of industry).

509. See *supra* note 243 and accompanying text (noting that immigrant workers presently are afraid to assert their workplace rights for fear that they will jeopardize their legal status).

tions are poor.⁵¹⁰ As a result, employers will be forced to offer more competitive wages to attract workers and make more efficient decisions about when to invest in fixed, as opposed to human, capital.⁵¹¹ Finally, this approach should put to rest arguments that immigrants take jobs away from natives because immigrants are willing to work for less than citizens.⁵¹²

3. Promoting Citizenship and Eliminating Anti-Immigrant Sentiment

Putting immigrants on par with natives by providing them a path to citizenship has multiple advantages. Recent U.S. history suggests that immigrants are more likely to invest in their own socioeconomic wellbeing when their legal status appears more secure.⁵¹³ In contrast, immigrants fail to take advantage of public programs meant to ease their socioeconomic advancement when their status is precarious.⁵¹⁴ Because U.S. anti-immigrant sentiment in the recent past has been rooted in the perception that immigrants drain public resources,⁵¹⁵ encouraging immigrants to help themselves is an important step in fighting prejudice.⁵¹⁶

Citizenship appears to be the best incentive for such social and economic mobility, in no small part because it also reduces feelings of alienation among immigrants.⁵¹⁷ The German experience reveals that long-term residence permits alone failed to decrease feelings of exclusion and insecurity among Turkish im-

510. *See supra* notes 243-46 and accompanying text (discussing poor working conditions with which many illegal immigrants must contend).

511. *See supra* notes 243-47, 324, 380 and accompanying text (discussing current immigrant wages and noting that wages of Mexican immigrants could increase by as much as 20% if they were legalized).

512. *See supra* note 14-15 and accompanying text (addressing argument that immigrants take away jobs from U.S. workers).

513. *See supra* notes 318-23 and accompanying text (noting that many immigrants learned new skills after acquiring U.S. citizenship under IRCA).

514. *See supra* notes 309, 313, 317 and accompanying text (noting that immigrants are afraid to apply for public benefits if they believe it will endanger their legal status in United States).

515. *See supra* note 249 and accompanying text (noting that U.S. politicians have blamed immigrants for straining public resources).

516. *See supra* note 320 and accompanying text (noting that after passage of IRCA immigrants made efforts to improve their skill sets).

517. *See supra* notes 151, 159-62, 314-16 and accompanying text (discussing how lack of citizenship and reductions in public assistance cause immigrants to feel increasingly alienated from State).

migrants and their families, so much so that some of them did not choose to naturalize even when they had the chance.⁵¹⁸ Children of Turkish *Gastarbeiter*, lacking a legal "place" in society, frequently expressed feelings of bitterness and insecurity and often compensated for their isolation by joining nationalist groups or militant street gangs.⁵¹⁹

Children born to immigrants in the United States are guaranteed citizenship, but this does not mean they are free of the risks of isolation or marginalization.⁵²⁰ Studies show that U.S. immigrants often neglect to apply for public benefits for their eligible citizen children, indicating that the fates of immigrants and their children are intertwined.⁵²¹ Accordingly, lawmakers must ensure that immigrant families, not just immigrant children, are naturalized.

Granting legal status to undocumented workers is not enough, however. Lawmakers must do a better job of protecting immigrants and highlighting their economic contributions to the public at large. The current hypocrisy of condemning illegal immigration while at the same time turning a blind eye to corporate abuse of undocumented workers cannot continue.⁵²² Fortunately, the growing political power of the U.S. Latino community ensures that politicians are increasingly likely to pay heed to the plight of immigrants in this country.⁵²³ But recent polls signifying renewed anti-immigrant sentiments demonstrate that the political divisiveness of the 1990s could easily be revived.⁵²⁴

Ultimately, granting legal status, and eventually citizenship,

518. See *supra* note 168 and accompanying text (noting that low naturalization rates among Turkish nationals residing in Germany reflected allegiances to their country of origin).

519. See *supra* notes 159-67 and accompanying text (discussing stigmatization of Turkish youths in Germany and their participation in street gangs).

520. See *supra* notes 305-06, 309-17 and accompanying text (discussing plight of immigrant children in United States).

521. See *supra* notes 309-17 and accompanying text (explaining that citizen parents frequently fail to apply for public benefits for their citizen children).

522. See *supra* notes 235-36, 241-47 and accompanying text (noting that sanctions against employers hiring illegal immigrants have been ineffective and that many employers exploit undocumented workers).

523. See *supra* notes 335-40 and accompanying text (discussing growing political power of Latino voters in United States).

524. See *supra* note 383 and accompanying text (discussing recent poll results that indicate anti-immigrant sentiments could be on rise in United States).

to immigrant workers is also the appropriate moral choice.⁵²⁵ The United States is a liberal democracy that prides itself on a tradition of immigration, hard work, and social mobility. By taking advantage of the labor immigrants provide without granting them the benefits of the political process, the United States remains untrue to its liberal democratic tradition.

4. Increasing Security

Finally, no post-September 11th analysis is complete without a discussion of security. Although the Mexican border poses little threat in terms of terrorism, the U.S. government spends U.S.\$3 billion annually to protect it.⁵²⁶ Yet the majority of people who enter the United States illegally do so by overstaying legally obtained (tourist or student) visas.⁵²⁷ This was the favored immigration strategy of the terrorists responsible for attacking the World Trade Center in 2001.⁵²⁸

By granting undocumented workers from Mexico permanent legal status, the resources expended on border control could be diverted to other, more urgent, immigration matters. Moreover, equipped with legal channels to enter the country, immigrants would have little need for the criminals who currently provide them with fraudulent travel documents and smuggling services.⁵²⁹ Presumably, these underground markets would in large part collapse, making life easier for law enforcement officials and more difficult for those trying to enter the United States for activities other than an honest day's work.

CONCLUSION

A comparison of Germany's *Gastarbeiter* policies and recent U.S. immigration reforms reveals that the U.S. has implemented

525. See *supra* notes 151-53 and accompanying text (noting that democracy's legitimacy is undermined when it excludes its foreign residents from public decision-making process).

526. See *supra* note 398 and accompanying text (discussing how much U.S. government spends to enforce U.S.-Mexico border).

527. See *supra* note 398 and accompanying text (noting that most people who stay United States illegally do so by overstaying their legally acquired visas).

528. See *supra* note 398 and accompanying text (noting that many foreign terrorists, including those responsible for World Trade Center attacks, overstayed their U.S. visas).

529. See *supra* notes 206-09 and accompanying text (noting that Mexican immigrants presently rely heavily on smugglers to cross U.S.-Mexico border).

a *de facto* guest worker program in the past two decades, with comparable unintended and adverse results. Reforms aimed at restricting immigration have instead encouraged the permanent settlement of Mexican immigrants. The exclusion of undocumented workers from public assistance programs and their inability to enforce workplace rights have limited immigrants' socioeconomic mobility, which has, in turn, led to anti-immigrant sentiments among the public at large.

A comprehensive immigration reform plan that legally recognizes the economic contributions of Mexican immigrants, not a temporary worker program, is most judicious means of curing these trends. A policy that ultimately grants citizenship to Mexican workers could restore the circular migration patterns of the past, reduce foreign labor dependencies, and limit social stratification and political divisiveness. Such a policy is also consistent with this country's liberal democratic values and could help allay recent national security concerns.