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Compassionate Immigration Reform

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COMPASSIONATE IMMIGRATION REFORM

Steven W. Bender*

*To be hopeful in bad times is not
just foolishly romantic. It is
based on the fact that human
history is a history not only of
cruelty, but also of compassion,
sacrifice, courage, kindness.*

-Howard Zinn

ABSTRACT

Ideals of comprehensive immigration reform have been co-opted by advocates of border and internal security and enforcement, leaving behind our aspirations as a compassionate nation of immigrants. Mindful of the tension between blind adherence to the rule of law and the goal of empathetic immigration policy, I suggest a reframing of comprehensive immigration reform as compassionate reform and sketch the details of this transformative policymaking approach.

Focusing on the life-threatening journey of undocumented immigrants and the perils they and their families face once inside the United States, I argue for a time-out on deaths at the border and on workplace immigration raids that split families apart. While supporting the expanded pathways to citizenship fostered by the federal DREAM and AgJOB Act proposals, ultimately I urge a return to the good neighbor Western Hemisphere exemption to immigration limits that existed until 1965. Realizing that the mood of the country has turned against immigrants, particularly those from Mexico, I conclude with suggestions as to how U.S. residents and policymakers might acquire empathy and thus the will to embrace compassionate immigration reform.

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INTRODUCTION

The catchphrase “comprehensive immigration reform” has come to mean proposals that, among other goals, confront the status of undocumented immigrants presently in the United States, authorize additional temporary visas to address any labor needs that may arise, and better enforce our borders. Of these, in recent years border enforcement has gained the most traction in political circles. As evident in the 2008 presidential campaign, most hopefuls anchored any mention of comprehensive immigration reform in the bedrock of enforcement prerogatives, nearly always leading with rhetoric of “we’ve got to secure the borders first.”¹ For example, Democratic candidate Hillary Clinton’s website criticized then-president Bush for failing to allocate sufficient resources to protect the borders, while Barack Obama’s campaign website urged sending “additional personnel, infrastructure and technology” to the borders.² Consistent with the prevailing enforcement emphasis, both Senators Clinton and Obama voted for the Secure Fence Act of 2006.³ The main difference in immigration rhetoric among these politicians was that some Republican candidates, notably Tom Tancredo, offered so-called comprehensive immigration reform proposals rooted solely in enforcement. Because Tancredo remained “100% opposed to amnesty,”⁴ his answer to addressing the millions of undocumented workers in the United States apparently was mass depor-

1. For example, during his campaign John McCain abandoned his quest for a temporary worker program for future entrants and citizenship for the current millions of undocumented immigrants, focusing instead on the mantra that “we’ve got to secure the borders first.” *McCain Adjusts Immigration Stance*, MSNBC (Nov. 3, 2007, 11:27 PM), <http://www.msnbc.msn.com/id/21614851/>.

2. STEVEN W. BENDER, *ONE NIGHT IN AMERICA: ROBERT KENNEDY, CÉSAR CHÁVEZ, AND THE DREAM OF DIGNITY* 117 (2008) [hereinafter BENDER, *ONE NIGHT IN AMERICA*].

3. Secure Fence Act of 2006, Pub. L. No. 109-367, 120 Stat. 2638.

4. BENDER, *ONE NIGHT IN AMERICA*, *supra* note 2.

tation through vigorous internal enforcement. In essence, first we secure the borders, and then we secure them some more.

As discussion of immigration reform moved toward enforcement, that debate shifted to our southern border, leaving Mexican immigrants to represent the face of immigration. Arizona, the territory of Minutemen maneuvers, Sheriff Joe Arpaio, and Senate Bill 1070, is the new epicenter for U.S. immigration policy. Given the dominant role of Mexican immigration in numbers⁵ and perception in the immigration debate, I offer my suggested reforms with Mexican immigrants foremost in mind. Still, many of my proposals extend to and resonate with other immigrant groups.

As the expression goes, “[s]how me your friends and I’ll tell you who you are.” For immigration policy, show me your bias and I will tell you what “comprehensive” immigration reform means to you. An employer, for example, wants a ready and steady supply of low-wage workers. Although the employer’s self interest is in hiring workers as vulnerable as possible, thus favoring undocumented or non-citizen documented workers, the potential disruption of immigration enforcement has led many employers to favor amnesty proposals that confer citizenship on a freshly minted workforce. Labor groups have evolved to support such citizenship opportunities despite the competition and downward pressure on wages these immigrant laborers can bring in an unregulated workplace.⁶ In contrast, those groups fearing dilution of their Anglocentric vision of U.S. culture, as well as those motivated foremost by protecting against terrorist entry, tend to emphasize enforcement at any cost, and oppose expanding lawful immigration limits to address the current undocumented and workers who arrive later.⁷

Whether by design or compromise, proposals from these groups and politicians sensitive to their urgings might address enforcement at the borders and internally, the status of existing undocumented immigrants, and the prospects for entry of future immigrants. Despite this “comprehensive” sounding agenda, elsewhere I have detailed critical components missing

5. See BILL ONG HING, *ETHICAL BORDERS: NAFTA, GLOBALIZATION, AND MEXICAN MIGRATION* 7-8 (2010) [hereinafter HING, *ETHICAL BORDERS*] (explaining the focus on Mexican migration as comprising perhaps sixty percent of undocumented immigrants and attracting the main ire of anti-immigrant groups).

6. BENDER, *ONE NIGHT IN AMERICA*, *supra* note 2, at 113. *But see* Stephen Dinan, *Temporary Foreign Workers Threaten Immigration Deal*, WASH. TIMES, Mar. 16, 2010, <http://www.washingtontimes.com/news/2010/mar/16/union-objection-puts-immigration-push-at-risk> (addressing the still contentious issue for the AFL-CIO of a temporary immigrant worker program).

7. BENDER, *ONE NIGHT IN AMERICA*, *supra* note 2, at 170 (detailing the various starting points of bias in constructing immigration reform).

from most recent reform proposals,⁸ including economic aid by the United States to Mexico to address the devastation to rural economies wrought by NAFTA,⁹ as well as labor reforms to enhance U.S. wages and job security.¹⁰ Given the political infeasibility of most of these proposals, I have grounded them in interest convergence arguments and, typically, offered pragmatic rather than revolutionary suggestions. Here, I dare to dream. What would comprehensive immigration reform look like if policymakers, as well as the U.S. public, truly felt compassion and empathy¹¹ toward immigrants, particularly those from Mexico? My analysis asks what reform compassion would inspire and shape and concludes that restoring the pre-1965 good neighbor policy for Western Hemisphere immigration would best protect the welfare of immigrant workers and their families. To avoid a merely academic exercise, I offer some suggestions on how U.S. residents, often lacking that compassion while building in their antipathy toward immigrants,¹² might acquire empathy and thus the will to enact compassionate reform.

I. COMPASSION AND THE RULE OF IMMIGRATION LAW

Swirling around the confirmation of Justice Sonia Sotomayor was the debate over the compatibility of compassion with the rule of law. Politicians often contend they want judges to apply the law and adhere to the Constitution. At the same time, albeit often superficially, politicians value compassion and empathy. President Obama referred to Sotomayor's qualities and qualifications with seeming genuineness, saying she has "a sense

8. The 1986 Immigration and Control Act last approached the status of meaningful comprehensive immigration reform. *See* Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359. Still, among other flaws it assumed that employer sanctions would curb the call and response of U.S. employers and undocumented immigrants.

9. *See* STEVEN W. BENDER, *RUN FOR THE BORDER: VICE AND VIRTUE IN U.S.-MEXICO BORDER CROSSINGS* (unpublished manuscript, on file with the author) [hereinafter BENDER, *RUN FOR THE BORDER*]; *see also* HING, *ETHICAL BORDERS*, *supra* note 5, at 9-19.

10. BENDER, *ONE NIGHT IN AMERICA*, *supra* note 2, at 167.

11. *See* Richard Delgado, *Rodrigo's Eleventh Chronicle: Empathy and False Empathy*, 84 CAL. L. REV. 61, 77-78 (1996) (suggesting that U.S. residents often think they have empathy for the downtrodden, but that their empathy is slight and superficial; further suggesting empathy is on a downward spiral in a world where inequality is deep and structural).

12. *See* Randy Shaw, *BP Oil Spill Submerges Concerns for Immigrants*, BEYOND CHRON., June 15, 2010, http://www.beyondchron.org/articles/BP_Oil_Spill_Submerges_Concern_for_Immigrants_8220.html (lamenting that "[t]he arrest and/or deportation of hard-working immigrants never spawned the broad moral outrage that accompanied the New York Times photo of an oil-soaked pelican," and suggesting immigration reform must be reframed as a "moral imperative").

of compassion.”¹³ Obama also spoke of the desirability of judges with “empathy.”¹⁴

A similar conflict underlies immigration policy. Blind adherence to the supposed rule of law leads some to call for border enforcement at any cost, even through use of lethal force to defend borders against weaponless immigrants.¹⁵ At the same time, those driven foremost by empathy and compassion toward immigrants might understand their undocumented border passage and presence in the United States as a justifiable response for those seeking a better life for themselves and their families when lawful means of entry, particularly those for low-skilled laborers who are the most desperately situated of immigrants, are kept far below demand.¹⁶ This tension is evident in the discussion below that balances the rule of law with compassion in the hands of compassionate policymakers. Still, as Bill Ong Hing states forcefully, there is not necessarily a conflict between compassion and the rule of law in immigration policy:

The experiment that we call America is a test of our character and our willingness to believe that we can have a strong country that is caring and diverse. Showing compassion and fairness in our immigration policies is not a sign of weakness. Rather, those traits demonstrate a confidence in a rule of law and system of government that metes out punishment when necessary but understands that regulating the lives of those who seek to live within our borders must be done with the utmost compassion, dignity, and understanding.¹⁷

13. Christopher Caldwell, *The Limits of Empathy for Sonia Sotomayor*, TIME, June 8, 2009, <http://www.time.com/magazine/article/0,9171,1901478,00.html>.

14. *Id.*

15. The web is littered with these foul suggestions. As just one example, consider the following discussion thread on whether the Border Patrol should shoot to kill undocumented immigrants attempting entry into the United States. *The Border Patrol Should Shoot to Kill Illegal Aliens Who Try to Cross Into the U.S.?*, USMESSAGEBOARD (July 13, 2010, 8:01 PM), <http://www.usmessageboard.com/politics/124766-the-border-patrol-should-shoot-to-kill-illegal-aliens-who-try-to-cross-into-the-u-s.html>. Also consider an article with quotations from a Georgia state legislator advocating shooting to kill at the border. George Franco, *Georgia Lawmaker Defends 'Shoot to Kill' Comment*, MYFOX ATLANTA (Oct. 14, 2010, 11:35 PM), <http://www.myfoxtatlanta.com/dpp/news/georgia-lawmaker-defends-shoot-to-kill-comment-101410>.

16. Elizabeth McCormick & Patrick McCormick, *Hospitality: How a Biblical Virtue Could Transform United States Immigration Policy*, 83 U. DET. MERCY L. REV. 857, 891 (2006) (providing an example of how only 5000 immigrant visas each year aim to accommodate the entire demand for low-skilled workers in U.S. jobs such as construction, factory workers, housekeeping, and landscaping).

17. BILL ONG HING, *DEPORTING OUR SOULS: VALUES, MORALITY, AND IMMIGRATION POLICY* 214 (2006) [hereinafter HING, *DEPORTING OUR SOULS*]. Compare the posture of a South Carolinian criticizing an Arizona journalist's compassionate support of citizenship for

The following discussion assumes a compassionate and empathetic policymaker and asks what immigration consequences follow. Readers reluctant to embrace this frame of mind might consider why many Latino/as seem so passionate in their appeal for immigrant justice. Recall the street protests in Los Angeles in March 2006 that drew between five hundred thousand and one million protesters, most of Mexican heritage, to rally for humane reform.¹⁸ In large part this passion stems from the familial connectivity of most Latino/as in the United States with Mexican residents. Many U.S. citizen Latino/as immigrated themselves, or are only one generation removed from immigrants, so that many Latino/as have immediate family or other relatives in Mexico (or other Latin countries) for whom the current U.S. immigration laws weigh heavy. Readers might consider how they would reshape the current landscape of oppressive immigration laws if their family members in another country (or even another U.S. state) were struggling to find employment, and the reader knew of local work well suited to their talents and aspirations. Assume further that these family members have hungry children and are desperate for a solution that retains their dignity and protects their safety.

A. Immigrant Safety

As I have documented along with other scholars,¹⁹ the stepped-up southern border enforcement campaign initiated during the Clinton administration, known in the San Diego area as Operation Gatekeeper, led to thousands of immigrant deaths.²⁰ Policymakers mistakenly assumed that undocumented immigrants who were crossing in the proximity of urban locations would not risk isolated mountain and desert crossings through the borderlands. Yet, immigrants tragically shifted their route to this treacher-

U.S. born children of undocumented immigrants that reveals another potential conflict between compassion and love of country:

Compassion is a feeling that is of no use to anyone when facing the stark reality of the possible destruction of one's country. . . . If you must have compassion, have it for your state and your country. Of course, you can be a traitor who has compassion if that is your choice. From compassion to traitor is only a small step.

Laurie Roberts, *History Will Judge Us On Our Compassion—Or Lack of It*, ARIZ. REPUB. (July 28, 2010), <http://www.azcentral.com/arizonarepublic/news/articles/2010/07/28/20100728roberts0728.html>.

18. See generally Kevin R. Johnson & Bill Ong Hing, *The Immigrant Rights Marches of 2006 and the Prospects for a New Civil Rights Movement*, 42 HARV. C.R.-C.L. L. REV. 99 (2007).

19. E.g., STEVEN W. BENDER, GREASERS AND GRINGOS: LATINOS, LAW, AND THE AMERICAN IMAGINATION 121-28 (2003) [hereinafter BENDER, GREASERS AND GRINGOS].

20. *Id.* at 123-26 (noting the likelihood of such deaths being vastly undercounted).

ous, desolate rural terrain.²¹ Countless immigrants perished due to heat, flash floods, and other dangers.²² Many are buried near the border in unmarked graves.²³ Adding to the peril, unscrupulous thieves prey on the exhausted border crossers. To finance their coyote guide some immigrants become indebted to trafficking rings and might even risk crossing with illicit drugs destined for U.S. users.²⁴

Obviously, any compassionate observer of immigration carries the heartbreak of so many undocumented immigrants dying in the desert. Luis Alberto Urrea captures this agony with his gripping account of fourteen Latino men and teenagers who died in the remote Arizona desert when their coyote guide lost his way; their bodies were found burned and mummified from the scorching heat.²⁵ Should one's family members attempt a similar passage, it would be easy to imagine the horrible gauntlet of dangers they would face and the terrible pall of worry surrounding their journey for those who care about their fate. Foremost, then, any compassionate immigration reform would draw a line in the dirt against any further deaths en route. Instead of hurling threats, as some xenophobes do, contending undocumented immigrants should be met with deadly force, compassionate observers who care for the safety and welfare of immigrant crossers would demand an immediate halt to the borderland deaths.²⁶

21. See BENDER, RUN FOR THE BORDER, *supra* note 9 (detailing how many undocumented immigrants alternatively crossed at official border checkpoints with valid papers but overstayed their visa).

22. BENDER, GREASERS AND GRINGOS, *supra* note 19, at 121-28. The death toll continues to grow as this article goes to press. See James C. McKinley, Jr., *An Arizona Morgue Grows Crowded*, N.Y. TIMES, July 28, 2010, at A14, available at <http://www.nytimes.com/2010/07/29/us/29border.html> (reporting fifty-seven bodies of immigrants had been found in the Pima County, Arizona desert so far in July).

23. BENDER, GREASERS AND GRINGOS, *supra* note 19, at 124.

24. In June 2010, Arizona's Governor Jan Brewer wildly exaggerated the problem, contending without any support that most undocumented immigrants arriving into Arizona from Mexico are smuggling drugs. *Arizona's Brewer: Most Illegal Immigrants are "Drug Mules"*, CNN U.S. (June 27, 2010, 1:01 PM), <http://www.cnn.com/2010/US/06/25/arizona.immigrants.drugs/index.html> (debunking Brewer's claim); see also Richard Marosi, *Arrests Shed Light on Border Kidnappings*, L.A. TIMES, July 18, 2010, <http://articles.latimes.com/2010/jul/18/local/la-me-immigrant-kidnap-20100718> (detailing kidnappings faced by undocumented immigrants during crossing).

25. LUIS ALBERTO URREA, *THE DEVIL'S HIGHWAY: A TRUE STORY* (2004).

26. The compassionate among us would also rail at the idea that supplying life-saving and social services to the undocumented might be criminalized in an immigration police-state. See BENDER, ONE NIGHT IN AMERICA, *supra* note 2, at 152 (discussing religious objections to the congressional proposal in 2005 that arguably would have criminalized Catholic social services provided to the undocumented); Allen Thomas O'Rourke, *Recent Development, Good Samaritans Beware: The Sensenbrenner-King Bill and Assistance to Undocumented Immigrants*, 9 HARV. LATINO L. REV. 195, 197, 205-06 (2006) (expressing sentiment for immigrants and pointing to the deep flaws in immigration law enforcement).

At least three options exist for stopping the spiraling border body count. One infeasible option is for U.S. employers to forego using undocumented immigrant labor. History has shown that regardless of employer sanctions under federal immigration laws, the benefits of an abundant and subordinated labor force are too compelling for employers to resist.²⁷ Tempering the pull-side of the push-pull formula therefore is not realistic.

As a second option, economic aid from the United States to Mexico could help generate meaningful economic growth and job opportunities in Mexico, and may ease the pressures for emigration. But given widespread government corruption in Mexico and deep structural inequities and inefficiencies,²⁸ the short-term prospects for such growth to fundamentally alter emigration are unlikely. Because immigrants are likely to continue to answer the call of jobs in the United States, compassionate reform must ensure their safe passage.

As a final option, reform must permit work-based immigration that for decades has far exceeded numerical limits. Visas must be readily available in sufficient numbers for safe passages at urban entry points. Those fearing entry of terrorists along with immigrant workers need not panic. Historically, terrorists have not entered the United States through Mexico—the September 11th terrorists immigrated legally through U.S. airports, mostly using six-month tourist visas.²⁹ Moreover, instead of immigrants paying exorbitant fees to coyotes and spending days in risky transit across the desert, they could pay for a vigorous but expedient official background check on entry to the United States. With a legitimate method of entry in accord with labor demand, U.S. officials could concentrate their border watch in outlying areas on remaining crossers, who in this regulatory environment would no doubt be crossing for illicit purposes. In this manner, enforcement policy could ensure the safety of immigrants and U.S. residents by seeking out the few terrorists and drug runners without the distraction of intercepting those crossing the border to better their lives.

Once at U.S. workplaces, undocumented immigrants are ripe for exploitation and hold scant rights.³⁰ Moreover, the jobs they perform often entail dangerous work in miserable conditions. As Kevin Johnson worried:

27. BENDER, RUN FOR THE BORDER, *supra* note 9, at 170-71.

28. See generally ANDRES OPPENHEIMER, BORDERING ON CHAOS: GUERRILLAS, STOCK-BROKERS, POLITICIANS, AND MEXICO'S ROAD TO PROSPERITY (1996) (detailing government corruption in Mexico's political history, particularly related to violence and drug cartels).

29. BENDER, RUN FOR THE BORDER, *supra* note 9, at 178-79.

30. See *Hoffman Plastic Compounds, Inc. v. Nat'l Labor Relations Bd.*, 535 U.S. 137, 140 (2002) (holding that the award of backpay for wrongfully discharged undocumented immigrants was inconsistent with federal immigration law).

The threat of deportation—and consequently the fear of loss of liberty and of separation from friends, family, job, and community—bears heavily on the daily lives of undocumented workers. It tends to inhibit them from exercising whatever rights they have under the law. With the fear of deportation shaping all social and economic interactions, many undocumented immigrants, not surprisingly, accept what employers offer, no questions asked, and work long hours for low wages and few benefits. Understanding that undocumented immigrants enjoy little in the way of actual legal protections and deeply fear deportation, many employers cannot resist the temptation to exploit them.³¹

Opportunities for visas consistent with labor demand would ease this recipe for exploitation.³²

Fear of deportation and perilous reentry keeps undocumented immigrants in the shadows, often to their jeopardy. Landlords might exploit their vulnerability as readily as employers.³³ The undocumented are unlikely to seek out the safety net of social or even medical services when otherwise available.³⁴ Many drive without a license and therefore uninsured because of the imperatives of the federal REAL ID Act³⁵ prompting state vigilance of legal status. And, after Arizona's enactment of Senate Bill 1070, undocumented immigrants there are especially terrified of any police contact, even as victims reporting crimes or helping law enforcement officials. Enabling these immigrant workers to obtain visas consistent with employer demand would ease these threats to safety and welfare. Arguments for raising the current low limits on immigration visas from Mexico are also grounded in the welfare of immigrant families.

31. KEVIN R. JOHNSON, *OPENING THE FLOODGATES: WHY AMERICA NEEDS TO RETHINK ITS BORDERS AND IMMIGRATION LAWS* 120 (2007) [hereinafter JOHNSON, *OPENING THE FLOODGATES*].

32. As mentioned *supra* at note 16, the United States authorizes only 5000 immigrant visas annually to accommodate the demand for low-skilled workers. Although the hemispheric admissions proposal discussed *infra* would ease the entry backlog, reform of our stingy work visa allowance is needed to enable those seeking temporary employment, but not permanent residence, to connect with willing U.S. employers.

33. STEVEN W. BENDER, *TIERRA Y LIBERTAD: LAND, LIBERTY, AND LATINO HOUSING* 79-80 (2010) [hereinafter BENDER, *TIERRA Y LIBERTAD*] (supplying examples of landlord exploitation of undocumented tenants).

34. BENDER, *GREASERS AND GRINGOS*, *supra* note 19, at 75.

35. Pub. L. No. 109-13, 119 Stat. 302 (2005). The REAL ID Act of 2005 requires states to obtain documentation of legal status and the applicant's social security number before issuing a driver's license that is valid for federal purposes, such as plane travel and entry into federal buildings. See generally STEVEN W. BENDER ET AL., *EVERYDAY LAW FOR LATINO/AS*, at ch. 11 (2008) (explaining the dire consequences of denying drivers' licenses to foreign nationals).

B. Welfare of Immigrant Families

Many undocumented immigrants have family either in Mexico or the United States that depend on their labor. Imagine the shape of immigration reform if U.S. policymakers cared about the welfare of these immigrant families. For those immigrants with family in Mexico, policymakers would be moved to ease immigration restrictions, as I suggested, to ensure the safety of immigrant workers crossing the border and living in the United States. The irony of border build-up is that having once successfully crossed into the United States, often through the expensive services of coyotes, the undocumented immigrant cannot afford another passage north and is thus compelled to remain in the United States even if work is seasonal or otherwise wanes. Immigrant workers cannot readily travel for holidays or other occasions to visit their family. The enforcement-only regime thus aggravates the immigrant's ruptured family situation, as the cost and peril of the passage north likely have separated the worker from family left safely behind in Mexico.

Immigrant workers may also wish to bring their families to the United States. Even where the immigrant has gained status as a U.S. citizen, the limited number of those eligible for family reunification from Mexico under current immigration laws has prompted a huge backlog and separated families waiting to share together in the American Dream. As of November 1, 2009, over one million Mexican residents were waiting for a family reunification visa,³⁶ by far the most from any country.³⁷ Given stingy per-country limits on visas, many if not most of these prospective immigrants will never live to be reunited.³⁸ A compassionate immigration reform proposal would raise immigration visa limits to accommodate demand for family reunification.

Related to the separation of families is the moribund Mexican economy, which prompts its residents to risk their lives in passage to the United States for a chance at economic opportunity and even survival for their families. A compassionate immigration program would address the push-side of the immigration equation that compels departures from Mexico. By supplying economic aid to our southern neighbor to create jobs, families

36. BUREAU OF CONSULAR AFFS., U.S. DEP'T OF STATE, ANNUAL REPORT OF IMMIGRANT VISA APPLICANTS IN THE FAMILY-SPONSORED AND EMPLOYMENT-BASED PREFERENCES REGISTERED AT THE NATIONAL VISA CENTER AS OF NOVEMBER 1, 2009, *available at* <http://www.travel.state.gov/pdf/WaitingListItem.pdf> (specifying a total of 1,174,003 on the family immigrant waiting list).

37. Other countries in order of applicants awaiting family visas were the Philippines (435,274), Vietnam (184,516), and China (183,910). *Id.*

38. *Id.* (stating a per-country annual total of preference visas in 2010 of 26,220).

would be able to stay together in Mexico as many would prefer.³⁹ Former Mexico President Vicente Fox phrased this imperative as:

How can we narrow the gap on income on both sides of the border? How can we in the long term equal the levels of development between our countries so that we become real friends, real partners and real neighbors? How can we build up the opportunities in Mexico so that our kids, 12- [and] 14-year-olds, don't have to leave home, don't have to move to the United States looking for opportunities?⁴⁰

To promote the welfare of undocumented immigrant children already in the United States, at minimum any compassionate immigration reform would embrace the Development, Relief, and Education for Alien Minors (DREAM) Act, giving a pathway to citizenship and thus hope for immigrant college students, as well as treating them on equal terms as other state resident students for purposes of tuition.⁴¹

On the defensive side, compassionate reformists must defend the U.S. Constitution from attacks on birthright citizenship leveled against the children of undocumented immigrants who are dehumanized as “anchor babies.”

39. See HING, *ETHICAL BORDERS*, *supra* note 5, at 134-43 (arguing the United States and Canada should invest in the Mexican economy and infrastructure to meaningfully curb mass migration); see also BENDER, *RUN FOR THE BORDER*, *supra* note 9, at 206 (urging economic stimuli from the United States that create jobs in both rural and urban terrain in Mexico as a means to dampen pressures of emigration from Mexico). On the drug front, through the Mérida Initiative the United States helps fund military intervention in Mexico that has drawn retaliatory violence from the Mexican drug cartels. Ironically, that violence has stymied U.S. entrepreneurship and tourism in Mexico, harming the Mexican economy. Although the United States readily supplies economic aid toward staunching the flow of illicit drugs, it balks at economic support to create jobs within Mexico that would ease pressures on Mexican emigration. Politically, such economic aid is a tough-sell when the U.S. economy is itself buffeted by unemployment and underemployment.

40. PETER LAUFER, *WETBACK NATION: THE CASE FOR OPENING THE MEXICAN-AMERICAN BORDER* 205 (2004).

41. The DREAM Act proposals of the past few years have offered citizenship to those young immigrants who possess good moral character, have been U.S. residents for at least five years and arrived before age sixteen, are under a specified age (in the most recent proposal, thirty-five at the date of enactment), and who complete two years of college or military service. See, e.g., Development, Relief, and Education for Alien Minors Act of 2009, S. 729, 111th Cong. (1st Sess.). Despite bipartisan support, the DREAM Act remains an aspiration. When political winds were perhaps blowing right, Democrats resisted pushing the Act, fearing it would derail more comprehensive legalization addressing far greater numbers of other undocumented immigrants. At the same time, in the throes of the current economic crisis in which immigrants are routinely scapegoated, so-called amnesty is a tough sell even when accorded to college students and military personnel. Accordingly, efforts to pass the DREAM Act as part of a comprehensive immigration reform package and as separate legislation have failed thus far. See Steven W. Bender, *Bipartisan Dreams of Immigration Reform*, *NUESTRAS VOCES LATINAS* (June 4, 2010), http://nuestrasvoceslatinas.blogspot.com/2010_06_01_archive.html. The latest attempt to pass the DREAM Act, this time as an amendment to the Defense Authorization Act, failed in the Senate on September 21, 2010.

Although the Supreme Court, in interpreting the Fourteenth Amendment, and Congress under the Immigration and Nationality Act, both have cemented the citizenship status of children born in the United States to undocumented parents,⁴² political momentum is building to undercut this status. Arizona's defiant state senator Russell Pearce leads the current movement championing federal or even state legislation denying birth certificates to the children of undocumented parents.⁴³

As immigrants have been demonized in U.S. media, the government has ramped up internal enforcement measures to detect and deport undocumented immigrants living in the United States. These efforts include federal Immigration and Customs Enforcement (ICE) raids at workplaces and roundups under cooperative "287(g) agreements" led by such notorious rogues as Arizona's Sheriff Joe Arpaio.⁴⁴ ICE raids have devastating and well documented consequences in ripping apart families. In recent years, ICE officials have targeted workplaces on both coasts and in between. One of the largest raids in immigration history occurred in 2008 at a kosher meat plant in Postville, Iowa leading to the seizure of 400 undocumented workers, most of them from Mexico and Guatemala.⁴⁵ Most children affected by the raids are very young—about two-thirds under age ten.⁴⁶ A National Council of La Raza study found in the wake of ICE raids that "families and relatives scramble[d] to rearrange care, children spent at least one night without a parent, often in the care of a relative or non-relative babysitter, in some cases neighbors and in some cases even landlords; some children were cared for by extended families for weeks and months."⁴⁷ That study found that younger children interpreted parental absence as ab-

42. Immigration and Nationality Act § 301(a), 8 U.S.C. § 1401(a) (2006); *United States v. Wong Kim Ark*, 169 U.S. 649, 705 (1898).

43. Michelle Price, *Russell Pearce, Arizona State Senator, Plans Bill to End Birthright Citizenship for Children of Illegal Immigrants*, HUFFINGTON POST (June 15, 2010), http://www.huffingtonpost.com/2010/06/16/john-kavanagh-arizona-sta_n_613998.html. It is unclear whether Pearce is talking about repealing federal law ensuring birthright citizenship, in which event the Constitution as interpreted by the Supreme Court would prevent its operation or, even more absurd, enacting state legislation to attempt to deny local issuance of birth certificates to children of undocumented immigrants, which would flout the Supremacy Clause.

44. Immigration and Nationality Act § 287(g), 8 U.S.C. § 1357(g) (2006) (authorizing the Secretary of Homeland Security to agree that state and local law enforcement can perform immigration enforcement functions).

45. See generally Bill Ong Hing, *Institutional Racism, ICE Raids, and Immigration Reform*, 44 U.S.F. L. REV. 307 (2009) (detailing impact of ICE raids).

46. *Id.* at 320-21.

47. *Id.* at 321 (discussing hearings before the National Commission on ICE Misconduct and Violations of Fourth Amendment Rights).

andonment.⁴⁸ A common tragedy is where U.S. born children of undocumented parents, and thus U.S. citizens by birthright, lose their parents in an ICE raid, yet remain behind in the United States while cared for by relatives or neighbors. Their parents may hope to return to the opportunities in the United States and not wish to endanger their children in that return passage, or may feel that the educational and economic opportunities that await their U.S. citizen children warrant their separation. Compassionate immigration reform would confront these often heartwrenching circumstances. Addressing this torment of separated children, Asa Hutchinson, then undersecretary of the Department of Homeland Security during the Bush Administration, explained the tension between the rule of law and compassion: “[W]e are certainly wanting to enforce the law but . . . we also are a compassionate country that deals with a real human side as well.”⁴⁹ A truly compassionate country, as it would do for deaths of immigrant border crossers, would call a halt to further separation of families by suspending ICE raids at the workplace while it figured out how to appropriately address the status of current undocumented immigrants.⁵⁰ The discussion below offers suggestions toward regularizing that status with an opportuni-

48. *Id.*

49. *Immigration Nation: Divided Country* (CNN television broadcast Oct. 17, 2004). In a keynote address during an immigration symposium at American University, Washington College of Law in March 2007, Hutchinson developed this point to encompass broader inequities in immigration enforcement:

The first value is the integrity of the law At the same time we are a compassionate nation that has our roots in welcoming immigrants to this country. We are conflicted between these two great values: the rule and integrity of the law versus the compassion of our country. While I was in the enforcement arena at Homeland Security, I was often asked why we weren't arresting the illegal aliens and why our agents weren't doing their work. Well, they were doing their work. However, many times when they were out there, we would find out that we apprehended the valedictorian of the class or the star of the football team. Then, the entire community would rise up and ask us why we were picking on these people. These experiences exemplify the conflict between the compassion of America and the rule of law.

Asa Hutchinson, Keynote Address at American University Administrative Law Review Symposium: Holes in the Fence: Immigration Reform and Border Security in the United States (Mar. 20, 2007), in 59 ADMIN. L. REV. 533, 535 (2007). In the days before his 2004 State of the Union address, President Bush outlined the immigration reform he championed, including a temporary worker program he contended “will be more compassionate. Decent, hard-working people will now be protected by labor laws, with the right to change jobs, earn fair wages, and enjoy the same working conditions that the law requires for American workers.” HING, DEPORTING OUR SOULS, *supra* note 17, at 21.

50. See Marcus Stern, *U.S. Changes Approach to Deportation*, USA TODAY, Sept. 10, 2010, at A8 (discussing changes in Obama administration deportation policies to better target and prioritize deportation of those immigrants who have committed serious crimes).

ty for citizenship in the interest of the longstanding contributions of these immigrant workers to our economy and culture.

C. Rewarding Immigrant Initiative

Scholars have demonstrated convincingly that the vast majority of undocumented immigrants and their families come to the United States for work and the opportunity to get ahead. As Kevin Johnson put it:

In our heart of hearts, we all know the answer [to why undocumented immigrants risk their lives to come here]. Immigrants come in pursuit of the American Dream. They come for jobs. They come to join family members. Indeed, even for the undocumented, the United States is a land of great opportunity.⁵¹

In his ode to the contributions of immigrants throughout U.S. history, President John Kennedy remarked that:

Immigration is by definition a gesture of faith in social mobility. It is the expression in action of a positive belief in the possibility of a better life. It has thus contributed greatly to developing the spirit of personal betterment in American society and to strengthening the national confidence in change and the future. Such confidence, when widely shared, sets the national tone. The opportunities that America offered made the dream real, at least for a good many; but the dream itself was in large part the product of millions of plain people beginning a new life in the conviction that life could indeed be better, and each new wave of immigration rekindled that dream.⁵²

Today's Mexican immigrants are the torchbearers of this national tone of promise that renews our American Dream. They risk their lives to perform grueling and dangerous tasks in the workforce, often for substandard pay. Rewarding these undocumented workers with citizenship belongs in the foundation of any compassionate immigration reform.⁵³

Again, for some the rule of law collides with compassion on the subject of so-called amnesty for the undocumented who may have broken federal law in their crossing of the border without documentation. If compassion doesn't evaporate those concerns, common sense should. As author Barbara Ehrenreich pointed out:

51. JOHNSON, OPENING THE FLOODGATES, *supra* note 31, at 201.

52. JOHN F. KENNEDY, A NATION OF IMMIGRANTS 67-68 (1964) (published posthumously).

53. In addition to immigrant contributions in the workplace, proposed immigration reform bills recognize other avenues of contribution to the United States that justify adjustment of immigration status, such as through educational training, military service, and volunteerism in the community and elsewhere. Comprehensive Immigration Reform for America's Security and Prosperity Act of 2009, H.R. 4321, 111th Cong. § 401(e).

[Undocumented immigrants have] been mowing the lawns, cleaning the offices, hammering the nails and picking the tomatoes, not to mention all that dish-washing, diaper-changing, meat-packing and poultry-plucking. . . . There is still the issue of the original “crime.” If someone breaks into my property for the purpose of trashing and looting, I would be hell-bent on restitution. But if they break in for the purpose of cleaning it—scrubbing the bathroom, mowing the lawn—then, in my way of thinking anyway, the debt goes in the other direction.⁵⁴

While many politicians agree on the concept of legalizing the current millions of undocumented citizens, most insist on some penalty for undocumented status, such as the \$5000 fine and “touchback” requirement in a 2007 congressional proposal.⁵⁵ Lately, politicians who support regularizing the status of undocumented immigrants also insist on payment of back income taxes, as well as the learning of English, and propose these immigrants step to the end of the line for eventual citizenship that, in the absence of family reunification, is unlikely. In urging comprehensive immigration reform, President Obama hit these same notes in a July 2010 speech at American University, holding undocumented immigrants accountable to “admit that they broke the law . . . pay their taxes, pay a fine, and learn English. They must get right with the law before they can get in line and earn their citizenship.”⁵⁶

Consider what a compassionate proponent of the contributions of the undocumented would suggest. Those who recognize that immigrants have helped fuel our economic engine and supplied critical services would no doubt find some of the proposed conditions to citizenship harsh, particularly a requirement that underpaid immigrant workers pay a significant fine on top of the likely hefty fees they paid to enter the country illegally. Are we better off as a country in taking whatever these immigrants have managed to save? Under such a proposal, those with deeper roots in the United States who have managed to save toward home ownership or their children’s education through their diligent work and frugal living would be hit hard. Compassionate observers, in contrast, would accept equal blame for our system of call and response that lured immigrants while offering inade-

54. Barbara Ehrenreich, *What America Owes Its ‘Illegals,’* NATION (June 12, 2007), <http://www.thenation.com/article/what-america-owes-its-illegals>.

55. BENDER, ONE NIGHT IN AMERICA, *supra* note 2, at 172; Editorial, *The Immigration Deal*, N.Y. TIMES, May 20, 2007, <http://www.nytimes.com/2007/05/20/opinion/20sun1.html?ex=1180324800&en=70f1748ede68bfc0&ei=5070&emc=eta1> (describing this Senate immigration proposal).

56. President Barack Obama, Remarks by the President on Comprehensive Immigration Reform at American University School of International Service (July 1, 2010) (transcript available at <http://www.immigrationgucl.com/blog/bid/46928/Obama-s-Immigration-Speech-Transcript>).

quate visas to low-wage workers, essentially telling them “[a]migo, if you can brave the deserts in the middle of the summer and outrun our Border Patrol agents, then we will reward you by allowing you to live in the shadows while you work as our gardeners, nannies and waiters.”⁵⁷ Conditions such as learning English should be replaced by an unfettered pathway to citizenship that aims to successfully and respectfully integrate undocumented immigrants into the political, economic, and social fabric of our communities. Rather than dishonoring Spanish by treating the inability to speak English in condescending terms, immigration laws should supply funding for English education, mindful that immigrants almost uniformly are eager—without any legal coercion—to learn English as the language of economic success in the United States.⁵⁸

Agricultural workers present a particularly compelling case, given their low pay and the treachery of this labor.⁵⁹ The proposed Agricultural Jobs, Opportunity, Benefits, and Security (AgJOBS) Act recognizes their contribution by allowing certain existing undocumented immigrants to gain permanent residency based on their past service in the fields.⁶⁰ Valuable contributions exist beyond the fields, however, and compassionate immigration reform would recognize these meritorious immigrants in all sectors of our economy by enacting the hemispheric reform addressed next.⁶¹

57. Marc Cooper, *Beyond the Borders of Hypocrisy*, HUFFINGTON POST (May 24, 2005), http://www.huffingtonpost.com/theblog/archive/marc-cooper/beyond-the-borders-of-hyp_1492.html.

58. See generally STEVEN W. BENDER, *COMPRENDE? THE SIGNIFICANCE OF SPANISH IN ENGLISH-ONLY TIMES* (2008).

59. BENDER, *ONE NIGHT IN AMERICA*, *supra* note 2, at 65 (stating the average life expectancy of farm workers as 48 years old at a time when overall U.S. expectancy is 77.6 years).

60. AgJOBS Act of 2009, S. 1038, 111th Cong. § 103(a)(1)(A)(i) (authorizing change of status to an alien lawfully admitted for permanent residence if the farm worker has performed at least five years of agricultural work for at least 100 work days per year, or three years of such work for at least 150 work days per year). See generally HING, *DEPORTING OUR SOULS*, *supra* note 17, at 29-30. The AgJOBS and DREAM Acts diverge from comprehensive immigration reform proposals that address citizenship of existing undocumented immigrants, as those comprehensive proposals generally send immigrants desiring citizenship to the back of the line. Given backlogs, there is little likelihood of citizenship calling for the special citizenship lines in these separate acts for undocumented college students, military personnel, and agricultural laborers.

61. Should Congress return to the pre-1965 exemption from quota limits for Mexico and the rest of the Western Hemisphere, that special allowance of citizenship would obviate the need, at least for Western immigrants, for the AgJOBS and DREAM Acts. Because those proposals apply to immigrants of all origins, however, compassionate immigration reform would still call for their enactment to benefit those immigrants from the Eastern Hemisphere.

D. Honoring a Good Neighbor

Mexicans consistently and reliably have answered the call for U.S. labor needs over the last century. In the early 1900s, the combination of anti-Asian immigration restrictions in the United States stifling Asian labor contributions and the upheaval of the Mexican Revolution, led hundreds of thousands of Mexican laborers to head for jobs in such U.S. industries as agriculture, railroads, meat packing, steel mills, and mining. Another surge in Mexican labor immigration accompanied World War II when the Mexican and U.S. governments negotiated the Bracero Program in 1942.⁶² Their agreement was a temporary worker importation structure which brought 4.8 million Mexican laborers to U.S. jobs over the years, the majority of them to work in the southwestern agricultural industry to ensure a steady wartime food supply.⁶³ The Program survived in various forms until Congress let it lapse in December 1964, when a coalition of labor organizers (including César Chávez and the AFL-CIO), religious organizations, and Mexican American groups alleged labor abuses in the Program.⁶⁴

Ironically, during the span of the Bracero Program no U.S. numerical limit existed on lawful immigration from Mexico (and the rest of the Western Hemisphere). Not until the 1965 Immigration and Nationality Act did Congress impose a limit on Western Hemisphere immigration, capping entry initially at 120,000 immigrants per year.⁶⁵ Mexican immigration and that of other Latin American countries were a casualty of politics, as the limitations were apparently imposed in exchange for a loosening of restrictions against immigration from other parts of the world, notably Asia.⁶⁶ Prominent Democrats decried the demise of the special relationship between the United States and Latin America, with Senators Edward (Ted) and Robert Kennedy leading the charge. Ted argued that:

The existence of a nonquota status for nationals of the Western Hemisphere has never been considered a form of discrimination against the other nations of the world, for the distinction was not based on race, religion, or ethnic origin. It was a firm indication of our esteem for our good neighbors and our pride in the special solidarity that exists among the people of this hemisphere. Now, despite the absence of any real immigration problem, and the presence of more stringent qualitative controls on

62. BENDER, ONE NIGHT IN AMERICA, *supra* note 2, at 105.

63. BENDER, RUN FOR THE BORDER, *supra* note 9, at 163.

64. BENDER, ONE NIGHT IN AMERICA, *supra* note 2, at 106.

65. *Id.*

66. See generally DANIEL J. TICHENOR, DIVIDING LINES: THE POLITICS OF IMMIGRATION CONTROL IN AMERICA 215-16 (2002) (explaining political compromise that led to the imposition of the first Western Hemisphere limits).

entry to this country, it is proposed that we take this historic step backward in our otherwise progressive Western Hemisphere policies.

We consider this decision by the Senate Immigration Subcommittee [to add the Western Hemisphere restriction] to be most regrettable. The majority of the hemisphere immigrants come to us from our closest neighbors—Canada and Mexico. We have long welcomed especially the contributions of these nations to our culture and society.⁶⁷

Robert Kennedy warned the Senate in 1965 of the consequences of abandoning the good neighbor immigration relationship within the Western Hemisphere:

This provision would impose a statutory limit on immigration from Latin America and Canada for the first time in our history. Even in 1920 and 1924, when the national origins system sharply limited immigration from the rest of the world, the Congress recognized the special relationship between the United States and our neighbors to the north and south, and refused to place a flat numerical limitation on immigration from the Western Hemisphere. This provision ignores that history, and that special relationship. In a world which is searching for increased cooperation and closeness between nations, the relationships of the United States with Canada and Latin America could serve as a goal and a model for others. We should not go backward now. . . .

Our relationship with Canada and Latin America is unique in the world. In our relationship with Latin America, in particular, we are engaged in a great experiment to see whether the societies which are rich and free can help those who are less free and poor, and to live in a world society in peace and harmony.

It is not in our interest to turn away from this experiment.⁶⁸

The combination of the end of the Bracero Program for temporary laborers and the imposition of strict limits on Western Hemisphere immigration (which were tightened in 1976 to cap annual Mexican immigration at 20,000), together with increased demand among U.S. employers, created today's Mexican undocumented immigration "crisis."⁶⁹ Compassionate immigration reform would return us to the pre-1965 law that recognized our good neighbor relationship within the Western Hemisphere in permit-

67. S. REP. NO. 89-748, at 25 (1965) (joint remarks of Edward M. Kennedy, Philip A. Hart, and Jacob K. Javits).

68. 111 CONG. REC. 18,244-83 (1965) (statement of Sen. Robert Kennedy). At the time, the Western Hemisphere exemption applied to those countries gaining their independence before a 1952 amendment of the immigration laws. President Kennedy proposed expanding the exemption in July 1963 to include countries incorporated after 1952, thereby including Jamaica and Trinidad and Tobago within the then-existing privilege of immigration without numerical limits. KENNEDY, *supra* note 52, at 105-06, app. D.

69. BENDER, ONE NIGHT IN AMERICA, *supra* note 2, at 107.

ting unlimited immigration.⁷⁰ Mexican laborers in particular have long answered the call of U.S. employers for labor in critical industries, and a compassionate proposal would in substantial measure finally acknowledge the debt owed for one of the most undervalued contributions in our nation's history—Mexican labor.

II. RESTORING COMPASSION FOR MEXICAN IMMIGRANTS

Why write about compassionate immigration reform when compassion is largely absent from the current immigration debate? I do this convinced that the U.S. public and policymakers will eventually come to recognize the contributions of Mexican immigrants and regret our policies of exclusion. As César Chávez responded to a question about his outlook from interviewer David Frost, "I'm an optimist. I have lots of confidence in people."⁷¹ In the heyday of the farm worker movement in the 1960s, many U.S. residents cared about the plight of the mostly Mexican-American laborers and supported boycotts aimed to help their cause.⁷² But as immigration laws became restrictive and irresponsible to labor needs, the increasing number of undocumented entrants over the years, combined with the movement of Mexican workers into jobs outside of agriculture and to locations beyond the southwest, changed the public and political consciousness to the current emphasis on enforcement and the rule of law. Mexican laborers are thus in a catch-22, in which a substantial portion of the public decries undocumented entry, and thus has lost its sense of compassion. Yet compassion is vital to generate reform to change this conundrum. In the spirit of optimism, I offer some concluding suggestions on how compassion can take root.

Despite the reach of Mexican immigrants throughout the United States, most U.S. residents have little meaningful daily contact with them.⁷³ Their exposure instead is to media and the overwhelmingly negative portrayals of Mexican people that media tend to propagate.⁷⁴ Compassion will not come

70. See BENDER, *RUN FOR THE BORDER*, *supra* note 9, at 159 (detailing how U.S. officials used regulatory constraints to curtail Mexican immigration as desired in times of economic downturn despite the facially unrestricted numbers of Western Hemisphere immigrants). To answer criticism that immigrants from other parts of the world might enter unfettered through the Western Hemisphere countries, a residency requirement in the country of emigration could be imposed prior to U.S. entry.

71. JEAN MADDERN PITRONE, *CHÁVEZ: MAN OF THE MIGRANTS* 166 (1971).

72. See BENDER, *ONE NIGHT IN AMERICA*, *supra* note 2, at 177.

73. See, e.g., Linda A. Jackson, *Stereotypes, Emotions, Behavior, and Overall Attitudes Towards Hispanics by Anglos* (Mich. State Univ., Res. Report No. 10, 1995), available at <http://www.jsri.msu.edu/RandS/research/irr/tr10.pdf> (reporting that few Anglos in the study had close friends who were Hispanic).

74. BENDER, *GREASERS AND GRINGOS*, *supra* note 19, at 120-21.

from Fox News or any daily newspaper. As Richard Delgado suggested, Mexican immigrants and their supporters need a powerful and favorable narrative—as Mexican laborers had in the late 1960s when “the farmworkers emerged as hard-working, pious, nonviolent men and women who merely wanted to work in safe conditions for a decent wage. Their leader [Chávez], a gentle nonviolent figure, evoked Martin Luther King and Mahatma Gandhi.”⁷⁵ A different narrative has taken hold among many today—one that regards Mexican immigrants as fortunate to have whatever crumbs of the American Dream are tossed their way, and thus undeserving of protection and reform.⁷⁶ New powerful leaders in the mold of Chávez and Dolores Huerta must emerge to help shape this favorable narrative. The narrative that emerges must rebut the raft of untruths perpetuated to justify anti-immigrant policies, such as the misconception that Mexican immigrants bring crime to the cities they populate.⁷⁷ There is no need to convince the anti-immigrant extremists who hurl hate at any reasonable reform proposal that transcends oppressive enforcement strategies. Rather, the narrative must target the centrists on the immigration debate, as many of them have been seduced by the allure of arguments founded in simplistic notions of adherence to the rule of law without consideration of the underlying historic, economic, and social contexts.⁷⁸

One valuable campaign to alter public perception of immigrant contributions is the joinder of comedian Stephen Colbert and the United Farm

75. Richard Delgado, *Rodrigo's Homily: Storytelling, Elite Self-Interest, and Legal Change*, 87 OR. L. REV. 1259, 1265 (2008) (through the words of fictional character Rodrigo).

76. Helping develop this new, despicable narrative are those such as classicist and farm owner Victor Davis Hanson who contended in his bestseller *Mexifornia* that “illegal aliens in California are not materially poor;” rather, their rental apartments contain “carpeting, air conditioners, heaters and appliances.” VICTOR DAVIS HANSON, *MEXIFORNIA: A STATE OF BECOMING* 57 (2003). A distinguished professor, Hanson went on to compare the material wealth of a Latino farm worker neighbor, Humberto, to his own, explaining that Humberto’s television is nicer, and that Humberto lives in a small wooden ranch home provided by his employer. Finally, Hanson decries what he views as the ungratefulness of Mexican immigrants, explaining they might have ten times their former status in Mexico, yet be churlish because their residence lacks central air conditioning.

77. Ruben Navarrette, Jr., *The Truth About Arizona's Immigration Law*, SAN DIEGO UNION-TRIB., June 5, 2010.

78. For example, many U.S. residents embrace the argument that if an immigrant acquired a visa and then citizenship through legal channels, then subsequent immigrants should adhere to the same rules. This logic assumes that legal avenues for immigration exist. In the case of high emigration-demand countries such as Mexico, and particularly for low-wage laborers from those countries, lawful immigration under current law is simply not feasible. Part of the narrative that must emerge then, is to detail how a desperate laborer seeking the American Dream has no option but to risk unlawful entry in order to contribute to our economy.

Workers to promote training by existing farm workers of U.S. citizens and legal residents in farm labor. The premise of the “Take Our Jobs” campaign is that few, if any, U.S. citizens will actually want to train for this grueling career, thus conveying a valuable lesson on our reliance on undocumented workers.⁷⁹

Renewing or establishing compassion must come through sustained engagement with Mexican immigrants in the local communities in education, civic, religious, and other settings that can effectively demonstrate the contributions of Mexicans to our cultural, economic, and political fabric. Religious leaders in some cities have forged a sanctuary movement to protest immigration raids and deportations while trying to awaken our moral imagination toward compassionate reform.⁸⁰ Community leaders can help nurture these local contacts with Mexican immigrants, whether in the throes of conflict or before divisive factions emerge. Those communities that have chosen instead to target and evict Mexican immigrants with onerous local ordinances have visibly suffered and withered.⁸¹ Spreading word of this outcome will give U.S. residents a preview of what lies in store should we fail to embrace Mexican immigrants. As I wrote elsewhere, if we continue to hamper Mexican immigration:

I envision a future with the possibility of signs at the U.S.-Mexico border quite different from the 1990s highway billboard an anti-immigrant group erected inside the California border near the Arizona state line warning: “Welcome to California—The Illegal Immigration State. Don’t Let This Happen to Your State!” Rather, a couple decades from now the billboard, placed just inside the Mexican border in bordertowns such as Tijuana, might read: “Empleadores estadounidenses le ruegan que se una a sus compatriotas que han encontrado nuevas oportunidades y un brillante porvenir en los Estados Unidos. Para más información llame al 1-800-SI VENGA (“United States employers urge you to join your fellow coun-

79. TAKE OUR JOBS, <http://www.takeourjobs.org> (last visited July 10, 2010) (“Job may include using hand tools such as knives, hoes, shovels, etc. Duties may include tilling the soil, transplanting, weeding, thinning, picking, cutting, sorting & packing of harvested produce. May set up & operate irrigation equip. Work is performed outside in all weather conditions (Summertime 90+ degree weather) & is physically demanding requiring workers to bend, stoop, lift & carry up to 50 lbs on a regular basis.”).

80. BENDER, ONE NIGHT IN AMERICA, *supra* note 2, at 152-54 (acknowledging the Justice for Immigrants campaign launched by the Catholic Church in 2005, but criticizing the Church for its delay in moral leadership on issues of vital importance to Latino/as); *Building on a Powerful Tradition*, NEW SANCTUARY MOVEMENT, <http://www.newsanctuarymovement.org/build-tradition.htm> (last visited Oct. 20, 2010).

81. BENDER, TIERRA Y LIBERTAD, *supra* note 33, at 66-72; 9500 LIBERTY (Interactive Democracy Alliance 2009) (documentary film details the adverse economic impact of an anti-immigration ordinance in Prince William County, Virginia).

try men and women who have found new opportunity and bright futures in the United States. Call 1-800-Come Now for further information.”)⁸²

Perhaps the potential of an economic slowdown (albeit difficult for many to imagine in today’s woeful economy) caused by an insufficient labor pool will supply the interest convergence that brings compassion, or at least an aligned self-interest, to the immigration debate. Admittedly, fostering compassion in the midst of an economic recession is challenging. Meaningful social change tends to coincide with economic growth. In contrast, history reveals that Latino/a immigrants are scapegoated in times of economic downturn, as during the Great Depression that prompted mass deportations and the 1950s recession that led to the abusive Operation Wet-back deportation program.⁸³

Compassion sometimes emerges in these difficult climates when extremists go too far in demonizing their targets. Backlash might result when emboldened zealots reveal their complete agenda that exceeds the tolerance of the majority. Admittedly, that threshold might be high in the current hostile environment, particularly when many equate undocumented immigration with the terrorist threat and, for terrorism, advocate or tolerate government-administered torture.

My own perspective on compassion holds hope for engaging others. Although I have deep familial roots in Mexico and my own story relies on the immigration successes of my grandparents,⁸⁴ my regard for the Mexican immigrant comes primarily from what they reinforce daily. As John Kennedy described it in the excerpt above, immigrants manifest “the expression in action of a positive belief in the possibility of a better life.”⁸⁵ My own love of country comes not from birthright or my rigorous Catholic education, but from appreciating those humble immigrant workers who risk everything, including their lives, for a chance at opportunity in the United States for themselves and their families. Each immigrant’s passage renews that passion for country that I hold dear, and I wish our Mexican immigrants a safe and prosperous journey in the years ahead.

82. BENDER, RUN FOR THE BORDER, *supra* note 9, at 239.

83. *Id.* at 166-67 (detailing the history of U.S. deportation campaigns against Mexican immigrants).

84. BENDER, GREASERS AND GRINGOS, *supra* note 19, at 187-92.

85. KENNEDY, *supra* note 52, at 68.