

3-1-2008

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Recommended Citation

Kimberly Jantz, *Boiling Point: Does Oklahoma Have a Role to Play in Creating Immigration Law or a Responsibility to Allow the Federal Government to Independently Manage Reform, Borders, and Treaties, The*, 15 *Tulsa J. Comp. & Int'l L.* 243 (2007).

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**THE BOILING POINT: DOES OKLAHOMA HAVE A ROLE TO
PLAY IN CREATING IMMIGRATION LAW OR A
RESPONSIBILITY TO ALLOW THE FEDERAL GOVERNMENT
TO INDEPENDENTLY MANAGE REFORM, BORDERS, AND
TREATIES?**

*Kimberly Jantz**

"America is not a melting pot. It is a sizzling cauldron."

- Barbara Mikulski¹

I. INTRODUCTION

Gary Rutledge, a professor at Rogers State College in Claremore, Oklahoma, discovered firsthand the practical problems caused by illegal immigration when he had a car accident in Tulsa.² While no one involved in the accident was seriously injured, the damage done to Professor Rutledge's car was substantial.³ When the police arrived, Professor Rutledge realized that his problems were worse than he initially thought – the other driver did not speak English, had no driver's license, and no proof of insurance.⁴ It appeared that the man was an illegal immigrant, but the officer was unable to verify his residency

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1. THE DECADE OF WOMEN: A MS. HISTORY OF THE SEVENTIES IN WORDS AND PICTURES (Suzanne Levine et al. eds., 1980) (quoting Barbara Mikulski).

2. Kari Huus, *Turmoil in Tulsa: The Illegal Immigration Wreck*, MSNBC, July 17, 2007, <http://www.msnbc.msn.com/id/19466978>.

3. *Id.*

4. *Id.*

status because controlling law prohibited him from running a background check for a misdemeanor offense, leaving Professor Rutledge responsible for the cost of the damage to his vehicle.⁵

The specificity inherent to state and local immigration reform laws undercuts substantial improvement and increases tension and problems between the United States and Mexico in similar matters.⁶ This comment discusses the background of immigration in the United States and explores the reformatory measures taken by state legislatures, the United States and Mexico, and the possibilities of conflict and discord that each may present. Due in part to failed bipartisan efforts to reform current immigration law and the narrow scope of recently successful laws, efforts to combat the effects of illegal immigration are causing problems between people, states and nations.⁷ The second section of this comment provides a general background of immigration in the United States, both legal and illegal. Section II further discusses the positive and negative aspects of immigration, as it affects both governments and individuals, including illegal immigrants. Section III focuses on Oklahoma's recent immigration reform bill, House Bill 1804.⁸ This section discusses the scope of the new law as well as its intended effects and unintended consequences on Oklahoma and neighboring states.⁹ Further, this section explores the possibility that the new law will not pass constitutional muster by analyzing a potential conflict between particular sections of the new Oklahoma law and current federal law.¹⁰ Additionally, the comment examines the strain that new laws put on the relationship between the United States and Mexico.

Section IV concentrates on efforts of the United States federal government to regulate immigration. It comments on recent failed reform efforts and smaller measures passed in the wake of unsuccessful attempts at federal immigration

5. *Id.*

6. Compare H.B. 1804, 51st Leg., 1st Reg. Sess. (Okla. 2007) (noting that "Oklahoma finds that illegal immigration is causing economic hardship and lawlessness in this state") with Hugh Dellios, *Mexico Pledges to Control Flow of Illegal Immigrants*, CHI. TRIB., Mar. 27, 2006, at 11 (noting increased cooperation between Mexico and the U.S. to address border security and a bilateral insurance program "allowing Mexican workers in the U.S. to receive their pensions in Mexico" and Alfredo Corchado, *Former Mexican President Says U.S. 'Denying Its Immigrant Soul'*, DALLAS MORNING NEWS, Oct. 12, 2007, at A1 (reporting that former President Vicente Fox strongly criticized what he views as a growing sentiment of fear of immigrants in the United States).

7. See Huus, *supra* note 2.

8. H.B. 1804, 51st Leg., 1st Reg. Sess. (Okla. 2007).

9. *Id.*

10. *Id.*; 8 U.S.C. § 1324 (2006).

legislation.¹¹ The section concludes by focusing on smaller federal measures adopted after House Bill 1804, which are aimed primarily at border security.¹²

Section V examines Mexico's efforts to cooperate with the United States regarding illegal immigration, including a greater police presence at the border and domestic economic reform designed to attract businesses to Mexico. Alternately, this section also explores Mexico's growing dissatisfaction with United States immigration policy and some internal national measures that somewhat undermine efforts by the United States to decrease unauthorized immigration.¹³ Additionally, this section evaluates Mexico's implementation of the North American Free Trade Agreement (NAFTA) and the unintended consequences of free trade in Mexico on illegal immigration. Specifically, this section focuses on the impact NAFTA has had on the industrial and agricultural sectors of Mexico, traditionally poorer areas of the nation.¹⁴ This section also discusses the negative result of foreign businesses operating in Mexico as it relates to illegal immigration.¹⁵ Finally, this section delves into future free trade policy between the United States and Mexico.

II. BACKGROUND AND EFFECTS OF ILLEGAL IMMIGRATION IN THE UNITED STATES

Professor Rutledge's story and others like it have caught the attention of various advocacy and activist groups within the United States seeking to implement immigration reform.¹⁶ Recently, immigration reform has become

11. *See generally* Comprehensive Immigration Reform Act of 2006, S. 2611, 109th Cong. (2006); *see generally* Secure America and Orderly Immigration Act, S. 1033, 109th Cong. (2005); *see generally* Comprehensive Enforcement and Immigration Reform Act of 2005, S. 1438, 109th Cong. (2005); *see generally* Secure Fence Act of 2006, Pub. L. No. 109-367, 120 Stat. 2638 (2006).

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

13. *See generally* MARTI DINERSTEIN, CTR. FOR IMMIGRATION STUDIES, *IDS FOR ILLEGALS: THE 'MTRICULA CONSULAR' ADVANCES MEXICO'S IMMIGRATION AGENDA 1* (2003); *see generally* *Consular ID Cards in a Post-9/11 World, Hearing before the Subcomm. on Immigration, Border Security, and Claims on Consular ID Cards of the H. Comm. on the Judiciary*, 108th Cong. (2003) (testimony of Steve McCraw, Assistant Director of the Office of Intelligence, Federal Bureau of Investigation), <http://www.fbi.gov/congress/congress03/mccraw062603.htm>, [hereinafter McCraw].

14. *See* JACOB HILL, COUNCIL ON HEMISPHERIC AFFAIRS, *FREE TRADE AND IMMIGRATION: CAUSE AND EFFECT* (2007), <http://www.coha.org/2007/07/18/free-trade-and-immigration-cause-and-effect>.

15. *See* Roger Bybee & Carolyn Winter, *Immigration Flood Unleashed by NAFTA's Disastrous Impact on Mexican Economy*, COMMONDREAMS, Apr. 25, 2006, <http://www.commondreams.org/views06/0425-30.htm>.

16. *See* Huus, *supra* note 2.

one of the most controversial and important issues in American politics.¹⁷ There are a number of reasons why immigration has been thrust to the forefront of politics.¹⁸ Many Americans feel that the high influx of illegal immigrants in the United States negatively impacts the environment, the economy, and crime control and prevention.¹⁹ Perhaps the most troubling concern is that of national security.²⁰ Recent data from the Department of Homeland Security suggests that Al-Qaeda members might try to enter the United States through the United States-Mexico border.²¹ As a result, the focus of reform efforts remains on Mexico due to its shared border with the United States and the fact that a very high percentage of illegal immigrants in the United States are of Mexican origin.²² Further, many illegal immigrants not of Mexican origin also pass through Mexico to cross at the border.²³

17. PollingReport.com, Immigration, <http://www.pollingreport.com/immigration.htm> (last visited Feb. 6, 2008) (citing USA Today/Gallup Poll, July 6-8, 2007) [hereinafter Immigration Poll].

18. See FairUS.org, Immigration Impact: Oklahoma, <http://www.fairus.org> (follow "Doing Research?" hyperlink; then follow "State, City, and County Data: Immigration in Your Backyard" hyperlink; then follow "Impact information" hyperlink under "Oklahoma") (noting a correlation between population increases and the rise of pollution levels and reporting that Tulsa County received a failing grade from the American Lung Association in its "State of the Air 2005" report); Jack Martin, *Breaking the Piggy Bank: How Illegal Immigration is Sending Schools Into the Red*, http://www.fairus.org/site/PageServer?pagename=research_researchf6ad (showing that costs attributable to illegal immigrants in the public school system reach nearly \$12 billion annually and that the figure is more than doubled to \$28.6 billion when the costs associated with children born in the United States to illegal immigrants is added).

19. Immigration Impact: Oklahoma, *supra* note 18.

20. Douglas Jehl, *U.S. Aides Cite Worry on Qaeda Infiltration from Mexico*, N.Y. TIMES, Feb. 17, 2005, at A16.

21. *Id.* (noting that while there is currently no conclusive evidence, intelligence suggests that Al Qaeda may use the Mexican border as an entry point into the United States).

22. See Michael Hoefler, Nancy Rytina & Christopher Campbell, U.S. Dep't of Homeland Security, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2006*, POPULATION ESTIMATES, AUG. 2007, at 4, available at http://www.dhs.gov/xlibrary/assets/statistics/publications/ill_pe_2006.pdf (identifying Mexico as the leading source of unauthorized immigration in the United States); *id.* at tbl. 3 (indicating that the majority of unauthorized immigrants in the United States in 2006 hailed from Mexico with an estimated number of over 6.5 million, a forty percent increase from 2000, and showing that the second highest number of immigrants came from El Salvador with an estimated number of 510,000).

23. Pia M. Orrenius, *Illegal Immigration and Enforcement Along the U.S.-Mexico Border: An Overview*, ECON. & FIN. REV., First Quarter 2001, at 2 (citing U.S. IMMIGRATION & NATURALIZATION SERVICE, 1997 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE (1999) (showing that in 1997, thirteen percent of illegal immigrants were from El Salvador, Honduras, Guatemala and Nicaragua)).

Despite evidence that illegal immigration has become costly for the United States, Americans remain deeply divided about the overall impact of immigration and the most effective way to direct reform policies, including how to prioritize efforts to either curtail the flow of immigrants into the United States or deal with unauthorized immigrants already within the country.²⁴ Gordon Hanson, an expert in the field of immigration in the United States, recently noted that “the net economic impact of immigration on the U.S. economy appears to be remarkably small,” explaining that new workers in the United States help economic resources to be allocated more efficiently, which leads to a higher national income.²⁵ Illegal immigration provides much needed labor, and by virtue of the immigrants’ illegal status, the wages paid are lower than the standard minimum wage.²⁶ The effect is that cities with the highest population of illegal immigrants have the lowest cost for labor in services such as housekeeping and gardening.²⁷

The opposing argument acknowledges these benefits but notes that most unauthorized immigrants from Mexico are low-skilled workers.²⁸ These immigrants fill labor gaps in sectors such as construction and agriculture, receiving lower wages than they would if they worked in traditionally white collar sectors.²⁹ Thus, even when illegal immigrants pay taxes (which most do), the contribution is lower than the cost of benefits received by unauthorized workers.³⁰ In other words, an illegal immigrant would pay very little in taxes by

24. See Immigration Poll, *supra* note 17; see *id.* (citing NBC News/Wall Street Journal Poll, June 8-11, 2007); see *id.* (citing CBS/New York Times Poll, May 18-23, 2007).

25. Posting of Gordon Hanson to ECONOBLOG, *Immigration's Costs-And Benefits*, http://online.wsj.com/public/article/SB115100948305787940-tA5PP0Ya_9U0AIXBQQhnaDyMIYc_20060725.html?mod=tff_main_tff_top (June 26, 2006).

26. Cynthia Tucker, *We're Right Back Where We Started on Immigration Control*, TIMES DAILY, Oct. 14, 2007, <http://www.timesdaily.com/article/20071014/NEWS/710140333/1/COMMUNITIES> (noting that several areas of the U.S. economy rely heavily on the labor of illegal immigrants and as a result, many businesses have no incentive to carefully check the legal status of their employees because a loss of workers means a loss of productivity).

27. Hanson, *supra* note 25.

28. *Id.*

29. See Tucker, *supra* note 26.

30. See Shikha Dalmia, *Illegal Immigrants are Paying a Lot More Taxes Than You Think*, REASON FOUNDATION, May 1, 2006, http://www.reason.org/commentaries/dalmia_20060501.shtml (stating that two-thirds of illegal immigrants pay income taxes, Social Security, and Medicare); Eduardo Porter, *Illegal Immigrants are Bolstering Social Security with Billions*, N.Y. TIMES, Apr. 5, 2005, at A1 (showing that while illegal immigrants pay into programs such as Social Security, they cannot, by law, benefit from them. Although it is impossible to know the exact number of dollars contributed by illegal immigrants, Social Security officials believe that the portion is significant. There is also a strong connection between mismatched W-2 forms and geographical areas with large numbers of illegal immigrants such as Texas, California and Illinois. Further, about thirty-four percent of these W-2 forms came from restaurants, construction companies, and

virtue of earning a smaller salary, but may have children in public schools, a benefit that would cost more than the individual tax dollars put into the education fund.³¹ Even viewed in the aggregate, however, when balancing the amount of tax money being contributed against the cost of benefits being utilized, the overall impact on the U.S. economy is not substantial.³² As a result, experts such as Gordon Hanson believe that what most concerns people in the United States is not the overall impact of illegal immigration on the economy, but that the “benefits of illegal immigration are enjoyed by one group – the employers who hire them (and the consumers of their services) – while the costs are incurred by other groups – low-skilled workers and taxpayers in states where illegal immigrants reside.”³³

Troublingly, many illegal workers labor under extremely poor conditions and for very low wages, which has prompted some people to accuse businesses of instituting modern day slavery.³⁴ Threatened with deportation, some illegal immigrants live in squalor and work extremely long hours to pay off debts owed to smugglers or businesses.³⁵ In the worst cases, there have been allegations of beatings, rape, and death.³⁶ These abuses reinforce the notion that the true beneficiaries of illegal immigration are businesses.³⁷ Although the United States benefits from the overall impact of *legal* immigration, businesses benefit from immigrants’ *illegal* status.³⁸ For these and other reasons, the controversial topic of illegal immigration remains at the forefront of current political debate.³⁹

farm operations, which adds to the assumption that these tax contributions are coming from illegal immigrants.).

31. Hanson, *supra* note 25.

32. *Id.*

33. *Id.*

34. JOHN BOWE, NOBODIES: MODERN AMERICAN SLAVE LABOR AND THE DARK SIDE OF THE NEW GLOBAL ECONOMY xvii-xviii (Random House 2007); *Five Recent Cases With Slavery Convictions*, PALM BEACH POST, Dec. 7, 2003, <http://www.palmbeachpost.com/hp/content/moderndayslavery/reports/peonageblurbs1207.html> [hereinafter *Five Recent Cases*] (describing a disturbing case which involved a man who purchased a Guatemalan woman, forced her to work in the fields and at his house, took all of the money she made, and forced her to have sex with him. He was eventually convicted of involuntary servitude, kidnapping, and smuggling).

35. *Five Recent Cases*, *supra* note 34.

36. *Id.*

37. Hanson, *supra* note 25.

38. *Id.*

39. Joe Murray, *Poll: Americans Frustrated with Immigration Crisis*, BULLETIN, Aug. 21, 2007, http://www.thebulletin.us/site/news.cfm?newsid=18729390&BRD=2737&PAG=461&dept_id=576361&rfi=6 (noting that the topic of immigration has become a very influential force in the 2008 Presidential campaign and debates).

To date, immigration reform has been widespread, messy and often futile.⁴⁰ Lawmaking bodies with the power to institute reform work independently while drafting laws, but later rely on each other for enforcement.⁴¹ Occasionally, two groups may come together to discuss immigration, promising cooperation and renewed focus, but these meetings are rarely followed by real signs of progress.⁴² Lawmaking, especially in the area of immigration, tends to be a slow and deliberate process.⁴³ In the United States, on both sides of the debate, individuals and groups espouse extreme and perhaps unachievable goals, while those remaining in the middle look for practical solutions.⁴⁴ Some groups advocate strong federal measures, which would both control border crossings and address the status of illegal immigrants already within the United States.⁴⁵ Mexico and the United States both see high levels of immigration as a natural short-term result of free trade policies, but argue that with time these same policies will improve living and working conditions in Mexico and thus the flow of immigration will naturally slow down.⁴⁶

40. See Am. Immigration Lawyers Ass'n, *Senate Judiciary Committee Continues Slow Progress in Markup of Immigration Reform Legislation*, Mar. 15, 2006, <http://www.aila.org/Content/default.aspx?docid=18835> [hereinafter AILA] (reporting on problems encountered by Congress during the drafting of comprehensive immigration reform); U.S. *Immigration Debate: Key Players*, BBC NEWS, June 15, 2007, <http://news.bbc.co.uk/2/hi/americas/4955768.stm> [hereinafter *Key Players*] (explaining the background and different policy goals of President Bush, influential members of Congress, and leaders of organizations either supporting or opposing immigration reform).

41. See H.B. 1804, 51st Leg., 1st Reg. Sess. (Okla. 2007) (noting that as part of enforcement, businesses and individuals will need to verify the status of suspected illegal immigrants by using the Systematic Alien Verification for Entitlements Program (SAVE), a program controlled by the United States Department of Homeland Security and that in using this program, businesses will not be punished if they are found to have hired an illegal immigrant in violation of the bill).

42. See Dellios, *supra* note 6.

43. AILA, *supra* note 40 (covering one small part of what would eventually be the failed immigration reform bill and reporting the obstacles, such as scheduling and amendments, encountered by senators during their attempts to draft the legislation).

44. See *All Things Considered: Bush Signs Border Fence Act; Funds Not Found* (NPR radio broadcast Oct. 26, 2006), available at <http://www.npr.org/templates/story/story.php?storyId=6388548> [hereinafter *All Things Considered*] (reporting on the Presidential proposal and Congressional approval of the construction of a 700 mile long fence along the Mexican border and the difficulties faced in actually completing the project).

45. See *Key Players*, *supra* note 40 (reporting on the failed bipartisan effort in the United States Senate to pass legislation to offer illegal immigrants a means to obtain legal status while at the same time tighten border controls).

46. See Dellios, *supra* note 6.

State and city legislatures are the newest group to enter the fray of immigration reform.⁴⁷ They have begun passing laws to minimize some of the negative consequences of unauthorized immigration.⁴⁸ However, local laws only address issues pertaining to illegal immigrants already within their state, city, or town.⁴⁹ These solutions are necessarily narrow, as state laws cannot extend beyond their own borders or direct any action towards the United States-Mexico border.⁵⁰ Thus, new state laws may not be able to address the areas of greatest concern, namely border security and the control of the influx of immigrants, and may aggravate the immigration reform process at a multi-national level by sending a message of intolerance to Mexico.⁵¹

Although states are in the unenviable position of feeling compelled to do *something*, they are unable to do *everything*.⁵² Thus, it becomes more apparent that comprehensive reform must occur at all levels in order to control the influx of immigrants, effectively enforce current federal law, and address the situation of illegal immigrants already in the United States.⁵³ Specifically, this includes local, city, and state governments, the United States federal and Mexican national governments.⁵⁴ For Mexico and the United States in particular, it is especially important to address the effects of agricultural reform and trade liberalization, respectively as the poverty within the farming sector of Mexico is seen as one of the biggest reasons for high numbers of illegal immigrants coming

47. *Id.* (suggesting that although local governments have passed various laws pertaining to illegal immigration in the past, truly aggressive reform has begun only recently).

48. See H.B. 1804, 51st Leg., 1st Reg. Sess. (Okla. 2007).

49. *Id.*

50. See U.S. CONST. art. VI, cl. 2; see *Lozano v. City of Hazleton*, 496 F. Supp. 2d 477, 518 (M.D.Pa. 2007). (explaining that the “federal Immigration Reform and Control Act . . . which deals with the employment of unauthorized aliens, contains an express pre-emption clause that pre-empts the employers portions of the IIRA.” This decision is especially relevant as the federal court decided that a municipal ordinance in the City of Hazleton, which was implemented to combat illegal immigration, was unconstitutional on a number of grounds, including federal preemption. See *id.* at 517-33).

51. See Peter Baker, *Calderon Admonishes Bush on Thorny Issues*, WASH. POST, Mar. 14, 2007, at A9 (reporting that Mexican President Felipe Calderón has reacted with disfavor to the recent fence building proposal); Corchado, *supra* note 6, at A-1 (reporting that Former Mexican President Vicente Fox was compelled to make a strongly-worded condemnation of United States domestic immigration policy as a result of measures taken in Irving, Texas).

52. Okla. H.B. 1804.

53. Editorial, *HB 1804*, TULSA WORLD, Nov. 1, 2007, at A-16.

A way must be found to secure our borders . . . and keep track of all those entering the country. [Illegal immigration] is . . . a federal problem and as long as a weak-kneed Congress refuses to address the problem and as long as there are jobs for illegals the problem will continue to exist.

Id.

54. *Id.*

into the United States.⁵⁵ Although both Mexico and the United States have previously acted to increase domestic prosperity by leveling the trade playing field, agreements such as NAFTA, in the short term, have had disastrous consequences for Mexican farmers and have created immigration chaos in the United States.⁵⁶

III. OKLAHOMA'S NEW IMMIGRATION LAW

A. State Interest in Immigration

Immigration is at the root of the history and culture of the United States.⁵⁷ It brings labor into anemic work sectors, provides the backbone of agricultural production, helps maintain the birth rate and enhances culture.⁵⁸ Yet the problems caused by illegal immigration are dangerous if ignored.⁵⁹ States such as California have experienced an increase in gang violence near the Mexican border, deaths of illegal immigrants exposed to extreme temperatures while crossing the border, and slave-like working conditions in certain industries.⁶⁰ As for Oklahoma, the problems are illustrated by the story of Professor

55. See GISELE HENRIQUES & RAJ PATEL, INT'L RELATIONS CTR., NAFTA, CORN AND MEXICO'S AGRICULTURAL TRADE LIBERALIZATION 1-4 (2004), <http://americas.irc-online.org/pdf/reports/0402nafta.pdf> (finding that free trade agreements such as NAFTA have intensified the problems facing Mexico's rural poor).

56. *Id.*

57. See EllisIsland.org, The Peopling of America, http://www.ellisland.org/immexp/wseix_4_3.asp (last visited Feb. 19, 2007). During the peak years of immigration into the United States, roughly twenty-two million people entered through Ellis Island. See *id.* As boats came towards the harbor immigrants on board would be within sight of the statue of liberty. See *id.* At the foot of the iconic statue is a timeless, and now very timely, poem:

"Keep, ancient lands, your storied pomp!" cries she
With silent lips. "Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore.
Send these, the homeless, tempest-tost to me,
I lift my lamp beside the golden door!"

EMMA LAZARUS: SELECTED POEMS AND OTHER WRITINGS 233 (Gregory Eiselein ed., Broadview Press 2002).

58. Hanson, *supra* note 25.

59. See discussion, *supra* § II.

60. *More Than 1,300 Arrested in Massive California Illegal Immigration Sweep*, MONSTERS & CRITICS, Oct. 3, 2007, http://news.monstersandcritics.com/usa/news/article_1362154.php/More_than_1300_arrested_in_massive_California_illegal_immigration_sweep (noting that some illegal immigrants commit violent crimes within the state).

Rutledge, where a simple car accident meant financial and legal problems for a person who had done nothing wrong.⁶¹

Needing solutions, and frustrated by slow progress made in Washington D.C., Oklahoma legislators passed Oklahoma House Bill 1804, known as the Oklahoma Taxpayer and Citizen Protection Act of 2007 (OTCPA).⁶² The bill, which went into effect on November 1, 2007, may be the toughest anti-illegal immigration bill anywhere in the United States.⁶³ The bill states that “it shall be unlawful for any person to transport, move or attempt to transport . . . any alien knowing or in reckless disregard of the fact that the alien” is illegally in the United States.⁶⁴ The bill also makes employing an illegal immigrant against the law.⁶⁵ It further denies illegal immigrants certain state benefits.⁶⁶

B. Social Issues

The bill received mixed reactions from the public, which was evidenced by large numbers of both protestors and supporters who rallied outside of the Tulsa City Council building to voice their opinions on the day the bill was passed.⁶⁷ Even the reactions within the Oklahoma political sphere were varied.⁶⁸ Representative John Sullivan lauded the bill’s passage, noting that the Federal Immigration Reform Act proposed by President Bush was too lenient.⁶⁹ Alternately, Tulsa Mayor Kathy Taylor and Oklahoma Governor Brad Henry both felt that immigration reform would best be left in the hands of the federal government and not the state.⁷⁰ Hispanic groups have denounced the new bill as

61. Huus, *supra* note 2.

62. H.B. 1804, 51st Leg., 1st Reg. Sess. (Okla. 2007).

63. Huus, *supra* note 2.

64. H.B. 1804, 51st Leg., 1st Reg. Sess. § 3. (Okla. 2007).

65. *Id.* § 7.

66. *Id.* § 8.

67. *See* Huus, *supra* note 2 (reporting that when 1500 protestors marched in Tulsa on May 5th in protest of the bill, they clashed supporters of the bill, including the Tulsa Minutemen Project and Outraged Patriots).

68. *Id.*

69. *See* Huus, *supra* note 2. Sullivan also successfully urged the Tulsa City Council to pass an additional resolution that would allow the police to verify the status of any suspected illegal immigrants while they are working. *Id.* Before the resolution was passed, police officers could only verify the status of suspected illegal immigrants who were arrested on felony charges. *Id.*

70. *Controversial Immigration Bill Signed into Law*, KOTV, May 8, 2007, <http://kotv.com/news/local/story/?id=126879> (quoting Governor Henry, who acknowledged the bill as a landmark step forward but warned that federal action is needed to adequately address the problem of illegal immigration); *Federal Law Maker Takes Aim at Local Immigration Issue*, KOTV, June 9, 2007, <http://kotv.com/news/local/story/?id=129086> (quoting Mayor Taylor, who labeled illegal immigration as a uniquely federal issue).

being both racist and illegal, vowing to challenge the law in court.⁷¹ Business owners also expressed concern that the bill will either harm their businesses financially, or that it will place too heavy a burden on businesses that may not have the resources to fully comply with the law.⁷² Finally, charity groups, churches, and hospitals worry that the new bill will interfere with efforts to provide charitable services to people in the state who are in need of assistance.⁷³

Some groups feel that the new law promotes racial profiling and discrimination, which may destroy any feelings of goodwill and cooperation amongst the Hispanic communities in Oklahoma.⁷⁴ Before the bill went into effect thousands of Tulsa Hispanics fled the city and state,⁷⁵ many due to the fear of deportation.⁷⁶ Many more legal immigrants left concerns that family members might be deported, worried that if one spouse was legal and the other illegal, the new law would tear apart families.⁷⁷ As one local report noted, many Hispanics in Oklahoma were unsure about what would happen to them if they were found or arrested once the bill took effect and returned to Mexico out of fear for their children and families.⁷⁸ In particular, one illegal Hispanic woman became pregnant while living and working in Tulsa, but left to go back to Mexico out of fear that authorities would forcibly take her baby away because

71. David Harper, *Judge Rules Against Bid for a Delay*, TULSA WORLD, Nov. 1, 2007, at A-1, A-10 (reporting that United States District Judge James Payne rejected an effort by the National Coalition of Latino Clergy to keep H.B. 1804 from going into effect).

72. Pamela Grady, *Oklahoma HB 1804 May Send Workers Elsewhere*, OKCBBUSINESS, Oct. 29, 2007, http://www.okcbbusiness.com/industry_article.asp?aID=0650116.25433602.583830.8961865.4599813.741&aID2=44901 (noting that construction companies and contractors may face substantial economic damages as a result of H.B. 1804, in particular companies risk losing workers who are found to be illegal and the resulting labor shortages may lead to delays in finishing projects and consequently, fines).

73. Bill Sherman, *HB 1804 Affects Ministries*, TULSA WORLD, Nov. 1, 2007, at A-10.

74. Brian Barber, *Signs Hit at State's New Immigration Law*, TULSA WORLD, Aug. 2, 2007, at A-1 (reporting that the United Front Task Force and the American Dream Coalition each unveiled billboards along a busy highway in Tulsa to raise awareness about the new bill; the more controversial of the two asks, "Is it OK for Oklahoma to have a law that promotes hate among people?").

75. See *Hispanics Moving Out of Oklahoma Before New Law Takes Effect*, KTUL, Aug. 22, 2007, <http://www.ktul.com/news/stories/0807/449699.html> [hereinafter *Hispanics Moving Out*].

76. *Id.*

77. Huus, *supra* note 2 (quoting Marcela Frescott, a coordinator for Catholic Charities in Tulsa, discussing why even some legal immigrants will be leaving Oklahoma, saying "[Catholic Charities] had one person who . . . has four children born here in the U.S., and now they're afraid to register the kids in school come August because they're afraid that at that time they might (be) arrested.").

78. Alexis Charbonnier, *Law Cited in Reverse Migration*, TULSA WORLD, Oct. 29, 2007, at A-1.

her child would be a legal citizen but she would remain illegal.⁷⁹ Her fears are rooted in rumors of mass forced adoptions or immigration officers raiding classrooms.⁸⁰

Evidence that many illegal immigrants are leaving the state somewhat reinforces the intent of the bill.⁸¹ While illegal immigrants leaving to move to border states cannot be said to positively affect nationwide immigration problems, recent data suggests that many illegal immigrants are moving back to Mexico to take their chances at home.⁸² For Tulsa in particular, many people are moving back to the town of Casa Blanca, their original home.⁸³ As a result, the already impoverished city of Casa Blanca is experiencing short-term financial and resource drains due to the influx of returning immigrants.⁸⁴ Many people returning to the city find their former homes in shambles, and one local shopkeeper felt that immigrants returning home will experience depression or become addicted to drugs upon discovering the lack of jobs and general state of hopelessness in the town.⁸⁵

Sebastian Lantos, a member of the Coalition of Hispanic Organizations, said that “[Oklahoma] is going to enact a law that will mess the judicial systems, law enforcement systems, for what? Just to create more prejudice and problems for our community.”⁸⁶ The allegations that the new bill promotes prejudice are echoed across the state but may be very difficult to prove, as the bill does not specifically target any race or nationality.⁸⁷ Yet evidence that thirty percent of the Hispanic population in Oklahoma is fleeing the state out of fear of deportation leaves little doubt as to which group is most affected by the new bill.⁸⁸

79. *Id.*

80. See TulsaWorld.com, *Bordering on a Problem*, http://www.tulsaworld.com/webextra/content/2007/casa_blanca/default.html (last visited Feb. 19, 2008) (covering the relationship between Tulsa and Casa Blanca, Mexico. The Web page chronicles the longstanding, and often strange ties between the two communities that lie on different sides of the border).

81. *Id.*

82. Charbonnier, *supra* note 78.

83. *Id.*

84. *Id.*

85. Alexis Charbonnier, *Mexican Town Will Feel Crunch*, TULSA WORLD, Oct. 28, 2007, at A-12.

86. *Hispanic Leaders Say State Immigration Bill Will Not Work*, KOTV, May 1, 2007, <http://kotv.com/news/local/story/?id=126408>.

87. H.B. 1804, 51st Leg., 1st Reg. Sess. (Okla. 2007).

88. *Hispanics Moving Out*, *supra* note 75.

Another interesting side effect of the bill may be its impact on surrounding states.⁸⁹ As noted above, many illegal immigrants are migrating back to Mexico, but that number only accounts for a portion of the group that has left the state.⁹⁰ While thousands of immigrants are leaving Oklahoma, many are moving into neighboring states such as Arkansas and Kansas.⁹¹ Arkansas in particular receives many of these individuals, as Arkansas immigration laws are considerably more lenient.⁹² Also, many undocumented immigrants have family members living in bordering states such as Arkansas and Texas, making those states more likely to see new immigrants.⁹³

As a result, Arkansas and Kansas are both considering adopting anti-immigration bills similar to Oklahoma's.⁹⁴ They might also feel compelled to enact legislation earlier than anticipated if suddenly faced with a massive influx of immigrants from Oklahoma.⁹⁵ Thus, the benchmark Oklahoma law that some expected to set a standard for other states may lead states such as Arkansas to pass new laws out of a new necessity because Oklahoma has left them little choice.⁹⁶

C. Enforcement Issues

Aside from social issues, there may also be a problem with Oklahoma's ability to fund and enforce the new law.⁹⁷ The bill will obviously need to rely

89. *Forum on Immigration Reform Held*, KOTV, Sept. 30, 2007, <http://kotv.com/news/local/story/?id=137016>.

90. Huus, *supra* note 2.

91. *Hispanics Moving Out*, *supra* note 75.

92. Huus, *supra* note 2.

93. *Id.*

94. *Id.*

95. *Hispanics Moving Out*, *supra* note 75.

96. David Harper, *Terrill Leads Way on Issue*, TULSA WORLD, Oct. 30, 2007, at A-1 (reporting that Oklahoma State Representative Randy Terrill, one of the main architects of H.B. 1804, believes that the bill has become a model for other states, with about a dozen other states introducing similar measures).

97. Devona Walker, *In Places Like Guymon, New Law Is a Challenge*, NEWSOK, Oct. 16, 2007, <http://newsok.com/article/3148695/> (reporting on how enforcement officials in an Oklahoma small town plan to enforce H.B. 1804). One officer noted that local authorities had been working with Immigration and Customs Enforcement agents to verify individuals' immigration status since the 1990s, so that aspect of the bill was nothing new. *Id.* Guymon has, per capita, the largest population of illegal immigrants in the state, yet the town has only a few Immigration and Customs Enforcement agents at its disposal. *Id.* A Texas county sheriff interviewed in the article suggested that Oklahoma had been tricked into thinking that the new law would make an impact in the immigration issue. *Id.* He noted that it will not be the federal government's job to enforce the new law, with that responsibility instead going to local officials, who have neither the manpower nor the money to be effective. *Id.*

on the help of enforcement agencies like local police and the department of homeland security.⁹⁸ The bill provides for “state and local law enforcement agencies to create a ‘force multiplier’ for the federal Immigration and Customs Enforcement (ICE) service” which will help deport any discovered illegal immigrants.⁹⁹ ICE officers will also work with local police to help check and verify the status of all people who have been arrested and are in jail.¹⁰⁰ This cooperation may not be enough to keep up with the demands of the new bill.¹⁰¹ In anticipation of enforcement concerns, the City of Tulsa has graduated more than thirty new police officers with special training in both customs and immigration.¹⁰² The city’s response comes in part as a way to ensure that it will be able to effectively enforce the new laws.¹⁰³ According to the president of the National Coalition of Latino Clergy and Christian Leaders, Tulsa police arrested a woman for knowingly transporting an illegal alien on November 1, 2007, the first day the bill went into effect.¹⁰⁴ Despite the fact that local police denied the arrest had occurred, Reverend Rivera announced at a public press conference that members of the Hispanic community would not stop aiding and transporting fellow Hispanics.¹⁰⁵ He urged fellow citizens to call the Federal Bureau of Investigation anytime they would normally need the assistance of local police because local officers must also check the legal status of everyone involved in

98. *Id.*

99. Huus, *supra* note 2; 8 U.S.C. § 1357(g) (2006) (allowing the United States Attorney General to enter into agreements to help facilitate the enforcement of federal law).

100. U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, ICE MUTUAL AGREEMENT BETWEEN GOVERNMENT AND EMPLOYERS (2006), <http://www.ice.gov/partners/opaimage/>. Immigration and Customs Enforcement is the federal body in charge of enforcing the nation’s immigration laws. *Id.* One of the many problems facing states and employers is unauthorized immigrants using fraudulent documents to get jobs, housing or public benefits. *See id.* To help effectively deal with this problem, Immigration and Customs Enforcement started the ICE Mutual Agreement between Government and Employers program (IMAGE). *See id.* This program helps educate businesses about detecting fake documents, and the use of the Basic Pilot Employment Verification Program to check an immigrant’s status. *Id.*

101. *Panel Questions Constitutionality of Immigration Law*, KOTV, Sept. 25, 2007, <http://kotv.com/news/local/story/?id=136640>.

102. *Id.*

103. *Id.*

104. *U.S. Citizen Arrested Under State’s New Anti-illegal Immigrant Law, Hispanic Advocate Says*, TULSA WORLD, Nov. 1, 2007, http://www.tulsaworld.com/news/article.aspx?articleID=071101_1__AUSci58616 (reporting on a claim by the Reverend Miguel Rivera that has been denied by local law enforcement and has yet to be verified).

105. *Id.*

the crime, including the victim.¹⁰⁶ The statement indicates that police enforcing the new laws may have their hands full from day one.¹⁰⁷

There are lingering concerns, however, that even with more officers enforcing the new law, the time taken to check immigration status and file reports will necessarily take away from the time officers could be patrolling the city.¹⁰⁸ There are additional concerns that other emergency services will be slowed down and, more disturbingly, that violent crimes will not be reported out of deportation concerns.¹⁰⁹ However, Tulsa Police officials have noted that the new law does not require them to raid any businesses that are suspected of hiring or harboring illegal immigrants, which they claim lessens the burden of enforcement.¹¹⁰ Under-Sheriff Brian Edward noted that the police do not have the resources to conduct raids anyway.¹¹¹

Aside from the additional responsibilities for local police, the new law also requires business owners, property owners, school administrators and others to run background checks on suspected illegal immigrants.¹¹² These administrators and officials will be required to use either the Systematic Alien Verification for Entitlements (SAVE) program or the Social Security database to ensure compliance with the new law.¹¹³ Any person or business that is found to be in violation of the new law (by hiring, harboring, etc. an illegal immigrant) is charged with a felony and may serve time in prison.¹¹⁴ Understandably, administrators and businesses feel they are in a precarious position.¹¹⁵ Verifying the legal status of new hires, students or tenants requires time and resources and many people in charge of the verification process may not be familiar with the government software they are required to use.¹¹⁶ The probable delays have already caused headaches for many Oklahoma businesses.¹¹⁷

106. *Id.*

107. *Id.*

108. See Huus, *supra* note 2.

109. *Id.*; *City Council Passes New Immigration Ordinance*, KOTV, May 5, 2007, <http://kotv.com/news/topstory/?id=128137>.

110. Nicole Marshall, *Officials: Raids Aren't Part of Immigration Law*, TULSA WORLD, Oct. 31, 2007, at A1.

111. *Id.*

112. H.B. 1804, 51st Leg., 1st Reg. Sess. § 8 (Okla. 2007).

113. *Id.*

114. *Id.* § 3(c).

115. *See Forum on Immigration Reform Held*, *supra* note 89.

116. *Local Businesses Could See a Boost Thanks to a New Immigration Law*, KOTV, May, 9, 2007, <http://kotv.com/news/local/story/?id=126944> (noting that the business seeing a boost is, not surprisingly, the one which conducts verification searches using the government software).

117. *See Forum on Immigration Reform Held*, *supra* note 89.

D. Constitutional Issues

At the time of this writing, the bill is still in its infancy stage and has already been met with problems, including questions of constitutionality, funding, enforcement, as well as opposition and fear from businesses and immigrants alike.¹¹⁸ Oklahoma clergyman Miguel Rivera announced that the National Coalition of Latin Clergy and Christian Leaders filed for an injunction based primarily on the claim that the bill is preempted by federal immigration law.¹¹⁹ Although Federal District Judge James Payne denied the request for an injunction, the lawsuit is still pending before the court.¹²⁰ If Judge Payne does not find the bill unconstitutional, Reverend Rivera said that they will immediately appeal the issue to the 10th Circuit Court of Appeals.¹²¹

Judge Payne denied the original request for an injunction because the Plaintiff did not present adequate evidence and further “found that [the lawsuit’s] plaintiffs - the National Coalition of Latino Clergy, its Oklahoma affiliate, two churches, a restaurant group and a group of anonymous individuals - could not challenge the law because they could not show that it had damaged them.”¹²² The lawsuit continues despite the fact that lawmakers involved in the drafting of the bill and supporters of the bill like Senator James Williamson assured the public that attorneys carefully examined the bill for any potential constitutional issues.¹²³ The American Civil Liberties Union of Oklahoma also reported that it was reviewing the bill for areas that might be unconstitutional.¹²⁴ With potential lawsuits pending when the bill has just recently gone into effect, there can be little doubt that Oklahoma courts and the state legislature will spend additional time and resources handling the fallout of OTCPA in the future.¹²⁵

In June 2007, a federal court struck down a local Pennsylvania immigration ordinance in the case of *Lozano v. City of Hazleton*.¹²⁶ The City of Hazleton

118. *See id.*

119. *Hispanic Leaders Announce Lawsuit*, KOTV, Sept. 28, 2007, <http://kotv.com/news/topstory/?id=136864>; *see Lozano v. City of Hazleton*, 496 F. Supp. 2d 477 (D. Pa. 2007) (striking down an ordinance enacted by the City of Hazleton which mirrors Oklahoma’s House Bill 1804 for, among other things, being preempted by federal law).

120. *State Again Asks Court to Toss Suit on HB 1804*, TULSA WORLD, Nov. 7, 2007, at A-7.

121. Harper, *supra* note 71, at A-10.

122. *Id.*

123. *Author of State Immigration Law Says it Appears to be Working*, DIVERSE, Sept. 17, 2007, http://www.diverseeducation.com/artman/publish/article_9282.shtml.

124. Huus, *supra* note 2.

125. *See Harper, supra* note 71, at A-10 (noting that the recent injunction denial was the second attempt to derail Oklahoma House Bill 1804 to come to court and that, although the injunction was denied, the lawsuit is still pending before the court).

126. *Lozano v. City of Hazleton*, 496 F. Supp. 2d 477, at 477 (D. Pa. 2007) (challenging a local city ordinance which attempted to regulate housing and employment of illegal immigrants).

issued an ordinance, in many ways similar to OTCPA, which provided stiff penalties for businesses hiring illegal immigrants.¹²⁷ A federal court struck down the law as being unconstitutional on a number of grounds, the most relevant to Oklahoma being federal preemption.¹²⁸ The court found that the ordinance was preempted by federal law and that it “disrupt[s] a well-established federal scheme for regulating the presence and employment of immigrants in the United States.”¹²⁹ Despite this ruling, Oklahoma Attorney General Drew Edmondson seeks to have the pending lawsuit challenging OTCPA dismissed.¹³⁰

The United States Constitution states that the “Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land. . .”¹³¹ This clause, commonly called the Supremacy Clause, reasons that in the event that there is a conflict between state and federal law then federal law prevails over the state law.¹³² Federal law may either expressly or impliedly preempt a state law.¹³³ Where Congress intended to preempt state law, federal law will supersede the state law by expressly preempting it, usually by federal statute.¹³⁴ By contrast, federal law impliedly preempts state law where Congress has either occupied the field where the state law would apply, where the federal and state law directly conflict with each other, or where the state law would frustrate the purpose of the federal law.¹³⁵

In *Pennsylvania v. Nelson*, the Supreme Court held that a state law is impliedly preempted where the congressional legislation has not left room for state regulation.¹³⁶ The test laid out in *Nelson* states that implied preemption may be found by examining the pervasiveness of the federal regulation in question, examining the federal interest which is at stake, and by determining

127. *Federal Judge Blocks Hazleton Anti-Immigrant Ordinance, Says Laws Cause Harm to Legal Immigrants*, ACLU, Oct. 31, 2006, <http://www.aclu.org/immigrants/discrim/27225prs20061031.html> (noting that at the request of landlords, business owners and residents, a judge originally issued an injunction preventing the ordinance from taking effect).

128. *Lozano*, 496 F.Supp.2d at 554.

129. *Id.*

130. Harper, *supra* note 71, at A-10 (reporting that State Representative Randy Terrill felt confident that the new law would withstand legal challenges, a position he felt was supported by Judge Payne’s denial of an injunction).

131. U.S. CONST. art. VI, cl. 2.

132. See *Gibbons v. Ogden*, 22 U.S. 1, 2 (1824).

133. *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990).

134. *Id.* at 77-79.

135. *Freightliner Corp. v. Myrick*, 514 U.S. 283, 287 (1995).

136. *Pennsylvania v. Nelson*, 350 U.S. 497, 502 (1956).

whether the state law will frustrate the federal goals.¹³⁷ Where a federal law meets the criteria of *Nelson*, the law will displace the state regulation.¹³⁸ In *Hazleton*, the District Court of Pennsylvania held that an immigration ordinance enacted by the city of Hazleton violated the Supremacy Clause of the United States Constitution.¹³⁹ The ordinance regulated, among other things, the harboring and employment of illegal immigrants in the city of Hazleton.¹⁴⁰ The law prohibited landlords from harboring illegal aliens knowingly or in reckless disregard of their illegal status.¹⁴¹ Additionally, the law required employers to verify the legal status of prospective employees by checking various pieces of documentation and further stated that any employer who hired an illegal immigrant knowingly or in reckless disregard of their illegal status would be subject to penalty, including the revocation of their business license.¹⁴² Plaintiffs challenged the constitutionality of the ordinance on the grounds that it was preempted by the federal Immigration Reform and Control Act of 1986 (IRCA).¹⁴³

1. Federal Law Expressly Preempts Hazleton Ordinance

The *Hazleton* court found that the ordinance was expressly preempted by IRCA.¹⁴⁴ First, IRCA contains a clause that states: “the provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.”¹⁴⁵ This clause indicated to the court that Congress, in explicit terms, intended IRCA to supersede any state immigration law.¹⁴⁶ It has been noted that IRCA is a “comprehensive scheme” that makes it illegal for any business to hire any illegal immigrant.¹⁴⁷ IRCA requires businesses to verify the documentation of new employees, and requires that any such new hire discovered to be illegal be discharged.¹⁴⁸ Any violation of this section can result in both civil and criminal penalties for the employer.¹⁴⁹ The Hazleton ordinance, by contrast, allowed the

137. *Id.* at 513-18.

138. *Id.*

139. *Lozano v. City of Halzeton*, 496 F. Supp. 2d 477, 518 (D. Pa. 2007).

140. *Hazleton, Pa., Ordinance 2006-18 § 2(c)* (Sept. 21, 2006).

141. *Id.* § 5(a).

142. *Id.* § 4(b).

143. *Lozano*, 496 F. Supp. 2d at 501-03.

144. *Id.* at 520.

145. 8 U.S.C. § 1324a(h)(2) (2006).

146. *Lozano*, 496 F. Supp. 2d at 552.

147. *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 147 (2002).

148. *See* 8 U.S.C. § 1324a (2006).

149. *Id.*

city to suspend or revoke the licenses of businesses found to be in violation of the ordinance, which the court found to be directly at odds with IRCA.¹⁵⁰ The defendant argued that the penalties contained in the Hazleton ordinance complied with federal regulation, noting that the suspension of a business permit “amounts to ‘licensing and similar laws’ as provided by the IRCA preemption section.”¹⁵¹ The court disagreed, however, holding that to interpret the IRCA as allowing a city to impose the most severe sanction, revocation of a business permit, would render the preemption clause in the IRCA meaningless.¹⁵²

2. Federal Law Impliedly Preempts Hazleton Ordinance

A law may be impliedly preempted where federal law occupies the field meant to be regulated or where there is a conflict between the state and federal laws.¹⁵³ The *Hazleton* court held that the ordinance was impliedly preempted by IRCA as Congress occupies the field of immigration regulations and the Hazleton ordinance directly conflicts with IRCA and frustrated its purpose.¹⁵⁴ The court held that “field preemption exists where the federal regulatory scheme is ‘so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it’” and where there is a federal interest in the field that is being regulated.¹⁵⁵ The *Hazleton* court reviewed the history of immigration regulation within the United States and noted that “[t]he federal government possesses an especially strong interest in immigration matters.”¹⁵⁶ In support, the *Hazleton* court cited a number of cases in which other courts held that immigration regulation falls exclusively under the purview of Congress and that states, cities and municipalities have little interest and influence in the same area.¹⁵⁷ Thus, the *Hazleton* court held that the federal government has a strong interest in regulating immigration.¹⁵⁸

Secondly, the field preemption test also looks at the pervasiveness of the regulation by the federal government.¹⁵⁹ Here, the *Hazleton* court noted that IRCA regulates the “hiring, employing, recruiting or referring for a fee for

150. Hazleton, Pa., Ordinance 2006-18 § 4(b) (Sept. 21, 2006).

151. *Lozano*, 496 F. Supp. 2d at 519.

152. *Id.*

153. *Gibbons v. Ogden*, 22 U.S. 1, 7 (1824).

154. *Lozano*, 496 F. Supp. 2d at 521-22.

155. *Id.* at 521 (citing *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

156. *Lozano*, 496 F. Supp. 2d at 522.

157. *Id.* (citing *U.S. v. Valenzuela-Bernal*, 458 U.S. 858, 864 (1982) and *Galvan v. Press*, 347 U.S. 522, 531 (1954)).

158. *Id.*

159. *Id.*

employment unauthorized aliens.”¹⁶⁰ Thus, IRCA is a “comprehensive scheme” and “leaves no room for state regulation.”¹⁶¹

Finally, a law may be impliedly preempted where it creates a conflict between state and federal law.¹⁶² The Supreme Court has held that field preemption “may be understood as a species of conflict pre[em]ption: a state law that falls within a pre-empted field conflicts with Congress’ intent (either express or plainly implied) to exclude state regulation.”¹⁶³ In its analysis of conflict preemption, the *Hazleton* court noted that federal immigration laws are intended to strike a balance between border enforcement and interior enforcement.¹⁶⁴ In the area of internal enforcement, IRCA must regulate the employment of illegal immigrants and provide a way for businesses to distinguish between legal and illegal workers.¹⁶⁵ In developing IRCA, Congress wanted to ensure the laws were not so strict as to lead to the improper removal of legal immigrants, while setting up a system of rules and safeguards to prevent illegal immigrants from obtaining employment.¹⁶⁶ Therefore, while the *Hazleton* court found the city ordinance and federal law both had the same goal and purpose in mind, they did not seek to achieve the same balance of those goals.¹⁶⁷ This difference, the court noted, created a direct conflict between the two laws.¹⁶⁸

3. Application of Preemption Analysis from *Hazleton* Decision to OTCPA

OTCPA requires state employers to use a Basic Pilot Program to verify the legal status of newly hired employees.¹⁶⁹ Additionally, it states that “it shall be a discriminatory practice for an employing entity to discharge an employee . . . who is a United States citizen or permanent resident alien while retaining an employee who the employing entity knows, or reasonably should know, is an unauthorized alien.”¹⁷⁰ Like the *Hazleton* ordinance, OTCPA seeks to regulate the employment of illegal immigrants and assigns liability and punishment to businesses found to be in violation of state law.¹⁷¹ Also like the *Hazleton* ordinance, OTCPA “creates a cause of action for discharged employees.”¹⁷²

160. *Id.* at 523.

161. *Lozano*, 496 F. Supp. 2d at 521.

162. *Id.*

163. *English v. General Elec. Co.*, 496 U.S. 72, 79 n.5 (1990).

164. *See Lozano*, 496 F. Supp. 2d at 527-28.

165. *Id.*

166. *See* 8 U.S.C. § 1324a (2006).

167. *Lozano*, 496 F. Supp. 2d at 528.

168. *Id.*

169. H.B. 1804, 51st Leg., 1st Reg. Sess. § 7(b)(1) (Okla. 2007).

170. *Id.* § 7(c)(1).

171. *Id.* § 7.

172. *Lozano*, 496 F. Supp. 2d at 520.

Unlike the Hazleton ordinance, OTCPA does not revoke the business license of those employers found to be in violation of OTCPA, nor does it redundantly forbid the hiring of illegal immigrants.¹⁷³ Rather, OTCPA essentially supplements employment regulations already found in IRCA.¹⁷⁴ Thus, Oklahoma's law appears on its face to be a repetition of IRCA for purposes of hiring an illegal immigrant, but adds an additional section that would impose extra liability on employers in the form of a discrimination suit.¹⁷⁵ According to the reasoning of the *Hazleton* court, OTCPA might still be expressly preempted by federal law because the Oklahoma law making it illegal to fire a legal United States citizen while employing an illegal immigrant creates a new cause of action not found within IRCA.¹⁷⁶

Secondly, applying the test for implied preemption also indicates that OTCPA might be in violation of the supremacy clause.¹⁷⁷ The implied preemption test, as noted earlier, has the effect of striking down a state law that intrudes on an area of regulation that the federal government occupies.¹⁷⁸ The field preemption test renders laws that regulate an area generally occupied by federal law unconstitutional.¹⁷⁹ The *Hazleton* court provided clear reasoning on the issue of federal regulation in the field of immigration law.¹⁸⁰ It is well established that the federal government has a strong interest in regulating immigration.¹⁸¹ Thus OTCPA clearly means to regulate in a field where Congress intended to leave no room for state interference.¹⁸² The portions of OTCPA that cover business and employment practices move into the area Congress meant to regulate under IRCA.¹⁸³

Whether OTCPA may be either redundant or contrary to IRCA becomes another issue.¹⁸⁴ The Oklahoma regulation of employment verification of illegal immigrants is nearly exactly the same as IRCA.¹⁸⁵ In fact, both OTCPA and IRCA utilize the Basic Pilot System, a government verification program, to determine an individual's legal status.¹⁸⁶ Like the Hazleton ordinance, the

173. See Okla. H.B. 1804.

174. See *Id.*; see 8 U.S.C. § 1324a.

175. Okla. H.B. 1804 § 7.

176. *Lozano*, 496 F. Supp. 2d at 518-19.

177. See *id.*

178. See *California v. Zook*, 336 U.S. 725, 747 (1949).

179. *De Canas v. Bica*, 424 U.S. 351, 351-52 (1976).

180. See *Lozano*, 496 F. Supp. 2d at 521.

181. *Matthews v. Diaz*, 426 U.S. 67, 81 (1976).

182. See 8 U.S.C. 1324a; see H.B. 1804, 51st Leg., 1st Reg. Sess. (Okla. 2007).

183. See Okla. H.B. 1804 § 7.

184. See *id.*; see 8 U.S.C. §1324a.

185. See Okla. H.B. 1804 § 7; 8 U.S.C. §1324a.

186. *Id.*

employment sections of OTCPA seek to achieve the same goals as the IRCA.¹⁸⁷ Both wish to regulate the employment of illegal immigrants and create safeguards to ensure that businesses have a way to verify the legal status of their employees.¹⁸⁸ However, like the Hazleton ordinance, the OTCPA did not consider Congress' ultimate goals and balances when drafting IRCA.¹⁸⁹ The *Hazleton* court noted that the "city council and the mayor did not consider the implications of the ordinances on foreign policy," something which the court felt upset the balance meant to be achieved by IRCA.¹⁹⁰ The OTCPA has even more potential to upset the balance meant to be achieved by IRCA and foreign policy.¹⁹¹ Not only have recent city and state immigration laws caused tension between the United States and Mexico, but Oklahoma's immigration law has also created problems for surrounding states.¹⁹² While the federal government and Oklahoma both desire the same end result, the process by which Oklahoma is attempting to reach that result could cause disruptions to the delicate balance meant to be achieved by federal regulation.¹⁹³

It is likely that the OTCPA section regulating the harboring, transporting and concealing of illegal immigrants will also be challenged in the courts.¹⁹⁴ The IRCA regulates these exact areas, but this particular section does not contain an express preemption clause.¹⁹⁵ It will therefore be necessary for the courts to apply the implied preemption analysis to determine the constitutionality of this portion of the OTCPA.¹⁹⁶ The application of the analysis strongly suggests that the harboring clause of the OTCPA moves into a field occupied by the federal government and also frustrates the purpose of IRCA.¹⁹⁷ Essentially, these acts of harboring, transporting and concealing are already forbidden under IRCA.¹⁹⁸ While the OTCPA again wishes to achieve the same goals as the federal government, the reasoning behind the Oklahoma legislation does not seek to

187. See *Hazleton, Pa.*, Ordinance 2006-18 (Sept. 21, 2006); see Okla. H.B. 1804.

188. See *id.*

189. *Lozano v. City of Hazleton*, 496 F. Supp. 2d 477, 528 (2007).

190. *Id.*

191. See H.B. 1804, 51st Leg., 1st Reg. Sess. (Okla. 2007). Compared to the Hazleton city ordinance, as state law, Okla. H.B. 1804 affects a wider population and greater area. See *id.*

192. Huus, *supra* note 2; Corchado, *supra* note 6, at A1.

193. See *Lozano*, 496 F. Supp. 2d at 527-29 (discussing the ability of a state- or city-enacted bill to disrupt the general balance of a federal regulation where Congress' laws are meant to be comprehensive).

194. Okla. H.B. 1804 § 1.

195. See 8 U.S.C. § 1324a.

196. See Okla. H.B. 1804.

197. See *id.* see 8 U.S.C. § 1324a; see *Lozano*, 496 F. Supp. 2d at 523.

198. See 8 U.S.C. § 1324.

encompass nationwide foreign policy concerns.¹⁹⁹ Thus, this portion of the OTCPA may also be struck down on Constitutional preemption grounds.²⁰⁰

IV. IMMIGRATION REFORM ON A FEDERAL LEVEL

Currently, the Federal Immigration Reform and Control Act of 1986 controls all immigration to United States.²⁰¹ The law makes it a crime to enter the United States illegally, subjects illegal aliens to deportation, and is enforced by the federal Department of Homeland Security.²⁰² Enforcement of the federal law has done very little to regulate illegal border crossing or handle deportation of illegal immigrants already residing in the United States.²⁰³ Within the past ten years, the federal government has twice tried and failed to pass comprehensive immigration reform measures.²⁰⁴ Partially as a result of the Federal government's apparent inability to handle immigration reform, legislators in states such as Oklahoma enacted their own measures to deal with illegal immigration.²⁰⁵

Over the past several years, Congress tried and failed three times to reform existing immigration laws.²⁰⁶ The most recent attempt at reform, the Comprehensive Immigration Reform Act, failed in the House of Representatives

199. See Okla. H.B. 1804.

200. See *Lozano*, 496 F. Supp. 2d 477.

201. See Immigration Reform and Control Act (IRCA) of 1986, Pub. L. No. 99-603, 100 Stat. 3359.

202. See *id.*; see *Understanding Immigration*, ARIZ. DAILY STAR, Apr. 23, 2006, <http://www.azstarnet.com/sn/border/125794> (noting that the current federal law outlines penalties for individuals found to be within the United States illegally).

203. *Securing the Homeland Through Immigration Law Enforcement: Hearing on Department of Homeland Security Transition: Bureau of Immigration and Customs Enforcement Before the Subcomm. on Immigration, Border Security, and Claims of the H. Comm. on the Judiciary*, 108th Cong. (2003) (statement of Mark Krikorian, Executive Director of the Center for Immigration Studies) (testifying that active enforcement of immigration policy created displeasure among some politicians and business owners, forcing enforcement officers to adopt more lenient measures for identifying and deporting suspected illegal immigrants).

204. Robert Pear & Carl Hulse, *Immigration Fails to Survive Senate Vote*, N.Y. TIMES, June 29, 2007, at A1 (reporting that measures which could have been the biggest immigration reform in twenty years failed when Senators could not reach a consensus on any of the bill's key provisions).

205. See Huus, *supra* note 2 (noting "the chaotic fallout of a federal framework that neither prevents illegal immigrants from entering the U.S. to work nor provides a way for them to gain legal status.").

206. See *generally* Comprehensive Immigration Reform Act of 2006, S. 2611, 109th Cong. (2006); see *generally* Secure America and Orderly Immigration Act, S. 1033, 109th Cong. (2005); see *generally* Comprehensive Enforcement and Immigration Reform Act of 2005, S. 1438, 109th Cong. (2005).

when it fell short of the votes needed to go to the floor.²⁰⁷ The act borrowed from key provisions of its two predecessors, the Secure America and Orderly Immigration Act and the Comprehensive Enforcement and Immigration Reform Act of 2005.²⁰⁸ The three bills each took very different approaches to immigration reform, specifically in the area of creating temporary work visas, or guest worker programs, but the recent failure of the Comprehensive Immigration Reform Act may be a crushing blow to President Bush, who had hoped to see improvement in this area before leaving the White House in 2008.²⁰⁹

President Bush and the 110th Congress worked hard to craft new immigration policy in the United States.²¹⁰ In a Congress deeply divided on nearly every issue of domestic and international concern, bipartisan efforts were rewarded with the Comprehensive Immigration Reform Act, which appeared at first to address the most problematic domestic immigration concerns.²¹¹ The bill provided amnesty to illegal aliens already in the United States.²¹² It created a work visa program for people who wished to come to the United States to work and live and pursue the American Dream.²¹³ It sought to tighten border security, funneling money, labor and resources into places such as Texas, California and

207. *See generally* S. 2611 (providing that amnesty would be given to illegal immigrants already in the United States and that a temporary guest worker program would have been created and those people gaining citizenship could bring an unlimited number of family members into the country); *see* Michael Sandler & Jonathan Allen, *Senate Gives Up on Immigration Bill*, CONG. Q., June 7, 2007, <http://public.cq.com/docs/cqt/news110-000002527366.html> (noting that the bill failed to get the votes needed to end cloture).

208. *See* S. 1033 (providing a bipartisan proposal by Senators McCain and Kennedy which would have, among other things, presented a way for illegal immigrants already within the United States to gain citizenship by applying for a visa and paying back taxes); S. 1438 (providing an alternate bill proposed by Republican Senators Cornyn and Kyl which would have increased enforcement efforts within the United States and provided temporary two-year work visas for those wishing to immigrate to the United States; after the two years had expired, the immigrants would be expected to return to their home country for one year before re-applying for another two-year visa).

209. *Vote Dashes Bush Immigration Plans*, BBC NEWS, June 29, 2007, <http://news.bbc.co.uk/2/hi/americas/6250756.stm> (finding that when the immigration reform bill fell apart in the Senate, it signaled the collapse of one of the central planks of the Bush platform. In a press conference, after news of the failure was made public, Bush announced his disappointment that the two parties in office could not overcome their differences to make a difference in immigration reform. Current Mexican President Felipe Calderon also expressed dismay at the lack of progress, calling it a "grave error" and noting that the U.S. economy cannot keep going without migrant labor).

210. *Id.*

211. *Id.*

212. *See* Pear & Hulse, *supra* note 204, at A-1.

213. *Id.*

Arizona where authorities are overwhelmed and overworked.²¹⁴ Finally, the bill worked to lessen the violence at the Mexican border, which has become dangerously high in recent years.²¹⁵ Despite the bill's promise, it failed.²¹⁶ Generally, Democrats in Congress felt it did not do enough to open borders and Republicans were unhappy with granting amnesty to illegal immigrants already in the United States.²¹⁷ Thus, a pragmatic bill with so much promise resulted in setting back policy reform.²¹⁸

While Congress promised to continue working on comprehensive immigration reform, it has begun passing smaller measures to address specific concerns.²¹⁹ First, Congress passed a resolution to begin the construction of a security fence along two-thirds of the United States' border with Mexico.²²⁰ The initial and most obvious problem with the Act remains lack of funding.²²¹ Congress distributed no money to the project, which could cost more than twenty billion dollars.²²² Aside from the cost, it would take a considerable amount of

214. *See id.*

215. *See* TONY PAYAN, *THE THREE U.S.-MEXICO BORDER WARS: DRUGS, IMMIGRATION AND HOMELAND SECURITY* 16-17 (Praeger Security International 2006) (noting that much of the violence at the border is exacerbated by illegal drug trafficking); Richard A. Serrano, *Border Violence Pushes North*, L.A. TIMES, Aug. 19, 2007, at A1 (finding that violence at the border is becoming more prevalent and disturbing).

216. Pear & Hulse, *supra* note 204, at A-1 (reporting that the failure of the bill was a crushing blow to the Bush administration which had hoped to see comprehensive immigration reform realized before President George W. Bush leaves office in 2008).

217. Sandler & Allen, *supra* note 207 (pointing out that both sides of the debate pointed the finger of blame at each other for the failure with some senators arguing that they needed more time to debate the amendments, which at one point numbered at more than 300).

218. *Id.* (quoting Senator Ted Kennedy as saying, "I believe we're well within reach of a realistic solution, and I believe we have the will to find it.").

219. Secure Fence Act of 2006, Pub. L. No. 109-367, 120 Stat. 2638 (2006); Comprehensive Immigration Reform Act of 2006, S. 2611, 109th Cong. (2006).

220. Secure Fence Act of 2006, Pub. L. No. 109-367, 120 Stat. 2638 (2006) (calling for the building of a 700 mile long security fence along the border, the Act includes other provisions which would add checkpoints along the border, and authorizes the Department of Homeland security to utilize technology such as satellites to further secure the border).

221. *See All Things Considered*, *supra* note 44 (discussing the planned construction of the fence and problems already encountered).

222. Press Release, President George W. Bush, President Signs Secure Fence Act (Oct. 26, 2006), <http://www.whitehouse.gov/news/releases/2006/10/20061026.html> (announcing:

[e]arlier this year, I addressed the nation from the Oval Office. I laid out our strategy for immigration reform. Part of that strategy begins with securing the border. Since I took office we have more than doubled funding for border security—from \$4.6 billion in 2001 to \$10.4 billion this year. We've increased the number of Border Patrol agents from about 9,000 to more than 12,000, and by the end of 2008,

time to construct the fence and it would require intensive labor.²²³ On a more positive note, criticism of the plan is minimal and most senators, though usually sharply divided, are in agreement when it comes to securing the border.²²⁴ President Bush seemed especially optimistic about the progress when he addressed the nation after signing the bill into law, as immigration was an important part of his campaign in both the 2000 and 2004 elections.²²⁵

Secondly, the 110th Congress has made two proposals, one of which would further increase security at the border while the second proposal would create a way for illegal immigrants to gain citizenship after meeting certain conditions.²²⁶ Congress wants to change visa requirements and tighten border security even more.²²⁷ Congress' new approach to immigration reform tackles issues and areas of concern in small steps, rather than trying to push through a huge bill.²²⁸ For now, Congress will focus their efforts on border security, leaving the more prickly issues of amnesty and work visas for a later time.²²⁹ This could be a problem for states such as Oklahoma which try to deport undocumented individuals but have no control over who may enter the state legally.²³⁰ Until a real consensus can be reached, Congress hopes to see reform in Mexico as well as changes in NAFTA to help slow the influx of illegal immigrants into the United States.²³¹

V. CURRENT POLICY IN MEXICO AND THE EFFECTS OF NAFTA

Unable to provide all the needed solutions at home, the United States has looked to Mexico for additional help.²³² Among the issues the United States would like Mexico to address are: protecting its southern border against South American immigrants who later illegally cross into the United States, reform

we will have doubled the number of Border Patrol agents during my presidency.).

223. *Id.*

224. *Id.*

225. *Id.*

226. See ROBERT MCMAHON, COUNCIL ON FOREIGN RELATIONS, [I cited this as a report unavailable in traditional printed form; see example in R.18.2.3 on pg 156] THE 110TH CONGRESS AND IMMIGRATION REFORM, Feb 13, 2007, <http://www.cfr.org/publication/12628/>.

227. *Id.*

228. Compare Secure Fence Act of 2006, Pub. L. No. 109-367, 120 Stat. 2638 (2006) with Comprehensive Immigration Reform Act of 2006, S. 2611, 109th Cong. (2006).

229. See Secure Fence Act [see example in R.12.9 on pg 113]; McMahon, *supra* note 226.

230. 8 U.S.C. § 1357(g) (2006).

231. Dellios, *supra* note 6, at 11.

232. *Id.* (noting that overtures of immigration reform send a positive message that the United States and Mexico are willing to cooperate and work together to help solve a crisis that concerns both nations).

agricultural policy in Mexico which causes poverty among local farmers who later leave to find work in the United States, as well as assist in patrolling and securing the border.²³³

Mexico, on the other hand, would like to see the United States create a temporary work program and give amnesty to illegal Mexican immigrants already living and working in the United States.²³⁴ Numerous meetings have been held between representatives from the two countries, including President Bush and former Mexican President Vicente Fox.²³⁵ Both presidents made it clear that immigration reform was a key goal and both nations were willing to work together to address their shared problems.²³⁶ Specifically, former President Fox promised to institute reform within his own country to make it a more desirable place to live and work.²³⁷ Yet these reforms may create a dilemma for Mexico.²³⁸

The relationship between the United States and Mexico is relatively strong, due in part to the friendship between Fox and Bush, but also because of Mexico's support of the United States over the decision to invade Iraq.²³⁹ Starting with the relationship between Presidents Bush and Fox, the two countries wish to continue to have productive dialogs regarding national security, free trade, and economic growth.²⁴⁰ It is obviously important to both leaders to sustain a positive relationship and to continue to work on improving

233. See *United States and Mexico Immigration Policy and the Bilateral Relationship: Hearing before the S. Foreign Relations Comm.*, 108th Cong. 2 (2004) (statement of Dr. Demetrios G. Papademetriou, President, Migration Policy Institute) [hereinafter Papademetriou statement].

234. See Press Release, President George W. Bush & President Vicente Fox, President Bush, Mexican President Fox Reaffirm Commitment to Security (Mar. 6, 2004), <http://www.whitehouse.gov/news/releases/2004/03/20040306-3.html>.

235. *Id.* (quoting former President Fox as saying “[w]e have a long tradition of relationships and meetings with Presidents Bush and Fox, starting with the meeting in the ranch at San Cristobal, where we developed a work agenda. We spoke—both Presidents continue to review looking forward to what lies ahead.”); see also Ginger Thompson, *Immigration on Agenda As Bush Meets Fox in Mexico*, N.Y. TIMES, Mar. 30, 2006, at A6 (noting that during the summit President Fox urged President Bush and Prime Minister Harper to make this type of meeting an annual event).

236. *Id.*

237. *Id.*

238. *Vicente Fox: Immigration is Biggest Challenge for Mexico, U.S.*, FOX NEWS, May 24, 2006, <http://www.foxnews.com/story/0,2933,196843,00.html> [hereinafter *Vicente Fox*].

239. Rafael Azul, *Faced with Mass Opposition to War Mexico's President Fox Leans Toward US on Iraq*, WORLD SOCIALIST WEB SITE, Mar. 14, 2003, <http://www.wsws.org/articles/2003/mar2003/mex-m14.shtml>.

240. *Vicente Fox*, *supra* note 238.

relations between the neighboring countries.²⁴¹ However, with the increasingly hostile rhetoric about immigration the obstacles for the countries grow higher.²⁴² For some Mexican officials, the immigration issue has become less about reform and more about racial intolerance and bigotry, which may lead to slow progress and deteriorating relationships between countries.²⁴³

In Mexico, Fox enjoyed enormous popularity and relative economic success.²⁴⁴ During his tenure as president, he created over one million new jobs in Mexico and saw an increase in salary-based workers.²⁴⁵ Additionally, due in some part to measures taken by the Fox administration, the Human Development index of Mexico increased.²⁴⁶ This index measures life expectancy, literacy, education, and standard of living.²⁴⁷ With Mexico's index level rising to that of other highly developed nations, President Fox perhaps fulfilled part of his promise to make Mexico a more desirable place to live.²⁴⁸

When directly addressing immigration reform or "The Whole Enchilada," President Fox was determined to seek long lasting and effective solutions.²⁴⁹ As part of this reform plan, Mexico pushed the United States to legalize immigrants within the states and to create temporary work programs for those who wish to enter the country to seek employment.²⁵⁰ Additionally, Mexico started playing a

241. Andres Oppenheimer, *Bush's Proposal for Immigration Reform Misses the Point*, MIAMI HERALD, Jan. 8, 2004, at 10A (comparing the relationships between the United States and Mexico to the member nations of the European Union).

242. Corchado, *supra* note 6, at A-1.

243. *Id.* (reporting that Vicente Fox admitted, during his recent trip to Irving, that he was unsuccessful in convincing his friend, and current Mayor of Leon, Mexico, to cancel the trip - Irving and Leon are sister cities - and Fox noted that the recent detentions in Irving are "no way of treating a sister city.").

244. *Id.*

245. See Enrique Andrade Gonzáles, *The Final Days of Mexican President Vicente Fox*, MEXIDATA, Aug. 28, 2006, <http://mexidata.info/id1022.html> (noting that while Fox was unable to keep many of his promises to the Mexican people, he did keep inflation rates low and the economy was healthy when he left office).

246. UNITED NATIONS DEV. PROGRAMME, HUMAN DEVELOPMENT REPORTS, MEXICO: THE HUMAN DEVELOPMENT INDEX - GOING BEYOND INCOME (2007/2008), http://hdrstats.undp.org/countries/country_fact_sheets/cty_fs_MEX.html.

247. *Id.*

248. Gonzáles, *supra* note 245.

249. John Ross, *All Eyes on May Day: A Real Day Without Mexicans?*, COUNTERPUNCH, Apr. 17, 2006, <http://www.counterpunch.org/ross04172006.html>.

250. *Id.*

significant role in breaking up drug trafficking rings in Mexico – groups that are largely responsible for transporting illegal immigrants into the United States.²⁵¹

Now, however, former President Fox has become increasingly critical of United States immigration policy.²⁵² A strong advocate of work-visa programs, Fox supported Bush's failed reform bill.²⁵³ The new local and state laws come partially as a result of the failure, according to Fox.²⁵⁴ In an October 2007 meeting in Irving, Texas, Fox spoke to a crowd of people and denounced recent local efforts to battle illegal immigration as the United States "denying its immigrant soul."²⁵⁵ In an effort to assuage fears that there is no end in sight to the number of illegal immigrants crossing the border, Fox said that Mexico wishes to have its own people come back to the country to help Mexico prosper.²⁵⁶

Current Mexican President Felipe Calderon has also expressed displeasure about the present state of immigration policy in the United States.²⁵⁷ He recently stated that true immigration reform must start by creating more jobs in Mexico.²⁵⁸ He noted that many Mexican villages are losing young able-bodied people to the United States, which leaves places such as his home state of Michoacan "pueblos where old people live alone."²⁵⁹ Although President Calderon acknowledges that the United States faces extreme pressure to reform current immigration policy, leading politicians to pass legislature like the Secure Fence Act, he suggested that Mexico focus on domestic improvement instead of merely echoing U.S. policy.²⁶⁰ For example, when addressing the United States' decision to move ahead with building the border fence, President Calderon said he understood the need for the United States to focus on border security, but that

251. See Alfredo Corchado & Laurence Iliff, *Mexico is Reducing Killings, Drug Supply*, DALLAS MORNING NEWS, at 1A (finding that by using new technologies, Mexican officials have been able to crack down on drug smuggling along the border).

252. Dianne Solis, *Ex-Mexico President Fox Criticizes Irving's Immigration Stance*, DALLAS MORNING NEWS, Oct. 13, 2007, <http://www.dallasnews.com/sharedcontent/dws/news/nationworld/stories/101307dnintfox.32a6418.html> (reporting on Fox's public criticisms in response to recent deportations in Irving, Texas).

253. See Dellios, *supra* note 6, at 11 (finding that current officials in Mexico agree with Bush's plan to develop a guest worker program).

254. Solis, *supra* note 252.

255. Corchado, *supra*, note 6, at A-1 (noting that Fox "pointed to the controversy in Irving, where police are working with federal immigration officials in a crackdown against illegal immigrants, a policy resulting in 'repression and unjustified fear.'").

256. Solis, *supra* note 252.

257. Corchado, *supra* note 6, at A-1.

258. Baker, *supra* note 51, at A-09.

259. Elaine Quijano, *Bush Promises Push for Immigration Reform*, CNN, Mar. 14, 2007, <http://www.cnn.com/2007/WORLD/americas/03/13/bush.mexico/index.html>.

260. Baker, *supra* note 51, at A-09.

it would be better for Mexico to build “a kilometer of highway in Michoacan or Zacatecas than 10 kilometers of walls in the border.”²⁶¹ Nonetheless, Calderon re-asserted his commitment to passing comprehensive immigration reform within Mexico.²⁶²

Mexico already has tough immigration measures in effect.²⁶³ Many people point to Mexico’s existing immigration laws, as found in the Mexican Constitution, as a great example of its strong immigration policy.²⁶⁴ The Mexican Constitution defines Mexican nationals as people who are “born in the territory of the Republic, regardless of the nationality of their parents” or those who are “born in a foreign country of Mexican parents.”²⁶⁵ The Constitution further defines a foreigner as a person who does not meet the criteria of a Mexican National and defines a Mexican citizen as someone who is a national, but has also reached the age of eighteen and has an honest means of earning a livelihood.²⁶⁶ The Constitution then states that:

Mexicans shall have priority over foreigners under equality of circumstances for all classes of concessions and for all employment, positions, or commissions of the Government in which the status of citizenship is not indispensable. In time of peace no foreigner can serve in the Army nor in the police or public security forces.²⁶⁷

This strong stance becomes important as Mexico plays a key role in preventing illegal crossings from South America through Mexico and ultimately into the United States.²⁶⁸ Mexico’s constitution provides separate definitions for

261. *Id.*

262. *See* Corchado, *supra* note 6, at A-1.

263. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, tit. I, chs. II, III, VI, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.) (defining individuals considered to be Mexican along with the rights and freedoms they may enjoy, defining foreigners, and defining Mexican citizenship); *see* MICHAEL WALLER, INST. OF WORLD POLITICS, MEXICO’S GLASS HOUSE: HOW THE MEXICAN CONSTITUTION TREATS FOREIGN RESIDENTS, WORKERS AND NATURALIZED CITIZENS (2006), http://www.iwp.edu/news/newsID.267/news_detail.asp (noting that the Mexican constitution is particularly unfriendly towards non-citizens or suspected illegal immigrants).

264. WALLER, *supra* note 263.

265. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, tit. I, ch. II, art. 30, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.).

266. *Id.* tit. I, ch. III, art. 33; *id.* tit. I, ch. IV, art. 34.

267. *Id.* tit. I, ch. I, art. 32.

268. *See Mexican Commandos Seek Control of Border: U.S.-trained Zetas Behind Wave of Violence Killing Hundreds Over Drug, Smuggling Routes*, WORLDNETDAILY, May 31, 2005, http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=44519 (reporting that rival Mexican gangs are often fighting each other for control of the southern border that Mexico shares with Guatemala to gain control of drug and human trafficking routes, and that the United States Border Patrol has deployed agents to help train Mexican officials to regain control of the border).

immigrants and naturalized citizens because the constitution allows Mexican citizens to arrest “lawbreakers (i.e., illegal immigrants) and hand them to the authorities.”²⁶⁹

Despite strong national immigration laws and promises to redirect policy, Mexico appears to be undermining efforts by the United States to slow down illegal immigration, most notably by the issuance of Matricula identification cards.²⁷⁰ The Mexican grassroots effort to promote the Matricula Consular has also become an area for concern.²⁷¹ Matricula consular refers to identification cards that are readily available in Mexico.²⁷² Unlike visas, these cards do not have the fingerprint of the person carrying them, nor are they as stringently regulated as other forms of identification.²⁷³ Matricula cards are not a form of legal identification to be used in the United States, but have been accepted as a basis for opening a bank account, obtaining a mortgage, or even getting a driver’s license.²⁷⁴ Thus, Matricula cards have the most value for illegal immigrants in the United States.²⁷⁵ A person illegally crossing the border without proper documentation, if caught, would have to give Immigration and Customs Enforcement his fingerprint, which would permanently flag him within the system.²⁷⁶

People using a Matricula card actually do not guarantee any information about themselves, including their name, as the process for obtaining matricula cards provides very few safeguards against fraud.²⁷⁷ The problem with this identification system arises when Mexican officials campaign for the program within the United States.²⁷⁸ These cards may open the doors to receiving many public benefits under the guise of being official documentation of citizenship, but they are not a substitute for actual visas or work permits.²⁷⁹

269. WALLER, *supra* note 263.

270. McCraw, *supra* note 13 (stating that Mexico has pushed for greater acceptance of Matricula cards in the United States, but that the process through which the cards are obtained does not adequately ensure the identity of the carrier).

271. DINERSTEIN, *supra* note 13, at 5.

272. McCraw, *supra* note 13.

273. *Id.*

274. DINERSTEIN, *supra* note 13, at 5 (noting that thirteen states allow a person to obtain a driver’s license using a matricula card).

275. *Id.* at 6 (noting that illegal Mexican immigrants carrying matricula cards are less likely to be arrested, detained, or deported, and run a lower risk of being fingerprinted or undergoing a criminal background check; instead, they are more likely to be cited and released for minor violations).

276. *See* McCraw, *supra* note 13.

277. *Id.*

278. *Id.*

279. *See* DINERSTEIN, *supra* note 13, at 5.

Notwithstanding the areas of concern that have already been addressed, there has been progress.²⁸⁰ The growing acceptance of the Matrícula card has helped Mexico move toward the goal it hoped to achieve – a sort of quasi-legal status for the undocumented population in areas where the card is widely accepted.²⁸¹ There has also been cooperation between officials in Mexico and the United States to crack down on border violence and security as well as gang violence within Mexico.²⁸² Finally, Mexico has remained committed to improving domestic job opportunities and economic strength and continues to communicate and cooperate with the United States about future reform.²⁸³

The Mexican economy benefits tremendously from the illegal migration from Mexico to the United States.²⁸⁴ Many immigrants working in the United States send money back to their family members still in Mexico.²⁸⁵ It is estimated that in 2006, immigrants working in the United States sent 23 billion dollars back to Mexico, making remittances the second largest source of foreign income.²⁸⁶ A large portion of the money being sent back to Mexico helps improve poor areas by becoming a source of funding for things like water treatment plants and road repair.²⁸⁷ A recent article noted that for the first half of 2007, remittances had not increased from the year before.²⁸⁸ Some of the cited causes for the leveling off of remittances are immigrants feeling

280. *See id.* at 4-5.

281. *Id.*

282. *See* Jane Morse, *U.S. Border Patrol Agents Must Enforce Laws, Provide Aid*, AMERICA.GOV, Sept. 25, 2007, <http://www.america.gov/st/washfile-english/2007/September/20070925164139ajesroM0.1921656.html#> (finding that United States Border Patrol agents work with Mexican officials, both federal and local, to secure the border and detain people trying to cross the border illegally).

283. Foreign Policy Ass'n, *GDTV 2007 Transcript - The Future of U.S.-Mexico Relations*, http://www.fpa.org/topics_info2414/topics_info_show.htm?doc_id=443905 (showing that the panel interviewed in the transcript agreed that migration policy would continue to be a part of President Calderon's overall agenda in Mexico; however, there was disagreement about how large a role the issue would be. It was noted that Calderon does not have the same openly warm and supportive attitude as former President Fox. The panel also noted that Calderon may be a weak president in terms of his ability to institute policy because he does not enjoy majority support within the Mexican Congress).

284. *See* Julia Preston, *Fewer Mexican Immigrants Are Sending Money Back Home, Bank Says*, N.Y. TIMES, Aug. 9, 2007, at A10.

285. *See generally* RAÚL HERNÁNDEZ-COSS, WORLD BANK, *THE U.S.-MEXICO REMITTANCE CORRIDOR: LESSONS ON SHIFTING FROM INFORMAL TO FORMAL TRANSFER SYSTEMS* 9 (2005) (providing a comprehensive overview of remittances by migrant workers as they apply to the U.S. and Mexico).

286. Preston, *supra* note 284, at A-10.

287. *Id.*

288. *Id.*

unwelcome in the United States, experiences of prejudice, as well as growing fears of deportation.²⁸⁹

Considering the significant role that remittances play in the Mexican economy, it is hardly surprising that the Mexican government would not have strong motivation to change current policy.²⁹⁰ But this is exactly what Former President Fox had vowed to do, and although he is no longer the president of Mexico, he continues to campaign strongly in the United States on the topic of immigration.²⁹¹ Not only does he wish to “expand [Mexico’s] economic growth so it is not necessary for people to seek work and benefits across the border,” but also to promote “the establishment of a new system that regulates the movement of people across [the] border in a manner which is legal, safe and orderly.”²⁹²

There are both positive and negative consequences of illegal immigration in Mexico, as evidenced in the economic boost gained from remittances and the hardships that small towns face when losing members of younger generations.²⁹³ And yet, in years past, leaders in Mexico have said again and again that they remain committed to working with the United States to make new policy.²⁹⁴ However, the earlier enthusiastic and positive rhetoric is now intermingled with strong condemnations of recent reforms in the United States, namely the Secure Fence Act as well as local and state ordinances.²⁹⁵ Instead of working together, it seems like Mexico and the United States are content to *talk* about partnership while actually aggravating the process in practice.²⁹⁶

Mexico’s participation in the North American Free Trade Agreement (NAFTA), implemented in 1994 and set to be completed in 2008, which aims to eliminate most trade barriers between the United States, Mexico and Canada, has also played a prominent role in the increased number of illegal immigrants entering the United States.²⁹⁷ NAFTA was designed, in part, to strengthen the Mexican economy through open and tariff-free trade, the creation of new employment opportunities, and by improving working conditions and standards of living.²⁹⁸ In the area of job creation and agriculture, the agreement has had a

289. *See id.*

290. Dellios, *supra* note 6 (noting that some of the promised reforms made by Mexican officials “clash with [the] long-held positions and actions” of Mexico).

291. Corchado, *supra* note 6, at A-1.

292. Vicente Fox, *supra* note 238.

293. Corchado, *supra* note 6, at A-1.

294. *Id.*

295. *See* Secure Fence Act of 2006, Pub. L. No. 109-367, 120 Stat. 2638 (2006); *see* H.B. 1804, 51st Leg., 1st Reg. Sess. (Okla. 2007).

296. Corchado, *supra* note 6, at A-1.

297. *See* Bybee & Winter, *supra* note 15.

298. North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289, at 297 (1993). [hereinafter NAFTA].

huge impact on the Mexican economy, but not always a positive one.²⁹⁹ While NAFTA's original intent was to drive up wages and productivity in Mexico, the actual effects have been different, as some workers have experienced worsening labor conditions and lower wages while small farm owners have seen large financial losses.³⁰⁰

Some experts have noted that free trade has crippled parts of the Mexican labor industry.³⁰¹ Studies suggest that while there has been net growth in the number of jobs, notably in the maquiladora (factory) sector, the working conditions in Mexican factories are pitiful and the wages are still very low.³⁰² Additionally, many of these same jobs are being outsourced to China, where goods may be produced even more cheaply.³⁰³ The Carnegie Endowment Society reported that there "has also been a decline in domestic manufacturing employment, related in part to import competition and perhaps also to the substitution of foreign inputs in assembly operations."³⁰⁴ Almost a third "of the jobs that were created in the maquiladora assembly plants in the 1990s have since disappeared."³⁰⁵

The agricultural sector of Mexico has also been hit hard by NAFTA.³⁰⁶ The treaty, by definition, opened up trade between the United States and Mexico and eliminated import and export tariffs.³⁰⁷ This effectively puts Mexican and American farms and businesses in direct competition with each other.³⁰⁸ As a result of the promise of prosperity, government farm assistance and investment

299. See HILL, *supra* note 14.

300. Bybee & Winter, *supra* note 15 (noting that big companies such Wal-Mart are now free to construct stores and compete for business in Mexico).

301. See CARLOS MARENTES, COMM. FOR GEN. AMNESTY & SOC. JUSTICE, NAFTA AND IMMIGRATION: STOP THE FINAL PHASE 2 (2007).

302. Bybee & Winter, *supra* note 15.

303. See Sandra Polaski, *Mexican Employment, Productivity and Income a Decade After NAFTA*, Brief Submitted to the Canadian S. Comm. on Foreign Affairs, Feb. 25, 2004, at 1, available at <http://www.carnegieendowment.org/pdf/files/canadasenatebrief.pdf>.

304. *Id.*

305. *Id.*

306. *Id.* (finding that:

Mexican agriculture has been a net loser in trade with the United States, and employment in the sector has declined sharply. U.S. exports of subsidized crops such as corn have depressed agricultural prices in Mexico. The rural poor have borne the brunt of adjustment to NAFTA and have been forced to adapt without adequate government support.).

307. See generally NAFTA, *supra* note 298 (implementing a series of measures that would eliminate existing tariffs and which would prevent signatories from creating new tariffs on imports and exports between them).

308. Bybee & Winter, *supra* note 15.

also began to decrease.³⁰⁹ The result has been disastrous for the poorest people living in Mexico.³¹⁰ Unfortunately, a substantial portion of the agriculture industry in Mexico is comprised of small farms.³¹¹ These small farms do not have the resources to effectively compete with American powerhouse farms and corporations.³¹² Thus, millions of farmers, farm workers, and their families have been driven out of business, into poverty and, in many cases, into the United States illegally.³¹³ Mexican peasants have begun to fear NAFTA as the failure of small farms means the end of personal income, and more disturbingly, the end of food to eat.³¹⁴ With no food and no jobs, poor peasants face the unenviable choice of staying and living in squalor, moving to larger cities where they would present limited skill sets to potential employers, or crossing into the United States where farm workers are needed.³¹⁵

There are many positive results stemming from the NAFTA treaty, but one negative consequence is the increase in illegal immigration into the United States.³¹⁶ As noted earlier, many illegal immigrants work in low-skilled labor sectors in the United States such as farming and factory work – the same areas heavily hit by NAFTA policy.³¹⁷ When the loss of jobs forces many immigrants to leave their hometowns to enter the United States, they often move into familiar work sectors.³¹⁸ Sadly, these areas have also become the focus of investigations of abuse, poor working conditions, and forced labor.³¹⁹ Poor and

309. See Polaski, *supra* note 303, at 1.

310. See *Id.*

311. See HILL, *supra* note 14 (finding that by the end of 2004 there were “6.8 million unemployed agricultural workers in Mexico.”); WOMEN’S EDGE COAL., NAFTA AND THE FTAA: IMPACT ON MEXICO’S AGRICULTURE SECTOR 1 (2003) (finding that when NAFTA was first being discussed between the signatories, there were three million corn producers in Mexico).

312. See Bybee & Winter, *supra* note 15 (noting that the service sector rules of NAFTA allow firms like Wal-Mart to enter the Mexican market and sell low priced goods made by cheap labor in China).

313. *Id.*

314. *Mexican Farmers Say Don’t Implement Next NAFTA Phase!*, PEOPLES’ GLOBAL ACTION, Nov. 17, 2002, http://www.nadir.org/nadir/initiativ/agp/free/mexico/2002/1122farmers_nafta.htm.

315. See MARENTES, *supra* note 303, at 2.

316. HILL, *supra* note 14.

317. *Id.*

318. *Id.*

319. *Five Recent Cases*, *supra* note 34 (noting that of these five cases, all occurring in Florida, most involved farm workers. One particular case focused on two brothers who came to Florida to make a better wage. They ended up picking tomatoes and received fifteen dollars for ten hours of work – though they were promised one hundred fifty dollars. Their employer said that the extra money went to paying for food, their smuggling fee and rent. At the end of the day, the two brothers shared a trailer with twenty-two other workers. The two men responsible for the working and living conditions were convicted on grounds of smuggling workers and involuntary servitude).

unskilled Mexican peasants come to the United States looking for employment but end up working under equally poor conditions and are afraid to seek help from authorities due to their illegal status.³²⁰

In 2008, the implementation of the NAFTA treaty will be complete.³²¹ Already the United States and Mexico have expressed their intent to further develop the scope of trade liberalization.³²² In 2005, Mexico, the United States, and Canada formed the Security and Prosperity Partnership (SPP).³²³ The stated objective of this group is to provide “the framework to ensure that North America is the safest and best place to live and do business. It includes ambitious security and prosperity programs to keep our borders closed to terrorism yet open to trade.”³²⁴ Essentially, the partnership would work to expand free trade but implement measures in all three countries that would tighten border security.³²⁵ The partnership not only targets the United States – Mexico border, but includes every border of each of the three countries.³²⁶ This seems to be directed at Mexico as Canada borders only one country, and the United States borders two, and each of those countries are part of the agreement.³²⁷

Many groups fear that extending these policies and further opening the door of free trade will make a bad problem even worse, with some going so far as to accuse the United States of trying to form a North American version of the European Union.³²⁸ Many of these same unhappy individuals note that the proposed measures of the SPP would increase illegal immigration by creating uniform measures for opening the border to the free movement of both people and goods.³²⁹ These measures, they fear, will also open the border to more

320. *Id.*

321. NAFTA, *supra* note 298.

322. See Press Release, White House, Security and Prosperity Partnership of North America Prosperity Agenda (Mar. 23, 2005), <http://www.whitehouse.gov/news/releases/2005/03/20050323-1.html>.

323. *Id.*

324. Security and Prosperity Partnership, <http://www.spp.gov/> (last visited Mar. 15, 2008).

325. *North American Leaders Unveil Security and Prosperity Partnership*, AMERICA.GOV, Mar. 23, 2005, <http://www.america.gov/st/washfile-english/2005/March/20050323130436ASrelliM0.1463282.html>.

326. *Id.*

327. *Tancredo: Halt 'Security and Prosperity Partnership'*, WORLDNETDAILY, Oct. 9, 2006, <http://www.america.gov/st/washfile-english/2005/March/20050323130436ASrelliM0.1463282.html> [hereinafter *Tancredo*] (reporting that Colorado Representative Tom Tancredo believes that the Act will further complicate immigration because it seeks to streamline border patrol, and he has condemned the SPP as designed to make North America more like the European Union).

328. *Id.*

329. *Id.*

smugglers of illegal immigrants.³³⁰ At the very least, this agreement, which is the natural successor to NAFTA, will likely continue those policies which are damaging to the poorest citizens of Mexico and increase illegal immigration into the United States.³³¹

Many critics of free trade policies argue that NAFTA measures are largely responsible for the increasing number of illegal immigrants entering the United States from Mexico.³³² Regardless of this criticism, both the United States and Mexico have expressed interest in implementing more measures that would likely have the same effect.³³³ Thus, while states and national governments complain and labor over reform measures meant to slow illegal immigration, two of the three bodies continue to pursue policy that would exacerbate the problem.³³⁴ It would be overly simplistic to say that, because NAFTA measures add to immigration problems, all policy concerning NAFTA should be halted.³³⁵ If both national governments wish to make substantial change in this area, they will have to at least acknowledge the negative fallout of NAFTA in the area of illegal immigration.³³⁶

VI. CONCLUSION

No matter how large or influential, no one government or organization can practically solve all of the problems resulting from illegal immigration, ranging from economic and legal concerns, to humanitarian and equal rights issues.³³⁷ The United States Congress, aware of the growing dissatisfaction among the states and the public, attempted to craft new legislation to address the areas of greatest reform.³³⁸ But when those efforts stalled and ultimately failed, city and state governments decided to make their own laws.³³⁹ Oklahoma's new immigration bill seems to be establishing the benchmark for other states to

330. *Id.*

331. Bybee & Winter, *supra* note 15.

332. *Tancredo*, *supra* note 327.

333. *Id.*

334. HILL, *supra* note 14; *NAFTA's Role in Fueling Illegal Immigration to US*, SCOOP, May 31, 2006, <http://www.scoop.co.nz/stories/HL0605/S00446.htm> [hereinafter *NAFTA's Role*] (interviewing Jeff Faux, the founder of the Economic Policy Institute, and noting that "before the North American Free Trade Agreement, illegal immigration from Mexico was less than half of what it is now.").

335. *NAFTA's Role*, *supra* note 334 (indicating that when entering into NAFTA, the United States did not consider how the treaty would affect the Mexican people).

336. *Id.*

337. See H.B. 1804, 51st Leg., 1st Reg. Sess. (Okla. 2007); see Secure Fence Act of 2006, Pub. L. No. 109-367, 120 Stat. 2638 (2006); see NAFTA, *supra* note 299.

338. *Key Players*, *supra* note 40.

339. Okla. H.B. 1804.

follow.³⁴⁰ While it is still too early to know exactly what the ultimate fate of the OTCPA will be, it is arguable that regardless of the bill's ability to survive judicial scrutiny, the legislation will be successful.³⁴¹ As noted in this comment, the OTCPA has already set off a domino effect, inspiring surrounding states to adopt similar measures.³⁴² If this new form of immigration legislation survives, those who crafted the new laws will feel successful.³⁴³ If the OTCPA is ultimately struck down on constitutional grounds, specifically on the basis of federal preemption, it may still be viewed as a success as it has, once again and with tremendous force, thrust the issue of comprehensive immigration reform back onto the desks of United States policymakers.³⁴⁴

The problem with this strong-arm tactic is its effect on the relationship between states, the burden it places on the courts, and the strain it creates between the United States and Mexico.³⁴⁵ As the *Hazleton* court noted, state governments do not consider the same factors as Congress when drafting immigration law.³⁴⁶ They do not consider foreign policy with Mexico nor do they particularly mind if neighboring states find themselves suddenly saddled with thousands of new illegal immigrants.³⁴⁷ Instead they are focused on solving problems within their own borders and sending a message to Congress that better results are needed.³⁴⁸

Meanwhile, Congress continues to attempt to reform immigration one step at a time, whether the goals are realistically attainable or not.³⁴⁹ Congress' Secure Fence Act, even if it were fully funded and accomplished soon, cannot practically halt all illegal border crossings, nor does it do anything to address other very big problems such as devising an easier way to immigrate to the United States, the future of illegal immigrants already within the country, abusive business practices, work visas, or amnesty.³⁵⁰

340. Harper, *supra* note 71, at A-1.

341. *See supra* § III.

342. *Id.*

343. Harper, *supra* note 71, at A-1.

344. *See Key Players, supra* note 40; Okla. H.B. 1804.

345. *See generally* Lozano v. City of Hazleton, 496 F. Supp. 2d 477 (D. Pa. 2007) (standing as an example of how intricate and extensive courts' reasoning must be when considering such legislation).

346. *See id.* at 521-24.

347. *See* Harper, *supra* note 71, at A-1.

348. *See* Okla. H.B. 1804.

349. *See Key Players, supra* note 40; Secure Fence Act of 2006, Pub. L. No. 109-367, 120 Stat. 2638 (2006).

350. Secure Fence Act of 2006, Pub. L. No. 109-367, 120 Stat. 2638 (2006); *see* H.B. 1804, 51st Leg., 1st Reg. Sess. (Okla. 2007).

On the other side of the fence, Mexican officials continue to support reform in the United States, but make very little progress addressing economic and agricultural problems within their own country.³⁵¹ They also exacerbate the problem by doing things like campaigning for more states to accept Matricula cards, or condemning cities' efforts to check the legal status of people being held in jail, as well as deporting those who are illegal.³⁵²

Finally, NAFTA has created an agricultural conundrum in Mexico, leading to higher rates of illegal immigration into the United States, yet both the governments of the United States and Mexico effectively ignore these negative effects.³⁵³ Absent real and practical immigration policy change, a better approach is to stop blocking the way for any one group to make progress.

351. See *Vicente Fox*, *supra* note 238.

352. See *Corchado*, *supra* note 6, at A1; see *DINERSTEIN*, *supra* note 13, at 1.

353. See *NAFTA*, *supra* note 298.

