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No More Band-Aid Solutions: Improving Immigration Reform by Addressing the Root Causes of Mexican Migration and Refining Foreign Direct Investment

Molly E. Kammien

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No More Band-Aid Solutions

IMPROVING IMMIGRATION REFORM BY ADDRESSING THE ROOT CAUSES OF MEXICAN MIGRATION AND REFINING FOREIGN DIRECT INVESTMENT

INTRODUCTION

The root causes of migration are nuanced and complicated. People choose to migrate for numerous reasons including pleasure, poverty, unemployment, war, and exploitation.¹ While migration has almost always been a popular topic in the United States, very few Congressional conversations about immigration reform have addressed the root causes of migration.² The most recent comprehensive immigration bills from 2013 passed in the Senate, S. 744, and introduced in the House of Representatives, H.R. 15, are now “effectively dead.”³ However, like most bills in the past, neither devoted any substantial portion to addressing the push factors⁴ that cause undocumented migrants to come to the United States. Instead, the bills focus intently on reactive solutions for dealing with

¹ U.N. Secretary-General, *International Migration and Development: Rep. of the Secretary General*, 18-19, U.N. Doc. A/68/190 (July 25, 2013).

[Some people] are compelled to move owing to poverty, violence and conflict, or environmental changes, and many face exploitation, abuse and other human rights violations along the way. . . . Changes in global production coupled with the globalization of labour markets continue to drive the international movement of labour. . . . For growing numbers of young people, migration represents the only viable strategy to find gainful employment.

Id.

² See *infra* Part II.A (explaining past immigration laws and their weaknesses).

³ See David Nakamura & Ed O’Keefe, *Immigration Reform Effectively Dead Until After Obama Leaves Office, Both Sides Say*, WASH. POST (June 26, 2014), http://www.washingtonpost.com/politics/immigration-reform-deal-now-unlikely-until-after-obama-leaves-office-both-sides-say/2014/06/26/945d1210-fc96-11e3-b1f4-8e77c632c07b_story.html.

⁴ See *Migration Trends*, BBC GCSE BITESIZE, http://www.bbc.co.uk/schools/gcsebitesize/geography/migration/migration_trends_rev2.shtml (last visited Jan. 8, 2015) (providing a list of “push” and “pull” factors, the factors that contribute to migration). Some push factors include war, poverty, and environmental harm, and some pull factors include higher employment and wages and political stability. *Id.*

migrants already in or making their way to the United States.⁵ These reactive solutions, like building a border fence and improving E-Verify systems, will not solve undocumented immigration in the long run. Instead, Congress needs “to move beyond piecemeal enforcement-only policies to address the core reasons for migration—legal and not—to the United States.”⁶

Lack of employment is one of the strongest push factors encouraging migrants to make the often-dangerous trek from Mexico to the United States.⁷ Studies have shown that “Mexican migration to the United States is primarily a result of inadequate employment opportunities in Mexico.”⁸ Therefore, addressing the employment problems in Mexico could significantly alter the movement of people northward to the United States.⁹ By increasing sustainable job opportunities and social initiatives, United States companies can reap the benefits of the growing Mexican economy and available labor force, while Mexican communities can secure long-term community gains from foreign direct investment.¹⁰

The United States “has a passionate love/hate relationship with undocumented immigrants[,]” who both give and take from the communities in which they live.¹¹ In the United States, “[u]ndocumented immigrants contribute to the economy through consumption, taxes, and the labor market and are especially helpful to small businesses trying to hold down labor costs.”¹² The

⁵ See S. 744, 113th Cong. (2013); see also H.R. 15, 113th Cong (2013).

⁶ Kevin R. Johnson, *Ten Guiding Principles for Truly Comprehensive Immigration Reform: A Blueprint*, 55 WAYNE L. REV. 1599, 1607 (2009). “The nation needs leadership to bring forth meaningful immigration reform that squarely addresses the core issues of modern immigration in an era of globalization.” *Id.* at 1608.

⁷ See MICHAEL GRAYBEAL, MEXICO’S ECONOMIC POLICY AND MIGRATION: DEALING WITH THE CAUSES: REPORT OF CENTER FOR STRATEGIC & INTERNATIONAL STUDIES 1 (May 2011), available at http://csis.org/files/publication/110509_Graybeal_MexicoEconPolicy_Web.pdf; see also Johnson, *supra* note 6, at 1609. A recent publication reported that over 6,000 migrants died on the trek on the U.S.-Mexico border between 1998-2013. INT’L ORG. FOR MIGRATION, FATAL JOURNEYS: TRACKING LIVES LOST DURING MIGRATION 54 (2014), available at <http://www.iom.int/files/live/sites/iom/files/pbn/docs/Fatal-Journeys-Tracking-Lives-Lost-during-Migration-2014.pdf>.

⁸ Graybeal, *supra* note 7.

⁹ See Damien Cave, *For Migrants, New Land of Opportunity Is Mexico*, N.Y. TIMES (Sept. 21, 2013), http://www.nytimes.com/2013/09/22/world/americas/for-migrants-new-land-of-opportunity-is-mexico.html?pagewanted=all&_r=0. Cave reports that as Mexico’s economic growth has increased since 2011, “Mexican migration to the United States has reached an equilibrium, with about as many Mexicans moving north from 2005 to 2010 as those returning south.” While no one factor has affected these numbers, the article insinuates that the economic growth and investment in Mexico is a factor in decreased migration. *Id.*

¹⁰ See *infra* Part IV.

¹¹ Marisa Silenzi Cianciarulo, *Can’t Live With ‘Em, Can’t Deport ‘Em: Why Recent Immigration Reform Efforts Have Failed*, 13 NEXUS 13, 13 (2008).

¹² Natalya Shatniy, *Economic Effects of Immigration: Avoiding Past Mistakes and Preparing for the Future*, 14 SCHOLAR 869, 871 (2012) (citing Gene Cubbison,

costs of immigration are seen most prominently in healthcare (because many undocumented immigrants are uninsured), in education (if an undocumented immigrant does not pay taxes), and in the criminal justice system.¹³

The United States depends on immigrants. The United States workforce is more skilled, aging, and shrinking, and few citizens want to fill labor-intensive jobs like construction or agriculture.¹⁴ However, immigration laws have not caught up with this increased need for labor. Very few people qualify for legal status under the current immigration system because of “unreasonable quotas and lack of avenues for legal unskilled immigrant labor.”¹⁵ While new programs like Deferred Action for Childhood Arrivals (DACA) help to some degree by providing temporary work permits to some undocumented young people,¹⁶ a huge overhaul will be needed to meet the current United States workforce needs.¹⁷

This note proposes that Congress revise the current immigration reform bills to address the root causes of Latin American migration, specifically from Mexico, in order to make proactive policy with long-term solutions. Part I explores employment as a recognized root cause of migration in North America and migration trends between Mexico and United States over the past few decades. Part II reviews several past and current immigration bills, with a focus on the pitfalls of S. 744’s and H.R. 15’s reactive approaches to immigration. Part III addresses various foreign investment initiatives in Mexico and beyond. It also looks at development and investment initiatives as a way to increase employment opportunities in Mexico and to support long-term economic growth for Mexico and benefits for United States companies investing there.

Illegal Immigrant Costs, Benefits Disputed, NBC 7 SAN DIEGO (May 3, 2010, 1:04 PM), <http://www.nbcsandiego.com/news/politics/Illegal-Immigrant-Costs-Benefits-Disputed—92549134.html>. Shatniy discusses the pros and cons of undocumented immigrants on United States’ society and presents amnesty as the solution to the immigration “problem.”

¹³ See *id.* at 884-86.

¹⁴ See Silenzi Cianciarulo, *supra* note 11, at 13-14.

¹⁵ *Id.* at 21. “Considering that the only visa system in place to fill unskilled labor needs is available to fewer than 200,000 workers, it is clear that current immigration laws are not aligned with current workforce demographics.” *Id.* at 22.

¹⁶ See *Deferred Action for Childhood Arrivals*, U.S. DEP’T OF HOMELAND SEC. (July 2, 2013), <http://www.dhs.gov/deferred-action-childhood-arrivals#0>. Under the program, DHS will use prosecutorial discretion to defer any action against certain undocumented individuals for two years, subject to renewal, who meet criteria such as being under 31 years old as of June 15, 2012, coming to the United States before turning 16 years old, and continuously residing in the United States since June 15, 2007.

¹⁷ See Silenzi Cianciarulo, *supra* note 11, at 13-14.

Finally, Part IV suggests changes to the current immigration bills to direct the focus toward increasing foreign investment initiatives to spur job creation in Mexico. Through this job creation, migration between the United States and Mexico could return to a more “circular” (or cyclical) pattern¹⁸ or decrease the need for the current numbers of unauthorized migrants to come to the United States seeking jobs. By using current foreign direct investment initiatives as tools for positive social change, Mexico and the United States can create a trade relationship that decreases the “forced” nature of migration that currently exists due to poor economic conditions in parts of Mexico, and, with other immigration reforms, allows migrants to *choose* when and how long to migrate north.

I. MIGRATION BETWEEN MEXICO AND THE UNITED STATES

A. *Employment as a Root Cause of Migration*

Since the beginning of human civilization, people have moved for a multitude of reasons.¹⁹ In the past century, the search for employment has been a particularly powerful migratory force, especially in Latin America where the decision to migrate often ties closely to the availability of jobs in the United States.²⁰ Therefore, the lack of “adequate legal avenues for migration of workers creates huge incentives for undocumented migration that some of the most draconian enforcement schemes—including those that increase the likelihood of death—have failed to deter.”²¹

Migration for labor is usually seen as a temporary solution.²² Many people plan to stay for a few months or years to save money then return home. However, the United States immigration policy often prevents this circular migration from occurring.²³ Instead of returning home, many migrants feel

¹⁸ Circular migration is the “repetitive migration to the destination country, return to the home country, and migration again.” Alyson L. Dimmitt Gnam, Comment, *Mexico’s Missed Opportunities to Protect Irregular Women Transmigrants: Applying a Gender Lens to Migration Law Reform*, 22 PAC. RIM. L. & POL’Y J. 713, 715 n.20 (2013).

¹⁹ See Richard A. Boswell, *Crafting True Immigration Reform*, 35 WM. MITCHELL L. REV. 7, 34 (2008). “Human beings have been on the move since the beginning of time. . . . [T]he forces [of migration] include, but are not limited to, family unification, economic advancement, and political strife.” *Id.*

²⁰ See Johnson, *supra* note 6, at 1611.

²¹ *Id.* at 1609.

²² See Gabriela Diaz & Gretchen Kuhner, Migration Policy Inst., *Women Migrants in Transit and Detention in Mexico*, MIGRATION INFO. SOURCE (Mar. 2007), <http://migrationpolicy.org/article/women-migrants-transit-and-detention-mexico>.

²³ See Dimmitt Gnam, *supra* note 18, at n.20.

forced to stay in the United States for fear of not being able to regain entry to work in the future.²⁴ Returning to a pattern of circular migration through improved immigration laws that address the push factors of migration would provide a more stable base of young labor in Mexico and prevent increasing numbers of Mexican workers from overstaying visas or entering illegally for work. Additional immigration reform, such as increasing non-immigrant visas, may also promote circular migration patterns.²⁵ While temporary worker programs are just a portion of the overall immigration reform needed to create a sustainable system, they are a vital piece of the puzzle.

B. Present Immigration Trends

Both the United States and Mexico are home to many immigrants, documented and undocumented. As of 2012, the United States was home to an estimated 11.7 million unauthorized immigrants, triple the number from 1990.²⁶ In addition, Mexico is a leading country for “transit migration” of Central Americans traveling to the United States.²⁷ In 2013, the Mexican government detained and deported over 86,000 migrants, most of whom were traveling through Mexico from Central America.²⁸

However, the undocumented immigration numbers have slowed over the past few years, probably due to the recession of

The United States is spending billions on walls that don't really keep migrants out (a University of California, San Diego, study showed that 97 percent of migrants who want to cross the border eventually get through), and on locking up and deporting people, many of whom return. Border enforcement, guest worker programs and pathways to citizenship haven't addressed the problem. Instead they have sealed in many migrants who would have preferred to circle back home, attracted temporary workers who never left, and legalized migrants who then brought relatives illegally, causing the number of unlawful migrants to grow.

Sonia Nazario, *The Heartache of an Immigrant Family*, N.Y. TIMES, at A27, Oct. 14, 2013, available at http://www.nytimes.com/2013/10/15/opinion/the-heartache-of-an-immigrant-family.html?_r=0.

²⁴ See Patricia Fernandez-Kelly & Douglas S. Massey, *Borders for Whom? The Role of NAFTA in Mexico-U.S. Migration*, 610 ANNALS AM. ACAD. POL. & SOC. SCI. 98, 112 (2007).

²⁵ Belinda I. Reyes, *The Impact of U.S. Immigration Policy on Mexican Unauthorized Immigration*, 2007 U. CHI. LEGAL F. 131, 147 (2007).

²⁶ U.S. *Unauthorized Immigration Population Trends, 1990-2012*, PEW RESEARCH CENTER HISPANIC TRENDS PROJECT, <http://www.pewhispanic.org/2013/09/23/unauthorized-trends/#Mexico>. The graph shows that approximately 6,050,000 of those unauthorized migrants were from Mexico.

²⁷ Diaz & Kuhner, *supra* note 22.

²⁸ Brianna Lee, *Mexico Struggles To Manage Central American Migration*, INT'L BUS. TIMES (July 21, 2014), <http://www.ibtimes.com/mexico-struggles-manage-central-american-migration-1634278>.

the United States economy and changes in Mexico's demographics.²⁹ United States Border Patrol apprehended 327,577 undocumented migrants in 2011, "the lowest number since 1972 . . . [and] a 53% drop from 2008."³⁰ Even though the number crossing might be decreasing, there are still large numbers of undocumented immigrants living and working in the United States, with 8.3 million in the labor force as of 2008.³¹ These migrants who work are spread unequally throughout the United States, "constitut[ing] . . . 10% or more of the labor force in Arizona, California, and Nevada, but less than 2.5% in most Midwest and Plains states."³²

II. CONGRESSIONAL IMMIGRATION REFORM BILLS

A. *History of U.S. Immigration Laws*

Over the history of the United States, immigration has been a popular topic in Congressional legislation.³³ Restrictive immigration policy has often been incited by major world events like world wars, economic depressions, and political pressure, far more than actual immigration trends and patterns.³⁴

The "first federal immigration laws [were] signed in 1882, barring 'lunatics, idiots, convicts and those likely to

²⁹ For example, Mexican women are having fewer children than in the past, resulting in a less crowded job market. MICHAEL GRAYBEAL, U.S.-MEXICO MIGRATION—PROSPECTS FOR REFORM, CENTER FOR STRATEGIC & INTERNATIONAL STUDIES (Jan. 5, 2012), available at http://csis.org/files/publication/120105_Graybeal_Mexico_HemFocus.pdf.

³⁰ Ann Colwell & Tom Watkins, *CNN Fact Check: Illegal Border Crossings at Lowest Levels in 40 Years*, CNN (Feb. 13, 2013, 9:11 AM), <http://www.cnn.com/2013/02/13/politics/fact-check-immigration/>.

³¹ See Jeffrey S. Passel & D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, PEW RESEARCH HISPANIC TRENDS PROJECT (Apr. 14, 2009), <http://www.pewhispanic.org/2009/04/14/a-portrait-of-unauthorized-immigrants-in-the-united-states/>.

³² *Id.*

³³ See *Evolution of U.S. Immigration Law 1776-2004*, N.J. LAW. MAG., Apr. 2004, at 10 [hereinafter *Evolution of U.S. Immigration Law*]. This timeline outlines major U.S. immigration legislation and immigration trends from 1776-2004. For another description of the U.S.'s immigration history, see also DARRELL M. WEST, BRAIN GAIN: RETHINKING U.S. IMMIGRATION POLICY 3-6 (2010), available at http://www.brookings.edu/~media/press/books/2010/braingain/braingain_chapter.pdf.

³⁴ Douglas S. Massey & Karen A. Pren, *Unintended Consequences of US Immigration Policy: Explaining the Post-1965 Surge from Latin America*, 38 POPULATION & DEVELOPMENT REV. 1, 2 (Mar. 2012), available at http://www.princeton.edu/coverstories/Massey_LatinAmericaImmigrationSurge/Unintended-Consequences.pdf. "U.S. immigration policy is not the result of a coherent plan or a systematic philosophy; it is the result of political battles, economic swings, and cultural fears." Reyes, *supra* note 25, at 132; see also *Evolution of U.S. Immigration Law*, *supra* note 33. For example, the National Origins Act and its amendments introduced quota systems that "favor[ed] [only] Northern and Western Europeans" leading up to the Great Depression and World War II, and great attention was paid to immigration laws after the September 11th terrorist attacks.

become public charges.”³⁵ The following four decades, including the years before and after World War I, saw a rise in the immigration restrictionist viewpoint.³⁶ Following the War, the U.S. passed the National Origins Act in 1924, which introduced a quota system and racist provisions that favored Western European immigrants.³⁷ The national origins quotas were enacted “in a deliberate attempt to limit the entry of Southern and Eastern European immigrants—or more specifically Jews from the Russian Pale and Catholics from Poland and Italy, groups at the time deemed ‘unassimilable.’”³⁸ Asians and Africans were “effectively banned” at that time as well.³⁹ In response to the lack of available labor in the United States during and after World War II, Congress also established a short-term foreign worker program as a “temporary wartime measure” known as the “Bracero Program.”⁴⁰ “Under the Bracero Program, [over] 4 million Mexican farm workers came to work [in] the United States” under strict employment contracts.⁴¹ The program declined when United States citizens returned from the War and ended in 1964 due to exploitation and human rights abuses.⁴² However, the “symbiotic relationship between Mexican labor and U.S. employers” formed under the program continues to exist.⁴³

The passage of the Immigration and Naturalization Act in 1952 and its subsequent amendments created major changes to immigration laws, with the 1965 amendments in particular “intended[ing] to purge immigration law of its racist legacy” by implementing “neutral preference [visa] system[s] based on family reunification and labor force needs.”⁴⁴ Asian immigration increased under the new laws, as did Latin American immigration in spite of the new relatively low entry caps imposed on entries from the Western Hemisphere.⁴⁵ However, by the 1970s the “increasing numbers [of immigrants], diversification, and

³⁵ *Evolution of U.S. Immigration Law*, *supra* note 33.

³⁶ *See id.*; *see also Reyes*, *supra* note 25, at 134 (stating that “[t]he 1911 Dillingham Report to the President proclaimed the potential ill effects of a growing immigrant population and the perceived inferiority of the new immigrant groups, leading to the passage of restrictive federal immigration policies in 1917, 1921, and 1924”).

³⁷ *Evolution of U.S. Immigration Law*, *supra* note 33; *see also Massey & Pren*, *supra* note 34, at 1.

³⁸ Massey & Pren, *supra* note 34, at 1.

³⁹ *Id.*

⁴⁰ *Id.* at 3.

⁴¹ *See Mexican Immigrant Labor History*, PBS: THE BORDER, <http://www.pbs.org/kpbs/theborder/history/timeline/17.html> (last visited Feb. 1, 2015).

⁴² *Id.*

⁴³ Reyes, *supra* note 25, at 133.

⁴⁴ Massey & Pren, *supra* note 34, at 1.

⁴⁵ *Id.* at 1-2.

illegal immigration—set the stage for increasing appeals to restrict the flow of immigrants and to do something about illegal immigration.”⁴⁶ In 1986, the Immigration Reform and Control Act (IRCA) was passed as one of the first legalization and border enforcement laws that also “prohibit[ed] employment discrimination based on national origin and require[d] individuals to possess employment eligibility and identity documents to work in the U.S.”⁴⁷ IRCA went to other extremes by criminalizing employment of unauthorized workers and largely increasing funds for border patrol.⁴⁸

The 1990s brought even more new immigration laws. First, Congress passed the Immigration Act of 1990, “followed by a series of amendments which overhaul[ed] the employment-based categories and impose[d] new restrictions on employers who hire foreign workers.”⁴⁹ Next, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which increased border enforcement.⁵⁰ The attacks on September 11, 2001, caused a large increase in internal enforcement of migration through the Department of Homeland Security and Immigration and Customs Enforcement, resulting in a huge rise in deportations.⁵¹

Both authorized and unauthorized immigration from Latin American increased greatly between the 1960s and 2000s.⁵² With the increase in unauthorized immigration, Congress has occasionally addressed domestic employment and labor issues in immigration legislation—but rarely has it ever addressed unemployment abroad (or the United States’ policies contributing to that unemployment).⁵³ Because of this, immigration laws continue to be out-of-touch with immigration realities. This highlights “the contradiction involved in the growing militarization of a border separating the United States from a country that poses no strategic threat and is, in fact, an ally and major trading partner”⁵⁴ The large undocumented population in the United States is due in large part to this disconnect between United

⁴⁶ Reyes, *supra* note 25, at 135-36.

⁴⁷ *Evolution of U.S. Immigration Law*, *supra* note 33; see also Reyes, *supra* note 25, at 136.

⁴⁸ See Fernandez-Kelly & Massey, *supra* note 24, at 107.

⁴⁹ *Evolution of U.S. Immigration Law*, *supra* note 33.

⁵⁰ Massey & Pren, *supra* note 34, at 10.

⁵¹ See Fernandez-Kelly & Massey, *supra* note 24, at 108.

⁵² Massey & Pren, *supra* note 34, at 2.

⁵³ Johnson, *supra* note 6, at 1611. “[T]he nation at some level understands that immigration is primarily about labor migration. That explains why the U.S. government at various times has sought to bolster enforcement of the immigration laws through workplace raids.” *Id.*

⁵⁴ See Fernandez-Kelly & Massey, *supra* note 24, at 109.

States immigration laws and its labor demands.⁵⁵ Therefore, “the lack of lawful avenues for workers to migrate in sufficient numbers to meet labor demand helps to explain the continuing flow of undocumented immigrants to the United States.”⁵⁶

B. Recent Immigration Reform Bills, S. 744 and H.R. 15, and their Pitfalls

Immigration continues to be a talking point in Congress, with numerous bills introduced in 2013 and 2014 alone to address a wide variety of immigration topics.⁵⁷ In the Senate, Senator Charles Schumer of New York introduced the most comprehensive of these bills on April 16, 2013—an immigration reform bill called the “Border Security, Economic Opportunity, and Immigration Modernization Act” or “S. 744.”⁵⁸ After adding over 90 amendments, S. 744 went to the Senate floor and was eventually passed by the Senate on June 27, 2013, by a 68-32 vote.⁵⁹ The bill had five main titles: Border Security and Other Provisions, Immigrant Visas, Interior Enforcement, Reforms to Nonimmigrant Visa Programs, and Jobs for Youth.⁶⁰ The following paragraphs provide a brief overview of some of the major provisions of each title. Although S. 744, as well as H.R. 15, discussed below, are now effectively dead, they illustrate the absence of root cause solutions in most modern immigration legislation.

S. 744 was very multi-faceted in its approach to immigration reform, but as stated above, it did not address push factors of migration. Title I laid out distinct plans for increased border patrol agents, fencing, mobile surveillance systems, and other security measures.⁶¹ The bill authorized an

⁵⁵ Johnson, *supra* note 6, at 1612-13.

⁵⁶ *Id.* at 1615.

⁵⁷ For a list of the immigration-related bills introduced in the House of Representatives and the Senate, see *Immigration*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/subjects/immigration/6206> (last visited Feb. 1, 2015). Examples include H.R. 633 “Fairness for High-Skilled Immigrants Act of 2013,” H.R. 3386/S. 1614 “Accuracy for Adoptees Act,” and H.R. 1901 “Keep Our Communities Safe Act of 2013.” See also *What’s on the Menu? Immigration Bills Pending in the House of Representatives in 2014*, IMMIGRATION POLICY CTR. (Mar. 26, 2014), <http://www.immigrationpolicy.org/just-facts/what%E2%80%99s-menu-immigration-bills-pending-house-representatives-2014>.

⁵⁸ See S.744, 113th Cong. (2013); see also *Special Report: A Guide to S. 744: Understanding the 2013 Senate Immigration Bill*, IMMIGRATION POLICY CENTER 3-4 (July 2013), <http://www.immigrationpolicy.org/special-reports/guide-s744-understanding-2013-senate-immigration-bill> [hereinafter S. 744 Guide].

⁵⁹ S. 744 Guide, *supra* note 58, at 4.

⁶⁰ S. 744.

⁶¹ *Id.* at §§ 1102 (increased border control agents), 1103 (fencing), 1106 (mobile surveillance systems and other security measures).

initial fund of \$46.3 billion, which would be supplemented by visa and user fees.⁶² Border Security would be trained on how to detect tunnels and passage routes, handle migrants, and identify false documents.⁶³ An independent Department of Homeland Security Border Oversight Task Force would make recommendations to the President on border policies and effectiveness.⁶⁴ This title also addressed migration to the United States through Mexico, and included prevention steps such as:

[E]nhanc[ing] training, resources, and professionalism of border and law enforcement officials in Mexico, Honduras, El Salvador, Guatemala, and other countries . . . [and] educat[ing] nationals of the[se] countries . . . about the perils of the journey to the United States, including how this Act will increase the likelihood of apprehension, increase penalties associated with illegal entry, and make finding employment in the United States more difficult.⁶⁵

An amendment to this section that was vital to gaining bipartisan support for the bill was the “Corker-Hoeven amendment[,] also known as the ‘border surge’ amendment[,]” which called for a substantial increase in border security spending.⁶⁶

Title II dealt with immigrant visas.⁶⁷ This section included a version of the Development, Relief, and Education for Alien Minors Act (DREAM Act), allowing undocumented youth brought to the United States as children to apply for Registered Provisional Immigrant (RPI) status.⁶⁸ This section also addressed the Agricultural Worker Program, which made undocumented agricultural workers eligible for a “blue card” if they met certain work criteria, like performing “575 hours or 100 work days during [a] two-year period” from 2010-2012,⁶⁹ and “meet[ing] the same criminal and admissibility requirements for RPI status.”⁷⁰ In addition, Title II created reforms to address immigration backlogs by awarding points for certain things like education, family ties, and work experience, and also by improving the family-sponsored and employment-based

⁶² *Id.* at § 6.

⁶³ *Id.* at §§ 1109 (detecting tunnels), 1111-12 (using force against migrants and general training, identifying false documents).

⁶⁴ *Id.* at § 1113.

⁶⁵ *Id.* at § 1203.

⁶⁶ S. 744 Guide, *supra* note 58, at 5.

⁶⁷ See S. 744 at §§ 2101-2555.

⁶⁸ *Id.* at §§ 2101, 2103. RPI status would be initially granted for six years.

⁶⁹ *Id.* at § 2211(a)(1)(A).

⁷⁰ S. 744 Guide, *supra* note 58, at 8-9. Those who receive blue cards would hold that status for eight years, then could apply for a green card (legal permanent resident status) five years after the enactment of the bill if they met the criteria. *Id.* at 9.

immigration systems.⁷¹ “The system would be divided into two ‘tiers,’” with one for higher-skilled immigrants and one for lower-skilled immigrants.⁷²

Title III concerned interior enforcement of immigration laws through a mandatory E-Verify verification system for U.S. employers to check legal status of their immigrant employees.⁷³ It also improved protections for vulnerable populations, like asylees and refugees⁷⁴ and increased oversight and protections for immigrants in immigration courts.⁷⁵ Title III increased penalties for criminal activities that make aliens subject to inadmissibility or deportability.⁷⁶

Title IV reformed the nonimmigrant visa programs for both skilled and less-skilled workers and visitors.⁷⁷ It raised the H-1B nonimmigrant skilled worker visa cap, addressed L-1 intracompany transferee visas, and created a W non-agriculture visa program for less-skilled, non-seasonal workers.⁷⁸ It also created new investor visas to attract investments and create jobs in the United States.⁷⁹ Finally, Title V created a Youth Jobs Fund to spur employment opportunities for low-income youth.⁸⁰

The “Border Security, Economic Opportunity, and Immigration Modernization Act,” H.R. 15, was introduced in the House of Representatives on October 2, 2013 by Representative Garcia and it gained around 200 co-sponsors.⁸¹ H.R. 15 included four Titles: Border Security, Immigrant Visas, Interior Enforcement, and Reforms to Nonimmigrant Visa Programs. H.R. 15 almost mirrored S. 744, with the exception of the Corker-Hoeven “border surge” amendments. Instead of these border surge provisions, H.R. 15 included border provisions of the Border Security Results Act, known as H.R. 1417 or the “McCaul bill,” an independent bill passed by the

⁷¹ S. 744 at §§ 2301-23.

⁷² S. 744 Guide, *supra* note 58, at 9.

⁷³ See S. 744 at §§ 3101-3911; see also *What is E-Verify?*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/e-verify/what-e-verify> (last updated Jan. 31, 2014).

⁷⁴ See S. 744 at §§ 3400-12.

⁷⁵ *Id.* at §§ 3501-07.

⁷⁶ *Id.* at §§ 3701-21. “Immigrants who have been admitted to the United States can be subject to deportation, or found to be deportable. Immigrants who are applying for admission to the U.S., or are applying for lawful status in the U.S., may be found to be inadmissible.” S. 744 Guide, *supra* note 58, at 15.

⁷⁷ See S. 744 at §§ 4101-4913.

⁷⁸ *Id.* at §§ 4101-4703. “The H-1B visa is for foreign workers with at least a bachelor’s degree who come to work temporarily in a specialty occupation. The L-1 visa is for foreign workers who have gained essential experience abroad with a multinational employer that needs to transfer them here temporarily to assist in their operations in the United States.” S. 744 Guide, *supra* note 58, at 16.

⁷⁹ See S. 744 at §§ 4801-4913.

⁸⁰ *Id.* at §§ 5101-05.

⁸¹ See *What’s on the Menu?*, *supra* note 57, at 7.

House Homeland Security Committee.⁸² The approach to border protection in H.R. 1417 included, among other things, reporting to the Department of Homeland Security on surveillance and illegal activity and long-term strategies on operational control of the southern border.⁸³

After little budging from Democrats or Republicans, both the Senate and House bills from 2013 have been declared dead.⁸⁴ Despite being labeled “comprehensive,” these immigration reform efforts had many pitfalls. A main concern is that both past and present immigration laws have permitted “few low and moderately skilled workers to come to the United States,” even when the country’s labor market reflects a need for more foreign workers of all skill levels.⁸⁵ Kevin Johnson further explains the problematic approach to immigration reforms in recent years:

Put simply, border fences, record numbers of deportations year after year, dramatically increased use of detention, greatly expanded removal provisions, the criminalization, along with heightened prosecution, of immigration offenses, and vastly expanded enforcement efforts that have resulted in efforts by migrants to journey to the United States through dangerous routes through deserts and mountains resulting in deaths, have failed to meaningfully reduce undocumented immigration. Nor does the United States have the resources and commitment necessary to engage in a massive campaign, which would cost many billions of dollars, to remove 12 million undocumented immigrants from the country (and millions of workers from the U.S. economy).⁸⁶

Congress continues to use retroactive techniques that prove ineffective for meeting its goal of decreasing undocumented immigration.⁸⁷ While the Congressional Budget Office reported

⁸² *Id.*

⁸³ See *A Guide to H.R. 15: The Border Security, Economic Opportunity, and Immigration Modernization Act*, IMMIGRATION POLICY CENTER 2 (Oct. 2013), <http://www.immigrationpolicy.org/special-reports/guide-hr-15-border-security-economic-opportunity-and-immigration-modernization-act> [hereinafter H.R. 15 Guide]. This report clarifies the difference between the two provisions, stating that “McCaul is more focused on establishing metrics and review of accountability, as opposed to the Corker-Hoeven amendment which established mandatory requirements for spending, infrastructure, border personnel, and technology regardless of actual border security needs.” *Id.* at 3.

⁸⁴ See Nakamura, *supra* note 3.

⁸⁵ Johnson, *supra* note 6, at 1613.

⁸⁶ *Id.* at 1619.

⁸⁷ See Fernandez-Kelly & Massey, *supra* note 24, at 112 (“Despite the increased costs and risks of unauthorized border crossing, the relative number of Mexicans arriving at the border seeking to enter the United States has not changed. . . . [T]he inflow of undocumented migrants from Mexico continues more or less unabated.”); see also Reyes, *supra* note 25, at 137 (“Even though border control has been the main approach to controlling illegal immigration and large sums of money are being spent protecting the border, it remains unclear if it is achieving its intended goal: to deter and reduce illegal immigration . . .”).

that “under S. 744 the net annual inflow of unauthorized residents would decrease ‘by between one-third and one-half compared with the projected net inflow under the current law[]’, . . . the methodology behind the CBO’s estimate is unknown.”⁸⁸ Therefore, to achieve decreases in unauthorized immigrants, Congress should address the root causes of Latin American migration instead of responding reactively.

III. FOREIGN INVESTMENT AND DEVELOPMENT IN MEXICO

A. *History of Foreign Investment in Mexico*

1. International Approach to Foreign Direct Investment

Throughout much of the last century, as many countries gained independence and world power players emerged, developing countries like Mexico resisted foreign investment by asserting their sovereignty over their land and resources.⁸⁹ The United States and other industrialized states pushed for liberalization and free markets, while developing states proposed solutions that protected state autonomy and control in foreign investment decisions.⁹⁰ The formation of international organizations like the United Nations Conference of Trade and Development marked an effort to create collective bargaining tools for developing countries to express their concerns about development and international investment.⁹¹

By the 1960s, transnational corporations (TNCs) became popular tools for foreign investment.⁹² TNCs are defined as “business enterprise[s] composed of a parent company and one or more subsidiaries located in two or more states, organized for the conduct of profitable international production and provision of goods and services.”⁹³ While TNCs provided capital to developing countries, they simultaneously escaped liability. The host and home countries were unable to fully regulate the behavior of TNCs, allowing them to shirk any responsibility to provide long-term development benefits to the

⁸⁸ S. 744 Guide, *supra* note 58, at 20 (footnote omitted).

⁸⁹ See Gloria L. Sandrino, *The NAFTA Investment Chapter and Foreign Direct Investment in Mexico: A Third World Perspective*, 27 VAND. J. TRANSNAT'L L. 259, 262-63, & nn.2-5 (1994); see also Rachel J. Anderson, *Toward Global Corporate Citizenship: Reframing Foreign Direct Investment Law*, 18 MICH. ST. J. INT'L L. 1, 9 (2009) (“Modern foreign direct investment law retains asymmetrical legal protections that are its colonial heritage.”).

⁹⁰ See Sandrino, *supra* note 89, at 266-71.

⁹¹ See *id.* at 269-70.

⁹² *Id.* at 270-71.

⁹³ *Id.* at 270.

host countries.⁹⁴ TNCs were, and still are, able to “shop for the most hospitable political and legal environment for their operations, which, in turn, contributes to a race to the bottom in terms of the regulation of foreign direct investment in host countries.”⁹⁵ The United Nations tried to address these issues by adopting the Charter of Economic Rights and Duties of States in 1974, but few tangible protections of developing states’ economic interests were achieved, despite constant pushback from these states.⁹⁶ Additionally, international agreements such as the General Agreement on Tariffs and Trade gave some protections to TNCs that undermined the work of the Charter of Economic Rights.⁹⁷

Starting in the 1980s, bilateral investment treaties (BITs) became the treaty of choice for investment where developing countries had an “increased need for capital,” but these agreements also presented problems for these countries in guarding themselves against exploitation.⁹⁸ While BITs provide many benefits to investors, they limit host country interference in TNC activity and “do not generally promote comprehensive protections for individuals or communities in host countries.”⁹⁹ Nevertheless, the number of BITs continues

⁹⁴ See *id.* at 270-72.

⁹⁵ Anderson, *supra* note 89, at 12.

⁹⁶ See Sandrino, *supra* note 89, at 274-77.

⁹⁷ *Id.* at 279.

⁹⁸ See *id.* at 278.

⁹⁹ See Anderson, *supra* note 89, at 14.

Current BIT practice does not, in general, expressly deal with development matters beyond the inherent objective of BITs of investment protection. There is a need for further clarification of the interrelationship between existing standards of investor protection and investment promotion, on the one hand, and the best means by which development concerns can be (or should be) expressed in the future evolution of BITs, on the other hand.

UNITED NATIONS CONFERENCE ON TRADE & DEVELOPMENT (“UNCTAD”), BILATERAL INVESTMENT TREATIES 1995-2006: TRENDS IN INVESTMENT RULEMAKING, at xvi (2007), available at http://unctad.org/en/docs/iteiia20065_en.pdf. But see *id.* at xi:

While all BITs limit the regulatory flexibility within which contracting parties can pursue their economic development policies, more recent BITs include a wider variety of disciplines affecting more areas of host country activity in a more complex and detailed manner. At the same time, these treaties put more emphasis on public policy concerns, in particular through, *inter alia*, the inclusion of safeguards and exceptions relating to public health, environmental protection and national security. Furthermore, the interaction of BITs with other agreements at different levels, including the bilateral, regional, plurilateral and multilateral levels, becomes more complicated. As global economic integration deepens, managing the impacts of integration on the domestic economy becomes more demanding and the challenges involved in concluding BITs are correspondingly greater.

to grow, and almost ninety percent of the world's countries had entered into BITs as of 2009.¹⁰⁰

While international trade law is rather developed, multilateral foreign direct investment law remains vague, so foreign direct investment continues to be “underregulated and underenforced.”¹⁰¹ Unlike many agreements and cases governing international trade under the World Trade Organization (WTO), few such laws exist for foreign direct investment.¹⁰² Several futile attempts have been made to develop such laws.¹⁰³

There are benefits and detriments to foreign investment. Benefits include technology transfer and increased tax revenues, while detriments include “property damage, personal injury, and significant environmental damage.”¹⁰⁴ Multinational enterprises are often “able to provide higher wages and, possibly, working conditions because of their higher productivity which, in turn, is explained by greater technological know-how and modern management practices . . . [This] may give rise to [indirect and] direct benefits.”¹⁰⁵ However, the impact of foreign ownership on working conditions other than wages remains unknown.¹⁰⁶

Foreign direct investment has the “potential to provide [great] benefits for local” communities, but it must be regulated by responsible policies.¹⁰⁷ In many investment situations, human rights are sacrificed in favor of “the power of neo-classical economic development theory and the pursuit of profit.”¹⁰⁸ Many groups recognize the need for better working relationships between host and investor countries¹⁰⁹ and call for

¹⁰⁰ See Anderson, *supra* note 89, at 13.

¹⁰¹ *Id.* at 2.

¹⁰² *Id.*

¹⁰³ See *id.* at 15-18. The article outlines several attempts to establish laws related to foreign investment, such as the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, which are voluntary and therefore not binding on states or TNCs, and the U.N. Special Representative of the Secretary General on Human Rights’ “Ruggie Report” that focused on the business/human rights relationship.

¹⁰⁴ *Id.* at 3.

¹⁰⁵ ORG. FOR ECON. CO-OPERATION & DEV., THE IMPACT OF FOREIGN DIRECT INVESTMENT ON WAGES AND WORKING CONDITIONS 11 (2008), available at <http://www.oecd.org/corporate/mne/40848277.pdf>.

¹⁰⁶ *Id.* at 14.

¹⁰⁷ Ibironke T. Odumosu-Ayanu, *Foreign Direct Investment Catalysts in West Africa: Interactions with Local Content Laws and Industry-Community Agreements*, 35 N.C. CENT. L. REV. 65, 88 (2012).

¹⁰⁸ Anderson, *supra* note 89, at 12.

¹⁰⁹

In sum, current BIT practice does not, in general, expressly deal with development matters. For most BITs concluded over the past decade, it remains true that, “a striking feature . . . is the multiplicity of provisions they contain that are specifically designed to protect foreign investments, and the

heightened “[c]orporate [s]ocial [a]ccountability,” which is “an attempt to link human rights, the environment, and other societal issues to the economic and corporate governance concerns of corporations.”¹¹⁰

2. Mexico’s Defiance to Foreign Direct Investment and Subsequent Back Down under NAFTA¹¹¹

Starting in the early 1900s, Mexico took a somewhat consistent, defiant stance against increased foreign direct investment. Due to President Porfirio Diaz’s early attempts to increase investment in the 1890s-1900s, much of Mexico’s wealth and enterprise was foreign-owned.¹¹² This led to the Mexican Revolution of 1910 and the drafting of the Mexican Constitution of 1917, which significantly restrained foreign investment and land ownership.¹¹³ Because of this early nationalist stance, Mexico had foreign direct investment only in very limited sectors of its economy throughout much of the twentieth century.¹¹⁴

In the 1930s, Mexico developed an “import substituting industrialization” model of economic development and began

absence of provisions specifically designed to ensure economic growth and development.” The need is, therefore, for further clarification of the interrelationship between existing standards of investor protection and investment promotion . . . and the best means by which development concerns can be (or should be) expressed in the future evolution of BITs.

UNITED NATIONS CONFERENCE ON TRADE & DEVELOPMENT, *supra* note 99, at 145 (alternation in original) (footnote omitted).

¹¹⁰ Anderson, *supra* note 89, at 21. Some international focus is being put on “Global Corporate Citizenship,” the idea that corporations have “rights and obligations in society similar to citizens.” *Id.* at 22-23.

¹¹¹ “For most of the 20th century, Mexico kept the world at arm’s length. The 1917 Constitution guaranteed Mexicans would be given priority over foreigners for various jobs, and until the 1980s the country favored policies that protected domestic industry from imports.” Cave, *supra* note 9.

¹¹² See Sandrino, *supra* note 89, at 279-81.

¹¹³ See CONSTITUCIÓN POLÍTICA DE LOS ESTADOS MEXICANOS [CONSTITUTION] Jan. 31, 1917, art. 27, available in English at http://www.oas.org/juridico/mla/en/mex/en_mex-int-text-const.pdf. Many amendments have been made since 1917. Ch. 1, Art. 27 and 28 are particularly focused on detailing protectionist policies for foreign land control; however, an amendment by President Salinas in the early 1990s limited Article 27’s protection on traditional land. See Fernandez-Kelly & Massey, *supra* note 24, at 104.

¹¹⁴ See Sandrino, *supra* note 89, at 282.

In response to this fear [of increasing foreign influence in the early twentieth century], the Mexican Constitution established the framework for a strong interventionist state and reserved to it exclusive control over the Mexican economic system. These constitutional principles support the restrictive Mexican economic policy toward foreign investment that predominated until [the 1980s] and continue[d] to influence Mexico’s economic development [through the 1990s].

Id. at 284 (footnotes omitted).

allowing more foreign investment.¹¹⁵ When foreign investment jumped due to Mexico's booming post-war economy in the 1940s-1950s, the country returned to a more protectionist position known as "Mexicanization" in the 1960s.¹¹⁶ The 1970s-1980s saw the emergence of TNCs, a massive oil boom, and a subsequent oil price crash. At this point, Mexican policy began to change due to economic constraints and foreign investment became slightly easier.¹¹⁷ President Carlos Salinas de Gortari began implementing a "neoliberal" agenda that included "privatizing the banking system, selling government firms, deregulating markets, and making fundamental modifications to Mexican property law."¹¹⁸

In 1993, Mexico enacted a Foreign Investment Law, which reserved some industries specifically for Mexican nationals or the government and opened others to foreign investors.¹¹⁹ In the same year, Mexico, the United States, and Canada signed the North American Free Trade Agreement (NAFTA) to open trade between the three countries.¹²⁰ NAFTA's provisions differed drastically from Mexico's previous investment policies. Unlike Mexico's strict protections against extensive foreign investment seen in the previous decades, NAFTA allowed broad trade liberalization in the hopes of "bring[ing] about national prosperity."¹²¹ For example, Chapter 11 of NAFTA deals with investment and calls for "each party [to] . . . accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments."¹²² This chapter also prohibits the reservation of a minimum level of

¹¹⁵ See *id.* at 292-93.

¹¹⁶ See *id.* at 295-96. The Mexican government implemented various techniques, such as requiring fifty-one percent of private business to be owned by Mexican nationals and taxing foreigners discriminately. *Id.*

¹¹⁷ See *id.* at 297, 299-301.

¹¹⁸ Fernandez-Kelly & Massey, *supra* note 24, at 104.

¹¹⁹ LEY DE INVERSIÓN EXTRANJERA [FOREIGN INVESTMENT LAW], available at http://www.wipo.int/wipolex/en/text.jsp?file_id=220832 (last revised Aug. 11, 2014); see also *Investment in Mexico*, KPMG (2012), available at <http://www.kpmg.com/MX/es/IssuesAndInsights/ArticlesPublications/Documents/Estudios/Investment-In-Mexico-2012.pdf>.

¹²⁰ North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289 (1993) [hereinafter NAFTA], available at <http://www.sice.oas.org/trade/nafta/naftatce.asp>; see Fernandez-Kelly & Massey, *supra* note 24, at 101 (noting that the NAFTA initiative first came from Mexico, due in large part to "Latin America's foreign debt [that] facilitated a political transformation in which a new narrative centered on free trade enabled the recovery of large financial institutions and promoted the activities of transnational corporations").

¹²¹ Fernandez-Kelly & Massey, *supra* note 24, at 104; see NAFTA, *supra* note 120, at § 102, for a list of objectives of the Agreement.

¹²² NAFTA, *supra* note 120, at § 1102.

equity for a country's nationals, nationalization or expropriation of an investment of another party's investor in its territory, and settlement of disputes through any means but international negotiation or arbitration in the investor-states.¹²³ These provisions, along with many others, directly conflict with previous protectionist Mexican policies.

Disputes over the effects of NAFTA have been prevalent since its inception. Proponents of NAFTA point to NAFTA's economic benefits to member countries and its function as a building block to improve trade relationships between the member states.¹²⁴ Opponents point to NAFTA's several weaknesses that proved detrimental to Mexico's national development goals.¹²⁵ They claim the agreement "utterly ignored international labor mobility and took no steps to equalize different levels of economic development among the participating countries . . . [and] represented an attempt at economic integration without political integration."¹²⁶ According to critics, NAFTA ignores labor and migration rights because its goal was to "advance the economic interests of a new binational class of investors, not the fortunes of citizens in general."¹²⁷ Therefore, "[a]lthough the treaty may have had mixed effects on workers in Mexico and the United States, its effects in terms of profits and capital accumulation are clear—never before have large firms experienced such an economic bonanza . . . [in conjunction with] significant growths in class inequality in the two countries."¹²⁸

¹²³ See *id.* at arts. 1102, 1110, 1116-20.

¹²⁴ Julián Aguilar, *Twenty Years Later, Nafta Remains a Source of Tension*, N.Y. TIMES (Dec. 7, 2012), <http://www.nytimes.com/2012/12/07/us/twenty-years-later-nafta-remains-a-source-of-tension.html?pagewanted=1&r=2>. One benefit cited by Ron Kirk, the U.S. trade representative, is that "[i]n 2010, the United States had \$918 billion in two-way trade with Canada and Mexico." *Id.* NAFTA supporters also say that "N[AFTA] was not conceived to solve domestic problems for any member country[.]" but instead increase trade between the countries. *Id.* Timothy A. Wise of the Global Development and Environmental Institute at Tufts University reported that foreign investment and trade did increase under NAFTA, while job production and development did not. *Id.*

¹²⁵ In a 1993 interview, President Salinas stated, "[W]e entered NAFTA because we want value-added production in Mexico so that additional employment opportunities can be created. In a sense, the whole point of NAFTA for Mexico is to be able to export goods and not people. That means creating jobs in Mexico." Nathan Gardels, *Salinas' Vision: After NAFTA, the World: Trade: Mexico is Investing Heavily to Improve the Environment for Foreign Business, and Asia is Welcome to Complete the Pacific Circle*, L.A. TIMES (Jan. 6, 1993), available at http://articles.latimes.com/1993-01-06/local/me-817_1_trade-agreement.

¹²⁶ Fernandez-Kelly & Massey, *supra* note 24, at 105 (internal citation omitted).

¹²⁷ *Id.* at 115.

¹²⁸ *Id.*

Because of NAFTA, the economies of the United States and Mexico are highly interlaced. “Mexico is the United States’ third largest trading partner, after Canada and China, in terms of total trade in goods, while the U.S. is Mexico’s largest trading partner.”¹²⁹ The total trade of goods and services between the two was close to \$535.9 billion in 2012, with “six million American jobs depend[ing] upon the U.S. trade relationship with Mexico.”¹³⁰

The Mexican and United States governments, however, need to look at their obligations under NAFTA as more than economic in order to successfully address migration issues. Fair labor and employment development should be a major focus of NAFTA policies. The Office of the U.S. Trade Representatives reports that some efforts are being made to improve small- and medium-enterprises’ access to information and opportunities under NAFTA.¹³¹ However, stronger government support through immigration legislation would greatly improve these efforts.

B. *The Current Mexican Economy*

1. The “Bad News”

The Mexican economy’s subpar growth over the past decades has been a push factor for migration to the United States.¹³² Several factors contribute to the slow growth, including “labor laws that encourage informality; monopolies that contribute to higher costs for Mexican consumers; poor primary and secondary education; and low tax collection that is remedied by revenue from . . . the state oil firm [PEMEX].”¹³³ Additionally, corruption, extortion threats, and drug violence all make investors wary and add costs to doing business in Mexico.¹³⁴

¹²⁹ *Lost in the Shadow of the Fence: The Important Economic Relationship of Mexico and the United States*, IMMIGRATION POLICY CTR. (May 9, 2013), http://www.immigrationpolicy.org/sites/default/files/docs/factsheet_fence_mexicouseconomy_draft4_may2013_paul.pdf [hereinafter *Lost in the Shadow of the Fence*] (citing statistics from U.S. Census Bureau).

¹³⁰ *Id.*

¹³¹ *Opportunities for Small- and Medium-Sized Businesses in the Americas Region*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, available at http://www.ustr.gov/webfm_send/2478 (last visited Sept. 24, 2014).

¹³² Graybeal, *supra* note 7, at 1.

¹³³ *Id.* “Pemex [Petróleos Mexicanos, Mexico’s national oil company] is often responsible for more than one-third of the Mexican government’s revenues.” Tim R. Samples & José Luis Vittor, *The Past, Present, and Future of Energy in Mexico: Prospects for Reform Under the Peña Nieto Administration*, 35 HOUS. J. INT’L L. 697, 698 (2013); see also Cave, *supra* note 9 (pointing out the high number of “Mexicans working in the informal economy” and the flexibility for foreign investors to “not follow[] . . . rules”).

¹³⁴ See Mark Koba, *Mexico, Surprising Land of Opportunity*, CNBC (Sept. 18, 2012, 9:41 AM), <http://www.cnbc.com/id/48986442>.

However, with proper security or policy reforms by the Mexican government, increased cooperation between the United States and Mexico, and more employment opportunities, Mexico could prevent the loss of its work force to foreign countries and encourage more circular migration for those who choose to leave.¹³⁵

2. The “Good News”

Despite the slow progress, the Mexican economy has seen some big improvements in the past few years.¹³⁶ Mexico’s economic growth “easily outpaced the giants of the hemisphere—the United States, Canada and Brazil—in 2011 and 2012, according to International Monetary Fund data, making the country more attractive to fortune seekers worldwide.”¹³⁷ In reality, Mexico offers investors “a land of opportunity that rivals any other emerging market.”¹³⁸ In the past ten years, “globally competitive Mexican businesses” have grown and started investing in foreign countries like the United States.¹³⁹ Mexico is now one of the world’s leading export countries and is also attracting huge investment companies like General Motors and Coca Cola.¹⁴⁰

¹³⁵ Graybeal, *supra* note 7, at 6; *see also* Koba, *supra* note 134 (stating that “Mexico may have one of the most underrated and misunderstood roles in the global economy”).

¹³⁶

Mexico has in place robust policy frameworks, which include monetary policy guided by the inflation targeting regime in the context of a flexible exchange rate, fiscal policy anchored by a balanced budget rule, and financial oversight based on a sound regulatory and supervisory framework. . . . [T]he authorities remain committed to prudent macroeconomic management under these policy frameworks. They are also committed to pursuing further reforms on a variety of fronts to bolster Mexico’s long-term growth potential.

Press Release, Int’l Monetary Fund, IMF Executive Board Approves New Two-Year US \$73 Billion Flexible Credit Line Arrangement with Mexico, IMF Press Release No. 12/465 (Nov. 30, 2012), *available at* <http://www.imf.org/external/np/sec/pr/2012/pr12465.htm>. IMF reports show that “Mexico’s growth has been resilient, supported by both external and domestic demand[.]” with “[g]rowth in 2011 and 2012 [] above potential—at nearly 4 percent. The country’s growth rate is expected to converge to 3½ percent in 2013—close to Mexico’s long-term potential growth rate.” *IMF Renews \$73 Billion Credit Line for Mexico*, IMF SURVEY MAGAZINE (Dec. 11, 2012), *available at* <http://www.imf.org/external/pubs/ft/survey/so/2012/car121112a.htm>.

¹³⁷ Cave, *supra* note 9.

¹³⁸ Koba, *supra* note 134.

¹³⁹ Graybeal, *supra* note 7, at 12-13.

¹⁴⁰ *See* Koba, *supra* note 134 (“With NAFTA, nearly 86 percent of Mexican exports and 50 percent of its imports are traded with the U.S. and Canada.”); *see also* Shelly K. Schwartz, *What’s the Next Global Manufacturing Superpower?*, CNBC (Sept. 18, 2012), www.cnbc.com/id/49007307#. Other direct investment in 2013 came from General Motors, Mondelez International Inc. (an Illinois-based company), and LEGO Group toys. Angelo Young, *Mexico Forecasts Record Foreign Direct Investment For 2013: \$35B to \$40B, Way Up From 2012*, INT’L BUS. TIMES (July 8, 2013), <http://www.ibtimes.com/mexico-forecasts-record-foreign-direct-investment-2013-35b-40b-way-2012-1336409>.

Huge businesses and monopolies, however, often inhibit the growth of smaller businesses that have limited access to credit and the banks.¹⁴¹ This fact, along with fears that the economic growth will halt quickly, has pushed Mexican leaders to focus on fostering foreign investment and development initiatives.¹⁴² Investors can be seen in all parts of the country, with foreign investment happening along the border, in historic tourist locations, in the capital, and even in the less popular central region.¹⁴³

In a recent response to monopoly barriers, Mexico's president Peña Nieto signed a law in December 2013 to "radical[ly] reform . . . the country's energy market, ending a 75-year oil and gas monopoly in the hope of attracting major investments to increase production."¹⁴⁴ This change should increase jobs and "growth by allowing private sector participation in [the] country's lucrative oil, gas and electricity sectors."¹⁴⁵

The "implementing" comprehensive energy reform laws were signed into law in August 2014.¹⁴⁶ These laws address a number of concerns, including tax obligations and governance responsibilities, of both PEMEX and private investors wanting to invest in Mexico's hydrocarbon industry. While several issues remain, such as providing appropriate assurances to communal and private landowners that they will be given protection and proper compensation for land, the lawmakers contend that they learned from other petroleum-rich lands like Angola, Brazil, and Nigeria to create comprehensive reform that will "balance the interests of potential investors versus the ongoing viability of PEMEX."¹⁴⁷

C. *How Development Ties Into Job Creation*

The status of the economy directly connects to migratory patterns. As one study showed,

¹⁴¹ Graybeal, *supra* note 7, at 131; *see also* Anthony Harrup & Nicholas Casey, *Mexico Goes After Its Monopolies*, WALL ST. J. (Mar. 11, 2013, 8:08 PM), <http://online.wsj.com/news/articles/SB10001424127887324096404578354543917674044>.

¹⁴² *See* Cave, *supra* note 9.

¹⁴³ *Id.*; *see also* Graybeal, *supra* note 7, at 13 (noting that rural Mexico shows continued signs of decreasing population as more people move to cities).

¹⁴⁴ David Alire Garcia & Toni Reinhold, *Mexico's President Signs Law to Reform Energy Market, Attract Investment*, REUTERS (Dec. 20, 2013, 4:23 PM), <http://www.reuters.com/article/2013/12/20/us-mexico-reforms-idUSBRE9BJ19820131220>.

¹⁴⁵ *Id.*

¹⁴⁶ Diana Villiers Negroponte, *Mexico's Energy Reforms Become Law*, BROOKINGS INST. (Aug. 14, 2014), <http://www.brookings.edu/research/articles/2014/08/14-mexico-energy-law-negroponte>.

¹⁴⁷ *Id.*

[E]conomic factors also play a critical part in the decision to migrate. People are very responsive to economic conditions in Mexico and the United States. They are less likely to move to the United States when the U.S. unemployment rate is increasing. An increasing GDP in Mexico originally leads to increases in migration, but as the GDP continues to increase, fewer Mexicans move to the United States.¹⁴⁸

Because of this, “[i]mproving opportunities for Mexicans at home and addressing increasing inequality and poverty in Mexico may be the only reliable and long-lasting solution to unauthorized immigration.”¹⁴⁹ Foreign direct investment has contributed to Mexico’s global attractiveness for further investment, increased jobs and training, and technology transfer.¹⁵⁰

Studies have shown a positive correlation between foreign direct investment and both job creation and higher wages.¹⁵¹ In fact, “[a]n estimated 73 million workers, representing 3% of the global workforce, were employed in foreign affiliates of MNEs [(multinational enterprises)] in 2006, almost three times more than in 1990 . . . [with a] disproportionate share of these workers . . . in developing and transition economies.”¹⁵² While foreign direct investment has been increasingly focused on skill-intensive sectors, the activities of the affiliates abroad do not necessarily require only skilled labor. Most jobs are labor-intensive and in the manufacturing sector.¹⁵³ The amount of job creation flowing directly from the investor may vary, and “the impact of FDI may . . . also spillover to affect productivity, employment and working conditions in domestically-owned firms.”¹⁵⁴

IV. SUGGESTED CHANGES TO THE CURRENT IMMIGRATION BILLS

Undocumented immigrants will continue to come to the United States regardless of the legislation passed by Congress.¹⁵⁵ However, if the government wants to slow the flow of undocumented migrants to the United States or increase

¹⁴⁸ Reyes, *supra* note 25, at 146.

¹⁴⁹ *Id.* at 151.

¹⁵⁰ *New Horizons and Policy Challenges for Foreign Direct Investment in the 21st Century*, OECD Global Forum on International Investment 2 (Nov. 26-27, 2001), available at <http://www.oecd.org/daf/inv/investmentstatisticsandanalysis/2424050.pdf>.

¹⁵¹ See generally THE IMPACT OF FOREIGN DIRECT INVESTMENT ON WAGES AND WORKING CONDITIONS, REPORT FOR OECD-ILO CONFERENCE ON CORPORATE SOCIAL RESPONSIBILITY 11 (June 23-24, 2008), available at <http://www.oecd.org/corporate/mne/40848277.pdf> (analyzing the impacts of FDI on host country working conditions).

¹⁵² *Id.* at 11.

¹⁵³ *Id.* at 8-10.

¹⁵⁴ *Id.* at 11.

¹⁵⁵ See *supra* Part I.A. (explaining the nuanced causes of migration).

circular migration patterns, new immigration bills must include measures that will address the push factors of migration. Failing to do so will cost the United States billions of dollars in ineffective defense mechanisms, like border walls, that do not provide long-term solutions.¹⁵⁶ Most undocumented immigrants come for jobs, and “[i]n order to discourage future flows of undocumented immigrants, the true reasons behind unauthorized immigration must be addressed. Putting a patch on the wound is not enough to make it heal properly.”¹⁵⁷

Most importantly, future legislation should address NAFTA’s and other trade policies’ shortcomings in job development.¹⁵⁸ By analyzing the intersection between current immigration laws and NAFTA’s arguable “exploitation” of the Mexican economy, Congress could recognize the connection between migration and jobs. Critics of the recent immigration reform efforts suggest many changes to the laws that would decrease the need for unauthorized immigration to the United States, including increased international focus on women’s education, programs for micro-credit, and improved trade policies.¹⁵⁹ This note proposes a two-part solution to job creation

¹⁵⁶ The U.S. spends \$18 billion on immigration enforcement each year. Nazario, *supra* note 23.

¹⁵⁷ Shatniy, *supra* note 12, at 906.

¹⁵⁸ See *supra* Part III.A.2.; see also Richard A. Boswell, *Crafting True Immigration Reform*, 35 WM. MITCHELL L. REV. 7, 34 (2008) (“Immigration laws attempt to control [human] movement, yet the most effective laws are those that recognize the limits of these attempts at controlling the most natural of human behaviors. While migration will forever be a part of the human existence, proper recognition must be given to those factors which motivate people to move.”).

¹⁵⁹

We can prevent this pain, and slow the flow of migrants permanently, only by addressing the “push” factors that propel migrants, especially women, to leave in the first place . . . We can start by creating opportunities for women in just four countries: Mexico, Guatemala, Honduras and El Salvador, which send three-quarters of all undocumented migrants here. The United States could increase aid to those countries to improve education for girls, which would lower birthrates. It could finance or promote microloans to help women start job-generating businesses. It could gear trade policies to give clear preferences to goods from these four countries. And it could work with hometown associations—groups of immigrants in the United States who want to help the towns they came from—to coordinate a percentage of the tens of billions of dollar that immigrants send home to Latin America each year toward investing in job-creating enterprises. (One Mexican hometown association helped build a factory in Oaxaca, which has employed many would-be immigrants.)

Nazario, *supra* note 23; see also Devon K. Roepcke, “Should I Stay or Should I Go?": Preventing Illegal Immigration By Creating Opportunity in Mexico Through Microcredit Lending, Comment, 38 CAL. W. INT'L L.J. 455 (2008) (suggesting microcredit programs from the U.S. government as a solution to prevent undocumented immigration from Mexico).

that should be included in the bill. Because the current United States-Mexico trading relationship is strong, the solution can build upon current foreign direct investment initiatives by using them to influence social change. This will benefit both Mexican communities who have traditionally sent migrants north and United States companies who need access to an affordable, stable labor force.

A. *Create Financial Incentives for Local Partnerships*

By creating financial incentives, such as tax breaks, for United States investors working with local partners, viable long-term development can be achieved. Investments by TNCs can have powerful effects on communities, and their corporate policies can “directly stimulate or dampen urban development, promote or hinder access to education, and support or thwart family cohesiveness.”¹⁶⁰ For this reason, Congress should encourage “positive” investments in Mexico that are sustainable and promote development.

Congress can create incentives for companies to partner with local entities in Latin America to create jobs. Local partners include entities like local governments, local investors and community leaders, and community organizations, and “[t]heir support or rejection of projects, especially large-scale projects in infrastructure (e.g., tollways, energy products) or exploration, is likely to have important implications for the success of a project in the medium- and long-term.”¹⁶¹ Not only do the local partners benefit from investments, especially where other credit may not be available, they also “complement and extend the reach of the foreign investors, connecting them to their social context and the web of government, community, and commercial ties that comprised it.”¹⁶² Connections to local institutions can also expand a corporation’s sense of social responsibility to the local community and encourage consideration of that community’s particular needs when

¹⁶⁰ Anderson, *supra* note 89, at 2.

¹⁶¹ Tamara Lothian & Katharina Pistor, *Local Institutions, Foreign Investment, and Alternative Strategies of Development: Some Views from Practice*, 42 COLUM. J. TRANSNAT’L L. 101, 115 (2003). This essay summarizes a panel discussion about the relationship of foreign investment and local institutions. A conclusion drawn from the discussion was that “greater emphasis should be placed on the diversity of the institutions that may support different investment projects and the local conditions and constituencies that are necessary for successful investment projects.” *Id.* at 101.

¹⁶² *Id.* at 115.

making investment decisions. In this way, local and foreign investment can and should overlap.¹⁶³

Corporations should also build upon the community's local initiatives.¹⁶⁴ By using local knowledge, labor, and leadership as a resource, companies can receive greater insight into cultural, environmental, and political factors that affect their businesses. Use of these local resources serves the business well by providing "insider" information such as hidden environmental conditions and benefits the community by creating jobs and a platform to assert their community's rights and concerns.

By creating a financial incentive like tax breaks for United States companies who partner with Mexican entities, Congress can help decrease unauthorized immigration by encouraging sustainable long-term investment in the immigrants' home communities and promote investment opportunities for United States companies and investors.

B. *Enact Mandatory Social Policies for Investors*

Because the benefits of foreign direct investment to local communities are often fewer than expected, the law should encourage investors to holistically examine community issues like politics, economics, and social justice.¹⁶⁵ Several African countries have enacted both national legislation and community development agreements (CDAs) to increase foreign investment's benefits to communities that could serve as a model for United States-based investment in Latin America.¹⁶⁶ For TNCs that engage in exploitative industries, such as oil extraction, enacting private CDAs ("[s]ome [of which] are mandated by legislation") with local communities to address development concerns often quells potential outcry from the community.¹⁶⁷

CDAs can take a variety of forms, including corporate social responsibility initiatives, benefits sharing, job creation or

¹⁶³ *Id.* at 116.

¹⁶⁴ *Id.* at 117. The panelists discussed an Argentina provincial energy cooperative that combined foreign and local capital and the government and private sectors as an example. *Id.*

¹⁶⁵ Odumosu-Ayanu, *supra* note 107, at 65-66. This article discusses the ways in which two African countries, Ghana and Nigeria, have attempted to reap more community benefits from foreign investments. "While the goal of attracting FDI might be laudable, there is a difference between FDI inflows (quantity) and a sustainable private investment regime (quality)." *Id.* at 68.

¹⁶⁶ *See generally id.*

¹⁶⁷ *Id.* at 81; *see, e.g., We Agree. Do You?*, CHEVRON, <http://www.chevron.com/weagree/> (providing examples of programs for community development and social initiatives).

assurance of a job percentage for local citizens.¹⁶⁸ While CDAs are not perfect, and sometimes act only as publicity or “peace-keeping” devices while really exploiting communities, they represent an alternative model of investment agreements that ensures some amount of responsibility and accountability of investors and a foundation for better development opportunities.

How would this work in practice between Mexico and the United States? U.S.-Mexico investment is robust,¹⁶⁹ but enactments of CDAs or similar social responsibility investment agreements would make investments more sustainable and would provide a partial solution to undocumented, non-circular immigration. As part of the immigration reform bills, Congress could offer some incentive, such as a domestic tax break or financial reimbursement, for companies investing in Mexico—but only if the company agrees to a CDA or similar corporate social responsibility initiative that promises to increase sustainable jobs in Mexico.¹⁷⁰ For example, a U.S. company that imports goods from Mexico could enact a CDA that ensures job creation or higher pay for the Mexican employees.

Various incentives could urge investing corporations to adopt CDAs that improve working conditions in the host country.¹⁷¹ Multinational corporations “may be willing to pay higher wages than their local competitors in an attempt to reduce worker turnover . . . [or] to motivate the workforce.”¹⁷²

¹⁶⁸ Odumosu-Ayanu, *supra* note 107, at 81-82. Other CDAs include things like “educational scholarships, technical training, employment opportunities, financial or other support for the development and maintenance of infrastructure like roads, water and power, assistance with the creation, development and support of small scale enterprises, and marketing of agricultural products.” *Id.* at 83.

¹⁶⁹

U.S. investment in Mexico, and Mexican investment in the U.S., is also strong . . . U.S. foreign direct investment (FDI) in Mexico (stock) in 2011 was \$91.4 billion. . . . These investments [were] primarily in manufacturing, nonbank holding companies, and finance and insurance sectors. . . . Mexican foreign direct investment in the United States in 2011 was \$13.8 billion. . . . Such investments in the U.S. are primarily in manufacturing and wholesale trade sectors.

Lost in the Shadow of the Fence, *supra* note 129.

¹⁷⁰ See Anderson, *supra* note 89, at 28-29 (suggesting that “[p]rinciples of Global Corporate Citizenship,” which Anderson describes similarly to the corporate responsibility standards discussed in this section, “can be formalized and integrated into international law . . . [through] multilateral, regional, and bilateral trade agreements[;] . . . guidelines and investment principles issued by international or multilateral organizations; and domestic regulations”).

¹⁷¹ See THE IMPACT OF FOREIGN DIRECT INVESTMENT ON WAGES AND WORKING CONDITIONS, *supra* note 151, at 11.

¹⁷² *Id.* at 12. Studies show:

that average wages in foreign-owned plants tend to be about 30% higher than in domestic plants. . . . This suggests that foreign-owned firms pay higher

They may also provide “better” jobs and labor practices, especially “in developing countries where the rule of law is weak . . . [and MNEs have] reputational concerns and consumer pressure in their home markets.”¹⁷³

President Obama recently announced the United States’ anti-corruption agenda that includes elements to improve international transparency and accountability, such as a National Action Plan to “promote and incentivize responsible business conduct.”¹⁷⁴ While this agenda is a step in the right direction, it should ensure that corporations are motivated to follow such programs, especially in relation to countries historically affected by U.S. trade policies.

C. *How These Changes Can Affect Migration*

By holding companies to a higher social standard of development when investing abroad, potential migrants would have more opportunity to work in their home country and feel less pressure to move to the United States to support their families. Similarly, undocumented immigrants who have not returned home because of lack of work in their hometowns could feel more secure in finding reliable employment from such investor initiatives. Therefore, migration to the United States will become more voluntary and migrants will have an incentive to return home after working in the United States for a set period of time.

More economic interaction between the United States and Mexico would prove to be highly beneficial for both nations.¹⁷⁵ Congress must look beyond granting gains only to large investors (the only population NAFTA effectively helped) and instead focus on financial gain for the larger community. In order for immigration legislation to successfully decrease the flow of unauthorized migrants and increase the general welfare of citizens in both countries, “efforts must be made to improve the Mexican economy and thus diminish the push factors of

wages than their local competitors in developing countries. However, this does not necessarily mean that foreign ownership improves employment conditions as the workforces in domestic and foreign firms may be qualitatively different.

Id.

¹⁷³ *Id.*

¹⁷⁴ Press Release, Fact Sheet: The U.S. Global Anticorruption Agenda, White House Office of the Press Secretary (Sept. 24, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/09/24/fact-sheet-us-global-anticorruption-agenda>.

¹⁷⁵ Graybeal, *supra* note 7, at 11-12; see also Kenneth Rapoza, *Sorry Brazil, Investors Prefer Mexico*, FORBES (July 10, 2012), <http://www.forbes.com/sites/kenrapoza/2012/07/10/sorry-brazil-investors-prefer-mexico/> (describing Mexico’s economic growth and portfolio investments).

migration. This includes increasing Mexican imports—possibly through new preferential treatments—or possibly locating industries in Mexico.”¹⁷⁶

By locating more industries in neighboring Mexico instead of far overseas, investors could access the benefits of having a stable, hard-working workforce close to home.¹⁷⁷ In fact, “Mexico is cheaper now than China”¹⁷⁸ and contains a workforce that works among the most number of hours annually per worker.¹⁷⁹ As it becomes a more attractive place for international investors, the potential for huge job creation and development in Mexico is closer to becoming a reality. As one reporter notes:

If the country of 112 million people can harness the energy of foreigners and newly educated Mexicans, become partners with the slew of American firms seeking alternatives to China, and get them to do more than just hire cheap labor, economists and officials say Mexico could finally become a more equal partner for the United States and the first-world country its presidents have promised for decades.¹⁸⁰

CDAs and local partnerships are not the only answer to lack of jobs. Nevertheless, these tools create a way for investors to harness a NAFTA-liberalized market, while simultaneously creating jobs in local Mexican communities and gaining valuable insight from local partners. These methods create benefits for both investors and local communities. Moreover, because CDAs can take a variety of forms, CDAs can be crafted to create jobs for the precise population of migrants coming to the United States—whether it be skilled or unskilled workers.

CONCLUSION

United States lawmakers are constantly addressing the hot topic of undocumented immigration through legislation such as the recent immigration reform bills S. 744 and H.R. 15. The bills proposed defensive measures, such as building walls and increasing border security, while ignoring the root causes of migration.¹⁸¹ Until proactive measures are taken to address the push factors of migration, like lack of jobs in the migrant’s home

¹⁷⁶ Graybeal, *supra* note 7, at 8.

¹⁷⁷ See Koba, *supra* note 134.

¹⁷⁸ Rapoza, *supra* note 175.

¹⁷⁹ Mexico ranks as one of the highest countries in annual hours worked per worker. *Average Annual Hours Actually Worked Per Workers*, OECD.STATEXTRACTS, <http://stats.oecd.org/Index.aspx?DataSetCode=ANHRS>; see also Catherine Rampell, *Mexicans Work the Longest Hours*, N.Y. TIMES BLOG (Apr. 12, 2011, 5:00 PM), http://economix.blogs.nytimes.com/2011/04/12/mexicans-work-the-longest-hours/?_r=0.

¹⁸⁰ Cave, *supra* note 9.

¹⁸¹ See *supra* Parts I.A and II.B.

community, the number of undocumented immigrants coming to the United States is unlikely to significantly slow down.¹⁸² For this reason, Congress should focus on incentivizing “socially-beneficial” foreign direct investment. If United States businesses invest in Mexico with local partnership collaboration and with social policies, people will have a choice in migrating or staying in their communities, unlike the “forced” migration that is necessary in many poor communities now. Migrants will be able to practice circular migration if they know their home communities have businesses offering well-paid jobs to locals. This, along with other solutions like increasing the current visa quotas, can help balance the legal flow of labor.¹⁸³

Both Mexico and the United States would benefit from this type of program. United States businesses will receive access to an affordable, stable workforce close to home in Mexico’s growing economy. By partnering with local entities and enacting social policies, these companies will increase the sustainability of their projects.¹⁸⁴ Mexican communities benefit because the number of jobs will increase as United States companies invest there. Because the companies would be required to enact corporate social responsibility policies and partner with local entities, the investments will be less exploitative and instead will contribute to community development.¹⁸⁵

In addressing one of the root causes of migration—unemployment in the migrant’s home community—Congress can begin creating sustainable immigration reform instead of implementing only defensive, Band-Aid solutions. This type of approach constitutes the truly comprehensive immigration reform needed to balance our economic and immigration policies.

Molly E. Kammien[†]

¹⁸² Passel & Cohn, *supra* note 31 (“[While] the undocumented immigrant population grew rapidly from 1990 to 2006 [it] has since stabilized.”).

¹⁸³ See Shatniy, *supra* note 12, at 903-07 (purporting that increased immigration quotas are necessary “to keep up with our economic demands”).

¹⁸⁴ See *supra* Part IV.A. (discussing the benefits of local partnerships).

¹⁸⁵ Compare Anderson, *supra* note 89, at 29-30 with Lothian & Pistor, *supra* note 161, at 111-13 (discussing some foreign direct investment projects that ultimately hurt the host communities more than helped, and proposing alternative investment projects that focus on local involvement). “Left to their own devices, local groups and financial entrepreneurs could occasionally invent new forms of investment, navigate the local context, and channel resources to areas of commercial potential and social need.” *Id.* at 113.

[†] J.D. Candidate, 2015, Brooklyn Law School; B.A., 2010, Boston College. I would like to thank the *Brooklyn Law Review* staff for their assistance in the editing process, Professors Maryellen Fullerton and Stacy Caplow for inspiring me to pursue my interest in migration, and my family and friends for their support. I want to dedicate this note to migrant families and their allies working for immigration reform.

