Article

THE LEGAL PRODUCTION OF MEXICAN/MIGRANT "ILLEGALITY"

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Abstract

Mexican migration to the United States is distinguished by a seeming paradox that is seldom examined: while no other country has supplied nearly as many migrants to the US as Mexico, major changes in US immigration law since 1965 have created ever more severe restrictions on "legal" migration from Mexico in particular. This paper delineates the historical specificity of Mexican migration as it has come to be located in the legal economy of the US nation-state, and thereby constituted as an object of the law. More precisely, this paper examines the history of changes in US immigration law through the specific lens of how these revisions with respect to the Western Hemisphere, and thus, all of Latin America, have had a distinctive and disproportionate impact upon Mexicans in particular.

Keywords

undocumented Mexican migration; illegality; deportability; immigration law; race; citizenship

Mexican migration to the United States is distinguished by a seeming paradox that is seldom examined: while no other country has supplied nearly as many migrants to the US as has Mexico since 1965, virtually all major changes in US immigration law during this period have created ever more severe restrictions on the conditions of "legal" migration from Mexico. Indeed, this seeming paradox presents itself in a double sense: on the one hand, apparently liberalizing immigration laws have in fact concealed significantly restrictive features, especially for Mexicans; on the other hand,

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ostensibly restrictive immigration laws purportedly intended to deter migration have nonetheless been instrumental in sustaining Mexican migration, but only by significantly restructuring its legal status as undocumented. Beginning in the 1960s, precisely when Mexican migration escalated dramatically – and ever since – persistent revisions in the law have effectively foreclosed the viable possibilities for the great majority who would migrate from Mexico to do so in accord with the law, and thus played an instrumental role in the production of a legally vulnerable undocumented workforce of "illegal aliens."

This study elaborates the historical specificity of contemporary Mexican migration to the US as it has come to be located in the legal (political) economy of the US nation-state, and thereby constituted as an object of the law, especially since 1965. More precisely, this article interrogates the history of changes in US immigration law through the specific lens of how these revisions have had a distinct impact upon Mexicans in particular. Only in light of this sociolegal history does it become possible to sustain a critical perspective that is not complicit in the naturalization of Mexican migrants' "illegality" as a mere fact of life, the presumably transparent consequence of unauthorized border crossing or some other violation of immigration law.[1] Indeed, in order to sustain an emphatic concern to de-naturalize the reification of this distinction, I deploy quotes throughout this essay, wherever the terms "legal" or "illegal" modify migration or migrants.

In addition to simply designating a juridical status in relation to the US nation-state and its laws of immigration, naturalization, and citizenship, migrant "illegality" signals a specifically *spatialized* socio-political condition. "Illegality" is lived through a palpable sense of deportability – the possibility of deportation, which is to say, the possibility of being removed from the space of the US nation-state. The legal production of "illegality" provides an apparatus for sustaining Mexican migrants' vulnerability and tractability – as workers – whose labor-power, inasmuch as it is deportable, becomes an eminently disposable commodity. Deportability is decisive in the legal production of Mexican/migrant "illegality" and the militarized policing of the US-Mexico border, however, only insofar as some are deported in order that most may ultimately remain (un-deported) – as workers, whose particular migrant status has been rendered "illegal." Thus, in the everyday life of Mexican migrants in innumerable places throughout the US, "illegality" reproduces the practical repercussions of the physical border between the US and Mexico across which undocumented migration is constituted. In this important sense, migrant "illegality" is a spatialized social condition that is inseparable from the particular ways that Mexican migrants are likewise racialized as "illegal aliens" – invasive violators of the law, incorrigible "foreigners," subverting the integrity of "the nation" and its sovereignty from *within* the space of the US nation-state. Thus, as a simultaneously spatialized and racialized social condition, migrant "illegality" is also a central feature of the ways that "Mexican"-ness is thereby

1 The category "migrant" should not be confused with the more precise term "migratory"; rather, "migrant" is intended here to serve as a category of analysis that disrupts the implicit teleology of the more conventional term "immigrant," which is posited always from the standpoint of the "immigrant-receiving" US nation-state (cf. De Genova, in press).

reconfigured in *racialized* relation to the hegemonic "national" identity of "American"-ness (De Genova, in press). Although it is beyond the scope of this article, it is nevertheless crucial to locate these conjunctures of race, space, and "illegality" in terms of an earlier history of the intersections of race and citizenship. That history is chiefly distinguished, on the one hand, by the broader historical formulation of white supremacy in relation to "immigration," and on the other, by the more specific legacy of warfare and conquest in what would come to be called "the American Southwest," culminating in the Treaty of Guadalupe Hidalgo of 1848, which occasioned the first historical deliberations in the US over questions concerning the citizenship and nationality of Mexicans.

The "revolving door" and the making of a transnational history

Originating in the shared, albeit unequal, history of invasion and war by which roughly half of Mexico's territory came to be conquered and colonized by the US nation-state, the newly established border long went virtually unregulated and movement across it went largely unhindered. During the latter decades of the 19th century, as a regional political economy took shape in what was now the US Southwest, mining, railroads, ranching, and agriculture relied extensively upon the active recruitment of Mexican labor (Barrera, 1979; Acuña, 1981; Gómez-Quiñones, 1994). There was a widespread acknowledgment that Mexicans were encouraged to move freely across the border, and in effect, come to work without any official authorization or documents (Samora, 1971; García, 1980; Calavita, 1992).[2]

After decades of enthusiastically recruiting Chinese migrant labor, among the very first actual US immigration laws was the Chinese Exclusion Act of 1882 (22 Stat. 58). So began an era of immigration regulation that sought to exclude whole groups even from entry into the country, solely on the basis of race or nationality. Eventually, with the passage of the Immigration Act of 1917 (Act of Feb. 5, 1917; 39 Stat. 874), an "All-Asia Barred Zone" was instituted, prohibiting migration from all of Asia (Hing, 1993; Kim, 1994; Salyer, 1995; Ancheta, 1998; Chang, 1999).[3] In the wake of repeated restrictions against "Asiatics," Mexican migrant labor became an indispensable necessity for capital accumulation in the region. During and after the years of the Mexican Revolution and World War I, from 1910 to 1930, approximately one-tenth of Mexico's total population relocated north of the border, partly owing to social disruptions and dislocations within Mexico during this period of political upheaval, but principally driven and often directly orchestrated by labor demand in new industries and agriculture in the US (cf. Cardoso, 1980).

During this same era, a dramatically restrictive system of national-origins immigration quotas was formulated for European migration and put in place

2 It is instructive to recall, however, that it was US whites who were the original "illegal aliens" whose undocumented incursions into Mexican national territory had supplied the prelude to the war (cf. Acuña, 1981, 3–5; Vélez-Ibáñez, 1996, 57–62).

3 Due to their colonized status following the US occupation after the Spanish–American War in 1898, Filipinos were designated US "nationals" and so were a notable exception to

the all-Asian exclusion.

through the passage of the Quota Law of 1921 (Act of May 19, 1921; 42 Stat. 5), and then further amplified by the Immigration Act of 1924 (Act of May 26, 1924; 43 Stat. 153; also known as the Johnson-Reed Act). The 1924 law's national-origins system limited migration based on a convoluted formula that made unequal numerical allotments for immigrant visas, on a country-by-country basis. In effect, this regulatory apparatus had confined migration from the entire Eastern Hemisphere to approximately 150,000 annually; within that ceiling, it had guaranteed that roughly 85% of the allotments were reserved for migrants from northwestern European origins (Higham, 1955[1988]; Reimers, 1985[1992]). Drawing upon 42 volumes (published in 1910 and 1911 by US Immigration Commissions) that compiled "findings" concerning the "racial" composition and "quality" of the US population, the 1924 Immigration Act codified the gamut of popular prejudices about greater and lesser inherent degrees of "assimilability" among variously racialized and nationally stigmatized migrant groups. The Congressional Record bears ample testimony to the avowed preoccupation with maintaining the "white"/"Caucasian" racial purity of "American" national identity – "an unmistakable declaration of white immigration policy" (Hutchinson, 1981, 167). Remarkably, in spite of the vociferous objections of some of the most vitriolic nativists and, more importantly, as a testament to the utter dependency of employers upon Mexican/migrant labor, particularly in the Southwest, migration from the countries of the Western Hemisphere – Mexico, foremost among them – was left absolutely unrestricted by any numerical quotas.

It is revealing that the US Border Patrol, from 1924 – when it was first created – until 1940, operated under the auspices of the Department of Labor. By the late 1920s, the Border Patrol had very quickly assumed its distinctive role as a special police force for the repression of Mexican workers in the US (Mirandé, 1987; Ngai, 1999, 2004). Selective enforcement of the law – coordinated with seasonal labor demand by US employers – instituted a "revolving door" policy, whereby mass deportations would be concurrent with an overall, large-scale importation of Mexican migrant labor (Cockcroft, 1986). Although there were no *quantitative* restrictions (numerical quotas) on "legal" Mexican migration until 1965, Mexican migrants could nonetheless be conveniently denied entry into the US, or deported from it, on the basis of a selective enforcement of *qualitative* features of immigration law, beginning at least as early as the 1920s.

During this era, the regulatory and disciplinary role of deportation operated against Mexican migrants on the basis of rules and regulations governing *who* would be allowed to migrate, with *what* characteristics, *how* they did so, as well as *how* they conducted themselves once they had already entered the country. Thus, attempted entry could be refused on the grounds of a variety of infractions: a failure upon entry to pay a required immigrant head tax and a fee for the visa itself, or perceived "illiteracy," or a presumed liability to become a

"public charge" (due to having no pre-arranged employment), or on the other hand, violation of prohibitions against contracted labor (due to having pre-arranged employment through labor recruitment). Likewise, Mexican workers could be subsequently deported if they could not verify that they held valid work visas or could otherwise be found to have evaded inspection, or if they could be found to have become "public charges" (retroactively enabling the judgment of a prior condition of "liability"), or to have violated US laws, or to have engaged in acts that could be construed as "anarchist" or "seditionist." All of these violations of the qualitative features of the law rendered deportation a crucial mechanism of labor discipline and subjugation, not only coordinated with the vicissitudes of the labor market but also for the purposes of counteracting union organizing among Mexican/migrant workers (cf. Dinwoodie, 1977; Acuña, 1981; Gómez-Quiñones, 1994).

With the advent of the Great Depression of the 1930s, however, the more plainly racist character of Mexican illegalization and deportability became abundantly manifest. Mexican migrants and US-born Mexican citizens alike were systematically excluded from employment and economic relief, which were declared the exclusive preserve of "Americans," who were presumed to be more "deserving." These abuses culminated in the forcible mass-deportation of at least 415,000 Mexican migrants as well as many of their US-citizen children, and the "voluntary" repatriation of 85,000 more (Hoffman, 1974; Guerin-Gonzáles, 1994; Balderrama and Rodríguez, 1995). Notably, Mexicans were expelled with no regard to legal residence or US citizenship or even birth in the US – simply for being "Mexicans."

In the face of the renewed labor shortages caused by US involvement in World War II, however, the United States federal government, in a dramatic reversal of the mass deportations of the 1930s, initiated the mass importation that came to be known as the Bracero Program as an administrative measure to institutionalize and regiment the supply of Mexican/migrant labor for US capitalism (principally for agriculture, but also for the railroads). The "Bracero" accords were effected unceremoniously by a Special Committee on Importation of Mexican Labor (formed by the US Immigration Service, the War Manpower Commission, and the Departments of State, Labor, and Agriculture) through a bilateral agreement with Mexico. Predictably, the US Department of Agriculture was granted primary authority over the program. Ostensibly an emergency wartime measure at its inception in 1942 (Public Law 45), the program was repeatedly renewed and dramatically expanded until its termination in 1964. This legalized importation of Mexican labor meant that migrant workers, once contracted, essentially became a captive workforce under the jurisdiction of the US federal government, and thus, a guarantee to US employers of unlimited "cheap" labor. In addition to this protracted contract-labor migration, however, the Bracero Program facilitated undocumented migration at levels that far surpassed the numbers of "legal" braceros – both through the development of a

migration infrastructure and through employers' encouragement of braceros to overstay the limited tenure of their contracts. Preferring the undocumented workers, employers could evade the bond and contracting fees, minimum employment periods, fixed wages and other safeguards required in employing braceros (Galarza, 1964; cf. López, 1981). Indeed, as early as 1949, US employers and labor recruiters were assisted with instantaneous legalization procedures for undocumented workers, known as "drying out wetbacks" (Calavita, 1992). Some have estimated that four undocumented migrants entered the US from Mexico for every documented bracero.[4] Early in 1954, in an affront to the Mexican government's negotiators' pleas for a fixed minimum wage for braceros, the US Congress authorized the Department of Labor to unilaterally recruit Mexican workers, and the Border Patrol itself opened the border and actively recruited undocumented migrants (Galarza, 1964; Cockcroft, 1986). This period of official "open border" soon culminated, predictably in accord with the "revolving door" strategy, in the 1954–1955 expulsion of at least 2.9 million "illegal" Mexican/migrant workers under the militarized dragnet and nativist hysteria of "Operation Wetback" (García, 1980). Thus, the Bracero years were distinguished not only by expanded legal migration through contract labor, but also the federal facilitation of undocumented migration and the provision of ample opportunities for legalization, simultaneously coupled with considerable repression and mass deportations.

4 Approximately 4.8 million contracts were issued to Mexican workers for employment as braceros over the course of the program's 22 years, and during that same period there were more than 5 million apprehensions of undocumented Mexican migrants (Samora, 1971; cf. López, 1981). Both figures include redundancies and thus are not indicative of absolute numbers, but reveal nonetheless a more general complementarity between contracted and undocumented flows.

The visibility of "illegal aliens" and the invisibility of the law

Due to the critical function of deportation in the maintenance of the "revolving-door" policy, the tenuous distinction between "legal" and "illegal" migration has been deployed to stigmatize and regulate Mexican/migrant workers for much of the 20th century. Originally by means of *qualitative* restrictions – such as work visa and literacy requirements and contract labor prohibitions, or in the case of the Bracero program, the requirement of labor contracts and the prohibition against overstaying those contracts – "illegality" has long served as a constitutive dimension of the specific racialized inscription of "Mexicans," in general, in the United States (De Genova, in press; cf. Ngai, 1999, 2004). In these respects, Mexican/migrant "illegality," *per se*, is not new. Indeed, this reflects something of what James Cockcroft (1986) has characterized as the special character of Mexican migration to the US: Mexico has provided US capitalism with the only "foreign" migrant labor reserve so sufficiently flexible that it can neither be fully replaced nor completely excluded under any circumstances. However, the US nation-state has historically deployed a variety of different tactics to systematically create and sustain "illegality," and furthermore, has refined those tactics in ways that have ever more thoroughly constrained the social predicaments of undocumented Mexican migrants. The

history of legal debate and action concerning "immigration" is, after all, precisely a *history*. This essay is centrally concerned with the task of denaturalizing Mexican/migrant "illegality," and locating its historical specificity as an irreducibly social "fact," a real abstraction, *produced* as an effect of the practical materiality of the law. Inasmuch as I am emphatically concerned with that distinct migration which is Mexican, in contradistinction to other migrations or some presumably generic "immigrant experience," furthermore, I want to insist upon the historical specificities of a similarly distinct "illegality" which has predominated for Mexican migrants in particular. These historically specific Mexican experiences within US legal regimes of migrant "illegality" certainly have meaningful analogies and substantive correlations with the sociopolitical conditions of other undocumented migrations, especially those from Latin America and the Caribbean (see, e.g. Hagan, 1994; Mahler, 1995; Coutin, 2000), as well as other racially subordinated groups, most notably Arabs and other Muslims ensnared in the immigration dragnet of the Homeland Security State since September 11, 2001 (cf. Cole, 2003). But such comparisons will only be intellectually compelling and politically cogent if they derive their force from precise accounts of the particular intersections of historically specific migrations and complex webs of "legality" and "illegality."

The history of immigration law is nothing if not a history of rather intricate and calculated interventions.[5] This is not to imply any over-arching, coherent, and unified "strategy" that has single-handedly dictated these calculations throughout that history. Nor is this history merely a functional, more or less automatic by-product of some predetermined (and thus, teleological) "logic" flowing from the presumably rigid and fixed "structure" of capitalist society. On the contrary, the intricate history of law-making is best distinguished above all by its constitutive restlessness and the relative incoherence of various conflicting strategies, tactics, and compromises that the US nation-state has implemented at particular historical moments, precisely to mediate the contradictions immanent in crises and struggles around the subordination of labor. Thus, US immigration laws have served as instruments to tactically supply and refine the parameters of both discipline and coercion. As such, they are always conjunctural, and never assured. In other words, immigration laws, in their effort to manage the migratory mobility of labor, are ensnared in a struggle to subordinate the intractability that is intrinsic to the constitutive role of labor within capital – what Marx described as "a protracted and more or less concealed civil war" (Marx, 1867 [1976, 412]; cf. Bonefeld, 1995; Holloway, 1995). As John Holloway suggests, "Once the categories of thought are understood as expressions not of objectified social relations but of the struggle to objectify them, then a whole storm of unpredictability blows through them. Once it is understood that money, capital, the state…" [and here I add, emphatically, the law] "…are nothing but the struggle to form, to discipline, to structure … 'the sheer unrest of life,' then it is clear that their development can be understood

5 Beyond legislation, the history of immigration and citizenship law also commands a consideration of judicial cases and administrative decisions affecting the policies regulating admission and deportation, as well as access to employment, housing, and education, and eligibility for various social welfare benefits (cf. Lee, 1999). My discussion, however, is concerned with the more narrowly legislative history affecting "illegality" for Mexican migration, inasmuch as this subject itself has been sorely neglected, if not misrepresented altogether.

only as practice, as undetermined struggle" (Holloway, 1995, 176; cf. Pashukanis 1929 [1989]). And it is this appreciation of the law – as undetermined struggle – that I want to bring to bear upon how we might apprehend the historicity of the US immigration law, especially as it has devised for its target, that characteristically mobile "population" comprised by Mexican/migrant labor.

Migrant "illegality" is ultimately sustained not merely as an effect of such deliberate legal interventions, but furthermore as the ideological effect of a discursive formation encompassing broader public debate and political struggle. Social science scholarship concerning undocumented Mexican migration to the US is itself often ensnared in this same discursive formation of "illegality" (De Genova, 2002). The treatment of "illegality" as an undifferentiated, transhistorical fixture is a recurring motif in much of the scholarship on Mexican migration. Across an extensive body of multidisciplinary scholarship, one encounters a remarkable visibility of "illegal immigrants" swirling enigmatically around the stunning invisibility of the law. The material force of law, its instrumentality, its productivity of some of the most meaningful and salient parameters of socio-political life, and also its historicity – all of this seems strangely absent, with rather few exceptions. This entanglement within the fetishism of the law tends to be true even on the part of scholars who criticize the disciplinary character of border patrol. Yet, with respect to the "illegality" of undocumented migrants, a viable critical scholarship is frankly unthinkable without an informed interrogation of immigration law. In effect, by not examining the actual operations of immigration law in generating the categories of differentiation among migrants' legal statuses, this scholarship largely takes the law for granted. By not examining those operations over the course of their enactments, enforcements, and reconfigurations, furthermore, this scholarship effectively treats the law as transhistorical and thus fundamentally unchanging – thereby naturalizing a notion of what it means to transgress that law.

Legislating Mexican "illegality"

Prior to 1965, as already suggested, there were absolutely no *quantitative* restrictions on "legal" migration from Mexico, imposed at the level of statute, and none had ever existed. There had literally never before been any *numerical* quota legislated to limit migration from Mexico.[6] This was true for all of the countries of the Western Hemisphere (excluding colonies), and so has implications for nearly all Latino groups (with Puerto Ricans as the very important exception), but none of these countries has ever had numbers of migrants at all comparable to those originating from Mexico. Furthermore, the reformulation of the legal specificities of "illegality" in 1965 and thereafter, it bears repeating, transpired in the midst of an enthusiastic and virtually

6 Here I refer to the absence of any prior *statutory* quotas legislated to restrict "legal" migration from Mexico, in contradistinction to numerical restrictions

imposed unofficially at the local level when US consulates in Mexico were sometimes directed to limit the number of migrant visas they issued (cf. Ngai, 1999, 2004).

unrelenting *im*portation of Mexican/migrant labor (increasingly impervious even to the ebbs and flows of unemployment rates). The end of the Bracero Program in 1964 was an immediate and decisive prelude to the landmark reconfiguration of US immigration law in 1965. Indeed, anticipating unemployment pressures due to the end of the Bracero Program, the Mexican government simultaneously introduced its Border Industrialization Program, enabling US-owned, labor-intensive assembly plants (maquiladoras) to operate in a virtual free-trade zone along the US border. As a result, migration within Mexico to the border region accelerated. By 1974, one-third of the population of Mexico's border states was comprised of people who had already migrated from elsewhere, and a mere 3% of them were employed in the maquiladoras (Cockcroft, 1986, 109; cf. Heyman, 1991). Thus, a long established, well organized, deeply entrenched, increasingly diversified, and continuously rising stream of Mexican migration to the US had already been accelerating prior to 1965, and circumstances in the region that might induce subsequent migration to the US simply continued to intensify. As a consequence of the successive changes in US immigration law since 1965, however, previously unknown *quantitative* restrictions – and specifically, the apparently uniform application of numerical quotas to historically distinct and substantially incommensurable migrations – became central to an unprecedented, expanded, and protracted production of a more rigid, categorical "illegality" for Mexican/migrant workers in particular, than had ever existed previously.

An ever-growing, already significant and potentially indispensable segment of the working class within the space of the US nation-state (both in agriculture and numerous metropolitan areas), Mexican/migrant labor is ubiquitously stigmatized as "illegal," subjected to excessive and extraordinary forms of policing, denied fundamental human rights, and thus, is consigned to an always uncertain social predicament, often with little or no recourse to any semblance of protection from the law. Since the 1960s, Mexico has furnished 7.5–8.4 million ("legal" as well as undocumented) migrants who currently reside in the United States (in addition to unnumbered seasonal and short-term migrants). Approximately half of them (49.3%) are estimated to have arrived only during the decade of the 1990s (Logan, 2001, 2002). By May 2002, based on estimates calculated from the 2000 Census, researchers have suggested that 4.7 million of the Mexican/migrant total were undocumented, of whom as many as 85% had arrived in the US only during the 1990s (Passel, 2002). No other country has supplied even comparable numbers; indeed, by 2000, Mexican migrants alone constituted nearly 28% of the total "foreign-born" population in the US. It may seem paradoxical, then, that virtually all major changes in the quantitative features of US immigration law during this period have created ever more severe restrictions on the conditions of possibility for "legal" migration from Mexico. Indeed, precisely because no other country has supplied comparable numbers of migrants to the US during this time period, all of the repercussions of the

uniform numerical restrictions introduced by these legislative revisions have weighed disproportionately upon Mexican migration in particular. This legal history, therefore, constitutes a defining aspect of the historical specificity – indeed, the effective singularity – of contemporary Mexican migration to the US.

To a great extent, the seeming enigma derives from the fact that the very character of migrant "illegality" for Mexicans (as well as other migrations within the Western Hemisphere) was reconfigured by what was, in many respects, genuinely a watershed "liberalization" of immigration policy in 1965. The Hart-Celler Act of 1965 (Public Law 89–236; 79 Stat. 911), which entailed amendments to the Immigration and Nationalities Act of 1952 (Public Law 82–414; 66 Stat. 163) comprised an ostensibly egalitarian legislation. The monumental overhaul of US immigration law in 1965 dismantled the US nation-state's openly racist formulation of immigration control. The reform of immigration law in 1965 dramatically reversed the explicitly racist exclusion against Asian migrations, which had been in effect and only minimally mitigated since 1917 (or, in the case of the Chinese, since 1882). Likewise, the 1965 amendments abolished the draconian system of national-origins quotas for the countries of Europe, first enacted in 1921 and amplified in 1924.

With the end of the national-origins quota system, predictably, the 1965 amendments have been typically celebrated as a liberal reform, and US immigration policy suddenly appeared to be chiefly distinguished by a broad inclusiveness, but with respect to Mexico, the outcome was distinctly and unequivocally restrictive. These same "liberal" revisions (taking effect in 1968) established for the first time in US history an annual numerical quota to restrict "legal" migration from the Western Hemisphere. Indeed, the new cap imposed for the Western Hemisphere came about as a compromise with those who sought to maintain the national-origins quota system, whom Aristide Zolberg (1990, 321) has described as "traditional restrictionists, who sought to deter immigration of blacks from the West Indies and 'browns' from south of the border more generally." However, David Reimers (1985 [1992, 79]) notes that few expressed blatantly racist attitudes, and the restriction for the Americas was notably defended in a more apparently liberal idiom, out of a concern with "fairness" for "our traditional friends and allies in Western Europe" (quoted on p. 77). Although hundreds of thousands already migrated from Mexico annually, and the number of apprehensions by the Immigration and Naturalization Service (INS) of "deportable alien" Mexicans was itself already 151,000 during the year prior to the enactment of the new quota, now no more than 120,000 "legal" migrants (excluding quota exemptions) would be permitted from the entirety of the Western Hemisphere. In comparison to 120,000 migrants who would be permitted within the Western Hemisphere quota, moreover, the annual quota for such "non-exempt" "legal" migration from the Eastern Hemisphere was higher – 170,000. On the scale of the globe,

no single country was sending numbers of migrants at all comparable to the level of migration from Mexico, and this has remained true, consistently, ever since. Yet, the numerical quota for all non-exempt migrants within the Western Hemisphere to migrate "legally" (i.e. the maximum quota within which Mexicans would have to operate) was restricted to a level far below actual and already documented numbers for Mexican migration.

The 1965 Amendments have also been characterized as expansively liberal in their provisions for migrant family reunification. For both Hemispheres, some family members would be considered "exempt" from the quota restrictions, and thus could migrate without being counted against the quotas. These "quota exemptions" for family reunification were restricted to the spouses, unmarried minor children, and parents of adult US *citizens* (usually migrants, but only those who had already been naturalized). Counted within the Western Hemisphere quota (i.e. non-exempt), notably, the spouses, unmarried minor children, and parents of *permanent residents*, as well as preference for professionals and skilled non-professionals with labor certifications from the Department of Labor, were variously privileged through a system of ranked preferences. The respective systems of preferences within the two quotas, however, were markedly different. For the Eastern Hemisphere, in addition to the explicit ranked preferences included under the Western Hemisphere quota for the relatives of *permanent residents*, there were also provisions for the unmarried *adult* children, married children (adult or minor), and also brothers and sisters (adult or minor) of US *citizens*. Here again, the specifications for "legal" migration from the Eastern Hemisphere were clearly different and, one might say, more liberal. Furthermore, they could be interpreted to have provided additional advantages (hence, greater incentives) for naturalized US citizenship, while those for the Western Hemisphere were considerably more circumscribed and provided no such exceptional benefits for naturalization. Thus, the unequal provisions for family reunification under the two distinct hemispheric quotas imposed generally disadvantageous limitations for Western Hemisphere migrations, and in fact, did so disproportionately to Mexican migration in particular. Likewise, although the provisions for quota-exempt family reunification were equal for both Hemispheres, these exemptions privileged the kin of US citizens (usually naturalized migrants), and so also disadvantaged Mexico because of the pronounced disinclination of most Mexican migrants, historically, to naturalize as US citizens (Sánchez, 1993; Gutiérrez, 1995, 1998; González Baker *et al.*, 1998). In short, the consequences of the new numerical restrictions would weigh disproportionately, almost singularly, on migration from Mexico – above all, because of Mexico's overwhelming numerical preponderance among *all* migrations – and furthermore, even the new law's more expansive and apparently liberal provisions for family unification were likewise structured in a manner that made them less easily applicable to or accessible by Mexicans.

There is still another feature of the 1965 legislation that had an exceptionally important consequence for undocumented Mexican migrants. A preference category for legal migration within the annual quota was established for migrants from the Western Hemisphere, but not the Eastern Hemisphere, who were the parents of US-citizen minors. In other words, a kind of legalization procedure was available to undocumented Western Hemisphere migrants who were the parents of children born in the US (hence, US citizens). In effect, a baby born in the US to an undocumented Mexican migrant served as a virtual apprenticeship for eventual legal residency. Thus, in a manner analogous to earlier "drying-out" procedures, Mexican migrants would be required to serve a term as undocumented workers but then could eventually be "legalized," contingent upon bearing a child in the US.[7]

Especially following more than twenty years of enthusiastic legal contract-labor importation from Mexico, orchestrated by the US federal government through the Bracero Program, an already established influx of Mexican migrants to the US was accelerating prior to 1965. With elaborate migration networks and extensive historical ties already well established, Mexicans continued to migrate, but given the severe restrictions legislated in 1965 (implemented in 1968), ever-greater numbers of Mexicans who were already migrating increasingly had no alternative than to come as undocumented workers, relegated to an indefinite condition of "illegality." From 1968 onward, the numbers of INS apprehensions of "deportable" Mexican nationals skyrocketed annually, leaping 40% in the first year. Although these apprehension statistics are never reliable indicators of the actual numbers of undocumented migrants, they clearly revealed a pattern of policing that was critical for the perpetuation of the "revolving door" policy: the disproportionate majority of INS apprehensions were directed at surreptitious entries along the Mexican border, and this was increasingly so. In 1973, for instance, the INS reported that Mexicans literally comprised 99% of all "deportable aliens" who had entered surreptitiously and were apprehended (cf. Cárdenas, 1975, 86). While the total numbers of apprehensions for all other nationalities from the rest of the world (combined) remained consistently *below* 100,000 annually, the apprehensions of Mexicans rose steadily from 151,000 in 1968 to 781,000 in 1976, when migration was, once again, still more severely restricted. These persistent enforcement practices, and the statistics they produce, have made an extraordinary contribution to the pervasive fallacy that Mexicans account for virtually all "illegal aliens." This effective equation of "illegal immigration" with unauthorized border-crossing, furthermore, has served to continuously re-stage the US–Mexico border in particular as the theatre of an enforcement "crisis," and thus constantly re-renders "Mexican" as the distinctive national name for migrant "illegality."

Immigration law, of course, was not the only thing that was changing in 1965. It has been widely recognized that the sweeping 1965 revisions of

7 This particular "drying-out" procedure was ultimately available to the undocumented parents of babies born in the US between July 1, 1968 and December 31, 1976, due to the elimination of this clause by the 1976 immigration act.

immigration policy emitted from a generalized crisis of Cold War-era liberalism, in which US imperialism's own most cherished "democratic" conceits were perpetually challenged. Taking shape in a context of Cold War international relations imperatives, confronted not only with monumental popular struggles over racial oppression at home but also with decolonization and national liberation movements abroad, US immigration policy was redesigned in 1965 explicitly to rescind the most glaringly discriminatory features of existing law. This crisis was exacerbated by the rising combativeness, in particular, of the Black struggle for "civil rights," which is to say, the mass movement of African Americans to demand their rights of *citizenship*. The Civil Rights struggle was increasingly articulated as a militant repudiation of the "second-class" (ostensible) citizenship conferred upon African Americans since the adoption of the Fourteenth Amendment following the Civil War. This intransigent movement forcefully exposed and articulately denounced the treacherous fact of racially subordinated citizenship. Furthermore, the end of the Bracero Program had been principally accomplished through the restrictionist efforts of organized labor, especially on the part of the predominantly Chicano and Filipino farmworkers movement. Thus, the specific historical conjuncture from which the 1965 Amendments emerged was deeply characterized by political crises that manifested themselves both as domestic and international insurgencies of racialized and colonized working peoples. So began a new production of an altogether new kind of "illegality" for migrations within the Western Hemisphere, with inordinately severe consequences for transnationalized Mexican labor migrants in particular – a kind of transnational fix for political crises of labor subordination (cf. De Genova, 1998, in press).

It is particularly revealing to note here that the explicit topic of "illegal immigration" had been almost entirely absent from the legislative debate leading to the 1965 law. David Reimers calls attention to the irony that the US Congress "paid little attention to undocumented immigrants while reforming immigration policy in 1965," but "as early as 1969" – that is, the first year after the 1965 law had taken effect! – "Congress began to investigate the increase in illegal immigration along the Mexican border" (1985 [1992, 207–08]). By 1976, however, legislative debate and further revisions in the law had succeeded to produce "illegal immigration" as a whole new object within the economy of legal meanings in the US Immigration regime – the explicit "problem" toward which most of the major subsequent changes in immigration policy have been at least partly directed.

In 1976, new Amendments to the Immigration and Nationalities Act were enacted (Public Law 94-571; 90 Stat. 2703), this time within days of the national elections in the US. The 1976 revisions summarily eliminated the legalization provision described above, by extending to the Western Hemisphere a system of statutory preferences for legal migration that more closely resembled that which had previously been established for the Eastern Hemisphere. More

importantly, the 1976 statutes imposed a fixed national quota for every individual country in the Western Hemisphere for the first time, now establishing a maximum number (excluding quota exemptions) of 20,000 legal migrants a year, for every country in the world – again, with an incomparably dramatic, singularly disproportionate impact on Mexico in particular.[8] Once again (and also in the liberal idiom of "fairness"), immigration law was still more dramatically revised, restricting "legal" (non-exempt) migration from Mexico to a meager 20,000 a year.[9] Then again, after legislation in 1978 (Public Law 95–412; 92 Stat. 907) abolished the separate hemispheric quotas, and established a unified worldwide maximum annual immigration quota of 290,000, the Refugee Act of 1980 (Public Law 96–212; 94 Stat. 107) further reduced that maximum global quota to 270,000, and thereby diminished the national quotas of 20,000 per country to an even smaller annual maximum of 18,200 "legal" migrants (excluding quota exemptions). In the space of less than 12 years, therefore, from July 1, 1968 (when the 1965 amendments went into effect) until the 1980 amendments became operative, US immigration law had been radically reconfigured for Mexicans. Beginning with almost unlimited possibilities for "legal" migration from Mexico (literally no numerical restrictions, tempered only by qualitative preconditions that, in practice, had often been overlooked altogether), the law had now severely restricted Mexico to an annual quota of 18,200 non-exempt "legal" migrants (as well as a strict system of qualitative preferences among quota exemptions, with weighted allocations for each preference). At a time when there were (conservatively) well over a million Mexican migrants coming to work in the US each year, the overwhelming majority would have no option but to do so "illegally."

There is nothing matter-of-fact, therefore, about the "illegality" of undocumented migrants. "Illegality" (in its contemporary configuration) is the product of US immigration law – not merely in the abstract sense that without the law, nothing could be construed to be outside of the law; nor simply in the generic sense that immigration law constructs, differentiates, and ranks various categories of "aliens" – but in the more profound sense that the history of deliberate interventions beginning in 1965 that have revised and reformulated the law, has entailed an active process of inclusion through illegalization (cf. Castells, 1975; Nikolinakos, 1975; Burawoy, 1976; Bach, 1978; Portes, 1978, 475; Calavita, 1982:13, 1998; Hagan, 1994:82; Coutin, 1996, 2000; Joppke, 1999, 26–31). Indeed, the legal production of "illegality" has made an object of Mexican migration in particular, in ways both historically unprecedented and disproportionately deleterious.

A new kind of landmark in the history of US immigration law was achieved with the passage in 1986 of the Immigration Reform and Control Act – IRCA (Public Law 99-603; 100 Stat. 3359) – because its principal explicit preoccupation was undocumented immigration. IRCA was finally adopted as the culmination of years of recommendations (first by a special Select

8 In a contemporaneous law review, Bonaparte (1975) plainly identifies the adverse effects in store for Mexican migration and links them to the amply evident and overt bias against Mexican migration in the transcripts of the legislative deliberations. Chock (1991) provides a compelling discussion of the ideological rhetoric of legislative debate and the discursive production of an "illegal alien crisis" during the 1975 congressional debates that eventually led to the 1976 legislation.

9 Mexico was immediately back-logged, with 60,000 applicants for 20,000 slots, and the backlog became more severe every year thereafter.

Commission on Immigration and Refugee Policy established by Congress in 1978 and then by a presidential cabinet-level Task Force in 1981) and repeated efforts over four years in the two houses of Congress to pass a variety of bills aimed at revisions in immigration policy. The 1986 amendments provided for a selective "amnesty" and adjustment of the immigration status of some undocumented migrants.[10] Once again, the law instituted a legalization procedure for those undocumented workers who had reliably (and without evident interruption) served their apprenticeships in "illegality," while intensifying the legal vulnerability of others. Indeed, IRCA foreclosed almost all options of legalization for those who did not qualify, and for all who would arrive thereafter. Furthermore, INS decisions concerning the implementation of IRCA legalization procedures contributed to the pervasive equation of "illegal alien" with "Mexican." The INS persistently battled in the courts to reserve the Amnesty for those whose undocumented status began with having "entered without inspection" (i.e. surreptitious border-crossers), rather than those who had overstayed their visas. In short, the INS seemed intent to exclude from the "amnesty" those applicants who did not match the profile of "illegality" most typical of undocumented Mexican migrants (González Baker 1997, 11–12). As a predictable result, whereas pre-implementation estimates had figured Mexicans to be roughly half of the total number of undocumented migrants, Mexican migrants accounted for 70% of the total pool of legalization applicants, and even higher proportions in California, Illinois, and Texas, the areas of highest Mexican/migrant concentration (*Ibid*.,13).

The Immigration Reform and Control Act of 1986 also established for the first time federal sanctions against employers who knowingly hired undocumented workers. Nevertheless, the law established an "affirmative defense" for all employers who could demonstrate that they had complied with the verification procedure. Simply by having filled out and kept on file a routine form attesting to the document check, without any requirement that they determine the legitimacy of documents presented in that verification process, employers would be immune from any penalty. What this meant in practice is that the employer sanctions provisions generated a flourishing industry in fraudulent documents, which merely imposed further expenses and greater legal liabilities upon the migrant workers themselves, while supplying an almost universal protection for employers (cf. US Department of Labor, 1991, 124; Chávez, 1992, 169–71; Mahler, 1995, 159–87; Cintrón, 1997, 51–60; Coutin, 2000, 49–77). Likewise, in light of the immensely profitable character of exploiting the legally vulnerable (hence, "cheap") labor of undocumented workers, the schedule of financial penalties imposed by IRCA simply amounted to a rather negligible operating cost for an employer found to be in violation of the law. Given that the employer sanctions would require a heightening of INS raids on workplaces, inspectors were required to give employers a three-day warning prior to inspections of their hiring records, in order to make it

10 Undocumented agricultural workers could adjust their status to temporary resident simply by proving that they had worked in perishable agriculture for at least 90 days during that prior year alone, and could apply for permanent resident status after a year or two, depending on how long they had been employed in agriculture. Otherwise, those who could establish that they had resided continuously in the US since before January 1, 1982, were eligible for temporary resident status, and after a period of 18 months, would be eligible to apply for permanent resident status.

"pragmatically easy" for employers to comply with the letter of the law (Calavita, 1992, 169). Furthermore, in order to avoid fines associated with these sanctions, employers would typically fire or temporarily discharge workers known to be undocumented prior to a raid. Thus, these provisions have primarily served to introduce greater instability into the labor-market experiences of undocumented migrants, and thereby instituted an internal "revolving door." What are ostensibly "employer sanctions," then, have actually functioned to aggravate the migrants' conditions of vulnerability and imposed new penalties upon the undocumented workers themselves.

The Immigration Act of 1990 (Public Law 101-649; 104 Stat. 4978) was not primarily directed at undocumented migration, but it did nonetheless introduce new regulations that increased the stakes of "illegality." Specifically, this legislation expanded the grounds for the deportation of undocumented migrants, introduced new punitive sanctions, and curtailed due-process rights in deportation proceedings. Among other stipulations,[11] the 1990 legislation also created a special visa program which sought, in the name of "diversity," to encourage more migration from countries that had been sending relatively low numbers of migrants (clearly not Mexico!). In addition, the 1990 legislation restricted jurisdiction over the naturalization of migrants petitioning to become US citizens, rescinding a practice that had been in place since 1795 permitting the courts to award citizenship, and now confining this authority exclusively to the federal office of the Attorney General.

11 The 1990 law increased the global annual quota for non-exempt migration and also significantly restructured the preference system.

The caprice of sovereignty and the tyranny of the rule of law

When undocumented migrants are criminalized under the sign of the "illegal alien," theirs is an "illegality" that does not involve a crime against anyone; rather, migrant "illegality" stands only for a transgression against the sovereign authority of the nation-state. With respect to the politics of immigration and naturalization, notably, sovereignty (as instantiated in the unbridled authoritarianism of border policing, detention, deportation, and so forth) assumes a pronouncedly absolutist character (cf. Dunn, 1996; Simon 1998). Such an absolutist exercise of state power relies decisively, of course, upon a notion of "democratic" consent, whereby the state enshrouds itself with the political fiction of "the social contract" in order to authorize itself to act on behalf of its sovereign citizens, or at least "the majority." In the US, this circular logic of sovereignty conveniently evades the racialized history of the law of citizenship, just as this species of majoritarianism sidesteps altogether the laborious history that has produced a "majority" racialized as "white." The racialized figure of Mexican/migrant "illegality," therefore, can be instructively juxtaposed to what is, in effect, the racialized character of the law and the "democratic" state itself. Inasmuch as the political culture of liberalism in the US already posits and requires "the rule of law" as a figure for "the nation," the instrumental role of

the law in producing and upholding the categories of racialization reveals something fundamental about the glorified figures of "American" sovereignty and "national culture" that are invariably conjoined in the dominant discourses of "immigration control."

"Illegality" has been historically rendered to be so effectively inseparable from their migrant experience that some Mexicans even defiantly celebrate their "illegal" identity. However, the considerable legalization provisions of the 1986 Amnesty afforded Mexican migrants a rare opportunity to "straighten out" or "fix" [*arreglar*] their status that few who were eligible opted to disregard. The immigration status of "legal permanent resident" vastly facilitated many of the transnational migrant aspirations that had been hampered or curtailed by the onerous risks and cumbersome inconveniences of undocumented border crossing. By 1990, however, 75.6% of all "legal" Mexican migrants in the state of Illinois, for instance, notably remained non-citizens (Paral, 1997, 8). In other words, the rush to become "legal" migrants did not translate into an eagerness to become US citizens. By the mid-1990s, nonetheless, especially amidst the political climate of heightened nativism and anti-immigrant racism that was widely associated with the passage of California's vindictive ballot initiative "Proposition 187," Mexican migrants began to seriously consider the prospect of naturalizing as US citizens in much greater proportions than had ever been true historically.

As the veritable culmination of such anti-immigrant campaigns, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009), quite simply, was the most punitive legislation to date concerning undocumented migration in particular (cf. Fragomen, 1997, 438). It included extensive provisions for criminalizing, apprehending, detaining, fining, deporting, and also imprisoning a wide array of "infractions" that significantly broadened and elaborated the *qualitative* scope of the law's production of "illegality" for undocumented migrants and others associated with them. It also barred undocumented migrants from receiving a variety of social security benefits and federal student financial aid. In fact, this so-called Immigration Reform (signed September 30, 1996) was heralded by extensive anti-immigrant stipulations in the Anti-terrorism and Effective Death Penalty Act – AEDPA (Public Law 104-132, 110 Stat. 1214; signed into law on April 24, 1996), as well as in the so-called Welfare Reform, passed as the Personal Responsibility and Work Opportunity Reconciliation Act (Public Law 104-193, 110 Stat. 2105; signed August 22, 1996). The AEDPA entailed an "unprecedented restriction of the constitutional rights and judicial resources traditionally afforded to legal resident aliens" (Solbakken, 1997, 1382). The "Welfare Reform" enacted dramatically more stringent and prolonged restrictions on the eligibility of the great majority of "legal" immigrants for virtually all benefits available under Federal law, and also authorized States to similarly restrict benefits programs. Without belaboring the extensive details of these acts, which

did not otherwise introduce new *quantitative* restrictions, it will suffice to say that their expansive provisions (concerned primarily with enforcement and penalties for undocumented presence) were truly unprecedented in the severity with which they broadened the purview and intensified the ramifications of the legal production of migrant "illegality." By penalizing access to public services and social welfare benefits, these legislations especially targeted undocumented migrant women (and their children), who had come to be equated with Mexican/Latino long-term settlement, families, reproduction, and thus, the dramatic growth of a "minority group" (Coutin and Chock, 1995; Chock, 1996; Roberts, 1997). Given the already well-entrenched practices that focus enforcement against undocumented migration disproportionately upon Mexican migrants in particular, there can be little doubt that these acts, at least prior to September 11, 2001, nonetheless weighed inordinately upon Mexicans as a group. Indeed, the language of the 1996 legislation, with regard to enforcement, was replete with references to "the" border, a telltale signal that could only portend a further disciplining of Mexican migration in particular.[12]

12 In strict legal terms, "the border" is constituted not simply by the territorial perimeter of the physical space of the nation-state, but also by entry points internal to the territory, e.g. airports (Bosniak, 1996, 594n.95). The Immigration Act of 1996 specified, however, that the increased number of Border Patrol agents and support personnel would be deployed "along the border in proportion to the level of illegal *crossing*" (Title I, Section 101[c]; emphasis added).

The border spectacle

Mexican migration in particular has been rendered synonymous with the US nation-state's purported "loss of control" of its borders, and has supplied the pre-eminent pretext for what has in fact been a continuous intensification of increasingly militarized control (Andreas, 1998, 2000; Dunn, 1996; Heyman, 1991, 1999; Kearney, 1991; cf. Chávez, 2001; Durand and Massey, 2003; Nevins, 2002). And it is precisely "the Border" that provides the exemplary theater for staging the spectacle of "the illegal alien" that the law produces. Indeed, "illegality" looks most like a positive transgression – and can thereby be equated with the behavior of Mexican migrants rather than the instrumental action of immigration law – precisely when it is subjected to policing at the US-Mexico border. The elusiveness of the law, and its relative invisibility in producing "illegality," requires this spectacle of "enforcement" at the border, precisely because it renders a racialized Mexican/migrant "illegality" visible, and lends it the commonsensical air of a "natural" fact.

The operation of the "revolving door" at the border that is necessary to sustain the "illegality" effect, always combines an increasingly militarized spectacle of apprehensions, detentions, and deportations – as well as increasingly perilous and sometimes deadly circumstances required to evade detection – with the banality of a virtually permanent importation of undocumented migrant labor.[13] This seeming paradox is commonly evoked in many Mexican (especially male) migrants' border-crossing narratives, in which stories of great hardship are often followed by accounts of quite easy passage (Davis, 1990; Kearney, 1991; Chávez, 1992; Martínez, 1994; De Genova, in press). Indeed, US immigration enforcement efforts throughout the 20th century

13 See Heyman's discussion of "the voluntary-departure complex" (1995, 266–267).

consistently targeted the US–Mexico border disproportionately, sustaining a zone of relatively high tolerance within the interior (Chávez, 1992; Delgado, 1993). The legal production of Mexican/migrant "illegality" requires the spectacle of enforcement at the US–Mexico border in order for the spatialized difference between the nation-states of the US and Mexico to be enduringly inscribed upon Mexican migrants in their spatialized (and racialized) status as "illegal aliens." The vectors of race and space, likewise, are both crucial in the constitution of the class specificity of Mexican labor migration. It is not at all uncommon, therefore, for Mexican migrants to conclude their border-crossing narratives, tellingly, with remarks about low wages. These narratives of the adventures, mishaps, as well as genuine calamities of border crossing seem to be almost inevitably punctuated with accounts of life in the US that are singularly distinguished by arduous travail and abundant exploitation (Kearney, 1991; Martínez, 1994; De Genova, in press; cf. Mahler, 1995).

The "enforcement" spectacle at the border, however, is not the only way that Mexican/migrant "illegality" generates and sustains a kind of border spectacle in everyday life. The "illegality" effect of protracted vulnerability has to be recreated more often than simply on the occasion of crossing the border. Indeed, the 1986 legislation that included the institution (at the federal level) of "employer sanctions" was tantamount to an extension of the "revolving door" to the internal labor market of each workplace where undocumented migrant workers were employed. The policing of public spaces outside of the workplace, likewise, serves to discipline Mexican/migrant workers by surveilling their "illegality," and exacerbating their sense of ever-present vulnerability (Chávez, 1992; Rouse, 1992; Heyman, 1998; De Genova, in press; cf. Mahler, 1995; Coutin, 2000). The "illegalities" of everyday life are often, literally, instantiated by the lack of various forms of state-issued documentation that sanction one's place within or outside of the strictures of the law (Hagan, 1994; Mahler, 1995; Cintrón, 1997; Coutin, 2000). The lack of a driver's license, for instance, has typically been presumed by police in much of the US, at least through the 1990s, to automatically indicate a Latino's more generally un-documented condition (cf. Mahler, 1995).[14] Indeed, without driver's licenses or automobile insurance cards, undocumented migrants can be readily compelled to pay hundreds of dollars in bribes as a consequence of pervasive and casual police corruption and abuse, on the basis of the cynical presumption that those who are legally vulnerable are therefore easily exploitable. In effect, there is virtually no way for undocumented migrants to not be always already culpable of some kind of legal infraction. This condition ultimately intensifies their subjection to quotidian forms of intimidation and harassment. And it is precisely such forms of everyday "illegality" that confront many undocumented Latino migrants with quite everyday forms of surveillance and repression. There are also those "illegalities," furthermore, that more generally pertain to the heightened policing directed at the bodies, movements, and spaces of the poor, and

14 Prior to September 11, 2001, there were only four states that issued driver's licenses to any state resident who could pass the driving test, regardless of their legal status (*New York Times*, 4 August 2001). As of October 2003, however, anti-immigration lobbies, such as the Federa-

especially those racialized as non-white. Inasmuch as any confrontation with the scrutiny of legal authorities is already tempered by the discipline imposed by their susceptibility for deportation, such mundane forms of harassment likewise serve to relentlessly reinforce Mexican and other Latino undocumented migrants' characteristic vulnerability as a highly exploitable workforce.

Yet the disciplinary operation of an apparatus for the everyday production of migrant "illegality" is never simply reducible to a presumed quest to achieve the putative goal of deportation. It is *deportability*, and not deportation *per se*, that has historically rendered Mexican labor as a distinctly disposable commodity. Here, I am emphasizing what have been the real *effects* of this history of revisions in US immigration law. Without engaging in the unwitting apologetics of presumptively characterizing the law's consequences as "unintended" or "unanticipated," and without busying ourselves with conspiratorial guessing games about good or bad "intentions," the challenge of critical inquiry and meaningful social analysis commands that one ask: What indeed do these policies *produce*? Although their argument is insufficiently concerned with the instrumental role of the law in the production of "illegality," Douglas Massey and his research associates have understandably nominated the post-1965 period as "the era of undocumented migration" and even characterize the effective operation of US immigration policy toward Mexico as "a de facto guest-worker program" (2002, 41, 45). There of course has never been sufficient funding for US immigration authorities to evacuate the country of undocumented migrants by means of deportations, nor even for the Border Patrol to "hold the line." The Border Patrol has never been equipped to actually keep the undocumented out. At least until the events of September 11, 2001, the very existence of the enforcement branches of the now-defunct INS (and the Border Patrol, in particular) were always premised upon the persistence of undocumented migration and a continued presence of migrants whose undocumented legal status has long been equated with the disposable (deportable), ultimately "temporary" character of the commodity that is their labor-power. In its real effects, then, and regardless of competing political agendas or stated aims, the true social role of much of US immigration law enforcement (and the Border Patrol, in particular) has historically been to maintain and superintend the operation of the border as a "revolving door," simultaneously implicated in importation as much as (in fact, far more than) deportation (Cockcroft, 1986). Sustaining the border's viability as a filter for the unequal transfer of value (Kearney, 1998; cf. Andreas, 2000, 29–50), such enforcement rituals also perform the spectacle that fetishizes migrant "illegality" as a seemingly objective "thing in itself."

With the advent of the antiterrorism State, the politics of immigration and border enforcement in the US have been profoundly reconfigured under the aegis of a remarkably parochial US nationalism and an unbridled nativism,

tion for American Immigration Reform, could contend that 24 states did not explicitly require legal residence for migrants to apply for a license.

above all manifest in the complete absorption of the INS into the new Department of Homeland Security (as of March 1, 2003). Nevertheless, this same socio-political moment within the US has been distinguished by a deadly eruption of genuinely global imperialist ambition. Thus, it should hardly come as a surprise that, on January 7, 2004, the Bush administration proposed a new scheme for the expressly temporary regularization of undocumented migrant workers' "illegal" status and for the expansion of a Bracero-style migrant labor contracting system orchestrated directly by the US state. Such a "legalization" plan aspires only for a more congenial formula by which to sustain the permanent availability of disposable (and still deportable) migrant labor, but under conditions of dramatically enhanced ("legal") regimentation and control. Like all previous forms of migrant "legalization," and indeed, in accord with the larger history of the law's productions and revisions of "illegality" itself, such an immigration "reform" can be forged only through an array of political struggles that are truly transnational in scale, and ultimately have as their stakes the subordination – and insubordination – of labor.

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