

“SHOULD I STAY OR SHOULD I GO?”¹: PREVENTING ILLEGAL IMMIGRATION BY CREATING OPPORTUNITY IN MEXICO THROUGH MICROCREDIT LENDING

TABLE OF CONTENTS

I.	INTRODUCTION.....	456
II.	CURRENT IMMIGRATION LEGISLATION IS UNSUCCESSFUL BECAUSE IT FAILS TO ADDRESS THE ROOT CAUSES OF ILLEGAL IMMIGRATION.....	460
	A. <i>Root Causes of Immigration</i>	460
	1. <i>“Pull” Forces</i>	461
	2. <i>“Push” Forces</i>	463
	B. <i>The Evolution of Immigration Law</i>	468
	1. <i>Historical Background of U.S. Immigration Law</i> ..	468
	2. <i>Current Efforts</i>	471
III.	ILLEGAL IMMIGRATION HURTS THE UNITED STATES AND MEXICO	475
	A. <i>Strain on the United States</i>	475
	B. <i>Strain on Mexico</i>	477
IV.	MICROCREDIT IS A NECESSARY COMPONENT TO U.S. IMMIGRATION POLICY	479
	A. <i>Microcredit is an Effective Means to Create Opportunity</i> .	480
	B. <i>How Microcredit Works</i>	480
	C. <i>Microcredit in U.S. Legislation</i>	483
	D. <i>Why Microcredit Will Help Mexico</i>	485
V.	CONCLUSION.....	490

1. “Should I Stay or Should I Go” by THE CLASH appeared on their 1982 Epic Records release, COMBAT ROCK. THE CLASH, COMBAT ROCK (Epic Records 1982). In the song, singer Joe Strummer says, “If I go there will be trouble; if I stay it will be double.” *Id.* Although the lyrics seem to describe a tumultuous relationship, this song is easily analogized to the mental struggle faced by Mexican citizens who see illegal immigration to the United States as the better of two hardships. *See id.*

I. INTRODUCTION

Drops of sweat began to bead into larger and more noticeable perspiration as I walked up the dirt path. To my right, I looked over an improvised Mexican village that nearly filled the valley below, complete with a grid of dirt roads, restaurants and even a pirate, or illegal, bus system. To my left, heat emanated from a rusty steel wall that blocked fresh air. Once I reached the top of the hill, I took one more step, and the wall ended. A cool breeze washed over me. I was now standing in the United States. The nearby empty water bottles and rusty cans on the ground indicated human presence.²

I was standing at the staging area where thousands of Mexicans who enter the United States illegally each year begin their trek. From here, it is a three-day walk through the desert to make it safely past the U.S. Border Patrol. Every year hundreds of people die trying to cross.³ All of this, just to stand in front of Home Depot and fight for a job making eight dollars an hour.⁴

The current debate over immigration is fueled by concerns that illegal immigrants cause a loss of U.S. citizens' jobs and a decrease in U.S. citizens' salaries.⁵ Additionally, the cost of providing services to immigrants, both legal and undocumented, exceeds the amount immigrants pay in state taxes.⁶ Illegal immigration is also a problem

2. The described experience is from a 2007 visit I took to Tijuana, Mexico and surrounding areas as part of the Fair Trade Academy, a summer program through California Western School of Law.

3. Francis Gabor & John B. Rosenquest IV, *The Unsettled Status of Economic Refugees From The American and International Legal Perspectives—A Proposal for Recognition Under Existing International Law*, 41 TEX. INT'L L.J. 275, 286-87 (2006).

4. See Fernanda Santos, *Day Laborers' Lawsuit Casts Spotlight on a Nationwide Conflict*, N.Y. TIMES, Sept. 17, 2006, § 1 (Magazine), at 38.

5. Tyler Bridges, *Concerns About Undocumented Migrants in Latin America Echo Many of the Worries in the United States*, MIAMI HERALD, June 11, 2007, at A10.

6. CONG. BUDGET OFFICE, THE IMPACT OF UNAUTHORIZED IMMIGRANTS ON THE BUDGETS OF STATE AND LOCAL GOVERNMENTS 1 (2007), available at <http://www.cbo.gov/ftpdocs/87xx/doc8711/12-6-Immigration.pdf>. The New Mexico Fiscal Policy Project gave an example of the cost of educating illegal immigrant children when it showed that in the 2003-2004 school year the state spent sixty-seven million dollars educating 9,200 illegal immigrant schoolchildren. *Id.* at 8. In 2000, counties sharing a border with Mexico spent roughly \$190,000,000 providing

because the fact that millions of people circumvent the legal immigration system contradicts and challenges the ideals of this nation of laws.⁷ While the American public is aware of the domestic problems associated with illegal immigration, the flow of people from Mexico to the United States has devastating effects on Mexico as well.⁸

A majority of Americans feel that illegal immigration is a very serious problem.⁹ Although the immigration debate divides people along pro-immigration and anti-immigration lines, most Americans agree reforms are needed.¹⁰ It was widely believed that 2006 would bring immigration reform, but this simply was not the case.¹¹ Instead, on the national level, the only major accomplishment was the passage of an initiative that expanded border fences.¹² Many felt that 2007 would be the last chance to pass immigration reform before 2008 election politics took over the national debate.¹³ In recent years, as a

health care for illegal immigrants. *Id.* at 8. It is difficult to figure the exact cost of providing law enforcement protection to illegal immigrants because the same protection is provided to all people in the jurisdiction, but the cost of prosecuting and incarcerating illegal immigrants can be high. *Id.* at 9. For example, in 1999 San Diego County spent fifty million dollars, nine percent of its law enforcement spending for that year, on law enforcement activities involving illegal immigrants. *Id.* at 9.

7. See *House Subcommittee Holds Hearing on Immigration Crisis*, 83 No. 31 INTERPRETER RELEASES 1749, 1752 (Aug. 14, 2006) [hereinafter *Immigration Crisis*].

8. See *infra* Part III.

9. Poll, *Immigration*, CBS NEWS/NEW YORK TIMES POLL, May 18-23, 2007, available at <http://www.pollingreport.com/immigration.htm>. More than sixty-one percent of the people polled responded that illegal immigration is a very serious problem in the United States. *Id.*

10. Bradley J. Condon & J. Brad McBride, *Do You Know the Way to San Jose? Resolving the Problem of Illegal Mexican Migration to the United States*, 17 GEO. IMMIGR. L.J. 251, 254 (2003).

11. Margaret D. Stock, *Immigration and Naturalization Law*, 41 INT'L LAW. 555, 555 (2006).

12. *Id.* (stating that the Secure Fence Act of 2006 required seven hundred miles of new fence along border between the United States and Mexico but did not fund the fences).

13. *Immigration and the Candidates*, N.Y. TIMES, Dec. 30, 2007, § 4 (Magazine), at 7 ("One of the strong arguments for passing immigration reform last summer was that it was a last chance.").

reaction to the U.S. government's inability to control illegal immigration, there has been a trend toward strict state and municipal laws.¹⁴

The current conversation about immigration does not consider that when people have access to employment and economic opportunity in their home country, they do not need to emigrate to another country.¹⁵ The purpose of this Comment is to explore the use of microcredit in Mexico as a means of preventing emigration from Mexico and illegal immigration to the United States by creating opportunity. Additionally, the Comment proposes that the U.S. government can use the profits from microcredit lending in Mexico to offset some of the financial burden created by illegal immigrants in the United States.

Microcredit is a concept that began in Bangladesh with a man named Mohammad Yunus.¹⁶ In 1976, while teaching economics at Chittagong University in Jobrah, Bangladesh, Yunus was struck by the poverty that surrounded the university.¹⁷ In speaking with some of the villagers, Yunus discovered that because the villagers lacked access to credit, they were forced to rely on local moneylenders to buy the products they needed to make a living.¹⁸ The moneylenders charged high rates, and many poor borrowers who were unable to repay became, effectively, bonded slaves.¹⁹ Some worked to pay off a debt of as little as twenty-two cents.²⁰ Realizing the impact that he

14. Stock, *supra* note 11, at 562; Allison Retka, *Valley Park Ordinance Fuels Further Disagreement*, DAILY RECORD, Nov. 20, 2007 ("At the end of the day, what the ordinance is saying is, 'We think the federal government hasn't done a good enough job of regulating illegal immigration'").

15. See George W. Bush, Remarks on Western Hemisphere Policy (Mar. 5, 2007) [hereinafter Remarks] (transcript available at 2007 WL 646232); see *U.S. Could Reduce Illegal Immigration by Thinking Small*, ARIZONA DAILY STAR, Nov. 3, 2006 [hereinafter *Thinking Small*].

16. Jane Kaufman Winn, *How to Make Poor Countries Rich and How to Enrich Our Poor*, 77 IOWA L. REV. 899, 932 (1992); *Fresh Air: Grameen Bank* (NPR radio broadcast June 22, 1999) [hereinafter *Fresh Air*] ("Yunus was an economics professor in Bangladesh when he first conceived of micro-credit.").

17. MUHAMMAD YUNUS, BANKER TO THE POOR 45 (PublicAffairs ed., 2003) (1997); *Fresh Air*, *supra* note 16.

18. YUNUS, *supra* note 17, at 50.

19. *Id.* at 49.

20. *Id.* at 47.

could have with what amounted to pocket change,²¹ Yunus compiled a list of villagers who owed money and how much they owed.²² The list indicated forty-two people were living in bondage because they borrowed a total of less than twenty-seven dollars.²³ Yunus loaned the villagers twenty-seven dollars, and, in doing so, birthed the concept of microcredit—small loans extended to people with no access to credit.²⁴

In 1977, Yunus established the Grameen Bank in Bangladesh to extend microcredit loans to the poor.²⁵ Since its inception, Grameen Bank has issued over \$2.5 billion in microcredit loans.²⁶ It has also become a model for microcredit lending which has been replicated around the world.²⁷ The success of microfinance institutions (MFIs) has caught the attention of private investors, who see it as a way to promote social goals and to also earn a guaranteed rate of return.²⁸

21. *Id.* at 48 (“[Yunnus] had never heard of anyone suffering for the lack of *twenty-two cents*.”).

22. *Id.* at 49 (“Within one week, [Yunnus] had a list prepared.”).

23. *Id.*

24. *Id.* at 50-51 (“Now I needed to create an institutional answer that these people could rely on.”).

25. *See id.* at 61. Yunus explains his approach: “In structuring our credit program, I decided to do exactly the opposite of traditional banks. To overcome the psychological barrier of parting with large sums, I decided to institute a daily payment program. I made the loan payments so small that borrowers would barely miss the money.” *Id.*

26. *Fresh Air*, *supra* note 16. Grameen Bank has provided over \$2.5 billion in micro-loans, and Mohammad Yunus won the Nobel Peace Prize in 2006 for his work with the Grameen Bank. *Id.*

27. YUNUS, *supra* note 17, at 155-56.

28. *All Things Considered: Beyond Charity* (NPR radio broadcast Dec. 26, 2006) [hereinafter *All Things Considered*]. Another emerging microcredit investment model uses U.S. investors as guarantors for microcredit loans made in the third world. Jeff Benjamin, *A ‘Very Businesslike Way’ to Reduce World Poverty, Social-Investment Opportunity Uses Client Assets not for Donations but as Microfinance Collateral*, INVESTMENT NEWS, Oct. 29, 2007. The investors sign an eighteen-month collateral agreement. *Id.* If there is a default, all investors pay a tax deductible pro rata amount. *Id.* For individuals who are not interested in microcredit as an investment, but want to help those in need, an organization called Kiva can connect them with an entrepreneur in need of start-up capital. *See generally* Kiva, www.kiva.org (last visited Mar. 14, 2008) (“Kiva lets you connect with and loan money to unique small businesses in the developing world.”). Under

This Comment will show how the U.S. government should systematically use microcredit based on the Grameen Bank principles as a tool to prevent illegal immigration from Mexico.²⁹ Part II will give a historical background of immigration law in the United States and illustrate how the current laws fail to address the true causes of illegal immigration. Part III will explain why legislation aimed at preventing illegal immigration should include provisions that will create opportunity in Mexico. Part IV will explain how microcredit works and why it is a viable method to prevent illegal immigration to the United States from Mexico by creating opportunity.

II. CURRENT IMMIGRATION LEGISLATION IS UNSUCCESSFUL BECAUSE IT FAILS TO ADDRESS THE ROOT CAUSES OF ILLEGAL IMMIGRATION

Immigration law in the United States reflects a long history of government attempts to control the market-driven forces of the supply and demand of labor.³⁰ With regards to Mexican workers, the U.S. tendency has been to bring workers in when they are needed and send them back when they are not.³¹ This approach does not consider the natural causes of human migration.³²

A. *Root Causes of Immigration*

Upon surveying the underlying causes of immigration, it becomes clear that comprehensive immigration reform must begin in Mexico for reform to be successful.³³ The immigrant's decision to migrate is

the Kiva model, lenders can pick the entrepreneur they want to help, make a loan, monitor the borrower's progress through journal entries, and when the entrepreneur repays the lender, the lender can choose to withdraw the money, or re-loan to another borrower. Kiva, www.kiva.org/about (last visited Mar. 14, 2008).

29. See generally *Thinking Small*, *supra* note 15 (proposing the idea generally). This Comment will look into what a U.S. commitment to microcredit would look like in U.S. policy and legislation as a specific tool to combat illegal immigration.

30. James F. Smith, *A Nation That Welcomes Immigrants? An Historical Examination of United States Immigration Policy*, 1 U.C. DAVIS J. INT'L L. & POL'Y 227, 242 (1995).

31. *Id.*

32. See U.S. COMM'N ON IMMIGRATION REFORM, U.S. IMMIGRATION POLICY: RESTORING CREDIBILITY 174 (1994) [hereinafter RESTORING CREDIBILITY].

33. Tyche Hendricks, *Mexico's Ambassador to the U.S. Discusses Major*

determined by a combination of “pull” and “push” forces.³⁴ In order to be effective, immigration policy must address both forces.³⁵ Past and present attempts to curb illegal immigration have failed because they address only the “pull” forces and neglect the “push” forces; they do not give Mexican citizens a reason not to leave home.³⁶

1. “Pull” Forces

A major force that attracts immigrants to the United States is the higher wage paid to laborers in the United States.³⁷ In a survey of 600 Mexican migrants, eighty-two percent said that it was the opportunity in the United States and not poor conditions in Mexico that caused them to leave home.³⁸ A worker in the United States can earn up to six times as much money as a person doing the same job in Mexico.³⁹ It is clear that Mexicans immigrate to the United States seeking opportunity.⁴⁰

The geography of employment opportunity as a pull force becomes apparent when considering trends in immigration. A recent shift in destination indicates that certain U.S. states constitute a new “pull” of employment opportunity.⁴¹ While immigrants have traditionally settled in border states and large metropolitan areas, since the 1990s there has been a discrete shift in destination states for

Issues with State Leaders, S.F. CHRON., Sept. 12, 2007; *Thinking Small*, *supra* note 15.

34. RESTORING CREDIBILITY, *supra* note 32, at 174. Factors which cause people to leave their homeland in search of a new home are “push” forces, while those factors that draw people to a new place are “pull” forces. See Roy L. Prosterman & Tim Hanstad, *Land Reform in the Twenty-First Century: New Challenges, New Responses*, 4 SEATTLE J. SOC. JUST. 763, 772 (2006).

35. RESTORING CREDIBILITY, *supra* note 32, at xxx.

36. *Id.* Hendricks, *supra* note 33; *Thinking Small*, *supra* note 15.

37. Christina Killion Valdez, *America is Still the Land of Opportunity for Immigrants*, ROCHESTER MINN. POST BULLETIN, Aug. 11, 2007.

38. Wayne A. Cornelius, *There’s No Point in Flailing at This Piñata*, L.A. TIMES, May 29, 2005, at M3.

39. Valdez, *supra* note 37.

40. Jason Lee Steorts, *Mexico, Heal Thyself: The Mexican Economy is a Sick Man, and Could Use Several Doses of Reaganism*, NAT’L REV., July 17, 2006, at 25; *Thinking Small*, *supra* note 15.

41. Condon & McBride, *supra* note 10, at 257.

immigrants.⁴² Prior to the 1990s, immigrant populations were mostly concentrated in California, New York, New Jersey, Illinois, Florida, and Texas.⁴³ Recent studies, however, show an increase in Mexican immigrant populations in non-traditional, immigrant-attracting states and indicate new employment “pull” forces in states such as Arizona, Georgia, North Carolina, Tennessee, Nevada, Colorado, Utah, Idaho, Iowa, and Nebraska.⁴⁴

Family reunification is another force that draws Mexicans to the United States.⁴⁵ It is estimated that sixty percent of Mexicans living in Mexico have relatives living in the United States.⁴⁶ Stricter border enforcement has made it more difficult for Mexicans working in the United States illegally to return to the United States after traveling to Mexico.⁴⁷ This is especially problematic when the worker is the head of household who is unable to visit his or her family.⁴⁸ As a result, there is a greater incentive for the whole family to move to the United States in order to be together.⁴⁹ Though family reunification is not, in itself, an economic motive for illegal immigration, it is often a result of immigration for economic reasons.⁵⁰

42. CONG. BUDGET OFFICE, *supra* note 6, at 4-5; Condon & McBride, *supra* note 10, at 257.

43. *See* CONG. BUDGET OFFICE, *supra* note 6, at 4-5; Condon & McBride, *supra* note 10, at 257.

44. CONG. BUDGET OFFICE, *supra* note 6, at 5-6; Condon & McBride, *supra* note 10, at 258-60; Tamar Jacoby, *Is Anyone Listening?; Voters Want Real Answers on Immigration*, L.A. TIMES, Jan. 2, 2008, at A15 (“[I]mmigration has loomed large in Iowa, once a state with virtually no immigrants, now full of foreigners seeking work in new meatpacking plants.”).

45. Megan L. Capasso, Article, *An Attempt at a “12 Step Program”: President Bush’s Comprehensive Strategy to Rehabilitate California and Mexico’s Addiction to Illegal Immigration: Does It Strike the Correct Societal Balance?*, 34 W. ST. U. L. REV. 87, 97 (2006); Pia Orrenius & Madeline Zavodny, *What Are the Consequences of an Amnesty for Undocumented Immigrants?*, 9 GEO. PUB. POL’Y REV. 21, 24 (2004); *see also* Valdez, *supra* note 37.

46. Capasso, *supra* note 45, at 97-98.

47. Cornelius, *supra* note 38; Valdez, *supra* note 37; *Morning Edition: Mexican Migrants Leave Kids, Problems Back Home* (NPR radio broadcast May 9, 2006) [hereinafter *Morning Edition*].

48. Cornelius, *supra* note 38; Valdez, *supra* note 37.

49. Cornelius, *supra* note 38; Valdez, *supra* note 37.

50. *See* Cornelius, *supra* note 38; *see* Valdez, *supra* note 37.

The aforementioned “pull” forces, which draw illegal immigrants to the United States, can be summarized generally as opportunity.⁵¹ This overarching idea of opportunity includes more than the opportunity of employment. It is the opportunity to receive a higher wage, to support a family back home, or to reunify with family members who have already crossed the border.⁵² To prevent illegal immigration from Mexico, this strong “pull” force must be counteracted by the creation of opportunity in Mexico.⁵³

2. “Push” Forces

The U.S. immigration policy has not addressed the “push” forces that cause illegal immigration.⁵⁴ These forces include poverty, economic informality, the failing *ejido* system and the waning success of the *maquiladoras*.⁵⁵ With per capita income in Mexico at one sixth of that in the United States,⁵⁶ it is the lack of opportunity that is causing people to make the dangerous trek across the desert.⁵⁷

51. Success stories of people who left for the United States, as well as television and Hollywood depictions of those accounts, perpetuate a belief in the “American Dream.” Valdez, *supra* note 37. This belief causes many in Mexico to see the United States as the land of opportunity. *Id.*

52. See Valdez, *supra* note 37; Steorts, *supra* note 40, at 25; Capasso, *supra* note 45, at 97-99.

53. *Thinking Small*, *supra* note 15.

54. See generally Stock, *supra* note 11 (surveying current immigration law).

55. See Prosterman & Hanstad, *supra* note 34, at 772; Joshua M. Kagan, *Workers’ Rights in the Mexican Maquiladora Sector: Collective Bargaining, Women’s Rights, and General Human Rights: Law, Norms, and Practice*, 15 J. TRANSAT’L L. & POL’Y 153, 154 (2005).

56. *Immigration Crisis*, *supra* note 7, at 1749.

57. *Id.* at 1750-51. The Cornelius study found that a majority of people who immigrated to the United States did so because of opportunity and not because of bad conditions in Mexico. Cornelius, *supra* note 38. Other sources show, however, that in the case of the rural poor, flight to cities and immigration to the United States result from the “push” force of poverty rather than the “pull” force of job opportunity. Prosterman & Hanstad, *supra* note 34, at 772 (2006); see David D. Spencer & Fernando Rivadeneyra, *Some Case Studies of Joint Ventures with Mexican Ejidos*, 6 U.S. MEX. L.J. 99, 101 (1998).

Poverty in rural areas fuels the migration of poor to urban areas.⁵⁸ The crowding this causes in urban centers forces people into informality,⁵⁹ which is defined as any type of economic activity not in compliance with economic regulations and taxation requirements.⁶⁰ A major source of rural poverty and urban crowding in Mexico is the failure of its *ejido* system.⁶¹ This system of communal farms, known as *ejidos*, came into existence in 1917 under Article 27 of the Constitution of Mexico.⁶² Under this system, large pieces of federal land were granted to groups of rural farmers, known as *ejidatarios*.⁶³ These large communal land holdings comprised forty-eight percent of Mexico's territory in 1990.⁶⁴ The *ejido* system was discontinued in 1992 by constitutional amendment, a move generally believed to have been a precondition to Mexico's entry to the North America Free Trade Agreement (NAFTA).⁶⁵ By the time the program ended, the size of new plots given to individual farmers was just 1.4 hectares—not nearly enough land to grow crops at competitive prices.⁶⁶ When economic conditions forced farmers to leave the *ejidos*, they either moved to an urban center or immigrated to the United States.⁶⁷

58. Prosterman & Hanstad, *supra* note 34, at 772; See also YUNUS, *supra* note 17, at 94; see also Jorge A. Vargas, *NAFTA, the Chiapas Rebellion, and the Emergence of Mexican Ethnic Law*, 25 CAL. W. INT'L L.J. 1, 21 (1994).

59. See Brett J. Miller, *Living Outside the Law: How the Informal Economy Frustrates Enforcement of the Human Rights Regime for Billions of the World's Most Marginalized Citizens*, 5 NW. U. J. INT'L HUM. RTS. 5, ¶ 9 (2006); see Winn, *supra* note 16, at 932.

60. Winn, *supra* note 16, at 912-13.

61. Steorts, *supra* note 40, at 25 ("This poverty is the predictable byproduct of the communal farms, known as *ejidos* . . .").

62. Spencer & Rivadeneyra, *supra* note 57, at 101.

63. Vargas, *supra* note 58, at 20.

64. Spencer & Rivadeneyra, *supra* note 57, at 99.

65. Amelia M. DeAngelis, *Coffee, Mexico's Other Bean: An Examination of the Globalization of the Coffee Industry, Its Impact on Mexican Villages, and the Possibility of Surviving the Grind*, 3 WASH. U. GLOBAL STUD. L. REV. 887, 892 (2004).

66. Steorts, *supra* note 40, at 25 ("Such small tracts are incapable of growing crops at competitive prices.").

67. Spencer & Rivadeneyra, *supra* note 57, at 101.

The other factor that drives Mexicans from rural areas is employment in *maquiladoras*.⁶⁸ *Maquiladoras* are foreign-owned factories on the Mexico side of the United States – Mexico border that assemble products, starting from product components, to be consumed in other countries.⁶⁹ The rise of the *maquiladora* began with the termination of the Bracero Program in 1964.⁷⁰ The program left the border towns—once the bases for hiring Mexican laborers—struggling with severe shortages due to the overcrowding of displaced workers.⁷¹ To relieve the pressure on the border towns, Mexico created the *Programa Nacional Fronterizo* (PRONAF), which gave foreign companies licenses to import parts to Mexico and to then export the completed product.⁷² The corporations that owned the *maquiladoras* could pay very low wages, and the corporations benefited from favorable tariffs that only applied to the value added to products in Mexico.⁷³

Maquiladoras have come under scrutiny for their unfair labor practices, workplace discrimination, and low wages.⁷⁴ There have been some wage increases in recent years, however these wage increases have outpaced productivity increases in Mexico's manufacturing sector.⁷⁵ The result is that Mexican *maquiladoras* are moving their operations to Asia, where wages are even lower.⁷⁶ Because over one million Mexican workers were at one time

68. See Kagan, *supra* note 55, at 154.

69. Sherri M. Durand, *American Maquiladoras: Are They Exploiting Mexico's Working Poor?*, 3 KAN. J.L. & PUB. POL'Y 128, 128 (1994); Kagan, *supra* note 55, at 155-56; A. Maria Plumtree, *Maquiladoras and Women Workers: The Marginalization of Women in Mexico as a Means to Economic Development*, 6 SW. J.L. & TRADE AM. 177, 178 (1999).

70. See *infra* Part II.B.1.

71. Kagan, *supra* note 55, at 155; see also Lucy A. Williams, *Property, Wealth and Inequality through the Lens of Globalization: Lessons from the United States and Mexico*, 34 IND. L. REV. 1234, 1246 (2001).

72. Kagan, *supra* note 55, at 155-56; Plumtree, *supra* note 69, at 181-82 (1999); L. Williams, *supra* note 71, at 1246-47.

73. Kagan, *supra* note 55, at 156; L. Williams, *supra* note 71, at 1246-47.

74. See generally Kagan, *supra* note 55; see generally Plumtree, *supra* note 69.

75. Condon & McBride, *supra* note 10, at 271.

76. *Id.*

employed in *maquiladoras*,⁷⁷ the gap left in their wake is contributing to Mexico's rising unemployment.⁷⁸

The influx of people from rural areas to urban centers, caused by the failure of the *ejido* system and the rise of *maquiladoras* in border towns, has forced many of the newcomers into informality.⁷⁹ Many of these people live in *colonias*—small villages built illegally on government land out of scrap wood, tarpaper and other found materials.⁸⁰ These urban slums are known for their lack of drinking water or sewage systems and their staggering levels of poverty and disease.⁸¹ The diseases found in these *colonias* include many diseases that are considered eradicated in the United States: tuberculosis, hepatitis, cholera, gastroenteritis, lead poisoning, dysentery, leprosy, dengue fever, encephalitis, typhoid, *Helicobacter pylori*, and shigellosis.⁸²

77. See Kagan, *supra* note 55, at 156 (“Between 1966 and 2004, the number of Mexicans employed in the maquiladora sector grew from 3000 to approximately 1.14 million.”).

78. See Capasso, *supra* note 45, at 97.

79. HERNANDO DE SOTO, THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE 87 (2000); Roderick R. Williams, Note, *Cardboard to Concrete: Reconstructing the Texas Colonias Threshold*, 53 HASTINGS L.J. 705, 707 (2002).

80. See Miller, *supra* note 59, ¶ 46; Lourdes Medrano, *Micro-lending Effort in Mexico Helps Poor Families Stay Home*, ARIZONA DAILY STAR, June 17, 2007, at A1. On a trip to Mexico during 2007 with the FTA, I visited Colectivo Chilpancingo, a typical *colonia* in Tijuana. Chilpancingo lies in a valley below the *maquiladoras* that employ most of its residents and pollute the river that flows through the *colonia*. Children are left unattended while parents work.

81. R. Williams, *supra* note 79, at 705. These informal communities are found on both sides of the U.S.-Mexico border. *Id.* at 706. The U.S. state with the most serious *colonia* problem is Texas, where it is estimated that more than 360,000 people live in over 1,400 *colonias*. *Id.*

82. *Id.* at 710. *Helicobacter pylori* is a bacterium that lives in the stomach and causes ulcers. See *id.* at 710 n.47; see also The Helicobacter Foundation, H. Pylori, http://www.helico.com/h_general.html (last visited Apr. 15, 2008). Shigellosis causes diarrhea, fever, and cramps. R. Williams, *supra* note 79, at 710 n.48.

Informal housing is accompanied by informal economic activity.⁸³ Mexico is home to a vibrant informal economy.⁸⁴ A 2005 study found that Mexico's informal economy is the third greatest perceived obstacle to the growth of business in Mexico, falling just behind personal security and piracy.⁸⁵ Informal businesses have a negative impact on the local economies in which they operate because the government must raise taxes to compensate for the untaxed transactions that take place.⁸⁶ Further, because informal businesses are unable to rely on the legal system, they do not have the benefit of contracts to protect them when doing business with strangers.⁸⁷ As a result, informal businesses rely on an improvised legal system based on a social contract that the community enforces.⁸⁸ Productivity suffers because the would-be entrepreneurs are forced to deal in smaller circles with people in their communities.⁸⁹ Informal businesses must also incur the additional cost of bribing officials so the officials will continue to allow the businesses to operate illegally.⁹⁰ These ongoing struggles with the informal housing and the

83. David Asp, *Argentina's Mystery of Capital: Why the International Monetary Fund Needs Hernando de Soto*, 12 MINN. J. GLOBAL TRADE 383, 397 (2003). "[W]ealthy countries and strong economies depend on legal structures that convert general wealth into capital." *Id.* In countries like Mexico, entrepreneurs operate informally through illegal titles and land ownership. *Id.* Economy remains informal because of two barriers to converting wealth into capital: "government bureaucracy" and "the disconnect between the existence of formal property rights and public benefit from those systems." *Id.*

84. *Id.* (estimating that twenty-eight to thirty-nine percent of Mexico's GDP resides in its informal economy).

85. CENTRO DE ESTUDIOS ECONÓMICOS DEL SECTOR PRIVADO (CEESP), ENCUESTRO SOBRE EL COSTO DE LA REGULACIÓN PARA LAS EMPRESAS EN MÉXICO [INVESTIGATION OF THE COST OF REGULATION FOR MEXICAN BUSINESSES] 5 (2007), available at <http://www.cce.org.mx/NR/rdonlyres/D462F5F7-CCDA-49DD-BABA-854FD3685AA6/4483/ESCR2007.pdf>; MARIO RODARTE, PERSPECTIVAS DE CRECIMIENTO DE LA ECONOMÍA MEXICANA [PERSPECTIVES ON THE GROWTH OF THE MEXICAN ECONOMY] 4, (2005), available at <http://www.cce.org.mx/NR/rdonlyres/120A74DDB-EACF4845AB5BC6064D691FD0/0/NAFINMonterrey041105.pdf>.

86. Capasso, *supra* note 45, at 100.

87. DE SOTO, *supra* note 79, at 71.

88. *Id.* at 87.

89. *Id.* at 71.

90. *Id.* at 83.

informal economy in Mexico raise serious questions about the future of Mexico's democratic system.⁹¹

The aforementioned "push" forces can be summarized as an overall lack of opportunity. To prevent illegal immigration from Mexico the "push" forces must be counteracted by greater "pull" forces that keep people from leaving home. To create this "pull" in Mexico, opportunity must be created in Mexico.⁹²

B. The Evolution of Immigration Law

Immigration in the Americas as a political issue predates the inception of the United States.⁹³ As such, it should come as no surprise that, more than two hundred years after that inception, immigration is still a source of conflict.

1. Historical Background of U.S. Immigration Law

In the Declaration of Independence, among other enumerations of "causes which impel[led]" the separation from England, was the King's obstruction of naturalization laws and failure to pass new laws that would encourage people to migrate to the Americas.⁹⁴ Once the United States gained its independence, the Framers empowered Congress to establish rules of naturalization.⁹⁵

The first legislative bars to the employment of aliens were the Anti-Peonage Act of 1867 and Alien Contract Labor Law of 1885.⁹⁶

91. See Winn, *supra* note 16, at 938.

92. *Thinking Small*, *supra* note 15.

93. See THE DECLARATION OF INDEPENDENCE para. 8 (U.S. 1776) ("The King of Great Britain] has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.").

94. *Id.* at para. 7.

95. U.S. CONST. art. I, § 8, cl. 4. The Constitution also deals with immigration related issues in Article I, section 9, clause 1, where it prevents Congress from prohibiting the "importation" of people prior to 1808, but it does allow those people to be taxed at a rate no more than ten dollars. U.S. CONST. art. I, § 9, cl. 1. While this does relate somewhat to immigration, the Constitution is clearly addressing the regulation of the slave trade. See *id.*

96. Karen Fleshman, *Abrazando Mexicanos: The United States Should*

These laws, passed in the years following the Civil War, were mainly concerned with the prevention of involuntary servitude.⁹⁷ At the same time that Congress was passing laws to prevent involuntary servitude, it passed the first laws aimed at the exclusion of an entire group.⁹⁸ Chinese laborers, who were invaluable during the construction of the transcontinental railroad, fell into great disfavor during the 1873 to 1878 depression.⁹⁹ The willingness of Chinese laborers to do work at low wages led to extreme anti-Chinese sentiment which prompted Congress to pass a law in 1882 that suspended the immigration of all Chinese laborers for ten years.¹⁰⁰ In 1884, the Act was strengthened to prohibit Chinese laborers from entering the United States from any country, not just China.¹⁰¹ In 1888, the Scott Act excluded all people of the Chinese race who were not members of an exempt class with proper identification.¹⁰²

The next major immigration law passed was the Immigration and Nationality Act (INA) of 1917.¹⁰³ This Act was passed to allow foreign workers to enter the United States from Mexico and work temporarily during World War I.¹⁰⁴ Due to lax enforcement of immigration laws, many of the workers remained in the United States after the war ended.¹⁰⁵ These workers would become the subject of hostility in the years to come.¹⁰⁶ Just as Congress reacted to the

Recognize Mexican Workers' Contributions to its Economy by Allowing them to Work Legally, 18 N.Y.L. SCH. J. HUM. RTS. 237, 240 (2002).

97. *See id.*

98. Emily Ryo, *Through the Back Door: Applying Theories of Legal Compliance to Illegal Immigration During the Chinese Exclusion Era*, 31 LAW & SOC. INQUIRY 109, 115-16 (2006).

99. *Id.* at 116.

100. *Id.* at 116-18.

101. *Id.* at 118.

102. *Id.*

103. Immigration and Nationality Act of 1917, Pub. L. No. 64-301, 39 Stat. 874 (1917).

104. Alice J. Baker, *Agricultural Guestworker Programs in the United States*, 10 TEX. HISP. J. L. & POL'Y 79, 82 (2004) ("The Immigration and Nationality Act of 1917 allowed the Commissioner General of Immigration to admit agricultural laborers for temporary employment during World War I.").

105. *Id.* at 83.

106. *See id.* at 83; Smith, *supra* note 30, at 243.

depression of the 1870s by passing strict Chinese exclusion laws, the government reacted to the depression years of the 1920s and 1930s by deporting Mexican workers.¹⁰⁷ Between 1929 and 1932, the U.S. government deported 345,000 Mexicans.¹⁰⁸

As times changed, so did the labor needs of the United States.¹⁰⁹ In 1942 the United States implemented the Bracero Program to meet those needs.¹¹⁰ Similar in objective to the INA of 1917, the Bracero Program was implemented to alleviate the manpower shortages caused by World War II.¹¹¹ It differed, however, in that it was a bilateral agreement between the United States and Mexico.¹¹² The program was originally intended to last only until the war's end, but it remained in place until the early 1960s.¹¹³ At its height in the late 1950s, the Bracero Program was responsible for the legal employment of an estimated 2.5 million Mexicans in the United States.¹¹⁴ Also at this time, Congress passed the Immigration and Nationality Act (INA) of 1952.¹¹⁵ This Act consolidated previous immigration law into a comprehensive statute, which has become the foundation for U.S. immigration law.¹¹⁶ The INA of 1952 established the procedures that

107. Compare Ryo, *supra* note 98, at 116 (describing the extreme anti-Chinese sentiment during the 1873-1878 depression) with Baker, *supra* note 104, at 83 (describing anti-Mexican sentiment during the Great Depression) and Smith, *supra* note 30, at 243 (discussing repatriation of Mexican workers in the 1920s and 1930s).

108. Smith, *supra* note 30, at 243.

109. Cornelius, *supra* note 38; see also Baker, *supra* note 98, at 83-84.

110. Kristi L. Morgan, *Evaluating Guest Worker Programs in the U.S.: A Comparison Of The Bracero Program and President Bush's Proposed Immigration Reform Plan*, 15 BERKELEY LA RAZA L.J. 125, 127 (2004) ("Allowing growers to contract with Mexican immigrants during World War I was the precedent growers used to demand foreign workers again."); R. Williams, *supra* note 79, at 707; see also Cornelius, *supra* note 38.

111. Baker, *supra* note 98, at 83-84; Morgan, *supra* note 110, at 127; Smith, *supra* note 30, at 244; Cornelius, *supra* note 38.

112. Morgan, *supra* note 110, at 127.

113. *Id.* at 127, 129.

114. *Id.* at 129.

115. Jill M. Pfennig, *Inadequate and Ineffective: Congress Suspends the Writ of Habeas Corpus for Noncitizens Challenging Removal Orders by Failing to Provide a Way to Introduce New Evidence*, 31 VT. L. REV. 735, 736-37 (2007).

116. *Id.*

govern non-citizens with regard to admission and expulsion.¹¹⁷ In 1964, the Bracero Program ended, leaving Mexico's border towns overcrowded with people trying to find work in the United States.¹¹⁸

In 1986, Congress enacted the Immigration Reform and Control Act (IRCA).¹¹⁹ This bill granted amnesty to 2.7 million undocumented immigrants with the belief that amnesty, along with stricter workplace enforcement and more Border Patrol officers, would prevent future inflows of illegal immigrants.¹²⁰ Under IRCA, employer sanctions increased exponentially every time the employer was caught employing undocumented workers.¹²¹ The burden of enforcement fell largely on employers while the Federal Government focused on border enforcement.¹²² Employers who made a good faith effort to verify the authenticity of the documents presented by the employee were exempt from penalty.¹²³ These new regulations created a vibrant market for fraudulent employment documents.¹²⁴ Partially in response to the widespread use of fraudulent documents that followed the IRCA, Congress enacted the Immigration Act of 1990, which increased the penalties for immigrants caught using false documents.¹²⁵ The most significant provisions of this act made it easier to deport criminal aliens and to increase the size of the Border Patrol.¹²⁶

2. Current Efforts

In recent years, a trend toward strict state and municipal laws has sprung out of frustration toward the federal government's inability to control the flow of illegal immigrants.¹²⁷ In October 2006, the city of

117. *Id.* at 737.

118. Kagan, *supra* note 55, at 155; Plumtree, *supra* note 69, at 181-82.

119. Condon & McBride, *supra* note 10, at 282.

120. Orrenius & Zavodny, *supra* note 45, at 21.

121. Fleshman, *supra* note 96, at 248 (explaining that employer sanctions can range from \$250 for first offense to \$10,000 for third offense).

122. Condon & McBride, *supra* note 10, at 282.

123. Fleshman, *supra* note 96, at 247.

124. *Id.* at 248.

125. *Id.*

126. Capasso, *supra* note 45, at 91.

127. ARIZ. REV. STAT. ANN. § 23-212, Governor's Transmittal Message

Escondido, California put itself on the map when it passed Ordinance No. 200638R, which required landlords to check the immigration status of their tenants.¹²⁸ Also in 2006, Hazleton, Pennsylvania passed an ordinance that imposed a \$1000 per day fine on landlords who rented to illegal immigrants.¹²⁹ The Hazleton ordinance went further by also threatening to revoke the business licenses of businesses that employ illegal immigrants.¹³⁰ An ordinance based on Hazleton's passed in Valley Park, a suburb of St. Louis, Missouri.¹³¹ What made the Valley Park ordinance different was that, unlike the Hazleton ordinance, it was actually enforced; landlords were required to evict tenants they knew to be illegally present in the United States.¹³² Presently, however, court challenges are preventing the enforcement of all three ordinances.¹³³ In December 2006, the City of Escondido stipulated to the entry of a final judgment that made permanent the temporary restraining order blocking Ordinance No. 200638R.¹³⁴ Ordinances like those in Escondido and Hazleton have prompted California's legislature to pass a bill that prohibits cities from requiring a landlord to check the immigration status of his tenants.¹³⁵

(2008); Stock, *supra* note 11, at 562; Retka, *supra* note 14; *Day to Day: Town Outlaws Renting to Illegal Immigrants* (NPR radio broadcast Oct. 5, 2006) [hereinafter *Day to Day*] ("Whittaker says he decided to make immigration a local issue because of what he called inaction by the federal government."). Over one hundred states and municipalities have "taken the law into their own hands" to prevent illegal immigration. Jane Sasseen, *Hire an Illegal Worker, Lose Your Business: Arizona's Tough New Immigration Law Has Companies Running Scared*, BUSINESSWEEK, Dec. 24, 2007.

128. Statement Regarding City of Escondido Actions Approving Stipulation For Final Judgment and Permanent Injunction (Dec. 13, 2006), <http://www.ci.escondido.ca.us/immigration/Statement.pdf>; Paul Eakins, *Escondido, California, Council OKs Illegal Immigration Resolution*, N. COUNTY TIMES, Jan. 11, 2007; Yolanda Chavez Leyva, *Keep that Legality Monkey Off Landlords' Backs*, FORT WORTH STAR-TELEGRAM, Nov. 5, 2007, at B11.

129. Leyva, *supra* note 128.

130. HAZLETON, PA., ORDINANCE 2006-18 (July 2006), *available at* http://www.hazletonchamber.org/chamber/images/1006_city_ordinance.pdf.

131. *Day to Day*, *supra* note 127.

132. *Id.*

133. Leyva, *supra* note 128; *Day to Day*, *supra* note 127.

134. Leyva, *supra* note 128.

135. *Id.*

Echoing the frustration of Hazleton, Escondido, and Valley Park, the state of Arizona has passed the most aggressive law in the country that prevents businesses from employing illegal immigrants.¹³⁶ Under the statute, which took effect January 1, 2008,¹³⁷ a business that knowingly employs illegal immigrants may lose its license for up to ten days, and a business that intentionally employs illegal immigrants automatically loses its business license for at least ten days.¹³⁸ If a business is caught in violation of the statute a second time during a probationary period following the first violation, the business license is permanently revoked.¹³⁹ Though the penalty is extreme, it is what Arizona considers necessary to stop the flow of illegal immigrants to the state.¹⁴⁰

On a national level, illegal immigration is unique because it tends to divide people regionally and ethnically, rather than by party affiliation.¹⁴¹ For a vast majority of Americans, illegal immigration will be important in their decision in the upcoming presidential election.¹⁴² The current immigration debate centers on stricter border enforcement and guest worker programs.¹⁴³ In terms of enforcement, the most recent efforts would thwart illegal immigration by extending

136. ARIZ. REV. STAT. ANN. § 23-212, Governor's Transmittal Message (2008); Sasseen, *supra* note 127.

137. The law was challenged in court by a coalition of business groups, but the case was thrown out by the judge for technical reasons. Sasseen, *supra* note 127. The plaintiffs subsequently filed a new suit seeking a preliminary injunction which they did not receive. *Id.*

138. ARIZ. REV. STAT. ANN. § 23-212(F)(1)(d), (2)(c) (2008); Sasseen, *supra* note 127.

139. ARIZ. REV. STAT. ANN. § 23-212(F)(3) (2008); Sasseen, *supra* note 127.

140. ARIZ. REV. STAT. ANN. § 23-212(F), Governor's Transmittal Message (2008); Sasseen, *supra* note 127.

141. See Rachel Uranga, *Survey: Latinos More Unified on Immigration*, L.A. TIMES, July 14, 2006, at N4 ("A quarter of respondents said neither Republicans nor Democrats had the best position on immigration.").

142. L.A. TIMES/BLOOMBERG POLL, June 7-10, 2007, available at <http://www.pollingreport.com/immigration.htm>. When asked how important a primary candidate's stance on illegal immigration was to their decision to support that candidate, fifteen percent said it was the most important issue, and sixty-six percent said it was an important issue. *Id.*

143. *Immigration and the Candidates*, *supra* note 13.

the border fence.¹⁴⁴ The creation of a guest worker program is much more contentious.¹⁴⁵

In September 2007, the Department of Homeland Security announced that it had completed its goal of adding seventy more miles of fence on the border with Mexico, bringing the total length of barriers to 145 miles.¹⁴⁶ This goal comes as part of the Secure Fence Act of 2006, which calls for 700 miles of fence along the border.¹⁴⁷ The Act sets an eighteen-month period for the Secretary of Homeland Security to take necessary actions to “achieve and maintain operational control over the entire international land and maritime borders of the United States”¹⁴⁸ To gain this level of control, the Act calls for the installation of two layers of reinforced fencing along with physical barriers, lights, cameras, and sensors.¹⁴⁹ While this fence does have the effect of making it harder for immigrants to illegally cross the border, its unilateral nature has created tension between the United States and Mexico.¹⁵⁰

Mexico would like to see a U.S. immigration policy that allows undocumented workers to achieve legal status and a procedure for future workers to enter and work legally.¹⁵¹ President George W. Bush’s immigration plan satisfies both of these objectives, with a path

144. Richard Marosi, *Border Fence Nearly Doubles; After Reporting Sluggish Progress Last Month, U.S. Officials Announce the Stretch of Barriers Has Grown to 145 Miles*, L.A. TIMES, Sept. 29, 2007, at A1.

145. See *Immigration and the Candidates*, *supra* note 13.

146. *Id.* An estimated one-half of the current population of illegal immigrants in the United States entered the country legally. CONG. BUDGET OFFICE, *supra* note 6, at 4. This raises some questions as to how effective a border fence will be at preventing illegal immigration. See *id.*

147. Marosi, *supra* note 144.

148. Secure Fence Act of 2006, Pub. L. No. 109-367 § 2(a), 120 Stat. 2638 (codified at 8 U.S.C. § 1701 (2006)).

149. Secure Fence Act of 2006, Pub. L. No. 109-367 § 3(1)(A), 120 Stat. 2638 (codified at 8 U.S.C. § 1103 (2006)).

150. Ayelet Shachar, *The Shifting Border of Immigration Regulation*, 3 STAN. J.C.R. & C.L. 165, 190 (2007).

151. Cornelius, *supra* note 38 (“Mexico is eager for the United States to liberalize its immigration policy but sees no reason to change its own.”); Hendricks, *supra* note 33 (“Mexico badly wants the United States to . . . let the country’s . . . undocumented immigrants . . . obtain legal status, and to create a legal avenue for future foreign workers . . .”).

to citizenship for immigrants currently in this country as well as a guest worker program.¹⁵² The guest worker program matches foreign workers with U.S. employers who are unable to fill positions with domestic workers.¹⁵³ Proponents believe that giving workers already in the United States the option to become guest workers will bring illegal immigrants out of the margins and into society.¹⁵⁴ Opponents argue that illegal immigrants will not come forward because in doing so they would be putting themselves “on the radar,” exposing themselves to possible deportation.¹⁵⁵ Still to others, the Bush plan will bring consequences similar to those of the Bracero Program.¹⁵⁶

III. ILLEGAL IMMIGRATION HURTS THE UNITED STATES AND MEXICO

A. *Strain on the United States*

While it is true that illegal immigrants provide labor that is important to the U.S. economy, they also bring a financial burden to the communities in which they settle.¹⁵⁷ Mainly, this strain results from illegal immigrants using public services,¹⁵⁸ living in informal or unconventional housing, and sending remittances.¹⁵⁹ It is the responsibility of the federal government “to mitigate the impacts of unlawful immigration on states and localities.”¹⁶⁰ Although there are federal programs that assist states with the additional costs associated

152. Capasso, *supra* note 45, at 102.

153. Morgan, *supra* note 110, at 125.

154. Capasso, *supra* note 45, at 104.

155. *Id.* at 105.

156. *See* Morgan, *supra* note 110, at 134 (evaluating President Bush’s guest worker proposal in the context of the Bracero Program and finding that it, like the Bracero Program, would provide cheap labor and monitor illegal immigration).

157. CONG. BUDGET OFFICE, *supra* note 6, at 1; Gabor & Rosenquest, *supra* note 3, at 287.

158. State and local governments are bound by federal programs and court decisions to provide certain services to illegal immigrants. CONG. BUDGET OFFICE, *supra* note 6, at 3. States, for example, may not exclude children from public education based on their immigration status. *Id.* at 7.

159. *See* Capasso, *supra* note 45, at 99; *see also* Bridges, *supra* note 5.

160. RESTORING CREDIBILITY, *supra* note 32, at xxii.

with illegal immigration, these programs do not fully offset the costs.¹⁶¹

One problem associated with illegal immigration that must be dealt with on a local level is informal housing.¹⁶² Illegal immigrants to the United States are forced into informality because their immigration status puts them outside the mainstream.¹⁶³ Some illegal immigrants, unable to afford conventional housing, are forced to live in shantytowns, much like the *colonias* in Mexican border towns, or in overcrowded houses and apartments.¹⁶⁴ Efforts to remove the shantytowns prove to be only a temporary fix to an ongoing problem.¹⁶⁵

Strains on the local economy are exacerbated by the fact that much of the money earned by illegal immigrants is not re-circulated in the community.¹⁶⁶ Remittance is the action of sending money to another place.¹⁶⁷ In immigration discussions, remittances refer specifically to the money earned in the United States that is sent back to the country of origin.¹⁶⁸ Of the 10.4 million Mexican immigrant adults, it is estimated that 6.6 million send remittances.¹⁶⁹ Remittances to Mexico were expected to reach \$23.4 billion in 2007.¹⁷⁰ This money, supporting one in five Mexican households, is the third largest source of revenue for Mexico's faltering economy.¹⁷¹

161. CONG. BUDGET OFFICE, *supra* note 6, at 10.

162. See R. Williams, *supra* note 79, at 705 (stating that the rampant spread of *colonias* is a major concern for border-states).

163. See Miller, *supra* note 59, ¶ 9.

164. Leslie Berestein, *Ousting of Migrants is Short-Term Fix: Laborers Find Other Places to Camp*, SAN DIEGO UNION-TRIBUNE, Feb. 17, 2007; R. Williams, *supra* note 79, at 705.

165. See R. Williams, *supra* note 79, at 726.

166. See INTER-AM. DEV. BANK, SURVEY OF MEXICAN AND CENTRAL AMERICAN IMMIGRANTS IN THE UNITED STATES, 12 (Aug. 8, 2007) [hereinafter IDB Survey], available at <http://www.iadb.org/news/docs/remitmex.pdf>.

167. BLACK'S LAW DICTIONARY 1321 (8th ed. 2004).

168. See Deanna Ford, *Tapping the Development Potential of Migration Through MFIs*, 12 GEO. PUB. POL'Y REV. 11, 11 (2007).

169. IDB SURVEY, *supra* note 166, at 12.

170. *Id.*

171. Capasso, *supra* note 45, at 96-97; Cornelius, *supra* note 38.

While a great benefit to Mexico, these remittances pull money away from recirculation in the communities where it is earned.¹⁷²

Though the problem affects the country as a whole, the burden of illegal immigration falls mainly on state and municipal governments.¹⁷³ The federal government's response to illegal immigration fails to adequately offset this burden.¹⁷⁴ A comprehensive solution to the illegal immigration crisis must include financial support to compensate local governments for the added expenses associated with immigration issues.¹⁷⁵ If a microcredit program is in place, it will generate profit to be used in just such a way—mitigating the burden on states caused by illegal immigration.

B. Strain on Mexico

Contrary to some popular sentiment, preventing illegal immigration is not anti-Mexican.¹⁷⁶ In addition to creating problems in the United States, illegal immigration creates problems in Mexico as well.¹⁷⁷ As a result of mass emigration, Mexico is suffering from a "brain drain," a loss of human capital, and is facing the threat of losing a generation of youth.¹⁷⁸

Historically, Mexico's economy has relied on its cheap and plentiful labor to compete in the global marketplace.¹⁷⁹ This reliance

172. Deanna Ford suggests the use of microcredit to allow the receiving parties in the home countries to make the best use of remittance money. Ford, *supra* note 165. Her article proposes that using microfinance institutions to channel funds will cause immigrants to return home sooner. *Id.* at 15. This approach does not curb the problem of illegal immigration, but rather presupposes the continuation of illegal immigration instead of looking to prevent it from occurring in the first place. *See id.*

173. CONG. BUDGET OFFICE, *supra* note 6, at 10; *see also* Gabor & Rosenquest, *supra* note 3, at 287 ("In addition, the financial burden that illegal immigration imposes on the United States falls predominantly on the local and state governments, rather than the federal level, and exacerbates populist anti-immigration pressure.").

174. CONG. BUDGET OFFICE, *supra* note 6, at 10.

175. *See* RESTORING CREDIBILITY, *supra* note 32, at xxii; *see* CONG. BUDGET OFFICE, *supra* note 6, at 10; *see* Gabor & Rosenquest, *supra* note 3, at 287.

176. Steorts, *supra* note 40, at 25.

177. *See* Ford, *supra* note 165, at 12.

178. *Id.*; *Morning Edition*, *supra* note 47.

179. Condon & McBride, *supra* note 10, at 272.

is threatened by the mass exodus of immigrants seeking higher wages in the United States.¹⁸⁰ The problem created by the number of workers being lost to immigration is exacerbated by the quality of workers being lost.¹⁸¹ Currently, there is a widespread misconception that the people who immigrate illegally to the United States are the poorest and least skilled of the population.¹⁸² On the contrary, the level of education of migrants coming from Mexico has risen in recent decades.¹⁸³ According to one study, Mexican immigrants to the United States have higher education levels than the mean level of education of their communities of origin.¹⁸⁴ The individuals that Mexico is losing to illegal immigration are seeking opportunity because they are both motivated and skilled.¹⁸⁵ This is evident in the results of a survey showing that ninety-five percent of the Mexican immigrants to the United States were employed in Mexico before they left.¹⁸⁶ With Mexico's human capital considered one of its greatest assets, this loss is frightening when considering Mexico's future.¹⁸⁷

The arguments for family reunification emphasize the strain illegal immigration places on families.¹⁸⁸ Many families have to adjust to a situation where husbands and fathers are away for months

180. *See id.*

181. *See id.* at 256-57; *see* Morgan, *supra* note 110, at 131 (describing the economic disadvantage caused by Mexico's loss of its best workers during the Bracero Program); *see* Hendricks, *supra* note 33.

182. Valdez, *supra* note 37.

183. Condon & McBride, *supra* note 10, at 256.

184. *Id.* at 256-57.

185. Hendricks, *supra* note 33 (stating that without comprehensive reform, Mexico will be unable to hold onto its skilled and motivated citizens); Valdez, *supra* note 37 ("More often the people who come here have some skills but can't find work at home or want to get ahead."); *see also* PEW HISPANIC CENTER, SURVEY OF MEXICAN MIGRANTS: PART THREE ii (Dec. 6, 2005) [hereinafter PEW SURVEY], available at <http://pewhispanic.org/files/reports/58.pdf>.

186. PEW SURVEY, *supra* note 185, at ii (stating that five percent of Mexican immigrants who have been in the United States for more than two years were unemployed in Mexico).

187. *See* Hendricks, *supra* note 33.

188. *See* Valdez, *supra* note 37 ("Santiago last made the illegal border crossing about two years ago, after spending a few cherished months with his wife and daughter in Mexico.").

or years on end.¹⁸⁹ An emerging problem in Mexico is the number of children being left with relatives when one or both parents leave for the United States.¹⁹⁰ These children frequently lack confidence and are plagued by behavioral problems which make them disruptive in school.¹⁹¹ Those who finish school take longer than usual, increasing education costs.¹⁹² There is a fear among educators that these abandoned children will be a lost generation in Mexico.¹⁹³

A comprehensive solution to Mexico's problems associated with illegal immigration to the United States would create opportunity in Mexico.¹⁹⁴ Opportunity in Mexico would keep Mexico's best and brightest at home working to improve their country.¹⁹⁵ It would also keep families intact. If a microcredit program is in place, it will create that much needed opportunity—helping Mexico and its citizens to succeed.¹⁹⁶

IV. MICROCREDIT IS A NECESSARY COMPONENT TO U.S. IMMIGRATION POLICY

As a sign of desperation, the United States has resorted to sending illegal crossers to their home towns, as opposed to releasing them just over the border, to deter repeat crossing.¹⁹⁷ While Americans remain divided about a solution to the illegal immigration problem, eighty-five percent feel that sending illegal immigrants back to their country of origin is not a realistic goal.¹⁹⁸ It is clear that the United States must add a new strategy to its immigration policy. Microcredit is that strategy.

189. *See id.* ("The first time her husband left to work in the United States was the most difficult, she says.").

190. *Morning Edition, supra* note 47; *see also* Valdez, *supra* note 37.

191. *Morning Edition, supra* note 47.

192. *Id.*

193. *Id.*

194. Hendricks, *supra* note 33; *see Thinking Small, supra* note 15.

195. *Thinking Small, supra* note 15.

196. *Id.*

197. *See* Lisa J. Adams, *Deported Migrants Will Be Sent Back to Homes*, CORPUS CHRISTI CALLER-TIMES, Feb. 21, 2004, at A4.

198. USA TODAY/GALLOP POLL, July 6-8, 2007, *available at* <http://www.pollingreport.com/immigration.htm>.

A. *Microcredit is an Effective Means to Create Opportunity*

The creation of economic development programs in immigrant-sending regions has been proposed to create an incentive for would-be migrants to stay home.¹⁹⁹ Microcredit programs are superior to other programs directed at helping the poor, many of which fail because capital investment is made, but underlying problems are not addressed.²⁰⁰ Typically, non-government organizations (NGOs) attempt to alleviate poverty by implementing elaborate training programs that teach new skills to the poor.²⁰¹ These well-intentioned programs neglect a fundamental question: how are the poor going to put the new skills to work if they do not have the necessary capital?²⁰²

The World Bank has been criticized for its focus on large infrastructure projects that are of great benefit to the wealthy but do little to help the poor.²⁰³ Likewise, bringing in American businesses like McDonalds and Blockbuster does not increase wealth for the poor because it does not create capital.²⁰⁴ Providing the poor with capital allows them to sell their products in the free market.²⁰⁵ This allows the poor to take full advantage of their own abilities.²⁰⁶

B. *How Microcredit Works*

The form of microcredit pioneered by Mohammad Yunus is referred to as the Grameen Model, named after his Grameen Bank in

199. 22 U.S.C. § 7104(a)(1) (2006); Cornelius, *supra* note 38; *Thinking Small*, *supra* note 15; see Hendricks, *supra* note 33.

200. See YUNUS, *supra* note 17, at 38 (explaining why an expensive tube well, a type of water well, was not being used for irrigation).

201. *Id.* at 141.

202. See *id.*

203. *Id.* at 146.

204. DE SOTO, *supra* note 79, at 66 (“[I]mporting McDonald’s and Blockbuster franchises, is not enough to create wealth.”).

205. See YUNUS, *supra* note 17, at 49. Another device that is valuable for bringing capital to the poor is land reform. For more about how land reform can empower the poor by allowing people to make use of otherwise “dead capital,” see Prosterman & Hanstad, *supra* note 34.

206. See YUNUS, *supra* note 17, at 50 (“They would get the highest possible return for their labor . . .”); *Thinking Small*, *supra* note 15.

Bangladesh.²⁰⁷ Microcredit, under the Grameen Model, is also referred to as “solidarity lending” because loans are extended based on social collateral instead of physical collateral.²⁰⁸ Essentially, the loans rely on collective personal responsibility.²⁰⁹ Microcredit does this by requiring that potential borrowers create a group of five, electing one member as the chairperson.²¹⁰ The borrower groups are the key to the success of microcredit because they create a support group for people of similar social and economic backgrounds.²¹¹ Once a group is formed, the members undergo a seven-day training on the bank’s policies and at the end of that training, loans are extended to two members of the group.²¹² If those members repay on time for six weeks, two more members receive their loans.²¹³ Finally, after the four members have consistently repaid on time, the chairperson is given his or her loan.²¹⁴ If a member of the group does not pay back the loan, the other members of his or her group will be unable to borrow in the future.²¹⁵ This means that the groups put pressure on their members to ensure repayment, and if a member is having trouble, the group members step in to help.²¹⁶

A key to the success of Grameen Model microcredit is its simplicity.²¹⁷ Some of the measures that keep the process simple include the following: one year duration on loans, repayment made in weekly installments starting one week after the inception of the loan, a standard interest rate of twenty percent, and repayment at a standard rate of two percent of the loan per week over fifty weeks.²¹⁸ This

207. Jameel Jaffer, *Microfinance and the Mechanics of Solidarity Lending: Improving Access to Credit Through Innovations in Contract Structure*, 9 J. TRANSNAT’L L. & POL’Y 183, 197-98 (1999).

208. *Id.* at 186.

209. Winn, *supra* note 16, at 932.

210. YUNUS, *supra* note 17, at 63; Winn, *supra* note 16, at 932.

211. YUNUS, *supra* note 17, at 62.

212. *Id.* at 63; Winn, *supra* note 16, at 932.

213. YUNUS, *supra* note 17, at 63; Winn, *supra* note 16, at 932.

214. YUNUS, *supra* note 17, at 63; Winn, *supra* note 16, at 932.

215. YUNUS, *supra* note 17, at 63-64; Winn, *supra* note 16, at 932; *Thinking Small*, *supra* note 15.

216. YUNUS, *supra* note 17, at 62-63; *Thinking Small*, *supra* note 15.

217. YUNUS, *supra* note 17, at 68.

218. *Id.*

simplicity makes it easy for an inexperienced borrower to succeed,²¹⁹ borrowers start with small loans, but as they continue to repay, they become eligible for larger loans.²²⁰ Each time a new loan is extended, it is considered a new loan cycle.²²¹ Studies have shown that between five and fifteen loan cycles are required for a borrower to be completely sustainable.²²²

The sustainability achieved by the borrower is shared by the institution. For example, Grameen Bank in Bangladesh boasts ninety-eight percent repayment.²²³ An additional facet to high repayment is the fact that successful microcredit lenders will not forgive loans, even in the face of natural disasters.²²⁴ Because microcredit is as much about building up the borrower's confidence as it is about extending her capital, forgiving loans undermines the pride and self-reliance of the borrowers.²²⁵ When borrowers are truly unable to pay, repayment periods can be extended and grace periods can be offered, but the integrity of the loan is maintained.²²⁶

While microfinance institutions are initially financed by grants or loans, many have since achieved operational self-sufficiency, and yet others have achieved complete financial self-sufficiency.²²⁷ Microcredit has even been shown to be a profitable endeavor for independent investors.²²⁸ In September of 2006 TIAA-CREF purchased \$43 million of stock in a global microfinance fund.²²⁹ Microlending funds are even available to individual investors at a

219. *Id.*

220. *Fresh Air*, *supra* note 16.

221. *Id.*

222. *Id.* Grameen Bank has been criticized for creating perpetual dependence on the part of its borrowers. Gina Neff, *Microcredit, Microresults*, LEFT BUSINESS OBSERVER #74, Oct. 1996.

223. YUNUS, *supra* note 17, at 58. Some microcredit organizations have repayment rates of ninety-nine percent. *Thinking Small*, *supra* note 15.

224. *Id.* at 137.

225. *Id.*

226. *Id.* at 138.

227. Jaffer, *supra* note 207, at 184.

228. Emily Berkman, Note, *Microloans as a Community Reinvestment Act Compliance Strategy*, 3 N.Y.U. J. L. & BUS. 329 (2006); *All Things Considered*, *supra* note 28.

229. *All Things Considered*, *supra* note 28.

guaranteed rate of return of up to three percent.²³⁰ Studies suggest that making microloans and larger loans can result in a mixed portfolio that achieves social and profit objectives.²³¹

C. Microcredit in U.S. Legislation

The U.S. Congress has found that microcredit is vital to the economic growth of developing countries.²³² Congress contends that “[i]t is . . . in the best interest of the United States to facilitate access to financial services and assist the development of microenterprise in developing countries.”²³³ This acknowledgment began in 2000, a significant year for microcredit in U.S. legislation.²³⁴ In two different bills passed that year, Congress endorsed the use of microcredit and recognized its potential to create opportunity for the poor.²³⁵ These bills are the Microenterprise for Self-Reliance Act of 2000 and the Trafficking Victims Protection Act (TVPA).²³⁶

In passing the Microenterprise for Self-Reliance Act of 2000, Congress sought to “make microenterprise development an important element of United States Foreign Policy and assistance”²³⁷ The act recognizes the crucial role that microcredit plays in reducing poverty and promoting economic development.²³⁸ To implement the development goals of the Act, Congress authorized the President to grant assistance to NGOs that provide microcredit loans.²³⁹ As the

230. *Id.* (“Individual investors . . . can put as little as one thousand dollars into a Calvert Foundation micro-lending fund . . .”).

231. Berkman, *supra* note 228, at 329.

232. 22 U.S.C. § 2211(1) (2006).

233. 22 U.S.C. § 2211(2) (2006).

234. *See* Microenterprise for Self-Reliance Act of 2000, H.R. 1143, 106th Cong. § 103(1) (2000); *see* Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7104 (2006).

235. *See* Microenterprise for Self-Reliance Act of 2000, H.R. 1143, 106th Cong. § 103(1) (2000); *see* Victims Protection Act of 2000, 22 U.S.C. § 7104 (2006).

236. Microenterprise for Self-Reliance Act of 2000, H.R. 1143, 106th Cong. § 103(1) (2000); Victims Protection Act of 2000, 22 U.S.C. § 7104 (2006).

237. Microenterprise for Self-Reliance Act of 2000, H.R. 1143, 106th Cong. § 103(1) (2000).

238. *See id.* § 102(10)(A).

239. *See id.* § 105(b)(1).

Act relates to Mexico, it provides that the United States will give grants to Latin American microcredit institutions that provide loans of \$400 or less.²⁴⁰

Congress passed the TVPA in 2000 as an attempt to combat and prevent the harsh reality that 600,000 to 800,000 people are trafficked across international borders each year.²⁴¹ Part of the TVPA charges the President with the establishment and implementation of measures to create opportunity in the sending countries.²⁴² This is intended to decrease the likelihood that people will fall victim to human trafficking.²⁴³ A key element of this creation of opportunity is the use of microcredit loans.²⁴⁴

These bills demonstrate that Congress does not need to be educated on microcredit's power to create opportunity and prevent human migration: it is clear that Congress understands that power. It is unclear, however, why Congress has not yet put that power to use in its general immigration policy.²⁴⁵ The following is an example of how Congress could do just that:

MICROCREDIT TO PREVENT ILLEGAL IMMIGRATION FROM MEXICO—The President shall distribute no less than \$5 million per year to Microfinance Institutions (MFIs) extending microcredit loans to Mexican citizens who are likely to illegally immigrate to the United States.²⁴⁶ The factors affecting MFI eligibility for U.S. grant money shall be: (1) the MFI's record of success at preventing would-be immigrants from leaving home; and (2) the MFI's financial sustainability and profitability. One-fourth of the profit earned by the MFI through U.S. grant money shall be

240. See *id.* § 105(3)(A)(i)(II).

241. Angela D. Giampolo, *The Trafficking Victims Protection Reauthorization Act of 2005: The Latest Weapon in the Fight Against Human Trafficking*, 16 TEMP. POL. & CIV. RTS. L. REV. 195, 198 (2006).

242. Victims Protection Act of 2000, 22 U.S.C. § 7104(a) (2006).

243. *Id.*

244. See *id.* § 7104(a)(1).

245. See *Thinking Small*, *supra* note 15.

246. Five million dollars, if given to MFIs that already have established the necessary infrastructure, would be enough to make 25,000 loans of two hundred dollars. If each two-hundred-dollar loan successfully kept a family of four from illegally immigrating to the United States, 100,000 fewer people would cross the border illegally each year as a direct result of this legislation.

reinvested in the MFI.²⁴⁷ The other three-fourths shall be placed in a general fund and distributed for education, health care, and law enforcement in municipalities most affected by illegal immigration.²⁴⁸

D. Why Microcredit Will Help Mexico

Historically, Mexico lagged behind its Latin American neighbors when it came to microfinance.²⁴⁹ This changed under Mexican President Vicente Fox, elected in 2000, who believes strongly in microcredit.²⁵⁰ In a proposal asking the United States to grant 250,000 work visas a year, Fox included microcredit loans as incentives for prospective immigrants to encourage them to stay home.²⁵¹ Over a fourteen-year period, the number of Mexicans living on less than one dollar per day decreased from 10.5% to 4.1%, largely due to microcredit lending.²⁵² Despite this improvement, there is still progress to be made.

One of the most significant problems faced by Mexico, for example, is an insufficient investment in physical and human capital.²⁵³ Many Mexicans are in poverty because they do not have access to capital.²⁵⁴ This is partially due to the fact that individuals

247. This one-fourth share of profit is meant to reward MFIs that generate a profit from the U.S. grant money.

248. Although it will not fully compensate local governments for the burden created by large illegal immigration populations, the three-fourths share of profit which will go to municipalities is an acknowledgement by the federal government of that burden created by these populations.

249. Darren Keyes, *Protecting the Peace While Profiting the Poor: Microfinance and Terrorist Financing Regulation*, 12 L. & BUS. REV. AM. 545, 556 (2006).

250. *Reflections From the Ranch: Vicente Fox Remembers*, ECONOMIST, Oct. 4, 2007, at 4.

251. Fleshman, *supra* note 96, at 265.

252. *Spain's Queen Sofia and President Fox Talk About Microcredit at Conference*, EL UNIVERSAL, Apr. 26, 2005.

253. RODARTE, *supra* note 84, at 7.

254. See YUNUS, *supra* note 17, at 50.

People . . . were poor not because they were stupid or lazy. They worked all day long, doing complex physical tasks. They were poor because the financial institutions in the country did not help them widen their

living in informal housing are unable to use their house as collateral to generate capital.²⁵⁵ Without capital, people are unable to make full use of their excess skills and capacities.²⁵⁶

Making capital more readily available to Mexico's poor will have a greater impact because of recent changes to Mexican law.²⁵⁷ The System for the Rapid Setting-up of Businesses (SARE), which Mexico's President, Felipe Calderon, signed into law in 100 municipalities, makes it easier for individuals to start businesses by reducing cost, paperwork and government discretion.²⁵⁸ Research performed by the World Bank indicates that Mexico has made serious progress; the time it took to start a business in 2007 was twenty-seven days, down from fifty-eight days just two years before.²⁵⁹ Microcredit can help the poor of Mexico start their own businesses, and it can also help them bring their extralegal activities into the formal economy.²⁶⁰ The tax benefit produced would be a great help to Mexico's economy.²⁶¹

One NGO already operating as an MFI in Mexico is *Compartamos*.²⁶² *Compartamos* began operation in 1990 with financing from the Inter-American Development Bank (IDB).²⁶³ By

economic base. No formal financial structure was available to cater to the credit needs of the poor.

Id.

255. DE SOTO, *supra* note 79, at 149.

256. *Fresh Air*, *supra* note 16 (“[C]redit helps because credit immediately creates the facility to use their excess capacity or excess skill.”).

257. See Felipe Calderón, Pres. of Mex., Remarks at the Government Actions For More and Better Jobs Event (Mar. 5, 2007) (discussing the SARE program), available at <http://www.presidencia.gob.mx/en/search/index.php?contenido=29287&pagina=1&palabras=sare>.

258. *Id.*

259. WORLD BANK GROUP, DOING BUSINESS 2008: MEXICO 9 (2007), available at <http://www.doingbusiness.org/Documents/CountryProfiles/MEX.pdf>.

260. Miller, *supra* note 59, ¶ 81.

261. See Capasso, *supra* note 45, at 100.

262. Diego Fonseca, *Strength in Variety: Mexican Society Shows that Institutional Investors Support Microfinance When Solid Performance is Evident*, MICRO ENTERPRISE AMERICAS, Fall 2006, available at <http://www.iadb.org/sds/foromic/ixforo/magazine/p28.cfm?language=english>; see *Compartamos*, <http://www.compartamos.com> (last visited Mar. 26, 2008).

263. Fonseca, *supra* note 262.

1995, *Compartamos* was completely self-sufficient, and by 1997, it was turning a profit.²⁶⁴ In fifteen years, *Compartamos* extended over \$130 million to more than 400,000 people.²⁶⁵ *Compartamos* is currently lending about \$315 million to more than 765,000 people.²⁶⁶

In 2002, *Compartamos* issued \$20 million in bonds, mainly to individual investors.²⁶⁷ Three years later, in 2005, the bank issued an additional \$50 million in bonds; but this time, the bonds were purchased by mutual funds and pension funds, not by individual investors.²⁶⁸ This shift in purchasers in the two bond issuances demonstrates the financial viability of microfinance lending as an investment.²⁶⁹

In addition to large MFIs, some small MFIs have seen dramatic success working along the border in Mexico.²⁷⁰ *EnComún*, for example, is a microcredit bank that operates in the towns along Mexico's border with the United States: Nogales, Sonora; Ciudad Juarez, Chihuahua; and Agua Prieta, Sonora.²⁷¹ *EnComún* has 1,500 participants with an average loan size of \$165.²⁷² One of *EnComún*'s success stories is that of Yadira Marquez.²⁷³ Yadira was living in Nogales, Sonora with her husband and three children.²⁷⁴ The family was struggling to survive on her husband's earnings of eighty dollars per week from the *maquiladora*.²⁷⁵ In desperation, Yadira was ready to send her husband across the border illegally to find work and send money home.²⁷⁶ Instead, Yadira applied for and received a \$200

264. *Id.*

265. *Id.*

266. *Compartamos*, <http://www.compartamos.com> (follow "Investors" hyperlink; then follow "General Results" hyperlink) (last visited Mar. 14, 2008).

267. Fonseca, *supra* note 262.

268. *Id.*

269. *See id.*

270. *See* Medrano, *supra* note 80.

271. *EnComún*, Where We Work, <http://www.bancomun.org/wherework.html> (last visited Mar. 26, 2008).

272. *EnComún*, *EnComún* Statistics, <http://www.bancomun.org/statistics.html> (last visited Mar. 26, 2008).

273. Medrano, *supra* note 80.

274. *Id.*

275. *Id.*

276. Medrano, *supra* note 80.

microcredit loan from *EnComún*.²⁷⁷ She used that loan to purchase silver jewelry which she began selling door-to-door.²⁷⁸ With the additional income generated by Yadira's jewelry business, she and her husband can now pay the school expenses for their children.²⁷⁹

As part of *EnComún*'s lending program, borrowers are required to join a community group responsible for keeping members up-to-date on loan and interest payments.²⁸⁰ Another success story is that of the treasurer for Yadira's lending group, Veronica Arizmendi.²⁸¹ Before she received her loan from *EnComún*, Veronica was a single mom who supported her two children by crossing the border and working illegally in Nogales, Arizona.²⁸² Veronica used her loan to start a small market that she runs out of her house, selling sodas, fruit, snacks and school supplies.²⁸³ She plans to use her next loan to tear down walls in her house and expand her store.²⁸⁴ Working from home means that Veronica does not have to be away from her children all day while she works.²⁸⁵

Other small MFIs boast similar stories. Alicia Nieblas Moroyoqui had no business experience and could barely make ends meet before she received her loan from *Grameen de la Frontera*, an MFI working in Etchojoa and Huatabampo, in Sonora, Mexico.²⁸⁶ With her initial loan, Alicia transformed herself from a field worker with no business experience to an entrepreneur, running a tailor shop from her home.²⁸⁷ In four years she had expanded her business to include a laundry business with four washing machines, a gold and silver jewelry business, and a computer that she rents by the hour to school children

277. *Id.*

278. *Id.*

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.*

283. *Id.*

284. *Id.*

285. *Id.*

286. *Grameen de la Frontera, Borrower Financial Success Stories*, <http://www.grameendelafrontera.org> (follow "Borrowers" hyperlink; then follow "Borrower Financial Success Stories" hyperlink) (last visited Mar. 26, 2008) [hereinafter *Success Stories*].

287. *Id.*

for their homework.²⁸⁸ The money Alicia earns from her businesses has allowed her to invest in her children's education: her eldest son returned to school to finish high school, her middle son studied law in Mexico, and her youngest son was able to finish high school.²⁸⁹

Yadira's loan has kept her family intact and in Mexico.²⁹⁰ Veronica's loan has kept her from working illegally in the United States and has allowed her to play a more active role in the upbringing of her children in Mexico.²⁹¹ Alicia's loan has made it possible for herself and her sons to remain in Mexico and contribute to their community.²⁹² All of this was achieved with loans of \$200 or less, which were repaid with interest.²⁹³ The dollar amount of these loans is negligible when compared to the thousands of dollars it costs to provide police protection, emergency health care, and education to just one family of illegal immigrants.²⁹⁴

The examples of *Compartamos*, *EnComún* and *Grameen de la Frontera* demonstrate two important elements of microcredit in Mexico. First, they show that microcredit lending in Mexico can be profitable because lending is already being used profitably in Mexico. Second, they illustrate that microcredit will help prevent illegal

288. *Id.*

289. *Id.* In many Mexican villages where *Grameen de la Frontera* operates, education is an undervalued and underutilized resource. See *Grameen de la Frontera*, Education, <http://www.grameendelafrontera.org> (follow "Reports" hyperlink; then follow "Trip Reports" hyperlink; then follow "January 2nd-5th, 2005 Trip Report" hyperlink) (last visited Mar. 26, 2008). Primary school is free and usually within walking distance, and most, but not all children attend. *Id.* Secondary school, for students from eleven to thirteen years of age, is more costly because families have to pay for school supplies and daily bus travel. *Id.* For this reason, fewer students go on to complete secondary school. *Id.* Due to the even higher costs associated with high school, many students never start, and most students never finish. *Id.*

290. *See id.*

291. *Id.*

292. *See* Success Stories, *supra* note 285.

293. *See* Medrano, *supra* note 80; *see* New Funding Needs, <http://www.grameendelafrontera.org> (follow "Reports" hyperlink; then follow "Trip Reports" hyperlink; then follow "January 2nd-5th, 2005 Trip Report" hyperlink) (last visited Mar. 14, 2008).

294. *See* CONG. BUDGET OFFICE, *supra* note 6, at 7-9 (calculating the millions of dollars that states spend every year on the education, health care, and incarceration of illegal immigrants).

immigration because, as demonstrated by the examples, it is already doing just that. It is already working to keep individuals in Mexico who would have otherwise illegally crossed into the United States. Additional benefits of microcredit would be realized if the U.S. governments chose to use microcredit as an investment to prevent border infractions, a tool which would generate positive income.

Though Mexico has significantly improved the amount of microcredit available to its citizens, Mexico's current levels of microcredit are dwarfed by the more than \$2.5 billion in microcredit the Grameen Bank has provided in Bangladesh.²⁹⁵ Inclusion of microcredit provisions for Mexico in U.S. immigration law would allow microcredit in Mexico to reach its full potential.²⁹⁶

V. CONCLUSION

With a history of unsuccessful immigration policy that addresses only the current levels of supply and demand of labor, it is time for the United States to consider a new approach. Because the United States has already acknowledged the success of microcredit in creating opportunity for the poor and preventing would-be immigrants from leaving home, it is a logical next step to include microcredit in U.S. immigration policy. Unlike traditional economic development programs, whose effect on illegal immigration is slow,²⁹⁷ microcredit has an immediate impact on would-be immigrants.²⁹⁸ This cost of microcredit is negligible when compared to the costs of a rising illegal immigrant population.²⁹⁹ Repayment is in the high ninety percent range,³⁰⁰ thus investment of money in microcredit is not a loss, as opposed to other immigration spending. U.S. funds invested in

295. See *Fresh Air*, *supra* note 16.

296. See Press Release, Inter-Am. Dev. Bank, IDB Calls for Tripling Volume of Microcredit in Latin America and the Caribbean in Five Years (Sept. 14, 2006) (“[M]icrofinance institutions are only meeting about 8 percent of the estimated demand for microcredit in the region.”).

297. See Cornelius, *supra* note 38 (suggesting it will take ten to fifteen years for economic development programs, as illegal immigration prevention tools, to produce results).

298. See Medrano, *supra* note 80; *Fresh Air*, *supra* note 16.

299. See CONG. BUDGET OFFICE, *supra* note 6, at 7-9.

300. Grameen Bank, for example, claims a ninety-eight percent repayment rate. YUNUS, *supra* note 17, at 58.

microcredit can continue to be reinvested in additional microcredit programs, and profit can be used to offset the costs of illegal immigration to local governments.

It is in the best interest of the United States to ensure that democracies in neighboring countries succeed.³⁰¹ United States policy in Latin America aims at promoting “an image of U.S. engagement that is focused on linking democracy and development.”³⁰² Meanwhile, the United States struggles to secure its borders and prevent people from entering illegally.³⁰³ An inclusion of microcredit provisions in U.S. immigration laws will achieve these objectives. The creation of opportunity in Mexico will decrease the number of people entering the United States illegally, while promoting a positive image of the United States.³⁰⁴ At the same time, Mexico will be able to retain the skilled, motivated people upon whom its future depends.³⁰⁵ For the future of the United States and Mexico, microcredit as a tool to combat illegal immigration must be an important part of U.S. immigration policy in the twenty-first century.

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301. Remarks, *supra* note 15.

302. *Fiscal Year 2008 Appropriations for Latin America and Caribbean Programs: Hearing Before Subcommittee on State, Foreign Operations and Related Programs of the H.R. Committee on Appropriations*, 110th Cong. (2007) (statement of Adolpho Franco, Assistant Adm’r, U.S. Agency for Int’l Dev.), available at 2007 WL 950100.

303. See *supra* Part II.B.

304. Remarks, *supra* note 15.

305. See Hendricks, *supra* note 33. Mexico ambassador to the United States, Arturo Sarukhan, described the current situation in Mexico: “Unless Mexico can trigger economic growth and well-paid, sustainable jobs, even with comprehensive reform [Mexico] won’t be able to hold onto skilled and motivated people. Mexico’s highest edge in the world today is its human capital, and we’re losing it.” *Id.*

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