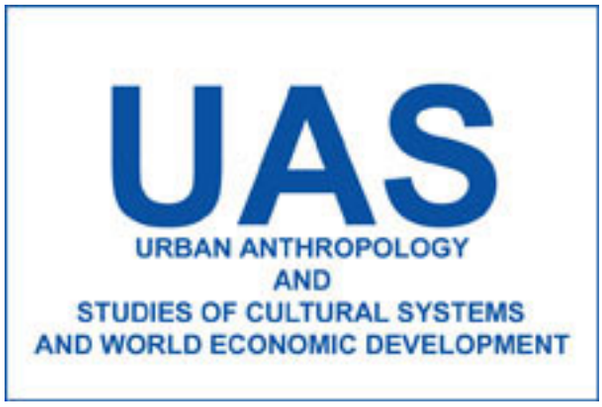

The "Undocumented" Mexican Migrant Question: Re-Examining The Framing Of Law And Illegalization In The United States

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ABSTRACT: Over the past four decades, the United States has experienced an acrimonious debate regarding Mexican migration, particularly that labeled "illegal/undocumented." A central dimension in the debate is the discursive opposition of the labels "illegal" versus "undocumented" migrant. The labels are dominant political signifiers, yet their overlapping formation and juridico-political context have been largely overlooked. This article traces the genealogy of these labels, presents some of the academic uses of these, and analyzes the shared premises and limitations of both terms. The essay argues that the inattention to the genealogy of the terminology and shared limitations have obscured the role of the label "undocumented" migrant in supporting the production of "illegality," despite its emergence as an explicitly oppositional term to "illegal alien/immigrant."

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Introduction

The mobilization of an estimated 3.3 to 5 million Latino migrants and their allies in about 200 cities in spring 2006 to protest migration policies being considered by Congress[1] is significant. One, it represents an unprecedented mobilization of Latinos, both citizens and non-citizens, to voice civil opposition to proposed State action. Two, it is an unprecedented national civil action aimed at protesting migration measures passed by the U.S. House of Representatives, before being considered by the Senate. Three, they constituted sites that gave visibility to discursive practices used to categorize migrants.[2] Placards carried by participants, media coverage of the marches, march protestors, and letters written to newspaper editors tended to invoke two sets of preferences.[3] One set of interlocutors favored terms such as "illegal aliens," "illegal immigrants," or the noun-form "illegals" (or the Spanish *ilegal*), and emphasized the "criminality" and negative socio-economic impact of migrants. The second set favored the terms "undocumented workers," "undocumented immigrant" or the noun-form "undocumented" (or the Spanish *indocumentado*) and emphasized their positive economic contribution to the U.S.[4]

The categorization evoked in the marches reflects discursive practices that have become hegemonic in the long-standing and acrimonious debate involving Mexico-U.S. boundary enforcement and Mexican migration, as well as multiple policy issues related to these. Moreover, the "illegal" versus "undocumented" migrant nomenclature[5] has become a central dichotomy in academic, media, and popular representations, as well as indexical of political positions on these issues. In addition, over the past half-century the illegal/undocumented migrant labels have become firmly associated with Mexican-descent persons (Acuña 2004; Andreas 2000; Bustamante 1972a, 1978; Chávez 1992, 2001; Fernández and Pedroza 1981; Gutiérrez 1995; Inda 2006; Johnson 1996-1997; López 1980-1981; Mazón 1975; Nevins

2002; Ono and Sloop 2002). Thus the debate is also a contention about the presence and impact of a particular community on the imagined sociopolitical identity and fabric of the U.S.[6]

The contemporary academic and popular usage of the terms illegal and undocumented migrant incorporates a taken-for-granted sense about the meaning of the terms. It is not uncommon to find academic use of the terms "illegal" and "undocumented" migrant without any explanatory note or definition.[7] Journalists, advocacy organizations, and politicians engaged with the issue also commonly invoke the terms without a definition or an explanation for the selection of the respective term.[8] The result is that the two terms have become dominant signifiers that carry much political weight and signification, yet are commonly used as if their respective referent was *a priori* established, indexed an established exegesis, or were simply technical statutory concepts.

This essay builds on the research and insights of anthropologists and other scholars who have examined the formation of *anti-Mexican migrant discourses* (Chávez 2001; Fernández and Pedroza 1981; Heyman 1998, 2001; López 1980-1981; Mazón 1975; Nevins 2002; Ono and Sloop 2002; Salinas and Torres 1975-1976); *the negative labeling of Mexicans* (De León 1983; Delgado and Stefancic 1992; Menchaca 1995; Santa Ana 2002; Vila 2000, 2003); and *the illegalization of migrants*, particularly Mexican migrants (Bustamante 1972a, b, 1973, 1975, 1978; Chávez 1997; Chock 1991; Collier et al. 1997; Coutin 2005a, b; De Genova 2002, 2005, 2006; Inda 2000, 2006; Johnson 1996-1997; Mehan 1997; Romero and Serag 2004-2005; Romero 2000-2001, 2006; Yngvesson and Coutin 2006). Yet it moves beyond these by addressing dimensions that have been largely overlooked in the genealogy of the terms, the relationship of the terms to juridical constructions, and their common limitations. Second, it offers alternative terminology for labeling migrants.

In this essay, I address the gap in the academic and public discourse on the illegal/undocumented migrant through an

ethnohistorical and sociolegal analysis of social science writings, legal scholarship, selected newspapers, and journalistic texts on Mexican migration.[9] The article presents two arguments. One, insufficient attention has been paid to the intrinsic problematic in the debate surrounding the illegal versus undocumented migrant labels, and that this has detracted from examining the common assumptions and limitations in the labels. Two, although the label undocumented migrant emerged in explicit opposition to the illegal migrant label, and is argued by some as being a neutral or positive alternative, the former also contributes to the production of migrant "illegality." In order to support these arguments, the essay examines existing juridical terminology in order to foreground the conceptual gap between the common use of the illegal/undocumented labels and their presumed quality as indexical of established law. Second, it outlines a genealogy of both terms in order to contextualize their development as applied to Mexican-origin migrants, and thus address an historical element not generally noted in the literature. Third, it presents a summary of the common patterns in the academic use of illegal/undocumented migrant terminology through five examples of their use by prominent U.S.-based scholars. Last, the article offers a discussion of the shared limitations in both terms, and presents an example of alternative terminology.

The text that follows is divided into four principal sections. The first section provides a synopsis of the existing statutory migration categorization framework, and notes the conceptual gap between the common labels used and the presumed corresponding juridical constructs. In the second section, I outline the conceptual history of the terms illegal and undocumented migrant within the multiple other appellations that have been used to label Mexican migrants. It is an effort to situate the two terms, and address Reinhart Koselleck's (1982, 1985, 2002) suggestion that scholars should examine the "conceptual history" (*Begriffsgeschichte*) of "fundamental concepts" (*Begriffe*)

and the role of such concepts in the power relations involved in constituting society, as well as in constituting action, and actors.[10] His suggestion reinforces the overall framework of discursive analytical strategies suggested by the work of Michel Foucault.[11] Both make discursive formations central to analyzing power relations.

The third section of the essay focuses on outlining the limitations in the use of the terms illegal and undocumented through a discussion of common patterns in the academic literature on Mexican migration, particularly works discussing illegal/undocumented migration and/or migrants. In the final section I discuss the common assumptions and limitations in both terms. In particular, I note two key problems: (a) an overriding emphasis on the individual migrant as a self-determining actor, and (b) the insufficient attention to the role of the State (Mexico and U.S.) in shaping human migration from the former to the latter. Subsequently, I suggest alternative migration terminology.

Situating the "Illegal" and "Undocumented" Migrant *Begriffe*

Statutory Migrant Classification and "Removable Aliens"

In order to more fully comprehend the general academic and popular use of the terms illegal/undocumented migrant, it is necessary to summarize the formal relevant terminology in the nation's migration statute, the Immigration and Nationality Act (INA), codified as Title 8 of the United States Code (8 U.S.C.), and the determination of who is a "removable alien." The point here is not that academics and non-academics should adopt the statutory language as the preferred or correct terminology, but rather to point out the discordance between the

formal categories and the language commonly used, which in varying degrees assumes a basis in law.

At the core of the nation's migration statute is the concept of "alien."[12] It is a concept that emerged in Medieval England (Kim 2000), was incorporated within the British Colonies in the Americas, and later became part of the statutory framework of the nascent United States of America.[13] Within the Immigration and Nationality Act, an "alien" is defined as "any person not a citizen or national of the United States" (INA § 101 [8 U.S.C. 1101]).[14] "Aliens" are subdivided into two major categories: (a) immigrants, and (b) nonimmigrants. The former are persons who have been formally admitted for permanent residency, also commonly labeled LPRs (lawful/legal permanent residents), or green card holders; and the latter are those who are allowed temporary entry under one of the more than 25 general categories of visas such as foreign students (F-1), high-tech specialty occupations (H-1B), temporary agricultural workers (H-2A), inter-company transfers (L1), and entertainers (P-1). All visas have conditions that must be adhered to in order for the visa to remain valid. The violation of the conditions voids the visa and makes the person subject to removal.

In the context of the aforementioned, the academic and common use of the terms "illegal immigrant" and "undocumented immigrant" (as well as other parallels such as "unauthorized immigrant"), despite their frequent use, do not have a basis in U.S. migration law. Consequently, in a technical sense they are oxymorons. They more accurately reflect popular political notions of migrants and migration, than formal juridical constructs. Yet scholars, politicians, journalists, and segments of the general public invoke these as if they indexed a formal or *a priori* established referent. A similar limitation also applies to the use of the concepts of "illegal immigration," and "undocumented immigration." Under U.S. migration law, a person who has formally "immigrated" is an "immigrant," and as such has been allowed to enter and live permanently

in the United States, and given a document (i.e., a green card); thus for a migrant to be categorized as an "immigrant" means that the person was part of a "legal immigration" process. On the other hand, the parallel labels of "legal immigration" and "documented immigration" are redundant designations.

A related categorization of "aliens" within migration law is the non-citizen who has violated a provision within the law. In academic and popular discourses, the label "illegal alien" is commonly invoked to categorize persons believed to have violated our migration statutes, particularly entry restrictions. As commonly invoked, however, it also does not accord with actual language in the nation's migration law; similar to the above, it seems to be more of a reflection of popular political imagination. Title 8 of the U.S. Code enumerates the following categories of relevant non-citizen categories: (a) "to be present unlawfully" (§1103); (b) "alien unlawfully present" (an "alien" not lawfully admitted, §1182); (c) "illegal entrant" (an "alien" present without admission or parole §1182); (d) "not lawfully present" (§1226); (e) "immigration violator" (an "alien" who has violated an immigration law such as a visa condition, §1182); (f) "criminal alien" (a non-citizen convicted of an "aggravated felony," not lawfully present, or otherwise removable, §1226); (g) "unauthorized alien" ("aliens" not authorized to be employed; not an alien lawfully admitted for permanent residence, or authorized to be so employed, §1324a, §1324b, §1255); and (h) "illegal alien" ("any alien convicted of a felony who is in the United States unlawfully," §1365).

What is clear from this list is that the popular term "illegal alien" and the juridical concept of "illegal alien" are not the same. The popular use is generally applied to persons who are thought to have entered the U.S. without authorization, what Border Patrol agents informally label EWIs (Entered Without Inspection).[15] On the other hand, the juridical term refers to a narrower and more specific categorization. The popular term "illegal alien" is closer in meaning to the formal categories

regarding presence and entrance. It is also clear from the list that the term "undocumented immigrant" does not exist in statute, in addition to its oxymoronic dimension.

Under U.S. migration law and regulations, what is ultimately the determining factor of who in everyday language is an illegal/undocumented migrant is whether the person has been found to be "subject to removal" by a federal Immigration Judge.[16] And so it is critical to understand that most migrants become subject to removal because of three general reasons: (a) violating the terms of the visa, such as remaining in the U.S. beyond the authorized time period or working when the particular visa prohibited employment (i.e., "immigration violator")[17]; (b) convicted of specified crimes, including even if already granted LPR status; or (c) entering the territory without formal authorization (i.e., "not lawfully present," "illegal entrant").[18] A migrant apprehended by ICE (Immigration and Customs Enforcement) or CBP (Customs and Border Protection) is not automatically subject to immediate removal upon apprehension. If apprehended, a migrant can ask for a removal hearing, and so would be placed in detention until the hearing. However, apprehended migrants, for mutual convenience and cost-saving concerns to U.S. authorities, are offered the option of "voluntary departure." Most apprehended migrants choose that option and are escorted as they "voluntarily" depart (are "returned"). This is not deportation/removal, although the two actions are commonly thought of as being the same.[19]

At a removal hearing, an Immigration Judge reviews the individual case and may adopt possible exceptions such as revoke or suspend the removal, grant asylum, grant Temporary Protected Status, as well as grant authorization to work, depending on the particulars of the case. Thus, subject to removal means that the migrant is subject to exceptions in the law regarding removability, as well as actual removal, what can be labeled "removability," the threat of possible removal (what Sayad insightfully noted in his 1996 essay as "liability to depor-

tation" [2004: 293], and De Genova later reiterated as "deportability" [2002]).[20] A person found to be "unlawfully present" is removed only after the judge has issued a removal order. The force of law thus rests on the threat of potential removal, not on an automatic action upon apprehension. Consequently, migrants who have been ordered removed by an Immigration Judge are ultimately persons who have been determined not to have a legal basis for being allowed to remain; they have been formally deemed as being "unlawfully present." This important distinction is generally overlooked.[21]

Finally, a related issue is the question: who are the "illegal/undocumented" migrants (those subject to removal)? Since the late 1920s, a southward political gaze has dominated much of the national discussion regarding "unlawful presence" and the "border" (Bustamante 1972b, 1975; Cárdenas 1975; Cardoso 1980; Chávez 2001; García 1980; Heer 1990; Heyman 1998, 2001; López 1980-1981; Reisler 1976). The result has been twofold. First, the Mexico-U.S. boundary area has been coded as "the border" in the imagination of members of Congress, the media, anti- and pro-migrant activists, popular and documentary film producers, and numerous academics. Thus, when many scholars and others discuss border security, border deaths, Border Patrol abuses at the border, or border justice efforts, etcetera, it is generally not the coastal borders or the northern border that are imagined; it is the Mexico-U.S. boundary area that is being constructed as the unmarked category. Second, the labels illegal/undocumented migrants have come to be largely associated with Mexican-origin persons and their possible "unlawful" entry, and created a near-synonym between the concept of "illegal/undocumented immigrant/alien" and Mexican migrant.[22] Together, they have contributed to the making of the nation's "immigration problem" a Mexico-centered problem; fostered the illegalization of Mexican migrants; and correspondingly, constructed Mexican migrants as the problem population threatening the nation's sovereignty.

The political and policy consequence of this is that when many academics, politicians, and others raise the specter of the "illegal/undocumented" migrant, many observers envision the issue as an entry-control and Mexican-migrant problem, what in the 1940s and 1950s became known as the "wetback problem" (García 1980; Gardner 1947; Hadley 1956; Halsell 1978; President's Commission on Migratory Labor 1951; Reisler 1976). Correspondingly, the logically imagined "solution" is, as President Reagan and later President Clinton would often assert, to "regain control of our border" and ensure our national sovereignty. What is overlooked in such a formulation is the fact that the population of migrants who may have entered without formal authorization may constitute about half or less of those subject to removal; "visa violators" appear to make up the other half, or more than half.[23] Yet the bulk of resources, personnel, and plans conjured to "solve" the imagined migration problem are aimed at "securing" the southern border through fences, drones, video surveillance, and increased Border Patrol personnel, as if solving the entry issue would automatically solve the entire illegal/undocumented migrant "problem." The "new nativism" or "anti-immigrationism" (Chávez 1997; Heyman 1998, respectively) discourse with its emphasis on the "illegality" of migrant entry from Mexico has successfully delineated the migration debate as one about law and illegalization, a problem of entry of Mexicans. The conceptual contradiction and inconsistencies found within academic and popular uses of the labels illegal/undocumented, and between these uses and juridical constructions of persons alleged to have violated entry, visa, or residency conditions, is not unique; it is reinforced by parallels among federal actors.

The Governmental Cacophony

While it is evident that multiple labels for "illegal/undocumented" migrants are used across the nation's print and television media, by academics, by activists favoring more restrictive measures and those promoting more welcoming policies, and the public at large, what has not been explicitly noted is that federal officials and agencies also deploy a variety of labels. A governmental cacophony also exists, even among those responsible for creating, interpreting, or implementing the nation's migration laws. The relevance of this is that the set of actors who are most familiar with the technical language of the law, do not necessarily adhere to that language and thus contribute to broader conceptual ambiguities related to how to label such migrants. Consequently, one finds oxymoronic, contradictory, and inconsistent uses, as well as labels without statutory bases.

The governmental cacophony encompasses all three branches of government, and spans multiple decades. In 1996, The U.S. Congress passed and President Clinton enacted the oxymoronically titled Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA, 110 Statutes-at-Large 3009).[24] Three years later, the U.S. General Accounting Office (GAO) submitted a report to Congress titled ILLEGAL ALIENS: SIGNIFICANT OBSTACLES TO REDUCING UNAUTHORIZED ALIEN EMPLOYMENT EXISTS (1999); a report that focuses on the popular notion of "illegal alien," not the juridically defined concept of "illegal alien." And in 2004, the same agency transmitted a report to Congress titled UNDOCUMENTED ALIENS: QUESTIONS PERSIST ABOUT THEIR IMPACT ON HOSPITALS' UNCOMPENSATED CARE COSTS (GAO 2006). The UNAUTHORIZED ALIENS IN THE UNITED STATES: ESTIMATES SINCE 1986 report by the U.S. Congressional Research Service (2007) uses the juridical concept of "unauthorized alien" in the title, but in the text the report states that its

focus is "the unauthorized alien population (commonly referred to as illegal aliens)." The result is a subtle slippage between evoking a juridically established concept ("unauthorized alien") in the title, and then shifting the focus in the text to a segment of the population covered by the concept, not all categories of persons encompassed by it; the content is thus ultimately closer to the everyday label noted.

Key entities within the U.S. Department of Homeland Security (DHS) who are responsible for enforcement and data collection activities related to migration-related efforts also evince the problems noted above. The Office of Immigration Statistics (OIS), the principal division at DHS charged with compiling and reporting the agencies efforts, issued its annual report: ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION RESIDING IN THE UNITED STATES: JANUARY 2008 (2009). In addition to its oxymoronic title, the report also uses the categories of "unauthorized resident population," "unauthorized resident immigration population," and "unauthorized residents." Although the report provides a definition of "unauthorized resident" (and by extension the other terms), the four categories do not have a juridical foundation.

With respect to the CBP bureau at DHS, one encounters some peculiar evocations. On September 1, 2009, the agency issued a news release that reports the apprehension of "3 illegal aliens" (three Mexican males) who were being smuggled by a "Cuban citizen" who was driving an SUV. Whether the Cuban-descent driver was a Parolee, a Permanent Resident, or a U.S. Citizen is not specified (2009b). Two weeks previously, CPB issued a news release wherein it reports that "CBP Intercepts Unauthorized Train Rider on Michigan Border" (2009a). A "Mr. Dennis Powers" is identified and noted to be "a lone undocumented Canadian male" whose case was forwarded to the local U.S. Attorney "for possible prosecution," and prompted the Port Director to express concern with the "hazards" of entering the "U.S. via unauthorized means" (2009a).

Besides the odd juxtaposition of "illegal aliens" in the case of Mexican migrants, and an "undocumented" or "unauthorized" Canadian migrant, as well as the clear difference in the illegalization of one action and an expression of personal safety in the second, in both cases the categories deployed, as used, are not formal categories.

The ICE division of DHS notes in its annual report for fiscal year 2008 that it "removed 356,739 illegal aliens from the United States…This includes more than 100,000 who returned to their home countries voluntarily" (2008-2009). Although the statement appears to be a straightforward claim, it is not. It is a misleading assertion that masks formal conceptual errors. First, under the change made by Congress in the 1996 IIRIRA, "removal" (previously labeled "deportation") is the formal action taken against a non-citizen who an immigration judge has ruled not to have grounds for remaining in the U.S. and so has been issued a Removal Order; ICE is responsible for carrying out the order to "remove" the person from U.S. territory. Migrants who are repatriated by ICE under the a Voluntary Departure option do not have a Removal Order against them, and so under U.S. migration law they are not considered to have been "removed." The lumping together of the two actions as "removals" allows ICE to assert its effectiveness by claiming a significantly higher statistic. Second, the deployment of the category of "illegal aliens" is not limited to the label found in 8 U.S.C. §1365 (an "illegal alien" being "any alien convicted of a felony who is in the United States unlawfully"), as used by ICE, it indexes the popular usage, not the juridical definition.

A final example is the categorization enunciated by President Obama in his September 2009 speech to a joint session of Congress regarding the topic of health care reform. In the speech, President Obama noted: "There are also those who claim that our reform would insure illegal immigrants. This, too, is false. The reforms, the reforms I'm proposing would not

apply to those who are here illegally" (2009; my emphasis). This too is oxymoronic.

Toward a Genealogy of the Illegal/Undocumented Migrant Nomenclature

The illegal/undocumented nomenclature, despite its centrality in the literature on Mexican migration in the 20th century, tends to be evoked but is not commonly contextualized. Consequently, this section presents a partial genealogy of the labels with the aim of showing their oppositional emergence. Their development is first situated within the existence of labels applied to persons of Mexican descent, and that informed some of the associations that were transferred to the "illegal immigrant" label.

The end of the U.S.-Mexican War and its aftermath contributed to the positioning of Mexicans in the acquired territory as a racialized, sociopolitical Other, and one subject to simultaneous processes of inclusion and exclusion (Acuña 1972, 2004; Bustamante 1972b, 1975; Cárdenas 1975; Cardoso 1980; Chávez 2001; De León 1983; Delgado and Stefancic 1992; González 2004; Gutiérrez 1995; Menchaca 1995; Nevins 2002; Reisler 1976; Salinas and Torres 1975-1976; Samora et al. 1971; Sánchez 1993). While the 1848 Treaty of Guadalupe Hidalgo granted collective U.S. citizenship to the approximately 100,000 Mexican-descent individuals who remained in the acquired territory, this did not guarantee that they or their descendants would be granted full membership rights or be perceived as belonging in the nation (Griswold del Castillo 1990; Martínez 2001, 2006; Meeks 2007; Montejano 1987; Zamora 1993). Even individuals who trace their descent to Mexican/Spanish families settled in the territory prior to 1848 are at times thought of as possible "immigrants" to the U.S.

In the context of the nation's narratives and debates about migration, as noted by the historian Donna Gabaccia (2006), many of the labels and phrases that permeate contemporary discussions such as "immigrant" and "nation of immigrants," are fairly recent inventions. Keywords like "immigrant" and "illegal immigration," for example, are both products of the 1880s (the former came to replace "emigrant" after 1888, and the latter emerged in 1882) (Gabaccia 2006). The contemporary illegal/undocumented migrant nomenclature, though not fully discussed by Gabaccia, is also of recent invention. And like other national "inventions of tradition," the invention of the dichotomy drew upon existing terminology for Mexicans and Mexican migrants.[25]

Ethnic Mexicans, as sociopolitical Others, have been the object of multiple negative and race-based labels. While some of the labels, such as "greaser," have been applied to persons of Mexican-descent in general, others focus more on Mexican migrants.[26] The label "illegal" alien/immigrant in reference to Mexican migrants is predated by the terms "Mexican," "peon" and "wet back/wetback," though the latter term continues to be used by some officials, journalists, and anti-migrant activists.[27]

The testimony of Arizona and Texas cotton growers at the 1920 U.S. House of Representatives committee hearing regarding requested exemptions to the 1885 Contract Labor Law (23 Statutes-at-Large 332)[28] and the 1917 Immigration Act (39 Statutes-at-Large 874) made their public labeling practices clear. In the close to 400-page transcript of the hearing, Mexican migrants are represented as: "the Mexicans," "these people," "these Mexicans," "the Mexican labor," "peon labor," and "wet backs" (U.S. House of Representatives 1920). While there are references to Mexicans that "come across the river" or "come from Mexico," and to labor recruitment by U.S. employers in violation of the Contract Labor Law, the label "wet back" is the only label indicating possible unau-

thorized entry by Mexican workers, though no parallel label for employers involved in illegal recruitment is enunciated; they remain simply "employers," not "illegal employers," or "illegals" (noun). The work by the economist Paul S. Taylor in Dimmit County (in 1926) and Nueces County (in 1929), Texas, indicates a continuation of most of the labels invoked at the 1920 hearing: "Mexican," "peons," "greasers," "Old Mexicans" (Mexicans from Mexico), "peon Mexicans," "wet Mexicans," and "wets" (Taylor 1934, 1970).

Although the label "wetback" has been used by several scholars such as economists Glenn E. Hoover (1929), sociologists Julian Samora et al. (1971), Alejandro Portes (1974), and journalists Eleanor Hadley (1956) and Peter Laufer (2004), its derogatory dimensions and origins are often overlooked.[29] While some authors define the label as referring to a migrant who swam the Río Bravo/Rio Grande River and entered without formal authorization and note its "common usage" (Samora et al. 1971: 6; Hadley 1956), some comment that it is a "threatening word" (Portes 1974: 40), or simply leave it undefined (Laufer 2004). With reference to its origin, several scholars (e.g., Portes 1979) erroneously associate its origins with the 1954 "Operation Wetback."[30] The 1951 report of the President's Commission on Migratory Labor, the above-cited 1920 House of Representatives hearing, and Paul S. Taylor's research indicate that the term was already in wide circulation prior to the 1954 mass deportation drives.

Most writers also overlook its dehumanizing dimension. As noted by the linguist William Randle (1961), and supported by other works, the label "wetback" in reference to a migrant seeking to enter through the Mexico-Texas boundary area, was an extension of its application to cattle and horses smuggled from Mexico into Texas. While no date is proposed, it is likely that it emerged between the Civil War and post-war period in South Texas when smuggling of livestock and other goods across the Mexico-Texas border and within South Texas were

fairly common. The terms "wet," "wet cattle," "wet ponies," and "wet stock" appear to be the predecessors to the "wet back/wetback" migrant label (Adams 1946; Atwood 1962; Blevins 1993; Brady 1956; Branch 1951; Randle 1961).[31] With reference to popular media, Gerald B. Breitigam's 1920 article in THE NEW YORK TIMES represents the first appearance of "wet," "wet Mexican," and "wetback" in that newspaper (Breitigam 1920); and Claud Gardner's 1947 fictional book WETBACK was the first popular novel that used the term (Gardner 1947).

"Illegal Immigrant, Illegal Alien, Illegals"

The terms "illegal immigrant/alien" and the noun-form "illegals," as noted above, have come to be commonly associated with Mexican-origin migrants. Yet their origins are not with that community. The entry prohibitions enacted by Congress under the 1875 "Page Law" (18 Statutes-at-Large 477) and 1882 Chinese Exclusion Act (22 Statutes-at-Large 58) were aimed at restricting primarily Chinese migration, and so in the late 19th century, public and governmental concern was with the "illegal entry" of "alien" Chinese. With the emergence of anti-Japanese sentiments on the West Coast in the early 1900s, concern shifted to the "illegal entry" of "alien" Japanese. Concern with the significant "illegal entry" of Europeans from Canada and Mexico also emerged in the early 1900s (Gutiérrez 1995; Ngai 1998, 2004; Reisler 1976).

Between 1900 and 1930, as noted by the historian George Sánchez (1993), the term "alien" began to be applied to Mexicans in the Southwest. However, it was not until the passage of the 1917 Immigration Act, with its literacy and head-tax requirements for admission, that concern with "illegal entrants" from Mexico began to be voiced by some segments of society (Reisler 1976). Agribusiness employers in the Southwest, however, had a different position. They illegally (in violation

of the 1885 Contract Labor Law) and legally contracted and facilitated the entry of Mexican workers to meet their "labor shortages" before, during, and after World War II. In the case of Arizona, the passage of the 1902 Reclamation Act proved to be a major federal subsidy and stimulus for the significant expansion of irrigated acreage for the production of long-staple cotton, and the concurrent demand for Mexican workers (Hill 2007; Meeks 2007; Pendleton 1950). And during World War I, due to pressures principally from cotton growers in Arizona, the Secretary of Labor interpreted a provision in the 1917 Immigration Act (the Ninth Proviso) as allowing him to waive the Contract Labor Law and the literacy and head-tax requirements in the 1917 Act for migrants from Mexico to enter and perform agricultural work as an "emergency measure."[32] Consequently, in the first two decades of the 20th century, employers heavily recruited Mexican migrants, and Mexican workers became the primary and preferred workforce in Southwest agriculture, mines, and railroads. As the historian Lawrence Cardoso (1980) described, the strong demand in the Southwest for additional labor "dovetailed" well with the emigration that took place at the same time due to the "economic development" in Mexico, and the Mexican Revolution.

The 1885 Contract Labor Law includes an "employer sanctions" provision that fined employers $1,000 for each offense of "knowingly assisting, encouraging or soliciting the migration or importation of any alien…into the United States…to perform labor or service of any kind under contract or agreement" (23 Statutes-at-Large 332; see also Orth 1907; U.S. Immigration Commission 1911).[33] In the Southwest, the fact that federal prosecutors and migration officials selected not to pursue the enforcement of the Contract Labor Law, allowed its violation on the part of employers to continue. The State was thus involved in constituting the illegal practice of foreign recruitment, and setting the historical foundation between U.S. employers and

Mexican migrant labor, through both "legal" and "illegal" processes in the first three decades of the 20th century.

Within news media, the first appearance of the label "illegal alien" appears to be a New York Times article in 1926 that describes the energetic Andrew Donaldson from Ireland who entered the U.S. from Canada on a bicycle after riding 300 miles (The New York Times 1926).

Although the term "illegal immigrant" had wide circulation in the 1930s in the context of mass deportation drives of Mexicans (Balderrama and Rodríguez 1995), the noun-form (i.e., "illegal"), now commonly invoked to label Mexican migrants, was not initially applied to Mexicans. It was applied to European Jewish migrants in the 1930s who sought to enter British controlled Palestine (Halamish 1995; Liebreich 2005; Samuel 1956). By 1939, an organized smuggling effort was implemented with the support of Jews in Palestine as well as volunteers from the U.S. to assist the "illegal" entry of those fleeing from Germany and other parts of Europe; the "illegal immigration" movement became known as the *Aliyah Bet*, or *Ha'apalah*.[34]

A 1939 news article in THE NEW YORK TIMES appears to be the first U.S. media reporting of the term "illegals" as a noun. The article notes the response of a Jewish crowd in Haifa to news about British police actions against a steamer with Jewish refugees, which was prevented from landing. Jewish protestors marched and carried banners reading: "Open the gates to the Jewish illegals" and "Down with the barbaric attitude toward illegals" (Levy 1939). The term "illegal" began to be applied to Mexicans in the late 1940s and early 1950s. Gladwin Hill, for example, in an article in THE NEW YORK TIMES in 1950 notes the efforts of Border Patrol agents in locating and arresting "wetbacks" and how "'illegals'" are loaded into trucks and buses and trundled back to Mexico.

Academic uses of illegal(s) in reference to Mexican migrants do not appear until the 1970s. The two earliest uses located are a

New York University Law Review article in 1973, and the book by the journalist Grace Halsell, THE ILLEGALS (1978). The former discusses the role of commuters and "illegals" within U.S. agriculture and their disadvantage within labor law. In her generally empathic description of Mexican "illegal" migration, including her own "illegal" crossing with migrants, Halsell describes the efforts of Mexican women and men to enter the U.S., and of the Border Patrol to prevent such entry.

According to the detailed account by Leo Chávez (2001) regarding the "anti-Mexican migrant discourse" in popular magazines, and the work of Fernández and Pedroza (1981) in newspapers, the early 1970s was key in the association of Mexican migration and illegality. In the early 1970s, the labels "illegal alien" and "illegals" became common references in discussions of the migration "crisis" on the Mexico-U.S. boundary area. Although not addressed by these authors, during the 1970s multiple governmental and policy reports were released with titles such as THE ILLEGAL ALIEN (State Department, see Karkashian 1975-1976), or ILLEGAL ALIENS: PROBLEMS AND POLICIES (American Enterprise Institute 1978). In both instances, the primary concern is with Mexican migration. The 1970s, however, were not only important to the circulation of the term "illegal" migrant, the period was also important to the emergence of opposition to that term.

"Undocumented Immigrant, Undocumented Worker, Undocumented"

The development of the term "undocumented immigrant" (or in Spanish, *indocumentado*) can be traced, though with less precision than "illegal immigrant." Although it is clear that Bert Corona, the El Paso-born Mexican-descent / Chicano labor leader and organizer, played a key role in the development of the concept of Mexican migrants "without documents" as op-

positional to the label "illegal alien," the first use of "undocumented" migrant by pro-migrant activist is less clear (Acuña 1972, 2004; Corona 1972; García 1994; Gutiérrez 1984, 1995; Ruiz 2004).[35] In the English translation of Corona's January 22, 1972 speech in Michigan (delivered in Spanish), Corona is quoted as using "without documents," "without papers," and "with documents or without documents" (Corona 1972). Whether Corona may have used both "*sin papeles*" (without papers) and/or "*indocumentado*" (undocumented), however, is not clear.[36]

Conceptually, an ethnic and class unity between U.S.-born Mexican-descent persons and Mexican migrants was informed by two key sources. One was the labor organizing by Luisa Moreno and Josefina Fierro who were involved in organizing the 1939 *El Congreso Nacional del Pueblo de Habla Española* (National Congress of Spanish-Speaking People). One of the resolutions of the National Congress called for the defense of Mexican migrants, and opposed the deportations and harassment of migrants by INS and the Border Patrol. Both women were active in organizing and defending the rights of migrants. The second important source was the work of Phil and Alberto Usquiano, trade leaders in San Diego, who created the *Hermandad Mexicana Nacional* (Mexican National Brotherhood) in 1951. The *Hermandad* was formed in response to actions by INS against Mexican migrants after World War II. These efforts influenced what Bert Corona and Soledad "Chole" Alatorre would later develop in Los Angeles.

Corona and Alatorre founded the *Centro de Acción Social Autonomo-Hermandad General de Trabajadores* (CASA-HGT) in Los Angeles in 1968. CASA initially focused on providing services to migrants. An important motivating factor for CASA was its opposition to the 1971 effort in California to establish an "employer sanctions" law, and the "illegal alien" rhetoric that had surfaced in the LOS ANGELES TIMES. The creation of its newspaper SIN FRONTERAS (Without Borders) in 1974 solidi-

fied the use of the term *indocumentado* and "undocumented." The term *indocumentado*/undocumented thus emerged in direct opposition to "illegal alien" and influenced young Chicano/Mexican-origin activists on and off campuses.

The earliest news media use of "undocumented" in reference to migrants took place in 1935. THE NEW YORK TIMES reporter Frank George published an article about the deportation activities of the Immigration Bureau regarding Canadians, Europeans, and Mexican migrants who had overstayed their visas or entered without authorization (George 1935).

Jorge Bustamante's 1972 article in the journal AZTLÁN appears to be the first published academic essay in English that invokes the label "undocumented" in reference to Mexican migration (1972b). Three years later, Gilberto Cárdenas (1975) published his insightful historical discussion of U.S. migration policy, and Lorenzo Torrez (1975) published an article on Chicano workers where he uses the concept in the text of the article. Bustamante's dissertation (1975) is the first completed dissertation that incorporated the term undocumented immigrant in the analysis. And the book PABLO CRUZ, a biographical account of a migrant, by Eugene Nelson (1975) is the first published book that uses the undocumented immigrant terminology.

A significant marker of the incorporation of the term undocumented migrant in governmental language was President Carter's news conference on April 15, 1977. At that news conference he was asked about his administration's study of the "illegal aliens coming into this country from Mexico." His response was: "My guess is that I will have a message to present on the illegal, or undocumented alien, probably within the next two weeks" (Carter 1977a). On August 4, 1977, President Carter delivered his "Undocumented Aliens Message to Congress" (Carter 1977b). In his message, President Carter outlined his proposal to address the nation's migration problems, and makes reference to "illegal immigration" and "illegal entry."

However, migrants are labeled as "undocumented aliens." This reinforced the overlap between popular usage and juridical language.

The mid-1970s was also important in international discussions on the labeling of migrants. Although it is not often noted in academic writings on migration, the United Nations (U.N.) General Assembly passed an important measure at the end of 1975. The measure directs U.N. entities to use "non-documented" or "irregular migrant workers" in all official documents for migrants that "illegally and/or surreptitiously enter another country to obtain work" (PICUM, Platform for International Cooperation on Undocumented Migrants, 2007: 5). Since 1975, several international and regional organizations (e.g., International Labor Organization, The Council of Europe) have rejected the term "illegal" migrant and instead adopted "irregular migrant" or "undocumented migrant" (PICUM 2007). In the U.S., the labels illegal migrant and undocumented migrant are part of a more than thirty-year-old oppositional discourse that continues to the present, and has become part of the conceptual cacophony that is not limited to visible commentators such as CNNs Lou Dobbs, Fox News' Linda Chavez, and radio host Rush Limbaugh, but also surfaces in academic writings in the social sciences and legal scholarship. The section that follows summarizes some of the broad patterns identified in the use of the illegal/undocumented labels.

The Voice of Scholarship, No Neutral Words,[37] Common Patterns

Academics both reflect the broader discursive practices in the society, and shape those practices to varying degrees. A review of published works by well-known scholars at prominent universities across multiple disciplines was carried out to examine the patterns in the deployment of the terms illegal

and undocumented migrant.[38] My review of the published literature, across disciplines, suggests that multiple writing strategies are deployed. These tend to at times explicitly indicate an explanation, though more often none is provided.

This section summarizes the migrant nomenclature adopted by Professors George Borjas (economist), Carol Swain (political scientist and law school professor), Mae Ngai (historian), Nicholas De Genova (anthropologist), and David Haines and Karen Rosenblum (an anthropologist and a sociologist, respectively). The five works do not reflect the entire range of migrant conceptualizations, or the complete analyses that each scholar has published on the topic, yet they index commonly deployed discursive practices within the literature reviewed. The authors presented here were selected because of their prominence in migration studies, they are respected scholars, most are based at leading national universities, and their works have received significant scholarly and media attention. Moreover, their insights have furthered our understanding of migration processes and have stimulated other researchers to build upon their ideas and foster new knowledge. In short, they have been influential in shaping the academic dialogue on the topic. It should be underscored that the discussion of each scholar is aimed at examining the discursive strategies they deployed; they are not intended as evaluations of the specific or general work; instead the focus is on the labels used.

George J. Borjas

Professor Borjas at Harvard University not only has established a solid record of economic analyses of migration and quality of migrants, but also has participated as an expert witness for defendants in several of the challenges to state and local regulation of migration (e.g., Hazleton, PA, and Arizona's employer sanctions case) brought on behalf of migrants and

employers. In his 1999 FRIENDS OR STRANGERS?: THE IMPACT OF IMMIGRANTS ON THE U. S. ECONOMY (particularly Chapter 4, "Illegal Aliens: The Black Market for Immigrants"), Borjas presents his analysis of the largely negative impact of "illegal aliens" and "legal immigrants," particularly that associated with Mexican migration. However, in neither the preface, introduction, text of Chapter 4, or endnotes in the book, is there an explanation or definition of the terms invoked: "illegal aliens," "illegal immigrant," "undocumented worker," "illegal entrant," "illegal population," "legal Mexican immigrant," and "illegal" (as a noun).

A careful reading of Chapter 4 reveals that although several labels are used in the chapter, certain terms are more frequently used. The term "illegal alien" (and secondarily "illegal immigrant") is used 138 times in the 21-page chapter, while "illegal" as a noun is used eight times, and "undocumented worker/person" is used three times. As also suggested by the title of the chapter, "illegal alien" is the dominant label. Borjas does not address any of the issues raised above regarding the discordance between popular labels and statutory language, the oxymoronic elements in them, or the oppositional formation of the terms "illegal" and "undocumented" migrant.

Carol M. Swain

Carol Swain edited the recently published DEBATING IMMIGRATION (2007). The book received much media attention, several positive comments and reviews by scholars such as William Julius Wilson, Stephan Thernstrom, Marvin Olasky, and was the object of a panel discussion at the Woodrow Wilson School of Public and International Affairs, and at the National Press Club in Washington, D.C., organized with the Center for Immigration Studies (CIS). In her introduction to the book, Swain presents an argument for controlling

"unauthorized" migration because of the socioeconomic and political harm it causes, particularly to the African-American community, and invokes multiple labels to discuss migration, specifically "illegal immigration": "illegal alien," "illegal migration," "illegal immigration," "illegal migrant," "illegal" (noun), "illegal resident," "illegal workers," "undocumented immigrant." In neither the text nor the endnotes to the chapter is there an explanation or definitions of the classification used, nor a discussion of the problematic issues discussed above. In the chapter, Swain uses "illegal" (noun) 12 times, "illegal immigrant" four times, "illegal migrant" once, and "undocumented immigrant" once.

Mae M. Ngai

In her 2004 book IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA, Ngai presents a detailed and insightful discussion of the 1921 Quota Law and 1924 Immigration Act and the impact of the national origins quota system provisions on subsequent migration law and practices. An important and unique contribution in the book is her discussion of migration policies between 1924 and 1965 on both Asians and Latino migrants, principally Mexican-origin migrants. Her discussion of the 1924 Act insightfully highlights its racialized underpinnings.

As suggested by the subtitle of the book, the label "illegal alien" is one that is found throughout the book. In contrast to Borjas and Swain, however, Ngai includes a two-page note on "language and terminology" (2004: ix-xx). In her explanation, Ngai notes:

> Some readers may object to my use of the term "illegal alien," because it carries pejorative connotations. To be sure, the phrase suggests a diminution of personhood and is particularly associated with racism towards Mexi-

> cans and other Latinos and Latinas.[fn. 1] I am sensitive to these renderings and I use the term not to reproduce racist stereotypes. To the contrary, the intention of this study is to locate the historical *origins* of those representations…In American law, an alien is a person who is not a citizen. An illegal alien is an alien who is unlawfully present (e.g., unauthorized border crosser or visa-violator) or who otherwise commits a deportable offense (e.g., an alien convicted of a crime of moral turpitude, sometimes called a "criminal alien"). I sometimes refer to illegal aliens as undocumented migrants, in line with common contemporary usage, but it should be understood that "undocumented" is a historically specific condition that is possible only when documents (most commonly a visa) are required for lawful admission, a requirement that was born under the modern regime of immigration restriction. Furthermore, not all illegal aliens are illegal because they lack documents; there are other types of unlawful presence and other grounds for deportation (2004: ix, her emphasis).[39]

While there are limitations in her explanation, such as the point of how U.S. law defines "illegal alien," her explanation may be more of a response to a manuscript reviewer who may have commented on the use of the label "illegal alien." This speculation is based on the observation that the title of her dissertation, the primary basis of her book, was ILLEGAL ALIENS AND ALIEN CITIZENS: UNITED STATES IMMIGRATION POLICY AND RACIAL FORMATION, 1924-1945 (1998). In that work, Ngai notes that "[i]llegality was constitutive of "Mexican"—a racial construction" (1998: 146); but no explanation is given for the label "illegal alien."

As a historian, Ngai faced scholarly and ethical issues related to labels used within the period addressed (1924-1965), the changing pattern of labels used during the period, and contemporary assessments of those labels.

Ngai's insights regarding migration law and the racialization of Asians and Latinos resulted in a book with much merit, yet she overlooks the link between the illegalization of Mexi-

cans, which she closely analyzed, and her own use of a label that was constituted by the same processes she examined. In addition, she overlooks the historical specific conditions that shaped the oppositional discourse of "illegal" versus "undocumented" migrant, and that the label "undocumented" migrant did not simply emerge as a synonym for "illegal" migrant. Moreover, if the multiple authors (discussed above) who note that it was in the early 1970s that the establishment of the association of "illegal alien" and Mexicans surfaced are correct, then her usage of the term for the 1924 to 1965 period may not fully fit.

Nicholas De Genova

De Genova's contribution to the 2002 ANNUAL REVIEW OF ANTHROPOLOGY, "Migrant 'Illegality' and Deportability in Everyday Life," presents an insightful and useful critique of the "legal production of Mexican/migrant "illegality," and a careful reading of social science writings on Mexican migration. In the introduction to the essay, De Genova presents his explanation for the migrant labels he will use and how he will present them:

> In this essay, the term undocumented will be consistently deployed in place of the category of "illegal" as well as other less obnoxious but not less problematic proxies for it, such as "extra-legal," "unauthorized," "irregular," or "clandestine." Throughout the ensuing text, I deploy quotes in order to denaturalize the reification of this distinction wherever the term "illegality" appears, as well as wherever the terms "legal" or "illegal" modify migration or migrants (2002: 420).

In the explanation and in other parts of the essay, De Genova makes it clear that he interprets the label "illegal" migrant

as pejorative and a problematic concept, and that he aims to problematize the notions of "immigration" and "immigrant," particularly in how they foster "an essentialized, generic, and singular object," a form of "'immigrant' essentialism" (2002: 421).

Although his discussion explicitly addresses the construction of "illegality" and the role of law in producing "illegality," the discussion does not address the possible limitations of the term "undocumented" migrant, including the possibility that the labels "undocumented" migrant or *indocumentado* may be part of the same broader "legal production" process that marks one group of individuals as part of the force of "illegalization."

De Genova's deploys the label "undocumented migrant" and "the undocumented" (as a noun), but does not discuss the "illegal" versus "undocumented" migrant oppositional development, nor situates their evolution.

David W. Haines and Karen E. Rosenblum

In ILLEGAL IMMIGRATION IN AMERICA: A REFERENCE BOOK (1999), Haines and Rosenblum bring together their contributions and that of 17 other scholars who address a wide range of topics related to migration to the U.S., as well as other nations. The ten-page Introduction to the volume includes a lengthy list of migration and migrant labels. With reference to the former, the authors invoke seven terms: "illegal immigration," "illegal movement," "irregular migration," "illegal border" crossing, "legal border" crossing, "undocumented immigration," and "migration." A longer list is used for migrants: "border crossers," "documented migrants," "illegal immigrants," "illegal" (noun), "legal immigrants," "regular

immigrants," "legal" (noun), "the undocumented" (noun), "undocumented worker/labor," and "undocumented immigrant." All of these are used without an explanation of how they are defined or should be understood by the reader.

Although much of the focus of the introduction is on discussing "the problems posed by 'illegal immigration' as a label" (Haines and Rosenblum 1999: 1), and the gray zone between the statuses of "legal" and "illegal" migrant, little is said about the intrinsic problems noted above. Specifically, the authors overlook the oxymoronic aspect in "illegal immigrant," "illegal immigration," "undocumented immigrant," the redundancy of the terms "legal immigrant," the oppositional formation of the "illegal" versus "undocumented" migrant categories, and the chronological development of the labels "illegal alien" and "illegal immigrant." In the case of the "illegal" versus "undocumented" migrant terminology, no explicit discussion is presented on the political weight and signification of the terms. Moreover, the term "the undocumented" is invoked 22 times, "undocumented worker/labor" eight times, and "undocumented immigrant" once, and are used in preference to "illegal immigrant" (invoked nine times). Thus, the label "the undocumented" functions as a synonym for "illegal immigrant;" and the label "illegal alien," in this case (in contrast to Borjas and Swain), is absent.

It is also noteworthy that only one of the 17 contributors to the volume includes a note explaining his selection of migrant labels. The anthropologist Duncan Earle, in his notes to his article, offers the following explanation:

> Because from a legal standpoint the status of immigrants must be adjudicated in order to issue a label that reflects full due process, I refrain from using the term "illegal aliens." Instead I prefer such terms as the "unauthorized," "inadjudicated," "extralegal," "contested," or "contestable" migrants…"Aliens" is far too sinister, as

> [Kevin] Johnson notes in his article on the subject (1998) (Earle 1999: 409).

The other 16 contributors use a wide array of appellations (i.e., "illegal immigrants," "undocumented workers," "illegals," "undocumented," "unauthorized workers," "undocumented immigrants," "illegal workers") without an explanation or definition for the selected terminology.

Haines and Rosenblum's volume is an important contribution to the analysis of multiple issues related to "illegal immigration," particularly concerning the control of entry issues, and in their introduction they explicitly confront the "problematic labels" related to that form of migration. However, they fall short in fully situating the problematic they address.

Taken together, the five works reviewed provide a picture of some of the strengths and limitations found in the academic literature on migration and migrants. All the cited authors offer important and perceptive discussions of migration issues that expand our understanding of the socioeconomic and political forces shaping those issues, yet do not fully engage the migrant concepts they deploy. The section that follows turns to a discussion of the common assumptions and limitations of the illegal/undocumented migrant label.

Common Ground, Common Limitations

The contemporary debate on the "illegal" versus "undocumented" migrant labels is generally thought of as one involving mutually exclusive positions. Groups favoring more restrictive policies tend to favor the former and adhere fairly strictly to it, while groups proposing more welcoming policies, generally avoid the former and are fairly loyal to the latter. The oppositional development of the terms over the last four decades has fostered the perception of mutual exclusiv-

ity. This opposition, however, does not mean that they have nothing in common. Both terms share some fundamental premises and limitations.

In his influential book SHADOWED LIVES (1992, 1998), Leo Chávez noted part of the point being raised here when he states:

> As *illegal aliens* they are not legitimate members of the community. The "illegal" component of this term underscores that they exist outside the legal system that governs society…In short, the undocumented immigrant's image consists of a conglomeration of negative values and missing qualities. (Even the term *undocumented* stresses the *lack* of documentation) (1992: 18; 1998: 22; his emphasis).

In other words, the labels illegal and undocumented share some elements, despite their seemingly oppositional position.

One element that is shared by both is a perspective regarding the link between U.S. State action and the actions of individuals. This aspect is commonly overlooked in the academic and national debate, and its absence reinforces the perception that it is principally an individual's action that creates a "legal" or "illegal/undocumented" migrant status. Such a view obscures the central role of the State (both the U.S. and Mexican State) in instituting rules and practices that encourage migratory movements, including the discretion regarding which laws to enforce and not enforce, as well as what label should be applied and to whom. Several scholars have highlighted that State practices are key in constructing the unstable distinction between "legal" and "illegal" in reference to the categorization of migration and migrants, as well as criminality more generally (Bach 1978; Calavita 1984, 1992; Coutin 2005a; Heyman 1999; Jenkins 1978; Kearney 1991; Portes 1978; Sayad 2004; Siegel 1998).

Ironically, the anti- and pro-migrant perspectives at times share the premise that the individual is the principal determining actor.[40] The former situates the "illegal" migrant as someone

who consciously chose to break the law, particularly entry restrictions. The latter labels a migrant who did not obtain, for unexamined reasons, the necessary documents to enter the U.S., as an "undocumented" migrant. In both cases the State (both the Mexico and U.S.) recedes in the political horizon. In the first, the law is neutral and fixed, someone who enters U.S. territory without authorization is a "law-breaker," and such persons have no legal right to remain and must be expelled according to the "rule of law." In the second perspective, the role of the State in setting admission quotas, criteria for "adjustment of status," decisions on who gets and does not get "papers," the encouragement of the growth of a remittance sending population, etc., are generally eschewed.

Under this logic, "undocumentedness" is an essence, and the subjectivity of individuals labeled "undocumented" migrants is self-selected and self-created. Or stated more directly, it borders on the assumption that persons labeled "undocumented" migrant, are "undocumented" because they have selected not to obtain *los papeles* ("the papers") that would convert them to "documented,"a perspective that excludes the paper-granting entity, the State.

Both views overlook the fact that it is the enactment of the law and its implementation that constitutes illegality, a point insightfully summarized by De Genova (2002). The same body of law creates, ignores, or pardons violations. The inaction of federal prosecutors and migration officials regarding the 1885 Contract Labor Law in the Southwest, and the World War I migrant contract labor under the Ninth Proviso of the 1917 Immigration Act are two of many examples of this process. The "Open Border" incidents in 1948 and 1954, wherein U.S. migration officials chose to disregard entry inspection procedures and applicable federal restrictions on the Mexico-U.S. border and allowed several thousands of individuals to enter U.S. territory (Cohen 2001; Galarza 1964; García y Griego 1983; Robinson 2007) are also noteworthy because of the blurring of

whether those persons allowed entry are thought of as having been formally authorized entry, or not. The migrants were not issued any documents, so can be thought of as "undocumented" migrants; but their entry was authorized by federal officials, so they were "legally" admitted under the discretion assumed by the officials (and directives from higher authorities at INS).

A second common assumption is the *homo economicus* perspective of migrants. Both tend to perceive individuals as if they represented autonomous economic units (economic inputs) simply reacting to supply and demand forces (push-pull forces). The anti-migrant camp tends to see "illegal" migrants as economic invaders who "steal jobs" and have a net negative impact on the economy and social fabric. Pro-migrant representatives tend to argue that "undocumented" migrants are drawn by the jobs employers offer to them, "take jobs that citizens do not want," and have a net positive impact on the economy. The common statement in the 2006 marches asserting "we are not criminals" can be interpreted as a contestation of "illegality" as well as a statement about the economic contribution of migrants. A *homo economicus* perspective ignores the multiple other dimensions of human migrants (e.g., marital and family aspirations, social expectations of parental and spousal responsibility, friendship ties, desires to escape human rights abuses, state-sponsored violence).

The third important assumption made by both camps is the assumption that there is a clear statutory line that separates a "legal" from an "illegal/undocumented" migrant. Space does not allow a detailed description of multiple state policies that create exceptions to the "legal" versus "illegal/undocumented" migrant distinction. However, some examples of these are: the 1929 Registry Act (45 Statutes-at-Large 1512; last updated in IRCA) that established the Registry provision in law which provides for the granting of Legal Permanent Residency (LPR) to "illegal/undocumented" migrants who

successfully remain undetected by migration officials for a defined period of time; U.S. tax law mandates that *all* individuals ("taxpayers") who earn the minimum income must file an income tax return; the Selective Service System (SSS) requires that *all* males within the ages of 18 to 25 must register, and in the event of a military draft *all registrants* are obligated to defend the nation if called upon; the 1966 "Cuban Adjustment" Act (80 Statutes-at Large 1161) and the 1995 treaty with Cuba grants LPR status and a "path to citizenship" to Cubans who outmaneuver the Coast Guard or Mexico-U. S. border officials and enter the U.S. without any documents; and the law that grants U.S. citizenship to migrants, even if they are "illegal/undocumented" migrants, who perform military work in defined periods of conflict (8 U.S.C. §1440), including the current wars in Afghanistan and Iraq.

These laws and practices, as well as many others, underscore the limitation in the premise that in the U.S. "rule of law" there is a clear and mutually exclusive categorization in the constitution of the "legal" and "illegal/undocumented" migrant. Thus, a central premise in the long-running and contentious "illegal/undocumented" migration debate has survived despite the intrinsic errors in its formulation. Both anti- and pro-migrant camps have commonly overlooked this problem.

A fourth common perspective is the focus on the "problem" as a Mexico-U.S. "border" issue, and the correlate of a "Mexican migration" problem, a problem previously labeled "wetback problem." In other words, the overriding focus on unauthorized entry as the "problem," has left the bigger "problem" of visa-related violations, as noted above, largely unexamined. Consequently, the terms "illegal/undocumented" migrant and "the border" have been solidified as unmarked categories whose meaning is decoded as Mexican migrant, and Mexico-U.S. border.

These four common elements highlight the conceptual aspects that are shared by perspectives in the "illegal" versus "undocumented" migrant debate. It is my belief that the debate could become a more constructive dialogue if academics and non-academics participating in the debate would take issues such as the four premises into consideration as they formulate their positions. If these are seriously explored, the contemporary enunciated premises and positions would at least have to be recast differently.

Alternative Nomenclature: Informally and Formally Authorized Migrants

In order to move away from the common practice of classifying persons as having or lacking "documents" (*papeles*), and thus explicitly bring the State back into not only the formal issuance of authorizing documents, but also into its role in the management of national economies, I propose the alternative labels of "informally authorized" and "formally authorized" migrants. As indicated, both are authorized. The former refers to persons whose presence is tacitly recognized and allowed through the discretion of federal authorities, who by the use of their discretion to not deter employers from employing such persons (i.e., not seriously enforcing "employer sanctions"), in effect authorize their physical presence and their participation in the economy. [41] This pattern is in effect the "Texas Proviso" writ large.

The Texas Proviso was added to the criminal harboring provisions of the 1952 McCarran-Walter Act (66 Statutes-at-Large 163), which increased penalties for smuggling, transporting, and harboring "illegal aliens," yet explicitly excluded "employment" as a form of harboring. This in effect signaled that it was acceptable to employ such persons, and shielded employers from being criminally liable for "harboring" such

persons at the workplace. The 1974 amendments to the Farm Labor Contractor Registration Act (1963), and the 1986 Immigration Reform and Control Act (IRCA) made employment of persons not unauthorized to work in the U.S. a civil and eventually a criminal act, but the clear lack of interest in implementing the restrictions since their enactment has de facto reinstituted a practice akin to the Texas Proviso.[42] The point is not that I see "employer sanctions" as a solution to the "problem," but rather to underscore the contradiction between the discourse that blames "unauthorized migrants" for "taking jobs away from Americans," and the practices that facilitate the recruitment and hiring on the part of employers of persons who are said to be "taking jobs away from Americans."

The label "informally authorized" is also offered as an option to the more pejorative label of "illegal" or *ilegal* that creates the subjectivity of "illegality" for individuals, and simultaneously exonerates the State and employers from any role in fostering the demand for such labor. In contemporary discourse, employers are simply referred to as "employers," not as "illegal employers," even when they are known to have hired informally authorized workers, and have been fired for doing so. "Formally authorized" persons are here defined as those individuals who have been formally allowed to enter and, for the most part, work in the U.S. The "formally authorized" includes persons allowed entry such as "lawful permanent residents," students, parolees, asylees, temporary agricultural workers, NAFTA Treaty workers, and athletes; and as such are subject to the perpetually shifting terrain upon which people are conferred particular statuses ("legal" and "illegal" migrant statuses), or granted or denied access to benefits (such as the 5-year limitation imposed on "lawful permanent residents"), all too often commensurate with the needs of the State and interests of capital.

Two important elements need to be foregrounded. One is the recognized irony in the suggestion of alternative ter-

minology, in that by proposing additional appellations, the essay may contribute to the conceptual cacophony noted above. However, the abstention in suggesting an alternative terminology does not in itself reduce the multiple existing labels; and perhaps the above discussion may alert scholars to a more careful deployment of migrant terminology, thus leading to reduction in the cacophony. Second, that while the alternative terms are not free of limitations, they at minimum suggest the need to debate the migration issue with terms that more closely reflect the historical and structural dimensions that have in the past, and continue in the present, to shape Mexican emigration.

Conclusion

This essay has sought to expand the dialogue and debate on Mexican informally authorized migration through a discussion of the development of the "illegal" and "undocumented" migrant labels, a discussion of some the migrant labeling problems in academic writings, and an examination of some of the important dimensions that have been largely overlooked by academics and non-academics. It was suggested that the inattention to the premises in the acrimonious debate over the past four decades has contributed to the delineation of the debate as one about the "illegality" surrounding Mexican migration. Anti-migrant perspectives have successfully made "illegality" the center of the debate. Pro-migrant perspectives have sought to contest the premise, but have not dislodged it from its hegemonic position, partly because they have focused on reacting to the anti-migrant discourse. The limited critical assessment of the shared premises in the debate has ultimately reinforced the *status quo* of the debate. It can be argued that until the shared premises and limitations are critically examined, the contemporary debate will remain as it has, a debate about

the "illegality" of Mexican migration, and one that ignores the fundamental problems of the shared premises.

More specifically, the article has sought to problematize the label "undocumented" migrant by underscoring that it shares common assumptions with the term "illegal" migrant, and thus it is also complicit in promoting the "illegalization" that its development and deployment was seeking to negate. While not explicitly addressed here, it may be argued that its transformation from a directly oppositional term to "illegal alien/immigrant" to a synonym for it, may have diluted its original intent. Yet, irrespective of this, the more central issue is the shared premises with its historical categorical nemesis; this is what limits its utility in negating the production of "illegality."

The terms, status, and direction of the debate are not simply academic questions; they have broader implications for entry control policies and expenditures, form and extent of workplace raids, the regulation of citizen and non-citizen workers (labor markets), the treatment of informally and formally authorized migrants, and a host of other migrationissues: In short, how humans enmeshed in globalized labor markets, consent to and resist the interlocking interest of political elites and employers in Mexico and the U.S. Informally authorized migration is part and parcel of those interlocking interests; it does not take place outside of those interests.

While there is some pessimism about the impact of the 2006 marches and the dissipation of the political will that was fostered among the 3.3 to 5 million Latino migrants and their allies (González 2009), the marches, nevertheless, represented an unprecedented mobilization of Mexicans, other Latinos, Asians and others, both citizens and non-citizens. We also cannot overlook the dynamic engendered in the marches. The millions of migrants and non-migrants who participated in the marches became a "people out of place" (Brysk and Shafir 2004) for some observers who were threatened by or displeased

with the public civic engagement of participants. While some elected officials praised the civic engagement of informally authorized migrants as an expression and reinforcement of democratic principles, others were alarmed and sought to limit them. The latter were particularly disconcerted with the incorporation of the Mexican flag and the Spanish translation of the Star Spangled Banner (*Nuestro Himno*).

Of perhaps greater importance to the core of this essay, is that the participation of non-citizens (including informally authorized migrants) and citizens destabilized the "legal" versus "illegal" migrant dichotomy, and bridged the presumed gap between Latino and non-Latino migrants. The collective action temporarily suspended the "illegalization" that drives the contemporary debate, and the assumption that there is a clear social and legal demarcation between citizen and non-citizen, "legal" versus "illegal" migrants. Although the link between the two remains to be empirically examined, the year 2006 also marked the start of a series of workplace raids across the nation on the part of ICE that lasted until the end of 2008, thereby raising the question of whether the ICE raids were a reaction to the marches and aimed to place the "people" (particularly informally authorized migrants) back in their "place." Whether the Obama administration will substantively shift the discourse and practices related to ICE raids, Mexican migration, and the Mexico-U.S. border, in a direction different from the Bush administration, remains an open question. Irrespective of this, however, the actions of state and local governments to regulate migration and migrants will ensure the continuation of the current acrimonious debate and the hegemony of the premises in that debate.

Postscript

The research presented here is based on a review of a large volume of existing literature on Mexican migration to the U.S.

and on the experience of Mexican-origin communities in the U.S. It encompasses ethnographic-oriented and ethno-historical works within anthropology, a broad segment of social science and legal scholarship, and some media/communications research specifically addressing the characterization of Mexican migrants and migration. The analysis put forth here is grounded in my long-term engagement with the issue of Mexican migration and multiple academic (research and teaching), governmental, policy research, and community-based roles that I have held over the past two decades. A starting point for the research was my working, searchable FileMaker Pro database of books, journal articles, chapters in edited books, theses and dissertations, and governmental and non-governmental reports on migration; the majority of the references are on Central American and Mexican migration to the U.S., and consists of more than 2,500 items.

It also involved the examination of scholarly databases using the keywords of "illegals," "illegal alien," *ilegal*, "illegal immigra*," "illegal migra*,""undocumented," *indocumentado*, "irregular," "clandestine," "unauthorized," *mojado*, *alambrista*, and "fence jumper." The academic databases searched were: (a) JSTOR (over 1,000 academic journal dating back to late 1800s); (b) EBSCO-Academic Search Premier (over 8,200 journals from 1975 to the present), Hein-On-Line (a law and law-related journal database with 1,293 titles); (c) Periodical Archive Online (Collections 1-7, covering the period from 1770 to 1995); Reader's Guide Retrospective (encompassing the period from 1890 to 1982); and PROQUEST Dissertations and Theses (covering from 1861 to 2009).

In order to ensure that I had accurately captured the topic of migration and Mexican migration, I carried out a search of key journals with a focus on these topics. The content of the following journals and policy reports was examined: (a) International Migration Review (1966-present); (b) International Migration (1997-present); (c) Social Science Quarterly (1968-present); (d)

Raza Law Journal (1983-2001); (e) Latino Studies (2003-2008); (f) Journal of Ethnic and Migration Studies (1998-2008); (g) Journal of Ethnic Studies (1973-1992); (h) Aztlán (1970-present); (i) Annals of the American Academy of Political and Social Science (1890-present); (j) The Journal of the Southwest (1999-2009); and (k) U.S. General Accountability Office (formerly, General Accounting Office, 1950 to the present).

With reference to media use of labels, three newspaper archives were examined: (a) The New York Times (1851-2005); (b) The Washington Post (1877-present); and (c) The Los Angeles Times (1985 to present). Lastly, the websites of organizations prominent in the debate on migration were reviewed. These included organizations such as FAIR (Federation for American Immigration Reform), Center for Immigration Studies (CIS), The Heritage Foundation, Southern Poverty Law Center, Migration Policy Institute, National Immigration Law Center, Pew Hispanic Center, Employment Law Center, The Center for Comparative Immigration Studies. The websites of the U.S. Department of Homeland Security (DHS), Citizenship and Immigration Services (USCIS), Office of Immigration Statistics (OIS), and ICE (Immigration and Customs Enforcement) were also reviewed.

NOTES

1 In December 2005, the U.S. Congress passed what was referred to as the Sensenbrenner Bill (named after it primary sponsor Jim Sensenbrenner, R-WI) on a 239 to 182 vote. The 256-page Border Protection, Anti-terrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437) would have made unauthorized presence an aggravated felony, called for making humanitarian assistance to "illegal aliens" a felony, and through various other provisions increase the level of enforcement activities. It did not include other provisions under debate such as a "legalization" provision.

2 For an excellent summary of the 2006 marches, see Bada et al. 2006. For more recent analyses of the marches in the Los Angeles area, see Loyd and Burridge 2007, and González 2009.

3 While this essay focuses on the two labels, "illegal" and "undocumented" migrant, based on the centrality of these two terms in a substantial segment of the published literature, this does not mean that they are the only labels that have been invoked over the past four decades. Some of the other labels used by U.S. writers include "wet," "wetback," *mojado*, *alambrista*, "clandestine," *clandestino*, "illegal entrant," *sin papeles*, unauthorized migrant/immigrant, deportee, furtive entrants, uninspected aliens, and others. In Europe, in addition to the terms "illegal" immigrant/migrant, clandestine, and "undocumented," there is also the common use of "irregular" immigrant/migrant; and in France, since the mid-1990s, the term *sans papiers* has been invoked by pro-migrant actors and in popular culture.

4 This essay uses the label "migrant" rather than "immigrant," and "migration" in place of "immigration," in order to acknowledge the multiple patterns of migratory movement of individuals (e.g., temporary migration, circulatory migration, permanent migration), rather than assume that all individuals make a single permanent "uprooting" move when they relocate from one area to another. This is also a move away from the label "immigrant" which, as Abdelmalek Sayad (2004) has astutely noted, privileges the position of the receiving State and overlooks the fact that human transmigration involves a departure from one space, and an arrival at a second.

5 For readability considerations, in the remainder of the essay I use the terms "illegal" and "undocumented" without quotation marks, unless used to highlight a specific point or usage. The reader should assume that they are being used as if they contained quotation marks to index their problematic dimension.

6 It should be noted that while the terms "illegal" and "undocumented" migrant have been principally associated with ethnic Mexicans, the terms are also common in discussion of Latino migrants more generally. It has simultaneously been largely absent in the labeling of many other nationalities, particularly Canadian, Irish, Polish, and other European groups. The only published book focusing on a non-Latino "illegal/undocumented" community in the United States, that I am aware of, is Corcoran's IRISH ILLEGALS (1993).

7 I have compiled a list of over 100 authors within anthropology, communication studies, economics, political science, social work, sociology, and legal scholarship who discuss Mexican migration, and use the two keywords but do not present a rationale for their respective selection. See for example, Bosniak 1988, 2007; Durand,

et al. 2001; Flores 2003; Heer 1990; Hing 2007; Hirsch 2002; Kemper et al. 2007; Mehan 1997; Stull and Broadway 2001; Wilson 2002.

8 In general, those individuals and organizations favoring removal of persons labeled "illegal immigrants" and/or stronger control measures on the Mexico-U.S. boundary, tend to favor the term "illegal" migrant. Some of the more visible "activist" individuals and groups include those associated with John H. Tanton, M.D. (such as FAIR, Center for Immigration Studies, Numbers USA), the online journal Social Contract (published by Tanton), Arizona Border Watch, Mothers Against Illegal Aliens (Arizona), The Minutemen, Texas Ranch Rescue, and others. For a discussion of Tanton's role in fostering a network of "anti-migrant" efforts and some of the links to "White supremacist" groups, see the Southern Poverty Law Center's Intelligence Report (2002). See also the Anti-Defamation League (2007) for a listing of organizations with "extremist rhetoric" against Latino migrants. Among the more visible "activist" taking a "pro-migrant" position, and generally using "undocumented," include the ACLU, Anti-Defamation League (ADL), MALDEF (Mexican American Legal Defense and Education Fund), National Council of La Raza (NCLR), National Immigration Law Center (NILC), and National Network for Immigrant and Refugee Rights (NNIRR).

9 See the postscript for a summary of the approach taken in this article.

10 There is some correspondence between Koselleck's notion of fundamental concept and Raymond Williams's (1976) "keywords." Koselleck's discussion more explicitly addresses the concepts of citizen and alien, what he labels "asymmetric counterconcepts." Williams's influential work did not include the keywords alien, citizen/citizenship, or immigrant/migrant.

11 See, for example, Michel Foucault 1972, 1977, 1980a, b, 1991.

12 It should be noted that U.S. migration law is principally grounded in a binary: citizen versus alien. An alien is a person who is not a citizen, and a citizen is ultimately a person who is not an alien. There is also a third keyword, national; however, it ultimately overlaps with citizen. Thus, all citizens are U.S. nationals, though some nationals (in certain territorial possessions) are nationals but not citizens.

13 As noted by Kim (2000), in the 13th Century the concept of "alien" was not fixed to birthplace, but rather had to do more with the distinction between "free" and "unfree." Under this conceptualization, a "native" born subject residing outside the United Kingdom

was considered an "alien." It was not until the 15th Century that it becomes associated with allegiance to the king, and its contemporary distinction between native and foreigner.

14 The current INA is based on the consolidation of migration and citizenship statutes brought about by the McCarran-Walter bill of 1952 (Public Law No. 82-414), and subsequent amendments to the statute.

15 It should be noted that the label Entered Without Inspection is a descriptor for the form of entry into the U.S., one can enter "with inspection," meaning that the person was processed by a customs official at a port of entry (including airports); and "entered without inspection" refers to the possibility of a person entering at a point other than a port of entry. Consequently, a U.S. citizen, permanent resident, or nonimmigrant could also enter without inspection, yet the person would not be considered an "illegal/undocumented" migrant. However, as sometimes used by migration officials, the label for an entry process is transformed into a noun and applied to persons deemed to have entered without authorization, or right to remain. The label marks a process, not a juridical migrant category; although it is used as noun to label individuals.

16 In 1996 Congress replaced the concept of "deportation" with "removal" (IIRIRA). Thus, since then persons are subject to removal, can petition for suspension of removal, or are removed from the territory (i.e., deported).

17 In the interest of simplifying the main issue, I do not include violations that take place under the Visa Waiver Program that allows persons from 35 countries (not including Mexico) to enter the U.S. without prior obtainment of a visa; I also exclude the issue of persons entering with stolen passports.

18 For convenience, I am here including cases involving entering with fraudulent documents and persons entering under "misrepresentation of material facts" (e.g., a person claiming to be a U.S. citizen and allowed entry, particularly before September 11, 2001). It should also be noted that even "naturalized" U.S. citizens may have their citizenship revoked, a process known as "denaturalization."

19 According to the U.S. Department of Homeland Security, there were 319,382 removals, and 891,390 "returns" in FY 2007 (2008: 95). Moreover, ICE frequently reports total "removals," with a qualifier or footnote noting that "returns" are included in the quoted figure.

20 In light of the conceptual change made by Congress (from deportation to removal) in 1996, a few years before De Genova's article (2002), "removability" retains consistency with the change.

21 A parallel distinction is that between arrest or indictment, and conviction. There is a major difference between the two. An arrest or indictment does not automatically lead to conviction. The premise that an individual is innocent until proven guilty is acknowledged in criminal law, but assumed not to exist in migration law. Migration officials do not often note the important distinction between apprehension and subject to removal; this likely reinforces the perception that all migrants apprehended for possible "unlawful presence" are automatically removed by CBP or ICE. The popular assertion or threat of "calling immigration" (or "calling *la migra*") presumes this.

22 Numerous academic articles, policy reports, and news media use the term "illegal aliens/immigrant" in their titles as a proxy for the topic being addressed: Mexican migrants alleged to have entered without formal authorization. For academic discussion of this association, see for example, Acuña 2004; Bustamante 1972a and 1978; Chávez 1992, 2001; Fernández and Pedroza 1981; Gutiérrez 1995; Inda 2006; Johnson 1996-1997; López 1980-1981, Mazón 1975; Nevins 2002; Ono and Sloop 2002.

23 Michael D. Cronin, representing the Immigration and Naturalization Service (INS), testified to Congress in 1999 that "(approximately 40-50%) of the estimated illegal alien population in the United States" were nonimmigrants who overstayed their visas (Ronin 1999: 120). A U.S. General Accounting Office report notes that the Department of Homeland Security (DHS) estimate of 30% is likely low, and notes that it may be as high as 57% (2004a: 10). In 2006, a committee of Congress was told by a former INS Senior Special Agent that it "is currently estimated that more than 40% of the illegal alien population" violated the terms of their visas (Cutler 2006: 31). The Pew Hispanic Center estimates that the "overstay" migrant population makes up about 45% of "unauthorized migrant" population (2006: 1). It should be observed that irrespective of the actual "overstay" migrant population, all the estimates overlook that in addition to "overstay" violations, an unknown number of nonimmigrants have voided their visas by violating other conditions such as employment; thus they are also subject to removal if discovered. Consequently, it is possible that the number of Mexican migrants who entered without formal authorization may ultimately make-

up a significantly smaller share than what politicians, academics, media, and others assume to be the case.

24 The problem noted here is that the notion of "illegal immigration," if understood to index "illegal immigrants," which is the primary concern of the Act (P.L. 104-208), is an oxymoron. As already noted, an "immigrant" is a person who has been formally admitted to enter and live permanently in the U.S., and given a "green card."

25 By "invention of tradition," I am drawing here on the phrase invoked by Eric Hobsbawm and Terence Ranger (1983).

26 De León's (1983) analysis of the term "greaser" remains the standard discussion of the term. According to De León, the term has been used since the early 1850s.

27 An example of a recent controversy regarding the use of the label "wetback" occurred in the Austin, Texas area in 2008. Mr. Charles Laws, the 75-year old general manager of the Creedmoor-Maha Water Supply Company and member of the Mustang Ridge City Council, described a proposed DHS detention facility as "a holding pen for wetbacks" (Castillo 2008). After multiple calls for his resignation, Mr. Laws noted that he has used it all his life and that it was common where he lived.

28 The 1885 law was amended in 1887, 1888, 1891, 1893, and 1903. Its core remained the same, though each amendment sought to make it more enforceable. The law was in effect until the major changes enacted in the 1952 McCarran-Walter Act, what became the Immigration and Nationality Act (INA) and is the foundation of current migration and citizenship law.

29 In addition to the authors mentioned, there are many others that could be listed. I have included these because of their prominence within their fields, and/or because of the breadth of period covered (from 1929 to 2004).

30 Juan Ramon García's book on the drives (1980) remains the "classic" discussion of the 1954 deportation drives. It should be observed that he does not address the origins of the term "wetback."

31 A 1946 episode of The Lone Ranger incorporated this earlier terminology: "Wet Cattle" (www.thenradio.com, www.otreat.com, www.otstreet.com).

32 The 1909 Taft-Díaz agreement, and the 1917 Ninth Proviso migrant contract worker programs (i.e., "guestworker" programs) predated the programs implemented under several forms during World War II (García y Griego 1983).

33 It should be noted that scholars commonly assert that the 1986 Immigration Reform and Control Act (IRCA) was the first time

that Congress sought to restrict the employment of non-citizens through penalties imposed on employers. As evident from the 1885 Contract Labor Law this is not correct. Moreover, as reflected in the 1974 amendments to the 1963 Farm Labor Contractor Registration Act (FLCRA), the amendments made it illegal for labor contractors to employ "with knowledge" "aliens not lawfully admitted for permanent residence" or did not have Attorney General employment authorization. See P.L. 93-518 (88 Stat. 1652).

34 The Jewish "illegal immigrants" or "illegals" have become part of the historical narrative of the founding of the State of Israel, and were accorded a status as brave pioneers and founders. Their efforts are memorialized in the *Atlit* Detainee Camp museum, a camp that held "Jewish illegal immigrants." The harsh and life-threatening efforts of Jews seeking to enter Palestine are captured in the documentary films by Meyer Levin, *The Illegals*, and *The Unafraid*; and in the 1960 U.S. popular feature film *Exodus*, with Paul Newman and Eva Marie Saint.

35 The discussion that follows relies on these authors, in addition to the additional sources cited.

36 I have not yet reviewed the Bert Corona Papers collection at Stanford University to review the 1972 Michigan speech

37 My reference to "no neutral words" is based on M. Bakhtin's observation that within the "stratifying forces of language, there are no 'neutral' words and forms" (1998: 293).

38 As noted in the postscript, a starting point for the search was the more than 2,500 item FileMaker Pro database of books, journal articles, dissertations, theses, chapters in books, and governmental and non-governmental policy reports on migration, most of which focus on Mexican migrants and migration covering the period from 1908 to 2009. This was supplemental by the compilation of academic journal articles, dissertations, and theses from the major electronic databases listed. I then reviewed the terminology used, as well as examined if an explanation or definition was included for the terminology deployed.

39 Ngai's only reference in footnote number 1, in support of her recognition of the pejorative baggage in the label "illegal alien," is Kevin Johnson's (1996-1997) article.

40 It should be noted that the labels of anti- and pro-migrant perspectives do not imply that individuals and organizations labeled as such are either homogeneous or monolithic regarding positions taken on migration and migrants. Moreover, it is well known that migration can generate unusual alliances among groups who other-

wise do not share views on other issues, what some label, "strange bedfellows." A similar irony was noted by Ono and Sloop (2002) regarding how proponents and opponents to Proposition 187 in California shared a similar view of migrants.

41 There already is a parallel, though not that well known, in U.S. statutes: PRUCOL (Permanently Residing Under Color of Law). The concept, used primarily in reference to public assistance benefits, refers to persons who federal migration authorities are aware off, in many cases know their names, addresses, etc., yet have taken no action to remove such persons. Thus courts have recognized that federal migration authorities are in fact implicitly/informally authorizing those persons to remain in the U.S. Prior to IRCA, and particularly after PRWORA, the list of benefits has been reduced considerably.

42 The reasons for not aggressively pursuing the enforcement of "employer sanctions" have varied since IRCA's enactment. Under President Reagan's regime, the priority was fighting Communism (primarily in Central America) and the "War on Drugs;" President George H. W. Bush's regime, while continuing some of President Reagan's interest, shifted the national priority to Iraq; under President Clinton, the "control of the border" and "ending welfare as we know it" became major concerns; and under President George W. Bush, the "War on Terrorism" and the Iraq War have come to dominate U.S. policy concerns. Thus, despite the recognition that the availability of U.S. jobs is a major stimulus to "unauthorized migration" and repeated calls to "fix" the problem, the assertive application of the "rule of law" among employers has not been a priority from the Reagan to the G.W. Bush Administration. It is still too early to assess the policy direction of the Obama administration.

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