

Spring 2011

Faces of Immigration Reform

Steven W. Bender
Seattle University School of Law

Follow this and additional works at: <https://ecollections.law.fiu.edu/lawreview>



Part of the [Other Law Commons](#)

Online ISSN: 2643-7759

Recommended Citation

Steven W. Bender, *Faces of Immigration Reform*, 6 FIU L. Rev. 251 (2011).
DOI: <https://dx.doi.org/10.25148/lawrev.6.2.7>

This Article is brought to you for free and open access by eCollections. It has been accepted for inclusion in FIU Law Review by an authorized editor of eCollections. For more information, please contact lisdavis@fiu.edu.

Faces of Immigration Reform

Steven W. Bender*

I. INTRODUCTION

The wait for so-called comprehensive immigration reform has been long and wrenching for immigrants and their advocates.¹ Over the years, as I have written on subjects that intersect with immigration, I have followed legislative developments assuming we were on the verge of federal comprehensive reform that would cause me, happily, to rewrite my text. Yet, Congress consistently dashed those hopes.² Recognizing the bitter disappointment of the hundreds of thousands of marchers for reform that packed the streets of Los Angeles and other cities in 2006,³ I remarked at the Florida International University Law Review Symposium that those hopeful for reform over the last decade might now wear a t-shirt lamenting resignedly: “We wanted comprehensive immigration reform and all we got was a lousy Secure Fence Act.”⁴

In the span of a decade, the roller-coaster ride of reform has devolved from the verge of compromise legislation just before the Sep-

* Professor of Law, Seattle University School of Law. I am grateful to Ediberto Román for inviting me to participate in this symposium and for his tireless national efforts to develop and promote Latino/a scholars and scholarship. Additionally, I appreciate the summer research grant from Seattle University that facilitated this project.

¹ President Reagan signed the last truly comprehensive immigration reform legislation, the 1986 Immigration and Control Act, which gave legal status to undocumented immigrants living in the United States since 1982 and to agricultural workers who spent at least ninety days of a qualifying period in agricultural labor. *See generally* STEVEN W. BENDER, *ONE NIGHT IN AMERICA: ROBERT KENNEDY, CÉSAR CHÁVEZ, AND THE DREAM OF DIGNITY* 112 (2008). The Act also included an enforcement component of sanctions on employers who hire undocumented labor. *See id.*

² *See* Frank Sharry, *Bienvenidos a Election 2008: The Truth on McCain's Immigration Ad*, HUFFINGTON POST (Sept. 18, 2008), http://www.huffingtonpost.com/frank-sharry/bienvenidos-a-election-20_b_127544.html (laying blame for failure in 2007 of comprehensive immigration reform).

³ Kevin R. Johnson & Bill Ong Hing, *The Immigrant Rights Marches of 2006 and the Prospects for a New Civil Rights Movement*, 42 HARV. C.R.-C.L. L. REV. 99 (2007); Sylvia R. Lazos Vargas, *The Immigrant Rights Marches (Las Marchas): Did the “Gigante” (Giant) Wake Up or Does It Still Sleep Tonight?*, 7 NEV. L.J. 780 (2007).

⁴ Both then-Senators Barack Obama and Hillary Clinton voted for the Secure Fence Act of 2006, Pub. L. No. 109-367, 120 Stat. 2638.

tember 11 attacks. That compromise balanced interests of immigrant advocates, employers, and labor, but gave way to scapegoating of immigrants in the ensuing war on terrorism, followed by the reforging of compromise legislation between Senate allies Edward Kennedy and John McCain, and now the global economic crisis that scuttled hopes for reform. At present, imperatives of enforcement, at the border and wherever undocumented immigrants can be found, have dominated policy debate while comprehensive reform remains in limbo and compassionate reform just a gleam in some advocates' eyes.⁵

Comprehensive immigration reform likely awaits the alchemy of several ingredients, two of them noticeably absent in today's anti-immigrant climate. As Richard Delgado suggested in reviewing my recent book about the 1960s' friendship of Senator Robert Kennedy and labor leader César Chávez,⁶ advancement of beleaguered groups may require not only interest convergence,⁷ but also a favorable story or image. No doubt the prevailing image of immigrants and Mexicans, now inexorably linked in the American imagination, is perhaps as vile as it can get. Elsewhere, I have detailed the litany of miserable images and stereotypes of Latinos/as in U.S. media and society,⁸ and in the last decade, that framing has worsened and placed compassionate immigration reform farther into the horizon.

As a likely third factor to support truly comprehensive reform that recognizes the value of immigrants to our economic, social, and cultural fabric, meaningful social change of this ilk tends to coincide with economic prosperity. In contrast, Latino/a immigrants have been readily scapegoated during economic downturns such as the present, with such historic examples as the mass deportations during the Great Depression and later, during the 1950s recession, of Operation Wetback.⁹

⁵ Steven W. Bender, *Compassionate Immigration Reform*, 38 FORDHAM URBAN L.J. 107 (2010) (speculating on the shape comprehensive immigration reform, co-opted by imperatives of border enforcement, would take if policy makers and the U.S. public felt compassion and empathy for immigrants).

⁶ Richard Delgado, *Rodrigo's Homily: Storytelling, Elite Self-Interest, and Legal Change*, 87 OR. L. REV. 1259, 1265 (2008) (reviewing BENDER, ONE NIGHT IN AMERICA, *supra* note 1).

⁷ On the theory of interest convergence, see generally Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980); Richard Delgado, *Explaining the Rise and Fall of African American Fortunes--Interest Convergence and Civil Rights Gains*, 37 HARV. C.R.-C.L. L. REV. 369 (2002); MARY DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* (2000).

⁸ See STEVEN W. BENDER, *GREASERS AND GRINGOS: LATINOS, LAW, AND THE AMERICAN IMAGINATION* (2003).

⁹ See STEVEN W. BENDER, *RUN FOR THE BORDER: VICE AND VIRTUE IN U.S.-MEXICO BORDER CROSSINGS* (forthcoming 2012); see also Josh Gerstein, *Janet Napolitano: Legalization a Hard Sell*, POLITICO (May 19, 2009), <http://www.politico.com/news/stories/0509/22735.html> ("When unemployment is up, anything that looks like you're taking jobs away from . . . people

Here, I focus on the efforts to forge a sympathetic construction of immigrants, particularly those from Mexico and other Latin countries, against the backdrop of attempts to pass pro-immigrant reform either comprehensively or piecemeal. I conclude that few, if any, sympathetic constructions are readily available. Reform may hinge, then, on interest convergence so powerful that it transcends the prevailing negative portrayals and our economic woes. That convergence, as I speculate, may come from a surprising but transitory source – the self-interest of politicians rather than from any innate courage.

II. REFORM LEADERSHIP: INDIVIDUALS AND COLLECTIVES

In *One Night in America: Robert Kennedy, César Chávez, and the Dream of Dignity*, I wrote about Chávez as the iconic face of the farm worker movement in the 1960s and later years.¹⁰ Although Ronald Reagan attacked Chávez as a Communist and troublemaker,¹¹ and farmers tried to undercut his image by such ploys as insisting his famous hunger fast in Delano in 1968 was a fraud – ludicrously accusing the then-frail Chávez of eating take-out milkshakes and hamburgers from local restaurants¹² –, his bedrock reputation brought credibility to the farm worker movement. As a devout and humble family man committed to nonviolence, Chávez struck a favorable pose for the hard-working farm workers and helped secure critical gains for these impoverished and vulnerable laborers.¹³ In a similar vein, Martin Luther King, Jr., educated, articulate, and committed equally to nonviolence, served as the sympathetic face of the civil rights movement.

No such nationally recognized leader today fronts the movement for immigration reform, at least on the side of compassionate reform. In contrast, several champions of merciless border security have risen on the backs of undocumented workers, including Sheriff Joe Arpaio, Jim Gilchrist, Chris Simcox, Tom Tancredo, Pat Buchanan, Victor Davis Hanson, and others. Most of these advocates for border security enjoy national profiles and recognition. Yet, if U.S. residents were polled on the identity of leaders for pro-immigrant reform, likely few would be able to identify any such leaders. Illustrating this paucity of individual leadership is a Pew Hispanic Center 2010 Leadership Survey that confirmed the stunning void in iconic leadership within the

who are lawfully here – citizens of the United States – is going to meet a lot of resistance,” remarks of Homeland Security Secretary Janet Napolitano).

¹⁰ BENDER, *ONE NIGHT IN AMERICA*, *supra* note 1.

¹¹ *Id.* at 21 (Reagan was then California’s governor).

¹² *Id.* at 28.

¹³ Delgado, *Rodrigo’s Homily*, *supra* note 6, at 1265-66.

Latino/a community.¹⁴ Because Mexicans and other Latinos/as are now the face of undocumented immigration in the United States, the Latino/a community has a significant stake in developing leaders to advocate for compassionate immigration policy. Yet, that Pew survey found that nearly two-thirds of Latino/a respondents could not name someone they considered “the most important Latino leader in the country today.”¹⁵ Sonia Sotomayor, named by only seven percent of respondents, was the most identified Latino/a leader, followed by Congressman Luis Gutierrez, drawing five percent.¹⁶ These survey numbers mirror those from an earlier survey in 2003, before the ascendancy of Justice Sotomayor to the Supreme Court, that found an even greater number – seventy-eight percent of Latinos/as – as unable to identify any important Latino/a leader.¹⁷ No doubt, Latinos/as (or the general public) asked to identify leaders on compassionate immigration policy, whether from within or outside the Latino/a community, would be similarly unable to respond, especially after the defection of Senator John McCain to the border-security camp and the passing of Senator Edward Kennedy. Their fleeting immigration coalition from 2006 and 2007 is now mostly forgotten.

The prevailing lack of familiarity of Latino/a leaders within the Latino/a community may reflect in part the cultural orientation of Latinos/as toward collective movements and success rather than individual achievement.¹⁸ I suspect that national Latino/a organizations such as the National Council of La Raza (NCLR), the Mexican Amer-

¹⁴ Paul Taylor & Mark Hugo Lopez, *National Latino Leader? The Job is Open*, PEW HISPANIC CTR. (Nov. 15, 2010), <http://pewhispanic.org/reports/report.php?ReportID=131>.

¹⁵ *Id.*

¹⁶ As part of that same survey, respondents were presented with names of eight Latinos/as to determine whether they were familiar with these individuals. Justice Sotomayor scored the highest recognition at sixty-seven percent, followed by Jorge Ramos at fifty-nine percent. Although she co-founded the United Farm Workers union with César Chávez, only twenty-eight percent of respondents recognized the indefatigable Dolores Huerta. Related to the discussion later of the influence of Latino/a organizations on public policy, this survey found that a scant eight percent of respondents were familiar with Janet Murguía, President of the National Council of La Raza.

Justice Sotomayor and Congressman Gutierrez, of course, are limited in their advocacy for immigration reform; Gutierrez by the political constraints of his constituency and Sotomayor by the relative scarcity of immigration cases that reach the Supreme Court. Since Sotomayor’s appointment, the Supreme Court did decide (and uphold) the validity of Arizona’s Legal Workers Law that mandates participation in the federal E-Verify system. *Chamber of Commerce v. Whiting*, 131 S. Ct. 1968 (2011) (Justice Sotomayor filed a dissenting opinion finding the law preempted).

¹⁷ BENDER, ONE NIGHT IN AMERICA, *supra* note 1, at 134.

¹⁸ Elsewhere, I have recognized the Latino/a culture of emphasis on the community over individual success. Steven W. Bender, *Savage Fronteras and Tribal Boundaries: Chasing Success in Hollywood’s Bordertown*, in SCREENING JUSTICE—THE CINEMA OF LAW 13, 13-24 (Rennard Strickland et al. eds., 2006).

ican Legal Defense and Educational Fund (MALDEF), and LatinoJustice (PRLDEF) enjoy significant recognition among Latinos/as. Even in the case of César Chávez, likely as many or more current Latino/a residents know of the United Farm Workers union as they do of Chávez individually. Chávez and UFW co-founder, Dolores Huerta, no doubt understood the importance of the collective (Latino/a) voice for justice when they formed the UFW in the 1960s to gain leverage with farm employers.¹⁹

Consider the efficacy of these national and regional Latino/a organizations as a face and catalyst of compassionate immigration reform.²⁰ Despite their resonance within Latino/a communities, the potential of these organizations to prompt broadscale immigration reform thus far has been muted. Among the reasons is that these organizations have needed to expend considerable resources defensively to resist the rash of harmful, localized immigration measures that spread once federal reform stalled, diluting their policy efforts on a national front.²¹ Conservative media have readily attacked these or-

¹⁹ See generally Steven W. Bender & Keith Aoki, *Seekin' the Cause: Social Justice Movements and LatCrit Community*, 81 OR. L. REV. 595, 603-04 (2002) (discussing mass mobilization tactics of UFW).

²⁰ It remains to be seen what impact the so-called Tequila Party may have on immigration policy as this political affiliation, inspired by the conservative Tea Party, is largely built around current dissatisfaction with immigration policy and other core issues for the Latino/a community. Albor Ruiz, *Latino Dismay Over Immigration Breeds Upstart Tequila Party*, NYDAILYNEWS.COM (June 1, 2011), http://articles.nydailynews.com/2011-06-01/local/29623972_1_immigration-status-immigration-reform-latinos.

²¹ For example, LatinoJustice (PRLDEF) participated in the litigation striking down Hazleton, Pennsylvania's anti-immigrant ordinance. *Lozano v. City of Hazleton*, 620 F.3d 170 (3d Cir. 2010), *vacated*, 131 S. Ct. 2958 (2011). The National Council of La Raza and the Hispanic National Bar Association filed an amicus curiae brief in the federal litigation challenging Arizona's infamous S.B. 1070. See Brief for Amici Curiae National Council of La Raza, United States Hispanic Chamber of Commerce, the Hispanic National Bar Association and Los Abogados Hispanic Bar Association in Support of Appellee's Brief and Upholding the District Court's Decision, *United States v. Arizona*, No. 10-16645, 2010 WL 5162528 (Sept. 30, 2010); *United States v. Arizona*, 641 F.3d 339 (9th Cir. 2011). MALDEF has been tremendously active in the courts, helping to challenge anti-immigrant regulations in numerous U.S. communities such as Valley Park, Missouri; Farmers Branch, Texas; Cave Creek, Arizona; and Redondo Beach, California (see *Comite de Jornaleros de Redondo Beach v. Redondo Beach*, Nos. 06-5570, 06-66869, 2011 WL 4336667 (9th Cir. 2011) (striking down anti day laborer law on free speech grounds as argued by MALDEF lawyers)). See generally *Protecting Immigrants' Rights*, MALDEF, <http://www.maldef.org/immigration/litigation/> (last visited July 19, 2011). MALDEF, of course, was instrumental in securing educational rights for undocumented children in the pivotal case of *Plyler v. Doe*, 457 U.S. 202 (1982). In addition to representing the rights of immigrants, these Latino/a organizations have defended the rights of Latinos/as more broadly in areas that encompass the workplace, voting booth, prisons, and civil rights generally. See LATINOJUSTICE, http://latinojustice.org/civil_rights/cases/ (last visited Oct. 14, 2011) (detailing PRLDEF civil rights litigation); *Brief of Mexican American Legal Defense and Educational Fund, et al. as Amici Curiae*, 14 BERKELEY LA RAZA L.J. 1 (2003) (brief filed in Michigan affirmative action cases); *Brief of Puerto Rican Legal Defense and Education Fund et al. as Amici Curiae*, 14 BERKELEY

ganizations as radical, anti-American, and even as potentially terrorist. As one hate radio host asked me in 2002, when he conflated with terrorists the admirable student organization MEChA (Movimiento Estudiantil Chicana/o de Aztlán) that I helped advise in Oregon: “When will the suicide bombings [by MEChA students] start in Aztlán?”²² In the 2003 California recall election, Republican candidate Tom McClintock compared MEChA to the Ku Klux Klan in denouncing Democratic candidate Cruz Bustamante’s participation in MEChA while at Fresno State.²³ Right-wing attacks on the MALDEF organization presumably led to the withdrawal by President Obama of the nomination of former MALDEF counsel Tom Saenz (since named president of MALDEF) to run the DOJ’s civil rights division.²⁴ As conservatives demonstrated in taking down ACORN (Association of Community Organizations for Reform Now),²⁵ organizations of color are readily vulnerable to unflattering characterization as radical and unworthy. At the same time, as Latino/a organizations have struggled to influence immigration policy, conservative groups such as the Federation for American Immigration Reform (FAIR), and the rogue extremist group the Minuteman Project, have effectively galvanized support for border enforcement.²⁶ Presumably, it is easier to rally hate

LA RAZA L.J. 25 (2003) (same); see generally Tom I. Romero, *MALDEF and the Legal Investment in a Multi-Colored America*, 18 BERKELEY LA RAZA L.J. 135 (2007); Leticia M. Saucedo, *National Origin, Immigrants, and the Workplace: The Employment Cases in Latinos and the Law and the Advocates’ Perspective*, 12 HARV. LATINO L. REV. 53 (2009) (detailing the role of MALDEF in immigrant worker litigation); see also Thomas A. Saenz, *Mendez and the Legacy of Brown: A Latino Civil Rights Lawyer’s Assessment*, 11 ASIAN L.J. 276 (2004) (discussing the anti-segregation roots of MALDEF).

At the same time, despite their commitments in defending the rights of Latinos/as in court, these Latino/a organizations have had some role in articulating and promoting compassionate immigration policy. For example, the League of United Latin American Citizens was a signatory to the Unity Blueprint for Immigration Reform, an immigration agenda presented to the U.S. Congress in 2007. UNITY BLUEPRINT FOR IMMIGRATION REFORM, <http://www.unityblueprint.org/Unity-Blueprint/Endorsers.html> (last visited July 19, 2011).

²² BENDER, GREASERS AND GRINGOS, *supra* note 8, at 50.

²³ Steven Bender, Sylvia R. Lazos Vargas & Keith Aoki, *Race and the California Recall: A Top Ten List of Ironies*, 16 BERKELEY LA RAZA L.J. 11, 11-12 (2005).

²⁴ Editorial, *Obama Flinches on Immigration*, N.Y. TIMES, Mar. 24, 2009, at A26.

²⁵ Scott Shane, *Conservatives Draw Blood from Acorn, Favored Foe*, N.Y. TIMES, Sept. 16, 2009, at A14; Amada Terkel, *ACORN Comeback? Conservatives Fear Return of Liberal Group*, HUFFINGTON POST (July 8, 2011), http://www.huffingtonpost.com/2011/07/08/conservatives-acorn-comeback_n_893121.html (describing financial demise of ACORN).

²⁶ On the eventual decline of the Minutemen efforts over internal squabbles, see Elizabeth Aguilera, *Internal Divide Reduces Role of Minutemen*, SIGNONSANDIEGO.COM, <http://www.signonsandiego.com/news/2011/jun/02/internal-divide-reduces-role-of-minutemen/> (last updated June 2, 2011). See also DEVIN BURGHART & LEONARD ZESKIND, INST. FOR RESEARCH & EDUC. ON HUMAN RIGHTS, *THE DECLINE OF THE ESTABLISHED ANTI-IMMIGRANT ORGANIZATIONS AND THE RISE OF TEA PARTY NATIVISM* (2012), <http://www.irehr.org/images/pdf/BeyondFAIRreport.pdf> (last updated January 30, 2012) (sug-

than empathy, particularly when the divisive message taps into deep-seated stereotypes and insecurities.

It is apparent that these national Latino/a organizations otherwise poised to influence immigration policy have not found a sympathetic ear or image within U.S. media or debate. Perhaps the degree of hostility to immigrants, and particularly the conflation of immigrants with the derogatory image of Mexicans in U.S. society, are too strong for any organization or individual to overcome. But my sense is that, although these Latino/a organizations are well-suited to organize the Latino/a community,²⁷ they are ill-suited to evoke needed sympathy from the Anglo community. That may explain why, as discussed below, some of these organizations are searching for a sympathetic image or face in which to frame compassionate immigration reform. Yet, these chosen images tend to be of sympathetic groups, such as college-educated youth or military veterans, rather than of individuals. Indeed, the lesson of the César Chávez legacy may be that it takes sympathetic individuals, wielding images of a sympathetic group (in Chávez's case, hard-working farm laborers) to capture and sway public opinion. In this way, our national obsession with individualism and individual success, most evident today in our embrace of the American Idol phenomenon, is paired with our appreciation of (and its converse, our hatred toward) larger groups, whether sports teams, racial/ethnic/religious groups, or other affiliations.

III. IN SEARCH OF A SYMPATHETIC IMAGE

Recognizing what Richard Delgado sensed about the need for a favorable story – a sympathetic image to galvanize policymakers and those that influence them – some immigration policy networks with which I am connected responded to the stagnation of immigration reform by considering strategically what image might resonate best with these audiences. For reasons I discuss below, no image seems readily poised to garner sympathy, particularly against the backdrop of the current economic crisis.

The largest class of immigrants awaiting reform – the some eleven million undocumented immigrants currently within the United

gesting a decline in membership and financial support for such anti-immigrant groups as FAIR and the Minuteman Project coincides with the assumption of their restrictionist agendas by the surging Tea Party movement).

²⁷ I say this with the caveat raised by symposium participant Alfonso Gonzales (Lehman College), who argued that grassroots Latino/a organizations, such as the United Farm Workers in the case of labor rights, would be better suited toward organizing Latinos/as around immigration policy than the relatively elite Latino/a organizations such as MALDEF and the National Council of La Raza.

States and predominantly from Mexico²⁸ – offers little hope for a sympathetic portrayal. These immigrants, largely drawn to *el Norte* by the prospect of employment to feed their families left behind, often risk their lives to work in the shadows doing miserable jobs for substandard wages that other U.S. residents are loathe to undertake, while they live in abysmal crowded conditions.²⁹ As I argue in a new book, *Run for the Border: Vice and Virtue in U.S.-Mexico Border Crossings*,³⁰ these undocumented immigrants are the most virtuous of border crossers in their commitment to the American dream of hard labor in the pursuit of financial stability, and even prosperity, few will ever realize. Grounds for sympathetic portrayals of these undocumented workers are obvious to compassionate observers, such as author Barbara Ehrenreich, who suggested:

[Undocumented immigrants have] been mowing the lawns, cleaning the offices, hammering the nails and picking the tomatoes, not to mention all that dish-washing, diaper-changing, meat-packing and poultry-plucking. . . . There is still the issue of the original “crime.” If someone breaks into my property for the purpose of trashing and looting, I would be hell-bent on restitution. But if they break in for the purpose of cleaning it – scrubbing the bathroom, mowing the lawn – then, in my way of thinking anyway, the debt goes in the other direction.³¹

Yet, proponents of border security emphasize the insurmountable sin of unauthorized entry and seamlessly conflate the undocumented laborer with criminals, drug runners, welfare cheats, and even terrorists,³² thereby damning the undocumented immigrant to a profoundly negative characterization. Any reform beneficial to undocumented immigrants, presumably at best a regularization of status and stepping to the back of the long line for eventual citizenship, in exchange for a hefty fine (so-called earned legalization), runs into this buzz saw of criminal imagery. Indeed, the undocumented immigrant exists in the American imagination at the epicenter of the many varieties of negative constructions Latinos/as face. These demeaning characterizations include perceptions of violent/criminal/terrorist inclinations to laziness and the undeserved collection of welfare, an obsession with

²⁸ UNAUTHORIZED IMMIGRANT POPULATION: NATIONAL AND STATE TRENDS, 2010, PEW HISPANIC CTR. (Feb. 1, 2011), <http://pewhispanic.org/files/reports/133.pdf>.

²⁹ STEVEN W. BENDER, *TIERRA Y LIBERTAD: LAND, LIBERTY, AND LATINO HOUSING* 30-32, 59, 66, 76-77 (2010) (describing miserable housing conditions of impoverished immigrant workers).

³⁰ BENDER, *RUN FOR THE BORDER*, *supra* note 9.

³¹ Barbara Ehrenreich, *What America Owes its “Illegals,”* THE NATION, June 12, 2007.

³² BENDER, *RUN FOR THE BORDER*, *supra* note 9.

breeding more welfare babies, an unwillingness to assimilate and learn English, a disdain for education, and even a comfortableness living in filthy squalor.³³ In this climate of hostility toward undocumented immigrants, any effort to regularize their status and back away from the current norm of abusive workplace raids and mass deportations is branded with the “A” word of amnesty and politically moribund. The sheer number of undocumented immigrants living in the United States, coupled with stereotypical notions of Latinas as breeders,³⁴ whips some Anglos into a frenzy of fear. Realistically, then, undocumented immigrants, as a group, are not the sympathetic face of viable, compassionate immigration reform.

Immigrant farm workers, both undocumented³⁵ and those with documented status, have long sought the possibility of citizenship, and may present a compelling characterization of deservedness. The Ag-JOBS (Agricultural Job Opportunities, Benefits, and Security) bill, considered by Congress throughout the last decade, represents legislation tailored to supply amnesty for farm workers in this critical national industry.³⁶ As exemplified by the dismal response to the 2010 “Take Our Jobs” campaign, in which the United Farm Workers union offered to supply training to U.S. citizens by existing farm workers, U.S. citizens are not exactly clamoring for field jobs.³⁷ These field laborers work for dismal wages in grueling conditions, in theory presenting a favorable case for special treatment in alignment with the demands from U.S. farmers of a steady supply of workers. Yet the history of the farm worker struggle for dignity suggests the U.S. public

³³ See generally BENDER, GREASERS AND GRINGOS, *supra* note 8.

³⁴ *Id.* at 72-75. In that book, I discuss my doubts whether Latino/a immigrants may enjoy the same evolution of image as German, Irish, Jewish, Italian, and certain other European immigrants to the United States who were once saddled with subhuman constructions. *Id.* at 229-31. Query whether one viable approach to the negative construction of immigrants in the current U.S. imagination is to somehow recast the face of immigration, and undocumented immigration, away from a Latino/a and a Mexican face. This might be attempted through telling the stories of the considerable number of Anglo immigrants who gain undocumented passage into the United States, whether through Canada, through overstaying tourist visas, or even through despicable sexual trafficking.

³⁵ My focus here is on the undocumented, while recognizing that immigrants with documented status would benefit too from compassionate immigration reform that, among other things, loosens limitations on gaining citizenship such as by restoring the Western Hemisphere exemption to immigration limits that Mexico and other Latin American countries enjoyed prior to the Immigration and Nationality Act of 1965.

³⁶ BENDER, ONE NIGHT IN AMERICA, *supra* note 1, at 113-14.

³⁷ See Bender, *Compassionate Immigration Reform*, *supra* note 5, at 126-27; see generally GABRIEL THOMPSON, WORKING IN THE SHADOWS: A YEAR OF DOING THE JOBS (MOST) AMERICANS WON'T DO (2010) (detailing rigors of Anglo journalist picking lettuce with migrant field workers in Yuma, Arizona).

has scant appreciation for these laborers.³⁸ Briefly in the 1960s, the U.S. public cared about the farm worker cause for decent wages and safe working conditions.³⁹ Celebrities such as Robert Kennedy and Steve Allen embraced the campaign to boycott grapes and helped bring then revolutionary, but ultimately nominal, changes to the industry, especially as wages stagnated over time.⁴⁰ But the farm worker movement quickly slipped from public consciousness, and today U.S. residents associate farm workers with undocumented immigrants and saddle them with all the prevailing negative stereotypes regardless of their crucial role in delivering food to our tables. Few, if any, high profile personalities champion farm workers today by tackling their dismal wages or their vulnerable immigration status, and the prospect for what was once bipartisan supported legislation to supply citizenship to farm workers is dim.

An Oregon immigrant rights representative suggested to me in 2010 that, although the swirling derogatory characterizations of immigrants generally had derailed efforts at comprehensive immigration reform, the appeal of youth is a sympathetic face for realistic specialized immigration reform. As with the AgJOBS proposal, Congress has considered versions of the DREAM (Development, Relief, and Education for Alien Minors) Act for many years.⁴¹ Proposals of late have offered a pathway to permanent residency for youthful immigrants who have been U.S. residents for at least five years, arrived before a specified age (in recent proposals, age fifteen or sixteen) and therefore presumably of their parents' volition, are under a specified age (for example, thirty-five in one recent proposal), and have completed two years of college or military service.⁴² With these restrictions, the DREAM Act constructs the favorable image of a young child brought over the border involuntarily by his or her parents and, after diligent performance in school, gaining admission to a university, and succeeding in remaining in school for at least two years, yet not of an age where the college student or graduate presumably should have returned to his or her country of citizenship.

The Latino/a population is profoundly young and growing – nearly one quarter (twenty-three percent) of all U.S. children seventeen

³⁸ BENDER, *ONE NIGHT IN AMERICA*, *supra* note 1, at 66.

³⁹ *Id.* at 59-61, 177.

⁴⁰ *Id.* at 62-63, 84-85, 94-95.

⁴¹ Bender, *Compassionate Immigration Reform*, *supra* note 5, at 117 n.41 (discussing ongoing failure to enact DREAM Act proposals).

⁴² See, e.g., S. 729, 111th Cong. (2009). A recent attempt to pass the DREAM Act as an amendment to the Defense Authorization Act failed in the U.S. Senate on September 21, 2010. Jeneba Ghatt, *In Defense of the Failed Dream Act Immigration Bill*, WASH. TIMES, Sept. 27, 2010.

and younger are Latino/a.⁴³ As I concluded my book debunking Latino/a stereotypes: “Whether we view our burgeoning Latina/o youth as an opportunity for collective growth or, through the lens of stereotype, as a fiscal and moral burden, may come to define our time in American history.”⁴⁴ Surely as an enlightened society we might regard Latino/a youth favorably and recognize their importance to our collective future. Yet history and the current climate suggest a reality that we consistently devalue and imperil the lives of Latino/a youth, constructing their image in menacing terms. Numerous examples below illustrate this negative construction of Latino/a youth, regardless of their education, and the deleterious policy implications of this hostile imagery.

One of the drafters of California’s infamous Proposition 187 conveyed this derogatory sentiment in attacking undocumented children:

You get illegal alien children, Third World children, out of our schools, and you will reduce the violence. That is a fact You’re not dealing with a lot of shiny face, little kiddies. . . . You’re dealing with Third World cultures who come in, they shoot, they beat, they stab and they spread drugs around our school system. And we’re paying them to do it.⁴⁵

Proposition 187 aimed unsuccessfully to reopen the Supreme Court’s recognition of constitutional-based rights to education for undocumented immigrant children.⁴⁶ This same hostility toward Latino/a youth has bubbled up of late in attacks on birthright citizenship and so-called anchor babies dehumanized through this characterization.⁴⁷

Widely favored and employed by Republican and Democratic administrations alike as the best means to enforce immigration laws internally, immigration enforcement raids strike most viciously at Latino/a youth.⁴⁸ A National Council of La Raza study found that young

⁴³ Chris Cillizza, *Growth in Hispanic Population Poses Challenge for Republicans*, WASH. POST, Mar. 28, 2011, at A2.

⁴⁴ BENDER, GREASERS AND GRINGOS, *supra* note 8, at 233.

⁴⁵ Pamela J. Podger & Michael Doyle, *War of Worlds*, FRESNO BEE, Jan. 9, 1994, at A1 (remarks of Barbara Coe).

⁴⁶ *Plyler v. Doe*, 457 U.S. 202 (1982). Proposition 187 was adopted in 1994 by California voters, but eventually gutted by a federal court. See *League of United Latin Am. Citizens v. Wilson*, 908 F. Supp. 755 (C.D. Cal. 1995) (striking down refusal to educate undocumented children as inconsistent with *Plyler*, but leaving intact the provisions denying other benefits to the undocumented); *League of United Latin Am. Citizens v. Wilson*, 997 F. Supp. 1244 (C.D. Cal. 1997) (finding the benefit-denial provisions of Proposition 187 preempted by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996).

⁴⁷ Bender, *Compassionate Immigration Reform*, *supra* note 5, at 117-18.

⁴⁸ NAT’L COUNCIL OF LA RAZA, *PAYING THE PRICE: THE IMPACT OF IMMIGRATION RAIDS ON AMERICA’S CHILDREN* (2007).

children tragically interpreted their parental absence following immigration roundups as parental abandonment.⁴⁹ Many of these children were left in the long-term care of relatives or non-relative babysitters as their parents faced detention and deportation.⁵⁰ Yet these devastating raids continue.

Before the decision in *Brown v. Board of Education*,⁵¹ Southwestern schools routinely marginalized and segregated Mexican American youth.⁵² Segregation extended to swimming pools, parks, and private businesses such as theaters, all enforcing the longstanding vision of Latino/a youth as a menace rather than as some sympathetic population.⁵³ Subsequent to the abolition of *de jure* segregation, the attack on Latino/a youth shifted to the defunding of public schools through property tax restrictions and by flight to suburbs where Anglo parents embraced private schools “safe” from youth of color.⁵⁴ Even Latino/a college students are routinely maligned, particularly those participating in the community-building and activist organization of MEChA,⁵⁵ which, as noted above, was equated with terrorism.⁵⁶ In this climate, ethnic studies curriculum aiming similarly to build community and instill ethnic pride in vulnerable populations is attacked as anti-American without regard to the consequences for Latino/a youth.⁵⁷

With this history of disdain for Latino/a youth, regardless of their immigration status, there is no doubt that the image of Latino/a youth is a challenging sell for immigration reform. Given the negative construction of Latino/a youth, documented or not, another Oregon immigrant rights advocate suggested to me that a truncated version of the DREAM Act stood the best chance for passage – one built on the positive image of undocumented veterans serving in the U.S. military and thereby gaining a pathway to citizenship should they survive the perils of service. Surely, policymakers and the U.S. public would not

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954). Even before *Brown*, other litigators and courts had tackled segregation targeting Latinos/as. See, e.g., *Westminster Sch. Dist. of Orange Cnty. v. Mendez*, 161 F.2d 774 (9th Cir. 1947).

⁵² BENDER, GREASERS AND GRINGOS, *supra* note 8, at 145-47.

⁵³ *Id.* at 143-45.

⁵⁴ *Id.* at 148-49.

⁵⁵ NATIONAL MECHA, <http://www.nationalmecha.org/about.html> (last visited Dec. 31, 2011) (describing aims of MEChA).

⁵⁶ See *supra* notes 22-23 and accompanying text.

⁵⁷ Arizona legislators, for example, aimed to abolish ethnic studies programs in Arizona schools through a state law prohibiting educational programs that “promote the overthrow of the United States government,” “promote resentment toward a race or class of people,” “are designed primarily for pupils of a particular ethnic group,” or that “advocate ethnic solidarity instead of the treatment of pupils as individuals.” H.B. 2281, 49th Leg., 2d Reg. Sess. (Ariz. 2010) (effective Dec. 31, 2010).

equate the patriotic immigrants in military service with the menacing construction of the undocumented as criminals and even terrorist threats. Perhaps then, this Starship Troopers-like⁵⁸ linkage of citizenship with military service might find political traction.⁵⁹ Yet, here too the likelihood of a favorable construction and outcome is low. Aside from times of active war, we tend to shunt veterans from policy favor.⁶⁰ Latino/a veterans in particular are rendered invisible in the retelling of wartime heroism, as demonstrated most recently by their wholesale exclusion from Ken Burns' documentary account of World War II despite the service of some 500,000 Latinos/as.⁶¹ Even as citizens, historically we have disgraced Latino/a war veterans as illustrated by the Texas funeral parlor that refused to bury a decorated Latino veteran and a Texas restaurant that tossed out a Latino recipient of the Congressional Medal of Honor because he was a "Mexie."⁶² Effectively, we are likely to view the undocumented in military service as "Bracero warriors" who are welcomed for a limited task but then must, as the Bracero laborers were expected to honor,⁶³ return to their countries of origin and not overstay their conditional welcome.

⁵⁸ STARSHIP TROOPERS is a notable science fiction novel in which Federation citizenship is reserved for those who serve in the Federal Service of the Terran Federation for at least two years. ROBERT A. HEINLEIN, *STARSHIP TROOPERS* (1959).

⁵⁹ Under current law, whether an undocumented immigrant can gain citizenship through military service is convoluted. Although a legal basis for naturalization exists in both the 1952 Immigration and Naturalization Act and an executive order issued by President Bush on July 3, 2002, Exec. Order No. 13269, 3 C.F.R. 241 (2002), in practice, these avenues are riddled with uncertainty. The 1952 Act requires the foreign national to have served "honorably" in the U.S. military. See generally Miriam Jordan, *Soldier Finds Minefield on Road to Citizenship*, WALL ST. J., Feb. 10, 2011, at A9, available at <http://online.wsj.com/article/SB10001424052748704570104576124091336851306.html>. The catch-22 for undocumented immigrants is that because the military apparently does not knowingly allow the undocumented to enlist, those immigrants using false papers to join might be seen as having enlisted fraudulently and therefore not as having served honorably. *Id.* The executive order also requires honorable service, posing the same obstacle to those serving under false papers. See generally Islander, *Military Service: Does it Benefit Non-Immigrants in the USA?*, WRONG WAYS (Nov. 4, 2005), <http://www.wrongways.com/military-service-does-it-benefit-non-immigrants-in-the-usa>. The DREAM Act, presumably, would offer naturalization to these veterans.

⁶⁰ See, e.g., Dana Priest & Anne Hull, *Soldiers Face Neglect, Frustration at Army's Top Medical Facility*, WASH. POST, Feb. 18, 2007, at A1.

⁶¹ Ruben Navarrette, Jr., *Commentary: Latinos Give PBS a History Lesson*, CNN.COM (May 14, 2007), http://articles.cnn.com/2007-05-14/us/navarrette_1_hispanic-veterans-hispanic-association-maggie-rivas-rodriguez?_s=PM:US; BENDER, GREASERS AND GRINGOS, *supra* note 8, at 102 (discussing similar invisibility in U.S. historical record and memory of Latino/a service in Vietnam War).

⁶² BENDER, GREASERS AND GRINGOS, *supra* note 8, at 145.

⁶³ BENDER, RUN FOR THE BORDER, *supra* note 9 (explaining assurances of return to Mexico in which laborer spouses and children were left behind in Mexico and deductions from paychecks were retained by the U.S. government as a pension fund available only after the workers returned to Mexico).

IV. POLITICAL INTEREST CONVERGENCE

With the absence of any sympathetic constructions and the prevailing economic woes, the only hope for immigration reform that is not obsessed with border security may be from compelling interest convergence that surmounts these barriers. In arguing for compassionate immigration reform that loosens restrictions on immigration and addresses the current undocumented population in the United States, commentators such as myself have pointed to several alignments of Anglo self-interest with Mexican and other immigrants. For example, I previously recognized the need for repair of our broken educational system for Latino/a children as in the U.S. self-interest of financing our social security system for the aging Anglo population.⁶⁴ Richard Delgado suggested a more pointed need of elderly Anglos for an immigrant workforce:

“[A]ll those baby boomers will need nursing care. That will be one of the few growth industries in the days ahead.”

“And who will make all those beds, empty those bedpans, and clean the rooms of the aging crowd?” Rodrigo asked.

“Immigrants?” I posited. “Hard working, conscientious immigrants willing to start at the bottom and work their way up. Without them, two-earner families, now barely able to make ends meet, will have to take time out or quit their jobs to take care of Grandpa or Grandma. Something must give.”⁶⁵

George Martinez offered an additional basis for convergence sourced in our desire to remain competitive with countries such as China and India in the global economy through liberalization of our immigration policies.⁶⁶ In my exposition on the history of Latino/a housing, *Tierra y Libertad: Land, Liberty, and Latino Housing*, I detailed the further convergence of immigration reform as a means of stimulating long-term housing growth.⁶⁷

These grounds for interest convergence have yet to prompt serious movement toward comprehensive immigration reform. But an additional factor may prove the best suited to spark pro-immigrant reform, albeit on more limited terms – political interest convergence. Recent elections and census figures reveal the burgeoning electoral clout of Latino/a voters. In the 2008 presidential election, Barack

⁶⁴ BENDER, ONE NIGHT IN AMERICA, *supra* note 1, at 175.

⁶⁵ Delgado, *Rodrigo's Homily*, *supra* note 6, at 1278.

⁶⁶ George A. Martínez, *Bobbitt, The Rise of the Market State, and Race*, 18 AM. U. J. GENDER SOC. POL'Y & L. 587, 603-04 (2010).

⁶⁷ BENDER, TIERRA Y LIBERTAD, *supra* note 29, at 176-77.

Obama drew 67 percent of the Latino/a vote, helping him win key states.⁶⁸ The 2010 mid-term election found Democrats Harry Reid in Nevada and Michael Bennet in Colorado winning close races with the help of Latino/a voters.⁶⁹ Demographic writing on the wall suggests the potential influence of Latinos/as in future presidential elections given that seven of ten states in which Latino/a population grew by at least 100 percent from 2000 to 2010 went Republican in the 2008 race: Alabama, Arkansas, Kentucky, Mississippi, South Carolina, South Dakota, and Tennessee.⁷⁰ Moreover, the four states with the largest Latino/a population – California, Florida, New York, and Texas – alone account for more than half the needed electoral votes.⁷¹ Although Latino/a voters differ on a variety of issues and tend to be fiscal liberals and social conservatives,⁷² they generally agree on the need for compassionate immigration reform.⁷³

At the same time Latinos/as have laid blame on Republicans for fostering anti-Latino/a rhetoric and derailing immigration reform,⁷⁴ they also recognize the shortcomings of the Obama Administration in failing to curb deportations of undocumented immigrants who pose no threat to local communities.⁷⁵ President Obama's dubious immigration record led Congressman Luis Gutierrez to question whether he could support Obama in the 2012 election.⁷⁶ As evident in their significant support of President Bush, Latinos/as, as a group, are considered a potential swing vote critical to both mainstream parties.⁷⁷ Accordingly, candidates in national and local elections might need to scramble in their self-interest to demonstrate their embrace of com-

⁶⁸ Ed Hornick, *Can the GOP Win Back Latino Voters?*, CNN.COM (Nov. 12, 2008), http://articles.cnn.com/2008-11-12/politics/latino.vote_1_latino-voters-leslie-sanchez-immigration-reform?_s=PM:POLITICS.

⁶⁹ Editorial, *Hispanic Growth Makes Its Vote Crucial to GOP Senate Bid*, THE AMERICANO (Mar. 29, 2011), <http://theamericano.com/2011/03/29/hispanic-growth-vote-crucial-gop-senate-bid/>.

⁷⁰ Cillizza, *Growth in Hispanic Population*, *supra* note 43.

⁷¹ *Id.*

⁷² BENDER, ONE NIGHT IN AMERICA, *supra* note 1, at 127-43 (discussing sentiments of Latino/a voters on a variety of issues).

⁷³ Alberto Gonzales, Op-Ed, *What Latinos Want From Their President*, L.A. TIMES, July 2, 2008 (former Attorney General under President George W. Bush).

⁷⁴ See, e.g., Hornick, *supra* note 68.

⁷⁵ See Ruiz, *supra* note 20.

⁷⁶ Barbara Rodriguez, *Gutierrez: Support for Obama Depends on Reform*, NORTHWEST HERALD (Illinois) (Apr. 17, 2011), <http://www.nwherald.com/2011/04/16/gutierrez-support-for-obama-depends-on-reform/ardmup2/>.

⁷⁷ BENDER, ONE NIGHT IN AMERICA, *supra* note 1, at 130-34 (explaining how Bush garnered some 40 to 44 percent of the Latino/a vote in the 2004 election); Richard Delgado, *Zero-Based Racial Politics: An Evaluation of Three Best-Case Arguments on Behalf of the Nonwhite Underclass*, 78 GEO. L.J. 1929 (1990) (an early call for the nonwhite poor to force competition for their votes from principled conservatives).

passionate immigration reform as needed to attract Latino/a voters. The Obama Administration appears to have offered the first political olive branch by announcing in summer 2011 that deportations may be halted for undocumented immigrants who are neither criminals nor security threats.⁷⁸ Of the proposals for national immigration reform that might best resonate with Latino/a voters without opening the immigration floodgates in the eyes of volatile restrictionists and collapsing a fragile convergence, the DREAM Act probably holds the most appeal for pragmatic reform. Ironically, Democratic strategists once withheld separate consideration of the DREAM Act, fearing it might derail more extensive reform benefitting the other “faces” of immigration reform, primarily the additional millions of undocumented immigrants in the United States.⁷⁹ In essence, that broader reform was the vegetable on the comprehensive reform plate, with enhanced border security the entrée and the DREAM Act the dessert of a meal palatable to several constituencies. Yet when the prospects for more comprehensive reform deteriorated in 2010 with ramped-up anti-immigrant and anti-Latino/a rhetoric, Democrats relented and pushed a stand-alone DREAM Act, albeit without success.⁸⁰

V. CONCLUSION

In recent months, undocumented college students from across the United States have come “out” as undocumented and as proponents

⁷⁸ Bill Ong Hing, *One Hand Clapping for Latest Obama Deportation Reforms*, HUFFINGTON POST (Aug. 23, 2011), http://www.huffingtonpost.com/bill-ong-hing/one-hand-clapping-for-lat_b_932646.html.

⁷⁹ See Steven W. Bender, *Bipartisan Dreams of Immigration Reform*, NUESTRAS VOCES LATINAS (June 4, 2010), <http://nuestrasvoceslatinas.com/2010/06/04/bipartisan-dreams-of-immigration-reform>.

⁸⁰ Senator Harry Reid’s attempt to pass the DREAM Act as an amendment to the Defense Authorization Act failed in the U.S. Senate on September 21, 2010. See also Kathleen Hennessey, *Dream Act May Haunt the GOP*, L.A. TIMES, Dec. 15, 2010, at A1 (reporting that Senate Republicans later denounced the DREAM Act as amnesty in Senate debate in December 2010). The Obama Administration appears to be implementing an informal variation of the DREAM Act as a matter of administrative discretion in deporting undocumented immigrants. See George Zornick, *Implementing the DREAM Act, Piece by Piece*, THE NATION (June 29, 2011), <http://www.thenation.com/blog/161742/implementing-dream-act-piece-piece> (discussing the memo from the director of Immigration and Customs Enforcement suggesting discretion could be used to determine how to allocate limited financial resources of deportation, allowing agents to consider whether the undocumented immigrant graduated from high school or is enrolled in college; ultimately suggesting that the DREAM Act stands little chance of short-term passage in Congress given that “there are twenty-one Democratic Senate seats up for grabs in 2012, compared with only ten Republican seats”). In part, this administrative discretion was formalized by the White House announcement in August 2011, discussed in text *supra* at note 78, to drop low-priority deportation cases not involving criminals or those immigrants posing security threats. See Hing, *supra* note 78 (describing the August announcement as in large part a statement of clarity of the June memo).

for the federal DREAM Act.⁸¹ These courageous, articulate, and educated voices and individuals are the face of our changing demographics and the challenges posed of that cultural tumult. Visionaries embrace these faces of change – the faces of the future of the United States as a hub for the vibrant mix of cultures that immigration reform will nurture. Rather than fearing a brown immigrant, they see the reflection of the American dream in these faces of optimism and anticipation for a better life.

⁸¹ Robert Koenig, “*Dreamers*” Pack Senate Hearing Room to Back Dream Act, ST. LOUIS BEACON (July 1, 2011), <http://www.stlbeacon.org/issues-politics/280-washington/111303-dreamers-pack-senate-hearing-room> (reporting that Senator Dick Durbin (D-III) remarked on the hundreds of undocumented immigrant college students, “Dreamers,” who attended a Senate hearing on the proposed DREAM Act: “When I look around the room, I see America’s future.”).