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The North American Free Trade Agreement: Open Borders or Closed Dreams

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Panel 3: The North American Free Trade Agreement: Open Borders or Closed Dreams?

Comments by María de Los Angeles Jiménez* †

I will begin by focusing on the specific issue of immigrant rights within the context of NAFTA. The debate about NAFTA continues to encompass a broader debate of where immigrants and immigrant rights questions fit within the context of economic integration.

As many of you know, most of the work of the American Friends Service Committee is on the United States-Mexico border. This work has brought us into direct and very personal contact with the effects of labor mobility, the mobility of primarily Mexican workers, into labor markets in different parts of the United States. This personal experience has led us to document and report the high human costs of migration for people. We have undertaken this work not only because of the publicized violence and problems created by the Border Patrol or the INS, but because of our own experience along the border, seeing the migrant victims of criminal and non-criminal activity.

Every month we see at least ten bodies taken out of the widest parts of the Rio Grande river. Many people are killed along freeways, not only in California, but in El Paso, and other areas of Texas. There are a lot of injuries on the railroads. Just two weeks ago, for instance, someone from Albuquerque called to tell me about men hiding in a railroad car on a moving train. When one man jumped from the train he had his feet severely cut; another man who jumped had both legs cut off. There are heavy human costs that befall migrating people whose only wish is to work in the United States.

We heavily criticized the immigration policy when we presented our views to Congress. On April 18, 1990, we testified before the Subcommittee on Human Rights and International Organizations of the U.S. House Committee on Foreign Affairs. We also testified before the Subcommittee for International Law, Immigration and Refugees of the U.S. House Committee of the Judiciary on August 5, 1992. We wrote our reports. We

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talked to different people. Nevertheless, the issue of migration from Mexico to the United States was muted by national policymakers.

These policymakers dealt with immigration not as an issue of economics, but as an issue of law enforcement. Dealing with immigration as a law enforcement issue is the wrong approach. While Mexican nationals account for only about 55% of the undocumented people in the United States, 90% of the people arrested on United States borders are Mexican nationals. If we are hoping for economic integration between Mexico, the United States, and Canada, then this is the opportunity to redefine immigration policy. Rather than talk about a law enforcement approach, we must define immigration as an issue of economic regulation. We must regulate the mobility of labor and access to U.S. labor markets. The only way that we can diminish much of the suffering that we see on the United States-Mexico border is to make that movement, that mobility, a legal but regulated process.

Sectors all over the country that are interested in NAFTA are talking about regulating investment, regulating the movement of goods, regulating intellectual property, regulating the different types of economic sectors and the interchange in trade. The one issue that no one wants to talk about is the regulation of a very important economic factor—labor. We should ask government officials why, if we are talking about the breaking of barriers for the circulation of commodities along international borders, labor is not being included in the dialogue. All economists we know of, including Adam Smith, the father of free trade, have always considered labor a commodity. The American Friends Service Committee went on record in hearings in San Diego, and in hearings in Houston (conducted by the U.S. Trade Representative), as asking that the issues of migration and labor mobility be included in NAFTA negotiations. These issues should now be considered regulatory issues and they should be recognized as an important part of economic development.

Our organization, however, was a very isolated voice in the national debate in the United States. We were isolated because the very people who could be our strongest allies, the labor unions, were actually also anti-Mexican. We looked at all the material put out by the AFL-CIO on this particular issue. They always characterized NAFTA as unworkable because it will lead to more migration—Mexican workers would take jobs away from American workers. This is a groundless fear. Mexican immigrants have been part of the U.S. labor market since lands were first taken from Mexico with Mexican people still on them. In terms of migrating streams, Mexican laborers have been coming to the United States for work since the early 1900s. Historically, integration into American labor markets by Mexican workers has been an important part of the formation of the American labor movement. Strikes were held and unions formed by Mexican workers in
every sector of the American economy throughout history. Nevertheless, the AFL-CIO denies this presence of Mexican immigrants.

The other group that did not want to discuss immigration was the Republican Party. The Republican Party supported free trade from Mexico in terms of opening markets and investments. One of the strongest proponents of NAFTA has been Senator Simpson of Wyoming. Yet, Senator Simpson was all for free trade as long as Mexican people were not here. He, of course, authored the 1986 Employer Sanctions Provision. Again, the politics of the moment ruled the day.

We also found it very difficult to convince Latino organizations that this was an issue that they needed to raise in the initial NAFTA debates. As a matter of fact, the National Council de La Raza, as I remember, agreed with the Bush Administration. The Council felt that immigration should not be placed on the NAFTA negotiating table because they felt that all we would get was a guest worker program like the Bracero Program. They felt that it was better not to bring up the issue than to mention the Bracero Program previously in place for fear that a similar program might be embraced by agri-business during the NAFTA talks.

The American Friends Service Committee's position was different. Our position looked to the negotiation of the free trade agreement with Canada. As a result of those negotiations professionals and executives from Canada were permitted entry on a yearly basis, and entry for their families, renewable any time. Theoretically, the Canadian entries are temporary, but their beneficiaries can actually remain here all their lives by simply renewing yearly. This program leads us to believe that we do not have to and should not accept the corporate definition of a guest worker as a "Bracero Program," but that we could negotiate for instruments of legal migration of Mexican individuals that allows the type of migrating that is open to Canadians.

It was only when the Southwest Voter Registration Institute started a nationwide series of conferences on the implications of NAFTA for Latino communities in the United States that this issue was brought into public debate. This was really the first institution of Latino origin to want to talk about the issue of migration. At every conference we had a board of panels and debates. It was my privilege, for example, to debate Tony Anaya, the ex-Governor of New Mexico. For the first time, a Latino organization began to consider the idea that maybe migration needed to be identified and discussed as an issue of economic development. It is an especially important issue because giving migrants from Mexico legal access to labor markets would reduce the problems of human rights violations that are inherent in legal and illegal border crossings.

Another organization, the Mexican-American Legal Defense and Educational Fund (MALDEF), soon adopted the same position and took it fur-
Immigrant rights attorneys were primarily the ones to begin to push within MALDEF. MALDEF took the issue to the National Council de La Raza and convinced the Council of the need to review their position. Finally, in March there was the Latino Summit. This was the first time that Latino organizations took a position on creating a tri-national commission to look at migration issues. In our view, the position of Latino organizations is still very weak because it does not fully address the issue of labor mobility as a need of economic integration and as a regulatory need similar to other areas that are being regulated by NAFTA. But this position did recognize that immigration is an important issue which needs the attention of all of our legal organizations in the United States, and which should not be overlooked.

This recognition was an important step because it signalled that there was a need for a parallel agreement to NAFTA. This type of need is not new or unique to immigration, as there are now hearings in Congress on the need for parallel agreements in the areas of labor rights and environmental action. Although there was a point where we thought this need in the immigration arena was represented by lay organizations in Washington, we are still very far from actual action on this. I am not aware of any organized effort to get Congress to hold a hearing on the parallel agreement involving immigration. Moreover, there is resistance by many organizations that do work in Washington, because, with the popular anti-immigrant sentiment today, immigration is a very delicate political issue.

Indeed, one of the frustrations that I and others feel, is that the business round-tables, the corporations and their representatives from the very beginning have had a very clear vision of what they wanted to accomplish. They have been able to meet their goals. Nevertheless, these corporations and business entities represent few people. One of their objectives, for example, was to get freedom of movement for executives and professionals. Business interests negotiated and developed, within NAFTA, a temporary entry provision for business persons.

This provision, again, facilitated the entry of people who are coming to the United States to do business. The provision defines the professionals who can come into the United States. Most of them must have degrees. An interior designer can come in under NAFTA. A forester, a hotel manager, a librarian, a dentist, a dietician, a veterinarian, an animal breeder, an astronomer, a biochemist, a plant breeder, a poultry scientist, an urban planner, a vocational counselor, a technical publications writer, are all professionals that may be able to obtain temporary permits to enter the United States under NAFTA. Yet, the only people without degrees that are permitted to come in are truck drivers and tour bus operators. Of course, truck drivers and tour bus operators directly service the interests of the corporate structure.
We wanted to participate in the NAFTA negotiations because we thought that we could negotiate labor protections and legal protections for the workers who were coming into the United States. The legal protections we envisioned would also benefit the domestic work force of the three countries. And yet, in this particular part of NAFTA which allows for temporary entry for business persons, some of the labor protections that are normally considered appropriate within what are called "visas for temporary entry" are simply not present. Thus, there is a definite business oriented conception of who should move freely across borders and under what conditions. The majority of the unskilled and low-skilled workers were totally absent from the debates and their interests are not reflected in the agreement.

However, at least at national levels, Latino organizations have recognized that this is a problem that must be addressed. This recognition means that we can and must move forward and attempt to negotiate and develop parallel agreements. As other debates about economic integration continue, we can participate in that process by asking that migration be considered as an issue of labor mobility and an issue of labor rights and protections. We must join the debate on behalf of the unskilled and low-skilled laborer who is otherwise unrepresented. Who benefits by having the borders? The corporations. Because there is a large group of workers who are illegal in any market or country, workers in all three countries find it difficult to sustain their rights and protections.

Corporations also benefit from borders because they have the ability to go to Mexico without equalizing wages with the market levels in the other countries. This gives the corporations a favorable area for developing industries with workers who earn less. Thus, there is an inherent interest in maintaining the situation as it is from the corporate standpoint. But from our standpoint, from the human rights standpoint, from the standpoint of social justice, we cannot permit this to be a subject that, once again, will be buried in the debate. It will be buried by those who simply do not want to address the issue because of their old prejudices toward the Mexican immigrant population.

With this, I will end and allow for further discussion. I think that this comment gives our position as an organization as we attempt to bring immigration issues into public discussion about economic integration and regulation. We must begin defending the Mexican worker, and his or her dignity, by allowing that Mexican worker to walk across a bridge, and not swim the river.
When the North American Free Trade Agreement (NAFTA) was first proposed, the Mexican American Legal Defense and Educational Fund (MALDEF) issued a statement indicating its support for the fast-track, but cautioning that it would not accept any agreement unless certain conditions were met. This statement was unfortunately interpreted to mean that MALDEF supported the NAFTA. MALDEF experts, including the advocates who have been working to develop MALDEF’s position with respect to the NAFTA, have worked to clarify public perception of MALDEF’s position. On March 5, 1993, MALDEF’s board issued a second statement which clearly states that unless MALDEF’s listed concerns are addressed, MALDEF opposes the North American Free Trade Agreement.¹

Before discussing the actual components of the March 5th policy statement, I would like to identify the fundamental question posed by the NAFTA. How can we create the highest quality of life for all the peoples of North America?

Economic integration is driven by forces which are global in nature. This integration is going to take place, regardless of the subjective will of the Republican party, Senator Alan Simpson or the Latino community. The challenge presented by the NAFTA is that of uniting those interested in and affected by economic integration in a common vision which addresses the quality of life issue.

The NAFTA presents both a challenge and an opportunity to build unity not only within the Latino community, but among social forces in many different countries.

The 1980s saw a major shift in the global economy. During this period, developed countries opened their economies to foreign investment, international financial markets, and imports of goods and services.

Deregulation and globalization of an ever-increasing range of economic activities became centerpieces of a new framework for national economic policy making. This new framework is evident in the formation of regional trading blocks including the U.S./Canada Free Trade Agreement, the European Community, the Southeast Asia trading blocks and, of course, the NAFTA.

¹ While MALDEF was opposed to the North American Free Trade Agreement at the time of this symposium, the subsequent inclusion of additional provisions in the NAFTA package prompted MALDEF to endorse the Agreement as part of the Latino Caucus.
Whether expressly stated or not, at the core of this new economic framework is a new conception of the role of national borders. Borders are no longer sites for imposing levies. Instead, borders are in effect becoming transmitters for the free flow of goods, capital and information. Eighteenth century notions of free trade assumed freedom of movement between distinct national economies. Today's notions of free trade are about an economy which is itself global, and about governments struggling to coordinate rather than control economic activities.

The dilemma is that neither the old border-wall nor the nation-state has disappeared. The problems involved in this transformation to a global economy are clearly evident in the public debate and political struggle around the NAFTA, which seek to further open up the Mexican, Canadian and U.S. economies to the circulation of goods and investment. The unceasing effort by the major economic actors to overcome the political barriers is a clear indication of the growing trend to depart from the old notion of national economic policy making and the emergence of a new approach on how economic activity is to be maximized and governed.

At the same time that a global consensus is emerging among the developed countries on the need for a new framework for developing national economic policy, immigration policy remains deeply rooted in the border and nation-state notions of the past. There has been an absolute failure to discuss or debate immigration policy and its implications within the context of global economic integration in the 21st century.

Immigration policy debates around the world have yet to address global economic integration in the 21st century and its implications on migration. Border control remains the basic means for regulating immigration, and as such is in direct conflict with the growth in national and global policies aimed at opening up national economies, such as the lifting of restrictions on foreign investment, the deregulation of financial markets, and the formation of so-called financial free zones in major cities and regions throughout the world. These policies in effect constitute a tearing down of national borders for the flow of capital, and the result is the globalization of certain sectors of the workforce.

At the same time, the current policy framework for immigration treats the flow of labor and people as the result of the actions of individual human beings, especially those of "economic" immigrants, as opposed to "political refugees." The current framework in effect puts the blame for immigration on the backs of immigrants and treats the receiving country as completely passive or without any major responsibility for migration; the decision to admit immigrants is therefore viewed by policy makers as merely a "favor" or "privilege" being bestowed upon aliens seeking a "better" life, or at best the benevolent provider of "family reunification." Completely absent from this perspective is any understanding that the international activities of the
governments or firms of receiving countries may have contributed to the formation of economic linkages with sending countries, linkages which impact not only the flow of capital but also the flow of labor. In essence, the current framework stresses individual push factors and ignores systemic relationships.

In addition to presenting a challenge, the NAFTA also presents a great opportunity for us as Latinos, and as immigrant rights advocates, to address the so-called "immigration problem" by framing the issue of immigration in a way that gets at the root causes of migration. We have criticized previous attempts to reform immigration policies, such as the Carter bill and the Simpson-Mazoli bill, for their failure to deal with these root causes. Yet we were not able to offer an alternative to these proposals because we did not have a vision, either as an organization or, more importantly, as a community, for what that alternative might be.

Discussion surrounding the NAFTA has given us an opportunity to begin to articulate this vision. Raul Hinojosa has developed a framework which sets out the contours of an alternative very well. Cardenas has also been advocating a vision of the economic integration of the North American continent. Voices such as these, and the opportunity to bring these views to the table, are the beginnings of great progress. While we are still far from reaching a consensus regarding a free-trade agreement, we have made significant gains. The current challenge for human rights, civil rights, and social justice activists and advocates is to contribute to this discussion, and to unite us in a common vision.

If part of the vision acknowledges that migration is also an outcome of the actions of governments and major private economic actors in receiving countries, then receiving countries can assess the impact of such actions and make policy decisions taking those actions into account. If economic internationalization contributes to migration flows, recognition of this fact can only assist in the development of a more effective immigration policy.

The centerpiece of any such policy must ultimately address the core question — the quality of life of the people in each of the three countries. A common vision will greatly enhance our efforts to achieve this goal. Yet this goal will not be enhanced if we do not fight and oppose a free trade agreement which is a pure free-trade arrangement or an agreement which is a protectionist scenario. Neither of these visions of a NAFTA would be good for working people nor would they enhance the quality of life for all people in North America.

I therefore believe that our focus, our vision, should have at its core the concept of a social charter which sets forth and recognizes some very fundamental human and democratic rights. These rights are now being voiced in many different ways. They are being voiced in the concern for labor rights, for immigrants rights, for the environment, and in the concern for the
lands, lives and cultures of the indigenous peoples. These voices of opposition are coming together and are creating a positive force on which to build. The struggle is not just one for the civil and democratic rights of Latinos or people of color in the United States. We have to think much more broadly, we have to think in terms of a vision for the quality of life for human beings in this hemisphere.

Many of those attending this conference and reading these commentaries are law students or individuals who are looking towards the legal profession as a possible career. This is an exciting time because it is an opportunity to make the decision to utilize your legal skills in the challenge to develop what that social charter should look like, and to develop the institutions and procedures to implement this charter. As a lawyer who believes in human rights and social justice, you will have something which you can contribute, both as a law student and as an attorney, to furthering this vision.

The MALDEF policy addresses four basic aspects of the issue. It does not intend to be, nor does it hold itself out to be, a comprehensive proposal. It is rather more of a political response to the present NAFTA. The first point the policy statement makes is that MALDEF opposes the NAFTA as it now stands because it does not address the issue of Latino job displacement or training. This is, of course, a fundamental issue. As Raul Hinojosa has mentioned, there is going to be displacement, and that displacement will disproportionately affect communities of color, particularly the Latino community. We also know that the training programs which Congress has enacted in the past, for example those instituted in response to plant closures, have failed. If the government plans to simply rely on existing programs and laws which cover plant closures or worker dislocation, it will do little to alleviate the displacement effects of the NAFTA.

The second issue, one which has been touched upon at this symposium, is MALDEF's opposition to the NAFTA due to its failure to address migration. The reasons for this failure have been laid out well by María Jiménez, but the basic point is that until a NAFTA actually recognizes that you cannot deal with the issue of the flow of goods and capital across a border without also dealing with the issue of labor and labor power, MALDEF cannot possibly support such an agreement.

The third area is the environmental and health issues, particularly those issues along the border, that the NAFTA has yet to address. Here, clearly, is the link in the basis for the alliances that are being built within the environmental movement.

The fourth and final area is based upon the past experiences in the border regions in terms of the maquiladoras. If the NAFTA fails to address the infrastructure issues and subsequently fails to affirmatively address what kinds of opportunities there would be for minority business enter-
prises, then MALDEF will stand in opposition to the NAFTA until all of these issues are addressed.

In developing a strategy which goes beyond the defeat of the NAFTA in its present form and towards creating the vision of which I have spoken, we must not ignore the role of race. Race has, unfortunately, been very central to the formation and the development of the United States as a nation, and certainly to the development of its economy. The question of race impacts every single aspect of the fabric of its life on every level, and that includes, of course, the relationships between different groups. For example, the current anti-immigrant backlash is fueling controversy around the NAFTA over immigration as a population and environmental issue. Anti-immigrant forces are appealing to the environmental movement to support repressive anti-immigrant proposals and oppose the NAFTA by arguing that the NAFTA will contribute to overconsumption and the depletion of resources, and with calls to protect “our way of life” from Third World immigrants. Immigrant-based communities and the civil and human rights movement will be stymied in building critical linkages with the environmental and labor movement if the scapegoating of immigrants and Mexican-bashing become a component of the strategy to secure a fair NAFTA. Yet, one positive aspect of the NAFTA is that it is forcing the different groups to deal with that question. How do we deal with the fact that there has been racism in the environmental movement? How do we deal with the fact that there has been racism in the labor movement?

These questions create a barrier which I strongly feel can be addressed and worked with. We have much to overcome, but we also have something very worthwhile to work towards. While the current proposal may present many challenges, the opportunities for discussion and the building of a common vision is a tremendous silver lining.