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Whose immigration reform ?

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- ¹ On October 8, 2013, thousands of migrants, community activists, religious leaders, and “pro-immigrant” politicians descended upon the National Mall and the Capitol building to demand that the US Congress pass so-called “comprehensive immigration reform.”¹ Although two hundred protesters were arrested during the action,² the Chicago-based Moratorium on Deportations remained unimpressed, and released a statement in which it decried the current “immigration reform” movement as a “scam,” and the Senate bill (S. 744) upon which it is based as “the newest example of oppression, violence, and exploitation sold to us as a ‘step in the right direction.’”³ The official title of S. 744—the Border Security, Economic Opportunity and Immigration Modernization Act—includes multiple buzz words that carry a decidedly positive connotation, but are rather imprecise in meaning. George Orwell once noted that such vague and euphemistic political speech is generally employed in order to justify otherwise indefensible positions,⁴ and indeed Moratorium on Deportations’ critical reading of S. 744 brings them to conclude that the bill is actually “anti-immigrant.” The present essay seeks to understand this conclusion through examination of the fraught relationship between S. 744 and the national “immigrant rights” movement in the United States, paying close attention to the latter’s engagement with the hegemonic discourse framing “comprehensive immigration reform” (CIR) in general, and by extension the rather contentious concepts that underpin this.
- ² Although laws “are always conjunctural, and never assured,”⁵ the US media tends to atomize and de-historicize political issues, and very few analysts have invoked prior immigration legislation in order to properly contextualize S. 744. The production of bourgeois law in a parliamentary system is also a crucial aspect of what could be conceived of in Gramscian terms as the broader process of negotiation between the ruling and popular classes in the former’s quest to obtain and retain hegemony, and as it is legislative bodies that are most directly linked to “civil society,” they are more susceptible to popular pressure than other branches of government.⁶ Lawmaking must thus not be treated as a discrete, autonomous process, but rather one that is rooted in a

constant struggle among an array of social and political forces within a particular historical context. Hence, while the passage of S. 744 has led thousands to take to the streets, the law itself is also partially constituent of *prior* social mobilizations, which themselves are always haunted by the specter of *transformismo*, a strategy employed by the ruling class to assimilate potentially dangerous ideas and strengthen its hegemony by adjusting them to its own policies. Moratorium on Deportations essentially views the “immigration reform” movement through this lens, so in order to more fully understand their point of view, we must challenge the *common sense* ideas undergirding mainstream immigration discourse in the United States by historicizing and demystifying S. 744 and “comprehensive immigration reform.” To that end, the next section will briefly outline the role of the US nation-state in producing the current immigration “crisis” that “comprehensive immigration reform” purports to resolve, through both economic policies abroad and the promulgation of immigration law at home.

Designing a ‘broken’ system

- 3 With an estimated eleven million undocumented people currently residing in the United States,⁷ nearly everyone seems to refer to the country’s immigration system as “broken.” Although many are quick to lay the blame on a “dysfunctional” and “polarized” Congress, Occupy Wall Street argued that the system is not “broken,” but has rather been *built* to oppress. De Genova conceives of the production of US immigration law in particular as a series of strategies and compromises put in place by the US nation-state in order to ensure the subordination of labor,⁸ and although I have addressed the question of intentionality elsewhere,⁹ in this article I will follow Huspek’s lead and simply focus on the overall *effects* of the US nation-state’s actions.¹⁰ Mexicans currently represent more than half of all undocumented people living in the US,¹¹ and have long been racialized as the archetypal “illegal alien”—an “impossible subject” that is at once both a “social reality” and a “legal impossibility.”¹² As such, this section will focus on the role of the United States in encouraging and subsequently criminalizing Mexican migration to the United States during the neoliberal era.
- 4 Neoliberalism arrived in Mexico in late 1982 when foreign borrowing and capital flight combined with a drop in the price of oil and led to a default on the country’s debt. The resulting IMF austerity program¹³ spurred many Mexicans living in the interior of the country to migrate north, where they often found precarious work in the largely US-owned *maquiladoras* on the border, or in the fields, factories, offices, or homes in the United States itself. Due to the Hart-Cellar Act of 1965, which had arbitrarily imposed quotas on immigration from countries in the Western Hemisphere without consideration of the historical migration between Mexico and the United States (itself largely the result of geographic proximity and US imperialism), the vast majority of these migrants arrived without proper documentation. By the mid 1980s, a “clear Left voice” was demanding an “immigration reform” in the United States with no employer sanctions, a humane border enforcement policy, and a clear pathway to citizenship without any penalties or fees for all undocumented migrants in the country.¹⁴ However, the Immigration Reform and Control Act (Pub.L. 99-603, 100 Stat. 3359, or IRCA) passed by Congress in 1986 included employer sanctions ; increased funding for the Border Patrol ; “legalization” provisions for *certain* undocumented migrants ; increased fines

and punishment for undocumented migrants ; and an expansion of the H-2 temporary visa program.¹⁵ Neoliberal austerity caused the number of Mexican migrants in the US to more than double during the 1980s,¹⁶ and at best IRCA was an inadequate stopgap measure that did nothing to address the root causes of migration. On the contrary, the law criminalized future migration by facilitating the rise of an enormous black market for false documents, and the increasing militarization of the border region disrupted the traditional circular migration between the two countries, leading to more permanent settlement.

- 5 IRCA's mixture of increased border and interior enforcement, a program of regularization for the status of some undocumented migrants, and implementation of changes to the visa system can be considered the blueprint for the current push for "comprehensive immigration reform." Although its regularization program was far more generous than anything currently being proposed, IRCA was opposed by leading migrant rights activists at the time,¹⁷ and Acuña argues that its passage marked a general defeat for the movement for progressive "immigration reform." He believes that a clear vision of what such a "reform" would look like had never taken shape outside of the *mexican@* community, and that "[t]his lack of understanding and consensus has led to the probability of compromise that invariably leads to a negation of meaningful and just reform."¹⁸ Indeed, the Illegal Immigration Reform and Immigrant Responsibility Act (Division C of Pub.L. 104-208, 110 Stat. 3009-546, or IIRIRA) passed a decade later in 1996 was far more repressive than IRCA in nearly every aspect.
- 6 The IIRIRA was passed in the midst of an unprecedented wave of migration from Mexico sparked by the entry into force of the North American Free Trade Agreement (NAFTA) and a peso crisis precipitated by foreign investors withdrawing ten percent of the nearly \$ 100 billion they had invested in Mexico on the eve of NAFTA's signing, leading to more neoliberal structural adjustment and increased control of US and transnational capital over Mexico's large oil reserves.¹⁹ In 1993, total annual immigration from Mexico to the US stood at around 370,000, which was already 18.5 times the number of visas legally available, but it shot up to approximately 570,000 by 1995, before eventually peaking at 770,000 half a decade later.²⁰ Although this unprecedented wave of migration was clearly linked to US policies, it was systematically criminalized via the passage of the IIRIRA and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104-193, or PRWORA, also known as "Welfare Reform"), which increased the prosecution of immigration crimes and the number of state and federal crimes leading to deportation, while simultaneously minimizing the discretion of immigration judges and expanding the number of categories of non-citizens subject to mandatory detention.²¹ The IIRIRA also institutionalized the Border Patrol's national strategy plan of "prevention through deterrence" implemented in 1994 by providing funding for the hiring of additional Border Patrol agents, and granting the Attorney General the explicit authority to construct barriers at the border.²² By deploying a large number of agents and military technology in heavily-transited urban regions through regional initiatives such as Operation Gatekeeper, it was believed that the harsh desert and mountainous geography of the rural areas would serve as a natural barrier and discourage individuals from crossing, or would alternatively funnel migrants into this hostile terrain, where the Border Patrol would supposedly have a tactical advantage.²³ Yet by 2002 the odds of arrest at the border had actually reached an all-time low of five

percent,²⁴ and the most powerful legacy after nearly two decades of this strategy is the sharp increase in the number of bodies—hundreds per year—recovered as migrants are squeezed into increasingly remote areas of the desert.²⁵

Comprehensive immigration reform in the twenty-first century

- 7 The previous section demonstrated how the roots of the immigration “crisis” of the twenty-first century are largely consequences of official US policy, and we will now examine how this crucial fact is conspicuously absent in the proposed solution of “comprehensive immigration reform.” During the first year of his presidency, George W. Bush met five times with his Mexican counterpart Vicente Fox in order to discuss tightened “border security” and a “liberalization” of the US immigration regime.²⁶ This attempt at reform “from above” essentially follows the blueprint set by IRCA, and contrasts with a push for reform “from below” by groups such as the Providence, Rhode Island-based Immigrants in Action/*Comité de Inmigrantes en Acción*, which sought to achieve “amnesty” through self-education to help undocumented workers familiarize themselves with their rights and mobilize.²⁷ The events of September 11, 2001 had a dramatic effect on both campaigns, as the high-level talks immediately fell apart,²⁸ and undocumented immigrants were now commonly referred to as criminals, potential terrorists, and “illegal aliens.” In this context, Immigrants in Action began to coordinate with Middle Eastern activists to challenge the practice of racial profiling suffered by both groups, and forged links with other immigrant workers and labor organizers before subsequently joining forces with a nationwide network of “amnesty” advocates and participating in the Immigrant Worker Freedom Ride of 2003 organized by the National Coalition for Dignity and Amnesty.²⁹ The term “amnesty” stands in contrast to CIR’s proposal of “earned legalization,” which would make permanent residency contingent upon meeting retrospective *and* prospective requirements.³⁰ Although a crucial distinction, “amnesty” only demands the *temporary* suspension of an immigration regime constructed to produce “illegality,” and with the root causes of migration left untouched, it leaves the door open to future moments of “crisis.” For Gramsci, a struggle becomes “dangerous” only when “the legal equilibrium is recognized to be impossible,”³¹ which would soon occur during the first half of 2006.

The repressive turn and a divided movement

- 8 The already restrictive US immigration regime was significantly tightened in the wake of September 11, 2001 by the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub.L. 107-173) and the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub.L. 108-458),³² as well as the implementation of the Justice Department’s National Security Entry-Exit Registration System in late 2002.³³ The creation of the Department of Homeland Security (DHS) in 2003 brought Customs and Border Protection and the INS’ successor agency Immigration and Customs Enforcement (ICE) under a single government agency, and the latter’s Bureau of Detention and Removal Operations promptly issued *Endgame*, a strategic plan for the decade in which it made clear its goal of “removing all removable aliens.”³⁴ The dubious link between “terrorism” and immigrants was then made explicit with the passage of the Border Protection,

Antiterrorism, and Illegal Immigration Control Act (H.R. 4437) by the House of Representatives on December 16, 2005, whose draconian measures included making all undocumented people felons and applying criminal sanctions to those who provide them with assistance, doubling the size of the Border Patrol, and mandating the construction of 700 miles of militarized fencing on the border with Mexico.³⁵

- 9 Millions of migrants and their allies took to the streets during the first half of 2006 in response, and although unprecedented in terms of sheer size, the mobilizations were far from homogeneous. Chavez focuses on the strong presence of US flags in the crowd, and sympathizes with the apparent demand for formal political inclusion in a society in which migrants have already established deep social and communal ties,³⁶ a strategy criticized by Mariana Viturro of the National Domestic Workers Alliance for its “nonconfrontational” and “assimilationist” character.³⁷ On the other hand, De Genova points out that the widespread chant “*¡Aquí estamos, y no nos vamos !*” and its corollary, “*¡Y si nos sacan, nos regresamos !*”³⁸ was indeed a radical anti-assimilationist gesture, with migrants practically daring the State to throw them out in a clear threat to the prevailing political and legal order.³⁹
- 10 While the mass mobilizations were widely credited with ensuring H.R. 4437’s defeat in the Senate, that chamber’s so-called “compromise” bill—the Comprehensive Immigration Reform Act of 2006 (S. 2611)—would also have further militarized the border, criminalized certain aspects of migration, and resulted in more deportations and a heightened surveillance of the entire migrant community in return for limited “earned legalization.”⁴⁰ During 2006 and 2007, a growing chorus of grassroots organizations thus spoke out against not just H.R. 4437, but also S. 2611 and the similar Comprehensive Immigration Reform Act of 2007 (S. 1348), arguing against any “comprehensive immigration reform” that did not attack the emerging system of “immigrant apartheid” that was making the lives of *all* migrants as difficult as possible.⁴¹ In 2007, ICE created the Office of State and Local Coordination to oversee programs such as Secure Communities, the Criminal Alien Program, 287(g), and the National Fugitives Operation Program, which form the backbone of ACCESS : Agreements of Cooperation in Communities to Enhance Safety and Security.⁴² These programs increase the role of local police in assisting with federal immigration enforcement, and it is inconceivable that ICE would have been able to remove 409,849 individuals in Fiscal Year 2012 without such collaboration, which has consistently led to racial profiling and other forms of abuse, and an erosion of what trust still existed between migrant communities and local police.⁴³ In parallel, as H.R. 4437 was making its way through the House in late 2005, DHS announced the launch of its Secure Border Initiative (SBI) to create a “virtual fence” on the southwest border,⁴⁴ and only months after H.R. 4437 had been defeated, the Secure Fence Act of 2006 (Pub.L. 109-367) passed the Senate by a more than four to one margin, mandating the construction of roughly 700 miles of two-layered reinforced fencing and additional physical barriers, roads, lighting, cameras, and sensors.⁴⁵ Although the twenty-first century has witnessed a precipitous decline in migration from Mexico, such intense militarization means that those who cross the border are now doing so in the most remote and hostile areas of the desert, and so the number of bodies recovered on the border has not declined accordingly.
- 11 While the more militant grassroots “migrant rights” groups combated this repressive turn by building local infrastructure to resist such violence and criminalization, national “immigrant rights” groups attempted to harness the energy of the mass

mobilizations of early 2006 in order to achieve “comprehensive immigration reform” at any cost, in the process marginalizing those voices seeking to radicalize the national “immigration debate.”⁴⁶ However, the devastation inflicted upon the migrant community in Postville, Iowa by an ICE raid of the Agriprocessors meatpacking plant on May 12, 2008 and the subsequent charging of undocumented workers with federal crimes served as a catalyst for the more moderate sector of the movement to turn their gaze towards the criminal justice and deportation systems, and not simply fight for “legalization.”⁴⁷ Yet while this process was unfolding, the election of Barack Obama served to deflect much of the discontent with the outgoing Bush administration as the ruling elite was able to strengthen its hegemony and the existing social order in the figure of a black Democrat.⁴⁸ Latin@s were now faced with a choice of whether or not to sign on to what Alfonso Gonzalez terms the “Obama-Democratic Party Consensus on immigration reform”: tighter immigration enforcement in exchange for symbolic appointments of Latinos to government positions.⁴⁹ He points out that “accommodationists” often have ties to powerful organizations such as the National Immigration Forum and the Center for American Progress, as well as a multimillion-dollar advocacy coalition financed by corporatist labor unions and major foundations called Reform Immigration for America (RIFA), which was formed in 2009 to provide funding, training, media support, and ideological direction to smaller immigrant rights organizations around the country.⁵⁰ It was also around this time that the national DREAMer movement began to gain steam and exert a large amount of influence over the national “immigration reform” debate.

United We DREAM

- 12 On August 1, 2001, the Development, Relief, and Education for Alien Minors Act (the DREAM Act) was introduced into the Senate as S. 1291 in order to address the tens of thousands of undocumented students who graduate high school each year but cannot afford to attend college because they are ineligible for in-state tuition rates as a result of Section 505 of the IIRIRA, and federal grants and loans due to Section 484(a)(5) of the amended Higher Education Act of 1965 (P.L. 89-329). Although the DREAM Act did not pass, similar bills have since been proposed as either stand-alone pieces of legislation or components of larger CIR packages such as S. 2611 and S. 1348, and generally include a repeal of §505 of the IIRIRA and a mechanism that would allow eligible youth to apply for legal permanent resident (LPR) status via an existing procedure known as “cancellation of removal” without first having to place themselves in deportation proceedings. Individuals granted conditional LPR status would have the right to access federal loans and to apply for LPR upon completion of two years of higher education.⁵¹
- 13 Just as RIFA was beginning to act as a moderating force over more grassroots “migrant rights” organizations, the National Immigration Law Center (NILC) gave its financial and logistical backing to local student groups around the country fighting for equal access to education, and United We Dream was founded in 2009 with the stated goal of building an immigrant youth movement to help pass the DREAM Act and reshape the broader movement for “immigrant rights.”⁵² Yet to an even greater extent than is the case with CIR, the DREAM Act is predicated on a fuzzy *idea* more than the actual provisions of the proposed legislation, through its invocation of the storied “American Dream” and a Civil Rights movement completely divorced from its radical socialist origins, which reduces the figure of Dr. Martin Luther King, Jr. to his “I Have a Dream”

speech. For a brief moment during the summer of 2011, the figure of Philippine-born Jose Antonio Vargas became a poster-boy for the contemporary DREAMer movement when the *New York Times Sunday Magazine* published his essay “My Life as an Undocumented Immigrant,”⁵³ in which we are told that save for passage of the DREAM Act, his only legal solution would be to return to the Philippines and accept a ten-year ban on entering the United States [mandated by an amendment to the INA §212(a)(9)(B) added by the IIRIRA]⁵⁴ before being able to even *apply* to return legally. Indeed, since only undocumented migrants who have maintained continuous residence in the United States since 1972 are eligible to petition to adjust their status to permanent residency,⁵⁵ many see the DREAM Act as a *deus ex machina* to rescue youth who may not even remember their country of birth from a lifetime of “illegality.”

- 14 Yet even aside from its narrow focus on a certain sector of undocumented youth, the actual provisions of the DREAM Act put it at odds with the broader struggle to achieve social justice. For example, under S. 952 and H.R. 1842—both referred to as the DREAM Act of 2011—those granted conditional LPR status would gain access to student loans and federal work-study programs, but would not be eligible to receive federal Pell Grants or supplemental educational opportunity grants, and would thus be forced to take out loans at a much higher rate than average. Hence, while many activists recognize the role of student loans in keeping a generation in debt bondage, and are demanding free tuition and a cancellation of all student debt, the DREAMer movement unwittingly celebrates this trap. The only other viable option provided by the legislation would be to join the armed forces instead of studying, a result of the Pentagon’s role in drafting subsequent versions of the DREAM Act. As Camilo Mejía argues, the military has a recruitment advantage because it is immune from most budget cuts and thus in the unique position of being able to provide housing, a steady paycheck, health care, and tuition waivers, and does not require fluency in the English language.⁵⁶
- 15 Despite the DREAM Act’s limited liberatory potential, the evolution of the organizing tactics employed by the DREAMer movement presages a certain radicalization of the mainstream “immigrant rights” movement as a whole. Echoing the more radical spirit of the Civil Rights movement, activists occupied Arizona Senator John McCain’s office on May 17, 2010, the anniversary of the landmark anti-segregationist *Brown v. Board of Education* ruling.⁵⁷ On December 8, the House included DREAM Act language as part of the Removal Clarification Act of 2010 (H.R. 5281), and although this bill did not even include a repeal of §505 of the IIRIRA,⁵⁸ its inability to pass led to a formal split in the DREAMer movement, with some blaming others for their hesitancy to use more confrontational tactics, as well as supposedly “supportive” politicians for their refusal to mobilize enough support to pass the bill. In response, the National Immigrant Youth Alliance (NIYA) was founded as a leaderless, autonomous movement that would allow young activists to speak for themselves.⁵⁹
- 16 Perhaps influenced by Vargas, who is gay and considered the publishing of his essay to be his second “coming out,” in late 2011 NIYA began organizing “public outings” during which undocumented youth would tell their life stories in public, denounce ICE ACCESS, and march to cries of “Undocumented! Unafraid!” In June of 2012, NIYA activists around the country occupied Obama for America campaign offices in order to pressure the president to bypass Congress and issue an Executive Order to halt the deportations of DREAMers.⁶⁰ The White House responded on June 15 with a

memorandum from the Secretary of Homeland Security Janet Napolitano in which she urged ICE officials to practice “personal discretion” when dealing with DREAMers, and announced that those who were not currently in deportation proceedings could apply for Deferred Action for Childhood Arrivals (DACA) status to protect against deportation for two years. Although many mistook this for an Executive Order, it was merely a set of guidelines and a means of enticing undocumented youth to *proactively* give their personal information to DHS without offering a guarantee against deportation or even an appellate mechanism for those whose applications are rejected. While United We Dream counts DACA as one of its victories, members of NIYA—who actually led the occupations—took a more cautious stance.⁶¹ Their suspicions were confirmed in July, when activists infiltrated Florida’s Broward Detention Center and demonstrated that dozens of individuals eligible for DACA were actually being held in detention.⁶²

- 17 During the second half of the year, several dozen undocumented migrants and their allies organized a “No Papers, No Fear—Ride for Justice” across the country in a vehicle christened the UndocuBus. Riders engaged in acts of civil disobedience along the way, pushing back against the criminalization of migrants before eventually arriving at the Democratic National Convention in Charlotte, North Carolina in September.⁶³ Although President Obama was eventually reelected in November, these were unmistakable signs of widespread discontent with his administration’s immigration policy, which has actually been far more repressive than even that of his predecessor. This newly radicalized current of the mainstream “immigrant rights” movement went beyond calls for “comprehensive immigration reform” to include demands to end deportations and a general denunciation of the criminalization of migration, but it was still somewhat reticent to ground the policies of the current administration within a broader historical context, and to link the exploitation, surveillance, incarceration and criminalization of the migrant community with similar trends affecting all of society. As a result, the door was left open for the ruling elite to try to defuse the unrest by once again taking up “comprehensive immigration reform.”

S. 744 : A Comprehensive Nightmare

- 18 On January 28, 2013, a bipartisan group of senators called the “Gang of Eight” proposed a framework for a CIR bill that would include increased border security and immigration enforcement, improved employment eligibility verification, a revision of the system of legal immigration, and the possibility of addressing the eleven million undocumented migrants currently living in the country and creating new guest-worker visas.⁶⁴ Most members of the Gang of Eight have received substantial amounts of money from private prison corporations,⁶⁵ and the dozens of “migrant rights” groups, community organizations, unions and churches comprising the Dignity Campaign view proposals such as the Gang of Eight’s as “products of an insider process in Washington.” In contrast to this, the Dignity Campaign engages in community-based organizing, and their vision of immigration reform “from below” is based on “human, labor and civil rights for all”⁶⁶ and would include speedy, across-the-board legalization, an end to guest worker programs and border militarization, and a renegotiation of free trade agreements such as NAFTA.⁶⁷
- 19 Yet with a framework for “comprehensive immigration reform” officially proposed, attention largely shifted to the nation’s capital, where ten DREAMers interrupted a

House Judiciary Committee hearing on immigration in February by shouting “undocumented and unafraid!” In April, the Rally for Citizenship in Washington capped off a week of actions to highlight the suffering caused by the “broken immigration system” and advocate for a “commonsense immigration reform” including a “roadmap to citizenship.”⁶⁸ Here it is worth remembering that Acuña’s “Chicano Left” had clarified that an acceptable pathway to citizenship would not include any fees or penalties, that the Dignity Campaign is calling for “quick” legalization with “low” fees, and that both movements outright reject border militarization. On the other hand, “commonsense” immigration reform implicitly accepts border militarization, increased interior enforcement and “earned legalization” simply because this “tradeoff” has become so thoroughly ingrained in the hegemonic public discourse that it has come to represent *common sense* itself. The rally’s adoption of the principles of reform “from above” was accentuated by the presence of labor organizers wearing Obama clothing and handing out US flags,⁶⁹ and this was reflected in the Border Security, Economic Opportunity and Immigration Modernization Act introduced into the Senate on April 16.

- 20 Far from including a “pathway to citizenship” for all undocumented migrants, S. 744 would create a temporary “Registered Provisional Immigrant” (RPI) status for certain individuals. This status could be revoked at any time, would be contingent upon maintaining employment and earning an income above the federal poverty level, and would be prohibitively expensive. Only after ten years would one be eligible to earn a green card and adjust to Lawful Permanent Resident status (LPR) after paying all taxes and a thousand dollar penalty fee. What’s more, the original version of S. 744 authorized \$ 5.5 billion dollars for purposes of “border security,” and the United States Citizenship and Immigration Service (USCIS) would only begin to issue new green cards once the Border Patrol achieves “persistent surveillance” of the entire southern border and is able to apprehend ninety percent of all unsanctioned crossers, “triggers” that are practically impossible to achieve and even measure. Additionally, USCIS would have to clear the existing backlog for green card applications before issuing any to individuals with RPI status, a process that the Migration Policy Institute estimates would take nineteen years, *assuming that no additional visas requests are filed during that time period*.⁷⁰ Other legal experts point out that the backlog could very likely *never* be completely eliminated, due to a small number of residual complex or ignored cases.⁷¹ This means that, aside from DREAMers and certain agricultural workers who would be granted special pathways for “legalization” due to the DREAM Act 2013 (§2103) and the Agricultural Worker Program Act of 2013 (§2201-2215),⁷² S. 744 would actually condemn most migrants to decades in legal limbo.
- 21 Many mainstream “immigrant rights” groups such as United We Dream criticized but ultimately supported S. 744, while more radical groups and the Dignity Campaign denounced its false “pathway to citizenship” and border militarization provisions. As the Senate debated S. 744 during the spring months, actions against deportations continued unabated and across borders. On April 28, the Movimiento Migrante Mesoamericano and Familia Latina Unida organized a press conference on the International Bridge separating Laredo, Texas, and Nuevo Laredo, Tamaulipas, during which letters written to President Obama by children whose families have been torn apart by deportations were read aloud. When the president arrived in Mexico for an official visit four days later, six hundred people protested his administration’s deportation policies in front of the US Embassy, with support from the Binational

Coalition of Ex-Braceros and the Mexican Electricians Union.⁷³ During the summer, DREAMer activists embarked on their most ambitious actions to date, with a group of nine individuals attempting to cross over from Nogales, Sonora to Nogales, Arizona and petition for humanitarian parole on July 22, 2013, and dozens more following suit at the Laredo/Nuevo Laredo crossing on September 30.⁷⁴

- 22 Days before the Senate voted on S. 744, the Hoeven/Corker amendment was added, authorizing an additional \$ 46 billion in funding to further militarize the border via the construction of seven hundred more miles of border fencing, a doubling of the number of Border Patrol agents on the line, and an increase in the deployment of military and surveillance equipment. In response, a coalition of grassroots “migrant rights” groups in southern Arizona released a joint statement calling S. 744 a “step backward,” and on June 24, activists gathered around a local shrine in downtown Tucson carrying handwritten signs with slogans such as “NO TO CIR BECAUSE IT MEANS MORE DEATHS”. The Border Communities Are Not For Sale !/¡Las Comunidades Fronterizas No Se Venden ! Campaign that they launched goes beyond a mere critique of S. 744 inasmuch as the message is that *any* increase in border militarization is unacceptable, which is a flat-out rejection of the very logic of a tradeoff between “border security” and “legalization” upon which “comprehensive immigration reform” rests.
- 23 Returning to the anecdote that opened this piece, perhaps two general trends can be discerned in the “migrant rights” movement following the Senate’s passage of S. 744 on June 27. On the one hand, more radical groups have taken steps to move beyond the whole idea of “comprehensive immigration reform” and sharpened their critique of the currently existing regime of mass detention/deportation and border militarization. The Border Communities Are Not For Sale ! campaign can be viewed within this framework, along with the National Day of Action against Border Militarization held on July 17, which witnessed actions in ten cities across the country, including a “die-in” outside Senator McCain’s office in Tucson.⁷⁵ While the purpose of these campaigns was to shine a spotlight on the deaths and abuse at the border, the “Not one more deportation !” campaign focuses on the mass expulsions taking place across the entire country, and on September 18, the National Day Labor Organizing Network led an event in which seven undocumented activists chained themselves to the White House and demanded a halt to all deportations.⁷⁶
- 24 On the other hand, similar actions have actually been guided by much more moderate politics. For example, forty-one activists—including the executive director of Promise Arizona, a RIFA-affiliated advocacy group based in Phoenix—were arrested at a protest targeting Republican members of the offices of the House of Representatives outside of their offices on August 1,⁷⁷ and six weeks later, 115 women were arrested for blockading an intersection outside of the House as a form of protesting the chamber’s inaction on “immigration reform” legislation. The latter event was organized by the We Belong Together campaign, whose mission is to highlight the ways in which S. 744 negatively affects female and queer migrants. This is an absolutely vital critique, but insofar as We Belong Together adopts the “American Dream”/“broken system” rhetoric and works directly with members of the House—via the Congressional Women’s Working Group on Immigration Reform—to push for the inclusion of “women-friendly” amendments, the group accepts the general framework of S. 744. While H.R. 15—the House’s version of “comprehensive immigration reform” introduced on October 2—includes some important “women-friendly” provisions such as exemptions and waivers to

employment requirements for RPI status and an increase in the number of U visas available for victims of domestic violence, the bill is cut from the same cloth as the non-amended S. 744, despite the working group's claim that it "will help to keep families together, grow our economy and reduce the deficit."⁷⁸ Similarly, the "Camino Americano" rally on October 8 was organized as the finale of the week-long Rally and March for Immigrant Dignity and Respect in order to tell Congress that : "the **Time is Now : America needs immigration reform**,"⁷⁹ instead of critiquing the "immigration reform" bills already proposed. Of course it would be erroneous to assign this mobilization a homogenous and non-critical character, but the dissatisfaction with S. 744 expressed by some protestors⁸⁰ is ultimately drowned out by a sea of US flags and calls for a "pathway to citizenship."

Whose Immigration Reform ?

- 25 The grand narrative that this essay has sought to illuminate is the relative success of the ruling class in channeling the energy of the "immigrant rights" movement into a non-threatening "comprehensive immigration reform" package designed "from above." While a detailed analysis of the ways in which S. 744 benefits the ruling elites would necessitate an entirely separate article, we must note that the bill strengthens their power through a heightening of repression and surveillance of migrants in the form of border militarization (Title 1, Subtitle A), the creation of the precarious RPI status (Title II, Subtitle A), an expansion of exploitative guest worker visas (Title IV), the mandatory implementation of the E-Verify program (Title II, Subtitle A), and a transition away from a visa policy of family reunification—however poorly implemented—towards one dictated by "market" needs and worker "merit" (Title II, Chapter 3, Subtitle 3). Yet by referring to concepts such as "modernization," "security" and "comprehensive immigration reform," S. 744 is presented as "the right thing to do." Just as the IIRIRA of 1996 made no pretensions of being "immigrant-friendly" because it was passed during a period of "new nativism,"⁸¹ S. 744 is clearly a product of the Obama era, in which the entrenchment of the Homeland Security State⁸² is either disguised or justified as necessary in order to achieve the mythical "balance" between "liberty" and "security" upon which liberal thought supposedly rests.⁸³
- 26 In this context, the DREAM Act has proven to be so useful precisely because it appeals to liberal values while simultaneously reinforcing the punishing ideology of the Homeland Security State through its concomitant criminalization of the larger undocumented community. These contradictory impulses color the exploits of the DREAM 9 and the DREAM 30, whose fearless acts of defiance are nonetheless tempered by their cap-and-gown uniforms and appeal for release on humanitarian grounds. While United We Dream's national congress ratified a six-point platform that included a call for the "legalization" of *all* undocumented migrants in the country in late 2012,⁸⁴ the inclusion of the DREAM Act 2013 in S. 744 forced the organization to essentially abandon this principle in practice less than a year later. In turn, the Hoeven/Corker amendment has shifted the entire "immigration debate" inexorably to the right, as even groups that were critical of S. 744 in its original form have since focused much of their criticism on the aforementioned amendment. This has been compounded by S. 744's death in the House of Representatives, the chamber's refusal to vote on H.R. 15, and the government shutdown in October. All of these events have directed attention away from a critical debate on the actual merits of "comprehensive immigration

reform,” and toward the familiar criticism of House Republicans. In other words, frustration with the theatrical maneuvers in the Beltway has served to moderate the “immigrant rights” movement even further. Meanwhile, the ruling elites host events such as the DREAMer hackathon sponsored by FWD.us, an organization whose corporate vision for “immigration reform” is based on “border security,” an expansion of the H-1B guest worker visa program, and the implementation of an employer verification system.⁸⁵

- 27 The Moratorium on Deportations campaign has shrewdly maintained a cautious distance from the mainstream “immigration reform” movement, working to forge links with other grassroots resistance struggles instead. In September 2010, the group organized an Immigrants’ Freedom Ride in order to raise awareness of the collaboration between ICE and local police and rising xenophobic sentiment, and by riding through “vast suburban space” on bicycles, participants were able to explore the nexus between global capitalism, local politics, and the policing of workers in general and migrant bodies in particular. Their refusal to approach “immigration reform” from within the narrow constraints of “single-issue” politics harkens back to the radical currents of the Civil Rights Movement,⁸⁶ yet they also address “immigration reform” directly through their “DEFER THE BULLSHIT” and “Whose Immigration Reform ?” campaigns. The former is a critical analysis of the Obama administration’s DACA program, and the latter a website intended to “combat the misinformation campaigns regarding ‘immigration reform,’” which includes a video deconstructing S. 744’s so-called “pathway to citizenship.” The group also criticizes large “immigrant rights” NGOs that falsely advertise S. 744, pointing out that they stand to benefit financially from the United States Citizenship Foundation created by Sections 2533-2538, which would provide funding to large NGOs to help DHS implement the bill. As these organizations would need to espouse assimilationist and patriotic views, this represents a blatant act of *trasformismo* designed to create the false impression of community support while silencing grassroots criticism,⁸⁷ in the same vein as “pro-reform” politicians like Luis Gutierrez.
- 28 While ultimately espousing a “no borders” philosophy, Moratorium on Deportations would welcome a national discussion on CIR, provided that an immediate end to deportations and ICE ACCESS, and “legalization” of *all* undocumented migrants, serve as a *precondition*. As to what principles should frame an eventual discussion, one can look to the September 7 forum *Ni Vencidos, Ni Vendidos : Race, Border Walls and the Politics of Not Selling Out*, its explicit rejection of the “good immigrant”/“bad immigrant” binary, inclusion of prison abolition and anti-policing organizers, and indigenous perspective on colonial borders. In their October 8 statement, the group argued that “when faced with ‘reforms’ it is not time to wave flags and cheer, it is time for resistance, time for barricades, occupations and strikes.” Less than a week later, organizers in Arizona moved to “shut down” ICE, with dozens of activists in Tucson chaining themselves to Border Patrol buses and the entrance gate of the federal courthouse in order to disrupt Operation Streamline,⁸⁸ a federal program through which individuals caught trying to enter the United States without authorization are brought—shackled—before a federal judge, and charged en masse with “illegal entry” and “illegal reentry” before being deported after a possible prison sentence.⁸⁹ On October 17, this action inspired a coalition of activists in San Francisco affiliated with Causa Justa / Just Cause, Aspire, the Asian Law Caucus, POWER and the California Immigrant Policy Center to block a deportation bus for several hours.⁹⁰ Back in Arizona,

protestors chained themselves together to block the entrance to the privately run Eloy Detention Center on October 14, and later in the day a group marched to the ICE building in downtown Phoenix.⁹¹ Organized by groups such as Puente Arizona, the National Day Laborer Organizing Network, and the #Not1MoreDeportationCampaign, US flags and calls for “comprehensive immigration reform” were conspicuously absent, and in their place raised fists demanding an end to mass incarceration, deportations, and criminalization. These activists clearly recognize that criminalization is an *active* process with cultural and *legal* roots, and that this cannot be undone with “comprehensive immigration reform” as it is currently understood.

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