Center for Immigration Studies

Backgrounder

August 2010

Beware of Indirect Immigration Policy Making

By David North

Most of the dialogue on national immigration policy, understandably, is focused on *direct* federal government policy making; that is, when Congress passes a law or votes appropriations, when the executive makes policies within the law, and when the judiciary interprets the law.

But there is another aspect of national policy making in which the U.S. government hands off migration decision making to some other entity, such as to a huge international organization like the World Trade Organization (WTO), or to a tiny government, such as that of American Samoa. These arrangements should concern all low-migration advocates, particularly since the mass migration people are proposing commissions to help make immigration policy.

My strong sense is that these *indirect* pieces of policy making nearly always favor the open-borders types; typically the other side is better placed and better able to manipulate these situations than those of us who dislike loose immigration policies.

Every time one of these policy hand-offs happens, at least to date, it has opened our doors a little (or a lot) more. Further, it is usually harder for the American government to correct these indirect decisions than it is to modify its own direct decisions.

There are four types of situations in which *indirect* policy making takes place. They are, in descending order of importance: 1) treaty arrangements, often free-trade agreements; 2) referrals to quasi-independent, nationwide American institutions; 3) referrals to other levels of American government, notably our island territories; and 4) subsequent decisions by other nations that alter the impact of existing congressional legislation. See Table 1 (page 2).

Perhaps I am missing something, but I have not seen a discussion of these four sets of arrangements covered in a single document. Further, while there has been a great deal of debate about the influence of treaty arrangements on U.S. immigration policy, there has been little on the other three matters. But the impact all of all four runs in exactly the same direction.

Incidentally, for these purposes I do not regard even the most controversial decisions of the executive or the judiciary as indirect decisions. I disagree with the Obama Administration's policy to slow down or stop deportations of illegal aliens without criminal records, for example, but I do not regard it as an *indirect* part of the process.

Some of these indirect arrangements are more worrisome than others. The worst are those, in which, because of existing treaties, *Congress cannot act*. Decisions are made in settings in which the United States is, at best, a litigant, and certainly not a decision maker.

Next most troublesome are those situations in which Congress is faced with a situation where it is *forced to act on a detailed proposal* created by external forces other than its own committee structures. Within this framework, in one scenario, Congress must vote one way or the other; in another scenario, if it does not vote, the proposed change happens anyway.

Then there are situations, such as the possibility of denying immigration powers to American Samoa, where *Congress may act*, but often does not. It did act regarding another territory, after years of foot dragging, finally taking immigration powers away from the scandal-plagued, sweatshop-tolerating local government of the Mariana Islands.

The least troublesome are those arrangements where the independent commission, either in existence or being proposed, makes recommendations to Congress, and it *must act* before anything happens. In these instances, while the commission in question may well tilt to looser borders, as they usually do, the Congress must make a decision. And that decision could well be to ignore the proposed change.

Let's look at America's second-hand immigration decision making in a little more detail. In the sections that follow I devote less detailed coverage to the arrangements that have been heavily documented (such as free trade treaties and the Marianas controversy) and more to those which have either attracted less attention or which are still in the proposal stage.

David North is a CIS Fellow.

Table 1. Examples of Indirect Immigration Policy Making in the United States

Category	Example	Congressional Role	Consequences or Potential Consequences
Treaties	NAFTA	None, now that NAFTA is in place	Creation of new visa classes (TN and TD), which causes about 100,000 nonimmigrant admissions a year, on average
	GATS	None, now that GATS is in place	The agreement may freeze some U.S. rules on current guestworker programs, thus eliminating the prospect of changes in levels or qualifications
Domestic	Proposed HR 4321	Congress may decide	Includes a proposed commission that would make admissions level recommendations that Congress could alter, but only if it acted quickly. The bill was introduced in the 111th Congress
Territories	American Samoa	Congress defined Samoa out of INA, but could reverse that decision	Territory vulnerable to guestworker abuse and trafficking, and has experienced one dramatic case of that
	CNMI	Congress excluded CNMI from INA, but later reversed that decision	CNMI used its immigration powers to import masses of guestworkers, treated them badly, and hired Jack Abramoff to lobby for the preservation of that system
Other Nations (unilateral)	Hungary	Congress could over-ride, but probably won't	Hungary expanded definition of its citizens to include ethnic Hungarians living outside its borders
	UK	Congress could have over-ridden, but did not	The UK granted independence to its former colonies, thus increasing the potential migration from them to the United States, a comparatively minor matter

Abbreviations used, in the order they appear: NAFTA, North American Free Trade Agreement; TN, Trade NAFTA; TD, Trade-Dependents; GATS, the General Agreement on Trade in Services; INA, the Immigration and Naturalization Act; CNMI, Commonwealth of the Northern Mariana Islands; VWP, Visa Waiver Program; and UK, United Kingdom.

Source: Center for Immigration Studies, Washington, DC.

Treaties

Perhaps the most troublesome of these arrangements are the treaties negotiated by the Office of the United States Trade Representative (OTR); the office itself is within the White House and, by its nature, is very interested in making trade-expanding deals with other nations and has little institutional focus on immigration.

A glance at the current *Congressional Directory*[1] listing for OTR shows 28 job titles, often covering more than one concept, but the word "immigration" does not appear in any of them.

It is within this immigration-does-not-really-matter atmosphere that OTR does its work. The agreements that it shapes require formal congressional approval, but that usually means an up-or-down vote (the so-called "fast track" scenario), which gives Congress no opportunity to change a word in the documents, just a chance to say yes or no. With extremely powerful corporations pushing free trade, the ayes usually carry the day.

If within one of these bulky documents there is yet another increase in legal migration, it is highly unlikely that the migration variable will cause the agreement's defeat.

What OTR does to American immigration policies is sometimes rather open, and more often obscure — but the direction is always the same: to open more opportunities for the admission, on more favorable terms, of more nonimmigrant workers. It never works the other way.

Given the extremely useful, highly-detailed *Backgrounder* on these treaties written by Jessica Vaughan,[2] only a couple of points need be made here on the kinds of damage done to immigration policy making by OTR and its allies.

First, there was the creation of a whole new nonimmigrant class for professionals, with new, relaxed rules. This was a feature of the U.S.-Canada Free Trade Agreement from 1989 through 1993, and after January 1994, of the broader North American Free Trade Agreement (NAFTA). The first agreement was with Canada only, the second included Mexico as well.

This nonimmigrant category includes TN (Trade NAFTA) status for Canadians, and the somewhat harder to obtain TN visa for Mexicans. It is for persons who might otherwise apply for H-1B nonimmigrant visas; it is for workers with specialized skills.

While Canadians can enter the United States in TN status without visiting a consulate, an equally qualified Mexican must secure a TN visa before coming to the United States in that category. Canadian TN workers, then, go through a single screening process, while Mexican ones go through a double screening process, both at the consulate and at the border.

There are many advantages of the TN status over the H-1B visa as an advice-giving Wikipedia article[3] indicates. If you are a Canadian with the right credentials, you drive to the nearest port of entry and apply for the status right there, and, if granted, drive on from Canada to your job in the United States. Also, there is no upper limit on the number of TNs, while there is a ceiling — often reached — for the H-1B visas. Further, while one can obtain a long series of three-year extensions of TN status, there is a six-year maximum for the H-1Bs.

On the other hand, unlike the H-1B, the TN is not a "dual intent" status, you cannot move from it to a green card in one smooth motion. And, it can be granted — or denied — at the border, with a denial probably more likely on an extension than on the first entry.[4]

How much impact do the TNs make on the U.S. labor market? One senior DHS official who has access to the data, and an interest in it, has estimated that at any one time, there are about 75,000 TN principals living in, and presumably working in, the United States. You might compare that to the flow of some 15,000 Canadian legal immigrants per year we have seen in recent years.

As to published figures, TN admissions vary from year to year, often reflecting the health of the American economy; the number of arriving workers has varied from 60,000 to 100,000 a year in fiscal years 1999 to 2008. In addition, during the same period, the admissions of spouses and children have been in the 12,000-22,000 range.[5]

These data are for the admission of both Canadians and Mexicans, the Department of Homeland Security does not publish separate statistics for the two flows, but the movements from Canada are generally accepted to be much larger than those from Mexico. Another data set, however, that of the Visa Office, provides information on the issuance of TN visas that, by definition, deals only with Mexicans. In FY 2009 there were 4,124 TN visas issued to workers, and 3,203 TD visas issued to their dependents.[6]

In contrast, there were 99,018 admissions of TN workers in FY 2009; while admissions data and visa issuance data are measures of different things,[7] the large spread in those numbers does point to a much greater Canadian usage of the program.

There are some aspects of the free trade agreements with Chile and Singapore that have minor impacts on congressional powers over immigration. There are set-asides within the overall H-1B ceiling of

65,000 new visas a year for applicants from the two countries, but this (unlike NAFTA) does not increase the total admissions of nonimmigrant workers. The set-asides are of 1,400 new slots for Chile and 5,400 new ones for Singapore each year. The professional workers admitted from these two countries do have an unlimited right to renew their visas, unlike the H-1Bs who have a maximum of six years.[8]

Chile and particularly Singapore are prosperous places and the use of these set-asides has been minimal. While the total ceiling is 6,800 new visas a year, there were only 213 admissions in FY 2009 for this new H-1B1 category[9].

The *second* technique by which congressional control of immigration is compromised through a treaty arrangement is harder to measure but probably much more significant than the first, in that it has world-wide implications (rather than being confined to four specific nations) and because it ties the hands of Congress, perhaps forever, regarding what laws it can pass on some aspects of nonimmigrant worker admissions.

The arrangement that looms large over any future restrictions in these nonimmigrant movements is the General Agreement on Trade in Services (GATS), which was completed in 1994.

The American nonimmigrant programs whose rules may have been frozen by our signing the GATS deal with H-1Bs and L-1s, of which they were 339,243 and 333,386 admissions respectively in FY 2009.[10]

The organization potentially making decisions about these matters is the World Trade Organization (WTO), a multi-national entity in which the United States has a single vote.

Three experts looking at GATS from three different perspectives, have this to say about it:

> *A number of provisions in legislation proposed [by restrictionists] to change U.S. law on H-1B and L-1 visas present a significant likelihood of being found to be inconsistent with U.S. commitments under GATS* … (Jochum Shore & Trossevin, PC)[11]

> *The United States has signed onto an international framework for free trade in services that binds us to dysfunctional immigration policies, notably the professional guestworker programs … [which puts] the country on a one-way street moving toward wide-open access for foreign workers under terms dictated by international organizations rather than our own democratically evolving immigration laws* … (Jessica Vaughan)[12]

> *Negotiators for GATS included specific language on temporary professional workers. This language references §101(a)(15)(H(i)(b) of INA and commits the United States to admitting 65,000 H-1B visa holders each year under the definition of H-1B specified in GATS. In addition, GATS includes very specific languages on "intra-corporate transfers" [i.e., L-1 visa holders.]* (Ruth Ellen Wasem)[13]

The three experts are, in order, Jochum Shore, a law firm that is an enthusiastic supporter of indirect decision-making, Jessica Vaughan, a colleague here at CIS, and an opponent of that kind of activity, and Ruth Wasem, a seasoned observer of such things for the Congressional Research Service.

Clearly they all agree that Congress's powers in this field have been restricted by congressional approval of GATS.

Unlike the ongoing influxes of TN professionals, their spouses, and their children, the potential tying of congressional hands is a threat, not a current reality. That threat operates in two ways: First, it is used by supporters of large guest worker movements to discourage any congressional action cutting back either the H-1B or the L-1 programs. (A good example is the Jochum Shore article, which sounds like a brief for a major corporation).

Second, it gives the supporters of these programs a back-up position — should Congress actually vote to reduce one of these programs, they can go to WTO (presumably indirectly) to get that organization to overrule the U.S. Congress.

How WTO would handle such a vote by Congress is not clear. One factor would be the degree to which the party in power in Washington fought the issue, but at best this nation is merely a litigant before an international agency. Another factor would be the internal workings of WTO. As Jessica Vaughan pointed out in her *Backgrounder*, the United States rarely wins anything at WTO.

The congressional backlash against using treaties to open doors for more migration, shown in the fight over the Chile and Singapore agreements (which limited the potential damage) may have discouraged OTR from inserting immigration elements in future trade agreements,[14] but huge damage has already been done.

Commissions

Within the framework of making immigration policy domestically, I know of one existing, and three proposed, instances of what I consider indirect policy making. There may be others.

The existing precedent can be found in the work of the U.S. Sentencing Commission, which plays a relatively minor role in the immigration field, while the three proposed commissions, each of which has some serious momentum, would play potentially major roles in immigration policy.

The U.S. Sentencing Commission is an independent agency in the judicial branch of the government. According to its website,[15] it was created by Congress in the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984. The notion was that it would establish guidelines so that the sentences imposed by federal judges would be more uniform than they had been in the past. The seven voting members of the commission are appointed by the president for six-year terms, and are confirmed by the Senate.

Every May the commission sends a long and highly detailed list of amendments to the sentencing guidelines to Congress, and if Congress does not act on them, they become operative on the following November 1. A spokesperson for the commission told me that, of the some 700-800 amendments sent to Congress in the last 25 years, only a couple had been rejected. The mechanism here is that Congress *may* act in this field, but typically does not.

Whether someone is deported or not often hinges on what crimes (over and above violating the INA) he or she has committed and what sentences have been imposed. It is within the power of the commission to make recommendations on these sentences, and this can alter the deportation segment of the nation's immigration policies. The commission has no sway over our admissions policies.

This spring the commission made a recommendation on how to handle a specific class of potential deportation cases, and if the future is like the past, Congress will permit the commission's recommendations to become operative later this year.

In this instance, as I reported in a blog post earlier this year,[16] the recommendation involved a tiny population of interest. It consists of a sliver of a fraction of a fraction of the illegal alien population currently in the United States.

More specifically, according to the *Federal Register,*[17] in order to qualify for a legalization benefit of some kind granted by the courts and made possible by the commission's May 2010 ruling, the individual must:

1) be in the nation illegally, *and*

2) have been apprehended for that reason, *and*

3) be in deportation proceedings, *and*

4) have "resided continuously in the United States from childhood," *and*

5) be one whose "cultural ties provided the primary motivation for the defendant's illegal entry or continued [illegal] presence in the United States" *and*

6) whose presence in the United States will not "increase the risk to the public from further crimes of the defendant."

When a judge encounters a person facing deportation and meeting all six qualifications, according to the Sentencing Commission, "a downward departure may be appropriate on the basis of cultural assimilation." "Downward departure" is a legally appropriate deviation from the usual sentencing guidelines that normally would result in deportation. Thus someone with the six qualifications *could* be eligible for non-deportation, and hence some form of legal presence in the United States, should a judge so rule.

Qualification No. 5 above is central to this recommendation. The idea appears to be that an illegal alien, who arrived as a child, who has successfully grown up in the United States, and is not otherwise in trouble, should be granted amnesty — essentially a mini-judicial version of the proposed Dream Act.

By its nature the impact of the Sentencing Commission on our immigration policies can only relate to some segments of the population of apprehended illegal aliens,[18] but it is a precedent for the *de facto* handing off a bit of policy making to another entity.

In contrast to the slight influence on immigration policy currently available to the Sentencing Commission, the impact of three proposed commissions could, potentially, be much more sweeping.

One of these proposals was made in the text of the amnesty bill introduced by Rep. Luis Gutierrez (D-Ill.) in December 2009; this is the Comprehensive Immigration Reform for America's Security and Prosperity Act of 2009 (CIR ASAP, HR 4321). Another, and perhaps an inspiration for the commission provision

in CIR ASAP, appeared a few months earlier in two reports written and published by the high-powered, deeply funded Migration Policy Institute in Washington. The third is included in the immigration reform package proposed by Senators Harry Reid (D-Nev.), Charles Schumer (D-N.Y.), and Robert Menendez (D-N.J.).

HR 4321 is full of many flaws and would change America's immigration policy drastically.[19] One of these, tucked within the great length of the bill, is the proposed, presidentially appointed Commission on Immigration and Labor Markets. Currently flows of immigrants to be admitted as workers, and of nonimmigrant workers, are both directly controlled by policies set by Congress. HR 4321 proposes a different system for making those decisions, as the following text indicates:

> *Section 501(c) Procedures to Determine Appropriate Level of Employment-Based Immigration for Temporary or Permanent Employment —*
>
> *(1) METHODOLOGY — Not later than 12 months after Congress appropriates funds for its operation, the Commission shall submit to Congress the methodologies it proposes to use to determine the need for immigrant workers and nonimmigrant foreign workers. Congress shall have 90 days to enact a resolution of disapproval. In the absence of such action, the methodologies shall stand approved.*
>
> *(2) INITIAL DETERMINATION OF NUMERIC LEVELS — At the beginning of the first regular session of Congress after the methodologies in paragraph (1) have been approved, but not later than the first day of April, the Commission shall submit to Congress the numeric levels of visas it recommends, by majority vote, to be made available for temporary or permanent employment under the Immigration and Nationality Act and a statement of the reasons therefore.* ***Congress shall have 90 days to enact a resolution of disapproval. In absence of such action, the numeric levels shall stand approved and be implemented at the start of the next fiscal year.*** *[Emphasis added]*
>
> *(3) ANNUAL DETERMINATIONS- Once the initial determination of numeric levels is established, the Commission shall annually thereafter submit to Congress any increase or decrease in numeric levels of employment based immigration it recommends by majority vote, which shall be disapproved by Congress in the same manner as in clause (2), or stand approved for the next fiscal year.*[20]

In short, the commission, whose only task — all year long — would be to study and make recommendations on immigrant and nonimmigrant admissions levels among worker migrants, would give the Congress all of 90 days to react to these recommendations. This would mean that both the relevant committees, and then the full chambers of both the House and the Senate, would have to agree to block the commission's recommendations, otherwise they would go into effect. It looks very much like a *de facto* plan to take away those decisions from Congress unless the commission did something so drastic that Congress would be forced to act.

Asking Congress to consider a proposal in committees, then on the floors of both chambers, and perhaps in conference, all within 90 days is about like asking your teenager to get out of bed at 6 a.m. every morning. It can be done, but not easily.

The Sentencing Commission gives Congress six months to act on its recommendations, not the three months of HR 4321.

The Gutierrez bill contains one of those proposals where Congress *may* act, not where it must act before any change takes place. If it does not act, the commission's recommendations go into effect. I think this is bad policy, and highly likely to open the doors to even more migrants, more than we would have if Congress made the decision in the usual manner, directly.[21]

The Migration Policy Institute's (MPI) proposal is for the creation of a Standing Commission on Labor Markets, Economic Competitiveness, and Immigration. The Commission's proposed creation is suggested in two long MPI reports, in which there is at least one splendid suggestion: that the migration of needed workers (however that is defined) be separated from "employer-defined demands for foreign workers."[22] I favor such a separation because of the unusual power an "employer-defined" program gives to employers over the workers, particularly in America's nonimmigrant worker programs.

Clearly if you are going to remove, as a deciding factor, employers' demands for workers, you need to substitute something else, and that is the crux of the problem. In fact, in this proposal one can glimpse the shadow of an immigration policy decision made in the 1965 Immigration Act,[23] largely put together and pressed by the then very young Sen. Ted Kennedy (D-Mass.).

The easy part of the decision making at the time was the elimination of the country-of-origin quotas that previously had shaped our immigration policies; they had become extremely unpopular, and appropriately so.

But if immigration was to continue to be limited, and that was clear, there had to be an alternative

way of selecting who could come. Kennedy and his allies decided that some people could be admitted without regard to numerical quotas, notably immediate relatives of U.S. citizens. As for those whose admissions were to be limited, Congress decided that most would be in several classes of other relatives of U.S. residents, and some would-be workers requested by employers. The generous allocations of relative-immigrants led to our current system of chain immigration, with many of the chains operating in the framework of relatively lightly educated families with links to both the United States and to their countries of origin.

I think that the emphasis on family immigration, the nepotism principal, was a mistake; getting away from the country-of-origin selection system was needed, but it came at what I consider both an unexpected and heavy price.

My sense is that a somewhat similar situation could be on the horizon if the MPI proposal were adopted, as the Standing Commission would be likely to permit far more worker migrants than our current, admittedly clumsy, system produces. I say this because indirect decision making in the immigration business has, apparently, always led to more admissions than a straight congressional decision system.

The members of the MPI-proposed commission would be appointed by the president with the advice and consent of the Senate. The role of the commission is described slightly differently in the two MPI reports that deal with the subject. In the first it says:

> *The Standing Commission would be required by statute to submit an annual report and recommendations simultaneously to the President and Congress. After a specified period for congressional consultation unless Congress acted to maintain existing statutory baseline labor market immigration levels, the President would issue a formal Determination of New Levels, adjusting employment-based green card quotas and preferences and temporary worker visa limits for the coming year.*[24]

While Congress, in one of those "Congress is forced to act on a detailed proposal" situations, could clearly veto the work of the Standing Commission, or could ignore it and let the process continue, the role of the President is less clear. Would he just serve as a rubber stamp to the commission? Would he be able to veto the recommendations? Would he be able to modify them? It is hard to tell.

Two months later the same authors issued another MPI report, again calling for a Standing Commission. This one was titled: "Aligning Temporary Immigration Visas with U.S. Labor Market Needs: The Case for a New System of Provisional Visas."[25] The report advocated a system of provisional visas, in which the alien's status, assuming all went well, morphed from that of a nonimmigrant to that of an immigrant. This would be something like the path followed as some, but not all, H-1B visas become green cards after the passage of time.

That there would be a relationship between the proposed commission and Congress was evident, but, again, the details were not obvious:

> *Provisional visas should be designed to be flexible and responsive to labor market needs. The total number of available in a given year (and hence a proportional number of employment-based green cards down the line)* ***would be set by Congress based on the recommendations of an independent expert Standing Commission on Labor Markets, Economic Competitiveness, and Immigration.*** *The Standing Commission would make regular reports to Congress, at least every other year, to ensure that the number of provisional visas and the types of employment for which foreign workers can be recruited are consistent with the goals of U.S. immigration policy.* [Emphasis added]

Again, the relationship between the proposed Commission and the Congress is uncertain.

The Reid-Schumer-Menendez proposal, as summarized by immigration lawyer Greg Siskind,[26] also calls for the creation of a Commission on Employment-Based Immigration. It "shall have the power to declare an emergency in the immigration system .... If the Commission declares that an emergency exists, the Commission shall recommend proposed adjustments in the employment-based immigration system to remedy the emergency. Congress shall then be required to vote on whether to enact the Commission's recommendations or to disapprove of enacted of the Commission's recommendations."

This commission-Congress relationship is a bit different from those proposed in HR 4321 and in the MPI reports. It would insist that Congress has to act, one way or the other, on a detailed list of recommendations. Congress would presumably not have the option of doing nothing, and letting the recommendations go into effect without lifting a hand, as in HR 4321. The R-S-M proposal sounds a lot like what happens when a Free Trade Treaty comes before the Senate, but in this instance both houses of Congress would be involved.

In contrast to the kind of indirect policy making that I have been discussing on the last few pages, there is a long and generally useful history of congressionally created immigration commissions; in each of these instances the commission's task was to give advice to Congress, which it was free to adopt, reject, or ignore and which, variously, it did.

The first of these, and the only one with a really restrictionist point of view, was the Taft Commission of 1913, which inspired the country-of-origin quotas of the 1920s; nearly 70 years later there was the Select Commission on Immigration and Refugee Policy, chaired by Father Theodore Hesburgh, then President of Notre Dame University, which tilted another way.[27] And there were several others, all simply giving advice to Congress.

The Territories

While Congress's deference to treaties has created what I am sure will be major future problems in immigration policy making, and while the HR 4321, MPI, and R-S-M proposals may be even more troublesome, nothing that Congress has done in terms of indirect decision making has been so dramatic as what it has done with our far-flung island territories.

The United States has five populated[28] island territories: the Commonwealth of the Northern Mariana Islands (CNMI), just north of Guam in the Western Pacific; American Samoa in the South Pacific; Guam; and the U.S. Virgin Islands and Puerto Rico, both in the Caribbean. The first four have been of interest to immigrants and those who would exploit them; Puerto Rico, heavily populated, has produced large numbers of emigrants.[29] (See Table 2.)

Commonwealth of the Northern Mariana Islands. These islands, the most populous of which is Saipan, were successively Spanish, German, and then Japanese colonies before America took them in a bloody battle toward the end of World War II.

America's control of these islands morphed from a wartime military rule to that of a United Nations-approved mandate. That mandate for decades also included the other once-Japanese colonies, including what is now the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. Of these island groupings, only the Marianas opted to keep closer ties to the United States, the other island jurisdictions becoming the quasi-independent, U.S.-subsidized associated states that they are today.

When it was apparent that the Marianas wanted to be under the U.S. flag, allowing its people to become U.S. citizens, the local officials worked out an arrangement with Washington, called the Covenant to Establish the Commonwealth of the Northern Mariana Islands in Political Union with the United States.[30] It was approved by Congress in 1976.

The islands' leaders had said that they were worried that if they did not have control over immigration, the nationwide provisions of the INA might mean that they would be swamped with immigrants in a situation that they could not control. They said, at the time, that they wanted to preserve the culture of the islands. Congress agreed, but included a provision that Congress could, unilaterally, restore its control of immigration at any time.

Thus, Congress agreed to let someone else make immigration policy in the Marianas for what turned out to be 32 years. Indirect immigration policy making, at least in these islands, turned out be a terrible idea.[31] Briefly, this is what happened.

The post World War II political leadership of the Marianas, almost uniformly male and Chamorro,[32] and with only a limited exposure to mainland political concepts, found themselves in a situation where their islands were *inside* the customs territory of the mainland, and thus goods produced there could be sold as "made in the USA," while at the same time they were *outside* of U.S. immigration and minimum wage laws.

This made the CNMI, which had no tradition of manufacturing, the best of all possible worlds for making things and selling them on the mainland within the tariff protections of the mainland. Since this situation was particularly attractive for making clothes — both the capital requirements and the skill levels were modest — this attracted a number of Asian-held clothing manufacturers. (There was no Chamorro or mainland investment or management in any of these factories.)

The CNMI politicians, in this context, then created their own immigration laws, which are best compared to those of the Persian Gulf Emirates. There were no provisions for permanent legal immigration; there were none for naturalization based on residence in the islands. The only migrants allowed were temporary workers, tied to their employers, who would become instantly deportable should they lose their jobs.

As various newspaper accounts confirm, the temporary workers employed by the sewing factories had arrived deeply in debt as a result of their contacts with the provincial labor ministries of Communist

China, worked long hours for low wages, and suffered highly unattractive working and living conditions.[33]

As an added negative complication, most of the temporary garment workers were young single women from China, who had been forced to sign contracts (that they were often not allowed to keep and were often written in a language they did not understand) saying that they could not fall in love or have children. Should they become pregnant, they would face an unhappy three-way choice: 1) return to China and a probable abortion there; 2) get an illegal abortion locally (Roe v. Wade never having been implemented in the islands); or 3) become an illegal alien while in the course of a pregnancy. I am a strong advocate of choice, in these matters, but the choice should be made by the woman involved, not a factory manager. (Some few favored women were allowed by their employers to have babies.)

So here we had a unique situation under the U.S. flag where coerced, illegal abortions were the order of the day. They happened frequently, I have been told. Signs advertising the illegal abortions were, I am told, posted prominently on Saipan, but were hidden in plain sight as they were written in Chinese.[34]

Meanwhile, though scant attention was paid to the coerced illegal abortions, the population explosion brought about by the islands' temporary worker policies was there for all to see. Note the *sevenfold* increase in population of the CNMI between 1970 and 2000 show in Table 2.

The media attention to the islands' policies, after a while, stirred some parts of Congress to pay attention to the matter, but the CNMI politicians, encouraged by the garment manufactures, spent millions of local tax money to hire the notorious, and for a while terribly successful, Jack Abramoff to lobby for the preservation of the CNMI status quo. Abramoff, later jailed and at this writing working for a Baltimore pizza parlor and living in a halfway house, and his lobbying techniques were intriguing enough to inspire a documentary film "Casino Jack."[35]

Abramoff's principal ally, Rep. Tom Delay (R-Texas), the majority leader of the House of Representatives, kept any action regarding the CNMI off the floor of the House for years. DeLay had wanted a totally unregulated guestworker program for the United States, and praised the CNMI program as being a model for the mainland.

The tide began to shift; DeLay left the house under a bit of a cloud; Abramoff went to jail; many of his allies got into serious legal troubles; the sweatshops, no longer protected by the tariff and facing stiff competition from China, closed their operations.

Eventually, with these factors all working and both sides of Congress in Democratic hands after the 2006 election, the re-transfer of immigration regulation, from the CNMI to the feds, was enacted as a segment of a noncontroversial bill, the "Consolidated Natural Resources Act of 2008"[36] and signed into law by President

Table 2. America's Islands: Migration Trends and Populations, 1970 and 2000

Islands	Migration Trends	Population 1970	Population 2000	Percent Change	Migration Authority
CNMI	A very large number of guestworkers	9,640	69,221	718 %	Local, then U.S.
American Samoa	Many guestworkers	27,000	57,000	211 %	Local
Guam	Some guestworkers	86,000	161,000	187 %	Largely U.S.
Virgin Islands	Many guestworkers before 1970*	62,000	109,000	176 %	U.S.
Puerto Rico	Much emigration	2,712,000	3,816,000	41 %	U.S.

* Most of these guestworkers and their families were subsequently granted permanent legal status in a Congressionally-mandated, Virgin Islands-only regularization program in the 1980's.
Population Data: U.S. Census for all except CNMI, see Statistical Abstracts of the U.S., 1972, (Table 1298) and 2003, (Table 1305). Data for the CNMI are from the Population Reference Bureau, at http://www.prb.org/Articles/2003/InfluxofForeignWorkersMasksGrowthofChildPopulationinNorthernMarianas.aspx
Source: Center for Immigration Studies, Washington, DC.

George W. Bush on May 8, 2008. It took another couple of years before the Department of Homeland Security actually started controlling immigration into those islands.

The process by which this bill became law had been a quiet one, and the proper congressional decision was made without any major debate over direct or indirect immigration policy making. In a sense, that was too bad; it would have been useful to have a bit of legislative drama on this point.

To the best of my knowledge, this was the only time that Congress, once it had granted immigration policy making to another entity, decided to reverse its course.

American Samoa. While Congress more or less deliberately gave CNMI control over its immigration policies in 1976, Congress by omission granted sway over immigration to American Samoa. This was a largely unconscious, two-step process.

The first step was to take over these islands from the tribal leaders and install a centralized government. The Deed of Cession from the tribal leaders to the United States in 1900 followed the 1899 agreement among the United States, the United Kingdom, and Germany. Germany took the larger Samoan islands to the west, America the smaller ones to the east, and Britain was compensated by moving some islands near New Guinea from German to British rule. All the islands in question have since become parts of independent island nations, except those in American Samoa.

Until 1956 the American islands were run by the Navy; and then for the next 21 years by the U.S. Department of the Interior, through appointed governors. During these periods mainlanders made all local governmental decisions, including those regarding immigration. In 1977 American Samoans started electing their own governor and legislators, and so islanders have controlled immigration policies since that time.[37]

Meanwhile, in the second step of the process, various mainland immigration laws were written that consistently defined Samoa out of the jurisdiction of the INA.

These arrangements caused little concern for almost a century, until 1999, when a Korean businessman named Kil Soo Lee decided to open a garment factory in Pago Pago, the capital of American Samoa. There was another such factory in the islands at the time, with both taking advantage of the U.S. tariff protections; the first factory used foreign workers (largely from China, I believe) but treated them well enough, so that there were no protests.

Lee had a different management style. Using middleman who charged major up-front fees — as much as $6,000 — to the workers concerned, he imported 250 women from Vietnam, promising them excellent American wages. They all had to borrow money from friends and families to make the trip, and were thus totally dependent on their new employer once they arrived in Samoa — a technique used by the sweatshops on Saipan as well.

Once they arrived, they were placed in a stoutly fenced factory and dormitory site; the place was locked at night. The women soon rebelled and stopped working; Lee, in turn, stopped feeding them. The women, having no funds to buy food, then sent two of their leaders out in the streets to beg food from the Samoans, and, I am told, the Samoans responded generously to the requests.

At about this time I played a fleeting, cameo role as I was monitoring the situation for the Interior Department's Office of Insular Affairs. I heard from the OIA's person on the island, read the quite damning news stories in the *Samoa News*, the islands' sprightly daily, and talked on the telephone with some concerned people.

I remember one evening, after six, learning that the women had been on strike, and had been denied food. Further, it developed, the next morning there would be a hearing involving the women, the employer, the local immigration service, and two lawyers. The one representing the employer was also a member of the legislature; the then-lawyer for the workers (pro bono) was Barry Rose. He told me that if things went badly the next day, the women would be deported and would never have a chance to testify in a U.S. court about their back wages and the illegal up-front payments that they had been forced to make.

Further, he (Barry Rose) had a problem. Not only were the local immigration authorities staunch allies of the employer, the women spoke no English or Samoan; literally no one in American Samoa spoke both English and Vietnamese. How was he going to make a case for them without talking with his clients? The nearest interpreters were presumably in Hawaii, eight hours away by plane.

I had worked at the Office of Refugee Resettlement a few years earlier, and thought that I could enlist some governmental help there, but no one was in the office at that hour, and the crucial event was the next morning.

Then I phoned a Vietnamese woman I knew at ORR who had left the agency and was now working as a freelance translator and interpreter. She knew me well enough to trust that I would pay her after the fact

for her services, and she agreed to do some telephonic translating for Mr. Rose and his clients.

I later learned that her services prevented the immediate deportation, and I paid her something like $185 for her work. I told my colleagues and my boss what I had done, and was told in Washington "that was good of you, David, you did not need to do that."

The reaction from Samoa was different.

Our office's one employee in Pago Pago was furious with me: "you are interfering in a strictly Samoan affair; you had no right to do that." Later at a meeting in Washington that I attended this same woman (probably the only American Samoan woman with an Ivy League degree) said of the nightly lockup of the Vietnamese women: "That is all right; they are different from us."[38]

The pro bono lawyer, on the other hand, was both grateful and bothered by my payment; he insisted that he repay me, which he did.

As to the situation inside the garment factory, we have this published account:

> *When the employees arrived, he [Lee] placed them on grueling schedules in horrid conditions and paid them next to nothing. Then, he kept the workers in line through threats, beatings, starvation, false arrests, sexual assaults, debt repayment schemes, deportation, and other tactics — all enforced by security guards in a gated compound.*[39]

Bear in mind this description is not the prose of some leftie working for the AFL-CIO, it is from a press release written by the FBI during the second Bush administration.

Throughout the situation the Samoan immigration service and the rest of the local government was less than useless. The federal Wage Hour Administration, tipped off by OIA, seized the output of the factory under a seldom-used "hot goods" provision of the labor standards act, and used the moneys obtained to pay back wages. Several of the women involved in the strike who did not want to stay in American Samoa, or return to Vietnam, were paroled into the States by the (mainland) immigration service. And the mainland Justice Department indicted Lee, tried him in Hawaii, and obtained a 40-year prison sentence from the presiding judge.[40]

Lee was convicted of extortion, money laundering, conspiring to violate the civil rights of others, and holding workers to a condition of involuntary servitude.

In reviewing the case on appeal the Ninth Circuit observed, while confirming the conviction and the sentence: "for reasons unknown to this court, American Samoa authorities did not prosecute Lee; however, the United States government did."[41]

In June of this year the Government Accountability Office released a useful report on American Samoa and its immigration policy, which, while not discussing indirect immigration policymaking as a subject, described three aspects of it.[42] While mentioning, gently, 1) the inability of the AS government to prevent human trafficking and abuse of migrants, and 2) the estimates that at least one third and perhaps a half of the population was foreign-born,[43] it focused most of its attention on 3) the Certificates of Identity issued by the Samoan government. These letter-sized documents can be used by residents of American Samoa, who are U.S. "nationals" rather than citizens,[44] to enter the United States.

Since there is minimal passenger traffic from these islands to the United States by sea, people using the Certificates of Identity routinely fly from Pago Pago to Hawaii, which is currently the only air route from the territory to other parts of the United States. Federal officials in Hawaii familiar with the use of CIs by Samoans indicated that they had detected no troubles with misuse of these documents, but that possibility concerned the authors of the report. GAO made no recommendations about the control of immigration into the islands, but it did urge the government in Washington to mount a risk assessment regarding the possible misuse of the CI's.

From all I have read about the AS government, such a recommendation strikes me as highly appropriate. We have, in this instance, granted the power of issuing a passport-type document to a government which has a long history of corruption; further, as the report indicates, the AS government does not even keep computerized records regarding to whom it has issued these documents.

There is a limit to the risk, however, that GAO did not mention. Given the pattern of their issuance and their use, the CIs are highly unlikely to be carried by anyone but a Polynesian, nor by anyone but someone flying into Honolulu. There is a finite supply of Polynesians, and only two flights a week from Pago Pago. So it is a potential threat, but a limited one.

Maybe GAO did not mention this factor because of its usual narrow focus, or perhaps because it is not politically correct to mention ethnicity.

Virgin Islands and Guam. What are now the U.S. Virgin Islands (USVI) were purchased from Denmark in 1917. That was during World War I, and one of the

reasons was a worry that Denmark, a not-powerful neutral in that war, might be pressured by Germany to turn over the islands, which then might be used as bases for Germany's submarines.

At first, as with Samoa, the government of these islands was in the hands of the Navy, and later that of U.S.-appointed civilian governors working with the Department of Interior. One of the tasks of those governments was supervising immigration; prior to World War II there was a great deal of unsupervised migration back and forth between the British and the American Virgin Islands, something that could be done easily with relatively small boats. The Immigration and Nationality Act was formally, but ineffectively, extended to the USVI in 1938 and then, more effectively, on March 1, 1941.[45]

During World War II there was much naval base construction, and in the decades that followed a boom in tourism-related employment. While not actually handing off immigration decision-making to local authorities, the federal government modified the nationwide H-2 program for nonimmigrant workers in such a way that permitted the flooding of island labor markets by workers from relatively nearby British, French, and Dutch island colonies. Soon these workers, few of whom had permanent visas, constituted half the islands' labor force. The House Committee report, cited earlier, reported that the "Down Islanders" were badly paid and that construction and hotel work wages were depressed by this program. Looking back, it foreshadowed what was about to happen to the CNMI, but on a smaller and less extreme scale.[46]

Eventually the Nixon administration decided, appropriately I think, that it would need a local alien regularization program that allowed the conversion of the nonimmigrant workers and their families to immigrant status, a process that I reviewed for the Ford Foundation.[47]

The exploitation of the other islanders by the U.S. Virgin Islanders was troublesome but cannot be blamed on the U.S. government's giving local authorities control over the program.

Guam. It, too, went through a period of Navy and Interior control of the local government, but it is included in the definition of the United States in the INA.

Currently, and for many years in the past, the Guam governor plays a role in H-2B decision making about like that played by a DOL certifying officer.[48] He decides on the appropriateness of employer applications for this group of guest workers. Elsewhere under the U.S. flag there is no such role for local government. I remember a conversation many years ago with the federal Department of Labor's ranking nonimmigrant worker official in Washington; he was unhappy at the lack of rigor in the then-governor's decision making on these visas, saying that his policies on this program were too similar to those made on nearby Saipan.

This, again, is *not* a statutory hand-off of immigration policy making by the Congress; it is a Department of Labor decision that it could reverse within an overall program voted by the Congress.

Decisions of Other Nations

How can a decision by another nation impact America's immigration policies? It is a bit complicated, but the United States is only mildly impacted by such policy changes, compared to say the Schengen[49] community of nations in Europe. There, if an alien is admitted to any of the member states, that alien can travel in and to all the others. Similarly, most European Union nations have arrangements that permit citizens of these nations to live and work in other EU nations without formalities.

Along similar lines, Australian and New Zealand citizens are automatically free to live and work in each other's countries (unless there is a serious criminal charge). Since this covers naturalized as well as native-born citizens, it means that a combination of New Zealand immigration and naturalization policies could impact migration into Australia, and vice-versa.[50]

The United States has no such arrangements (apart from the treaties discussed above) but we do have some policies that once we establish them can be, and have been, modified by other nations.

For example, when the 1965 Immigration Act was written it set a limit of 200 legal immigrants per year from each of the jurisdictions that were then colonies of some other nation, such as the then-British island of St. Lucia.[51]

In 1979 Great Britain granted independence to the island and the 200-per-year limit was erased — with no U.S. input. St. Lucia's migrants to the United States were then controlled within the much broader limits laid on Western Hemisphere migrants generally. As a result of independence, the flow of immigrants from St. Lucia to the United States exploded. Presumably the numerically limited admissions before independence were less than 200, but by FY 1980 annual immigration from that island had risen to 1,193.[52]

Similarly, Hungary decided recently to grant citizenship to 3.5 million ethnic Hungarians living outside that nation[53] and each of these persons will be

eligible to carry a Hungarian passport after January 1, 2011. People carrying such passports will be eligible to come to the United States without visas under the American Visa Waiver Program (VWP); thus the 1.4 million ethnic Hungarians living in Romania will be able to use the VWP, although their ethnic Romanian neighbors cannot. (Hungary is in VWP, Romania is not.)

So the decision of the Hungarian government has added millions of persons to the list of those who can enter this nation visa-free.

Now, it would be possible for Congress to change the laws, and make the ceiling for St. Lucia 200 whether or not it is a nation, and to bar Hungarians not resident in Hungary from the VWP, but both of these responses strike me as unlikely. Both the actions, of Britain and of Hungary, as one might expect, added to the number of people who can come to America, in one category or another.

There have been actions by other nations that restrict migration to the United States, such as the use of exit control by the Soviets in the past, and the presumed use of similar controls by North Korea at the present. But those actions do not limit the role of the U.S. government; one leaving either the old Soviet Union or the current North Korea would still need to be able to secure a visa of some kind to enter the United States.

Summary

There are a number of actual and potential situations in which the advocates of more migration have used (or are using) the seemingly innocuous technique of policy delegation to meet their ends. Pulled together in this report are a series of examples of such mechanisms.

In every instance to date, when these mechanisms became operative, these hand-offs of policy making have led to more migration, usually more exploitation of the migrants, and less control by Congress. In every instance the immigration advocates have proved to be more powerful and probably more skillful than the other side. And in only one, that of the Marianas, has Congress reversed a previous decision to handle immigration policies indirectly.

The siren calls for immigration policy decisions to be made by non-congressional expert commissions should be shunned at all costs.

End Notes

[1] *2009-2010 Congressional Directory, 111th Congress*, GPO, Washington, 2009, p. 589.

[2] Jessica Vaughan, "Be Our Guest: Trade Agreements and Visas," Center for Immigration Studies, Washington, 2003, http://www.cis.org/TradeAgreementsVisas. For another view, see Ruth Ellen Wasem, "Immigration Issues in Trade Agreements," Congressional Research Service, Washington, 2005, http://www.au.af.mil/au/awc/awcgate/crs/rl32982.pdf.

[3] "TN Status," http://en.wikipedia.org/wiki/TN_status.

[4] A Canadian friend of one of my relatives found out about this the hard way; an inspector at the port of entry apparently decided that the carload of people, heading back to their home in Miami after a vacation in Canada, looked more like prospective immigrants than a temporary TN worker and his family. The family was denied entry, and his employer's lawyers had to be enlisted, later, to resolve the situation, but only after a substantial delay and substantial expenses.

[5] Admissions data are from the *2008 Yearbook of Immigration Statistics* and predecessor volumes, Table 25.

[6] Annual Report of the Visa Office, U.S. Department of State, "NIV Workload by Category FY-2009," http://www.travel.state.gov/pdf/FY2009NIVWorkloadbyVisaCategory.pdf.

[7] The TN visa is issued, typically, only once every three years; during that period a visa holder or a Canadian in that status might cross the border once or several times. Each data set relates to a workload concept, the admission of an alien or the issuance of a visa, rather than being a count of persons.

[8] Wasem, *op. cit.*, p. 8. There is also a class of Australian nonimmigrant investors, E-3, that was created about the same time as the passage of the Free Trade Agreement with Australia, but this decision was made directly by Congress, and not through a treaty mechanism. See Wasem p. 9.

[9] Office of Immigration Statistics, "Nonimmigrant Admissions to the United States: 2009," Department of Homeland Security, Washington, DC, 2010, Table 2, http://www.dhs.gov/xlibrary/assets/statistics/publications/ni_fr_2009.pdf.

[10] *Ibid.*

[11] Jochum Shore & Trossevin, PC. "Legal Analysis: Proposed Changes to Skilled Worker Visa Laws Likely to Violate Major U.S. Trade Commitments," The National Foundation for American Policy, 2010, http://www.nfap.com/pdf/GATSLegalAnalysis_NFAPPolicyStudy_June2010.pdf.

[12] Vaughan, *op. cit.*, p. 1.

[13] Wasem, *op.c it.,* p 6.

[14] Vaughan, *op. cit.,* p 9.

[15] http://www.ussc.gov/index.html.

[16] "Micro-Amnesty for Some Illegals Pending Before Congress," http://www.cis.org/north/downwarddeparture.

[17] The May 14, 2010, edition, http://www.ussc.gov/FEDREG/20100511_Federal_Register_Notice.pdf.

[18] A review of 550 pages of proposed amendments submitted by the commission to Congress during the years 1988 to 1997 shows that four of them dealt with deportation, some calling for downward departures and some for upward departures in the sentencing guidelines, and all apparently quite narrow in scope. For the full text, see http://www.ussc.gov/2004guid/APPCVOLI.pdf.

[19] For the full text of the bill and a number of CIS comments on it, see http://cis.org/Amnesty2010/CIRASAPHR4321.

[20] See http://thomas.loc.gov/cgi-bin/bdquery/D?d111:4321:./list/bss/d111HR.lst.

[21] Section 130 of HR 4321 would also create another commission, the United States-Mexico Border Enforcement Commission, but it could only make recommendations to the Congress; Congress would have to act before any of them came into being, and Congress would be free to ignore the suggestions.

[22] Demetrious G. Papademetriou, Doris Meissner, Marc R. Rosenblum, and Madeleine Sumption, "Harnessing the Advantages of Immigration for a 21st-Century Economy: A Standing Commission on Labor Markets, Economic Competitiveness, and Immigration," Migration Policy Institute, May 2009, p. 8, http://www.migrationpolicy.org/news/2009_5_13.php. I have known both the senior authors, Dr. Papademetriou and former INS Commissioner Meissner, for a long time and think highly of them both; but frequently, as here, disagree with them.

[23] For the full text, see: http://library.uwb.edu/guides/USimmigration/79%20stat%20911.pdf.

[24] Papademetriou et al., *op.cit.,* p. 16.

[25] Demetrious G. Papademetriou, Doris Meissner, Marc R. Rosenblum, and Madeleine Sumption, "Aligning Temporary Immigration Visas with U.S. Labor Market Needs: The Case for a New System of Provisional Visas," Migration Policy Institute, July 2009, p. 14, http://www.migrationpolicy.org/news/2009_7_24.php.

[26] There are several summaries of this proposal available; this one can be seen at http://www.ilw.com/articles/2010,0429siskind.pdf.

[27] For a brief comment on the Taft Commission, and a more detailed analysis of the Select Commission, see Vernon Briggs, "Report of the Select Commission on Immigration and Refugee Policy: A Critique," Cornell University ILR School, 1982, http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1035&context=hrpubs.

[28] America also has a number of islands that do not have permanent populations and are, for all practical purposes, forbidden to have non-governmental civilian settlements, such as Baker, Howland, Johnston, Midway, and Wake in the Pacific, and Navassa in the Caribbean. Detailed immigration policies are thus moot in these places. (Midway, however, has some nonimmigrant Thai workers employed by a government contractor.)

[29] I have had direct and indirect contact with the islands and their immigration policies for more than a quarter of a century, and presumably picked up some biases along the way. I was the (part-time) Washington correspondent of the late Fiji-based newsmagazine, *Pacific Islands Monthly,* from 1984 to 1997; from 1997 to 1999 I was the public affairs officer of the Department of Interior's Office of Insular Affairs. I frequently dealt with immigration issues in both positions; while I was at Interior the CNMI sweatshops dispute was at its height. I also wrote about island immigration matters for both CIS and for *Interpreter Releases,* the trade paper of the immigration bar. While at Interior I spent a considerable amount of time in the CNMI and Guam, but never reached American Samoa. Earlier, in 1983, I received a grant from the Ford Foundation to examine the mini-amnesty program run in the Virgin Islands.

[30] See http://cnmilaw.org/covenant.htm.

[31] This long and complicated story has been extensively documented. See, for example, three government publications: 1) "Hearing on S.1100 and S. 1275, Senate Committee on Energy and Natural Resources," U.S. Senate, March 31, 1998; 2) "Office of Insular Affairs, Federal-CNMI Initiative on Labor, Immigration, and Law Enforcement in the Commonwealth of the Northern Mariana Islands, Third Annual Report," U.S. Department of the Interior, July 1997; and 3) U.S. Commission on Immigration Reform, "Immigration and the CNMI," 1997. These provide evidence of what happened, and the policy positions of both island and mainland leaders.

For journalistic coverage of the grim condition of the sweatshops, see, for example: 1) Terry McCarthy "Give Me Your Tired, Your Poor ... And the Northern Marianas — a U.S. possession — Will Put Them to Hard Labor," *Time*, February 2, 1998; 2) William Branigin, "Northern Marianas Not a Workers' Paradise," *The Washington Post*, October 14, 1997, and "U.S. Pacific Paradise is Hell for Some Foreign Workers," August 29, 1994; and 3) Philip Shenon, "Saipan Sweatshops Are No American Dream," *The New York Times*, July 18, 1993.

[32] The insularity of the CNMI leadership can be contrasted to that of Guam, in which there is a mix of successful politicians of different backgrounds, almost like that of Hawaii. While most elected officials in Guam are Chamorros, the indigenous people, Guam has also elected *haoles* (mainlanders), Filipinos, and people of mixed origins to high office; women, too, play a much larger political role in Guam than in CNMI. In contrast, except for a few indigenous women in the legislature, all elected officials in the CNMI have been indigenous men.

[33] While working at Interior, I interviewed more than 50 former garment workers who had managed to get to Guam, illegally, where they (largely successfully) were applying for political asylum. For more on how these various systems worked, see my long CIS report, http://www.cis.org/USIslandTerritoriesInternationalMigration, and ABC-TV's "20-20" program on the Saipan garment industry, broadcast on March 12, 1998.

[34] The pattern of coerced illegal abortions was brought to a close a few years ago, while the sweatshops were still operating, but not through any CNMI action, nor by decisions by the mainland executive and legislative branches. A class action lawsuit by a mainland firm, on behalf of the workers, prevailed in the federal courts. As a result, garment workers who became pregnant could have their babies, in China, leave them with grandparents in China, and return to their jobs in the islands. The sweatshops are now closed, again by external forces — namely the unrestricted shipment of garments made in mainland China to U.S. stores; this happened because of the admission of China to the World Trade Organization. The comparatively high wage level in the CNMI was such that it made no economic sense to continue to make clothes there. For a description of the class action suit, from the workers' point of view, see http://www.globalexchange.org/campaigns/sweatshops/saipan/.

[35] For reviews of this film, see http://www.cis.org/north/casinojack.

[36] http://frwebgate.access.gpo.gov/cgibin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ229.110. My former employer when we both were at Interior, Al Stayman, was the congressional staff member who shepherded the bill through to passage.

[37] See the American Samoa homepage of the Department of the Interior's Office of Insular Affairs, at http://www.doi.gov/oia/Islandpages/asgpage.htm.

[38] That incident was just one of several that reminded me that the Civil Rights Revolution took place only on the mainland of the United States.

[39] "Anatomy of an International Human Trafficking Case," a July 16, 2004, press release from the Federal Bureau of Investigation, http://www.fbi.gov/page2/july04/kisoolee071604.htm.

[40] For more on the trial, see http://www.justice.gov/crt/crim/trafficking_newsletter/antitraffnews_aug05.pdf.

[41] See the Circuit Court's decision, at http://cases.justia.com/uscourtofappeals/F3/472/638/473342/.

[42] "American Samoa: Performing a Risk Assessment Would Better Inform U.S. Agencies of the Risks Related to Acceptance of Certificates of Identity," GAO-10-638, June 2010, http://www.gao.gov/new.items/d10638.pdf.

[43] The overwhelming majority of the foreign-born in American-Samoa are from the nearby nation of Samoa (formerly Western Samoa) and are ethnically and linguistically identical to the majority population.

[44] Except for perhaps a handful of residents of the CNMI, residents of American Samoa are, currently, the only U.S. nationals. There were U.S. nationals, decades ago, living in both the Philippines and the U.S. Canal Zone, but those places are no longer under the U.S. flag. A U.S. national has virtually all the rights of a U.S. citizen (except voting on the mainland) and can naturalize under streamlined requirements.

[45] Most of this section of this report is drawn from "Nonimmigrant Alien Labor Program of the Virgin Islands of the United States," a special study of the Subcommittee on Immigration, Citizenship, and International Law of the Committee on the Judiciary, House of Representatives, Ninety-fourth Congress, first session, October 1975, and reprinted by the University of Michigan Library.

[46] There was a little less tension, I think, in the USVI, because while the resident population was not very generous to the incoming workers — denying their children the right to attend the public schools, for instance — both the dominant population and the incoming workers in the USVI were English-speaking, and both were black. In contrast, in the CNMI, the resident population spoke a different language than the Chinese migrants, and the two populations had different ethnic and cultural backgrounds.

[47] My report on the subject, "The Virgin Islands Alien Legalization Program: Lessons for the Mainland," New TransCentury Foundation, 1983, is hard to find outside the libraries of the Ford Foundation and those in the Virgin Islands.

[48] See the USCIS fact sheet on the H-2B program, at http://www.uscis.gov.

[49] Schengen is a village in Luxembourg where five European nations agreed in 1985 to eliminate internal borders among the five; if an alien had been admitted to Belgium, for example, he or she could travel to any other Schengen nation without inspection as could citizens of the five nations. The initial signatories were Belgium, France, Germany, Luxembourg, and the Netherlands; 20 others have since joined the arrangement.

[50] E-mail communication to the author from Jim Williams, Minister/Immigration, the Australian Embassy in Washington, June 2010.

[51] Under that law there was also a class of immediate relatives of U.S. citizens who were admitted outside the numerical limits.

[52] Data are from "1980 Statistical Yearbook of the Immigration and Naturalization Service," U.S. Department of Justice, 1981, Table 6. INS did not report admissions from St. Lucia, and several similar entities, separately, until 1979. Most of the migration from St. Lucia to the States goes to the U.S. Virgin Islands.

[53] "Hungarians from non-EU States could come to work in Britain," *The Telegraph*, June 20, 2010, http://www.telegraph.co.uk/news/worldnews/europe/hungary/7841839/Hungarians-from-non-EU-states-could-come-to-work-in-Britain.html.

Backgrounder

Beware of Indirect Immigration Policy Making

By David North

Most of the dialogue on national immigration policy, understandably, is focused on *direct* federal government policy making; that is, when Congress passes a law or votes appropriations, when the executive makes policies within the law, and when the judiciary interprets the law.

But there is another aspect of national policy making in which the U.S. government hands off migration decision making to some other entity, such as to a huge international organization like the World Trade Organization (WTO), or to a tiny government, such as that of American Samoa. These arrangements should concern all low-migration advocates, particularly since the mass migration people are proposing commissions to help make immigration policy.

My strong sense is that these *indirect* pieces of policy making nearly always favor the open-borders types; typically the other side is better placed and better able to manipulate these situations than those of us who dislike loose immigration policies.

Center for Immigration Studies
1522 K Street, NW, Suite 820
Washington, DC 20005-1202
(202) 466-8185 • (202) 466-8076
center@cis.org • www.cis.org

Center for Immigration Studies
1522 K Street, NW, Suite 820
Washington, DC 20005-1202
(202) 466-8185
center@cis.org
www.cis.org