

# U. S. Immigration Reform in a Historical Perspective

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## INTRODUCTION

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## INTRODUCTION

Donald Trump, who had never served in any elected or appointed positions at any level of government, was elected as the 2016 Republican presidential candidate, then elected as the 45th President of the United States, predominantly reflecting the dissatisfaction of white working-class voters. Many of these voters feel that they have been left out of American politics, as mainstream Republican candidates during the primaries, along with Democratic candidate Hillary Clinton, targeted the emerging groups of voters, most of whom are minorities.

Trump attracted an unexpectedly large number of voters, including many who traditionally supported the Democrat, with his proposals to build a wall along the Mexican border to be financed by the Mexican Government, to bar immigrants from any countries that harbor “terrorists,” and to have allies pay for the security provided to them by American forces. The fact that he narrowly defeated Clinton by taking the battleground states that suffered most in the economic downturn with his extremist rhetoric suggests that immigration issues will continue to take priority on the political agenda in the next administration.

Why immigration issues occupied such a central position in the 2016 presidential elections can be understood in terms of political trends to date. It is not true that previous administrations intentionally avoided the task of solving this issue, or that a new question suddenly emerged during this year’s election. Every previous administration, including the current Obama Administration, has tried to provide an answer to the failed policies, but in vain. The search for a solution became especially difficult after Congress began to show increasing polarization, with ever decreasing ideological overlap and fewer members

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venturing across party lines. While immigration reform has been stalemated for decades, the fate of a large number of undocumented immigrants is left in the balance.

This article intends to sketch the political landscape of immigration reform, and to establish the basis for further studies on immigration policy under the incoming administration. In what follows, let us first survey the historical trends of immigration into the United States after the Immigration and Naturalization Act Amendments of 1965, and then trace the legislative attempts at immigration reform from the Reagan through the Bush administrations. Finally, let us analyze the efforts to mobilize the political actors for immigration reform through integrating local governments and civic activists under the current Obama administration.

## **1. THE STATE OF UNDOCUMENTED IMMIGRANTS**

### **1) An Invitation to Undocumented Immigrants**

The United States began as a nation of immigrants, and the proportion of immigrants in the population grew as the spatial and economic expansion of the new nation required ever more labor. The numbers who obtained lawful permanent resident status increased steadily and crossed the million mark early in the 20th century (DHS 2014, Table 1). The arrival of such large numbers of immigrants indicates that the United States had extended long-standing invitations to immigrants from an earlier time, and continued to welcome them as long as the need existed.

While the demand for immigrants continued, the American people did not welcome those who came from non-WASP (White, Anglo-Saxon, and Protestant) areas and threatened to alter the existing ethnic and racial profile of the young nation. Negative reactions to new waves of immigrants first emerged on the east coast in opposition to southern and eastern European immigrants, many of whom were Catholic and/or non-English speakers. While, on the west coast, especially in the state of California, Chinese immigrants drew hostility as early as the mid-19th century.

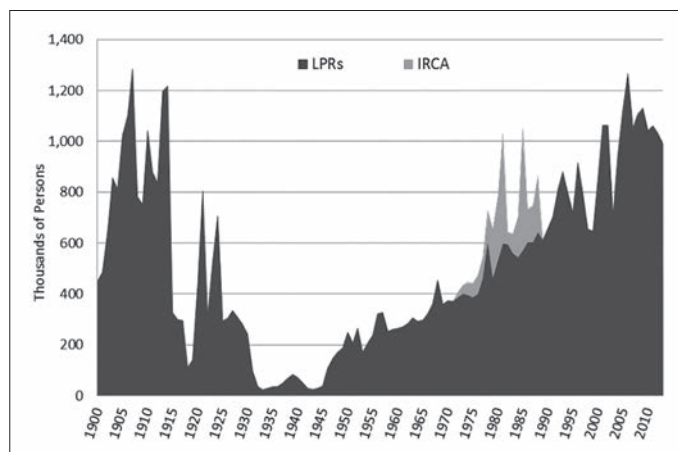
Despite the large contribution of Chinese workers to the construction of the intercontinental railroad from the west coast end, the state of California decided to restrict immigrants from China and Mongolia inside of their state boundary as early as 1858 (Statute of California, Chap. CCCXIII). The federal government, which claimed exclusive right of control over the border, forestalled this decision by the Californian state, legislating its own restriction in its place under the Page Act of 1875, which prohibited forced labor and prostitutes from entering the U.S. from China. Such restrictions were followed by the Chinese Exclusion Act of 1882, which totally banned immigration from China except in very specific cases.

As Chinese workers were banned from entering the United States, continued domestic demand for inexpensive labor needed some bodies to fill the gap. Japanese immigrants started to replace Chinese workers, but a similar antagonism against Asians soon emerged

in California, and eventually the Japanese government settled a gentlemen's agreement to voluntarily restrict emigration from Japan. Notwithstanding the practical closure of the border against Asian immigrants, a demand for broader immigration restrictions grew as a national concern. In 1921, a new immigration act set the upper limit of immigrants from each country at three percent of the registered population as of 1910. This quota was further narrowed, in 1924, to two percent of the registered population of 1890.

The waves of increasing restrictions were mainly targeting southern and eastern European immigrants, many of whom were Catholic and thus regarded as culturally unwelcome. However, as a result of the Act of 1924, Japanese immigration, already further reduced in the gentlemen's agreement, was totally banned. Remaining domestic demand for inexpensive labor was then met by the inflow of Filipino workers who, coming from a territory then under American control, were not regarded as foreign immigrants.

This history shows the underlying nature of American population growth. The large North American continent required increased numbers of people to occupy the land as the nation expanded westward, but population growth did not follow the pattern that early settlers had hoped for, i.e., maintaining the dominance of the original Anglo-Saxon stock. Conservative Americans feared cultural transformation, while the economic demand for inexpensive labor continued to pull immigrants from the old world. A nuanced balancing act was required between the two sides until the Immigration Act of 1924 finally closed the border against "undesirable" immigrants. The ensuing Depression period did not need drastic immigration policy changes, since the flow had already stemmed during the



**Figure 1 Annual Legal Permanent Resident (LPR) Admission and Status Adjustment (FY 1900–2010)**

Source: *Yearbook of Immigration Statistics*, from Kandel and Wasem (2016, 2).

previous decade.

As the United States entered the Second World War, expanding wartime economy with less domestic labor force remaining after conscription solved the unemployment problems of the Great Depression. Suddenly, the agricultural sector struggled to fill the demand for seasonal labor. A new program of introducing Mexicans as seasonal workers was initiated. In 1942, the Bracero Program was created by executive order. This was not an immigration program per se, but was specifically a seasonal labor scheme. After the end of each harvest season, Mexican workers were meant to return home and not to continue treading on American soil.

## **2) Reasons behind the Open Border**

Increasing numbers of Bracero workers remained in the United States after their contracts ended, either because of continuing employment opportunities in the United States attracted them, or because they had started new families during their stays. At the end of World War II, the young male population absented by military service began to re-enter the domestic work force, driving female workers who had been mobilized for production during the war back to the private sphere. However, America's entry into the Cold War and the breakout of the Korean War convinced Congress to formally renew the Bracero Program, instead of terminating it, through Public Law 82-78 in 1951. This law was an amendment to the Agricultural Act of 1949 (Public Law 81-439), which aimed to provide a supply of inexpensive farm workers without threatening overall labor market conditions.

In order to protect the regular American labor force against the continued introduction of Mexican farm workers, the Act stipulated the following conditions for recruiting foreign labor: the unavailability of equivalent domestic workers, no negative influence on domestic workers, and the employers' reasonable efforts to attract equivalent American workers before recruiting foreign workers. Mexicans already in the United States could also be employed under this program if they were legal residents, and employers were responsible for checking the legal status of their workers based on "reasonable" ground or through "reasonable" inquiry (PL 82-78, Section 504). Even if the employed Mexican did not report back to the recruitment center at the end of his contract, moreover, employers were only asked to pay back to the government the partial cost of transportation of the workers (PL 82-78, Section 502 (3)).

Even though the Act required employers to prioritize the employment of American workers, weak sanction of the Bracero Program put on employers allowed them to hire Mexicans for lower costs and at sub-standard conditions, which in turn lowered working conditions for domestic farm workers. The Bracero Program was finally terminated in 1964, but the informal inroads to the United States labor market built during this period remained, as did the Mexicans who found jobs and families in the United States. Farm workers started to be included in the Fair Labor Standards Act of 1966, gaining a

minimum wage of one dollar/hour. It was not until 1978, however, that the minimum wage set for farm workers was brought up to the level of other industries (DOL n.d.).

The end of the Bracero Program coincided with the enactment of the Immigration and Naturalization Act of 1965 (PL 89–236), amending the previous Immigration and Nationality Acts. The new act set an overall immigration ceiling at 290,000 and divided them between the Eastern and Western Hemispheres at 170,000 and 120,000, respectively. In the Eastern Hemisphere, a ceiling of 20,000 was set for any one country, as well as categorical ceilings for overall numbers, neither of which applied to the Western Hemisphere. This immigration reform departed from the previous rule with country-specific restrictions, and was meant to send a message to the international community divided by the Cold War that the United States was in line with the fundamental human rights of freedom of movement that the United Nations had endorsed, and that it sought to distinguish itself against the policies of the Soviet Union.

The amended Act divided immigrants who could be accepted into prioritized groups, including four family-sponsored categories and two employment-based categories. These consisted of the following: first, unmarried children of citizens aged 21 and older (20%); second, spouses and children of Legal Permanent Residents (20%); third, married children of citizens (10%); and fourth, siblings of adult citizens (24%). Between the second and the third family-sponsored categories came the first category of the employment-based preference, namely those with exceptional abilities (10%). After the family-sponsored categories came the second employment-based category, under which immigrant workers could be accepted when there were insufficient domestic workers to fill the jobs (10%). The final category, conditional entries, was set aside to accept refugees (6%); this would later be reframed under the Refugee Act of 1980 (PL 96–212).

The immediate family members of U.S. citizens, namely spouses, unmarried children under 21, and parents of citizens 21 and older, were placed outside of numerical caps, as were special migrants with diplomatic purposes. In 1976, categorical preferences were extended to cover immigrants from the Western Hemisphere, and, in 1978, hemispheric divisions were terminated and a single worldwide ceiling of 290,000 was set instead. The Immigration Act of 1990 tried to further diversify the source of immigrants and set a new diversity category to invite immigrants from countries that had not traditionally sent many immigrants to the United States by using a lottery.

The departure from the previous geographical preference system, however, received strong opposition, especially from the southern states, partly due to their historically conservative stance, but more pragmatically from the fact that they share a so-called “porous” border with Mexico. In the next section, Let us outline how this porosity has worked in terms of the undocumented population movement.

## 2. FAILED EFFORTS IN PAST CONGRESSES

### 1) Reagan's Immigration Reform of 1986 (Public Law 99-603)

Discontinuation of the Bracero Program did not mean that American society no longer needed inexpensive workers, which was clearly indicated by the differential treatment of the Western Hemisphere in the Immigration and Naturalization Act Amendments of 1965. As shown in Figure 2, the 1965 act opened American borders to increasing numbers of immigrants. Among them, Figure 3 highlights the fact that Mexican immigration increased

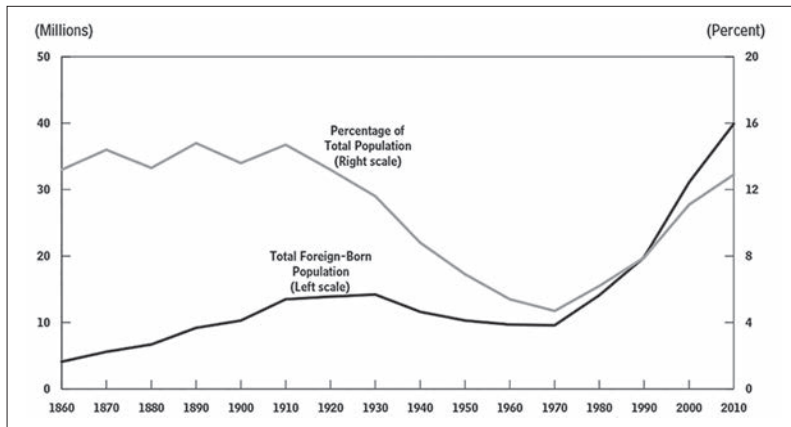


Figure 2 Foreign-Born Population in the United States, 1860 to 2010

Source: CBO (2013, Exhibit 1).

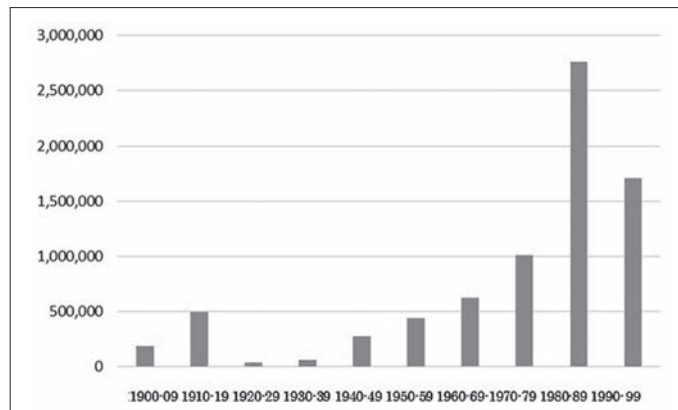
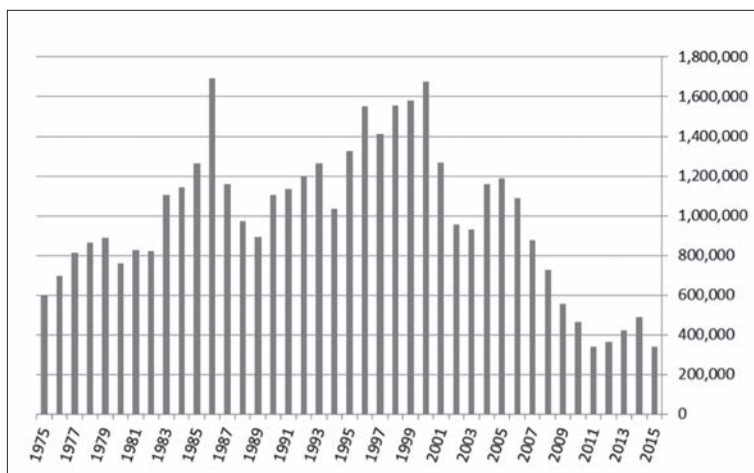


Figure 3 Number of Legal Permanent Residents from Mexico

Source: Data gathered from DHS (2016, 8 and 10).

steadily from the 1960s through the 1980s. Most of these workers were supposed to be absorbed into the unskilled labor market left open by the ending of Bracero Program. Besides Mexicans, immigration from Caribbean and Central American countries also expanded during the same period from 98,569 in the 1960s to 120,376 in the 1970s, and then to 339,376 in the 1980s (DHS 2016, 8–11).

Such a rapid expansion of legal immigration from Central America was beyond the expectation of American society, but given the moderate speed of processing, one can only assume that a larger number of potential immigrants were waiting for admission to the United States. Many of those who could not expect to obtain immigration visas soon enough attempted to enter the United States illegally, especially through Mexico, which shares a long land border with the United States. Figure 4 shows the numbers of people caught by the Border Patrol attempting to cross the border into the United States. Given the long natural border between the two countries, however, these numbers should be understood to reflect only a fraction of actual undocumented entries to the United States. As stated above, the current stock of a large number of undocumented residents in the United States also includes those who entered the United States legally and extended their stays without permission.



**Figure 4 U.S. Border Patrol Apprehensions**

Source: Kandel and Wasem (2016, 18).

Faced with the societal awareness that an increasing number of undocumented immigrants were living within the borders, Congress finally passed the Immigration Reform and Control Act (IRCA) in 1986 to tackle with this question during the Reagan administration. The first part of the law, “Control of Illegal Immigration,” and its second

part, "Legalization," were meant to deal with the previously accumulated effects of undocumented immigrants. The next part, "Reform of Legal Immigration," stipulates how to prevent the future attempts of illegal entries, so that the country could put the undocumented immigrant question to rest.

"Closing the back door" was an expression used to describe the strengthening of border controls in order to stop the flow of undocumented migrants over the Mexican border. But closing the "back door" could be effective only if the demand for inexpensive labor was met through the "front door," namely raising the overall working conditions for manual laborers. Faced with an economic downturn, however, the United States did not have the volition to consider the question of global economic imbalance, and, instead of protecting the rights of all workers including immigrants, people shifted their interest to the rights of unionized workers. This further expanded the informal labor market, hitherto only supplied by undocumented immigrants.

Besides leaving incentives for undocumented workers, the 1986 Act failed to address the problem of those who were trapped in between the systems. The IRCA stipulated that undocumented immigrants who entered the United States before January 1, 1982 would be provided the opportunity to legalize their status, and that those who tried to illegally enter the United States in the future would be faced with stricter controls at the border.

Lawmakers did not give any consideration, though, to those who had entered the United States after the cut-off date of January 1, 1982, but before the actual enactment of stricter border control. These undocumented migrants could not expect timely legalization, but did not want to return home either, knowing that it would be much more difficult to return to the United States once the new law was enacted. It was also hoped that the fact that the United States gave amnesty once would mean that there might be another chance for amnesty in the future, as it is a well-known fact that large numbers of undocumented immigrants continued to live in the United States. Cautiously optimistic, many Mexicans continued to cross the border anyway, hoping to become future beneficiaries. Thus, instead of lowering the number of undocumented immigrants after 1986, undocumented entries continued to grow.

Another loophole of the immigration system stems from the division of authority between federal and state governments, which is inherent in the federal system. A strict document check is conducted upon entry to the country, but once inside, immigrants freely move around the United States unimpeded; they are not physically obliged to exit the United States when the visa period expires. Checking the legal status of residents does not fall under the responsibility of state or local governments; but these governments are the providers of social services, not only time-pressed emergency response services but more general public services including public education.

Moreover, as in the case of the Bracero Program, even under the IRCA, employers were able to avoid the penalties for having employed undocumented workers, as long as they could claim that there was no rational way to know that the employees were



undocumented. The possibility of the Act provoking negative reactions toward minorities had been expected, and thus Section 274 B of Public Law 99–608 specifically discusses how to prevent discrimination based on national origin or citizenship status.

Still, the IRCA caused legal immigrant workers or even native-born minority workers to experience discrimination from employers trying to avoid the penalties of employing illegal immigrants even if unknowingly. It was often suggested that if the names of the job interviewees sounded Latino/a or their complexion was brownish and they “looked like” aliens, then employers refrained from offering them jobs in order to avoid potential legal trouble.

## 2) A Patchwork of Immigration Reforms

The limited effectivity of the IRCA of 1986 in deterring future undocumented immigrants was already obvious even before it took effect. Henceforth, subsequent administrations initiated the following efforts one after the other trying to fix the problems in a patchwork fashion. The following table shows a timeline of immigration law/policy developments provided by the Migration Policy Institute, which has been supplemented by the author’s updates:

**Table 1 Key Immigration Laws and Policy Developments since 1986**

1986	Immigration Reform and Control Act (IRCA)
1988	Anti-Drug Abuse Act (ADAA)
1990	Immigration Act of 1990
1994	Violent Crime Control and Law Enforcement Act (VCCLEA)
	Immigration and Nationality Technical Corrections Act of 1994
	Operation Gatekeeper
	Proposition 187 (California)
1996	Antiterrorism and Effective Death Penalty Act (AEDPA)
	Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)
	Personal Responsibility and Work Opportunity Reconciliation Act of 1996
1997	Nicaragua Adjustment and Central American Relief Act (NACARA)
	Basic Pilot Program
1998	Haitian Refugee Immigration Fairness Act (JRIFA)
1999	Codifying US obligations under the Convention Against Torture
2000	INS guidance for prosecutorial discretion
2001	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act
2002	Enhanced Border Security and Visa Entry Reform Act (EBSVERA)
	Homeland Security Act
	National Security Entry-Exit Registration System (NSEERS)
	First 287 (g) agreement with the state of Florida
	Child Status Protection Act (CSPA)

2003	Student and Exchange Visitor Information System (SEVIS)
2004	Intelligence Reform and Terrorism Prevention Act of 2004 (IPTRA) US-VISIT program launched
2005	REAL ID Act Secure Border Initiative launched Operation Streamline launched Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (House passed)
2006	Comprehensive Immigration Reform Act (Senate passed) Secure Fence Act 6,000 National Guard troops deployed to the Southwest border
2007	A new Comprehensive Immigration Reform bill (died in the Senate) Deployment, Relief, and Education for Alien Minors (DREAM) Act (failed in the Senate) Legal Arizona Workers Act (Arizona, constitutionality upheld in 2011) Participation in 287 (g) expands
2008	ICE introduced the Secure Communities program Highly visible worksite enforcement operations by ICE
2009	ICE new guideline for workplace enforcement
2010	Support Our Law Enforcement and Safe Neighborhoods Act (Arizona SB 1070)
2011	Alabama, Utah, Georgia, South Carolina, and Indiana enacted laws similar to SB 1070
2012	Deferred Action for Childhood Arrival (DACA) announced
2014	Expanding DACA announced Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) announced Texas v. United States (Texas and 25 other states)

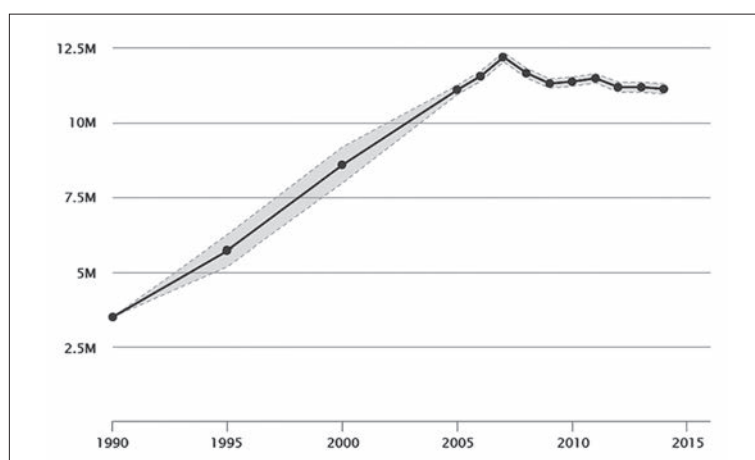
Source: MPI (2013b), supplemented by the author.

The last comprehensive immigration-related legislation was passed during the Clinton administration, with the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), but also was addressed under the Antiterrorism and Effective Death Penalty Act (AEDPA) and Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In his memoir, President Clinton lists some of the immigration control measures his administration enacted:

- Increasing the Border Patrol over 35%.
- Deploying underground sensors, infrared night scopes, and encrypted radios.
- Building miles of new fences.
- Installing massive amounts of new lighting.
- Removing 30,000 illegal workers from jobs across the country since 1993 (Clinton 1996, 134).

As for the problem of increasing numbers of undocumented immigrants, the stricter punishments proscribed by the IIRIRA did not induce voluntary departures. The Act

declared that, as of April 1, 1997, if immigrants had unlawfully stayed in the United States for less than one year, they would have to wait three years before gaining legal re-entry, whereas if they stayed over one year, they had to wait ten years before gaining re-admittance. Many undocumented immigrants, even if they opted for legal conduits, have family members in the United States, including American citizens, and did not want to risk separation from family members for such a long time. Furthermore, the American economy under President Clinton was prosperous, which attracted many immigrants, including undocumented ones, to the United States, as shown in Figure 5.



**Figure 5 Unauthorized Immigrant Population Trends**

Source: Pew Research Center (2016).

From the start of George W. Bush's presidency, sitting at the top of the political agenda was how to control the flow of undocumented immigrants, especially those from Mexico, which the IIRIRA had failed to halt effectively. As the former Governor of Texas, Bush was close to Mexico and even announced as early as January 25, 2001, several days into his presidency, that he would visit Mexico to promote relations. Keeping his word, President Bush met President Vicente Fox first that February, and in several subsequent follow-up meetings leading up to the announcement of the Temporary Worker Program in September 2001. It was believed that President Bush succeeded in finding a workable way out of this perpetual problem.

It was less than a week after this announcement that the terrorist attacks of "9-11" took place, which abruptly halted any further immigration reform efforts and redirected the national debate to anti-terrorism for some time to come. It was not until 2004, when President Bush faced with a re-election campaign and needed support from Latino/a voters

that the Temporary Worker Program was taken up again as a serious agenda item.

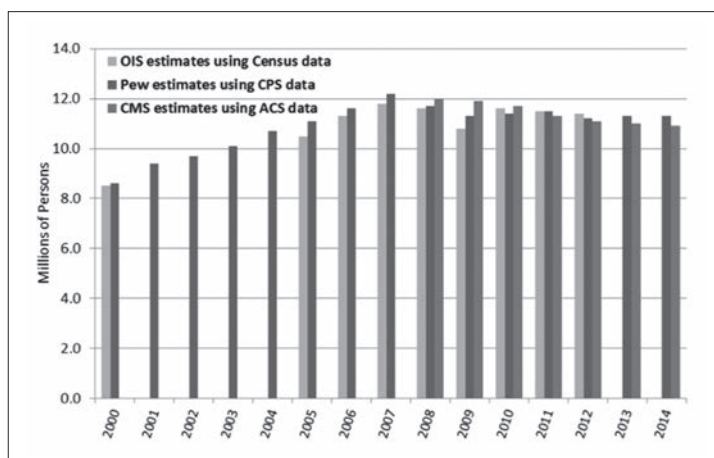
During the same period, though, Congress worked to narrow down the path and made entry to the United States harder from a domestic security viewpoint. Faced with President Bush's initiative to open the border to Mexican workers, the reaction from his own party in Congress was quite negative, especially in the House of Representatives. In 2005, the Border Protection, Antiterrorism and Illegal Immigration Control Act of 2005 (H.R. 4437) passed the House by a vote of 239 (R: 203, D: 36) to 182 (R: 17, D: 164, I: 1), with the support of many southern Democrats. This bill failed to pass the Senate, but invited a nationwide protest movement, "A day without Immigrants." Centered on Latino/a civic organizations, millions of people took a day off and walked in the streets to simulate a situation in which immigrants, including the undocumented, disappeared from their communities.

The Senate took a more moderate stance and tried to pass a bipartisan Comprehensive Immigration Reform Act in 2006 (S 2611). Sponsored by Sens. Arlen Specter (R-Pennsylvania), Chuck Hagel (R-Nebraska), Mel Martinez (R-Florida), John McCain (R-Arizona), Ted Kennedy (D-Massachusetts), Lindsey Graham (R-South Carolina), and Sam Brownback (R-Kansas), the bill passed the Senate by a vote of 62 (R: 23, D: 38, I: 1) to 36 (R: 32, D: 4), showing strong bipartisanship. The House with its H.R. 4437 and the Senate with S 2611 did not manage to meet in the middle, therefore, no law was enacted in the 2005–2006 session. This was the last instance of an immigration reform bill passing in either houses of Congress to date. Ensuing efforts either failed to muster enough votes, or did not even reach the voting stage due to partisan struggles.

### **3) Executive Efforts under the Obama Administration**

While President Obama was elected with almost total backing from African American voters (95%), he also received strong support from the Latino/a population (67%), including 56% in Arizona, the home state of Republican candidate John McCain (CNN 2008). In recognition of their strong support, Latino/as expected the Obama administration to pave the way for immigration reform. President Obama's decision to tackle the issue of healthcare first, thereby consuming all of his political capital, was a grave disappointment for the Latino/a community. The situation worsened when the mid-term elections of 2010 reversed the majority status of the House from Democrat to Republican, making it quite difficult for President Obama to pass any legislation at all without reflecting the priorities of the Republican Party.

Among the immigration issues, a bill to secure the rights of those who crossed the border with their parents was introduced in 2001, an effort known as the DREAM Act (Development, Relief, and Education for Alien Minors Act). Special attention was paid to DREAMers partly due to their lack of responsibilities on themselves when they illegally entered the country as children, and partly because it is not practically possible to remove all undocumented immigrants, and having them remain illegal just increases the social cost



**Figure 6 Estimated Number of Unauthorized Resident Aliens**

Source: Kandel and Wasem (2016, 24).

in the long-term. If they have the opportunity to obtain higher education and become taxpayers, then they will become assets rather than liabilities to the society.

The DREAM Act failed to pass for more than a decade, and, finally, during the presidential campaign of 2012, President Obama announced an executive action to legalize DREAMers, under DACA (Deferred Action for Childhood Arrivals), hoping that Congressional legislation to the same effect would soon follow. Since no legislative action was expected during his term, in 2014, President Obama tried to expand this program and introduced a new category, DAPA (Deferred Action for Parents of Americans), to prevent the parents of American citizens or lawful permanent residents, from being deported. President Obama's additional executive action in the absence of corresponding legislation was met with negative reactions from numerous states that refused to shoulder the financial costs of implementing Obama's initiative. In *United States v. Texas*, the judiciary, based on the rule of separation of powers under a federal system, ruled in favor of the states and stopped the implementation of the new programs.

When President Obama first announced DACA, he was not sure whether DREAMers would actually come out to claim their rights, since registering also meant they were publicly admitting their unlawful presence in the United States. Despite widespread doubt, among the estimated 1.8 million potentially eligible youth, close to 845,000 had applied as of June 30, 2016, compounded by over 606,000 renewals (USCIS website). Even during the tense presidential campaigns of 2016, when conservative candidates were threatening to remove undocumented immigrants, about 20,000 new applicants registered every month, indicating that DACA provides a practical benefit for DREAMers.

### 3. POLITICAL STRUGGLES BETWEEN ACTORS

#### 1) Pro-Active vs. Reactive Local Polities

While the federal government was locked in partisan battles in both houses over immigration reform, those who were actually living alongside undocumented immigrants began to take action from both sides. On one side were those sympathetic to the plight of undocumented immigrants, especially those most in need, such as children, the elderly, or the disabled, who accept the migrants as “residents” regardless of their legal status.

According to the Migration Policy Institute, the largest undocumented populations are located in the state of California (3,034,000 estimated), followed by Texas (1,464,000 estimated), New York (867,000 estimated), and Florida (605,000 estimated) (MPI 2013a). Eighteen states allow undocumented students to pay in-state university tuition as of 2014. Among them, California, Colorado, Connecticut, Florida, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Mexico, New Jersey, New York, Oregon, Texas, Utah, and Washington do so through state laws, while Oklahoma and Rhode Island through Board of Regents decisions (NCSL 2014).

Texas and California took action in 2001, well ahead of any federal action, passing state laws, HB 1403 and AB 540 respectively, and allowed in-state tuition for undocumented immigrant students. Such action was followed by New York and Utah in 2002. California revised California Dream Act (AB131) in 2011, thus allowed undocumented immigrants receive financial aid and loans, which was previously denied under AB 540, as calculated by a yearly determination of eligibility based on documents (CSAC website).

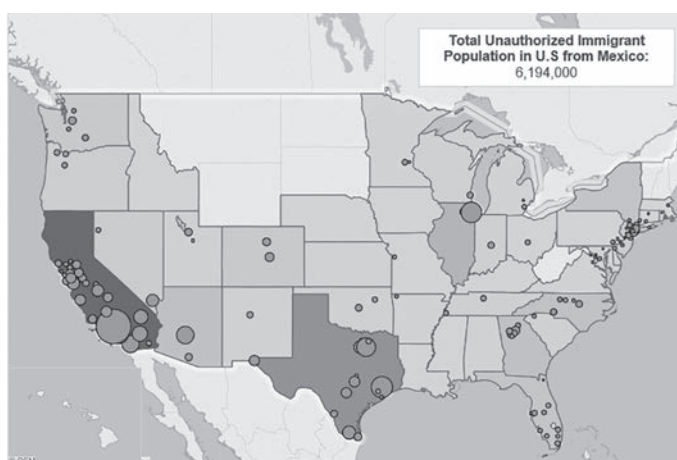
On the other side were the reactive state governments that opposed any progress on immigration reform that might encroach on the benefits of their legal residents. These places were mostly gathered along the border with Mexico, since many who have crossed the border remain near the area of entry, especially where the Spanish-speaking populations are concentrated. It is often alleged that the undocumented tend to commit more crimes in their neighborhoods, thus, for the sake of neighborhood security, the borders should be strictly controlled and those who break the law should be deported. In this pattern of argumentation, the question of the legality of residents and the frequency or brutality of criminal acts are recognized as identical psychologically.

One of the most notorious cases pertained to the legislation passed by the state of Arizona (SB 1070) in 2010. Arizona, as shown in Figure 7, shares a border with Mexico that spans a vast desert, an area often used by trespassers. Responding to the residents’ perceived fears that those unlawful intruders were connected to criminal activity, and to their frustration that the federal government was not enacting laws severe enough to stop the inflow of these people, Arizona passed a law to protect residents from potential crime.

The Obama Administration contested that Arizona’s state law would infringe on the federal authority of border control, and civic organizations including American Civil

Liberty Union criticized that certain stipulations, including the arresting or detaining of people based solely on reasonable suspicion of their legal status, are equivalent to legalizing racial profiling by law enforcement officers (ACLU n.d.). In June 2012, the Supreme Court ruled in the case *Arizona v. United States* that immigration control does fall under the federal authority, but upheld the right of Arizona state police to arrest or detain suspects when there is “reasonable suspicion” of their legality (US Supreme Court 2012).

Similar state laws meant to deter undocumented immigrants from settling there were passed by Alabama, Georgia, Indiana, South Carolina, and Utah. Numerous other states tried but did not succeed in passing similar laws.



**Figure 7 Unauthorized Immigrant Populations by Country and Region, Top State and County Destinations, 2009–13**

Source: MPI (2013a).

## 2) Civil Society Actors

Besides the ongoing political struggles between state and local versus federal government, immigration politics has another strong body of actors on the domestic scene, namely those from civil society. The immigration issue has had a peculiar history with regard to the American social/political agenda. It is not true that, since the United States is a nation of immigrants, people have been coming from everywhere in the world throughout American history. At certain times, the international situation and corresponding domestic conditions have given determinative influence on the source countries/regions of immigrant groups to the United States.

Diverse ethnic groups in the United States more often than not have worked to accommodate immigrants into domestic society. Particular ethnic groups tend to gather in

certain parts of the country rather than dispersing randomly, making their voices more effective in local polities. Additionally, religious communities represent strong actors in civil society, as they are embedded locally in the areas where immigrants spend their lives. It was a memorable moment in September 2015, when Pope Francis, after delivering a strongly-worded speech about immigration, among other issues, to the U.S. Congress in Washington, D.C., was handed a message from a U.S.-born girl asking him to help her undocumented family members in the United States (Gambino 2015).

For many years, labor unions formed the largest opposition to the immigration of unskilled workers, claiming that the incoming low-wage workers inevitably drive down the wages of American nationals, and that immigration would thus be against the best interests of American workers. With increasing numbers of workers in certain sectors, including the service sector, consist of legal, or even undocumented, immigrant workers, the policies of certain affiliated labor unions changed to advocate the real needs of its workers. SEIU (Service Employee International Union), for example, does not encourage unlawful entries, but is understanding of its members who have undocumented family members or friends.

Among the current population of undocumented immigrants, the dominant group consists of Latino/a immigrants, especially those of Mexican decent. The plight of nearly one-million young undocumented people currently registered under DACA program remains uncertain and is the cause of major concern for the ethnic and religious communities of which they are a part.

### **3) Supreme Court Decisions**

Under the American federal system, controlling the flow of people, goods, or money across the national border falls under the responsibility of the federal government. Starting in the late 19th century, struggles between the state and federal government over immigration control began, with this tug of war often resulting in state or local governments finding the federal government too slow to act on pressing situations in their daily lives.

In earlier cases, including California's ban on Chinese immigrants, or the most recent case of Arizona's law on undocumented immigrants, states encroached into areas of federal jurisdiction unsatisfied with the federal government's timely response to issues facing them.

Regarding the expansion of DACA and introduction of DAPA, however, the roles were reversed. President Obama's policies to further expand benefits to undocumented youth or their families of citizens or legal residents was fundamentally challenged by the states in *United States v. Texas*. Although the president's original executive action, DACA, was meant to fill the gap between the pressing needs of undocumented youth and protracted delay in congressional actions, the court decided that the President could not impose such a financial and administrative burden on state governments solely based on executive



privilege.

The judicial intervention into Obama's policies toward DREAMers was widely supported as balancing the power between the federal and state governments. In order for the balance of power stipulated in the Constitution to function as expected, however, each actor must make rational and responsible choices. Recent inaction chosen by congressional majority is equivalent to an attempt to avoid unfavorable outcomes by protracting the drafting of legislation for a prolonged period. While no action was taken, it is the people in question who suffer from it, not the politicians. Judicial judgments can base themselves on legal standards, regardless of political situation on the ground. The power of those who suffer most often falls short of checking the stronger power held among entrenched interests.

## CONCLUSION

Before the incoming Trump Administration establishes its policy line on the immigration question, it is impossible to predict what kind of immigration reform might await. Holding the executive office as well as the majority in both houses of Congress, the Republican line of strictly controlling immigration, especially relating to undocumented immigrants, will certainly prevail in the coming years.

Whether or not border control functions effectively, however, is not an independent phenomenon but should be considered in terms of the totality of policies, including domestic economic policies and foreign policies reflecting the reality of the globalized market. For the border to remain stable, the conditions on both sides of the border need to be balanced as well. Such international viewpoints should be reflected in the policy making of the federal government.

Immigration policy is a federal responsibility and thus its form reflects the perspective of the federal government. However, an examination of the history of the politics and policies of immigration reveals that a Washington-centered view leaves out many important elements from the conversation. Upcoming immigration policy formulation, thus, should be examined utilizing plural frameworks existing in parallel, rather than vertically, and must include local, civic, and trans-border actors.

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