

Fighting for the Rights of Immigrants: Triangular Approach by Civil Society

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INTRODUCTION

On the first day in office, President Donald Trump issued Executive Order No. 13765, “Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal,” to restrict federal payment toward the Obamacare (PL 111-14) program. Relying on the Republican-majority Congress, he expected to repeal, one after another, the liberal programs set up by former president Barack Obama, starting with Obamacare. The repeal of Obamacare, however, has not yet occurred into his second year. President Trump’s order to executive departments or agencies to exercise “all authority and discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the Act that would impose a fiscal burden” on states or individuals has disturbed the smooth implementation of public health policies.

Among the successive executive orders aimed at further reversing the liberal policies of the Obama administration were those targeted to limit the flows of people from Islamic countries and Latin America into the United States. Executive Order 13769, “Protecting the Nation from Foreign Terrorist Entry into the United States,” issued on January 27th, 2017 was based on the justification that immigrants from Islamic countries, wherein militant groups are active, pose a security threat to the United States. Despite the

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intervention of Federal district and appeal courts, the revised executive order, Executive Order 13780, issued on March 6th, which excluded Iraq from the list of restricted countries, was finally given partial approval by the Supreme Court. Meanwhile, President Trump added restrictive tools for immigration control by Presidential Proclamation 9645, "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats," on September 24th, 2017, making the Supreme Court ruling on the preceding executive order practically irrelevant.

While the restrictions against Islamic countries invited legal challenges against their potential religious and racial discrimination, President Trump pushed forward another kind of restriction against Mexicans and other South Americans under two executive orders, both issued on January 25th, 2017. One is Executive Order 13767, "Border Security and Immigration Enforcement Improvements," which invited legal challenges regarding the demarcation of federal-state powers. The other is Executive Order 13768, "Enhancing Public Safety in the Interior of the United States," which invited a political challenge regarding the integration of American families. The former reflected his campaign promise to build a wall along the Mexican border and to stop the inflow of new immigrants outside the law, while the latter focused on the deportation of undocumented immigrants caught in the communities where they are residing. Many such deportation cases take place along the border but are not limited to these areas. These undocumented immigrants often live with family members, many of whom are American citizens or legal residents, including minors.

Although immigration control is a federal responsibility, given the limited number of federal immigration officers, the federal government gradually increased its request for state or local governments' cooperation, especially in its interior activities. It is in this cooperative relation between the federal and state/local governments that both constitutional and policy questions have been raised since the mid-1990s, especially after the 9-11 incident. However, as the federal government delayed immigration reform, an increasing number of communities, which had cooperated with the federal policies, started moving away from positive cooperation, or becoming so-called sanctuary cities.

Since President Trump believed in outright confrontation against the immigrant communities, we tend to think that he has a different stance and favors a different set of policies from that of the previous administrations. However, many of the current policies have been in place not only from the time of the Obama administration, but even before him. In the following parts, let us first trace the changes in the federal immigration laws and the continuing problems involved, and then consider how the above-mentioned cooperative relationship between the federal and state/local governments started and developed over time. Finally let us explore the proactive movement emerging on the ground in the shape of a triangle, involving the state/local government, legal specialists, and civil society organizations, including the immigrants themselves, both undocumented and documented.

It is obvious that fundamentally solving immigration-related problems is impossible without positive legislative actions at the federal level. In the meantime, though, the triangle formed in the communities is a challenge in trying to reduce the burden of existing problems. Connecting actors and forming such triangle, in turn, functions to empower the immigrant community itself. The situation of the State of California will be taken up as one of the leading cases on how this process has been taking place.

1. FEDERAL IMMIGRATION LAW IN DEADLOCK

a. Polarized Federal Politics and Immigration Policies

As a nation of immigrants, the United States has almost continuously since its founding accepted those who want to migrate into the country, and those with long or short family histories of immigration have constituted the foundation of the United States. Depending on the political, economic, or societal conditions, however, the United States has exercised policies of immigration restrictions from time to time. The targets of restriction varied, sometimes based on economic reasoning to protect domestic workers and at other times based on cultural reasoning to protect the integrity of American society.

Early versions of such immigration restrictions were carried out not by the federal government but by gateway states, such as New York or California, to protect their own communities. The federal government challenged such state initiatives in the courts, however, claiming that border control should be exclusively a federal responsibility, and thus immigration control by states was unconstitutional. Faced with an increasing number of immigrants, the federal government belatedly legislated immigration control in 1875, the so-called Page Act, followed by the Immigration Control Act of 1882. The United States from the late 19th century to the mid-20th century is characterized by an inward-looking tendency, blocking not only Asian immigrants starting with the Chinese and followed by Japanese, but also European ethnic minorities based on the population ratio before the mass-migration started in the late 19th century.

After World War II, the Immigration and Nationality Act of 1952 (INA, PL 82-414), also known as the McCarran-Walter Act, was enacted, and it eliminated all race-based quotas and replaced them with purely nationality-based quotas. Increasingly, immigration policies symbolized the nature of countries under the deepening Cold War rivalry, and the United States had to emphasize its openness through free population movement, as opposed to the restricted Communist regime. The Immigration and Naturalization Act of 1965 (PL 89-236) eliminating quota system was set up as the new basis of the immigration framework.

The reform, however, introduced a new cap on immigrants from the Western Hemisphere for the first time in U.S. history. Preceding this reform, the United States had just discontinued the Bracero Program, which regularly circulated unskilled farm labor between Mexico and the United States. In the absence of such a formal cycle of unskilled

labor, those who wanted to fill the demand for unskilled labor but were restricted by the annual immigration cap, chose to enter the United States without legal status. Because of their unstable status, undocumented immigrants tended to remain, rather than return, even after labor demand ebbed, thus expanding the size of immigrants outside the law.

The increasing presence of undocumented immigrants caused not only an economic problem by bringing down the wage level due to employment outside the law, but also a legal problem by the involvement of immigrants in criminal cases as victims or wrongdoers. Faced with such a development under President Ronald Reagan, the Immigration Reform and Control Act (IRCA, PL 99-603) was legislated in 1986, which made immigration control at the border stricter, while giving legal status to those who had already been inside of the United States without documents. The IRCA temporarily reduced the number of immigrants outside the law, but in turn invited more immigrants to sneak into the United States hoping for the next chance of legalization to take place soon (See Figure 1). Critics of the immigration policy thus called the IRCA “an amnesty” and held a strong position against repeating the same kind of legislation.

Since the IRCA, there was only once successful revision made regarding the basic immigration framework, in 1990, despite numerous attempts by both the House and the Senate to enact substantial immigration reform. The Immigration Reform Act of 1990 (PL101-649), for the first time, created distinct employment-based visas, categorized by occupation, as well as a diversity visa program using lottery to admit immigrants from

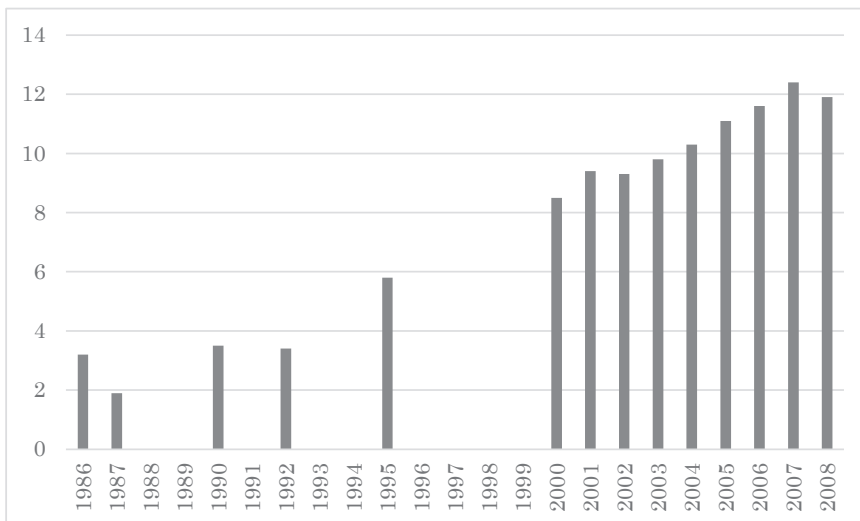


Figure 1 Estimated Number of Unauthorized Resident Aliens, 1986–2008 (in millions)

Source: Data from Wasem (2012, 3).

areas that are underrepresented in the American society.

In the meantime, the Senate succeeded in passing bipartisan bills more than once but failed to reach bicameral agreements faced with partisan resistance against liberal immigration reform in the House, as explained in the author's previous article (KITAGAWA OTSURU 2017). The Obama administration's executive action in 2012 to accommodate the needs of undocumented youth brought into the United States as minors was a reaction, rather than pro-active proposal, to the stagnated immigration reform.

b. Varied Responses from Diverse Communities

While lack of development continued at the federal legislative front, actual exercises of immigration control greatly changed over time, partly reflecting the new kind of threat perception in the post-Cold War world. Under the Republican-majority Congress, in 1996, three legislations were enacted, which did not intend to address the shared problem. The three of them, however, produced a combined effect of protecting American society from threats caused by external actors, including the undocumented. The three legislations were the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA, PL 104-132), the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, PL 104-193), and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA, PL 104-208).

For safeguarding American society against violence, the Democratic-majority Congress had already responded by legislating the Violent Crime Control and Law Enforcement Act (PL 103-322) after the Waco siege in 1993, among others. The act reinforced police power and provided resources for preventive programs; however, it also included a "three-strike" provision, which resulted in greatly increasing the number of those incarcerated by the police, especially among minorities. However, it was Section 287(g) of IIRAIRA that specifically shifted the historically nuanced balance between the state and federal governments, and made the community police faced with increasingly difficult problems. Despite the divided jurisdiction between the federal and state/local governments, a new basis for communication between them regarding citizenship or immigration status was provided by this legislation, which was promulgated into the 8 U.S. Code § 1373 as follows:

§1373. Communication between government agencies and the Immigration and Naturalization Service

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual: (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service. (2) Maintaining such information. (3) Exchanging such information with any other Federal, State, or local government entity.

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

(Pub. L. 104-208, div. C, title VI, §642, Sept. 30, 1996, 110 Stat. 3009-707.)

This invitation for information-sharing between the police and the federal immigration officers further expanded after the violent attack on September 11, 2001. Less than 50 days after the attack, the Congress passed the USA PATRIOT (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) Act (PL 107-56) and provided the federal government legal basis to search for personal data in the name of terrorism prevention. The Bush administration, on the other hand, created the USA Freedom Corps inside the Executive Office of the President by Executive Order No. 13254 (January 29, 2002) and called for the nation to serve public purposes under national emergency. Responding to the president's call for national service, the police not only cooperated in the activities to search for terror suspects, but the National Sheriffs' Association even mobilized residents under the revitalized National Neighborhood Watch Program, which was created in 1972, to provide information on potential terrorists living among them.

When the psychological crisis of the 9-11 incident began to ebb a little, and President Bush's War on Terror policy started to raise legal and constitutional questions, especially in terms of protection of basic human rights, some state and local governments took a second look at their cooperative agreement with the federal government. This voluntary cooperation for immigration control activities was also imposing a financial cost on the state and the local governments. Such a reconsideration was even accelerated by the Bush administration's forceful raids on workplaces, which were supposedly employing large numbers of undocumented immigrant workers. Not just the scene of raids but the resulting separation of family members invited negative reactions from the local communities, especially if they included minority residents.

Among the states that took a critical stance against the federal immigration policy,

some initiated policies to include the marginalized population. Governor Rod R. Blagojevich of Illinois, for example, issued an Executive Order creating “New Americans Immigrant Policy Council” in 2005 and developed policies to support immigrants become self-sufficient members of the community. The Council was to consult with immigrant leaders and host communities and make recommendations to the governor (State of Illinois 2005). Governor Blagojevich appointed a Mexican American resident as the director of the Council, symbolizing the rapidly changing population of the state. The following Illinois governor Pat Quinn created the Office of New Americans under his governorship in 2010 and forged a step ahead of the federal government, setting the Illinois DREAM Act in 2011. Reflecting the deepening controversy over the federal-state coordination over immigration control, Governor Pat’s executive order establishing the New Americans Trust Initiative in 2015, focusing on the equal treatment of immigrants under the criminal justice system, was a notable proactive measure by the state (State of Illinois 2010; 2015).

When President Obama took office, the intensity of undocumented immigrants was less than the peak it had reached in 2007, partly due to the American economic recession caused by the Lehman shock, which led to a downsizing of the market for undocumented immigrants. However, the flow of undocumented people soon picked up, and some state and local governments, especially on the border or in the south, like Alabama, Arizona, Georgia, Indiana, and South Carolina, regarded immigration control by the Obama administration as insufficient. They moved forward and legitimated their cooperation with the federal immigration activities by adding a stipulation of such cooperation into their state law.

As the Obama administration tried to restrict such a proactive move by states based on the constitutional demarcation between the federal and state governments and filed a suit against the State of Arizona, the Supreme Court in *Arizona, et al. v. United States* (567 U.S. ___ (2012), Docket No. 11-182) recognized that a certain positive cooperation from the state or localities is within the constitutional range (KITAGAWA OTSURU 2015, 10). Such states were also critical against the Obama administration’s executive action of supporting the rights of undocumented youth, under DACA (Deferred Action for Childhood Arrivals) and, in court, they successfully killed the Obama administration’s plan to expand the program.

It is not true, though, that the Obama administration did not exercise any strict policy of immigration control. As shown in Figure 2, U.S. Immigration and Customs Enforcement (ICE)’s removal of cases against undocumented immigrants during the Obama administration was higher than those during the Bush administration (ICE 2015, 8). The difference was that the Obama administration prioritized border control and focused on criminal cases in the interior activities. In Obama’s final year as president, ICE removed or returned 240,255 individuals, and 174,923 removals among them took place near the land border or ports of entry. Only 65,332 people, or 27 percent of the cases,

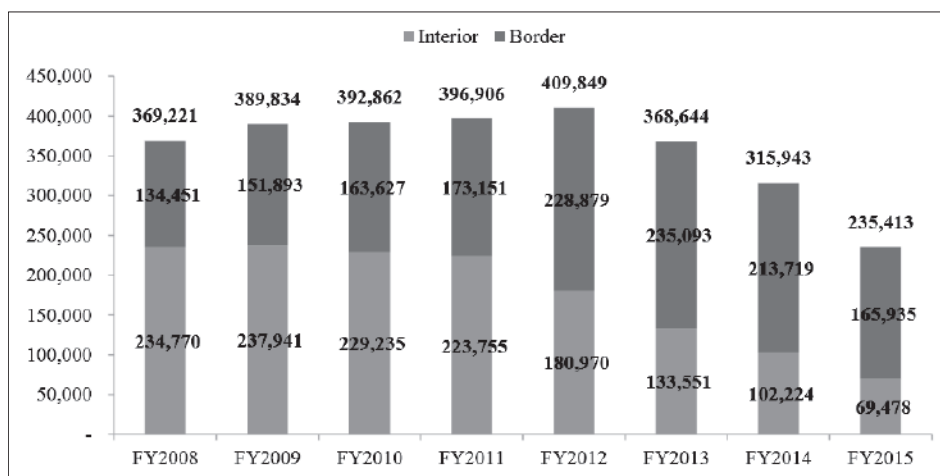


Figure 2 Fiscal Year 2008–15 ICE Removal

Source: ICE (2015, 8).

were apprehended by ICE officers in the interior of the United States, as opposed to 64 percent in 2008, the last year of the W. Bush administration (ICE 2016, 2). In addition to such a geographical shift in apprehension, 83.7 percent of those removed in 2016 came under Priority 1, as those who constitute a serious threat to public safety and national security, as opposed to only 2.3 percent under Priority 3, who are non-criminal immigration violators (ICE 2016, 3).

Such prioritization in removal practices as well as the federal-state/local balance over immigration control under the Obama rule was almost reversed as soon as the Trump administration came into power. President Trump was critical not only of the inflow of people from Islamic countries, but also of undocumented immigrants, especially those coming through the southern border, as he had taken a tough position against them during the campaign. Numbers of state and local governments, which had embraced the numerous undocumented immigrants into their fold as residents, took explicit positions to counteract the Trump administration's immigration policy even before he was sworn into the presidency. For example, Mayor Rahm Emanuel of Chicago pledged to set up a Legal Protection Fund with one million dollars, along with National Immigrant Justice Center, to help immigrants and refugees threatened with deportation (City of Chicago 2016).

As expected, the Trump administration immediately took strict policies against undocumented immigrants. One of the targeted areas was the so-called sanctuary jurisdictions, which refrained from exerting a positive cooperation with federal immigration activities. States regularly receive federal funds as supplementary when they implement certain policies, and among these policies were police activities. President

Trump issued Executive Order 13768 on January 30, 2017, and its section 9(a) stated that the federal government would withhold federal funds from these “sanctuary” jurisdictions.

There is no federal law defining “sanctuary” jurisdictions, but it is often used to refer to localities that offered limited cooperation to federal immigration authorities citing many different reasons, including their own act or policies, as well as fiscal constraints (Garcia 2009, 1; Herman 2017, 2–4). Even though state or local governments are not obliged to cooperate with federal immigration control, in many cases, this term is used by those critical of such state/local policies not strictly questioning the immigration status. The U.S. Conference of Mayors and Major Cities Chiefs Association jointly expressed their strong reservations about Trump’s decision to withhold federal funds based on an elusive definition of “sanctuary jurisdiction” as one that is “in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law (Executive Order 13768)” (Durr 2017).

Undocumented immigrants are not evenly spread out across all parts of the United States but concentrate in certain states as shown in Figure 3. Border states such as Texas and California include the largest number of them, but northern states such as Illinois and Massachusetts also show large concentrations of undocumented immigrants. Besides the proximity to the border and the existence of ethnic communities, other factors such as

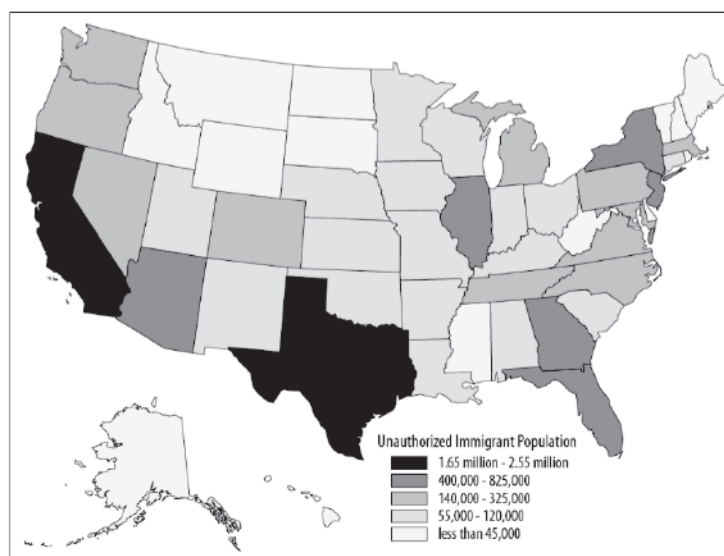


Figure 3 Unauthorized Resident Alien Population, by State (Estimates for 2010)

Source: Wasem (2012, 7).

employment, health care, education, or welfare programs available to undocumented people influence their relocation. Among these concentrated states, some states take a pro-immigrant stance and virtually function as a “sanctuary” to them; others positively cooperate with federal immigration control, as in the case of the State of Arizona.

In the next section, let us look at the State of California, one of the so-called sanctuary states, and observe how the actors involved are trying to draw a positive picture out of a constrained situation.

2. TRIANGLE FORMED BY CIVIL SOCIETY: THE CASE OF CALIFORNIA STATE

a. Changes over Time

The State of California is among such border states with numerous immigrants among its residents. It has historically played an important role as a land entrance for immigrants from the south, especially bordering Mexico, as well as a major entrance for those from Asian countries across the Pacific.

Among the immigrants were a large number of seasonal workers that the Californian agricultural industry required. Many of them were supplied from Mexico via the Bracero Program, until it ended in 1964. In the absence of any replacing system, along with the introduction of the annual ceiling for the Western hemisphere under the Immigration Act of 1965, an increasing number of unskilled labor force who could not freely migrate to and from California ended up entering the United States outside the law and remained in California instead of returning home. As shown in Figure 3, the State of California had the greatest number of undocumented immigrants among the states, as of 2012. Given the fact that nearly 60 percent of Californians are of non-whites (See Figure 4), the State of California is often regarded as supportive of the residing undocumented immigrants. However, this was not the case until the turn of the century when the Californian government as well as its society at large became more supportive of having immigrants outside the law residing in their neighborhood.

As late as in 1980, when the U.S. Census started to separately indicate a new category of Hispanic, 66.6 percent of Californians were non-Hispanic white, which declined to 57.2 percent in 1990, to 46.7 percent in 2000, and to 40.1 percent in 2010. For example, when Californians passed Proposition 63 in 1986, deciding English as the official language of the state, and directed a legislation accordingly, 74 percent of voters supported the position and over 60 percent of the state population consisted of whites. Californians then passed Proposition 187, or “SOS (Save Our State)” initiative in 1994, with a closer margin of 59–41. This proposition was to restrict the rights of undocumented immigrant in education, health care, welfare, and the state was asked to perform quasi-federal immigration control.

Proposition 187 was, however, enjoined by the federal court, and Governor Pete Wilson challenged it in the court until the end of his term. The next governor, Gray

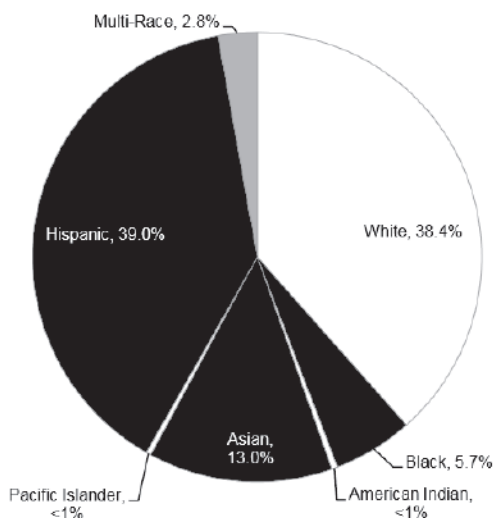


Figure 4 Race and Ethnicity Distribution, July 2015

Source: Brown (2015, 141).

Davis, however, withdrew the appeal and closed the case against the Proposition. As of the voting on the Proposition in 1994, the ratio of white population was already below 60 percent of the total state population, while that of Hispanics reached 28 percent. As one activist interviewee explained, Californians' attitude toward immigrants turned more affirmative around the 2000s, reflecting the increasing share of minority population. Such a demographic change was one of the factors that induced other states to similarly take a different policy direction. When formulating new policies, such states tend to be more accommodating of the needs of immigrants, including undocumented immigrants.

Local communities' relationship with immigrants, including the undocumented, is influenced by various factors, including proximity to the border or the port of entry, historical relationship with the immigrant-sending area, and the characteristics of the major local industry, in addition to the partisan base of the area. Interest in immigration policy among those whose daily lives are not immediately affected by the presence of immigrants can be manipulated by symbolic factors. People's attitude toward immigration policies has become increasingly shaped by the polarization along party lines on the political stage. Among the politicians, few crossed the party line on the immigration issue, except for those like late Senator John McCain of Arizona. Even the fundamental argument over the rule of law, from time to time, is used to politicize the immigrant's story and ends up criminalizing the undocumented immigrant.

Another group of actors whose position is divided over the immigration policy is the police officers. In those states that have chosen to positively cooperate with the federal immigration activities, the police officers take advantage of daily incidents like speeding or unlawful parking to ask for the immigration status of suspects. Under the police-state agreements, they play a more positive role and cooperate with the U.S. Immigration and Customs Enforcement (ICE) detainer by notifying the release of undocumented immigrants from criminal custody or by extending their custody up to 48 hours until the ICE comes to get them.

Immigrants' right advocacy claims that such cooperation raises constitutional and legal questions (Cullen 2018). For example, *Calarza v. Szalczyk*, 745 F. 3d 634 (2014) ruled that ICE detainers cannot be mandatory because detainers force the state or local government to use their own resources to keep the person longer than necessary for the sake of the federal government. Or such maintenance of custody at the request of the federal government is regarded as a new arrest and should be subject to the Fourth Amendment requirement of the Constitution as ruled in *Morales v. Chadbourne*, 793 F. 3d 208 (2015).

On the contrary, in communities where immigrants constitute a substantial ratio of residents, the police tend to take the side of immigrants for pragmatic reasons. If the police officers were to behave like immigration officers in such communities, the residents, including legal residents, will keep their distance from the police, because they fear being accidentally arrested or deported. If they or any of their family members happen to be undocumented, police officers are kept further away. Such a distance between the residents and the officer may cut off important information flow and thus make it more difficult for the police to deter criminal cases (Khashu 2009; Hughes Socol Piers Resnick & Dym, Ltd. 2017). One of the interviewees pointed out that reporting of DV has declined in the Los Angeles police after President Trump assumed office; Trump's severe message against undocumented immigrants has made people fearful of contacting the police.

b. Proactive Movements

As observed in the previous section, providing necessary services like education, health care, welfare to residents, as well as maintaining the safety of the community, comes under the responsibility of state and local governments. While the federal government fails to control the inflow of undocumented immigrants, such services should be indiscriminately provided whether the residents are citizens, legal immigrants, or undocumented immigrants. Given the doubtful prospect of timely federal immigration reform, communities with a substantial share of immigrants among residents take proactive measures rather than wait for any change to take place.

One of the measures is to make use of the existing laws to protect the rights of the immigrants. This is the area where lawyers can come in and use their legal expertise. For example, CalWORKs is a cash assistance to parents in need so that their children can gain

education and become employed. Some portion of CalWORKs, however, is funded by the federal government, and therefore, the federal government prohibits the use of any money for the undocumented. Even among the legal immigrants who are eligible, it is sometimes not easy to obtain CalWORKs; hence, legal experts should intervene and protect immigrants' benefits.

The other is to establish or revise the laws to make immigrants feel more protected. This is an area where the collective process is carried out by civil society organizations and policy makers. It should be noted that such activities are increasingly organized and carried out by immigrants themselves. For example, the State of California regards all immigrants as the state residents, and thus legislated to provide health care to all residents beyond the federal government's baseline. Or, legal experts lobbied to prevent the introduction of the Public Charge bill, which would prevent immigrants who have received cash assistance from becoming citizens or re-entering the country. Although Republican members are less supportive of immigrants' interests, one interviewee describes elections as a local, rather than a national, matter, and thus, even Republican members listen to their own constituency's voice.

One of the reasons the immigrant community is able to play such a proactive role is that immigrants themselves become empowered in American society. Figure 5 shows the steadily increasing educational level of the immigrant population in California. Within ten years since 2006, those who acquired doctoral degree increased by ten percentage points, while those who could not finish high school declined by 15 percentage points. Such a

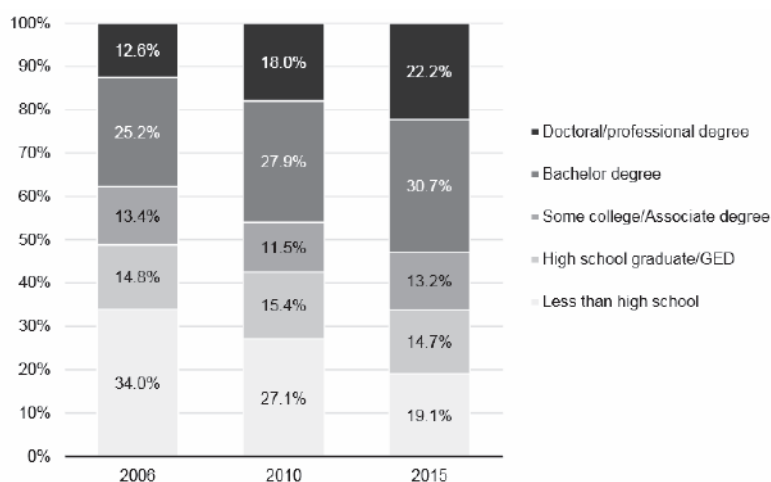


Figure 5 Changing Educational Attainment of California Immigrants (Age 25 and Older)

Source: Brown (2017, 149).

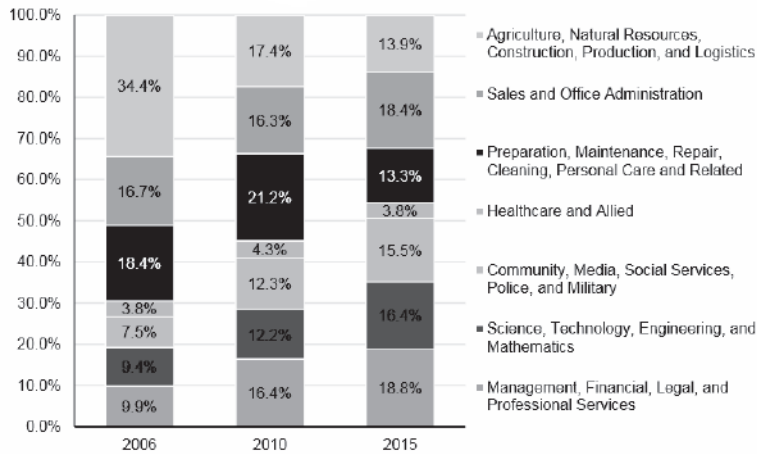


Figure 6 Occupations of California Immigrants (Age 16 and Older)

Source: Brown (2018, 139).

drastic shift in educational background among the immigrants leads to a change in the occupations pursued by immigrants (See Figure 6). While the number of agricultural workers reduced to less than half from 2006 to 2015, or by more than 20 percentage points, the number of professional workers increased in various areas such as the medical, legal, managerial, or media fields.

Of course, there is always a possibility of backsliding. In the case of education, for example, we may consider the case of California's charter schools as a progressive movement. In the northeastern part of California, however, charter public schools are re-segregating themselves, rather than de-segregating, making them much whiter than it was previously as California overall is becoming more populated by the minority. It is important that these professional workers of immigrant background represent multiple aspects of Californian lives themselves, rather than depend on others to speak for them. One of the interviewees revealed that in a polarized situation, even the media can function as an echo-chamber overstating what it regards "negative," thus the reported stories become more negative than the reality.

As seen from Figure 6, underlying the transformation of the immigrants' movement from reactive to proactive is the very transformation of immigrants themselves. They are no longer at the periphery of the society subject to the will of the majority but play core societal roles through their integration.

c. Forming a Triangle

One of the interviewees suggested that an activist can observe the formation of a triangle

with three actors regarding immigrants' rights: a) civil society organizations not only with immigrant background but also in general, b) local and state governments, especially with regard to their educational, medical, and welfare resources, and c) legal specialists representing the minority in litigations as well as lobbying to bring out positive policy outcomes.

Through these actors involved, immigrants including the undocumented, can have their voice heard. Even when immigration reform is finally starting to move at the federal level, the immigrant community and its surrounding community continue to face the issue of undocumented people. Many of them, as stated above, are of mixed family; the younger members, especially, are born in the United States and hold citizenship. Given this situation, grass-root activists are trying to prevent the isolation of such immigrant families in society and help integrate them into the surrounding community, not by forcing them to abandon their cultural and linguistic bases but by expanding and lowering the surrounding community's boundaries and hurdles.

A phenomenon that symbolically describes this necessity is the preparatory actions toward the upcoming 2020 census. To reflect the reality of Californians on the ground as the basis for policy making, especially in budget allocation, it is necessary to prevent the undercounting of the minority population in the census, including those without legal status. Those representing immigrant-rich communities are trying to ensure that their real population size is reflected in the upcoming census. They are, however, apprehensive that undocumented immigrants, or families with some undocumented members, may refrain from participating in the census fearing that information given might be traced by the federal government and lead to possible deportation of their family members.

Considering the fear held among their immigrant residents, the State of California was quick to implement measures to protect the immigrant communities. Three state laws were passed, which were later challenged by the Trump administration. The first was Assembly Bill No. 103 (AB-103) "Public Safety: Omnibus" (June 27, 2017), prohibiting a city or county or local law enforcement agency from entering into a contract with the federal government or any federal agency to house or detain an adult noncitizen in a locked detention facility for purposes of civil immigration custody.

The second was Assembly Bill No. 450 (AB-450) "Employment Regulation: Immigration Worksite Enforcement Action" (October 5, 2017), prohibiting an employer or any other person acting on the employer's behalf from providing voluntary consent to an immigration enforcement agent to enter nonpublic areas of a place of labor unless the agent furnishes a judicial warrant as specified.

The strongest challenge to the Trump administration was Senate Bill No. 54 (SB-54) "Law Enforcement: Sharing Data" or "California Value Act" (October 5, 2017). This bill was introduced by State Senator De León (D), coauthored by State Senators Toni G. Atkins (D), Jim Beall (D), Richard Pan (D), Nancy Skinner (D), Scott D. Wiener (D), and Assembly Members Rob Bonta (D), David Chiu (D), Jim Cooper (D), Jimmy Gomez (D),

Marc Levine (D), Eloise Reyes (D), and Miguel Santiago (D). This bill prohibits state and local law enforcement agencies from using money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, as specified, and subject to exceptions, proscribe other activities conducted in connection with immigration enforcement by law enforcement agencies. Also, the Attorney General publishes model policies that limit assistance with immigration enforcement to the fullest extent possible, for use by public schools, public libraries, health facilities operated by the state or a political subdivision of the state, and courthouses, among others.

These three acts not only target immigration-related issues but also consider the benefits of Democratic Party's basic constituencies and supporters. Moreover, those supporting the bill were not only immigrant-supporting organizations and ethnic organizations, but also labor unions, educational institutions, or health care organizations, which are active supporters of immigrants' rights on the civil society side. Especially, since the background of most workers in California can be traced back to immigrants, they share the view that exploitation of immigrants is equivalent to exploitation of workers, according to one of the interviewees.

Organizations of different types or having different policy areas, as well as those with different beneficiaries, cross over and collaborate to facilitate positive policy outcomes. Such organizations like the National Immigration Center, California Immigration Policy, Latino Coalition for a Healthy California, Mexican American Legal Defense Education Fund, Immigrant Legal Resources Center, Sargent Shriver National Center on Poverty and Law, among others, are working together to formulate beneficial policy outcomes. They conduct advocacy as well as lobbying based on their professional expertise.

The creation of a civil society triangle is exemplified by the activities in the State of California, as expected, and it invited counter-attack from the Trump administration. Among the measures was the threatened withholding of federal funding, such as the Edward Byrne Memorial Justice Assistance Grant (JAG) funding, as a penalty. The JAG funding is a federal justice funding to state and local jurisdictions to support law enforcement, prosecution, indigent defense, courts, crime prevention and education, community corrections, drug treatment, and enforcement among others.

The Department of Justice announced on January 24, 2018, that 23 jurisdictions were under review if unlawfully restricting information sharing, and if so, they should return the FY2016 JAG funding and that they may not be eligible to receive the FY2017 funding. Among those 23 jurisdictions threatened, the largest number of them belong to California: State of California, Berkeley, Fremont, City of Los Angeles, Monterey County, Sacramento County, City and County of San Francisco, Sonoma County, and Watsonville. These jurisdictions were selected based on their non-compliance with section 1373. Attorney General Jeff Sessions justified the fund withdrawal saying as follows: "Protecting criminal aliens from federal immigration authorities defies common sense and undermines the rule of law" (Department of Justice 2018).

Given the fact that the JAG funding was founded in the memory of a police officer killed by criminals dealing in drugs, and that the fund is expected to allow states and local governments to support a broad range of activities to prevent and control crime and to improve the justice system, holding the fund as hostage to force state/local governments to cooperate with the federal immigration enforcement is unjustified. As individual jurisdictions face such challenges from the federal government, the above-mentioned civil society triangle proves to be increasingly useful.

CONCLUSION

At the time of writing, no constructive solution for the immigration policy impasse was in sight. On the contrary, the state-level attempts to protect immigrants were challenged in court by the Trump administration. On March 6, 2018, the Trump administration sued the State of California under *THE UNITED STATES OF AMERICA v. THE STATE OF CALIFORNIA; EDMUND GERALD BROWN JR., Governor of California, in his Official Capacity; and XAVIER BECERRA, Attorney General of California, in his Official Capacity*, claiming that three above-mentioned statutes, AB-103, AB-450, and SB-54, obstruct the enforcement of federal immigration law.

It is an agreed-upon conclusion that legislating immigration reform is indispensable for the United States, not only for those who are living without legal status, but also for the rest of the community who share their time and space with the undocumented immigrants. At the same time, though, it is unrealistic to believe that more than 11 million undocumented immigrants can be removed from the United States once at all. The economic reality of the Latin America beyond the border is another key element missing in the policy resolving this impasse.

The only way to politically as well as morally satisfy most of the American people regarding the immigration regime is to balance the legal standard and feasibility of policy at the same time. In creating that balancing act, the triangular collaboration among politicians, legal experts, and civil society organizations, as pointed out in this article, continues to be an important facilitating actor.

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- Assembly Bill No. 450 (AB-450), “An act to add Sections 7285.1, 7285.2, and 7285.3 to the Government Code, and to add Sections 90.2 and 1019.2 to the Labor Code, relating to employment regulation” (October 5, 2017).
- Senate Bill No. 54 (SB-54), Chapter 495, “An Act to amend Sections 7282 and 7282.5 of, and to add Chapter 17.25 (commencing with Section 7284) to Division 7 f Title 1 of, the Government Code, and to repeal Section 11369 of the Health and Safety Code, relating to law enforcement,” October 5, 2017.

LIST OF INTERVIEWEES:

- Royce Bernstein Murray, Political Director, American Immigration Council, September 7, 2017,
- Tristan Brown, Legislative Advocate, CA Federation of Teachers, AFT, AFL-CIO, May 21, 2018.
- Ana Gonzalez-Barrera, Research Associate, Pew Research Center, September 5, 2017.
- Michael Herald, Director of Policy Advocacy, Western Center on Law and Poverty, May 21, 2018.
- Laura DeKoven Waxman, Director of Public Safety, The United States Conference of Mayors, November 16, 2017.
- Angie Wei, Chief of Staff, California Labor Federation, May 24, 2018.
- Andrew T. Medina, California Policy Manager, Asian Americans Advancing Justice – California, May 25, 2018.

