

LEIR BRIEFING ROOM

CRITICAL JUNCTURES IN US IMMIGRATION POLICY

Henry J. Leir Institute for Migration and Human Security

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KEY POINTS:

- Historically, U.S. immigration policies have vacillated between passive acceptance and active exclusion, interspersed with episodes of active recruitment.
- Yet even during periods of restrictionism, labor markets and migratory networks have attracted migrants to the United States, often with the tacit approval of employers and government officials.
- Since the 1990s, the U.S. Congress has failed to pass comprehensive immigration reform while U.S. immigration and border policies have become increasingly securitized and externalized, especially since the September 11, 2001 terrorist attacks.
- The overarching result, currently being perpetuated by the Biden administration, is an unsustainable and often incoherent mix of restriction with access that neither meets labor demand nor improves security.

FROM OPEN DOORS TO QUOTAS AND CONTRACTS

For most of the 19th century, the United States had an open-door policy that imposed few restrictions on immigration. These doors began to close with passage of the **Chinese Exclusion Act** in 1882 and nearly slammed shut in 1924, when Congress created the U.S. Border Patrol and passed the **National Origins Quota Act** for countries outside the Western Hemisphere. During the Great Depression, the U.S. government deported nearly half a million Mexicans, many of whom were U.S. citizens.

This outright exclusion of Mexicans was severe but short-lived in the face of labor market demand, which surged in the 1940s during the Second World War. While the national quota system remained in place, the U.S. switched to active recruitment of Mexicans through the **Bracero Program**, a series of bilateral agreements negotiated between the U.S. and Mexican governments to provide and manage temporary contracts for Mexican migrants. Between 1942 and 1964, these agreements brought 4.5 million Mexicans to work in the United States, primarily in the states of California, Arizona, and Texas.

When even this program proved insufficient to meet the demand for workers, undocumented immigration increased, eliciting a public backlash. In another episode of active exclusion, the Eisenhower administration launched the pejoratively named **Operation Wetback** in 1954. Under this policy, the U.S. Border Patrol rounded up and deported more than one million Mexicans.

PREFERENTIAL ENTRY AND PASSIVE ACCEPTANCE

The next major change in U.S. immigration policy occurred in the context of the Civil Rights movement, which had the paradoxical effect of killing the Bracero Program while dramatically expanding legal access to the United States for migrants from other countries in the Global South. In 1965, the U.S. Congress responded to rights-based criticisms of national-origin quotas with the **Immigration and Nationality Act**, which replaced quotas with a preference system designed to reunite immigrant families and increase skilled migration. A few years later, the United States became a signatory to the 1967 Protocol Relating to the Status of Refugees.

The 1965 Act and the 1967 Protocol contributed to a significant increase in legally-sanctioned migration from countries outside the Western Hemisphere while leaving millions of Mexican migrants undocumented. Rather than actively excluding these migrants, the U.S. government opted for passive acceptance. The long U.S.-Mexico border remained weakly guarded, and employers enjoyed access to low-cost workers without political rights. Circular migration still prevailed, with migrants going back and forth as their economic circumstances dictated, but more and more Mexicans put down roots in the United States, especially if they had U.S.-born children.

FROM PASSIVE ACCEPTANCE TO ACTIVE EXCLUSION

With a few exceptions, passive acceptance lasted until the 1980s, when the U.S. Congress passed the first major immigration reform in decades. The 1986 **Immigration Reform and Control Act (IRCA)** combined tighter border controls and employer sanctions for hiring undocumented workers with amnesty for migrants who had arrived before 1982. Despite its amnesty provision, IRCA began a shift toward a more exclusionary immigration regime. As in earlier periods, this shift was not uniform; some doors closed while others opened. But the long-term trend was toward hardened borders and fewer legal pathways, especially to U.S. citizenship.

IRCA had the paradoxical effect of increasing flows while making stays more permanent. These new flows were both documented and undocumented. The nearly 2.7 million immigrants who gained legal status could now bring their relatives through family reunification. But even this was not enough to meet the growing demand for immigrant labor, and the 1982 deadline disqualified most Central Americans fleeing civil war. So more migrants arrived without legal status, expanding the ranks of the undocumented and reinforcing a trend toward mixed-status families, especially among Mexicans and Central Americans. At the same time, border control made the journey for undocumented migrants much more expensive and dangerous, which encouraged permanent settlement.

IRCA's contradictory approach to immigration continued for several decades, although with steady movement toward restrictionism. In 1990, Congress passed the **Immigration Act**, which reorganized the preference system to allow unused employment-based visas to be applied to family reunification while creating a new category of diversity visas to encourage immigration from underrepresented countries. The 1990 law also established Temporary Protected Status, or TPS, to grant short-term but renewable protection to people displaced by armed conflict or natural disasters.

The pendulum swung back in the restrictionist direction just a few years later, as economic recession and growing anxiety about demographic change fueled anti-immigrant sentiment, especially in the U.S. Southwest. In 1994, California voters approved **Proposition 187**, a referendum backed by incumbent Governor Pete Wilson to deny undocumented immigrants access to education and social services.

The courts struck down most of Prop 187 as unconstitutional, but its electoral success delivered two clear messages to politicians: that high-immigrant states were losing patience with what they perceived as the federal government's failure to do its job; and that anti-immigrant policies make good politics, as evidenced by Pete Wilson's unexpected reelection victory.

The U.S. Congress responded with the 1996 **Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)**, signed by President Clinton, which marked a decisive turn toward active exclusion. The 1996 law criminalized undocumented immigration and fused immigration control with local law enforcement. It also restricted the eligibility of legal immigrants for means-tested public programs and toughened the requirements for immigrant sponsorship. Meanwhile, the federal government launched several border-control initiatives between 1993 and 1997 to close off traditional crossing points in Texas, California, and Arizona.

As the U.S. economy recovered and labor demand surged in the 1990s, politicians from both parties revisited the idea of a guestworker program to reduce reliance on undocumented workers. This idea was cut short, however, by the terrorist attacks on September 11, 2001, which reframed migration as a national security issue.

Between 2002 and 2006, the Congress passed six laws aimed wholly or in part to strengthen immigration enforcement. It also created the Department of Homeland Security (DHS), which took over and reorganized the country's immigration control agencies. Emboldened by an exponential increase in their budgets and personnel, new agencies such as Customs and Border Patrol (CBP) and Immigration and Customs Enforcement (ICE) complemented border control with internal enforcement, including check points far from the border, workplace raids, and deportation of longtime residents as well as border-crossers.

Despite a dramatic decline in undocumented border crossings in the first decade of the 21st century, U.S. immigration policy became even more restrictionist after the 2008 financial crisis. President Obama's approach most closely approximated the uneasy mix of active exclusion and passive acceptance found in IRCA. On the one hand, he presided over a significant increase in deportations, leading pro-migrant activists to dub him "Deporter in Chief." On the other hand, he created the **Deferred Action for Childhood Arrivals (DACA)** program in 2012 to provide temporary relief from deportation along with work authorization for nearly 800,000 young adults brought to the United States by their parents.

Active exclusion reached its apogee under President Trump. Besides deporting migrants without a violent criminal record, his administration extended exclusionary policies to legal immigrants, refugees, asylum-seekers, and visitors from countries deemed a security threat. His most consequential policies included:

- **Slash in refugee admissions:** an 85% cut in the annual admissions cap (from 95,000 to 15,000) along with a ban on refugees from countries deemed a security risk.
- **Migration Protection Protocols (MPP):** more than 80,000 asylum seekers sent back to Mexico to await their U.S. court hearings.
- **Title 42:** nearly 3 million expulsions at the U.S.-Mexico border since March 2020 under a public health rule allowing the U.S. government to deny entry without any hearing.

The Trump administration also ramped up efforts to “externalize” border control by eliciting the cooperation of Mexico and Central America in preventing migrants from reaching the U.S.-Mexico border through a mix of detention, deportation, and asylum.

President Biden took office promising to roll back many of Trump’s exclusionary policies but quickly became ensnared in the same restrictionist trap as previous administrations. He raised the refugee admissions cap and granted more discretionary access while continuing many of Trump’s policies either voluntarily or by court order. In early 2023, he responded to a dramatic increase in border encounters with a familiar mix of restriction and access: while authorizing Title 42 expulsions of migrants from previously exempt countries, he created a new legal pathway for them to gain entry into the country. This pathway benefited thousands of migrants but remained severely undersubscribed because of high barriers to access.

RECOMMENDED READING:

Andreas, Peter (2022). *Border Games: The Politics of Policing the U.S.-Mexico Divide*. 3rd Edition. Ithaca: Cornell University Press.

Cantú, Franciso (2019). *The Line Becomes a River: Dispatches from the Border*. New York: Riverhead Books.

Fitzgerald, David (2019). *Refuge Beyond Reach: How Rich Democracies Repel Asylum Seekers*. New York: Oxford University Press.

Goodman, Adam (2020). *The Deportation Machine*. Princeton: Princeton University Press.

Cox, Adam B. and Cristina M. Rodríguez (2020). *The President and Immigration Law*. New York: Oxford University Press.

Tichenor, Daniel (2002). *Dividing Lines: The Politics of Immigration Control in America*. Princeton: Princeton University Press.