

A stylized world map composed of a grid of dots in various shades of gray, with several dots highlighted in red. The map is centered behind the title and authors' names.

The Third Rail of U.S. Politics

The Current Immigration Debate in the United States

JAMES COOPER AND YVETTE LOPEZ

June 2011

- n There are an estimated 15 million undocumented immigrants in the United States. At 16 percent of the nation's population, Hispanics are the largest ethnic minority in the United States and are believed to make up the majority of undocumented immigrants in the country.
- n The lack of a cohesive and workable federal response to undocumented immigration has left a political and security vacuum, which state and local governments have increasingly filled. These responses may run counter to the U.S. Constitution and the fundamental rights of U.S. citizens, let alone immigrants.
- n Comprehensive immigration reform has become the third rail of U.S. politics and with the losses in the House of Representatives by the Democratic Party in the last November elections, such bold new approaches to the increasing problem of illegal immigration are unlikely to move forward. Instead, exclusionary proposals like amending the Fourteenth Amendment, relating to birthright citizenship, and local initiatives like the so-called Arizona Law and the Senate Bill 1070 (SB 1070) will be in the offering.
- n The lack of leadership in Washington D.C. on comprehensive immigration reform is fast destroying the gains that the Latino community has earned and their support for president Obama. Senate Bill 1070 is not only about illegal immigrants but also calls into question America's so-called »post racial society.«

I. Immigration in the United States

There are an estimated 11 to 15 million undocumented immigrants in the United States, but these numbers are declining due to the economic crisis and new locally created (non-federal) regulations aimed at undocumented populations. According to a September 1, 2010 report from the Pew Hispanic Center, the annual inflow of unauthorized immigrants to the U.S. was nearly two-thirds less in the March 2007 to March 2009 timeframe than it had been from March 2000 to March 2005.

According to a 2010 book published by the Brookings Institution, »[t]he U.S. has benefited greatly over the years from the 'brain gain' of immigration.« The author of »Brain Gain: Rethinking U.S. Immigration Policy«, Darrell M. West, concludes that immigrants raised the U.S. Gross Domestic Product by \$37 billion in 2007. In addition, immigrants were twice as likely as native-born Americans to start a new business between 1996 and 2008, employing 450,000 workers in 2005. Most impressively, close to one quarter of patents filed from the United States were based on work of U.S. immigrants in 2006.

Immigrants have also greatly contributed to U.S. tax rolls and entitlement programs. By 2007, the Social Security trust fund had received a net benefit of somewhere between \$120 billion and \$240 billion from unauthorized immigrants. For writer Edward Schumacher-Matos, this represented an astounding 5.4 percent to 10.7 percent of the trust fund's total assets of \$2.24 trillion that year. The cumulative contribution is surely higher now. Unauthorized immigrants paid a net contribution of \$12 billion in 2007 alone. Schumacher-Matos concludes that undocumented immigrants may be a burden on taxpayers in the short-term but generally receive less in welfare than do native-born Americans.

Immigrants do make the United States stronger by integrating into the American fabric. A report by the Center for American Progress studied census data to find that immigrants tend to integrate into U.S. society as they always did. The report noted the »illusion of non-assimilation is created by looking only at newcomers who have not had time yet to assimilate as fully as earlier arrivers.« The report found that »the longer immigrants are here, the more they advance and the better they are integrated into our society.« In 1990, only 16 percent

of immigrants who were »recently arrived« were homeowners; however, in 2008, 62 percent of these same immigrants were homeowners. Similarly, only 35 percent of immigrants earned incomes above the low-income level in 1990; however, by 2008, 66 percent of the immigrants were earning incomes above the low-income level demonstrating that with time immigrants assimilate into U.S. culture and society.

In an August 2010 San Francisco Federal Reserve report, Giovanni Peri firmly concluded that new immigrants assist in making almost everybody wealthier, countering the popular belief that undocumented immigrants take away jobs from U.S. citizens and depress wages.

II. Comprehensive Immigration Reform or the Lack Thereof

Following the September 11, 2001 terrorist attacks, the U.S. Congress passed several historic measures in the name of national security. Most significantly, the Immigration and Naturalization Service (INS) was abolished and its authority was transferred to the newly created U.S. Department of Homeland Security (DHS). U.S. Immigration and Customs Enforcement (ICE) became the largest investigative agency within DHS and was tasked »to protect national security, public safety and the integrity of the U.S. borders through the criminal and civil enforcement of federal laws governing border control, customs, trade and immigration.«

Although the administration of President George W. Bush introduced a proposal to create a temporary worker program that would have granted participants legal status, like many of the subsequent immigration reform proposals, it failed to garner support. Instead, the REAL ID Act of 2005, which eliminated judicial review in certain cases, became law. In addition, the controversial Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) increased the number of Border Patrol agents to the northern border, expanded the definition of terrorism to include soliciting funds for terrorist organizations and allowed law enforcement authorities to detain non-citizens before deciding whether to charge them as terrorists.

During the post-9/11 period, immigrants from Middle Eastern and predominantly Islamic countries were subjected to special registration rules requiring certain males to register with the Department of Homeland Security. Many of these immigrants were placed in removal proceedings and subsequently deported back to their home countries.

Members of Congress introduced numerous bills that attempted to reform the federal immigration laws but like earlier proposals they failed to get through Congress. As an example, in 2005 Senators John McCain (R-AZ.) and Edward Kennedy (D-MA) introduced the Secure America and Orderly Immigration Act, a bipartisan comprehensive immigration reform bill that would bring people out of the shadows and integrate them into the system. The bill created a guest worker program by matching willing workers with willing employers. It also provided a mechanism for undocumented immigrants in the U.S. the opportunity to earn their permanent residency yet also created harsh penalties for employers who hired undocumented individuals. The bill was largely accepted as a realistic solution to the broken immigration system but failed to obtain Congressional support.

Drastically different from the McCain/Kennedy bill, was the bill sponsored by Senators John Corny (R-TX) and Jon Kyl (R-AZ). The Comprehensive Enforcement and Immigration Reform Act provided for a controversial mandatory departure program for undocumented migrants. Although the bill allowed immigrants to return to the U.S. legally, it did not expand the available legal options of returning to the U.S., therefore making the possibility of returning questionable. It too died on the Senate floor.

Opponents of comprehensive immigration reform often argue that any immigration reform legislation would open the floodgates for immigrants coming to the U.S. They point to the 1986 amnesty period where almost three million people, mostly from Latin American countries, immigrated to the U.S. as a result of that year's Immigration Reform and Control Act, which established programs that granted residency status to a variety of people including farm workers and individuals who had resided in the United States for a lengthy period.

Although many Americans believe that immigration reform under the Obama administration is impossible,

most agree that the current immigration laws are outdated. Republicans are reluctant to provide another legislative victory apart from health reform.

It seems that any reform would have to include enforcement measures along with allowing for legal status to a portion of the undocumented population including young students and seasonal agriculture workers.

President Obama has repeatedly stated his support for comprehensive immigration reform; however, thus far his administration has only created immigration enforcement mechanisms. During his administration, President Obama has met with immigrant right groups promising his support for comprehensive immigration reform. Nonetheless, with other priorities such as healthcare and finance reform, comprehensive immigration reform continues to remain elusive.

III. State-Level Response to the Immigration Problem

The U.S. federal government is responsible for creating and enforcing immigration law; however, in the last few years, in the wake of the perceived inability of the Federal Government to enforce its own laws, states and municipalities have resorted to passing legislation that attempts to crack down on illegal immigrants.

Cities such as Escondido, California and Hazelton, Pennsylvania were among the first places to pass divisive local ordinances preventing landlords from renting to undocumented immigrants. On September 8, 2010, the Third Circuit Court of Appeals found the Hazelton anti-immigrant ordinance to be unconstitutional as it usurped federal law. In response to the anti-immigrant city ordinances and increased enforcement by the Department of Homeland Security including immigrant raids, cities such as San Francisco and Los Angeles initiated sanctuary policies that allowed undocumented residents to receive public services without fear of being apprehended.

The most contentious anti-immigrant law at the local or state level is Arizona's – the Support Our Law Enforcement and Safe Neighborhoods Act (Senate Bill 1070), which has become a lightning rod in the United

States. Arizona's impugned law, among other things, mandates that local law enforcement officials determine the immigration status of people they arrest for other reasons if they believe those arrested are in the country illegally. Judging from the plethora of lawsuits that have emerged since Governor Jan Brewer signed Senate Bill 1070 into law, including the U.S. Department of Justice lawsuit that contest its constitutionality, the bill is anything but clear. During the August primaries for the Governor's race, a federal judge ruled that much of the law is unconstitutional and put it on hold. Opponents of the bill argue that the law makes communities less secure as immigrants will not come forward to report crime for fear of being apprehended on immigration violations. Long-standing community policing successes are at risk and so is societal cohesion.

Advocates maintain that Senate Bill 1070 will protect the state, a preferred point of entry for illegal crossing from Mexico, from the endemic violence of the northern border region.

Once again, immigrants are being used as political pawns and scapegoats in the wake of America's economic crisis and upcoming elections. The bill is not an anomaly. Copycat legislation in Colorado, Florida and Nebraska has also attempted to pass similar legislation. Most of the legislation if passed is expected to be challenged in court.

Numerous cities and towns have also passed Arizona-like resolutions creating different immigration policies across the United States. In California, the city of Menifee approved a resolution that criticizes California cities for creating an Arizona boycott in response to the bill.

Although this resolution is largely symbolic, it demonstrates the anger felt by most Americans. According to a bipartisan poll, although most Americans support comprehensive immigration reform, an outstanding 82 percent of Americans also support the draconian Arizona law demonstrating the anger felt by most citizens at the federal government.

States are also reacting to the high costs of providing services to the undocumented population. The Federal government reimburses only a few of these costs.

IV. Federal Immigration Policies

The Federal Government continues to enforce immigration laws, but generally only in highly publicized coordinated inter-agency sweeps. In its annual report, the Office of Immigration Statistics stated removals of foreign nationals from the United States in 2009 totaled 393,289 indicating the seventh straight year of increase. Immigration raids have been common at factories and farms. Employer audits and criminal prosecutions have increased for employers who have hired undocumented individuals.

But the Department for Homeland Security has also been lax in enforcing some immigration laws. As an example, in August 2010, the U.S. Immigration and Customs Enforcement directed its attorneys to review and terminate charges against certain defendants in immigration court proceedings. This will favor those immigrants who have pending applications before the benefit branch of immigration, the U.S. Citizenship and Immigration Service, including individuals married to U.S. citizens.

Information sharing among different state and federal agencies has increased. The Immigration and Customs Enforcement started biometric-sharing programs such as US VISIT and programs that attempt to identify immigrants with criminal records. Currently, the organization is using biometric information sharing programs between various government agencies including the U.S. Department of Justice (DOJ) and the Federal Bureau of Investigation in 574 jurisdictions in 30 states.

A big recruiting push for the Border Patrol was prompted by the Bush Administration between 2006 and 2008 with some 6,000 National Guard troops sent to the four states that border Mexico. President Obama has also been beefing up the numbers at the U.S.-Mexico border, ordering some 1200 National Guardsmen to support DHS's Customs and Border Protection to fight drug traffickers and other border criminality. In June 2010, he asked Congress for funds to hire another one thousand Border Patrol agents, and to purchase two drone airplanes, thermal imaging radars, and remote video surveillance. This push to increase enhance border security was clearly to build political support for the congressional mid-term elections 2010. Additionally, DHS

has built 646.5 miles of fencing of the 652 mandated by the U.S. Congress.

The Federal Government has also reacted to events at the state and municipal levels of government. For example, Arizona's Maricopa County Sheriff Joe Arpaio, an anti-illegal immigrant law enforcement official who is popularly elected, has been the subject of a Department of Justice lawsuit for allegations of discriminatory practices based on racial profiling and unconstitutional searches and seizures. According to the Civil Rights Division of the Department of Justice, Arpaio's acts are unprecedented for failing to cooperate with the federal authorities. Maricopa County Sheriff Joe Arpaio is even being talked about as a potential Presidential candidate for 2012.

There are also attempts afoot in the U.S. Congress to amend the 14th Amendment of the U.S. Constitution, which provides that all persons born in the United States are U.S. citizens, regardless of their parents' citizenship. Restrictionists, like Senator Lindsey Graham, have introduced several bills over the years that would deny U.S. citizenship to the children born in the U.S. to parents who are residents of other countries. According to a Migration Policy Institute report, »The Demographic Impacts of Repealing Birthright Citizenship«, the repeal of birthright citizenship for the U.S.-born children of unauthorized immigrants would expand the unauthorized population by at least five million over the next four decades.

V. The Current Immigration Debate


Comprehensive immigration reform last failed to pass in 2005 because it was considered to be too large a bill. Members of Congress have since focused on one-off legislation like the DREAM Act. A bipartisan bill, the Development, Relief and Education for Alien Minors Act (The DREAM Act) provides an avenue for permanent residency for undocumented students that were brought to the U.S. as children. In 2007, the DREAM Act came eight votes short of overcoming a filibuster in the U.S. Senate; however, a new version is currently before the Senate as an attachment to a Department of Defense Authorization Bill. Senator Dick Durbin (D-IL) has tried to get the DREAM Act through Congress for 10 years.

Senator John McCain, who had sponsored the McCain/Kennedy bill in 2005, surprisingly came out against the DREAM Act stating that the bill's timing was all about politics. According to the senior senator from Arizona, the Democrats were worried about whether they will control Congress after the November mid-term election. Indeed, Senate Majority Leader Harry Reid had attached the DREAM Act to the military appropriations bill as he was in a tight re-election race for his seat and was seeking Latino support. President Obama, who has lost support since coming into office two years ago, has repeatedly called for Congress to pass this single legislation. Speaking on September 16, 2010 at the Congressional Hispanic Caucus Institute, President Obama was not above politics, telling the assembled group of lawmakers »[D]on't forget who is standing with you, and who is standing against you.«

Most of the 11 Republican senators who supported the McCain Kennedy bill only a few years ago, have now come out against the DREAM Act. Hardcore GOP leaders have not been above vitriolic statements. Senator David Vitter (R-LA) took to the Senate floor on September 15, 2010 vowing to fight the proposed legislation »tooth and nail«. Only a few cooler heads came out in support of the bill: Former Secretary of State Colin Powell, a moderate Republican, announced that his party should support immigration reform because immigration is »what's keeping this country's lifeblood moving forward.«

On September 21, 2010 the Senate voted 56 to 43 against proceeding with the Defense Authorization Act. Once again, the DREAM Act failed to pass the Senate and ended in a familiar political gridlock. The mid-term elections on November 2, 2010 resulted in the Democrats losing their majority in the U.S. House of Representatives and losing seats in the U.S. Senate that diminished their majority there. In the dying hours of the lame duck session that followed the mid-term elections, there was another attempt to pass the DREAM Act. It, too, was defeated.

Republicans gained more than 690 seats in state legislatures around the U.S. on November 2, 2010. Anti-immigrant sentiment continues to run rampant and in Mississippi, Nebraska, Oklahoma, Pennsylvania and South Carolina bills similar to Arizona's Senate Bill 1070 and others that will take away citizenship rights for so-called »anchor babies« – children born to parents



who are undocumented immigrants – are all expected to be introduced. Georgia’s Legislature passed its own anti-immigrant bill on April 15, 2011. This trend is sure to create rifts between Latino communities and the Republican Party, result in some soul-searching among more moderate Republicans, create a litigation cottage industry for advocacy groups, but also damage the Democratic Party who were unable to produce promised results.



About the authors

James Cooper is Professor of Law at the California Western School of Law and Director of the International Legal Studies Institute. His work focuses on International Trade Law (especially NAFTA), the Law of Armed Conflict and Latin American legal culture. Professor Cooper has consulted with the U.S. Departments of Justice and State on legal reform and border issues. Recently, Professor Cooper has developed training programs for the legal sector funded by UNDP and other non-profit-organizations.

Yvette Lopez is an adjunct professor at California Western School of Law in San Diego where she primarily focuses on immigration. She was part of the U.S. Department of Justice Attorney General's Honors Program and worked as an attorney advisor for the U.S. Department of Justice Executive Office for Immigration Review. As a member of the American Immigration Lawyer's Association, she has lobbied Congress for comprehensive immigration reform.

Imprint

Friedrich-Ebert-Stiftung | International Dialogue
Hiroshimastraße 28 | 10785 Berlin | Germany

Responsible:
Anne Seyfferth, Head of the Department of Western Europe/
North America

Tel.: ++49-30-269-35-7736 | Fax: ++49-30-269-35-9249
Email: ID-INFO-WENA@fes.de
www.fes.de/international/wil

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Friedrich Ebert Foundation
1023 15th Street, NW | Suite 801
Washington, DC 20005
Tel.: +1-202-408-5444
Fax: +1-202-408-5537
Email: fesdc@fesdc.org | <http://www.fesdc.org>

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