

Introduction

Déjà Vu

Carol M. Swain

Unfortunately, immigration lends itself to lawlessness. The benefits are great; the tickets are scarce; administrative discretion is wide; political intervention is commonplace; and the judicial system governing immigration is slow and often lacking in credibility – Lawrence Fuchs, 1985.¹

For it is hardly likely that the American people and its representatives will live indefinitely with the present situation in which no effective measures to control illegal immigration exists and we are divided on the question of what principles should govern our efforts to control immigration. No policy set by Congress, or the Executive, or even the courts – though their interventions have affected policy deeply – now truly control “whom we shall welcome” – Nathan Glazer, 1985.²

“The more things change, the more they stay the same” comes from a French proverb. It captures well an aspect of the political complexity surrounding efforts to reform United States’ immigration law and policy. Lawrence Fuchs and Nathan Glazer penned the words in the epigraph after the Reagan Administration era’s Simpson/Mazzoli bill failed to survive the conference process. Simpson/Mazzoli was supposed to fix the problems caused by the previous grand effort of 19 years earlier to reform immigration. It failed.

Before delving into background material and an overview of the current immigration situation, it is useful to review the language and terminology that shapes immigration discussions in the United States and, in some cases, other parts of the world. Readers of this volume will encounter different terminology from the scholars, activists, and policy experts who have contributed their expertise to this volume. In my chapters, I have chosen to use the official United States government designations to refer to individuals in the country without proper documentation.³ Other contributors have made different decisions about how they refer to various populations. The Department of Homeland Security’s definitions below depict how the government characterizes the population:

Alien

Any person not a citizen or national of the United States. “Foreign national” is a synonym and used outside of statutes when referring to noncitizens of the U.S.

Illegal Alien

Also known as an “Undocumented Alien,” is an alien who has entered the United States illegally and is deportable if apprehended, or an alien who entered the United States legally but who has fallen ‘out of status’ and is deportable. . .

Lawful Permanent Residents

Also known as “green card” holders, are noncitizens who are lawfully authorized to live permanently within the United States.

In this volume, I use the government designation of illegal alien to refer to non-green card holders who are in the country without legal papers. Other contributions might refer to these as undocumented immigrants, unauthorized foreigners, undocumented citizens, or just plain immigrants. Legally, the term immigrant refers to a person who enters another country for the purpose of taking up permanent residence. The U.S. legally admits foreigners by granting them one of two types of visas: immigrant and non-immigrant.

The terms “asylee” and “refugees” have their own special meanings as described below:

Asylee

A foreign national in the United States or at a port of entry who is unable or unwilling to return to his or her country of nationality, or to seek the protection of that country because of persecution or a well-founded fear of persecution. Persecution or the fear thereof must be based on religion, nationality, membership in a particular social group or political opinion.

Refugee

Generally, any person outside his or her country of nationality who is unable or unwilling to return to that country because of persecution or a well-founded fear of persecution based on the person’s race, religion, nationality, membership in a particular social group, or political opinion. For a legal definition of refugee, see section 101(a)(42) of the Immigration and Nationality Act (INA).

Now that we have addressed terminology, we can return to an overview of immigration history and politics since the turn of the last century. We have had mixed success with resolving immigration challenges in America and abroad.

After more than a century of grappling with immigration problems and successfully passing only three major legislative Acts (the 1924 National Origins Act, the 1965 Immigration and Nationality Act, and the 1986 Immigration Reform and Control Act), our nation still contends with many direct and indirect problems related to the presence of millions of illegal aliens who reside within our borders. We face an ever-expanding set of concerns related to criminal behavior, national security, refugee and asylee policy, family reunification, birthright citizenship, guestworker programs, human trafficking,

Introduction

3

and birth tourism. At the state and federal level, we fight over how to treat the children of these illegal aliens: How should we treat the American-born children of illegal aliens who have deportation orders, and how should we treat the foreign-born children of illegal aliens who attend our schools, churches, synagogues, and mosques? Should unaccompanied minors and foreign-born children of illegal aliens be immune from deportation? Should they receive in-state tuition and admission preferences at public colleges and universities?

The list of immigration-related concerns and issues seems endless. It touches many areas, including tax policy and entitlement programs such as Social Security and Medicaid. Among the perennial problems is that no one knows with certainty how many illegal aliens reside in the United States. Writing more than 30 years ago, Lawrence Fuchs noted that a commonly repeated guesstimate was twelve million, a number he dismissed. Fuchs concluded: “There are currently no reliable estimates of the number of illegal aliens in the country or the net volume of illegal residents in the United States.” That about sums up the situation in the second decade of the twenty-first century as well. We still conveniently throw out guesstimates of 11 or 12 million illegal aliens when we attempt to guess how many people reside in the country without legal authorization.

Since the publication of this volume’s first edition, Congress in 2005, 2006, 2007, and 2013 failed to pass major immigration reform bills, originating from different houses of Congress. The House Border Protection, Antiterrorism, and Illegal Immigration Control Act (H.R. 4437) was approved in 2005; but not taken up in the Senate. The Senate approved the Comprehensive Immigration Reform Act (S 2611) on a 62–36 vote on May 25, 2006, but failed to approve the Comprehensive Immigration Reform Act of 2007 (S 1348) in 2007. The Senate in June 2013 approved the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (S 744). The failure of immigration reform to move forward in Congress led President Barack Obama to push the limits of executive power with the implementation of Deferred Action for Childhood Arrivals (DACA) and, later, Deferred Action of Parents of Americans (DAPA) in 2014 (Swain, Chapter 12).

AN OVERVIEW OF A SHIFTING LANDSCAPE

In November 2016, the immigration landscape shifted once again with the election of Donald J. Trump as the incoming president. Trump campaigned as an immigration restrictionist, who promised to have Mexico pay for the construction of a border wall between Mexico and the United States. Trump also vowed to protect American citizens from terrorists and criminal aliens. Statements made during his historic campaign even came back to haunt him as he attempted to follow the pattern of executive action and prosecutorial discretion instituted by President Obama. Federal court injunctions against an executive “travel ban” led the Trump Administration to appeal to the Supreme

Court, which granted a measure of relief, allowing the most vital parts of his executive order pertaining to selected Muslim nations to stand.

The following is a list of major developments that have shaped immigration procedures and practices since 2006.

- The election and re-election of Barack Obama in 2008 and 2012 as a liberal, activist president.
- Both the expansion and restriction of immigration federalism, which dictates what state and local governments can and cannot do to assist the federal government in undertaking its role to enforce the nation's immigration laws.
- An unprecedented increase in the use of executive action and prosecutorial discretion to bypass Congress and implement rules and practices that slowed deportation and expanded immigrants' rights.
- A surge in unaccompanied minors crossing the southern border.
- Chaos in the Middle East and a destabilization that has led to an increase in refugees from Arab nations to Europe.
- A rise in Islamic terrorism within the United States and around the world.
- A steep decline in the percentage of working-age Americans in the labor force, either employed or unemployed, which was at a 36-year low (62.4 percent) in September 2015, but had risen to 63.1 percent by September 2017.⁴ The record low was 58.10 percent in 1954.
- The election of Donald J. Trump in 2016 as an immigration restrictionist president.

As I show in Chapter 12 of the Law and Policy part of this edition, President Obama established a precedent of using executive actions to implement his policy goals. Acting unilaterally, he expanded presidential power in areas related to healthcare and immigration reform. Most prominently, at least in the area of immigration, was the creative use of executive powers to bypass Congress and unilaterally institute the Deferred Action for Childhood Arrivals (DACA) Program in 2012 and Deferred Action of Parents of Americans and Lawful Permanent Residents (DAPA) in 2014. Challenged in the courts, DAPA has been withdrawn by the Trump Administration.

Federalism refers to the constitutional division of power between the national government and the sovereign states. As I edited the first edition of this book, states and localities had begun taking action to resolve the problem themselves. However, immigration federalism came to a screeching halt in 2012 after the U.S. Supreme Court reaffirmed the position of federal dominance in its ruling in *Arizona v. United States*.⁵ In reaction to broad legislation passed by the state of Arizona, which raised concerns about civil rights and civil liberties violations, the Court reaffirmed the federal government's broad power over immigration and alien status (Swain and Yetter, Chapter 11).

During the Obama Administration, we saw an increase in executive actions and prosecutorial discretion that affected the status of legal and illegal aliens as well as refugees and asylees. The Administration used its discretion to

Introduction

5

implement policies such as “catch and release.” This allowed the border patrol to apprehend and release persons caught entering the U.S. illegally and to shift resources that allowed it to improve some of the conditions affecting persons in the country illegally. In addition, after the failure of the Schumer/Rubio Senate bill, thousands of unaccompanied minors, mostly from the Central American countries of El Salvador, Guatemala, and Honduras, streamed into the U.S., and most were allowed to remain. Data from the Center for Latin American and Latino Studies capture the magnitude of the problem:

During fiscal year (FY) 2014, U.S. Customs and Border Protection (CBP) reported the apprehension of 68,541 unaccompanied minors – a striking 77 percent increase from the previous fiscal year and a 429 percent increase from just 15,949 UAC apprehensions in FY2011. Family unit apprehensions along the southwest border also skyrocketed 461 percent, from 14,855 in FY2013 to 68,445 in FY2014.⁶

Unfortunately, the placements of these minors were not always with parents and relatives in the U.S. Since some of this influx occurred in late spring and summer, one can only imagine the strain placed on local school budgets as administrators adjusted to the challenges of having to accommodate unexpected pupils and language barriers.

Chaos related to the 2010 Arab Spring that destabilized parts of the Middle East has had a profound impact on America. It created a critical need to address the refugee crisis that came out of the violent unrest in that part of the world. Under President Obama, a record number of Muslim refugees came to the United States in 2016, constituting 46 percent of the total⁷ number of refugees entering the U.S. Fear of Islamic terrorism on American soil affects how some Americans view Muslims. It explains their receptivity to presidential candidate Donald Trump’s vow to institute a Muslim ban until refugees could be properly vetted.

Since 9/11, and particularly in recent years, there has been an increase in Islamic terrorism in the U.S. and in Europe. Political scientist John Mueller compiled an extensive dataset on attacks in the United States since 9/11.⁸ High-profile attacks at the Boston Marathon (2013), and in large and small cities such as Chattanooga, Tennessee (2015), Orlando, Florida (2016), San Bernardino, California (2016), Saint Cloud, Minnesota (2016), and Fort Lauderdale, Florida (2017), along with the attacks in European nations, have fueled national security concerns. In Chapter 9, Rogers Smith points out that U.S. officials have taken many actions to reassure those who fear immigrants for cultural or national security reasons, yet have not taken many substantive actions likely to lead to significant declines in immigration.

After the November 2015 attacks in Paris killed 130 people and wounded 368, Trump called for a database of Muslims entering the United States. A few weeks later, a terrorist attack in San Bernardino killed 14 and critically wounded 22. Trump quickly called for a temporary ban on all Muslims entering the United States. His controversial stance evoked criticism from

foreign leaders and led some to argue that his remarks should disqualify him from serving as president. These words would later haunt the newly elected president when they were cited in a legal brief challenging the then-president's executive orders that placed a temporary ban on Muslims from seven nations. Injunctions from lower federal courts led to a Supreme Court intervention which affirmed presidential power.

The American workforce is undergoing dramatic demographic changes, with fewer native workers participating in the labor force. The final job report for the Obama Administration, released in December 2016, revealed that more than 95 million Americans are no longer in the labor force. Labor force participation stood at 62.7 percent, barely up from a 38-year low of 62.4 percent in September 2015. Some of the labor force dropouts have given up on looking for work and others have chosen not to participate in the labor force. For those who would like to work, the outlook is far from rosy.

Research by Steven Camarota and Karen Zeigler (Chapter 3) shows that a third of the net new jobs created between 2000 and 2017 went to immigrants, and that the native population has never recovered from job losses associated with past recessions. In addition, research by John Skrentny (Chapter 1) presents further unsettling news about employment discrimination and its impact on low-skilled white and black native workers. Skrentny found that employers nationwide preferred immigrants over native workers because they believe job skills vary based on race and ethnicity. Employers preferred Asians and Hispanics over white and black workers. Other unsettling news for native workers comes from data showing a decline in the percentage of Americans willing to work. Charles Murray has found a growing percentage of white working-class men who prefer to stay home rather than work. Murray reports in his study of Fishtown that, between 1960 and 2000, the percentage of able-bodied white men who were not in the labor force grew from 9 percent to 30 percent. Much of the problem came from men not interested in working.⁹ His findings are echoed in a similar study by Nicholas Eberstadt, *Men without Work: America's Invisible Crisis*.¹⁰ Eberstadt reports that about 10 million men between the ages of 25 and 54 have left the labor force and are now addicted to drugs, porn, and/or television and video games. Of course, we have no way of knowing the size of this population and how many were never in the workforce. Their lifestyle is made possible by government entitlement programs and the generosity of relatives. These men resemble the poverty-stricken, lower-class whites described in J. D. Vance's *Hillbilly Elegy*, which portrays a value system and a reality of hard-core unemployable whites who have no interest in living by the rules and norms of most of society. There are clearly jobs, some of them decent-paying, available for men who want to work.¹¹

Indeed, both white and black Americans find themselves confronting new realities, such as the possibility that elites have little concern about the realities of the native population. A new reality for white Americans, which undoubtedly

Introduction

7

played a small role in President Trump's election, is a higher mortality rate for whites and a growing sense of hopelessness. Anne Case and Angus Deaton referred to these early deaths as "deaths of despair." According to their findings:

Around the turn the century, after decades of improvement, all-cause mortality rates among white non-Hispanic men and women in middle age stopped falling in the US, and began to rise. . . By 2014, rising mortality in midlife, led by these "deaths of despair," was large enough to offset mortality gains for children and the elderly.¹²

In addition, the authors surmise:

[D]eaths of despair come from a long-standing process of cumulative disadvantage for those with less than a college degree. The story is rooted in the labor market, but involves many aspects of life, including health in childhood, marriage, child rearing, and religion. Although we do not see the supply of opioids as the fundamental factor, the prescription of opioids for chronic pain added fuel to the flames, making the epidemic much worse than it otherwise would have been.¹³

Clearly, this is a new and changing environment for Caucasian Americans who now face greater uncertainty about their future and that of their children and grandchildren as they adapt to changing circumstances in a nation that once offered Anglo-Americans enormous privileges.

THE GENESIS OF THE IDEA

In 2005, I was new to the study of immigration. My interest in the subject was piqued in the late 1990s and early 2000s as I conducted research for my book *The New White Nationalism in America: Its Challenge to Integration* (2002), in which I forecast the rise of what now brands itself as the alt-right movement.¹⁴ I commissioned interviews of key figures in what has variously been styled as the white nationalist, white supremacist, white protest, or white rights movements in America. I was interested in exploring the background of these individuals, how they came to hold their views, and their positions on key race-related issues of the day. Repeatedly, the interviewees offered harsh commentary on the high level of legal and illegal immigration flowing into America from "Third-World nations" and the failure of the U.S. government to stem this tide – a development the interviewees perceived as a threat to Euro-American values and culture. Although many of the views expressed were openly racist, the respondents did not seem to care how critics might perceive them.

After listening to their arguments and watching events unfold in border states (such as the formation of the Minute Men and other militia groups), it became increasingly clear that a situation was developing in America in which the racist right was framing the debate on serious and potent issues regarding immigration and naturalization. Although these issues are of great concern to many Americans, they were largely ignored; an open debate was being suppressed by many people in the mainstream who

feared being dismissed as racist. Accordingly, a very limited public discussion was being monopolized by a small minority on the racist right. This was effectively silencing legitimate conversations that ought to have taken place in the public realm among more mainstream thinkers. Those mainstream conversations would be about the changing demographics of the nation and the continued existence and embracing of immigration policies that many Americans believe placed the needs and concerns of new immigrants above those of the native-born.

My instincts about these issues were seemingly confirmed in November 2005, when I received an e-mail from a stranger that I refer to here as “Martha.”

Martha described herself as a 65-year-old white woman who had recently joined the California Minute Men. This was a group of citizens organized to help stem what Martha described as an invasion of her beloved country. Martha wrote me to lament the fact that a 15-year friendship with a black neighbor ended on the day that she asked her black friend to join her at the border. With horror, disdain, and anger, the black friend exclaimed: “I don’t do anything to help white people.” Martha was crushed. She is not a racist, she explained to me in her e-mail. She does not hate Mexicans – her husband of 23 years is Mexican-American. Rather, her e-mail expressed rage at illegal immigration and at the failure of blacks to join the fight against it. After all, she argued, it is their country, too, that is being invaded.

Martha’s frustration had risen to the point where she was willing to stay up all night patrolling the border in the belief, or hope, that her lone act, multiplied by the acts of several hundred others, might actually reduce illegal immigration. Her e-mail expressed fear about not wanting her children and grandchildren to be forced to learn Spanish in order to live and work in their own country. She decried the 14th Amendment’s guarantee of citizenship by birth for those who entered the country illegally. Martha also lamented the drain on local goods and services that she claims have forced hospital emergency rooms in Los Angeles to close. She ended her e-mail with the capitalized words: GOD BLESS AMERICA.

Martha’s fears might appear extreme, but they are not without some foundation. Immigration is and was a growing concern for many Americans. Moreover, it remains a critical issue even today.

Announcing his entry into the 2016 presidential contest, Trump brought immigration to the forefront of public discussion when he said he would build a wall to keep illegal aliens from entering the country. In that same speech, Trump threw political correctness to the wind by accusing some Mexicans of coming to the U.S. for nefarious purposes:

When Mexico sends its people, they’re not sending their best. They’re not sending you. They’re not sending you. They’re sending people that have lots of problems, and they’re bringing those problems with them. They’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people.¹⁵

Introduction

9

The murder of Kate Steinle, on July 1, 2015, served to bolster support for Trump, and it forced other candidates to address the immigration crime problem. Her shooting death on Pier 14 in San Francisco led Congress to introduce and debate a bill called Kate's Law, which would add an additional mandatory prison sentence to illegal aliens who return to the U.S. to commit crimes after they have been deported.¹⁶ As of July 2017, Kate's Law (H.R. 3004) has passed in the House of Representatives and is awaiting Senate action, along with a companion bill, "No Sanctuary for Criminals Act" (H.R. 3003), that would make it more difficult for sanctuary cities to flourish.¹⁷

A BRIEF OVERVIEW

Figure 0.1 depicts immigration growth between 1965 and 2015, and key legislative efforts, as well as the births of DACA and DAPA in 2012 and 2014, respectively, which occurred without legislative action. A sense of déjà vu comes from our knowledge that Congress has attempted to address the immigration problem with mixed results. In 1986, Congress passed the Immigration and Reform Control Act (IRCA),¹⁸ and four years later it passed the 1990 Immigration Act.¹⁹ Next came the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).²⁰ Lastly came President Obama's executive orders giving temporary legal status to some classes of illegal immigrants. His orders have been blocked or rescinded by the Trump Administration. So far, each congressional Act or executive action has brought numerous unintended consequences. Douglas Massey argues that congressional policy since 1986 has been filled with contradictions. Rather than fix the problem, U.S. policies toward Mexico have made it less likely that illegal migrants from Mexico will return home of their own accord.²¹ Massey and Pren, Chapter 8, provide an in-depth analysis of immigration from Latin America.

A close perusal of the graph further shows no real fluctuations between 2007 and 2015, despite the national recession that caused massive unemployment and layoffs for native workers.

THE IMMIGRANT PROTESTS OF THE 2000S

The 109th Congress tried to fix the immigration problem with a bill that could not muster the support needed to become a law. Repeatedly, members of Congress have introduced measures that have died in one or both houses of Congress. Momentum for the 2007 bill grew after hundreds of thousands of legal immigrants and illegal aliens engaged in mass protests during the spring of 2006. Breathtakingly large public demonstrations first occurred in April 2006, and again on May 1, 2006, when organizers ratcheted up the stakes by arranging a national boycott touted as "A Day Without Immigrants," intended to bring the U.S. economy to a crawl. Although the impact of the