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DEPARTMENT OF ENGLISH



**Muslim and Latino Immigrants in Donald
Trump's America (2017–2021): The Return
to Nativism and Xenophobic Measures and Its
Repercussions on the American Life**

Thesis Submitted to the Department of English Language in Candidacy
for the Degree of Doctorate in Civilization.

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Declaration of Originality

I, Ali BOUKHALFA, do herewith declare that the material contained in my thesis entitled: “Muslim and Latino Immigrants in Donald Trump’s America (2017–2021): The Return to Nativism and Xenophobic Measures and Its Repercussions on the American Life” is an original work performed by me under the guidance and advice of my faculty supervisor, Prof. Faiza SENOUCI MEBERBECHE from the Department of English Language. I certify that the thesis presented hereby for examination for a doctorate degree at ABU BEKR BELKAID University, Tlemcen, is solely my own work and contains no part of any other thesis or work unless it is clearly mentioned.

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Dedication

To my mother,

To my father,

To my siblings,

Acknowledgments

First and Foremost, all praises and thanks go to Allah for the blessings He surrounded me with and the strength He granted me to successfully accomplish this work.

I am so delighted to express my sincere thanks and gratitude to my supervisor, Prof. Faiza MEBERBECHE SENOUCI who helped me immensely during all the steps I went through before finishing this work. I am so indebted to her for providing me with her valuable support from the first step to the last stage of this Thesis. Her valuable guidance, advice, patience, and support, and particularly her agreement to supervise me and accompany me on this long journey, would be forever appreciated and engraved on my mind and heart.

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Abstract

Immigration is an old phenomenon that characterized the international movement of people from their home countries to a destination country. This international movement is of great importance, especially for destination countries, as it could alter the structure of their societies and cause significant cultural, social, and economic implications. Given its sensitivity, the migration of people ought to be organized and legalized to make it consistent with the best interest of the destination country. The United States of America is the best world example as a country that welcomes people from all parts of the world, thereby famously known for its melting pot. However, with the remarkable spike in the number of immigrants, which caused some social, economic, and cultural issues, the need for a good immigration policy consistent with America's best interests became very necessary. Therefore, American history comprises a series of immigration laws, passed under previous federal administration, designed chiefly to adjust immigration laws so that only immigrants who meet the required criteria could enter the United States. The Republican administration of President Donald Trump is no exception. Campaigning for the 2016 presidency under his famous slogans "America First" and "Make America Great Again", Donald Trump designed his xenophobic immigration plan, particularly against Muslim and Latino immigrants, placing Americans' interests ahead of the interests of immigrants. His immigration plan is essentially based on increasing the enforcement of immigration laws, banning the inflow of undesirable immigrants, restricting the acceptance of asylum seekers and refugees, and increasing the removal of illegal or undocumented immigrants. Therefore, this study aims to investigate the impact of Trump's immigration measures against Muslim and Latino immigrants the American life. To answer this research problem, this study targeted the population composed of the community of immigrants in the United States including newcomers and potential immigrants, Muslim, Latin, and illegal immigrants. The data was collected from historical sources and documents, studies by immigration analysts, surveys and polls conducted by scholars, newspapers, and institutions, and reports made by other researchers as well as federal agencies. The study also relied on the historical method which consists in gathering relevant information along with examining and analyzing critical facts and events. This study found that Trump's immigration plan has more disadvantages than advantages. It generated new problems and side effects rather than solving the pre-existing issues. Trump's immigration plan hurt very much America's historical reputation as a nation that welcomed immigrants regardless of their religious and ethnic backgrounds, which is one of the basic values upon which America was built.

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List of Acronyms

ACA: Affordable Care Act

ACLU: American Civil Liberties Union

AEDPA: The Antiterrorism and Effective Death Penalty Act

AL: American Legion

AOR: Affidavit of Relationship

APA: American Psychological Association

APL: American Protective League

BCC: Border Crossing Card

Byrne JAG: Byrne Justice Assistance Grants

CAIR: Council on American-Islamic Relations

CAM parole: Central American Minors parole

CBN: Christian Broadcasting Network

CBP: US Customs Border Patrol

CFR: Council on Foreign Relations

CIS: Center for Immigration Studies

CLEAR: Clear Law Enforcement for Criminal Alien Removal

CLINIC: Catholic Legal Immigration Network, Inc.,

CMS: Center for Migration Studies

COPS: Office of Community Oriented Policing Services

CTCEU: Counterterrorism and Criminal Exploitation Unit

DACA: Deferred Action for the Childhood Arrivals

DAPA: Deferred Action for Parents of Americans

DED: Deferred Enforced Departure

DHHS: Department of Health and Human Services

DHS: Department of Homeland Security

DOJ: Department of Justice

DOS: Department of State

DREAM Act: Development, Relief, and Education for Alien Minors

EAD: Employment Authorization Documents

EO-1: Executive Order 13769

EO-2: Executive Order 13780

ERO: Enforcement and Removal Operations
EU: European Union
EWI: Entered Without Inspection
FBI: Federal Bureau of Investigation
FDNS: Fraud Detection and National Security
FICA: The Federal Insurance Contributions Act
FISA: Foreign Intelligence Surveillance Act
FSL: Free Speech League
FY: Fiscal Year
GAO: Government Accountability Office
GDP: Gross Domestic Product
GOP: Grand Old Party
ICCPR: International Covenant on Civil and Political Rights
ICE: Immigration and Customs Enforcement
IEP: International Entrepreneur Parole
IIRIRA: Illegal Immigration Reform and Immigrant Responsibility Act of 1996
ILRC: Immigration Legal Resource Center
INA: Immigration and Nationality Act of 1952
INS: Immigration and Naturalization Service
IRCA: Immigration Reform and Control Act of 1986.
ISIS: Islamic State in Iraq and Syria
IWP: Interview Waiver Program
LEA: Law Enforcement Agency
LPR: Lawful Permanent Resident
MCA: Military Commissions Act
MOU: Memorandum of Understanding
MPP: Migration Protection Protocols
NAFTA: North American Free Trade Agreement
NEMT: New Economics of Migration Theory
NET: Neoclassical Economic Theory
NFIB: National Federation of Independent Business
NSEERS: National Security Entry-Exit Registration System
NTCA: North Triangle of Central America
NURP: The National UnDACAmented Research Project

OLC: Office of Legal Counsel
OPM: Office of Personnel Management
ORR: Office of Refugee Resettlement
PRWORA: Responsibility and Work Opportunity Reconciliation Act
PTSD: Post-Traumatic Stress Disorder
RPUSA: Reform Party of the United States of America
RSC: Resettlement Support Centers
SAALT: South Asian American Leaders of Tomorrow
SCAAP: State Criminal Alien Assistance Program
TPS: Temporary Protected Status
TVPRA: Trafficking Victims Protection Reauthorization Act
TVPRA: Trafficking Victims Protections Reauthorization Act
UAC: Unaccompanied Alien Children
UCR: Uniform Crime Reporting
UN: United Nations
UNHCR: United Nations High Commissioner for Refugees
USA PATRIOT Act: Uniting and Strengthening America by Providing Appropriate Tools
Required to Intercept and Obstruct Terrorism Act
USCIS: U.S. Citizenship and Immigration Services
USCRC: U.S. Civil Rights Commission
USRAP: U.S. Refugee Admissions Program
US-VISIT: United States Visitor and Immigrant Status Technology
VWP: Visa Waiver Program

General Introduction

Over centuries, the United States of America was the best destination for consecutive waves of immigrants from different parts of the world. They arrived in the new world in an attempt to better themselves and enjoy a peaceful and prosperous life. This made the U.S. to be regarded as the nation of immigrants par excellence. The arrival of millions of immigrants with different backgrounds to live together in one society changed the structure of the American people which became more diverse. It became a multicultural, multireligious, multilingual, and multiethnic society, thereby referring to it as the world's best example of a melting pot. These immigrants played a key role in developing the nation in different fields: economically, socially, culturally, and politically. They were the solid ground upon which America was built; without them as well as their significant sacrifices, America would never be today's great nation.

Given its nature as a nation that welcomes immigrants, the U.S. federal government gave much importance to the issue of immigration into the United States. In fact, there were a series of immigration reforms adopted by consecutive administrations intended for regulating the inflow of immigrants into the USA according to the nation's best interests. These reforms were dictated by the circumstances the nation went through, especially in times of war and crises. Starting from the Alien and Sedition Act of 1798 to the notorious PATRIOT Act passed following the 9/11 attacks in 2001, the White House along with Congress strived to enact laws that guarantee the best selective immigrant policy that complies with the best interests of America as a great nation and a leading power of the free world.

However, some of the reforms were introduced as a response to anti-immigration sentiments that surfaced among xenophobists and nativists. If we look back on American history, we find many examples of xenophobic measures and policies adopted by the American government, particularly during times of fear when the United States was at war or involved in a conflict with a foreign power. For instance, the Chinese Exclusion Act of 1882 suspended the inflow of Chinese immigrants into the United States for ten years and renewed it for ten other years in 1892. Furthermore, the Barred Zones Act of 1917 and the Immigration Act of 1942 effectively reduced Asian Immigration into the United States. Similarly, the European countries had their share of American xenophobic measures, especially those hailing from Southern and Eastern European countries. Japanese, Germans, and Italians were also targeted by restrictive measures on their inflow to the United States. In other words, xenophobic and nativist immigration measures characterized the U.S. immigration history since its foundation. Accordingly, such draconian measures were not new and characterized the evolution of American immigration history during the 19th and 20th centuries.

In the 21st century, the need for adjusting the U.S. immigration policy surfaced again to meet the nation's best interests. Accordingly, several changes were introduced to the U.S. immigration policy under both administrations of President George W. Bush¹ (born on July 6, 1946) and President Barak Obama² (born August 4, 1961). The administration of Donald Trump

¹ George W. Bush was the 43rd U.S. President from January 20, 2001, to January 20, 2009. His Presidency was eventful. It was famous for the 9/11 attacks on the two Twin Towers of New York and the Pentagon in Pennsylvania. Besides, it famous for the War on Terror and the Invasion of Iraq and Afganistan. Lastly, his presidency ended with the financial crisis of 2008. Before his presidency, George W. Bush served as the 46th Governor of Texas from January 17, 1995, to December 21, 2000.

² Barack Hussein Obama was the 44th U.S. President from January 20, 2009, to January 20, 2017. Prior to his presidency, he served as a Member of Illinois Senate from the 13th district from January 8, 1997, to November 4, 2004. Thereafter, he served as the U.S. Senator from Illinois from January 3, 2005, to November 16, 2008.

is no exception as President Trump gave much importance to adjusting the U.S. immigration policy by introducing tough measures on account of meeting the nation's best interests and protecting the nation's national security. However, Trump's immigration plan comprised strict measures designed chiefly to rid the nation of undesired immigrants. Consequently, Trump's war on immigrants is just another episode in the series of assaults against immigrants.

Trump's campaign against immigrants had been waged under his big slogans "Making America Great Again" and "America First." He wanted an immigration policy that places Americans' interests ahead of the interests of immigrants. According to his view, immigrants who are regarded as unbeneficial to the country and its economy or may harm American national security must be banned from entering the country. Furthermore, he capitalized on Islamophobia and anti-immigration sentiments that pervaded the country following the 9/11 attacks and were still fueled up to Trump's presidency. Ever since the 9/11 attacks, Muslim and Arab immigrants were targeted by American Racists. However, Donald Trump intended to worsen even more the suffering of Muslim immigrants.

Trump's derogatory ideas rest namely on demonizing Muslim immigrants, capitalizing on all terrorist attacks around the world to corroborate his radical point of view about banning and limiting the flow of unwanted immigrants. For instance, he capitalized on the mass shooting at Pulse Nightclub in Orlando, Florida, on June 12, 2016, where 49 people were killed, to infuse and back up his venomous ideas. He maintained that the terrorist behind the attack is a descendant of an Afghan family that migrated to the United States, emphasizing the terrorist's father's support for the Taliban, a regime that killed many people who held dissimilar ideas from those of its leaders. He assumed that the attack would never happen if America did not allow this family to come to the United States; therefore, he insisted on taking suitable measures to ban such unwanted people from entering America.

Effectively, shortly after taking office in the White House, President Donald J. Trump issued his notorious Executive order known as the Muslim Ban that banned the entry of immigrants from seven Muslim-dominated countries which are as follows: Yemen, Sudan, Syria, Iraq, Iran, Libya, and Somalia. He did so because he considered them as the hotbed of terrorism, and that immigrants from that countries could harm America at any time. In other words, this ban was based on national security grounds which is another important sphere that must be protected from being jeopardized by unpleasant immigrants, according to Donald Trump. Further, the Muslim Ban came as the fulfillment of his electoral promise when he called

in December 2015 for banning completely the entry of Muslims to the United States.³ So, it was pretty clear that Trump's promise to ban the entry of Muslims into America represents an act of Islamophobia. Additionally, the Muslim Ban came to fuel again hatred and hostility towards Muslims in America. This proved that Islamophobia among Americans never abated since they directly point to Muslims as the first suspects of any terrorist attack.

Latinos, namely Mexicans, also figured in Donald Trump's xenophobic immigration plan. Mexicans were the first target of the Trump administration as they were looked down on by Donald Trump. The latter demonized them for their bad quality as well as their tendency to commit crimes, accusing them of bringing their problems to the United States which might inflict public safety and national security.⁴ Moreover, he accused them of stealing Americans' jobs.⁵ Therefore, to stem the inflow of Mexicans as well as other Latino immigrants who usually cross the country's southwest border with Mexico, Trump announced his big project of building a gigantic and tall border wall along the U.S.-Mexican border.

Additionally, Trump's Immigration plan allowed for mass deportation of undocumented immigrants. To achieve so, he targeted the immigration programs initiated by his predecessor, President Barak Obama⁶ (born August 4, 1961), namely the so-called Deferred Action for Childhood Arrivals (DACA) program⁷ designed to help undocumented immigrants by deferring deportation of those who arrived in the United States in their childhood. Hence, nullifying such immigration programs would deprive thousands of undocumented immigrants of the protection provided by the federal government, thereby increasing the number of deportable immigrants from the United States. So, it was quite clear that Trump's war on immigrants played a major role in the outcome of the last presidential election in November 2020. All these measures along with others were designed under the bright slogan "America First" which mesmerized the majority of Americans, enabling him to infuse his draconian ideas centered on building a gigantic border wall along the U.S.-Mexican border.

³ Jon Herbert, Trover McCrisken, and Andrew Wroe, *The Ordinary Presidency Donald J. Trump*, (Switzerland: Palgrave MacMillan, 2019), 30.

⁴ Katie Reilly, "Here Are all the Times Donald Trump Insulted Mexico," Time, published on August 31, 2016, Accessed on February 5, 2023, <https://time.com/4473972/donald-trump-mexico-meeting-insult/>

⁵ Katie Reilly, "Here Are all the Times Donald Trump Insulted Mexico,"

⁶ Barack Hussein Obama was the 44th U.S. President from January 20, 2009, to January 20, 2017. Prior to his presidency, he served as a Member of Illinois Senate from the 13th district from January 8, 1997, to November 4, 2004. Thereafter, he served as the U.S. Senator from Illinois from January 3, 2005, to November 16, 2008.

⁷ Howard University School of Law, "Deferred Action for Childhood Arrivals (DACA)", Law Library, Accessed on December 2, 2022, <https://library.law.howard.edu/civilrightshistory/immigration/daca>

As aforementioned, President Donald J. Trump's immigration policy came to comply with the broad philosophy he adopted in different fields under his famous slogans "Let's make America great again" and "America First". Under these two slogans, he aimed at introducing new reforms to the U.S. immigration policy and correcting the flaws of his predecessors' policy who, according to him, adopted lenient immigration measures at the expense of the nation's best interests. Therefore, putting in place a new immigration plan living up to his vision of making America great again is necessary for him. His immigration plan is essentially based on increasing the enforcement of immigration laws, banning the inflow of undesirable immigrants, restricting the acceptance of asylum seekers and refugees, and increasing the removal of illegal or undocumented immigrants. Thus, the issue addressed by this study is how would be the impact of Trump's xenophobic measures on American life. How could Trump make America great again by going against one of the most important pillars upon which America was built? In other words, is it possible for Donald Trump to make America great again by adopting such a tough and xenophobic immigration policy?

This topic is of great importance simply because it deals with one of the basic issues that obsess the American people. Evidently, America is a country of immigrants par excellence; therefore, policies and measures against immigrants are so sensitive to public opinion in the United States. President Trump's xenophobic measures created polemical debates among Americans, namely politicians from both political parties, Democrats and Republicans. Each part is striving to adduce conclusive evidence and arguments to justify their attitudes and rebut the other part's justifications. This situation led many speculators to speculate about the effects of such xenophobic measures on America's economy, society, foreign policy, and the future of the United States. Hence, this study tackles this topic to examine the rightness of the proponents' arguments and cast light on the repercussions of such radical measures on the American nation.

This study sheds light on the basic tenets of Trump's xenophobic immigration policy and its repercussions on American life. To achieve so, the following guiding questions are raised:

- To what extent were Trump's arguments founded?
- Are Trump's xenophobic measures necessary to make America great again?
- Did he succeed in implementing his immigration plan?
- What were Trump's immigration plan's repercussions on American life?

As tentative answers to the aforementioned research questions, one may suggest some hypotheses listed below:

- Part of Trump’s arguments were baseless and do not match with the reality on the ground.
- Trump’s xenophobic measures were unnecessary to make America great again.
- Trump largely succeeded in implementing his immigration plan.
- Trump’s immigration policy went against America’s best interests and negatively impacted American life.

As regards the research methodology, the study’s target population is the community of immigrants in the United States including newcomers and potential immigrants, American Muslim immigrants, undocumented and illegal immigrants, Mexicans, Central and Latin American immigrants, minority groups, visa overstayers, asylum seekers, and refugees. The data was collected from historical sources and documents, studies by immigration analysts, surveys and polls conducted by scholars, newspapers, and institutions, and reports made by other researchers as well as federal agencies. Besides, the study relied on a mixed method, using both quantitative and qualitative methods. The study also relied on the historical method which consists in gathering relevant information and examining and analyzing critical facts and events.

This study comprises nine chapters. To make the first contact with the study’s general theme, this work starts by providing a broad overview of the evolution of the U.S. immigration policy. Therefore, the first chapter of this dissertation is entitled “A Glimpse into the Evolution of the U.S. Immigration Policy”. This chapter brings to light the main stages the U.S. immigration system went through prior to Trump’s presidency, shedding light on the waves of immigration into the USA and the historical contexts that led to the enactment of immigration laws to adjust the inflow of immigrants with America’s best interests.

The second chapter of this study throws light on the concepts of nativism and xenophobia before shedding light on the accession of President Donald Trump. It sheds light on Trump’s immigration plan. It starts with providing a short biography of Donald Trumps and explores his way to the White House. Thereafter, this chapter moves to talk about the basic tenets of Trump’s immigration policy he announced during his 2016 presidential campaign. It gives a brief explanation of each point of the plan in addition to the motives behind each

measure he intended to implement once in office. These measures would be expounded separately in the next chapters.

The third chapter deals with the Muslim Ban designed to ban the entry of immigrants or nationals from seven Muslim-majority countries on the grounds that they are perceived to be dangerous to public safety and U.S. national security. Furthermore, it casts light on the different iterations of the Muslim Ban and the legal challenges it encountered. Besides, it discusses the constitutionality of the ban and its effects on American Muslim immigrants, and immigrants from the banned countries.

Chapter four of this work brings to light undocumented or illegal immigrants. It sheds light on Mexican immigrants since they make up the largest undocumented community in the United States, exploring the historical factor that led to that situation. Additionally, it explores the different ways through which illegal immigrants entered the United States, thereby residing without legal status. Afterward, it moves to discuss the push and pull factors behind illegal immigration from Mexico and Latin American countries.

Chapter five of this study tackles one of the basic tenets of Trump's immigration plan which is constructing a border wall along America's border with Mexico in order to stem illegal crossings from Mexico, Central, and Latin American countries. It starts with providing a brief historical overview of border walls across the world and their different uses. Then, it focuses on the previous attempts of fencing the U.S.-Mexican border under the previous administrations of George W. Bush and Barack Obama. Moreover, this chapter tackles the way the Trump administration secured the required funds for constructing the wall; in addition, it tackles the structure of the border wall and its effects on illegal immigration.

Chapter six, however, deals with a variety of other immigration proceedings and measures implemented by the Trump administration, including hiring more border agents, returning illegal crossers, changing asylum rules, establishing a deportation task force, reforming laws on interior enforcement, expanding 287(g) partnership, etc. Also, this chapter provides an extensive explanation of many other proceedings such as ending catch-and-release along the southwest border and enhancing the pursuit of unauthorized immigrants who have committed crimes.

Chapter seven considers another basic point in Trump's immigration policy which consists in ending Obama-era immigration programs such as DACA and DAPA. It sheds light

on Dream Act and DREAMers who are eligible for DACA. Additionally, this chapter talks about ending TPS immigrants from designated countries and provides statistical data about TPS recipients.

Chapter eight, however, brings to light Trump's Zero Tolerance Policy (ZTP). Starting with a brief overview of the reasons behind illegal migration across the country's southwest border, it explores the legal background of ZTP and Trump's intent as well as his justifications for initiating this policy. Further, it tackles the main feature of ZTP which is the family separation along the southwest border and its effects on children and their parents. It also provides an account of the offenses for which migrants are prosecuted. Last, the chapter ends with the timeline of family separation.

The last chapter deals with the repercussions of Trump's immigration policy on American life. It starts with the impacts of the Muslim Ban, including the human, economic, and healthcare impacts. It also explores the ban's impact on visa issuance. Additionally, this chapter considers the effects of Trump's ZTP, ending TPS and Obama-era immigration initiatives such as DACA and DAPA. Furthermore, it tackles the different repercussions of the border wall. This chapter ends with Trump's failure in winning a second term and the notorious impact of his political decisions and manners on electrifying the American political landscape, leading to the storming of Congress by his supporters.

Chapter 1: A Glimpse into the Evolution of the U.S. Immigration Policy

Since its discovery, and particularly after its independence, immigrants flocked to the United States in great numbers. Pushed by the difficulties they encountered in their home countries and their desire to improve their living conditions and enjoy a peaceful and decent life, immigrants from different parts of the world decided to leave their home countries for the United States, which became their dreamland. Europeans, Asians, Africans, and Latin Americans, all migrated to America. However, as the number of immigrants started proliferating in the 19th century, the United States became a country of diverse peoples. This led to the emergence of some social and economic issues that jeopardized the stability and harmony of American society. In response, the federal government addressed these issues by passing a series of acts designed to protect the country's national security and the best interests of its people. As a result, the U.S. immigration history witnessed a lot of changes that marked the evolution of America's immigration policy. Therefore, this chapter aims at shedding light on the different stages the U.S. immigration policy went through till the presidency of President Donald Trump.

Ever since its discovery, the United States witnessed several waves of immigrants that characterized particular periods of its history. During the colonial era, Europeans as well as Africans started to migrate to the new world. The number of immigrants increased a lot with the rise of the industrial revolution, which resulted in the need for more workers to meet the factories' growing need for more qualified workers. Moreover, Africans, or rather slaves, used to be brought to the United States against their wills before the U.S. Civil War⁸ (1861–1865) to be enslaved and work for free on the farms and plantations of southern American farmers. In essence, America was a great workshop that was in extreme need of skillful workers in different fields. Hence, the inflow of newcomers has changed over the course of U.S. history due to the needs of the growing economy together with the political atmosphere that characterized the U.S. foreign policy with certain nations during particular periods. Accordingly, this chapter aims at shedding light on immigrants' inflow into the United States as well as the evolution of its immigration policy since the early years following its independence. Besides, it would throw light on the different reasons that affected immigrants' inflows into the country.

1.1 Immigration during the Colonial Era

During the seventeenth and eighteenth centuries, groups of immigrants from Europe and Africa began flocking to the new world in their bid to improve their living conditions. These groups made up the nucleus of the American original people and set up the solid ground of traditions and customs that would shape and pervade the future nation's identity. The early groups of immigrants, mostly from England, began founding their colonies to serve as British outposts in the new world. They established the first of their colonies on the northeastern coast of the Northern American continent and moved southward along the Atlantic shores.

In the early years of sixteenth-century Europe, Christianity prevailed the life of Western and central monarchies. These were so committed to the Christian teachings that shaped almost all aspects of their daily life. The Catholic Church, headed by the pope stationed in Rome, exercised a great influence over the then-European societies. As a matter of fact, the pope's power increased massively by the late Middle Ages. He became a unifying figure and a

⁸ The American Civil War was a war fought in the United States between the Unionist Army of the Northern States under the leadership of President Abraham Lincoln and the Confederate Army of the Southern Seceding States under the leadership of Davis Jefferson. Broke out on April 12, 1861, and finished on May 25, 1865, the Civil War ended with victory of the Unionist Army over the Confederate Army, thereby bringing the southern states under the authority of the federal government in Washington, DC, restoring the Unity of the United States of America.

powerful ally in political disputes. Moreover, gaining papal support was vital for rulers as it guarantees both political prestige and moral authority which were essential for maintaining and stabilizing their regimes. Additionally, the Catholic Church managed to extend its influence through its social and humanitarian activities. This is well manifested in the key role of the monasteries. The latter provided people with many services such as schooling, healthcare, and the seven sacraments.⁹ All in all, the Catholic Church had a tremendous influence on medieval Europe and pervaded all aspects of life.

At the dawn of the sixteenth century, however, there was a widespread sentiment of dissatisfaction among Western and central Europeans at several aspects of the Catholic Church. People resented the Church's bloated bureaucracy, abuse of power, outright arrogance of the clergy, and avarice. This atmosphere was suitable for bringing about the desired change. Effectively, at the onset of the 16th century, Europe hummed with reforming ideas that called for reviewing many of the Catholic Church's aspects and practices. There was also a widespread agreement that the Church had to be reformed and purified. This movement became known as the Reformation Movement which brought about a radical change that would change the course of modern European history.

The German theologian, Martin Luther¹⁰ (November 10, 1483 –February 18, 1546), instigated the Reformation Movement in 1517.¹¹ He published his famous ninety-five theses in which he chastised the selling of indulgences. In the next decade, many other preachers evolved Luther's reformist ideas. Having been exploited for a long time by the Catholic Church, individuals protested the Catholic Church and welcomed reformers' ideas that ushered in the introduction of a new approach to the Christian faith known as Protestantism. Consequently, Christianity as well as Europe ended up split into two big factions, the Catholics and Protestants.

The Reformation was not limited only to the conterminous European monarchies, but it soon reached England. The then King, Henry VIII¹² (June 28, 1491 – January 28, 1547), was

⁹ Mark Cartwright, "*Medieval Monastery*", published on 14 December 2018.
https://www.ancient.eu/Medieval_Monastery/

¹⁰ Martin Luther was a leading figure of the reformation movement in Europe during the 16th century, leading to the emergence of Protestant Reformation and Protestantism, thereby referring to his ideas and beliefs by Lutheranism. He, was a professor, author, hymnwriter, priest, and theologian.

¹¹ David Bagchi and David C. Steinmetz, *The Cambridge Companion to Reformation Theology* (The United Kingdom, Cambridge University Press, 2004), 41.

¹² King Henry VIII was one the famous rulers in the British history who ruled England from 1509 till his death in 1547. He is best known for his six marriages, thus six wives, along with his efforts to end his first marriage with Catherin of Aragon. Besides, his disagreement with Pope Clement VII who refused such an annulment

the pioneer of the English Reformation as he was the one who established the Anglican Church.¹³ Henry VIII's chief motive behind breaking away from the Catholic Church was absolutely personal. In 1526, he wanted to divorce his first wife, Catherine of Aragon, because she failed to breed the wanted heir to the English throne. Therefore, he wanted to sway the pope, Clement VII¹⁴ (May 26, 1478 – September 25, 1534), to allow him to divorce Catherine since it was disallowed under Catholicism. To that end, his chief and skillful minister, Cardinal Wolsey, was not expected to have any difficulty in getting the pope's approval to divorce Catherine of Aragon. However, Pope Clement VII refused and banned the divorce, which massively angered King Henry VIII.¹⁵ Hence, to achieve his aim, King Henry VIII moved to other steps that would completely change the history of England.

King Henry VIII wanted out of the Catholic Church. He convinced the bishops to put him at the head of the Church in England. To this end, parliament passed the Act of Supremacy in 1534 which declared the King of England to be the supreme head of the English Church instead of the pope¹⁶. This allowed King Henry VIII to divorce Catherine of Aragon and marry his beloved Anne Boleyn. Furthermore, King Henry VIII was capable to find other financial resources for his treasury. He seized the opportunity that the Catholic Church was no longer popular among English people to dissolve around 560 Catholic monasteries¹⁷ and religious houses between 1536 and 1539, seizing their properties. Thus, the treasury was enriched with a great amount of money and wealth.

Dissolving monasteries in England was so harmful to the English economy. Therefore, life became harsh and difficult for the towns during the century that followed the dissolution of monasteries. This was aggravated after the centralizing of the wool industry that made a living for town people. Besides, the emergence of London as England's main port deprived smaller towns of their business. In fact, the wool industry became the mainstay of the English economy by the end of the Tudor period (1485–1603); it made up three-quarters of the country's foreign

pushed him to initiate English Reformation by separating the Church of England from Catholicism and papal authority.

¹³ Richard S. Tompson, *Great Britain: A Reference guide from the Renaissance to the Present*, (The United States of America: Facts on File, 2003), 243.

¹⁴ Clement VII was the head of the Roman Catholic Church and the ruler of Catholic states during the time period that spanned years from November 19, 1523, to his death on September 25, 1534. Dubbed as the most unfortunate of the popes, Clement VII's reign was so eventful as it witnessed a rapid succession of religious, military, and political struggles, resulting in far-reaching impacts on Christianity and worldwide politics.

¹⁵ David McDowall, *An illustrated History of Britain*, (China: Longman Group UK Limited, 1989), 69.

¹⁶ Kenneth O. Morgan, *The Oxford History of Britain*, (Great Britain: Oxford University Press, 1993), 282.

¹⁷ McDowall, *An illustrated*, 70.

trade. Therefore, the standstill of the wool international trade harmed both towns and ports.¹⁸ Accordingly, the English economy was in extreme need of new markets to sell their products.

Finding new markets in other markets became a priority for the English government. To this end, the government chartered monopolistic trading companies to other areas of the world. For instance, the Eastland Company was chartered in 1579, the Senegal Adventurers Company in 1588, the East India Company in 1600, the Virginia Company in 1606, and the Massachusetts Bay Company in 1629.¹⁹ The primary aim of the early companies was to open up the targeted markets in these different continents to English wool; however, later companies were intended for other purposes such as the Virginia Company which was destined to mine gold.²⁰ Thus, these monopolies greatly served merchants who were its members as well as the English economy in General.

The Virginia Company of London was in fact a joint-stock company created by a group of affluent merchants, which means that its members who have shares in it hoped to get a significant return once the company secures a foothold in the new world.²¹ Establishing a successful colony was quite promising because it would boost the English Economy and provide relief to the boating population. Therefore, the investors of the Virginia Company were eager to sail to North America for the sake of gaining wealth. They were encouraged by the hopes of discovering precious metals, benefiting from trading with the Amerindians, and the cheap labor of the natives in the production of marketable merchandise.

In 1606, King James I²²(James Charles Stuart; 19 June 1566 – 27 March 1625), the first king in the Stuart Dynasty who acceded to the throne upon the death of Queen Elizabeth I²³ (born on September 7, 1533— died on March 24, 1603), chartered the Virginia Company to found a colony in North America.²⁴ Hence, on December 20, 1606, the Virginia Company's journey to the New World was organized on three ships: the *Susan Constant*, the *Godspeed*, and the

¹⁸ Robert Bucholz, *A History of England from the Tudors to the Stuarts*, (The Great Courses: United States of America, 2003), 117.

¹⁹ Bucholz, *A History of England*, 118.

²⁰ *Ibid.*, 118.

²¹ Sarah McBee. *The History of the Jamestown Colony: Seventeenth-Century and Modern Interpretations*. The Ohio State University at Mansfield, June 2009.

²² James VI and I was King of Scotland as James VI from 24 July 1567 and King of England and Ireland as James I following the union of the English and Scottish crowns on 24 March 1603 until his death in 1625. Despite his efforts to bring Scotland and England under one unified kingdom, both kingdoms of England and Scotland retained their individual sovereignty, with their own governing institutions

²³ Queen Elizabeth I was the queen of England and Ireland during the period 1558 through 1603. Her predecessor was queen Mary I and succeeded by King James I.

²⁴ Robert V. Remini, *A short History of the United States*, (New York: HarperCollins e-books, 2008),10.

Discovery.²⁵ After several months, the three ships disembarked on May 24, 1607, in the area they labeled Virginia after the Virgin Queen Elizabeth. The settlers established their first colony and called it Jamestown after King James I.²⁶ They built a triangular fort away from the river on high ground in order to protect themselves from the possible attacks of the Amerindians as well as the Spanish incursions.²⁷ Thus, this fort became the core around which the colony started to expand in the coming years and decades.

The arrivals at Virginia, who sailed on board the three ships, were around 104.²⁸ These settlers picked up the site of Jamestown for some notable reasons that met the criteria determined by the Virginia Company before sailing to the territory that would later be called the United States of America. These criteria consist essentially in choosing a site that is surrounded by water on three sides just like a peninsula, meaning that it is easily defensible against any possible Spanish attack or from the local Powhatan Indians. More importantly, the water's depth was necessary for establishing a dock or a harbor for their ships and tying them to the shoreline.²⁹ Accordingly, the Jamestown settlement became the first permanent English colony in what was known as the New World.

The settlers of the Jamestown colony were essentially employees of the Virginia Company. They were tasked with looking for gold everywhere. The investors of the Company aimed at discovering precious metals such as pearls, silver, and other valuable products that might create quick wealth on their investment. Most important, they were pushed forward by the strong desire to find gold just like the Spanish conquistadores did in Mexico. Therefore, the settlers worked very hard so as to find gold; “no talk, no hope nor work, but dig gold, wash gold, load gold”.³⁰ Politically speaking, the colony was ruled by a council of seven members whose names were determined by the leading board of the Virginia Company in London. In fact, the names of the council's members were kept in three sealed boxes, one box for each ship. Accordingly, Edward Maria Winfield was to be the head of the Jamestown colony whereas “the other six members were Bartholomew Gosnold, Christopher Newport, John Martin, John

²⁵ Sonia Benson, Daniel E. Brannen Jr., and Rebecca Valentine, *U.X.L Encyclopedia of US History*, (The United States of America: Gage, Cengage Learning, 2009), 808.

²⁶ Robert, *A short History of the United States*, 10.

²⁷ Gary B. Nash, *Encyclopedia of American History*, Revised Edition, (The United States of America: Facts on File, Inc., 2010), Vol II, 181.

²⁸ Gary, *Encyclopedia of American History*, 2:181.

²⁹ Sarah J Stebbins, “A Short History of Jamestown.” Last updated: February 26, 2015. <https://www.nps.gov/jame/learn/historyculture/a-short-history-of-jamestown.htm>.

³⁰ Bryn O’Callaghan, *An Illustrated History of the USA*, (China: Longman Group UK Limited, 1990), 13.

Ratcliffe, George Kendall, and John Smith”.³¹ Thus, the Jamestown settlers started their new life in the New World, which was full of challenges and difficulties.

The Jamestown settlement suffered a lot before being able to survive. Settlers began to die in ones, in twos, and then in dozens.³² The reasons behind their death were different. Many of the settlers were wild and headstrong adventurers with personal interests. Others were unwilling to put in the required efforts to cultivate the land and grow food to sustain themselves and thus found a feasible and self-sufficient community³³. Instead, they favored wasting their time relaxing and playing games. This resulted in great suffering from starvation and famine, especially in the freezing winter of 1609-1610 which was labeled “the starving time”.³⁴ During that winter, settlers who managed to stay alive had to eat barriers, acorns, roots, and even their horses³⁵. As they grew increasingly desperate, some colonists ate their pets and even resorted to cannibalism³⁶. As a result, only sixty colonists out of 490 weathered the dreadful winter³⁷.

A wide range of epidemics and infectious diseases was another factor that really complicated the suffering of the Virginia colonists. The latter struggled a lot to survive because the area was the homeland of different diseases such as typhoid and dysentery.³⁸ Furthermore, many settlers died from the attacks of the Amerindians.³⁹ Besides, the wooden houses as well as most of the settlers’ clothes were burnt in the several fires the region had witnessed.⁴⁰ Adding to the aforementioned reasons, the drought of the James River complicated their suffering by increasing the salinity of its water⁴¹, thereby increasing the number of dead people. Hence, by the end of their first year in the Jamestown colony, 38 Englishmen managed to survive out of a total of 104 who landed in Virginia. Thus, around 5000 out of 6000 immigrants passed away between 1607 and 1625.⁴²

³¹ Sarah J Stebbins, “A Short History of Jamestown”.

³² O’Callaghan, *An Illustrated History*, 13.

³³ Benson, *U.X.L Encyclopedia*, 808.

³⁴ *Ibid.*, 809.

³⁵ Robert, *A short History of the United States*, 10.

³⁶ Neely, Paula. “Jamestown Colonists Resorted to Cannibalism”. Published May 3, 2013.

<https://www.nationalgeographic.com/news/2013/5/130501-jamestown-cannibalism-archeology-science/>

³⁷ Paggy Sarri. *Colonial America: Almanac*, ed. Julie L. Carnagie (The United States of America: U.X.L, An imprint of the Gale Group, 2000) 1:86.

³⁸ Vickers, Daniel, ed., *A companion to Colonial America* (United Kingdom: Blackwell publishing Ltd, 2006), 56.

³⁹ O’Callaghan, *An Illustrated History*, 13.

⁴⁰ Deir Clancy Steer, and Amila Baksic, *Colonial America*, (China: Bailey Publishing Associates Ltd, 2009), 7.

⁴¹ Gary, *Encyclopedia*. 2:181.

⁴² *Ibid.*, Vol II, 181.

Stories about the desperate settlers in Jamestown reached England, yet new settlers continued to arrive at the colony. As a matter of fact, the Jamestown colony was regarded by the English government as a dumping land. The Virginia Company amassed homeless children and sent them to the colony. Also, it sent a hundred condemned people from London's prison, whereas some favored sailing willingly.⁴³ With regard to women, a scarce number of them settled in the Jamestown colony. Around ninety young women were shipped over by the Virginia Company to its settlers. To get a wife, the would-be husband had to pay the company "120 pounds weight of best tobacco leaf".⁴⁴ The price seemed to be reasonable for the settlers so that all women were married within a short time.

As for the ruling body, its head and members used to be determined by the Virginia Company until 1618.⁴⁵ Prior to this date, the military style of government deprived settlers of taking any part in the management of the colony, which resulted in disastrous effects. Therefore, in hopes of attracting more immigrants to its Jamestown colony, the Virginia Company ordered its newly appointed governor, Sir George Yeardley to create a representative governmental body called the House of Burgesses. The latter comprised two elected representatives from each of the ten Virginia settlements in addition to the governor and a council.⁴⁶ This assembly would meet annually to discuss the colonists' issues and pass laws necessary to regulate them. These laws would be sent to England to be reviewed by the Virginia Company because it maintained the veto power over the laws made by that assembly.⁴⁷ With these changes that gave settlers a direct voice in running their colony and government, Virginia received around 3,500 people from England between 1619 and 1622.⁴⁸

By the end of the sixteenth century, many English people believed that the Anglican Church was still like Catholic Church. Although Queen Elizabeth I did her best to change the Anglican Church to make it look different from the Roman Catholic Church, a few people felt no change. They felt that the Anglican Church retains much of the Catholic Church's practices. They were dissatisfied with the power of its bishops as well as its elaborate ceremonies.⁴⁹

⁴³ O'Callaghan, *An Illustrated History*, 13.

⁴⁴ *Ibid.*, 14.

⁴⁵ Lionard W. Levy, and Kenneth L. Karst, "Encyclopedia of American Constitution", (The United States of America: Macmillan Reference USA, 2000).

⁴⁶ Benson, *U.X.L Encyclopedia*, 720.

⁴⁷ Gary, *Encyclopedia*. 2:51.

⁴⁸ Thomas Benjamin, ed., *Encyclopedia of Western Colonialism since 1450*, (The United States of America: Thomson Gale, 2007), 1117.

⁴⁹ O'Callaghan, *An Illustrated History*, 16.

Additionally, they resented the expensive decoration of their churches and questioned many of their teachings, believing that they had to be purified; therefore, they were called *Puritans*.

The Puritans advocated radical reforms in the Anglican Church. They wanted to return to a simpler faith and less structured forms of faith just like the worshiping way of the early Christians. To this end, they appealed for replacing the rituals and structures associated with the Roman Catholic Church with other simpler protestant forms of faith and worship.⁵⁰ After acceding to the throne in 1603, King James I felt the danger of the Puritans and warned them that he would drive them out of the land if they do not agree with his ideas on religion. He regarded their reformist ideas as a potential threat to the unity of the English people and thus would undermine the royal power. Consequently, the Puritans' religious freedom became at stake which pushed them to seek another country or land wherein religious freedom is guaranteed.

Puritans were divided into two main groups: the separatists and non-separatists. The non-separatists believed that the Anglican Church could be reformed from within. The separatists, on the other hand, were a radical sect of Puritanism and adopted a zealous conviction, believing that the reformation of the established church was quite impossible. Therefore, they proceeded to sever their local congregation from the Anglican Church.⁵¹ To escape persecution, the separatists moved to Holland in 1607⁵², wherein religious freedom was permitted. However, they did not feel at ease there and decided to move to the New World to establish their own community. Accordingly, they received a charter from the Virginia Company that granted them permission to settle in the northern part of its colony in the New World. As a result, in September 1620⁵³, the pilgrims departed the English port of Plymouth for the New World.

The pilgrims, who numbered 101,⁵⁴ sailed to the New World aboard the Mayflower. Their journey across the Atlantic lasted for sixty-six days before landing on Cape Code in New England on November 11, 1620.⁵⁵ The Mayflower was supposed to land in Virginia instead of Cape Code; however, the storms it encountered during its long journey across the Atlantic

⁵⁰ U.S. Department of State, *Outline of U.S. History*, (The United States of America: Global Publishing Solutions, 2011), 13.

⁵¹ Gary, *Encyclopedia*. 2:293.

⁵² Benson, *U.X.L Encyclopedia*, 1232.

⁵³ *Ibid.*, 1232.

⁵⁴ U.S. Department of State, *Outline of U.S. History*, 13.

⁵⁵ Gary, *Encyclopedia*. 2:294.

changed its way to the North, in what is known now as Massachusetts. Upon their arrival in Cape Code, the pilgrims were dissatisfied with the location for being a sandy hook of land as well as the shortage of food and water they suffered from. Besides, many of them were sick. Therefore, they decided to seek another suitable land possible to land in. Effectively, after several days, they managed to arrive in Plymouth, Massachusetts, on December 21, 1620.⁵⁶ Thus, the Puritans established their settlement at Plymouth Bay and began their new challenging life in the New World.

Like their fellows in Jamestown Colony, the Pilgrims went through many difficulties. The season by the time they arrived at Plymouth was winter. It was so hard for the newcomers to adapt themselves to the cold climate and the frozen land. The deep snow made it difficult for them to build their houses. Adding to that, they suffered from a shortage of food. All these factors together contributed to raising mortality among the pilgrims. Consequently, half of the Plymouth settlers died before the coming of spring⁵⁷. The survivors, however, managed to adapt themselves to the requirements of their new life in Plymouth. They learned how to hunt and fish. They also got seeds of corn from the friendly Amerindians who showed them how to plant it. Hence, the pilgrims got acquainted with their new life, thereby enhancing their living conditions.

English immigrants, namely the pilgrims, continued to arrive in the Plymouth colony. Most of them were pilgrims. In actual fact, puritanism grew increasingly prohibited in England, especially after the accession of King Charles I to the throne in 1625. The latter granted the pilgrims permission to create a joint-stock company in 1629 with the name of Massachusetts Company Bay⁵⁸, by which they got the right to establish a colony north of Virginia. John Winthrop was one of the famous pilgrims who joined the company. He was so worried about the moral life in England as well as the future of their religion. Therefore, along with his fellows, he eagerly joined the newly chartered company in the hope of enjoying their religious freedom in the New World.

It is interesting to note that right before the Mayflower set sail to the New World, John Winthrop was chosen by the Massachusetts Bay Company to be the Governor of the future settlement in America. This was done given his administrative competency as well as his

⁵⁶ O'Callaghan, *An Illustrated History*, 17.

⁵⁷ *Ibid.*, 17.

⁵⁸ Robert, *A short History of the United States*, 14.

reputation as a religious man. Hence, numbering 1,000 men, women, and children,⁵⁹ sailed to America aboard a fleet of seventeen ships on May 22, 1630; after weeks in the Atlantic, they landed in Boston on June 12, 1630. Once in America, Winthrop preached to his people about remaining unified as one man so as to be protected by God who would help them to prosper. He maintained that: “We shall be as a City upon a Hill; the eyes of all people are upon us. . . . We shall be made a story and a byword throughout the World”.⁶⁰ This Puritan commitment played a significant role in the development of the Boston colony. Consequently, almost 20,000 immigrants arrived in the Massachusetts Bay colony within a few years⁶¹. Thus, the creation and establishment of new colonies in the New World would contribute greatly to raising the number of immigrants during the colonial era.

Immigration to the New World (the United States) increased between the sixteenth and eighteenth centuries due to the increase in the need to secure more foreign markets to raise their trade surpluses through imposing import tariffs and subsidizing the export industries. Such mercantilist economic policies⁶² adopted by European governments pushed the latter to mistreat their citizens by considering them as economic resources and restricting their movement depending on specific factors including their social status based on their social class in the country’s social pyramid.⁶³ In Great Britain, for instance, citizenship was fiercely protected by limiting the naturalization of immigrants. Furthermore, the British government forcibly populated its colonies by individuals deemed to be undesirable such as criminals and other social outcasts. Naturalizing immigrants was economically quite important for the British government as only British citizens, called “subjects,” could own real estates and pass them down to their inheritors under British common law. Accordingly, new immigrants’ economic opportunities were restricted, thereby relegating most of them to a legal position known as “denizen” and thus giving them limited economic rights, reducing their political rights, and placing restrictions on bequeathing their estates under English common law.

Between the 16th and 18th centuries, European countries discouraged their citizens’ internal migration while they encouraged immigration to their colonies of only skilled workers.

⁵⁹ O’Callaghan, *An Illustrated History*, 17.

⁶⁰ *Ibid.*, 14.

⁶¹ *Ibid.*, 14.

⁶² Mercantilist economic policies rely on the intervention of the government to increase trade surpluses via restricting imports and protect domestic industries. The modern-day mercantilist economic policies comprise subsidizing domestic industries, imposing tariffs, restricting labor emigration, and devaluing currencies.

⁶³ Andrew M. Baxter, and Alex Nowrasteh. *A Brief History of U.S. Immigration Policy from the Colonial Period to the Present Day* (Washington, DC: CATO Institute, 2021), 2. <https://doi.org/10.36009/PA.919>.

Given their need for such skillful workers, colonial governments offered a swift naturalization system in addition to other advantages such as granting them lands and debt relief.⁶⁴ With regard to the British colonies in North America, the British government decided to ignore the lax naturalization system owing to its objective of settling its American colonies. In doing so, the British crown would grant immigrants to its North American colonies the same rights it usually granted to Englishmen; hence, in 1700, British Parliament restricted the colonies' jurisdiction of naturalizing and granting other rights to immigrants, believing that colonial naturalization policies would weaken Englishmen's trading positions. However, following the passage of the Plantation Act of 1740, the colonial naturalization process was eased up, thereby boosting settlement.

The Plantation Act of 1740 helped in spurring the population of the British North American colonies as it allowed for the naturalization of non-Catholic immigrants by granting them Englishmen's status after spending seven years of residency along with taking a religious test, a statement of Christian belief to which some people, like Jews, were exempt, and pledging allegiance to the British government. However, the colonies favored relying more on the local naturalization process to speed up immigration.

Immigration to British North American colonies used to happen according to two different ways. Some immigrants migrated forcibly either as slaves or through transportation while others migrated voluntarily. "Transportation," was a criminal term for enforced immigration that permitted the British authority to expel undesired individuals, such as criminals, to populate its North American colonies. In actuality, individuals sentenced to death had to choose between hanging or transportation; therefore, opting for transportation or rather forcibly emigrating to North American colonies was a common choice since death was the sole punishment for committing a felony under the English common law.⁶⁵

The transportation process was streamlined following the passage of the Transportation Act of 1717 by granting English courts the power to sentence criminals to transportation. Furthermore, English courts became able to banish convicts for fourteen years and turn them into indentured servants, resulting in transporting about 50,000 convicts to American colonies before the outbreak of the American Revolutionary War.⁶⁶ Colonists objected to the

⁶⁴ Baxter and Nowrasteh. *A Brief History of U.S. Immigration Policy*, 2.

⁶⁵ Ibid.

⁶⁶ Ibid., 3.

transportation of these convicts; however, their colonies could not oppose the migration of British subjects.

Transported convicts to American colonies did not constitute the majority of the population of forced migrants into the Northern American colonies; African slaves were the majority with 388,000 slaves. As a matter of fact, slavery was dissimilar from the first mode of forced migration of convicts in terms of rights they would be entitled to once in North American colonies. In other words, contrary to transported convicts from Britain, slaves would be deprived of their basic rights and would have no chance to obtain their freedom though many of them were emancipated during the centuries prior to the American Civil War (1861-1865).⁶⁷ Given the large numbers of African slaves forcefully transported to British colonies in North America, slaves along with their descendants became an important part of the population in British northern American colonies. However, regarding slaves as immigrants would certainly broaden the meaning of the term “immigrants” to its breaking point. Enslaving and forcefully transporting people was an experience that is completely different from the experience of other migrants who willfully moved to other countries; therefore, slaves’ story would not fit in the context of this paper.

Immigrants who deliberately decided to move to Britain’s colonies in North America were mostly attracted by the availability of good chances to promote good lives there, especially through benefitting from high wages, cheap lands, and the freedom of conscience. Many of these immigrants financed their trip by concluding indentured servitude contracts, thereby exchanging part of their future labor in return for their migration to British colonies. By the end of their contracts, these migrants would be discharged with some benefits including a small amount of cash, getting skillful in doing some jobs, and sometimes receiving a piece of land.⁶⁸ As a result, a considerable number of Europeans moved to Britain’s colonies in North America during the 1700s and worked as indentured servants to pay for their passage to these colonies.

British and European immigrants continued flowing into Britain’s North American colonies, thereby increasing their number to surpass one million by 1755. This spike in the number of immigrants worried the British authorities, pushing them to ban colonists from settling the lands acquired from France during the French Indian War and suspending the

⁶⁷ Ibid.

⁶⁸ Ibid.

colonial naturalization process in 1773.⁶⁹ These measures angered so much the colonists that they complained about them in the American Declaration of Independence⁷⁰ issued on July 4, 1776, accusing King George III⁷¹(June 4, 1738 –January 29, 1820) of prohibiting “the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands”.⁷² By the end of the colonial period, the colonial population spiked significantly, amounting to roughly 2.2 million residents by the onset of the American Revolutionary War⁷³ (1775-1783), where the majority of that growth resulted from 346,000 European immigrants and their descendants.⁷⁴

1.2 Immigrants Inflow between 1776-1830

Given the huge number of newcomers arriving yearly to the United States, naturalizing immigrants became a hot issue that haunted the American political class. As a matter of fact, citizenship was one of the earliest issues that prevailed political scene. To address the issue legally, the U.S. citizenship law was shaped depending on three main concepts: jus soli, jus sanguinis, and pledging allegiance. Jus soli is the concept of the right of soil which means that American citizenship would be granted automatically to those born on American soil. Jus sanguinis, however, is the concept related to the right of blood, meaning that, under most conditions, American citizenship would be granted automatically to those born to American citizens outside the U.S. territory. The third option to get American citizenship is swearing allegiance to the U.S. government, thereby getting full access to American political life.

⁶⁹ Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (The United States of America: Russel Sage Foundation, 2006), 43.

⁷⁰ The American Declaration of Independence was adopted on July 4, 1776, by the Second Continental Congress after convening at Pennsylvania State House. Headed with “The Unanimous Declaration of the Thirteen United States of America”, the bill spelled out the thirteen colonies’ motive for regarding themselves as independent sovereign states, thereby being no longer under the British authority.

⁷¹ King George III was the King of the Great Britain and Ireland for long period starting from October 25, 1760, until his death on January 25, 1820, thereby being famous for spending the third longest period as a ruler in the British history. He is also famous for being responsible for losing the American thirteen colonies.

⁷² National Archives, “Declaration of Independence: A transcription,” Accessed on June 12, 2023. <https://www.archives.gov/founding-docs/declaration-transcript>

⁷³ The American Revolutionary War, also known as the American War of Independence or the Revolutionary War, was the military conflict between the American Patriot forces under the commandship of George Washington and the British Army. The Revolution lasted for around eight years, leading to the independence of the thirteen American colonies, later the thirteen states that founded the United States of America.

⁷⁴ Baxter and Nowrasteh. *A Brief History of U.S. Immigration Policy*, 3.

Following the issuance of the Declaration of Independence on July 4, 1776, America's founding fathers thought that pledging allegiance to the country through consent would be enough to confer citizenship on immigrants. This approach undermined the country's reliance on the two concepts of *jus soli* and *jus sanguinis*. Relying on swearing allegiance to the country as a primary way to get American citizenship stemmed from the founding fathers' fears of being sentenced to death by the British authority for their disloyalty; therefore, pledging allegiance as a way to obtain American citizenship proves more the loyalty of immigrants to the American government and became the gateway to receive the full array of political rights in a fledgling nation that was struggling for getting its independence. As a result, three categories of people were engendered: former British citizens who became American citizens after pledging allegiance to the American Revolution, former British citizens who remained loyal to the British crown and thus became enemy aliens, and "murky middle ground of fair-weather residents".⁷⁵ After independence on July 4, 1783, American loyalists along with the murky middle ground spurred the U.S. government to consider American citizenship as "both a matter of place of birth and one of consent".⁷⁶

Constitutionally speaking, Article I, Section 8, authorized Congress to establish a uniform rule of naturalization and grant immigrants eligibility to all offices except for those of the U.S. President, and later the office of the Vice President.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.⁷⁷

This exclusion from the office of president aimed at limiting foreign influence on the U.S. government, according to George Tucker, a prominent lawyer and Virginia's delegate to the Annapolis convention of 1786. However, Tucker maintained also that foreign-born individuals should not be ostracized thoroughly from councils of power nor banned from federal employment for the same motives because such policy would not succeed and would only cause resentment among people in a nation that is open to foreign ideas. Thus, in the first Congress

⁷⁵ *Ibid.*, 4.

⁷⁶ Daniel Kanstroom, *Deportation Nation: Outsiders in American History* (The United States of America: Harvard University Press, 2007), 33.

⁷⁷ Andrew B. Arnold, *A Pocket Guide to the US Constitution: What Every American Need to Know* (2nd ed.) (Washington, DC: George Town University Press, 2018), 58.

of 1789, around 10% of its membership (including both Senators and Representatives) were foreign-born, compared to 3% in 2021.⁷⁸

The Constitutional Convention deprived state governments of any jurisdiction over naturalizing immigrants and granted this power to the federal government. This decision meant that state governments used to regulate the naturalization process according to their perspectives depending on their specific interests, such as banishing criminals and noncitizens, banning the entry of the poor, and even trying to entirely ban the entry of some races. Such a decision came within a national context where the founding fathers were concerned greatly with laying the foundation of a strong nation; therefore, populating the USA by letting in more immigrants was highly prioritized by the Founding Fathers, though they were concerned also with many other issues related to immigrants like multilingualism or the linguistic mosaic caused by the non-English languages, the social, religious, and cultural assimilation of aliens, and their voting rights. This concern was clearly expressed by Thomas Jefferson⁷⁹ (April 13, 1743 – July 4, 1826), who maintained that “the present desire of America is to produce rapid population, by as great importations of foreigners as possible”.⁸⁰ Thus, along with other motives, such as funding the nation’s debts and meeting the need for more skillful workers, raising America’s population was the core motivator for opening the country’s gates for more immigrants.

This approach of letting in more immigrants resulted in a significant spike in the number American population. American census of 1790, which excluded Native Americans, revealed a remarkable increase in the nation’s population since the 1770s which amounted to 3.9 million residents. The census also showed that the white made up 80.7% of the population while African slaves almost constituted the rest (19.3%).⁸¹ In terms of ethnicity, the census revealed that 69.3% of the U.S. population could trace their origins to Great Britain or rather Scotland, Wales, and England.⁸² Consequently, the census showed that American society became socially

⁷⁸ Sara Atske, “Immigrants and Children of Immigrants Make Up at Least 14% of the 117th Congress,” Pew Research Center, Published on February 12, 2021, Accessed on June 12, 2023, <https://www.pewresearch.org/short-reads/2021/02/12/immigrants-and-children-of-immigrants-make-up-at-least-14-of-the-117th-congress/>

⁷⁹ Thomas Jefferson served as United States Minister to France from May 17, 1785 to September 26, 1789. He served as the United States first Secretary of States from March 22, 1790 to December 31, 1793. Thereafter, he served as America’s second Vice President from March 4, 1797 to March 4, 1801. Then, he served as America’s third President from March 4, 1801 to March 4, 1809.

⁸⁰ Population Council, “Alexander Hamilton on the Naturalization of Foreigners,” *Population and Development Review* 36, no. 1 (2010): 179. URL: <http://www.jstor.org/stable/25699042>

⁸¹ Campbell Gibson and Kay Jung, “Historical Census Statistics on Population Totals by Race, 1790 to 1990, and By Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States,” United States Census Bureau, September 2002.

⁸² Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America*, 52.

and ethnically a mosaic of different communities from different countries, unlike the European countries whose populations were racially and ethnically homogeneous.

Upon his election as the first U.S. President on April 14, 1789,⁸³ President George Washington⁸⁴ (February 22, 1732 – December 14, 1799), along with Congress, started laying the foundations of the new fledgling nation. He created his cabinet, chose its members, and embarked on addressing the paramount issues the nation was facing. Among the bread-and-butter issues that concerned the nation was the naturalization of immigrants. Broadly speaking, naturalization is the process by which aliens or expatriates become citizens of a nation they were not born in. The U.S. Constitution granted Congress the jurisdiction to enact laws concerning regulating issues related to the naturalization of immigrants: “To establish a uniform rule of Naturalization, and uniform laws on the subject of Bankruptcies throughout the United States”.⁸⁵ Therefore, Congress did not wait long before passing the first Naturalization Act in 1790 which was the first bid to set the rules required for foreign-born people to obtain American citizenship.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that any alien, being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen thereof.⁸⁶

The Naturalization Act of 1790 required two years of residence in the United States for white aliens before being able to apply for American Citizenship. In other words, the Act extended American citizenship to white people of good character who were in the country for two years and swore allegiance to the U.S. government. Non-white immigrants along with indentured servants and slaves were excluded from naturalization. When contemplating this Act, it seems very clear that it was biased against foreign-born people of color. In effect, this Act made it clear that only expatriate white people could be naturalized after spending two years in the United States. In other words, this Act made it explicit that people of color, namely

⁸³ Wagner, Heather Lehr, *Great American Presidents: George Washington*, (The United States of America: Chelsea House Publishers, 2004), 67.

⁸⁴ George Washington is the most influential figure marked the American history the most. He served as a member of Virginia House of Burgesses from July 24, 1758 to June 24, 1775; Virginia’s delegate to the Continental Congress from September 5, 1774 to June 16, 1775; the 14th Chancellor of the College of William and Mary from April 30, 1788, to December 14, 1799; the Commander in Chief of the Continental Army from June 19, 1775 to December 23, 1783; the 7th Senior Officer of the United States Army from July 13, 1798, to December 14, 1799; the 1st President of the United States from April 30, 1789, to March 4, 1797.

⁸⁵ Andrew B. Arnold, *A Pocket Guide to the US Constitution*, 122.

⁸⁶ Richard Peters, ESQ., *The Public Statutes of the United States of America, from the Organization of the Government in 1789 to March 3, 1845* (Boston: Charles C. Little and James Brown, 1845), 1:103.

African Americans, were not concerned with benefiting from American citizenship and thus the self-evident truths stated in the U.S. Declaration of Independence that “All men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness,”⁸⁷ were practically far from being true.

Though these exclusions, the Naturalization Act of 1790 was arguably considered to be the best naturalization law to date, given the easy and uniform pathway it prescribed to get naturalized within a short period without gender and country requirements or skills and religious tests. However, some Congressmen worried about the nation’s national security which could be undermined by the large foreign-born population through their voting rights, namely during wartime or when the USA gets in a conflict with a foreign power. These concerns increased with the outbreak of the French Revolution in the early 1790s; in actuality, the French Revolution was characterized by violence; therefore, U.S. officials and Congressmen feared that the United States would be affected by the French Revolutionaries if they come to the nation. In response, Congress extended the probationary period to five years. The Act also required prospective citizens to declare their intention for naturalization three years before initiating the process. Accordingly, the naturalization process got stricter, thereby reducing the number of naturalized immigrants.

He[any alien, being a free white person] shall, at the time of his application to be admitted, declare on oath or affirmation, before some one of the courts aforesaid, that he has resided within the United States, five years at least, and within the state or territory, where such court is at the time held, one year at least; that he will support the constitution of the United States; and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly by name, the prince, potentate, state or sovereignty, whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.⁸⁸

So, there was no change regarding foreign-born people of color who remained excluded from benefiting from their right to naturalization just because of the color of their skin, making them deemed inferior to white people.

⁸⁷ Richard Peters, ed., *The Public Statute at Large*, 414.

⁸⁸ *Ibid.*, 414.

1.3 The Alien and Sedition Acts

Following the accession of John Adams⁸⁹ (October 30, 1735 — July 4, 1826) to the U.S. presidency in 1797, America's bilateral relations with France deteriorated to the extent that the countries were on the verge of waging war against each other, though John Adams's administration tried very hard to follow the advice of George Washington to "steer clear of permanent alliances with any portion of the foreign world".⁹⁰ However, abiding by this golden piece of advice was not that easy for President Adams. He faced a big challenge to maintain his nation's sovereignty and neutrality as war broke out again between the long-lasting enemies, France and Great Britain. Angered by the Jay's⁹¹ Treaty⁹² signed between the USA and Great Britain in 1795,⁹³ France started seizing American ships bound for British ports because it believed that the Jay's Treaty was a breach of the Franco-American Alliance Treaty as well as the Amity and Commerce Treaty signed between USA and France on February 6, 1778⁹⁴. Besides, the French forced American sailors on those seized ships to serve France in its war against Great Britain. This incident caused great embarrassment to the fledgling government of John Adams, who started seeking out diplomatic solutions without ignoring the military solution.

John Adams' efforts to solve diplomatically the conflict with France were frustrated by the French Foreign minister, Charles Maurice de Talleyrand⁹⁵ (2 February 1754 – 17 May 1838).

⁸⁹ John Adams was one of the Founding Fathers and a famous American statesman who served in different US offices before and after the American Revolution. He served as Massachusetts' delegate to the Continental Congress from September 5, 1774, to November 22, 1777; the Massachusetts Superior Court Chief Justice from October 1775 to February 1777; the chairman of the Marine Committee from October 13, 1775, to October 28, 1779; the US envoy to France from November 28, 1777, to March 8, 1779; the US envoy to the Netherlands from April 19, 1782, to March 30, 1788; the US Minister to Great Britain from April 1, 1785, to February 20, 1788; the first Vice President from April 21, 1789, to March 4, 1797; the US Second President from March 4, 1797, to March 4, 1801.

⁹⁰ Benson, *U.X.L Encyclopedia*, 48.

⁹¹ John Jay is one of the Founding Fathers and a U.S. statesman who marked the American History. He served as New York's delegate to the first Continental Congress from September 5, 1774, to October 26, 1774, and delegate to the second Continental Congress from December 7, 1778, to September 28, 1779; the sixth president of the Continental Congress from December 10, 1778, to September 28, 1779; the U.S. Minister to Spain from September 27, 1779, to May 20, 1782; the U.S. Secretary of Foreign Affairs from July 27, 1789, to September 15, 1789; the second Governor of New York from July 1, 1795, to June 30, 1801; and first US Chief Justice from October 19, 1789, to June 29, 1795

⁹² The Jay's Treaty was signed in 1795 between USA and Great Britain to fix their bilateral countries. By the terms of this treaty, the British agreed to vacate the Northwest Territory, restore U.S. trading privileges in British ports and the East Indies, compensate for seized ships, and end discrimination of U.S. commerce. The United States opened the Mississippi River to the English, promised to pay debts owed to British merchants, and agreed to close U.S. ports to the outfitting of privateers for British enemies.

⁹³ Benson, *U.X.L Encyclopedia*, 48.

⁹⁴ U.S. Department of State, *Outline of U.S. History*, 63.

⁹⁵ Charles Maurice de Talleyrand was a French secularized clergyman, statesman and leading diplomat. After studying theology, he became Agent-General of the Clergy in 1780. In 1789, just before the French

The latter sent three agents, referred to as X, Y, and Z, to meet the three commissioners sent by President John Adams to negotiate a peace treaty with France. This ushered in what is historically known as XYZ Affaire. The French agents informed their American counterparts that negotiations could start only if the U.S. government loans France \$12 million and bribes the French government's officials⁹⁶. The U.S. commissioners refused and reported their president on the French humiliating conditions to begin peace talks. This triggered a big wave of wrath that swept the whole American nation, expressing their anger in one expression: "Millions for defense, but not one cent for tribute."⁹⁷ Soon, the U.S. conflict with France morphed into an undeclared war called the Quasi-War, during which ships of both countries attacked one another on the high seas.

Politically speaking, and in anticipation of an imminent war with France, Congress predominated by the Federalists passed a series of four acts in 1799 together known as the Alien and Sedition.⁹⁸ These acts were meant to protect American national security from any domestic threat that might undermine the federal government and destabilize the nation. The first of the four Acts called the Naturalization Act, was passed chiefly to lengthen the probationary period an alien had to spend in the United States before applying for American Citizenship. Accordingly, by the terms of this Act, an alien had to reside in the United States for fourteen years instead of five years before being able to apply for American citizenship⁹⁹.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that no alien shall be admitted to become a citizen of the United States, or of any state, unless in the manner prescribed by the act, intituled "An act to establish a uniform rule of naturalization; and to repeal the act heretofore passed on that subject," he shall have declared his intention to become a citizen of the United States, five years, at least, before his admission, and shall, at the time of his application to be admitted, declare and prove, to the satisfaction of the court hailing jurisdiction in the case, that he has resided within the United States fourteen years, at least.¹⁰⁰

As a matter of fact, the Naturalization Act was also designed to limit the influence of immigrants in the U.S. elections, namely the presidential elections. Most importantly, these acts were aimed at weakening the Democratic-Republican party since the Federalists believed that

Revolution, he became Bishop of Autun. He worked at the highest levels of successive French governments, most commonly as foreign minister or in some other diplomatic capacity.

⁹⁶ U.S. Department of State, *Outline of U.S. History*, 82.

⁹⁷ Robert, *A short History*, 63.

⁹⁸ Tim McNeese, *Discovering U.S. History: Early National America 1790-1850*, (The United States of America: Chelsea House Publishing, An imprint of Infobase Publishing, 2010), 26.

⁹⁹ *Ibid.*, 64.

¹⁰⁰ Richard Peters, ed., *The Public Statute at Large*, 566.

most of immigrants were pro-French and pro-Republicans. In addition, the Democratic-Republicans, led by Thomas Jefferson, admired the French Revolution¹⁰¹ (1789–1799) because it expressed the popular will; therefore, they lobbied for giving much power to the state governments at the expense of the Federal one. So, behind passing these acts, the Federalists wanted to lessen the power of the Democratic-Republican party by depriving it of a significant portion of its followers and voters. Oddly, however, this Act pushed many immigrants to seek their citizenship before it became effective, thereby tilting the balance in favor of the Democratic-Republicans in the presidential election of 1800.¹⁰²

As the specter of an eminent war was looming, the U.S. lawmakers hastened to pass protective measures, which manifested in the Alien Enemies Act and the Alien Friends Act. These two acts depicted the deep concern of the U.S. government about its domestic front and reflected its fear of the aliens' disloyalty to the nation. More importantly, it revealed serious worries about possible dishonest and cruel acts the aliens might conduct against the U.S. government to show their sympathy with their native countries that are at war or in conflict with the hosting nation, the United States of America. Therefore, passing such acts would provide the government with the suitable power to protect itself from being undermined and smash any attempt to weaken American national security. Thus, the Alien Enemies Act authorized the U.S. president to arrest and deport all male citizens of a nation that is considered to be an enemy nation to the United States, whereas the Alien Friends Act authorized the American president to deport any non-citizen suspected of scheming against the government, even during peacetime.

... it shall be lawful for the President of the United States at any time during the continuance of this act, to order all such aliens as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government thereof, to depart out of the territory of the United States... and... whenever he may deem it necessary for the public safety, to order to be removed out of the territory thereof, any alien who may or shall be in prison in pursuance of this act; and to cause to be arrested and sent out of the United States...¹⁰³

To protect the government and federal institutions from being undermined by political critics, Congress passed the Sedition Act of July 14, 1798. The latter made it unlawful for any

¹⁰¹ The French Revolution was a period of radical political and societal change in France that started with the Estates General of 1789 and ended with the formation of the French Consulate in November 1799. Many of its ideas are considered fundamental principles of liberal democracy while the values and institutions it created remain central to French political discourse.

¹⁰² Gary, *Encyclopedia*. 2:14

¹⁰³ *Ibid.*, 570-571.

person, citizens and aliens alike, to write, publish, utter, or print any false, scandalous, or malicious writings against the U.S. president, Congress, or government with the intention of defaming or bringing them into contempt or disruption. Consequently, heavy penalties were set to punish such acts.

And be it further enacted, that if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either' house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute... shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.¹⁰⁴

As it is noticeable, these acts gave much power to the government at the expense of individuals' civil liberties. The Federalists thought that the young nation was in extreme need of stability which was essential and vital for its development. To this end, they regarded the French threat, both ideologically and militarily, as being quite enough to topple the fledgling government. They, therefore, proceeded to pass these protective acts in their bid to shield the infant government from all that might bring about its collapse. The Anti-Federalists, however, considered the acts as being a genuine violation of the first amendment to the U.S. Constitution that guaranteed to Americans their basic rights of assembly and petition as well as their freedom of religion, speech, and press.¹⁰⁵ To make a long story short, the Alien and Sedition Acts depicted the U.S. government's early episodes of xenophobic measures intended to curb the influx of immigrants into the United States of America. These Acts had a bad impact on the popularity of the Federalist Party to the extent that they caused the failure of President John Adams in the presidential elections of 1800 in favor of Thomas Jefferson, the leader of the Democratic-Republic Party.

The passage of the Alien and Sedition Acts was accompanied by a hot debate in Congress between the Federalists¹⁰⁶ and Democratic—Republicans¹⁰⁷ over the rights of non-

¹⁰⁴ *Ibis.*, 596-597

¹⁰⁵ U.S. State of Department, *About America: The Constitution of the United States*, 70.

¹⁰⁶ The Federalists were members of the Federal Party which was a conservative and nationalist American political party and the first political party in the United States. Under Alexander Hamilton, it dominated the national government from 1789 to 1801. Defeated by the Jeffersonian Republicans in 1800, it became a minority party while keeping its stronghold in New England and made a brief resurgence by opposing the War of 1812. It then collapsed with its last presidential candidate in 1816. Remnants lasted for a few years afterwards.

¹⁰⁷ The Democratic-Republican Party, known at the time as the Republican Party and also referred to as the Jeffersonian Republican Party among other names, was an American political party founded by Thomas Jefferson and James Madison in the early 1790s. It that championed republicanism, agrarianism, political

citizens under the U.S. Constitution. The Democratic–Republicans viewed that non-citizens were entitled to all rights under the Constitution because the latter often addresses them using terms like “people” or “persons” instead of citizens. James Madison¹⁰⁸ (March 16, 1751 – June 28, 1836), who was a leading figure in the Democratic-Republican Party, denounced the idea that non-citizens have no rights under the U.S. Constitution, arguing that the federal government has no absolute right over them even if they have no rights guaranteed by the U.S. Constitution. Furthermore, Congressmen argued that relying on presidential decrees to deport non-citizens is unconstitutional because it goes against the Fifth and Sixth Amendments to the U.S. Constitution. However, due to their bad impacts on non-citizens as well as the partisan schism, most of these acts did not last for long and expired in 1801 following the accession of Thomas Jefferson to the U.S. Presidency where both political parties labored for winning the support of 250,000 European immigrants who came to the United States between 1783 and 1815.¹⁰⁹ Consequently, the probationary period was reconstituted to five years by the terms of the Naturalization Act of 1802; thus, the 14-year waiting period remains the longest probationary period in American history aliens had to spend in the United States before being able to apply for naturalization.¹¹⁰

Another attempt to restrict the inflow of immigrants into the United States occurred in 1819 when economic depression along with worries that Great Britain would ship the poor into Congress’ pro-immigration stance. Therefore, under the guise of safety, and in the absence of a mechanism for enumerating immigrants under the U.S. Constitution, Congress resorted to the trick which consisted in passing legislation aiming at limiting the number of passengers allowed on board a ship based on its tonnage. This legislation reduced the carrying capacity of liners

freedom and equality, and expansionism. The party became increasingly dominant after the 1800 elections as the opposing Federalist Party collapsed.

¹⁰⁸ James Madison was one of the founding fathers and a statesman who played a key role in drafting the U.S. constitution, thereby nicknamed the Father of the U.S. Constitution. He was Virginia’s delegate to the Congress of Confederation from November 6, 1781, to October 30, 1787; he served as Virginia’s representative in the House of Representatives from March 4, 1789, to March 4, 1797; thereafter, he served as America’s 5th Secretary of State from May 2, 1801, to March 3, 1809; then, he serves as America’s 4th President from March 4, 1809, to March 4, 1817.

¹⁰⁹ James Madison was the 4th U.S. President from March 4, 1809, to March 4, 1817. He was the delegate of Virginia to the Congress of Confederation from November 6, 1786, to October 30, 1787. Afterwards, he became Virginia’s representative in the U.S. House of Representatives from March 4, 1789, to 1797; Then, under presidency of Thomas Jefferson, he served as the 5th U.S. Secretary of States from May 2, 1801, to March 3, 1809. Due to his significant contribution to drafting the U.S. Constitution, he is labelled the “father of the U.S. Constitution”.

¹¹⁰ Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America*, 101.

and raised the price of traveling, thereby minimizing the number of passengers who could afford to travel to the United States.¹¹¹

1.4 Immigration between 1830-1910: The Second and Third Waves

The second wave of immigrants began to move to the United States of America around 1830 when the US population was approximately estimated at 12.9 million. Contrary to the previous wave, immigrants in the second wave relied on credit and family remittances to finance their passage to America, causing the decline of indentured servitude which nearly disappeared. Immigrants of the second wave were pushed by some international political and economic developments, like the Irish potato famine in 1845 and political revolutions in some European countries in 1848. All in all, domestic and international factors pushed hundreds of thousands of immigrants to move to America, thereby proliferating their number from 599,125 in the 1830s to 1,713,251 in the 1840s.¹¹²

Immigrants from different countries, mainly England, Ireland, France, Germany, and Canada arrived in the United States during the antebellum period. These immigrants were dissimilar from each other in terms of cultural and religious backgrounds, especially the German craftworkers and Irish Catholics, thereby paving the way for the rise of nativist political parties in America. Besides, the arrival of these immigrants triggered nativists' worries about other issues, such as wage competition between Native Americans, immigrants' eligibility to benefit from welfare programs, and the religious dichotomy between Native Americans who were essentially Protestants and the new Catholic immigrants.¹¹³ Most important, Native Americans, particularly the Southerners, worried that the new Catholic immigrants would oppose slavery which was a hot and divisive issue during the antebellum period. These anti-immigrant sentiments spawned the Native American Party in 1845.¹¹⁴ The latter was founded by an anti-Catholic group in New York that chiefly aimed at halting immigration and protecting Native Americans' jobs. Campaigns of this group resulted in riots, including one violent

¹¹¹ Andrew M. Baxter, and Alex Nowrasteh. *A Brief History of U.S. Immigration Policy from the Colonial Period to the Present Day* (Washington, DC: CATO Institute, 2021), 6. <https://doi.org/10.36009/PA.919>.

¹¹² U.S. Department of Homeland Security, Office of Immigration Statistics. *Yearbook of Immigration Statistics 2018* (Washington: DHS, 2019).

¹¹³ Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America*, 133; Paul Spickard, *Almost All Aliens: Immigration, Race, and Colonialism in American History and Identity* (New York: Routledge and Taylor & Francis Group, 2007), 123.

¹¹⁴ Benson, *U.X.L Encyclopedia*, 878.

incident that happened in Philadelphia, Pennsylvania, causing the death of twenty-four individuals along with the burning of two Catholic churches.¹¹⁵

The American Party's main agenda centered on halting the influx of immigrants into the USA, protecting Native Americans' jobs, and protecting American society's religious and cultural identity. Most importantly, the party aimed at barring naturalized immigrants from political offices, thereby lobbying for lengthening the probationary period to twenty-one years before. The American Party, also referred to as the Know-Nothing Party,¹¹⁶ argued that immigrants, namely the Irish and other Catholics, pose a genuine threat to American democracy and values, raising fears of a conspiracy by using the U.S. voting system to elect agents of the pope, the head of the Roman Catholic Church, allowing him to exert political control over America. The Know-Nothing Party managed to work up strong and sometimes violent anti-immigrant sentiments, thereby gaining great popular support for their campaigns which proved to be successful during the 1840s and 1850s.

The turmoil of American politics during the antebellum period was so beneficial to the Know-Nothing Party. For many years, the American political landscape was dominated by two national political Parties: the Whig Party¹¹⁷ and the Democratic Party¹¹⁸. The Democrats adopted a pro-immigration policy and were always in favor of letting in more immigrants while the Whig voters in the North were always concerned with fears related to religious and ethnic minorities.¹¹⁹ However, with the sectional factions within the ranks of the Whig Party, many of its members left it for the Know-Nothings, whose members pledged to end the immigrant tide. Furthermore, the Party's membership increased as many conservatives joined it due to their dissatisfaction neither with the pro-slavery Democrats nor with the anti-slavery Republicans. Consequently, the party won several elections in 1855: electing 43 seats to the House of

¹¹⁵ Ibid.

¹¹⁶ In 1849, the Know-Nothing Party was founded in New York City where its members called it the Order of the Star-Spangled Banner. Soon after, lodges formed in nearly every other major American city. These lodges were open only to white, native-born citizens. Additionally, new members were inducted with secret initiation rituals. Therefore, its members, when asked about their nativist organizations, were supposed to reply that they knew nothing, hence the Party's name.

¹¹⁷ The Whig Party was a conservative political party that emerged in the United States during the mid-19th century. Alongside the slightly larger Democratic Party, it was one of the two major parties in the United States between the late 1830s and the early 1850s as part of the Second Party System. Four presidents were affiliated with the Whig Party for at least part of their terms. Other prominent members of the Whig Party include Henry Clay, Daniel Webster, Rufus Choate, William Seward, John J. Crittenden, and John Quincy Adams.

¹¹⁸ The Democratic Party is one of two major contemporary political parties in the United States. Founded in 1828, it was predominantly built by Martin Van Buren, who assembled politicians in every state behind war hero Andrew Jackson, making it the world's oldest active political party.

¹¹⁹ Benson, *U.X.L Encyclopedia*, 878.

Representatives, winning the governorship in Kentucky, Maryland, and Delaware, along with four states in New England, gaining Massachusetts' legislature, and electing the Party's mayor in Philadelphia.¹²⁰ Though these political achievements, the Party lost momentum due to its failure to develop a clear stance toward the hot issue of slavery as well as the slow influx of immigrants. However, despite the slowing immigration flows, the foreign-born population increased to reach 13.2% in 1860, causing a deep demographic change.¹²¹ Regionally, the percentage of the foreign-born population varied from one state to another, where some states scored higher percentages. For instance, in 1855, the foreign-born population amounted to 51% in New York City whereas California scored the highest percentage of 63%.¹²²

1.4.1 The Act to Encourage Immigration of 1864

Following the outbreak of the American Civil War (1861–1865), war industries' need for workers increased. In response, pro-immigration Republicans resorted to discrediting nativists. In this regard, President Abraham Lincoln¹²³(February 12, 1809 – April 15, 1865) maintained the following:

I regard our immigrants [are] one of the principal replenishing streams which are appointed by Providence to repair the ravages of the internal war and its waste of national strength and health. All that is necessary is to secure the flow of that stream in its present fullness, and to that end, the Government must in every way make it manifest that it neither needs nor designs to impose involuntary military service upon those who come from other lands to cast their lot in our country.¹²⁴

Therefore, to put in place this policy, Congress passed the Homestead Act of 1862 and the Contract Labor Act of 1864. The Homestead Act offered free lands (homesteads) in the West to both American citizens as well as immigrants who were eligible for naturalization and were willing to work the land for five years. Each homestead comprised 160 acres of land, and all American citizens who were heads of families and were over twenty-one years old could

¹²⁰ Ibid, 878-879;

¹²¹ Baxter and Nowrasteh. *A Brief History of U.S. Immigration*, 6.

¹²² Ibid., 6.

¹²³ Abraham Lincoln is one of the top ten U.S. President who greatly served the United States of America especially during the American Civil War where he succeeded in maintaining the unity of United States. He held different political offices. He served as a member of the Illinois House of Representatives from Sangamon County from December 1, 1834, to December 4, 1842. Thereafter, he served as Representative in the House of Representatives from March 4, 1847, to March 3, 1849. Afterwards, he run for the Senate, but he failed. Later, he won the ticket of his political party, the Republican Party, and won the race to the White House in 1860. He became the President of the United States from March 4, 1861, to April 15, 1865. He did not finish his second term because he was assassinated by John Wilkes Booth as he was watching a play at Ford's Theatre.

¹²⁴ Abraham Lincoln, "Fourth Annual Message: December 6, 1864", The American Presidency Project, Accessed on May 22, 2023. <https://www.presidency.ucsb.edu/documents/fourth-annual-message-8>

claim their land from the government. All they had to do was to demand the land from the government, live on it for five years, and the land would be theirs at the end. If the homesteaders want to quickly acquire the land in less than five years, they could achieve so after six months by buying it in return for a very low price \$1.25 an acre.¹²⁵

As regards the Contract Labor Act of 1864, also known as “An Act to Encourage Immigration of 1864,” came to address the labor shortage spawned by war conditions.¹²⁶ As a matter of fact, Abraham Lincoln greatly valued the role of immigrants in developing the United States. He strongly believed in an economic philosophy based on the labor of immigrants as he saw them as merchants, farmers, and builders who could massively contribute to the future development of the American economy. To achieve so, Abraham Lincoln saw that a concerted effort under governmental supervision could ease and simplify both recruited and voluntary immigration.¹²⁷

This critical situation pressured Lincoln’s administration to take legal action, thereby addressing the issue in his annual speech to Congress on December 8, 1863, expressing to Congressmen the country’s urgent need for more workers from foreign countries to meet the increasing needs of the U.S. economy. Given the increased demand, he stressed the importance of addressing this issue through a governmental law; therefore, he maintained the following:

I again submit to your consideration the expediency of establishing a system for the encouragement of immigration. Although this source of national wealth and strength is again flowing with greater freedom than for several years before the insurrection occurred, there is still a great deficiency of laborers in every field of industry, especially in agriculture, and in our mines, as well as of iron and coal as of the precious metals. While the demand for labor is thus increased here, tens of thousands of persons, destitute of remunerative occupation, are thronging our foreign consulates and offering to emigrate to the United States if essential, but very cheap assistance, can be afforded them.¹²⁸

So, President Lincoln depicted the situation where the U.S. economy was in extreme need of more workers and that the U.S. consulates in foreign countries were being thronged by immigrants, stressing the importance of governmental interference. To his pleasure, Lincoln’s

¹²⁵ O’Callaghan, *An Illustrated History*, 62.

¹²⁶ Edith Abbott, “Federal Immigration Policies, 1864—1924,” *The University Journal of Business* 2, no. 2 (1924): 133.

¹²⁷ Jason Silverman, “Lots to History: Abraham Lincoln’s Act to Encourage Immigration,” Friends of the Lincoln Collection, Accessed on May 23, 2023, <https://www.friendsofthelincolncollection.org/lincoln-lore/lost-to-history-abraham-lincolns-act-to-encourage-immigration/>

¹²⁸ Jason Silverman, “Lincoln’s ‘Forgotten’ Act to Encourage Immigration,” President Lincoln’s Cottage, published on July 1, 2016, Accessed on May 23, 2023. <https://www.lincolncottage.org/lincolns-forgotten-act-to-encourage-immigration/>

message received a quick response from Congress, and a bill to encourage the influx of immigrants and protect them was submitted to the Senate to be discussed and enriched.¹²⁹ The bill was underpinned by the Republican Party's platform adopted on June 7, 1864, which comprised a "resolution declaring that immigration should be fostered and encouraged by a liberal and just policy".¹³⁰

The Act to Encourage Immigration authorized American employers to recruit foreign workers and legalized the contract labor of immigrants. In this respect, it provided that immigrants, before moving to the United States, could make labor contracts by pledging their wages for twelve months to pay back their passage to the United States. The Act also provided that these contracts would be valid in law and enforceable by the U.S. courts.

That all contracts that shall be made by emigrants to the United States in foreign countries, in conformity to regulations ... whereby emigrants shall pledge the wages of their labor for a term not exceeding twelve months to repay the expenses of their emigration, shall be held to be valid in law, and may be enforced in the courts of the United States.¹³¹

Abraham Lincoln's administration had a long-lasting impact on the US immigration policy. This manifested in choosing Anson Burlingame (November 14, 1820 — February 23, 1870)¹³² to be the U.S. minister to China in 1861 who negotiated the Burlingame-Seward trade treaty with China in 1868. This treaty recognized the mutual benefits and advantages of the flow of immigrants between the two countries, guaranteeing the Chinese immigrants' right to enter the United States.

The United States of America and the Emperor of China cordially recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects respectively from the one country to the other, for purposes of curiosity, of trade, or as permanent residents.¹³³

¹²⁹ Jason Silverman, "Lincoln's 'Forgotten' Act to Encourage Immigration,"

¹³⁰ Abbott, "Federal Immigration Policies, 1864—1924," 133.

¹³¹ The New York Times, "An Act to Encourage Immigration," Accessed on May 23, 2023, <https://www.nytimes.com/1864/08/03/archives/an-act-to-encourage-immigration.html>

¹³² Anson Burlingame was an American statesman, a lawyer, diplomat, abolitionist, and a legislator from the Republican Party. He occupied several important jobs. Politically, he served as Massachusetts Representative in the House of Representatives from March 4, 1855, to March 3, 1861. Thereafter, he was served as diplomat in China after being appointed by President Abraham Lincoln from August 20, 1862, to November 21, 1867.

¹³³ Immigration History, "Burlingame Treaty of 1868," 2019, Accessed on May 23, 2023, <https://immigrationhistory.org/item/burlingame-treaty-of-1868/>

However, the Burlingame Treaty did not guarantee naturalization to the Chinese immigrants but only legalized their passage to the United States which was previously illegal under Chinese law. This provision resulted in a significant proliferation in the foreign-born community in the United States, which amounted to 14.4% of the whole American population in 1870.¹³⁴ This good political stance was held by the federal government until 1898 when the Supreme Court ruled otherwise in the *United States v. Wong Kim Ark* decision.¹³⁵

1.4.2 The Naturalization Act of 1870

By the end of the American Civil War (1861–1865), Congress began working on naturalization legislation that complies with the abolition of slavery all over the U.S. territory. Obviously, this legislation would extend the rights afforded by naturalization; however, Congressmen disagreed over the extent to which these rights would be bestowed on the newly freed slaves. In this regard, Senator Charles Sumner (Republican from Massachusetts) opted for crossing out the word “white” wherever it occurs to erase any distinction based on race or color in naturalization law. Other Congressmen, however, objected to extending naturalization rights to both Asians and Amerindians.¹³⁶ In the end, Congressmen's discussions spawned the Naturalization Act of 1870 which extended naturalization rights to free white aliens, aliens originating in Africa, and aliens of African descent.

As aforementioned, the Naturalization Act of 1870 excluded Asians, particularly, Chinese immigrants from naturalization. This exclusion resulted from the growing hatred among Native Americans toward Chinese immigrants due to a set of reasons. In point of fact, Chinese immigration to the United States was a hot issue that captivated both official and public opinion for many decades prior to the enactment of the Naturalization Act of 1870.

Since ancient times, the Chinese, like other people around the world, tend to move from one place, area, or country to another for different motives. These motives consist mostly in the need to seek a better life in another area or the need to escape dangers in their homeland caused namely by wars and invaders. So, over time, people chose to move from one place to another to fulfill their needs and ambitions. It is noteworthy to point to the difference between emigration and immigration. Emigration refers to the movement of people from their homeland

¹³⁴ Baxter and Nowrasteh. *A Brief History of U.S. Immigration Policy*, 8.

¹³⁵ Spickard, *Almost All Aliens: Immigration, Race, and Colonialism in American History and Identity*, 470.

¹³⁶ Baxter and Nowrasteh. *A Brief History of U.S. Immigration Policy*, 8.

to settle in another one, whereas immigration refers to the arrival of people into a new country to settle there. Generally, people's movement from and into countries is generally underlain by push and pull factors.

Emigrants move from their home country to another one for certain reasons called pull factors. The latter lie in the set of conditions in the host country that attracts the attention of emigrants and pulls them. Overall, people leave their home country for another in an attempt to enhance their social status and living conditions. This could be achieved through seeking better jobs with good salaries that allow them to meet their basic needs and thus enjoy a respectful life. In addition, one of the main reasons that attract emigrants is the efficient education systems in developed countries which are considered the key to improving their social status and allowing them to enter the labor market with valuable skills. These pulling factors played a major role in affecting the flow of immigrants from and into several countries.

Emigrants do not leave their homelands for just the pulling factors, but sometimes for being forced by the push factors. As a matter of fact, emigrants are mostly pushed to leave their home country for another one for certain notable reasons which consist in a large part in their dissatisfaction with their social life in their homeland which pushes them to seek to improve it in another country that guarantees that. More importantly, emigrants sometimes find themselves compelled to escape their homeland due to the extremely unpleasant hardships they encountered there. In this case, these emigrants are called refugees.¹³⁷ These hardships generally emerge during times of political repression and conflicts or rather wars and civil wars. In brief, the emigrants' movement from one country to another is governed by the outcome of the pull and push factors.

Historically, for more than 150 years, Chinese immigrants had been flocking to the United States in considerable numbers. Only a few numbers of Chinese seamen had arrived on the eastern coast of the United States by the end of the eighteenth century. However, the flow of the Chinese to America increased following the discovery of Gold in the Sacramento Valley of California in 1848, in what is known as the California Gold Rush. This event triggered a big wave of immigration to California from all over the whole world, including Chinese immigrants. The overwhelming majority of the first Chinese immigrants were males hailing

¹³⁷ Michael Teitelbaum, *Immigration to the United States: Chinese Immigrants*, ed. Robert Asher (The United States of America: Facts On File, Inc., 2005), 5.

from the province of Guangdong and mostly entered from the port of San Francisco.¹³⁸ Statistically, only 750 Chinese immigrants were counted in California by the 1850 census. Two years later, this number increased to reach 10,000 Chinese immigrants or rather gold miners.¹³⁹ Consequently, Chinese immigrants started gaining a permanent foothold in the United States.

Spurred on by the lure of a better life in the United States as well as their desire to escape economic hardships at home, Chinese immigrants kept flowing into the United States for years, between 1850 to 1882. In fact, this period of immigration comprised three waves of Chinese immigration to the USA. The first wave started, as it is aforementioned, following the discovery of gold in California. Having suffered for a long time from poverty, high taxes, government corruption, floods, droughts, etc., the poor Chinese found themselves coerced to leave their mother country for the United States in their hope of realizing their dreams of enjoying a prosperous life and strike it rich through working in gold mines in California. As a result, around 20,000 Chinese immigrants left for the United States.¹⁴⁰

Upon their arrival in America, the Chinese immigrants began their long journey to adapt themselves to the new life as well as integrate themselves into American society. They were regarded by Americans as exotic and mysterious as they knew only a few about China and its people. However, they were welcomed especially as they proved to be hardworking and productive. Many of them, in fact, ended up working in the transcontinental railroad that linked the West of America to its East. Moreover, these Chinese immigrants were skillful in doing a lot of jobs and activities. They brought to their new home prominent farming techniques, mining and construction know-how, and a sense of group work, which helped them to develop a good reputation among the other communities. This was clearly expressed by the then California governor, McDougal, who praised the Chinese immigrants maintaining that they were “one of the most worthy classes of our newly adopted citizens”;¹⁴¹ he went beyond when he maintained that “further immigration and settlement of Chinese is desirable”.¹⁴² In a nutshell, John McDougal’s eulogy of the Chinese could be considered a reflection of the public attitude towards the Chinese immigrants in their early period of residence in California. Consequently,

¹³⁸ Eithen, Luibhéid. *Entry Denied: Controlling Sexuality at the border*, (The United States of America: The University of Minnesota Press, 2002), 31.

¹³⁹ Benson, *U.X.L Encyclopedia*, 98.

¹⁴⁰ Teitelbaum, *Immigration to the United States*, 12.

¹⁴¹ Mildred Wellborn, “The Events Leading to the Chinese Exclusion Acts”. In *The Historical Society of Southern California*, (The United States of America: University of California Press, 2014), 49-58.

¹⁴² Wellborn, “The Events Leading to the Chinese Exclusion Acts,” 49-58.

between 1850 and 1882, the Chinese community in the USA increased significantly and was estimated at 322,000 people.¹⁴³

As the Chinese community in the USA increased, the need for developing a cultural identity became intense. In this regard, they clustered in small zones, in cities, which became the cradle of maintaining and spreading the Chinese identity in the United States. These clusters operated independently from the surrounding American cities; as a matter of fact, they were cities within cities. In the very beginning, these clusters were called “Little China,” “Little Canton,” or “the Chinese Quarter,” but later became known as the “Chinatowns”^{144, 145}. In their Chinatowns, the Chinese felt more at home and well protected by their big community; they speak the same language and share the same traditions and customs. This helped them to boost their identity and culture which was like the one they left behind in China.¹⁴⁶ Over time, the Chinese immigrants moved eastward to California where they established “Chinatowns” in cities all around the United States.

The Chinese immigrants were famous for being skillful and hardworking people. Once in America, they proved their capability to adapt themselves quickly to new jobs though most of them hailed from agricultural areas in China. They excelled in different jobs: in the mines, railroad industry, laundries, hotels, family kitchens, and as servants, etc.¹⁴⁷ This made them well-desired especially in the early years of their immigration to the USA because there was a need for more workers as America was just like an open workshop. However, this admiration did not last for a long time as dissatisfaction towards them soon surfaced.

Most of the Chinese immigrants in California worked hard in the mines of gold. They were welcomed by those who came before them to America. They soon developed a good reputation as hardworking, quiet, calm, and clean newcomers. Over time, these Chinese miners began to buy the rights to exploit the mines that were considered worthless after being used and dried up by Americans. Mostly, the Chinese miners found gold in these supposedly used-up mines. More importantly, the Chinese miners distinguished themselves by bringing in a new

¹⁴³ Benson, *U.X.L Encyclopedia*, 98.

¹⁴⁴ Chinatowns are enclaves of Chinese people outside their home country, China. In the United States, the first Chinatown was created in San Francisco in 1848, followed by many other Chinatowns that were established during the 19th century by the Chinese diaspora on the West Coast. By 1875, Chinatowns had emerged in eastern cities such as New York City, Boston, and Philadelphia.

¹⁴⁵ Teitelbaum, *Immigration to the United States*, 29.

¹⁴⁶ *Ibid.*

¹⁴⁷ Wellborn, “The Events Leading to the Chinese Exclusion Acts”, 49-58.

technique which consisted in damming up rivers with pine trees.¹⁴⁸ The new technique, developed in China, helped the Chinese miners in speeding up the digging and sifting process through controlling the flow of water. As a result, the Chinese income boomed.

The Chinese miners also distinguished themselves with a sense of collaborative work or rather a sense of teamwork. This gave them a certain advantage in competing against the other miners of other communities. Very often, there were some conflicts between miners over exploiting certain mines or digging in a certain place. The Chinese, however, did not compete against each other but instead gathered their power and money to buy mines that were supposedly drained up by others. Thereafter, they exploited it and shared the income they gained among the working team. Consequently, the Chinese miners grew successful.

The dissatisfaction of the white Americans was caused also by the readiness of the Chinese immigrants to work in return for low wages. The Chinese were ready to work for just \$5 or \$8 per day, whereas the whites were not ready to work for less than \$16 or \$20.¹⁴⁹ This angered the white Americans because the Chinese readiness to work for low wages led to a decrease in wages which hurt the interests of the whites. The whites' anger intensified as they began losing their jobs in favor of the Chinese immigrants because employers tended to employ the Chinese for their low wages, thereby doubling their profit. This intensified anti-Chinese sentiment and pushed forward to take official steps towards containing Chinese immigration to the United States.

The success of the Chinese miners did not go unnoticed by the American miners who got angry with them. In actual fact, enchanted by the California Gold Rush, thousands of non-Chinese journeyed from the eastern part of the USA to California in their hopes of striking it rich there. However, most of them soon got disappointed and all their dreams evaporated as they found nothing. Adding to that, mining and digging for gold was extremely hard work that drained their energy, thereby giving up their dreams of finding gold. Envious of the Chinese success, white miners turned the entirety of their anger towards them—the Chinese miners—who were accused of stealing Americans' wealth.¹⁵⁰ Some of them even took a step further by undertaking violent acts against them. This was documented in an article issued in *San Francisco Alta California* newspaper on August 8, 1853, where it wrote that “An American

¹⁴⁸ Teitelbaum, *Immigration to the United States*, 27.

¹⁴⁹ Wellborn, “The Events Leading to the Chinese Exclusion Acts”, 49-58.

¹⁵⁰ Benson, *U.X.L Encyclopedia*, 98.

yesterday attacked a Chinaman, beating him shamefully. The Chinamen were afraid to interfere. The assailant [the attacker] had the unfortunate Celestial [a name used by Americans of this time to describe Chinese people] by the queue [braid] and kicked and beat him until he was tired".¹⁵¹

To appease the white miners and contain their anger, California's government enacted the Foreign Miners' Tax¹⁵². Though supposedly passed to target all immigrants, it chiefly targeted the Chinese miners as it imposed a tax on any one of them as a pre-condition before allowing them to work in mines. Practically, this tax had an adverse effect on the level of violence against the Chinese miners as it increased it instead of decreasing it. The increased level was caused by the tax collectors themselves towards the Chinese's resentment against the unfair taxes. This fact was documented in the diaries of a tax collector who wrote: "I was sorry to stab the poor creature, but the law makes it necessary to collect the tax; and that's where I get my profit."¹⁵³ This law and its resulting acts revealed the early seeds of xenophobia against the Chinese community in the United States of America.

The Foreign Miners' Tax was not the only ordinance against Chinese immigrants; there were other similar local ordinances with the same aim. These laws revealed that the Chinese became no longer welcomed in the United States. These anti-Chinese sentiments were well expressed by Judy Yung who wrote the following:

Special taxes were also levied on Chinese fishermen, laundrymen, and brothel owners. Other local ordinances, which did not specifically name the Chinese but which obviously were passed to harass and deprive them of a livelihood, included the cubic-air-law, which prohibited residence in rooms with less than 500 cubic feet of air per person; the sidewalk ordinance, which made it a misdemeanor for any person to carry baskets across the shoulders; and the queue ordinance, which required that the hair of every male prisoner in the city jails be cut to within one inch of the scalp.¹⁵⁴

This made it clear that the Chinese success in dominating many activities greatly annoyed the white Americans who resorted to the use of their institutions to curb the sweeping success of this community. It also reveals the Chinese character of being well-disciplined, hardworking, and diligent. In short, the anti-coolies sentiment did not stop there, and local

¹⁵¹ Teitelbaum, *Immigration to the United States*, 27.

¹⁵² The Foreign Miners' Tax Act of 1850 was an Act enacted by California State legislature in 1850, levying a tax of \$20/month on foreign miners who were not naturalized and those who had not naturalized by the terms of Guadalupe Hidalgo Treaty of 1848. Of the \$20, tax collectors would retain \$3 and remit the rest to the state. However, this Act was repealed in 1851, and subsequently replaced by the Foreign Miners' License Tax Act of 1852, that charged \$4/month on foreign miners.

¹⁵³ *Ibid.*, 28.

¹⁵⁴ Luibhéid. *Entry Denied: Controlling Sexuality at the border*, 32.

ordinances were just the beginning that harbingered other tough laws, but this time federal laws. In other words, the anti-Chinese sentiment began to be institutionalized, thus finding its way to the corridors of the federal government.

After the end of the Gold Rush, a lot of Chinese workers had to find another way to make their living. Among other jobs such as farming, the Chinese moved to work in the railroad industry. A large part of the railroad network, such as the Central Pacific, was accomplished thanks to the hard work, skill, and dedication of around twelve thousand Chinese workers.¹⁵⁵ Moreover, the Chinese workforce in San Francisco dominated the four key industries which were shoes, woolens, tobacco, and garments. However, despite their contributions to the development of the U.S. economy, anti-Chinese sentiments mounted as they were accused of stealing the jobs of white workers.¹⁵⁶ The latter were firstly willfully excluded as they refused to work with the Chinese, but later were involuntarily excluded by the employers or rather the capitalists who favored the Chinese workers for their low wages.¹⁵⁷

As aforementioned, the influx of Chinese immigrants was spurred on again with the signing of the Burlingame Treaty, also known as the Burlingame-Seward Treaty, between USA and China. Signed in 1868, the treaty widely opened the U.S. gates to receive a big wave of Chinese coolies, even greater than that caused by the California Gold Rush.¹⁵⁸ This treaty came chiefly within the framework of the nation's efforts to gain inroads into the Chinese economy and benefit from its profitable trading opportunities. It also aimed at fostering the spread of Christianity in China, together with the European countries, who were also scrambling for getting inroads in China and Japan¹⁵⁹. On the whole, by the terms of this treaty, the United States allowed China to establish consulates in the United States and agreed not to interfere in China's development.¹⁶⁰ Besides, the treaty provided for the free movement of American and Chinese citizens from one country to the other, considering the Chinese immigrants as permanent residents though they were not naturalized. In short, the treaty's provisions can be summarized as the following:

¹⁵⁵ Benson. *U.X.I. Encyclopedia*. 99.

¹⁵⁶ Paul Spickard, *Almost All Aliens: Immigration, Race, and Colonialism in American History and Identity* (New York: Routledge and Taylor & Francis Group, 2007), 162.

¹⁵⁷ Wellborn, "The Events Leading to the Chinese Exclusion Acts". *The Historical Society of Southern California*, 49-58.

¹⁵⁸ Teitelbaum, *Immigration to the United States*, 40.

¹⁵⁹ "The Burlingame-Seward Treaty, 1868". Office of the Historian, Foreign Service Institute. United States Department of States. Accessed on June 4, 2020. <https://history.state.gov/milestones/1866-1898/burlingame-seward-treaty>.

¹⁶⁰ Ed. Marsha E. Ackermann et al, *Encyclopedia of World History: Age of Revolution and Empire 1750 to 1900* (The United States of America: Facts on Files, Inc., 2008), 71.

(1) Mutual protection of citizens on each other's soil; (2) The freedom of religious beliefs and exercises; (3) The right of a citizen of either country to reside in the other country at will, with the privileges of citizens of the most favored nation; (4) The right to prevent involuntary immigration; (5) The right to establish a system of currency and commerce; (6) The admission of the Chinese to the public schools in America and the right to establish American schools in China.¹⁶¹

As a direct result of this treaty, the United States counted a total of 138,941 Chinese immigrants who came to America during the period from 1870 to 1880.¹⁶² Once again, these immigrants came to California and thus were added to those who were left jobless as the California Gold Rush ended and the Railroad had been completed. Therefore, the success of the Burlingame-Seward Treaty was short-lived as the anti-Chinese sentiments mounted and paved the way for provisions aiming at restricting the flood of the Chinese people into the United States.

The Naturalization Act of 1870 seemed to be an interpretation of the newly ratified 14th Amendment to the U.S. Constitution which literally provided that “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside,”¹⁶³ just for the sake of barring the naturalization of the Chinese descendants based on birthplace citizenship. However, this provision proved to do little to obstruct the naturalization of the Chinese immigrants, thereby the need for a more rigid naturalization law called the Page Act of 1875.

1.4.3 Passing the Page Act of 1875

The considerable number of Chinese immigrants coupled with hatred against them led to the rise of anti-Chinese groups, or rather the anti-coolie groups, with the aim of restricting their flow into the USA. The anti-Chinese sentiment aggravated following the arrival of great numbers of Chinese women and children who would compete against white Americans for scarce jobs. This reinforced the argument of the anti-coolie groups created in California's largest cities and towns. The ensuing violence against the Chinese immigrants manifested in acts of lynching, burning, raping, and even boycotting Chinese products.¹⁶⁴ This made

¹⁶¹ Wellborn, “The Events Leading to the Chinese Exclusion Acts”. *The Historical Society of Southern California*, 49-58.

¹⁶² Lee. *At America's Gates*, 25.

¹⁶³ Andrew B. Arnold, *A Pocket Guide to the US Constitution: What Every American Need to Know*, 2nd ed., 122.

¹⁶⁴ Ed. Ackermann et al, *Encyclopedia of World History*, 88.

significant pressure on the state legislature, paving the way for passing laws that would restrict the influx of Chinese immigrants into the United States.

Effectively, the anti-sentiment against the Chinese began finding its way to the corridors of power. This manifested in the passage of the Page Act of 1875 by Congress. Sponsored by the Republican Representative, called Horace F. Page, the Act aimed at putting an end to the danger posed by the Chinese cheap labor as well as the Chinese women who were accused of being immoral or guilty of sexual wrongdoings.¹⁶⁵ In its first section, this law made it the duty of the consul-general or the consul of the United States, who resides in the port where it is supposed to deliver the certificate to the vessels' masters allowing Chinese, Japanese, or immigrants of any oriental country to enter the USA, to ascertain whether these newcomers enter into a contract for a term of service in the United States for lewd and immoral purposes. If it is proven to be so, the said general consul should not deliver that certificate.

That in determining whether the immigration of any subject of China, Japan, or any Oriental country, to the United States, is free and voluntary...it shall be the duty of the consul-general or consul of the United States residing at the port from which it is proposed to convey such subjects, in any vessels enrolled or licensed in the United States, or any port within the same, before delivering to the masters of any such vessels the permit or certificate provided for in such section, to ascertain whether such immigrant has entered into a contract or agreement for a term of service within the United States, for lewd and immoral purposes; and if there be such contract or agreement, the said consul general or consul shall not deliver the required permit or certificate.¹⁶⁶

Additionally, in order to curb the flow of Asian immigrants and strengthen the ban against the coolie workers, namely Chinese and Japanese, the Page Act provided for a heavy punishment which consisted in a fine of \$2,000 and a sentence to jail of a maximum of one year upon any American citizen or any other person amenable to the U.S. laws who attempts to bring any immigrant from China, Japan, or any other oriental country to work in the United States without their free consent. More importantly, it canceled and nullified all agreements or contracts already made in pursuance of such illegal importation, whether such importation shall have been in American vessels or others.

That it any citizen of the United States, or other person amenable to the laws of the United States, shall take, or cause to be taken or transported, to or from the United States any subject of China, Japan, or any Oriental country, without their free and voluntary consent, for the purpose of holding them to a term of service, such citizen or other person shall be liable to be indicted therefor, and, on conviction of such offense, shall be punished by a fine not exceeding two thousand dollars and be imprisoned not

¹⁶⁵ Lee. *At America's Gates*, 30.

¹⁶⁶ The Statute at Large of the United States of America, from December, 1873 to March, 1875, 477.

exceeding one year. and all contracts and agreements for a term of service of such persons in the United States, whether made in advance or in pursuance of such illegal importation, and whether such importation shall have been in American or other vessels, are hereby declared void.¹⁶⁷

The Page Act did not target only Chinese men, but it targeted Chinese women as well. This was tackled by its third section when it stipulated that the importation into the United States of Chinese women for lewd is totally forbidden, and thus all agreements made previously for the same purpose are also abrogated. This section reflected the fact that there was an immoral aim behind importing Chinese women into the United States which is prostitution. Hence, to halt this activity, the federal legislature imposed a heavy conviction upon any person found guilty of a felony. The conviction was set to be a fine not exceeding \$5,000 and a sentence to jail not exceeding five years.

That the importation into the United States of women for the purposes of prostitution is hereby forbidden; and all contracts and agreements in relation thereto, made in advance or in pursuance of such illegal importation and purposes, are hereby declared void; and whoever shall knowingly and willfully import, or cause any importation of, women into the United States for the purposes of prostitution, or shall knowingly or willfully hold, or attempt to hold, any woman to such purposes, in pursuance of such illegal importation and contract or agreement, shall be deemed guilty of a felony, and, on conviction thereof, shall be imprisoned not exceeding five years and pay a fine not exceeding five thousand dollars.¹⁶⁸

This provision had a great effect on the Chinese community as it barred the immigration of Chinese women. The impact lies in the fact that it augured ill for further based sexuality federal laws. Besides, though prostitution was not limited to Chinese women only, and was spread among other communities, targeting the importation of Asian women for their sexual misdeeds showed how sexual control overlapped with other systems of social hierarchy or other forms of social regulation, namely those related to gender, class, and race.¹⁶⁹ On the other hand, it is noteworthy to maintain that, even the then-U.S. President, Ulysses Grant (April 27, 1822 – July 23, 1885)¹⁷⁰, was in favor of limiting the inflow of Chinese immigrants into the United States. This was openly expressed in his seventh annual message to Congress on December 7, 1875, when he maintained the following:

¹⁶⁷ Ibid., 477.

¹⁶⁸ The Statute at Large of the United States of America, from December, 1873 to March, 1875, 477.

¹⁶⁹ Luibhéid. *Entry Denied: Controlling Sexuality at the border*, 31.

¹⁷⁰ Ulysses S. Grant is the 18th U.S. President from March 4, 1869, to March 4, 1877. Before being president, he served in very important jobs. From August 12, 1867, to January 14, 1868, he served as the U.S. Secretary of War. Thereafter, he acted as the Commanding General of the U.S. Army from March 9, 1864, to March 4, 1869.

That polygamy should exist in a free, enlightened, and Christian country, without the power to punish so flagrant a crime against decency and morality, seems preposterous. True, there is no law to sustain this unnatural vice; but what is needed is a law to punish it as a crime, and at the same time to fix the status of the innocent children, the offspring of this system, and of the possibly innocent plural wives. But as an institution, polygamy should be banished from the land.¹⁷¹

This excerpt from President Ulysses Grant's address to Congress shows clearly that banning further importation of Chinese women became the concern of the high American authorities, and the ban was made in the name of protecting American society from the Chinese immoral practices of polygamy and prostitution. In other words, the Federal government wanted to preserve the American traditional conception of family and marriage by barring the Chinese practices of polygamy from gaining a foothold in the USA.¹⁷²

The Change in the American attitude towards Chinese immigrants resulted from the change in the quality of Chinese immigrants. In other words, Americans respected and welcomed the early Chinese immigrants due to their high quality where most of them were merchants or immigrants with adventurous and ambitious spirits. Once in America, these immigrants established the so-called Chinatowns wherein they lived together, maintained their native lifestyle, and labored to furnish the newcomers with shelters and all that they needed to pursue their life in America. To this end, they organized themselves into associations created essentially by merchants. Their essential activity consisted in providing newcomers with shelters, food, jobs, loans, medical care, and even organized burials for the dead people.¹⁷³ Ultimately, they provided Chinese immigrants with everything they needed to lead respectable lives.

Amongst the Chinese associations, there were six powerful ones called the six companies, which later became called the Chinese Consolidated Benevolent Association. These six companies wielded great power and had a significant influence on the Chinese as they settled disputes between the Chinese, offered protection to their members, and looked for the welfare of the Chinese immigrants in San Francisco. For instance, when a newcomer arrives at the port of San Francisco, he was met with a representative of one of the six companies who would take him to his shelter in one of the Chinatowns. This reflects the reality of the early

¹⁷¹ "Seventh Annual Message". Ulysses S. Grant. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. Accessed on May, 31, 2020. <https://www.presidency.ucsb.edu/node/203765>

¹⁷² Abrams, Kerry (April 2005). "Polygamy, Prostitution, and the Federalization of Immigration Law". *Columbia Law Review*. 105 (3): 641–716.

¹⁷³ Teitelbaum, *Immigration to the United States*, 31.

Chinese immigrants who enjoyed a certain freedom in the United States as they were welcomed there. This fact was described by one of the Chinese immigrants who maintained: “Our people were all in their native costume, with queues down their backs, and they kept their stores just as they would do in China, with the entire street front open and groceries and vegetables overflowing on the sidewalks”.¹⁷⁴ However, this was just the beginning and things soon changed.

Among the main activities of the six companies was importing Chinese immigrants who entered into a labor contract. However, these companies did not make sure to import Chinese immigrants with good qualities or of a high class to the United States. Instead, they imported Chinese immigrants with poor qualities, where most of them were ignorant coolies; more importantly, the imported coolies comprised criminals and morally deficient ones. This contributed to the spread of crimes and decadence in the moral standards in San Francisco. Consequently, the American moralists changed their views towards the Chinese and began regarding them as people who are far from practicing the principles of Confucianism. The latter refers to a practical philosophy of moral behaviors that affected Chinese traditions and social norms, resting on five main virtues perceived as paramount for creating harmony in Chinese society; these virtues or ethical principles consist in the virtue of learning, wisdom, community, morality, and the highest expression of all virtues.¹⁷⁵ Therefore, Chinese immigrants’ non-compliance with the virtues of Confucianism led Americans to disrespect them, thereby regarding them as treacherous people as these newcomers won the confidence of their masters but later proved to be deceitful. In Americans’ eyes, they are a people of low standards as they had no respect for chastity and their women were prostitutes; they are people given to living in filthy places, gambling, and keeping dens of opium. In summary, white Americans’ point of view towards the Chinese immigrants changed by a hundred and eighty degrees, thereby considering Chinese immigrants as uncivilized people who need to be civilized.¹⁷⁶

The American politicians, however, saw Chinese immigrants as a potential threat to the American institution. This viewpoint intensified as Chinese immigrants established the so-called “tongs”, secret groups created by Chinese coolies who refused to be controlled by American laws. These groups were involved in drugs and crimes. Additionally, they rejected

¹⁷⁴ Ibid.

¹⁷⁵ Kaitlin Garcia, “What are the Five Virtues of Confucianism,” Study.com, Updated on April 28, 2022, Accessed on February 19, 2023. <https://study.com/learn/lesson/ren-confucianism-ethics-five-virtues.html>

¹⁷⁶ Wellborn, “The Events Leading to the Chinese Exclusion Acts”. In *The Historical Society of Southern California*, 49-58.

all Californian efforts to furnish them with American education or teach them Christianity. Most important, they objected to the assimilation of any of the American precepts and customs in their culture. This was the lever upon which the anti-Chinese immigration capitalized in their attempts to curb the Chinese influx into the United States.

In California, the period from 1873 onward was characterized by an increase in the capitalists' profit as they relied too much on the Chinese workingmen which raised the wrath of white Americans. Politically, the Republicans drew up a resolution criticizing the Burlingame Treaty recently negotiated with China which angered white Americans, whereas the Democrats were against it and directed the wrath of the white unemployed Americans towards the unfortunate Chinese immigrants. This resulted in a wave of violence against the Chinese that lasted for three days. Many Chinese were killed, their laundries destroyed, and the wharves of the Pacific Mail Steamship Company, which transported the Chinese immigrants to America, were raided; the rioters could not burn the company's steamships, but managed to burn the adjacent lumberyards and hay barns.¹⁷⁷ In a nutshell, Chinese immigration became a legitimate target for Californian politicians as a special committee of the legislature wrote that "the Chinese immigration was a dangerous unarmed invasion of our soil".¹⁷⁸

The situation of the Chinese immigrants in California worsened with the rise of Denis Kearney, an Irish immigrant, as the spokesman of the anti-Chinese movement. Kearney distinguished himself as one of California's most important figures who fought for restricting Chinese immigration. He blamed both capitalists and Chinese immigrants for making jobs scarce and lowering wages, thereby raising the rate of unemployment among white Americans. With the mounting wrath of the white Americans, a workingman association was founded in San Francisco in the summer of 1877, with Denis Kearney as its secretary.¹⁷⁹ This association had been established essentially for defending the interests of white American employees. Later on, workingmen unions were established across the whole state. However, the Chinese would witness their darkest days following the foundation of the Workingmen Party of California in

¹⁷⁷ "Denis Kearney and the California Anti-Chinese Campaign". The Chinese American Experience: 1857-1892. Accessed on June 2, 2020. Harp Week, LLC.

<https://immigrants.harpweek.com/ChineseAmericans/2KeyIssues/DenisKearneyCalifAnti.htm>

¹⁷⁸ Stephanie S. Pincetl, *Transforming California: A Political History of Land Use and Development* (The United States of America: Johns Hopkins University Press, 1999), 22.

¹⁷⁹ "Denis Kearney and the California Anti-Chinese Campaign". The Chinese American Experience: 1857-1892. Accessed on June 2, 2020. Harp Week, LLC.
<https://immigrants.harpweek.com/ChineseAmericans/2KeyIssues/DenisKearneyCalifAnti.htm>

1877, with Denis Kearney, as its leader. This party would play a significant role in toughening measures aiming at restricting the flood of Chinese immigrants into the USA.

The Workingmen Party of California's main agenda was to root the country from cheap Chinese immigrant labor, crying "The Chinese Must Go!".¹⁸⁰ This party played a key role in shaping California's 1879 Constitution as it secured eleven seats in the state Senate and seventeen seats in the state assembly.¹⁸¹ Its role is clearly noticed through the provisions presented by the Committee on the Chinese made during the Constitutional Convention of 1880. These provisions were organized in article XIX, which was wholly devoted to limiting the Chinese influx and organizing their residence in the state.

The first section of article XIX provided that California's legislature ought to prescribe all the required measures for the protection of states as well as its cities, counties, and towns, from the burdens and evils resulting from the presence of aliens who are or may become criminals, vagrants, paupers, mendicants, or invalids afflicted with contagious disease. Further, it should take measures to protect the state and its citizens from aliens deemed to be dangerous to the peace and well-being of the state. Besides, the state's legislature ought to impose provisions that determine the conditions upon which an alien could reside in the state, and in return, it should also determine the means and the mode of removal in case of failure or refusal to respect and obey the state's laws.

The Legislature shall prescribe all necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens who are or may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and from aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which persons may reside in the State, and to provide the means and mode of their removal from the State, upon failure or refusal to comply with such conditions.¹⁸²

As for organizing labor in California, the touch of the Workingmen Party was noticeable as the constitution provided heavy measures to restrict the labor of the Chinese within the state's borders. In defending the interests of the white Americans, the Party lobbied for a total ban on Chinese labor by forbidding the existing companies or those created thereafter from employing

¹⁸⁰ Lee. *At America's Gates*, 26.

¹⁸¹ Pincetl, *Transforming California: A Political History of Land Use and Development*, 23.

¹⁸² The Statutes of California, "Passed at the Twenty-Third Session of Legislation, 1880" (Sacramento: State Office, J. D. Young, Supt. State Printing, 1880), xli.

Chinese immigrants. The only case permitted to employ the Chinese is as punishment for a crime they committed.

SEC. 2. No corporation now existing or hereafter formed under the laws of this State, shall, after the adoption of this Constitution, employ directly or indirectly, in any capacity, any Chinese or Mongolian. The Legislature shall pass such laws as may be necessary to enforce this provision. SEC. 3. No Chinese shall be employed on any State, county, municipal, or other public work, except in punishment for crime.¹⁸³

In respect of the organization of the Chinese residents in the state, the constitution referred to them as aliens proved to be ineligible to be integrated into American society. It, therefore, considered them as dangerous to the well-being of the state and thus the state's legislature should discourage their immigration by all means within its power. More importantly, the state constitution prohibited forever the Asiatic Coolieism on the ground that it represents a form of human slavery; therefore, all the contracts made for the importation of such labor were hereby declared void and companies that used to import them would be subjected to penalties prescribed by California's legislature. To enforce these measures within the state borders, the legislature would delegate all necessary powers to all state cities and towns to root the Chinese from California's territory and ban their importation into it.¹⁸⁴ However, this article was declared unconstitutional and the question of Chinese immigration seemed to be solved only by federal laws.

1.4.4 The Chinese Exclusion Act of 1882

In its attempt to limit the flow of Chinese immigrants, the U.S. Federal government first revised the Treaty of Burlingame in 1880. The amended treaty provided that the flow of workers may be regulated, limited, or suspended, but not banned altogether for a period of ten years. This limitation concerned only workers and exempted certain categories such as household servants, teachers, travelers, and merchants. Further, this treaty provided the necessary protection for the Chinese in America. As for the Chinese who already resided in America and want to visit China, they can obtain certificates guaranteeing them to re-enter the country.¹⁸⁵ In brief, the amended treaty paved the way for the enactment of the first tough restrictive act on Chinese immigration.

¹⁸³ Ibid., xli.

¹⁸⁴ Ibid., xli.

¹⁸⁵ Wellborn, "The Events Leading to the Chinese Exclusion Acts", 49-58.

Effectively, having endured great pressure from the anti-Chinese groups, Congress finally yielded to it. This question reached the floors of the federal Congress and efforts were made to stem the inflow of Chinese immigrants. These efforts culminated in the passage of the Chinese Exclusion Act of 1882. This Act abrogated altogether the Burlingame Treaty and replaced it with tough measures intended to stem the inflow of Chinese immigrants. This explicit intention is so clear as the whole Act was based on an official attitude that considered the coming of Chinese workers as being dangerous to the good order of certain localities in the country. This idea of scorning the Chinese people sprang from the American superiority complex; that is, American racism. The latter was rooted in the ideology of social Darwinism as well as American nativism.¹⁸⁶ Thus, the restrictive measures that came in this act clearly expressed this ideology when prohibited all Chinese laborers, either skilled or unskilled, from coming to the United States for a period of ten years, from 1882 up to 1892.

Whereas, in the opinion of the Government of the United States the coming of Chinese laborers to this country endangers the good order of certain localities within the territory thereof: Therefore... from and after the expiration of ninety days next after the passage of this act, and until the expiration of ten years next after the passage of this act, the coming of the Chinese laborers to the United States be, and the same hereby, suspended; and during such suspension it shall not be lawful for any Chinese laborer to come, or, having so come after the expiration of said ninety days, to remain within the United States.¹⁸⁷

If any Chinese person was found unlawfully in the United States, he would be deported to his country after exposing him to justice, a judge, or commissioner of a court of the United States that would find him residing unlawfully in the United States and thus deserving to be deported to his native country.

... any Chinese person found unlawfully within the United States shall be caused to be removed therefrom to the country from whence he came, by direction of the President of the United States, at the cost of the United States, after being brought before some justice, judge, or commissioner of a court of the United States and found to be one not lawfully entitled to be or remain in the United States.¹⁸⁸

¹⁸⁶ Ma, Xiaohua. *The Sini-American Alliance During World War II and the Lifting of the Chinese Exclusion Acts*. Mid-America American Studies Association. American Studies International, Vol. 38, No. 2 (JUNE 2000), pp. 39-61.

¹⁸⁷ The Secretary of State. *The Statute at Large of the United States of America, from December, 1881 to March, 1883, and Recent Treaties, Postal Conventions, and Executive Proclamations*, (Washington: Government Printing Office, 1883), 58-59.

¹⁸⁸ The Secretary of State. *The Statute at Large of the United States of America, from December, 1881 to March, 1883*, 61.

However, the Act provided few exemptions to specific categories such as diplomatic and officials of the Chinese government. Most important, it prohibited the naturalization of Chinese immigrants.

That this act shall not apply to the diplomatic and other officers of the Chinese Government traveling upon the business of that government, whose credentials shall be taken as equivalent to the certificate in this act mentioned, and shall exempt them and their body and household servants from the provisions of this act as to other Chinese persons... That therefore no State court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed.¹⁸⁹

The passage of the Chinese Exclusion Act of 1882 marked the end of the free immigration era that characterized American history and opened the doors to a new era of immigration based on race. Actually, this legislation laid the foundations of a discriminatory immigration policy that would gradually restrict the numbers of immigrants in accordance with their race. In other words, the USA abstained from being the nation of immigrants that welcomed different communities from different countries and continents. Instead, it became a gatekeeper nation, a new type completely different from ever before. Thus, immigration to the USA became a sensitive topic for the federal government and its institutions that began exerting federal control over immigrants at its gates and also within its borders. This manifested in setting the standards upon which an immigrant would be accepted to come to America. These Standards were mostly based on race, gender, and class.¹⁹⁰

The Chinese Exclusion Act witnessed some modifications or amendments. The first amendment as such was the Scott Act in 1888. This latter came to toughen even more the constraints on Chinese immigration as it banned Chinese immigrants from returning to the United States after visiting their native country, China.¹⁹¹ It also reaffirmed the nation's legal right to deport any Chinese found residing illegally in the United States but granted them the right to appeal the decision.¹⁹²

That no Chinese laborer within the purview of the preceding section shall be permitted to return to the United States unless he has a lawful wife, child, or parent in the United States, or property therein of the value of one thousand dollars, or debts of like amount due him and pending settlement. The marriage to such wife must have taken place at least a year prior to the application of the laborer for a permit to return to the United States, and must have been followed by the continuous cohabitation of the parties as man and wife... But any such Chinese person convicted before a commissioner of a

¹⁸⁹ Ibid., 61.

¹⁹⁰ Lee. *At America's Gates*, 6.

¹⁹¹ Benson, *U.X.L Encyclopedia*, 748

¹⁹² Lee. *At America's Gates*, 224-225.

United States court may, within ten days from such conviction, appeal to the judge of the district court for the district.¹⁹³

The Chinese Exclusion Act was supposed to expire after ten years; that is, in 1892. However, the United States maintained its attitude toward Chinese immigration and thus renewed the Act for ten more years. This renewal came as a response to the pressure of white American or rather the Caucasian laborers who admired the effect of the Act. Consequently, Congress renewed the Chinese Exclusion Act through another Act called the Geary Act of 1892 which maintained the laws in force and provided for the deportation of any Chinese immigrant deemed unlawfully residing in the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that all laws now in force prohibiting and regulating the coming into this country of Chinese persons and persons of Chinese descent are hereby continued in force for a period of ten years from the passage of this act... That any Chinese person or person of Chinese descent, when convicted and adjudged under any of said laws to be not lawfully entitled to be or remain in the United States, shall be removed from the United States to China.¹⁹⁴

This Act went further when it provided for a heavy punishment against any person of Chinese descent found guilty of residing unlawfully in the United States to be jailed at hard labor for a period not exceeding one year before deporting them to their native country, China. More importantly, this Act required that foreign-born Chinese workers have to register with the government and carry an identification card at all times.¹⁹⁵ Chinese caught without such required documents would be detained and deported to China.

That any Chinese person or person of Chinese descent convicted and adjudged to be not lawfully entitled to be or remain in the United States shall be imprisoned at hard labor for a period of not exceeding one year and thereafter removed from the United States... And it shall be the duty of all Chinese laborers within the limits of the United States, at the time of the passage of this act, and who are entitled to remain in the United States, to apply to the collector of internal revenue of their respective districts, within no year after the passage of this act, for a certificate of residence...¹⁹⁶

¹⁹³ The Fifteenth Congress of the United States, *The Statutes at Large of the United States of America from December 1887 to March 1889: Recent Treaties, Postal Conventions, and Executive Proclamations* (Washington: Government Printing Office, 1889), 477- 479.

¹⁹⁴ The Secretary of State, *The Statute at Large of the United States of America, from December, 1891 to March, 1893, and Recent Treaties, Postal Conventions, and Executive Proclamations* (Washington: Government Printing Office, 1893), 25.

¹⁹⁵ Teitelbaum, *Immigration to the United States*, 46.

¹⁹⁶ The Secretary of State, *The Statute at Large of the United States of America, from December, 1891 to March, 1893*, 25-26.

Maintaining the same measures of the Chinese Exclusion Act and adding other tough provisions through the Geary Act revealed the parameters of the new era of immigration into the United States where Asian immigrants became a permanent target for American nativism and racism. This manifested in perpetuating the exclusion of the Chinese in 1902¹⁹⁷. This fact revealed the American viewpoint towards the Chinese immigrants as being undesirable in the United States and thus became a permanent target for the U.S. emigration system. In other words, America regarded Chinese immigration as a potential threat to its security, sovereignty, and self-preservation.

American authorities, in fact, went further when equated the danger posed by Chinese immigration with that of national sovereignty. This attitude can be deduced and figured out through two famous cases, *Chae Chan-ping v. United States* in 1889 and *Fong Yue Ting v. United States* in 1893, treated by the Supreme Court where the court asserted that the state holds the same rights and duties to protect its citizens from the threats posed by the Chinese immigration just like it did during times of war. This stems from the belief explicitly expressed by Congress in the preamble of the Chinese Exclusion Act that Chinese immigrants endanger the good order of certain localities within the country.¹⁹⁸ Consequently, these restrictive measures ushered in a significant drop in the number of Chinese immigrants who migrated to the United States, from 105,000 Chinese people in 1880 to 61,000 in 1920.¹⁹⁹

Restricting Chinese immigration, however, did not stem the influx of Chinese immigrants into the USA. Contrariwise, the Chinese immigrants vied these restrictive measures and continued their migration to the country through what is called the underground railroad, just like that one developed and used by African American slaves during the years prior to the Civil War (1861–1865). The Exclusion Acts, in fact, merely forced underground Chinese immigration and fostered the smuggling of such illegal immigrants. Hence, the desire of the Chinese immigrants to enter the United States sustained a well-organized and profitable transnational organization that comprised “prospective immigrants, immigration agents, professional smugglers, corrupt immigration officials and other government employees in China, the United States, and throughout the Americas”.²⁰⁰ This organization of smugglers began smuggling secretly the Chinese immigrants through Texas and proved to be effective as

¹⁹⁷ Ed. Ackermann et al, *Encyclopedia of World History*, 89.

¹⁹⁸ The Secretary of State. *The Statute at Large of the United States of America, from December, 1881 to March, 1883, and Recent Treaties*, 58.

¹⁹⁹ Teitelbaum, *Immigration to the United States*, 12.

²⁰⁰ Lee. *At America's Gates*, 193.

107,488 people reached America in 1890.²⁰¹ Once in Texas, the illegal Chinese immigrants began taking lessons in English to help them find jobs in the United States. This new fact increased so much the importance of the Chinatowns for these illegal immigrants as it provided them with shelter and steady work.²⁰²

However, the U.S. stance on Chinese immigration witnessed a significant change during World War II. This change came as a result of the Japanese Pearl Harbor attack on December 7, 1941. Following this attack, both China and the United States of America declared war on Japan and thus found themselves fighting together against the same enemy. This fact alleviated America's radical attitude towards Chinese immigrants and led to a sudden reversal of U.S. immigration policy. This change appeared through the lifting of the restrictions.

1.5 Immigration during the Progressive Era

After recovering from the wounds of the Civil War (1861–1865), the United States regained its attractiveness as one of the best destinations for immigrants, particularly those from Europe. Thus, 2018 statistics from the U.S. Department of Homeland Security showed that the number of immigrants who entered the United States more than doubled between 1861 and 1890 compared to 4.9 million registered between 1831 and 1860, skyrocketing to 10.4 million.²⁰³ These immigrants came mainly from southern and eastern European countries, contrary to those who arrived in the United States during the previous wave who hailed mainly from northern European countries.²⁰⁴ These immigrants came to work for a temporary period before returning to their home countries. This mode of immigration, return migration, was not new as it existed before, but it became more affordable due to the lower costs of transportation.

Following a Congressional investigation about immigrants' compliance with the existing immigration legislations which resulted in discovering "widespread violations and circumventions,"²⁰⁵ Congress responded by enacting a new immigration bill called the Immigration Act of 1891 which expanded the list of excluded immigrants. The new bill also allowed the deportation of immigrants if were found excludable by the federal government.

²⁰¹ Benson, *U.X.L Encyclopedia*, 100.

²⁰² *Ibid.*, 100.

²⁰³ U.S. Department of Homeland Security, Office of Immigration Statistics, *Yearbook of Immigration Statistics 2018* (Washington: DHS, 2019).

²⁰⁴ Baxter and Nowrasteh, *A Brief History of U.S. Immigration Policy*, 9.

²⁰⁵ *Ibid.*, 9.

Moreover, the bill provided for the creation of the Bureau of Immigration and made final the rulings of immigration inspectors, thereby abrogating any attempt for judicial review.

During the early 1900s, many progressives claimed that immigrants became a source of many problems to the point they thwarted the creation of an ideal society as they committed a lot of crimes and abused American welfare. Others were more explicit in their anti-immigrant sentiments when they argued that the government is responsible for protecting Native Americans from immigrants who were looked down upon, accusing them of lowering the wages of the natives and depressing innovation among Americans.²⁰⁶ In more accurate words, scholars of the era believed that immigrants of certain ethnicities have enduring and inflexible intrinsic traits that would obstruct their integration into American society. Therefore, to avoid such impediments, progressives resorted to imposing literacy tests on immigrants before embarking. They also opted for “various eugenics-inspired racial and ethnic exclusions of Jews, Asians, and Africans”.²⁰⁷ Thus, the desire for an activist federal government combined with pseudo-scientific eugenic claims resulted in the passage of a set of immigration laws between 1890 and 1907. The Second iteration of the Immigration Act was passed in 1903, which in its turn, extended the list of excluded immigrants. More importantly, the new act took a step forward in restricting the flow of immigrants by depriving aliens of their right to due process protection hitherto guaranteed by the Fourteenth Amendment to all persons and providing it to American citizens only.²⁰⁸

Another important immigration legislation was passed in 1907 authorizing the U.S. President “to call, in his discretion, an international conference...or to send special commissioners to any foreign country, for the purpose of regulating by international agreement, subject to the advice and consent of the Senate of the United States, the immigration of aliens to the United States”; moreover, this legislation required medical examinations abroad before embarkment by authorizing the federal government to provide “for the mental, moral, and physical examination of such aliens by American consuls or other officers of the United States government at the port of embarkation”.²⁰⁹ In short, anti-immigrant laws began finding their way to the corridors of Congress, which broadly resulted in raising the number of excluded

²⁰⁶ Thomas C. Leonard, *Illiberal Reformers: Race, Eugenics, and American Economics in the Progressive Era* (The United States of America: Princeton University Press, 2016), 70.

²⁰⁷ Baxter and Nowrasteh, *A Brief History of U.S. Immigration Policy*, 9.

²⁰⁸ Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (The United States of America: Russel Sage Foundation, 2006), 229.

²⁰⁹ Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America*, 230.

immigrant classes from being admissible in the United States, strengthened the federal government's deportation power, and raised the head tax on immigrants to \$4,00.²¹⁰ Besides, rancor against immigrants spurred the U.S. government to restrict the inflow of Japanese workers through the informal Gentleman Agreement with Japan, whereby Japan agreed to restrict the flow of its nationals to the United States in return for a commitment by the U.S. government not to pass a Chinese-style exclusion.²¹¹

Progressives' and nativists' anti-immigration stance was strengthened by the outcome of the Dillingham Commission which revealed that "new immigrants" were fundamentally different from old immigrants who came from Western and Northern Europe. Their culture, rates of economic success, and assimilative potential were supposedly severely constrained," suggesting that restrictive measures on immigration would solve that problem.²¹²

This Dillingham Commission was created for the sake of investigating immigration's impact on the United States, particularly new immigrants hailing from Southern and Eastern Europe. With the exception of one member, William S. Bennet of New York,²¹³ members of the Dillingham Commission were restrictionist-minded, comprising Congressmen from both political parties, Republicans and Democrats, along with statisticians, economists, special agents, etc. To reach the pre-determined conclusion, the Commission resorted to mobilizing the nation's foremost social scientists as well as political thinkers, who were mostly pro-restrictionist immigration policy including some opponents such as Franz Boas who conducted "a study of body changes among immigrants indicating their successful assimilation".²¹⁴

In 1911, the Dillingham Commission presented a report of 42 volumes. However, its report's findings were questionable due to methodological flaws. Its members were accused of cherry-picking data to reach the pre-determined conclusion that new immigrants from Southern and Eastern Europe are innately inferior to those from Western and Northern Europe. Besides, the Commission ignored or explained away the gathered data that showed and proved the ability of the so-called "new immigrants" to succeed and get assimilated into

²¹⁰ Ibid., 230.

²¹¹ Ibid., 231.

²¹² Alex Nowrasteh, "Thomas Sowell on Immigration," CATO Institute, published on July 22, 2013, Accessed on May 29, 2023, <https://www.cato.org/blog/thomas-sowell-immigration>

²¹³ Alex Nowrasteh, "Thomas Sowell on Immigration".

²¹⁴ Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America*, 232.

American society just because it did comply with the world view of the Commission.²¹⁵ Furthermore, the Commission had absurdly defined retardation for children as being “behind in school,” just for the sake of amplifying retardation among non-English speaking immigrant children. For instance, the Commission found that 66.9% of Polish Jewish students along with 63.6% of southern Italian were retarded.²¹⁶ Moreover, the Commission’s report proved to be biased in favor of Western and Northern European immigrants when it returned data, that showed them seeking welfare in American cities, to “further information or further correction”.²¹⁷ Though the aforementioned flaws, however, policymakers adopted the Commission’s report and its recommendations because it was consistent with their prejudices.

With the mounting concerns regarding new immigrants’ intelligence and how well they would integrate into American society, the Americanization movement emerged as a collective of private non-profitable organizations which supported civics classes, language lessons, and the destruction of the hyphenated Americans. This movement gained momentum, especially with the mounting tension between Germany and the United States during WWI, and developed into an array of government programs designed to push forward the assimilation of immigrants, such as writing school curricula and banning the German language from being spoken in public schools. On the ground, these anti-German laws slowed the assimilation process but were very popular as the tension between the USA and Germany escalated leading America to break its neutrality and take part in the war with the Allied powers. Politically, the anti-immigrant sentiment spurred Congress to pass the Immigration Act of 1917, also known as the Asiatic Barred Zone Act, against President Woodrow Wilson’s (December 28, 1856 – February 3, 1924)²¹⁸ veto. This act came with restrictive measures broadly aiming at preventing the immigration of undesirable Asians hailing from a large part known as “any country not owned by the U.S. adjacent to the continent of Asia”.²¹⁹ Accordingly, immigrants from “Afghanistan, the Arabian Peninsula, Asiatic Russia, India, Malaysia, Myanmar, and the Polynesian Islands” were excluded from entering the United

²¹⁵ Alex Nowrasteh, “Thomas Sowell on Immigration”.

²¹⁶ Ibid.

²¹⁷ Baxter and Nowrasteh, *A Brief History of U.S. Immigration Policy*, 10.

²¹⁸ Woodrow Wilson was the 28th U.S. President from March 4, 1913, to March 4, 1921. Before being the US President, he served in many official positions. He was the 13th President of Princeton University from October 25, 1902, to October 21, 1910. Thereafter, he served as the 34th Governor of New Jersey from January 17, 1911, to March 1, 1913.

²¹⁹ Robert Longley, “US Immigration Act of 1917: A Product of Isolationism, Law Drastically Reduced US Immigration,” ThoughtCo, updated on February 16, 2021, Accessed on August 13, 2023. <https://www.thoughtco.com/us-immigration-act-of-1917-4125136>

States.²²⁰ However, the act's main restriction lied in a literacy test designed to reduce the inflow of European immigrants, with exemption for those who were able to prove they were escaping persecution in their home countries.

1.5.1 The Quota Acts

Following the end of the Great War²²¹ (1914–1918), reports from the U.S. embassies and consulates in European countries revealed that millions of European nationals were planning to migrate to the United States.²²² Therefore, for the purpose of anticipating a post-war wave of immigration following the end of WWI, particularly after demobilizing 4,000,000 soldiers, Congress considered passing further restrictive immigration measures. In this respect, restrictionists along with eugenicists bolstered their anti-immigration position by adducing their dubious accounts of the role of immigration throughout American history. Others went beyond when improperly used intelligence tests to prove the intellectual inferiority of new immigrants and black Americans, thereby “biasing their results by intentionally surveying a disproportionate number of immigrants and blacks who were mentally handicapped for their final report and then omitting that crucial detail in their conclusions”.²²³ As a matter of fact, the United States witnessed a significant influx of experimental psychologists in 1920 who worked under the leadership of Robert Yerkes, the responsible for the Testing Program. Yerkes, along with other pioneers of the American mental testing movement believed in some brutal pessimistic sociopolitical views that morphed into political views. Upon getting involved in the Great War (1914–1918), Robert Yerkes was the president of the American Psychological Association (APA). With enlisting great numbers of draftees to prosecute the war, APA suggested exposing all the draftees to a psychological test aimed at providing a mental assessment to the Army leaders to classify and deploy them according to their capacities.²²⁴

²²⁰ Robert Longley, “US Immigration Act of 1917: A Product of Isolationism, Law Drastically Reduced US Immigration”.

²²¹ The Great War also referred to as World War I or the First World War is an international armed conflict which started in Europe in 1914 following the assassination of Franz Ferdinand and his morganatic wife, Sophie, duchess of Hohenberg, by the young man called Gavrilo Princip in Sarajevo, in June 28, 1914. Following this assassination, war broke out between tow coalitions, the allies and the Central Powers. Battles occurred in different parts of the world, in Europe, the Middle East, Africa, part of Asia and the Pacific, causing the death of over 9 million soldiers, 23 million wounded, and 5 million people due to the military actions. of people and soldiers.

²²² Vernon M. Briggs, *Mass Immigration and the National Interest: Policy Directions for the New Century*, 3rd ed. (The United States: Routledge, 2015), kindle.

²²³ Baxter and Nowrasteh, *A Brief History of U.S. Immigration*, 10.

²²⁴ Leon J. Kamin, *The Science and Politics of I.Q.* (The United States of America: Lawrence Erlbaum Associates, 1974), 17.

1.5.1.1 The Emergency Quota Act of 1921

In 1920, a Committee on Scientific Problems of Human Migration was established under the leadership of Robert Yerkes with the core objective that lies in “remove serious national debate over immigration from politics, and to place it instead on a firm scientific basis”.²²⁵ Similarly, biological scientists and psychologists in the Eugenics Research Association, chaired by the honorable gentleman, Albert Johnson who chaired also the House Committee on Immigration and Naturalization, were equally committed to the same objective. The first research examined by the committee of the National Research Council was that of scientist Carl Brigham, an assistant professor at Princeton University. Brigham’s book entitled *A Study of American Intelligence* was forwarded by Albert Yerkes who wrote: “Two extraordinarily important tasks confront our nation: the protection of the moral, mental, and physical quality of its people, and the re-shaping of its industrial system so that it shall promote justice and encourage creative and productive workmanship”.²²⁶ Brigham’s study was of great significance because it was based on facts, not on theories, presenting reliable facts and data to the country’s lawmakers, as Albert Yerkes maintained.

Mr. Brigham has rendered a notable service to psychology, to sociology, and above all to our law-makers...The author presents no theories or opinions but facts. It behooves us to consider their reliability and their meaning, for no one of us as a citizen can afford to ignore the menace of race deterioration or the evident relations of mi migration to national progress and welfare”.²²⁷

Brigham’s empirical study reanalyzed the Army data on immigrant intelligence. It took the performance of the black draftees as a bedrock baseline, finding out that Eastern and Southern European immigrants scored the same or less than the blacks: “Fully 46% of the Poles, 42.3 % of the Italians, and 39% of the Russians scored at or below the Negro average”.²²⁸ The study also came up with a notable result that immigrants’ intelligence is firmly correlated to the years immigrants had spent in the United States, hinting at the fact that they get more intelligent as they spend more years in the United States. Brigham’s study also came with new findings to confirm the genuine intellectual superiority of the Nordic immigrants.

Our tests results indicate a genuine intellectual superiority of the Nordic group...The Nordics are...rulers, organizers, and aristocrats...individualistic, self-reliant, and jealous of their personal freedom...as a result they are usually Protestants...The

²²⁵ Kamin, *The Science and Politics of I.Q.*, 19.

²²⁶ *Ibid.*, 20.

²²⁷ *Ibid.*, 20.

²²⁸ *Ibid.*, 20.

Alpine race is always and everywhere a race of peasants...The Alpine is the perfect slave, the ideal serf...the unstable temperament and the lack of coordinating and reasoning power so often found among the Irish...we have no separate intelligence distributions for the Jews...our any sample of immigrants from Russia is at least one half Jewish...Our figures, then, would rather tend to disprove the popular belief that the Jew is intelligent...²²⁹

The study concluded with a warning to the long-term decline in American intelligence due to the continuous influx of immigrants, thereby racially mongrelizing American society. It specifically cautioned against the rapid decline in American intelligence owing to the presence of the negro community within American society compared to the European countries.

We must face a possibility of racial admixture here that is infinitely worse than that faced by any European country today, for we are incorporating the negro into our racial stock, while all of Europe is comparatively free from this taint...The decline of American intelligence will be more rapid than the decline of the intelligence of European national groups, owing to the presence here of the negro.²³⁰

Brigham, based on his findings, believed that American intelligence would inevitably deteriorate, but could be prevented if the public opinion gets mobilized. More importantly, Brigham concluded that there is no reason for the federal government to remain idle, preaching it to take the necessary legal measures and steps to prevent the disaster. Thus, this study, along with many other similar attitudes, resulted in growing support for further restrictive immigration measures, Congress yielded again by passing new restrictive legislation called the Emergency Quota Act of 1921.

The Quota Emergency Act of 1921 came with a new approach to restrict the influx of foreign nationals into the United States depending on their nationality. To this end, the legislation established a cap on the number of admissible immigrants from certain nationalities, by admitting only 3% of “the total number of foreign-born people in the U.S. [from that nation] according to the 1910 census, with a total cap of 350,000”.²³¹ Again, the Northern and Western European countries obtained the majority of quotas which amounted to 55%, while the rest was accorded to other communities from other destinations. However, what is noteworthy to mention here is that immigration to the United States became family-based immigration, not economic immigration. That is, prior to 1921, the focus was on who

²²⁹ Carl Brigham, *A Study of American Intelligence* (The United States: Princeton University Press, 1923), pp. 182-83, 185, 189, 190.

²³⁰ Brigham, *A Study of American Intelligence*, 210.

²³¹ Kristen L. Anderson, *Immigration in American History* (United Kingdom: Routledge, 2021), 64.

to exclude from entering the country, meaning all foreign nationals could migrate to the United States in there was no exclusion; however, from 1921 onward, federal agencies started focusing on whom to admit and denied entry to all foreign nationals who were not explicitly approved.²³²

1.5.1.2 The National Origins Act of 1924

The Immigration Act of 1924, also dubbed the National Origins Act, came with even more restrictive measures, lowering the quota from 3% to 2%, and relying on the census of 1890 as a baseline instead of that of 1910 or 1920.²³³ This meant that the quota of foreign nationals from the Southern and Eastern Europe would decrease significantly since they made up a small part of the then U.S. total population. Effectively, 82% of the world quota was given to Northern and Western European countries while 14% of it was accorded to immigrants from Southern and Eastern European countries, and roughly 4% was accorded to immigrants from the eastern hemisphere.²³⁴ For instance, Great Britain alone benefited from 65,000 of the annually available slots.

The Immigration Act of 1924 is informally known as the Japanese Exclusion Act, owing to a provision it contained that completely barred immigration from Japan, contrary to the Gentlemen’s Agreement that only reduced the inflow of Japanese immigrants. In point of fact, the congressional session of 1923 witnessed strong agitation over a total ban on Japanese immigration. To stop Japanese immigration, congressmen cleverly used language while designing the provision so as not to mention Japan explicitly but apply it specifically to Japanese immigrants, by barring the immigration of all persons considered ineligible for citizenship.²³⁵ Accordingly, the United States unilaterally ended the Gentlemen’s Agreement; in response, “Japan declared a national day of mourning and humiliation”.²³⁶ Thus, the Immigration Act of 1924 marked the end of the era relatively known for the “open door” to immigration that characterized the U.S. immigration system for many decades.

Both acts, the Emergency Quota Act of 1921 and the Immigration Act of 1924, were popular due to the widespread eugenic notions as well as those of nationalism and xenophobia. Few politicians objected to them; also, famous sociologists, like Henry Pratt

²³² Baxter and Nowrasteh, *A Brief History of U.S. Immigration Policy*, 11.

²³³ Anderson, *Immigration in American History*, 64.

²³⁴ Briggs, *Mass Immigration and the National Interest: Policy Directions for the New Century*, 3rd ed., kindle.

²³⁵ *Ibid.*

²³⁶ *Ibid.*

Fairchild, a sociologist from New York University, published his famous book entitled *The Melting Pot Mistake* in which he employed the crudest elements of xenophobia, nationalism, and eugenics. Likewise, former Democratic Senator, Edwin E. Grant, cautioned against letting more immigrants from different cultural, religious, and ethnic backgrounds at the expense of harmony among Americans, which is the ultimate aim of the melting pot policy designed to assure the assimilation of immigrants into American society.

America has long been known as the "melting-pot." In fact, America's greatness came from the mixture of the best European blood...the prosperity made possible by our forefathers has lured the parasites of Europe—the scum that could so well have been eliminated from the melting-pot. When the pot begins to boil, it does not take the scum long to rise to the surface. The more unassimilable the elements, the greater the amount of scum. Much of it can be skimmed off, but only after it has tainted the entire mixture. It is the scum from the melting-pot which we should eliminate at all costs.²³⁷

Grant alluded to the danger posed by unpleasant elements that may cause the pot to explode, hinting at certain unassimilable communities of immigrants. Thus, for the sake of maintaining the safety and harmony of the whole pot, it is paramount, according to him, that the federal government gets rid of unpleasant immigrants by all means, by banning their entry and deporting those already in the country.

Similar to the Emergency Quota Act of 1921, the Immigration Act of 1924 did not restrict immigration from Western Hemisphere, leading to a spike of immigrants hailing from Western countries. Consequently, the influx of immigrants from Canada and Mexico increased to replace workers from Asia and Europe.²³⁸ As a response to the new situation, immigration restrictionists claimed that Mexican immigrants cannot enter the United States due to their ineligibility for naturalization as “mixed breeds”.²³⁹ In this respect, economist Roy L. Garis contended that “to admit peons from Mexico...while restricting Europeans and excluding Orientals is not only ridiculous and illogical—it destroys the biological, social, and economic advantages to be secured from the restriction of immigration”.²⁴⁰ Effectively, the federal government addressed this issue by considering all Mexicans as white.²⁴¹

²³⁷ Edwin E. Grant, “The Scum of the Melting-Pot,” *American Journal of Sociology* 30, no. 6(1925): 643. URL: <http://www.jstor.org/stable/2764588>

²³⁸ Baxter and Nowrasteh, *A Brief History of U.S. Immigration*, 11.

²³⁹ Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America*, 257.

²⁴⁰ Hearings before the Committee on Immigration and Naturalization, House of Representatives, 71st Congress, 2nd Session, *Immigration from Countries of the Western Hemisphere* (Washington, DC: Government Printing Office, 1930), 608.

²⁴¹ Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America*, 257.

The application of the provisions of the Immigration Act of 1924 based on the quota system proved to be so difficult given the technical issues, partly ascribed to the Bureau of Immigration's lack of required a sufficient number of agents as well as the administrative capacity to discharge its duties. For instance, the act provided that all foreign nationals wanting to migrate to the United States are required to be prescreened by U.S. embassies and consulates in their countries; the act also provided for the establishment of a visa system and the deportation of illegal immigrants. Additionally, agents of the Immigration Bureau were authorized to apprehend illegal border crossers without the necessity to obtain warrants and to access private properties located within 25 miles of the border. Also, the Immigration Act of 1924 provided for the creation of a new federal entity called the U.S. Border Patrol.²⁴² Thus, to enforce all the act's provisions, it was mandatory to increase the staff of immigration agencies as well as U.S. embassies and consulates abroad to guarantee the literal enforcement of the act's provisions. Consequently, in the absence of the required staff and agencies to enforce the new array of powers and measures, 175,000 illegal entries were registered annually.²⁴³

1.6 Immigration Policy between 1930 and 1965

The Immigration Act of 1924 greatly reduced the influx of legal immigrants. Five years before passing the act, the annual inflow of immigrants used to enter the United States amounted to 554,920 immigrants but declined to 304,182 immigrants during the five years that followed the enactment of the act.²⁴⁴ With the onset of the Great Depression, the average number of annual legal immigrants arriving in the United States further declined, reaching 35,576. The Great Depression with its bad effects, such as the spread of unemployment due to the bankruptcy of many banks and companies, reduced the attractiveness of the United States to immigrants, thereby causing a significant decline in legal immigration during the 1930s which averaged 69,938 annually.²⁴⁵ Thus, a small comparison between the annual average of legal immigrants arriving in the United States in 1924 and 1940 shows a substantial drop estimated at 90%. In other words, the percentage of the influx of legal immigrants to the whole U.S. population was estimated at 0.63% in 1924 but declined to 0.05% in 1940.²⁴⁶

²⁴² Congress

²⁴³ Maurice R. Davie, *World Immigration* (New York: Macmillan, 1936), pp. 400–01.

²⁴⁴ Baxter and Nowrasteh, *A Brief History of U.S. Immigration*, 12.

²⁴⁵ *Ibid.*, 12.

²⁴⁶ *Ibid.*

Under the new administration of President Franklin Delano Roosevelt²⁴⁷ (January 30, 1882—April 12, 1945), Executive Order 6166 issued on June 10, 1933, merged the Bureau of Immigration with the Bureau of Naturalization into one body called the Immigration and Naturalization Service (INS) associated with the Department of Labor.²⁴⁸ This new agency focused on the enforcement of the existing law as the inflow of immigrants collapsed during the years of the Great Depression. The rise in the rate of unemployment caused the then-Secretary of Labor, William N. Doak, to reason that deporting illegal immigrants would create jobs for Native Americans; consequently, the federal government deported over one million Mexicans and individuals of Mexican ancestry in what became known as the “repatriation program”. The justification for repatriating Mexicans was clearly expounded by Harry E. Hull, the Commissioner General of Immigration who explained it as follows:

It is the purpose of the Department of Labor...to foster, promote, and develop the welfare of the wage earners of the United States, ... and to advance their opportunities for profitable employment; and it is a mere corollary of this duty and purpose to spare no reasonable effort to remove the menace of unfair competition which actually exists in the vast number of aliens who have in one way or another, principally by surreptitious entries, violated our immigration laws.²⁴⁹

So, the core motive for deporting Mexicans was to free jobs to give them to Native Americans, thereby alleviating the effects of the economic depression by creating jobs that would boost the recovery of the U.S. economy. However, contrary to its intended purpose, repatriating the Mexicans raised unemployment among Native Americans.²⁵⁰ Besides, the results of the repatriation program showed that nearly 60% of the deportees were American citizens born in the U.S. to Mexican parents, and many of them were children deported to Mexico after sending their parents there.²⁵¹

²⁴⁷ Franklin Delano Roosevelt was the 32nd President of the United States of America and the only President in the U.S. history who served for more than two terms, from March 4, 1933, to April 12, 1945. Before presidency, FDR occupied many important jobs. He was the member of the New York State Senate from January 1, 1911, to March 17, 1913. Thereafter, he served as Assistant Secretary of the Navy from March 17, 1913, to August 26, 1920. Afterwards, served as the 44th Governor of New York from January 1, 1929 to December 31, 1932.

²⁴⁸ U.S. Citizenship and Immigration Service, *Overview of INS History* (Washington, DC: USCIS History Office of Library, 2012), 7.

²⁴⁹ Jongkwan Lee, Giovanni Peri, and Vasil Yasenov. *The Employment Effects of Mexican Repatriations: Evidence from the 1930's* (NBER Working Paper no. 23885, September 2017), 2.
<http://www.nber.org/papers/w23885>

²⁵⁰ Lee, Peri, and Yasenov. *The Employment Effects of Mexican Repatriations: Evidence from the 1930's*, 19.

²⁵¹ Kevin R. Johnson, “The Forgotten Repatriation of Persons of Mexican Ancestry and Lessons for the War on Terror,” *Pace Law Review* 26, no. 1 (2005): 4. DOI: <https://doi.org/10.58948/2331-3528.1147>

With the outbreak of WWII (1939–1945), growing fears that foreigners and subversive communist groups were plotting to topple the U.S. government.²⁵² Therefore, to protect national security and anticipate what might jeopardize it, Congress enacted the Alien Registration Act in 1940 which brought new measures, obliging noncitizens to “register with the federal government, provide fingerprints, and notify the government in the event of an address change”.²⁵³ The Alien Registration Act, also known as the Smith Act, provided for the deportation of aliens due to their involvement in any communist, fascist, or Nazi group. Additionally, any attempt to undermine the morale of U.S. soldiers would be fined \$10,000 and jailed for not more than ten years, or both.²⁵⁴

Following the U.S. declaration of war on Germany and Japan on December 11, 1941, four days after the Japanese attacks on Pearl Harbor, Hawaii, President Roosevelt issued Executive Order 9066 on February 19, 1942, which provided for the creation of concentration and detention camps for the German and Japanese immigrants in the United States.²⁵⁵ As a matter of fact, the Japanese attacks on Pearl Harbor caused the death of 2,403 and 1,178 wounded along with the destruction and sinking of many battleships,²⁵⁶ thereby heightening long-standing anti-Asian sentiment among Americans, particularly those living along the Western coast of the United States. Many Americans strongly believed that Japanese Americans in Hawaii aided the Japanese in their attacks on Pearl Harbor; hence, 15,000 Japanese Americans suspected of committing disloyal actions were rounded up, while others who were not regarded as genuine security risks were banned from traveling without permission, being in areas close to strategic and sensitive locations, and possessing arms, short-wave radios, or maps.²⁵⁷ More importantly, due to fears that Japanese Americans on American soil would support their mother country against the United States, calls for deporting them completely from the USA rose among Americans, namely politicians, military leaders, newspapers, and patriotic groups. As a result, Executive Order 9066 came to contain their malicious actions by putting them inside internment camps.

²⁵² Benson, *U.X.L Encyclopedia*, 50.

²⁵³ Baxter and Nowrasteh, *A Brief History of U.S. Immigration*, 12.

²⁵⁴ United States Statutes at Large, *Laws and Concurrent Resolutions Enacted During the Second and Third Sessions of the 76th Congress of the United States of America 1939-1941* (Washington, DC: Government Printing Office, 1941), 671.

²⁵⁵ Franklin D. Roosevelt. “Executive Order 9066—Authorizing the Secretary of War to Prescribe Military Areas”. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. Accessed on June 3, 2023. <https://www.presidency.ucsb.edu/node/210838>

²⁵⁶ Benson, *U.X.L Encyclopedia*, 1207.

²⁵⁷ *Ibid.*, 811.

Following the end of WWII, eugenicist, nationalist, and progressive motives and justifications for the passage of the 1924 Immigration Act started to fade away, though restrictionists hoped to “preserve whiteness” through the nation’s immigration policy.²⁵⁸ A five-year study was conducted by a Senate Committee before the passage of the 1952 McCarran-Walter Act.²⁵⁹ This study spawned a report that strongly supported the policy of the 1924 National Origins Act, maintaining that “the preferential treatment of prospective immigrants within the quotas for each quota area and availability of quota numbers should be considered primarily from the standpoint of the best interests of the United States”, stressing that the national-origins approach remains the cornerstone of the U.S. immigration policy.²⁶⁰ Broadly, the committee explained its viewpoint as the following:

Without giving credence to any theory of Nordic superiority, the subcommittee believes that the adoption of the national origins formula was a rational and logical method of numerically restricting immigration in such a manner as to best preserve the sociological and cultural balance in the population of the United States. There is no doubt that it favored the peoples of the countries of northern and western Europe over those of southern and eastern Europe, but the subcommittee holds that the peoples who had made the greatest contribution to the development of this country were fully justified in determining that the country was no longer a field for further colonization...²⁶¹

So, the committee reiterated its commitment to the justifications that made the platform upon which rested the provisions of the 1924 National Origins Act. Furthermore, the committee supported the belief that Western and European immigrants were superior to others, maintaining explicitly that the United States no longer admits such low-standard immigrants. Thus, it was clear the new legislation would follow the same stream.

Effectively, though vetoed by then-U.S. President, Harry S. Truman²⁶² (May 8, 1884 – December 26, 1972), Congress, with a Democratic-Party majority, overrode his veto thanks to the two-thirds required majority, thereby passing the McCarran-Walter Immigration and Nationality Act (INA) of 1952 on June 27.²⁶³ President Truman vetoed it because he feared

²⁵⁸ Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America*, 316.

²⁵⁹ Marion T. Bennett, “The Immigration and Nationality (McCarran-Walter) Act of 1952, as Amended to 1965”, *The Annals of the American Academy of Political and Social Science*, (1996): 128.
DOI:10.1177/000271626636700114

²⁶⁰ *Ibid.*, 129.

²⁶¹ *Ibid.*, 129-130.

²⁶² Harry S. Truman was the U.S. 33rd President from April 12, 1945, to January 20, 1953. Before being the President, he occupied many important and official jobs. He was the Judge of Jackson County, Missouri’s Eastern District from January 1, 1923, to January 1, 1925. Thereafter, he served as the Presiding Judge of Jackson County, Missouri from January 1, 1927, to January 1, 1935. Then, he became Missouri’s Senate from January 3, 1935, to January 17, 1945.

²⁶³ *Ibid.*, 130.

that it would maintain the national origins quota system and “establish racially constructed quotas for Asian nations,”²⁶⁴ believing that it would be discriminatory against Asians. This act reviewed and consolidated the existing immigration laws, thus remaining up today the cornerstone of the U.S. immigration policy.²⁶⁵ Briefly, the 1952 INA stipulated the following: First, it broadly maintained the previous immigration measures, particularly the national origins plan and the quota system; however, it favored skilled immigrants and relatives according to the concept that the country selects the admissible aliens, not the aliens who select the country. Second, provisions for losing and gaining nationality were reviewed. Third, all races were eligible for naturalization, which disproves Truman’s worries. Fourth, it increased the quota for immigrants hailing from countries outside of the Western and Northern European hemispheres. Fifth, it authorized the Department of State to refuse entry to those thought to lower Native Americans’ wages. Sixth, it repealed the 1880s’ prohibitions against contract labor, allocating a minimum quota of 100 visas for immigrants from every independent country in the world.²⁶⁶ Seventh, it upheld the reunification of families by exempting children and spouses from being included in the quota of each country. Eighth, Security measures were strengthened. Fifth, the grounds for exclusion were broadened. Last but not least, enhancing the efficiency of immigration agencies.²⁶⁷

Given the reforms brought about by the INA of 1952, it was expected that the influx of immigrants into the United States would increase. Eventually, the annual average of immigrants rebounded to 257,000, yet the 1960 census revealed that only foreign-born immigrants represented only 5.4% of the U.S. population.²⁶⁸ However, the act faced criticism from the civil rights movement along with the refusal of eugenics. The civil rights movement, in fact, focused massively on treating all races of immigrants equally regardless of their race or nationality, thereby regarding the McCarran-Walter Act as a law with a discriminatory background. President Dwight D. Eisenhower²⁶⁹(October 14, 1890 — March 28, 1969)

²⁶⁴ Office of the Historian. “The Immigration and Nationality Act of 1952 (The McCarran-Walter Act)”. United States Department of State. Accessed on June 3, 2023. <https://history.state.gov/milestones/1945-1952/immigration-act>

²⁶⁵ David Weissbrodt, Laura Danielson, and Howard S. (SAM) Mayers III, *Immigration Law and Procedure in a Nutshell*, 7th ed. (The United States of America: West Academic Publishing, 2017), 123.

²⁶⁶ Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America*, 316.

²⁶⁷ Bennett, “The Immigration and Nationality (McCarran-Walter) Act of 1952, as Amended to 1965”, 130-131.

²⁶⁸ Briggs, *Mass Immigration and the National Interest: Policy Directions for the New Century*, 3rd ed., Kindle.

²⁶⁹ Dwight D. Eisenhower was the 34th U.S. President from January 20, 1953, to January 4, 1961. Before presidency, he served in many important jobs. He was the 13th President of Columbia University from June 7, 1948 to January 19, 1953. During WWII, he was the 1st Military Governor of the American occupied zone of Germany from May 8, 1945, to November 8, 1945. Afterwards, he became the 16th Chief of staff of the Army from November 19, 1945 to February 6, 1948. Then, he became the 1st Supreme Allied Commander Europe from April 2, 1951 to May 30, 1952.

himself criticized the 1952 INA stating that “it does in fact discriminate”, asking Congress in his 1953 State of the Union address to “write an immigration law that would at one and the same time guard our legitimate national interests and be faithful to our basic idea of freedom and fairness to all”.²⁷⁰ He repeated the same call to Congress in his 1956 State of the Union address, expressing the urgent need to review the then-immigration system, but Congress did not make any step. In 1958, Senator John F. Kennedy²⁷¹ (May 29, 1917 — November 22, 1963) authored a book entitled, *A Nation of Immigrants*, in which he called for reforming the racial-national quota system.²⁷² Similarly, in July 1963, after being elected as the nation’s President after President Eisenhower, Kennedy asked Congress again to reform the McCarran-Walter Act of 1952, suggesting eliminating the quota system.

The use of a national origins system is without basis in either logic or reason. It neither satisfies a national need nor accomplishes an international purpose. In an age of interdependence among nations, such a system is an anachronism, for it discriminates among applicants for admission into the United States on the basis of accident of birth. ...[T]he system is heavily weighted in favor of immigration from northern Europe and severely limits immigration from southern and eastern Europe and from other parts of the world...Meanwhile, many thousands of quota numbers are wasted because they are not wanted or needed by nationals of the countries to which they are assigned.²⁷³

On the whole, the growing dissatisfaction at the 1952 INA along with the criticism it received paved the way for further reforms included in the Immigration and Nationality Act of 1965. Effectively, Congress responded by passing the Immigration and Nationality Act of 1965 signed into law on October 3, 1965, by President Lyndon B. Johnson²⁷⁴ (August 27, 1908 — January 22, 1973).

²⁷⁰ Margaret Sands Orchowski. *The Law that Changes the Face of America: The Immigration and Nationality Act of 1965* (The United States of America: Rowman & Littlefield, 2015), 47.

²⁷¹ John Fitzgerald Kennedy was the 35th U.S. President from January 20, 1961, to November 22, 1963. Before being President, he held many crucial positions. He was a member of the U.S. House of Representatives from Massachusetts’s 11th District from January 3, 1947, to January 3, 1953; thereafter, he became the U.S. Senator from Massachusetts from January 3, 1953, to December 22, 1960. Afterwards, he ran for presidency and defeated his Republican rival Nixon; however, Kennedy did not finish his term as he was assassinated in Dallas, Texas on November 22, 1963, thereby being replaced by his Vice President Lyndon Johnson who became the 36th American President.

²⁷² Spickard, *Almost All Aliens*, 337.

²⁷³ *Ibid.*, 338-339.

²⁷⁴ Lyndon B. Johnson was the 36th U.S. President from November 22, 1963, to January 20, 1969. Before his presidency, he occupied several important official jobs. He was member of the House of Representatives from Texas’s 10th District from April 10, 1937, to January 3, 1949. Then, he became U.S. Senator from Texas from January 3, 1949, to January 3, 1961. He was the Senate Majority Whip from January 3, 1951, to January 3, 1953. Thereafter, he became the Chair of the Senate Democratic Caucus from January 3, 1953, to January 3, 1961. He was the Senate Minority Leader from January 3, 1953, to January 3, 1955. Thereafter, he served as the Senate Majority Leader from January 3, 1955, to January 3, 1961. Afterwards, he became the U.S. 37th Vice President from January 20, 1961, to November 22, 1963.

The Immigration Nationality Act of 1965, also known as the Hart-Celler Act after Representative Emanuel Celler of New York and Senator Philip Hart of Michigan, received the majority of votes in both chambers of Congress: 326 to 69 in the House of Representatives and 76 to 18 in the Senate.²⁷⁵ The 1965 INA came with significant reforms to the U.S. immigration system. Its major reforms manifested in abolishing the previous system of quotas based on the national origins of immigrants and removing all preferences based on race. Instead, the act put in place consistent per-country ceilings where no country would be accorded a higher or lower limit than any other country. The legislation provided that “no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence,”²⁷⁶ thus, setting an annual ceiling of 170,000 dedicated to immigrants from the Eastern Hemisphere capped at 20,000 per country, while the ceiling set for the Western Hemisphere was 120,000 with no per-country limit.²⁷⁷ Besides, the act was crafted depending on two main guidelines: family reunification and skilled jobs. Therefore, spouses, unmarried minor children, and parents of U.S. citizens were exempted from preference requirements. Additionally, it preferred some categories while treating potential immigrants’ applications. In this respect, the act favored the following categories:

unmarried and married sons and daughters of U.S. citizens; siblings of U.S. citizens; spouses and unmarried sons and daughters of green card holders; members of the professions that include, but are not limited to, architects, engineers, lawyers, physicians, surgeons, and teachers; scientists and artists of exceptional ability; skilled and unskilled workers in occupations for which labor was in short supply; and some refugees.²⁷⁸

Thus, the 1965 INA discarded the old system of quotas based on the national origins of immigrants in favor of a new system based on family unification and meeting the demands of the U.S. labor market, namely in some professions and occupations in which labor was in short supply.

These reforms had profoundly affected the influx and shape of immigrants into the United States. The act caused a big surge in the size of immigrants back to over 1,000,000 immigrants per year, just like in the 1920s after passing the Immigration Act of 1924. Moreover,

²⁷⁵ David A. Gerber, *American Immigration: A Very Short Introduction* (United States of America: Oxford University Press, 2011), 51.

²⁷⁶ Government Publishing Office, Immigration and Naturalization Act of 1965 (1965), 911.

²⁷⁷ Gerber, *American Immigration: A Very Short Introduction*, 51.

²⁷⁸ Baxter and Nowrasteh, *A Brief History of U.S. Immigration Policy*, 15-16.

over 2,000,000 immigrants came annually to the United States on temporary visas in addition to over 500,000 illegal immigrants who annually entered the country either by illegally crossing the border or overstaying their temporary visas, approximately amounting to 4,000,000 illegal immigrants yearly.²⁷⁹ Ethno-racially, the 1965 INA profoundly nationally changed the structure and composition of the U.S. population, creating a population that resembles the world rather than the country founded upon the independence of the thirteen British colonies.²⁸⁰ Due to the lack of restrictions on race, religion, creed, and national origin, immigrants began pouring into the country from different parts of the world; consequently, within the fifteen years that followed the enactment of the act, the U.S. population became a mosaic of multinational, multiethnic, multilingual, multicultural, and multifaith mixed peoples.²⁸¹ More importantly, the size of the foreign-born population surged during the decades after the passage of the 1965 INA, from 9.7 million in 1960 to 14.1 million in 1980, then 31.1 million in 2000 and 40 million in 2010.²⁸² In a nutshell, the 1965 INA had three major impacts: it increased legal immigration, illegal immigration, and increased confusion about its immigration principles, like whether it is an enforceable law or a civil right law, and revived the question about whether some nationalities and races should be restricted.

Refugees were also addressed by the 1965 INA. Between 1967 and 1980, the United States received waves of refugees who escaped communism and communist regimes of their home countries. They arrived in the United States thanks to presidential parole power as well as specific legislative remedies. For instance, during the Vietnam War²⁸³ (1959—1975) in 1975, the United States passed the Indochina Migration and Refugee Act which granted 200,000 Vietnamese refugees a special status and permission to enter America.²⁸⁴ However, the issue required deep and thorough consideration instead of the ad hoc system in place. To this end, Congress passed the Refugee Act of 1980 which restricted the use of presidential parole power, raising temporarily the refugee limits to 50,000 instead of 17,600 and creating a new category for asylum seekers. In addition, the Refugee Act of 1980 provided that the U.S. President could, in consultation with Congress, determine the future number of refugees to be admitted annually.²⁸⁵ The act also amended the 1965 INA to make it comply with the United Nations

²⁷⁹ Orchowski. *The Law that Changes the Face of America: The Immigration and Nationality Act of 1965*, 79.

²⁸⁰ *Ibid.*, 79.

²⁸¹ *Ibid.*, 80.

²⁸² *Ibid.*, 80-81.

²⁸³ Baxter and Nowrasteh, *A Brief History of U.S. Immigration Policy*, 16.

²⁸⁴ Benson, *U.X.L Encyclopedia*, 103.

²⁸⁵ Government Publishing Office, *Refugee Act of 1980 (1980)*, 103.

Protocol Relating to the Status of Refugees enacted in 1967 which determined the characteristics of individuals recognized as refugees; consequently, the United States accepted annually 97,000 refugees between 1980 and 2000.²⁸⁶

With the remarkable surge in illegal immigration, the need for new legislation to address the issue became more intensive. To this end, Congress enacted the Immigration Reform and Control Act (IRCA) of 1986, which enabled undocumented aliens already in the country since 1982 to apply for legalizing their status; additionally, the act placed heavy penalties and fines on employers who illegally employ undocumented aliens.²⁸⁷ Before IRCA, undocumented aliens could be deported if were intercepted by INS agents, but they were not banned from working. Attempts to illegalize undocumented aliens' labor were many before the IRCA but in vain. The IRCA gave amnesty to approximately 3,000,000 undocumented immigrants in addition to establishing 109 INS offices for the sake of better enforcement of immigration laws.²⁸⁸ Further, the IRCA required illegal immigrants to fill out an I-9 form at the point of hire to prove that they are legally permitted to work in the United States. Then, the new hire has to show his/her employer some documents which confirm the information on his/her I-9 form.²⁸⁹ However, this requirement negatively affected illegal immigrants by decreasing their wages due to the low demand for their labor, but this did not dim the wage magnet; on the contrary, it spawned a black market for getting fake documents to obtain jobs in the United States, either by stealing identity documents or borrowing valid documents from those with legal work authorization.²⁹⁰

1.7 Immigration Reforms during the 1990s

In 1990, Congress enacted the Immigration Act of 1990 which aimed at creating “a selection system that would meet the future needs of the economy by moving away from a near-total focus on family-based immigration and toward the admission of more immigrants based on their skills and education”.²⁹¹ President George H. W. Bush²⁹²(June 12, 1924 — November

²⁸⁶ Baxter and Nowrasteh, *A Brief History of U.S. Immigration Policy*, 16.

²⁸⁷ Benson, *U.X.L Encyclopedia*, 1001.

²⁸⁸ Kanstroom, *Deportation Nation: Outsiders in American History*, 227; Zolberg, *A Nation by Design*, 371.

²⁸⁹ Alex Nowrasteh, “Identity Loans and Identity Theft: Illegal Immigrants in a Restricted Labor Market,” CATO Institute, Published on November 8, 2017, Accessed on June 4, 2023.

<https://www.cato.org/blog/identity-loans-identity-theft-illegal-immigration-regulated-labor-market>

²⁹⁰ Nowrasteh, “Identity Loans and Identity Theft: Illegal Immigrants in a Restricted Labor Market”.

²⁹¹ Muzaffar Chishti and Stephen Yale-Loehr, *The Immigration Act of 1990: Unfinished Business a Quarter-Century Later* (Washington, DC: Migration Policy Institute, 2016), 1.

²⁹² George H. W. Bush was the 41st U.S. President from January 20, 1989 to January 20, 1993. Before presidency, he held several important jobs. He was a member of the U.S. House of Representatives from

30, 2018) who signed it into law on November 29, 1990, described it as being “the most comprehensive revision to U.S. Immigration law in 66 years”.²⁹³ Similarly to previous legislation, the act permitted the immediate relatives of U.S. citizens (parents, children, and spouses) along with a few other classes of immigrants to enter the United States outside the allocated allotment. Further, the act redesigned three streams of immigration: employment-based, family-sponsored, and diversity-based, without significantly changing the fourth stream of Asylum seekers and refugees.²⁹⁴

The Immigration Act of 1990 limited the number of visas issued annually to 700,000 for the Fiscal Years²⁹⁵ 1992, 1993, and 1994, distributed as follows: 465,000 for family-sponsored immigrants, 140,000 for employment-based immigrants, 55,000 to children and spouses of those legalized under 1986 legislation, and 40,000 to special transition programs.²⁹⁶ However, from Fiscal Year 1995 onward, the number of visas issued annually decreased to 675,000 visas distributed as follows: 480,000 for family-sponsored immigrants, 140,000 for employment-based, and 55,000 for diversity visas.²⁹⁷

Despite the act’s array of measures that encouraged legal immigration, the 1990s witnessed a spike in illegal immigration which increased steadily to 8.6 million in 2000 after reaching 5.7 million in 1995 and 3.5 million in 1990.²⁹⁸ This surge in illegal immigration endorsed restrictionists’ position, contending that “immigrants had negative economic effects, failed to assimilate culturally, used an abundance of welfare, and amplified the perceptions of lawlessness and social chaos along the border with Mexico caused by illegal immigration”.²⁹⁹ In response, state and federal laws were passed. In California, for instance, two well-known Propositions 187 and 227 were discussed and passed by wide margins; the first aimed at curtailing welfare for illegal aliens, requiring all state employees to inform INS about any

Texas’s 7th District from January 3, 1967, to January 3, 1971. Thereafter, he served as the 10th U.S. Ambassador to the United Nations from March 1, 1971 to January 18, 1973. Then, he served as the 2nd Chief of the U.S. Liaison Office to the People’s Republic of China from September 26, 1974, to December 7, 1975. Later, he became the 11th Director of Central Intelligence from January 30, 1976, to January 20, 1977. Then, he became 43rd Vice President of the United States from January 20, 1981, to January 20, 1989.

²⁹³ Chishti and Yale-Loehr, *The Immigration Act of 1990: Unfinished Business a Quarter-Century Later*, 1.

²⁹⁴ *Ibid.*, 2.

²⁹⁵ The American Fiscal Year (FY) starts from October 1st to September 30th of the next calendar year. For instance, the fiscal year FY 2017 starts from October 1, 2016 to September 30, 2017.

²⁹⁶ *Ibid.*, 2–3.

²⁹⁷ *Ibid.*, 3.

²⁹⁸ Jens Manuel Krogstad, Jeffrey S. Passel and D’vera Cohn. “5 Facts about Illegal Immigration in the U.S.” Pew Research Center. Published on June 12, 2019. Accessed on June 5, 2023.

<https://www.pewresearch.org/short-reads/2019/06/12/5-facts-about-illegal-immigration-in-the-u-s/>

²⁹⁹ Baxter and Nowrasteh, *A Brief History of U.S. Immigration Policy*, 18.

suspect illegal immigrant, whereas the second banned bilingual education in public schools.³⁰⁰ At the national level, the administration of President Bill Clinton³⁰¹ (born August 19, 1946) tried to lessen illegal immigration administratively through undertaking operations along its southern border such as Operation Hold the Lion in 1993 and Operation Gatekeeper in 1994.³⁰²

In like manner, Congress' initiative to reduce illegal immigration came in 1996 by passing two important bills: The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and The Antiterrorism and Effective Death Penalty Act (AEDPA). Enacted in the wake of the terrorist attacks in Oklahoma City, both acts placed heavy penalties on illegal crossings, created mandatory detention for several noncitizen classes, and precipitated deportation procedures for some cases.³⁰³ They also retroactively expanded criminal grounds for removal, eliminated some and limited other discretionary waivers of removability and increased the involvement of state and federal in law enforcement deportation.³⁰⁴ Furthermore, the two acts restricted judicial review of certain types of deportations, enabling secret evidence in deportation procedures related to the removal of aliens accused of terrorist activities. More importantly, the IIRIRA broadened the internal removal apparatus and set measures to forfend illegal immigrants from benefiting from the legal system to obtain green cards through so-called "three-and-ten-year bars", designed to forfend illegal immigrants who left the United States from reentering it legally for any reason whatsoever.³⁰⁵

Another act to reduce illegal immigration was passed by Congress on August 22, 1996, called Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). Commonly known as "the welfare reform"³⁰⁶, the PRWORA brought further barriers in front of immigrant women to prevent them from benefiting from social services, particularly, health care, increasing the waiting period to five years before new immigrants be eligible for it.³⁰⁷

³⁰⁰ Elliott R. Barkan, "Return of Nativists? California Public Opinion and Immigration in the 1980s and 1990s", *Social Science History* 27, no. 2 (2003): 229, 237, 249, 261–66.

³⁰¹ Bill Clinton was the 42nd U.S. President from January 20, 1993 to January 20, 2001. Before presidency, he occupied many important jobs. He was the 50th Attorney General of Arkansas from January 3, 1977, to January 9, 1979. Afterwards, he became the Vice Chair of the National Governors Association from August 6, 1985, to August 26, 1986. Then, Chair of the National Governors Association from August 26, 1986, to July 28, 1987. Thereafter, he served as the 40th and 42nd Governor of Arkansas from January 11, 1983, to December 12, 1992.

³⁰² Baxter and Nowrasteh, *A Brief History of U.S. Immigration Policy*, 18.

³⁰³ Kanstroom, *Deportation Nation: Outsiders in American History*, 10.

³⁰⁴ *Ibid.*, 10.

³⁰⁵ Priscilla Huang, "Anchor Babies, Over-Breeders, and the Population Bomb: The Reemergence of Nativism and Population Control in Anti-Immigration Policies," *Harvard Law and Policy Review* 2 (2008): 389–90.

³⁰⁶ Huang, "Anchor Babies, Over-Breeders, and the Population Bomb: The Reemergence of Nativism and Population Control in Anti-Immigration Policies," 389.

³⁰⁷ *Ibid.*, 389.

Hence, new immigrants who arrived after August 22, 1996, had to reside continuously in the USA for five years before getting eligible for welfare.

1.8 Immigration Reforms in the 21st Century

During the 2000 presidential elections, the Hispanic voters favored the Republican presidential candidate, George W. Bush³⁰⁸ (born on July 6, 1946) who campaigned for expanding legal immigration and legalizing illegal immigrants, declaring that “Legal immigration is not a source of national weakness; it is a sign of national success”.³⁰⁹ However, after winning the elections and becoming the 43rd U.S. president, his first year in the White House witnessed a major event that not only changed America but also the whole world, the 9/11 attacks on the Twin Towers in New York as well as the Pentagon in Pennsylvania. As a result, anti-immigrant sentiments and Islamophobia spread out throughout the whole country.

Legally, Congress responded by passing the USA PATRIOT Act on October 26, 2001, which restricted immigrants’ rights by extending deportation powers to suspected terrorists, authorizing the Attorney General “to wiretap and harass citizens, detain noncitizens (and even citizens) without charge or recourse to attorneys or courts”.³¹⁰ Thereafter, in 2002, after INS extended visas to two deceased 9/11 terrorists, Congress enacted another legislation called the Homeland Security Act of 2002 which grouped 22 federal departments and agencies into a new department called the Department of Homeland Security (DHS).³¹¹

During his two terms in office, George W. Bush signed two acts in 2002, the Visa Entry Reform Act and Enhanced Border Security Act, and in 2006, signed the Secure Fence Act in addition to renewing the USA PATRIOT Act. These acts consolidated the federal government’s power to detain immigrants without trial, provided for fencing over 850 miles along the country’s southwest border with Mexico, and increased the size of Border Patrol.³¹² Moreover, Congressional actions increased security screening of nonimmigrant visas by putting in place

³⁰⁸ George W. Bush was the 43rd U.S. President from January 20, 2001, to January 20, 2009. His Presidency was eventful. It was famous for the 9/11 attacks on the two Twin Towers of New York and the Pentagon in Pennsylvania. Besides, it famous for the War on Terror and the Invasion of Iraq and Afganistan. Lastly, his presidency ended with the financial crisis of 2008. Before his presidency, George W. Bush served as the 46th Governor of Texas from January 17, 1995, to December 21, 2000.

³⁰⁹ Zolberg, *A Nation by Design*, 430.

³¹⁰ Spickard, *Almost All Aliens: Immigration, Race, and Colonialism in American History and Identity*, 475.

³¹¹ U.S. Department of Homeland Security. “Who Joined DHS”. Last updated February 27, 2023; Accessed on June 5, 2023. <https://www.dhs.gov/who-joined-dhs>

³¹² Kanstroom, *Deportation Nation: Outsiders in American History*, 10.

various programs, like Automated Biometric Identification System, the Electronic System for Travel Authorization, and the Student and Exchange Visitor Information System.³¹³

Immigration reforms continued during the Presidency of Barack Obama who introduced in 2012 a new program called Deferred Action for Childhood Arrivals (DACA) which offered a two-year authorization for work as well as a reprieve from removal for undocumented immigrants. This program received criticism, namely from Obama's Republican rival in the 2012 presidential elections, Mitt Romney³¹⁴ (born March 12, 1947), who objected to the citizenship pathway suggested by DACA, contending that the strict enforcement of the immigration laws would certainly push undocumented immigrants to leave the U.S. by themselves. Though such criticism, President Obama maintained his program during his second term. However, Obama's immigration programs were severely criticized by the Republican candidate and the 45th U.S. President Donald Trump, promising to end his predecessor's immigration plans. Further details on this point will be discussed later in this paper.

To conclude, it became clear throughout this chapter that immigration to the United States attracted many people from different parts of the world. Immigrants moved to the United States owing to different motives that changed over time. Starting with early settlers coming mainly from England by the onset of the seventeenth century to recent times, immigrants' motives changed from escaping persecution and seeking religious freedom to materializing their American Dream which mainly consists in bettering themselves, promoting their living conditions, and enjoying a prosperous life. However, given the increasing number of immigrants who annually moved to the United States, the latter was obliged to regulate this inflow to adapt it to the best interests of the country. Accordingly, several measures and proceedings were introduced by the federal government to adjust the nation's immigration policy to the best interests of the American people, especially economic, social, and national security. However, these changes were sometimes tough on immigrants and were based on anti-immigrant sentiments or rather xenophobia. Additionally, some immigration measures were taken based on nativist xenophobic views that favor native Americans over newcomers, leading to the restriction or suspension of the inflow of immigrants into the United States, like what

³¹³ Michelle Mittelstadt, Burke Speaker, Doris Meissner, and Muzaffar Chishti. *Through the Prism of National Security: Major Immigration Policy and Program Changes in the Decade since 9/11* (Washington, DC: Migration Policy Institute, 2011), 1–17.

³¹⁴ Mitt Romney is an American Republican Politician, Lawyer, and businessman who unsuccessfully run for U.S. presidency in the 2012 elections against President Barack Obama. He served as the 70th Governor of Massachusetts from January 2, 2003, to January 4, 2007. Currently, he is a U.S. Senator from Utah since January 3, 2019.

Chapter 1 _____ A Glimpse into the Evolution of the U.S. Immigration Policy

happened under the Trump Administration. Therefore, the second chapter of this study brings to light the two notions of nativism and xenophobia as well as Trump's immigration plan.

Chapter 2: Trump's Immigration Plan

As illustrated in the previous chapter, American history witnessed periods characterized by xenophobia toward certain hyphenated immigrants, mostly caused by political and military conflicts with foreign countries the United States took part in. Therefore, each time America gets involved in such conflicts, it turns the entirety of its attention to preserving the domestic front via taking measures aiming at protecting its national security from being jeopardized and destabilized from within. Usually, these measures center on restrictions imposed on immigrants in general, particularly on certain communities whose native countries are at war or have deep disagreements with the United States. Besides, America may resort to restrictive measures imposed on immigrants on account of preserving its economy and Americans' jobs from being stolen by immigrants. Hence, throughout American history, the consecutive American Governments resorted to adjusting their immigration policy to meet the best interests dictated by the then-faced challenges. In this regard, the administration of the 45th U.S. President, Donald J. Trump (January 20, 2017— January 20, 2021), made no exception. The latter came with his new vision about how to adjust American immigration policy to meet the challenges encountered by his administration. This chapter aims at shedding light on the different aspects, aims, and reasons upon which Donald Trump's xenophobic policy is based. But before dealing with all these points, it is better to deal first with the concepts of xenophobia and nativism.

2.1 Nativism and Xenophobia

Nativism, as it is defined in the Merriam-Webster dictionary, means “a policy of favoring native inhabitants as opposed to immigrants”.³¹⁵ In other words, the term “nativism” refers generally to the policies and measures that aim at protecting and favoring the interests of the native people over those of immigrants. Furthermore, nativism mostly expresses a reaction that mostly develops into a backlash and aversion towards immigrants caused by the natives’ fears of losing their interests, namely the economic ones, such as jobs.

In the United States, nativist sentiments emerged following the economic and political changes the nation had witnessed in the nineteenth century. In other words, the idea of nativism is correlated to a specific historical context that helped it to emerge and thrive. This historical context consisted in the great waves of immigration that swept America during the nineteenth century owing to great economic changes, thereby becoming an open workshop needing more working masses. Therefore, immigrants were eager to benefit from the opportunities the United States had provided; as a result, the USA was inundated with great masses of immigrants and thus raised the fears of the natives for their interests threatened by newcomers. These fears developed over time and became a political ideology that affected the whole life of Americans.

American nativism is characterized by some basic tenets. First and foremost, it incarnates a steadfast opposition to immigrants. This opposition springs from the belief that immigrants undermine the cultural values of American society namely the religious ones. As a matter of fact, Nativism in the USA comprised a strong anti-Catholic aversion as a great range of the newly arrived immigrants came from predominantly Roman Catholic nations. This fact triggered a nativist bias against those immigrants because of their fear for their predominantly Protestant culture. Therefore, immigrants with the Catholic religion found it difficult to find their religious freedom in the United States ever since the colonial era up to the early years of the twentieth century.³¹⁶

Nativist restraints on the immigrants with Catholic culture intensified with the stressors of the new waves of immigrants in the fall of the nineteenth century as well as the outbreak of the Great War (1914–1918) in Europe.³¹⁷ This backlash against the Catholics led to the rise of

³¹⁵ <https://www.merriam-webster.com/dictionary/nativism>

³¹⁶ Kevin Rhoads, *Hooded Secularism: Exclusion and “100 Percent Americanism’s Version of Separation of Church and State”*, (Thesis, Georgia State University, 2015), 1.

³¹⁷ Rhoads, *Hooded Secularism*, 10.

the “100 percent Americanism” philosophy that is based on the public commitment to America’s cultural values that made it the guardian of liberty and the most blessed country in the world. So, Nativists and Americanists (adherents of the 100 percent Americanism) favored their Protestant culture over the Catholic one on the grounds that Protestant culture represents the Native Americans whereas the Catholic one is an intruder since it came with immigrants. This rejection of the Catholics and the hatred towards them emanates from the claim that the Catholics cannot be citizens loyal to the USA because they were primarily loyal to the pope.³¹⁸ Therefore, the Americanization process aims essentially at dissolving the undesirable old-world traits of religion the immigrants had brought with them. This idea was clearly expounded by President Theodore Roosevelt’s (October 27, 1858 – January 6, 1919)³¹⁹ statement when he said the following:

We must Americanize [newcomers]...in their way of looking at the relations between Church and State;” “We have...little use for people who carry religious prejudices into our politics;” “We are against any recognition whatever by the State in any shape or form of State-aided parochial schools;” the immigrant” must not bring in his Old-World religious...antipathies;” “A church which remains foreign, in language or spirit, is doomed.”³²⁰

Paradoxically, however, this practice and attitude came despite the fact that these nativists themselves celebrate the religious freedom guaranteed in the United States by the U.S. Constitution.³²¹

Nativists’ rejection of immigrants was also ascribed to the issue of assimilation into U.S. society. Immigrants, as a matter of fact, were accused of being either unable or unwilling to be assimilated into American society.³²² This led the Americanists to make significant pressure on the lawmakers to put in place policies and measures designed to speed up the assimilation process. This would go through a forceful obligation of immigrants to ditch all traits of their mother identity and adopt the American one. This is because assimilation into American society

³¹⁸ Peter Hervik, “Xenophobia and Nativism,” *International Encyclopedia of the Social & Behavioral Sciences* 25 (2015): 796.

³¹⁹ Theodore Roosevelt was the 26th U.S. President from September 14, 1901, to March 4, 1909. Before his presidency, he occupied many important jobs. He was a member of the New York State Assembly from the 21st District from January 1, 1882, to December 31, 1884. Afterwards, he became the Minority Leader of the New York State Assembly from January 1, 1883, to December 31, 1883. Then, he became the Commissioner of the United States Civil Service Commission from May 7, 1889, to May 6, 1895. Thereafter, he became the 5th Assistant Secretary of the Navy from April 19, 1897, to May 10, 1898. After, he served as the 33rd Governor of New York from January 1, 1899, to December 31, 1900. Thereafter, he served as 25th Vice President of the United States from March 4, 1901, to September 14, 1901.

³²⁰ Rhoads, *Hooded Secularism*, 28.

³²¹ *Ibid.*, 1,

³²² Christopher Muscato, *Nativist: Definition, Theory & Groups*. Accessed on 28/08/2020. <https://study.com/academy/lesson/nativist-definition-theory-groups.html>

was a quite sensitive issue. Therefore, nativism became so influential and entered the political realm, thereby starting affecting the political landscape to the point that many U.S. Presidents gave it much importance in their presidential campaigns such as Theodore Roosevelt who was a great supporter of the philosophy of “100% Americanism”.³²³ This philosophy, in its broad meaning, emphasizes all the features that distinguish American society from other societies and requires loyalty and fidelity to American political ideals.³²⁴ Therefore, President Theodore Roosevelt averred that Americans “have the right and duty to ensure that immigrants become like the rest of us”.³²⁵ In other words, nativists pressured decision-makers to put into practice policies and measures to restrict the inflow of immigrants and assure that immigrants melt into the American society, thus making them just like the rest of the American people or rather like the Native Americans. To this end, immigrants have to discard their old identity's traits as well as their religious customs and adopt the American ones to look like Americans, or rather, to be true Americans.

Nativism as a philosophy witnessed its heydays during the years of the Great War (1914–1918), namely following the U.S. declaration of war against Germany in April 1917. Then, nativists turned their attention to the threat of the German Americans who might remain loyal to their mother country and sympathize with it at the expense of the hosting country, the United States. Fears for the national security that might be jeopardized by disloyal German Americans gave much support to the “one hundred percent policy” and advanced it. In this regard, the newly established organization, called the American Legion (AL), spurred the one hundred percent Americanism philosophy centered on the self-protective facets of Americanism. This manifested in the resolution passed by its first national convention that stressed the following high spots which are as follows:

The first national convention passes a resolution to form “a commission of The American Legion to foster and perpetuate a 100% Americanism.” Its mission would be to combat anti-American activities and propaganda (which were on the rise in America in the post-Bolshevik Revolution era); educate immigrants, prospective U.S. citizens and alien residents in the principles of Americanism; inculcate the ideals of Americanism to the citizen population in order to prevent special interest or class divisions across the country; spread to the U.S. public the “real nature and principles of American government”; and “foster the teaching of Americanism in all schools”.³²⁶

³²³ Rhoads, *Hooded Secularism*, 1.

³²⁴ *Ibid.*, 3

³²⁵ *Ibid.*, 28.

³²⁶ American Legion 1919/1920. *Americanism: 100 Percent Americanism*. <https://centennial.legion.org/americanism>. Accessed on 28/08/2020.

So, it is quite clear that the AL committed itself to advancing the Americanization process by educating immigrants and teaching them the principles and ideals upon which America was built. In other words, the AL would labor to protect the American native society by making immigrants ditch their mother identities to melt easily into the American society.

Even though religion and ethnicity were real motives for nativists, their core motivations were economic. The latter consisted in the fear of losing jobs in favor of immigrants. As a matter of fact, the large waves of immigrants provided a large pool of skillful and inexpensive workers for the U.S. mills as well as other economic sectors. Accordingly, the well-being of the native workers and artisans became at stake. Therefore, the nativists did not want to lose their jobs and pressed for curbing the inflow of immigrants and preserving their rights and acquisitions. For instance, the Chinese immigrants suffered from xenophobic treatment as they were industrious people and thus threatened the well-being of the Native Americans:

As a class, [the Chinese] were harmless, peaceful and exceedingly industrious; but, as they were remarkably economical and little or none of their earnings except for the necessaries of life and this chiefly to merchants of their own nationality, they soon began to provoke the prejudice and ill-will of those who could not see any value in their labor to the country. In short, they worked too hard (often for less pay than others were willing to accept), saved too much, and spent too little.³²⁷

So, native Americans reacted against the Chinese immigrants once their well-being became at stake in addition to other reasons that will be explored in detail later in this chapter.

Nativism as a concept and philosophy is so close to the concept of Racism. The latter is defined in Merriam Webster to be “a belief that race is the primary determinant of human traits and capacities and that racial differences produce an inherent superiority of a particular race”.³²⁸ In Oxford, however, racism is defined as being “the unfair treatment of people who belong to a different race; violent behavior towards them”.³²⁹ It is also “the belief that some races of people are better than others”.³³⁰ From these definitions, it is clear that racism refers to the refusal of a class of people because of its cheap and low traits by another class that is considered to be of high and super traits. The best incarnation of this concept is the draconian treatment of the blacks or rather the African-Americans by the whites, like what happened in the United States and South Africa.

³²⁷ Charles J. McClain, *In Search of Equality: The Chinese Struggle against Discrimination in Nineteenth Century America* (United States of America: University of California Press, 1994), 10.

³²⁸ <https://www.merriam-webster.com/dictionary/racism>

³²⁹ https://www.oxfordlearnersdictionaries.com/definition/american_english/racism?q=racism

³³⁰ *Ibid.*

Racism, also known as racialism, hinges on the belief that human beings could be divided into categories or separate biological entities known as races. This separation hinges on the relationship between individuals' inherited physical traits and the traits of their personalities, intellectual competencies, and their cultural and behavioral features.³³¹ In other words, there is a strong tie between the physical traits of individuals and their personalities, intelligence, cultural and behavioral tendencies; that is, one's personality firmly depends on their physical traits. Concisely, racism refers to the idea that some races are innately superior to others. On the other hand, the concept can be extended to other domains and classifications. It could be "applied to political, economic, or legal institutions and systems that engage in or perpetuate discrimination on the basis of race or otherwise reinforce racial inequalities in wealth and income, education, health care, civil rights, and other areas".³³²

In the United States of America, racism played a significant role throughout its history. African-Americans received draconian treatment from the whites who enslaved them and deprived them of their basic and human rights. They had been brought against their will to the USA thanks to the transatlantic slave trade. Consequently, between 1525 and 1866, around 12.5 million African-Americans were kidnapped and shipped from Africa to the United States. Only 10.5 million survived the harrowing two-month journey through the Atlantic.³³³ After their emancipation in 1863, and following the end of the American Civil War (1861–1865), African Americans became free and started enjoying their civil rights. However, they did not enjoy total equality with the whites who continued their ill-treatment of the black. In other words, there was a shift from racism to discrimination where the blacks and the whites were segregated from each other. Both races, blacks and whites, have their distinct communities and developed their own institutions such as schools, hospitals, and churches.³³⁴

Nativism and racism have been two major themes that characterized the course of American history. They are two concepts that are close in meaning to one another. Both terms refer to a backlash and aversion that emerges and develops among people of a certain community against another group or community. In the case of racism, one race dislikes another one, whereas in the case of nativism people of the same group or community (native-born and non-native-born people) dislike each other.³³⁵ In addition, both terms refer to the standpoint of

³³¹ <https://www.britannica.com/topic/racism>

³³² Ibid.

³³³ <https://www.smithsonianmag.com/history/158-resources-understanding-systemic-racism-america-180975029/>

³³⁴ <https://www.britannica.com/topic/racism>

³³⁵ <https://ohiohistorycentral.org/w/Nativism>

the whites towards the others, the non-native Americans. While racism assumes the supremacy of the whites over the blacks, nativism assumes the supremacy of the indigenous over immigrants and the non-native-born people, thus favoring allocating of the nation's resources to them (native-born) over immigrants.³³⁶ This supremacy or favoritism means that all resources of the nation ought to be allocated at first to the native-born citizens, then, in the second place, to the non-native-born citizens and immigrants.

However, with the onset of the twentieth century, another term arose and became widely used ever since. This term is *xenophobia*. Etymologically speaking, the word 'xenophobia' is of Greek origin and comprises two parts: 'xenos' which refers to both the stranger and the guest, and 'phobos' which refers to fear, thus xenophobia literally means the fear of the stranger.³³⁷ In the Merriam-Webster dictionary, xenophobia is defined to be "the fear and hatred of strangers or foreigners or of anything that is strange or foreign".³³⁸ In Oxford, however, xenophobia is defined to be "a strong feeling of dislike or fear of people from other countries".³³⁹ From both definitions, xenophobia is associated with the rancor and hatred of the Indigenous towards immigrants. Concisely, the term 'xenophobia' is used to refer to the dislike of immigrants, strangers, or foreigners; thus, the indigenous people with such feelings are anti-immigrants, anti-foreigners, anti-strangers, and anti-different groups.³⁴⁰

Xenophobia and nativism are two overlapping terms. They both express hatred and exclusionary ideologies towards strangers, or rather immigrants; in addition, they both claim the defense of the culture of the indigenous people. Conceptually, "they can be approached as varieties of cultural racism – along with anti-Semitism; anti-black, anti-Roma, and anti-Gypsy racism; and others – as they construct distinct cultural identities that are seen as inherited, rather than as acquired through naturalization".³⁴¹ Hence, they are sometimes used interchangeably.

To put it in a nutshell, racism, nativism, and xenophobia are terms and concepts that largely affected American history and contributed to the framing of modern America. Hence, this chapter explores the different Xenophobic measures the United States witnessed prior to

³³⁶ <https://www.oxfordpresents.com/ms/golash/racism-nativism-and-immigration-policy/>

³³⁷ Peter Hervik, "Xenophobia and Nativism," *International Encyclopedia of the Social & Behavioral Sciences* 25 (2015): 796.

³³⁸ <https://www.merriam-webster.com/dictionary/xenophobia>

³³⁹ https://www.oxfordlearnersdictionaries.com/definition/american_english/xenophobia?q=xenophobia

³⁴⁰ Hervik, "Xenophobia and Nativism," 796.

³⁴¹ Ibid.

Trump's administration, shedding light on the surrounding historical context as well as the effects of each one on immigrants and Americans.

2.2 A Brief Biography of Donald Trump

Donald John Trump is the 45th U.S. President who ruled America from January 20, 2017, to January 20, 2021. He was born on June 14, 1946, in Queens, New York City. He was the fourth of five children of Frederick C. and Mary MacLeod Trump; three elder siblings who are Maryanne, Fred Jr., and Elizabeth along with a younger brother called Robert³⁴². At the age of 6, he joined a private school in Queens before enrolling in the New York Military Academy in the hope that it would channel his energy positively as he was an energetic and bright child³⁴³. Effectively, the academy helped him a lot in developing his skills as he became a star athlete and a student leader by the time of his graduation in 1964. Afterward, Donald Trump joined New York City's Fordham University in 1964 wherein he studied for two years before moving to the Wharton School of Finance at the University of Pennsylvania where he spent two years before graduating in 1968 with a degree in economics.³⁴⁴

Studying economics at Wharton School helped Donald Trump in boosting his career as a successful businessman. Furthermore, he benefited massively from the guidance of his father Fred. C. Trump, who was a businessman and the owner of a real estate development company under the name of *Elizabeth Trump and Son*. In effect, following his graduation, Donald Trump joined his father's company, which specialized in developing apartments for middle-class people in New York City's outer boroughs. Together, they started making good deals which created a suitable atmosphere for refining and sharpening Donald Trump's skills and put him on the right path to become a successful businessman. Benefiting from his father's expertise was of great importance and made the solid ground upon which Donald Trump laid the foundations of his successful business career. In this respect, Donald Trump stressed the key role his father played in sharpening his skills and providing him with the necessary experience to launch his career. "My father was my mentor, and I learned a tremendous amount about every aspect of the construction industry from him,"³⁴⁵ Donald Trump maintained. For his part,

³⁴² Biography.com Editors. "Donald Trump Biography". *The Biography.com website*. Publication March 18, 2021. Access 22 avril 2021. URL <https://www.biography.com/us-president/donald-trump>

³⁴³ Ibid.

³⁴⁴ History.com Editors. "Donald Trump". *History*. Publication November 18, 2016. Access October, 14, 2021. URL <https://www.history.com/topics/us-presidents/donald-trump>

³⁴⁵ Donald J. Trump. URL <https://www.trump.com/leadership/donald-j-trump-biography>

Fred. C Trump said that “Some of my best deals were made by my son, Donald...everything he touches seems to turn to gold”.³⁴⁶

Donald Trump's dreams were bigger than his father's ones. He, therefore, moved to Manhattan in 1971 to make a name for himself in the real estate world where he met many influential people and discovered many economic opportunities that deserved his attention. Convinced of these opportunities, he decided to embark on large building projects in Manhattan that would bring him great benefits.³⁴⁷ Effectively, he managed to construct high-profile projects such as the Grand Hyatt New York Hotel which opened in 1980 as well as the Trump Tower which opened in 1983. Moreover, the 1980s were marked by many achievements for Donald Trump consisted in opening hotel-casinos in Atlantic City, New Jersey.

Politically speaking, Donald Trump affiliated himself with many political parties before joining the Republican Party. Since joining the ranks of the Republican Party in Manhattan in 1987, his political affiliation changed five times.³⁴⁸ In 1999, he left the Republican Party for the Independence, New York's version of the Reform Party of the United States (RPUSA), which is neither Republican nor Democratic.³⁴⁹ Under this party, he run for the presidency in 2000 and managed to win RPUSA's California primary. Thereafter, he left the RPUSA for the Democratic Party in 2001; he remained a Democrat till September 2009. Therefore, Jeb Bush (born February 11, 1953)³⁵⁰, Trump's rival in the GOP primary elections in 2015, criticized Donald Trump accusing him of being a Democrat longer than a Republican. “Mr. Trump doesn't have a proven conservative record... He was a Democrat longer in the last decade than he was a Republican. He's given more money to Democrats than he has to Republicans”, said Jeb Bush.³⁵¹ In defense, Trump responded by maintaining that he was living in an area dominated by the Democratic Party, thereby getting affected by the ideas and ideals of the Democrats.³⁵²

³⁴⁶ Ibid.

³⁴⁷ URL <https://www.notablebiographies.com/St-Tr/Trump-Donald.html>

³⁴⁸ Joshua Gillin, “Bush Says that Trump was a Democrat longer than a Republican in ‘the Last Decade’”, Politifact, published on August 24, 2015, accessed on June 16, 2023. <https://www.politifact.com/factchecks/2015/aug/24/jeb-bush/bush-says-trump-was-democrat-longer-republican-las/>

³⁴⁹ Allpolitics.com, “Trump Officially Joins the Reform Party,” published on October 25, 1999, accessed on June 16, 2023. <https://edition.cnn.com/ALLPOLITICS/stories/1999/10/25/trump.cnn/index.html>

³⁵⁰ John Ellis “Jeb” Bush was Florida's 43rd Governor from January 5, 1999, to January 2, 2007, and Florida's Secretary of Commerce from January 6, 1987, to September 9, 1989. He was the son of the 41st U.S. President, George H. W. Bush, and a younger brother of the 43rd U.S. president, George W. Bush. He run for the 2016 U.S. Presidency, but faile to with the Republican Party's ticket.

³⁵¹ Tom Murse, “Was Donald Trump a Democrat? Why the Billionaire Real Estate Mogul Has Changed Political Parties”, ThoughtCo, published on June 10, 2020, accessed on June 16, 2023. <https://www.thoughtco.com/was-donald-trump-a-democrat-3367571>

³⁵² Ibid.

After spending eight years in the Democratic Party, Trump left it and remained unaffiliated till December 2011. Reports of the media ascribed Trump's political unaffiliation to his desire to run for the presidency if he is not pleased with Republican Party. This was confirmed by Trump's attorney, Michael Cohen, who maintained that he did that "in order to preserve his right to run as an independent if he is (not pleased) with the GOP nominee".³⁵³ However, Trump decided not to run for the 2012 Presidency, favoring rejoining the Republican Party. Thus, Trump's change of political parties caused him a lot of criticism, namely from Republicans, who severely criticized him for his affiliation with the Democratic Party.³⁵⁴

2.3 Trump's Rise to Power

Donald Trump revealed his intention to run for the U.S. presidency very early in 2015. He announced his candidacy for the presidency on June 16, 2015, and officially won the ticket of his Republican party one year later, on July 19, 2016, at the Republican National Convention held in Cleveland, Ohio, from July 18-20, 2016.³⁵⁵ Winning the nomination of the Republican Party was a great step in Trump's long road to the White House. Having been chosen to be the nominee of the Republican Party, also referred to as the Grand Old Party (GOP), for the 2016 presidential race marked the end of the first part of his way to the U.S. presidency which is winning the primaries of the GOP and the beginning of the second and the most important part which is competing against his counterpart in the Democratic Party, Hillary Clinton³⁵⁶ (born October 26, 1947), who managed to win the ticket of her party as its nominee for the 2016 presidential elections. This effect fueled the American political scene with fierce competition between the presidential campaigns of both nominees, namely Donald Trump.

Donald Trump led his presidential campaign under the slogan "Make America Great Again"³⁵⁷, a phrase he borrowed from former American president Ronald Reagan (February 6,

³⁵³ Ibid.

³⁵⁴ Tom Murse, "Was Donald Trump a Democrat? Why the Billionaire Real Estate Mogul Has Changed Political Parties".

³⁵⁵ Leada Gore, "Republican National Convention 2016: Date, Schedule, Speakers, What to expect from GOP in Cleveland," Al.com, published on July 17, 2016, accessed on June 12, 2023. https://www.al.com/news/2016/07/republican_national_convention_1.html

³⁵⁶ Hillary Diane Rodham Clinton is an American politician and diplomat who served as the 67th United States secretary of state under president Barack Obama from 2009 to 2013. She was the First Lady of Arkansas from January from January 11, 1983, to December 12, 1992. Afterwards, she became the First Lady of the United States from January 20, 1992, to January 29, 2001. Thereafter, she served as the United State Senator from New York from January 3, 2001, to January 21, 2009. Currently, she is the 11th Chancellor of Queen's University Belfast since January 2, 2020.

³⁵⁷ Jon Herbert, Trevor McCrisken, and Andrew Wroe, *The Ordinary Presidency of Donald J. Trump* (Switzerland: Palgrave Macmillan, 2019), 34.

1911 – June 5, 2004).³⁵⁸ He chose this slogan right after the failure of the Republican candidate, Mitt Romney, to defeat Barack Obama in the 2012 presidential elections.³⁵⁹ He saw his way ahead of him to run for the office of U.S. President and right away began preparing himself for that big challenge. He started by choosing an attractive and resonant catchphrase “Make America Great Again” which reminded the American public of Ronald Reagan’s Golden Era who used nearly the same slogan, “Let’s Make America Great Again,” in his 1980 presidential campaign. Hence, he immediately trademarked his slogan with the U.S. Patent and Trademark Office to keep it for his exclusive use. He managed to do so claiming that former President Ronald Reagan did not trademark it. However, despite the similar slogans adopted by both Republican candidates, Ronald Reagan and Donald Trump, there were huge differences in terms of how did they operate as presidents following their victory in the presidential elections.

To understand well the philosophy of the slogan “Make America Great Again” as well as the motives behind its use, it is capital to put it into its right context and examine the situations that caused the need to use it by both presidents, Trump and Reagan. As a matter of fact, the slogan calls for restoring the greatness of the United States after being damaged and crippled. So, the question to be raised here is: what crippled America before the presidency of both Republican Presidents, Ronald Reagan and Donald Trump?

The use of the slogan “Let’s Make America Great Again” by Ronald Reagan did not come out of nothing. When contemplating the critical situation as well as the big challenges the United States underwent during the 1970s, it becomes clear that the use of that slogan was of great significance. Given the setbacks America witnessed during the 1970s, Ronald Reagan rose as a savior of the nation and promised to restore America’s greatness, or rather America’s power and prosperity. Economically speaking, the U.S. economy underwent a period of stagnation and inflation in the mid-1970s³⁶⁰. The situation worsened and peaked in 1980 when inflation reached 12,5%, unemployment increased to 7%, and the prime lending rate hit 20% as a result of the economic recession. This critical economic situation was the worst since the crisis caused by the Great Depression which brought about a radical change in the American political landscape when Franklin Delano Roosevelt (1882—1945; served 1933—1945)

³⁵⁸ Ronald Wilson Reagan is the 40th President of the United States from January 20, 1981, to January 20, 1989. Prior to his presidency, he occupied several important jobs. He was the President of the Screen Actors Guild from November 16, 1959, to June 7, 1960. Afterwards, he served as California’s 33rd Governor from January 2, 1967, to January 6, 1975.

³⁵⁹ Morgan Iwan, “Make America Great Again: Ronald Reagan and Donald Trump,” In *The Trump Presidency* (London: the United Kingdom, 2019), 59.

³⁶⁰ Morgan Iwan, “Make America Great Again: Ronald Reagan and Donald Trump,” 60.

managed to inflict a landslide victory upon the then-President Herbert Hoover (1874—1964; served 1929—1933) in the 1932 elections. Therefore, to make use of the bad economic situation in his favor, Ronald Reagan criticized then-President Jimmy Carter³⁶¹ (born October 1, 1924) for being “an agent of outdated liberal doctrines”³⁶² that caused the decline of the American economy and promised to renew its prosperity through the so-called the doctrine of the supply-side economics. This is what characterized the American domestic front only; so what about the international front?

American recession was not limited to the domestic front only but touched also the international front. America was about losing the Cold War in favor of the Soviet Union as it lost Vietnam to the Communists in 1975. The Soviets also gained other parts in Southeast Asia and Africa during the presidency of Gerald Ford³⁶³(1913-2006; served 1974-1977). America's losses continued during the presidency of Jimmy Carter as the Soviets managed to extend their influence to Central America, the Horn of Africa, and most importantly Southwest Asia when invaded Afghanistan in December 1979.³⁶⁴ In response to these facts, the Republican candidate Ronald Reagan promised to restore America's prosperity and supremacy by mobilizing the nation's economic resources as well as the vastly superior military to turn the U.S. retreat into advance.

Winning the Cold War was of great importance for the USA because it represents a global struggle between the capitalist and free camp under America's leadership and the communist and tyrant camp under the leadership of the USSR. Therefore, restoring America's moral commitment to defeat and curb the Communist influence and expansion was necessary for restoring America's prosperity or rather America's Greatness. Thus, raising the slogan “Let's Make America Great Again” came to meet Reagan's adopted philosophy and strategy to restore America's economy and contain the expansion of Communism.³⁶⁵ This is about the

³⁶¹ James Earl Carter Jr. is the 39th President of the United States from January 20, 1977, to January 20, 1981. His political Career began in his home state, Georgia when served as a Member of Georgia Senate from the 14th District from January 14, 1963, to January 9, 1967. Thereafter, he served as Georgia's 76th Governor from January 12, 1971, to January 14, 1975.

³⁶² Morgan Iwan, “Make America Great Again: Ronald Reagan and Donald Trump,” 60.

³⁶³ Gerald Rudolph Ford Jr. is the 38th U.S. President from August 9, 1974 to January 20, 1977. His political career was very rich with achievements and important jobs he occupied. He initiated his political career with being a member of the U.S. House of Representatives from Michigan's 5th District from January 3, 1949, to December 6, 1973. Thereafter, he became the Chair of the House Republican Conference from January 3, 1963, to January 3, 1965. Afterwards, he became the leader of the Leader the House Republican Conference from January 3, 1965, to December 6, 1973. Then, he became the 40th Vice President of the United States December 6, 1973, to August 9, 1974.

³⁶⁴ Morgan Iwan, “Make America Great Again: Ronald Reagan and Donald Trump,” 60.

³⁶⁵ Morgan Iwan, “Make America Great Again: Ronald Reagan and Donald Trump,” 61.

context that caused Ronald Reagan to choose the phrase “Let’s Make America Great Again” in 1980, a fact that Donald Trump claimed to know about only a year ago, putting the whole blame on former President Ronald Reagan for not trademarking it; “But he did not trademark it,” Donald Trump maintained of former President Ronald Reagan.³⁶⁶ Accordingly, the originality of the slogan is not available.

Given his businessman mindset, and to avoid President Reagan’s mistake of not trademarking his slogan, Donald Trump decided to claim the slogan’s ownership by asking his lawyers to trademark it, a legal step that was effectively done on July 14, 2015.³⁶⁷ In this respect, his lawyer, Alan Garten revealed that the Trump Organization owns over 800 trademarks in over 80 countries. A month after trademarking the slogan “Make America Great Again”, Trump officially announced his candidacy for the 2016 presidential elections. Thereupon, Trump fiercely defended and protected his ownership of the idea expressed in his slogan, “Make America Great Again”, especially when his fellow Republican candidates, like Ted Cruz of Texas and Scott Walter, Wisconsin’s Governor, used it in their speeches during the GOP primary elections.³⁶⁸ In response, Trump’s lawyers sent them letters of cease-and-desist, thereby protecting Trump’s idea that propelled him to the White House.³⁶⁹

In the Democratic Party, the slogan of “Making America Great Again” was seen differently. When asked about this slogan, Hillary Clinton implicitly refused to acknowledge that the United States was weak before Trump’s Presidency, or exactly, under the Democratic administration of President Barack Obama. Instead, she preferred that Trump raises the slogan “Make America Greater” rather than “Make America Great Again”, alluding to the idea that America was already great under Obama’s administration. “I don’t think we have to make America great. I think we have to make America greater”, said Hillary.³⁷⁰ However, Trump’s use of this slogan seemingly did not come out of nothing; he must have had his own motives for choosing this slogan. So, what are they?

³⁶⁶ Karen Tumulty, “How Donald Trump Came Up with ‘Make America Great Again’”, The Washington Post, Published on January 18, 2017, Accessed on June 15, 2023, https://www.washingtonpost.com/politics/how-donald-trump-came-up-with-make-america-great-again/2017/01/17/fb6acf5e-dbf7-11e6-ad42-f3375f271c9c_story.html

³⁶⁷ Karen Tumulty, “How Donald Trump Came Up with ‘Make America Great Again’”.

³⁶⁸ Ibid.

³⁶⁹ Ibid.

³⁷⁰ Ibid.

Donald Trump used the slogan “Make America Great Again” in his 2016 presidential campaign with no strong predefined philosophy. This had been clearly shown just days before his inauguration when he was interviewed by the *Washington Post* on January 18, 2017, where he revealed his lack of a clear public philosophy. When he was asked to define his slogan, he answered: “It actually inspired me because, to me, it meant jobs. It meant industry and meant military strength. It means taking care of our veterans. It meant so much”.³⁷¹ Moreover, his “America First” exposed his visceral populism when he promised that henceforth “every decision on trade, on taxes, on immigration, on foreign affairs, will be made to benefit American workers and American families”.³⁷² Thus, compared to Ronald Reagan, Donald Trump exposed a lack of a public philosophy and substantive strategy that may provide him with a solid ground to discharge his duties as president of the United States of America.

2.4 Trump's Criticism of Previous Presidents

Trump's lack of a cogent strategy was felt and noticed during his presidential campaign. As a businessman, he saw life as a zero-sum game and found that America was losing jobs abroad. In this respect, and while announcing his intention to seek the Republican ticket to run for the 2016 U.S. presidency, Donald Trump pledged to be the greatest creator of jobs and bring back others from many countries. He literally pledged to achieve the following:

Be the greatest jobs president that God ever created... bring[ing] back our jobs from China, from Mexico, from Japan, from so many places. I'll bring back our jobs, and I'll bring back our money. Right now, think of this: We owe China \$1.3 trillion. We owe Japan more than that. So they come in, they take our jobs, they take our money, and then they loan us back the money, and we pay them in interest, and then the dollar goes up so their deal's even better. How stupid are our leaders? How stupid are these politicians to allow this to happen? How stupid are they?³⁷³

One year later, Donald Trump fleshed out these crude ideas more carefully in a teleprompted speech in Monessen, Pennsylvania, on the 28th of June, 2016 when he maintained the following:

Our politicians have aggressively pursued a policy of globalization—moving our jobs, our wealth and our factories to Mexico and overseas. Globalization has made the financial elite who donate to politicians very wealthy. But it has left millions of our workers with nothing but poverty and heartache. When subsidized foreign steel is dumped into our markets, threatening our factories, our politicians do nothing. For years, they watched on the sidelines as our jobs vanished and our communities were

³⁷¹ Morgan Iwan, “Make America Great Again: Ronald Reagan and Donald Trump,” 62.

³⁷² *Ibid.*, 62.

³⁷³ Jon Herbert, Trevor McCrisken, and Andrew Wroe, *The Ordinary Presidency of Donald J. Trump*, 53.

plunged into depression-level unemployment.... This wave of globalization has wiped out our middle class. It doesn't have to be this way.³⁷⁴

Thus, it was clear that Donald Trump was completely against the strategies adopted by his predecessors whom he blamed for losing American jobs in favor of foreign countries. He, therefore, revealed his intention to supersede globalization with economic nationalism in compliance with his slogan "America First". He refused to compromise American domestic interests in trade policy promising to review trade deals as he considered trade as a means to an economic end rather than a part of foreign policy that aims at engaging other nations and promoting a peaceful economic boom.³⁷⁵ He did not believe in the idea that America's support for globalization would benefit American interests through the mutual exchange of services and goods. Consequently, he promised to rescind all foreign trade agreements he believed were poorly negotiated by his predecessors. In this regard, he suggested withdrawing from the signed but unratified contract called the Trans-Pacific Partnership (TPP) between the United States and eleven Pacific-rim nations. Moreover, he proposed withdrawing or renegotiating the North American Free Trade Agreement (NAFTA) signed by former President George Herbert Walker Bush (1924—2018; served 1989—1993) in 1992 and ratified by Congress in 1993 thanks to the efforts of former President Bill Clinton (1946—; served 1993—2001) who helped in shepherding it to get congressional approval with bipartisan support.

Donald Trump's ideas and stance on globalization had been crystalized well as he turned his presidential campaign to attack his Democratic counterpart, Hillary Clinton. He sought to portray her as a supporter of TPP, NAFTA who thought to be the worst agreement maybe ever signed as he maintained in his speech "Remember, it was Bill Clinton who signed NAFTA, one of the worst economic deals ever made by our country"³⁷⁶, and other trade agreements. He accused her of being a job-killer as well as a trade-supporting establishment candidate who does not care about the effects of globalization that was hurting American ordinary workers. Most important, Donald Trump disparaged severely the legacy of his Democratic president, Barack Obama, and said in his own words:

I think President Obama has been the most ignorant president in our history. His views of the world as he says don't jibe and the world is a mess, ...President Obama — when

³⁷⁴ Ibid.

³⁷⁵ Ibid., 34.

³⁷⁶ Politico Staff, "Full Text: Donald Trump 2016 RNC Draft Speech Transcript," Politico, Accessed on November 26, 2021, <https://www.politico.com/story/2016/07/full-transcript-donald-trump-nomination-acceptance-speech-at-rnc-225974>

he became president, he didn't know anything. This guy didn't know a thing... And honestly, today he knows less. Today, he knows less. He has done a terrible job.³⁷⁷

That is why most of Donald Trump's presidential campaign was based on excoriating the legacy of Obama's administration just to present himself as the best alternative for America rather than his Democratic rival, Hillary Clinton, who received her share from Trump's attacks on Obama's legacy. Therefore, the 2016 presidential elections witnessed furious competition between the campaigns of Donald Trump and Hillary Clinton.

2.5 Targeting Illegal Immigrants

Donald Trump's presidential campaign attracted not only the American people and policymakers but also the rest of the world for his contract with the American voters as well as the promises he gave to his supporters. Perhaps, the hottest and most sensitive point that marked Trump's presidential campaign was his stance on illegal immigrants and his intention to review American immigration policy. In this respect, Donald Trump regarded that illegal immigrants had stolen Americans' jobs while, according to him, 20% of Americans are unemployed or underemployed which is completely unfair. Therefore, the core meaning of his slogan "America First" is to protect the rights of Native Americans, and basically their right to have jobs. Trump's expounded that he just reported the fact or reality which exists on the ground, and it is not about expressing an opinion. He said in his own words:

The illegal immigrants who have taken jobs that should go to the people here legally, while over 20% of Americans are currently unemployed or underemployed. Believe me, they're all over the place. I see them. I talk to them. I hug them. I hold them. They are all over the place.³⁷⁸

Donald Trump was very tough on illegal immigrants and accused the administration of his predecessor Barack Obama as well as his former Secretary of State Hillary Clinton to be so soft on the illegal immigrants whom he considered of being so dangerous to the safety of Americans and their national security. He went further as he excoriated President Obama for his failure in protecting Americans' national security when he surrendered their safety by opening the U.S. borders to illegal immigrants who lived later in sanctuary cities.³⁷⁹ In this

³⁷⁷ Madeline Conway, "9 of the nastiest things Trump said about Obama," Politico, Accessed on November 22, 2021, <https://www.politico.com/story/2016/11/9-ways-trump-insulted-obama-231184>

³⁷⁸ Donald Trump, *Crippled America: How to make America Great Again* (The United States of America: Threshold Editions, 2015), Kindle.

³⁷⁹ Los Angeles Times Staff, "Transcript: Donald Trump's full immigration speech, annotated," Los Angeles Times, Accessed on August 31, 2016, <https://www.latimes.com/politics/la-na-pol-donald-trump-immigration-speech-transcript-20160831-snap-htmstory.html>

respect, he maintained the following in his immigration speech at a rally in Phoenix, Arizona, on the 31st of August 2016:

President Obama and Hillary Clinton have engaged in gross dereliction of duty by surrendering the safety of the American people to open borders, and you know it better than anybody right here in Arizona. You know it. President Obama and Hillary Clinton support sanctuary cities. They support catch and release on the border. They support visa overstays. They support the release of dangerous, dangerous, dangerous, criminals from detention. And, they support unconstitutional executive amnesty.³⁸⁰

Donald Trump considered most illegal immigrants as criminals who jeopardize the safety of the American people. In this respect, he put all the blame on the Obama administration whom he accused of being behind the death of many innocent Americans by criminals who are essentially illegal immigrants. Trump tried to clarify and justify his attitude on the loose immigration policy that became a trend and caught the attention of both American citizens and the political class and caused them to hate him for that. To clarify his vision toward this issue, he said that America became a dumping land for the worst people from many countries. He, therefore, took a tough stance saying that this flow and arrival of such illegal and bad immigrants has to stop and U.S. borders have to be well controlled because a country that cannot control its borders cannot survive. More importantly, Trump raised the sensitivity of the issue maintaining that these worst people who cross the southern borders came not only from Mexico, but also from Central and Southern America, and probably from the Middle East. This fact is enough to review America's immigration policy to protect the interests and the safety of the United States.

I said that many countries are dumping their worst people on our border and that it has to stop. A country that does not control its borders can't survive-especially with what's going on right now. What I said only make common sense. I speak to border patrol guards and they tell us who we're letting across our borders. The countries south of us are not sending us their best people. The bad people are coming from places other than just Mexico. They're coming from all over Central and South America and they're coming probably- probably- from the Middle East.³⁸¹

Donald Trump did not deny the fact that many illegal immigrants are good, but, according to him, this fact does not change the reality that most of them are less educated and lower-skilled workers who competed directly against the vulnerable American workers and deprived them of jobs, making it very hard to get jobs under such circumstances.³⁸²

³⁸⁰ Los Angeles Times Staff, "Transcript: Donald Trump's full immigration speech, annotated".

³⁸¹ Donald Trump, *Crippled America: How to make America Great Again*, Kindle.

³⁸² Los Angeles Times Staff, "Transcript: Donald Trump's full immigration speech, annotated."

2.6 The Media under Trump's Attack

Donald Trump also blamed the media for not reporting these facts to American People and the political class. Instead, the media as well as Trump's opponents focused only on the needs of these illegal immigrants, who according to him, are treated in many cases better than American vets³⁸³. Besides, Donald Trump doubted the official number of illegal immigrants in the United States presented by the U.S. government which is 11 million illegal immigrants maintaining that Americans got used to here that same number for many years whereas their real number must be changed so that it may be 30 million or even 3 million. Therefore, Trump considered that Obama's government has no idea what the real number is. He went even further than this when he accused the U.S. government under President Obama of being ignorant of what the illegal immigrants are doing on many fronts.

2.7 No Amnesty for Illegal Immigrants

Donald Trump's immigration plan allowed for stiff measures against illegal immigrants in the USA. He announced to his supporters in his Phoenix speech on August 31, 2016, in Arizona, that there is one core issue in the immigration debate which is the well-being of the American people. He, therefore, pointed to his Democratic adversary, Hillary Clinton, maintaining that she keeps talking repeatedly about her fear of the separation of families, but she does not talk about American families who had been separated permanently from their loved ones due to a preventable murder. Hillary Clinton, according to Trump, talks constantly about families who came to the USA in violation of American law. He, therefore, promised to treat all people who live or reside in the United States with great dignity, fairness, and compassion, but the greatest compassion will be for the American citizens only.

The immigration debate led the Republican candidate Donald Trump to direct his attacks on his Democratic competitor as well as the administration of President Barack Obama accusing them of supporting sanctuary cities as well as of being loose regarding protecting the U.S. borders from being crossed by illegal immigrants. According to Trump, Obama and Hillary support catch and release on the borders, support visa overstays, and most important support releasing dangerous criminals from detention,³⁸⁴ who, many of them, were behind a lot of crimes as well as the death of countless Americans across the U.S. territory. To back up his

³⁸³ Ibid.

³⁸⁴ Ibid.

argument, Trump adduced several examples just to prove how dangerous are illegal immigrants to the safety of Americans. Among the victims of illegal immigrants was a 21-years old girl, called Sarah Root, who was a top student. She was killed by an illegal immigrant who arrived at the border, entered federal custody, and then was released into the U.S. community under the policies of Barack Obama and Hillary Clinton. Sarah's murder was released again and he is out there at large. Weak and foolish policies, Donald Trump commented.

Another victim of the Obama-Clinton open borders policy was Grant Roonebeck, a 21-year-old convenience store clerk and a very good guy from Mesa, Arizona. Grant was killed by an illegal immigrant and gangster who had been previously convicted of housebreaking and had been also released from custody. Kate Steinle was another victim of the Obama-Clinton open borders policy. She was shot in the sanctuary city of San Francisco by an illegal immigrant who had been previously deported five times. Another case was that of Earl Olander, a 90-year-old who had been cruelly beaten by illegal immigrants and left bleeding to death in his home. The perpetrators of this crime were illegal immigrants with criminal records but were not deported because they do not meet the standards for removal set by Obama's Administration. California had also witnessed a crime committed by illegal immigrants. It is related to a 64-year-old air force veteran called Marilyn Pharis who had been sexually assaulted and beaten to death by a Hummer. The perpetrator of this crime was arrested on multiple occasions but was never deported though everyone wanted him out.

Donald Trump continued highlighting the great danger posed by illegal immigrants. According to a 2011 report by the Government Accountability Office, around 25,000 illegal immigrants as well as other non-citizens had been arrested and jailed all around the US territory. This costs the federal government more than \$113 billion per year,³⁸⁵ Trump maintained. However, what is incredible for Donald Trump was Hillary's promise when she pledged amnesty for illegal immigrants in her first 100 days in office if elected to the office of U.S. President; moreover, she would provide them with Obamacare, Social Security, and Medicare. In his speech at the Republican National Convention on July 21, 2016, he bashed Clinton's plan for immigration and stressed its detrimental effects on the whole of America. He said in his own words:

My plan is the exact opposite of the radical and dangerous immigration policy of Hillary Clinton. Americans want relief from uncontrolled immigration. Communities want relief. Yet Hillary Clinton is proposing mass amnesty, mass immigration, and

³⁸⁵ Ibid.

mass lawlessness. Her plan will overwhelm your schools and hospitals, further reduce your jobs and wages, and make it harder for recent immigrants to escape from poverty.³⁸⁶

Therefore, the Republican candidate Donald Trump announced his radical stance on illegal immigration maintaining that there will be “no amnesty for those in the United States illegally”.³⁸⁷ He went beyond when he pledged to provide only one route for those who are seeking legal status in America: “To return home and apply for re-entry like everybody else, under the rules of the new legal immigration system that I have outlined”.³⁸⁸ So, what is Donald Trump's immigration plan? And how does it differ from Hillary's one?

2.8 Trump's Immigration Plan's Broad Lines

In his speech in Phoenix on August 31, 2016, Republican candidate Donald Trump outlined his immigration plan which contains ten points. This new immigration plan marked a radical view towards undocumented and illegal immigrants in the United States, which would open the doors of a new stage characterized by tough measures against them. This immigration plan is mostly based on increasing immigration enforcement across the national territory through widening the enforcement of the priorities, eliminating temporary protection for undocumented immigrants, and reducing the admission of further refugees to its lowest level since the American resettlement program which started taking effect in 1980.³⁸⁹

2.8.1 Constructing a Border Wall

The first point in Trump's immigration plan consists in constructing a border wall along America's southern border with Mexico to curb the inflow of illegal immigrants most of whom he considered to be gangsters who brought about violence and poured drugs into American society. Further, the wall would help protect the integrity of the American lawful immigration system. In this respect, Donald Trump announced to his supporters in his 2016 RNC speech on July 21, that he had been honored as he received the support of America's Border Patrol Agents

³⁸⁶ Politico Staff, “Full Text: Donald Trump 2016 RNC Draft Speech Transcript,” Politico, Accessed on November 26, 2021, <https://www.politico.com/story/2016/07/full-transcript-donald-trump-nomination-acceptance-speech-at-rnc-225974>

³⁸⁷ Louis Nelson, “Trump Shift on Immigration: There's no Amnesty, but We Work with Them,” Politico, Accessed on November 26, 2021, <https://www.politico.com/story/2016/08/donald-trump-immigration-sean-hannity-227383?cmpid=sf#ixzz4IIQrPXnm>

³⁸⁸ Los Angeles Times Staff, “Transcript: Donald Trump's full immigration speech, annotated.”

³⁸⁹ Sarah Pierce, Jessica Bolter, and Andrew Selee, *U.S. Immigration Policy Under Trump: Deep changes and Lasting Impacts* (Washington, DC, Migration Policy Institute, 2018), 1.

with whom he will work to protect the nation's immigration system.³⁹⁰ With regard to the cost of building that wall, Donald Trump reassured Americans that America will not pay for it; instead, he will make the Mexicans pay for its costs. This promise had been previously revealed in his book entitled *Crippled America* published in 2015 when he promised to build a very high and impervious wall to illegal immigrants. He wrote: "I would build a great wall, and nobody builds walls better than me, believe me, and I will build it very inexpensively. I will build a great wall on our southern border. And I will have Mexico pay for that wall. Mark my words!".³⁹¹ This does not mean that he does not love people coming in, but he wants them to come legally.

Trump assured his supporters that the Mexicans are great people and their leaders are great too, but he promised to make them pay for an intangible, physical, tall, powerful, and beautiful wall he is going to build if elected to the office of the U.S. President. This self-confidence stems from his great experience as a successful businessman who is skillful in negotiating and making good deals. Moreover, he promised to use the most recent technology including above and below-ground sensors that are the tunnels. Furthermore, the wall will be supplemented by towers, aerial surveillance, and manpower to find and dislocate tunnels and keep out criminal cartels. To achieve this promise, Donald Trump counted too much on the cooperation of the then-Mexican President, Enrique Peña Nieto (1966 —; served 2012—2018), whom Trump believed to be keen to cooperate with the United States to solve the problem of illegal immigrants.³⁹²

2.8.2 Ending Catch and Release and Zero Tolerance Policy

The second point in Trump's immigration policy is to put an end to the catch and release of illegal immigrants. This will be achieved by detaining anyone who crosses the border illegally until they are removed from the country and deported back to their country of origin. However, the third point in Trump's immigration plan is to provide no tolerance to criminal aliens under his administration. In this respect, federal data showed that there are around two million criminal aliens in America; a huge number according to Donald Trump. Therefore, he vowed to deport them right after being elected to the office of the U.S. president. To achieve so, he planned to open detainers, if necessary, for illegal immigrants arrested for any reason

³⁹⁰ Politico Staff, "Full Text: Donald Trump 2016 RNC Draft Speech Transcript."

³⁹¹ Donald Trump, *Crippled America: How to make America Great Again*, Kindle.

³⁹² Los Angeles Times Staff, "Transcript: Donald Trump's full immigration speech, annotated."

whatsoever and put them under immediate removal proceedings. To better implement this policy, Trump would proceed as follows:

2.8.3 Restoring Secure Communities Program

Donald Trump went even further when he promised to end the Obama administration's, deadly, non-enforcement policies that enabled thousands of alien criminals to roam freely in the streets and commit crimes. These criminal aliens managed to enter America thanks to the loose U.S. immigration policy under Obama's administration, according to Trump's belief. To corroborate his argument, Trump accused Obama's administration of allowing 300,000 criminal aliens to return to their communities in the United States. In addition to that, these dangerous aliens committed a lot of crimes and murdered and terrified many Americans. Hence, removing undesired and troublesome immigrants is a necessity that cannot be done without cooperating closely with local jurisdictions.

Additionally, the highly successful Secure Communities Program will be restored. The latter is a Department of Homeland Security program (DHS) designed to determine immigrants in American jails who are deportable under immigration laws. Under this program, participating jails submit arrestees' fingerprints not only to criminal databases but also to immigration databases, enabling Immigration and Customs Enforcement (ICE) to consult information related to individuals held in jails.³⁹³ Hence, as of the 27th of September, 2011, Secure Communities was available in 1,595 jurisdictions across 44 states and territories. Besides, ICE planned to implement the Secure Communities Program in each of the 3,100 state and local jails across the country by 2013. As for the arrestees' fingerprints, the ICE reported that, as of September 30, 2011, over 11,000,000 fingerprints had been submitted which resulted in 692,788 database matches; consequently, ICE had removed more than 142,000 persons from the United States.³⁹⁴

2.8.4 Expanding the Popular 287(g) Program

Besides the restoration of the Secure Communities Program, Donald Trump planned also to expand and revitalize the popular 287(g) program. The latter was named after "*Section 287(g) of the Immigration and Nationality Act (INA) and became law as part of the Illegal*

³⁹³ Michael Waslin, *The Secure Communities Program: Unanswered Questions and Continuing Concerns* (Washington, D.C: Immigration Policy Center, 2011), 2.

³⁹⁴ Michael Waslin, *The Secure Communities Program*, 2.

Immigration Reform and Immigrant Responsibility Act of 1966 (IIRAIRA)".³⁹⁵ By the terms of the 287(g) program, state and local law enforcement officers cooperate with the central government to enforce federal immigration laws. In brief, section 287(g) of INA permits DHS to conclude formal written agreements or rather Memoranda of Agreements (MOAs) with state or local enforcement agencies to deputize selected state and local law enforcement officers to do certain tasks of federal immigration agents. On the other hand, the MAOs, which are officially concluded under the supervision of the ICE, are discussed between DHS and local authorities and include a delegation of authority to a limited number of state and local officers. Generally, while performing their functions, deputized officers have to comply with federal civil rights laws and are entitled to perform the following tasks:

Interview individuals to ascertain their immigration status; check DHS databases for information on individuals; issue immigration detainers to hold individuals until ICE takes custody; enter data into ICE's database and case management system; issue a notice to appear (NTA), which is the official charging document that begins the removal process; make recommendations for voluntary departure in place of formal removal proceedings; make recommendations for detention and immigration bond; and transfer non-citizens into ICE custody.³⁹⁶

So, as Donald Trump aimed at rooting out illegal immigrants, he would count on the aforementioned programs already designed in hopes of identifying hundreds of thousands of deportable aliens in local jails.

2.8.5 Passing the Kate Steinle and Davis and Oliver Laws

Things did not stop here for Donald Trump; in fact, he planned to ask Congress to pass a law named after Kate Steinle to make sure that criminal aliens convicted for illegal re-entry would receive the possible strong minimum sentences.³⁹⁷ Another legislation he would suggest to be passed would be named for Detective Michael Davis and Deputy Sheriff Danny Oliver, two law enforcement officers who had been murdered by a previously deported illegal immigrant.³⁹⁸ The Davis-Oliver bill will be designed to enhance collaboration with state and local authorities to speed up the process of detecting and deporting illegal and criminal immigrants and terrorists.

³⁹⁵ American Immigration Council. "The 287(g) Program: An Overview", July 8, 2021, <https://www.americanimmigrationcouncil.org/research/287g-program-immigration>

³⁹⁶ American Immigration Council. "The 287(g) Program: An Overview", July 8, 2021, <https://www.americanimmigrationcouncil.org/research/287g-program-immigration>

³⁹⁷ Los Angeles Times Staff, "Transcript: Donald Trump's full immigration speech, annotated."

³⁹⁸ Ibid.

2.8.6 Increasing Immigration Agents and Depriving Sanctuary Cities of Federal Funds

To perfectly implement his immigration plan, Donald Trump announced that he would triple the number of ICE deportation officers and hire 5,000 additional border patrol agents. Besides, he planned to create a new special deportation task force within ICE with one prime mission which lies in detecting and swiftly deporting the most dangerous criminal illegal immigrants who escaped justice. To better enforce immigration laws, Donald Trump planned to deprive sanctuary cities which led to the death of many American citizens. These cities have to cooperate with federal authorities and would receive no taxpayer dollars if they refused to obey federal authorities. Besides, Trump announced that he would work with Congress to enact legislation aiming at protecting jurisdictions that side with federal authorities. This stance stems from the belief that there is no need to keep these bad people in jails since they cost the USA huge money; instead, it is absolutely better to send them back to their home countries that have to deal with their problems.

2.8.7 Ending Obama-Era Immigration Programs

The next point in Trump's immigration policy lies in repealing unconstitutional executive orders passed under Obama's administration and enforcing all immigration laws. In fact, Donald Trump promised to immediately cancel two of Obama's executive amnesties which he considered unconstitutional as they defied federal laws and granted amnesty to roughly 5 million illegal immigrants, a huge number, in addition to other millions of illegal immigrants who are waiting in line to go through the process legally.³⁹⁹ "So unfair,"⁴⁰⁰ said Trump. To crystallize and give more credibility to his idea, Trump rebuked sharply Hillary's plan for pledging to maintain both illegal amnesty programs including that of 2014 which had been blocked by the Supreme Court; most important, Hillary promised to add a third amnesty program that would have bad effects on the nation, according to Donald Trump. Therefore, he affirmed that all immigration laws will be enforced under his administration and that nobody will be immune from enforcement. This means that anybody who is here illegally—in the United States— will be deported back to his/her origin country. In other words, under his administration, criminals, gangsters, visa overstays, security threats, and public charges would

³⁹⁹ Ibid.

⁴⁰⁰ Ibid.

not be excepted from deportation; “this what it means to have laws and to have a country,”⁴⁰¹ said Donald Trump.

2.8.8 No Visas in the Absence of a Reliable Vetting System

The sixth point in Trump's immigration plan is to suspend issuing visas in countries where a suitable and reliable screening cannot be done, so their citizens would be banned from visiting the United States legally. In this regard, he wondered as follows:

Why should we absorb the expense of keeping criminals in prison? Let their countries of origin deal with the problems they sent us. If they refuse to take them back, we can stop issuing visas to those countries, preventing their citizens from legally visiting the United States.⁴⁰²

To corroborate his viewpoint, he provided data revealed by the Senate Subcommittee Immigration which showed that since 9/11 up to 2014, around 380 foreign-born individuals have been convicted of terrorist acts in the USA. He went beyond when he presumed that the number of such cases is even more, but Obama's administration abstained from revealing the exact number. Therefore, he vowed to ask the Department of Homeland Security as well as the Department of Justice to undertake a comprehensive review of such cases with the aim of developing a list of countries and regions from which his administration would suspend immigration till effective and extreme vetting mechanisms can be put in place.⁴⁰³

Putting in place extreme vetting mechanisms would certainly outrage targeted countries, as Donald Trump expected. However, he did not care so much about them because what mattered to him is to have a strong country that respects and enforces its laws as he said: “It starts with enforcing the existing laws. A country either has laws or it does not. But having laws we do not enforce makes no sense to me”.⁴⁰⁴ On the other hand, places and regions from which immigration would be suspended may include unstable countries like Syria and Libya. Trump, as a matter of fact, intended to ban tens of thousands of Syrians from entering the United States on account of suspecting them of being dangerous to American national security due to the lack of documents that prove their identity, where they come from exactly, or their jobs. He even doubted that opening the doors of immigration to the Syrian refugees will be just like extending the invitation to members of the Islamic State in Iraq and Syria (ISIS) to come to the United

⁴⁰¹ Ibid.

⁴⁰² Donald Trump, *Crippled America: How to make America Great Again*, Kindle.

⁴⁰³ Los Angeles Times Staff, “Transcript: Donald Trump's full immigration speech, annotated.”

⁴⁰⁴ Donald Trump, *Crippled America: How to make America Great Again*, Kindle.

States to destroy it from within.⁴⁰⁵ Instead, he will build safe zones in their home countries sponsored or funded by money he would get from the Gulf states and others.⁴⁰⁶

Donald Trump gave much importance to putting in place an extreme vetting system to check applicants' admissibility to come to the United States. In this respect, he stressed the importance to test applicants' ideology just to make sure they love America and share the same values as Americans. He maintained that the United States had admitted 100,000 immigrants from both Iraq and Afghanistan during the last five years. However, according to a Pew Research Center report⁴⁰⁷, the majority of people in these two countries justify the barbaric practice popularly known as "the honor killing"⁴⁰⁸, which differs from the values of American society and human rights. Therefore, Trump vowed, if he takes office, he would oblige applicants to pass a test regarding many topics namely their views respecting women, gays, minorities, and radical Islam. As a result, America would admit only a few immigrants who do really respect American values and thus cause no problems.

2.8.9 Assuring Immigrants' Home Countries' Cooperation

Trump's seventh point in his immigration plan is to assure that illegal immigrants' home countries accept to take them back when they are ordered to leave the United States. According to Donald Trump, there are at least 23 countries that decline to take back their people, including considerable numbers of violent criminals, after being ordered to quit America. This will not happen under his administration as he promised: "Not going to happen with me, not going to happen with me".⁴⁰⁹ He expounded that, pursuant to the Supreme Court decision, if these quite dangerous criminal illegal immigrants are not taken back by their home countries, law enforcement officers will have to release them into American society which might have detrimental and horrific results. He, therefore, blamed former Secretary of State and his rival in the 2016 presidential election, Hillary Clinton, for not doing her best to bring these countries into compliance and continued issuing visas to these countries though there is a law that commands her as a Secretary of States to stop issuing visas to those nations.

⁴⁰⁵ Ibid.

⁴⁰⁶ Los Angeles Times Staff, "Transcript: Donald Trump's full immigration speech, annotated."

⁴⁰⁷ Pew Research Center is a nonpartisan fact tank that informs the public about the issues, attitudes and trends shaping the world. It conducts public opinion polling, demographic research, media content analysis and other empirical social science research. Pew Research Center does not take policy positions. It is a subsidiary of The Pew Charitable Trusts. Its headquarters are in Washington, D.C. and its activities are funded by the Pew Charitable Trusts.

⁴⁰⁸ honor killing is a crime committed in response to a behavior perceived to have brought dishonor to a family and therefore violated the code of honor.

⁴⁰⁹ Los Angeles Times Staff, "Transcript: Donald Trump's full immigration speech, annotated."

Donald Trump went so far in his criticism when accused Hillary along with Obama's administration of not knowing what they were doing. Consequently, her misconduct resulted in releasing large numbers of dangerous criminal aliens into American society who ought to be removed from the country and sent back to their countries of origin. In this regard, Trump revealed to his supporters that, pursuant to a report by Boston Globe⁴¹⁰, nearly 13,000 criminal aliens were released into American communities between 2008 and 2014 due to the refusal of their home countries to receive them back under any circumstances, which is quite unbelievable given America's great power. Besides, Trump stressed that the release of these 13,000 criminal aliens, many of them were convicted of killings, sexual assaults, and some heinous crimes, took place on Hillary's watch while she had the power and duty to stop it, yet she did nothing. For instance, 323 criminal aliens were released in New England between 2008 and 2012, according to the Boston Globe, where around 30% of them have committed new offenses like rape, attempted murder, and child molestation. This is unacceptable and will not happen under Trump's administration, as he promised.

2.8.10 Creating Biometric Entry-Exit Visa Tracking System

The next point of Trump's immigration policy is to complete and put in place the biometric entry-exit visa tracking system. The latter had been required by Congress for many years, yet it had not been finished. He promised to have a perfect tracking system that would be on land, on the sea, and in the air. He considered this system to be of great importance that would help in identifying illegal immigrants, namely those who overstayed their visas. In this respect, he maintained that almost 50% of the illegal immigrants came to the United States on temporary visas and then never left. Additionally, he wondered: "Why should they leave? Nobody is telling them to leave! Stay as long as you want, we will take care of you!";⁴¹¹ therefore, he regarded them as a genuine threat to U.S. national security. More importantly, he reminded his supporters that the 9/11 Commission recommended that the tracking system would be essential and a high priority due to its key role in helping law enforcement and intelligence officials in August and September 2001 to search for two of the 9/11 hijackers who overstayed their visas. This meant a lot for American national security. This situation continued over many years; for instance, around 500,000 individuals overstayed their temporary visas in 2015. Hence, getting rid of these individuals and sending them back to their home countries

⁴¹⁰ The Boston Globe is an American daily newspaper founded and based in Boston, Massachusetts.

⁴¹¹ Los Angeles Times Staff, "Transcript: Donald Trump's full immigration speech, annotated."

will be prioritized under Trump's administration, as he promised. This is to send a message to illegal immigrants, namely overstays, that visas expiration dates will be enforced under his administration, not like Obama-Clinton policy that conveyed a message that individuals can come to the United States on a temporary visa and never leave; in this case, "we have completely to open border, and we no longer have a country",⁴¹² Trump commented.

2.8.11 Saving Americans' Jobs

The ninth point of Trump's immigration policy consists in saving jobs of the Americans. However, he correlated saving and protecting Americans' jobs with his immigration policy. In other words, he would save unemployed Americans' jobs through toughening measures on illegal immigrants whom he accused of stealing the jobs of the unemployed Americans. Hence, this objective can be achieved by putting in place and enforcing the "E-verify" system to its fullest possible extent under the existing law and working with Congress to strengthen and expand its use all over the whole country. Using such a nationwide system will enable potential employers to determine job seekers who are here legally and eligible for work and those who are not; accordingly, this would certainly help protect the jobs of unemployed Americans.⁴¹³

According to Donald Trump, immigration laws were not passed only for the sake of keeping criminals and unpleasant immigrants outside the U.S. borders, but also for the sake of protecting all aspects of American life. Therefore, designing a perfect immigration system must take into consideration protecting all aspects of American life including cultural, social, economic, and security aspects.

2.8.12 Protecting Forgotten People's Interests

The Last point of Trump's immigration policy concerns taking care of American workers, or rather, the forgotten people as he calls them. To achieve so, he intended to review certain trade deals like NAFTA which he considered one of the most disastrous deals ever made in American history. In addition, he promised to bring back Americans' jobs after being taken outside the borders to other countries. More importantly, he will not allow economic companies to leave America and produce in other countries because he would make it so difficult for them, which might entail bad consequences. In doing so, he aimed to protect the American economy and keep very high the U.S. Gross Domestic Product (GDP) rather than rendering America a

⁴¹² Ibid.

⁴¹³ Donald Trump, *Crippled America: How to make America Great Again*, Kindle.

market for foreign goods which will usher in increasing unemployment among American workers, thereby decreasing the country's tax revenue. "It is not going to happen,"⁴¹⁴ Trump promised.

Assimilating immigrants into American society is a big concern for the previous administrations, and the Trump one is no exception. He gave much importance whilst designing his immigration policy. In this regard, he maintained that America had accepted 59 million immigrants between 1965 and 2015 who have greatly served and enriched the United States in different fields.⁴¹⁵ However, this large number of immigrants entailed a lot of obligations of the U.S. government toward them as well as their children. According to Trump, controlling the flow of future immigrants became an obligation to make sure they are likely to be integrated successfully into American society. Therefore, it is high time to change the U.S. immigration system by adopting a set of reforms in hopes of achieving the following objectives: first, "to keep immigration levels measured by population share within historical norms"⁴¹⁶; second, selecting immigrants on the basis of their likelihood to successfully assimilate in the American society as well as their ability to be financially self-sufficient; third, selecting immigrants to fit American needs in different fields on the basis of merit, skill, and proficiency; fourth, put in place a new immigration control to boost wages and make sure that the open jobs are accorded first to American workers.

In a nutshell, Trump's goal behind these steps is to admit only immigrants who can fit in with the requirements of the American immigration system and serve the best interests of America. This cannot be achieved under the existing outdated immigration laws, according to Donald Trump. Hence, updating the current immigration laws became a necessity that would be undertaken by Trump's administration by bringing the required reforms to live at the expectations of the national interests. In other words, the aforementioned points of Trump's immigration policy are enough to accomplish more within just a few months than what other previous American politicians have accomplished during the last fifty years if, of course, they are vigorously enforced and followed, as he maintained:

So let's now talk about the big picture. These 10 steps, if vigorously followed and enforced if rigorously followed and enforced, will accomplish more in a matter of months than our politicians have accomplished on this issue in the last 50 years. It's

⁴¹⁴ Los Angeles Times Staff, "Transcript: Donald Trump's full immigration speech, annotated."

⁴¹⁵ Ibid.

⁴¹⁶ Ibid.

going to happen. folks. Because I am proudly not a politician, because I am not beholding to any special interest.⁴¹⁷

This is all about the immigration reforms Donald Trump is going to bring to the U.S. immigration policy if elected to the office of the U.S. president. So, how did his administration implement these reforms after his inauguration on the 20th of January, 2017, and announcing him officially the 45th American President?

2.9 Donald Trump in the White House

The 2016 presidential elections resulted in the election of Donald Trump as the 45th U.S. President. However, the victory of Donald Trump and announcing him to be the successor of Barack Obama surprised almost everyone who followed the polls conducted at the national and local levels, which consistently expected Hillary Clinton to succeed President Barack Obama.⁴¹⁸ In effect, according to election forecasters, Clinton's chances to win the elections ranged from 70% to 99% based on Election results yielded by opinion polls; in addition, these opinion polls expected that Clinton was favorable to win states like Pennsylvania and Wisconsin which later went for Donald Trump on the election day.⁴¹⁹ This mismatch between poll and election results reflected that the organized polls underestimated Trump's popularity and the level of support he got during his presidential campaign. Consequently, proclaiming Donald Trump as the successor of President Barack Obama caused different reactions among the American people, namely the supporters of Hillary Clinton.

Reactions to Trump's victory in the 2016 presidential elections were different, on both domestic and international fronts. According to a Pew Research Center report, 50% of the voters were happy that Donald Trump was elected president of the United States, whereas around 48% of them were not. Likewise, the report revealed that 97% of Trump's supporters were happy that he won, whereas 93% of Hillary Clinton's voters were disappointed.⁴²⁰ Therefore, some riots and manifestations took place in many states to express their disappointment at Trump's victory.

⁴¹⁷ Ibid.

⁴¹⁸ Andrew Mercer, Claudia Dean, and Kiley McGeeney, "Why 2016 Election Polls Missed Their Mark," Pew Research Center, November 9, 2016, <https://www.pewresearch.org/fact-tank/2016/11/09/why-2016-election-polls-missed-their-mark/>

⁴¹⁹ Andrew Mercer, Claudia Dean, and Kiley McGeeney, "Why 2016 Election Polls Missed Their Mark."

⁴²⁰ Pew Research Center Staff, "Low Marks for Major Players in 2016 Election-Including the Winner", Pew Research Center, November 21, 2016, <https://www.pewresearch.org/politics/2016/11/21/presidential-election-reactions-and-expectations/>

On the international front, reactions to Trump's victory varied from one country to another. For instance, the Russian President, Vladimir Putin, welcomed the victory of Donald Trump and expressed his hopes to restore relations between the USA and Russia. In this regard, he maintained in his own words:

We heard the campaign statements of the future U.S. presidential candidate about the restoration of relations between Russia and the United States, it is not an easy path, but we are ready to do our part and do everything to return Russian and American relations to a stable path of development. This would be good for both the Russian and American people and have a positive impact on the climate of world affairs.⁴²¹

For his part, the Chinese President, Xi Jinping, congratulated Donald Trump in a telegram, whereas his foreign minister expressed his hopes to boost the bilateral relations between the two countries. The Iraqi attitude was close to the Chinese one. In effect, the Iraqi prime minister, Haider al-Abadi, congratulated the president-elect Donald Trump expressing his hope of "looking forward to America's continued support in his country's fight against Islamic State".⁴²² Afghanistan adopted nearly the same stance as the Iraqi one when President Ashraf Ghani expressed the strong and strategic Afghano-American relations maintaining that the USA and Afghanistan "are strategic partners in the fight against terrorism and partners in development".⁴²³ Similar stances were taken by the rest of the countries such as British prime minister Theresa May, Japanese prime minister Shinzo Abe, German Chancellor Angela Merkel, and Israeli prime minister Benjamin Netanyahu, all looked forward to working together with President-elect Donald Trump and his administration, thereby continuing promoting the bilateral relations between their countries and the United States.

However, a few countries expressed their lukewarm attitudes toward Trump's victory in the 2016 elections. For instance, the Iranian reaction to Trump's victory was apathetic as his victory will not change the American perspective of Iran as its enemy. Thus, the Iranian President, Hassan Rouhani, declared that the results of the U.S. elections would have no impact on his country's policies. Also, the Liberian President, Ellen Johnson Sirleaf, declared to BBC that "she is extremely saddened by Donald Trump's victory"⁴²⁴ due to her concerns about whether he has an African agenda and is going to build bridges with Africa or not. Similar concerns were expressed by the Scandinavian countries including Finland, Sweden, Denmark,

⁴²¹ BBC Staff, "Trump Wins US Election: How World Leaders Have Reacted", BBC, November 9, 2016, <https://www.bbc.com/news/election-us-2016-37919394>

⁴²² BBC Staff, "Trump Wins US Election: How World Leaders Have Reacted."

⁴²³ Ibid.

⁴²⁴ Ibid.

and Norway who had some concerns about the new American President, but were hopeful that their good relationships with the United States would continue as the Danish Prime Minister maintained “let’s give Donald Trump the benefit of the doubt”.⁴²⁵

2.10 Trump's Inauguration in January 2017

Upon his election to the White House, the president-elect labored on choosing members of his cabinet whom he considered able to help him achieve all the promises he gave to his supporters during his presidential campaign. Then, on January 20, 2017, he took the oath of President of the United States following Mike Pence who took the oath of Vice President of the United States. His inauguration day was marvelous as thousands of his supporters wearing his famous red “Making America Great Again” caps attended the transition ceremony between former President Barack Obama and new President Donald Trump held on the west front of the Capitol Building. According to crowd experts, the number of people who attended the ceremony oscillated between 300,000 and 600,000, a number that was disputed by the White House and Donald Trump who claimed that the number of attendees had been underestimated by the media.⁴²⁶

Having been sworn in by Chief Justice John G. Roberts Jr., Donald Trump officially succeeded Barack Obama in the White House. Aged at 70, he “became the oldest man to assume the presidency and the first to have no previous record of government or military experience”.⁴²⁷ After being sworn in, Donald Trump made his first speech as President in which he reiterated the promises he raised during his presidential campaign reminding the audience that he is the voice of the ordinary people. He, therefore, started his inaugural address by maintaining that the inauguration ceremony has a special meaning because it does not represent a transfer of power from one administration to another, but rather a transfer of power from Washington D.C. and giving it back to the American people. He immediately raided the American establishment accusing it of being selfish and not caring about the ordinary people. This, according to Trump manifested in different aspects enlisted one by one when he said:

For too long, a small group in our nation's capital has reaped the rewards of government, while the people have borne the cost. Washington flourished, but the people did not share in its wealth. Politicians prospered, but the jobs left and the factories closed. The establishment protected itself, but not the citizens of our country.

⁴²⁵ Ibid.

⁴²⁶ History.com editors, “Donald Trump is Inaugurated,” History, Last modified January 19, 2021. <https://www.history.com/this-day-in-history/donald-trump-is-inaugurated>

⁴²⁷ History.com editors, “Donald Trump is Inaugurated.”

Their victories have not been your victories. Their triumphs have not been your triumphs, and while they celebrated in our nation's capital, there was little to celebrate for struggling families all across our land.⁴²⁸

So, Donald Trump was clear from the first time about what he is going to do and what he is going to fight. As a matter of fact, he believed that the American establishment marginalized the American people as it monopolized political power and economic prosperity. He, therefore, considered his victory as the victory of the ordinary people who just took back their political power from the few who monopolized it; thus, January 20, 2017, will symbolize the day when Americans became again the true rulers of their country. This is because he considered that the real issue consists in whether the country is governed by the people, not in which political party governs the country. As such, Trump's administration reflects the will of the people, or rather, the forgotten men and women.

Trump did not forget to remind his audience of the promises he raised during his presidential campaign. These promises will be fulfilled by his administration simply because it represents a nation that does exist to serve its people. Thus, his government would labor to provide the righteous Americans with good schools for their children, better jobs for themselves, and safe neighborhoods which became insecure due to the spread of gangs, crime, and drugs that caused the death of many people and robbed America of a great deal of unrealized potential. These, according to President Trump, are just basic rights that all righteous citizens normally should have and enjoy, yet many citizens are still asking for them due to the different realities they have encountered. This bad situation, or rather American carnage, has to stop and stop immediately, Trump commented.

Trump continued portraying a bad image of America in different fields and excoriating former American governments. In effect, he lambasted former U.S. governments for enriching the industry of other countries instead of the American one, subsidizing foreign armies at the expense of the American military, defending the borders of other countries while refusing to defend their own, spending trillions of dollars overseas instead of spending them on developing and renewing the infrastructure of the country, making other countries rich while America's wealth, strength, and confidence faded away.⁴²⁹ Additionally, he blamed former American governments for allowing many of the American factories and companies to move abroad to

⁴²⁸ Politico Staff, "Full Text: 2017 Donald Trump Inauguration Speech Transcript," Politico, Last modified January 20, 2017, <https://www.politico.com/story/2017/01/full-text-donald-trump-inauguration-speech-transcript-233907>

⁴²⁹ Politico Staff, "Full Text: 2017 Donald Trump Inauguration Speech Transcript."

produce in other countries leaving behind millions of American workers without jobs which complicated their suffering; consequently, the American middle class eroded due to ripping its wealth and distributing it among people across the world. This, as Trump said, happened in the past and would never occur under his administration which is looking forwards to the bright future of all Americans thanks to his policy that places the interests of Americans ahead of everything in compliance with the famous slogan “America first,”⁴³⁰ which would be the overriding theme of his presidency.

2.11 Implementing His Immigration Plan

Donald Trump did not take too much time before starting his immigration plan; contrary to that, he quickly began laboring on implementing his immigration plan to fulfill the promises he raised before his supporters. Therefore, he initiated the issuance of a series of Executive Orders meant to provide the legal background and proceedings to follow while implementing that immigration plan. In this regard, he issued the famous executive order holding the number 13769 (EO13769) that brought new measures discussed below:

2.11.1 New Vetting Measures for the Visa-Issuance Process

Trump's EO13769, also referred to as EO-1, came to implement his radical perspective toward Muslims as well as all undesired foreign nationals he regarded as a potential threat to the welfare and safety of Americans. To achieve so, he proceeded to extremely toughen the vetting measures followed in the visa-issuance process. These measures were nothing short of the implementation of his idea of “extreme vetting of immigrants”⁴³¹ raised during his presidential campaign.

As soon as I enter office I am going to ask the Department of State, ...Homeland Security and the Department of Justice to begin a comprehensive review of these cases in order to develop a list of regions and countries from which immigration must be suspended until proven and effective vetting mechanisms can be put in place. I call it extreme vetting right? Extreme vetting. I want extreme. It's going to be so tough, and if somebody comes in that's fine but they're going to be good. It's extreme.⁴³²

⁴³⁰ Ibid.

⁴³¹ Douglas Kellner, *American Nightmare: Donald Trump, Media Spectacle, and Authoritarian Populism* (Netherlands: Sense Publishers, 2016), 65.

⁴³² Los Angeles Times Staff, “Transcript: Donald Trump's full immigration speech, annotated”, Los Angeles Times, Accessed on November 24, 2021, <https://www.latimes.com/politics/la-na-pol-donald-trump-immigration-speech-transcript-20160831-snap-htmlstory.html>

Accordingly, EO13769 was issued chiefly to implement President Trump's perspective of the new American immigration policy which ostensibly aims to preserve America's national security that lies essentially in protecting Americans' safety from being threatened by terrorist attacks that might be committed by foreign nationals. Hence, toughening immigration laws was regarded as a necessity for President Donald Trump to stop the inflow of undesirable foreign nationals who tend to exploit American immigration laws to enter the United States with malevolent intentions. To this end, the EO-1 outlined a series of measures designed to implement Trump's perspective of "extreme vetting of immigrants," which revolves around suspending issuing visas along with other immigration benefits to nationals hailing from certain countries of particular concern.

The EO-1 listed several tough measures to follow before deciding on the issuance of a visa for any applicant. First, an immediate review would be conducted by the Secretary of Homeland Security in consultation with the Director of National Intelligence and the Secretary of State to identify the required information to get from any country to adjudicate the issuance of any visa, admission, or another benefit under the Immigration and Nationality Act (INA) to decide that the visa applicant is the person who claims to be and that he poses no threat to public safety of Americans. Second, a report about the review's results, prepared by the Secretary of Homeland Security in consultation with the Director of National Security and the Secretary of State, should be submitted to the office of the U.S. President within 30 days after the issuance of the EO-1. The report should provide the President with the requisite information for adjudications along with a list of uncooperative countries that refused to present the aforementioned necessary information. Furthermore, in order to guarantee a perfect vetting of immigrants, a copy of the report should be presented to the Director of National Security and the Secretary of State to secure high coordination between the three departments.

2.11.2 Collaboration of Foreign Governments

Foreign governments are required to cooperate with the American government by providing it with the requisite information regarding applicants seeking American visas. Hence, a report would be prepared and given to the Secretary of State containing names of uncooperative countries. Right after the receipt of the report on the review's results, the Secretary of State will request all the foreign governments that already declined to present the required information regarding their citizens to supply them within sixty days of notification. Once this period expires, the Secretary of Homeland Security, in consultation with the Secretary

of State, will supply the President with a list of foreign governments recommended to be added to the list of countries whose nationals would be excluded from entry into the United States (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas) until they supply such information. Additionally, further countries may be added at any point to the submitted list described above to be treated similarly until full compliance occurs.

2.11.3 Extreme Vetting Procedures

To make sure that the U.S. President is fully aware and updated on the progress in implementing these proceedings, a joint report made by Secretaries of State and Homeland Security should be submitted to the President each month; the first report would be submitted within 30 days of the date of the EO-1, the second one after 60 days of the date of the EO-1, the third one after 90 days of the date of EO-1, and the fourth one after the 120 days of the issuance of the EO-1⁴³³.

Moreover, to concretize Trump's idea of extreme vetting, the EO-1 came up with a unified screening program for all visa applicants. The latter, which is part of the adjudication process for immigration benefits, would be the fruit of a collaboration of the heads of four important departments which are the Director of the Federal Bureau of Investigation (FBI), the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence. This program ultimately aims at detecting visa applicants wanting to enter the United States fraudulently with intentions to cause harm to Americans. To this end, the program comprises uniform vetting procedures such as in-person interviews. These vetting procedures are listed as the following:

In-person interviews; a database of identity documents proffered by applicants to ensure that duplicate documents are not used by multiple applicants; amended application forms that include questions aimed at identifying fraudulent answers and malicious intent; a mechanism to ensure that the applicant is who the applicant claims to be; a process to evaluate the applicant's likelihood of becoming a positively contributing member of society and the applicant's ability to make contributions to the national interest; and a mechanism to assess whether or not the applicant has the intent to commit criminal or terrorist acts after entering the United States.⁴³⁴

⁴³³ Donald Trump, "Executive Order 13769-Protecting the Nation from Foreign Terrorist Entry Into the United States," The American Presidency Project, Accessed July 7, 2022, <https://www.presidency.ucsb.edu/documents/executive-order-13769-protecting-the-nation-from-foreign-terrorist-entry-into-the-united>

⁴³⁴ Trump, "Executive Order 13769."

To update the President on the progress in implementing this program, three reports prepared by the Secretary of Homeland Security in conjunction with the Secretary of State along with the directors of the FBI and the National Security shall be submitted to his office of the U.S. President. The first report would be submitted within sixty days of the day of the EO-1, the second one within 100 days of the date of this order, and the third one would be submitted within 120 days after the issuing of this EO-1.

2.11.4 Restricting the Admission of the Asylum Seekers

The EO-1 also reviewed the admission of asylum seekers into the United States. In actual fact, this order suspended the U.S. Refugee Admission Program (USRAP) for 120 days in order to review the application and adjudication process under the same program. The review of the USRAP chiefly aims at detecting and fixing its flaws and identifying what additional measures could be prescribed to make sure that the approved asylum seekers do not pose any threat to the welfare and safety of the United States. Concerning the asylum seekers who are already in the USRAP program, they could be accepted following initiating and completing these additional procedures. After 120 days of the date of EO-1, the Secretary of State would resume USRAP admissions only for foreign nationals hailing from countries for which a joint decision was taken by the Secretary of Homeland Security, the Secretary of State, and the Director of National Intelligence, which determines that such further measures are adequate to assure the U.S. national security and welfare. More than this, once resuming the admissions under the updated USRAP, the Secretary of State, in consultation with the Secretary of Homeland Security, is tasked, to the lawful extent, with bringing further changes with the goal of prioritizing refugee claims made by asylum seekers based on religious-based persecution if the asylum seeker's religion is a minority religion in his home country. If legislation is found necessary and appropriate to uphold such prioritization, Secretaries of State and Homeland Security would recommend them to the U.S. President. Moreover, Secretaries of State and Homeland Security can jointly decide on refugees' admission on a case-by-case basis, including those with claims based on religious persecution, only after making sure they do not pose a threat to the U.S. security and that their admission into the country is consistent with America's national interests. The president should be updated on the progress of the refugees' admission based on religious persecution through an initial report within 100 days and a second one within 200 days.⁴³⁵

⁴³⁵ Trump, "Executive Order 13769."

2.11.5 Restricting the Admission of the Syrian Refugees

Provisions of the EO-1 showed how watchful Trump's administration was regarding the admission of refugees for security and welfare grounds. In effect, Syrian refugees were a hot issue that captivated the attention of the whole world as they fled from death and persecution in their home country for safety in countries around the world which resulted in the worst humanitarian crisis in the 21st century. In point of fact, following the outbreak of the Syrian conflict in 2011, hundreds of thousands of Syrians were killed during the ten years of this conflict; moreover, almost half of the pre-Syrian population of around 22 million⁴³⁶ escaped death, fight, and persecution for safety and better opportunities in other countries, namely in the western world. More accurately, in its 2018 report, Human Rights Watch revealed that 400,000 were killed in the Syrian war since 2011.⁴³⁷ In addition, 6 million were forcibly displaced inside Syria, and 5 million sought refuge abroad and became refugees according to the reports of the United Nations (UN) agencies.⁴³⁸ A refugee is defined by the UN to be a person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.⁴³⁹

According to the aforementioned definition, the 5 million Syrians became refugees who sought the help of the international community to provide them with their basic needs to survive. Indeed, in response to this bad situation, the United Nations along with the international community expressed their dissatisfaction with the dealings of the Syrian regime and consequently tried to help the Syrians.⁴⁴⁰ As a result, a lot of countries helped the Syrians by offering legal refugee resettlement within their respective boundaries; however, the response of the international community differed from one country to another, namely the United States of America.

⁴³⁶ Mercy Corps, "The Facts: What you need to know about the Syria Crisis", Mercy Corps, Accessed July 3, 2022. <https://www.mercycorps.org/blog/quick-facts-syria-crisis#how-war-affected>

⁴³⁷ Human Rights Watch, *World Report 2018: Events of 2017* (New York: Seven Stories Press, 2017), 525.

⁴³⁸ Human Rights Watch, *World Report 2018: Events of 2017*, 525.

⁴³⁹ United Nations, "United Nations: Peace, Dignity and Equality on a Healthy Planet", Accessed July 3, 2022. <https://www.un.org/en/global-issues/refugees>

⁴⁴⁰ Carolina Romero, "Analyzing the United States' Limited Response to the Syrian Refugee Crisis," *Political Analysis* 18, no. 3 (2019): 32. <https://scholarship.shu.edu/pa/vol20/iss1/3>

In his report before the Senate Committee on the Judiciary, Subcommittee on Immigration and National Interest, the director of the Office of Refugee Admission, Lawrence Bartlett, maintained that the refugees around the world are estimated at 20 million according to the latest statistics of the United Nations High Commissioner for Refugees (UNHCR). These refugees will benefit from the requisite support in the country to which they escaped till they voluntarily and safely return to their home country. According to its 2014 report, the UNHCR reported that children represented 51% of refugees under its mandate, the highest percentage since a decade; in addition, around 34,300 applications for asylum in 82 countries were submitted by unaccompanied and separated children, mostly originated in Eritrea, Afghanistan, Somalia, and Syria.⁴⁴¹ This made the UNHCR's efforts along with the international community of great sensitivity and importance given the big challenges they would face in order to fully care about them, thereby providing them with the required protection, assistance, education, etc.

The United States, as a leading country in the world, plays a key role in helping refugees via the humanitarian programs of UNHCR such as the International Organization for Migration, the International Committee of the Red Cross, and other non-governmental organizations that aim to provide assistance and protection to refugees till their safe return to their homes. For instance, an estimated number of 126,800 were repatriated voluntarily to their home countries in 2014.⁴⁴² Moreover, the UNHCR reported that the United States of America admitted 73, 000 refugees for resettlement, which is the largest number worldwide in 2014.⁴⁴³ As a matter of fact, the United States of America is considered to be a leading country in this field given its exemplary model of refugee resettlement. This is reflected by statistics that revealed that the USA had received more than 3 million refugees from all over the world since 1975.⁴⁴⁴ This is what made Americans proud of their history of welcoming refugees and immigrants as Secretary Kerry stated, "All of us in positions of responsibility, nations with power and capacity and opportunity, have an obligation to come together and restore hope".⁴⁴⁵ Accordingly, the USRAP represents America's highest values of compassion, generosity, and leadership role in humanitarian protection.

⁴⁴¹ United Nations, *Report of the United Nations High Commissioner for Refugees, Covering the Period July 2014-30 June 2015*, (New York, 2015), 10.

⁴⁴² Lawrence Bartlett, *Refugee Admissions Fiscal Year 2016*, (Washington, DC, 2015), 2.

⁴⁴³ United Nations, *Report of the United Nations High Commissioner for Refugees*, 13.

⁴⁴⁴ Lawrence Bartlett, *Refugee Admissions Fiscal Year 2016*, 3.

⁴⁴⁵ *Ibid.*, 3.

The U.S. humanitarian leadership increased even more during the presidency of the Democratic President Barack Obama. In effect, the United States received and resettled over 611,000 refugees, from FY2009 to FY2016⁴⁴⁶. In addition, in the last FY2016 of his presidency, 85,000 refugees were resettled in different American states.⁴⁴⁷ This is the largest number of refugees resettled in the United States since 1996, as displayed in Table 3.1. More importantly, it is the highest record registered by the UNHCR.⁴⁴⁸

Resettling refugees in the United States is undertaken by the State Department's Bureau of Population, Refugees, and Migration (PRM), through the famous program of USRAP which consists in a public/private partnership collaborating with a number of federal agencies, federal and local governments, and non-profits.⁴⁴⁹ This program succeeded to resettle refugees in 49 of the 50 American states, including the two noncontiguous states of Alaska and Hawaii.

2.11.6 The Process of Refugee Admission

Admitting refugees to the United States goes through several steps. After escaping to another country, refugees have to register with UNHCR which thereafter will determine the next action to do. In this respect, the UNHCR will either decide to return refugees to their country of origin, integrate them into the country to which they escaped, or relocate them to another country.⁴⁵⁰ If the United Nations decides to resettle a certain refugee into the United States, his/her case would be sent to one of the nine Resettlement Support Centers (RSC) around the world under the administration of the U.S. State Department. These agencies are the Church World Service (CWS), Episcopal Migration Ministries (EMM), Ethiopian Community Development Council (ECDC), International Rescue Committee (IRC), US Committee for Refugees and Immigrants (USCRI), World Relief Corporation (WR), Hebrew Immigrant Aid Society (HIAS), Lutheran Immigration and Refugee Services (LIRS), and United States Conference of Catholic Bishops (USCCB).⁴⁵¹ Thereafter, the RSC that receives the refugee's case conducts deep research about him/her, collects information about their background, and sent them to the State Department and the U.S. Department of Homeland Security for security

⁴⁴⁶ Lizzie Biddle, "Refugee Resettlement Under the Obama Administration: Untangling the U.S. Refugee Assistance Program at the Federal Level," *Global Journal of Peace Research and Praxis* 2, no. 1, (2018): 1.

⁴⁴⁷ Lizzie Biddle, "Refugee Resettlement Under the Obama Administration", 2.

⁴⁴⁸ Ibid., 1.

⁴⁴⁹ Ibid., 2.

⁴⁵⁰ Staff of Ballotpedia, "Admission of Refugees," Accessed July 9, 2022, https://ballotpedia.org/Admission_of_refugees#cite_note-8

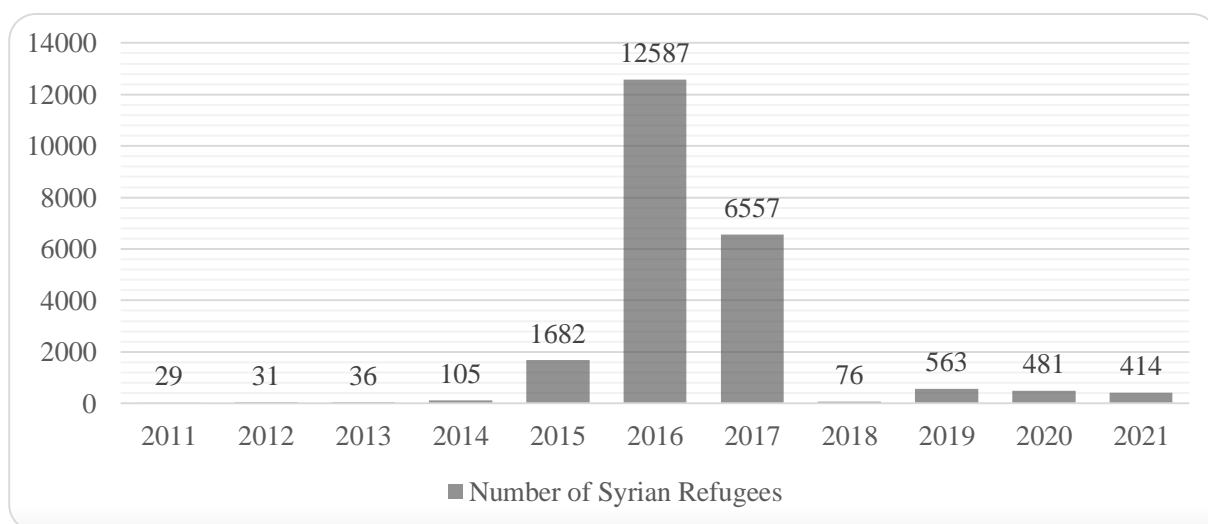
⁴⁵¹ UNHCR, the UN Refugee Agency, "U.S. Resettlement Partners," Accessed July 9, 2022, <https://www.unhcr.org/en-us/us-resettlement-partners.html>

checks. Moreover, the refugee will be interviewed personally by an agent from the U.S. Citizenship and Immigration Services (USCIS). The latter will decide whether to admit the concerned refugee or not after examining the results of security checks as well as the in-person interview. If the decision is positive, the refugee would be subjected to a medical screening so as to make sure that he/she does not bear infectious diseases such as tuberculosis. Afterward, the refugee will benefit from a sponsor through a resettlement agency within the United States to help him/her get assimilated into American life. More importantly, the refugee will benefit from a cultural orientation as well as public assistance in order to facilitate their integration into American society.⁴⁵²

2.11.7 Partisan Disagreement over the Admittance of Syrian Refugees

The effectiveness of USRAP was clearly noticeable during the second term of President Obama. By the end of FY2015, the United States resettled less than 2,000 Syrian refugees. In more detail, Figure 1 reveals that 29 Syrian refugees were resettled in FY2011, 31 in FY2012, 36 in FY2013, 105 in FY2014, and 1682 in FY2015, which amounted to 1883 in total. However, the number skyrocketed in FY2016 when 12587 were admitted into the United States. This number represents 2,4% of the total number of admitted refugees into the United States in FY2016, which is 69,933 (see Appendix 1).

Figure 1. Syrian refugee arrivals in the USA, FY 2011-2021



Source: Statista Research Department, August 9, 2021. Accessed on July 1, 2022.

<https://www.statista.com/statistics/742553/syrian-refugee-arrivals-us/#:~:text=In%20the%20fiscal%20year%20of,Syrian%20refugees%20admitted%2C%20at%2012%2C587.>

⁴⁵² Staff of Ballotpedia, "Admission of Refugees."

Figure 1 clearly demonstrates that the admission of Syrian refugees into the USA was almost monotonous and stable during the first term and the first half of the second term of Barack Obama's presidency, where 1883 Syrian refugees had been admitted into the USA. This is because the Syrian conflict was in its early years when political efforts and initiatives to settle it were being made, giving hope to the Syrians to peacefully solve their conflict. However, as years went on, it became clear that solving the conflict peacefully was quite difficult, especially after using chemical weapons by the regime of Bashar al-Assad, which reflected his unwillingness to compromise. This fact pushed millions of Syrians to leave their country for other countries, namely the neighboring ones, in their attempt to seek peace, safety, and new opportunities for living and surviving. This ushered in the worst humanitarian crisis of refugees that obsessed the whole international community. Therefore, the number of Syrian refugees in 2015 doubled 16 times compared to their number in 2014 when only 1,682 were admitted into the United States. The number again doubled many times in the next year and reached 12,587, representing 14.81% of the admitted refugees into the USA in the FY 2016 where America admitted 85,000 refugees (see Appendix 1).

By the fall of 2016, the State Department reported that the United States had resettled 15,479 Syrian refugees, whereas this number sharply decreased in the following year to become 3,024, a very small number compared to the huge number of Syrian refugees estimated worldwide at 11 million.⁴⁵³ This resulted from Trump's decision to reduce the admission of Syrian refugees into the United States due to suspecting them of threatening the interests of America. Therefore, pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), he suspended their entry until reviewing the USRAP to make sure that the admission of such refugees complies with the interests of the USA. Consequently, Trump's four years in office witnessed a significant decline in the number of admitted Syrians into the United States as displayed in Figure 1. It is notable to notify that the American Fiscal Year (FY) starts from October 1st to September 30th of the next calendar year.⁴⁵⁴ For instance, the fiscal year FY 2018 starts from October 1, 2017, to September 30, 2018. Accordingly, the fiscal years under the responsibility of Trump's administration are FY 2018, FY 2019, FY 2020, and FY 2021.

The impact of Trump's EO-1 on the admission of Syrian refugees was noticeable starting from FY 2018. In effect, on security grounds related to the protection of Americans'

⁴⁵³ Carolina Romero, "Analyzing the United States' Limited Response to the Syrian Refugee Crisis," 32.

⁴⁵⁴ Madhuri Thakur, "The Fiscal Year in USA," WallStreetMojo, Accessed July 4, 2002, <https://www.wallstreetmojo.com/fiscal-year-in-usa/>

national security, only 76 Syrian refugees were admitted in FY 2018 compared to 6,557 who were admitted in FY 2017, under Obama's administration. This reflects the radical change to the U.S. immigration policy between the Democratic administration under President Barack Obama and the Republican administration under President Donald Trump. In point of fact, the Republicans were more reluctant and unwilling to receive Syrian refugees to resettle them all over the American territory. This could be noticed following Obama's offer in 2015 to receive at least 10,000 Syrian refugees over the next fiscal year due to the increasing pressure made by the European countries to demonstrate the United States' goodwill to join their efforts to resettle the Syrian refugees.⁴⁵⁵ Though this offer was welcomed by American aid groups that considered it a token of American humanitarian leadership given its social and economic strength, it caused the disagreement of many Republicans who regarded the Syrians as a genuine threat to Americans' safety and thus warned that President Obama was letting in terrorists. Consequently, receiving more Syrian refugees became a hot issue that polarized the political class and ignited political debates and arguments between Democrats and Republicans.

Democratic officials, namely governors, interacted positively with Obama's offer to receive at least 10,000 Syrian refugees. Jerry Brown, California's governor, expressed his will and readiness to work closely with the President to keep and promote America's tradition as a safe refuge for asylum seekers as declared by the Refugee Act of 1980.

The Congress declares that it is the historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands, including, where appropriate, humanitarian assistance for their care and maintenance in asylum areas, efforts to promote opportunities for resettlement or voluntary repatriation, aid for necessary transportation and processing, admission to this country of refugees of special humanitarian concern to the United States, and transitional assistance to refugees in the United States. The Congress further declares that it is the policy of the United States to encourage all nations to provide assistance and resettlement opportunities to refugees to the fullest extent possible.⁴⁵⁶

Meanwhile, it is mandatory to make sure that all individuals seeking refuge in the United States are thoroughly and carefully vetted, thereby assuring Californians' safety. Likewise, the governor of Colorado state, John Hickenlooper, vowed to work together with the federal government as well as the Department of Homeland Security (DHS) to ensure that the national

⁴⁵⁵Gardiner Harris, David E. Senger, and David M. Herszenhorn, "Obama Increases Number of Syrian Refugees for US Resettlement to 10,000," *The New York Times*, Accessed July 5, 2012, <https://www.nytimes.com/2015/09/11/world/middleeast/obama-directs-administration-to-accept-10000-syrian-refugees.html>

⁴⁵⁶ Public Law 96-212, 96th Congress, *Refugee Act of 1980* (March 17, 1980), 102. <https://www.govinfo.gov/content/pkg/STATUTE-94/pdf/STATUTE-94-Pg102.pdf>

screening processes for refugees are as stiff as possible. A similar stance was announced by Delaware's governor, Jack Markell, who stated that "We should rally around the President's call for compassion for a suffering population that wants nothing more than a safe place to rebuild their lives from the rubble of war".⁴⁵⁷ In a nutshell, the vast majority of Democrat officials, including governors, welcomed Obama's proposal to allow at least 10,000 Syrian refugees into the United States.

However, the Republican officials, including 31 Republican governors, expressed their disagreement and objected to the proposal of President Barack Obama, mainly for security reasons. In a more accurate way, those governors opposed Obama on the ground that the Syrian refugees came from a country full of terrorists who may easily hide among the flood of Syrian refugees. Furthermore, the Paris terror attacks on November 13, 2015, had a great impact in raising their fears for the safety of their citizens, thereby expressing their refusal of Obama's proposal. President Obama, however, did not cancel his offer and reiterated his commitment to receive that number of Syrian refugees despite the Paris attacks simply because, as he said, they would be admitted into the United States after carefully vetting them and subjecting them to stiff security checks.⁴⁵⁸ This declaration did not manage to dissipate the worries of the Republicans. In this respect, Republican Representative of New York, Peter T. King, stated that "Our enemy now is Islamic Terrorism, and these people are coming from a country filled with Islamic Terrorists... We do not want another Boston Marathon bombing situation".⁴⁵⁹ A similar stance was expressed by a number of state governors. For instance, Robert Bentley, the Republican governor of Alabama strongly opposed any attempt to resettle Syrian refugees in Alabama under USRAP and pledged not to remain complicit to a policy that may endanger the security and safety of Alabamians.

I will oppose any attempt to relocate Syrian refugees to Alabama through the U.S. Refugee Admissions Program. As your Governor, I will not stand complicit to a policy that places the citizens of Alabama in harm's way... I will not place Alabamians at even the slightest, possible risk of an attack on our people.⁴⁶⁰

A similar stance was announced by Arkansas' governor, Asa Hutchinson, who strongly objected to the use of any installation or facility in Arkansas for relocating Syrian refugees. He

⁴⁵⁷ Staff of Ballotpedia, "U.S. Governors and their Responses to Syrian Refugees," Ballotpedia," Accessed July 5, 2022. https://ballotpedia.org/U.S._governors_and_their_responses_to_Syrian_refugees#cite_note-10

⁴⁵⁸ Rebecca Kaplan, "Can Governors Legally block Syrian Refugees from Coming to their States?" CBS NEWS, Accessed July 7, 2022, <https://www.cbsnews.com/news/governors-legally-cant-block-syrian-refugees/>

⁴⁵⁹ Gardiner Harris, David E. Senger, and David M. Herszenhorn, "Obama Increases Number of Syrian Refugees for US Resettlement to 10,000,"

⁴⁶⁰ Staff of Ballotpedia, "U.S. Governors and their Responses to Syrian Refugees."

criticized this strategy for not being the right one that suits the interests of the United States; he completely refused to make America a permanent place for relocating Syrian refugees. Instead, the best places for doing so are Syria's neighboring countries in Europe, Asia, and Africa.

As governor, I oppose any facility or installation in Arkansas being used as a Syrian refugee center. Many of the Syrian refugees are fleeing violence in their own country but Europe, Asia or Africa are logically the best places for resettlement or for temporary asylum...Again, I will oppose Arkansas being used as such a relocation center. The hardships facing these refugees and their families are beyond most of our understanding, and my thoughts and prayers are with them, but I will not support a policy that is not the best solution and that poses risk to Arkansans.⁴⁶¹

As to the governor of Iowa, he conditioned the relocation of Syrian refugees to Iowa by assuring the safety of Iowans by conducting a thorough and thoughtful review by the intelligence community, otherwise Iowa will not be a place for resettling any Syrian refugees. Similarly, North Carolina's governor, Pat McCrory, strongly refused to welcome the Syrian refugees and asked the president and the federal government to stop sending them to North Carolina until they are thoroughly satisfied with the effectiveness of the security checks on such refugees. In like manner, Bobby Jindal, Louisiana's governor, expressed a tough attitude toward relocating Syrian refugees in the United States, particularly in Louisiana. According to him, it would be better to halt the process of letting in refugees and found it quite irresponsible and disconcerting to allow such individuals who may have ties to the terrorist group called Islamic State in Iraq and Syria (ISIS) to come to the USA without the state knowledge or involvement⁴⁶². To come to the point, Republican officials, namely the governors, strongly opposed Obama's offer to allow Syrian refugees into the United States because they regarded them as a potential threat to the security and safety of citizens of their respective states in particular and all Americans in general. This leads to raising a notable question as to the extent to which governors' power may affect the process of refusing or accepting refugees to be relocated to the United States.

The organization of jurisdictions related to the process of refugees' admission had been addressed by the Refugee Act of 1980. The latter granted broad power to the U.S. President which manifests in allowing into the country refugees with well-founded fears of persecution in their homelands due to their religion, race, nationality, membership in a certain group or political opinion, especially if he determines, after appropriate consultation, that an unforeseen emergency refugee situation exists. Besides, the Act limited the ceiling of admitted refugees

⁴⁶¹ Ibid.

⁴⁶² Staff of Ballotpedia, "U.S. Governors and their Responses to Syrian Refugees."

for each fiscal year to 50,000 but granted the president the right to raise it if it is deemed necessary.⁴⁶³ On the other hand, state officials, including governors, are responsible for the resettlement of refugees; however, they can slow or block arriving refugees. In this respect, some experts in immigration and constitutional law revealed that states do not have the power that allows them to reject relocating refugees accepted by the federal government.⁴⁶⁴ In this respect, Richard Primus, a constitutional law professor at Michigan University Law School, explained that local states cannot interfere in foreign relations or get engaged in diplomatic affairs, but they can make themselves attractive or unattractive destinations for newcomers granted refugee status.

States are not supposed to engage in foreign relations or in diplomacy. States can do things that make themselves attractive or unattractive as destinations for immigrants...But [the state of Michigan] could not, for example, say, 'We disapprove of the government of Myanmar, and so we boycott Myanmar as Michigan.' That's the federal government's job, and when states have tried to do things like that, the courts have said, 'No way.'⁴⁶⁵

Likewise, another professor and expert in immigration and Constitutional law at New York University Law School, Adam Cox, revealed that states lack the power to refuse to relocate refugees or other immigrants admitted by the federal government; however, they can obstruct their resettlement within their boundaries through instructing their employees not cooperate with the resettlement program or could even freeze state-level refugee benefits or federal refugee benefits granted by the states. To make a long story short, admitting Syrian refugees into the United States became a hot debatable issue that polarized the American political landscape.

As expected, the number of admitted Syrian refugees for resettlement in the United States shrunk during the Republican administration of President Donald Trump after declaring them to be detrimental to the interests of the country. Indeed, Figure 1 reveals that only 76 Syrian refugees were admitted for resettlement in FY2018 after 6557 in FY2017 and 12587 in FY 2016. Their number increased in FY 2019 to 563 but decreased again to 481 in the next FY2020 and to 414 in FY2021. Accordingly, Trump's perspective on Syrian refugees caused a severe decline in admitted numbers.

⁴⁶³ Staff of Ballotpedia, "Admission of Refugees."

⁴⁶⁴ Kaplan, "Can Governors Legally block Syrian Refugees from Coming to their States?"

⁴⁶⁵ Ibid.

2.11.8 Banning the Entry of Refugees

Donald Trump's radical viewpoint was not limited to only Syrian refugees, but it concerned almost all refugees regardless of their countries of origin. This is what manifested in EO-1 when he declared that admitting over 50,000 refugees in FY2017 would be detrimental to America's interests; therefore, he suspended their entry until their entry complies with the interests of the country;⁴⁶⁶ accordingly, admitting refugees into the USA is expected to decline during his presidency. This is also another point that highlights differences in immigration policy under the administration of Presidents Barack Obama and Donald Trump. Effectively, data displayed in Appendix 1 proves that Obama's administration admitted more refugees compared to the Trump administration. In more detail, Obama's administration admitted 557,467 refugees between FY 2009 and FY 2016. In addition, the highest number of refugees was received in FY 2016 which is 84,994. However, this number shrunk to 53,716 once Donald Trump took office in 2017. Furthermore, the total number of refugees under Trump's administration sharply declined to 118,063, which represents only 21.17% of the 557,467. This decline of 78.82% in refugee admission came as the embodiment of Trump's restrictive measures aiming at reducing the number of admitted refugees into the United States due to security concerns as well as giving much time to review the vetting process.

Moreover, the least annual ceiling number since FY 1975 was scored in FY 2020 (see Appendix 1) where 18,000 refugees were theoretically allowed to come into the United States, yet only 11,814 were admitted. This reflects the big change in American immigration policy and how tough Trump's administration was on immigrants and refugees. Most important, it mirrors the difference between the perspectives of President Barack Obama and Donald Trump. With regard to Barack Obama, he delivered a speech on September 20, 2016, where he announced that, in FY 2017, "the United States will welcome 110,000 refugees from around the world which is nearly a 60% increase over 2015", said President Obama.⁴⁶⁷ Raising the number of refugees along with toughening the screening procedures, stems from his belief that refugees can start a new life in the United States and can make America stronger.

In recent years, in the United States, we've worked to put in intensive screening and security checks, so we can welcome refugees and ensure our security -- in fact, refugees are subject to more rigorous screening than the average tourist. We've seen

⁴⁶⁶ Trump, "Executive Order 13769-Protecting the Nation from Foreign Terrorist Entry Into the United States."

⁴⁶⁷ The White House, "Remarks by President Obama at Leaders Summit on Refugees," Accessed on July 9, 2022, <https://obamawhitehouse.archives.gov/the-press-office/2016/09/20/remarks-president-obama-leaders-summit-refugees>

in America, hardworking, patriotic refugees serve in our military, and start new businesses and help revitalize communities. I believe refugees can make us stronger.⁴⁶⁸

Before the Leaders' Summit on Refugees in the United Nations, in New York, on September 20, 2016, President Obama expounded on the big issue of refugees obsessing the entire world. He maintained that most refugees are children and women who often flee war and terrorism. They are families who want to enjoy a safe life, work, be good citizens, and contribute to the development of their country; therefore, he did not regard them as a security threat. Instead, he considered that the real challenge for the international community is how to take care of the millions of refugees around the world who became a real test to humanity, "whether we give in to suspicion and fear and build walls, or whether we see ourselves in another"⁴⁶⁹. Moreover, he tried to sensitize the leaders of countries to the delicacy of the crisis of refugees saying that those tortured girls could be our daughters and that boy (Aylan Kurdi) on the beach could be our son or our grandson. Therefore, closing the door in front of those families is nothing short of a betrayal of the deepest values of the entire humanity and a denial of the nation's heritage, namely the heritage of the United States that is built by refugees and immigrants. Therefore, the first step in solving the crisis of refugees is to acknowledge that refugees themselves represent a symptom of the international community's failure.

President Obama moved to prescribe durable solutions to the refugee crisis. According to him, addressing this crisis, like the one in Syria, would be done by ending the conflict through a political settlement, not by using military power. Besides, greater investments in development and education are necessary to avoid such conflicts since their lack would lead to instability. Also, establishing justice and equality all over the world is a necessity to guarantee human rights for all individuals on the globe. These ideas and perspectives of President Barack Obama portrayed the difference in viewpoints towards immigrants and refugees between him and Donald Trump in particular, and between the Democratic and Republican parties in general. Accordingly, Obama offered to welcome at least 10,000 Syrian refugees in FY 2016 and 110,000 refugees in FY 2017 distributed as follows: 35,000 from Africa, 12,000 from East Asia, 4,000 from Europe and Central Asia, 5,000 from Latin America and the Caribbean, 40,000 from Near East and South Asia, and 14,000 for unallocated reserve.⁴⁷⁰ However, President Donald

⁴⁶⁸ The White House, "Remarks by President Obama at Leaders Summit on Refugees."

⁴⁶⁹ Ibid.

⁴⁷⁰ The White House, "Presidential Determination—Refugee Admission for Fiscal Year 2017," Accessed on July 9, 2022, <https://obamawhitehouse.archives.gov/the-press-office/2016/09/28/presidential-determination-refugee-admissions-fiscal-year-2017>

Trump did not agree with this policy and reduced the number of refugees once he took office for the aforesaid reasons.

2.11.9 State and Local Jurisdictions Involvement in the Resettlement Process

Subsection(g) of the EO 13769 provided that State and local jurisdictions are granted a significant role in relocating the admitted refugees to their respective states. In this respect, the Secretary of Homeland Security reviews the existing laws to determine, to the permitted extent, state and local jurisdictions may have greater involvement in the process of determining places within their boundaries in which admitted refugees would be resettled. Besides, he shall present a proposal regarding the lawful promotion of such involvement.

2.11.10 Terrorism-Related Grounds of Inadmissibility

The Secretary of Homeland Security, in consultation with the Attorney General, will consider repealing the exercise of authority, under INA 212 (d)(3)(b), that permits foreign nationals to come into the United States though they are declared inadmissible due to their ties with terrorism. In actual fact, the INA restricts the admission of refugees already engaged in terrorist acts or involved in terrorist activities such as having been a member of a social, political, or any other group that upholds terrorist activities or provides logistic support to terrorists. These bans had been greatly extended under the US PATRIOT ACT as well as the REAL ID Act which resulted in a delay or a refusal of thousands of genuine asylum seekers and refugees' applications.⁴⁷¹ Consequently, the authority of the Department of Homeland Security (DHS) to issue exemptions was expanded by Congress in 2007. Thenceforth, the DHS issues exemptions with a designation in the Federal Register or with policy guidance related to specific cases that would otherwise fall under the grounds.

2.11.11 Visa Issuance Proceedings

In its eighth section, the EO 13769 immediately suspends the State Department's Visa Interview Waiver Program (IWP) to assure consistency with section 222 of the INA, 8 U.S.C. 1202, which requires that all nationals seeking a nonimmigrant visa will be personally interviewed, will benefit from specific statutory exceptions. Furthermore, the Secretary of State shall expand the Consular Fellows Program in order to accommodate the proliferated consular

⁴⁷¹ Sarah Pierce and Doris Meissner, *Trump Executive Order on Refugees and Travel Ban: A brief Review* (Washington, DC: Migration Policy Institute, 2017), 4.

interviews for visas. As a matter of fact, the implementation of IWP, which is based on a two-year pilot program in 2012 and became permanent in 2014, was designed to waive interviews for low-risk travelers already vetted by the U.S. government and mostly have received a U.S. visa.

In order to maintain reciprocity in treating foreign nationals in the same way American nationals are treated by other countries while issuing their visas, the Secretary of State will adjust the visa validity period, fee schedule, or other treatment to match the treatment of American nationals mistreated by a foreign country.⁴⁷² In other words, the State Department ought to regularly adjust the visa validity period as well as the visa issuance fees so as to meet the requirements of the reciprocity principle.

2.11.12 Transparency and Data Collection

For requirements of transparency with American citizens and effective implementation of the policies and practices that serve Americans' national interest, a new reporting system for regular reports on charges, convictions, and similar information of foreign-born individuals, is required. This is because the reporting system used prior to Trump's presidency is the FBI's program called Uniform Crime Reporting (UCR).⁴⁷³ The latter was effective since 1929 and comprises thousands of "states, local, territorial, and tribal agencies that annually report on the violent and property crime offenses"⁴⁷⁴; however, it does not comprise information pertaining to criminal charges. Therefore, EO 13769 established a new system within DHS, that works in parallel with UCR, to report on terrorism convictions, charges, and acts. Accordingly, every six months, the DHS ought to regularly and publicly report information on the following:

- The number of foreign nationals in the USA who have been charged or convicted of terrorism-related offenses while in the United States.
- The number of foreign nationals removed from the United States due to their terrorism-related activity, affiliation, material support, or any other security reason.
- The number of foreign nationals in the USA who have been radicalized following their entry into the United States and get involved in terrorism-related activities or acts, or provided material support to terrorism-related organizations in countries that pose a genuine threat to the United States.

⁴⁷² Trump, "Executive Order 13769."

⁴⁷³ Sarah Pierce and Doris Meissner, *Trump Executive Order on Refugees and Travel Ban*, 5.

⁴⁷⁴ *Ibid.*, 5.

- The number and type of acts of gender-based violence against women, including honor killing, in the USA by foreign nationals.

Also, the DHS ought to report on any information pertaining to public security and safety, including information about the immigration status of foreign nationals charged with major offenses, as determined by the Secretary of Homeland Security and the Attorney General.

To sum up, President Trump signed EO13769 on January 27, 2017, which brought stiff measures to implement his promises of reviewing the American Immigration policy. To this end, the EO suspended for 120 days the U.S. Refugee Admission Program on account of reviewing it. In addition, the EO definitely banned the admission of Syrian refugees due to suspecting them of being dangerous to the safety of Americans and U.S. national security. Furthermore, the EO lowered the ceiling number for refugee admission to 50,000 for FY 2017 against a limit of 110,000 set by former president, Barack Obama. Additionally, the admission of refugees prioritized the religious minorities encountering persecution in their countries of origin, such as Christians in Syria.⁴⁷⁵ Last but not least, exceptions from these measures would be made on a case-by-case basis. So, given these new tough measures brought by Trump's EO 13769, what would be the reactions of the concerned individuals inside and outside America? Also, what would be the reaction of the American political class as well as the civil rights activists?

To conclude, Donald Trump became the 45th American President following his victory in the 2016 presidential elections. He run for presidency relying on his controversial programs, namely his immigration plan, that captivated the attention of Americans, the political class, and the media. This is because of the radical change his immigration plan would bring to American immigration policy. Trump promised to root out immigrants illegally residing in the United States, defending the interests of the forgotten people by protecting their jobs, putting in place a perfect vetting system to check the eligibility of potential immigrants to get American visas, increasing ICE agents, constructing the border wall along the country's southwest border, creating a deportation task force, and ending Obama-era immigration programs which he regarded as being behind increasing criminal records. These points, among others, heated American debate about the future of immigrants in the United States, especially given the fact that the United States was a country that welcomed immigrants for centuries and never closed

⁴⁷⁵ BBC NEWS, "President Trump: Persecuted Christians Refugee to Get Priority," Accessed on July 18, 2022, <https://www.bbc.co.uk/news/av/world-us-canada-38778322>

its doors in front of them. Some criticized Trump's immigration policy on the ground that it goes against one of the nation's values and commitments, welcoming immigrants and dreamers because it is their dreamland. Among the main points of his immigration plan that caused him a lot of criticism consists in his call for a complete shutdown of Muslim immigrants entering the United States of America implemented through the Muslim Ban. Therefore, Chapter 3 sheds light on the Muslim Ban and different reactions to it.

Chapter 3: Trump's Muslim Travel Ban

Once in office, President Donald Trump moved immediately to fulfill the promises he made to his voters. In effect, following his inauguration on the 20th of January, 2017, President Donald Trump worked very hard to materialize his electoral program, namely his immigration policy. This manifested in the series of executive orders, famously known as the Travel Ban, aiming at banning the influx of immigrants and non-immigrants from a certain number of Muslim-majority countries. This resulted in an uptick in the anti-Muslim sentiments, or rather Islamophobia, that already pervaded the United States which increased the sufferance of American Muslim citizens who have ties and relatives in the countries concerned by the Travel Ban. However, due to its controversial nature, the executive orders related to the Muslim Ban were met with a hostile reception from the U.S. lower courts on the ground that the Muslim Ban violates the provisions of the First Amendment to the U.S. Constitution. So, how did Donald Trump exploit Islamophobia in his favor? What were the countries targeted by the Muslim Ban? What were Trump's motives? And how did the Ban impact the Muslim community in the USA?

3.1 Islamophobia in the USA

Ever since its discovery by Christopher Columbus in 1492,⁴⁷⁶ the United States remained the best destination for immigrants from different parts of the world for the sake of benefiting from the available opportunities. These immigrants came to the United States with their different dreams, but also with their different identities, ethnicities, religions, and cultural backgrounds; they joined the Amerindians in populating the country and began pursuing their new lives in the new country. Over time, this created a new society which is a mixture of different communities with diverse cultural backgrounds. This resulted in the need for creating a harmonious society that tolerates cultural, ethnic, and religious diversity so as to facilitate the assimilation of all immigrants of the various communities and put them on the right pathway to prosper and contribute well to the development of the United States in all fields, as declared by former U.S. president, Lyndon B. Johnson, who maintained the following:

Our beautiful America was built by a nation of strangers. From a hundred different places or more that have poured forth into an empty land, joining and blending in one mighty and irresistible tide. The land had flourished because it was fed from so many sources, because it was nourished by so many cultures and traditions and people.⁴⁷⁷

Lyndon Johnson's acknowledgment that immigrants had massively contributed to the construction and development of the United States reflects their positive role in making today's America a strong and great nation. So, immigrants, including Muslims, have never been an absolute burden on the nation's shoulders; instead, they participated significantly in developing the country in different domains.

However, the Muslim community had encountered anti-Muslim feelings that permeated the entirety of American society, namely following the 9/11 attacks on the twin towers of New York. These terrible attacks conducted by a group of terrorists who belonged to the then-famous terrorist organization, called *al-Qaeda*,⁴⁷⁸ led by the Saudi Arabian multimillionaire, Osama

⁴⁷⁶ Tim McNeese, *The New World: Prehistory -1542* (The United States of America: Chelsea House, 2010), 96.

⁴⁷⁷ Lyndon Johnson, "Remarks on Signing the Immigration Act of 1965," Learning for Justice, Accessed January 24, 2022, <https://www.learningforjustice.org/classroom-resources/texts/remarks-on-signing-the-immigration-act-of-1965>

⁴⁷⁸ Al-Qaeda is a Sunni pan-Islamist militant organization founded by Ousama Bin Laden in lated 1980s. It is led by Salafi jihadists who self-identify as a vanguard spearheading a global Islamist revolution to unite the Muslim world under a supra-national Islamic state known as the Caliphate. The latter was established in late 1980s for the sake of providing logistic support to Muslim fighters in Afghanistan against the Soviet Union. Thereafter, this group developed into a formal terrorist organization that undertook several terrorist attacks in many countries around the globe, including the famous and terrible 9/11 attacks on the Twin Towers in New York and the Pentagon. Therefore, the United Nations Security Council, the NATO, and the European Union in addition to many other countries, all designated it as a terrorist group.

Bin Laden⁴⁷⁹ (March 10, 1957–May 2, 2011), triggered a wave of rancor that swept the whole country from coast to coast. In effect, having been terrified by the horrors of the attacks, Americans became more aggressive towards the Muslim community in the United States, and Muslims around the world were stereotyped as being the first enemy of America.

By the time of the 9/11 attacks, few Americans knew about the terrorist organization, *al-Qaeda*, and its leader Osama Bin Laden. Therefore, this event pushed Americans to raise many questions regarding the motives and aims of the terrorists behind attacking their country. Perhaps, the famous question that most Americans had raised was “Why do they hate us?”⁴⁸⁰ Many had tried to provide an answer to that question, including the then U.S. President George Walker Bush. The latter, addressed the joint session of Congress on the 20th of September, 2001, in a long speech devoted to presenting explanations to Americans about the attacks, the terrorists behind them, their motives and doctrine, and the retaliation of the White House. President Bush considered that the terrorists’ chief motive behind their attacks on the twin towers was their hatred of American democracy because Americans can elect their leaders democratically, whereas people in Muslim countries cannot elect their leaders because they are self-appointed. Besides, according to George W. Bush, the terrorists hate Americans for their freedom of religion and speech, as well as their rights to vote, assemble, and disagree with each other which does not exist in their countries.

They hate what we see right here in this chamber — a democratically elected government. Their leaders are self-appointed. They hate our freedom — our freedom of religion, our freedom of speech, our freedom to vote and assemble and disagree with each other.⁴⁸¹

This declaration seems to reflect a deep clash of civilizations between the Western world and Islamic nations, but President Bush rectified maintaining that Muslims around the world are not the enemy of Americans who respect Islam which is practiced in the USA by millions of Americans, and by millions in other countries that are friends of the United States. Rather, George Bush considered the radical network of terrorists along with all governments throughout the globe that support and fund them to be the real enemy of the Americans. Bush also tried to

⁴⁷⁹ Osama bin Mohammed bin Awad bin Laden is was a Saudi Arabian-born militant and founder of the terrorist organization Al-Qaeda Ousama Bin Laden became the spiritual and General leader of Al-Qaeda from August 11, 1998 to May 2, 2011. After determining his secret location, he was assassinated by the U.S Special Operations Forces at his compound in Abbotabad, Pakistan.

⁴⁸⁰ Jeffrey Kaplan, “Islamophobia in America? September 11 and Islamophobic Hate Crime,” *Terrorism and Political Violence* 18, no. 1(2006): 1-33. doi: 10.1080/095465500383209, 1.

⁴⁸¹ John W. Dietrich, *The George W. Bush Foreign Policy Reader: Presidential Speeches with Commentary* (New York, NY: Routledge, 2005), 52.

acquit Islam from the accusation that it is a violent religion saying that Islam's teachings are good and peaceful,⁴⁸² but what the terrorists are doing is just blaspheming Allah since they are committing crimes and evil in His name. More importantly, President George W. Bush went further in drawing a dark picture of terrorists by depicting them to be extremists and barbarians who seek to kill people regardless of their age, religion, and gender, which made them the enemy of the entire humanity as well as the civil and modern life.

The terrorists practice a fringe form of Islamic extremism that has been rejected by Muslim scholars and the vast majority of Muslim clerics; a fringe movement that perverts the peaceful teachings of Islam. The terrorists' directive commands them to kill Christians and Jews, to kill all Americans and make no distinctions between military and civilians, including women and children.⁴⁸³

Besides, in the political sphere, terrorists want to overthrow the existing governments in many Muslim countries such as Egypt, Saudi Arabia, and Jordan.⁴⁸⁴ They do not acknowledge religious tolerance; therefore, they strive to “drive Jews and Christians out of vast regions of Asia and Africa”.⁴⁸⁵ Such a declaration from the leader of the greatest country in the world reshaped the attitude of the whole world regarding Islam and Muslims and led to misconceptions about them. As a result, the world had completely changed following the 9/11 attacks which represented a rupture in the world's history where Islamophobia permeated all continents due to the newly undertaken war on terror led by America and its allies.

Though President George Bush acknowledged that Islam is a good and peaceful religion, the Muslim community started encountering hard times in the United States. They became the subject of deep hatred and backlash famously known as Islamophobia. In fact, having been massively impacted by the horrors of the attacks that caused the death of almost 3,000⁴⁸⁶ Americans along with destroying the twin towers of New York which symbolized the greatness of the United States, Americans started regarding them as a potential threat to their lives and lifestyle; therefore, they began exposing their hatred to the Muslim community in their country. In other words, Muslim Americans became under the pressure of a concentrated wave of hatred that swept America, thereby causing them a lot of difficulties and making their life in the United States so stressful.

⁴⁸² John W. Dietrich, *The George W. Bush Foreign Policy Reader: Presidential Speeches with Commentary*, 52.

⁴⁸³ *Ibid.*, 51.

⁴⁸⁴ *Ibid.*, 52.

⁴⁸⁵ *Ibid.*, 52.

⁴⁸⁶ David Holloway, *9/11 and the War on Terror* (Great Britain: Edinburgh University Press, 2008), p. 1.

In the aftermath of the 9/11 terror strikes on the Twin Towers of New York City and the Pentagon, the presence of Muslims in the United States has increasingly raised apprehensions among the American public. From several vantage points, concerns about the threat of terrorism have overshadowed many other priorities and sometimes caused judgments to be clouded. Tempers have flared, resentments have been aroused, and hate crimes have been perpetrated against individuals suspected of being linked—sometimes in the most tenuous of ways—to terrorism. Often women have been the victims of prejudice and hostility. Some Americans are deeply persuaded that Muslims are guilty not only of violent behavior but also of treating women as inferior to men.⁴⁸⁷

Statistically speaking, the number of Muslim immigrants in America was estimated to be 6,000,000 in 2010⁴⁸⁸. This number indicates that Muslims in the USA were a minority. This latter suffered a lot following the 9/11 incidents due to the violation of its civil and economic rights as well as the social discrimination caused by the distorted picture of Islam and Muslims in the American public mind that characterized the political landscape along with the mass media. Many polls had been conducted in the United States between 2001 and 2009 that reflected the distorted conception of Islam among Americans. For instance, a 2003 Pew Research Center poll showed that around 45% of Americans believe that Islam is the religion that spurs violence, more than any other religion, amongst its believers.⁴⁸⁹ Also, another survey had been conducted in 2009 revealed that 36% of Americans could not recall the basic facts related to Islam.⁴⁹⁰ This misunderstanding and distorted perception of Islam led Oklahoma voters in the 2010 elections to vote in favor of banning Sharia from being used in their courts due to their fear of Islam and their misconception about it. Additionally, the fear of Islam was manifested in the efforts and attempts by many Americans to obstruct the building of mosques and Islamic community centers throughout American territory.⁴⁹¹

The distorted perception of Islam was imputed in large part to the horrific incidents and scenes that accompanied the 9/11 terrorist attacks along with the stereotypes made by the American mass media. A stereotype is a shallow idea and perception one may have regarding a certain person or group of individuals from the same ethnic or religious group.⁴⁹² As a matter of fact, the mass media managed to infuse two kinds of stereotypes concerning Muslim-Arab: terrorist males and veiled and oppressed women.

⁴⁸⁷ Yvonne Yazbeck Haddad, Jane I Smith and Kathleen M. Moore, *Muslim Women in America: The Challenge of Islamic Today* (The United States of America: Oxford University Press, 2006), v.

⁴⁸⁸ Ashley Moore, "American Muslim Minorities: The New Human Right Struggle," *Human Rights and Human Welfare*, 91.

⁴⁸⁹ Ibid.

⁴⁹⁰ Ibid.

⁴⁹¹ Saeed A. Khan, "Sharia Law, Islamophobia and the U.S. Constitution: New Tectonic Plates of the Culture Wars," *University of Maryland Law Journal of Race, Religion, Gender and Class* 12, no. 1 (2012): 124.

⁴⁹² Bryant Sandoval, "Impacts of Prejudice in the Media" (Senior Thesis, AP Literature and Composition, William and Carol Ouchi High School, 2016), 1.

Overall, the mass media portrayed Muslim men as being Arabs though the latter constitute only 20% of the worldwide Muslim population. In addition, Muslim men are generally depicted in traditional Arab dress. With regard to Muslim women, they are frequently stereotyped as being oppressed by the Muslim society and thus generally portrayed as putting on a veil, burqa, or niqab.⁴⁹³ Such distorting stereotypes contributed significantly to conveying a disfigured idea of Islam and the important position Muslim women enjoy within their Muslim societies; therefore, such stereotypes were deceiving and completely far away from reflecting the reality of Islam and Muslims that does exist on the ground.

Muslims in the United States showed a lot of differences regarding their home countries, their political beliefs, and their ethnic and racial makeup. Statistics revealed that the American Muslim community comprises roughly eighty nationalities and different cultural backgrounds.⁴⁹⁴ However, according to a study conducted by the Council on American-Islamic Relations (CAIR), three big ethnicities form the absolute majority of Muslims in the United States: Arabs with 20%, African-Americans with 30%, and South Asians with 33%.⁴⁹⁵ The rest of the Muslim ethnicities include immigrants from Africa, Bosnia, and Iran. So, it is quite clear that Arabs represent a minority within the minority of American Muslim Community and thus all the aforementioned stereotypes propagated by the media did not reflect its pluralistic feature.

The misconception regarding Islam and its peaceful teachings deterred Americans from perceiving the bright image of Islam. Instead, they regarded Muslims as violent people and construed Islam as being a religion that preaches about violence and destruction, without taking into consideration that the 9/11 attacks had been undertaken by hijackers who were basically terrorists and extremists. Unfortunately, instead of digging into the reality and the broad dimensions of Islam and Prophet Mohammed's message to all people around the world, most Americans relied on the horrific and shocking scenes of the 9/11 incidents to form their conclusion about Islam and associate it with violence and destruction. Therefore, in his attempt to correct this misconception to his fellow Americans, Armstrong wrote that the core and essence of the prophet Mohammed's message was to put an end to the kind of mass slaughter the Americans had witnessed in New York and Washington, DC.

When the Prophet Muhammad brought the inspired scripture known as the Koran to the Arabs in the early 7th century A.D., a major part of his mission was devoted precisely to bringing an end to the kind of mass slaughter we witnessed in New York

⁴⁹³ Ashley Moore, "American Muslim Minorities: The New Human Right Struggle", 91.

⁴⁹⁴ *Ibid.*, 91.

⁴⁹⁵ *Ibid.*, 92.

City and Washington. Pre-Islamic Arabia was caught up in a vicious cycle of warfare, in which tribe fought tribe in a pattern of vendetta and counter-vendetta. Muhammad himself survived several assassination attempts, and the early Muslim community narrowly escaped extermination by the powerful city of Mecca.⁴⁹⁶

Armstrong elucidates that, in Coran, Muslims can only defend themselves without initiating hostilities. Islam is thus a peaceful religion as its name indicates the meaning of “surrender”, the Arabic word for “salam”. Therefore, having a disfigured conception of Islam and blaming all Muslims for the misdeeds of a few radicals is a big mistake.

Americans’ deformed attitude towards Islam and Muslims started taking effects on the ground where features of Islamophobia pervaded almost all aspects of American life. In effect, Islamophobic measures and behaviors had been translated into institutional, economic, and social prejudice. Ever since the 9/11 incidents, Muslims in the United States became under tough scrutiny and some found themselves under surveillance. This situation increased after the issuance of the USA PATRIOT Act (the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act) signed by President George W. Bush on October 26, 2001. This Act came in 342 pages and was passed to provide the American President with all required tools and powers to preserve America’s national security and conduct America’s war on terror.⁴⁹⁷ Moreover, it granted law enforcement agencies and international intelligence agencies unprecedented jurisdiction and reduced the judicial oversight that previously gave courts the right to check that these powers were not abused while executing laws. Thus, the provisions of the PATRIOT Act began paving the way to trample upon individuals’ civil rights guaranteed by the U.S. Constitution.

3.2 Terrorist Acts in the United States

The PATRIOT Act was not the first antiterrorist law in the course of American history. America had witnessed almost similar attacks during the presidency of President Bill Clinton in what is known as the Oklahoma City Federal Building Bombing. These attacks had been conducted on April 15, 1995, and resulted in devastating the Alfred P. Murrah Federal Building which comprised fifteen federal agencies. The bombing of Oklahoma City left great damage: all floors of the whole building fell down and 168 people, including 19 children, were killed in addition to 800 injured.⁴⁹⁸ Right after the incident, the media and public attention were directed

⁴⁹⁶ Keren Armstrong, “The True, Peaceful Face of Islam,” Islamicity, Updated Dec. 2, 2021, Accessed on February 20, 2023, <https://www.islamicity.org/3939/the-true-peaceful-face-of-islam/>

⁴⁹⁷ Benson, *U.X.L Encyclopedia*, 1618.

⁴⁹⁸ *Ibid.*, 1179.

towards the possible suspects, namely Arabs, but investigations soon revealed names of the real terrorists who were American citizens: Timothy McVeigh (1968—2001) and Terry Lynn Nicolas (1955—).⁴⁹⁹ However, as Muslims are usually associated with terrorism, a lot of anti-Muslim incidents were undertaken by Americans, during the two days before discovering the real criminals. In this respect, the CAIR counted more than 200 incidents of assault, harassment, and property damage.⁵⁰⁰ For instance, a mosque in Richardson, Texas, received ten threatening phone calls.⁵⁰¹ But as reports on the rancor against Muslims started surfacing, President Bill Clinton called on Americans to avoid prejudgments or blaming any religion for the attacks. This confirms that Americans associated Muslims with violence and terrorism, thereby pointing to them immediately following any terrorist act.

3.3 Increasing Individuals' Surveillance

Given the great damage and the significant number of casualties caused by the Oklahoma City attacks, the need for a specific piece of legislation to address the matter had risen. Thus, one year later, the Antiterrorism and Effective Death Penalty Act (AEDPA) was signed by President Bill Clinton on April 24, 1996. This law had been passed to help law enforcement detect and prosecute terrorists. But the Act did not live up to the expectations of Bill Clinton who wanted to grant law enforcement more powers to use wiretaps and access to personal records in matters related to terrorism. Clinton's wish was objected to by Congress on grounds that loosening surveillance and records rules come against the Bill of Rights. The latter in its Fourth Amendment guaranteed that law enforcement officers cannot search or arrest people without arrest or search warrants from the court. More importantly, the court has to get conclusive evidence upon which it could allow for searching or arresting individuals. Besides, the Fifth Amendment provided that no citizen can be stripped of his basic rights of life, liberty, and property without due process of law.⁵⁰² But these basic rights had been adjusted in 1978 by passing the Foreign Intelligence Surveillance Act (FISA) after discovering that FBI agents were carrying out widespread surveillance on American Citizens during the 1970s. Accordingly, FISA organized the work of foreign and domestic surveillance by separating them so that foreign surveillance can continue without restrictions whereas domestic surveillance has to be

⁴⁹⁹ Ibid.

⁵⁰⁰ Amardeep Singh, "United States: We Are not the Enemy," *Human Rights Watch* 14, no. 6 (2002): 13.

⁵⁰¹ Ibid., 13.

⁵⁰² Andrew B. Arnold, *A Pocket Guide to the US Constitution: What Every American Need to Know (2nd ed.)* (Washington, DC: George Town University Press, 2018), 105.

under the control of the courts.⁵⁰³ However, this restriction on domestic surveillance would change by the PATRIOT Act.

The passage of the PATRIOT Act came to meet the requirements of a new stage characterized by a big challenge to the injured greatness of the United States. The 9/11 attacks put the reputation of the United States as the leader of the World and the undefeatable nation at stake. Therefore, the attacks on the twin towers of New York and the Pentagon in Washington, DC, were unprecedented as they occurred on American soil for the first time after WWII. This made the challenge so specific that it needs specific measures, which consisted in the PATRIOT Act. In this respect, President George W. Bush maintained that the PATRIOT Act would help law enforcement officers to discover and stop terrorists before committing their crimes.⁵⁰⁴ It, therefore, provided domestic law enforcement as well as intelligence agencies with the requisite powers to find out and arrest terrorists before they struck.

However, these powers came at the expense of individuals' privacy and civil liberties guaranteed by the Bill of Rights. As a result, law enforcement officers are allowed to search people without being obliged to show that a crime had been committed. In fact, it was sufficient for agents to tell a FISA judge that the search might be beneficial in antiterrorist efforts to get permission to watch and demand "an individual's records from banks, brokerages, libraries, travel agencies, video stores, telephone services, doctors, and places of worship without the person's knowledge".⁵⁰⁵ Also, searching individuals' homes or businesses could be done without showing warrants from the courts. Most important, the Sneak and Peak searches wherein the person being searched is unaware of the search had been authorized, too; the FISA judges are consulted in such cases but have little control over the operations. Besides, the PATRIOT Act authorized law enforcement officers to surveil a person's internet and telephone, thus getting information regarding communications coming into and going out of their telephone or computer.

The government may now spy on web surfing of innocent Americans, including terms entered into search engines, by merely telling a judge anywhere in the U.S. that the spying could lead to information that is 'relevant' to an ongoing criminal investigation. The person spied on does not have to be the target of the investigation. This application must be granted and the government is not obligated to report to the court or tell the person spied upon what it has done. Nation-wide roving wiretaps. FBI and CIA can

⁵⁰³ Benson, *U.X.L Encyclopedia*, 1619.

⁵⁰⁴ *Ibid.*, 1618.

⁵⁰⁵ *Ibid.*, 1620.

now go from phone to phone, computer to computer without demonstrating that each is even being used by a suspect or target of an order.⁵⁰⁶

In brief, individuals' civil liberties had been trampled on by the provisions of the PATRIOT Act that gave law enforcement agents much power in the name of fighting terror and protecting the national security of America. As a result, the Act contributed greatly to intensifying anti-feelings towards all Muslims around the globe in general, and those in America in specific.

3.4 Targeting Muslims

Islamophobia and prejudice against Muslims in America began to take effect very quickly in the aftermath of the 9/11 attacks. Attacks against Muslims proliferated and were recorded in different parts of the country. In effect, individuals with Arabic or Islamic-sounding names or with Middle Eastern look became legitimate targets for assaults by Americans who wanted to take revenge. Consequently, many innocent American Muslims were killed or attacked. For instance, a 49-year-old man, called Balbir Singh Sodhi, was shot and killed on September 15, 2002, at his gas station as he was planting flowers. His murder was due to his resemblance with Osama Bin Laden in his traditional look. Human Rights Watch was briefed by police officials that Frank Roque, Sodhi's alleged murderer, had been noticed in a local bar, just hours before committing his crime, bragging about his intention to kill the "ragheads responsible for the September, 11".⁵⁰⁷

Additionally, Frank Roque alleged that he shot into the house of an Afghani American as well as at two Lebanese gas station clerks⁵⁰⁸. Vasudev Patel, a 49-year-old Indian was also killed on the 4th of October, 2002, by another man called Mark Stroman. The latter maintained that he killed Patel due to the outrage that overwhelmed him following September, 11. More importantly, when interviewed, Stroman said that he did what he had to do as a retaliation since America is at war against terrorists: "We're at war. I did what I had to do. I did it to retaliate against those who retaliated against us".⁵⁰⁹ Stroman, in fact, did not kill Patel only, but he killed also another man called Waqar Hassan on September 15, 2001. The latter is a 46-year-old Pakistani and father of four children, was killed while he was cooking hamburgers in his grocery

⁵⁰⁶ Ahmed Nafeez Mosaddeq, *The War on Freedom: How and Why America was Attacked September 11, 2001* (United States of America: Media Messenger Books, 2002), 268.

⁵⁰⁷ Amardeep Singh, "United States: We Are not the Enemy," *Human Rights Watch* 14, no. 6 (2002): 18.

⁵⁰⁸ Ibid.

⁵⁰⁹ Ibid.

store near Dallas, Texas. As for the motives behind his murder, Hassan's family believed that he was killed due to the hatred caused by September, 11 since nothing was stolen from his store. In addition, what upholds this belief was the fact that Hassan had been subjugated to ethnic and religious slurs from his customers before his death.

Murder cases and backlash against Muslims in America proliferated after September, 11. On September 17, 2001, a 44-year-old Yemeni Arab, called Ali Almansoop, had been murdered in his house in Lincoln Park, Michigan by an American called Brent David Seever. The latter, and before shooting Almansoop, told him that he was angry about the 9/11 terrorist attacks. Almansoop tried desperately to save himself maintaining that he had nothing to do with the terrorists and their attacks; nevertheless, Seever was so determined and killed him in cold blood. A similar case took place in California on September 29, 2001; it is related to the murder of a 48-year-old Yemeni Arab and father of eight, called Abdo Ali Ahmed. Two days before killing him, Ahmed found a note on his car windshield stating, "We're going to kill all of you Arabs".⁵¹⁰ Ahmed threw the note away instead of informing the police. Following his murder, his family as well as local Muslim leaders told the press that the incident represents a hate crime; however, the police did not classify the case as a hate crime since no perpetrators were found. Another case was that of Ali W. Ali, a 66-year-old Somali Muslim who died in Minnesota on the 15th of October, 2001, just nine days after being punched in the head while standing at a bus stop. Ali's son along with the local Somali community imputed the attack to the rancor towards the Somalis caused by a front-page local newspaper article, published just two days before the 9/11 attacks, which accused the Somalis in Minnesota of having given money to a Somali terrorist group with links to Osama Bin Laden, the leader of *al-Qaeda* which was responsible for the 9/11 attacks. Ali's family viewed his murder as a hate crime, whereas both the FBI and local police remained unable to find his assailant. These are just a few examples of the hate crimes that took place in the United States as a result of the backlash and anti-Muslim feelings that swept the whole country following September, 11.

Islamophobia in the United States took other forms. Mosques as well as Muslim sacred places were also targeted by the angered Americans. In this respect, an organization called the South Asian American Leaders of Tomorrow (SAALT) reported that 104 bias incidents against mosques and worship places had been recorded during the first week after September, 11.⁵¹¹ Of

⁵¹⁰ Amardeep Singh, "United States: We Are not the Enemy," *Human Rights Watch* 14, no. 6 (2002): 19.

⁵¹¹ *Ibid.*, 19.

these 104 bias incidents, 55 were telephone threats, 24 were related to harassment of mosque worshippers outside mosques, and 22 involved property damage; moreover, Sikh gurdwaras, Arab churches, and Hindu temples were all targets for American's rancor after the 9/11 attacks.⁵¹² This resulted in decreasing the number of worshippers during the weeks that followed the 9/11 attacks where violence and threats against Muslims spiked out; therefore, many Arab and Muslim American organizations were threatened through phone calls and slanderous e-mails.

Some examples of such threatening messages were revealed by the American Arab Anti-Discrimination Committee (ADC) and reflected the dangerous backlash expressed by Americans against Muslims: "I now enjoy watching Arabs and Muslims die"; "You F***** ARABS go to hell. You will pay"; "You should start acting like Americans and not terrorists"; "MAY YOU BURN IN HELL".⁵¹³ Also, anti-Muslim feelings shifted to almost all aspects of American life which made it so difficult to Muslims to pursue their life peacefully in the country. For example, three Arab Americans were not allowed to board a Northwest Airlines plane in Riverside, California, on September 21, 2001, on grounds of annoying passengers who do not feel comfortable when traveling with Middle Eastern men.⁵¹⁴ Such examples of hatred towards Muslims in the United States were countless and mirrored their sufferance, namely the Middle Eastern people, from the post-9/11 backlash that permeated the United States of America.

3.5 Rancor toward Muslim Immigrants

The post-9/11 backlash towards Muslims took different forms: institutional, economic, and social. As aforementioned, the passage of the PATRIOT Act granted unprecedented powers to law enforcement officers at the expense of the personal freedom of citizens, all in the name of protecting America's national security from being jeopardized by terrorist threats. These new tough measures were adopted ostensibly to fight against terror; however, they in parallel contributed significantly to legitimizing the backlash in the eyes of the American public.⁵¹⁵ To toughen even more measures against Muslims in America, the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act was passed in 2003, which authorized local law

⁵¹² Ibid., 19.

⁵¹³ Anny Bakalian and Mehdi Bozorgmehr, *Backlash 9/11: Middle Eastern and Muslim Americans Respond* (The United States of America: University of California Press, 2009), 3.

⁵¹⁴ Anny Bakalian and Mehdi Bozorgmehr, *Backlash 9/11*, 3.

⁵¹⁵ Ibid, 2.

enforcement to enforce federal immigration laws. Therefore, coupled with the PATRIOT Act, the CLEAR Act led to an increase in the surveillance of Muslims who became watched in mosques, in their workplaces, on the internet, in their accounts, and even through library records. Besides, following the first anniversary of the 9/11 attacks, the Immigration and Naturalization Service (INS) amended the existing registration and fingerprinting program and became known as National Security Entry-Exit Registration System (NSEERS). This system would be applied to the immigrants already concerned with the previous registration programs, or rather nonimmigrants from the countries of Iraq, Lybia, Iran, Syria, and Sudan⁵¹⁶.

In November 2002, INS announced that only males over the age of 16 from the above countries, who are residing in America on temporary visas, are required to register with this program. However, INS added another 20 countries to the compliance list, between November 2002 and January 2003, so the total number of countries concerned with the registration program reached 25. Thus, men concerned with this program had to report to INS offices for multi-phase registration entailing questioning, photographing, and fingerprinting. Still, this program failed because the INS failed to put out clear information as regards the requirements of the program which ushered in many unnecessary deportations; in addition, the program used bad detention methods on participants.⁵¹⁷ These biased policies and measures ushered in deteriorating the relationship between the American government and the Muslim community because of its bad impact on their lives. Additionally, the Muslim community began to erode away as a result of the CLEAR and PATRIOT Acts which infused feelings of anxiety, isolation, and ostracism amongst American Muslims; consequently, this electrified atmosphere helped only in detaching the American Muslim community from the American mainstream.⁵¹⁸

3.6 Trump's Exploitation of Islamophobia

The anti-Muslim feelings towards Muslim Americans, Arabs, and Muslim immigrants remained noticeable among Americans and never faded away. In point of fact, Islamophobia remained a hot issue and one of the recurrent topics that captivated the attention of presidential candidates in American presidential campaigns. This manifested in the presidential campaign of President Donald Trump who capitalized too much on Islamophobia to raise his popularity

⁵¹⁶ Homeland Security Department, "Removal of the Registration Relating to Special Registration Process for Certain Nonimmigrants," Federal Register, Accessed January 28, 2022, <https://www.federalregister.gov/documents/2016/12/23/2016-30885/removal-of-regulations-relating-to-special-registration-process-for-certain-nonimmigrants>

⁵¹⁷ Ashley Moore, "American Muslim Minorities: The New Human Right Struggle", 92

⁵¹⁸ *Ibid.*, 92.

among his supporters. He therefore repeatedly revealed his bigotry toward Muslims and promised his voters to ban the entry of Muslims from certain Muslim countries on account of preserving America's national security.

Similarly, almost all Republican candidates showed hatred toward Muslims; still, the rancor toward Muslims shown by Donald Trump was unprecedented as he depicted them in the worst possible picture. He regarded them as a potential threat to the safety of the United States; hence, he called in December 2015 for "a total and complete shutdown of Muslims entering the U.S."⁵¹⁹ In actual fact, Donald Trump thought that Muslims are more likely than members of other religions to pose a genuine threat to the country's national security and Americans' public safety. This attitude might be figured out through his statement: "I think that Islam hates us."⁵²⁰ Accordingly, Trump developed a tough stance on Muslim immigrants and called for banning their entry to the United States maintaining "We can't allow people coming into this country who have this hatred of the United States...and of people that are not Muslim."⁵²¹ Therefore, Muslim immigrants figured in his immigration plan as a legitimate target for his administration.

3.7 The Issuance of Executive Order 13769

Effectively, right upon his inauguration on the 20th of January, 2017, President Donald Trump moved swiftly to implement his new immigration policy. The latter started to take shape, just one week after taking his seat in the oval office of the White House, with issuing his Executive Order 13769 (EO-1) under the name "Protecting the Nation from Foreign Terrorist Entry in the United States."⁵²² The latter, as its name indicates, is aimed at protecting the United States from foreign nationals intending to commit hostile and terrorist acts against Americans and the nation's best interests in general. EO-1 came to embody President Trump's belief that the United States' borders became insecure or rather porous so that terrorists managed to sneak into the country and threaten the safety of Americans. Therefore, he kept raising concerns about the danger posed by radical Islamist terrorists hailing from Muslim countries, thereby banning temporarily (for 90 days) the entry of nationals from seven Muslim-majority countries,

⁵¹⁹ Jon Herbert, Trover McCrisken, and Andrew Wroe, *The Ordinary Presidency Donald J. Trump*, (Switzerland: Palgrave MacMillan, 2019), 30.

⁵²⁰ Earl M. Maltz, "The Constitution and the Travel Ban," *Lewis and Clark Law Review* 22, no. 2 (2018): 393.

⁵²¹ Maltz, "The Constitution and the Travel Ban," 393.

⁵²² Donald J. Trump. "Executive Order 13769-Protecting the Nation From Foreign Terrorist Entry Into the United States". The American Presidency Project. January 17, 2017.
<https://www.presidency.ucsb.edu/documents/executive-order-13769-protecting-the-nation-from-foreign-terrorist-entry-into-the-united>

including Libya, Syria, Somalia, Sudan, Iraq, Iran, and Yemen.⁵²³ Besides, EO-1 suspended the entry of refugees or asylum seekers for 120 days, a period during which the U.S. Refugee Admissions Program (USRAP) would be reviewed to find out and implement the necessary additional measures that should be taken to make sure that the foreign nationals approved for refugee admission do not threaten the U.S. welfare and security.⁵²⁴

3.8 Motives for Issuing EO-1

Signed on January 27, 2017, the EO-1 was nothing short of the incarnation of Trump's call, in December 2015, for "a total and complete shutdown of Muslims entering the US".⁵²⁵ He therefore swiftly moved to fulfill this promise he raised before his supporters during his presidential campaign. Furthermore, he showed no hesitation in tackling such a sensitive issue in such a tough manner. However, to moderate and reduce the reaction of his opponents, he adduced some reasons and outlined his motives behind the issuance of the EO-1. The overall justification was the suspicion that Muslims hate Americans and thus are likely to commit terrorist acts against the country and innocent Americans, just like the horrifying 9/11 attacks on New York's twin towers and Pennsylvania, which caused the death of 3,000 Americans,⁵²⁶ along with the destruction of buildings and, more importantly, injuring America's dignity and greatness as the undefeatable country in the world.

President Trump presented several arguments to justify the issuance of EO 13769. He tried to convince his audience that his main concern as President is to protect the nation from possible terrorist attacks and acts that may endanger the safety of Americans and their national security. Therefore, foreign nationals who do not support the U.S. Constitution or bear hostile attitudes towards the United States or any of its founding principles should be banned from entering or visiting it.

Besides, the ban on Muslim nationals was not only for their radical Islamic attitudes and terrorist acts but also for preserving Americans' lifestyle from being ruined by those who cannot adapt to it. Therefore, Trump considered it very important to protect American society by banning all those who engaged in acts of bigotry or violence against women, or those who do

⁵²³ Pierce, Bolter, and Selee, *U.S. Immigration Policy Under Trump: Deep changes and Lasting Impacts*, 15.

⁵²⁴ Donald J. Trump, "Executive Order 13769-Protecting the Nation From Foreign Terrorist Entry Into the United States". d

⁵²⁵ Jon Herbert, Trover McCrisken, and Andrew Wroe, *The Ordinary Presidency Donald J. Trump*, (Switzerland: Palgrave MacMillan, 2019), 30.

⁵²⁶ Donald J. Trump. "Executive Order 13769".

not tolerate religious differences. Besides, the country should bar the entry of foreign nationals who do not comply with the American lifestyle and thus are likely to cause problems in terms of oppressing Americans of any race, gender, or even of different sexual tendencies.⁵²⁷

Another reason that pushed President Donald Trump to issue the EO-1 was to toughen the vetting measures designed to detect and bar the entry of foreign nationals with terrorist ties or those who intend to exploit the U.S. immigration laws for malicious goals. In this respect, Trump criticized the then visa-issuance process for being loose and incapable to detect the nineteen foreign nationals responsible for the 9/11 attacks. He ascribed its weakness to the then State Department policy which obstructed consular officers from properly checking the visa applications of the nineteen terrorists who caused the death of 3,000 Americans on American soil. Thereupon, this visa issuance process had been updated to detect very well the would-be terrorists but it is still incapable of stopping the terrorist acts committed by foreign nationals already admitted to the United States.

Perhaps in no instance was that more apparent than the terrorist attacks of September 11, 2001, when State Department policy prevented consular officers from properly scrutinizing the visa applications of several of the 19 foreign nationals who went on to murder nearly 3,000 Americans. And while the visa-issuance process was reviewed and amended after the September 11 attacks to better detect would-be terrorists from receiving visas, these measures did not stop attacks by foreign nationals who were admitted to the United States.⁵²⁸

Hence, the EO-1 came to review the already updated visa-issuance process and toughening, even more, its vetting measures to make it more effective in detecting and barring the entry of would-be terrorists and foreign nationals with malicious purposes. So, what are the new vetting measures introduced by Trump's administration to the visa-issuance process?

3.9 Public Reaction to EO-1

Immediately after signing it on January 27, 2017, reactions to the EO13769 were recorded inside and outside the United States. Several protests at airports against Trump's seismic move broke out almost immediately following the signing of the order. Domestically speaking, 48 hours after the introduction of the EO13769, thousands of Americans protested peacefully against it at airports and outside a Brooklyn courthouse, demonstrating their solidarity with migrants and their families. In New York, for instance, taxi drivers protested

⁵²⁷ Ibid.

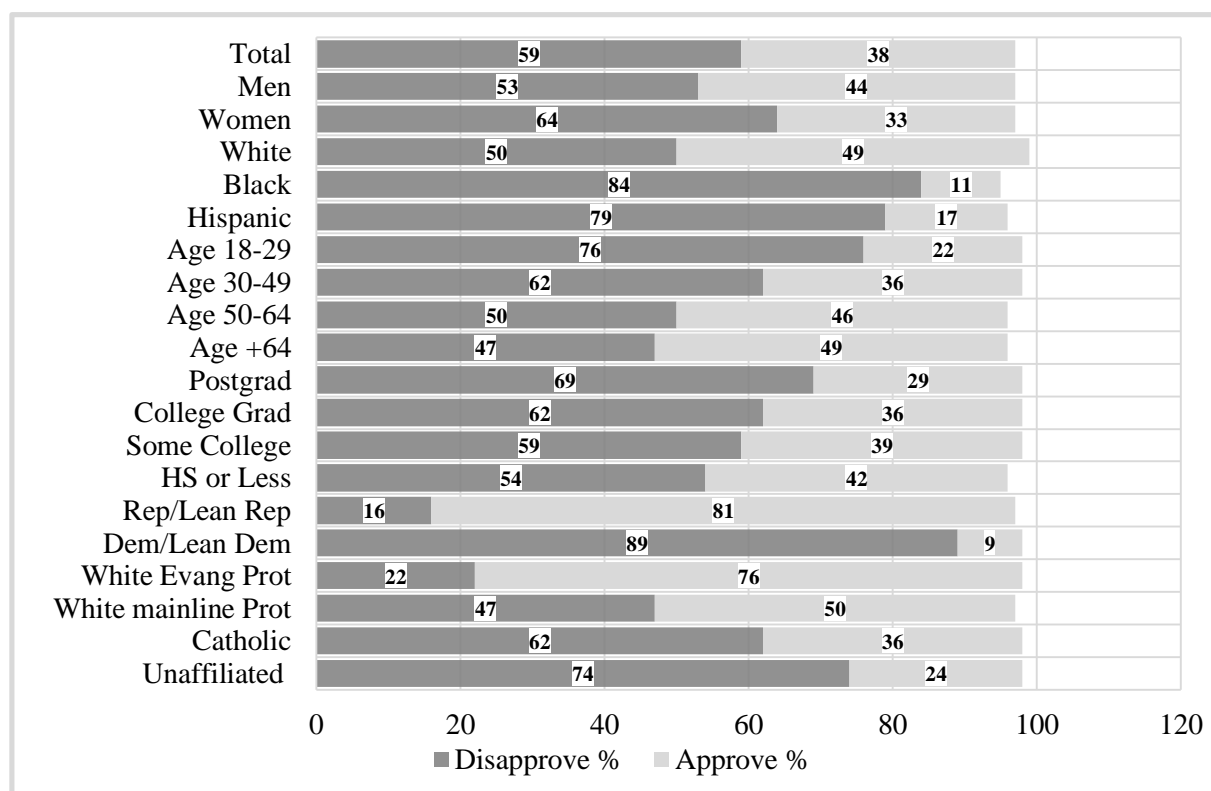
⁵²⁸ Donald J. Trump. "Executive Order 13769"

against the EO13769 by staging a work stoppage at Kennedy airports.⁵²⁹ A Pew report published on February 16, 2017, revealed that the majority of Americans were against the provisions of Trump’s executive order. The report showed that the majority of Americans estimated to 59% disapproved of the EO13769, whereas a minority of them estimated to 38% approved of Trump’s policy outlined in the executive order.⁵³⁰

3.9.1 Public Reaction According to Racial and Ethnic Background

Americans’ reaction to the EO13769 differed according to several factors, namely their racial and ethnic background. A survey was conducted by the staff of the Pew Research Center to investigate the individuals’ reactions to Trump’s EO-1. The findings of the study were displayed in Figure 2 which shows public reaction to Trump’s EO13769 according to a set of criteria: individuals’ political affiliation, religion, gender, age, intellectual level, and race.

Figure 2. Approval of executive order policy varies by race, age, education, and religion



Note: Whites and black include only those who are not Hispanics; Hispanics are of any race
Source: Survey conducted by Pew Research Center on February 7-12, 2017.

⁵²⁹ Alan Yuhas and Mazin Sidahmed, “Is this a Muslim Ban? Trump’s Executive Order Explained,” *The Guardian*, Accessed on July 18, 2022, <https://www.theguardian.com/us-news/2017/jan/28/trump-immigration-ban-syria-muslims-reaction-lawsuits>

⁵³⁰ Staff of Pew Research Center, “In First Month, Views of Trump are Already Strongly Felt, Deeply Polarized,” *Pew Research Center*. Accessed on July 18, 2022, <https://www.pewresearch.org/politics/2017/02/16/2-views-of-trumps-executive-order-on-travel-restrictions/>

Demographically speaking, the whites were divided almost equally over the EO13769. According to Figure 2, 49% of the white community approved of it whereas 51% of them were against it. However, the overwhelming majority of African Americans estimated at 84% and 79% of Hispanics were against Trump's EO13769.⁵³¹ This stance reflects the deep concern of African Americans as well as Hispanics about their future in the United States because they are considered as the two major communities that score a large number of immigrants which makes them so sensitive to such measures and policies meant to target immigrants and restrict their inflow into the country. Therefore, these communities tend to object to any bill that may threaten their residence in the USA or destabilize their life.

3.9.2 Public Reaction According to Religious Background

Religion was another factor that affected Americans' reaction to EO13769. Figure 2 shows that the majority (76%) of the white evangelical Protestants, to which President Trump belongs, approved of Trump's policy outlined in the EO13769, while 22% of them disapproved. This is not a surprise since there is a strong relationship between White evangelicals and the Republican Party. This special relationship of support dates back to the victory of the Republican Candidate, Ronald Reagan, over the then-Democratic President, Jimmy Carter. Thenceforth, all Republican presidential candidates benefited from the great support of the Christian evangelical voters, namely the white evangelicals.⁵³² Therefore, it is noteworthy to understand the significant support of white evangelicals to the Republican presidential candidates as well as the reason behind it.

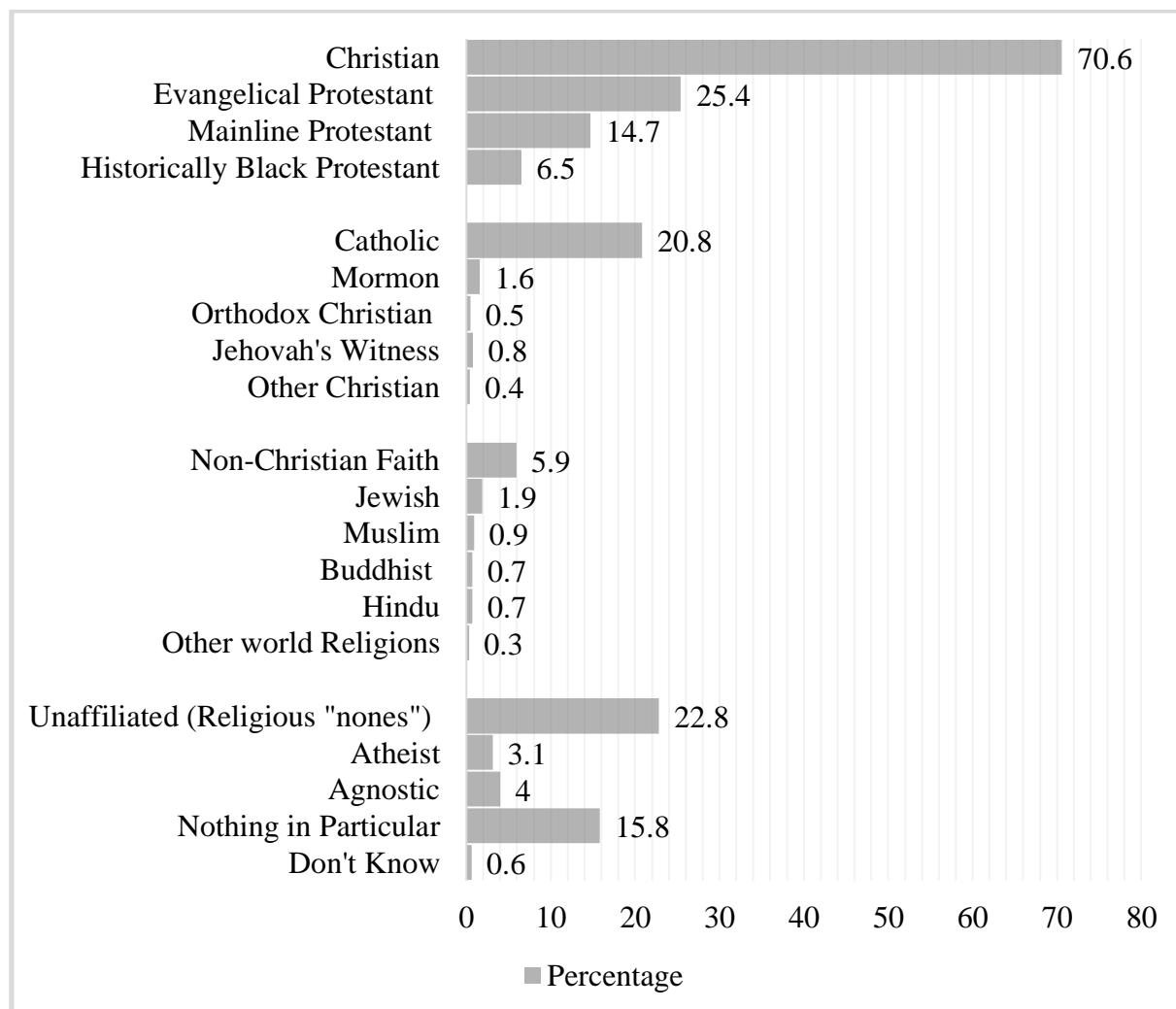
Another Pew study dubbed "Religious Landscape Study" was conducted during the period from June 4-September 30, 2014, in order to investigate the public distribution according to religion. The results of the study are displayed in Figure 3 which shows that Christians represent the largest religious group (70.6%) in the United States. These Christians are divided as follows: 25.4% for the Evangelical protestants, 14.7% for the Mainline Protestants, 6.5% for the Historically Black protestant, and 20.8% for the Catholics. Additionally, Figure 3 shows that the Evangelists represent one-fourth (25.4%) of the Christian community in the United States, which makes them the most common religious group in America, just ahead of those unaffiliated individuals. Therefore, guaranteeing their support would be so beneficial to

⁵³¹ Staff of Pew Research Center, "In First Month, Views of Trump are Already Strongly Felt."

⁵³² Jason Husser, "Why Trump is Reliant on White Evangelicals?" Brookings, Accessed on July 19, 2022, <https://www.brookings.edu/blog/fixgov/2020/04/06/why-trump-is-reliant-on-white-evangelicals/>

presidential candidates as their support paves the way toward the White House. Furthermore, knowing the political ideals and principles this religious group believes in would help politicians shape popular policies that would gain the support and approval of this large religious community. So, what is the racial and ethnic composition of the Evangelists? What are their political beliefs? And how did they benefit President Trump, namely in respect of his immigration policy and their reaction to the EO13769?

Figure 3. Religious landscape in the United States in 2014



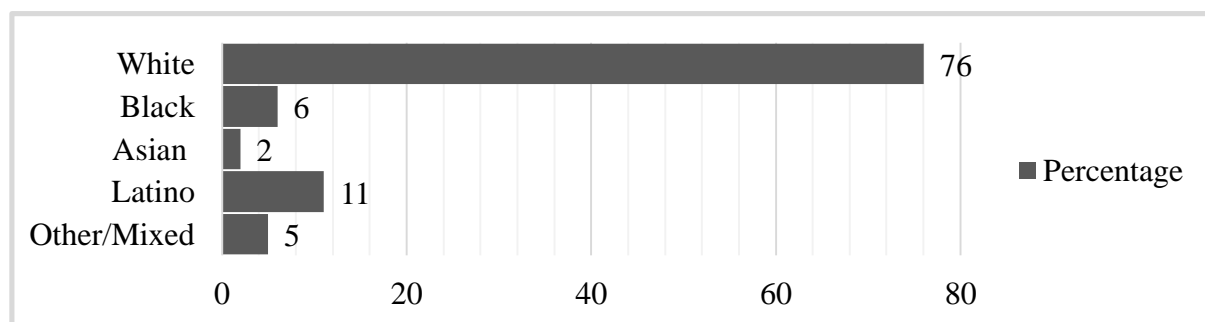
Note: The study surveyed more than 35,000 Americans from all 50 states about their religious affiliations, beliefs and practices, and social and political views.

Source: Pew Research Center, Religious Landscape Study, accessed on July 19, 2022, <https://www.pewresearch.org/religion/religious-landscape-study/#religions>

As aforementioned, the Evangelists represent the largest group within the American Christian community. This community comprises different racial and ethnic groups. Figure 4 displays the findings of a Pew Research Center study conducted to ascertain the racial and ethnic composition of the American Evangelic community.

According to Figure 4, the whites constitute the majority with 76% while the blacks represent only 6%. Also, Latinos make up 11% of them, whereas Asians make up only 2% and 5% for other individuals. Geographically speaking, around half of the evangelicals (49%) reside in the South which is home to 37% of adult Americans, almost one-fourth (22%) of them live in the Midwest which is home to 21% of Americans, 20% of them live in the West which is home to 23% of the American population, and 9% of them live in the Northeast which is home to 18% of the American adult population⁵³³. This geographical distribution reflects that the Evangelicals live everywhere across the American territory which enables them to have a significant impact on the American political landscape, namely elections. Accordingly, gaining their support would be of great importance for presidential candidates as they may play a key role in tipping the balance of elections in their favor.

Figure 4. Racial and ethnic composition among evangelical protestants



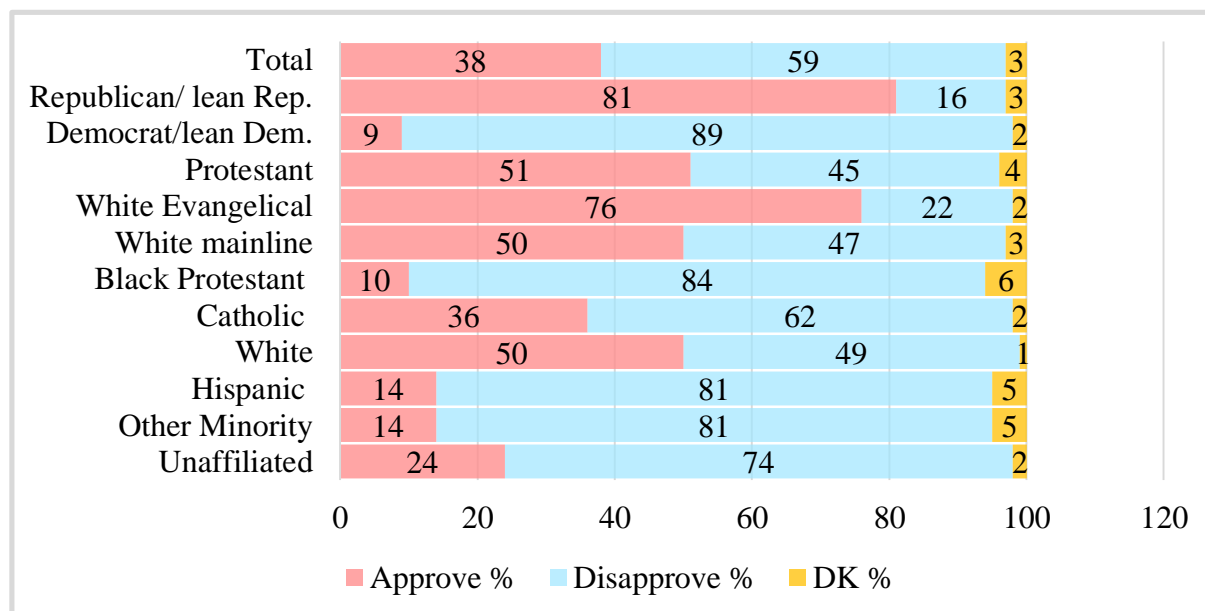
Source: Pew Research Center, Religious Landscape Study, Accessed on July 19, 2022, <https://www.pewresearch.org/religion/religious-landscape-study/religious-tradition/evangelical-protestant/#social-and-political-views>

Another 2017 Pew Research Center study investigated the individuals' political stance on Trump's EO13769 according to their religious background. The findings of the study are displayed in Figure 5 which shows that the majority of white evangelicals (76%) concurred with Trump's policy outlined in the EO13769. This support was expressed by some key figures of the white Evangelicals such as Pastor Ernie Sanders, the host of the radio show 'The Voice of Christian Resistance' in Ohio and the head of the Tea Party chapter of his area. Pastor Sanders expressed many evangelical leaders' worries about the ban on certain countries from entering the United States, maintaining that he is not against letting refugees into the country, but he is against bringing in criminals and young jihadists into the country, as President Trump justified his decision of banning their entry. Pastor Sanders went further in explaining his

⁵³³ David Masci and Gregory A. Smith, "5 facts about Evangelicals Protestants," Pew Research Center, Accessed on July 19, 2022, <https://www.pewresearch.org/fact-tank/2018/03/01/5-facts-about-u-s-evangelical-protestants/>

position on the ban, worrying that letting too many Muslims into the United States may lead to the establishment of Sharia law within American communities, which he considers to be counter to his belief in America's unique Judeo-Christian heritage.⁵³⁴

Figure 5. Most white Evangelicals approve of Trump's refugee policy, most religious 'Nones' disapprove



Note: Whites and blacks include only those who are not Hispanics; Hispanics are of any race
Source: Survey conducted by Pew Research Center on February 7-12, 2017.

Pastor Sanders' views represent a window into the Evangelicals' political tendencies. Being the largest Christian group made their political position of great importance for the politicians who strive to gain their support. In this respect, evangelicals showed great support for Trump's travel ban policy. To tell the truth, this support, or rather the relationship between Donald Trump and evangelicals baffled scholars since it combines two opposing poles, Donald Trump with his past lifestyle as Manhattan's Billionaire and conservative evangelicals who emphasize moral character as well as family values. However, other scholars viewed that the relationship between them makes good sense given the fact that evangelical culture maintained a certain balance between America's feature as a Christian country and a deeply-rooted exclusive theology that remains doubtful of the others outside their religious group. This concern was expressed by Pastor Bob Roberts, head of 3,000-member Northwood Church, an

⁵³⁴ Harry Bruinius, "Why Evangelicals are Trump's Strongest Travel-Ban Supporters," *The Christian Science Monitor*, Accessed on July 20, 2022, <https://www.csmonitor.com/USA/Politics/2017/0303/Why-Evangelicals-are-Trump-s-strongest-travel-ban-supporters>

evangelical congregation in Keller, Texas who said that “I think the biggest thing is that Evangelicals mixed their faith with the state, making a kind of religious nationalism...they see it as ‘taking back America’, as stopping the Muslims from taking over America”.⁵³⁵ This concern is the main reason that pushed evangelicals to support Trump’s travel ban policy and allowed rancor towards Muslims to pervade their fold. As a result, Islamophobic ideas and fears started finding their way among Evangelicalism.

Given its beliefs, traits, and weight among Americans, Evangelicalism became of great importance for American politicians who scrambled to gain its support. In actual fact, evangelicals who make up 25% of the electorate have long constituted the faithful base of support for the Republican Party. Donald Trump benefited from their support in the 2016 presidential election where 8 of 10 of them voted for him. Their support for his travel ban policy was quite overwhelming (76%) compared to the mainline evangelicals’ support estimated at 50% of them. However, in a distinct contrast, as displayed in Figure 5, the overwhelming majority of black protestants estimated at 84%, and 74% of unaffiliated disapproved of Trump’s executive order because they are two constituencies of the Democratic Party.⁵³⁶ As for the Catholics, most of them (62%) objected to the EO13769. However, there were big differences in opinion among the constituents of this religious group regarding the ban as displayed in Figure 5. While the whites were evenly divided in their position on the EO13769, the majority (81%) of Hispanics as well as other racial and ethnic minorities disapproved of the EO13769 owing to their great sensitivity to xenophobic measures against any community in the United States.

3.9.3 Political Class Reaction to EO13769

Trump’s EO13769 contributed to polarizing the American political landscape. As expected, the order gained the approval of the majority (81%) of the Republican Party in return for the disapproval of the majority (89%) of the Democratic Party. Democrats refused the whole policy adopted by President Trump because it went against the ideals of their party as well as the policy and legacy of former president Barack Obama whom Donald Trump had criticized sharply for his lenient policy towards refugees and immigrants. Therefore, Democratic Senators

⁵³⁵ Harry Bruinius, “Why Evangelicals are Trump’s Strongest Travel-Ban Supporters.”

⁵³⁶ Smith, Gregory A. “Most White Evangelicals Approve of Trump Travel Prohibition and Express Concern about Extremism”. Pew Research Center. Accessed on July 20, 2022. <https://www.pewresearch.org/fact-tank/2017/02/27/most-white-evangelicals-approve-of-trump-travel-prohibition-and-express-concerns-about-extremism/>

tried to rescind the order but were blocked by a Republican Senator. Democratic Senator Dianne Feinstein declared that she had 27 senators who signed the bill to rescind Trump's executive order, but the move was obstructed by the Republican Senator Tom Cotton, as the Senate's rules indicate that the objection of one Senator is sufficient to block a bill, especially given the fact that the Republicans hold a 52-48 seat majority.⁵³⁷

3.10 Legal Challenges and Evolution of Trump's Travel Ban

Trump's Muslim travel ban policy was so controversial and raised a lot of questions about its legality or rather its constitutionality. Trump argued that the Travel Ban would protect the national security of the United States, but critics responded to his argument by saying that it is illegal as it targeted Muslims which violates America's law and defiles its historical reputation as a welcoming country for immigrants.⁵³⁸ Politically speaking, 160 Democratic Representatives introduced a motion to defund the order, but their efforts went in vain as they lacked the required majority in favor of the Republicans who hold a 240-193 seat majority.⁵³⁹

Following its issuance on January 27, 2017, the EO13769 witnessed a lot of legal challenges in the American federal courts which made it so difficult to enforce it. These challenges consist mainly in the constitutionality of the order that aimed at banning the entry of foreign nationals from seven Muslim-majority countries which are Iran, Iraq, Syria, Yemen, Libya, Sudan, and Somalia. Plaintiffs and challengers of Trump's executive order claimed that it is unconstitutional as it failed to comply with the U.S. Constitution, namely the first amendment which guaranteed basic rights to all Americans. These rights consist in individuals' rights to free practice of their religion, to speak freely, to assemble for a common purpose, and to petition the government on a cause that is close to their heart. Most important, the first amendment to the U.S. Constitution stipulated that Congress shall not legislate against the establishment of religion or any of the aforesaid guaranteed rights. It literally provided that:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.⁵⁴⁰

⁵³⁷ Reuters Staff, "Democrats Set Bills Seeking to Overturn Trump Travel Ban," Reuters, Accessed on July 20, 2022, <https://www.reuters.com/article/us-usa-trump-immigration-senate-idUSKBN15E2QA>

⁵³⁸ Reuters Staff, "Democrats Set Bills Seeking to Overturn Trump Travel Ban."

⁵³⁹ Ibid.

⁵⁴⁰ Andrew B. Arnold, *A Pocket Guide to the US Constitution: What Every American Need to Know (2nd ed.)* (Washington, DC: George Town University Press, 2018), 90.

This amendment made it clear that religious freedom and tolerance is so glorified by the American founding fathers and all Americans since America's foundation. Therefore, any attempt to violate this right would go against the values upon which the country is built and thus would cause resentment of all Americans. Plaintiffs against the Muslim Ban believed that it breached individuals' religious freedom as it banned their entry to the country on account of their religion, Islam.⁵⁴¹ Indeed, 3.45 million Muslim Americans⁵⁴² were badly affected by the Muslim Ban due to just their religion, not because they committed crimes and violent acts, or breached law and order. Furthermore, the Muslim Ban entirely suspected the Muslim Community as well as whole countries of posing a serious threat to American national security and the best interests of the country, which is relatively or in large part an ill-founded argument. Making unfounded allegations and charges regarding people's beliefs, ideas, ideals, and intentions might detrimentally affect their whole lives; therefore, such dangerous charges must be based on conclusive evidence and well-founded arguments to avoid hurting innocent people, which is not the case with Trump's allegations. Consequently, the Muslim Ban is nothing short of the incarnation of religious discrimination within American Society.

Effectively, Trump's controversial order triggered a wave of resentment that swept American airports where thousands of protesters manifested against the EO13769 demanding the release of those denied entry. If truth be told, the Muslim Ban resulted in, among other things, the removal of some arriving nonimmigrants as well as the cancellation of 600,000 visas.⁵⁴³ In response to these protests, attorneys across the country camped out in airports and filed lawsuits in federal courts. On Saturday 28, 2017, the cause against the implementation of the EO13769 gained a nationwide temporary injunction when a federal judge blocked its implementation.⁵⁴⁴ This opposition obliged President Trump along with his immigration staff to introduce some changes to the original bill of EO13769, thereby issuing the second iteration of EO13769 hoping to gain public approval and overcome legal challenges.

⁵⁴¹ Sarah Pierce, Jessica Bolter, and Andrew Selee, *U.S. Immigration Policy Under Trump: Deep changes and Lasting Impacts*, (Washington, DC: Migration Policy Institute, 2018), 15.

⁵⁴² Staff of Pew Research Center, "U.S. Muslims Concerned about Their Place in Society, But Continue to Believe in the American Dream," Pew Research Center, Accessed on July 21, 2022, <https://www.pewresearch.org/religion/2017/07/26/demographic-portrait-of-muslim-americans/>

⁵⁴³ Muzaffar Chishti, Sarah Pierce, and Laura Plata, "In Upholding the Travel Ban, Supreme Court Endorses Presidential Authority While Leaving Door Open for Future Challenges," Migration Policy Institute, Accessed on July 21, 2022. <https://www.migrationpolicy.org/article/upholding-travel-ban-supreme-court-endorses-presidential-authority-while-leaving-door-open>

⁵⁴⁴ Muslim Public Affairs Council, *Joint Hearing on the Oversight of the Trump Administration's Muslim Ban* (Washington, DC: United States House of Representatives, 2019), 3.

3.10.1 Issuing Travel Ban 2.0

Given the big challenges the EO13769 (EO-1) had encountered, President Trump concluded that some changes have to be introduced to it to be able to pass the scrutiny of the Supreme Court. Therefore, on March 6, 2017, Trump issued Executive Order 13780 which represents the second version of the Muslim Ban 2.0. Designed to make it more legally defensible, the second version the Muslim Ban, also referred to as EO-2, brought a number of changes, including putting off its implementation day and exempting foreign nationals who were already authorized to travel to the United States. Besides, EO-2 removed the provision related to the definite restriction on Syrian Refugees. Further, Iraq was omitted from the list of the seven Muslim-majority countries after an agreement between the U.S. government and its Iraqi counterpart, that Iraq would accept the deportations of its nationals. Lastly, EO-2 relied on the DHS' report on terrorism to uphold the claim that issuing the ban was necessary to protect American national security.

However, despite these changes, the EO-2 also encountered a hostile reception from the lower federal courts. In this regard, district courts in the state of Hawaii and Maryland ruled against the enforcement of EO-2 all over the whole American territory, and these rulings had been approved by the U.S. Courts of Appeals for the 9th and 4th circuits respectively.⁵⁴⁵ The Supreme Court, for its part, allowed for partial application of the order regarding foreign nationals lacking a bona fide relationship with any person or entity in the United States, which reflects that the administration managed to avoid earlier legal pitfalls. Accordingly, the Trump administration was yet another time obliged to introduce further changes and improvements to be able to pass the scrutiny of the Supreme Court. So, would it work this time?

3.10.2 Issuing Travel Ban 3.0

The saga of the series of changes brought to the Travel Ban continued as President Trump introduced other changes to EO-2 in the same year, on September 24, 2017, but this time through a Presidential Proclamation, not an executive order. In effect, many changes concerning the nature of the limitations that were being imposed had been introduced to the existing bill of the ban so as to make it sound more legal. The proclamation avowed to target foreign nationals from countries that were either unwilling or unable to cooperate with the

⁵⁴⁵ Earl M. Maltz. "The Constitution and the Trump Travel Ban," *Lewis & Clark Law Review*, Forthcoming (March 23, 2018), SSRN: <https://ssrn.com/abstract=3148137> or <http://dx.doi.org/10.2139/ssrn.3148137>

United States and share the required information related to immigration matters or terrorism about their nationals wanting to travel to the USA. Accordingly, the new iteration of the ban removed restrictions on Sudanese nationals but maintained restrictions on nationals of Libya, Iran, Somalia, Syria, and Yemen. More importantly, it imposed a variety of restrictions on foreign nationals from three new countries which are Chad, North Korea, and Venezuela.⁵⁴⁶ Also, the proclamation did not stop the admission of refugees. Last but not least, the new version of the ban did not apply to lawful permanent residents, dual nationals, and visa holders on the 18th of October, 2017, the presumed date from which the ban would start taking effect.

In like manner, the third version of the travel ban permitted government officials to give applicants discretionary waivers on a case-by-case basis. Moreover, the proclamation provided that an applicant must prove that he or she does not pose any threat to the country's security and that their entry to the country serves America's national interests. Further, applicants must prove that being banned from entering the USA would cause undue hardships. Even though the proclamation had indicated that a waiver may be appropriate in certain cases, granting a waiver is not guaranteed under any circumstances.

Unsurprisingly, opponents of Travel Ban 2.0 reacted in the same way against Travel Ban 3.0 and filed legal challenges against Trump's measures and procedures regarding his immigration policy. Before the enforcement of the ban, courts issued nationwide injunctions claiming the suspension of the ban for all listed countries except Venezuela and North Korea.⁵⁴⁷ In practical terms, the district judges in Hawaii 15 and Maryland 16, who already ruled against the enforcement of the ban in its second version, were equally hostile to Trump's Proclamation and yet another time ruled against its enforcement either partially or completely.⁵⁴⁸ However, the administration appealed, and this time, the Supreme Court made a decisive ruling in favor of Trump's Proclamation when stayed the orders of the lower courts. More importantly, the Supreme Court declared that the new proclamation could be implemented while the case moves through the courts.⁵⁴⁹ In addition, on April 10, 2018, the administration removed Chad from the list of banned countries maintaining that the country —Chad— had improved its shared information on known or suspected terrorists and had taken steps to make its passports more

⁵⁴⁶ Maltz, "The Constitution and the Trump Travel Ban."

⁵⁴⁷ Pierce, Bolter, and Selee, *U.S. Immigration Policy Under Trump: Deep changes and Lasting Impacts*, 15.

⁵⁴⁸ Maltz, "The Constitution and the Trump Travel Ban."

⁵⁴⁹ Muzaffar Chishti, Sarah Pierce, and Laura Plata, "In Upholding the Travel Ban, Supreme Court Endorses Presidential Authority While Leaving Door Open for Future Challenges," Migration Policy Institute, Accessed on July 21, 2022, <https://www.migrationpolicy.org/article/upholding-travel-ban-supreme-court-endorses-presidential-authority-while-leaving-door-open>

secure. Finally, on the 26th of June, 2018, the Supreme Court likely ended the Travel Ban's one-year-and-a-half-long entanglement in American courts declaring that the Travel Ban 3.0 complies with federal law as well as the U.S. Constitution.⁵⁵⁰ In a nutshell, Trump's Travel Ban received wide criticism from civil rights activists as well as legal challenges in the U.S. court system as regards its constitutionality, especially constitutional provisions guaranteeing individuals their civil rights that were abridged by the Travel Ban. So, what were these criticisms and the legal challenges Trump's Travel Ban went through before being approved by the Supreme Court?

3.11 Constitutionality of the Travel Ban

As above-stated, upon his election to the White House, President Donald Trump along with his staff embarked on issuing a series of Executive orders, known as the Travel Ban, aiming at implementing his promise of extreme vetting and restricting the inflow of immigrants into the United States. His promise hinges on a broad vision expressed by his famous motto "a total and complete shutdown of Muslims entering the U.S."⁵⁵¹ However, the travel ban faced a lot of legal challenges in the U.S. court system as well as from civil rights activists who considered it as challenging to the rule of law, thereby pushing the president to introduce some changes to the first and second versions of the ban to make it sound more legally and guarantee its approval by the Supreme Court. These changes reflect that the early versions of the ban showed limits with respect to the protections of the U.S. Constitution in immigration law.⁵⁵² So, what are these limits that led to a one-year-and-a-half-long entanglement in American courts before being approved by the Supreme Court?

3.11.1 The Rule of Law in the United States

The phrase 'the rule of law' refers to the supremacy of law as such and the ascendancy of entities of the legal and legitimate governing system. However, it is mandatory to differentiate this phrase from the phrase 'a rule of law', which is used to indicate some particular rules such as the rule against perpetuities or the rule that 'books can be borrowed for only one week'. Moreover, the rule of law is one of the main ideals and values that characterize liberal political morality along with other values including human rights, social justice, democracy,

⁵⁵⁰ Pierce, Bolter, and Selee, *U.S. Immigration Policy Under Trump: Deep changes and Lasting Impacts*, 15.

⁵⁵¹ Jon Herbert, Trover McCrisken, and Andrew Wroe, *The Ordinary Presidency Donald J. Trump*, 30.

⁵⁵² David M. Driesen, "President Trump's Executive Order and the Rule of Law," *UMKC Law Review* 87, no. 3 (2019): 489.

and economic freedom. The variety of these ideals indicates that there are different ways according to which social and political systems could be assessed and evaluated; besides, it indicates that is not necessary that all these ideals fit together.⁵⁵³ Consequently, constitutions of developed countries around the world, including the American one, endeavor to reflect these ideals and values stressing them as pillars of their whole political, social, and economic life.

The framers of the U.S. Constitution sought to establish the rule of law rather than the rule of men. This constitution came in response to the dreams of Americans who suffered a lot under the British rule and against its arbitrary executive actions.⁵⁵⁴ Therefore, the values of democracy, democratically elected entities, the separation between the three branches of the governing system, personal freedom, and civil rights, etc. all came to lay down the foundations of a democratic political life rather than the brutal and unjust life they underwent under the British Monarchical System which brutalized Americans through its unfair policy and arbitrary executive orders.

The rule of law established in the U.S. Constitution is famous for certain widely understood features that deserve to be mentioned before evaluating Trump's executive orders to determine whether they breach the Rule of Law or not.

3.11.2 The Principle of Legislative Supremacy

The U.S. Constitution established the principle of legislative supremacy via providing for an elected Congress and granting it the power to pass a broad set of laws and control the federal budget. The framers of the U.S. Constitution gave much importance to the legislative branch and viewed it as the leading branch of the federal government. This stems from the historical fact that the Continental Congress led the American Revolution, which made it responsible in front of the American people and the thirteen American colonies. Therefore, following independence, this branch enjoyed high consideration from the framers who granted it a variety of important powers including the power to regulate interstate and international commerce, declare war, raise armies, spend money to promote the general welfare, and set rules regarding immigration and naturalization.⁵⁵⁵ The president, however, can veto any piece of legislation he considers unwise but Congress can override his veto with a two-thirds vote.⁵⁵⁶

⁵⁵³ Jeremy Waldron, "Rule of Law," Stanford Encyclopedia of Philosophy, Accessed on July 25, 2022, <https://plato.stanford.edu/entries/rule-of-law/>

⁵⁵⁴ Driesen, "President Trump's Executive Order and the Rule of Law," 490.

⁵⁵⁵ *Ibid.*, 491.

⁵⁵⁶ *Ibid.*, 491.

The U.S. Constitution provided that the executive power shall be vested in a President of the United States of America chosen together with the Vice President to hold the office during the term of four years.⁵⁵⁷ The Constitution granted the President a wide set of powers including making treaties, being the commander in chief of the U.S. Army and Navy, appointing ambassadors, other public Ministers and Consuls, judges of the Supreme Court, and filling up the vacancies that may happen during the Recess of the Senate.

He [The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments. The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.⁵⁵⁸

In addition to that, the U.S. Constitution granted the President a very sensitive task which lies in enforcing laws passed by Congress, which means that the President has to execute laws including those passed against his will. In other words, the clause “he shall take care that the laws be faithfully executed”⁵⁵⁹ requires the president to enforce and implement Congressional policies he may disagree with. The idea of faithful execution of laws refers to fidelity to the goals of laws and legislation and making the required efforts to serve them.

The U.S. Constitution placed more stress on the clause of faithfulness to laws through the presidential oath. Article II requires the President to swear to protect and defend the U.S. Constitution, including the Take Care Clause along with numerous provisions that enabled Congress to pass laws and design policies that President and his administration have to faithfully execute and implement. In other words, the swearing-in clause requires the President to implement statutes and protect all constitutional rights when issuing his executive orders.⁵⁶⁰

Before he [the President] enter on the Execution of his Office, he shall take the following Oath or Affirmation: “I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”⁵⁶¹

⁵⁵⁷ Arnold, *A Pocket Guide to the US Constitution*, 54.

⁵⁵⁸ U.S. Department of State, *About America: The Constitution of the United States of America with Explanatory Notes* (Bureau of International Information Programs, 2004), 27.

⁵⁵⁹ Arnold, *A Pocket Guide to the US Constitution*, 66.

⁵⁶⁰ Driesen, “President Trump’s Executive Order and the Rule of Law,” 491.

⁵⁶¹ Arnold, *A Pocket Guide to the US Constitution*, 60.

Similarly, all federal officials of the executive branch are required to swear to obey statutes and respect constitutional rights. This oath represents a rupture or a departure from the old British practices when officials used to swear to obey and be faithful to the crown. In doing so, the general oath of federal officials, including executive officials, reflects a conscious decision that aims at making federal officials faithful to the law and spirit of the U.S. Constitution rather than to the U.S. President.⁵⁶²

The Senators and Representatives before mentioned, and the Members of the several State Legislatures and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.⁵⁶³

In the furtherance of the idea that the executive branch has to be faithful to the “Rule of Law”, the Constitution placed limitations on the President’s powers, prohibiting him from the absolute power to behave on his own. For instance, the Constitution denies the President to appoint federal officials on his own; instead, he has the right to nominate “officers of the United States” who will take office only if the Senate approves.⁵⁶⁴ This idea is explained by the founding father, Alexander Hamilton, who maintained that “the Constitution subjects the President to the control of a branch of the legislative body” due to the fear that he will abuse his powers regarding the appointment of officials.

In the only instances in which the abuse of the executive authority was materially to be feared, the Chief Magistrate of the United States would, by that plan, be subjected to the control of a branch of the legislative body. What more could be desired by an enlightened and reasonable people?⁵⁶⁵

The Senate’s power to refuse presidential nominees will discourage the nomination of candidates who might be inclined to obey the president while the law requires them to disobey the presidential directives and behave according to the law, Hamilton explained. Accordingly, the framers of the U.S. Constitution sought to make the President an agent faithful to the policies and laws made by Congress, whereas granted him the authority to check Congressional legislation through his veto power.

⁵⁶² Driesen, “President Trump’s Executive Order and the Rule of Law,” 491.

⁵⁶³ Arnold, *A Pocket Guide to the US Constitution*, 81.

⁵⁶⁴ *Ibid.*, 492.

⁵⁶⁵ Alexander Hamilton, “The Appointing Powers Continued and other powers of the Executive Considered,” Library of Congress, Accessed on July 25, 2022, <https://guides.loc.gov/federalist-papers/text-71-80>

The idea of legislative supremacy is well implemented through the U.S. Constitution so that it ensured the stability of law over time. This could be easily noticed through the small number of amendments to the U.S. Constitution which amounted to 27 amendments during a period that exceeds two centuries and thirty years. This stability is ascribed to the Constitution which made it difficult to enact, change, or repeal a law, where a motion has to pass through the House of Representatives and the Senate, and then be presented to the President to sign to become a law. In addition, as above-stated, the President has the power to veto the bill if he disagrees with it, and Congress in its turn can override the President's veto with a two-thirds vote.

By the late 19th century and during the 20th century, the United States witnessed great economic changes and developments due to new technologies and the rise of corporations. These changes ushered in a modern complex economy that generated great development in different fields; however, it produced in parallel oppressive monopolies, drugs and unsafe food, periodic economic collapse, and environmental challenges.⁵⁶⁶ These developments raised new challenges for the existing model of legislative supremacy. In point of fact, addressing such challenges appropriately required a great deal of expertise as well as more detailed decisions which Congress cannot do on its own. Therefore, to fulfill the challenges, Congress started establishing administrative agencies by the late 19th century with the aim of making and enforcing detailed decisions about how to implement Congressional policies. This trend accelerated during the years of the Great Depression with President Franklin D. Roosevelt's New Deal and again in the 1970s due to severe environmental problems.

Delegating authority to administrative agencies is quite sensitive. In this respect, some of the statutes that delegated power to the executive branch provided detailed instructions regarding the way to exercise this authority, while others provided only vague and general policies. Nevertheless, the idea of legislative supremacy remained a paramount part of the U.S. Constitution.⁵⁶⁷ On the other hand, the executive branch actions pursuant to delegated authority remain generally under judicial review so as to vindicate the legislative supremacy principle. The Administrative Procedure Act along with many substantive statutes authorizes courts to overturn actions of the executive branch not complying with the statutes delegating authority or breaching Constitutional norms; furthermore, the courts have also reviewed the executive orders to check their

⁵⁶⁶ Driesen, "President Trump's Executive Order and the Rule of Law," 494.

⁵⁶⁷ *Ibid.*, 494.

compliance with the law ever since *Marbury v. Madison*.⁵⁶⁸ In like manner, Congressional oversight authority may also play a significant role in assuring the executive branch's acquiescence to the statutes and laws.

Despite the considerable efforts to maintain a stable rule of law, it was debilitated by the growing power of the U.S. President as well as the political polarization before electing Donald Trump to the White House. In effect, for a variety of factors, presidents became more powerful political actors with great influence on the political scene domestically and internationally. In parallel, the increasing power of the U.S. presidents and political polarization destabilized the legal administration, especially when elected presidents sought to bend discretionary decisions to match their political preferences, sometimes conflicting with the preferences incarnated by statutes passed by Congress and signed by previous presidents.⁵⁶⁹ Nonetheless, the ideal of the rule of law constrains the President through the principle of legislative supremacy and remains a paramount feature of the U.S. Constitution and the actual practice of the executive branch of the federal government.

3.11.3 The Principle of Complying with the International Law

The U.S. Constitution also incorporated international law into the rule of law. This is manifested through clause 2.2.2 which authorizes the President to negotiate and conclude treaties with foreign countries, but by and with the consent of two-thirds of the Senate. In addition, the Constitution authorized federal courts to adjudicate cases related to these treaties. On the other hand, international law generally binds government officials to the treaties signed by foreign countries and the international community. Therefore, the framers of the U.S. Constitution wanted to establish the rule of law and inculcate its practices as a substitute for the arbitrary executive authority they saw under the British monarchical system.

3.11.4 The Principle of Constitutional Rights

Another basic feature or principle upon which American Constitution is built is that of guaranteeing the basic rights for all American citizens. These rights came as a response to the demands of Americans that their Constitution has to ensure all basic rights for all citizens before

⁵⁶⁸ *Marbury v. Madison* (1803) is legal case between the then Secretary of Staes James Madison and William Marbury, a Virginia politician appointed by former President John Adams to serve as a peace justice but his commission was withheld by James Madison, the Secretary of State in the administration of newly elected President, Thomas Jefferson. This case was a landmark U.S. Supreme Court decision that established for the first time that federal courts have the power to overturn an act of Congress on the ground that it violates the US Constitution

⁵⁶⁹ *Ibid.*, 495.

ratifying the Constitution. Besides, the Constitution revealed that these basic rights are of great importance for Americans to the extent that it banned Congress from passing any law that abridges or restricts them. Thenceforth, respecting individuals' basic rights became the main characteristic of 'the rule of law' in liberal democracies across the world, despite the differences in the set of rights guaranteed by the different constitutions.

The presidential oath as well as the Take Care clause required the President to respect and defend these rights listed in the Bill of Rights, and more importantly, avoid violating them while issuing executive orders. The First Amendment, as aforesaid, denied Congress the right to pass laws with regard to the establishment of religion or its free exercise. Additionally, the Fifth Amendment to the Constitution denied the federal government the authority to deprive any person "of life, liberty, or property, without due process of law".⁵⁷⁰ This reflects the great importance the U.S. Constitution accorded to the protection of people's basic rights which is a key component of the rule of law.

3.11.5 Federalism

During the Constitutional Convention, the delegates of the twelve participating states wanted to establish a new system that gathers the thirteen states into one unified country, but at the same time gives the states a share of the political power. To this end, the U.S. Constitution provided for a new form of governing system that is nothing like the then-monarchical system like the British one nor like the then-republican system like the French one; it is federalism which is a doctrine of government under which the political power is shared between a central or national government and other subnational governments.⁵⁷¹ Federalism can be organized in different ways depending on the specificity of each people and country. As regards the American federal system, it consists of fifty state governments under one central government headquartered in Washington, DC. The U.S. Constitution determined the set of powers delegated to the federal government and those delegated to the state governments. It granted the federal government broad but limited powers, where the Tenth Amendment protected and preserved states' rights when stating "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the

⁵⁷⁰ Arnold, *A Pocket Guide to the US Constitution*, 105.

⁵⁷¹ Benson, *U.X.L Encyclopedia*, 542.

people”.⁵⁷² Thus, federalism in the United States represents an essential feature of the rule of law.

3.12 Trump’s EOs Challenges to the Constitution

As aforesaid, following his accession to the White House, Donald Trump embarked on issuing a series of executive orders meant to address several issues and implement his policies in different fields. Twenty-Four executive orders were issued in his first month in the White House.⁵⁷³ Throughout American history, Presidents used their constitutional power to issue executive orders, thereby issuing thousands of executive orders had been issued by consecutive US presidents, from President George Washington to the incumbent President Donald Trump. However, these executive orders uncomfortably resemble decrees despots used to issue to rule their non-democratic countries.⁵⁷⁴ Accordingly, issuing such executive orders often triggers anxiety about presidents’ usurpation of the democratic norms enshrined in the American Constitution.

3.12.1 Challenges to Constitutional Norms

Following issuing his EO13769, the Trump administration received a lot of criticism for the challenges to the U.S. Constitution shown by the aforementioned executive order. In this respect, Karen Tumlin, the legal director and Immigrant Justice Fund for the National Immigration Law Center, maintained that President Donald Trump is not a king, thereby he must abide by the U.S. Constitution and the present immigration laws duly designed and enacted by Congress. He considered Trump’s issuance of EO13769 as an attempt to legislate through executive fiat, thereby confusing federal officials about “how to interpret or implement this presidential dictate and very real human suffering”.⁵⁷⁵ Such criticism turns one’s attention to Trump’s EO13769 challenges to constitutional rights and liberties such as the protection of religious freedom, equal protection, due process, federalism, and Congressional control of the purse. These challenges are elaborated as the following:

⁵⁷² U.S. Department of State, *About America: The Constitution of the United States of America with Explanatory Notes*, 74.

⁵⁷³ Driesen, “President Trump’s Executive Order and the Rule of Law,” 489.

⁵⁷⁴ *Ibid.*, 489.

⁵⁷⁵ David B. Rivkin Jr., Karen Tumlin, and James Downie, “Opinion: Is President Trump’s Executive Order Constitutional?” Published on February 6, 2017, accessed on June 14, 2023, https://www.washingtonpost.com/opinions/is-president-trumps-executive-order-constitutional/2017/02/06/26ee9762-ecc1-11e6-9973-c5efb7ccfb0d_story.html

3.12.1.1 Religious Discrimination

As aforesaid, Donald Trump attacked Muslims during his presidential campaign and promised to bar their entry to the United States on account of protecting the safety of Americans claiming that Muslims pose a genuine threat to U.S. national security and that their travel to America does not serve its interests. Following voicing his bigotry against Muslims, a number of critics responded to his claims pointing out that they are in open violation of the U.S. Constitution.⁵⁷⁶

Once in office, President Donald Trump asked his counselors to make his promise of the Travel Ban legal. New York's former mayor, Rudy W. Giuliani, stated that "President Trump wanted a Muslim Ban and requested he assembles a commission to show him the right way to do it legally".⁵⁷⁷ Rudy Giuliani was asked by Fox News host, Jeanine Pirro, about whether the Travel Ban has anything to do with religion; Giuliani answered that when President Trump first announced the Ban, he called it the 'Muslim Ban'. Then, he called me up saying "Put a commission together. Show me the right way to do it legally,"⁵⁷⁸ said Rudy Giuliani. Afterward, Giuliani maintained that he assembled a group of other very expert lawyers on the matter including Michael Mukasey, former U.S. attorney general, Republican representatives Michael Mukasey from Texas, and Peter T. King of New York. Giuliani continued by saying that the commission arrived at determining the list of banned countries after focusing on the areas of the world that pose a danger to America, not religion.⁵⁷⁹

Critics, however, maintained that members of the commission were not specialist enough to draft such important and sensitive executive order that affected the lives of millions of Muslims inside and outside America. The point is that Donald Trump did not involve immigration law specialists while reviewing the law. Furthermore, Trump did not receive a thorough legal review from the Office of Legal Counsel (OLC) of the Department of Justice (DOJ).⁵⁸⁰ As a matter of fact, Trump took an extraordinary step when he sent the draft of the order to the OLC only hours before signing it into law. He tasked the OLC with a small task

⁵⁷⁶ Ibid., 497.

⁵⁷⁷ Amy B. Wang, "Trump Asks for a 'Muslim Ban,' Giuliani Says- and Ordered a Commission to do It," The Washington Post, Accessed on July 28, 2022, <https://www.washingtonpost.com/news/the-fix/wp/2017/01/29/trump-asked-for-a-muslim-ban-giuliani-says-and-ordered-a-commission-to-do-it-legally/>

⁵⁷⁸ Wang, "Trump Asks for a 'Muslim Ban,' Giuliani Says- and Ordered a Commission to do It."

⁵⁷⁹ Ibid.

⁵⁸⁰ Driesen, "President Trump's Executive Order and the Rule of Law," 497.

which consists in assuring that the order is “lawful on its face and properly drafted”.⁵⁸¹ More importantly, “the OLC did not take into account... statements made by an administration or it[s] surrogates close in time to the issuance of an Executive Order that may bear on the order's purpose”.⁵⁸² Accordingly, the process through which Executive Order 13769 was drafted and issued comprised some inaccurate steps that badly affected its legality, thereby facing difficulties to pass the Supreme Court’s scrutiny.

Traditionally, American Presidents who have honored the principle of the Rule of Law used to seek a full opinion from the OLC. In addition, they usually consult with legal specialists in the government with a great deal of expertise on the matters addressed in the proposed executive orders. To tell the truth, given the complexity of modern law, the President, who is committed to faithfully executing the law, has to subject the proposed executive orders to a thorough review by specialist and qualified lawyers, “with some tradition from the White House politics”.⁵⁸³

Executive branch lawyers are a particularly important group when it comes to legal accountability. Lawyers operate throughout the national administrative state, in centralized legal offices at the White House and Department of Justice, in agency general counsel offices, and even on the ground with agency personnel. 476 Few agency policies and sanctioned actions go unvetted by lawyers, and agency lawyers often wield substantial power- arguably, too much power- over agency policy.⁵⁸⁴

President Donald Trump signed the EO-1, usually referred to as the Travel Ban, entitled *Protecting the Nation from the Foreign Terrorist Entry to the United States* without subjecting it to substantial vetting. The Travel Ban barred travel from seven Muslim-majority countries for 90 days and suspended the admission of refugees for 120 days and indefinitely suspended the admission of Syrian refugees. Further, it instructed the Secretary of State to, once resuming the admission of refugees, prioritize the admission of refugees victimized by religious persecution in their country of origin provided that their religion is considered a minor religion. Additionally, Trump’s statements revealed that Christians would be exempted from the provisions of the Travel Ban as they are treated as priorities.⁵⁸⁵ In fact, Trump declared in an

⁵⁸¹ Shawn E. Fields, *From Guantanamo to Syria: The Extraterritorial Constitution in the Age of “Extreme Vetting,”* *Cardozo Review Law* 39, no. 1123 (2018): 1143. https://scholarship.law.campbell.edu/fac_sw/153

⁵⁸² Fields, “From Guantanamo to Syria: The Extraterritorial Constitution in the Age of “Extreme Vetting””, 1143.

⁵⁸³ Driesen, “President Trump’s Executive Order and the Rule of Law,” 497.

⁵⁸⁴ Gillian E. Metzger, “1930 Redux: The Administrative State Under Siege,” *Columbia Law School* 131, no. 1 (2017): 80-81. https://scholarship.law.columbia.edu/faculty_scholarship/954

⁵⁸⁵ Meghan Keneally, “Donald Trump Says He’ll Give Christian Refugees Priority,” ABC NEWS, Accessed on July 29, 2022, <https://abcnews.go.com/Politics/donald-trump-hell-give-christian-refugees-priority/story?id=45099271>

interview he had with the Christian Broadcasting Network (CBN), that the Syrian refugees are unfairly treated in the refugee process. He said the following:

They've been horribly treated. Do you know if you were a Christian in Syria it was impossible, at least very tough to get into the United States? If you were a Muslim you could come in, but if you were a Christian, it was almost impossible and the reason that was so unfair, everybody was persecuted in all fairness, but they were chopping off the heads of everybody but more so the Christians. And I thought it was very, very unfair. So we are going to help them.⁵⁸⁶

However, CBN released remarks on Trump's statements to prioritize Syrian Christians over Syrian Muslims. He did not provide any example nor did he cite evidence to corroborate his claim that it is so difficult for Syrian Christians to gain refugee status compared to Syrian Muslims. So, his claims were not well-corroborated. In addition, Chris Boian, the senior communications officer of the UNHCR acknowledged the feature of the Middle East as a region of extraordinary religious diversity, stating that all refugees who escaped persecution and life-threatening conflicts in their homelands should be treated equally and impartially, and benefit from American assistance and protection regardless of their religious backgrounds⁵⁸⁷.

The Travel Ban also defies the Constitutional norm that prohibits segregation based on religion. The First Amendment to the U.S. Constitution forbade the federal government from interfering with the free exercise of any religion or promoting the establishment of a state religion. In other words, the Establishment Clause⁵⁸⁸ denies the federal government the right to act out according to religious rancor. To tell the truth, among the reasons that pushed Judge Derrick Watson of Hawaii to rule against the enforcement of EO-1 was that "Trump's contemporaneous public statements – about keeping Muslims out of the U.S. – suggested that the travel restrictions were issued with a purpose to disfavor a particular religion, in spite of its stated, religiously-neutral purpose".⁵⁸⁹ So, the government ought to respect all religions and act regardless of individuals' religion. In addition, punishing individuals should be based on conclusive evidence about their wrongdoing, not on their religious backgrounds. Therefore, Trump's Executive Orders went against these clauses and led to the detention of a lot of people with valid visas upon arrival at U.S. airports. Protests of travelers swept almost all American airports and led to lawsuits in several courts challenging the constitutionality of the order,

⁵⁸⁶ Keneally, "Donald Trump Says He'll Give Christian Refugees Priority."

⁵⁸⁷ Ibid.

⁵⁸⁸ Arnold, *A Pocket Guide to the US Constitution*, 90.

⁵⁸⁹ Fred Barbash, "Trump's Campaign Words Stalk Him in Court on Sanctuary Cities, Just as in Travel Ban Cases," *The Denver Post*, Accessed July 31, 2022, <https://www.denverpost.com/2017/03/30/trump-sanctuary-cities-campaign-words/>

generating a nationwide injunction against enforcing the provisions of the Travel Ban on account of violating the important constitutional clause prohibiting religious discrimination.⁵⁹⁰

In response to the series of injunctions made by several courts against the enforcement of the EO-1 and then EO-2, President Trump along with his staff was compelled to revise both versions of the order to make it sound more legal to be accepted by the Supreme Court and pass its scrutiny. Both versions of the order were hostilely met by courts and both of them were enjoined due to the Establishment Clause concerns. However, after introducing another set of changes to EO-2 through Presidential Proclamation No. 9645,⁵⁹¹ the Supreme Court reversed a preliminary injunction against its enforcement with a 5-4 decision.⁵⁹² This series of changes introduced to the first version of the Ban as well as the number of injunctions it received from the courts revealed the bad reality that President Trump did not consult with the DOJ, exactly with OLC, before promulgating EO-1, which is considered as a disregard for the rule of law. Moreover, The Supreme Court's reversal of the injunction against the third version of the Travel Ban does not undermine the argument that Trump failed in respecting the rule of law, nor did it vindicate the third Travel Ban. In fact, the Supreme Court favored disregarding discriminatory words of Trump's Proclamation (EO-3) to uphold the Travel Ban.⁵⁹³ The Court held that "it must apply highly deferential rational basis review to the evaluation of religious discrimination claims when the government claims a national security justification, at least in the immigration context."⁵⁹⁴ In other words, the Supreme Court's 5-4 decision to uphold Trump's Travel Ban rests on the "majority's discounting President Trump's repeated discriminatory statements and crediting his supposed national security concerns".⁵⁹⁵ So, though many changes were introduced to EO-2, Trump's proclamation (EO-3) did not gain an absolute majority among justices of the Supreme court, confirming its main feature as a controversial order that polarized the political scene and triggered the wrath of a great portion of the American people, namely immigrant communities and civil rights activists.

⁵⁹⁰ Driesen, "President Trump's Executive Order and the Rule of Law," 499.

⁵⁹¹ Hilary Hurd, and Yishai Shwartz, "The Supreme Court Travel Ban Ruling: A Summary," Lawfare, Accessed August 3, 2022. <https://www.lawfareblog.com/supreme-court-travel-ban-ruling-summary>

⁵⁹² *Ibid.*, 500.

⁵⁹³ Bill Frelick, "US Supreme Court Disregards Trump's Discriminatory Words to Uphold Travel Ban," Human Rights Watch, Accessed July 30, 2022, https://www.hrw.org/news/2018/06/26/us-supreme-court-disregards-trumps-discriminatory-words-uphold-travel-ban?gclid=EAIaIQobChMIqeHb1Meg-QIVxYXVCh2OKQ0zEAAYAiAAEgLbBvD_BwE

⁵⁹⁴ Driesen, "President Trump's Executive Order and the Rule of Law," 500.

⁵⁹⁵ Bill Frelick, "US Supreme Court Disregards Trump's Discriminatory Words to Uphold Travel Ban."

3.12.1.2 Equal Protection

Trump's Travel Ban is in open violation of the Constitutional right consisting in the Equal Protection of the Laws Clause. The latter prohibits discrimination based on individuals' religious backgrounds and may limit governmental discriminatory actions based on national origins. The Fourteenth Amendment to the U.S. Constitution guaranteed Equal Protection to all American citizens.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.⁵⁹⁶

According to the 14th Amendment, states shall never deny the Equal Protection of the Laws to any person within its jurisdiction. With regard to the Supreme Court, its Equal Protection jurisprudence designates all laws identifying race-based categories for impartial treatment as 'suspect' and thus would be subjected to stiff scrutiny. In like manner, all legislation based on the national-origin classification of people would also be subjected to strict scrutiny. With respect to immigration laws, there is a notable question regarding whether the "Equal Protection of the Laws" is guaranteed to foreigners living outside the U.S. borders. This concern stems from the fact that EO-1 is applied to people who live within the U.S. borders and are protected by the Equal Protection Clause, while EO-2 and EO-3 are applied to fewer people with clear entitlement to the Equal Protection clause.⁵⁹⁷

3.12.1.3 Due Process of Law

The U.S. Constitution provided that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law".⁵⁹⁸ So, individuals' rights of life, liberty, and property are guaranteed by Constitution and cannot be taken from them without a fair trial, or rather a due process of law. Trump's Travel Ban does not provide for the procedural due process according to which individuals can be deprived of their fundamental rights, such as their right to travel. Moreover, EO-1 did not provide any sort of procedural due process to preserve the already acquired rights. Similarly, the subsequent

⁵⁹⁶ Arnold, *A Pocket Guide to the US Constitution*, 122.

⁵⁹⁷ Driesen, "President Trump's Executive Order and the Rule of Law," 501.

⁵⁹⁸ Arnold, *A Pocket Guide to the US Constitution*, 122.

versions of the Travel Ban, EO-2 and EO-3, did not provide legal procedures to protect against the deprivation of the pre-existing rights but applied to fewer people entitled to the right of due process of law.⁵⁹⁹

Additionally, the Travel Bans attacked the norms of the substantive due process of law. The federal government has been long asked by the Supreme Court to act rationally which became an underenforced constitutional norm due to concerns about potential judicial overreaching. During the *Lochner era*,⁶⁰⁰ courts used to review actions of the government for rationality to find out policies that the judges had disapproved of due to their rationalities, thereby indicating the governmental inappropriate interference with democratic processes. In response to demands to prohibit the enforcement of the EO-1, Judge Robart addressed a question to the Government's lawyer about the rationality of the Travel Ban, whether it has a rational basis or not.⁶⁰¹ Judge Robart's decision to ban the enforcement of the EO-1 did not reach the question of whether "the extremely deferential rational basis test governs judicial review of the President's order for reasonableness".⁶⁰² Further, the Ninth Circuit's decision which affirmed injunctions against EO-2 and EO-3 applied a less deferential level of scrutiny consistent with the arbitrary and capricious test governing the review of administrative agency decisions.

Trump's Travel Bans attack fundamental rationality norms at the core of the U.S. Constitutional tradition, even if somehow subsidiary to the judicial review. These rationality norms require that the federal government's restrictions ought to aim at finding solutions to real problems and responding to facts. In this respect, President Trump maintained that his executive order is a necessary measure to protect Americans from domestic terrorist attacks.⁶⁰³ However, facts revealed that no person was killed in the United States by immigrants from the banned countries. Furthermore, the Travel Ban did not include many other countries from which terrorists may travel to the USA, such as Afghanistan and Pakistan. This reveals the discriminatory approach of the bans where the government ought to ban immigrants from all

⁵⁹⁹ Driesen, "President Trump's Executive Order and the Rule of Law," 501.

⁶⁰⁰ The *Lochner Era* was a period of controversy and change in American constitutional law that spanned the period from 1897 to 1937. During that period, economic forces challenged and ultimately overthrew traditionally accepted social beliefs and legal doctrines.

⁶⁰¹ David M. Driesen, "Judicial Review of Executive Orders' Rationality," *Boston University Law Review* 98, no. 1013 (2018): 1014. <https://www.bu.edu/bulawreview/files/2018/10/DRIESEN.pdf>

⁶⁰² Driesen, "Judicial Review of Executive Orders' Rationality", 1014.

⁶⁰³ Evan Perez, Pamela Brown, and Kevin Liptak. "Inside the Confusion of the Trump Executive Order and Travel Ban," CNN Politics, Accessed on July 31, 2022, <https://edition.cnn.com/2017/01/28/politics/donald-trump-travel-ban/index.html>

countries that pose a threat to the safety and security of Americans without being selective and impartial.

On the other hand, suspecting whole countries on account of their religion is absolutely a baseless allegation. If truth be told, no religion explicitly targets the safety and security of the United States or calls for killing Americans, including Islam, which calls for peace and protecting the lives of other people regardless of their religious backgrounds. Accordingly, the Travel Bans implicitly accuse Islam of being a violent religion that aims at terrorizing and threatening the lives of Americans, which is completely wrong!! On the other hand, the Travel Ban came suddenly and did not give travelers and affected people the opportunity to find an outlet for their difficult situations. This situation is like a driver who is deprived of his driver's license without allowing him to be heard,⁶⁰⁴ said Stephen Yale-Loehr, a professor of immigration law practice at Cornell Law School, Ithaca, New York. Yale-Loehr explained, "That's a procedural due process violation...They can't just put you on a plane and send you back without any sort of hearing at all -- courts look at the interest of the individual, the interest of the government, and balance the two".⁶⁰⁵ Therefore, some of the courts that reviewed the Travel Bans suggested that they did not meet the norms of the due process of the laws.⁶⁰⁶ In a nutshell, Trump's Travel Ban undercut people's religious freedom, their right to equal protection, and their right to due process of the laws.

3.12.1.4 States' Rights

Trump's Travel Bans also violate states' rights of acting as sanctuary cities for immigrants and particularly attack constitutional limitations on obliging states to implement the federal government. To tell the truth, there is no official or agreed-upon definition of what is referred to as sanctuary cities or jurisdictions, so it is still debatable whether the term refers precisely to certain states or localities.⁶⁰⁷ Historically speaking, the sanctuary movement dates back to the 1980s, when American churches hid Central American migrants threatened with deportation from the USA, thereby escaping civil strife in the region.⁶⁰⁸ Currently, sanctuary cities are broadly referred to as "cities that expressly forbid officials or police Departments from

⁶⁰⁴ Perez, Brown, and Liptak. "Inside the Confusion of the Trump Executive Order and Travel Ban."

⁶⁰⁵ Ibid.

⁶⁰⁶ Driesen, "President Trump's Executive Order and the Rule of Law," 502.

⁶⁰⁷ Sarah Herman Peck, "*Sanctuary*" *Jurisdictions: Federal, State, and Local Policies and Related Litigation* (Washington, DC: Congressional Research Service, 2019), 3.

⁶⁰⁸ Kristina Cooke, and Ted Hesson, "What Are 'Sanctuary' Cities and Why Is Trump Targeting Them?", Reuters. Accessed on July 31, 2022, <https://www.reuters.com/article/us-usa-immigration-crime-idUSKBN20J25R>

inquiring into an individual's immigration status".⁶⁰⁹ In other words, sanctuary cities or Jurisdictions are commonly viewed as those that have enacted laws or designed policies aimed at substantially limiting and restricting their involvement in enforcing federal immigration statutes and policies.

Currently, there are more than 150 counties and cities across the American territory that have sanctuary measures and policies.⁶¹⁰ Besides, according to the Center for Immigration Studies (CIS), there are eleven sanctuary states which are California, Colorado, Connecticut, Illinois, Massachusetts, New Jersey, New Mexico, New York, Oregon, Vermont, and Washington.⁶¹¹ In addition to that, the CIS listed 175 cities and counties.⁶¹² The aforementioned states have measures in place that limit cooperation with detainer requests, refuse the access of Immigration and Customs Enforcement (ICE)'s agents to jails, and reduce communication with ICE.⁶¹³ The latter can request to hold up suspects for 48 hours beyond their release time, which enables its officers to take the suspected person into custody; such requests are known as detainers.⁶¹⁴ However, some officials in the sanctuary jurisdictions refuse to honor the ICE detainer requests arguing that they are voluntary, thereby honoring them may lead to detaining people without a constitutionally valid reason.⁶¹⁵

During his presidential campaign, then-candidate Donald Trump took part in an interview with a Seattle radio station in August 2016, wherein he expressed his stance on sanctuary cities maintaining that "sanctuary cities are out...sanctuary cities are over".⁶¹⁶ Hence, bringing an end to sanctuary cities mattered a lot for President Donald Trump who proceeded to restrict federal funding to jurisdictions that restrict or decline to cooperate with officials of ICE, an agency of the DHS responsible for enforcing federal statutes related to border control, customs, trade, and immigration.⁶¹⁷ His stiff position against sanctuary cities stems from his belief that these sanctuary cities are protecting criminals to the extent that law enforcement

⁶⁰⁹ Benjamin Gonzalez, Loren Collingwood, and Stephen Omar El-Khatib, "The Politics of Refuge: Sanctuary Cities, Crime, and Undocumented Immigration," *Urban Affairs Review* 0, no. 0 (2017): 1, DOI: 10.1177/1078087417704974

⁶¹⁰ Cooke, and Hesson, "What Are 'Sanctuary' Cities and Why Is Trump Targeting Them?"

⁶¹¹ Jessica M. Vaughan, and Bryan Griffith, "Map: Sanctuary Citie, Counties, and States," Center for Immigration Studies, Accessed on August 1, 2022, <https://cis.org/Map-Sanctuary-Cities-Counties-and-States>

⁶¹² Vaughan and Griffith, "Map: Sanctuary Citie, Counties, and States."

⁶¹³ Cooke, and Hesson, "What Are 'Sanctuary' Cities and Why Is Trump Targeting Them?"

⁶¹⁴ Ibid.

⁶¹⁵ Ibid.

⁶¹⁶ Grace Benton, "The Legality of Sanctuary Cities," *Georgetown Immigration Law Journal* 33, no. 139 (2018): 139.

⁶¹⁷ Benton, "The Legality of Sanctuary Cities", 139.

officers almost give up.⁶¹⁸ Therefore, getting rid of these sanctuary cities became a priority for his immigration policy, based on, as aforesaid, deporting undocumented immigrants whom he suspected of being behind most of the crimes, and who usually find safe refuge in the sanctuary cities. About this, he stated the following declaration when he was interviewed by the Fox News host, Sean Hannity:

It's so hard for the police to — if somebody is protected between the sanctuary city nonsense. We got to get rid of the sanctuary cities, we're protecting these people... We're protecting criminals. And the police, who are phenomenal people, they're at a point where they almost give up. They catch them, they have them, they know they did it and then they know nothing is going to happen. You know, OK, so if you're a killer and you're in this country, they go after you big league and it's tough. If you're a killer and you're an illegal immigrant, the police don't know what to do.⁶¹⁹

Hence, Trump moved quickly to implement this idea by threatening to deprive sanctuary states of federal grants “except as necessary for law enforcement”.⁶²⁰ Legally speaking, Congress is constitutionally authorized to condition the receipt of federal grants on states’ compliance with federal reasonable policies, but Congress cannot use its power to obligate states to enforce federal laws.⁶²¹ This was proved by the Supreme Court’s ruling on the National Federation of Independent Business (NFIB) versus the Sebelius case on June 27, 2012.⁶²² In brief, a coalition of individuals, states, and NFIB challenged the Affordable Care Act (ACA) on account of the law’s individual health insurance mandate goes beyond Congress’s prerogative to regulate interstate commerce under Article I’s Commerce Clause; also, they argued that Congress has no power to tax on that ground. In other words, the plaintiffs claimed that the ACA’s individual mandate and Medicaid expansion do not comply with the U.S. Constitution. Consequently, the Supreme Court had to provide answers to these questions: whether Congress has the authority to require individuals to pay for insurance, whether the individual mandate would be severed from the rest of the law, and whether ACA’s expansion provision was unconstitutionally coercive to states.⁶²³ At the end of the case, in a 5-4 decision, the Supreme Court upheld the individual mandate as constitutional under the Constitution’s

⁶¹⁸ Nelson, “Trump Shift on Immigration: There’s no Amnesty, but We Work with Them.”

⁶¹⁹ Ibid.

⁶²⁰ Driesen, “President Trump’s Executive Order and the Rule of Law,” 503.

⁶²¹ Ibid.

⁶²² Ballotpedia Staff, “National Federation of Independent Business (NFIB) vs Sebelius,” Ballotpedia, Accessed on August 1, 2022,

[https://ballotpedia.org/National_Federation_of_Independent_Business_\(NFIB\)_v._Sebelius](https://ballotpedia.org/National_Federation_of_Independent_Business_(NFIB)_v._Sebelius)

⁶²³ Ballotpedia Staff, “National Federation of Independent Business (NFIB) vs Sebelius.”

Taxing and Spending Clause. In addition, it struck down the provision that would deprive the states of federal Medicaid funds, whereas it upheld Medicaid expansion in general.⁶²⁴

In order to obligate states to enforce the federal immigration policy, President Trump issued the Executive Order 13768 entitled “Enhancing Public Safety in the interior of the United States”.⁶²⁵ Issued just two days before EO-1, on January 25, 2017, Executive Order 13768, also known as the Sanctuary Cities Order, allowed the federal government to withhold states from federal funds for not cooperating in implementing federal immigration law.⁶²⁶ Sanctuary Cities Order aims at achieving the following purposes:

(a) Ensure the faithful execution of the immigration laws of the United States, including the INA, against all removable aliens, consistent with Article II, Section 3 of the United States Constitution and section 3331 of title 5, United States Code; (b) Make use of all available systems and resources to ensure the efficient and faithful execution of the immigration laws of the United States; (c) Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law; (d) Ensure that aliens ordered removed from the United States are promptly removed; and (e) Support victims, and the families of victims, of crimes committed by removable aliens.⁶²⁷

As it is clearly cited, the Sanctuary Cities Order vowed, among other things, to punish uncooperative jurisdictions that do not comply with applicable federal law by withholding federal funds. The truth is that President Trump justified his willingness to punish such jurisdictions on the grounds that they willfully violated Federal law when attempting to shield aliens from removal from the country which caused immeasurable harm to Americans as well as to the very fabric of the United States.⁶²⁸ In particular, Trump’s administration intended to condition Byrne Justice Assistance Grants (Byrne JAG), the State Criminal Alien Assistance Program (SCAAP), and the Office of Community Oriented Policing Services (COPS).⁶²⁹

However, in August 2018, the Ninth Circuit found that Trump’s Sanctuary Cities Order did not pass constitutional muster, thereby ruling that it violated the Separation of Powers principle on the grounds that the Executive Branch cannot decline dispersing federal grants in

⁶²⁴ Ibid.

⁶²⁵ David A. Martin, “Trump’s Order on the Deportation of Undocumented Residents, Annotated by an Immigration Law Expert,” Accessed on August 1, 2022, <https://www.vox.com/the-big-idea/2017/1/28/14416616/executive-order-immigrants-sanctuary-trump>

⁶²⁶ Driesen, “President Trump’s Executive Order and the Rule of Law,” 503.

⁶²⁷ Martin, “Trump’s Order on the Deportation of Undocumented Residents, Annotated by an Immigration Law Expert.”

⁶²⁸ Federal Register, “Enhancing Public Safety in the Interior of the United States,” Accessed on August 2, 2022, <https://www.federalregister.gov/documents/2017/01/30/2017-02102/enhancing-public-safety-in-the-interior-of-the-united-states>

⁶²⁹ Benton, “The Legality of Sanctuary Cities”, 139-140.

question without authorization from Congress.⁶³⁰ Therefore, threatening to withhold almost all federal funding coupled with restricting the supervision of states over its local entities constitutes a broad and flagrant assault on states' sovereignty. In doing so, the Sanctuary Cities Order authorizes the federal government to take action against the state governments that failed to enforce federal immigration laws. In other words, this order coerces states to enforce a federal law inconsistent with the U.S. Constitution. To put it briefly, though unsuccessful, the Sanctuary Cities Order marked the beginning of Trump's war on sanctuary cities and jurisdictions, and presaged a beginning of a new chapter in the U.S. immigration policy traced by President Donald Trump with a broad aim consisting in reviewing the whole American immigration system to be consistent with the best interests of the United States.

3.12.1.5 Congressional Control Over the Purse

Trump's Executive Order also violates the Congressional key power of the purse that constitutionally restrains the presidential power. Constitutionally speaking, the power to appropriate funds is accorded to Congress, not to the President. It provided that "No Money shall be drawn from the Treasury but in Consequence of Appropriations made by Law".⁶³¹ This clause limited the power of the executive branch where the President cannot spend money without authorization by law. Accordingly, both the Sanctuary Cities Order as well as Trump's Executive Order to build a Border Wall along the Mexican American borders attack the Congressional control over spending and appropriating funds.

The Sanctuary Cities Order challenges the Congressional power of appropriating funds by asserting Presidential authority to withhold federal funds from state governments on the basis of their compliance with the presidential policy preferences. In several laws, Congress conditioned appropriating federal funds on states' compliance with certain conditions, thereby allowing the executive branch to deprive states of benefiting from federal funds if these conditions are met. However, no law allows the President to deprive non-cooperative states of all federal funds, especially if the grants are not conditioned upon law enforcement.⁶³² By claiming such power, President Trump usurped the Congressional power to decide where the grants ought to go. Effectively, the Ninth Circuit ruled that "no reasonable argument" can uphold the usurpation of the Congressional Spending Clause.⁶³³

⁶³⁰ *Ibid.*, 140.

⁶³¹ Arnold, *A Pocket Guide to the US Constitution*, 48.

⁶³² Driesen, "President Trump's Executive Order and the Rule of Law," 505.

⁶³³ *Ibid.*

3.12.1.6 Challenges to Treaties

Treaties are legal documents that represent a serious legal undertaking both in domestic and international law. Internationally, once they are effective, “treaties are binding on the parties and become part of international law. Domestically, treaties to which the United States is a party are equivalent in status to Federal legislation, forming part of what the Constitution calls the supreme Law of the Land”.⁶³⁴ Trump’s Executive Orders undercut treaty obligations. Under the international human rights law, the United States, like other countries of the international community, has to admit refugees regardless of their religion or their countries of origin. According to the International Human Rights Law (IHRL), countries have an obligation toward migrants that consists in respecting, protecting, and fulfilling their human rights.⁶³⁵ Besides, incorporating certain cross-cutting human rights principles is paramount for realizing human rights in migration policy, including the equality and non-discrimination principle.

The principle of non-discrimination prohibits distinction, exclusion, restriction or preference on the basis of a list of non-exhaustive grounds such as race, color, descent, ethnic origin, sex, age, gender, sexual orientation, gender identity, disability, religion or belief, nationality, migration or residence status or other status. States should address direct and indirect discrimination against and unequal treatment of people in laws, policies and practices, including by paying particular attention to the needs of migrants in vulnerable situations.⁶³⁶

Accordingly, Trump’s Travel Bans flagrantly overlook America’s treaties and obligations as an important and effective country within the international community. In other words, Trump’s Travel Bans attack the constitutional norm of treaty compliance.

3.12.1.7 The Plenary Power Doctrine

In their efforts to have federal courts invalidate Trump’s Travel Bans, critics, as well as opponents, have to prove they do not contend with the plenary power doctrine. The latter “protects the federal government from claims that it is violating an individual’s right to equal protection when it imposes discriminatory burdens on non-US citizens”.⁶³⁷ The roots of this doctrine are traced back to a number of cases treated by the Supreme Court in the late nineteenth

⁶³⁴ Congressional Research Service, *Treaties and Other International Agreements: The Role of the United States Senate* (Washington, DC: U.S. Government Printing Office, 2001), 1.

⁶³⁵ United Nations, “International Standards Governing Migration Policy,” Accessed August 2, 2022, <https://www.ohchr.org/en/migration/international-standards-governing-migration-policy>

⁶³⁶ United Nations, “International Standards Governing Migration Policy.”

⁶³⁷ Cunny School of Law, “The Plenary Power Shield: National Security and the Special Registration Program, Nitin Goyal,” Accessed on August 3, 2022, <https://www.law.cuny.edu/legal-writing/forum/immigration-law-essays/goyal/#:~:text=The%20plenary%20power%20doctrine%20protects,burdens%20on%20non-US%20citizens.>

and the onset of the twentieth centuries; however, critics of Trump's Travel Bans mostly referred to the case of *Kleindienst v. Mandel* in 1972.⁶³⁸ In the latter case, the Court was invited to check a decision of Attorney General Richard Gordon Kleindienst to deny a visa to a Belgian national called Ernest E. Mandel, who identifies himself as a Marxist revolutionist who advocates Marxist ideology in his speeches and numerous writings. The *Kleindienst v. Mandel* case involves the validity of section 212 (a) (28) of the McCarran Act or rather the Immigration and Nationality Act, which determines the classes and categories of aliens entitled to receive visas. Mandel, however, falls in the prohibited class that cannot receive a visa, yet the law authorizes the Attorney General to admit an alien despite his inadmissibility.⁶³⁹ In point of fact, the law generally prohibited granting visas to foreign nationals who advocate economic, international, and governmental doctrines of world communism, but the law enables the Attorney General to waive this prohibition and grant him a visa at his discretion.

Advocating the economic, international, and governmental doctrines of world communism means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally coordinated Communist movement.⁶⁴⁰

So, Mandel looked for a visa to lecture in the United States. The Secretary of State recommended the approval of Mandel but the Attorney General declined to allow him to reenter the United States on account of his flagrant abuse of previous waivers. In response, Mandel, along with many U.S. citizens brought this action to declare the law inconsistent with the U.S. Constitution, particularly the First Amendment, in the way it violated their right to hear, speak, and debate Mandel.⁶⁴¹ With three justices dissenting, the Court refused the plaintiffs' claim of unconstitutionality of the Attorney General's decision against Mandel and ruled that his decision was lawful and consistent with the U.S. Constitution.⁶⁴²

Speaking on behalf of the majority, Justice Harry A. Blackmun stressed the deference accorded to the two other branches of the federal government to decide on matters related to the exclusion and deportation of aliens. Moreover, while acknowledging the First Amendment rights of the plaintiffs were implicitly protected by the court's verdict to exclude Mandel, Blackmun pointed out that the authority to exclude aliens was inherent in sovereignty, which is

⁶³⁸ Maltz, "The Constitution and the Travel Ban," 397.

⁶³⁹ Lewis F. Powell Jr, *Supreme Court Files: Kleindienst v. Mandel* (Washington and Lee Virginia: University School of Law, 1971), 1.

⁶⁴⁰ Immigration and Nationality Act, 34.

⁶⁴¹ Powell, *Supreme Court Files: Kleindienst v. Mandel*, 1.

⁶⁴² Maltz, "The Constitution and the Travel Ban," 397.

paramount for developing normal international relations with foreign countries and defending America's best interests against foreign encroachments and dangers, is a power vested exclusively in the political branches of government. He added the following:

The Court without exception has sustained Congress plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden... when the Executive exercises [the power to exclude an alien] on the basis of a facially legitimate and bona fide reason, the courts will neither look behind the exercise of that discretion nor test it by balancing its justification against the First Amendment interests of those who seek personal communication with the applicant.⁶⁴³

Focusing on a “facially legitimate and bona fide reason” portrays a commitment to judicial deference in immigration cases. In addition, Trump's Travel Bans explicitly qualify the national security concerns, upon which they are based, as “legitimate and bona fide” reasons. Nevertheless, critics of the Travel Bans held that the application of the *Kleindienst* standards does not interdict the judiciary from inquiring into the actual purposes for promulgating Trump's executive orders.⁶⁴⁴

Additionally, the plaintiffs and challengers of the Travel Bans sought to get support and advantage from the language of Justice Anthony Kennedy's concurring opinion in the *Kerry v. Din* case. In that case, Fouzia Din, an American citizen, sought to get an explanation for the denial of a visa for her Afghan husband, Kanishka Berashk, but the Court refused Din's claim. The State Department, headed by Secretary John Forbes Kerry, refused to grant a visa to Din's husband claiming that he was involved in terrorist activities. This refusal was based on 8 U.S.C. § 1 182(a)(3)(B)⁶⁴⁵ from the INA that forbade the admission of any foreign national engaged in terrorist activities. However, the State Department did not provide any details regarding the activities in which Kanishka was involved or the evidence it had considered in denying him the visa.⁶⁴⁶

Fouzia Din claimed that denying the visa to her husband Kanishka Berashk encroached upon her right to marriage, thereby deserving an explanation from the State Department regarding its decision according to the due process of the law.⁶⁴⁷ The State Department,

⁶⁴³ *Ibid.*, 398.

⁶⁴⁴ *Ibid.*, 398.

⁶⁴⁵ Immigration and Nationality Act, 127.

⁶⁴⁶ Shalini B. Ray, “Plenary Power and Animus in Immigration Law,” *Ohio State Law Journal* 80, no.1 (2019): 40, https://scholarship.law.ua.edu/fac_articles/273.

⁶⁴⁷ Michael Kagan, “The Plenary Power is Dead! Long Live Plenary Power,” *Michigan Law Review First Impressions* 114, no. 21 (2015): 21. https://repository.law.umich.edu/mlr_fi/vol114/iss1/10

however, provided no details as to the evidence it considered while deciding to deny the visa to Kanishka except the law that provided for the denial of the visa for aliens suspected of being involved in terrorist-related activities. In point of fact, Din did not ask the Court to rule on whether her husband is actually a terrorist; instead, she asked for the process that would enable the couple to respond to the allegations.⁶⁴⁸

Justice Kennedy maintained that Fouzia Din had received a response from the State Department that only explained the grounds upon which the State Department denied the visa to her husband; in other words, she received the reason that is “facially legitimate and bonafide”.⁶⁴⁹ According to Justice Kennedy, providing a statutory basis for an alien’s visa ineligibility is a facially legitimate reason since Congress has the plenary power to define the grounds upon which an alien would be ineligible to get a visa. Further, citing clause 8 U.S.C. § 1 182(a)(3)(B) of the INA meets the requirement for a genuine factual basis as the law determines the factual predicates. Though the State Department gave the plaintiff in *Kleindienst v. Mandel* more details about the grounds of his visa denial, i.e., his noncompliance with the conditions of his previous visas, *Kleindienst v. Mandel* involved a provision that gave the Attorney General almost unbridled discretion to adjudicate waivers. However, the State Department had applied a statutory basis to decide on the inadmissibility of Din’s husband, Kanishka Berashk.⁶⁵⁰

Justice Kennedy pointed out that Din had admitted that her husband worked for the Taliban, which proves at least a facial relation with terrorism. However, Kennedy noted that the Court does not have the power to dig into the reasons upon which the federal government denied Kanishka the visa to enter the United States due to the absence of an affirmative showing the bad faith of the consular officer who refused to grant a visa to Din’s husband.⁶⁵¹ Therefore, challengers of Trump’s Travel Bans claimed that “an affirmative showing of bad faith” may provide Judges with the necessary justification to dig into the expressed motives to exclude aliens. They argued that Trump’s statements against Muslims and immigrants during his presidential campaign provide judges with the kind of evidence necessary to uphold such a showing.⁶⁵² Therefore, opponents and challengers of the Travel Bans argued that the Court should consider them as enactments designed to punish groups of people due to their religions.

⁶⁴⁸ Kagan, “The Plenary Power is Dead! Long Live Plenary Power,” 21.

⁶⁴⁹ *Ibid.*, 21.

⁶⁵⁰ Ray, “Plenary Power and Animus in Immigration Law,” 40.

⁶⁵¹ *Ibid.*, 41.

⁶⁵² Maltz, “The Constitution and the Travel Ban,” 398.

However, it is notable to highlight an important difference between issues generated by the Travel Bans and those arguments that caused the emergence of the reference to legitimate and bona fide reasons in both cases of *Kleindienst v. Mandel* and *Kerry v. Din*. In point of fact, both cases emerged as challenges to the decisions of federal officials after denying the entry of foreign nationals owing to particular reasons related to each case. In *Kleindienst v. Mandel*, the question revolved around whether Attorney General *Kleindienst* violated the Constitution when he declined to waive a statutory provision that banned Mandel from entering the United States, whereas in *Kerry v. Din* the question was whether a consular officer is constitutionally required to adduce an explanation to his decision to ban Kanishka, an Afghan national, from getting a visa to enter the United States on grounds that he was engaged in terrorist activities. However, in the Travel Ban cases, the courts were called upon to overrule a federal decision -executive order- to ban or delay the entry of a whole class of foreign nationals.

It is noticeable that in cases where class-based distinctions on immigration are challenged, the Supreme Court rejected to place any constitutional restrictions on the powers of the two other branches of the federal government to deter them from adopting such measures. In this respect, Justice Frankfurter pointed out in 1954 that policies pertaining to the entry of aliens and their right to remain in the United States are typically concerned with the political conduct of the U.S. government.⁶⁵³ Moreover, Frankfurter maintained that “[the idea that] the formulation of these policies is entrusted exclusively to [the political branches] has become about as firmly embedded in the legislative and judicial tissues of our body politic as any aspect of our government”.⁶⁵⁴ If truth be told, the majority expressly reaffirmed its support for this principle in *Kleindienst v. Mandel*, and even those who argued that Mandel himself should be admitted believed that “Congress could enact a blanket prohibition against entry of all aliens falling into the class defined by [the relevant provisions of the INA], and that First Amendment rights could not override that decision”.⁶⁵⁵ Therefore, it would be a very big deal if *Din* had won her case against Secretary John Kerry. If that happened, it means that the plenary power doctrine that has long been the basis of immigration law had been finally overturned.⁶⁵⁶ This is because the federal government’s plenary power doctrine is usually placed at the height to give it much power and authority to regulate immigration without constraints by judicial review or constitutional limitation.

⁶⁵³ *Ibid.*, 399.

⁶⁵⁴ *Ibid.*

⁶⁵⁵ *Ibid.*

⁶⁵⁶ Kagan, “The Plenary Power is Dead! Long Live Plenary Power,” 22.

Five years after *Kleindienst v. Mandel*, the Supreme Court faced another case which is the *Fiallo v. Bell* case. In this case, the Supreme Court was called upon to consider the constitutionality of the distinctions established by the provisions of the Immigration and Nationality Act which accorded preferential immigration status to noncitizen children of many American citizens and noncitizen parents of many classes of children who were themselves citizens. Sections 101 (b) (1) (D) and 101 (b) (2) from the INA, which excluded the relationship between an illegal child and his natural father from the special preference immigration statute granted by the Act to the child or parent of an American citizen or a lawful permanent resident, held not to be unconstitutional.

a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person... The term “parent”, “father”, or “mother” means a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in (1) above... the term “parent” does not include the natural father or the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.⁶⁵⁷

These provisions gave immigration preference to children or parents of either existing American citizens or noncitizens residing lawfully in the United States. However, neither the biological children born out of wedlock to American fathers nor the fathers of American citizens who were born out of wedlock had been favored by the INA. Thus, by refusing the constitutional challenge to the exclusion, the majority opinion stressed the need for judicial deference in the strongest possible terms on matters related to immigration, maintaining that the decision to exclude any class of aliens falls under the responsibility of Congress and completely outside the Court’s power to control it.⁶⁵⁸ Accordingly, the application of this standard of review requires rejecting claims related to the unconstitutionality of Trump’s Travel Bans.

3.12.1.8 Rights of Aliens Located in Other Countries

Aliens who are not under the jurisdiction of the U.S. federal government have a special status. In fact, the principles that govern their constitutional status had been established by the Supreme Court’s decision in *United States ex rel. Turner v. William*, on May 16, 1904. It is the case of an English anarchist called John Turner whose case represents the first ideological

⁶⁵⁷ Immigration and Nationality Act, 31-34.

⁶⁵⁸ Maltz, “The Constitution and the Travel Ban,” 400.

deportation in American history.⁶⁵⁹ In this case, the Supreme Court affirmed the decision of the federal government of deporting John Turner, an English philosophical anarchist, thereby upholding the constitutionality of the Immigration Act of 1903, also known as the Anarchist Exclusion Act.⁶⁶⁰

John Turner was an English trade unionist and philosophical anarchist who visited the America in 1896 on a lecture tour. In 1903, he was invited by American anarchists to come to the USA on another lecture tour. To this end, anarchists started raising money to pay for Turner's passage. While it was apparent that it was not the intention of the anarchists to invite Turner for the sake of testing the recently passed Act, the Immigration Act of 1903, it was, however, exactly what occurred in immigration officials' minds.⁶⁶¹ Therefore, once in the Port of New York at Ellis Island, John Turner was detained for questioning by a Commissioner of Immigration called William Williams. Yet, after questioning, they released him as it became clear that it was the wrong person due to a resemblance of names. Upon releasing the wrong person, William hatched up a plan to allow the actual John Turner to enter the United States in order to permit officials to collect evidence against him to deport him under the provisions of the Anarchist Exclusion Act of 1903.⁶⁶² Effectively, once the actual John Turner arrived in New York in October 1903, he fell into Commissioner William's trap, though he did not initially enter the United States through Ellis Island.

When arrested by immigration inspectors, Turner had already started delivering some lectures in New York before being sent to Ellis Island for detention pending deportation. Immigration inspectors had transcribed Turner's speeches where he identified himself as an anarchist, thereby confiscating a copy of the anarchist newspaper *Free Society* they found in his pocket.⁶⁶³ Additionally, they found a pamphlet written by Johann Most⁶⁶⁴ and a schedule of

⁶⁵⁹ Kraut, Julia Rose. "Global Anti-Anarchism: The Origins of ideological Deportation and the Suppression of Expression the Suppression of Expression". *Indiana Journal of Global Legal Studies* 19, no. 1 (2012): 182. <https://www.repository.law.indiana.edu/ijgls/vol19/iss1/7>

⁶⁶⁰ Kraut, "Global Anti-Anarchism: The Origins of ideological Deportation and the Suppression of Expression the Suppression of Expression," 169-170.

⁶⁶¹ *Ibid.*, 183.

⁶⁶² *Ibid.*, 183.

⁶⁶³ *Ibid.*, 184.

⁶⁶⁴ Johann Joseph Hans Most, born on February 5, 1846 and died on March 17, 1906, was German American Social Democratic than an anarchist politician, news paper editor, and orator. Also, he is credited with popularizing the concept of propaganda of the need.

his tour lectures including lecturing on “The Legal Murder of 1887”⁶⁶⁵ as well as addressing a mass meeting with Most in commemoration of the hanging of the “Haymarket Anarchists”.⁶⁶⁶

During the hearing before a board of special inquiry of the Department of Commerce and Labor (DCL), Turner had acknowledged to immigration officials that he was an anarchist, the point at which the officials informed him that he would be deported under the Immigration Act of 1903. The Secretary of Commerce and Labor upheld this decision; similarly, it was upheld by the Circuit Court of the United States for the Southern District of New York. In response, the Free Speech League (FSL) rushed to his help. As a matter of fact, pending his forceful deportation, Turner was locked in a 9 by 6 feet cage designed for insane immigrants;⁶⁶⁷ in addition, pending his deportation, Turner was free to leave the USA and return to England, but the anarchist and activist Emma Goldman asked him if he would stay in detention on Ellis Island for the sake of challenging his deportation’s constitutionality.⁶⁶⁸ Turner, however, responded positively to the request of Emma Goldman not because he believed he would win the case, but because he believed that the public opinion might be sufficiently aroused to rescind the Anarchist Exclusion Act or obstruct his deportation.⁶⁶⁹

The Anarchist Exclusion Act of 1903 is a law that codified immigration to the United State and introduced four inadmissible classes of aliens which are anarchists, beggars, people with epilepsy, and prostitutes. It literally provided for the following:

That the following classes of aliens shall be excluded from admission from the United States: All idiots, insane persons, epileptics, and persons who have been insane within five years previous; persons who have had two or more attacks of insanity at any time previously; paupers, persons likely to become a public charge; professional beggars; persons affected with loathsome or with a dangerous contagious disease; persons who have been convicted of felony or other crime of misdemeanor involving moral turpitude; polygamists, anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States or all government or of all forms of law or the assassination of public officials; prostitutes

⁶⁶⁵ Kraut, “Global Anti-Anarchism: The Origins of ideological Deportation and the Suppression of Expression the Suppression of Expression,” 170.

⁶⁶⁶ The Haymarket affair (also known as the Haymarket massacre, the Haymarket riot, the Haymarket Square riot, or the Haymarket Incident) was the aftermath of a bombing that took place at a labor demonstration on May 4, 1886, at Haymarket Square in Chicago, Illinois, United States. It began as a peaceful rally in support of workers striking for an eight-hour work day, the day after the events at the McCormick Harvesting Machine Company, during which one person was killed and many workers injured.

⁶⁶⁷ Sidney Fine, “Anarchism and the Assassination of McKinley,” *The American Historical Review* 60, no. 4 (1995): 796. <http://www.jstor.org/stable/1844919>.

⁶⁶⁸ *Ibid.*

⁶⁶⁹ Fine, “Anarchism and the Assassination of McKinley,” 796.

and persons who procure or attempt to bring in prostitutes or women for the purpose of prostitution...⁶⁷⁰

As aforesaid, Emma Goldman began a long association with the FSL in 1903 starting with their commitment to defend the British Anarchist John Turner. The latter was the first person to be tried for violating the Anarchist and Exclusion Act passed on March 3, 1903. This Act targeted the anarchists and others who advocate the forceful overthrow of the U.S. government as well as the assassination of American public officials.

To tell the truth, the federal government particularly cracked on the anarchists in response to the hysteria that followed the assassination of the then U.S. President, William McKinley (1843—1901; served 1897—1901) when he was shot by the twenty-eight-year-old Polish immigrant called Leon Czolgosz (1873—1901).⁶⁷¹ The latter shot President McKinley while he was delivering a speech on September 5, 1901, at the Pan-American Exposition in Buffalo, New York.⁶⁷² Leon Czolgosz, who identified himself as a self-proclaimed anarchist,⁶⁷³ shook the left hand of President McKinley and shot him twice in his chest causing him Gangrene (the decay of skin tissue owing to blood loss) that led to his death on September 14, 1901.⁶⁷⁴ Consequently, the death of President McKinley just after six months after initiating his second term caused a great wave of rancor against anarchists that swept the USA from coast to coast.

At the official level, the police of Buffalo arrested several anarchists on the grounds that Leon Czolgosz, a self-avowed anarchist, did not act alone and must be supported by his fellow anarchists. Under questioning, Czolgosz confessed that he assassinated President McKinley because he considered it his duty to do so. Further, he told doctors who examined him that he studied anarchism for several months insofar as he believed there should be no rulers and that he was completely aware of what he was doing while he shot the President; hence, he was willing to take the consequences.⁶⁷⁵ This raised a lot of questions about anarchism and the set of beliefs and ideas that form its doctrine.

⁶⁷⁰ U.S. Congress, *The Statutes at Large of the United States of America, from December 1901, to March 1903, Concurrent Resolutions of the Two Houses of Congress, and Recent Treaties, Conventions, and Executive Proclamations* (Washington: Government Printing Office, 1903), 1214.

⁶⁷¹ Benson, *U.X.L Encyclopedia*, 989.

⁶⁷² *Ibid.*, 988.

⁶⁷³ Bill Lynskey, ““I shall Speak in Philadelphia”: Emma Goldman and the Free Speech League,” *The Pennsylvania Magazine of History and Biography* 133, (2009): 172.

⁶⁷⁴ Benson, *U.X.L Encyclopedia*, 989.

⁶⁷⁵ Fine, “Anarchism and the Assassination of McKinley,” 780.

The term anarchism is derived from the word ‘*anarchy*’ which refers to the actual absence of any form of organized government. Its origin is traced back to the Age of Enlightenment in the eighteenth century when movements supporting reason and intellectualism started getting influential.⁶⁷⁶ These ideas resulted in radical changes in terms of governmental ideals and values. For instance, among the famous influencers and pioneers of this movement was the Swiss-born philosopher, Jean Jacques Rousseau, whose ideas influenced the inciters of the French Revolution. So, anarchism is a political belief that refuses organized governments and believes that each person can govern him- or herself. Furthermore, anarchists strongly believe in the idea that all forms of government and rulership over people restrict their freedom and detrimentally affect their responsibility and individual action.⁶⁷⁷

The influence of the anarchist movement continued affecting and pervading the political and social life in Europe till the twentieth century. As a matter of fact, one month prior to the assassination of U.S. President McKinley, Italian King Humbert was killed by the anarchist Bresci.⁶⁷⁸ Thenceforth, Americans started raising questions as to whether the public officials as well as the U.S. President were themselves secured and well protected against anarchists’ attacks. Francis H. Nicholas, a correspondent of the *Outlook* newspaper wrote on August 10, 1901, that though they were few in number, Americans regarded anarchists as an alarm, and considered anarchism as “the most dangerous theory which civilization has ever had to encounter, and that anarchists ranks, it was thought, were filled by common criminals and psychopaths who were prepared to resort to fire and the sword to subvert the social order and to murder public officials”.⁶⁷⁹ Therefore, the assassination of President McKinley came to demonstrate to Americans the extent to which the threat of the anarchist doctrine can reach.

In response to the McKinley murder, the need for reviewing the existing immigration statutes became intense. New laws had to be introduced to restrict and ban the entry of undesired immigrants to the USA, including the anarchists. Therefore, President Theodore Roosevelt signed into law the Anarchist Exclusion Act on March 3, 1903, under which the British anarchist John Turner was charged with violating it. The anarchists in the USA seized the opportunity of enforcing the exclusion sections of the Act against John Turner to exploit their free speech views.

⁶⁷⁶ Ackermann, Marsha E., Michael J. Schroeder, Janice J. Terry, Jiu-Hwa Lo Upshur, and Mark F. Whitters, *Encyclopedia of World History: Crisis and Achievement 1900 to 1950* (New York: Fact On File, 2008), 15.

⁶⁷⁷ Ackermann et al., *Encyclopedia of World History: Crisis and Achievement 1900 to 1950*, 15.

⁶⁷⁸ Fine, “Anarchism and the Assassination of McKinley,” 777.

⁶⁷⁹ *Ibid.*, 777-778.

The Free Speech League decided to focus its attention on the free-speech aspects of Turner's affaire. To this end, the league raised a question to the public as to whether "Shall the Federal Government be a judge of beliefs and disbeliefs? Tyranny ... always begins with the most unpopular man or class and extends by degrees: it should be resisted at the beginning."⁶⁸⁰ Apparently, playing on the angle of free speech started giving its fruits to the anarchists. Indeed, the support for Turner's cases was clearly evidenced through the mass meeting organized in New York City's Cooper Union on December 3, 1903, to protest against the deportation of Turner. At the end of the meeting, the protesters came up with some resolutions all objected to the provisions of the Anarchist and Exclusion Act as it authorized the deportation and exclusion of an alien just because of his ideas and beliefs. Besides, they objected to the administrative process according to which he was arrested and detained. Similar meetings were organized in Buffalo and Philadelphia; likewise, several labor organizations objected to the government's actions.⁶⁸¹

Criticism of the Anarchist and Exclusion Act to the point that it provided for the exclusion and deportation of peaceful anarchists was also voiced by some of the important newspapers and magazines in the United States. For instance, the New York Daily News, the New York Evening Post, the New York World, the Independent, the Springfield Republican, and the Outlook, all claimed that, in banning aliens from the country only because of their opinions, the federal government was encroaching upon the basic principle of freedom of speech and thought.⁶⁸² However, such criticisms failed to persuade the Supreme Court that took up the case on the 6th of April, 1904.

John Turner objected to the deportation claiming that the order violated both his due process rights and his right to free speech guaranteed by the First Amendment. The Court, however, unanimously rejected Turner's claims, thereby upholding the decision of his deportation. To elaborate on the point, Chief Justice Melville W. Fuller affirmed that an alien would be cut off from his rights of worshipping or speaking or publishing, or petitioning in the United States if he is not allowed to enter the country or illegally entered the country.⁶⁸³ However, Fuller also noted that this inability is merely due to the exclusion of the alien from enjoying the aforesaid rights, thereby asserting that an alien does not belong to the American

⁶⁸⁰ *Ibid.*, 797.

⁶⁸¹ Fine, "Anarchism and the Assassination of McKinley," 797.

⁶⁸² *Ibid.*

⁶⁸³ Maltz, "The Constitution and the Travel Ban," 402.

people to whom these set of basic rights are guaranteed by the U.S. Constitution.⁶⁸⁴ In other words, Fuller’s opinion conveyed that appealing to the U.S. Constitution means admitting that the United States is a country that is governed by that supreme law. He concluded that since the power to exclude is determined to exist under the Constitution, excluded aliens cannot obtain and enjoy the rights which are secured only to people who belong to this nation as citizens or otherwise.⁶⁸⁵

The same opinion was reiterated in *Kleindienst v. Mandel*. Citing Turner with approval, the opinion of the majority maintained that as an unadmitted or nonresident alien, the excluded person has no Constitutional right to enter the United States as a nonimmigrant or otherwise. Hence, the requirement of a “facially legitimate and bona fide reason” was imposed on account of excluding an alien, in that case, invokes the rights guaranteed under the First Amendment to the U.S. Constitution to American citizens wishing to hear and debate the views and thoughts of an excluded person.⁶⁸⁶

Likewise, in the 1990 *United States v. Verdugo-Urquidez* case, the Supreme Court once again ruled that the Bill of Rights does not protect nonresident aliens. This case is not about the attempt of a nonresident alien to get permission to enter the United States; instead, it is about a dispute over admitting evidence in the trial of a Mexican citizen accused of a variety of related violations.⁶⁸⁷ The evidence, however, had been obtained in Mexico by agents of the U.S. Drug Enforcement Agency who were working in collaboration with the Mexican government’s representatives.⁶⁸⁸ The defendant claimed that the evidence should be suppressed since it was obtained without a warrant as required by the Fourth Amendment to the U.S. Constitution which stipulates:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.⁶⁸⁹

In concluding that the seized evidence could be admitted at the criminal trial, the opinion of the majority in the *United States Verdugo-Urquidez* explicitly drew an analogy between this current case and the case of John Turner, thereby declaring that people who are protected by

⁶⁸⁴ Ibid.

⁶⁸⁵ Ibid., 403.

⁶⁸⁶ Ibid., 403.

⁶⁸⁷ Maltz, “The Constitution and the Travel Ban,” 403.

⁶⁸⁸ Ibid., 403.

⁶⁸⁹ Arnold, *A Pocket Guide to the US Constitution*, 122.

the First and Fourth Amendments to the U.S. Constitution belong to a class of people who make part of the national community or who have otherwise developed sufficient connection with this country so as to be considered part of that community. On the other hand, those challenging Trump's Travel Bans must somehow differentiate their arguments from those which underlay *Verdugo-Urquidez* and *John Turner*. The challengers of Trump's Travel Bans sometimes capitalize on the ruling of the Supreme Court in *Boumediene v. Bush* in 2008. In the latter case, the Supreme Court was called upon to consider petitions for habeas corpus filed by Lakhdar Boumediene along with a number of aliens who had been described as "enemy combatants" after being captured by the U.S. armed forces in other countries; thereafter, they were detained in the U.S. Naval Station located in Guantanamo Bay, Cuba. Two years before *Boumediene v. Bush*, Congress passed the Military Commissions Act (MCA) on October 17, 2006, which provided for banning federal courts from exercising jurisdictions over habeas petitions filed by detainees such as the petitioners.

Petitioners detained at Guantanamo Bay Facility presented a question to the Supreme Court about whether they are entitled to the constitutional privilege of habeas corpus guaranteed by the U.S. Constitution under Article I, Section 9, Clause 2.⁶⁹⁰ They claimed that the MCA was unconstitutional as it went afoul of Article I, Section 9 of the U.S. Constitution or rather the "Suspension Clause", which bans the suspension of the writ of habeas corpus except in cases of rebellion or invasion: "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it".⁶⁹¹ In response, the U.S. government maintained that the petitioners are not rightful when claiming protection under the Suspension Clause owing to the fact that they are not American citizens and that the Guantanamo Bay facility is located outside the U.S. territory, in Cuba.⁶⁹²

The Supreme Court, represented by Justice Anthony Kennedy, objected to the argument of the Government maintaining that aliens detained at the Guantanamo Bay facility are entitled to protection under the Suspension Clause.⁶⁹³ While acknowledging the lease that enabled the USA to occupy the Guantanamo Bay facility, Cuba retains the ultimate sovereignty over the territory on which the Guantanamo Bay facility is situated. Justice Kennedy objected to the

⁶⁹⁰ Staff of Justia, "Boumediene v. Bush, 553 U.S. 723 (2008)," Justia US Supreme Court, Accessed on August 9, 2022, <https://supreme.justia.com/cases/federal/us/553/723/#tab-opinion-1962621>

⁶⁹¹ Arnold, *A Pocket Guide to the US Constitution*, 45.

⁶⁹² Maltz, "The Constitution and the Travel Ban," 404.

⁶⁹³ *Ibid.*, 405.

claim that the aliens' right to be protected under the Suspension Clause was limited by the concept of "*de jure* sovereignty". Instead, he affirmed:

...at least three factors are relevant in determining the reach of the Suspension Clause: (1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner's entitlement to the writ.⁶⁹⁴

Justice Kennedy also noted that "In every practical sense, Guantanamo is not abroad; it is within the constant jurisdiction of the United States".⁶⁹⁵ Besides, Anthony Kennedy pointed out that there is no indication concerning a possible conflict or friction that may occur with the host government due to adjudicating a habeas corpus petition. Accordingly, the United States is not, for all practical purposes, answerable to any other sovereign for its acts on the base, though it is obliged to abide by the terms of the lease. Therefore, Kennedy concluded that the Military Commissions Act of 2006 is unconstitutional.

Our decision today holds only that the petitioners before us are entitled to seek the writ; that the DTA [Detainee Treatment Act of 2005] review procedures are an inadequate substitute for habeas corpus; and that the petitioners in these cases need not exhaust the review procedures in the Court of Appeals before proceeding with their habeas actions in the District Court. The only law we identify as unconstitutional is MCA.⁶⁹⁶

Considered out of the context, the functional analysis of the Court's ruling in *Boumediene* might be viewed in the abstract as leaving open the possibility of interpreting the U.S. Constitution in the way that it extends the free exercise rights to nonresident aliens seeking admission to the country. However, the majority opinion in *Boumediene* Court did not refer to the *Turner* case nor did it purport to overrule *Verdugo-Urquidez*. In addition, the main issue that was at the heart of the dispute in *Boumediene* was different from that discussed in *Turner* and *Verdugo-Urquidez*. While the issue in the earlier case was whether aliens outside the territorial jurisdiction of the U.S. government are entitled to the protection of the Bill of Rights, the *Boumediene* Court's main focus was on whether the territorial reach of the Bill of Rights extended to areas under the control of the U.S. government but cannot assert sovereignty over them.

⁶⁹⁴ Staff of Justia, "Boumediene v. Bush, 553 U.S. 723 (2008)," Justia US Supreme Court, Accessed on August 9, 2022, <https://supreme.justia.com/cases/federal/us/553/723/#tab-opinion-1962621>

⁶⁹⁵ Staff of Justia, "Boumediene v. Bush, 553 U.S. 723 (2008)."

⁶⁹⁶ *Ibid.*

In actual fact, the principles underlying *Turner* and *Verdugo-Urquidez* are in agreement with the basic nature of the U.S. Constitution itself. Neither the delegates who assembled in Philadelphia in 1787 to draft the Constitution nor those who were selected to ratify it in the state ratification conventions were driven by a perceived need to solve issues faced by people in the world at large. Besides, the supporters of the new Constitution drafted in Philadelphia believed that the institutions established under the Articles of Confederation were very weak and powerless, and lack the required tools, jurisdictions, and mechanisms to protect people's common and separate interests. Therefore, the new constitution was designed to address that problem by creating a new federal government with far greater powers than those granted to the Continental Congress under the Articles of Confederation. Contrariwise, adding the Bill of Rights broadly aimed at limiting and restricting the potential threat that might be caused by the newly strengthened federal government to the interests of individual states and their respective citizens.

Conversely, extending the protections of the Bill of Rights to nonresident aliens will not advance this project. Furthermore, rejecting the principles embodied in *Turner* and *Verdugo-Urquidez* would obstruct the federal government's ability to perform some of the functions for which it was created. Moreover, it is obvious that the interests of American citizens would not be consistent with those of nonresident aliens all the time; hence, in such situations, the American government is tasked with advancing the policy preferences and the best interests of American citizens, not those of nonresident aliens. However, if nonresident aliens are deemed to be protected by the Bill of Rights, the federal government would have limited options. Therefore, this lack of flexibility would impede the federal government's ability to take the right and best-calculated actions to address the concerns of communities the U.S. Constitution was essentially designed to protect them.⁶⁹⁷ Accordingly, the opponents of Trump's Travel Bans have clearly been aware of the difficulties that *Turner* and *Verdugo-Urquidez* would pose for all arguments based on the equal protection components based on the Fifth Amendment or Free Exercise Clause of the First Amendment.⁶⁹⁸

Rather than relying on either of these provisions, the challengers of the Travel Bans' constitutionality have mostly conceded that since the executive orders were motivated by the anti-Muslim backlash, the exclusion of potential entrants from the listed seven countries is

⁶⁹⁷ Maltz, "The Constitution and the Travel Ban," 406.

⁶⁹⁸ *Ibid.*, 406.

unconstitutional because it runs afoul of the First Amendment prohibition on laws “respecting an establishment of religion”.⁶⁹⁹ They contended that actions based on religious aversion and distaste violate both the Establishment and Free Exercise Clauses. Moreover, they stressed to regard the Establishment Clause as a structural limitation on the federal government’s actions rather than ensuring individuals’ civil rights; hence, despite the Court’s verdicts such as those handed down in *Turner* and *Verdugo-Urquidez*, the Establishment Clause limits the government’s power of excluding nonresident aliens.⁷⁰⁰ Still, this Clause encounters invincible doctrinal difficulties.

3.12.1.9 The Travel Ban and The Establishment Clause

Any cogent and credible evaluation of the Establishment Clause challenges the Travel Bans must start with an understanding of the historical background that led to the adoption of the clause itself. Historically, different religious backgrounds characterized America’s early settlers: Puritans who predominated the New England states, Anglicans who predominated the South, Quakers, and Lutherans who flocked to Pennsylvania, Roman Catholics who settled mainly in Maryland, Presbyterians who were most numerous in the middle colonies, and Jewish congregation in five cities.⁷⁰¹ During the colonial period, the Anglican church was established by law in all southern colonies, while Puritanism was established in most New England states. However, Delaware, Pennsylvania, New Jersey, Rhode Island, and much of New York remained without an established church.⁷⁰² In the colonies wherein there was an established church, clergy used to be appointed and disciplined by colonial authorities. Colonists had to pay religious taxes to attend church services. Dissenters were often punished for refusing to pay religious taxes to churches they disagreed with or preaching without a license.⁷⁰³

After the independence, there was widespread agreement among Americans that there should be no established church all over the national territory. Therefore, the Established Clause of the First Amendment reflects this consensus. The language of the clause is applied only to the federal government as it provides: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”.⁷⁰⁴ Later, in 1833, all states disestablished

⁶⁹⁹ *Ibid.*, 406-407.

⁷⁰⁰ Maltz, “The Constitution and the Travel Ban,” 407.

⁷⁰¹ Marci A. Hamilton and Michael McConnell, “Common Interpretation: The Establishment Clause,” National Constitution Center, Accessed on August 9, 2022, <https://constitutioncenter.org/interactive-constitution/interpretation/amendment-i/interps/264>

⁷⁰² Hamilton and McConnell, “Common Interpretation: The Establishment Clause.”

⁷⁰³ *Ibid.*

⁷⁰⁴ Arnold, *A Pocket Guide to the US Constitution*, 90.

religion. In the 1940s, however, the Supreme Court ruled that disestablishment applies to state governments under the 14th Amendment.⁷⁰⁵

When the First Amendment was drafted and ratified, Americans mostly construed the concept of “establishment of religion” as a specific relationship between the government and one or more religious organizations.⁷⁰⁶ The nature of this relationship might be defined as the government’s interference with the structure and personnel of the established church, its doctrines, using it for public functions, and limiting the political participation of members of the established church; in addition, the government might also interfere with the public financial support for the church, obligatory attendance at religious services in the state church, and/or banning attendance in other churches.⁷⁰⁷ In other words, all jurists virtually agree that the government would violate the Establishment Clause if it obliges people to attend or financially support a religious entity as such if it interferes with the clergy selection of a religious organization or a religious doctrine, if it compels a religious organization or figures to act in a religious capacity to exercise governmental power, or if it extends benefits to certain religious entities out of the other religious entities without secular justification.⁷⁰⁸ To come to the point, the majority of the Establishment Clause cases fall in four areas: financial support to religious education or other social welfare activities conducted by religious entities, prayer sponsored by the government, accommodation of religious dissenters from the general application of the law, and the government-owned or sponsored symbols.⁷⁰⁹

Notwithstanding the variety of the relationship’s specifics from one state to another, it was mostly understood by all parties that the concept of the “establishment of religion” basically hinges on the theory that one or more religious organizations were favored over others and treated on that basis by the relevant state government. Likewise, in the 1971 Court ruling in *Lemon v. Kurtzman*, Chief Justice Warren E. Burger determined the three evils against which the Establishment Clause was designed to provide protection; they are “sponsorship, financial support, and the active involvement of the sovereign in religious activity”.⁷¹⁰

A given law might not establish a state religion, but nevertheless be one “respecting” that end in the sense of being a step that could lead to such establishment, and hence offend the First Amendment. In the absence of precisely stated constitutional

⁷⁰⁵ Hamilton and McConnell, “Common Interpretation: The Establishment Clause.”

⁷⁰⁶ Maltz, “The Constitution and the Travel Ban,” 407.

⁷⁰⁷ Ibid.

⁷⁰⁸ Hamilton and McConnell, “Common Interpretation: The Establishment Clause.”

⁷⁰⁹ Ibid.

⁷¹⁰ Ibid.

prohibitions. we must draw lines with reference to the three main evils against which the Establishment Clause was intended to afford protection: “sponsorship, financial support, and active involvement of the sovereign in religious activity.”⁷¹¹

So, this understanding constituted the historical context as well as the backdrop for the creation of the modern approach to analyzing the Establishment Clause in *Lemon v. Kurtzman*, where the opinion of the majority of Justices in the Court held that a statute can survive the challenges of the Establishment Clause only if it has a secular legislative purpose, its primary effect must be one that neither advances nor prohibits religion, and lastly, it must not foster an excessive government interference with religion.⁷¹²

The cases wherein the Court had found that the federal government practices went afoul of the Establishment Clause have broadly portrayed a similar understanding of the nature of evils the clause intended to address. For instance, *Lemon* and its progeny included situations wherein the federal government provided financial support to religious entities, while in a case like *McCreary County v. American Civil Liberties Union (ACLU)*, and *Santa Fe Independent School District v. Doe*, the Court found out that federal government had in effect granted its official imprimatur to the doctrines adopted by particular religious groups.⁷¹³ Additionally, in *Larkin v. Grendel’s Den, Inc.* and the *Board of Education of Kiryas Joel Village School District v. Grumet*, the Court held that the local officials had unconstitutionally delegated government power to religious authorities. Hence, whatever one thinks of the results in these cases, each of the government actions that were at issue could plausibly be associated with the concepts of “sponsorship, financial support, [or] active involvement of the sovereign in religious activity”.⁷¹⁴

However, the problems presented by the Travel Bans are completely different as no one can cogently argue that the restrictions imposed by the executive orders aim at advancing any particular religion or any particular set of beliefs, or lack thereof. Furthermore, the executive order does not foster the establishment of a relationship between any religious organization and the government. However, though the Travel Bans did not explicitly refer to any religious entity or a particular set of beliefs, critics of the order claimed that the Travel Bans run afoul of the U.S. Constitution because it was enacted due to anti-Muslim motivation.⁷¹⁵

⁷¹¹ Staff of Justia, *Lemon v. Kurtzman*, 403 U.S. 602 (1971), Justia US Supreme Court, Accessed August 9, 2022. <https://supreme.justia.com/cases/federal/us/403/602/>

⁷¹² *Ibid.*, 408.

⁷¹³ Maltz, “The Constitution and the Travel Ban,” 407.

⁷¹⁴ *Ibid.*, 407.

⁷¹⁵ *Ibid.*, 408.

In fact, any effort to read a generalized prohibition against religious rancor against people on the basis of their religious beliefs into the Establishment Clause engenders an insoluble issue for those seeking to deploy the clause against the Travel Ban. Challengers of the Travel Ban's constitutionality argue that the Establishment Clause argument is not subject to the strictures of *Verdugo-Urquideza* and *Turner* because the clause itself is a structural limitation on the federal government's power rather than a guarantee of people's rights.⁷¹⁶ However, the claim that the clause bans the federal government from acting against individuals based on religious backlash cannot plausibly be characterized as anything other than a claim of people's rights. Accordingly, even if the Establishment Clause is understood to be protective of American citizens only against government actions based on religious animus, nonresident aliens could not advocate similar protection from the federal government's actions under the existing statute. To sum up, Trump's Travel Ban does not run afoul of the principles established by the Supreme Court's rulings that dealt with the scope of the First Amendment.⁷¹⁷ Moreover, it is obvious that the Court itself may change those principles if it considers the merits of the constitutional challenges to the actions of President Trump's administration. However, in the absence of such changes, the rulings of the lower courts temporarily prevented the enforcement of the Travel Ban owing to the indefensibility of the First Amendment grounds.

3.13 Effects of the EOs on Visas Issuance

The series of Executive Orders President Donald Trump issued with the aim of banning and restricting the inflow of immigrants from certain countries had a significant impact on the number of visas granted to foreign nationals hailing from the listed countries. In practical terms, the number of issued visas had been detrimentally affected and decreased significantly compared with those registered during the presidency of Barack Obama. Changes in the number of issued visas for foreign nationals from countries targeted by the Travel Ban are displayed in the tables below.

3.13.1 Effects on Countries of the Muslim Ban

The Muslim Ban greatly affected nationals of the banned countries. The Ban gravely decreased the number of Visas issued for nationals of these countries. Broadly, according to a CATO analysis of DHS data about the effects of EO13769, it found that around 91% reduction

⁷¹⁶ Ibid., 410.

⁷¹⁷ Ibid.

in Muslim Refugees was registered between 2016 and 2018 along with a 30% decline in visa issuance to 49 predominantly Muslim countries.⁷¹⁸ Furthermore, applicants in these countries lost the money they paid as fees for their applications. Additionally, under the guise of national security, the Ban barred peoples of entire nations from entering the United States. These effects are extensively explained as the following:

3.13.1.1 Immigrant Visas Issuance

Following the enactment of the Muslim Ban 1.0 on January 27, 2017, its effects had been very soon noticed through the significant changes in the number of visas granted to foreign nationals from the countries concerned with the travel ban. Table 1 displays immigrant visas issued at foreign service posts for countries of the Muslim Ban over the period spanning fiscal years 2012 to 2020.

Table 1. Immigrant visas issued at foreign service posts for countries of the Muslim Ban during FY 2012-2020

	2012	2013	2014	2015	2016	2017	2018	2019	2020
Iran	8,126	8,057	7,049	7,179	7,727	6,643	1,449	1,623	4,750
Iraq	4,853	4,335	2,181	2,010	3,660	3,720	2,120	1,814	688
Syria	1,926	2,179	1,984	1,901	2,633	2,551	838	944	1,652
Yemen	2,681	3,158	2,939	3,143	12,998	5,419	1,195	4,379	4,935
Somali	921	1,047	1,705	1,078	1,797	1,791	546	464	970
Libya	134	163	189	272	383	458	139	267	170
Sudan	1,167	1,019	1,552	1,642	2,606	1,841	2,585	2,202	676
Total	19,808	19,958	17,599	17,225	31,804	22,423	8,872	11,693	13,841

Source: Table XIII Immigrant Visas Issued at Foreign Service Posts (by Foreign State Chargeability) (All Categories) Fiscal Years 2012-2021*

<https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2021AnnualReport/FY21TableXIII.pdf>

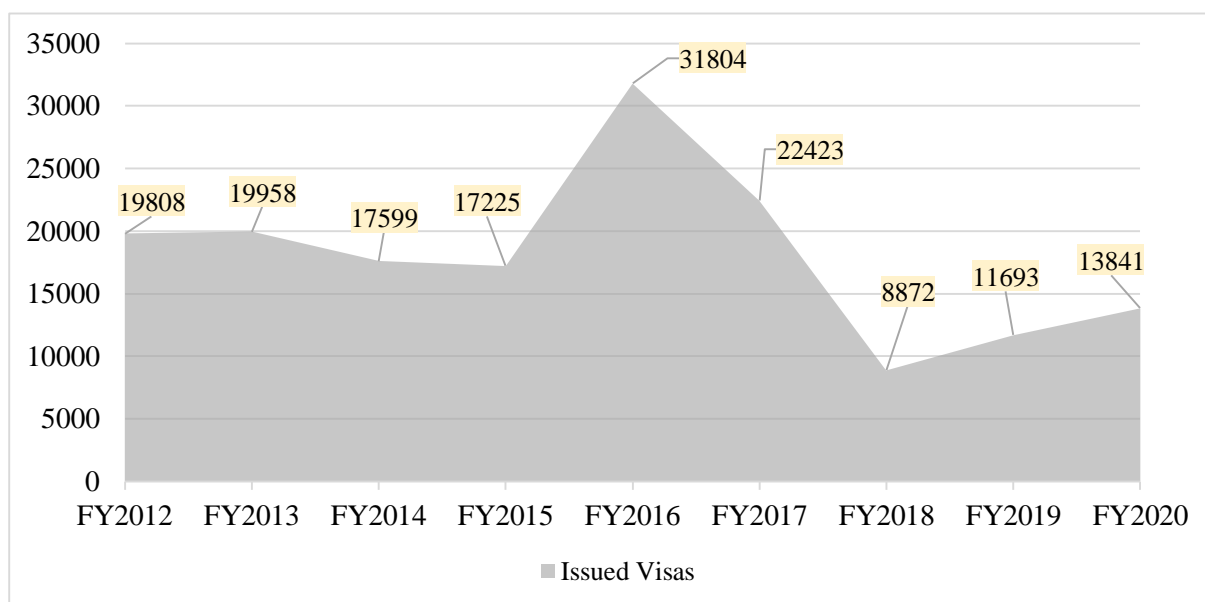
Broadly, Table 1 shows a significant change between the policy of the Democratic administration of President Barack Obama and that Republican one of President Donald Trump. Numbers show that during Obama's Presidency, the United States used to admit more immigrants from the seven Muslim countries compared with the period that followed the enactment of the Travel Ban. For instance, in 2016, America admitted 7,727 Iranian immigrants, but this number decreased to 6,643 in 2017, 1,449 in 2018, and 1,623. In 2019. Likewise, visas granted to nationals from Yemen decreased sharply from 12,998 in 2016 to

⁷¹⁸ Louis Cainkar, "The Muslim Ban and Trump's War on Immigration". Middle East Research and Information Project. 2020. Accessed on June 14, 2023. <https://merip.org/2020/06/the-muslim-ban-and-trumps-war-on-immigration-2/>

5,419 in 2017 and 1,195 in 2018. In addition, Table 1 shows that the total number of visas granted for nationals of the banned countries remarkably decreased from 31,804 in 2016 to 22,423 in 2017, 8,872 in 2018, 11,693 in 2019, and 13,841 in 2020.

Figure 6 shows the change in visa issuance for nationals of the banned countries between FY2012 and FY2020. This figure shows a sharp decline in the number of visas issued between FY2016 where their number amounted to 31,804 and FY2018 where their number declined to 8,872, a difference of 22,932 visas (72.1%) which reflects the big change in American immigration policy under Trump's administration.

Figure 6. Visa issuance for nationals of the banned countries



Source: Adapted from U.S. Department of State, Bureau of Consular Affairs
Table XIII Immigrant Visas Issued at Foreign Service Posts (by Foreign State Chargeability)
(All Categories) Fiscal Years 2012-2021*
<https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2021AnnualReport/FY21TableXIII.pdf>

The same thing happened with visas granted to nationals from North Korea and Venezuela. Table 2 displays changes related to the admission of immigrants from these two countries under the two administrations of Barack Obama and Donald Trump.

Table 2. Immigrant visas issued at foreign service posts for North Koreans and Venezuelans during FY 2012-2020

	2012	2013	2014	2015	2016	2017	2018	2019	2020
N. Korea	6	5	1	7	9	3	5	14	7
Venezuela	1,932	1,816	1,910	2,348	2,471	2,909	3,172	1,218	2,031
Total	1,938	1,821	1,911	2,355	2,480	2,912	3,177	1,232	2,038

Source: Table XIII Immigrant Visas Issued at Foreign Service Posts (by Foreign State Chargeability) (All Categories) Fiscal Years 2012-2021*

https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2021AnnualReport/FY21_TableXIII.pdf

According to the displayed numbers in Table 2, the total number of visas granted to immigrants from the two countries continued increasing where 2,355 visas were issued in 2015, 2,480 in 2016, 2,912 in 2017, and 3,177. Though the issued visas for the North Koreans were very scarce due to the absence of diplomatic relationships between the United States and the dictatorship established by the North Korean regime, visas granted to immigrants from Venezuela continued to increase until FY2019 when a sharp decline occurred after adding Venezuela to the list of the banned countries.

3.13.1.2 Nonimmigrants Visas Issuance

Nonimmigrants' visa issuance was also affected by the provisions of the Travel Ban. Table 3 reflects the change that occurred regarding the admission of nonimmigrants from the seven countries targeted by the travel ban.

Table 3. Nonimmigrant Visas Issued for Nationals from Muslim Ban Countries during FY 2012-2020

	2012	2013	2014	2015	2016	2017	2018	2019	2020
Iran	25,446	26,091	33,961	35,363	29,404	19,801	6,014	4,244	2,182
Iraq	10,399	14,522	16,359	13,499	15,416	11,038	10,014	9,725	3,937
Syria	9,408	15,130	12,671	10,061	9,096	5,411	2,131	1,775	1,331
Yemen	3,497	4,079	5,842	4,525	5,203	2,919	1,121	1,325	698
Somalia	202	210	352	331	451	276	207	168	103
Libya	3,226	4,593	4,766	3,303	2,307	1,552	925	968	529
Sudan	3,771	3,328	4,872	5,080	6,979	4,239	5,116	4,589	2,069
Total	55,949	67,953	78,823	72,162	68,856	45,236	25,528	22,794	10,849

Source: Table XVII, Nonimmigrant Visas Issued by Nationality (Including Border Crossing Cards) Fiscal Year 2012-2021*

https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2021AnnualReport/FY21_TableXVII.pdf

According to data shown in Table 3, nonimmigrant visas issued at foreign service posts for nationals of the Muslim Ban’s countries over the period spanning fiscal years 2012 to 2020 decreased as well. This decline started in FY2016 and continued till FY2020 when it reached its lowest number of 10,849 visas. This decline is ascribed to the tough measures the Trump administration adopted through the long and tough vetting system designed to check applicants’ eligibility for obtaining visas after making sure that they do not pose any threat to America’s national security and serve the best interest of the United States.

3.13.2 Effects on Countries of the Travel Ban

The number of nonimmigrant visas issued for nationals of Venezuela and North Korea was also affected by Trump Travel Ban, namely by the tough vetting proceedings. This is clearly shown in Table 4 which mirrors the difference in immigration policy between the administrations of Presidents Barack Obama and Donald Trump. Concerning Venezuela, the number of nonimmigrant visas granted to its nationals peaked in FY2015 under Obama’s administration, reaching 237,926. Thereafter, this number started decreasing over the next years before reaching its lowest value of 20,328 under the Trump administration, reflecting how difficult it became under his administration to get a nonimmigrant visa. Almost the same change occurred concerning nonimmigrant visas granted to nationals of North Korea when their number decreased from 100 in 2016 to 22 in 2020.

Table 4. Nonimmigrant visas issued for nationals from Venezuela and North Korea during FY 2012-2020

Fiscal Years	Venezuela	North Korea	Total
2012	228,207	87	228,294
2013	221,204	56	221,260
2014	174,741	59	174,800
2015	237,926	89	238,015
2016	156,361	100	156,461
2017	56,720	55	56,775
2018	28,540	45	28,585
2019	20,328	48	20,376
2020	14,867	22	14,889

Source: Table XVII, Nonimmigrant Visas Issued by Nationality (Including Border Crossing Cards) Fiscal Year 2012-2021*

https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2021AnnualReport/FY21_TableXVII.pdf

3.13.3 Worldwide Visa Issuance

In like manner, the number of immigrant visas issued at American foreign service posts across the whole world over the period spanning fiscal years 2013 to 2018 witnessed a noticeable decline. Figure 8 shows that the number of immigrant visas increased during Obama's administration between fiscal years 2014 and 2016 from 467,370 to 617,752 (see Appendix 2); however, upon initiating Trump's immigration plan, this number started declining steadily before reaching its lowest value of 533,557 (see Appendix 2). This indicated that toughening vetting measures had greatly affected the visa-issuing process, leading to a worldwide decline in the number of visas granted to foreign nationals around the whole world.

Similarly, the number of nonimmigrant visas was also impacted by Trump's new immigration policy aiming at restricting the inflow of undesired immigrants and toughening vetting measures. Their number peaked in FY2015 as it reached 10,891,745 (see Appendix 3); afterward, it began declining gradually until reaching 9,028,026 in FY2018 (see Appendix 3). So, it is clear that Trump's immigration policy affected the influx of visa issuance for immigrants and nonimmigrants for both banned and non-banned countries.

3.14 Ending the Muslim Ban

Given the detrimental effects of the Muslim Ban on the American Muslim community as well as Muslim immigrants from the banned countries, ending the notorious ban was a paramount priority for former Vice President and the 2020 Democratic presidential candidate Joe Biden⁷¹⁹ (born November 20, 1942). The latter, in his electoral speech on June 17, 2020, in Darby, Pennsylvania, promised to terminate Trump's Muslim Travel Ban on his first day if elected to the White House. In front of the attendees of the Muslim Million Votes summit, he stated that "I will end the Muslim ban on day one. Day one. And I will work with Congress to pass hate crimes legislation like the Jabara-Heyer No Hate Act and the End Racial and Religious Profiling Act".⁷²⁰ Speaking to the attendees of the summit, Joe Biden stressed that "Muslim communities were the first to feel Donald Trump's assault on black and brown people with his vile Muslim ban. That fight was the opening barrage in what has been nearly four years

⁷¹⁹ Joseph Robinette Biden Jr. is the 46th President of the United States from January 20, 2021. He served as the 47th President of the United States under President Barack Obama from January 20, 2009, to January 20, 2017. Before that, he served as the U.S. Senator from Delaware State from January 3, 1973, to January 15, 2009.

⁷²⁰ Christina Wilkie, "Biden Pledges to End Trump's 'Muslim Ban' on His First Day in Office," CNBC, published on July 20, 2020, accessed on February 22, 2023, <https://www.cnbc.com/2020/07/20/biden-pledges-to-end-trumps-muslim-ban-on-his-first-day-in-office.html>

of constant pressure, insults, and attacks by Trump against minorities”.⁷²¹ Biden also pointed to the spike in hate crimes that characterized Trump’s presidency. This reality was confirmed by Griffin Edwards and Stephen Rushin’s study which found that hate crime surged under Trump’s administration, especially in the counties that voted for Donald Trump in the 2016 presidential election.

President Trump’s election was associated with a statistically significant surge in reported hate crimes across the United States, even when controlling for alternative explanations. Counties that voted for President Trump by the widest margins in the presidential election experienced the largest increases in reported hate crimes.⁷²²

Similarly, 16,000 law enforcement agencies reported to the FBI’s Uniform Crime Reporting (UCR) their statistics about hate crimes recorded across the American territory. Published in November 2019, UCR revealed that 7,120 hate crimes were registered in 2018. Further, the report recorded 7,036 single-bias hate crimes, victimizing 8,646 individuals.⁷²³ As for the reasons behind these hate crimes, the report indicated that they were mostly motivated by ethnicity, race, or ancestry bias. Other than Trump’s xenophobic language and declarations, his political appointees were another reason that contributed massively to the surge of hate crimes, according to Joe Biden. “Donald Trump has fanned the flames of hate in this country across the board...through his words, his policies, his appointments, and his deeds,” said Joe Biden.⁷²⁴ Therefore, it was no surprise that former Vice President Joe Biden would restore Obama’s immigration policy once he is in the oval office.

Effective, upon his inauguration, President Joe Biden rescinded Trump’s Muslim Travel Ban on his first day in office, on January 20, 2021. Additionally, President Biden ended other Trump executive orders and proclamations intended to restrict and ban the inflow of immigrants from certain Muslim-majority countries and then some African countries. President Biden justified their nullification by the principle upon which America is founded: religious freedom and tolerance enshrined in the U.S. Constitution.⁷²⁵ Biden continued to maintain that Trump’s actions remain a stain on the American national conscience because of their inconsistency with America’s long history of welcoming people regardless of their religious backgrounds.

⁷²¹ Christina Wilkie, “Biden Pledges to End Trump’s ‘Muslim Ban’ on His First Day in Office”.

⁷²² Edwards S. Griffin and Stephen Rishin. “The Effects of President Trump’s Election on Hate Crimes”. (2018): 1. Available at SSRN: <https://ssrn.com/abstract=3102652> or <http://dx.doi.org/10.2139/ssrn.3102652>

⁷²³ Federal Bureau of Investigation, “2018 Hate Crime Statistics Released,” FBI, Published on Nov. 12, 2019, Accessed on Feb. 22, 2023. <https://www.fbi.gov/news/stories/2018-hate-crime-statistics-released-111219>

⁷²⁴ Christina Wilkie, “Biden Pledges to End Trump’s ‘Muslim Ban’ on His First Day in Office”.

⁷²⁵ Joseph R. Biden Jr., “Proclamation on Ending Discriminatory Bans on Entry to the United States,” The White House, Published on Jan. 20, 2021, Accessed on Feb. 22, 2023, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-ending-discriminatory-bans-on-entry-to-the-united-states/>

The United States was built on a foundation of religious freedom and tolerance, a principle enshrined in the United States Constitution. Nevertheless, the previous administration enacted a number of Executive Orders and Presidential Proclamations that prevented certain individuals from entering the United States — first from primarily Muslim countries, and later, from largely African countries. Those actions are a stain on our national conscience and are inconsistent with our long history of welcoming people of all faiths and no faith at all.⁷²⁶

Additionally, President Joe Biden criticized Trump’s immigration measures for undermining American national security instead of protecting it as announced by Trump’s administration. Further, such notorious policies threatened America’s international network of alliances and partnerships; more importantly, they dulled America’s power as a bright example for the whole world in preserving and defending individual basic rights as they separated families, inflicting pain that would remain for years to come.

Beyond contravening our values, these Executive Orders and Proclamations have undermined our national security. They have jeopardized our global network of alliances and partnerships and are a moral blight that has dulled the power of our example the world over. And they have separated loved ones, inflicting pain that will ripple for years to come. They are just plain wrong.⁷²⁷

Therefore, President Joe Biden declared nullified the Muslim Travel Ban along with other executive orders and proclamations that banned and restricted the inflow of immigrants into the United States of America. Further, President Biden directed the Secretary of State to instruct U.S. embassies and consulates around the world to resume visa processing consistently with the nullification of Trump’s orders and proclamations.

Our national security will be enhanced by revoking the Executive Order and Proclamations. Accordingly, I hereby proclaim...Executive Order 13780, and Proclamations 9645, 9723, and 9983 are hereby revoked ... The Secretary of State shall direct all Embassies and Consulates, consistent with applicable law and visa processing procedures, including any related to coronavirus disease 2019 (COVID-19), to resume visa processing in a manner consistent with the revocation of the Executive Order and Proclamations specified in section 1 of this proclamation.⁷²⁸

By ending the Muslim Travel Ban, America closed one of the darkest chapters that characterized the evolution of its immigration policy, thereby allowing immigrants to come to the nation regardless of their religious backgrounds.

⁷²⁶ Biden, “Proclamation on Ending Discriminatory Bans on Entry to the United States”.

⁷²⁷ Ibid.

⁷²⁸ Ibid.

To sum up, upon his election to the White House, President Donald Trump swiftly moved to implement his promise of “a total and complete shutdown of Muslims entering the United States” by issuing the controversial EO13769 dubbed “Protecting the nation from Foreign Terrorist Entry into the United States”. The latter barred foreign nationals from Muslim-majority countries, from the Middle East and Africa, from entering the USA on grounds of protecting America’s national security. Broadly, EO13769 banned for 90 days the entry of foreign nationals from Iran, Iraq, Syria, Yemen, Libya, Somalia, and Sudan. In addition, it prohibited the admission of refugees from all countries for 120 days whereas the Syrian refugees were barred definitely. This is because he viewed their entry to be detrimental to the interests of the USA claiming that “numerous foreign-born individuals have been convicted or implicated in terrorism-related crimes”⁷²⁹ since the 9/11 attacks. Consequently, the EO13769 troubled a lot of American families and foreign nationals who have relatives and businesses in America, which raised the voices of critics who criticized it for many aspects.

As it is apparent, Trump’s EO13769 was clothed in the language of protecting American national security. Therefore, the ground upon which the EO13769 is based is suspecting foreign nationals hailing from predominantly Muslim countries who intend or want to travel to the USA. However, claiming that several foreign-born nationals have been convicted or involved in terrorism-related crimes since the 9/11 attack was completely baseless. Trump’s claim was rebutted by a report that analyzed the government’s data since 2001, which revealed that nobody was killed in the United States in a terrorist attack by someone who emigrated from or his parents emigrated from any of the blacklisted countries mentioned by the EO13769.⁷³⁰ This fact reflects Trump’s bigotry against Muslims to the point that he banned their entry to America for baseless grounds. Nevertheless, the Muslim Ban greatly affected American visa issuance around the world, namely in the banned countries. This ban was met with great refusal from immigrant communities as well as civil rights activists, arguing that the ban is unconstitutional and a foul of the First Amendment to the U.S. Constitution. After starting to take effect, the ban caused a sharp decline in the visas granted to nationals of the banned countries, creating difficulties for the Muslim community in America and others outside America who could not

⁷²⁹ Louis Cainkar, “The Muslim Ban and Trump’s War on Immigration,” *Middle East Research and Information Project: Critical Coverage of the Middle East Since 1971*, Accessed on July 18, 2022, <https://merip.org/2020/06/the-muslim-ban-and-trumps-war-on-immigration-2/>

⁷³⁰ Cainkar, “The Muslim Ban and Trump’s War on Immigration.”

enter the USA. Similarly, Donald Trump targeted illegal immigration, promising to increase deportations of undocumented immigrants by implementing a set of measures explored in the next chapter.

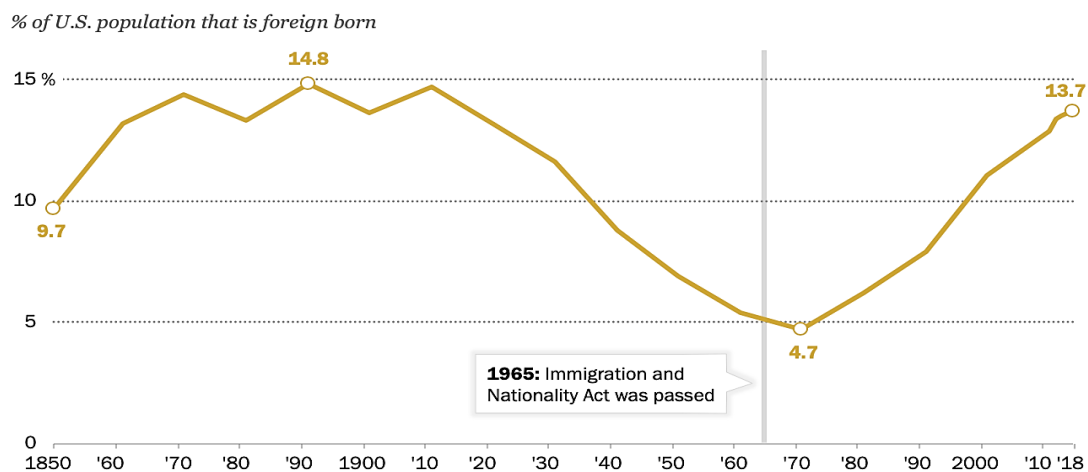
Chapter 4: The Dilemma of Illegal Immigrants in the USA

One of the main points that figured in Donald Trump's immigration plan was rooting out unauthorized immigrants from the United States. Statistics showed that America counted more than 11 million undocumented immigrants who live in different states across the United States, precisely in sanctuary cities. They came to the United States through illegal ways, usually by crossing the country's southwest border with Mexico or by overstaying their visas. Additionally, statistics showed that Latin Americans, namely Mexicans, form the absolute majority of undocumented immigrants in America. Donald Trump promised to deport these illegal immigrants and send them back to their countries of origin because they pose a serious threat to the country's public safety as well as the social and cultural characteristics of American society. Additionally, Donald Trump accused these immigrants of being drug dealers and morally bad who came to America to steal Americans' jobs. Therefore, consistently with his electoral slogan 'America first,' he vowed to rid the nation of those undesired immigrants to keep America for Americans and those who entered it legally after meeting the required criteria set by the U.S. government. Thus, this chapter brings to light undocumented immigrants in the United States, their ways of entering America, and Trump's immigration measures to root them out of the USA.

4.1 Undocumented Immigrants in the USA

As it is universally known, the United States of America is the country that has more immigrants than any other country in the world. According to a Pew Research Center study published by Abby Budiman on August 20, 2020, over 40 million people living in the USA were born in foreign countries, accounting for about 20% of the world’s immigrants.⁷³¹ Figure 7 displays the statistics related to the evolution in the size of the immigrant community during the long period spanning decades from 1850 to 2018. According to the data displayed in this figure, the United States registered 44,8 million of its population in 2018 who were born in foreign countries, making up 13.7% of the total U.S. population. However, this percentage is below the record 14.8% registered in 1890 when 9,2 million immigrants used to live in the United States.⁷³²

Figure 7. Immigrants' share of the U.S. population from 1850 to 2018



Source: Abby Budiman, “Key findings About U.S. Immigrants,” Pew Research Center, Accessed on August 14, 2022, <https://www.pewresearch.org/fact-tank/2020/08/20/key-findings-about-u-s-immigrants/>

Figure 7 shows that the United States of America witnessed a continuous inflow of immigrants till 1870 when the country registered a slight decline in the influx of immigrants, namely due to the riots and manifestations against the Chinese before passing the Chinese Exclusion Act of 1882 which contributed massively in reducing the influx of Chinese immigrants into the USA. Thereafter, immigrants inflow increased again, reaching its peak in

⁷³¹ Abby Budiman, “Key findings About U.S. Immigrants,” Pew Research Center, Accessed on August 14, 2022, <https://www.pewresearch.org/fact-tank/2020/08/20/key-findings-about-u-s-immigrants/>

⁷³² Budiman, “Key findings About U.S. Immigrants.”

1890 hitting 14.8%. Thenceforth, Figure 3 shows a decline that started in 1910 and continued after the end of the Great War (1914–1918) owing to the Quato system that restricted the number of admissible immigrants per country. After signing the Immigration and Nationality Act of 1965 by President Lyndon Johnson, which replaced the Quota System, the inflow of immigrants surged again starting in 1970 to reach 13.7% of the American population, accounting for 44.8 million of the total American population estimated at 327,167,434 in 2018.⁷³³

These immigrants have different statuses in the United States of America. Accordingly, the overwhelming majority of them, accounting for 77% (see Appendix 4) reside lawfully in the United States in 2017. This percentage comprises 5% of temporary lawful residents, 27% of lawful permanent residents, and 45% of naturalized citizens. In contrast, immigrants who resided illegally in the United States constituted 23% of the total number of foreign-born immigrants in 2017.⁷³⁴ The size of the unauthorized immigrant population more than tripled between 1990 and 2007, shifting from 3,5 million in 1990 to 12,2 million in 2007. In 2017, its size decreased by 1,7 million to reach 10,5 million, thus accounting for 3.2% of the U.S. population. The decline in the size of the illegal immigrant population is due to the decline by 2 million in the number of Mexican illegal immigrants who constitute the largest source of the unauthorized immigrant population in the USA. Meanwhile, there was a rise in the number of unauthorized immigrants hailing from Asia and Central America.⁷³⁵

Given their significant number among the U.S. immigrant population (27%), illegal immigrants remained an issue that all previous administrations tried to reduce their size by adopting restrictive immigration measures. The administration of President Donald Trump is no exception as it gave great importance to reducing the size of this undesired category of immigrants. However, to better prescribe the right solutions, it is paramount to understand and ascertain the ways through which undocumented managed to enter the United States. Additionally, it is quite important to understand the historical backgrounds that encouraged this kind of immigration and America's previous attempts to stem it.

⁷³³ U.S. Census Bureau, "2018 National and State Population Estimates," Published on December 19, 2018, accessed on June 10, 2023. <https://www.census.gov/newsroom/press-kits/2018/pop-estimates-national-state.html>

⁷³⁴ Budiman, "Key findings About U.S. Immigrants."

⁷³⁵ Ibid.

4.2 Previous Policies against Unauthorized Immigrants

As aforementioned, almost a quarter of the U.S. immigrant population resides illegally in the country. These immigrants continuously troubled the successive U.S. governments which did their best to find out a durable solution to this issue. To tell the truth, the history of undocumented or rather illegal immigrants in the USA is a sad tale full of many lies and false promises from American lawmakers as well as candidates for public office. While the vast majority of American citizens have been always against illegal immigration owing to the variety of problems it engendered, concerns about such problems continued pervading the political landscape and obsessing politicians and lawmakers because the previous statutes enacted by Congress did not properly address the issue and were not adequately enforced.⁷³⁶

The history of illegal immigration in the USA over the last forty years was created by a combination of bad factors: statutes, market forces, and elite power groups, who contributed together to undermine the American republic, the U.S. Constitution, and the Rule of Law. In this respect, there have been many federal actions, as well as pieces of legislation enacted by the U.S. Congress, intended to deal with the issue of illegal immigration that had a great impact on the course of American immigration policy.

4.2.1 Operation Wetback in 1954

When the issue of illegal immigration intensified in the 1950s, President Dwight Eisenhower cracked down on the issue, resorting to enforcing the existing immigration statutes with an aggressive deportation program known as “Operation Wetback”.⁷³⁷ At that time, the term “wetback,” first used in print by the New York Times newspaper on June 20, 1920, was a derogatory term often used as an ethnic slur to refer to foreign nationals, namely the Mexicans, living illegally in the United States.⁷³⁸ The term was originally applied only to Mexican citizens who illegally entered America by swimming across the Rio Grande River that marks the borders between Mexico and the state of Texas. Further, “the choice of the word in the operation’s name underscored the creator’s belief that these were not humans with rights but an invasive species that needed to be rooted out”.⁷³⁹

⁷³⁶ Staff of Illegal Immigration, “History of Illegal Immigration,” Illegal Immigration.com, Accessed on August 12, 2022, <https://www.illegalimmigration.com/history-of-illegal-immigration/>

⁷³⁷ Staff of Illegal Immigration, “History of Illegal Immigration.”

⁷³⁸ Ibid.

⁷³⁹ Laura Smith, ““Operation Wetback” Uprooted a Million Lives and Tore Families Apart. Sound Familiar?” Timeline, Accessed on 13, 2022, <https://timeline.com/mass-deportation-operation-wetback-mexico-eb79174f720b>

“Operation Wetback” conducted in 1954 refers to the enforcement of the existing immigration statutes by President Dwight Eisenhower’s administration. This operation ushered in the mass deportation to Mexico of as many as 1.3 million illegal Mexican immigrants.⁷⁴⁰ Though the operation was originally requested by the Mexican government in order to prevent further Mexican farm workers from escaping the country, the operation Wetback strained the diplomatic relations between Mexico and the United States.⁷⁴¹ In point of fact, Mexican workers were legally permitted at that time to temporarily enter the United States for seasonal work pursuant to the terms of the Bracero program, a Second World War agreement between the United States and Mexico.⁷⁴² Additionally, the U.S. government undertook Operation Wetback partly in response to the abuse of the Bracero Program as well as the American public’s resentment at the U.S. Border Patrol’s incapability to reduce the number of seasonal Mexican farm workers living permanently in an illegal way in the United States.

4.2.1.1 Background of the Wetback Operation

Prior to the fall of the 19th century, Mexico had long tried to reduce the migration of its nationals to the United States. However, with the onset of the 20th century, this policy changed with Mexican President Porfirio Diaz (1830—1915; served 1877—1880 then 1884—1911) as well as other Mexica government officials who found that their country’s great asset consisting in the abundant and cheap labor force could be the key to revive and stimulate their struggling economy. Conveniently for the Mexican economy, America with its booming agricultural industry was a suitable market for absorbing the abundant Mexican labor force. Consequently, 60,000 Mexican farm workers temporarily and legally entered the United States yearly during the 1920s; however, during the same period, 100,000 Mexican farm workers used to enter the United States every year illegally, where many of whom did not return to Mexico.⁷⁴³ Still, when its agribusiness started suffering owing to the growing scarcity of farm workers, Mexico began pressuring America to enforce its immigration statutes so as to get back its farm workers. Simultaneously, America’s large-scale farms and agribusinesses were recruiting more and more illegal Mexican laborers to fulfill their increasing need for year-round labor. As a result, from the 1920s till the onset of WWII, the vast majority of the field workers on American farms,

⁷⁴⁰ Robert Longley, “Operation Wetback: The Largest Mass Deportation in U.S. History,” ThoughtCo, Accessed on August 12, 2022, <https://www.thoughtco.com/operation-wetback-4174984>

⁷⁴¹ Robert Longley, “Operation Wetback: The Largest Mass Deportation in U.S. History.”

⁷⁴² Longley, “Operation Wetback: The Largest Mass Deportation in U.S. History.”

⁷⁴³ Ibid.

particularly in the southern states, were Mexicans, most of whom entered illegally to the United States.⁷⁴⁴

4.2.1.2 The Bracero Program

With the onset of WWII, America's labor force started to drain which increased its need for the Mexican labor force. To settle this issue, the American government and Mexico signed the Bracero (the Spanish word for "farm workers") Program, an agreement that allowed Mexican workers to work temporarily in the USA in exchange for the return of Mexican illegal farm workers to their country of origin. In other words, instead of supporting America's military efforts during WWII, Mexico favored supplying America with its workers; America, in return, would toughen its border scrutiny and fully enforce its immigration laws in order to curb the inflow of Mexican workers into the United States. Thus, the first Mexican braceros entered America under the Bracero Program on September 27, 1942.⁷⁴⁵ To put it briefly, though around 2 million Mexican braceros entered the United States under Bracero Program, disagreements and tensions between the two countries over its effectiveness and enforcement began to surface which led later to the implementation of Operation Wetback in 1954 under the Presidency of Dwight Eisenhower.

4.2.1.3 Bracero Program Issues Engender Operation Wetback

Notwithstanding the availability of legal Mexican workers thanks to the Bracero Program, numerous American growers preferred relying on the cheap labor of the illegal Mexican migrants. On the other side of the border, the number of Mexican workers seeking to work in the United States proliferated to the point that the Mexican government became unable to process it. Besides, the Mexican braceros who could not enter America legally entered it illegally instead. Furthermore, while Mexican law allowed braceros with valid labor contracts to cross the border freely, American law authorized making foreign labor contracts only after braceros had legally entered the country. Therefore, this excessive bureaucracy, coupled with entry fees of the U.S. Immigration and Naturalization Service (INS), the literacy tests, and the costly naturalization process, impeded the legal inflow of even more Mexican braceros who sought better wages in the United States.

⁷⁴⁴ Ibid.

⁷⁴⁵ Ibid.

Mexican workers found in the U.S. economy an outlet for their dreams. In actuality, Mexico suffered from different problems, such as massive unemployment and food shortage, coupled with population growth pushed even more Mexican citizens to resolve to move to the other side of the border, legally and illegally. However, in the United States, concerns about the economic, social, and security issues caused by illegal immigration grew among Americans so it pressured the INS to increase its arresting and deportation efforts.⁷⁴⁶ Meanwhile, Mexico's agricultural economy was suffering owing to the shortage of braceros.

According to an agreement between the two governments, the INS in 1942 increased, even more, the number of Border Control Officers patrolling the Mexican border; still, illegal immigrants continued crossing the border. In reality, the Mexican illegal immigrants used to reenter the United States after being deported by the INS officers, thereby largely negating their efforts. In response, the two governments agreed in 1945 to implement a strategy aiming at relocating deported Mexicans deeper into Mexico so as to make it harder for them to re-cross the border. However, the strategy was not that effective.⁷⁴⁷

When the ongoing negotiations between the two governments over the Bracero Program failed in 1954, the Mexican government sent an armed military force of 5,000 soldiers to the border. In retaliation, President Eisenhower appointed retired General Joseph May Swing as INS Commissioner ordering him to resolve the issue of border control.⁷⁴⁸ The appointment of General Swing aimed at improving the effectiveness of the immigration statutes enforcement by militarizing INS agents. Consequently, General Swing's plan to achieve so became known as Operation Wetback.

4.2.1.4 Implementation of Operation Wetback

Operation Wetback was based on joint efforts of both the U.S. Border Patrol along with the Mexican government to control illegal immigration. In Mexico, while the Mexican press cautioned potential immigrants of being apprehended under Operation Wetback, preparations to increase the number of removals to the interior were made by the Mexican government. Therefore, in early May 1954, officials of both countries publicly announced that the U.S.

⁷⁴⁶ Ibid.

⁷⁴⁷ Kelly Lytle Hernandez, "The Crimes and Consequences of Illegal Immigration: Across-Border Examination of Operation Wetback 1943 to 1954," *The Western Historical Quarterly* 37, (2006): 421- 444 DOI: 10.2307/25443415

⁷⁴⁸ Hernandez, "The Crimes and Consequences of Illegal Immigration: Across-Border Examination of Operation Wetback 1943 to 1954," 5.

Border Patrol would soon launch the so-called “Operation Wetback” as an innovative campaign of U.S. immigration law enforcement in response to the increasing crisis of illegal Mexican migrants.⁷⁴⁹

Thus, on May 17, 1954, a total of 750 Border Patrol Officers and Investigators started apprehending and immediately, without due process or a court-issued deportation order, deporting Mexicans who illegally entered the country.⁷⁵⁰ After being transported back across the border on a fleet of buses, boats, and planes, the deportees were handed off to Mexican officials, who in their turn, would take them to unfamiliar towns in central Mexico to benefit from the job opportunities the Mexican government had created for them.

Operation Wetback was not limited only to border-sharing regions of Texas, California, and Arizona, but similar operations were conducted in the cities of Chicago, Los Angeles, and San Francisco. On the other hand, during the immigration enforcement sweeps, many Mexican-Americans were detained by INS agents and forced to prove their American citizenship owing to misunderstanding them as Mexicans. To prove that, INS agents would accept only birth certificates, which few people carried with them as citizenship proof. Unfortunately, throughout Operation Wetback, an undetermined number of Mexican-Americans were wrongly deported to Mexico due to their failure to quickly produce birth certificates before being deported.⁷⁵¹

4.2.1.5 Results and Legacy of Operation Wetback

One year after the implementation of Operation Wetback, the INS claimed to have returned 1.1 million illegal immigrants defined at the time as “confirmed movement of an inadmissible or deportable alien out of the United States not based on an order or removal”.⁷⁵² still, this number comprised thousands of illegal immigrants who favored returning voluntarily to Mexico because they feared being apprehended by the INS agents. Accordingly, the real estimated number of removals fell to less than 250,000 in 1955.⁷⁵³

Even though the INS would claim to have removed a total number of 1,300,000 people throughout the operation, that number was widely discussed and disputed due to the number of immigrants who were arrested and removed several times, alongside the number of Mexican

⁷⁴⁹ Ibid.

⁷⁵⁰ Longley, “Operation Wetback: The Largest Mass Deportation in U.S. History.”

⁷⁵¹ Ibid.

⁷⁵² Ibid.

⁷⁵³ Ibid.

Americans wrongly deported; hence, it is quite difficult to accurately assess the total number of the deportees. By the same token, even during the height of the operation, American growers did not stop recruiting illegal Mexican braceros owing to their cheap cost as well as their desire to avoid the government's excessive bureaucracy required by Bracero Program. Thus, the continuous hiring of illegal Mexican braceros ultimately contributed to the failure of Operation Wetback.

The program was dubbed by INS to be a success of international cooperation, declaring the border with Mexico to be secured. Yet, newspapers and newsreels in the United States portrayed the dark side of Operation Wetback, revealing pictures of detained men herded into crudely-erected holding pens in city parks before deporting them to Mexico. More dramatically, in some cases, the Mexican immigration agents inhumanly treated the returning detainees as they dumped them in the middle of the Mexican desert leaving them without food and water.

Some observers were less than sanguine about Operation Wetback's success. An American labor official acknowledged that the INS had "performed a major task in clearing the border areas of literally hundreds of thousands of wetbacks" but added that Operation Wetback had "dumped" thousands of illegal workers over the border, creating problems on the Mexican side. In July 1955 "literally hundreds of thousands of braceros were roaming about the streets" of Mexicali ... Some eighty-eight braceros died of sunstroke as a result of a round-up that had taken place in 112-degree heat, and he argued that more would have died had Red Cross not intervened. At the other end of the border, in Nuevo Laredo, a Mexican labor leader reported that "wetbacks" were "brought [into Mexico] like cows" on trucks and unloaded fifteen miles down the highway from the border, in the desert.⁷⁵⁴

To make it more effective, General Joseph Swing wanted to build a chain-link fence along several sections of California and Arizona's border in addition to towers at strategic locations. He claimed that the fence would be so effective in obstructing the illegal immigration of disease-ridden women and children who comprised around 60% of those who crossed the border surreptitiously to the United States after Operation Wetback.⁷⁵⁵

To come to the point, Operation Wetback was at best a short-term success and failed to solve the problem of illegal immigration along the southern border with Mexico. While it might have temporarily slowed illegal immigration, Operation Wetback did not succeed in getting independent from the need for the cheap cost of the Mexican braceros nor did it reduce

⁷⁵⁴ Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (The United States of America: Princeton University Press, 2004), 156.

⁷⁵⁵ Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America*, 156.

unemployment in Mexico as its planners had already promised. Therefore, Congress ended the Bracero Program in 1964.

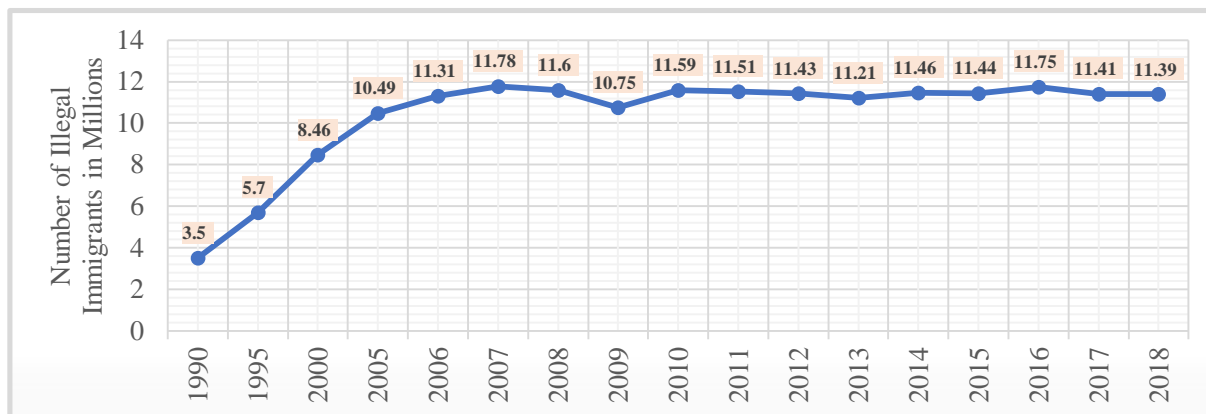
This was just a glimpse into the background of the illegal immigration caused by Mexican braceros. As the issue of illegal immigration remained aching politicians and lawmakers in the United State, the issue became a hot topic during the presidential campaign of the Republican presidential candidate, Donald Trump, as well as during his presidency owing to its sensitive dimensions and effects on millions of illegal immigrants in the United States. So, how did President Trump approach this issue?

4.3 Trump Targets Undocumented Immigrants

In his 2016 presidential campaign, Donald Trump gave much importance to the issue of illegal immigration in the United States. He targeted unauthorized immigrants residing in the country illegally. Unlike the legal immigrants who are defined by the Department of Homeland Security (DHS) as those immigrants who obtained lawful and permanent residency in the United States such as admitted refugees, asylum seekers, and people admitted as nonimmigrants under classes of admission associated with residence, the DHS defined illegal alien residents as all foreign-born non-citizens who reside unlawfully in the United States.⁷⁵⁶ These illegal immigrants managed to enter the country either without inspection or overstayed their visas, thereby lacking the legal documents that justify their residency in America. Therefore, this category of immigrants is often referred to as illegal immigrants, undocumented immigrants, or unauthorized immigrants. Figure 8 shows the evolution of the undocumented population in the United States during the three last decades, from 1990 to 2018. As aforementioned, the number of undocumented immigrants began to increase following the enactment of the Immigration and Nationality Act of 1965 and its amendments. For instance, between 2000 and 2015, the estimated number of unauthorized immigrants kept its upward trend until 2007 when their number amounted to 11.8 million. Thereafter, it was stalled and then decreased until 2010 owing to, maybe, the economic recession the United States witnessed in 2008. Afterward, their number resumed its upward trend until 2016.

⁷⁵⁶ Bryan Baker, *Estimates of illegal Alien Population Residing in the United States: January 2015* (Homeland Security, Office of Immigration Statistics, 2018), 2.

Figure 8. Unauthorized immigrants population in the United States from 1990 to 2018 (in millions)



Source: Published by Statista Research Department, August 4, 2022. Accessed on August 15, 2022. <https://www.statista.com/statistics/646261/unauthorized-immigrant-population-in-the-us/>

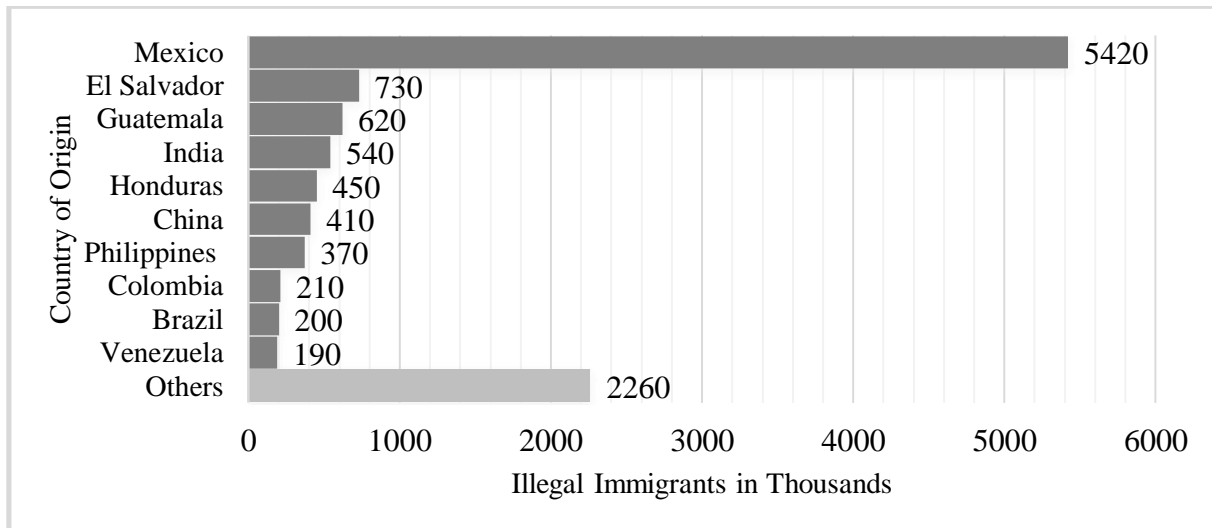
Figure 8 reveals significant trends in the inflow of unauthorized aliens in the United States during the period spanning 2000 to 2018. The first trend represents an upward in the number of illegal aliens from 3,5 million in 1990 to 11,78 million in 2007, with an annual average of 470,000 illegal immigrants who entered the USA. Afterward, this number began to decrease between 2007 and 2009, reaching 10,75 million illegal immigrants. This decrease might be ascribed to the economic recession America witnessed due to the financial crisis of 2008 as well as the economic recovery in Mexico. Then, between 2009 and 2016, the inflow of illegal immigrants witnessed a slight increase as it reached 11,75 million in 2016.

4.3.1 Unauthorized Immigrants Estimated by Country of Origin, Age, and Sex

Classifying illegal immigrants according to their country of origin, as portrayed in Figure 9, demonstrates that Mexico remains the largest source of such immigrants since many decades ago. According to data from the U.S. Department of Homeland Security in 2018, the United States counted 5,420,000 illegal Mexican immigrants, representing approximately 46% of the total illegal immigrant community in the United States. Next, the Central American Countries come in second place with 730,000 for Honduras, 620,000 for Guatemala, 450,000 for Honduras, 210,000 for Colombia, 200,000 for Brazil, and 190,000 for Venezuela, making up 20% of the illegal immigrant community in the USA. India come in third place with 540,000 illegal immigrants, representing nearly 4.6%, followed by China with 410,000 illegal immigrants who make up 3.4% of the illegal immigrant community in the USA. Thereafter, the Philippines with 370,000 (3.13%) and illegal immigrants from other countries with 2,260,000,

representing 19.2% of the illegal immigrant community in the United States. This mosaic structure of the illegal immigrant community alludes to the fact that there are different ways according to which these immigrants entered the USA since there is no shared borders between the USA and other countries like India and China.

Figure 9. Estimated number of illegal immigrants in the United States in 2018, by country of origin (in 1000s)

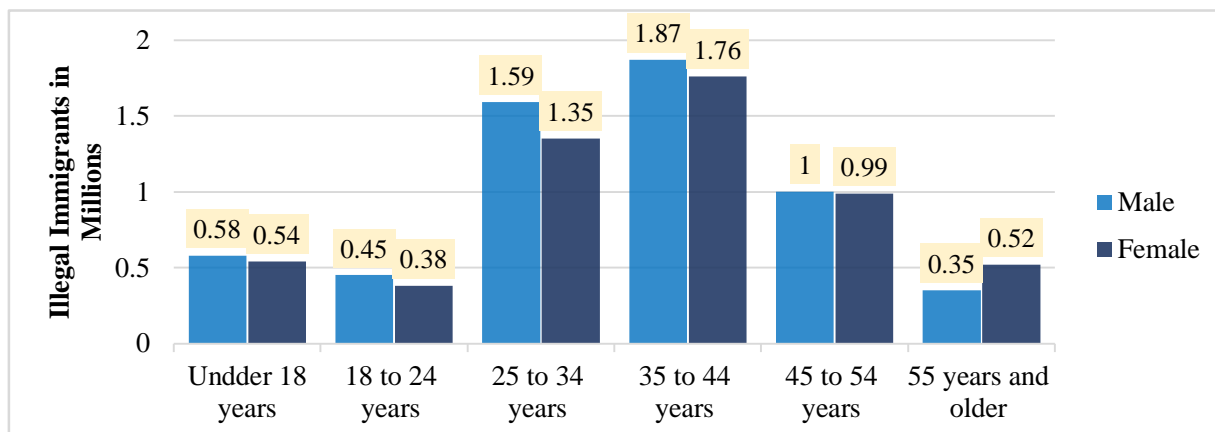


Source: United States; U.S. Department of Homeland Security, January 2018
Published by Statista Research Department on August 4, 2022. Accessed on August 15, 2022.
<https://www.statista.com/statistics/269365/origin-of-illegal-immigrants-in-the-us/>

Figure 9 reveals the reality that the vast majority of illegal immigrants in the USA come from Central and South America with 7,820,000 unauthorized immigrants, accounting for 68,6% of the illegal immigrants in the country. Hence, designing efficient policies to curb the inflow of such immigrants remained at the core of the federal government’s preoccupation.

Given the great size of the undocumented immigrant community in the USA, analyzing this category of immigrants according to their age and sex might provide important information that helps understand the motives and needs of each category, thereby prescribing the right solutions to this issue. According to Figure 10 which shows the categorization of illegal immigrants by sex and age, men and women migrated illegally with a slight difference in the number of each category. Additionally, the category of age that forms a large number of illegal immigrants comprises immigrants aged between 35 and 44 years old, with 1,870,000 for men and 1,760,000 for women; afterward, immigrants aged between 25 and 34 years old, with 1,590,000 for men and 1,350,000 for women. These two categories mostly enter America illegally in their hopes to find better opportunities for jobs to better their lives.

Figure 10. Estimated number of illegal immigrants population in the United States in 2018, by age and sex (in millions)



Source: Published by Statista Research Department, August 4, 2022. Accessed on August 15, 2022. <https://www.statista.com/statistics/646261/authorized-immigrant-population-in-the-us/>

Figure 10 also shows that teenagers under the age of 18 are likely to migrate to the USA more than those between 18 and 24 years old, which might be explained by the fact that children mostly accompany their families when migrating illegally to the United States, namely across the southwest border with Mexico. Besides, Figure 10 shows that tendency to migrate illegally to the United States decreases as potential immigrants get older where immigrants generally favor staying in their home countries rather than taking the risk of such difficult adventure.

4.3.2 Illegal Immigrants' Mode of Entry

When foreign nationals enter the United States in violation of the U.S. immigration laws, this immigration is called illegal immigration and immigrants who enter in this way are called illegal or unauthorized immigrants. This type of immigration comprises both foreign nationals, who enter the United States without the explicit permission of the American authorities such as the Mexican wetbacks who crossed the U.S. border by swimming across the Rio Grande River, and foreign nationals who enter the United States lawfully but remained in the country beyond the time period permitted to them according to their visas.⁷⁵⁷ These modes of illegally entering the United States are explored as follows:

⁷⁵⁷ Pozo Goldstein, LLP, "3 of the Most Common Ways People Migrate Illegally," Pozo Goldstein NYC, Accessed on August 15, 2022, <https://www.pozogoldsteinny.com/illegal-immigration/>

4.3.2.1 Illegal Entry

Illegal entry remains the largest source of illegal immigration in the USA. Statistics show that an estimated annual number of 500,000 foreign nationals enter illegally the country, thereby making about 6.5 million of the undocumented immigrant community residing in the USA by 2016.⁷⁵⁸ Very often, illegal Immigrants enter the country with the help of “coyotes”, smugglers of people across the Mexican American border. Most of the illegal immigrants who unlawfully crossed the U.S. borders in 2016 hail from Mexico as shown in Table 5, accounting for 48,71% of the total of the illegal immigrants who Entered Without Inspection (EWIs). Moreover, Table 5 reveals that the vast majority of the EWIs, accounting for 97,36%, entered the United States by illegally crossing the southern U.S. borders.

Table 5. Arrivals of undocumented migrants in 2016, by mode of arrivals and country of origin: Top five countries (thousands)

Country	Total Arrivals	Country	Overstays	Country	EWIs
All Countries	515	All Countries	320	All Countries	190
Mexico	145	Mexico	50	Mexico	95
El Salvador	35	India	25	El Salvador	35
Guatemala	30	China	25	Honduras	25
Honduras	30	Venezuela	20	Guatemala	20
India	25	Philippines	15	Dominican Republic	10
All Other	245	All Other	185	All Other	5

Note: Except for “All countries” and Mexico, overstays and EWIs do not sum to total arrivals because different countries are included in the columns that show overstays and EWIs. EWIs ¼ people who entered without inspection.

Source: Center for Migration Studies.

As a matter of fact, immigrants traveling to the United States through Mexico captivate the public’s attention due to the illegal immigration issue since they account for the overwhelming majority of the apprehended foreign nationals by the U.S. Customs Border Patrol CBP which includes Border Patrol (Immigration and Customs Enforcement mostly works inside the country).⁷⁵⁹ However, those apprehended by CBP can apply for asylum if they can genuinely claim fear for their lives if they return to their countries of origin.⁷⁶⁰ To this end, some apprehended immigrants approached federal agents to apply for asylum.

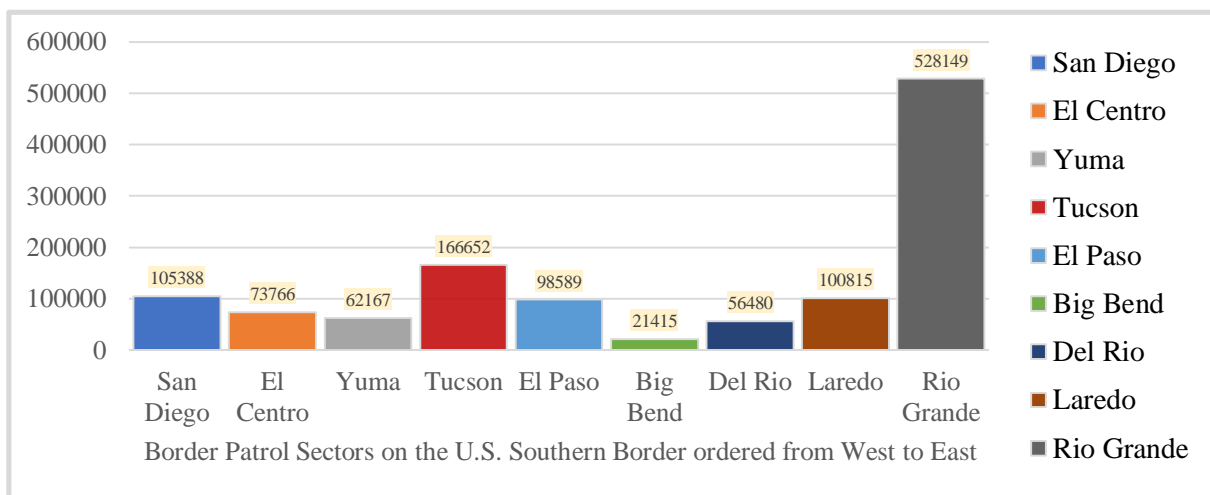
⁷⁵⁸ Pozo Goldstein, LLP, “3 of the Most Common Ways People Migrate Illegally,”

⁷⁵⁹ Sean McMinn, “Where Does Illegal Immigration Mostly Occur? Here’s What the Data Tell Us,” NPR, Accessed on August 2022, <https://www.npr.org/2019/01/10/683662691/where-does-illegal-immigration-mostly-occur-heres-what-the-data-tell-us>

⁷⁶⁰ McMinn, “Where Does Illegal Immigration Mostly Occur? Here’s What the Data Tell Us.”

On the other hand, federal statistics related to the apprehension of illegal immigrants are displayed in Figure 11, showing that the most popular area along the U.S.-Mexican border from which most of the illegal immigrants flow into the USA is the Rio Grande River which marks the border between Mexico and Texas, as displayed in Figure 11. In 2016, U.S. Customs Border Patrol apprehended 528,149 illegal immigrants who were trying to cross illegally the Rio Grande River sector of south Texas for the United States. The second highest number of apprehensions was registered in the sector of Tucson in Arizona where the CBP apprehended 166,652 illegal immigrants.

Figure 11. Apprehended illegal immigrants by CBP along patrol sectors on the U.S. southern border centers in 2016



Source: Customs and Border Protection, Reveal from The Center for Investigative Reporting and OpenStreetMap contributors
<https://www.npr.org/2019/01/10/683662691/where-does-illegal-immigration-mostly-occur-heres-what-the-data-tell-us>

On the other hand, the southern border was not only a passage for illegal immigrants but also for smugglers of drugs and currency. CBP FY2015 Statistics about its enforcement actions in FY2015 by state along *the* southwest border presented in Table 6 reveal that CBP agents managed to arrest a total number of illegal immigrants estimated at 331,335 along the whole southern border with Mexico. Besides, CBP agents seized a total quantity of drugs estimated at 2,137,428 pounds. This quantity seems to be very big that it can jeopardize the public safety and health of Americans, namely teenagers. Accordingly, the southwest border poses a genuine threat to the U.S. economy which consists in smuggling currency.

CBP agents succeeded in protecting the U.S. economy when seized \$19,990,371. These statistics prove that the southwest border poses a real threat to the whole American society and economy, thereby designing efficient and effective procedures to shield the country from these unpleasant effects is of high importance for the country’s security and remains a continuous concern for politicians as well as lawmakers.

Table 6. CBP enforcement actions in FY2015 by state along the southwest border

	Arizona	California	New Mexico	Texas	Total
Apprehensions	70,074	39,575	11,218	210,468	331,335
Drug Seizures (pounds)	928,858	224,215	69,607	914,748	2,137,428
Currency Seizures	\$2,102,688	\$7,739,869	\$975,880	\$9,171,935	\$19,990,371
Persons Determined to be Inadmissible	9,362	40,236	1,005	62,971	113,574

Source: U.S. Department of Homeland Security, U.S. Customs and Border Protection, Fiscal Year 2015 CBP Border Security Report, December 22, 2015, p.3.

The CBP FY2017 report, however, revealed more facts about apprehensions and seizures along the southwest border. According to that report, CBP officers and Border Patrol agents arrested 20,131 criminal aliens along with 10,908 who were wanted by law enforcement authorities.⁷⁶¹ Additionally, the U.S. Border Patrol apprehended 536 dangerous illegal aliens who were members of a gang including 228 MS-13, 66 Surenos, 53 Piasas, and 61 18th Street gang members. Moreover, the report revealed statistics about the U.S. Border Patrol Drug Seizures from FY2012 to FY2018. These statistics are displayed in Table 7 which shows that CBP agents seized a considerable quantity of dangerous drugs estimated at 2.14 million pounds smugglers tried to smuggle into the United States including 1.59 million pounds of marijuana, 273,580 pounds of cocaine, 66,617 pounds of methamphetamine, 5,760 pounds of heroin, 1,485 of fentanyl.⁷⁶² Likewise, Table 7 shows that the U.S. Border Patrol, which is part of CBP and responsible for patrolling areas at and around the international land border, seized considerable quantities of different drugs intended to be sold inside the United States. Thus, these statistics reveal the great danger posed to American public safety by smugglers and illegal immigrants from the southwest border with Mexico. Therefore, strengthening security measures along America’s border with Mexico is of high importance for President Donald Trump.

⁷⁶¹ U.S. Department of Homeland Security, *CBP Border Security Report: Fiscal Year 2017* (December 5, 2017), 2.

⁷⁶² U.S. Department of Homeland Security, *CBP Border Security Report: Fiscal Year 2017*, 3.

Table 7. U.S. Border Patrol Drug Seizure from FY2012 to FY2018 (in pounds)

	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018
Cocaine	12,161	4,696	4,554	11,220	5,473	9,346	6,550
Heroin	430	576	606	518	566	953	568
Marijuana	2,299,864	2,430,123	1,922,545	1,538,307	1,294,052	861,231	461,030
Methamphetamine	3,715	3570	3,930	6,443	8,224	10,328	11,314
fentanyl	n/a	n/a	n/a	n/a	n/a	181	388
Total	2,316,170	2,438,965	1,931,635	3,112,976	1,308,315	882,039	479,850

Source: U.S. Customs and Border Protection, CBP Enforcement Statistics FY2018, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics-fy2018>

According to the data revealed in Table 7, Border Patrol agents did a great job when yearly saving America from being flooded with large quantities of different poisonous drugs. For instance, in FY2015 alone, they managed to seize 3,112,976 pounds (around 1,412,021 kg) which is a very large quantity that threatens the safety, security, and stability of American society when taking into consideration the bad effects of drugs on its consumers and the whole society via spurring and increasing the spread of violence and crimes within the American society. Hence, good control of the U.S. border would contribute significantly to reducing the rate of crimes, thereby saving the lives of many citizens.

4.3.2.2 Visa Overstay

Given its powerful leading role in almost all fields, namely the economy, the United States registers tens of millions of nonimmigrants who annually visit it for different purposes: pleasure, tourism, business, school, work, etc. Their arrival in the country boosts, even more, the U.S. economy by creating jobs across the country and thus providing an important revenue to U.S. businesses. For instance, in 2019, expenditures by international visitors in the United States amounted to \$233,5 billion in sales and \$74 billion as a trade surplus.⁷⁶³ These visitors arrive in the United States on a particular type of visa, or they come from countries where the requirements for a visa are waived. In either case, they are considered nonimmigrants wishing to travel to the United States for a limited period and then return home after the expiration of their visas. However, while in the United States, they are under the U.S. Immigration Statutes and must leave the country at the end of their visit or when instructed to leave.

⁷⁶³ “Travel, Tourism, & Hospitality Industry,” SelectUSA, Accessed on August 19, 2022, <https://www.trade.gov/selectusa-travel-tourism-hospitality-industry>

In its FY2017 report, the Department of Homeland Security (DHS) reported that the vast majority of nonimmigrants do lawfully leave the country following the deadline of their visit. The DHS reported that 52,656,022 nonimmigrants entered the United States during FY2017 and thus are expected to leave the country in the same fiscal year.⁷⁶⁴ However, FY2017 nonimmigrants travel data identified that of the total number of nonimmigrants, there were 701,900 who did not depart the country after the expiration of their visas, accounting for 1.33% of the total number of visitors.⁷⁶⁵ This percentage was estimated at 1.47% in FY2016 and 1.17% in FY2015. Though these rates seem to be very low, the big number of visitors amounting to tens of millions gives much importance to these rates as they account for hundreds of thousands of overstayers per year: 527,127 overstayers in FY2015⁷⁶⁶, 739,478 in FY2016⁷⁶⁷, and 701,900 in FY2017.

4.3.2.2.1 Defining Visa Overstay

Visa overstayers are foreign nationals who lawfully enter the United States as visitors for a limited period determined on their visas; however, they favor staying in the country beyond the deadline determined on their legal traveling visas.⁷⁶⁸ In other words, visa overstayers enter lawfully by legal traveling visas but stay unlawfully in the country after the expiration of their visas, thereby becoming illegal immigrants by overstaying their visas. The Department of Homeland Security (DHS) defined the overstay as follows:

An overstay is a nonimmigrant who was lawfully admitted to the United States for an authorized period but stayed in the United States beyond his or her lawful admission period. This also includes a nonimmigrant admitted for “duration of status” who fails to maintain that status. Duration of status is a term used for foreign nationals who are admitted for a specific purpose, which expires when that purpose expires- such as a student program that runs for four years of study.⁷⁶⁹

Most undocumented immigrants in the United States did not enter the country without inspection through the southwest border; they entered the country lawfully but then overstayed their visas. For instance, in FY2017 entry/exit overstay report prepared and published by the DHS, revealed that 701,900 travelers to the United States had overstayed their visas, as shown in Table 8. The duration a nonimmigrant has to stay in the country is predetermined by his/her

⁷⁶⁴ U.S. Department of Homeland Security, *Fiscal Year 2017 Entry/Exit Overstay Report*, (August 7, 2017), iii.

⁷⁶⁵ Ibid.

⁷⁶⁶ Department of Homeland Security, *Fiscal Year 2015 Entry/Exit Overstay Report* (January 19, 2016), iv.

⁷⁶⁷ Department of Homeland Security, *Fiscal Year 2016 Entry/Exit Overstay Report* (April 20, 2016), iv.

⁷⁶⁸ Pozo Goldstein, LLP, “3 of the Most Common Ways People Immigrate Illegally.”

⁷⁶⁹ U.S. Department of Homeland Security. *Entry/Exit Overstay Report: Fiscal Year 2015* (January 19, 2016), 4.

visa and depends on the kind of visa he/she obtained. On the other hand, it is commonly construed that visa overstayers enter the country on a tourist or business visa. Therefore, most Americans consider that the visa overstayers illegal immigrants are more educated and thus better than the other types of illegal immigrants.⁷⁷⁰

Table 8. FY2017 summary overstay rates for nonimmigrants admitted to the United States via air and sea POEs

Admission Type	Expected Departures	Out-of-Country Overstays	Suspected In-Country Overstays	Total Overstays	Total Overstay Rate	Suspected In-Country Overstay Rate
VWP Countries						
Business or Pleasure Visitors	22,472,710	16,944	114,121	131,065	0.58%	0.51%
Non-VWP Countries						
Business or Pleasure Visitors (Excluding Canada and Mexico)	14,659,249	21,157	280,559	301,716	2.06%	1.91%
Students and Exchange Visitors (Excluding Canada and Mexico)	1,662,249	29,909	39,074	68,983	4.15%	2.35%
All Other In-Scope Nonimmigrants (Excluding Canada and Mexico)	1,730,106	13,119	32,877	45,996	2.66%	1.90%
Canada and Mexico Nonimmigrants	12,131,588	13,845	140,295	154,140	1.27%	1.16%
Total	52,656,022	94,974	606,926	701,900	1.33%	1.15%

Source: Adapted from the U.S. Department of Homeland Security, Fiscal Year 2017 Entry/Exit Overstay Report, 12.

Visa overstays can be classified into two main categories: in-country overstays and out-of-country overstays. The first category, in-country overstays, comprises nonimmigrants who entered the United States and stayed in the country after the expiration of their visas, whereas the second category, out-of-country overstays, comprises nonimmigrants who entered the United States and then departed the country after remaining illegally for a certain period of time following the expiration of their visas without obtaining an extension of stay or changing the status or meeting other specific conditions, like asking for asylum in the United States.⁷⁷¹ This

⁷⁷⁰ Pozo Goldstein, LLP, “3 of the Most Common Ways People Immigrate Illegally.”
⁷⁷¹ Government Accountability Office (GAO), *Overstay Enforcement: Additional Actions Needed to Access DHS’s Data and Improve Planning for a Biometric Air Exit Program*, GAO-13-683 (Washington, DC: Government Accountability Office, 2013), 6. <http://www.gao.gov/assets/660/656316.pdf>.

category comprises nonimmigrants admitted for a duration of status who failed to maintain that status, such as students who stopped pursuing a full course of study at an approved educational institution or pursuing any authorized practical training after completing their full course of study.⁷⁷² This categorization is very important for DHS's reports as it helps greatly its officials in identifying the overstay rates of some countries to determine violators who are currently in the United States.

4.3.2.2.2 Nonimmigrants' Motives for Overstaying Their Visas

Nonimmigrants may overstay their visas in the United States for many reasons. According to a 2013 report made by the Government Accountability Office (GAO), the main motive for which nonimmigrants overstay their visas is the availability of economic opportunities in the United States.⁷⁷³ Moreover, changes that may occur within a visitor's country while he/she is in the United States could push him/her to stay in the country past their admission date. For instance, an uprising or a forceful change in the government could make it difficult for visitors to return home, thereby causing them to overstay their visas in the United States. Additionally, some nonimmigrants utilized their visas to lawfully enter the United States but intended to remain there just to escape violence, political turmoil, and economic strife that occurred in their countries of origin.⁷⁷⁴

Some critics, however, claim that the current ineffective American Immigration System is one of the reasons that spurs nonimmigrants to overstay their visas. In her testimony before Congress, Margaret D. Stock, Esq., an associate professor at the United States Military Academy in West Point, New York, and an expert in the field of military, constitutional, immigration, and security law, argued that the vast majority of the overstayers are not terrorists and do overstay their visas in their hope to get approval for their application to adjust their status.⁷⁷⁵ Moreover, overstayers remain in the United States due to their fear of getting punished and banned from reentering the United States for a period of three years or ten years.

⁷⁷² GAO, *Overstay Enforcement: Additional Actions*, 6.

⁷⁷³ GAO, *Overstay Enforcement: Additional Actions*, 1.

⁷⁷⁴ Aline Barros, "After Overstaying Visas, Immigrants face Uncertain Future," VAO, Accessed on August 19, 2022, <https://www.voanews.com/a/after-overstaying-visas-immigrants-face-uncertain-future/3868473.html>

⁷⁷⁵ *Visa Overstays: Can We Bar the Terrorist Door? Hearing before the Subcommittee on Oversight and Investigations of the Committee on International Relations, House of Representatives, 109 Cong. 2.* (Washington, DC: U.S. Government Printing Office, 2006), 24. <http://www.house.gov/international-relations>

The vast majority of people who overstay their visas are not terrorists; many are awaiting approval of an adjustment application; hoping that an immigrant visa number will become current; are afraid to leave the United States for fear of triggering a 3-year, 10-year, or permanent bar; or have become “overstays” through some bureaucratic glitch or a failure of their sponsor to file the correct paperwork.⁷⁷⁶

This argument is deemed to be vague as the current immigration law allows nonimmigrants to apply to adjust their status and/or extend their stay while in the United States. Still, visitors are not allowed to stay in the United States just because their application is pending. In actuality, they still have to abide by their visas’ terms and thus are compelled to leave the country if their application to extend and/or adjust their stay is disapproved before their stay expires. So, the immigration system should not be blamed for punishing those visitors who choose to break the law and overstay their visas.

Other possible reasons that may push visitors to violate their visas’ stay consist in the U.S. enforcement policies and procedures pertaining to immigration law in general and visa overstay cases in particular. ICE is the agency responsible for identifying, locating, arresting, and removing immigration law violators. ICE has two subagencies to carry out this mission which are the Homeland Security Investigations (HSI) and the Enforcement and Removal Operation (ERO). According to the findings of the Government Accountability Office (GAO) in 2015, only 3% of the enforcement resources of the ICE were dedicated to addressing overstays, thereby removing only a small number of overstayers estimated at 8,000 out of a total of 5.5 million.⁷⁷⁷ Moreover, HSI arrested only between 20% to 27% of the overstay cases it worked on.⁷⁷⁸ All these statistics reveal that overstay enforcement was not a high priority for the DHS immigration enforcement agencies under Obama’s administration.

Consequently, the lack of DHS enforcement against visa overstay violations may contribute to increasing the number of overstayers. In this respect, the ICE Counterterrorism and Criminal Exploitation Unit (CTCEU) reported that it had closed 34,700 overstay cases between 2004 and 2010, which caused the DHS to arrest 8,100 overstayers out of a relative number of overstayers estimated at 5.5 million, accounting for only 0,147% which is very small compared to the huge number of overstayers. Further, in FY2105, DHS reported that 527,127

⁷⁷⁶ *Visa Overstays: Can We Bar the Terrorist Door?* 24.

⁷⁷⁷ Jessica M. Vaughan, “DHS Reports Huge Number of visitors Overstayed in 2015,” Center for Immigration Studies (CIS), Accessed on August 19, 2022, <https://cis.org/Vaughan/DHS-Reports-Huge-Number-Visitors-Overstayed-2015>

⁷⁷⁸ Government Accountability Office (GAO), *Overstay Enforcement: Additional Mechanisms for Collecting, Assessing, and Sharing Data Could Strengthen DHS’s Efforts but Would Have Costs*, GAO-11-411. (Washington, DC: Government Accountability Office, 2011), 15.

nonimmigrants overstayed their visas, of which 482,781 were suspected of being in-country overstayers. However, HSI arrested only 1,900 overstayers on the basis of CTCEU leads,⁷⁷⁹ accounting for a chance of being arrested by HSI following an investigation estimated at 0,39%.

4.3.2.2.3 Potential Risks Posed by Visa Overstayers

Given the considerable number of yearly visa overstayers counted in millions, this large number could pose a genuine threat to U.S. National Security, especially with the lack of DHS enforcement against them. In point of fact, terrorists as well as members of transnational criminal organizations could exploit this risk as they want to enter and operate in the United States. Actually, they can enter the United States by illegally crossing the border, or entering legally by a visa and then remain in the country to conduct their malicious purposes and acts.⁷⁸⁰ In either case, the large number of visa overstayers encourages terrorists to exploit the U.S. visa system to enter and remain in the United States to conduct their wicked purposes. Accordingly, regardless of their evil objectives, be it trafficking in illegal goods or profiting from smuggling, etc., these overstayers or rather actors would opt for violating or not violating their visas' terms.

Terrorists have already tried to abuse the U.S. immigration system to conduct their evil acts on American soil against American citizens and the best interests of the nation. In this regard, the 9/11 Commission reported that all the terrorists had at least one form of acceptable identification, such as a U.S. driver's license or a passport issued by a foreign country. Such documents are of great importance for terrorists just like weapons because without them they cannot move freely to conduct their malicious acts. The report revealed the following:

For terrorists, travel documents are as important as weapons. Terrorists must travel clandestinely to meet, train, plan, case targets, and gain access to attack. To them, international travel presents great danger, because they must surface to pass through regulated channels, present themselves to border security officials, or attempt to circumvent inspection points. In their travels, terrorists use evasive methods, such as altered and counterfeit passports and visas, specific travel methods and routes, liaisons with corrupt government officials, human smuggling networks, supportive travel agencies, and immigration and identity fraud.⁷⁸¹

⁷⁷⁹ *Overstaying their Welcome: National Security Risks Posed by Visa Overstays. Hearing before Subcommittee on Border and Maritime Security of the Committee on Homeland, Security House of Representatives*, 114 Cong. 2 (Washington, DC: US Government Publishing Office, 2017), 19. <http://www.gpo.gov/fdsys/>

⁷⁸⁰ K. Jack Riley, *Border Security and the Terrorist Threat* (Santa Monica, CA: RAND, 2006), 10. <https://www.rand.org/pubs/testimonies/CT266.html>.

⁷⁸¹ National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (Washington, DC: U.S. Government Printing Office, 2004), 384.

Therefore, the U.S. immigration system was fiercely criticized by the National Commission on 9/11 Terrorist Attacks which described it as “increasingly dysfunctional and badly in need of reform”.⁷⁸² The commission further explained that, in national security circles, only the smuggling of destructive weapons is considered dangerous for national security, not terrorists who might use them against Americans. Therefore, the first step in protecting the nation from the potential threat of such evil people is to review the immigration system and design new measures able to detect terrorists and bad people and keep them outside the United States by banning their entry into the country, which is the ostensible and ultimate aim of President Trump’s new measures of reforms that constitute the tenets of his immigration policy.

The immigration system as a whole was widely viewed as increasingly dysfunctional and badly in need of reform. In national security circles, however, only smuggling of weapons of mass destruction carried weight, not the entry of terrorists who might use such weapons or the presence of associated foreign-born terrorists.⁷⁸³

However, such documents were, in many cases, obtained fraudulently.⁷⁸⁴ Nonetheless, such fraudulent documents allowed terrorists to enter the United States and facilitated their movement within the country. Furthermore, obtaining such important documents complicated the task for agents of immigration enforcement to locate and deport the 9/11 hijackers who overstayed their visas. This fact increases fears for the national security of the nation given the fact that at least 400,000 overstayers are in the United States at any time.⁷⁸⁵

The use of visas to lawfully enter the United States had significantly helped terrorists in conducting their operations against American citizens as well as America’s best interests. Indeed, the 2005 report on immigration and terrorism prepared by Janice L. Kephart revealed significant findings and facts about the evasive methods of terrorists and their widespread violations of U.S. immigration laws. Also, the report highlighted the genuine danger that might be caused by the loose immigration system not only in terms of who is admissible to the country but also in terms of how terrorists, once in the country, used the immigration system’s flaws to remain there to pursue their evil acts and crimes. In this respect, the report revealed that two-thirds (59) of the foreign-born terrorists, who operated in the USA estimated at 94, committed

⁷⁸² National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (Washington, DC: U.S. Government Printing Office, 2004), 384.

⁷⁸³ National Commission on Terrorist Attacks Upon the United States, *The 6/11 Commission Report*, 384.

⁷⁸⁴ Riley, *Border Security and the Terrorist Threat*, 10.

⁷⁸⁵ *Ibid.*, 10.

immigration fraud prior to or in conjunction with their involvement in terrorist activities.⁷⁸⁶ Moreover, of those 59 terrorists, many had violated American immigration laws several times. Furthermore, temporary visas were a common means of entering, thereby making it easy to illegally stay in the United States of America.

Investigations following the 9/11 attacks revealed that 18 terrorists had student visas along with four other applications that had been approved to study in America; at least 17 terrorists used visitor visas to enter the United States, either business visas (B1) or tourist visas (B2).⁷⁸⁷ Additionally, the report revealed that there were 11 cases of passport fraud and 10 cases of visa fraud; on the whole, 34 foreign nationals were charged with making false statements to an immigration official. More importantly, terrorists overstayed their visas in at least 13 instances.⁷⁸⁸ The report listed other additional violations of the U.S. immigration system terrorists had committed. Therefore, the report made it clear that strict enforcement of immigration laws, either at American consulates overseas and ports of entry or around the country, ought to be an integral part of the federal government's efforts to prevent future attacks.

Terrorists' recent efforts to violate immigration laws could be traced back to at least the first World Trade Center bombing in 1933, where one of the involved terrorists, an Egyptian called Mahmud Abuhlima, had overstayed his tourist visa and worked illegally in the United States as a car driver.⁷⁸⁹ Furthermore, in the 9/11 events, at least four hijackers overstayed their visas or were out of status, and took part in the attacks that caused the death of nearly 3,000 Americans and brought down the twin towers. This was due to the porous outer ring of security where hijackers managed to pass through the U.S. border security a combined total of 68 times without arousing suspicion. Besides, in 2012, Amine Al-Khalifi, a Moroccan who had been in the United States since 1999 on a tourist visa, attempted to conduct suicide at the U.S. Capitol.⁷⁹⁰ In actuality, since 2001, over 36 visa overstayers have been convicted of terrorism-related charges.⁷⁹¹ In a word, the federal government could prevent many terrorist attacks that took place on American soil if immigration laws were properly enforced and reviewed.

⁷⁸⁶ Janice L. Kephart, *Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel* (Washington, DC: Center for Immigration Studies, 2005), 5.

⁷⁸⁷ Kephart, *Immigration and Terrorism*, 5.

⁷⁸⁸ *Ibid.*, 5.

⁷⁸⁹ *Overstaying their Welcome: National Security Risks Posed by Visa Overstays*, 4.

⁷⁹⁰ *Ibid.*, 4.

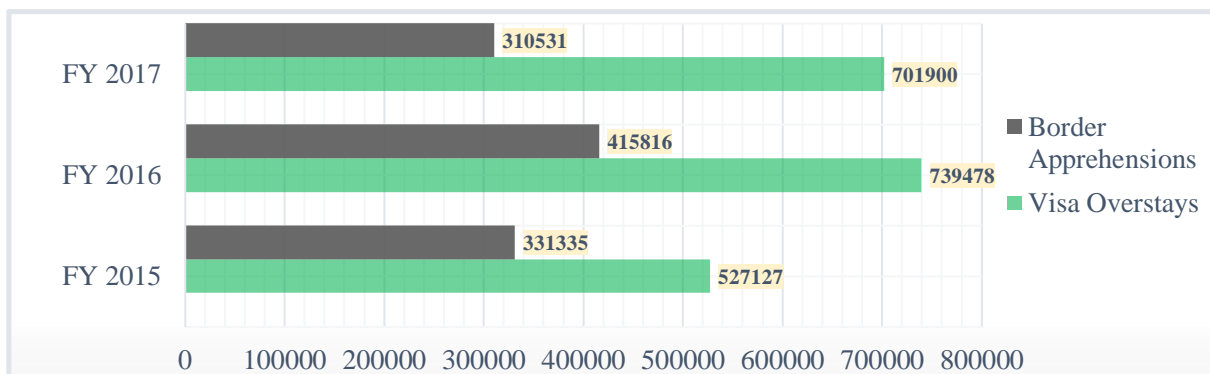
⁷⁹¹ *From the 9/11 Hijackers to Amine Al-Khalifi: Terrorists and the Visa Overstay Problem*, Hearing Before the Subcommittee on Border and Maritime Security of the Committee on Homeland Security, House of Representatives, 112 cong. 2 (Washington, DC: US Government Publishing Office, 2012), 4.

In response to these recommendations and findings revealed by several reports, changes and enhancements have been brought to the U.S. immigration system. Starting with the 1996 Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA), Congress as well as the National Commission on 9/11 Terrorist Attacks recommended that a biometric entry/exit screening system is required at the U.S. border so as to address the visa overstay issue.

The Department of Homeland Security, properly supported by Congress, should complete, as quickly as possible, a biometric entry-exit screening system, including a single system for speeding qualified travelers. It should be integrated with the system that provides benefits to foreigners seeking to stay in the United States. Linking biometric passports to good data systems and decision making is a fundamental goal. No one can hide his or her debt by acquiring a credit card with a slightly different name. Yet today, a terrorist can defeat the link to electronic records by tossing away an old passport and slightly altering the name in the new one.⁷⁹²

Therefore, in order to track visitors or nonimmigrants, the United States Visitor and Immigrant Status Technology (US-VISIT) program collects all visitors’ biometric information to facilitate following and catching them in case they overstay their visas. Hence, any person intending to travel to the United States must have a readable and electronic passport that provides the necessary information. Besides, nonimmigrants who overstay their visas for less than a year before leaving the country would be banned from reentering the country for three years.⁷⁹³ The ban would increase to become 10 years if the nonimmigrants overstay their visas for over a year. In this respect, the DHS statistics about entry/exit overstay reports in FY2015, FY2016, and FY2017, represented in Figure 12, show that around 451,816 visitors out of 45 million legal U.S. arrival by air and sea overstayed their visas through FY2016.⁷⁹⁴

Figure 12. Immigration violations during the period spanning FY2016 to FY2017



Source: Adapted from the DHS Entry/Exit Overstay Reports of Fiscal Years 2015, 2016, and 2017.

⁷⁹² National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, 389.

⁷⁹³ Pozo Goldstein, LLP, “3 of the Most Common Ways People Immigrate Illegally.”

⁷⁹⁴ Ibid.

On the other hand, Figure 16. shows statistics presented by DHS entry/exit overstay reports in FY2015, FY2016, and FY2017 which revealed that the total number of visa overstayers exceeds that of illegal immigrants apprehended on the southwest border, which means that visa overstayers make up the majority of the unauthorized immigrants in the United States. These statistics are consistent with the findings presented by the Center for Migration Studies (CMS) about 2017 estimates, which proved that the primary mode of entry for the unauthorized population in the USA has been for the ten past years to overstay temporary visas.

4.3.2.3 Border Crossing Card Violation

The third mode of entry for the unauthorized population in the United States consists in abusing the Border Crossing Card (BCC). The BCC is both a Border Crossing Card and a B1/B2 visitor's visa. Generally, any foreign national wishing to enter the United States must at first get a visa, either a nonimmigrant visa for a temporary stay or an immigrant visa for permanent residence. Hence, visitor visas, B-1, B-2, and B1/B2, are nonimmigrant visas designed for foreign nationals wishing to visit the United States for a temporary stay.⁷⁹⁵ The B-1 visa category is designed for nonimmigrants, allowing them to enter the United States for limited business purposes, whereas the B-2 visa category is designed for foreigners allowing them to enter the country for a limited period of time for tourism, pleasure, and medical treatment.⁷⁹⁶ The visa category B1/B2, however, is for both categories.⁷⁹⁷ The BCC (also referred to as Adsp-150) is issued as a laminated card with enhanced graphics and technology, and is similar in size to the credit card. This card is valid till its expiration date which is ten years after its issuance date, except in the cases of some children.⁷⁹⁸

The Department of State DOS issues the BCC to Mexican citizens only in order to enter the United States for temporary purposes.⁷⁹⁹ Further, BCC holders can benefit from the unlimited number of entries to the United States during the ten-year period; however, they can stay in the country for no more than 30 days and can travel only within a limited area after each entry (generally does not exceed 25 miles from the border). The Applicant of BCC must meet

⁷⁹⁵ U.S. Department of State, "Visitor Visa", Travel.State.Gov, Accessed on August 18, 2022, <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visitor.html>

⁷⁹⁶ Green Evans-Schroeder, "Non-Immigrant Visitor Visas", Accessed on August 2022, <https://www.arizonaimmigration.net/non-immigrant-visitor-visas>

⁷⁹⁷ U.S. Department of State, "Visitor Visa."

⁷⁹⁸ U.S. Department of State, "Border Crossing Card," Travel.State.Gov, Accessed on August 18, 2022, <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/border-crossing-card.html>

⁷⁹⁹ Citizenpath staff, "Border Crossing Card Explained," CitizenPath, Accessed on August 19, 2022, <https://citizenpath.com/faq/border-crossing-card-explained/>

some fundamental requirements such as having a valid Mexican passport at the time of application, being a citizen of and residing in Mexico, meeting the eligibility standards for B1/B2 visas, and proving that he/she has ties to Mexico that would oblige him/her to return following the expiration of the temporary stay in the United States.⁸⁰⁰

While a smaller number of unauthorized immigrants use this method to enter the United States, the Border Crossing Card is the most common type of visa for the entry of registered nonimmigrants. Still, it is somehow difficult to determine the exact number of nonimmigrants who overstayed their visas, but it is roughly estimated between 250,000 and 500,000 unauthorized immigrants who violated their BCC visas.⁸⁰¹

4.3.3 Illegal Immigrants from Mexico

Trump's anti-immigration rhetoric adopted during his 2016 presidential campaign brought once again the U.S.-Mexican policies to the forefront of political discourse. Perhaps the most famous among his measures was planning to build a large physical wall along America's southern border with Mexico to curb Mexican illegal immigration into the USA. Historically, however, though these policies were designed to obstruct the inflow of migrants attempting to illegally cross the U.S.-Mexican border and reduce it to its lowest possible number, highly motivated and determined migrants along with their potential U.S. employers have continued to find ways to bypass political and physical barriers intended to thwart their illegal migration.⁸⁰²

4.3.4 Central and Latin American Migrants

In America, popular and policy conversations about immigration mostly revolve around migration from Latin America, particularly migration from Mexico and Central America. This particular emphasis is not surprising as facts presented by a 2011 MPI report revealed that Mexican immigrants account for 30% of the U.S. immigration population (including undocumented and naturalized immigrants) while Central Americans account for 7%. Further, the report stated that all Latin Americans along with Caribbean immigrants together make up 53% of the U.S. foreign-born population.⁸⁰³ These statistics are striking and showed a

⁸⁰⁰ Citizenpath staff, "Border Crossing Card Explained."

⁸⁰¹ Pozo Goldstein, LLP, "3 of the Most Common Ways People Immigrate Illegally."

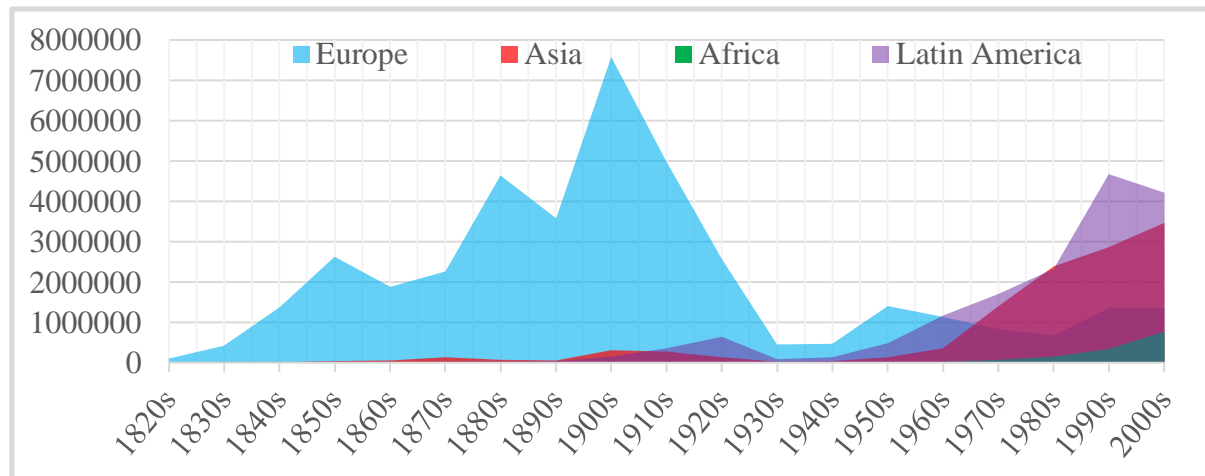
⁸⁰² Alix Naugler and Stephen J. Conroy, "Motivation for Mexican-US Immigration: Does the Economy Matter?" *Journal of Borderland Studies* 35, no. 1 (2018): 3.

⁸⁰³ Kate Brick, A. E. Challinor, and Marc R. Rosenblum, *Mexican and Central American Immigration in the United States* (Washington, DC: Migration Policy Institute, 2011), 1.

significant increase in the number of Latino immigrants in the United States taking into consideration that Mexicans accounted for only 8% of the U.S. foreign-born population in 1970, while Latin American and Caribbean immigrants made up only 26% of the whole immigrant population in the United States.⁸⁰⁴ This means that the foreign-born population increased about four-fold since 1970, whereas the number of Mexican and Central American immigrants doubled in each decade between 1970 and 2000 and reached 20.4 million in 2010, a twenty-fold increase since 1970.⁸⁰⁵

While contemporary discussions about immigration into the United States often depict Mexican and Central American immigrants as being the main contributors to the immigrant population in the United States, statistics show that the region is relatively a new contributor to the U.S. immigration flows. Figure 13 reveals that Latin American immigrants account for less than 10% of the immigrant community in the USA before WWII and were only a quarter of the U.S. immigrants in the early post-war period, before increasing to about 40% at the beginning of the 1960s and then 50% of the U.S. immigrant population in 1990s.

Figure 13. Average annual permanent immigration flows to the United States, by region of origin, 1820s to 2000s



Source: Adapted from DHS, 2009 Yearbook of Immigration Statistics, Office of Immigration Statistics, August 2010.

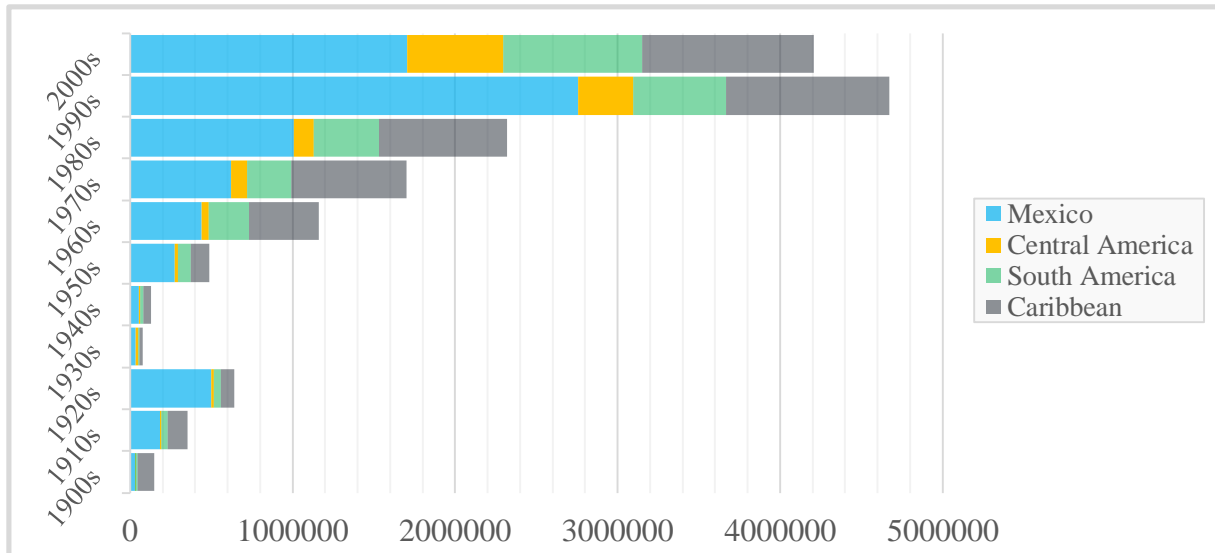
These changes are a function of proliferation in the Mexican and Central American immigrant population America had witnessed in the early post-WWII period. Effectively, Figure 14 shows that the number of Mexican immigrants increased rapidly to exceed One

⁸⁰⁴ Brick, Challinor, and Rosenblum, *Mexican and Central American Immigration in the United States*, 1-2.

⁸⁰⁵ *Ibid.*, 2.

million immigrants during the 1980s, and reached 2,757,418 immigrants during the 1990s.⁸⁰⁶ Similarly, Caribbean immigrants started to increase following WWII and reached 1,004,687 immigrants in the 1990s⁸⁰⁷ and 1,053,969 immigrants during the 2000s.⁸⁰⁸

Figure 14. Latin American immigrants flow to the United States, from the 1900s to the 2000s



Source: Adapted from DHS, 2009 Yearbook of Immigration Statistics, Office of Immigration Statistics, August 2010.

The surge in Mexican and Central American immigration into the United States reflects significant changes in the structure of the pull and push factors that motivate international immigration together with some changes brought to the U.S. immigration policy. As aforesaid, statistics showed that Mexico remained, for several decades, at the top of countries from which more immigrants flock to the United States as shown in Figure 14. American leaders as well as lawmakers tried to prescribe solutions and policies to curb the inflow of Mexican illegal immigrants, but could only reduce their number. This seemingly insoluble situation raises questions about the reason behind the continuous inflow of Mexican illegal immigrants into the United States despite all the efforts of both the U.S. and Mexican governments to stop their illegal immigration. So, what are the reasons behind the continuous flow of Mexican immigrants into the United States?

⁸⁰⁶ Department of Homeland Security (DHS), *2009 Yearbook of Immigration Statistics* (Washington, DC: Office of Immigration Statistics, 2010), 8.

⁸⁰⁷ Department of Homeland Security (DHS), *2009 Yearbook of Immigration Statistics*, 8.

⁸⁰⁸ *Ibid.*, 10.

4.3.5 Motives of Mexican Migration into the USA

Broadly, the surge in Mexican migration into the United States is in large part due to the legacy of the U.S.-Mexican Bracero Program initiated in the early months of WWII and lasted until 1964. The Bracero Program enabled 4,000,000 Mexican Braceros to be recruited and get jobs in the United States on temporary visas. As a result of this bilateral cooperation, a new culture and economy of emigration had been developed among the Mexican communities and deepened the dependency of U.S. agribusiness on the cheap labor provided by the Mexican immigrants. Further, it provided the required backdrop for the creation of a transnational network of labor recruiters connecting the two sides, Mexico and the United States.⁸⁰⁹

Throughout that period, demographic, economic, and social conditions in Mexico and Central America spurred a large part of immigrants to leave their countries for the United States. Precisely, the post-WWII demographic growth estimated at above 3% in the region, was translated in its turn into the rapid growth that characterized the working-age population in the 1960s. However, the region had also witnessed difficult times characterized by uneven employment growth and substantial economic uncertainty coupled with the 1970s oil shocks. Additionally, the 1982 sovereign debt default of Mexico as well as the repeated currency devaluations as the country made a rocky transition from inward-looking state-led development during the 1950s and 1960s to more competitive markets and trade-oriented growth starting in the 1990s. With regard to the Central American countries, these deep changes and challenges were combined with civil wars, such as the Guatemalan Civil War (1960-1996)⁸¹⁰ and the Salvadoran Civil War (1980-1992)⁸¹¹, coupled with natural disasters, all contributed greatly to pushing large numbers of immigrants to leave their countries for mainly the United States of America.⁸¹²

⁸⁰⁹ Brick, Challinor, and Rosenblum, *Mexican and Central American Immigration in the United States*, 3.

⁸¹⁰ The Guatemalan Civil War was a civil war in Guatemala that spanned over three decades from 1960 to 1996. This conflict occurred between the Guatemalan government and various leftist rebel groups. During this conflict, the government forces have been condemned for committing genocide against the Maya population of Guatemala and for widespread human rights violations against civilians. Conflict arose due to longstanding issues of unfair land distribution. The wealthy, mainly European-descended, citizens, and foreign companies, such as the American United Fruit Company, controlled much of the land, thereby leading to conflicts with the rural indigenous poor.

⁸¹¹ The Salvadoran Civil War is a twelve-year armed conflict occurred during the period that spanned the years that was fought between the Salvadoran Government and the Farabundo Martí National Liberation Front (FMLN). The latter is a coalition or "umbrella organization" of left-wing groups backed by the Cuban regime of Fidel Castro as well as the Soviet Union. This war broke out following a coup d'état on October 15, 1979, where the new government responded to anti-coup protesters by killing many of them. The war continued till January 16, 1992, after signing the Chapultepec Peace Accords in Mexico City.

⁸¹² *Ibid.*, 4.

Like other migrants around the world, Mexican migration could be analyzed based on three main sets of factors: demand-pull factors, supply-push factors, and networks.⁸¹³ Demand-pull factors comprise recruitment by U.S. employers and agribusiness, the so many jobs available in the United States, and more importantly, the high wages assured by U.S. employers. The Supply-push factors, however, include the poor performance of the Mexican economy coupled with strong regional socioeconomic inequalities in Mexico. As to network factors, they refer to family members as well as friends who already live in the United States or other channels that smooth the way for the Mexican migration.⁸¹⁴

4.3.5.1 Demand-Pull: U.S. Economic Factors

As aforementioned, the international migration of people from one country to another is the outcome of various reasons including economic, political, social, cultural, educational, health, and environmental ones. Economically speaking, the good performance of the U.S. economy is a major factor that attracts Mexican immigrants owing to the available opportunities for getting new and profitable jobs, thereby enhancing their lives and social statuses. Good education quality in the USA is also another factor that pulls Mexican immigrants. The ways these two factors attract more Mexican immigrants are expounded as the following:

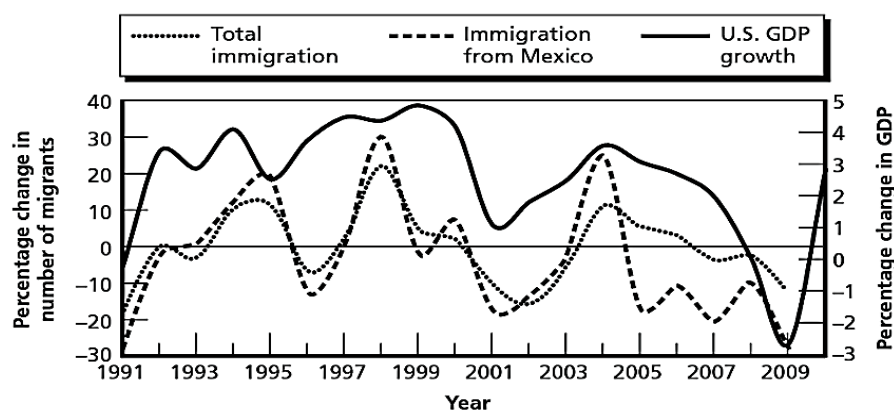
4.3.5.1.1 U.S. Economic Growth

Economic conditions play a key role in Migrants' decision to leave their country for the United States. Given the fact that the U.S. economy is the greatest and most powerful in the world, characterized by the availability of jobs and economic opportunities, Mexican migrants take it as the main motive for their decision to leave their country for the United States; in other words, economic conditions are the chief determinant of the short-term immigration flows. Broadly, immigrant movements are in agreement with the economic growth in the host countries. Therefore, the movement of Mexican migrants to the United States is consistent with the U.S. economy's growth expressed by the Gross Domestic Product (GDP), especially during the 2000s as depicted in Figure 15.

⁸¹³ Emma Aguila et al., *United States and Mexico: Ties that Bind, Issues that Divide* (California: RAND Corporation, 2012), 37.

⁸¹⁴ Emma Aguila et al., *United States and Mexico: Ties that Bind, Issues that Divide*, 37.

Figure 15. Annual change in immigrant flows to the United States and the U.S. gross domestic product, 1991—2010



Source: Passel and Suro, 2005; Pew Hispanic Center, 2007; BEA, 2010.

According to data displayed in Figure 15, the flow of Mexican immigrants depends on the good performance of the US manifested in the growth of the U.S. GDP; that is, the more US GDP increases, the more Mexican immigrants flow into the United States. This consistency occurred many times, according to Figure 15. For instance, from 1991 to 1994, the U.S. GDP growth was accompanied by an increase in the influx of Mexican immigrants; however, inconsistency between U.S. GDP and Mexican migration into the USA occurred during the years of the Mexican economic crisis despite the decline in U.S. GDP because Mexican immigrants favored emigrating rather than staying in their home county whose economy crippled. Thereafter, once the Mexican economy recovered, the flow of Mexicans into the USA decreased though the U.S. GDP increased because the effect of the push factors decreased.

4.3.5.1.2 Education Quality

Another key factor immigrants usually consider before deciding to migrate is the quality of education in the destination country. Good quality of education has been always a key motivator for leaving the country of origin for another country that assures a high quality of education, thereby increasing their chances to get jobs and enhance their living conditions. While previous studies that focused on the relationship between migration and quality education relied on measures of education attainment, the findings suggest that migrants hail from areas known for low education quality.⁸¹⁵ Relying on data gathered from household field surveys in 25 communities located in five states in western Mexico including Jalisco,

⁸¹⁵ Kristina Aiad-Toss, “Factors that Influence Mexican Emigration to the United States: The Role of Economics, Education Quality, Crime, and Violence,” *Honors Research Projects 753*, (2018): 7.

Michoacan, Guanajuato, Nayarit, and Zacatecas, the study conducted by Douglas S. Massey and Kristine E. Espinosa found that the likelihood to emigrate to the United States decreases as years of schooling increase for an individual. According to this study, this trend is ascribed to the fact that migrating benefits are relatively lower for more educated individuals.⁸¹⁶

On the other hand, the availability of good educational infrastructures was shown to reduce people’s likelihood to emigrate for the first time, which complies with the perception that educated people gain less when migrating to the United States, as shown in Table 9. In other words, the more Mexican workers’ level gets higher the more their wages and earnings decrease.

Table 9. Ratio of U.S. wages to Mexican wages for Mexican-born workers, 2000

Age	Years of schooling Completed					
	4	5-8	9-11	12	13-15	+16
18-22	5,8	4,9	4,2	3,9	3,4	2,2
23-27	5,9	4,6	3,9	3,2	2,5	2,5
28-32	5,3	4,4	3,6	3,0	2,0	2,4
33-37	5,7	4,4	3,6	2,9	2,2	2,4
38-42	5,6	4,4	3,2	2,9	2,2	2,2
43-47	5,8	3,9	3,1	2,4	2,2	2,0
48-52	5,8	4,1	3,0	2,2	1,9	2,0

Note: Mexican wages are rescaled to adjust for cost-of-living differences between Mexico and the United States, using the 2000 purchasing power parity (ppp) adjustment factor for Mexico, as listed in Hanson (2006).

Source: Hanson, 2006.

For instance, Table 9 shows that a Mexican immigrant aged between 23 and 27 with four years of education is likely to make nearly six times as much in the United States as s/he would make in Mexico, while he would earn only 2,5 times if he has between 13 and 15 years of schooling. Additionally,

Additionally, Demographics research has investigated individuals’ likelihood of migrating with different education levels and found that migrants mostly come from both ends of the education quality spectrum, with high rates of migration registered for individuals with the highest and lowest educational level rather than individuals with middle educational level.⁸¹⁷ Furthermore, the study noted that spurring education among poor families so as to

⁸¹⁶ Aiad-Toss, “Factors that Influence Mexican Emigration to the United States: The Role of Economics, Education Quality, Crime, and Violence,” 8.

⁸¹⁷ Vincenzo Caponi, “Heterogeneous Human Capital and Migration: Who Migrates from Mexico to the US?” *Annals of Economics and Statistics*, no. 97/98 (2010): 207. <http://www.jstor.org/stable/41219116>

improve their educational attainment from the third level to the twelfth level would contribute to the reduction of immigration through increasing the quality — educational level — of the Mexicans, thereby reducing numbers of Mexican migratory flows wishing to migrate to the United States.⁸¹⁸

Another study conducted by José Felipe Martínez, Lucrecia Santibañez, and Edson E. Serván Mori upholds the findings of Caponi's study. Their study suggested the existence of a negative relationship between educational quality and migration likelihood.⁸¹⁹ The study further noted that Mexican municipalities with high rates of migration are more likely to suffer from a lack of sufficient schools (particularly middle and high schools) and experienced school closing more frequently. Besides, the study found that the municipal migration rates are negatively associated with the availability of the required educational infrastructure, and with the availability of extra-curricular activities and vocational workshops. Similarly, higher migration rates are also negatively correlated with parental involvement and community support for schools as reported by teachers.⁸²⁰ In a nutshell, education is a key factor in Mexican migrants' decision to emigrate to the United States. It is negatively associated with their educational level and the availability of the infrastructures required for improving their educational quality which helps reduce the migratory flows to the United States.

4.3.5.2 Supply-Push: Performance of the Mexican Economy

Another sphere that greatly affects Mexican migration into the United States is the supply-push factors. Overall, this effect manifests in the difficult conditions present in Mexico that force Mexicans to decide to migrate to the United States. Accordingly, wage differences between the USA and Mexico are considered one of the key factors that push Mexicans to move to the USA. The spread of poverty and unemployment among Mexicans are also two other factors that incite them to emigrate to the USA. Besides, the spread of violence, gangs, gangsters, and drug dealers, along with the availability of family networks, all contributed significantly to forcing Mexicans to move to the United States, hoping to find safety there. The ways these factors affect the decision of potential Mexican immigrants to migrate to the USA are spelled out as follows:

⁸¹⁸ Caponi, "Heterogeneous Human Capital and Migration: Who Migrates from Mexico to the US?" 208.

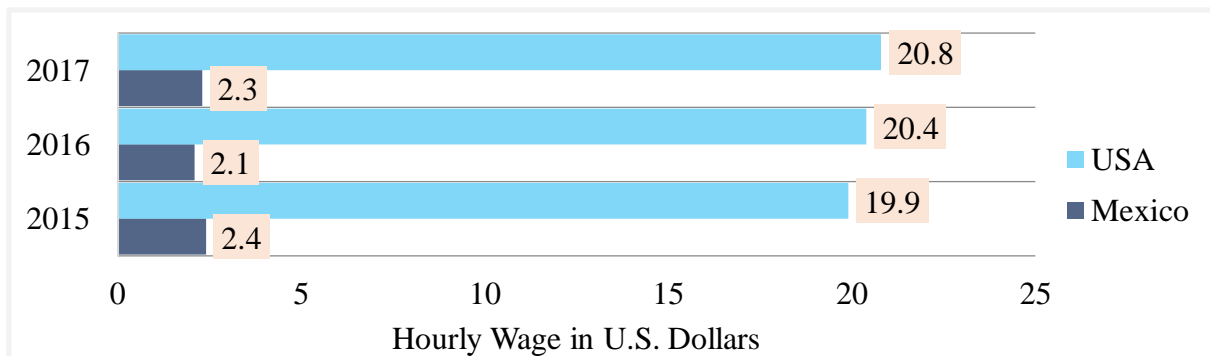
⁸¹⁹ José Felipe Martínez, Lucrecia Santibañez, and Edson E. Serván Mori, "Educational opportunity and immigration in Mexico: Exploring the individual and systemic relationships," *Teachers Record College* 115, (2013): 17. DOI: 10.1177/016146811311501002.

⁸²⁰ Martínez et al. "Educational opportunity and immigration in Mexico: Exploring the individual and systemic relationships," 17.

4.3.5.2.1 Wage Differences between the USA and Mexico

High wages in the United States are also another determinant factor that pushes Mexican immigrants to move toward the United States. Figure 16 shows the average wage in the manufacturing sector in Mexico compared to the United States from 2015 to 2017. Data displayed in this figure shows that there is a high consistency between the growth in the U.S. GDP and the Mexican migration flows into the United States. This would be so attractive to the highly motivated Mexican immigrants as the growth in the U.S. GDP would certainly increase job availability with high wages and thus high revenues compared to wages and revenues in Mexico.

Figure 16. Average wage in the manufacturing sector in Mexico compared to the United States from 2015 to 2017 (in U.S. dollars per hour)



Source: Adapted from Statista. Published by Teresa Romero on July 5, 2021. Accessed on August 23, 2022. <https://www.statista.com/statistics/882757/mexico-average-wage-manufacturing-sector-compared-us/>

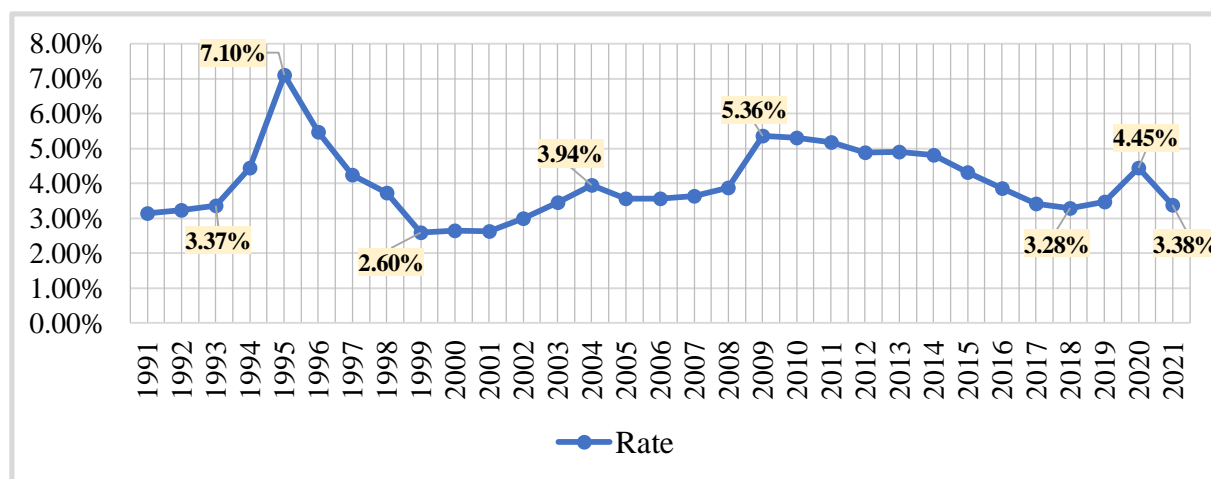
Additionally, Figure 16 reveals the big difference in wages between the United States and Mexico. For instance, while a Mexican immigrant could earn \$2,4 per hour when working in the Mexican manufacturing sector, s/he could increase this hourly wage to more than eight-fold when working in the same sector in the United States in 2015. Likewise, a Mexican immigrant can get an hourly wage of \$2,1 when working in Mexico, while he could get an hourly wage of \$20,4, a 9,7 fold if s/he migrates to America and work in the U.S. manufacturing sector. Hence, this large difference in the hourly wage between the United States and Mexico is a key pulling factor that pulls Mexican migrants to the United States.

4.3.5.2.2 Unemployment in Mexico

Another key factor that pushed Mexican immigrants to leave their country for the United States is unemployment and the lack of jobs owing to the poor performance of the Mexican

economy, especially during the late decades of the twentieth century. In point of fact, there is a high correlation between the Mexican unemployment rate and the migration flows to the United States. Empirical studies have mostly upheld the hypothesis that the desire to emigrate rests on pull factors consisting in the economic opportunities measured by employment as well as wage levels.⁸²¹ In other words, poor economic opportunities, which led to the spread of unemployment as well as low wages, were in large part the reason that pushed Mexicans to decide to migrate to the United States whose economy is characterized by job availability and high wage levels. To this end, casting light on employment in Mexico could help to account for Mexican migration flows to America. Figure 17 shows statistics about Mexico's unemployment rate during the period from 1991 to 2021.

Figure 17. Mexico's unemployment rate 1991—2021



Source: Adapted from Mexico Unemployment Rate 1991-2021, Macrotrends, Accessed on August 24, 2022. <https://www.macrotrends.net/countries/MEX/mexico/unemployment-rate?q=Unemployment+rate+of+latin+American+countries+>

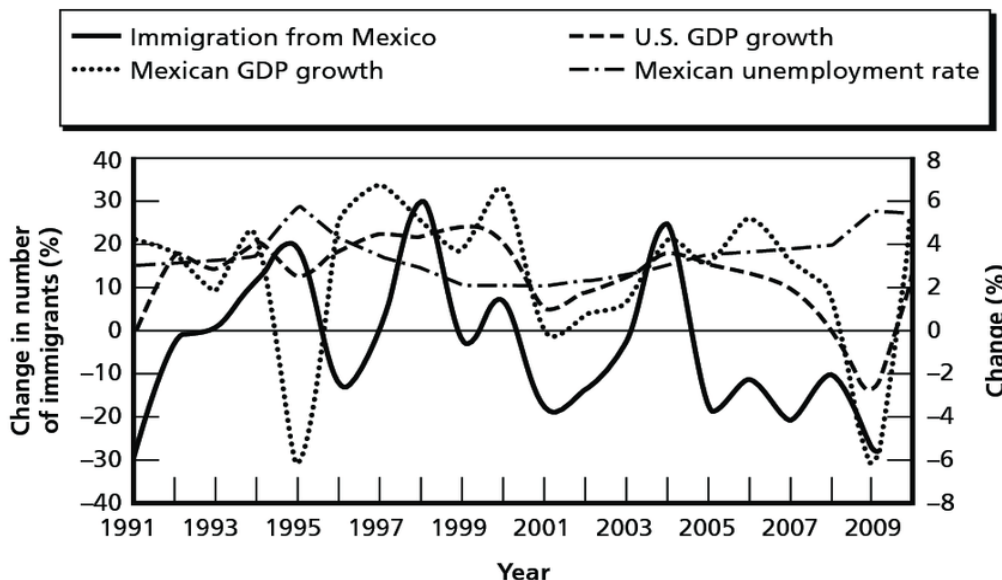
As depicted in Figure 17, unemployment in Mexico witnessed several ups and downs according to the performance of the economy. The last time wherein Mexico registered the least rate of unemployment is in 1999 with 2.60%; however, the highest rate of unemployment was registered in 1995 due to the currency (peso) devaluation in December 1994.⁸²² Peso's devaluation, however, led to an economic recession which in its turn led to a decline in the Mexican GDP growth as shown in Figure 18. This decline in GDP manifested in the rise of the unemployment rate to 7,10% as displayed in Figure 18, thereby increasing Mexican migration to the USA. After achieving macroeconomic and financial stability in the following years, the

⁸²¹ Kristina Aiad-Toss, "Factors that Influence Mexican Emigration to the United States: The Role of Economics, Education Quality, Crime, and Violence," *Honors Research Projects* 753, (2018): 4.

⁸²² Emma Aguila et al., *United States and Mexico: Ties that Bind, Issues that Divide*, 40.

Mexican economy recovered somehow, leading to employing more workers, absorbing more workers, and lowering the unemployment rate among Mexicans.

Figure 18. Annual change in immigrant flows from Mexico to the United States, Mexican unemployment rate, and Mexican and U.S. gross domestic product, 1991-2010



Source: Passel and Suro, 2005; BANXICO, undated.

Indeed, Figure 18 shows a clear inverse relationship between the Mexican GDP and the migratory flows from Mexico to the United States during the 1990s. Yet, following 1999, both Mexican GDP and migratory flows seem to move in the same direction as displayed in Figure 18. Moreover, it is noticed that the Mexican unemployment rate fluctuates less than the migration flows except for the spike during the crisis of 1995; still, it remains attached to them according to the general concept that higher unemployment is always associated with more migratory flows from Mexico to the United States.

4.3.5.2.3 Poverty and Economic Performance in Mexico

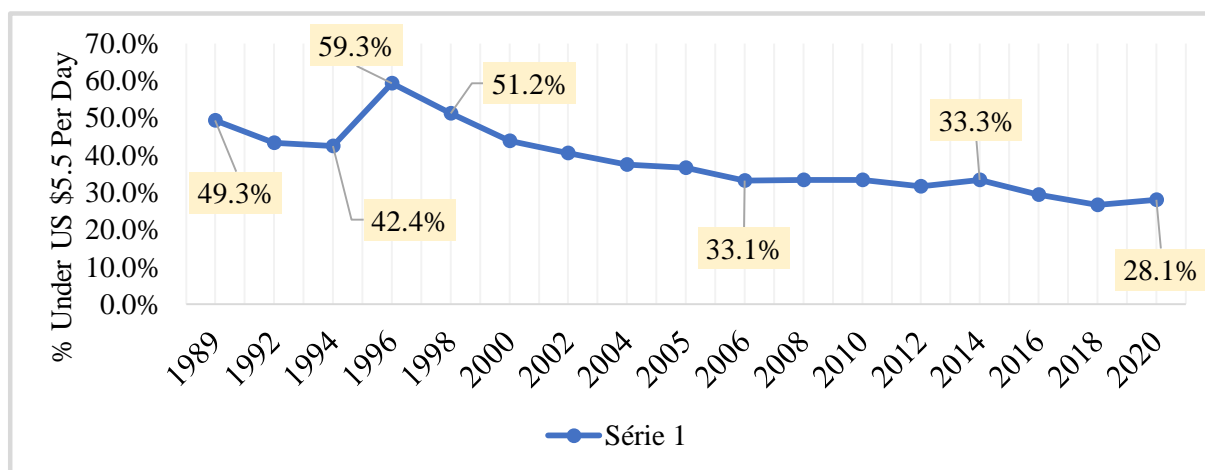
Poverty is another key push factor that encourages Mexican nationals to decide to migrate to the United States. In its 2010 Human Development Report, the United Nations classification of countries according to their Human Development Index (HDI) classified Mexico in the 56th place among the high human development.⁸²³ According to this index, Mexico’s main deficiencies lie in the proportion of the population that is illiterate, malnutrition,

⁸²³ United Nations Development Program (UNDP), *Human Development Report 2010* (New York: UNDP, 2010), 149.

scarcity of physicians, and high-income inequality. Furthermore, Mexico’s 2010 purchasing power was estimated at US\$ 14,566.⁸²⁴

The analysis of poverty in Mexico will be based on two main indicators provided by the Mexican government: capability poverty and food poverty. Capability poverty refers to the person’s incapability to meet his or her minimum requirements of health, education, and food. Food poverty, however, refers to a person’s inability to buy the minimum necessary food basket even if all of her or his income was allocated to it.⁸²⁵ Figure 19 displays data about poverty in Mexico registered from 1989 to 2020.

Figure 19. Mexico poverty rate, 1989—2022



Source: Adopted from Mexico Poverty Rate 1989—2022, Macrotrends, Accessed on August 24, 2022. <https://www.macrotrends.net/countries/MEX/mexico/poverty-rate>

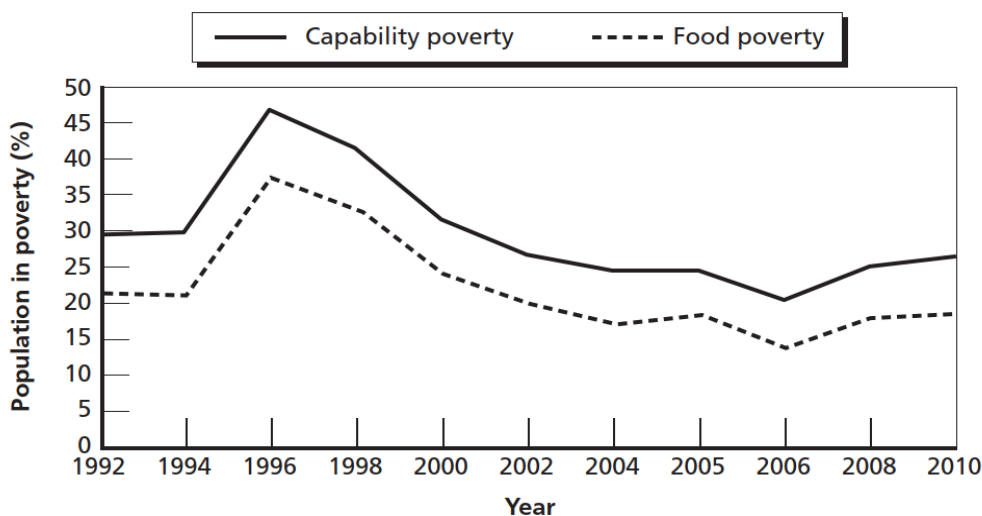
The economic crisis that struck the country in 1994 due to the peso devaluation caused a remarkable increase in the prevalence of poverty in Mexico, thereby augmenting the percentage of capability poverty from 30% in 1994 up to 46% in 1996. Meanwhile, food poverty also shifted from 21% in 1994 to 37% during the same period as depicted in Figure 20. The shift in poverty among Mexicans after 1994 and peaked in 1996 is displayed in Figure 19 which shows the percentage of Mexicans living on less than \$5,5 a day. According to Figure 19, poverty in 1996 attained its highest level when the percentage of Mexicans living on less than \$5,5 reached 59,3%, which means that poverty pervaded the majority of the Mexican population. Therefore, it is not surprising that this crisis which brought about an unbearable situation characterized by an increase in unemployment would certainly push citizens, namely

⁸²⁴ Emma Aguila et al., *United States and Mexico: Ties that Bind, Issues that Divide*, 42.

⁸²⁵ *Ibid.*, 42.

teenagers, to think deeply about migration and decide to leave the country for the United States in the hope of bettering their lives there.

Figure 20. Poverty rates in Mexico, 1992—2010



Source: CONEVAL, undated (b).

However, Mexican poverty rates declined steadily as the Mexican economy recovered starting from 1996 onward, resulting in a decline of capability poverty and food poverty reaching for the first time after 1994 lower levels in 2002 when capability poverty attained 27% and food poverty 20%, as displayed in Figure 20. During the first half of the 2000s, there were no statistically remarkable changes where poverty among Mexicans continued its steady decline till 2006 when capability poverty attained 21% whereas food poverty attained 14%. But after the Financial crisis that swept America and almost the whole world, poverty started to increase again. However, reductions in poverty rates do not necessarily mean to be translated into a downward trend in the Mexican migratory flows to the United States as can be noticed when comparing Figure 18 with Figure 19 due to the effect of other factors.

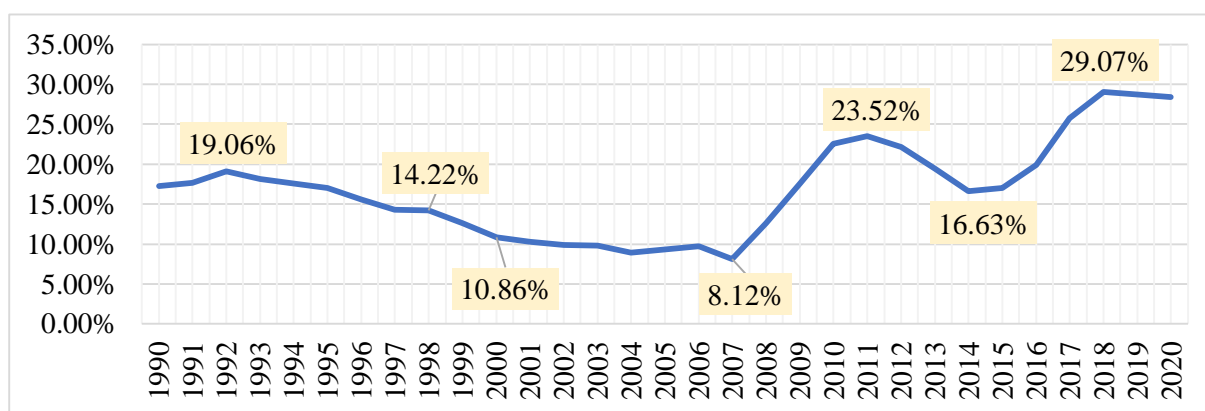
4.3.5.2.4 Drug Violence and Crimes

Another key factor that pushed Mexican nationals to migrate to the USA is the spread of violence and crimes across the Mexican territory. If truth be told, violence is not new in Mexico, but it increased following the election of the new Mexican President in 2006, Felipe Calderon⁸²⁶ (born 18 August 1962). The latter initiated a drug war in 2007, aiming at ending drug violence in Calderon’s home states Michoacan, but later the war had been extended to the

⁸²⁶ Felipe de Jesús Calderón Hinojosa is the 63rd President of Mexico who ruled Mexico from December 1, 2006, to November 30, 2012. Before being president, he served as Secretary of Energy under the Presidency of his predecessor President Vicente Fox Quesada.

rest of the country.⁸²⁷ Besides, given the fact that the election of Calderon was dogged by fraud accusations, violent social unrest had been triggered, giving the impression that there was a political motivation to deploy troops on the streets of Mexican cities. As a result of Calderon’s drug war, the number of annual homicides witnessed a remarkable increase from 10,425 in 2006 to 27,213 in 2011,⁸²⁸ and the total of homicides during Calderon's presidency amounted to 120,000 cases compared to 60,000 cases during Vicente Fox Quesada’s⁸²⁹ (born 2 July 1942) presidency.⁸³⁰ Figure 21 shows that the annual homicide rate was estimated at 8.12% in 2007 and then steadily increased during the Calderon presidency until attaining 23.52% in 2011.

Figure 21. Mexico's annual homicide rate 1990—2020 per 100,000 inhabitants



Source: Adopted from Macrotrends, Mexico Murder/Homicide Rate 1990—2022, Accessed on August 30, 2022. <https://www.macrotrends.net/countries/MEX/mexico/murder-homicide-rate>

Following the end of Calderon’s presidency, the annual homicide rate began to decline gradually to reach 16.63%; then, it started a new upward trend, reaching its peak in 2018 as amounted to 29.07%, pushing more potential Mexican immigrants to decide moving northward to the United States of American to escape death and guarantee their safety.

Violence and drug crimes caused the death of a considerable number of Mexicans. In point of fact, the drug war caused the death of 39 soldiers in 2009, mostly owing to accidents, while the police incurred hundreds of deaths.⁸³¹ Moreover, the Mexican government released

⁸²⁷ Jorge A. Lopez, “Correlation between Violence and Forced Migration,” In *Latin American Geopolitics: Migration, Cities, and Globalization*, ed. Cesar Alvarez Alonso and Jose Ignacio Hernandez (Cambridge: Palgrave Macmillan, 2019), 222.

⁸²⁸ Aiad-Toss, “Factors that Influence Mexican Emigration to the United States: The Role of Economics, Education Quality, Crime, and Violence,” 6.

⁸²⁹ Vicente Fox Quesada is the 62nd President of Mexico from December 1, 2000, to November 30, 2006. Before being President, he served as the Governor of Guanajuato from September 25, 1995 to September 25, 1999.

⁸³⁰ Lopez, “Correlation between Violence and Forced Migration,” 222.

⁸³¹ *Ibid.*, 223.

its data related to the violence and drug war estimating that there were 47,453 homicides during the period from January 2007 through September 2011.⁸³² On the other hand, homicides are practically concentrated in 3% of the municipalities that make up approximately 70% of homicides.⁸³³ The top five most violent municipalities in 2010 are Ciudad Juarez, Culiacan, Tijuana, Chihuahua, and Acapulco. Because of the murder of the policemen, which reduced the government's capability to enforce laws, security in cities and towns deteriorated gravely, leading to the spread of chaos and fear among citizens. Consequently, kidnapping, carjacking, house thefts, male and female abductions, business extortion, and rapes all proliferated in the absence of police vigilance.

This unbearable situation characterized by fear and insecurity caused many Mexicans to take decisions about internal and international migration. For instance, a survey conducted by a university in the state of Ciudad Juarez estimated that 115,000 individuals favored migrating to the United States in 2010.⁸³⁴ In reality, it is not surprising that towns hit with intense violence would automatically seek an outlet for their fear of unsafety by leaving their hometowns and home states for other safe places either inside or outside Mexico; as a result, such insecure towns and states incurred high levels of out-migration.

4.3.5.2.5 Networks' Availability Spurred Illegal Migration

Demand-pull and Supply-push factors cannot alone spur Mexican immigrants to head toward the United States. If truth be told, it is quite difficult for immigrants to enter the United States, especially illegally, in the absence of migratory networks that facilitate the task for Mexican immigrants. For instance, the presence of family members or even people from the same neighborhood may help ease transition costs for the new Mexican immigrants by aiding them financially or assisting them to get houses or lodges, food, and find jobs. As a matter of fact, different studies relying on data from the Mexican Migration project found that having a social tie to a current and former migrant in the United States increases significantly the likelihood of migration.⁸³⁵ Furthermore, the magnitude of the trend depends on the strength of the tie as well as the degree of the closeness of the relationship. Also, studies found that the

⁸³² Cory Molzahn, Viridiana Rios, and David A. Shirk, *Drug Violence in Mexico: Data and Analysis Through 2011* (Trans-Border Institute: University of San Diego, 2012), 8.

⁸³³ Aiad-Toss, "Factors that Influence Mexican Emigration to the United States: The Role of Economics, Education Quality, Crime, and Violence," 6.

⁸³⁴ Lopez, "Correlation between Violence and Forced Migration," 225.

⁸³⁵ Aiad-Toss, "Factors that Influence Mexican Emigration to the United States: The Role of Economics, Education Quality, Crime, and Violence," 9.

Mexicans' migration likelihood depends also on the gender of immigrants, where males are more likely to migrate than females.

Other studies pointed out that the magnitude of the network ties spurring migrants to decide to leave their country is a legitimate casual effect and not exogenous or attributable to other factors.⁸³⁶ Another study pointed out that social connections between the origin and destination countries and the social capital arising from them are important for the general causation of emigration. Additionally, relying on survey data from more than Mexicans, researchers at Harvard University demonstrated that social tie network effects encourage migration and even play an essential role more than the economic and political factors. Besides, these researchers interviewed 120 migrants along with their household members in Mexico and found that more than 90% of immigrants received assistance from other and former immigrants in terms of information or help which aided them to cross the U.S. border or find a job in the United States.⁸³⁷ This is concerning legal migration; however, illegal migration that aims to cross the U.S. border unlawfully follows illegal ways, namely networks of immigrant smuggling famously known as the "coyotes".

In 2014, a man from Maryland called the police, maintaining that his stepfather called Moises Ferrera, a Honduran migrant, had been detained there and tortured by smugglers who had already brought him into the United States.⁸³⁸ These smugglers wanted more money from Ferrera, according to the stepson, and were hitting repeatedly his head with a hummer, vowing to continue torturing him until his family send them the requested money. When the federal agents as well as sheriff's deputies went to the house, they found out that Ferrera was not the only person detained in the house, but found hundreds of migrants were detained in the house for ransom where smugglers mutilated their limbs and raped women.⁸³⁹ During the trial, the prosecutor Matthew Watters told the jury that "What transpired there is the subject of science fiction, of a horror movie – and something we simply don't see in the United States...organized crime cartels had brought this terror across the border,"⁸⁴⁰ reflecting the great danger posed by immigrants' smugglers to public safety.

⁸³⁶ Ibid., 9.

⁸³⁷ Ibid., 9-10.

⁸³⁸ Miriam Jordan, "Smuggling Migrants at the Border Now a Billion-Dollar Business," The New York Times, Accessed on August 25, 2022, <https://www.nytimes.com/2022/07/25/us/migrant-smuggling-evolution.html>

⁸³⁹ Miriam Jordan, "Smuggling Migrants at the Border Now a Billion-Dollar Business."

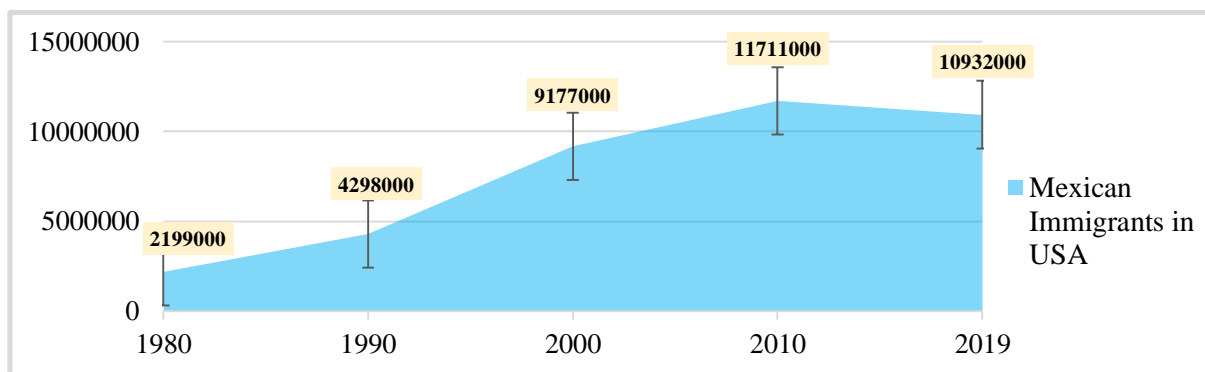
⁸⁴⁰ Ibid.

Ferrera’s case was one of many other cases. If truth be told, migrant smuggling along the U.S. southern border developed from being just a scattered network of freelance or rather “coyotes” into a multi-billion-dollar international business under the control of organized crime, including some Mexican violent drug cartels. For instance, over 5,046 people were arrested and charged with human smuggling in 2013.⁸⁴¹ Such evidence indicates that this activity —migrant smuggling— hurts the best interest of the United States which made it necessary to toughen the U.S. control over its southern border with Mexico to shield the country from the bad effects such undocumented and illegal immigrants may cause while in America.

The Decline of Mexican Immigration to the USA

Recent statistics from the Migration Policy Institute (MPI) displayed in Figure 22 show that the Mexican community in the United States remained the largest migrant community in the USA despite the decline in its size, thus accounting for about 24% of 45 million foreign-born residents.⁸⁴² MPI statistics revealed that about 10,932,000 Mexican-born individuals lived in the USA, a decline of 7% or rather 779,000 from the number registered in 2010 which attained 11,711,000.

Figure 22. Mexican immigrant population in the United States, 1980-2019



Source: Adapted from MPI, Mexican Immigrants in the United States, <https://www.migrationpolicy.org/article/mexican-immigrants-united-states-2019>

This decline in the size of the Mexican migration community is ascribed in large part to the enforcement of U.S. immigration laws and in another part to the development of the Mexican economy. In point of fact, according to the findings of the MPI, the number of Mexican immigrants returning to Mexico outnumbers the number of those who come from Mexico.⁸⁴³

⁸⁴¹ Ibid.

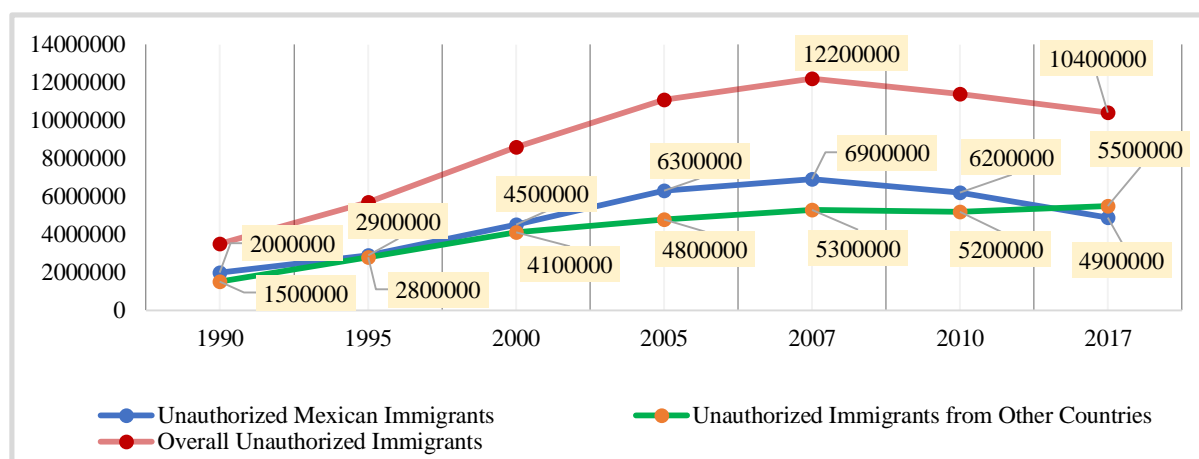
⁸⁴² Emman Israel, and Jeanne Batalova, “Mexican Immigrants in the United States”, Migration Policy Institute (MPI), Accessed on August 29, 2022, <https://www.migrationpolicy.org/article/mexican-immigrants-united-states-2019>

⁸⁴³ Israel and Batalova, “Mexican Immigrants in the United States.”

4.4 The Decline of the Mexican Illegal Migration

According to the Pew Research Center’s estimates of the number of illegal immigrants, there is a decline in the number of unauthorized immigrants in the United States during the last decade. These estimates, based on government data, are displayed in Figure 23. The latter reveals that the Mexican unauthorized immigrants no longer represent the majority of the illegal immigrant community in the United States of America, accounting for about 10,5 million in 2017, including about 4,9 million Mexicans, as displayed in Figure 23.⁸⁴⁴ This decline is largely ascribed to the decline in Mexican born which was 1,7 million in 2017 below its peak of 12,2 million in 2007, thereby driving down the overall population of unauthorized immigrants to be estimated at 10,5 in 2017.⁸⁴⁵

Figure 23. Unauthorized immigrants in the USA from Mexico and other countries



Source: Adapted from Pew Research Center⁸⁴⁶

As a matter of fact, the unauthorized population rose relatively steadily for decades until peaking at about 12 million between 2007 and 2008; thereafter, it started declining following the economic recession caused by the Global Financial Crisis of 2008, accounting for 10,040,000 illegal immigrants in 2017. However, despite this remarkable decline, the Mexican illegal community remained the largest one among the other illegal communities in the USA, accounting for nearly half of the undocumented immigrants in the country as depicted in Figure

⁸⁴⁴ Jefferey S., Passel and D’vera Cohin, “Mexicans Decline to Less than Half the US Unauthorized Immigrant Population For the First Time”, Pew Research Center, Accessed on August 29, 2022, <https://www.pewresearch.org/fact-tank/2019/06/12/us-unauthorized-immigrant-population-2017/>

⁸⁴⁵ Passel and Cohin, “Mexicans Decline to Less than Half the US Unauthorized Immigrant Population For the First Time.”

⁸⁴⁶ Passel and Cohin, “Mexicans Decline to Less than Half the US Unauthorized Immigrant Population For the First Time”.

23. Besides, the decline in the Mexican illegal community in the USA was accompanied by a rise in the number of undocumented immigrants hailing from other countries. So, what caused the decline of Mexican illegal migration?

This decline, as aforementioned, was in large part due to the decline in the number of Mexican unauthorized immigrants, which, in turn, declined owing to some reasons, namely economic and political changes that occurred in Mexico and the USA. First, Mexico managed to reduce the crime rates over the past decades which was a key reason that pushed many Mexicans to leave their country for the United States; however, other Latin Americans are still registering high instances of violence and crime which caused their nationals to migrate to America.⁸⁴⁷ Second, the Mexican women's fertility rate had fallen from 6.8% children per woman in the 1960s to 2.2 in 2010.⁸⁴⁸ Further, potential migrants belong to the age category ranging between 18 to 35 years old; therefore, the decline in Mexican women's fertility automatically led to a decline in the number of prospective migrants in this category. Third, the performance of the Mexican economy improved remarkably in the last decade following the great recession of 2008, leading to the creation of new job opportunities within the country. Third, unauthorized Mexican immigrants along with Central Americans have been overwhelmingly targeted by enforcing American immigration laws.⁸⁴⁹ Additionally, the U.S. federal government had toughened the control along its border with Mexico, particularly after the 9/11 attacks, and increased penalties for crossing the border unlawfully. As a result of all the aforesaid reasons, more Mexican Immigrants are returning to Mexico than are seeking to enter the United States.

In summary, Illegal immigration to the United States is a problem that obsessed American lawmakers for many years, given the great number of undocumented immigrants living illegally in the United States. These illegal immigrants came to the country either by overstaying their visas or illegally crossing land borders with the United States. Additionally, these unauthorized decide to immigrate to America due to a set of push and pull factors. Mostly, the push factors lie in the difficult economic and social conditions such as unemployment, violence, armed conflicts, drugs, etc., while pull factors consist essentially in the availability of good jobs with high wages, a perfect educational system, and peace. However, the U.S.

⁸⁴⁷ Aiad-Toss, "Factors that Influence Mexican Emigration to the United States: The Role of Economics, Education Quality, Crime, and Violence," 9.

⁸⁴⁸ *Ibid.*, 2.

⁸⁴⁹ Jessica Bolter, *Illegal Immigration in the United States* (Migration Policy Institute (MPI), 2019), 2.

Chapter 4 _____ The Dilemma of Illegal Immigrants in the USA

government tried many times to prescribe solutions to stem the influx of illegal immigrants as well as lessen the effects of such illegal immigration. President Donald Trump, along with his immigration staff, came up with a strategy that is expected to solve this issue. One of the measures prescribed to stem and reduce the influx of illegal immigration is to construct a border wall along America's southwest border with Mexico. Chapter 5 throws light on Trump's idea of building a border wall, exploring his motives and the proceedings that accompanied its implementation.

Chapter 5: Trump's Border Wall

Given the significant number of illegal immigrants who yearly enter the United States as well as those apprehended at the southwest border, Donald Trump gave much importance to this issue by adopting a variety of immigration and security measures designed to stem illegal immigration. As illustrated in Chapter 4, Mexicans make up the majority of undocumented immigrants in the USA. Additionally, other Latino immigrants came in second place after the Mexicans. These immigrants capitalized on the fact that there is a long land border between Mexico and the United States which made it easier to them to illegally cross it, thereby residing unlawfully in the United States. Over time, the size of the illegal immigrant community increased and became estimated in the millions, thereby triggering anti-immigrant sentiments. Therefore, Donald Trump promised his supporters in his 2016 presidential campaign to build a big wall along the U.S. southwest border with Mexico to stem illegal crossings and protect America's national security and the public safety of Americans. Thus, this chapter casts light on Trump's project of constructing a wall along the country's southwest border along with other measures prescribed to curb illegal immigration.

5.1 Trump's Promise to Construct the Border Wall

Donald Trump promised his supporters during his 2016 presidential campaign to build a 2,000-mile physical wall made of steel along the U.S.-Mexican border to prevent people from crossing over it illegally. "I would build a great wall, and nobody builds walls better than me, believe me, and I'll build them very inexpensively, I'll build a great, great wall on our southern border, and will have Mexico pay for that wall. Mark my words," Trump declared in his presidential announcement speech on June 16, 2015.⁸⁵⁰ This wall received wide media coverage and captivated the political class, and immigrants as well.

As a matter of fact, building the wall was a key promise and objective in Trump's presidential campaign and one of the basic tenets of his immigration plan. He resorted to this idea due to certain reasons and justifications. Before his supporters, he argued that Mexicans are beating Americans economically and are laughing at their stupidity as America became a dumping land for the others' problems. He maintained in his own words:

When do we beat Mexico at the border? They're laughing at us, at our stupidity... And now they are beating us economically. They are not our friends, believe me. But they're killing us economically. The U.S. has become a dumping ground for everybody else's problems.⁸⁵¹

Donald Trump went even beyond in disparaging and insulting Mexican immigrants, stating that "They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people".⁸⁵² Thus, stemming their inflow to the country is quite legitimate for him. In addition, Donald Trump wanted that America receives only the best immigrants who prove to be beneficial to the U.S. economy and America's well-being. In this regard, he claimed that Mexico does not send its best people to America, but sends only its bad people who have lots of problems.⁸⁵³ He assumed that the Mexican immigrants America receives from Mexico are of cheap quality, which is so harmful to the U.S. economy and society. If truth be told, Trump's perspective of the Mexican immigrants is even worse than this, assuming that the Mexican immigrants are rapists, but some of them are good:

⁸⁵⁰ Time Staff, "Here's Donald Trump's Presidential Announcement Speech", Time, Accessed on September 1, 2022, <https://time.com/3923128/donald-trump-announcement-speech/>

⁸⁵¹ Katie Reilly, "Here Are all the Times Donald Trump Insulted Mexico," Time, published on August 31, 2016, Accessed on February 5, 2023, <https://time.com/4473972/donald-trump-mexico-meeting-insult/>

⁸⁵² Katie Reilly, "Here Are all the Times Donald Trump Insulted Mexico".

⁸⁵³ Time Staff, "Here's Donald Trump's Presidential Announcement Speech."

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 us. They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people.⁸⁵⁴

Consequently, these bad Mexican immigrants, according to Donald Trump, brought with them their problems to the U.S. including crimes, drugs, and violence. Thus, based on this radical and xenophobic perspective, Trump aimed at ridding the U.S. of such bad immigrants by building a physical tall wall along the country's southern border. These declarations reflect Trump's perspective and stance on Mexican Immigrants; besides, such xenophobic expressions represent the core of his justifications for calling for building his border wall along the country's southwest border. Hence, this chapter aims at shedding light on Trump's Border wall, its motives, its cost, and its performance in stemming the flow of Mexican immigrants.

5.2 Border Walls History

Trump's idea of building a wall is not new as there were many previous experiences around the world of building walls along borders between countries. Historically, barriers were used for centuries as a means to define territorial boundaries between countries, cities, and districts. Among the oldest examples are the Germanic limes and other fortifications constructed by Romans, including the walls of Antonine, Aurelian, Hadrian, and the Theodosian triple wall, many of which had been built millennia ago.⁸⁵⁵ However, walls built in Mesopotamia are argued to be the oldest, and Sumerian King Shulgi of Ur was thought to have built a 250-kilometer-long wall around 2038 BCE between the Tigris and Euphrates rivers in order to prevent the invasion of Amorite.⁸⁵⁶ Moreover, the Great Wall of Gorgan, also known as the Red Snake Defense System, was built during the Sasanian era between 420 CE and 530 CE, in what is now northern Iran. Also, around the 9th century, the Danish Dannevirke was built across the neck of the Jutland peninsula. In Nigeria, Sungbo's Eredo and the Iya of Benin date to 800 to 1000 CE. In Japan, the Genko Borui, which dates to seven centuries ago, was a 20-kilometer stone wall along Hakata Bay designed to prevent the invasion of the Mongol forces. In the 15th century, the Silesian Walls run through parts of modern-day Poland. Additionally, China's multiple walls, initiated during the Ming Dynasty spanned several centuries of

⁸⁵⁴ Ibid.

⁸⁵⁵ Elizabeth Vallet, "The World Is Witnessing a Rapid Proliferation of Border Wall", Migration Policy Institute (MPI), Accessed on September 1, 2022, <https://www.migrationpolicy.org/article/rapid-proliferation-number-border-walls>

⁸⁵⁶ Vallet, "The World Is Witnessing a Rapid Proliferation of Border Wall."

construction, from 1368 to 1644. So, building walls to demarcate borders or prevent invasion by enemies was an idea to which ancient people resort as a defensive and protective strategy.

Debates over the functions of these historical walls, whether they were strategic or demographic filters, meant to assert the greatness of an empire or keep it safe from being invaded by enemies, still exist among historians. But what is clear is that the idea of building walls dates back to many centuries BCE. In the last century, apart from the Iron Curtain, a set of defensive walls was built, comprising the Maginot Line, the Alpine Wall, and the Atlantic Wall ahead of or during WWII in Europe.⁸⁵⁷ Besides, the 20th century witnessed the building of colonial walls such as the Morice Line in Algeria, occupation walls like the Bar Lev Line along the Suez Canal, and delimitation walls like the Green Line in Cyprus. However, the end of the Cold War seemed to bring an end to the need for walls. Effectively, the end of the Cold War marked the beginning of a new era of Globalization, which is essentially based on the intensification and densification of global flows of people, goods, or capital, thereby sustaining a narrative that rapidly pointed toward a world without borders or sovereignty. Perhaps, the best illustrative example of this idea is the European Union, particularly the Schengen area, where the international movement became increasingly seamless. As a result, goods and individuals' mobility became the basic feature of the global system contrary to walls which seemed to belong to the bygone era as they were archetypes of fixity and immobility.

5.3 The Different Uses of Modern Border Walls

Walls built during and shortly after WWII were meant to transform a conflict's front line into a de facto border, freezing a hot zone in an artificial and fortified peace. Perhaps the best illustrative examples of such walls are the wall that separates the two Koreas, the wall that separates India and Pakistan, and Cyprus. Such walls prevailed in the 20th century and still account for 21% of contemporary walls (See Appendix 5).⁸⁵⁸

However, with the beginning of the 21st century, the aims of walls standing today have changed; today's walls aim at filtering, slowing down, and prohibiting selected individuals and goods from neighboring countries. In more detail, 24% are primarily constructed to prevent smuggling and 32% are mostly designed to halt illegal migration, such as the wall along the U.S.-Mexican border, the wall between India and Bangladesh, and the wall around Hungary.

⁸⁵⁷ Ibid.

⁸⁵⁸ Ibid.

The rest of the walls, 23%, are directed at preventing terrorism such as those in Israel, Saudi Arabia, and Ferghana Valley in Central Asia where Tajikistan, Uzbekistan, and Kyrgyzstan.⁸⁵⁹

5.4 Border Wall is the USA

Before the Chinese Exclusion Act of 1882, American immigration policy focused on the increase in immigration from Northern and Eastern Europe; illegal immigration into the country was unheard-of. Between 1847 and 1854, nearly 2.7 million immigrants entered the United States; moreover, America received 80,000 Chinese immigrants between 1870 and 1875, brought to the country by the companies that had contracted to provide a cheap labor force to American mines, railroads, and other companies needing unskilled workers.⁸⁶⁰ However, this influx in Chinese immigration was coupled with an increase in unemployment of 30% in California's workforce following the 1873 panic, resulting in attacks on these newcomers accusing them of working at slave wages. Violence against the Chinese spread throughout the west of the country, pressing Congress to pass the Chinese Exclusion Act of 1882 which banned Chinese immigration for ten years. This ban led Chinese immigrants to change their destination from the USA to Canada, incentivizing Canadians to put in place their own restrictive immigration policies and measures across their ports. In response, the Chinese immigrants changed their destination again, but this time to Mexico. Consequently, Chinese immigration into the USA across the U.S.-Mexican border became commonplace by 1901.⁸⁶¹ Thenceforth, the federal government started giving much importance to strengthening its border security by raising the number of agents along its southern border.

The U.S.-Mexican border was officially determined by the Treaty of Guadalupe Hidalgo in February 1848 following the end of the Mexican-American War 1846—1848. Until 1882, controlling illegal immigration across the border received insignificant efforts from the U.S. government due to its great focus on Northern and Eastern European immigration. However, this changed in 1924 when border regulation efforts called for the establishment of a new body called the Border Patrol Agency intended for monitoring borders and limiting crossings. During the 1930s, anti-immigrant sentiments against those of Mexican descent revived again, leading

⁸⁵⁹ Migration Policy Institute (MPI), Accessed on September 1, 2022,

<https://www.migrationpolicy.org/article/rapid-proliferation-number-border-walls>

⁸⁶⁰ David H. Bennett, "Immigration and Immigrants: Anti-Immigrant Sentiment," Syracuse University, 1-2.

https://www.gale.com/binaries/content/assets/gale-us-en/primary-sources/newsvault/gps_newsvault_19thcentury_usnewspapers_immigration_essay.pdf

⁸⁶¹ Lynn Burnett, "The Origins of Border Crossing and Border Policing. Excluding the Downtrodden: European Border Crossers, and the Immigration Act of 1882," *The Cross-Cultural Solidarity History Project*, <https://crossculturalsolidarity.com/the-origins-of-border-crossing-and-border-policing/>

to the adoption of other restrictive immigration policies and resulting in forcing over one million Mexican immigrants out of the United States into Mexico.⁸⁶²

Despite the anti-immigrant sentiment across the nation, the need for a further workforce remained intensive. To meet this need, America and Mexico signed the Mexican Farmer-Labor Agreement of 1942, creating the Bracero Program which allowed millions of Mexican farmers to move to the United States to work in the fields for short-term labor. This program lasted until 1964, allowing approximately 4.6 million Mexican farmers to get labor contracts.⁸⁶³ In 1965, Congress overturned the program and replaced it with the quota system which allowed only a determined number of Mexican and Central American immigrants to enter the country according to the Immigration and Nationality Act of 1965.

The federal government's efforts to strengthen border security and monitor the flow of immigrants across its border never ceased. A series of initiatives and measures were taken in the 1990s, starting with the "Operation Blockade" or "Operation hold-the-Line" policy initiated by Selvester Reyes, El Paso Border Sector Chief. Selvester Reyes's policy came as a response to the EL Paso residents' complaints against racial profiling by border patrol agents and law enforcement while chasing and pursuing unauthorized immigrants; therefore, he created this policy to enhance security along the border by increasing the number of border patrol agents at the entrances to urban centers, thereby deterring migrants from entering those areas. Likewise, similar policies were initiated in the San Diego sector and Arizona, with "Operation Gatekeeper" and "Operation Safeguard" respectively. Consequently, these policies helped push illegal migrants away from America's border into hostile areas of the borderland.⁸⁶⁴

Having been considered a successful policy, the federal government generalized the initiative on the nine sectors of the country's border. In 1994, the Border Patrol, which was part of the Department of Justice under INA, released a new strategic plan called "Prevention Through Deterrence" intended to enforce immigration laws along the country's southern border. This plan was developed by Chief Patrol Agents, Border Patrol Headquarters staff, and planning experts from the Department Defense Center for Law Intensity Conflict, and was

⁸⁶² Lynn Burnett, "The Origins of Border Crossing and Border Policing. Excluding the Downtrodden: European Border Crossers, and the Immigration Act of 1882".

⁸⁶³ History.com Editors, "U.S. and Mexico Sign the Mexican Farm Labor Agreement," History, Published on October 7, 2019, Accessed on February 5, 2023, <https://www.history.com/this-day-in-history/us-mexico-sign-mexican-farm-labor-agreement-bracero-program>

⁸⁶⁴ Leo Castenada and Jean Guerrero, "America's Wall," KPBS, Published on November 13, 2017, Accessed on February 6, 2023, <https://www.kpbs.org/news/border-immigration/2017/11/13/americas-wall>

based on concentrating resources in major entry corridors to enhance the control of these areas and force traffic to more difficult crossing areas.

The Border Patrol will increase the number of agents on the line and make effective use of technology, raising the risk of apprehension high enough to be an effective deterrent. Because the deterrent effect of apprehensions does not become effective in stopping the flow until apprehensions approach 100 percent of those attempting entry, the strategic objective is to maximize the apprehension rate. Although a 100 percent apprehension rate is an unrealistic goal, we believe we can achieve a rate of apprehensions sufficiently high to raise the risk of apprehension to the point that many will consider it futile to continue to attempt illegal entry.⁸⁶⁵

The implementation of these policies increased apprehensions of illegal immigrants. U.S. Davis Professor, Bradford Jones, evaluated the number of apprehensions registered in four border sectors, El Paso, Tucson, and San Diego, between 1989 and 2019. During this period, the two sectors of El Paso and San Diego maintained these policies while Tucson did not, resulting in a decrease in illegal immigration in El Paso and San Diego sectors while the Tucson sector witnessed an increase in illegal immigration.⁸⁶⁶

Prior to the 1990s, apprehensions of illegal immigrants scored high results in the two sectors of San Diego and El Paso, while low rates were scored in the two sectors of Tucson and El Centro centers.⁸⁶⁷ However, after implementing deterrence policies in the latter sectors, apprehensions of illegal immigrants increased significantly, while it decreased in the two other sectors that did implement deterrence policies. Also, the decline in apprehensions across San Diego Sector is ascribed to the two dozen miles fence the government built along the sector built between 1994 and 1999, leading illegal immigrants to attempt illegal crossings through El Centro Sector which witnessed a surge in illegal crossings during the same period.⁸⁶⁸

Although the efforts of manpower deterrence dominated the 1990s, physical deterrence of illegal immigration across the southwest border still garnered support. The first initiative of building a wall between the USA and Mexico dates back to 1911 when the Bureau of Animal Industry pointed to the need to build a fence to prevent cattle from crossing the border during a cattle tick disease that swept Mexico. Since then, support for fencing borders stagnated until 1992, when the U.S. Navy decided to fence the sector between San Diego and Tijuana.

⁸⁶⁵ William L. Painter, *DHS Border Barrier Funding* (Washington DC: Congressional Research Service, 2020), 2.

⁸⁶⁶ Leo Castenada and Jean Guerrero, "America's Wall," KPBS, Published on November 13, 2017, Accessed on February 6, 2023, <https://www.kpbs.org/news/border-immigration/2017/11/13/americas-wall>

⁸⁶⁷ Leo Castenada and Jean Guerrero, "America's Wall".

⁸⁶⁸ Ibid.

However, the real efforts to move from agent-focused deterrence to physical-focused deterrence started with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The latter directed the Attorney General as well as the Commissioner of Immigration and Naturalization to take the required actions to install additional barriers and roads to deter illegal crossings.

(a) IN GENERAL.—The Attorney General, in consultation with the Commissioner of Immigration and Naturalization, shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to the detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States.⁸⁶⁹

Additionally, IIRIRA authorized the Attorney General to “contract for or buy any interest in land, including temporary use rights, adjacent to or in the vicinity of an international land border when the Attorney General deems the land essential to control and guard the boundaries and borders of the United States against any violation of this Act”.⁸⁷⁰ Furthermore, the legislation granted an appropriation of \$12,000,000 for fencing the border along the San Diego sector. Though passed in 1996, this bill did little to boost wall construction between Mexico and the United States, which remained stagnated.

5.5 Securing Borders Following 9/11 Attacks

The importance of constructing physical barriers along America’s border with Mexico revived again following the 9/11 attacks where fear for public safety and national security pervaded every corner of the country, increasing the fear that terrorists might enter the nation across the southern border. This caused politicians to focus on enacting legislation enhancing security along the southern border. Accordingly, the Bush administration responded in 2002 by establishing a new department called the Department of Homeland Security (DHS) with three main agencies: Immigration and Customs Enforcement, U.S. Customs and Border Patrol, and U.S. Citizenship and Immigration Services. In doing so, the federal government implicitly assumed that immigration and terrorism are related issues of concern.

In 2005, Congress passed the Real ID Act with an amendment to the IIRIRA to provide the DHS secretary with discretionary authority “to waive all laws as necessary to ensure

⁸⁶⁹ U.S. G.P.O. 1996, “Illegal Immigration Reform and Immigrant Responsibility Act of 1996: Conference Report,” 8. Available online at: <https://www.congress.gov/104/crpt/hrpt828/CRPT-104hrpt828.pdf>

⁸⁷⁰ U.S. G.P.O. 1996, “Illegal Immigration Reform and Immigrant Responsibility Act of 1996: Conference Report,” 8.

expeditious construction of certain barriers and roads at the U.S. border”.⁸⁷¹ In other words, under the Real ID Act of 2005, the DHS Secretary is authorized to virtually use any possible means to secure the country’s border, including “overriding environmental and property laws ostensibly designed to prevent the federal government from imposing its will against citizens and communities without due process”.⁸⁷² Besides, the bill prohibited “courts, administrative agencies, and other entities from reviewing the secretary’s agencies or from ordering relief for damages alleged to have resulted from such decision”.⁸⁷³ All these measures are aimed at providing the federal government with more power and jurisdiction to protect the country from illegal crossings and terrorists who may enter through the border to commit terrorist acts on American soil.

In November 2005, DHS released the Secure Border Initiative (SBI), a multiyear and multibillion-dollar program intended to strengthen border security and reduce illegal immigration.⁸⁷⁴ The CBP supports this initiative with agents and officers necessary for patrolling the borders, securing ports of entry, and enforcing immigration laws. Besides, “CBP’s SBI program is responsible for developing a comprehensive border protection system using technology, known as SBInet, and tactical infrastructure—fencing, roads, and lighting—along the southwest border to deter smugglers and aliens attempting illegal entry”.⁸⁷⁵ From FY2006 to May 2010, the federal government spent \$4.5 billion, including \$2.6 billion on tactical infrastructure and \$1.6 billion on SBInet. These efforts were not enough for the Bush administration which shifted to another stage of building a border wall by enacting a famous Act in 2006 that boosted the construction of the border wall.

5.6 Secure Fence Act of 2006

Following his accession to power, President George W. Bush increased the funding allocated to border security initiatives from \$4.6 billion in 2001 to \$10.4 billion in 2006 and

⁸⁷¹ H.R. 418 – 109th Congress (2005-2006), “Real ID Act of 2005,” Congress.gov, <https://www.congress.gov/bill/109th-congress/house-bill/418>

⁸⁷² Terence Michael Garret, “The Border Fence, Immigration Policy, and the Obama Administration: A Cautionary Note,” *Administrative Theory and Praxis* 32, no. 1 (2019):129-133. DOI: 10.2753/ATP1084-1806320109

⁸⁷³ H.R. 418 – 109th Congress (2005-2006), “Real ID Act of 2005”.

⁸⁷⁴ U.S. Government Accountability Office, *Secure Border Initiative: DHS Has Faced Challenges Deploying Technology and Fencing Along the Southwest Border* (GAO, 2010), 1.

⁸⁷⁵ U.S. Government Accountability Office, *Secure Border Initiative: DHS Has Faced Challenges Deploying Technology and Fencing Along the Southwest Border*, 1.

raised the number of border patrol agents from 9,000 to 12,000 agents.⁸⁷⁶ This increase in financial and agent allocations came as a response to increased concerns about public safety as well as the national security that pervaded the whole nation, from coast to coast, following the 9/11 attacks; therefore, the Bush administration increasingly focused on strengthening security across the country's southern border, considering it of high priority for the U.S. government.

Earlier this year, I addressed the Nation from the Oval Office. I laid out our strategy for immigration reform. Part of that strategy begins with securing the border. Since I took office, we have more than doubled funding for border security—from \$4.6 billion in 2001 to \$10.4 billion this year [2006]. We've increased the number of Border Patrol agents from about 9,000 to more than 12,000, and by the end of 2008, we will have doubled the number of Border Patrol agents during my Presidency.⁸⁷⁷

The Bush administration was highly concerned with promoting security along the southern border through a series of measures. It deployed thousands of National Guard members in order to help Border Patrol agents do their job. Additionally, it upgraded technology used at its border and added infrastructure, including vehicle barriers, new fencing, and thousands of new beds in the detention facilities, to continue efforts to end catch-and-release at the country's southern border. These efforts and measures culminated in apprehending and sending home over 6 million illegal immigrants who attempted illegal crossings into the United States.⁸⁷⁸

However, the real step made forward by the Bush administration to build a border wall along the American-Mexican border came after signing the Secure Fence Act of 2006. This Act aims chiefly to protect the American people and make the U.S. border more secure. Therefore, this came with extra measures intended to meet this aim such as fencing additional hundreds of miles along the southern border. Further, the Act authorized additional checkpoints, barriers, and lighting to prevent illegal crossings into the country. Moreover, the bill authorized DHS to increase the use of advanced technology such as cameras, satellites, and unmanned aerial vehicles to reinforce the southern border's infrastructure. So, the government counted on the combination of using wisely physical barriers along with deploying the most recent technology to help border patrol agents do their job perfectly.

⁸⁷⁶ George W. Bush, "Remarks on Signing the Secure Fence Act of 2006," The American Presidency Project Published on October 26, 2006, Accessed on February 6, 2023,

<https://www.presidency.ucsb.edu/documents/remarks-signing-the-secure-fence-act-2006>

⁸⁷⁷ George W. Bush, "Remarks on Signing the Secure Fence Act of 2006".

⁸⁷⁸ Ibid.

Under the Secure Fence Act of 2006, the DHS Secretary is instructed to continue building the two-layer reinforced fencing within 18 months of passing this Act.⁸⁷⁹ In other words, the length of the U.S.- Mexican border amounts to 1,954 miles, and the DHS Secretary is directed under the Secure Fence Act of 2006 to fence sectors along the southern border that make in total 700 miles of the total border, or rather 36% of the total border.⁸⁸⁰ Combined with SBI Program, the Secure Fence Act 2006 aimed at impeding the illegal cross-border activity of immigrants along with terrorists through the country's southern border by setting aside environmental and property laws carefully drafted over the years in order to protect people's rights, granting carte blanche to the DHS Secretary, Michael Chertoff, to fence 700 miles.⁸⁸¹ These 700 miles were distributed among several sectors as follows:

(1) from ten miles west of the Tecate, California, port of entry to ten miles east of the Tecate, California, port of entry; (2) from ten miles west of the Calexico, California, port of entry to five miles east of the Douglas, Arizona, port of entry (requiring installation of an interlocking surveillance camera system by May 30, 2007, and fence completion by May 30, 2008); (3) from five miles west of the Columbus, New Mexico, port of entry to ten miles east of El Paso, Texas; (4) from five miles northwest of the Del Rio, Texas, port of entry to five miles southeast of the Eagle Pass, Texas, port of entry; and (5) 15 miles northwest of the Laredo, Texas, port of entry to the Brownsville, Texas, port of entry (requiring fence completion from 15 miles northwest of the Laredo, Texas, port of entry to 15 southeast of the Laredo, Texas, port of entry by December 31, 2008).⁸⁸²

Fulfilling this objective was quite difficult for the Bush administration. As a matter of fact, by the end of his presidency on January 20, 2009, the Bush administration managed to fence 278 miles of 15-to-18-foot-tall, including 91.3 miles in California, 127.8 miles in Arizona, 14.2 miles in New Mexico, and 44.6 miles in Texas.⁸⁸³ Besides, the Bush administration managed to build 248 miles of vehicle barriers, including 19.8 miles in California, 151.6 miles in Arizona, 76.2 miles in New Mexico, and 0.04 in New Mexico.⁸⁸⁴ Thus, the Bush

⁸⁷⁹ H.R.6061- 109th Congress (2005-2006), "Secure Fence Act of 2006," Congress.gov, October 26, 2006, Accessed on February 6, 2023, <https://www.congress.gov/bill/109th-congress/house-bill/6061>

⁸⁸⁰ Scott Nicole, "The Obama-Biden Built more than 100 Miles of Border Wall. The Biden-Harris Administration Should Tear Walls Down," SBCC, Accessed on February 6, 2023, https://www.southernborder.org/the_obama_biden_administration_built_more_than_100_miles_of_border_wall_the_biden_harris_administration_should_tear_walls_down

⁸⁸¹ Terence Michael Garret, "The Border Fence, Immigration Policy, and the Obama Administration: A Cautionary Note," *Administrative Theory and Praxis* 32, no. 1 (2019):129-133. DOI: 10.2753/ATP1084-1806320109

⁸⁸² H.R.6061- 109th Congress (2005-2006), "Secure Fence Act of 2006".

⁸⁸³ Customs and Border Protection, *Border Fence Project Surpasses 500-Mile Mark: Pedestrian, Vehicle Fence Installed Along the Border in California, Arizona, New Mexico, and Texas* (Washington: CBP, 2009), 1.

⁸⁸⁴ Customs and Border Protection, *Border Fence Project Surpasses 500-Mile Mark: Pedestrian, Vehicle Fence Installed Along the Border in California, Arizona, New Mexico, and Texas*, 1.

administration managed to build 526 miles in total, including 135 miles that were built prior to the enactment of the Secure Fence Act of 2006.

Constructing the border wall along America's southern border proved to be politically a controversial issue, especially between politicians of both political parties, Democrats and Republicans. This made it a very hot issue that it was addressed during the 2008 presidential campaign. Both Democratic candidates, Barack Obama and Hillary Clinton visited Texas University at Brownsville and "were given a tour of the area where the eighteen-foot-high, concrete-based, metal pike fence was to be built".⁸⁸⁵ Following the tour, both Obama and Hillary Clinton tried to convince the University and political leaders in the lower Rio Grande Valley that they had no inkling about the effects the border wall would have on the region when they were Senators and voted for the Secure Fence Act of 2006; therefore, both candidates assured the local leaders that they are now against the idea of constructing the border wall and are instead in favor of reconsidering its adverse impacts. More importantly, they promised to reconsider the whole idea of building the border wall if they are elected to the White House.⁸⁸⁶ The 2008 presidential election with a resounding victory of Barack Obama who chose Hillary Clinton to be his Secretary of State. However, the border wall continued to be constructed with no regard for its adverse effects on people in the Rio Grande Valley whose sense of frustration was clearly expressed by the statement of Brownsville's mayor, Pat Ahumada, who maintained the following:

To appease people in middle America, they are going to kill our communities along the border. The rest of America has no idea how we live our lives here. We are linked by the Rio Grande, not divided by it. Our history, our families, and our neighbors are tied together on both sides of that river.⁸⁸⁷

5.7 Impediments and Opposition to Fencing Borders

Efforts of fencing and constructing the border wall continued under the Obama administration, which managed to build 128 miles though Obama promised during his presidential campaign to reconsider the idea of constructing the border wall. "We have to work with local communities to deal with the border in intelligent ways. We can't do it by building a wall along the border. That's not going to work," said Obama in south Texas ahead of the

⁸⁸⁵ Ibid.

⁸⁸⁶ Ibid.

⁸⁸⁷ Howard Witt, "U.S. Fence Creates River of Ill Will on Texas Border," Chicago Tribune, Published on January 16, 2008, Accessed on February 6, 2023, <https://www.chicagotribune.com/nation-world/chiborderfence-story-story.html>

2008 Texas primary.⁸⁸⁸ Following his victory, he received a letter from commissioners of Cameron County, an area in south Texas where the Bush administration planned to construct walls, but none was built due to the long time the federal government took to condemn private property. In their letter, the commissioners asked President Obama to make the cancellation of building a border wall a high priority for his administration: “We respectfully ask that you make the cancellation of the border wall on the Southern Border a top priority of your administration. Let us build bridges of friendship, safety, and prosperity – not walls of hatred and division”.⁸⁸⁹ This letter reflects the fact that people in borderland were against the construction of the border wall between the United States and Mexico, which created a lot of impediments to the federal government.

Indeed, people living along the borderlands were opposed to the construction of the border wall, causing its slow advancement. This is what happened for the Bush administration, especially following the enactment of the Secure Fence Act of 2006. By the end of 2008, DHS intended to build 670 miles of single- and double-fencing barrier along the country's southern border, including 180 miles in Texas. However, the fence would not be an unbroken barrier; rather, it would start and stop, and be interspersed with natural gaps like mountains and open areas where surveillance cameras and invisible tripwires would alert agents whenever an attempt of illegal crossing occurs. In this respect, spokesman for U.S. CBP, Michael Friel, maintained that “The process started with the Border Patrol assessing operationally where fencing could be effective in securing the border, and then you lay over that where fencing can be built from an engineering perspective”.⁸⁹⁰ So, natural impediments seriously obstructed the construction of the border wall along the U.S.-Mexican border.

Constructing the wall was not obstructed by natural impediments only, but also by some people living in the borderlands along the border. As a matter of fact, by the terms of the Real ID Act of 2005, the federal government was obliged to condemn and buy thousands of acres of these people's lands upon which it would build the border wall. However, many border landowners get outraged and refused to sell their lands to the federal government, causing them to sue the government. Among the opponents of the border wall was Eloisa Garcia Tamez, the director of the graduate nursing program for UTB, who challenged the government's request to

⁸⁸⁸ Scott Nicole, “The Obama-Biden Built more than 100 Miles of Border Wall. The Biden-Harris Administration Should Tear Walls Down”.

⁸⁸⁹ Ibid.

⁸⁹⁰ Howard Witt, “U.S. Fence Creates River of Ill Will on Texas Border”.

let surveyors get access to border landowners' lands.⁸⁹¹ In January 2008, Justice Department started taking those opponents into federal court in order to oblige them to give the government the temporary right to access their private properties. According to DHS, the majority of the landowners in California, Arizona, and Texas, making 102 of 135, refused to comply with the government's wish, including Tamez who refused to let surveyors access to the land—a mile inland from the Rio Grande— she has had in her family that traces back to land grants from the King of Spain in 1767. “This land has been in my family since 1767 when my ancestors received 12,000 acres from the king of Spain...I don't want to just give it up on a whim”⁸⁹², and “Once the wall is built, it means that DHS has lawlessly taken my land, and it will take me until my last days to right that wrong. And after I am gone, my children will have to take up the fight,”⁸⁹³ said Tamez. In response to the opposition of border landowners, DHS Secretary, Chertoff, contended that “What we're not going to do is say that everyone gets to decide whether they're going to participate in the process, and if they don't want to, then the greater good be damned”.⁸⁹⁴ Thus, the Bush administration faced a big challenge from border landowners

Opponents of fencing the border hoped that the change of the administration and appointment of a new DHS Secretary would dissipate their fears and worries. Many hoped that the new DHS Secretary, Janet Napolitano, who served as U.S. Attorney for the District of Arizona, Attorney General of Arizona and then elected for two-term Governor of Arizona,⁸⁹⁵ would work with border communities and local elected officials on both sides of the border to come up with an alternative to the fence the federal government planned to construct. “Napolitano understands the border and she has a history with the border governors...and in this country boy's opinion, that's the way we're going to resolve this issue by working with our neighbors”, said Mayor Chad Foster.⁸⁹⁶ However, all their hopes went in vain and the fence continued to be built under Obama's administration, in spite of the increase in the cost allotted for constructing one mile which shifted from \$1 million per mile in 2006 to \$7.5 million per mile in 2008.⁸⁹⁷ As a result, prior to the inauguration of the Trump administration, the Obama

⁸⁹¹ Ibid.

⁸⁹² Ibid.

⁸⁹³ Melissa Del Bosque, “Back to the Wall: Can Janet Napolitano Stop the Border-Fence Boondoggle?” Texas Observer, Published on February 6, 2009, Accessed on February 7, 2023, <https://www.texasobserver.org/2951-back-to-the-wall-can-janet-napolitano-stop-the-border-fence-boondoggle/>

⁸⁹⁴ Howard Witt, “U.S. Fence Creates River of Ill Will on Texas Border”.

⁸⁹⁵ U.S. Department of Homeland Security, “Janet Napolitano, Secretary of Homeland Security 2009-2013,” updated on January 23, 2023, accessed on February 7, 2023, <https://www.dhs.gov/janet-napolitano>

⁸⁹⁶ Melissa Del Bosque, “Back to the Wall: Can Janet Napolitano Stop the Border-Fence Boondoggle?”

⁸⁹⁷ Ibid.

administration managed to build 128 miles, thereby totaling 654 miles as fenced borders, including 526 miles that were built under the Bush administration. In more detail, under the Bush and Obama administrations, 46 of 60 miles in the San Diego sector were fenced, along with 59 of 70 miles in the El Centro sector, 107 of 126 miles in the Yuma sector, 211 of 262 miles in the Tucson sector, 166 of 180 miles in the El Paso sector, 5 of 510 miles in the Big Bend sector, 4 of 210 miles in the Del Rio sector, 1 of 171 miles in the Laredo sector, and 55 of 273 in the Rio Grande Valley sector.⁸⁹⁸

5.8 Trump's Border Wall Executive Order

In his presidential announcement speech on June 16, 2015, Donald Trump outlined the broad lines of his presidential campaign which essentially consists of illegal immigration, underemployment, an aging nuclear arsenal, a shrinking gross domestic product, and Islamic terrorism.⁸⁹⁹ The first point he started with in his speech was the issue of the unauthorized immigrants coming from the southern border which rendered America a dumping land for dangerous people from Mexico and Latin America with low standards. Such immigrants are of bad quality, drug dealers, rapists, criminals, etc., and thus are detrimental to the safety and social stability of the United States; thus, illegal migration is inconsistent with the country's best interests. Giving his perspective, Donald Trump prescribed a solution to this issue via building a border wall along the country's southwest border. Therefore, just five days after his inauguration on January 20, 2017, President Donald Trump swiftly moved to implement his promise of building the wall by issuing Executive Order 13767 entitled "Border Security and Immigration Enforcement Improvements" on January 25, 2017.⁹⁰⁰ Thus, this order came to continue the construction of the border wall along the U.S.-Mexican border.

5.8.1 Aim of Executive Order 13767

Executive Order 13767 (EO13767) Starts by explaining its purpose which mainly lies in protecting the U.S. national security from aliens who unlawfully enter the country, thereby

⁸⁹⁸ U.S. Government Accountability Office, *Southwest Border Security: Additional Actions Needed to Better Assess Fencing's Contributions to Operations and Provide Guidance for Identifying Capability Gaps* (Washington: CBP, 2017), 48-56.

⁸⁹⁹ Kevern Verney, "Bad Hombres: The Trump Administration, Mexican Immigration and the Border Wall," In *The Evolving American Presidency*, ed. Mara Oliva and Mark Shanahan (Cambridge: Palgrave Macmillan, 2019), 137.

⁹⁰⁰ Donald J. Trump, "Executive Order 13767- Border Security and Immigration Enforcement Improvements," *The American Presidency Project*, Accessed on September 3, 2022, <https://www.presidency.ucsb.edu/documents/executive-order-13767-border-security-and-immigration-enforcement-improvements>

posing a serious threat to the public safety and security of the whole country. Hence, controlling the southwest border contributes greatly to the maintenance of the country's whole security and shields it from aliens' malicious purposes. "Border Security is critically important to the national security of the United States. Aliens who illegally enter the United States without inspection or admission present a significant threat to national security and public safety,"⁹⁰¹ EO13767 says. Additionally, EO13767 asserts that U.S. agencies charged with border security have been overwhelmed by the recent surge in illegal migration at the southern border. Furthermore, the order noted that transnational criminal organizations operate sophisticated human- and drug-trafficking operations on both sides of the southwest border, thereby contributing to a significant surge in violent crime as well as deaths from dangerous drugs. Besides, illegal immigrants coming from the southern border include those intending to harm Americans through terrorist acts and criminal conduct. Thus, illegal immigration poses a real threat to the best interests of the United States; therefore, EO 13767's main purpose is to direct executive departments and agencies to deploy all lawful means to secure the nation's southern border with Mexico to stop illegal immigration and repatriate apprehended aliens "swiftly, consistently, and humanely".⁹⁰²

5.8.2 Trump's Motives for Issuing EO 13767

In order to achieve its purpose, EO13767 follows a policy of five basic tenets. First, ensuring the security of the country's southern border via immediately building a physical barrier along the U.S.-Mexican border, controlled and administered by qualified personnel to stop illegal immigrants, drug and human trafficking, and terrorist acts. Second, detain arrested individuals suspected of violating federal or state laws, including immigration laws, pending further proceedings regarding their violations. Third, quickening determinations of the arrestees' claims of eligibility to stay in the United States. Fourth, promptly remove arrestees whose claims to remain in the US have been lawfully refused. Last but not least, fully cooperate with states and local law enforcement when enacting federal-state partnerships to enforce federal immigration priorities, and state monitoring and detention programs that comply with federal statutes.

EO 13767 defined operational control as being "the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of

⁹⁰¹ Trump, "Executive Order 13767- Border Security and Immigration Enforcement Improvements."

⁹⁰² Ibid.

terrorism, narcotics, and other contraband”.⁹⁰³ Hence, to ensure complete operational control of the southwest border, the Secretary of the Department of Homeland Security (DHS) must take a number of steps. First, immediately plan, design, and construct a physical wall along America’s border with Mexico. Second, determine and allocate available federal funds required for planning, designing, and building the border wall. Third, develop long-term funding requirements, including preparing Congressional budget requests for the current and next fiscal years. Last, prepare a border security study within 180 days of issuing the EO 13767 that should take into consideration the current state of southern border security, the border’s geographical terrain, the availability of federal and state resources required to ensure operational control and a strategy through which operational control could be achieved and maintained.

5.9 Implementation of EO 13767

As explored in Chapter 2, Donald Trump outlined the main points that make up his immigration plan in a detailed campaign speech delivered in Arizona on August 31, 2016. The ten points or rather ten proposals focused on reducing immigration to the United States and enforcing more aggressively the existing immigration laws against undocumented immigrants. Though it propelled his campaign into the White House, his approach contrasted sharply with those adopted by the previous administrations, which largely sought to keep a balance between robust immigration and targeted enforcement. He strongly believed in these ten points or proposals arguing that, “if rigorously followed and enforced, will accomplish more in a matter of months than our politicians have accomplished on this issue in the last fifty years”.⁹⁰⁴

5.9.1 Constructing the Wall

On top of these ten steps, we find the famous point and promise consisting in building a border wall or a physical barrier along the U.S.-Mexico border. In this respect, on August 31, 2016, candidate Trump stated the following before his supporters in his Phoenix speech, in Arizona:

On day one, we will begin working on an impenetrable physical wall on the southern border. We will use the best technology, including above- and below-ground sensors, towers, aerial surveillance, and manpower to supplement the wall, find and dislocate tunnels, and keep out the criminal cartels, and Mexico will pay for the wall.⁹⁰⁵

⁹⁰³ Trump, “Executive Order 13767- Border Security and Immigration Enforcement Improvements.”

⁹⁰⁴ Politico Staff, “Donald Trump Immigration Speech in Arizona,” Politico, Accessed on September 9, 2022, <https://www.politico.com/story/2016/08/donald-trump-immigration-address-transcript-227614>

⁹⁰⁵ Politico Staff, “Donald Trump Immigration Speech in Arizona.”

Hence, following his inauguration on January 20, 2017, Donald Trump moved swiftly to implement his ten proposals, namely his proposal related to constructing the wall.

Perhaps, suggesting building a wall along the southwest border was the most memorable and visually striking of the ten proposals Donald Trump outlined on the campaign trail and the one he frequently repeated given its importance to his immigration policy as well as the safety and security of the country. Still, many analysts expected that, as soon as he takes office, he would downplay this proposal in favor of a more general plan to fortify the border with Mexico, especially as the illegal migration across the border continued to decrease.⁹⁰⁶ Contrary to their expectations, President Trump showed no signs of backing off his commitment to this proposal. This manifested in his Executive Order 13767 issued only five days after his inauguration which provided the legal framework for the construction of the wall border.

Repurposing the existing funds that were appropriated for FY2017, at the White House's insistence, the DHS opened a bidding process for the wall border models, which eventually resulted in awarding eight contracts to companies to construct a prototype near San Diego. These companies finished building these prototypes by October 2017. These prototypes comprised certain important characteristics for an impenetrable wall including a physically imposing look, height of at least eighteen feet, resistance to under and above penetration, impossibility of breach by ladders, and esthetically pleasant color; however, there is no specification regarding the wall type, whether it should be fence or concrete.⁹⁰⁷

5.9.2 Funding the Border Wall

As a matter of fact, one-third of the 2,000-mile border already has vehicle barriers and fences, namely in New Mexico, California, and Arizona, mostly constructed thanks to the passage of the Fence Secure Act of 2006 by George W. Bush's Administration.⁹⁰⁸ To start constructing the wall in FY2018, the administration has made a strong case for additional funding and proposed \$18 billion over ten years with the purpose of constructing 316 miles of new fencing and reinforcing or repairing other 407 miles.⁹⁰⁹ Estimates of the wall costs differ from those of Trump's administration. In this respect, independent estimates of the wall-

⁹⁰⁶ Sarah Pierce, Jessica Bolter, and Andrew Selee, *Trump's First Year on Immigration Policy: Rhetoric vs. Reality* (Washington, DC: Migration Policy Institute, 2018), 3.

⁹⁰⁷ Bob Carbaugh, and Toni Sipic. "Paying for the Trump Boondoggle". *Challenge* 60, no.4 (2017): 386. DOI: 10.1080/05775132.2017.1320904

⁹⁰⁸ Carbaugh, and Sipic. "Paying for the Trump Boondoggle", 386.

⁹⁰⁹ Pierce, Bolter, and Selee, *Trump's First Year on Immigration Policy: Rhetoric vs. Reality* (Washington, DC: Migration Policy Institute, 2018), 3.

building costs oscillate between \$15 billion and \$40 billion. DHS estimates that the construction of the wall will cost around \$21,6 billion, whereas Trump's administration, as well as Congressional Republicans, estimated the costs to range between \$8 billion and \$15 billion. Still, the wall construction costs are just part of the whole true cost which would include yearly maintenance costs of about \$750 million.⁹¹⁰

Trump's idea of constructing the border wall brought him a lot of criticism. Critics of the wall border maintained that the idea of constructing a wall along the U.S.-Mexico border is a bad one as it would do little to ensure American national security. Further, they argued that unauthorized migration from Mexico has declined since 2008 owing to the decline in Mexican women fertility who produced fewer young people, the adverse effect of the 2008 Great Recession on the U.S. economy, and the increased border enforcement undertaken by Obama's administration, thereby invalidating the need for the Trump's border wall. Additionally, critics downplayed Trump's arguments that unauthorized immigrants are stealing jobs of native-born Americans in the absence of conclusive evidence proving his argument. Conversely, evidence proved that Mexican immigrants tend to take jobs that are very dissimilar from those of native-born Americans such as picking fruits, vegetables, and other farm products.⁹¹¹ Besides, the overall costs of the border wall's construction and maintenance were still undetermined in an exact way, which apparently estimated at tens of billions of dollars, maybe \$25 billion, raised questions about who is going to pay this colossal expense.⁹¹²

Some critics viewed that walls or fences make little difference to border security outside the crowded populated areas where undocumented border crossers might easily and quickly die in the desert or unpopulated area. In fact, all densely populated areas already have fences. In rural areas, however, they are a speed bump. They do little to deter undocumented border crossers from crossing the border who actually want to be apprehended by Border Patrol agents in order to ask for protection or rather asylum in the United States.⁹¹³ Besides, they considered the wall to be an environmental hazard. Others regarded the border wall as being a monument to Trump's beliefs, who sees asylum seekers as invaders and Mexican immigrants as rapists except for some of them who are assumed to be good people.⁹¹⁴ Others, however, considered

⁹¹⁰ Carbaugh, and Sipic. "Paying for the Trump Boondoggle", 386.

⁹¹¹ Carbaugh and Sipic. "Paying for the Trump Boondoggle", 387.

⁹¹² *Ibid.*, 387.

⁹¹³ Adam Isacson, "Trump to Seize More Border Wall Money Through Brute Force," WOLA, Accessed on September 12, 2022, <https://www.wola.org/analysis/trump-border-wall-money-brute-force/>

⁹¹⁴ Isacson, "Trump to Seize More Border Wall Money Through Brute Force."

that the border wall is nothing short of a prop for Trump's reelection campaign; therefore, President Trump insisted on its construction to fulfill his promise, thus maintaining his electoral bowl in the 2020 presidential election.

Despite the aforesaid arguments and the decreasing popularity of the idea, President Donald Trump did not show any sign of backing off his commitment to the idea of constructing the wall. He insisted on fulfilling his promise to his supporters and started working on several policies to pay for the border wall's costs. Initially, during his presidential campaign, he vowed to make Mexico pay for the costs, maintaining that "I [Donald Trump] would build a great wall, and nobody builds walls better than me, believe me, and I'll build them very inexpensively, I'll build a great, great wall on our southern border, and will have Mexico pay for that wall. Mark my words".⁹¹⁵

However, after electing Trump as the 45th U.S. President, the Mexican President, Enrique Peña Nieto (1966-; served 2012-2018) announced to his people that they would not be footing the bill. "It is evident that we have some differences with the new government of the United States, like the topic of the wall, that Mexico, of course, will not pay", President Enrique Peña Nieto declared on Wednesday, January 11, 2017, in his speech in front of foreign diplomats at the National Place.⁹¹⁶ Peña Nieto further refuted Trump's allegations that Mexico will pay for the wall he announced following a September meeting with him, tweeting "At the start of the conversation with Donald Trump, I made it clear that Mexico will not pay for the wall".⁹¹⁷ Once again, Peña Nieto's comments stood in direct contrast with Trump's declarations, who insisted that the Mexican would be footing the bill and that his pledge to make Mexico pay for the border wall would come to fruition. He insisted: "In order to get the wall started, Mexico will pay for the wall. But it will be reimbursed. OK? ... It will happen. Remember this, OK?"⁹¹⁸

Before his inauguration, reports surfaced revealing that President-elect Donald Trump would back off to a part of the commitments he announced during his presidential campaign, telling Congressional members that U.S. taxpayers would be footing the bill; however, Trump

⁹¹⁵ Time Staff, "Here's Donald Trump's Presidential Announcement Speech", Time, Accessed on September 1, 2022, <https://time.com/3923128/donald-trump-announcement-speech/>

⁹¹⁶ Eli Watkins, "Mexican President: 'Of Course' We Won't Pay for Trump's Wall", CNN, Accessed on September 10, 2022, <https://edition.cnn.com/2017/01/11/politics/pena-nieto-donald-trump-mexico-wall/>

⁹¹⁷ Cristiano Lima, "Mexican President: 'Of Course' Mexico Won't Pay for Wall," Politico, Accessed on September 10, 2022, <https://www.politico.com/story/2017/01/mexico-trump-border-wall-233519>

⁹¹⁸ Lima, "Mexican President: 'Of Course' Mexico Won't Pay for Wall."

quickly and stridently refuted these reports saying that “Reports went out last week, ‘Oh, Mexico is not going to pay for the wall because of a reimbursement.’ What’s the difference? I want to get the wall started”.⁹¹⁹ Apparently, Trump was eager to start building the wall as soon as possible; therefore, he would not wait for Mexico to fund the construction of the wall which apparently would take him a long time. “We’re going to build a wall. I could wait about a year-and-a-half until we finish our negotiations with Mexico, which we’ll start immediately after we get to the office, but I don’t want to wait,” Trump declared.⁹²⁰ So who is going to pay for the wall, or rather, where would Trump’s administration get the money to pay for the wall?

5.9.3 U.S. Taxpayers Paid for the Border Wall

Donald Trump seemed to be in a hurry, instead of waiting, he favored funding the wall relying on the money paid by the taxpayers pending reimbursing them later by Mexico. “Reports went out last week, ‘Oh, Mexico is not going to pay for the wall because of a reimbursement.’ What’s the difference? I want to get the wall started,” Trump maintained.⁹²¹ Concerning the strategy he is going to follow to get Mexico to pay for the wall, he was non-committal outside of promising it would indeed occur. On the other hand, Donald Trump would have Mexico pay for the wall through the benefits the United States would receive via renegotiating the trade deal, suggesting that Mexico would pay “through longer-term reimbursement”, which did not occur.⁹²² Trump further states that the wall would help Mexico by preventing illegal migration from countries of Central and Southern America. Additionally, the wall would help stabilize both sides, noting that “We are going to stabilize on both sides of the border and we also understand that a strong and healthy economy in Mexico is very good for the United States”.⁹²³

Along with the proposal to fund the wall by the U.S. taxpayers, Donald Trump put forward a number of other proposals including a tax on remittances from Mexican immigrants in the United States to their families in Mexico, levying a new border tax of about 20% on U.S.

⁹¹⁹ Watkins, “Mexican President: ‘Of Course’ We Won’t Pay for Trump’s Wall.”

⁹²⁰ Ibid.

⁹²¹ Lima, “Mexican President: ‘Of Course’ Mexico Won’t Pay for Wall.”

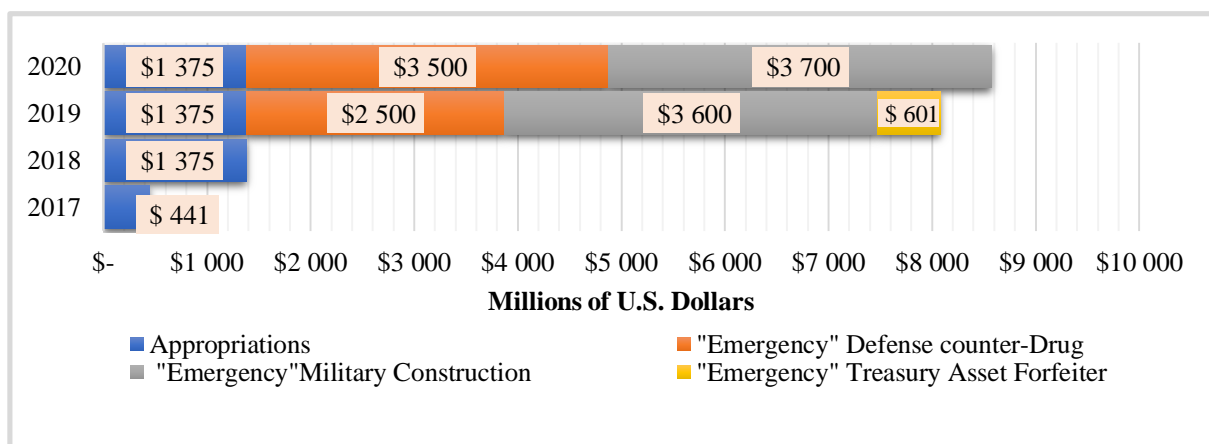
⁹²² Ed Mazza, “Trump Makes a Bewildering Confession about Who’s Paying for His Border Wall,” Huffpost, Accessed on September 12, 2022, https://www.huffpost.com/entry/donald-trump-border-wall-tolls_n_5f585017c5b62874bc15abfb

⁹²³ Jeremy Diamond, “Trump Order Construction of Border Wall, Boosts Deportation Force,” CNN, Accessed on September 12, 2022, <https://edition.cnn.com/2017/01/25/politics/donald-trump-build-wall-immigration-executive-orders/index.html>

imports from Mexico, and border adjustment as part of reforming the American corporate tax system. The study conducted by Carbaugh and Sipic discussed Trump's three proposals and concluded that constructing a border wall is not only a bad idea but also that if it is built, it would cost the U.S. a very high budget regardless of how it was funded.⁹²⁴

As aforesaid, in 2018, Trump's administration requested Congress to appropriate \$18 billion for constructing the border wall. Congress, however, refused to fund it in late 2018 and early 2019.⁹²⁵ Congress allocated some money for projects at the border. In response to Congress' refusal, Donald Trump resorted to National Emergency Powers in 2019 to divert money from the budget of the Department of Defense.⁹²⁶ Further, around \$15 billion Trump had wrested from different departments of the U.S. government, including the Department of Defense, Department of Homeland Security, and Department of Treasury, as shown in Figure 24.⁹²⁷

Figure 24. Possible sources of border barrier funds during the Trump administration



Source: Adapted from Adam Isacson, "Trump to Seize More Border Wall Money Through Brute Force," WOLA, Accessed on September 12, 2022, <https://www.wola.org/analysis/trump-border-wall-money-brute-force/>

The four-year-building budget between 2017 and 2020 amounted to \$18,467 billion. Of this budget, only \$4,566 billion was actually approved by Congress, while the rest had been diverted from other departments and agencies. In other words, Congress had actually appropriated less than one-fourth of the whole budget Trump's administration had requested from Congress. This implies that the majority of congressional members were convinced of the

⁹²⁴ Carbaugh and Sipic. "Paying for the Trump Boondoggle", 387.

⁹²⁵ Isacson, "Trump to Seize More Border Wall Money Through Brute Force."

⁹²⁶ Christopher Giles, "Trump's Wall: How Much Has Been Built During His Term," BBC NEWS, Accessed on September 12, 2022, <https://www.bbc.com/news/world-us-canada-46748492>

⁹²⁷ Giles, "Trump's Wall: How Much Has Been Built During His Term."

utility of the wall as a means to uphold the US national security and safety, thus founding it needless to waste that significant budget on a useless wall. More importantly, this implies that three-quarters of the wall budget lacked congressional approval.

To secure the rest of the budget, President Trump resorted to three mechanisms: Proclaiming a national emergency, exploiting two legal provisions governing how the Defense Department can use its budget, and raiding the Treasury Department's Forfeiture Funds.⁹²⁸ First, by proclaiming a national emergency, President Trump diverted \$3,6 billion from the budget for military construction projects into wall construction. He resorted to this proclamation on the 15th of February, 2019, shortly following losing his shutdown battle with Congress. In addition, Trump's administration planned to wrest another \$3,7 billion from the budget of the Department of Defense in 2020.⁹²⁹

The second mechanism lies in exploiting the two provisions specifying how the Department of Defense can use its budget, Trump's administration managed to secure another \$2,5 billion for wall building. The first provision is *Section 284(b)(7) of Title 10, U.S. Code*, which allowed the Department of Defense to spend its budget on constructing roads and fences and the installation of lighting in order to block drug smuggling corridors across international boundaries of the country. In other words, Trump can capitalize on this provision to build a border wall by claiming that there is a counter-drug reason to do so.⁹³⁰ Relying on this section alone is not enough as the Defense Department's annual budget for "Drug Interdiction and Counterdrug Activities" amounted to only \$1,035 billion, most of which had been used. Therefore, Trump's administration resorted to another provision which consisted in section 8005 of the 2019 Defense Appropriation bill; the latter enabled Trump to move up to around \$4 billion from one category to another within the Defense budget. In the end, Trump managed to secure the additional sum of money that amounted to \$2,5 billion from a long list of Defense categories, from personal costs to training for Afghan security forces and plowed it into the counter-drug account to spend it on the wall construction in 2019.⁹³¹ With regard to

⁹²⁸ Isacson, "Trump to Seize More Border Wall Money Through Brute Force."

⁹²⁹ Paul Sonne, Jeff Stein, and Nick Miroff. "Lawmakers from Both Parties Criticize White House Plans to take \$7,2 billion in Pentagon Funding for Trump's Border Wall," The Washington Post, Accessed on September 12, 2022, https://www.washingtonpost.com/immigration/lawmakers-from-both-parties-criticize-white-house-plan-to-take-72-billion-in-pentagon-funding-for-trumps-border-wall/2020/01/14/675838d4-36ed-11ea-bf30-ad313e4ec754_story.html

⁹³⁰ Isacson, "Trump to Seize More Border Wall Money Through Brute Force."

⁹³¹ Ibid

2020, the Washington Post reported that Trump's administration planned to secure an additional \$3.5 billion by capitalizing on this mechanism.⁹³²

The third mechanism upon which Trump's administration relied to obtain further money to fund the wall building is the Treasury Department's Forfeiture Fund, a pot of money that was created in 1992 chiefly for the drug war, from which Trump's administration diverted \$601 million. In a nutshell, by relying on these mechanisms or rather maneuvers, President Trump managed to secure the required amount of money for wall construction without congressional approval which is basically a constitutional right and power granted to Congress. In other words, Donald Trump defied the congressional appropriation power which caused Congress to disapprove of his approach to addressing the issue.

5.10 Public Stance on the Border Wall

Trump's promise to construct a border wall along the U.S.–Mexican border proved to be a controversial project that split public opinion. Politically, this project found difficulties to gain Congressional financial support as most of the Democrats opposed it. "If there is only one thing people know about Donald Trump, they know he wants to build a border wall. And if there's only one thing people know about Democratic lawmakers, it's that they rarely turn down multibillion-dollar infrastructure projects,"⁹³³ said Emily Ekins, the vice president and director of polling at the CATO Institute. This manifested in the disagreement between President Trump and Democratic Congressional leaders who refused to appropriate \$5.7 billion in funding for the border wall since December 22, 2018. Nancy Pelosi, Democratic House Speaker (D—CA), described the wall to be "immoral, ineffective, and expensive" while the Senate Minority Leader, Chuck Schumer (D—NY), declared that the wall is "wasteful and does not solve the problem".⁹³⁴ In doing so, the Democrats probably felt confident during the shutdown as the public opinion was on their side, causing them to hold their ground against the Trump administration.

⁹³² Sonne, Stein, and Miroff. "Lawmakers from Both Parties Criticize White House Plans to take \$7.2 billion in Pentagon Funding for Trump's Border Wall."

⁹³³ Emily Ekins, "Americans Used to Support a Border Wall. What Changed Their Minds?" CATO INSTITUTE, Published on January 14, 2019, Accessed on February 13, 2023, <https://www.cato.org/commentary/americans-used-support-border-wall-what-changed-their-minds>

⁹³⁴ Emily Ekins, "Americans Used to Support a Border Wall. What Changed Their Minds?"

Public opinion on constructing the border wall changed radically before and during Trump's presidency. The project of building the wall or fencing the Mexican-American border gained the support of the majority of Americans under the previous administrations of President George W. Bush and Barack Obama. In 2007, constructing a border wall gained wide support from Americans due to the surrounding geopolitical climate characterized by toughened security measures the Bush administration had taken following the 9/11 attacks and its war on terrorism, thereby shaping the public opinion towards favoring all measures that uphold the national security and public safety. This was also proved by the findings of a 2013 ABC News/Washington Post survey that revealed that 65% of Americans were in favor of building a 700-miles fence wall along the country's southwest border.⁹³⁵ However, over time, public support for the border wall of fence faded away as of 2015. Thenceforth, the majority of Americans gave little importance to fencing their country's southwest border.

Democrats' support for the border wall or fence had also witnessed nearly the same change as that of the public. A Time/SRBI poll in 2006 found that 52% of Democrats and 62% of Republicans supported the construction of a security fence along 2,000 miles of the US-Mexican. Furthermore, polls organized between 2005 and 2015 showed that nearly 50% of Democrats continued their support for constructing a border barrier along the U.S.-Mexican border. Additionally, the Republican support for the Border wall or fence never faded and remained increasing from 2007 through 2019, reflecting the Republican Party's commitment to strengthening border security, while Democrats greatly supported the border wall or fence in 2005 with 52% of the party's membership but this support gradually decreased over years to reach 12% in 2018.⁹³⁶ Accordingly, the public support for the border wall turned into opposition under Trump's administration where 60% of Americans were against constructing the border wall while only 37% supported it.⁹³⁷

5.11 How Much of Trump's Wall Was Built

The calculation of miles the Trump administration constructed depends very much on the definition and distinction between the two terms "new" and "wall". As aforementioned, 654 miles were already built before the inauguration of President Trump, including 354 miles of

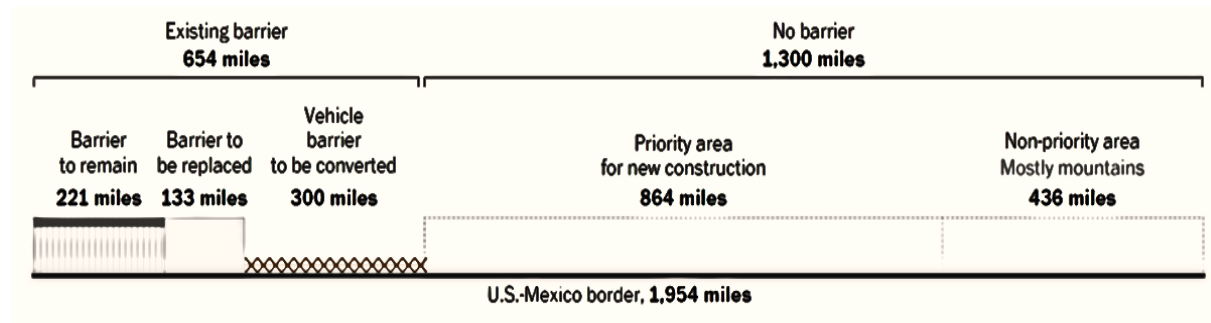
⁹³⁵ Ibid.

⁹³⁶ Ibid.

⁹³⁷ Ibid.

barricades intended to stop pedestrians and 300 miles of anti-vehicle fencing, as shown in Figure 25, which shows the pre-construction status of the southern border.

Figure 25. Pre-construction status of the southern border



Source: Nick Miroff and Adrian Blanco, “Trump ramps up border-wall construction ahead of 2020 vote,” *The Washington Post*, Published on February 6, 2020, Accessed on February 11, 2023, <https://www.washingtonpost.com/graphics/2020/national/immigration/border-wall-progress/>

A few months before leaving the White House, the U.S. CBP reported in October 2020 that the southern border comprises 669 miles of primary barriers, which is the first obstacle illegal crossers would encounter, and 65 miles of secondary barrier, which usually runs after the primary barrier as the second obstacle illegal crossers would encounter.⁹³⁸ This indicates that what Trump’s administration had actually built was only 15 miles of new barriers in areas where no barriers existed before.⁹³⁹

Besides, 350 miles were constructed; however, according to CBP, they are made up of replacement structures along with some miles of the secondary barrier. Furthermore, 378 additional miles of new and replacement barriers, are either under construction or in the pre-construction phase, less than 50% of them are located in places where no barriers existed.⁹⁴⁰ This is what was really constructed under the Trump administration; however, President Trump does not make a distinction between the newly constructed barriers and replacement structure, considering both of them as a new wall and regarding the progress made so far as a success. He tweeted:

⁹³⁸ Lucy Rodgers and Dominic Bailey, “Trump Wall: How Much Has He Actually Built?” *BBC News*, Published on October 31, 2020, Accessed on February 8, 2023, <https://www.bbc.com/news/world-us-canada-46824649>

⁹³⁹ Lucy Rodgers and Dominic Bailey, “Trump Wall: How Much Has He Actually Built?”

⁹⁴⁰ *Ibid.*

When the Military rips down an old & badly broken Border Wall in an important location, & replaces it with a brand new 30 ft. high Steel & Concrete Wall. Nancy Pelosi says we are not building a Wall. Wrong, and it is going up fast. Brandon Judd just gave us great marks!⁹⁴¹

Even more than this, he bragged about what his administration built maintaining, during a visit to the wall in June 2020, that his “administration has done more than any other administration in history to secure our southern border”.⁹⁴² However, Trump’s administration built less than what he announced during his 2016 presidential campaign as he promised to build a concrete wall along the 2000-mile border that make up the country’s total southern border with Mexico. Later, he announced that the border wall would cover only half of the total border (1000 miles); thereafter, the length of the border covered by the wall was reduced to 500 miles, as he announced in February 2020 in the State of the Union speech.

To meet this goal of about 500 miles of barrier, crews are required to add monthly about 30 linear miles of barrier throughout 2020, meaning more than doubling the pace of their construction pace.⁹⁴³ However, things on the ground did not match Trump’s expectations as his administration encountered nearly the same impediments previous administrations had faced, mostly consisting in legal difficulties related to spans of barriers where the government has to acquire the people’s private land and physical and natural challenges in the Rio Grande which made so difficult to build the wall. These hardships slowed the pace of border construction, compelling the Trump administration to lower yet another time its expectations regarding the constructed miles of the wall from 509 to 450 miles as of January 2021.

Most of the legal challenges the Trump administration encountered are mainly related to the part of the border in Texas. Unlike the western states where much of the lands are already under government control, hundreds of ranches, riverfront farms, and other properties are under private ownership in Texas. Worse than this, some landowners have old records, while other lands are owned by multiple heirs. In front of these difficulties, the government resolved to make aggressive use of its eminent domain authority to get the required lands under its control, but the legal process is lengthy and requires a long time before bringing under its control the required lands. For their part, landowners were unwilling to cede their lands to the federal government due to a set of reasons varying from their fears of splitting plots and reducing land

⁹⁴¹ Ibid.

⁹⁴² Ibid.

⁹⁴³ Nick Miroff and Adrian Blanco, “Trump ramps up border-wall construction ahead of 2020 vote,” The Washington Post, Published on February 6, 2020, Accessed on February 11, 2023, <https://www.washingtonpost.com/graphics/2020/national/immigration/border-wall-progress/>

use, blocking river access, affecting scenic views, or reducing land values. Some other landowners went beyond in their refusal to cooperate with the government and hand over their lands in favor of the public interest, vowing to fight if the government takes their lands.⁹⁴⁴ These issues slowed significantly the pace of the construction of the wall, resulting in a small percentage (7%) of the wall which is built upon private properties.⁹⁴⁵

According to the CBP information on January 4, 2021, the Trump administration has completed 452 miles (727 km) in total; however, the Trump administration managed to build only 80 miles of new barriers where non existed before, including 47 miles of primary wall along with 33 miles of secondary wall.⁹⁴⁶ Hence, most of the new fences built by the Trump administration are considered “replacement fencing”. Thus, it is pretty clear that President Trump failed to fulfill his electoral promise where reality showed that his administration was far from achieving it even if it included all the new, replacement, and secondary barriers built so far.

5.12 The Structure of the Border Wall

America's southern border comprises approximately 650 miles of barriers of different forms. Pedestrian fences were put in place in more urban areas to stop people from illegal crossings, vehicle barriers made from old railroad tracks were put in place in remote areas, and no man-made structures in mountainous areas and long stretches that follow the Rio Grande Valley.⁹⁴⁷ During his 2016 presidential campaign, Donald Trump revealed his promise to build a border wall of concrete, but, once elected, he referred to constructing a border wall of steel that allows border agents to see through it.⁹⁴⁸ Therefore, what Trump's administration has built is mostly a steel fencing wall, as shown in Figure 43. However, his administration installed a more formidable structure than what was previously put in place. The wall's new structure comprised “steel bollards, anchored in concrete, that reach 18 to 30 feet in height and will have lighting, cameras, sensors, and improved roads to allow U.S. agents to respond quickly along an expanded enforcement zone”.⁹⁴⁹ In his remarks at the major county sheriffs and the major

⁹⁴⁴ Nick Miroff and Adrian Blanco, “Trump ramps up border-wall construction ahead of 2020 vote,” *The Washington Post*, Published on February 6, 2020, Accessed on February 11, 2023, <https://www.washingtonpost.com/graphics/2020/national/immigration/border-wall-progress/>

⁹⁴⁵ Nick Miroff and Adrian Blanco, “Trump ramps up border-wall construction ahead of 2020 vote”.

⁹⁴⁶ Giles, “Trump's Wall: How Much Has Been Built During His Term.”

⁹⁴⁷ Nick Miroff and Adrian Blanco, “Trump ramps up border-wall construction ahead of 2020 vote,” *The Washington Post*, Published on February 6, 2020, Accessed on February 11, 2023, <https://www.washingtonpost.com/graphics/2020/national/immigration/border-wall-progress/>

⁹⁴⁸ Lucy Rodgers and Dominic Bailey, “Trump Wall: How Much Has He Actually Built?”

⁹⁴⁹ Nick Miroff and Adrian Blanco, “Trump ramps up border-wall construction ahead of 2020 vote”.

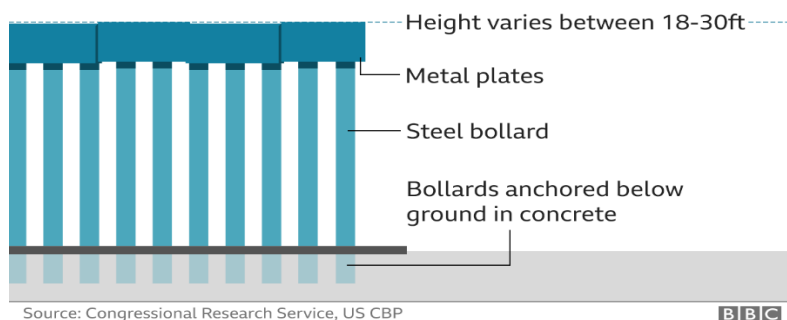
cities chiefs association joint conference in 2019, Trump bragged about the good features of his border wall maintaining the following:

The wall is very, very — on its way. It's happening as we speak. We're building, as speak, in the most desperately needed areas. And it's a big wall. It's a strong wall. It's a wall the people aren't going through very easy. You're going to have to be in extremely good shape to get over this one...They would be able to climb Mount Everest a lot easier, I think. But it's happening. And we have other things happening too. We're strengthening up the ports of entry. We're using tremendous technology, including drones, but tremendous technology. But it all hinges around the walls, because if you don't have the walls, the technology is almost useless.⁹⁵⁰

The structure of Trump's border wall is clarified in Figure 26.

Figure 26. Structure of Trump's border wall

Trump's barrier is mostly bollard fencing



In its report of January 2020, the Congressional Research Service described the wall as “it poses a formidable barrier, but it is not the high, thick masonry structure that most dictionaries term a “wall.” Nor is a border barrier a one-time investment or stand-alone solution to the issue of illegal border crossing or drug smuggling”.⁹⁵¹ The report adds also that CBP considered border barriers as a means of increasing illegal crossers' likelihood to be detected, intercepted, and detained before they can evade border agents.

Once constructed, border barriers and their supporting infrastructure of sensors, roads, lighting, and surveillance technology, need to be monitored and maintained to be effective. The designs being deployed are significantly different from the pedestrian fencing and vehicle barriers they are replacing, and will pose a much different challenge to those attempting to cross them. Roughly 300 miles of the existing border barriers constructed prior to the Trump Administration were barriers designed to impede vehicles, not people. Replacing vehicle barriers with the bollard-style pedestrian barriers may not represent new miles of primary barriers along the border,

⁹⁵⁰ J.W. Marriott, “Remarks by President Trump at the Major County Sheriffs and the Major Cities Chiefs Association Joint Conference,” The White House, Published on Feb. 13, 2019, Accessed on Feb. 26, 2023, <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-major-county-sheriffs-major-cities-chiefs-association-joint-conference/>

⁹⁵¹ William L. Painter, *DHS Border Barrier Funding*, 15.

but it does represent a new obstacle that changes the calculus of those attempting to cross the border between ports of entry.⁹⁵²

Thus, technically, Trump's barrier is more effective compared to the previously existing barriers which would help very much in the efforts of intercepting and apprehending illegal immigrants attempting to illegally cross between the United States and Mexico.

Effectively, in 2020, apprehensions of illegal immigrants at the southwest border dropped sharply compared to the record of 2019.⁹⁵³ This decline in apprehensions is not only ascribed to the effectiveness of Trump's barrier but also to the decline in the immigration of family groups as well as to the deterrent effects of Trump's tough anti-immigration measures rather than the barrier alone. Immigrants who escaped violence, poverty, or persecution in their home countries found it so difficult to apply for asylum in the United States after toughening its rules under Trump's administration, obliging them to wait for a long time pending deciding about their cases and reducing their chances to get accepted due to limiting the number of immigrants to be accepted.

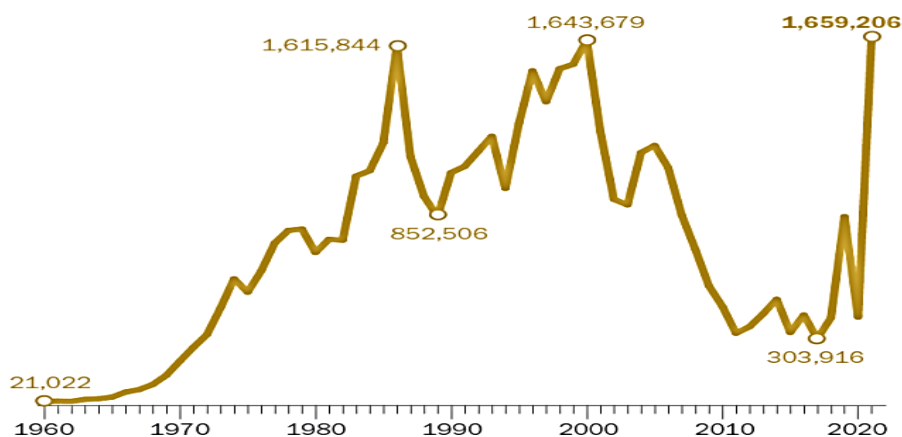
5.13 Border Apprehensions during Covid-19

The decline in apprehensions at the U.S.-Mexican border is also ascribed to the series of protective measures taken by the Trump administration during the pandemic of Covid-19 that allowed agents to deport illegal crossers back to their home countries, thereby bypassing normal immigration proceedings and asylum rules. Sarah Pierce, a U.S. immigration policy analyst at the independent Migration Policy Institute told BBC that "Any effect that the physical wall has had in reducing unauthorized migration has paled in comparison to the administration's bureaucratic wall...A series of interlocking policies have significantly reduced unauthorized arrivals".⁹⁵⁴ As a matter of fact, following the sweeping coronavirus pandemic, the CBP reported that the number of encounters dropped to just over 400,000 in FY 2020 but remarkably increased in FY2021 as it amounted to 1,659,206 as depicted in Figure 27.

⁹⁵² Ibid.

⁹⁵³ Lucy Rodgers and Dominic Bailey, "Trump Wall: How Much Has He Actually Built?"

⁹⁵⁴ Ibid.

Figure 27. Migrant encounters at U.S.-Mexico border, by fiscal year

Note: Beginning in FY2020, annual totals combine expulsions and apprehensions into a new category known as encounters. Annual totals before fiscal 2020 comprise apprehensions only.

Source: U.S. Customs and Border Protection, Pew Research Center, https://www.pewresearch.org/fact-tank/2021/11/09/whats-happening-at-the-u-s-mexico-border-in-7-charts/ft_21-11-01_mexicoborder_1a/

Unlike before the pandemic of coronavirus where the vast majority of encounters ended in apprehension, most encounters since the onset of Covid-19 resulted in expulsion from the United States. In March 2020, President Trump invoked Title 42, a section of the Public Health Service Act, that authorizes the federal government to temporarily suspend the entry of foreign nationals when deemed necessary for the interest of public health.⁹⁵⁵ Title 42 is a clause of the Public Health Services Laws enacted in 1944 that enables the federal government to protect public health safety from any disease that wept any foreign country by suspending the entry of its nationals.

Whenever the Surgeon General determines that by reason of the existence of any communicable disease in a foreign country there is serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health, the Surgeon General, in accordance with regulations approved by the President, shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose.⁹⁵⁶

Though rarely invoked by the previous administrations, the Trump administration relied on section 265 of Title 42 to pass the Public Health Order following the onset of the Covid-19

⁹⁵⁵ Nicole Narea, "Biden Is Quietly Enforcing One of Trump's Most Anti-Immigrant Policies," Vox, Published on April 29, 2021, Accessed on February 12, 2023, <https://www.vox.com/policy-and-politics/22398712/biden-title-42-migrant-border-expel>

⁹⁵⁶ Authenticated U.S. Government Information, *Title 42- The Public Health and Welfare*, 411.

pandemic, authorizing the expulsion of migrants owing to concerns about the spread of the virus without allowing them to apply for asylum.⁹⁵⁷ Hence, the Trump administration began expelling thousands of unauthorized immigrants attempting illegal crossing at the country's southwest border, resulting in the expulsion of 618,000 migrants. Despite the objection to the order from scientists of the Centers for Disease Control and Prevention on account of the absence of any legitimate public health rationale behind it, Vice-President Mike Pence ordered continuing its implementation.⁹⁵⁸

Invoking Title 42 caused civil rights advocates to criticize President Trump and his administration. Olga Byrne, the immigration director at the International Rescue Committee, found it unconstitutional to expel migrants under the Public Health Order maintaining, arguing that "there is nothing in the law that allows the government to expel migrants without due process".⁹⁵⁹ The ACLU had also criticized the Trump administration for seizing upon an obscure public health law as its last attempt to achieve its aim of shutting down the asylum system. According to ACLU, Trump's administration misinterpreted Title 42, leading to a mass expulsion of migrants seeking safety without allowing them to explain their fears and motives, though seeking asylum is guaranteed by U.S. law which bans sending people to places wherein their safety is threatened.⁹⁶⁰ Hence, invoking Title 42 resulted in the expulsion of roughly 2 million immigrants from the border including Haitian asylum seekers, Venezuelans who flocked to the border in great numbers, and the Mexicans who remained making up the largest immigrant community in the southwest.

⁹⁵⁷ Quinn Owen, Armando Garcia, and Deena Zaru, "What Is Title 42-The Trump-Era Immigration Order at the US-Mexico Border?" *Abc News*, Published on December 16, 2022, Accessed on February 12, 2023, <https://abcnews.go.com/US/title-42-amid-backlash-biden-administration-defends-trump/story?id=80149086>

⁹⁵⁸ Nicole Narea, "Biden Is Quietly Enforcing One of Trump's Most Anti-Immigrant Policies".

⁹⁵⁹ Quinn Owen, Armando Garcia, and Deena Zaru, "What Is Title 42-The Trump-Era Immigration Order at the US-Mexico Border?"

⁹⁶⁰ Leonardo Castaneda and Katie Hoepfner, "News and Commentary: Five Things to Know about Title 42 Immigrant Expulsion Policy," *ACLU*, Published on March 22, 2022, Accessed on February 12, 2023, <https://www.aclu.org/news/immigrants-rights/five-things-to-know-about-the-title-42-immigrant-expulsion-policy>

In summation, constructing a border wall along the US-Mexican border was a key promise of President Trump that he did not accomplish during his sole term in the White House. This wall was intended to stem unauthorized immigration from Mexico and other Latin American countries which he mostly considered to be of bad quality and thus unfit for the best interest of the United States. Building this wall required billions of dollars Trump vowed to make Mexico pay for it, but this did not happen; instead, taxpayers paid for the whole cost by taking money from the budget of some federal departments, thereby breaking his electoral promise to Americans and the rules of appropriations of funds that belong to Congress. Additionally, throughout his 2016 presidential campaign, Donald Trump bragged about his skillfulness in building walls describing his border wall to be of concrete, but once in office, he changed the structure of the wall into a steel fencing wall on account of allowing border agents to see through it, thereby facilitating their efforts of intercepting unauthorized immigrants attempting illegal crossings. Moreover, most of Trump's steel barrier lies in replacing barriers already constructed under previous administrations of Presidents George W. Bush and Barack Obama, breaking his promise to build a concrete wall along the 2000-mile border that makes up the country's total southern border with Mexico; thus, adding another black point regarding the failure of his administration to meet his electoral promises. This reflects the point to which he exaggerated while delivering his electoral promises. Nevertheless, the border wall proved to be effective in increasing apprehensions along the US-Mexican border in 2019. This effectiveness came as the fruit of a combination of other measures his administration put in place to enforce his immigration policy. These immigration proceedings and measures are tackled in the following chapter.

Chapter 6: Increasing Border Security and Interior Enforcement

In his Arizona speech on August 31, 2016, Republican presidential candidate, Donald Trump pledged before his supporters to terminate “the Obama administration’s deadly non-enforcement policies that allow thousands of criminal aliens to freely roam our streets”.⁹⁶¹ As a president, Donald Trump moved to implement his electoral promise via EO13767 titled “Enhancing Public Safety in the Interior of the United States” which set new and expensive priorities for enforcement, including such large categories as aliens charged or convicted of crimes, and those who have committed acts that could result, among other things, in criminal charges. Thus, this new policy represents a drastic change compared to Obama’s narrow priorities policy adopted during his two last years in office which essentially focused on aliens who committed felonies or misdemeanors.⁹⁶² In other words, expanding priorities imply that efforts to increase interior enforcement would target a large population of immigrants if successfully implemented. Additionally, strengthening border security would have great importance under Trump’s administration.

⁹⁶¹ Politico Staff, “Donald Trump Immigration Speech in Arizona.”

⁹⁶² Pierce, Bolter, and Selee, *Trump’s First Year on Immigration Policy: Rhetoric vs. Reality*, 7.

In effect, along with constructing the border wall along America's southwest border with Mexico to stem illegal immigration, Donald Trump put in place other measures intended to fortify border security and raise the efficiency of enforcing immigration laws. Therefore, the Trump administration labored on ending catch-and-release along the southwest border, increasing the number of border agents and stations, enhancing the pursuit of undocumented immigrants who committed crimes, returning border crossers to their native countries, etc. These measures along with others were regarded as paramount to maintaining public safety and national security across the United States. Hence, this chapter throws light on the Trump administration's measures designed to strengthen border security and increase interior enforcement.

6.1 Measures to Strengthen Border Security

Reducing illegal border crossings of Mexican and Central American immigrants through the southwest border required designing new measures meant to strengthen border security. Before Trump's presidency, both the American and Mexican governments took measures to stem and reduce illegal migration but failed.⁹⁶³ Despite the deportations undertaken by Obama's administration as well as the long risky journey illegal immigrants usually go through, tens of thousands of illegal immigrants hailing from Mexico and Central American countries, namely from El Salvador, Guatemala, and Honduras, continued to move to the USA.⁹⁶⁴ Therefore, fortifying border security by designing further measures was paramount under the Trump administration. Accordingly, the latter came with an array of border security spelled out as the following:

6.1.1 Expanding Detention Capacity at the Border

The Trump administration considered enhancing the detention capacity along the southern border as highly important to the operational control; therefore, the Secretary of DHS must take all necessary action and allocate all legally available resources to immediately construct, operate, control, or establish contracts for building and operation of detention facilities at or near the U.S.-Mexican border. Further, Customs and Border Patrol (CBP) would focus on expanding the short-term detention facilities while the U.S. Immigration and Customs

⁹⁶³ Guadalupe Correa-Cabrera, "Immigration and Border Security in the Age of Trump", Wilson Center, published on March 24, 2017, accessed on June 14, 2023. <https://www.wilsoncenter.org/article/immigration-and-border-security-the-age-trump>

⁹⁶⁴ Guadalupe Correa-Cabrera, "Immigration and Border Security in the Age of Trump".

Enforcement (ICE) would focus on standard detention. Moreover, both CBP and ICE were directed to explore options for joint temporary structures.

6.1.2 Assigning Asylum Officers and Immigration Judges to Detention Facilities

An asylum officer is defined as an immigration officer who “(i) has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications ... and (ii) is supervised by an officer who meets the condition described in clause (i) and has had substantial experience adjudicating asylum applications”.⁹⁶⁵ In order to conduct credible fear determination as well as reasonable fear determination, the DHS is directed to assign asylum officers to detention facilities. As a matter of fact, migrants arrested at the southern border, waiting for expediting removal and who expressed to Border Patrol agents a fear of persecution if returned to their country of origin are subjected to humanitarian procedures. Therefore, they are given a credible fear interview administered by U.S. asylum officers who make part of U.S. Citizenship and Immigration Services (USCIS). Thereafter, asylum officers decide on the credibility of the asylees’ fear of persecution and their possibility to get political asylum under U.S. laws. Those identified to have a significant possibility to get it are placed in formal immigration court proceedings where an immigration judge would decide on their eligibility to benefit from the political asylum.⁹⁶⁶ As regards immigrants who were previously ordered deported, they are similarly interviewed by an asylum officer to determine the reasonableness of their fear. Those determined to have a reasonable fear of persecution may apply for withholding from deportation.⁹⁶⁷

Prior to 2017, political asylum claims at the southern border surged with a shift from predominantly Mexican flows to mixed flows of economic and humanitarian migrants from Central America’s North Triangle countries, or rather Honduras, EL Salvador, and Guatemala. Effectively, between FY2011 and FY2016, the number of credible fear cases mounted up from 11,000 to 94,000 while reasonable fear cases mounted up from 3,000 to 10,000. Therefore, in order to meet the increasing caseload, about 50% (from 40-50%) of the USCIS’s asylum

⁹⁶⁵ Staff of Cornell Law School, “8 U.S. Code § 1225 - Inspection by Immigration Officers; Expedited Removal of Inadmissible Arriving Aliens; Referral for Hearing,” Legal Information Institute, Accessed on September 4, 2022, https://www.law.cornell.edu/uscode/text/8/1225#b_1

⁹⁶⁶ Faye Hipsman, and Doris Meissner, *Trump Executive Order and DHS Implementation Memo on Border Enforcement: A brief review* (Washington, DC: Migration Policy Institute, 2017), 3.

⁹⁶⁷ Hipsman and Meissner, *Trump Executive Order and DHS Implementation Memo on Border Enforcement: A brief review*, 3.

officers have been assigned to administer credible fear interviews, either by telephone or physically at detention centers.⁹⁶⁸

On the other hand, the Department of Justice (DOJ) is directed to assign immigration judges to detention facilities in order to conduct removal proceedings. Prior to 2017, the U.S. immigration system employed 300 judges in 58 courts across the whole country. Immigration judges typically administered hearings for detainees remotely through videoconference. However, the new directives did not specify whether judges would be physically assigned to detention centers to process detainees' claims of fear of persecution if returned to their countries of origin.⁹⁶⁹ As a matter of fact, the immigration courts had been overwhelmed by the huge number of cases, which attained 542,000 cases as of FY2017; moreover, wait times mounted up to reach up to three to four years. Hence, reassigning judges to detention centers could speed up processing claims, thereby deciding for some of the detained asylum seekers within the shortest possible period.

6.1.3 Ensuring for Illegal Entry

Trump's EO13767 directed the DHS to ensure that aliens apprehended at the border for violating the U.S. immigration statutes would be detained pending the outcome of their removal proceedings or their removal from the country. Also, the DHS is directed to issue new policy guidance to all its personnel as regards the appropriate and consistent use of lawful detention under the Immigration and Nationality Act (INA), including ending up the practice commonly known as "catch and release".⁹⁷⁰ The latter is a term that dates back to the 1990s and refers to the practice of apprehending illegal immigrants at the southwest border and releasing some of them before exposing them to an immigration judge. As used in EO13767, the term is likely to refer to the reality that Unaccompanied Children (UACs), many asylum seekers, and families seeking asylum, are not detained during their removal proceedings under a variety of laws and agency policies.⁹⁷¹ UACs from countries other than Mexico and Canada have special treatment under the 2008 Trafficking Victims Protections Reauthorization Act (TVPRA); they are transferred to the Office of Refugee Resettlement (ORR) custody and, if possible, released to a

⁹⁶⁸ *Ibid.*, 3.

⁹⁶⁹ *Ibid.*

⁹⁷⁰ Trump, "Executive Order 13767- Border Security and Immigration Enforcement Improvements."

⁹⁷¹ Hipsman and Meissner, *Trump Executive Order and DHS Implementation Memo on Border Enforcement: A brief review*, 4.

U.S. relative or sponsor pending their removal proceedings.⁹⁷² Similarly, asylum seekers with a credible fear of persecution may also be released on a case-by-case basis.

On the other hand, family detention, which was increased by Obama's administration after the remarkable surge in the Central American family flows ever since 2014, had been stopped by the federal court. In 2015, a U.S. district judge found that DHS family detention practices violated the Flores Settlement because even the accompanied children are also covered by the settlement. In point of fact, the Flores Settlement is a 1997 settlement governing detention that requires that minors taken into the custody of the Immigration and Naturalization Service (INS) must be housed in facilities that meet certain standards. It mandated that:

INS operates with a policy favoring release to a parent, legal guardian, adult relative or licensed program. Upon taking a minor into custody, INS or the licensed program must make and record a prompt and continuous effort toward family reunification and release, as well as maintain up-to-date records of minors held for longer than 72 hours, including biographical information and hearing dates... The program must also provide physical care, food, clothing, grooming items, routine medical and dental care, immunizations, medication, an individualized needs assessment for each child, an educational assessment and plan, a statement of religious preferences, an assessment identifying immediate family members in the United States, education services and communication skills.⁹⁷³

Since many of the detention facilities do not meet the aforementioned standards, the DHS responded by reducing the family detention period to less than 20 days.⁹⁷⁴ Even though the EO13767 directed the DHS to detain as many border crossers as possible, including asylum seekers until they are heard by an immigration court or they are removed from the country, the ongoing litigation over the detention of families may obstruct the expansion of family detention.

6.1.4 Returning Border Crossers and Quantifying American Assistance to Mexico

The DHS is also directed under Trump's EO13767 to take appropriate actions to return the apprehended aliens seeking U.S. admission, who attempted to cross the U.S. border with Canada or Mexico, to the territory from which they came pending their removal proceedings. Previously, individuals in removal proceedings remain in the U.S. for the period of their immigration court cases. Concerning Canadian and Mexican migrants, the U.S. immigration

⁹⁷² Ibid., 4.

⁹⁷³ Abbie Gruwell, "Unaccompanied Minors and the Flores Settlement Agreement: What to Know," National Conference of State Legislatures (NCSL), Accessed on September 6, 2022, <https://www.ncsl.org/blog/2018/10/30/unaccompanied-minors-and-the-flores-settlement-agreement-what-to-know.aspx>

⁹⁷⁴ Gruwell, "Unaccompanied Minors and the Flores Settlement Agreement: What to Know."

law allows for returning them while their deportation cases are being heard. However, this provision does not concern those administratively removed through expedited removal or reinstatement of removal and thus would not be exposed to immigration judges.⁹⁷⁵

By the terms of EO 13767, agencies across the U.S. territory are tasked with identifying and quantifying all sources as well as levels of direct and indirect aid or assistance to the Mexican government during the past five years, including all bilateral and multilateral development aid, humanitarian and military aid, and economic assistance. In addition, heads of all executive departments and agencies ought, within 30 days of issuing this order, to submit this information to the Secretary of State.⁹⁷⁶ In return, the Secretary of State shall, within 30 days after receiving the information, submit to the President a consolidating report outlining the levels of such aid and assistance that have been provided annually to the Mexican government over the past five years.⁹⁷⁷ For instance, in FY2015, the United States directed \$583,575,595 in foreign assistance to the Mexican government, 91% of it in economic assistance and 9% in military assistance.⁹⁷⁸

6.1.5 Expanding Local Ability to Enforce Immigration Laws

EO13767 directed the DHS to take appropriate actions to engage with state governors as well as local officials to prepare to enter into agreements under section 287(g) of the Immigration and Nationality Act (INA), thereby allowing state and local law enforcement officials to better perform the functions of immigration officers concerning investigation, apprehension, or detention of aliens in the United States under the supervision of the Secretary of State.⁹⁷⁹ Additionally, DHS may also structure each agreement under section 287(g) of the INA in a way that “provides the most effective model for enforcing federal immigration laws and obtaining operational control over the border for that jurisdiction”.⁹⁸⁰ In actual fact, INA’s section 287(g) enables the federal government to conclude agreements with local governments under which local law enforcement officers or federal employees may be trained and authorized

⁹⁷⁵ Hipsman and Meissner, *Trump Executive Order and DHS Implementation Memo on Border Enforcement: A brief review*, 5.

⁹⁷⁶ Trump, “Executive Order 13767- Border Security and Immigration Enforcement Improvements.”

⁹⁷⁷ *Ibid.*

⁹⁷⁸ “U.S. Foreign Assistance by Country,” [ForeignAssistance.gov](https://foreignassistance.gov), Accessed on September 6, 2022, <https://foreignassistance.gov/cd/mexico/2015/obligations/0>

⁹⁷⁹ Trump, “Executive Order 13767- Border Security and Immigration Enforcement Improvements.”

⁹⁸⁰ *Ibid.*

to assist with enforcing immigration laws. In this respect, the DHS reported that, as of FY 2017, 32 enforcement agencies in 16 states participate in the 287(g) program.⁹⁸¹

INA's 287(g) program has had three models: (1) the jail model, in which officials screen for immigration status when booking individuals on criminal charges; (2) the task force model, in which local and state officials screen for status in the field; and (3) the hybrid model, in which jurisdictions perform both models.⁹⁸² In all three models, participating officers are able to issue detainers for the purpose of holding aliens likely to be removed pending transfer to ICE custody. However, as of January FY2017, all the agreements were jail models in which officers can only ask individuals for their immigration status after booking them into jail and convicting them of a crime; they cannot ascertain immigration status during routine policing operations. Conversely, the task force model enables officers of the 287(g) program to inquire about detainees' immigration status during policing routine before jailing them. This model received widespread public criticism due to its special focus on accusations of racial profiling. For instance, in locations such as Maricopa County, Arizona, the task force model had been used by the sheriff's office to conduct enforcement operations in immigrant neighborhoods; in response, Obama's administration ended all task force agreements in 2012.⁹⁸³

6.1.6 Changing Asylum System Policies

EO13767 mandated that "It is the policy of the executive branch to end the abuse of parole and asylum provisions currently used to prevent the lawful removal of removable aliens".⁹⁸⁴ This provision came to correct some loopholes in the asylum system exploited, as critics argued, by immigrants to enter and remain in the United States. In actuality, the surge in the number of asylum seekers arriving at the country's southwest border raised concerns that the U.S. asylum system is being misused by aliens lacking valid humanitarian claims. This led critics to argue that aliens are exploiting the asylum system's flaws and the parole provisions to enter and remain in the United States.⁹⁸⁵ However, a 2015 UNHCR study noted that the largest part of women arriving at the southwest border coming from Mexico as well as countries of the North Triangle of Central America (NTCA) expressed valid fears of persecution in their

⁹⁸¹ Hipsman and Meissner, *Trump Executive Order and DHS Implementation Memo on Border Enforcement: A brief review*, 6.

⁹⁸² *Ibid.*, 6

⁹⁸³ *Ibid.*, 6.

⁹⁸⁴ Trump, "Executive Order 13767- Border Security and Immigration Enforcement Improvements."

⁹⁸⁵ Hipsman and Meissner, *Trump Executive Order and DHS Implementation Memo on Border Enforcement: A brief review*, 6.

countries of origin. The study found that 64% of the interviewed migrant women from Mexico and NTCA reported direct threats and attacks by members of criminal armed groups as the main reason that pushed them to quit their home countries.⁹⁸⁶

Sixty-four percent of the women described being the targets of direct threats and attacks by members of criminal armed groups as at least one of the primary reasons for their flight. Women also described incidents in which gang members murdered or were responsible for the forced disappearance of a loved one (e.g. a child, partner, or other close relative). Many were asked to pay a cuota, or “tax,” for living or commuting to work in a certain area, and threatened with physical harm if they could not pay.⁹⁸⁷

This complies with credible fear claims, accounting for 78% of claims the asylum officers approved in FY2016.

6.2.7 New Proceedings for Credible and Reasonable Fear Determinations

In order to decide on the asylum seekers’ fears credibility, Trump’s EO13767 directed the DHS to ensure, including by issuing new regulations, that aliens seeking asylum in the United States are given credible fear and reasonable fear interviews in compliance with the plain language of the law. Immigration laws and regulations lay out several requirements for the credible fear and reasonable fear interview process. For instance, interviews ought to be administered by a USCIS officer in a nonadversarial manner away from the general public. Additionally, provisions specified other details regarding when an interviewee is entitled to a translator as well as who can be consulted before, or be present during the interview. Furthermore, they specified the standards and information asylum officers would rely on when making credible fear and reasonable fear determinations.⁹⁸⁸ The implementation memo instructed asylum officers to take the necessary and required information from the interviewee legally sufficient to decide on the credibility of his/her claims as well as make determinations. The DHS guidance stressed the importance of eliciting relevant information from the interviewees and assessing the credibility of their statements and claims during the interviews. In addition, the DHS specified that determinations must include consideration of the statistical likelihood that the claim would be granted by an immigration judge. Statistics showed that rates

⁹⁸⁶ Chiara Cardoletti-Carroll, Alice Farmer, and Leslie E. Vélez, *Women on the Run: the First-Hand Accounts of Refugee Feelings El Salvador, Guatemala, Honduras, and Mexico* (New York: UNHCR, 2015), 4.

⁹⁸⁷ Cardoletti-Carroll, Farmer, and Vélez, *Women on the Run: the First-Hand Accounts of Refugee Feelings El Salvador, Guatemala, Honduras, and Mexico*, 4.

⁹⁸⁸ Hipsman and Meissner, *Trump Executive Order and DHS Implementation Memo on Border Enforcement: A brief review*, 7.

of asylum grants for nationals from NTCA in immigration courts are among the lowest of any-national origin group with 15% for Guatemala, 12% for Honduras, and 14% for El Salvador.⁹⁸⁹

Also, the USCIS is directed to increase the operational capacity of the Fraud Detection and National Security (FDNS) directorate so as to detect and prevent fraud in the asylum and benefits and adjudication processes. In doing so, standards of credible fear and reasonable fear would be tightened, thereby making it more difficult for asylum seekers to lodge claims after being apprehended at the border.

6.2.8 Extending the Use of Expedited Removal

The DHS can apply expedited removal, an administrative form of deportation without a hearing before an immigration judge, to aliens who are designated under the statute. In other words, DHS is authorized to apply expedited removal to aliens who entered the United States during the two past years regardless of whether they were apprehended within the U.S. interior or at the border. The U.S. Immigration laws authorize expedited removal of unlawful recent entrants apprehended throughout the U.S. territory who could not establish a continuous presence for the prior two-year period. Still, since enacted in 1996, expedited removal had been applied only to entrants apprehended at the border.

Further, DHS' most recent regulations issued in 2004, limited the use of expedited removal to unlawful entrants apprehended within 100 miles of the border within the previous 14 days.⁹⁹⁰ In actuality, expedited removal has not been used in the interior, while it has been a common procedure in border enforcement, accounting for 45% of apprehensions in 2014.⁹⁹¹ MPI estimates revealed that 835,000 undocumented immigrants have resided in the United States for less than two years, of whom 260,000 to 440,000 entered illegally or through the Visa Waiver Program and hence could be removed from the country before being exposed to an immigration judge under EO13767.

6.2.9 Granting Parole for Asylum Seekers on a Case-By-Case Basis

Under Trump's EO 13767, DHS is directed to ensure that parole would be granted into the United States on a case-by-case basis when the concerned individual demonstrates urgent humanitarian reasons or a significant public benefit drawn from such parole. "Parole is an

⁹⁸⁹ Ibid., 7.

⁹⁹⁰ Ibid., 7.

⁹⁹¹ Ibid., 7.

administrative measure used by DHS to temporarily authorize the release of a noncitizen into the United States. Parole is not a lawful admission or a determination of a noncitizen's admissibility, and can be conditioned upon such terms as the posting of a bond or other guarantee".⁹⁹² Thus, under American law, DHS is authorized to grant parole on a case-by-case basis for foreign nationals with urgent humanitarian reasons or for a significant public benefit. Furthermore, asylum seekers prone to expedited removal and proved to have a credible fear are eligible for parole.

Obama's administration issued a policy directive in 2009 to generally grant parole to arriving asylum applicants who demonstrated to have a credible fear of persecution provided that they do not pose any security, safety, or flight risk. In FY2015, the ICE granted parole to 47% of arriving asylum seekers who passed a credible fear interview. Granting parole to aliens in the predesignated categories, according to a DHS memo, has contributed to a border security crisis, generating an incentive for unauthorized migration. This may presage an intention to reduce the parole grants to arriving asylum seekers. Simultaneously, tightened credible fear and reasonable fear standards and measures may lead to a reduction in the number of positive determinations and thus prevent the need for policy guidance that narrows the exercise of parole.

6.2.10 Unaccompanied Children Defined

Section 11(b) of EO13767 directed DHS to train all its personnel on how to implement statutes that govern the definition and treatment of unaccompanied children apprehended at the border to make sure that minors are properly treated, processed, receive the appropriate care and placement while in DHS custody, and when appropriate are safely repatriated in compliance with the U.S. law. The status of Unaccompanied Alien Children (UAC) entitles minors to special protections such as access to social services, placing them into a suitable care facility, and removing proceedings before an immigration judge instead of expedited removal. Besides, the memo mandated that, when developing guidance and training, DHS will create standardized procedures to confirm that minors initially determined to be UACs continue to fall within the statutory definition as they go through the removal process.⁹⁹³

⁹⁹² ICE, "Revised Parole Policy for Arriving Noncitizens with Credible Fear Claims," U.S. Immigration and Customs Enforcement, Accessed on September 7, 2022, <https://www.ice.gov/factsheets/credible-fear>

⁹⁹³ Hipsman and Meissner, *Trump Executive Order and DHS Implementation Memo on Border Enforcement: A brief review*, 9.

Under the 2002 Homeland Security Act, an “unaccompanied alien child is the one who: (1) has no lawful immigration status in the United States; (2) has not attained 18 years of age; (3) with regard to whom: (a) there is no parent or legal guardian in the United States; (b) no parent or legal guardian in the United States is available to provide care and physical custody”.⁹⁹⁴ Still, DHS has historically specified that a minor would be considered a UAC if s/he is “apprehended by the Border Patrol without parent or guardian present, even if the child has a parent elsewhere or other relatives in the United States”.⁹⁹⁵ EO13767 instructed DHS to determine UAC on the basis of a narrower interpretation of the Homeland Security Act. This would allow DHS to detain and deport children who have parents or other legal guardians present in the U.S. without providing them with the protection afforded under the TVPRA. Instead, the implementation memo suggests that such children would be subject to expedited removal. This change in procedures for minors apprehended at the border would likely quicken the deportation of large numbers of children from mostly Central America. It would also preclude minors with valid asylum claims from advancing them without legal representation or parents and relatives to assist them.

6.1.11 Authorization to Enter Federal Lands

Under Trump’s EO 13767, DHS in conjunction with the Interior Department and any other heads of agencies is instructed to take appropriate action to authorize access to all federal lands for federal, state, and local officers, and enable such officers to perform their duties pertaining to the enforcement of immigration law. As a matter of fact, more than 40% of the U.S.-Mexican border (820 linear miles) is managed by land management agencies affiliated with the U.S. Interior Department and the U.S. Forest Service affiliated with the U.S. Department of Agriculture.⁹⁹⁶ Cooperation on border security between DHS and these agencies occurs mainly under the 2006 Memorandum of Understanding (MOU) according to which they coordinate their efforts, share information, install surveillance equipment, road usage, access to wilderness areas, and mitigate environmental impacts.

However, the policy has been criticized for impeding security efforts on federal lands. Therefore, EO13767 can supersede parts of the MOU. Accordingly, the “Border Patrol will still

⁹⁹⁴ *Homeland Security Act of 2002*, PUBLIC LAW 107–296—NOV. 25, 2002, 107th Congress (Washington, DC: Library of Congress, 2002), 2205.

⁹⁹⁵ Hipsman and Meissner, *Trump Executive Order and DHS Implementation Memo on Border Enforcement: A brief review*, 9.

⁹⁹⁶ Hipsman and Meissner, *Trump Executive Order and DHS Implementation Memo on Border Enforcement: A brief review*, 10.

be required to comply with the existing federal land management laws, including the *National Environmental Policy Act* of 1969, *Wilderness Act* of 1964, and *Endangered Species Act* of 1973”.⁹⁹⁷ However, the secretary of DHS is allowed to waive all legal requirements, including environmental and federal land management laws, considered mandatory for expeditious construction of security barriers along the U.S. border.

6.1.12 Expanding Federal Prosecutions of Migrants Apprehended at the Border

EO13767 mandated that the Department of Justice (DOJ) must establish prosecution guidelines and allocate all appropriate resources to make sure that prosecutions of offenses having nexus to the southern border would be highly prioritized by federal prosecutors.⁹⁹⁸ Offenses with a nexus to the southern border mostly include smuggling, immigration, and fraudulent document-related crimes. Illegal entry and re-entry along with similar immigration violations accounted for 52% of all federal prosecutions in FY2016, which made them the single largest category of criminal offenses federal district courts handled as of 2017.⁹⁹⁹ The overwhelming majority of these prosecutions estimated at 87% originated with CBP while ICE accounted for only 10%.

The most common border-related crime is misdemeanor improper entry which accounted for 35,367 prosecutions in FY 2016; felony re-entry after deportation comes in second place with 28,930 prosecutions while transporting and harboring certain aliens comes in third place with 3,794 prosecutions.¹⁰⁰⁰ Still, less than 20% of the apprehended migrants at the border were prosecuted for border-related crimes. U.S. attorneys’ priorities as well as the capacity in their offices and in the federal courts reduced the number of migrants who can be prosecuted for these crimes. Therefore, the Attorney General is authorized by the terms of EO13767 to direct U.S. Attorneys to give an even higher priority and accord greater resources to the prosecution of related-border crimes, thereby increasing the share of convictions and federal prison sentences for such crimes.

The DHS implementation memo specified that the focus of EO13767’s sec. 13 will be on domestic and international efforts to dismantle transnational criminal organizations involved in human smuggling. It, therefore, instructed the CBP along with other DHS agencies to plan,

⁹⁹⁷ Ibid.

⁹⁹⁸ Trump, “Executive Order 13767- Border Security and Immigration Enforcement Improvements.”

⁹⁹⁹ Hipsman and Meissner, *Trump Executive Order and DHS Implementation Memo on Border Enforcement: A brief review*, 10.

¹⁰⁰⁰ Ibid., 10.

implement, and support enhanced operations; it also directed the ICE to expand its work and activities in Guatemala, Honduras, and El Salvador. Besides, it directed that task forces target individuals and organizations for offenses related to the smuggling of aliens across the U.S. border or trafficking, drug trafficking, illegal entry and re-entry, identity theft, visa fraud, unlawful use or possession of documents, and violent acts against individuals or property near or at the U.S. border.

6.1.13 Reporting Statistics on Border Apprehensions

The DHS Secretary shall, by the terms of EO13767, monthly report statistical data on aliens apprehended near or at the southwest border. The reporting method should be uniform across all DHS components “in a format that is easily understandable by the public”.¹⁰⁰¹ In reality, DHS monthly provided statistical data, for several years, on the overall apprehensions of aliens at the border including family units, UACs, and aliens from countries other than Mexico. Further, the report includes Border Patrol sector-level breakdowns of UACs and family units and introduced a range of port of entry figures. Trump’s administration, however, continued reporting these statistics with more details regarding the released information. For instance, since March 2017, the CBP started publishing Border Patrol recidivism rates as well as the apprehensions of individuals with criminal convictions at and between ports of entry.

6.1.14 Ending Catch-and-Release

Another sphere of immigration upon which Donald Trump had focused both as a candidate and as a President is ending the practice famously known as “catch and release” along the country’s southwestern border with Mexico. The term “catch and release” has no clear definition; however, as used by Trump’s administration, it seems “to refer to a series of U.S. government policies and practices that allow unaccompanied minors, some families, and some asylum seekers to be released into the community during their asylum and/or removal proceedings”.¹⁰⁰² Hence, under Trump’s administration, apprehended families, unaccompanied minors, and asylum seekers would not be released into the American community and society pending deciding about their removal or asylum.

¹⁰⁰¹ Trump, “Executive Order 13767- Border Security and Immigration Enforcement Improvements.”

¹⁰⁰² Pierce, Bolter, and Selee, *Trump’s First Year on Immigration Policy: Rhetoric vs. Reality* (Washington, DC: Migration Policy Institute, 2018), 4.

EO13767 instructed DHS to end this practice, but it did not explicitly define the measures according to which the DHS would proceed to achieve so. On the other hand, Trump's administration was concerned with the issue of unaccompanied minors as the then federal law as well as legal precedent require officials to release such children to a parent or a guardian pending ending processing their cases. This law, according to Trump's administration, seems to spur minor migrants to cross the border illegally.¹⁰⁰³ To address this issue, the Justice Department implemented two administrative policies. First, in April 2017, Jeff Sessions, the U.S. Attorney General issued a memo directing federal prosecutors to prioritize the prosecution of criminal immigration violations, like smuggling, illegal entry, and illegal reentry. Meanwhile, ICE started targeting sponsors of unaccompanied minors, usually parents, who paid for having their children brought to the United States. The point is that when taking sponsors (parents) away from their children, or scaring them to deter them from sponsoring them again, the administration expected that fewer children would be released from federal custody.¹⁰⁰⁴ Second, in May 2017, the Attorney General instructed federal prosecutors to pursue the most serious and readily provable offense in all cases where different charges could be applicable, including cases pertaining to immigration, hoping to enforce the law to the farthest possible extent. Accordingly, ICE and CBP may refer an apprehended illegal migrant for federal prosecution for illegal entry instead of deporting them back to Mexico. Reports noted that parents who illegally crossed the border with their children were increasingly being prosecuted for illegal entry in 2017.¹⁰⁰⁵

To make it easier to keep unaccompanied children and youth in custody to expedite their removal to their home country, Trump's administration recommended pursuing two legal changes: the first is an amendment to the provisions of the William Wilberforce Trafficking Victims Protection Reauthorization Act passed in 2008 (TVPRA of 2008), while the second is related to terminating the 1997 Flores Settlement Agreement. With regard to TVPRA of 2008, it allowed DHS to swiftly return apprehended minors from contiguous countries (Canada and Mexico); however, DHS is required to put all other apprehended minors into a formal removal process that may last for months and years. Under the amendment advocated by Trump's administration, all unaccompanied children will be treated similarly, just like those from Mexico and Canada. The administration brought this amendment owing to its belief that this

¹⁰⁰³ Ibid., 4.

¹⁰⁰⁴ Ibid., 4.

¹⁰⁰⁵ Ibid., 5.

provision encouraged child migrants to illegally cross the U.S.-Mexican border because they know they would not be subjected to a swift removal. As regards the 1997 Flores Agreement, the government is required to hold minors in the least restrictive setting with the possibility of releasing them to a family member or other adult sponsor if appropriate and to grant them bond hearings before an immigration judge. Under the administration's legal change, the Flores agreement would apply both to unaccompanied children and minors traveling with their parents.¹⁰⁰⁶ Accordingly, under the “catch and release” immigration policy, Trump’s administration will no longer permit apprehended families at the border to be released into the United States. In his remarks at the Council on Foreign Relations in Washington, D.C., Kevin McAleenan, Acting Secretary of Homeland Security stated the following:

With some humanitarian and medical exceptions, DHS will no longer be releasing family units from Border Patrol Stations into the interior... This means that for family units, the largest demographic by volume arriving at the border this year, the court-mandated practice of catch and release due to the inability of DHS to complete immigration proceedings with families detained together in custody — will have been mitigated.¹⁰⁰⁷

Concerning the strategy DHS is going to follow to carry out its new policy, the agency issued a statement maintaining that, in close collaboration with Central American Countries, migrant family units would be swiftly returned to their country of origin if they do not claim fear of return. However, if they claim fear of return, they will generally be returned to Mexico under Migration Protection Protocols (MPP). As a matter of fact, under the MPP, asylum-seeking migrants would be sent by the U.S. government to Mexico wherein they stay pending getting court dates in the United States to pursue their claims of protection. However, the MPP program, also known as “Remain in Mexico,” received a lot of criticism due to its failure to protect migrants with valid claims of fear of return to their countries of origin.¹⁰⁰⁸

6.2 Enhancing Interior Enforcement

From Trump’s inauguration on January 20, 2017, to September of the same year, the number of issued detainers doubled compared to its number in the same period the year before. This came as the embodiment of his promise as a presidential candidate when he vowed to “issue detainers for illegal immigrants who are arrested for any crime whatsoever and will be

¹⁰⁰⁶ Ibid., 5.

¹⁰⁰⁷ Richard Gonzales, “Trump Administration to End ‘Catch and Release’ Immigration policy, Says DHS Chief,” NPR, Accessed on September 13, 2022, <https://www.npr.org/2019/09/24/763645635/trump-administration-to-end-catch-and-release-immigration-policy-says-dhs-chief>

¹⁰⁰⁸ Gonzales, “Trump Administration to End ‘Catch and Release’ Immigration policy, Says DHS Chief.”

placed into immediate removal proceedings”.¹⁰⁰⁹ Hence, the issuance of detainers proliferated following the signature of Trump’s Executive orders that expedited the enforcement of removal proceedings.

A detainer is defined to be a request that a state or local law enforcement agency either hold an alien who has been apprehended and is suspected of being a removal alien for up to 48 hours past their release date to grant ICE enough time to dispatch resources to take them into federal custody or notify ICE in advance of their release date.¹⁰¹⁰ The ICE’s new policy, published on March 24, 2017, under the title “Policy Number 10074.2” defined a detainer as being “A notice that ICE issues to a federal, state, local, or tribal LEA [Law Enforcement Agency] to inform the LEA that ICE intends to assume custody of a removable alien in the LEA’s custody”.¹⁰¹¹ This means that more aliens would stay under ICE custody, thus increasing the number of noncitizens likely to be returned to their homeland.

In actual fact, ICE lodges detainers on individuals who have been arrested on criminal charges whom ICE suspects to be removable noncitizens. The detainer requests that the other LEA notifies ICE before a removable individual is released from custody; besides, it asks the LEA to maintain custody of noncitizens for a brief period of time so that ICE can take custody of the concerned individual in a safe and secure setting upon release of LEA’s custody. Broadly, ICE’s detainer serves three key functions: First, notifying an LEA that ICE intends to assume custody of an alien already in the LEA’s custody once the alien is no longer subject to the LEA’s detention; second, requesting information from an LEA about an alien imminent release so ICE may assume custody before the alien is released from the LEA’s custody; last, requesting that the LEA maintains custody of an alien who would otherwise be released for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) to provide ICE with enough time to assume custody of the alien.¹⁰¹²

While the ICE had the potential to increase the issuance of detainers, states and localities would decide whether to comply with these requests or not and thus whether removable immigrants would be placed into removable proceedings via this mechanism. Hence, when

¹⁰⁰⁹ Politico Staff, “Donald Trump Immigration Speech in Arizona.”

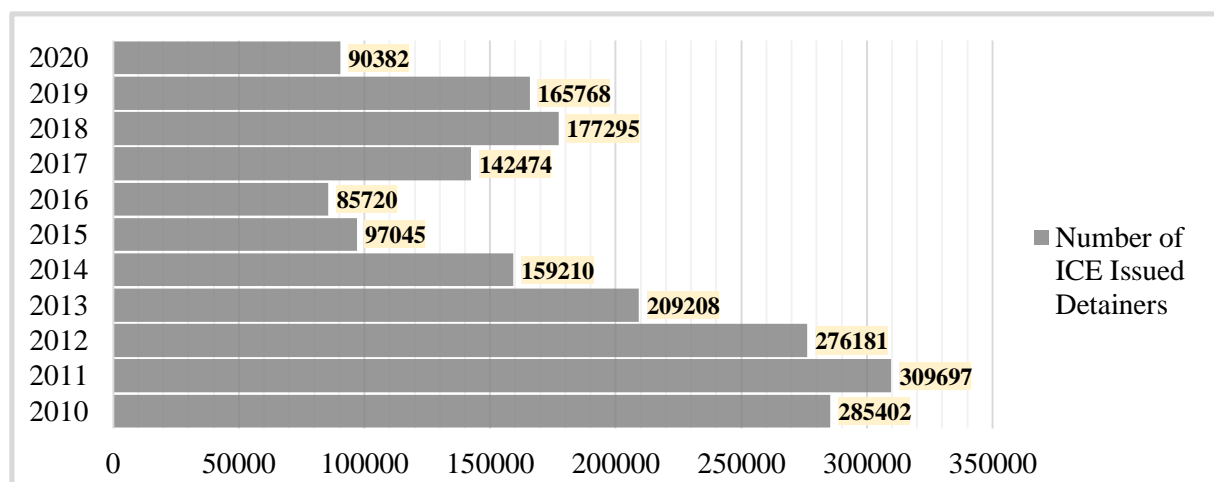
¹⁰¹⁰ Pierce, Bolter, and Selee, *Trump’s First Year on Immigration Policy: Rhetoric vs. Reality*, 7.

¹⁰¹¹ ICE, *Policy Number 10074.2: Issuance of Immigration Detainers by ICE Immigration Officers* (March 24, 2022), 3. <https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf>

¹⁰¹² U.S. Immigration and Customs Enforcement, “ICE Detainers: Frequently Asked Questions,” ICE, Accessed on September 14, 2022, <https://www.ice.gov/identify-and-arrest/detainers/ice-detainers-frequently-asked-questions>

LEAs fail to honor ICE’s detainers and release serious criminal offenders onto the streets, it certainly undermines ICE’s efforts and ability to carry out its mission, thus undermining its potential to protect the nation’s public safety.¹⁰¹³ Therefore, to guarantee that LEAs honor ICE’s detainers, Trump’s EO 13767 instructed ICE to publish weekly reports revealing LEAs that released aliens subject to detainers. Figure 28 shows statistics about ICE issued detainers spanning FY2010 to FY2020. According to these statistics, ICE-issued detainers surged during the presidency of Donald Trump, contrary to the last two years of Obama’s presidency. The number of issued detainers began to increase since Trump’s first year in the White House, as displayed in Figure 28, when the ICE issued 142,474 detainers in FY2017 compared to 85,720 FY2016.

Figure 28. Immigration and customs enforcement issued detainers, FY2010-20



Sources: Adapted from Trac Immigration, Immigration and Customs Enforcement Detainers, Accessed on September 14, 2022. <https://trac.syr.edu/phptools/immigration/detain/>

In addition, Figure 28 shows that ICE detainers decreased steadily from FY2011 through FY2016 from 309,697 in FY2011 to 85,720 in FY2016, reflecting Obama’s Administration's lenient stance toward enforcing immigration laws related to removing undesired illegal immigrants. However, contrary to his predecessor’s policy, President Trump labored to increase the issuance of detainers aiming at expediting the removal of illegal immigrants, thereby spiking following the issuance of EO13767 to reach its highest number of 177,295 in 2017, and thus reflecting the radical change under the Trump administration.

¹⁰¹³ U.S. Immigration and Customs Enforcement, “Detainers 101,” ICE, Accessed on September 14, 2022, <https://www.ice.gov/features/detainers>

6.2.1 Restore Secure Communities Program

Another important point in Donald Trump’s immigration policy consists in expanding the ties between the U.S. criminal justice system and immigration enforcement which Obama’s administration tried in some ways to curtail in its last years. “We will restore the highly successful Secure Communities program,” Trump pledged in his Arizona speech on August 31, 2016.¹⁰¹⁴ To achieve so, the Secure Communities Program comprises introducing an information-sharing designed to crosscheck people’s fingerprints booked into state or local police against the FBI and DHS database for indications that somebody may be a removable alien. The Secure Communities Program was deactivated by Obama’s administration during its two last years in the White House in favor of the Priority Enforcement Program (PEP), which enabled the local jurisdictions to determine the parameters of their cooperation with ICE. This level of discretion enabled localities to cooperate to various degrees: first, they could decide whether to hold people past their release dates or only notify the ICE in advance about someone’s release; second, they could choose whether to take these steps in all, some, or only rare cases. Before the establishment of the PEP in late 2014, 377 refused to honor some or all detainees; however, by the beginning of 2016, 277 of those jurisdictions responded positively to requests or notifications for detention.¹⁰¹⁵

Donald Trump, through EO13767, ordered DHS to reactivate the Secure Communities program which occurred shortly thereafter. Because Secure Communities determines any removable alien, its reactivation augments the removal chances for any unauthorized immigrant who interacts with the criminal justice system. Still, the impact of the Secure Communities program did not live up to expectations since many local jurisdictions refused to honor ICE detainees for less serious crimes.

The degree of cooperation of local jurisdictions with ICE is not alike for all of them. While some of them have limited cooperation with ICE, others were looking for ways to fully cooperate with ICE and are spurred to do so by Trump’s administration. According to section 287(g) of the INA, the federal government is allowed to enter into agreements with state and local LEAs in order to allow trained officers from those agencies to help with the investigation, apprehension, or detention of removable aliens. “We will expand and revitalize the popular 287(g) partnerships, which will help to identify hundreds of thousands of deportable aliens in

¹⁰¹⁴ Politico Staff, “Donald Trump Immigration Speech in Arizona.”

¹⁰¹⁵ Pierce, Bolter, and Selee, *Trump’s First Year on Immigration Policy: Rhetoric vs. Reality*, 8.

local jails, that we don't even know about," Trump declared to his supporters in his Arizona speech on August 31, 2016.¹⁰¹⁶ This promise was concretized through EO13767 which instructed DHS to increase outreach to states and localities to spur them to establish 287(g) agreements. Accordingly, between January and August 2017, the federal government managed to conclude 27 new 287(g) agreements, thus augmenting the total number of agreements on the books to 60.¹⁰¹⁷ Moreover, ICE approved 23 additional jurisdictions to conclude partnership in November 2017, even though none of them had been implemented as of early January 2018; consequently, if all the established partnerships come to fruition, ICE will be monitoring the most active portfolio of 83 agreements, thereby surpassing the previous peak of 72 in 2011.¹⁰¹⁸

6.2.2 Increase Mandatory Minimum Sentences for Illegal Reentry

Among the promises he delivered during his presidential campaign, Donald Trump pledged to ask Congress to pass legislation known as Kate's Law. "On my first day in office I am also going to ask Congress to pass Kate's Law, named for Kate Steinle... to ensure that criminal aliens convicted of illegal reentry receive strong mandatory minimum sentences. Strong", Trump pledged before his supporters in Arizona speech. Kate's law would increase mandatory minimum sentences for immigrants convicted of crimes who reentered the United States illegally after being deported previously. The backdrop of Kate law dates back to the 2015 incident when an unauthorized immigrant man, named Jose Inez Garcia Zarate, killed Kate Steinle, a 32-year-old woman from San Francisco, by shooting her.¹⁰¹⁹ Jose Inez Garcia Zarate had illegally crossed the border into the United States multiple times during the two decades prior to shooting Kate Steinle and was sentenced to jail three times for the crime of reentry.¹⁰²⁰

Garcia Zarate was found not guilty of murdering Kate Steinle in July 2015, sparking a heated national debate over illegal immigration. Garcia Zarate had been acquitted of first- and second-degree murder as well as involuntary manslaughter. Further, he was found not guilty of assault with a semi-automatic weapon; the court found him guilty only of having a firearm by a felon. On the other hand, he was released from San Francisco Jail just three months before

¹⁰¹⁶ Politico Staff, "Donald Trump Immigration Speech in Arizona."

¹⁰¹⁷ Pierce, Bolter, and Selee, *Trump's First Year on Immigration Policy: Rhetoric vs. Reality*, 7.

¹⁰¹⁸ *Ibid.*, 8.

¹⁰¹⁹ Elizabeth Zwirz, "Kate Steinle's Accused Killer Found Not Guilty of Murder, to Be Deported," FoxNews, Accessed on September 15, 2022, <https://www.foxnews.com/us/kate-steinles-accused-killer-found-not-guilty-of-murder-to-be-deported>

¹⁰²⁰ Pierce, Bolter, and Selee, *Trump's First Year on Immigration Policy: Rhetoric vs. Reality*, 8.

the Kate murder despite the request by the federal immigration authorities to detain him for removal. This is because San Francisco maintained its sanctuary ordinance for 30 years which means that city officials are prohibited from assisting ICE officials unless required by state or deferral law.¹⁰²¹ In response to San Francisco's non-cooperation, Tom Homan, ICE Deputy Director, stated that "San Francisco's policy of refusing to honor ICE detainers is a blatant threat to public safety and undermines the rule of law. This tragedy could have been prevented if San Francisco had turned the alien over to ICE, as we requested, instead of releasing him back onto the streets".¹⁰²²

The Kate Steinle Bill was passed in both chambers of Congress. In 2017, it passed the lower chamber of Congress but stalled in the upper Chamber. President Trump called on Congress to ensure the passage of the two immigration bills, Kate's Law and the No Sanctuary for Criminals Act.¹⁰²³ "Countless innocent Americans – including the loved ones of many families in the room with us today – have been killed by illegal immigrants with multiple deportations", Trump maintained when addressing a meeting in the White House Cabinet Room. He added that "The bill will close the dangerous loopholes exploited by criminals, gang members, drug dealers, killers, terrorists. MS-13 [Mara Salvatrucha, gang that originated in Los Angeles] is a prime target".¹⁰²⁴ On the other hand, the two bills were criticized severely by the American Civil Liberties Union (ACLU) which issued a statement maintaining that the true intent of these two bills is to empower the deportation force and the anti-immigrant agenda of Trump's administration. Therefore, the ACLU urged the House of Representatives to reject the two bills to defend the U.S. Constitution and protect people's rights regardless of their backgrounds. According to the ACLU, Kate's law restricts immigrant's ability to challenge prior removal orders in court regardless of whether they were lawfully obtained; in addition, the No Sanctuary Criminal Act would force state and local law enforcement agencies to violate the Fourth Amendment to the U.S. Constitution by requiring them to imprison individuals without due process at the behest of the federal Immigration Agents.¹⁰²⁵ In support of the two bills, the ICE Deputy Director said that the law if passed, would provide officers and

¹⁰²¹ Christina Maxouris and Amanda Watts, "Immigrant Acquitted of Murder in Kate Steinle Shooting Is no Competent to Stand Trial Due to Mental Illness, Evaluator Says", CNN, Accessed on September 15, 2022, <https://edition.cnn.com/2020/02/15/us/kate-steinle-immigrant-mental-illness/index.html>

¹⁰²² Zwirz, "Kate Steinle's Accused Killer Found Not Guilty of Murder, to Be Deported."

¹⁰²³ Swati Bhasin, "What Is Kate's Law? Trump Urges Congress to Pass Immigration Bills", IBT, Accessed on September 15, 2022, <https://www.ibtimes.com/what-kates-law-trump-urges-congress-pass-immigration-bills-259151>

¹⁰²⁴ Bhasin, "What Is Kate's Law? Trump Urges Congress to Pass Immigration Bills."

¹⁰²⁵ Ibid.

prosecutors with more tools to protect people because “stiffer penalties for reentry offenders make sense”.¹⁰²⁶

6.2.3 Reforming Laws on Interior Enforcement

Another promise fulfilled by President Donald Trump was reforming laws on interior enforcement. This was manifested in the passage of the *Machael Davis, Jr. and Danny Oliver in Honor of State and Local Law Enforcement Act* or rather the Davis-Oliver Act of 2017. Passed on May 16, 2017, the Davis-Oliver Act was named after two Californian police officers¹⁰²⁷ who were murdered by a thirty-four-year-old undocumented immigrant, called Luis Enrique Monroy Bracamonte while doing their job in the line of duty.¹⁰²⁸ Luis Enrique who was illegally in the United States was booked on suspicion of murder, attempted carjacking and murder following the deadly shootings of the two North California sheriff’s deputies in Sacramento and Placer counties. In like manner, Enrique’s wife, Janelle Marquez Monroy, was booked on suspicion of attempted murder and carjacking; besides, officials maintained that she was with her husband during the six-hour rampage.

The rampage began when Sacramento County Sheriff’s Deputy, Danny Oliver, who was on patrol with his partner, stopped to check on a suspicious car in a Motel 6 parking lot. Evidence provided by officials maintained that Luis Enrique shot Oliver from a car, causing him deadly wounds. Thereafter, the couple, Luis Monroy and his wife attempted to carjack a motorist about a mile away; however, the driver, later identified as Anthony Holmes, declined to turn over his keys and was shot in his head.¹⁰²⁹ Afterward, the couple stole another car after failing to commandeer Holmes’ car and drove to Auburn, where they were confronted by County Sheriff’s Det. Michael David Davis Jr. and Deputy Jeff Davis. As a result, Luis Monroy fired both lawmen where Jeff Davis was wounded in the arm and Michael Davis died later.¹⁰³⁰

Luis Enrique Monroy was illegally in the United States and twice deported from the country. According to U.S. Immigration and Customs Enforcement, he was deported to Mexico in 1997 after being arrested and convicted in Arizona for possession of narcotics for sale. Then,

¹⁰²⁶ Ibid.

¹⁰²⁷ Laurence Benenson, “House Considering Bill Increasing Immigration Enforcement, H.R. 2431”, National Immigration Forum, Accessed on November 9, 2022, <https://immigrationforum.org/article/house-considering-bill-increasing-immigration-enforcement-h-r-2431/>

¹⁰²⁸ Paul Pringle and James Rainey, “After Fatal Shootings, Officials Try to Find a Reason for the Violence”, Los Angeles Times, Accessed on November 9, 2022, <https://www.latimes.com/local/crime/la-me-placer-shootings-follow-20141027-story.html>

¹⁰²⁹ Paul Pringle and James Rainey, “After Fatal Shootings, Officials Try to Find a Reason for the Violence”.

¹⁰³⁰ Ibid.

he was arrested and sent back to Mexico for the second time in 2001. Therefore, during his 2016 presidential campaign, Donald Trump took advantage of Monroy's case to promote political support for his candidacy and immigration policy. This manifested in his promise to his voters in his Phoenix speech in Arizona, when he promised to pass a law named for Detective Michael Davis and Deputy Sheriff Danny Oliver.

Another reform I [Donald Trump] am proposing is the passage of legislation named for Detective Michael Davis and Deputy Sheriff Danny Oliver, two law enforcement officers recently killed by a previously-deported illegal immigrant. The Davis-Oliver bill will enhance cooperation with state and local authorities to ensure that criminal immigrants and terrorists are swiftly identified and removed.¹⁰³¹

As stated by Donald Trump, the Davis-Oliver bill aims at identifying swiftly terrorists and criminal immigrants through enhancing cooperation between state and local authorities. This bill was finally passed by Congress on May 16, 2017, after having been previously introduced several times since the murder of the two law enforcement officers, Detective Michael Davis and Deputy Sheriff Danny Oliver, in 2014.¹⁰³² Broadly, the Davis-Oliver Act would significantly reshape the U.S. interior immigration enforcement by forcing state and local law enforcement authorities to focus their limited resources on immigration enforcement rather than on existing public safety threats.¹⁰³³ Additionally, the Act would enable state and local authorities to pass their immigration laws along with authorizing state and localities to enforce federal immigration laws, thereby overturning “the Supreme Court’s Arizona v. U.S. decision that reiterated the longstanding principle that immigration enforcement is a federal responsibility”.¹⁰³⁴ Meanwhile, the Act would prevent jurisdictions from having or adopting community trust policies aiming at preventing officers from inquiring about the immigration or citizenship status of individuals, which may ruin the trust between immigrant communities and law enforcement.

The Oliver-Davis Act also required state and local law enforcement agencies to enforce federal immigration detainers determined to be voluntary by courts. This would immunize states and localities against civil liability for good-faith enforcement of detainers but would do so only if it does not go against the provisions of the Fourth Amendment to the U.S. Constitution via avoiding detaining individuals without having warrants or in the absence of a probable cause determination. Moreover, the Act granted victims of felony offenses and their families a private

¹⁰³¹ Politico Staff, “Donald Trump Immigration Speech in Arizona.”

¹⁰³² Pierce, Bolter, and Selee, *Trump’s First Year on Immigration Policy: Rhetoric vs. Reality*, 9.

¹⁰³³ Laurence Benenson, “House Considering Bill Increasing Immigration Enforcement, H.R. 2431”.

¹⁰³⁴ *Ibid.*

right of action enabling them to sue jurisdictions that did not honor detainers if the perpetrator of the crime was the subject of the detainer that was not honored.¹⁰³⁵ Further, states and localities found to be in violation of these provisions could be deprived of a variety of federal grants pertaining to law enforcement, national security, terrorism, naturalization, or immigration. However, conditioning federal grants in that manner may be in direct opposition with court decisions obstructing the federal government from obliging states and localities to carry out federal priorities.

The unlawful presence of undocumented immigrants in the United States, which is currently (under Trump’s administration) a civil offense, would also be criminalized under Oliver-Davis Act. This would result in making criminals out of millions and subjecting them to criminal prosecution. In addition to that, the Act increased penalties for unlawful entry and reentry.

Any alien who violates any provision under paragraph (1) (A) shall, for the first violation, be fined under title 18, United States Code, imprisoned not more than 6 months, or both; (B) shall, for a second or subsequent violation, or following an order of voluntary departure, be fined under such title, imprisoned not more than 2 years (or not more than 6 months in the case of a second or subsequent violation of paragraph (1)(E)), or both; (C) if the violation occurred after the alien had been convicted of three or more mis demeanors or for a felony, shall be fined under such title, imprisoned not more than 10 years, or both; (D) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 30 months, shall be fined under such title, imprisoned not more than 15 years, or both; and (E) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 60 months, such alien shall be fined under such title, imprisoned not more than 20 years, or both.¹⁰³⁶

Additionally, the Oliver-Davis Act set forth new grounds for the deportation of undocumented immigrants along with restricting discretionary relief from deportation or removal. Also, the Act increased the number of individuals subjected to mandatory detention by updating the federal crime database by adding new categories of U.S. immigration violators. Refugees would be also targeted by the Oliver-Davis Act by depriving them of the humanitarian protections granted to them as well as other victims of violence.¹⁰³⁷ Moreover, the Act would bar some of them from other benefits such as adjusting their status or obtaining American citizenship.

¹⁰³⁵ Ibid.

¹⁰³⁶ 115th Congress (2017-2018), “H.R.2431- Michael Davis, Jr. and Danny Oliver in Honor of State and Local Law Enforcement Act”, Congress. Gov, Accessed on November 10, 2022, <https://www.congress.gov/bill/115th-congress/house-bill/2431/text>

¹⁰³⁷ Laurence Benenson, “House Considering Bill Increasing Immigration Enforcement, H.R. 2431”.

Placing limits on the extension of Temporary Protected Status designations was also addressed by Oliver-Davis Act. In this regard, the Act required Congressional action for extensions. Further, the Act provided for the continued detention of children in family detentions, creating additional screening and vetting requirements for those seeking visas or petitioning for admission to the United States. On the other hand, the Act provided ICE officers with a range of powers to ensure the proper enforcement of immigration laws and protect the nation against illegal immigrants' offenses. Accordingly, they are authorized to arrest illegal immigrants for any offense against the United States, for any felony, and for bringing in, transporting, or harboring certain aliens, or inducing them to enter; additionally, ICE officers are authorized to execute warrants of arrest for administrative immigration violation or to execute warrants of criminal arrest; and to carry firearms.

Because of the sensitivity of their job which mostly makes them in direct confrontation with dangerous illegal immigrants, ICE officers' security matters a lot. Therefore, to ensure the proper execution of their job as well as their safety while doing their job, the Act allowed ICE officers to carry firearms to defend themselves against potential shooting attempts and to make sure they can stop and arrest dangerous illegal immigrants, thereby ensuring the safety and national security of Americans. The Act also ordered the Secretary of DHS to provide all ICE officers with the required tools, weapons, and body armor necessary for their safety as well as appropriate training that is mandatory for every agent before being well qualified to be on the front line before dangerous illegal immigrants.

The Secretary of Homeland Security shall ensure that every U.S. Immigration and Customs Enforcement deportation officer on duty is issued high-quality body armor that is appropriate for the climate and risks faced by the agent. Enough body armor must be purchased to cover every agent in the field... Such Secretary shall ensure that U.S. Immigration and Customs Enforcement deportation officers are equipped with weapons that are reliable and effective to protect themselves, their fellow agents, and innocent third parties from the threats posed by armed criminals.¹⁰³⁸

In summary, by criminalizing the majority of undocumented immigrants and significantly ramping up the role of localities in the enforcement of immigration law, the Oliver-Davis Act seemed to drive immigrants deeper into the shadows. Moreover, the Act may harm the so-called 'community trust' as it lessens or lets up the inclines of immigrant victims and witnesses to cooperate with state and local law enforcement. In other words, enforcing the Oliver-Davis Act may strain local enforcement agencies' limited resources, thereby changing

¹⁰³⁸ Ibid.

the focus of law enforcement from those illegal immigrants threatening the safety of citizens to those who are merely out of status.

6.2.4 Hire More ICE and Border Patrol Agents

Increasing border agents for enhancing the enforcement of immigration law was a promise Donald Trump announced to his supporter during his 2016 presidential campaign. He considers that laws could be meaningful only if they are implemented, thereby gaining the respect of the whole country.

In a Trump Administration, all immigration laws will be enforced. As with any law enforcement activity, we will set priorities. But, unlike this Administration [Obama's administration], no one will be immune or exempt from enforcement – and ICE and Border Patrol officers will be allowed to do their jobs. Anyone who has entered the United States illegally is subject to deportation – that is what it means to have laws and to have a country.¹⁰³⁹

Additionally, it is noteworthy to mention that before issuing this order, President Trump issued a memorandum, entitled “Memorandum on the Federal Civilian Employee Hiring Freeze” on January 23, 2017, to be applied to all vacant positions in the executive branch, except for the military personnel.

...I hereby order a freeze on the hiring of Federal civilian employees to be applied across the board in the executive branch. As part of this freeze, no vacant positions existing at noon on January 22, 2017, may be filled and no new positions may be created, except in limited circumstances. This order does not include or apply to military personnel. The head of any executive department or agency may exempt from the hiring freeze any positions that it deems necessary to meet national security or public safety responsibilities. In addition, the Director of the Office of Personnel Management (OPM) may grant exemptions from this freeze where those exemptions are otherwise necessary.¹⁰⁴⁰

So, the director of OPM has the authority to grant exemptions where necessary. Besides, hiring Border Patrol agents, asylum officers, and immigration judges require exemptions under the Hiring Freeze memorandum.

Donald Trump gave much importance to increasing the number of officers to ensure the enforcement of the U.S. immigration law. To this end, EO 13767' sec. 16 addressed this issue

¹⁰³⁹ Politico Staff, “Donald Trump Immigration Speech in Arizona.”

¹⁰⁴⁰ Donald J Trump, “Memorandum on the Federal Civilian Employee Hiring Freeze,” The American Presidency Project, Accessed on September 9, 2022, <https://www.presidency.ucsb.edu/documents/memorandum-the-federal-civilian-employee-hiring-freeze>

by instructing the Office of Personnel Management (OPM) to take appropriate action that would facilitate hiring personnel required to implement this order.

Accordingly, EO13767 mandates that the DHS should take appropriate actions in order to hire 5,000 additional Border Patrol agents, making sure that such agents enter on duty and are assigned to duty stations as soon as is practicable. Furthermore, DHS was instructed to hire 10,000 more ICE agents to enforce his executive orders pertaining to immigration.¹⁰⁴¹ This decision was nothing short of the incarnation of his promise to his voters during his 2016 presidential campaign as he promised to triple the number of ICE agents and hire 5,000 additional Border Patrol agents. He said in his own words: “We are going to triple the number of ICE deportation officers... We’re also going to hire 5,000 more Border Patrol agents and put more of them on the border, instead of behind desks. We will expand the number of Border Patrol Stations”.¹⁰⁴²

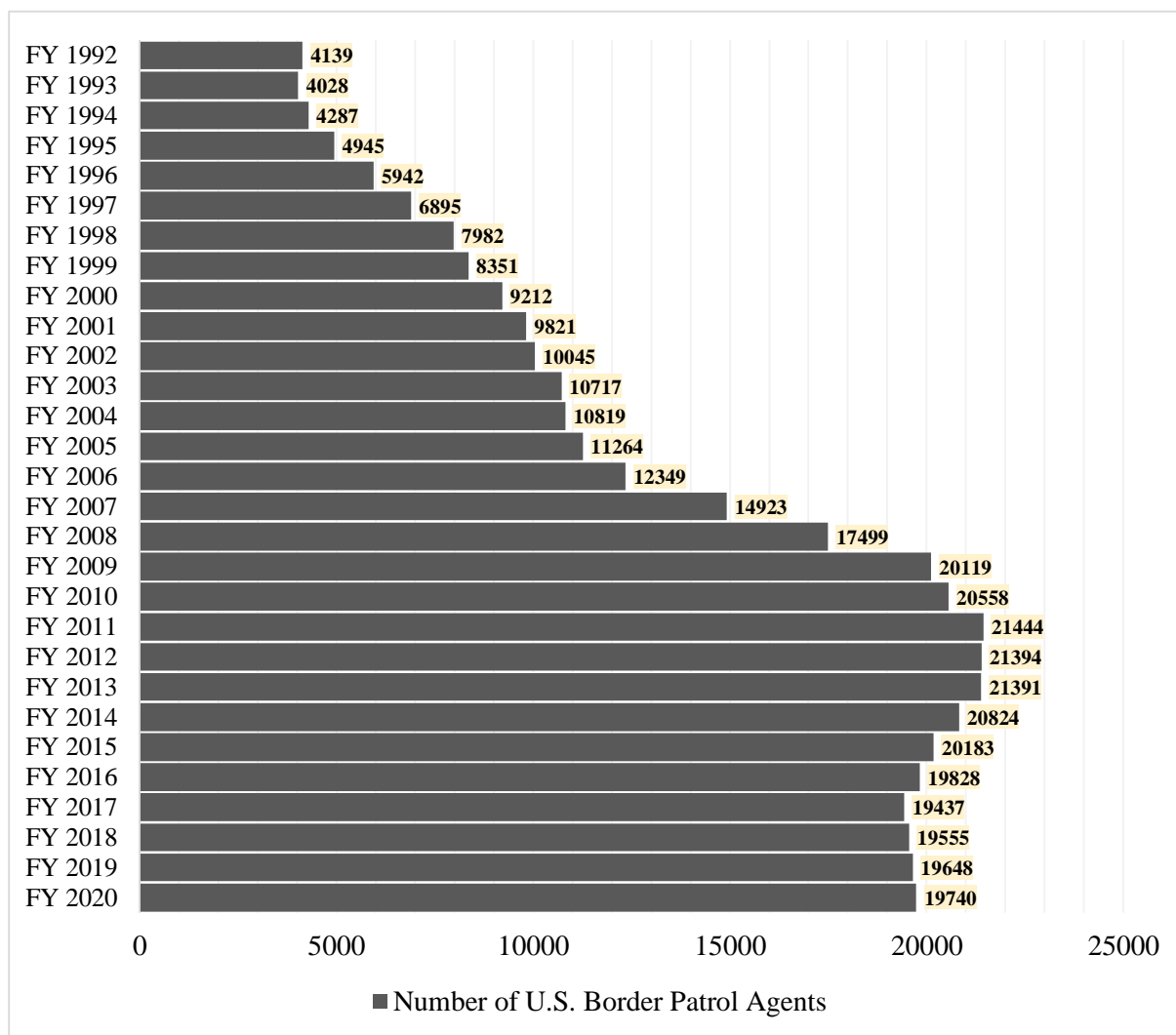
Accordingly, in his EO13767, President Trump ordered the Department of Homeland Security DHS to hire 10,000 additional ICE agents, which would raise their current number by about 50%, and hire 5000 additional Border Patrol officers.¹⁰⁴³ Figure 29 shows Border Patrol agent nationwide staffing by fiscal year during the three past decades, from 1992 to 2020.

¹⁰⁴¹ Brian Naylor, “Trump’s Plan to Hire 15,000 Border Patrol and ICE Agents Won’t Be Easy”, npr, Accessed on November 19, 2022, <https://www.npr.org/2017/02/23/516712980/trumps-plan-to-hire-15-000-border-patrol-and-ice-agents-wont-be-easy-to-fulfill>

¹⁰⁴² Politico Staff, “Donald Trump Immigration Speech in Arizona.”

¹⁰⁴³ Pierce, Bolter, and Selee, *Trump’s First Year on Immigration Policy: Rhetoric vs. Reality*, 10.

Figure 29. Border patrol agent nationwide staffing by fiscal year



Source: adapted from U.S. Customs and Border Patrol

Statistics displayed in Figure 29 show that the number of ICE agents did not remarkably increase, thereby achieving Trump’s goal of increasing immigration agents appeared to be difficult to be concretized on the ground; it encountered serious difficulties. The first challenge in the way of achieving this decision was securing funds from Congress which has not yet appropriated the right budget to meet the financial requirements for such an increase in the size of the ICE as well as the Border Patrol agent.¹⁰⁴⁴ Furthermore, the relevant agencies struggled to hire and retain enough staff to maintain their currently authorized numbers. These challenges were confirmed by acting Inspector General John Kelly of the Department of Homeland Security when appeared before the House Appropriations Committee on Homeland Security on March 6, 2019, voicing the difficulties faced by his agencies maintaining the following: “They

¹⁰⁴⁴ Ibid.

will be challenged to achieve their goals. They have not achieved their goals in the past... Even if the agency succeeds in recruiting and hiring thousands of agents, it wouldn't be able to train them properly".¹⁰⁴⁵ This declaration depicted well the challenges encountered on the ground by agencies responsible for recruiting new agents which may obstruct achieving Trump's order to hire 5,000 Border Patrol agents as well as 10,000 additional ICE officers, thus creating a serious hindrance to the enforcement of his executive orders related to immigration.

Figure 29 shows that the number of Border Patrol agents kept increasing for two decades and under multiple administrations between 1994 and 2011, reaching its peak in 2011 with 21,444. Thenceforth, the agency began shedding agents till 2018 when it witnessed a small increase. Republican Representative from Texas, Dan Crenshaw, a member of the House Homeland Security Subcommittee on Oversight, Management, and Accountability, commented on this issue at a hearing on the agency's hiring challenges saying "These personnel shortages create national security risks. They slow the movement of commerce and put an additional strain on already overworked border enforcement workforce".¹⁰⁴⁶ These shortages and challenges were ascribed to the difficult and long process according to which new agents would be hired. As a matter of fact, the lengthy process includes a lengthy polygraph that a majority of two-thirds of applicants usually fail. This issue coupled with DHS's lack of sufficient human resources staff necessary to conduct efficient hiring, thereby taking nine months on average to hire a new agent. Therefore, according to the DHS Office of Inspector General, hiring 5,000 new agents determined by President Donald Trump requires receiving 750,000 applications.¹⁰⁴⁷

Besides, what complicated the task of the DHS is the difficulty of retaining its staff as it loses an average of 904 agents per year while hiring only 523 per year.¹⁰⁴⁸ This reality can be explained in light of the difficult working conditions Border Patrol agents have to adapt themselves to. In this regard, it is notable to voice some facts about their work in the line of duty. They are regularly asked to work overtime; besides, their work schedules can change quickly. Additionally, they are frequently required to patrol some of the dangerous parts or sections of the border which may cause casualties in their ranks due to attacks from dangerous illegal immigrants and smugglers. For instance, 41 Customs and Border Protection employees

¹⁰⁴⁵ Alen Gomez, "Border Patrol Struggling to Hire, Keep Agents, but May Never Get 5,000 Trump Ordered", USATODAY, Accessed on November 21, 2022, <https://www.usatoday.com/story/news/politics/2019/03/29/border-patrol-struggling-to-hire-5000-agents-president-trump/3155869002/>

¹⁰⁴⁶ Alen Gomez, "Border Patrol Struggling to Hire, Keep Agents, but May Never Get 5,000 Trump Ordered", /

¹⁰⁴⁷ Pierce, Bolter, and Selee, *Trump's First Year on Immigration Policy: Rhetoric vs. Reality*, 10.

¹⁰⁴⁸ Ibid.

have died in the line of duty in the past between 2002 and 2019, according to CBP data.¹⁰⁴⁹ Moreover, the mental toll is another reason that constitutes a serious hindrance to the hiring process.

Agents are compelled to work in some of the most remote outposts along the country’s long border. For example, in the section from the U.S. border crossing Lakeville, Arizona, there is a community of 50 people that features one gas station as well as one small grocery store. Further, the nearest medical clinic and school are 39 miles away and the groundwater has traces of arsenic. Such stress may help in clarifying the significant suicide rate among CBP employees approximately estimated at 28% which is much higher than any other law enforcement agency. Table 10 shows CBP statics about Rates of suicide among CBP agents during the period spanning FY2007-2019.

Table 10. Rates of suicide among CBP agents

Rate of Suicides in CBP			
FY	Pop	Suicides	Rate per 100,000
2007	48,254	6	12.43
2008	54,012	7	12.96
2009	58,518	14	23.92
2010	58,945	12	20.36
2011	60,094	8	13.31
2012	60,163	8	13.3
2013	59,913	7	11.68
2014	59,546	5	8.4
2015	59,587	10	16.78
2016	59,221	10	16.89
2017	59,178	10	16.90
2018	60,014	10	16.66
2019	-	8	-
Total	-	115	15.30

Source: U.S. Customs and Border Protection

According to CBP data, more than 115 CBP employees, including 5 women and 105 men,¹⁰⁵⁰ committed suicide between 2007 and 2019, as shown in Table 10.¹⁰⁵¹ Such evidence portrays the risks and challenges CBP agents face while doing their job, and as a result, it discourages Americans to apply for joining CBP ranks which negatively affects the enforcement of Trump’s immigration policy.

¹⁰⁴⁹ Alen Gomez, “Border Patrol Struggling to Hire, Keep Agents, but May Never Get 5,000 Trump Ordered”.

¹⁰⁵⁰ U.S. Customs and Border Protection, CBP Employee Suicide Report: Data from 2007-Present, Washington, DC: Office of Human Resources Management, 2019.

¹⁰⁵¹ Justin Rohrlich, “US Border Officer Die by Suicide 30% More Often than Other Cops”, Quartz, Accessed on November 21, 2022, <https://qz.com/1738901/us-border-officers-die-by-suicide-30-percent-more-often-than-other-cops>

In order to overcome the aforementioned challenges, lawmakers passed several bills in 2017 aiming at speeding up the hiring process by waiving the polygraph exam for certain applicants. Two bills passed out of committee, but one entitled the *Anti-Border Corruption Reauthorization Act of 2017*, enacted on July 28, 2017, passed the House in June 2017, though it has not moved in the Senate. Among other things, the Act provided for the following:

Notwithstanding any other provision of law, the Secretary of Homeland Security is authorized to waive all legal requirements the Secretary, in the Secretary's sole discretion, determines necessary to ensure the expeditious construction, installation, operation, and maintenance of the tactical infrastructure and technology under this section. Any such decision by the Secretary shall be effective upon publication in the Federal Register.¹⁰⁵²

However, opponents of these measures raised concerns related to safety and national security as the measures would not be secure enough in the absence of a universal and strict application of the polygraph exam.¹⁰⁵³

With regard to hiring additional ICE agents, Congress authorized 21,570 personnel in FY2017, a similar number to past years. However, the ICE did not manage to fill all these positions and thus was expected to have over 1,000 vacancies by the end of the year. Similarly, the ICE encountered some difficulties to hire new agents but they were not as pronounced as those encountered by CBP. Accordingly, to hire the 10,000 required agents ordered by President Donald Trump in his executive order, the DHS Office of Inspector General estimated that 501,750 applications ought to be received by ICE to be able to recruit 10,000 agents.¹⁰⁵⁴

When lawmakers discussed FY2018 spending, President Trump requested \$314 million to authorize staffing 500 Border Patrol agents and 1,000 additional ICE personnel, both the House of Representatives and the Senate approved appropriating the required budget to hire 500 Border Patrol agents. The House of Representatives had also supported Trump's request for 1,000 new ICE agents; however, the Senate's bill approved hiring only 150 additional ICE criminal investigators, declining Trump's request for 850 deportation officers.¹⁰⁵⁵

¹⁰⁵² 115th Congress (2017-2018), *H.R.3548 – Border Security for America Act of 2017*. Congress.gov. Accessed on November 21, 2022. <https://www.congress.gov/bill/115th-congress/house-bill/3548/text>

¹⁰⁵³ 115th Congress (2017-2018), *H.R.3548 – Border Security for America Act of 2017*.

¹⁰⁵⁴ Pierce, Bolter, and Selee, *Trump's First Year on Immigration Policy: Rhetoric vs. Reality*, 11.

¹⁰⁵⁵ *Ibid.*

6.2.5 Establishing a Deportation Task Force

Another basic pillar of Trump’s immigration policy is the creation of a new body called the Deportation Task Force, essentially tasked with identifying and quickly removing from America the most dangerous criminal illegal immigrants. This was nothing short of the embodiment of his promise to his voters during his 2016 presidential campaign as he announced: “Within ICE, I am going to create a new special Deportation Task Force, focused on identifying and removing quickly the most dangerous criminal illegal immigrants in America who have evaded justice”.¹⁰⁵⁶ This idea garnered considerable media attention during Trump’s presidential campaign. This idea reemerged upon his election to the White House, when the Speaker of the House, Paul Ryan, a Republican Representative from Wisconsin, stated in a televised town hall in January 2017 that such a force is not happening.¹⁰⁵⁷ Later, in February of the same year, the Associated Press reported that the DHS had considered a proposal aiming at entering into 287(g) agreements with the National Guard in 11 border states to authorize their troops to apprehend illegal immigrants. However, the DHS maintained that the bill was just a pre-decisional draft since it did not reach the Secretary, thereby unseriously considering it at the time of the report.

However, even though Trump’s administration did not create a designated deportation task force, it increased apprehensions and removals in the interior of the country. Effectively, in the period between Trump’s inauguration on January 20 and the end of FY2017 on September 30, 2017, apprehensions of immigrants in the interior of the country increased by 42% compared to the same period in FY2016.¹⁰⁵⁸ Furthermore, the number of arrests of Immigrants with criminal convictions increased but at a much slower rate. However, while the overall removals decreased under Trump’s administration, largely due to the decrease in border crossings, the removals of immigrants from the interior of the country increased also by 37% in the first nine months following Trump’s inauguration, compared to the same period in 2016, largely due to enlarging enforcement priorities as well as the increased attention to interior enforcement.¹⁰⁵⁹

Following issuing his EO 13768, *Enhancing Public Safety in the Interior of the United States*, which outlined the administration’s immigration enforcement and Removal priorities,

¹⁰⁵⁶ Politico Staff, “Donald Trump Immigration Speech in Arizona.”

¹⁰⁵⁷ Pierce, Bolter, and Selee, *Trump’s First Year on Immigration Policy: Rhetoric vs. Reality*, 11.

¹⁰⁵⁸ *Ibid.*

¹⁰⁵⁹ *Ibid.*, 12.

the DHS's implementation memorandum of February 20, 2017, entitles *Enforcement of the Immigration Laws to Serve the National Interest*, set forth directions for the implementation of the policies outlined in EO 13768. Accordingly, ICE's enforcement focus was expanded to include removable aliens who:

(1) have been convicted of any criminal offense; (2) have been charged with any criminal offense that has not been resolved; (3) have committed acts which constitute a chargeable criminal offense; (4) have engaged in fraud or willful misrepresentation in connection with any official matter before a governmental agency; (5) have abused any program related to receipt of public benefits; (6) are subject to a final order of removal but have not complied with their legal obligation to depart the United States; or (7) in the judgment of an immigration officer, otherwise pose a risk to public safety or national security.¹⁰⁶⁰

More importantly, DHS has indicated that classes or categories of removable aliens will not be exempted from potential enforcement, anymore. Therefore, the department that played a key role in incarnating this policy is the Enforcement and Removal Operations (ERO). The latter is one of the main directorates of ICE that upholds the immigration laws at, within, and beyond U.S. borders. Furthermore, ERO's work is very sensitive and of great importance as it is tasked with enforcing immigration laws against those who pose a genuine threat to public safety and national security, or who otherwise undermine the integrity of the American immigration system:

ERO protects the homeland through the arrest and removal of noncitizens who undermine the safety of our communities and the integrity of our immigration laws... ERO operations target public safety threats, such as convicted criminal noncitizens and gang members, as well as individuals who have otherwise violated our nation's immigration laws, including those who illegally re-entered the country after being removed and immigration fugitives ordered removed by federal immigration judges. ERO deportation officers assigned to INTERPOL also assist in targeting and apprehending foreign fugitives or Fugitive Arrest and Removal (FAR) cases who are wanted for crimes committed abroad and who are now at-large in the U.S."¹⁰⁶¹

Therefore, ERO is considered the striking power Donald Trump's administration would rely on in order to enforce its tough measures pertaining to arresting aliens posing a serious threat to public safety and U.S. national security in order to deport them from the United States. Indeed, the change in the U.S. immigration policy following the issuance of Trump's EO13768 was reflected by ERO's enforcement statistics in FY2017 which showed increases in the three main enforcement actions: ICE ERO administrative arrests, book-ins of aliens to ICE detention

¹⁰⁶⁰ U.S. Immigration and Customs Enforcement, *Fiscal Year 2017 ICE Enforcement and Removal Operations Report* (U.S. Department of Homeland Security, 2017), 1.

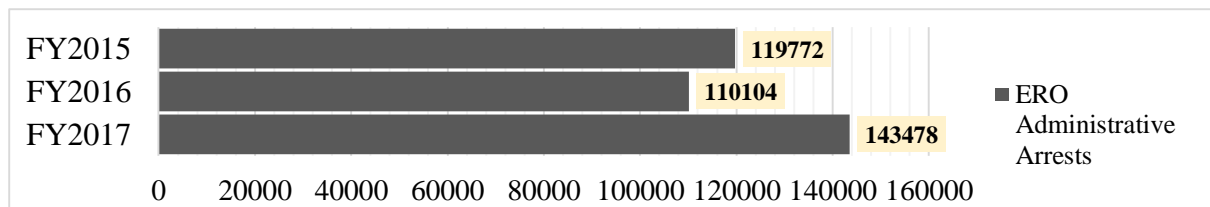
¹⁰⁶¹ U.S. Immigration and Customs Enforcement. "Enforcement and Removal Operations". ICE. <https://www.ice.gov/about-ice/ero>

facilities resulting from ICE apprehensions, and ICE ERO removals of aliens as a result of ICE’s interior enforcement.¹⁰⁶²

6.2.6 ICE ERO Administrative Arrests

An administrative arrest is defined to be the arrest of an alien for a civil violation of immigration laws.¹⁰⁶³ Accordingly, the ICE ERO registered 143,470 administrative arrests in FY2017, the highest number compared to what was registered in the two previous fiscal years where 110,104 administrative arrests in FY2016 with 33,366 more arrests representing a 30% increase, and 119,772 administrative arrests in FY2015 with 23,698 more arrests representing a 19.78% increase as revealed by Figure 30.

Figure 30. FY2015-FY2017 ERO administrative arrests



Source: Adapted from U.S. Immigration and Customs Enforcement, Fiscal Year 2017 ICE Enforcement and Removal Operations Report

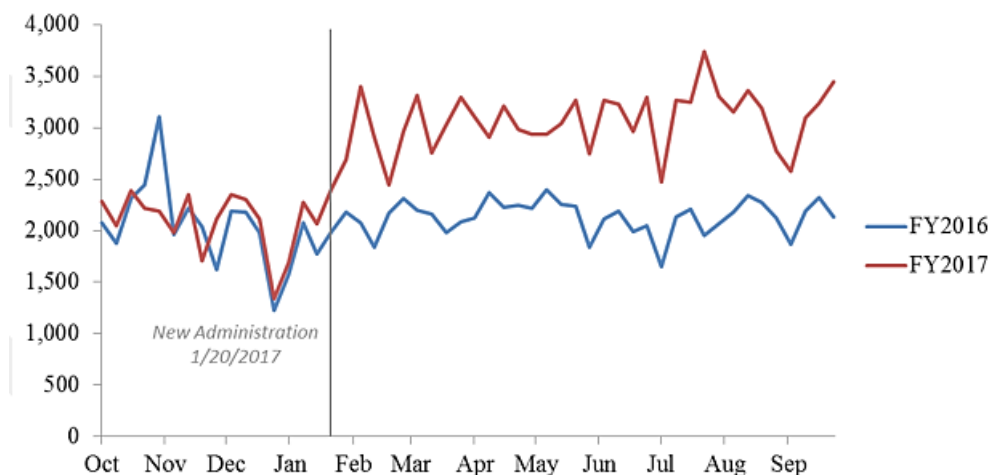
Administrative arrests started to proliferate following the issuance of EO13768 on January 25, 2017, as illustrated in Figure 31. The latter shows that administrative arrests witnessed a considerable increase after Trump’s administration took political authority which manifested in the rise of arrests during the period from January 20, 2017, to the end of FY2017, compared to the same period of FY2016; as a result, the total number of arrests shifted from 77,806 in FY2016 to 110,568 in FY2017.¹⁰⁶⁴

¹⁰⁶² U.S. Immigration and Customs Enforcement, *Fiscal Year 2017 ICE Enforcement and Removal Operations Report, 1.*

¹⁰⁶³ *Ibid.*, 2.

¹⁰⁶⁴ *Ibid.*

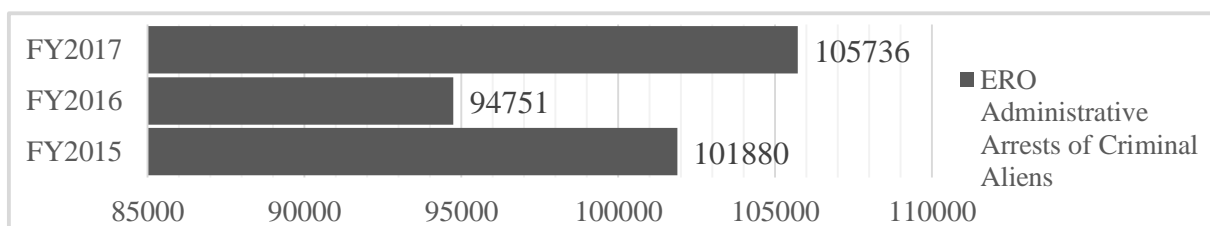
Figure 31. FY2016 and FY2017 ERO administrative arrests per week comparison



Source: U.S. Immigration and Customs Enforcement, Fiscal Year 2017 ICE Enforcement and Removal Operations Report, 1.

However, an administrative arrest of a criminal alien is the arrest of an alien already convicted of a criminal act. In this respect, ICE is tasked with targeting and apprehending this category of aliens in order to deport them from U.S. territory. Accordingly, as portrayed in Figure 32, ERO increased its arrests of criminal aliens in FY2017 following the issuance of Trump Executive Order of January 20, 2017, resulting in the arrest of 105,736 criminal aliens, resulting in a 12% (10,985) increase over FY2016.

Figure 32. FY2015 – FY2017 ERO administrative arrests of criminal aliens



Source: Adapted from U.S. Immigration and Customs Enforcement, Fiscal Year 2017 ICE Enforcement and Removal Operations Report

A detailed explanation of the total administrative arrests registered in FY2017 is shown in Table 11. It classifies administrative arrests into three categories: those with criminal convictions, those with unknown convictions and with criminal charges pending final disposition, and those with unknown criminal convictions or pending charges. With regard to those aliens with both criminal convictions and pending criminal charges, they are counted only counted in the criminal conviction category.

Table 11. FY2017 ERO administrative arrests by criminality

ERO Administrative Arrests by Criminality		
Criminality	Arrests	% of Total
Criminal Convictions	105,736	73.7%
Pending Criminal	22,256	15.5%
No Known Criminal	15,478	10.8%
Total Arrests	143,470	100%

Source: U.S. Immigration and Customs Enforcement, Fiscal Year 2017 ICE Enforcement and Removal Operations Report

As displayed in Table 11, the overwhelming majority of the arrests fell in the first category, criminal convictions, resulting in the highest percentage of arrests 73.7%. Those arrested aliens pending criminal charges came in second place with 15.5%; however, those arrested aliens with unknown criminal charges came in third place with a relatively small percentage of about 11%. These results reflect the reality that the vast majority of Criminal aliens used to evade justice prior to Trump’s administration which may increase the potential threat posed to the safety and national security of American citizens. In addition, these results point to the fact that the ERO’s efforts culminated in shielding Americans from the looming danger posed by criminal aliens and thus avoiding the recurrence of a tragic incident similar to that of Kate Steinle. More importantly, the results reflected the success of ERO in expanding its efforts to target all categories of illegal aliens, focusing primarily on those deemed to pose a genuine threat to the public safety and national security of the country.

ICE’s FY2017 statistics on different convictions and crimes committed by arrested criminal aliens reflect the great danger posed by this category of immigrants. Many arrested aliens with criminal convictions had committed a range of dangerous crimes that vary from crimes related to public peace to others related to robbery, sexual offenses and assaults, forgery, family and weapon offenses, thefts, ...etc. For instance, ERO managed to arrest a total of 76,503 aliens charged for or convicted of dangerous drugs, 48,454 aliens charged for or convicted of assaults, 5,615 aliens charged for or convicted of robbery, 5,118 aliens charged for or convicted of sexual assaults, 2,027 aliens charged for or convicted of kidnappings, and 6,174 aliens charged for or convicted of stealing vehicles (see Appendix 6). These different crimes reflect the bad reality of a portion of aliens, namely illegal immigrants who may have a negative impact on American social life.

Two main types of administrative arrests are at-large arrests and detainees.

6.2.6.1 At-Large Arrests

Another category of arrested aliens is known as the ERO at-large arrest. The latter is conducted in the community, as opposed to in a custodial setting such as a prison or jail. Following EO13768, ERO's statistics reflected increases in at-large arrests, especially in the areas that do not honor the ICE's detainers or limit or restrict the access of ICE officers to their jail population. In FY2017, at-large arrests increased, reaching 40,066 compared to 30,348 in FY2016.¹⁰⁶⁵ Moreover, ERO at-large arrests registered following the issuance of EO13768 till the end of FY2017 were estimated at 31,663 compared to 22,094 registered during the same period in FY2016, a 43% increase.¹⁰⁶⁶ This reflects that illegal immigrants became more prone to apprehension under the new administration of Donald Trump, showing no amnesty to them as he promised during his 2016 presidential campaign.

6.2.6.2 Detainers

As aforementioned, a detainer is a request that the receiving law enforcement agency both notifies the Department of Homeland Security as early as practicable, at least 48 hours, if possible, before a deportable alien is released from criminal custody, and also keep custody of the alien for a period of not exceeding 48 hours after the time the alien would otherwise be released to enable DHS to assume custody for the sake of removing the concerned alien.¹⁰⁶⁷ It is notable to mention that ICE issues detainers to federal, state, and local law enforcement agencies only after establishing a probable reason to believe that the concerned alien is removable from the USA and thus provide notice of ICE's intention to assume custody of a certain alien detained in the custody of that enforcement laws agency. So, the detainer facilities facilitate the custodial transfer of a removable alien to ICE from another law enforcement agency. Besides, this process ensures a safe transfer of the detained aliens to ICE officers and avoids potential risks to the general public by enabling arrests to be made in a controlled, custodial setting as opposed to at-large arrests in the community.

¹⁰⁶⁵ U.S. Immigration and Customs Enforcement, *Fiscal Year 2017 ICE Enforcement and Removal Operations Report*, 6.

¹⁰⁶⁶ *Ibid.*, 7.

¹⁰⁶⁷ U.S. Immigration and Customs Enforcement, *Fiscal Year 2017 ICE Enforcement and Removal Operations Report*, 7.

On the other hand, the cooperation the ICE receives from other law enforcement agencies is paramount to its capability to identify and arrest aliens deemed dangerous to public safety and U.S. national security. However, the cooperation of jurisdictions with ICE's officers differs as only some of them consider it beneficial. In actuality, while some jurisdictions do not cooperate with ICE's officers as a matter of policy, others believe that cooperation with ICE's officers is crucial to enhance public safety and national security, but refuse to do so based upon litigation concerns. Though not legally required, as a matter of legal policy, all ICE's detainees should be accompanied by either: (1) a properly completed Form I-200 which is a warrant for arresting an alien signed by a legally authorized immigration officer or (2) properly completed Form I-205 which is a warrant of removal or deportation also signed by a legally authorized immigration officer.¹⁰⁶⁸ These forms minimize future litigation risks and help further ICE's efforts to make sure that U.S. law enforcement partners would honor its detainees.

ERO's statistics revealed that the number of detainees increased following the issuance of EO13768. This manifested in the ERO issuance of 142,493 detainees in the time period starting from the inauguration of Trump's administration till the end of FY2017 compared to 62,192 issued during the same period from FY2016, an 81% increase.¹⁰⁶⁹ In addition, the issued detainees reached 142,356 in the entire FY2017 while it reached only 86,026 in the previous fiscal year, a 65% increase, which mirrors ERO's commitment to the enforcement of Trump's executive orders and thus targeting all illegal aliens it encounters. Thus, the increase in the number of issued detainees reflects a more active approach to interior enforcement, namely regarding those aliens involved in criminal activities, despite the continued opposition from some state and local jurisdictions.¹⁰⁷⁰

6.2.6.3 Declined Detainer

ICE registers a detainee as declined when a law enforcement agency fails to keep custody of an alien for up to 48 hours, as required on Form I-247A, and instead releases the concerned alien into the community which may jeopardize the public safety. Therefore, ICE works to make sure that these aliens, many of whom may re-offend, will not be released from custody.¹⁰⁷¹ For instance, a new approach adopted by DHS and ICE in coordination with the

¹⁰⁶⁸ Ibid., 7-8.

¹⁰⁶⁹ Ibid., 8.

¹⁰⁷⁰ Ibid.

¹⁰⁷¹ Ibid.

DOJ has taken actions to support ICE's state and local partners in case they encounter legal challenges due to lawfully cooperating with ICE detainees.

ERO's statistics demonstrate that the highest number of its detainees were declined during FY2017. Statistics also showed that the number of declined detainees increased from 3,623 in FY2016 to 8,170 in FY2017, a 125.5% increase, which shows that many local jurisdictions declined to honor ICE detainees to arrest aliens, many of whom were convicted of criminal crimes, resulting in arresting only 460 or rather 6% of them in FY2017.¹⁰⁷² Though there is an increase in the number of honored detainees in FY2017 compared to that registered in FY2016 where 275 were arrested, an increase of 60%, it further demonstrates the genuine threat posed by those dangerous aliens to the public safety since 7,710 illegal and criminal aliens were released into the community and thus remaining free due to the refusal of the sanctuary cities to cooperate with ICE's enforcement efforts.

6.2.6.4 Initial Book-ins to ICE Custody

Another category of enforcement actions lies in initial book-ins to ICE custody. An initial book-in is defined as being the first book-in to an ICE detention facility in order to begin a new detention stay.¹⁰⁷³ This category comprises aliens apprehended by Customs and Border Patrol CBP and transferred to ICE for deportation. ICE's statistics for FY2017 show that initial book-ins to ICE increased reaching 139,530 compared to 108,342 in the previous fiscal year, a 36.25% increase.¹⁰⁷⁴ This demonstrates the rise in initial book-ins to ICE custody following the inauguration of Trump's administration and issuance of the EO13768 till the end of FY2017 where it shifted from 75946 in the same time period in FY2016 to 108,077 by the end of FY2017. This reflects the reality that Trump's tough immigration policy began to take effect swiftly and undesired aliens became the main target for ICE ERO agents to send them back to their home countries.

However, when comparing the numbers of book-ins produced by interior and border enforcement efforts during the fiscal years 2015, 2016, and 2017, ICE ERO statistics reveal that book-ins resulting from CBP in FY2017 decreased to 184038 compared to 244510 registered in FY2016.¹⁰⁷⁵ This was ascribed to the decline in the number of border

¹⁰⁷² Ibid., 9.

¹⁰⁷³ Ibid., 10.

¹⁰⁷⁴ Ibid.

¹⁰⁷⁵ Ibid., 11.

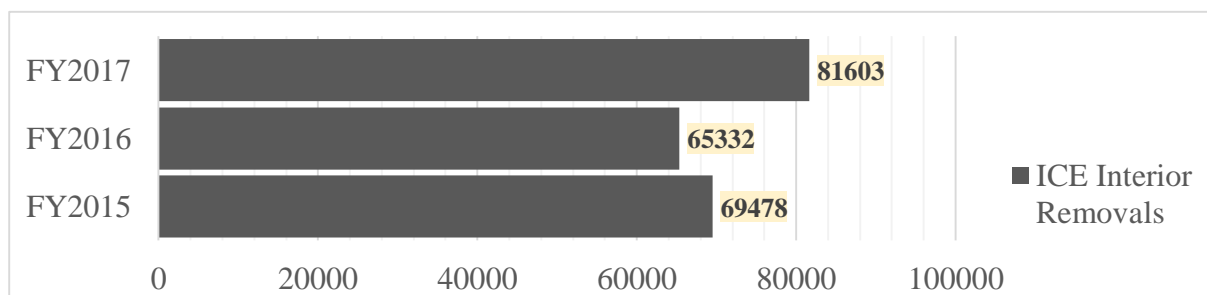
apprehensions in FY2017 due to the drop in the number of illegal immigrants who attempted to illegally cross the U.S. borders.

3.12.1 Removals

The removal of an inadmissible alien lies in his/her compulsory and confirmed movement back to their country of origin based on an official order of removal. Likewise, ERO’s removals statistics witnessed similar trends to those registered in its administrative arrests and initial book-ins. Accordingly, removals tied to ICE arrests rose in FY2017, namely following the start of the new government, resulting in a 37% increase during the time period that goes from January 20, 2017, through FY2017 compared to the same time period from the previous fiscal year.

Figure 33 displays ICE’s interior removals registered during the three fiscal years 2015, 2016, and 2017. Similarly, it shows an increase in ICE’s interior Removals which amounted to 81,603, after being 65332 in FY2016, resulting in an increase of 16,271. However, the overall ICE removals scored during the same three fiscal years reflect a decline of 6% in the overall removals the ICE conducted in FY2017 as it registered 226,119 after reaching 65,332 in FY2016.¹⁰⁷⁶ Still, despite the 6% decline in ICE’s overall removals in FY2017, its interior removals in FY2017, as shown in Figure 33, increased from 65,332 to 81,603, a 25% increase in aliens arrested during interior enforcement activities in FY2017 compared to previous fiscal year. This surge in interior removals almost counterbalanced the 17% decline in border removals, which reflected the trend of fewer book-ins of border arrests.

Figure 33. FY2015 – FY2017 ICE interior removals



Source: Adapted from U.S. Immigration and Customs Enforcement, Fiscal Year 2017 ICE Enforcement and Removal Operations Report

¹⁰⁷⁶ Ibid., 12.

The decline in ICE’s numbers of overall removals registered in FY2017 was primarily ascribed to the decline in border apprehensions where fewer aliens had been arrested at the border in FY2017 than in FY2016. As a result, this decline in arresting aliens at the border affected the overall number of removals registered by ICE ERO in FY2017, as the majority of aliens apprehended at the border mostly processed under the provisions of expedited removal so that they are swiftly removed from the United States, while those aliens apprehended in the interior are more likely to be processed under lengthy immigration proceedings and appeals, which mostly delays the issuance of the removal order.

6.2.7 Increase Border Agents and Stations

Another basic pillar of Trump’s immigration policy is to increase the number of border agents and stations in order to better enforce his executive orders pertaining to immigration. This decision was a promise he raised during his 2016 presidential campaign when he promised to “put more [Border Patrol agents] on the border instead of behinds the desks. We will expand the number of border patrol stations significantly”.¹⁰⁷⁷ However, by the end of his first year in the White House, there were no signs that Border Patrol agents at the border had increased or that the Border Patrol agents had left their desks to position themselves at the border.¹⁰⁷⁸ Moreover, the Trump administration’s demand for a budget of about \$33 million to fund border security over the upcoming decade reportedly comprised a plan for cutting the number of canine units by 40% and sending their handlers to perform customs duties along the country’s southwest border with Mexico, thereby threatening to leave or create gaping holes in the whole security system.¹⁰⁷⁹ In doing so, this plan represents a change in Trump’s promise or rather a shift from what he promised during his presidential campaign; in other words, instead of moving agents from their desk jobs to perform duties at the border, it suggested redeploying agents already in the field.¹⁰⁸⁰

Meanwhile, Trump’s administration pursued the practice done by Obama’s administration which consists in sending customs officers from other ports to perform duties at entry ports along the southwest border on temporary assignments in order to fill critical

¹⁰⁷⁷ Politico Staff, “Donald Trump Immigration Speech in Arizona.”

¹⁰⁷⁸ Pierce, Bolter, and Selee, *Trump’s First Year on Immigration Policy: Rhetoric vs. Reality*, 12.

¹⁰⁷⁹ Ron Nixon, “To pay for Wall, Trump Would Cut Proven Border Security Measures”, *The New York Times*, Accessed on December 1, 2022, <https://www.nytimes.com/2018/01/08/us/politics/trump-border-wall-funding-surveillance.html>

¹⁰⁸⁰ Pierce, Bolter, and Selee, *Trump’s First Year on Immigration Policy: Rhetoric vs. Reality*, 12.

vacancies.¹⁰⁸¹ Trump's administration also continued many construction projects that had started during Obama's administration, including a project to enlarge the San Ysidro port of entry initiated in 2016 and the creation of a new planned port of entry at San Diego called Otay Mesa Land Port of Entry.¹⁰⁸²

In a nutshell, President Trump undertook several immigration measures to strengthen border security and increase interior enforcement of immigration laws. To this end, he ordered the DHS to hire 10,000 additional ICE agents and 5,000 CBP officers. Besides, he ordered the creation of a deportation task force within ICE to facilitate identifying illegal immigrants and thus quickening their deportation process. Furthermore, President Trump ordered the end of the so-called "catch and release"; under the "catch and release" immigration policy, Trump's administration will no longer permit apprehended families at the border to be released into the United States. Besides, the Trump administration increased ICE detainers aiming at increasing the removals of undocumented immigrants. Additionally, he asked Congress for passing Kate's Steile law as well as the Davis-Oliver Act in order to increase the minimum sentence for illegal immigrants. These measures, along with others, contributed to increasing apprehensions of illegal immigrants. However, these measures were not sufficient for the Trump administration; therefore, Trump moved to another stage in implementing his immigration which consists in terminating Obama's immigration programs. So, what are Obama's immigration programs targeted by Trump's administration? And what were Trump's motives to take such action? All of these would be explored in the next chapter.

¹⁰⁸¹ Ibid.

¹⁰⁸² City News Service, "San Ysidro Border Crossing Construction to be Completed Ahead of Schedule", Fox5, Accessed on December 1, 2022, <https://fox5sandiego.com/news/san-ysidro-port-of-entry-closed-through-weekend-for-expansion-project/>

Chapter 7: Rescinding Obama- Era and Other Immigration Programs

In his presidential campaign, Donald Trump promised to rescind Obama's immigration programs owing to their detrimental effects on Americans' public safety and the country's national security. He therefore sharply excoriated Obama's administration for the deterioration of public safety and the spread of crimes committed by illegal immigrants who ought to be detained and deported by ICE. Therefore, ending Obama's immigration programs was very important for President Trump on account of protecting the public safety threatened by undocumented immigrants whom he looked down on. Besides, Donald Trump ascribed the spread of crimes in American society to the loose policies adopted by Obama's administration. Hence, decreasing the crime rate in American society passes through terminating these programs, according to President Trump. Therefore, the aim of this chapter is to throw light on Obama's immigration programs targeted by the administration of President Trump and provides an extensive explanation of Trump's motives to cancel them.

7.1 Ending DACA and DAPA

As aforesaid in the previous chapter, Donald Trump vocally announced his intention to rescind Obama’s DACA programs designed to provide protection to unauthorized immigrants maintaining that “we will terminate the Obama Administration’s deadly non-enforcement policies that allow thousands of criminal aliens to freely roam our streets”.¹⁰⁸³ He mainly alluded to the DACA program introduced by former president Barack Obama on June 15, 2012. Therefore, following Trump’s victory in the 2016 presidential elections, the main concern for immigration advocates was the future of thousands of Dreamers under the new Republican administration. In other words, with his anti-immigration rhetoric and backlash exuded during his speeches before his supporters in addition to surrounding himself with anti-immigrant politicians such as Kris Kobach and Jeff Sessions, the future of the DACA program remained obscure. So, what is DACA? What are its aims, its recipients, and its effects?

7.1.1 Dream Act and Dreamers

The history of DACA dates back to 1996 when the U.S. Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).¹⁰⁸⁴ The latter set forth the basis for criminalizing immigration in the United States. As regards the youth undocumented immigrants, IIRIRA’s Title V, Section 505, declared any alien unlawfully residing in the United States to be ineligible for any postsecondary education benefit.¹⁰⁸⁵ In response to this Act, youth undocumented immigrants started organizing themselves into a unique, vocal, persuasive, and successful social movement that spoke for Dreamers.¹⁰⁸⁶

The first generation of Dreamers focused on advocating access to higher education as well as to state and federal financial support granted to American citizens and residents.¹⁰⁸⁷ At the federal level, dreamers began advocating more rights related to the development, relief, and education of alien minors; as a result, the initial version of the Development, Relief, and Education for Alien Minors (DREAM) Act was introduced in 2001. Thenceforth, young undocumented immigrants became formally called “dreamers”. Besides, at least ten versions of the DREAM Act have been introduced in Congress since 2001. Though some key differences

¹⁰⁸³ Ibid.

¹⁰⁸⁴ Alijandra Castaneda, *Daca, the Dream Act and Dreamers* (Observatorio de Legislacion y Politica Migratoria, 2017), 2.

¹⁰⁸⁵ 104th Congress 2nd Session, *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (Washington DC: Congress Printing Press, 1996), 134.

¹⁰⁸⁶ Alijandra Castaneda, *Daca, the Dream Act and Dreamers*, 2.

¹⁰⁸⁷ Ibid.

between the several iterations of the DREAM Act, all of them would provide a pathway to legal status for young undocumented immigrants who entered the United States as children.¹⁰⁸⁸

7.1.2 Different Iterations of the Dream Act

The first version of the DREAM Act was sponsored by the Democrat Senator of Illinois, Dick Durbin, and the Republican Senator of Utah, Orrin Hatch. Introduced to the Senate on August 1, 2001, the original bill was based on stories of young people who strived and struggled to continue their studies in the United States, find jobs, and pursue their future in the country. In actual fact, Pauline Lee was the original student who inspired Senator Durbin to introduce the DREAM Act in 2001 so as to provide young undocumented immigrants with a pathway to get American citizenship. In his opening remarks to the Senate, Senator Durbin presented other examples of young dreamers, dubbing their predicament as “one of the most compelling right issues of our time”.¹⁰⁸⁹

Meanwhile, Democrat Representative of Illinois, Luis Gutiérrez, sponsored another bill in the House of Representatives (H.R. 1582 — 107th Congress), called Immigrant Children’s Educational Advancement and Dropout Prevention Act of 2001, later changed to the Student Adjustment Act of 2001 introduced to the House of Representatives (H.R.1918 — 107th Congress) by the Republican Representative of Utah, Christopher “Chris” Cannon, on May 21, 2001. The Adjustment Act allowed states to cancel the removal and adjust the status of certain alien college-bound students who resided in the United States for a long term.

Another change was introduced to the DREAM Act on May 25, 2006. Sponsored by Republican Senator of Pennsylvania, Arlen Specter, the new version of the DREAM Act became called the Comprehensive Immigration Reform Act of 2006 and 2007. Still, after its failure to be passed, Senator Durbin attached an amended version of the DREAM Act to the Department of Defense Authorization Bill of 2008, proposing another pathway dreamers can follow consisting in serving two years in the U.S. Army, which remained as an essential part of the subsequent versions.¹⁰⁹⁰ However, the passage of the Act seemed to be feasible in 2010 as the House passed the bill whereas the Senate failed to pass it as it was only 5 votes short of the 60 necessary to get approved.¹⁰⁹¹

¹⁰⁸⁸ American Immigration Council, *The Dream Act, Daca, and Other Policies Designed to Protect Dreamers* (August 2020), 2.

¹⁰⁸⁹ Alijandra Castaneda, *Daca, the Dream Act and Dreamers*, 3.

¹⁰⁹⁰ *Ibid.*, 3.

¹⁰⁹¹ American Immigration Council, *The Dream Act, Daca, and Other Policies Designed to Protect Dreamers*, 2.

In 2013, the Senate passed the Border Security, Economic, Opportunity, and Immigration Modernization Act which comprised a DREAM Act provision. Four years later, on July 2017, the Republican Senator of South Carolina, Lindsey Graham along with the Democrat Senator of Illinois, Dick Durbin, reintroduced the Dream Act of 2017 in the Senate in order to authorize the nullification of removal and adjustment of status of certain nationals who entered the United States as children and became long-term U.S. residents. A few days later, Democrat Representative of California, Lucille Roybal-Allard along with Republican Representative of Florida, Ileana Ros-Lehtinen, introduced the DREAM Act on June 26, 2017. Similar to the previous versions of the DREAM Act, these bipartisan and bicameral bills aimed at providing dreamers, who were brought to the United States as children and lived in the country for four years, with protection from removal and the opportunity to get legal status if they meet certain requisite conditions.¹⁰⁹²

The Current version of the DREAM Act, H.R. 6- American Dream and Promise Act of 2019, was introduced to the House on March 12, 2019, by the Democrat Representative of Florida, Lucille Roybal-Allard. The bill “cancels and prohibits removal proceedings against certain aliens and provides such aliens with a path toward permanent resident status”.¹⁰⁹³ Accordingly, DHS or DOJ have to cancel removal proceedings against minor aliens brought to the country as children and grant them instead conditional permanent residence status for ten years. Also, the bill imposes several qualification requirements such as the alien being required to be continuously and physically present in the country and being enrolled in or have completed certain educational programs. Further, DHS has to establish streamlined procedures to apply for conditional permanent residence in the country for aliens who benefited from DACA status and are not disqualified for renewal.

When the alien applies and meets certain requirements, such as completing certain programs at an educational institution or serving at least two years in the Uniformed services and being discharged honorably, DHS shall remove the conditional permanent resident status granted to such alien.¹⁰⁹⁴ DHS or DOJ shall cancel removal proceedings against aliens provided with permanent legal status according to two humanitarian programs: Temporary Protected Status (TPS) and Deferred Enforced Departure (DED). However, DHS is disallowed under this

¹⁰⁹² Alijandra Castaneda, *Daca, the Dream Act and Dreamers*, 4.

¹⁰⁹³ Library of Congress, “H.R.6 – American Dream and Promise Act of 2019”, Congress.gov, Accessed on December 1, 2022, <https://www.congress.gov/bill/116th-congress/house-bill/6>

¹⁰⁹⁴ Library of Congress, “H.R.6 – American Dream and Promise Act of 2019”.

bill to use the information of applications to adjust status for immigration enforcement purposes. DHS is also required under this bill DHS to establish a grant program for nonprofit organizations that assist individuals with certain immigration-related issues.

7.1.3 Introducing DACA

In response to the failure of the DREAM Act legislation to pass the two chambers of Congress in 2010, President Barack Obama initiated the new immigration policy towards minor aliens brought to America as children known as the Deferred Action for Childhood Arrivals (DACA) announced by then-Secretary of Homeland Security Janet Napolitano on June 15, 2012.¹⁰⁹⁵ DACA is an exercise of prosecutorial discretion based on providing temporary relief from deportation or rather a “deferred action” and work authorization to certain (who meet certain requirements) young undocumented aliens brought to the country as children.¹⁰⁹⁶ In his memo in the Rose Garden at the White House on June 15, 2012, President Barack Obama voiced his remarks on immigration reform and an Exchange with reporters, maintaining that his administration will mend American immigration policy to make it more fair, efficient, and just, especially for young undocumented immigrants, sometimes called DREAMers.¹⁰⁹⁷ He further said:

Now, these are young people who study in our schools, they play in our neighborhoods, they're friends with our kids, they pledge allegiance to our flag. They are Americans in their heart, in their minds, in every single way but one: on paper. They were brought to this country by their parents--sometimes even as infants--and often have no idea that they're undocumented until they apply for a job or a driver's license or a college scholarship.¹⁰⁹⁸

Through these words, President Obama exuded sympathy and showed a deep understanding of the claims and the predicament situation of DREAMers. To belabor the point, he asked the audience to put themselves in DREAMers' shoes asking them to imagine that they have done everything right in their entire life such as studying hard, working hard, and maybe graduating at the top of their class, and suddenly they find yourselves threatened to be deported to a country that they know nothing about, with a language they may not even speak.¹⁰⁹⁹ Obama

¹⁰⁹⁵ Howard University School of Law, “Deferred Action for Childhood Arrivals (DACA)”, Law Library, Accessed on December 2, 2022, <https://library.law.howard.edu/civilrightshistory/immigration/daca>

¹⁰⁹⁶ American Immigration Council, *The Dream Act, Daca, and Other Policies Designed to Protect Dreamers*, 1.

¹⁰⁹⁷ The American Presidency Project, “Remarks on Immigration Refome and an Exchange with Reporters”, US Santa Barbara, Accessed on December 2, 2022, <https://www.presidency.ucsb.edu/documents/remarks-immigration-reform-and-exchange-with-reporters>

¹⁰⁹⁸ The American Presidency Project, “Remarks on Immigration Refome and an Exchange with Reporters”.

¹⁰⁹⁹ *Ibid.*

went further in defending the rights of the young DREAMers and expressed his readiness to sign the DREAM Act if it succeeded to pass both Houses of Congress. More explicitly, he expressed his regret that the bill failed to pass the Senate as it secured only 55 votes instead of the 60 required votes due to the Republicans who blocked it.

I have said time and time and time again to Congress that--send me the "DREAM Act," put it on my desk, and I will sign it right away. Now, both parties wrote this legislation. And a year and a half ago, Democrats passed the "DREAM Act" in the House, but Republicans walked away from it. It got 55 votes in the Senate, but Republicans blocked it. The bill hasn't really changed. The need hasn't changed. It's still the right thing to do. The only thing that has changed, apparently, was the politics.¹¹⁰⁰

This showed the wide gap between the Republicans and Democrats in granting DREAMers their main rights to avert deportation from the United States and obtain authorization to work and study. In addition, it reflects that the Republicans were reluctant to provide DREAMers with a pathway to get American citizenship so that they can pursue their life peacefully in the United States without being threatened to be deported to their home countries.

Thanks to the DACA program, 800,000 eligible young adults were allowed to work lawfully, study, and plan their lives without the constant threat of removal.¹¹⁰¹ In addition, DACA recipients can also qualify for in-state tuition and state-founded educational grants and loans in certain states; further, they can qualify for state-subsidized health insurance depending on where they live.¹¹⁰²

Historically, it was quite easy for immigrants to illegally cross the U.S.-Mexican border to work in the United States, because it was easy for illegal migrants to enter the country by land without the possibility of being detected and because the federal government did not restrict immigration from Mexico and Central America as it did with immigration from the Eastern hemisphere.¹¹⁰³ In actual fact, migrating back and forth between Mexico and the United States was easy enough for Mexicans. According to Ana Minian, a historian from Stanford University “preferred to live in Mexico for most of the time and then come for short periods of time, sometimes up to a couple years, and then return to Mexico until they needed to come back

¹¹⁰⁰ Ibid.

¹¹⁰¹ Ibid.

¹¹⁰² Ibid.

¹¹⁰³ Dara Lind, “Why Ending DACA is so Unprecedented,” Vox, Published on Sept. 5, 2017, Accessed on Jan. 19, 2023, <https://www.vox.com/policy-and-politics/2017/9/5/16236116/daca-history>

again”.¹¹⁰⁴ It was not until the second half of the twentieth century that the U.S. government restricted legal immigration from Mexico; however, illegal immigrants were still able to come and work in the country. Later, in the 1990s, the federal government began building up border security. However, the new border security measures pushed many Mexican migrants preferred to stay in the United States rather than go back to their country of origin because they feared they cannot come back to the United States because they found it too risky and challenging to cross again the US border given the aforesaid measures adopted by the federal government.¹¹⁰⁵ So, immigrants already in the United States remained there whereas their families attempted to cross the border to join them.

Prior to the 1990s, keeping a family both together and employed in the United States did not require having an undocumented child. But when unauthorized migration dropped to zero after the 2000s, in addition to the fact that children from Central America mostly come for humanitarian reasons, children had the opportunity to get legal status upon their arrival.¹¹⁰⁶ Indeed, this narrative does not cover every DREAMer’s personal story, but it helps understand why there are currently so many individuals in the United States who are young adults, who grew up in America among American citizens as undocumented immigrants. This narrative helps explicate why so many people have not just lived in the USA since they were six years old, but have not even seen their country of origin since then. It also explains why many Americans think of these DREAMers to be good immigrants. Most important, it reflects the fair motives of the DREAMers themselves to advocate the same rights exercised by their peers in the United States.¹¹⁰⁷

7.1.4 Difference between DACA and the DREAM Act

Both DACA and DREAM Act target the same population, unauthorized immigrants who entered the United States as children. In addition, requirements for DACA eligibility are similar to eligibility requirements in some iterations of the DREAM Act introduced in the previous Congresses. However, the DACA initiative and DREAM Act differ from each other in the fact that they offer different forms of immigration relief for eligible individuals. DACA initiative is an exercise of prosecutorial discretion by the executive branch where DACA recipients are offered temporary protection from deportation, but they are not offered a lawful

¹¹⁰⁴ Dara Lind, “Why Ending DACA is so Unprecedented”.

¹¹⁰⁵ Ibid.

¹¹⁰⁶ Ibid.

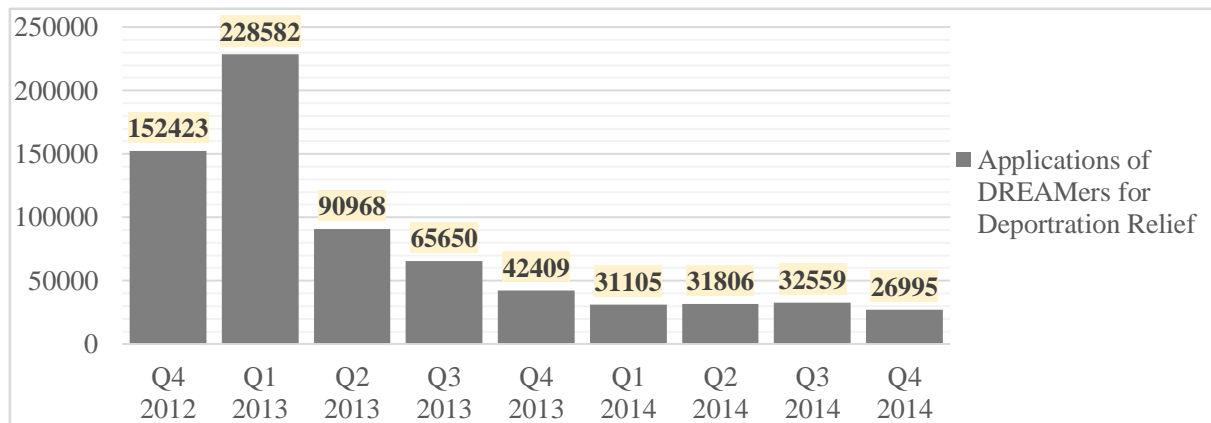
¹¹⁰⁷ Ibid.

immigration status.¹¹⁰⁸ Contrary to the DACA initiative, the DREAM Act bills are pieces of legislation passed by Congress to establish a process or rather a pathway for eligible individuals to obtain a Lawful Permanent Resident status (LPR). So, unlike the DREAM Act, DACA does not provide young undocumented aliens with LPR, thereby requiring them to renew their deferred action every two years. These two aspects granted them the opportunity to get a driver’s license along with, depending on the state, access to higher education as residents of their states.¹¹⁰⁹ Actually, getting the opportunity to work and get jobs is the point that mattered a lot for the DREAMers as it allowed them to move beyond the minimum wage paying jobs, thereby being able to pay the fees of their higher education studies. However, deferred action under DACA can be terminated if the recipient gets involved in criminal activity, quit the United States without advanced parole, or if the program itself is repealed.¹¹¹⁰

7.1.5 Expanding DACA to Other Recipients

A Pew Research Center study, published on December 5, 2014, showed that the number of applications increased following the announcement of the program in June 2012 till the first quarter of the next year. Thereafter, the number of applications started declining gradually over the rest of 2013 and the whole of 2014 as shown in Figure 34.

Figure 34. Fewer DREAMers applied for deportation relief



Source: Adapted from Pew Research Center. <https://www.pewresearch.org/fact-tank/2014/12/05/if-original-daca-program-is-a-guide-many-eligible-immigrants-will-apply-for-deportation-relief/>

¹¹⁰⁸ Andorra Bruno, *The DACA and DAPA Deferred Action Initiatives: Frequently Asked Questions* (Washington, DC: Congressional Research Service, 2017), 7.

¹¹⁰⁹ Alijandra Castaneda, *Daca, the Dream Act and Dreamers*, 8.

¹¹¹⁰ National Conference of State Legislatures, “Deferred Action for Childhood Arrivals: Federal Policy and Examples of State Actions,” NCSL, Published April 20, 2020, Accessed on December 3, 2022, <https://www.ncsl.org/research/immigration/deferred-action.aspx>

The study also revealed that the estimated number of eligible unauthorized in 2014 amounted to 1.1 million; two-thirds of them (64%) have had their applications accepted for review.¹¹¹¹ As aforementioned, DACA grants authorization for work and deportation relief for minor aliens brought to the USA as children, commonly referred to as the DREAMers. Figure 34 reveals that applications of 702,497 DREAMers were accepted for review to benefit from the DACA program since its beginning in August 2012, according to the data revealed by the U.S. Citizenship and Immigration Services (USCIS).

With the first wave of permits were about to expire, Obama’s administration started receiving renewal applications. By the end of 2014, applications of more than 22,000 of the initial DACA recipients were accepted for renewal.¹¹¹² On the other hand, eligibility for benefiting from DACA increased after being expanded by President Obama who issued an executive action on November 20, 2014, to address the increase in applications for renewal of ADCA.¹¹¹³

Under the initial DACA program, young people who had been in the U.S. for at least five years, came as children, and met specific education and public safety criteria were eligible for temporary relief from deportation so long as they were born after 1981 and entered the country before June 15, 2007. DHS is expanding DACA so that individuals who were brought to this country as children can apply if they entered before January 1, 2010, regardless of how old they are today. Going forward, DACA relief will also be granted for three years.¹¹¹⁴

His new executive action expanded DACA to an additional 330,000 unauthorized immigrants, by extending eligibility to those aliens older than 30 who were brought to the country as children before January 1, 2010. While the application fee remained the same, \$465, eligibility was previously restricted to those under 30 who were brought to the country as children before June 15, 2007.¹¹¹⁵

¹¹¹¹ Jens Manual Grogstad and Ana Gonzalez-Barbara, “If Original DACA Program Is a Guide, Many Eligible Immigrants will Apply for Deportation Relief,” Pew Research Center, Published December 5, 2014, Accessed on December 2, 2022, <https://www.pewresearch.org/fact-tank/2014/12/05/if-original-daca-program-is-a-guide-many-eligible-immigrants-will-apply-for-deportation-relief/>

¹¹¹² Jens Manual Grogstad and Ana Gonzalez-Barbara, “If Original DACA Program Is a Guide, Many Eligible Immigrants will Apply for Deportation Relief”.

¹¹¹³ Ibid.

¹¹¹⁴ Office of the Press Secretary, “Fact Sheet: Immigration Accountability Executive Action”.

¹¹¹⁵ Office of the Press Secretary, “Fact Sheet: Immigration Accountability Executive Action,” The White House, November 20, 2014, Accessed on December 3, 2022, <https://obamawhitehouse.archives.gov/the-press-office/2014/11/20/fact-sheet-immigration-accountability-executive-action>

7.1.6 Who Are DACA Recipients?

To benefit from DACA, the applicant must meet a set of requirements which are as follows:

- S/he must be under 31 years old as of June 15, 2012;
- S/he first entered the USA before her/his 16th birthday;
- S/he lived permanently in the USA from June 15, 2007, till the present;
- S/he was physically present in the USA on June 15, 2012, and at the time s/he applies;
- S/he came to the USA without valid papers before June 15, 2012, or her/his lawful status expired as of June 15, 2012;
- S/he is currently studying or graduated from high school or obtained a certificate of completion of high school or obtained a General Educational Development (GED) certificate, or has been honorably discharged from the Coast Guard or the US military forces.¹¹¹⁶

However, the applicant would lose her/his right to apply for deferred action under DACA if s/he poses any threat to U.S. national security or public safety.¹¹¹⁷ S/he may also lose her/his right to apply for deferred action under DACA if s/he was convicted of a felony offense or certain misdemeanors or three or more misdemeanors of any kind. Examples of significant misdemeanors comprise violence, burglary, threats or assaults, driving under the influence, obstructing justice or bribery, possessing or using unlawfully a firearm, or unlawfully possessing drugs.¹¹¹⁸

Concerning exemptions to eligibility requirements, the applicant who is under 15 can be exempted from eligibility requirements if s/he is in the process of removal, has an order of removal, or a voluntary departure order, and is not in an immigration detention center at present. The applicant can be exempted from fee application requirements if s/he is under 18, homeless, makes less than 150% of the U.S. poverty level, is currently in foster care, or otherwise lacks familial support. Also, the applicant may be exempted from fee applications if s/he is not economically independent due to a serious illness and earn an income that is less than 150% of the U.S poverty level or has debt amounting to \$10,000 due to medical expenses.¹¹¹⁹

¹¹¹⁶ University of California Berkeley, “DACA Information,” Undocumented Student Program. Updated October 20, 2022, Accessed on December 3, 2022, <https://undocu.berkeley.edu/legal-support-overview/what-is-daca/>

¹¹¹⁷ Howard University School of Law, “Deferred Action for Childhood Arrivals (DACA)”.

¹¹¹⁸ University of California Berkeley. “DACA Information”.

¹¹¹⁹ National Conference of State Legislature, “Deferred Action for Childhood Arrivals: Federal Policy and Examples of State Actions”.

In the past, immigrants were not obliged to stay in the country for 10 or 20 years at a time to get legalized in the United States; it used to be possible for undocumented immigrants to get legalized without leaving the country and attempting to return.¹¹²⁰ Prior to 1976, it was possible for Latin American immigrants to apply for LPR status (green card holders) if they had children born in the United States, regardless of their age. More than this, they would be officially admitted to the country once their applications were approved, even though they were in the country as unauthorized immigrants.¹¹²¹ This was changed by the 1976 law which made it impossible for parents of U.S. citizens to apply for a green card until their children had turned 21. However, all this was changed by the 1996 law called The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). This law obliged unauthorized immigrants living in America to wait from 3 to 10 years outside the United States before being eligible for legalization. Therefore, an immigrant with a family in the USA could attempt to get a waiver, but he would still have to quit the country to do so. Really, it is very difficult for undocumented immigrants to get legalized under IIRIRA. The latter was very tough on them; it not only squeezed them but narrowed their possibilities of getting legalized and slammed the doors on any future possibility of adjusting their status.¹¹²²

In a nutshell, the combination of settledness and the difficulty of legalization made DREAMers generationally unique in the history of American immigration policy. The latter neither totally excluded them from getting legalized nor did it allow them to get legalized as a family to go through a generational life-cycle. This is why DREAMers do not accept blaming their parents for bringing them to the United States. Also, this explains why they worried about the fate of their parents and relatives disqualified for DACA.

7.1.7 Unauthorized Immigrants' Eligibility by Region of Birth

As aforesaid, President Obama's executive action extended the benefit from deferred action under DACA to almost half (48%) of the unauthorized immigrant population in the United States.¹¹²³ DREAMers from different regions of the world would be concerned by this extension, namely those who originated in Mexico who would feel the great impact under

¹¹²⁰ Dara Lind, "Why Ending DACA is so Unprecedented".

¹¹²¹ Ibid.

¹¹²² Ibid.

¹¹²³ Eileen Patten and Jeffrey S. Passel, "How Obama's Executive Action Will Impact Immigrants, by Birth Country," Pew Research Center, Published November 21, 2014, Accessed on December 3, 2022, <https://www.pewresearch.org/fact-tank/2014/11/21/how-obamas-executive-action-will-impact-immigrants-by-birth-country/>

DACA, followed by Central Americans, while lower shares of eligible unauthorized immigrants hail from Asia and the rest of Latin America, as shown in Table 12.

Table 12. Eligibility of unauthorized immigrants, by region of birth (in thousands)

	Total Unauthorized Immigrant Population	Total Eligible		Newly Eligible	
		Estimate	%	Estimate	%
Latin America					
Mexico	5,850	3,250	55	2,600	44
Central America	1,700	850	51	425	25
South America	700	275	37	180	25
Caribbean	550	230	41	110	20
Other Regions					
Asia	1,400	475	34	375	27
Europe, Canada	600	180	31	120	20
Middle East, Africa, and Other	400	110	29	75	20
Total	11,200	5,350	48	3,850	35

Source: Pew Research Center. <https://www.pewresearch.org/fact-tank/2014/11/21/how-obamas-executive-action-will-impact-immigrants-by-birth-country/>

According to the data revealed in Table 12, the total of unauthorized immigrants in the United States in 2014 amounted to 11,200,000 aliens. The overwhelming majority of them hailed from Latin America which makes up 78.57% of the total, while other regions make up only 21.43%, a small portion compared to that from Latin America. However, Mexicans remain the largest source of the unauthorized immigrant population in the USA, resulting in the biggest percentage, 52.23%, of DREAMers eligible for benefiting from deferred deportation under DACA. Central Americans come in second place with a total of eligible DREAMers amounting to 1,275,000 which makes up 11.38% of the whole unauthorized population. South Americans come in third place with 455,000 eligible DREAMers making up 4.06% of the total unauthorized population. Caribbeans, however, come in the last place with 340,000 resulting in the lowest percentage of eligible DREAMers with 3.03%.

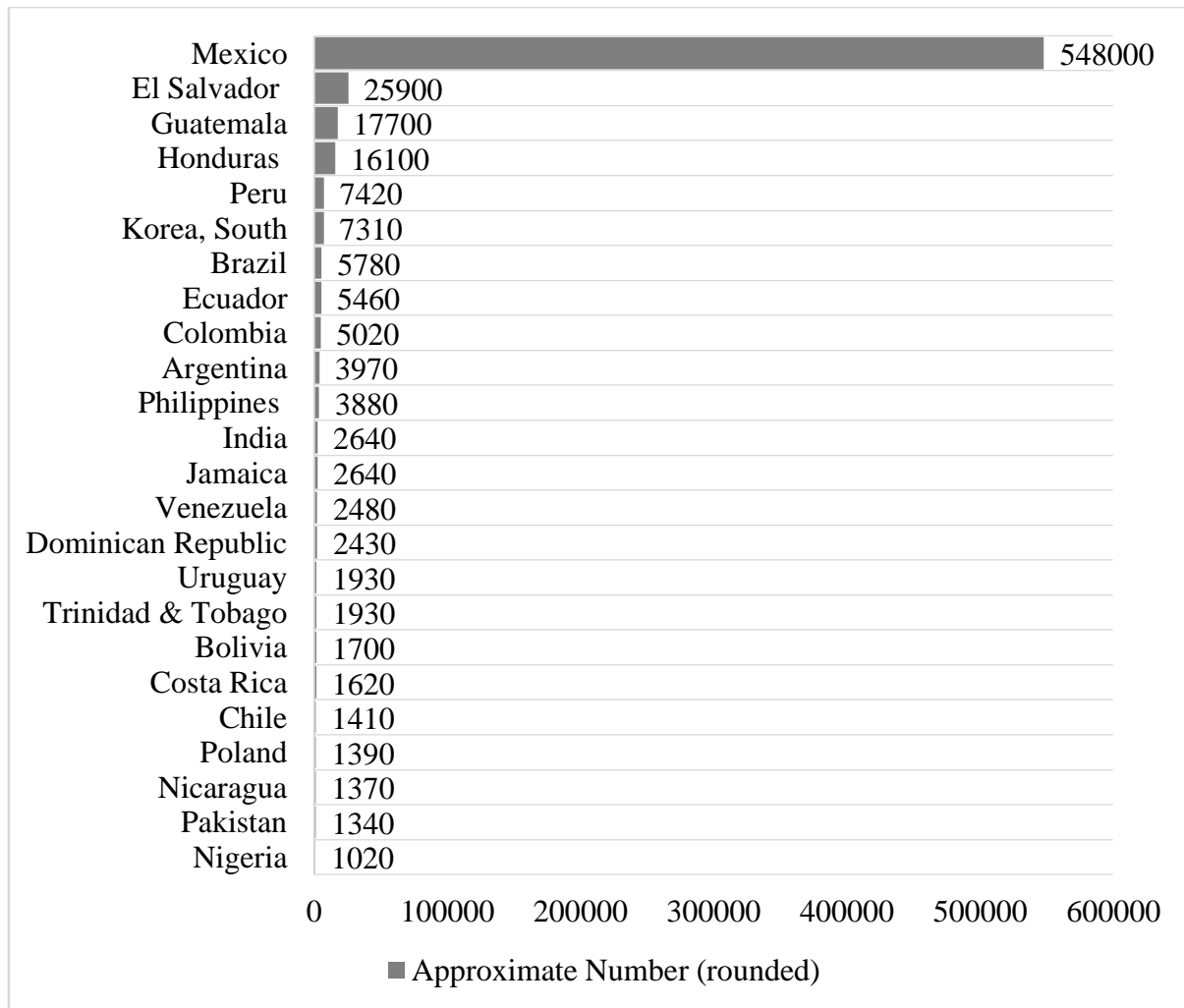
Concerning other regions, Table 12 shows that Asians come in first place with 850,000 eligible DREAMers, making up 7.59% of the total unauthorized population. Afterward, eligible DREAMers from Europe and Canada amounted to 320,000 making up 2.85% of the total unauthorized population. Then, eligible DREAMers from the Middle East, Africa, and other places constitute 185,000 with the lowest percentage, 1.65% of the total unauthorized population. These low percentages reflect the fact that unauthorized immigrants do not come from Europe or Asia due to the economic development in the majority of European and Asian

countries. Africans, however, make up a low percentage of DREAMers due to the fact they can reside illegally in the United States by overstaying their visas which is so difficult for them.

7.1.8 DACA Eligibility by Country of Origin

To get a clearer picture of DREAMers eligible for DACA, Figure 35 reveals USCIS data about the origins of the unauthorized immigrants eligible for DACA in 2017.

Figure 35. Approximate active DACA recipients: country of birth



Source: U.S. Customs and Immigration Services data as of September 4, 2017.

As displayed in Figure 35, Latin Americans remained the main source of unauthorized immigrants who benefited from DACA. Mexico scores the highest number of DREAMers, thereby coming in first place with 548,000 recipients. NTCA’s countries came in second place with 25,900 Salvadoran recipients, 17,700 Guatemalan recipients, and 16,100 Honduran recipients. Other countries came after with few numbers compared to significant numbers of

DACA beneficiaries from Mexico as well as NTCA countries. This reflects that the overwhelming majority of teenagers in the undocumented immigrant community hail from Central American countries due to the shared land border between the United States and Mexico.

7.2 Deferred Action for Parents of Americans (DAPA)

In November 2014, President Barack Obama announced a new program, called Deferred Action for Parents of Americans (DAPA), designed to provide protection from deportation for a broader group of unauthorized immigrants, especially parents of U.S. citizens or lawful permanent residents.¹¹²⁴ In other words, DAPA aims at protecting unauthorized immigrants who continuously lived in the United States since 2010 and whose children were either American citizens or lawful permanent residents.¹¹²⁵ To benefit from DAPA, parents have to meet a list of requirements to be eligible to request it which consists mainly of having lived continuously in the country since January 2010; furthermore, s/he has, on November 20, 2014, a son or daughter who is U.S. citizen or a lawful permanent resident. Additionally, they have to be present Physically in the USA on November 20, 2014, and at the time of application. Besides, they are not an enforcement priority for deportation from the USA, under the memorandum of November 20, 2014, called *Policies for Apprehension, Detention, and Removal of Unauthorized Immigrants*.¹¹²⁶ Consequently, as many as 3.6 million unauthorized immigrants estimated by Migration Policy Institute (MPI) and Urban Institute (UI) were expected to benefit from the DAPA program.¹¹²⁷ More importantly, according to estimations of MPI and UI, as many as 5 million unauthorized immigrants, or rather nearly half of the 11 million who make up the unauthorized immigrant population would benefit from both Obama's programs, DACA and DAPA.¹¹²⁸

¹¹²⁴ Migration Policy Institute, "Trump's Administration Rescinds DACA, Fueling Renewed Push in Congress and the Courts to Protect DREAMers", MPI, September 15, 2017, Accessed on December 5, 2022, <https://www.migrationpolicy.org/article/trump-administration-rescinds-daca-fueling-renewed-push-congress-and-courts-protect-dreamers>

¹¹²⁵ Immigration History, "Deferred Action for Parents of Americans and Lawful Residents (DAPA) and DACA Program Expanded", Immigration History. 2019. Accessed on December 2022, <https://immigrationhistory.org/item/deferred%E2%80%8B-action-for-parents-of-americans-and-lawful-permanent-residents-dapa-and-daca-program-expanded/>

¹¹²⁶ U.S. Citizenship and Immigration Services, "2014 Executive Actions on Immigration," USCIS, Updated April 15, 2015, Accessed on December 5, 2022. <https://www.uscis.gov/archive/2014-executive-actions-on-immigration>

¹¹²⁷ Randy Capps, et al., *Deferred Action for Unauthorized Immigrant Parents: Analysis of DAPA's Potential Effects on Families and Children* (Washington, DC: Migration Policy Institute and Urban Institute, 2016), 3.

¹¹²⁸ Randy Capps, et al., *Deferred Action for Unauthorized Immigrant Parents: Analysis of DAPA's Potential Effects on Families and Children*, 3-4.

7.2.1 Statistics of People Living in Potentially DAPA-Eligible Households

According to estimates of MPI and UI, over 10 million individuals live in households that comprise potentially DAPA-eligible parents. Beyond the recipients themselves, many adults and children who are American citizens or legal immigrants can benefit from DAPA owing to the fact that many unauthorized immigrant households comprise individuals of various immigration statuses. In other words, the financial state of all household members would get better as they benefit from the high family incomes as well as the reduced anxiety about removal. Statistics of MPI and UI showed that 9.9 million individuals lived with minor children in households that comprise at least one DAPA-eligible person, including 4.3 million minor children at the age of 17 or younger, and 5.6 million adults (3.3 million DAPA-eligible parents and 2.3 million other adults).¹¹²⁹

As regards the distribution of the DAPA-eligible population, Appendix 7 shows that it is concentrated in a handful of states, just like the distribution of the unauthorized immigrant population. In addition, 48% of the DAPA-eligible population during the 2009-13 time period lived in three border states with Mexico: California, Texas, and Arizona. Nearly 1.1 million DAPA-eligible individuals (30% of the U.S. total) lived in California while 559,000 (15%) lived in Texas and 97,000 (3% of the U.S. total) lived in Arizona. These three border states together comprised nearly half of the DAPA-eligible population due to the long border shared between the United States and Mexico which made it easy for immigrants from Mexico and Latin American countries to cross it illegally. Then, 231,000 (6% of the U.S. total) live in New York followed by Illinois, Florida, New Jersey, Georgia, and North Carolina, with more than 100,000 (between 3% and 5% of the U.S. total) for each.

7.2.2 Trump's Plan to Rescind DACA and DAPA

Upon his election, Donald Trump delayed canceling DACA despite his firm promise to do so during his 2016 presidential campaign, hoping that Congress would possibly find a solution for the young population of young adults currently benefiting from this program. However, under pressure from his supporting base as well as threats from ten states to sue to end the program if nothing was done, Trump finally decided to rescind DACA on September 5, 2017.¹¹³⁰ To that end, Trump's administration provided the formal details of the blueprint to

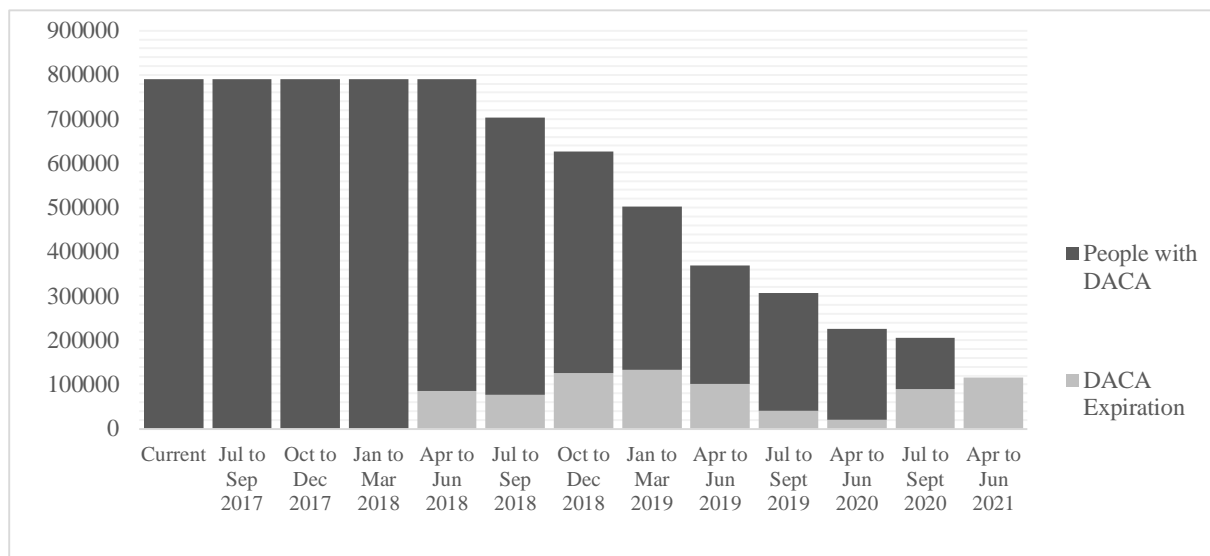
¹¹²⁹ Ibid., 4.

¹¹³⁰ Pierce, Bolter, and Selee, *Trump's First Year on Immigration Policy: Rhetoric vs. Reality*, 15.

unwind DACA in a memorandum announced by the Acting Homeland Security Secretary, Elaine Duke.¹¹³¹

According to that memorandum, all DACA recipients would maintain their work authorization and protection from removal till the expiration of their DACA benefits.¹¹³² However, From September 5, 2017, Trump’s administration stopped granting DACA benefits to new applicants and renewals to those individuals who already benefited from DACA and whose DACA benefits would expire after the 5th of March, 2018.¹¹³³ That is, DACA recipients whose permits expire on March 6, 2018, would definitely lose their protection that day. In addition, those who may have been eligible for DACA before March 5, 2018, and did not apply for it before that date would no longer be eligible for it.¹¹³⁴ All this would occur only if Congress fails to enact a bill protecting DACA beneficiaries within six months, either by providing them with a pathway to legalization or by continuing to grant them temporary protection.¹¹³⁵ Accordingly, DACA recipients would lose their status gradually according to the plan depicted in Figure 36.

Figure 36. The end of DACA



Source: US Citizenship and Immigration Services.
<https://www.vox.com/2017/9/5/16252648/trump-daca-end-deadline>

¹¹³¹ Migration Policy Institute, “Trump’s Administration Rescinds DACA, Fueling Renewed Push in Congress and the Courts to Protect DREAMers”.

¹¹³² Ibid.

¹¹³³ Pierce, Bolter, and Selee, *Trump’s First Year on Immigration Policy: Rhetoric vs. Reality*, 15.

¹¹³⁴ Migration Policy Institute, “Trump’s Administration Rescinds DACA, Fueling Renewed Push in Congress and the Courts to Protect DREAMers”.

¹¹³⁵ Dara Lind, “Why Ending DACA is so Unprecedented,” Vox, Published on Sept. 5, 2017, Accessed on Jan. 19, 2023, <https://www.vox.com/policy-and-politics/2017/9/5/16236116/daca-history>

The announcement of rescinding the DACA program triggered a firestorm of protests from a broad cross-section of the different constituents of American society: religious and civil-society leaders, prominent corporate leaders, university presidents, and members of Congress from both parties. Trump’s decision to terminate DACA meant that approximately 800,000 young undocumented aliens brought to America as children would be eligible for removal from the United States, thus losing their work authorization and access to education. Furthermore, according to Trump’s administration plan to rescind DACA, an average of 915 DACA beneficiaries would lose their benefits following March 5, 2018.¹¹³⁶

Legally speaking, rescinding DACA proved to be a controversial decision. In this respect, Attorney General Sessions maintained that Obama’s administration deliberately sought to achieve what the legislative branch refused, thus declaring DACA to be unconstitutional.¹¹³⁷

The executive branch, through DACA, deliberately sought to achieve what the legislative branch specifically refused to authorize on multiple occasions. Such an open-ended circumvention of immigration laws was an unconstitutional exercise of authority by the Executive Branch.¹¹³⁸

By contrast, a federal district court judge in San Francisco issued a nationwide injunction on January 9, 2018, ordering Trump’s government to resume offering DACA renewals. The Department of Justice (DOJ) appealed the decision, and on January 13, the USCIS started accepting applications for DACA renewals. After accepting to review the legal challenges pertaining to ending DACA, the Supreme Court agreed, on June 18, 2020, the Supreme Court blocked Trump’s attempt to terminate Obama’s DACA initiative in a 5-4 ruling.¹¹³⁹ In other words, the Supreme Court’s decision maintained the DACA program enabling DACA recipients to renew their permits of accessing education and obtaining work authorization.

Similar to DACA, Trump’s administration also rescinded two other Obama-era deportation-relief programs, though neither was ever implemented. Effectively, on June 15, 2018, DHS Secretary John F. Kelly officially terminated the DAPA program along with the extension of the existing DACA program.¹¹⁴⁰

¹¹³⁶ Pierce, Bolter, and Selee, *Trump’s First Year on Immigration Policy: Rhetoric vs. Reality*, 15.

¹¹³⁷ Anti-Defamation League, “What is DACA and Who Are the DREAMers,” ADL, Published 2017, Updated 2022, Accessed on December 6, 2022, <https://www.adl.org/resources/tools-and-strategies/what-daca-and-who-are-dreamers>

¹¹³⁸ Anti-Defamation League, “What is DACA and Who Are the DREAMers”.

¹¹³⁹ Ibid.

¹¹⁴⁰ Pierce, Bolter, and Selee, *Trump’s First Year on Immigration Policy: Rhetoric vs. Reality*, 15.

7.3 Ending TPS Designations and Obama-Era Executive Actions

The Temporary Protection Status (TPS) program is a life-saving immigration program that authorizes foreign nationals to remain in the United States if while they are in the USA, something catastrophic occurs in their home countries such as famine, epidemic, war, or a natural disaster, that prevents their safe return to their country of origin.¹¹⁴¹ Similar to DACA, TPS provides its recipients with protection from deportation and allows them to work legally while staying in the United States. However, TPS is a temporary and humanitarian form of relief that does not offer its recipients a Lawful Permanent Resident (LPR) in the United States.¹¹⁴²

Establishes a program for granting temporary protected status and work authorization to aliens in the United States who are nationals of countries designated by the Attorney General to be subject to armed conflict, natural disaster, or other extraordinary temporary conditions. Authorizes the Attorney General to grant such temporary protected status. Prohibits deportation during the period in which such status is in effect. Directs the Attorney General to: (1) authorize such alien to engage in employment in the United States; and (2) provide such alien with an employment authorized endorsement or other appropriate permit. Sets forth provisions relating to benefits and status during such period of temporary protected status.¹¹⁴³

The creation of TPS dates back to 1990 when Congress passed it to authorize the DHS to provide the status for nationals whose home countries witnessed disasters or suffered from civil conflicts.¹¹⁴⁴ In a 2018 MPI report, TPS protected 436,000¹¹⁴⁵ people hailing from ten countries that suffered from wars, violence, starvation, epidemic, and the aftermath of natural disasters. Thus, the largest communities of TPS beneficiaries hail from two main countries of the North Triangle of Central America (NTCA): El Salvador and Honduras. In more detail, El Salvador comprised the largest group of TPS recipients with 263,000 followed by Honduras with 86,031 recipients, and Haiti with 58,557 recipients.¹¹⁴⁶ Another report presented by USCIS

¹¹⁴¹ Paniel Ibe and Eli Johnson, “Trump Has Ended Temporary Protected Status for Hundreds of Thousands of Immigrants. Here is What You Need to Know,” Updated June 30, 2020, Accessed on December 6, 2022, <https://www.afsc.org/blogs/news-and-commentary/trump-has-ended-temporary-protected-status-hundreds-thousands-immigrants>

¹¹⁴² Paniel Ibe and Eli Johnson, “Trump Has Ended Temporary Protected Status for Hundreds of Thousands of Immigrants. Here is What You Need to Know”.

¹¹⁴³ 101st Congress (1989-1990), “S.358-Immigration Act of 1990,” Congress.gov, Accessed on December 7, 2022, <https://www.congress.gov/bill/101st-congress/senate-bill/358#:~:text=Immigration%20Act%20of%201990%20-%20Title,for%20FY%201992%20through%201994.>

¹¹⁴⁴ Richard Gonzales, “Trump Administration Ends Temporary Protected Status For Hondurans,” Npr, May 4, 2018, Accessed on December 7, 2022, <https://www.npr.org/sections/twotwo-way/2018/05/04/608654408/trump-administration-ends-temporary-protected-status-for-hondurans>

¹¹⁴⁵ Pierce, Bolter, and Selee, *Trump’s First Year on Immigration Policy: Rhetoric vs. Reality*, 15.

¹¹⁴⁶ *Ibid.*

to Congress on March 29, 2020, provides more updated data about TPS holders from ten different countries listed below in Table 13.

Table 13. Number and prior immigration status of TPS beneficiaries during the calendar year 2020

Country	Total
El Salvador	244,921
Haiti	54,365
Honduras	78,149
Nepal	14,642
Nicaragua	4,344
Somalia	447
South Sudan	101
Sudan	738
Syria	6,682
Yemen	1,663
Total	406,052

Source: U.S. Citizenship and Immigration Services

The TPS program received a lot of criticism since its creation by Congress as part of the Immigration Act of 1990. According to the legislation, each administration was tasked with determining countries whose nationals would be eligible to benefit from the TPS program and with extending or ending benefits for countries every six to eighteen months.¹¹⁴⁷ Both past governments, Democratic and Republican, have been criticized by immigration hardliners for extending certain TPS designations for a long period so that it no longer seems temporary. For instance, El Salvador was designated for TPS following a series of earthquakes that stroke the country ever since 2001, which means that some Salvadorans benefited from TPS for approximately 17 years (the report was published in 2018).

Provides for special temporary protected status for Salvadorans. Designates El Salvador as a country whose nationals are eligible for temporary protected status under the new program, subject to specified restrictions. Makes such designation effective as of enactment of this Act, until the end of an 18-month period beginning January 1, 1991. Requires a Salvadoran, to be eligible for such status, to have been in the United States continuously since September 19, 1990, and to register between January 1 and June 30, 1991. Requires renewal of such registration and work authorization every six months. Sets forth special rules for enforcement of the requirement to depart following termination of such designation.¹¹⁴⁸

So, Trump’s administration resorted to terminating TPS to render it eligible for deportation to thousands of TPS holders. It took a stricter view of TPS statutory language to justify its decision

¹¹⁴⁷ Pierce, Bolter, and Selee, *Trump’s First Year on Immigration Policy: Rhetoric vs. Reality*, 16.

¹¹⁴⁸ 101st Congress (1989-1990), “S.358-Immigration Act of 1990”.

to end designations for some countries when they applied for renewal. Accordingly, By January 2018, the administration terminated the TPS benefits for 263,000 Salvadoran beneficiaries, 58,557 Haitians, 5,306 Nicaraguans, and 1,048 Sudanians; in addition, it alluded to terminating TPS benefits for 86,031 Hondurans.¹¹⁴⁹ In a statement from the Secretary of DHS, Kirstjen M. Nielsen, she announced that DHS would terminate the TPS program for about 57,000 Hondurans. However, Nielsen maintained that she would delay the effective date to terminate the TPS for Hondurans till January 5, 2020. She stated the following:

[T]he Secretary determined that the disruption of living conditions in Honduras from Hurricane Mitch that served as the basis for its TPS designation has decreased to a degree that it should no longer be regarded as substantial. Thus, as required under the applicable statute, the current TPS designation must be terminated.¹¹⁵⁰

These announcements to terminate TPS benefits for beneficiaries from different countries, namely from Honduras, were met with a big resentment. Immigration advocates criticized Nielsen's decision to end TPS for Hondurans claiming it was politically driven and without paying regard to the current dangerous conditions in Honduras. In this respect, the Catholic Legal Immigration Network, Inc., (CLINIC) stated that Honduras was in the middle of a humanitarian crisis with a staggering homicide rate, chronic childhood hunger, and the lack of drinking water for hundreds of thousands of Hondurans.¹¹⁵¹ Therefore, CLINIC's executive director, Jeanne Atkinson, said that "The administration has attempted to paint a picture that it has no choice but to terminate TPS".¹¹⁵² Atkinson went beyond in interpreting DHS's decision to terminate TPS for Hondurans accusing Trump's government of implicitly alluding to the idea that all past administrations, Democratic and Republican, unlawfully extended TPS for Hondurans; contrary to that, it is the Trump administration's decision that disregards the law and Congress's intent to create TPS designed to safeguard human lives in the first place.¹¹⁵³ However, the supporters of Trump's administration praised the decision arguing that the justification for extending TPS for Hondurans expired two decades ago; "The hurricane that justified it in the first place was two decades ago", declared Mark Krikorian, the executive director of the Center for Immigration Studies (CIS).¹¹⁵⁴ However, Krikorian preferred that the Trump Administration would give Hondurans only six months to leave the United States, not eighteen months.

¹¹⁴⁹ Pierce, Bolter, and Selee, *Trump's First Year on Immigration Policy: Rhetoric vs. Reality*, 16.

¹¹⁵⁰ Richard Gonzales, "Trump Administration Ends Temporary Protected Status For Hondurans".

¹¹⁵¹ Ibid.

¹¹⁵² Ibid.

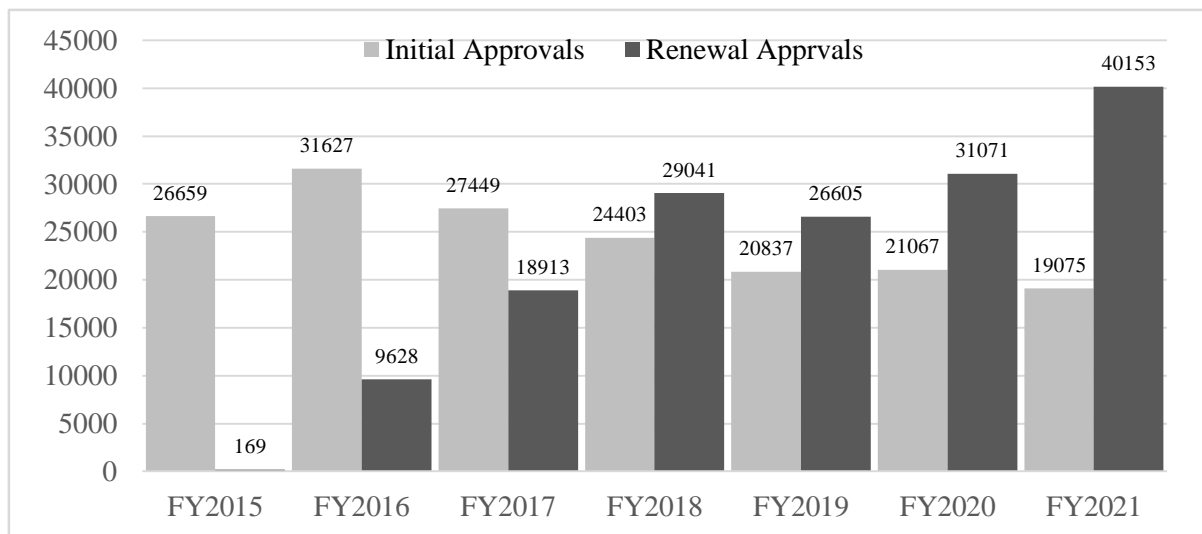
¹¹⁵³ Ibid.

¹¹⁵⁴ Ibid.

7.4 H-4 Employment Authorization Documents (EADs)

In 2014, the DHS issued regulations permitting certain H-4 visa holders to apply for Employment Authorization Documents (EADs) if their H-1B spouses have started the process to become an LPR, but cannot yet receive a green card due to the decades-long backlogs. Accordingly, the critically important H-4 EAD offers temporary relief for H-4 spouses so that they can lawfully work and thus can support their families pending adjusting their status.¹¹⁵⁵ In reality, many H-1B visa holders are sponsored by their employers for green cards; however, due to the per-country backlogs, the process may last for many years, sometimes decades, after accepting their initial applications by USCIS.¹¹⁵⁶ While waiting to adjust their status, these people are stuck to the temporary status that restricts their ability to work. Also, many H-4 spouses cannot contribute additional income, pursue their careers, or even apply for a driver's license.¹¹⁵⁷ Data related to H-4 EAD approvals (initial and renewal) is displayed in Figure 37.

Figure 37. H-4 EAD approvals (initial and renewal) FY 2015-2021



Source: United States Citizenship and Immigration Services

Similar to the aforementioned programs initiated by Obama’s administration, the H-4 EADs were targeted by Trump’s administration. The latter alluded to its intention to terminate it. Therefore, under the Trump administration, initial approvals of H-4 applications remained decreasing, as shown in Figure 37 from 31,627 in FY2016, followed by 27,449 in FY2017, and 20,837 in FY2019.

¹¹⁵⁵ Andrew Moriarty, “H-4 Work Authorization Act: Priority Bill Spotlight,” Fud.us, April 26, 2022, Accessed on December 7, 2022, <https://www.fwd.us/news/h-4-work-authorization/>

¹¹⁵⁶ Pierce, Bolter, and Selee, *Trump’s First Year on Immigration Policy: Rhetoric vs. Reality*, 16.

¹¹⁵⁷ Andrew Moriarty, “H-4 Work Authorization Act: Priority Bill Spotlight”.

7.5 International Entrepreneur Parole

The International Entrepreneur Parole (IEP) is a special rule that allows the DHS to use its parole authority to offer foreign entrepreneurs a period of authorized stay in the United States. These stays are determined on a case-by-case basis, where the entrepreneur has to demonstrate that their presence in the United States would bring significant public benefit. However, it is notable to note that the IEP program is not a visa, but the DHS's special parole authority to offer a period of authorized stay.¹¹⁵⁸ Entrepreneurs who may respond to the requirements of IEP eligibility can come to the United States to start their businesses. Further, their children and spouses can also benefit from parole to accompany them to the USA. Once in the United States, their spouse can apply for work authorization and their children can attend school.

The International Entrepreneur Parole program offers various benefits for its beneficiaries. It permits foreign entrepreneurs to come to the United States to work for their businesses. In addition to some benefits that already exist such as an E2 visa¹¹⁵⁹ and L1 visa¹¹⁶⁰, IEP is yet another way for entrepreneurs to enter and stay in the United States to develop their businesses. Besides, the IEP program does not require entrepreneurs to invest their money as the E2 visa requires; additionally, their children can benefit from this program as it allows them to attend American schools, thus benefiting from the U.S. high-qualified educational system. Moreover, entrepreneurs can benefit from an initial parole period of two-and-a-half years with the ability to apply for its renewal for another two-and-a-half years. In other words, entrepreneurs can be authorized to stay for five years in total. Furthermore, the authorized stay under the IEP program is not limited to only one entrepreneur; up to three entrepreneurs can come to the United States to work for the same startup company.¹¹⁶¹

To be eligible for the IEP program, entrepreneurs are required to meet some requirements. They must own at least 10% of the business they work for. They also have to be actively involved in their business, not just passive investors. In addition, the startup company

¹¹⁵⁸ Michael Ashoori, "International Entrepreneur Parole Program Explained," Ashoorilaw, Accessed on December 8, 2022, <https://www.ashoorilaw.com/blog/international-entrepreneur-parole-program-explained/>

¹¹⁵⁹ The E2 visa program is a non-immigrant visa that represents a great option for entrepreneurs, investors, and people looking for running a business in the United States. Thanks to E2 visa, they are allowed to live in the United States, start a U.S. business, and work for their business.

¹¹⁶⁰ The L2 visa is a non-immigrant visa that permit foriegn companies to tranfer a manager, executive, or a person with a specialized skill or knowledge to an American company, which is a branch office, parent, subsidiary, or affiliate of the foreign company.

¹¹⁶¹ Michael Ashoori, "International Entrepreneur Parole Program Explained".

is required to be founded within the last five years. Besides, another key program requirement, the business must prove its potential for rapid business growth and job creation.¹¹⁶² Other requirements for the IEP program include the entrepreneur's ability to prove that s/he invested up to \$250,000 in her/his startup company. S/he can be eligible for the IEP program if s/he proves that her/his startup company had received \$100,000 in federal, state, or local government awards or grants. Last, they can prove eligible for the IEP program if they can if they proved to partially meet one of the two last aforesaid conditions along with other reliable and compelling evidence.¹¹⁶³

The IEP program chiefly aims at developing the U.S. economy by encouraging international entrepreneurs to come to the United States to create and develop startup companies or entities with high-growth potential. In this regard, DHS estimates that creating the parole process for entrepreneurs with the potential to provide a significant public benefit would be so beneficial to the economy as it can enhance innovation, generate capital investments, and create more jobs for Americans.¹¹⁶⁴ Further, DHS estimates that the IEP would spur entrepreneurs to pursue business opportunities in the USA rather than abroad, thereby expecting to generate important scientific, research development, and technological advances which may result in creating new products and generate positive spillover impacts to other businesses and sectors. These positive spillover effects can benefit the U.S. economy by boosting and strengthening high-growth and job-creating businesses in the country. Therefore, the DHS expected that 2,940 international entrepreneurs would be qualified every year for the IEP program, which may provide the U.S. market with thousands of direct and indirect jobs.¹¹⁶⁵

The IEP program was issued on January 17, 2017, shortly before the end of Obama's second term in the White House, to spur foreign entrepreneurs to come to America to create startup entities with high-growth and job-creating potential. However, upon taking office, the Trump administration tried to repeal the IEP program and block its implementation by delaying its effective date presumed to be on July 17, 2017, for nearly eight months, till March 14, 2018; moreover, the DHS suggested to completely end the program as part of a broader government-

¹¹⁶² Ibid.

¹¹⁶³ Ibid.

¹¹⁶⁴ Department of Homeland Security, "International Entrepreneur Rule," Federal Register, Published on January 1, 2017, Accessed on December 8, 2022, <https://www.federalregister.gov/documents/2017/01/17/2017-00481/international-entrepreneur-rule>

¹¹⁶⁵ Arturo Castellanos-Canales, "Fact Sheet: International Entrepreneur Parole Program," National Immigration Forum, Published on June 3, 2022, Accessed on December 8, 2022. <https://immigrationforum.org/article/fact-sheet-international-entrepreneur-parole-program/>

wide review of all existing federal immigration programs and as part of the Trump’s executive order 13767 signed in January 2017 that aims at tightening the U.S. security border. Hence, the government would use the delay period just to solicit public comments concerning its intended termination.¹¹⁶⁶ This idea was formally expressed by a spokesman who maintained: “During the delay, DHS will be soliciting public comment on a proposal to withdraw to the rule, and individuals will not be able to apply for parole under the International Entrepreneur Rule”.¹¹⁶⁷ This intention sparked the fear of the tech industry and investment leaders who remained fearful that the delay of the IEP program was just the first step before terminating it altogether. In response to this maneuvering, lawsuits were filed in the U.S. courts which reversed the Trump administration’s attempt of rescinding the IEP program and ruled in favor of pursuing its implementation in 2018. Trump’s administration responded to the court ruling by proposing another rule to rescind the IEP program in June 2018, but that rule was never finalized.¹¹⁶⁸ Nonetheless, owing to the uncertainty that surrounded the implementation of the IEP program and its termination as well, only a few entrepreneurs applied for parole under the IEP program¹¹⁶⁹ which cost the US economy thousands of jobs and millions of dollars.

7.5 Central American Minors Refugee and Parole

In 2014, President Obama’s administration created a program called the Central American Minors parole (CAM parole) to respond to the surge in the number of unaccompanied minors and families who illegally entered the United States from NTCA countries: El Salvador, Guatemala, and Honduras.¹¹⁷⁰ Broadly, under the CAM program, minors who failed to obtain a refugee status could win a two-year renewable parole on the condition that they have parents or relatives who reside legally in the United States. The chief aim of this program is to provide children escaping persecution in their home countries with a safe, legal, and orderly alternative to travel to the U.S. southern border on their own or with smugglers. Additionally, the CAM

¹¹⁶⁶ Camiel Becker and Clare Bienvenu, “Trump Delays Parole for Entrepreneurs,” Becker and Lee LLP, 2018, Accessed on December 8, 2022, <https://www.blimmigration.com/trump-delays-parole-entrepreneurs/>

¹¹⁶⁷ Tony Romm, “The Trump Administration Is Delaying a Key Program For Foreign Entrepreneur,” Published on July 10, 2017, Accessed on December 8, 2022, <https://www.vox.com/2017/7/10/15948590/trump-delay-international-entrepreneur-rule-immigration>

¹¹⁶⁸ Arturo Castellanos-Canales, “Fact Sheet: International Entrepreneur Parole Program”.

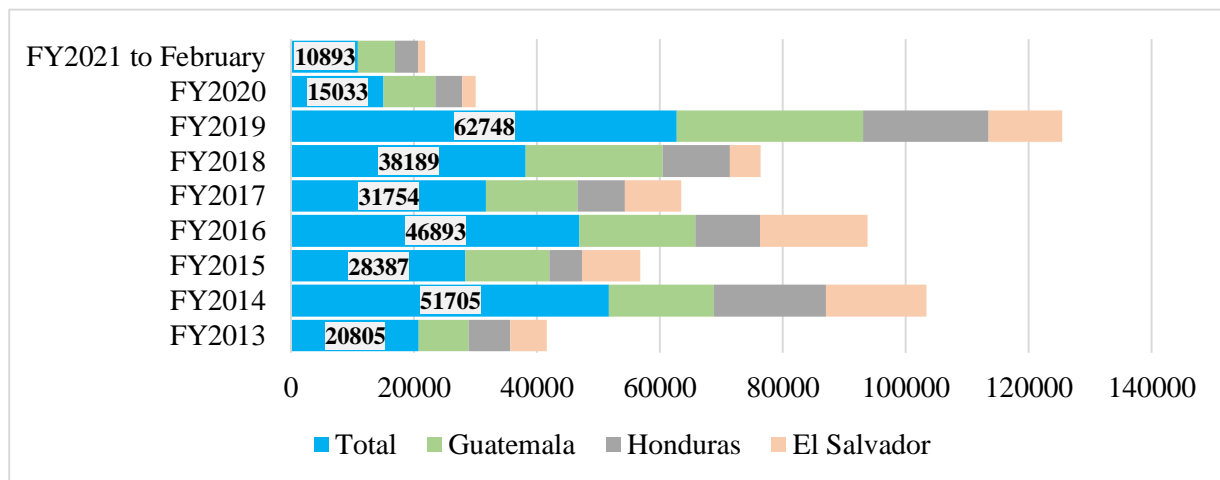
¹¹⁶⁹ Ibid.

¹¹⁷⁰ David Nakamura, “Trump Administration Ends Obama-Era Protection Program for Central American Minors,” The Washington Post, Published 16, 2017, Accessed on December 8, 2022, https://www.washingtonpost.com/politics/trump-administration-ends-obama-era-protection-program-for-central-american-minors/2017/08/16/8101507e-82b6-11e7-ab27-1a21a8e006ab_story.html

program aimed at curbing the flow of the spike in accompanied children arriving at the Mexican-American border in the spring and summer of 2014.¹¹⁷¹

Figure 38 displays data about the apprehension of unaccompanied children at the southern border from 2013 to February 2021. It shows that the number of unaccompanied children who arrived at the U.S. southern border amounted to 20,805 in FY2013 and nearly doubled in FY2014 when it reached 51,705, which overwhelmed the U.S. processing capacity, thereby forcing the CBP officials to house children in temporary shelters on US military bases.

Figure 38. Apprehension of unaccompanied children at the southern border 2013-Feb2021



Source: Adapted from Custom Border Patrol Newsroom, Brookings

This surge in accompanied children coupled with a spike in gang violence in the three countries of the North Triangle of Central America. In point of fact, murder crimes committed by gangs witnessed a terrible increase in El Salvador and Honduras. Between 2011 and 2014, gang-related homicide increased by a factor of 10, and more than doubled in 2014 alone. In Honduras, however, gang-related homicide witnessed a 160% increase.¹¹⁷² Therefore, many children who fled to the U.S. southern border came from the most dangerous regions in these three countries where many of them revealed that they were targeted to be recruited by powerful and violent gangs. Those who declined to be recruited were subjected to various brutal punishments such as murder, kidnapping, and raping.

¹¹⁷¹ National Immigration Forum, “Fact Sheet: Central American Minors (CAM) Program,” Published on March 19, 2021, Accessed on December 8, 2022, <https://immigrationforum.org/article/fact-sheet-central-american-minors-cam-program/>

¹¹⁷² National Immigration Forum, “Fact Sheet: Central American Minors (CAM) Program”.

Applying for benefiting from the CAM program passes through several steps. Usually, asylum seekers have to apply personally in the country of asylum. Yet, the CAM program enables parents of children seeking protection to apply while their children are still in their home countries. As a matter of fact, the CAM program relies on a process known as the Affidavit of Relationship (AOR) that was established for refugees in the United States to help them apply for family members with pending refugee cases overseas.¹¹⁷³ Further, the CAM program developed an AOR process through which parents from NTCA countries with some form of legal status (Permanent Resident Status, Temporary Protected Status, Parole, Deferred Action, Deferred Enforced Departure, or Withholding of Removal) may apply for their unmarried children under the age of 21 who are still in their countries of origin.¹¹⁷⁴

As shown in Figure 38, under the CAM parole program, the United States received thousands of Central American children since its creation, thus proving its effectiveness. Yet, the Trump administration put its future in doubt when the DHS froze it and announced an internal review as part of a broader government-wide review of all existing federal immigration programs following the passage of Trump's executive orders aiming at tightening immigration controls.¹¹⁷⁵ Carter Langston, a spokesman at the USCIS which monitors the immigration parole system declared that parole requests from individuals of NTCA denied refugee status in their home countries will no longer be considered automatically by the USCIS.¹¹⁷⁶ In other words, the DHS announcement of rescinding the CAM parole program meant that the agency (USCIS) will start notifying families that children already approved for entry would have to reapply through other immigration channels which may be more difficult. Furthermore, 1,465 minors with CAM parole status cannot renew their status, so they are compelled to renew their stays in the United States through other immigration channels.

In response to the rescission of the CAM parole program, immigration rights advocates condemned it maintaining that it would throw thousands of families into uncertainty. In this respect, Lisa Frydman, a vice president at Kids in Need of Defense, expressed her concerns about the foggy future of these children after being abandoned by the U.S. government saying that "Our concern is that the administration is completely abandoning these children and leaving

¹¹⁷³ Ibid.

¹¹⁷⁴ Ibid.

¹¹⁷⁵ David Nakamura, "Trump Administration Ends Obama-Era Protection Program for Central American Minors".

¹¹⁷⁶ Ibid.

them in a real situation of immediate danger”.¹¹⁷⁷ J. Kevin Appleby, a senior director at the Center of Migration Studies, had also expressed his disagreement with unwinding the CAM parole program that puts in danger the safety of minors maintaining that “It was a safety net for children who were in danger but whose parts of their stories might not match a certain class under refugee status...is mean-spirited. It’s not a large number of kids, and they’re really vulnerable”.¹¹⁷⁸ However, USCIS officials responded to the Immigration rights advocates’ concerns by confirming that 99% of those who applied under the CAM refugee and parole programs won admission to the United States. Further, stressed that Trump’s decision to rescind the CAM parole program did not end their chance to come to the USA; rather, they would have to apply through the standard parole program put in place for far longer.¹¹⁷⁹

7.6 Expand Enforcement Priorities

Among the Trump immigration policy’s pillars is the expansion of enforcement priorities. This promise was clearly expressed by Donald Trump during his 2016 presidential campaign as he bashed Obama’s administration for being very soft on illegal immigrants by adopting programs such as DACA and DAPA, which, according to Trump, provided more formal means of protection for them. Furthermore, Donald Trump firmly excoriated the Obama administration for narrowing its enforcement priorities and limiting them to recent border crossers as well as those convicted of certain major crimes, thereby exempting most unauthorized immigrants from deportation.¹¹⁸⁰ Trump also criticized his political rival in the 2016 presidential election, Hillary Clinton, who, according to him, pledged to introduce a third amnesty in favor of undocumented immigrants. Therefore, Trump vehemently asserted to his supporters that such amnesty will not be granted under his administration that would enforce all immigration laws targeting undocumented immigrants. He stated the following:

In a Trump Administration, all immigration laws will be enforced. As with any law enforcement activity, we will set priorities. But, unlike this Administration, no one will be immune or exempt from enforcement – and ICE and Border Patrol officers will be allowed to do their jobs. Anyone who has entered the United States illegally is subject to deportation – that is what it means to have laws and to have a country.¹¹⁸¹

¹¹⁷⁷ Ibid.

¹¹⁷⁸ Ibid.

¹¹⁷⁹ Ibid.

¹¹⁸⁰ Pierce, Bolter, and Selee, *Trump’s First Year on Immigration Policy: Rhetoric vs. Reality*, 17.

¹¹⁸¹ Politico Staff, “Donald Trump Immigration Speech in Arizona.”

This declaration reveals that Trump’s administration would grant no amnesty for nationals who are illegally in the United States. Apparently, Trump seemed to tell undocumented immigrants that reaching their aim of obtaining American citizenship or lawful status in the United States by benefiting from amnesty would not work under his administration that would grant them no amnesty. “There will be no amnesty. Our message to the world will be this: You cannot obtain legal status or become a citizen of the United States by illegally entering our country,”¹¹⁸² Trump declared in his Phoenix speech in Arizona. The aim behind this severe declaration is to discourage illegal immigrants, namely those from Latin America, to come to the United States simply because their plans to get legal status would go in vain because they would be targeted by immigration enforcement agencies, ICE and Border Patrol agents.

Effectively, in his executive order of January 25, 2017, President Trump listed all categories of illegal immigrants that would be subject to deportation. All these categories were briefly mentioned by President Trump in his Phoenix speech including criminals, security threats, gang members, visa overstays, and public charges.¹¹⁸³ However, in his EO13768 on enhancing public safety in the interior of the county, President Trump outlined in detail the removable categories of illegal immigrants. Accordingly, the director of DHS was instructed to faithfully execute immigration laws and prioritize for deportation the following categories of illegal immigrants who:

(a) Have been convicted of any criminal offense; (b) Have been charged with any criminal offense, where such charge has not been resolved; (c) Have committed acts that constitute a chargeable criminal offense; (d) Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency; (e) Have abused any program related to receipt of public benefits; (f) Are subject to a final order of removal, but who have not complied with their legal obligation to depart the United States; or (g) In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.¹¹⁸⁴

Most important, in the same EO13768, President Trump instructed federal departments and agencies to use all available systems and resources to ensure the faithful and perfect execution of American immigration laws that target all removable aliens.¹¹⁸⁵ This is a notable

¹¹⁸² Ibid.

¹¹⁸³ Ibid.

¹¹⁸⁴ Donald J. Trump, “Executive Order 13768—Enhancing Public Safety in the Interior of the United States,” The American Presidency Project, January 25, 2017, Accessed on December 14, 2022, <https://www.presidency.ucsb.edu/documents/executive-order-13768-enhancing-public-safety-the-interior-the-united-states>

¹¹⁸⁵ Donald J. Trump, “Executive Order 13768—Enhancing Public Safety in the Interior of the United States”.

distinction from the Obama administration's approaches which seemed somehow lenient as it targeted only certain categories of illegal immigrants while most of them were exempted from removal. This manifested clearly in some discretionary measures adopted by Obama's administration that became known as "the Morton Memo", after John Morton's memo issued on June 30, 2010, which provided officers of immigration enforcement agencies with guidelines they ought to follow while deciding about who to arrest, detain, and remove. Hence, three main priorities for deportation were listed by the Morton Memo comprising those considered a threat to the U.S. national security and public safety, namely those illegal migrants with criminal convictions of any kind; unauthorized migrants who recently crossed the U.S. border; and illegal migrants who did not heed a previous order of deportation or re-entered the country after being removed.¹¹⁸⁶

The shift in priorities for deportation under Trump's administration widened the pool of unauthorized immigrants eligible for deportation, resulting in a surge in the number of arrested and removed aliens within the unauthorized population. Accordingly, between its inauguration day till the end of FY2017 on September 30, 2017, ICE deported 61,094 aliens from the interior of the nation, a 37% increase over the same time period from the past fiscal year; additionally, during the same time period, ICE arrested 110,568, a 42% increase over the same period of FY2016.¹¹⁸⁷ Of these 110,568 arrestees, 31,888, or rather 29% of them were aliens with no criminal conviction. This was a clear distinction from Obama's administration where interior enforcement focused chiefly on convicted criminals as 90% of the deported aliens from the interior of the country were convicted of what the administration considered as serious crimes.¹¹⁸⁸

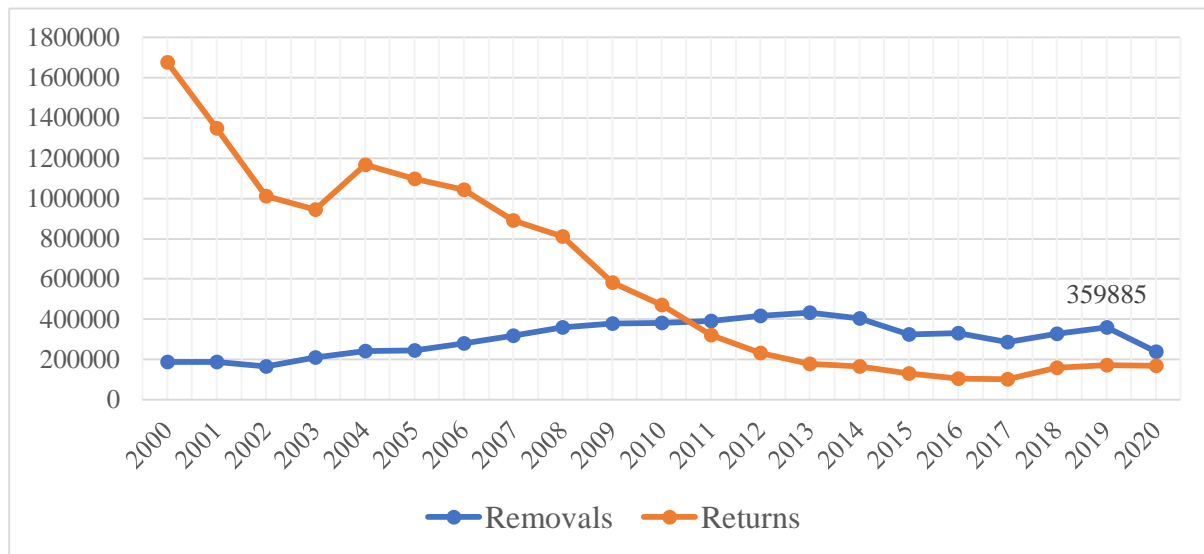
Trump's expansion of the pool of removable illegal aliens was quickly translated into real actions on the ground. In this respect, the 2019 DHS statistics, about the aliens removed or returned from or to the United States during the period spanning fiscal years 2000 to 2019, are displayed in Figure 39, revealing a spike in deportations of convicted illegal immigrants under Trump's administration.

¹¹⁸⁶ American Immigration Council, *The End of Immigration Enforcement Priorities Under the Trump Administration* (Washington, DC., 2018), 3.

¹¹⁸⁷ Pierce, Bolter, and Selee, *Trump's First Year on Immigration Policy: Rhetoric vs. Reality*, 17.

¹¹⁸⁸ *Ibid.*

Figure 39. Aliens removed or returned: fiscal years 2000-19



Source: U.S. Department of Homeland Security, <https://www.dhs.gov/immigration-statistics/yearbook/2019/table39>

Removals of aliens, as shown in Figure 39, were estimated at 287,093 in the whole of FY2017 before increasing to 328,716 in the following fiscal year and then to 359,885 in FY2019. However, FY2020 witnessed a considerable decline in the total number of removals as they reached 239,151, a 33,53% decrease compared to the previous fiscal year. Similarly, the number of returns, which refer to the confirmed movement of inadmissible or deportable aliens out of the USA not based on order removal, surged during Trump’s administration after witnessing a continuous decline that lasted for many years since FY2004. In FY2017, their number amounted to 100,695 then increased to 159,940 in the following fiscal year, and 171,445 in FY2019. In like manner, the number of returns slightly declined in the last year of Trump’s administration to 167,327. Thus, the increase in deportations of aliens came to mirror the will of President Trump to root out illegal immigrant from the United States of America.

To sum up, Donald Trump announced that he is going to rescind Obama’s immigration programs namely DACA and DAPA because he considered them to be unfit for his immigration plan. He argued that such programs contributed to deteriorating public safety due to releasing illegal immigrants into American society instead of detaining them. Similarly, Trump ended other programs like the TPS program that was so beneficial for the designated countries that encountered humanitarian crisis, civil wars or armed conflicts, and natural disasters. Statistics showed that hundreds of thousands of DACA, DAPA, TPS, and other programs recipients

benefited from deferring deportation from the United States in addition to the advantage of getting work authorization to work legally in the United States. Therefore, terminating these programs would have great impacts on both recipients as well as different aspects of American life. Additionally, Trump went beyond in his attempt to stem and reduce illegal immigration by adopting a policy dubbed the Zero Tolerance Policy. Chapter 8 brings to light this policy's aims, implementation, and effects.

Chapter 8: Zero Tolerance Policy and Family Separation

In the last decade, the United States witnessed a significant surge in the number of families coming mainly from countries of the North Triangle of Central America (NTCA) who were apprehended at the U.S.-Mexican border. To curb the inflow of these families, the Trump administration introduced a zero-tolerance policy (ZTP) that chiefly aimed at prosecuting all adults caught attempting to illegally cross the border regardless of whether they come with their children or they were asylum seekers.¹¹⁸⁹ This policy resulted in separating thousands of children from their parents, reclassifying them unaccompanied, and referring them to the custody of the Office of Refugee Resettlement (ORR). So, what pushed illegal immigrants to cross illegally the U.S.-Mexican border, what is Trump's zero-tolerance policy, what were Trump's motives to adopt this tough policy, and what were its impacts?

¹¹⁸⁹ Catalina Amuedo-Dorantes and Jose R. Bucheli, "Family Separation and Reunification Under President Trump's Zero-Tolerance Policy" (2022), 1. https://conference.iza.org/conference_files/AMM_2022/amuedo-dorantes_c1295.pdf

8.1 Reasons for Illegal Migration Across the U.S. Southwest Border

Illegal migration of families and children across America's southwest border is ascribed to a set of reasons. Basically, these families usually decide to leave their home countries due to a combination of push and pull factors. Overall, immigrants' decision to leave their home countries reflects their dream to have a better life in the United States that allows them to benefit from good education for their children as well as the available jobs to enhance their living conditions. However, illegal immigrants tend to cross the U.S. southwest border unlawfully owing to the lack of legal pathways under the U.S. current policy. In addition, the backlogs of demands of permanent residence for family members of American citizens deterred many immigrants to wait for long to obtain an update on their legal case; this caused many families to reveal that they would migrate to the United States lawfully if they had the opportunity to do it.¹¹⁹⁰ However, despaired of obtaining visas after applying multiple times, many families finally decided to move to Canada to cross illegally the Canadian border with Washington State.

U.S. immigration policy offers few pathways for the legal migration of Mexicans. The majority of the families I [Joanna Dreby] interviewed were unauthorized border crossers. Nearly all said they would have migrated legally if the option had been open to them. Many described multiple visits to the U.S. consular office to try to get a visa, like one mother who applied three times before giving up and instead going to Canada and then crossing into Washington State.¹¹⁹¹

Given the economic hardships as well as the lack of a legal means to migrate to the United States, parents in many cases are obliged to leave their children in their home countries. After deciding to move to the United States, migrant families usually send over one parent while the second parent remains in the mother country until the first parent secures a job in the United States and then joins them.¹¹⁹² Thus, due to the limited opportunities to migrate legally to the United States, often skewed to favor the privileged and wealthy immigrants, many migrant families opted for moving to the U.S. without proper documents to initiate their process for getting refuge or obtaining asylum status in the USA.

Another factor that contributed significantly to the increase in illegal migration was the desire to secure a better future and good life for their children.¹¹⁹³ Migrant mothers usually take

¹¹⁹⁰ Joanna Dreby, "U.S. Immigration Policy and Family Separation: The Consequences for Children's Well-Being," *Social Sciences and Medicine* 132, (2015): 17. <https://doi.org/10.1016/j.socscimed.2014.08.041>

¹¹⁹¹ Joanna Dreby, "U.S. Immigration Policy and Family Separation," 17.

¹¹⁹² Ibid.

¹¹⁹³ Joanna Dreby, "The Burden of Deportation on Children in Mexican Immigrant Families," *Journal of Marriage and Family* 74, no. 4 (2012):832. DOI:10.1111/j.1741-3737.2012.00989.x

the decision of migrating to the United States because they see it as a means to achieve some sort of prosperity by working in the USA, saving money, and sending it later to their children and family members in their home countries.¹¹⁹⁴ This is because they tried very hard to get economic opportunities to achieve so in their countries of origin, but they failed which pushed them to seek economic opportunities in the United States. Usually, one family member moves first to the United States and starts sending back money to his/her family members once getting the economic means to do so.

Another reason that pushed migrant families to move to the United States is the stability of the U.S. Dollar, which is an essential factor that would make it easier for them to earn a living in the United States and send money to their children in their Home countries. In addition to that, safety and social stability in the United States are also another pulled migrant families given the gang violence, civil wars, and political unrest that characterized most of the central and Latin American countries.¹¹⁹⁵ All in all, undocumented migrant families decide to move to the United States given a set of pull and push factors that consist in securing a better life and future for their children, benefiting from the available economic opportunities and the stability of the US currency, and enjoying safety in the USA and escaping gang violence, political unrest, and civil wars in their countries of origin.

8.2 The Legal Background of ZTP

To better understand the zero-tolerance policy as well as its effects, it is quite important to consider the legal framework in which this policy was adopted as well as its roots. As a matter of fact, America's immigration policy toward refugees and asylum seekers witnessed a drastic change since forms of amnesty were introduced under Ronald Regan's administration after signing the Immigration Reform and Control Act of 1986 (IRCA) and its derivative sequel, the Immigration Act of 1990. This Act introduced significant changes to the U.S. immigration laws as it placed heavy penalties on employers who hire undocumented immigrants or individuals unauthorized to work in the United States; however, the IRCA offered legalized status, or rather lawful permanent residence (LPR) as well as prospective naturalization to

¹¹⁹⁴ Joanna Dreby, "U.S. Immigration Policy and Family Separation: The Consequences for Children's Well-Being," 17.

¹¹⁹⁵ De Jesus, Amanda. *Immigration Status and Risk Factors for Suicidal Ideation and Attempts among Latinos in the United States* ((Order No. 28262956). [Doctoral Dissertation, Fordham University] ProQuest Dissertations & Theses Global, 2021), 10.

undocumented immigrants who came to the United States before 1982.¹¹⁹⁶ Besides, farmers who could prove 90 days of employment in the United States are also qualified for LPR.¹¹⁹⁷ The IRCA was considered very important due to its amnesty provision that enabled about 3 million migrants, mostly of Hispanic descent, to obtain legal status, thereby securing social and economic opportunities as lawful residents of the United States and getting protected from removal.¹¹⁹⁸ Furthermore, the IRCA authorized employment verification through a process known as I-9 which became the primary means to enforce immigration requirements in employment verification and practices. Accordingly, hired employees were required to prove their work eligibility by filling out an I-9 form and submitting certificates of citizenship or employment authorization.

By emphasizing stricter border enforcement, imposing penalties for employing undocumented migrants, and allowing the legalization of undocumented immigrants who resided in the USA for five years or more before 1982, the IRCA offered a new opportunity to get legalized residency in the United States. In other words, approximately 1.6 million undocumented immigrants were able to get a legalized status along with 1.1 farmer workers who were also able to obtain legal status for their families.¹¹⁹⁹ As a result, this legislation contributed significantly to the historic spike in the numbers of family-based migration in the upcoming decade of the 1990s, thereby enabling Mexican nationals (roughly 70% of whom were beneficiaries of IRCA) to gain a solid foothold in the US immigration system and become the largest immigrant community in the USA.¹²⁰⁰

The IRCA was followed later by several pieces of legislation which paved the way for the adoption of this policy which are the Flores Settlement Agreement of 1997, the Homeland Security Act of 2002, and the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008.¹²⁰¹ These pieces of legislation reflected the efforts of the previous administrations to

¹¹⁹⁶ Library of Congress. “1986: Immigration Reform and Control Act of 1986”. Accessed on Jan. 2, 2023. <https://guides.loc.gov/latinx-civil-rights/irca#:~:text=This%20act%20introduced%20civil%20and,undocumented%20migrants,%20who%20entered%20the>

¹¹⁹⁷ Library of Congress. “1986: Immigration Reform and Control Act of 1986”.

¹¹⁹⁸ Ibid.

¹¹⁹⁹ Muzaffar Chishti, Doris Meissner, and Claire Bergeron, “In Its 25th Anniversary, IRCA’s Legacy Lives On,” Migration Policy Institute, Published on Nov.16, 2011, Accessed on Jan. 2, 2023, <https://www.migrationpolicy.org/article/its-25th-anniversary-ircas-legacy-lives>

¹²⁰⁰ Muzaffar Chishti, Doris Meissner, and Claire Bergeron, “In Its 25th Anniversary, IRCA’s Legacy Lives On”.

¹²⁰¹ Catalina Amuedo-Dorantes and Jose R. Bucheli, “Family Separation and Reunification Under President Trump’s Zero-Tolerance Policy” (2022), 5.

address issues pertaining to family separation and minor migrants' detention after being apprehended at the southwest border.

8.2.1 The Flores Settlement Agreement of 1997

The early signs of the ZTP emerged in the late 1980s and beginning of the 1990s when waves of unaccompanied minors from Central America started arriving at the country's southwest border to escape conflicts in their home countries and reunite with their relatives in the country, and benefit from the available economic opportunities.¹²⁰² However, owing to the backlogs brought about by the surging number of immigrants attempting to cross the U.S. border in addition to the processing requirements that may take the federal government weeks, months, or sometimes even years to resolve the immigration status of minor immigrants and children as well. Therefore, once the government decides that the immigration status would take a long time to be resolved, the government starts detaining these undocumented children while their immigration status is being resolved.¹²⁰³

Initially, the agency that was responsible for taking care of unaccompanied children from Central America was the DOJ. However, owing to the spiking number of unaccompanied children from Central America in the late 1980s, Immigration and Naturalization Service (INS) became the agency in charge of taking care of migrant children. As a matter of fact, INS was the agency responsible for enforcing immigration laws that enabled them to assume the guardianship of minor migrants coming from Central America. Many commentators believed that INS took an inhuman approach to treat and care about minor migrants as it detained them in what can only be described as prison-like settings. According to them, minor children were physically and psychologically weak and vulnerable, yet INS detained them for extremely long periods of time in such inhuman conditions; furthermore, INS was criticized sharply for not distinguishing between minor and adult migrants in detaining conditions as they were detained in similar conditions.¹²⁰⁴ Central American unaccompanied minor migrants detained at the border received various forms of ill-treatment for years while being under the responsibility of INS as they “were placed in cells with unrelated adults of both sexes, detained in penal-like

¹²⁰² Dhillon Ramkhelawan, “The Separation of Migrant Families at the Border Under the Trump Administration’s Zero Tolerance Policy: A Critical Mistreatment of Immigrant Children Held in U.S. Custody,” *Child and Family Law Journal* 7, no. 1(2019): 154. <https://lawpublications.barry.edu/cflj/vol7/iss1/7>

¹²⁰³ Dhillon Ramkhelawan, “The Separation of Migrant Families at the Border Under the Trump Administration’s Zero Tolerance Policy: A Critical Mistreatment of Immigrant Children Held in U.S. Custody,” 154.

¹²⁰⁴ *Ibid.*, 155.

settings, and were subjected to abuse by guards and other prisoners”.¹²⁰⁵ Consequently, ACLU pursued its case and filed a class action lawsuit that revealed the lack of norms and standards in detaining facilities required for detaining minors migrants as well as the inhuman conditions to which they were subjected.

The first time in U.S. history where the courts set out standards and procedures INS has to follow while detaining minor migrants was the Flores Settlement Agreement. This agreement resulted from the *Flores v. Meese* case where Jenny Flores, a fifteen-year-old Salvadoran girl, escaped the military conflict in her home country to reunite with her aunt in the USA. Flores fled the civil war in her home country, El Salvador, and entered the United States after crossing the border between California and Mexico.¹²⁰⁶ Her mother used to live in California but was an unauthorized immigrant. At the time of Jenny Flores’ detention in 1985, INS used to release the child into their custody if s/he has a parent or a legal guardian in the United States until their immigration status is handled.¹²⁰⁷ However, though the general policy of INS at the time was to release the child, INS’s Western Region had implemented different policies for minor migrants. In other words, instead of releasing children into their custody to other relatives or responsible parties, the INS’s Western Region would only release them to a parent or guardian unless there were extenuating circumstances. In case the parent or guardian did come to take the child, the INS would keep the child in their custody until an immigration hearing would be organized and then decide about their removal or asylum.¹²⁰⁸

On the other hand, the Western Region of INS was notorious for utilizing minor migrants as bait to catch their unauthorized parents or guardians in the United States. In point of fact, when the parent or guardian comes forward to take their child, INS seized this opportunity to apprehend and initiate immigration proceedings against them. Because Jenny Flores’ mother was an undocumented immigrant, she feared apprehension and deportation to her home country, El Salvador, if she came forward to have her daughter released; hence, she did not approach INS to get her daughter released. However, Flores had other relatives, an aunt and uncle, who lived lawfully in the United States and were keen to take care of her pending settling her immigration case. Yet, since INS would release the child only to a parent or

¹²⁰⁵ Ibid.

¹²⁰⁶ Megan Kauffman, “Protecting the Flores and Hutto Settlements: A Look at the History of Migrant Children Detention and Where Immigration Policies are Headed,” *Immigration and Human Rights Law Review* 2, no. 2 (2020): 2. <https://scholarship.law.uc.edu/ihr/r/vol2/iss2/1>

¹²⁰⁷ Megan Kauffman, “Protecting the Flores and Hutto Settlements: A Look at the History of Migrant Children Detention and Where Immigration Policies are Headed,” 2.

¹²⁰⁸ Kauffman, “Protecting the Flores and Hutto Settlements,” 3.

guardian, it released Flores to a private for-profit center, that housed minor migrants along with male and female adults, instead of her relatives. This led to a long sufferance of Flores in that jail.

The prison in which Flores was detained was primarily a motel that was transformed into provisional jail. It was surrounded by a chain-link fence as well as barbed wire. Life inside that jail was quite miserable for the detainees, namely children. Flores was inhumanly detained in that prison as she was shackled, strip-searched, and placed in a juvenile detention facility for two months without having any recreational and educational activities; Moreover, Flores was compelled to share the bathroom with adults.¹²⁰⁹ In addition, at the time of Flores' detention, INS housed around 5,000 children in its detaining facilities, most of whom did not have lawyers to defend them and were without a basic understanding of the law as many of them were underage and did not speak English.¹²¹⁰ Therefore, ACLU filed a lawsuit on behalf of her and other children subjected to similar conditions.

The litigation resulted in setting out the requisite standards for detaining, treating, and releasing minor migrants. According to the Flores Agreement, immigration officials in detaining facilities ought to provide minor migrants with food and drinking water, medical assistance namely in emergency cases, toilets and sinks, adequate temperature control and ventilation, adequate protection from others, and separating them from strange and unrelated adults when possible.¹²¹¹ Furthermore, the agreement required INS officials to ensure a prompt release of children from detention facilities, and place children for whom no release option is available or whose release is pending in detention centers that provide the least restrictive setting appropriate to the age and basic needs of detained children. Besides, INS officials are required to implement standards regarding the care and treatment of children in detention facilities. Accordingly, the Flores Settlement Agreement not only set out the minimum and requisite standards and procedures INS officials have to follow while detaining unaccompanied minor migrants stressing the point that unaccompanied children should be detained for a short period only. Also, a federal judge ruled in 2016 that the Flores Settlement Agreement applies also to families which ought to be detained together and released within 20 days.¹²¹²

¹²⁰⁹ Ramkhelawan, "The Separation of Migrant Families at the Border Under the Trump Administration's Zero Tolerance Policy: A Critical Mistreatment of Immigrant Children Held in U.S. Custody," 156.

¹²¹⁰ Kauffman, "Protecting the Flores and Hutto Settlements," 4.

¹²¹¹ Ramkhelawan, "The Separation of Migrant Families at the Border Under the Trump Administration's Zero Tolerance Policy: A Critical Mistreatment of Immigrant Children Held in U.S. Custody," 156.

¹²¹² *Ibid.*, 156.

8.2.2 The Hutto Settlement Agreement

Though the Flores Settlement Agreement determined the standards and procedures INS officials have to follow while dealing with unaccompanied minor migrants held in U.S. custody, some concerns related to the separation of children from their families were still not addressed properly. Therefore, the Bush administration resorted to the creation of family detention centers in order to keep families caught inside the United States or at the border. Don. T. Hutto was one of the detention facilities created for that purpose that held hundreds of families, most of them were women with their children, who came to the United States for the sake of applying for asylum in the USA after escaping the abusive conditions they encountered in their countries of origin. However, detaining conditions in the Hutto facility were improper as they were almost prison-like conditions; for instance, children were obliged to wear prison uniforms, received little to no recreational or educational opportunities, threatened to be separated from their parents as a disciplinary means, and were detained for months.¹²¹³ Such detaining conditions were in direct opposition to the Flores Settlement Agreement; as a result, the ACLU once again filed a lawsuit to enhance detaining conditions for families.

This litigation resulted in the creation of the Hutto Settlement Agreement which prescribed the measures and procedures immigration officials have to abide by while detaining families and children. Accordingly, immigration officials are required to permit children at age 12 years old or older to move freely about the detention facility, provide a full-time and on-site pediatrician, cancel the count system which obliged families to remain in their cells for twelve hours a day, install privacy curtains around toilets, and provide children with trip opportunities. Also, immigration officials ought to provide migrant children with toys and age-appropriate books and improve the nutritional value of food presented to children to keep them healthy. Additionally, children ought to benefit from more time outdoors as well as more educational programming. Further, children were no longer required to wear prison uniforms. Last but not least, the Hutto Settlement Agreement required immigration officials to be subject to external oversight to ensure their performance.¹²¹⁴

¹²¹³ Ibid., 157.

¹²¹⁴ Ibid., 157.

8.2.3 The Homeland Security Act of 2002

On November 25, 2002, President George Bush signed into law the Homeland Security Act that dissolved INS and establish instead a new executive department called the Department of Homeland Security (DHS).¹²¹⁵ Drafter after the 9/11 attacks, the Act put in place several measures aiming at ensuring U.S. national security as a response to large-scale emergencies that rose rapidly as top priorities for the Bush Administration. Accordingly, to meet the new security challenges, the DHS comprised three agencies entitled to enforce immigration laws which are the U.S. Citizenship and Immigration Services (USCIS), Immigration Customs Enforcement (ICE), and Customs and Border Patrol (CBP).¹²¹⁶ Also, the Act transferred the authority over processing and caring for unaccompanied children from the old INS to the Office of Refugee Resettlement (ORR) under the responsibility of the US Department of Health and Human Services (DHHS) to make sure that the least restrictive setting would be monitored and as required in the Flores Settlement Agreement of 1997.¹²¹⁷ Additionally, minor migrants were to be released to parents, family, or other sponsors without unnecessary delay when possible.

In 2008, Congress passed another act entitled The Trafficking Victims Protection Reauthorization Act (TVPRA) that outlined two procedures for processing cases of unaccompanied minors based on whether they belong to contiguous countries (Canada and Mexico) or non-contiguous countries. Accordingly, minor migrants from contiguous countries would be repatriated if no ground for asylum is available; otherwise, they would be put under the ORR's custody. Minor migrants from non-contiguous countries, however, would be transferred to the custody of ORR, barring exceptional circumstances. This differential treatment of minor migrants, together with the increasing backlogs in immigration courts owing to the criminalization of illegal entry into the United States, resulted in a surge in the number of unaccompanied minors being held under ORR custody.¹²¹⁸

8.3 Trump Initiated His Zero-Tolerance Policy

In his 2016 presidential campaign, Donald Trump vowed to provide zero tolerance for criminal aliens in what came to be known as the “zero-tolerance policy”. This policy broadly

¹²¹⁵ Richard J. Samuels, “Homeland Security Act,” Britannica, Updated on November 18, 2022, Accessed on December 28, 2022, <https://www.britannica.com/topic/Homeland-Security-Act>

¹²¹⁶ Catalina Amuedo-Dorantes and Jose R. Bucheli, “Family Separation and Reunification Under President Trump’s Zero-Tolerance Policy” (2022), 5.

¹²¹⁷ *Ibid.*, 6.

¹²¹⁸ *Ibid.*

aimed at getting rid of the criminal aliens who are free and roaming about the streets inside the United States along with those who managed to evade justice. He declared the following:

Zero tolerance for criminal aliens. According to federal data, there are at least 2 million criminal aliens now inside the country. We will begin moving them out day one, in joint operations with local, state and federal law enforcement. Beyond the 2 million, there are a vast number of additional criminal illegal immigrants who have fled or evaded justice. But their days on the run will soon be over. They go out, and they go out fast.¹²¹⁹

Once in office, President Trump moved to the implementation of this policy that primarily targeted unauthorized immigrants attempting to illegally cross the U.S. border hoping to discourage illegal immigration into the country and reduce the burden of processing asylum requests deemed to be fraudulent by the administration officials. As a matter of fact, the United States witnessed in its last years before Trump's administration a spike in the number of Central American families arriving at the U.S. southern border, most of them seeking asylum. Some of these families requested asylum at the U.S. ports while others request it after entering the country without inspection or rather illegally. Therefore, Trump's administration revealed its intention to address this issue by putting in place a zero-tolerance policy aiming at ramping up criminal prosecutions against foreign nationals caught at the border while attempting to cross it illegally.¹²²⁰ Accordingly, U.S. Attorney General Jeff Sessions announced on April 6, 2018, that a new zero-tolerance policy is going to be put in place by the DOJ.¹²²¹ So, what were the motives for setting forth this tough policy?

8.4 Trump's Intent Behind Initiating ZTP

The Trump administration's primary intention behind initiating this stiff policy was to deter other immigrant families who are thinking about migrating to the United States from immigrating over the U.S. southwest border or seeking asylum in the United States.¹²²² President Trump, in fact, strongly believed in the idea that separating migrant families at the border would so effective in deterring migrants from coming to the United States; therefore, he considered several stiff measures to tighten border security. "If they feel there would be

¹²¹⁹ Politico Staff, "Donald Trump Immigration Speech in Arizona."

¹²²⁰ Human Rights Watch, "Q&A: Trump Administration's "Zero Tolerance" Immigration policy," HRW, Published on August 16, 2018, Accessed on December 17, 2022, <https://www.hrw.org/news/2018/08/16/qa-trump-administrations-zero-tolerance-immigration-policy>

¹²²¹ Human Rights Watch, "Q&A: Trump Administration's "Zero Tolerance" Immigration policy".

¹²²² Jeffrey R. Baker and Allyson McKinney Timm, "Zero-Tolerance: The Trump Administration's Human Rights Violations Against Migrants on the Southern Border," (2021), *Pepperdine University Legal Studies Research Paper* 13, no. 12 (2020): 594. Available at SSRN: <https://ssrn.com/abstract=3559908> or <http://dx.doi.org/10.2139/ssrn.3559908>

separation, they don't come," Trump stated about immigrants during comments to reporters in the White House.¹²²³ More important, Trump claimed, without providing evidence, that "immigrants were grabbing children and they are using children to come into our country in many cases".¹²²⁴ Therefore, to stem the inflow of immigrants to the United States, Donald Trump along with his staff thought about different options his administration has to do to slow down illegal immigration. "We're looking at a lot of different things having to do with illegal immigration...we're going to do whatever we can do to get it slowed down," President Trump declared.¹²²⁵ For his part, Katie Waldman, a spokesman for the DHS, talked about a crisis at the country's southwest borders caused by the rising number of adults entering the country illegally with their children. "DHS will continue to enforce the law humanely, and will continue to examine a range of options to secure our nation's borders," Waldman maintained.¹²²⁶ Therefore, implementing the zero-tolerance policy came with an ultimate objective which consists in slowing down illegal immigration and asylum demand.

Many questions and concerns surrounded the implementation of the zero-tolerance policy. For instance, John Kelly, the White House Chief of Staff, in an interview with NPR's John Burnet, sympathized with the reason that pushed migrant families to flee to the United States, but the federal government has to apply laws; he stated "They're coming here for a reason... And I sympathize with the reason. But the laws are the laws. But a big name of the game is deterrence."¹²²⁷ Journalist John Burnet asked him another question about whether the family separation would be a tough deterrent, John Kelly replied: "It could be a tough deterrent — would be a tough deterrent".¹²²⁸ Kelly, in fact, went beyond when he stated that he would do anything to deter Central American immigrants from coming to the USA after getting on a very dangerous network that brings them up through Mexico to the USA.

This viewpoint was also affirmed by Attorney General Jeff Sessions when hosted by Fox News's Laura Ingraham in her program "The Ingraham Angle". Ingraham asked him this

¹²²³ David Shepardson, "Trump Says Family Separations Deter Illegal Immigration," Reuters, published on October 14, 2018, Accessed on December 28, 2022, <https://www.reuters.com/article/us-usa-immigration-trump-idUSKCN1MO00C>

¹²²⁴ David Shepardson, "Trump Says Family Separations Deter Illegal Immigration,"

¹²²⁵ Ibid.

¹²²⁶ Ibid.

¹²²⁷ Philip Bump, "Here are the Administration Officials Who Have Said that Family Separation Is Meant As a Deterrent," The Washington Post, Published on June 19, 2018, Accessed on December 29, 2022, <https://www.washingtonpost.com/news/politics/wp/2018/06/19/here-are-the-administration-officials-who-have-said-that-family-separation-is-meant-as-a-deterrent/>

¹²²⁸ Philip Bump, "Here are the Administration Officials Who Have Said that Family Separation Is Meant As a Deterrent."

question: “General Sessions, is this policy in part used as a deterrent? Are you trying to deter people from bringing children or minors across this dangerous journey? Is that part of what the separation is about?”.¹²²⁹ Jeff Sessions replied that the federal government is going just to apply the law. Ingraham interrupted him and asked him another question to confirm with him whether the whole policy is about deterrent; “But is it a deterrent, sir?” Are you considering it a deterrent?” Ingraham interjected. Jeff Sessions confirmed this intent explaining that the fact of not prosecuting illegal migrants for entering the country unlawfully played a key role in the proliferation of this kind of illegal immigration. He literally maintained the following:

I see that the fact that no one was being prosecuted for this was a factor in a fivefold increase in four years in this kind of illegal immigration...So, yes, hopefully people will get the message and come through the border at the port of entry and not break across the border unlawfully.¹²³⁰

Similarly, when interviewed by CNN’s Alisyn Camerota in August 2019, the acting director of the USCIS and one of Trump’s immigration officials, Ken Cuccinelli, defended the Trump administration’s proposed changes to be brought to the Flores Settlement Agreement that would indefinitely allow the detainment of undocumented families together with their children, confirming also that the new proposal aimed at deterring migrants from crossing the southwest border.

This is a deterrent because they know that instead of rushing the border, which is what’s been going on for a number of years now, by using the massive numbers coming to the border and overwhelming our facilities and our capacity to hold folks and our court rulings, which is what the Flores rule was, that now they can and will to the extent we’re able to do so, hold them until those hearings happen.¹²³¹

So, as affirmed by John Kelly, Jeff Sessions, and Ken Cuccinelli, Trump’s zero-tolerance policy is meant to slow down unlawful immigration by adopting a tough policy based essentially on family separation as means of discouraging and deterring illegal immigrants from going through the long and dangerous journey to come before arriving at the U.S.-Mexican Border.

Civil rights advocates expressed their deep concerns about the harm Trump’s ZTP would cause to migrant families, namely minor children. In this respect, the U.S. Civil Rights

¹²²⁹ Ibid.

¹²³⁰ Ibid.

¹²³¹ Veronica Stracqualursi, “Trump Immigration Official Says New Rule Detaining Families Indefinitely Is a Deterrent,” CNN, Published on August 23, 2019, Accessed on December 29, 2022, <https://edition.cnn.com/2019/08/23/politics/ken-cuccinelli-flores-settlement-cnntv/index.html>

Commission (USCRC) wrote a letter to the Department of Justice and Homeland Security on June 15, 2018, urging them to stop separating children from their parents after crossing the country's southwest border.¹²³² In its letter, USCRC reminded the heads of the two departments of their report written to Obama's administration on immigration detainee facilities in which it condemned the policies of separating migrant children from their families and placing them in separate detention centers, where USCRC's main concern was the inadequate and inappropriate care provided by Obama's government to minor migrants when it took charge of undocumented children after separating them from their parents.¹²³³ Thereafter, USCRC pointed to its grave concerns about the fair administration of justice owing to the coercive tactics and lack of due process afforded to apprehended migrant families. The federal government's coercive tactics manifested in shuffling children into detention centers after separating them from their parents who sought refuge in the USA; these tactics, if true, as one judge maintained were "brutal, offensive, and fails to comport with traditional notions of fair play and decency".¹²³⁴ This is because this policy "may coerce parents into withdrawing what may be valid asylum applications or otherwise impairing their immigration proceedings, for fear of what may be happening to their children", especially given the government's apparent animus against Mexicans as well as Central American migrants.¹²³⁵

8.5 Trump's Justification for His ZTP

The American immigration process was complicated for families entering the country unlawfully and was fraught, especially for those who came with their children. As previously discussed, the United States ought to comply with stricter rules that govern the detention and care of minor migrants in its custody. According to the Flores Settlement Agreement of 1997, the ICE is required to move the detained minors to a licensed detention facility designated for children within three to five days, unless specific circumstances allow otherwise, and thereafter place them under foster custody of qualified relatives or others.

minors shall be separated from delinquent offenders. Every effort must be taken to ensure that the safety and well-being of the minors detained in these facilities are satisfactorily provided for by the staff. The INS [replaced later by ICE] will transfer a minor from a placement under this paragraph to a placement under Paragraph 19 (i) within three (3) days, if the minor was apprehended in an INS [replaced later by ICE]

¹²³² Letter from U.S. Commission on Civil Rights to Jeff Sessions, U.S. Attorney General & Kirstjen M. Nielsen, Secretary of Homeland Security. (June 15, 2018), <https://www.usccr.gov/press/2018/06-15-18-letter.pdf>.

¹²³³ Ibid.

¹²³⁴ Ibid.

¹²³⁵ Ibid.

district in which a licensed program is located and has space available; or (ii) within five (5) days in all other cases.¹²³⁶

In *Flores vs. Johnson* in 2015, the Central District of California interpreted the Flores Settlement Agreement by requiring separate detention centers for children and others for their parents. Also, because the settlement focused on ensuring the safety of children, the court ordered the release of the detained parents along with their children.

In light of all the evidence, the Court agrees with Plaintiffs' interpretation of the preference for release provision, described in Paragraph 14 of the Agreement. As such, Defendants must release an accompanying parent as long as doing so would not create a flight risk or a safety risk. Since releasing the parent along with the child in this case would, in most instances, obviate Defendants' concern that releasing the child alone would endanger the child's safety, Defendants' argument that this policy falls within the safety risk exception as a blanket matter is unavailing. Therefore, the Court finds that Defendants' blanket no-release policy with respect to minors accompanied by their mothers is a material breach of the Agreement.¹²³⁷

The Ninth Circuit agreed with the first point related to placing children and their parents in separate detention facilities but overturned the second point related to releasing detained parents to better ensure the safety of their children. Trump's administration used this provision to justify its policies of separating minor migrants from their families and refused to release detained parents; hence, following the announcement of ZTP, instead of releasing both children and their parents, the Trump administration started placing parents in separate detention centers after taking away their children to place them in other detention facilities.¹²³⁸ Additionally, the Trump administration claimed that "the Flores settlement means children must be separated from their parents since they cannot be held in custody alongside their parents who are facing criminal prosecution and deportation for crossing the border illegally".¹²³⁹ It also claimed that the Flores Settlement "prevents the timely deportation of unaccompanied children, allowing them to remain in the US out of custody, where they typically fail to attend court hearings regarding their asylum cases".¹²⁴⁰ Hence, Kirstjen Nielsen, the Homeland Security Secretary,

¹²³⁶ United States District Court, Central District of California, *Stipulated Settlement Agreement* (1997. https://www.aclu.org/sites/default/files/field_document/flores_settlement_final_plus_extension_of_settlement011797.pdf), 8.

¹²³⁷ United States District Court, C. D. of California, *Jenny L. Florest, et al. Vs Jeh Johnson, et al.* 2015, https://scholar.google.com/scholar_case?case=7566013962289623344&q=Flores+v.+Johnson+2015&hl=en&as_sdt=2006&as_vis=1

¹²³⁸ Baker and McKinney Timm, "Zero-Tolerance: The Trump Administration's Human Rights Violations Against Migrants on the Southern Border," 594.

¹²³⁹ Michael Mark, "The Trump Administration Keeps Blaming 'Loopholes' in Immigration Laws for Its Family Separation Policy-Here's What's Really Going on," Business Insider, Published on Jun 19, 2018, Accessed on Dec. 1, 2022, <https://www.businessinsider.com/immigration-loopholes-asylum-law-trump-administration-congress-2018-6>

¹²⁴⁰ Michael Mark, "The Trump Administration Keeps Blaming 'Loopholes' in Immigration Laws for Its Family Separation Policy-Here's What's Really Going on,"

expressed the need for Congress to fund the Trump administration's ability to hold together families through the immigration process. As a result of these tough measures, minor undocumented migrants along with their families suffered from catastrophic harm and trauma. Experts, however, cautioned the administration officials against the lasting psychological that may result from their harsh policy, yet the administration proceeded undeterred.¹²⁴¹

8.6 Trump's Motives for Implementing His ZTP

The Trump administration's motives or at least Trump's motives behind adopting such a stiff policy against undocumented migrant families were rooted in segregation based on ethnicity, race, and migrants' national origin. In his announcement speech for his candidacy for the 2016 presidential campaign on June 16, 2015, Donald Trump stated scolding comments about Mexican immigrants arguing that most of them are of cheap quality and that Mexico is sending to the USA only its bad people who have lots of problems:

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 us. They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people.¹²⁴²

Trump went even beyond in his racist view toward undocumented immigrants. He used extraordinarily harsh rhetoric to renew his call for tough immigration measures against unauthorized immigrants depicting them as animals and bashing the Mexican government for not helping the U.S. authorities to stop this kind of illegal immigration: "We have people coming into the country or trying to come in, we're stopping a lot of them, but we're taking people out of the country. You wouldn't believe how bad these people are...These aren't people. These are animals."¹²⁴³ This statement reflects Trump's the extent to which President Trump scorned and despised Mexican and Latin American immigrants and may help explain his harsh ZTP against undocumented immigrants. As a matter of fact, Donald Trump considered this declaration as the absolute truth that does not require him to apologize for it. A few weeks

¹²⁴¹ Baker and McKinney Timm, "Zero-Tolerance: The Trump Administration's Human Rights Violations Against Migrants on the Southern Border," 594.

¹²⁴² Michelle Ye Hee Lee, "Donald Trump's False Comments Connecting Mexican Immigrants and Crime," *The Washington Post*, Published on July 8, 2015, Accessed on December 30, 2022, <https://www.washingtonpost.com/news/fact-checker/wp/2015/07/08/donald-trumps-false-comments-connecting-mexican-immigrants-and-crime/>

¹²⁴³ Gregory Korte and Alan Gomez, "Trump Ramps Up Rhetoric on Undocumented Immigrants: 'These Aren't People. These Are Animals,'" *USA TODAY*, Published on May 16, 2018, Accessed on December 30, 2022, <https://www.usatoday.com/story/news/politics/2018/05/16/trump-immigrants-animals-mexico-democrats-sanctuary-cities/617252002/>

later, he reiterated his stance toward Mexican and Latin American immigrants in his interview on Fox News's "Media Buzz" on the 5th of July, 2015, as he defended his viewpoint and refused to be construed as a racist when stated the following:

I can never apologize for the truth. I don't mind apologizing for things. But I can't apologize for the truth. I said tremendous crime is coming across. Everybody knows that's true. And it's happening all the time. So, why, when I mention, all of a sudden I'm a racist? I'm not a racist. I don't have a racist bone in my body.¹²⁴⁴

Another motive that pushed Donald Trump to be tough on Mexican and Latin American immigrants is that he considered them unhealthy and that many of them have AIDS; for instance, he declared that "Haiti had sent 15,000 people. They all have AIDS".¹²⁴⁵ Additionally, Trump voiced his concern about the 40,000 Nigerian immigrants who would "never go back to their huts in Africa" after seeing the United States.¹²⁴⁶ Further, Donald Trump wanted to have a selective immigration system that favors immigrants from developed countries over those from undeveloped countries. He, therefore, grew frustrated with lawmakers in the White House when discussing protecting immigrants from African countries, El Salvadore, and Haiti, as part of a bipartisan immigration deal, wondering "Why are we having all these people from shithole countries come here?".¹²⁴⁷ Instead, he suggested allowing in more immigrants from Norway and Asian countries whom he thought would better help and serve the U.S. economy.¹²⁴⁸ This means that Trump's immigration enforcement policies were essentially rooted in discriminatory and racist rancor toward Mexican, Central, and South American immigrants along with others from underdeveloped countries.

On the other hand, characterizing these immigrants as animals and criminals was not backed by evidence. As a matter of fact, statistics showed that conviction rates for Native Americans are higher than those of immigrants.¹²⁴⁹ For instance, in 2019, the state of Texas

¹²⁴⁴ Gregory Korte and Alan Gomez, "Trump Ramps Up Rhetoric on Undocumented Immigrants: 'These Aren't People. These Are Animals'".

¹²⁴⁵ Michael D. Shear and Julie Hirschfeld Davis, "Stocking Fears, Trump Defend Bureaucracy to Advance Immigration Agenda," Published on Dec. 23, 2017, Eccessed on Dec. 30, 2022, <https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html>

¹²⁴⁶ Michael D. Shear and Julie Hirschfeld Davis, "Stocking Fears, Trump Defend Bureaucracy to Advance Immigration Agenda".

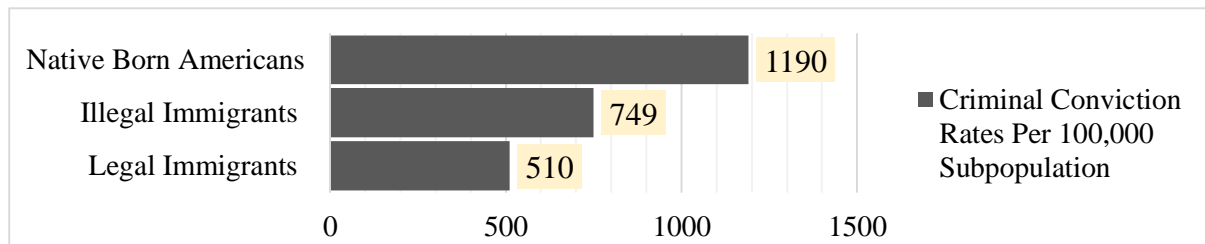
¹²⁴⁷ Josh Dawsey, "Trump Derides Protection for Immigrants from 'Shithole' Countries," The Washington Post. Published on Jan. 12, 2018, Accessed on Dec. 30, 2022, https://www.washingtonpost.com/politics/trump-attacks-protections-for-immigrants-from-shithole-countries-in-oval-office-meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94_story.html

¹²⁴⁸ Josh Dawsey, "Trump Derides Protection for Immigrants from 'Shithole' Countries".

¹²⁴⁹ Alex Nowrasteh, Criminal Immigrants in Texas in 2019: Illegal Immigrant Conviction Rates and Arrest Rates for Homicide, Sex, Crimes, Larency, and Other Crimes (Immigration Research and Policy Brief, 2021), 2.

scored 286,248 native-born Americans convicted of crimes in return for 14,010 convictions for unlawful immigrants and 15,692 convictions for lawful immigrants.¹²⁵⁰ Accordingly, the ratio of convictions among native-born Americans to 100,000 is the highest with 1,190 convictions, while 790 convictions for illegal immigrants and 510 convictions for legal immigrants, as shown in Figure 40.

Figure 40. Criminal conviction rates by immigration status in Texas, 2019



Source: Alex Nowrasteh’s analysis of data from the Texas Department of Public Safety and the American Community Survey. <https://www.cato.org/sites/cato.org/files/2021-05/IRPB-19.pdf>

Accusing illegal immigrants of being criminals is also an exaggerated allegation from President Donald Trump. Homicides committed by undocumented immigrants like the murder of Kate Steinle in 2015 and Mollie Tibbetts in 2018 garnered great public attention and resulted in promoting public support for tough and harsh immigration enforcement. More importantly, these homicides provided a solid support and platform for Trump’s claims that illegal immigrants were behind a large number of crimes in the USA. In addition, Trump capitalized on the aforesaid crimes to introduce his zero-tolerance policy. However, studies and statistics proved that the highest homicide rate in Texas is for native-born Americans.¹²⁵¹

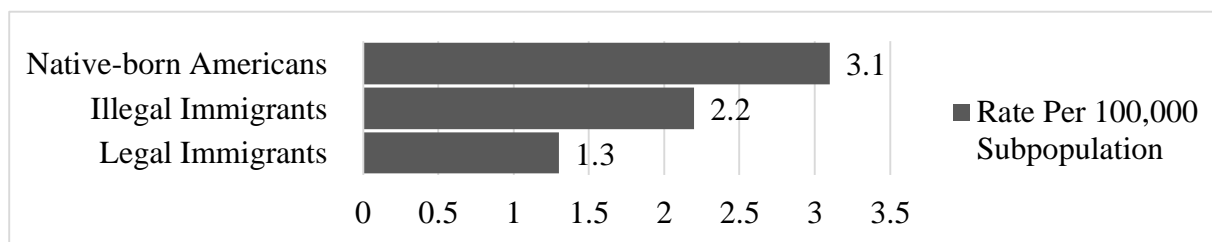
In 2019, Texas registered 829 homicides committed by people, 746 of these homicides were committed by native-born Americans, 42 homicides were committed by illegal immigrants, and 41 were committed by legal immigrants.¹²⁵² Accordingly, the homicide rates are 3.1 per 100,000 for native-born Americans, 2.2 per 100,000 for Illegal immigrants, and 1.3 per 100,000 for legal immigrants, as shown in Figure 41. These statistics disprove Trump’s allegations that illegal immigrants are criminals while the truth is that the criminality rate is higher among native-born Americans than illegal and legal immigrants.

¹²⁵⁰ Alex Nowrasteh, *Criminal Immigrants in Texas in 2019: Illegal Immigrant Conviction Rates and Arrest Rates for Homicide, Sex, Crimes, Larceny, and Other Crimes*, 2.

¹²⁵¹ Alex Nowrasteh, *Criminal Immigrants in Texas in 2019: Illegal Immigrant Conviction Rates and Arrest Rates for Homicide, Sex, Crimes, Larceny, and Other Crimes*, 3.

¹²⁵² *Ibid.*

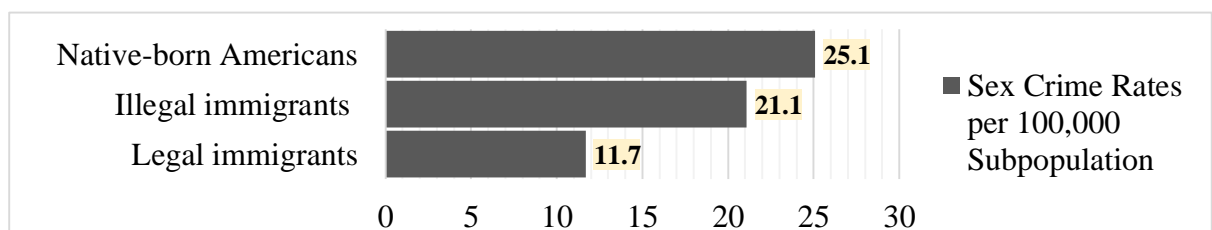
Figure 41. Homicide conviction rates by immigration status in Texas, 2019



Source: Alex Nowrasteh’s analysis of data from the Texas Department of Public Safety and the American Community Survey. <https://www.cato.org/sites/cato.org/files/2021-05/IRPB-19.pdf>

Statistics also showed that illegal immigrants come in second place after native-born Americans in sex crimes, arrests, and larceny. Sex crimes comprised individuals convicted of sexual assaults, sexual offenses, and commercial sex.¹²⁵³ For every 100,000 people in Texas, statistics showed that 25.1 native-born Americans were convicted of sex crimes, 21.1 convictions by illegal immigrants, and legal immigrants came in third place with 11.7 convictions, as shown in Figure 42. In other words, sex crimes committed by illegal immigrants are 16% less than those committed by native-born immigrants. Likewise, sex crimes committed by legal immigrants are 53.4% less than those committed by native-born Americans.

Figure 42. Sex crime conviction rates by immigration status in Texas, 2019



Source: Alex Nowrasteh’s analysis of data from the Texas Department of Public Safety and the American Community Survey. <https://www.cato.org/sites/cato.org/files/2021-05/IRPB-19.pdf>

Concerning larceny, statistics also proved that illegal immigrants committed less number of crimes compared to native-born Americans. For every 100,000, 25 illegal immigrants were convicted for larceny, 34,9 convictions for legal immigrants, and 111,5 for every 100,000 native-born Americans.¹²⁵⁴ In other words, the larceny conviction rates for illegal and legal immigrants are 77.6% and 68,7% respectively less than that of native-born Americans.

¹²⁵³ Ibid., 4.
¹²⁵⁴ Ibid.

Concerning arresting of illegal immigrants, statistics also proved that the overall arrest rate for illegal immigrants is less than that for native-born Americans. Accordingly, in 2019, The police in Texas arrested 696,337 natives, 44,124 legal immigrants, and 36,454 illegal immigrants.¹²⁵⁵ Table 14 shows that for every 100,000 individuals in each subpopulation, Texas police arrested 2,895.7 native-born Americans, 1,948.3 illegal immigrants, and 1,433.6 legal immigrants. This indicates that the arrest rate for illegal and legal immigrants is 32.7% and 50.04% respectively less than that of Native Americans.

Table 14. Arrest rates by immigration status and crime in Texas

	All Arrests	Homicide Arrests	Sex Crime Arrests	Larceny Arrests
Native-Born Americans	2,895.7	5.4	56.4	224.0
Illegal Immigrants	1,948.3	2.8	51.6	76.6
Legal Immigrants	1,433.6	2.3	34.4	95.4

Note: Rates are per 100,000 residents in each subpopulation

Source: Alex Nowrasteh’s analysis of data from the Texas Department of Public Safety, the American Community Survey, and the American Migration Studies.

<https://www.cato.org/sites/cato.org/files/2021-05/IRPB-19.pdf>

So, committing crimes is not limited to illegal immigrants, but to the U.S. society as a whole. Also, Trump’s allegations that illegal immigrants are criminals proved to be baseless and were meant to garner public support for his harsh xenophobic measures against them.

8.7 Obama Approached Differently Migrant Families at the Border

Now that the separating families procedures and standards of detaining undocumented migrant children at the border are defined in the Flores and Hutto Settlement Agreements, it is so important to have a look at the way the Obama administration addressed this issue to make it easier to understand the reaction and resentment of immigrants as well as civil rights activists towards Trump’s implementation of his ZTP.

To start with, the Obama administration’s way of dealing with undocumented families and their minor children at the border was in total contrast with the Trump administration’s ZTP. Under the Obama administration, the government at least attempted to abide by the standards and procedures set out in the Flores and Hutto Settlement Agreements by creating detention centers meant to hold thousands of undocumented families together with their

¹²⁵⁵ Ibid., 4.

children pending the processing of their cases.¹²⁵⁶ At this point, the Trump administration seems to effectively revive this policy. Still, the Obama administration came under fire due to maintaining undocumented families in detention facilities even when they have relatives residing lawfully in the United States, arguing that the prompt release of children detained at the border applies only to unaccompanied children.

In response, Federal District Court Judge Dolley Gee ruled that the Obama administration's policy of detaining minor migrants along with their mothers is altogether unlawful because it violated the standards for detaining children outlined by the Flores Settlement, and ordered Obama's administration to release detained migrant children within 90 days of the ruling.¹²⁵⁷ This ruling was a setback for the Obama administration's immigration policies which responded by halting the detainment of migrant families attempting to enter the United States and adopted instead a new policy known as *Alternatives to Detention* that still permit migrant families to be closely supervised by providing mothers with ankle monitors before releasing them.¹²⁵⁸

When asked to comment on Trump's declaration that "there were only two options: separating migrant children from their parents at the border or open borders,"¹²⁵⁹ John Sandweg, the former acting head of ICE under the Obama administration responded by saying that separating families at the border "happened very rarely under the prior administration, our overall policy was to keep families unified".¹²⁶⁰ According to Sandweg, the only problem the Obama administration faced was when parents intentionally separated themselves from their children before arriving at the border which made it so challenging for the government to reunify minor migrants with their parents.

¹²⁵⁶ Camila Domonoske and Richard Gonzales, "What We Know: Family Separation and 'Zero Tolerance' at the Border," NPR, Published on June 19, 2018, Accessed on Jan. 1, 2023, <https://www.npr.org/2018/06/19/621065383/what-we-know-family-separation-and-zero-tolerance-at-the-border>

¹²⁵⁷ Alexandra Starr, "After Court Ruling, 3 Immigration Detention Centers Could Close," NPR, Published on July 27, 2015, Accessed on Jan. 1, 2023, <https://www.npr.org/2015/07/27/426674309/after-court-ruling-3-immigration-detention-centers-could-close>

¹²⁵⁸ Camila Domonoske and Richard Gonzales, "What We Know: Family Separation and 'Zero Tolerance' at the Border".

¹²⁵⁹ Rebecca Joseph, "Separations of Children, Parents at U.S. Border Could Be Permanent: Former Immigration Director," Global News, Published on Jun 19, 2018, Accessed on Jan. 1, 2023, <https://globalnews.ca/news/4284138/separation-children-parents-us-border-permanent/>

¹²⁶⁰ Rebecca Joseph, "Separations of Children, Parents at U.S. Border Could Be Permanent: Former Immigration Director".

After adopting the *Alternatives to Detention* program, the Obama administration did not face legal consequences anymore under the Flores and Hutto Settlement Agreements, especially since the new program was welcomed by the ACLU.¹²⁶¹ So, it is pretty clear that the Obama administration's approach to dealing with family separation was more acceptable by immigrants and civil rights activists as it received little resentment compared to the Trump administration's policy which engendered a sweeping resentment among immigrants, civil rights advocates, and political class.

8.8 Implementation of Trump's ZTP

Under the zero-tolerance policy, U.S. attorney's officers along the southwest were instructed to increase eligibility for criminal prosecution by taking into account all cases related to illegal entry to the United States; in other words, all foreign nationals who were caught attempting to cross the southwest border would be convicted without exception. Thenceforth, judicial districts along the U.S. southwest border saw a significant surge in the number of prosecutions of immigration-related referrals by agents of Customs and Border Patrol. Thus, 100% of the adults arrested while attempting to cross the southwest border were prosecuted by the DOJ without taking into account whether they were asylum seekers or accompanied by minor children.¹²⁶² Hence, total prosecutions nearly doubled between March and June 2018 as they shifted from 7,604 to 12,402, a 61,31% increase within two months.

In contrast, non-immigration prosecutions declined significantly from 1,093 in March 2018 to 703 in June 2018¹²⁶³. In addition, the ratio of immigration prosecutions surged in June 2018 where only one in seventeen prosecutions were anything other than immigration offenses, while it was only one in seven prosecutions in March 2018. This reflects the Trump administration's determination to discourage illegal immigration into the country by ramping up illegal prosecutions.

8.9 Offenses for Which Migrants Are Prosecuted

Overall, the federal government increasingly relied on criminal courts in order to stem the inflow of illegal immigrants into the United States, especially on the southwest border with

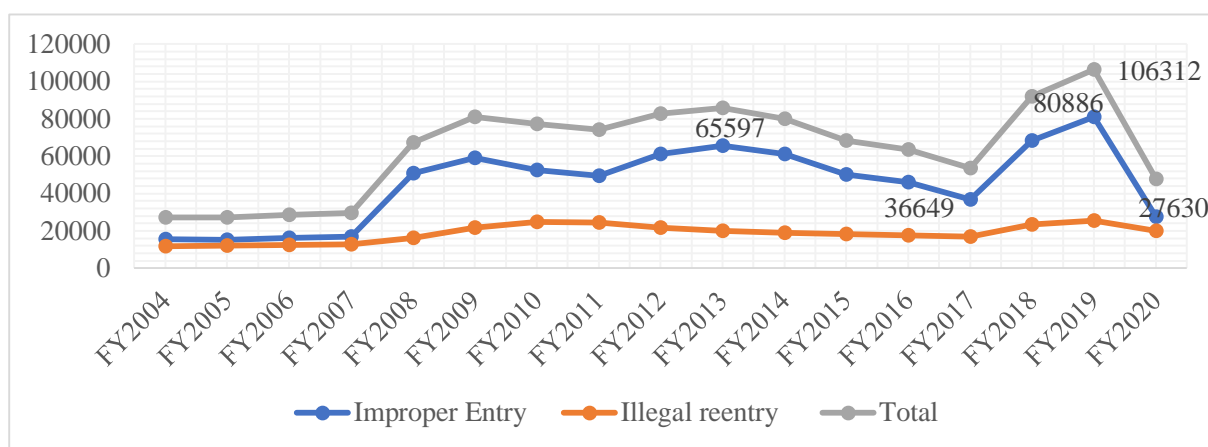
¹²⁶¹ Camila Domonoske and Richard Gonzales, "What We Know: Family Separation and 'Zero Tolerance' at the Border".

¹²⁶² Ibid.

¹²⁶³ TRAC Immigration, "Stepped Up Illegal-Entry Prosecutions Reduce those for other Crimes," published on August 6, 2018, accessed on June 11, 2023. <https://trac.syr.edu/immigration/reports/524/>

Mexico. In this respect, migrants were mostly prosecuted either for illegal entry if the person entered the country without permission or for illegal reentry if the person entered the country without permission after being removed previously from the United States.¹²⁶⁴ Every year, tens of thousands of asylum seekers are prosecuted for the said crimes. Further, prosecutions for entry-related offenses peaked in FY2019 when reached 106,312, as shown in Figure 43, before declining significantly in the following fiscal year to 47,730 because the federal government started rapidly expelling most border crossers in March 2020 rather than referring them for prosecution.¹²⁶⁵

Figure 43. Number of people charged with improper entry and illegal reentry, FY2004-2020



Source: U.S. Department of Justice, Office of Public Affairs, “Department of Justice Prosecuted a Record-Breaking Number of Immigration Related Cases in the Fiscal Year 2019,” October 17, 2019; U.S. Department of Justice, Offices of the United States Attorneys, Prosecuting Immigration Crimes Report, “8 USC §1325 FY20 Monthly Defs Filed” and “8 USC §1326 FY20 Monthly Defs Filed.”

The surge in the number of prosecutions is basically ascribed to the change in federal offenses following the announcement of Trump’s zero-tolerance policy. The physical presence of an illegal immigrant is considered to be a civil violation rather than a criminal offense. This means that DHS can place the person in deportation proceedings and also can require a fine; however, it cannot prosecute the person for criminal offenses unless they reentered the country after having been previously removed from the United States.¹²⁶⁶ Similarly, a person who entered the country on a valid visa and overstays it can be put in deportation proceedings but cannot face federal criminal prosecutions only because of this solely civil infraction. Contrary

¹²⁶⁴ American Immigration Council, *Prosecuting People for Coming to the United States* (Washington, DC, 2021), 1.

¹²⁶⁵ American Immigration Council, *Prosecuting People for Coming to the United States*, 1.

¹²⁶⁶ *Ibid.*, 2.

to that, federal criminal charges can be faced by those who enter the country without permission.

Federal criminal offenses related to immigration and nationality are identified under Title 8 of the U.S. Code, including illegal entry and reentry. Passage 1325 of Title 8 from the U.S. Code (8 U.S.C. §1325) criminalizes unlawful entry into the country.¹²⁶⁷ This offense applies to foreign nationals who enter without a proper inspection at a port of entry; for instance, those who enter between ports of entry to avoid inspection or those who make false statements when entering or attempting to enter the country. If this offense is committed by a person for the first time, it would be considered a misdemeanor punishable by a fine, sentence to jail for six months, or both. However, passage 1326 of Title 8 from the U.S. Code (8U.S.C. §1326) criminalizes unlawful reentry or any attempt to unlawfully reenter the country, caught in the United States after being removed previously, ordered to be removed, or denied admission. Hence, this crime is considered a felony that deserves a maximum sentence of two years in jail. Most important, heavy penalties can apply if the person was previously deported after having been convicted of committing certain crimes; in this case, the person would be punished with up to ten years in prison for a single felony conviction or three misdemeanor convictions entailing drugs or crimes against a person, or punished with up to 20 years for an aggravated felony conviction.¹²⁶⁸ Other convictions entail combined violations of the two passages 1325 and 1326 which made the majority of federal prosecutions, in Trump’s administration. Effectively, combined violations constituted 65% of all criminal prosecutions in federal courts as of December 2018.¹²⁶⁹

In federal courts, the prosecutor often adds a charge of “illegal entry” to the indictment if the person is convicted of “illegal reentry”. This allows the prosecutor to pressure the person to plead guilty to the lesser offense —an illegal offense— in return for a short sentence. This practice, famously known as “a flip flop plead”, raises serious due-process concerns. As a matter of fact, prosecutors often resort to proposing this plea deal if the person agrees to waive certain rights, including their right to challenge the indictment. Moreover, this practice expedites the process so that the indicted persons accept a plea agreement, plead guilty, and then are sentenced within hours.¹²⁷⁰

¹²⁶⁷ Ibid.

¹²⁶⁸ Ibid.

¹²⁶⁹ Ibid.

¹²⁷⁰ Ibid.

8.10 Implementing Family Separation

Another notorious policy adopted by Trump’s administration is the so-called family separation. This policy allowed authorities to separate children from their parents once arriving at the U.S. border with Mexico. According to this policy, the DHS will refer all migrants who illegally enter the United States to the Department of Justice for criminal prosecution. Thus, as soon as the policy began to take effect, its manifestations and signs started to surface such as mothers who frantically called the government to find their missing children, children appearing and representing themselves in courts, children sleeping in warehouse-like facilities surrounded by wire fences, wailing fathers pleading with immigration agents, and hundreds of thousands of people protesting and marching in streets raising slogans against the said policy and demanding to get back their children such as the slogan “where are the children?”.¹²⁷¹

8.11 Timeline of Family Separation

As aforementioned, President Donald Trump embarked on issuing a series of executive orders aiming at implementing his visions toward immigration. A few weeks after taking office, reports began to surface regarding the intention of the administration to initiate a policy intending to separate children from their parents as a means of deterring further immigrants from coming to the United States.

On March 3, 2017, Trump’s administration considered a proposal that aims at separating children from their mothers at the border. This proposal aimed in a large part to deter future immigrants from coming to the United States, especially those who bring their children with them.¹²⁷² According to this policy, the federal government would keep parents in custody while they contest removal or wait for asylum hearings. Children, however, would be put into protective custody with the Department of Health and Human Services (DHHS) until a U.S. relative or a state-sponsored guardian would take care of them. Thus, in FY2017, CBP arrested 75,622 alien family units and separated 1,065 of them.¹²⁷³ Of these separated families, 46 families were separated due to fraud while 1,019 were separated due to medical and/or security

¹²⁷¹ Reilly Frye, “Family Separation Under the Trump Administration: Applying an International Criminal Law Framework,” *Journal of Criminal Law and Criminology* 110, no. 2 (2020): 351.
https://scholarlycommons.law.northwestern.edu/jclc/?utm_source=scholarlycommons.law.northwestern.edu%2Fjclc%2Fvol110%2Fiss2%2F6&utm_medium=PDF&utm_campaign=PDFCoverPages

¹²⁷² Julia Edwards Ainsley, “Exclusive: Trump Administration Considering Separation Women, Children at Mexico Border,” Reuters, Published on March 3, 2017, Accessed on December 17, 2022,
<https://www.reuters.com/article/us-usa-immigration-children-idUSKBN16A2ES>

¹²⁷³ William A. Kandel, *The Trump Administration’s “Zero Tolerance” Immigration Enforcement Policy*, 8.

concerns. During the first five months of FY2018 before adopting the “Zero Tolerance Policy”, CBP apprehended 31,102 family units and separated 703 of them.

In its monthly report to Congress, in January 2022, on separated children, the DHHS reported that from April through December 2018, 2828 were separated from their parents, of them, 123 were at the age of 4 or under while 2705 were over the age of 5. However, in the last years of Trump’s administration, a significant decline in the number of separated children was noticed as it reached 933 in 2019 and 43 in 2020 (see Appendix 8). This decline was ascribed to the litigations against the policy as well as the opposition of the civil rights advocates and organizations such as the ACLU that filed lawsuits against separating children from their parents. Furthermore, the pandemic of Covid-19 had also contributed to the decline in the arrival of immigrant families at the US southwest border, thus leading to a sharp decline in separating families.

To conclude, upon being elected to the U.S. presidency, Donald Trump swiftly moved to the implementation of his tough immigration policy by capitalizing on his discretionary authority and issuing a series of executive orders. These executive orders aimed in the first place at fulfilling the immigration promises he gave to his voters during the 2016 presidential campaign. Hence, banned the inflow of immigrants from the seven Muslim-dominated countries which are as follows: Yemen, Sudan, Syria, Iraq, Iran, Libya, and Somalia. Additionally, he restricted the admission of refugees and asylum seekers to the United States. Moreover, Trump initiated building a border wall along the U.S.-Mexican border to stem the inflow of illegal immigrants, namely from Mexico and countries of the North Triangle of Central America. He also increased the apprehension and deportation of illegal immigrants after widening the pool of unauthorized immigrants eligible for removal. Trump went even further when he resorted to rescinding Obama-era’s deportation-relief programs such as DACA and DAPA. Additionally, he even threatened sanctuary cities by depriving them of federal financial subsidies if they refuse to cooperate with federal immigration enforcement officers and agents. This large set of immigration measures set forth by the Trump administration impacted the whole American life in different fields, mainly economically and socially. Also, it detrimentally affected families of immigrants inside and outside the United States. These effects will be explored in detail in the upcoming chapter.

Chapter 9: Impacts of Trump's Immigration Plan

As aforementioned in the previous chapter, President Donald Trump took several stiff immigration measures generally aiming at protecting the U.S. national security and the public safety of American citizens. These measures targeted different categories of immigrants ranging from Muslims to unauthorized immigrants, visa overstayers, refugees, and asylum seekers. These tough immigration measures marked his presidency and distinguished his administration from that of his predecessor President Barack Obama who adopted lenient measures towards illegal immigrants by providing them with pathways to get legal status in the United States rather than considering them eligible for deportation, thereby making them a legitimate target for the Immigration enforcement agencies. This radical change in immigration policy affected almost all aspects of American life as the targeted immigrants played key roles in different domains. So, what were the effects of Trump's immigration policy on the different aspects of American life?

9.1 The Travel Ban Impacts

The Trump administration relied on section 212 (f) of INA which authorizes him to suspend or restrict the entry of all aliens or any class of aliens if he finds they would be detrimental to the interest of the USA.

Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.¹²⁷⁴

So, the Muslim Ban was not framed to purposely exclude Muslims from the United States. Instead, it purports to address the terrorist threat to the country's national security by temporarily suspending immigration from the seven aforementioned countries. However, in contrast to this logic, there was no terrorist attack in the USA has ever been carried out by terrorists from any of the banned countries. What intensifies this confusion is that the 9/11 attacks were committed by terrorists from Saudi Arabia, a country conspicuously dropped from the list of blacklisted countries.¹²⁷⁵ In addition, many other Muslim-majority countries in which Donald Trump has business interests, such as Egypt, Saudi Arabia, Turkey, and Azerbaijan, do not figure on the list of barred countries.¹²⁷⁶ Nevertheless, it is easy to ascertain Trump's real intention behind the Muslim Ban which is restricting immigration from Muslim countries because he once called for "a total and complete shutdown of Muslims entering the United States".¹²⁷⁷ However, to avoid constitutional attacks and accusations of abridging religious freedom, he resorted to framing the ban on the basis of nationality rather than religion. But the aim remained the same, as Donald Trump and one of the ban's architects, Rudi Giuliani, admitted.

Even though federal judges managed to strike down the first and second iterations of the racist policy dubbed the Muslim Ban due to claims about discrimination against Muslims,

¹²⁷⁴ Shoba Sivaprasad Wadhia, "Biden Ends the Muslim Ban on Day One of His Presidency but its Legacy Will Linger Opinion," *The Philadelphia Inquirer*, Published on January 20, 2021, Accessed on February 2, 2023, <https://www.inquirer.com/opinion/commentary/biden-immigration-day-one-muslim-ban-repeal-20210120.html>

¹²⁷⁵ Elizabeth Goitein, "Trump's Muslim Ban Foes Is not at all about Terrorism," *Brennan Center for Justice*, Published on Jan 31, 2017, Accessed on February 2, 2023, <https://www.brennancenter.org/our-work/analysis-opinion/trumps-muslim-ban-not-all-about-terrorism>

¹²⁷⁶ Joseph Hincks, "These Countries with Business Links to Trump Aren't Part of His Immigration Ban," *Fortune*, Published on January 27, 2017, Accessed on February 2, 2023, <https://fortune.com/2017/01/27/donald-trump-muslim-immigration-ban-conflict/>

¹²⁷⁷ Elizabeth Goitein, "Trump's Muslim Ban Foes Is not at all about Terrorism".

the Supreme Court upheld its third iteration on the ground that the federal law authorizes the President to suspend entry to the country, thereby allowing the Trump administration to further camouflage its Islamophobic, racist, and xenophobic intent behind this policy; in addition, the Supreme Court ruled that the third version of the Ban could be implemented while lower courts considered whether it was appropriate to continue litigation.¹²⁷⁸ Thenceforth, the upheld policy of the Travel Ban stemmed the entry of foreign nationals from Syria, Iran, Yemen, Somalia, Lybia, North Korea, and political officials from Venezuela. This led to harmful impacts in a variety of aspects, domestically and internationally.

9.1.1 Travel Ban Impacts on Families

Several countries were affected by Trump's Travel Ban. Millions of people were banned from entering the United States including those who escaped violence in their home countries, those who hoped to reunite with their families or access medical treatment, or those who sought to pursue their studies in the USA. In its 2019 report, the DHS reported that the Muslim travel ban had detrimental effects on nationals of the listed countries as it separated thousands of families, including parents, young children, couples, friends, and relatives. Further, the ban thwarted educational and career opportunities. Also, a more sensitive impact was that many families were unable to say "goodbye" to their dying loved ones, causing them lifelong suffering.¹²⁷⁹

The DHS 2019 report highlighted the devastating impacts of the Trump administration's immigration policies. The travel ban not only affected nationals from Muslim Majority countries but also affected Muslim Americans who have relatives and friends in the countries targeted by the ban, where U.S. officials in American embassies in the targeted countries banned people from joining their relatives, friends, or loved ones in the United States. A recurrent suffering that occurred for thousands was that they were not able to live together because they were separated, one living in the U.S. and the other living in one of the targeted countries. Moreover, the ban separated 1,545 children from their American parents and 3,460 parents from their American children.

¹²⁷⁸ Peniel Ibe, "5 Things to Know about the Muslim Ban," American Friends Service Committee, Updated on Feb. 21, 2020, Accessed on Jan 29, 2023, <https://www.afsc.org/blogs/news-and-commentary/5-things-to-know-about-muslim-ban>

¹²⁷⁹ Safaa Aly, "Rescinding the Muslim Ban Is Not Enough," The Regulatory Review, published on May 19, 2021, accessed on Jan. 31, 2023, <https://www.theregreview.org/2021/05/19/aly-rescinding-muslim-ban-not-enough/>

Imagine being married or engaged to someone and not being able to live with them because your government, without any proof, has claimed that letting people into the United States from your partner's country would harm national security. That's the situation for at least 3,882 people, according to the State Department. The ban has also kept at least 1,545 children from their American parents and 3,460 parents from their American sons and daughters.¹²⁸⁰

Oxfam's¹²⁸¹ humanitarian policy lead, Noah Gottschalk, condemned the Muslim ban for institutionalizing religious discrimination. Moreover, Gottschalk contended that the ban would spur other politicians and individuals who seek to end America's legacy and long history as a welcoming nation.¹²⁸² In addition, Isra Chaker, Oxfam's refugee campaign lead expressed her dismay at the Supreme Court's endorsement of Trump's Travel Ban, resenting discrimination on the basis of religion which is against a key value upon which America is built: religious freedom.

There's a human impact behind this ban...The Muslim Ban has torn families apart. It has shattered our ability to be reunited. It is cruel, and it is heartless. Discrimination on the basis of religion is un-American, and we are shocked that the Court would reject this essential American value of religious freedom.¹²⁸³

Therefore, Oxfam along with other civil rights activists and organizations spoke out against the Muslim Ban and its harmful attacks on immigrant communities.

9.1.2 Travel Ban's Impact on the U.S. Economy

The Muslim travel ban would inevitably have negative impacts on the U.S. economy, particularly in tourism, travel, and education. Travel and tourism come in second place as the largest source of exported goods and services in the American economy. The Department of Commerce reported in 2015 that 77.5 million foreign nationals visited the United States, thereby spending about \$246.2 billion on U.S. goods and services, or approximately 11% of the U.S. total exports.¹²⁸⁴ More important, these visitors sponsored 1.1 million American jobs or rather 14% of tourism and travel-related jobs. Hence, any ban on foreign Muslim-majority countries would dramatically affect the U.S. economy. It would detrimentally affect the federal,

¹²⁸⁰ Harsha Panduranga, "The Muslim Ban: A Family Separation Policy," Brennan Center for Justice, published on June 26, 2019, Accessed on January 31, 2023, <https://www.brennancenter.org/our-work/analysis-opinion/muslim-ban-family-separation-policy>

¹²⁸¹ Oxfam is a global movement of people fighting for their equality and justice.

¹²⁸² Oxfam, "What's the Human Impact of Muslim Ban?" Oxfam, published on June 28, 2018, Accessed on Feb. 2, 2023, <https://www.oxfamamerica.org/explore/stories/whats-the-human-impact-of-the-muslim-ban/>

¹²⁸³ Oxfam, "What's the Human Impact of Muslim Ban?"

¹²⁸⁴ Robert Kahn, "A Muslim Travel Ban and the U.S. Economy," Council on Foreign Relations, published on October 6, 2016, Accessed on February 2, 2023, <https://www.cfr.org/blog/muslim-travel-ban-and-us-economy>

state, and local budgets as their tax revenues would decrease due to the decrease in the sale of goods and services caused by the ban.

Table 15 presents Robert Kahn’s expected scenarios of the Muslim Ban’s impacts on the U.S. economy made in October 2016 where the U.S. economy would incur an annual cost that ranges between \$35.6 billion and \$71 billion. Kahn expected that the Muslim Ban would cause a direct loss of spending ranging from \$14 to \$30 billion, while the indirect effects are expected to range between \$31 and \$60 billion and job losses would oscillate between 50,600 and 132,000. These expectations revealed the looming danger to the U.S. economy caused by Trump’s Travel Ban.

Table 15. Economic impact scenarios and multiplier

	Base Spending Direct (\$billion)	Multiplier Indirect (\$billion)	Total Impact (\$billion)	Related Job Losses (direct)
Scenario 1	\$13.79	\$17.24	\$31.03	50,600
Scenario 2	\$29.50	\$36.88	\$66.38	132,000

Source: Robert Kahn, “A Muslim Travel Ban and the U.S. Economy,” Council on Foreign Relations, Published on October 6, 2016, Accessed on February 2, 2023, <https://www.cfr.org/blog/muslim-travel-ban-and-us-economy>

Indeed, following the implementation of the Muslim Ban in January 2017, industry leaders from different sectors decried its potentially devastating costs to the U.S. economy. According to a report made by the Council on Foreign Relations (CFR), 974,926 international students pursue their studies in U.S. universities and colleges. For instance, Iran which is on the list of banned countries is one of the top 25 countries that send graduate students to pursue their studies in the United States. These foreign students contribute annually \$30.5 billion to the U.S. economy and support 373,000 American jobs.¹²⁸⁵ CFR also estimated that U.S. colleges would lose \$700 million per year if the ban becomes permanent given the significant number of students from the banned countries estimated at 16,000 students who registered in 2017.¹²⁸⁶

The sector of engineering and tech startups would also get inflicted by the travel as well as Trump’s restrictive immigration policies. In this regard, CFR estimated that 44% of

¹²⁸⁵ Colleen Curry, “Trump’s Immigration Ban Could Cost US economy as Much as \$71 Billion: The Tourism, Tech, Education Sectors Could be hit Hard,” Global Citizen, Published on February 2017, Accessed on January 2, 2023, <https://www.globalcitizen.org/de/content/trumps-immigration-ban-could-cost-the-us-economy-7/>

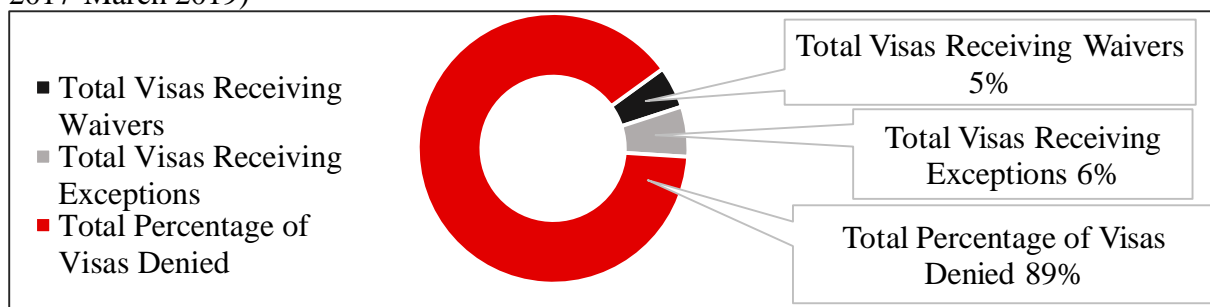
¹²⁸⁶ Colleen Curry, “Trump’s Immigration Ban Could Cost US economy as Much as \$71 Billion: The Tourism, Tech, Education Sectors Could be hit Hard,”

engineering and tech startups in silicon valley are founded by immigrants from different countries, including those on the list of banned countries. More important, more than 50% of patents are filed by immigrants, meaning that over half of the new inventions made in the United States are the ideas of immigrants.¹²⁸⁷ This reflects the key role immigrants play in developing the U.S. economy and maintaining its supremacy and domination over the world. It also refers to their importance in creating and supporting thousands of jobs for Americans, thus banning their entry would be so costly to America’s economy.

9.1.3 A Decline in Visa Issuance

Under the third version of the travel ban, the Trump administration offered nationals from the barred countries the opportunity to enter the United States by obtaining a waiver; however, these waivers are only available for visa applicants who respond to certain requirements and conditions. Additionally, the waiver process is lengthy and full of chaos.¹²⁸⁸ Applicants would go through a lengthy process in which they have to document their links to their American relatives, “submitted to interviews and medical examinations that they passed, and went through one of the world’s most rigorous visa vetting systems, which incorporates a range of national security checks”.¹²⁸⁹ This caused a sharp decline in visa issuance to nationals from the banned countries, as depicted in Figure 44, where the total percentage of visas denied amounted to 89% compared to 5% for the total visas receiving waivers and 6% for the total visas receiving exceptions. This reflected the severeness of the vetting systems designed to check the eligibility of the applicants to assure national security.

Figure 44. Percentage of visas subjected to travel ban issued in travel ban countries (Dec. 2017-March 2019)



Source: Harsha Panduranga, “The Muslim Ban: A Family Separation Policy,” Brennan Center for Justice, Published on June 26, 2019, Accessed on January 31, 2023, <https://www.brennancenter.org/our-work/analysis-opinion/muslim-ban-family-separation-policy>

¹²⁸⁷ Ibid.
¹²⁸⁸ Peniel Ibe, “5 Things to Know about the Muslim Ban”.
¹²⁸⁹ Harsha Panduranga, “The Muslim Ban: A Family Separation Policy,”

On the other hand, the Muslim Ban not only affected people attempting to enter the United States but also those already inside the country. In addition, due to the Muslim Ban, Muslim Americans were cut off from their family members, relatives, friends, etc., who were outside the United States. Broadly, at least 42,650 individuals, including parents, children, students and siblings, tourists, and businesspeople, have been banned from the USA owing to their country of origin without any warning sign in their files.¹²⁹⁰ For instance, the number of permanent visas issued to Americans' immediate relatives fell from about 50% to 80% in the barred countries; however, these numbers do not account for the whole story as many more people were discouraged from even applying given their small chances to get approval.¹²⁹¹ Almost everyone from the banned countries wishing to travel to the USA can concretize their wish only if they get a waiver after proving that they would undergo an "undue hardship" if they do not receive a visa, that they do not pose any threat to U.S. national security and public safety, and that their entry would be beneficial to the U.S.A.

The Trump administration contended that the waiver process guarantees that the travel ban is flexibly and humanely applied, but this claim was pure sophistry as confirmed by the State Department's calculations. The latter revealed that it granted waivers to a paltry 5% of visa applicants; additionally, less than 30% of children, as well as 13% of spouses of U.S. citizens, received waivers, which represents a paltry percentage compared to the considerable number of applicants wishing to enter the United States.¹²⁹² This reality raises questions about the standards the Trump administration followed to determine whether applicants were really experiencing undue hardships or not. This can be implicitly understood from the case of a Yamani mother, called Shaima Swileh, who was banned from visiting her dying two-year-old son Abdallah Hassan, and received a waiver only after the media's pressure on Trump's government when tackled its story. The Council on American-Islamic Relations (CAIR) announced that Shaima's son Abdallah Hassan died in UCSF Benioff children's hospital in Oakland, California, where his father, Ali Hassan brought him in October 2018, to cure him of a genetic brain disorder.¹²⁹³

¹²⁹⁰ Ibid.

¹²⁹¹ Ibid.

¹²⁹² Ibid.

¹²⁹³ Associated Press in Oakland. "Two-Year-Old Son OF Yemeni Woman who Sued to Enter US Dies in California". The Guardian. Published on Dec. 29, 2018. Accessed on Feb. 2, 2023. <https://www.theguardian.com/us-news/2018/dec/29/two-year-old-son-yemeni-woman-sued-enter-us-dies-california>

The story of Abdallah Hassan is quite dramatic. Ali Hassan is an American citizen who lives in Stockton, California. In 2016, he married Shaima Swileh in a war-torn Yemeni and moved to Egypt. The family planned to return to California in 2017 where Shaima Swileh applied for a visa. However, due to the Muslim Ban, Shaima obtained neither a visa nor a waiver. Her husband, Ali Hassan, was obliged to move to California as his son's health deteriorated, while Shaima remained in Egypt struggling with getting a waiver. "My wife is calling me every day wanting to kiss and hold her son for the one last time," Ali Hassan stated.¹²⁹⁴ His hopes to get his wife with him and her son began wavering. But the miracle occurred when the hospital social worker contacted CAIR which sued the government on December 16; as a result, the State Department gave Shaima Swileh a waiver the next day so that she managed to hold her son for the first time in the hospital on December 19. This case reflects the suffering of thousands of families whose lives were inflicted by Trump's restrictive immigration policy. On the other hand, suing the government and pressing it to grant a waiver for Shaima was a guiding light that would enlighten other immigrants' path to get their right of joining their families in the United States as the CAIR's lawyer for Shaima's family, Saad Sweilem, who said: "With their courage, this family has inspired our nation to confront the realities of Donald Trump's Muslim ban...In his short life, Abdullah has been a guiding light for all of us in the fight against xenophobia and family separation".¹²⁹⁵

9.1.4 Denying Protection for Needy Countries

As aforementioned, the Trump administration planned to terminate the TPS status for nationals of the designated countries. The TPS program protects nationals of the designated countries, afflicted by wars or armed conflicts, natural disasters, or any other humanitarian crisis, from deportation and provides them with work authorization in the United States so as to pursue their lives in the country till they will be able to return safely to their home countries. In implementing the Muslim Ban, the Trump administration would deny the TPS status eligibility to nationals of four Muslim countries, Somalia, Syria, Sudan, and Yemen, already entitled to it for many years.¹²⁹⁶ Unlike the previous administrations, Trump's administration declined to redesignate these four countries to benefit from TPS status, thereby leaving nationals of these countries who recently arrived in the USA in limbo. In doing this, life in the

¹²⁹⁴ Associated Press in Oakland. "Two-Year-Old Son OF Yemeni Woman who Sued to Enter US Dies in California".

¹²⁹⁵ Ibid.

¹²⁹⁶ Ibid.

U.S. for people of these four countries got very complicated as they were left unprotected and with few options.

9.1.5 Raising Discrimination against Muslims and Colored Immigrants

Ever since his inauguration, President Trump along with his administrative staff worked hard to stem the inflow of colored people into the United States. This policy ushered in a dramatic reduction in the number of immigrants of color entering the country, namely Muslims, by keeping them behind U.S. borders. Also, this policy took a variety of forms, either by banning entry, deporting undesired immigrants already in the country, or creating a fearful atmosphere of nativism, bias, and uncertainty.¹²⁹⁷ This atmosphere helped to fuel anti-Muslim sentiments which led to violent acts against Muslims and their businesses in the United States.

9.2 Trump's ZTP Impact on Immigrant Families and U.S. Economy

Family separation undertaken by the Trump administration under the zero-tolerance policy resulted in the most visceral impacts owing to the ruthless assault of the said administration on undocumented immigrants attempting to enter illegally to the United States. When the Democratic President, Joe Biden succeeded President Donald Trump in the White House on January 20, 2021, it was estimated that 5,500 children were separated from their parents and guardians under Trump's zero-tolerance policy, including cases the Trump administration described as being justified on account of parents' criminal record.¹²⁹⁸ Also, according to immigration advocates, 1,400 were removed from the country without their children.¹²⁹⁹ These facts show the harshness of the adopted ZTP the Trump administration followed against migrant families caught at the U.S. southwest borders.

As aforementioned, Trump's ZTP was initiated in April 2018; however, it was revealed later that the Trump administration began its xenophobic policy of zero-tolerance policy in 2017 under a secret pilot program.¹³⁰⁰ This resulted in the separation of 1,030 from their parents

¹²⁹⁷ Ibid.

¹²⁹⁸ Caitlin Dickerson, "Parents of 545 Children Separated at the Border Cannot be Found," *The New York Times*, Updated on March 15, 2021, Accessed on January 2, 2023, <https://www.nytimes.com/2020/10/21/us/migrant-children-separated.html>

¹²⁹⁹ Joel Rose, "Families Separated at Border Hope Biden Reunites Them, Bringing Deported Parents Back," *NPR*, Published on January 28, 2021, Accessed on January 2, 2023, <https://www.npr.org/2021/01/28/961301353/families-separated-at-border-hope-biden-reunites-them-bringing-deported-parents->

¹³⁰⁰ Ed Pilkington, "Parents of 545 Children Still Not Found Three Years After Trump Separation Policy," *The Guardian*, Published on October 21, 2020, Accessed on January 3, 2023, <https://www.theguardian.com/us-news/2020/oct/21/trump-separation-policy-545-children-parents-still-not-found>

under the pilot scheme, of whom 485 children have their parents found thanks to a scheme imposed by federal judges while the rest of them, 545, were still not found. Therefore, the court tasked the ACLU along with a team of lawyers with finding the 545 parents to reunite them with their children.¹³⁰¹ As a matter of fact, roughly 66% of migrant parents were separated from their children and deported to their home countries in Central America under Trump's scheme pilot program before being ordered by the court to find them. However, the search for these parents, referred to as "unreachable" in the court's document, was handicapped by the pandemic of Covid-19.

The separation and deportation of migrant parents to their counties of origin caused widespread revulsion and anger due to the suffering of children and their deported parents. In this regard, the director of the coalition of almost 250 groups, called Families Belong Together, reiterated that the efforts to find the unreachable parents would continue till finding all of them. She said: "The Trump administration ripped 545 children away from their parents, lied about it, then lost track of them as they departed them into danger. That's par for the course for a sadistic immigration system".¹³⁰² For his part, the deputy director of the ACLU's immigration project, Lee Gelernt, made a declaration to NBC News "We will not stop looking until we have found everyone of the families, no matter how long it takes. The tragic reality is that hundreds of parents were deported to Central America without their children, who remain here with foster families or distant relatives".¹³⁰³

On the other hand, the Trump administration represented by Attorney General Jeff Sessions announced its zero-tolerance policy without advance notice to the U.S. Marshals Service (USMS). Upon its implementation, USMS reported to the leadership of the Department of Justice (DOJ) about its concerns related to the inability to meet the resource demands necessary to implement the government's ZTP which would negatively affect the USMS's capacity to meet the mission requirements all over the American territory.¹³⁰⁴ In addition, USMS had also warned the DOJ that implementation would cause a shortfall of \$227 as well

¹³⁰¹ Ed Pilkington, "Parents of 545 Children Still Not Found Three Years After Trump Separation Policy".

¹³⁰² Ibid.

¹³⁰³ Ibid.

¹³⁰⁴ U.S. Department of Justice Office of the Inspector General, *Review of the Department of Justice's Planning and Implementation of Its Zero Tolerance Policy and Its Coordination with the Departments of Homeland Security and Health and Human Services* (Publication No. OIG-21-028), 59. <https://oig.justice.gov/reports/review-department-justices-planning-and-implementation-its-zero-tolerance-policy-and-its>

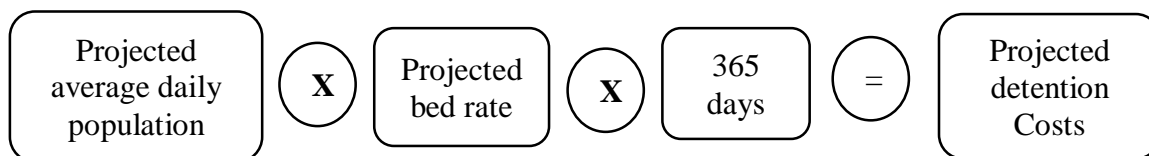
as a shortage of 3,000 beds without additional resources in FY 2019.¹³⁰⁵ Further, the policy prohibited thousands of migrants from finding jobs, thereby negatively affecting the US economy by depriving it of income tax and sales tax revenues.

9.2.1 Trump’s ZTP Economic Impact

Economically speaking, the policy proved to be so costly. The Custody Operations Program, which is part of ICE’s Enforcement and Removal Operations division, is the agency responsible for managing the detention of removable aliens who are held under government custody. The detention bed mandate refers to the number of beds required to be set aside to host undocumented immigrant detainees.¹³⁰⁶ This number used to be set yearly by Congress since FY2010 through the appropriation process, except for FY2017. The ICE is required to maintain this number of detention beds, characterized by some as being a quota, as a means of deterring undocumented immigrants from coming to the United States.

ICE follows a specific calculation to determine the bed rate. When doing so, ICE looks at minimizing the cost of the bed rate by considering a smaller number of factors making up the costs, including certain costs related to health care, security, and other costs. Hence, ICE excludes from calculation a significant share of payroll costs of custody operation along with a variety of additional costs. ICE’s formula for calculating detention costs relies on two variables: the average dollar amount to house one adult detainee for one day (bed rate) and the average daily population (ADP) of all detainees.¹³⁰⁷ Accordingly, ICE follows the following formula to calculate detention costs:

Figure 45. ICE formula to calculate detention costs



Source: ICE Congressional Budget Justification for Fiscal Year 2018

¹³⁰⁵ U.S. Department of Justice Office of the Inspector General, Review of the Department of Justice’s Planning and Implementation of Its Zero Tolerance Policy and Its Coordination with the Departments of Homeland Security and Health and Human Services, 59.

¹³⁰⁶ Laurence Benenson, “The Math of Immigration Detention, 2018 Update: Costs Continue to Multiply,” National Immigration Forum, Published on May 9, 2018, Accessed on January 3, 2023, <https://immigrationforum.org/article/math-immigration-detention-2018-update-costs-continue-multiply/>

¹³⁰⁷ U.S. Government Accountability Office, “Immigration Detention: Opportunities Exit to Improve Cost Estimates,” GAO, Published on April 18, 2018, Accessed on January 3, 2023, <https://www.gao.gov/products/gao-18-343>

Table 16 displays data related to detention bed quota and average bed rate from FY 2010 to FY 2018. For instance, in FY 2016, ICE calculated the daily bed rate which amounted to be \$126.46 for its 29,953 beds for adult detention, while it amounted to \$161.36 for its 960 beds designated for family detention, producing an overall daily bed rate of \$127.54.¹³⁰⁸ However, in FY 2018, the federal government is set to spend an estimated budget of \$3.076 billion on the DHS custody operation, or rather \$8.43 million per day on immigrant detention.¹³⁰⁹ Accordingly, given the significant number of 40,520 detention bed quota designated for FY 2018, producing a daily bed rate of \$208 per immigrant detainee.¹³¹⁰

Table 16. Detention bed quota and average bed rate: FY 2010 to FY 2018

Fiscal Year	Detention Bed Quota	ICE Custody Operations Appropriations	Average Bed Rate
FY 2010	33,400	\$1.771 billion	\$145
FY 2011	33,400	\$1.799 billion	\$148
FY 2012	34,000	\$2.051 billion	\$165
FY 2013	34,000	\$1.994 billion	\$161
FY 2014	34,000	\$2.255 billion	\$182
FY 2015	34,000	\$2.435 billion	\$196
FY 2016	34,000	\$2.368 billion	\$190
FY 2017	38,000	\$2.705 billion	\$195
FY 2018	40,520	\$3.076 billion	\$208

Source: U.S. Immigration and Customs Enforcement

Table 16 shows an increase in the average bed rate (daily cost per detainee), especially after FY 2013, which reflects the ICE’s increase in the number of detained families. Family detention in which migrant families are held together with their minor children proved to be so costly to the U.S. government, more than regular detention; this is so clear in FY 2018, as shown in Table 16, where the average bed rate shifted to \$208 after being \$195 in FY 2017 due to of the surge in the family detention caused by the implementation of Trump’s ZTP. Also, though family detention comprises just a fraction of the detained population, it may cost approximately as much twice per person, thereby driving up the average daily bed rate of the whole detained population which is not good for the federal government as it is required to avoid unnecessary expenditures to save taxpayers funds as much as possible.

¹³⁰⁸ Laurence Benenson, “The Math of Immigration Detention, 2018 Update: Costs Continue to Multiply”.

¹³⁰⁹ Ibid.

¹³¹⁰ Ibid.

As of June 2018, ICE runs 113 detaining centers across the whole territory. It also coordinates with state and local prisons in addition to private jails in order to operate hundreds more. In its FY 2018 budget, ICE projected \$133.99 to maintain one adult detention bed per day, but immigration groups pegged the cost closer to \$200.¹³¹¹ Also, the ICE's FY 2018 budget projected the cost of maintaining a family bed, which holds together a migrant family along with minor children, to be \$319 per day.

ICE incurs indirect expenses, which result in a fully burdened average daily rate of \$133.99 for adult beds. Family beds are funded through fixed price contracts and are thus not dependent on the ADP level. An average daily rate for family beds can be calculated by dividing the total funding requirement of \$291.4 million by the projected ADP of 2,500 for a rate of \$319.37.¹³¹²

However, as of April 2018, the ICE began separating children from their parents which resulted in the creation of "tent cities" to host thousands of separated children. Consequently, the cost of beds in these tent cities skyrocketed to \$775 per night, according to an official of DHHS, which is much higher than keeping children with their parents in detention facilities or holding them in more permanent centers.¹³¹³ The reason for the high cost is ascribed to the whole cost of various elements which consist in maintaining security, bringing in air conditioning, medical workers, and other government contractors far exceed the cost for structures that are routinely staffed. For instance, holding children in permanent HHS facilities, such as Casa Padre in Brownsville, Texas, costs only \$256 per person per night, while it costs \$298 per person per night when keeping children with their parents in U.S. Customs and Immigration Enforcement's detention centers in Delly, Texas.¹³¹⁴

Another sensitive issue is related to the period the detainees would spend in detention centers. ICE estimated the average stay of a detainee to be 40 days; however, the reality revealed that thousands of detainees spent more than 40 days. For instance, in one case heard by the Supreme Court, an immigrant was held in detention for three years. Furthermore, the policy

¹³¹¹ Jaden Urbi, "This is How Much It Costs to Detain an Immigrant in the United States," CNBC, Published on June 20, 2018, Accessed on January 4, 2023, <https://www.cnbc.com/2018/06/20/cost-us-immigrant-detention-trump-zero-tolerance-tents-cages.html>

¹³¹² U.S. Department of Homeland Security. *U.S. Immigration and Custom Enforcement: Budget Overview Fiscal Year 2018* (Washington, DC: DHS, 2018), 17.

¹³¹³ Julia Ainsley, "Trump Admin's 'Tent Cities' Cost More Than Keeping Migrant Kids with Parents," NBC News, Published on June 20, 2018, Accessed on January 4, 2023, https://www.nbcnews.com/storyline/immigration-border-crisis/trump-admin-s-tent-cities-cost-more-keeping-migrant-kids-884871?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiosam&stream=top

¹³¹⁴ Julia Ainsley, "Trump Admin's 'Tent Cities' Cost More Than Keeping Migrant Kids with Parents,"

would be so costly if given the spike in the number of detainees in FY 2018 which amounted to 51,379 who would be kept in immigration detention facilities each day according to DHS, a considerable jump from the previous years where the detainees' average number hovered near the law 30,000s.¹³¹⁵ Accordingly, the federal government would specify a considerable budget to spend more on detaining facilities due to Trump's ZTP.

9.2.2 ZTP's Psychological Impact on Minor Children and Their Parents

The policy's negative impact was not only economic but also psychological for migrant families and minor children. Grieving the loss of parents due to family separation would detrimentally affect the psyche of children as well as their parents. To start with, implementing the zero-tolerance policy was fundamentally cruel. This is because holding illegal immigrants in detention facilities can be, for both parents and children, a significant contributing factor to mental deterioration, anger, frustration, suicidality, and despondency.¹³¹⁶

Trump's ZTP has ripped apart thousands of immigrant families with no guarantee to reunite them again. Though Trump claimed to have officially ended his zero-tolerance immigration policy in 2018, 900 children were separated from their parents since then.¹³¹⁷ In addition, in August 2019, ICE arrested 680 undocumented Latino workers in Mississippi food processing plants and ripped apart more families. Friends and family members were desperately looking for answers.¹³¹⁸ Children sobbed as they waited for an answer about what was going on and the fate of their parents. Neighbors and strangers volunteered to take children with nowhere to go to a local gym for the night after detaining their parents. Volunteers provided the separated children with food and drinks, but most of the children kept sobbing and asking for their parents rather than eating and drinking, According to WJTV. "I need my dad...he's not a criminal," one little girl cried as she spoke with WJTV.¹³¹⁹ "I understand the law and how everything works and how everything has a system. But everyone needs to hold the kids

¹³¹⁵ Jaden Urbi, "This is How Much It Costs to Detain an Immigrant in the United States".

¹³¹⁶ Refugee International, "The Trump Zero Tolerance Policy: A Cruel Approach with Human and Viable Alternatives," Published on July 31, 2018, Accessed on January 4, 2023, https://www.refugeesinternational.org/reports/2018/7/31/trump-zero-tolerance-policy#_ftn8

¹³¹⁷ Surya Swaroop, "Psychological Effects of Trump's "Zero-Tolerance" Policy on Children," People for American Way, Published on August 9, 2019, Accessed on January 5, 2023, <https://www.pfaw.org/blog-posts/psychological-effects-of-trumps-zero-tolerance-policy-on-children/>

¹³¹⁸ Dianne Gallagher, Catherine E. Shoichet, and Madeline Holcombe, "680 Undocumented Workers Arrested in Record-Setting Immigration Sweep on the First Day of School," CNN, Published on August 9, 2019, Accessed on January 5, 2023. <https://edition.cnn.com/2019/08/08/us/mississippi-immigration-raids-children/index.html>

¹³¹⁹ Dianne Gallagher, Catherine E. Shoichet, and Madeline Holcombe. "680 Undocumented Workers Arrested in Record-Setting Immigration Sweep on the First Day of School".

first and foremost in their minds,” Jordan Barnes, the gym owner, declared to WJTV. “And that’s what we’ve tried to do here, just give them a place to stay.”¹³²⁰ Such declarations reflect the harshness of Trump’s ZTP against undocumented families and the resentment it received from Americans.

It is really hard to describe the attacks and the grave damage they caused to undocumented families along with their children. The latter used to be harshly separated from their parents with no sense of comfort and familiarity to be placed in abhorrent detention centers for long periods of time where they are ill-treated as they are stripped of their personal belongings and left to sleep on cold concrete floors.¹³²¹ Although immigration officials claimed that these detention facilities are transitional and intended to hold undocumented minor immigrants for a short period before moving them elsewhere, many children ended up staying for a lengthy period of time in such appalling centers which represent also a breeding ground for disease and infection. Additionally, these detention centers are considered to be sites of cruelty and chaos for minor migrants as they are left without basic needs such as diapers, toothbrushes, or even showers; also, they do not benefit from appropriate medical care. In a word, detention facilities were filthy, starving, and traumatizing.¹³²²

Such inadequate detention conditions are not only inhumane and against human rights, but are also significant contributing elements to children’s neurological and psychological development that last for the rest of their life. In actual fact, child detention is associated with a growing risk and rates of Post-Traumatic Stress Disorder (PTSD) and chronic mental health conditions, including depression among minor migrants. In addition, detaining children may detrimentally affect the child’s emotional and cognitive functions and result in lower academic performance, unhealthy attachments, and chronic mental disorders. Furthermore, it was reported that separated minor migrants were having difficulties adapting themselves to their lives after leaving detention centers. Also, the emotional distress the separated minor migrants experienced during their journey before arriving in the United States will complicate their adjustment ability to their family, school, and culture in the USA.¹³²³

¹³²⁰ Ibid.

¹³²¹ Surya Swaroop, “Psychological Effects of Trump’s “Zero-Tolerance” Policy on Children”.

¹³²² Ibid.

¹³²³ T.H.Gindling and Sara Z. Poggi, “The Effect of Family Separation and Reunification on the Educational Success of Immigrant Children in the United States,” *IZA DP*, no. 4887(2010): 5.

The bond children form with their parents is something that should never be broken forcefully. Separating them from their parents would cause children to feel afraid and helpless. Such immediate separation would traumatize children, causing the brain to release stress hormones to initiate “fight, flight, freeze” responses which prepare the physical body to respond in a protective way to survive.¹³²⁴ This, in turn, temporally obstructs the brain’s part responsible for rational thinking, causing the child to act in a purely emotional manner such as crying and sobbing. This situation can be reduced if the separated children are placed into a healthy environment post-trauma, but separated minor immigrants are placed in inadequate detention facilities that only exacerbate the neurological stress responses.¹³²⁵

In addition to the neurological stress, separated migrant minors can also suffer from immense psychological repercussions owing to the fact of being separated from their families in a foreign country with no sense of familiarity and stability. It is difficult for children to assimilate why their caregivers have abruptly disappeared without any sign to show up again. While the child’s outcome of his behaviors and beliefs due to the trauma is subjective, a general pattern can result from such separation. At first, separated children will struggle to comprehend what has happened as they desperately attempt to find their caregiver to no avail. Thereafter, they enter a state of despair and withdraw from their surrounding environment. Finally, they get detached and surrender to the reality of separation.¹³²⁶

The debilitating impacts of separation are pervasive and last even after the reunification of the migrant family members. There have been various instances wherein separated children do not show any emotional behavior for several months after getting reunited with their parents for the first time. It is a natural response for traumatized children to dissociate themselves from their surrounding environment as a means of protection and lack of emotion. Moreover, separated children exposed to trauma for a long period of time may get their sense of reality totally changed and their emotional development stunned. Besides, when abandoned, children tend to blame themselves and develop damaging thought patterns that skew their perception of what a healthy relationship is. On the other hand, the “no touch” rules in detention facilities, which deprive separated children of necessary physical contact and comfort, further aggravate

¹³²⁴ Laura CN Wood, “The Impact of Punitive Immigration Policies, Parent-Child Separation, and Child Detention on the Mental Health and Development of Children,” *BMJ Pediatrics Open* 2018. 3. Doi:10.1136/ bmjpo-2018-000338

¹³²⁵ Surya Swaroop, “Psychological Effects of Trump’s “Zero-Tolerance” Policy on Children”.

¹³²⁶ *Ibid.*

their trauma.¹³²⁷ Psychologically speaking, touch often conveys more emotions than words, namely at a young age; in addition, it is paramount for a young child to associate touch with empathy. In other words, without appropriate sensory stimulation from others, these children are at increased risk for impaired cognitive development and attachment disorders.¹³²⁸ Accordingly, the Trump administration's zero-tolerance immigration policy is brutal, cruel, unnecessary, and harmful to innocent children. No detention facility has the right to dehumanize and traumatize migrant children. Unfair family separation and deportation should be stopped and such inhuman treatment should disappear.

9.2.3 Indirect Impacts of Trump's ZTP

What further worsened the impact of Trump's zero-tolerance immigration policy is the inability of the Customs and Border Patrol to deal with great numbers of migrant families. As a matter of fact, the Trump administration encouraged migrant families and asylum seekers to come to the U.S. ports of entry which resulted in overcrowding at the ports of entry. This led CBP officials to limit the number of immigrants who might have pushed asylum seekers to attempt illegal border crossings instead. Furthermore, CBP reported that owing to the limited processing capacity at HHS facilities along with other factors, CBP hosted unaccompanied children for lengthy periods in facilities constructed for short-term detention.¹³²⁹ DHS also contributed to the surge in illegal immigration by providing migrant families at the ports of entry with inconsistent information, causing them to not understand that they will be separated from their children and thus would not be able to communicate with them after separation.¹³³⁰ Furthermore, DHS also struggled to identify, track, and reunify separated families under Trump's ZTP owing to limitations in its information technology system, including the lack of integration between ICE's, CBP's, and HHS' receptive information technology systems. Consequently, DHS became unable to provide accurate, complete, and reliable data about family separation and reunification, thereby raising concerns about the accuracy and reliability of its reports.¹³³¹

¹³²⁷ Ibid.

¹³²⁸ Ibid.

¹³²⁹ Department of Homeland Security, Office of Inspector General, *Special Review- Initial Observations Regarding Family Separation Issues Under the Zer Tolerance Policy* (Washington, DC: Publication No. OIG-18-84, 2018), 5.

¹³³⁰ Department of Homeland Security, Office of Inspector General, *Special Review- Initial Observations Regarding Family Separation Issues Under the Zer Tolerance Policy*, 11.

¹³³¹ Ibid.

Forceful family separation under Trump's ZTP engendered significant levels of stress and anxiety for the entire family unit: parents, children, and relatives. Also, family separation contributed to undermining men's role in their family lives. Deported immigrants cannot earn enough money in their countries of origin to support their families living in the United States, which deprives them of their key role to support their children and families. Upon returning to their countries of origin, deportees face high levels of stigma as they are mostly regarded as failed immigrants or as criminals, even if their removal has nothing to do with criminal offenses. They also face difficulties to find stable jobs which demoralizes them. When the American government created single mothers' households, fathers' roles in their families get reduced to their lowest level; they may permanently disappear from their children's lives and suffer from family dissolution in the worst-case scenario. Consequently, the child's well-being is crippled due to emotional and economic insecurity.

Getting assimilated into the American society and educational system is another difficulty separated children faced under Trump' ZTP, especially during the first 3-12 months after separation. The adjustment of separated children in American schools is quite difficult due to their psychological state, the lack of supportive resources to help them, and their limited English proficiency. Therefore, the process of assimilating separated children into American culture is quite challenging who just arrive in the United States; their suffering caused by family separation along with experience with language barriers would inevitably deprive them of having the same set of tools as their peers, causing them to struggle to communicate even their simplest needs. In many cases, psychological suffering, language barrier, and bullying lead undocumented children to remain silent, neglect their needs, and fade into the background. This hinders significantly their assimilation into American culture and society which may engender serious future problems.

9.2.4 Trump's ZTP vs United Nations Standards

The United Nations had also raised concerns about Trump's zero-tolerance policy. Grounded in Article 14 of the 1948 Universal Declaration of Human Rights which set out the rights of asylum seekers and protected them from persecution¹³³², the United Nations adopted

¹³³² The United Nations Refugee Agency, *Convention and Protocol Relating to the Status of Refugees: Text of the 1951 Convention Relating to the Status of Refugees* (Accessed on Jan. 1, 2013, <https://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html>), 3.

the Refugee Convention in 1951 after being ratified by 145 Nation-States.¹³³³ The UN Refugee Convention outlined the basic rights of displaced individuals as well as the obligations of the contracting Nation-States to protect them from persecution. Also, the Refugee Convention provided a clear definition of the term refugee as follows: “A refugee, according to the Convention, is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion”.¹³³⁴ Moreover, the Refugee Convention came up with some principle keys, most notably principles of non-penalization, non-discrimination, and non-refoulement.¹³³⁵ In other words, the contracting Nation-States are expected to abide by the convention provisions which are meant to be applied without discrimination as to age, sex, sexuality, disability, and other prohibited grounds of segregation. The convention also provided that refugees should not be punished for their illegal entry or stay.¹³³⁶ This provision recognizes that asylum seekers can breach immigration laws, and thus cannot be charged with criminal and immigration offenses related to seeking asylum or detaining them arbitrarily just because they sought asylum. Additionally, Article 32 of the Refugee Convention came up with a set of safeguards against expelling refugees which are as the following:

(1) The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order. (2) The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority. (3) The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.¹³³⁷

As it is clearly stipulated in Article 32, the Contracting States, including the United States, cannot deport refugees from its territory based purely on grounds related to national security or public safety, which is the main motive of President Donald Trump to enforce tough immigration measures against refugees and asylum seekers coming to the southwest border of the United States.

¹³³³ Ramkhelawan, “The Separation of Migrant Families at the Border Under the Trump Administration’s Zero Tolerance Policy: A Critical Mistreatment of Immigrant Children Held in U.S. Custody,” 156.

¹³³⁴ William A. Kandel, *The Trump Administration’s “Zero Tolerance” Immigration Enforcement Policy*, 3.

¹³³⁵ *Ibid.*, 3.

¹³³⁶ *Ibid.*, 3.

¹³³⁷ *Ibid.*, 29-30.

As aforesaid, the Refugee Convention came also with a fundamental principle of nonrefoulement and denied all contracting states the right to make any derogation or reservation. Article 33 of the Convention clarified this principle stipulating that no contracting state shall not return or refoule refugees against their will, in any manner whatsoever, to their home countries where they have serious fears for their life of freedom.

No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.¹³³⁸

But, article 33 excluded refugees from benefiting from refoulement if there are reasonable grounds for being regarded as a potential threat to the national security of the hosting country or having been convicted by a final judgment of a certain serious crime that poses a genuine threat to the public safety of the hosting country.

However, the most relevant provision of the 1951 UN Refugee Convention to Trump's zero-tolerance policy provisions is article 31 which embodied the key principle of non-penalization of unlawful refugees by the hosting country. This article provided that the hosting cannot penalize refugees for their illegal entry or presence after presenting themselves to the authorities without delay and showing good reasons for their unlawful entry or presence. In addition, the hosting country shall not unnecessarily restrict the movement of refugees within the country until their status in the hosting country is regularized or got admitted to another hosting country.

The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened ... enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence...The Contracting States shall not apply to the movements of such refugees restrictions...The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.¹³³⁹

Therefore, pursuant to Article 31 of the UN Refugee Convention of 1951, the Trump Administration has no right to separate migrant children from their families after arriving at the U.S.-Mexican border. In other words, separating children from their families stand in direct opposition to the provisions of articles 31, 32, and 33 which prohibited penalizing refugees for

¹³³⁸ Ibid., 30.

¹³³⁹ Ibid., 29.

their illegal entry, restricting their movement within the hosting country by placing them in detaining facilities, and refouling them or deporting them to their home countries which may cause serious threats to their lives and freedom. This fear and trauma caused by the big change in policy toward undocumented families and children lead us to examine the way Obama's administration handled this sensitive issue.

In a nutshell, Trump's ZTP showcased the high percentage of family unit apprehensions that occurred in FY 2018 compared to the previous years, namely during Obama's era. This policy targeted undocumented immigrants, namely those arriving at the U.S. southwest border after a long risky journey due to the bad and push factors mostly related to escaping gang violence, political unrest, and civil wars in their home countries. Therefore, due to these push factors, the United States scored a surge of 60.3% in illegal immigration, mainly from NTCA's countries.¹³⁴⁰ Unsurprisingly, the negative impacts of Trump's zero-tolerance immigration policy outweigh the rest, ranging from enacting laws without appropriate interpretation and conduct, devaluating the American Dream, and the psychological impacts inflicted on the policy's victims. The Trump administration made no distinction between illegal entry and reentry, though both of them are federal misdemeanors and thus punishable according to convicted felonies.¹³⁴¹ In addition, there is no federal law passed by Congress or any other federal institution that requires family separation during the prosecution process; therefore, deliberately separating children from their parents was adopted by the Trump administration as a strategy and tactic to deter further undocumented immigrants from coming to the United States.

Undoubtedly, civil rights activists and organizations condemned this policy and many efforts were made by local and international organizations in order to end the policy. The ACLU filed a lawsuit challenging Trump's family separation policy where the plaintiffs pointed to many alleged violations, like the asylum seeker's right to seek protection where asylum is synonymous with refugee status and that the U.S. immigration laws allow immigrants to apply for asylum regardless of their immigration status, which means that even illegal immigrants can apply for asylum in the United States. Also, as aforementioned, the policy violates the provision of the 1951 Refugee Convention that clearly states that the contracting countries should not

¹³⁴⁰ Mala Mardialina and Rima Nagib, "The Impacts of Zero-Tolerance Policy Towards Illegal Latin American Immigrants Under Donald Trump's Administration 2018," (2020), DOI: 10.4108/eai.26-11-2019.2295149

¹³⁴¹ Mala Mardialina and Rima Nagib, "The Impacts of Zero-Tolerance Policy Towards Illegal Latin American Immigrants Under Donald Trump's Administration 2018".

punish immigrants owing to their illegal entry. In addition, the ACLU alleged that the policy violates the Fifth Amendment to the U.S. Constitution which is “comprehensively deciphered as the privilege to be dealt with reasonably, proficiently, and effectively by the administration of justice”.¹³⁴² According to the ACLU, Trump’s ZTP violates immigrants’ rights to keep their families by the due process by separating families without proof that parents are inappropriate for their children in addition to depriving parents of their right to a proper court hearing.¹³⁴³ The ACLU argued that illegal immigrants are considered to be future citizens of the United States, thus deserving to be protected by the Fifth Amendment. Most important, the United States ratified the United Nations’ 1966 International Covenant on Civil and Political Rights (ICCPR) in 1992 which stipulates that States Parties, including the United States, have to treat people, including illegal immigrants —arrestees, detainees, and prisoners— as humanely as possible with respect to the natural pose of humane dignity.

The States Parties to the present Covenant, Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world, Recognizing that these rights derive from the inherent dignity of the human person, Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear.¹³⁴⁴

This excerpt from the ICCPR’s preamble shows that individuals have the right to freedom, justice, and peace by virtue of human dignity. Therefore, illegal undocumented immigrants, as human beings, are entitled to benefit from these rights in the United States that ratified the ICCPR, thereby getting obliged to abide by the provisions of this international chart.

Another significant violation is the government's inability to provide appropriate detaining facilities according to the Flores Settlement Agreement as separated children were detained in harmful centers. Also, Trump’s zero-tolerance immigration policy provided a distorted and disfigured picture of the American Dream. The United States had been always referred to as the promised land for everyone, especially immigrants, who dream of a better life, as America was regarded as the dreamland or the land of opportunities.¹³⁴⁵ Defined as “the chance to climb the social ladder based on their natural capacities and accomplish quality goods

¹³⁴² Ibid.

¹³⁴³ Ibid.

¹³⁴⁴ United Nations, “International Covenant on Civil and Political Rights,” Accessed on Jan 14, 2023. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

¹³⁴⁵ Mala Mardialina and Rima Nagib, “The Impacts of Zero-Tolerance Policy Towards Illegal Latin American Immigrants Under Donald Trump’s Administration 2018”.

and services despite prior diverse backgrounds,” and rooted in liberalism, the American Dream represents an essential value that shapes the modern American social life, pushing and spurring Americans to take the lead in different fields through their various unimaginable innovations.¹³⁴⁶ Provided that there are many opportunities to pursue individual interests, the American Dream was intended to consistently wind up with more than what one began with regardless of one's social class. However, the Europeans —today's white Americans— interpreted the American Dream as being their own homogenous goal and excluded the other racial groups, resulting in distorting its meaning which became an illusion for minority groups in the United States.¹³⁴⁷ Therefore, undocumented immigrants have to go through many hardships and impediments, mostly consisting in racism and discrimination, imposed by the domineering groups in the United States in order to enjoy social equality and benefit from the equal opportunities they dreamt of. Some find that the American Dream became an outdated notion that is not applicable in today's America since President Donald Trump seems to close the country's doors to immigrants themselves via his tough immigration policy. Accordingly, Trump's immigration policy seems to devalue the American Dream as it is intended to drive out minority groups by deterring and prosecuting unauthorized immigrants and providing fewer job opportunities as an approach to lessen competition for jobs and limit aid funds.

9.3 Impacts of Ending DACA and TPS

As discussed in Chapter 8, the Obama administration came up with the DACA program which is an exercise of prosecutorial discretion aiming chiefly at providing Unauthorized immigrants who came to the United States during their childhood with temporary relief from deportation along with work authorization. This program proved to be so beneficial for hundreds of thousands commonly known as DACA recipients who formed an essential community within the U.S. society.

DACA recipients' importance to American society stems from the fact that they are the parents of 254,300 American citizen children (see Appendix 9). Besides, approximately 8 in 10 DACA recipients have relatives in the U.S. society, either American citizen parents, children, or siblings; furthermore, DACA recipients occupied jobs in sensitive sectors such as education where 9000 of them worked as teachers in 2017.¹³⁴⁸ Moreover, DACA recipients enjoy high

¹³⁴⁶ Ibid.

¹³⁴⁷ Ibid.

¹³⁴⁸ Nicole Prchal Svajlenka, and Trinh Q. Truong, “The Demographic and Economic Impacts of DACA Recipients: Fall 2021 Edition,” CAP, Published on Nov. 24, 2021, Accessed on Jan. 22, 2023,

levels of educational attainment as well as labor force participation than the general American population. Besides, Appendix 9 shows that a significant number of about 1.450,900 million people live with a DACA recipient. Also, about 73% of DACA recipients do not have an immediate relative in their home countries.¹³⁴⁹ Thus, it is pretty clear that DACA recipients became a crucial component of American society, meaning ending DACA would have sensitive repercussions on different aspects of American life.

9.3.1 DACA's Effects on the U.S. Economy

Thanks to DACA, roughly 832,881 eligible young adults were able to get jobs, attend school, and plan for their future in the country without the constant fear of removal from the United States.¹³⁵⁰ Granting work authorization to this category of undocumented immigrants allowed them to enhance their socioeconomic status. According to the findings of a survey conducted by the Center for American Progress (CAP) in August and September of 2019 on 1,105 DACA recipients in 40 states including the District of Columbia, 58% of the respondents managed to get better jobs with better salaries, while 48% managed to get better jobs with better working conditions, and 53% got the chance to get new jobs with health insurance as well as other benefits.¹³⁵¹ In addition, the survey revealed that 53% of the respondents managed to get jobs that better fit their education and training, while 52% managed to move to a job that fits their long-term career objectives.¹³⁵² Besides, the survey found that 6% of the respondents initiated their own businesses after benefiting from DACA while 17% of them received professional licenses.¹³⁵³

The 2019 survey's findings along with the four surveys conducted in the four previous years showed a significant increase in the respondents' average hourly wage which amounted to 86% after receiving DACA, shifting from \$10.46 per hour to \$19.45 per hour for those less than 25 years old while it shifted to \$23.7 for respondents of 25 years old or older¹³⁵⁴, a 128% increase.¹³⁵⁵ Additionally, the results of the survey revealed that the average annual earnings

<https://www.americanprogress.org/article/the-demographic-and-economic-impacts-of-daca-recipients-fall-2021-edition/>

¹³⁴⁹ Niskanen Center. "The Niskanen Center's Work on DACA". <https://www.niskanencenter.org/daca/>

¹³⁵⁰ American Immigration Council, *Deferred Action for Childhood Arrivals (DACA): An Overview* (Washington, DC: American Immigration Council, 2021), 1.

¹³⁵¹ American Immigration Council, *Deferred Action for Childhood Arrivals (DACA): An Overview*, 1.

¹³⁵² Ibid.

¹³⁵³ Ibid.

¹³⁵⁴ Results from Tom K. Wong et al., 2019 National DACA Study, 3. <https://americanprogress.org/wp-content/uploads/2019/09/New-DACA-Survey-2019-Final-1.pdf>

¹³⁵⁵ Tom K. Wong, Sanaa Abrar, and Claudia Flores, "DACA Recipients' Livelihoods, Families, and Sense of Security Are at State this November," CAP, Published on Sept. 19, 2019, Accessed on Jan. 17, 2023,

for respondents under 25 amounted to \$42,132 while their median annual earnings totaled \$38,000; however, for those 25 years old and older, their average annual earnings totaled \$49,790 while their median annual earning amounted to \$44,583.¹³⁵⁶ This increase greatly impacted 79% of the respondents as it not only made them financially independent but also served the U.S. economy as it enhanced the respondents' purchasing power, thus spending and buying more goods, and paying more taxes at the federal, state, and local levels.¹³⁵⁷ For example, 60% of respondents maintained that they managed to buy their first car after benefiting from DACA which boosted the sale of cars, thus generating sales tax revenue together with registration and title fees. More important, respondents' ability to buy cars not only increased the states' revenue but was coupled with the safety benefits of having more licensed and insured drivers on the roads. Likewise, the survey showed that 14% of respondents bought their first home after receiving DACA, which positively affected the U.S. economy by generating new jobs and infusing new spending in local economies. These impacts resulted in a total of \$8.8 billion in federal, state, and local taxes paid annually to households with DACA beneficiaries.¹³⁵⁸

DACA beneficiaries proved to have deep economic and social roots in the USA. Data from the CAP showed that 254,300 U.S.-born children have at least one parent who is a DACA beneficiary.¹³⁵⁹ Also, a total of 1.5 million individuals live in homes with a DACA recipient. Besides, data revealed that, nationally, households with DACA beneficiaries pay yearly \$5.6 billion in federal taxes and \$3.1 billion in state and local taxes. Furthermore, a total of 56,100 beneficiaries owned homes, making \$566.9 million in mortgage payments yearly, while those who do not own homes pay yearly \$2.3 in rent. More important, households with DACA recipients have \$24 billion as spending power after paying their taxes.¹³⁶⁰ In a nutshell, DACA was so beneficial to the US economy as its recipients contributed significantly to boosting it. Additionally, DACA proved to be a good program as it enabled its recipients to feel a strong sense of belonging to American society and opened new opportunities for them to pursue their

<https://www.americanprogress.org/article/daca-recipients-livelihoods-families-sense-security-stake-november/>

¹³⁵⁶ Results from Tom K. Wong et al., 2019 National DACA Study, 3.

¹³⁵⁷ American Immigration Council, *Deferred Action for Childhood Arrivals (DACA): An Overview*, 1.

¹³⁵⁸ Tom K. Wong, Sanaa Abrar, and Claudia Flores, "DACA Recipients' Livelihoods, Families, and Sense of Security Are at Stake this November".

¹³⁵⁹ Nicole Prchal Svajlenka and Philippe E. Wolgin, "What We Know About Demographic and Economic Impacts of DACA Recipients: Spring 2020 Edition," CAP, Published on April 6, 2020, Accessed on January 17, 2023, <https://www.americanprogress.org/article/know-demographic-economic-impacts-daca-recipients-spring-2020-edition/>

¹³⁶⁰ Nicole Prchal Svajlenka and Philippe E. Wolgin, "What We Know About Demographic and Economic Impacts of DACA Recipients: Spring 2020 Edition".

dreams and lives without the threat of deportation to their countries of origin; therefore, Trump's attempt to end DACA would nullify all the aforesaid advantages and benefits and would certainly have detrimental effects on the lives its recipients as well as the nation's economic and social spheres.

Another report presented by the Niskanen Center presented a series of economic numbers the U.S. economy would lose if DACA is ended and its recipients are deported. As aforesaid, the DACA program was of great value for its recipients where the lives of hundreds of thousands of individuals rely on it. The sensitivity of the program stems from the many services it provides for its recipients who, in their return, serve the country in different fields. Economically, DACA beneficiaries proved to be crucial to the U.S. economy as they contribute over \$42 billion to the U.S. Gross Domestic Product (GDP) annually, averaging over \$109,000 per worker.¹³⁶¹ Moreover, DACA-recipient households hold \$25.3 billion in spending power after taxes. Besides, DACA recipients provide the U.S. economy with \$272 million in mortgage and rental payments monthly, meaning a loss of \$3.3 billion in annual mortgage and rental payments. Additionally, deporting DACA recipients would cost U.S. taxpayers between \$7 billion and \$21 billion, depending on the deporting methods and procedures followed by the government. Furthermore, deporting DACA recipients would cost employers an amount of \$6.3 billion in employee turnover costs; in addition, deporting them would generate a loss of nearly \$40 billion in social security and Medicare contributions over the next ten years. These considerable economic numbers reflect the great importance of DACA recipients for the U.S. economy, meaning that ending DACA and deporting its recipients would detrimentally affect the American economy. In brief, maintaining DACA would save federal and state governments big amounts of money they could spend on other beneficial things or programs.

9.3.2 DACA's Impact on Education

In the educational field, DACA also had positive effects on its beneficiaries and American society as a whole. The CAP 2019 survey revealed that 40% of respondents were in schools, where the overwhelming majority of them estimated at 83% were preparing for their bachelor's degree or higher. Furthermore, the survey showed that 93% of those in schools maintained that thanks to DACA, they "pursued educational opportunities that they previously could not".¹³⁶² Still, 46% of the respondents revealed that they already have a bachelor's degree

¹³⁶¹ Niskanen Center. "The Niskanen Center's Work on DACA". <https://www.niskanencenter.org/daca/>

¹³⁶² Ibid.

or higher. Therefore, deporting DACA parents would harm their children; in other words, deporting a parent from a child's home is mostly associated with an increase in financial hardship, a decline in academic performance, an increase in depression and anxiety, and a 15% to 17% decrease in the likelihood of graduating the high school.¹³⁶³ More important, placing those children, whose parents were deported, in foster care may cause federal and state governments between 5 to 14 billion dollars annually.

On the other hand, statistics showed that one in three DREAMers is enrolled in higher education and many more have finished their Bachelor's Degree. These opportunities led DREAMers' to form 6.4% of the higher educational attainment than formal American citizens. Also, thanks to the authorization to work granted to DACA recipients, they managed to get money to pay for their education since they could not access federal aid for education or in-state tuition.¹³⁶⁴ In a word, DACA proved to be beneficial for DREAMers as it enabled them to pursue their studies without the threat of being deported, thereby pushing them to get more civically engaged in public life.

9.3.3 DACA's Impact on Healthcare

DACA not only provided its recipients with work authorizations and protection from deportation, but it provided them with healthcare benefits through their employers because they are not entitled to federal aid. This may leave many DACA recipients without insurance if states pull employer-based health care for undocumented migrants. Besides, finding alternative healthcare may cause mental stress and depression for Undocumented Immigrants, namely for those with preexisting conditions.¹³⁶⁵ If the federal government rescinds DACA and deports its recipients, the healthcare services they benefited from would not be available, thereby causing them to get less likely to spend as consumers and thus harming state and local economies with losses of more than \$25 billion. In addition, medicare users in the healthcare system would feel their absence after deportation due to their significant contribution to supplementing the program with roughly \$367 million.¹³⁶⁶ Further, DREAMers who obtain health services under privatized plans would hurt insurance companies as they get unable to fulfill their monthly payments after losing their jobs due to losing DACA. Moreover, ending DACA would lead to

¹³⁶³ Niskanen Center, "The Niskanen Center's Work on DACA," <https://www.niskanencenter.org/daca/>

¹³⁶⁴ Makenna Territo, "Ten Years Later, Dreamers Still Rely on DACA," Niskanen Center, Published on Nov. 28, 2022, Accessed on Jan. 21, 2023, <https://www.niskanencenter.org/ten-years-later-dreamers-rely-on-daca/>

¹³⁶⁵ Makenna Territo, "Ten Years Later, Dreamers Still Rely on DACA".

¹³⁶⁶ *Ibid.*

a potential shortage of 2.4 million healthcare workers that will aggravate without the 29,000 DREAMers healthcare workers, nurses, and doctors.¹³⁶⁷ All in all, for all the aforesaid reasons, the DACA program ought to be maintained by Congressional legislation as it provides insurance and vital services to hundreds of thousands of its recipients who in turn are socioeconomically so beneficial to the United States at large.

9.3.4 DACA's Social and Psychological Impact

Protecting DREAMers under DACA enhanced their sense of belonging to the United States and alleviated their stress and anxiety about their future. Hence, ending it would generate negative effects on both DREAMers and American society. In this respect, a nationwide study entitled *The National UnDACAmented Research Project (NURP)* conducted by Harvard researchers with the aim of seeking to understand the impact of DACA on the lives of eligible youth found that DACA provided its recipients with new employment and educational opportunities, promoting individual lives and boosting local economies.¹³⁶⁸ Additionally, the NURP found that “DACA led to an overall decrease in stress, helping them to perform better in their jobs and in their studies. It also reduced fears. More than two-thirds of recipients told us they were less afraid of law enforcement and of being deported”.¹³⁶⁹ Furthermore, thanks to the security of work authorization, DACA recipients gained a renewed sense of purpose which boosted their perspectives of the future, thereby holding new hope that they would pursue meaningful and well-paid jobs. This caused them to get the required confidence and motivation to invest in post-secondary education. In this regard, an 18-year-old interviewee from South Carolina, called Carolina, told the researchers that DACA had changed her look at school as well as her life chances. She said the following:

“My freshman year and my sophomore year, I did really bad, mostly because I was just not motivated because... all of this is going to be worthless in the end. But then when DACA came out, I started doing a lot better since I was like, OK, I actually have a chance... I was super motivated.”¹³⁷⁰

¹³⁶⁷ Ibid.

¹³⁶⁸ Roberto G. Gonzales and Kristina Brant, “Analysis: DACA Boosts Young Immigrants’ well-Being, Mental Health,” NBC News, Published on June 15, 2017, Accessed on January 17, 2023, <https://www.nbcnews.com/news/latino/analysis-daca-boosts-young-immigrants-well-being-mental-health-n772431>

¹³⁶⁹ Roberto G. Gonzales and Kristina Brant, “Analysis: DACA Boosts Young Immigrants’ well-Being, Mental Health”.

¹³⁷⁰ Ibid.

DACA also renewed its beneficiaries' sense of belonging to the United States. As a matter of fact, though many DACA-eligible youths spent the majority of their childhood in the USA, they felt were denied validation and recognition as members of the U.S. society. However, after receiving DACA, eligible youth felt a new sense of belonging and worth as DACA acknowledged their right to live and work, and temporarily protected them from removal. In this respect, a 19-year-old girl, called Maria, revealed to the study conductors that she always considered New York City to be her home, explaining that DACA granted her the comfort that she could get out of the shadow and pursue her life confidently in the United States. She said the following:

“I feel like I can actually contribute to my community, my society, whatever it is, without having to worry about tomorrow, that I might get deported or something like that. I feel more safe participating in things for the community and for anything, really.”¹³⁷¹

Rescinding DACA would badly affect its recipients. The CAP survey explored the concerns of DACA beneficiaries who raised deep worries about the fears, harms, and hardships they would face if they are deported to their country of origin. In this respect, the survey revealed that 80% of respondents expressed their worries about their physical safety saying that “In my country of birth, I would be concerned about the physical safety of myself and my family,”¹³⁷² while 75% of them raise concerns about healthcare in their home countries after deportation reporting that “In my country of birth, I would be concerned about the quality of healthcare for myself and my family”.¹³⁷³ Besides, 75% of the respondents have also raised their concerns related to the quality of education after being deported to their home country maintaining that “In my country of birth, I would be concerned about the quality of education for myself and my family,”¹³⁷⁴ while 58% of them expressed their worries about food insecurity saying that “In my country of birth, I would be concerned about food insecurity for myself and my family,” and 41% of them expressed their concerns about homelessness maintaining that “In my country of birth, I would be concerned about homelessness for myself and my family”.¹³⁷⁵

¹³⁷¹ Ibid.

¹³⁷² Tom K. Wong, Sanaa Abrar, and Claudia Flores, “DACA Recipients’ Livelihoods, Families, and Sense of Security Are at State this November”.

¹³⁷³ Ibid.

¹³⁷⁴ Ibid.

¹³⁷⁵ Ibid.

As DACA brought about positive impacts on its recipients' lives, their families, as well as America's socioeconomic sphere, ending it would cancel all the aforesaid positive effects and generate serious issues for the whole country. Though DACA never officially legalized any undocumented immigrants, rescinding it would be, in a way, the largest act of illegalization of immigrants in America's history.¹³⁷⁶ As a matter of fact, it has never occurred at any time in American history that a generation raised and rooted in the United States had been denied recognition and instead pushed into the precarity of illegal-immigrant life. Therefore, winding down DACA is unprecedented because DACA itself is unprecedented since it never occurred in the U.S. immigration history where the government provided legal protection to thousands of unauthorized immigrants who had little chance to get fully legalized in the USA.¹³⁷⁷

Usually, when politicians want to reconcile reality and law, they often tend to change the law to make it suitable and responsive to reality, not forcefully change the reality by changing the law. The Obama administration initiated DACA which responded to the reality and preoccupations of some undocumented immigrants, thus attempting to adapt the law to the reality of this category of immigrants. The Trump administration, however, did the opposite by changing the law to change the reality of these immigrants. Rescinding DACA would certainly widen the gap between reality and law which is threatening to the public safety and social security of the entire American society. In other words, DACA was so beneficial for the whole country as it attempted to get the best out of what the undocumented immigrants have by integrating them into the U.S. society by authorizing them to work and study and pursue their lives in the country. Therefore, Trump's plan to end it would trouble roughly 800,000 recipients by obstructing their integration into the American lifestream, thereby forcing them to go back to the clutches of unauthorized-immigrant life.

To explore the effects of unwinding DACA on its recipients, a survey was conducted from July 16 to August 7, 2018, by "Tom K. Wong of the University of California, San Diego; United We Dream; the National Immigration Law Center; and the Center for American Progress"¹³⁷⁸ fielded a national survey that included 1,050 DACA recipients from 40 states including the District of Columbia. The survey included two parts: the control condition under

¹³⁷⁶ Dara Lind, "Why Ending DACA is so Unprecedented," Vox, Published on Sept. 5, 2017, Accessed on Jan. 19, 2023, <https://www.vox.com/policy-and-politics/2017/9/5/16236116/daca-history>

¹³⁷⁷ Dara Lind, "Why Ending DACA is so Unprecedented".

¹³⁷⁸ Tom K. Wong, et al., "Ending DACA Would Have Wide-Ranging Effects but Immigrant Youth are Fired Up and Politically Engaged," Published on March 16, 2022, Accessed on January 20, 2023, <https://unitedwedream.org/resources/ending-daca-would-have-wide-ranging-effects-but-immigrant-youth-are-fired-up-and-politically-engaged/>

DACA and the treatment condition after losing DACA. In the control condition, respondents were asked several questions centered on how they would perform certain civic activities under DACA. They were asked how they would report a crime that they witnessed to the police, report a crime that they were a victim of to the police, use public services that required them to give their personal contact information, do business such as opening a bank account or getting a loan which requires them to give their personal contact information, participate in public events where police may be present, place their children in an after-school or day-care program, report wage theft by their employer.¹³⁷⁹ However, in the treatment condition, the respondents were asked the same aforesaid questions, but were given the prompt “IF YOU NO LONGER HAD DACA, how likely are you to do the following?”.¹³⁸⁰ The survey came up with striking results as they reflected deep changes in DACA recipients’ civic behaviors and performance within American society after losing DACA.

The survey findings showed that losing DACA would have serious impacts on DACA recipients and the whole of society. For instance, in the control condition, 76.7% of the respondents are “likely” or “very likely” to report the police on a crime they have witnessed, which is good behavior that helps the police to catch the criminals, thus helping to maintain order and establish justice. However, this percentage dropped to 40.7% in the treatment condition, meaning that they would be less cooperative with the police which negatively affects maintaining security and establishing justice. Besides, the survey’s results showed that 29% would be less likely to report to the police a crime of which they were victims if they are stripped of DACA status. These results are of great importance and sensitivity for maintaining security among Americans because the safety of the whole society rests on the full participation of all its members; hence, public safety could be cracked and weakened if one segment of the society does not feel comfortable to come forward.

Furthermore, the survey’s findings showed that 32% of the respondents would be less likely to use public services lest they would be obliged to present their personal contact information after losing DACA. Similarly, 47.9% of them would be less likely to do business due to their fear of being required to present their personal contact information when losing DACA; 36.3% would be less likely to take part in public events lest they would meet the police;

¹³⁷⁹ Tom K. Wong, et al., “Ending DACA Would Have Wide-Ranging Effects but Immigrant Youth are Fired Up and Politically Engaged”.

¹³⁸⁰ Wong, et al., “Ending DACA Would Have Wide-Ranging Effects but Immigrant Youth are Fired Up and Politically Engaged”.

20.2% of the respondent with children would be less likely to place their children in an after-school or day-care program after losing DACA; and 37.9% of the respondents would be less likely to report on wage theft by their employer if they lose DACA.¹³⁸¹ Hence, the survey proved that losing DACA would push its recipients to be less cooperative with the police for maintaining public safety and less likely to actively participate in public life, thereby pushing them into the clutches of illegal-immigrant life.

The survey also showed that DACA recipients were increasingly concerned about the political and legal uncertainty surrounding DACA's fate under the Trump administration. This doubtful situation regarding unwinding DACA had shaken their confidence in the government's institutions. Though DACA recipients were explicitly promised not to share their personal information with ICE, only 6.6% of them reported that they trust the federal government when asked this question: "How much trust do you have that the information you provide to the federal government will not be shared with Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP) for immigration purposes?"¹³⁸²

Politically, the survey showed that DACA recipients are more likely to be politically mobilized and civically engaged. According to the survey's findings, 63.9% of the respondents reported that they had participated in a campaign to defend DACA during the past 12 months, while 34.5% reported that they participated in a campaign to stop deportation during the past 12 months. Also, 28.9% of them maintained that they took part in a campaign against the killings of unarmed black people.¹³⁸³ Similarly, during the 12 months preceding the survey, 35.2% of the respondents reported taking part in a political rally or demonstration, 6.9% were engaged in civil disobedience, 40.9% of them contacted or attempted to contact a senator or a representative in Congress, 69.2% of them signed a petition on the internet about social or political issues, and 55.1% reported having sent a message or updating a post on Facebook or Twitter about social or political issues.¹³⁸⁴ These results reflected that DACA recipients got more civically and politically engaged following the announcement of winding down DACA.

¹³⁸¹ Ibid.

¹³⁸² Ibid.

¹³⁸³ Ibid.

¹³⁸⁴ Ibid.

9.3.5 DACA's Impact on the Labor Market

As aforesaid, the DACA executive program is meant to protect undocumented immigrants from deportation and authorize them to work and get jobs legally. In 2018, the House Committee on Small Businesses estimated that the effect of cuts to the DACA program is “equivalent to an estimated 30 major regulations on employers”.¹³⁸⁵ Therefore, most of DACA's impact would be placed on the employers who depend on them to pursue their businesses. Further, rescinding DACA would trouble employers as they would struggle to find other workers to replace their workers who lost DACA.

A survey conducted by the Niskanen Center in 2020 showed that over 87% of DACA recipients reported that they attained financial independence thanks to DACA.¹³⁸⁶ In addition, when the pandemic of Covid-19 stroke the whole world, including the United States, hitting healthcare workers and teachers hard and causing the death of thousands of citizens. This made the DACA recession even harder because deporting about 30,000 essential workers in these two sensitive sectors would leave them depleted.¹³⁸⁷ This issue would be more effective in certain states than others, especially in the border states like Texas and California wherein a quarter of DACA recipients hold jobs in critical sectors such as health services and education. Therefore, rescinding DACA and deporting its recipients would not only cost the U.S. economy \$6.3 billion in employee turnover but also would cause the labor market a shortage of 18% in the workforce.¹³⁸⁸ In summary, unwinding DACA would be so harmful to the U.S. economy, namely the labor market, owing to the key role they play in different sectors, especially in sensitive ones like education and health services.

9.4 Impact of Ending TPS

As previously discussed in Chapter 9, Temporary Protected Status (TPS) is a life-saving immigration program intended to permit foreign nationals to stay in the United States if, while they are in the USA, their countries of origin witnessed catastrophic incidents that prevent their safe return. These incidents, for example, include wars, armed conflicts, famine, natural disasters, or epidemics.¹³⁸⁹ Similar to DACA, TPS protects its recipients from removal and

¹³⁸⁵ Makenna Territo, “Ten Years Later, Dreamers Still Rely on DACA”.

¹³⁸⁶ Ibid

¹³⁸⁷ Ibid.

¹³⁸⁸ Ibid.

¹³⁸⁹ Peniel Ibe and Eli Johnson, “Trump Has Ended Temporary Protected Status for Hundreds of Thousands of Immigrants. Here's What You Need to Know,” American Friends Service Committee, Updated on June 30,

allows them to work legally during their stay in the United States. Furthermore, TPS is a temporary and humanitarian form of relief that does not offer a permanent residency in the USA to its recipients who are expected to go back to their home countries once their safe return is guaranteed. As a result, this program provided protection for roughly 330,000 from ten countries that suffered from disease, starvation, violence, the aftermath of natural disasters, and other life-threatening conditions. Therefore, ending TPS and deporting its recipients would cause heavy losses to the United States in different fields.

Overall, rescinding TPS would be so harmful to several communities because they are deeply integrated into these communities across the United States. This is because recipients from the three countries (El Salvador with 195,000 recipients, Honduras with 57,000 recipients, and Haiti with 50,000 recipients) with the largest TPS populations alone are parents for 279,200 children born in the United States (See Appendix 10).¹³⁹⁰ This made them so crucial to the well-being of their children as they provide them with emotional and financial support to successfully follow their studies and life in the United States. Besides, these TPS holders are important as they shoulder responsibilities in schools, churches, and civic organizations. Furthermore, thousands more occupy different jobs such as caregivers for seniors, nannies, or people with disabilities. They also occupy important jobs in other fields that are important to the health the well-being of American society.¹³⁹¹ This made them so important that their removal would be harmful, namely to the U.S. economy.

9.4.1 TPS's Impact on the U.S. Economic

Economically, having been in the United States for many years (TPS holders from El Salvador and Honduras who make up approximately three-fourths of the current TPS population are in the United States for an average of 24 years), TPS holders got integrated into the U.S. economy, thereby contributing significantly to the U.S. GDP. The overwhelming majority of TPS holders, more than 80%, are part of the labor force which is much higher than the national average. Figure 46 shows that TPS holders' rate of participation in the labor force is higher than that of U.S. native-born workers who participate with 62% and that of U.S.

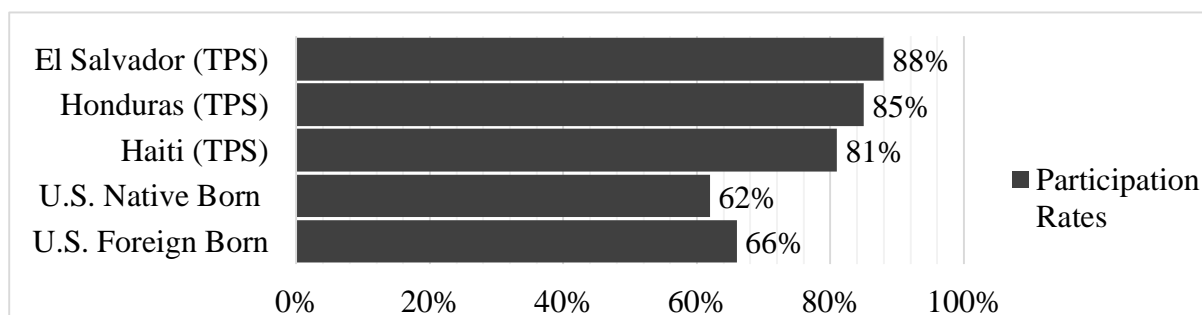
2020, Accessed on Jan. 22, 2023, <https://www.afsc.org/blogs/news-and-commentary/trump-has-ended-temporary-protected-status-hundreds-thousands-immigrants>

¹³⁹⁰ Peniel Ibe and Eli Johnson, "Trump Has Ended Temporary Protected Status for Hundreds of Thousands of Immigrants. Here's What You Need to Know".

¹³⁹¹ Ibid.

foreign-born workers who participate with 66%, indicating their great importance to the U.S. economy.

Figure 46. TPS labor force participation rates



Source: Andrew Moriarty, “Temporary Protected Status (TPS): 5 things to Know,” fwd.us. Published on Sept. 14, 2022, Accessed on Jan. 23, 2023, <https://www.fwd.us/news/temporary-protected-status-tps-5-things-to-know/>

They hold jobs in key sectors like health care, transportation, food industries, warehousing, and delivery. During the pandemic of Covid-19, an estimated number of 131,300 TPS recipients from the three countries holding the majority of the TPS population served as essential workers.¹³⁹² This enabled them to contribute annually \$14 billion to the national GDP.¹³⁹³ Hence, ending TPS would certainly have detrimental repercussions for the U.S. economy.

A report presented by researchers from the Immigration Legal Resource Center (ILRC) in April 2017 found that terminating TPS for the three countries (El Salvador, Honduran, and Haiti) with the largest TPS populations would cost American taxpayers \$3.1 billion.¹³⁹⁴ Further, terminating TPS for these three countries would lead to a reduction of about \$6.9 billion in social security as well as Medicare contributions over the next decade; it would also result in a \$45.2 billion reduction in GDP over the next decade.¹³⁹⁵ Moreover, the wholesale lay-off caused by the deportation of these TPS workers from these three countries would lead to \$967 million in turnover costs, especially because employers would struggle to recruit new workers to replace the deported workers with TPS status. This problem would be felt most acutely in the

¹³⁹² Ibid.
¹³⁹³ Andrew Moriarty, “Temporary Protected Status (TPS): 5 things to Know,” fwd.us, Published on Sept. 14, 2022, Accessed on Jan. 23, 2023, <https://www.fwd.us/news/temporary-protected-status-tps-5-things-to-know/>
¹³⁹⁴ Amanda Baran, Jose Magana-Salgado, and Tom K. Wong, *Economic Contributions by Salvadoran, Honduran, and Haitian TPS Holders: The Cost to Taxpayers, GDP, and Businesses of Ending TPS* (Washington, DC: Immigrant Legal Resource Center, 2017), 1.
¹³⁹⁵ Amanda Baran, Jose Magana-Salgado, and Tom K. Wong, *Economic Contributions by Salvadoran, Honduran, and Haitian TPS Holders: The Cost to Taxpayers, GDP, and Businesses of Ending TPS*, 1.

cities and locations dominated by nationals from the three countries, namely in metropolitan areas in states like New York, Florida, Texas, California, Virginia, and Maryland.¹³⁹⁶ Table 17 shows that Honduran nationals with TPS status are mostly located in the main metropolitan areas in New York, New Jersey, Pennsylvania, Florida, Texas, and Virginia. For instance, 8,818 are located in New York, Newark, and Jersey cities. In Florida, 7,467 are located in Miami, Fort Lauderdale, and West Palm Beach. Texas, in its turn, hosts 6,060 in three of its cities, Houston, The Woodlands, and Sugar Land.

Table 17. Metropolitan areas and Honduran TPS holders

Metropolitan Area	TPS Holders
New York-Newark-Jersey City, NY-NJ-PA	8,818
Miami-Fort Lauderdale-West Palm Beach, FL	7,467
Houston-The Woodlands-Sugar Land, TX	6,060
Washington-Arlington-Alexandria, DC-VA-MD-WV	5,538
Los Angeles-Long Beach-Anaheim, CA	3,901

Source: Tom Wong analysis American Community Survey (ACS) data

However, Salvadoran TPS holders make up the majority of the TPS population in the United States. They are deployed nearly in the same metropolitan areas with great numbers. Table 18 shows the distribution of Salvadoran TPS holders where the majority of them are located in the metropolitan areas of Washington, Arlington, and Alexandria with 32,359. California’s metropolitan cities came in the second place with 30,415 followed by New York, New Jersey, and Pennsylvania with 30,415 followed by Texas with 24,740 distributed in its main metropolitan areas of Houston, The Woodlands, Sugar Land, Dallas, Fort Worth, and Arlington. In last place come the cities of New York, Newark, and Jersey City with 23,168 TPS holders.

Table 18. Metropolitan areas and Salvadoran TPS holders

Metropolitan Area	TPS Holders
Washington-Arlington-Alexandria, DC-VA-MD-WV	32,359
Los Angeles-Long Beach-Anaheim, CA	30,415
New York-Newark-Jersey City, NY-NJ-PA	23,168
Houston-The Woodlands-Sugar Land, TX	16,991
Dallas-Fort Worth-Arlington, TX	7,749

Source: Tom Wong analysis of American Community Survey (ACS) data

¹³⁹⁶ Ibid., 1.

For their part, Haitian TPS holders are distributed in nearly the same metropolitan areas as shown in Table 19. The majority of them, making up 19,368, are located in the cities of Florida followed by 9,402 located in New York, Newark, and Jersey City. Massachusetts and New Hampshire come next with 4,302 TPS holders.

Table 19. Metropolitan areas and Haitian TPS holders

Metropolitan Area	TPS Holders
Miami-Fort Lauderdale-West Palm Beach, FL	16,287
New York-Newark-Jersey City, NY-NJ-PA	9,402
Boston-Cambridge-Newton, MA-NH	4,302
Orlando-Kissimmee-Sanford, FL	3,081
Atlanta-Sandy Springs-Roswell, GA	992

Source: Tom Wong’s analysis of American Community Survey (ACS) data

The data displayed in these tables reflect the degree to which TPS holders are rooted in the economic and social aspects of American life. This also alludes to the grave impacts on different fields if the federal government under the Trump administration imposes the termination of TPS status for hundreds of thousands of its holders. Besides, deporting such a great number of TPS recipients would make the federal government incur heavy costs as displayed in Table 20

Table 20. Cost of deporting TPS holders

Country	TPS Holders	Cost Per Deportation	Total Deportation Cost
El Salvador	186,403	\$10,070	\$1,877,078,210
Honduras	70,281	\$10,070	\$707,729,670
Haiti	46,558	\$10,070	\$486,893,060
		Total	\$3,053,646,940

Source: Tom Wong analysis American Community Survey (ACS) data; CAP 2016

The Center for American Progress (CAP) estimated the cost of deporting one TPS holder at \$10.070.¹³⁹⁷ This comprises several charges including the four main tasks required to conduct this kind of mass deportation and removal process advocated by anti-immigration hardlines: apprehension, detention, legal processing, and transportation. Thus, when considering the total number of TPS holders as of April 2017 which is estimated at 303,242, and multiplying it by the deportation cost per one TPS holder of \$10.07, it makes \$3.053.646.940 which is a colossal cost for the U.S. taxpayers, as displayed in Table 20.

¹³⁹⁷ Ibid., 4.

Deporting TPS holders would not only be costly to the federal government but would also negatively affect the U.S. economy as they would leave their jobs that are lucrative for them along with the U.S. economy. After the decision to end TPS status, TPS recipients would be obliged to leave their jobs, causing a heavy loss to the American economy. The impact on GDP can be estimated by calculating the lost wages as a result of a potential recession of the TPS program. To this end, Table 21 outlines losses the U.S. economy would incur if the Trump administration proceeded to end TPS status. According to data displayed in Table 21, 128,790 Salvadoran workers with TPS status and an average wage of \$24,429 would annually cost the U.S. economy a total of \$31,462,109,100 while 46,020 Honduran workers with TPS status and an average wage of \$23,759 would annually cost the U.S. economy a total of \$1,093,389,180. Also, 15,257 Haitian workers with TPS status and an average wage of \$18,338 would annually cause the U.S. economy a total of \$279,782,866. Hence, the Salvadorans, Hondurans, and Haitians, together would annually cost the U.S. economy a total of \$4,519,382,956 which is a significant amount of money.

Table 21. GDP contributions by TPS holders

Country	People with Pre-tax Wages or Salary Income	Average Wage	Total Pre-Tax Wages or Salary Income	Over Ten Years
El Salvador	128,790	\$24,429	\$3,146,210,910	\$31,462,109,100
Honduras	46,020	\$23,759	\$1,093,389,180	\$10,933,891,800
Haiti	15,257	\$18,338	\$279,782,866	\$2,797,828,660
		Total	\$4,519,382,956	\$45,193,829,560

Source: Tom Wong's analysis of American Community Survey (ACS) data

9.4.2 TPS’ Impact on Social Security

In the United States, both employers and employees are required to contribute to the fund of social security and Medicare trust funds. According to the Federal Insurance Contributions Act (FICA), both of these two trust funds require employees to fund current, outstanding obligations to individuals entitled to benefit from them. Medicare trust fund is projected to be insolvent in 2028 whereas the social trust fund is projected to be insolvent in 2034. A decline in contributions due to ending TPS and deporting its recipients (about 300,000 employees from the workforce) who contribute to the fund of both two trust funds would automatically move forward the insolvency dates of both of them. The withholding rate for employees and employers to fund the social security trust fund is the same with 6.2% for each, making 12.4% in total, while it is 1.45% for both employees and employers for the Medicare

fund trust, making a total of 2.9%.¹³⁹⁸ As part of the American workforce, TPS employees are required to comply with the requirements of FICA, thus providing a significant amount of money to fund both Social Security and Medicare trust funds.

The withholding rate for the social security trust fund for workers is applied only to a certain amount of annual wages. For instance, the annual wage was limited to \$127,200 in 2017. Furthermore, employers are required to withhold an additional 0.9% on wages that are greater than \$200,000 for the Medicare trust fund. The details of TPS employees’ social security contributions are displayed in Table 22. To get the amount of money the average TPS employer and employee contribute to the social security taxes, the average yearly wage will be multiplied by the tax rate. Accordingly, each Salvadoran employee is expected to pay \$3,029 for social security, while a Honduran employee would pay \$2,946 and \$2,274 for each Haitian employee.

Table 22. The average social security contribution by TPS holders

Country	Average Yearly Wage	Tax Rate	Contribution Per Year
El Salvador	\$24,429	12.4%	\$3,029
Honduras	\$23,759	12.4%	\$2,946
Haiti	\$18,338	12.4%	\$2,274
Total			\$8,249

Source: Tom Wong’s Analysis of ACS data

To get the annual amount employers and TPS employees would pay for social security taxes, the employee’s contribution per year from each country is multiplied by their respective population and then they are added up together. Accordingly, the total amounts paid yearly for social security are \$390,130,153 for Salvadoran TPS employees, \$135,580,258 for Honduran TPS employees, and \$34,693,075 for Haitian TPS employees (see Appendix 11). The total amount paid by TPS employees of the three countries amounts to \$560,403,487, which is a significant amount the federal government ought to maintain it.

9.4.3 TPS’ Impact on Medicare

TPS holders’ impact on the contributions to Medicare is also of great importance. Their contribution is represented by data displayed in Table 23 which shows that each Salvadoran TPS holder pays annually \$708 as a contribution to Medicare, while each Honduran and Haitian TPS holder respectively pays \$689 and \$532 as annual contributions to Medicare.

¹³⁹⁸ Ibid., 5.

Table 23. Average Medicare Contribution by TPS Holders

Country	Average Yearly Wage	Tax Rate	Contribution Per Year
El Salvador	\$24,429	2.9%	\$708
Honduras	\$23,759	2.9%	\$689
Haiti	\$18,338	2.9%	\$532
Total			\$1,929

Source: Tom Wong’s Analysis of ACS data

To obtain the contribution of the whole Salvadoran TPS holders, the individual contribution of each employee will be multiplied by the number of TPS employees belonging to the same community. Accordingly, the 2017 contribution of the Salvadoran community to the Medicare trust fund totaled \$91,240,116 while the Honduran and Haitian contributions amounted to \$31,708,286 and \$8,113,703 respectively, making an annual total of \$131,062,106 by the three communities (see Appendix 12).

To get the total FICA contribution over a decade, we combine the total amount contributed to social security over a decade with the total amount contributed to Medicare over a decade by the whole three communities holding TPS status in the United States. The obtained results show that the three communities’ FICA contribution over ten years totals approximately \$7 billion which is a significant number the US economy would lose after terminating TPS status (see Appendix 13).

Contemplating these significant contributions divert one’s attention to the challenges related to the replacement of these TPS employees after deporting them from the United States. Theoretically, it seems that employers are able to hire other replacement workers who could make the same FICA contributions; however, practically, there is no guarantee that the employer would be able to successfully hire other replacement workers. Additionally, there is no guarantee that the employer would continue maintaining the job instead of consolidating or canceling it altogether. Moreover, there is no guarantee that the employer would hire replacement workers at the same wage because a lower introductory wage would certainly lead to a decrease in the contributions even after filling the job. Also, there is no guarantee that FICA contributions would not be stopped due to a vacant job. Furthermore, there is no guarantee that the replacement worker would not leave another job to fill the job left by the TPS employee, which would result in decreasing the FICA contributions due to creating a vacant job at the

previous employer.¹³⁹⁹ In a nutshell, ending TPS status for hundreds of thousands of immigrants in the United States would be costly to the U.S. economy due to their significant contributions, making their replacement a quite challenging task for their employers as it is costly in terms of money and time.

9.4.4 TPS's Turnover Costs to Businesses

As aforementioned, ending the TPS status would mean that about 190,067 TPS holders who report pre-tax wages or salary income would lose their authorization work to work legally in the United States. This would coerce employers to stop relying on employees with TPS status and replace them with others who may work legally in the United States. Consequently, employers would incur a variety of turnover costs including the cost of temporarily covering an employee's responsibilities as well as the replacement costs such as searching, interviewing, hiring replacement candidates, and training them. In this respect, the CAP analyzed a variety of studies related to this issue and came up with an approximate estimation for the turnover cost which roughly makes 21.4% of an employee's annual salary.¹⁴⁰⁰ Thus, to obtain the total turnover cost for replacing 190,067 TPS employees from the three countries (El Salvador, Honduras, and Haiti), we multiply the average annual salary of TPS holders from these countries by their respective populations to obtain the total amount of pre-tax wages or salary income; thereafter, the latter number will be multiplied by 21.4% to get the total turnover cost per country. Afterward, combining the three turnover costs would give us the whole turnover cost employers would incur after ending TPS stats (see Appendix 14). As for the Salvadoran TPS employees, their deportation would cost their employers a total amount of \$673,289,135, while the Hondurans and Haitians would cost them \$233,985,285 and \$59,873,533 respectively, making a total turnover cost of \$967,147,953 (approximately one billion dollars).

These are the cost of ending TPS for nationals of three countries only, meaning that the costs and effects of terminating TPS status would be greater and so harmful for the US economy. Hence, it is pretty clear that the Trump administration's decision to terminate TPS status would not only trouble TPS holders but would be also costly for their employers and the U.S. economy as a whole.

¹³⁹⁹ Ibid., 7.

¹⁴⁰⁰ Ibid.,

9.4.5 Effects on Countries Designated for TPS

Terminating TPS status would certainly destabilize its recipients' home countries. Countries that have just recovered from catastrophic events are unable to welcome and reabsorb thousands of their nationals living for many years in the United States. TPS holders play a key role in sustaining their families and relatives in their home countries by helping them financially by sending them money. Additionally, maintaining TPS would promote stability in these countries; therefore, rescinding TPS for these countries before sufficiently recovering from their difficult conditions would have a deeply destabilizing impact. The impact would be felt more in the needy countries, namely those at the U.S. southern border, where more immigrants would flee to the United States so as to save their lives and the lives of their families.

On the other hand, the United States is blamed for its great responsibility in destabilizing the countries designated for TPS. For instance, the U.S. foreign policy in designated countries like Honduras, Haiti, Nicaragua, and El Salvador, has long been characterized by cooperating with paramilitary forces and supporting totalitarian regimes, leading to the creation of miserable conditions in those countries that pushed their people to flee for their safety and well-being in other countries, including the United States.¹⁴⁰¹ Accordingly, the United States has to assume its responsibility and maintain or extend TPS status for its holders till the complete recovery of their home countries.

In summary, Donald Trump campaigned for toughening American immigration policy, arguing that America became a dumping land for the bad immigrants hailing from certain countries. He, therefore, lobbied for a very tough immigration plan that targeted Muslims from certain Muslim-majority countries on the grounds that they pose a genuine threat to American national security as well as public safety. However, the implementation of the Muslim ban caused bad effects on American Muslim families as well as their relatives outside America. Trump also initiated the construction of a gigantic border wall along the US-Mexican border for the sake of stemming and reducing illegal immigration across the southwest border. Trump went beyond when promised no tolerance for illegal immigration by enforcing immigration laws all over the fifty states and increasing their deportation to their home countries. Besides, Trump implemented His notorious policy known as the Zero Tolerance Policy ZTP and resorted

¹⁴⁰¹ Peniel Ibe and Eli Johnson, "Trump Has Ended Temporary Protected Status for Hundreds of Thousands of Immigrants. Here's What You Need to Know".

to family separation in order to deter further families from thinking about coming to the United States of America. Such strict policies that ignored the humanitarian side inflicted immigrant families as it separated children from their parents and host them in separate detention facilities. Therefore, both parents and their children encountered hard times, namely children who suffered from psychological problems. Economically, deporting DACA and TPS recipients proved to be harmful to the U.S. economy given the heavy costs employers would incur as they are obliged to recruit new workers through a lengthy process. Aven politically, Trump's Immigration plan polarized the American political scene due to different points, leading to political battles inside the corridors of Congress. All in all, Trump's immigration plan proved to be controversial since its announcement during the 2016 presidential campaign through its bad impacts on different aspects of American life.

General Conclusion

The United States of America is a nation of immigrants par excellence. Throughout its history, America remained the best destination for immigrants flocking to it from different countries and different parts of the world. This inflow of immigrants, sometimes in millions per decade, turned the attention of lawmakers in Congress and the White House to introduce some reforms to the nation's immigration policy aiming at making it comply with the country's best interests that changed according to the country's then geopolitical and socioeconomic context. Accordingly, remarkable reforms characterized the course of U.S. history starting with the Alien and Sedition Acts passed by Congress during the Presidency of the second U.S. President, John Adams, as a protective measure against possible threats jeopardizing national security during the looming danger of the Quasi-War with France, the Chinese Exclusion Act of 1882 and Quota Acts of 1920 and 1924, Immigration and Nationality Act of 1965, up to PATRIOT Act of 2001, all were introduced by the previous administrations in the name of the best interests of the United States.

Donald Trump's administration is no exception. During his 2016 presidential campaign, Donald Trump revealed his immigration plan that would comprise tough measures aiming at restricting or stemming the inflow of undesirable immigrants from certain countries as well as rooting out undocumented immigrants already in the country and sending them back to their home countries. Furthermore, he reduced the number of refugees and asylum seekers accepted into the United States. Such tough measures were broadly justified by the fear for national security, public safety, Americans' well-being, development of the U.S. economy, and cohesion in U.S. society. This immigration plan made part of Trump's broad policy intended to make America great again and place the interests of Americans ahead of those of immigrants or the international community.

Once in office, President Trump moved swiftly to implement his immigration plan by issuing a series of Executive Orders, starting with EO13769, or rather the Muslim Ban, which banned nationals of seven Muslim-majority countries from entering the United States on grounds related to the fear for national security. However, this study proved that the grounds upon which the Muslim ban was built were unfounded. Besides, none of the terrorist acts against America were committed by nationals of the blacklisted countries. Additionally, other Muslim-majority countries whose nationals committed terrorist acts against the USA like Saudi Arabia did not figure in the list of banned countries, raising questions about the rightness of Trump's justifications for blacklisting the seven countries: Iran, Iraq, Syria, Sudan, Somalia, Yemen, and Lybia.

On the other hand, the Muslim Ban negatively affected American Muslim immigrants as it separated them from the rest of their families outside America. It also detrimentally affected other communities such as students who were about to pursue their studies in the United States. The ban also caused wide manifestations of Muslim immigrants in airports across the American territory who manifested against the reckless order of President Trump. Adding to that, the ban faced legal difficulties and litigation in the U.S. courts, compelling the President to issue other iterations of the ban before being upheld by the Supreme Court. In a nutshell, the Muslim Ban was not that beneficial to the best interests of the country, thereby generating more negative effects than positive effects making it needless. Therefore, his successor, Democratic President Joseph Robinet Biden (1942—; served 2021—) repealed it once in office, on January 20, 2021.

Another immigration measure the Trump administration implemented was the construction of a border wall along the country's 2000-mile southwest border. This border wall was intended to help reduce illegal immigration or crossings to its lowest possible level. During his 2016 presidential campaign, Donald Trump promised to stem the illegal crossings through the southwest border on account of the threat Mexican and Latino illegal immigrants pose to public safety given the bad quality of most of them. Through this work, it became clear that President Trump failed to finish constructing the 2000-mile border wall. Even worse than this, the study revealed that the majority of Trump's border wall was replacement barriers already constructed by the previous administrations of Presidents George W. Bush and Barack Obama. In other words, the Trump administration managed to build only 15 additional miles, too far away from the promise of a 2000-mile border which was a big failure for President Trump and his administration.

Donald Trump not only failed to finish the construction of the wall but also failed to fulfill his promise to make Mexico pay for it. Additionally, he failed to secure the required appropriations from Congress due to the opposition of the Democratic party and its leaders in the House of Representatives who regarded the border wall as "ineffective" and "wasteful". Hence, to avoid delaying the construction of the wall and overcoming the financial impediments, Donald Trump proceeded to appropriate funds for the border project after taking money from the budget of other departments.

Another notorious immigration measure that figured in Trump's immigration policy is his Zero Tolerance Policy (ZTP). Trump's ZTP showcased the high percentage of family unit apprehensions registered in FY 2018 compared to the previous years, particularly during Obama's era. This policy targeted undocumented immigrants, namely those arriving at the U.S. southwest border after a long risky journey due to the bad and push factors mostly related to escaping gang violence, political unrest, and civil wars in their home countries. Hence, owing to these push factors, the United States scored a surge of 60.3% in illegal immigration, mainly from NTCA countries. Unsurprisingly, the negative impacts of Trump's zero-tolerance immigration policy outweigh the rest, ranging from enacting laws without appropriate interpretation and conduct, devaluating the American Dream, and the psychological impacts inflicted on the policy's victims. The Trump administration made no distinction between illegal entry and reentry, though both of them are federal misdemeanors and thus punishable according to convicted felonies. In addition, there is no federal law passed by Congress or any other federal institution that requires family separation during the prosecution process; therefore,

deliberately separating children from their parents was adopted by the Trump administration as a strategy and tactic to deter further undocumented immigrants from coming to the United States. This strategy had very bad psychological impacts on both minor children and their families, thereby negatively impacting minor children's education and psychological health.

Trump's immigration plan also allowed for the mass deportation of undocumented immigrants. To achieve so, Trump's administration labored to increase the number of immigration agents of ICE and CBP, which proved to be so difficult as it required money, qualified agents, and time. Therefore, the process of hiring new agents went through these impediments, thereby negatively affecting the implementation of Trump's immigration plan.

Trump's policy of deporting undocumented immigrants hurt America's reputation as a nation that welcomes immigrants. This is because his ZTP policy went against the United Nations Universal Declaration of Human Rights, called the Refugee Convention, which set out the rights of asylum seekers and protected them from persecution. By the terms of the Refugee Convention, the contracting Nation-States are expected to abide by the convention provisions which are meant to be applied without discrimination as to age, sex, sexuality, disability, and other prohibited grounds of segregation. The convention also provided that refugees should not be punished for their illegal entry or stay. This provision recognizes that asylum seekers can breach immigration laws, and thus cannot be charged with criminal and immigration offenses related to seeking asylum or detaining them arbitrarily just because they sought asylum. Thus, contrary to the provisions of the Refugee Convention, Trump's measures against undocumented immigrants as well as separating minor children from their parents at the border and detaining them went against the policy of the United Nations, thereby hurting the reputation of the United States of America.

Moreover, to increase the deportations of undocumented immigrants, Trump's administration resorted to rescinding Obama's immigration program, particularly DACA and DAPA, which provided minor undocumented work authorization and deferred their removal to their home countries. Additionally, to increase the deportation of undocumented immigrants, Trump's administration resorted to ending TPS to its recipients, thereby expediting their removal. Ending the TPS status would mean that about 190,067 TPS holders who report pre-tax wages or salary income would lose their authorization work to work legally in the United States. This would coerce employers to stop relying on employees with TPS status and replace them with others who may work legally in the United States. Consequently, employers would

incur a variety of turnover costs including the cost of temporarily covering an employee's responsibilities as well as the replacement costs such as searching, interviewing, hiring replacement candidates, and training them. These are the cost of ending TPS for nationals of three countries only, meaning that the costs and effects of terminating TPS status would be greater and so harmful to the U.S. economy. Hence, it is pretty clear that the Trump administration's decision to terminate TPS status would not only trouble TPS holders but would be also costly for their employers and the U.S. economy as a whole.

To conclude, though Trump's immigration plan was devised to meet the United States's best interests, its rigid implementation caused problems big problems for immigrant families and to the United States itself. Concretizing his idea of a total and complete shutdown of Muslims entering the United States through the Muslim Ban proved to be controversial and harmed a lot America's reputation as a nation of immigrants par excellence. The Ban also confused even federal officials, thereby refusing to enforce it within the borders of their states regarding it as unconstitutional, pushing the Trump administration to introduce changes to the original bill of the Ban. Muslim families were separated as many of them who were outside America could not join their families in the United States, causing them to suffer severely. Also, implementing his idea of constructing a long, tall, and gigantic border wall along the U.S.-Mexican border was not that easy for his administration. More importantly, Trump failed to fulfill his electoral promise to have Mexico pay for the cost of the border wall. Instead, he resorted to dedicating a portion of the federal departments' budgets to fund the wall project. Additionally, he failed to fulfill his electoral promise to hire 5,000 Border Patrol agents and 10,000 ICE agents due to the long and costly procedures along with the small number of applicants.

Additionally, Trump's Zero Tolerance Policy proved to lack the humanitarian side as it separated minor children from their families to detain them, hoping to deter potential immigrants from coming to the United States. This policy inflicted immigrants parents and their minor children, causing them to suffer psychologically and negatively affecting their educational careers. The Trump administration also endeavored to increase the deportations of illegal immigrants. To this end, it opted for depriving sanctuary cities of federal funds to push them to cooperate with federal immigration officers to help enforce Trump's immigration policy. Further, Trump resorted to rescinding Obama's immigration program called DACA designed to help minor immigrants to work and study legally in the USA by deferring their removal to their home countries. Also, ending TPS for tens of thousands of its holders proved

to be costly to the U.S. economy given the important services and jobs they occupied, thereby making it so difficult for their employers to replace them. All in all, Trump's immigration plan almost backfired as it did not meet its objectives due to the impediments that encountered its implementation along with the side effects it generated, thereby contributing significantly to losing the 2020 presidential race in favor of Joe Biden who overturned many of Trump's Executive orders that laid the foundation of his immigration plan, namely EO13769 of the Muslim Ban.

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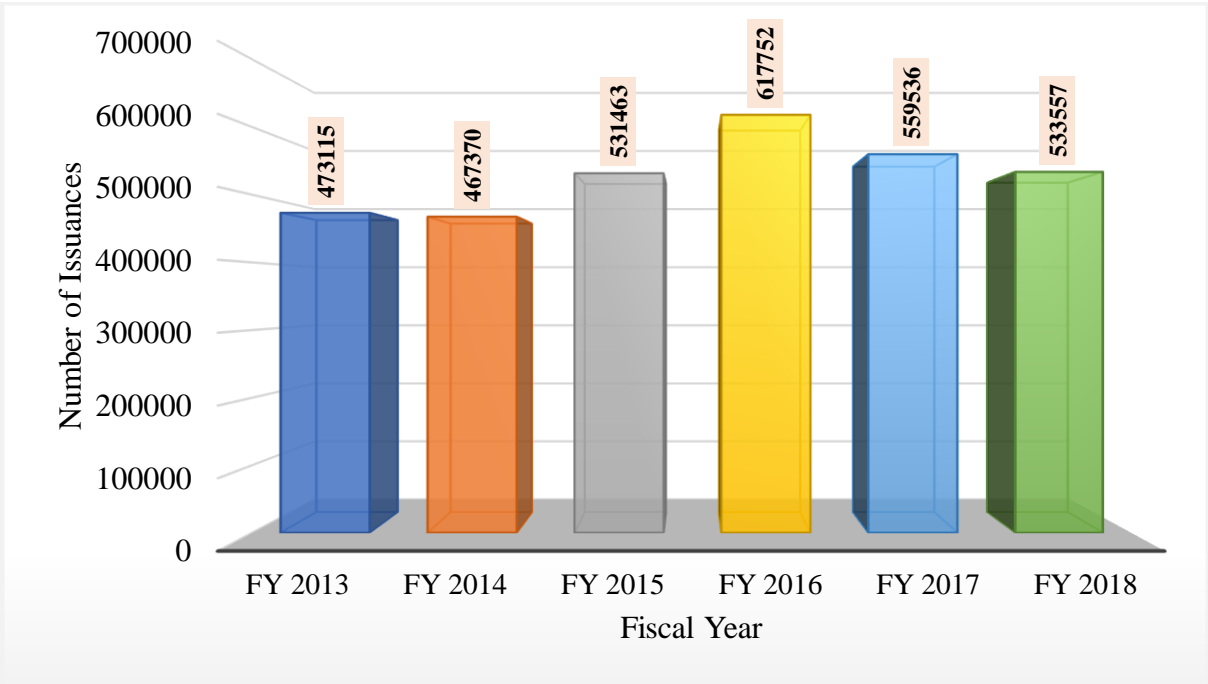
Appendices

Appendix 1: U.S. Annual Refugee Resettlement Ceiling and Annual Number of Admitted Refugees, Fiscal Years 1975 - 2022

Fiscal Year	Annual Ceiling	Number of Admitted Refugees
1975	-	146 158
1976	-	27 206
1977	-	19 946
1978	-	36 507
1979	-	111 363
1980	231 700	207 116
1981	217 000	159 252
1982	140 000	98 096
1983	90 000	61 218
1984	72 000	70 393
1985	70 000	67 704
1986	67 000	62 146
1987	70 000	64 528
1988	87 500	76 483
1989	116 500	107 070
1990	125 000	122 066
1991	131 000	113 389
1992	131 000	132 531
1993	142 000	119 448
1994	121 000	112 981
1995	112 000	99 974
1996	90 000	76 403
1997	78 000	70 488
1998	83 000	77 080
1999	91 000	85 525
2000	90 000	73 147
2001	80 000	69 886
2002	70 000	27 131
2003	70 000	28 403
2004	70 000	52 873
2005	70 000	53 813
2006	70 000	41 223
2007	70 000	48 282
2008	80 000	60 191
2009	80 000	74 654
2010	80 000	73 311
2011	80 000	56 424
2012	76 000	58 238
2013	70 000	69 926
2014	70 000	69 987
2015	70 000	69 933
2016	85 000	84 994
2017	50 000	53 716
2018	45 000	22 533
2019	30 000	30 000
2020	18 000	11 814
2021	62 500	11 411
2022	125 000	10 742

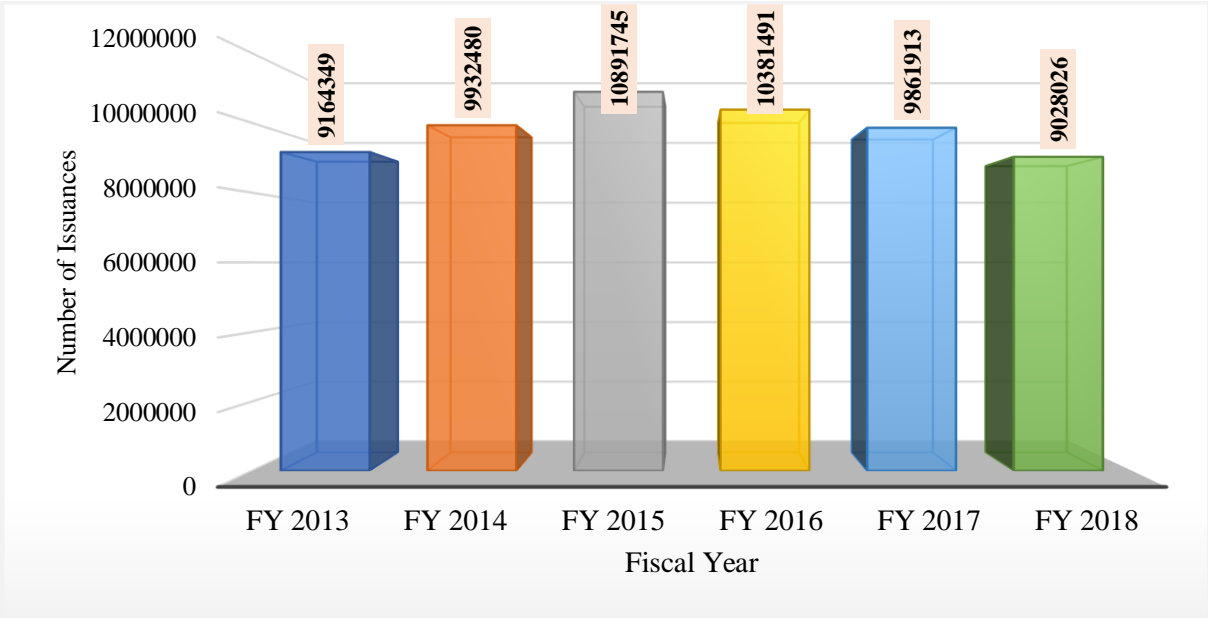
Source: Migration Policy Institute (MPI) tabulation of WRAPS data from the Department of State's Bureau of Population, Refugees, and Migration, available at www.wrapsnet.org/admissions-and-arrivals/.

Appendix 2: Worldwide immigrant visa issuances during the period spanning FY2013-18



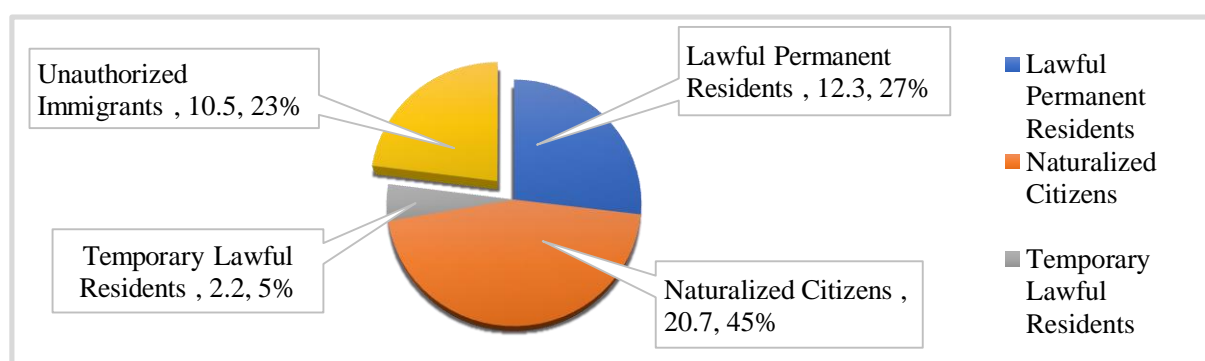
Source: Worldwide Immigrant Visa Issuances Fiscal Years 2013-2018. Travel.State.Gov. <https://travel.state.gov/content/dam/visas/Statistics/Graphs/FY2013-2018%20Worldwide%20IV.pdf>

Appendix 3: Worldwide nonimmigrant visa issuances during the period spanning FY2013 to FY2018



Source: Worldwide Immigrant Visa Issuances Fiscal Years 2013-2018. Travel.State.Gov. <https://travel.state.gov/content/dam/visas/Statistics/Graphs/FY2013-2018%20Worldwide%20NIV.pdf>

Appendix 4: Immigrants' status in the United States



Source: Pew Research Center Estimates based on Augmented U.S. Census Bureau Data.

Appendix 5: Countries with border walls 2023

Country	Wall Name	Length (Km)	Length (Miles)
India	India-Bangladesh barrier	3,268	2,030.64
China	China-Hong Kong	32	19.88
United States	Mexico-United States border	1,000	621.37
Pakistan	India-Pakistan barrier	550	341.75
Bangladesh	India-Bangladesh barrier	3,268	2,030.64
Russia	Estonia-Russia barrier	108	67.10
Mexico	Mexico-United States border	1,000	621.37
Egypt	Egypt-Gaza barrier	3.10	1.93
Iran	Iran-Pakistan barrier	959	595.90
Turkey	Bulgaria-Turkey barrier	30	18.64
Thailand	Malaysia-Thailand border	650	403.89
South Africa	Kruger National Park	120	74.56
Myanmar	India-Myanmar barrier	1,624	1,009.11
South Korea	Korean Demilitarized Zone	248	154.10
Spain	Ceuta border fence	8	4.97
Iraq	Kuwait-Iraq	193	119.93
Afghanistan	Pakistan-Afghanistan barrier	2,670	1,659.06
Morocco	Ceuta border fence	8	4.97
Saudi Arabia	Saudi-Yemen barrier	75	46.60
Ukraine	Ukraine-Russia barrier	2,000	1,242.74
Uzbekistan	Kazakhstan-Uzbekistan	45	27.96
Yemen	Saudi-Yemen barrier	75	46.60
Malaysia	Brunei-Malaysia	20	12.43
Mozambique	Kruger National Park	120	74.56
North Korea	Chinese-Korean border fence	1,416	879.86
Syria	Turkey-Syria border barrier	828	514.50
Kazakhstan	Kazakhstan-Uzbekistan	45	27.96
Zimbabwe	Botswana-Zimbabwe	500	310.69
Tunisia	Libya-Tunisia	460	285.83
Greece	Greece-Turkey border	200	124.27
Hungary	Hungary-Serbia barrier	175	108.74

United Arab Emirates	United Arab Emirates-Oman barrier	410	254.76
Israel	Israel-West Bank barrier	708	439.93
Hong Kong	China-Hong Kong	32	19.88
Serbia	Hungary-Serbia barrier	175	108.74
Libya	Libya-Tunisia	460	285.83
Kyrgyzstan	Uzbek-Kyrgyzstan barrier	870	540.59
Bulgaria	Bulgaria-Turkey barrier	30	18.64
Norway	Norway-Russia border barrier	200	124.27
Palestine	Israel-West Bank barrier	708	439.93
Lebanon	Israel-Lebanon barrier	11	6.84
Oman	United Arab Emirates-Oman barrier	410	254.76
Kuwait	Kuwait-Iraq	193	119.93
Croatia	Hungary-Croatia barrier	41	25.48
Botswana	Botswana-Zimbabwe	500	310.69
Slovenia	Slovenia-Croatia barrier	220	136.70
North Macedonia	North Macedonia-Greece barrier	30	18.64
Estonia	Estonia-Russia barrier	108	67.10
Cyprus	Green Line	180	111.84
Brunei	Brunei-Malaysia	20	12.43

Source: World Population Review. “Countries with Border Walls 2023”.
<https://worldpopulationreview.com/country-rankings/countries-with-border-walls>

Appendix 6: FY2017 total ERO administrative arrests criminal charges and convictions¹⁴⁰²

Criminal charge Category	Criminal Charges	Criminal Convictions	Total
Traffic Offenses – DUI	20,562	59,985	80,547
Dangerous Drugs	19,065	57,438	76,503
Immigration	10,389	52,128	62,517
Traffic Offenses	24,438	43,908	68,346
Assault	16,535	31,919	48,454
Larceny	4,438	15,918	20,356
Obstructing Judiciary, Congress, Legislature, etc.	9,623	11,655	21,278
General Crimes	6,623	10,702	17,325
Burglary	2,574	10,262	12,836
Obstructing the Police	4,640	9,976	14,616
Fraudulent Activities	3,476	8,922	12,398
Weapon Offenses	2,913	8,260	11,173
Public Peace	3,592	7,336	10,928

¹⁴⁰² It is notable to indicate that the criminality displayed in the table comprises all criminal charges and convictions for FY2017 ERO administrative arrests entered in the ICE’s system of record during the time of data run. Also, an alien may have more than one criminal charge or criminal conviction in FY2017 where all relevant charges and convictions for each arrest are included. Accordingly, the total number of criminal charges and convictions is greater than that of aliens administratively arrested.

Sex Offenses (Not Involving Assault or Commercialized Sex)	1,631	5,033	6,664
Invasion of Privacy	1,904	4,830	6,734
Stolen Vehicle	1,496	4,678	6,174
Robbery	1,020	4,595	5,615
Family Offenses	1,985	3,934	5,919
Forgery	1,442	3,768	5,210
Sexual Assault	1,413	3,705	5,118
Stolen Property	1,168	3,176	4,344
Damage Property	1,421	2,681	4,102
Flight/Escape	937	2,319	3,256
Liquor	1,675	2,313	3,988
Health/Safety	539	1,548	2,087
Homicide	355	1,531	1,886
Kidnapping	710	1,317	2,027
Commercialized Sexual Offenses	577	995	1,572
Threat	495	847	1,342
Total	147636	375679	523315

Note: Immigration crimes comprise illegal entry and reentry, false claims to American citizenship, and alien smuggling.

Source: Adapted from U.S. Immigration and Customs Enforcement, Fiscal Year 2017 ICE Enforcement and Removal Operations Report

Appendix 7: Top 20 States with largest potentially DAPA-eligible populations and state shares of the US eligible population, (%) 2009-2013

State	Population Potentially Eligible for DACA	State Share of U.S. Potentially Eligible Population
United States	3,605,000	100
California	1,087,000	30
Texas	559,000	15
New York	231,000	6
Illinois	183,000	5
Florida	150,000	4
New Jersey	133,000	4
Georgia	125,000	3
North Carolina	114,000	3
Arizona	97,000	3
Washington	74,000	2
Colorado	62,000	2
Virginia	61,000	2
Maryland	56,000	2
Nevada	48,000	1
Oregon	44,000	1
Massachusetts	42,000	1
Tennessee	36,000	1
Pennsylvania	32,000	1

Indiana	32,000	1
Utah	32,000	1

Source: MPI, Randy Capps, et al., *Deferred Action for Unauthorized Immigrant Parents: Analysis of DAPA's Potential Effects on Families and Children*, 7.

Appendix 8: The number and ages of children separated at or between ports of entry

Count and Ages of Minors Separated from April 2018 Through January 2022			
	4 and Under	5 and Above	Grand Total
2018			
Apr	17	92	109
May	26	1484	1510
Jun	38	953	991
Jul	1	10	11
Aug	6	17	23
Sep	4	25	29
Oct	8	29	37
Nov	12	40	52
Dec	11	55	66
Total	123	2705	2828
2019			
Jan	7	39	46
Feb	13	57	70
Mar	31	94	125
Apr	36	115	151
May	28	102	130
Jun	34	158	192
Jul	14	83	97
Aug	14	35	49
Sep	4	24	28
Oct	3	18	21
Nov	5	9	14
Dec	2	8	10
Total	191	742	933
2020			
Jan	0	9	9
Feb	6	12	18
Mar	0	1	1
Apr	0	2	2
May	0	2	2
Jun	0	0	0
Jul	0	0	0
Aug	0	0	0
Sep	0	2	2
Oct	0	0	0
Nov	3	3	6
Dec	3	0	3
Total	12	31	43

Source: Adapted from Department of Health and Human Services, Monthly Report to Congress on Separated Children, January 2022.

Appendix 9: Characteristics of DACA recipients and their households by states

State	Number DACA Recipients	Average Age at Arrival	Average Year of Arrival	Number of Individuals Living in Households With DACA Recipients	Number of US-Born Children of DACA Recipients
Alabama	3,970	6	2000	8,800	1,800
Alaska ⁷⁰	70	9*	2004*	300*	N/A
Arizona	23,990	6	1999	54,000	10,400
Arkansas	4,480	7	1999	10,400	2,500
California	183,460	7	1998	462,600	66,400
Colorado	14,520	6	1999	28,700	6,700
Connecticut	3,560	8	2000	6,400	900*
Delaware	1,310	8*	2000*	3,600*	1,100*
Florida	24,810	8	2000	47,900	7,100
Georgia	20,610	7	2000	46,300	8,200
Hawaii	340	7	1999	1,200	100*
Idaho	2,760	6	1997	4,900	1,500
Illinois	33,940	7	1999	76,000	14,400
Indiana	8,870	7	2001	18,900	4,400
Iowa	2,420	7	2000	4,600	1,400*
Kansas	5,550	6	2000	11,300	2,900
Kentucky	2,710	7	2001	5,200	1,100*
Louisiana	1,730	7	2000	3,200	800*
Maine	50	N/A	N/A	N/A	N/A
Maryland	7,870	8	2000	19,600	2,900
Massachusetts	5,480	8	1999	8,500	1,200*
Michigan	5,250	7	1999	8,500	1,300
Minnesota	5,180	6	1999	11,700	2,200*
Mississippi	1,310	6*	1999*	2,400*	400*
Missouri	3,010	8	2000	5,500	1,800
Montana	70	N/A	N/A	N/A	N/A
Nebraska	2,910	6	2000	7,200	1,300*
Nevada	12,100	6	1999	28,300	5,000
New Hampshire	270	7*	1998*	700*	N/A
New Jersey	16,350	8	2000	33,600	4,700
New Mexico	5,690	6	1999	10,600	2,500
New York	28,180	8	1999	62,500	7,000
North Carolina	24,050	7	2001	50,800	11,000
North Dakota	120	N/A	N/A	N/A	N/A
Ohio	3,860	7	1999	7,000	1,600
Oklahoma	6,110	7	2000	12,700	1,700
Oregon	9,710	7	1998	20,600	5,900
Pennsylvania	4,480	7	2001	7,300	1,200

Rhode Island	890	7	1999	1500	400*
South Carolina	5,750	7	2001	11,100	2,400
South Dakota	190	9*	2001*	300*	N/A
Tennessee	7,650	7	2001	19,100	4,900
Texas	106,090	7	2000	241,500	52,000
Utah	8,490	6	1999	18,000	2,400
Vermont	20	N/A	N/A	N/A	N/A
Virginia	9,410	8	2001	19,600	2,800
Washington	600	7*	1999*	800*	N/A
West Virginia	110	9*	2001*	200*	1,300*
Wisconsin	6,540	6	1999	10,800	N/A
Wyoming	510	N/A	N/A	N/A	N/A
United States	630,430	7	1999	1,450,900	254,300

Note: Unavailable data are due to small sample sizes. Data flagged with asterisk (*) are based on small size and may be unreliable.

Source: Center for American Progress analysis of pooled 2016 1-year, 2017 1-year, and 2018 1-year American Community Survey microdata.

Appendix 10: More than one-quarter of a million U.S.-citizen children live in households with family members who hold TPS status, by states

State	Number of Children
Arkansas	4,200
California	43,500
Colorado	2,500
Florida	37,200
Georgia	8,000
Illinois	2,600
Indiana	3,300
Kansas	3,700
Maryland	23,900
Massachusetts	3,400
Nebraska	2,400
Nevada	3,100
New Jersey	13,300
New York	23,600
North Carolina	9,800
Pennsylvania	3,500
South Carolina	1,500
Tennessee	3,800
Texas	49,000
Utah	2,900
Virginia	19,200
Washington	2,600
United States	279,200

Note: Data are presented for states with more than 1,500 children living in families with TPS beneficiaries

Source: Center for American Progress Analysis of 2017 1-year American Community Survey Microdata. <https://www.americanprogress.org/article/ending-tps-will-hurt-u-s-citizen-children/>

Appendix 11: Total social security contributions by country

Country	Contribution Per Year	People with Pre-Tax Wages or Salary Income	Total Per Year	Over Ten Years
El Salvador	\$3,029	128,790	\$390,130,153	\$3,901,301,528
Honduras	\$2,946	46,020	\$135,580,258	\$1,355,802,583
Haiti	\$2,274	15,257	\$34,693,075	\$346,930,754
Total			\$560,403,487	\$5,604,034,865
Employer/Employee Contribution			\$280,201,743	\$2,802,017,433

Source: Tom Wong's Analysis of ACS data

Appendix 12: Total medicare contributions by country

Country	Contribution Per Year	People with Pre-Tax Wages or Salary Income	Total Per Year	Over Ten Years
El Salvador	\$708	128,790	\$91,240,116	\$912,401,164
Honduras	\$689	46,020	\$31,708,286	\$317,082,862
Haiti	\$532	15,257	\$8,113,703	\$81,137,037
Total			\$131,062,106	\$1,310,621,057

Source: Tom Wong's Analysis of ACS data

Appendix 13: Total social security and medicare contributions

	El Salvador	Honduras	Haiti
Social Security	\$390,130,153	\$135,580,258	\$34,693,075
Medicare	\$91,240,116	\$31,708,286	\$8,113,703
Per Year	\$481,370,269	\$167,288,545	\$42,806,778
Over Ten Years	\$4,813,702,692	\$1,672,885,445	\$428,067,785
El Salvador	\$4,813,702,692		
Honduras	\$1,672,885,445		
Haiti	\$428,067,785		
Total	\$6,914,655,923		

Source: Tom Wong's Analysis of ACS data

Appendix 14: Turnover costs for businesses

Country	Average Wage	People with Pre-Tax wages or Salary Income	Total Pre-Tax wages or Salary Income	Turnover Percentage	Turnover Cost
El Salvador	\$24,429	128,790	\$3,146,210,910	21.4%	\$673,289,135
Honduras	\$23,759	46,020	\$1,093,389,180	21.4%	\$233,985,285
Haiti	\$18,338	15,257	\$279,782,866	21.4%	\$59,873,533
Total					\$967,147,953

Source: Tom Wong's Analysis of ACS data; CAP data 2012

Le Résumé

L'immigration est un phénomène ancien qui caractérise le mouvement international de personnes de leur pays d'origine vers un pays de destination. Ce mouvement international est d'une grande importance, en particulier pour les pays de destination, car il pourrait modifier la structure de leurs sociétés et entraîner des implications culturelles, sociales et économiques importantes. Vu sa sensibilité, la migration des personnes doit être organisée et légalisée pour la rendre compatible avec l'intérêt supérieur du pays de destination. Les États-Unis d'Amérique sont le meilleur exemple mondial en tant que pays qui accueille des personnes de toutes les régions du monde, ainsi connu pour son creuset. Cependant, avec la hausse remarquable du nombre d'immigrants, qui a causé des problèmes sociaux, économiques et culturels, la nécessité d'une bonne politique d'immigration conforme aux meilleurs intérêts de l'Amérique est devenue très nécessaire. Par conséquent, l'histoire américaine comprend une série de lois sur l'immigration, adoptées sous les administrations fédérales précédentes, conçues principalement pour ajuster les lois sur l'immigration afin que seuls les immigrants qui répondent aux critères requis puissent entrer aux États-Unis. L'administration républicaine du président Donald Trump ne fait pas exception. En campagne pour la présidence de 2016 sous ses célèbres slogans "America First" et "Make America Great Again", Donald Trump a conçu son plan d'immigration xénophobe, en particulier contre les immigrés musulmans et latinos, plaçant les intérêts des Américains avant les intérêts des immigrés. Son plan d'immigration est essentiellement basé sur le renforcement de l'application des lois sur l'immigration, l'interdiction de l'afflux d'immigrants indésirables, la restriction de l'acceptation des demandeurs d'asile et des réfugiés et l'augmentation du retrait des immigrants illégaux ou sans papiers. Par conséquent, cette étude vise à enquêter sur l'impact des mesures d'immigration de Trump contre les immigrants musulmans et latinos sur la vie américaine. Pour répondre à cette problématique de recherche, cette étude a ciblé la population composée de la communauté des immigrés aux États-Unis comprenant les nouveaux arrivants et les immigrés potentiels, musulmans, latins, et les immigrés illégaux. Les données ont été recueillies à partir de sources et de documents historiques, d'études menées par des analystes de l'immigration, d'enquêtes et de sondages menés par des universitaires, des journaux et des institutions, et de rapports rédigés par d'autres chercheurs ainsi que par des agences fédérales. L'étude s'est également appuyée sur la méthode historique qui consiste à recueillir des informations pertinentes ainsi qu'à examiner et analyser des faits et événements critiques. Cette étude a révélé que le plan d'immigration de Trump a plus d'inconvénients que d'avantages. Cela a généré de nouveaux problèmes et effets secondaires plutôt que de résoudre les problèmes préexistants. Le plan d'immigration de Trump a beaucoup nui à la réputation historique de l'Amérique en tant que nation accueillant des immigrants indépendamment de leurs origines religieuses et ethniques, ce qui est l'une des valeurs fondamentales sur lesquelles l'Amérique a été construite.

ملخص البحث

الهجرة ظاهرة قديمة ميزت الحركة الدولية للأشخاص من بلدانهم الأصلية إلى بلد المقصد. هذه الحركة الدولية ذات أهمية كبيرة، خاصة بالنسبة لبلدان المقصد، لأنها يمكن أن تغير بنية مجتمعاتها وتتسبب في آثار ثقافية واجتماعية واقتصادية كبيرة. نظرًا لحساسيتها، يجب تنظيم هجرة الأشخاص وتقنينها لجعلها تتماشى مع المصلحة الفضلى لبلد المقصد. الولايات المتحدة الأمريكية هي أفضل مثال عالمي كدولة ترحب بالناس من جميع أنحاء العالم، وبالتالي تشتهر ببوتقة انصهارها. ومع ذلك، مع الارتفاع الملحوظ في عدد المهاجرين، والذي تسبب في بعض القضايا الاجتماعية والاقتصادية والثقافية، أصبحت الحاجة إلى سياسة هجرة جيدة تتوافق مع المصالح الأمريكية الفضلى ضرورية للغاية. لذلك، يشتمل التاريخ الأمريكي على سلسلة من قوانين الهجرة، التي تم تمريرها في ظل الإدارات الفيدرالية السابقة، والتي تم تصميمها أساسًا لتعديل قوانين الهجرة بحيث يمكن فقط للمهاجرين الذين يستوفون المعايير المطلوبة دخول الولايات المتحدة. الإدارة الجمهورية للرئيس دونالد ترامب ليست استثناء. خلال حملته الانتخابية لرئاسة عام 2016 تحت شعاريه المشهورين "أمريكا أولاً" و "لنجعل أمريكا عظيمة مرة أخرى"، صمم دونالد ترامب خطته للهجرة المعادية للأجانب، لا سيما ضد المهاجرين المسلمين واللاتينيين، مقدمًا مصالح الأمريكيين على مصالح المهاجرين. تعتمد خطته للهجرة بشكل أساسي على زيادة إنفاذ قوانين الهجرة، وحظر تدفق المهاجرين غير المرغوب فيهم، وتقييد قبول طالبي اللجوء واللاجئين، وزيادة إبعاد المهاجرين غير الشرعيين أو غير المسجلين. لذلك، تهدف هذه الدراسة إلى التحقيق في تأثير إجراءات الهجرة التي اتخذها ترامب ضد المهاجرين المسلمين واللاتينيين على الحياة الأمريكية. للإجابة على مشكلة البحث هذه، استهدفت هذه الدراسة السكان المكونين من مجتمع المهاجرين في الولايات المتحدة بما في ذلك الوافدون الجدد والمهاجرون المحتملون والمسلمون واللاتينيون والمهاجرون غير الشرعيين. تم جمع البيانات من المصادر والوثائق التاريخية، والدراسات التي أجراها محللو الهجرة، والاستطلاعات والاستطلاعات التي أجراها العلماء والصحف والمؤسسات، والتقارير التي أعدها باحثون آخرون بالإضافة إلى الوكالات الفيدرالية. كما اعتمدت الدراسة على المنهج التاريخي المتمثل في جمع المعلومات ذات الصلة إلى جانب فحص وتحليل الحقائق والأحداث الهامة. وجدت هذه الدراسة أن خطة ترامب للهجرة لها عيوب أكثر من المزايا. لقد وأد مشاكل وأثار جانبية جديدة بدلاً من حل المشكلات الموجودة مسبقًا. أضرت خطة ترامب للهجرة بشدة بسمعة أمريكا التاريخية كدولة رحبت بالمهاجرين بغض النظر عن خلفياتهم الدينية والعرقية، والتي هي إحدى القيم الأساسية التي بنيت عليها أمريكا.

In the 2016 presidential elections, Donald Trump campaigned for presidency under his famous slogans "America First" and "Make America Great Again", announcing his xenophobic immigration plan, particularly designed against Muslim and Latino immigrants, based on strengthening the enforcement of immigration laws, prohibiting the influx of unwanted immigrants, restricting the acceptance of asylum seekers and refugees and increased withdrawal of illegal or undocumented immigrants. This study investigates the impact of Trump's immigration measures against Muslim and Latino immigrants on American life. This study found that Trump's immigration plan has more downsides than upsides, and generated new problems and side effects rather than solving pre-existing problems. Furthermore, Trump's immigration plan caused great damage to America's historic reputation as a nation that welcomes immigrants regardless of their religious and ethnic background, which is one of the core values on which America was built.

Lors des élections présidentielles de 2016, Donald Trump a fait campagne pour la présidence sous ses célèbres slogans "America First" et "Make America Great Again", annonçant son plan d'immigration xénophobe, particulièrement conçu contre les immigrés musulmans et latinos, basé sur le renforcement de l'application des lois sur l'immigration, l'interdiction de l'afflux d'immigrants indésirables, la restriction de l'acceptation des demandeurs d'asile et des réfugiés et le retrait accru des immigrants illégaux ou sans papiers. Cette étude examine l'impact des mesures d'immigration de Trump contre les immigrants musulmans et latinos sur la vie américaine. Cette étude a révélé que le plan d'immigration de Trump a plus d'inconvénients que d'avantages et a généré de nouveaux problèmes et effets secondaires plutôt que de résoudre des problèmes préexistants. En outre, le plan d'immigration de Trump a causé de graves dommages à la réputation historique de l'Amérique en tant que nation qui accueille les immigrants indépendamment de leur origine religieuse et ethnique, qui est l'une des valeurs fondamentales sur lesquelles l'Amérique a été construite.

في الانتخابات الرئاسية لعام 2016، ترشح دونالد ترامب للرئاسة تحت شعاراته الشهيرة "أمريكا أولاً" و "لنجعل أمريكا عظيمة مرة أخرى"، معلناً عن خطته للهجرة المعادية للأجانب، والمصممة بشكل خاص ضد المهاجرين المسلمين واللاتينيين، على أساس تعزيز إنفاذ قوانين الهجرة، حظر تدفق المهاجرين غير المرغوب فيهم، وتقييد قبول طالبي اللجوء واللاجئين وزيادة اجلاء المهاجرين غير الشرعيين أو غير المسجلين. تبحث هذه الدراسة في تأثير إجراءات الهجرة التي اتخذها ترامب ضد المهاجرين المسلمين واللاتينيين على الحياة الأمريكية. وجدت هذه الدراسة أن خطة ترامب للهجرة لها جوانب سلبية أكثر من الجوانب الإيجابية، وتولد مشاكل وآثاراً جانبية جديدة بدلاً من حل المشكلات الموجودة مسبقاً. إلى جانب ذلك، تسببت خطة ترامب للهجرة في إلحاق ضرر كبير بسمعة أمريكا التاريخية كدولة ترحب بالمهاجرين بغض النظر عن خلفيتهم الدينية والعرقية، والتي هي إحدى القيم الأساسية التي بنيت عليها أمريكا.