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**THE UNDOCUMENTED MIGRANT CHALLENGE IN THE US: ISSUES IN
ENFORCEMENT**

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Abstract

The United States has attempted to at least on the surface curb the undocumented migrant issue for almost a century. However, with a constant need for workers to support the U.S. economy, a history of racism by Americans, and morally dubious immigration law, it has proven to be a difficult and sensitive issue.

Scholars have addressed this challenge head on with economic, social, and political research to often times express that a change in immigration law is needed for the future of America. They have interviewed and told stories of immigrants affected by present U.S. immigration laws and the effect on the country if a massive number of undocumented migrants were removed. They have told stories of the effects on families, highlighting where the families come from and why most are here. However most of the research was missing the perspective of someone who not only performed extensive research on the topic, but also has worked in the immigration enforcement field for over a decade, experiencing both sides of the challenge at hand.

A nation must have the ability to protect its borders and enforce its immigration laws to protect its national interests, but at what cost? From the perspective of a field immigration officer, you'll experience first-hand what it is like to not only tear fathers away from their children, breaking up families that have been in the U.S. for decades, but also arrest child molesters, murderers, and rapists, all to conclude that the issue is not only morally perplexing for the families affected, but for the immigration officers as well.

Extensive research on the topic is shared with personal stories and evidence that U.S. immigration laws need to not only change and offer permanent solutions to those immigrants that either arrived as children, or are simply in the U.S. to work and raise their families, but also give the ability to properly enforce the borders and remove those from the U.S. who choose to commit heinous acts while they are here.

List of Initials

CBP- Customs and Border Protection

DACA- Deferred Action for Childhood Arrivals

DAPA- Deferred Action for Parents of Americans and Lawful Permanent Residents

DHS- Department of Homeland Security

ER- Expedited Removal

EWI- Entry without Inspection

HSI- Homeland Security Investigations

ICE- Immigration and Customs Enforcement

IIRIRA-Illegal Immigration Reform and Immigration Responsibility Act

IMMACT- Immigration Act of 1990

IRCA- Immigration Reform and Control Act

LPR- Lawful Permanent Resident

NTA- Notice to Appear

USBP- United States Border Patrol

USCIS- United States Citizenship and Immigration Services

VR- Voluntary Removal

Preface

In June of 2006, I traveled to Tucson, Arizona from Maryland as part of my entrance on duty with the United States Border Patrol (USBP) as a Border Patrol Agent. From there, five of us loaded into a Ford Excursion and took the hour drive to the U.S./Mexico international boundary in Nogales, AZ with two senior Border Patrol Agents. What I saw there I can only describe as a United States that I've never seen before. Nogales is the rare U.S. city that is split into one part Mexico and one part U.S. The border fence was a patch work of scrap metal that constantly needed repair. The dirt border fence road was nearly undriveable, yet we bounced and rolled in the sections where the Excursion could take us. On more than one occasion the vehicle seemed to be almost vertical from the rises and falls of the border road. Throughout the journey, the agents were pointing out notable landmarks and areas close to Nogales proper that needed constant patrolling. The agents went on to explain spots called static positions, nicknamed "X's" where USBP vehicles had to be present for visible border enforcement. An area we covered on the east side of town nicknamed, "Hamburger Hill," overlooking the shopping streets of small Nogales, was quiet but appeared mountainous in that small city. On the hill, there were two tracks, an upper and a lower, that drove around the hill to the border fence. The USBP vehicle had to sit on the lower part of the hill, or face a shower of rocks thrown from Mexico into the U.S. aimed at the vehicle.

After five months of training at the USBP Academy in Artesia, NM where I learned law enforcement techniques, immigration law, Spanish, driving techniques, physical techniques, and parts of criminal law, along with five months of field training, I sat in the static position described to me months earlier. On one occasion another relatively new agent wanted to get out on foot near the border fence to check and see if anyone was hiding from the cameras. I moved

my vehicle towards the high part so I could provide an over-watch and let him know of any dangers present. Once I stepped out of my vehicle and walked down about 20 feet from it, I heard a loud bang, looked up and heard a loud whizzing noise go by my left ear; it was a warning. I immediately hit the ground and rolled to a more covered position. Once I gathered myself I scanned with my rifle just over the border fence but didn't see anything. I dipped back down and waited for backup to arrive and pull me out of that area. On another occasion I was riding a dirt road with another agent just beyond a school, where a group of 30 people were walking. They immediately saw us and ran in every direction possible. A helicopter was called in and we retrieved about half of the people who ran. That was the immigration I was used to, border fence jumpers or groups from 2 to 50 walking out in the distant desert for 3 days to avoid detection.

Like so many other border patrol agents, I decided I needed to work closer to home, so I accepted a position with Immigration and Customs Enforcement (ICE) in Baltimore, MD. This assignment allowed me to see the interior enforcement aspect of everything, from at-large street arrests of people in their homes with their families crying, to the continued detention of serious criminals that should not be on American streets. I placed immigration holds on people at detention centers only to see them released without notice, and I witnessed the inherent dangers that come with these arrests on the streets. Recently, another officer and I attempted to apprehend a subject without immigration paperwork who had previously been convicted of Driving Under the Influence of Alcohol (DUI). DUI is typically a low-level offense and is treated as such in the immigration court, although a prior enforcement priority due to the chance of causing injury or death to others on the street. In this particular case, we performed a vehicle stop earlier in the morning on the subject, but allowed him to take his teenage child to school and

return back to see us. He did exactly that, which gave me a false sense of security. We explained to him as we do with everyone else that we were with ICE and he needed to come with us to fill out paperwork for Immigration Court. We asked about his health and if he took any medication. Also, we asked if he had a travel document. As I was securing my handcuffs and the other officer was attempting to cuff the subject, he swung and struck her in the face right below the eye, staggering her. Seeing this, I went to grab him and he pushed me off of him. When I went down I was able to trip him, but he got right back up and ran down the street screaming. I followed him on foot as he tried to open a closed business door about a block from his house. When he saw that it was locked he turned towards me. With my handcuffs in my hand I was able to grab him. However, he reached for the cuffs and took them from my grasp. I had a hold of him from behind and was attempting to get control of him. We ended up near a glass window where he rotated his body and I hit my head on the glass on the way to the ground. After more struggling and help from a bystander I was able to apply handcuffs and control the subject eventually getting him into custody. This is formerly a subject we would have been able to place a detainer on in a detention center, and he would have been handled in a secure setting. He would have had a hearing before an immigration court and pled his case from there. However, with the current climate, he seemed to be scared for his life and caused havoc for the other officer and me.

Immigration has not only been my profession for more than 10 years, but it has also been part of my interest. I'm interested in why millions of people every year would risk their lives for what they believe to be a better, but very difficult and uncertain, life. Up until a short time ago, they would have had to work at almost a non-stop pace and live their entire lives in hiding, to avoid detection from immigration officials. And if found, they would have to either sit in a

detention facility away from their families until they won their case or were removed back to their home country. It is my experience to always ask the question why, and I seem to always hear the question in response, why not?

Introduction

There is absolutely no question that the undocumented population in the U.S. is a topic worth discussing in any forum. At some point or another, everyone in the U.S. has come across an undocumented migrant whether it be through employment, on the street, or in a detention facility. The question that has remained is what should America do for the best interest of the nation and the undocumented population that has been here for decades?

In order to write on unauthorized immigration in the U.S., I have combined careful study of primary and secondary sources as well as drawing from my personal experiences. My focus will primarily be on Hispanic undocumented migrants, as I have encountered those the most throughout my immigration career. I will explore the relations between the U.S. and the country that is most often used by undocumented migrants to enter the U.S, Mexico.

First I will offer a history of immigration focusing on the undocumented migrants that came first came from Mexico, how they were treated in early twentieth century America, and how they were used on an as-needed basis for economic gain of business. Next, I will review policies in each U.S. presidential administration from Ronald Reagan to Donald Trump, looking at the immigration issue across time. In each time period, I will discuss the socioeconomic, political, and other factors from their home countries and the U.S. that causes migration. Also, I will focus on changes in U.S. immigration law as well as enforcement practices across each time period, and the leading issues and controversies surrounding the U.S. concerning politics, economics, and law enforcement regarding detention and expulsion.

I will also express several interconnected arguments across each time period, noting what sort of changes that should occur. First, I believe American immigration laws and enforcement practices are often impractical, morally dubious, and don't reflect the needs of this country.

Second, I will look at the impossible jobs immigration officers have in the U.S., to where they enforce outdated laws, or were forced to adapt to an ever-changing political environment from one day to the next with enforcement priorities and now the expungement of those priorities.

Lastly, I will express the need for practical laws that can be applied and enforced causing the least amount of suffering possible to the least amount of people possible, while upholding the right for a nation to enforce its immigration laws, and allow these highly- trained law enforcement officers to do their jobs as described by law without a fight with morality every day.

Throughout my thesis, I will use terms such as entering “legally” and “illegally.” Entering the U.S legally simply means entering at an official port of entry and presenting valid documentation, visa and/or passport. Entering illegally mean to enter at a place other than a port of entry in the U.S. without documentation. These terms are routinely employed where I work.

History of United States Immigration

Relation Between the United States and Mexico

The United States and Mexico are probably two of the most interconnected countries in the world. From an economic standpoint there is no question that one cannot do without the other. Mexico needs U.S. dollars pumping back in its economy; in fact remittances from the United States to Mexico is the second largest source of income for Mexico, with only money from natural resource sales coming in at a higher rate (pbs.org). Mexico needs the money, and the U.S. needs trade with Mexico too, a strong relationship only deepened with the North American Free Trade Agreement (NAFTA). Some 14 million U.S. jobs depend on trade between Mexico and the U.S. While some U.S. manufacturers saw NAFTA as an opportunity to move jobs to Mexico, the U.S. economy also needs the people to fill certain jobs. This labor

inflow can happen through all types of means, but mostly it happens through illegal or undocumented immigration. According to the Pew Research Center, Mexicans make up nearly half of the 11.7 million unauthorized immigrant population, and people from other nationalities also use Mexico as a crossing point to get into the United States (pewresearch.org).

With a U.S. population of 323 million (uscensus.gov), and an unemployment rate hovering around 5 percent (data.bls.gov), how does the U.S. still need people to work? The answer to that question and so many more lies in the history of the two countries' relationship. The U.S. and Mexico may be linked by 1,989 miles of border, but they are miles apart concerning developing policies for the export of workers to the U.S.

In 1845, as the Mexican-U.S. War drew close, the U.S. sent politician and lawyer John Slidell to Mexico to negotiate the buying of California and New Mexico for \$25 million USD from the Mexican government. The goal was to have the southern border of Texas be the Rio Grande. A major part of what is now Texas was already under U.S. control through the previous annexation of Texas, although Mexico refused to acknowledge it. The Mexican government of course rejected this offer, which led to President James Polk's decision to send troops to the then U.S./Mexico southern border. In the years between 1824-1835, the President of Mexico changed 16 times, and in this chaotic context the Mexican government made only feeble attempts to incorporate California, New Mexico, Arizona, Texas into the larger Mexico nation.

Invading U.S. forces made it all the way to take over Mexico's capital city in late 1847. The U.S. and Mexico negotiated the Treaty of Guadalupe Hidalgo in February 1848 in which the U.S. acquired Arizona, California, Nevada, New Mexico, Utah, half of Colorado, and Texas, an arrangement that has come to be known as the Mexican Cession, at least in the United States. The U.S. also paid \$15 million to Mexico and to settle any disputes that U.S. citizens had

against Mexico. In its new territory, the U.S. initially guaranteed the property of land grants given by the Mexican government, but this provision would later be deleted before the treaty was ratified by U.S. Congress. Former Mexican citizens may have become U.S. citizens (Meier & Ribera, 1993), but they plainly did not enjoy equal protection of their rights under the law.

After the U.S. took the territory of what is today the U.S. southwest it sought to persuade people in the region that they were in better hands under U.S. control. Property and religious rights were to be respected, provided that the new citizens were peaceful. An early example of how the treaty was honored can be seen by events in California. After the agreement, many found gold in California, bringing waves of migrants to the territory. Issues arose when white settlers of the U.S. came into contact with Mexicans/Mexican-Americans that owned the land that the settlers wanted. This caused fighting, and as a result even though their rights were supposedly guaranteed in the Treaty of Guadalupe Hidalgo, many Mexicans lost their lands because they did not have clear titles. Mexicans had often leaned on verbal agreements and lacked the U.S.-style paperwork required to defend their land rights in U.S. courts. In California, the process to clear land titles took an average of 17 years and even among those Mexicans that eventually kept their land many fell into debt due to the cost of proving their land titles. It was the job of the land grantee to prove they owned the land, otherwise they were charged with fraud (Meier & Ribera, 1993).

The Treaty of Guadalupe Hidalgo also brought together two distinctly different cultures, which often times put Mexicans/Mexican Americans at a disadvantage. Not only had their former government failed them, but Mexicans also had to deal with the new Anglo settlers that relied on individual conquest and accomplishment as opposed to the Mexican community view. As Meier and Ribera note, “A prejudiced Anglo majority isolated and dominated them

[the Mexicans] within American society and did not permit significant acculturation to the majority. Thus, despite treaty guarantees of property rights...bitterness and estrangement grew between Anglos and Mexican Americans during the years following the Treaty of Guadalupe Hidalgo” (Meier & Ribera, 1993, p.68).

These actions by U.S. settlers and the U.S. government were based on the concept of Manifest Destiny, a belief that it was inevitable that the U.S. extend from the Atlantic to the Pacific Ocean. As noted historian David M. Pletcher has stated, “but it was also a justification, in that they wanted territory and needed an excuse or justification for a push into territory that they did not control” (pbs.org). So even with the signing of the treaty, this belief and justification proved more important than any document or any understanding ever would. The racism and prejudice that ensued went hand-in-hand with notions of manifest destiny. Populations in these newly acquired areas were sparse, and the sudden influx of Anglo settlers pushed Mexicans in the newly acquired areas into a lonely position. In California, Mexican miners, or miners that were not Anglo, were swept away by legislation and violence. Although there were many different Spanish-speaking miners, they were all grouped together as “greasers” (Meier & Ribera, 1993, p.70).

The Mexican Revolution and After

In addition to the problems that Mexico had with the U.S. acquisition of the southwest region, Mexico had domestic difficulties. Porfirio Diaz (1876-1911) brought modernization to his nation, but his policies helped lead to a bloody civil war, the Mexican Revolution 1910-1917. Diaz favored foreign investment while only advancing the prosperity of a few economic elite in Mexico, actions that ultimately led to the Revolution (Hellman,

1983). Diaz's policies alienated a broad swath of Mexicans and a coalition of landowners, mine owners, merchants, workers and peasants banded together and to launch the Revolution in hopes of changing the government.

As war erupted, many fled Mexico to escape the violence; the Revolution led to over 900,000 deaths. In the U.S., the Mexican-born population in 1910-1920 rose from just over 220,000 to more than 486,000, with another 400,000 sent back into Mexico (Browning & Kerkmans, 2014, p. 241). Mexicans crossed the Rio Grande in an attempt to achieve a better life, seeking land or employment. But when they came into the U.S. they were often treated as outsiders and endured bitter racism.

Following the Revolution many provisions were written into the new Mexican Constitution of 1917, but action was a different story. Presidents were still either part of the elite class or were controlled by them so their help to the poor was often limited to words not deeds. When the Revolution started, 40 percent of agricultural land in Mexico was owned by American citizens, but by 1923 foreign interests still owned over 40 million acres of agricultural land in Mexico. After the Revolution in Mexico many were promised land, but the redistribution program parceled out in such small amounts that small farmers needed help from the hacienda owners to survive, leaving the poor to remain at the will of the elite (Meier & Ribera, 1993).

U.S. Laws: The Late Nineteenth/Early Twentieth Centuries

In 1882, the U.S. set into place the Chinese Exclusion Act, at the time preoccupied with turning back Asian and Eastern European immigrants. These same nativist concerns led to the National Origins Act of 1924, the first occasion the U.S. put an immigrant quota system into law. This law set limits on the number of Eastern Europeans allowed into the country in a given

year. Before the act, an average of 200,000 Italians entered the U.S. annually but after the bill but with the new law only 4,000 Italians entered each year (gmu.edu). Italians and those from other Eastern Europeans nations were seen as inferior to Northern Europeans nations based on the theory of eugenics, which aimed at establishing a strong “white nationalism” (Ironsides & Corrigan, 2015). The founder of the Galton Society, Charles Davenport, testified before Congress that “Nordics” were superior to “Alpine” and “Mediterranean” races of southern and eastern Europe (Ngai, 2004). The quota system was a response to these racist ideas. Within this context, Mexicans, already experiencing racism, bigotry, and land loss, now confronted an act that favored the entrance of a certain type of European from the “right” geographical area.

Just as seen today however, some people had no other means to better their life situation than to migrate. The very fact that jobs were available brought people over to the U.S. from Mexico and elsewhere, and if there was not a legal means available to do it, those people took the risk and entered without documents. As it happened, U.S. agriculture needed laborers. Meier and Ribera (1993) note that “Between 1870 and 1900 the total farm acreage in the American West tripled, and land under irrigation increased dramatically from 60,000 to 1,446, 000 acres” (p.110). The rising railroad industry also needed workers. Overall then, people were crossing into the U.S. to take advantage of new opportunities, often times not waiting or attempting to enter the U.S. with documentation. Due to the quota system set against booming U.S. farming and railroad industries, Mexicans were actually being recruited to fill jobs. Industry leaders begged the U.S. Congress to exclude Mexicans from the quota system because their businesses needed Mexican workers (Meier & Ribera, 1993, p.126). However, these migrants would nonetheless soon become a target of exclusion. As one lawmaker in 1924 put it, “What is the use of closing the front door to keep out undesirables from Europe when you permit

Mexicans to come in here by the back door by the thousands and thousands” (Hernandez, 2010, p. 38).

The Early Border Patrol

The 1924 act also established the United States Border Patrol. Most of the officers were white and working class. Enforcement officers commonly saw their jobs in racialized terms, white vs. non-whites and their jobs gave these officers a chance to establish dominance, as previously they could not. As Kelly Hernandez (2010) put it, “Immigration control was emerging as a critical site of simultaneously expanding the boundaries of whiteness while hardening the distinctions between whites and nonwhites” (p.42). The officers first employed a technique called line watch, which amounted to sitting near the U.S./Mexico boundary and watching for illegal entrants. There were only a few hundred officers and nearly two thousand miles of border, so this approach was highly ineffective. In the 1920’s during prohibition, agents also encountered many that were trying to smuggle liquor into the U.S. In 1925 there were more than \$450,000 worth of seizures made (Hernandez, 2010).

Many of the arrests the Border Patrol made back then were seen as racially motivated letting pass all who looked “American” while holding people who looked “Mexican.” Today agents are taught to look beyond skin color. Many illegal entrants wear dirty or ragged clothing from the long walk. Commonly they have several sets of clothing on so they can just shed them as they go. Many travel with jugs of water or backpacks that have rations with up to a week of food in them. They usually have no formal address and have no idea where they are exactly or where they are going, often times providing foreign country identification. Illegal entrants are found today walking in rough terrain areas that most legal citizens would not travel. It was more

than skin complexion that should have been used to apprehend an illegal entrant, but in the 1920s race seemed to be the only factor considered. More on this topic will be discussed later including my experiences as an agent.

The “Bracero” Program

Throughout out the twentieth century the Mexican government made several inquiries to the U.S. government about normalizing worker flows into the U.S. However, the U.S. was not serious about developing such a program until 1940. As WWII approached there were not enough farm workers because of higher pay offered by defense industries. Both governments came to an agreement in July 1942, which included guaranteed adequate wages and safe working conditions to be supervised by the U.S. government.

As workers came north, the Mexican farming industry complained of losing workers, but the Mexican government wanted to protect the migrants and sought an agreement with the U.S. nevertheless. The Mexican Embassy in Washington D.C. wrote to the U.S. Secretary of State at the time, urging the U.S. to, “Adopt the measures which may be appropriate to prevent the illegal entry of Mexican workers not in possession of Bracero contracts” (Hernandez, 2010, p. 427). This new program used the term “braceros” who, as scholar Judith Hellman writes, “were workers - mostly agricultural workers - who contracted to work in the United States for a specific period of time, usually three to four months, at a wage determined in advance” (Hellman, 1983, p. 87). Between 1942 and 1947 200,000 bracero workers came to 21 states. Eventually these workers spilled over from farm work into the railroad industry. Overall, the bracero program was an attempt to normalize conditions for workers who would otherwise enter illegally. It is interesting to note that Texas originally did not have any bracero employees because the

Mexican government refused to send workers there due to allegations of discrimination. Eventually this changed with Texas legislation that called for treating all Mexicans as equal to their U.S. counterparts (Hellman, 1983).

Braceros were typically unmarried men who were almost illiterate but sought to work in the U.S. because of high unemployment and lower wages in Mexico. Braceros stayed in work camps, and despite all promises offer to the Mexican government, the workers often enduring substandard food, shelter, and working conditions. After World War II, the U.S. government sought to end the bracero program, but U.S. agriculture and business interests lobbied hard for continued access to cheap labor. The program was extended. In 1949, more than 87,000 migrants were still coming in the Bracero program (Hellman, 1983).

The U.S. government left supervision of the program up to farming organizations themselves. By 1950, the Mexican government pushed for stronger controls and guarantees for Mexican workers and as a result a new bracero program was agreed upon in August 1951. However, inhumane treatment continued, documented by many participants. As Meier and Ribera correctly noted, “Prejudice and discrimination, substandard housing, poor food, physical mistreatment, undue exposure to pesticides, unjust deductions from wages, unreasonable charges for room and board, and low net earnings” were all too frequent occurrences (Meier & Ribera, 1993, p.178). Bracero program participants enjoyed a guaranteed wage beginning in 1962, but as advances in technology emerged, the need for Mexican farm workers ebbed (Meier and Ribera, 1993).

The Bracero Program had many positives. It provided workers in areas of the U.S. economy that needed them. It brought over 4 million people from Mexico that most likely otherwise would not have earned as high a wage. It also benefited Americans as it kept the

prices for the goods produced low due to the relatively cheap labor. For Mexico just in the last six years of the program 1958-1964, the program earned their economy \$1 billion dollars (Hellman, 2003, p.87).

However, it seems there was a lack of control by both governments in the program. The businesses that used braceros had little supervision from the outside, a violation of what was guaranteed in the original agreement between the U.S. and Mexico. This allowed employers to do as they wanted with their employees in terms of housing, food, and working conditions. The reach of powerful agricultural lobbyists was considerable. Their pressure led to the resignation of Pauline Kibbe, then Executive Secretary of the Texas Good Neighbor Commission. She had criticized the low-certified wage which, “Brought her into direct conflict with powerful agricultural and ranching interests,” as Meier and Ribera note (pg. 180). When wages in the U.S. cotton industry were lower than what the Mexican government thought was fair, Mexico advised the U.S. that braceros would not be available until the wage was raised. In response, between October 13-18, 1948, the border was opened up to Mexican nationals where the USBP “paroled” the entrants and transported them to United States Employment Service centers where they were taken to labor camps and brought to the cotton fields so the cotton could be picked (p.181).

Yet low wages, substandard working conditions, and inadequate housing did not prevent workers from Mexico from joining the Bracero program. As Hellman sums up, “In spite of the often grim situation encountered by bracero laborers in the United States, the conditions in rural Mexico were such that each year hundreds of thousands of workers sought to enter the bracero program” (Hellman, p.87).

Mass Enforcement Efforts

In 1954, while the Bracero Program was running at full speed, U.S. Attorney General Herbert Brownell Jr. instituted the countervailing “Operation Wetback,” designed to stop illegal immigration (A “Wetback” is derogatory term for an undocumented person from Mexico that recently waded across the Rio Grande into southern Texas.) Brownell was said to have links to labor unions and business in agriculture. The operation removed over 1 million people in 1954 alone, with many going back voluntarily. Oddly, Operation Wetback had some good results. The resulting shortage of farm workers, brought some benefits in wages, job opportunities, and working condition to the remaining braceros in the U.S. This operation had a negative impact on families, however. As Meier and Ribera note, “Families were broken up when heads of households were deported, often leaving wives and children to fend for themselves and ultimately to become financial burdens on society” (Meier and Ribera, 1993, p.190).

More mass enforcement came in the 1980’s more than 2 million undocumented Mexicans lived in the U.S. were counted in the census report. With the unemployment rate close to 10 percent, the Immigration and Naturalization targeted higher paying jobs in nine big cities throughout the U.S. in an attempt to get unemployed American citizens into those positions. Targeting only Spanish-speaking personnel for removal, the charges of racism with this operation led to its suspension. Surveys just a few months later revealed the same subjects that were deported were soon back on the job in the United States (Meier and Ribera, 1993, p. 191). Many people were dropped off at the border only to return to the U.S the same day, making it back to where they were before. Employers knew the employee and if the employer

saw no repercussions from hiring the same subject back, they did, instead of paying to train a new employee all over again.

In the 1990s, as Meier and Ribera have pointed out, “While Mexican undocumented represent less than two-thirds of all illegal entrants, they make up approximately 90 percent of all illegal aliens apprehended by the INS” (p.192). It was often difficult to ascertain someone’s true identity, a situation depicted in the 1983 film, “El Norte.” The main characters, Enrique and his sister Rosa from San Pedro, Guatemala, are told by others before their journey that if captured to claim to be Mexican from the state of Oaxaca. Both were eventually apprehended by the Border Patrol, claimed to be Mexican, and returned south to Tijuana, Mexico, only to cross another time and make it north. For the Border Patrol it was easier to just to drop people off at the Mexican border, and much harder to have to arrange travel to Guatemala or beyond. “El Norte” did not depict whether Enrique or Rosa were fingerprinted or not. Today, on a person’s first encounter with immigration if they are traveling without identification and claim to be from Mexico, it is the practice to document that they are Mexican after an interview with Mexican consulate officials for all future encounters with U.S. Immigration. In the 1980s and 1990s, only two fingerprints were taken, whereas today all fingers are printed. In the past, comparisons of those apprehended were almost non-existent and information sharing from one section of the border to another was seldom available, making it often impossible to determine someone’s true identity. Therefore, if a person apprehended claimed to be from Mexico, they were returned to Mexico and all their paperwork in the U.S. depicted them as being Mexican.

More Recent Developments

Beginning in the 1980s, the Mexican government tried to curb immigration to the U.S. by allowing foreign companies to set up factories, called *maquilas*, which would help workers to stay in Mexico by providing employment opportunities there. These assembly plants attracted thousands of people from central Mexico, but there were not enough jobs for all those seeking to work; Migration north to the U.S. continued. And it was no surprise that organized American labor was against the rise of outsourcing to maquilas. The maquilas actually brought more female workers to the border zones, and with the lack of sufficient maquila work for internal migrants, it actually served to increase the number of female entrants into the U.S. These maquilas would attract female workers, “expecting them to leave when they marry and have children” (Fussell, 1997, p. 8). Employers justified paying women lower wages because they were often times supported by their spouses. Indeed, this development may have been the main reason for the start of the family reunification process in the Immigration Reform and Control Act (IRCA) signed into law by President Reagan in 1986.

IRCA aimed at giving legal status to those that had a continuous presence in the U.S. since January 1, 1982, supplied stricter sanctions for employers that knowingly hired undocumented workers, and gave more authority to the Border Patrol (cis.gov). It also protected outdoor agriculture operations in that a warrant or consent of the owner was now needed to enter a worksite when questioning anyone about their immigration status. In order to obtain legal status, undocumented immigrants did have to have some knowledge of the English language and the U.S. IRCA therefore was not a blanket of automatic legal immigration status given out to all but in fact, was a three-stage process involving application for temporary legal status, a second application for permanent legal status, and third application to be a U.S. citizen. Applicants

needed to have a clean criminal record and documented employment. A fair assessment of the law comes from Pillar Marrero in her book, "Killing the American Dream." Marrero writes, "The Amnesty Law legalized and integrated 3 million people into American Society, but it failed to create long-term mechanisms for hiring foreign workers in the industries that would most need them according to fluctuations in the economy" (Marrero, 2012, p.4). IRCA is often termed "The Amnesty Law" because many Americans see IRCA as only granting amnesty to illegal immigrants. Shortly after the act the undocumented population rose to 11 million even with increased border enforcement and employer sanctions on hiring undocumented migrants. Plainly the benefits of coming to the U.S. to work continued to outweigh the chance of being deported. Meier and Ribera (1993) were correct in noting, "It appears unlikely that a socioeconomic process as complex as Mexican migration can be substantially altered by unilateral legislation like IRCA" (pg. 269); The normalization of the status of previously undocumented migrants helped these individuals to be sure, but also stimulated an increase in the flow of undocumented population to the U.S.

With the increased undocumented population, another act came into law in 1996, just 10 years after IRCA. The Illegal Immigration Reform and Illegal Immigration Responsibility Act (IIRIRA), attempted to combat undocumented migrant smuggling, providing more money and personnel to the USBP and the U.S. Attorney's Office, for enforcement and funding investigation of immigration-related crimes. The law also established a ten year ban on re-entry for those that come into the U.S. illegally and were removed, and increased the ban time to 20 years for those that illegally re-entered the U.S. after having been deported previously. This act is what immigration officials still use in establishing deportability for anyone in the U.S. without immigration status. More on both IRCA and IIRIRA will be offered in later sections.

Presidential Administrations and Attempts at Immigration Reform

The Reagan Administration

Just before President Ronald Reagan took office on January 20, 1981, President Jimmy Carter assigned a commission to explore the immigration challenges facing the U.S. The Select Commission on Immigration and Refugee Policy consisted of members of the U.S. House of Representatives and Senate. Their final report was issued in January 1981. It is important to review this report to see the differences between recommendations and actual law as well as to see the similarities that we experience today.

In a May 5, 1981 hearing with the Select Commission on Immigration and Refugee Policy before U.S. Congress, U.S. Senator Alan K. Simpson (R-WY) stated, “The U.S. today is taking in more legal immigrants and refugees for permanent resettlement than the rest of the world combined. In addition, hundreds of thousands of illegal immigrants cross our borders everyday” (p.3). He projected, that based on the fertility rate and immigration rate, that the U.S. population by 2080 would be 300,000,000, although this looks like an underestimation. Simpson also recognized that millions seek entrance and that it was only fair to take care of the people that were already in the U.S. by limiting both legal and illegal immigration. At that time, 94 percent of the immigrants came under family reunification preference, showing the U.S. commitment prior to IRCA to keep families together.

Senator Simpson stated before Congress, “At present the Social Security card, which is widely used, is also widely abused” (p.8). He was right: almost 75 percent of working-age undocumented migrants use a fake social security card (Mortenson, 2009). Senator Simpson also pointed out that if we wish to curb illegal immigration we must perform worksite

enforcement. The Chair of the Immigration Reform Commission, Theodore Hesburgh, a special appointee by President Carter, also stressed the need to help other countries so their residents are not pushed to our borders, “By assisting people to improve the quality of life in their own country. In this effort, the best gift of the heart which the U.S. could provide would be clear communication of the basis of our [economic] success” (p.8).

Chairman Hesburgh held 12 public hearings near multiple ports of entry including, Baltimore, Miami, New Orleans, San Francisco, and Los Angeles, as well as 24 meetings with immigration subject matter experts along with seven public commission hearings to review original research. Hesburgh asked the same questions that many still raise today, “Why shouldn’t people be free to move wherever they want to? Why not let down the barrier of nation-states and permit people to move freely?” But given the notion that nations can enforce their borders, he commented that the Commission acted under international interdependence, rule of law, and noted that an open society that must act within immigration limits while giving those who obtain legal status a pathway to obtain citizenship. He stated the absolute need for a national identity card that everyone in the U.S. would use for employment to make it fair for everyone. This provision was never realized.

The Commission recommended a legalization process for those already in the U.S., targeting limited available resources to bringing people outside of the shadows to a full American life. No longer should exploitation by employers be permitted, paying undocumented workers a lower wage with no benefits jobs that might otherwise be given a documented resident or U.S. citizen. Hesburgh noted, “Without an employer sanction law and a reliable means of employee identification, the rule of law would be compromised extensively as aliens tried to slip the boundaries imposed by this program” (p.28).

The Commission also tackled the idea of a guest worker program that was similar to the Braceros program. The Commission decided against it for several reasons. First, the European guest worker model showed a large number of those temporarily admitted ended up staying without documentation. Moreover, many of the jobs seemed designed just to exploit immigrant guest workers, treated as second class aliens without the full protection of law. But once a program starts it is extremely tough to stop. The Commission did not think it was fair to other nations throughout the world to extend a hand to one particular country -Mexico- without including others.

In summary, the Carter-era Commission recommended prohibiting employers from knowingly hiring undocumented migrants, requiring a national identity card for employment, adding more resources dedicated to border enforcement, and raising the number of immigrants allowed to enter the U.S.

Immigration Relief Control Act

Before asking for comprehensive immigration action from Congress, the incoming Reagan administration assigned a task force to review the recommendations. In July 1981 Attorney General William French Smith made an official proposal to Congress on immigration reform. After several failed initial attempts and amendments added, the Immigration Reform and Control Act was signed into law on November 6, 1986.

A key provision of the law included employer sanctions for hiring undocumented workers. The law required employees fill-out an I-9, Employee Eligibility Verification Form, attesting that the applicant had the legal right to work in the U.S. Also, the employer was required to examine the employees' identity documents. However, there was to be no national

identification card used to help with verification of the legal right to work in the U.S. The Department of Labor was supposed to work with immigration authorities in identifying employers in violation, however no resources were dedicated to this task by Congress. Neither immigration nor the Department of Labor had sufficient employees to monitor adherence. Economist Barry Chiswick argued that this provision in the law was a “toothless tiger” because there was not any real enforcement that came with this new employer sanction. The employer had an obligation to review identity documents submitted by the applicant, however as long as they showed good faith in reviewing them, there was no penalty, fine or otherwise that would be implemented (Chiswick, 1988).

Chiswick also pointed out that this process would give rise to the underworld of counterfeit documents, one that is indeed still prevalent today. I have personally encountered multiple cases where as long as the employee attests that the individual can work in the U.S. and provides any type of social security card, fraudulent or counterfeit, there are no questions asked by their boss. A 1990 report from the Urban Institute and Rand Corporation revealed low enforcement levels and a lack of communication between agencies regarding employers that violate IRCA (migrationpolicyinstitute.org). Professor Wayne Cornelius, a scholar with the U.S.-Mexican Program at the University of California San Diego, noted that, “There is not a single documented case of successfully using employer sanctions laws to reduce the population of illegal immigrants anywhere in the world” (Rivera-Batiz, et. al, 1989, p. 6).

On the other hand, the law appears to have adversely affected legal immigrants. A 1988 study by the General Accounting Office (GAO) of over 400 employers in New York showed that 22,000 legal immigrants were relieved from their jobs or denied employment because employers initially feared enforcement actions as a result of IRCA. In total, 461,000

employers were shown to be discriminating against applicants based on where an applicant was born

Penalizing employers proved difficult. The INA would issue a warning if violations were found and then a visit would be made to the site to advise the employer to correct the action. An initial grace period was granted until June 1988 before enforcement action was to be taken against any employer. But in the end only \$33.7 million of the total \$123 million allotted by Congress was actually given to employer sanctions, guaranteeing the 'toothless tiger,' while \$70.5 million went toward border enforcement, \$16.8 toward criminal alien removal program, and \$2 million toward the Systematic Alien Verification for Entitlements (SAVE) (Juffras, 1991, p.46), a verification system that shows whether a person's immigration documents are valid when applying for any government benefit. (uscis.gov).

However, the whole point of employer sanctions can be summed up by Simpson in 1990, "The purpose of the bill was to avoid exploitation of human beings. It was not a jobs bill" (Fix, 1991, p.7). Employers do what they must in order to increase profits, and use of undocumented workers allows employers to deny benefits, pay low wages, and tolerate unsafe labor practices throughout the place of work. This point was fully illustrated in Jimmy Breslin's *The Short_Sweet Dream of Eduardo Gutierrez*, where Eduardo, an undocumented migrant, died when the building he was working in collapsed. Eduardo was working with other undocumented migrants at the time. Had worksite enforcement been in place, even documented workers would not have been allowed to work in such an unsafe building. Breslin gives the example of a Korean store owner who hired a Korean for \$500 a week, while hiring two Mexicans and only giving them an average of \$250 a week. The owner eventually fired the Korean and hired another Mexican for

only \$170 a week. Enforcement would force owners to pay more money to attract lawful workers.

What can also be attributed to lack of employer sanctions enforcement, employers could also be violent towards their day laborers, who were often undocumented, as described by Martinez and Valenzuela (2000) in *Immigration and Crime: Race, Ethnicity, and Violence*. An undocumented day laborer, Manuel was depicted as being threatened with a gun by his boss after Manuel worked for him all day and the boss only offered \$20 pay.

Another key provision in IRCA was increased resources dedicated to border enforcement. In 1987, the INS dedicated 57 percent of its budget or \$70 million for this effort. And in 1988, another \$67.2 million or 40 percent of the total funds given by Congress were allotted to border enforcement. Although the USBP was seen as the enforcement arm of immigration, these sums were not nearly what was needed to make a constant visible presence on the U.S. southern border. During that time the USBP expanded agents' duties to include criminal alien enforcement at jails and prisons in the U.S. and drug interdiction at the border. Because of this change, line watch dedicated hours by USBP agents dropped from 42 percent in 1986 to 38 percent in 1989 (Juffras, 1991, p.55). Instead of an agency strictly dedicated to preventing illegal immigration, they were now stretched to other areas, thus doing very little to curb undocumented migration.

The most notable aspect of IRCA was the implementation of an amnesty that by 1989 was granted to approximately 3 million people. Amnesty covered those who entered the U.S. illegally prior to January 1, 1982 and remained in the U.S. and to those who entered on a visa before January 1, 1982, but which expired before that date. These amnesty applicants were split into two categories, legally authorized workers (LAW) and special agricultural workers

(SAW). Of the total applicants, 70 percent were from Mexico, and 72 percent were employed in some capacity (Hoefler, 1991).

Critics often protest that amnesty was not the answer, however mass deportation of these individuals instead of amnesty would have crippled the economy, as 1.3 million applicants came from the SAW program, that is they were already working as field hands. Also, the large number of legalizations that occurred as a result of IRCA shows the overall dependence the U.S. had developed upon undocumented migrants.

Other less noteworthy but important aspects of IRCA included the implementation of the Visa Waiver Program (VWP) which allowed entrants from certain designated countries to enter the U.S. without a visa and remain for up to 90 days before having to depart. Also, an H-2A guest worker program for foreign workers allowed sponsored stays for agricultural employers for up to 3 years. The Special Commission on Immigration and Refugee Policy had previously recommended against a national guest worker program because of its difficulty to administer and enforce. This recommendation was forgotten. Also, noted in the law was that federal money was to be given to states which incarcerated undocumented migrants for crimes committed through the State Criminal Alien Assistance Program, although money wasn't officially allocated until 1994. (ncls.org).

The total number of apprehensions made along the border by the USBP in the years following implementation of IRCA were used by Congress to measure the effectiveness of the law. However, several shortcomings arose out of this approach. First, different apprehensions sometime involve the same person attempting to enter the U.S. illegally on several occasions. It was noted that apprehensions made by the USBP dropped in 1988-1989, but so did line watch hours dedicated to undocumented immigration.

Crime and Unemployment in the 1980s

A popular stance in the immigration argument is that undocumented migrants commit crimes while in the U.S., raising the crime rate and taking up room in prisons and jails. There was a provision in IRCA that stressed that the Attorney General must expeditiously remove undocumented migrants convicted of certain serious crimes. Therefore, it would be helpful to explore the crime rate in the U.S. before and after IRCA was implemented. Muddying this analysis, however, is the fact that tough anti-drug legislation was passed at the same time and the number of criminal arrests nationally rose as a result.

A study of IRCA applicants performed by Scott R. Baker (2013), an associate professor of finance at the Kellogg School of Finance at Northwestern University, found a 3 to 5 percent drop in crime for every 1 percent of unauthorized immigrants legalized in the U.S. as a result of IRCA. Baker estimated that this resulted in 120,000 to 180,000 less property and violent crimes committed in the U.S. He attributed this to more employment opportunities becoming available as a result of legalization. Similarly, researchers in *Immigration, Employment Opportunities, and Criminal Behavior*, who examined crime in Bexar County, Texas (home of San Antonio, TX) found that when IRCA legalization expired in 1988, crimes allegedly committed by Hispanics rose nearly 60 percent as opposed to their native-born counterparts. Crime was attributed to a lack of the ability to obtain gainful employment largely due to the fact that a vast number of the crimes committed were for financial gain, mainly drug-related crimes but also including prostitution, gambling, car theft, burglary, and robbery (Friedman, Owens, & Bohn, 2017).

Another key act involving immigration under the Reagan administration was the Anti-Drug Abuse Act of 1988. Although the target of this act was to combat drug crimes generally, it

included aspects that were exclusive to non-citizens. The most pertinent aspect of this law for non-citizens was the term “aggravated felony” which made a person removable any time after entry if an immigrant is convicted of one of these crimes. Aggravated felonies at that time included murder, weapons trafficking, and drug trafficking crimes. This was the Congressional response to the notion that immigrants were committing a large amount of crimes and that something had to be done about it (Yates, Collins, & Chin, 2005). The length of the sentence for these crimes did not matter for removability, as long as there was a conviction. It increased the prison term to 15 years for a person illegally reentering the U.S. after having been removed and previously convicted of an aggravated felony. Also, the law directed the Attorney General to start removal proceedings while a person was in prison to expedite the removal process. To show the effect this law had, from 1908-1980, 40 thousand people were deported for criminal offenses, but during the 1980s over 30 thousand were removed for narcotic and criminal violations. Concerning drug offenses, issues have arisen because some drug offenses are state felonies but not considered felonies at the federal level. However, the Board of Immigration Appeals (BIA) has followed individual circuit court decisions for classifications of crimes. Each district has different classifications of crimes that are considered felonies which has proven to be problematic when using convictions that were out of the state where immigration officials arrested the person. For instance, in Maryland many people are convicted of Assault 2nd degree and receive sentences longer than one year. But for immigration purposes, this crime is neither a felony nor a crime involving moral turpitude so it cannot be used against the person in immigration court. In other states their assault convictions are considered felonies if the defendant received more than a year sentence.

Although immigrants commit crimes just like average citizens, there was not an unnecessary spike in crime because more immigrants were here. In fact, according to Harvard Sociologist Ralph Sampson, “Cities of concentrated immigration are some of the safest places around” (economist.com). Sampson was referring to major cities in the southwest U.S. that have an increased foreign born population, but no spike in crime. That being said, if an immigrant without legal status commits a heinous act, a nation must obviously be allowed to remove that individual after judicial review.

The U.S. in the 1980s passed large-scale immigration reform in an attempt to fix what appeared to be a broken system, with millions entering illegally. Many claimed that undocumented migrants were stealing jobs from Americans, and those same immigrants were committing a record number of crimes. The bill-makers of IRCA attempted to first handle the employment of undocumented migrants, then raise the legal immigration population by amnesty in an attempt to lower the unlawful immigrant population, as well as allowing more legal immigrants into the country than years past. However, a lack of employment enforcement coupled with the INS being tasked with too many responsibilities and too few resources, meant that the undocumented population continued to rise. While criminal removals were increasing it was more of a revolving door because of a change in enforcement laws and how frequently people continue to cross without documents in the southwest desert of the U.S.

George H. W. Bush Administration

During a 1980 presidential debate with Ronald Reagan, George H.W. Bush, when asked about children of undocumented migrants attending school, claimed that he believed in helping

those here without proper immigration status obtain lawful status so that children would not have to worry when attending schools.

Early on during his own presidency, October 27, 1990 Bush Sr. signed the Immigration Act of 1990 (IMMAC) into law. The act placed a ceiling of 700,000 allowed to migrate to the U.S. between the years of 1992-1994. Under the previous act the ceiling had been 530,000. These visas were given out on criteria centered around family, employment, and diversity. The act also established a Temporary Protected Status (TPS) for certain countries, with El Salvador being the first designated country. TPS was designated by the Attorney General for countries that were considered unsafe because of an on-going armed conflict, environmental disaster, or other extraordinary circumstances. Once a TPS designation date is established, people that were continuously residing in the U.S. since that designation date, had no felony or two or more misdemeanor convictions, did not pose a national security risk, and had applied during the designation period, could maintain lawful status in the U.S. TPS continues to this day, although a person with TPS must reapply during the renewal period, otherwise their TPS waiver will expire.

When first designated to El Salvador, it was estimated that 500,000 Salvadorians residing in the U.S. would qualify for the benefit. Although TPS status does not automatically lead to any other path to legal residency or citizenship, it does not prevent a person from applying for citizenship or legal residency. This is a benefit to people from the designated countries that escaped harsh conditions in their homeland and just came to the U.S. to work, and did not commit crimes or become a national security risk. For example, Dr. Colleen Ebacher, an associate professor at Towson University recounts interviews with several immigrants and their stories of traveling to and living in the U.S. One in particular, Josefina, a native of El Salvador,

arrived in the U.S. with lawful visa after amnesty was granted to millions of undocumented immigrants in 1986. Josefina noted that she could not return to her country because of the violence and dire conditions there. Josefina was able to apply for and was granted TPS with work authorization. TPS, although a good avenue for a person escaping violence, offers nothing for permanency and requires constant renewal, or else the person will be without lawful status once again (Ebacher, 2011).

Also included in the Immigration Act of 1990 was the provision that individuals who were properly notified but failed to attend their removal hearings would receive an automatic removal order. At first glance this appears to go against due process, as it looks like being found guilty but not being able to contest one's case. However, adjudicating these cases with an automatic order relieves the immigration judges of keeping the cases on their dockets. If a person fails to show, it is unlikely they will show again in the near future. Persons that are apprehended by ICE that have a removal order in abstencia, can file paperwork with the court and their cases are automatically reopened and the person cannot be removed until their case is closed. During the previous years of immigration enforcement priorities, a person without a criminal record but with a final order of removal would be apprehended by immigration officials after a stop with state and local police. The removal order was placed in as a warrant and when the officers performed background checks on a person of question, the person would be detained by immigration even should the officer have no further interest. Under the change in practice the person would now be detained and only if they chose not to reopen their case, would be removed. It has been my experience that people in this circumstance remember being processed by immigration in previous years, but often state that they never received any paperwork to attend hearings. Years go on living in the U.S., and these individuals have more to lose (contact

with family, houses, cars, other properties in the U.S.). They are often appalled that they have to quickly involve friends and family and contact an immigration attorney to stop removal when they are arrested.

Further, the law of 1990 dismissed the ability of judges to allow undocumented migrants to stay in the U.S. when sentencing offenders that have committed a crime involving moral turpitude (CIMT). (CIMT is a removable offense that “involves intent to commit fraud, commit theft with intent to permanently deprive the owner, or inflict great bodily harm, as well as some reckless or malicious offenses and some offenses with lewd intent” (ilic.org).) This means that the criminal judge has no discretion on removal or the immigration process; the judge could only sentence the offender for the offense committed. The law also increased the return ban on those convicted of aggravated felonies, increasing the time from 10 to 20 years. And for clarification, a CIMT is a removable offense that “involves intent to commit fraud, commit theft with intent to permanently deprive the owner, or inflict great bodily harm, as well as some reckless or malicious offenses and some offenses with lewd intent” (ilic.org).

A portion of the 1990 law was focused on anti-discrimination by employers against. Congress ordered a review of employment sanctions in IRCA by the General Accounting Office (GAO) to find out if the law discriminated against some potential employees. It was reported that 10% of employers, “reported changing their behavior towards foreign-appearing workers.” As a result, “is more reasonable to conclude that a substantial amount of discriminatory practices resulted from IRCA rather than not” (Lowell, Teachman, & Jing, 1995). Of course the GAO study came under scrutiny because it did not include analysis before IRCA, was done by mail, and employers may not have been educated on what is included in discrimination. B. Lindsay Lowell from the U.S. Department of Labor, Jay Teachman of

Washington State University, & Zhongren Jing of the University of Maryland (1995) found in their analysis of the GAO study that only a small number of Hispanics, the majority of those studied, were adversely affected. The greater problem they found, was with the ineffectiveness of IRCA in general due to the lack of employment enforcement. As a result, undocumented workers continued to work in all conditions without any threat of punishment to the employer or employee.

The act also established the Commission on Immigration Reform (CIR), later named the Jordan Commission, after Barbara Jordan who was their longest sitting commissioner. The duty of the Jordan Commission was to report how effective current immigration policy was for America.

The Jordan Commission

The commission reported its findings in four different reports before Congress between 1994 and 1997. Their intentions were in the best interest of the nation: "We disagree with those who would label efforts to control immigration as being inherently anti-immigrant. Rather, it is both a right and a responsibility of a democratic society to manage immigration so that it serves the national interest" (fairus.org).

The commission's first report with a primary focus on illegal immigration showed that current tactics to halt illegal entrants at the U.S. southern border were ineffective. According to the commission, officials at the border needed more training and resources to adequately do their jobs. Also the Jordan Commission found that it was more cost-effective to apprehend undocumented migrants at the border compared to interior enforcement. They also called for proper enforcement of employer sanctions, which would eliminate the "pull" aspect of those

entering without immigration documents. Push and pull theory was first developed in 1889 by English geographer Ernest Ravenstein in *Laws of Migration* in that unfavorable conditions in one country, like poverty and unemployment in Mexico, push a person out, while favorable conditions like economic opportunity in the U.S., pull them into another country (jrank.org).

The commission concluded that the federal government needed to offset the cost of immigration enforcement by providing financial aid to state and local governments that encounter undocumented migrants at their hospitals and jails. However, with that, those that sponsored immigrants needed to be held financially responsible when their uninsured immigrant used these facilities.

The commission's other reports focused on legal immigration, refugee policy, and future immigration policy. The commission stressed the need to cap lawful immigration and only include the nuclear family when granting lawful immigration to reunite families and to have no future national amnesties to undocumented migrants. They also highlighted the need to end unskilled-worker lawful immigration and increase skilled-worker immigration. The commission held that the U.S. government should financially help refugees who were unable to migrate to the U.S. And the commission stressed the need to reorganize INS bureaucracy. This last step would not come until after 9/11 (Commission on Immigration Reform, 1997).

Crime Rate/Unemployment in the 1990s

Concerning crime during the 1990s, according to the FBI's Uniform Crime Report all major crimes including murder, rape, and robbery, dropped during the 1990's. Also, an analysis of crime data and immigration conducted by Professor Tim Wadworth of Colorado University (2010), found that immigration could have been an important contributor to the crime drop in

large cities that have the foreign-born or newly-arriving immigrant populations. At least partially attributing this to the ‘healthy immigrant thesis’ where, “motivated individuals infuse a population with noncriminogenic characteristics” (p.548). This finding ran hard against data offered by a Government Accountability Office (GAO) study in 2005 which found that the 55,322 undocumented migrants in U.S. prisons had committed almost 700,000 crimes, with 12% of these crimes being violent offenses (GAO-05-337R). In my view, young migrants commit the same amount of crimes as their American cohorts, however being undocumented and a criminal compounds the issue, thus creating a greater public concern.

The U.S. experienced a recession during the first part of the Bush Administration, and the unemployment rate peaked at 7.2 percent in 1992. Perhaps this is the reason U.S. citizens continued to blame immigrants on taking jobs away. According to Bureau of Labor Statistics as of March 2017, there were 6,079 American born over the age of 16 that were unemployed, while only 1,205 foreign born over the age of 16 that were unemployed (data.bls.gov).

President Bush had started his push for immigration reform during his battle with Ronald Reagan for the U.S. presidency in the early 1980s. He wasted no time in helping to enact that reform in 1990 with IMMACT. The goals of IMMACT were to correct the unintended consequences of IRCA with employment sanctions, but also to sought to remove unauthorized immigrants who committed serious crimes from the U.S. Establishing a commission to report on the challenges of immigration policy doubtless was Congress’s best move because it involved scholarly research and a bi-partisan team that covered all policy areas of the U.S. In the event, however the changes suggested by the commission were not fully enacted. The INS continued to operate as usual during the 1990s. President Clinton in 1994 continued the push to control

illegal immigration and thought he achieved it with the Illegal Immigration Reform and Immigration Responsibility Act.

The Clinton Administration

When Bill Clinton took office, he reiterated the stance of presidents before him in that he had a disdain for illegal immigration and sought to make change in the immigration system. Clinton's first bill signed into law greatly affecting immigrants was the Violent Crime Control and Law Enforcement Act (VCCLEA) in 1994 which among other things gave the U.S. Attorney General more power in removing certain aggravated felons without going through immigration proceedings after incarceration. These removals are known as administrative removals which are reviewed by ICE attorneys and management at the field office level. An aspect often forgotten about these types of cases is that the person being removed can request judicial review of their case before removal or within a limited timeframe contest their removal on certain grounds, for example if a valid claim of lawful immigration status can be shown.

The law dedicated more resources to the border and to the USBP for border enforcement to remove those who entered illegally either via identity fraud or who came to the U.S. at a place other than a lawful port of entry. However, even with these appropriations, the undocumented population continued to rise. As shown by the Jordan Commission, the INS at the time had many programs to sustain, and adding a criminal alien focus took away from border enforcement. VCCLEA called for removal of all undocumented migrants who were either apprehended at the border or committed crimes in the U.S. However, undocumented migrants continued to enter as shown by apprehensions by the border patrol, and it is my experience the

process remained a revolving door which put a burden on interior immigration enforcement who were limited in available resources.

Comprehensive immigration reform came with the enactment of Clinton's Illegal Immigration Reform and Immigration Responsibility Act in 1996. This is a highly complex immigration measure one that has the intention of removing documented and undocumented migrants who entered illegally or committed certain crimes in the U.S. It again increased funding to border enforcement; increased penalties for those found in the U.S. without documents; required entry and exit notification, reduced benefits available to undocumented migrants in the U.S; and continued detention for those in immigration custody.

One aspect of the act was overturned in 2001 by the U.S. Supreme Court: the indefinite detention of migrants when their country of origin refused to issue travel documents. In *Zadvydas v. Davis* (533 U.S. 678 (2001)), Kestutis Zadydas was removable because of his criminal convictions in the U.S. He was born in Lithuania but had parents who were citizens of Germany. INS tried multiple countries to issue travels documents for Zadvydas, but all refused. At the time, the U.S. Attorney General could detain these types of people indefinitely. However, in the appeals process, the U.S. Supreme Court ruled that a person could not be detained indefinitely in those circumstances and the government had to prove detention was necessary after a 90 day period. It has been my experience that this part of the law is both a benefit and detriment to the Department of Homeland Security because this ruling releases space to house those who might more likely be removable, at the same time if that person released commits another egregious offense after release, this obviously greatly harms the public perception of the agency. I have seen many criminals released from detention and able to walk the streets where U.S. citizens who commit the same crimes would not only be held longer in the

criminal detention facilities, but also find it harder to obtain a living once out of incarceration. There are cases where undocumented immigrants know we cannot remove them, and disregard the order of supervision process that starts upon their release. However, some whose crimes were committed long ago, and since have not been in the criminal justice system do abide by the rules of release and have proven to be productive members of society. Once the person is released due to the inability to remove them, they will not be committed to detention again unless another crime is committed or a travel document for the individual is obtained by ICE.

The act also established the 287(g) program which gave immigration authority to state and local law enforcement inside of local detention centers. A Memorandum of Understanding (MOU) was created between ICE and the local department that outlines the mandates that the local department must obey while exercising power of immigration law. After that is completed, these officers are given a four week immigration training session. These MOU's can be used to enforce immigration law either at detention facilities or as part of a task force. When a person is arrested by local police, they are vetted by local officers concerning their immigration status. Just like federal immigration officers, once a person is determined to be removable, an immigration detainer is placed and once the local charges are completed, they are processed for immigration purposes. Typically, persons are usually transferred to the immigration part of the detention center after they are first processed.

Many groups, for example the American Immigration Council, claim that this MOU process undermines the power of local officers to enforce criminal laws in their area. The program focuses on non-violent crimes, they charge while citing studies that indicate non-violent criminals are often targets of 287(g) officers (americanimmigrationcouncil.org). However, given

the finite resources of ICE and the fact that federal dollars go back into the jail (giving them the resources to hire more officers), it is actually a vital program for immigration enforcement. ICE officers can also use the facility when they apprehend someone in the area. This arrangement, in my view, benefits law enforcement at all levels and helps assure that dangerous criminals are kept safely locked away.

In the case of my area in Maryland, there is a 287(g) program – an MOU - in Frederick County. Many times, officers that work in that area are approximately one hour from the Baltimore Field Office, so instead of traveling long distances with an arrestee, they are able to house and process the person minutes from the arrest site and go back onto the streets much earlier than if they had to travel long distances. The program is overseen by a designated officer from ICE Headquarters who reviews all documents produced by the officers. There are other aspects of the program that use task force-oriented policing where the 287(g) officers enforce immigration law in public. It is my experience that the officers at the detention centers are far more vital to ICE in the apprehension and removal of dangerous undocumented migrant criminals.

Another law that was created during the Clinton Administration was the Nicaraguan Adjustment and Central American Relief Act (NACARA) in 1996. This measure brought relief to those foreign nationals from Nicaragua, El Salvador, Guatemala, Honduras, and certain eastern European nations previously under Soviet rule who were residing in the U.S. Foreign nationals from these countries would have to prove their removal would be an extreme hardship, and that they posed no threat to society. Once proven, this would suspend removal for them and certain family members. A recipient of this act automatically receives permanent resident

status. The status is granted by United States Citizenship and Immigration Services. However, a person in immigration proceedings may ask the judge for this relief as well.

An act similar to NACARA is the Haitian Refugee Immigration Fairness Act (HRIFA) (1998) which once granted would give Haitian nationals permanent resident status in the U.S. Haitians would have to prove the same hardships as those under NACARA, however dates differ concerning the application deadline. These are individuals previously granted refugee status in the U.S. and are not otherwise removable. Family members of those granted status under HRIFA may also apply for status under this act. In fiscal year 2015, ICE removed only 433 Haitians from the US (ice.gov).

Although the previous immigration laws attempted to curb illegal immigration, it was lawful immigration by visitors and students that would cost the U.S. the most deaths on home soil in history.

The Bush Administration

Before September 11, 2001 there seemed to be a change coming to immigration enforcement. The United States Border Patrol still apprehended those jumping the border fence and those caught in close proximity to the border, but the question often was brought up about what to do with those already established inside the U.S. After all, there was a large number of migrants working, providing for their families, but without proper immigration documentation. The 1996 IIRIRA law made plain that immigration officials had the authority to apprehend these people and send them back to their home countries. At the presidential level, President George W. Bush, a Republican and former governor of Texas, wanted more of “compassionate conservatism” when it came to his party. He thought that anti-immigration actions would hurt his party in the future. He also won 35% of the Hispanic vote, a large number

for this traditionally Democratic demographic, when he was elected U.S. president in 2000. He knew that in order to keep this support he would have to build upon and improve the relationship with Mexico and the migrant community.

Just weeks prior to the terrorist attacks on 9/11, President Bush had been in discussion with then President of Mexico Vicente Fox (2000-06) about relations with Mexico and the immigration issue. With over 28 million documented and undocumented immigrants living in the U.S. as of March 2000, and with them accounting for 1 in every 10 residents in the U.S. (Marrero, 2012), Bush saw the economic and humanitarian concerns for his country and wanted to act to normalize the situation. However, once the attacks on the World Trade Center in New York, NY happened, Bush could no longer pursue his immigration-friendly agenda.

Within six weeks of 9/11, U.S. Congress passed the PATRIOT Act. It became much easier to apprehend a person without lawful immigration status and hold them in detention. Nineteen 9/11 terrorists were actually immigrants in violation of their immigration status. The Patriot Act gave law enforcement more authority when dealing with suspected terrorists, including making it easier to obtain wiretaps, search warrants, to arrest, detain and to gather information from illegal immigrants and/or suspected terrorists. The question was however, who is a terrorist? Not even the U.S. Department of State can provide a clear definition. Scholars such as Richard Betts, the Director of War and Peace Studies at Columbia University echo this: "There has never been any consensus definition of terrorism" (abc.com).

In the wake of 9/11, the USBP made the prevention of terrorism a basic goal. The Border Patrol mission statement reads: "The priority mission of the Border Patrol is preventing terrorists and terrorist weapons, including weapons of mass destruction, from entering the United States" (cbp.gov). When there is a hint of a terrorism connection when the Border Patrol makes an

apprehension, the FBI and the Joint Terrorism Task Force are called to speak to the detainee. These individuals are labeled “special interest aliens.” With apprehensions being made at such remote locations in southwest U.S., an agent never knows who they have until the apprehensions are made and the people are spoken to back at the USBP station. What looks like a mother and child attempting to cross to find employment, could be people attached to a terrorist organization. The Texas Department of Public Safety Press Secretary stated, “It is important to note that an unsecure border is a vulnerability that can be exploited by criminals of all kinds, and it would be naive to rule out the possibility that any criminal organizations around the world, including terrorists, would not look for opportunities to take advantage of security gaps along our country’s international border” (Wilson, 2015).

Assistant Professor of Criminal Justice at the University of South Carolina, Samantha Hauptman argued in her book, *Criminalization and Immigration*, that the legislation against terrorism has attached a criminal label to immigrants, stating that the “war on terror” has made U.S. citizens become more suspicious of immigrants, too often seeing them all as criminals. It has also facilitated more changes in public support of classifying immigrants according to the crimes they have committed. We have, Hauptman argues, notions of a “desirable” immigrant prototype and “undesirable” stereotypical immigrants, that is those that come from countries believed to be associated with terrorists. She states that all of this contributes to a “moral panic environment and the subsequent criminalization of immigration in U.S society” (Hauptman, 2013, p.16). Perhaps in this era of information sharing in a matter of seconds more citizens are made aware of terrorists that could cross into the U.S. illegally. But as Hauptman correctly emphasizes, the U.S. does not admit more immigrants than do other countries in the world. The U.S. may be a nation of immigrants, but in the last 15 years it has become more aware and

cautious of the possible dangers to the country that may come from allowing large numbers of immigrants through ports of entry and those crossing illegally.

U.S. Agencies

In 2003, perhaps the biggest effect on immigration by any president in recent years was the creation of U.S. Department of Homeland Security (DHS). It became the new home of a number of agencies that deal with immigration including, the U.S. Coast Guard (USCG), Customs and Border Protection (CBP and USBP), Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS). The Department of Justice also has control over the immigration court system, the Executive Office for Immigration Review (EOIR).

Immigration and Customs Enforcement is charged with enforcing the nation's immigration law inside of the U.S. with help from Homeland Security Investigations (HSI), which also investigate crimes associated with illegal immigration, while the USBP enforces border security. All agencies follow IIRIRA when enforcing immigration rules as that is the most up to date law enacted by Congress. Before any presidential executive action in 2014 and previous memorandums of action in 2011, ICE and HSI simply apprehended those in the country who had previously been charged and/or convicted of a crime and those who were only guilty of violating their immigration status or had a final order of removal. Those people in the latter category were never convicted or charged with a criminal offense. If those people who were apprehended and had final orders of removal, did not attempt to open their case with EOIR, and a travel document was given for the person to return to their country, they were removed from the U.S. often times receiving as they left a ten year ban on reentering the U.S. unless given written permission from the U.S. Secretary General or the Secretary of DHS.

There are competing interests between USCIS and ICE. USCIS is constrained by the number of applications they can process. There is a charge to immigrants for each application, so there is always an agency push for more applicants for lawful status. Although both agencies work under the same enforcement priorities, I've recalled several instances where a migrant's status should have been revoked, but was automatically renewed once the application was processed. Either because the crimes committed weren't annotated on a criminal history report or the agency failed to check. Further applications from that individual mean more money for the agency. ICE should be notified when an applicant is found to be in violation of immigration law to prevent further crimes, but mostly is not and must rely on trained officers to find and arrest these individuals. Even with realignment with the creation of DHS in 2003, there still seems to be a lack of communication between agencies because of competing interests.

The Present:

Day to Day Challenges of Enforcement

As an immigration officer with both the USBP and ICE, I've taken part in both border apprehensions as well as those in the interior. It was easier to justify all apprehensions with the USBP as those undocumented immigrants mostly jumped the international border fence and attempted to elude apprehension to make it north. We would follow groups using many forms of technology as well as simply following on foot. Along the way, these groups of undocumented immigrants would leave behind their trash as well as layers of clothing they would simply shed. An area that was frequented by these immigrants would have vast areas of trash and used clothing. These migrants not only pollute the environment but also leave the possibility of poisoning animals/birds by leaving their trash behind. As an agent not only was I enforcing the illegal entry law, but also attempting to stop any further littering of the environment.

Also as an agent with the USBP I would sit at the border in designated locations in a downtown setting and attempt to apprehend those seen jumping the border fence. On more than one occasion, I gave chase but had my scalp cut open by a tree branch in following the immigrant up a dark pathway on the side of a hill. I had to call in to communication and seek medical attention to get my scalp attended to. Often times when attempting to apprehend those near the international border fence, I was hit with rocks being thrown from the top of the fence. Rocks are rightfully considered deadly weapons as they can severely maim or kill a person if hit in the right area. In essence, there was an interest on multiple levels in apprehending these recent entrants.

My experience with ICE and interior immigration enforcement that happened on occasion, I recall sitting outside of a house of a female nurse who happened to have a final order of removal from many years before but without her having any previous encounters with law enforcement. It is possible she simply didn't go to her hearing, triggering an automatic removal order or she simply failed to obey the removal order. If we arrested her, she would have the right to reopen her case and try to stay in the U.S., vesting thousands of dollars with an immigration attorney. A good majority of the public would look at this as a travesty if she was arrested, but current immigration laws were being enforced, and with the ICE mission being actual removal of those ordered removed, it stresses the need to change immigration laws so quite possibly a non-criminal registered nurse must apply for lawful status or she risks being arrested.

Cases involving people without criminal records but with orders of removal were occupying beds inside of ICE contract facilities until they were released or removed. While I do acknowledge the other side, there are also people that have yet to be encountered by law enforcement but are themselves committing criminal acts yet to be detected, that ICE can

apprehend because of their removal order, there was a chance to obtain intelligence and possibly prevent future criminal activity, but there needed to be a better concentration of resources to primarily focus on the criminal non-citizen.

Obama Administration

Barrack Obama became President of the U.S. on January 20, 2009 and immigration reform was one of the top priorities of the new administration. Nevertheless, an immigration bill never passed Congress. Instead, he elected to use executive orders to shape priority enforcement. In my professional opinion, the lack of immigration reform and policies gave rise to sanctuary cities, a sense of entitlement amongst the undocumented population, assaults on border patrol agents, and continued to contribute to low morale amongst DHS employees. While focusing finite resources on border enforcement and migrants with a criminal record is a step in the right direction, laws should have changed to guide immigration enforcement officers and the public.

Immigration Enforcement

Priority Enforcement

There were previous versions of using discretion in immigration apprehensions, but I believe none affected the agency as much as those set forth in 2011 under Obama dealing with “prosecutorial discretion” in apprehension, detention, and removal of undocumented immigrants. Other law enforcement agencies use discretion every day. For example, a typical local police officer may look the other way when seeing a person illegally cross the street while focusing more of their attention on drunk drivers.

But in the March 2011 memo from DHS Secretary John Morton, it was declared that given ICE's finite resources, it was necessary to concentrate on those that would pose more of a threat to the community and national security interests. The agency did not want to have non-criminal visa overstays occupying a bed in jail while at-large criminals with final orders of removal were on the street. Saying that, the memo outlined three levels of priorities, Priority 1: "Aliens who pose a risk to national security or a risk to public safety". This included those suspected of terrorist activities, those convicted of crimes with emphasis on violent crimes and felonies or those with a criminal record, those involved in gang activity older than 16, those that had outstanding criminal warrants, or those who "pose[d] a risk to public safety." The emphasis was on criminals. Inside of this priority, different levels were applied, level 1 to 3, with level 1 being the most egregious criminal and level 3 being those convicted of crimes that had less than a year of punishment.

Priority 2 of the memo read: "The removal of aliens who have recently violated immigration controls at the border, at ports of entry, or through the knowing abuse of the visa and visa waiver programs shall be a priority" (Morton, 2011). By quickly removing new illegal entrants, however, this change in law did not give migrants a chance to establish themselves in the U.S., find any family related relief, or be hired. Previously, in many instances, undocumented migrants were caught at the border, and if they provided a U.S. address, were released and the court paperwork would be mailed to that address. This produced many removal orders in absentia because migrants often moved, failing to report their change in address. In many instances when the person was apprehended by immigration authorities, years later the court would reopen the case, clogging the system further.

Priority 3 of the report added that: “the removal of aliens who are subject to a final order of removal and abscond, fail to depart, or intentionally obstruct immigration controls” (Morton, 2011). This priority focused on those with recent outstanding orders of removal, with or without orders of removal. It also included those that are deemed a threat to the community, those who have not been convicted of a crime and previously removed from the U.S, as well as those who obtained entrance into the U.S. by fraud. It is an absolute benefit to all law enforcement to have a person of interest in a criminal investigation who also has a removal order or has yet to be seen by an immigration judge to be apprehended by immigration officials. ICE is still focusing on an immigration priority, while state and local law enforcement can speak to the person of interest in an attempt to build their case against the subject (Morton, 2011).

Recent Relief Policies for Immigrants

Following this memo, an announcement called “Deferred Action for Childhood Arrivals” (DACA) was announced in June 2012. This deferred action does not grant permanent legal status, however it grants temporary status to those that migrated to the U.S. as children and allows those migrants to work in the U.S. without repercussions. DACA eligible migrants can also renew their status provided nothing changes in their criminal history. To qualify for DACA persons need to be under 31 years old as of June 15, 2012; have arrived in the U.S. prior to their 16th birthday; had a physical presence in the U.S. since June 15, 2012, had no other legal status as of June 15, 2012; either be enrolled in school, graduated from high school, or obtained a GED; served in the U.S. military; not in any way a threat to national security; or have a criminal history. Applicants have to file with USCIS along with a \$465 USD fee (uscis.gov) and submit their fingerprints for background verification. Every person that ICE apprehends is verified to

see if they meet the criteria set forth in DACA. Even those persons that did not officially file for DACA, were treated as DACA eligible. If they qualified they were released, preventing removal. This holds true in the current Trump Administration.

DACA eligible participants were brought over to the U.S. as children and have as a rule led productive lives in the U.S. even without legal immigration status. A recent online survey of DACA participants has revealed that since the implementation of DACA, “Many are getting better, higher-paying jobs than they had before they received DACA. They are buying cars at high rates, and many are pursuing educational opportunities previously unavailable to them” (americanprogress.org). Immigration scholar Pilar Marrero (2012) summed up the situation finding that, “Most comprehensive studies carried out on this issue indicate that making full use of these young immigrants’ talents and abilities would have an unequivocally positive economic and financial impact on the country” (p.149).

There needed to be some aspect of immigrant child relief, and DACA was a good start. According to Marrero (2012) there were as many as 65,000 undocumented high school seniors graduating each year. And without any immigration status, they were ineligible for in-state tuition, leaving them each with thousands of additional dollars to pay if they wanted to go to college. Also, these people were ineligible for scholarships, and, due to their status, even if they graduated from college could have trouble getting a job. Part of this blame lies within the parents of the undocumented children in their lack of attempt to obtain immigration documentation for their children, often because they did not seek assistance for their families from any number of non-profit organizations designed to help undocumented families living in the U.S.

In November 2014, Obama expanded DACA by eliminating the age requirement and permitting eligibility to those that have been living in the U.S prior to January 1, 2010 with relief in the program expanding to three years. Also introduced was a program known as Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). In this program an undocumented migrant must have a son or daughter that is either a Lawful Permanent Resident or U.S. citizen as of November 20, 2014. Also, they must have been present in the U.S. since January 1, 2010, were not an immigration priority as stated in the John Morton (2011) memo, passed a background check, and not otherwise be a threat to national security.

Once this executive action was initiated, all persons that were apprehended were also checked for eligibility into either DACA and DAPA. And if they were deemed eligible, they were released right away. However, expanded DACA and DAPA executive actions were met with much resistance from individual states within the U.S. Texas filed a lawsuit with the U.S. District Federal Court in the Southern District of Texas, *U.S. v. Texas* 579 U.S. (2016), to stop the implementation of expanded DACA and DAPA citing among other things that both initiatives violated federal law. The case has made it to the U.S. Supreme Court and a 4-4 split was reached, affirming the lower court's decision to stop the executive order (supreme.justicia.com). This in no way affects the original implementation of DACA as immigration enforcement agencies still adhere to the policy present day.

Other Policy

In lieu of changing immigration law, another memo was circulated in November 2014, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants.” This document superseded all previous memos and further focused ICE’s enforcement priorities. Those with serious criminal history and/or those deemed to be a threat to national security were the top removal priority, however discretion was emphasized at the start of investigation so that resources could be further focused on those undocumented immigrants that were seen as a threat to the community. Also in this memo, more emphasis was placed on those with significant misdemeanors including domestic assaults, driving under the influence, firearms-related crimes, or controlled substance trafficking-related offenses. A further restriction was placed on final orders of removal in that a person without a criminal record, needed to receive their final order of removal: those without a criminal record who had established families and lived in the U.S. now had a chance to stay and not worry about apprehension and removal.

There continues to be fighting amongst elected officials in Congress for comprehensive immigration reform. A 2015 documentary on this struggle for immigration reform, produced by Frontline, “Immigration Battle” examines how Congressman Luis Gutierrez (D) (4th District, Illinois) headed the effort to give legal status to all of those undocumented immigrants living in the U.S. that had clean criminal records. He stated many times that President Obama could protect as many as 8 million undocumented immigrants currently living in the U.S. The documentary also presented stories of children, called “DREAMers” who are scared their undocumented relative may be removed from the U.S. This child-driven activist group came from President Obama’s failed legislation, “The Dream Act” which attempted to give legal immigration status to millions in the U.S.

Congressman Gutierrez felt pressure from Latino groups to get something accomplished and end deportations. In 2013, even with DACA and Temporary Protective Status laws in place, there were still 1,000 deportations a day, earning President Obama the title, “Deportation Officer in Chief”; he has removed more people than any other president in history. Obama approved enforcement priorities that sought to protect families and attempted to pass further immigration reform in the DREAM Act. Above all, however, it is rather the job efficiency of immigration enforcement agencies that accounts for rising removals. These officers who have gained more resources, and are able to find and remove those people that are enforcement priorities that is, violent criminals, all while still staying within the guidelines previously set forth by President Obama.

Although executive actions are looked upon by some critics as circumventing Congress to enact policy, Associate Professor at the University of South Carolina, Maria Zug (2015) argues that “Executive action regarding deportation priorities provides uniformity and predictability and prevents discrimination” (p.958). And from an enforcement perspective, these executive actions do provide more focus for the limited resources, establishing clear immigration priorities. Still, ICE enforces immigration law (which can change only with an act of Congress), not policy (which can be changed any day), so the constant changes greatly and directly affect employee morale because of either confusion from management about what officers can enforce, or simply not knowing what will change in the future.

Morale

Although there has not been a change in immigration law since the mid 1980's, immigration enforcement has gone through a number of policy changes since 2010 that not only affects those residing in the U.S. but also employees charged with enforcing immigration laws. In the past, it seemed much easier to go apprehend all final orders of removal regardless of their living situation or prior history in the U.S. However, when sweeping changes came about, some highlighted above, there developed a level of uncertainty amongst employees of every level as to what might be coming next. Like any position in law enforcement profession, employees at ICE and the USBP take pride in their jobs in enforcing the laws they are designated to enforce.

The difficulty with policy changes are for example, on a number of cases I have experienced, criminal judges in the state of Maryland have changed convictions and sentence length of offenders to help with their immigration case. What is the reason for giving a 10 year suspended sentence to a person who lacks immigration status, only to change the conviction and sentencing length to 364 days that same day?

Changes in policy are immediate, and give no allowance for adjustment or training to the officers other than basic review by attorneys of the agencies to the officers. Agents were no longer allowed to enforce a law, but had to review policy memos for our enforcement capabilities. For instance, illegal entry is still a crime in the U.S., 8 U.S.C. 1325. However, if a person was encountered by ICE during normal operations and found to have illegally entered the U.S. but had no criminal convictions, per enforcement priorities that person was not allowed to be apprehended. This practice, however, serves to create a sense of entitlement among the undocumented population. The seemingly capricious shifts in policy greatly affects morale within an organization.

Bestplacestowork.org analyzes the Federal Employee Viewpoint Survey completed by the Office of Personnel Management (OPM) every year. It is an on-line survey completed by more than 420,000 federal employees across 391 federal organizations. These organizations are broken down into three levels based on number of employees-- large, medium and small--with large agencies having more than 15,000 employees. DHS is categorized as one of 19 large agencies within the federal government. Amongst these organizations, DHS ranked last in 2015 with a score of 43.1 in relation to employee job satisfaction. Also, amongst all effective leadership categories, DHS also ranked last.

This survey also ranks sub-agencies within a large agency as to their job satisfaction. Amongst 320 sub-agencies, ICE ranks 318th with a score of 33.4 and CBP (the parent organization of USBP) ranks 313th with a score of 40.5. Interestingly, ICE scores have fallen since 2010 when it was over a score of 54. It is difficult to look at one particular item regarding employee satisfaction because working conditions are different depending on which part of the U.S. an employee of ICE or CBP may work. However, it is not difficult to surmise that changes in policy have a direct impact to the employees it affects.

Job of the U.S. Border Patrol at the Border

I started working for the USBP in 2006 when there was a big hiring push to “secure the border” from terrorism and illegal immigration. When I started a majority of the border fence looked like patch work from pieces that were recovered from a junkyard. There were holes that constantly needed repair with new holes arising daily. Those on the Mexican side would constantly tear away at the fence in order to gain easier access to the U.S. For a majority of the fence, we could not see on the other side adding another element of danger because of the

constant threat of rocks being thrown in our direction. The deployment of the U.S. National Guard helped in the construction of new fencing as they installed a fence that resembles piping where we could easily see what is on the other side and not have to approach the border fence with such caution.

While I was at the USBP Academy in Artesia, NM they started having two classes enter on duty a week. This created an overcrowded situation in many of the common areas. Rooms that were designed for two occupants had four who also shared one bathroom. With that many new agents, it was my original thought that there would be too many agents at the border. And when I arrived at my station with over 500 border patrol agents, I again thought we would be standing on top of each other every fifty feet on the border road. I was wrong.

In Nogales, Arizona there are non-stop rolling holes, valleys, ridges, and constant rough terrain, expected to be patrolled for undocumented migrants. It would be nearly impossible to cover every part, of just that area, let alone the rest of the U.S./Mexico border, even with over 15,000 border patrol agents. Often times when my partner and I would go on long hikes through canyons sometimes totaling four hours, we would be the only agents in a 5-mile stretch. Radio communication would be unsatisfactory at times and cell phones reception would be almost non-existent unless we used a Mexican tower that had stronger frequency. On many occasions we would uncover large groups of people predominately from Central America, sometimes 50 plus, or drug mules that were carrying 50lb sacks of marijuana on their backs for pick-up at a designated spot. These groups knew that detection would be highly unlikely in these remote areas, however they remained on watch. The handlers of the groups, called "coyotes," would send scouts ahead of the groups to look out for any USBP agents or those looking to rob the groups of their valuables they were traveling with. More times than not, the scout would spot us

before we saw them and have their group find hiding spots to wait for us to pass. Even more so, drug mules who would only be traveling with 4 to 5 people would remain on the high ground to keep a constant visual of us. Because the terrain is so rough, even skilled and knowledgeable agents had a hard time remaining at the high point of view and would not know when they themselves were being watched by someone else.

It is true that many of the agents would be assigned downtown responsibility to push the migrants further out west away from the city. However, large groups of migrants would never attempt to cross in the city areas. The Border Patrols concentrated enforcement in city areas have pushed migrants to cross in more desolate areas, but the coyotes would certainly have their groups cross further out to avoid detection even with equal distribution of agents in the cities and desert. It would not be wise to cross a group of 25 to 50 people all at once downtown, and if they were broken up it would take longer with a lower success rate in the downtown area.

Farther out in the desert, there is more of a possibility for migrants to go undetected. Even if a group is stumbled upon there is a greater chance of them getting away because of the sheer numbers of people involved. To my astonishment, even with the constant presence of the Border Patrol in downtown areas, there are still people crossing like we were not even there to begin with.

The adaptation of technology has greatly helped the detection of those unlawfully entering the U.S. From 360 degree movable cameras downtown, sensors buried in the ground on commonly used trails, trucks set up at high points along the border that are equipped with heat sensing high resolution cameras, to helicopters in constant communication with ground agents, on the surface there would not be person we could not apprehend. Still, when a large group or drug mules are spotted, most agents assigned to that area would concentrate on that group and all

else is forgotten. This is not to say that if we saw other people we would let them go, it was just that for safety purposes it would be necessary to dedicate as many as possible to apprehend what we saw on the cameras or those that tripped the trail sensors. This would go for the downtown areas as well. If a group of four were spotted jumping the fence and running down the street, agents would cover as many avenues of escape as possible while the cameras told of their location. Other groups or those with narcotics would cross shortly after and go undetected because of the concentration on the first undocumented migrants.

Being a new agent I often worked static positions at the border in vehicles called “rock proofs.” These were government vehicles that had metal cages attached to every piece of glass on the outside of a vehicle that could break if hit by a rock. Hours would go by sitting at the border fence and nothing would happen or be seen by cameras. Then seemingly out of nowhere a shower of rocks would rain on the vehicle that would gain the attention of all involved agents working in the downtown area. Because of the situation of the border fence, we could not see who was throwing rocks or how many they had to throw at agents. Sometimes people on the Mexico side would sit on top of the fence and throw rocks at USBP agents on the U.S. side. We saw this as a distraction but we could not ignore that it was happening. Mexican police would be called and a few minutes later they would be seen on camera rolling through the area where rocks were seen being thrown on camera. The Mexico/U.S. border along the southwest is a violent place to work, and savagery like this cannot be ignored.

The U.S.B.P. not only attempts to control illegal border crossings, but also utilizes immigration checkpoints within 50 miles of the international border in an attempt to apprehend undocumented migrants. Every vehicle is stopped on the highway at a designated spot and the occupants are asked their citizenship or to provide documentation supporting their claim. When

there is reasonable suspicion of either drug-related criminal activity or immigration violations a vehicle is sent to secondary inspection for further investigation in an attempt to not further impede the flow of traffic. However, there are times that traffic would be backed up and traffic would be “flushed,” meaning all vehicles are sent through and not questioned.

At secondary inspection, the assigned agents ask further questions of the occupants of the vehicle about their country of citizenship. Buses or transport vans with multiple people would always be sent to the secondary zone for further inspection. This takes skilled agents that have great knowledge in the area of document fraud or being able to detect those trying to be deceptive. Even with skilled agents, there is always a large amount of traffic depending on the time of day so there would be a rush to get the people on their way.

At the checkpoint I was assigned, there was an exit ramp shortly before the established checkpoint that would often be used by people to avoid detection. Also, agents would be on patrol on vehicle and on foot before and after the checkpoint to find those dropped off shortly before the checkpoint and picked up right after. The same kind of technology would be used to detect those walking in the desert as those on the border, but again it is a numbers game. There were not enough agents assigned to such a vast mountainous area to be able to detect a large percentage of those crossing on the border. In FY 2016, the USBP reported 408,870 apprehensions of undocumented migrants at the border, a number that does not include those who got away (USBP.gov).

Apprehensions

When a person is apprehended at the border by a USBP agent, they are quickly interviewed, the information is documented on a field interview sheet. In Nogales, there was an agent assigned to transport that would take those people to the station for further processing. There they are formally fingerprinted and asked if they claim any fear to return to their country. It is my experience that most of Mexican descent who had no previous criminal history and very few crossings on the border would opt for a “voluntary return” to their country. They would sign a paper saying they wanted to return to Mexico and we would put them in a van, drive to the border, and watch them walk back across into Mexico. While in detention, everyone would be separated according to gender, criminal history, and type of case. For instance, all returns would go into one room. Every couple hours everyone in detention would be given food and drink until they left the facility. Their property would be bagged up and they would be given a property tag to retrieve their property when they left the facility.

Other people from countries other than Mexico, those with more serious cases or repeat offenders have their paperwork filled out to see an immigration judge or have their removal order reinstated. They would be sent further north for processing. At any time a person can express fear to return to their country regardless of their case history and an interview with an asylum officer is immediately set up with future referral to an immigration judge if the asylum officer believes their fear is reasonable or credible. All documents signed are given to the migrants so they can show their family members or their lawyer. Also, while there is not an assigned public defender, migrants are given a list of free or low-cost lawyers that will represent them in immigration court if they are attempting to remain in the U.S.

The overwhelming majority of apprehensions by the USBP are of Mexicans (192,969 of 415,186 in FY 2016). Some see this as racist, in that the border patrol is only going after those

of Hispanic descent. Yet it is my experience that agents go after those that cross, no matter the skin color. In different areas of the border, there are different ethnic groups that cross. For instance, in Texas there are more apprehensions involving those of Asian descent than in Arizona. If we happened to come across an Asian or African that did not speak English, we would get an interpreter and set those people up to see an immigration judge because more than likely they are looking to claim fear in returning to their native country. U.S. immigration encounters more from Mexico because as Ravenstein held, “The volume of migration decreases as distance decreases” (jrank.org).

USBP Training

USBP agents are well trained today, but this was not always so. Indeed, in the early 1920s the USBP agents received little training. As a result, agents would just pick out those who looked different than a typical American at that time. Today, according to the CBP website, “Each Border Patrol Agent trainee must complete a 19-week resident course of instruction in integrated law, physical training, firearms instruction, driving and Spanish. Border Patrol trainees must maintain a passing score in all courses of instruction in order to be retained” (cbp.gov). Each area requires at least a 70 percent passing score. And because the predominate amount of encounters involve those who speak Spanish, an 8-week course is also given to the agent for basic understanding of the language. Many courses at the academy have tests on the same day, so it is imperative that the student master many areas of study at once to pass the academy.

Also, at the stations, many agents are given post-graduation study involving more immigration law, Spanish, the science behind tracking people, and area familiarization. In total this training takes up the first year of employment with the USBP. Just like in regular local police work, young agents are teamed up with more experienced agents to show them how to become a successful border patrol agent while maintaining a certain degree of safety. At no time is an agent told to target a specific group of people or look at those that do not resemble “Americans.”

Criminal versus Administrative Process

A lot of attention has been given to fact that the arrests made by immigration officials are without a judicial third party review. Because the process is administrative, detainees are not given a public defender to represent them in removal proceedings like they would have in criminal cases. However, although some of the processes that are followed are not the same as in a criminal case, mainly because the administrative system is not set-up the same way the criminal justice system is, there are still checks performed so as to not violate civil rights.

First, an officer’s supervisor must review the file of every person targeted for arrest, and then sign an administrative arrest warrant. The supervisor must make sure that the targeted individual is either removable or ICE lawyers believe that they will prosecute the individual upon apprehension. While immigration officers enjoy the right to be able to question anyone of their citizenship, authorities must also be in a lawful place to do so and make sure the person of interest is a priority.

During the pursuit of the individual, immigration officers must obey the same laws that local police must follow. Agents have to always keep in mind the protections given to every individual including a subject's protections against unlawful search and seizure.

In many instances immigration agents must gain consent to do anything, and permission can be revoked at any time when attempting to execute an administrative warrant. The public does not have to answer the door when agents knock. Agents cannot tell occupants to vacate their residence. More recently we have had to make most of our apprehensions on the street outside of homes because individuals realize they do not have to allow us in their homes.

When the person is arrested by ICE in the interior of the U.S., the individual is searched and their property is inventoried, just like any apprehension at the border. For instance, ICE in Kansas City, MO received verification that an individual of interest who was a citizen and national of Peru was just released by a local adult detention center. The person was fingerprinted upon their intake into that local facility for a driving offense and their fingerprints matched that of a person who has been previously convicted of a prior assault in which they served over a year in jail. The person now becomes a target of enforcement.

The assigned ICE officer has the target's pertinent information and begins to create a folder which has the target's total criminal and immigration history from when they first entered the U.S. The criminal court documents are requested, and once received are given to ICE legal counsel for review. Once they agree to pursue removal charges against the target the administrative warrant is filled out and given to the officer's supervisor for review. After the supervisor signs off on the warrant, the officer begins to see if they can locate the target. As a note, most times when a person enters the U.S. at a place other than a port of entry, there is no

immigration record of the individual. Therefore, agents have to interview the individual before arrest to determine if they might have any type of immigration status.

After some investigation, the target is usually found and brought to the ICE office to start the immigration process. The person is fingerprinted and photographed, where his or her fingerprints are matched against what is available in criminal and immigration databases. Once the identity is confirmed, it is here the formal paperwork is given. This may include the charges the person faces in immigration court. A file number is assigned to the person; they will have that number throughout their entire immigration history in the U.S. The person is also given paperwork that includes a contact sheet for free or low cost lawyers, the right to contact their embassy, a phone call to loved ones, and copies of all documents that will be submitted to the immigration court. The person will also be notified which detention facility they will be housed at, and transported there later that day unless they can pay their bond and be released.

While in criminal proceedings the first appearance must be held within 24 hours of arrest, that is not the case in immigration administrative proceedings. Cases are scheduled by ICE legal counsel once the documents are sent to the court. It is of interest of both parties to get the process started since individual ICE offices must pay contract facilities every day per bed used.

While the person is at an ICE contract facility they enjoy several benefits as set forth in the 2011 Performance Based National Detention Standards. For instance, there must be at least an hour of recreation every day, access to a telephone, as well as access to a legal library so persons detained may review their cases. The detention facility is also visited by assigned ICE officers who can update those detained on their cases and explain what the next steps will be. Having been in supervision and dealing with contract facilities, they do have their issues. For instance, a particular incident I recall where persons detained were not receiving their mandated

recreational time had to be addressed with supervision at the detention center. To prevent issues like this, monthly meetings are held between facilities management and ICE detention management to correct any issues that may have arisen during the previous month. There have been several documented cases of mistreatment or harsh conditions, and those issues need to be resolved as quickly as possible. It has always been my experience that concerns that have come about in detention facilities have always been corrected swiftly.

In the above example, the person from Peru received a final order of removal. It was then the job of the ICE officer to obtain a travel document for the individual and update the person detained. In this case, the person had their expired Peru passport, so that was submitted to the embassy for review. Once the embassy interviewed the person and documented the person was from Peru, they issued a travel document and the officer scheduled the person for removal via commercial flight. Upon removal, the person was given copies of their removal paperwork and the original was kept in the person's immigration file for future reference.

The above example was a common occurrence within the immigration process. There are certainly instances where a person has extended stays while in immigration custody due to any number of reasons. For example, if a detainee has a major health issue arise and must be hospitalized, also a detainee may have a fear claim that needs to be adjudicated for release or removal, issues with acquiring a travel document because not all countries cooperate with ICE, scheduling of flights for removal, or in some cases the detainee simply would not cooperate with ICE.

Major issues arise when people look at the criminal justice process the same as they would the immigration process. Immigration officials can make warrantless arrests and question anyone in America about their citizenship under Section 287 of the Immigration and Nationality

Act. A majority of ICE arrests come off of targeted enforcement which involves creating a work file by supervisory immigration officers with the approval of legal counsel. It is correct that this is not the same process as the criminal justice process as the warrant is issued by a third party, magistrate judge or commissioner. However, as an immigration officer I can state that officers act within the constraints of the law and current immigration enforcement policy. Also, we come across other people when we are looking for a specific person. When identity cannot be ascertained, field biometric scanners are used to determine who a person really is. Without field fingerprinting devices, agents would have to bring everyone to processing offices, which could end up being a waste of time for all involved if the person turns out to not be a target of immigration enforcement. For instance, if immigration officers are looking for person "A" and officers see a person with similar physical features as person "A" exiting the same residence where person "A" supposedly lives, that person is stopped and questioned. For verification purposes, the person will be fingerprinted on the portable scanner to determine identity. And if according to the results it is not person "A" but person "B" and "B" turns out to be an immigration priority, immigration officials would bring the person to the office for further processing, while others still look for person "A."

A necessary change to immigration enforcement would require that administrative warrants be reviewed and signed by an immigration judge or a neutral third party. The enforcement of these warrants would have the same parameters, but this would take away the public's concern of rogue immigration officers that provide false information to arrest someone.

Adding more judges to rectify the problems of detainees waiting in detention centers to have their first hearing before an immigration judge would ease delays. Detainees should have at

least an initial appearance within 48 hours to hear the charges brought before them and asked how they wish to proceed.

Immigration Detention

Immigration officials placed nearly 440,000 people in detention centers across the country in 2013, down from nearly 487,000 in 2012. Although the immigration process is a civil procedure in nature, many view placing those in immigration detention as too similar to the criminal justice process, but without the benefits of constitutional limitations that inmates in jails enjoy. Jennifer Chacon, a law professor at the University of California Irvine agrees stating, “Detention is punitive, and is experienced as such by immigrants. Immigrants in detention feel the punitive force of separation from families, inadequate conditions of detention, demeaning treatment, and lack of easy access to medical services” (Chacon, 2014, p.623). Cesar Cuauhtemoc Garcia Hernandez, a visiting professor at the University of Buffalo (Sturm College of Law) in “Immigration Detention as a Punishment,” shares this view, that immigrant detainees being held in the same place as criminals gives them the same stigma and label which should not be for a civil process.

ICE contracts roughly 257 detention facilities around the U.S. which are operated by state and local agencies as well as for-profit corporations (Torrey, 2015). I’ve worked in contract facilities as well as family-based residential camps. Contract facilities are in agreement with ICE to house immigration detainees while they are going through the immigration process. These facilities must adhere to certain detention standards, typically the 2011 Performance Based National Detention Standards. These standards give baselines that must be met by the detention

facility otherwise the individual ICE office as well as the contract facility will be given a negative rating by independent reviewers through ICE headquarters with certain punitive actions afterwards. This is so both facility and the field office work together to achieve a common goal.

For instance the guidelines read, “All detainees shall be provided nutritionally balanced diets that are reviewed at least quarterly by food service personnel and at least annually by a qualified nutritionist or dietitian” (4.1 Food Service, 2011 PBNDS). When offices and facilities are audited for compliance, a standard like this is checked for adherence. If it is found that the facility is not in compliance, they are given a specific time frame to correct this deficiency and must show evidence that they now comply.

In local and state facilities that house immigration detainees, there will always be the relation between the local inmates and immigration detainees simply because they may both be wearing the same clothing and have to share the same facility. There are simply too many detainees for ICE to create specialized independent facilities for these individuals, and a better option would be to enter into contracts with state and local agencies. On average, a detainee costs ICE \$126 dollars per day to house (DHS, FY17 Budget). Because these detainees are in these facilities, the facilities run the immigration part of the facility as long as it is within the standards. This is a constant with every facility across the country. And a point to remember is, ICE detainees are able to leave the facility through the process of immigration court or interviewing with their embassy representative, so the facility where the person is being held does not want the detainee bringing back anything that could potentially be passed off to a local inmate or other detainees. This requires that the detainee be searched, sometimes strip searched to make sure the facility remains free from weapons or contraband.

In the facilities, detainees are classified according to their security level. These levels are illustrated in the 2011 Performance Based National Detention Standards. Those with low level, non-violent offenders are placed together, and the same goes with those that have a violent criminal history. This system has its flaws, as I have witnessed on several occasions, those affiliated with criminal gangs and prior low level offenses would be placed with other low level criminal history detainees because the criminal gang members lacked the documented criminal history needed to be placed in with violent offenders. Usually after a few days the other detainees express their concerns and the gang member starts threatening the other detainees in their area. The gang member is separated and moved to their appropriate grouping.

Often a point of contention is the amount of stay in detention a person has while in immigration custody. While the primary goal for anyone in ICE custody who is not in the U.S. in accordance with the law is to be removed, there can be a number of reasons why the person remains in custody. For instance, the country of which the person is a citizen may have an embassy not cooperating, or the detainee may be asking for continuance days while they locate an immigration attorney.

Mass removals to Central America or voluntary departures to Mexico for example can create a view that most that are quickly out of custody and removed, however some immigrants can stay in custody a year or longer while their hearings take place. In recent years, placing immigrants in long term detention has come under scrutiny. However, the U.S. Supreme Court ruled in 1896 in *Wong Wing vs. U.S.*, 163 U.S. 228 (1896), that “detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens”. Detention for immigrants is according to Chacon (2014), “simply a holding

mechanism used to allow the government to effectuate its civil immigration enforcement goals” (p. 623).

Depending on the individual case, detainees are given bonds to be released from immigration custody if 100 percent of the bond is paid by the obligor. However, lawful permanent residents (LPR) are often statutorily denied bond because their prior criminal history does not allow them to receive a bond according to Illegal Immigration Relief and Immigration Reform Act (IIRIRA). In order for an LPR to be brought into custody, they must have committed serious offenses including felonies and crimes involving moral turpitude that have a sentence of a year or longer. Because of that, it is against current law for them to be offered a bond. Often times they are the people with the most ties to the community where they live, and the most to lose should they be removed, but are held in custody without a chance of release unless given a favorable judgment by the immigration judge, that is until they win their case. I believe a change to the law in this regard is necessary because of ties to the community and the fact these individuals often have home, businesses and vehicles in their names. A case-by-case judicial review for the opportunity to be offered bond would be better.

As one immigration detainee noted, “The inmates are compelled to enter and stay. They sleep in dorms arranged body to body. They ask permission to go to the bathroom. Their hands, feet, and waists are shackled when they are moved from place to place. In other words, they are prisoners” (Hernandez, 2014). As stated above, around 80 percent of ICE detainees are non-violent offenders, but everyone in custody must be treated the same. Detainees are put into restraints (handcuffed in front, attached to a chain that goes around their midsection, with ankle cuffs) for the safety of officers and the general public. It is not a viable solution to let everyone

walk around with their hands and legs free in the hope that all would always follow all directions from officers.

While ICE operates under civil detention and attempts to constantly raise detention standards so detainees can fight their cases and remain in the U.S., in my view ICE also has an obligation to the communities they serve while still operating under the constraints of civil enforcement. For instance, should a person with multiple driving under the influence (DUI) convictions and no legal immigration status be given a bond and released? Should a recent lawful permanent resident that was convicted of domestic violence be released and sent back to the same household? Having laws that categorically deny bond to individuals with violent criminal histories would be a better practice.

Scholars view the current state of immigration detention as punitive in nature that offers little protections compared to the criminal process. However, ICE is acting within the constraints of the current law. Before President Trump took office, very few non-citizens were held in detention that did not have a criminal record designated as a priority from the November 2014 memo written by former Secretary of Homeland Security Secretary Jeh Johnson concerning immigration enforcement.

Another recent development in immigration detention is the rise of family-based residential centers. My observation of these facilities has shown them to be quite different than typical detention centers. First, all people in the facility are called 'residents' and are more or less allowed to move freely throughout the campus. There were designated hours where residents had to stay in their rooms, but typically this was so they could sleep. Activities were set up for all members of the family, and there was on-site medical staff and food service personnel. Upon arrival to the camp, residents are given health screenings and processed as

typical noncitizens. They are given room assignments, clothing, food, and an introduction regarding the facilities available to them while they were there. These facilities also adhere to every aspect of the 2011 Performance Based National Detention Standards.

According to the 2015 Border Security Report, the USBP made a total of 337,117 apprehensions nationwide of undocumented migrants that entered the U.S. in FY 2015. Of those apprehensions, 39,970 were unaccompanied children and 39,838 were family units. These numbers were a decline from 2014. Because of the thousands of families that have entered violating U.S. immigration law, there needed to be a place to temporarily house the families and start the immigration process

Immigration hearings would also take place either at the facility or via video. No one stayed at the facility longer than 30 days because of either removal, transfer of their immigration case, release on bond, or cancellation of their immigration case.

Most residents of these facilities would get apprehended by the USBP at the border and are then transported to these facilities. Transportation can take a few days because of the distance from the border to these residential centers. Mich Gonzalez, a staff attorney from the American Friends Service Committee described these facilities as the new internment camps, stating, "We cannot sit idly by and watch as these gross human rights violations continue to be justified. We must all stand up and shut these facilities down" (afsc.org). Gonzalez was referring to what he witnessed during a week-long visit to the Karnes City, Texas Residential Center. He worked pro-bono as an attorney to represent the residents. Residents complained their rooms were too cold at night, with often 8 to a room.

Grassroots Leadership produced a video titled, “No Sanctuary: Big Business and Family Detention,” where they highlighted immigrant stories of those held in family detention. The video highlighted the struggles mothers and children had to endure in their home countries as well as in family residential centers in the United States. An immigrant mother spoke of fleeing her home because of domestic violence from her father. Upon arrival to the U.S. she discovered her daughter had a brain tumor and needed medical attention. She claimed while she was in the Karnes Residential Center, a privately run facility, her daughter did not receive the treatment she needed. However, with the help of pro-bono attorneys, she was able to be released from Karnes into an immigrant family-based center.

It is my experience that family-based detention centers are a way for the families seeking asylum in the U.S. to have their cases heard before an immigration judge, and if released will have lawful status so they will not have to live in the shadows as undocumented immigrants. In these cases, the system worked. If not detained, where would these families go? How would these families survive in the U.S.? The process brought legal status and save resettlement.

Officers that have worked other family residential centers have spoken of the quick turnaround that families receive in these facilities. No family stayed an extended period of time; they would be released and told to report to the ICE office closest to the place they claimed they were going to live. Resident centers with periodical reporting to ICE offices, is a way to keep track of those entering the U.S. without documentation and with asylum claims. It is a better way of dealing with immigration.

Opponents of residential centers speak of the cost to taxpayers per day and the income private contractors generate that run the family-based facilities. Yet there remains great demand for these centers with a backlog in 2016 of over 620,000 asylum based cases in immigration

court, it is better to have the cases documented and going through the process than to have cases being denied years later because applicants missed the 1 year asylum cut-off time deadline.

According to the American Immigration Council, there is currently a three to five year wait for asylum cases to be adjudicated. However, although a large number enter from Central and South America that claim asylum, only about 10 percent of those granted asylum came from Central and South America in 2014 (americanimmigrationcouncil.org). Without a change in the law, these asylum seekers from Central and South America likely at some point will be removed. It is my experience that a number of asylum applicants withdraw their application because they no longer want to be detained or it costs too much money to retain a private attorney while they are detained. A change in this process is warranted. A study by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University showed that persons represented by attorneys had greater success in asylum cases (trac.syr.edu). These individuals all deserve representation.

While there are several holes in the administrative system concerning immigration enforcement, where to house families or unaccompanied children caught entering the U.S. without permission as well as changes to the current immigration law updated to the current needs of the country would relieve some of the concerns. Nevertheless, until legislators make changes to the current immigration laws, authorities, that is, people like me must operate within constraints of the law. Even if the law seems quite unfair at times.

The Media and Immigration

Information can travel so quickly because on the internet and our smart phones, but often the public is given information about immigration that is misleading. For example, theguardian.com published an article highlighting the 2015 killing of Terrance Kellom in Detroit, MI. Marisa Franco and Paromita Shah stated, “It was an ICE officer who pulled the trigger” (theguardian.com). The link to the story refers to an article on cbs.com, “No charges against officers in the Terrance Kellom Shooting.” In that article, it speaks of an ICE “raid” that led to officers to the doorstep of Kellom. However, ICE does not participate in raids when going to someone’s home for an arrest. ICE either performs scheduled operations with certain objectives, like arresting those in a certain area of the U.S. with multiple DUI’s and outstanding order of removal for example, or regular targets of enforcement which are completed every day by ICE Fugitive Operations. In either instance, all persons targeted for arrest are targets of enforcement, and Kellom would have been no different.

The CBS article quoted Wayne County, Michigan State Prosecutor Kym Worthy who went over the events that led to the death of Kellom. Ms. Worthy pointed out that Kellom was hiding, and then shouted out, “I have a gun. Shoot me bitch, kill me.” Once anyone says these words, officers are on high alert because of the threat of deadly force. Officers had a legal right to be in the home and moved around the home to find Kellom. It is my experience that movements by officers in these types of situations are slow and methodical because there is no guarantee as to who or what they will find in the home including any innocent bystanders or children. The article stated that Kellom appeared with a hammer, was ordered to drop the hammer, but refused and stepped towards the officer. A shot was fired, but Kellom continued to advance, and that was when deadly force was used until Kellom could no longer advance towards the officers. In

instances like these, an internal investigation is immediately performed and the officer is given administrative leave because of the investigation of killing another person and the stress caused to the officer. Prosecutors found no evidence, based on the facts of the case to charge the officer with homicide, however articles like the one published in the *Guardian* conveyed to the public that instances like these are not investigated both internally and by outside agencies.

The American Civil Liberties Union (ACLU) has published several “Know Your Rights” brochures including, “Know your rights when asked about your immigration status.” The pamphlet starts off with, “You have the right to remain silent. You do not have to answer questions about where you were born, whether you are a U.S. citizen, or how you entered the country.” This is correct that all people may remain silent when dealing with law enforcement, but because immigration officials can make warrantless arrests if there is probable cause that the person is in the country illegally, remaining silent will most likely result in at least a brief detention for a mobile fingerprint scan to find out if the person has ever been encountered by U.S. immigration before. Answering to your status immediately can avoid wasted time by officers as well as the person being questioned.

Another “Know Your Rights” brochure published by the ACLU, “What to do if immigration agents (ICE) are at your door” includes advice for people that it is safer for people not to answer the door when ICE knocks unless they have a criminal warrant, and in all other cases state, “I do not consent to your entry.” Because ICE operates in target enforcement, the reason officials are at any door is because there is evidence the person of interest is at that residence. On multiple occasions, I’ve knocked on doors and the door never opens. However, more hours are wasted in this regard because I had to wait outside of residence for the person to appear. When a person does not answer the door, the investigation in that case is not over. It

remains open until the person is either arrested, changes immigration status, or appears at the immigration office for further questioning. Opening the doors allow officers to move on to the next residence if the person of interest is not there.

Also included in both brochures is the advice not to sign anything without consulting a lawyer first. Because immigration does not provide public defenders, the money must come out of the pocket of the arrested or questioned subject. And to not sign anything does not stop the immigration process. In fact, there is nothing that is signed by the subject that initiates the removal process. A person may refuse to sign everything and be removed or refuse to sign everything and win their case. A person may also sign every document with the same results. I've seen refusal to sign cases in federal court where the defendant is viewed negatively when trying to be released from custody because they've refused to sign every document once removal is ordered by an immigration judge. Signing documents still allows a person to file appeals and attempt to stay in the U.S. It is the evidence that the subject provides that matters in the case. Also, documents are given to every subject including low cost or free attorneys available in the area, consular notification, notification of rights for El Salvadorians, notification that case custodial status will be available for family to see, etc. A refusal to sign these documents to simply acknowledge receipt is against the interest of the subject. Copies are also given to every subject on every document they sign to keep, give to a family member, or a hired private attorney. Also, every document is translated to the recipient in the recipient's language of choice.

Publishing rights for the general public when dealing with law enforcement including immigration is educational and informative. But, I have encountered several individuals that misunderstand their rights. For instance, a person matching the description and photograph of a

person of interest got into a vehicle documented as the person of interest's vehicle. Officers approached the vehicle and asked the person to put down their driver's side window. He refused, and also refused to identify who he was. We sat there for hours waiting for him to cooperate, asking simply that he lower his window and identify who he was. Eventually, after making several phone calls and videos, he opened his door and was apprehended. The same thing happened to him that would have happened hours earlier, except in the arrest narrative we wrote, "Refused to comply." This is one of the factors that can go into determining the amount of bond a person receives before seeing an immigration judge.

Sensitive Locations

ICE and CBP have set out policies that articulate where immigration enforcement is not allowed except in matters of national security or emergency. Particularly these are at places of worship, medical treatment centers including hospitals, rallies or protests, and schools. Recently, courthouses have also come under scrutiny as a place that immigration officers should not be allowed to make arrests. Maryland Attorney General Brian E. Frosh recently wrote a letter to ICE and CBP, "I am concerned that the Administration's aggressive new policies will discourage the most vulnerable immigrants from seeking judicial protection and medical care, which will cause avoidable injuries and potentially even deaths" (baltimoresun.com).

Courthouses are a place where immigration officers can make safe arrests of targeted subjects without any public involvement. For instance, in the past I've visited courthouses, shown my administrative warrant, and when the case is over the person is turned over to my custody by allowing me to pick the person up in lockup below the courthouse. Now in most

cases without a criminal warrant, the person must be followed out of the courthouse and be a safe distance away to make a lawful arrest. This puts everyone in danger, including officers, the public, and the arrested subject. On most occasions, the person being targeted at the courthouse has been investigated and is found to be in the court without status or has violated their status in some way with prior criminal convictions. Immigration officials are not at courthouses to put anyone's life in danger or cause any harm whatsoever. It is simply to affect an arrest for removal or to start the immigration process. In the *Baltimore Sun* article, a case was highlighted where a female was arrested by immigration officials at a courthouse in Texas who was pressing charges on her boyfriend for domestic violence. This female had several prior removals from the U.S. along with a criminal record, information which was not included in the article.

Frosh went on to explain that parents are afraid to send their children to school because of the fear of immigration enforcement. It is my experience that immigration officials have never arrested any child at school and arresting children is highly discouraged unless it is a matter of national security or some exigent circumstance. In my career, I've never seen or heard of a minor arrested by immigration authorities at a school.

Sanctuary Cities

A "Sanctuary City" is a city where policy directs local law enforcement on patrol and in detention centers not to cooperate with federal immigration authorities including not honoring immigration detainers (cis.org). According to the Center for Immigration Studies, there are 300 identified sanctuary jurisdictions by ICE as of September 2015, with more than 17,000 rejected detainers in these cities. Currently available on the ice.gov website are exact illustrations of

detainers that were not honored. There are a number of reasons cities seek to protect undocumented migrants including strains on families should the person be removed, strains on the economics and workforce in the cities where undocumented migrants live, and for political reasons. Many of these cities are Democratic Party strongholds with strong immigration ties, so it is in the partisan interest of the elected officials to protect those migrants without status. In “Sanctuary Cities and Watch Dog Politics”, Associate Professor at the University of Denver, Christopher N. Lasch, discussed the fact that with the implementation of Secure Communities, the amount of detainers filed increased ten-fold so cities fought back by setting policies that directed law enforcement to not honor detainers. What is often seen as a major issue with immigration detainers is holding people for immigration purposes once their local charges were completed. Also, detainers are seen as a hold for an administrative crime, although Title 8 includes illegal entry and reentry as a criminal offense. Often times, immigration detainers request up to a 48 hour hold on a person for transportation purposes. It is my experience that the reason for the hold is the finite resources at ICE. ICE officials often times do not work twenty-four hour shifts every day of the year. Therefore, the implementation of a hold was simply so transport could be organized and response could be timely. In Maryland alone, there are 17 counties and Baltimore City that ICE is responsible to monitor. Without a twenty-four-hour transport team, it would be nearly impossible to get everyone as they are released from their local charges which could be any hour of the day. Also, scheduling allows the officers to process the cases, a chance to perform a more in-depth investigation into every case which cuts down on hold times while the person is in immigration detention. In sanctuary jurisdictions, ICE is often left scrambling around for last minute releases from local detention facilities for those

that ICE is aware of. There are other areas throughout the U.S. that have twenty-four-hour response teams, but most field offices do not have the personnel to form a team for that purpose.

A lot is often made about how racist and discriminatory immigration detainers can be and how secure communities target certain populations in the U.S. But as an officer I can say everyone when brought into a detention facility has their fingerprints searched against an immigration database, and for those where country of citizenship is questioned, 287 (g) officers or immigration officials can determine if the person is subject to removal proceedings. Once ICE receives the record of the person and if they are found to be removable, a detainer is placed. A detainer does not equal removal. A detainer allows the immigration official to question the immigration history of the person and proceed if needed. It has never been my experience where color, race, or creed determines if we talk to a person at a detention facility. It is their responses to questions and fingerprint verification that deems if a person should be investigated further. However, with facilities and cities not honoring detainers, it doesn't allow that chance. Instead, finite resources are spent looking for the person that was once held in custody. This hurts the people that may end up being U.S. citizens, wish to adjust their immigration status, or those that have a true asylum claim. It also hurts the communities where these released persons reside because it can sometimes give dangerous criminals another chance to engage in further violent activity.

Included in these sanctuary jurisdictions is the inability of ICE to arrest persons in certain areas of the city including in or around courthouses. This is because unauthorized migrants reported that ICE officials harassed them, in which case they would not show up to their court hearings. ICE focuses on target enforcement and the courthouse is one of the safest places to arrest someone in violation of immigration law. Instead officer's lives are put at greater risk

when being forced to arrest people on the street. Many times, last known addresses for persons targeted for arrest are incorrect, and ICE does not have a good lead where the person is living because they move from place to place so quickly. Because jurisdictions do not allow ICE to arrest the person at a courthouse or other government buildings does not mean the person will not be arrested and left alone. The person will remain a target unless federal immigration law changes or that person changes their immigration status.

Trump Administration

Donald Trump took office in January 20, 2017 and rescinded the immigration policies set forth by the Obama Administration almost immediately. On January 25, 2017, President Trump issued an Executive Order that allowed immigration law to be enforced, with a focus on those that were either convicted of a criminal offense or faced criminal charges, and those that had final orders of removal. The order also reinstated the Secure Communities program that allows sharing of fingerprints from those arrested on local criminal charges to be searched through immigration databases (whitehouse.gov). There are multiple jurisdictions that do not honor immigration detainers, so the effectiveness of the reinstatement of secure communities is still up in the air. However, President Trump signed an executive order which vowed to withhold federal funding from sanctuary areas (Kaste, 2017).

Shortly after the executive order to follow current immigration law, a number of news agencies reported “raids” by ICE and fear now rising in the immigration community because of the new executive order. Department of Homeland Security Secretary John Kelly stated there were 680 arrests made in areas all over country the weekend of February 10-12, 2017 including

New York, Chicago, and Los Angeles with about 75 percent convicted of murder, aggravated battery, or DUI. However, there is disagreement over Trump's recent immigration actions with Senator Minority Leader Chuck Schumer (D-NY) commented that, "I have always supported smart immigration enforcement that helps to keep our country safe, but raids targeting law-abiding immigrants and treating those with traffic violations the same as murderers and robbers will only achieve the opposite" (politico.com). Raids is an incorrect term, as Secretary Kelly and the rest of DHS calls them, these are "targeted enforcement." A retired Special Agent for ICE stated, "The priorities are still going to be the same priorities, criminals first, but what the president's executive order did do, it returned discretion to arrest and not to arrest to the line-level officer. ... If they encounter someone who's here illegally, they have the authority and discretion to arrest them, period" (Kim & Hesson, 2017).

The outcry from the public is based in part on the patterns of policy enforcement established over the past four years. Human rights activists have now reported a spike in calls from worried immigrants about the recent arrests in the Los Angeles area. A possible outcome to this change would be a new immigration law that requires support from all sides of the immigration fence. What has not changed is the finite resources available to DHS. Although all undocumented migrants and those in violation of their status are eligible for arrests, decisions are still made based on resources available on a case-by-case scenario. What actually most shapes these judgments are available bed space, current case status, officers available to make arrests, health status of the individuals, primary care-takers of minor children, and the current political climate in sending countries.

President Trump also issued other executive actions concerning immigration that includes a travel ban on certain migrants from Yemen, Syria, Somalia, Libya, Iran, and Sudan. There has

been a temporary injunction placed on this travel ban as the original travel ban included those with permanent resident cards and lawful immigrant and non-immigrant visas. Two federal judges in Maryland and Hawaii have placed a temporary injunction on the executive order. However, a federal judge in Virginia, Anthony Trenga agreed with the travel ban, noting that President Trump “has unqualified authority to bar physical entry to the United States at the border” (westernjournalism.com).

What is up for debate is the clashing of two immigration laws. A 1952 law states, “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” (law.cornell.edu). However, the 1965 immigration law says, “No person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person’s race, sex, nationality, place of birth, or place of residence” (law.cornell.edu). Together our nation needs to come up a comprehensive immigration plan moving forward.

Conclusion

U.S. immigration enforcement and undocumented migrants have a complex relationship. Businesses want cheap labor and sometimes provide unsafe working conditions. Undocumented migrants are drawn by the pay, often times ten times more than they would make elsewhere. Up until the creation of the United States Border Patrol, Mexicans would be able to cross a border

into what was once part of Mexico, work and return home whenever they wanted. But as years went by, and the tightening of the border, it was harder for undocumented migrants to cross.

Many human rights groups claim the USBP pushes migrants out to the desert to perish because of city enforcement tactics that are used. Those same human rights groups claim immigration enforcement is racist and discriminatory towards undocumented migrants. All while Immigration and Customs Enforcement, Customs and Border Protections, as well as the United States Border Patrol are following the laws that have been in place since 1996. Different presidential administrations push different agendas, all while sending immigration officers in a spin trying to figure out if they are enforcing the Immigration and Nationality Act tomorrow or immigration enforcement priorities.

Migrants also pay the price of enforcement. They are often arrested in front of their families and held in detention for a number of days while their case goes through the immigration process. Since immigration enforcement priorities were set in 2012, most of those in custody had criminal convictions, in an attempt by ICE to increase public safety even when the criminal justice system failed to rehabilitate the individual at the expense of its officers. In fiscal year 2016, 92 percent of the interior removals in the U.S. had at least one criminal conviction (ice.gov).

For the past twenty-one years, immigration officers have worked under the same immigration law, but this law does not currently meet the economic or social needs of the country. The recent election of Donald Trump and his push towards enforcing immigration law has made thousands in the immigration community fearful that the life they know today will be gone tomorrow. My point, however, is that immigration enforcement is not to blame, for officers are simply enforcing the current laws set in place. These officers, in my experience

steadily pay attention to humanitarian concerns. Perhaps a change to administrative law to match the criminal law process would help the thousands held in immigration custody because those that cannot afford an attorney would be appointed one that could help their case. An easier pathway to citizenship would be ideal for those law-abiding hard workers that this country needs to survive. For instance, a person has lived and worked here for 20 years with only minor traffic violations should be able to apply for United States citizenship. The process should involve time as a lawful permanent resident (LPR) before citizenship, but the person could continue to establish themselves without any anxiety while they help they continue to help their own country.

For those who have not yet attempted the journey to the U.S., there must be more support given to their home country's economic, educational, and professional development. This approach would prove to be more valuable than providing funds to other countries' border enforcement. To see how that does not work just examine the amount of apprehensions by the United States Border Patrol every year and the steady stream of illegal entrants in the U.S. Because countries like Mexico, Guatemala, Honduras, and El Salvador rely on the remittances sent by immigrants, there will never be any true border enforcement in their region.

Worksite enforcement is essential for undocumented migrant population control after proper support is given to Central America and improvements in those countries have been documented and there is an opportunity for long-term undocumented migrants to earn legalization in the U.S. Then there would be no reason to work here undocumented, if you could earn an honest living at home, or easily obtain documentation here, pay taxes, and help America grow.

What I cannot apologize for is enforcement of the immigration laws. Nations are obligated to enforce their borders for their own national interest. Barbara Jordan said it best, "...It is both a right and a responsibility of a democratic society to manage immigration so that it serves the national interest" (numbersusa.com). In fact, I've personally experienced several instances where an arrest to start removal proceedings actually helped a person quickly resolve their unfortunate circumstances.

Children that were brought over to this country without documentation are not to blame for their lack of immigration status. DACA is a step in the right direction, however it needs to lead at least to be a lawful permanent resident and placed into law. These second generation immigrants are educated and cannot only relate to American culture, but to their home country as well. It is those children that are going to help America continue to be a world leader, so we need to keep them here and keep them educated. It is all not the fault of the U.S. government, but also partial weight is on the parents for not attempting to help their children out by seeking status. I've seen on multiple occasions where because the parent never naturalized to become a United States citizen, their foreign-born children were later arrested for their criminal convictions and removed. In many instances, if the parent naturalizes, the child automatically receives that benefit as well. For the undocumented population, it is their duty as parents to seek out any number of immigrant advocacy groups to help them get their children lawful immigration status.

Of course, all of the noted changes would require more resources to be dedicated to the immigration field as a whole. Proper worksite enforcement, border enforcement, making sure allocated funding to foreign aid is being properly utilized, increased applications for documentation to USCIS, and a committee to research and make recommendations for the

change all require a dedicated staff of professionals that are properly trained in the field. It is an investment the country must make to receive benefits in the coming decades.

Congress must act to finally give guidance to a disgruntled and often confused public and Department of Homeland Security staff. Another commission like the bi-partisan Jordan Commission that performs a study of the immigration challenge is also in order to identify the needs to Congress using both sides of the argument. A committee like that can greatly educate the public and Congress on the actual needs of the country instead of needs of a political party

Immigration enforcement should not end in any nation. However, adjustments need to be made periodically to change for the current times so the U.S. can be leading the world for the next hundred years.

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