

# United states immigration policy essay

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Our economic times, international relations, and terrorism have shaped our countries immigration policy. These issues have driven us to pass legislation opening and closing our borders in response to current events. Though not always at the forefront of concern, it has been a constant struggle that has affected the dynamics of our country. Arizona's recent passing of tough immigration laws aimed at identifying and deporting illegal immigrants has again put immigration at the forefront of American politics. Additionally, it has raised the question of constitutionality and rekindled the flame of State v. Federal power.

In order to trace the history of our countries immigration policies you must first understand the role the constitution, federal government, and individual states play in this very complex issue. The terms " immigration" and " constitutionality" have been linked in such a way that you might think the constitution lays the foundation. However, this couldn't be further from the truth. The term immigration isn't even referred to in the constitution. The constitution's power in regards to immigration are derived from Article I, Section 8, clause 4 which states " Congress shall have the power to... establish a uniform rule of naturalization. Additionally, the 14th amendment states " All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. " (The United States Constitution, 2004).

By controlling the process by which aliens are able to become citizens of our country the federal government has very broad power in terms of immigration. These broad powers have on many occasions been tested by

states and the Supreme Court has routinely sided with the federal government. This can be illustrated by *Hines vs.*

*Davidowitz* in which the Supreme Court struck down Pennsylvania state law requiring aliens to carry a state issued identification card. The Supreme Court found that the state law created an obstacle in implementation of the federal law. Another example is in the case of *Plyler vs.*

*Doe* in which the Supreme Court struck down a Texas law denying education to undocumented alien children, based on Fourteenth Amendment's Equal Protection Clause (Supreme Court Cases, 2011). Though the Courts have continually ruled in the federal governments favor the states do still hold significant power in regards to immigration, particularly in how they enforce federal law. Congress first made an attempt at tackling the immigration issue with the Naturalization Act of 1790. This act granted citizenship to free white persons, of good character, who had lived in the United States for a period of two years. Due to the massive influx of immigrants, Congress would amend the act in 1795 requiring persons to live in the United States for a period of 5 years before they could apply for citizenship. Over the next hundred years the United States would receive an influx of immigrants that could not have been imagined. Soon steps would be taken to limit the number of immigrants and more importantly the ethnicity of those immigrants. The 1800's saw rise in the number of immigrants entering the United States.

Particularly those of Chinese decent who played a key role in the building of our railroads during this time. With the California gold rush in full swing the

demand for railroads, bridging the east and west coast, was paramount. Thousands of Chinese immigrants entered the country and once the railroads had been completed many stayed in the west. Once the gold rush dwindled down the economy followed suit.

Americans began to resent the competition the Chinese were presenting in the labor force. This played a key role in the passing of the Chinese Exclusion Act of 1882, which barred the entry of Chinese immigrants for 10 years (Three Decades of Mass Intergration, 1995). Additional amendments to the act prevented those Chinese already in the country from re-entering once they had left. Chinese immigrants were forced to choose between staying in the country or seeing their families who had stayed behind in China. Over the next sixty years United States immigration policy would continue to resist not just Chinese immigration but Asian immigration as a whole.

Chinese immigration may have been at standstill but the need for cheap labor was still there. This led to an influx of Japanese immigrants to fill the void left by the Chinese work force. This would lead to problems as Americans would again resent having their jobs given to immigrants. That compounded with rampant racial conflicts led to President Roosevelt entering into an agreement with the Japanese government known as the Gentleman's Agreement of 1907 (Three Decades of Mass Intergration, 1995). Japan agreed not to issue out passports to Japanese citizens wanting to work in the United States and the United States agreed not to segregate the existing Japanese population residing in the United States. Unlike the Chinese Exclusion Act of 1882, this was not an act but an agreement that was never

ratified. Its main purpose was to ease tensions between Japan and the United States. Though it did serve to limit the number of Japanese immigrants coming into the country.

Asian immigration into the United States would be dealt another blow in the years to come. As animosity towards Asian's escalated in the early 1900's so did the attempts to keep them from entering the United States. The Chinese Exclusion Act had already prevented the Chinese from entering our country. Tensions between the United States and Japan had been building and would eventually lead to WWII.

Our willingness to keep our borders open to both countries would soon come to an end. The most severe blow came from the Immigration Act of 1917. Previous acts and agreements had singled out the Chinese but the Immigration Act of 1917 greatly increased the number of individuals banned from entering the country. This list included; "idiots," "feeble-minded persons," "epileptics," "insane persons," alcoholics, "professional beggars," all persons "mentally or physically defective," polygamists, and anarchists. Furthermore, it barred all immigrants over the age of sixteen who were illiterate. (Immigration Act of 1917, 2009). Asia in particular was singled out in an area of the act known as "Asiatic Barred Zone".

This zone consisted of most of Eastern Asia and the Pacific Islands except for the Philippines, who the United States had a treaty with, and banned immigration from the area. President Woodrow Wilson vetoed to bill but it was passed overwhelmingly by Congress. Though Asians had been singled out for much of the 1900's in immigration acts, the United States was

beginning to stifle the number of immigrants as a whole and what better way to do that then place a cap.

With the number of immigrants coming to the United States still on the rise the government took another drastic measure to curtail this. The Immigration Act of 1924, also known as the National Origins Quota of 1924, placed a cap on the number of immigrants that could enter the United States. This cap was initially set at two-percent of the total of any given nation's residents in the U. S. as reported in the 1890 census.

The two-percent rule would be replaced by an overall cap of 150, 000 immigrants annually and quotas determined by “ national origins” as revealed in the 1920 census. Additionally, a provision of the act barred entry to those ineligible for citizenship (Immigration Act of 1924). The immigration acts of 1917 and 1924 in essence ended Asian immigration into the United States and dealt a severe blow to Japanese relations with the United States. Historians have come to believe that the Immigration Act contributed heavily in the psychological estrangement of Japan and the United States in the years before Pearl Harbor (Burkman, 2004). Over the next 20 years the Immigration Act of 1917 coupled with the exclusions outlined in the Immigration Act of 1924 would govern immigration policy in the United States until major reform came in 1952. The United States had begun a transition at the conclusion of WWII to new concerns that lead to the Cold War years. As the economy began to bounce back, the threat of cheaper Asian labor was replaced with the fear of the communist. This lead to a shift

in United States immigration policy and the passing of the Immigration and Nationality Act of 1952 (INA).

Prior to this act immigration policy had been a scattered group of policies but the INA was the first document that placed all immigration policy into one centralized location. The INA took a lot of the same principles from the Immigration Act of 1924 but did have some drastic changes. One notable change was that it removed racial and gender limitations all together. It also introduced selective immigration which was a preference system used in deciding who would receive priority in the immigration process based on certain criteria. Immigrants with specialized skills in the labor sector and those individuals with relatives who were already United States citizens were given priority. The fear of communism was rampant and it added additional screening and security requirements before citizenship could be granted.

The INA would be overhauled in 1965 with a series of amendments that marked the changes our country was going through during the Civil Rights era. The 1965 INA set the foundation that we use today in regards to immigration reform. The INA of 1965 marked the end of United States immigration policy that relied on national quotas and discrimination. Instead, it set hemispherical caps; 170, 000 for the Eastern Hemisphere, and 120, 000 for the Western, with a limit of 20, 000 annually from any nation. When President Lyndon B. Johnson signed the bill he, following the vision of the late John F. Kennedy, sought to make America a land of opportunity for the whole world to see.

In his eyes this was a way to fight communism by showing the world how democracies embrace all. With immigrants with family already in the United States being given priority, a bulk of the 22.8 million immigrants that entered the country between 1966 and 2000 were of family members of nationalized immigrants (Daniels, 2008).

For the first time in over 50 years Asian-Pacific immigrants were again allowed to immigrate to the United States. Between 1965 and 1978 the United States made its greatest strides in establishing immigration reform that gave all immigrants, regardless of nationality or race, the opportunity to live the American dream. Not surprisingly our economic stability was at a high as we we're still surging from post war prosperity.

The 1980's would place a new emphasis on the illegal alien and the American work force. America was rooted in a recession from 1980-1982 that saw unemployment skyrocket. As jobs became more scarce the American people again rumbled about seeing jobs given to immigrants, especially illegal immigrants. In order to tackle this problem the Immigration Reform and Control Act (IRCA) of 1986 was created. Illegal immigrants were flocking into the United States for the job opportunities.

In order to curb this, lawmakers devised legislation aimed at holding companies and small business owners liable for not ensuring their workers had proper documentation. Companies and small business owners found in violation of the IRCA were hit with fines and penalties. Opponents of the bill argued that employers would discriminate against legal immigrants not wanting to deal with the potential fines associated with hiring illegal;



immigrants unknowingly. However, this was addressed in parts of the IRCA outlining how the screening process would and would not be utilized. Specifically, requiring employers to ensure that immigrants had the appropriate documentation, not requiring them to gauge the authenticity of it (Information and Reform Control Act of 1986).

The IRCA of 1986 targeted illegal immigration by making it harder for illegal immigrants to obtain work. This undoubtedly was frowned upon by immigrants who were now required to apply and produce more documentation. However, illegal immigrants did find solace in the amnesty provision found in the IRCA. It gave amnesty to illegal immigrants who could prove that they had been living in the United States illegally since before January 1, 1981. This led to some 3 million illegal aliens being granted citizenship into the country (Immigration Reform and Control Act of 1986, 2008).

Enforcing the amnesty provision would be a challenge for government agencies. Many immigrants had no means of proving how long they had lived in the country while others were resorting to purchasing fraudulent papers to establish residency. Border states such as Texas, Arizona, and California would spend years trying to filter through the amnesty provision. The next 15 years would see little change in American immigration policy but a new challenge would await our country after the attacks on 9/11. Tensions between the United States and Muslim nations were at a fevered pitch in the early 1990's. The Gulf war coupled with the 1993 terrorist attacks on the world trade center had made Americans suspicious of Muslims. This

suspicion would turn to fear after the attacks on 9/11. Slightly more than a month after the attacks the USA PATRIOT Act was passed and signed by President George W.

Bush. A majority of the act dealt with expanding the government's abilities and rights in regards to tracking and monitoring suspected terrorists and their cash flow. However, title IV, Border Security, had a drastic affect on America's immigration policy. Government agencies such as the Immigration and Naturalization Service (INS) and United States Customs Service saw their budgets sky rocket in order to meet new security demands. This money was utilized to increase the technological front as well as to pay for the hiring of thousands of new INS and Customs agents.

These agents would be needed to perform more thorough back ground check on all visa applicants and man our borders to the north and south. The affect these new security measures would have would ultimately change United States immigration policy. Immigrants wanting to gain access to the United States would experience road blocks like they had never experienced.

Immigrants were now being run through FBI databases in order to determine identity, criminal history, and possible terrorist ties. Having some or any suspected terrorist affiliation would lead to immigrants being denied entry into the country. Students studying in the United States were now tracked and entered into a data base and mandated that they receive Attorney General approval to take flight schools, vocational classes, and language training schools.

Bottom line is that it made immigrating to the United States a much tougher feat and the affect on immigration numbers was significant, especially immigrants from Muslim nations such as Pakistan, Morocco, and Iran. It is estimated that between 2001 and 2003 the number of Muslims arriving from 22 Muslim countries had declined by more than a third (Muslim Immigration has Bounced Back, 2006). Skeptics have been quick to point out that these measures would not have prevented the attacks on 9/11. An article in the Michigan University Press found that “ Although the attacks of September 11 revealed serious management and resource deficiencies in the bureaucracies that administer our borders, U. S. immigration laws in and of themselves did not increase our vulnerability to attack” (Hing, 2006). Our countries immigration laws prior to the attacks were some of the most stringent in the world and it is widely believed that communication flaws in our government agencies, not border security, allowed the attacks on 9/11 to occur.

Since 2005 the number of Muslim immigrants to the United States has rebounded as the American people have become educated on the war on terror and the Muslim faith. Our economy would soon be a driving force in United States immigration policy and the state of Arizona would put immigration back in the public’s eye. The collapse of the housing market in 2006 along with a credit crisis triggered one of the worst economic downturns this country has seen. The American people were foreclosing on home, filing for bankruptcy, and jobs were becoming harder to come by. By 2009-2010 unemployment rates were hovering around 9-10% annually a level that had not been seen since the recession of 1982 (United States Department of

Labor, 2011). Like the recession of 1982, Americans saw jobs become more scarce as automobile manufacturers, banks, and other large companies began laying off or filing for bankruptcy. Soon attention would focus to illegal immigrants, specifically those of Hispanic decent, and the availability of jobs. Border States like Texas, California, and Arizona sited illegal immigrants as part f their economic woes.

The states would argue that illegal immigrants didn't pay taxes but received food stamps and used public resources such as health benefits, draining their respective economies. These concerns, justified or not, lead Arizona lawmakers to take drastic action in April 2010. Arizona lawmakers drafted the Support Our Law Enforcement and Safe Neighborhood act, Introduced as Arizona Senate Bill 1070 (Arizona SB 1070) and it was signed into law on April 23, 2010. Its intended purpose, as stated in the bill itself, is to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States. Arizona was not creating new immigration law but using the state power it felt it had to enforce federal law. Arizona lawmakers have consistently addressed concerns with illegal immigration as noted by a recent study finding that between 2004 and June, 2005, the Arizona legislature sponsored 20 anti-immigrant bills (Wilson, 2008). This is by far the most in a given period of time by any state.

Arizona had passed anti-immigration bills before without much reaction from Hispanic Americans but two controversial parts of the bill put Americans, specifically Hispanic Americans, in an uproar. First, Article 8, section B, of the

law requires law enforcement officials to check a person's immigration status during traffic stops, detentions, and arrests. Secondly, provisions in the law required immigrants to carry proof of citizenship at all times or face fines. Hispanic Americans have argued that these provisions would lead to racial profiling and have legal immigrants singled out by law enforcement. Unlike Asian Americans, who had minimal numbers to protest the Immigration acts of 1917 and 1924, Hispanic Americans contribute to roughly 16% of the United States population as of the 2010 census (U. S. Census Bureau, 2010). The voice of some 50 million Hispanic Americans would soon be heard across our nation.

Upon passage of Arizona SB 1070 Hispanic Americans took to the streets in protest. Hispanic leaders urged American people to boycott Arizona and called for the federal government to take action. A federal judge would eventually block the two most controversial provisions of the bill but the legal fight is far from over. Hispanic Americans continue to fight to have the bill thrown out while Arizona lawmakers have refused to back down on their assertion that it is within their power to enforce federal law. This is sure to be a highly contested issue in the years to come and will in one way or another steer immigration policy in the future.

As you can see our country has consistently evolved its immigration policy based on our economic times, national relations, and terrorism. These events have shaped the level of acceptability Americans our comfortable with when it comes to opening our borders. Americans are willing to accept immigrants

working by their side when the jobs are plentiful and international relations with an immigrant's country of origin are good.

However, as the economy downturns and international relations sour, our immigration policy tightens in response. When times are good and jobs are plentiful we are a land of opportunity for the entire world. However, when times get tough we lock the doors and baton down the hatches.

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