

# Immigration reform in regards to public policy and the political process essay sa...

[Sociology](#), [Immigration](#)



## Introduction

Immigration is a critical issue that continues to influence significantly the diversity, economy and moral values of the United States. There is increasing concerns across the political divide to enact more stringent immigration policies to secure borders and criteria for accommodation of the current undocumented immigrants. This debate has elicited mixed reaction with hardliners calling for punitive measures while liberals proposing legalization of unauthorized immigrants (Thomas, 2006)

The country sovereignty has come under the threat of illegal immigrants making the enactment of a comprehensive reform policy essential. This research looks at the history of immigration policy, critically looks at the provisions in the various Acts and makes recommendations to improve the existing policy framework.

## Literature Review

Francisco (1991) assesses the effect of the Immigration Reform and Control Act (IRCA) of 1986. The author explores the objectives of the policy and if they have actually been achieved. He has also looked at the IRCA implementation in America. He presents an overview of the Immigration reforms during the 1980's and assesses implementation up to 1991. All agree that IRCA has succeeded in its legalization framework; however they cast aspersions on the employer sanctions clauses and express skepticism on the effectiveness of IRCA in curbing illegal immigration.

Hoefer (1991) analyses the features of illegal immigrants who qualifies as permanent residents under the 1986 Immigration and Reform Control Act. He provides a background to the IRCA policy and implementation by the INS. He studies the impact of IRCA on the size of the current immigrants.

Martin (2007) provides an in-depth study into the current immigration stalemate of 11 million unauthorized aliens. He analyzes the immigration reforms with respect to politics and national debate and links their impact to the congress decisions for the year 2006. Her findings reveal that employers preferred to carry the risk of hiring illegal workers than follow the legal hiring process.

#### A Glimpse at Immigration Policy Reforms through history

Naturalization Act of 1790 was the first ever naturalization act to be passed in the US, which limited citizenship to only white persons who had a good moral standing and had resided in the United States for a period of not less than 2 years continuously(Jasper, 2008).

The history of immigration in the United States presents an interesting chain of policy changes influenced by diverse views that often involve color, race or class. Immigrants who came to the United States were mainly from developing nations. Before the famous American Revolution immigrants were mainly from countries like, France, Holland, Spain, Portugal and others. Africans found themselves in the US through forced slavery. However immigration was not granted to criminals. It was mainly allowed on the basis of increasing need for labor in the United States. Discontent over the

increasing immigration started to emerge when 2.8 million Irish immigrants came to the United States between 1820 and 1880. In 1865, the Fourteenth Amendment was passed to protect children born in the US. This Amendment was further interpreted in 1898 to cover all children born in America except children of diplomatic persons. American society rejected Catholics and Germans from Ireland and the protests began to pick momentum. The events following the Civil War made the Federal government to consider a strict immigration policy.

In 1870, the 1865 Amendment was broadened to include naturalization of African Americans. And in 1875, the first immigration statute was passed that illegalized the admission of convicts and prostitutes and outlawed Chinese labor. The 1882 Chinese Exclusion Act further dealt a blow to the Chinese laborers. Immigration from Chinese laborers was halted for ten years and faced suspension for admission into citizenship. This act was further passed by the Congress in 1884, 1886 and 1888 but later repealed 1943. The 1907 Gentleman Act restricted Japanese migration into the United States followed by the Immigration Act of 1924 that totally excluded them from naturalization. California went a step further by barring Japanese from leasing farmland and possession of property.

The Quota Act was enacted by the Congress after the First World War which pegged the number of subsequent immigration at 3% of their existing population in the US. The Immigration Act of 1917 excluded Asian Indians from acquiring citizenship. Illegal aliens continued to sore and by the year 1920 US population had grown to 105 million people of which 14 million were

foreigners. The Tydings-McDuffe Act of 1934 excluded the Filipinos and limited them to up to 50 persons per year. In 1942, California passed the Bracero Program that paved way for 2 million Mexican employees to work temporarily on Californian agricultural farms and in industries (Vernellia, 2001)

Magnuson Act of 1943 removed barriers to Asian Immigrants seeking citizenship.

The 1952 Immigration and Nationality Act allowed only a certain number of immigrants from each country. In 1965, Congress passed the Immigration Act which favored immigrants with skills, removed quotas and gave preference to close relatives of American Citizens (Braziel, 2000).

#### Immigration Reform and Control Act of 1986

Notable among the reforms was the 1986 Immigration Reform and Control Act assented to on 6<sup>th</sup> November 1986 by President Ronald Reagan. It illegalized entry of immigrants into the US by putting in place sanctions on employers and granting amnesty to unlawful immigrants who had entered and continuously lived in the United States by 1st January 1982. It prohibited employers from hiring illegal immigrants who had no legal permanent status or authorization to work in the United States (Coutin, 2007).

It systematically discriminated against the immigrants in the employment for unlawful; aliens by introducing penalties ranging \$250 to \$10, 000 for an unauthorized employee and up 6 months imprisonment for consistent

violators. And if the employer unlawfully discriminates against an employee except for unauthorized alien, he faced penalties ranging from \$250 to \$ 2, 000 for every authorized individual discriminated against. However the H-2A provision made it legal for employer to hire non- immigrants when labor shortage was anticipated but only on temporal basis. The reform further stated that the employer must thoroughly examine employee's identity and eligibility for employment before completing INS Form 1-9. (IRCA, 1986)

The 1990 law continued to favor immigrants with skills and only legal immigrants may get the US citizenship. The 1994 California's Proposition 187 barred immigrants from enjoying schooling and medical care and limited it to only American citizens.

#### Implications of 9/11 Terrorism on Immigration Policy

The 9/11 Commission was set up and mandated to look into the causes of the terrorism and recommend various reforms changes in the Immigration policy. As a result of the commission findings, aliens faced to tougher security at airports before entry into the United States (9/11 Commission, 2004)

Among the policies that have been enacted include; the National Security Entry- Exit Registration System, The Patriot Act, Operation Liberty Shield besides Refugee Restrictions. The Patriot Act expanded FBI's surveillance over activities of persons in the US whereas the National Security Entry- Exit Registration System made it mandatory for all non- US citizens above the age of 16 years to register with the government. Refugee Restrictions and

Operation Shield led to a significant decline in the number of those seeking asylum and refugee status. These policies by the US has been met with protests and animosity from all over the world. Security checks have intensified and citizens have been subjected to cruel monitoring by FBI agents especially the immigrants (Baglien, 2008)

Border Protection, Anti-Terrorism and Illegal Immigration Control Act of 2005(H. R. 4437)

H. R. 4437 was passed by the House on 16<sup>th</sup> December 2005. This act classified illegal aliens and those who aided them as felons. This sparked widespread protests all over the country that demanded an overhaul of the bill and called for legalization of alien immigrants (Jahnes, 2006)

This House bill was supported by 92% of Republicans and 82 % of Democrats but failed to sail through the Senate. It was referred to as Sensenbrenner Bill because of the sponsorship it received from Republican Jim Sensenbrenner. The bill proposed a 700 miles fence along US-Mexican border to curb against illegal Mexican immigrants. It also required that the American government take custody for undocumented aliens and reimburse counties for the cost of detaining illegal immigrants. Employers were required to authenticate the legal status of immigrants via electronic means. It also proposed the abolition of Diversity Immigrant Visa among other provisions. This bill has sparked off a political debate with fears that it will affect 11 million immigrants.

Liberals have termed it as draconian while proponents argue that it will stem civil infraction in the US. Supporters, mainly republicans projects an improved border security and thereby counter terrorism, drug trafficking and human trafficking from Mexico . Detractors say that measures are too punitive and violate the basic human rights and limits access to primary services by the immigrants. The bill flopped at the conference committee stage. These protests have caused the Senate to consider striking off some provisions and make some amendments in its S. 2611. Civil rights movements are calling on the government to grant legal status to illegal immigrants whereas labor unions are divided as to whether to rally behind the guest worker program or support illegalization (Warren, 2005)

The Comprehensive Immigration Act (CIRA, S. 2611)

The S. 2611 was introduced on 7<sup>th</sup> April 2006 by Senator Arlen Specter. It was co-sponsored by Senator, Hagel, Martinez from Florida, McCain, Kennedy, Brownback and others. It dwelled on immigration reform proposing an amendment to the contentious H. R 4437. It also provided for security to be beefed up along the border with Mexico, grant legal status to illegal aliens and increase guest workers through the Blue card visa program that will allow recipients to work for up to maximum of 6 years. It passed the Senate with 62 to 36 votes but failed to pass the conference committee stage just as H. R 4437 bill.

The fundamental difference between the S. 2611 and H. R 4437 lies in the S. 2611 to allow over 7 million illegal aliens who have resided in the country for



a period of not less than 5 years admission into citizenship accompanied with a fine of \$ 2000. S. 2611 made a provision to allow illegal immigrants who had resided for two to five years, about 3 million in number, to continue staying for 3 years after which they will leave and seek admission for legalization at boarder check points. Those who had resided for less than two years were to return to their countries. The S. 2611 also proposes a 370 miles fence unlike 700miles by H. R. 4437. S. 2611 would increase H-1B work visas to 115, 000 from 65, 000 with a 20% annual increase. The Inhofe Amendment clause in the S. 2611 discourages use of other languages to offer services in the United States apart from English (Thomas, 2006)

#### Views on Current Immigration Policy Reforms

Human rights activists have protested over the enforcement of these reforms with some arguing that the 1986 IRCA reforms were the best. Many support enforcement to control illegal immigration even blames the US government for laxity in dealing with the problem (David, 2003).

A conglomeration of religious leaders from the United States have joined hands in a campaign against the current immigration policy saying it deprives family values and denies protection for foreign workers. They are calling on President Obama to institute urgent reforms and make it a priority in his timetable. Two Democratic legislators recently called the press and said they had evidence for social problems the immigrants are facing. Mike Honda, a Californian congressman, reiterated the same and called on the president to honor his pledge to Americans. Luis Gutierrez jumped into the

bandwagon registering his dissatisfaction with the current immigration policy (News Hopper, 2009)

The Mexican immigration problem has always been a contentious factor in immigration debates. It has been characterized by regular bilateral talks from either side especially in the year 2001. These talks later collapsed in the wake of September 11 attacks on America. Mexican undocumented immigrants are estimated to be about 5.3 million, constituting a fifth of the undocumented immigrants. Following the passage of the 1986 IRCA Act, an estimated 2 million received residential status from Mexico alone. Mexico's geographical proximity has made a victim of circular migration the United States. Through the North American Free Trade Agreement (NAFTA), Mexico and the US have been able to make some progress on border security and enforcement issues (Demetrios, 2004)

Immigration debate could not escape the 2008 US election campaigns. Both the Republican and Democratic parties used it as platform in the just concluded elections. Senator McCain expressed his willingness to address the issue referring to Arizona as having spoken Spanish initially. Both parties politicized the issue after it became apparent that the 9.3 million Latino vote held a swing vote in the states of Florida, Nevada, New Mexico and Colorado (Simon, 2008).

#### Suggested Reforms on the current Immigration Reform Stalemate

A successful reform package needs to adopt a three pronged fundamental approach to the issue which includes: account for the present immigration

population, curb future illegal immigration and form a legal framework to guide future immigrants. US immigration policy took a new dimension after the 9/11 terrorism attacks. There are fears that uncontrolled and unauthorized migration could be a potential catalyst for terrorism.

Registration, strict enforcement measures, and deportation of criminal immigrants have suggested. The option of registration draws major support from the Congress. Lawmakers have proposed that registration be contingent upon employment for a period of not less than three years with a possibility of renewal. However this regularization program may not be well implemented if immigrants who opt to stay longer are anything to by. Policy makers may consider extending a permanent status to illegal immigrants who possess temporal residence but contingent upon employment, English language proficiency, history of tax payments and/or have ties to a US national.

We also need to pump more resources into security facilities and overhaul current strategies to enforcement. Interior enforcement which is a tenet of the IRCA 1986 reform has not succeeded well in deterring unauthorized entry of immigrants. We need a review of employer sanctions and labor standards.

Reform must consider the human rights of immigrants and even introduce status adjustments besides working privileges. The employer sanction in the 1986 IRCA must be repealed to grant equal employment opportunities to all regardless of status. Unprecedented unlawful arrests of immigrants as pretexts of evil is an anathema and must end, it is completely inhuman. The

success of any reform must address the dignity and the inalienable rights of all people, their freedoms and justice. Introduce a proper legal framework to reduce the current adjudication backlog. This policy should revise the quotas currently limiting visas to legal immigrants. Short term visas may work though they must be followed by stringent and fair enforcement (Demetrios, 2004).

## Conclusion

Legislators are widely divided on the immigration issue and consensus may not be forthcoming in the meantime. Regularization of immigrants lack new ideas and does not comprehensively address the issue. Debate should be informed with concerns from both sides. The affected parties' needs to be involved in the drafting of this important legal framework to handle the issue that is now threatening America's social and economic priorities. Co-operation with Mexico will assist in border surveillance management and verification of candidates' eligibility for legalization. As the debate on migration rages on, Mexico will continue to assume a pivotal role in the deliberation process given its deep economic and political ties with United States.

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