

U.S. Policy Toward Illegal Immigration and Border Security: Summary and Evaluation

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ABSTRACT: *Immigration has been a recurring issue throughout American history. Recently, American's attention has been diverted from immigration from across the seas, to the immigration concerns at the Mexican American border. This paper examines several policies and studies about immigration. One will gain knowledge of the history of America's immigration and the policies used to regulate immigration. The effects of these policies will also be evaluated. In addition, the reader will learn about potential policies that officials considered implementing, but upon weighing the options, decided against. Finally, the reader will gain an understanding of why Mexican citizens are choosing to immigrate to America.*

The United States and Mexico have been close partners due to economic factors and geographic proximity. Focus on the relationship between these two countries often centers on the border region, an area that experiences a complex history, and where Mexican immigrants have historically crossed in search of economic opportunity. Many continue to cross the border illegally by the hundreds of thousands. While issues of securing our border and stemming the flow of illegal immigrants into this country fade in and out of our national consciousness, when they do come to the forefront of our political debate, a number of strong emotions, beliefs, and perceptions confront the problem. Arguments concerning national sovereignty and border security are complicated with racist sentiments, human rights concerns, and economic considerations.

This paper will provide an overview of the 2,000-mile border between the United States and Mexico and the policies that affect it. Immigration policy is not a recent federal concern. Change over the last 150 years has impacted the interactions and border crossings between American and Mexican citizens. After discussing previous policies directed at the southern border and the immigration issue, including the roots of the problem, this paper will analyze the dramatic intensification of policy toward immigrants and border security that occurred under the Bush administration after the tragic events of September 11, 2001. We will also examine the role of the U.S. Border Patrol and the deterrence theory.

The 9/11 attacks brought U.S. national security under intense scrutiny. This resulted in the reorganization of the border security and immigration agencies into the newly established Department of Homeland Security (DHS). The goal of this investigation is to assess to what

degree the DHS policies have failed in preventing the illegal passage of immigrants. These policies have ignored peaceful, balanced, and mutually beneficial solutions to the dilemma. The paper will conclude with recommendations for resolving the complex problem.

When one thinks of the southern border, visions of a rugged region, a wild frontier with dirty border towns, vast ranches, señoritas, banditos, cowboys, and violence generally come to mind. The history of the two nations and their people's interactions date back to the countries' foundings. After achieving independence from Spain in 1821, Mexico opened up trade to the North commencing a flood of American migration to the border region motivated by economic opportunity (Truett, 2006, p. 36). In 1848, Mexico lost a significant portion of its territory to the United States as a result of the Mexican-American War (p. 32). The Treaty of Guadalupe Hidalgo established the boundary line and surprisingly, economic activity continued to flock to the borders (Maril, 2004, p. 139).

Economic interaction between the two nations was encouraged by the Mexican government from the Benito Juárez period of reform through the rule of Juárez's successor, Porfirio Díaz, whose regime lasted from 1876 to 1910 (Truett, p. 59). Despite the encouraged economic growth, the border remained a violent region with tense relations between the Americans, Mexicans, and Apaches (p. 60). While smuggling may be viewed as a modern problem, it was just as prevalent in the mid 19th century due to the newly established international border. In the place of drugs and immigrants, tools, leather, furniture, tobacco, and guns were smuggled across the border (Maril, p. 140). The problem with exploited immigrant workers dates back decades with the mines in Arizona re-

sorting to the Mexican population for a supply of cheap labor (Truett, p. 38). At the beginning of the Mexican Revolution in 1910, the border was once again redefined. This marked a shift in how the United States addressed border security. During the conflict, officials north of the border, disturbed by the violence and fearful of incursions by Mexican forces, stepped up security and limited entry into the country (p. 167). The Mexican Revolution affected America's policies towards the border. By 1917, it was clear that America had begun to patrol its southern border in a new manner: Mexicans began to cross in increasing numbers, drawn by the opportunities available in the United States (p. 177).

T. Payan (2006) identifies the three major eras of U.S. policy towards immigration and the border. The first of these is the Frontier Era, which lasted from 1848 to 1910. During this time the southern border was largely unregulated as Mexicans freely passed to and from Mexico. At the time, anti-immigration sentiment was directed toward the Chinese through the Chinese Exclusion Act of 1882. Of four immigration laws passed during this period, the U.S.-Mexican border was not mentioned (p. 6). In the early 1900s, the border was further scrutinized as other nationalities began taking advantage of the area for illegal crossing. However, Mexicans were not the focus of these restrictions. According to President Theodore Roosevelt, the border was "closed to all but citizens and bona fide residents of Mexico" (p. 7). This attitude stood in stark contrast to the rhetoric and policies of today toward our Mexican neighbors.

The next period was the Customs Era, which was influenced by three important events. First, the Mexican Revolution required more U.S. security and forts be placed along the border (p. 9). Secondly, the anti-immigration sentiment expanded to include Mexicans, who were now seen as "foreigners." This helps to explain the continued closing of the border (p. 10). The Bisbee Deportation of 1917 exemplifies this attitude. Twelve hundred striking mine workers, the majority of whom were Mexicans, were rounded up and deported across the border (Truett, p. 174). As part of the increased restrictions on the border, the U.S. Congress established the Border Patrol in 1924 as part of the immigration service (Lovalo, 2008, p. 20). The end of World War II was the third force that influenced the Customs Era and continued the trend of increased separation and enforcement along the border (Payan, p. 11). According to Payan, "This drove a wedge between the two countries, driving home the economic disparities that have marked the border to this day" (p. 11).

The Law Enforcement Era was ushered in during the Nixon administration, which marked a surge of conservative ideals that placed an emphasis on law and order (p. 11). In line with the trend, this era continued to place restrictions on immigrants and increased the enforcement along the border. A number of legislative pieces were passed to meet this goal. These included the 1986 Immigration Reform and Control Act (IRCA), the 1990 Immigration Reform Act, and the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (Guerette, 2007, p. 247). The 1986 IRCA did take a somewhat balanced approach to the problem by granting amnesty to three million illegal workers already in the United States. Despite that provision, the focus remained on increased forces patrolling the border. The result was the Border Patrol tripling its personnel from 4,000 agents to 12,000 agents during the 1990s (Maril, p. 168). During the 1990s the Border Patrol implemented military-style operations along the border, which included Operation Hold the Line in Texas, Operation Safeguard in Arizona, and Operation Gatekeeper in California (Payan, p. 12). The purpose of these operations was to deter immigrants from entering the United States and to force attempted crossing to more remote terrain where Border Patrol agents would have a tactical advantage (Guerette, p. 246). The border patrol partially succeeded in their goal, but it resulted in an unexpected consequence. Because of the increased difficulty in crossing, immigrants were forced to take more dangerous routes in remote desert locations. This caused the migrant death toll to increase dramatically. In response, the Border Patrol, under the Immigration and Naturalization Service created the Border Safety Initiative (BSI) in June of 1998 (p. 246). While the program has had some success, the overall death toll reflected little change (p. 260).

In order to comprehend the problem of the border, one must recognize the factors that bring Mexicans to America illegally. Additionally one must understand the attitudes of Americans and Mexicans. Every day along the Mexican side of the border, buses carry loads of Hispanic workers to within walking distance of U.S. soil. The intention is obvious: To cross and find work in the United States (Maril, 2004, p. 133). Payan reaffirms this notion: "Mexican migration both to Northern Mexico and to the United States is almost entirely motivated by economics" (p. 61). In the first years of U.S. existence, the nation's survival depended on the waves of immigrants that came in search of economic opportunity. The situation was mutually beneficial (Jackson Lee, 2006, p. 268). Today the U.S. economy arguably depends on the labor provided

by foreign immigrants. A study by the *Economist* shows a shortage of labor in the United States, which allows for the easy incorporation of a large number of migrants. According to the study, approximately 161 million job opportunities in the United States exist, while there are only about 156 million workers (Payan, p. 62).

The United States has depended upon immigrant labor throughout its history; the Bracero Program was an important example. During the World War II labor shortage, the government established the Bracero Program, which lasted from 1943 to 1964. Under the program, many Mexican workers came to the United States and worked mainly in agricultural sectors (Maril, p. 145). When the program ended in 1964, illegal immigration began to rise (Payan, p. 55). The rapid industrialization of Mexico in the 1960s and 1970s did not help, as it caused a spike in unemployment throughout the country (Payan, 2006, p. 55). R. L. Maril described how the Rio Grande separated, “the most powerful country in the world from an exploding third-world population with little on its plate but hope” (p. 6). The juxtaposition of such wealth and opportunity alongside poverty readily explains the force that draws migrants to sneak across the border. The reality of Mexico’s economic instability creates a pushing force that combines with the pulling force of economic possibility in the United States, thus driving the northern migration (Fullerton & Sprinkle, 2004, p. 70).

A Pew Hispanic Center poll reveals that 43% of Mexicans would leave Mexico for the United States if they could (Payan, p. 61). The busiest time of the year for apprehensions by the Border Patrol is just after the Christmas season as undocumented workers return to their jobs in the states after celebrating Christmas in Mexico with their families (Maril, p. 7). Many Mexican immigrants make it across to the United States and find jobs through a network system. Friends and relatives already in the United States contact the future migrants in Mexico to let them know they have jobs waiting for them. This reveals strong ties to their families and country, which immigrants must sacrifice for the sake of survival (Fullerton & Sprinkle, p. 71). While criminals do cross the border illegally, the vast majority are peaceful people seeking a better life (Payan, p. 61). Once these undocumented workers take the risk of crossing the border, a relatively little chance that they will be caught inside the United States remains (Payan, 2006, p. 77).

In 1986, between four to five million illegal immigrants resided in the United States (p. 55). By 2006, the number increased to over ten million immigrants. Between 2000 and 2004, about 700,000 workers ille-

gally entered the United States each year (Jackson Lee, p. 271). The problem of illegal immigration raises concerns among the American public. About 75% of Americans are concerned about illegal immigration, while 50% think the government should do more to solve the problem (p. 271).

On September 11, 2001, Americans were shocked by the terrorist attacks against our nation. Those tragic events demonstrated the vulnerability of our nation, and, in its wake, attention was turned to securing our borders (p. 271). The fear that followed led to an anti-immigrant environment (Lovalo, p. 16). Everyone that crossed the border into the United States was considered a suspect and viewed as a potential terrorist (Payan, 2006, p. 14). This fearful environment led to policies directed at the U.S.-Mexico border, which in reality had little to do with the threat of terrorism (p. 13). The border issue was redefined. Historically treated as a matter of law enforcement, it became a matter of national security (p. 13).

Following the attacks of 9/11 and the refocusing that occurred as a result, all matters pertaining to immigration (previously under the Department of Justice) were reorganized under the newly created Department of Homeland Security (p. 13). The resulting legislative acts and policy proposals have demonstrated a one-approach pattern of increased security through militarized tactics. The USA PATRIOT Act, signed into law by President Bush in 2001, expanded the government’s capability to detain and deport suspected terrorists, increased the immigration enforcement budget, and added agents to the Border Patrol (Hines, 2006, p. 12). The National Intelligence Reform Act of 2005 requested an additional 10,000 Border Patrol agents to reach a total of 21,000. Although the act was vetoed by President Bush, it still demonstrates the military style approach toward the U.S. border (Payan, p. 18). Passed in 2005 the Secure Border Initiative (SBI) was another step forward in the new strategy. SBI called for more efficient enforcement of immigration laws, an increase of Border Patrol agents and technology along the border, better detention and removal capabilities of illegal immigrants, and an investment in infrastructure to help secure the southern border (p. 19). This infrastructure would include the highly debated security fence along the U.S.-Mexico border. As of August 29, 2008, 344 miles of fencing have been completed along the southern border (Basham, 2008). Another step towards increased enforcement of illegal immigration was the Real I.D. Act of 2005. Several of the terrorists involved in 9/11 had acquired U.S. driver’s licenses. The Real I.D. Act prohibits

states from issuing driver's licenses to a person without proof of legal residence (Hines, p. 22).

Despite the intensified efforts by the federal government to control the passage of immigrants, terrorists, and drugs along the southern border, the problem remains. The continued trafficking of humans and drugs along with kidnapping, murder, and destruction of private property in the border region have forced the states to act on their own. In 2005, governors Bill Richardson of New Mexico, Janet Napolitano of Arizona, and Rick Perry of Texas all declared states of emergency due to the continued violence and criminal activity along the border (Jackson Lee, p. 273). The necessity of these states to declare a state of emergency reflects the failure of the federal government to control the border (p. 274).

The consistent pattern by the national government has been one of increased security through agents, weapons, fences, and technology, especially since 9/11. Many attempts at finding a more balanced approach continue. President Bush, along with Senators John McCain and Ted Kennedy, proposed a temporary guest-worker program, which was a step toward a more balanced and realistic policy (Payan, p. 65). This program would allow undocumented immigrants to either enter or remain in the United States to work for a specific period of time. Workers would be able to renew their status, but once their time expired they would be forced to return to their home countries. The program also called for stricter penalties for companies that hired undocumented workers and required U.S. companies to attempt to find a U.S. citizen to fill the job before hiring a temporary worker (Jackson Lee, p. 275). Although the program was never passed, it does demonstrate the awareness that a multifaceted solution must be found. Part of the obstacle to such a program is the opposition of many Republicans who view this as rewarding lawbreakers by giving them a legal status (Hines, p. 26).

In order to achieve security and prevent immigrants, drugs, and terrorists from crossing U.S. borders each year, the U.S. Border Patrol is on the frontlines of both Canada and Mexico. The 2,000-mile border between the United States and Mexico is the focus of the illegal immigration problem. Officially established May 28, 1924, by an act of Congress, the U.S. Border Patrol is the law enforcement branch of U.S. Customs and Border Protection (CBP) within the Department of Homeland Security. According to the CBP website, the overall mission of the Border Patrol is to detect and prevent the entry of illegal aliens into the United States. Maril (2008) describes how, following the attacks of 9/11, "the U.S. Border Patrol was suddenly

yanked from virtual obscurity into a public spotlight as a thousand questions were asked about the security and safety of our nation's borders" (p. 223). As the frontline defense of our borders, the Border Patrol was called upon to expand its goals in accordance with the changing threats. The overall mission of the Border Patrol remains the prevention of illegal entry, but the scope of its goals has greatly expanded.

The Border Patrol has identified five main objectives. The first is to increase the likelihood of capturing terrorists and their weapons at points of entry. Next is the deterrence of illegal entries through improved enforcement. Third, the Border Patrol strives to detect, detain, and deter traffickers of human, drug, and other illegal cargoes. Additionally their goal is to increase overall effectiveness through the use of "Smart Border" technology. The use of this technology includes night-vision goggles, electronic sensors, infrared scope trucks, helicopters, and patrol boats. Lastly, they strive to reduce the crime in border communities (Office of Border Patrol, 2004, p. 2).

Since 1994, the main strategy of the Border Patrol has been that of deterrence. In the 1990s Silvestre Reyes, a high-ranking official within the Border Patrol, implemented a strategy along the El Paso border sector. He focused agency resources along highly visible points of the border. According to his theory, potential immigrants would abandon their border crossing attempts upon seeing the immense power of the Border Patrol, therefore being effectively deterred. This strategy removed agents and resources from traditional means of tracking and apprehending illegal immigrants. Traditionally, the success of the Border Patrol was measured by apprehension rates. According to the theory, the more illegal immigrants that were captured the better the agency was functioning. The strategy of deterrence turned that logic upside down. Under the new strategy, declining numbers of apprehensions demonstrated success. Deterrence was eventually applied to the entire southern border (Maril, p. 160–62). As a result of this strategy, for a number of years the agents were required to perform "X's." A certain number of agents per shift were required to station their vehicles along the border with their lights on in highly visible locations. During the eight to ten hour shifts, the agents were required to stay in their vehicles and were discouraged from exiting the vehicle unless they saw illegal immigrants with their own eyes.

The strategy of deterrence is based on rational theory, but the logic behind it and the measures of success are questionable. Deterrence, which has been used throughout law enforcement policy, suggests that the

potential criminals, or immigrants in this case, will examine the costs and benefits of their actions along with the consequences. If the swiftness, certainty, and severity of punishment are likely, the immigrant will realize that the costs are higher than the benefit (Payan, p. 76). The idea of deterrence sounds good in theory, but in practical application this has had questionable results in stemming the tide of illegal immigration.

Arguments in support of deterrence hold that by maintaining visibility and showing force instead of searching out and apprehending immigrants, the Border Patrol would discourage potential immigrants. However, if the Border Patrol measures success through the decrease in apprehension rates, it is only logical to assume that by being unmobilized and unwilling to pursue illegal immigrants that the numbers will drop dramatically. It is not surprising that after Reyes' plan was implemented, there was a drop in apprehensions (Maril, p. 165). Despite deterrence being heralded as a success and being continued today, it is obvious that workers and drug smugglers continue to cross in large numbers. The implementation of deterrence and the "X's" became a joke to agents who were forced to comply with the strategy. Following night shifts, trails of trash and clothing, evidence of illegal crossings, were plainly evident between the fixed positions that Border Patrol agents maintained. Furthermore, agents that continued in seeking out and capturing illegal immigrants were discouraged from doing so. An increase in apprehension statistics proved that the Border Patrol was not succeeding as measured by the strategy of deterrence (p. 166). Additionally, it seems that workers continue to take the risk of crossing because the benefit of obtaining a job and thus ensuring survival far outweighs any risk of getting caught (Payan, p. 76). By only applying deterrence to the border region, the government limits its success and does not take into account other factors.

Even with the intense scrutiny that U.S. border security has experienced in recent years along with the increase of manpower, technology, and budgets, illegal immigration is still a problem as immigrants and drugs continue to cross (p. 14). As Maril aptly states, "Real control of these lands along the Rio Grande was a pipe dream, a vacuous illusion, and a wicked pretension." (p. 117). Such harsh criticism may be hard to accept, but is nonetheless true. The U.S. government has failed in securing its southern border and preventing the flow of illegal immigrants. From 1986 to 2006 the Border Patrol grew from 2,000 agents to 12,200 (Payan, p. 56). The government has taken a blanket approach to the three problems facing our borders: immigration, drugs, and

terrorism. The American government has tried to stop all problems through the single approach of the expansion and militarization of the Border Patrol (Payan, p. xiv). Continuing to pour money into this failed system is like continuing the same tactics for the failed "War on Drugs" (Hines, p. 28). Furthermore, while the government has ultimately failed to stop or even slow down illegal immigration, it has inadvertently increased immigrant deaths through the policies it has pursued (p. 25).

Through proposals and legislative acts, the federal government has at least demonstrated some awareness that the problem of illegal immigration cannot be won only on the border but must be addressed on all fronts. By calling for better enforcement of immigration laws and punishment for employers who hire undocumented workers, the benefit will decrease for those who seek to enter the United States illegally. Other measures, including increased deportations and limitations on the acquisition of driver's licenses also combat the problem from the interior. Yet those messages alone will do little to solve the problem. As long as the United States is an economic power in need of unskilled labor, Mexico's poverty will drive workers to our border. Policy makers must recognize that the majority of illegal immigrants are driven entirely by economic motive and are not a threat to our national security. A policy reflecting this realization would be mutually beneficial to aliens seeking employment and to the American economy. While not a perfect plan, the guest worker program proposed by Bush, McCain, and Kennedy is at least headed in the right direction.

In 2006, Democrat U.S. Representative Sheila Jackson Lee proposed two pieces of legislation aimed at confronting the immigration issue on two levels. The first proposal, Save America Comprehensive Immigration Act (SACIA), would address the issue of the economic motivation and the residence status of undocumented workers. The bill would provide legal access for undocumented workers who have been in the United States for five years to maintain an occupation. It would also grant permanent legal status to immigrants who have been in the United States since 1986 (p. 279). Exploitation proves to be a problem with the temporary worker program. Workers may be forced to work at low wages or face the risk of being fired and losing their employee status if they do not comply. SACIA would implement protections for temporary workers and seek to prevent the separation of families through deportations (p. 280). The second proposal is the Rapid Response Border Protection Act (RPBPA). This bill would expand measures to secure the border by increasing the size of the

Border Patrol by 15,000 agents over the next five years. Additionally, this act would seek to attract highly qualified candidates for the positions of immigration enforcement (p.284). According to Jackson Lee, this two pronged response would, “deal with the millions of undocumented workers who currently reside within the country but also must work to prevent the present undocumented population from being replaced by a new one in the future” (p.273).

Payan asserts that “a real solution to the border would require a political will that no one, from Washington to Mexico City, is willing to invest on this god-forsaken part of the globe that clamors for attention” (p.xii). Regardless of the political realities that have thus far prevented genuine border security and immigration reform from being achieved, law and policy makers must realize the complex nature of the problem. Additionally, these officials must stop trying to use such a single, heavy-handed approach, which by itself, does little more than waste money and turn foreign opinion against us. Government officials must recognize that the vast majority of illegal immigrants are not criminals, but rather peaceful, hard-working people that contribute to our nation both economically and culturally. The United States is fully within its rights as a sovereign nation to secure its borders. However, focusing all of our attention and resources on the border can only go so far in resolving the problem. We must understand that the strong motivations that drive illegal immigration have not yet been stopped by increased

border security. Even so, if such an approach were possible, it would not help either side.

The United States needs to develop a comprehensive policy that recognizes the complexity of the issue. The legislation proposed by Representative Jackson Lee approaches the problem in an appropriate manner. We must take into account border security, economic needs that immigration can satisfy, the possibility of permanent residency for some and a temporary program for others, labor exploitation, and the enforcement of immigration and labor laws and the punishment of violators. Although such reform could not be guaranteed to work completely, it would likely be far more successful than the current policy and would be a much more balanced and rational approach. Through an approach that would limit the number of illegal crossings, the Border Patrol would be able to focus on the interdiction of drugs and the protection of our borders against terrorist threats. A more peaceful resolution of the immigration problem would benefit the United States by welcoming foreign workers who would contribute economically and culturally to this great nation. The border region with Mexico would achieve a level of stability and peace, and the United States could remain the center of diversity and economic opportunity.

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References

- Basham, W. (2008). U.S.-Mexico border "virtual fence." FDCH Congressional Testimony.
- Fullerton, T. M. Jr., & Sprinkle, R. L. (2004, Fall). Border controls, public policy, immigration, and trade with Mexico. *Texas Hispanic Journal of Law & Policy*, 10, 66–77.
- Guerette, R. T. (2007, May). Immigration policy, border security, and migrant deaths: An impact evaluation of life-saving efforts under the Border Safety Initiative. *Criminology & Public Policy*, 6, 245–266.
- Hines, B. (2006, Spring). An overview of U.S. immigration law and policy since 9/11. *Texas Hispanic Journal of Law & Policy*, 12, 9–28.
- Jackson Lee, S. (2006, Summer). Why immigration reform requires a comprehensive approach that includes both legalization programs and provisions to secure the border. *Harvard Journal of Legislation*, 43, 267–286.
- Lovalo, R. (2008, December). Building the homeland security state. *NACLA Report on the Americas*, 41, 15–20.
- Maril, R. L. (2004, March). *Patrolling chaos: The U.S. Border Patrol in deep South Texas*. Lubbock, Texas: Texas Tech University Press, 2, 177–178
- Office of Border Patrol. (2004). National Border Patrol Strategy. Washington, DC: US Customs and Border Protection. Retrieved from http://www.cbp.gov/xp/cgov/border_security/border_patrol/border_patrol_ohs/
- Payan, T. (2007, December). The three U.S.-Mexico border wars: Drugs, immigration, and homeland security. *Journal of American Studies*, 3, 703–704.
- Truett, S. (2006). *Fugitive landscapes: The forgotten history of the U.S.-Mexico borderlands*. New Haven: Yale University Press.