

The U.S.- Mexico border and the construction of the border wall

US Senate
Judiciary Subcommittee on
Border Security and
Immigration



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The frontier between Mexico and the United States stretches from the Pacific coast to the Atlantic coast, consisting in a great portion of a natural geographical separation, the *Rio Grande*. Nevertheless, around the time Mexico became independent from Spain, in 1821, the border used to be very much up north, as Mexican soil comprised the territories reaching the Northern state of Oregon and south to the Nieces river on the East.

Mexico began disintegrating along its northern border as soon as 1836, when Texas declared itself independent from it (and later being annexed by the US in 1845), and culminating with the war between the United States and Mexico between 1846 and 1848. American president James K. Polk believed and realized the *Manifest Destiny*, or the inevitable expansion of the rapidly increasing American population towards the Pacific coast, not only settling but also spreading democracy and liberalism across the continent. While the President's first steps were to annex Texas and offer Mexico a sum for the territories comprising from New Mexico to California, Polk sent American troops to the disputed areas after the negative response, which soon led to escalated violence between both countries.

The American-Mexican war was put to an end with blatant American victory over Mexico, and the latter was forced to recognize the annexation of Texas and to sell a third of its territory, as agreed to in the Treaty of Guadalupe Hidalgo in 1848. With the incorporation of the territories

that today encompass California, Arizona, New Mexico, Nevada, Utah and some portions of Colorado, Wyoming, Oklahoma and Kansas, the current borders between the United States and Mexico were established (minor modifications took place in 1953, like the Garden Purchase).



US and Mexican territories before the 1946-1948 war

immigration policies, etc. – these issues have made the border a renowned topic for political debate. In spite of the intense political discussion for the past decades, it hasn't always been like that. People crossed the border freely and regularly during almost the whole of the 19th century, as reflected, for example, on the wave of Mexicans from annexed territories resettling in their home country. In fact, the first bill to exclude a concrete ethnicity from entrance to the US, namely from the border with Mexico, was the Chinese Exclusion Act in 1882. The Chinese provided cheap labor and were blamed for decreasing wages and working conditions in

California, so they were banned from trespassing the Mexican border as they had been doing hitherto.

Yet confrontation with Mexico in relation to immigration wouldn't emerge until the Mexican Revolution took place in the decade of 1910. Other than political exiles and people fleeing violence in their home country, Mexicans from rural areas also crossed the border, seeking better living conditions and employment in the industries of the Southwest of the country. The big influx of Mexican refugees and migrant workers was met with higher border control, manifested with actual fences demarcating the separation between both nations and patrols guarding the frontier; yet Mexican migrants were still somehow welcomed, especially if compared with other ethnicities (for example, they were exempted from the Quotas Immigration Act of 1924). After the decrease in migrants that the Stock Market Crash and the Depressions of 1929 caused, the numbers have been rising throughout the 20th century, reaching 4 million Mexican immigrants in 1990 and peaking at 11,7 million in 2014.

Genuine efforts to stop Mexicans from crossing the border into the US were first seen in 1993 when President Bill Clinton built a barrier between San Diego and Tijuana, as undocumented immigrants and drug smuggling allegedly posed a serious threat to American security. The last physical borders constructed were erected under George W. Bush's mandate, following the dictations of the Secure Fence Act of 2006, that allowed for the construction of a 1100 km long fence along the frontier; and despite the decreasing and more stable migrant influx into the US in the recent years as a consequence to the financial crisis (some are even returning to Mexico, particularly those with low education level), it is rather unlikely that these would be the last efforts to stop migrants from entering the US.



Current border, natural separation and fencing



It's important we go over the reasons why the border is being closely guarded, and why President Donald Trump made a political campaign out of his willingness to erect a wall to separate both countries. How big of an issue is Mexican immigration? Estimations in 2014 showed how Mexican immigrants made up for 28% of the foreigners living in the US (11,7 million out of 42,3), and also constituted the largest unauthorized immigrant group present in the US, as more than half of the estimated 11 million unlawful immigrants are Mexican (as estimated in 2013). In a country with more than 320 million population, 11 million might seem an insignificant number. But their impact can be huge.

One of the greatest problems exposed especially by those disinclined to extend the size and responsibilities of the welfare state, is the burden on federal expenditure that immigration poses. Some point out the great cost that the existence of policies like the Deferred Action for Childhood Arrivals (DACA) program entails. Many young Mexicans are beneficiaries of it, a program that slows down or avoid deportation procedures, and provides work authorization.

Mexican immigrants have traditionally taken lower salaries than US citizens, which can lead to social tensions in situations of unemployment and replacement for cheap labor, as other citizens aren't able to compete with Mexicans for jobs. Many also point out the low skills and education and average worse performance of Mexican immigrants if compared to American-born citizens or citizens from other origins. The productivity at work of a Mexican immigrant is, on average, 21.5% lower than the national average, and 16.8% lower than the average for all immigrants in the whole country.

We can also consider the fact that legal migrants, who earn a salary in the US, are sending remittances to their country of origin, and therefore spending less money in the US. The problem is bigger if we consider the fact that unlawful working migrants are doing the same, yet without paying US taxes.

Lastly, in a more social aspect, people point out clashes with assimilating communities, the development of Mexican *ghettos*, and even an increase in violence, crime, and segregation.

Immigration brings about a lot of benefits that is also important to consider. Other than the cultural exchange (food, music, language, etc.) their presence entails, Mexican immigrants provide a young workforce (87% of Mexican immigrants were of working age as of 2014) and are proven to be ready and eager to work (in the same year, 69% of Mexican immigrants were in the civilian labor force, while 66% of all immigrants and 62% American-born population were). Some even point out their willingness to work for lower salaries as a benefit to the US economy. All in all, Mexican immigrants are pivotal to the American economy, as their input to US GDP accounts for 4% of it, reaching a 10% in states like Arizona, Nevada and Texas.



★ US recent legal history on migration

The legal record of the United States on immigration is rather extensive, as it has been adapted according to the necessities and the political and social momentum of the US and the rest of the world; and rightfully so, as the American country has been a destiny for immigration since long before it was constituted as an independent polity. We should then focus on the legislation that has shaped the possibilities foreigners have to enter and reside in the US and on what grounds they can be admitted or expelled from the country, as well as the most recent developments.

- **Immigration and Nationality Act.** We wind back to the Hart-Celler Act of 1965, as this was the first piece of legislation that depicted the end of the post-war trauma that was reflected on immigration laws, based on quotas on national origins, which severely hindered the entrance of migrants from everywhere else other than Western Europe. The quota system that embodied for almost half a century the racial superiority sentiment and the fear of mass migration and radicalisms was finally removed with this act, and it also introduced visa categories that favored skilled immigrants or those with family links to US citizens. Its legacy is still seen today as it initiated what we know today as *family-based immigration* and it diversified immensely the demographics in the US.
- The **Immigration Reform and Control Act of 1986** took a completely different narrative, as its purpose was to deter illegal migration from entering the US. While it amnestied unlawful immigrants that entered the country before 1982, it criminalized those who employed illegal immigrants and increased border enforcement and personnel on the US borders.
- 4 years later, the **Immigration Act of 1990** brought about many of the visa permits to enter the US that we know today: family reunification visa, diverse working visas (categorized into priority workers, advanced professionals, skilled workers...), and the commonly known as the lottery visa. It also lifted the prohibition on homosexual and HIV-positive immigrants to enter the country. Overall, it increased considerably the number of immigrants that could enter the US by legal means.
- The **Illegal Immigration Reform and Immigrant Responsibility Act of 1996** posed new problems and restrictions to those residing illegally in US territory, as it provided with a process for expedited removal and penalized them by prohibiting their return to the US for a certain period of time. As for the border with Mexico, enforcement was increased by allowing the construction of further fencing in places like San Diego, California, and civil penalties for those attempting to cross the border illegally were imposed. Lastly, we should highlight the tightening of asylum procedures and its requirements.
- Following the terrorist attacks of the 9th of September 2001, a new piece of legislation that found overwhelming support in Congress was devised, the **Enhanced Border Security and Visa Reform Act of 2002**. It aimed at making information on migrant more accessible and information sharing easier, by requiring the Immigration and Naturalization Service (INS) to make its databases interoperable, and ensuring information is shared with the different agencies in charge of border enforcement and

intelligence. It also further regulated visa and other travel documents issued to aliens by requiring them to be machine-readable and tamper-resistant, and also to include a standard biometric identifier.

- **The REAL ID Act of 2005** tightened US borders as more requirements for asylum applications were introduced, and grounds to decline applicants and remove immigrant from the US were expanded, namely in relation with terrorism-related activity. Moreover, it aims at ensuring compliance with national standards when issuing and accepting identification documents and requires state authorities to share data on driver's licenses. As of now, 25 states are still not fully implementing this act.
- Lastly, the one piece of legislation we should highlight is the controversial **Deferred Action for Childhood Arrivals of 2012**, known as DACA. It was introduced by Barack Obama by an executive memorandum, and it provided relief for many young immigrants, some estimate 700,000 in the US. This program is applicable for those that were brought the country as children unlawfully, and not only deportation is postponed but they are provided with a work permit in the US, as well as eligibility to obtain driver's license, health insurance, bank accounts, and are able to pay taxes, take a loan or register in college; for a period of 2 years that is renewable. This program is part of every political discussion in the US, following the current showdown between Donald Trump and US federal judges, as the president repealed the act in September 2017 and the courts ordered the full restoration of the program.

★ Types of immigration

Let's make an overview of how these laws apply and regulate the entrance of migrants, and what means they possess to enter the US. First, we should discuss legal migration. Different permits for aliens to reside in the country are issued and depending on the period for which they are emitted, we can distinguish permanent and temporary permits.

As for **permanent residency permits**, they are most commonly known as **green cards**. The current legislation facilitates access to permanent residency for those whose family is already living in the country, or those moving to the US to work. **Family reunification** allows people with a direct relative being US citizen to obtain a green card and offer also different possibilities to other family members (but based on their professional skills). In ciphers, around 800,000 people received in 2016 permanent residency through family-based migration, and around 70% of all green cards issued annually. Regarding **employment-based green cards**, 130,000 were handed out in 2016, and only those working migrants who are investing on commercial US businesses that would benefit the domestic economy and create job positions are eligible for it. Another way an immigrant can obtain a green card is through **the US diversity visa program**, that runs as a lottery for those applying for it all over the world and aims at diversifying the origin of the US immigrant population. Lastly, we should highlight **asylum seeking** that allows those fleeing conflict to stay in the US, yet it is suffering major cuts from the current administration, as Trump froze refugee admissions during 2017, and only 45,000 have been admitted this year, the lowest total since the current refugee program was elaborated, in 1980.

About **temporary residence**, different programs grant temporary residency to workers: **H-1B** (high-skilled workers), **H-2A** (Agricultural workers), **H4** (for relatives), **H-2B** (for service workers), etc. The most issued temporary working visa is **H1-B**. And other than workers, temporary residency is granted through programs like **DACA**, or the **Temporary Protected Status** that allows people with dangerous conditions at their home countries (Somalia, Sudan, Nicaragua...) to live and work in the US.

As for **illegal immigrants**, they account for about 11 million and most have resided in the country for at least 10 years, and a third of them are parents to US-born children; and contrary to what many believe, many of them have **overstay** the expire date of their **visas** instead of crossing the border illegally. Regarding **border trespassing**, it is estimated that 10,000 people attempt at illegally entering the country through the Southern border every week, and one in three is caught and removed by border enforcement personnel; yet it is observed these people will still attempt at crossing at least twice a year. The number of people of undocumented and of people crossing the borders has dropped considerably in the past years due to the financial crisis and the policies undertaken by some states and the new government. Furthermore, contrary to popular believe, many of those crossing the Southern border illegally are not Mexicans but Central Americans that flee conflict back at home, and thanks to the 2008 US anti-human trafficking law, they are granted certain legal rights that Mexicans aren't.



★ Barack Obama's presidency

Major changes have taken place in the last presidential terms, with both presidents being very active and vocal on border crossings and other migration issues. First, Barack Obama implemented the aforementioned Deferred Action for Childhood Arrivals or DACA in 2012, while also pushing to reintroduce the DREAM Act that while similar to DACA, it also provides for a path to citizenship for those beneficiaries. Moreover, in 2014 Obama tried to extend the coverage of DACA to undocumented parents of US citizens through DAPA or Deferred Action for Parents of Americans but was discredited by many and finally outlawed by the Supreme Court in 2016 on grounds of violation of immigration law and the Constitution. Despite his willingness to commit with those in need through institutional efforts, many found reasons to criticize his handling of the matter. While conservatives accused his administration of being soft on border enforcement and on pursuing and deporting immigrants that had committed serious crimes, many civil society organizations advocating for immigrants' rights pointed out how during both his terms, more than three million people were removed from the country, outnumbering those by former Presidents Bill Clinton and George W. Bush. Figures certainly don't lie, and 2012 a new record of deported immigrants was set, with approximately 410,000 people being removed at reaching a rate of 34,000 departures a month.

★ 2016 Presidential Elections and Donald Trump's campaign

During the primaries and the campaign prior to 2016 presidential election migration issues were, as some claim, instrumentalized, specially by future President-elect Donald Trump. He was able to scrap votes anywhere where people could be convinced immigration was the biggest problem the United States had to tackle. These are some of the arguments Trump used to persuade on the importance of migration and the critics made to them:

- **America is being invaded by illegal aliens and criminal refugees.** To support this claim, Trump exposed the example of specific families that had suffered from crimes committed by illegal immigrants. Critics emphasized on the fact that these cases were not representative of the immigrant population and were being used to feed hatred towards the undocumented population.
- **America is vulnerable to terrorist attacks carried out by refugees.** The example of the different terrorist attacks that took place in Western Europe served him as examples of this statement. Again, detractors sustain that while the number of refugees is being capped every year, the number of murders committed in the US by foreigners in the last decades is very small, and most of these casualties were the result of the 9/11 terrorist attacks (committed by visiting foreigners, not asylum seekers).
- **Mexicans are entering the Southwest border freely and unlawfully, it is wide open;** and therefore, **a wall must be built between both countries** (we all know he also claimed Mexico should pay for it). Certainly, many don't paint the picture as simple as that; Mexican immigration into the US peaked in 2005, and many point out how it is now a stable phenomenon considering the amount of removals and returns, the further fencing on the border during the George W. Bush administration, and the increase in

border patrol personnel promoted by Obama. Furthermore, the economically-driven migration from Mexico has decreased while those fleeing violence in Central America and immigration from India and China is considerably more significant now. Yet fencing would also prevent nationals from Central America and other countries to cross the Southern border illegally.

★ Donald Trump in office

The actions regarding immigration taken by the government resulting from Trump's election as President have been multiple. First, Donald Trump issued an **executive order** on January 2017 on **border security**, urging federal agencies to build a physical wall on the border with Mexico, to stop what is commonly known as the *catch and release* practices that allowed some undocumented immigrants to be released after being captured until court hearings were held; and expanded the grounds for expedited removals (without court hearings) so to include those migrants that can't prove they have been in the US for at least two years.

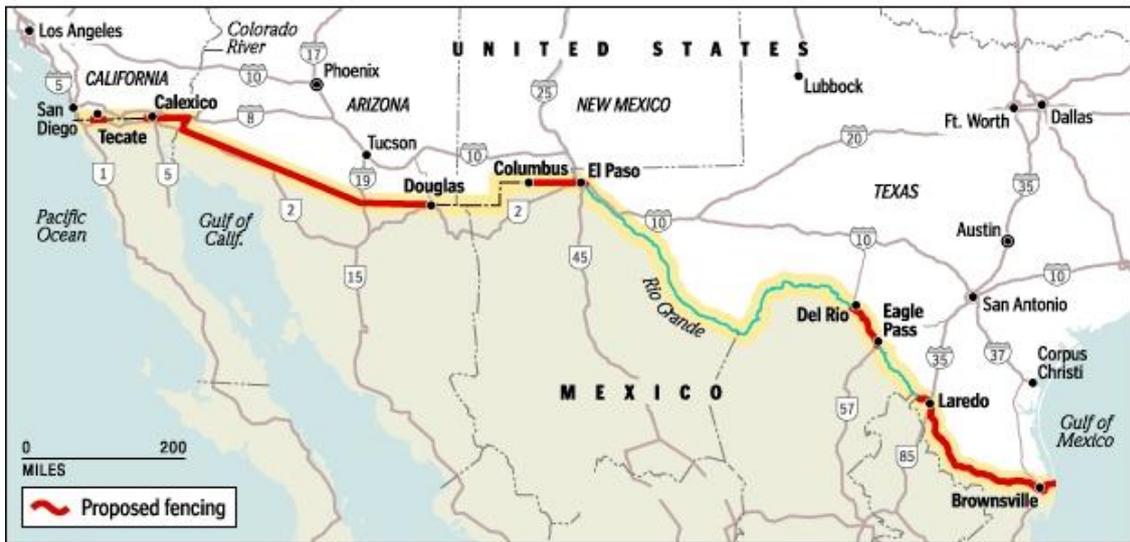
A second executive order was released at the same time relating issues of **interior enforcement**, which first handled the issue of *sanctuary cities*. As we have seen, states have their own competences and duties regarding immigration control, and while many seek to further develop border enforcement (Arizona, Alabama, South Carolina, Georgia...) others allow undocumented immigrants to enjoy of certain civic rights - what many commonly refer to as *sanctuary cities*. While there isn't a clear definition for this phenomenon, some say cities with limited willingness to cooperate with federal authorities on migration enforcement account for more than 600. Donald trump condemned the actions of this municipalities with this executive order, blocking federal funding to these cities, and re-establishing the program *Secure Communities*, which requires local and state forces to turn in suspects of entering the country illegally to federal immigration authorities, and also share information of them. Some states and cities are in litigation with Trump's order, namely California which was found to be obstructing federal immigration enforcement through state laws by the Justice Department. Furthermore, this executive order also expanded the categories of unlawful immigrants prioritized for removal, and enhanced removal facilities and incremented enforcement personnel.

A third order that dealt with **terrorism prevention** was issued shortly after, and it prevented nationals from Iran, Iraq, Libya, Somalia, Sudan and Yemen, countries from particular concern, from entering the United States, as well as banning nationals from Syria indefinitely. The order also suspended the *US refugee program* for 120 days. This executive order, other than causing an outrage in public opinion, met legal challenges from multiple US courts, and while revoked and revised into softer provisions by future orders and presidential proclamations, its legitimacy is still in question.

Other than that, we can see how Trump is renovating past efforts of admitting less refugees and shifting from a family reunification and work-based migration system, towards one that gives priority to educated high-skilled workers. Trump reduced the annual cap of asylum seekers that are admitted into the US to 50,000 (in 2016, more than 180,000 applied for asylum), and also ended the *Temporary Protected Status* program that, as we have seen, provided with a temporary residence and work permission for those fleeing violence and environmental disasters in Central America. He also tried to eliminate DACA gradually (which as we have seen provides relief for immigrants brought as children to the US), but US courts have overridden his attempts to do so. We can also observe the zero-tolerance policy at the Southern border that allowed authorities to

arrest and prosecute all unauthorized criminals, causing the separation of more 2000 child migrants from their families until earlier this year, following protests all over the country.

As for the construction of the wall on the Southern border, Donald Trump seems determined to see it erected. While the President sought to build a 2000-mile wall on the border with a cost of \$25 billion, the negative Congress to support such an expensive project has modified his plans. Deputy commissioner of US Customs and Border Protection revealed the goal to build a \$16 billion wall along 1000 miles of the border. As for now, only \$1,6 billion have been approved by Congress, which are being used to erect prototypes and to replace and enhance portions of the already existing fences.



Donald Trump's proposed fencing



Immigration has posed a great challenge for U.S. political debate for decades, considering policymakers have to consider opposing economic, security, and humanitarian concerns. While a certain level of party doctrine on immigration can be appreciated, the many issues that immigration entails (demand for skilled and unqualified labor, undocumented migration, border security...) and the different impacts they have on the many states of the country swings opinions very differently among senators and Congress members. This makes it difficult to have an agreement among parties in legislative chambers on extensive migration policies, and thus leading to executive and judicial officials having to eventually make a decision on some of these issues (and certainly, not exempt from controversy). So to illustrate how complex the debate is among legislators, the last time they came close to enacting a comprehensive immigration reform was in 2013, when the Democrat-led Senate passed a reform bill that would have provided a path to citizenship for undocumented immigrants and tough border security provisions, yet the House of Representatives was then controlled by the Grand Old Party and they disregarded the project.

★ Republican party

Now, if we analyze general party positions, we might draw the following differences. For **Republicans**, immigration is a national security issue, and the government must ensure they track every person entering and exiting the United States. Being permissive with unchecked crossings of the borders and allowing undocumented immigrants to stay in the US poses many risks, as immigration is associated with terrorism, criminal mobs and drug smuggling. Republicans advocate for greater border security by enhancing and extending fence between the United States and Mexico and increasing resources for border authorities. Moreover, the GOP usually brings a strict enforcement policy, limiting the rights of those undocumented in deportation proceedings; tracking down immigrants who overstay their visas; and cutting federal funds to *sanctuary cities*. Republicans are commonly opposed to granting amnesty or allowing unlawful migrants to enjoy civil rights and benefits (issuing driver's licenses, receiving in-state tuition...).

★ Democratic party

As for the **Democratic party**, they allegedly see immigration as an opportunity to renew the *American Community*. They have placed their efforts on devising comprehensive immigrant reforms, one that also includes securing borders with more personnel and better infrastructure and technology, and also enforcing existing immigration laws. As for further developing the border fence, not many have pronounced themselves. Moreover, Democrats seek to increase the number of visas issued on an employment and family integration basis, as well as improving the naturalization process, thus providing a path for undocumented aliens to become legal permanent residents.

★ Independents

Bernie Sanders, the Vermont Independent Senator has a very defined position that matches many Democrats. He believes America to be a *nation of immigrants* and therefore we must ensure these have the chance to prosper in the US. He supports Obama's DACA and proposed DACA and DREAM Act; that is, providing a legal path to citizenship for those undocumented. He also claims unlawful migrants should be protected from labor exploitation. As for the borders, while he defends higher border control, he opposes physical barriers or fencing.

As for Angus King, Senator from Maine, he doesn't just fall on either the Democrat or Republican spectrum when it comes to migration. He extensively criticized the Trump's Muslim ban, opposed separation of Immigrant families, and claims that the current wave of migrants on the Southern border is composed by asylum seekers fleeing violence and natural disasters in Central America and therefore should not be outlawed. But he also takes a very pragmatic view as proven by his promotion, earlier this year, of a failed bipartisan bill that would unfreeze the stalemate on migration but would also approve Trump's \$25 million budget on fencing the border.



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