

How Immigration on the U.S.-Mexico Border Has Been an Issue as a Result of today's Immigration Policies

Story Goldman

Research Scholars Program, Harvard Student Agencies, In Collaboration with Learn with Leaders

ABSTRACT

This article analyzes the evolution of the United States immigration system and how the United States current policies regarding immigration on the U.S.-Mexico border reflect the antithesis of what the founding fathers envisioned for America. Specifically, it discusses that while the Immigration and Nationality Act of 1965 was thought to be progressive in comparison to previous laws, its contents continue to allow the maltreatment of immigrants under inhumane conditions in detention centers and protects policies that not only obstruct key American values but also lead to the further exploitation of asylum seekers. The paper discusses the reasoning behind the necessity for reform and concludes with possible resolutions that restore the United States' role as an asylum and demonstrate the greatest American values of freedom and liberty. The solutions consist of reapportioning the responsibilities within the asylum system and alternatives to detentions (ATDs) which serve to benefit immigrants, reduce government spending and reflect the United States founding principles.

Keywords: Asylum, ATDs, freedom, immigrants, reform, detention

Subject: Law

INTRODUCTION

In 1790, Congress passed the United States' first immigration law, The Naturalization Act of 1790 which granted "...any alien, other than an alien enemy, being a free white person, who shall have resided for the term of two years, may be admitted to become a citizen thereof, on application to any common law court of record in any one of the states wherein he shall have resided for the term of one year at least, and making proof to the satisfaction of such court, that he is a person of good character..." Unlike future United States immigration laws, the Naturalization Act of 1790 acted in accordance with the Founders' hope for America as an asylum. In less than 60 years the United States' view on immigration as the "New World" became encompassed in prodigious and xenophobia, with the first anti-immigrant political party known as the Know-Nothing Party. The Know-Nothings targeted immigrants from Ireland and German descent. However, it was not so much their place of origin but their religion that fueled their nativistic stance towards immigration to the United States. The rise of the Know-Nothing Party was the first inception of immigration as a political issue but the United States' newfound xenophobic view of immigration did not affect United States law till the Chinese Exclusion Act of 1882. The Chinese Exclusion Act of 1882 and The Geary Act of 1892 established the first racially incentivized restrictions to immigration in the United States. The act stated, "...after the passage of this act...the coming of Chinese laborers to the United States be, and the same is hereby, suspended; and during such suspension it shall not be lawful for any Chinese laborer to come, or having so come after the expiration of said ninety days to remain within the United States."

The prejudicial disposition of immigration laws carried over into the 20th century as a result of World War 1 and communism, which eventually led to the most restrictive immigration law in United States' history. The Immigration Act of 1924 established quotas to 2 percent of the population in the 1890 census, restricting overall immigration at 150,000 per year. It took the United States 40 years to admit that the Immigration Act of 1924, in Kennedy's words, was "intolerable" and passed a new immigration law which uprooted the national origins quota. The Immigration and Nationality Act of 1965 created an immigration system based on categories rather than quotas but still put caps on each.



The categories consisted of relatives of U.S. citizens or permanent residents, immigrants who had skills deemed useful to the United States or refugees seeking asylum.

Since 1965 there have been other pro-immigration provisions passed that have either altered or added to the Immigration and Nationality Act of 1965 yet due to the xenophobia rooted deep into the history of immigration in the United States, immigrants are still discriminated against. In the recent years, discriminatory presumptions have been primarily placed on immigrants coming from the United States-Mexico border. From 2011 to 2013 the American Immigration Council recorded as many as half-a-million U.S.-citizen children experiencing the deportation of at least one parent and 7,216 people have died crossing the U.S.- Mexico border between 1998 and 2017. This data shows that although the Immigration and Nationality Act of 1965 established immigration law in America, the little reform over the past decades has created consequences on American society and values specifically on the United States-Mexico border by counteracting the principles of which America was formed; George Washington, the first president of the United States and signer of the Declaration of Independence expressed his vision for the United States and his personal incentive behind its founding, "I had always hoped that this land might become a safe & agreeable asylum to the virtuous & persecuted part of mankind, to whatever nation they might belong."

THE IMPORTANT ROLE OF AMERICAN VALUES IN IMMIGRATION LAW

On January 25, 2019 the Department of Homeland Security under the Trump Administration issued its new Policy Guidance for Implementation of the Migrant Protection Protocols, otherwise known as the 'Remain in Mexico' policy. The new policy addressed governmental procedures to return immigrants entering from the U.S.-Mexico border and seeking asylum back to Mexico until the U.S. immigration court system provided a court hearing date. In doing so more than 2% of the 71,076 immigrants that were returned under the Trump Administration suffered murder, rape, torture, kidnapping and other forms of assault after returning. Although the act was protected by Section 235 of the Immigration and Nationality Act of 1965 which states, "In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory..." the federal government itself admitted that the new policy "impos[ed] substantial and unjustifiable human costs on migrants who were exposed to harm while waiting in Mexico," President Biden has since returned up to 5,600 immigrants back to Mexico, a 92% decrease from the Trump Administration and is currently in litigation with the state of Texas in hopes to dissolve the policy. President Biden has also reversed Trump's "zero-tolerance" policy where all immigrants entering the United States in any locations besides the official port were detained and separated thousands of families.

Biden's efforts to reform immigration policies reflect the values on which America was built. However, Trump's ability to put the two policies in place and be supported under the "pro-immigration" Immigration and Nationality Act of 1965 reflects the antithesis. George Washington stated, "Liberty, when it begins to take root, is a plant of rapid growth" yet the current United States government is reducing the growth of the land of the free and returning immigrants to unsafe countries and territories. Not only does the Immigration and Nationality Act of 1965 have a direct impact on immigrants in protecting such policies but also affecting American society. Much like the founders, a majority of Americans believe that the United States should serve as a place of refuge. Thomas Jefferson once wrote, "This refuge, once known, will produce reaction on the happiness even of those who remain there, by warning their taskmasters that when the evils of Egyptian oppression become heavier than those of the abandonment of country, another Canaan is open where their subjects will be received as brothers, and secured against like oppressions by a participation in the right of self-government."

In a Pew Research Center study in May 2021, a survey determined that 69% of adults favor allowing undocumented immigrants to stay legally in the U.S. and within that percentage that 42% believe that undocumented immigrants who are currently living in the U.S. and meet certain requirements should be eligible to apply for U.S. citizenship. The survey also found that even politically active members of society and government believe that the government has done a poor job of dealing with the influx of asylum seekers at the border: 86% of Republicans and 56% of Democrats. The result of the survey reveals the evident issue of immigration law in America; when a government is putting policies in place that are not in line with the founders' or current American values, there is a need for reform.

THE COST-EFFECTIVE BENEFITS AND AMERICAN MORAL REBIRTH OF NEW IMMIGRATION INNOVATIONS AND POLICIES

During the month of June 2022, Immigration and Customs Enforcement, otherwise known as ICE, booked 21,482 people into detention centers. In an interview, detainees described unjustifiable conditions which have resulted in at least 35 deaths in the span of less than three years. The conditions include separating families, cold temperatures,



inadequate food, water and sanitation and neglect in detainee wellness in terms of medical and mental health care. These conditions have fostered the perfect environment for the spread of disease as well as the diminishment in morale. Out of the recorded deaths, 25.7% have been identified as suicide by hanging while the remaining percentage is attributed towards medical causes, 30.8% of which was from the spread of COVID-19. In the ICE's FY 2018 budget report, it estimated that the federal government spent \$8.43 million per day on immigration detention, which according to the National Immigration Forum translates to spending more than \$200 a day per detainee. Despite the high costs and adequate funding, immigrants still face the same inhumane conditions. Comparatively, the government could spend as little as \$4.50 a day per immigrant through ATD's (alternatives to detention) like electronic monitoring programs. The National Immigration Forum reported that in 2017 the United States government saved \$189 each day by moving one person from a detention center to ATDs. This report indicated that if ICE had moved one-third of the detainees (12,667) to ATD's, the federal government would have saved more than \$2.39 million each day. These programs not only drastically reduce the cost of federal government spending but also reduce the harmful effects of detention centers by preventing the spread of diseases and keeping families together. ATDs like ankle monitors provide immigrants with freedom, a value held in the highest regard to the founding fathers, while still having a system in place to control the flow of people moving into the country. Some argue that by ridding the immigration system of detention centers and only using ankle bracelets to monitor immigrant activity that immigrants who are deemed dangerous would be "free" to bring crime into the United States. However, out of all detained immigrants only 31% have a criminal record.

While immigration groups have fought to reform the conditions at detention centers, the same groups have also asked that the federal government reform the asylum process. The current immigration system can keep immigrants waiting for a court hearing for up to four years; in that time immigrants may suffer the conditions of detention centers or the transgressions along the Mexican border. If the Department of Homeland Security were to reallocate the responsibilities of the immigration court and asylum officers, the current backlog and rising immigration numbers would begin to decrease and would keep immigrants safe from detention centers or crime in Mexico. The Migration Policy Institute has argued that by allowing the trained asylum officers to not only initiate the "credible fear" interview to assess an applicant's ability to establish eligibility for asylum, but also make the final decision so the application process would be completed in months rather than years. Opponents of the plan argue that in doing so, the federal government would not be addressing immigration judicially, however the courts would still play a role in the admissions of immigrants along the U.S.-Mexico border. When asylum officers determine cases, immigrants would have the ability to appeal their case in front of an immigration judge; the courts would serve as another facet of the American appellate court system. Much like the ATDs, this possible reform would save the federal government resources including hundreds of thousands of dollars and allow immigrants to have two opportunities for freedom.

CONCLUSION

In conceptualizing the morality of today's current immigration laws, the policies protected by the Immigration and Nationality Act of 1965 must be viewed through the eyes of the United States' founding fathers in order to determine the extent of reform needed to align United States laws with its core values. In particular, the United States' founding principle of freedom and its relationship to its role as an asylum to the persecuted parts of the world must be reflected in today's policies yet today's governmental procedures and laws deter asylum seekers and contribute to the oppression of which the founders hoped to protect mankind. This paper argues that, "Instead of deterrence and enforcement only approaches, we should welcome people with dignity in line with American values. We must extract ourselves from the counter-productive "crisis at the border" news cycle. Instead, America must lead the way in building a sustainable migration system that meets the demands of the modern world and current events" (American Immigration Lawyers Association, 2022). In making this determination, the United States can achieve America's founding principles through the use of ATD's and reallocating responsibilities within the asylum process; a solution not only to the flaws in the United States immigration system but also to American society and government spending.

REFERENCES

- [1]. AILA Doc. No. 19032731. (2022, July 21). *Featured Issue: Border Processing and Asylum*. American Immigration Lawyers Association. Retrieved August 9, 2022, from <https://www.aila.org/advo-media/issues/featured-issue-border-processing-and-asylum>
- [2]. AILA Doc. No. 19091660. (2022, July 7). *Featured Issue: Migrant Protection Protocols (MPP)*. American Immigration Lawyers Association. Retrieved August 9, 2022, from <https://www.aila.org/advo-media/issues/port-courts>

- [3]. Anderson, S. (2019, August 1). *Immigration, Nationalism And America's Founders*. Forbes. Retrieved August 9, 2022, from <https://www.forbes.com/sites/stuartanderson/2019/08/01/immigration-nationalism-and-americas-founders/?sh=1609ba5836c1>
- [4]. Benenson, L. (2018, May 9). *The Math of Immigration Detention, 2018 Update: Costs Continue to Multiply*. National Immigration Forum. Retrieved August 9, 2022, from <https://immigrationforum.org/article/math-immigration-detention-2018-update-costs-continue-multiply/>
- [5]. *Conditions in Migrant Detention Centers*. (2021, January 20). American Oversight. Retrieved August 9, 2022, from <https://www.americanoversight.org/investigation/conditions-in-migrant-detention-centers>
- [6]. Coye, E. (2020, December 30). *Is This The Country The Founders Envisioned?* The Transylvania Times. Retrieved August 9, 2022, from https://www.transylvaniatimes.com/lifestyles/is-this-the-country-the-founders-envisioned/article_494f7ab7-af19-5435-8e7b-20932eec6ca4.html#:~:text=Ultimately%2C%20our%20founding%20fathers%27%20vision,could%20not%20overrule%20state%20rights
- [7]. Drozdowski, H., & Chong, F. (2018, July 31). *The Trump Zero Tolerance Policy: A Cruel Approach with Humane and Viable Alternatives*. Refugees International. Retrieved August 9, 2022, from <https://www.refugeesinternational.org/reports/2018/7/31/trump-zero-tolerance-policy>
- [8]. *8 USC 1225: Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing*. (2022, August 8). United States Code. Retrieved August 9, 2022, from <http://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title8-section1225&num=0&edition=prelim>
- [9]. *Fact Sheet: Electronic Monitoring Devices as Alternatives to Detention*. (2019, February 22). National Immigration Forum. Retrieved August 9, 2022, from <https://immigrationforum.org/article/fact-sheet-electronic-monitoring-devices-as-alternatives-to-detention/>
- [10]. *Frequently Asked Questions: "Remain in Mexico" Policy*. (2021, April 12). Justice For Immigrants. Retrieved August 9, 2022, from <https://justiceforimmigrants.org/what-we-are-working-on/asylum/frequently-asked-questions-remain-in-mexico-policy/>
- [11]. "From George Washington to Francis Adrian Van der Kemp, 28 May 1788," *Founders Online*, National Archives, <https://founders.archives.gov/documents/Washington/04-06-02-0266>. [Original source: *The Papers of George Washington*, Confederation Series, vol. 6, 1 January 1788–23 September 1788, ed. W. W. Abbot. Charlottesville: University Press of Virginia, 1997, pp. 300–301.]
- [12]. History.com Editors. (2010, March 5). *U.S. Immigration Since 1965*. History. Retrieved August 9, 2022, from <https://www.history.com/topics/immigration/us-immigration-since-1965>
- [13]. History.com Editors. (2018, December 21). *U.S. Immigration Timeline*. History. Retrieved August 9, 2022, from <https://www.history.com/topics/immigration/immigration-united-states-timeline#:~:text=The%201882%20Act%20is%20the,and%20the%20sick%20or%20diseased>
- [14]. *Immigration Act of 1924 (Johnson-Reed Act)*. (2019). Immigration History. Retrieved August 9, 2022, from <https://immigrationhistory.org/item/1924-immigration-act-johnson-reed-act/>
- [15]. *The Immigration Act of 1924 (The Johnson-Reed Act)*. (n.d.). Office of the Historian, Foreign Service Institute. Retrieved August 9, 2022, from <https://history.state.gov/milestones/1921-1936/immigration-act#:~:text=The%20Immigration%20Act%20of%201924%20limited%20the%20number%20of%20immigrants,of%20the%201890%20national%20census>
- [16]. *Immigration Detention Quick Facts* [Fact sheet]. (2022, July). TRAC Immigration. Retrieved August 9, 2022, from <https://trac.syr.edu/immigration/quickfacts/>
- [17]. Isacson, A. (2022, June 24). *Weekly U.S.-Mexico Border Update: Migrant death toll, Remain in Mexico, Paroles and caravan arrivals, security in Mexico*. WOLA Advocacy For Human Rights in the America. Retrieved August 9, 2022, from <https://www.wola.org/2022/06/weekly-u-s-mexico-border-update-migrant-death-toll-remain-in-mexico-paroles-and-caravan-arrivals-security-in-mexico/#:~:text=The%20Trump%20administration%2C%20which%20invented,towns%2C%20Human%20Rights%20First%20reported>
- [18]. Landis, M. T. (2019, January 22). *The Know-Nothings: Populism Using Nativism as Political Strategy in the Mid-19th Century*. Brewminate: A Bold Bend of News and Ideas. Retrieved August 9, 2022, from <https://brewminate.com/the-know-nothings-populism-using-nativism-as-political-strategy-in-the-mid-19th-century/>
- [19]. Little, B. (2017, September 7). *The Birth of 'Illegal' Immigration*. History. Retrieved August 9, 2022, from https://www.history.com/news/the-birth-of-illegal-immigration?li_source=LI&li_medium=m2m-rcw-history
- [20]. Meissner, D., & Pierce, S. (2019, April). *Policy Solutions to Address Crisis at Border Exist, But Require Will and Staying Power to Execute*. Migration Policy Institute. Retrieved August 9, 2022, from <https://www.migrationpolicy.org/news/policy-solutions-address-crisis-border-exist-require-will-staying-power>



- [21]. *Migrant deaths and disappearances*. (2022, June 14). Migration Data Portal. Retrieved August 9, 2022, from <https://www.migrationdataportal.org/themes/migrant-deaths-and-disappearances>
- [22]. *Most Americans Are Critical of Government's Handling of Situation at U.S.-Mexico Border*. (2021, May 3). Pew Research Center. Retrieved August 9, 2022, from <https://www.pewresearch.org/politics/2021/05/03/most-americans-are-critical-of-governments-handling-of-situation-at-u-s-mexico-border/>
- [23]. National Archives and Records Administration. (1790). *Naturalization Bill of 1790* [Photograph]. U.S. Capitol Visitor Center. <https://www.visitthecapitol.gov/exhibitions/artifact/h-r-40-naturalization-bill-march-4-1790>
- [24]. Terp, S., Ahmed, S., Burner, E., Ross, M., Grassini, M., Fischer, B., & Parmar, P. (2021, January 11). *Deaths in Immigration and Customs Enforcement (ICE) detention: FY2018–2020*. PubMed Central. Retrieved August 9, 2022, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7870381/#:~:text=Since%20April%202018%2C%2035%20individuals,FY2019%2C%20and%2010.833%20in%20FY2020>
- [26]. United States Government National Archives. (1882, May 6). *The Chinese Exclusion Act of 1882* [Photograph]. National Archives. <https://www.archives.gov/milestone-documents/chinese-exclusion-act#transcript>
- [27]. Urbi, J. (2018, June 20). *This is how much it costs to detain an immigrant in the US*. CNBC. Retrieved August 9, 2022, from <https://www.cnn.com/2018/06/20/cost-us-immigrant-detention-trump-zero-tolerance-tents-cages.html>
- [28]. *U.S. Citizen Children Impacted by Immigration Enforcement* [Fact sheet]. (2021, June 24). American Immigration Council. Retrieved August 9, 2022, from <https://www.americanimmigrationcouncil.org/research/us-citizen-children-impacted-immigration-enforcement>
- [29]. *What are President Biden's challenges at the Mexico border?* (2022, June 29). BBC News. Retrieved August 9, 2022, from <https://www.bbc.com/news/world-us-canada-56255613>