

America's Immigration Policy Fiasco: Learning from Past Mistakes

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Abstract: In this essay I discuss how and why U.S. policies intended to stop Latin American immigration to the United States not only failed, but proved counterproductive by ultimately accelerating the rate of both documented and undocumented migration from Mexico and Central America to the United States. As a result, the Latino population grew much faster than demographers had originally projected and the undocumented population grew to an unprecedented size. Mass illegality is now the greatest barrier to the successful integration of Latinos, and a pathway to legalization represents a critical policy challenge. If U.S. policy-makers wish to avoid the failures of the past, they must shift from a goal of immigration suppression to one of immigration management within an increasingly integrated North American market.

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Following the landmark immigration reforms of 1965, which sought to eliminate the taint of racism from U.S. immigration law, America's immigration and border policies took an increasingly restrictive turn. For the first time, hard numerical limits were imposed on immigration from the Western Hemisphere. These limits were tightened in subsequent years, drastically reducing opportunities for legal entry from Mexico, our neighbor and the largest contemporary source of immigrants to the United States. Inevitably, these restrictions gave rise to mass undocumented migration.¹ In response to the rising tide of apprehensions, U.S. policy-makers increased border enforcement exponentially, scaling up deportations to record levels. The immigration enforcement industry presently costs the U.S. government an estimated \$18 billion per year; employs more than 20,000 Border Patrol Officers (an all-time high); and deports an unprecedented 400,000 undocumented migrants per year.²

Despite the astounding enforcement effort of the past several decades, net immigration from Latin America has only accelerated. From 1970 to 2010,

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the percentage of foreign-born rose from 4.7 percent to 13 percent of the U.S. population, the undocumented population rose from a few thousand to a current total of 11 million persons, and Latinos climbed from 4.7 percent to 16.3 percent of the total population.³ If the goal of U.S. policy was to limit the number of Latin Americans living in the United States, it clearly failed. Although the 1965 liberalization of restrictions on Asian, African, and Southern/Eastern European immigration generally worked as expected – bringing in a diverse array of new immigrants in manageable numbers, many of whom were highly educated – the tightening of restrictions on immigration from the Americas backfired.

This failure derives from the fact that the immigration policies implemented in 1965 and thereafter were not founded on any rational, evidence-based understanding of international migration. Instead, they were enacted for domestic political purposes and reveal more about America's hopes and aspirations – and its fears and apprehensions – than anything having to do with immigrants or immigration *per se*. When policies are implemented for symbolic political purposes, and massive interventions are undertaken with no real understanding of how they might affect a complex social system such as immigration, the results are not only likely to be unanticipated, but counterproductive. And that is exactly what transpired in North America. The unintended consequences of U.S. immigration policy unleashed a chain reaction of events that produced an unprecedented boom in Latin American immigration to the United States, despite monumental enforcement efforts.

Our story begins with the crest of the civil rights movement in the 1960s, as legislators pushed to right the historical

wrong of racial segregation. The 1964 Civil Rights Act outlawed discrimination in hiring and service provision and put teeth into school desegregation; the 1965 Voting Rights Act guaranteed black suffrage and prohibited the various subterfuges by which African Americans historically had been disenfranchised; the 1968 Fair Housing Act prohibited discrimination in the rental or sale of housing; and the 1974 Equal Credit Opportunity Act banned discrimination in mortgage lending. Within a brief decade, the vestiges of racism were purged from the American legal code.

In the context of an expanding civil rights movement, the provisions within U.S. immigration policy that openly discriminated against Asians, Africans, and Southern/Eastern Europeans came to be seen as intolerably racist. In 1965, over vociferous Southern objections, Congress amended the Immigration and Nationality Act to create a new immigration system that allocated residence visas on the basis of skills and family ties to U.S. residents, rather than national origins.⁴ The legislation initially created separate numerical quotas for the Eastern and Western Hemispheres, but in 1978, the hemispheric caps were abandoned in favor of a single worldwide ceiling of 290,000 visas, with each nation eligible for up to around 20,000 visas per year. Immediate relatives of U.S. citizens were exempt from these numerical limits, however.⁵

Mexican immigration to the United States had averaged around 50,000 persons per year prior to 1965. In addition to this sizable inflow of legal immigrants, Mexico enjoyed access to a large temporary worker program that, from 1942 to 1964, enabled short-term visas for work in the United States, mostly in agriculture. At the program's height, some 450,000 Mexicans were entering each year as temporary laborers. As the civil rights era

gained momentum, however, the program came to be seen as exploitive and discriminatory, on par with Southern sharecropping. Congress began to cut back the number of work visas in 1960 and unilaterally terminated the program in 1965, despite strong protests from the Mexican government.⁶

The repeal of the discriminatory quotas and the termination of the temporary worker program had been undertaken for the laudable goal of ending racism in U.S. immigration policy; but in neither case did Congress give any consideration to what the consequences might be for the system of Mexican migration, which had evolved to become fully institutionalized by 1965. In the late 1950s, the United States was admitting a half-million Mexican migrants per year (all in legal status), roughly 90 percent for temporary work and 10 percent for permanent residence. By 1960, these flows were sustained by well-developed social networks that connected households and communities in Mexico to jobs and employers in the United States. Economic expectations and structures on both sides of the border were adapted to this reality.⁷

What would happen to this deeply entrenched, thoroughly institutionalized flow of migrants once opportunities for legal entry from Mexico were terminated? Congress did not address or even seriously consider this question; but migration theory and research yield the strong conclusion that immigration flows tend to acquire an obdurate momentum once they are supported by an institutionalized social infrastructure of networks, practices, and expectations, especially when conditions of labor supply and demand remain unchanged. As a result, when opportunities for legal entry disappeared after 1965, the massive inflow from Mexico simply reestablished itself under undocumented auspices. Undocumented

migration steadily rose in subsequent years until, by 1979, it roughly equaled the volume observed in the late 1950s, only now the overwhelming majority of migrants were “illegal.”⁸

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Although little had changed except the documentation of the migrants, the rise of illegal migration after 1965 offered a golden opportunity for ambitious bureaucrats and cynical politicians to garner financial resources and political support; for by definition, illegal migrants were “criminals” and “lawbreakers,” and thus readily portrayed as a grave threat to the nation. Magazine articles on immigration published between 1970 and 2000 were characterized by the rise of a distinct “Latino threat narrative” that framed Latin Americans in general, and Mexicans in particular, using one of two threatening metaphors. On the one hand, migrants from the south were portrayed as a brown “flood” that would “inundate” American culture and “drown” its society. On the other hand, undocumented migrants were portrayed as “invaders” who “swarmed” across the border in “banzai charges” to overrun “outgunned” Border Patrol Agents who fought vainly to “hold the line” against the “alien invasion.”⁹

As the Cold War climaxed, the war on drugs accelerated, and the war on terror came to dominate public rhetoric, martial metaphors overtook marine metaphors. As the number of border apprehensions rose each year, press releases, news articles, and political speeches heralded the increase as confirmation of the ongoing invasion. Although the steady drumbeat of the Latino threat narrative inflamed public opinion and pushed it in a more conservative, restrictionist direction,¹⁰ from 1965 to 1979, the rise in apprehensions stemmed from actual increases in undocumented traffic at the

border, because formerly legal temporary migration was restored under undocumented auspices as circular illegal migration. After 1979, however, the number of undocumented entries stabilized and the rise in apprehensions was pushed forward by the intensifying enforcement effort.¹¹

The 1976 *Reader's Digest* article "Illegal Aliens: Time to Call a Halt!" – written by the Commissioner of the U.S. Immigration and Naturalization Service – reflects the popularized Latino threat narrative. In it, the commissioner alleges that his agency is "out-manned, under-budgeted, and confronted by a growing, silent invasion of illegal aliens" that "threatens to become a national disaster."¹² Through such scare tactics, he and other immigration officials and their political allies were successful in channeling ever-greater resources and personnel to combat the alleged invasion. The number of apprehensions began to rise in self-feeding fashion, even though the underlying traffic at the border was no longer increasing. Each new release of apprehension statistics was accompanied by a demand for more enforcement resources, which indeed produced more apprehensions, which justified still more enforcement resources. As a result, during the 1980s and 1990s, border enforcement increased exponentially in a manner that was completely detached from the actual number of undocumented migrants attempting to cross the border.¹³

From 1980 to 2000, the Border Patrol increased from 2,500 to 9,200 officers, and its budget rose from \$83 million to \$1.1 billion. In response, apprehensions surged from 817,000 to 1.7 million, even though independent estimates indicate the volume of undocumented entries was roughly constant. Despite the massive increase in border enforcement, the number of migrants entering the United States

without authorization changed little; but the sharp upward surge in the costs and risks of border crossing did alter the behavior of migrants, though not in ways expected by policy-makers. As enforcement personnel and matériel accumulated in the two busiest border sectors, migratory flows were diverted away from El Paso and, especially, San Diego, and toward the Sonoran desert and new crossing points on the Arizona border. This shift increased the average cost of crossing from roughly \$500 to \$3,000 per trip and tripled the death rate of undocumented migrants attempting the crossing. Having been forcibly pushed away from California, migrants continued on to new destinations, such as North Carolina, South Carolina, Georgia, Nebraska, and Iowa, states which in the 1990s came to house the most rapidly growing Latino populations.¹⁴

In addition to changing crossing and destination points, rising border enforcement also altered the propensity of migrants to circulate back and forth. Given the rising costs and risks of unauthorized border crossing, migrants quite logically minimized crossing – not by remaining in Mexico, but by settling more permanently in the United States. The principal effect of the progressive militarization of the Mexico-U.S. border was to reduce the rate of undocumented out-migration back to Mexico; it did not lower the rate of undocumented migration into the United States.¹⁵ The end result was a doubling of the net rate of illegal migration and a sharp increase in undocumented population growth through the 1990s and into the new century. In the course of two decades, the North American migration system was transformed from a circular flow of male workers going to California and a few other states into a settled population of families living in all fifty states. From 1988 to 2008, the

number of unauthorized residents of the United States grew from 1.9 million to 12 million, while the share residing in California dropped from 40 percent to 25 percent.¹⁶

Illegal migration has always been confounded in the public mind with threats to the nation's security – be they from Jacobins, papists, or Communists – and the 1980s were no exception. In the context of the Cold War and the proxy confrontation with the Soviet Union in Central America, President Reagan warned Americans that “terrorists and subversives are just two days’ driving time from [the border crossing at] Harlingen, Texas,” and in response to such rhetoric, the 1986 Immigration Reform and Control Act contained a host of provisions enacted to manage a potential “immigration emergency.” In another speech, Reagan predicted that extremist groups would “feed on the anger and frustration of recent Central and South American immigrants who will not realize their own version of the American dream.”¹⁷

With the collapse of the Soviet Union, illegal immigrants lost their value as a trope in the Cold War; however, they were quickly co-opted symbolically in the war on terror. In response to the 1993 attack on the World Trade Center and the 1995 bombing in Oklahoma City, Congress in 1996 passed the Anti-Terrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Act. Following the 1998 bombing of the USS *Cole* in Yemen, the 2000 bombings of American embassies in Kenya and Tanzania, and the catastrophic attacks of September 11, 2001, Congress enacted the USA PATRIOT Act. These measures not only strengthened border enforcement, but very deliberately increased pressure on both legal and illegal immigrants within the United States.¹⁸

The 1996 legislation, for example, authorized removals from ports of entry without judicial hearings, declared undocumented migrants ineligible for public benefits, restricted access of documented migrants to certain means-tested programs, granted local agencies the power to assist in immigration enforcement, declared any alien who had *ever* committed a crime immediately deportable, authorized the “expedited exclusion” of any alien who had *ever* crossed the border without documents, granted authority to the State Department to designate any organization as “terrorist” and render all its members deportable, added alien smuggling to the list of crimes covered by the anti-mafia RICO statute, and severely limited the possibilities for judicial review of all deportations. The 2001 legislation granted executive authorities additional powers to deport, without presentation of evidence, any alien – legal or illegal – that the attorney general had “reason to believe” might commit, further, or facilitate acts of terrorism. It also authorized the arrest, imprisonment, and deportation of non-citizens upon the orders of the attorney general, again without judicial review.¹⁹

The cumulative result of these actions was a massive escalation of roundups in immigrant neighborhoods, raids at employment sites, “stop and frisk” actions on city streets, and traffic stops along public roadways. The end result was an exponential increase in immigrant detentions and deportations that threatened not only undocumented migrants, but any foreigner who was not a U.S. citizen. From 1990 to 2010, deportations from the United States rose from 30,000 to around 400,000 per year. In response, millions of legal immigrants rushed to undertake *defensive naturalization*: petitioning for U.S. citizenship in order to protect their rights and safeguard their ability to remain in the United States.²⁰

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Historically, Latin American and, especially, Mexican immigrants had displayed very low rates of naturalization. In the 1990s, however, citizenship applications surged in response to the rising tide of internal enforcement and cumulative restriction of liberties. Among Mexicans, the number of naturalizations had never exceeded 30,000 per year prior to 1990, and the total number in the two decades between 1970 and 1990 stood at just 233,000. However, Mexican naturalizations surged to 255,000 in 1996, with plateaus of 208,000 in 1999 and 232,000 in 2008, yielding a cumulative total of 2.1 million new citizens between 1990 and 2010.²¹

The surge in naturalizations is key to understanding the acceleration of legal immigration from Mexico that has unfolded in recent years, despite the annual cap of 20,000 visas per country; for as noted earlier, immediate relatives of U.S. citizens are exempt from numerical limits. Although legal permanent residents are authorized to petition for the entry of their spouses and minor children, these visas fall under the annual cap, and their relatives must wait until a visa becomes available – which for an oversubscribed country such as Mexico takes years. In contrast, if permanent residents naturalize to become U.S. citizens, their spouses and minor children are eligible for immediate entry, along with the immigrant's parents. Moreover, their adult children and siblings acquire the right to enter, subject to numerical limitation.

In sum, each new citizen creates new entitlements within the U.S. immigration system and produces more legal immigrants down the road. As a result, when Congress began to strip away the rights and privileges of permanent residents and threaten them with deportation for a growing number of infractions, it unwittingly created hundreds of thou-

sands of new entitlements for permanent resident visas that pushed legal immigration well above the statutory cap of 20,000 visas per year. To be sure, the exemption offered to citizen relatives had long pushed legal immigration from Mexico above the 20,000 visa limit. During the 1970s, for example, arrivals of Mexican legal residents averaged 63,000 per year despite the cap. By the latter half of the 1990s, however, the average more than doubled to reach 136,000, and from 2000 through 2010, it stood at 170,000 per year. Whereas only 5 percent of all legal Mexican immigrants entered as relatives of U.S. citizens in 1990, that figure rose to nearly two-thirds by 2010. In its zeal to increase pressure on foreigners in the name of the war on terror, Congress inadvertently increased legal immigration from Mexico by a factor of nearly three.²²

Up to now I have focused on Mexico, by far the leading contributor of migrants to the United States. Since 1970, Mexico alone has accounted for approximately 20 percent of documented and 60 percent of undocumented immigrants to the United States – and half of all documented and three-quarters of all undocumented immigrants from Latin America. After Mexico, the second major source region in Latin America is Central America, which accounts for around 15 percent of documented and 20 percent of undocumented migrants from the region. Immigration from Central America was minimal prior to 1980, with legal entries totaling just 114,000 during the 1970s. But entries by Central Americans grew rapidly thereafter, totaling around 325,000 in the 1980s and around 600,000 in both the 1990s and 2000s.²³

The surge in Central American immigration stemmed from the U.S.-Contra intervention, which raised levels of vio-

lence and social disorder in the region and pushed thousands of people northward as refugees. Although Nicaraguans, escaping a left-wing, pro-Soviet regime, were readily accepted as refugees and ultimately admitted to permanent residence, other Central Americans – Salvadorans, Guatemalans, and Hondurans – were labeled “economic migrants,” and were not welcomed. U.S. officials relegated these migrants to temporary protected status at best, and more commonly undocumented status, adding a significant Central American component to America’s Latin American population boom.²⁴

Over the past four decades, the United States has undergone a mass immigration not seen since the early twentieth century. The new wave has yielded a progressive Latinization of the U.S. population and a rising prevalence of illegality among the foreign born. From 1970 to 2010, the foreign-born population rose from 9.6 to 40 million persons, while the Latino population grew from 9.6 million to 50.5 million, now making up 16.3 percent of the total population. Among Latinos, the foreign-born population rose from 30 percent to 40 percent, and Central Americans and Mexicans together increased their share of the population from two-thirds to three-quarters. (Caribbeans fell from 25 percent to about 15 percent.) Among Latinos present in 2010, nearly a third lacked documents, and nearly 60 percent of immigrant Latinos were unauthorized.²⁵

For the most part, these developments were unintended consequences of U.S. immigration and border policies enacted without regard for realities on the ground. By curtailing opportunities for legal entry from the Americas after 1965, the United States transformed a well-established and largely circular flow of legal migrants into an equally well-established, circular

flow of illegal migrants. The increase in illegal migration led, in turn, to the rise of the Latino threat initiative and a shift toward increasingly restrictive policies. The resultant militarization of the Mexico-U.S. border transformed the geography of border crossing and led to a proliferation of new destinations, while at the same time reducing rates of return migration and accelerating the undocumented population growth. Finally, U.S. political and military interventions in Central America during the 1980s generated outflows of émigrés that further augmented Latin American population growth in the United States. As a result, since 1970, the foreign-born population has quadrupled, the United States became substantially more Latino, national origins among Latinos have shifted decisively toward Mexico and Central America, and the share present without authorization has risen to unprecedented heights.

The evidence thus suggests that the turn toward restrictive immigration policies after 1965 was counterproductive, to say the least. Particularly in the case of Mexico, the contradictions are glaring. In 1994, the United States and Mexico entered into a free trade agreement designed to reduce barriers to cross-border movements of goods, capital, resources, information, services, and many categories of people. Not only was free movement of labor excluded from the otherwise integrated North American market being established, but that same year, the United States launched Operation Gatekeeper to block the flow of migrants through the busiest border sector – part of a two-decade-long process of border militarization. Apparently, the contradiction between the stated goal of integrating all factor markets in North America and the exclusion of Mexican labor from participating never occurred to leaders in Washington.

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The simple reality is that, as a practical matter, it is virtually impossible to stop the movement of people between two countries that share a 3,000-mile border, are linked together in a free trade agreement, are among one another's largest trading partners, and are bound by a joint history of social, economic, and political inter-penetration. If one tries unilaterally to block flows of people that are the natural outgrowth of broader processes of social and economic integration, moreover, the results are dysfunctional and counterproductive, as we have seen. Rather than seeking to suppress migratory flows that merely reflect the powerful forces binding North America together, the alternative is to accept the flows and seek to manage them in ways that are beneficial to Americans, Mexicans, and the immigrants themselves.

In North America, the stars might finally be aligned for such a transition, moving away from unilateral repression toward bilateral strategies of management. With the conspicuous help of Latino voters, President Obama won a second term and need not worry again about reelection. In Mexico, meanwhile, new President Enrique Peña Nieto has taken charge and is looking for a way forward on issues with its northern neighbor. Should the two presidents seek to cooperate in managing international migration more effectively, they will benefit from a unique political moment when the pressure is off: undocumented migration from Mexico has fallen to a net of zero and has remained there since 2008. Indeed, the net immigration rate may even be negative.²⁶

One reason for this development is the quiet return of temporary worker migration. Whereas only 3,300 Mexicans entered the United States on temporary work visas in 1980, in 2010 the number reached 517,000.²⁷ Though the latter

figure is inflated by new measurement efforts at the border, in 2008, before these new efforts were implemented, the number of entries stood at 361,000, the largest number since 1959. When added to the average of 170,000 Mexicans who entered each year as permanent residents, we see that substantial opportunities for legal entry have opened up in the U.S. immigration system, with numbers fluctuating around the half-million level last observed in the late 1950s. Although labor demand in the United States faltered in the great recession of 2008, the demand that remains is currently being met by legal migration in various categories.

In Mexico, meanwhile, the conditions that have for so long driven immigrants northward have shifted. Birth rates have fallen dramatically, the rate of labor force growth is rapidly decelerating, and the Mexican population is aging as rural populations continue to dwindle. Rural dwellers, long the source of a disproportionate share of Mexican immigrants, dropped from 35 percent of the population to roughly 20 percent today. At the same time, real wages have stabilized even as they have fallen in the United States, while education levels among younger cohorts have steadily risen and the middle class has grown.²⁸ The young migrants leaving Mexico today are increasingly well-educated people of metropolitan origin who are migrating in response to the rhythms of development in an ever-more integrated North American economy.²⁹

In sum, the conditions that supported mass undocumented migration in the past appear to be disappearing, and what needs to be done now is to find ways to better manage the flows that will inevitably occur in the course of North American economic integration. We must facilitate the entry and return of the large majority of migrants who prefer circula-

tion to settlement, while opening up opportunities for legal permanent residence for the minority of migrants who acquire strong social or economic connections to the United States and wish to remain permanently.

In recent years, politicians in the United States have referred to four “pillars” of comprehensive immigration reform: gain control of the border, create a sizable guest worker program, increase the quotas for immigration from Mexico (and Canada), and enact a pathway to legalization for undocumented U.S. residents. Of these, three have already been achieved in de facto terms: illegal migration has been at a net of zero since 2008; temporary worker entries are at levels not seen since the late 1950s; and through defensive naturalization, Mexicans themselves have in practical terms increased the size of their quotas for legal immigration.

Although the current system of temporary worker migration could certainly benefit from improvements to protect workers from exploitation, the most serious task remaining for immigration reformers is the legalization of the 11 million persons who are currently unauthorized, especially the 3 million or more persons who entered as minors and grew up in the United States. The lack of legal status constitutes an insurmountable barrier to social and economic mobility, not only for the undocumented immigrants themselves, but for their citizen family members. Not since the days of slavery have so many residents of the United States lacked the most basic social, economic, and human rights.

The transition to a minority-majority U.S. population is now well under way, and is inevitable in demographic terms. Although the U.S. population is currently 16 percent Latino, 14 percent black, 5 percent Asian, and 3 percent mixed race, among births, 25 percent are to Latino

mothers, 15 percent are to African Americans, and 7 percent are to Asians, making up almost half the total. Our failure to arrange for the legalization of the 11 million persons currently out of status will not change the demographic transition under way in the United States; it will only render it more contentious, problematic, and costly to society. In 2013, the United States, Mexico, and Canada have a unique opportunity to break with the failed policies of the past and enter a new era of cooperation to manage, rather than suppress, the ongoing flow of migrants who will inevitably move within the free trade zone that has been created among the three countries.³⁰

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