

# **Immigration Policy at the US-Mexico Border: Causes, Consequences, and Current Repercussions**

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*The United States' historical and present-day injustices towards immigrants from Mexico and Latin America are seen through the complications felt by undocumented immigrants, the assimilation of immigrants, and the asylum process for immigrants. Specifically, this paper consists of three sections: 1) Racism in an Anti-Racist Bill: The Forgotten Quota that Caused Undocumented Immigration 2) The Negative Impacts of Labor and Crime Legislations on the Assimilation of Mexican Communities into the American Mainstream, and 3) The Pandemic and Immigration—A Relationship of Inconsistency and Injustice. The first section looks at the causes behind the first Western Hemispheric quota and its effect on immigration across the US-Mexico border. The second section analyzes the consequences of U.S. immigration policy and its contribution to the challenges facing Mexican communities and their ability to assimilate into the American mainstream. Finally, the third section covers the current repercussions of immigration policy by providing a historical account of Title 42 and its harmful enactment under both the Trump and Biden administrations.*

## Section I

### **Racism in an Anti-Racist Bill: The Forgotten Quota that Caused Undocumented Immigration**

#### **Intro**

Today, the Immigration and Nationality Act of 1965 is known as a liberal and just piece of legislation that comprehensively reformed a racist immigration system, which is exactly what the progressive senators who wrote the bill intended. Ironically, the bill also included an amendment written by racist conservative senators that instituted the first ever quota on immigration from the Western Hemisphere. This amendment directly led to a rise in undocumented immigration rates across the Mexico-US border for the first time in American history.

This initial surge in undocumented immigration started a “self-feeding chain reaction of enforcement.”<sup>1</sup> This cycle has resulted in short term solutions such as restrictive legislation and an increasingly militarized border that have only worsened the crisis, increasing apprehension rates and forcing migrants to use more dangerous routes while doing little to actually reduce undocumented immigration.<sup>2</sup> A highly politicized feedback loop separates current border policy from actual undocumented migration rates and instead responds to increasingly disconnected

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<sup>1</sup> Douglas S. Massey and Karen A. Pren, “Unintended Consequences of US Immigration Policy: Explaining the Post-1965 Surge from Latin America,” *Population and Development Review* 38, no. 1 (2012): 9.

<sup>2</sup> Claudia Sadowski-Smith, “Unskilled Labor Migration and the Illegality Spiral: Chinese, European, and Mexican Indocumentados in the United States, 1882-2007,” *American Quarterly* 60, no. 3 (2008): 779–800.

public opinion that supports conservative border policy.<sup>3</sup> Now, 40 years since the last significant legislative attempt to address undocumented immigration, comprehensive reform in today's political climate has proven to be nearly impossible.

One would think that scholars would have extensively studied this amendment, as it kickstarted the cycle of ineffective enforcement that brought us to where we are today. However, while most scholars acknowledge the effects of this 1965 Immigration and Nationality Act and its amendment on Mexican immigration, existing debate about the 1965 Immigration and Nationality Act have focused solely on the decision to remove national-origins quotas from the Eastern Hemisphere, largely ignoring the effects of the act on the Western Hemisphere. This has resulted in a significant lack of research into the origins of this amendment. This paper will attempt to answer the question: What led U.S. policy makers to include these Western Hemispheric quotas that in hindsight directly created this undocumented immigration crisis?

## **Background**

Undocumented immigration hasn't always been a political issue in the United States. In fact, before 1965, it wasn't an issue at all. Until the 1965 Immigration and Nationality Act, undocumented immigration rates across the US-Mexico border were insignificant, as there was no quota on the number of visas issued to Mexicans, or any country in the Western Hemisphere for that matter.<sup>4</sup> Not only was immigration from Mexico largely unrestricted, but before 1964 the U.S. federal government actively encouraged it, recruiting temporary Mexican laborers through the Bracero program. Due to the lack of undocumented immigration, and the role of the federal

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<sup>3</sup> Massey and Pren, "Unintended Consequences of US Immigration Policy," 14.

<sup>4</sup>There were 40,000 apprehensions per thousand agents in 1965, compared to 460,000 less than 12 years later. Massey and Pren, "Unintended Consequences of US Immigration Policy," 14.

government in encouraging labor migration, immigration was not highly politicized. In fact, it was almost completely absent from public consciousness.<sup>5</sup>

It isn't hard to figure out what caused the sudden increase in undocumented immigration from Mexico. After more than two decades of temporary labor recruitment, establishing a "massive circular flow of Mexican migrants," the Bracero program "came to be seen as an exploitative and discriminatory system," and was terminated in 1964 due to pressure from a coalition of "unions, religious organizations, and civil rights groups."<sup>6</sup> This program, which at its peak issued 500,000 temporary visas a year to Mexican laborers, was ended without addressing the resulting dependence of the U.S. agricultural sector on Mexican labor.<sup>7</sup> Just one year later, the 1965 Immigration and Nationality Act restricted the number of visas issued to all immigrants from the Western Hemisphere to just 120,000.<sup>8</sup> The subsequent increase in undocumented immigration can be directly attributed to these two factors, as the "temporary labor program had been terminated and the number of permanent resident visas had been capped," which left "no legal way to accommodate the long-established flows" of Mexico-US migration.<sup>9</sup> In other words, the initial surge of undocumented immigration from Mexico was caused not by an increase in

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<sup>5</sup>Fewer than 1% of citizens considered immigration to be the greatest problem facing the U.S. in 1965, compared to 23% in 2019. Jeffery M. Jones, "New High in U.S. Say Immigration Most Important Problem," Gallup, June 21, 2019, <https://news.gallup.com/poll/259103/new-high-say-immigration-important-problem.aspx>. Andrew Kohut, "From the Archives: In '60s, Americans Gave Thumbs-up to Immigration Law That Changed the Nation," Pew Research Center, accessed April 24, 2023, <https://www.pewresearch.org/short-reads/2019/09/20/in-1965-majority-of-americans-favored-immigration-and-nationality-act-2/>.

<sup>6</sup> Massey and Pren, "Unintended Consequences of US Immigration Policy," 5.

<sup>7</sup> "Action Memorandum From the Assistant Secretary of State for Inter-American Affairs (Kubisch) to Secretary of State Kissinger," Department of State Office of The Historian, December 21, 1973, <https://history.state.gov/historicaldocuments/frus1969-76ve11p1/d62>.

<sup>8</sup> David Fitzgerald and David Cook-Martín, "The Geopolitical Origins of the 1965 Immigration Act," in *A Nation of Immigrants Reconsidered*, ed. Maddalena Marinari, Madeline Y. Hsu, and María Cristina García, US Society in an Age of Restriction, 1924-1965 (University of Illinois Press, 2019), 94, <https://doi.org/10.5406/j.ctv9b2wjb.9>.

<sup>9</sup> Massey and Pren, "Unintended Consequences of US Immigration Policy," 5.

immigration from Mexico, but instead by new immigration policy that stripped the legality from established labor flows.

## **Literature Review**

Scholars generally agree that the 1965 Immigration Act was passed primarily to repeal national-origins and race-based quotas in the Eastern Hemisphere from the 1920s. Because of this, there is an extensive debate as to what factors drove legislators to repeal these racist quotas. Scholars disagree over whether the decision to do so was primarily motivated by specific foreign policy concerns or changing moral and ethical views about racial discrimination, and the existing study of the act is devoted primarily to these two schools of thought. However, these scholars generally overlook the importance of an amendment to the act that restricted immigration from the Western Hemisphere. This has resulted in a lack of research and debate over the motivation behind the inclusion of this amendment.

The most popular explanation for the passage of this act is that it was a reflection of the changing moral values behind the Civil Rights movement. In “The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965,” author Gabriel Chin acknowledges foreign policy pressures but argues that the main driver behind the act the idea that “racial and national distinctions were bad in principle, not because of some particular exigency.”<sup>10</sup> To support his argument, Chin first draws on scholars such as Vernon Briggs, who noted that the immigration act was passed in the same year as the Voting

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<sup>10</sup>Gabriel J Chin, “The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965,” *NORTH CAROLINA LAW REVIEW* 75 (November 1, 1996), 301.

Rights act and just a year after the Civil Rights Act of 1964, grouping the three together as a “high-water mark in a national consensus of egalitarianism.”<sup>11</sup> Chin then analyzes Congressional discussion over the 1965 Act, using quotes from congressmen who argued that the existing quota system was “contrary to our basic principles as a nation,” and “irrational, arrogantly intolerant, and immoral,” as evidence that their primary motivation was moral and anti-discriminatory. Chin concludes that the act, along with its repeal of existing immigration quotas, was simply “intended to take race out of America's immigration policy.”<sup>12</sup> Chin’s arguments are echoed by Douglas S. Massey, Jorge Durand, and Noran J. Malone in their book “Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration.” They argue that the national-origins quota system “came to be seen as intolerably racist,” and that the resulting 1965 Immigration act was “part of the broader move to end racism in federal law.”<sup>13</sup> Massey, Durand, and Malone leave no doubt as to their opinion of the relative importance of civil rights to the bill, stating that “at the time the bill was seen as more of a piece of civil rights legislation than a fundamental change in U.S. Immigration policy.”<sup>14</sup>

On the other side of the debate, authors like David Fitzgerald and David Cook-Martin argue that the act was motivated in part by foreign policy concerns, minimizing the role of domestic pressure over civil rights. In “The Geopolitical Origins of the 1965 Immigration Act,” Fitzgerald and Cook-Martin begin by refuting the ideas of Chin and other scholars about the importance of the civil rights movement to the 1965 Immigration Act. Most importantly, they

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<sup>11</sup>Vernon M. Briggs, *Immigration Policy and the American Labor Force* (Baltimore: Johns Hopkins University Press, 1984).

<sup>12</sup>Chin, “The Civil Rights Revolution Comes to Immigration Law,” 345.

<sup>13</sup> Douglas S. Massey, Jorge Durand, and Nolan J. Malone, *Beyond Smoke and Mirrors : Mexican Immigration in an Era of Economic Integration* (New York : Russell Sage Foundation, 2003), <http://archive.org/details/beyondsmokemirro0000mass>, 39.

<sup>14</sup> Massey, Durand, and Malone, *Beyond Smoke and Mirrors*, 40.

note that while the civil rights movement was “primarily framed in the old black/white dichotomous way of understanding US race relations,” the 1965 Immigration Act was primarily concerned with discrimination against Asian immigrants, not African Americans. As a result, the “1965 immigration act was not strongly pushed by US blacks,” who were more concerned with their own civil rights.<sup>15</sup> To determine the true origins of the bill, the authors examine the report written by President Truman’s Commission on Immigration and Naturalization, which “eventually formed the outline of the 1965 Immigration Act.” While this report “acknowledged liberal democratic creeds and the scientific rejection of racism,” Fitzgerald and Cook-Martin found that “foreign policy concerns dominated its arguments.”<sup>16</sup> This analysis leads the authors to conclude that foreign policy considerations played a significant role in the passage of the 1965 Immigration and Nationality Act, not just civil rights concerns.

In the articles and books mentioned above, reflective of the wider debate over this immigration act, there is surprisingly little attention given to the amendment to this act that restricted immigration from the Western Hemisphere. In his article, Chin acknowledges that the bill imposed “for the first time, a 120,000 annual limit on Western Hemisphere immigration,” but dismisses this restriction as “insignificant compared to those which were eliminated.”<sup>17</sup> He makes no mention of the implications this limit had on Mexican immigration. In their book, Massey, Durand, and Malone go further than Chin and acknowledge the importance of the Western Hemispheric limit. They argue that if not for this new limit on visas, “the flow of Mexicans would simply have shifted from bracero to resident alien visas,” meaning that the bracero program “would have continued apace under a different name.” Essentially, they argue

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<sup>15</sup> Fitzgerald and Cook-Martin, “The Geopolitical Origins of the 1965 Immigration Act,” 94.

<sup>16</sup> Fitzgerald and Cook-Martin, “The Geopolitical Origins of the 1965 Immigration Act,” 91.

<sup>17</sup> Chin, “The Civil Rights Revolution Comes to Immigration Law,” 298.

that had the 1965 Immigration and Nationality Act not included a quota on the Western Hemisphere, “undocumented migration would probably not have grown.”<sup>18</sup> Yet while Massey, Durand, and Malone acknowledge the severe implications of the decision to include this limit, they make no attempt to explain the motivation behind it. Instead, they focus on the political and economic motivation behind the end of the Bracero program, which by their own analysis would not have caused the increase in undocumented immigration without the immigration bill.

Finally, while Fitzgerald and Cook-Martin briefly delve into the negotiations over the Western Hemispheric limit in their article, they also fail to explain the rationale behind its inclusion. They explain that this limit was an amendment introduced by conservative Democrats and Republicans in the final negotiations over the bill, and outline the opposition, explaining that the White House was concerned it would “vex and dumbfound” Latin American leaders and that it undermined the “principle of nondiscrimination” the bill was intended to promote. However, Fitzgerald and Cook Martin never explain why the conservative proponents of the amendment wanted to eliminate Western Hemispheric exemptions. Instead, they simply conclude that the inclusion of the Western Hemispheric quota was the “political price of ending the national-origins quotas in the Eastern Hemisphere.”<sup>19</sup> Just like Chin, Fitzgerald and Cook-Martin devote their article to the origins of the end of the Eastern Hemispheric quotas, deeming the Western Hemispheric quota to be of less importance, and therefore not worth researching.

Despite the robust and extensive scholarly debate over the decision to eliminate national-origin quotas in the Eastern Hemisphere in the 1965 Immigration and Nationality Act, almost no scholars have carried out research on the inclusion of a quota on the Western Hemisphere,

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<sup>18</sup> Massey, Durand, and Malone, *Beyond Smoke and Mirrors*, 42.

<sup>19</sup> Fitzgerald and Cook-Martin, “The Geopolitical Origins of the 1965 Immigration Act,” 94-95.



despite its far-reaching implications. This paper will attempt to explain the motivation of the senators who introduced and supported the inclusion of this quota in the final bill.

## **Primary Evidence**

### *Congressional Records*

Senator Sam Ervin of North Carolina introduced the amendment that instituted a quota on immigration from the Western Hemisphere during the final negotiations in the senate over the 1965 Immigration and Nationality Act. In a lengthy speech, Senator Ervin proposed this amendment and defended it, using excerpts from a number of news articles he read into the record. Through an analysis of this speech, the articles he introduced for support, and a speech made by Senator Strom Thurmond shortly thereafter, three distinct arguments in support of the amendment are apparent. The necessity of this quota was defended on the grounds that it would prevent a wave of immigration from Latin American countries, that it would end unjust discrimination against countries in the Eastern Hemisphere, and that it would preserve the ethnic composition of the United States.

First, Senator Ervin began his speech by assuring his audience that he did not support removing the national-origins quota system, which he believed was enacted for a “very good reason.” To Ervin, arguments that claim the national-origins quota system was discriminatory were “mischievous nonsense and sanctimonious propaganda.”<sup>20</sup> However, because he knew that his opposition had enough votes to reform the quota system, Senator Ervin explained, he was left with two options: fight for the national-origins quota system, and lose, or accept its removal and attempt to amend the new law, in an effort to fix what he saw as a “fatal defect” in the original

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<sup>20</sup> U.S. Congress, Senate, *Immigration and Nationality Act*, 24232.

bill: the lack of a Western Hemispheric quota.<sup>21</sup> From the very beginning of the speech, Ervin's intentions are apparent: while he may not be able to save the national-origins quota system and the racist ideology it represented, he was going to do his best to include similar restrictive policy in the new bill.

Ervin's first argument drew on seemingly widespread fears of an imminent Latin American exodus. Ervin argued that his amendment would prevent a massive flood of immigration from South and Central American countries caused by overpopulation. Ervin supported this claim with various editorials and columns from prominent news sources such as the *New York Times*, *Christian Science Monitor*, and *Minneapolis Tribune*, among others. One column stated, "Latin America currently has the highest growth rate in the world. Famine and population may be on a collision course. Can the United States, with all the sympathy and pity in the world, really hope to solve foreign problems by taking in immigrants?"<sup>22</sup> Some had statistics, claiming that "the population of Latin America will increase 3.6 times by the end of the century,"<sup>23</sup> and criticisms, such as "on the whole, the Latin American nations are failing to solve their economic problems," even that "most Latin governments do not currently recognize their population problems."<sup>24</sup> Finally, as the articles concluded, "It would seem that a reasonable, legal limit on migration from Latin America, if adopted today, could prevent the need to adopt more stringent legislation tomorrow,"<sup>25</sup> and "the imposition of a quota will provoke less diplomatic tension now than it will later when overpopulation becomes acute."<sup>26</sup> These editorials

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<sup>21</sup> U.S. Congress, Senate, *Immigration and Nationality Act*, 24232.

<sup>22</sup> U.S. Congress, Senate, *Immigration and Nationality Act*, 24236.

<sup>23</sup> U.S. Congress, Senate. *Debate on Amendment to Immigration and Nationality Act*. 89th Cong., 1st sess., 1965, 24234

<sup>24</sup> U.S. Congress, Senate, *Immigration and Nationality Act*, 24235.

<sup>25</sup> U.S. Congress, Senate, *Immigration and Nationality Act*, 24234.

<sup>26</sup> U.S. Congress, Senate, *Immigration and Nationality Act*, 24235.

and columns had similar structures, claiming that first that overpopulation and bad leadership in Latin American countries would soon lead to mass migration to the United States, and second that action now would be easier than action in the future. They were seemingly unbiased evidence of rational fears that the country would soon be overrun with massive amounts of Latin American immigrants, and proposed what seemed to be a responsible and strategic solution.

Ervin drew on foreign policy concerns to bolster his argument about the need for Western Hemisphere quotas, arguing that the absence of a Western Hemispheric quota was, in fact, discriminatory. A system that “specified that only a limited number [of immigrants] could come in from the Eastern Hemisphere,” while allowing “unlimited numbers... from the Western Hemisphere,” was a “gross discrimination against all people of the Eastern Hemisphere.”<sup>27</sup> He brought up examples, such as “no more than 20,000 persons could be admitted from the United Kingdom in one year, but such countries as El Salvador, Paraguay, Nicaragua, and Argentina could send unlimited numbers.” As Ervin explained, “Retention of my amendment in the bill will finally bring us to the point at which we no longer discriminate in favor of the people of Chile over the people of England, or the people of the Dominican Republic over the people of France, our traditional allies since our fight for independence.”<sup>28</sup> In the end, Ervin stated that even his amendment wasn’t satisfactory, as it still allowed “45 percent of immigrants to come from only 15 percent of the world’s population.” Ervin presented a perfectly logical argument to the Senate: If we restrict immigration from the Eastern Hemisphere, then a system that allows unrestricted immigration from the Western Hemisphere is inherently discriminatory.

Through Ervin’s first two seemingly unbiasedly logical and rational arguments, he made a third, implicit argument. This argument, that the quotas will preserve the current ethnic

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<sup>27</sup> U.S. Congress, Senate, *Immigration and Nationality Act*, 24233.

<sup>28</sup> U.S. Congress, Senate, *Immigration and Nationality Act*, 24232.

composition of the US, is supported by the racial undertones in his evidence. In his first argument, Ervin's emphasis on an isolationist sentiment, unwilling to "solve foreign problems by taking in immigrants," thinly masks fears of "floods" and "avalanches" of non-white Latin Americans pouring into the US. These racial undertones grow stronger in his next argument, where he expresses outrage that the United States limits the number of white Europeans in favor of unlimited non-white Latin Americans. One especially striking example of this is the comparison of England and Trinidad-Tobago in an article from the *Christian Science Monitor* introduced by Senator Ervin. As the author explains, "Trinidad-Tobago used to be a British colony and as such got the minimum of 100 immigrants a year." However, now that "Britain has made Trinidad-Tobago independent," making it subject to the Western Hemispheric non-quota, "Theoretically... their entire population will be able to move en masse to New York City."<sup>29</sup> While the author assures his audience that "Trinidad-Tobago is only used in this article for the purpose of illustration," the purpose could not be more clear. According to Trinidad-Tobago's 1960 census, 96% of citizens were either Indigenous, African, or Mixed, compared to only 1% who were white.<sup>30</sup> The image of nearly 800,000 immigrants of color flooding into New York City stoked racial fears among the article's audience. If the implicit racial undertones in Senator Ervin's examples and imagery weren't convincing enough, the following speech, made by Senator Strom Thurmond, removes any doubt that the quota lacked racist or preservationist intentions.

Senator Strom Thurmond of South Carolina stripped away the implicit language and racial undertones used by Ervin and made the underlying racism in this amendment explicit. In

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<sup>29</sup> U.S. Congress, Senate, *Immigration and Nationality Act*, 24235.

<sup>30</sup> Jack Harewood, "Racial Discrimination in Employment in Trinidad and Tobago. (Based on Data from the 1960 Census)," *Social and Economic Studies* 20, no. 3 (1971): 267–93.

his speech, Senator Thurmond launched into a fierce defense of the national-origins quota system, echoing Senator Ervin's initial argument and stating that, "no apology is necessary for an immigration law based on the national-origins quota system, and I make none." According to Thurmond, there was nothing wrong with "preventing immigration from changing the national or ethnic composition of the American population."<sup>31</sup> After confirming his support for Senator Ervin's amendment, which he believed "would constitute a badly needed improvement in the existing law," Thurmond then attacked the assumption that the country would benefit from immigration at all, which he believed is "no longer true or soundly based."<sup>32</sup> Disagreeing with the proposed limits, which include 170,000 from the Eastern Hemisphere and 120,000 from the Western Hemisphere, for a total of 290,000 immigrants per year, Senator Thurmond proposed a different limit: "50,000 per year from all sources."<sup>33</sup> Senator Thurmond's support for Senator Ervin's amendment, when considered in conjunction with his fierce critiques of the proposed immigration reform and advocacy for a complete reduction in immigration as a whole show that it is just another mechanism by which he believes the US will be able to preserve its ethnic and racial identity.

### *Legislative History*

When considering the actions of these senators in the context of their politics and legislative history, these racial motivations become even more apparent. Ervin, who introduced the quota, was a staunchly conservative Democrat from North Carolina. A "lifelong opponent of civil rights legislation," Senator Ervin helped organize "grassroots resistance to court ordered

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<sup>31</sup> U.S. Congress, Senate, *Immigration and Nationality Act*, 24237

<sup>32</sup> U.S. Congress, Senate, *Immigration and Nationality Act*, 24237

<sup>33</sup> U.S. Congress, Senate, *Immigration and Nationality Act*, 24238

school desegregation” in response to the Supreme Court’s *Brown V. Board* decision.<sup>34</sup> Senator Strom Thurmond was also a staunchly conservative Democrat with a similar, if not worse, track record on civil rights. A senator from South Carolina, Senator Thurmond was an “archfoe of civil rights legislation”<sup>35</sup> who holds the record for the longest speech in senate history, a 24-hour long filibuster against the 1957 Civil Rights Act.<sup>36</sup> Clearly, this amendment was just a part of an extensive record of racist and discriminatory action for the senators who supported it.

An analysis of the legislative history of the senators most supportive of this amendment support the conclusion that there was an implicit racist motivation behind the decision to include a Western Hemispheric quota in the 1965 Immigration and Nationality Act. As lifelong opponents to civil rights legislation, these Southern conservatives devoted their careers to defending segregation and Jim Crow laws. Ervin’s arguments to prevent “floods” or “avalanches” of Latin Americans, his complaints of discrimination against white, European countries in favor of Indigenous and African ones, and Thurmond’s pleas to preserve the “ethnic composition” of the United States follow logically from their racist efforts to exclude Black Americans from white society.

### *Agricultural Labor*

Despite the clear racist and preservationist motivation behind this amendment, it didn’t have to lead to the massive increase in undocumented immigration across the US-Mexico border. As discussed previously, the sudden increase in undocumented immigration was almost

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<sup>34</sup>“U.S. Senate: Sam Ervin: A Featured Biography,” United States Senate, accessed April 24, 2023, [https://www.senate.gov/senators/FeaturedBios/Featured\\_Bio\\_ErvinSam.htm](https://www.senate.gov/senators/FeaturedBios/Featured_Bio_ErvinSam.htm).

<sup>35</sup> “Strom Thurmond | Biography & Facts | Britannica,” accessed April 24, 2023, <https://www.britannica.com/biography/Strom-Thurmond>.

<sup>36</sup> “U.S. Senate: Strom Thurmond: A Featured Biography,” United States Senate, accessed April 24, 2023, [https://www.senate.gov/senators/FeaturedBios/Featured\\_Bio\\_Thurmond.htm](https://www.senate.gov/senators/FeaturedBios/Featured_Bio_Thurmond.htm).

exclusively due to the sudden illegality of seasonal farmworkers on which the American agricultural sector depended, not the permanent migrants that the senators worried about. If the Senate had acknowledged the reliance of the US agricultural sector on Mexican labor, and established some form of legal protections for these temporary laborers, the problem could have been avoided, even with the quota.

Surprisingly, the very same senators who fought to exclude Mexican and other Latin American migrants with quotas were the ones advocating for protections for these temporary farm workers. Desperate to secure labor for their agriculture-reliant states, senators from California, Georgia, and Florida fought to maintain the system that exploited Mexican workers. Just four days before this debate, a coalition of these southern Democratic senators fought to increase the number of temporary visas for farmworkers in a debate over a farm bill. Led by both Sam Ervin and Strom Thurmond along with other conservative Democrats such as James Eastland of Mississippi and Spessard Holland of Florida, they were defeated by just one vote.<sup>3738</sup> Senator Spessard Holland brought up the issue of temporary laborers again in the final negotiations over the 1965 Immigration and Nationality Act, but was assured by one of the main supporters of the bill, progressive Senator from Massachusetts Ted Kennedy, that it would not change existing law around temporary labor visas.<sup>39</sup> The idea that these farmworkers would end up coming to the United States regardless of their legal status, which was the fundamental cause of the rise in undocumented immigration, was not part of either debate over temporary migrant labor. Instead, these debates consisted of conservative senators from southern states fighting for

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<sup>37</sup> U.S. Congress. Senate. *Debate on Amendment to Food and Agriculture Act*. 89th Cong., 1st sess., 1965.

<sup>38</sup> "Migratory Farm Labor," CQ Almanac Online Edition, accessed April 24, 2023, <https://library.cqpress.com/cqalmanac/document.php?id=cqal65-1258729>.

<sup>39</sup> U.S. Congress, Senate, *Immigration and Nationality Act*, 24230.

exploitative labor, and progressive senators from northern states unwilling to compromise on what had come to be seen as an immoral system.

## **Analysis**

The conservative southern Democrats who supported the quota on the Western Hemisphere weren't completely opposed to Mexican and Latin American immigration. These senators did want to ensure that immigrants from these countries couldn't become permanent residents, in order to preserve a white US ethnic identity. They wanted these immigrants to instead be let in temporarily, forming a foreign labor force that could be exploited by the US agricultural sector. While the northern progressives who championed the immigration bill were willing to compromise on the issue of permanent residence with the southern conservatives, temporary farm labor was a bridge they were not willing to cross.

As discussed in the literature review, there were strong incentives for senators to remove the national-origins quota system, a publicized issue with both civil rights and foreign policy implications. As a result, progressive senators were willing to accept the amendment proposed by Senator Ervin in order to ensure the removal of the national-origins system, despite its racist and preservationist nature that contradicted the moral rationale of the immigration act itself. Unaware of the drastic implications this amendment would have on undocumented immigration, progressive senators believed that the political benefit of eliminating the national origins quota system far outweighed the political cost of instituting a quota on the Western Hemisphere.<sup>40</sup> On the flip side, these progressive senators were not willing to compromise on temporary visas for farm laborers, which, as discussed in the background, had garnered fierce resistance from a coalition of unions, religious organizations, and civil rights groups by 1965. The progressive

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<sup>40</sup> Fitzgerald and Cook-Martin, "The Geopolitical Origins of the 1965 Immigration Act," 95.



senators were unaware that these farm workers would return to the United States regardless, stripped of all protections and subject to even worse exploitation as a result of their new undocumented status. Instead, they believed that in taking a stand, and preventing southern Democrats from expanding temporary visas, they were solving the problem.

In the end, the political calculus made by the progressive senators was correct. Not only did Senator Ervin's racist amendment to the 1965 Immigration and Nationality Act go unnoticed by the American public at the time, but nearly 60 years later, the act is still known and debated only for its removal of the national-origins quota system on the Eastern Hemisphere. However, while the progressive senators may not have realized it at the time, their decision to accept what was seen as an inconsequential amendment limiting immigration from the Western Hemisphere, but refusing to compromise on temporary labor, would result directly in a massive increase in undocumented immigration that would only worsen the working conditions for Mexican farmworkers.

## **Conclusion**

Senator Sam Ervin introduced the amendment to the 1965 Immigration and Nationality Act that limited immigrants from the Western Hemisphere as a desperate attempt to instill the act with the same racist and preservationist ideology behind the national-origins quotas it was attempting to reform. The progressive senators pushing for immigration reform, blinded by both pressing domestic and international concerns, decided that the amendment wasn't worth fighting. Instead of considering the effects of such a restriction on seasonal laborers, these progressive senators doubled down on their efforts to reduce the number of visas for these temporary migrants, refusing to acknowledge them in the immigration bill. Pressured by interest groups demanding civil rights and the end of exploitation, progressive senators unintentionally

criminalized hundreds of thousands of Mexican laborers, stripping them of any protection they had left while starting a cycle of border enforcement that has led to the crisis we find ourselves in today. As Doug Massey and Karen Pren said in their book on immigration reform, immigration policy is rarely grounded “in any real understanding of the forces that govern international migration.” Instead, it “is more strongly shaped by prevailing economic circumstances or political ideologies.”<sup>41</sup> In the case of the 1965 Immigration and Nationality Act, a lack of understanding of the forces behind Mexican migration and opposition between prevailing political ideologies led senators to enact policies with disastrous and far-reaching implications that still affect us today.

## **Section II**

### **The Negative Impacts of Labor and Crime Legislations on the Assimilation of Mexican Communities into the American Mainstream**

#### **Introduction**

The nature of Mexican immigration is especially unique in comparison to that of past ethnic groups, such as Eastern Europeans or Asians. Widespread Mexican immigration began through temporary labor systems that brought seasonal workers from Mexico to work in U.S. agriculture and service occupations. From early on Mexican laborers were viewed as temporary citizens and were never integrated into society the ways that past ethnic groups had been. Since then Mexican immigration has remained unique due to the consistent replenishment of migrants crossing the border for refugee, work, and other economic opportunities. As discussed in the

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<sup>41</sup>Massey and Pren, “Unintended Consequences of US Immigration Policy,” **Population and Development Review**, vol. 38, 2.

previous section, large portions of these immigrants were undocumented, a direct impact of the racist undertones and miscalculations prevalent in the 1965 Act. These historical distinctions can be attributed to the proximity of Mexico to America as well as the persistence of racial prejudices. One of the main differences, however, that is often raised during discussions around the state of Mexican immigrants is their inability to assimilate and failure to contribute to American society. Mexican communities have quickly become the punching bag for politicians and scholars to complain about unemployment rates or increased crime. Mexican Americans are often accused of choosing not to assimilate to the American mainstream and of forming their own cultural enclaves instead. It is important to study the realities of Mexican immigration and assimilation in order to provide context to these claims, further allowing us to understand the obstacles faced by migrants throughout the assimilation process. Moreover, identifying whether or not the U.S. government has played a positive or negative role in that process.

In this essay I will analyze the connections between U.S. legislation and the assimilation of Mexican communities into the American mainstream, specifically how legislation has impacted straight line assimilation. The straight line theory, proposed by Lloyd Warner and Leo Srole in 1945, posits that the conditions under which immigrants assimilate improve over the course of generations. For example, the social system makes improvements, the standard of living for families increases, and immigrants develop better language abilities.<sup>42</sup> While this is the ideal scenario and a very optimistic approach to assimilation, the straight line theory has been proven to be both flawed and impractical by scholars in various fields, facing questions around

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<sup>42</sup> Ziyanak, Sebahattin. "Critically Assessing Classic Assimilation Theory and Alternative Perspectives for Immigrants and the Second Generation in the United States." **Race, Gender & Class**, vol. 22, 144.

its distorted interpretations of the economy and generational changes.<sup>43</sup> Regardless of its impracticality, the theory has already painted a distorted picture of what the assimilation process looks like. By emphasizing the perceived ease at which immigrants should be assimilating, the reality of Mexican immigration seems irreparable. Furthermore, the theory undermines how assimilation should not be looked at as a matter of capabilities, but rather a matter of capacity. Many scholars, such as Harvard professor Samuel Huntington, continue to make arguments that seemingly emerge out of a utopian society where straight line assimilation is possible. In his article “The Hispanic Challenge,” Huntington warns that Mexican immigrants are rejecting American values and are a threat to the country's cultural homogeneity. He argues that “particularly striking in contrast to previous immigrants is the failure of third- and fourth-generation people of Mexican origin to approximate U.S. norms in education, economic status, and inter- marriage rates.”<sup>44</sup> This type of rhetoric neglects the fact that the prolonged pace at which Mexicans are assimilating is much more complicated than merely the “failure” of younger generation Mexicans. Specifically, one of the key deterrents to desirable straight line assimilation comes from legislation and its direct impacts on Mexican communities.

Throughout this essay I argue that legislation passed over the last decade has had overwhelmingly negative impacts on the capacity for assimilation of Mexican communities. By first understanding the effects of legislation on immigrant lives and communities, I can then draw connections between those experiences and the difficulties present in the assimilation process. For the purpose of this analysis I will focus on two types of legislations: those involving labor and those involving crime. I look at how the realities of various policies act as direct

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<sup>43</sup> Gans, Herbert J. “Second-Generation Decline: Scenarios for the Economic and Ethnic Futures of the Post-1965 American Immigrants.” **Ethnic and Racial Studies**. (Sep. 2010).

<sup>44</sup> Huntington, Samuel P. “The Hispanic Challenge.” **Foreign Policy**, (no. 141 2004), 36,

examples for the processes apparent within prominent theories and concepts of assimilation. Scholars such as Alejandra Portes, Richard Alba, Herbert J.Gans, and many others, have put forth new theories of assimilation, taking critical approaches to the classic straight line theory. Much of their work closely applies to the experiences of Mexicans in the U.S. and provides important sociological context. Through my own research I found that legislative policies influencing labor and crime have played a significant role in the extinction of the straight line theory and has set Mexican immigrants on a challenging and isolated path to inclusion. I discuss the experiences of both new immigrants and later generation Mexican Americans, referring to them collectively as the Mexican community. The connections between legislation and assimilation are especially significant to understanding the obstacles currently facing Mexicans in the U.S. and identifying the failures of the U.S. government in providing necessary support.

### **Relevant Theories of Assimilation**

Since Warner and Srole proposed the straight line theory, scholars have continuously challenged many of its main ideas, searching for explanations to its shortcomings. One of the most direct reinterpretations of assimilation theory was the idea of second generation decline put forward by Gans. Through this approach, Gans questions the feasibility of upward mobility over generations of immigrants, especially those who are not white. In his theory he highlights that the economic environment for post-1965 immigrants provides very different opportunities than the economic optimism experienced by early European immigrants. These differences stem from the challenge to succeed in education, the stigma of “immigrant jobs,” and scarcity of such job opportunities. Based on these new criteria, Gran establishes two possible options for second generation immigrants: first, they are “offered immigrant jobs and can accept them or turn them

down,” or second, they are “denied the opportunity to make this choice.”<sup>45</sup> If the immigrant ends up working an “immigrant job,” by choice or by default, they will thus reinforce the isolation of Mexican workers into low-paying exploitative jobs. If they turn down jobs they find demeaning and choose to look elsewhere, however, they are likely to be excluded based on skills, education, or reputation from better jobs. Both these options push immigrants toward economic decline even as generations proceed. Gans also attributes the progress of assimilation to the influences of education and acculturation but emphasizes that such processes are difficult to fulfill due to the barriers from racial prejudices and institutional suppression. Second generation decline theory sets the stage for further interpretations of contemporary assimilation, providing context for the potential decline of immigrants into economic or social subsidiaries.

An example of such interpretations is reflected in Alejandra Portes and Min Zhou’s explanation of segmented assimilation theory. They aimed to understand the variations that occur during assimilation— sometimes leading to the downward mobility of later generations of immigrants. The segmented assimilation theory looks specifically at second generation immigrants and the three forms of adaptation: economic and social integration into the middle-class, downward fall into “permanent poverty and assimilation to the underclass,”<sup>46</sup> or economic advancement while resisting assimilation into the cultural mainstream. These three pathways indicate different segments of society that later generations adapt to based on various influences. Most significantly: the areas that they live in, which often indicates the strength of their ethnic communities; the color of their skin and the associated prejudices faced in the US; and the

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<sup>45</sup> Gans, Herbert J. “Second-Generation Decline: Scenarios for the Economic and Ethnic Futures of the Post-1965 American Immigrants.” **Ethnic and Racial Studies**. (Sep. 2010), 182.

<sup>46</sup> Portes, Alejandro, and Min Zhou. “The New Second Generation: Segmented Assimilation and Its Variants.” **The Annals of the American Academy of Political and Social Science**, vol. 530, 10.

availability of economic opportunities which are often hindered by the isolation of immigrants into specific occupational sectors. The third pathway is particularly significant to the story of Mexican immigrants due to their primary engagement in agriculture, service and other unskilled labor forces. In order to find higher-paying jobs, immigrants are often better-off searching through networks within their own ethnic communities, which offer opportunities not widely available to immigrants in the open labor market; such as coethnic firms or apprenticeships.<sup>47</sup> Due to such incentives to maintain connections with ethnic enclaves, the assimilation process begins to look very different for second generation Mexican immigrants. Their pathways take on a variety of forms and can signal to areas in which government institutions should play a larger role.

The last theory I will include, relevant to the conversation within this essay, is Richard Alba and Victor Nee's new assimilation theory, or as Sebahattin Ziyanak refers to it, revisionist assimilation theory. Proposed in 2003, this theory takes an even deeper approach, looking at what really changed between European and contemporary immigration in order to formulate a new way of understanding the assimilation process. Alba and Nee make a plethora of arguments but focus on the fact that assimilation is still happening and in order to understand why it is happening differently we must reformulate our approaches. They point out that while assimilation has long-been thought of by scholars, such as Milton Gordon, to be a one-way process, it is in fact a result of cooperation between both the host society and the immigrant group. This perspective is beneficial to understanding the impact that legislation has on assimilation and thus the inherent capacity for immigrants to successfully integrate. Furthermore,

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<sup>47</sup> Portes, Alejandro, and Min Zhou. "The New Second Generation: Segmented Assimilation and Its Variants." **The Annals of the American Academy of Political and Social Science**, vol. 530, 15.

revisionist theory emphasizes the characteristics of assimilation. For example, how it is a “bumpy” process involving many ups and downs but ultimately resulting in integration to the mainstream. Also, how it embodies the “blurring” of cultures and identities. During assimilation, the host society should give up some of its cultural homogeneity in order to integrate the immigrant and vice versa, creating a blurring of boundaries. These descriptions help illustrate the qualities of contemporary assimilation and further distinguish the shortcomings of the host society– shifting the blame away from immigrants who have found it difficult to integrate in a linear way.

Many scholars have taken approaches similar to my own, exploring the distinctions of contemporary assimilation and Mexican immigration. Catherine S. Ramirez discusses the history and expectations of assimilation in the U.S. while making connections to the Latino/a experience, emphasizing the predominantly white focus within processes such as “Americanization” and “Anglo-conformity.”<sup>48</sup> She also alludes to differential inclusion which is “the paradoxical process by which a person or group assimilates or is assimilated as an outsider.”<sup>49</sup> This concept is especially relevant to the differences between European and Mexican assimilation due to the tendency of American society to isolate people of different races. Douglas S. Massey and Karen A. Pren take a different approach, analyzing the unintended consequences of the 1965 Immigration and Nationality Act and how they contributed to the current makeup of Mexican immigration. By focusing on legislative reform and its negative influences on the experiences of Mexican communities, Massey and Pren illustrate the failures of Congress and

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<sup>48</sup> Ramírez, Catherine S. “Assimilation.” in **Keywords for Latina/o Studies**, edited by Deborah R. Vargas et al., vol. 6. (NYU Press, 2017), 15.

<sup>49</sup> Hao, Lingxin. *Social Forces* (vol. 84, no. 2, 2005), 1310.



other governmental departments in managing the immigration issue.<sup>50</sup> The closest analysis to mine is the work of Micheal T. Light and Dimeji Togunde who write about assimilation and public policy. Their research includes extensive empirical analysis which indicates that contrary to recent accusations, Mexican immigrants have in fact continued to assimilate despite the barriers instituted by legislative policies. Light and Togunde define assimilation to be mainly English proficiency, education and naturalization rates, all of which have persisted.<sup>51</sup>

The current debate around the integration of Mexican immigrants into the American mainstream has focused largely on the obstacles limiting and altering the pathways for assimilation. However, there has been little research done to connect the implications of legislation to the challenges facing Mexican assimilation. As established, the straight line theory has many flaws and is no longer applicable to the contemporary immigration picture. Therefore, it is important to understand the forces contributing to the increasingly complicated pathways for assimilation, such as second generation decline, segmented assimilation and revisionist theory. This essay will focus on the assimilation of Mexicans into the economic and social spheres as two distinct processes. Degrees of assimilation are difficult to quantify, so I will conduct a comparative analysis of existing research done on legislation and on assimilation. My analysis of the legislation relating to crime and to labor will provide context for the current challenges facing Mexican communities which I will then fit into theories and concepts of assimilation. Through this essay, I hope the reader will better understand that although assimilation has continued to improve over time, legislative policies have played an overwhelmingly negative and restrictive role in that process. The American government has often furthered the exploitation of

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<sup>50</sup> Massey and Pren, "Unintended Consequences of US Immigration Policy," **Population and Development Review**, vol. 38.

<sup>51</sup> Light and Togunde

Mexicans in unskilled occupations, provided unequal opportunities and support, and contributed to the racialization of immigrant communities. These implications play a significant role in the perceived failure of Mexican immigrants to assimilate and should be brought to the forefront of the immigration debate.

### **Barriers in the Workplace**

In an article about labor as a central theme to Mexican American inequality, Shannon Gleeson emphasizes that “economic rationales for reform” are particularly important to immigration legislation. This point is crucial to understanding the experience of Mexicans and the incentives behind recent policies. Historically, Mexican immigrants have been anchored to their reputation as laborers. The legacy of immigrants as temporary and exploitable workers, from during and before the Bracero program, has contributed to the stigma surrounding Mexican laborers and their role in the workplace. According to the Migrant Policy Institute, “68 percent of Mexican immigrants ages 16 and older were in the civilian labor force in 2021 [...] and were mostly employed in the service; natural resources, construction, and maintenance; and production, transportation, and material moving occupations.”<sup>52</sup> In accordance with these statistics, approximately “59% of all temporary work visas issued in fiscal year 2021 were received by Mexicans”<sup>53</sup> (followed by 16% by Indians, 4% by Japanese, 2% Jamaicans, 2% South Koreans), and the number of unskilled work visas such as H-2A’s and H-2B’s being

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<sup>52</sup> “Mexican Immigrants in the United States.” **Migration Policy Institute** (2022).

<sup>53</sup> “Temporary Visa Holders in the United States.” **Migration Policy Institute** (2022).

issued in the U.S. has also increased over the last five years<sup>54</sup>. These developments may be due to delay periods during the peak of Covid but are nonetheless indicative of the consistent presence of temporary Mexican laborers in the U.S. economy. As the number of unskilled Mexican workers in the U.S. continues to be the majority, it is clear that the characteristics of the labor market have remained unchanged even decades after the Bracero program (a temporary labor program for Mexican agricultural workers beginning during WWII) was abolished. Isolation in service and unskilled sectors speaks to the institutional structures that inhibit the movement of immigrants through straight line assimilation. This section will explain the ways in which immigration legislation has failed to establish equitable economic and social support for Mexican workers and how they have contributed to the challenges apparent in segmented and revisionist theories of assimilation.

Due to prejudices and discrimination, workers within agricultural and service sectors have long been left out of labor protection measures, often known as working ‘outside of the law’<sup>55</sup> due to their exclusion from protections and rights access. This distressing reality was reinforced into law during 1935 through the National Labor Relations Act (NLRA). This new deal reform set out to protect labor unions and bargaining rights within private sectors as well as ban numerous unfair labor practices to improve the welfare of underrepresented workers. The Act, however, explicitly excluded “any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor.”<sup>56</sup> At the time, Congress was aware of the significant impacts on the Black working class but ignored them

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<sup>54</sup> “Temporary Visa Holders in the United States.” **Migration Policy Institute** (2022).

<sup>55</sup> Gleeson, Shannon. “Labor.” In **Keywords for Latina/o Studies**, edited by Deborah R. Vargas, Nancy Raquel Mirabal, and Lawrence La Fountain-Stokes, (NYU Press, 2017), 106.

<sup>56</sup> National Labor Relations Act,” **National Labor Relations Board**.

nonetheless. Instead, they chose to legalize the exclusion of certain people, determined by a racist agenda, from the coverage of workplace protections. This Act created a precedent which paved the way for biased practices in largely non-white labor sectors and Mexicans are quickly being integrated into this system. In fact, today, there are still policies being passed that enable the discrimination of Mexicans by employers. Through the Immigration Reform and Control Act in 1986, Congress passed a series of sanctions on employers who hired undocumented workers. Almost immediately, it was brought to attention that such sanctions may result in Mexican's receiving fewer jobs due to their foreign appearance. In response, Congress passed a law penalizing any discrimination towards employees related to the provisions of the IRCA. However, the fines for hiring undocumented workers were so much higher than those for engaging in discrimination that employers continued to reject Mexican employees based on the assumption that they may be undocumented— steering clear of the costly sanctions.<sup>57</sup>

The establishment of legal exploitation and inequity through legislation such as the NLRA is extremely relevant to the current economic opportunities for both legal and illegal Mexican immigrants. Isolation and mistreatment within unskilled jobs limits the abilities of Mexican laborers to further develop occupational skills and to assimilate through economic advancement. As a result, they may be perceived by the host society as a source of cheap labor rather than a group of equal peers. This is not only because they are filling jobs seen to be requiring lower human capital, but also because those are jobs that Americans don't want— an expectation set during the Bracero era. The pattern of Mexican immigrants working in low-paying jobs contributes to the second generation decline theory since less opportunity for economic success often impacts education trends over generations. Scholar Alexandra Délano

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<sup>57</sup> Lowell, Lindsay, et al., "Unintended Consequences of Immigration Reform: Discrimination and Hispanic Unemployment," **Demography**, vol. 32.

Alonso, points out that “although education trends improve for the second and third generations of Latinos, the socioeconomic situation of the first generation of migrants has an impact on the health and education outcomes of their children.”<sup>58</sup> While Mexican Americans have begun to seek education at much higher rates, their education experiences are still greatly determined by their economic status. For example, if families receive very little income, second generations may need to drop-out or spend less time on education in order to find jobs and provide for their families. Also, in families with less economic resources, Mexican students may receive less support from their parents or live in residential areas with low-funded schools. Evidently, the economic stagnation of first generation immigrants can seriously impact the feasibility of their children to receive educational opportunities and therefore assimilate into the American mainstream by means of moving up through the middle class.

The ability to maintain an economic culture in which workers can be continuously exploited and isolated into a certain occupational sector relies on a mutually exclusive distinction between economic and social spheres. Ramirez explains this phenomenon and emphasizes that the “inclusion at one level of society can reinforce and even be predicated on marginalization in or exclusion at another.”<sup>59</sup> Looking back to the NRLA, the ease with which Congress passed the outrightly discriminatory bill relied on the exclusion of African Americans on a social level. Conveniently, Black laborers were continuously exploited in the workplace because they received little support from white American society. Similarly, the inclusion of legal and illegal immigrants into the U.S. economy, specifically in agriculture and service jobs, depends on their

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<sup>58</sup>Alonso, Alexandra Délano. “Mexicans in the United States: In Pursuit of Inclusion.” **Current History**, vol. 115, no. 784, (2016), 308.

<sup>59</sup> Ramírez, Catherine S. “Assimilation.” in **Keywords for Latina/o Studies**, edited by Deborah R. Vargas et al., vol. 6. (NYU Press, 2017), 17.

exclusion from cultural society. One way that immigrants are pushed into the economic sphere through their forceful exclusion from the social sphere is through a process that Devon W. Carbado describes as racial naturalization. This is when “some groups are violently included in the United States via racial subordination and exclusion from the white mainstream”<sup>60</sup> –seen in the form of racial prejudice, suppression of civic participation, and government support of reducing immigrant access to education and health benefits.

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), both of which restricted the rights of illegal and legal immigrants, leaving all non-citizens subject to the same jurisdiction. The IIRIRA “authorized the deportations of non-citizens from ports of entry without judicial hearing”<sup>61</sup> and ordered non-citizens petitioning a family-sponsored immigrant to provide proof of having an income “that is no less than 125 percent of the Federal poverty line.”<sup>62</sup> More significantly, it officially denied federal funding for state-level post secondary education to non-citizens, and made it illegal for any non-citizens to vote in federal elections.<sup>63</sup> While the Act successfully hindered the entries and capabilities of illegal immigrants, its equal impact on legal aliens furthered Mexican exclusion. Higher education became more difficult to obtain and the required proof of income for family reunification heightened pressure on students to work.

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<sup>60</sup> Ramírez, Catherine S. “Assimilation.” in **Keywords for Latina/o Studies**, edited by Deborah R. Vargas et al., vol. 6. (NYU Press, 2017), 17.

<sup>61</sup> Massey and Pren, “Unintended Consequences of US Immigration Policy,” **Population and Development Review**, vol. 38, 19.

<sup>62</sup> Congress.gov “H.R. 2022 – 104th Congress (1995-1997): Illegal Immigration Reform and Immigrant Responsibility Act of 1996.”

<sup>63</sup> Congress.gov “H.R. 2022 – 104th Congress (1995-1997): Illegal Immigration Reform and Immigrant Responsibility Act of 1996.”

The PRWORA similarly set restrictions that limited the social and economic mobility of Mexican communities. It implemented a limit so that immigrants could not receive welfare until five years after their admission to the U.S. and reduced access to many welfare programs even after the limit was over.<sup>64</sup> The act was passed under the guise of reducing dependency on welfare and increasing work ethic, yet it did nothing to improve job protections for immigrants such as addressing pay disparities or hiring discrimination. Consequently, because so many of the jobs that Mexican workers occupy receive extremely low pay, this contributed to poverty and put strain on quality of life for new and senior immigrants. By forcing non-citizen Mexicans out of education and social support systems, they became easier to exploit in the labor section. The mutual exclusivity of social integration and economic acceptance made it difficult for Mexicans to advocate for themselves and generations of immigrants remained isolated in harsh working conditions,

In many ways, these sorts of legislative reforms also reinforced the inclusion of immigrants into the social sphere and exclusion from the economic sphere. Unlike the scenario depicted previously, many immigrants may actually find it easy to culturally assimilate in the U.S. through processes such as acculturation and ‘Americanization,’ by which they adopt American values, dress, habits and language. Many of these ‘Americanized’ Mexicans are members of the second and third generations meaning they are more likely to have attended extensive schooling and often present themselves as American. However, due to the consequences of legislation such as those mentioned above, they are largely excluded at an economic level. Since Mexican Americans may still be seen “as ‘illegal aliens,’ they are

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<sup>64</sup> Congress.gov “H.R. 3734 – 104th Congress (1995-1997): Personal Responsibility and Work Opportunity Reconciliation Act of 1996.”

marginalized, particularly in the market, and are vulnerable to exploitation and deportation.”<sup>65</sup>

While many of their white counterparts with similar educational backgrounds may move up through the workforce, many younger generation Mexican immigrants will face institutionalized discrimination and exploitation during job searches and employment. These implications directly relate to segmented assimilation theory. As discussed by Portes and Zhoë, “the children of nonwhite immigrants such as Mexicans may not have an opportunity to obtain access into the middle class, no matter how they are acculturated.”<sup>66</sup> Instead, assimilation happens in a segmented manner. First generations may work to advance economically for their children but will preserve their own cultural identities. Conversely, second generations may fully acculturate to American society but have trouble maintaining the same economic progress. The division of inclusion into economic and social sectors makes it harder for immigrants to fully assimilate, even over generations.

Through a revisionist approach, the institutional barriers created by historical legacies and inequitable labor reforms reinforce perceived Mexican exceptionalism (“Mexican’s perceived inability and/or unwillingness to assimilate”<sup>67</sup>) as Mexicans are pushed to look toward their own communities for support. Alba elaborates on this concept, explaining that “the knowledge that individuals like oneself are in situations of exclusion and disadvantage could intensify one’s ethnic identity and desire to assert it.”<sup>68</sup> This inclination further interferes with

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<sup>65</sup> Ramírez, Catherine S. “Assimilation.” in **Keywords for Latina/o Studies**, edited by Deborah R. Vargas et al., vol. 6. (NYU Press, 2017), 17.

<sup>66</sup> Hao, Lingxin. *Social Forces* (vol. 84, no. 2, 2005), 1310.

<sup>67</sup> Ramírez, Catherine S. “Assimilation.” in **Keywords for Latina/o Studies**, edited by Deborah R. Vargas et al., vol. 6. (NYU Press, 2017), 16.

<sup>68</sup>Alba, Richard. “Assimilation in the Early Twenty-First Century.” **The Great Demographic Illusion: Majority, Minority, and the Expanding American Mainstream**, Princeton University Press (2020),



the ability to assimilate in accordance with straight line theory. Based on various mechanisms put forth in revisionist theory, assimilation is a two way process between the individual and the host society. Ideally, the society must also conform to the individual by taking measures such as improving social welfare programs, adjusting racial prejudices, and eliminating bias from the workplace. Only then will the individual be able to fully assimilate into their host society. Unfortunately, due to systematic prejudices and ineffective legislative reform, American society remains rigid and unable to adapt to incoming Mexican communities, resulting in further segregation and the illusion that Mexicans are choosing not to assimilate. Alba and Nee highlight that “whenever opportunities for ethnic minority immigrants are greater in the mainstream than in the ethnic economy, there is a motive for assimilation.”<sup>69</sup> However, if opportunities arise only in exploitative jobs and the U.S. government consistently passes legislation further restricting social and economic support, immigrants will feel less incentive to assimilate and will maintain connections with their ethnic enclaves and native communities. Due to the shared difficulties, especially in the workplace, Mexican immigrants face when trying to assimilate to the American mainstream, their communities foster high levels of social capital. The strength of the networks within their communities is beneficial to short term well-being, but harmful to the long term process of assimilation. This imbalance between the growth of individual human capital and that of overall social capital in Mexican immigrant communities thus contributes to perceived pluralism. Yet, it is important to recognize the institutional force of legislation that pushes Mexican Americans toward embracing multiculturalism and away from traditional assimilation.

### **Mexican Association with Crime**

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<sup>69</sup> Hao, Lingxin. *Social Forces* (vol. 84, no. 2, 2005), 1310.

Since the largely permanent migration of Mexican immigrants to the US, “the terms migrant and criminal [have become] blended. This is a result of immigration reform not only failing to rectify the undocumented immigration issue but also legislators' role in fueling public prejudice against Mexican Americans and new immigrants. Looking back, the 1965 Act unintentionally set the stage for mass undocumented immigration. By getting rid of the Bracero program and leaving engrained labor patterns without an allocated system for hiring workers and issuing visas, the labor market continued operating as usual. Uncoincidentally, undocumented immigrants flocked to the U.S. to fill the jobs previously occupied by Bracero workers. During the 1960's, immigration was not a salient issue for most Americans so this shift in immigrant populations went largely unnoticed. Quickly, however, from the 1970's to 1980's the increase in illegal immigration drew widespread attention, contributing to the rise of the latino threat narrative (a form of narrative where latinos are associated with invasion, reconquest and engagement in crime).<sup>70</sup> This response was mainly a result of three subsequent movements: media propaganda, economic instability, and a slew of restrictive immigration reforms.<sup>71</sup> This section will discuss the connections between these trends and how the perceived singularity of migrants and criminals impacted the efforts of Mexicans to assimilate– contributing to differential inclusion and the applicability of second generation decline theory.

In Chavez's book, *The Latino Threat: Constructing Immigrants, Citizens, and the Nation*, he uses the metaphor of a “global card trick” to describe the rise of the Latino threat narrative– the misrepresentation and typification of Mexicans as criminals through the media. Between

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<sup>70</sup> Chavez, Leo R. “The Latino Threat Narrative,” **The Latino Threat: Constructing Immigrants, Citizens, and the Nation, Second Edition**. Stanford, CA: Stanford University Press (2013).

<sup>71</sup> Massey and Pren, “Unintended Consequences of US Immigration Policy,” **Population and Development Review**, vol. 38, 19.

news content, books, and political campaigns, Mexicans were solidified as “illegal aliens”<sup>72</sup> who are “flooding” and “invading” our beloved country. The way these sentiments grew—resulting in the increase in immigration interest among the general public—can be explained through analyzing media trends and virtual “tricks.” For example, following 1970, the “frequency of pairing of the terms ‘flood,’ ‘crisis,’ or ‘invasion’ with ‘Mexico’ or ‘Mexican immigrants,’”<sup>73</sup> in major newspapers increased exponentially. The trajectory of this trend correlated with the growing concern around immigration and with notable political responses—peaking in the late 1970’s and in 1986 (when the IRCA was passed). Even on magazine covers, Chavez points out countless titles such as, “Our Illegal Alien Problem,” “Crisis Across the Border,” and “Welcome to Amexica;” all of which emphasize the persistence of alarmists.<sup>74</sup> The exaggeration of Mexican immigrants “flooding” the U.S. and causing a “crisis” directly contributed to the public’s predisposed assumption that migrants were criminals. Tomas R Jimenez, in his book *Replenished Ethnicity*, interviews Americans on their opinions around Mexican immigration. Unsurprisingly, their responses reflect influence from the virtual misrepresentation of Mexicans. One interviewee stated: “They come in here and the crime rate . . . The police are always . . . The police briefs or whatever in the newspaper . . . Mexicans most wanted in the back page of the newspaper. And it is domestic violence has gone up and stuff.”<sup>75</sup> Many of Jimenez’s other interviewees also match

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<sup>72</sup> Chavez, Leo R. “The Latino Threat Narrative,” **The Latino Threat: Constructing Immigrants, Citizens, and the Nation, Second Edition**. Stanford, CA: Stanford University Press (2013), 24.

<sup>73</sup> Massey and Pren, “Unintended Consequences of US Immigration Policy,” **Population and Development Review**, vol. 38, 19.

<sup>74</sup> Chavez, Leo R. “The Latino Threat Narrative,” **The Latino Threat: Constructing Immigrants, Citizens, and the Nation, Second Edition**. Stanford, CA: Stanford University Press (2013).

<sup>75</sup> Jiménez, Tomás R. “Assessing Mexican Immigration: THE MEXICAN-AMERICAN PERSPECTIVE.” **Replenished Ethnicity: Mexican Americans, Immigration, and Identity**, University of California Press (2010), 191.

this attitude, illustrating how Americans have internalized their associating of Mexicans with crime and violence.

This shift towards racialization and as Massey says, “racial stratification,” has efficiently pushed Mexicans into isolation and stripped away special aspects of their identities, leaving behind only their reputation for crime. Racial stratification is the “unequal distribution of people across categories,”<sup>76</sup> largely by race. The process of defining a racially stratified society depends heavily on establishing minorities to make-up the lowest level categories. Determining who these minorities are is a result of the subconscious construction of boundaries as well as influence received from social forces. When a group is defined as a minority, it often means that they are subject to dehumanization and thus receive discrimination from the rest of society. The racialization of Mexican communities, alluding to higher crime tendencies and lower human capital, is a direct step in racial stratification. By pumping alarmist and nativist rhetoric into mainstream media, Americans push Mexicans further into isolation as excludable minorities. Their perceived association with crime creates the stereotype that Mexicans are criminals and discourages their inclusion into society as consumers, parents, students, etc. So much so that many Mexicans adopted slogans such as “we are workers, not criminals.”<sup>77</sup> While these slogans were aimed at pursuing acceptance, this particular motto reinforces Mexicans’ subordinate role within the workplace in addition to their already unwavering stereotype as criminals. Mexicans become stuck in a lose-lose situation where they are marginalized from mainstream society as criminals, and in the workforce (the societal sector in which they are accepted) they are

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<sup>76</sup>Massey, Douglas. “The Racialization of Mexicans in the United States?” **Racial Stratification in Theory and Practice**. Migracion y Desarrollo: First Semester (2008)

<sup>77</sup>Gleeson, Shannon. “Labor.” In **Keywords for Latina/o Studies**, edited by Deborah R. Vargas, Nancy Raquel Mirabal, and Lawrence La Fountain-Stokes, (NYU Press 2017), 107

exploited. These unequitable circumstances contributed to the inability for Mexicans to follow the straight line theory of assimilation since American society continuously constructs racialized obstacles, making linear assimilation impossible.

As stated before, Congress's involvement in immigration issues has only increased these drawbacks and further exacerbated existing barriers to assimilation. Instead of passing legislation that would support migrants and increase equal opportunities across all sectors, Congress encapsulated anti-immigration rhetoric into the form of repressive legislation. One contributor to the negative rhetoric aimed at immigrants was the deterioration of the economy during the early 1980's. According to the FDIC, the 1980's economy slowed due to stagnation, "the economic problem of excess capacity and unemployment coexisting with inflation and no economic growth."<sup>78</sup> High unemployment rates were a result of mass layoffs in goods and service occupations largely resulting from miscalculations by companies on future consumer spending. Based on these insecurities, Americans sought out someone to blame. According to social psychologist Susan Fiske, "feeling individually deprived...may alert a person to feeling collectively deprived...[and] this collective feeling leads to blaming out-groups" such as immigrants. Consequently, American public opinion became extremely anti-immigrant, not only because of alarmist media but also because of concurrent economic insecurity, leading to the push for restrictive legislation. This social reaction can also be explained by Massey's description of racial stratification theory which states that "people naturally favor boundaries and framings that grant them greater access to material, symbolic, and emotional resources and they seek to convince others to accept their favored version of social reality."<sup>79</sup> Since Mexican

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<sup>78</sup> "Historical Timeline: The 1980's" **Federal Deposit Insurance Corporation.**

<sup>79</sup> Massey and Pren, "Unintended Consequences of US Immigration Policy," **Population and Development Review**, vol. 38, 64.

immigrants already occupied the bottom of the class hierarchy, an outcome based on existing negative stereotypes such as criminals and job-stealers, Americans were enabled to blame and discriminate through legislative policies.

These policies took a variety of forms, however, they all worked together to inhibit assimilation on social and economic levels. Provisions included increased funding for border control, employer sanctions regarding undocumented employment, expedited deportation, and so on. One prominent piece of legislation, usually associated with the IIRIRA and the PRWORA for being passed in the same year, was the Anti-Terrorism and Effective Death Penalty Act (ATEDPA). This act took a major step in racializing Mexican Americans by furthering their association with crime. After the Act expanded the list of crimes eligible for immediate deportation, even recategorizing “most crimes involving moral turpitude as aggravated felonies,”<sup>80</sup> it declared any non-citizens (including legal immigrants) who had committed a crime (regardless of how long ago) subject to deportation. At the same time, also revoking discretionary relief from most non-citizens and eliminating judicial review from these deportation cases. As a result, immigrants' lives were overwhelmed with distress as they feared being deported for past transgressions or any future petty crimes. Furthermore, they were now widely viewed by their host society as criminals which reinforced their status as subordinates.

Congress was also not the only governmental body pursuing restrictive policies. There were also numerous enforcement operations launched by the Department of Homeland Security or the Immigration and Naturalization Service. One major outcome of these operations was the widespread delusion that the immigration crisis was growing. Since there was so much money

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<sup>80</sup>Rannik, Julie K. “The Anti-Terrorism and Effective Death Penalty Act of 1996: A Death Sentence for the 212(c) Waiver.” **The University of Miami Inter-American Law Review**, vol. 28, no. 1, (1996)

being put into border control and enforcement, the number of border apprehensions increased at a significant pace after 1977. Simultaneously, however, illegal entries were actually decreasing. In short, “anti-immigration sentiment increasingly fed off itself to drive the bureaucratic machinery of enforcement forward to new heights, despite the lack of any real increase in illegal migration.”<sup>81</sup> Fallacies such as these were disseminated quickly by politicians and everyday Americans, contributing to the discrimination and stratification of Mexican Americans.

When looking at assimilation theories, the results described above are obvious examples of differential inclusion (a deviation of the desired course of assimilation.) Similar to the experiences of African Americans, Mexicans are increasingly finding themselves being accepted into the mainstream as subordinates. Ramirez describes this as enjoying “a secondary set of rights reserved for particular minorities who ‘behave’ appropriately and stay in their designated subsidiary space without complaint”<sup>82</sup> Many of the steps taken to racialize Mexicans have criminalized any breach of “appropriate behavior,” thus fortifying their lesser position in society. Therefore, while some scholars continue to argue that many Mexicans are choosing not to assimilate, it is important to recognize that even those who do choose to assimilate are unable to overcome so many institutional barriers. Besides, as described previously, overcoming one barrier does not mean full assimilation and acceptance since the inclusion into one sector of society often depends on the exclusion from another. By blurring the lines between Mexicans and criminals, America has successfully compromised Mexican inclusion at a social level. As a result, Mexican laborers are welcomed into the economic sphere as the labor market is now enabled to freely exploit Mexican workers with little backlash from the public. At the same time,

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<sup>81</sup> Massey and Pren, “Unintended Consequences of US Immigration Policy,” **Population and Development Review**, vol. 38, 9.

<sup>82</sup> Ramírez, Catherine S. “Assimilation.” in **Keywords for Latina/o Studies**, edited by Deborah R. Vargas et al., vol. 6. (NYU Press, 2017), 15.

the negative association with being criminals may make it harder to find higher-paying jobs, meaning Mexicans will find economic mobility difficult.

Differential inclusion is preferred by American nativists as being the most lucrative means for assimilation. A perfect situation in which immigrants behave within their subsidiary space, providing exploitable labor and scapegoats for periods of economic or political instability. Naturally, the straight line theory of assimilation no longer applies, especially in combination with restrictive legislation. The blending of the terms migrant and criminal, the influx of alarmist opinions in the media, and the delusions created by overzealous apprehensions and deportations has set immigrants en route towards second generation decline. These, as some may argue, intentional outcomes of legislation and political rhetoric have caused reductions in opportunities for immigrants such as jobs, education, and welfare. Therefore, it is no surprise that the conditions for second generations have not improved and it can become increasingly harder to assimilate. Paradoxically, assimilation gets progressively easier for the host society when differential inclusion is widely accepted. Based on revisionist theory, because assimilation is a two-way street, it requires cooperation from the host to accelerate the seamless integration of immigrants into the mainstream. If the prevailing strategy of supporting assimilation is based on the isolation of Mexican immigrants as an inferior class, then it will become easier to sustain this separation as generations pass. This is due to the institutionalization of societal boundaries through the expansion of restrictive policies and anti-immigrant tendencies over time. America has quickly established the means for suppressing immigrants and constructed a society in which Mexicans have been meticulously excluded, yet, somehow receive persistent criticism for their failure to “assimilate.”



## **Conclusion**

As established by existing research, assimilation has become a much more complicated process for contemporary immigrants such as Mexicans. The ultimate integration of previous European immigrants was at the time a product of economic optimism and fading ethnic prejudices. These circumstances, however, have changed immensely and Mexicans encounter a much different welcoming into the US— shaped by racism and exclusionary incentives. My research suggests that legislation has to a large extent acted as a restricting force to the success and quality of assimilation into the American mainstream. Policies dictating labor regulations have pushed Mexican immigrants into exploitative jobs and limited the economic mobility of second and third generations. Coinciding with this process, legislation has actively subdued the social integration and support of Mexican communities, thus facilitating employers' abilities to maintain a behaved and reliable workforce. Similarly, legislation dealing with crime has racialized immigrant communities and amplified the negative social perceptions circling the media. Alarmist sentiments have turned immigration issues into a crisis and an urgent threat, leading Mexican communities to live in fear of deportation or discrimination based on stereotypes and misjudgements. Modern theories of assimilation put forth by various sociologists, explain such outcomes of detrimental legislation and their relation to the decline and segmented integration of non-white immigrant groups. The results of these comparisons indicate that legislation, often disguised as constructive, has catered mainly to white interests and created additional boundaries to the assimilation process.

It is also important to note that immigrants have in fact persevered; developing means of success and adaptation techniques despite push-backs and obstacles. According to the American Council on Education (ACE), “the growing Hispanic population . . . is seeking higher education

at levels not seen before.”<sup>83</sup> Dropout rates are decreasing and more Mexicans are receiving degrees necessary to pursue diverse career paths. Furthermore, English language proficiency has increased dramatically over the last forty years—reaching 72% of all Latinos (ages 5 and older) compared to 59% in 1980.<sup>84</sup> English proficiency is often used as an indicator to both economic and social assimilation as it widens economic opportunities and displays acculturation to mainstream culture. These positive developments, and many more, give hope to the assimilation of Mexican communities both economically and socially. However, the largest takeaway from my research is the significance of assimilation as a two-way collaboration. No matter how motivated immigrants are to assimilate, the host society must offer equal interest. This includes blurring ethnic boundaries and supporting new immigrant communities. In the future, it will be increasingly important for legislators to take a more proactive approach to the immigration issue and contribute genuine support. Patterns of exclusion and differential inclusion that are prominent today will not function forever. While many later generations will acculturate to American culture, the discrimination and exploitation faced by these communities will result in resentment toward their host societies and indirectly promote the importance of ethnic networks. Consequently, if the U.S. desires a more unified society, policy makers will have to learn to work with immigrants in order to expand the capacities for assimilation.

### **Section III**

#### **The Pandemic and Immigration—A Relationship of Inconsistency and Injustice**

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<sup>83</sup>Alba, Richard. “Assimilation in the Early Twenty-First Century.” **The Great Demographic Illusion: Majority, Minority, and the Expanding American Mainstream**, Princeton University Press (2020).

<sup>84</sup> “A Brief Statistical Portrait of U.S. Hispanics”, **PewResearch Center**, 2022.

## **Introduction**

Continuing on the consequences of immigration policy on assimilation, we will also include the current repercussions of the pandemic-era policy known as Title 42. The existence and extended consequences of the Covid-19 pandemic on immigration policy are evident throughout the Trump and Biden administration. Specifically, the negative impacts have been on families, unaccompanied children, and Haitian asylum seekers crossing the border. While hope was maintained to lift Title 42, it still prevailed and provided legalized injustices, such as the separation of families and unaccompanied children and no due process of law for Haitian asylum applications.

Over the past year, the Title 42 Covid-19 Policy has made its way to the news and into the lives of many Mexican and Haitian immigrants. While mostly known for its usage under both the Trump and Biden administration, its history goes back to 1944. On July 1, 1944, Franklin Delano Roosevelt approved and signed off on Public Law No.410 or the Public Health Service Act. The act was presented to revise and consolidate the laws related to the Public Health Service. The Public Health Service was formed to combat health issues on a national and international scale. The bodies of the Public Health Service are a “commissioned corps of officers” who are highly trained in medicine, research, public health, etc. The act makes clear the acceptance of the broadness and vagueness of the powers held by the Public Health Service, which include the power of quarantine for inter-state and national relations. One example is the act provided the Public Health Service authority of augmentation on quarantine in aviation.

The connection between the Public Health Service and their ruling over quarantine is separate from their power of national control of viruses. The act has several parts and sections,

and the relevant one for this research is the information in part “G” of title “III.” While the focus still pertains to quarantine it introduces the power of inspection. The power is vested in the individual who oversees the U.S. Public Health Service (USPHS) Commissioned Corps, the Surgeon General. With the approval of the Federal Security Administrator, under part G, the Surgeon General is given broad authority to “make regulations necessary to prevent the introduction of disease into the country or its spread from State to State.”<sup>85</sup> In other words, the security of the United States from pandemics and neighboring countries' viruses is a responsibility vested upon the Surgeon General and the Federal Security Administrator.

However, the power is additionally given to the “traditional authority,” which would be considered modern-day Border Patrol. The act gives the traditional authority the power to detain any “infected” individual who is likely to start the spread of disease when making entry into the United States. The power listed is similar to the one held by the familiar quarantine authorities of the State and local health officers. However, the act adds speculation by stating the power over detainment would not be exercised during this time (1994) on diseases but only on those considered "sexual/venereal." Even with the limitation, the act gave birth to an impactful tool that would aid the United States in mitigating new infections that could be brought into territorial lines.

In addition, the most known action permitted under the act is the one given to the relationship between the president and immigration. The act continues the existing power of the president to suspend immigration and importation into the United States. The ones affected by the blockage are foreign countries with known serious epidemics. Furthermore, the act makes clear that the President is to work with the General Surgeon to enact these forms of jurisdictions.

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<sup>85</sup> Alanson Willcox, “The Public Health Service Act, 1944,” *Social Security Bulletin*, vol. 7(8) (1944): 15–17.

The act states, “the authority is placed in the Surgeon General, to be exercised under Presidential regulations.”<sup>86</sup> The act outlines the extended powers that are later practiced by President Donald J. Trump and Joe Biden during the global pandemic caused by Covid-19.

### **The Trump Administration**

Knowing the history of Title 42 policy reflects the intentions behind the extension of powers and jurisdiction with public health and foreign affairs. Behind the well-described lies the potential for abuse of power, which the United States 45th President, Donald Trump, exhibited during his presidency. During his time in office, Trump was known for his plans to "build a wall," but his intentions behind the infrastructure were for domestic and national power and exclusion. While Trump used Title 42 as a cover for xenophobia, the Coronavirus also exhibited the relationship between the United States and Mexico.

In 2020, at the height of the pandemic, the Trump administration informed other States that they closed the U.S. border with Mexico to minimize Covid-19 cases. However, the announcement provoked a similar statement from Mexico. After Trump closed the border, community border activists in Mexico voiced their reaction to Mexico's current President, Andres Manuel Lopez Obrador (AMLO). The conversation led to Mexico stating that AMLO would "shut the border to keep out Americans who have had over 65,0000 coronavirus cases compared to Mexico's 500 as of 2020, March 26."<sup>87</sup>

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<sup>86</sup> Willcox, “The Public Health”

<sup>87</sup> Terence M. Garrett, “Covid-19, wall building, and the effects on migrant protection protocols by the Trump administration: The spectacle of the worsening human rights disaster on the Mexico-U.S. border,” *Administrative Theory & Praxis*, vol. 42(2) (2020): 240–248.

Mexico's response to the announcement was expected, given the past tensions between both states regarding immigration policy. Title 42 enables the deportation of asylum seekers immediately, without due process, because it prevents any chances to apply for asylum. These measures led to an influx of immigrants into Mexico, which caused the issue of rapid population growth, given Trump's past policy, "the 'Remain in Mexico' (aka MPP) policy enacted in January 2019." Through MPP, immigrants at the US-Mexico border experienced constant deportations and expulsions. For example, the Trump administration stripped away roughly 60,000 asylum seekers from staying in the United States to await their trial to grant them asylum. Instead, MPP placed asylum applicants from diverse places in Latin America in Mexico, which was another foreign country for some applicants.

A study conducted by the Department of Geography at Texas State University provided an example of Trump's usage of Title 42 as a destroyer of the asylum system for applicants. The study exposed how the actions under Title 42 went against international law, specifically the laws protecting asylum seekers and refugees. Ironically, the United States and 145 other countries signed an international refugee law that protects refugees and asylum seekers from forceful repatriation. President Barack Obama's administration initially violated the law, but the Trump administration took more drastic measures. Both presidents started building bilateral contracts with "source and transit" countries to oversee the "interception and repatriation" of potential asylum seekers at the US–Mexico border.<sup>88</sup> However, citizens, immigrants, and the international community knew that Trump's policy intertwined with expulsion motives under the veil of national protection in his public rhetoric.

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<sup>88</sup> Sarah A. Blue et al., "IM/mobility at the US–Mexico border during the COVID-19 pandemic," *Social Sciences*, vol. 10(2) (2021): 47.

Each president views the issue of immigration differently, and it depends on their perspective on asylum seekers. With President Trump, many understood his opinions to be in two categories: "interpreting asylum seekers as national security threats or economic migrants attempting to game the system."<sup>89</sup> Having these beliefs brought forth his idea to place asylum seekers under this section of threats to the public health of the United States because of the pandemic. However, the reality was that Trump and US Centers for Disease Control and Prevention (CDC) used a health code to destroy the asylum system from one of deportation and detention to expulsion. The former is the MPP or the 'Remain in Mexico' policy, which Biden recently ended in 2022 with the authorization of the US Supreme Court. Lastly, the latter is Title 42, which is still prevalent even with a shift in political parties and viewpoints on immigration.

As mentioned, MPP is a Trump-era policy focused on stigmatization and international border collaboration with Mexico. The Trump administration's initial goals toward asylum seekers were evident in his first years in office. Trump's agenda was to extend and create immigration policy centered around increasing the detention within the US territory, as seen in Obama's term, while also boosting deportations. In addition, Trump wanted to continue the neighboring partnership with Mexico's National Migration Institute (INM) "to detain and deport migrants at its southern border."<sup>90</sup> A program that showcased their partnership is "Operation Streamline" (OS). OS provided authority to Border Patrol to prosecute, and the power was practiced on migrants who "were picked up for illegal entry along the river within certain geographic boundaries." Research conducted by an immigration attorney, Jackie Fordham, provided an account of which demographics the government prosecuted. In terms of Latin America, Mexicans were the group with the highest prosecution rates in the Rio Grande Valley,

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<sup>89</sup> Blue, "IM/mobility at the US–Mexico border"

<sup>90</sup> Ibid.

rather than Central Americans.<sup>91</sup> However, for Central Americans, their process was unique from that of Mexicans. Border Patrol is in charge of turning over asylum seekers from Central America to ICE, which held the final decision on the deportation and detention of releasing the asylum seeker.

Under Trump's presidency, many families crossing the border entered with fear given his elimination of an Alternative to the Detention (ATD) program, known as The Family Case Management Program (FCMP). The FCMP had a short run, starting in January 2016 and ending (by the Trump administration) in June 2017. One of the reasons during the time of FCMP that policymakers were looking for ATDs was because of the influx of immigrants and asylum seekers, which led to overcrowding in detention centers. The FCMP was a piloted ATD solution created to address the numerous immigrant families coming across the border whose vulnerabilities did not align with those in detention.

The outline of the FCMP was to aid pregnant and nursing women first. In addition, under the program, migrants experiencing mental or medical health issues, like trauma and those suffering from domestic abuse, were aided.<sup>92</sup> The element added to the FCMP to make it an effective ATD was its collaboration with community-based organizations (CBDs). The CBDs worked under an agreement with a private contractor named GEO Care, Inc., to provide migrants with case management assistance. The process under the FCMP included assigning each family a case manager who offered three sets of services to aid in the application cycle; all this was to increase compliance with immigration obligations.

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<sup>91</sup> Ibid.

<sup>92</sup> Audrey Singer, "Immigration: Alternatives to Detention (ATD) Programs," *Congressional Research Service*, (2019).



First, case managers offered their clients initial stabilization services, such as English language learning, medical and food assistance, and legal services. Next followed the emphasis on becoming educated on the immigration process through watching presentations highlighting proceedings, obligations, and legal representation.<sup>93</sup> In addition, the FCMP provided families with the resources to learn about US laws surrounding domestic violence, child supervision, and driving while intoxicated. The last pillar of services included support for the families' applications through case managers having monthly office and home visits and monthly appointments with Enforcement and Removal Operations (ERO). Given the immense emotions felt through the dangerous journey to immigrate to the United States and the lack of trust many foreigners have towards the US, given historical injustices, the FCMP provided hope for many families. Having the case managers by their side, families-built trust with the immigration system, but the Trump administration viewed the program as too costly and ended its benefits.

The FCMP became a distinct memory for migrants after Trump's 'zero-tolerance' policy in April 2018, which removed the humanitarian viewpoint to immigration policy. The main difference that caused the most impact on the deportation system for immigration was that the policy "required all migrants to be detained and criminally processed."<sup>94</sup> Given the rapidness of the deportation process under the 'zero-tolerance,' asylum seekers filled up detention centers, and unlike FCMP, their access to legal counsel was prohibited. In addition, the policy mandated that arriving migrants refer to the Department of Justice for criminal prosecution for their actions of "illegal entry or reentry." As stated, the policy removed its emphasis on the humanitarian approach to immigration, and it became evident in the policies outlined for asylum seekers and

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<sup>93</sup> Singer, "Immigration: Alternatives to Detention"

<sup>94</sup> Blue, "IM/mobility at the US-Mexico border"

their families. While adult asylum-seekers were detained and awaiting criminal prosecution, the policy separated their children from their protection (their parents). Under the Trump administration's new policy, "Over 2600 children were separated, with no tracking mechanism in place, leading to prolonged separations and life-long trauma."<sup>95</sup> Mothers especially felt sorrow and helplessness as their children became victims of the cruel separation enforced by authority.

The overcrowding conditions in detention centers opened the door to moving from deportation to an externalization and expulsion policy approach. The issues caused by the Trump administration and the pandemic provided the foundation to suspend the asylum process. Then, the CDC introduced the Title 42 public health code, which became the new official "immigration law" for asylum seekers. However, Title 42 was not the best alternative for immigration law because it went around US courts and US Congress. Such bypassing allowed Border Patrol officials to rapidly expel migrants who came across the border, which restructured the application process. With the immense amounts of expulsions under Title 42, we start seeing the integration of the 'Remain in Mexico' policy.

As of March 2020, the merger of policies accounted for approximately 200,000 migrant expulsions, and each lacked due process.<sup>96</sup> Migrants had two possible final destinations; either their home country, which came with the fear of prosecution, or Mexico, another unfamiliar foreign country for some migrants. The conclusive thoughts on the expulsive policy under the Trump administration, like Title 42, were the questioning of motives driving the enforcement. First, legal advocates and healthcare experts thought that there was a targeting of immigration status on asylum seekers during the enforcement of Title 42, which the CDC based on public

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<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

health criteria. Lastly, many healthcare workers, like Physicians for Human Rights, emphasized that asylum seekers are not more prone to spread the virus when comparing them to students, truck drivers, and temporary workers who cross the border daily with no interference by Title 42.

## **The Biden Administration**

After Trump lost his re-election, next came President Joseph Robinette Biden, who revealed a different relationship to Title 42. While there was a change of presidency, Title 42 still held its place within the President's usage. The Biden-Harris administration highlights how Title 42 changed regarding the last administration enactment. Biden gained the trust of many demographics by emphasizing his commitment to making immigration policy more ethical and humane, which included attempting to lift the Title 42 public health order. However, as stated on their website, "the court prevented" his efforts, which meant reshaping the current policy in hopes of keeping his campaign promises. The main goals when adjusting Title 42 included "increasing security at the border" and "reducing the number of individuals crossing unlawfully between ports of entry." Through these objectives, the Biden-Harris administration was working towards making the legal process for migration more structured and efficient while providing consequences that bypass the provided legal pathway.<sup>97</sup> For example, President Biden emphasized international collaboration and strengthening relationships through the additions he positioned under immigration policies like Title 42 during the pandemic.

While the Trump administration negatively impacted states like Mexico, outlined in his reframing of Title 42, Biden positively incorporated many countries from Latin America and the

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<sup>97</sup> The United States Government, "Fact sheet: Biden-Harris Administration announces New Border Enforcement Actions," *The White House*, (2023).

Caribbean. In ensuring the creation of an effective policy, Biden implemented the Venezuelan parole process, which he believed to be successful. For context, the American Immigration Council defines a parole process as exercising the right to "discretion to temporarily allow certain noncitizens to physically enter or remain in the United States if they are applying for admission but do not have a legal basis for being admitted."<sup>98</sup> Given the potential of the Venezuelan parole process, the Biden-Harris administration expanded it to other nations like Cuba, Nicaragua, and Haiti. Logistically through the process, 30,000 citizens from either of these nations who passed a background check and passed vetting could enter the United States.<sup>99</sup> Individuals then wait two years to receive work authorization legally, and this process accepts 30,000 people monthly.

In addition, the Biden-Harris administration took the approach to immigration policy through work authorization and refugee aid on an international scale. During his planning for post-Title 42, Biden included that he would accept around 20,000 refugees from Latin American and Caribbean countries. The main goal behind this addition was to increase refugee admission from Western Hemisphere, which was a promise made by Biden under the *Los Angeles Declaration for Migration and Protection*. Biden made the declaration in hopes of expanding legal pathways for immigrants from Latin America, which required international collaboration to work effectively. For example, the Biden administration states that countries like Ecuador, Columbia, Belize, and Costa Rica provided their support by "each implementing new regularization or temporary protection policies to provide legal status to hundreds of thousands

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<sup>98</sup> The United States Government, "Fact sheet: Biden-Harris Administration"

<sup>99</sup> Ibid.

of migrants."<sup>100</sup> In addition, Spain, Canada, and Mexico offered more temporary work opportunities and expanded resettlement for refugees.

While many of the pushes for changes provided by the Biden administration were for post-Title 42, they still answer to past injustices towards immigration. For example, President Biden provided an effective solution for the Remain in Mexico Policy implemented by the Trump administration. The main issue caused by the policy was the displacement of many asylum seekers to Central and Northern Mexico. Asylum seekers have had to wait for a trial date at an immigration court to address their needs to enter the United States in a foreign country, which meant lingering in fear and poor conditions. However, after the courts lifted Title 42, Biden planned to introduce a more effective and quicker process for noncitizens in Mexico, which Biden calls the CBP One Mobile application. Through the application, applicants can present themselves for "inspection and to initiate a protection claim instead of coming directly to a port of entry to wait."<sup>101</sup> The importance of this new application lies in its ability to provide a safer and more humane process between the immense number of applicants at the U.S. ports of entry and the immigration court system.

One of the last sections of the plans from the Biden administration is its focus on other organizations that help immigrants. President Biden outlined monetary support for humanitarian issues in Mexico and Central America. The budget set for the support of governmental bodies was \$23 million. The specific requirement for receiving the aid was to be assisting vulnerable migrants, refugees, and other communities in your region. The overall catering of the funding would go towards "[helping] support shelter, health, legal assistance, mental health and psychosocial support, water, sanitation, hygiene products, gender-based violence response,

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<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

livelihoods, other protection related activities, and capacity building for partners."<sup>102</sup> Biden's focus on foreign aid helps differentiate him from past presidents because he acknowledges the vast issues in immigration and how it will take a collective front to help provide effective and concrete solutions.

While Biden had plans for post-Title 42 immigration policy and movement, it did not go as planned. Unfortunately, Biden unwillingly continued the policy, which has progressed in expulsions of asylum seekers. President Biden made the executive decision to maintain Title 42 until April 2022 because the CDC, the rapid tests, and vaccinations to counter Covid-19 were enough to address their public health concerns. While the termination of Title 42 was set to go into effect on May 23, it failed because of a federal court in Louisiana blocking the Biden administration from doing so.<sup>103</sup> The courts were on a binary when supporting or opposing the lifting of Title 42. Some courts, for example, the D.C. Circuit Court of Appeals, declared Title 42 expulsions illegal since the immigration policy did not provide migrants and their families with due process to obtain protection from persecution.

In addition, Biden branched out similar plans to those of the MPP by the Trump administration. Initially, in the 'Remain in Mexico' policy, the Mexican government agreed to have mostly "Mexican, Guatemalan, Honduran, and Salvadoran families and single adults encountered at the southern border."<sup>104</sup> Instead of pushing back on the policy, the Biden administration added Cuba and Nicaragua to the agreement, which placed Cubans and Nicaraguan migrants in Mexico. However, the contract is not legally accountable for the spike in Haitian asylum seekers that Title 42 has pushed to Mexico, which poses problems. The main

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<sup>102</sup> Ibid.

<sup>103</sup> "A Guide to Title 42 Expulsions at the Border," *American Immigration Council*, (2022).

<sup>104</sup> "A Guide to Title 42 Expulsions at the Border"

issue on behalf of Haitian migrants under the Biden administration is their lack of legal protection and the border patrols constantly disregarding their fear of returning to their home country. Asylum seekers' migration is primarily because of the fear of unsafe living conditions within their home states, but Title 42 does not consider this reality. Biden's continuation of the "public health" policy meant those subjected under Title 42 could not use the possibility of facing persecution in their home country for leaving to push back on their expulsion. While there is a "loophole" where migrants could "spontaneously" announce their fear of torture where their expulsion will take them to the U.S. Customs and Border Protection Officers (CBP), their announcement rarely gets addressed. Even if validated, the CBP must find the sentiments as "reasonably believable" to send the migrant to an asylum officer to grant them an exception to expulsion. Statistics showed "From March 2020 through September 2021, just 3,217 people were screened for torture prior to being expelled, and only 272 people were granted an exemption and permitted to seek asylum."<sup>105</sup> Under Title 42, asylum seekers not placed in Mexico are held in U.S. Immigration and Customs Enforcement (ICE) or CBP detention and then flown out to their home country with no opportunity to apply for asylum. For example, under Title 42, "over 18,000 Haitian nationals seeking asylum have been subjected to return to Haiti,"<sup>106</sup> thus invalidating Haitian asylum seekers' demands and needs for safety. Also, even when outcry, advocacy groups, and many Democratic members of Congress opposed flights for migrants to Haiti, the Biden administration expelled approximately 8,000 more Haitian migrants after they crossed the border near Del Rio, Texas.

One clear opposition to the flights for Haitian asylum seekers is from within the Biden

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<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

administration, Harold Hongju Koh, the former Legal Adviser of the United States Department of State. Koh advocated for the notice of international and immigration law violations when the Biden administration enforced Title 42. The first laws in violation are the Conventions against Torture (CAT) law and the 1967 Refugee Protocol law, which both prohibit "State Parties from expelling, returning, or extraditing any person to any State where substantial grounds for believing [they] would be in danger of being subjected to torture." Title 42 violates these laws when interacting with Haitian migrants because migrants who arrive at the border are not screened for fear and persecution unless they have the "spontaneous" announcement, which Koh states is known as the "shout test." In addition, another violation stems from the unfortunate events where Haitian migrants were not informed where the deportation flights were taking them. The Biden administration violated the laws when the destination was Haiti's because Haitian asylum seekers now had a higher chance of "possible persecution or torture." For example, Haiti's provided President Biden with the announcement that since the pandemic, they have been experiencing security concerns, human rights abuses, and social unrest, thus making it a non-ideal safe country. In addition, given their political instability because of the assassination of President Moïse and the infrastructure destruction caused by a devastating earthquake, Haiti's asked for a halt to the massive deportation of Haitian migrants. However, as Koh states, Biden disregarded the plea and clear signs that both laws prohibit (sections that state the conditions of what is a "safe" country migrants can return to) when he returned 4,600 Haitian migrants to Haiti, which as Kohn states, was a "humanitarian nightmare."<sup>107</sup>

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<sup>107</sup> Harold Hongju Koh, "Re: Ending Title 42 return flights to countries of origin, particularly Haiti," *Politico*, (2021).



## **Conclusion**

Title 42 has been a policy mixed with the idea of public health and immigration. However, presidential administrations have had clear motives, which is evident when analyzing where they are placing emphasis when enforcing the policy. The outline of the public health code provided context and early exposure to consider the overuse of power, which would infringe on other human rights. The Trump administration had a history of removing humane policies, especially those centered around immigration, and replacing them with cruel policies. Trump had the goal of changing the asylum process, which started with detentions and deportations and moved to be more externalizing and expulsion. On the other hand, the Biden administration provided solutions to make the immigration application system and overall immigration policy more efficient and humane. However, there has been no lifting of Title 42. While Biden may oppose such a regulation, there is still enforcement and disadvantages towards specific groups of asylums, such as those from Haiti. Biden has had inner cabinet conflict and tension because of the methods of continuing Title 42, which violated international and immigration law.

