

LWV New Mexico Immigration Study

Editorial comment: This study was authorized almost a year ago. I have collected a large amount of material. It is possible the Congress will pass immigration reform this spring, but the agreement on legislation may not occur until after the Nov. elections. Since this issue has been covered extensively by the media for the past several months, this study will begin with a history of U. S. immigration legislation. The following essay will be a history of immigration and New Mexico, followed by New Mexico laws and rules and regulations.

There is a lot of talk today about immigration – much of it contentious. People from every part of the globe try to enter the country, legally and illegally.

In the beginning immigrants were welcomed since the continent was sparsely populated. But even our founding fathers had differing views about who was welcome and who was not.

Quotes from our founding fathers:

In 1751, Benjamin Franklin wrote in *Observations Concerning the Increase of Mankind*,

Why should the Palatine boors be suffered to swarm into our settlements, and by herding together establish their language and manners to the exclusion of ours? Why should Pennsylvania, founded by the English, become a colony of aliens, who will shortly be so numerous as to Germanize us instead of us Anglifying them and will never adopt our language or custom, anymore than they can acquire our complexion.

George Washington in 1783, when addressing the members of the Volunteer Association of Ireland is reported to have said:

The bosom of America is open to receive not only the opulent and respectable stranger, but the oppressed and persecuted of all nations and religions, whom we shall welcome to participate in all of our rights and privileges, if by decency and propriety of conduct they appear to merit the enjoyment.

Immigrants and refugees have been received, and sometimes welcomed, since the earliest years of our founding. They have sought refuge from war in their country, or from political or religious persecution. Others have come for economic reasons, looking for a better life for their families.

United States citizens and government have reacted differently to those seeking to immigrate. Policies have been more welcoming to being very restrictive. There has been racial, political, and ethnic discrimination. Early in the republic, policies were intended to determine who these groups would be.

No concerted anti-immigrant movement developed until the mid 1800's when thousands of desperately poor Irish immigrants, fleeing the potato famine, began arriving at east coast ports, primarily in Massachusetts and New York. In reaction, the Massachusetts and New York state governments passed laws taxing and there by impeding the flow of immigrants. On appeal to the Supreme Court in 1849 the state laws were struck down and immigration was linked directly to "foreign commerce" which is controlled by Congress. They ruled that even in the absence of federal legislation, state governments could not regulate immigration.

In 1868 the 14th Amendment to the Constitution was adopted. Section 1 states that "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which

shall abridge the privileges or immunities of citizens of the life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” Statutory provisions still limited citizenship to “free white persons”.

The closing of the doorway of admission to the US began in 1882 when policies were adopted that began the exclusion of certain kinds of immigrants. Discrimination between the late 1800’s and mid 1900’s was harshest on Asians, in particular Chinese. Among the earliest migrants to be considered desirable as workers but undesirable as citizens were the Chinese who were welcomed as laborers in the mines but they were not allowed to bring their families. In 1892 Congress passed the Geary Act, which extended exclusion of Chinese for another 10 years. Restrictions were placed upon Chinese living in the U.S. It stated “...any Chinese person or persons of Chinese descent” was in the country illegally unless they could demonstrate otherwise. It required all Chinese in the U.S. to get a certificate of residence or be deported. The laws were changed in 1946 to allow certain Chinese and their families to immigrate and apply for citizenship. Regulations were also eased for India and Philippines but other Asian countries, chiefly Koreans and Japanese were barred from citizenship.

From 1921 to the early 1940’s statutes and administrative actions set narrowing limits for those immigrants who were not excluded. These were in the form of literacy tests, checks the migrants background for a history of criminality and political tests to separate out radicals, especially those sympathetic to Communism. The first law requiring a literacy test was passed in 1913. This was opposed by manufacturing interests who sought an abundant supply of unskilled workers. President William Taft vetoed this legislation “the natives (US citizens) are not willing to do the work that the aliens come to do. During these years the Federal Bureau of Immigration was created to control immigrants and immigration.

During “the Great Depression” there was a net gain of only about 70,000 immigrants over emigrants (those who come with the intention of becoming a permanent resident). President Hoover reduced the number of immigrant visas due to the economic conditions to assure those coming would have employment and not become public charges. Some consulates issued visas to those with substantial assets or to those with a sponsor volunteering a willingness to support the immigrant if necessary.

The depression was followed by World War 2 and a need for additional labor causing another reversal in immigration policies, especially toward Mexico. When the US approached the Mexican government about bringing labor north, the Mexican government wanted a say about where its citizens worked, and what their wages and living conditions would be. It was agreed they would be paid the prevailing wage. It is reported that just over 225,000 “braceros” were brought in, 75% from Mexico. During this time immigration barriers in general were relaxed and the movement of workers back and forth across the border continued as it had for many years. Mexican labor, whether legal or not, worked not only on farms but also on railroads, in mining and in manufacturing. Each time the U.S. actively recruited labor from south of the border it was assumed they would all return home when no longer needed but many remained in the U.S..

The two governments agreed to institute the “forced savings fund” and 10% of the workers wages were withheld and sent to banks in Mexico. They were to recover their money after they returned to Mexico. Unfortunately, few received their money on their return, supposedly due to banking corruption. In recent years there have been attempts by some of the elderly workers to recover their funds and the Mexican government promised to pay them if they can produce proof of their payments into the fund.

Starting with the 1952 McCarran-Walter Act U.S. policies provided for specific limits or numerical caps on how many refugees and immigrants would be admitted from each country. None proved effective since the US changing foreign policies created new demands to accept political refugees such as with the admission of Cubans and Hungarians.

In 2001 the INS reported that refugees and asylum seekers, many from Cuba, were 10% of the over 1 million immigrants admitted that year. Congress made special rules for the Cubans who were for awhile the favored refugees of the federal government. The Cuban Refugee Act of 1966 established that Cubans admitted or paroled into the US after January 1, 1959, and present in the US for one year could be given permanent resident status at the discretion of the attorney general. This overrode existing law and transformed what was a complicated procedure for others who had to leave the country and return to get their status changed into a simple routine for Cubans. Although this policy is still in effect, in 1994 President Clinton reversed the policy of welcoming boat people and announced that any refugees picked up at sea would no longer be taken in and they would be returned to Guantanamo Bay if no other country would take them in and they did not want to return to Cuba.

In the late 1970's and early 80's circumstances again led to discontent over US immigration policies and the government's apparent inability to cope with immigration issues. Fear of AIDS, the convicts sent by Castro to the US, inflation, rumors of an illegal immigration crisis and high unemployment increased anxieties. In 1978 Congress created a commission to study the issue. The principle recommendation given to Congress in 1981 was to reduce immigration and the report claimed that undocumented migration was the country's major immigration problem. After 5 years of debate and the introduction of multiple bills the 1986 Immigration Reform and Control Act was passed.

The 1986 Act proposed an amnesty for illegal immigrants who were longtime residents, tighter border controls, and a forgery-proof identity card. The Act allowed for an increase in work visas. Legal immigration was near 1 million a year and there was substantial illegal immigration. Theodor Hesburgh, former president of Notre Dame, headed the commission and expressed a concern that cheap immigrant labor reduces the standard of living for all workers. This was similar to the arguments used against Chinese, Irish, Italian, Germans and other new groups entering the US. Members of the Reagan administration took the position that immigration was necessary for economic reasons, while those opposed to immigration used the cultural argument that some immigrants are not able to assimilate into the American culture. Political leaders considered the 1986 Immigration Reform and Control Act a solution to all immigration problems. When signing the bill Ronald Reagan predicted "future generations of Americans will be thankful for our efforts to humanely regain control of our borders and thereby preserve the value of one of the most sacred possessions of our people—American citizenship."

In *Guarding the Golden Door*, Roger Daniels writes about the 1986 law, " (this is) a measure reflecting the deep divisions in Congress over immigration policy. Despite the anti-immigrant rhetoric by Congress, and the media, the 1986 law, on balance, actually expanded immigration rather than restricting it. There were provisions that were intended to 'get tough with' immigrants. Ironically, these 'get tough' provisions, especially the ones that Reagan claimed would enable America to "regain control of our borders," failed as most authorities quickly recognized.

"The two major restrictive provisions, as summarized by the INS:

1. Created sanctions prohibiting employers from knowingly hiring, recruiting, or referring for a fee aliens not authorized to work in the United States.

2. Increase enforcement at U.S. borders.

Since most immigrants, legal or illegal, come to the US to work, an effective system of employer sanctions would, sooner or later, all but eliminate illegal immigration. Enforcing such sanctions especially in regions where the use of illegal workers was a way of life, would be difficult under any circumstances. But Congress had no intention of passing a statute that would put large numbers of respectable and often wealthy citizens in legal jeopardy. The word *knowingly* in the statute is a clear indication of this. Criminal statutes – and hiring an illegal alien is a crime, do not normally absolve perpetrators who claim that they did not know what they were doing.

“And, if the *knowingly* were not enough, Congress – at the behest of southwestern and western legislators – deliberately impeded effective enforcement.” In 1988 the first full year after the Act went into effect the INS reported 1+M apprehensions and of these 93% were expelled with the benefit of the INS transporting them to the border. Most were of Mexican nationality and 98% were persons who had entered illegally. The reason they were not deported is because that is a long and expensive legal process. The law was made so that it did not interfere with the supply of agricultural workers. Many of the workers who were expelled were simply going home after working the harvest and intending to return for future harvests as they always had.

The immigration issue of the past presents many of the same dilemmas to our leaders and to us as citizens. Today the number of undocumented immigrants in the U.S. has increased 23% over the last four years to between 10 and 11 million people according to the Pew Hispanic Center. More than one - half of the undocumented are from Mexico. Before Mr. Bush, in 2004 first urged Congress to create a program that would legalize undocumented workers and allow for foreign workers to come here in the future, policy makers have neglected the issues driving the increased numbers of the illegal crossing of our southern border. Mr. Bush has said as recently as March, 2006 while in Cancun that he could not engineer U.S. immigration reform, because he is not a member of the legislative branch.

Congress is now acting. The House of Representatives differed with Mr. Bush and passed legislation that would tighten border security and make it a federal crime to live in this country illegally, turning the millions of undocumented immigrants here into felons, ineligible to win any legal status. This position is supported by some conservatives and others who see more liberal legislation as a threat to American culture, jobs and security.

Meanwhile, the Chamber of Commerce, many business, religious and union leaders are supporting legislation sponsored by various Senators. Legislation that would tighten border security, grant permanent residency and ultimately citizenship to the undocumented is being proposed, each Senators' legislation has variations on the above. The proposal sponsored by New Mexico Senator Dominici, offers undocumented immigrants already in the U.S. three years to apply for guest worker status. In order to apply for permanent residency they must leave the U.S. and reapply from outside the country. This bill would also increase penalties for employers who hire undocumented workers and would require that Social Security cards be tamper resistant. Dominici's bill would allow the National Guard be called to patrol the border for illegal crossings as well as for drug interdiction and terrorists. One difference between Dominici's bill and others is a requirement that the Mexican government help control human smuggling, drug trafficking and illegal immigration from the Mexico side of the border.

Whether any legislation will be signed into law before the November 2006 elections is up for debate. If the proposal passed by the Senate differs significantly from that of the house many question if the House/Senate conference will be able to resolve the differences.

Immigration is a global issue with global causes and will require global solutions. In an ideal world there would be no barriers to immigration. The movement of people from one area to another is an issue of concern for democracies where there is an attempt to manage the flow of immigrants. Parts of Europe have been in the news with problems, so far not seen in the United States. The movement of people from countries where they have fewer economic opportunities have not led to the desired integration. Those migrating to predominately “white” countries are often confronted with social exclusion, racism and the lack of an opportunity to participate in policy debates. Jane Kramer’s wrote in *The New Yorker*, April 3, 2006 “There are said to be fifteen million Muslims in Western Europe – the result of postwar and post-colonial migrations, labor recruitment and the demographics of a rapidly expanding immigration population drawn from cultures ...” differ from the European cultures. Immigrants may have other values different from the democratic, secular country they have chosen to migrate to. The increasing focus on security by governments and in some instances by citizens, has led to a debate about integration policy.

As stated in the beginning of this paper, immigration is a contentious issue and we see this today as Congress debates if there should be changes in immigration law, and if so what should those changes be. Perhaps this will be resolved this year, maybe not.

Rebecca Frenkel, Chair
Immigration Study Committee, LWV New Mexico