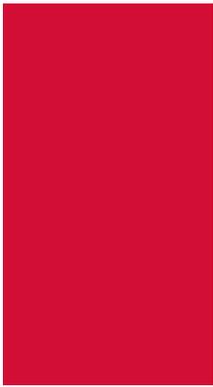


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Global and U.S. Immigration:
Patterns, Issues, and Outlook

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“Man is of all sorts of luggage the most difficult to be transported.”

—Adam Smith

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EXECUTIVE SUMMARY

There were 190 million international migrants in 2005, meaning 3 percent of the world's residents left their country of birth or citizenship for a year or more. Migrants include persons in all legal statuses whose reason for being abroad range from study to work to settlement. The number of international migrants in industrial countries more than doubled between 1985 and 2005, from 55 million to 120 million.

Most industrial countries have organizations and sometimes political parties that advocate no borders at one extreme and no immigrants at the other. These extremes have hardened, and each faction seems to prefer the status quo to a compromise that can be enacted into law, which may explain the persistence of the status quo.

The U.S. had 37 million foreign-born residents in 2007, totaling 12.3 percent of the U.S. population and almost 20 percent of the world's international migrants. These migrants can be divided into three major groups: 34 percent are naturalized U.S. citizens, 35 percent are legal immigrants and visitors, and 31 percent are unauthorized. The Senate in May–June 2007 debated and failed to approve the “comprehensive immigration reform” favored by President Bush and most Democrats, which aimed to reduce the influx of unauthorized foreigners and provide a path to legal status for many of them.

The Senate's failure to approve comprehensive immigration reform had three consequences. First, the Department of Homeland Security (DHS) announced a no-match enforcement strategy in August 2007, currently stopped by a court injunction, that would require employers who receive letters from the Social Security Administration (SSA) calling attention to discrepancies between employee-provided data and SSA data to terminate workers who did not clear up the discrepancy. Second, Senate supporters of incremental immigration reforms failed to win

approval for the DREAM and AgJOBS bills in fall 2007 which would have allowed unauthorized high-school graduates and farm workers to earn legal status. Third, Democratic presidential candidates have generally avoided discussing immigration, while Republican candidates, with the exception of John McCain, have generally embraced a tough enforcement approach.

GLOBAL MIGRATION

The number of international migrants is at an all time high. There were 190 million “migrants” in 2005, defined by the United Nations as people who left their country of birth or citizenship for a year or more (UN, 2006). The number of international migrants in industrial countries more than doubled from 55 million in 1985 to 120 million in 2005.

Most of the world’s 6.6 billion people never cross a national border; most live and die near their place of birth. Those who cross national borders usually move to nearby countries, often following networks that were created by previous labor recruitment, as from Mexico to the United States or Turkey to Germany.

International migration is likely to increase for reasons that range from persisting demographic and economic inequalities between countries to revolutions in communications and transportation that increase mobility. There are also more borders to cross: there were 193 generally recognized nation-states in 2000, four times more than the forty-three in 1900.¹

Most countries discourage immigration, meaning that they do not anticipate the arrival of foreigners who wish to settle and become naturalized citizens. Some also discourage emigration, as symbolized by the Berlin Wall between 1961 and 1989 and the continuing efforts of North Korea to retain citizens.²

1. Charles C Lemert. 2005. *Social Things: An Introduction to the Sociological Life*. Rowman & Littlefield, says there were fewer than fifty nation states in 1900 (p176).

2. North Korea is one of the few nations that continues to prohibit emigration, contravening Article 13(2) of the 1948 Universal Declaration of Human Rights.

Five countries plan for the arrival of immigrants: the U.S., which accepted 1.2 million immigrants in 2006; Canada (250,000); Australia (125,000); New Zealand (50,000); and Israel (25,000).³ Most of the world's migrants are unanticipated, in the sense that they were not welcomed as settlers upon arrival. Many of the migrants who settle in Europe or Japan arrive as students or guest workers and later earn permanent residence rights. Others slip over the industrial countries' borders or overstay their visas. Of these, some are regularized; some seek asylum from persecution at home and are recognized as refugees; and some remain unauthorized but manage to stay on.

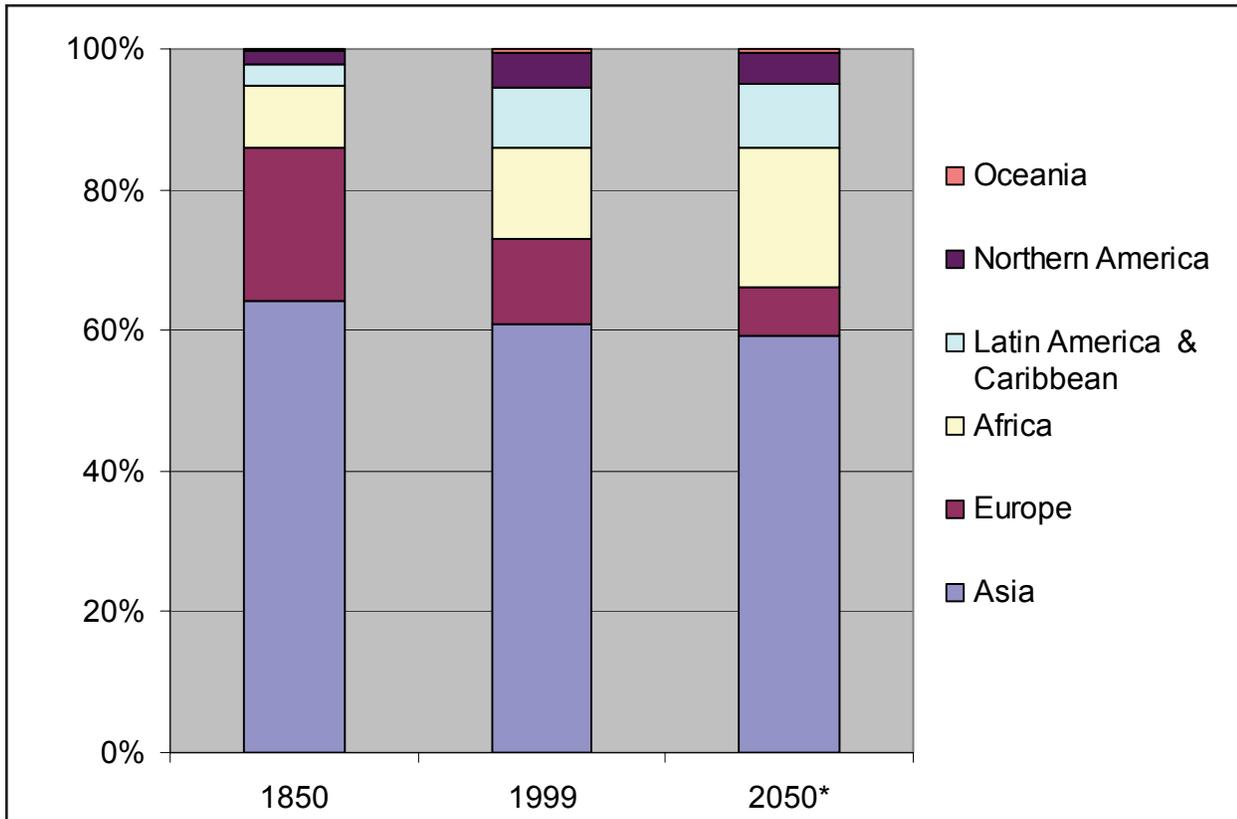
DEMOGRAPHIC AND ECONOMIC DIFFERENCES

International migration is motivated by differences and facilitated by revolutions in communications, transportation, and rights. The first difference involves population: most of the world's people are in developing countries, as is most population growth. The world's population is growing by 1.3 percent or 80 million a year, with 97 percent of that growth occurring in developing countries.

In the past, significant demographic differences between areas prompted large-scale migration. For example, Europe had 21 percent of the world's almost 1 billion residents in 1800 and the Americas had 4 percent. When there were five Europeans for every American, millions of Europeans emigrated to North and South America in search of economic opportunity as well as religious and political freedom. This raises the question of whether history will repeat itself. Africa and Europe have roughly equal populations today, but by 2050 Africa is projected to have three times more residents than Europe. If Africa remains poorer than Europe, the two continents' diverging demographic trajectories may propel young people from overcrowded African cities to urban areas in Europe that may have empty housing.

3. Websites of the government immigration agencies.

Figure 1 World Population by Continent, Percent Shares

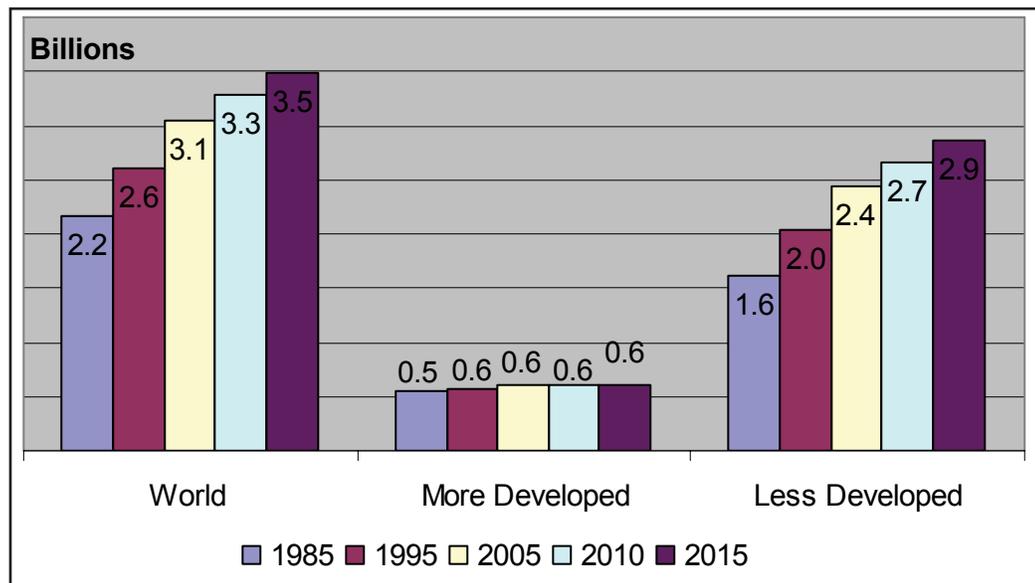


Two types of economic differences encourage international migration. The first is inequality between countries and the second is inequality within a country. The world's almost 200 nation-states have per capita incomes that range from less than \$250 per person per year to more than \$50,000, a difference that provides a significant incentive, especially for young adults, to migrate over borders for higher wages and more opportunities.

The thirty high-income countries had a billion residents in 2005, a sixth of the world's population, and their gross national income was \$36 trillion, 80 percent of the global \$45 trillion. The resulting average per capita income of \$35,131 in high-income countries was 61 times the \$580 per capita in low-income countries and 13 times the \$2,640 per capita in middle-income countries. Despite rapid economic growth in some developing nations—including the four East Asian “Tigers” (Taiwan, Singapore, Hong Kong, and South Korea) in the 1990s and China and India more recently—the ratio of per capita income in high-income countries compared with that of low- and middle-income countries has grown steadily larger over the past quarter century.

Most population and labor force growth is in low- and middle-income countries. The world's labor force of 3.1 billion in 2005 included 600 million workers in the more developed countries and 2.5 billion in the less developed countries. The labor force in less developed nations is projected to increase by about 425 million between 2005 and 2015, while it is projected to remain stable, at just over 600 million, in higher-income countries.

Figure 2 Economically Active Population (EAP), 1985–2015



Source: International Labor Office, Laborsta Database (<http://laborsta.ilo.org/>)

Income inequality within a country may also contribute to international migration. In lower-income countries, 40 percent of workers are employed in agriculture, a sector in which workers' earnings are often lower than average. In many developing countries, there is a single purchaser of farm commodities, who is thus able to buy crops for less than world-market prices, while monopoly suppliers of agricultural inputs can charge high prices for fertilizer and seed. As a result, farm incomes are usually less than nonfarm incomes, providing an incentive for farm workers and farmers to migrate to urban areas, where wages, incomes, and opportunities are better. The economics of farming in developing countries is one reason the urban share of the world's population surpassed 50 percent for the first time in 2008.⁴

4. George Martine, *State of World Population 2007: Unleashing the Potential of Urban Growth* (New York: United

Industrialized countries had “great migrations” off the land in the past, providing workers for expanding factories, fueling population growth in cities, and adding to emigration pressures. Similar migrations are underway today in countries from China to Mexico, and this rural–urban migration has three implications for international migration. First, ex-farmers and farm workers are most likely to accept 3-D (dirty, dangerous, difficult) jobs inside their countries or abroad. Second, rural–urban migrants must make physical as well as cultural transitions as they adapt to urban life. With many of their friends and relatives already settled in the cities of industrial countries, many rural–urban migrants find the transition to urban life abroad as easy as at home, as when Mexicans find adapting to Los Angeles no more difficult than navigating Mexico City. Third, as rural–urban migrants get one step closer to the country’s exits, it is usually easier to obtain visas and documents for legal migration in the cities, or to make arrangements for illegal migration.

COMMUNICATIONS, TRANSPORTATION, RIGHTS

Demographic and economic differences encourage migration, but it takes networks or links between areas to support actual moves. Migration networks are a broad concept and include communication factors that enable people to learn about opportunities abroad as well as the migration infrastructure that actually transports migrants over national borders and the rights regime that allows them to remain abroad. These networks have been shaped and reinforced by three major transformations in the past half century: the communications, transportation, and rights revolutions.

The communications revolution helps potential migrants learn about opportunities abroad. The best information comes from migrants already established in the receiving country, since they can provide family and friends with understandable information. Cheaper communications help migrants transmit job information as well as advice on how to cross national borders. For

example, friends and family in rural Mexico may hear about California farm jobs sometimes even before people living in nearby cities with unemployment rates of more than 20 percent. Meanwhile, films and television programs depicting life in high-income countries may encourage people, particularly the young, to assume that migration will inevitably lead to economic betterment.

One major benefit of the transportation revolution has been the declining cost of travel. British migrants unable to pay one-way passage to the North American colonies in the eighteenth century often indentured themselves, signing contracts that obliged them to work for three to six years for whomever met the ship and paid the captain. With today's relatively low transportation costs, traveling anywhere in the world legally typically costs less than \$2,500 while getting smuggled into a country may cost up to \$20,000. Most studies suggest faster payback times for migrants today, so that even migrants who pay high smuggling fees can usually repay them within two or three years.

While the communications and transportation revolutions help migrants learn about opportunities and cross national borders, the human rights revolution affects their ability to stay. After World War II, most industrialized countries strengthened the constitutional and political rights of people within their borders in order to prevent a recurrence of fascism. Many nations also granted social and economic rights to residents in their evolving welfare states without distinguishing between citizens and migrants.

As migration increased in the 1990s, policymakers began to roll back socioeconomic rights for migrants in an effort to reduce the number of "unwanted" migrants. In the early 1990s, more than a thousand foreigners a day applied for asylum in Germany. The government distributed them throughout the country until their applications were resolved and required local communities to provide them with housing and food. But when Germans discovered that more than 90 percent of the new arrivals did not need protection from persecution at home, there was a backlash that included attacks on foreigners.

World War II persuaded many European governments to put liberal asylum provisions into their postwar constitutions to prevent another situation in which refugees perish because receiving countries return them to a country that persecutes them, as happened with some of those fleeing Nazi Germany. The asylum seekers of the 1990s strained this system, prompting the German government to respond in three ways. First, it required asylum seekers from countries such as Turkey to obtain visas, allowing prescreening that could reject potential asylum seekers. Second, it imposed fines on airlines bringing foreigners to Germany without visas and other documents. Third, Germany and other European Union (EU) countries agreed to make it difficult for foreigners from “safe” countries, and those who transited through safe countries en route to Germany, to apply for asylum.⁵ In this way, the constitutional protection of asylum was maintained, but the number of asylum applicants was reduced by making it harder to apply.

The United States pursued a similar strategy of restricting migrant rights to reduce the costs of migrants. The North American Free Trade Agreement (NAFTA) was expected to speed up economic and job growth in Mexico, reducing Mexico–U.S. migration. Instead, Mexico–U.S. migration surged during the early 1990s recession, prompting California voters to approve Proposition 187 in 1994, which would have denied unauthorized foreigners access to state-funded services, over the objections of almost all political leaders and opinion makers statewide. A federal judge stopped the implementation of Proposition 187, but some of its provisions were included in 1996 federal immigration reforms.

Proposition 187 led to a national debate over immigrant numbers and rights, especially access to social assistance. President Bill Clinton argued that the number of needy migrants should be reduced in order to maintain the access of legal immigrants to welfare benefits. Employers argued that the better solution was to allow immigration to remain at high levels but reduce access to social assistance.⁶ Employers won, so immigration remained high and welfare

5. Sylvie Da Lomba, *The Right to Seek Refugee Status in the European Union* (Antwerp, Netherlands: Intersentia, 2004).

6. Details of the three U.S. laws enacted in 1996 are at Migration News, <http://migration.ucdavis.edu/>. One provision that was eventually dropped from the final bill would have made legal immigrants deportable if they received more

benefits were curbed. But benefits to poor children and elderly immigrants were restored during the economic boom of the late 1990s.

Perspectives on the rising number of migrants and the trade off between numbers and rights can be framed by two extremes. At one extreme, the Wall Street Journal advocates a five-word constitutional amendment to the U.S. constitution: “There shall be open borders.”⁷ Organizations ranging from the Catholic Church to the World Bank have called for more migration, arguing that people should not be confined to their countries of birth by national borders and that more migration would speed economic growth and development in both sending and receiving countries.⁸

At the other extreme, every industrial country has organizations like the Federation for American Immigration Reform (FAIR), which call for sharp reductions in immigration.⁹ The economic basis of FAIR’s argument is that low-skilled migrants hurt low-skilled U.S. workers. The organization also maintains that migrants threaten established U.S. cultural values and create negative environmental effects by increasing the U.S. population. Many European countries have anti-immigrant political parties, from the National Front in France to the Swiss People’s Party, which received more votes than any other Swiss political party in the October 2007 elections.¹⁰

The no-borders and no-immigrants extremes are often reluctant to compromise, which is one reason why no nation has found the secret to managing migration. Canada may come closest: it aims to increase its population by 1 percent a year via immigration (the equivalent of the U.S. accepting 3 million immigrants a year), has guest worker programs administered by public-private partnerships that are far less contentious than similar U.S. programs, and has high levels

than twelve months of welfare benefits. In the late 1990s, the access of legal immigrants and children to some welfare benefits was restored.

7. An editorial on July 3, 1986 first made this proposal, which was repeated in an editorial on July 3, 1990.

8. The U.S. Conference of Catholic Bishops mission statement is at: www.usccb.org/mrs/visionandmission.shtml The World Bank’s 2006 GEP report is at: www.worldbank.org/prospects/migrationandremittances

9. FAIR is at: www.fairus.org

10. The Swiss People’s Party (SVP) used a billboard showing three white sheep standing on the Swiss flag kicking out a black sheep with the tagline “to create security.” The billboard reminded voters of the SVP’s support for a proposal to deport foreign criminals and their families. In 2003, the SVP won 27 percent of the vote and was projected to win a similar share October 21, 2007.

of public satisfaction with its migration system. In many European countries, by contrast, anti-immigrant political parties push their mainstream counterparts to embrace tough policies toward at least some types of foreigners, as in Denmark, France, the Netherlands, and Switzerland.

U.S. MIGRATION PATTERNS

The United States is a nation of immigrants. Under the motto “*e pluribus unum*,” (from many one) U.S. presidents frequently remind Americans that they or their forbearers left another country to begin anew in the land of opportunity.¹¹ Immigration is widely considered to be in the national interest, since it permits immigrants to better themselves as they strengthen the U.S.

For its first hundred years, the U.S. *facilitated* immigration, welcoming foreigners to settle a vast country. Beginning in the 1880s, the U.S. began to bar certain types of foreigners—including prostitutes, workers who arrived with contracts that tied them to a particular employer for several years, and Chinese—beginning an era of *qualitative* restrictions. In the 1920s, the U.S. added *quantitative* restrictions, or quotas, on the number of immigrants accepted each year.

Amendments to the basic U.S. immigration law in 1965 switched preferences from northwestern Europeans to foreigners with relatives in the U.S. and those desired by U.S. employers. The origins of immigrants were not expected to change, but they did. In the 1960s, half of U.S. legal immigrants were from Latin America and Asia; between 2000 and 2005, 73 percent were from these regions. Illegal immigration began rising in the 1970s, rose faster after immigration reforms in 1986, and was the first major immigration issue debated in Congress in the twenty-first century.

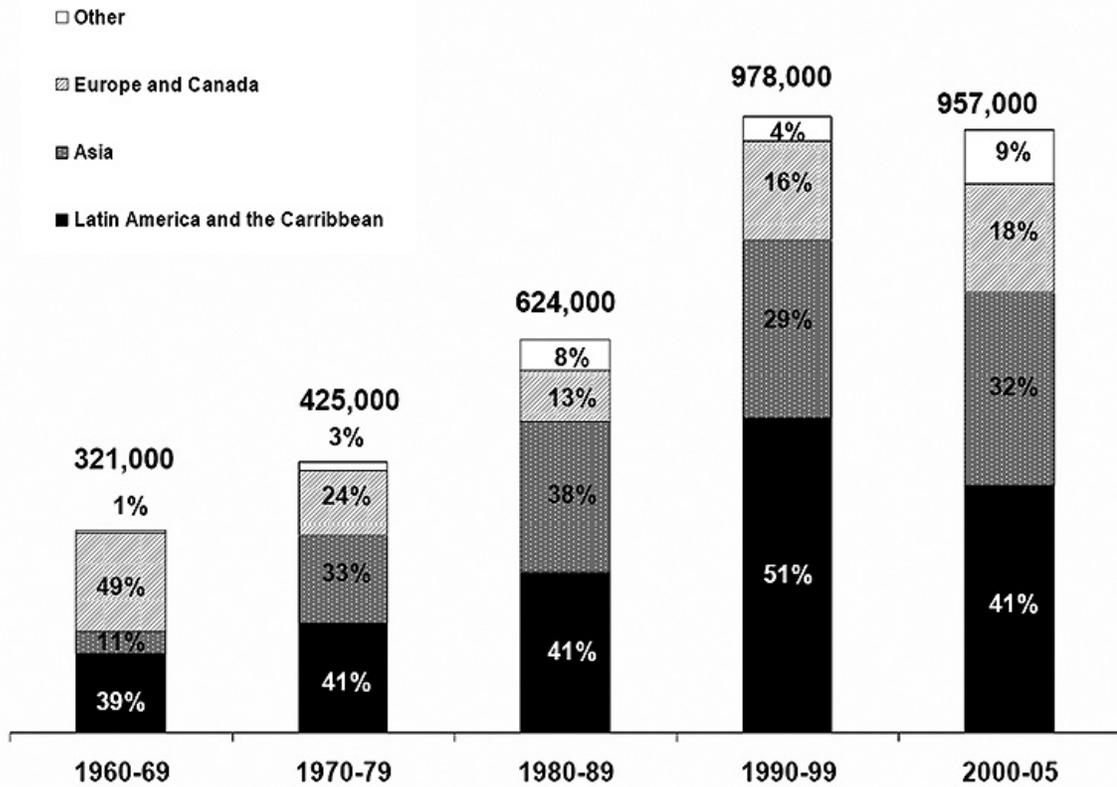
Immigration occurs in waves, and the U.S. is in the midst of its fourth wave of immigrants. The first wave arrived before records were kept, when most immigrants were English-speakers from the British Isles. The second wave, dominated by Irish and German immigrants in the

11. The exceptions are Native Americans, slaves, and those who became U.S. citizens by purchase or conquest, such as French nationals who became Americans with the Louisiana Purchase, Mexicans who became Americans with the settlement ending the Mexican War, and Puerto Ricans who became U.S. citizens as a result of the American victory over Spain in 1898.

1840s and 1850s, challenged the dominance of the Protestant church and led to a nativist backlash against Catholics and immigrants.

Figure 3. Immigration to the U.S.: 1960–2005

Annual Number of Legal U.S. Immigrants by Decade and Region of Origin, 1960-2005



The third wave, which took place between 1880 and 1914, brought over 20 million immigrants to the U.S., an average of 650,000 a year. Most of these immigrants found jobs in factories in the Northeast and Midwest, where they were sometimes joined by Americans leaving the farm. Third-wave immigration, which many feared was bringing southern and eastern Europeans to the U.S. who could not be assimilated, was slowed first by World War I and then by numerical quotas in the 1920s.

The fourth and current wave began with immigration reforms in 1965. Legal immigration averaged 250,000 a year in the 1950s; 330,000 in the 1960s; 450,000 in the 1970s; 735,000 in the 1980s; and over a million a year since the 1990s.

Foreigners enter the U.S. through a front door for legal permanent immigrants, a side door for legal temporary migrants, and a back door for the unauthorized. About two-thirds of legal immigrants are family-sponsored, which means that family members in the U.S. petition the government to allow the admission of relatives. There are no limits on the number of immigrant visas available for the immediate relatives of U.S. citizens, and 580,000 were admitted in FY06. There is, however, a cap on the number of immigrant visas available to relatives of permanent residents and more distant relatives of U.S. citizens: only 222,000 were granted in FY06. This results in long waits. Mexican spouses of U.S. immigrants had to wait seven years for immigrant visas in 2005, and adult brothers and sisters of U.S. citizens over twenty years.¹²

Legal temporary migrants are foreigners who come to the United States to visit, work, or study. There are no limits on most types of temporary visas. The U.S. is willing to accept the more than 24 million tourists (visitors for pleasure) who arrived in 2005. Temporary foreign students and workers are more controversial, however. In the aftermath of the terrorist attacks of September 11, 2001, the U.S. government required foreign students to be interviewed personally before receiving a student visa and to pay a fee to support a database that tracks them while they are in the U.S.

All guest workers receive visas that tie them to a particular U.S. job. However, the rules governing these visas differ for the skilled and the unskilled. H-1B visa holders must generally have at least a college degree and fill U.S. jobs that normally require a college degree. Employers who request H-1B workers do not have to show that U.S. citizens are unavailable to fill the jobs for which foreign workers are sought. Indeed, most U.S. employers may lawfully lay off U.S. workers and replace them with H-1B workers. Most guest workers in this category are Indians employed in computer-related jobs. Each can stay up to six years and “adjust” to regular immigrant status if their U.S. employer deems them uniquely qualified to fill the job and the U.S. Department of Labor (DOL) agrees.¹³

12. Waiting lists are published in the DOS Visa Bulletin, http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html

13. The procedure for admitting H-1B workers is attestation, meaning that the employer makes assurances about the wages offered etc. By law and regulation, DOL must approve almost all of the so-called Labor Condition Applications, which means that the 65,000 H-1B visas are normally gone early each fiscal year, that is, in one day in April 2007 as

Table 1. Foreigners Coming to or in the U.S., 2004–06

Category	2004	2005	2006	Average
Legal Immigrants	957,883	1,122,373	1,266,264	1,115,507
Immediate relatives of U.S. Citizens	417,815	436,231	580,483	478,176
Other family-sponsored immigrants	214,355	212,970	222,229	216,518
Employment-based	155,330	246,878	159,081	187,096
Refugees and Asylees	369,685	459,848	381,310	403,614
Diversity and other immigrants	99,153	83,332	88,017	90,167
Estimated Emigration	308,000	312,000	316,000	312,000
Legal Temporary Migrants	30,781,330	32,003,435	33,667,328	32,150,698
Pleasure/Business	27,395,921	28,510,374	29,928,567	28,611,621
Foreign Students (F-1)	613,221	621,178	693,805	642,735
Temporary Foreign Workers	676,218	726,535	821,006	741,253
Illegal Immigration: Apprehensions	1,264,232	1,291,142	1,206,457	1,253,944
Removals or Deportations	189,368	202,842		196,105
Unauthorized Foreigners	770,000	770,000	770,000	770,000

*Sources: 2006 Yearbook of Immigration Statistics, Tables 6, 26, 35; Emigration from Census Unauthorized Estimate from Passel, 2008
Foreign students and workers excludes their spouses and children*

employers requested over 100,000 H-1B visas for FY08, which began October 1, 2007. Receiving an immigrant visa, by contrast, requires the employer to try and fail to recruit U.S. workers to fill the job for which the employer seeks an immigrant. For more on the H-1B program and labor certification, see the report of the January 18, 2008 seminar at UC Davis (<http://migration.ucdavis.edu/wcpsew/>)

Two major guest worker programs admit unskilled foreign workers, H-2A and H-2B. The H-2A program has no cap on admissions, and admits about the same number of foreign workers each year as the H-2B program, which is capped at 66,000 a year. Both the H-2A and H-2B programs require certification, meaning that employers and local State Workforce Agencies (SWAs) must try and fail to find U.S. workers to fill the jobs for which the employer is requesting guest workers. Since most employers have already identified the foreign workers they want to fill the jobs when they apply to DOL for certification, the process can be contentious, especially if SWAs, unions, or other groups refer U.S. workers to fill the vacant jobs who are not hired or retained.

Unauthorized foreigners are persons in the United States in violation of immigration laws. About 55 percent of the estimated 12 million unauthorized foreigners entered the U.S. without inspection, meaning they evaded border controls, while 45 percent entered legally but did not leave as required. Almost 7 million of the unauthorized are believed to be from Mexico, meaning there are more unauthorized than legal (5 million) Mexican-born U.S. residents.

The Department of Homeland Security is responsible for preventing unauthorized foreigners from entering the U.S. and for finding and removing those here illegally. DHS's Customs and Border Protection agency includes the Border Patrol, whose agents apprehend foreigners attempting to enter the U.S. between designated ports of entry. Currently, Border Patrol agents apprehend about 1.3 million foreigners a year, 85 percent of whom are Mexicans caught just inside the Mexico–U.S. border.¹⁴ Almost all apprehended Mexicans “volunteer” to return to Mexico.¹⁵ In addition, Immigration and Customs Enforcement agents removed or deported 208,500 foreigners from inside the U.S. in 2005; 70 percent were Mexicans.

14. Immigration Enforcement Actions: 2005, available at: www.dhs.gov/ximgtn/statistics/publications/index.shtm Apprehensions record the event of capturing an unauthorized alien, and are not a count of individuals, so that one alien apprehended five times is recorded as five apprehensions.

15. Those caught so many times they appear to be smugglers may be prosecuted by U.S. authorities. The investigation of the firings of eight U.S. attorneys in December 2006 found that, in most border districts, the same individual had to be apprehended at least six times before being prosecuted by the U.S. Attorney's office. See DHS: Border, Interior. Migration News Vol. 14 No. 2, April 2007. http://migration.ucdavis.edu/mn/more.php?id=3272_0_2_0

U.S. IMMIGRATION REFORM ISSUES

Most Americans want fewer legal immigrants admitted and more done to reduce illegal migration. Over the past fifty years, there has been only one year, 1956, that more than 10 percent of Americans supported increasing legal immigration.¹⁶ Typical of survey results¹⁷ on illegal migration is a September 2007 ABC News Poll: 67 percent of respondents agreed that the U.S. government is not doing enough to “keep illegal immigrants from coming into this country.” Americans seem to distinguish legal and illegal: 54 percent of respondents agreed that illegal immigrants mostly hurt the U.S., while 59 percent agreed that legal immigrants mostly help the U.S. In this and other polls, Americans were divided almost fifty-fifty on whether the U.S. should enforce laws against illegal migration or offer at least some illegal migrants a path to legal status.¹⁸

SENATE DEBATE IN 2007

The American division of opinion on illegal migration was evident in the U.S. Senate in May–June 2007 when the Comprehensive Immigration Reform Act of 2007 (CIRA 2007), supported by President Bush and most Democrats, stalled. The two key obstacles to Senate approval of CIRA 2007 were opposition to amnesty from some Republicans and the fears of some Democrats that admitting guest workers would depress the wages of U.S. workers.

CIRA 2007, negotiated privately by a dozen senators led by Edward Kennedy (D-MA) and Jon Kyl (R-AZ), embodied a grand bargain that would have provided a path to legal status for some of the unauthorized foreigners in the U.S. and shifted future legal immigration toward foreigners with skills under a point system. In particular, CIRA 2007 would have: (1) increased border and interior enforcement to slow illegal migration; (2) provided a path to legal status for

16. Support for increasing immigration in 1956 is generally attributed to the Hungarian uprising against communism in October–November 1956.

17. Immigration poll results are available at: www.pollingreport.com/immigration.htm

18. In polls, higher percentages agree with legalization if the question is phrased to emphasize that foreigners legalizing their status would have to pay fines, learn English, and have no criminal records. Lower percentages support legalization if the question is phrased in terms of allowing foreigners who broke U.S. laws to become citizens.

most of the 12 million unauthorized foreigners in the U.S.; (3) established a new guest worker program and revised existing programs; and (4) created a point system to select some U.S. immigrants.¹⁹

CIRA 2007 called for an increase in the number of Border Patrol agents from the current 14,500 to 20,000 within 18 months (and eventually to 28,000); an additional 370 miles of fencing on the Mexico–U.S. border; and enough detention space to hold 27,500 foreigners. A mandatory Employment Eligibility Verification System (EEVS, called Basic Pilot or E-Verify by DHS) would have checked the legal status of all new hires within eighteen months of enactment and, within three years, verified the status of employees hired previously.

The Social Security Administration would have been required to develop fraud-resistant identification cards. Employers would have had to check the cards of newly hired and currently employed workers and transmit the data on them to DHS via the internet, and DHS would then have checked the workers' legal status. Penalties for violating employer sanctions laws would have risen to \$5,000 for a first offense and up to \$75,000 for repeat offenders. Businesses that use subcontractors would have been responsible for ensuring that their subcontractors employed only legal workers.

Under CIRA 2007, unauthorized foreigners in the U.S. before January 1, 2007 could have registered with DHS beginning six months after enactment, paid \$1,000, undergone background checks, and obtained renewable Z-1 visas that allowed them to live and work legally in the U.S. indefinitely.²⁰ Z-1 visa holders could have become legal immigrants if they had passed an English test, undergone a background check, paid a \$4,000 fine, and applied at a U.S. consulate in their home country; this “touch-back” rule applied only to the head of an unauthorized family.²¹

19. CIRA 2007 differed from CIRA 2006, approved by the Senate on a 62–36 vote in May 2006, by including (1) triggers, meaning that more Border Patrol agents would have to be hired, more border fencing built, and the mandatory new employee verification system working before the Z-legalization and new Y-1 guest worker programs could start and (2) requiring touchbacks, meaning that unauthorized foreigners must leave the U.S., apply for immigrant visas abroad, and return to the U.S. legally.

20. Low-income Z-visa holders would not have been eligible for the Earned Income Tax Credit, but would have received social security credit for any earnings while unauthorized.

21. However, Z-1 visa holders could not have become regular immigrants until the current backlog of foreigners

There would have been a second and easier legalization program for up to 1.5 million unauthorized farm workers who did at least 150 days of farm work in the two years ending December 31, 2006. Under AgJOBS, unauthorized farm workers would have received Z-A visas by paying \$100 and could have become legal immigrants by paying an additional \$400.

The third key element of CIRA 2007 was a new guest worker program that would admit up to 200,000 Y-1 guest workers a year, down from the originally proposed 400,000 a year.²² As introduced, the cap on Y-1 work visas could have risen if employers requested all available visas early in the year; this market adjustment mechanism was eliminated by senators concerned that guest workers would depress the wages of U.S. workers. The H-1B would have doubled in size, and the current H-2A and H-2B seasonal programs would have become the Y-2A and Y-2B programs.²³

CIRA 2007 would have changed the legal immigration system for at least fourteen years. There were about 4 million foreigners waiting for immigrant visas in May 2005, including 1.5 million spouses and minor children of legal immigrants (112,000 immigrant visas were issued to spouses and minor children of legal immigrants in FY06). This backlog would have been cleared by adding 440,000 visas a year to expedite family unification.

awaiting immigrant visas was cleared, a process that DHS estimates would take eight years. Immigrants may normally become naturalized U.S. citizens after five years.

22. U.S. employers could have employed Y-1 workers after advertising vacant jobs for at least ninety days and making certifications, including promising not to lay off U.S. workers, in order to hire guest workers. Employers would have paid a processing fee and a guest worker impact fee of \$500 to \$1,250, depending on the firm's size, but this fee could have been waived if the employer provided health insurance to employees. Employers would have had to provide Y-1 workers with the same wages and benefits as similar U.S. workers, and paid at least the local prevailing wage. Employers in counties with unemployment rates of 7 percent or more would have had to obtain waivers from DOL to employ Y-1 workers.

To obtain Y-1 visas, foreigners would have paid a processing fee and an impact fee of \$500 and reported to their U.S. employers within seven days. Two-year Y-1 visas could have been renewed twice, for a total of six years of U.S. work. However, the worker would have to have spent at least one year in his/her country of origin between U.S. work stints. (An amendment to allow six continuous years of U.S. work failed on a 41–57 vote). Y-1 guest workers would have been prohibited from being unemployed more than sixty days at any one time and for more than 120 days during the life of each two-year work visa. Y-1 guest workers could have changed to another U.S. employer who was certified to hire Y-1 workers.

23. There would have been three types of Y-visas: for the new temporary workers (Y-1), for seasonal farm workers (Y-2A, with an unlimited number of ten-month visas available), and for seasonal nonfarm workers (Y-2B, with up to 100,000 visas good for ten months available).

Under the new point system in CIRA 2007, foreigners seeking to immigrate would have had to earn at least fifty-five of the maximum 100 points, with up to forty-seven points available for employment (given for type of U.S. job, age, experience, and employer recommendation), up to twenty-eight for education, and up to fifteen for English and civics. Once an applicant had the minimum fifty-five points, another ten points could have been awarded for having U.S. relatives. Foreigners seeking visas to fill high-demand jobs, whether as janitors or engineers, would get up to sixteen of the forty-seven employment points.²⁴

The failure of CIRA 2007 means that broad immigration reform is likely “dead” until at least 2009, when there will be a new president and Congress. In fall 2007, advocates of incremental reform failed to win Senate approval of the DREAM Act, which would have allowed unauthorized foreigners brought to the U.S. as children who graduated from U.S. high schools to earn legal immigrant status, and AgJOBS, billed as having the support of both worker advocates and employers and able to provide a test of the earned legalization concept.

NO MATCH

In August 2007, DHS announced a no-match enforcement strategy that would likely have increased turnover among unauthorized workers but was blocked from being implemented by the courts. The new enforcement strategy was widely viewed as retaliation by the Bush Administration for a perceived lack of business support for CIRA 2007.

President Bush said that he “predicted, [that] after the comprehensive immigration bill went down, that there would be blowback and it would start with employers who are saying, ‘Where am I going to get my peach pickers from?’” DHS Secretary Michael Chertoff suggested that employers would put pressure on Congress to enact comprehensive immigration reform after no

24. For example, under the system proposed in CIRA 2007, a twenty-nine-year-old Mexican who had worked six years as a U.S. guest worker could achieve sixty-one points by having five years of U.S. job experience in a high-demand occupation (health care aide), being young, knowing English, and having a U.S. relative. However, a forty-five-year old Indian IT worker with a Ph.D. and a U.S. job offer but no U.S. work experience would receive only forty-nine points, despite knowledge of English.

match was implemented, saying “there will be some unhappy consequences for the economy out of doing this.”

The centerpiece of the no-match enforcement strategy was the letters the Social Security Administration sends to employers who pay taxes on behalf of ten or more workers for whom the name and Social Security Number (SSN) in the SSA database do not match information provided by the employer. Beginning in September 2007, these no-match letters would have included a DHS notice advising employers to terminate employees who could not clear up SSN discrepancies within ninety days or risk fines for knowingly hiring unauthorized workers.²⁵

SSA planned to send no-match letters to 140,000 employers in September 2007 that would have identified mismatches involving 8.7 million workers for earnings reported in 2006. In the past, many attorneys advised employers to ignore no-match letters since the SSA database includes errors due to name changes upon marriage and data entry mistakes, and there has been no penalty associated with receiving them. The error rate for U.S. citizens in the SSA database is estimated to be 11 percent, meaning that 12.7 million of the 17.8 million “bad” SSNs in 2006 are believed to belong to U.S. citizens, according to SSA’s inspector general.

Citing these errors in the SSA database, the AFL-CIO, the U.S. Chamber of Commerce, the American Civil Liberties Union, and trade associations for the agriculture, restaurant, and construction industries sued to block the distribution of the DHS notice with SSA’s no-match letters. In October 2007, a federal district judge ordered SSA not to include the DHS notice with its no-match mailings to prevent “irreparable harm to innocent workers and employers” as some legal workers would undoubtedly be fired because of mistakes in the SSA database. As a result, SSA did not send out no-match letters for 2006 earnings.

25. The DHS notice laid out a “safe harbor” procedure to protect employers from fines. Employers would have thirty days to check their own records for errors and would then give employees sixty days to contact SSA and clear up the discrepancy. After ninety days with no correction the employer would be presumed to know the employee is unauthorized.

Even if the DHS notices are eventually distributed to employers who receive no-match letters, their effects on the employment of unauthorized workers are ambiguous. Internal Revenue Service Section 6103 prohibits SSA from sharing tax information with other agencies, so DHS would not have received the names of the employers who received its notices. Since the no-match letters sent in September refer to the previous calendar year, employers could employ an unauthorized worker almost two years before DHS assumed there was “knowing employment.” In addition, workers terminated in response to no-match letters could return with new false documents or switch employers, gaining another two years of employment.

Worker turnover may increase if the no-match enforcement strategy is implemented, and there may be more underground activity, such as wages paid in cash, but without a secure work authorization document that all employers are required to see and check against a database, there would likely be little change in the employment of unauthorized workers. Furthermore, identity theft could frustrate a new no-match enforcement policy, since no-match letters are not generated for unauthorized workers using valid names and SSNs that match government records but do not belong to them.

The Bush Administration coupled the no-match enforcement policy with a pledge to make administrative changes to “streamline” the admission of guest workers under the H-2A and H-2B programs to avoid “labor shortages.” Under both programs, over 95 percent of U.S. employer requests to DOL for certification to fill jobs with guest workers are approved, usually within two weeks. However, farm employers complain that the labor certification process is cumbersome, and nonfarm employers of unskilled foreign workers complain that the 66,000 a year cap is insufficient. In the past, Congress has temporarily raised the H-2B cap.

Beginning in fall 2007, DOL began to make changes to the H-2A program as urged by farm employers. On November 6, 2007, DOL issued a Training and Employment Guidance Letter (TEGL) instructing State Workforce Agencies to reduce the recruitment of U.S. workers when employers seek certification to fill jobs with H-2A workers, to verify the legal status of U.S. workers they refer, and to inspect the housing employers are required to offer as early in

the application process as possible. This TEGL drew protests from farm worker advocates who alleged that DOL was unlawfully removing protections for U.S. workers interested in jobs that employers want to fill with guest workers.

SWAs post the job openings for which H-2A workers are sought, and employers advertise in local newspapers and on the radio to recruit U.S. workers. In most cases, the name of the employer offering the job is suppressed, which means that U.S. workers interested in the advertised jobs must report to their local SWA, register (and usually prove they are authorized to work), and be referred to the employer for a hiring interview. In some cases, it is hard for interested workers to contact the employer for an in-person or telephone interview, especially if the employer is an association that hires all workers through one site in a state. The TEGL says that employers do not have to have someone available at all times to interview U.S. workers, but advises them to have an answering machine to accept inquiries from workers.

The TEGL requires SWAs to refer only “eligible” U.S. workers to jobs for which the employer seeks certification to use H-2A workers. The TEGL “strongly recommends” that SWAs use the E-verify or Basic Pilot system operated by DHS to verify the legal status of U.S. workers seeking referral to H-2A jobs, and to send proof of the worker’s legal status to the employer. Many states said they would not use E-Verify because it is not supposed to be used until a worker is hired to avoid discrimination based on errors in the database.

CONCLUSIONS

The number of migrants globally, as well as in the U.S., is at an all time high. Growing international migration is controversial, and most industrial countries have organizations and sometimes political parties whose primary aim is to reduce migration, especially unauthorized migration. On the other hand, most countries also have organizations dedicated to increasing migration and legalizing unauthorized foreigners within their borders, and international organizations such as the World Bank advocate more migration to speed up development via remittances.

The U.S. had 37 million foreign-born residents in 2007, making one in eight U.S. residents foreign born. Almost 12 million of these foreign-born residents are unauthorized, and what to do about them was debated in the U.S. Senate in spring 2006 and spring 2007. In both years, a comprehensive immigration reform package favored by President Bush and most Democrats that would have stepped up enforcement and created a path for at least some unauthorized foreigners to become legal immigrants was not approved.

The U.S. immigration reform debate has been increasingly “decoupled” from developments in Mexico, meaning there is little talk of “special arrangements” for Mexican migrants. Instead, reform efforts have proceeded with little mention of Mexico or its interests, although with 30 percent of all immigrants, and 55 percent of the unauthorized being Mexican, that country would be most affected by immigration reform or stepped up enforcement.

The Bush administration’s strategy of trying to enlist employers in the push for comprehensive reform by using no-match letters to step up enforcement has been stopped by a judge, and supporters of incremental reforms were unable to win Senate approval in fall 2007. Most observers expect immigration reform to await the incoming president in 2009, but it is not clear what shape the next immigration reform package will take, nor how high on the new president’s agenda immigration reform will be.

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