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Criminalization and Citizenship: How Racial Discrimination Affects U.S. Immigration Policy

Melissa Lisette Trejo
University of Texas at El Paso

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CRIMINALIZATION AND CITIZENSHIP: HOW RACIAL DISCRIMINATION AFFECTS
U.S. IMMIGRATION POLICY

MELISSA LISETTE TREJO

Master's Program in History

APPROVED:

Larisa Veloz, Ph.D., Chair

Yolanda Chávez Leyva, Ph.D.

Maria Cristina Morales, Ph.D.

Stephen L. Crites, Jr., Ph.D.
Dean of the Graduate School

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2022

Dedication

I dedicate this thesis to my grandparents, Maria Elena Rojas, and Miguel Velasco Rojas (March 24, 1932-November 29, 2022). Without them, this would not be possible. Gracias por su amor y confianza en mí y por apoyarme. Los amaré para siempre.

CRIMINALIZATION AND CITIZENSHIP: HOW RACIAL DISCRIMINATION AFFECTS
U.S. IMMIGRATION POLICY

by

MELISSA LISETTE TREJO, B.A.

THESIS

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Introduction

Immigrants endure hardships, face the potential for violence, and risk their very lives emigrating to the United States with the belief that opportunity for economic stability awaits. Most harbor no illusions about the struggles they will face in their future and yet they persevere to create a legacy for their offspring which they consider better than their own often humble beginnings. U.S. citizenship and American opportunity are two key ingredients of that legacy of hope. Often, those dreams are dashed by legislation and policies specifically designed to exclude them from realizing that hope. Here we will explore those policies and their affects.

The primary focus of this essay will be on how immigration policies affected the community of El Paso between the years 1986-2008. In order to give context to this period of immigration policy, I begin with providing a history of twentieth-century immigration policies in the United States and then focus specifically on the twelve years of state and federal legislation in the El Paso/Ciudad Juarez borderlands zeroing in on Operation Blockade (OB), Operation Hold the Line (OHTL), and Operation Linebacker (OLB). The recruitment of local and state law enforcement personnel to uphold immigration policies and laws, like in Operation Linebacker, is in violation of the United States Constitution. However, if the federal government reimburses state and local law officers for any funds used to enforce immigration policy, it is not considered illegal. What becomes problematic for the federal government is that depending on the interpretation of the legislation, the federal agency tasked with monitoring immigration does not have the authority to delegate their own responsibility to state and local law enforcement.

Since the founding of the U.S., many laws have been passed on the subject of immigration. The laws are meant to protect the citizens of the country; however, some legislation

comes with underlying nationalistic sentiments. An example of this is the National Origins Quota Act of 1924. Madison Grant was a popular eugenicist in the 1920s that developed a case as to why Mexicans should have limited admittance into the United States by comparing Mexicans to the Chinese.¹ Grant wrote to the chair of the House Immigration Committee about the Mexican issue, and based on his “expertise” as a eugenicist, stated that the Chinese situation and Mexican situation are the same.² Although Grant believed in racial purity, this kind of thinking was not necessarily worked into the National Origins Quota Act. Madison Grant, author of *The Passing of the Great Race: or The Racial Basis of European History*, tried to justify the case for the superiority of White, Nordic, and Germanic peoples of Europe. He argues that race is the only factor that has determined the rise and fall of old-world civilizations. He reasons that the ancient Greek civilization rose to power because of the influence of Nordic peoples, while Rome fell because of interbreeding with dark skinned peoples.³ Grant, here, links thoughts about racial purity and dark-skinned people implying that a darker foreign other could lead to a decline in civilization itself. He effectively rendered dark people as racially inferior and subhuman—and congress accepted his testimony when considering immigration policy. This anecdote provides an early example of how ideas surrounding racial inferiority and superiority made their way into policy debates.

What I have found in the course of my research on immigration legislation prior to and after the events of September 11th, 2001, is that the mission of immigration legislation has

¹ Natalia Molina, *How Race Is Made in America : Immigration, Citizenship, and the Historical Power of Racial Scripts* (Berkeley, Calif.: University Of California Press, 2014).

² Ibid. 39.

³ Madison Grant, *The Passing of the Great Race or the Racial Basis of European History*, Fourth (1916; repr., New York, NY: Charles Scribner’s Sons, 1921),

<https://babel.hathitrust.org/cgi/pt?id=loc.ark:/13960/t45q5sf2w&view=1up&seq=7>.

remained the same, all while policy makers differed in their approach to illegal immigration. The mission has been to keep undesirables out who did not contribute to the good of the nation. After 9/11 an undefinable War on Terror provided the justification for all manner of discrimination, all in the name of national security. As this thesis demonstrates, nationalist undertones of “us” versus “them” were not new but rather were recycled from racial scripting that occurred in the 1930s, 1950s, 1990s and early 2000s.

To understand how the history of immigration policy has and continues to contribute to the criminalization of immigrants and the questioning a person’s citizenship I build off of the following historical works: *Americans for Americans: A History of Xenophobia in the United States* by Erika Lee, *At America’s Gates: Chinese Immigration during the Exclusion Era, 1882-1943* by Erika Lee, *The INS on the Line: Making Immigration Law on the US-Mexico Border, 1917-1954* by S. Deborah Kang, *How Race is Made in America: Immigration, Citizenship, and the Historical Power of Racial Scripts* by Natalia Molina, and *Impossible Subjects: Illegal Aliens and the Making of Modern America* by Mae M. Ngai. United States immigration policy is formulated based on gatekeeping ideology in order to justify denial of citizenship that works in cycles not rooted in crime, but racialized reasons of who should be allowed across our borders and who should not. Erika Lee, author of *At America’s Gates*, details how even though the Chinese Exclusion Act of 1882 was federal legislation, its origins stem from uniquely regional activism in California to promote and solidify ideas of Chinese immigrants as permanently

inferior to white Americans of the region.⁴ Here, Lee suggests that the Chinese Exclusion Act laid the foundations for monitoring the gateways of our national boundaries.

Gatekeeping has been an American tradition that crosses racial lines. The first legislative exclusion of immigrants as “the other” began with Chinese immigrants between the years 1882-1943. Erika Lee’s book *At America’s Gates: Chinese Immigration during the Exclusion Era 1882- 1943* uses transnational, local, and national frameworks and focuses on the exclusion era. Through interviews, archives, government documents, Ph.D. dissertations, INS records, articles, and books, Lee plunges into the dark history of the Chinese in the United States. She discusses various topics such as gatekeeping, nativism, xenophobia, and brings together the struggles of the Chinese community during a time that was most divisive for them. Lee’s work is an analysis of the foundations for exclusionary policy that is subsequently applied to all racialized groups. It examines the arbitrary standard of measure established against the Chinese which is later used to judge the desirability and admissibility of other groups. Building that analysis from resources not available prior to the 1980s and 1990s, Lee sets up the discussion of immigration policies reviewed in this paper.⁵

In *America for Americans: A History of Xenophobia in the United States* Lee continues her discussion on immigration focusing specifically on how fear is used to exclude entire groups of people, because of their race, as detrimental to the society at large.⁶ Describing xenophobia as being weaponized to justify exclusion in immigration policy and criminalizing individuals

⁴ Erika Lee, *At America’s Gates : Chinese Immigration during the Exclusion Era, 1882-1943* (Chapel Hill, NC: University of North Carolina Press, 2003). 19.

⁵ Ibid. Lee. 14, 24.

⁶ Erika Lee, *America for Americans : A History of Xenophobia in the United States* (New York: Basic Books, 2019), 9.

simply for being members of a particular ethnicity during times of perceived immigration crises, Lee indicates that xenophobia is still present in more muted forms during times of peace, prosperity, and low immigration.⁷ She writes this from the perspective of having borne witness to hatred of “the other” during the 2016 election and explored how racial discrimination was neither a new phenomenon nor a relic of the past. Her work is representative of the cyclical nature of racial narratives being used to propel political agendas and nationalist doctrines. American society and history are deeply rooted in prejudice and Lee’s exploration of anti-immigrant sentiments are chronologically presented from 1755 to the Trump administration in 2020.

S. Deborah Kang’s book *The INS on the Line: Making Immigration Law on the US-Mexico Border, 1917-1954* describes how the Immigration and Naturalization Services was created and functioned as a government agency, from the beginning of the Immigration Act of 1917 to Operation Wetback in 1954. She traces the history of border security in the United States. When the Border Patrol was established in 1924, its intention was securing the southern border of the United States from Chinese immigration, however its authority was uncertain.⁸ Using Kang’s insight and research, I am able to connect the early days of the INS to how it operated latter in the twentieth century when it was enveloped by The Department of Homeland Security. Overall, Kang presents a history of an agency that constantly struggled with a lack of funding in attempting to carry out immigrations policies. As I show in this essay, immigration and border

⁷ Ibid. Lee. 8.

⁸ Kang, S. Deborah. *The INS on the Line: Making Immigration Law on the US—Mexico Border, 1917—1954*. (New York, NY: Oxford University Press, 2019.) 8-9.

enforcing agencies would continue to clamor for more financial support and would receive it, especially to bolster security after 9/11.

Natalia Molina coins the phrase “racial scripts” when focusing on the period 1924-1965, to explain how this “period ushered in a new regime of ‘race making’ and shaped the ways we think about Mexicans today”.⁹ The first part of the book discusses how limits on Mexican migration was opposed by corporate agriculture employers when the Immigration Origins Quota Act placed a limit on how many immigrants could migrate to the U.S. from the western hemisphere, the challenges immigrants faced when denied citizenship (including appealing such a denial), and how birthright citizenship was a way to prevent Mexicans from attaining citizenship by reclassifying Mexicans from White to Native American.¹⁰ Molina emphasizes that once a marginalized group has been targeted, other minorities can be next. An example of this is how the Chinese were excluded from becoming citizens in 1882 and how that was used to prevent African American, Native Americans and Mexicans from becoming citizens. Part II goes into detail of how practices of excluding Mexicans from citizenship progressed into seeking ways to justify their deportability which continued well into the 1940s and 1950s with Operation Wetback and Operation Round Up in Los Angeles.¹¹ Natalia Molina’s work on how race was made in America relates closely to my research on immigration policy and operations that are intentionally racialized. Even while legislation is intended to benefit Americans, policies violate the 14th Amendment rights of Mexican Americans, as well as documented, and undocumented immigrants in the United States. Not only do these policies inadvertently discriminate, but they

⁹ Natalia Molina, *How Race Is Made in America : Immigration, Citizenship, and the Historical Power of Racial Scripts* (Berkeley, Calif.: University of California Press, 2014). 2.

¹⁰ Ibid. Molina. 21-26.

¹¹ Ibid. Molina. 35.

also cast anyone that may “look Mexican” into the category of deportable Mexicans. Chapter two in my thesis discusses how these racialized scripts targeted Mexicans in the 1990s. I extend the use of “racial scripts” to understand how policies affect immigrants beyond the Immigration and Nationality Act of 1965.

Research on immigration policies from the 1990s onward, though fairly recent, does not mean that further research is not being conducted. While many scholars are taking up the issues of immigration in the latter half of the twentieth century, my thesis focuses on the 1990s-2000s and is unique in how it examines immigration and how it affects the border city of El Paso.¹² I hope that by writing about how immigration policies and operations affected El Paso from 1986 to 2008, while contextualizing these in a larger historical context, that I can contribute to the rich history of this west Texas city.

In *Impossible Subjects: Illegal Aliens and the Making of Modern America*, Mae Ngai explains that through law and social history, an individual, whether documented or undocumented, is permanently categorized as alien and unassimilable in the eyes of the nation just as Lee described in *At America's Gates*.¹³ She proves that the making of modern America stems from making racialized groups the “other” and begins her book with the Johnson-Reed act of 1924. Ngai focuses on Asian immigration with the migration of Japanese, Chinese, Filipino,

¹² Maddalena Marinari, “Divided and Conquered: Immigration Reform Advocates and the Passage of the 1952 Immigration and Nationality Act,” *Journal of American Ethnic History* 35, no. 3 (2016): 9, <https://doi.org/10.5406/jamerethnhist.35.3.0009>.

Mae Ngai, “The Unlovely Residue of Outworn Prejudices: The Hart-Cellar Act and the Politics of Immigration Reform, 1945-1965,” *Americanism: New Perspectives on the History of an Ideal*, 2006, https://doi.org/DOI:10.5149/9780807869710_kazin. 8.

¹³ Mae M. Ngai, *Impossible Subjects : Illegal Aliens and the Making of Modern America* (Princeton, New Jersey: Princeton University Press, 2014). 8.

and Mexican immigration through the Bracero Program. Her chapters on the Johnson-Reed Act, McCarran-Walter Act, and the Hart-Cellar Act describe the development of illegality as a category attached to immigrants that served to more effectively restrict their status as equals and eligibility for citizenship.

My research begins where Ngai's work concludes by addressing IRCA and immigration operations that occurred in the 1990s. While there are many articles that speak about the operations and effects of IRCA and immigration bills from 1986 on, they don't often speak to the larger history of Mexican Immigration.¹⁴ Ngai's scholarship has influenced my own work in that I seek to understand how "the other" is a concept that has been created, perpetuated, and been acted upon through policy in El Paso. Ngai helped form many of the questions I have regarding immigrations acts and how they affect people locally.

Chapter one will focus on immigration legislation dating from the Chinese Exclusion Act of 1882 to the Immigration Reform and Control Act of 1986. I lay out a chronology of major U.S. immigration policy and strategies in order to outline the foundations for policy for my period of study, 1986-2008. I will show how the foundations for exclusionary policy were laid early in the nation's history. Chapter two will consist of immigration legislation that was passed between 1990-2000 and the events that occurred in El Paso, Texas with local students and

¹⁴ Gerard Morales and Rebecca Winterscheidt, "Immigration Reform and Control Act of 1986 - an Overview 1987," *The Labor Lawyer* 3, no. 4 (1987).

Monica Ortiz-Uribe, "'My Life Could've Been Completely Different' Revisiting the Impacts of 1986 Amnesty," *The Oklahoman*, February 21, 2021, <https://www.oklahoman.com/story/news/2021/02/21/my-life-couldve-been-completely-different-revisiting-impacts-of-1986-irca-amnesty/331491007/>.

Michael White, Frank Bean, and Thomas Espenshade, "The U.S. 1986 Immigration Reform and Control Act and Undocumented Migration to the United States," *Population Research and Policy Review* 9, no. 2 (May 1990), <https://utep.idm.oclc.org/login?url=https://www.jstor.org/stable/40229886>.

teachers and the Border Patrol and how racial scripts were used. I will also discuss Operation Blockade and Operation Hold the Line and the paradigm shifts in border security. Chapter three covers immigration laws passed between 2001-2008, how 9/11 dramatically changed border security, and how crime was a justification for tighter border security, and the impacts of these developments on El Paso Texas.

Using a variety of primary sources such as legislation, newspapers, press releases, statistical law enforcement data and testimony, I detail how the earliest iterations of immigration policy were based on ideologies of racial superiority/inferiority, how this framework of xenophobia is disguised in rhetoric of economic protectionism, societal safety from “the other” and used to deny citizenship and even expel groups based on unfounded criminality. I rely on secondary sources, including policy analyses, journal articles, newspapers, books, and videos demonstrate how immigration legislation continues to be framed through fear.

Chapter 1: Chinese Exclusion Act 1882 to Immigration Reform and Control Act of 1986

Introduction

In 1776, a new country made up of thirteen colonies emerged from the reigns of British control and declared sovereignty as the United States of America. This was the foundations of a new nation that would give its citizens freedom from monarch rule. The rebellion was known as the American Revolution that lasted from 1775 to 1783. The newly formed country began to build its government and questions began to arise of who would be considered citizens. The Naturalization Act of 1790 was passed to allow only free white persons to be eligible for citizenship and excluded women of color, non-whites, and indentured servants.¹⁵ Now that this concept was established, territorial expansion was the next step. The notion known as Manifest Destiny¹⁶ intensified with the annexation of Texas in 1845. However, this led to war with Mexico in 1846 and ended in 1848 with the signing of the Treaty of Guadalupe Hidalgo. The treaty gave the United States Mexican territory of Texas, New Mexico, Arizona, Nevada, California, Colorado, Utah, and Oklahoma.¹⁷ The countries would be separated by the Rio Bravo (Rio Grande) as per the terms of the treaty. Articles VIII and IX of the treaty gave Mexican citizens an opportunity to become American citizens, however if after a year they had not decided and not moved from U.S. territory, they would automatically forfeit Mexican citizenship

¹⁵ United States Congress, “An Act to Establish an Uniform Rule of Naturalization,” Session II, Chapter 3 § (1790), <https://congressional.proquest.com/congressional/result/congressional/congdocumentview?accountid=7121&groupid=114737&parmId=17F3CD42AF7#400>.

¹⁶ The belief that the United States was fated by God to expand westward.

¹⁷ David Gutiérrez, *Walls and Mirrors: Mexican Americans, Mexican Immigrants, and the Politics of Ethnicity* (Berkeley: University of California Press, 1995).

and be given American nationality.¹⁸ The Naturalization Act of 1790 and articles VIII and IX of the Treaty of Guadalupe Hidalgo are some of the earliest examples of American policies toward citizenship in the United States. In order to understand immigration policy, this chapter's primary focus will be on immigration acts from 1882 to 1986 in chronological order with an emphasis on the Immigration Reform and Control Act of 1986.

Chinese Exclusion Act of 1882

The Chinese Exclusion Act established a basis for immigration policies in the United States by “means of inspecting, processing, admitting, tracking, punishing, and deporting immigrants.”¹⁹ This process is still used today in immigration policies as it will be noticed throughout the thesis. The legislation has been the only racialized law that was passed in the United States. In order to reduce the influx of Chinese workers, the law became the first bill that tried to control immigration based on national identity.²⁰ The act states that Chinese laborers were not allowed to come into the United States; that anyone who brings a Chinese worker would be charged with a misdemeanor, fined, and jailed; and that citizenship of Chinese immigrants would be denied.²¹ This type of gatekeeping and restriction of who can and cannot enter has been an aspect of immigration policy in the United States since the passing of this

¹⁸ “Treaty of Guadalupe Hidalgo” (1848). Treaty of Guadalupe Hidalgo [Exchange copy]; 2/2/1848; Perfected Treaties, 1778 - 1945; General Records of the United States Government, Record Group 11; National Archives Building, Washington, DC. [Online Version, <https://www.docsteach.org/documents/document/treaty-guadalupe-hidalgo>]

¹⁹ Erika Lee, *At America's Gates: Chinese Immigration during the Exclusion Era, 1882-1943* (Chapel Hill, NC: University of North Carolina Press, 2003), 40.

²⁰ *Ibid.* Lee, 26.

²¹ Horace Page, “Chinese Exclusion Act” (1882). [Chinese Exclusion Act] An Act of May 6, 1882, Public Law 71, 47th Congress, 1st Session, 22 STAT 58, to Execute Certain Treaty Stipulations Relating to Chinese; 5/6/1882; Enrolled Acts and Resolutions of Congress, 1789 - 2011; General Records of the United States Government, Record Group 11; National Archives Building, Washington, DC. [Online Version, <https://www.docsteach.org/documents/document/chinese-exclusion-act>, September 10, 2022]

law.²² As stated above, the Naturalization Act of 1790 declared that free white persons were eligible for citizenship and having the Chinese Exclusion Act that strictly prohibits a race due to their undesirability meant that immigration law bears restrictions based citizenship on certain race. This sets precedent for racially based exclusionary legislation. Additionally, it criminalizes Chinese immigrants that want to come to the United States if they were laborers, but teachers, vendors, diplomats, students, and travelers were exempted from this law. This act was eventually repealed in 1943. Although the Chinese Exclusion Act affected Chinese and Asian immigrants, concept of the gatekeeping would also be applied to in Mexican immigrants.

Mexican Citizenship and the Case of Ricardo Rodriguez

The Treaty of Guadalupe Hidalgo signed in 1848 granted citizenship to many Mexicans living on U.S. territory. Yet there is no clarification on whether Mexicans were eligible to be classified as “white” in the treaty. According to Natalia Molina, this was the “Achilles heel” of the accord and provided “an opening for those who sought to make Mexicans ineligible for citizenship for decades to come.”²³ In 1896, Ricardo Rodriguez, a Mexican “copper-colored” man with “dark eyes, straight black hair, and high cheek bones”, applied for citizenship.²⁴ Rodriguez’s case used the Treaty of Guadalupe Hidalgo to assert that he had the right to request citizenship according to the law. In the legal documents in *Re Rodriguez* a person can acquire nationality by being born the country, following the naturalization laws, by amendment of legislation, and through annexation.²⁵ According to the law Rodriguez qualified to become a

²² Lee, *At America’s Gates*, 24.

²³ Natalia Molina, *How Race Is Made in America : Immigration, Citizenship, and the Historical Power of Racial Scripts* (Berkeley, Calif.: University of California Press, 2014). 45.

²⁴ District Court, W.D. Texas., *In re Rodriguez* (Honorable T.M. Paschal May 3, 1897). 337-338.

²⁵ *Ibid.* *In re Rodriguez*. 339.

citizen of the United States, but opposing counsel stated he was neither white, African, or of African descent so therefore could not be eligible.²⁶ Rodriguez was asked at length about his Mexican heritage relating to if he was part of the Aztec race, had ancestry from Spain, his religion, and where his race came from, all to which he answered no.²⁷ Evidently, the judge found that Ricardo Rodriguez met all the qualifications to be granted citizenship, regardless of skin color. Due to the Texas Republic constitution and the Treaty of Guadalupe Hidalgo, Mexicans had the right to citizenship and naturalization.²⁸ The case of Ricardo Rodriguez demonstrates that citizenship was contested if the person applying was Mexican, especially if a person had a darker complexion. An immigration officer's perception was not enough to deem Mexicans to be ineligible for naturalization and citizenship. It had to be in accordance with the laws at the time. This court case was one of the first instances in which a Mexican challenged the state to approve his application of citizenship status. The question of who should and should not be allowed to enter the United States based on race is once again introduced in 1917.

Legislation in 1917 and 1924

The Immigration Act of 1917 aimed to thwart the immigration of people that were deemed undesirable to live in the United States, specifically immigrants from the Asiatic zone.²⁹ This zone ranged from the Middle East to Southeast Asia and included European immigrants

²⁶ Ibid. In re Rodriguez, 337.

²⁷ Ibid. In re Rodriguez, 338. It is also stated in the document that he could have answered no due to being illiterate.

²⁸ Molina. *How Race is Made in America*. 45.

²⁹“Immigration Act of 1917” (1917), https://congressional-proquest-com.utep.idm.oclc.org/congressional/docview/t41.d42.64_pl_301?accountid=712. *Note:* In the Immigration Act of 1917, there is a long list of those that are not allowed entry into the United States. A few are as follows: imbeciles, epileptics, vagrants, alcoholics, the poor, polygamists, anarchists, prostitutes, contract laborers, returning deported aliens, those who had assistance purchasing their passage, Asians, those who are diseased.

from southern and eastern Europe. The act also applied a literacy test and an increased tax for those arriving to the U.S.³⁰ This included immigrants who entered from Mexico, but were exempt by the Department of Labor.³¹ According to George J. Sánchez, in 1921 this exemption lapsed and Mexicans that crossed into the United States were subjected to the provisions of the Immigration Act of 1917. An inspector working at the Santa Fe Street Bridge in El Paso, Texas explained the process that those crossing were subjected to. When immigrants first crossed, they were inspected, vaccinated if needed, fumigated, deloused, and then took a literacy test.³² One migrant recalled being forced to remove their clothing and have them washed while they bathed due to the health check requirements and feeling like “animals that were bringing germs.”³³ Although Mexicans were not the ones exclusively targeted in this legislation, they similarly felt the repercussions of those immigrants who were directly impacted in the bill.

In the early 1920s, there was a rise in support of an immigrant quota system being passed as law in the United States. Madison Grant and other eugenicists were supportive in passing of the National Origins Quota Act of 1924.³⁴ The act lowered the admissions of immigrants from southern and eastern Europe and immigration from Asian countries that were “ineligible for citizenship.”³⁵ There were no restrictions for immigrants migrating from the western hemisphere,

³⁰ “Immigration and Nationality Act,” 82 P.L. 414: 66 Stat. 163, Chap 477; 82 Enacted H.R. 5678 § (1952), https://congressional-proquest-com.utep.idm.oclc.org/congressional/docview/t41.d42.82_pl_414?accountid=7121. 875, 876, 877.

³¹ Mae M. Ngai, *Impossible Subjects : Illegal Aliens and the Making of Modern America* (Princeton, New Jersey: Princeton University Press, 2014). 64.

³² George J. Sánchez, *Becoming Mexican American: Ethnicity Culture and Identity in Chicano Los Angeles 1900-1945*. (New York, NY: Oxford University Press, 1995). 55.

³³ Ibid. Sánchez. *Becoming Mexican American*. 56.

³⁴ This act was also known as the Johnson-Reed Act.

³⁵ Erika Lee, “America First, Immigrants Last: American Xenophobia Then and Now,” *The Journal of the Gilded Age and Progressive Era* 19, no. 1 (December 13, 2019): 3–18, <https://doi.org/10.1017/s1537781419000409>.

however, coincidentally the United States Border Patrol was founded in 1924.³⁶ The Johnson-Reed Act applied quotas based on origin that offered immigration visas to 2% of people of a nationality that resided in the U.S., the 1890 U.S. census and would have a minimum quota of 100.³⁷ Besides having origin quotas, the act also gave preferences within the quotas to children and spouses of U.S. citizens.³⁸ The Johnson-Reed Act had elements of discrimination towards those that were seen as inferior, especially so with having limits for immigration from some countries, while immigrants from other countries were barred altogether. Immigration from the western hemisphere was not impacted during this time, yet at the end of the decade, a new attitude would arise with the economic crisis of 1929.

The Great Repatriation

The repatriation of Mexicans and Mexican Americans began in 1929 and ended in 1939, justified with the Great Depression. As written earlier, the anti-Mexican sentiment was widespread even before the United States succumbed to the financial disaster. Regardless of the contributions of Mexicans to American society, the reasons given for the repatriation were “to return indigent nationals to their own country...; to save welfare agencies money; and to create jobs for real Americans.”³⁹ According to Adam Goodman, the author of *The Deportation Machine: America's Long History of Expelling Immigrants*, “[there was a belief] that foreigners

³⁶ Kelly Lytle Hernandez, *Migra! A History of the U.S. Border Patrol* (Berkeley, California: University of California Press, 2010). 26.

³⁷ “Immigration Act of 1924,” 68 P.L. 139; 43 Stat. 153, Chap 190; 68 Enacted H.R. 7995 § (1924), https://congressional-proquest.com.utep.idm.oclc.org/congressional/docview/t41.d42.68_pl_139?accountid=7121. 159.

³⁸ *Ibid.* Immigration Act of 1924. 155.

³⁹ Francisco E Balderrama and Raymond Rodriguez, *Decade of Betrayal : Mexican Repatriation in the 1930s* (1995; repr., Albuquerque: University Of New Mexico, 2006). 99.

stole US citizens' jobs, drained public coffers, carried diseases, committed crimes, and harbored communist and radical political views result[ing] in a rising chorus across the country for their expulsion."⁴⁰ There was also hostility and suspicion of Mexican immigrants. President Hoover's attitude towards Mexicans encouraged these feelings, and he also condemned them as one of the many causes for the depression, since Mexicans took job opportunities from American citizens.⁴¹ But deportations were costly, and the Immigration and Naturalization Service (INS) was trying to minimize these costs by using it as a last resort. Although the Undesirable Aliens Act of 1929 (Blease's Act) made illegal entry into the United States a criminal offense, the INS still did not have enough money to prosecute, let alone execute large-scale deportations, and undocumented immigrants were given the option to voluntarily leave the United States.⁴² For those who did not have their own means of transportation, repatriation via trains was most commonly used.⁴³ Undocumented parents that were forced to leave their older children that wanted to stay in the U.S., since they were American citizens, caused psychological strain within Mexican family units because of family separations.⁴⁴ The Mexican newspaper *Excelsior* wrote that "racial discrimination in these times not only makes more painful the downfall of racial groups previously place in a disadvantageous position, but they increase the responsibility of the communities because of the suffering of those groups."⁴⁵ The Great Depression was an excuse to repatriate thousands of Mexicans and Mexican Americans that were seen as the unwanted. Many

⁴⁰ Adam Goodman, *The Deportation Machine: America's Long History of Expelling Immigrants* (Princeton, NJ: Princeton University Press, 2020). 41.

⁴¹ Sánchez, *Becoming Mexican American*. 213.

⁴² S. Deborah Kang, *INS on the LINE : Making Immigration Law on the US -Mexico Border, 1917-1954*. (S.L.: Oxford Univ Press Us, 2019). 65.

⁴³ Balderrama and Rodríguez. *Decade of Betrayal*. 101.

⁴⁴ Ibid. Balderrama and Rodríguez. *Decade of Betrayal*. 105.

⁴⁵ Ibid. Balderrama and Rodríguez. *Decade of Betrayal*. 119.

did leave of their own accord in hopes of being able to return once the economy recovered. However, the many that did stay behind were ultimately deported.

McCarran-Walter Act and Operation Wetback

The Immigration and Nationality Act of 1952 (McCarran-Walter Act) was passed during the McCarthyism era, and it was a combination “restrictive anti-Communist and Cold War civil rights measures.”⁴⁶ This “mixture” made for interesting legislation. The act continued the national origins quota, strengthened naturalization procedures, stopped Asian exclusion restrictions, and eliminated the gender, racial, and nationality obstacles, yet attempted to contain the communist threat.⁴⁷ The bill seemed very progressive when it came to immigration, yet restrictive to those areas where communism was common. It looks as though it was an act that was passed to appease both sides of the political spectrum. Two years after the passing of this bill, Operation Wetback was executed.

Operation Wetback was implemented in the summer of 1954 and was used to deport undocumented Mexican immigrants. There was an influx of immigrant workers due to the Bracero Program and those were denied into the program, found other means of entry into the United States.⁴⁸ Due to this increase of migration, the 1954 INS Annual Report indicates that “the influx of aliens illegally entered from Mexico appears like an incoming tide, with mounting waves of people entering the country, and being sent back, and returning again but in ever

⁴⁶ Maddalena Marinari, “Divided and Conquered: Immigration Reform Advocates and the Passage of the 1952 Immigration and Nationality Act,” *Journal of American Ethnic History* 35, no. 3 (2016): 9, <https://doi.org/10.5406/jamerethnhist.35.3.0009>. 13.

⁴⁷ Ibid. Marinari. “Divided and Conquered.” 13.

⁴⁸ Jorge Durand, “The Bracero Program (1942-1964) a Critical Appraisal,” *Migración Y Desarrollo* 05, no. 09 (July 5, 2007): 25–40, <https://doi.org/10.35533/myd.0509.jd>.

greater volume and always reading further inland with each incoming wave.”⁴⁹ News media coverage stated “the flow of illegal aliens...from Mexico is critical and endangering the national security”⁵⁰, [they] “propagated disease, committed crimes, drained the tax base, and degraded the labor standards and living conditions of domestic workers”⁵¹ and explained why the Mexican issue had to be addressed with such intensity. Border Patrol agents from the Canadian and Florida region were deployed to California to begin the mass deportations.⁵² The INS began working with the Mexican government to arrange transportation.⁵³ With the U.S. and Mexican government working cohesively, it made for a successful operation. In January of 1955, it was declared that “the day of the wetback is over” and that the southern border had been secured.⁵⁴

Hart-Celler Act 1965

President John F. Kennedy took office in 1961 in the rise of the civil rights movement. He sought to expand the admissibility of certain groups that had been rejected by the McCarran-Walter Act.⁵⁵ By the time of Kennedy’s presidency, Walter reaffirmed the suggestion that immigrants from the regions of the world that the new president wanted to allow in were a threat due to their political ideology.⁵⁶ The act eliminated the national origins quota system for immigrants in countries that were previously limited, such as Asia, India, Africa, and Eastern

⁴⁹ Joseph Swing, “Annual Report of the Immigration and Naturalization Service, Washington, D.C.” (Washington, D.C.: U.S. Department of Justice - Immigration and Naturalization Service, June 30, 1954). 2.

⁵⁰ Goodman. 52.

⁵¹ Ibid. Goodman. 53.

⁵² Kelly Lytle Hernandez, *Migra! : A History of the U.S. Border Patrol* (Berkeley, California: University Of California Press, 2010). 184.

⁵³ Ibid. Hernandez. *Migra!* 185.

⁵⁴ Ibid. Hernandez. *Migra!* 196.

⁵⁵ Mae Ngai, “The Unlovely Residue of Outworn Prejudices: The Hart-Celler Act and the Politics of Immigration Reform, 1945-1965,” *Americanism: New Perspectives on the History of an Ideal*, 2006, https://doi.org/DOI:10.5149/9780807869710_kazin.8.

⁵⁶ Ibid. Ngai. Hart-Celler Act.

Europe, and substituted it for admittance based on relationships with United States citizens.⁵⁷

After the assassination of President Kennedy in November of 1963, Lyndon B. Johnson signed into law the Hart-Cellar Act. He passed the law to give preference to skilled workers globally, but also did not have a cap on unskilled labor coming from the western hemisphere.⁵⁸ As a result, this posed unintended consequences on how the government would regulate immigration.

Likewise, the law “prohibited discrimination in immigration law.”⁵⁹ The act was amended in 1976 to include immigrants from countries in the west in the preferential category. It would be 21 years before another major milestone was reached in Americas immigration reform policies.

Immigration Reform and Control Act of 1986 (IRCA)

The Immigration Reform and Control Act of 1986 was signed into law on November 6 by President Ronald Reagan amidst the Iran-Contra scandal and went against the Republican Party's wishes. Pushes for the legislation began in 1981 at the beginning of his presidency and was finally passed midway through his second term. IRCA seemed beneficial because it provided amnesty to immigrants already in the United States before 1982, offering a path to citizenship, and punishing employers who knowingly hired undocumented workers. Employers paid undocumented workers at a lower wage, which in turn, left employees at a higher risk for exploitation. However, this legislation also increased border security and Border Patrol (BP) resources. The policy's intent was in the right direction for immigration reform, but its aftereffects did little to curb the tide of illegal immigration. Instead, it increased discrimination

⁵⁷ “Immigration and Nationality Act Amendments,” 89 P.L. 236; 79 Stat. 911; 89 Enacted H.R. 2580 § (1965), https://congressional-proquest-com.utep.idm.oclc.org/congressional/docview/t41.d42.89_pl_236?accountid=7121. 911.

⁵⁸ Ngai. Hart-Cellar Act. 110.

⁵⁹ Lee. America First. 13.

and racial profiling of Mexicans by either not hiring them or hiring them precisely because the workers were Mexican and could be exploited. The objective of IRCA was threefold: 1. Stricter penalties for employers who hired, exploited, and abused undocumented immigrants; 2. Increased border security; and 3. Amnesty paved the way for millions of undocumented immigrants to attain citizenship.

Title I of IRCA imposed much stricter sanctions and penalties for companies that hired undocumented workers. Prior to this, companies faced loose regulation for confirming the citizenship status of laborers for purposes of employee tax reporting and payroll. The I-9 form required verification of one of seven documents that fulfilled both requirements to verify employment and identity or two forms of identification.⁶⁰ Subsequently, Form I-9 became mandatory and any employer that did not verify these documents could face fines up to \$2,000 per individual for first offenses and up to \$10,000 per individual for the third offense.⁶¹ Beyond this, employers could also face imprisonment of up to 6 months for each person.⁶² This section intended to greatly outweigh the cost savings of paying lower wages to offset the risk of the penalties for the exploitation of workers. Even employers who used contractors to hire workers, knowing that candidates were undocumented would be in violation of the bill. The law indicates

⁶⁰ Gerard Morales and Rebecca Winterscheidt, "Immigration Reform and Control Act of 1986 - an Overview 1987," *The Labor Lawyer* 3, no. 4 (1987). *Note:* These are the documents that could be used: One of list of seven: U.S. passport, cert. of U.S. Citizenship, cert. of Naturalization, unexpired foreign passport with appropriate visa, alien registration receipt card/green card, temp. resident card, or employment authorization card. One of the lists of 10: social security card, unexpired reentry permit, unexpired Refugee Travel docs, State Dept. Birth certificate, State Dept. certificate of Birth Abroad, original or certified copy of birth certificate, employment authorization doc issued by INS, Native American tribal docs, U.S. Citizen I.D. card, and resident citizen I.D. card. The following were used in conjunction with the previous list in order to establish identity: State driver's license or state I.D., school I.D. card with photo, voter registration card, Military I.D., federal, state, or local government I.D. card, military dependent I.D. card, Native American tribal docs, U.S. Coast Guard Merchant Mariner Card or Canadian driver's license.

⁶¹ *Ibid.* Morales, Winterscheidt. 717.

⁶² *Ibid.* Morales, Winterscheidt. 717.

that the responsibility for verification fell directly upon employers to confirm applicants eligibility rather than on the sub-contracting organizations, such as unions.⁶³ These protocols were not enforced immediately, but rather the government gave companies roughly ten months to implement plans and changes in hiring practice.⁶⁴

Those who drafted the legislation recognized the risk of racial profiling based on national origin and race. Consequently, subsection 274B was added to IRCA to remind employers of the Equal Employment Opportunity (EEO), Title VII of The Civil Rights Act of 1964. The EEO prohibits discrimination based on sex, race, color, religion, or national origin. Despite the subsections specifically prohibiting discriminatory practices based on citizenship status or national origin, it supplied no definite punishment for employers in violation of the act.⁶⁵ This loophole meant that a company might not violate IRCA but still be in violation under the EEO.

While one section punishes employers who knowingly hire undocumented workers, Part B addressed enforcement and how to minimize immigration to the United States. The section also included an immigration emergency fund for a potential surge of immigrants coming into the United States. Part B in Title I of IRCA authorized budgetary increases to the INS under which the Border Patrol operated and increased the workers' wages.⁶⁶ A substantial increase was made to this budget from \$380 million in the fiscal year 1986 to \$456 million in the fiscal year

⁶³ Ibid. Morales, Winterscheidt. 724.

⁶⁴ Peter Rodino, "Conference Committee on Immigration Reform and Control Act of 1986" (Washington, D.C.: U.S. Congress, 1986). 17-18.

⁶⁵ Ibid. Rodino. 17-18.

⁶⁶ Ibid. Rodino. 24-25.

1987 to \$538 million in the fiscal year 1988.⁶⁷ (The authors included a footnote that stated the numbers were lower than what was written. \$363 million in 1986 to \$453 million in 1987 to \$471 million in 1988.)⁶⁸ However, the amounts in IRCA allocated \$422 million in 1987 and \$419 million in 1988 and also allowed for a discretionary fund of \$35 million to reimburse state and local municipalities that may assist in the event of an immigration emergency.⁶⁹ Here, the potential for assistance by municipal law enforcement is already laid. The bill was a calculated compromise by the Reagan administration to grant amnesty when expulsion was not a feasible option but also tightened immigration policy and bolstered punishment.

With increased funding, a measurable growth in personnel was imminent. With each fiscal year beginning in 1987, a minimum 50% increase in personnel was authorized, and their pay was apportioned from the money given to the Department of Justice for the INS and Border Patrol.⁷⁰ The increase in border monitoring, according to Congress, was necessary, and IRCA was pronounced as the solution to illegal immigration.⁷¹ More money was needed in order to deter unwanted migration into the United States according to lawmakers. The more funding the INS had; the more the border was sufficiently secured. The better security the border had, the fewer number of illegal immigrants would be entering the country and seemed a very logical resolution to the problem. However, the number of apprehensions decreased by 42% from 1986-1988.⁷² Supporters of the act argued that this demonstrated that increased numbers of agents

⁶⁷ Michael White, Frank Bean, and Thomas Espenshade, "The U.S. 1986 Immigration Reform and Control Act and Undocumented Migration to the United States," *Population Research and Policy Review* 9, no. 2 (May 1990), <https://utep.idm.oclc.org/login?url=https://www.jstor.org/stable/40229886>.

⁶⁸ Ibid. White, Bean, and Espenshade. 113.

⁶⁹ Rodino. 26-27.

⁷⁰ Ibid. Rodino. 24.

⁷¹ White, Bean and Espenshade. 95.

⁷² Ibid. White, Bean, Espenshade. 95

slowed the tide incoming migrants, while critics contended that agents were simply reassigned to other projects, such as searching for drug smugglers. IRCA was a political answer rather than a realistic solution on immigration policy and border security.

IRCA received much praise for its leniency towards undocumented immigrants in the United States. As Reagan said during the signing of IRCA, "This legislation takes a major step towards meeting this challenge to our sovereignty. At the same time, it preserves and enhances the nation's heritage of legal immigration."⁷³ Despite Reagan's statements, the bill began increasing border security that the nation sees today. Aside from updating the citizenship statuses for millions of undocumented immigrants who had arrived in the United States before 1982, the bill also increased the chances of these same people being racially profiled when applying for employment. To be granted amnesty, undocumented immigrants had to meet certain specific stipulations of the bill in order to qualify for residency. Applicants had to submit their documentation in a timely manner, had to prove that they had been in the United States undocumented since at least January 1, 1982, show proof of residence in the U.S. since the bill's enactment, and the applicant had to be eligible for admission into the country.⁷⁴ In addition to the above requirements, the applicant must not have been convicted of any felony or three or more misdemeanors in the United States, must not have assisted in any prosecution of any person based on race, religion, nationality, and/or affiliation in any specific social group or political belief, and was required to register under the military selective service act. If a person was required to be registered under the act, they must have had basic citizenship skills including an

⁷³ President Ronald Reagan, "Statement on Signing the Immigration Reform and Control Act of 1986," <https://www.reaganlibrary.gov/archives/speech/statement-signing-immigration-reform-and-control-act-1986>.

⁷⁴ Morales, Winterscheidt. 721.

understanding of English, knowledge and understanding of United States history and government, or were enrolled in a course of study to understand English, history and government of the United States.⁷⁵ Similarly, a person who applied for temporary residency was recommended not to rely on the government welfare system for support. If any of these criteria were not met, the applicant was disqualified from temporary residency, unless otherwise permitted by the Attorney General under specific circumstances.

Immigration and citizenship status affects millions of people across the United States. El Paso is no different. Imagine living in a country where your particular ethnic or racial group is viewed negatively, and even native-born members of your same ethnic background see you as a burden. Now, envision the grant of amnesty and the volumes of undocumented immigrants living in the states now able to come out of the shadows and began their pursuit of their American dream. This was the case for a man named Carlos Ruvalcaba. He was brought over to El Paso from Juárez as a toddler and both his mother and he were undocumented. There was a sense of relief when Ruvalcaba and his mother received their green cards after applying for amnesty. He stated in a news article that it was almost like he had lived two lives. He enjoyed and loved going to Juárez, but it was so different from his life in El Paso.⁷⁶ After becoming a citizen, Ruvalcaba joined the Air Force, graduated from the University of Texas at El Paso, and eventually became an attorney.⁷⁷ Although this particular story was one of feel-good, dream-come-true success

⁷⁵ Rodino. 29.

⁷⁶ Monica Ortiz-Urbe, “‘My Life Could’ve Been Completely Different’ Revisiting the Impacts of 1986 Amnesty,” *The Oklahoman*, February 21, 2021, <https://www.oklahoman.com/story/news/2021/02/21/my-life-couldve-been-completely-different-revisiting-impacts-of-1986-irca-amnesty/331491007/>.

⁷⁷ Ibid. Ortiz-Urbe.

involving IRCA, it stands as an exception rather than the norm. Employers continued to exploit workers and thus follows the darker side of America.

As mentioned above, IRCA gave harsher punishments to employers who purposely and knowingly hired undocumented workers. However, this did not stop employers from hiring and exploiting immigrants. IRCA was also supposed to stop unwanted immigration and deal out harsher punishments for those who crossed, but that also did not happen. All IRCA did was put forth a set of laws that were continually being broken and not enforced, because the cost of sanctions outweighed the benefits of lower wages and exploited labor. What ended up happening was the United States government began to either amend IRCA or put in stricter policy for immigrants to have a more challenging time entering and leaving the United States.

Conclusion

The origins of the United States immigration policy and legislation began with the founding of the nation and were exclusionary, always designed to keep out the undesirable other. Spiritual conceptualizations of providence and Manifest Destiny drove pioneers to expand and take from those whom they considered less worthy of the land or the continent. The whitewashed history that is taught to Americans as children excludes many of the contributions that Africans, Native Americans, Chinese, Filipino, Mexican, and so many others have brought into the making of this country. This is not to say white European immigrants were not excluded, but rather that the majority of immigrants that were excluded were people of color (POC).

The 1924 the Immigration Act created immigration quotas and set up the Border Patrol. Depression era economics saw the rise of xenophobic sentiments leading to the repatriation of

not only Mexicans but also Mexican Americans from 1929-1939. While a temporary work program was initiated for Mexican immigrants, those not working under the program became targets for Operation Wetback in 1954. The McCarran-Walter Act preserved the quota registry, while the Hart-Cellar Act ended it. The thirty plus years of growing Mexican immigration led to a monumental amnesty program by the Reagan administration, and it imposed much stricter sanctions for employers hiring unauthorized workers. The immigration policies that were passed from 1882 to 1986 resulted in a quid pro quo. Visas, temporary contracts, and amnesty was given but border regulation increased and so did punishments for border-crossers. Perceptions of immigrants as criminals gave the implication that immigrants only came into the country to burden the public welfare system and live off the government. Most immigrants were criminalized and only the selected few were eligible for American citizenship. By the 1990s even more aggressive immigration policy and operations came to pass with the goal of stopping illegal immigration once and for all.

Chapter 2: The Best Defense is Offense 1990-2000

The 1990s saw the collapse of the Soviet Union, an economic recession, and the invasion of Kuwait by Saddam Hussein. Because of the passing of IRCA in 1986, the George H.W. Bush administration sought to pass another immigration reform designed to repair issues that were seen as unintended consequences from IRCA. In 1990 the Immigration Act was passed to address the discriminatory practices that had increased from IRCA based on employer sanctions. President Clinton's administration also sought to improve upon previously passed immigration legislation specifically by strengthening vigilance at the border with the Immigration Responsibility Act (IIRIRA). These federal acts were supplemented with regional border enforcement operations in 1993, including Operation Blockade and Operation Hold the Line began (OB/OHTL). In order to better understand how racialized understandings of immigration fueled such policies, this chapter will use Natalia Molina's concept of racial scripts to assess how although immigration policies were not explicitly racialized, stereotypes toward Mexican and Mexican American communities were deployed to justify increasing border and immigration vigilance. According to Natalia Molina, racial scripts work in three different ways: stereotypes, attitudes, and policies against a specific marginalized group that become easily utilized against other groups which typically emerge in social structure, material conditions, and historical context.⁷⁸ This chapter will consider the racial scripts used to justify and direct immigration legislation and border enforcement policies in the 1990s.

⁷⁸ Natalia Molina, *How Race Is Made in America : Immigration, Citizenship, and the Historical Power of Racial Scripts* (Berkeley, Calif.: University Of California Press, 2014). 6-7, 9.

Racial scripts offer a method for cross referencing different groups with similar experiences allowing researchers to analyze differences and similarities. Molina uses this framework as a method to compare and contrast the experiences of different racialized groups simultaneously and how they were affected by racism in society and historically. According to Molina, an example of the use of racial scripts in the establishment of birthright citizenship. She describes how this script is not exclusive to the depression era repatriation of Mexicans and Mexican Americans but was also applied to free blacks and Chinese born in the United States.⁷⁹ Molina wrote that policy makers developed and interpreted laws based on the current immigrant group laying claim to birthright citizenship, specifically immigrants that were not categorized as black or white.⁸⁰ If a person from an immigrant group that was neither classified as black or white wanted to obtain birthright citizenship, the powers that be, used racial scripts to deny them that right. Racial scripts are templates for applying discriminatory agendas across various groups across different time periods.

Helping the Undocumented through the Immigration Act of 1990

The Immigration Act of 1990 was a promising pathway for a more compassionate immigration policy by amending some sections of IRCA. Specifically, the improvements sought to increase immigrant admissions for family reunions, provide additional qualifications for admission into the United States, and reduce the discrimination caused by IRCA's sanctions on employers for hiring undocumented immigrants.⁸¹ President Bush wrote a statement regarding

⁷⁹ Ibid. Molina. 7.

⁸⁰ Ibid. Molina. 69-70.

⁸¹ Arnold H. Leibowitz, "United States: Immigration Act of 1990," *International Legal Materials* 30, no. 2 (March 1991): 298–381, <https://doi.org/10.1017/s0020782900017587>.

the signing of the Immigration Act in which he stated that the law sought to merge family reunification and increase immigration of skilled workers to meet the need of the United States, opened the door to boost legal immigration, and amended the antidiscrimination provisions in IRCA that would discourage discrimination related to employer sanctions.⁸² However, there was also an increase in border security in the Immigration Act of 1990 that authorized funds for 1,000 border patrol agents, construction, repair, and maintenance of the United States border, and structures to prevent illegal immigration.⁸³ An article in the El Paso Herald Post written by Alfredo Corchado stated that “Immigration and Naturalization Service agents will have increased police powers...authorization to carry firearms and to make arrests for federal violations.”⁸⁴ In the bill, an immigration emergency fund section was revised to reimburse states if asylum applications exceed one thousand in a quarter; if, the welfare, lives, property and safety of residents were threatened; or if the Attorney General deemed a situation an emergency with allotted funds of \$35,000,000.⁸⁵ With each new immigration bill passed, the border patrol and INS have been given more power and money to deter unwanted illegal immigration.

In the 1990s, the Border Patrol was a part of the Immigration and Naturalization Services, and “the INS remained exempt from the provision of the APA” (Administrative Procedures Act of 1946).⁸⁶ The APA ensured that agencies did not have absolute power over law-making

⁸² George Bush, “Statement on Signing the Immigration Act of 1990,” PDF Transcript, (Signing of the Immigration Act of 1990, November 29, 1990), [tps://congressional-proquest-com.utep.idm.oclc.org/congressional/docview/t67.d72.1990-58-1427?accountid=7121](https://congressional-proquest-com.utep.idm.oclc.org/congressional/docview/t67.d72.1990-58-1427?accountid=7121).

⁸³ American Immigration Lawyers Association, *Selected Legislative History of the Immigration Act of 1990* (Washington, D.C.: American Immigration Lawyers Association, 1991).

⁸⁴ Alfredo Corchado, “INS Opens Doors to Families,” *El Paso Herald Post*, October 1, 1991. A1.

⁸⁵ Congress.gov. "Related Bills - S.358 - 101st Congress (1989-1990): Immigration Act of 1990." November 29, 1990. <https://www.congress.gov/bill/101st-congress/senate-bill/358/related-bills>.

⁸⁶ Kang. 4. Kanstroom 2007 and Schuck 1984 as cited in Kang 2019.

procedures. The Administrative Procedures Act of 1946 was a statute that attempted to protect lawful agency procedures, but not a single statute could give a thorough set of instructions on how to make decisions for all federal agencies, old and new.⁸⁷ . It was up to the agencies to settle disputes based on the interpretation of their own regulations, but if disputes were not able to be resolved, then agencies would turn to the APA. Because of unrestricted practices specified by the APA and legal evaluation of immigration policy, systems of oversight and regulation have gone unchecked and unsupervised. Historian Lucy Salyer writes in her book *Laws Harsh as Tigers* that immigration law has been allowed to become “an ‘outlaw’ in American legal culture.”⁸⁸ Salyer speculates that the reasons behind this scarcity of oversight have not been fully explored.⁸⁹ Since the INS and the Border Patrol were exempt from such regulation, there was an increased possibility for agents to use their own discretion, outside the purview of sanctioned action and act beyond the scope of their authority.⁹⁰

Border Patrol Abuses within the Mexican Community in El Paso

El Paso is a border city that was established in 1659 along the Rio Grande. The city was originally founded as a mission in Juárez, Chihuahua, México and was known, at the time, as El Paso del Norte. The majority of the population is of Mexican descent. It is also a binational community, insofar as commerce and community flow freely between the two cities.⁹¹ In 1992, a

⁸⁷ Kang, 4. Shapiro 1988 as cited in Kang 2019.

⁸⁸ Lucy E Salyer, *Laws Harsh as Tigers*, Second Edition (Univ of North Carolina Press, 2000), https://read.amazon.com/sample/B00ZVEJUPQ?f=1&r=f89f820&sid=134-1280628-4677861&rid=&cid=A3GS37CCTB5HLF&clientId=kfw&l=en_US. xiv.

⁸⁹ Ibid. Salyer. xvi.

⁹⁰ Kang, 4. Shapiro 1988 as cited in Kang 2019.

⁹¹ Oscar J Martinez, *Troublesome Border*, Revised (1988; repr., Tucson, AZ: University Of Arizona Press, 2006), 126-127.

lawsuit alleged that an unwritten protocol existed whereby border patrol agents targeted low-income residents who appeared Hispanic, poor, and specifically high school kids from Bowie High School and residents of the surrounding neighborhood with surveillance, excessive interrogation, and being followed.⁹² It was relatively normal for the border patrol to stop students with Hispanic appearance or Hispanic descent, and even teachers were prone to this harassment. An incident occurred when border patrol agents harassed and detained two students, Juan, and David, while walking home from a graduation rehearsal. The agents had demanded their ID's, asked about their citizenship status and both students answered in English that they were citizens of the United States. Both students began walking away after answering the questions and the agents "threatened to harm them if they did not stop."⁹³ One of the agents grabbed David by his arm and pushed him face first against a fence and the agent put his forearm against the back of his neck, kicked his legs open and began to hit him on the back and legs.⁹⁴ An article in the El Paso Times written by Joe Olvera recounts how David testified to the court that he was beaten after he told the border patrol agent that he was a U.S. citizen. David said, "He told me 'you better stop before we beat you up so bad you won't be able to move.'"⁹⁵

After hearing about Juan's interaction with the Border Patrol, a teacher and football coach, Ben Murillo, came forward to speak about his experience a year before. Murillo was stopped by the BP with two of his players while driving to a local football game. The agent

⁹² Timothy J Dunn, *Blockading the Border and Human Rights : The El Paso Operation That Remade Immigration Enforcement* (Austin, Texas: University of Texas Press ; Chesham, 2010). Chapter 1.

⁹³ Murillo, et al. v. Musegades, et al. (United States District Court WD Texas, El Paso Division December 1, 1992). 491-492. https://scholar.google.com/scholar?scidkt=17456096052872833116&as_sdt=2&hl=en

⁹⁴ Ibid. Murillo, et al. v. Musegades, et al. 492.

⁹⁵ Joe Olvera, "Students Testify of Agent Abuse," Newspapers.com El Paso Times, October 22, 1992, <https://www.newspapers.com/image/430097723/?terms=border%20patrol%20lawsuit>.

pointed his gun at Murillo's head, while in his coaching attire, he began to explain to the agents that he was a coach at Bowie High School, there were two students with him in the vehicle, and he asked the agent to holster his weapon.⁹⁶ Murillo's frank and open testimony about his experience was a key motivator for many people that came forward with their stories of harassment.⁹⁷ Murillo testified in court that when the border patrol agent stopped him and one agent pointed a gun to his head he "was frightened." He said "I thought I was going to be hit. All I had to do was flinch and I am history. I asked the agent to remove his gun from my head, but he refused. He just told me to shut up and get out of the car."⁹⁸ Olvera wrote in the article that plaintiffs stated that border patrol agents would drive at an accelerated speed through the grassy parts of the high school and would stop students capriciously merely because a person has dark skin and lived in close proximity to the border.⁹⁹ A meeting was held at Bowie High School and the Border Rights Coalition (BRC) was invited to give a presentation for residents on knowing and understanding their civil rights.¹⁰⁰ The BRC helped the group of students and teachers to successfully file a civil rights suit in the fall of 1992 against the Border Patrol sector chief Dale Musegades. The judge presiding over the case imposed an injunction that prohibited the border patrol from stopping anyone because of their race or ethnicity. Furthermore, the judge decided that policies had to be changed on why they detained anyone.

In these two instances, United States citizens were targeted by the border patrol for having a darker complexion and living close to the U.S.-Mexico border. Community members

⁹⁶ Murillo, et al. v. Musegades, et al. 491.

⁹⁷ Dunn. *Blockading the Border and Human Rights*. 28.

⁹⁸ Olvera. "Students Testify of Agent Abuse."

⁹⁹ Ibid. Olvera. "Students Testify of Agent Abuse."

¹⁰⁰ Dunn. *Blockading the Border and Human Rights*. 26.

complained that they were simply detained and questioned because of their Hispanic characteristics. Based on the comments made by Murillo, the stereotypical assessment of what an illegal immigrant from Mexico looks like was used by border patrol agents to racially profile members of the Bowie community. In this example, racial scripts were used to determine who looked Mexican regardless of nationality and in turn criminalized United States citizens and undocumented immigrants. Due to the discriminatory practices and litigation, the border patrol was put on the political defensive, and its integrity was questioned. Chief Musegades retired shortly thereafter in early 1993, and Silvestre Reyes was named El Paso sector chief in July of that year.

Mastermind of Operation Blockade

Born in Canutillo, Texas, a suburb of El Paso, Silvestre Reyes was the first Hispanic Sector Chief in the Border Patrol and later a congressman for El Paso's 16th District. He was raised in the west El Paso farming community and graduated from Canutillo High School in 1964. He attended college in Austin but returned home to help his family on the farm. Reyes attended UTEP intermittently but ultimately was drafted into military service in 1966. He joined the Border Patrol in 1969 and, in 1984, became the sector chief in McAllen, Texas. He was sent to El Paso, Texas, after Dale Musegades retired from the Border Patrol.¹⁰¹ Since the Bowie lawsuit showed that policies had to change regarding how the border patrol operated within the community, and to avoid any more negative publicity, Reyes found that it would be better to halt

¹⁰¹ U.S. House of Representatives, "REYES, Silvestre | US House of Representatives: History, Art & Archives," History, Art and Achieves United States House of Representatives, accessed March 12, 2020, <https://history.house.gov/People/Detail/20297>.

immigrant crossings into the United States altogether rather than a strategy of pursuit and arrests. Reyes ordered that border patrol agents be stationed every 50 yards to half mile apart along the course of a 20-mile section of the border. Utilizing 400 agents of the 650 in the El Paso sector, he formed a human wall protecting the border.¹⁰² In detailing the chaos that he had inherited when he came to take over the El Paso sector, Reyes stated that there were many morale problems, and wanted a resolution regarding the Bowie lawsuit which included disciplinary actions against several agents. He also commented on the immense amount of illegal or undocumented people entering the United States.¹⁰³

Operation Blockade

The naming of Operation Blockade was no accident, and there was an agenda from policing the border to actively militarizing it. Instead of defensive operations where the goal was to apprehend, this operation was more offensive, relying on deterrence, and preventative measures. On September 19, 1993, Operation Blockade was initiated. Secondary to the operation's goals, Reyes found himself undertaking a public relations campaign in which he contributed to the myths of crime committed by undocumented crossers in borderland regions to justify the tenacity of the border patrol's new strategy. These myths were largely perpetuated by the American media through an expansion cable news networks and Hollywood.¹⁰⁴ Alex Saragoza, the essayist of *Cultural Representation and Mexican Immigration*, writes that these stereotypes developed amidst neoconservatism that began under the Reagan administration.

¹⁰² Ramon Renteria, "In a Position to Do More: Reyes Poised for Real Power," *El Paso Times*, December 6, 2006, www.newspapers.com.

¹⁰³ Dunn. 56. 2010.

¹⁰⁴ Alex M Saragoza, "Cultural Representation and Mexican Immigration," in *Beyond La Frontera : The History of Mexico-U.S. Migration* (New York, N.Y.: Oxford University Press, 2011), 227–49.

Cable news networks depicted an immigrant invasion and Hollywood portrayed immigrants, specifically Mexicans, as “siesta loving and lazy peons.”¹⁰⁵ With the rise of 24/7 news access, these depictions were widely available to a larger audience; any viewpoint could be expressed, and it was guaranteed to reach a large population of likeminded individuals.¹⁰⁶ By the nature of Mexican immigrant presence in the United States with or without documentation, xenophobic pundits could justify that immigrants were not law abiding citizens.

Reyes, pandering to the concerns of the conservative community, said that immigrants were responsible for crimes such as burglaries, vagrancies, “Mexican gangs,” and prostitution.¹⁰⁷ After the operation’s commencement, the question was put to Reyes by the El Paso Times, “what is the justification for doing this now?” to which he responded, “...I don’t think we need justification for doing our job.”¹⁰⁸ Initially, Reyes utilized a public relations campaign to gain the support of the El Paso community. Once the strategy was in place, Reyes did not have to give an explanation to why he and the El Paso Border Patrol sector operated as it did. Due to the success of Operation Hold the Line, the strategy of offensive deterrence rather than apprehension was adopted agency-wide.¹⁰⁹ The policy was expanded and is now used nationwide along the U.S.-Mexico border under the guise of national security.¹¹⁰ The issue is that there exists no explicit or delineated policy in place and there is no oversight as to what and how Border Patrol operates.

¹⁰⁵ Ibid. Saragoza.

¹⁰⁶ Ibid. Saragoza.

¹⁰⁷ Dunn. 62.

¹⁰⁸ El Paso Times Staff, “Border Patrol Chief Explains Operation Blockade,” *El Paso Times*, September 23, 1993, www.newspapers.com.

¹⁰⁹ William Krouse, “CRS Report for Congress on U.S. Border Patrol Operations” (CRS, 1995), <https://www.hsdl.org>. CRS 2.

¹¹⁰ “Operation Gatekeeper,” oig.justice.gov, n.d., <https://oig.justice.gov/sites/default/files/archive/special/9807/gkp01.htm>.

As a result of the operation's demonstrable success, Silvestre Reyes sought to obtain more personnel, training, and funding; his rationale for the increase in agents was to allow rotation of agents every two days along the physical border in-field to avoid boredom and complacency and failure to properly monitor the assigned land and city scape. Extended periods of inactivity were leading to mental fatigue and reducing the morale of those agents working along the border. Border Patrol agents were tasked with monitoring the border for hours at a time with little to no activity.¹¹¹ While this may attest to the effectiveness of the newly implemented strategy, agents found themselves bored from doing nothing other than watching the desert scape. Allowing agents to execute other tasks such as checking cargo and passenger trains, airports, and buses, and patrolling around the city of El Paso would dispel this idleness. At the time, there were 650 border patrol agents in the El Paso sector and Reyes was expecting 70 more. He had requested an additional 200 agents be assigned to the El Paso Sector from the 700 that congress had approved in 1994.¹¹² The increase in personnel meant that Reyes could send officers to perform other duties and have agents monitoring the border, increasing apprehensions, and seemingly reducing crime by undocumented immigrants. More agents meant more apprehensions and thus, less crime. This tactic is similar to the enforcement loop that Douglas Massey and Karen Pren mention in their article "Unintended Consequences of US Immigration Policy." Massey and Pren wrote that the loop begins with a growing number of undocumented immigrants, followed by more apprehensions, which then trigger anti-immigrant sentiments, which in turn produces restrictive immigration policies and border operations, which increases the number of agents at the border, which increase man hours and results in more

¹¹¹ Sito Negron, "Agents Fight Boredom, Low Morale," *El Paso Times*, September 18, 1994, www.newspapers.com.

¹¹² Ibid. Negron.

apprehensions.¹¹³ Operation Hold the Line was considered a success at deterring illegal immigration and reducing crime committed by immigrants, but according to a study by Professor of Sociology Frank Bean of the University of California—Irvine, it deterred illegal immigration to other sections across the border and small scale crime.

There are more factors involved with claiming that an operation can deter crime committed by undocumented immigrants like socio-economic status of the city, growth, and lack of resources. The Los Angeles Times covering Frank Bean’s study indicated that the operation had deterred illegal crossings significantly, discouraged street vending and petty crime committed by illegal immigrants, had strong community support, and has decreased enrollment at local schools and birthrates.¹¹⁴ However, it also resulted labor migration moving to other border crossings, low morale amongst border patrol agents and a thinning out of resources.¹¹⁵ In the research paper that was published by the U.S. Commission on Immigration Reform authorized by the Immigration Act of 1990, Professor Bean writes that the reason why the crime rate in El Paso was high prior to Operation Hold the Line was due to the close proximity of Juárez and an increase in population in El Paso.¹¹⁶ The reduction in crime was attributed to generally declining crime rates, but coincided with the implementation of the operation.¹¹⁷

¹¹³ 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 (March 2012): 1–29, <https://doi.org/10.1111/j.1728-4457.2012.00470.x>.

¹¹⁴ James Bornemeier, “El Paso Program Deters Illegal Immigrants, U.S. Study Finds,” *The Los Angeles Times*, July 24, 1994, <https://www.newspapers.com/image/159217843/?terms=el%20paso%20program%20deters%20illegal%20immigrants%20U.S.%20study%20finds&match=1>.

¹¹⁵ *Ibid.* Bornemeier.

¹¹⁶ Frank Bean et al., “Illegal Mexican Migration and the United States/Mexico Border: The Effects of Operation Hold the Line on El Paso/Juarez,” *Homeland Security Digital Library*, July 1994, <https://www.hsdl.org/?abstract&did=437743>. 92.

¹¹⁷ *Ibid.* Bean. 132

According to Bean, due to bias, it is a bit difficult to accurately assess if the communities in El Paso were for or opposed to Operation Hold the Line, but it seemed as though most were for reducing undocumented crossings. However, because there was not a scientific poll done, no determination can confirm which groups supported Operation Hold the Line.

In a study by Jonathan Fried and the American Friends Service Committee, El Paso residents were interviewed from downtown neighborhoods. When the residents in the Chihuahuita neighborhood of downtown El Paso were interviewed, only a few residents voiced their opinions in favor of Operation Blockade, even though much of the community was opposed. While there was a slight decrease in crime, the correlation with undocumented immigrants could not be shown definitively. Since there was a decreasing trend in crime overall during this period, it could not be ascertained what relationship, if any, existed between crimes committed and the citizenship statuses of the perpetrators. Residents statements included the following, “I feel much more secure in that I don’t have to worry about some illegal alien breaking into my home,” “I have more privacy at my home and car without having peddlers trying to get work or money from me,” and “It has affected me in that I don’t have to shoo away window washers and seventy-year-old ladies with two-year-old babies begging for money,” were just a few comments made.¹¹⁸ In contrast to these opinions, other residents of Chihuahuita that were interviewed said, “I don’t agree with it. The crosser doesn’t come to cause trouble,” “The crimes are done by the same drug addicts here,” and “Because at first, we thought it was the crossers, however, we have noted that the robberies are committed by our own residents.”¹¹⁹ The

¹¹⁸ Jonathan Fried and American Friends Service Committee. Immigration Law Enforcement Monitoring Project (ILEMP), Operation Blockade : A City Divided (Philadelphia, Pa. American Friends Service Committee, Community Relations Division, 1994). 25.

¹¹⁹ Ibid. Fried and American Friends Service Committee. 24-26.

comments made by the residents in Chihuahuita showed two different sides of the spectrum when it comes to how immigrants are viewed in society.

Illegal Immigration Reform and Immigrant Responsibility Act of 1996

With the election of Bill Clinton in the early 1990s, a portion of his platform consisted of what should be done with the immigration problem in the country. He believed that it was a crisis inherited from the previous administration, President George H. W. Bush, and developed a plan to strengthen the border, border control, protect American jobs, deport criminal and deportable aliens, and deny public benefits.¹²⁰ President Clinton promised to solve the immigration issue in the United States with a four point immigration plan. The plan consisted of strengthening border control to help deter illegal immigration, work site enforcement, criminal alien removal, and assistance to States to help with illegal immigration.¹²¹ This plan became known as the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). IIRIRA was responsible for an increase in border security, regulations regarding admission into the United States on one hand, but also for decreasing the paperwork required for proof of citizenship or residency. The increase of border security consisted of hiring more agents to patrol the border, pay increases, fence construction, and up to date equipment for the Border Patrol. It also included fine or imprisonment for evading Border Patrol checkpoints and mandated the development and implementation of biometric identification cards for crossing at ports of entry, and increased personnel for investigating smuggling and unlawful employment for the next three

¹²⁰ “New Community - Immigration - Illegal Immigration - An Inherited Problem.” National Archives and Records Administration. National Archives and Records Administration, 1996.

https://clintonwhitehouse1.archives.gov/White_House/Publications/html/briefs/iii-7.html.

¹²¹ Ibid. New Community.

years. 300 investigators were hired by 1997 in order to investigate visa overstayers which would become essential for future immigration operations.¹²²

IIRIRA included new penalties for admissibility for those “unlawfully present” with certain exemptions and updated removal procedures replaced deportation judicial processes. This involved new guidelines for voluntary departure and new crimes were added to a list of deportable offenses as a part of the 1996 Antiterrorism law that would disqualify an applicant from entry. This made it more difficult for immigrants to apply for residency, especially if they were convicted of a crime, and were at risk of getting deported even if they have been allowed into the country under different provisions. Moreover, the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) changed the definition of crimes of moral turpitude to include immigrants who were convicted of a crime that carried a punishment of 1 year or more could now be deported even if they had not been sentenced to 1 year or more incarceration.¹²³ Moral turpitude is subject to interpretation and can be interpreted in many different ways. Morality is different depending on the person, therefore moral turpitude made it extremely difficult to those that were convicted of any crime. Immigrants with offenses of moral turpitude with or without jail or prison time could be deported.

The act modified employer penalties and changes what the Reagan administration previously achieved in 1986 with IRCA. IRCA required an employer to verify an applicant’s citizenship status and IIRIRA reduced the amount of paperwork that an employer had to verify

¹²² Title I was summarized from the IIRIRA congressional document that was filed. This is a brief synopsis of the extended text.

¹²³ “Antiterrorism and Effective Death Penalty Act of 1996” (1996), <https://www.congress.gov/104/plaws/publ132/PLAW-104publ132.pdf>. 63. Title V subtitled D section 436.

an applicant's citizenship status. This law seems to exempt liability for employers to have made sufficient attempts to fulfill these processes. IIRIRA modified the provisions of IRCA to permit state and local government involvement immigration so long as the federal government reimbursed them for funds spent.

Conclusion

Immigration policies in the 1990s began to tighten compared to the amnesty that IRCA granted in 1986. We also see its effects on border cities like El Paso through racial scripts. Stereotypes, attitudes, and policies towards marginalized groups, like Mexicans, caused Border Patrol abuses towards local school students, teachers, and residents. The Border Patrol were sued due to racial profiling and lost their case. Amidst the aftermath of the lawsuit, a new border chief was named who happened to be Mexican, and a new strategy for border enforcement emerged with Operation Blockade which later became Operation Hold the Line. Although residents had varying opinions regarding the success of the operation, there were several sentiments that an increase of immigrants means an increase of crime, which isn't necessarily the case. A new immigration act was passed which strengthened border security, new crimes were added to the list of deportable offenses and minimized paperwork to check an applicant's residency or citizenship status. During this decade criminalization of Mexicans reemerged and citizenship was questioned if a person looked as if they were Hispanic, as the case with the Bowie lawsuit. Mexicans seemed to become equivalent to criminals and non-citizens and this had quite an effect on El Paso due to its high population of people of Mexican descent. Anti-immigrant sentiment was high again in the 1990s, however in the wake of 9/11, the sentiment would increase even more and apply to a general suspicion of all immigrants.

Chapter 3: New Era of Border Security 2001-2008

From the late 18th century to the middle of the 19th century, the responsibility for monitoring international borders and ensuring their security fell to the states individually; Congress was able to authorize those activities but didn't necessarily mandate them directly.¹²⁴ The responsibility was then shifted amongst various federal agencies. Beginning with the Department of the Treasury and the passing of the Chinese Exclusion Act, collector of customs were required to maintain manifests, issued certificates to Chinese laborers leaving the United States, and because of the federal taxes that had to be paid, immigration fell under the Department of the Treasury.¹²⁵ Immigration was given its own office in the Treasury department which later became the Bureau of Immigration.¹²⁶ Responsibility was then transferred to the Department of Commerce and Labor to protect the domestic labor force and then again to the Attorney General in the Department of Justice due to a shift to security interests.¹²⁷ Eventually, the office responsible for regulating immigration was the Immigration and Naturalization Service and after September 11th, 2001, a part of the Department of Homeland Security. Currently, multiple agencies coordinate and cooperate to enforce immigration policy and law.

Adrian Rodríguez, author of the article *Punting on the Values of Federalism in the Immigration Arena? Evaluating Operation Linebacker*, wrote that the Supreme Court declared in

¹²⁴ Adrian J. Rodríguez, "Punting on the Values of Federalism in the Immigration Arena? Evaluating Operation Linebacker, a State and Local Law Enforcement Program along the U.S.-Mexico Border," *Columbia Law Review* 108, no. 5 (2008): 1226–67, <http://www.jstor.org/stable/40041798>. 1232.

¹²⁵ [Chinese Exclusion Act] An Act of May 6, 1882, Public Law 71, 47th Congress, 1st Session, 22 STAT 58, to Execute Certain Treaty Stipulations Relating to Chinese; 5/6/1882; Enrolled Acts and Resolutions of Congress, 1789 - 2011; General Records of the United States Government, Record Group 11; National Archives Building, Washington, DC. [Online Version, <https://www.docstoc.org/documents/document/chinese-exclusion-act>, September 10, 2022]. 2.

¹²⁶ *Ibid.* Rodríguez. 1236

¹²⁷ *Ibid.* Rodríguez. 1236.

1849 in *Smith v. Turner* that immigration, citizenship, and taxation of vessels entering the United States fell under the responsibility of Congress and the federal government.¹²⁸ Rodríguez cited that in *Chae Chan Ping v. United States* only the federal government was able to “exclude foreigners under its sovereign powers delegated by the Constitution” and states were not allowed to regulate immigration.¹²⁹ This occurred in 1882 the same year that the Chinese Exclusion Act was passed. Since federal law superseded state law by the *Chae Chan Ping* ruling, states were not allowed to enforce immigration policy. However, over the course of history, both the federal government and states have had to take certain measures to regulate immigration. Who then has the most say over issues of immigration? Is it congress that issues laws of the federal government, or state agencies using local resources? Furthermore, who regulates the federal government in their application of justice with regards to immigration. There is no one office that regulates immigration. Instead, there are many departments that manage immigration law and policies, and for this reason jurisdictional issues are pervasive and understanding how immigration law is made and carried out becomes muddled and unclear. In 2001, an immigration decisively shifted to the domain of the Office of Homeland Security.

In early 2001, there were renewed talks between the United States and Mexico on the topic of immigration reform. President George W. Bush met with President Vicente Fox because he wanted to strengthen ties between the two nations, begin a guest-worker program for Mexicans to work in the United States, and work on a path for permanent legal residency that would eventually lead to citizenship for undocumented Mexican immigrants currently in the

¹²⁸ Ibid. Rodríguez. 1232.

¹²⁹ Ibid. Rodríguez. 1236.

U.S.¹³⁰ After their meeting, both presidents agreed to continue talks to work on immigration reform together in an effort towards building bridges rather than walls and avoiding the isolationism, protectionism, and nativist rhetoric that had come to plague the debate.¹³¹ These talks abruptly ended on the morning of September 11, 2001.

Post 9/11 Legislation

Approximately a month and a half after the attacks on the World Trade Center, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) was passed by Congress and became public law on October 21, 2001.¹³² Most of the requirements in this act related to immigration through the northern border of the United States due to the fact that several of the 9/11 hijackers had made their way into the country via Canada. Nowhere in this law was the southern border region mentioned. The most important aspects of this act that pertain to immigration are sections 413 and 414. Section 413 allows the Secretary of State to share information about the state visa lookout program database called the integrated entry and exit data system.¹³³ Under certain circumstances, information on individual immigrants might be shared in order to combat terrorism, trafficking in controlled substances, persons, or weapon. Section 413 also provided for

¹³⁰ Ramón Gutiérrez, "George W. Bush and Mexican Immigration Policy," *Revue Française D Etudes Américaines* 113, no. 3 (2007): 70, <https://doi.org/10.3917/rfea.113.0070>. 71-72.

¹³¹ CSPAN, "George W. Bush on Immigration," www.youtube.com, 2011, <https://www.youtube.com/watch?v=116tPdgQzYk>. During the interview, President Bush spoke about America's history in the 1920s about isolationism, protectionism, and nativism, and cautioning against a return to these ideas in modern America.

¹³² F. James Sensenbrenner, "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" (2001), <https://congressional.proquest.com/congressional/result/congressional/congdocumentview?accountid=7121&groupid=114737&parmId=17F8481DF05&rsId=17F848152EB>.

¹³³ USA Patriot Act pdf. Pg 353 Title IV, subtitle B, sec 413.

the sharing of information with foreign governments with the purpose of reciprocation.¹³⁴ The Secretary of State was permitted to share data with different agencies and foreign governments with the intention that the agencies and foreign governments also share their data with the Secretary of State. Section 414 reiterates what was outlined in the IIRIRA of 1996 regarding the implementation of biometric screening technology but required it be carried out as soon as possible due to national security concerns.¹³⁵ At their most general interpretation, these two sections deal with monitoring who is in the country, who is categorized as a non-citizen and their backgrounds with regards to terrorism, trafficking, and weapons. While there is no distinction of specific ethnic, racial, or religious groups that fell under the scope of this act, the generality allows for a sweeping, inclusive definition of non-citizen that encompassed documented and undocumented immigrants.

National security became a reoccurring theme connected to immigration. The biometric identification system and infrastructure was supposed to have been developed after the passage of IIRIRA, but the project did not happen.¹³⁶ The Patriot Act was the first in a number of policies that combined immigration imperatives with securing the United States against further terrorist attacks. America and its citizens had to be protected to ensure that no more Americans died on U.S. soil at the hands of aliens or foreign terrorists. After 9/11, border security tightened requirements for a path to citizenship. Within the next four years, three pieces of legislation were

¹³⁴ USA Patriot Act pdf. Pg. 353, Title IV, subtitle B, sec. 413.

¹³⁵ USA Patriot Act pdf. Pg. 353, Title IV, subtitle B, sec. 414.

¹³⁶ Cary Stacy Smith and Li-Ching Hung, *The Patriot Act : Issues and Controversies* (Springfield, Illinois: Charles C. Thomas, Cop, 2010), 24.

signed into law and operations were initiated that intended to control threats in the name of protecting the country.

Approximately seven months after these attacks, the Enhanced Border Security and Visa Entry Reform Act of 2002 (EBSVERA) was passed, signed, and within it came 6 new titles that affected immigration policy in the United States. Of these six, only Titles I, III and VI are analyzed here as they are the most relevant to the thesis. Title II refers to intra-agency information sharing. Title IV addresses operations for inspections of foreign nationals traveling to Canada, the United States and Mexico. Title V discusses issues with foreign students and monitoring their stays in the United States. Similar to IIRIRA of 1996, Title I, section 101 of EBSVERA dedicates itself to allocating funds for 800 new personnel, salaries for the new employees, cross-training of staff from other agencies that operate on the U.S. border and ports of entry, a pay increase for Border Patrol agents, inspection assistants and support staff with at least one year of service.¹³⁷ Section 102 made \$150 million available to the INS to expand technology (border wall, cameras, computer security, IT development), to streamline commerce and human traffic at ports of entry to include an expansion of programs for pre-enrollment and pre-clearance, as well as upgrading facilities of the INS, Customs & Border Protection and the Department of State.¹³⁸ Title III section 302 of EBSVERA relates to the development and implementation of biometric identification cards for crossing at ports of entry. However, IIRIRA had already established some groundwork for this, and the program was revisited and renewed with the Patriot Act; EBSVERA represented the third phase of this system's implementation.

¹³⁷ F. James Sensenbrenner. Enhanced Border Security and Visa Entry Reform Act of 2002 (2002). [https://www.congress.gov/bill/107th-congress/house-bill/3525.Enhanced Border Security and visa Entry Reform Act of 2002 Law, Title I, Sec. 101, 545.](https://www.congress.gov/bill/107th-congress/house-bill/3525.Enhanced%20Border%20Security%20and%20visa%20Entry%20Reform%20Act%20of%202002%20Law,%20Title%20I,%20Sec.%20101,%20545)

¹³⁸ Ibid. Sensenbrenner. Title I, Sec. 102, 546.

The Attorney General had to create a database in which crossers at the ports of entry were identified through technology that read visas, passports, travel, and entry documents in the possession of immigrants.¹³⁹

The Homeland Security Act of 2002 (HSA) laid the foundation for state and local participation in federal immigration enforcement, like Operation Linebacker, whereas previously it was only used on an emergency basis. HSA brought together 22 agencies under the direction of 3 major groups: Customs and Border Patrol (CBP), Immigration and Customs Enforcement (ICE), and United States Citizenship and Immigration Service (USCIS).¹⁴⁰ What this act looked to accomplish was to combine agencies and establish the Department of Homeland Security (DHS). The most important of all 17 titles is Title VIII, which granted authority to this federal agency to coordinate with non-federal entities such as state and local government.¹⁴¹ HSA grouped terrorism and immigration together under the umbrella of national security, which created the notion that these two issues were somehow related to one another. The act broadened the scope of who was to be monitored and for what reason. In doing this, Title VIII permits the cooperation of resources of state, local and federal law enforcement in the name of protecting

¹³⁹ Enhanced Border Security and visa Entry Reform Act of 2002 Law, Title III, Sec. 302, pg. 552

¹⁴⁰ Homeland Security. "Who Joined DHS." Department of Homeland Security, September 15, 2015. <https://www.dhs.gov/who-joined-dhs>. The 22 organizations are: U.S. Custom Service, Immigration and Naturalization Service, Federal Protective Service, Transportation Security Administration, Federal Law Enforcement Training Center, Animal and Plant Health Inspection Service, Federal Emergency Management Agency, Strategic National Stockpile Nation Disaster Medical System, Nuclear Incident Response Team, Domestic Emergency Support Team, Center for Domestic Preparedness, CBRN Countermeasures Program, Environmental Measurements Laboratory, The National Biological Warfare Defense Analysis Center, Plum Island Animal Disease Center, Federal Computer Incident Response Center, National Communications System, National Infrastructure Protection Center, Energy Security and Assurance Program, United States Coastguard, and the United States Secret Service.

¹⁴¹ Homeland Security Act of 2002. Pg. 2220, Title VIII, subtitle A, sec 80.

national security and increases the risk of profiling immigrants as possible terrorists throughout all communities.

The Real I.D. Act of 2005 continued with the upgrades of facial recognition compliance for driver's licenses and state identification cards. Including several amendments to IIRIRA, the act granted the Secretary of Homeland Security and the Attorney General discretionary authority to erect fencing as needed, and power to remove individuals they believed were a threat to national security.¹⁴² Further, that power required no judicial oversight for those decisions made by the secretary of DHS. The act dictated that any type of judicial review would be considered only if a petition to an appropriate court of appeals was filed according to the guidelines in the sections outlined.¹⁴³ There were no checks-and-balances, and the courts were not able to contest these decisions when they were able to be applied retroactively.¹⁴⁴ The Real I.D. act was an amendment to IIRIRA that created more stringent guidelines for asylum, biometric I.D. system, and authorized the beginnings for a physical barrier.

There was a shift in the way immigrants were viewed and it gradually began to evolve. In 1996, AEDPA enacted harsher penalties for those immigrants that had been convicted of a crime, thus disqualifying them from residency or citizenship. EBSVERA invested billions more in technology, personnel, training, compensation, infrastructure, and facility renovations. HSA was made from the consolidation of agencies under 3 main groups led by the Department of Homeland Security which eventually laid the groundwork for state and local participation in

¹⁴² F. James Sensenbrenner, "The REAL ID Act of 2005," Pub. L. No. 418 (2005).

¹⁴³ Ibid. Sensenbrenner. 22, lines 16-25.

¹⁴⁴ Ibid. Sensenbrenner.

federal immigration enforcement. The REAL ID Act gave more jurisdictional control to the Secretary of the DHS and the Attorney General. In an attempt to modify the perception of undocumented immigrants, these policies inadvertently criminalized immigrants' status regardless of whether or not they had an existent criminal past; they were labeled as criminals just by the fact of their presence in the U.S.

The Real I.D. Act granted the Secretary of DHS unique singular power over millions of immigrants' lives through veto power over judicial review of deportation cases and was one of the building blocks that led to a justification for policies and operations run by local law enforcement agencies. In 2004, the USA PATRIOT Act was amended to finally carry out biometric technology installation as soon as possible and included the southern border as part of the act. As a major port of entry, El Paso was directly affected by this act and put greater pressure on federal law enforcement to police who was crossing the border. The biometric systems were meant to identify those with criminal backgrounds, monitor their frequency and location of crossing. Past records of crime were flagged as indicators of potential reoffending. However, statistics by the El Paso Police Department and the El Paso County Sheriff's Department indicated that the rates of crime in the city were not aligned with identified offenders who crossed international borders. Coincidentally, that same year, El Paso was named one of the Top 5 Safest Cities in the United States with populations of over 500,000;¹⁴⁵ the crime rate in El Paso, was not as high as other cities with populations at or over 500,000. Violent crime rates in El Paso decreased compared to the national level and both the Sheriff's office and El Paso Police

¹⁴⁵ Shjarback, J., & Manjarrez, V. (2019, February 15). Violent crime in El Paso before and after border fence: Column. Retrieved December 09, 2020, from <https://www.elpasotimes.com/story/opinion/2019/02/15/violent-crime-el-paso-before-and-after-border-fence-column/2875181002/>

Department (EPPD) also reported a decrease from the previous year.¹⁴⁶ CBP sponsored a pilot program that began to use local law enforcement at the border called Operation Stonegarden in 2005.¹⁴⁷ The operation was a grant program to reimburse state and local law enforcement agencies which undertook to police immigration enforcement. It is important to note that this practice was first authorized in IIRIRA in 1996, but El Paso did not have an expressed written plan in place.¹⁴⁸ Operation Stonegarden was so successful in incorporating various municipal agencies that plans for a more long-term operation began. The following year, Operation Linebacker was initiated.

Operation Linebacker

Incorporating the grants made available through Operation Stonegarden, sheriffs from 16 border cities came together and formed the Texas Border Sheriff's Coalition on May 4th, 2005. Primary among their objectives was to identify and prevent entry of terrorists and weapons into the United States. However, as part of their mission, they also strove to strengthen border security by co-operating with federal agencies to prevent such illegal entry and thus, protect U.S. territory and citizens as a second line of defense to the federal agencies in place in stopping harmful materials, contraband, and individuals with no legitimate right of entry. These goals coalesced into Operation Linebacker. As part of this pilot joint operation, Linebacker's

¹⁴⁶ El Paso Police Department. (2008). 2008 Annual Report (pp. 1-39, Rep.). El Paso, Texas: City of El Paso.

¹⁴⁷ El Paso Sheriff's Department, (2005). EL Paso County Sheriff's Office 2005 Annual Report (pp. 1-28, Rep.). El Paso, TX: El Paso County Sheriff's Office Crime Analysis Section. Pg. 2

¹⁴⁸ Maria Cristina Morales and Theodore R. Curry, "Citizenship Profiling and Diminishing Procedural Justice: Local Immigration Enforcement and the Reduction of Police Legitimacy among Individuals and in Latina/o Neighbourhoods," *Ethnic and Racial Studies* 44, no. 1 (February 25, 2020): 1–20, <https://doi.org/10.1080/01419870.2020.1723669>.

objectives were adopted on September 16, 2005.¹⁴⁹ Governor Perry announced the statewide border security plan that included the work of the Texas Border Sheriff's Coalition on October 12th, 2005. Perry stated that he decided on this plan "because the State of Texas [could not] wait for the federal government to implement needed border security measures."¹⁵⁰ He noted that criminal organizations were already operating on both sides of the Texas border and he determined that the border represented a potential national security threat from drug cartels, Al Qaeda and other terrorist groups.¹⁵¹ Perry's plan focused on six areas: support from local law enforcement and OLB, lowering violent crime rates on the border, patching radio systems together, developing a response plan, having the National Guard provide training when needed and to pass judicial improvements.¹⁵² The Border Patrol would be first line of defense while the Sheriffs and their deputies would be the second line of defense. Working in conjunction this way helped Texas obtain federal funding in the form of grants from the DHS to subgrant monies to local municipalities to secure the border. However, the legality of this cooperation and monitoring its success was put to the test in the following three years.

Operation Linebacker was one of several border security initiatives that was enacted during the 21st century. According to an analysis written by Adrian J. Rodríguez in the *Columbia Law Review*, Operation Linebacker was tasked with increasing patrols in high-risk areas, random vehicle checkpoints, allocating state funds to border law enforcement, and used state funded

¹⁴⁹ Ibid. El Paso Sheriff's Department Annual Report 2005

¹⁵⁰ Gov. Perry Launches State-Led Border Security Operation [Press release]. (2005). New York, NY: Columbia Law Review: Author.

¹⁵¹ Ibid. Gov. Perry Launches State-Led Border Security Operation [Press release].

¹⁵² Ibid. Gov. Perry Launches State-Led Border Security Operation [Press release].

cameras to monitor the southern international boundary.¹⁵³ Rodriguez' analysis seems to contradict exactly what the Sheriffs Coalition stated what OLB was intended to do. The purpose of the operation was to prevent violent crime in border cities with the help of the Sheriff's department as a second line of defense for the Border Patrol.¹⁵⁴ However, according to the Sheriff's statistics, crime increased even after OLB began and El Paso Police Department (EPPD) shows crime indicating an upward trend as well. Annual reports from the El Paso County Sheriff's Department and the El Paso Police Department which cover the years before and after Operation Linebacker's execution reflect the uptick of crimes in the El Paso area. EPPD's statistics give raw data numbers of incidences and does not reflect the change year over year. While there were dips in statistical numbers from one year to the next, the general trend was an upward one indicating an increase in the number of reported crimes. According to Louie Gilot of the El Paso Times, in the first year that OLB was enforced, the most aggressive offenses (sexual assault, aggravated assault, and vehicle theft) decreased, but homicides increased by 2 from 4 to 6, as well as assault, burglary, arson, robbery, and theft.¹⁵⁵ If the objectives of the operation were to deter crime, the evidence showed that there was no connection between the rates of the crime committed in El Paso, before and after the operation, and did not show a substantial reduction.

The El Paso Sheriff's Department's data reflected an upward trend in crime from 2005-2008, immediately before and after Operation Linebacker begun. It appears statistics were

¹⁵³ Rodríguez, Adrian. Punting on the Values of Federalism in the Immigration Arena? Evaluating Operation Linebacker. Pg 1248

¹⁵⁴ Gov. Perry Launches State-Led Border Security Operation [Press release]. (2005). New York, NY: Columbia Law Review: Author.

¹⁵⁵ Gilot, L. "Crime Rises despite Operation Linebacker." El Paso Times, January 8, 2007.

<https://www.newspapers.com/>.

selected and reported to reflect desired positive outcomes and to direct the narrative on the success or failure of an operation. Data was plotted to reflect an outcome rather than being analyzed for what the empirical evidence indicated. The trend from 2005-2006 clearly showed that crime, including violent crime, was not deterred, but rather increased throughout El Paso County. From 2006-2008, there were marked differences between the data of EPPD and the Sheriff's Department. El Paso PD statistics for 2006-2007 showed a substantial decrease in felonies within the city limits, but during the same time frame, the sheriff's incidence of the same felonies increased.¹⁵⁶ Evaluating 2007-2008, Sheriff's information showed a consistent decline in the same offenses, while EPPD indicated a slight increase in offenses during the same period.¹⁵⁷ What these statistics show is that for the same types of violent crime reported in the same area by two different local law enforcement agencies, the raw data does not match. For federal reporting to indicate a decrease in crimes based on apprehensions of immigrants is incorrect because of contradictory information provided by the local agencies. All this has shown is that data is manipulated, and that the myth of immigrants creating more crime in El Paso did not (bear out with concrete evidence). The narrative of crime perpetrated by immigrants that both Silvestre Reyes in 1993 and Sheriff Samaniego in 2005 advanced, had little foundation in reality and was baseless for justifying their strategies for border security.

On August 17, 2006, the U.S. House Judiciary Committee, led by Senator F. James Sensenbrenner, held a hearing in El Paso, Texas at the Chamizal National Memorial to discuss illegal immigration, and its impact on border cities, specifically what role if any Mexico should

¹⁵⁶ El Paso Police Department. (2008). 2008 Annual Report (pp. 1-39, Rep.). El Paso, Texas: City of El Paso.

have in vetoing U.S. border policies. Amongst the people who gave testimonies were Sheriff Leo Samaniego, Police Chief Richard Wiles and Congressman Silvestre Reyes, the same former Sector Chief of the Border Patrol in 1993. Samaniego testified that Sheriffs and their deputies already serve as the second line of defense once an immigrant crossed the border and any resulting harm to both resident and immigrant would become the jurisdiction of those officers, not the border patrol.¹⁵⁸ Samaniego urged the committee to appropriate federal funds for Border Texas Sheriff's Coalition for work that they had already engaged in, and he called for an approval of Section 607 of H.R. 4437. This section of the house resolution would enact an enforcement assistance program that allowed the transfer of "aliens" in the custody of the Sheriff's department to the custody of federal law enforcement and allow local law enforcement to be reimbursed for the costs that they may incur.¹⁵⁹ Samaniego testified that the resolution "clarifies that States have the inherent authority to enforce all immigration laws...The more than 650,000 officers nationwide represent a massive force multiplier. House Resolution 4437 would give us all the authority we need to enforce immigration law."¹⁶⁰ House Resolution 4437, the Sensenbrenner Bill would have provided \$100 million for training and border security from Texas to California and include the various Sheriffs' Departments along the U.S.-Mexico Border.¹⁶¹ Though it did pass the House, the resolution failed to secure enough votes to pass in

¹⁵⁸ United States. *Should Mexico Hold Veto Power over U.S. Border Security Decisions? Hearing before the Committee on the Judiciary, House of Representatives, One Hundred Ninth Congress, Second Session, August 17, 2006.* HathiTrust. Washington: U.S. G.P.O. : For sale by the Supt. of Docs., U.S. G.P.O., 2006. <https://hdl.handle.net/2027/pst.000058945513>. 6-7.

¹⁵⁹ F. James Sensenbrenner, "BORDER PROTECTION, ANTITERRORISM, and ILLEGAL IMMIGRATION CONTROL ACT of 2005," *Congress.gov*, December 5, 2005, <https://www.congress.gov/congressional-report/109th-congress/house-report/345/1>.

¹⁶⁰ Ibid. *Should Mexico Hold Veto Power over U.S. Border Security Decisions?* 6-7.

¹⁶¹ 109th Congress, "Text - H.R.4437 - 109th Congress (2005-2006): Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005," *www.congress.gov*, January 27, 2006, <https://www.congress.gov/bill/109th-congress/house-bill/4437/text>.

the Senate. Sheriff Samaniego's statement was problematic because immigration law is a federal responsibility and therefore allowing local law enforcement to enforce immigration policy would be a violation of the Constitution.

Although Samaniego seemed to be ok with integrating local law enforcement and immigration enforcement, EPPD Chief Richard Wiles was not. He believed that the El Paso community relied on and supported each other economically and through family relationships.¹⁶² Wiles disagreed that local law enforcement should be tapped to enforce federal immigration laws because he felt it undermined the trust and cooperation of immigrant communities, occupied resources of local law enforcement, involved complex immigration law for which officers shouldn't be responsible, limited the authority of local leadership, and posed a risk of civil liability to local law enforcement.¹⁶³ He also explained that El Paso was one of the safest cities in the country because of the relationships local law enforcement had built with the community members.¹⁶⁴ Wiles felt that there were other ways to uphold immigration policy other than involving state and local municipalities. Policymakers understood the controversy that could come with any sort of militarization of the border from past experience with Operation Blockade and Operation Hold the Line. Even Silvestre Reyes himself, thirteen years after the implementation of OHTL made the following statement at that hearing, "we talk about creating this new class of criminals, which I don't support--and I will stipulate to my good friend from Texas, Congressman Gohmert, that I voted against that as well, because I don't think we need to criminalize a whole new status of people."¹⁶⁵ Detailed studies spanning two decades from 1980-

¹⁶² Ibid. *Should Mexico Hold Veto Power over U.S. Border Security Decisions?* 59.

¹⁶³ Ibid. *Should Mexico Hold Veto Power over U.S. Border Security Decisions?* 63-64.

¹⁶⁴ Ibid. *Should Mexico Hold Veto Power over U.S. Border Security Decisions?* 60.

¹⁶⁵ Ibid. *Should Mexico Hold Veto Power over U.S. Border Security Decisions?* 175.

2000 specifically contradict what these various officials and legislators tried to allege about the nature of immigration and crime. Immigration was not found to be interconnected with crime or violence and in certain cases actually helped to reduce levels of violence.¹⁶⁶ To combine local police officers and federal border agents would affirm the criminalization of immigrants and to justify citizenship profiling. Citizenship profiling “refers to incidents where stops, searches, and questioning by law enforcement are motivated by a suspicion of the individuals lack of citizenship.”¹⁶⁷ Profiling incidents erode the relationship between local law enforcement and citizens and diminishes any trust that the people have with police.¹⁶⁸

Since 1882, immigration issues have been overseen by the federal government and not by the states individually. Operation Linebacker so flagrantly conflated federal mandates with the tasks of local officers and resources that Texas Senator Elliot Shapleigh, the Mexican Consulate, and other immigration activists denounced and criticized the practices of the El Paso Sheriff’s Department and Sheriff Leo Samaniego. An article written for the El Paso Times by Louie Gilot stated that the Mexican Consulate in El Paso complained that the El Paso Sheriffs crossed the line when it came to their civic duty and consulate spokeswoman Socorro Cordova confirmed that she called and spoke directly to Sheriff Samaniego and requested he not intrude in immigration affairs.¹⁶⁹ El Paso citizens expressed the opinion that the only result of OLB would be to deter immigrants, documented and undocumented, from calling 9-1-1 for fear of deportation or deportation of their family.¹⁷⁰ Families were terrified of going to the store for

¹⁶⁶ Garth Davies and Jeffrey Fagan, “Crime and Enforcement in Immigrant Neighborhoods: Evidence from New York City,” *SSRN Electronic Journal* 641 (May 2012): 99–124, <https://doi.org/10.2139/ssrn.1987096>. 104-105.

¹⁶⁷ Morales, Curry. 2.

¹⁶⁸ *Ibid.* Morales, Curry. 5-6.

¹⁶⁹ Gilot, L. “Mexican Consulate Criticizes Sheriff’s Role in Arrests,” April 20, 2006. www.newspapers.com.

¹⁷⁰ Gilot, L. “El Paso Sheriff’s Harass Public.” El Paso Times, June 1, 2006. <https://www.newspapers.com/>.

groceries, to work, to school or pick up their children from school because they didn't know if they would run into sheriff's deputies patrolling the area.¹⁷¹ This caused a distrust of the police and regardless of immigration status, the harsh reality was that since OLB was enacted, it gave power to local agencies helping the Border Patrol with immigration issues. Senator Elliot Shapleigh issued a statement on July 13, 2006, that read that civil rights were being violated by sheriff's deputies mentioning that Operation Linebacker brought back memories of Operation Hold the Line when Border Patrol agents were detaining anyone that looked Mexican and brown skinned.¹⁷² Shapleigh indicated that under the provisions of a state senate bill, state and local law enforcement groups were specifically prohibited from profiling individuals solely based on characteristics of race; it mandated that each law enforcement agency develop an explicitly written policy about racist profiling and yet, it required all law enforcement officers to "collect race data for traffic stops."¹⁷³

Conclusion

Even prior to the attacks on the World Trade Center in 2001, immigration policies and laws have been enacted to criminalize those that were in the country undocumented. The Bush administration's approval of the USA PATRIOT Act, EBSVERA of 2002, Homeland Security Act of 2002, and the REAL ID Act of 2005 seemed well-intentioned to reform procedures for entry and re-entry and was passed in light of the September attacks on the World Trade Center when funding for border security seemed like a reasonable and even necessary. Implementing

¹⁷¹ Ibid. Gilot, June 1, 2006.

¹⁷² Shapleigh, E. Operation Linebacker: El Paso Sheriff must comply with the Constitution; not stop people based on skin color. Commissioner's Court. July 13, 2006.

¹⁷³ Ibid. Shapleigh.

Operation Linebacker under the proposition to deter crime, sounded like a wonderful idea, but analysis shows that crime did not decline and furthermore that having local law enforcement act as a second line of defense against illegal immigration led to public distrust and racial profiling. The passage of so much legislation was reactionary to the events that occurred on 9/11 and in the end seemed to speed up strategies that had already been mandated such as biometric technology.

Conclusion

The criminalization of immigrants is deeply embedded within American history, specifically, in the development of immigration policy. Discrimination through legislation often works in cycles and has led to racial scripting and citizenship profiling. As by the repatriation of Mexicans from 1929 to 1939, then during Operation Wetback in the 1950s, again in the 1990s with the myth of urban crime in El Paso perpetrated by crossers, and yet again after the attacks on the World Trade Center on 9/11 under the guise of national security, lawmakers have attempted to demonize the other when it suits their narratives of the time. It is troubling that immigration and national security are issues which have been linked to one another and the resulting rhetoric which springs from this union is one of distrust, fear, and discrimination. Having analyzed the earliest forms of immigration policy which are expressly discriminatory against a particular ethnic group and specific nationality, one can see the contradiction between the Statue of Liberty's call to send [us] your tired, your weak, your poor, with legislation that essentially counters with except if they're Chinese. The constant shift in responsibility for overseeing immigration policy and enforcement belies a dedication to monitoring how our borders are secured and from whom. As the economic need arose, Mexican immigrants were granted access to perform labor that other Americans simply didn't want to do. Yet, in times of economic turmoil and global depression, attitudes of hate and discrimination returned with Mexican and Americans of Mexican heritage being targeted as *persona non grata* by American society. Even utilizing non-scientific and racist notions of superiority, citizens and non-citizens alike were rounded up and forcibly removed from the country in the name of protecting real Americans' interests.

With the passing of IRCA, what was labeled as a path to citizenship and a compromise in the immigration debate resulted in racial profiling of workers specifically to avoid their employment or sanctions for employers that weren't strict enough to dissuade the unscrupulous from exploiting the immigrants anyway. Just ten years later, America had been attacked once already at the World Trade Center and Operation Hold the Line was implemented later that same year. The purported crime rates related to the ever-growing influx of undocumented immigrants was held up as a banner for justifying an increase in personnel and a new deterrent strategy rather than one based on apprehensions. The Clinton Administration sought to tighten the reins of border security by expanding the scope of deportable offenses and narrowing the path to legalization for immigrants. As has been demonstrated, the supposition versus the reality of that crime-and-immigrant correlation has been shown to be false and yet efforts continued to increase funding for more personnel and technology. The psychological foundations for erecting a physical barrier between the two countries were seeded within IIRIRA's sprawling lines of text.

At the turn of the new millennium, one fateful Tuesday morning turned the idea of "the other" into a serious threat to the security of our nation. Anyone who wasn't born here became the target of suspicion, but more specifically anyone with uncategorizable shades of brown skin who spoke a different language and came from a different place. The Patriot Act further fanned the flames and provided the power and resources to stop undesirables at our ports of entry and along the country's most vulnerable boundaries. While the act never mentions a threat at the nation's southern border, those who would foment xenophobic fear didn't miss the opportunity to intermingle the ideas of national security, terrorism, and criminal immigrants. While the nation reeled from its lack of preparedness for such a devastating attack by a foreign enemy on domestic territory, fear gave rise of the rhetoric that led to more calls for greater security, more

personnel, more stringent policies, more legislation, more protection. Criminalizing those who had nothing to do with these attacks galvanized the debate between xenophobes and rationalists, with anti-immigrant defenders framing the argument as pro- or anti- security of the United States. This division permeated all levels of law enforcement and quickly enveloped our nation's border security officers. The consolidation of agencies tasked with monitoring, protecting, and defending the nation under a Department of Homeland Security soon absorbed the nation's border agents tasking them with participating in national security defense. Their roles and the people with whom they had the most interaction then became labeled as possible threats to national security or terrorists and not just people with families or men, women, and children seeking better opportunities.

Serious debate on immigration reform becomes impossible when there is an oversimplified explanation as to why immigrants are crossing into the United States documented or undocumented. There has to be an honest analysis of the economic and geopolitical underpinnings for such mass movement of peoples. Debate devolves into argument which devolves into vitriol without bases in fact about why it is bad for a particular group to be here. Crime, health, national security; all of these reasons are shown to be unsubstantiated and baseless claims that thinly veil the xenophobic tendencies at the root of those arguments. Criminalizing immigration allows politicians to undertake certain efforts and purport to promote particular viewpoints to garner support and advance these narratives. Campaign slogans are transmuted into policy based on advice from counselors, media and sources far removed from those it affects the most.

According to former President Donald Trump, drug dealers, rapists, and other criminals allegedly plague our communities and create nightmares of the other and their brown skin.¹⁷⁴ Moral arguments of humanitarian behavior are volleyed between the opposing sides of the debate regarding the kind of treatment immigrants receive. One group claims moral superiority by declaring that immigrants are criminals, and the government and law enforcement does well to protect the well-being of its citizens. Then the opposing group attempts to reclaim the metaphorical flag of self-righteousness by decrying the treatment of those apprehended by criticizing their living conditions. Once again, critical self-analysis and debate breaks down because of point-for-point arguments that pit two different types of moralities against each other.

What often goes unspoken in the debate is that immigration is not a problem, but rather an issue every nation faces with regard to its own sovereignty. How a society and its representatives address and manage that issue speaks to the attitudes of that society at large and their respective behavior is indicative of their willingness to see themselves and others as equals and humans.

Both the Obama and Trump administrations represented reactionary swings in opposite directions of the pendulum of political ideology from one extreme to another. Rather than seeking out genuine solutions to the issues affecting modern U.S. immigration policy, opposing sides continue to argue about the validity of apprehensions, the statistics on crime and the necessity of state and municipal manpower. Media coverage on who is to blame for crime, immigrants, or native born residents, rekindles the controversy as a means to an end for

¹⁷⁴ Donald Trump, "Presidential Candidacy Announcement," Transcript (Donald Trump Announcement of Presidential Candidacy, June 16, 2015), <https://time.com/3923128/donald-trump-announcement-speech/>.

continued discriminatory policies and procedures adopted at federal, state, and municipal levels. Adequate reform cannot occur without a legitimate review of a system infected by these attitudes of discrimination toward immigrants. Dismantling the precarious framework of only certain immigrants as a threat to national security is paramount to these discussions on reform and from there, pathways to citizenship can be developed which allow for equal treatment under our nation's laws.

El Paso is crucial to include when examining how immigration laws and policies impact communities along the border. Without El Paso, historians' understanding of immigration is incomplete. The rich history that envelops El Paso and surrounding areas are important when studying Texas because of the city's uniqueness as the only border city whose issues impact not only Mexico, but also its sister city Las Cruces, New Mexico. Examples mentioned throughout the essay such as the action taken at Bowie high school by border patrol agents and some community responses that repeated the concern over undocumented immigrants bringing crime across the border, show how racial scripts have impacted views toward immigration in the borderlands. Events on August 3, 2019, when a shooter walked into the Cielo Vista Walmart to kill as many Hispanics as he could shows how racial scripts about a supposed Hispanic invasion of the United States resulted in an abhorrent display of violence. Furthermore, new sections of the border wall were built as a direct result of racialized scripts deployed during the Trump administration that cited borderland cities as dangerous. This type of rhetoric that labels Hispanics or immigrants coming into the United States as criminals and inspiring fear of "the other," has led to not only violence in the borderlands but also continued fortifications of the border.

A war on terror should not be equated to a war on immigrants. People should not be punished nor feel threatened about the prospect of coming to this country. The current political climate of civil unrest gives hope to the possibility of genuine discourse and debate about solutions to the nation's immigration policies and legislation because it demonstrates a recognition that something is wrong. While anti-immigration pundits might quip that they agree the immigration system is flawed, I would counter that the system is broken. It has, for far too long, moved in the direction of closing off our borders in favor of protection of Americans, but even more so, Americans of a particular shade or complexion. The system has been manipulated by legislators with fear and with racist rhetoric. Where once our shores and borders welcomed foreigners seeking to establish new roots and take advantage of new opportunities, fear has regularly been used to try to derail our democratic experiment in favor of the comfortably known. Course corrections on this journey have been few and far between, but it is specifically for these reasons that the proverbial line in the sand must be bridged by an open hand and not a closed fist.

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Vita

Melissa L. Trejo was born and raised in El Paso, Texas. She received an Associate of Arts degree in English (2014) and Chicana/o Studies (2015) and earned a Bachelor of Arts degree in Chicano Studies with a minor in English and American Literature in 2018. As an undergraduate she was a part of the Women's and Gender Studies Honor Society TRIOTA.

As a graduate student, Melissa was a member of Movimiento Estudiantil Chicano de Aztlán (MEChA) and served as President of the organization in 2021. For the 2020-2021 school year, she received the Richard E. Dunlap Memorial Fund Scholarship. She was employed at a non-profit organization that helps at risk youth and worked as a tutor. Melissa aims to work as a history teacher for middle school and high school children, or as a history professor.

Contact information: mlbejado@hotmail.com or mlrios4@miners.utep.edu