

Immigration Reform in the United States:

**IRCA Revived: Contextualizing the Border Security, Economic Opportunity
and Modernization Act (S. 744)**

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Abstract

The Immigration Reform and Control Act (IRCA) 1986, was the last comprehensive piece of immigration legislation passed in the United States and it failed to meet the needs of employers, protect immigrants and create equitable access in U.S. immigration. With the Border Security, Economic Opportunity and Modernization Act (S. 744) passed in the U.S. Senate, it might be possible that a comprehensive bill better suited to the needs of the American economy and people will replace the IRCA. However, due to the political nature of immigration reform in the U.S., S. 744 contains compromises that disproportionately affect communities living along the border without providing the financial resources to regulate the implementation of S. 744. Although the IRCA failed to meet expectations, namely achieving a lasting reduction in undocumented migration, the authors of S. 744 have chosen to use the IRCA as the framework to structure the new bill. S. 744 will focus on giving employers greater access to temporary foreign workers, allow undocumented immigrants the ability to transition to permanent resident status and secure U.S. and Mexico border by completing the 2,000-mile security fence.

The success of S. 744 rests on its final stated goal of securing the border. Without a 90% apprehension rate, not a single undocumented immigrant will be able to apply for legalization under the new law. Undocumented immigrants will continue to “live in the shadows”, employers will not be subject to greater sanctions, regulatory bodies will lack funds to protect undocumented workers, and border communities will become home to the largest border patrol in the world. (Bean, Brown, 2012 & Cushing, 2013) Employing a less unidirectional approach giving greater importance to the rights of undocumented immigrants in relation to securing the border could increase the possibility of undocumented immigrants having access to legalization programs as a result of the unrealistic conditions of a “secure” border as described in the legislation. Finally, recognizing that the needs of one community do not outweigh those of another, supporters of S. 744 in their single minded push for immigration reform overlook the needs of communities living along the border, while those who oppose S. 744 argue that any bill with a legalization program rewards individuals in violation of U.S. law having entered the United States without authorization. This paper will look at the conflicting arguments and interests to offer an understanding of how effective S. 744 may potentially be in repairing the U.S. immigration system, should it be signed into law.

ABBREVIATIONS

Arizona's Safe Neighborhoods Act – Arizona SB 1070
Border Security, Economic Opportunity and Modernization Act – S. 744
Congressional Research Service – CRS
Customs and Border Protection – CBP
Deferred Action for Childhood Arrivals – DACA
Department of Homeland Security – DHS
Development, Relief and Education for Alien Minors – DREAM Act
Electronic Employment Verification System – EEVS
Illinois Coalition for Immigrant and Refugee Rights - ICIRR
Immigration Customs and Enforcement – ICE
Immigration Naturalization Service – INS
Immigration Reform and Control Act – IRCA
Lawful Permanent Resident Status – LPR
League of United Latin American Citizens – LULAC
Lutheran Immigration and Refugee Service – LIRS
Migration Policy Institute - MPI
National Education Association – NEA
Office of Citizenship and New Americans – OCNA
Registered Provisional Immigrant Status – RPI
State Legalization Impact Assistance Grant – SLIAG
The National Association of Former Border Patrol Officers – NAFBPO
U.S. Census Bureau, American Community Survey – ACS
U.S. Department of Justice – DOJ

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Introduction

The United States is a country that was built upon immigration. However, throughout its history, immigration has been one of the most controversial and divisive issues facing American legislators and citizens. Issues over who is deemed worthy of being allowed into the country coupled with attempts to create criteria to determine eligibility for entrance in the U.S. are highly debated between and within both political parties. Americans tend to take pride in defining the U.S. as a country of immigrants, yet argue over the impact of continued immigration on the socio-economic growth of the country. One thing that politicians and citizens can agree on is that there is a need for immigration reform in the United States. Reform requires that one takes into consideration not only the economic impact immigrants have on the U.S. economy and wages, but also the impact such legislation has on the ability of workers to protect their rights and not be forced to live in constant fear of deportation, the impact on levels of crime, social and welfare issues, as well as the distribution of political power. The main populations targeted are undocumented immigrants entering into the United States and the millions of individuals currently living there without authorization. (Gans, Replegle and Tichenor, 2012)

It is within this climate that 8 U.S. Senators, Republican and Democrat, came together to construct legislation they believe encompasses a necessary evolution of the U.S. immigration system so as to meet the current needs of Americans and immigrants. The United States immigration reform bill, Border Security, Economic Opportunity and

Modernization Act (S. 744),¹ which is an option to replace IRCA, is the most recent and influential immigration reform bill constructed in the U.S. over the last 15 years. This piece of legislation is believed to address not only the issue of integrating undocumented immigrants into American society but also the reinforcement of the border so as to prevent the flow of unauthorized migration across the U.S. - Mexico border in the future.

Some of the main issues of the national debate include the impact undocumented migration has on economic growth, the naturalization process, border security, and access to political representation. Undocumented immigrants from Mexico are often perceived as stealing jobs from U.S. workers² and thus seem to be posing the greatest threat to the economy. Policymakers estimate that the United States is home to between 10 – 12 million undocumented immigrants and that this number will continue to rise unless control over the flow of immigration is strengthened.

Since IRCA, the last major immigration reform bill, passed in 1986, successive U.S. presidents and both houses in Congress have argued that the American immigration system is “broken” and that sweeping reform is urgently needed (Gans, Replogle and Tichenor, 2012). During the first two years that IRCA was in place, representatives from Immigration and Naturalization Service (INS) asserted that IRCA was successful in reducing undocumented immigration across the U.S.-Mexico border, reporting a decrease in the number of individuals apprehended while attempting to cross the border. These

¹ The Border Security, Economic Opportunity and Modernization Act is a comprehensive piece of immigration legislation passed in the US Senate. It addresses the strengthening of border enforcement and internal enforcement of immigration law, the law addresses concerns from employers who argue for greater access to foreign guest workers and the need to increase protections for immigrants residing in the United States. The legislation will be explained in further detail in section 1 of Chapter

² For the purposes of this paper, U.S. workers is a term meant to include U.S. citizens and labour migrants with legal documentation providing authorization to work in the United States.

statistics are largely due to a decrease in the number of unauthorized attempted border crossings. (Bean, Edmonston & Passel, 1990, pg. 152) The INS noted a surge of seasonal agricultural workers, with the offer of legal status, now entering the U.S. with valid work visas. (Suro, 1989) However, these results were ultimately short lived; overall, undocumented “immigration persisted virtually undaunted” (Baker, 1997, pg. 6)

Organizations calling for reform have emerged on either side of the issue, each focusing on a particular constituency affected by immigration. They diverge on the issue of types of reforms thought to be necessary. On the one hand, there are those who pursue the strengthening of immigrants’ human rights, while others call for tougher enforcement and border control, ostensibly for the American citizen. To gain the necessary support in both houses of Congress, an immigration reform package will need to overcome the oppositional nature of U.S. politics and bridge these groups.

A successful reform package must strengthen the enforcement of immigration laws and border control, institute harsher and more effective sanctions against employers, who knowingly hire undocumented immigrants, include a process to legalize the majority of undocumented immigrants currently residing within the U.S. and, finally, construct a system that would allow U.S. businesses greater access to foreign guest workers. Current legislation, despite containing all of these measures, has failed to achieve an immigration system that is able to regulate the flow of immigrants, create a deterrent strategy that would place sufficient opportunity costs on employers and successfully protect and inform immigrants and guest workers of their rights. IRCA is lacking a realistic plan to incorporate the labour needs of various industries and provide the necessary resources for the internal enforcement of unauthorized hiring practices. In the end, the Federal

government proved to be a reactionary body that performed wide scale raids without leaving behind the necessary tools for employers to hire U.S. workers and regulatory agencies to perform inspections to ensure employer compliance with the law.³ S.744 addresses these and other issues, attempting to repair the limitations of IRCA instead of overhauling the immigration system.

There is growing momentum in terms of organizations calling for immigration reform, which sheds light on the troubling conditions undocumented immigrants face as a result of their current classification as “illegal.” (DeGenova, 2002, pg. 422) With this human rights issue taking center stage in the political narrative of immigration reform, a greater understanding of the consequences of proposed legislation and the potential obstacles that may limit its effectiveness is needed. One such publically debated consequence centers the tradeoffs required to get S. 744 passed, namely the impact completing the Security Fence would have on communities living on both sides of the U.S.-Mexico border on the one hand and the potential denial of any type of legalized status to 11 million undocumented immigrants. Forcing border communities and undocumented immigrants to compete to defend their position, as if one is superior to the other, has created a hostile environment, each group attempting to discredit the other. In the end border communities are at a disadvantage, Congress does not hear their voice as loudly and they are often seen as complicit in the crossing of undocumented immigrants.⁴

For better or worse, the IRCA bill has laid the foundation for the current debate of

³ Data taken from the Department of Homeland Security tracking the enforcement actions of both the Obama and Bush administrations. Retrieved : <http://trac.syr.edu/immigration/reports/233/>.

⁴ BBCNews, “Mexico Anger over US Border Fence” Oct. 27, 2006. & The Border Network for Human Rights “Community Rally on Immigration Reform, Accountable Border Enforcement and the Consequences of Militarization” Sept, 6, 2013 retrieved at <http://bnhr.org/news/border-congressmen-to-hold-field-hearing-community-rally-on-immigration-reform-border-enforcement-accountability-and-militarization#more-1766>.

immigration reform and its shortcomings highlights the importance for real reform, not symbolic gestures.

Methodology

The newly proposed legislation, The Border Security, Economic Opportunity and Modernization Act (S. 744) has opted to maintain the intention of IRCA and use its structure as a guide for future immigration reform. Understanding whether S. 744 will create the needed changes to immigration law or be limited in ways similar to IRCA is the fundamental question. To make those predictions I will source 4 types of data. The first being the texts of various pieces of legislation in question, comparing the Immigration Reform and Control Act (IRCA) of 1986 to The Border Security, Economic Opportunity and Modernization Act of 2013 (S. 744) as well as local and state laws that impact various high immigrant-receiving regions. Second, I will look at media coverage of the legislation process, how legislators attempt to influence the political will of Americans and how Americans and immigration activist groups, either in support of or opposition to the law, critiqued the bill(s). Third, I will examine academic research undertaken by scholars from a number of disciplines on various issues that impact immigration and immigration reform. This includes economic scholars who have calculated the impact undocumented workers have on the U.S. economy and the wages of U.S. workers. Finally, I will cite data available from various U.S. Government departments and international organizations that focus on immigration, including the Migration Policy Institute, the PEW Hispanic Center and The Department of Homeland Security (DHS). These organizations collect demographic data on immigrant

communities and publish research on the impact proposed legislation will have on various immigrant groups.

When examined collectively, these types of data provide a detailed understanding of the content and impact of various pieces of legislation. As IRCA is to remain the framework for S. 744, a comparison of the two will provide insight into whether S.744 contains the changes suggested over the past 18 years. Media coverage of the process, from the time the bipartisan group formed with the intent to author a comprehensive piece of immigration reform to its passing in the U.S. Senate, will highlight the actors involved and the likelihood of the bill being signed into law. Scholarly research on past immigration reform and the quality of oversight and enforcement will highlight the limitations of past and future legislation and help to predict what the bill will realistically achieve. Finally, statistical data obtained from the U.S. government and other international organizations grounds debates that are often stalled by arguments over which group should be held accountable instead of discussions of how to move forward while inflicting the least amount of damage to all those involved. The insight offered by each of these forms of research when examined together help answer the questions of how effective will S. 744 be in repairing the U.S. immigration system and what are its limitations. In response to these questions I will address changes and additions that could be incorporated into the bill so as to help it achieve its intended aim of securing the border, creating sustainable access to U.S. immigration and protecting immigrants' rights.

To this end, Chapter 1 of this paper will focus on the contents of the IRCA, what made IRCA so unique, and whether it was successful in achieving its goals, namely protecting the rights of immigrant workers, reaching undocumented immigrants eligible

for legalization programs, and enforcing the border to control the inflow of future immigrants. Chapter 2 will be comprised of 4 sections; the first will introduce the four major sections of S. 744, and evaluate its potential based on its similarities with IRCA as laid out in the first chapter. The second section of Chapter 2 will look at some of the most vocal interest groups that inform how the American people evaluate the effectiveness of any proposed immigration reform. The third section will address the economic considerations of both the Federal and State governments in relation to immigration policies as they are currently, and how this might change should they be altered. The final section of the chapter will focus on the main political debates that underpin this issue, both in Congress and carried out by the media. Chapter 2 is meant to highlight the limitations of S. 744 and elucidate why signing it into law continues to be a challenge. The final chapter introduces three policy recommendations, taking into account the political nature of immigration reform in the United States, and why political narratives and differences limit the types of policy considerations that will gain the necessary support in Congress to be written into law.

Chapter 1

Context Setting & Historical Considerations

The need for immigration reform has been a part of the U.S. consciousness for decades. It is an extremely personal issue that tends to divide legislators and Americans, especially those living in high-immigrant receiving regions. Historically, immigration reform has been a product of extensive debate and concession, and this trend is not likely to change as new legislation is introduced into the U.S. House of Representatives and the Senate. Congress remains divided on the types of reform needed and the costs to be born

by immigrants, citizens, businesses and communities. Any immigration reform bill that is introduced into Congress needs to take into consideration the shift in demographics that have occurred since passing the IRCA. According to estimates from the U.S. Census Bureau's American Community Survey (ACS), the U.S. immigrant population stands at approximately 40.4 million, or 13% of the total U.S. population. (Migration Policy Institute, 2011) In 2011, Mexican born immigrants accounted for almost 30% of the total immigrant population of 40.4 million, making Mexico the largest immigrant sending country to the United States. (Migration Policy Institute, 2012) The Pew Hispanic Center estimates the number of undocumented migrants at 11 million. (Werman, 2013) Mexican immigrants tend to be the most visible immigrant community in the United States and are often vilified as the group responsible for such economic hardships as the lack of jobs available to U.S. workers.

Migrants traveling into the U.S. from Mexico tend to consist of labour migrants and their families, and the debates in Congress on immigration reform revolve around the impact undocumented migrants have on the U.S. economy as opposed to the negative impact current legislation has on immigrant communities. New legislation has been introduced in the form of S. 744 by a bipartisan group of legislators known as the "gang of eight". The amendments in this legislation are meant to address the problem of undocumented migrants crossing the U.S.-Mexico border by completing the border fence, and to remedy the vast inequality and human rights violations committed against undocumented immigrants and their families living in the U.S., by offering them a conditional path toward legalization. Both points are contentious for those reformers who demand the strengthening of punitive measures for undocumented immigrants who either

entered the U.S. without proper authorization or authorized expired visas. Alternatively, there are reformers who call for legislation that would end the exploitation of Mexican immigrant labour by expanding the purview and funding of regulatory bodies, which would allow individuals to live without constant fear of deportation. Despite high levels of dissatisfaction with the proposed alterations, both Democrats and Republicans agree that the current immigration legislation is part of the “broken system”, even though it was applauded as a responsible and just solution to past programs like the bracero program⁵ when first passed.

The Immigration Reform and Control Act, 1986 (IRCA)

The United States has struggled with the problem of undocumented migration for decades, particularly undocumented foreign workers crossing the US-Mexico border. Labour migration from Mexico was the major focus of the last immigration reform bill, IRCA, passed in 1986 was a product of that struggle. The aim of the legislation was to reduce the number of undocumented immigrants entering the United States, sanction employers who hired undocumented workers, and offer a one-time legalization option for undocumented immigrants currently residing in U.S. This came out of almost a decade of debate and hard work with interest groups and lobbyists taking center stage to represent the interests of immigrants, labour unions and associations that represent both farm workers and employers.

⁵ Between 1942 and 1964 the Bracero Program was an initiative negotiated between the U.S. and Mexican government for the recruitment of approximately 4.6 million Mexican agricultural workers known as braceros. They were hired for short periods and then returned to Mexico. After recruitment was stopped in 1954, the U.S. government enacted “Operation Wetback” which called for the mass deportation of braceros back to Mexico. (Griego y Garcia, 1991)

The three major features of IRCA include employer sanctions, a process for legalization that approximately 3 million undocumented immigrants took advantage of, and greater policing of the Southern U.S. border to guard against further undocumented immigration.⁶ The first of these provisions was to remove employment opportunities for undocumented immigrants living in the United States; forcing them to make their status known and get on the path to legalization. Legislators intended this provision to deter future immigrants from attempting to enter the United States illegally, knowing they would not be able to access the U.S. labour market. (White, Frank and Espenshade, 1990) Without the convenience of technology and the e-verify service that will be discussed in detail later, employers would be forced to scrutinize the documents provided by prospective employees or face civil fines up to \$2,000 per employee or criminal penalties of up to 6 months in prison if a “pattern of practice” could be established. (White, Frank and Espenshade, 1990)

The second major provision was a process of legalization offered to undocumented immigrants who were able to prove they had been residing in the United States continuously since January 1, 1982. These individuals were offered a temporary resident alien status; if able to demonstrate a minimal understanding of English and United States civics and history, their status would be adjusted to permanent resident alien. Seasonal agricultural workers would qualify for legalization if they could prove employment for 90 days in a 12-month period before May 1, 1986. By the time these offers expired, 1.77 million undocumented immigrants had applied for temporary resident

⁶ The IRCA was not just a piece of immigration reform, it also contained important “employment, civil rights, welfare, and federal reimbursement provisions” and included several initiatives like “anti-discriminate safeguards, state legalization impact assistance grants, and a program to check the welfare eligibility of non-citizens” (White, Frank and Espenshade, 1990)

alien status and 1.3 million seasonal agricultural workers had applied for the general legalization program (U.S. Immigration and Naturalization Service, 1989a)

Amnesty is defined as “the state’s magnanimity toward those offenders whom it would be too expensive to punish.” (Baker, 1997, pg. 7) There were two types of amnesty that are incorporated into the IRCA, “ slate-cleaning” amnesty, which was offered to Seasonal agricultural workers and “firm-equities” amnesty which offered legalization only to those individuals that could prove continuous residence since 1982 and 90 days of employment completed before May 1, 1986. (Baker, 1997, pg. 7-9; White, Frank and Espenshade, 1990) Offering “slate-clean” amnesty to seasonal agricultural workers acknowledged that the United States is economically dependent on agricultural workers. Employers routinely claim a labour shortage in this industry and, due to the nature of the work; rural isolation and undocumented status seasonal agricultural workers are vulnerable to employer abuse and are consistently denied their rights. (Lee, 2002) This was also an attempt to increase protections for seasonal agricultural workers, recognize the value they contribute to the U.S. economy and ensure a labour force for employers. For non-agricultural workers, the offer of “firm-equities” amnesty was a way to calculate the contribution of immigrants and to determine whether they had earned the right to stay. The inconsistent access to employment and the potential risk to employers who hired undocumented migrants limited individuals’ ability to access this program. (Baker, 1997) In the end, “educational service providers were particularly adamant about the disjuncture between the amnesty promise and its realization.” (Baker, 1997, pg. 16)⁷

⁷ The State Legalization Impact Assistance Grant (SLIAG), responsible for the state reimbursement of social service costs for legalized immigrants, was shut down in 1992, according to the director “it just wasn’t cost effective” (Baker, 1997)

Provisions made for expanding the enforcement capabilities of the U.S. Immigration and Naturalization Services (INS) was the third major part of the legislation. The IRCA allocated 380 million dollars in 1986 for enforcement activities; the amount was increased to 456 million dollars in 1987 and up to 538 million dollars in 1988. Border patrol personnel were increased from 3,687 officers to 4,669 in 1988. (White, Frank and Espenshade, 1990, pg. 94) These funds were meant to enhance the interior and exterior enforcement capabilities of the INS and Border Patrol. These three features set the IRCA apart from previously introduced legislation and were expected to successfully decrease the levels of undocumented migration into the United States.

The IRCA was considered a major accomplishment when it was first passed through Congress and signed into law. However, looking back, a number of the limitations that have circumscribed its effectiveness and ability to accomplish what it was set out to do are evident. There was a commonly held misconception that Mexican laborers, entering the United States without legal authorization, created the problem of undocumented immigration. The campaigns implemented to inform undocumented immigrants of the opportunity to transfer their immigration status to either a temporary or permanent resident alien was biased in favor of Spanish speaking immigrants. Individuals from various other ethnic and national communities were unaware of their eligibility to apply to either “amnesty” program. (Kerwin, 2010) This resulted in individuals who met the meeting criteria for legalization programs to be forced to remain in the U.S. without proper documentation and risk deportation once the application period had passed. In the early 1990s Congress passed individual bills specific to immigrant

communities that were excluded from legalization programs under the IRCA.⁸ An important lesson learned through the implementation of the IRCA has been that programs can often miss large segments of a population when various characteristics are overlooked or misunderstood. Two important factors that the IRCA's legalization programs overlooked were the housing and living arrangements of many undocumented immigrants and the gendered aspects that caused unequal access to the legalization process. These unforeseen factors impacted the opportunity for equal access, as well as discouraged immigrants from taking advantage of the opportunity for legalization. The first factor is that due to financial constraints, there may be more than one family residing in a single household. One of the factors "chilling application rates" was the immigrants' concern that their ineligible family members would come to the attention of INS as a result of their own applications. (Baker, 1997, p. 17)

Immigration reform legislation needs to first recognize that many undocumented immigrants live in mixed families; some eligible to access the legalization programs while others remain ineligible. In 1989, the INS reported that 41 family members remained outside of any type of legalization program for every 100 legalized aliens. Immigration reform legislation will need to create a relief program that does put eligible applicants in a position where they are forced to choose between legalization and the safety of their families and thus turn away from the legalization process in order to protect family members as best they can. The second important factor that limited access to the legalization programs of the IRCA was the lack of consideration given to the inability of women to provide the necessary documentation required to access any form

⁸ Legislation includes the Chinese Student Protection Act of 1992, The Nicaraguan and Central American Relief Act, the Haitian Refugee Immigration Fairness Act. (Kerwin, 2010, pg. 16-17)

of legalization. The IRCA required documentation to prove continuous residency in the United States since 1982. Forms of proof could include, paycheck stubs, rent receipts and utility bills; women were less likely to be able to produce these types of physical documentation. While the IRCA did not disqualify individuals who were employed in the underground market, it would be difficult for those individuals working in such conditions to then submit certain types of proof. Also, if living together with family members, their names might not appear on leases or bank accounts. (Hagan & Baker, 1994, pg. 34) Though affidavits from neighbors and family could be presented as part of a package of alternative evidence, these cases were then placed under increased scrutiny, and were often contested in court.

Summary

After the IRCA was fully implemented, levels of undocumented immigration continued virtually unaffected. The IRCA failed to achieve its main goal of deterring undocumented immigration, and so attempts to reform the current system need to be highly critical of the IRCA and its implementation strategy. The bulk of scholarly research has focused on the effectiveness of INS enforcement, while fewer studies have looked at the success of legalization programs. (Baker, 1997) Undocumented immigrants were forced to choose between applying for legalization and face possible deportation while their applications were reviewed, or remain in the United States without legal documentation and subsequently remain vulnerable to exploitation (Baker, 1997: Baker, 2013).

Employers are able to apply for guest workers after illustrating a labour market shortage to the US department of Labour. The need for temporary foreign workers

develops from the shortage of domestic workers willing to perform tasks that “are exhausting, dangerous and degrading” and simultaneously, socially necessary. (Walzer, 1983, pg. 56) The domestic labour market is incapable of supplying workers for such positions at the wage offered by employers. There are two programs available for foreign workers to access the U.S. labour market. H1 visas offered to specialty workers and H2 visas offered to low skilled foreign workers.⁹ The majority of undocumented immigrants living in the United States are these low skilled migrants. Seasonal Agricultural Workers and the majority of undocumented immigrants fall under the H2-A visa program, also known as the “guest worker program.” (Hall, 2002, pg. 522) Many critics point to this aspect of the current immigration legislation to emphasize the depraved nature of the current system where by the United States fails in comparison to other immigrant receiving countries in Western Europe. (Hall, 2002) It is precisely because of the H2-A visa program that the United States is unable to become a signatory of the Convention Concerning Migration for Employment since it is in violation of international law.¹⁰

In 2012, a bipartisan group known as the “gang of 8” was formed; it comprised of members from the U.S. Senate dedicated to resolving the failings of the IRCA and smaller immigration reform policies, passed in the last 2 -15 years. The two main features of the legislation were first, a legalization process or “amnesty” that could potentially

⁹ H1 visas are open to immigrants that have completed a Bachelors Degree and are highly encouraged to immigrate to the United States. They will also be eligible to apply for permanent resident status after completing a 6 year work contract. H2 visa holders are low skilled workers performing hourly work, and are unable to apply for permanent residency at any time. (Gower, 2012)

¹⁰ The Convention Concerning Migration for Employment adopted in Geneva in 1949 under the International Labour Organization, are a set of provisions meant to protect the rights of migrant workers and their families, should they be allowed to accompany them, that all member states must adhere to. Member states release an annual report detailing current policies to show compliance.

Detailed

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C097

reach 11 million undocumented immigrants living in the United States, secondly, the completion of the border fence and increased securitization of the U.S.-Mexico border. Amnesty proposals are almost always introduced alongside “new policies to redouble efforts to enforce old policing aimed at the undesirable actions the “amnesty” targets have already taken” (Baker, 1997, pg. 7) States are forced to couple any form of “amnesty”, whether it be “slate-cleaning” or “firm-equity” amnesty with provisions that show the state to be cracking down on future undocumented migration so as not to be seen as rewarding immigrants for taking up residence illegally. Immigration remains under federal jurisdiction, yet individual U.S. States have been sorely disappointed with current immigration laws. States like Arizona have passed criminal laws like SB 1070, meant to “crack down” on crime, that target undocumented immigrants; these laws have the potential to impact access to a legalization stream¹¹.

This new immigration reform bill, S.744, has been structured to follow the model set out by the IRCA. Both pieces of legislation attempt to effectively deter the hiring of undocumented labour migrants. With advancements in technology, the U.S. government is able to track the hiring practices of employers more efficiently. S. 744 also attempts to regulate the flow of immigrants by completing the border fence and has increased funding for border security by 4.6 billion dollars. Finally, a version of “amnesty” is being offered to individuals that meet certain criteria. To determine whether this is a possible solution, the next section will begin by defining the fundamental differences between the

¹¹ Criminal history is often a disqualifying characteristic that denying immigration access to legalization programs. States that link criminal charges to immigration status disadvantage their residents from transitioning their immigration status to either permanent or lawful resident status.

IRCA and S. 744, bearing in mind that any immigration reform legislation will be criticized because it is deemed either too harsh or not harsh enough.

Chapter 2

Introduction

Comprehensive immigration reform legislation was passed through the U.S. Senate, the Border Security, Economic Opportunity and Modernization Act, S. 744, in June 2013. However, this legislation has yet to be introduced into the U.S. House of Representatives. S. 744 would replace the Immigration Reform and Control Act (IRCA) with specific changes addressing several major concerns held by both parties. This Chapter will provide a comparison of S. 744 and the IRCA and determine whether those changes would be sufficient to “fix the broken immigration system,” highlight the major interests at play that are representative of large parts of American society and debate the impact immigration has on the U.S. economy.

The gang of 8 has chosen to model S. 744 after the IRCA; a comparison of both pieces of legislation can offer important insight into the effectiveness of the newly proposed law. The political nature of the U.S. legislative process means that there are powerful organizations who are able to impact how the narrative around immigration reform is constructed. As such, highlighting the main interest groups at play can offer insight into how Americans feel about different aspects of the legislation. The economic considerations around immigration reform remain a major factor; employers have felt that the IRCA did not meet the needs of the U.S. labour market and have turned to undocumented immigrants to fill those labour shortages. Finally, how a legalization program will affect various industries, the wages of U.S. workers, and protect

undocumented workers who have historically been vulnerable to employer abuses will be discussed in this Chapter.

The Border Security, Economic Opportunity and Modernization Act (S. 744)

S. 744 is potentially the first comprehensive immigration reform legislation passed since the IRCA in 1986. Despite being passed in the Senate, it will remain ineffective until introduced and passed by the U.S. House of Representatives. There have been smaller bills introduced by the House attempting to make specific, individual changes to U.S. immigration policy, though ultimately none have passed. Thus little has been done to overhaul the system and address the many failings of the current immigration law. The IRCA promised a one-time legalization program in conjunction with an efficient immigration system that would create a positive impact on the US economy, protect the rights of immigrant workers, and ensure secure borders. The IRCA's immigration policy was ineffective in practice due to the lack of flexibility in accommodating the fluctuating needs of the economy. The bipartisan authors of S. 744 have followed the model created by the IRCA in that the major focus of the act is to respond to the needs of undocumented immigrants living in the U.S., create a deterrent strategy to prevent the hiring of undocumented workers and secure the U.S.-Mexico border as well. Comparison between the two pieces of legislation offers insight into how well S. 744 will be able to implement its objectives. The following information on the contents of S. 744 was taken directly from the finalized bill that was passed in the U.S. Senate and a summary offered by the Migration Policy Institute.

1. Border Security

According to the final version of S. 744 passed in June, 2013, before any undocumented immigrants can access any legalization programs, the Secretary of Homeland Security must submit two individual plans. The first plan is for the enforcement of the shared U.S.-Mexico border, a Southern Border Security Strategy, and the second, a Southern Border Fencing Strategy.¹² Undocumented immigrants would then be responsible for proving residency and employment history to demonstrate they are eligible to apply for the legalization programs and status adjustment to Registered Provisional Immigrant (RPI) Status.¹³

Homeland Security will be allotted 4.5 billion dollars for the implementation of both plans through Customs and Border Protection (CBP). The CBP will have at their disposal increased funds for the prosecution of individuals caught crossing the border without proper authorization and the implementation of a monitoring system that specifies a minimum number of cameras, sensors, surveillance systems, and towers to be present at each border patrol sector along the U.S.-Mexico border. (ICIRR, 2013) The legislation also authorizes the use of fixed-wing aircraft, also known as drones, and helicopters to ensure 24/7 surveillance. In essence, this legislation will only begin addressing the status of undocumented immigrants living in the United States once the Department of Homeland Security can assure Congress that there is an effectively

¹² Congress must determine that the border enforcement plans implemented by the Department of Homeland Security has an effectiveness rate of 90% before processing applications for RPI status. This determination is made when all high-risk sectors along the US-Mexico border apprehend 30,000 individuals attempting to cross into the United States each year. (ICIRR, 2013)

¹³ The first section of S. 744 states clearly that undocumented immigrants will not have access to any legalization program until Congress declares that Homeland Security has been successful in securing the border. The RPI status will be described in further detail in the next section discussing reforms to immigrant visa programs.

impenetrable physical and virtual wall. The entire U.S.-Mexico border will be continuously monitored and any individual attempting to cross will be prosecuted. Construction of the border fence and mass surveillance will likely not be successful in preventing undocumented immigrants from residing in the United States. The main drivers of undocumented immigration have been a result of the IRCA's insistence that low skilled workers can only receive temporary or seasonal visas. This gap in previous immigration legislation will be discussed further in the fourth section, called Reforms to Non-immigrant Visa Programs.

Though controversial, the border fence is considered a necessary compromise for any piece of immigration legislation to successfully be passed in Congress. The 4.5 billion dollar budget, with an additional 2 billion should it be necessary, calls for the militarization of the U.S.-Mexico border, in a manner that is comparable to the border between North and South Korea. (Castañeda, 2013) This section of the bill would demolish the way of life of people and communities that have lived along the border for generations. In a speech, Rick Perry, the former governor of Texas has pronounced the idea of completing a border fence extending from the Gulf of Mexico to the Pacific Ocean "idiocy," "ridiculous," "nonsense," and "absolutely not the answer" (Perry, 2011) The Tohono O'odham Nation is a Native community with approximately 28,000 members residing on a federally recognized reservation that spans both sides of the US-Mexico border. If S. 744 is passed into law by congress the Tohono O'odham people will be forced to endure border patrol agents, 24 hour surveillance, checkpoints to travel within the reservation and drones constantly flying over their community. (Democracy

Now!, 2014)¹⁴ There are many small communities near the Tohono O’odham reservation in Arizona such as Ajo and Casa Grande. These smaller towns have become home to border patrol agents and are forced to house what is ostensibly the largest security force in the United States, possibly endangering these communities. (Cushing, 2014)¹⁵

Communities living along the border have had a long and unstable history. The U.S.-Mexico border has moved many times; at some points, small towns at the border have belonged to the United States, while at other times, they have belonged to Mexico. These small towns have had a long and rich history, its people have a shared American and Mexican identity. That connection to both nations still remains, and the needs of these communities have been essentially ignored for the sake of passing some form of legislation. Mark Dannels, Sheriff of Arizona’s Cochise County criticized legislators for leaving citizens and local law enforcement “who call the Southwest border home out of the decision making process when it comes to security and immigration reform.” (Carter, 2013, pg.1) Completing construction of the border wall will not greatly affect the expansion of unauthorized movement across the U.S.-Mexico border, considering the fact that the majority of undocumented immigrants enter the United States with authorized work and travel visas and only later change in status to undocumented. (Oscar, 1994, pg. 96) This portion of the bill was meant to appeal to conservatives fearing open borders would lead to another bout of “amnesty” occurring 15 years in the future.

¹⁴ In an interview with Democracy Now!, a member of the Tohono O’odham Nation and an organizer with the O’odham Solidarity Across Borders, Alex Soto emphasizes that his community “is caught in the midst of colonial policies that are militarizing” their lands. These policies affect their way of life as O’odham and their traditional practices. (Democracy Now!, 2014)

¹⁵ In March 2014 US Border Patrol has issued new guidelines for the use for deadly force. Between 2010 and 2012 US Border Patrol agents was had 67 shooting incidents and killed 19 people. (Cushing, 2014)

2. Reforms to Immigrant Visa Programs and Immigrant Integration Provisions

Upon the completion and implementation of both the Southern Border Security Strategy and Southern Border Fencing Strategy, S. 744 will create a Registered Provisional Immigrant Status or RPI status for qualified undocumented immigrants. Immigrants employed in any non-agricultural sector will be eligible to apply for legalization under this status, which comes with a 6-year renewable work visa. After 10 years, these individuals will be able to transition to Lawful Permanent Resident Status or LPR status, at which point they will be eligible for naturalization in three additional years. This section of the act also establishes the Office of Citizenship and New Americans (OCNA) to create integration-centered programs and assist immigrants in their applications for citizenship. If undocumented migrants can prove their being physically present in the United States on or before December 31, 2011, they are eligible to apply for RPI status. S. 744 also recognizes the need to reduce some of the current obstacles in order to encourage undocumented immigrants to apply for legalization. Removing the touch back requirement, which forced undocumented immigrants to return to their country of origin while the INS reviewed their applications for legalization, will likely be a determining factor for those who fear deportation as a result of coming forward.

Agricultural workers and youth that fall under the DREAM Act¹⁶ will be offered a fast track to legalization and naturalization. Agricultural workers will receive a special blue card visa allowing them to shift to LPR status immediately. There will be no

¹⁶ The DREAM Act, also known as the Development, Relief, and Education for Alien Minors passed in the U.S. Senate. It offers aid to undocumented individuals who were brought to the United States before the age of 16 by their parents. (S. 1968)

numerical cap placed on the number of visas issued under this section. Agricultural workers will also receive permanent work authorization and travel authorization. Individuals who qualify for the DREAM Act will be eligible for RPI Status. After 5 years, and the completion of certain requirements¹⁷, applicants would be given a green card. Individuals covered under the DREAM Act with a U.S. green card are then able to apply for citizenship immediately. (ICIRR, 2013)

Undocumented immigrants will continue to carry the burden of proving proof of residency and employment history under S. 744. In an effort to make documenting employment history easier on applicants, employers who of undocumented workers, be it knowingly or unknowingly, will be safe from prosecution under this bill. Another important change is that undocumented immigrants would be able to leave their current job and remain unemployed for up to 6 months; employment status will no longer be grounds for deportation. The caveat being that an individual must show that they are able to earn above the federal poverty annual income level and are not in need of income assistance. This provision was written in as an attempt to offer workers more flexibility in making employment and labour decisions.

A two-track system will also be established for allocating visas on a new, merit-based, permanent visa program. As a result, individuals will not longer be able to sponsor siblings or children over the age of 32. Instead, the spectrum of family ties to those in the United States will be given a point value, along with education, job skills, employment in various industries, and English proficiency. Under this first track, 120,000 to 250,000

¹⁷ The Criteria include, entering the United States before age 16, earning a High School Diploma or earning a GED, completed 2 years of higher education or served 4 years in the military, passed English and Civics, and has not significant criminal history. (ICIRR, 2013, pgs. 1-2)

visas will be available annually. The second track is only available to immigrants who have applied for visas prior to the enactment of the bill. This will include employment petitions and family-based petitions. This is the legislation's attempt to deal with application backlogs and will run between 2015 and 2021.

This section of the bill is furthermore an attempt to reduce the number of barriers that eligible immigrants face when applying for RPI status. An example of this aim is seen in the reduction of the processing and administrative fees for each application submitted to the INS. Previously fees entailed \$5,500 per application; this new law would require \$500 at the start of the application process and \$500 upon completion. The easier the application process is for immigrants, the greater the turnout; efforts to get undocumented immigrants to submit applications decreased early on at the start of IRCA. The low turnout forced the INS to shoulder most of the financial burden, which led to the closing of many offices designated to assist with the application process. Though those funds were later recouped at the end of the legalization program, the resources spent on reaching undocumented immigrants fell and many who were eligible missed out on the opportunity for legalization.

Part of the miss opportunity included being unable to reach the differing migrant communities across the United States. In 1986, the government specifically targeted Hispanic and Latino communities through information campaigns with regards to who was eligible to achieve legal status. As a result, the implementers of IRCA overlooked immigrants from other regions, nations, and ethnic communities¹⁸, often contesting their

¹⁸ Immigration attorneys criticized the implementation of The IRCA's legalization program, arguing that the information campaigns misled non-Hispanic immigrants of their eligibility. For example, "a

eligibility in court, which discouraged many eligible applicants. (MPI 2013, pg. 4 & Baker, 1997, pg. 12) Under S. 744, undocumented migrants have 1 year after the Secretary of Homeland Security has successfully implemented a Border Security Strategy to apply for RPI status. In that time, the Office of Citizenship and New Americans will need to seriously consider a new strategy that reaches as many eligible immigrants as possible. Removing the touch back requirement was an important first step; immigrants who are forced to return to their country of birth before being eligible to apply for RPI status may fear their applications will be denied, and they will be separated from family, friends, and their home.

All immigrants applying for a visa to the United States must undergo a background check so as to ensure that they neither pose a threat, nor have a criminal history. Unfortunately, the applications of some undocumented immigrants will be automatically denied due to criminal history and region. Immigration remains under federal jurisdiction, as such there should be no individual state policy that either increases or limits access to legalization programs.¹⁹ Yet as individual states attempt to regulate and legislate immigration, there will be increased barriers faced by undocumented immigrants as a result of where they reside. There has been no attempt by this legislation to address the inequality these applicants will face.

Zambian client failed to apply because he “thought the program was only for Mexicans” (Baker, 1997, pg. 12)

¹⁹ Arizona’s Safe Neighborhoods Act, also know Arizona SB 1070 was passed in 2010 and upheld by the US Supreme Court. This legislation has been criticized as an anti-immigration law because it requires police to determine the immigration status of anyone arrested or detained when there is “reasonable suspicion” they are not in the U.S. legally. Similar legislation has since been introduced in Alabama, Georgia, Utah, South Carolina and Indiana. The American Civil Liberties Union (ACLU) has filed a lawsuit against the law in each of these states. (ACLU, 2012)

3. Interior Enforcement

This section of the legislation focuses on what resources will be available to employers to ensure their employees have authorization to work in the United States and highlights the tools the government will have to monitor employer compliance. S. 744 requires the mandatory use of the Electronic Employment Verification System (EEVS). After the enactment of the bill, employers will be given 4 years to commence using the EEVS. This will be a costly endeavor, which the bill has allocated 250 million dollars towards. The EEVS will not only be available to employers, but to all U.S. workers who will be able to “lock” their social security numbers and check their EEVS history. This is an essential provision; if all U.S. workers are to receive individual identification numbers, it is important that they be able to monitor who is attempting to access that information and determine whether it is being misused. There will be a new “photo tool” available to ensure that forged documents are not being used. If this tool is not available, video conferencing and scanning technology will be available at federal government facilities. The interdepartmental and cross agency cooperation necessary for this tool to be successful will be immense. As such, the legislation allocates funding for state and local agencies to be able to provide the necessary support to employers and federal regulators.

Employers found hiring undocumented immigrants will receive fines up to \$7,500 per worker on discovery of their first offense; those identified as repeat offenders will pay up to 10,000 per worker and/or no more than 2 years in prison. The IRCA’s employer sanctions were a groundbreaking piece of legislation in 1986, but since then, major gaps have been found in relying too heavily on employers for interior enforcement. The IRCA

made it increasingly difficult to use fraudulent documents, yet employers were able to shield themselves from sanctions by turning to “middlemen entities to actually hire workers, such as temporary employment firms, and by reclassifying workers as independent contractors.” (Chishti and Kamasaki, 2014, pg. 3) Employers have successfully used sanctions as a method of reprisal against workers who attempt to advocate for their rights. The legislation increases funding for workplace inspections and a hiring increase to monitor the EEVS. However, beyond that there are no substantive provisions that expand the rights of workers. (Chishti, 2000) In this sense, S. 744 will not significantly impact the rights of workers who will remain vulnerable to employer abuse. The bill does not provide workers any formal rights to address the issue of abusive employers, nor does it require employers to inform foreign workers of the limited rights they do possess. This is a fundamental limitation of S. 744, for immigration reform to be successful there must be a balance between access to temporary foreign workers as well as the existence and protection of workers’ rights. If the expansion of workers rights becomes too costly, employers will encourage the immigration of undocumented workers to fill labour shortages. In doing so, immigration legislation will be able to protect workers only in so far as it able to monitor and regulate the EEVS and the underground labour market. (MPI, 2013) Workers employed in the agricultural sector will remain especially vulnerable as a result of isolated work sites. S. 744 strengthens the monitoring capacity of regulatory bodies and sanctions against employers, while doing very little to strengthen the rights of temporary foreign workers.

4. Reforms to Non-immigrant Visa Programs

This section of the legislation focuses on the visa programs available to immigrants who have not earned sufficient merit points to be eligible for the RPI and LPR immigrant visa programs. The Non-immigrant visa program attempts to make meaningful changes to the H1 and H2 visa programs and specifically introduces three new categories to expand access for low skilled labour migrants into the U.S. labour market. The bill introduces fees and restrictions to discourage employers from relying too heavily on temporary foreign workers and expands access to a variety of labour sectors. Non-agricultural labour migrants with less than a bachelor's degree will now have access to a W visa²⁰, permitting a work period of three years that can be renewed twice. If residing with dependents, this visa program would offer work authorization to spouses and children. Upon completion of one 3-year work contract, labour migrants entering under this status are eligible to apply for permanent residency through the merit-based system. The H2-A visa program²¹ will be replaced with two new agricultural visa programs. The first is a "contract" visa, a labour migrant will be required to complete one work contract, after which they are permitted to access the U.S. labour market for employers registered with Homeland Security. The second is an "at will" employment visa, under this program workers are not tied to any one employer, and are able to move between employers that are registered to hire temporary labour migrants. Both of these programs offer a 3-year visa, with the option of a 3-year renewal.

²⁰ Some limitations include increased fees for employers classified as "heavy visa user", where less than 30% of employees are US workers, and prohibit the hiring of labour migrants under this program if local unemployment exceeds 8.5%. (MPI, 2013, pg. 20)

²¹ As previously mentioned, the H-2A Visa program was originally designed to supplement labour shortages in the agriculture sector of the US economy. The law would offer between 20,000 and 200,000 visas a year; the US Agriculture Secretary can adjust that number. (MPI, 2013)

The W visa program and the two agricultural visa programs extend the work period and visa length available to workers, and allow labour migrants to be unemployed for up to 60 days. This is a positive departure from the IRCA and can potentially limit exploitation of workers. Workers would no longer be tied to an employer in order to remain in the United States. While “contract” workers would be required to complete their work contract before leaving to find new employment opportunities, the law explicitly waives that obligation should the employer violate their responsibility to workers. Another change involves lengthening the work period. Under the IRCA, low skilled labour migrants and agricultural workers could be hired on a short term or as a seasonal worker for a maximum of 10 months to a year, a contract that workers could renew up to three times. Workers were also required to return home before applying for either permanent residency or a new work visa. By extending the length of visas and rescinding the touch back requirement, workers would be less vulnerable to exploitation, able to move between jobs and fill labour market shortages, and if travelling with their families, create roots in the United States. All these provisions would strengthen their application for permanent residency.

Unfortunately, this legislation ultimately fails to offer any option for permanent status to agricultural workers and does not allow agricultural workers to immigrate with their dependents.²² The protections offered in this legislation would be administered through those new offices created by the bill. The enforcement capabilities of these offices when put into practice will determine the level of protection afforded low skilled

²² Agricultural workers are required reside in employer provided housing, as a result the legislation has deemed it unrealistic to allow agricultural workers to immigrate with their dependent families. The IRCA and Senate Bill 744 make no mention of offering work authorization to family of agricultural workers. (Hall, 2002 & MPI, 2013)

temporary foreign workers, especially in the agricultural industry. Agricultural workers often live away from main towns or cities on secluded farms, increasing their vulnerability to exploitation at the hand of employers. As such, it will fall on these new oversight and regulatory bodies created to protect, assist and inform labour migrants in advocating for their rights.

S. 744 addresses many of the failings of IRCA, but the new legislation will be a significant financial burden and sacrifices effectiveness and efficiency to garner the political support necessary to pass in the Senate. A 4.5 Billion dollar border security strategy would destroy communities on both sides of the U.S.-Mexico border in an effort to be perceived as tough on undocumented flows of migration. As a result of political pressure, the opportunity for 11 million undocumented immigrants to legalize their status in the U.S. might only be achieved by militarizing the U.S.-Mexico border. This is essentially an enormous monetary investment that has a miniscule impact in the overall number of undocumented immigrants residing in the US, most of whom become undocumented by means of overstayed authorized visas. (Sumption and Papademetriou, 2013)

Limiting the number of undocumented immigrants will depend on interior enforcement and the implementation of mandatory e-verify programs for employers. It would also require the man power designated for patrolling the border to instead be used to inspect work places to ensure workers safety and in the administration of the EEVS. Policy makers were forced to find a balance between offering workers higher wages and creating stricter regulations to protect workers rights; easing the burden on the system to ensure that employers do not opt out of the program and find ways to hire undocumented

workers. (Chishti and Kamasaki, 2014) Finally, against the advice of workers' advocates, the new legislation has decided to consolidate implementation and oversight power in the Department of Homeland Security, limiting the role of both the Department of Labour and the Department of Agriculture. (Sumption and Papademetriou, 2013 & MPI, 2013).

Interest Groups

There is a consensus that immigration reform is desperately needed in the United States, the disagreement arises on what that reform should look like. Opposition and support for immigration reform legislation S. 744 is based on various factors. The reasoning behind either position does not necessarily focus solely on undocumented migration, but includes the opportunities for labour migrants of various skill levels to make American companies more productive and competitive, both domestically and internationally. The interest groups discussed in this section are those with a strong stance, either in support of, or in opposition to, the approach S. 744 has taken in response to undocumented immigration to the U.S.

The Lutheran Immigration and Refugee Service (LIRS) and the League of United Latin American Citizens (LULAC) are groups that support S. 744, their platform focuses on the rights of undocumented workers and underscores the contribution they make to the communities in which they live. These two groups are very vocal advocates for S. 744 and their message resonates with those of many other groups fighting to get it passed in Congress. The Heritage Foundation is the most outspoken opponent of S. 744, their message focuses mainly on the economic costs associated with providing legal status to undocumented immigrants. They advocate for deportation and the need to strengthen border enforcement through such means as the building of the proposed wall. The

Heritage Foundation is one of the most prominent conservative think tanks in the United States; this is especially significant, as Congressman, Presidential candidates and Media outlets have cited its immigration studies. Media in the form of FOX News informs a large percentage of American citizenry and has taken an activist position in influencing political will in order to prevent the passing of S. 744. Other groups with stances in this debate focus on the practical side of eventual implementation and consequences for those on the ground. The National Association of Former Border Patrol Officers (NAFBPO) is an organization that looks at not only the increased risk border patrol officers would face but also risks immigrants face attempting to cross the border. Their voices not only influence how any new legislation is received, they shape the national conversation around immigration.

I. Support

Community engagement is central for groups like the Lutheran Immigration and Refugee Service (LIRS). After S. 744 was passed, the LIRS released a statement welcoming the

“Senate bill’s inclusion of community-based support as an alternative to detention. Community-based support is a critical tool in the enforcement spectrum because it will promote integration and make our communities stronger.” (Hartke, 2013)

The community based enforcement structure that LIRS references is that policy which protects undocumented immigrants from deportation when assisting local law enforcement in the apprehension of criminals in addition to the existence of sanctuary

cities.²³ Undocumented immigrants fear deportation or imprisonment for coming forward to report crimes committed not only against themselves, but others living in their community.²⁴ Fear of deportation is a strong motivation to avoid interaction with all types of law enforcement. Undocumented immigrants are members of many communities across the United States and are either forced to stand silent when a community member becomes a victim of crime, or forced to remain silent if they themselves become a victim of crime. To keep communities safe and to maintain an effective and efficient law enforcement institution, there should be formal policies in place that allow undocumented immigrants to report crime and assist in the apprehension of criminals without fear of deportation.

Furthermore, supporters of the legislation tend to highlight the bipartisan nature of the bill. The LULAC, League of United Latin American Citizens, released a statement in June 2013, after the passage of S. 744 was announced. It read, “Today, a bipartisan group of senators who have been working for months on immigration reform legislation filed the first bill in decades that attempts to fix our nation’s broken immigration system with realistic and pragmatic measures.” (Zuleta, 2013) LULAC goes on to highlight the need for immigration legislation that “offers a roadmap to citizenship for millions of hard-working immigrants who seek an opportunity at the American dream.” (Zuleta, 2013) Similarly, the National Education Association (NEA) released a statement urging the

²³ Sanctuary cities exist where local law enforcement officers do not ask the immigration status individuals when interacting with the public. Though there is not guarantee that immigration information will not be released to ICE or that law enforcement will follow the sanctuary policies, it is a formal policy of that city. (Hing, 2012)

²⁴ In Providence, Rhode Island, Danny Sigui, an undocumented immigrant from Guatemala gave critical testimony that assisted in the conviction of 6 murderers. The state attorney general reported Gigui to the U.S. Department of Homeland Security (DHS), he was detained and deported after the trial. (Hing, 2012, pg. 2)

House of Representatives to support what they describe as “commonsense” immigration reform and went on to say that the NEA “applauds the Gang of Eight’s bipartisan effort to bring this historic bill to the Senate floor.” (Tzamaras, Woods, 2013 pg.1) The NEA is made up of DREAMERS²⁵ who, as undocumented immigrants themselves, hope that once the legislation becomes law, they will have access to U.S. citizenship, be able to attend higher education, and enter the U.S. labour market.

LIRS and LULAC fail incorporate the needs of communities beyond their own; they advocate solely for the needs of the 11 million undocumented immigrants living in the United States who have built strong, lasting roots in the communities they reside in. Both LIRS and LULAC seem to have overlooked the impact this legislation will have on others, specifically border communities, to achieve a positive impact on the communities they champion. A criticism they are eager to charge opposition groups with.

II. Opposition

Opposition to S. 744 similarly comes from various organizations. One such vocal group, The Heritage Foundation, believes that:

“no form of amnesty will fix our immigration system. Yet, within six months, the Gang of Eight’s bill will grant amnesty to almost everyone who entered the country illegally prior to 2012. The Heritage Foundation estimated this type of amnesty would add \$6.3 trillion to our national debt – law-abiding Americans cannot afford that burden.”

²⁵ DREAMERS are those individuals that fall under the auspices of the DREAM Act. As previously mentioned, DREAMERS are undocumented youth brought to the United States by their parents.

The statements of the heritage foundation have been proven to be factually incorrect and their language often incorporates racist and xenophobic assumptions about immigrants, specifically immigrants of Mexican descent. The co-author of the above report, Jason Richwine, wrote the following in his public policy doctoral thesis from Harvard University in 2009; “No one knows whether Hispanics will ever reach IQ parity with whites, but the prediction that new Hispanic immigrants will have low-IQ children and grandchildren is difficult to argue against.” (Reeve, 2013) These statements are meant to be inflammatory and to garner political opposition to bill S. 744.

Other organizations actively involved in the apprehension of undocumented workers offer a more tempered criticism to the bill. The National Association of Former Border Patrol Officers (NAFBPO) defines their organization as a “diverse group of both law enforcement officers and representatives.” In a statement before the S. 744 was passed cautioned the Senate Judiciary Committee, They emphasized that any immigration reform legislation will “profoundly impact the security of the county, our nation’s communities, and the people we as law enforcement officers are sworn to protect.” (Mezzacapo, 2013, pg. 3) The concerns the NAFBPO range from the militarization of the border; a move which would place them in a constant state of heightened danger, to the increased risks that migrants will face in attempting to cross the border illegally. They stress the increased risk that children will be facing when attempting to cross the US-Mexico border, either alone or with their families. As the front line defense against the “threat” of undocumented border crossings, the hazardous situations that both officers and immigrants will be placed in should be an important factor of consideration for the

Department of Homeland Security when devising the Southern Border Security Strategy and the Southern Border Fencing Strategy.

Opposition to the bill ranges from political rhetoric that attempts to scare Americans into believing that the undocumented immigrants are bleeding the United States dry, to expressing real concerns about the effects the legislation will have on the lives of people who will be at risk as a result of the militarization of the U.S.–Mexico border. While there are those against this bill with a well-documented history of opposition motivated by racism and xenophobia, support for the bill tends to overlook the sacrifices the legislation forces particular communities to make. It minimizes the devastating impact that the legislation will have on border communities like the Tohono O’odham Nation and others. Unfortunately, passage of any immigration reform legislation will inevitably be a political decision, rather than one that centers the many and varied constituencies whose quality of life is contingent upon what immigration laws are in place.

Political Debates

An attempt to reform immigration legislation in the United States is invariably a political undertaking. With the Republican Party holding a majority in the House and the Democratic Party holding a majority in the Senate, any attempt to overhaul the current immigration system will require bipartisan cooperation and heavy compromises on both sides. However, there is no clear-cut understanding of what form immigration legislation should take for Democrats or Republicans. Some state governments, frustrated over the apparent deadlock in congress, have opted to address undocumented immigration through the introduction of new criminal laws.

I. Divisions within Congress

There exist four ideological traditions that have informed the national debate on immigration as defined by Gans, Replegle and Tichenor. On the left, there are the economic protectionists and cosmopolitans, while on the right there are the pro-business expansionists and the cultural protectionists. The foundations of these ideological traditions are incompatible with one another, rendering immigration reform a slow and arduous process. There are those who are particularly hostile towards undocumented immigrants and the process of legalization, while some hope to expand the temporary foreign worker programs, and still others who support the legalization of all 11 million undocumented immigrants it is approximated reside in the United States today.

A. Cosmopolitanism

Cosmopolitanists, or “pro-immigration liberals” are concerned with the status of undocumented immigrants as “illegal” and the increased risks they face as a result of their “second-class persons” status. (Gans, Replegle and Tichenor, 2012, pg. 6 & DeGenova, 2002) The focus of cosmopolitan policy makers is to ensure that immigration reform legislation includes a pathway to citizenship for undocumented immigrants. In a speech given during a march for immigration reform in New York in 2006, the Democratic Representative from Illinois Luis Gutierrez explained that “...what we want is a legalization process... a pathway to their legalization so that they can come out of the shadows of darkness, of discrimination, of bigotry, of exploitation, and join us fully.” (Democracy NOW!, 2006) For Representative Gutierrez and other cosmopolitan policy makers in a Republican controlled House, getting immigration legislation introduced on the House floor is impossible without bipartisan support.

B. Economic Protectionism

Also on the left are the economic protectionists, whose main focus is the impact that undocumented workers and temporary foreign workers have on full citizens and especially the ability of U.S. workers to find jobs. Economic protectionists would resist legislation that includes a legalization program and expands access to the U.S. labour market for temporary foreign workers. Workers' unions are actively pushing for comprehensive immigration reform that protects the rights of U.S. workers and removes the competition created by undocumented and temporary foreign workers. The solution for economic protectionists is not a massive deportation of undocumented immigrants; rather, the endorsement of the expansion of employer sanctions. Senator Brian Dorgan, a Democrat from North Dakota, introduced amendments that would gut the guest worker program introduced in past immigration reform attempts. He argued that the "Chamber of Commerce and big business are the ones that want the opportunity to continue the flow of cheap labour." (Stanley-Becker, 2013, pg.5) The irreconcilable difference between economic protectionists and cosmopolitanists is their view on offering legal status to undocumented immigrants. Both recognize the risks inherent in their undocumented status, but the solutions prescribed by the respective ideologies are incompatible.

C. Pro-Business Expansionism

Pro-business conservatives and Republicans want increased recognition from the U.S. government that the economy has grown dependent on guest workers. In their view, the solution to undocumented immigration is the creation of a program that "regularizes employers' access to vital foreign labour" (Gans, Replogle and Tichenor, 2012, pg. 8)

Elizabeth Dickson²⁶, a chairperson of the Chamber of Commerce Subcommittee on Immigration, testified before congress on the need not only for “fruit pickers, but rather welders, service technicians, and tool and die makers.” (Stanley-Becker, 2013, pg. 18) Dickson went on to highlight labour demands in construction, health care and hospitality. Under the IRCA, these industries can only hire guest workers under the H-2B visa, restricting access to short-term and seasonal work. She and other pro-business lobbies and policy makers point to the labour market shortage in such industries, arguing that the expansion of the guest worker program would create positive economic growth in the United States.

D. Cultural Protectionism

Finally, cultural protectionists, also known as border hawks, see undocumented immigration as “nothing short of an unprecedented breakdown of American sovereignty,” and maintain that it is imperative that Congress responds by reinforcing the border. (Gans, Replogle and Tichenor, 2012, pg. 8) The House Republicans of this mindset, who might otherwise be willing to work towards comprehensive immigration reform, quickly reject S. 744 because the bill lacked suitably harsh sanctions and penalties to be placed on undocumented immigrants eligible for legalization. House Speaker John Boehner, a Republican from Ohio, and Paul Ryan, former presidential candidate and Chairman of the House Budget Committee, agreed that undocumented immigrants “could live legally and without fear in the U.S., but only if they were willing to admit their culpability, pass rigorous background checks, pay significant fines and back taxes, develop proficiency in

²⁶ Statement of Elizabeth Dickson, Manager of Global Immigration Service gave testimony before the Committee on Education and the Workforce, U.S. House of Representatives, 109th Congress., 2d Session. (July 19, 2006). On behalf of the U.S. Chamber of Commerce, Guest Worker Program, highlighting the needs to expand both the H-2A and H-2B visa programs in any proposed legislation.

English and American civics, and be able to support themselves and their families (without access to public benefits).” (Munro, 2014) Representative Boehner, as House Speaker, has the power to decide what bills are introduced and voted on in the U.S. House of Representatives. Demanding increased penalties for undocumented immigrants applying for legal status is essentially the same as stating outright that, under a Republican led House, S. 744 will not be passed into law.²⁷

Republicans are stuck between the pro-business lobby, a major financial contributor to Republican candidates across the country that advocates for unrestricted access to guest workers and boarder hawks, a significant part of the Republican base who want to reinforce the border, oppose the guest worker programs, and are against any type of legalization process for undocumented immigrants.

“Republicans come from districts with electorates more white and native-born than those in Democratic strongholds: 131 House Republicans represent districts that are more than 80% white in contrast to only 31 Democrats elected in such homogeneous districts. And only 46 House Republicans come from districts that are less white than the national average.” (Stanley-Becker, 2013, pg. 20)

As such, Republicans have to contend with interests from their constituents that will determine their continued service in the U.S. Congress, and the financial support that sustains the long and expensive elections that are a mainstay of U.S. politics. Current worries moderate republicans include the loss of their financial support for refusing to

²⁷ Senate Bill 744 does place administrative fees on applicants for legalization, yet these fees have been reduced from previous Senate immigration bills, and there are special categories of individuals that are exempted from all administrative and processing fees. (MPI, 2013)

address immigration reform and the loss of their constituency to Tea Party candidates as a result of expanding the guest worker program or passing into law legislation that offers undocumented immigrants a pathway to citizenship. On June 10, 2014, Eric Cantor, the U.S. House of Representatives Republican Majority Leader, lost his House position after being ousted in his district by David Bratt, a Tea Party Candidate from Richmond, Virginia. CNN political analyst David Green stated, "for Cantor to be knocked off by a Tea Party conservative over his efforts to push for immigration reform and his earlier efforts to lift the debt ceiling, I think it will send shock waves through Republican ranks." (Steinhauser & Walsh, 2014) Events like these make it appear unlikely that immigration reform of any kind will be passed through the U.S. House of Representatives. After a Republican heavy weight such as Eric Cantor, the U.S. House Majority Leader and expected successor of John Boehner as Speaker of the House, loses his seat for supporting a piece of bipartisan legislation, the case for comprehensive immigration reform is unlikely to make it to the House floor in the near future. (Steinhauser, Walsh, 2014 & Rubino, 2014)

The Impact of Undocumented Immigrants on the U.S. Economy

Assertions made concerning the impact undocumented workers have on the U.S. economy and the wages of US workers is highly contested by varying interpretations of available statistical data. One element of the debate on potential immigration reform centers on the burden placed on tax payers as a result of states and federal services that immigrants use and on what impact legalizing immigrants will have on the wages of U.S. workers. For an immigration reform bill to be passed into law, it needs to gain the support

of states that receive large numbers of immigrants.²⁸ Legislation proposals must ensure that states will not be forced to shoulder the financial burden of providing welfare services to immigrants eligible for legalization and that the employment opportunities and wages of U.S. workers will not be negatively impacted by newly authorized immigrants entering the labour market.

For this assessment, it is important to have an accurate measure of the costs and benefits of immigrants on the U.S. economy. Politicians misuse statistics to create an image that supports the established position. One such example of such misrepresentation claimed, “68 percent of low-skilled (or illegal) immigrants don’t have health insurance while only 14% of native born don’t have health insurance. Therefore the problem of uncompensated care in hospitals is due to immigrants using emergency rooms to get health care.” (Gans, Replogle & Tichenor, 2012, pg. 4) A key factor not included is that the population of U.S. citizens and authorized immigrants make up 10 times the number of undocumented migrants. A true assessment of the costs created by immigrants and undocumented migrants lies in recognizing that rhetorically positioning percentages of two populations that are in no way comparable in size is disingenuous.

In attempting to offer a more accurate measure of those costs and benefits I will look at various services the State is responsible for providing, examine whether K-12 education should be considered a cost or an investment in the future, and present the relationship between revenue collected by taxes in relation to cost bearing services like health care. I will then turn my attention to the impact that undocumented migrants have

²⁸ High immigration receiving states include California, Arizona, Texas and New Mexico. These states share a border with Mexico, the largest immigrant sending country, have large immigrant populations and have industries dependent on foreign labour migrants. (Brown and Bean, 2012)

on the U.S. economy and finally, in the last section, will use California as a model case to determine the impact undocumented immigration can have of the economy of states receiving high numbers of immigrants.

Economic Considerations

I. Education:

Education is a public service funded at the state level and guaranteed to all students, kindergarden through highschool, regardless of immigration status; it is the largest fiscal expenditure that any state funds. The children of unauthorized immigrants are entitled to attend public school until the completion of high school. (Gans, Replogle & Tichenor, 2012, pg. 3) Some economists often argue that this is just one example of how undocumented immigrants are taking advantage of public services. However, as children educated in the United States are likely to remain in the U.S. and enter the U.S. work force, other economists argue that public funded education should be considered an investment in the future economic opportunities for students. By focusing on “the large costs that children impose on the system” some economists “ignore the even larger returns they deliver as adults” (Fitz & Wolgin, 2012, pg. 231) Those like the DREAMers, individuals that were brought to the United States by their parents as young children, represent undocumented migrants who fall under the jurisdiction of the DREAM Act. DREAMers advocate for the expansion of the DREAM Act, also known as the Development, Relief and Education for Alien Minors, and the Defferred Action for Childhood Arrivals ACT (DACA) because they view education as an investment in their future. DREAMers often have a limited attachment to their place of birth, having been unable to visit their home due to their parents fear of not being able to return to the U.S.

DREAMers define themselves as Americans, want the opportunity to access higher education, expand their economic and career opportunities in the United States to become contributing members of American society.

Educational opportunities for adult immigrants should also be a priority for immigration reform. Before immigrants can obtain U.S. citizenship or permanent visas they will need to complete an English language proficiency exam. It was a requirement of the IRCA that immigrants choose to either take the English language efficiency exam or complete an English language course. The IRCA funded English language education classes, requiring completion of 40 hours in order to be eligible to access the legalization process. Policy makers recognized that without English proficiency, increasing the earning potential of newly legalized immigrants would not be possible. The IRCA determined that 40 hours of English education would provide immigrants seeking legalization sufficient English proficiency. However, language educators assert that 40 hours of language instruction would not greatly benefit nor increase the economic opportunities of immigrants. To see real results in language proficiency, future immigration legislation would need to provide immigrants with a minimum of 90 hours of English language instruction, but preferably as much as 150 hours. (Baker, 1997, pg. 16) Without a strong understanding of the English language, newly legalized immigrants would be forced to remain in low paying jobs, would have more impediments when accessing government services, and difficulty in advocating for their rights. There would also be greater limits on mobility as immigrants would not be able to access labour markets that would put them at greater risks for employer abuses.

II. Contributions of Undocumented Immigrants

a. State & Federal Programs

Another aspect of this debate centers how the presence of undocumented immigrants contributes to economic losses as a result of employment through the underground labour market. Tax revenue lost as a result of the lax regulations that allow undocumented workers access to underground labour markets, while still gaining access to public services, is a foundational argument in support of deportation. It is important to note that there are two types of undocumented workers. The first are undocumented workers that are in fact employed in the underground labour market. The second type of undocumented worker has obtained forged papers; this group comprises more than half of the undocumented labour population and these individuals pay both income and FICA (Social Security and Medicare) taxes. Undocumented immigrants with forged documents “have paid 120 billion to 240 billion into the Social Security Trust Fund.” (Fitz & Wolgin, 2012, pg 233) This is a direct contribution to the Social Security fund since these workers are not eligible to collect Social Security upon retiring; their contribution has contributed greatly and allowed the social security fund to remain solvent.

In 1997, the National Research Council found that undocumented immigrants with forged papers contribute \$80,000 dollars more in taxes than they receive in public benefits. (Baker, 1997, pg. 17) Furthermore, income tax and FICA are not the only sources of revenue for states. While levels may vary from state to state, everyone, including undocumented immigrants, pay “consumption” or “living” taxes. These can be substantial and “[account] for hundreds of billions of dollars in state and local revenues each year.” (Fitz & Wolgin, 2012, pg. 230) Undocumented immigrants, generally low

skilled workers, have been able to fill labour market shortages vital to the US economy in various industries. Legalizing undocumented workers would increase the revenue for the state and federal governments. This potential economic boost as now allayed the fear of newly legalized immigrant workers displacing U.S. workers, fear that has only increased since the global economic recession that began in 2008.

b. U.S. Workers

A study completed at the University of California, Riverside on the effects of immigration reform on the labour market, found that legalization programs would have profound effects on the U.S. labour market. Upon its conclusion, the study found the legalization programs would increase immigrant wages by more than 20% for workers who would be able to better match their skill set to available jobs. On the other hand, those individuals who would remain in their current positions, legalization would have little to no impact on their wages. The legalization of 11 million undocumented immigrants is possible with “a negligible impact on the wages” of U.S. workers. (Lozano and Sørensen, 2011, pg 7)

A more pressing matter, in terms of the national immigration narrative, is the effect legalization could have on the employment rates of U.S. workers. Those that would likely be the most impacted by S. 744 would be U.S. workers that did not complete highschool or have not accessed any type of higher education or vocational training programs. A study by Orrenius and Zavodny done in 2007 found that there will be a “1 to 5 percent decrease in American low-skilled blue-collar workers due to legal immigration.”(Bohn and Lofstrom, 2012, pg. 247) Alternatively, other studies have found that immigrant skills tend to complement those of U.S. workers and in fact the “inflow of

immigrants equaling 1 percent of the population generates a 1.5 percent increase in total employment.” (Cortez and Peri, 2012, pg. 252) Though legalization would not greatly impact the wage earning capabilities of U.S. workers, low skilled workers should expect an increase in competition for jobs. Studies that show an increase in jobs as a result of an increase in immigration or legalization programs fails to mention whether low skilled workers will be able to access those jobs, and more work needs to be done in order to answer this question.

III. Deportation

If no path toward legalization is offered to undocumented immigrants and Immigration Customs and Enforcement (ICE) instead applies its funding toward locating and deporting undocumented immigrants, the consequences could have profound effects on the U.S. economy. Undocumented immigrants make up approximately 75 percent of the U.S. agricultural labour force. (Vaughan, 2012) The U.S. Department of Agriculture reports that every farm worker creates approximately 3.1 U.S. jobs, “jobs that support and are created by the growing of agricultural products.” (Vaughan, 2012, pg.20) The majority of complimentary jobs created by farm workers is filled by an American citizen worker. Beyond the fact that the sheer cost of locating and deporting every single undocumented immigrant makes the venture unfeasible, it would be quite costly and not yield a positive economic benefits for the U.S. economy.

Undocumented workers are the main source of labour for the agriculture, construction, and manufacturing industries, as well as the service and restaurant sectors. States whose economies rely on these sectors would not support such a measure if brought to a vote in Congress; California being a prime example. California is a high

immigrant receiving state whose economy makes up 13% of the total U.S. GDP. (Hincapié & Ooi, 2012) In California, undocumented workers make up about “9% of the workforce and gross state product, and make up 22% of the agriculture, forestry, and fishing/hunting workforce; 17% of the leisure and hospitality workforce; and 15% of the construction workforce.” (Hincapié & Ooi, 2012, pg 19) These statistics highlight the fact that systematically removing undocumented workers from California would have a massive impact on not only the California state economy but on the U.S. economy as a whole. California not only makes up a disproportionately large percentage of the total U.S. GDP, it is the most populous state in the U.S. DHS reports California has an undocumented immigrant population of approximately 2,830,000 or 7.5% of the total population of California. Immigration reform policy attempting to create positive changes in the U.S. economy cannot expect that the removal of undocumented immigrants will open up approximately 11 million jobs for U.S. citizens or authorized immigrants. With the creation of jobs that can be directly linked to production in agriculture, the removal of all undocumented immigrants could wipe out the sustainability of industries like agriculture, taking with it thousands of the resulting complementary jobs currently filled by U.S. workers.

Arguments both for and against legalization allude to the economic impact that undocumented immigrants have on the U.S. economy, and the burden undocumented immigrants are perceived to be on state and local governments. Though legalization would increase competition for low skilled work from somewhere between 1 and 5 percent, legalization would have an overall positive impact on the U.S. economy. More workers would be contributing to Social Security and Medicare as well as paying income

taxes. Other than maintaining the status quo, there can be no sustainable alternative to legalization and mass deportation is a disastrous prospect for many states like California and consequently the entire country.

Chapter 3

Policy Recommendations

The Border Security, Economic Opportunities and Modernization Act (S. 744) is a piece of legislation that is considered an acceptable compromise between meeting the needs of undocumented immigrants currently residing in the United States and calming Americans' fears of possible mass inflows of undocumented immigrants. The political nature of U.S. politics forced the authors of the act to make various compromises before it could be passed in the U.S. Senate. Taking the politics into consideration, there are three main policy recommendations that should be considered and incorporated into this piece of legislation. First, the legislation should create a formal policy for all federal agencies, specifically ICE, to protect undocumented individuals from deportation when in contact with local law enforcement. Second, as a part of the implementation of the legislation, greater attention should be paid to the dissemination of information on eligibility requirement for entering into the legalization stream. Finally, detailed guidelines should be outlined for the Department of Homeland Security on minimum standards for securing the southern U.S.-Mexico border. These recommendations will address some of the critiques raised in this paper and demonstrate the political struggles that the authors of this legislation were forced to contend with.

Sanctuary Policies

As a response to the terrorist attack on September 11, 2001 the Department of Justice (DOJ) began strengthening ties between local and federal law enforcement agencies. Local police were asked to aid in the apprehension of terrorists by interviewing individuals with temporary visas. National origin, age, and gender were used when attempting to locate individuals with ties to organizations with possible sympathies to groups defined as terrorist organizations. The DOJ asked local police to contact the INS if any individuals were found to be in violation of their visas and to hold them without bond. (Office of the Deputy Attorney General, 2001, pg.1) While most cities complied with the requests, some refused, including Portland and Corvallis, Oregon, San Francisco and San Jose, California, and Seattle, Washington. (Yardley, 2006) For many of the cities that refused to participate, federal requests conflicted with state and local “sanctuary policies”. For example, the city of San Francisco has a City of Refuge ordinance prohibiting all city employees from assisting ICE with immigration investigations.²⁹ The ordinance also prohibits local law enforcement from inquiring about an individual’s immigration status if they have not been charged with a crime. (Ridgley, 2008) Former San Francisco Mayor Gavin Newsome issued an Executive Order that called on the city to put in place training protocols for the implementation of the Sanctuary Ordinance. (General Services Agency, 2007)

²⁹ This ordinance came as a response to the Sanctuary Movement of the 1980s. Members of various faith groups offered aid to Central Americans forced to flee their homes due to civil war in their countries. Many found it difficult to obtain refugee status from the U.S. Government. More recently there has been a strong push in the Sanctuary Movement to protect undocumented immigrants from raids that separate families. (City and County of Refuge Ordinance, <http://sfgsa.org/index.aspx?page=1067>)

The “sanctuary policies” in these cities are a stark contrast to the policies of criminalization being implemented against undocumented immigrants in states like Arizona and Alabama. With state laws like the Support Our Law Enforcement and Safe Neighbourhoods Act, also known as Arizona SB 1070, deemed constitutional by the U.S. Supreme Court, many states have opted to introduce similar legislation. These laws require local law enforcement officers to inquire about the immigration status of any individual who they suspect is residing in the state without proper documentation. The inclusion of a provision in S. 744 that specifically addresses the sharing of information between State, Local and Federal law enforcement would impart to undocumented immigrants a more equal standard of protection under the law before being granted access to the proposed streams of legalization.

S. 744 requires the U.S. – Mexico border to be secured before the Department of Homeland Security begins accepting applications for legalization from undocumented immigrants. A secured border is defined in the bill when a 90% apprehension rate is reported by all major crossing sectors³⁰. Incorporating a “sanctuary policy” for federal agencies, and encouraging state and local law enforcement to do the same, would go a long way towards building trust within immigrant communities. This should be a priority as the country moves towards adopting a legalization program due to the potential for increased nativist sentiments spurred on by inflammatory political rhetoric. The criminalization of the undocumented status in the United States has led to serious violations of civil rights through targeted efforts against Latino and Hispanic communities. Highly publicized immigration raids in Hispanic and Latino communities

³⁰ There are nine major crossing sectors along the southern U.S. border. From West to East: San Diego, El Centro, Yuma, Tucson, El Paso, Marfa, Del Rio, Laredo, and Rio Grande Valley.

reinforce a perception that the majority of poor Hispanic and Latino communities are undocumented immigrants.³¹

Immigration is a federal issue and the U.S. Supreme Court has historically blocked past attempts by states to regulate the flow of immigration based on the grounds that any such law would violate the Equal Protection Clause of the constitution. (Ridgley, 2008, p. 56) However, the U.S. Supreme Court has recently upheld Arizona's SB 1070 law, giving states greater authority over the enforcement of immigration through the implementation of criminal laws. This move is in direct conflict with sanctuary policies, founded on the idea that individuals should have the fundamental rights regardless of citizenship. (Ridgley, 2008, Varsanyi, 2006) These policies would create spaces for immigrant communities to interact with law enforcement without being placed under constant surveillance and policing. The strengthening of local communities is imperative, with or without the expectation that undocumented residents will soon be able to transition to authorized status. Sanctuary policies should remain in place even after the period in which undocumented immigrants can apply to legalize their immigration status comes to an end.

Access to Information

There is often a misconception shared by undocumented immigrants and the general public alike on who is eligible to alter their immigration status under the new legislation. Many immigrants who were eligible for the "amnesty" program under the IRCA did not take advantage of the opportunity to legalize their immigration status as a

³¹ In 1997, Arizona was performed an immigration raid, known as the "Chandler Roundup". In her discussion of the event Romero (2006) describes the actions of police as "race-related abuse and harassment," against individuals targeted based on their "Mexicanness" indicated by their "skin color, bilingual speaking abilities" and residency. (p. 447)

result of government bias and the dissemination of information by government bodies.³² The INS allocated about 10.7 million dollars to the outreach and public education campaign, which had two purposes. First, this money was to be spent to inform eligible applicants of their rights and the process of legalization, and second, it was meant to inform employers of the revised sanctions that they would be subject to should they hire undocumented labour migrants. The IRCA had unrealistic expectations of how effectively the information campaigns would inform qualified applicants of their eligibility, of how to take advantage of the opportunity to legalize, and the speed at which various offices could process those applications. As it stands S. 744, does not make the necessary adjustments to ensure that this program is more effective.

To reach more eligible immigrants S. 744 will create the Office of Citizenship and New Americans (OCNA) to oversee the legalization programs carried out across the country. This office will receive less funding than past immigration reform attempts including what was allocated under the IRCA.³³ By not providing adequate funding, the legislation is limiting the power of the OCNA before it even begins its task of educating the public. Increasing the funding allocated to the OCNA and expanding the information channels to include existing advocacy organizations that have ties to immigrant communities would be instrumental in the effective distribution of information to eligible

³² In Baker's (1997) discussion of the IRCA's legalization program, she argues that the INS made several key decisions in the implementation of the program that was biased in favor of undocumented Mexican immigrants. An example would be their attempt to "exclude applicants who did not fit the typical profile of the Mexican undocumented immigrant" in court. (Baker, 1997, p. 12)

³³ In 2007 the Senate introduced U.S. Senate Bill 1639, under this immigration reform attempt, the Senate argued for a new office that would require \$100 million dollars to carry out an effective outreach and public education campaign, and the processing of applications. (U.S. Senate Bill 1639) Comparatively, the IRCA's \$10.7 million (approximately 22 million in 2013 dollars), is twice the resource investment as Sb. 744. Congress argues that for the OCNA to be effective it will require only \$10 million dollars, essentially decreasing the resources available to the legalization campaign by half. (Migration Policy Institute, 2013)

immigrants. In a revised piece of legislation, the OCNA should receive increased funding to carry out information campaigns during the entire 12 to 18 month time frame during which the DHS is securing the U.S. - Mexico border. Individuals eligible for the transition to legal immigration status would have a greater opportunity to understand their rights and gather the necessary documentation to demonstrate residency and work history. This should be a key feature of any new legislation; the processing of applicants for residency should receive the same commitment as proposals for securing the border. A substantial portion of the costs of processing the applications and administrative services through the OCNA can be recouped by requiring payment of a non-refundable fee of \$1000 to apply for legalization. States receiving high numbers of immigrants already have some of the infrastructure necessary to reach these eligible immigrants and will be important partners throughout the legalization process. Greater access coupled with increased transparency and oversight of the legalization process should be prominent features of a revised S. 744.

Border Enforcement

Securing the border is the greatest challenge proposed in S. 744. Before undocumented immigrants can begin immigration status transitions, the Department of Homeland Security must present and implement two plans toward securing and enforcing the impermeability of the southern U.S. border. This portion of the legislation was deemed a necessary compromise in order to accumulate the necessary support for the inclusion of a legalization option for undocumented immigrants. Thus, the U.S. Senate has taken crucial measures to protect 11 million individuals residing within the U.S. at the expense of communities living along the U.S.-Mexico border. It is to the detriment of

these border communities that any legislation that does not include a strong border enforcement measure would not successfully pass either the House or Senate.

Undocumented immigrants attempt to cross the border into the United States every year; while this number has declined since the economic recession that began in 2008, and the number of individuals turned back at the border has increased.³⁴ The majority of currently undocumented immigrants have entered the United States legally, with authorized work or travel visas, and subsequently remained in the country after those visas had expired. As such, intensifying border security through proposed militarization plans will not greatly impact the number of undocumented immigrants residing in the U.S. Instead, it will force immigrants determined to cross the border to take increasingly dangerous measures to cross into the U.S. and allow “coyotes”³⁵ the ability to charge more for their assistance.

The 4.5 billion dollars allocated to the completion and maintenance of the border security strategy will not likely prevent the continued presence of undocumented immigrants. Rather those resources could be used by the OCNA when reaching out to undocumented immigrants during legalization programs, or the INS and ICE to monitor the EEVS and the internal enforcement of immigration law. Another major concern is the continued sovereignty of communities like the Tohono O’odham, a federally recognized Native community whose reservation spans both sides of the border. This community is

³⁴ Figures published by the Department of Homeland Security in an annual report entitled Immigrant Enforcement Action 2010: <http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement-ar-2010.pdf>

³⁵ Coyotes are individuals, American and Mexican that assist immigrants attempting to cross the U.S.-Mexico border without authorization. Coyotes charge a great deal for their services but make no guarantees that immigrants will successfully enter the.

one among the many that are being ignored to make the political commitments seen as necessary to pass the bill into law. Communities with a history of colonial oppression do not welcome the 24-hour surveillance and the separation that would result from a fence being constructed through their community.

Immigration reform is the only mechanism that has the potential of allowing the state to effectively regulate immigration flows. “Cosmopolitan” members of congress need to take up the responsibility to fully inform the public of the impact a border wall will have on communities. This is especially important, as a wall would not greatly impact the number of undocumented immigrants residing in the United States without an effective temporary foreign worker program as well as family reunification opportunities for both high and low skilled workers. Instead of completing the border fence, Homeland Security should focus on strengthening existing border checkpoints and major crossing sectors, particularly in remote areas where immigrants could be at risk when crossing. The legislation should ensure an exemption for federally independent communities like the Tohono O’odham indigenous community and ensure they are not being isolated or attempt to dissolve their connection to the United States.

As Homeland Security has yet to propose any type of plan to secure the border, S. 744 should require strategies that limit the construction of a physical barrier between the United States and Mexico. In 2010, Homeland Security froze construction of the border fence after completing 700 miles of the 2,000 miles of shared border between the U.S. and Mexico. It was estimated that upkeep alone would cost 49 billion dollars over the next 25 years. (Shiflett, 2010, *The Fence (La Barda)*, 2010) In the HBO documentary series, “*The Fence (La Barda)*” a “coyote” was interviewed who was not in the least

discouraged by the prospect of the border fence being completed. “We don’t care about fences,” said one coyote. “We’ll just find another way to cross.” (Shiflett, 2010) The completion of the border fence will not create a 100% secure southern U.S. border, and the completion of the wall is unrealistic and fiscally irresponsible. The Border fence would need to pass through the Rio Grande River, Lake Amistad, Falcon Lake and cross Big Bend National Park.³⁶ If the United States government intended to leave these vital waterways open, they would continue to allow undocumented immigrants access to the United States. If the government chooses to seal these access points as well, the legislation would need to include within it proposals to limit the environmental impact of effectively damming all bodies of water shared by the United States and Mexico.

Though the justification of the wall is based entirely on ensuring the security of the state by keeping out individuals who are deemed dangerous or threatening, in reality this narrative is the result of political struggles occurring within the United States government at the state and federal levels. While border security remains an integral part of legislation with any hope of passing, proposed legislation should work to inform Americans about the methods by which undocumented immigrants gain entry into the United States and give preference to effective enforcement strategies that propose alternatives to current problematic and impractical strategies.

Conclusion

Obstacles for S. 744 include a lack of consensus between states on how to deal with the immigrant population. Some states, like Arizona, believe the only way to protect

³⁶ The United States and Mexico share water rights to the Rio Grande River, previous plans proposed are to the advantage of the United States and would likely pose a political problem with the Mexican Government. Additionally, Big Bend National Park is approximately the size of Rhode Island, 1,2500 miles long and has a mountainous range that makes completing the border fence difficult. (Finger, 2013)

their communities is by enacting harsher criminal penalties so as to deter immigrants from entering the United States without authorization and urging congressman to reject any form of legalization program. California, and other states with large immigrant populations whose economies are highly dependent on immigrant labour, have chosen to shield undocumented immigrants from criminal prosecution and support more inclusionary legislation. The narrative bias that propagates the stereotype that all undocumented immigrants are from Mexico and are illegally employed has made many Americans fearful of what they perceive as an “open” border between the United States and Mexico. As such, to avoid the completion of a fence across the U.S.-Mexico border, there needs to be a political will in Congress to push for alternatives and investing in finding realistic solutions that relay on facts rather than rhetoric.

S. 744 does make substantial changes to the current U.S. Immigration system, changes that come at a cost. While the need to address the 11 million undocumented immigrants living in the “shadows” should be a priority for U.S. policy makers, the militarization of the U.S.-Mexico border and the destruction of communities like the Tohono O’odham indigenous community should not be seen as an acceptable compromise. It is undocumented immigrants that are overstaying authorized work or travel visas, not undocumented border crossings that have created a pressing need for immigration reform. S. 744 makes changes to the types and number of work visas available to foreign workers, and has increased the resources for interior enforcement to ensure that immigrants are using legal channels to work and live in the United States. The United States economy has grown dependent on temporary foreign workers and legislators have chosen to ignore the risks undocumented immigrants and communities

face. Members of the U.S. House of Representatives do not have adequate incentive to go against the, often ungrounded, fears of their constituents and protect the rights of temporary labour migrants. U.S. Congressmen seem to be in a never-ending election cycle. Politically, it may be that these policy recommendations would be able to accumulate the support needed to pass the bill in the Senate, were it not for the renewed fear among Republicans in the House of Representatives of losing their seats to Tea Party candidates who have been shown to be able to oust established and powerful members of Congress in recent years.

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