



Immigration Policy, Process & Legal Rights

**Section III of the
2006-2007 Travis County Immigrant Assessment**

**Conducted by
Travis County Health and Human Services & Veterans Service
Research and Planning Division**

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Immigration Policy, Process and Legal Rights Overview

Community Goals

The national goal for immigration policy and process and the community goal for protecting the rights of immigrants are reflected in the following statements:

[To] secure America's promise as a nation of immigrants by providing accurate and useful information to our customers, granting immigration and citizenship benefits, promoting an awareness and understanding of citizenship and ensuring the integrity of our immigration system.

(U.S. Citizenship and Immigration Services)

[To] be a "Safety Zone" where all persons are treated equally, with respect and dignity, regardless of immigration status.

(Austin City Council, 1997)

On a national level, the most viable immigration policy and system would reflect and address the needs of local communities and individual community members. On a local level, the well-being of the entire community is linked to the treatment of individual community residents.

Highlights

- Immigrants, businesses, local governments and community-based organizations share the need for timely, accurate information and specialized legal assistance to understand and navigate the complex, changing immigration system.
- Trends in United States immigration policy appear to be cyclical. At various points in history, immigrants (or certain groups of immigrants) have been welcomed or rejected depending on the state of the economy, public opinion, political climate, and national security issues.
- Jurisdiction over immigration related policies is both complex and ambiguous. The federal government determines the overarching immigration policy and oversees the immigration system. State and local governments do not have formalized roles in the immigration system, however they often bear the costs and responsibility for meeting the needs of immigrant residents including education, healthcare, and public safety.
- The group "foreign born" includes the following subgroups: naturalized U.S. citizens, lawful permanent residents, individuals with temporary visas, and undocumented immigrants. These groups and the distinctions between them are described in Table 3-A on page 24.

- The current immigration system is complex and can be difficult to understand and navigate. Immigrant focus group participants noted encountering a number of challenges with the federal system including difficulty with the paperwork process, cost, lack of legal status, and lack of timeliness in response. A demand for immigrant visas that far exceeds the supply, and backlog issues also pose significant challenges for those wishing to attain legal residency.
- While all immigrants living in the United States have some fundamental rights as laid out in the U.S. Constitution, the majority of rights are tied to legal status. The Constitution makes a significant distinction between “citizens” and “persons.” Thus many immigrants living and working in the United States have formal protections of basic rights afforded to “persons” but not to “citizens.”

| Table 3-A. Immigrant Subgroups and Related Visas, Legal Status and Citizenship Status | | | | |
|---|--|---|--------------|---------------|
| Group | Description | Visa Availability | Legal Status | U.S. Citizens |
| Naturalized U.S. Citizens | <p>Foreign-born individuals who have completed the following:</p> <ul style="list-style-type: none"> ▪ obtained lawful permanent resident status ▪ lived in the U.S. for five years ▪ shown good moral character ▪ demonstrated the ability to read, write and speak English ▪ indicated knowledge of U.S. history and government ▪ completed citizenship application and paid related fees ▪ taken the oath of allegiance for naturalized citizens | | ✓ | ✓ |
| Lawful Permanent Residents (LPR) | <p>Foreign-born individuals who belong to one of the following groups and have been granted immigrant visas:</p> <ul style="list-style-type: none"> ▪ have been sponsored by a family member who is a U.S. citizen or LPR ▪ have needed job skills and have been sponsored by a U.S. employer ▪ come from a country that has low levels of immigration to the U.S. and have been granted admission through a diversity lottery ▪ are refugees or ayslees who are unable or unwilling to return to their home countries | A total of 675,000 immigrant visas are available annually. Limits apply according to countries of origin and preference categories (family sponsored preference, employment based preference, and diversity lottery). | ✓ | |
| Individuals with temporary visas ³ | <p>Foreign-born individuals who have been granted nonimmigrant visas and thus have legal status to enter the United States for a limited period and specific purpose. This group includes students and temporary workers.</p> | There are nearly 100 different types of nonimmigrant visas; with no overall annual cap on the number of individuals admitted each year. However, Congress does set numerical limits for some categories. For example, 65,000 H-1B specialty occupation visas for first time applicants; 66,000 H2-B visas for seasonal nonagricultural workers; 5,000 T-1 visas for victims of trafficking. | ✓ | |
| Undocumented immigrants | <p>Foreign-born individuals who belong to one of the following groups:</p> <ul style="list-style-type: none"> ▪ Foreign-born individuals who enter, live, and work in the U.S. without the documents or authorization required by U.S. law. ▪ Foreign-born individuals who were admitted on a temporary basis but have overstayed their visas. | Do not have a visa, and under current immigration law, may not have an opportunity to obtain a visa. | | |

Source: Batlova, 2006; Congressional Budget Office, 2006; Greico, 2006; Wasem, 2006

³ As defined for purposes of this report, this group includes some individuals who are considered part the Travis County immigrant population (i.e. students, temporary workers, and their families, and others who are not considered to be part of the immigrant population (i.e. tourists and business travelers).

History of United States Immigration

The history of United States immigration is rich and complex. Over time, United States policy and practices on immigration have changed according to geopolitical factors such as land availability, population growth, the need for workers, and native-born citizens' perceptions of foreign-born populations. At some points in history, policy has created rights, protections, and opportunities for newcomers. At other points, policy has discouraged immigration and/or has left many workers and families virtually absent of rights or protections. To provide context to the current discussions on immigration, following is 1) a brief narrative overview of the history of immigration policy in the United States, and 2) an illustration of how historical factors and policy decisions have effected changes in the size and relative proportion of the immigrant population over time.

A Brief Narrative History of U.S. Immigration Policy

Colonial Period to 1840: Relatively Free and Open Borders: The 17th, 18th and early 19th centuries were a period of relatively free and open borders when immigration was generally favored and, at times, even recruited. However, the U.S. borders were not equally open to everyone. While many of the first Africans who came to the United States did so of their own free will, most Africans who came to North America during the Colonial period did so against their will as part of the transatlantic slave trade (Library of Congress, n.d.). There were also early attempts to keep out the poor, groups considered culturally or religiously incompatible with the rest of the population, or others considered "undesirable" (Zolberg, 2006). As the United States became a sovereign nation, citizenship was first defined through the *Naturalization Act of 1795*. The Act restricted citizenship to "free white persons" who resided in the United States and renounced their allegiance to their former country.

1840 to 1920: Greatest Period of Immigration in United States History: The period between 1840 and 1920 is sometimes referred to as "the greatest period of immigration in U.S. history." During these years, 37 million European immigrants arrived in the United States (American Immigration Law Foundation, n.d.). A variety of factors contributed to high rates of immigration. Extreme economic conditions such as the Irish Potato Famine and the German Depression prompted emigration from Europe. Technological advancements decreased both cost and travel time by ship, making travel more feasible. Finally, industrialization increased the demand for immigrant labor in the U.S. (Zolberg, 2006).

After the Civil War, the 14th *Amendment of the United States Constitution*, ratified in 1868, expanded the definition of citizenship to include all children born on U.S. soil. The post-war constitutional amendments also shifted immigration regulation from the state to the federal level. In its newly formalized role, the federal government sought to better protect and regulate entry into the United States. *The Immigration Act of 1891* established an Office of Superintendent of Immigration within the Treasury Department to oversee national immigration policy and

immigration into the United States. In 1892, the Office opened an immigrant processing station on *Ellis Island*, New York. (American Immigration Law Foundation, n.d.; U.S. Department of Customs and Border Protection, n.d.; Zolberg, 2006)

Late in the 19th century, the U.S government proactively recruited immigrant workers, first from Europe and later, to support westward expansion, from Asian nations such as China and Japan. Native-born Americans did not always welcome the newcomers. Some feared that new immigrants meant competition for jobs and wealth. Others were concerned that Asians and “not so white” southern and eastern Europeans were a threat to the American identity. This anti-immigrant sentiment shifted the policies of the period from diversified recruitment to restriction. For example, the *Chinese Exclusion Act of 1882*, prohibited any additional persons from China from entering the United States and excluded those already in the country from obtaining citizenship. (Zolberg, 2006; Library of Congress, n.d.)

Immigration from World War I (WWI) through World War II (WWII): The outbreak of WWI ceased most transatlantic movement, and immigration declined. When immigration resumed following the war, Congress sought to limit the number of newcomers. The *Quota Law of 1921* and the *Johnson Act of 1924* quantitatively restricted immigration through a national origins quota system. Quotas for each nationality were based on each nationality’s representation in previous U.S. Census figures. Asians were completely excluded from the available visas with few exceptions. (Congressional Budget Office, February 2006; Zolberg, 2006)

With the threat of WWII, immigration became associated with the issue of national security; President Roosevelt moved immigration functions (*Immigration and Naturalization Service*) to the Department of Justice in 1940 (U.S. Department of Customs and Border Protection, n.d.). The Japanese attack on Pearl Harbor in 1941 prompted the organization of internment camps in the U.S. where Japanese Americans were stripped of their property, relocated and imprisoned, solely on the basis of their ancestry (Library of Congress, n.d.).

While immigration in general slowed significantly during both world wars, immigration from Mexico continued steadily as U.S. businesses recruited Mexican workers to help meet labor shortages (see Special Topic: Immigration between the U.S. and Mexico).

Post World War II — The Foundation of Current Immigration Policy: The nation’s first refugee law, the *Displaced Persons Act of 1948*, allowed many refugees from WWII to settle in America. Beginning in the 1960’s Cuban refugees fled to the U.S. to escape the Cuban regime. After 1975, many Vietnamese who sided with the Americans during the Vietnam War, sought refuge in the United States (American Immigration Law Foundation, n.d.). *The Refugee Act of 1980* gave the President and Congress the authority to determine the number of refugees to be admitted annually (Congressional Budget Office, 2006).

In 1952, the *Immigration and Nationality Act (McCarran-Walter Act)* established the basic foundation for most of present immigration law. While this law retained a national origins

quota system, it also removed the strict racial barriers to immigration by establishing minimal quotas for immigrants from Asian countries (American Immigration Law Foundation, n.d.).

Many of the policies established in the *Immigration and Nationality Act Amendments of 1965* are still in place today (with modifications). This law replaced the national origins quota system with a categorical preference system that gave preference to relatives of U.S. citizens and lawful permanent residents and to workers with certain skills. The law maintained an annual limit on immigration from the Eastern Hemisphere (170,000 immigrants with no more than 20,000 per country) and for the first time established a cap on immigration from the Western Hemisphere (120,000 with no country limits or preference categories). Immediate family members of U.S. citizens (defined as spouses, parents, and children) were exempted from the caps. (Congressional Budget Office, 2006)

During the 1960s, the U.S. ended the Bracero program⁴ and changed the composition and numbers of people authorized to immigrate to the United States (*Amendments of 1965*). Despite the change in policy, agricultural employers still had the same need for labor, and workers continued to immigrate but increasingly did so outside of legal channels. The *Immigration Reform and Control Act of 1986 (IRCA)* sought to address the issue of unauthorized immigration by granting lawful permanent residency to more than 2.7 million undocumented immigrants who had entered the United States before 1982. It also sought to enhance enforcement and established sanctions against employers who hired workers not authorized to work in the United States. (American Immigration Law Foundation, n.d.; Zolberg, 2006)

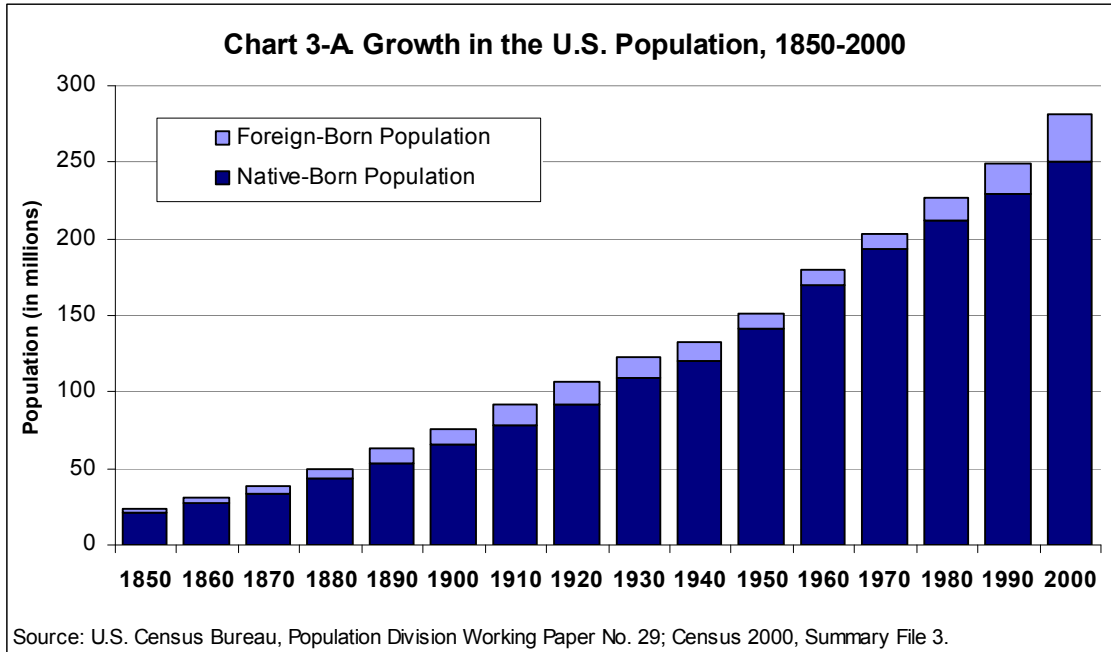
In a more recent attempt to address the continuing issue of unauthorized immigration, Congress passed the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)*. This law increased the number of border patrol agents and other security measures at the borders, created major changes to the immigration consequences of criminal cases, established mandatory detention of immigrants convicted of certain crimes, and instituted a permanent bar to permanent residence for those who falsely claimed to be U.S. citizens. It also limited the public benefits available to immigrants and established an employment verification pilot program. (Congressional Budget Office, 2006)

Immigration Policy in the 21st Century: Since the events of September 11, 2001, the issue of national security has been central to U.S. immigration policy. The *Homeland Security Act of 2002* created the Department of Homeland Security (DHS) and merged 22 federal agencies including FEMA, the U.S. Coast Guard, and the former Immigration and Naturalization Service (INS) (Jernegan, 2005). With this reorganization, immigration paperwork and processing functions are now handled through the Bureau of Citizenship and Immigration Services, one division of a large, security-focused Department.

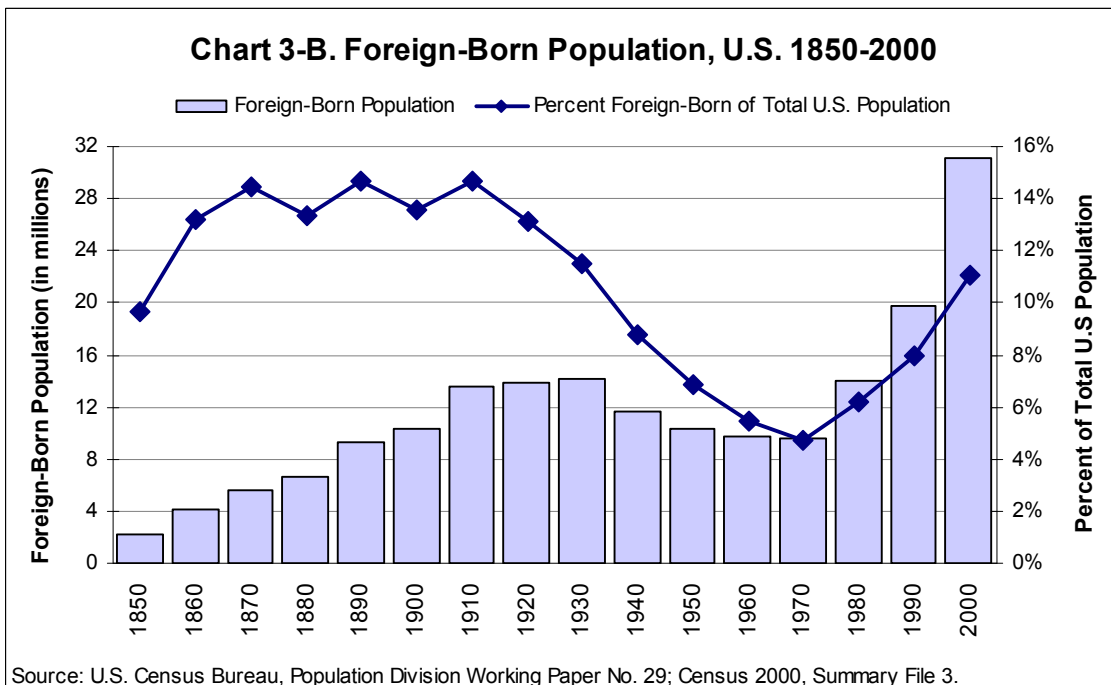
⁴ Agricultural migrant program established during WWII to replace American agricultural workers with workers from Mexico.

History of U.S. Immigration: Numbers and Trends

As related to the historical factors discussed above, the number and relative proportion of immigrants living in the United States has fluctuated over time. Chart 3-A shows that the U.S. is currently experiencing a period of significant immigration.



However, as Chart 3-B displays, from a historical perspective, the current U.S population has proportionately fewer immigrants than in the past.



Special Topic: Immigration between the U.S. and Mexico

With a complex history, interconnected economies, and a shared border of 2,000 miles (the only land border in the world between a first-world country and a third-world country) the U.S and Mexico have a unique immigration relationship that warrants special mention here.

Changing Land and Borders: The U.S. and Mexico in the 19th Century

“The first Mexicans to become part of the United States never crossed any border, instead the border crossed them (Library of Congress, n.d.).”

Following Mexico’s independence from Spain in 1821, Mexico gave American settlers an open invitation to immigrate into Mexican territory (including present-day Texas). In hopes of encouraging U.S. settlers to settle in Mexican territory and adopt Mexican citizenship, Mexican officials granted Stephen F. Austin a large area of land. Before long, what would become Texas territory was largely inhabited by a majority of Anglo-American immigrants, and conflict soon developed between U.S. colonists and the Mexican government. American settlers resisted adopting Mexican citizenship and the Roman Catholic faith, and denied freedom to slaves despite Mexico’s emancipation of slaves in 1829. In 1830, the Mexican government prohibited further Anglo-American immigration and forbade further importation of slaves to Texas.

Persistent insurgence by Anglo-American settlers and failure of the Mexican government to maintain order ultimately led to the outbreak of the Mexican-American War in 1846. After two years of battle, Mexico was defeated. Mexico relinquished territories to the United States in exchange for \$15 million dollars through the signing of the Guadalupe-Hidalgo Treaty. Upon signature of the treaty, the United States increased its total landmass by one-third, adding what are now the states of California and Texas, as well as parts of Colorado, Arizona, New Mexico, Utah, Nevada and Wyoming. Following the war, Mexicans living in seized territories became U.S. citizens and were protected by the U.S. Constitution, although in practice Mexicans were rarely afforded these rights. By the end of the 19th century, many Mexican-Americans found themselves deprived of their land and unwelcome in what was once their homeland.

Shifting Economic Needs, Shifting Policies: The U.S. and Mexico in the 20th Century

“Immigration law has swung back and forth throughout the 20th century, at times welcoming Mexican immigrants and at other times slamming the door shut on them (Library of Congress, n.d.).”

In the early 1900’s, revolution in Mexico and a strong U.S. economy led to increasing Mexican immigration to the United States. During World War I, industrial companies in the Midwest recruited Mexican workers to address the shortage of domestic and European immigrant workers and to help meet the demand for wartime goods. Even in the 1920s, when U.S. policy discouraged immigration from most of the world, immigration from Mexico continued, as the national quota system imposed after WWI was not applied to any country in the Western Hemisphere. However, during the Great Depression of the 1930s, both U.S. citizens and non-citizens of Mexican descent were deported to make jobs available for non-Latino citizens.

The 1940’s brought another reversal in U.S. policy. With the start of World War II, Mexican workers were again needed to remedy U.S. labor shortages. In one related policy, the United States established the Bracero Program (1942-1964) to replace American agricultural workers who had joined the armed forces. The Bracero Program continued after the war, but the United States’ overall philosophy in the post-war period was a new, larger campaign of deportation that lasted into the 1950s.

In 1960s, another set of policy changes, (the Immigration and Nationality Act Amendments of 1965 & the end of the Bracero program), limited legal channels for immigration. However, immigration from Mexico continued at a steady rate. Between 1970 and 2000, the number of Mexican immigrants seeking economic opportunity or a chance to reunite with family in the U.S. grew from 800,000 to nearly 8 million.

Today, this immigration trend continues, often outside of legal channels, with opportunities and challenges for both nations. For Mexico, remittances sent home by immigrant workers add stability to the economy, but the safety net provided by emigration may delay the implementation of any meaningful domestic reform in Mexico (for example workforce development). The United States benefits from the cultural and economic contributions of Mexican immigrants, but faces challenges providing for their health, safety and basic needs. The U.S. continues to struggle with establishing policy that negotiates the gap between the needs of both countries and their residents and the interests and resources of the U.S.

Sources: Divine, Breen, Fredrickson & Williams, 1995; Library of Congress, n.d.; Zolberg, 2006; Spencer, 2005.

Current Immigration Policies and the Immigration System

Structure, Roles, and Responsibilities

The immigration system falls under the jurisdiction of the federal government with the majority of immigration related functions under the auspices of the U.S. Department of Homeland Security. In addition, the U.S. Department of State and U.S. Department of Justice are responsible for parts of the immigration system. Table 3-B provides a brief description of the immigration related roles and responsibilities of each of these agencies.

| Table 3-B. Immigration Related Roles and Responsibilities of Federal Agencies | |
|---|--|
| Department | Office/Bureau and Immigration Function |
| U.S. Department of Homeland Security | <p>U.S. Citizenship and Immigration Services (USCIS): Oversees immigration related benefits including: citizenship, asylum, lawful permanent residency, employment authorization, refugee status, inter-country adoptions, replacement of immigration documents, family and employment related immigration, and foreign student authorization.</p> <p>Immigration and Customs Enforcement (ICE): Investigates terrorism and other related criminal activity; enforces federal immigration laws, customs laws and air-security laws.</p> <p>U.S. Customs and Border Protection: Secures the United States borders and facilitates cross border flow of trade and travel.</p> |
| U.S. Department of Justice | <p>Executive Office for Immigration Review: Manages the immigration court system.</p> |
| U.S. Department of State | <p>Office of Visa Services, Bureau of Consular Affairs: Oversees visa numbers and availability, processes visas and serves as liaison between the Department of Homeland Security and embassies and consulates abroad on matters concerning visas.</p> |

Sources: U.S. Department of Justice, n.d.; U.S. Department of Homeland Security, n.d.; U.S. Department of State, n.d.

While the federal government sets overarching immigration policy and oversees the immigration system, state and local governments are not without immigration-related responsibilities, particularly related to undocumented immigrants.

Many state governments have considered or passed legislation related to immigrants and employment, public benefits, education, identification and drivers licenses, voting rights, law enforcement⁵ and legal services. Some of these laws seek to indirectly discourage undocumented immigrants from settling in certain locales (legislation that requires more stringent verification of documentation status for employment, declares English as the official

⁵ See the Public Safety section of this assessment for more information on policies relating to the role of local police in immigration enforcement

language, and/or denies driver's licenses to undocumented immigrants). Other state laws seek to provide certain basic protections to immigrants working and living as residents of communities. (Morse, Blott, Speasmaker & Dwyer, 2006)

Like many state legislatures, city governments have adopted their own policies in an effort to either protect or limit the rights of undocumented immigrants. For example, in November 2006, the Farmers Branch, Texas City Council unanimously voted to approve an ordinance which bans renting apartments to undocumented immigrants. Farmer's Branch is one of 50 cities or counties around the country that have considered, passed, or rejected similar laws meant to discourage illegal immigration (Associated Press, 2006). Conversely, the City of Austin's policy regarding undocumented immigrants, as stated in Resolution 970130-33, is that all persons should be treated equally, with respect and dignity, regardless of immigration status.

Special Topic: Current State and Federal Policy Discussions

Policy makers have recently been devoting much attention to immigration issues. The following is a brief summary of recent discussions at the state and federal levels.

Texas State Legislature: As of the writing of this report, the 80th session of the Texas Legislature (January 9, 2007 to May 28, 2007) is underway. The session began with the filing of more than 30 immigration-related bills on topics such as eligibility for services and benefits, enforcement of federal immigration laws by state and local governments, regulation of immigration assistance services, and employment of undocumented workers. As of publication of this report, the final status of these bills is still unknown.

U.S. Congress: Comprehensive immigration reform has been a recent presidential and congressional priority. Although the 109th U.S. Congress (Session 2: January - December, 2006) undertook this issue, the House and Senate were unable to negotiate any significant legislation. H.R. 4437, passed by the U.S. House, focused on border security and enforcement related issues, while S. 2611, passed by the Senate, combined provisions on enforcement with provisions on expanding legal temporary and permanent admissions. By session end, the two houses were only able to agree on some border-related security provisions (including P.L. 109-367 border fencing) and limited provisions on temporary and permanent employment-based immigration (as part of P.L. 109-13 and P.L. 109-364).

The outcome of the November 2006 election, which shifted Congressional control to the Democratic Party, brought new prospects for immigration reform. Prior to the start of the 110th Congressional Session (Session 1: January- December, 2007), immigration experts and some members of Congress expressed cautious optimism that significant legislation could be passed. One such piece of legislation, the bipartisan Security through Regularized Immigration and a Vibrant Economy Act (STRIVE Act, H.R. 1645) was introduced in the House on March 22, 2007. The bill would tighten border security, establish an employment verification system, provide a new worker program for future immigrant workers, overhaul the family immigration system to reduce backlogs, establish an earned legislation system for undocumented immigrants living the U.S. and facilitate the integration of immigrants. Nonetheless, as of the writing of this report, it is unclear whether this or similar legislation will pass. The best window for immigration reform may be before the 2008 presidential elections consume national attention.

Source: Bruno et. al, 2006; Gelatt, 2006; National Immigration Forum, n.d.

Categories of Immigrants: Entry and Residence in the United States

Under current immigration policy, foreign-born individuals have several legal ways to enter and live in the United States: lawful admission for permanent residence, entry as a refugee,

entry with a temporary protected status and temporary admission as a nonimmigrant⁶. Many other foreign-born individuals come to the United States to live or work without authorization from the U.S. government. Policies affecting each of these categories of admission to the United States are discussed below.

Authorized Permanent Admission (Immigrant Visa): Foreign-born individuals granted permanent admission to the United States are classified as **Lawful Permanent Residents (LPRs)**. Lawful permanent residents are eligible to work in the United States and eventually may apply for citizenship to become **Naturalized U.S. Citizens** (Congressional Budget Office, 2006). Four major principles underlie U.S. policy on authorized permanent admission 1) reunification of families, 2) admission of immigrants with needed skills, 3) protection of refugees, and 4) diversity of admissions by country of origin. (Wasem, 2006)

To become a lawful permanent resident, a foreign-born individual must first be issued an immigrant visa. The number of available visas is based on a complex set of numerical limits and preference categories. The **Immigration and Nationality Act** provides for an annual permanent worldwide level of 675,000 immigrant visas, with each country of origin held to a numerical limit of 7% of the worldwide level. However, limits are flexible in certain categories. Unused immigrant visas from prior years are also added to the complex equation. Table 3-C on the following page provides an overview of the major LPR categories and number of visas associated with each.

Special Topic: Obtaining Citizenship through the Naturalization Process

Under current U.S. immigration law, non-citizens with **lawful permanent resident** status are eligible to become U.S. citizens through a process called **naturalization**. The requirements for naturalization include:

- Continuous residence (but not necessarily physical presence) in the U.S. for five years as a lawful permanent resident (three years in the case of spouses of U.S. citizens)
- Good moral character
- Attachment to the principles of the U.S. Constitution
- Favorable disposition toward the United States
- An ability to read, write, speak and understand
- Knowledge of U.S. Government and History

An individual that meets the above criteria must then complete the following process:

- Complete and submit application for naturalization, along with photographs, supporting documentation, a \$330 fee and a \$70 biometrics (fingerprint) fee to the USCIS
- Attend a finger printing appointment with UCSIS
- Participate in an interview to answer questions about his/her application and background
- Pass an English and civics tests
- Take the Oath of Allegiance for naturalized citizens at a citizenship ceremony

Source: U.S. Citizenship and Immigration Services, 2004

⁶ As defined by the U.S. Department of Homeland security, the term “immigrant” is used to describe foreign-born individuals authorized for permanent admission to the U.S. while the term “nonimmigrant” is used to describe foreign-born persons authorized for temporary admission to the U.S. These legal terms are used in this section of the assessment, however when used elsewhere throughout the report, the term immigrant is used more generally to describe any foreign-born person living in our community.

| Table 3-C. Lawful Permanent Resident Categories and Annual Numerical Limits, 2006 | | |
|---|--|--|
| LPR Category | Description | Annual Limit |
| Immediate Relatives of U.S. Citizens | Generally the largest share of LPR admissions. Granted to spouses, parents of citizens age 21 or over and unmarried children (under 21) of U.S. citizens. | No limit |
| Family Sponsored Preference | Four-tiered preference-based system ⁷ under which U.S. citizens and LPRs sponsor relatives for permanent admission. | 226,000 |
| Employment- Based Preference | Five-tiered preference-based system ⁸ under which employers sponsor workers with certain job skills not available through local native-born workers. | 140,000 |
| Diversity Lottery | A formula-based lottery aimed at countries that have low levels of immigration to the U.S. Applicants must have a high school education or equivalent or two years training/work experience in an occupation. | 55,000 |
| Refugees & Asylees | Status granted to people unable or unwilling to return to their home country because of persecution on account of their race, religion, nationality, membership in a particular social group or political opinions. Refugees apply for admission from outside the U.S. while asylees request legal admission within the U.S. or at the port of entry. Both must wait one year before petitioning for LPR status. | No limits on receiving asylum. Annual determination for refugee status (limit in 2005 was 70,000). No limits on LPR adjustments. |

Source: Congressional Budget Office, 2006; Wasem, 2006

Authorized Temporary Admission (Nonimmigrant Visa): Foreign-born individuals seeking to enter the United States for a limited period and specific purpose may be granted admission through a temporary, nonimmigrant visa. These individuals apply for the type of visa that relates to their purpose of travel and generally have in common an intent to return to their county of origin. Once in the United States, these individuals are restricted to their visa's designated activity and length of stay. However, in certain cases it is possible to apply for a change to their status, and in some cases for adjustment to lawful permanent resident status.

⁷ Family sponsored preferences: 1) Unmarried sons and daughters of citizens 2) Spouses and children of LPRs, unmarried sons and daughters of LPRs 3) Married sons and daughters of citizens, and 4) Siblings of citizens age 21+

⁸ Employment based preferences: 1) Persons of extraordinary ability in the arts, science, education, business, or athletics; outstanding professors and researchers; and certain multi-national executives and managers 2) Members of the professions holding advanced degrees or persons of exceptional abilities in the sciences, art, or business, 3) Unskilled shortage workers 4) Special immigrants including ministers of religion, religious workers other than ministers, certain employees of the U.S government abroad, and others, and 5) Employment creation investors who can invest at least \$ 1 million to create a minimum of 10 new jobs.

Some individuals admitted on a temporary basis overstay their visas, after which point they no longer have legal status in the U.S. Major categories of temporary admission include:

- Tourists, business travelers, and other short term visitors,⁹
 - Students, journalists, exchange and cultural visitors,
 - Temporary workers,
 - Diplomats and other representatives of foreign governments,
 - Expected long-term residents (often spouses or fiancées of U.S. citizens).
- (Congressional Budget Office, 2006; Grieco, 2006a)

Temporary Protected Status (TPS): This temporary legal status is granted to eligible nationals of designated countries who are temporarily unable to return safely to their home countries due to internal conflict or environmental disaster.¹⁰ During the period for which the Secretary of Homeland Security has designated a country for TPS, an eligible individual from that country may apply for TPS benefits, which allow him/her to lawfully live and work temporarily in the United States. Temporary protected status does not lead to permanent resident status. When the Secretary terminates a TPS designation, individuals from that country revert to the same immigration status they had prior to the designation or to any other status they may have acquired while registered for TPS. (U.S. Citizenship and Immigration Services, n.d.a)

Unauthorized Residency: Foreign-born individuals also enter the United States without inspection. They lack the documents or authorization required by United States law. These individuals, as well as those who entered with valid visas but overstayed or violated their terms of admission, make up a group of foreign-born individuals often referred to as undocumented immigrants. In recent years, the number of undocumented immigrants nationwide has increased steadily, with an annual growth of about 500,000 per year (Passel, 2006). As of March 2006, there were an estimated 12 million undocumented immigrants in the United States, compared with 8.4 million in 2000 (Passel, 2006).

⁹ This group generally consists of visitors rather than temporary residents and thus is not considered to be a part of the foreign born population discussed in this report.

¹⁰ Examples of countries currently or recently designated for TPS are Burundi, El Salvador, Honduras, Liberia, Nicaragua, Somalia, Sudan.

Backlogs in the Immigration System

Backlogs are a significant challenge in the current system of attaining legal residency. There are two types of backlogs.

1. For those seeking lawful permanent resident status the most significant reason for backlogs is due to the limited number of immigrant visas, and a demand that far exceeds supply. Applicants for lawful permanent residency must be sponsored by a family member or an employer¹¹. The process begins when the sponsor files a petition and the immigrant is awarded a priority date. The priority date serves to hold an immigrant's place on a waiting list until an immigrant visa is available. Once a priority date is issued, the wait time for visa availability varies greatly depending on preference category (family relationship or type of employment) and country of origin; the current wait time ranges from five to twenty-two years. For example, unmarried sons and daughters of U.S. citizens from Mexico who have recently become eligible to apply for an immigrant visa have waited for at least 15 years (those who entered the waitlist on or before March 1992 became eligible to apply for a visa in March 2007). In the majority of cases, legal permanent resident applicants on the waitlist for an available immigrant visa must wait in their country of origin, often separated from their family. (National Immigration Forum, 2005; Wasem, 2006; *Vias Bulletin for March*, 2007)
2. The second type of backlog is an administrative backlog, or delays in processing applications for lawful permanent residence and naturalization (U.S. Citizenship). Administrative backlog occurs because of an increase in the number of applications and/or a lack of adequate resources to process them. Backlogs may also occur because of unfunded mandates—projects or policies legislated by Congress without adequate funding to support them. For example, heightened, resource-intensive security precautions initiated after September 11, have increased delays and hindered backlog reduction efforts. (American Immigration Law Foundation, 2004; Migration Policy Institute, 2005)

In 2004, at the request of Congress, the USCIS developed a Backlog Elimination plan with a goal of a 6-month processing time for all applications by 2006. As of the writing of this report, a progress report was available through the first quarter of FY2006. The progress report showed that the number of backlogged applications reached a peak at roughly 3.85 million in January 2004, as of December 2005 USCIS reported only 705,000 backlogged applications that were within their control. (Migration Policy Institute, 2005; U.S. Citizenship and Immigration Service, 2006)

¹¹ Family-sponsored preferences and employment-based preferences make up the majority of applicants for lawful permanent resident status. Refugees, asylees, and diversity immigrants are also eligible for this status, however the process for these groups is somewhat different.

Local Findings: Challenges with the Immigration System

Focus group participants recounted challenges in obtaining both immigrant visas (lawful permanent resident status) and non-immigrant visas (temporary legal status). One participant spoke of difficulty navigating the immigration system: "I received notice of my residency application and it had the wrong date and time of entry, by one year. I corrected it but could not figure out where I needed to send the corrections. I got a letter from someone in Nebraska saying that they had not received my paperwork. I didn't know I was supposed to send it to them—I did and now I haven't heard from them for a month. I'm told they lose a lot of people's papers." Another spoke of changes following 9/11: "I had a bad experience with an F1 visa especially after 9/11/01. Before, you would apply and get an answer in one day. Now, it is very complicated and stringent. The U.S. embassy system takes extra long and makes it more difficult, it seems to be more of an arbitrary decision."

Participants also reported that their visas restricted activities that U.S. citizens take for granted as part of daily life. One participant indicated, "Most of my difficulty has been with immigration, getting the permanent resident card. The problem is that the permanent resident card prohibits travel easily back to Mexico or Cuba." Another reported: "I can't work or study because of the type of visa I have."

Finally, for those eligible for legal status, cost can be a prohibitive factor. As one participant described: "My husband came first, got settled and then sent for me and my four kids. I could have come initially with my husband but I could not afford to bring my kids also, since the cost would be about \$1800 per person. I knew if I came without my children, there was a big possibility that I would never be able to bring them over later."

Legal Rights of Immigrants

All immigrants living in the United States have the protections afforded to "persons" by the United States Constitution. However, many rights are also tied to legal status. The following describes 1) rights granted to lawful permanent residents, and 2) rights that apply to all immigrants, regardless of legal status.

In addition to providing a path to citizenship, lawful permanent resident status provides immigrants with many of the rights granted to U.S. citizens. Some of these rights include:

- To live and work permanently anywhere in the United States
- To request a visa for a spouse or unmarried child to live in the United States
- To receive some but not all federal benefits such as Social Security or Medicare
- To own property
- To apply for a driver's license
- To leave and return to the U.S. (U.S. Citizenship and Immigration Service, n.d.b)

Undocumented immigrants are not afforded these same rights. However, all immigrants, including the undocumented, do have some fundamental rights as described below:

- **Right to remain silent:** Under the 5th Amendment of the U.S. Constitution, every person has the right to remain silent when questioned by a government agency. A person cannot be arrested simply for refusing to answer questions or refusing to identify him/herself.
- **Right to be free from unreasonable searches or seizures:** The 4th Amendment gives every person the right to be free from searches or seizures. A police officer or

immigration agent cannot enter and search a person's home without consent or a valid search warrant. A person stopped on the street has the right to refuse any search on their body beyond a weapon search.

- **Right to an attorney:** The 6th Amendment provides every person the right to have the government provide an attorney at its own expense in a criminal proceeding. This same right does not apply to immigration or civil matters.

(National Immigration Law Center, 2004a; Political Asylum Project of Austin, 2003a)

Any immigrant detained by immigration agents also has certain rights. These include:

- **The right to speak to an attorney before answering any questions or signing any documents and the right to representation by an attorney at any hearing or interview with immigration authorities.** Unlike in criminal proceedings, in immigration proceedings the U.S. government does not have to provide or pay for a lawyer to represent the defendant. However, immigration authorities should provide a list of groups that provide free or low cost legal advice or representation.
- **The right to a hearing with an immigration judge.** In most cases an immigration judge has sole authority to order deportation unless an immigrant waives the right to a hearing or accepts voluntary departure. Immigrants detained at the border, charged with an aggravated crime, or who have been previously ordered to be deported do not have this same right to a hearing before a judge.
- **The right to timely decision about deportation proceedings and the right to request release from detention while proceedings are pending by paying a bond if necessary.** The government generally has 48 hours to order deportation proceedings and decide whether to detain the immigrant in custody or release him/her on bond. Detained immigrants may wait for months in detention before they see a judge. However, an immigrant always has the right to request release from detention by paying a bond if necessary. A bond hearing must be set for 2-3 days from when it is requested.

(National Immigration Law Center, 2004b; Political Asylum Project of Austin, 2003a)

Local Findings: Immigrant Rights

Focus group discussions indicated some immigrants may have a lack of knowledge of their rights. Participants told of situations in which they had been treated unfairly because they lacked credible information or because they were unsure of standard practices in the United States. One individual shared that he purchased a house but felt the contractor did not disclose the problems with the house. Also, when his family moved out of their rented apartment, there was no inventory list to check off damages. They were held responsible and were asked to pay over \$2000. The man was not sure what recourse his family had in either of these situations. Participants in another focus group reported examples of being targeted for fraud. One person relayed, "There are some companies that give you problems. Someone called from a company and asked for my social security number. I didn't give it to them though."

Participants also noted a fear of asserting their rights due to their lack of legal status. One individual commented: "Without documents you are always scared about fighting for rights in court." Another reported, "The owner of my apartment complex told me that if I complained that she would call INS."

Special Topic: Immigrant Detention, ICE T. Don Hutto Family Residential Facility

The T. Don Hutto Family Residential Facility is only 27 miles from Austin in Taylor, Texas. Formerly a correctional center, it now houses immigrants and their children who are in Immigration and Customs Enforcement custody (ICE) while they await immigration proceedings. Created in March 2003 after the terrorist attacks on September 11th, 2001, ICE is the largest investigative branch of the Department of Homeland Security with an array of responsibilities for enforcing key homeland security priorities. ICE directs their efforts at targeting undocumented immigrants to protect the United States against potential terrorist attacks.

As an initiative of ICE, the T. Don Hutto facility is intended to function as an “effective and humane” facility for immigrant families awaiting immigration proceedings (“Fact Sheets: The ICE T. Don Hutto,” n.d.). One of only two facilities of its kind in the United States, the 512-bed facility opened in May 2006 as a solution to the Department of Homeland Security’s plan to resolve the “catch and release” practice of undocumented immigrants at the southern border (“Fact Sheets: The ICE T. Don Hutto,” n.d.). Previously, immigrants caught crossing the border illegally were released with “Notices to Appear” before federal immigration judges, and were rarely known to appear for hearings (“Fact Sheets: The ICE T. Don Hutto,” n.d.). Since ICE acquired the Hutto Correctional Center through an Inter-Governmental Service Agreement with Williamson County, Texas, the facility operates 24 hours, 7 days a week, staffed by ICE officers, who are contract officers with the Corrections Corporation of America (CCA), the nation’s largest private prison company.

Many of the immigrants at the facility are seeking political asylum or are refugees from impoverished countries or countries in crisis, such as Honduras, Guatemala, El Salvador, Somalia and Palestine; Mexican immigrants are excluded from the detention center since they undergo different immigration proceedings.

Under ICE detention standards, the facility’s services for detainees include: classroom instruction, medical services, chaplain services, a full-size gymnasium, and a library. However, the facility has been the subject of scrutiny from human rights groups and advocates, who claim the facility is “inappropriate and inhumane” (Castillo, 2007b). Most recently, on March 6, 2007, the American Civil Liberties Union and the University of Texas Law School Immigration Clinic filed lawsuits in federal district court in Austin on behalf of ten immigrant children detained in the facility. The two advocate groups challenged the confinement of immigrants as it relates to congressional directions to keep immigrant families together either through release or through less restrictive alternatives to detention. In particular, the groups highlight that children are restricted to only one hour of schooling and recreation per day, are provided inadequate healthcare and nutrition, and are often separated from their parents at night to accommodate cell space (Lydersen, 2007).

As of the writing of this report, the facility continues to operate, and currently houses approximately 400 immigrants. The federal government has 60 days from the file date to respond to the lawsuit.

Legal Services for Immigrants

The Need for Legal Services

Immigrants may have a variety of needs related to legal services. Like many community residents, immigrants may need services related to family law or defense representation if charged with a crime. Further, as discussed in the Housing and Workforce sections of this report, immigrants (particularly low-income, newly arrived, and/or undocumented immigrants) may be at greater risk for exploitation in their housing or work situations. Thus, they may have a relatively higher need for specific kinds of legal assistance to help assert their rights.

Immigrants may also require specialized legal aid and advocacy in negotiating the systems, laws, and policies pertaining specifically to immigration. Those who interact with immigrants on a daily basis, including employers, local governments, or social service agencies may also require legal assistance to help them understand complex and changing immigration policies.

Local Findings: Access to Legal Services

In a forum of providers serving immigrants in the Austin/Travis County community, participants reported that the top legal need for their clients was access to affordable, culturally appropriate services in the areas of immigration, family, criminal and employment law. Providers noted that in some cases, access to legal services is limited by funding sources and regulatory barriers that may prohibit service provision to undocumented immigrants.

Immigrant focus group participants also reported difficulty accessing legal services. One participant relayed that she had been able to find local social services to meet many of her needs, including childcare and housing, but that she had difficulty finding legal services that she could afford.

The Provision of Legal Services

Two major groups are authorized and qualified to provide immigration related legal services¹²: licensed attorneys and accredited representatives who work for a nonprofit community or faith-based organization and have been recognized by the U.S. Department of Justice, Executive Office for Immigration Review. To obtain their accreditation, applicants must demonstrate that they have the skills and training necessary to provide assistance with immigration-related legal issues. A roster of Board of Immigration Appeals Recognized agencies is listed at the EOIR website <http://www.usdoj.gov/eoir/statspub/raroster.htm>. The roster includes all recognized agencies and Accredited Representatives nationwide.

In some instances, immigrants turn to people not authorized or qualified to provide immigration services. These people are often known as “notarios.” In many Latin American countries, the Spanish word “notario” describes a person who is a licensed attorney. However, in United States, a notary is only licensed to witness the signing of legal documents. Some people in the Austin community will obtain a notary public license in Texas but present themselves to Spanish-speaking clients as a “notario público,” or a licensed attorney authorized to help with an immigration case. These individuals may charge immigrant clients high fees for services they never provide or for services provided poorly, in a manner that will jeopardize an immigration case. (Texas Attorney General 2003, 2006)

Attorneys, non-profits, faith-based organizations, the Mexican consulate, and the Texas Attorney General’s Office have worked to educate immigrants about this type of crime and how they can protect themselves. The Texas Attorney General’s Office has shut down nearly 40 businesses to prevent them from providing unauthorized legal services since 2002; at least one of these was in the Austin area. (Texas Attorney General 2003, 2006)

¹² Law students under supervision and certain persons with pre-existing relationships with an immigrant working for free may also be able to provide assistance.