

# The Legal Landscape of U.S. Immigration: An Introduction



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Many have written about and debated the U.S. visa system, but three decades after the passage of the 1990 Immigration Act, it continues to define the ways in which immigrants legally enter the United States. Yet, without comprehensive immigration policy reform grounded in deep understanding about the drivers of migration, opportunities for legal entry and the rights of noncitizens have become more restricted (Massey and Pren 2012). At the same time, greater use of broad executive actions has led to changes that reflect specific presidential preferences rather than multiple interests across the political spectrum. The following examples illustrate the range of recent executive actions. President Obama's Deferred Action for Childhood Arrivals (DACA) offered protection from deportation to those who crossed the border as children with their parents without au-

thorization. In contrast, executive actions by President Donald J. Trump have boosted immigration enforcement, banned persons of particular national origins from U.S. entry, and limited noncitizens' access to asylum.

Studies about the visa system and legal immigration have taken a back seat to a much larger and growing body of work on unauthorized migration. The objective of this issue of *RSF: The Russell Sage Foundation Journal of the Social Sciences* is to invigorate scholarly interest in legal immigration. Building on existing studies, which largely focus on wage differences among immigrants with different visas, as well as between them and U.S. natives, we aim to provide a comprehensive overview of the legal immigration system with new scholarship on the topic. Decades of backlogs and long waiting times to obtain and process visa requests, along

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**Table 1.** Changes in U.S. Legal Immigration Policy Regime

Period	Inclusion Versus Exclusion Content	How Implemented
Before 1925	From relatively open entry to restrictions	Growing reliance on legislation
1925–1964	Limited entry with some exceptions	Legislation / narrow executive actions
1965–1990	Expansive policies	Legislation / narrow executive actions
1991–2002	Rising restrictions with some exceptions	Legislation / narrow executive actions
2003–present	Rising restrictions	No legislation / broad executive actions

Source: Authors' compilation.

with recent increases in naturalization rates and visas for temporary migrant workers, are likely to have wide-ranging consequences for the lives of the 44.5 million foreign born living in the United States. Many are long-term residents. Only one-fifth (21 percent) entered in 2010 or later, relative to 25 percent who arrived in the 2000s and 53 percent who arrived in the 1990s or earlier. Further, even though 1.1 million immigrants became lawful permanent residents in fiscal year 2017, more than twice that number (2.3 million) entered on temporary visas as temporary workers or foreign students accompanied by family members (Zong, Batalova, and Burrows 2019).

We begin by relying on historical studies to describe immigration laws and policies, including the expansion of the visa system in 1990. We highlight both important congressional legislation and presidential executive actions that define and govern legal immigration. In the last thirty years, because Congress has been unable to pass new legislation to reform and restructure the legal visa system, U.S. presidents have used executive actions more often and more broadly than in the past. For example, relative to President Dwight D. Eisenhower's use of parole to permit the entry of tens of thousands of Hungarian refugees, current executive actions target millions of immigrants. They complicate how asylum applications are processed, limit the use of discretion by immigration judges, suspend the entry of immigrants from certain countries, and reduce the number of refugees for resettlement. Thus, combined with congress-

sional inaction, executive actions have created a system of exclusion that influences the experiences of legal immigrants now and will again in the future.

### IMMIGRATION POLICY AND PRESIDENTIAL ACTIONS

We describe the policies and executive actions that have governed migration since the late nineteenth century, defining executive actions as orders, actions, or guidelines about U.S. immigration from the executive branch of government; for the most part, these represent presidential views and preferences. Table 1 guides this section, which summarizes broad shifts in U.S. policies, their exclusionary-inclusionary content, and the mechanisms that fueled such content, such as congressional legislation or executive actions, orders, and guidelines. We consider five periods in U.S. immigration history: before 1925, 1925 to 1964, 1965 to 1990, 1991 to 2002, and 2003 to the present.<sup>1</sup>

#### Before 1925

For much of the nineteenth century, immigrants entered the United States in a climate of relative openness to newcomers. However, as industrialization took hold, U.S. immigration policies emerged to bar from entry certain types of immigrants, such as prostitutes, criminals, and the Chinese born (Ngai 2014; Zolberg 2008; P. Martin 2014).<sup>2</sup> As anti-immigrant sentiment grew after World War I, Congress passed legislation that broadly restricted immigrant entry. The Immigration Act of 1917 excluded

1. We draw here on a wide variety of historical works about U.S. immigration (see, for example, Ngai 2014; Daniels 2004; S. Martin 2010; P. Martin 2014; Tichenor 2009; Zolberg 2008).

2. Japanese workers migrated to replace those from China. However, in 1907, a diplomatic agreement between Japan and the United States targeted them for exclusion (Ngai 2014).

from U.S. entry the Chinese and immigrants from the Middle East, Southeast Asia, and India. It also added a literacy test for those who could enter. The first quantitative restrictions on immigrants occurred with passage of the Emergency Quota Act of 1921. Just three years later, Congress passed the National Quotas Act, setting strict and permanent numerical quotas for immigrant entry by national origin (S. Martin 2010). In addition, it required that persons entering the United States present visas obtained from embassies and consulates abroad.

### 1925 to 1964

Exclusionary immigration policies largely continued after 1924 and throughout the 1930s and 1940s, despite some gains for some groups (Daniels 2004).<sup>3</sup> One illustration was the Alien Registration Act of 1941. Although it required registration and fingerprinting of all immigrants and made Korean and Japanese women and all non-Chinese Southeast Asians ineligible for citizenship, the 1941 act also gave Filipinos, Indians, and Chinese wives of U.S. citizens naturalization rights without any numerical limitations.

Fueled by a shortage of agricultural labor during World War II, the United States opened its door to Mexicans who could work in agriculture. Mexico and the United States signed a bilateral agreement in 1942, followed by congressional approval of Public Law 45 in 1943, permitting Mexicans to migrate temporarily to the United States to work in agriculture. This work was seasonal, encouraging regular movement back and forth across the border until 1964. By that time, millions of Mexicans had worked as *braceros* (Galarza 1964).

Around the same time, the United States also opened its door to some refugees. Given the millions of people displaced in Europe after the end of World War II, President Truman—during the first year (1945) of his administra-

tion—issued an executive order that allocated existing immigration visa quotas to individuals displaced because of the war. Although a small gesture in terms of numbers, this was the first executive action to open U.S. entry to refugees. However, Congress also passed legislation related to refugees a few years after Truman's order. One example is the Displaced Persons Act of 1948, which led to the resettlement of approximately four hundred thousand refugees between 1949 and 1952.

In 1952, Congress passed the Immigration and Nationality Act (INA), which revised, but largely maintained, the national origin quotas excluding immigrants from countries in Europe and Asia. The 1952 INA also contained a five-preference admission system to allocate visas to relatives of permanent residents and U.S. citizens, and to workers who would not adversely affect the U.S. labor market. However, in a move toward expansive immigration policy, the INA removed the bar to Asian immigrant naturalization and maintained two provisions from the 1924 act that exempted from numerical limitations spouses and minor children of U.S. citizens, as well as persons from the Western Hemisphere. An immediate consequence was that the number of legal immigrants grew. As Roger Daniels (2004) points out, despite the 158,000 annual INA quota on total immigrants, 3.5 million immigrants were admitted between 1953 and 1965 (a larger share of nonquota than quota immigrants admitted each year).

Under greater pressure to accept refugees, President Eisenhower's administration (from 1953 to 1961) also used a combination of legislation and executive action to admit refugees. In addition to Congress' passage of six pieces of legislation that ultimately admitted about ninety thousand refugees, the president implemented an executive action to overcome the national origin quota on immigrants from Hungary. That order led to the parole of thirty-

3. Because the National Quotas Act did not apply to Western Hemisphere countries, Mexican migration continued after 1924. In 1929, the State Department decided to assess whether those applying for visas would become a public charge. This action allowed consular officers to use discretion and deny visas to those believed to be contract laborers, unable to pass the literacy test, or become a public charge (Daniels 2004; Ngai 2014). One year later, this action cut visas for Mexicans to approximately eleven thousand in 1929, relative to an average of fifty-nine thousand in each of the previous five years (Ngai 2014). In 1930, the U.S. government then applied this to European countries, further reducing legal immigration.

five thousand Hungarian refugees who entered seeking protection in 1956. Two years later, Congress passed legislation allowing these parolees to become permanent residents and, subsequently, naturalized citizens. It passed a separate statute allowing the attorney general to permit making status changes administratively—facilitating the use of parole for future administrations.

### 1965 to 1990

Expansive immigration policies emerged with amendments to the INA passed in 1965 and 1976. The 1965 provisions opened immigration worldwide by terminating the national origin quotas and issuing visas based on a first-come, first-served hemispheric basis. They also expanded the admission preference system and allocated a greater share of visas for family reunification than originally existed in the 1952 INA. Immigrant visas from Eastern Hemisphere countries were capped at an annual limit of 170,000, and visas from the Western Hemisphere were capped at an annual limit of 120,000. Thus a global limit of 290,000 was set on immigrant visas subject to the numerical limitations in the admission preference system.

These expansive changes had significant implications for immigrant flows to the United States (Chishti, Hipsman, and Ball 2015; Massey and Pren 2012). Because Congress created a global admission policy across both hemispheres, allocating all visas through preference categories except for exempted immediate relatives of U.S. citizens, Mexico now became subject to numerical limits. Legal immigration from Mexico dropped by half and unauthorized entry of Mexicans grew. In addition, as more Latin Americans and Asians entered with permanent residency, they also brought immediate family members, who were exempt from numerical limits, as well as sponsored relatives through the limited admission preferences. Thus, annual legal immigration grew from approximately 333,000 in the 1960s, to 450,000 in the 1970s, and to 600,000 in the 1980s. Despite

the cap of 20,000 per country, the exemption of immediate relatives of U.S. citizens meant that many countries—such as Mexico, Korea, and the Philippines—exceeded the limits.

In the 1960s and 1970s, the United States also opened its door to Cubans and Southeast Asians. From the late 1950s until 1962, more than one hundred thousand Cubans entered the United States. Many could have been designated as refugees.<sup>4</sup> As one of his first executive actions as president, President John F. Kennedy set up the Cuban Refugee Emergency Center and directed the secretary of Health, Education, and Welfare to begin a Cuban Refugee Program (Thomas 1967). Although the program was initially supported with discretionary presidential funds, Congress then passed the Migration and Refugee Assistance Act as more Cubans sought refuge in the United States. By the early 1970s, approximately six hundred thousand Cuban refugees had resettled as refugees; by 2000, nine hundred thousand had. In addition, as Fernando Riosmena (2010) describes, the Cuban Revolution also indirectly stimulated outmigration from the larger region. In an effort to defuse political pressure in the area, Presidents Kennedy and Lyndon Baines Johnson allocated resources to build a new consulate and hire more consular officers to meet Dominicans' growing demand for visas (Grasmuck and Pessar 1991; J. Martin 1966).

Presidents Gerald Ford and Jimmy Carter also used executive powers to open the United States to refugees from Southeast Asia; yet, once again, congressional legislation followed executive actions. President Ford began Operation Babylift, which facilitated the evacuation of Vietnamese orphans for U.S. adoption. President Carter issued an executive order that doubled the number of Southeast Asian refugees permitted to enter the United States each month. Subsequently, in 1982, Congress passed the Amerasian Immigration Act and, in 1988, the Amerasian Homecoming Act. By 1995, more than 480,000 Vietnamese had immigrated to the United States.

4. The earliest Cuban arrivals were Cuban elites who brought their resources to the United States and transformed Miami (Portes and Stepick 1993), and children who were evacuated immediately after Castro's takeover of Cuba as part of Operation Peter Pan (de los Angeles Torres 2004).

In 1980, Congress passed the Refugee Act, which eventually permitted a dramatic expansion in refugee resettlement. The 1980 act defined refugees consistent with the United Nations definition—namely, a refugee is someone who seeks protection from persecution or fear of persecution related to race, religion, nationality, membership in a particular social group, or political opinion. Although it originally set the annual number of refugee entries at fifty thousand, the 1980 act gave presidents the authority to set annual ceilings. It also recognized the right to asylum. Persons seeking asylum could apply for protection after arriving in the United States (legally or illegally) and, if granted, like refugees, asylees could adjust to permanent residency. Although the 1980 act also included a provision to restrict the attorney general's parole power, it added a caveat that permitted the practice if justified with compelling reasons. Within weeks of the passage of the Refugee Act, the Carter administration paroled approximately 150,000 Cuban and Haitian refugees who had arrived in the Mariel boatlift.

In 1978, in an effort to review and recommend changes in immigration policy, Congress created the Select Commission on Immigration and Refugee Policy. One recommendation was to develop policy designed to reduce undocumented U.S. migration. After years of debate, Congress passed the 1986 Immigration Reform and Control Act (IRCA). IRCA substantially increased resources for border enforcement, offered amnesty to migrants already residing in the United States, authorized a special legalization program for agricultural workers, and set employer sanctions against those who knowingly hire undocumented migrants for work (Donato, Durand, and Massey 1992). In this way, IRCA is a good example of the traditional way of making broad changes to the immigration system, reflecting a compromise between humanitarians who pushed to regularize the legal status of undocumented migrants and nativists who lobbied for greater enforcement and border security. Ultimately, IRCA resulted in 2.7 million amnesty recipients and increased the existing border enforcement budget by 50 percent (Bean, Vernes, and Keely 1989).

Over the next ten years, U.S. presidents in-

creasingly relied on executive actions to manage immigration issues, strategically targeting certain groups for relief from deportation. President Ronald Reagan protected minor children of parents legalized by IRCA from deportation, and President George H. W. Bush later extended this protection to all spouses and unmarried children of IRCA amnesty recipients. President Reagan blocked deportation of Nicaraguan refugees already living in the United States. President George H. W. Bush protected from deportation Chinese nationals in the United States at the time of the Tiananmen Square incident in China. Presidents Bush and Bill Clinton gave temporary protected status (after the 1990 Immigration Act passed) to Salvadoran and Haitian refugees, among others, protecting them from deportation.

In 1990, following another recommendation from the Select Commission, Congress passed the Immigration Act. It revised and substantially expanded the U.S. visa system, originating from the desire to "open the front door wider to skilled immigrants of a more diverse range of nationalities" (Simpson 1990). The act made some revisions to the system of permanent immigrant family-sponsored, employment-based, and diversity visas. It also broadened the number of temporary nonimmigrant visas that allowed persons to enter the country as specialty workers, students, exchange visitors, travelers for tourism or business, and crew members in transit (Yale-Loehr 1991).

The 1990 act also increased the annual worldwide numerical limit to 366,000 immigrants and raised the annual number of migrant workers (from 54,000 to 140,000). It created five employment-based visa types, including those for priority workers with extraordinary and outstanding ability, professionals with exceptional ability and at least a master's degree, professionals with at least a bachelor's degree, skilled workers, religious workers, and investors willing to create companies that employ at least ten full-time U.S. workers. In addition, it gave 55,000 permanent residency visas to family members of IRCA's newly legalized migrants between 1992 and 1994. Further, it established the diversity visa program, which since 1995 has offered up to 55,000 permanent residency visas to those with



at least a high school degree born in countries with low rates of immigration (such as countries sending fewer than 5,000 immigrants in the previous five years). The 1990 act also eliminated bans on homosexuals and members of the Communist Party, created temporary protected status to protect certain groups from deportation, and established special immigrant visas for juveniles—a status that subsequently permitted adjustment to lawful permanent residency.<sup>5</sup>

### 1991 to 2002

In sharp contrast to the expansive legislation in the earlier period, in 1996 Congress passed three restrictive laws during a period of rising unauthorized migration and increasing anti-immigrant sentiment. The first was the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which allocated more resources to border enforcement and levied harsher costs on unauthorized migrants and their employers than IRCA (Weintraub et al. 1998; Martin and Midgley 2003; Legomsky 1997). It legislated an increase in border patrol agents for each of the following five years and strengthened employer sanction provisions by raising fines and introducing a telephone verification system that permitted some employers to verify a potential worker's legal status. It also expedited the removal of unauthorized migrants, barred their reentry for up to ten years, and required U.S. resident sponsors of immigrants to be legally responsible and have more income than previous sponsors.

In 1996, Congress also passed the Personal Responsibility and Work Opportunity Reconciliation Act, which restricted legal permanent residents' access to food stamps, Supplemental Security Income, and other means-tested benefits for five years after admission (Newton 2008). Finally, in 1996, it passed the Anti-Terrorism and Effective Death Penalty Act, which made it possible to deport any non-citizen who had ever committed a crime, no matter when, and to limit judicial review of deportation orders (Legomsky 2000). After ex-

panding the grounds for removal and streamlining removal proceedings, deportations rose. In the five years before 1996, annual deportations averaged 43,000; five years after 1996 they averaged 170,000 (Massey and Pren 2012).

During this period, two small pieces of congressional legislation are of note. The first was the 1997 Nicaraguan Adjustment and Central American Relief Act (NACARA), which had two components. It authorized Nicaraguans and Cubans who resided continuously in the United States before December 1, 1995, regardless of their prior immigration status, to apply for permanent residency. It also permitted their spouses, minor children, and unmarried adult children to apply for lawful permanent residence if they had an eligible spouse or parent. The second component was much more restrictive for Guatemalans and Salvadorans. They could apply only for suspension of deportation or cancellation of removal, not for legal permanent residency. Moreover, Guatemalans were eligible only if they had entered the United States on or before October 1, 1990, registered for benefits with the American Baptist churches by December 31, 1999, and were not apprehended trying to enter the United States after December 19, 1990. Salvadorans could apply if they entered the United States on or before September 19, 1990, registered for Baptist benefits or applied for temporary protected status by October 31, 1991, and were not apprehended trying to enter the United States after December 19, 1990. By contrast, those from Soviet bloc countries were eligible if they entered the United States on or before December 31, 1990, or filed an application for asylum on or before December 31, 1991. As a result, NACARA led to more Cuban, Nicaraguans, and former Soviets becoming legal permanent residents than Guatemalans and Salvadorans.

The other legislation passed during this period was the 2000 Victims of Trafficking and Violence Protection Act, which created U visas for victims of criminal activity and T visas for victims of trafficking. However, unlike most temporary nonimmigrant visas, eligible appli-

5. In 1994, the North American Free Trade Agreement (NAFTA) began. It created a new temporary nonimmigrant NAFTA professional (TN) visa that permits Canadian and Mexican accountants, engineers, lawyers, pharmacists, scientists, and teachers to work for U.S. or foreign employers.

cants of U and T visas receive multiyear temporary residence with a path to lawful permanent residence.

However, after the terrorist attacks of September 11, 2001, the trend toward growing restrictions and enforcement revived. Congress passed the 2001 USA Patriot Act, continued to boost resources for border enforcement, and set terrorism-related grounds for deporting noncitizens. In doing so, it strengthened the power of the executive branch to deport foreign nationals. Whether they lived in the United States with or without a permanent or temporary visa, if the attorney general believed a foreign national might commit, further, or facilitate acts of terrorism, deportation could occur without judicial review (Zolberg 2008; Massey and Pren 2012). The Patriot Act also permitted indefinite detention, which led to the immediate detention of more than 1,200 Muslim immigrants for extended durations (Hiemstra 2019). Notable among the many enforcement efforts was the 2002 Homeland Security Act passed by Congress. It created the Department of Homeland Security (DHS) and established the new Immigration and Customs Enforcement (ICE).

### 2003 to the Present

In this recent period, deportations rose dramatically. For example, during the first five years after 2001, the average grew to 229,000 deportations a year. During the most recent span (2014 to 2018), it rose to 338,000 (Massey and Pren 2012). With a large budget, ICE aimed to deport all immigrants who were removable. Congress further facilitated this effort in a variety of ways. For example, as part of the 2004 Intelligence Reform and Terrorism Prevention Act, ICE received funding for thousands of new detention beds between 2006 and 2010, expanding deportations (Hiemstra 2019). Correspondingly, DHS announced that expedited removal would apply to all migrants caught within one hundred miles of the U.S.-Mexico border, shift-

ing deportations without an immigration hearing deeper inside the United States (Coleman and Kocher 2012). Other enforcement initiatives also began after 2002. These include the DHS launch of the Secure Border Initiative and partnerships between DHS and local enforcement agencies to broaden internal enforcement efforts through the 287(g) provision of the 1996 IIRIRA (Donato and Armenta 2011).

In 2012, President Barack Obama responded by announcing an executive order to provide temporary relief from deportation to those who entered without authorization as children with their parents. In its first year, approximately eight hundred people received DACA status.<sup>6</sup> Also in 2012, the Obama administration implemented a regulatory change permitting existing 287(g) agreements between ICE and local enforcement agencies to expire (Kandel 2016). In 2013, after the House of Representatives failed to consider the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013—legislation passed by the Senate to overhaul the legal immigration system—President Obama announced a second executive order that would have offered similar temporary relief to millions of unauthorized parents of U.S. citizen children. This order, however, never went into effect. It was blocked by an injunction stemming from a lawsuit by twenty-six states that was later upheld.

President Obama's use of executive actions attempted to protect millions from deportation and, if they all went into effect, would have covered a large share of the unauthorized population. Although earlier executive immigration actions offered protection to smaller specific groups of people, such as immediate relatives of those receiving IRCA's amnesty, or to refugees from Hungary, Cuba, Haiti, and El Salvador, Obama's executive actions covered many more people. Greater use of executive actions, and their expanded scope, would only intensify during the Trump administration.

Indeed, as an early sign of an aggressive im-

6. Early in 2017, the Trump administration revoked DACA. After the U.S. government appealed decisions from several federal appeals courts, which ruled against DACA revocation, the Supreme Court ruled in June 2020 against the government, saying that DACA was terminated in an arbitrary and capricious manner. Currently approximately 690,00 persons have DACA status. In July 2020, the Trump administration announced new rules for DACA, including that it will no longer permit first-time DACA applications and that renewal applications must be made every year rather than every two years.

migration agenda, the Trump administration announced three executive orders in 2017 (Pierce 2019). The first covered border security and immigration enforcements, directing DHS to plan and construct a border wall, construct more detention facilities, detain noncitizens, expand expedited removal throughout the country, apply humanitarian parole on a case-by-case basis, and ensure that credible fear determinations are within “plain language of the provisions.” The second was described as enhancing public safety by forbidding sanctuary jurisdictions from receiving federal funds,<sup>7</sup> directing DHS to restart 287(g) agreements with local communities, requiring local jurisdictions to issue detainers on all unauthorized migrants in custody, expanding the priority list for noncitizen deportation, and authorizing an additional ten thousand ICE agents. The third superseded two earlier ones. It suspended immigrant visas to those from Iran, Libya, North Korea, Somalia, Syria, Yemen, and to some from Venezuela. In early 2020, the Trump administration expanded the suspension of visas that could lead to permanent residency of noncitizens from Nigeria, Myanmar, Eritrea, and Kyrgyzstan; it also barred residents from Sudan and Tanzania from participating in the diversity visa program.<sup>8</sup>

Although space does not permit a comprehensive listing of all executive actions on immigration since 2017, we illustrate the breadth and depth of those taken so far. Some took the form of executive orders or proclamations; others were executive regulations and guidelines. As a result, rather than resolving big immigration issues with durable collective action via congressional legislation, numerous and often constantly changing executive actions have reflected presidential preferences about immigration (see Pierce 2019).

One example is the implementation of extensive executive actions in both the Department of Justice and at U.S. Citizenship and Immigration Services (USCIS), which have had wide-ranging consequences for all types of immigrants. At the Department of Justice, the ac-

tions have included granting more authority to political appointees in immigration courts, ending an AmeriCorps program offering free attorneys for unaccompanied children, permitting more denials of cancellation of removal cases than in the past, prosecuting all illegal entry cases (including children until June 20, 2018), temporarily restricting those in detention from accessing information about the legal system, and speeding up processing by increasing video conferencing. Judges also face new performance standards. They can no longer make court practices child-friendly and, for families at ten U.S. immigration courts, judges must implement expedited dockets and complete these cases within a year. Judges must complete expedited asylum applications within 180 days.

Executive unilateral guidelines and actions have also reduced the flow of humanitarian migrants. Among these are a reduction in the number of refugees, termination of the Central American Minors program, and closure of refugee resettlement offices. With respect to asylum seeking, executive actions have raised standards for credible fear interviews, limited access to asylum for victims of domestic and gang violence, and implemented an asylum ban for those crossing the border between ports of entry—although the courts have issued injunctions against the latter. Another change is the Migrant Protection Protocol program (Smith 2019). It returns asylum seekers who lack proper documentation to enter the United States back to Mexico to remain there until the date of their immigration court proceeding. On that date, they can enter the United States to have their asylum claim assessed. Metering is a practice ordered at all ports of entry by the Trump administration in April 2018 as a way to limit the daily numbers of asylum seekers permitted to enter in each U.S. port of entry (American Immigration Council 2020). Immediately before crossing the U.S. border, asylum seekers are intercepted; they are given a number and returned to Mexico by Custom and Border Protection without being processed. They then

7. This provision was not upheld in the courts.

8. Interestingly, the 2020 order does not apply to tourist, business, or other nonimmigrant travel from these countries to the United States.



wait in Mexico until their number is called. When it is, they are permitted to return to the United States to process their potential asylum claim. In an attempt to reduce the affirmative asylum backlog, the U.S. government implemented last-in, first-out processing (so that recent applicants go ahead of older ones, the hope being that persons with older applications return to their origin countries). In addition, it now facilitates return by offering to those seeking asylum the opportunity to waive asylum interviews and go directly into removal proceedings. Finally, in July 2019, the Trump administration announced a ban on asylum for individuals entering the United States at the “southern land border” after leaving their home country and then transiting through another country.

For children, executive actions have attempted to deny Special Immigrant Juvenile Status to those who filed as minors but turned eighteen during the process. They have also increased the vetting of minors’ sponsors by enforcement agencies—although the government reports it is currently refraining from both practices. Executive actions have also ended temporary protected status for people from six countries (El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal), though a temporary court injunction against this is in place.

At the USCIS, procedures are now in place to slow down the pace of nonimmigrant and immigrant visa interviews. Compared with before 2017, visa officers have greater discretion to request more information about travel, housing, and employment histories at any time during the visa processing period. The State Department can also declare that a visa application is misrepresented during a longer window of time than previously. Indeed, USCIS officers are now implementing new public charge vetting for those applying for permanent lawful residency or temporary visas, and are continuously vetting migrants throughout the visa process rather than just once. A new requirement is that when a member of Congress is involved in a visa case, the request must include a notarized signature from the migrant involved. Although symbolic, the new USCIS mission statement no longer mentions that the United States is a nation of immigrants. USCIS also

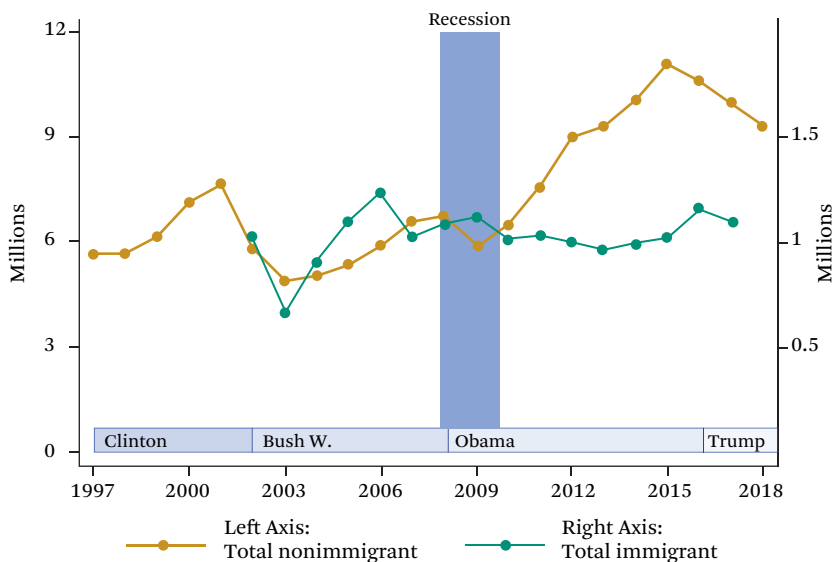
destroys green cards returned after sixty days rather than saving them for longer periods. It may deny work authorization if persons are arrested or convicted of a crime, and may deny visa applications if applicants do not have required information. Finally, USCIS has created a denaturalization office, issues more notices than previously to appear in court for those with outstanding applications, and limits fast-tracked naturalizations to spouses of U.S. citizens who have been together for three years or more.

At the time of writing, the COVID-19 pandemic, which has upended the lives of millions around the world, has led to new U.S. restrictions on nonessential travel (Singer 2020). On March 20, 2020, the Centers for Disease Control, along with DHS, issued orders prohibiting many foreign nationals, regardless of country of origin, from entering at the southern and northern borders in response to COVID-19 (Santamaria and Harrington 2020). These orders have had immediate consequences for many asylum seekers. Those who present themselves at U.S. ports of entry, those apprehended between ports of entry, including unaccompanied children, are being turned back (Lind 2020). The Trump administration has also suspended entry of most foreign nationals from China, the Schengen area of Europe, the United Kingdom and Ireland, and Iran.

In conclusion, in light of decades of congressional inaction, whereby legal immigration policy has remained largely the same, presidents are increasingly using executive actions to implement their preferences about immigration. Thus the legal immigration system has been increasingly shaped by administration preferences rather than by a coalition of congressional interests. One consequence has been the emergence of a broad system of immigrant exclusion that corresponds to shifts in the volume of visas.

#### **CURRENT PATTERNS AND TRENDS IN VISA USE**

Greater and more expansive use of unilateral presidential actions, together with three decades of legislative inaction on legal immigration policy, have created a complex migration system geared toward enforcement and deter-

**Figure 1.** Nonimmigrant and Immigrant Visas, 1997–2018

Source: U.S. Department of Homeland Security 2018; U.S. Department of State 2019.

rence. We examine how visa trends map onto these shifts in governance and influence.<sup>9</sup>

We rely on two data sources. For nonimmigrant visas, we use nonimmigrant visa issuances available from the U.S. Department of State (State) for the period between 1997 and 2018. These data approximate more closely the number of persons who are beneficiaries of a given nonimmigrant visa than nonimmigrant admission data, which offer much larger counts because they include the number of times a person crosses with a visa.<sup>10</sup> For immigrant visas, we use the number of legal permanent resident visas issued (or the number of persons who obtained legal permanent residency) between 2002 and 2017. These data are available from the Department of Homeland Security.<sup>11</sup>

One strength of these data is that they contain information by detailed class of admission, enabling us to classify visa issuances into broad categories. To capture the number of low-

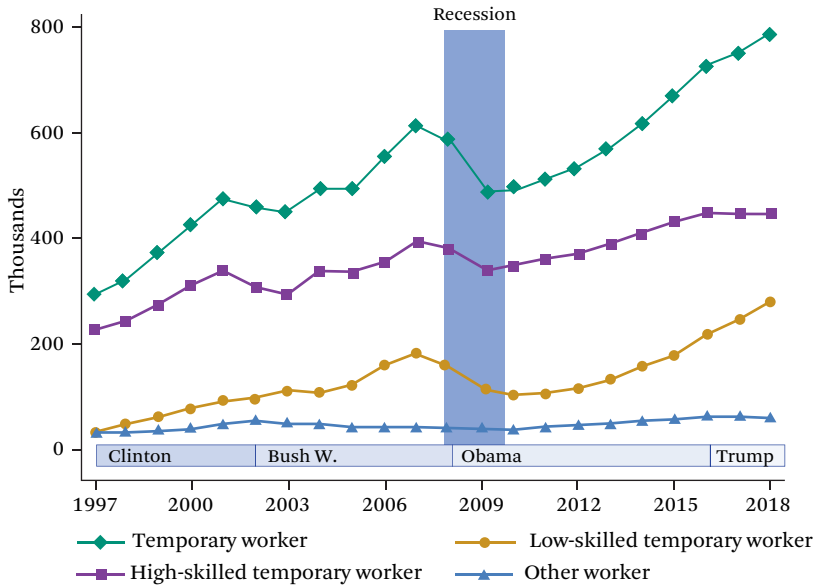
skilled temporary worker visa issuances, we include H-2A and H-2B visas for agricultural and unskilled seasonal workers, H-2R visas for returning unskilled seasonal workers, A-3, and G-5 visas. The A-3 visas are for attendants and employees of ambassadors, ministers, diplomats, consular officers, and other government officials and their families. The G-5 visas are for employees or domestic workers of foreign nationals who are permanent members of a diplomatic mission, official government representatives, or those appointed to an international organization in the United States. Among high-skilled temporary worker visas, we include H-1B and related H-1BI, H-1C, H3, as well as A1, A2, G1, I, L1, O1, O2, P1, P2, P3, R1, S5, S6, and TN. Broadly, all visas in this category are issued to high-skilled professionals, though a few exceptions are possible (for more on the categorization scheme, see table A1).

Figure 1 presents trends in temporary non-

9. The results are preliminary and descriptive. We present them to spur future research.

10. The file used is FY1997–2018 NIV Detail. It includes annual visa issuance by national origin (<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html>, accessed April 16, 2020).

11. Unfortunately, the 2018 immigrant visa data were not available at the time of writing. We rely instead on 2017 data ([https://www.dhs.gov/sites/default/files/publications/Lawful\\_Permanent\\_Residents\\_2017.pdf](https://www.dhs.gov/sites/default/files/publications/Lawful_Permanent_Residents_2017.pdf), accessed April 16, 2020).

**Figure 2.** Nonimmigrant Temporary Employment Visas, 1997–2018

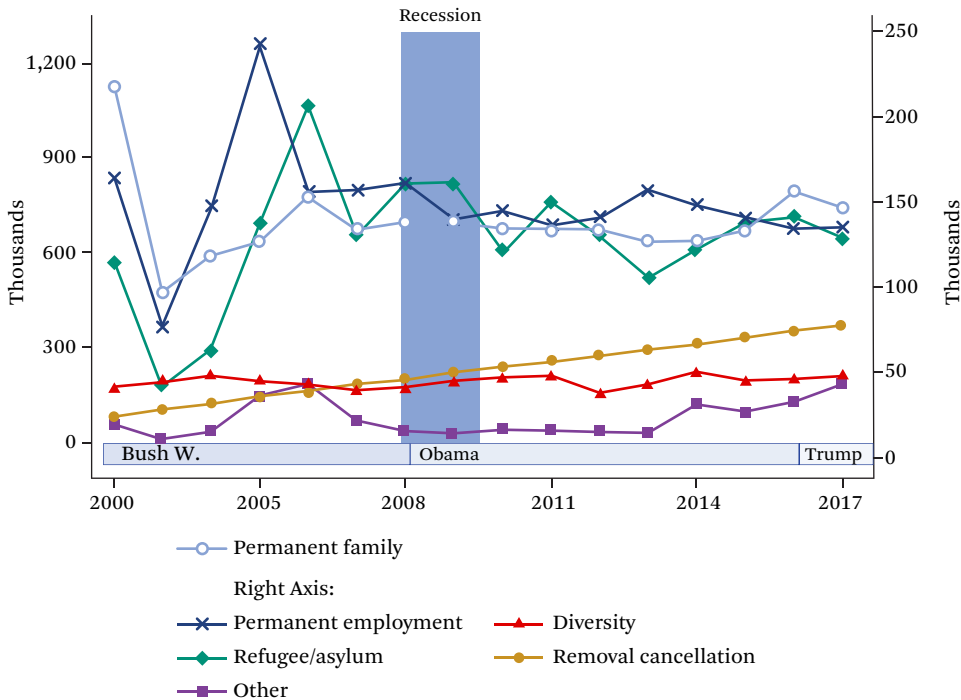
Source: U.S. Department of State 2019.

immigrant visas (from 1997 to 2018) and immigrant visas (from 2002 to 2017). Although both lines track closely together in the early 2000s, growth in nonimmigrant visas is dramatic after 2008. This was a period when the numbers of Mexico-U.S. migrants became net zero, as U.S. employment opportunities and the supply of young Mexicans seeking to migrate northward contracted (Massey 2018). Between 2009 and 2015, temporary nonimmigrant visas increased from six to eleven million, to decline thereafter to about ten million in 2018. In contrast, the number of permanent immigrant visas has remained significantly smaller, hovering around one million per year since 2004.

Figure 2 distinguishes among types of temporary nonimmigrant employment visas, mapping trends between 1997 and 2018. Across the period, temporary nonimmigrant work visas more than doubled, from approximately three hundred to eight hundred thousand. Moreover, in every year, high-skilled temporary visas outnumbered low-skilled visas, even though both declined during the Obama administration and the Great Recession. In addition, although both types of visas recovered after 2009, the growth of low-skilled visas exceeded that of high-skilled. Between 2010 and 2015, the number of

low-skilled visas tripled, from approximately one hundred to almost three hundred thousand. During the same period, the increase in high-skilled visas was more modest, from three hundred to four hundred thousand.

Figure 3 zooms in closer to describe recent trends in six broad types of permanent immigrant visas. Three facts are worth pointing out. First, the overall number of permanent immigrant visas has remained small relative to temporary nonimmigrant visas. Second, although permanent immigrant visas were rather stable for most of the time between 2002 and 2017, the change between 2002 and 2007 was notable. The numbers of immigrant permanent family-based, employment-based, and refugee-asylum visas dropped between 2002 and 2003, immediately after the events of September 11, 2001. Although they increased between 2003 and 2006, their numbers remained stable thereafter. Diversity and other immigrant visas were also stable between 2002 and 2017. Third, the number of permanent immigrant employment-based visas was always far smaller than the number of similar temporary nonimmigrant visas. Based on figure 3, about 150,000 permanent immigrant work-based visas were issued in 2017, relative to the

**Figure 3.** Immigrant Visa Types, 2002–2017

Source: U.S. Department of Homeland Security 2018.

almost 800,000 temporary ones issued the same year (see figure 2).

In sum, trends in temporary nonimmigrant visas, especially employment-related, suggest an exclusive legal migration system that has become more reliant on temporary than permanent visas. Along these lines, the growth and greater volume of temporary low-skilled employment-related visas are especially striking relative to the far smaller stable number of permanent ones. Further research should explore whether the growth in nonimmigrant visas has somehow responded to a desire to control and, perhaps, replace unauthorized migration from years past, as well as the implications of favoring this type of entry. Studies should also investigate whether and how growth in temporary work visas relates to changes in the labor market conditions of immigrants. Finally, researchers need to consider the short- and long-term consequences of greater and broader use of executive actions for the lives of noncitizens and on their chances of obtaining permanent legal relief.

### A BRIEF MAPPING OF THIS ISSUE

In this issue, we explore various aspects of the legal landscape for immigrants in the United States. Although they vary widely in terms of focus and approach, the articles are similar in two ways. All use visa categories to understand broad issues of concern for social scientists, such as inequality, labor demand for immigrants, and legal justice. They also ask and answer new questions about legal immigrants using unique data sources, large-scale surveys, or combining data in innovative ways. Together, they build on prior studies, identify consequences of the legal visa system, and offer a foundation for future research on the U.S. legal immigration system.

Although the governance system of legal immigration has remained largely intact since the 1990 Immigration Act, the first article, by Daniel Costa (2020), describes shifts in employment-based temporary nonimmigrant and permanent immigrant visas. He documents a shift in the U.S. labor migration system that translates into many more temporary migrant, than per-

manent immigrant, workers each year. He then identifies the effects of such a labor migration system, including increased vulnerability and a greater chance of experiencing workplace abuse among temporary workers, as well as long backlogs among those seeking numerically limited employment-based visas.

Pia M. Orrenius and Madeline Zavodny (2020) also consider employment pathways by examining the volumes of certified visas for temporary less-skilled workers in an era of declining unauthorized migration. They note that visa issuances to temporary agricultural workers have risen dramatically and ask what accounts for the rise. They find that, when labor markets are strong, more H-2A and H-2B visa requests for unskilled workers are certified. They suggest that employers do not view these visa programs as alternatives to unauthorized migration because these visas are unrelated to the numbers of less-educated, non-naturalized, and Latin American immigrants in the labor force.

Building on these two studies, Julia Gelatt (2020) considers whether employer-sponsored immigrants fare better in the labor market than family-sponsored immigrants. Using the New Immigrant Survey and following new legal immigrants after they enter in 2003 over the four to six years that follow, she compares employment rates, self-employment rates, and occupational outcomes of various categories of family-sponsored immigrants, humanitarian migrants, and those entering with diversity visas, to those of employer-sponsored immigrants. She finds that most legal permanent U.S. immigrants, after several years of residence, have high employment rates relative to the overall U.S. population. However, employment-sponsored immigrants and their spouses bring highest levels of education and English proficiency, and work in the most highly skilled occupations, initially and over time.

The last four articles consider alternative pathways of legal entry or legal status acquisition. Cara Wong and Jonathan Bonaguro (2020) examine public opinion about *jus meritum* citizenship, which exists for noncitizens in exchange for military service. Motivated by the relative silence of politicians and pundits, who avoid mentioning the policy in public, Wong and Bonaguro examine U.S. public support for

the idea of citizenship based on service. Using experiments embedded in surveys from the Cooperative Congressional Election Studies, they investigate how public support for non-citizen soldiers' receipt of citizenship for service varies by type of service (whether in the military or not) and by whether migrants entered with or without legal documents. They find significantly more support for citizenship granted for service to migrants who entered legally.

Van C. Tran and Francisco Lara-García (2020) consider refugees resettled in the United States, and examine how their micro-level integration varies based on pre- and postmigration characteristics. Relying on the Annual Survey of U.S. Refugees, a nationally representative sample of 1,500 refugee households admitted between 2011 and 2015, the authors report three key findings. First, despite substantial variation in pre-migration human capital, are the small group differences in their early socioeconomic outcomes. Second, they find that, because most refugees in each group are working, most are concentrated in low-wage sectors. Finally, post-migration integration policies matter for all refugee groups.

Banks Miller, Jennifer S. Holmes, and Linda Camp Keith (2020) investigate preferences of political elites and humanitarian immigration. They find that presidential preferences are important in determining who is admitted as a refugee, but congressional preferences are important in determining the size of the refugee population. Interestingly, preferences of the president and Congress matter considerably less with respect to asylum decisions. These results highlight the discretion of the executive branch in U.S. immigration policy and how immigration enforcement bureaucracy may limit the role of elite preferences in determining humanitarian immigration.

Finally, Luis Edward Tenorio (2020) considers a lesser-known form of immigration relief available to migrant children: Special Immigrant Juvenile Status (SIJ). Based on courtroom experiences and participant observations of forty-eight Central American unaccompanied children working on SIJ applications, Tenorio describes the origins of SIJ, how it has shifted over time, and its implications. He reveals two



types of integration effects. The first relates to the complex process of seeking relief, which involves proceedings in family and immigration courts, as well as regular contacts with other federal agencies. The second effect is collateral to going through such proceedings, affecting unaccompanied minors' social networks and relationships.

### CONCLUDING COMMENTS

In the United States, we are currently living through a period of highly contested politics in regard to immigration. Embedded in this polar-

ized context is an inability to pass and implement legislative reforms of the legal immigration system, as well as a growing reliance on executive actions to make broad policy changes. This is not a sustainable situation for the long term. It has led to a system of visa exclusions, creating hardships for both unauthorized and authorized migrants. In this context, revitalizing scholarship about the legal migration system can help generate the evidence needed to unearth legislative debates and move them forward—an opportunity we urge future researchers to grasp along with us.

**Table A1.** Categories of Visa Issuance Data Used in Analysis

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#### Total visas

(Total permanent, total temporary)

#### Total temporary (nonimmigrant) visas

Temporary family visas

Temporary employment visas

Low-skilled temporary worker visas

(H2A, H2B, H2R, A-3, G-5)

High-skilled temporary worker visas

(A1, A2, G1, H1B, H1B1, H1C, H3, I, L1, O1, O2, P1, P2, P3, R1, S5, S6, TN)

Other workers

(V-1, NATO-1–NATO-7, E-1, E-2, E-3, E-3R)

Student visas

(M1, M3, F1, F3)

Exchange visas

(J-1)

Tourist and business visitor visas

(B1, B2 and B-1, B1-/B2)

Spouses/family member visas

(H-4, E-2, L-2, J-2, F-2, M-2, O-3, P4, Q1, Q2, Q3, R2, S7, TD, V-2, V-3, N-8, N-9, E-3D)

Special visas

(T1, T2, T3, T4, U1, U2, U3, U4)

#### Total permanent (immigrant) visas

Permanent family visas

Permanent employment visas

Diversity visas

(DV1, DV2, DV3, DV6, DV7, DV8)

Refugee/asylum

Cancellation of removal

(Z13, Z14, Z15)

Other permanent visas

(Parolees, NACARA, HRIFA, IRCA, other)

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*Source:* Temporary visas from U.S. Department of State 2019; permanent visas from U.S. Department of Homeland Security 2018.

*Note:* The following visas are not included: G2 and G3; transit visas: D, D-CREW, C-1, C-2, C-3, C-1/D; and fiancée visas K1, K2, K3.

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