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# Illegality: A Contemporary Portrait of Immigration



ROBERTO G. GONZALES AND STEVEN RAPHAEL

On June 23, 2016, the Supreme Court decided, by a 4-4 vote, to uphold the decisions of the lower courts, blocking President Obama's administrative actions on immigration. After years of congressional gridlock, the Obama plan would have bypassed Congress by expanding the 2012 Deferred Action for Childhood Arrivals (DACA) program to parents. The administrative action, known as Deferred Action for Parents of Americans (DAPA), would have extended deportation relief and work authorization to undocumented immigrants with citizen or lawful permanent resident children and to those who migrated at young ages but who did not meet the cutoffs for DACA. The action was challenged by Texas and twenty-five other states on the grounds that it overstepped the bounds of executive power and violated the Constitution. A Texas judge, Andrew Hanen, issued an injunction preventing the action from going into effect, which was upheld by the 5th U.S. Circuit Court of Appeals.

All told, the planned administrative actions

would have provided relief to nearly five million undocumented immigrants (Capps et al. 2016). The decision was a mere nine words long, but its consequences would be felt widely because it placed the future of immigration reform and that of millions of undocumented immigrants and their families on hold.<sup>1</sup> That's how Isabel Reyes felt.<sup>2</sup> The mother of two U.S.-born children and a laundry attendant at a hotel in a Chicago suburb, Isabel had been struggling to pay her bills and take care of her children after her husband's deportation. Since February 2015, after being stopped by the police in the United States for a broken taillight, Isabel's husband and father to her children had been living in his home state of Michoacán. The incident landed him in the custody of Immigration and Customs Enforcement (ICE) and he was ultimately deported. Isabel, who had lived in Chicago for almost fifteen years, had a lot riding on the Supreme Court decision. "I was hoping things could change for me and my family. I don't know how much longer I can do this on my own. It's not

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1. "The judgment is affirmed by an equally divided court" (Liptak and Shear 2016).

2. Isabel is a pseudonym used to preserve anonymity.

only the financial. I feel like we are living in a cage.”<sup>3</sup>

By 2016 in communities across the United States, families like Isabel’s were reeling from more than a decade of massive immigration enforcement and policies that had sown fear and distrust of law enforcement and had narrowly circumscribed their worlds. Undocumented immigrants make up about one-fourth of all immigrants living in the United States. However, the focus on undocumented migration takes on a central role in the U.S. policy agenda—often at the expense of other immigration issues (Jones-Correa and de Graauw 2013). Although President Obama’s immigration actions sought to shield immigrants from deportation, his administration’s enforcement policies had widened fear and distrust. In 2013, the United States removed a record 438,421 undocumented immigrants (Gonzalez-Barrera and Krogstad 2014). By 2016, the tally under Obama alone had exceeded 2.5 million, 23 percent more than during the Bush years and more than the sum total of all recorded removals prior to 1997 (Golash-Boza 2015). Cooperation between ICE and local law enforcement under 287(g) agreements and Secure Communities had created an immigration dragnet, snaring immigrants for improper lane changes and countless other noncriminal offenses. In fact, of those removed in 2013 more than half (240,000) did not have a criminal conviction.

Meanwhile, Congress’s failure to enact wide-scale immigration reform has kept a large segment of settled immigrants in the shadows, cut off from the very institutions and services that have historically benefited immigrant families. Their poverty and exclusion from the formal polity are disadvantages that are also passed down to their children (Bean, Brown, and Bachmeier 2015; Yoshikawa 2011). Today, an estimated 11.3 million undocumented immigrants live with uncertain futures. However, unlike any time before in history, this population is firmly ensconced in U.S. society. Like Isabel, most have lived in the United States for a considerable time—more than half of all undocumented adults have been in the United States for at least thirteen years and about one

in five for twenty years or longer (Passel et al. 2014; Gonzalez-Barrera 2015).

The longer average duration of residence in the United States translates into large numbers of undocumented immigrants married to legal permanent residents or the parents of U.S.-born children. In fact, most undocumented immigrants live in households with citizen or lawful permanent resident family members. More than 16.6 million people live in a mixed-status family with at least one undocumented immigrant (Taylor et al. 2011), and nearly half of undocumented immigrants are parents of minors. Within these families, 4.5 million are citizen children, and more than 2.1 million are undocumented but have lived in the United States since childhood (Dreby 2015; Batalova and McHugh 2010). Nearly 7 percent of all K–12 students had at least one undocumented parent in 2012. Among these students, about eight in ten were born in the United States. Deportations of these immigrants is particularly traumatizing for such families.

What’s more, the overall number of undocumented immigrants has stabilized since the Great Recession. Driving much of this trend is the decrease in net migration from Mexico. In fact, since 2009 more Mexicans have departed the United States than have entered. Nonetheless, Mexicans remain the largest group among the unauthorized, making up about half of the population (Gonzalez-Barrera 2015). As a result, those living in the United States today are most likely to be long-term residents and to live in mixed-status families with American-born members.

Six states account for 60 percent of all undocumented immigrants: California, Texas, Florida, New York, New Jersey, and Illinois. However, the composition is changing. Whereas prior to the 1990s the unauthorized immigrant population was concentrated in a handful of states, today undocumented immigrants live, work, and go to school in both traditional immigrant gateways and new destination areas in the Midwest and Southeast.

Although congressional action on immigration has stalled, states and municipalities across the country have attempted to take im-

3. Personal interview by Roberto G. Gonzales, June 25, 2016.

migration matters into their own hands. This current political context has resulted in a mixed landscape of state and municipal policies and practices, making geographic location and local context increasingly influential in determining the treatment of immigrants and the opportunities available to them. Some states have opened up access to broader participation and integration—offering undocumented immigrants the ability to apply for driver’s licenses, vote in local elections, and receive critical services. Others have adopted a more restrictive stance—for example, by attempting to criminalize unauthorized presence and exclude immigrants from public universities. This uneven geography of local law enforcement and immigration policy demonstrates that today, perhaps more so than ever before, where one resides within the United States shapes a multitude of experiences based on local impediments and opportunities.

In this issue of *RSF*, an interdisciplinary team of scholars presents stark and candid portraits of how various policy changes have impacted the welfare of undocumented immigrants, their families, and their communities. Through empirical research, qualitative analysis, and mixed-method study, the papers in this volume document and explore the consequences, intended and otherwise, of the drastic shifts in policy pertaining to the unauthorized that have occurred in the past few decades. These papers also discuss how policymakers have responded to challenges created by forces beyond the United States that have generated new waves of undocumented immigrants.

### THE ENDURING LEGACY OF HART-CELLER

On October 3, 1965, at a ceremony beneath the Statue of Liberty, President Lyndon Johnson signed a landmark immigration reform bill into law. The 1965 Immigration and Nationality Act (INA), often referred to as the Hart-Celler Act, named for its principal sponsors in the Senate and House of Representatives, removed barriers against immigration from Asia and Africa and abolished the much-criticized quota system. The INA followed on the heels of the Civil Rights Act, barring discrimination on the

grounds of race, color, religion, sex, or national origin. The United States could no longer maintain a system considered contradictory to its fundamental values.

In addition, 1964 saw the end of the twenty-two-year-old Bracero Program, a guest-worker initiative that supplied low-cost and flexible Mexican labor to America’s farms, eliminating a primary legal avenue for temporary migration between Mexico and the United States. At the height of the program, more than five hundred thousand temporary work visas were given to agricultural workers annually. But, like the restrictive quotas of the U.S. immigration system, the program was viewed as out of balance with American ideals. By this time, however, growers in the Southwest had become heavily dependent on their flexible Mexican labor force and were unable and unwilling to find other sources of workers. Growers still demanded the labor of Mexican workers and continued to hire them despite the end of the Bracero Program. However, most were now coming through illegal channels. Moreover, the decades-long patterns of seasonal migration created strong informational links between certain Mexican sending communities and receiving communities and employers in the United States, giving rise to chain migration that survived Bracero. Although labor demand did not subside for many decades, the auspices under which labor migrants came to the United States to work—without legal authorization—changed dramatically.

President Johnson argued that the INA would not dramatically alter the demographic composition of the United States. Prior to 1965, U.S.-bound immigrants were mostly European. They were also largely white. The INA eliminated restrictive immigration policies instituted in the 1920s and created new family and skilled-worker preference categories for entry. By liberalizing the rules for immigration, prioritizing family reunification, and opening migration from Asia, Africa, the Middle East, and southern and eastern Europe, Hart-Celler stimulated a rapid growth in the numbers of new Americans and a change in the ethnic makeup of these newcomers. New ethnic enclaves emerged in several U.S. cities and existing enclaves expanded. These demographic

changes refueled debates about immigration, membership, and belonging.

Meanwhile, migration from Mexico surged. However, as the sociologists Douglas Massey and Karen Pren argue, this increase occurred despite, rather than because of, the new system (2012). Before 1965, no numerical limits on immigration from the Western Hemisphere were in place. But the 1965 amendments marked an end to open borders, set limits to annual immigration from the Western Hemisphere of 120,000, and established country quotas of twenty thousand. These changes, which came shortly after the Bracero Program ended, led many employers to view undocumented migration as their only source of cheap labor.

Between 1965 and 1986, twenty-eight million Mexicans entered the United States as undocumented migrants, most for a relatively short stay, and unauthorized immigration from Mexico became a hot political issue in the United States. This ultimately resulted in the passage of the Immigration Control and Reform Act (IRCA) in 1986: the legalization of more than three million undocumented migrants, the introduction of employer sanctions, and the fortification of the border.

### LEGALIZATION AND UNINTENDED CONSEQUENCES

The mid-1980s was a pivotal time for U.S. immigration policy. The resident population of unauthorized immigrants had grown to unprecedented levels, most arriving in the United States by either entering without inspection along the U.S.-Mexico border or overstaying a visa. Many had established lives in the United States, were married to lawful permanent residents or naturalized or native-born U.S. citizens, had children, and were gainfully employed with U.S. employers in various sectors. Advocates for these immigrants stressed the impossibility and inhumanity of large-scale deportation of such an established population and the direct and indirect costs such a policy would impose on U.S. society and immigrant communities in particular. Employers who relied heavily on the labor of unauthorized immigrants also stressed the importance of immigrants for their business operations and worried that mass deportations coupled with

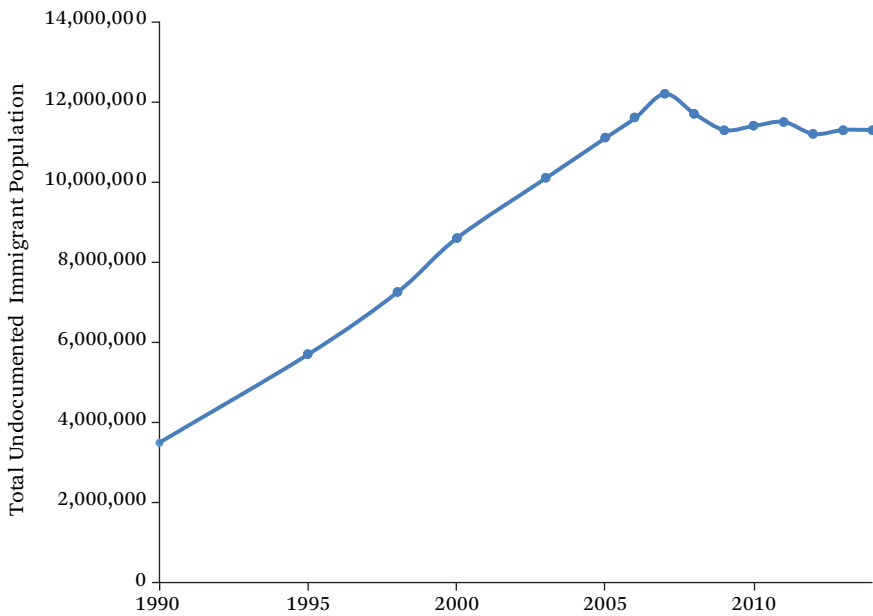
severe border restrictions would harm business and the economy.

On the other hand, latent demand among the public was to limit unauthorized immigration, to gain control of the nation's borders, and to ensure that immigration followed established legal procedure for entry and residence. Advocates for tougher enforcement stressed the need to strengthen the border, to limit the ability of unauthorized immigrants to find work in the United States and to establish consequences for both unauthorized immigrants as well as employers who knowingly hired them.

The passage of the IRCA represented a grand compromise intended to address the concerns of both sides of this debate. First, IRCA created two legalization programs, the General Amnesty and the Special Agricultural Workers provision, that together lead to the legalization through adjustment to permanent resident status of more than three million people. Second, the act made it illegal for the first time in U.S. history to knowingly hire an undocumented immigrant, and created a series of employer sanctions that graduated with more severe and repeat violations. Third, the act provided for additional enforcement resources to strengthen the border with an eye on preventing limiting future immigration flows.

The logic of IRCA was clear. The policy wiped the slate clean for those unauthorized immigrants with established lives in the United States, and made a major concession to a key class of employers (growers in particular) via a legalization for seasonal agricultural workers. At the same time, by creating a sanction system for employers and prohibiting the hiring of the unauthorized, IRCA attempted to eliminate the major pull factor that had long attracted many undocumented immigrants to the United States, namely, the prospects of higher and perhaps more stable earnings.

Despite the large numbers legalized through IRCA's two legalization programs and consequent declines in the resident number of unauthorized, the undocumented population proceeded to grow over the subsequent three decades (see figures 1 and 2). Several factors contributed to this growth. The employer

**Figure 1.** Undocumented Immigrant Population in the United States

Source: Passel and Cohn 2015.

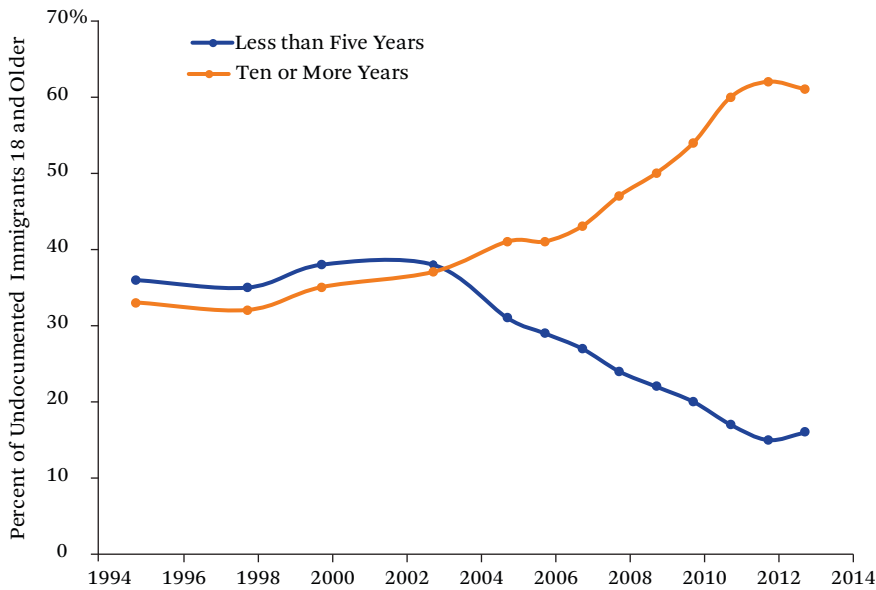
sanctions system did little to deter the hiring of undocumented migrants, effectively nullifying a key component of the IRCA enforcement strategy. The fortification of the U.S.-Mexico border certainly raised the likelihood of being apprehended. Also, subsequent changes to federal policy—increasing the sanctions for being apprehended and enhancing the volume of geographically interior enforcement (discussed in the following section)—likely deterred new entrants and return entrants to some degree. However, this latter factor coupled with the availability of employment fundamentally shifted the nature of undocumented migration in the post-IRCA period.

### THE DISRUPTION OF CIRCULAR MIGRATION

In the pre-IRCA era, undocumented Mexicans were mostly seasonal labor migrants whose families remained at home. The IRCA was the first in a series of laws that fortified the nearly two-thousand-mile U.S.-Mexico border through physical barriers, higher border-enforcement staffing levels, and increased use of technology to detect migrant crossings. The greater militarization of the border made the act of cross-

ing much more difficult, costly, and dangerous. Migrants started bringing their spouses and children to the United States to live with them and were reluctant to return home given the increased costs and risks of the trip back to the United States (Massey, Durand, and Malone 2002). In addition, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996 established bars to reentry for persons unlawfully present in the United States. The effect of these reentry bars was amplified by the expiration of 245(i), a provision that had allowed migrants to adjust their status while still within the United States. Undocumented residents were now required to return to their countries of origin to apply for legal status. However, the reentry bars are triggered on departure, creating the unintended consequence of keeping a large, settled population of unauthorized immigrants in the United States (figure 2).

Throughout the 1990s and into the twenty-first century, the number of undocumented immigrants residing in the United States grew substantially, as did efforts to address their presence and participation in U.S. society. With greater overall time in the United States, mi-

**Figure 2.** Proportion of Undocumented Immigrants in the United States

Source: Passel et al. 2014.

grant families developed deeper ties to U.S. communities. They did so through marriage, by bearing U.S.-born children who are by law U.S. citizens, and by deepening connections to employers, schools, and other institutions. All the while, the policy context made life in the United States increasingly difficult.

### THE RISE OF THE “FORMIDABLE DEPORTATION MACHINE”

Over the last two decades, immigration laws and enforcement practices have narrowed the rights of noncitizens and have made neighborhoods and public spaces unsafe. Coinciding with the rise in the size of the unauthorized population residing in the United States has been the creation of a more extensive and punitive enforcement apparatus. This new infrastructure has been aimed at deporting unauthorized immigrants apprehended at the

border as well from the country’s interior and deterring future return migrations through accelerated deportation or severe sanctions for subsequent unlawful entry. The emergence of the “formidable deportation machine” meticulously documented by Doris Meissner and her colleagues (2013) and by Marc Rosenblum and Meissner (2014) dates to the mid-1990s.

In 1996 Congress passed the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA).<sup>4</sup> These two laws significantly expanded the number of crimes considered deportable offenses and made deportation mandatory for all immigrants sentenced to a year or more. In addition, the 1996 laws eliminated the “suspension of deportation” practice, which had protected immigrants without a criminal history deportation.<sup>5</sup> In consequence, the 1996 laws increased the

4. Public Law No. 104-132, 110 Statute 1214 (1996) and Public Law No. 104-208, 110 Statute 3009-546 (1996), respectively.

5. Prior to the passage of AEDPA and IIRAIRA, § 212(c) of the Immigration and Nationality Act had provided discretionary relief from exclusion and deportation for certain noncitizens (“§ 212(c) relief”). Under § 212(c), lawful permanent residents who had lived in the United States for seven continuous years were eligible for the relief. Even permanent residents who had been convicted of an aggravated felony were eligible, as long as the term of imprisonment served was less than five years. AEDPA rendered noncitizens convicted of aggravated

number of noncitizens eligible for removal and decreased their eligibility for relief from removal proceedings, thus subjecting both noncitizens convicted of crimes and those with past criminal convictions to mandatory detention and deportation without previously available avenues of relief. Of equal consequence, the removal provisions of these laws were applied retroactively to immigrants who would not have been deported under the laws in place at the time of their original convictions. Immigrants are now left with no recourse to judicial review or appeal. And because immigration courts are civil rather than criminal, the right to counsel does not apply.

During the pre-IRCA era and through the first half of the 1990s, deportations usually involved the voluntary returns of immigrants apprehended at the border or within the border region apprehended at internal checkpoints. Formal removal proceedings from the interior of the nation were relatively rare, were subject to judicial review, and for the most part resulted when what was then the Immigration and Naturalization Service (INS) received an anonymous tip or when an undocumented immigrant committed a serious felony resulting in a fairly lengthy prison term.

Since 1996, this infrastructure has been strengthened by increased staffing levels for the U.S. Customs and Border Protection (CPB) (which is responsible for border enforcement and monitoring) and the ICE (which is responsible for interior enforcement of immigration law), both key operational components of the Department of Homeland Security (DHS). In addition, new modes of cooperation between local enforcement and ICE (at first voluntary and then mandatory) have greatly facilitated identifying deportable immigrants, among both the unauthorized and legal permanent residents with documented criminal histories.

Several major qualitative changes since 1996 have also changed the deportation landscape. To begin, the process of formally removing someone from the United States has been

greatly streamlined. Prior to 1996, formal deportations—referred to as *removals*—required judicial review by an immigration judge. Since 1996, the removal process has been expedited for individuals apprehended at the border or individuals with a prior removal order (via reinstatement of a removal order). The alternative to a formal removal is a voluntary return, a less punitive avenue. A formal removal carries heavy consequences, including a ban on reentry for a fixed period depending on the number of prior removals and the rendering of any subsequent attempt to enter the United States a felony punishable by a federal prison sentence. In recent years, the CPB as well as ICE have deliberately processed more individuals as formal removals rather than returns in an effort to deter future return migration through raising the potential sanctions if apprehended. As a consequence, immigration-related felonies and admissions to federal prisons for immigration related offenses have been the fastest growing components of court dockets and federal prison admissions flows since the turn of the century (Sklansky 2012; Rosenblum et al. 2014).

Second, the scope of the definition of who is deportable for an *aggravated felony* expanded greatly. Prior to 1996, formal removals for criminal conduct was limited to unauthorized immigrants and legal permanent residents who had committed and been convicted of relatively serious crimes receiving fairly lengthy prison sentences. The 1996 legislation created a more inclusive definition of who is a deportable criminal alien, with provisions for retrospective application to the unauthorized and to legal permanent residents alike.

Third, following the September 11 terrorist attacks and the consolidation of border enforcement and immigration services under the umbrella of DHS, interior enforcement activity greatly increased. Apprehensions made in the interior of the country nearly always result in formal removals, either expedited for those with prior removal orders or subject to judicial

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felonies ineligible for discretionary relief from deportation under § 212(c). Effective April 1, 1997, IIRAIRA § 304(b) repealed INA § 212(c) altogether and eliminated all possibility of relief under the old rule. IIRAIRA provided for a form of discretionary relief available to a small group of noncitizens that did not include noncitizens convicted of an aggravated felony, regardless of the length of sentence served.



review. Moreover, staffing levels for CPB and ICE have grown considerably, increasing both the risk of apprehension at the border and the risk of detection and removal from the interior.

Fourth, enforcement actions have increasingly resulted from information gathered in the process of local criminal justice enforcement. This began with the creation of 287(g) agreements, named for the section of the amended INA that authorized such memoranda of agreement, that provided training to local law enforcement and delegates authority to local law enforcement to enforce immigration law within its jurisdiction. This was enhanced by the introduction and complete roll out across U.S. correctional institutions of the Secure Communities program between 2008 and 2014. Secure Communities forwards fingerprints normally collected in the process of booking criminal defendants following an arrest or admission of those convicted of a crime to prison or jail to the Department of Homeland Security. Such information is typically sent to state attorneys general to be entered into state criminal history repositories and forwarded onto the Federal Bureau of Investigation as part of the Interstate Identification Index program. Hence, Secure Communities does not require additional information or the cooperation of local authorities in identifying deportable aliens who pass through the nation's jails and prisons. The program simply dipped into an existing information flow between localities and the federal government. When DHS identifies a deportable alien, they issue a forty-eight-hour hold notice to the local authorities to facilitate detention and the commencement of formal removal proceedings. Participation is not voluntary and local agencies cannot opt out of participating. Furthermore, in 2009, Senator Robert Byrd (D-WV), then chairman of the Appropriations Subcommittee on Homeland Security, added language to the federal budget tying federal funding for ICE's detention budget to a requirement to "maintain a level of not less than 33,400 detention beds on a daily basis" (increased in 2013 to thirty-four thousand).<sup>6</sup> This directive became known as the immigrant detention quota

or bed mandate, and is thought to have driven up immigration enforcement. Secure Communities was discontinued in 2014 and replaced with the Priority Enforcements Program (PEP), which defined a narrower scope of individuals with more serious criminal histories for targeted deportation efforts. Nevertheless, similarities remain, particularly the integration between local law enforcement and ICE.

Collectively, these changes have increased the number of formal removals from the country, increased deportations resulting from interior enforcement, and greatly increased the costs and potential sanctions associated with reentry. The cumulative effects of these changes on enforcement aggregates is evident in figure 3. The figure displays apprehensions of undocumented immigrants, aggregate returns without a removal order, and formal removals from the country from 1980 to 2013. Apprehensions and returns closely chart one another, apprehensions declining by large amounts in recent years as there have been fewer attempts to cross the border without inspection. Formal removals increased notably in 1996 and accelerated after the turn of the century.

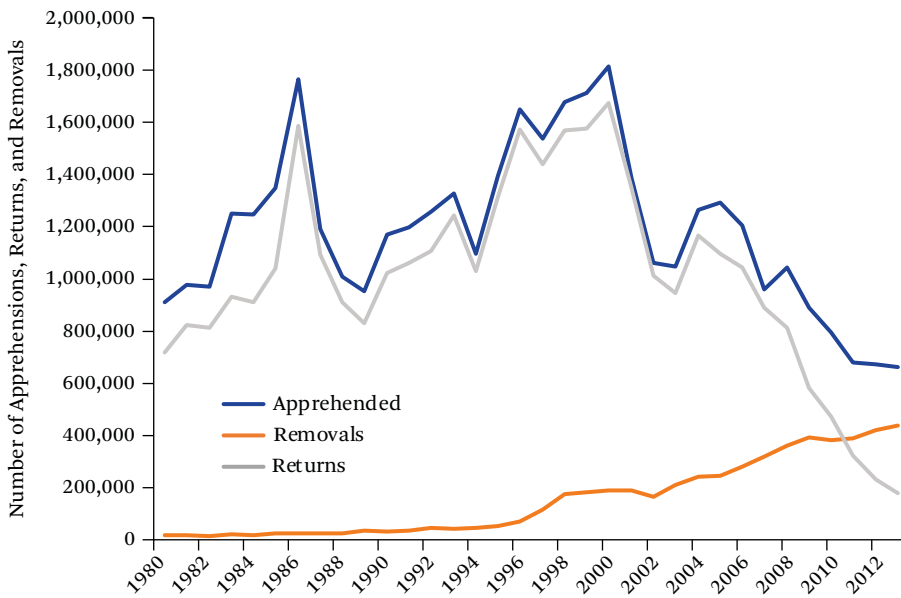
All told, these developments radically transformed U.S. enforcement practices and thus life in the United States for undocumented immigrants. Over the last decade, hundreds of thousands of immigrants have been placed in removal proceedings after being arrested or cited for minor traffic violations such as right turns on red lights, U-turns, and failing to use a turn signal when changing lanes or turning (Alonzo et al. 2011). These practices have had the effect of ratcheting up fear and anxiety in communities across the United States that include immigrants, but also their spouses, neighbors, employers, and teachers.

### THE LIVED EXPERIENCES OF ILLEGALITY TODAY

Today, the United States finds itself in the same position it did prior to the passage of IRCA, though with some key and very salient differences.

First, the population of undocumented immigrants is large. Although the population

6. Department of Homeland Security Appropriations Act, 2010.

**Figure 3.** Immigrant Apprehensions, Returns, and Removals

Source: U.S. Department of Homeland Security 2014.

now is much larger, more settled, more integrated into U.S. society, and through births and marriage, more likely to be tied to U.S. citizens and legal residents, then and now a large resident foreign-born population hangs in the balance of U.S. policy decisions.

Second, many employers (if not entire industries) remain that rely heavily on the labor of undocumented immigrants despite the provisions of IRCA. By most accounts, the employer sanctions provisions and the attempt to limit employment opportunities for undocumented workers have been utter failures. Complying with IRCA requires that employers make a good faith effort to establish the identity and work eligibility of a job applicant by reviewing one of several forms of identification listed in the I-9 form (such as passport, birth certificate, social security card, or green card). Complying with these requirements does not involve verifying the authenticity of these documents, and thus the use of fraudulent documents became widespread in the immediate aftermath of IRCA's passage. Moreover, few resources have been devoted to enforcing the prohibition against hiring the unauthorized, naturally resulting in very low deterrence. Employer sanc-

tions have had one important effect on U.S. labor market outcomes. Namely, in the pre-IRCA period, empirical evidence was scant of a wage penalty for being unauthorized once the effects of observable characteristics such as age, education, and English language ability were controlled for. In the post-IRCA period, however, a sizable wage penalty has emerged, suggesting either that employers are passing on the expected costs of sanctions to undocumented workers or that employers have somehow gained the upper hand on undocumented workers as a result of the law and are therefore paying such workers relatively less.

Third, we again observe strong demand among sizable portions of the U.S. public to address undocumented immigration and quite vocal support at least among Republican primary voters for presidential candidates emphasizing a nativist agenda.

As mentioned, policies and enforcement practices that have disrupted circular migration patterns have dramatically increased the number of settled migrants who are long-term stayers with families. These contours makes the unprecedented and wide-scale enforcement practices all the more anxiety inducing,

as today's migrants have a greater stake in staying in the United States. All the while, Congress has not been able to act on immigration reform. This delay has produced a large and vulnerable population with shrinking rights and high levels of stress. As the anthropologist Sarah Willen observes, illegality is also an embodied experience (2007; see also Gonzales 2016; Horton 2016; Holmes 2013).

Although illegality is generally perceived to affect adult migrants, these trends have also had deleterious effects on children growing up in the United States (Yoshikawa, Suárez-Orozco, and Gonzales, forthcoming). Children with undocumented parents exhibit higher levels of anxiety and depressive symptoms and are significantly less likely to graduate from high school (Potochnick and Perreira 2010; Bean, Brown, and Bachmeier 2015). For the estimated 2.1 million undocumented children, legal barriers multiply as they begin to make critical developmental transitions (Batalova and McHugh 2010; Abrego 2006; Gonzales 2011; Smith 2008; Suárez-Orozco, Suárez-Orozco, and Todorova 2009). And, because political discourse around immigration has focused almost exclusively on undocumented immigrants, dawning adolescence also brings a growing awareness of the stigma associated with undocumented status (Abrego 2008; Abrego and Gonzales 2010; Castro-Salazar and Bagley 2010). For many young people, this can be discomfiting, causing them to withdraw from school and to constrict their social networks (Gonzales 2016; Gonzales and Chavez 2012; Perez et al. 2009). Taken together, growing up under such circumstances can lead to feelings of frustration and increased worry about the future (Gonzales, Suárez-Orozco, and De-dios 2013).

In the absence of comprehensive immigration reform from the federal government, several states have taken it upon themselves to pass legislation that targets the hiring of undocumented immigrants (such as Arizona's 2007 Legal Arizona Workers Act), enhances the ability of law enforcement to identify undocumented immigrants and turn them over to the

federal government (Arizona's SB1070), or makes it a crime to be an undocumented immigrant in the state or harbor or aid an undocumented immigrant (Arizona, Alabama, Utah). In addition, several states have passed bills that bar undocumented immigrants from consideration for in-state college tuition, and several states' public postsecondary systems (Alabama, Georgia, and South Carolina) have excluded undocumented immigrants from enrolling in their institutions. To be sure, several states have taken legislative action meant to improve the lives and expand the rights of undocumented immigrants. For example, eighteen states have passed legislation providing for in-state tuition for undocumented youth enrolled in state universities, and four states grant these students eligibility for state financial aid.<sup>7</sup> Twelve states and the District of Columbia have passed legislation providing drivers' licenses to undocumented immigrants. Today, more so than ever before, where one lives dramatically shapes experiences of illegality and integration (Coleman 2012; Olivas 2007).

More recently, the Obama administration has used its executive authority to provide relief from deportation and temporary work authorization to undocumented youth who arrived as children via the Deferred Action for Childhood Arrivals (DACA) program. In the short term, this program has provided a significant boost to its beneficiaries (Gonzales, Terriquez, and Ruszczyk 2014). The administration has also attempted to extend comparable relief and temporary privileges to the unauthorized parents of U.S.-born children through the DAPA program, though, as already discussed, the recent Supreme Court 4-4 decision has effectively shelved this effort. Hence, in the legislative vacuum left by federal government inaction, state level legislation and executive actions on the part of the part of President Obama reflecting the heterogeneity in political sentiment regarding undocumented immigration are filling the void.

In 2014, nearly sixty-nine thousand children from El Salvador, Guatemala, and Honduras, many of whom were under the age of twelve,

7. See National Conference of State Legislatures, <http://www.ncsl.org/research/immigration/in-state-tuition-and-unauthorized-immigrants.aspx> (accessed November 8, 2015).

made their way to the U.S.-Mexico border, traveling without adults and at great risk (USICE 2015). Some fled their countries to escape gang violence; others were trying to join family members already in the United States (Hipsman and Meissner 2015). This surge strained detention facilities and overwhelmed state and municipal governments. Although a small number of these children have been granted asylum and some communities have welcomed them, many others have closed their doors and their presence has reignited debates about border security. The numbers of those arriving at the U.S. border declined the following year, but the immigration status of many of these children remains in limbo and local governments and institutions are struggling to adequately address a wide range of needs (Dryden-Peterson 2015).

### STUDYING EXPERIENCES OF ILLEGALITY

Over the last two to three decades, an interdisciplinary group of social scientists, sociologists, demographers, and anthropologists have examined border enforcement, the social and economic costs of migration, labor market effects, gender and other forms of stratification, and health and welfare (Donato and Armenta 2011). Early studies in this area focused on the role of undocumented labor and the experiences of undocumented workers in specific labor sectors or settings (Portes 1978; Bustamonte 1977; Burawoy 1976). As scholars began to conduct binational community studies, much of the scholarship focused on the relationship between rural sending communities in Mexico and (mostly undocumented) migrants' experiences of settlement in the United States (Massey et al. 1990). Soon after, demographers began carrying out quantitative analyses to assess the labor market effects of undocumented workers (Bean, Telles, and Lowell 1987; Warren and Passel 1987). Then, throughout the late 1980s and 1990s, ethnographic research began to explore the everyday experiences of undocumented immigrants as they made lives in U.S. communities (Hagan 1994; Delgado 1993; Chavez 1992; Rodriguez 1987).

Several perspectives have shaped this scholarship. Earlier research viewed illegality as a

*process*, beginning when migrants crossed an invisible yet deeply political border, and continuing as they navigate life in the shadows (Eschbach et al. 1999; Chavez 1992). A second perspective has viewed illegality as a *juridical status* assigned to migrants who arrive outside formal or authorized channels or who become unauthorized through an expired visa or through a change in the law. A more recent perspective has shifted the analytic focus away from studying undocumented people as "bearers of illegality" (Menjívar and Kanstroom 2013). This approach instead examines the mechanisms that produce and sustain illegality (Goldring, Berenstein, and Bernhard 2009; Menjívar 2006; Ngai 2004; De Genova 2002; Coutin 1999). Contemporary ethnographic accounts have delved into the experiences of deportation (Boehm 2016; Golash-Boza 2015), low-wage work (Holmes 2013; Gomberg-Muñoz 2011; Zolniski 2006), and experiences in new immigrant destinations (Stuesse 2016; Ribas 2015; Marrow 2011). Finally, much attention has been paid to the circumstances of children and youth, particularly their coming of age experiences in education and the workforce (Gonzales 2011, 2016; Enriquez 2011, 2014; Terriquez 2015; Abrego 2006, 2008).

Indeed, the growth of large, settled populations lacking legal status has raised many questions of how different segments of these populations are being incorporated into host societies, what factors determine different pathways and outcomes, and how the condition of illegality shapes their everyday lives.

### THE CURRENT EXPERIENCE OF ILLEGALITY IN THE UNITED STATES

The lived experience of illegality in the United States today is dramatically different than in the pre-IRCA days. The likelihood of apprehension at both the border and the interior has increased, as has the severity of the consequences of apprehension. Nevertheless, the current undocumented population has stronger social ties to the United States and longer tenures in the country. The numbers affected by this experience are at historical highs. Moreover, the numbers indirectly affected via the illegality of a parent, a sibling, or a member of one's extended family are even larger.

The articles in this issue address the current experience of illegality in the United States, as lived directly by undocumented immigrants and indirectly by their families. The papers are organized around three broad themes: the direct and indirect experiences of being on the receiving end of immigration enforcement, how undocumented immigrants adapt to their illegality or their quasi-legality, and the impact of illegality and immigrant identity on political incorporation and civic participation.

Caitlin Patler and Nicholas Branich present one of the first analyses of a troubling by-product of the rise in deportation: namely, the increase in the population of detainees in formal removal proceedings and the effects on family members and family connections. The authors analyze an original survey of individuals in an immigration detention facility in California who have been detained for at least six months as a result of a deportation removal process. The authors focus on the contact these individuals have with their families, specifically on contact with children. The paper builds on a growing body of literature studying the determinants of visitation of the detained and the effects of visitation and various behavioral outcomes.

A major recent development in immigration trends in the United States is the surge in unaccompanied minors migrating primarily from the Central American countries of Guatemala, Honduras, and El Salvador. These minors present particular challenges to U.S. immigration policy because many have distant relatives in the United States and are fleeing violence and poverty in their home countries. Nonetheless, the United States faces the challenge of processing these children, screening the suitability of family members that step forward to serve as temporary guardians, and adjudicating their petitions to remain in the country. Lauren Heidbrink draws on interviews with unaccompanied minors in the custody of the Office of Refugee Resettlement (ORR) in the U.S. Department of Health and Human Services, individuals that apply sometimes (successfully and sometimes not) to sponsor such minors with the aim of freeing them from ORR custody, and officials in ORR detention centers to study the process that governs ORR release

from detention. The paper highlights the manner in which ORR often negates the agency of unaccompanied minors and fails to recognize conventional kinship networks and social roles that are common in the cultures of sending countries yet often inconsistent with western notions of the appropriate social roles of legal minors. The paper presents detailed analysis of how the prescribed activities by ORR for these youth (attending school, engaging in after school activities, socializing) often conflict with the child's sense of responsibility to members of the households, and the extreme barriers that ORR places in attempting to ensure that youth will not come to harm in the homes of sponsors. The discussion of home visits is particularly revealing, because the ORR is imposing standards on family and kin in determining suitability that are beyond what would be imposed by child protective services across the country.

Of course, the experience of illegality effects the children of the undocumented, both those who are undocumented as well as those who are U.S.-born citizens. Lauren Gulbas and Luis Zayas analyze the effects of having undocumented parents on the welfare of U.S. citizen children through a series of open-ended interviews with children in the United States and Mexico. The authors focus on three groups of children: U.S. citizen children who follow a deported parent to Mexico, citizen children of deported parents who remain in the United States, and citizen children with undocumented parents who have not had a parent deported as of the date of the interview. Through a systematic analysis of interview transcripts, the authors discuss common themes regarding the hardships and challenges created by the deportation of an undocumented parent (or the threat of deportation), how this affects the child's role within the household, and the factors particular to these population that foster resiliency.

The new reality of being undocumented in the United States has required that undocumented immigrants adapt accordingly. These adaptations may involve settling for lower wages, limiting ambitions about educational attainment and occupational mobility, and for the lucky few who have achieved partial adjust-

ment through DACA, adapting to these new privileges within the context of being the member of a family where others are still constrained by their legal status.

Peter Brownell tests for an effect of employer sanctions risk (operationalized as fines per employee year and the likelihood of an audit by year, industry and state) on the wages of Mexican workers as measured in Mexican Migration Project (MPP) data. Theoretically, the expected value of a fine acts as a tax, the incidence of which should partly be born on the supply side of the labor market. In addition, the author is interested in the extent to which this tax explains the widening gap in earnings between legal and unauthorized workers post-IRCA. The findings suggest that employer sanctions play at most a minor role, with a small significant effect of the fines on wages. These effects do not differ for undocumented and documented Mexican workers, suggesting that the fines may be affecting wages through statistical discrimination against foreign-born Mexican workers more generally. The author does some back-of-the-envelope calculations showing the aggregate magnitude of the post-IRCA unauthorized wage penalty and how this overwhelms the total employer-paid fines. Hence, even if the fines were totally passed off onto the supply side of the market, they could not possibly explain the wage disadvantage that undocumented workers in the post-IRCA period experience. The analysis suggests that the balance of power has shifted to employers, and that employers take advantage of this change to pay the undocumented less than they otherwise would.

Esther Yoona Cho provides an analysis of the experience of college-educated 1.5-generation undocumented youth in California, focusing on how these individuals negotiate the transition from college to the job market and adapt to the limited opportunity structure they face as a direct result of their undocumented status. The paper presents a comparative analysis of undocumented youth from South Korea and Mexico, and provides a rich portrayal of the difference ethnic occupation networks that they can access after college. The South Korean entrepreneurial community is more varied and offers a richer set of informal (in the sense that

they pay cash) opportunities that better matches the skills sets of undocumented college graduates. By contrast, the Latino youth are able to access service-sector, very low-paying jobs through their social networks with a great gulf between the skills they acquire in college and what is demanded of them in the workplace. The exception is for those youth who are involved in the pan-ethnic nonprofits serving the Latino communities, where it is often possible to work as an independent contractor.

Katharine Donato and Samantha Perez analyze data from the MPP to document differences in the migration arrangements of Mexican children and how they vary across broad time periods separable by policy events. The authors look at three broad periods (pre-IRCA, or before 1986; pre-IIRAIRA, or before 1996; and post-IIRAIRA, or after 1996) and assess how the migration experience of authorized and unauthorized children vary. The focus here is whether the children migrate alone, with siblings only, or with parents and siblings and the sensitivity of this choice to the enforcement policy environment.

Clearly, undocumented immigrants cannot formally participate in the political process. To the extent that the U.S.-born children of undocumented immigrants do not observe their parents voting, attending public forum, and engaging in other less formal forms of civic participation, they may also participate less as adults despite their citizenship. Moreover, citizens may act to prevent political participation of immigrants, perhaps due to suspicions regarding legal status, or perhaps due to differential priorities regarding local state and federal government spending levels and services. Susan Brown and Alejandra Jazmin Sanchez analyze data from the Immigration and Intergeneration Mobility in Metropolitan Los Angeles Survey to study the effects of having an unauthorized mother on a measure of political integration and political knowledge. The authors present a theoretical discussion of the avenues through which parental immigration status may impact political participation and then test for an impact in a series of multivariate model estimates. The principal findings of this study are that children of unauthorized

mothers are less likely to be politically integrated and knowledgeable as young adults. However, this effect appears to be entirely mediated through the educational attainment of the 1.5- or second-generation youth. This paper highlights an important dimension of civic assimilation that has received relatively little serious research attention.

Finally, Robert Courtney Smith provides a detailed case study of a voting rights dispute in Port Chester, New York. Although the town is characterized as generally progressive and welcoming of immigration, a sizable minority of its population believes that undocumented immigrants who are ineligible to vote may seek to do so fraudulently in an effort to steer local policy in a direction more favorably to the relatively new Latino community. The paper presents a detailed discussion of several town meetings, the process and outcomes associated with a federal lawsuit brought against the town by the justice department alleging violation of the Voting Rights Act, detailed analysis of local politics and the role of race and ethnicity in mobilizing blocks of voters and efforts to suppress votes, and the broader narratives that frame the public debate. The paper also details some of the complexities of the key individuals involved in these dispute: politicians at once castigating hecklers harassing speakers of Hispanic origin at a public forum and then anonymously distributing racially inflammatory material, friendships among individuals on both sides of the political divide, and complex sometimes inconsistent views pertaining to immigration and politics in their community. The paper is rich in detail and illustrates many of the direct avenues by which small actions can disenfranchise and marginalize a group. The author situates these conflicts in terms of both racial-ethnic animus as well as simple ethnic politics and power brokering.

## CONCLUSION

The large population of undocumented immigrants in the United States poses one of the most pressing, and politically difficult policy problems of the new century. Since the failure of the bipartisan effort at immigration reform in the senate in 2013, undocumented immigration and immigration policy more generally

has become a highly salient and polarizing topic. Lost in the intensity of current political conflict is the experience of undocumented immigrants themselves and a measured discussion of the impact policy has on the experience of being undocumented and the impact the undocumented have on the nation.

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