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# State Immigration Policies

VOLUME 6, ISSUE 3

FALL 2011

## Introduction

The controversy surrounding undocumented immigration began with the passage of Arizona's new immigration law, SB 1070, in April 2010. This piece of legislation gives state law enforcement the same power the federal government has to enforce immigration law. As a result, a number of other states followed suit, and began enacting "copycat laws" that, attempt to get a grip on the problem of immigration within their own states, like SB 1070. Many of the provisions of the provisions of SB 1070 are controversial, sparking protests and challenges from both the Latino community and the federal court system. If one hopes to understand the underpinnings of current immigration policy, it is important to un-

## A Brief History Of Immigration

In order to best understand the current trends of immigration policy, as well as the possible future trends of immigration policy it is necessary to understand the history of immigration in the US. There are clear parallels between the Latino immigrants of today and the first colonial settlers of America. Both came seeking a greater degree of political and economic freedom. A second wave of immigration in the 1800s, consisted of immigrants from Italy, Russia, Poland and other eastern European countries. These immigrants experienced cultural persecution, which questioned their cultural traditions and questioned their "racial" background. The descendants of the earlier English, French and German immigrants were prejudiced toward the new wave of immigrants.

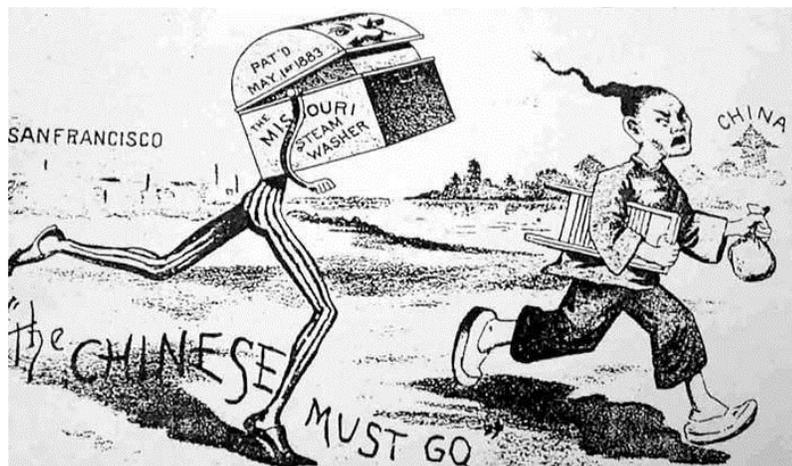
It was not until nearly a century after the United States was established, that the federal government enforced the first immigration policy. The first immigration policies largely target-

ed specific nationalities—such as, the Chinese. At first, US immigration policy banned the immigration of certain nationalities into the US altogether. Later immigration policy imposed quotas on specific nationalities. However, immigration quotas favored immigrants from Europe by giving them larger quota, while giving smaller quotas to migrants from Latin America, Asia and Africa until 1965, when immigration policy was reformed. Immigration quotas for individual Latin American countries in were additionally reformed in 1976 because the United States had grown more reliant on Mexican labor over the years. Ironically, however, as the US becomes more dependent on the labor of Mexican immigrants, more and more legal limitations have been enacted. The fact that the economic interests of the United States are connected to immigration seems to not be an issue.

## A Brief History Continued

United States policies often go against the dictates of immigration policy, which hints at the possibility that policy is based on a historical sense of xenophobia, rather than a political and economic research. Indeed the federal government remains largely unconcerned with immigration until the passage of the Steerage Act of 1819, which required that all immigrant passenger documentation be copied and sent to the Secretary of State and reported to Congress. As the US continued expanding westward, the demand for a larger labor force that would speed up the process of expansion increased, and the Homestead Act of 1862 was passed. The Act encouraged immigrants and citizens to settle in the West with the promise of free land, provided that they develop the land for at least five years.

The first law passed that excluded a specific nationality was the Chinese Exclusion Act of 1882, which aimed to decrease the amount of Chinese manual laborers that immigrated to the United States. Eventually, all Chinese immigrants were banned from immigrating into the United States for ten years. If a Chinese immigrant was found in the United States unlawfully, they were deported.



This law was renewed in 1892 and 1902. The later law renewed the number of immigrants allowed into the country each year by implementing a law without an end date. These quotas followed the first attempt to centralize immigration control in 1864 when anti-immigrant sentiment seemed to focus on immigrants within the Asian demographic. The Immigration Act of 1891 created the Bureau of Immigration that had the power to deport immigrants who were in the US illegally. Throughout the future decades, other immigrants were barred entry into the US, mostly due to physical and mental disabilities and other conditions that would prevent them from earning a living.

# A Brief History Continued

Immigration policy continued to be xenophobia motivated, because there is a strong correlation between anti-immigrant policies and increases in levels of immigration. Later immigration laws impose a quota system that seemed to be applied solely to Asians and excluded Western Europeans (Ewing 3-). The anti-immigration sentiment seemed to be largely directed towards the Asian demographic at first, a 1943 act allowing the naturalization of Chinese immigrants effectively repealed the Chinese Exclusion Act of 1882. It was the institution of the Bracero program during World War II that marked a shift in exclusionary policy towards Mexican immigrants. The Bracero program was instituted with the intention of fulfilling a demand for farm laborers, eventually bringing five million

Mexican immigrants into the US from 1942 to 1964. Because of the costliness of formally participating in the immigration process, many poor, undocumented Mexicans also immigrated into the US in search of work. In 1954, the United States government carried out "Operation Wetback," rounding up and deporting one million undocumented and legal immigrants, and even legal citizens of Mexican descent (Ewing 5).

The McCarran-Walter Act of 1952 simplified immigration laws into a single statute, eliminating race as a standard for exclusion but maintained a national-origins quota system in which countries outside the western hemisphere were given much lower quotas. Thirteen years later, with the passage of the Immigration Act of 1965, national origin quota systems were no longer in effect, but numerical restrictions were continued, allowing 120,000 immigrants from the Western hemisphere and 170,000 from the

Eastern Hemisphere. It also created a seven-category "preference system" for the family members of US citizens and legal permanent residents (LPRs) that is still in place today, although Western Hemisphere countries were exempt from this system until 1976. Two final significant immigration acts were the Refugee Assistance Act of 1975 creating opportunities for Cambodian and Vietnamese refugees to enter into the United States and the Refugee Act of 1980, which deleted the refugee category from the immigration preference system and instituted a resettlement program in the United States.

In short, the history of United States immigration policy has dealt with a number of peoples of varying economic, cultural and national backgrounds, at times discriminating against them and at other times aiding them. A closer look at immigration laws in the years 1986 and beyond will provide a more specific insight into the current challenges of implementing an effective national immigration policy, particularly with regard to undocumented Hispanic migrants.

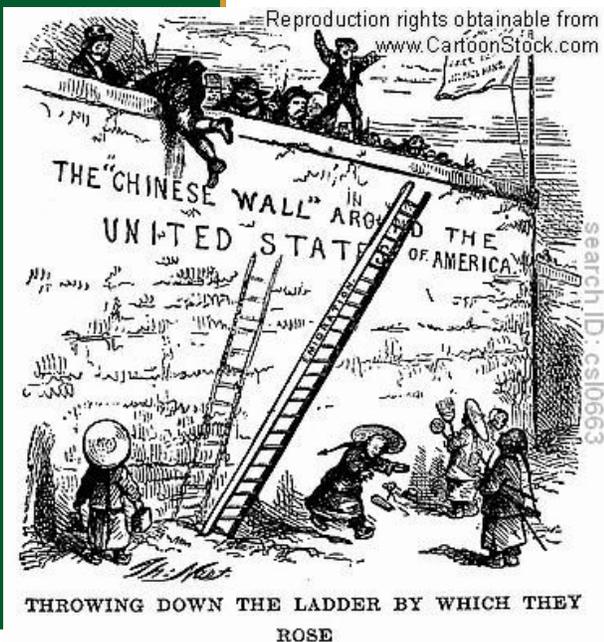


# Immigration Policy 1986 to Present

The Immigration Reform and Control Act of 1986 (IRCA) and the Immigration Act of 1990 mark the beginning of the modern era of US immigration policy. Douglas Massey et. al. describe this era as being defined by "the politics of contradiction" (73). The US simultaneously employed methods of border control despite the fact that the economies of the US and Mexico integrated. IRCA afforded undocumented migrants the ability to apply for legal status within the United States. It implemented sanctions on those specific businesses who had full knowledge that they were employing undocumented immigrants while at the same time raising the level of border security. These policies were somewhat successful in making it more difficult for immigrants to cross the border illegally, but it did not stop an expansion in the growth of the immigrant population due to a greater number of births within the country. Even though the demand for immigrant labor increased, the same quotas remained in place for the number of immi-

grants legally allowed into the country. While the Immigration Act of 1990 did raise the quota for the number of immigrants granted entrance to the country, it could not resolve the problems ultimately resulting from IRCA. IRCA gave the farm workers a legal status; no longer limited to working under harsh labor conditions, the newly-made legal immigrants not resolve the problems ultimately resulting from IRCA. IRCA gave the farm workers a legal status; no longer limited to working under harsh labor conditions, the newly-made legal immigrants the possibility of deportation. The government increased their powers to remove undocumented migrants because of those who could be defined as 'aggravated felons'. In the same year, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) which effectively decreased undocumented migrants access to social benefits even after they had resided in the US and acquired their green cards.

The Anti-terrorism and Effective Death Penalty Act (AEDPA) also passed in 1996, legal immigrants the possibility of deportation. The government increased their powers to remove undocumented migrants because of those who could be defined as undocumented migrant's presence in the US more precarious. The 9/11 terrorist attacks changed the discourse of immigration policy in the nativism arguments found another source of legitimacy in their arguments. Americans became more afraid of the invisible terrorist threat and more likely to support stiffer border control despite the fact that it is ineffective in slowing the flow of undocumented immigrants.



# State Immigration Policies



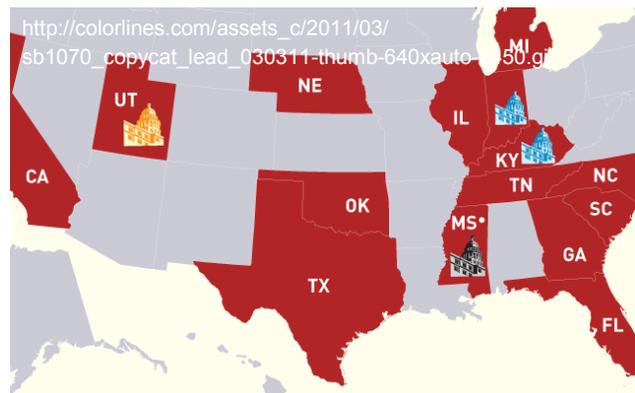
The recent passage of laws such as Arizona's SB 1070, Alabama's HB 56, Indiana's SB 590 and Georgia's HB 87 have marked the shift away from a uniform national immigration policy. Although this shift is not limited to the past year, these provisions are the strictest. States are increasingly proposing and passing legislation that further limit the rights of undocumented migrants in their state. These initiatives have sparked from the governments inability to control immigration to a level that many nativists see fit, combined with the dissatisfaction many US citizens feel in regards to the recent economic slump, and nativist sentiments that pervade US society.

Arizona's SB 1070 included many controversial aspects, which are out lined in the table on page 7. Imitation laws in the other states have passed laws with similar implications. In April 2011 how ever, the US Court of Appeals for the 9th Circuit issued an injunction blocking the enforcement of the first four provisions

In contrast to these tough anti-immigrant laws, other states have passed measures that are seemingly pro-immigrant. Pro-immigrant legislation includes the passage of the

DREAM Act in both Illinois and California, as well as New Mexico's lax regulations in issuing licenses (Clark).

To determine why certain states were passing anti-immigrant legislation while other states were passing legislation that helped undocumented students attend college we looked at the estimates of unauthorized immigrant population by state. Although there is not direct mathematical correlation, it appears that states that had smaller undocumented immigrant populations in 1990, yet experienced major growth.



Map showing states with laws similar to Arizona's SB 1070.

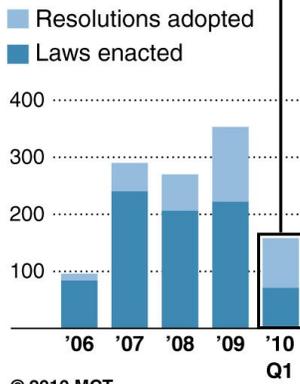
# State Immigration Law

In that population by 2010 are likely to be states that are considering tough anti-immigrant legislation. Alabama for example, had 5000 undocumented migrants in 1990, but had an estimated 120,000 over the past two decades. States such as California and Illinois didn't experience such proportionally dramatic shifts. California experienced an increase of 35,000 to 425,000. Illinois experienced a more dramatic increase, starting with 200,000 in 1990, and increasing to 500,000 undocumented immigrants in 2010. Indiana's undocumented and documented and documented worker population was at 1,500,000, and doubled to 2,550,000 in 2010.

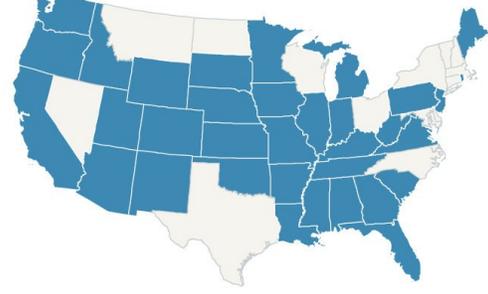
## State immigration laws not new

*In filing its lawsuit against Arizona's immigration bill, the U.S. Justice Department is arguing that federal law supercedes state legislation. State laws on immigration are relatively common. In the first quarter of this year, 34 states enacted 71 laws regarding immigration.*

### State immigration

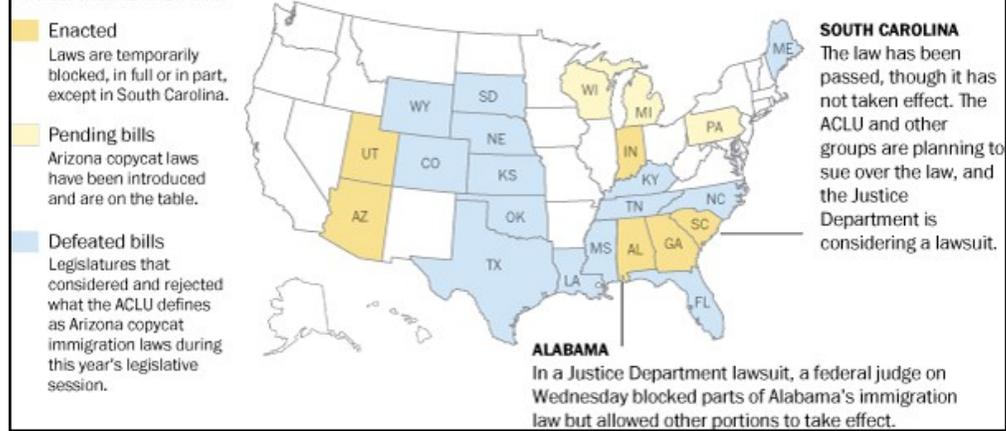


Q1 2010: 87 resolutions, 34 laws passed by these states



Source: National Conference of State Legislatures  
Graphic: Chicago Tribune

### IMMIGRATION LAW STATUS



# SB 1070 Provisions

As passed, SB1070:

- Explicitly requires state and local law enforcement officials to inquire about immigration status during any lawful stop, detention, or arrest.
- Makes it a misdemeanor to fail to carry proper immigration documents with a maximum fine of \$100 and up to 20 days in jail for the first violation and up to 30 days in jail for a subsequent violation.
- Makes it illegal for unauthorized immigrants to solicit work in any public space.
- Authorizes local police to make an arrest without a warrant of any person they believe is “removable from the United States.”
- Makes it a misdemeanor to attempt to hire day laborers if the driver is impeding the normal flow of traffic.
- Makes it illegal for a worker to get into a car if it is impeding traffic.
- Makes it unlawful for any person to transport, move, conceal, harbor, or shield from detection any unauthorized immigrant if the person knows or recklessly disregards the fact that the immigrant is in the U.S. illegally.
- Mandates the impoundment of any vehicle used to transport, move, conceal, harbor, or shield an unauthorized immigrant.
- Allows officers to detain a person to make inquiries into immigration status if the person cannot produce valid documents.
- Mandates that an officer may not release someone from custody until immigration status has been verified.
- Prohibits cities, towns, and counties from having any policy in place that limits the investigation of violations of federal immigration laws. Many localities have “community policing policies” that enhance trust and cooperation between police and immigrant communities by not asking people who have not been arrested, including victims and witnesses to crimes, for their documents.
- Allows private citizens to sue state law enforcement agencies if the private citizens believe law enforcement is not enforcing federal immigration laws to their liking.



# The Story of a Dreamer

Carlos Robles and his brother are DREAMers. Although they were born in San Luis Potosí, Mexico, they consider Palatine, Illinois their home. Carlos and his brother Rafael moved to the US with their parents when Carlos was 14, seven years ago. Carlos excelled in high school and became an honor roll student, as well as the captain of the varsity tennis team.

On an Amtrak train to visit their friend at Harvard, Carlos and Rafael were detained by the Department of Homeland Security, held in prison and threatened with deportation because they were not US citizens. With support from his high school teachers, lawyers, the community at large, and a personal intervention from Senator Richard Durbin, the brothers were able to fight their case and received deferral.

Carlos learned about the DREAM Act when still in high school. He says that the DREAM Act represents a way to supersede his situation. With the DREAM Act he would be able to pay for school and find better work. He describes it as not a reward, but as "fair" legislation because in high school he did the same things as any other student. He admits that the possibility of the DREAM Act affected his high school experience.

Without the DREAM Act he says that finding motivation not easy. In high school he said that the DREAM Act affected his plans to go for college because paying for college seemed like Federal funding for school is benefits only students who intend on attending college or entering the armed services who have no criminal record. They have to be residents of the US for five years as well. He points out that critics of the plan say that there exists a loophole for the kids of criminals, but he says that it is probably a moot point because those kids still have to excel.

While Carlos waits for the Illinois Dream Act to get funding, his family works to pay for his education. He attended community college for two years on scholarship, and currently attends Loyola part time, pursuing a teaching degree. He says that paying for college has become a larger task since his brother began attending the University of Illinois in Chicago. Carlos views the passage of the DREAM Act with a guarded optimism; recognizing its benefits and questioning why it has taken so long for such a reasonable measure to become practiced.



*“He describes it not as a reward, but as ‘fair’ legislation”*

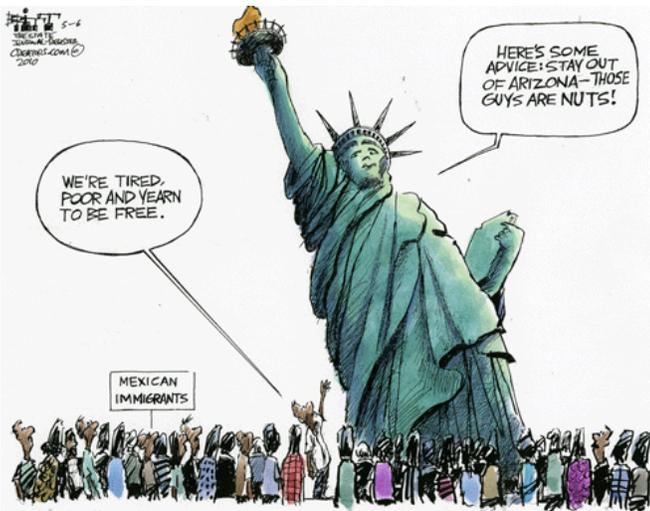
# The Effects of SB 1070

While the implementation of state laws such as SB 1070 would seem to aid the federal government in enforcing immigration law, the fact that it has implemented different and oftentimes harsher policies actually makes enforcing laws more difficult. Overlapping elements of federal and state laws create jurisdictional problems; only the federal government has the ability to enforce immigration laws and the power to deport immigrants, regardless of how many immigrants are arrested for violating state law. Although some federal-state partnerships do exist, which give state officials the power to enforce immigration law, the power to enact punishments on violators of the law still ultimately rests in the hands of the federal government. A federal district court stated that the enjoined provisions of SB 1070 stated that the enforcement of SB 1070 “will divert resources from the federal gov-

ernment’s other responsibilities and priorities.” Thus, it is possible that the federal government’s prioritization of criminals could take away resources from finding dangerous criminals and instead use the resources to deport non-violent immigrants. As the number of individuals reported to Immigration Customs and enforcement (ICE) increases, this would inundate ICE with a number of undocumented immigrants preventing them from efficiently targeting immigrants that threaten the community.

While some argue that better policing of undocumented immigrants will lead to safer local communities, this is not the case. In fact, the exact opposite could be

true. Not only are immigrants not fully responsible for high crime rates, but it could make both legal and undocumented immigrants less likely to report crimes, knowing they will be questioned by police as victims and witnesses. Police enforcement is more effective with the help of the community, but the potential for arresting undocumented immigrants can undermine the trust of the community, making enforcement more difficult and communities less safe. Furthermore, the strict enforcement of these immigration laws can divert much needed law-enforcement resources from dealing with serious . . . and violent crimes. According to Sheriff Joe Arpaio in Maricopa County, Arizona, increased immigration enforcement has caused slower responses to 911 calls and lower arrest rates. Despite the increased enforcement on immigration, of the 578 illegal immigrants arrested from 2006-2007 in Maricopa County, 498 could only be charged with smuggling themselves into the country. As a result, many law enforcement officials have outright opposed SB 1070. In the midst of the financial struggle, it is also important for states to take the economic consequences of such immigration policies into effect. The cost enacted in one county of Arizona alone is staggering, based on an estimate of a sim-



# The Effects of SB 1070

## continued

ilar bill allowing the arrest of noncitizens for trespassing simply for entering the state. These costs take into account all law enforcement, attorney, jail and court costs (Figure 1). However, these costs alone would fail to take the loss of revenue from such a policy into account. As a result of cancelled conferences and events in Arizona, the economy lost around \$141 million. Most strikingly, a 2011 report by Raul Hinojosa-Ojeda and Marshall Fitz estimated that the deportation of all noncitizens in Arizona would increase unemployment by 17.2 percent, cause citizens and undocumented immigrants to lose an estimated 581,000 jobs and ultimately decrease the economic output of the state by \$48.8 billion. Clearly the economic and social costs of such laws outweigh the potential benefits.



## SB 1070 By the Numbers

- Law enforcement agencies would spend between \$775,880 and \$1,163,820 in processing expenses;
- Jail costs would be between \$21,195,600 and \$96,086,720;
  - Attorney and staff fees would be \$810,067 \$1,620,134;
  - Additional detention facilities would have to be built at unknown costs.
  - In addition, the Superior Court, Justice Courts, Juvenile Courts, and Municipal Courts would realize increased costs for additional court staff, interpreters, administrative staff, and pre-trial services.
  - Multiplying this among all 15 counties means the costs of implementing SB1070 could rise into the hundreds of millions of dollars for the state

# The Immigrant Response in Alabama

Until now, little attention has been directed to immigrants' responses to these state policies. In response to the most recent immigration law in Alabama, protests were held on October 12, 2011. People of Latino descent chose to skip work in order to protest the immigration law which was, at that time, the strictest state immigration law in the nation. These protests sought to demonstrate the economic influence of the immigrants and resulted in lower production or complete closure of at least six poultry plants throughout Alabama. Hispanic business owners also chose to participate in the protests, resulting in a number of restaurants, grocery stores and a bank that has mostly

Latino patrons. Many businesses lost thousands of dollars worth of revenue, but chose to remain closed to participate in solidarity with the immigrants.

Despite being challenged in a court, many of the controversial provisions of the law - including the indefinite detainment of people suspected to be undocumented immigrants - were upheld by a federal judge. Since then, absentee rates among Latino children have risen, which reached a new high on October 12 with the demonstration against the immigration law. At one school, around 160 students of the total school population of 600 were missing, when the number of absen-

tees on a typical day is 20-30 students. While the law is currently being challenged in the 11th Circuit Court of Appeals, it is unclear when the ruling as to whether or not the law can be suspended will be issued. Interestingly, the essential method of organizing the protests surrounded the use of social media websites like Facebook and Spanish-language radio. The Latino community also makes up a significant portion of the state's population, as there are 185,000 Latinos in Alabama, most of them Mexican.

## Primary Account: Alabama Immigration Law:

Victor Manuel Cruz, Jr., is a junior at the University of Notre Dame and double majoring in both anthropology and the Institute of Latino Studies. Although he is a legal citizen of the United States, he is of Latino background and wanted to experience the effects of the law firsthand, almost six months after it was initially implemented.

### **Why did you go to Alabama?**

“I was in the South for a national MEChA [a Latino student group] liaison meeting. Our meeting was in Columbus, Georgia, ten minutes away from Alabama. I was with a group of students from the University of Colorado at Boulder and they were the ones who suggested it.”

### **What did you do in Alabama?**

“We spent about two hours in Alabama observing the town of Phenix, Alabama. We observed the cultural interactions of people, focusing on race relations. We focused on talking to the people around us and observing general social interactions within the town.”

### **What did you notice about the behaviors of people in the town?**

“It seemed like the town was segregated. It was a mixed town, but there was very little interaction between people of different races.”

### **How did you feel personally?**

“I did not feel like I was profiled, but I did not feel welcome.”

### **Why didn't you feel welcome?**

“I guess there were various reasons. Number one, the history of the state was in my head which gave me a preconceived notion about the state and the people of the state. I just did not feel any welcoming energy there. The people were not very nice. I went to the gas station to buy a water and the lady behind the register asked if she could help me and told me I should not be out so late.”

### **Would you want to go to Alabama and stay there for a longer period of time?**

Yes, for educational purposes. I mean, to observe

the communications and interactions of people with one another, also to learn what the stigma of the new immigration bill introduced in Alabama is about.

### **Were there any interesting stories about how citizens in Alabama were affected by the law?**

“One man was telling other people that his family was leaving Alabama. He said Georgia was a better alternative even though it had passed a similar immigration bill to Alabama. He also mentioned that his relatives were traveling to Arkansas.”

### **And this was specifically because of the immigration bill?**

“Yes.”

### **Thank you for your time, Victor.**

“You are welcome, have a nice day.”

# Pro-Immigrant Policies?

In the months following the movement of undocumented immigrants to states with less restrictive standards for issuing driver's licenses in light of harsh immigration laws, a number of pieces of legislation were proposed in New Mexico, Utah and Washington. The state of Washington, for example, has already passed a law requiring stricter standards for issuing driver's licenses and is considering legislation which would force people to prove they had entered the country legally before obtaining a license. Utah is considering revoking their driver's licenses to immigrants completely as well, though this issue is less contested because Utah licenses do not serve as personal identification so much as "driving privilege cards." This "privilege card" is currently used by 42,000

undocumented immigrants since becoming available six years ago. The only state which continued to adamantly reject any form of legislation regarding this matter was New Mexico, who fully supported an undocumented immigrants' right to a driver's license. However, the current governor of New Mexico, Susana Martinez is pushing for legislation to cancel 80,000 licenses given to noncitizens, but the state contends that it does not have an accurate count of the number of licenses it has issued to undocumented immigrants because it does not ask for the immigration status of applicants.



## Conclusions

The history of US Immigration Policy is contradictory to itself and to American interests. Without confronting the root economic and social causes of undocumented migration, there will never be a proper solution. Measures such as securing the borders of the US are detrimental to the US and immigrants as well.

In order to confront the failure of the US government to control immigration, states have reverted to passing their own measures of control. These anti-immigrant laws have met a lot of criticism and have had drastic effects on both migrants and employers in these states, and do not affect the real concerns of nativists. They appear to be short-sighted and produced out of emotion rather than reliable research.

Some states have passed legislation that helps immigrants become integrated in the community and begin to positively affect it. This type of legislation looks to the future of America as one that promotes the "American Dream" and focuses on the real problems.



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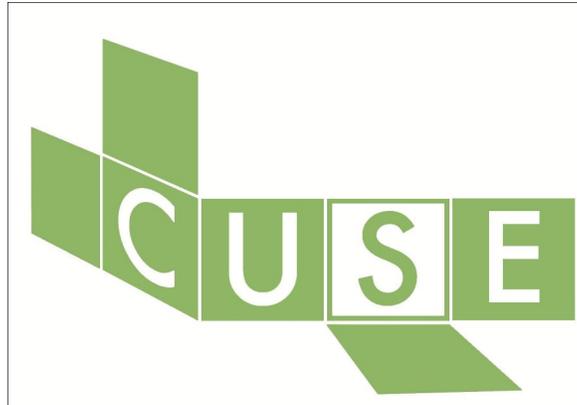
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