



TEXAS BORDERS, HISTORY, POLICY AND MANAGEMENT

NOVEMBER 2022

HISTORY

Before there was Texas, there was Tejas, a Spanish province of colonial New Spain from 1690 until 1821. Before there was Tejas, the region was home to a variety of native tribes ranging from those on the coast, such as the Karankawa, to the high plains, including the Apache, Kiowa, and Comanche.

The first Spanish mission was established in Paso del Norte, now the twin border cities of El Paso and Ciudad Juarez, in 1659 in the jurisdiction of Nuevo Mexico. The native tribes frustrated Spain's first effort to establish a mission in east Tejas in 1690, causing the missionaries to return to Mexico. Returning in 1716, Spain sought to establish a buffer to New France's Louisiana, constructing Nuestro Padre San Francisco de los Tejas and other missions, as well as a presidio. Civilian settlers arrived in 1718, at San Antonio.

Following the Mexican Revolution, which established the independence of the United Mexican States from Spain, the State of Coahuila y Tejas was created under the 1824 Constitution. Hooker maps from the period show the border between Tejas and Tamaulipas to be the Nueces River, not the Rio Grande.

After the 1836 Texas Revolution established the Republic of Texas as an independent nation, the boundary between Mexico and its new neighbor was disputed. Texas sought to expand its territory to the West – claiming all lands north of the Rio Grande from the Gulf of Mexico to its headwaters in present-day Colorado – and Mexico insisted on the historic border of the Nueces River.

As an internal border, there had been no enforcement of the line between Tejas and Tamaulipas by the United Mexican States. Following Texas independence, the ambiguous border region saw multiple raids by Mexican armed forces seeking to reestablish its authority. In September 1842, Mexican troops took control of San Antonio, north of the Nueces, but Texan militiamen forced a Mexican retreat following the Battle of Salado Creek.

Following the annexation of Texas by the United States, the disputed territory became the site of two 1846 battles between U.S. and Mexican forces at Palo Alto on May 8 and the Resaca de la Palma on May 9. American troops prevailed in both battles, beginning the Mexico-United States War. When the war ended, both governments compromised on the mid-point of the Rio Grande as the borderline between Texas and Mexico.

The end of the war made defending the new dividing line a top priority for Texas and U.S. leaders. Enforcement efforts looked both north and south. Historian Alice Baumgartner estimates between 3,000 and 5,000 slaves fled south across the border to freedom on Mexican soil despite government efforts to keep them in the U.S. A year before the Civil War, dual citizen Juan Nepomuceno Cortina and his crew were involved in cross-border banditry and were met by Texas Rangers, volunteers organized to protect the frontier and disbanded when a mission was accomplished.

U.S. Army Lt. Col. Robert E. Lee arrived in 1860, threatening war unless the raids ended, which they did. The fighting depleted the disputed border region of much of its population as many of the ranches were abandoned. They would later develop into a more structured force around the turn of the century, with a history of extrajudicial violence on the borderlands.

The 1860s featured a Civil War in the United States and a French conquest of Mexico. The end of the U.S. Civil War and the ascendance of Maximilian I of Mexico began nearly a half century of relative peace on the border, occasionally interrupted by raids and banditry, as well as characterized by land disputes in which Anglos took possession of Spanish land grants; both were sources of ethnic and class tension. As during the preceding three decades, the border itself was enforced indifferently by Mexican and American authorities operating, often in cooperation, on both sides of the frontier.

The early history of U.S. border enforcement was more about the collection of tariffs (taxes) on imported goods than about excluding people. In 1807, Congress and President Thomas Jefferson enacted legislation banning the importation of slaves. At the time, Congress and the U.S. legal system struggled to balance the dual status of slaves as 'people' and as 'property.' Ineligible for citizenship until the 14th Amendment to the U.S. Constitution was ratified in 1868, slaves were not considered immigrants.

Prior to the 1880s, no federal limitations on immigration were written into law. The U.S. economy needed immigrants to grow, to work in its factories, mines, fields, and to build the transcontinental railroad. From 1850 to 1882, nearly 333,000 Chinese immigrants came to the U.S., many to work constructing the railroad.

With the completion of the railroad came the Chinese Exclusion Act of 1882, the first law limiting immigration based on race or national origin, attempting to close the door on Chinese immigration. Having recruited Chinese labor for more than three decades,

the U.S attempt to ban immigrants from China was ineffective, and many Chinese immigrants found crossing the border from Mexico – especially at El Paso – easy compared to landing in California ports. The growth of a human smuggling industry along the U.S.-Mexico border led many other ethnic groups who were considered ‘undesirable’ by the American government to try to enter the United States through Mexico.

The Chinese Exclusion Act marked the first of what would become many immigration policy failures, based mostly on a lack of alignment between immigration policies and the economic and social realities of the time. After having been welcomed when the U.S. wanted labor to build up its infrastructure and manufacturing, immigrants seeking to reunite their families or improve their lives were hardly to be denied by an act of Congress. Likewise, the new restrictions on the movement of people did not impact the movement of goods or capital.

When immigration patterns are driven by structural social or economic factors like labor market imbalances, attempts to limit immigration often have more influence on how people migrate rather than stopping the movement of people. When restrictive immigration policies force more immigrants to enter the U.S. by illegal means, such as with the help of human smugglers, the methods become self-perpetuating in defiance of policy and the law. These factors help explain why immigration policies that ignore economic and social realities tend to have only a limited effect on real-world migration trends.

The flow of immigration across the Texas-Mexico border escalated when increasingly autocratic Mexican President Porfirio Diaz threw his reelection challenger Francisco Madero into jail in 1910 and forcibly ended the contest. Madero and his supporters generated a popular uprising from jail, beginning a decade-long civil war.

An estimated one million Mexicans crossed the border into the United States during the civil war, seeking work and refuge. The influx of Mexican labor further strained the political and economic status of Mexican American residents in Texas, stirring a new debate over whether to restrict Mexican immigration. No limitations were enacted.

The U.S. entry into the First World War in April 1917 brought about severe restrictions on immigration from Europe, which created a need for other immigrants to join the U.S. agriculture workforce. In May 1917, the U.S. implemented the first Bracero program helping farmers to recruit Mexican workers. When the program ended in 1921, Mexican workers continued to seek work in the U.S., often crossing the border outside the legal ports of entry, proving again that policies that fail to acknowledge social and economic reality are unlikely to succeed. In response, the U.S. Border Patrol was organized in 1924, beginning the ineffectual activity of pursuit, capture, and escape that has been a feature of immigration policy on the Texas border with Mexico ever since.

In 1921, Congress and President Warren Harding enacted the Emergency Quota Act reducing immigration and limiting the number of immigrants from any country to 3 percent of the residents from that country counted in the 1910 Census. The limitation did not apply to migrants from Mexico or Latin America.

Black Tuesday, October 29, 1929, and the Great Depression, led many Americans to identify Mexican immigrants as a cause of Anglo unemployment and to advocate for their deportation. The federal Bureau of Immigration organized raids to identify and remove deportable aliens. The highly publicized raids removed many U.S. citizens, including thousands who were forced onto deportation trains that left downtown San Antonio for the border. An estimated one million Mexicans and Mexican Americans were deported or left the U.S. out of fear for their safety.

The Second World War again reversed the tide as America had an intense need for labor. In 1942, the U.S. and Mexico reached agreement on the second Bracero program, again mainly intended to fill the U.S. agricultural labor shortage. The program continued for 22 years, eventually employing 5 million workers in 24 states.

The program was highly successful in filling the labor needs of American agriculture, but the rights guaranteed to workers by the program were rarely enforced. The ascendancy of the civil rights movement and the leadership of United Farm Workers' César Chavez created a backlash against the program, and it expired in 1964.

In the modern era, the 1965 Immigration and Nationality Act created a new system of visas based on immigrant skills and family relationships. The act limited immigration from Mexico and Latin America for the first time. But after the bill was enacted, the largest number of immigrants came to the U.S. from Mexico, as opposed to Europe and Canada prior to the bill's passage, further illustrating the incompatibility of the social and economic realities with the federal immigration laws.

President Ronald Reagan enacted the Immigration Reform and Control Act of 1986, providing amnesty to some immigrants in the U.S. without authorization, tightening border security and sanctioning employers of undocumented immigrants. Three million immigrants were legalized, but the enforcement and sanction provisions were still misaligned with the social and economic realities of the day and failed to stop new undocumented entries into the U.S.

In 1996, President Bill Clinton sought legislation to reduce the level of illegal immigration. While his immigration reforms failed in Congress, he signed legislation that increased spending for border security.

In 2006 and 2007, President George W. Bush pushed bipartisan immigration reform as a key priority, including a guest worker program and a path to legal status for undocumented immigrants. The proposed reforms were predicated on the

implementation of enforcement measures on the border with Mexico and an employment eligibility verification system. The bill died in June 2007 after losing four votes on the Senate floor to end debate and failing to advance the legislation to final passage.

In 2013, the Senate passed a bipartisan reform bill based on many of the features included in the 2007 Bush legislation and supported by President Barack Obama, but Speaker John Boehner refused to bring the bill to the House floor for a vote. Instead, he promised to pass many of the legislative provisions one-by-one, a strategy that never materialized.

In response, President Obama issued an executive order deferring immigration enforcement for “Dreamers,” individuals who came to the U.S. as children, have been in the United States at least since June 2007, and do not have criminal records.

President Donald Trump made immigration a central issue of his 2016 election campaign and his term in the White House, emphasizing a reduction in legal immigration and finishing a border wall on the border with Mexico. Early in his administration, President Trump was offered full funding for the border wall by Democratic congressional leaders in exchange for his support of immigration reform measures, but he refused. President Trump shut the government down to force Congress to approve border wall funding, which did not happen, and the shut-down concluded without new border wall funding. On some policy initiatives, public opposition forced President Trump to reverse direction, such as deportation protections for Dreamers and the zero-tolerance policy that caused thousands of young immigrant children to be separated from their families.

President Trump’s Migrant Protection Protocol (also known as Remain in Mexico) policy continued an effort dating back to President Reagan of using Mexico as a refugee buffer zone, especially regarding Central Americans. Recent years have seen an uptick in immigrants and asylum seekers from Central American countries like Guatemala and Honduras, as those countries experience social and economic turmoil. According to the U.S. Customs and Border Protection agency, factors that contribute to migration from Central American countries include violence, insecurity, and famine in their home countries, exacerbated by crop failures and drought related to changing climate patterns.

The U.S.-Mexican immigration bargain, first struck in the Reagan Administration by then-Secretary of State George Shultz and his Mexican counterpart Jorge Castañeda, led Mexico to fortify its southern border to stop Central Americans from travelling north to the U.S. In return, the U.S. at the time agreed not to fortify its southern border or prevent Mexican migration to the U.S., an important factor to a Mexican economy struggling with high unemployment.

The global COVID-19 pandemic provided President Trump with new opportunities to curb travel and immigration to the United States. Based on recommendations from the Centers for Disease Control to limit the pandemic spread, the Trump Administration halted many asylum procedures under section 265 of Title 42 of the U.S. Code. Under this policy, migrants seeking to make claims for asylum were expelled back to Mexico or their home countries without the opportunity to present their asylum claims. President Joe Biden sought to terminate the policy in May 2022, but a federal judge blocked his action. During President Biden's presidency, more than 2 million apprehended migrants have been expelled to Mexico or their home countries.

Over the past several years, border wall construction and immigration curbs have disrupted migration from Mexico as much as from Central America, leading Mexican enforcement of its southern border to fluctuate. This in turn contributed to the recent increases in the total number of migrants seeking to cross into the U.S. from Mexico. The results show again the mismatch of immigration policy with economic and social reality, giving rise to outcomes contrary to the intent of U.S. immigration policy.

President Joe Biden came to power in 2021 seeking to reverse most of the policies of his predecessor, but initially maintaining most of the restrictions related to the pandemic. When President Biden has sought to restore asylum processing, his efforts have been frustrated by the Supreme Court, although he won a Supreme Court challenge to his policy to unwind President Trump's Migrant Protection Protocol.

The Biden Administration's work to reunite families separated under President Trump's zero tolerance program has been successful only on the margins. In June 2022, the American Civil Liberties Union estimated that more than 1,000 children who were taken under President Trump's family separation policy still have not been reunited with their families.

President Biden has also sought immigration legislation similar to proposals advanced by Presidents Bush and Obama, but a sharply polarized and narrowly divided Congress has stymied progress on the initiative. Working with his Mexican and Central American counterparts, President Biden has sought to attack some of the root causes of migration, including poverty and political corruption in the region. It is a long-term solution unlikely to provide immediate results.

Immigration policy and border enforcement is a powerful political issue, provoking strong polarization among political partisans, both Democratic and Republican. Many seek to oversimplify complicated, intertwined issues that involve sovereignty, human rights, community, economic and law enforcement. Often overlooked is the human impact on migrants who are vilified by some for political gain.

The unresolved nature of the issues has strengthened multi-national crime organizations, much as it has through history. The intense political rhetoric has spurred

extreme hate crimes, including the massacre in El Paso on August 3, 2019. The lack of an effective, orderly immigration and asylum process has led to violence among criminal organizations and spiking crime rates in Mexico, as well as exploitation of migrants. Meanwhile, communities on the U.S. side of the border remain generally safe, with crime rates below the state and national averages. Finally, anti-immigrant rhetoric has led to local communities taking on the task of treating migrants with dignity through processing centers, as the federal government focuses its resources on enforcement over other components of the immigration situation.

The Texas Border Coalition believes an understanding of the Texas border history is essential to solving border challenges today. Effective solutions need to reflect the social economic realities of today. Equally important, partisanship should play no role in solving our immigration and border management problem. In fact, partisanship has made solving the problem vastly more difficult than it needs to be.

POLICY: ECONOMIC & SOCIAL REALITY

U.S. immigration law had a negligible impact on Texas for most of the first 30 years of statehood. U.S. law did not restrict immigration until the 1880's, when a law was enacted to exclude Chinese migrants, eventually bringing immigration enforcement to the Texas border.

The law did not achieve its goal of excluding all Chinese immigration. It was perceived by many Chinese as lacking legitimacy because it ignored the American economy's demand for their labor, their desire to provide that labor, the desire of many immigrants to reunite their families, not to mention the political turmoil in their home country. For all those reasons, Chinese migrants continued to come to the U.S. However, they mostly abandoned entry through California and began arriving through Mexico.

To stem the flow of Chinese migrants entering the U.S. through Mexico, the precursor to the Border Patrol was organized – originally known as the Mounted Guards – in El Paso in 1904. The Border Patrol was authorized in 1924, primarily to prevent alcohol smuggling during Prohibition and secondarily to curtail unlawful migration.

In 1965, President Lyndon Johnson signed the Immigration and Naturalization Act (INA) into law, dramatically changing how Mexican migration was managed by the U.S. government. Prior to the Act, about 450,000 guest worker visas were available to Mexican workers and an unlimited number of resident visas. After the 1965 law was enacted, guest worker visas were abolished, and resident visas were limited to 20,000 annually.

Overnight, thousands of formerly legal Mexican immigrant workers lost their protected status. However, social and economic reality was unchanged. The demand for

immigrant workers, especially in the U.S. agriculture sector, remained as strong as it was before the law was enacted. The migrants' desire for employment was not diminished. Instead of ending Mexican migration, the INA fostered the underground human smuggling industry that has since grown and been subsumed by huge multinational drug cartels.

Over 20 years later, President Ronald Reagan enacted the Immigration Reform and Control Act legalizing millions of unauthorized immigrants. The law also established sanctions on employers for hiring employees whose immigration status could not be confirmed. Laws passed in 1996, 2002 and 2006 emphasized border control, prioritized enforcement of employment laws and tightened standards for admission to the U.S. Each of the laws increased border security staffing and technology, including the 2006 Secure Fence Act authorization of hundreds of miles of border fencing and new border monitoring technology.

Like the Chinese Exclusion Act in the 19th century, subsequent 20th and 21st century immigration laws have aimed to reduce migration to the U.S. but have more often missed the target, for many of the same reasons: the laws often ignored the social and economic realities that lead migrants to leave their homes and seek a temporary or permanent relocation in the U.S. The investments in technology, however, have demonstrated recent payoffs.

In the years following the passage of the 1986 Immigration Reform and Control Act, the undocumented population of the U.S. nearly quadrupled from an estimated 3 million to 11.5 million persons while Border Patrol funding increased 37-fold, from \$164 million in 1986 to \$6.2 billion in 2022, while staffing increased from 3,638 to 21,460.

Clearly, the surge in border enforcement has had little effect in reducing unauthorized migration to the U.S., most likely because each new round of immigration policies failed to consider longstanding economic and social realities. These include the U.S. economy's demand for immigrant labor and the worsening economic, social, and environmental conditions in Mexico and Central America. Immigration policy also did not reflect the increased economic integration of the Texas-Mexico states because of the 1993 ratification of the North American Free Trade Agreement (NAFTA) which greatly reduced barriers to cross-border capital investments and commerce among the U.S., Mexico, and Canada.

Before NAFTA, Texas border communities were thriving local economies. Border trade and cross-border manufacturing grew even more rapidly following NAFTA. However, the increased integration of the American, Mexican, and Canadian economies was not complemented by an integration of workforces, in part because President Bill Clinton opposed recommendations for new guest worker programs that would allow Mexican workers to enter and leave the U.S. legally.

Integration of the North American workforce was further hampered following the 9/11 attacks as border enforcement efforts shifted from facilitating legitimate trade and travel to a focus on national security threats. While the scale of border enforcement measures expanded exponentially, efforts to update immigration policy failed in Congress.

For migrants, the pull of American jobs and social safety, coupled with the push of poverty and insecurity in Mexico and Central America, continued to increase the rate of northbound migration across the Texas-Mexico border. The migration north met a newly expanded U.S. enforcement effort, sweeping up hundreds of thousands of migrants with no criminal or terrorist history, leading many experts to report the U.S. immigration system had become seriously broken.

Presidents George W. Bush and Barack Obama sought immigration reform legislation from Congress that would have legalized some immigrants, placed new sanctions on employers, expanded employment-based visa programs, and enhanced immigration enforcement. Meanwhile, the U.S. stepped up enforcement on the southern border, including an expanded Border Patrol, hundreds of miles of border fencing and the deployment of new technology.

In some measure, these enforcement efforts prompted a reaction from the government of Mexico. In the 1980s, Mexico agreed to help stop Central Americans from travelling north across Mexico to the U.S. In return, the U.S. agreed not to fortify its southern border or prevent Mexican migration to the U.S. The ramping up of U.S. enforcement at its southern border led Mexico to become less reliable as a partner to stop Central American migrants crossing Mexico on their way to the U.S.

Although immigration reforms made legislative progress in 2006, 2007, and 2013, each proposal ultimately failed to pass both chambers of Congress, stalling efforts to update U.S. immigration policy to address a quickly changing security, economic and social landscape on the border.

The push-pull factors that were driving Mexican and Central American migrants north subsided temporarily during the height of the COVID pandemic but increased again as the pandemic eased, making U.S. policy reforms based on bipartisan compromise more needed than ever.

Given the repeated failure to pass immigration legislation over the past 20 years, how could Congress successfully pass reform legislation in 2022?

First, Congress should avoid the comprehensive legislative approach that helped doom prior efforts. Rather than rallying support from disparate interests, the comprehensive approach has rallied opponents. Instead, Congress should approach reform, after the November elections, by adopting a package of discreet proposals that command bipartisan support.

In addition to adopting an incremental legislative approach, Congress should avoid being caught in the trap of “security first.” An exclusive focus on immigration enforcement, as demonstrated by results over the past several decades, will not result in an orderly, fair immigration process. The Texas Border Coalition has advocated for years that the most important factors for improving border security are to adopt immigration reforms that would provide legal avenues for workers to enter the United States when needed, allowing border officials to focus more resources on criminal and terrorist threats.

Atop the list of bipartisan proposals should be the Dream Act to provide legal status for undocumented immigrants who entered the United States as children. There are about 3 million such immigrants in the U.S. today; about 800,000 immigrants are enrolled in the Deferred Action for Childhood Arrivals (DACA) program that temporarily defers their potential deportation. On average, DACA enrollees arrived in the U.S. around age 7 and have lived here for more than two decades.

There is urgency in passing the Dream Act because the program’s protections face court challenges, despite the U.S. Supreme Court’s 5-4 ruling in favor of the program. Although the Biden Administration has proposed new rules to shore up the program, court challenges remain a threat.

House and Senate lawmakers have introduced bipartisan Dream Act proposals that would provide Dreamers with statutory protection from deportation and an opportunity to obtain legal status in America. The House passed its version of the bill on March 18, 2021, on a 228-197 bipartisan vote. A bipartisan group of Senators have engaged in negotiations on a compromise bill but have yet to achieve consensus. When the November election concludes, they will have about six weeks to reach agreement and remove the threat of deportation for Dreamers. Polls consistently show the Dream Act is popular, including a June 2021 sampling that found support from 72 percent of voters.

Furthermore, the Dream Act is responsive to both social and economic reality. Should the legislation fail, and the courts hold the Dreamers’ immigration status to be illegal, these young people could be deported and forcibly removed from the only society they have known. They could be returned to birth countries where they have no memory or connection, and often no close family. The situation in which they would find themselves is not the result of any choice they have made, yet they could pay a

substantial social price for having been raised in the U.S., which in turn would lose their valuable contributions. If Texas Dreamers were forced to leave, Texas GDP would decline by about \$8 billion a year.

Economically, Dreamers today can use their temporary status to gain employment and financial stability, providing economic benefits to the nation and tax revenue to governments. Should the Dream Act pass, the economic contributions of Dreamers will grow; should it fail, their economic inputs would be removed.

Likewise, the proposed Farm Workforce Modernization Act would stabilize the agricultural workforce, of which at least half is undocumented (some studies suggest the percentage is closer to three-quarters). The legislation would allow farm workers to earn legal status and improve the current temporary farm worker program. Helping alleviate the farm labor shortage would prevent the loss of crops that would otherwise rot in fields, assuring an adequate food supply and controlling inflation. It would also help restore the circulatory nature of farm labor, allowing farm workers to return to their families in their home countries (half or more are from Mexico) when their work in the U.S. is done, while relieving agricultural employers of the fear of punishment for violating U.S. labor law.

The farm workforce proposal passed the House of Representatives March 18, 2021, on a bipartisan vote of 247-174. A group of Senate Republicans and Democrats are negotiating provisions of a companion bill.

The bipartisan Healthcare Workforce Resilience Act would assign unused visas for up to 15,000 immigrant physicians and 25,000 nurses, helping alleviate healthcare provider shortages made worse during the COVID-19 pandemic. The related bipartisan Conrad State 30 and Physician Access Reauthorization Act would waive the requirement that foreign medical school graduates return to their home counties for two years before they are eligible to apply for an immigrant visa or permanent residence, provided they work in medically underserved areas.

Combined, these bills would relieve medical provider shortages in more rural states with complex health care needs. By increasing access to healthcare in rural areas, the legislation would help alleviate emergency room visits and ongoing care needs for many Americans, providing obvious social and economic benefits.

Inefficient policies, budget restrictions and mismanagement at the U.S. Citizenship and Immigration Service (USCIS) has resulted in the expiration of USCIS' authority to issue hundreds of thousands of Green Cards (officially, Permanent Resident Cards) that allow legal, temporary immigrants to permanently live and work in the United States. Bipartisan House and Senate leaders have introduced legislation to recapture the

unissued Green Cards and allow them to be reallocated for current use. Similar recapture legislation was enacted in 2000 and 2005.

Meanwhile, it is essential that Congress continue to fund the Emergency Food and Shelter program operated by the U.S. Department of Homeland Security to assure that local governments and non-governmental organizations can carry on programs to address the needs of migrants entering the U.S.

Besides providing long-term security to hundreds of thousands of legal immigrants working across every economic sector, the Niskanen Center estimates approval of recapture legislation could boost the Gross Domestic Product by as much as \$815 billion over 10 years.

There is great urgency for Congress to act before the year is out. By tackling the limited, bipartisan package of immigration reforms, Congress can begin to build a foundation to make the American immigration system functional again – making effective management at the border more likely to be realized, including needed reforms to the asylum system. Failure to act will continue a broken system with consequences for immigrants, their families, the American economy, and society.

BORDER MANAGEMENT

There have been many inflection points involving the U.S. government's management of its border with Mexico over the past 50-plus years. Some are well-known: the 1965 Immigration and Naturalization Act and the transformation of borders and immigration following the September 11, 2001, terrorist attacks. Some are not as familiar, such as the technological transformation of the border management environment, which have improved the government's ability to interdict illegal activities and foster more efficient travel and tourism.

Now, border management is not just boots on the ground and desert and river patrols. As land ports reflect increased numbers of local crossers and truck and rail movement, and authorities meet increased numbers of migrants, the country's view of these management issues must broaden to meet current realities.

Prior to the 1965 Act, the back-and-forth flow of Mexican and Latin-Americans across the Texas-Mexico border was largely unrestricted. Most migrants worked seasonally and returned home. The new law restricted Mexican migration for the first time, erasing hundreds of thousands of Mexican guest worker authorizations and an unlimited number of resident visas – creating the first so-called “illegal aliens,” although none of the formerly legal Mexican workers did anything to change their protected status. The demand for Mexican workers, especially in the U.S. agriculture sector, was not changed by the law either. Instead of ending Mexican migration, the law forced it outside the law.

However, much of the U.S. government looked the other way, accepting the migration of Mexican workers because strict enforcement would have produced severe economic results, especially in the agricultural sector. In fact, Congress and President Ronald Reagan enacted the Immigration Reform and Control Act in 1986 seeking to align the law more accurately to economic and social reality, legalizing millions of unauthorized immigrants.

In the immediate aftermath of the September 11 attacks, the American public and border enforcement agencies shifted their view of border enforcement. What had previously been seen as a public nuisance centered in border regions, strategies changed to emphasize counterterrorism. What was an ebb and flow of traffic across the border, both at and in-between ports, mostly in response to economic forces of supply and demand, stopped as the government implemented new security measures, and U.S.-Mexico border sister cities in Mexico became distant cousins amid the enforcement regime, including a border wall and local militarization.

Noting that some of these measures would be ineffective, the Texas Border Coalition advocated for a more common-sense approach involving reform of the immigration structure, increased manpower and greater reliance on technology. Rather than a physical wall, TBC argued for reliance on the Rio Grande River by removing Carrizo Cane vegetation on the river's shores, giving Border Patrol agents greater situation awareness, and improving their ability to interdict river crossers. In the past few years, Congress has invested millions of dollars in Carrizo Cane removal, improving sightlines and improving awareness.

Recently released data show dramatic improvements in border management by the U.S. Customs and Border Protection (CBP) that may be a new inflection point. CBP's has vastly increased its estimated apprehension rate of unauthorized border crossers from 35 percent in 2002–2004 to 78 percent in 2018–2020. Despite the overwhelmingly negative media coverage of border issues, the estimated number of entries without inspection are far below the levels observed in the early 2000s.

TBC also advocated for big increases in Customs agent staffing and technology at the land ports of entry, where most illegal drugs are smuggled into the U.S. CBP has installed new, extremely effective non-invasive inspection systems, such as multi-energy portals, to enable agents to see inside cars and trucks to detect illegal and banned goods. The technology, combined with more Customs inspectors trained to the equipment, is contributing to significant drug busts where it had been deployed. As the equipment is installed in more land ports of entry, the interdiction of drug smuggling will skyrocket. The technology has already contributed to CBP seizing more than four times the amount of fentanyl seized in 2019, from 2,800 pounds in 2019 to almost 13,000 pounds in the first 11 months of fiscal 2022.

These successes can only be capitalized upon if Congress continues to expand funding for critical personnel and programs and begins reforming dysfunctional immigration laws to create the opportunity for officials to finish the job of securing the U.S.-Mexico border.

Overall border management strategies, including enforcement, are only likely to achieve the kind of success desired by the American people in an immigration policy environment reflecting economic and social reality. Combined with the kind of funding required to maintain momentum interdicting human and drug smuggling, bipartisan immigration proposals are needed to remove the disorder and improve Texas border security both at the land ports of entry and between them.

In recent years, more and more individuals and families have been surrendering themselves to CBP officers in hopes of qualifying to stay in the U.S. by seeking asylum status, based on credible fear of harm in their countries. They are not “illegal” unless credible fear is not established, in which case the migrant is removed. This increase in asylum applications has led to a boost in the number of CBP “encounters” but not illegal immigration.

Under U.S. law, if a migrant enters the country, surrenders to an enforcement official and requests asylum, he or she is entitled to a hearing on the claim. Over the last several years, the bulk of migrants entering the U.S. have come from the Central American northern triangle countries of El Salvador, Guatemala, and Honduras. The primary reasons for their migration to the U.S. are to reunite with members already established in the U.S., perceptions of amnesty (largely driven by misinformation), fear of violence and/or persecution in their home country, and better economic opportunities in the U.S.

Many of these Central American migrants are women and children. The fact that U.S. courts have ruled against the detaining of family units means there is no real detention, removal, or prosecution of these individuals. Family units are released with a “notice to appear” at a future court hearing. Because the U.S. was not prepared for the increase in the number of asylum applicants, the legal system for reviewing their claims has not been able to keep pace. Over the past decade, the number of pending claims has risen from just under 300,000 to nearly 2 million. The delay between a hearing being scheduled and finally heard has nearly doubled to two years. To help address the backlog, the Biden Administration proposed a more than \$500 million appropriation increase, but the House recommended funding only about half the boost. When compared to the billions invested security operations, the Administration’s request seems both needed and prudent and TBC supports the full funding of the Biden Administration request.

TBC has advocated for additional immigration judges to begin clearing the case backlog and Congress has answered with several hundred new judges. The new judges have rapidly increased case completions: during this fiscal year, closures should be more than 400,000, nearly tripling the number in the previous fiscal year. We have also argued for a rule change, implemented on May 31, to speed up asylum decisions at the southern border. As the rule is implemented, we are hopeful it will continue to speed up asylum adjudication.

Despite these successes, Congress remains mired in decades of failure to reform our immigration laws to refocus migration on legal methods committing to following our asylum laws. Overall, we must appropriately fund this part of the system so that we have security that is based both on law enforcement and an immigration system sufficient to meet economic and social reality. The U.S. needs about 600,000 to 650,000 low-skilled workers, few of which we create internally, every year to keep our economy growing. There is a statutory limit of 66,000 visas per fiscal year for temporary nonagricultural workers. We must have immigrants to meet our workforce needs as well as to grow our communities.

To bring greater order to border management, it is essential that Congress begin to break the impasse that prevents legislative action. Although TBC has backed comprehensive measures in the past, combining immigration and border management provisions, we now believe an incremental approach, beginning with initiatives that already enjoy broad bipartisan support, is a better path. There are a handful of measures pending in the U.S. Senate, that should see final action during the Lame Duck congressional session following the 2022 mid-term elections.

In previous white papers, we advocated for incremental action on bipartisan immigration reform measures. Here we suggest the time is right for action on a handful of border management bills that can help build confidence for more robust legislation in 2023 and beyond.

The two main bipartisan border management proposals are the Bipartisan Border Solutions Act and the Securing America's Ports of Entry Act.

The Bipartisan Border Solutions Act would establish at least four new regional processing centers in high-traffic Border Patrol sectors; disincentivize migrants with unrealistic asylum claims from coming to the U.S.; give Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS) and CBP additional resources to help them do their jobs – including additional ICE Enforcement and Removal staff, CBP officers, and processing coordinators.

The proposal would also speed up processing to address wait times and backlogs at land ports of entry, deter illegal migration while efficiently processing legitimate

asylum claims, all while protecting children and allocating resources to local governments and non-governmental organizations at the border.

The bipartisan Securing America's Ports of Entry Act would fully staff America's airports, seaports, and land ports of entry; improve screening of vehicles and cargo entering the United States to 90 percent of commercial vehicles; and allow CBP officers to focus their efforts on law enforcement priorities while supporting lawful international commerce.

There are additional security actions Congress and the President can take that would improve our management of the border, such as the Safe Zones Act that would create asylum processing centers, one on the border of Guatemala and three along the U.S.-Mexico border to provide asylum seekers alternatives to making the dangerous trek to our southern border and the Homeland Security Improvement Act that would strengthen oversight and accountability measures at DHS by creating an Ombudsman for Border and Immigration Enforcement.

There are other projects that would widen the Rio Grande River, adding to its deterrent power, including the Cameron County Weir Dam project in Brownsville and the Webb County Dam in Laredo. In addition to providing improved border security, the projects would expand water supply, a critical development for border communities. Another project would complete State Highway 1472, providing an essential link between Eagle Pass and Laredo, where no road along the Rio Grande River exists today.

Meanwhile, it is essential that Congress continue to fund the Emergency Food and Shelter program operated by DHS to assure that local governments and non-governmental organizations can carry on programs to address the needs of migrants entering the U.S.

Texas border communities are thriving, safe cities and counties that see solutions to national problems involving immigration and border management that reside on our front doorsteps. It is our misfortune that too many of our national leaders have looked at these challenges and have seen partisan political opportunities instead of the bipartisan solutions they can be. Our is not an open border problem but a nascent success story that needs to be built upon to achieve our local, state, and national goals.

The Texas Border Coalition is at the ready to join with any all who are interested in seeking solutions that unite us instead of problems to divide us.

About the Texas Border Coalition

The Texas Border Coalition (TBC) is a collective voice of border mayors, county judges, economic development commissions focused on issues that affect nearly 2.8 million people along the Texas-Mexico border region and economically disadvantaged counties from El Paso to Brownsville. TBC is working closely with the state and federal government to educate, advocate,

and secure funding for transportation, immigration and ports of entry, workforce and education and health care. For more information, visit the coalition website at www.texasbordercoalition.org.

Sources

[American Social History Project, Early Twentieth Century Mexican Immigration to the U.S.](#), City University of New York, 2022.

Baxter, Andrew and Nowrasteh, Alex, [A Brief History of U.S. Immigration Policy from the Colonial Period to the Present Day](#), The Cato Institute, 2021.

Bier, David, [Why the Legal Immigration System Is Broken: A Short List of Problems](#), [CATO Institute](#), 2018.

Chishti, Muzaffar and Kamasaki, Charles, [IRCA in Retrospect: Guideposts for Today's Immigration Reform](#), [Migration Policy Institute](#). 2014.

Cornyn, U.S. Senator John, [News Release "Bipartisan Border Solutions Act."](#) 2022.

Customs and Border Protection, U.S. Department of Homeland Security, [News Release "CBP Releases August 2022 Monthly Operational Update."](#) 2022

Dungan, Ron, [A moving border, and the history of a difficult boundary](#), The Wall, USA Today Network, 2021.

Dungan, Ron, [The Border: A History](#). 2021.

Encyclopedia Britannica, [U.S. Undocumented Immigrant Population Estimates](#), 2022.

Fehrenbach, T. R., [Lone Star: A History of Texas and the Texans](#), MacMillan Company, 1968.

Felbab-Brown, Vanda, [9-11 and the US-Mexico border: New challenges 20 years later](#), The Brookings Institution, 2021.

Gonzalez-Barrera, Ana, [After surging in 2019, migrant apprehensions at U.S.-Mexico border fell sharply in fiscal 2020](#), Pew Research Center, 2020.

Government Accountability Office, [Border Patrol Staffing and Enforcement Activities](#), 1996.

Gregory, James, [Texas Migration History 1850-2018](#), The Great Depression in Washington State Project, 2015.

Gruben, William and Kiser, Sherry, [NAFTA and Maquiladoras: Is the Growth Connected](#), Dallas Federal Reserve Board, 2001.

Hanson Gordon & McIntosh Craig, [The Great Mexican Emigration, Review of Economics and Statistics](#), 2008.

Haynes, Sam, [Border Land: The Struggle for Texas 1820-1879](#), University of Texas at Arlington, 2017.

Harrigan, Stephen, [Big Wonderful Thing](#), University of Texas Press, 2019.

Horgan, Paul, [Great River the Rio Grande](#), Rinehart & Company, 1954.

Klobucista, Claire, Cheatham, Amelia Cheatham, and Roy, Diana, [The U.S. Immigration Debate, The Council on Foreign Relations](#), 2022.

Konrad, Victor and Correa-Cabrera, Guadalupe, [Borders in Transition: North American Borders in Comparative Perspective](#), L'Espace Politique, 2022.

Leal, David and Limon, Jose, [Immigration and the Border Politics and Policy in the New Latino Century](#), University of Notre Dame Press, 2013.

Lee, Erika, [Enforcing the Borders: Chinese Exclusion along the U.S. Borders with Canada and Mexico, 1882-1924](#), The Journal of American History, 2002.

Little, Becky, [The Birth of 'Illegal' Immigration: For a long time, it wasn't possible to immigrate "Illegally" to the U.S.](#), History.com, 2019.

Little, Becky, [The Violent History of the U.S.-Mexico Border](#), History.com, 2019.

Massey Douglas, Durand Jorge, [Malone Nolan, Beyond Smoke and Mirrors: Mexican Immigration in an Age of Economic Integration](#), Russell Sage Foundation, 2002.

Massey Douglas, Pren Karen, [Unintended Consequences of US Immigration Policy: Explaining the Post-1965 Surge from Latin America](#), Population and Development Review, 2012.

Minian, Ana Raquel, [Offshoring Migration Control: Guatemalan Transmigrants and the Construction of Mexico as a Buffer Zone](#), Oxford University Press on behalf of the American Historical Association, 2020.

Mize, Ronald and Swords, Alicia, [Consuming Mexican Labor: From the Bracero Program to NAFTA](#), University of Toronto Press, 2011.

Neufeld, Jeremy, Milliken, Lindsay, Rand, Doug, [STOP THE INCINERATOR: The high cost of green card slots going unused and the benefits of recapturing them](#), Niskanen Center, 2021.

Nixon, Dennis E., ["Common Sense Border Management Solutions."](#) 2021.

Office of Immigration Statistics, U.S. Department of Homeland Security, ["Border Security Metrics Report."](#) 2022.

Office of Immigration Statistics, U.S. Department of Homeland Security, ["Fiscal Year 2021 Southwest Border Enforcement Report."](#) 2022.

Peach, James and Adkisson, Richard, [NAFTA and Economic Activity along the U.S.-Mexico Border](#), Journal of Economic Issues, 2000

Peters, U.S. Senator Gary, News Release, ["Peters, Cornyn Bill to Address Staffing Shortages at Ports of Entry Advances in Senate."](#) 2021.

Rippy, J. Fred, [Border Troubles Along the Rio Grande, 1848-1860](#), The Southwestern Historical Quarterly, 1919.

Schain, Martin, [The Border: Policy and Politics in Europe and the United States.](#), Oxford University Press, 2019.

Senate Judiciary Subcommittee on Immigration, Citizenship, and Border Safety, [Hearing on Flatlining Care: Why Immigrants Are Crucial to Bolstering Our Health Care Workforce](#), 2022.

Stark, Oded, [The Migration of Labor](#), Blackwell Publishing, 1991.

Steinhauer, Jason, [The History of Mexican Immigration to the U.S. in the Early 20th Century](#), The John W. Kluge Center, 2015.

Transport Security International, ["Trends in Cargo Screening Technology,"](#) 2022.

Tucker, William H., ["Mexican Immigration Problem in the U.S.A., How it Started."](#) 2016.

Valentine, H.A., [Border Patrol: Southwest Border Enforcement Affected by Mission Expansion and Budget](#), U.S. Department of Justice, 1992.

Wang, Sun Ling, Hoppe, Robert, Hertz, Thomas Hertz, and Xu, Shicong, [Farm Labor, Human Capital, and Agricultural Productivity in the United States](#), U.S. Department of Agriculture Economic Research Report, 2022

Wooten, Dudley (editor), [A Comprehensive History of Texas](#), Texas State Historical Association, 1898.