

# US Immigration Policy

## The Making of a Crisis



Matthieu TARDIS

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# The Observatory on Immigration and Asylum

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# Summary

Donald Trump's election to the White House appeared to be the beginning of a profound change in the United States' immigration policy. He reneged on bipartisan consensus that recognized the "positive contribution" of immigration to the country. This resulted in an increase in policies that affected all aspects of immigration. However, it is the most symbolic of Donald Trump's goals: building a wall between the United States and Mexico that caused the longest government shutdown in American history.

Although, Donald Trump has made immigration a key criterion of his political agenda, immigration debates have been an ongoing part of American political life for several decades. Two topics have dominated these debates since the 1980s. The first concerns enhanced border enforcement, primarily at the Mexican border, and the second relates to the legalization of unauthorized immigrants in the United States. Since the IRCA (Immigration Reform and Control Act) was passed in 1986 during Ronald Reagan's presidency, successive presidents have failed to find a compromise with Congress on an overall reform of the American immigration system. The focus has tended to be on the most coercive aspects of immigration policy, which even Barack Obama could not redress with a legalization program. More than a break with the past, Donald Trump's policy is simultaneously the successor to and manifestation of institutional deadlocks stemming from the polarization of American political life.

Yet, from a quantitative point of view the immigration situation between the United States and Mexico is far from exceptional. It falls far short of what the United States experienced at the turn of the 2000s. On the other hand, the profiles of immigrants arriving at the border have changed greatly. Since the early 2010s, single Mexican men, who used to cross the border for work, have given way to families and unaccompanied minors from El Salvador, Honduras and Guatemala, seeking asylum in the United States. But the American asylum system has been neglected in favor of enhanced border enforcement and is unable to effectively and suitably respond to these people's situation.

Despite this situation, the federal government has embarked on a frantic race to prevent immigrants crossing the southwestern border.

Although, Donald Trump has not been able to start building the wall yet, he has put a legal and operational arsenal in place to drive immigrants even further from the United States. The right to asylum has gradually been dismantled by restricting the number of entries at border crossing points and by implementing an outsourcing policy to manage migration flows. American power has enabled Donald Trump to impose agreements on Mexico and the so-called “Northern Triangle” countries, forcing them to take responsibility for these asylum seekers, at the expense of an escalating humanitarian crisis.

This policy has been able to proceed without any hindrance by Congress, highlighting the shortcomings in the US political system. But the government has to contend with other counter-powers, in terms of judges, cities, and civil society for whom immigration has become a symbol of opposition, or even resistance, to Donald Trump.

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# Introduction

In January 2019, the United States experienced the longest government shutdown in its history. Obviously, the country is used to these shutdowns related to a deadlock between the executive and Congress. In this case, it was the 26<sup>th</sup> shutdown since 1976. However, there was something exceptional about this one: firstly, it broke all records for duration, lasting for one month and three days, and secondly, it is highly significant that the deadlock focused on immigration for the first time. Since Donald Trump's election in 2016, immigration seems to have never divided Democrats and Republicans so much and polarized American society.

From a European perspective, Donald Trump's election appeared to be the beginning of a profound change in American political tradition regarding immigration. The United States was indeed founded as a nation of immigrants and its history is also a history of immigration. This characteristic is all the more striking when compared with the history of European countries, where, despite a sometimes, long migration history, immigration has never become a component of European society and identity. It may be surprising to European observers that an "identity" approach to immigration, summed up, for example, by the slogan "America First", could have been instrumental in Donald Trump's victory. How can this be explained?

Several factors stand out. After his election, Donald Trump reneged on the bipartisan consensus that for several decades had recognized "the positive contribution" of regular immigration to the country. An example of this change can be found in the rewording of the U.S. Citizenship and Immigration Services' (USCIS: the federal agency that oversees lawful immigration) mission statement, where the phrase "a nation of immigrants" to describe the United States was removed, and where the goal of protecting US citizens was added. However, President Trump did not stick to policy statements. The increase in immigration policies since his inauguration is unprecedented. No aspect is exempt



from it<sup>1</sup>: from legal immigration, including highly skilled workers and American citizens' family members, to refugee resettlement programs.<sup>2</sup>

Of course, the most symbolic of Donald Trump's goals in immigration policy is building a wall between the United States and Mexico. This "impenetrable wall" has deeply coalesced American tension on immigration. This has made it possible to establish a link in the debate between the words "crisis" and "immigration", along the lines of what Europeans have experienced since 2015, with the predictable effects on solidarity among Member States.<sup>3</sup> As in Europe, this U.S. "immigration crisis" has been presented as the result of uncontrolled arrivals at the borders, in this case at the United States' southwestern border. Hence, the idea of a cause-effect relationship between the "immigration crisis", the political crisis and the record shutdown in January 2019.

This may explain both the development of immigration policy and the debates around it (or politics). Although, this relationship between policy and politics on immigration is key to the development described above, we nevertheless need to broaden the focus in order to accurately understand the factors that have led to the current situation. As a result, the 2016 presidential election no longer appears as a departure, but as part of a sequence which started much earlier in the mid-1980s. In other words, the "immigration crisis" and its political expression are more the result of a slow deterioration in institutional decision-making mechanisms than of a changing immigration situation at the border. Therefore, Donald Trump's immigration policy is not a break with the past, but a continuation of three decades of American policy on the subject. From Ronald Reagan to Barack Obama, American presidents have tried (most often without success) to find the bipartisan consensus

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1. For a comprehensive description of immigration policies passed since Donald Trump's election, see S. Pierce, "Immigration-Related Policy Changes in the First Two Years of the Trump Administration", Migration Policy Institute, May 2019, available at: [www.migrationpolicy.org](http://www.migrationpolicy.org).

2. Resettlement is a program for the legal transfer of refugees from a first country of asylum to a new country of asylum where they will receive asylum and a residency permit. The American resettlement program grew from 85,000 refugees in the last year of Barack Obama's term to 30,000 for the 2019 fiscal year, by prioritizing Christian refugees over Muslims. The United States plans to accept 18,000 refugees for the 2020 fiscal year, or a lower quota than the post-September 11 period in 2001. See M. Greenberg, J. Gelatt and A. Holovnia, "As the United States Resettles Fewer Refugees, Some Countries and Religions Face Bigger Hits than Others", Migration Policy Institute, September 2019, available at: [www.migrationpolicy.org](http://www.migrationpolicy.org).

3. See M. Tardis, "Le droit d'asile : histoire d'un échec européen" [Right of Asylum: history of a European failure], *Études de l'Ifri*, Ifri, 2015, available at: [www.ifri.org](http://www.ifri.org), and M. Tardis, "La politique européenne d'immigration", in T. de Montbrial and D. David (dir.), *RAMSES 2019. Un monde sans boussole?*, Paris: Ifri/Dunod, 2019.

necessary to change the U.S. asylum and immigration system. These institutional deadlocks have continued to increase with the increasing polarization of American political life. Donald Trump's policy is therefore, both the successor to and manifestation of these organizational deadlocks. His policy is also characterized by its shortcomings that exacerbate the failures of the U.S. immigration system and increase its effects on immigrant populations.

In that respect, Donald Trump has given added impetus to factors that have been at work for years, particularly the impact of border controls on Central American countries, but also the shift in the immigration debate to the courts and local level, due to a lack of consensus at federal level. To explain this situation, we will focus on the challenges of the United States' southwestern border with Mexico, and show to what extent mechanisms and failures in the political decision-making process have resulted in a humanitarian crisis at the Mexican border. In other words, we will see that the political crisis preceded and worsened the "immigration crisis".

We will adopt a two-stage approach. We will first revisit the debates and paradigms of immigration policies since the 1980s and see the resulting obstacles to the development of the US system. For example, it is remarkable to see how the asylum system is not suited to the challenges of the 2010s. In the second part, we will describe policy changes by the Trump administration since 2018. We will see that, although the Trump administration has not succeeded in building a physical wall at the border, a complete legal and operational arsenal now allows the United States to drive immigrants even further from its territory.

# **An American System Unsuitable to New Immigration Challenges**

Although, Donald Trump has made immigration a key criterion of his political agenda, immigration debates have been an ongoing part of American political life for several decades. The tension between the recognition of immigrants' rights and immigration enforcement, is mainly managed, as in most Western countries, through immigration policies. As elsewhere, the focus has tended to be on the most coercive aspects of American immigration policy, particularly against a background of increasing security concerns. We know that in the European context, priority given to enforcement rather than recognition of immigrants' rights, is rooted in the inability to get consensus for overall reform among EU Member States in response to the situation of millions of unauthorized immigrants. This observation also applies to American immigration policy in some ways. Therefore, Donald Trump inherited a situation of 30 years of political deadlock in 2017 that he exacerbated.

## **The stalled impetus of U.S. immigration policy**

Two topics have dominated immigration debates since the 1980s. The first concerns enhanced enforcement, mainly at the Mexican border. The second relates to the status of unauthorized immigrants in the United States. Since Ronald Reagan's presidency, the executive has regularly failed to find a compromise on overall reform of the U.S. immigration system. To date, Donald Trump has not been any more successful, even though like his predecessors, he uses legalization as leverage to gain the opposition's support for enhanced immigration enforcement and reduced migration flows.

## *The turning point of 1986*

1986 is an important date, as it is the year when the IRCA (Immigration Reform and Control Act) was passed, i.e. the last legalization program for unauthorized immigrants. This act allowed nearly three million people to obtain a residence permit. Initially, the reform was not just intended to address the status of unauthorized immigrants. It aimed primarily to tighten border controls and create new penalties for employers who hired unauthorized immigrants.<sup>4</sup> The IRCA was the result of a compromise after five years of legal battles until it was finally signed by President Reagan on November 6, 1986.

By combining legalization programs with immigration enforcement objectives, the IRCA has turned the former into a bargaining chip to gain acceptance for the latter, and vice-versa, thus establishing a bipartisan compromise on the subject. Since then, debate on immigration policy in the United States has been based on this paradigm. This paradigm also, at least partly, explains the inability to substantially change immigration policy in the context of an increasingly polarized political life, only leaving little room for maneuver for a major overhaul in the approach to immigration.

Yet, the focus of immigration policies has very quickly shifted towards enhanced immigration enforcement, with the issue of immigrants' right only coming second. As a result of the IRCA, the ineffectiveness of penalties against employers, as well as the increased number of unauthorized immigrants during the 1990s, had a negative impact on public opinion. Indeed, lawmakers had not anticipated the high demand for cheap, low-skilled labor in the U.S. economy. Over the years, this resulted in attracting foreign workers with no opportunity of legalizing their legal status.<sup>5</sup>

Anti-immigration feeling started to emerge at state level, particularly in California, where it became an electoral issue, before quickly reaching federal level. Two very restrictive laws were passed in 1996 during Bill Clinton's presidency. One changed the welfare program by practically eliminating all social welfare for unauthorized immigrants, while greatly reducing the social rights of residence permit holders (Personal Responsibility and Work Opportunity Reconciliation Act). The other

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4. M. Chishti, D. Meissner and C. Bergeron, "At Its 25th Anniversary, IRCA's Legacy Lives On", Migration Policy Institute, November 2011, available at: [www.migrationpolicy.org](http://www.migrationpolicy.org).

5. T. Huddelston, "Paving the Way for Integration: The Pathways to Citizenship in France and the United States", Migrant Integration Policy Index, France Terre d'Asile-Immigration Policy Center-Migration Policy Group, February 2011, available at: [www.france-terre-asile.org](http://www.france-terre-asile.org).

introduced expedited removal procedures from the United States for illegal entry (Illegal Immigration Reform and Immigrant Responsibility Act).<sup>6</sup>

During the first months of his presidency, George W. Bush attempted to launch a new legalization phase, addressing the demands of the business community and the agricultural sector, but also those of immigrants' rights advocates and his Mexican counterpart. September 11, 2001 had an impact on immigration policy, paving the way for measures targeting Muslims and drastically tightening immigration enforcement by reorganizing the US coercive system.<sup>7</sup> This security turning point prompted considerable mobilization from part of the immigrant population, mainly from Latin America. From February to May 2006, unprecedented demonstrations brought between 3.7 and 5 million people together in more than 160 cities against the Border Protection, Antiterrorism and Illegal Immigration Control Act.<sup>8</sup> These demonstrations remain one of the largest popular movements in American history to this day. The disputed bill was withdrawn, leaving a status quo, with no further legislation subsequently submitted to the U.S. Congress. However, this status quo at federal level contrasts with extensive legislation in several states.<sup>9</sup> The demonstrations showed that immigration no longer just involved the few large, cosmopolitan cities in the United States. Yet, this local legislation was characterized by a very restrictive approach to immigration and immigrants' rights. This resulted in a deep division in American society on immigration, just as a broad movement to defend immigrants' rights was formed.

### ***The Obama presidency and immigration***

In 2010, the United States had 11.2 million unauthorized immigrants, or nearly 30% of the country's immigrant population. At best, instruments targeting limited groups from specific countries have allowed some immigrants to

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6. W. A. Ewing, "Opportunity and Exclusion: A Brief History of U.S. Immigration Policy", Immigration Policy Center, January 2012, available at: [www.americanimmigrationcouncil.org](http://www.americanimmigrationcouncil.org).

7. Congress created the Department of Homeland Security – (DHS) in 2003 which includes the agencies responsible for controlling immigration: Customs and Border Protection – (CBP) and Immigration and Customs Enforcement (ICE). These two agencies witnessed a significant increase in their number of officers during George W. Bush's presidency.

8. I. Bloemraad, K. Voss and T. Lee, "The Protests of 2006: What Were They, How Do We Understand Them, Where Do We Go?", in K. Voss and I. Bloemraad (ed.), *Rallying for Immigrant Rights: The Fight for Inclusion in 21<sup>st</sup> Century America*, Berkeley, University of California Press, 2011.

9. 1,059 bills were submitted to State legislatures in 2017. *Ibid.*

remain in the country or to be temporarily protected from removal procedures, mainly through a 1990 act creating Temporary Protected Status – TPS.<sup>10</sup>

However, there has been no shortage of bills to reform U.S. immigration policy since the early 2000s. In terms of legalization, these bills focused on the situation of young people without residence permits who came to the United States as minors – the DREAMers.<sup>11</sup> A first attempt initially failed in 2001. Amended versions followed in 2006 and 2007, and then in 2010 during Barack Obama’s presidency. None of them were passed by both chambers.<sup>12</sup> These failures forced President Obama to use executive orders in 2012 to introduce relief from removal and work permits for young unauthorized immigrants. Around 790,000 people have currently benefited from this program called DACA (Deferred Action for Childhood Arrivals). However, it does not provide a pathway to permanent residence or U.S. citizenship. Therefore, it creates a status subject solely to the discretion of the U.S. executive branch. Later, in 2014, Barack Obama’s attempt to extend this protection to parents of children with permanent residence, was brought before the federal courts and then the Supreme Court by 26 Republican states and overturned.

In other words, and despite guarantees that he had presented regarding immigration enforcement – which also earned him the nickname of “Deporter in Chief” from immigrants’ rights advocates<sup>13</sup> – President Obama did not succeed in reviving bipartisan compromise to change US immigration policy. This is a failure of the IRCA method, making enhanced immigration enforcement an argument for adopting legalization. 2014 demonstrated the

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10. This status is granted for a period of six to eighteen months and is renewable by the Attorney-General for humanitarian reasons related to wars or natural disasters. Although, it does not grant access to a right to permanent residence or to U.S. nationality, this status can be renewed for decades, as is the case for more than 260,000 Salvadorians protected since the 2001 earthquake. See M. Chishti, J. Bolter and S. Pierce, “Tens of Thousands in United States Face Uncertain Future, as Temporary Protected Status Deadlines Loom”, Migration Policy Institute, December 2017, available at: [www.migrationpolicy.org](http://www.migrationpolicy.org).

11. The expression DREAMers comes from the acronym of this bill: *Development, Relief and Education for Alien Minors Act*.

12. M. Chishti and J. Bolter, “Trump Administration Rescinds DACA, Fueling Renewed Push in Congress and the Courts to Protection DREAMers”, Migration Policy Institute, September 2017, available at: [www.migrationpolicy.org](http://www.migrationpolicy.org).

13. A. Sakuma, “Obama Leaves Behind a Mixed Legacy on Immigration”, *NBC News*, January 15, 2017, available at: [www.nbcnews.com](http://www.nbcnews.com). Three million people were removed during his presidency, or more than all his predecessors in the White House. However, he did not entirely deserve this nickname. In fact, the Obama administration focused its efforts on removing foreigners with criminal convictions or who recently entered the United States. On the other hand, the number of non-admissions at the border decreased drastically between 2009 and 2016. In total, half the number of immigrants had to leave the United States during Obama’s presidency as during the Bush and Clinton presidencies. M. Chishti, S. Pierce, and J. Bolter, “The Obama Record on Deportations: Deporter in Chief or Not?”, Migration Policy Institute, January 2017, available at: [www.migrationpolicy.org](http://www.migrationpolicy.org).

limits of this approach. Not only was the extension of the DACA program overturned by the courts, but policies introduced to deal with the increased arrivals of families and unaccompanied minors at the Mexican border during the summer of 2014, also helped to put families in detention, restrict opportunities to apply for asylum at the border and reduce the scope of protection granted to unaccompanied minors.<sup>14</sup>

But these measures paved the way for President Trump's U.S.-Mexican border policy, while his administration attempted to painstakingly dismantle Barack Obama's legacy. Consequently, the Attorney General tried to challenge the temporary protected status of seven nationalities<sup>15</sup> and, notably, in September 2017, to revoke the symbolic DACA program.<sup>16</sup>

Unable to make Mexico pay for the wall, as promised by candidate Trump, the president engaged in a power struggle, firstly with his Republican majority and then, after the 2018 mid-term elections, with the Democrat majority in the House of Representatives, to gain the funding needed to build it. Like his predecessors in the White House, Donald Trump put legalization on the negotiating table. In this particular case, he proposed extending the status of DACA program recipients in exchange for \$ 5.7 billion needed to build the wall.<sup>17</sup> We know that the initiative failed. After this failure, the president finished by declaring "a national emergency" at the border on February 15, 2019; a tactic that allowed him to use funds from the defense budget for the wall. As a result, with this decision the president of the United States institutionalized a crisis situation at the Mexican border, that however was not experiencing exceptionally increased flows.

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14. M. Zug, "The Mirage of Immigration Reform: The Devastating Consequences of Obama's Immigration Policy", *Kansas Law Review*, vol. 63, No. 4, 2015, p. 953, available at: [kuscholarworks.ku.edu](http://kuscholarworks.ku.edu).

15. R. Murray, "Temporary Protected Status for Salvadorans Extended, While Liberians Face Looming Deadline for Departure", American Immigration Council, October 2019, available at: [immigrationimpact.com](http://immigrationimpact.com).

16. In early 2020, these measures were still blocked by the federal judges and three DACA cases were referred to the Supreme Court. See J. Loweree, "The Supreme Court Heard a Major Case on DACA. Here's What You Need to Know", American Immigration Council, November 2019, available at: [immigrationimpact.com](http://immigrationimpact.com).

17. A. Karni and S.G. Stolberg, "Trump Offers Temporary Protections for 'Dreamers' in Exchange for Wall Funding", *New York Times*, January 19, 2019, available at: [www.nytimes.com](http://www.nytimes.com).

## The border with Mexico and failures in the immigration and asylum system

The immigration situation at the U.S.-Mexican border is at the center of politics about immigration to the United States. Again, this is not a new state of affairs. There is a longstanding and significant immigration relationship between the United States and Mexico. However, the remarkable thing is that the actual migration flow nowadays is far from exceptional from a quantitative point of view. It falls far short of what the United States experienced at the turn of the 2000s, which did not lead to a shutdown or declaration of a national state of emergency. However, behind the most visible aspect of the debates in recent years, there is a reality that has been little noticed and concerns the development of profiles of immigrants arriving at the border. The American system, which was founded to counter unauthorized immigration by Mexican single men, nowadays has to deal with the new influx of families and minors in need of international protection. This significant difference creates many problems.

### *Developments in immigration at Mexican border*

The political and media coverage of “migrant caravans” on route to the United States provided the necessary images to support rhetoric about the “migration crisis” and to justify President Trump’s decision to declare an emergency at the border, but the numbers tell a rather different story.

A spike in apprehensions of 133,000 people was recorded at the southwestern border in May 2019 alone, or a number that the country has not seen since 2006.<sup>18</sup> However, from the following month this figure dropped very significantly to reach levels at the end of 2019 comparable to those of 2018, or around 35,000 apprehensions per month<sup>19</sup>, i.e. before the measures taken by the Trump administration. This return to pre-2019 figures shows the spike can be explained by the depth of the political crisis in Washington and by its effects, i.e. the fear for many migrants of a total and imminent closure of the U.S.-Mexico border.<sup>20</sup>

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18. “South west Border Migration FY 2019”, U.S. Customs and Border Protection, available at: [www.cbp.gov](http://www.cbp.gov).

19. *Idem*.

20. A slight increase in apprehensions at the border was observed between Donald Trump’s election and his inauguration.

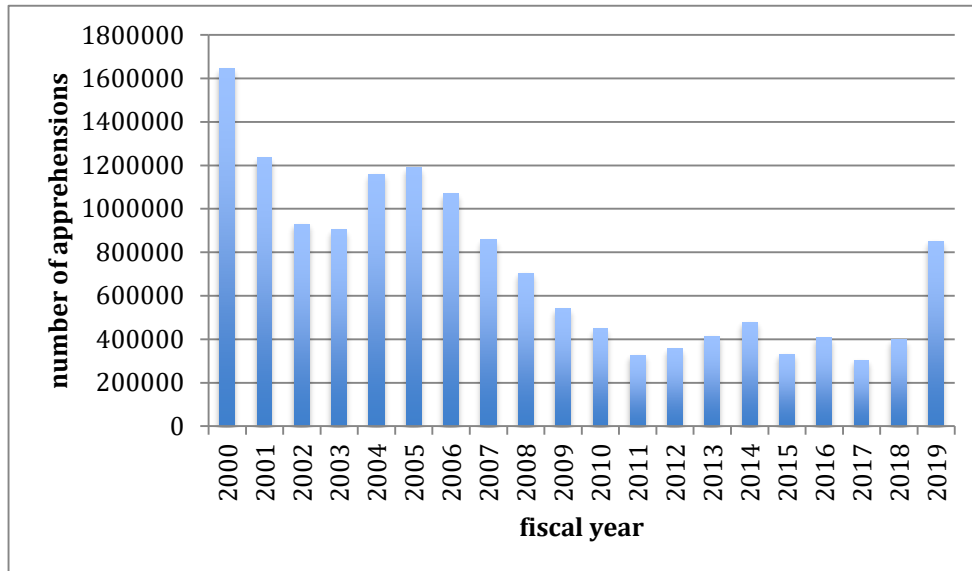


Additionally, although the number of apprehensions at the border doubled in 2019 when compared to 2018, it was half the spike witnessed in 2000. In that year, around 1.6 million immigrants were apprehended at the U.S. border. Additionally, 2000 ended a decade in which the level of apprehensions had never fallen below one million people. This level then slowly decreased, stabilizing at around 400,000 people from 2010.<sup>21</sup> In 2017, the year Donald Trump took office, a historically low figure was recorded, with 300,000 apprehensions.

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21. M. Chishti, S. Pierce and J. Bolter, “The Obama Record on Deportations: Deporter in Chief or Not?”, *op. cit.*

### Apprehensions at the Southwestern Border

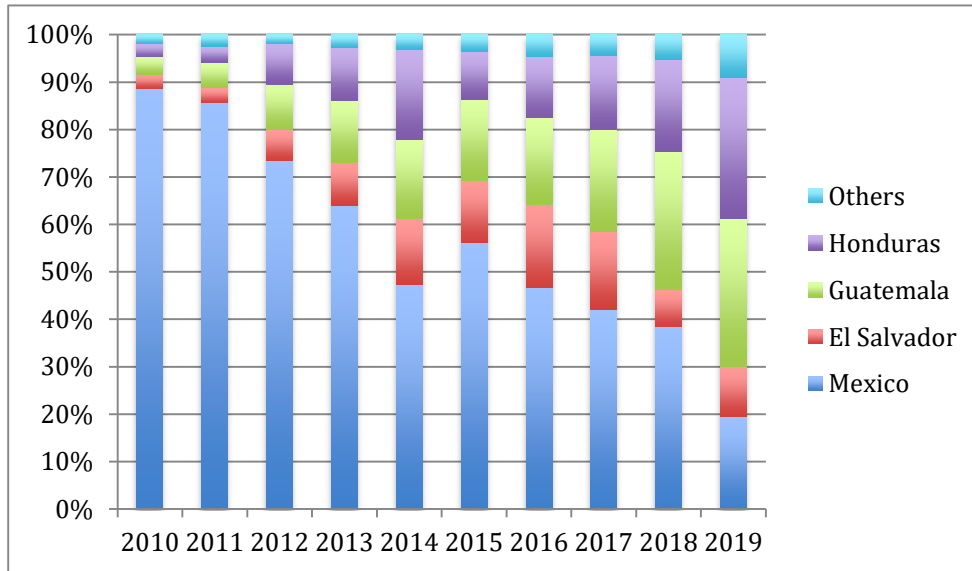


Source: U.S. Customs and Border Protection.

How can this development be accounted for? It can be explained by the change in the immigration relationship between the United States and Mexico in a decade. In 2008, Mexicans accounted for 90% of apprehensions at the border, mainly single men looking for work. Unauthorized arrivals of Mexicans have now decreased, mainly due to the improved economic situation. In fact, since 2013 India and China have overtaken Mexico in the list of the main countries of origin of new immigrants to the United States. The number of Mexicans living in the U.S. has even slightly decreased, from 11.7 million in 2007 to 11.3 million in 2017. A growing proportion of them also hold a residence permit or have been naturalized.<sup>22</sup> At the same time, the 2010s saw an increase in the number of people from El Salvador, Honduras and Guatemala. As of 2014, they have even outnumbered Mexicans arriving at the U.S. border. They accounted for 70% of apprehensions in 2019.

22. A. Selee, S. E. Gioguli-Saucedo, A. G. Ruiz Soto *et al.*, "Investing in the Neighborhood: Changing Mexico-U.S. Migration Patterns and Opportunities for Sustainable Cooperation", Migration Policy Institute-El Colegio de Mexico, September 2019, available at: [www.immigrationresearch.org](http://www.immigrationresearch.org).

### Nationalities of immigrants apprehended at the southwestern border



Source: U.S. Customs and Border Protection.<sup>23</sup>

That fact that nationals of the so-called “Northern Triangle” countries (Honduras, El Salvador and Guatemala) have outnumbered Mexicans, is not a factor in itself, that destabilizes the regulatory and operational system implemented at the border by the United States. With the exception of 2019, arrivals have been relatively limited throughout the 2010s. But this change in nationalities is also accompanied by one in the immigrants’ profile. It is now mainly families and unaccompanied minors who arrive at the US border.<sup>24</sup> This trend started in 2014 and has been steadily increasing since then: 55% of those arriving in 2019 were family units and 9% were unaccompanied minors.<sup>25</sup>

Yet, the legal framework, established since the 1996 Illegal Immigration Reform and Immigrant Responsibility Act, is based on an expedited assessment of applications for entry to the United States, which involves very limited procedural safeguards accompanied by detention. This system is not suitable for families and unaccompanied minors whose detention is strictly regulated.<sup>26</sup> The vulnerability of these immigrant

23. See [www.cbp.gov](http://www.cbp.gov).

24. D. Meissner, “Rethinking U.S. Immigration Policy: New Realities Call for New Answers”, Migration Policy Institute, August 2019, available at: [www.migrationpolicy.org](http://www.migrationpolicy.org).

25. “Southwest Border Migration FY 2019”, U.S. Customs and Border Protection, *op. cit.*

26. The Flores Settlement results from a class action lawsuit in 1985. In 1997, the parties to the litigation agreed on a settlement that determined the standards applying to the detention of

populations – related to age, gender, more dangerous immigration routes, and as we will see further on, reasons for leaving their countries – has been worsened by an almost-systematic detention policy. Hence, there is a contradiction: unlike single men from Mexico, families and children do not intend to escape from the US authorities. They arrive through official ports of entry at the border and enter into an immigration system that has not been designed to respond to their specific circumstances.

### ***An asylum system on the brink of collapse***

As stated previously, border enforcement at the southwestern border is the result of broad bipartisan consensus developed during the 1990s and 2000s. Both Republicans and Democrats have consistently boosted the legal measures and resources for the immigration enforcement agencies. Nowadays, the United States spends 34% more on immigration enforcement agencies than on all the criminal and law enforcement federal agencies, including the FBI. In 2018 alone, Congress allocated \$ 24 billion to the main immigration agencies, two-thirds of which was for the U.S. Customs and Border Protection – CBP.<sup>27</sup>

The American asylum system has not received the same attention from American institutions. It has been undergoing a systemic crisis since the early 2010s.<sup>28</sup> Affirmative asylum cases filed in the United States with the U. S. Citizenship and Immigration Service (USCIS) rose from 28,000 in 2010 to 143,000 in 2017. Officers from the same service must also assess claims for protection at or near a U.S. border subject to expedited removal on the grounds of credible fear of persecution in their home country. These claims exploded between 2010 and 2017. As a result, an asylum seeker may wait between two and five years before being interviewed. Similarly, immigration judges are overburdened with asylum cases filed as a defense against removal, that account for almost 30% of the backlog of cases before these courts. Hearing delays are also disproportionate and can take up to five years. Yet, USCIS and the immigration courts are understaffed. Only 760 USCIS officers were assigned to process asylum applications in 2019 for the entire United States, which also only had 430 immigration judges to

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immigrant children. These standards were revised in 2014 and stipulate that children, with family or unaccompanied, cannot be held in a detention center for more than 20 days.

27. D. Meissner and J. Gelatt, “Eight Key U.S. Immigration Policy Issues: State of Play and Unanswered Questions”, Migration Policy Institute, May 2019, available at: [www.immigrationresearch.org](http://www.immigrationresearch.org).

28. D. Meissner, F. Hipsman and T. Alexander Aleinikoff, “The U.S. Asylum System in Crisis: Charting a Way Forward”, Migration Policy Institute, September 2018, available at: [www.migrationpolicy.org](http://www.migrationpolicy.org).

examine 1.3 million cases. Finally, there is no legal aid system to guide asylum seekers through these procedures, including for minors.

In other words, the situation at the southwestern border illustrates and exacerbates the failures of the American system in terms of international protection. The immigrant populations arriving are mainly in need of protection either because of their age (they are minors<sup>29</sup>) or for asylum. Nationals from the “Northern Triangle” countries are generally fleeing widespread violence and persecution by gangs and cartels. El Salvador holds the world record for homicides per capita. Honduras is fourth and Guatemala is fifteenth.<sup>30</sup> The discrepancy between immigrants’ asylum requirements and the resources of the institutions responsible for asylum accounts for the extent of the tensions and deteriorating humanitarian situation at the American border, despite migration flows being nothing exceptional in quantitative terms. Measures taken in recent years have resulted in a worsened situation on the ground and passed responsibility for dealing with immigrants to its southern neighbors.

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29. Unaccompanied minors can apply for the Special Immigrant Juvenile Status. The Trump administration restricted this status to young people under 18, even when the age of majority, which is determined at state level, is 21. This decision has been appealed before Californian and New York judges. See S. Pierce, “Immigration-Related Policy Changes in the First Two Years of the Trump Administration”, *op. cit.*

30. A. Reichlin-Melnick, “What the Safe Third Country Deals Mean for The Future of Asylum in the United States”, American Immigration Council, October 2019, available at: [immigrationimpact.com](http://immigrationimpact.com).

# **Beyond the Wall: An Increasingly Impassable Border**

The wall is symbolic of the Trump administration's rhetoric on immigration. In early 2020, or a year after the national emergency was declared at the border, not a single kilometer of the wall has been built. Among the eight appeals brought before the federal courts, a Texan judge blocked the use of Department of Defense funds that Donald Trump intended to use in this way. However, this is not the focus of the Trump administration's actions at the Mexican border. Since 2018, another much less visible "wall" has been "built" through fast-paced measures and policies, whose sole objective is to deter immigration to the United States and to prevent immigrants from entering the U.S.A.

## **From deterrence to the ineffectiveness of asylum at the border**

Two particularly significant steps were taken in April 2018. The first was the deployment of the National Guard at the border<sup>31</sup> reflecting a militarization of immigration control. The second aroused strong indignation in U.S. public opinion and affected families. Jeff Sessions, the Attorney General, promoting his "zero tolerance"<sup>32</sup> policy to deter families from coming to the United States, allowed the Customs Border and Protection (CBP) to automatically refer adults arriving at the border to attorneys' offices, with a view to prosecuting for illegal entry. As stated previously, more than half of the immigrants at the border were members of family units. As the regulations do not permit minors to be detained for more than 20 days, the authorities decided to separate children from their families. The children involved were classified as "unaccompanied minors" and placed alone in shelters, under the responsibility of the Office of Refugee Resettlement – (ORR), for the time needed to identify a parent, relative or sponsor who would take care of them.

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31. 9,000 soldiers were then sent to the border in October, 2018 and February, 2019. See S. Pierce, "Immigration-Related Policy Changes in the First Two Years of the Trump Administration", *op. cit.*

32. A pilot project was launched in El Paso in the summer and fall of 2017.

In the week following the Attorney General's announcement, 2,654 children were separated from their parents.<sup>33</sup> Thousands of others may have been separated without the authorities being able to provide accurate data. These children, who were sometimes very young, were sent to shelters throughout the United States, while the parents were held in jails or immigration detention centers mainly in Texas and Arizona. In response to public opinion, Donald Trump ended this policy of family separation in June 2018.<sup>34</sup>

The harm appears to be substantial, and undoubtedly, partly irreparable. Indeed, the CBP did not keep orderly records on family separations. Parents were not always informed of where their children were sent. Some children, who were too young, traumatized or who only spoke a dialect, were unable to provide information to the ORR. Finally, several hundred parents had already been repatriated. At the same time, the ORR started to take people's fingerprints to send them to the United States Immigration and Customs Enforcement – (ICE). This decision deterred many family members or relatives from picking up children in shelters, out of fear that their illegal residence would be discovered by the agency responsible for removal procedures.<sup>35</sup>

In response to the failure of this “zero tolerance policy”, the Trump administration introduced other forms of leverage to restrict opportunities for immigrants to seek asylum or enter the United States.<sup>36</sup> Therefore, the

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33. L. Danan, E. Venditto, R. Wilson (*et al.*), “On the Frontlines of the Family Separation Crisis: City Response and Best Practice for Assisting Families”, Cities for Action-Lumos, 2018, available at: [lumos.contentfiles.net](https://lumos.contentfiles.net).

34. Executive Order dated June 20, 2018. Furthermore, on June 26, a federal judge ordered the authorities to reunite families by July 10, 2018 for children under the age of five, and by July 26, 2018 for those under 18. See L. Danan, E. Venditto, R. Wilson *et al.*, “On the Frontlines of the Family Separation Crisis”, *op. cit.* The policy reversal of June 20, 2018 did not deter the government from revising the Flores Settlement in September 2018 to allow the indefinite detention of families. This measure was immediately blocked by a federal judge. See K. Rane, “Federal Judge Says DHS Must Keep Its Promise to Protect Children in Immigration Detention”, American Immigration Council, October 2019, available at: [immigrationimpact.com](https://immigrationimpact.com).

35. 170 potential sponsors were also arrested between July and November, 2018. See R. Capps, D. Meissner, A. G. Ruiz Soto *et al.*, “From Control to Crisis: Changing Trends and Policies Reshaping U.S.-Mexico Border Enforcement”, Migration Policy Institute, August 2019, available at: [www.migrationpolicy.org](https://www.migrationpolicy.org). In July 2019, more than 4,000 children without identified sponsors were still under the responsibility of the Office of Refugee Resettlement. See “Shattered Refuge: A U.S. Senate Investigation into the Trump Administration's Gutting of Asylum”, Office of U.S. Senator Jeff Merkley, November 2019, available at: [www.merkley.senate.gov](https://www.merkley.senate.gov).

36. It should also be noted that from August 2017, the U.S. authorities ended the Central American Minors Refugee and Parole Program, created by Barack Obama, that allowed minors from Central America to legally come to the United States to join parents and to apply for asylum or another form of protection. Similarly, in June 2018, the Attorney General, Jeff Sessions made use of the opportunity opened up by the asylum system to adjudicate on an individual case himself. He reversed important case law that extended eligibility for refugee status to people fleeing non-state persecution and violence from private groups, such as gangs and cartels. This

authorities decided to reduce the number of people permitted to enter the United States at official ports of entry on the southwestern border in order to file an asylum claim there. Hence, since 2018 the CBP has been allowing between 0 and 69 applicants per day at the Tijuana port of entry.<sup>37</sup> This policy, called metering, has created queuing on the other side of the border. Crossing order lists have been drawn up by the immigrants themselves or by other types of private groups. CBP officers use these lists daily to call people permitted to enter the United States. Immigrants must wait days, weeks, or in some cases even months, in Mexico before they can file an asylum application in the United States. In November 2019, there were still 21,000 people on waiting lists at all of the southwestern border ports of entry.<sup>38</sup> To prevent immigrants from bypassing this policy by attempting to cross the border away from official ports of entry, the authorities decided in November 2018 that, in this case in point, their asylum applications would not be assessed.

More recently in October 2019, a pilot program was set up in El Paso, for those using the metering system, with a view to assessing people's asylum applications within a quick 10-day period (Prompt Asylum Claim Review<sup>39</sup>). Asylum seekers are placed in CBP detention facilities. They have one hour to call an attorney – without access to legal aid – or to prepare for their interview with an asylum officer on their own.<sup>40</sup> The appeal before the immigration judge is by telephone. The CBP has prohibited attorneys from entering detention facilities and telephone use is severely restricted.<sup>41</sup> This pilot program was extended to the Rio Grande Valley area on December 31, 2019 and should be rolled out along the entire border in February 2020.<sup>42</sup>

The limits of this change in border enforcement policy can be gaged: American and international law does not allow the government to remove the right to asylum in the United States. In fact, metering policy and the

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decision specifically targets natives of El Salvador, Guatemala and Honduras. See S. Pierce, "Immigration-Related Policy Changes in the First Two Years of the Trump Administration", *op. cit.*

37. "Shattered Refuge: A U.S. Senate Investigation into the Trump Administration's Gutting of Asylum", *op. cit.*

38. "Policies Affecting Asylum Seekers at the Border", American Immigration Council, January 2020, available at: [www.americanimmigrationcouncil.org](http://www.americanimmigrationcouncil.org).

39. Mexican nationals are not subject to the metering policy and to Prompt Asylum Claim Review. However, another pilot program, called the Humanitarian Asylum Review Process, also allows for a 10-day review of asylum claims by Mexicans filed in El Paso.

40. People apprehended at the border can apply for asylum as part of a defensive procedure. They must also undergo a credible fear of interview with a USCIS officer. If they achieve this milestone, their cases are then referred to an immigration judge for a merits hearing.

41. K. Sheperd, "New Process in El Paso Seeks to Deport Asylum Seekers in Less Than 10 Days", American Immigration Council, October 28, 2019, available at: [immigrationimpact.com](http://immigrationimpact.com).

42. *Ibid.*



procedural measures at the border are making this right unrealistic and ineffective.

## Outsourcing the United States' border control

Another result is that the metering policy de facto makes Mexico responsible for receiving immigrants looking to enter the United States. This responsibility continued to increase with the adoption of the Migrant Protection Protocol – (MPP) in January 2019. This protocol stipulates that immigrants must remain in Mexico while their asylum application is assessed by the United States. They are only permitted to enter the United States when they are summoned before the asylum authorities.<sup>43</sup> Immigrants are thus forced to wait many months in Mexico, including for their court hearing. Between 57,000 and 62,000 people are understood to have been returned to Mexico under this procedure in 2019.<sup>44</sup> Some shelters have been opened by the Mexican authorities, but, more often than not, immigrants are in private or nonprofit shelters and in hotels. Immigrants are specifically targeted by gangs and cartels, including by those they have fled from in their countries of origin. Nonprofit organizations report several hundreds of kidnappings, rapes, torture and other types of attacks against immigrants. Journeys to the border when summoned by American authorities are particularly dangerous. The Mexican authorities are unable to protect these immigrants, even in the shelters they manage or in police stations. Although reported by nonprofit organizations and in academic literature, the security situation of immigrants in Mexico is downplayed by the US authorities as “anecdotal”.<sup>45</sup>

However, the United States kept up pressure on Mexico throughout 2019 so that it controlled migration flows more effectively. In May 2019, Donald Trump threatened to raise tariffs on Mexican imports if the Mexican

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43. Several exemptions are provided for in the MPP. Firstly, this protocol cannot be applied to Mexican nationals. It also stipulates that people who have a reasonable fear of persecution or torture in Mexico are permitted to continue their process in the United States. Finally, an exemption is possible on a case-by-case basis for vulnerable people (pregnant women, serious medical cases, LGBTQ+ people, etc.) See H. Bonilla, “The Perils of the Migrant Protection Protocols”, American Immigration Council, October 2019, available at: [immigrationimpact.com](http://immigrationimpact.com). In fact, many observers report that these exemptions are unrealistic because of the rushed interviews and lack of legal aid. Only 1% of applicants are estimated to be represented by an attorney. See A. Reichlin-Melnick, “Chaos and Dysfunction at the Border: The Remain in Mexico Program Firsthand”, American Immigration Council, September 2019, available at: [immigrationimpact.com](http://immigrationimpact.com) and K. Murdza, “I Was Denied Access to the Tent Courts Where Asylum Seekers Are Rushed Through a Sham Process”, American Immigration Council, November 2019, available at: [immigrationimpact.com](http://immigrationimpact.com).

44. “Policies Affecting Asylum Seekers at the Border”, *op. cit.*

45. “A Year of Horrors: The Trump Administration’s Illegal Returns of Asylum Seekers to Danger in Mexico”, Human Rights First, January 2020, available at: [www.humanrightsfirst.org](http://www.humanrightsfirst.org).

government did not take steps to reduce the number of immigrants transiting through its territory. The two countries signed an agreement on June 7, 2019, according to which Mexico undertook to tighten enforcement at its border with Guatemala and within the country.<sup>46</sup> The number of removals from Mexico automatically increased by 34%, while the number of apprehensions at the US border decreased by 29%.<sup>47</sup> A further step was taken in July 2019, with the announcement that from now on the American authorities would no longer accept asylum applications from people who transited through a third country. This amounts to an asylum ban at the United States' southwestern border and transfers the responsibility for assessing asylum applications filed by Central American nationals who come by land<sup>48</sup> onto Mexico. But Mexico does not have the capacity to deal with all these asylum applications or to guarantee immigrants' safety with regard to the gangs and cartels operating in its territory.<sup>49</sup>

In order to complete this framework, the Trump administration negotiated so-called "safe third country" agreements with El Salvador, Honduras and Guatemala<sup>50</sup> after announcing in March 2019 that it would cut aid to the "Northern Triangle" countries. These Asylum Cooperative Agreements permit the United States to return asylum seekers to these three countries provided that they are not nationals of those countries. Nevertheless, the American government must demonstrate that these people will not be persecuted and that they will have access to a full and fair asylum procedure – which these countries are unable to provide because of the widespread violence that they are experiencing and non-existent asylum capacities. For example, Guatemala's asylum agency has eight officers and El Salvador's only one.<sup>51</sup>

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46. Mexico also undertook to accept more returned immigrants under the Migrant Protection Protocols. Finally, the United States and Mexico promised to increase their development assistance to the three "Northern Triangle" countries to "fight the root causes" of migration movements.

47. A. Reichlin-Melnick, "Chaos and Dysfunction at the Border: The Remain in Mexico Program Firsthand", *op. cit.*

48. Mexican nationals are naturally excluded from this policy. The others can still apply for a withholding of removal or protection under the International Convention against Torture, whose eligibility standards are much higher than those for refugee status.

49. R. Murray, "Why It's Bad to Force Asylum Seekers to Seek Protection Elsewhere", American Immigration Council, September 2019, available at: [immigrationimpact.com](https://www.immigrationimpact.com).

50. In 2019, \$ 450 million in development assistance was frozen for the Northern Triangle countries. The government reinstated \$ 143 million in development assistance after these countries agreed to adopt safe third country agreements. See "Shattered Refuge: A U.S. Senate Investigation into the Trump Administration's Gutting of Asylum", *op. cit.*

51. A. Reichlin-Melnick, "What the Safe Third Country Deals Mean for The Future of Asylum in the United States", *op. cit.*

It was under these agreements that 97 asylum seekers from Honduras and El Salvador were returned to Guatemala in November 2019.<sup>52</sup> Only six of them are believed to have applied for asylum, and out of these, five had reportedly left the county in early January 2020.<sup>53</sup> Nevertheless, the government plans to implement these Cooperative Agreements by also sending Mexican asylum seekers to Guatemala.<sup>54</sup>

In less than two years, Donald Trump's administration has therefore succeeded in making the land border with Mexico an impassable area for immigrants. This has been achieved by challenging the fundamental principles of the right to asylum and by putting unprecedented diplomatic pressure on Mexico and its Central American neighbors. Donald Trump admittedly benefited from the legal and operational framework left behind by his predecessors in the White House and knew how to use them to the fullest. The most noticeable thing is that this massive realignment of American asylum and immigration policy required no vote in Congress. The main opposition to this policy is now more at judicial and legal level rather than in Washington.

## The emergence of counter-powers: judges and cities

The lack of major legislation on immigration policy since the 1990s has bolstered the American president's power. Barack Obama had to use his executive powers to impose the DACA program, because it was impossible to get overall reform of the immigration system passed. Although, he vehemently criticized his predecessor's decision, Donald Trump did the same, probably at an unprecedented level in the United States' recent history. Therefore, it is not surprising that the other counter-power in the American Constitution, the judiciary, assumed the role left vacant by Congress.

In fact, the debate takes place nowadays as much in the political arena as in the legal field.<sup>55</sup> The judicialization of immigration policy does not date from 2017, but it has reached unprecedented levels. The reason is primarily numerical, due to increased immigration policies. It is also the result of a coercive and polarizing policy that impacts on the human rights and living conditions of millions of people, i.e., that tests the constitutional

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52. A. Reichlin-Melnick, "Trump Administration Begins Sending Asylum Seekers to Guatemala", American Immigration Council, November 2019, available at: [immigrationimpact.com](https://www.immigrationimpact.com).

53. P. J. McDonnell and M. O'Toole, "Mexico Balks at U.S. Plan to Send Mexican Asylum Seekers to Guatemala", *Los Angeles Times*, January 7, 2020, available at: [www.latimes.com](https://www.latimes.com).

54. *Ibid.*

55. It should be noted that we are talking here about regular courts. Immigration courts in the United States are not autonomous and independent in respect of the executive power.

framework and international commitments with respect to people's fundamental rights. From the "travel ban", adopted five days after his inauguration, to building the wall, not to mention challenging the Deferred Action for Childhood Arrivals (DACA) program, most of the immigration measures taken by Donald Trump were slowed down or blocked by federal judges. Resort to the legal system was even been taken into account by the Trump administration. This is confirmed by the declaration of a national emergency in January 2019, during which Donald Trump himself predicted the failure of litigation that was initiated.

This immigration policy has also expedited the emergence of cities and states as leading political actors in migration issues. Since the 2000s, some large cities and cosmopolitan states have started to assume the role left vacant because of the lack of a federal integration policy,<sup>56</sup> by offering support programs for immigrant populations and support organizations, in order to guarantee social cohesion in their area. In 2016, 41 cities and five states had specific offices dedicated to immigrant affairs. The city of New York was the pioneer with the creation in 1986 of the Mayor's Office for Immigrant Affairs that now has around 50 officers.<sup>57</sup>

Although, the local and state powers mainly aimed at promoting integration, social cohesion and the positive contribution of immigration to their areas, their actions took a more political turn after Donald Trump's election. They positioned themselves, as the main opponents of federal immigration policy, worried about the effects of this policy on communities. This polarization between the federal level and the state and local levels was also demonstrated by President Trump's decision, as soon as he was elected, to withdraw federal subsidies for so-called "sanctuary" cities, that refused to let municipal police forces cooperate with Immigration and Customs Enforcement - (ICE) to identify and apprehend unauthorized immigrants.<sup>58</sup>

Above all, it was the "zero-tolerance" policy and separation of families that aroused the strongest reaction in many cities and states. Cities with a long history of immigration, such as New York and Los Angeles, but also southern cities, like Houston, Albuquerque or Tucson,

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56. The only federal support for immigrant population is for resettled refugees and unaccompanied minors. A poorly subsidized program was also set up by George W. Bush to support immigrants in the naturalization process.

57. E. de Graauw and I. Bloemraad, "Working Together: Building Successful Policy and Program Partnerships for Immigrant Integration", *Journal on Migration and Human Security*, vol. 5, No. 1, p. 2017, available at: [journals.sagepub.com](http://journals.sagepub.com).

58. This decision was partly blocked by the judges. See S. Pierce, "Immigration-Related Policy Changes in the First Two Years of the Trump Administration", *op. cit.*

were at the forefront of the response to this policy. They publicly expressed their opposition,<sup>59</sup> directly challenging the federal administration and asking for reliable information on minors and their parents. They have also helped immigrants, by providing them with legal information, or coordinated and funded civil society actors, particularly with a view to providing immigrants with free legal aid.<sup>60</sup>

This resulted in the formation of alliances sustained by vibrant civil society from the start of the Trump presidency. The scale of the protests against the first version of the “travel ban” showed that civil society was capable of organizing quickly and effectively. Networks of immigrant support organizations, often from immigrant communities, were formed in the 1980s, particularly after the 1986 legalization legislation.<sup>61</sup> These organizations are still active nowadays and supported by the large American philanthropic sector, which is essential to organize and boost the nonprofit sector, particularly to address the needs of immigrant populations after September 11 and during the introduction of the DACA program.<sup>62</sup> Since 2017, philanthropic foundations have managed to be reactive and coordinated. Several foundations have set up a joint fund to support NGOs that provide legal aid to immigrants (Immigrant Litigation Fund). Similarly, human rights organizations, as influential as the American Civil Liberties Union (ACLU) and the Center for Constitutional Rights (CRR), that shaped the struggle for African-Americans’ civil rights, have now made defending immigrants’ rights their main cause. On the other hand, Washington-based advocacy NGOs have lost all access to the White House.

This engagement by civil society extends beyond the circle of the usual human rights’ defenders and immigrants’ rights advocates to reach out to Americans unconnected with immigration and social justice. Donald Trump has made immigration the core of his political agenda. He has also made it the symbol of everyone who intends to resist him. However, the scale of the protests against Donald Trump’s immigration policy tests its ability to last. Fatigue, apathy and burn-out

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59. A resolution against the zero-tolerance policy was adopted on June 11, 2018 by the *US Conference of Mayors* which brings together mayors of cities with more than 30,000 inhabitants.

60. L. Danan, E. Venditto, R. Wilson *et al.*, “On the Frontlines of the Family Separation Crisis”, *op. cit.*

61. When the IRCA was passed in 1986, \$ 4 billion in aid was allotted to local civil society actors to help unauthorized immigrants with their legalization applications. Part of this aid was also allocated to local authorities to offset the additional healthcare, education, English language course and social welfare costs. See M. Chishti, D. Meissner and C. Bergeron, “At Its 25th Anniversary, IRCA’s Legacy Lives On”, *op. cit.*

62. E. de Graauw and S. Gleeson, “Philanthropic Investments in Immigrant Rights During Turbulent Times”, *Politics of Color*, February 14, 2018, available at: [politicsofcolor.com](http://politicsofcolor.com).

are the main risks for these actors, while immigrant rights' advocates may be less able to rely on the judicial system. The federal administration has already appointed nearly 190 federal judges more in tune with its policy. In addition, litigation already initiated will gradually be referred up to the Supreme Court that is now mainly Republican.<sup>63</sup> Although, American democracy has demonstrated that it could generate opposition forces outside of the federal political institutions, will these “ad hoc” counter-powers withstand a potential second term of Donald Trump?

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63. J. Blitzer, “Are the Courts Beginning to Move in Favor of Trump’s Immigration Policies?”, *The New Yorker*, February 6, 2020, available at: [www.newyorker.com](http://www.newyorker.com).

# Conclusion

Besides the violation of fundamental principles of the rule of law by this recent development in the United States' immigration policy, there is an important geopolitical cost to consider.

American immigration policy is now power politics. It is based on the asymmetries that reinforce it. As a result, Andrés Manuel López Obrador, who was elected President of Mexico in December 2018, could not defend his position for long when faced with pressure and threats from his American counterpart. Mexico has become the anteroom of American immigration policy. More than 60,000 asylum applications were filed in Mexico in 2019, without counting the tens of thousands of immigrants waiting in Mexico as part of the Migration Protection Protocol, which we have seen the consequences of.

It has been impossible for the Central American countries to stand up to their large northern neighbor and these countries have found little support from the international community. The office of the United Nations' High Commissioner for Refugees (UNHCR) has been very reserved with respect to American decisions, which are, however, in many respects inconsistent with the basic principles of refugee protection. The UNHCR has offered its services to the United States to guarantee refugees' rights<sup>64</sup> and said it had been "troubled" by the scaling down of the refugee resettlement program.<sup>65</sup>

However, it is still too early to decide whether Donald Trump's approach to immigration has been a lasting success, especially as the subject remains one of his favorites, particularly in view of the 2020 election. It is also difficult to assess the medium- and long-term impact of U.S. policy on Central, and more generally, South American countries.<sup>66</sup> Yet, this part of the American continent is in turmoil with its share of displaced people. Central America is now one of UNHCR's priority emergencies, with the number of refugees approaching 400,000, since the

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64. "UNHCR Statement on New US Regulation on Asylum", UNHCR, November 9, 2018, available at: [www.unhcr.org](http://www.unhcr.org).

65. "UNHCR Troubled by Latest US Refugee Resettlement Cut", UNHCR, November 2, 2019, available at: [www.unhcr.org](http://www.unhcr.org).

66. Donald Trump's policy has also had an impact on Canada. Indeed, the country has seen an increase in the number of asylum seekers, but has maintained its resettlement program at a high level.

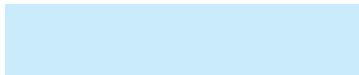
crackdown on protests in Nicaragua in 2018.<sup>67</sup> 4.5 million people have fled Venezuela in recent years, making it the greatest movement of people worldwide since the war in Syria.<sup>68</sup> Does the closure of the United States' southern border not risk further destabilizing these countries, which until now, have instead shown openness and solidarity for displaced people?

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67. See the UNHCR website on displacements in Central America: [www.unhcr.org](http://www.unhcr.org).

68. See the UNHCR website on the Venezuelan situation: [www.unhcr.org](http://www.unhcr.org).





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