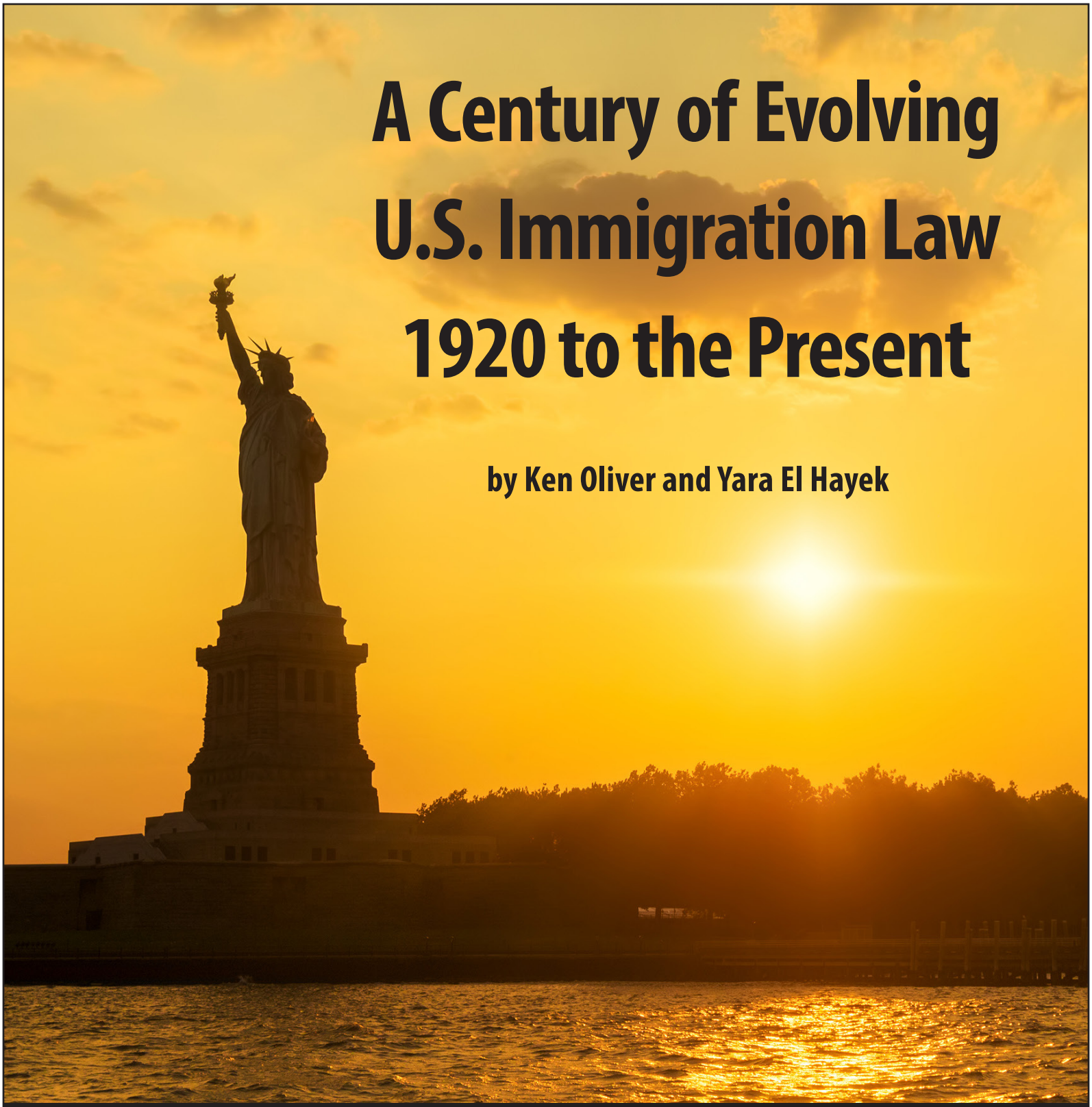

A Century of Evolving U.S. Immigration Law 1920 to the Present

by Ken Oliver and Yara El Hayek

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Introduction

Since the 1920s, U.S. immigration law has seen many changes that have affected the lives of the nation's immigrants and citizens alike. Significant change arose in the immediate aftermath of World War I. To be sure, lawmakers have always struggled to adapt the system to each new era.

Today, foreign-born residents of the United States comprise 13.6 percent of the U.S. population, with almost 77 percent of them being in the country legally (Radford). From 1990 to 2007, illegal immigration almost tripled, reaching 12.2 million in 2007. Unauthorized immigrants comprised 23 percent of America's immigrant population in 2017 and almost 3.2 percent of the U.S. population. In recent years, the United States has been facing a rise in unauthorized immigrants from Central America and Asia.

While much of the current focus on the immigration system is justifiably on the problem of illegal border crossings and human trafficking, it should be kept in mind that a historic hallmark of our immigration system has been its ability to provide safety to refugees as well as attract individuals from the world over who have succeeded in not only lifting up themselves and their families but also in enriching their newly adopted homeland.

To fully understand our immigration system—and the events that led to our current predicament—we must look back to the World War I era. It was during this period that a backlash against mass immigration led to major immigration law reform. Yet, immigrants from this period and their children helped set the stage for America's post-World War II boom and the nation's consolidation as the world's preeminent superpower. More recently, reforms have been attempted in fits and starts that tend to undermine the policies that have historically worked to protect our borders and grow our economy, in large part fueling the rise in illegal immigration. This has left our current system a patchwork of outdated, ineffective laws.

A century later and despite all the challenges, with an average of approximately one million new lawful permanent residents per year, according to the U.S. Department of Homeland Security, the United States still shines as a beacon of freedom to the rest of the world, even as it struggles to create an immigration system that best serves its interests (DHS).

Key Points

- There are parallels between the prevailing concerns over immigration today and those of nearly a century ago.
- Humanitarian considerations, along with America's workforce needs and economic cycles, have also driven major immigration policy changes.
- National security is a cornerstone of sound immigration policy that seeks to serve the overall interests of our country and its citizens first.

National Security Context

World War I: The Road to Quotas

In February 1917, Congress overrode President Woodrow Wilson's veto of the Immigration Act of 1917 (Pub. L. No. 64-301) which increased restrictions on immigration by requiring migrants entering the United States to pass a literacy test and limiting the number of Asian migrants who were allowed to settle in the

country. This bill had previously been vetoed by Presidents Cleveland, Taft, and Wilson (Boissoneault). This ban did not include Japan since the United States and Japan had the previous Gentlemen's Agreement of 1907 that barred the U.S. from imposing any restrictions on Japanese immigration as long as Japan would not allow further emigration to the U.S (Higham).

In addition to qualitative restrictions such as those indicated above, the 1917 legislation defined the powers of immigration officers, conferred discretionary authority to admit certain barred groups, enabled the deportation of aliens who entered in violation of law (generally within three or five years after entry), and made aliens who engaged in certain criminal or subversive misconduct in the United States deportable without any time limitation. This law provided exceptions to many of the provisions for neighboring countries in the Americas.

After the controversial act of 1917 and as World War I approached an end, fear of the anarchist movement led to a push for anti-radical reforms (Kraut, 191). In October 1918, Congress banned the entry of anarchists into the U.S. and enabled the deportation of anarchists living in the country (Pub. L. No. 65-221). An anarchist was defined as someone in opposition to organized government, or who taught the violent overthrow of the government. Additionally, the reform repealed a previous provision set in 1903 that had exempted from deportation immigrants who had lived in the U.S. for five years or longer.

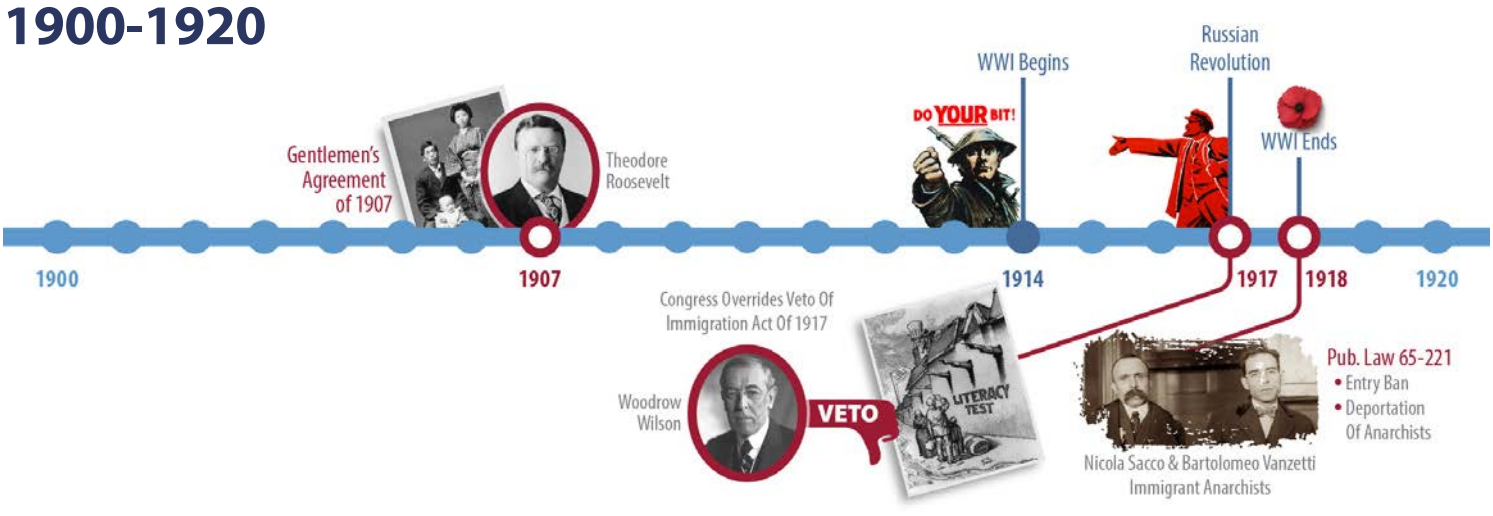
The laws put in place in 1917 and 1918 were largely a result of legitimate fears of massive, unchecked immigration to the nation during a time of global conflict (including the Russian Revolution) as well as terrorist attacks from the anarchist movement (an anarchist had previously assassinated an American president). Nearly a century later, we would see similar fears in the aftermath of the horrific terrorist attacks of September 11, 2001.

The Institution of Quotas and Immigration Control

Up until 1921, U.S. immigration law focused on the demographic composition—not necessarily the number—of immigrants entering the United States. However, the end of World War I left many countries devastated, with their citizens looking for an escape to restart their lives. Building upon the reforms of 1917 and 1918, the first numerical limitations were placed on immigration in 1921. The widespread fear of being inundated by a flood of immigrants from war-torn European countries, along with the United States' prevailing isolationist mood in the 1920s, resulted in the act of May 19, 1921, which set quotas on immigrants (Pub. L. No. 67-5). The new law put an annual quota limiting new immigrants to 3 percent of the foreign-born persons of each nationality residing in the United States in 1910, for an annual total of approximately 350,000 new immigrants (DOS Office of the Historian). The 1921 quota act was scheduled to expire in 1922, but it lasted until June 30, 1924.

After the act of May 19, 1921, expired, Congress enacted a permanent policy based on numerical limitations. The quotas in the Immigration Act of 1924 (Immigration Act of 1924) adopted a national-origins formula, basing the number of immigrants entering the United States of each nationality on the number of persons of that national origin in the United States in 1890. The legislation resulted in a sharp curtailment of immigrants from southern and eastern Europe and limited the number of immigrants per country to 150,000 per year.

The numerical limitations did not apply to immigrants from the Western Hemisphere countries or other non-quota groups such as alien wives and children of U.S. citizens or returning lawful residents. Aliens who entered in violation



of the quota system were subject to deportation at any time. The numerical limitations of 1924 alongside the previously established restrictions of 1917 formed the twin elements of immigration policy and shaped the immigration system over the course of almost three decades.

Over the next 15 years or so, the structure of the U.S. immigration system was gradually shaped through several new laws that modified the immigration policy. One of those was the Alien Registration Act of 1940 (Alien Registration Act of 1940), which expanded the directives for the exclusion and deportation of criminals and members of subversive groups and allowed for the exclusion and deportation of anyone whose past included subversive activity. A system of alien registration and fingerprinting was inaugurated, and provisions were made for the suspension of deportation in the cases of certain resident aliens of good moral character.

World War II: Refugees and Resettlement

Humanitarian Efforts

Although new quotas and restrictions were placed on immigration through new laws, humanitarian efforts were also undertaken to ensure the safety of many people facing hardships. Restrictions were relaxed in some cases in the wake of World War II, taking into account the effects the conflict had on other nations.

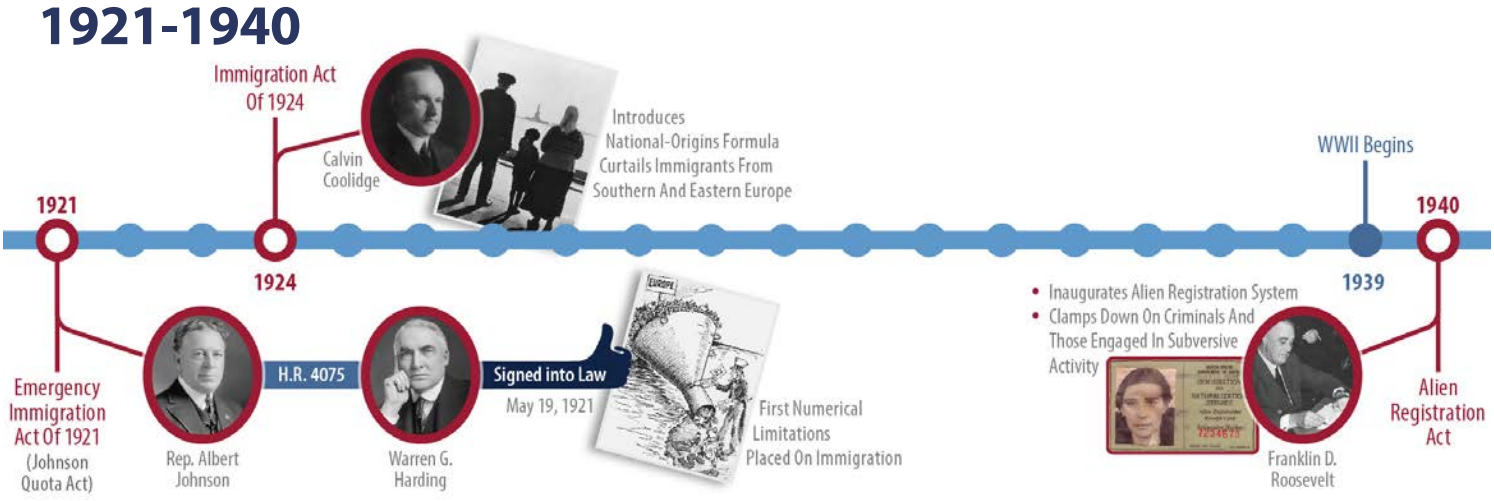
In the post-World War II context, the first new measure aimed to help members of the U.S. Armed Forces rejoin their families and loved ones. In December 1945, Congress passed the War Brides Act, which expedited the admission of spouses, natural children, and adopted children of members of the U.S. Armed Forces. Approximately 118,000 aliens were admitted to the United States under the War Brides Act of 1945 (Pub L. No. 79-271).

Shortly thereafter, 400,000 people were allowed to enter the United States under the Displaced Persons Act of 1948 and the Refugee Act of 1953 (U.S. House of Representatives History, Art & Archives 2019a; CBP; Pub. L. No. 80-774; Pub. L. No. 81-555). The Displaced Persons Act was a major liberalization of U.S. immigration policy, and one of the most significant post-war humanitarian efforts. Beneficiaries admitted into the country during the three-year period established by the act were fleeing from the economic and political ruin left by the war, in search of economic opportunity. Yet, however humanitarian the intent of the Displaced Persons Act of 1948 was, it created a system that, as President Truman described it, effectively "mortgaged," or reduced, the immigration quotas of the countries of origin of its beneficiaries far into the future (Harry S. Truman Library & Museum).

In 1950, as the Cold War grew colder, Congress passed the Internal Security Act (Pub. L. No. 81-831) that expanded provisions excluding subversives and also required communist organizations to register with the government.

As more and more refugees fled the communist countries behind the Iron Curtain, problems were piling up in Europe. In response, President Eisenhower backed the Refugee Relief Act of 1953, which allowed another 214,000 refugees from Europe (Glass) until the end of 1956 (Pub. L. No. 83-203). Unlike the Displaced Persons Act of 1948, the people admitted to the United States through the Refugee Relief Act were not counted against the normal quota limitations (U.S. House of Representatives History, Art & Archives 2019b). The Refugee Relief Act expired on December 31, 1956.

Another humanitarian initiative, undertaken to alleviate a number of recurring hardships, led to a new law in September 1957 that expanded the immigration benefits to out-of-wedlock children, adopted children, and orphans (Pub. L. No. 85-316). It waived grounds for inadmissibility for certain relatives of U.S. citizens and resident aliens who



otherwise would be excludable for criminality or immorality, for tuberculosis, or for misrepresentations. It expunged the quota mortgages carried over from the Displaced Persons Act. It permitted the waiver of fingerprinting for nonimmigrants, and it permitted the use by 18,656 refugee-escapees of non-quota visas that remained unused under the Refugee Relief Act's allotments (Speer, 713).

Immigration as Aid to Refugees

Humanitarian relief continued to be a major concern for Congress. In 1958, Congress passed a number of new laws to further aid refugees. These included an act passed in July 1958, that gave permanent residence status to Hungarian refugees admitted on parole (Pub. L. No. 85-559). A law passed in August 1958 allowed aliens who had been living in the United States prior to June 28, 1940, to gain lawful residence (Pub. L. No. 85-616) and a law passed in September 1958 granted non-quota visas for refugees displaced from the Azores and Indonesia (Pub. L. No. 85-892).

Interest in refugee assistance led to additional changes throughout the years. A new law passed in July 1960 authorized the U.S. Attorney General to admit certain refugee-escapees under parole and ultimately adjust their status. Additionally, the act added marijuana to the list of narcotics for which possession could lead to exclusion and deportation, and it allowed for adjustment of status by excluding crewmen but extending the benefits to all other aliens inspected and admitted or paroled (Pub. L. No. 86-648.)

The End of the Quota System and the Immigration Amendments

End of the Quota System

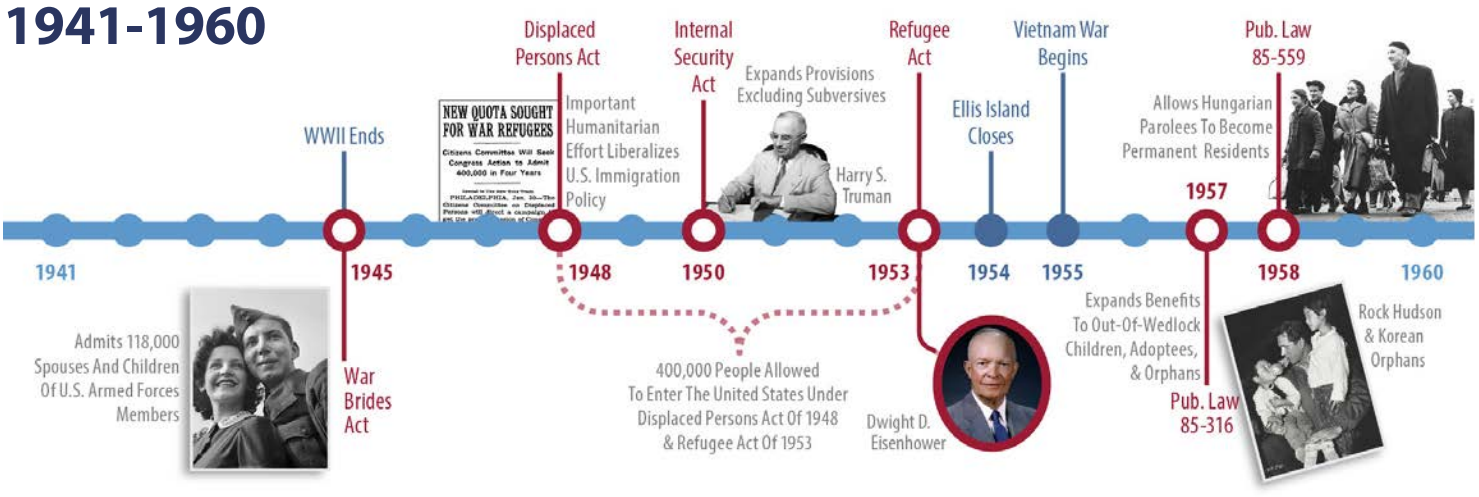
President Kennedy sought broad immigration reform when he submitted to Congress a comprehensive program of changes in 1963 (Kennedy). After his death, Kennedy's reform efforts came to fruition in 1965, when a major overhaul of the immigration system took place (Immigration and Nationality Act of 1965). One of the most significant changes the act made was the elimination of immigration quotas based on national origin. It placed a (soft) cap on total immigration of 170,000 annually and created a preference for unmarried adult sons and daughters of U.S. citizens (with a 20 percent cap), the spouses, and unmarried children of legal permanent residents (also with a 20 percent cap); workers and those who have an exceptional scientific or artistic ability that would benefit the economy, culture, or welfare of the United States (with a cap of 10 percent).

The new immigration system faced a major challenge with the end of the Vietnam War. Prior to the passage of the Indochina Migration and Refugee Assistance Act of 1975, American law only allowed the government to help those displaced by the war through resettlement within their home countries. But to offer more assistance to the displaced Vietnamese people, that year Congress passed the Indochina Migration and Refugee Assistance Act of 1975 which allowed for approximately 130,000 refugees from southeast Asia to be resettled into the United States under refugee status (Pub. L. No. 94-23). This legislation was created as a new law, rather than as an amendment to current law, in order for it to end in 1977. However, the program allowed entry for refugees from Indochina into the late 1970s and 1980s. This law and the influx of refugees that resulted were the catalysts for the formation of the Select Commission on Immigration and Refugee Policy, as well as the Refugee Act of 1980.

Reforms of the Immigration System

Lawmakers wrestled with additional reforms in the 1970s.

The Health Professions Educational Assistance Act of 1976 (Pub. L. No. 94-484) placed restrictions on worker visas for doctors and reduced their preference status as part of the seven-point system since there no longer was a doctor shortage in the United States (Harris, 314).



The 1976 Amendments to the Immigration and Nationality Act (Pub. L. 94-571) were a result of a multi-year backlog of immigration applications. The Immigration Act of 1965 had created a total cap of 170,000 immigrants (20,000 per country, excluding Western Hemisphere nations), and a seven-point preference system. The backlog of immigration applications from the Western Hemisphere alone soon numbered more than 120,000. The 1976 amendments brought immigration standards for Western Hemisphere countries in line with those for Eastern Hemisphere countries (Gerald R. Ford Library and Museum).

Amendments in 1978 further simplified the United States' immigration system by combining the Eastern and Western Hemisphere quotas into a single 290,000 cap, rather than keeping them separate (Pub. L. No. 95-412). They also dealt with the question of citizenship by bringing the law into alignment with Supreme Court decisions such as *Afroyim v. Rusk* that limited how naturalized citizens could lose their U.S. citizenship (Public Law 95-432). Congress additionally loosened literacy requirements for naturalization of individuals who were over 50 and had lived in the United States for at least 20 years (Pub. L. No. 95-579).

The 1978 efforts were a prelude to the Refugee Act of 1980, many of the provisions of which were formulated by the Select Commission on Immigration and Refugee Policy created by the 1978 amendments. Officials found a need for a uniform system of identifying and accepting refugees into the United States. Before the Refugee Act, by law only 6 percent of the 290,000 global immigrants entering the United States were refugees. Yet in the wake of the Vietnam War, the United States confronted the prospect of hundreds of thousands of refugees without a unified protocol. The Select Commission on Immigration and Refugee Policy developed policies which were adopted in the Refugee Act of 1980 (Pub. L. No. 96-212).

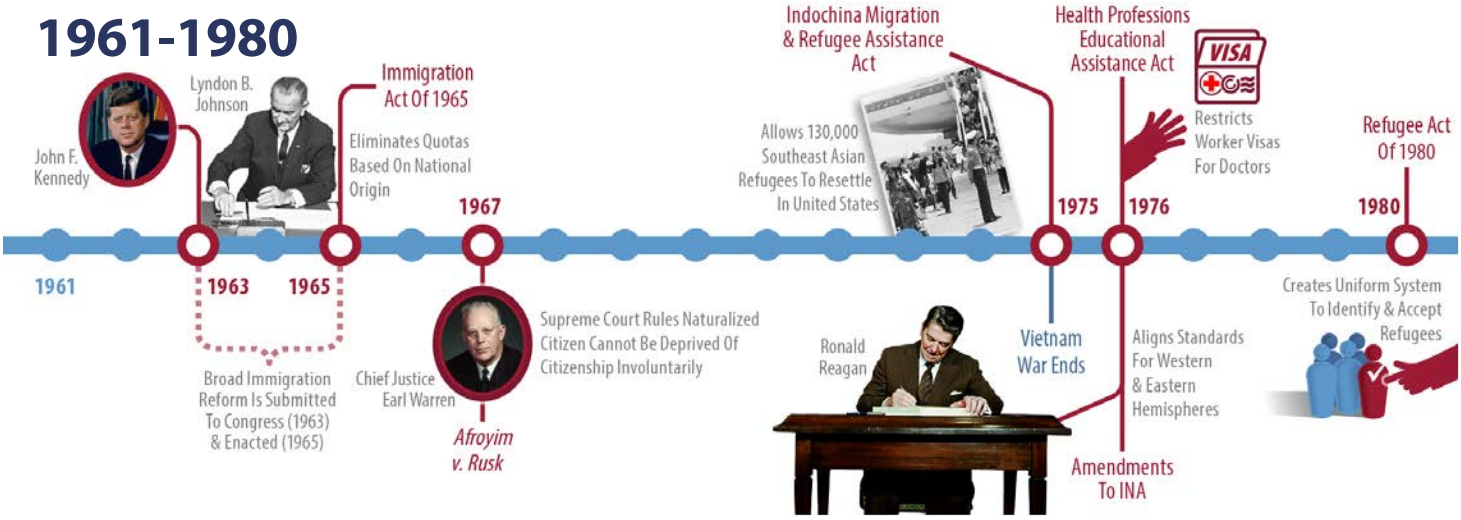
Immigration Reform and Amnesty in 1986

The most sweeping changes to the Immigration and Nationality Act occurred in 1986, as three major immigration laws were passed that year. The Immigration Reform and Control Act (IRCA) of 1986 drew most of the attention of the public as it focused on measures to end illegal immigration.

Immigration Reform and Control

The first of the three laws passed was the Simpson–Mazzoli Act, inspired by the recommendations of the Select Committee on Immigration and Refugee Policy and an immigration task force formed by President Reagan in 1981. A split in Congress led to only a watered-down version of the bill passing. But it was still a precursor to the more extensive IRCA. The bills passed on November 6, 1986. They sanctioned employers who knowingly employed illegal aliens, created narrow paths of amnesty for aliens who had been in the United States illegally since designated dates, and facilitated the establishment of a United States Immigration Board and administrative judges.

The Immigration Reform and Control Act of 1986 (Pub. L. No. 99-603) resulted in amnesty to approximately 2.7 million people (Rytina). It also reinstated and strengthened sanctions against employers of workers not authorized to work in the United States. It did so by creating an infrastructure to monitor the hiring process of immigrants. IRCA implemented the I-9 Form, through which employees attest under penalty of perjury that they are authorized to work in the United States and can show documents to prove so. Additionally, on the form, employers confirm under penalty that they have seen their employee's work authorization documentation. The I-9 Form was phased in through an educational program that lasted through September 1, 1987, at which point violators would be assessed a penalty in the form of a citation until May 31, 1988 (ICE). After that, civil penalties could be imposed on those employers,



and criminal penalties could be applied for repeated violations.

In addition to the I-9 Form, IRCA legalized immigrants who had resided in the United States prior to January 1, 1982. The legislation did not apply to the spouses and children of amnesty-eligible aliens. The Reagan administration subsequently used executive authority to offer "blanket deferral" for children living with one or both parents legalized through IRCA amnesty. Lastly, IRCA overhauled the H-2 visa program by creating a separate, non-H-2 pathway for agriculture workers. A special provision allowed agricultural workers who had performed 90 days of work in the U.S. over the course of a year before May 1, 1986, to gain their temporary residence status.

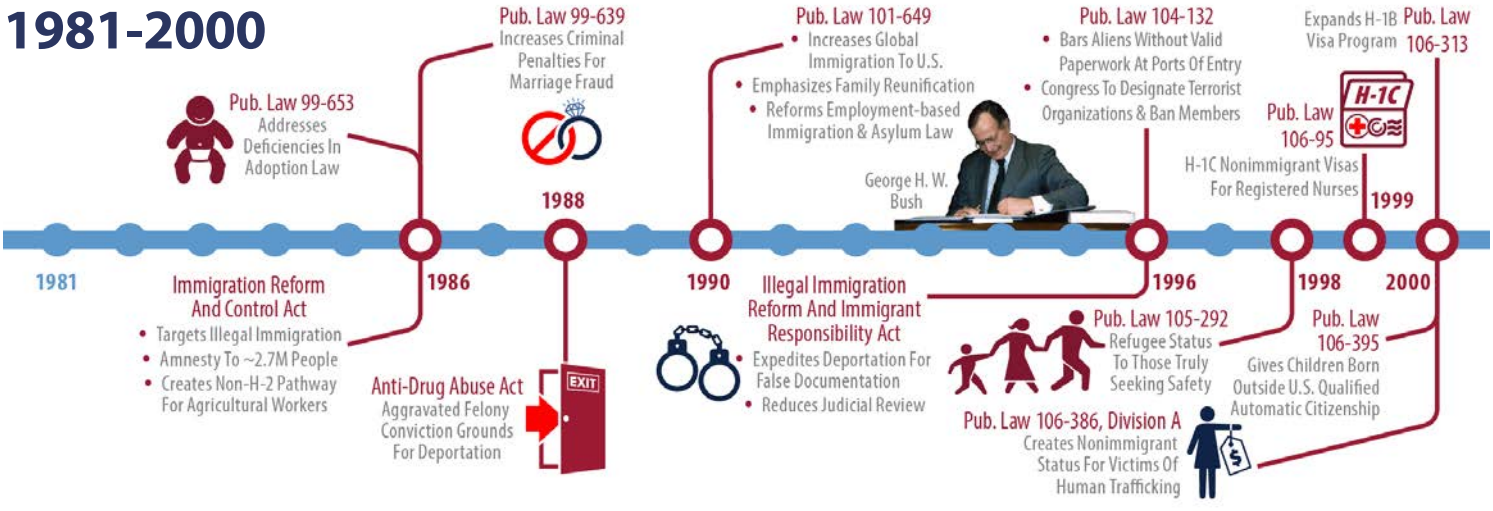
Alongside these reforms, the Immigration Marriage Fraud Amendments of 1986 (Pub. L. No. 99-639) also created some more severe penalties. Reports of widespread marriage fraud circulated through the country, leading Congress to make significant changes in how immigrants could obtain U.S. citizenship through marriage. Aliens seeking the "preferred immigration" status based on marriage would be granted provisional permanent resident status for two years, but it could be subject to ratification or revocation at any time. Revocation would occur if it were proven that the immigrant status was improperly (fraudulently) obtained, or if the marriage was legally terminated other than through the death of a spouse. At the end of the conditional resident status, both the resident and the petitioner (the spouse) were required to file for permanent status, at which point they would be interviewed and have the pending permanent status either granted or rejected. Under the Marriage Fraud Amendment, aliens with exclusion or deportation notices would not be able to obtain immigration benefits through marriage until they had resided outside the United States for two years. Additionally, criminal penalties were increased for sham marriages, and additional restrictions for fiancée or fiancé petitions were imposed.

Deficiencies in adoption law were also addressed in 1986 (Pub. L. No. 99-653). Under the new law, the definition of adoption was modified to allow the two-year legal custody period for adopted children to take place before adoption; it introduced cross-chargeability for spouses and children; it allowed out-of-wedlock foreign-born children to obtain U.S. citizenship through a citizen father; it reduced the time a naturalized citizen may live abroad immediately following naturalization from five years to one year, after which he risks the loss of citizenship; and it allowed administrative naturalization for U.S. citizen-adopted children

In the wake of these changes, further reforms took place in bits and pieces such as Pub. L. No. 100-204 that protected aliens from exclusion or deportation from the United States solely for beliefs, statements, or associations under constitutional protections between January 1, 1988, to February 28, 1989. Furthermore, the legislation created immigration benefits that granted legal residency to aliens from Poland, Afghanistan, Ethiopia, and Uganda and to Indochinese and Amerasian refugees. The Anti-Drug Abuse Act (ADAA) of 1988 (Pub. L. No. 100-690) attempted to address the increase in drug trafficking across the U.S. border and included some elements relating to immigration. Under the act, any alien convicted of an aggravated felony could be deported from the United States without exceptions.

Expansion of U.S. Immigration Capacity

A comprehensive legal immigration reform bill, the Immigration Act of 1990 (Pub. L. No. 101-649), became law when it was signed by President George H.W. Bush in November 1990. It significantly increased global immigration into the U.S. In addition to the 135,000 annual refugees who could be admitted to the United States prior to 1990, the Immigration Act of 1990 allowed 700,000 more to enter in the



three years after the passage of the bill, and 675,000 every year thereafter. Of these 700,000 immigrants, 465,000 were family-sponsored visas, 140,000 were employer-sponsored visas, and 55,000 were diversity visas.

With the family-sponsored immigration category (465,000 immigrants), Congress continued to promote family reunification. The immediate relatives (spouses, minor children, and parents of adult children) of U.S. citizens did not have a quantified limit, but they would be counted as part of the annual allotment for family-sponsored immigration.

The family category was split into four different preferences, with the highest preference being unmarried adult children of U.S. citizens. This category was capped at 23,400 immigrants or about 5 percent. The second category was spouses and unmarried children of lawful permanent resident aliens. This category accounted for 114,200 immigrants or about 25 percent of the total. The third preferred category consisted of the married sons and daughters of U.S. citizens and their spouses and minor children forming another 5 percent of the category, with a 23,400 cap. The fourth and last preference group consisted of brothers and sisters of adult U.S. citizens and their spouses and minor children. It had a cap of about 65,000 immigrants or about 14 percent.

Moreover, the new law put into place the family fairness administrative practice in the hope of keeping families together by mandating work authorization and indefinite stay of deportation for the spouses and minor children of aliens who were granted amnesty. This law reserved an additional 55,000 immigrant visas during the fiscal years 1992, 1993, and 1994 (Pub. L. No. 101-649, Sec. 111-112).

Employment-based immigration was also reformed, with a cap of 140,000 immigrants. It replaced the former system by putting in place three new preferences, each with an annual allocation of 40,000 visas (plus unused ones from other groups) and added two more employee-based references, with a 10,000 visas allocation each. The first preference category was designated "Priority Workers," which included aliens with extraordinary ability, outstanding professors and researchers, and certain multinational executives and managers. The second employment-based preference went to aliens described as having extraordinary ability in science, arts, education, business, or athletics, which garnered national or international notice.

Skilled workers typically with a bachelor-equivalent degree and unskilled non-seasonal workers made up the third preference group, with the unskilled workers accounting for a maximum of 10,000 immigrants of the category's 40,000 visas. The remaining two preference groups allowed an additional 10,000 immigrants to enter the United States.

The fourth employee-based category was reserved for "special immigrants" as well as certain religious worker classes, with a limit of 5,000 visas. The fifth and last category was job creators—those who could create more employment in the United States. This category included individuals who would invest at least $1 million in a new business that benefits the U.S. economy and create at least 10 new jobs for U.S. workers. The amount could be lowered to $500,000 in rural or high unemployment areas and raised up to a $3 million minimum investment in high population areas (Pub. L. No. 101-649, Sec. 121-124).

The diversity visas included in the 1990 law benefited aliens seeking admission from emerging countries or those with relatively little representation in the United States. The 1990 law increased the number of aliens who may apply for permanent resident status under asylum from 5,000 to 10,000 and created special provisions that granted permanent residency status to persons who were previously qualified.

Besides the asylum reform, the Extended Voluntary Departure (EVD) program was codified and amplified by the Immigration and Naturalization Service (INS). EVD was meant to create a safe haven status for individuals who would be imperiled in their home country as a result of war, natural disaster, or some other extraordinary or temporary condition that would place their lives at risk. The 1990 act ensured that these aliens under the EVD were not removed from the United States and were allowed to work. This act also granted temporary protection to groups such as the Lebanese and Tibetans who were dealing with specific hostilities and displacement in their home countries (Pub. L. No. 101-649, Sec. 131-134).

Because of these reforms, family, employment, and diversity-based immigration rose significantly under the 1990 act.

The act also reformed the temporary worker system with nonimmigrant visas. It allowed for an unlimited number of countries that fulfill special requirements to be part of the nonimmigrant program. (Prior to the reforms, only eight countries were eligible.) Eligibility for a temporary worker visa was expanded to bachelor's degree-holding individuals with special skills rather than just "professionals." These H-1B immigrants, limited to 65,000 workers, could stay and work for a maximum of six years. H-2B visas were created to provide 25,000 annual visas for unskilled nonagricultural workers. The act allowed for "dual-interest" visas that gave nonimmigrants the possibility to seek permanent residency status while maintaining their nonimmigrant requirement.

Broadly speaking, the 1990 act was notable for establishing new categories for workers coming into the United States. The act also created clear consequences for violating the

rules—exclusion and deportation. Some Immigration and Naturalization Service (INS) officials became law enforcement officers—with the ability to carry weapons, make arrests, and tender official documents (Pub. L. No. 101-649, Sec. 201-231).

Following the wholesale reforms of 1990, Congress passed the Miscellaneous and Technical Immigration and Naturalization Amendments (MTINA) of 1991 (Pub. L. No. 102-232) to incorporate elements of three sets of bills that had been pending in Congress. The first bill gave courts 45 days to administer the oath of naturalization, and if they failed to do so, applicants could choose to take their oaths at an immigration agency. The second dealt with labor immigration and eliminated the annual ceiling on O and P visas and began to investigate the impact those visas had on the American labor force as well as Americans with the same qualifications to obtain those jobs.

MTINA also said that employers must pay holders of special employees visas a wage higher than the prevailing average. The goal was to encourage employers to hire more American citizens. Finally, the third bill made several technical corrections to the 1990 act.

Attempts to Curb Illegal Immigration

Punishment Increases for Illegal Immigration

In the wake of the Oklahoma City bombing, the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996 (Pub. L. No. 104-132) aimed to expedite removal of aliens at ports of entry if they did not have valid paperwork. The legislation contained a variety of significant changes to immigration laws and was aimed at combating both domestic and international terrorism. The act gave immigration officers the authority to exclude aliens from entering the United States without a hearing if the officer determined the alien was entering under fraud.

Additionally, the new law gave immigration officers the ability to exclude from deportation relief any aliens who had entered the United States without inspection, regardless of how long they had been in the United States. On the other hand, Congress was given the authority to designate terrorist organizations and ban their members or representatives from entering the United States. The legislation also included a process for removing aliens who are members of such organizations.

Also, in 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) (Omnibus Consolidated Appropriations Act) allowed an expedited process of deportation of any alien for attempting to enter the country with false documentation. The act sharply reduced judicial review of immigration decisions and added to the grounds of inadmissibility and deportation several crimes, including aggravated felonies.

In 1998, the International Religious Freedom Act (Pub. L. No. 105-292) passed, requiring training for foreign service officers, immigration officers, and immigration judges regarding religious persecution, as it relates to eligibility for asylum or refugee status. The act aimed to add grounds for inadmissibility to certain officials who had been involved in violating the religious freedom of others, and to add further security to ensure that refugee status was granted only to those who truly sought safety.

Nonimmigrant Visas and Immigration Control

In an effort to deal with some specific labor shortages, the law was changed to award visas to certain categories of workers.

The Nursing Relief for Disadvantaged Areas Act of 1999 (Pub. L. No. 106-95) created H-1C nonimmigrant visas for registered nurses working at U.S. hospitals in areas with a shortage of health care professionals and set forth the requirements for obtaining such visas. H-1C visa holders were limited to a three-year stay in the United States with no extensions (Pub. L. No. 106-95, Sec. 2(b)), and the policy was subsequently reauthorized by Congress in 2006.

The American Competitiveness in the Twenty-First Century Act (AC21) of 2000 (Pub. L. No. 106-313) included provisions related to H-1B nonimmigrant visas and employment-based adjustment status. AC21 expanded the H-1B visa program by increasing the number of visas available in the following three years and exempting some categories from numerical limitation. The act also allowed for some program extensions beyond the six-year maximum and allowed for holders of H-1B visas to change employers as soon as they file a petition—rather than after its approval.

The Victims of Trafficking and Violence Protection Act (VTVPA) of 2000 passed alongside the Child Citizenship Act and the Visa Waiver Permanent Program Act. The VTVPA contained two major divisions that affected immigration law. The first was the Trafficking Protection Act (Pub. L. No. 106-386, Division A), which created "T" nonimmigrant status for victims of human trafficking and those assisting in their investigation. The second was the Violence against Women Act (Pub. L. No. 106-386, Division B), which allowed women to self-petition when they believed they were in an invalid marriage, due to the abusing spouse's bigamy. The petitioner had to establish a good moral character to be eligible for status change. The Child Citizenship Act (Pub. L. No. 106-395) allowed children born outside the United States to acquire citizenship automatically if they were under the age of 18 and residing in

the United States in the legal and physical custody of at least one U.S. citizen parent. Finally, the Visa Waiver Permanent Program Act (Pub. L. No. 106-396) made the visa waiver pilot program permanent and instituted deadlines for participating countries to have machine-readable passports.

Impact of Terrorism on Immigration

USA Patriot Act

Following the 9/11 attack on the United States, the USA Patriot Act in 2001(Pub. L, No. 107-56) included numerous immigration-related measures dealing with security, including technological and procedural changes, as well as other alterations to immigration law enforcement. As a result of the legislation, immigration officers were allowed to access certain criminal dossiers and were given power to detain noncitizens whom they suspected to be terrorists. In addition to making terrorism a deportable offense, the act stipulated that those who endorse terrorism or who are representatives of a terrorist group are inadmissible.

The Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. No. 107-173) included provisions relating to visa issuance, security, technology, and other issues. The reforms called for enhanced security in reviewing visa applicants and required that electronic versions of visa files be made available to inspectors before the arrival of the noncitizen visa holder. The act also placed restrictions on immigrants from countries believed to be state sponsors of terrorism. As part of digitalization efforts, this bill mandated interagency cooperation through information sharing.

A second major act that passed in 2002 was the Homeland Security Act (Pub. L. No. 107-296) that eliminated the INS and created the Department of Homeland Security (DHS), a federal cabinet-level agency primarily charged with defending the nation and carrying out its immigration laws—though some immigration functions continued to be carried out by the Department of Justice, the Department of Labor, and the Department of State.

In order to increase security surveillance and anti-fraud protections, the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. No. 108-458) required in-person interviews for most applicants between the ages of 14 and 79. The act also tightened eligibility requirements. Provisions included the establishment of an immigrant's "good character" and whether an applicant had participated in their home countries in torture, extrajudicial killing, or severe violations of religious freedom.

Related efforts resumed with the REAL ID Act of 2005 (Pub. L. No. 109-13), enacted as part of the Emergency Supplemental Appropriation Act for Defense, the Global War on Terror, and Tsunami Relief. Section 101 of the act added a burden of proof as a requirement for asylum applications. The law also eliminated caps on the number of asylum seekers who could change status and the number of noncitizens who could be granted asylum based on resisting coercive population control.

The National Defense Authorization Act of 2006 (Pub. L. No. 109-163) created a special immigrant status for up to 50 Iraqi and Afghani translators per year, as well as their dependent spouses and children. These immigrants had to have worked directly with the U.S. Armed Forces for at least 12 months, received a written recommendation from a U.S. general or admiral, and cleared background checks and screening before they could file a petition.

9/11 Commission Security Updates

After years of tightening immigration rules in response to the 9/11 terror attacks, 2007 saw some loosening. The Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. No. 110-53) authorized the expansion of the visa waiver program, for example. Congress implemented suggestions regarding security upgrades for immigrant verification based on the 9/11 Commission Act, creating new requirements for countries in order to be eligible for the visa waiver program, and it required nonimmigrants

traveling under the waiver program to submit biographical information electronically. It also required their countries to report any theft or loss of a nonimmigrant's passport to the United States.

Section 711 of the act required the DHS to develop and implement a fully automated electronic travel authorization system to collect biographical and other necessary information to determine whether there was a law enforcement or security risk in allowing a nonimmigrant to travel to the United States. The DHS was also required to develop an exit system within one year of the statute's enactment. This exit system would record every departure of a visa waiver program participant. As a result of this provision, the DHS developed an Electronic System for Travel Authorization (ESTA) that required all eligible people to obtain authorization through ESTA in advance of travel to the United States under the visa waiver program.

More adjustments to the system came in 2008. Acts such as the National Defense Authorization Act, the Kendall Frederick Citizenship Assistance Act, and the Child Soldiers Accountability Act were a few of the pertinent laws that passed that year. The National Defense Authorization Act (Pub. L. No. 11-181) created benefits for permanent residents who were the spouses or children of U.S. military members. The act stated that permanent residents may not be treated as abandoning or relinquishing their permanent residency if their spouses or children were serving overseas. It also created several special refugee statuses for Iraqis.

The Kendall Frederick Citizenship Assistance Act (Pub. L. No. 110-251) allowed DHS to use paperwork from a noncitizen service member's enlistment toward their background and security checks in their application to become a United States citizen. The American Recovery and Reinvestment Act (Pub. L. No. 111-5) prohibited federal economic stimulus from lending money to small businesses if any of the owners were unlawfully present in the United States. Additionally, no loan guarantee could be made to any entity found to have engaged in a pattern or practice of hiring, recruiting, or referring for a fee a person known to be unauthorized to work in the United States.

Changes under President Obama

Section 602(b) of the Omnibus Appropriations Act of 2009, the Afghan Allies Protection Act (Pub. L. No. 111-8), granted special immigrant status to certain Afghan citizens who had assisted the United States. It included those Afghans' spouses and children. The law also authorized the secretary of state to collect information on officials of foreign governments when there is credible evidence that they or their immediate family members had been involved in corruption relating to the extraction of natural resources in their country. If these individuals were shown to be part of corruption, they would be barred from entering the United States.

Immigration laws passed in 2010 included additional fees for certain H and L nonimmigrants; the International Adoption Simplification Act and the Help Haitian Adoptees Immediately to Integrate Act.

A supplemental appropriations bill enacted in 2010 imposed additional filing fees and fraud prevention for certain H and L nonimmigrant visas if those workers comprised 50 percent or more of the employer's workers (Pub. L. No. 111-230). The original law was set to expire in September 2014, but a late 2010 law extended this legislation until September 2015 (James Zadroga 9/11 Health and Compensation Act of 2010).

The International Adoption Simplification Act (Pub. L. No. 111-287) emphasized the aim of the United States to allow its citizens to adopt children, and it simplified the system. In particular, it restored the immunization and sibling-age exemptions for children adopted by a United States citizen under the Hague Convention on Intercountry Adoption to facilitate their admission into the United States. Likewise, the Help Haitian Adoptees Immediately to Integrate Act (Pub. L. No. 111-293) allowed adjustment of status for up to 1,400 Haitian orphans who entered the United States after the earthquake that devastated that country in 2010.

Trade-related Action

Laws passed in 2011 focused on the economic aspect of immigration. The Asia-Pacific Economic Cooperation Business Travel Cards Act (Pub. L. No. 112-54) authorized the establishment of a program that issued travel cards to any individual active in the Asia-Pacific Economic Cooperation zone. The E-2 Nonimmigrant Visa allowed Israeli nationals to obtain an E nonimmigrant visa to conduct both trade and investment in the United States if Israel provided the similar status to U.S. nationals (Pub. L. No. 112-130).

The Consolidated Appropriations Act of 2012 (Pub. L. No. 112-74) included a provision that reduced the waiting times for visa interviews in China, Brazil, and India and created a pilot program for processing B-1 and B-2 visas using secure video conferencing for interviews. The Consolidated Appropriation Act also extended the Lautenberg Amendment related to the Foreign Operations, Export and Financing Act of 1990 for an additional fiscal year.

President Obama's Second Term

Legislation approved and signed into law during 2013 focused on aid to individuals in dangerous environments. The Violence Against Women Reauthorization Act (Pub. L. No. 113-4) authorized the secretary of homeland security

along with the attorney general and the secretary of state to disclose otherwise confidential information relating to a noncitizen who is a beneficiary for relief, as long as that information was to be used solely for national security purposes. Additionally, DHS was required to conduct a background check through the National Crime Information Center for the fiancé or fiancée of any noncitizen who applied for a visa and to provide a letter to the noncitizen informing them of any protection orders, restraining orders, or criminal history.

The Consolidated Appropriations Act of 2014 (Pub. L. No. 113-76) dealt with adoptions and preadoption visitation requirements, with the goal of further encouraging adoptions. Instead of requiring both adopting parents to see a child during the proceedings in that child's home countries, just one parent would now suffice.

Another act that passed in 2014 focused on limiting terrorism and denied entry to certain United Nations representatives who had been found to have been engaged in espionage activities or a terrorist activity against the United States (Pub. L. No. 113-100).

Nonimmigrant visas and the visa waiver program were also the subjects of considerable activity in 2015. The L-1 and H-1B visas saw a fee increase that applied to companies considered dependent on foreign workers. Employers who had 50 or more employees in the United States under the L-1 and H-1B nonimmigrant status saw fee increases as part of an effort to reduce foreign workers coming in as nonimmigrants (Pub. L. No. 114-113). Alongside the fee increase, Congress made several changes to the H-2B program for temporary workers. Workers who were counted against the H-2B cap could return to the United States without being counted against the cap a second time. In the final months of the Obama administration, the U.S. Customs and Border Protection Authorization Act created a trusted traveler program administered in partnership with other countries and made some minor changes to the collection and disposition of funds for immigration inspection services and preclearance activities.

Conclusion

Over the course of the last century, Congress has enacted numerous changes to the country's immigration system. Throughout this period, changes to America's immigration laws have been driven by a wide range of concerns. In the context of World War I and its aftermath, national security was the principal motivation for reform. There are parallels between that period and our post-9/11 era, when security concerns have also spurred restrictions on immigration. Humanitarian considerations, along with America's workforce needs and economic cycles, have also had effects on the pace and substance of changes to U.S. immigration law.

As it stands today, the country's immigration system is a patchwork of complexity and inefficiency resulting from decades of turmoil, debate, legislative fixes, and court challenges. The crisis of 2019 along the U.S. southern border demonstrates that much work is needed before America has an immigration system that reflects America's position as a "shining city on a hill," a beacon of liberty that can be the world's foremost refuge from tyranny, while at the same time upholding the rule of law and serving the overall best interests of our country and its citizens first. ☆

References

Alien Registration Act of 1940, Ch. 439, 54 STAT. 670.

American Immigration Council. 2017. "Executive Grants of Temporary Immigration Relief, 1956-Present." Accessed November 26, 2019.

Boissoneault, Lorraine 2017. "Literacy Tests and Asian Exclusion Were the Hallmarks of the 1917 Immigration Act." *Smithsonian.com*, February 6.

CBP (U.S. Customs and Border Patrol). "1948." Accessed November 18.

DHS (U.S. Department of Homeland Security). 2018. "Table 1. Persons Obtaining Lawful Permanent Resident Status: Fiscal Years 1820 to 2017." DHS.

DOS (U.S. Department of State) Office of the Historian. "The Immigration Act of 1924 (The Johnson-Reed Act)." Accessed November 26, 2019.

Gerald R. Ford Library and Museum. 2019. "10/20/76 HR14535 Immigration and Nationality Act Amendments of 1976." Accessed December 4.

Glass, Andrew. 2018. "Eisenhower signs Refugee Relief Act, Aug. 7, 1953." *Politico*, August 7.

Harris, Beverly F. 1977. "The Immigration and Nationality Act Amendments of 1976: Implications for the Alien Professional." *Cleveland State Law Review* 26(2): 295-324.

Harry S. Truman Library & Museum. 2019. "Statement by the President Upon Signing the Displaced Persons Act." Accessed November 26, 2019.

Higham, John. 1956. *American Immigration Policy in Historical Perspective*. Law and Contemporary Problems.

ICE (U.S. Immigrations and Customs Enforcement). 2013. "Form I-9 Inspection Overview." Last revised June 26, 2013. Accessed December 16, 2019.

Immigration Act of 1924, Ch. 190, 43 STAT. 153.

Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 STAT. 911.

James Zadroga 9/11 Health and Compensation Act of 2010, Pub L. No. 111-347, 124 STAT. 3623.

Kennedy, John F., *A Nation of Immigrants* (rev. ed. 1964).

Kraut, Julia Rose. 2012. "Global Anti-Anarchism: The Origins of Ideological Deportation and the Suppression of Expression." *Indiana Journal of Global Legal Studies*. 19(1):169-193.

Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, 110 STAT. 3009.

Pub. L. No. 11-181, Act of Jan. 28, 2008, 122 STAT. 3.

Pub. L. No. 64-301, Act of Feb. 5, 1917, Ch. 29, 39 STAT. 874.

Pub. L. No. 65-221, Act of Oct. 16, 1918, Ch. 186, 40 STAT. 1012.

Pub. L. No. 67-5, Act of May 19, 1921, Ch. 8, 42 STAT. 5.

Pub. L. No. 79-271, Act of June 25, 1945, Ch. 591.

Pub. L. No. 80-774, Act of June 16, 1950, Ch. 262, 64 STAT. 219.

Pub. L. No. 81-555, An Act to Amend the Displaced Persons Act of 1948, 64 STAT. 219.

Pub. L. No. 81-831, Internal Security Act of 1950, 64 Stat. 987.

Pub. L. No. 83-203, Ch. 1169, 68 STAT. 1044.

Pub. L. No. 85-316, 71 STAT. 639 (1957).

Pub. L. No. 85-559, Act of July 25, 1958, 72 STAT. 419.

Pub. L. No. 85-616, Act of Aug. 8, 1958, 72 STAT. 546.

Pub. L. No. 85-892, Act of Sept. 2, 1958, 72 STAT. 1712.

Pub. L. No. 86-648, Act of July 14, 1960, 74 STAT. 504.

Pub. L. No. 89-336, Act of Oct. 3, 1965, 79 STAT. 911.

Pub. L. No. 94-23, Act of May 23, 1975, 89 STAT. 87.

Pub. L. No. 94-484, Health Professions Educational Assistance Act of 1976, 90 STAT. 2243

Pub. L. No. 94-571, Act of Oct. 20, 1976, 90 STAT. 2703.

Pub. L. No. 95-412, Act of Oct. 5, 1978, 92 STAT. 907.

Pub. L. No. 95-432, Act of October 10, 1978, 92 STAT. 1046.

Pub. L. No. 95-579, Act of Nov. 2, 1978, 92 STAT. 2474.

Pub. L. No. 96-212, Act of Mar. 17, 1980, 04 STAT. 102.

Pub. L. No. 99-603, Act of Nov. 6, 1986, 100 STAT. 3359.

Pub. L. No. 99-639, Act of Nov. 10, 1986, 100 STAT. 3537.

Pub. L. No. 99-653, Pub. L. No. 99-653, Act of Nov. 14, 1986, 100 STAT. 3655.

Pub. L. No. 100-204, Act of Dec. 22, 1987, 101 STAT. 1331.

Pub. L. No. 100-690, Act of Nov. 18, 1988, 102 STAT. 4181.

Pub. L. No. 101-649, Act of Nov. 29, 1990, 104 STAT. 4978.

Pub. L. No. 102-232, Act of Dec. 12, 1991, 105 STAT. 1733.

Pub. L. No. 104-132, Act of Apr. 24, 1996, 110 STAT. 1214.

Pub. L. No. 105-292, Act of Oct. 27, 1998, 112 STAT. 2787.

Pub. L. No. 106-95, Act of Nov. 12, 1999, 113 STAT. 1212.

Pub. L. No. 106-313, Act of Oct. 17, 2000, 114 STAT. 1251.

Pub. L. No. 106-386, Act of Oct. 28, 2000, Division A, 114 STAT. 1464.

Pub. L. No. 106-395, Act of Oct. 30, 2000, 114 STAT. 1631.

Pub. L. No. 106-396, Act of Oct. 30, 2000, 114 STAT. 1637.

Pub. L. No. 107-56, Act of Oct. 26, 2001, 115 STAT. 272.

Pub. L. No. 107-173, Act of May 14, 2002, 116 STAT. 543.

Pub. L. No. 107-296, Act of Nov. 25, 2002, 116 STAT. 2135.

Pub. L. No. 108-458, Act of Dec. 17, 2004, 118 STAT. 3638.

Pub. L. No. 109-13, Act of May 11, 2005, 119 STAT. 231.

Pub. L. No. 109-163, Act of Jan. 6, 2006, 119 STAT. 3136.

Pub. L. No. 110-53, Act of Aug. 3, 2007, 121 STAT. 382.

Pub. L. No. 110-251, Act of June 26, 2008, 122 STAT. 2319.

Pub. L. No. 111-5, Act of Feb. 17, 2009, 123 STAT. 115.

Pub. L. No. 111-8, Act of Sept. 30, 2009, 123 STAT. 524.

Pub. L. No. 111-230, Act of Aug. 13, 2010, 124 STAT. 2485.

Pub. L. No. 111-287, Act of Nov. 30, 2010, 124 STAT. 3058.

Pub. L. No. 111-293, Act of Dec. 9, 2010, 124 STAT. 3175.

Pub. L. No. 112-54, Act of Nov. 12, 2011, 125 STAT. 550.

Pub. L. No. 112-74, Act of Dec. 23, 2011, 125 STAT. 786.

Pub. L. No. 112-130, Act of June 8, 2012, 126 STAT. 376.

Pub. L. No. 112-239, Act of Jan. 2, 2013, 126 STAT. 1632.

Pub. L. No. 113-4, Act of March 7, 2013, 127 STAT. 54.

Pub. L. No. 113-76, Act of Jan. 17, 2014, 128 STAT. 5.

Pub. L. No. 113-100, Act of Apr. 18, 2014, 128 STAT. 1145.

Pub. L. No. 114-113, Act of Dec. 18, 2015, 129 STAT. 2242.

Radford, Jynnah. 2019. "Key Findings about U.S. Immigrants." *Pew Research Center*, June 17.

Rytina, Nancy. 2002. IRCA Legalization Effects: *Lawful Permanent Residence and Naturalization through 2001*. U.S. Immigration and Naturalization Service.

Speer, John K. 1970. "America's Post-War Refugee Measures: A Sketch of Executive and Legislative Action." *The International Lawyer* 4(4): 709-719.

U.S. House of Representatives History, Art & Archives. 2019a. "The House Legislates Refugee Policy." Accessed November 26, 2019.

U.S. House of Representatives History, Art & Archives. 2019b. "Immigration and Refugees." Accessed November 26, 2019.

Photo Citations

1900-1920

1. Gentlemen's Agreement of 1907 (Reunited Japanese Family): Los Angeles Public Library
2. Gentlemen's Agreement of 1907 (Theodore Roosevelt): Library of Congress
3. WWI: awm.gov.au
4. Immigration Act of 1917 Veto Override (Woodrow Wilson): en.wikipedia.org
5. Immigration Act of 1917 Veto Override (Literacy Test): uscis.gov
6. Russian Revolution: Getty
7. WWI Ends: uihere.com
8. Pub. Law 65-221: jacobinmag.com

1921-1940

1. Emergency Immigration Act of 1921 (Albert Johnson): Library of Congress
2. Emergency Immigration Act of 1921 (Warren G. Harding): en.wikipedia.org
3. Emergency Immigration Act of 1921 (Immigration Funnel): nps.gov
4. Immigration Act of 1924 (Calvin Coolidge): Library of Congress
5. Immigration Act of 1924 (Immigrants): FPG / Getty
6. Alien Registration Act of 1940 (Frankilin D. Roosevelt): FDR Presidential Library
7. Alien Registration Act of 1940 (ARA Card): citizenpath.com

1941-1960

1. War Brides Act: en.wikipedia.org
2. Displaced Persons Act of 1948: wilsonquarterly.com
3. Truman, 1948-1953: National Archives
4. Refugee Relief Act of 1953: en.wikipedia.org
5. Pub. Law 85-316: ebay.com
6. Pub. Law 85-559: uscis.gov

1961-1980

1. John F. Kennedy: Alfred Eisenstaedt
2. Immigration and Naturalization Act of 1965: history.com
3. *Afroyim v. Rusk*: history.com
4. Indochina Migration and Refugee Assistance Act of 1975: flickr.com
5. Immigration and Nationality Act Amendments of 1976: rapidvisa.com

1980-2000

1. Pub. Law 101-649: lawprofessors.typepad.com
2. Pub. Law 105-292: Noun Project (Gerald Wildmoser, DE)
3. Pub. Law 106-395: Noun Project (Simon Child, GB)

2000-2015

1. Patriot Act: Noun Project (Cédric Villain, FR)
2. Pub. Law 108-458: georgewbush-whitehouse.archives.gov
3. Pub. Law 11-181: Noun Project (Mangsaabguru, TH)
4. Help Haitian Adoptees Immediately to Integrate Act: Courtesy God's Vision For Haiti
5. Pub. Law 113-76: Courtesy Joshua Treviño

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