

# Rethinking U.S. Immigration Policy

## New Realities Call for New Answers

Concept Note

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By Doris Meissner

The narrative of immigration as a security and jobs threat that helped propel President Trump into office has remained central to the administration's goals and immigration policy playbook. Looking ahead, immigration promises to remain center stage in the president's bid for a second term.

Following sweeping executive orders issued during the first weeks of the Trump presidency, the scope of the administration's actions has steadily broadened with continuing and ever more consequential immigration policy declarations and changes. Among more than 200 measures advanced to date to broadly reshape the immigration system, the president's highest priority—funding “the wall”—even led to the longest partial federal government shutdown in history.

The pushback against the Trump agenda on immigration has been fierce and far-reaching. Congress has refused to fund outsized spending asks; courts have blocked many policy and regulatory measures; and significant numbers of states and localities with sizeable immigrant populations have limited their cooperation on long-established areas of federal policy pre-eminence, especially regarding immigration enforcement.

Nonetheless, whatever the disagreements of the current period and departure from long-accepted norms, reverting to the status quo ante does not represent a defensible answer. There are fundamental failings in the immigration system that date back decades and that have repeatedly eluded efforts to legislate changes over those years. The nation's immigration system is in desperate *need* of an overhaul—and has been for many years. What has been missing is an alternate vision for a path forward that treats immigration as a comparative advantage and strategic resource, while also accounting for critical security and rule-of-law imperatives, that can together further U.S. interests, values, and democratic principles as a society.

The Migration Policy Institute (MPI) is launching a new initiative, Rethinking U.S. Immigration Policy, that seeks to fill this gap by generating a big-picture, evidence-driven vision—backed up by solid proposals for establishing a functioning, orderly system—of the role immigration can and should play in the country's future.<sup>1</sup> The starting point for the Rethinking Initiative is to recognize that new realities facing the United States should drive immigration policymaking in the period ahead, not a return to the tired debates of the last 20 years that have centered on solving the problem of illegal immigration through varying measures collectively known as comprehensive immigration reform. Addressing illegal immigration must

<sup>1</sup> For more on the Rethinking U.S. Immigration Policy Initiative, and to find the research and analysis generated as part of the project, visit [www.migrationpolicy.org/rethinkingimmigration](http://www.migrationpolicy.org/rethinkingimmigration).

be a part of future solutions, but it is far from the only pressing topic that must be addressed.

Among the new realities that must inform any rethinking of the U.S. immigration system to meet a world facing the challenges of globalization, the tech-induced disruptions reshaping the future of work, a growing global competition for talent, and national polities increasingly skeptical of government's ability to manage migration, are these:

- ***Shifting demographic trends and their implications for economic growth.*** Low population growth in the United States, the product of declining fertility and rapid aging, has been in full view for years. But the trends are deepening, with population growth at its lowest level since 1940, fertility declining since the 2008-09 recession, and a perhaps unprecedented pace of aging, with the proportion of seniors to working age adults rising from 25 per 100 in 2015 to a projected 33 per 100 by 2025 and 40 per 100 by 2050. Immigration has cushioned the effects of these trends on productivity and labor force needs, with the United States facing a far more favorable outlook than peer countries in Europe, for example. Immigrants—both legal and unauthorized—and their U.S.-born children have accounted for nearly all the growth in the U.S. working age population over the past decade. Automation and other technology will increasingly play major roles in meeting future labor force needs. But immigration will continue to be an indispensable ingredient in assuring continued economic growth and the well-being of society.
- ***Flexibility needed to adjust immigration levels and bid for talent.*** Today's legal immigration system rests largely on laws enacted in 1965 and 1990. Those measures reflected a dramatically different domestic

economy and global marketplace. Other major immigrant-receiving countries have modernized their policies—in some cases multiple times—to reposition their systems to identify the workers their economies need to compete in this globalized world. Canada, Australia, the United Kingdom, and Singapore are among the governments that have postured their immigrant-selection systems to identify, recruit, and retain the immigrants they want for their labor markets of today and tomorrow. These countries and others are all competitors for talent. In contrast, the United States has a rigid, outdated system for tapping valuable human capital. Immigrant workers across the skills spectrum support important sectors of the economy. It is essential to develop a better understanding of the jobs and industries that rely on foreign-born workers, as well as to ensure level playing fields for all workers and pair this knowledge with projections about future automation, outsourcing, and job growth. For immigration to serve as a strategic resource, immigration policy must establish a mechanism with built-in flexibility to adjust the numbers and types of workers admitted to respond to the real needs of the labor market.

- ***Changing U.S.-Mexico border enforcement challenges.*** Migration from Central America, and indeed potentially from other parts of the hemisphere and regions of the world, constitutes today's major and longer-term challenge to U.S.-Mexico border security and border management. For decades illegal immigrants were primarily Mexican and were mainly adult males seeking to evade Border Patrol detection and find readily available work in the United States. In 2008, for example, Mexicans comprised more than 90 percent of apprehensions.

To date this fiscal year, Guatemalans, Hondurans, and Salvadorans represent 74 percent of apprehensions, with two-thirds composed of families or unaccompanied children. Some are seeking protection from violence in their home countries and are applying for asylum. Others want work or to reunite with relatives already in the United States. This is a dramatic change that has not been reflected in border enforcement facilities, resource allocations, inter-agency coordination, or enforcement strategies that can respond to humanitarian exigencies and efficiently sift through these mixed flows to identify who is in need of protection and who is not. These flows bring with them new complexities that call for fundamental changes in border enforcement policies, programs and capabilities.

- ***A stable or even declining unauthorized immigrant population.*** Beginning with the numbers not legalized under the 1986 *Immigration Reform and Control Act* (IRCA) and spurred by the protracted economic boom in the 1990s and critical changes in the 1996 *Illegal Immigration Reform and Immigrant Responsibility Act* (IIRIRA), the unauthorized population grew by 500,000 people annually well into the 2000s. However, since the recession in 2008-09, growth in this population has stalled, and by some estimates even decreased, from a high of about 12 million in 2007 to under 11 million in 2017. With more leaving than arriving, Mexicans now account for less than half of all unauthorized immigrants. And more than 60 percent of the overall unauthorized population has been in the United States for at least a decade. The long-settled nature of this population, including parents to about 4.1 million U.S.-citizen children, calls for a remedy to address their plight. Their lack of legal status has shifted the locus

of harm from the interests of individuals who have violated immigration law to those of U.S. citizens in mixed-status households, communities, workplaces, employers, and the social fabric of large parts of the country.

- ***Enforcement-first has run its course.*** The growth in the unauthorized population, gaps in the immigration system exposed by 9/11, and the creation of the Department of Homeland Security (DHS) that framed immigration first and foremost as a national security matter gave rise to calls for enforcement-first by opponents of comprehensive immigration reform in 2006, 2007, and 2013. By default, enforcement-first has been the prevailing philosophy guiding Congress' actions, with funding for border enforcement a rare place for bipartisan consensus for many years. The result has been dramatic growth and investment in immigration enforcement at the borders and in the U.S. interior. In fiscal 2018, Congress appropriated \$24 billion to fund the principal immigration enforcement agencies—a spending level 34 percent greater than the \$17.9 billion allocated for *all* other principal federal criminal law enforcement agencies combined. With the unaccompanied minor surge in 2014 and again with the migration crisis unfolding at the Southwest border in recent months, it has become clear that enforcement-first has reached its limits. This is also the case with interior enforcement, where, despite the president's rhetoric and policy changes, the peak levels of removals, achieved in 2008-11, are unlikely to be realized again because many communities and some states now limit their cooperation with federal enforcement. New policies and responses must be developed, based on rules that are enforceable, for the immigration system to operate effectively.

- ***A new era of domestic politics and global repercussions.*** For the first time in the modern era, a U.S. president and a major political party have upended decades of bipartisan consensus that legal immigration is a net positive for the country. Immigration is now a topic of controversy day in and day out across the land, having been weaponized as a political issue. The president and some other leaders pledge to dramatically reduce and change the character of legal immigration, including having sharply narrowed signature humanitarian programs such as refugee resettlement and access to asylum, that have for many years embodied deeply held American values. To be sure, the dynamics driving today's clashing views on immigration are not just an American phenomenon. Anti-immigrant sentiments are on the rise in many parts of the world and have unleashed nationalist and populist forces in other western liberal democracies. Establishing common-sense, implementable immigration policies and restoring public confidence in government's ability to manage migration may not only decide future elections but are testing the core institutions and values that will shape the future of democratic systems in the United States and elsewhere.

## A Way Forward

Against a backdrop of new realities, MPI is charting a way forward with a multi-year initiative that is grounded in both evidence and analysis and in promoting bipartisan discussion and consensus building. Historically, immigration policymaking and legislation have only succeeded through across-the-aisle cooperation and the search for common ground. This initiative is

committed to re-energizing such bipartisanship and recapturing a new center in formulating and advancing feasible solutions.

The Rethinking work has already begun with reports and recommendations MPI has issued that address the crisis in the asylum system and new challenges to U.S.-Mexico border enforcement. In the coming weeks, MPI will publish several think-pieces: On immigration and future labor market needs, as well as the role immigration is playing in strengthening national security in the post-9/11 world. These papers will inform future MPI policy proposals.

They illustrate the range of analyses and types of policy blueprints and fresh thinking MPI intends to advance across the gamut of compelling immigration policy problems the nation faces. That spectrum will span a wide range of policy challenges that call for careful examination of the needs and shortcomings in the primary permanent immigration streams—family and employment-based, humanitarian, and diversity—as well as temporary, provisional, and other streams. The work will also assess the effectiveness and improvements needed in administering the immigration system, including, for example, the need to reform the immigration court system. Finally, MPI will publish broad policy roadmaps that distill the work for purposes of overall public debate and information for decisionmakers.

As is the case with all its signature activities, MPI will publish materials and ideas and engage these in the public forum on an ongoing basis, so that good ideas and information are in the marketplace continuously, as contending ideas circulate and are debated. The Rethinking Initiative is intended to be a living endeavor with the ability to respond to unforeseen developments alongside developing a longer-term vision and workable proposals for solutions to legislate and implement.

## Conclusion

As a defining characteristic of the nation's past and present, immigration has served as an important comparative advantage economically, culturally, and globally. However, the decades-long inability of the political system to update and modernize immigration laws and policies represents a failing that continues to rob the United States of the full value of immigration as a strategic resource. Beyond that, the lack of necessary change to the immigration system is contributing to deepening, corrosive divisions in today's politics and the runup to 2020 elections.

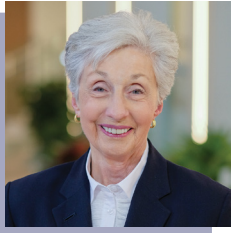
In the absence of a desperately needed overhaul, this critical policy arena will continue to be subject to wild swings from administration to

administration that rely on broad uses of executive authority to accomplish goals that should be articulated by Congress. Important new realities in demographics, labor market needs, global competition, border enforcement challenges, and the politics surrounding immigration provide a heightened need to address and close the gaps between immigration law and policy and facts on the ground.

The Rethinking Initiative will provide a policy roadmap of pragmatic, workable measures for a modernized immigration system that is flexible, able to adapt to changing trends and needs, and designed to endure beyond any single administration in furtherance of managing immigration as a continuing force for good in America's future.

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## About the Author



**Doris Meissner**, former Commissioner of the U.S. Immigration and Naturalization Service (INS), is a Senior Fellow at the Migration Policy Institute (MPI), where she directs the Institute's U.S. immigration policy work.

Her responsibilities focus in particular on the role of immigration in America's future and on administering the nation's immigration laws, systems, and government agencies. Her work and expertise also include immigration and politics, immigration enforcement, border control, cooperation with other countries, and immigration and national security. She has authored and coauthored numerous reports, articles, and op-eds and is frequently quoted in the media. She served as Director of MPI's Independent Task Force on Immigration and America's Future, a bipartisan group of distinguished leaders. The group's report and recommendations address how to harness the advantages of immigration for a 21st century economy and society.

From 1993–2000, she served in the Clinton administration as Commissioner of the INS, then a bureau in the U.S. Department of Justice. Her accomplishments included reforming the nation's asylum system; creating new strategies for managing U.S. borders; improving naturalization and other services for immigrants; shaping new responses to migration and humanitarian emergencies; strengthening cooperation and joint initiatives with Mexico, Canada, and other countries; and managing growth that doubled the agency's personnel and tripled its budget.

She first joined the Justice Department in 1973 as a White House Fellow and Special Assistant to the Attorney General. She served in various senior policy posts until 1981, when she became Acting Commissioner of the INS and then Executive Associate Commissioner, the third-ranking post in the agency. In 1986, she joined the Carnegie Endowment for International Peace as a Senior Associate. Ms. Meissner created the Endowment's Immigration Policy Project, which evolved into the Migration Policy Institute in 2001.

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For more on the initiative, visit: [www.migrationpolicy.org/rethinkingimmigration](http://www.migrationpolicy.org/rethinkingimmigration).

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