

# US IMMIGRATION POLICY: YESTERDAY AND TODAY

## WEEK 1: HISTORY OF US IMMIGRATION

- **New Spain and the Borderlands (1521 – 1821)**
  - Immigration: Limited to Spanish subjects and others as authorized by the King
  - Naturalization: No legal concept of naturalization
- **Colonial America (1600-1789)**
  - Immigration: Relatively open and non-regulated
  - Naturalization: Available as either English subject or colonial citizen
- **Frontier Expansion (1790 – 1880)**
  - Naturalization Law of 1802
    - Naturalization limited initially to "free white persons" of "good moral character," later extended to "persons of African origin"
  - Treaty of Guadalupe Hidalgo (1848) / Gadsden Purchase (1853)
    - Mexicans in the annexed areas were offered U.S. citizenship
  - Fourteenth Amendment (1868)
    - "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States..."
    - Interpreted in U.S. v. Wong Kim Ark (1898) to include anyone regardless of parents' status
- **The Great Wave (1880 – 1919)**
  - Immigration Acts of 1882 / 1891
    - Established permanent Office of Immigration, funded by a \$0.50 per-person fee
    - Entry denied to "criminals, lunatics, idiots, or persons deemed liable to become a public charge"
  - Chinese Exclusion Act (1882)
    - Driven by political conditions in post-Gold Rush California
    - Gave rise to the first great wave of commercial human smuggling
- **The Great Pause (1920 to 1964)**
  - Immigration / National Origin / Oriental Exclusion Act of 1924
    - Restricted immigration from southern and eastern Europe by establishing a 2% quota by country of origin based on 1890 US Census
    - Excluded all Asians as "non-white," but granted exemption for all natives of Western Hemisphere – including Mexico – as "white"
    - First law to distinguish between "immigrant" (permanent) and "nonimmigrant" (temporary) visitors
  - Mexican Repatriation (1929- 1936)
    - An unconstitutional process with no basis in law
    - At least 400,000 deported, including many US citizens
- **The Pause Starts to Thaw (1943 to 1964)**
  - Exclusion Laws Repealed (1943 – 1946)
    - Chinese Exclusion Laws repealed in 1943 (China now a WWII ally)
    - Luce-Celler Act (1946) ended exclusion of South Asia Indians and Filipinos
  - Displaced Persons Acts of 1948 / 1950
    - Provided for the limited immigration of displaced persons from Europe
  - Mexican Farm Labor Agreement (Bracero Program) 1942-1964
    - Bureaucratic red tape led to extensive use of undocumented workers who had little choice but to remain in the US and illegally relocate family members

- **The Second Wave (1965 to 2016)**
  - Immigration and Nationality Act Amendments of 1965 (Hart-Cellar Act)
    - National-origin quotas replaced by a two-tier preference system for immigration: Family-based (“family reunification”) and Employment-based
    - Annual immigration cap established at 290,000 – but with only 120,000 for the Western Hemisphere, leading to further undocumented Mexican immigration
    - New non-immigrant visa categories created for temporary visitors
  - Refugee Act of 1980
    - Provided a permanent and systematic procedure for the admission of refugees, with an annual cap above and beyond the Hart-Cellar cap
    - Created a new definition of refugee based on “...persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion”
  - Immigration Reform and Control Act of 1986 (IRCA)
    - Amnesty given to 3 million undocumented immigrants in exchange for intensified enforcement
  - Immigration Act of 1990 (IMMACT)
    - Total immigration cap increased to 700,000 annually
    - Family-based immigration limited to immediate family members
    - Employment-based immigration capped at 140,000, with new requirements
    - Temporary Protected Status (TPS) added for foreign nations whose home country is subject to armed conflict or natural disaster
    - Diversity Immigrant Visa (“Diversity Lottery”) added and capped at 55,000
  - Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)
    - Increased categories of criminal activity (e.g. shoplifting) for which immigrants can be deported and imposed mandatory detention for as much as 2 years
    - Restricted states from offering in-state tuition to undocumented residents
    - Permitted the Attorney General to enter into agreements with state and local agencies to perform immigration enforcement functions
  - Flores Settlement (1997).
    - Settlement between U.S. Justice Department and litigants who alleged mistreatment of unaccompanied minors in detention
    - Currently interpreted to mean that all minors in detention — accompanied by parents or not — cannot be held for more than 20 days
  - DACA (2012)
    - Executive Order: Deferred Action for Childhood Arrivals
    - For undocumented immigrants before age 16 arriving in US prior to June, 2007
    - Does not provide a path to permanent residency or citizenship
    - Allows eligibility for work, but not for social programs or resident tuition

- **Going Forward 2016-??**
  - Cancellation of DACA (2017)
    - Cancelled by Executive Order
    - Currently under partial court injunction
  - Zero-Tolerance / Family Separation
    - 2018 Attorney General ruling
    - Illegal entry considered to be an “aggravated felony” subject to mandatory detention of adults
    - Aggravated by “metering” of lawful entries
    - Family separation made necessary by mandatory detention of adults
    - Halted by injunction requiring release of minor children in accordance with 1997 Flores Settlement
  - Remain in Mexico (2019)
    - 2019 DHS Administrative Rule
    - Requires all potential asylees arriving by land directly from a third country to be returned to that country and await their final eligibility hearing in the US
    - Currently in litigation...but with no injunctive relief
  - Restricted Asylum Criteria (2018)
    - 2018 Attorney General Ruling
    - Denies asylum for domestic abuse or gang violence
    - Possible conflict with UN refugee definition within the 1980 Refugee Act
    - Currently in litigation...but with no injunctive relief
  - Upcoming Expiration of Temporary Protected Status (TPS)
    - TPS - part of 1990 IMMACT
    - Requires periodic renewal by DOJ or DHS, which was declined starting in 2018
    - Set to expire in 2019 for approximately 300,000 from El Salvador, Honduras, Haiti
    - Currently halted by Federal court injunction pending outcome of litigation
  - DHD Final Rule on Public Charge (2019)
    - Immigrants who have received *or are considered likely to receive* public benefits may be considered inadmissible as permanent residents in the United States
    - Litigation is being pursued
  - Executive Order Requiring Health Insurance
    - Immigrants seeking green cards must show proof of private insurance coverage
  - Administrative and Sub-Rosa Changes (2017-2019)
    - Revocation of U.S. passports due to questions about validity of birth certificates
    - Discontinuation of work authorizations for spouses of work visa holders
    - Processing slowdowns and increased rejection rates for work and educational visas
    - Increased rejection rates for tourist and business visas from many countries, especially Mexico

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