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Debating Immigration in Polarized America: The DREAM Act, DACA, and Undocumented Immigrants

Chieko KITAGAWA OTSURU*

INTRODUCTION

A newspaper article introduces us to John Lennon's and Yoko Ono's 1972-1975 deportation fight, which became the foundation of the discretion policy announced by President Barack Obama in 2012 (Japan Times 2014). According to the article, when challenged by Lennon and Ono's lawyer, Leon Wildes, the U.S. Immigration and Naturalization Service (INS) acknowledged that it had used its own discretion in non-priority cases and revealed its prosecutorial discretion guidelines.

The above-mentioned discretion policy is Deferred Action for Childhood Arrivals (DACA) launched on June 15, 2012. It is a common application of prosecutorial discretion to adopt a lenient approach towards those who had illegally entered the United States as children accompanied by their parents and have been in the United States without any legal standing. Under DACA, the U.S. Customs and Border Protection (CBP), the U.S. Citizenship and Immigration Services (USCIS), and the U.S. Immigration and Customs Enforcement (ICE) are directed by the Secretary of the Department of Homeland Security not to remove them.

Since this policy does not have the power to change the beneficiaries' legal status, the young undocumented immigrants are still not eligible to apply for citizenship. Moreover, the policy is effective only as long as the president in power elects to retain it. Given such unstable status, presidential authority was not the first choice of those who worked to improve the rights of undocumented people, including those who would be covered under DACA. The discretionary approach was adopted only after Congress came close to changing the immigration law in 2012 but was blocked by the House Republicans' opposition.

President Obama is intending to mandate the executive agencies to extend more rights to undocumented immigrants after the 2014 elections, given that the stalemate in the increasingly partisan Congress has failed to enact any legislation. As Hispanics (or Latinos) are rapidly increasing their share among the American population and most of the undocumented immigrants are of Hispanic origin, it seems unlikely that the present lack of

* Professor, Faculty of Law, Kansai University.

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protections of undocumented aliens remain untouched. The question is when and how will the American society find the way out of this impasse, given the increasing pressures toward restriction, rather than easing of border controls.

In the following sections, let us examine the background of the current immigration reform, failed congressional attempts at immigration reform, and the impact of President Obama's discretion policy. The prospect for the rights of more than 11 million immigrants without any legal status in the United States will be discussed in the conclusion.

I. OBAMA'S PROMISE

1. Immigration as a Campaign Issue

When nationally little known Illinois state senator Barack Obama gave the keynote speech at the Democratic National Convention in 2004, many were impressed with his power of words but did not expect him to become President in such a short time. As the situation in Iraq deteriorated, the next presidential election cycle started in the context of a nationwide criticism of the Iraq War. While Democratic candidates all criticized the Bush-initiated war in Iraq, candidate Obama emphasized that he was the only one who had been against the wrong war from the beginning. Other leading candidates had to face the critical decision of starting Iraq War as congressional members, and voted for the war on records. Among them was Hillary Rodham Clinton, Senator from New York.

Clinton led the election campaign as the most popular candidate in name recognition and political skills, and seemed to have paved the way to the presidency until the October debate. It was her response to one question which made a huge stumbling block on her path to the Presidency, leading to her eventual fall as a candidate. The question was whether to provide driver's licenses to undocumented aliens, and Clinton supported the initiative recognizing the reality that undocumented aliens live in the United States, and while they are there they have to drive. Issuing a driver's license based on an exam, according to her, is much safer than letting them drive around without license.

However, it was a time after the September 11th, 2001 terrorist attacks and the driver's license was an officially-issued ID functioned as an important means of moving around and living in the American society. With a driver's license, even a terrorist has an access to an airplane. Given such societal anxiety, supporting the idea that driver's licenses should be issued to undocumented aliens is, in retrospect, political suicide. When Clinton adopted the controversial stance, every other candidate on the stage pounced on her, attacking her purportedly mistaken judgment on the handling of undocumented aliens. That day was the beginning of the fall of presidential candidate Clinton, and opened up the chance for other candidates to compete against her in seeking the Presidential seat.

It was Barack Obama who made good use of this opportunity, attacking Clinton on the driver's license question, while gathering support on his stance as the only one truly anti-war candidate. Obama did not specifically reveal how he would deal with the

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immigrant question, but his liberal political stance, his half-African roots, and the anti-war messages, persuaded the minority voters that Obama must stand for their cause and will, upon becoming President, seek to achieve the goal of their empowerment.

During his fight for Democratic candidacy, however, Obama was not strongly supported by Hispanics. Clinton was making use of the Black-Brown divide, namely Hispanics' skepticism against the African Americans, to her advantage in the critical primary elections such as the one in Nevada. Such a divisive strategy invited criticism among the Democrats, and the internally divided Clinton campaign headquarters could not sustain enough political and financial capital to survive until the end of the primaries.

Even after Obama won the Democratic candidacy, the Hispanic voters continued to view the candidate critically. While the positive views toward Obama held among the Hispanics increased from 27 to 41 percent after the National Convention (Wall Street Journal 2012, 3), there remained a lasting effect of the Black-Brown divide. Moreover, Republican candidate John McCain of Arizona had been popular among the Hispanic voters because of his support for immigration reform atypical of Republican Party candidates. McCain, however, had to retreat from his original supportive position of immigrants during the primaries, because the debate of the Republican Party was dominated by anti-immigration hardliners. In the end, Obama received 67 percentage of the Hispanic vote to McCain's 31 percent.

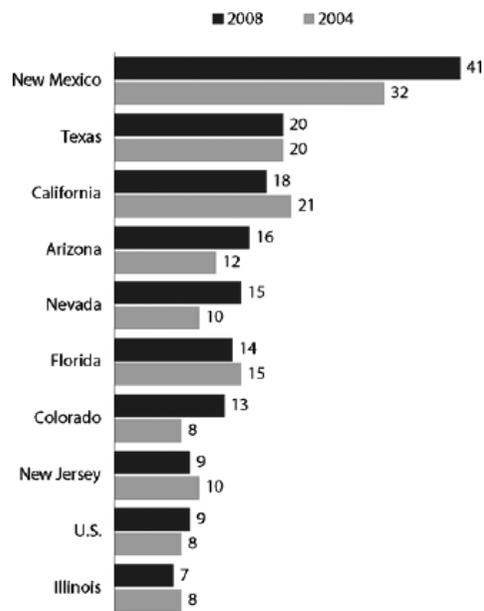


Figure 1 Hispanic Share of Voters in Presidential Elections, 2004 and 2008

Source: Lopez (2008, 1).

2. Priorities of the First Obama Administration

On launching his presidency, one of the promises President Obama made was to pay back for the support he received from the Hispanic voters. He promised to work for the unsolved question of immigration reform so as to extend some legal protections to the undocumented aliens, especially those of Hispanic origin. Such reform is effective, however, only if it is accompanied by tightening of border control that halts the flow of new undocumented aliens. Thus, the Obama administration almost doubled the number of border security agents from about 10,000 in 2004 to about 20,700 in 2010 (White House 2010, 5-7), signed the Southwest Border Security Bill in August 2010 (PL 111-230), and carried out expedited removals of undocumented aliens in significantly greater numbers than the preceding Bush administration (see Figure 2).

Given the limited political capital, though, the first Obama administration chose to concentrate on the question of creating a universal health care, leaving the immigration reform behind. The Patient Protection and Affordable Care Act (PPACA), or Obamacare, narrowly succeeded at 60-39 in the Senate in December 2009, and at 219-212 in the House in March 2010, becoming law on March 23, 2010. Between the two votes, Senator Kennedy passed away and the Senate Democrats lost in the special election, losing the filibuster-proof margin in the Senate. The House Democrats, thus, had to pass the Senate-passed bill without a revision, even though the House Democrats had aimed for more benefits for the patients.

The passage of Obamacare was regarded as going against the principle of self-help among the Republicans, and some state governments legally challenged it as unconstitutional. Added to such challenge on the judicial level was the electoral one, and a new political movement of the Tea Party expanded its influence in the primary elections on the Republican side. In the elections of 2010, the number of House Democratic seats shrunk from 255 to 193, losing the majority of the House. On the Senate side, the number of Democratic seats decreased from 59 to 53, and made the prospect for any significant policy change, such as immigration reform, quite an uphill battle.

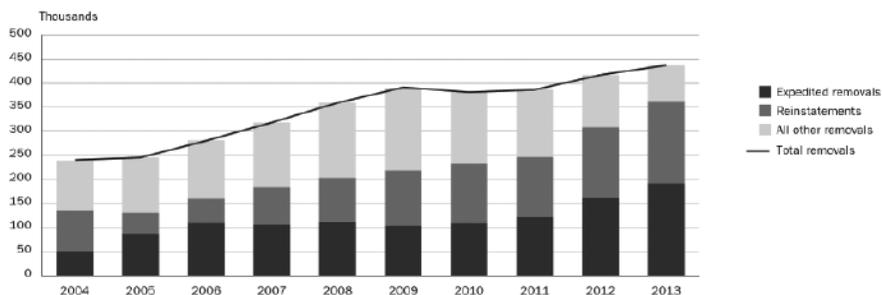


Figure 2 Total Removals, Expedited Removals, and Reinstatements, FY 2004-2013

Source: U.S. Department of Homeland Security (2014, 6).

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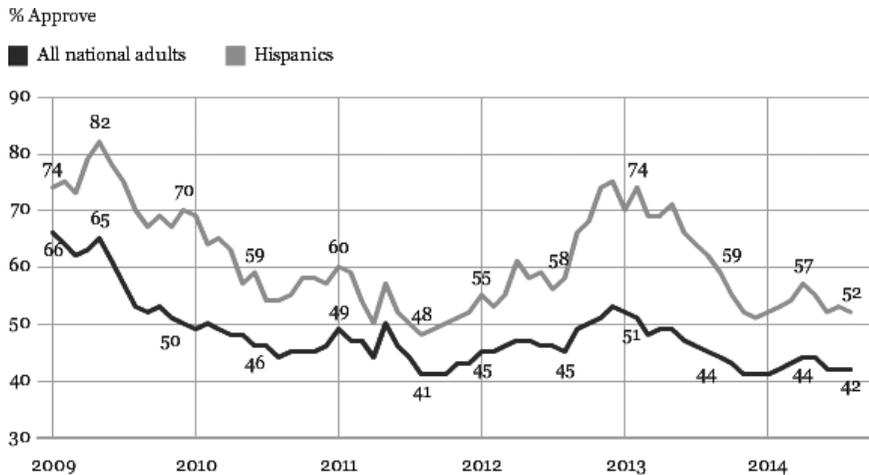


Figure 3 Obama's Job Approval by Hispanics

Source: Gallup (2014).

Feeling abandoned, Hispanics continued to support President Obama, since there were no alternatives, and for the Obama administration, sustaining the support among the Hispanics was politically necessary. In May 2011, the Obama administration published a report, *Building a 21st Century Immigration System* (White House 2011), advising the Hispanic community of ideal reforms to be made towards their empowerment while trying to persuade the general public of the economic rationales for keeping the documented immigrant community in the United States. The report, for example, described the immigrants as job creators and tax contributors, in an effort to dispel the general image of immigrants as welfare recipients.

Running up to his re-election campaign, President Obama determined that Congress would not enact any immigration reform before the elections, and thus decided to utilize his executive privilege to launch DACA in June 2012. In August, the Obama administration released a report, *An America Built to Last: President Obama's Agenda and the Hispanic Community* (White House, 2012), and elaborated on the agenda of his second administration to the Hispanic community. In that report, he emphasized that only Congress can provide the thorough comprehensive immigration reform, including passing the Development, Relief, and Education for Alien Minors (DREAM) Act, and thus not only he should be elected as President, but Democrats should regain the majority in the Congress.

Having been disappointed by the first Obama administration, Hispanics still gave a larger support to Obama in the 2012 elections than in the past—71 percent of the Hispanic vote—while giving only 27 percent to the Republican candidate Mitt Romney. On the congressional side, House Democrats were able to regain some seats, but the

Republicans retained the majority at the margin of 201 to 234. Senate Democrats also gained some seats and made the margin at 53-45 with two independents caucusing with Democrats, still far short of stopping filibuster.

From his first presidential campaign through the middle of his second term, President Obama continued to place the immigration reform among his political agenda. Despite his focus on the issue, President Obama was not successful in exercising his leadership over the congressional leaders to break the impasse over his agenda, including the immigration issue. It is often pointed out that his leadership style is too aloof to convince congressional members to support his position (Wilson 2011).

II. SENATE-HOUSE SPLIT

1. Attempted Immigration Restrictions

Immigration reform has been debated in Congress since the number of undocumented aliens started showing an accelerated increase in the 1980s. The Bracero program in which documented Mexican agricultural workers were employed only during the harvest time and returned home after the season was terminated in 1964. Moreover, the Immigration Reform Act of 1965, while removing numerical limits on immigrants from outside of American continents, set a numerical limit on those from Latin American countries for the first time. These are thought to be among the factors inducing the increased number of unskilled workers to enter or remain in the United States illegally. As of 2013, it was

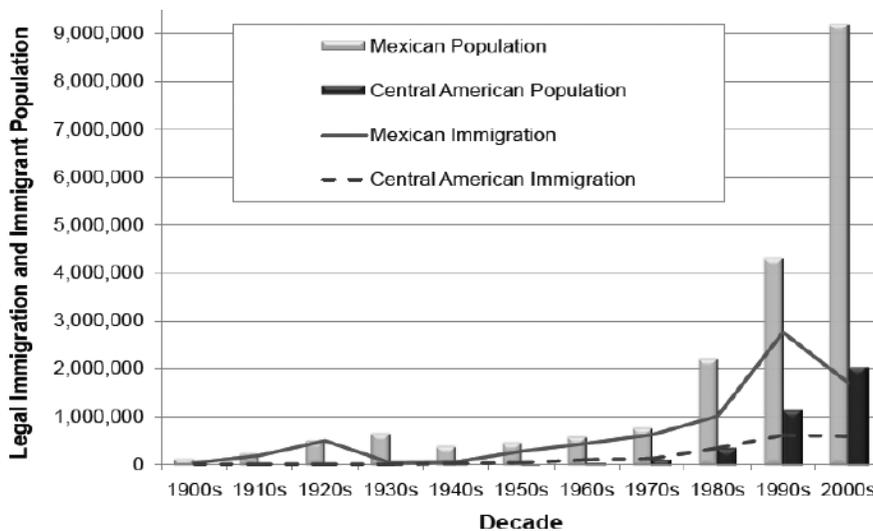


Figure 4 Legal Immigrants' Flow and Total Population of Mexican/Central American Origin

Source: Rosenblum and Brick (2011, 4).

estimated that about 11.6 million Mexican immigrants resided in the United States, up from 2.2 million in 1980, and many of them are undocumented aliens (Zong and Batalova 2014).

The first measure addressing the question of increasing undocumented aliens was the Immigration Reform and Control Act of 1986. This act introduced enhanced border controls in an effort to prevent the further inflow of undocumented immigrants, and provided amnesty to about three million unauthorized immigrants already inside of the United States. The stock of the undocumented aliens was reduced through this legalization, but newly legalized immigrants later gained citizenship and ended up drawing an additional flow of immigrants via family reunification. Those who fell outside of the admissible categories still entered the United States as undocumented immigrants.

To meet the emerging problems, Congress enacted the Immigration Act of 1990. While lifting the immigration ceiling, doubling employment-related visas and introducing lottery system to diversify the background of immigrants, the 1990 act established the U.S. Commission on Immigration Reform, headed by former Congresswoman Barbara Jordan, to provide policy recommendations. The Commission's final report came out seven years later, and among the detailed recommendations were many of the restrictive measures already adopted in the immigration reform of 1996. To curtail the flow of undocumented immigrants, the Commission emphasized deterrence and removal strategies regarding undocumented aliens, such as enhanced border controls, employer oversight, tighter benefits controls, cooperation with source countries, and better data collection (U.S. Commission on Immigration Reform 1997, 103-145).

In 1996, the Illegal Immigrant Reform and Immigrant Responsibility Act (IIRAIRA) was enacted. The Act, combined with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, limited benefits for undocumented immigrants in an effort to reduce the incentives for aliens to enter the United States against the law. Among the measures taken, many of which resembled the recommendations of the above-mentioned Commission on Immigration Reform's interim report, were border fences, pilot programs for employment verification, and partnerships with state and local law enforcement officers. These measures, however, had little tangible effect on the number of illegal entries.

Section 505 of the IIRAIRA, however, did have an effect in limiting the opportunities of undocumented youths. In *Plyler v. Doe*, 457 U.S. 202 (1982), the Supreme Court secured the right to primary and secondary education for unauthorized immigrant children. The ruling partly aimed to protect them from paying back for their parents' unlawful conduct, but also aimed to prevent American society from being burdened with immigrant adults without basic education in the future. However, IIRAIRA Section 505 restricts aliens not lawfully present from receiving any postsecondary education benefits, unless non-resident American citizens or nationals are eligible for such benefits with a comparable amount, duration, and scope. A specific interpretation of this section was never

made, and the restrictions set forth by the federal government superseded the state authority. Some states, such as California, avoid this section's restriction by setting the eligibility for the educational benefit not based on the residency, but on attendance of in-state secondary educational institutions (Bruno 2012, 4-5).

President George W. Bush came close to reaching an agreement with President Vicente Fox of Mexico to legalize undocumented immigrants by beginning a guest worker program in September 2001. However, the effort did not move forward until 2004 as the terrorist attacks in that month totally changed the national sense of security, and secure control of national borders became more important than before. While negative reactions against aliens increased, the need for inexpensive workers in the American markets did not stop, and the lure of good-paying American job markets continued to appeal Latin American nationals, especially Mexicans. The entry of undocumented aliens continued to rise until 2008, when the 2008 economic collapse hit the American society and the demand for workers, including entry-level workers, dwindled. The slowly recovering American economy coupled with a boom in Mexican economy beginning in 2010 leveled off the entry of undocumented immigrants, as shown in Figure 5. It is not true, though, that the number of existing undocumented aliens shrunk as the new entry leveled off, and the political initiative to meet the challenges of undocumented aliens has continued to date.

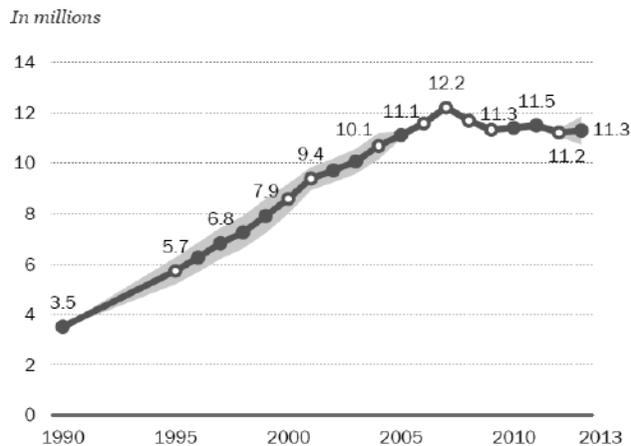


Figure 5 Growth in Unauthorized Immigration Has Levelled Off

Source: Pew (2014, 4).

In the post-September 11th period, efforts at immigration reform mostly took place in the Senate, while the House indicated a more hardline stance. In December 2005, the House passed a bill, the Border Protection, Anti-Terrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437) introduced by Congressman Jim Sensenbrenner (R-WI),

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by a vote of 239 (D 36, R 203) to 182 (D 164, R 17, I 1). Although the Senate did not act on the bill, and thus the bill died, the criminalization of undocumented aliens that the Sensenbrenner bill stipulated invited a nationwide protest movement. On the following May 1st, Hispanics, as well as many others, who were outraged by the language of Sensenbrenner bill boycotted work and school, and marched nationwide under the banner “A Day without an Immigrant,” making the American business realize the nature of life without Hispanic workers.

In 2006, Senator Arlen Specter (D-PA) introduced the Comprehensive Immigration Reform Act of 2006 (S. 2611). While allowing the undocumented aliens to be legalized, the bill required them to pay back past taxes so that their legalization would not burden American citizens. The bill passed the Senate in May with bipartisan support of 62 (D 38, R 23, I 1)-36 (D 4, R32). The bill, however, was not voted on by the House and died at the end of the session. In 2007, a new bill combining those proposed by Senators Edward Kennedy (D-MA), John McCain (R-AR), John Cornyn (R-TX), and Jon Kyle (R-AZ) was introduced as the Secure Borders, Economic Opportunity and Immigration Reform Act of 2007 (S.1348) by Majority Leader Harry Reid (D-NV).

This bipartisan bill contained, among others, the entire language of the most recent DREAM Act which had repeatedly failed to pass since 2001 with Democratic or Republican sponsorship. The very first bill sharing the idea with the later DREAM Act was introduced as the Immigrant Children’s Educational Advancement and Dropout Prevention Act of 2001 (H.R. 1582) in April 2001 by Representative Luis Gutiérrez (D-IL), and presently included the elements common with the later DREAM Acts: good moral character, enrollment in higher educational programs, entering the United States as a minor and presently below 25, and continuous residency in the United States for more than five years. This bill was then incorporated into Student Adjustment Act of 2001 (H.R. 1918), which amended the IIRAIRA so as to admit unlawful aliens’ eligibility for higher educational benefits based on the same state residence requirement as U.S. nationals, to adjust middle or secondary students with qualifying years of U.S. residency to permanent resident status, and to open the paths to federal and state higher education assistance while they are applying for the cancellation of removal.

The first bill under the name of “DREAM Act” was introduced by Senators Orrin Hatch (R-UT) and Maria Cantwell (D-WA) in August 2001, intending also to amend the IIRAIRA prohibitions on the undocumented youths’ educational opportunities. Although the terrorist attacks of September 11th, 2001 happened right after the introduction, the bill was reported back by Senator Patrick Leahy (D-VT) with an amendment to the Senate on June 2002 (S. 1291). Various versions of the DREAM Act have been introduced without success since then, but all are based on the idea that undocumented aliens who crossed the border as children should not be burdened with the penalty for the wrongdoings of their parents throughout their lives.

The 2007 bill, for example, incorporated four major conditions, namely having entered

the United States before the age of 16, graduated high school or obtained a General Educational Development certificate, having no criminal record, and having lived in the United States continuously for at least five years. Senate consideration of the bill (S 1348) was terminated in June 2007 as the cloture first failed by 33 (D 33, R 0)-63 (D 15, R 47, I 1), the second time by 34 (D 34, R 0)-61 (D 13, R 47, I 1) and the third time by 45 (D 37, R 7, I 1)-50 (D 11, R 38, I 1). With the backing of President Bush, the bill was re-introduced by Senator Kennedy as S. 1639 (“To provide for comprehensive immigration reform and for other purposes”), but the cloture failed again at 46 (D 34, R 12)-53 (D 15, R 37, I 1), virtually killing immigration reform for the remainder of the Bush administration.

2. Tightrope Walking of the Immigration Reform

The fact that Congress failed to initiate any reforms on immigration does not mean that there were no problems felt among the nation regarding immigration. Especially sensitive were the states bordering with Mexico, where immigrants, both legal and illegal, tend to concentrate and thus more resources are needed to meet the needs on the ground. It was the State of Arizona that passed the first state law on immigration issue in 2010, interfering with what is considered to be a federal matter. It is quite ironic that the people of Arizona demonstrated a harsh rejection of immigrants, while McCain, their Senator, traditionally had shown a strong support for immigrants despite the Republican leadership’s negative stance.

State of Arizona passed S.B. 1070, which demanded seemingly illegal immigrants to show official documents, or make it a crime if they fail to carry the documents, among other things. S.B. 1070 was slightly modified by H.B. 2162 to remove what appeared like racial profiling, while the main part challenging illegal immigration remained the same. The Obama administration immediately protested that the law undermines the federal authority over immigration as well as runs contrary to civil rights law. Other states experiencing the similar challenges from illegal immigrants, such as Alabama, Georgia, Indiana, South Carolina, and Georgia, also adopted similar state laws. In 2012, *Arizona, et al. v. United States* (567 U.S. ____ (2012), Docket No. 11-182) the Supreme Court upheld a provision allowing the State of Arizona to demand that aliens show official documents, while rejecting other parts of the law. Organizations supporting immigrants’ rights, such as ACLU, are continuing to challenge the constitutionality of Arizona’s and other state laws in order to protect the rights of undocumented aliens.

While the policy extending educational rights to undocumented children, namely the DREAM Act, remained undecided at the federal level, several states went ahead and took initiatives to adopt state versions of the DREAM Acts. For example, Texas first passed the state law allowing undocumented students to pay in-state tuition and attend public universities in 2001 (HB 1403). Other states also provide in-state tuition benefits to unauthorized students: California (AB130 and AB131 in 2011), Utah (HB 144 in 2002),

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New York (SB7784 in 2002), Washington (HB1079 in 2003), Illinois (HB60 in 2003), Kansas (HB 2145 in 2004), New Mexico, (SB 582 in 2005), Nebraska (LB 239 in 2006), Wisconsin (A75 in 2009), Maryland (SB 167/HB470 in 2011), Connecticut (H6390 in 2011), Colorado (S33 in 2013), Minnesota (S1236 in 2013), New Jersey (SB 2479 in 2013), Oregon (SB 742 and H2787 in 2013), and Washington (SB 6523 in 2014) (National Conference of State Legislations 2014).

There are, however, such states as Arizona (Proposition 300 in 2006), Colorado (HB1023 in 2006), Georgia (SB492 in 2008), South Carolina (HB4400 in 2008), Alabama (H856 in 2011), and Indiana (H1402 in 2011) that bar unauthorized immigrant students from in-state benefits (National Conference of State Legislations 2014). Besides conservative Southern states, it is interesting to note that Colorado and Indiana, which generally share liberal ideals, showed negative views on undocumented immigrant children. Colorado, however, started a very limited program of providing drivers' licenses to undocumented immigrants in August 2014 (S.B. 251) (Paul 2014).

On the federal level, the immigration reform took a back seat as the Obama administration had focused on the passage of healthcare reform as its priority. Thus, when the immigration issue finally came up for debate, Democrats had already suffered from the loss in the midterm election of 2010, and the national political mood had already entered Obama's re-election cycle. House barely passed the DREAM Act at 216 (D 208, R 8)-198 (D 38, R 160) in December 2010, the last moment of Democratic majority. The vote showed a clear partisan divide but it also suffered from nearly 40 Democratic members voting against President Obama's provisions. Besides Southern conservative members, members from Pennsylvania (7), Ohio (4), Indiana (3), and New York (3) joined the Republicans in voting against the DREAM Act.

Following the House passage, the Senate, which needs a filibuster-proof supermajority to move bills forward, failed to do so with the vote of 55 (D 50, R 3, I 2)-41 (D 5, R 36). The three Republican Senators supporting the Act were Senators Richard Lugar (R-IN), Lisa Murkowski (R-AK), and Bob Bennett (R-UT), among whom Senator Bennett had already lost in the primary of 2010 against a Tea Party candidate, and Senator Lugar subsequently lost his seat in the 2012 primary. The failed DREAM Act had to continue for reconsideration in the next Congress before the Republican-majority House and the Democratic Senate still short of filibuster-proof margin.

President Obama was critical of the Senate Republicans who blocked the passage of the DREAM Act, and pointed out that Republicans themselves were involved in the writing of the first DREAM Act bill in the 2000s. Obama especially pointed out the efforts that his administration made to meet the conditions Republicans had raised as follows:

We have more of everything: ICE, Border Patrol, surveillance, you name it. So we take border security seriously. And we take going after employers who are exploiting and using undocumented workers, we take that seriously. But we need

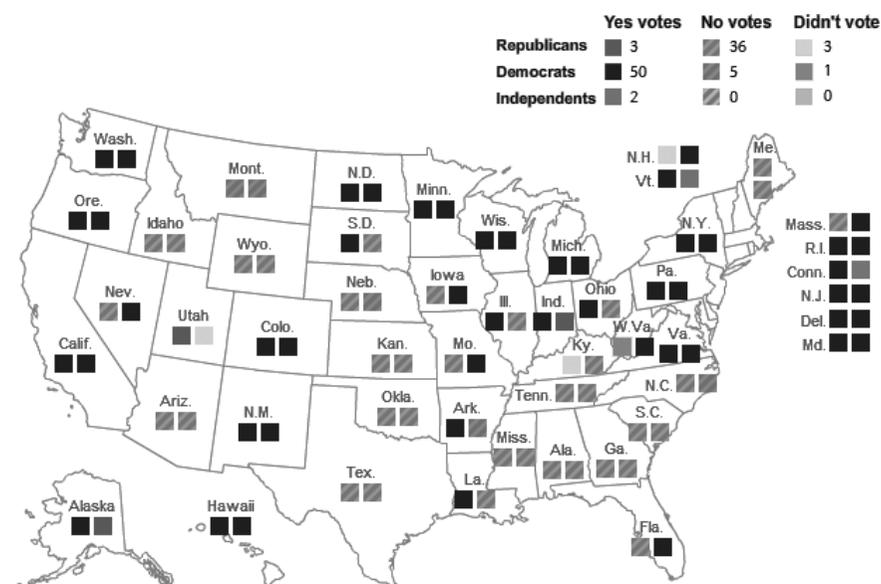


Figure 6 Geography of the Vote on the DREAM Act of 2010

Source: *New York Times* (December 18, 2010).

to reform this immigration system so we are a nation of laws and we are a nation of immigrants. And, at minimum, we should be able to get the DREAM Act done (Obama 2010).

Besides meeting the conditions, the Obama administration was trying to have the American public accept the DREAM Act by characterizing that the Act satisfies the interests of the American public. Among the benefits that the White House pointed out to the public includes the fact that undocumented youth contribute to American military's recruitment and readiness and pay more tax money by earning more income (White House 2010, 1). In the past, non-citizens served in the military and acquired citizenship upon discharge (USCIS 2010), and the Pentagon is now recruiting DACA youth to fill the special slots, called the Military Accessions Vital to the National Interest (MAVNI) (DOD 2012).

Such White House characterization of undocumented immigrant youth to the American public must be disappointing from the viewpoint of the immigrants themselves as well as supporters of the DREAM Act, but the document further states that American public should not be worried about the impact of the policy since "just 38 percent of all potential beneficiaries will successfully complete the DREAM Act's rigorous process and earn permanent immigration status" (White House 2010, 2). It further guarantees that the DREAM Act only applies to those who are already in the United States, and thus cannot act as a "magnet" encouraging others to come (White House 2010, 3). The attempt to

obtain support for the passage of the DREAM Act by the Obama Administration has ironically marred the character of the future citizens.

As expected, the path of the DREAM Act was further narrowed in the 112nd Congress starting 2011. The political agenda started to be overshadowed by the upcoming presidential elections and the Republicans had already taken the position that Obama's agenda would not have any chance of passing before the presidential elections. The Senate passed the Comprehensive Immigration Reform Act, including the DREAM Act, but the House did not make any moves toward voting.

III. EXECUTIVE ACTION VS. LEGISLATION

1. The Effect of Deferred Action for Childhood Arrivals

Faced with the impasse on immigration reform in Congress, President Obama tried to meet the challenges and take responsibilities via executive actions. The challenges that the immigration issue continued to pose were in the areas of economy and security, while the responsibilities were in the question of protecting the rights of undocumented immigrant children, who had already been within the borders of the United States.

There was a concern that DACA was not a legislative measure, but rather an executive action. Depending on the result of the upcoming presidential elections, those who made their illegal position in the United States exposed may be deported because of their own actions in the event that the next President changes the policy. Despite such concern, though, 152,420 undocumented aliens filed requests for DACA consideration in FY 2012. After Obama's reelection, 427,601 undocumented aliens filed requests in FY 2013, with the cumulative total of over 610 thousand of DACA requests as of December 2013 (USCIS 2014b).

The most utilized resources by DACA recipients were new job opportunities or better paid jobs, followed by driver's licenses, bank accounts, credit cards and healthcare. It is quite revealing that ordinary youths had been denied such ordinary opportunities because they were brought into the United States by their parents illegally.

Congressional action to legalize the status of undocumented youths through legislation continued in the 113th Congress. The Senate finally passed Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744) at 68 (D 52, R 14, I 2) - 32 (D 0, R 32) on June 27, 2013. The vote was still divided along party lines but more Republican Senators supported the immigration reform than in the previous trials and Democratic Senators who went against the President last time stayed along the party line. This Act introduced a new immigration category—registered provisional immigrant (RPI)—and unauthorized aliens meeting such conditions as continuous physical presence in the United States since the end of 2011 would be placed under this category.

The atmosphere of the Republican House, however, remained hostile towards undocumented immigrants. Senate-passed bills were rarely taken up in the House, and

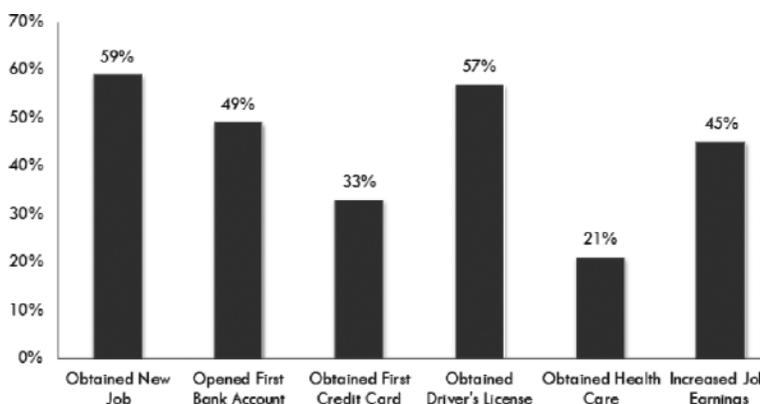


Figure 7 Resources Accessed by DACA Recipients

Source: Gonzales and Bautista-Chavez (2014, 3).

totally different sets of bills were introduced, such as the Border Security Results Act of 2013 (H.R. 1417) and Strengthen and Fortify Enforcement (SAFE) Act (H.R. 2278), among others. None of those bills moved forward to a vote and immigration reform virtually died before the midterm elections.

President Obama addressed the nation on July 12, 2014, stating that in the absence of congressional progress on immigration reform, he would further pursue executive action to relieve more undocumented immigrants. Against Obama's hardened stance, constitutionality of executive action in the absence of legislated measures invited arguments not only from the Republicans but also from the Democrats. For example, Chairman of the House Committee on Oversight and Government Reform, Representative Darrell Issa (R-CA), along with 32 Republican co-signers, sent a letter to President Obama and requested that he should end DACA which "violates the Constitutional principle of a separation of powers" (Dumain 2014).

In September, Obama decided to wait until after the midterm elections to take further actions in an effort to avoid inviting attacks from the Republicans, and thus causing the negative effect on vulnerable congressional Democrats. As of this writing, House is expected to continuously be controlled by the Republicans and Senate is projected to go under Republican control, even though the margin remains less than filibuster-proof. The incoming Congress will further block any immigration reform that President Obama had promised to the Hispanic voters back in 2008, and instead the border control and restriction of undocumented immigrants will be hardened.

2. Implication for Further Actions

Another reason why President Obama decided to keep a distance from expanding DACA before the midterm elections was the emerging question of unaccompanied

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children crossing the Southwest border with Mexico in an increasing number. The increase is said to be partially caused by the mistaken belief that DACA would provide undocumented alien children who reach American borders a path to American citizenship. In order to make use of the opportunity, children from Latin American countries are carried to the border, oftentimes by commercial agents. Dangerous societal conditions of Latin American countries, such as crime, drugs, and violence, are said to be also pushing parents to send their children to the United States.

The U.S. Customs and Border Protection Commissioner R. Gil Kerlikowske stated, “Our agency and the Department of Homeland Security have mobilized to address this situation in a way consistent with our laws and our American values” (U.S. Customs and Border Protection 2014). There had always been border crossings by undocumented immigrants, but those by unaccompanied child immigrants were a more recent phenomenon. American response to the crossings changed when it was determined that some of the immigrants actually were victims of domestic violence, and thus in need of protection by American government, rather than being rejected as illegal aliens.

The first Act allowing unauthorized alien children to stay within the United States was the Immigration Act of 1990 (PL 101-649). The law stipulated that any child or youth under the age of 21, born in a foreign county, living without legal authorization in the United States, and having experienced abuse, neglect, or abandonment may be eligible for special immigrant juvenile (SIJ) status. Children under SIJ status may become lawful permanent residents, which leads to U.S. citizenship if they meet certain Immigration and

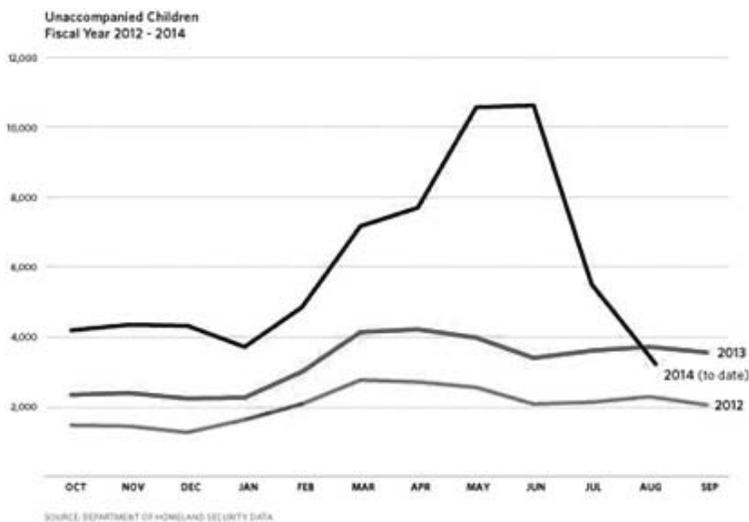


Figure 8 Number of Unaccompanied Children Attempting to Cross the Southwest Border

Source: White House (2014).



Figure 9 An Example of Danger Awareness Materials

Source: U.S. Customs and Border Protection (2014).

Nationality Act requirements.

Added to the framework of protecting abused immigrant children was the Victims of Trafficking and Violence Protection Act of 2000 (PL 106-386), which was reauthorized in 2003 and 2005. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (PL 110-457) expanded the eligibility for SIJ status to unaccompanied alien children, which was again reauthorized by the Violence against Women Reauthorization Act of 2013 (PL 113-4).

Unaccompanied children from countries south of Mexico spend some time in a detention center, and are either sent back to their country of origin or to their relatives in the United States. Alien children originating from the border between Mexico and Canada are treated differently from other unaccompanied children, and they are immediately met by officials and taken under the protection of the courts. The underlying idea in treating SIJs is to protect their best interests, so that U.S. government may return them to their parents' previous country of nationality or their last residence, or leave them with their sponsors such as relatives or family members living in the United States, even if sponsors themselves are undocumented aliens. It is also mandated that children are not asked such questions as the details of the abuse, abandonment, or neglect that they have suffered. Some of the records of these SIJs are missing, with authorities unable to locate them, even where deportation was subsequently affirmed by a judge. Consequently, these children have to be deported even after spending several years in the United States while waiting for the final judgment.

The number of Mexican undocumented aliens, which had exceeded the numbers of any

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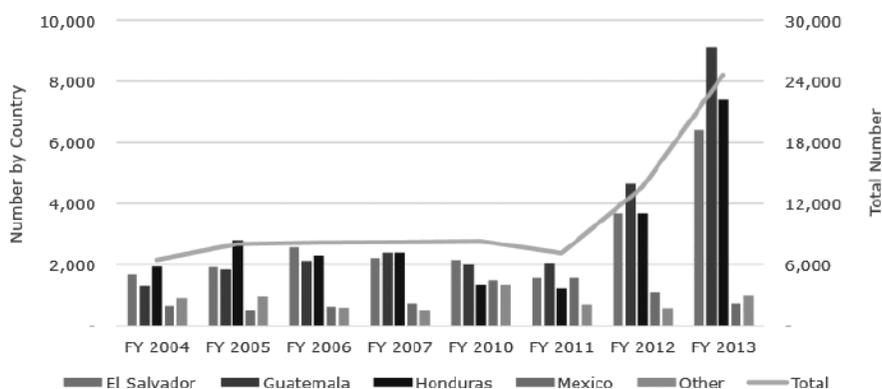


Figure 10 Number of children in ORR custody, FY 2004- 07 and FY 2010-13

Source: Bipartisan Policy Center (2014, 3).

other aliens, is actually declining, partly due to the straggling economic situation of the United States after the market crash of 2008 and partly due to the fast growing Mexican economy. The unaccompanied children are now coming from further South, from countries such as El Salvador, Guatemala, and Honduras, where not only the economic condition is dire, but criminal activities are threatening the safety of children.

Republican Governors of Alabama, Kansas, North Carolina, Pennsylvania, Utah, and Wisconsin have signed a letter to President Obama asking him to discourage the unaccompanied children from crossing the border by deporting them. Governors of Indiana, Maine, Mississippi, and Tennessee have complained against the federal government for bringing unaccompanied immigrant children to their states without prior notice. Contrasting to these negative responses are Maryland and Massachusetts, which provide unaccompanied immigrant children temporary homes (Wang 2014). There is already an effort to disconnect the inflow of unaccompanied children from the path to citizenship, and human rights groups are taking positions against such a backward-looking change.

The Obama administration is challenged by the question of the increasing number of unaccompanied alien children on the border, at the very moment when it is trying to have its immigration reform accepted by American public. These factors do not exactly have a causal relationship, but from the viewpoint of anti-immigration groups, because Obama's DACA policy is flawed, it has invited the unstoppable flow of unaccompanied children. Such perception may eventually make it difficult to create a common space to deal with the immigration reform before the end of the Obama administration.

CONCLUSION

The United States has been proud of its characterization as a nation of immigrants, and

the nation believes that immigrants accepted today will make American citizens in the near future. American immigration policies fluctuated overtime, adding some restrictions then taking them away sometime later. But if the fundamental value underlying the immigrant nation is used as a tool for political game, the integrity of the very nation fluctuates, as experienced during the immigration restrictions in the first half of the 20th century.

Controlling immigration without impairing the fundamental values continues to challenge American society, even after unfair immigration restrictions were removed. Immigration legislations under the Reagan administration, the Clinton administration, the Bush administration, as well as the Obama administration present eloquent examples for that. What has been added to this already difficult challenge is the highly charged political division of the nation—the so-called 50-50 America—since the Clinton administration. The terrorist attacks of September 11th, 2001, weakened the division for some time, but it came back in an especially harsh way during the Obama administration. As stated above, this is partly due to the leadership style of President Obama; however, the underlying partisanship, added by the challenges of the Tea Party, is making the consensus difficult to achieve.

The immigration issue touches upon not just the economic welfare of the nation, but underlying languages, religions, and cultural values. Thus it is difficult to find the way out when the politics is divided unrealistically from the beginning. However, the United States has to find the way out because one of the parties of this question, namely Hispanics, is increasing in number, which will not be reversed or even stopped in the near future. The other reason as to why this issue must be met immediately is that the future of many young people depends upon how American politicians resolve this issue. Not responding to the challenges that undocumented young immigrants are faced with today will not only affect these young people, but also shake the foundation of American society in the near future.

American society has responded constructively to questions where children are involved. The fact that the DREAM Act and DACA are supported by the public at large, despite the rejection by Republican congressional members, proves that this question can present the common space on which American society steps out of the partisanship, and moves forward to consensus-building based on dialogue. How the immigration issue is discussed and responded in the near future, thus, makes an important test case for the viability of American politics.

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