WHY ARIZONA? THE S.B. 1070 AND THE HISTORY OF IMMIGRATION
IN THE SOUTHWESTERN BORDER STATES

A Thesis
submitted to the Faculty of
The School of Continuing Studies
and of
The Graduate School of Arts and Sciences
in partial fulfillment of the requirements for the
degree of
Masters of Arts in Liberal Studies

By

Mary Kirk Laidlaw, B.A.

Georgetown University
Washington, D.C.
March 21, 2012
WHY ARIZONA? THE S.B. 1070 AND THE HISTORY OF IMMIGRATION IN THE SOUTHWESTERN BORDER STATES

Mary Kirk Laidlaw, B.A.

MALS Mentor: Kazuko Uchimura, Ph.D.

ABSTRACT

Geography, history, demography, and economics all bind the United States to Mexico. The four U.S. states that directly border Mexico – Arizona, California, New Mexico and Texas – are especially affected by relations between the two countries. These states have been on the receiving end of immigrants from Mexico, largely unauthorized. Arizona in 2010 passed a notably stringent immigration law, S.B. 1070, which provides legal support for the elimination of unauthorized immigrants from the state. Arizona’s focus on unauthorized immigration reflects the challenge of that issue to America in the twenty-first century. As legal challenges to S.B. 1070 proceed, other states have passed similar legislation during an unprecedented period of legislative activism at the state level. What historical, socioeconomic, and political factors led to the passage of S.B. 1070 in Arizona and how do these factors compare to characteristics of the other southwestern border states? To answer this question, the thesis begins in the early nineteenth century and sweeps the history of the American southwest and federal immigration law to identify the national, regional, and state policies and precedents that led up to the passage of S.B. 1070 in 2010. This review illuminates the complex of factors that put Arizona in the forefront of state-level immigration legislation in 2010 and at the center of the current contention over national immigration policy. Understanding this history is a necessary step if America is to legislate effective immigration policy reform.
NOTE ON TERMINOLOGY

The language used in discussions of immigration topics is often emotionally charged and can be unclear in communicating the various levels of legal status that are essential to the conversation. This thesis uses the following terms throughout:

- “The Southwest” refers to the four states that collectively define America’s border with Mexico which runs for a distance of 1,951 miles from San Diego, California in the west, along the south of Arizona and New Mexico, to Brownsville, Texas in the east.

- “Anglos” refers to Caucasian Americans who are citizens of the U.S. The term is interchangeable with whites, Caucasians, and Anglo Americans. Various sources that this thesis quotes include these terms; this thesis presents the terms as stated in the quoted works. Katherine Benton-Cohen of Georgetown University noted in her 2010 article, “Immigration and Border Politics in Arizona, Then and Now,” that ‘Anglo’ is “a term used in the Southwest in lieu of ’white’” (Benton-Cohen 2010a, 6).

- “Ethnic Mexicans” refers to all those residing in the U.S. who claim Mexican identity or ancestry. The term includes Mexican American citizens, legal residents of Mexican nationality, and unauthorized immigrants from Mexico.

- “Mexican Americans” refers to American citizens of Mexican ethnicity who were present at the time of annexation of the American Southwest and were thus entitled to American citizenship, Mexican immigrants who have naturalized, the American-born descendents of either, and the American-born children of unauthorized immigrants.

- “Unauthorized immigrants” refers to those persons who are foreign-born and who reside in the U.S. without federal U.S. documentation. Both those who entered the U.S. without documentation and those who overstayed legal visas are included in this term. Although migration can be circular, especially prior to the increased levels of border enforcement that evolved over time, this thesis refers to all those residing in the U.S. without official authorization as “unauthorized immigrants” regardless of length of stay. Where pertinent, the text identifies temporary or seasonal migration patterns.
# CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABSTRACT</td>
<td>ii</td>
</tr>
<tr>
<td>NOTES ON TERMINOLOGY</td>
<td>iii</td>
</tr>
<tr>
<td>CHAPTER 1. INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>CHAPTER 2. BORDER DEFINITION: THE SOUTHWEST’S IMMIGRATION PERSPECTIVES TAKE ROOT</td>
<td>10</td>
</tr>
<tr>
<td>CHAPTER 3. BORDER DEVELOPMENT: ANGLO AMERICANS CAPITALIZE ON THE SOUTHWEST</td>
<td>33</td>
</tr>
<tr>
<td>CHAPTER 4. BORDER TENSION: INCREASING UNAUTHORIZED IMMIGRATION AND THE SOUTHWEST FROM WORLD WAR II TO THE MILLENNIUM</td>
<td>74</td>
</tr>
<tr>
<td>CHAPTER 5. BORDER FAILURE: THE FEDERAL GOVERNMENT FAILS TO REFORM IMMIGRATION POLICY AND THE STATES ACT</td>
<td>122</td>
</tr>
<tr>
<td>REFERENCES</td>
<td>163</td>
</tr>
</tbody>
</table>
CHAPTER 1
INTRODUCTION

Geography, history, demographics, and economics all bind the United States to its southern neighbor, Mexico. Continuous migration across the border, trade and investment agreements such as 1994’s North Atlantic Free Trade Agreement (NAFTA), and increasing communication networks and cultural exchange provide evidence of the growing integration of the two nations. The U.S. states that directly border Mexico – California, Arizona, New Mexico, and Texas – are especially affected by relations between the two countries. They “face unique issues caused by the intersection of local, national, and international interests” (Benton-Cohen and Cadava 2010, 4). Since the time of their formation as American states, these four have been on the receiving end of immigration from Mexico, largely unauthorized. Each border state is unique in terms of its response as well as the impact of immigration on local and state issues. Arizona in 2010 passed a notably stringent immigration law, S.B. 1070. “Its aim is to identify, prosecute, and deport” all unauthorized immigrants from the state (Archibold 2010a).

The Problem of Unprecedented Levels of Unauthorized Immigration

Arizona’s focus on unauthorized immigration reflects the challenge of that issue to America in the twenty-first century. Since the passage of the Hart-Cellar Act in 1965, the national dialog about immigration policy has focused on unauthorized immigrants. History reveals that America’s response to unauthorized immigration since 1965 closely mirrors the response of Americans in earlier periods of high immigration. For example, the years 1880 to 1920 witnessed high levels of European and Asian immigration and the hardening of both of the U.S.’s land borders; the government designated specific border crossing points and created a law enforcement presence along the border. Regardless, unauthorized immigration and human smuggling surged during that period. Post-1965, unauthorized immigrants have crossed the
border in unprecedented numbers despite national, regional, and state-level attempts to stem the tide. “Determined migrants, an attractive labor market, and a long border ultimately undermined efforts to fashion an effective system of control over cross-border migration” (Ettinger 1994, 171). Since 1993 when President Clinton responded to citizens’ concerns with a strong border militarization effort, and especially since the terrorist attacks at the Pentagon and in New York City on September 11, 2001, America’s immigration policy has reflected a focus on immigration control through border enforcement. Once again, this approach has not worked to eliminate unauthorized immigration although it has increased costs for the nation and border states as well as the cost and risk for the immigrants themselves. The continued presence of unauthorized immigrants throughout America, especially in the Southwest, and firsthand accounts of life along the border bear witness to the failure of America’s federal immigration policy thus far. “Illegal immigration is a predictable consequence of demographic trends and current U.S. law in the face of global economic realities” (Gans 2006, 1).

In an article published on December 26, 2010 in The Washington Post, Roberto Suro of the University of Southern California, in accord with many other scholars, politicians, and journalists, identifies the status of the over eleven million unauthorized immigrants who already reside in the U.S. as “the most intractable problem by far” for the development of effective immigration policy. Of particular concern has been the concentration of unskilled and uneducated migrants from Mexico within the unauthorized population (Jacobson 2008, 49). Each decennial Census has enumerated the increase in this population in America, particularly in the Southwestern states. The unauthorized immigrants of the twenty-first century are typically here to stay. They have established social and economic relationships with institutions and persons in the communities where they are located (Schuck 1984, 43). They often live in families made up of citizens, legal residents, and other unauthorized immigrants (Wroe 2008,
They marry, have children who are American citizens by birth right, attend school, work, pay taxes, and receive limited public benefits that include education (Schuck 1984, 43). Their integration into American communities poses challenges to the law which must be just and balance the interests of many. If U.S. law creates opportunities for unauthorized immigrants in the U.S. to obtain citizenship, where is the justice for those who wait for legal entry? Law professor Peter H. Schuck recognizes that some Americans benefit from the presence of the unauthorized but writes, “It is also true, however, that most undocumented aliens have come here uninvited, that they remain here in knowing violation of our laws, and that any moral claims they may have must be compared to those of the numerous would-be immigrants who wait patiently, often at great personal cost, for legal admission” (Schuck 1984, 44). If U.S. law does not create reasonable levels of opportunity for legal entry, what, if any, rights and privileges enjoyed by citizens should convey to the unauthorized? For example, what aspects of America’s social safety net should apply to unauthorized immigrants? Such decisions must consider the potential effects on the nation of the creation of a permanent and legally unprotected underclass. As Roberto Suro argues in his December 26, 2010 article in The Washington Post, there would be a “cost to the nation’s political soul” even with amnesty if legal status came with no opportunity for citizenship and full participation in America’s democracy. “Conventional ideas about morality and community simply cannot adequately capture the complex, ambiguous character of the relationship between undocumented aliens and American society” (Schuck 1984, 44). And yet, America needs a body of law that does just that.

Recent economic recessions, especially the worldwide recession of 2008, seem to have made some dent in the level of unauthorized immigration, but despite “massive unemployment and ramped-up deportations” under the Presidency of Barack Obama, the decrease in the number of unauthorized immigrants living in the U.S. has been minimal; there is therefore little
reason to believe that further militarization of America’s borders will control unauthorized immigration (Suro 2010) and it certainly encourages those already present to stay. Fences, searchlights, and patrols have pecked away at the problem to little effect. Meanwhile, states such as Arizona must deal daily with the practical challenges of the unauthorized immigrant population and continued illegal entry; the challenges are real rather than ideological.

The Primary Concerns about S.B. 1070

The passage of S.B. 1070 drew significant national and international attention to Arizona, making it the black sheep of the American states. However, at the time of its passage, S.B. 1070 was extremely popular in Arizona (Camarota 2010). While a number of other states such as Alabama did follow Arizona with variations of anti-immigrant legislation, the national response was less approving. What accounts for the distance between public opinion within Arizona and that of much of the rest of the nation? And why is a law that, on its surface, simply encodes state enforcement of existing federal law a source of such controversy throughout America and the world? Two areas of primary concern are evident in the immediate legal challenges that face S.B. 1070. First, there is significant concern about the potential of the law to promote racial profiling and other forms of discrimination by those charged with upholding it. S.B. 1070 empowers officers of the law to investigate anyone they suspect of being in the U.S. without authorization. In a state that is home to many citizens of Mexican birth or ancestry, this is a significant issue. What is the legitimate basis for such suspicion? A law’s potential to encourage racial profiling is an issue that lawmakers and the public raise whenever immigration control legislation is proposed. For example, during the administration of President Jimmy Carter in the 1970s, the Congressional Hispanic Caucus objected to some aspects of proposed legislation due to its potential for interference with the civil and human rights of Hispanic Americans. The Caucus stated that laws requiring employers to verify the legal status of
potential employees and laws that introduced stringent security measures at the U.S.-Mexico border “would inevitably threaten anyone who even looked Hispanic in American society” (Gutierrez 1995, 4). The passage of S.B. 1070 brought such concerns to the forefront of national consciousness once more.

The second major area of concern evident in the legal challenges to S.B. 1070 and the responses to its passage is the potential for interference in federal immigration policy. While the states did control most aspects of immigration policy in the early history of the nation, that changed decisively by 1900. Since then, there has been little state-level immigration legislation. Typically, states limited their legislative activity to areas specifically allowed to them by federal law. These areas include unlegislated aspects of the provision of federal and state-funded public benefits to immigrants, declarations of official language, and access to state-funded education (Nicholson-Crotty and Nicholson-Crotty 2011, 613). Even in these few areas, significant legal challenges have illuminated the fact that there is currently much confusion about states’ rights to legislate immigration-related policy details. The failure of federal immigration policy reform in the early twenty-first century encouraged the states to become active in this legislative area again. S.B. 1070 is the most controversial of the immigration-related laws passed at the state level during this period. Like the voter-approved but court-restricted Proposition 187 in California, S.B. 1070 addresses areas of law traditionally left in the hands of the federal government. As of December 2011, the U.S. Supreme Court agreed to hear the case of the U.S. government claims that Arizona’s law extends the hand of the state beyond the acceptable boundary of state jurisdiction and interferes with preemptive federal power over immigration and naturalization. Arizona has requested that the Supreme Court review the decision of the Ninth Circuit that declared S.B. 1070 unconstitutional and prohibited the implementation of most of its provisions (Barnes 2010). The state’s argument, which the Supreme Court will hear
in 2012, is that the Court’s decision restricts Arizona’s ability to cooperate with federal law to control unauthorized immigration (Barnes 2011).

**Asking the Primary Question about the Passage of S.B. 1070**

At first glance, legislation such as S.B. 1070 appears to be the product of the nativism that has coursed through the nation in response to all of the great waves of immigration in U.S. history. In fact, much of the backlash against S.B. 1070’s passage has labeled it as such. But a close reading of a sample of the abundant scholarly works on immigration policy responses, as reflected in the References section of this thesis, illuminates the complex stew of socioeconomic and cultural factors behind laws such as S.B. 1070. John Higham, author of the seminal 1955 work on American immigration, *Strangers in the Land*, notes more recently that “some concerns about immigration were rooted in legitimate concerns of day-to-day life rather than virulent ideology” (Kammer 2010, 4). While nativism is part of the mix of forces that propels legislative response to large waves of immigration, the literature supports the understanding that nativism is not the sole or even primary force. “The larger framework in which to set mass immigration in any era consists of the real socioeconomic strains and thus policy issues that these invariably generate” (Graham 2004, 35). Thus, it is important to look deeper than nativism alone when determining the impetus behind S.B. 1070. In order to understand the passage of Arizona’s law, this thesis asks and answers the question: Why is Arizona at the epicenter of immigration policy development in the early twenty-first century and what in its history distinguishes its response to immigration? The thesis sweeps the history of America’s Southwest as a region, and the history of Arizona and the other three Southwestern border states individually, to identify the unique factors that contributed to the passage of S.B. 1070 in Arizona in 2010. The thesis examines how, if at all, Arizona differs from the rest of the U.S. and particularly from the other three border states which also deal with ongoing unauthorized
immigration. Any historical analysis of Arizona’s response to immigration must recognize that the border states’ experiences with immigration policy and issues differ from the experience of the rest of the U.S. “Even in an era of global migration and tremendous ethnic diversity, Arizona and other border states have to address issues that Iowa, Delaware, and Georgia do not” (Benton-Cohen 2010a, 13).

The principal hypothesis of this thesis is that the American Southwest does have a unique history of immigration beginning with its treatment of the Mexicans who found themselves to be residents of the U.S. after the Mexican-American War and the Gadsden Purchase. And within the American Southwest, Arizona has its own unique immigration history that reached crisis proportions in the first decade of the twenty-first century. To support this hypothesis, the thesis presents the history of the Southwest from the early years of the nineteenth century through 2010, focusing on the treatment of the ethnic Mexicans, including Mexican Americans, by the four border states and their relative inclusion or exclusion in political and economic life.

Why This Question Matters

In writing about California’s late twentieth century experience with immigration from an economic perspective, Kevin McCarthy and Georges Vernez of the Rand Corporation state that debates about immigration policy typically involve “advocates stating their views without the benefit of a nonpartisan assessment of the issues” (McCarthy and Vernez, xiii). This statement unfortunately applies to the quality of national discussion of Arizona’s S.B. 1070 and the state-level debates leading up to its passage. Certainly, in the months following the passage of the law, officials defended the state’s legislative position using unsubstantiated statistics and arguments rooted in the myths of America’s past. Signs and slogans from earlier eras such as “No Irish Need Apply,” “The Chinese Must Go,” and “Japs Keep Moving” echoed in the
remarks of immigration partisans, vigilantes, and even elected officials in the early twenty-first century (McCarthy and Vernez, xiii). Advocates of extreme positions -- from complete restriction with militarized borders to open borders without recognition of the sovereignty of nation-states -- dominated the discussion. To the present, coverage of isolated violent incidents, sensationalistic stories, and often inaccurate crime statistics fill the news. States and localities continue to react. The result is a jumble of inconsistent laws and policies that vary from state to state. Peter Schrag, Visiting Scholar at the Institute for Governmental Studies at the University of California, Berkeley, calls the result “the crazy quilt of contradictory local responses” (Schrag 2010, 9). Further complicating the picture and confusing the electorate, elected officials often flip-flop in their stance on immigration policy issues. Peter Schrag notes the example of Arnold Schwarzenegger of California who, while serving as governor in 2004, praised the citizen militias which were patrolling the Southwest’s border in order to block the entry of unauthorized immigrants to the U.S. In 2007 Governor Schwarzenegger recanted his support for the vigilantes and signed a bill that prohibited municipalities in his state from requiring that landlords check the legal status of their tenants (Schrag 2010, 9). As an example of hyperbole, Governor Jan Brewer of Arizona claimed that the desert was littered with headless corpses; she later corrected her statement but the damage was done (Milbank 2010). This thesis attempts to examine the primary question from a non-partisan perspective; a review of the References reveals the fact that many perspectives were considered as part of the writing process. Intentionally, the thesis does not make normative judgments on immigration policy issues. Rather, it provides a history and attempts to objectively identify the factors -- national, regional, and state -- that were part of the context for the passage of S.B. 1070. As America proceeds to address the legal questions about the law, it is important to accurately identify all of the factors that influenced the state legislature of Arizona to pass S.B. 1070 in 2010. Although familiarity
with some basic statistics regarding the number of immigrants from Mexico and the proportion of population growth those immigrants represent, particularly in the Southwest, does provide some insight into the reasons for S.B. 1070’s passage, it is necessary to center the understanding of S.B. 1070 in the context of Southwestern history. “Lacking an educated understanding of the unique conditions at the periphery, the mainstream society is constantly irritated at the deviant behavior found at the border and is perpetually concerned about the problems the zone generates for the nation-state” (Martinez 1988, 2-3). For the federal government to be successful in legislating immigration reform that is acceptable to its citizens, enforceable, and effective in addressing the issue of unauthorized immigration, a thorough understanding of the Southwestern border is crucial. It is important to consider Arizona in order to ensure that America’s immigration law – local, state, and federal – “not only speaks to the nation’s vision of itself” but accurately “signals its position in the world and its relationships with other nation-states” (Ngai 2004, 9).
CHAPTER 2

BORDER DEFINITION: THE SOUTHWEST’S IMMIGRATION PERSPECTIVES TAKE ROOT

Once France and the United States signed the Louisiana Purchase in 1803, Mexico’s northern lands stood on America’s southern border and became the primary focus of U.S. territorial ambitions. That border has evolved since, dividing a region of shared culture, climate, and economy and creating lasting bitterness due to the violent conflicts and ethnic discrimination that characterized the course of its definition (Martinez 1988, 30). This chapter surveys the history of this region in the nineteenth century, the period of national border formation, and charts the region’s turbulent transition from Mexican North to American Southwest. The annexation of the Southwest by the U.S. and the historical relationship between the Anglo Americans and ethnic Mexicans residing in that region are significant contributing factors to today’s immigration issues. Of particular relevance to the primary question that this thesis attempts to answer are the differences between the four U.S. states of Texas, California, New Mexico and Arizona which were born from Mexico’s state of Tejas and territories of Alta California and Nuevo Mexico during the nineteenth century. Within the story of the Southwestern region as a whole, each state has its own unique story of development, border delineation, and socioeconomic interaction between ethnic Mexican and Anglo American populations. Those stories resonate today in the attitudes, laws, and policies of each state regarding immigration – both legal and unauthorized. Here in the nineteenth century the story of Arizona’s S.B. 1070 begins.

1821 - 1840: Mexico Faces Challenges along its Northern Border

It was only in 1821 that Mexico won its independence from Spain which had held it as a colony since the sixteenth century. At the time of Mexican independence, Mexico’s north was
sparsely populated and culturally disconnected from the new nation’s center of government in Mexico City. Nuevo Mexico had a higher population than Tejas or Alta California; a number of prominent Mexican families with strong Spanish ancestry inhabited the land along Nuevo Mexico’s northern border where they engaged in farming and sheep raising. Spain had deemed the placement of loyal settlements there to be a necessary protection against French incursion (Navarro 2005, 56) and the Pueblo Indians of the region were a ready source of labor for the settlements (Maciel and Gonzales-Berry 2000, 12). The westernmost area of Nuevo Mexico, which later became the U.S. state of Arizona, had a small population as compared to the rest of Nuevo Mexico at the time. Arizona’s desert climate was extreme, its geography which included the Grand Canyon was challenging, and its Apache tribes warred with all interlopers (Navarro 2005, 58). Over time, the settlements in Nuevo Mexico’s north had developed strong trading relationships with the Americans who used the Santa Fe Trail to transport American goods to and from the territory (Maciel and Gonzales-Berry 2000, 13). Because of those relationships, the earliest American settlers there tended to be trappers and traders who integrated into the Mexican majority, intermarrying and forming mutual economic interests (Rodriguez 2007, 75).

In comparison to the territory of Nuevo Mexico, Alta California, which extended to the north of current day San Francisco, had a pacified Native American population and a prosperous ranching and farming economy built on its fertile soil. The Catholic Franciscans sponsored by Spain had established thriving missions of Native Americans up and down the Pacific coast in the late 1700s. Particular population centers in Alta California were Los Angeles, San Diego, Santa Barbara, and Monterey (Navarro 2005, 58). Mexico’s state of Tejas, which had been settled predominantly by Native Americans from central Mexico, remained, like Arizona, sparsely populated in 1821. El Paso was its major population center and San Antonio was also home to a relatively significant population as compared to the rest of the Mexican state.
Ranching and farming drove the economy there as it did in the rest of Mexico’s north (Navarro 2005, 57).

The U.S. federal government, having been successful in the Louisiana Purchase and the purchase of Florida from Spain in 1819, sought to persuade the new nation of Mexico to sell its northern territories outright (French 2010, 14). These offers continued the pattern of previous offers to Spain. The Mexican government, though weak and in need of funds, consistently refused American overtures (Navarro 2005, 67). However, the frequency of the offers as well as the frequency of Apache and Comanche attacks, especially in Tejas and the Arizona region of Nuevo Mexico, convinced Mexico of the need to protect its northern settlements through development. Continuing a policy practiced earlier by Spain, Mexico’s new government invited Americans to settle in its northern lands in order to further populate those areas and hold them for the Mexican nation (Navarro 2005, 66). In return for land grants, Mexico required that American immigrants meet specific economic standards and become Mexican citizens and Catholics (French 2010, 25). Tejas was in particular need of settlement. The government’s recruiting efforts there were highly successful in attracting Americans including many Southern farmers who brought their slaves from small plantations and family-owned farms (Navarro 2005, 67). These newcomers used their Mexican land grants to introduce the cotton industry to Tejas, establishing plantations in east Tejas and along the state’s rich coastal plains (Foley 1997, 18). In addition to the Americans who met Mexico’s economic requirements and received official land grants in return for pledging loyalty to Mexico and Catholicism, many other Americans migrated to northern Mexico and settled without legal claim. As a result, the American population increased significantly throughout the 1820s across all of Mexico’s northern territories, with the exception of the Arizona region of Nuevo Mexico (French 2010, 25). Tejas’s population growth was especially strong (Foley 1997, 18).
Mexico was less successful in converting its new residents into loyal Mexicans than it was in attracting them to settle. Over time, the predominance of Americans in Mexico’s north, the remoteness of these provinces from Mexico’s capitol, and the focus of the new government in Mexico on more pressing national issues made the area an increasing challenge to govern and encouraged the development of a unique border culture based on autonomy and self-reliance (Maciel and Gonzales-Berry 2000, 13). Borders are inherently tense; “these tension-generating circumstances at the frontier are well enough understood by local people, especially decision-makers, and many conflicts are diffused through the use of time-tested informal mechanisms that often circumvent national laws” (Martinez 1988, 6). The American settlers, who did not even share the language of their new government, determined to maintain their American identity despite their promises and began to act on that determination as early as 1826. American settlers just north of Austin declared their land to be Fredonia, an independent republic. The Mexican army easily overcame the Fredonia rebels who fled north to the U.S. (French 2010, 26). In the aftermath of the rebellion, an alarmed Mexico sought to regain control and enacted a number of restrictions across its north. Residents viewed as particularly punitive the edicts that outlawed slave holding, constricted further immigration from the U.S., and enforced Catholicism. As the regional tensions mounted, divisions widened between Mexican and Anglo neighbors (Navarro 2005, 69). This was markedly true in Tejas where slavery was tied to the profitability of the cotton economy and the population now tilted heavily towards Americans. By 1830 approximately twenty thousand American citizens, over two thousand of their slaves, and a sudden minority of four thousand Mexicans resided there (Navarro 2005, 68).

The rebellion of Fredonia may have failed but it was an omen of things to come. Despite more moderate population shifts in Nuevo Mexico and Alta California than in Tejas, conflicts throughout Mexico’s north continued alongside further unauthorized American
migration throughout the 1830s. In Tejas, Americans dominated and events continued to build towards full-out revolt. The sleepy, neglected, and sparsely populated Tejas of 1821 existed no more and the rebellious Texas was beginning to be born. Tejans acted boldly in 1835, declaring independence from Mexico and claiming, on paper, land all the way to the Rio Grande which was well beyond Tejas’s southern boundary of the Nueces River. According to historian David Montejano, the desire to control the Rio Grande and its potential as a trade route was an impetus behind the rebellion (Montejano 1987, 18). Texas historian Neil Foley emphasizes as an additional causative factor in the rebellion the intention of Anglo Texans to continue to own slaves in defiance of Mexican law (Foley 1997, 18-19). The Tejas Revolt was led by many southern-born Americans including Jim Bowie, Davy Crockett, and William Barrett Travis. These men were among those who lost their lives during the legendary siege of the Alamo in which a small number of Texans unsuccessfully defended the mission against Mexican troops (Foley 1997, 18-19). The fighting ended at San Jacinto with a Mexican defeat and the founding of the Lone Star Republic.

The Tejas Revolt, particularly the battle of the Alamo, spawned a Southwest mythology of valiant Anglo Americans fighting inferior Mexican bandits for the right to self-rule (Montejano 1987, 223-225). Anti-Mexican sentiment abounded despite the fact that a significant number of Tejas’s Mexican residents matched the Americans in their resentment of the central government’s intervention in the state’s affairs and had actively participated in the Revolt. Mexicans living in the Lone Star Republic experienced great tumult after the Texan victory regardless of the side they had supported. Many were evicted from their homes, “were treated as foreigners in their own land and were subjected to white racial and physical attacks, discrimination, and retribution” (Navarro 2005, 72). As Tejas’s Mexican residents attempted to fight back against the violence and blatant discrimination, a great deal of lawlessness occurred
on both sides of the ethnic divide. The Lone Star Republic extended the protections of its new Constitution to white residents only, specifically excluding blacks and Native Americans. This left Mexicans to prove their whiteness in order to gain citizenship and retain their land ownership rights in the Republic (Foley 1997, 19). In reviewing the nineteenth century history of the Southwest, it is important to note that the Revolt succeeded due to good timing and unofficial U.S. support. First, the rebellion occurred during the political tumult that was part of Mexico’s early formation (Maciel and Gonzales-Berry 2000, 13). Second, the U.S. federal government under President Andrew Jackson unofficially supported the Revolt with funds, volunteers, and armaments (French 2010, 29), even though American leaders such as former President John Quincy Adams disapproved (French 2010, 32). While political analyst Gregory Rodriguez indicates that “the Texas revolution may not have been an explicit struggle over slavery,” concepts of race and laws regarding slavery were major contributors to the tensions along the entire U.S.-Mexican border during the mid-nineteenth century (Rodriguez 2007, 82).

The Lone Star Republic, now free of Mexican governance, immediately declared slavery legal within its borders (Foley 1997, 19).

While the right to hold slaves was not as salient an issue in Nuevo Mexico, the residents of that territory, like the Texans, objected to the imposition of high taxes by a government that generally left them in “isolation and neglect” (Maciel and Gonzales-Berry 2000, 13), especially in the sparsely populated area of Arizona. Additionally, Nuevo Mexicans resented the new governor who was sent from central Mexico to oversee the territory and its tax collection. Emboldened by the success of Tejas, Nuevo Mexicans rose up in protest. While their 1837 action, known as the Chimayó Rebellion, did result in the beheading of the unfortunate Governor Albino Perez, the Mexican army crushed the rebellion (Maciel and Gonzales-Berry 2000, 13). Significant to the defeat, the predominantly Mexican population did not receive the
same support from the U.S. government as had the predominantly Anglo population of Tejas. “But once the grassroots rebellion was squelched, the stage was set for American occupation” (Maciel and Gonzales-Berry 2000, 13).

1840 - 1853: The U.S. Defines its New Southwest

The Mexican government never accepted the separation of Tejas from its holdings and launched several incursions into the Lone Star Republic which it viewed as occupied territory (French 2010, 32). Violent disputes erupted regularly at the Republic-Mexico border which was still located along the Nueces River despite the Republic’s claim to the potential-rich Rio Grande (Montejano 1987, 18-20). The Lone Star Republic’s government, headed by Sam Houston, soon requested annexation by the U.S. but the Republic’s pro-slavery stance initially complicated the matter (French 2010, 32). Before long, concern over adding another slave-holding state to the Union became less significant to the American government than did its ambition for territory. Due to the frustration of its expansionist ambitions by Mexico’s continued refusal to sell its territories of Alta California and Nuevo Mexico, the U.S. federal government used the border violence as a pretext for action in 1845. According to official justifications, the presence of so many Americans in Mexico’s north made the violence along the Lone Star Republic-Mexican border an American cause (Navarro 2005, 75). President Polk annexed the Republic, declaring Texas America’s twenty-eighth state in 1846. The statehood declaration did not specify Texas’s southern and western boundaries but did add another slave state to the Union which was already experiencing tensions that would lead to the Civil War (French 2010, 33). Mexico considered the annexation a hostile action akin to a declaration of war and responded by breaking off diplomatic relations with the U.S. Regardless, President Polk’s administration continued its offers to purchase Mexican territory. The Mexican government continued to decline and refused to meet with Polk’s emissaries (Navarro 2005,
75). In response, President Polk ordered Commander Zachary Taylor and American troops to cross the Nueces River and advance to the Rio Grande, claiming as part of the new U.S. state of Texas the region that had been subject to continued dispute between Mexico and the Lone Star Republic (Menchaca 2011, 16). As Taylor advanced, Mexican forces resisted. Congress declared war with Mexico in May 1846. It is worth noting that in Mexico, the Mexican-American War is known as the War of Northern Aggression (French 2010, 33).

Soon after the start of the Mexican-American War, the U.S. invaded the Nuevo Mexico and its Mexican governor surrendered without conflict, judging the conflict to be unwinnable (Herrera 2000, 28-30). Despite official acceptance of the occupation, the territory’s Mexicans and Native Americans allied to resist the American military (Navarro 2005, 79). The major conflicts occurred in Taos and Mora with the U.S. victorious in both (Herrera 2000, 32-35). While there was also some resistance to the invasion of Alta California by U.S. troops, that territory soon fell to the Americans. As the war proceeded and the U.S. made its way west to the Pacific Coast and south towards Mexico City, the U.S. government debated whether to acquire the entirety of Mexico or only its northern territories. The acquisition of Nuevo Mexico and Alta California, along with ownership of the Rio Grande, had been the original aim of the U.S. action (Menchaca 2011, 17). Resulting from this debate, attitudes towards Mexicans and their innate differences from Anglos crystallized. “Significantly, the debate over Mexico and Mexicans also inspired Americans to envision themselves clearly and emphatically as an Anglo-Saxon race destined to dominate the world” (Rodriguez 2007, 96-97). Throughout the Southwest, Anglo actions were based in the belief that “while segments of the Mexican upper class could be assimilated into Anglo American society, the Mexican working class was generally viewed as unassimilable” (Rodriguez 2007, 107). The argument that ultimately limited American ambition for Mexican territory was that governance of the Mexican
population would be required if the acquisition included Mexico’s major cities. “There was little or no support” for granting Mexicans the rights of U.S. citizenship and few believed that America could absorb the large Mexican population without damage to Anglo American culture (Rodriguez 2007, 93-94). Historian David Gutierrez highlights this perspective by quoting Senator Lewis Case of Michigan who stated during a Congressional session in 1847, “We do not want the people of Mexico, either as citizens or subjects. All we want is a portion of territory, which they nominally hold, generally uninhabited, or, where inhabited at all, sparsely so, and with a population, which would soon recede, or identify itself with ours” (Gutierrez 1995, 16).

In late 1847, U.S. forces fought their way to Mexico City where the Mexicans, led by General Santa Ana, ultimately surrendered. Mexico and the U.S. signed the Treaty of Guadalupe Hidalgo in February 1848. The Treaty recognized America’s incorporation of over half of Mexico’s territory and included the entire states of New Mexico and Texas, large portions of Arizona and California, and parts of Colorado, Nevada, Utah, Wyoming, Oklahoma, and Kansas (Martinez 1988, 16-17). The Treaty imposed terms of peace that were “so severe that [Mexico] also lost the political war of maintaining its own territorial integrity” (Navarro 2005, 77). Mexican resistance to U.S. rule did occur throughout the annexed territory after the war’s conclusion. Again, the most intense activity took place in Texas where the long history of conflict over the southern border continued to resonate. With at least sixty thousand of the total Mexican population of the annexed land -- between seventy-five and one hundred thousand -- residing within its borders (Maciel and Gonzales-Berry 2000, 14), the New Mexico territory also experienced some organized resistance. Insurgents destroyed infrastructure including rail lines, fences, telegraph lines, and ranch buildings (Rodriguez 2007, 103). But such actions were sporadic; with the exception of those few thousand New Mexicans who protested by moving
south into Mexican land, most prominent Mexican families in New Mexico aligned themselves with their minority American neighbors “and came to acknowledge and accept the inevitability of an American future” (Rodriguez 2007, 105). In Alta California, many prominent Mexicans, “fairly sophisticated, landed, and populous” (Rodriguez 2007, 79), welcomed the alliance with America. Historian Armando Navarro chronicles the post-war period of “armed resistance” across the Southwest up until the 1880s, noting the ethnic hatred and violence on both sides but noting the limits of Mexican resistance. “Yet at no time did these social bandits evolve into viable revolutionary or insurgent social movements” (Navarro 2005, 102-115).

The war’s end in 1848 swiftly changed the Mexican North to the American Southwest. The number of Americans moving to the new Southwest from America’s Deep South and East rose immediately and post-war anti-Mexican attitudes continued to rise along with Anglo numbers. Although specifics varied by location and local economy, Mexicans throughout the Southwest were typically treated with “American arrogance and disdain” as well as the bitterness resultant from any war (Gutierrez 1995, 14). In that atmosphere, the U.S. government ceded much of the responsibility for implementing the Treaty of Guadalupe Hidalgo to the governments of the new state and territories; the federal government did not enforce the Treaty’s promised protections of land ownership and citizenship rights for Mexicans who now found themselves residing in America (Maciel and Gonzales-Berry 2000, 14). Texas and California’s agricultural regions were the locations where “the most dramatic manifestations of Americans’ racist tendencies emerged” (Gutierrez 1995, 18). New Mexico, with its concentrated Mexican population which was already integrated to some degree with Anglos and its sparsely populated region of Arizona, also experienced ethnic tensions but to a lesser degree than the rest of the Southwest (Maciel and Gonzales-Berry 2000, 15).
Despite New Mexico’s substantial population and its officials’ active overtures to the U.S. federal government to grant statehood in the immediate post-war years, Congress declared New Mexico a territory rather than a state in 1850; statehood was not federally debated again until 1865 and did not come to pass for over sixty years (Nieto-Phillips 2000, 100-134). The territorial designation was due at least in part to the reluctance of Eastern legislators to grant statehood to a region that was predominantly Mexican, Spanish-speaking, and Catholic (Maciel and Gonzales-Berry 2000, 14). The reluctance of Southern legislators to invite another abolitionist state into the Union as the Civil War approached was another cause (Nieto-Phillips 2000, 100). The Organic Act for the Territory of New Mexico, part of the Compromise of 1850, limited voting rights to “free white male citizens;” Mexicans, with the exception of the Pueblo Indians of the region, were included in that category (Nieto-Phillips 2000, 99-100). Because New Mexico was a territory, voting privileges were limited to the regional level. Territories did not have voting representation in Congress, territorial governors were appointed by the U.S. president, and territory residents could not vote in national elections. In its post-war years, New Mexico grew more slowly than Texas and California and changes there were few due to its distance from America’s highly populated areas. The economy continued to center on ranching and raising sheep. This slow pace of change supported the continued power of the territory’s influential and wealthy Mexican American elite who continued to hold land and elected office. Their majority status and effectiveness “in cutting their deals with white elites” ensured the continued participation of Mexican Americans in public matters as the territory approached statehood (Navarro 2009, 41). Mexican Americans in the territory were able to hold onto “economic, political, and cultural power longer than they did in California or Texas” (Rodriguez 2007, 113). It is important to the understanding of Arizonan history to note that the Mexican elite of New Mexico resided in the north and east of the territory, due to the settlement
pattern of the Spanish colonial era, and not in the region that ultimately became Arizona. “The Nuevomexicano community, particularly in the north, retained its ethnic distinctiveness, reflecting its deep roots in the area and an unshakable pride in its ancestry and cultural legacy.” This distinguished northern New Mexico from other areas of the Southwest, a distinction that would persist throughout its history (Maciel and Gonzales-Berry 2000, 18-19).

California’s exponential growth after 1848 was due in part to the general post-war surge of Americans to the Southwest but the discovery of gold at Sutter’s Mill in Coloma had a greater impact on the population of that Territory (Navarro 2005, 132). A week before the signing of the Treaty of Guadalupe Hidalgo, the California Gold Rush began to propel over two hundred thousand American citizens west. With the number of Mexicans in California in 1848 numbering only approximately ten thousand (Gutierrez and Zavella 2009, 1), the Anglo newcomers easily overwhelmed the existing Mexican population. Approximately one hundred thousand foreigners joined these Americans in the rush for gold. Within two years, despite the arrival of Mexican immigrants amongst the foreigners, only eleven percent of California’s population was Spanish-speaking (Rodriguez 2007, 106). The ownership of land, including the right to mine it, became an issue of significance in the lives of all California residents, new and old, as Anglo Americans drove towards control of California and its riches. The first Constitution of California, adopted in 1849 just prior to attainment of statehood in 1850, granted the right to vote to only those males identified as white; most Mexicans as well as all Native Americans, mestizos, and blacks were disenfranchised (Rodriguez 2007, 123). “Their equivocal racial status and the murky definition of ‘whiteness’ made Mexicans highly vulnerable to violations of their rights” in California because each individual jurisdiction made its own decisions (Rodriguez 2007, 124). As the competition for gold intensified, the new state passed the Foreign Miners Tax in 1850 to discourage foreigners, including Mexican nationals, from
mining (Navarro 2005, 133). The Tax emboldened American miners to intimidate and harass ethnic Mexicans who persisted in mining (Gutierrez 1995, 19). Because the Anglo Americans did not distinguish between Mexican nationals and Mexican Americans, miners abused American citizens along with Mexican nationals and “forcefully” expelled them from the gold fields (Gutierrez 1995, 19). On the heels of the Miners Tax, the California legislature passed the Land Act of 1851 which voided the land grants previously made by Spain to those of Native American ancestry, including mestizos. These lands were among “the most coveted property in California” (Menchaca 2011, 23). Across the Southwest, the post-war confiscation of the property of Mexican American landowners and their active response was a significant law and order problem. The issue became so heated in Texas that the Texas Supreme Court ruled in 1853 in Cook v. de la Garza (13 Tex., 447) that the property confiscation was illegal and punishable by incarceration. Subsequently, the Texas Supreme Court also acted to protect the rights of Mexican Americans to inherit property (Menchaca 2011, 30). Regardless of these legal victories, a series of punitive expulsions occurred in central and southeast Texas in the mid to late-1850s; entire communities were forced from their homes and pushed south towards Mexico. In San Antonio, the Mexican population of the period fell by half (Montejano 1987, 28-29).

Despite the huge territorial gain achieved by the Mexican-American War, the U.S. continued to consider its shrunken southern neighbor an encumbrance to America’s economic progress. Seeking a more direct railroad route from Texas to California, the U.S. again pressured the beleaguered Mexican government of President Santa Ana to sell more of its north (Navarro 2005, 95). This time, the Mexicans were vulnerable. The 1853 Gadsden Purchase broadened America’s territory to include part of Mexico that ultimately became the southernmost strip of New Mexico and Arizona south of the Gila River, including Tucson. The
U.S. initially added its land acquisition to the U.S. Territory of New Mexico. Along with the land, the U.S. inherited the small Mexican population of the area. As it had in negotiations leading to the Treaty of Guadalupe Hidalgo, the Mexican government again attempted in the language of the Gadsden Purchase to protect the rights of the region’s Mexicans residents. Again, the agreement guaranteed their right to choose U.S. citizenship and to continue to own property or to move south to Mexico.

1854 – 1865: The Southwest Border and Attitudes Harden Leading Up to the Civil War

The U.S. federal government again failed to enforce its guarantees to Mexico, leaving their implementation up to New Mexico. The loss of land and social standing experienced by Mexicans throughout the Southwest beginning in 1848 was extended after 1853 to the Mexican residents of the land acquired via the Gadsden Purchase. The Purchase gave the U.S. the land on which to develop a southern railroad route to the Pacific and “a region of great potential wealth in minerals, grass lands, and fertile inter mountain valleys” (Schmidt 1961, 263-264). In the sparsely populated region that would later become southern Arizona, cattle ranching dominated the economy. Mexicans there were successful “rancheros” and a few areas, such as Tucson, “had substantial Mexican middle and upper classes” who regularly mixed with the area’s small Anglo population (Benton-Cohen 2009, 27). While the shared need for security due to Apache conflicts had forged bonds across ethnic populations (Rodriguez 2007, 100), beginning with the Gadsden Purchase, Anglos were “steadily gaining power and influence, if not total control” (Benton-Cohen 2009, 33). Under American ownership, interest rose in exploring the Arizonan mines that had been discovered and abandoned under Spanish rule. As the Gold Rush continued in California, the mining industry developed in Arizona, predominantly in its south. At the start, most mining was accomplished on a small scale by individuals and small companies that relied on Mexican labor and American capital (Arizona Mining Association 2006, 2). The burgeoning
mining industry and the presence of the U.S. military who engaged in subduing the Apaches encouraged migration to Arizona in mid-century (Benton-Cohen 2009, 9). During that period, Arizona’s mining towns, known as “white men’s camps” developed behavioral codes that were the earliest forms of government in the remote regions of the New Mexico territory. While the codes of the camps varied, they often limited the opportunities for Mexican and South American miners and completely excluded Chinese and African Americans laborers (Benton-Cohen 2009, 83). For example, near today’s Prescott, Arizona, the Pioneer Mining District barred “Asiatics and Sonorians” from work (Benton-Cohen 2009, 83). In the mining camp of Bisbee in later Cochise County, “Mexican men could live and work in the Warren District – indeed, as the chief road builders and woodcutters, they were essential to its success – but they were barred from working underground, where the best-paid jobs were” although the interpretable race labels of the period enabled exceptions wherever it benefitted mine owners (Benton-Cohen 2009, 82-83). The social divisions extended to wages which were typically one-third to one half less for ethnic Mexicans than for Anglos for comparable work; some camps had wage structures that paid Mexicans even less (Benton-Cohen 2009, 84-85). The same dual wage system existed throughout the Southwest, in the agricultural sector as well, and the same justification was used to support its continuance: Mexicans were dirty and did not require the same wages as Anglos in order to support their needs (Montejano 1987, 225–228).

Anglo dominance continued to grow in Arizona along with the mining industry. By 1856, the number, power, and land ownership of the American miners and companies were significant enough that they began to petition Congress for establishment of a state of Arizona separate from New Mexico Territory (Noel 2011, 430-431). Much of the push was motivated by the desire of Anglo residents to free themselves from the predominantly Mexican culture and political participation evident in New Mexico (Navarro 2005, 141). The petitioners stated that
their culture was distinctly different than that of New Mexico where politics and culture were strongly Spanish and Mexican, with laws written in both English and Spanish and legislative procedures conducted with interpreters (Navarro 2005, 137-141). By 1860 the population of the future Arizona was approximately ten thousand and was clustered in two cities, Tucson and Yuma (Noel 2011, 448). Tucson’s Anglo population owned eighty-seven percent “of the real and personal property” in the previously Mexican-dominated town (Benton-Cohen 2009, 34). However, in more isolated ranching areas such as northern Cochise County in the southeastern corner of the future state, Mexican Americans did continue to own ranches and enjoy “pioneer status and a public prominence” (Benton-Cohen 2009, 148). Though the level of social integration in Arizona never matched that experienced in the rest of New Mexico, some Anglo migrants did blend with the Mexican inhabitants of more populous areas such as Tucson. In such large towns, some Anglos spoke Spanish, married Mexican women, and adopted traditional Mexican methods of ranching and farming (Benton-Cohen 2010a, 6).

California’s Gold Rush peaked in 1855 although mining continued after that year, conducted by companies and corporations rather than the so-called “forty-niners.” At the same time, some miners who had profited in the early years wished to leave behind the taxing physical labor required by mining. Many of the ex-miners migrated throughout California, often squatting on land belonging, according to Spanish land grants, to the elite Mexicans who were now American citizens (Gutierrez 1995, 21). The increasing pressure and sheer numbers of the Anglos as well as the disparities between Mexican and American laws regarding land rights determined the eventual downfall of Mexican Americans from California economic and political power leading up to the turn of the century. Those who lost their land became increasingly concentrated in segregated Mexican American communities in the southern area of the state (Gutierrez 1995, 23). California’s post-Gold Rush economy transitioned from a base in
small ranches and farms to sustained mining, commercial agriculture, trade, and infrastructure development. Even after the flood of miners had waned, Midwestern and Southern farmers and businessmen continued to migrate to the state. Throughout the Southwest, particularly in Texas and California, Anglo business owners restricted Mexican labor to low-paying occupations just as they had in Arizona’s mines. This created a vicious cycle in which Mexicans were pushed toward unskilled jobs and then considered unskilled because they held only those jobs (Gutierrez 1995, 25).

Leading up to 1861 and the Civil War, the attention of the Southwest, like that of the rest of the U.S., focused on the rising tensions between the North and the South over slavery and states’ rights. “The constitutional compromise that protected slavery in states where it already existed did not apply to newly acquired territories. Thus, every expansion of the nation reignited the divisive issue” (Goodwin 2006, 141). California, an abolitionist state with strong economic ties to the eastern states, sided with the Union along with the New Mexico Territory. Texas, where slavery was well-established due to the significant population with roots in the American South, sided with the Confederacy (Goodwin 2006, 293). Throughout the Civil War years, the American Southwest witnessed development and change. President Lincoln signed the Homestead Act of 1862 which brought a large population stream to the Southwest and West in the years that followed its passage. Farm communities moved in entirety to the Southwest from the depleted land of the American Midwest and North. They brought with them an economic structure based on “contract wage labor and business rationality” (Montejano 1987, 104). Mexicans, some residents of the U.S. at the time of annexation and some having immigrated later, took advantage of the opportunity to gain inexpensive land that came with the obligation to become a U.S. citizen. European immigrants joined the march (Montejano 1987, 104-105). In February 1863 President Lincoln responded to continuing pressure from the
increasing Anglo population of the Arizona region of the New Mexico Territory and established the Territory of Arizona as a separate entity. Union troops returned to the region and began to subdue the Apaches, although outbreaks of violence continued at an incidental level even after the Apache Chieftain Geronimo surrendered at the Arizona-New Mexico border in 1886 (Martinez 1988, 69). The laws of the new Arizona Territory made white race a voting requirement. Although the accepted interpretation of white included most Mexican males, the vagueness of the definition left room for interpretation as history progressed and various interest groups emerged (Benton-Cohen 2009, 31). A number of other changes in the Southwest during the Civil War included the Mormons’ settlement of Utah which they had reached in 1847, the Gold Rush population’s continued dispersal across the Southwest, and the Territory of New Mexico’s strong stance against Texas’s claims to the western lands along the length of the northern Rio Grande (Nieto-Phillips 2000, 103). Also in Texas, “Anglo and Mexican merchants of the river towns, from Brownsville through Laredo, gained small fortunes supplying the Confederate forces and transporting Confederate cotton down the Rio Grande for export” (Montejano 1987, 47). By the end of the period, the population of the Southwestern border states had multiplied, become more diverse, and the Southwest’s boundaries were reasonably well-defined.

**Why Arizona? What this History Reveals about Arizona’s Passage of S.B. 1070**

Decisions about the location of the U.S.-Mexico border in both 1848 and again in 1853 did not consider the cohesion of existing communities in the border region. According to Oscar Martinez writing in *Troublesome Border*, this lack of consideration was in sharp contrast to the process used to define the borders between the American states. Those border decisions gave priority to human factors and the process was one in which “population centers were seen as nuclear areas, or cores, from which to calculate where boundaries would be drawn in outward
directions at appropriate distances” (Martinez 1988, 5). The initial lack of consideration of the human factor in the formation of the U.S.-Mexican border created an ongoing set of circumstances and conflicts that have required resolution along the national borders at the local and state level and set the stage for Arizona’s immigration legislation of the early twenty-first century. “Those who negotiated the boundary in the 1840s could hardly have anticipated the human consequences of their decision” (Martinez 1988, 5). The history of the Southwest in the nineteenth century through the Civil War reveals region-wide discriminatory treatment of those Mexicans who found themselves on American soil due to national decision-making. The history also reveals their loss of their long-held position as land owners to their new Anglo neighbors. As a result, the Mexicans of America’s Southwest during the period of border formation tended toward isolation in their own communities which naturally increased their ethnic distinctiveness. In limiting ethnic Mexicans in the exercise of their rights under the Constitution after granting them citizenship in official international agreements, “Americans planted the seeds of continuing ethnic discord in the region” (Gutierrez 1995, 38). Concepts of race resonated throughout the period’s national legislation as well as those of the new states and territories.

The nineteenth century history reveals the uniqueness of America’s four Southwestern border states in their relationships to Mexico and in their attitudes and policies regarding the Mexican American people within their territories. “Mexicans enjoyed varying degrees of legal rights based on their perceived racial background” (Rodriguez 2007, 108) which had much to do with their location within the Southwest. Those in New Mexico Territory, including Arizona, fared better than their ethnic brethren in Texas and California. Given the history up to the Civil War, it would seem likely that any of the Southwestern border states and territories, with the exception of New Mexico, might be the source of restrictionist legislation such as S.B. 1070 in
the twenty-first century. A nineteenth-century resident of the Southwest would most likely have predicted Texas as the source of future anti-immigrant legislation. As this chapter highlights, the violence on Texas’s border “laid the initial ground for invidious distinction and inequality” between “Anglos – conquerors and victors -- and Mexicans – conquered and vanquished” (Montejano 1987, 5) and “made the issue of [Anglo] equality with Mexicans a rather absurd proposition” regardless of whether those Mexicans were American citizens (Montejano 1987, 224). Texas’s membership in the Confederacy also would add to the impression that Texas would be a strong restrictionist state throughout its history. California would seem to be close behind Texas due to its treatment of ethnic Mexicans during the Gold Rush.

What does this history tell us about Arizona in particular that might inform our view of its immigration legislation today? While immigration between nation states was not an issue until later in the nineteenth century as discussed in the next chapter, a number of characteristics of the Arizona Territory during this period resonate in the state’s stance on immigration in the twenty-first century and distinguish it from the other border states. First, of the two border states and two border territories, Arizona had the smallest and most isolated population. As a result, little interaction took place there between resident Mexicans and Anglos prior to the mining boom which began after the Gadsden Purchase. While the persistent Apache threat did forge some interactions between the territory’s few residents, temporary mutual security needs were the basis of those ties and the relationships evaporated with the diminution of the threat. The mining boom expanded Arizona’s population – both Mexican and American – exponentially, increasing the interactions between the area’s ethnicities. However, those interactions were never those of social equals. The mining industry introduced Anglos to Arizona as the sources of capital and business owners. The Mexicans who migrated north for mining came as laborers and were quickly relegated to the lowest paying occupations within the industry. Mexicans were
also socially segregated from the Anglos within the mining camps. Thus, the relationships between Anglos and Mexicans in the future Arizona were predominantly between owner-managers and laborers. Mexicans were tolerated by Anglos only to the degree that their labor was necessary. This pattern is still evident today. While such owner-laborer relationships occurred throughout the Southwest in the nineteenth century, in Arizona they were not balanced against any other economic or social pattern. Arizona’s residents rarely experienced the kinds of equitable relationships evident in many towns and cities of California, Texas, and New Mexico in the early history of those states where a subset of the ethnic Mexican population retained some of the power it held prior to annexation. As compared with those three, with their long histories of interaction and even intermarriage before the mid-1800s, Arizona stands as an exception; social interaction between ethnic Mexicans and Anglos there was limited to a very few small towns and cities including Tucson (Meeks 2007, 25). As an example of the potential benefits of the historical interactions between ethnic groups, David Montejano wrote regarding Texas that the extensive contact between Anglo and Mexican Texans, first on an equal footing and later in more segregated times, provided Texans with an opportunity for accommodation between ethnic populations; their necessary interaction “points to a relationship that, though frequently violent and tense, has led to a situation that today may be characterized as a form of integration” (Montejano 1987, 9). Such an opportunity was absent in most of Arizona.

Second, the sparsely populated Arizona began to separate itself from New Mexico during this period based on racial arguments in order to assert the predominance of its new Anglo residents and to firmly identify its populace as American. Arizona’s attitudes regarding Mexican culture and race were revealed in the effort to separate Arizona from the Territory of New Mexico. Arguments for separation expressed the low value put on Mexican contributions to the territory that became the Southwest and no recognition of the Mexicans’ rightful place in
the border territories on the part of the Anglo Arizonans. This attitude was a logical one for the Americans who flooded Arizona as the mining industry grew. They considered the few Mexicans who lived and ranched there impediments to their capitalistic drive for natural resources and fulfillment of America’s Manifest Destiny. The rhetoric of the time and the actions of the U.S. federal government legitimated and supported that viewpoint. Mae Ngai of Columbia University uses the term “alien citizens” to describe the position of members of an ethnic or racial minority who are “American citizens by virtue of their birth in the United States but who are presumed to be foreign by the mainstream of American culture and, at times, by the state” (Ngai 2004, 2). This term summarizes the position of the Mexican Americans in the Southwest who were born in the annexed territory, guaranteed citizenship and Constitutional rights according to the Treaty of Guadalupe Hidalgo and the Gadsden Purchase, but whose treatment was decidedly that usually extended to unwelcome outsiders. New Mexico was an exception due to the position, number and political involvement of the Mexican population within its territory. Arizona was not.

Third, the predominance of the mining industry in Arizona, the area’s desert conditions, as well as the presence of hostile Native Americans discouraged the migration of women and families to the area during this period. The male dominance of the mining industry inhibited the creation of settled communities, even if segregated, where relationships between Mexicans and Americans would have been inevitable as they were in the agricultural regions of Texas, California, and New Mexico. As previously noted, the codes of the mining camps enforced relatively strict social segregation. There was no opportunity in Arizona’s mining camps for ethnically mixed social communities with all of the interactions, conflicts, and resolutions inherent in that process. There was a preponderance of men, laboring at different levels in an occupational hierarchy, and living in temporary and segregated housing. In analyzing the
passage of state-level immigration-related laws in 2011, Jill and Sean Nicholson-Crotty of the University of Missouri note differing points of view on whether interaction between distinct groups increases or decreases racial animosity. The scholars cite Contact Theory, which argues for the decrease in such negative attitudes over time given strong patterns of interaction, and also reference studies that indicate that increased contact can intensify competition for resources and can fail to moderate race-based stereotypes when combined with high numbers of immigrants from a particular racial group (Nicholson-Crotty and Nicholson-Crotty 2011, 614). The evidence from Arizona in the nineteenth century would support the applicability of Contact Theory; without opportunities for interaction, strong racial discrimination persisted in a region where the Anglo settlers dominated the smaller population of ethnic Mexicans in their midst.
“From the birth of the republic until the 1880’s American society was consumed by the tasks of populating a vast unsettled continent and exploiting its untapped wealth” (Schuck 1984, 2). As Chapter 2 describes, the national borders, newly formed, were relatively open in the nineteenth century although citizenships was not available to all. As the final quarter of the century progressed, American protectionists called out for control of the rapidly increasing immigration from Europe’s south and east. Immigration restriction became a national priority (Gutierrez 1995, 51). In the Southwestern border states, immigration concerns focused on specific racial and ethnic groups whose numbers distinguished them: Asians, who joined the demographic mix primarily in California, and Mexicans, who continued to migrate across the borders of all four Southwestern states (Ngai 2004, 18). As this chapter will show, the role of the federal government in immigration law and policy originated and expanded in the late nineteenth century as a result of the public’s concern regarding demographic change. The federal legislation of the 1880s through 1921 codified an increasing list of exclusions based on ethnic and racial characteristics. Beginning in 1921, continuing through the Great Depression, and leading up to World War II, the national government filled the gaps in this approach by codifying numerical limits for immigration from many nations. The racial and numeric restrictions of the entire period from the 1880s to WW II had an unintended consequence; immigration restriction created a relatively new category of persons in the U.S. – the unauthorized immigrant. Since that time, unauthorized immigration has been a predominant social issue. Unauthorized immigration from Mexico has been a particular challenge to the
Southwest. Here, in the history of the Southwest’s development and the rise of unauthorized immigration, the story of Arizona’s S.B. 1070 continues.

1865 - 1880: The Railroads Connect the Nation and Immigration Restriction Begins

On the national level, the immigration restriction movement gained further ground in the late 1800s. Up to that point, America’s borders had been “of little social or economic significance” (Rodriguez 2007, 129). Citizenship with its associated rights did not rest on distinctions between immigrants and those born in America. Instead, up to the Civil War, federal law had reflected the acceptance of the idea that citizenship and its associated rights were based on race; citizenship was reserved for white people (Chomsky 2007, xix). That changed with the passage of the Fourteenth Amendment in 1868 during the post-Civil War Reconstruction period. The Amendment guaranteed certain rights associated with citizenship and affirmed that all persons born in the U.S. with the exception of Native Americans were rightful citizens of the U.S. The Fourteenth Amendment has had broad legal application and often figures prominently in debates regarding the status and legal rights of immigrants – both authorized and unauthorized – and their children up to the current day as well as to racial and civil rights issues. Repeatedly, courts have applied the Fourteenth Amendment to support the extension of the right to equal protection under the law to non-citizens residing in the U.S. (Ngai 2004, 5-6). It is important to note that the initial applications of the Fourteenth Amendment did not necessarily interpret its provisions as legislating an end to the social segregation enforced in many American regions or precluding the consideration of race in immigration legislation. The breadth of the Amendment’s application would develop over time (Wright 2008, 52-53).

After the Civil War ended in 1865, border raids into the shrunken Mexican territory from the U.S. escalated. In Texas, incursions from both sides of the border continued to drive
local tensions (Montejano 1987, 33). While skirmishes continued over small parcels of land and water rights all along the border, regional changes were approaching the Southwest. Two powerful companies -- the Central Pacific Railroad of California and the Union Pacific Railroad -- laid track from Omaha to Sacramento to complete the First Transcontinental Railroad in 1869. By connecting to existing railroads in the East, the new track linked America by rail, from the Atlantic to the Pacific. “Before railroads, Spanish was the preferred language in Arizona. The currency was the Mexican peso” (Associated Press 2012); this was particularly the case in Tucson which traded heavily with Mexico (Navarro 2005, 142). Although it ran due north of Arizona, New Mexico, and Texas, the railroad initiated the transformation of the Southwest. Along with the railroad, technological developments such as refrigerated boxcars and advances in irrigation encouraged commercial agriculture and laid “the foundations for one of the most explosive periods of economic growth in American history” (Gutierrez 1995, 41). In order to complete the railroad, the Central Pacific Railroad Company had recruited and hired large numbers of inexpensive Chinese laborers, encouraging a major wave of Asian migration to California and all along the railroad’s route. Concurrently, rates of immigration from Europe, particularly Ireland, to other regions of the U.S. escalated. The significant numbers of immigrants and their distinct cultures and languages incited renewed expressions of nativism; many Americans voiced concerns that the immigrants drove wages down and were harder to assimilate to American culture, an implicit goal (Schrag 2010, 3). When the immigration flow continued despite the waning of the Gold Rush in California and the completion of the railroad’s first transcontinental route, anti-immigrant sentiment reached a crisis stage. Violent incidents grew in number. In that climate, the federal Naturalization Act of 1870 amended the Naturalization Act of 1790, extending naturalization rights to blacks and excluding Asians from the ranks of potential citizens. The legislation did not explicitly address Mexican immigrants;
Mexicans were typically recognized as white at that time although laws in the Southwest, as noted in Chapter 2, did vary (Wright 208, 55). Despite such action on naturalization policy to address concerns about Asian immigrants, the federal government continued to have “only a very limited direct involvement in matters of immigration” (Ettinger 2009, 18).

“The swirl of ideas and fears about immigrant ‘others’ that had been latent in American culture for the past century coalesced in the 1870s and 1880s in an environment of economic uncertainty and social stress” (Ettinger 2009, 18). California and Texas acted to limit the impact of immigrants on their states; each had a different target. Legislation enacted in California chipped away at the rights of the Chinese living within the state’s borders. By 1879, California law was fervent in its racism; the state amended its Constitution to segregate Asians into certain residential areas and to eliminate employment opportunities for all Asian immigrants (Wroe 2008, 18). Texas’s legislation looked towards the porous border with Mexico where continued border conflicts raised fears of Mexican bandits. Texans demanded action. The state responded in 1871 by establishing a state Bureau of Immigration and reinstating the Texas Rangers who had been decommissioned after the Civil War (Menchaca 2011, 74). Governor Coke, frustrated by the federal government’s failure to protect the border, gave the Rangers broad powers in southern Texas, even encouraging Rangers to cross into Mexican territory to arrest suspected bandits. The Rangers complied, attacking Mexicans who were often “shot or arrested simply because they were suspected of being bandidos or because they were accused of protecting cattle rustlers” (Menchaca 2011, 75). Given such license, the Rangers became “the apprehenders, the judge, and often the executioner all in one” (Navarro 2009, 40). According to Laurence French of Western New Mexico University, the treatment of Mexicans and other non-Anglos in Texas in the latter half of the nineteenth century amounted to ethnic cleansing (French 2010, 49). Ultimately, the government of Mexico protested the Rangers’ behavior,
motivating the U.S. federal government to step in to control the Texas border to protect it for trade (Menchaca 2011, 79). Like the states of California and Texas, the territories of Arizona and New Mexico experienced rapid demographic change in the period after the Civil War although they did not legislate immigration restrictions. As compared with California and Texas, immigration in the New Mexico and Arizona Territories was not yet a salient issue and territories had more limited legislative powers overall. The ownership of land in both regions was the primary issue for the ethnic Mexicans there, many of them American citizens. Though there were fewer Spanish land grants in Arizona than in New Mexico, the old system of land ownership in both territories was overtaken by the U.S. system of land laws and the greed of speculators. The grants had been defined in a cultural environment where “ownership was respected and bound by tradition and honor” and some had not even been legally filed (Maciel and Gonzales-Berry 2000, 16). Changes in land and business taxes due to American control often exceeded the means of those, typically Mexican Americans, who had continued to use their land for small scale farming and livestock rather than large commercial enterprises. Providing an additional challenge, the federal government established a number of National Forests in New Mexico that incorporated the land of many original landholders (Maciel and Gonzales-Berry 2000, 17). Regardless of their economic losses, Mexican Americans in New Mexico did continue to hold political power due to their relatively dense population and respected positions in that territory. They dominated many key elective offices from 1850 through statehood in 1912, especially in the northern areas of the state such as Albuquerque where Anglos and Mexicans mixed socially and practiced cultural accommodation (Maciel and Gonzales-Berry 2000, 17-21). Southern New Mexico and the Territory of Arizona were less ethnically integrated than northern New Mexico. Arizona’s Mexican Americans “did not necessarily benefit from the changing economy” of the region (Noel 2011, 449). The arrival of
the railroads put many middle-class Mexican American merchants out of business and they fell into the working-class pool of Mexican laborers who toiled in Arizona’s agriculture, mining, ranching, and transportation industries. “The resulting society was one with major corporations and their investors at the top, and skilled and unskilled workers at the bottom” (Noel 2011, 449). By the early 1880s, Anglos were in charge throughout southern New Mexico and Arizona as well as in the agribusiness-dominated states of California and Texas. Only in northern New Mexico did Mexican Americans hold their ground (Maciel and Gonzales-Berry 2000, 19-20).

As evident in the legislative activity of California and Texas, state governments were the primary force behind immigration law and practice in the U.S. up to approximately 1875. Supreme Court rulings on a number of cases beginning in 1875 shifted the power over immigration policy to the federal government where it has since remained. Interestingly, the first federal action after this shift identified race as a legitimate criterion for immigration restriction. Congress passed the Page Act in 1875 which limited the number of Chinese immigrants to the U.S. and identified the Chinese as undesirable entrants (Wright 2008, 57). By encoding a restriction on immigration, the Page Act unintentionally initiated America’s history of unauthorized immigration. “Although popularly conceived of as a relatively recent phenomenon, surreptitious border crossings of immigrants into the United States date back at least as far as the 1880s” (Ettinger 2009, 1). Human smuggling rings enabled unauthorized border crossers then as they do now and already well-established networks of ethnic brethren welcomed the unauthorized immigrants. “In fact, surreptitious migration of Chinese laborers into the American West first drew attention to the peculiar difficulties of enforcing immigration laws along the international borders” (Ettinger 2009, 4). It is worth noting that overland migration from both the north and south were of concern; the Canadian border was a particular priority of the late nineteenth century (Ettinger 2009, 2).
1882 - 1912: New Mexico and Arizona Become American States

The Southwest’s geographical borders were well-defined by 1880 and, with the Civil War now in the past, the U.S. moved forward to develop the region’s urban and industrial economy. The Second Transcontinental Railroad connected New Mexico and Arizona to the rest of the U.S. in 1880. The railroad expanded the cattle industry which could now expeditiously transport its stock to northern and eastern markets (Gutierrez 1995, 41). Regardless of the hardships and injustices they experienced once they arrived, Mexicans, both miners and farm laborers, continued to migrate to the Southwest because the work north of the border provided a better wage than they could have achieved in Mexico where political conflicts were escalating leading up to the Mexican Revolution (Benton-Cohen 2009, 91). As the number of unskilled Mexicans migrating to Arizona increased during the 1890s, their proportion also increased relative to the declining Mexican American middle class (Noel 2011, 450). The proportion of the population represented by residents of Mexican ethnicity also fell during the 1890s relative to that of Anglo Americans who continued to move to the Arizona Territory (Noel 2011, 452). Mexican migration was not limited by immigration law at that time and was often circular. Approximately sixty thousand Mexicans per year entered the U.S. prior to 1910 and the majority returned to Mexico each winter after harvests which made them an ideal labor pool (Rosenblum and Brick 2011, 2). Their circular migration “reinforced a pattern of cultural and political interactions between communities on both sides of the border” as well as a cross-border economy (Zamora 1993, 15).

Mining continued to expand throughout the Southwest, especially in Arizona, which was rich in precious metals. Silver mining was predominant there until 1886. Coincident with the surrender of Geronimo and the reduction of the Apache threat to Arizona’s commerce, the Sherman Silver Purchase Act reduced silver’s value (Arizona Mining Association 2006, 5). But
copper mining in the territory expanded and by 1893, Arizona’s abundant copper was in high demand due to Thomas Alva Edison’s use of the metal to conduct electricity and the rapid industrialization of the U.S. northeast (Noel 2011, 449). Recognizing the value of Arizona’s natural resources to America’s development and economy, the territorial and federal governments took on an active role in leveraging Arizona’s assets and together “facilitated the first phase of modern industrial development, primarily in mining and agriculture” there (Meeks 2007, 5-6). The territorial government granted land to railroads and subsidized mining companies and even individual miners in order to develop those industries (Meeks 2007, 6). The federal government created a system of reservations for Native Americans (Martinez 1988, 68) which, along with the Homestead Act of 1862, the Desert Lands Act of 1877, and the Newlands Reclamation Act of 1902, which funded irrigation projects in 20 states, transformed Arizona’s economy, ecology, and social structure as well as that of other areas in the Southwest and West (Gutierrez 1995, 41). The Roosevelt Dam was completed in 1911 due to the federal land acts and this propelled southern Arizona’s agricultural sector forward onto ample and irrigated land (Meeks 207, 6). To fill the resultant need for labor, the Territory’s cotton growers, along with growers from the rest of the Southwest, recruited workers from Mexico (Dean and Reynolds 2006, 27). Together, the territorial and federal governments’ directives brought a large wave of Mexican laborers and Anglo settlers to the Southwest and particularly transformed the underpopulated Arizona.

Coincident with Arizona’s economic transformation, Texas in the late 1800s experienced a period of significant economic development and “intense Americanization of the local culture” (Rodriguez 2007, 120). The era of the mythic American cowboy arrived and introduced longhorn cattle, enormous industrial ranches, fencing of the open range, formalized water rights, and cattle trails to the recently completed railroads that now connected the
Southwest to northern and eastern markets (Montejano 1987, 85-87). “The result of rapid growth after the arrival of the railroad was the formation of two societies, one Anglo and the other Mexican” and this was particularly true in Texas where ranching and cotton were predominant (Montejano 1987, 95). Already a major cotton producer, Texas began to leverage its south and westernmost lands for expanded cotton production. Although Texas did experience a politically motivated effort to bar Mexicans from naturalization in order to eliminate their opportunity to vote, the Texas Constitution of 1887 enfranchised both ethnic Mexican citizens and those who declared their intention to naturalize (Orozco 2009, 35). This remained Texas law until 1927 despite the rampant racism engendered by the state’s earlier constitutional debates (Menchaca 2011, 109-160).

Race again proved itself the primary consideration in immigration legislation of the period when the continuing intense public reaction to Chinese immigration, even after the Page Act, motivated Congress to act further. “With anti-Chinese feelings hitting a high-fever pitch and anti-immigrant riots breaking out in many cities,” Congress passed the Chinese Exclusion Act of 1882 (Lee 1998, 42). The Act barred Chinese immigrants already in the U.S. from citizenship and prevented further immigration of Chinese laborers for the next ten years; members of the merchant class were exceptions (Lee 1998, 42). However, the flow of Chinese immigration continued, now unauthorized, and Congress established the first Border Patrol a few years later to intercept unauthorized immigrants at nation’s borders. According to Southwest historian Katherine Benton-Cohen of Georgetown University, “Chinese exclusion created a framework for immigration control that would dramatically shape the future of Mexicans and many others” (Benton-Cohen 2009, 79). Immigration control “was now a federal, not a state, issue” (Lee 1998, 43). Federal immigration administration agencies rapidly
developed and, “by 1893, both the House and the Senate had formed permanent standing committees on immigration” (Lee 198, 43).

The U.S. Supreme Court heard the case of Plessy v. Ferguson (163 U.S. 537) in 1896 and their ruling reflected the initial understanding of the Fourteenth Amendment’s appropriate application (Wright 2008, 67-68). Law enforcement officers had arrested Mr. Plessy, who was seven-eighths white, for sitting in a whites-only railroad car in Louisiana. The Supreme Court upheld a lower court ruling that the arrest of Mr. Plessy was constitutional. According to the Court’s decision, racial segregation did not violate the Fourteenth Amendment of the Constitution. While the ruling’s direct effect was to uphold the South’s Jim Crow laws, the decision also supported by definition the ongoing segregation of ethnic Mexicans from Anglo Americans in the Southwest and validated the state and local legislation that enforced that segregation. “Long used to their own racial traditions, Mexicans now found that their upward social mobility was being constricted on the grounds of race” (Rodriguez 2007, 123). Like American blacks, ethnic Mexicans “attended separate and inferior schools, were forced to live separately from Whites, and were socially ostracized” throughout the Southwest (Navarro 2009, 41). Clearly ethnic Mexicans were not always viewed as white by Southwestern society.

The U.S. population in 1900 was approximately one hundred million and the ethnic Mexican population was approximately a half million with almost all ethnic Mexicans residing in the four Southwestern border states and providing most of the labor for the Southwest’s agribusiness, railroads, and mining (Navarro 2009, 55). The Anglo American population of those same states had also swelled but, within a few years, “the people of Texas and other states of the Southwest awakened to the reality of an ‘invasion’ of a large and – as many believed – largely unassimilable group thought to be racially inferior but nevertheless capable of competing with whites for jobs in agriculture and industry” (Foley 1997, 51). Overall, the
increasing numbers of Anglo Americans and the prejudicial treatment suffered by the ethnic Mexicans in their midst “gradually divested [Mexican Americans] of both political and economic influence in all areas except northern New Mexico and south Texas” where they remained the majority population” (Gutierrez 1995, 14). Building on the anti-immigrant scapegoating that had emerged during the national recession of 1893, the advent of the Spanish-American War in 1898 caused a “racial panic” as Anglo Americans feared the potential tyranny of persons of Spanish descent. (Menchaca 2011, 169). Mexicans were the victims of a number of violent incidents during that period despite federal protections and newly arrived Anglo Americans “set about building a more racially exclusive society” (Rodriguez 2007, 119). Some broad actions of the federal government slowed the downward progress although that was a side effect rather than an intention. The Fourteenth Amendment arose again in the context of immigration and naturalization law in 1898 when the Supreme Court ruled in United States v. Wong Kim Ark (169 U.S. 649) that, while it was legitimate for the government to exclude certain groups of potential immigrants such as the Chinese from entering the country and from citizenship, it was not legitimate for the government to remove citizenship status from anyone born in the U.S. (Ngai 2004, 214). The ruling affirmed the language of the Amendment’s Citizenship clause: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States” (Fourteenth Amendment to the Constitution). The citizenship of American-born children of Mexican nationals and other immigrant groups was safe for the time being.

In the wake of the Spanish-American War, the U.S. Congress in 1903 became concerned for the first time about the “lack of regulation over Mexican immigration” and the potential entry of political radicals (Menchaca 2011, 176). At the same time, American business owners, particularly in the Southwest, continued to oppose restrictions on Mexican immigration
due to their expressed need for large pools of inexpensive labor (Gutierrez 1995, 46). After significant public debate, Congress passed only moderate immigration reforms in 1903 including a head tax from which it exempted Mexicans, Canadians, and Cubans (Menchaca 2011, 177) and federal courts that same year “passed rulings to clarify and protect the citizenship rights of Mexican immigrants” (Menchaca 2011, 179). The desire to eliminate immigration from Asia, still a regional concern, resulted in the Gentlemen’s Agreement with Japan in 1907. This policy strictly controlled Japanese migration to the U.S. and, due to the preference of the Japanese government, avoided the passage of specific anti-Japanese legislation. The public’s concerns over increased immigration levels remained unassuaged and, in response to the hue and cry, the U.S. Congress established the Dillingham Commission in 1907 to assess the impact of immigration on the nation. The Commission would not report until 1910 and, even then, it would not focus on Mexican immigration (Benton-Cohen 2011, 34).

While the federal government remained unresponsive, Texas moved to eliminate the potential for arriving Mexicans to participate in the political process (Menchaca 2011, 179). By 1910, Texas had updated state election laws to introduce a poll tax, reduce voting precincts to eliminate Mexican majorities, mandate electoral primaries, and authorize political parties to control attendance at meetings and conventions (Menchaca 2011, 179). Texas stepped up where it believed the federal government had failed. While it is true that some Mexicans in Texas did manage to continue to participate in public affairs and to have a voice in local politics through the twentieth century, this typically occurred only in the few towns and cities where Mexican Americans were a significant population such as El Paso, Laredo, Brownsville, and Corpus Christi (Gutierrez 1995, 26). The general trend, despite regional exceptions, was for Anglo Americans to attempt to gain political and economic control from Mexican Americans and to segregate ethnic Mexicans from Anglo society.
The motivation behind the segregationist policies throughout the Southwest, particularly where agriculture dominated the economy, was “the need to regulate and maintain a reservoir of cheap Mexican labor” (Montejano 1987, 178). The economic benefits of such labor were significant and provided the motivation, if not the rhetoric, behind the development of a separate and inferior school system for ethnic Mexicans in the early twentieth century.

“Mexicans had to be kept ignorant” (Montejano 1987, 191). Segregated schooling in Texas was the most entrenched in the Southwest; it had started earlier, was officially structured by school districts, and was state-wide (Montejano 1987, 191-194). California, New Mexico, and Arizona also had separate school systems for Mexican children but segregated schooling was less pervasive; segregated education was extensive in Arizona and California and infrequent in New Mexico (Ruiz 2001, 23). Wherever segregated schooling was the norm, opportunity for the education of ethnic Mexican children often did not extend beyond fifth grade. The burgeoning eugenics movement provided some of the justification for separate schooling by putting scientific language behind racism (Ngai 2004, 24-25). The eugenics viewpoint began to be reflected in immigration policy and law during this period and was codified in the legislation later in the decade.

Mexican Americans in the Southwest interpreted the legislation and arguments of the time as indications that their ethnicity was a general liability. Mexican identity was a more significant issue in New Mexico with its large ethnic Mexican population, well represented in the politics of the territory. As calls for statehood increased at the turn of the century, the self-identification of territorial residents as Spanish American “became a counteroffensive against critics who deemed New Mexico racially ‘unfit’ for full inclusion in the United States” (Benton-Cohen 2009, 173). The tortuous process towards statehood for both territories revealed a great deal about the racial attitudes in currency in the U.S. at that time. The process also highlighted
the strong Anglo identification of Arizona and the commitment of the New Mexicans to their Spanish and Mexican ancestry (Melendez 2000, 160 – 165). Shortly after the railroads came to Arizona, Arizona passed a Territorial Act in 1889 barring those who did not speak English from the territory’s government (Associated Press 2012). According to Katherine Benton-Cohen, an attempt by Congress to form one state from the territories of Arizona and New Mexico in 1905 was “pilloried by Arizonans who were appalled at the prospect of becoming a racial minority” within overwhelmingly Mexican New Mexico (Benton-Cohen 2010a, 7). “Equating job status with race,” even when race had circumscribed job eligibility, the leaders of the Arizona Territory viewed ethnic Mexicans as inferior because they worked primarily in unskilled positions in Arizona’s “mines, ranches, and agricultural sector” (Noel 2011, 452). Arguments for statehood included much discussion of the position of Mexican Americans and Mexican immigrants in Arizona’s economy and culture and concluded that ethnic Mexicans “posed no threat to other Americans – as docile and marginal members of American society, as people who soon returned to Mexico, or as people who would eventually die out” (Noel 2011, 453).

After eliminating non-English speakers, primarily ethnic Mexicans and some European immigrants, from the voting rolls by imposing a literacy test (Noel 2011, 459), Arizona conducted a public vote on joint statehood with New Mexico. The vote was a resounding “no” (Benton-Cohen 2010a, 7-8). Based on the success of Arizona’s legislators in convincing Congress that “their territory was quite different from New Mexico and more like the rest of the nation,” the proposal for joint statehood then died at the national level in 1905 (Noel 2011, 462-463).

The two territories were now independent in their quest for statehood. Arizona’s first constitutional convention in 1910 included only one delegate of Mexican descent (Noel 2011, 463). The state Constitution began to chip away the privileges of U.S. citizenship from
Arizona’s Mexican American citizens. Although Arizona planned to offer voting rights to “every white male citizen of the United States, and every white male citizen of Mexico” who had chosen American citizenship “by right of the treaties” (Benton-Cohen 2009, 31), the constitution “failed to define whiteness – which meant that the common assumption of someone’s whiteness amounted to their actual possession of it” (Benton-Cohen 2009, 32). In contrast to Arizona, New Mexico’s state Constitution, also “drafted in 1910, made specific provisions to protect the voting, educational, and language rights of its Spanish-speaking citizens” (Melendez 2000, 165). Over thirty percent of the one hundred delegates who participated in New Mexico’s constitutional convention were Mexican Americans. “Activities surrounding the struggle for statehood demonstrate that despite significant land loss, violence, and discrimination” experienced in the late nineteenth century, the Mexican American “upper class remained powerful, affluent, and politically influential” (Maciel and Gonzales-Berry 2000, 84). This was evident in New Mexico’s application for statehood. A hallmark of New Mexico’s Constitution was its protection of the balance of the interests that held power in the state at its inception (Garcia 1994, 33-40). In 1910 both New Mexico and Arizona proposed individual statehood to Congress and won that status, effective 1912; New Mexico had become America’s forty-seventh state and Arizona had become its forty-eighth. As documented in their state constitutions, the two states viewed the people of Mexican descent within their borders quite differently from the start. New Mexico encouraged their integration into American society and the political process while continuing to respect their Mexican roots. Arizona viewed them as a necessary presence for the state’s economy but ethnic Mexicans “were expected either to remain in their station and refrain from any disputes or to return to Mexico” (Noel 2011, 466-467).
The Dillingham Commission, which had considered input from eugenicists and immigration restrictionists, released its findings in 1910. The report supported the belief that the surge of non-Northern European immigrants was harmful to America due to the immigrants’ inherent inferiority, unassimilability, relative prevalence of insanity, criminal tendencies, and willingness to accept low wages (Wroe 2008, 15). “Cultural biases inevitably tainted the commission’s work” (Benton-Cohen 2010b, 19). The Commission, commenting on the practices of the mining camp in Bisbee, Arizona, acknowledged the existence of the dual-wage system but characterized it “not as an injustice but as the product of a natural hierarchy of races.” The report attributed the poor living conditions of low-wage workers in the mining camps to preference rather than to their lower wages (Benton-Cohen 2009, 86). Of note, Mexicans immigrants, more numerous than Asian immigrants even in 1911, “received no special attention from the Dillingham Commission” beyond mention that they were not of concern because of their circular pattern of migration (Benton-Cohen 2011, 37). In the wake of the report, Congress passed restrictionist legislation including a literacy test but President Taft, a strong advocate for big business, vetoed the measures prior to leaving office in 1913 (Benton-Cohen 2010b, 21). In the sixteenth Congressional vote on literacy tests since 1896, the Senate overrode President Taft’s veto but the House did not. Literacy test legislation would continue to move back and forth through the legislative process until 1917 when it would become law as part of the Immigration Act of that year (Wright 2008, 82).

1913 - 1929: The Southwest Economy Grows and Mexican Immigrants Supply the Labor

While reeling from the recession that hit Arizona in 1914, Arizona was forced to contend with spillover violence from the Mexican Revolution which had begun in 1910. Cries from surprised Arizonans for federal protection mounted but were rejected as potential infringements on neutrality laws (Benton-Cohen 2010a, 9). In response to the economic
pressures and racial mistrust, Arizona enacted the so-called “Eighty Percent Law” which required that four of five employees in any workplace be American citizens or file papers to become so. The law was especially popular with the white labor coalition and voters in the mining districts (Benton-Cohen 2010a, 8). The mining companies and their allies, intent on procuring the least expensive labor possible, challenged the law which made its way to the U.S. Supreme Court in 1915 in *Truax v. Raich* (239 U.S. 33). The Court declared the law unconstitutional due to its violation of the equal protection clause of the Fourteenth Amendment (Benton-Cohen 2010a, 9). However, its popularity with Arizonan voters reflected the anti-immigrant climate at the time. The Eighty Percent Law would not be the last of Arizona’s immigration and employment-related legislation to be deemed unconstitutional.

While the federal government continued to debate an appropriate response to the spillover border violence and immigration issues in general, the violence and chaos of the Mexican Revolution continued; the warfare south of the border pushed over a million Mexicans into the U.S., mainly to the Southwest by the Revolution’s conclusion in 1929. In writing about New Mexico, Maria Rosa Garcia-Acevedo of California State University, Northridge, noted that “the lax enforcement of the border at the dawn of the century permitted the flow of population from Mexico to New Mexico, and the distinction between documented and undocumented workers blurred” (Garcia-Acevedo 2000, 218). Despite the discrimination they experienced once in the U.S., these migrants did escape the war and obtained jobs at higher pay than they could even hope for in Mexico. Because their country was in such tumult, the immigrants’ previously circular pattern of migration was disrupted. Laborers stayed in the U.S. and began to bring their wives and families to escape the violence. The Southwest’s citizens reacted to the newcomers with increased expression of anti-Mexican sentiment including calls for the U.S. to limit Mexican migration. Effectively ignoring the general public’s anti-immigrant sentiment, the
federal government responded actively to the pressures from employers who emphasized that the growing economy of the Southwest and the labor shortages caused by World War I required abundant availability of Mexican labor, primarily in the mining, railroads, and agricultural sectors. How to satisfy that need without further inflaming the Southwest’s citizens? Congress skirted the overall immigration issue and addressed limited aspects of the Southwest’s concerns. The Immigration Act of 1917, also known as the ‘Asiatic Barred Zone Act,’ denied immigration to migrants from much of eastern Asia and the Pacific Islands as well as persons deemed mentally or physically deficient (Wright 2008, 82). Together with the Chinese Exclusion Act of 1882 and the Gentlemen’s Agreement of 1907, the Act built a strong wall against legal Asian immigration; unauthorized immigration did continue from both the north and the south. The 1917 Act also ended the legislative back and forth over literacy tests by including one and it imposed an immigration head tax of eight dollars per person (Graham 2004, 41). The effect of the Act was to increase immigration’s illegal flow. The fact that a majority of the period’s Mexican immigrants were poor, illiterate even in their native Spanish, and had crossed into America without authorization in order to avoid literacy requirements and the head tax intensified Mexican Americans’ as well as Anglo Americans’ concerns (Navarro 2009, 60). Mexican Americans, already struggling to hold onto the shreds of their social position in the Southwest, renewed their efforts to separate themselves from the recent unauthorized immigrants. “Announcements of whiteness and pioneer status [by Mexican Americans] were responses to and reflections of increasing racism in early twentieth-century America” (Benton-Cohen 2009, 174). However, such “defensive maneuvers” did not change the fact that “Anglos increasingly controlled the economy” (Benton-Cohen 2009, 176) of the Southwest and pushed ethnic Mexicans into segregated communities whenever possible. “The mass immigration from Mexico in the early 1900s furthered the impression that all Mexicans were foreigners”
Secretary of Labor Wilson used a special provision of the Immigration Act of 1917 to quickly establish the Temporary Admissions Act of 1917; this Act suspended some of the requirements of the Immigration Act and effectively created the first guest worker program (Navarro 2009, 56). Wilson’s action, widely protested by many in the Southwest, was intended to satisfy business owners while emphasizing the temporary nature of the migrants’ stays and therefore minimal impact on American laborers (Foley 1997, 45). Beginning in 1919, the U.S. government also required migrants from Mexico to register at designated border-crossing stations but this requirements was rarely enforced” (Benton-Cohen 2009, 91).

Union radicalism had surged among industrial workers throughout America approaching and during World War I. Labor activists included some ethnic Mexicans – those with citizen status due to Treaty guarantees or American birth, and more recent immigrants (Benton-Cohen 2009, 199). The largely Mexican workforce at smelters in both Arizona and Texas organized strikes and, in a rare show of cooperation, white union members refused to cross the strike lines of the Mexican workers (Benton-Cohen 2009, 204). In the midst of these tensions, Mexicans in south Texas, predominantly non-citizens, conducted an armed insurrection in response to persecution by Anglo Americans. Exiled Mexican revolutionaries fueled the dramatic series of conflicts which “killed hundreds, halted the economy, destroyed significant property, and dislocated thousands” on both sides of the conflict and included “train derailments, bridge burnings, and sabotage of irrigation plants” (Montejano 1987, 117). The goal was the formation of an independent republic. Thousands of American troops and “an orgy of bloodshed” by the Texas Rangers ended the rebellion which was known as the Plan de San Diego after the town of San Diego, Texas (Montejano 1987, 127). Mexico and its army supported the U.S. military rather than the rebels in order to avoid reigniting a war between Mexico and the U.S. (Montejano 1987, 125). The rebellion inflamed the negative stereotypes of
ethnic Mexicans as racial inferiors, a threat to peace and stability, and “American citizens in name only” (Montejano 1987, 131).

In July of 1917, a significant event in the history of U.S. immigration occurred in the mining town of Bisbee, Arizona which had figured prominently in the report of the Dillingham Commission in 1911. Bisbee is located in Cochise County, eight miles from the U.S.-Mexican border, in the southeast corner of the state. Katherine Benton-Cohen, who has written extensively about Bisbee, attributes “one of the largest violations of civil liberties in American history” (Benton-Cohen 2010a, 5) to national issues of the time including “concerns over revolutionary violence and contempt for immigrant workers, combined with anti-union sentiments” which were addressed in a particular context related to Arizona’s status as a border state (Benton-Cohen 2010a, 5). At that time, Mexican and Mexican American workers across the Southwest were striking against the copper mining companies for improved conditions and wages. The International Workers of the World (IWW) Union called a strike in Bisbee and a large immigrant workforce, including a disproportionate number of Mexicans, provided most of the support (Benton-Cohen 2010a, 10). Despite the peaceful nature of the IWW strike in Bisbee (Benton-Cohen 2010, 12), Cochise County Sheriff Harry Wheeler requested National Guard troops to keep the peace. When the federal government failed to respond, Wheeler deputized local men who, heavily armed, apprehended twelve hundred men they believed to be associated with the union. The deputies loaded the men into cramped boxcars and transported them into the New Mexico desert and left them there. “About 90 percent of the deportees were born outside the United States. They claimed thirty-four nationalities, but fully half of those deported were either Mexican or eastern European, the men who had always been at the margins of the white man’s camp” in Bisbee (Benton-Cohen 2009, 225). The men, wandering in the desert, were rescued by troops from an army camp nearby. The abuse of power on the part of Sheriff
Wheeler brought a federal response, though not the one he had requested; the nation debated civil liberties and state and local government power. The federal government appointed a mediation committee and housed the deported men in an army camp for two months while the committee conducted an investigation. By the time the committee issued its report in 1918, deeming the deportation an illegal and vigilante action, “Bisbee’s immigrant communities were devastated” and Mexicans were purged from the local mining industry as “the erasure of the deportees from Bisbee was nearly total” (Benton-Cohen 2009, 228). Few returned. The federal government arrested twenty-one “mining officials, businessmen, and other deputies on charges of conspiracy and kidnapping” but the federal cases were later dismissed (Benton-Cohen 2009, 234). In early 1920, a criminal case was brought against 210 Bisbee citizens but all were acquitted (Benton-Cohen 2009, 235). According to Dr. Benton-Cohen, Sheriff Wheeler’s decision to deport the laborers “was an extreme version of the World War I demand for 100 percent Americanism. But for Mexicans it was impossible to be 100 percent American. Not in a community so close to the border, and not in a wage system predicated on their inferiority” (Benton-Cohen 2009, 237). Across Arizona, organized labor ceded control of the state’s politics and economy to the owners of the mining companies (Benton-Cohen 2009, 237). Immigrants throughout the Southwest, especially in Arizona, experienced deteriorated conditions after the Bisbee Deportation. “Mexican families faced new kinds of segregation, including in the schools” of Arizona (Benton-Cohen 2010a, 12).

Despite their lack of power to participate economically and politically, Mexicans were expected to take on some of citizenship’s responsibilities. The U.S. government at all levels worked to engage Mexicans into the armed services and civilian support efforts during World War I. As a result, ethnic Mexicans who lived in the U.S. participated in large numbers in the country’s armed forces between 1917 and 1920. Interestingly, because the federal government,
unlike a number of the Southwestern states, considered the ethnic Mexicans in the armed forces to be white, they were not segregated as black Americans were. The war broadened their experience of inclusion and returning “Mexican American veterans of World War I were among the first to demand their full civil rights” and to reject their categorization with non-naturalized Mexican immigrants (Rodriguez 2007, 153-155). Achieving this demand remained a challenge in states such as Texas and Arizona. In addition to encouraging veterans’ awareness of their civil rights, World War I served as a catalyst for the development of the current day understanding of nations and their relationships. That understanding emphasized the rights of nations to govern without interference by other nations and the inviolate nature of national borders (Ngai 2004, 10). This understanding influences immigration legislation and public opinion to the present.

During the brief economic downturn of that post-war period, Arizona’s mining companies “preserved jobs –mostly underground and for married men – that strongly favored American-born men over immigrants, especially Mexicans.” A once-thriving industry ground to a stop; only one mining company, Phelps Dodge, remained in business in Arizona by 1921. Phelps Dodge became the “dominant force in the Arizona economy” when mining resumed (Benton-Cohen 2009, 239). The years following World War I imposed increasing social pressures and isolation on Arizona’s ethnic Mexicans. One example of the pervasive acceptance of segregation, as described by legal scholars Jeanne M. Powers and Lirio Patton, was the city policy towards the use of Tempe Beach Park in Tempe, Arizona which is located in the center of the state, just east of Phoenix. That park included an Olympic size swimming pool paid for by public funds and frequented only by the city’s Anglo residents. In 1923, the Swimming Pool Committee requested funds to establish a pool for city residents of Mexican ethnicity. At no
point in the discussions of the Committee did anyone raise the possibility that all residents of Tempe should be permitted to use the existing pool (Powers and Patton 2008, 136).

California was still grappling with its concerns over Asian immigration when voters approved Proposition 1 in 1920 which made the state’s 1913 Alien Land Law more restrictive. Proposition 1 prohibited "aliens ineligible to citizenship" -- which effectively meant Asian immigrants at the time -- from owning property in the state. Such anti-Asian immigration laws blocked Asians from filling the region’s growing labor needs. As a result, by the mid-1920s Mexicans were the predominant labor force in California’s agricultural sector just as they already were in Texas, New Mexico and Arizona (Navarro 2009, 60). Approximately half of America’s large-scale cotton farms were located in Texas, California, and Arizona and agribusiness had replaced ranching in the region’s economy by this time (Ngai 2004, 129). The growth of the agricultural sector triggered large scale migration of Anglo Americans and European immigrants to the region (Montejano 1987, 113). Once they arrived, Mexicans, including those who had already fallen from the middle class to the laboring class due to the loss of their land, now fell from relatively long-term and stable contractual labor positions on ranches to temporary seasonal labor on farms. Mexicans in the agricultural areas in the west and south of Texas experienced the most severe segregation and poor treatment. The Texas pay rates were even lower than those of the other Southwestern states (Zamora 1993, 24-28). Texas farmers used multiple means including debt peonage and coercion to keep Mexican farm labor in place during the critical seasonal need for labor and then drove the labor off (often illegally and sometimes unpaid) when the needs subsided (Montejano 1987, 197-219). Ethnic Mexicans in Texas’s agricultural regions were “treated as an inferior race, segregated into their own town quarters and refused admittance at restaurants, picture shows, bathing beaches, and so on” (Montejano 1987, 114). The Klu Klux Klan furthered the hostile racial environment; some of
the racial violence included lynchings of ethnic Mexicans (Orozco 2009, 28). In another attempt to retain Anglo power in the state, the Texas Legislature passed into law in 1923 a “White Man’s Primary” which limited voting rights to qualified white male voters and excluded Mexicans from that definition (Gutierrez 1995, 27).

This excessively poor treatment coincided with the recruitment of Mexican laborers working in Texas by the agricultural industry in America’s northern states. Texas growers, alarmed at the flow of Mexican agricultural workers from the state, pushed the Texas Legislature between 1923 and 1929 to pass a series of state laws known collectively as the Emigrant Agent Acts. These laws attempted to restrict the flow of Mexican labor from Texas to other states by fining labor agents and companies who tried to entice laborers from Texas (Rodriguez 2007, 146). Inventive companies and labor agents circumvented the Acts which did not accomplish their goals (Orozco, “Emigrant Agent Acts”). Wages for agricultural and mining labor were higher in Arizona and even in Mexico than they were in Texas. Therefore, Arizona did not experience the labor unrest that typified Texas in the 1920s and early 1930s (Ngai 2004, 137). Despite the efforts of Texas’s agribusiness owners, Mexican labor branched out into other occupations due to the availability of industrial jobs beginning in the 1920s. Anglo workers and the unions that represented them resisted the change with Texas again figuring prominently in repression. As early as 1921, oil workers in northern Texas rioted against their Mexican co-workers, threatening them with death unless they left their jobs. Multiple affiliates of the American Federation of Labor (AFL) “made it clear that they would not work alongside Mexicans and opposed their hiring” (Montejano 1987, 189). Across the Southwest, but especially in Texas, labor unions excluded Mexican and Mexican American laborers, fought to make skilled occupations Anglo only, and demanded racial quotas (Montejano 1987, 190). Texas in that era was full of labor contractors and employment agencies that, according to
cotton growers, drove up the prices of Mexican labor. The growers pressured the Texas Labor Bureau to get those middle men out of the way of profits by regulating the new industry or by operating employment agencies itself. In 1923, the state complied and the Labor Bureau opened employment agencies in Amarillo, Dallas, El Paso, Fort Worth, San Antonio, and Waco, all destination cities for the railways from Mexico and the laborers they carried north (Foley 1997, 49).

The views of Americans, particularly in the Southwest and West, on the issue of immigration sharpened into two polarized positions in the 1920s and early 1930s that depended largely on one’s place in the socioeconomic hierarchy. “Small farmers, progressives, labor unionists, and eugenicists” were typically restrictionists who wished to close the border and deport all non-naturalized Mexicans across it. “Large scale growers, railroad executives, and businessmen” were usually antirestrictionists and pushed for open borders and unchecked flow of Mexican labor (Montejano 1987, 186). Both groups agreed on the negative social impact of immigrants on the American way of life; the difference between them was in how they viewed their economic interests relative to immigration policy options and how they crafted their message. Antirestrictionists prioritized the benefits of inexpensive labor over cultural concerns and “felt confident that they could control the situation – and in a manner that would satisfy both social principles and economic needs” (Montejano 1987, 187). Rationalizing their extensive recruitment of Mexican labor, antirestrictionists argued that such labor was useful to accomplish tasks that were beneath the dignity of Anglo Americans; the Mexican race’s inherent slow pace, low intelligence, and passivity particularly suited them for such work (Gutierrez 1995, 46). Employers also emphasized that the laborers’ stay in America would be temporary and “therefore represented no lasting social or economic threat to American citizens” (Gutierrez 1995, 49). Inadvertently, the Mexican laborers themselves contributed to this
impression. Their hope of returning to Mexico demotivated many from applying for U.S. citizenship. Their non-citizen status made them easy targets for systemic discrimination (Rodriguez, 133).

The end of World War I heralded a strong isolationist mood throughout the U.S. (Benton-Cohen 2010b, 21). Congress responded to restrictionists’ calls for action by passing the 1921 Emergency Quota Act and the 1924 National Origins Act which is also known as the Johnson-Reed Act. While these pieces of legislation aimed to “shut the doors of immigration” (Lee 1998, 44), neither capped immigration from Mexico due to antirestrictionist pressure and the lack of salience of Mexican immigration as an issue at the national level (Lee 1998, 45). Regardless of the failure to address this predominant concern of the Southwest, these bills were landmarks in America’s history of immigration law (Wright 2008, 86-89). The 1921 Act, which was temporary and set to expire in 1924, limited the number of immigrants from each non-Western hemisphere country, with the exception of Asian nations, to no more than three percent of the number of immigrants from that country enumerated in the 1910 Census (Lee 1998, 45). Of greater significance to America’s nativists, the 1924 Act restricted immigration further. That Act used as its baseline the 1890 Census, collected before the huge wave of immigration from Southern and Eastern Europe, to determine national quotas. The Act also capped total immigration at 165 thousand, which was a significant reduction from the inferred total of 360 thousand allowed by the 1921 Emergency Quota Act (Lee 1998, 45). Together, the Acts of the early 1920s nearly halted immigration, including that from Mexico. Echoing the results of the Immigration Act of 1917, the visa charges and head taxes that were part of the Immigration Act of 1924 served as obstacles to many prospective legal Mexican immigrants who consequently chose to immigrate illegally (Rodriguez 2007, 146). “Unsurprisingly, Mexican migrants quickly demonstrated little regard for the requirements of the official border. Perhaps hundreds of
thousands crossed the border without documents between 1917 and 1929.” This situation resulted from insufficient processing staff at official border crossings as well as overt decisions to enter illegally (Ettinger 2009, 151). The increase in unauthorized immigration motivated Congress to pass the Labor Appropriations Act of 1924 which established the U.S. Border Patrol at both the Mexican and Canadian borders (Ettinger 2009, 146). Two unintended consequences of the continued push to migrate in spite of increased restrictions and border law enforcement were a reduction in circular migration and an increase in human smuggling. The presence of the Border Patrol complicated unauthorized immigration enough that the traditional circular pattern of migration became more risky; many of the unauthorized migrants stayed in America. The increasing difficulty of immigration promoted the resurgence of an immigrant smuggling industry that remains active today. Both European and Mexican immigrants relied on these paid networks to help them avoid law enforcement (Ettinger 2009, 147). In sum, both the Canadian and Mexican borders of the U.S. went from an unguarded state up to the 1880s to heavily patrolled barriers by the 1930s. Despite the law enforcement infrastructure which did experience some success, immigration, now increasingly unauthorized, continued. In reaction to the concern of Anglo Americans regarding this change, Mexican Americans themselves emphasized the distinction between ethnic Mexican American citizens and the significant wave of unauthorized immigrants from Mexico. “The distinctions between Mexicans and Americans and legal and illegal immigrants hardened” during the 1920s (Rodriguez 2007, 147).

Mexican Americans in Texas’s Corpus Christi area, not far from the border and a center of anti-Mexican sentiment, founded the League of United Latin American Citizens (LULAC) in 1929 in response to discriminatory practices against Americans of Mexican ethnicity. LULAC’s leadership focused on the rights of Mexican American citizens and was as “equally interested in preparing Mexican Americans for integration as they were with combating prejudices”
In an attempt to emphasize their status as American citizens and to separate themselves from recent undocumented immigrants, LULAC argued that Mexicans were white Caucasians. Using terms such as “Latin American” and “American of Spanish extraction” to self-identify was an attempt by American citizens of Mexican descent “to assert their rights in contradistinction to immigrants with Mexican citizenship” (Benton-Cohen 2009, 269). This division was a reflection of the growing American acculturation of the ethnic Mexicans in Texas who were American citizens and whose families had lived in Texas for generations as compared with the post World War I immigrants who opposed assimilation and “promoted Mexican nationalism and the Spanish language,” remaining vested in the political changes in Mexico (Orozco 2009, 57). From its start in Corpus Christi, LULAC extended its activism across Texas and the nation. Its endeavors on behalf of American citizens of Mexican ethnicity resulted early in its history in desegregation of hundreds of public places, including swimming pools, restrooms, water drinking fountains, public dinning places, hotels, and barber and beauty shops. LULAC organized and financed the first, though unsuccessful, 1931 class action lawsuit against school segregation in Texas, *Salvatierra vs. Del Rio Independent School District*.

Though disappointed that the 1921 and 1924 Immigration Acts and some additional regulations passed in 1929 did not set numeric limitations on immigration from Mexico (Wright 2008, 89), anti-immigration activists in the Southwest were not deterred. The California Joint Immigration Committee (CJIC) led efforts to exclude Mexicans from eligibility for citizenship. As noted earlier, the laws of the times were not clear on the status of Mexicans because Mexicans had often been legally and socially considered non-white although they were more often categorized as white (Molina 2010, 172). The CJIC, which was an umbrella organization for interest groups that included the Federation of Labor, the American Legion, and the Native
Sons of the Golden West (Molina 2010, 181), continued to push to have Mexican immigration included in the immigration quota system throughout the rest of the decade (Navarro 2009, 61). The advent of the Great Depression in 1929 strengthened their stance. While efforts to exclude Mexicans from citizenship ultimately failed, pressure by the CJIC and politicians including Representative John C. Box of Texas did result in the issuance of instructions by the State Department to its consular offices in Mexico to reduce available visas (Molina 2010, 188). Congress in 1929 also passed Public Law 1018 which criminalized both entry into the U.S. without a visa and return to the U.S. after deportation. The former was made a misdemeanor punishable by up to one year of incarceration and the latter became a felony punishable by up to two years of incarceration. Due to these restrictions, despite their exclusion from the quotas of the period’s immigration laws, Mexicans became the largest group of illegal aliens in the U.S. (Ngai 2004, 7). In order to enforce the restrictions, Congress increased the funding for the Border Patrol (Molina 2010, 189). “For the first time, the crossing of the U.S.-Mexico border was a challenging endeavor” for Mexicans (Garcia-Acevedo 2000, 224). According to Katherine Benton-Cohen, these and other changes ended the Mexican American claim on whiteness in much of the Southwest by 1930 despite the efforts of the Mexican American middle class and LULAC. The terms “Mexican” and “white American” “had become mutually exclusive racial categories that divided nearly the entire population” of the Southwest. The division was especially sharp in Arizona which had a mining-based economy (Benton-Cohen 2009, 240). As an indicator of the increasing distinction, the number of marriages between Mexican Americans and Anglo Americans in the Southwest fell around that time. According to Dr. Benton-Cohen, this decrease in inter-marriage might have reflected more than the obvious one of Anglo preferences; the Mexican Americans who had lost most of their land and water
rights might also have preferred to marry within their own community in order to consolidate any remaining holdings (Benton-Cohen 2009, 160).

1930 - 1945: The Great Depression and World War II Stress Immigration Policy

California by 1930 “accounted for one-third of the United States’ fresh fruit, one-fourth of its vegetables, and nearly the entire American output of almonds, artichokes, figs, nectarines, olives, dates and lemons” (Gutierrez 1995, 42). Despite their contributions to agriculture in California, ethnic Mexicans there suffered from institutionalized discrimination just as in the other Southwestern states. “When the Latino presence in the state was noticed at all, it was viewed as a problem, the ‘Mexican problem,’ that most public officials hoped would quietly go away” (Hayes-Bautista 2004, 1). In this sense, California was much like Texas, the other Southwestern state with an economy based in agribusiness. Immigration fell during the Great Depression due to the poor economic conditions and the border enforcement and repatriations conducted by the U.S. government. For the first time, the Census of 1930 codified the distinction of Mexicans from whites by providing a Mexican racial category. This codification by the federal government opened the door for the exclusion of Mexican nationals from citizenship and other legal protections that, at that time, were restricted to the white population which now did not officially include ethnic Mexicans. The designation in the 1930 Census reflected the beliefs of the time and further betrayed the national intention expressed in the Treaty of Guadalupe Hidalgo to integrate ethnic Mexicans in the annexed territory into American life.

The Great Depression transformed the industries of the Southwest just as it did in the rest of the country. The copper mining industry throughout the Southwest and West collapsed in 1933 which seriously impacted the economy of Arizona. While bringing some relief to the plummeting economy, the Roosevelt Administration’s New Deal economic policies of the
1930s did not remedy the social or economic inequalities in the Southwest due to their discriminatory implementation. In Arizona, mining company owners administered the federal public relief programs and “accommodated local inequities” by paying lower wages for New Deal work to ethnic Mexicans and by providing lower levels of aid (Benton-Cohen 2009, 255). “Relief administrators and Anglo residents treated whiteness and American citizenship as inextricable, a long-standing assumption of mining-town housing and salary policies” (Benton-Cohen 2009, 258). In the New Deal era of the industrial farm in the mid-1930s, any remaining white tenant farmers in the Southwest joined the seasonal migrant workers who had, until that time, been predominantly Mexican and black. This pattern was particularly prevalent in Texas (Foley 1997, 164). In addition to the Dust Bowl and the Great Depression, the consolidation and mechanization of the cotton farms of Texas, Oklahoma and Arkansas and the unfair contractual labor practices of the period pushed agricultural laborers west, mostly to California. John Steinbeck illustrated their plight in his historical novel, *The Grapes of Wrath*. When concern grew over the treatment of these farm laborers in Southwestern agriculture, landowners successfully resisted attempts to restructure their industry to reduce its dependence on seasonal labor, thus keeping wages low. Attempting to raise cotton prices by restricting supply, the Agricultural Adjustment Act of 1933 authorized federal payments to farmers who reduced production. Southwest farmers responded by plowing under approximately ten million acres of cotton; this represented one quarter of the nation’s crop and the jobs associated with it (Foley 1997, 166). The tenant farmers of west Texas – whites, blacks, and Mexicans alike -- suffered the most as that region’s “acreage reduction, rapid mechanization, and the growing use of Mexican migrant labor accelerated the shift to large-scale production and the attendant decline in the system of tenant operations or small farms” (Foley 1997, 175).
The state of New Mexico remained poor and sparsely populated and the Great Depression only worsened the situation. In contrast to the rest of the Southwest with its agricultural and mining industries, New Mexico relied heavily on federal grants as well as small scale farming and livestock long before the New Deal (Garcia-Acevedo 2000, 223). The majority of families, especially native Mexicans, relied on subsistence farming for survival; adult males supplemented the family income with earnings from migratory labor (Maciel and Gonzales-Berry 2000, 87). A small middle class of ethnic Mexican “business-people, teachers, and public officials” (Maciel and Gonzales-Berry 2000, 87) emerged in the state’s larger towns and cities. Political action on the part of Mexican Americans who had continued their civic participation after statehood as well as continued integration of education made the middle class possible. Unofficial segregation did occur however, especially in the eastern part of the state, despite political safeguards. Because New Mexico did not have widespread agriculture and mining sectors as did the other Southwestern states, it was not ever the destination of choice for unauthorized laborers. New Mexico avoided most of the tumult that came with the presence of the unauthorized population. This was especially true when jobs evaporated during the Great Depression which began in 1929 (Maciel and Gonzales-Berry 2000, 91).

The economic hardships of the Great Depression led to increased nativist attacks on all immigrants in the U.S. throughout the 1930s. Ethnic Mexicans were frequently fired from jobs in order to make room for unemployed Anglo Americans; they experienced massive job loss, displacement from their homes, and poverty (Navarro 2009, 62). Despite the fact that ethnic Mexicans were so affected, restrictionists emphasized that those who were still employed were depriving Americans of jobs due to their acceptance of low wages (Gutierrez 1995, 55). As representatives of the American worker, organized labor unions joined the anti-immigration chorus, alleging that immigrants from Mexico were stealing jobs that rightfully belonged to
Americans, depressing wages for manual labor, and degrading working conditions for all (Navarro 2009, 60). The Southwest’s Mexican Americans worried about these same things, along with Anglo Americans, and additionally worried that Mexican immigrants were “competing with them for scarce jobs and housing, and undercutting their efforts to achieve better working conditions” (Gutierrez 1995, 59). The farmers and sharecroppers who migrated from drought-parched states such as Oklahoma began to replace ethnic Mexican laborers in the agricultural sector in large numbers. “The large-scale immigration of farm settlers from the Midwest and the South and of farm laborers from Mexico overwhelmed the pioneer residents, both Anglo and Mexican, of the border region” (Montejano 1987, 9). At the same time, the change from the long-term and year-round employment typical of the Southwest’s ranches to the seasonal employment of the agricultural economy shifted the relationships between employer and worker and further segregated the races (Montejano 1987, 9).

In the anti-immigration atmosphere of the Great Depression, the government developed federal administrative regulations that led to massive deportations. Some of these “repatriations” were voluntary and some were not. The Immigration and Naturalization Service (INS) worked with the Department of Labor’s Bureau of Immigration and local law enforcement agencies to conduct roundups, likened to paramilitary operations, of Mexicans in major American cities in the Southwest and Midwest (Navarro 2009, 63). Southern California was the main location with the largest action occurring in Los Angeles in 1930 and 1931 (Gutierrez 1995, 72). In California alone, over five hundred thousand ethnic Mexicans left the U.S. voluntarily due to deteriorating conditions or were deported (Wroe 2008, 17). “The deportations and threats of deportations, coupled with nativist hostile attacks, convinced thousands of Mexicanos, especially from Texas, to voluntarily return to Mexico” (Navarro 2009, 63). Interestingly, the repatriated Mexicans often took with them children who were
American citizens. The deportations of the era made clear that “both the U.S. government and growing segments of the business community now took for granted the fact that Mexican laborers could be imported during the good times and banished when times turned bad” regardless of their citizenship status (Rodriguez 2007, 161). Due to the Mexican consulates visa reductions of the 1920s, the deportations and lack of employment during the Great Depression from 1929 to 1939, increased border enforcement, and the continued migration of Anglo Americans to the Southwest, the proportion of the Southwestern population that ethnic Mexicans represented dropped in the 1930s (Molina 2010, 189). Despite that drop, anti-Mexican rhetoric continued unabated in the Southwest. As one example of the rampant discrimination and response, an attempt was made in the city of El Paso, Texas in 1936 to classify the race of Mexicans living in the city to non-white. LULAC led the successful drive to reject this reclassification and compelled the U.S. Census Bureau to eliminate its 1930 Census racial category of “Mexican,” once again including Mexicans as white in its official definition (Molina 2010, 192).

By the end of the 1930s, the position of ethnic Mexican workers throughout the Southwest, regardless of industry, was a dire one. Not only were they scapegoated by displaced Anglo farm workers as the cause of their own disenfranchisement, they were also denigrated by insecure industrial workers who were struggling to form and maintain unions. The efforts of ethnic Mexican workers to act on their own behalf – leaving farms to seek higher pay, striking, and occasionally sabotaging urban workplaces -- gained them the reputation of “insolent and intractable workers” (Zamora 1993, 53). On the national level though, Mexicans again made some progress by 1940. The 1940 Nationality Act extended citizenship to “white persons, persons of African nativity or descent, and descendents of all races indigenous to the Western hemisphere (Molina 2010, 200). America’s need for industrial labor and for copper and other
materials contributed to advances in union power in the industrial sector of the economy and the end of dual-wage system in the Southwest mining industry leading up to World War II (Benton-Cohen 2009, 271). American employers, especially in the agricultural and mining sectors, had again turned to Mexico to fill the need for manual labor during the industrial build up of the pre-war period. The need for such labor, and the desire of both Mexico and the U.S. to control migration between Mexico and the U.S. and the conditions for migrants, led to the founding of a guest worker program soon after the U.S. entered World War II. The program, known as the Bracero Program and officially called the Mexican Farm Labor Supply Program, provided official support for temporary Mexican workers in the U.S. under the auspices of the U.S. Department of Agriculture (USDA). The program also set standards for wages and working conditions that satisfied the Mexican government. Motivated by the chronic negative social conditions in Mexico, Mexicans applied with alacrity; the U.S. issued and over four and a half million temporary visas (though some were to repeat workers) across the years of the program which officially concluded in 1964 (French 2010, 78).

As intended by the Program, most braceros migrated to California to work in agriculture (Navarro 2009, 73). While the Program did recruit the planned number of laborers, it failed to reduce unauthorized migration although that result had been anticipated. The continued availability of unauthorized laborers enabled agricultural employers such as those in Texas and the Imperial Valley of California to meet the needs for inexpensive labor while avoiding the requirements of the Bracero Program for wages and working conditions (Navarro 2009, 79). Arizona and New Mexico also required agricultural labor but on a smaller scale. Employers in those states were typically willing to work within the Program’s constraints (Ngai 2004, 152). For the braceros as well as immigrants outside the program, reality often deviated from the guarantees negotiated by Mexico. Enforcement of the Program’s requirements was weak. Over
the years, as the two governments repeatedly renewed the Bracero Program, the U.S.
government turned over much of its administration to private employers, further weakening the
enforcement of the protections. Treatment of the braceros in the U.S. included low wages, high
costs, physical mistreatment, exposure to harsh working conditions and environmental
chemicals and hazards, and physically grueling labor (Navarro 2009, 74). Death and injury were
common (French 2010, 77). The Bracero Program had a negative effect on the status of ethnic
Mexicans in the U.S., especially in the Southwest where the laborers were concentrated. First,
the typical bracero was illiterate in any language, poor, and unlikely to return permanently to
Mexico. This affected public perception and reduced the status of ethnic Mexicans in general. In
addition, though not always enforced as previously noted, the conditions of employment under
the program were sometimes better than those of other workers in the Southwest. “Ill feelings
toward Mexicans certainly brewed during this time given that foreign migrant workers were
guaranteed wages and benefits denied U.S.-born farm workers” (French 2010, 77).

At the same time as the braceros and their unauthorized brethren streamed across the
border, between 375 and 500 thousand ethnic Mexicans served with the U.S. military during
World War II (Navarro 2005, 191). Although their participation did not alter employment
practices and the underlying attitudes of Americans, particularly in the Southwest, to Mexicans
and other racial minorities, their circumstances began to change. President Roosevelt created the
Federal Employment Fair Practices Committee (FEPC) by Executive Order 8802 in 1941 and
strengthened it in 1943 with the subsequent Executive Order 9346. This legislation aimed to
ensure that the federal government conducted business with only those companies that did not
discriminate on the basis of race, color, creed or national origin. Already active in immigration
and labor management in the Southwest due to the ongoing Bracero Program, the federal
government began field operations throughout the Southwest to ensure employers’ compliance
with the FEPC in 1943. The investigations revealed that some growers classified Mexicans, including Mexican Americans, as unskilled labor even if they were performing skilled work (Montejano 1987, 269). As a result, the federal government took legal action in both 1943 and 1948 to ensure compliance with the FEPC and to block the Southwest’s agricultural sector from recruiting labor outside the Bracero Program. Subsequently, ethnic Mexican laborers began to fill semiskilled positions in the Southwest’s factories, shipyards, and mines, triggering strong resistance that included strikes in some locations. The frustrated Texas growers requested participation in the Bracero Program in the summer of 1943. The Mexican government refused to issue work permits for Texas because Mexico deemed the state’s discrimination against Mexicans to be “brutal and intolerable due to the practice of de jure segregation” and the treatment of Mexican nationals by the Texas Rangers (Navarro 2009, 74). In an effort to placate the Mexican government, Texas Governor Coke Stevenson issued the Caucasian Race Resolution (H.C.R. No. 105, 1943) affirming the rights of all Texas Caucasians to equal treatment in public places (Montejano 1987, 268). The intent was to include Mexican Americans under the Caucasian designation but that view was not shared by many Texans. Stevenson quickly followed this error by establishing the Good Neighbor Commission of Texas, a federally funded effort whose mission was to end discrimination through improved understanding (Montejano 1987, 268-270). These measures did not immediately convince the Mexican government which delayed issuing the guest worker permits requested by Texas until late 1947 (Navarro 2009, 74).

As the Southwest’s business owners adjusted to the increase in federal oversight, the military-industrial complex expanded during this period in New Mexico bringing military bases, missile testing ranges, and demands for timber, industry, and minerals and metals. This also affected Arizona to a lesser extent. Air travel and communication technologies escalated
changes in these states. Urban growth resulted and enlivened New Mexico as well as Arizona economically, socially, and demographically (Nash 1994, 8-11). Notably, New Mexico became the nation’s center of advanced scientific research due to the establishment of the Los Alamos Laboratories “which spawned other scientific projects throughout New Mexico” including the Sandia Laboratories in Albuquerque (Nash 1994, 12).

**Why Arizona? What this History Reveals about Arizona’s Passage of S.B. 1070**

This chapter documents the expansion of both the population and the economy of the Southwest from the post-Civil War years through World War II, despite the Great Depression of the early 1930s. During this period, the Southwestern border states each experienced a revolution in culture and economy, moving from low-population rural societies to locations for extensive industry and agribusiness. Motivated by the needs of World War II and continuing in its wake, “government contracts attracted high-tech manufacturing firms to the region, resulting in unprecedented demographic and urban growth and laying the groundwork for the manufacturing and service economy to supersede the old extractive economy” (Meeks 207, 6). Even New Mexico was transformed by science and the military. The federal government also became a major actor in the provision of social benefits during this period of history with its New Deal remedies for the economic conditions of the Great Depression; up until World War I, “state and local spending far exceeded that of the federal government, and most government services were provided by subnational governments” (Hansen 2006, 30).

This review reveals some aspects of Arizona’s history that foreshadow the passage of S.B. 1070 in 2010. While all four of the states have strong histories of discrimination and anti-immigrant sentiment, with New Mexico continuing as the milder exception, Arizona’s experiences reveal a serious division between its ethnic Mexican and Anglo populations that continued from the period of border definition discussed in Chapter 2. As the twentieth century
approached, America began to address its incorporation of the Southwest. Americans of the
time were conflicted about ethnic and racial differences within the new region. Part of that
uncertainty was evident in the differing stances of the Arizona and New Mexico Territories as
they reached for statehood. Arizona distinguished itself for its strong Anglo identification and
its policy of marginalizing its Mexican American residents and its more recent Mexican
arrivals. The journey to statehood would likely have been far shorter if Arizona had been
willing to form one state with New Mexico. But Arizonans preferred to wait rather than to
accommodate New Mexico’s significant ethnic Mexican population. After joint statehood was
defeated, Arizona’s application to join the Union as a state was based on strong American
identity and the elimination of the status of its ethnic Mexican residents. The statehood process
itself, which required that officials and citizens express their views and justify them, increased
the certainty behind the voices: Arizona was a state that was to be run by its Anglo population
according to Anglo values and norms. A strong white labor coalition in Arizona influenced the
state’s first Constitution which codified these values and offered no accommodations to
Spanish-speaking citizens. The state Constitution “assured Anglos within and outside the
territories that people of Mexican descent either remained safely under the control of their
Anglo employers or would not stay long in the country” (Noel 2011, 435). In contrast to
Arizona, New Mexico supported the Mexican American elite’s continued hold on power. The
relatively slow growth of the new state’s population as compared to Arizona, Texas, and
California (Nash 1994, 5) helped. The status quo in state politics and power in New Mexico was
encouraged by the state Constitution’s accommodation of multiple interests and cultures within
the new state’s government. To this day, the state typically has ethnically balanced
representation in national offices with one Anglo and one Hispanic senator and one Anglo and
one Hispanic representative. Each party’s gubernatorial ticket through 1960 typically included
an Anglo nominee for governor with a Hispanic nominee for lieutenant governor (Garcia 1994, 44).

The spillover incidents at the Arizona border during the Mexican Revolution, Arizonans’ subsequent requests for help, and the federal government’s refusal to intervene due to broader trade and international concerns set a pattern that would be repeated a number of times up until 2010 and the passage of S.B. 1070. The pattern of the state’s passage of restrictionist legislation as an extreme reaction to changing economic conditions in periods of high immigration, exemplified by the Eighty Percent Law, would also repeat in later Arizona history. The federal oversight of employment practices provided by the Bracero Program was not a significant influence on the state because Arizona was less reliant on the program than were Texas and California. Arizona was highly independent of federal oversight and intervention up to World War II. Consequently, the social constructs and economic highs and lows of the mining industry continued as the driving force in the state’s economy and determined the state’s overall stance towards the ethnic Mexicans who resided there. Most of the ethnic Mexicans who lived in Arizona during the period from 1865 – 1945 came as immigrants, often unauthorized. The Mexican miners entered the job hierarchy at the bottom rung and most stayed there. The structure of the mining camps made it nearly impossible to climb the ladder. Their position at the bottom invoked disrespect due to their willingness to accept low wages – the only wages offered to them. Their low wages determined their poor living conditions which engendered further disrespect. The Bisbee Deportation in 1917 was a seminal event in Arizona’s history and displayed for the nation the worst aspects of the state’s mining culture. But rather than the sunlight of national attention illuminating the problem so that it could be addressed, national criticism furthered the consolidation of the Anglo point of view within the state. In the wake of the Bisbee Deportation, conditions deteriorated, divisions
sharpened, and discrimination and isolation increased for the ethnic Mexicans, both citizens and non-citizens alike. There was little change in this situation until after World War II when empowered Mexican American veterans returned to the state and the rest of the Southwest. Their achievements would promote an awareness of ethnic Mexicans as U.S. citizens. However, the unabated flow of now unauthorized immigrants from Mexico, while filling the labor needs of the invigorated Southwestern economy, made the veterans’ task more difficult by encouraging the impression of ethnic Mexicans as low-skilled, low-wage, and only marginally American.
CHAPTER 4
BORDER TENSION: INCREASING UNAUTHORIZED IMMIGRATION AND THE SOUTHWEST FROM WORLD WAR II TO THE MILLENNIUM

Although changes in Americans’ attitudes towards race were by no means universal, immediate, or achieved without a struggle, minorities in America gained ground on social equality beginning with the World War II generation’s return from the front. The veterans’ activism set the stage for the Civil Rights Movement of the 1960s and 1970s which caused a sea change in American perceptions of race. These changes in attitudes regarding race then influenced decisions on immigration policy at the federal level. The restrictions of early twentieth century immigration laws, discussed in Chapter 3, bowed to liberalization in the latter part of the century although the federal government’s direction was sometimes in misalignment with the expressed will of America’s voters. Although unintentional, the federal legislation beginning in the 1960s increased overall immigration levels and shifted primary sending countries from Europe to Asia, Mexico, Central America, and the Caribbean (Sassen 1998, 35). The 1990 Census reflected the increase, enumerating the late twentieth century’s explosive growth in the non-Anglo population of the Southwest and, to a lesser degree, other regions of America. The Census also indicated that authorized and unauthorized immigration as well as high birth rates all contributed to its updated snapshot of America, especially in the Southwest, and especially in California. Throughout America, the quantification of this demographic change, which was already evident in many communities, was “greeted enthusiastically in many places, with ambivalence in others, and with open hostility in many sites” (Gutierrez and Zavella 2009, 3). As the 1990s and the immigration surge continued, the public cried out for government control of what many, particularly in the Southwestern border states, increasingly perceived as an invasion of their territory, culture, and economy. All levels of government
struggled with legislative responses, flip-flopping back and forth between restrictionist and inclusionist legislation. A particular focus of the legislation of the era, best exemplified by the landmark Proposition 187 in California, was the provision of any publicly funded benefits to residents of the U.S. who were not citizens. “The extent to which residents of the United States who are not U.S. citizens should be eligible for federally funded public aid has been a contentious issue since the 1990s” (Wasem 2010, 1). Which level of government had jurisdiction over benefit and services distribution decisions and which level should absorb the costs incurred in providing those benefits and services to non-citizens? “At the heart of this conflict is the fact that the federal government sets policy but does not assume responsibility, financial or otherwise, for the implementation of many key aspects of immigration policy” (Sassen 1998, 11). Immigration policy and welfare policy became closely entwined in the 1990s and the states reacted. Here, in the post World War II years up to the millennium, the story of S.B. 1070 gained momentum.


“While Mexicanos were dying in the battlefields, at home they continued to be victimized by segregation, poverty, and racism” (Navarro 209, 70). The Mexican American men and women who returned to their Southwest homes from service in the armed forces during World War II met continued racism despite their contributions to the war effort; the unity of wartime “rapidly evaporated during peacetime” (Montejano 1987, 270). While they were often denied the recognition and respect provided to other veterans, federal programs including the GI Bill’s educational benefits did cover Mexican American veterans. As the number of college-educated amongst them increased, so did their political activism. Civil rights rose to the top of the national agenda when minorities, with Mexican Americans being most significant in the Southwest, demanded full participation in civic life. With the participation of veterans, the
Texas-based LULAC, the American GI Forum, and other organizations representing Mexican Americans gained strength after World War II (Gutierrez 1995, 153-155). The organizations continued to separate their members from the multitudes of unauthorized immigrants and to claim equality for Mexican American citizens. Towards that end, they set the goal of eliminating the separate school system for ethnic Mexicans in the Southwest. Their long legal battle led to success in a number of school district-wide and state-level cases in the late 1940s and early 1950s. Of particular note, in 1951 the U.S. District Court of Arizona ruled in Gonzales v. Sheely that separate education of Mexican American students was unconstitutional. This Arizona case followed the pattern of Mendez v. Westminster in 1946 in California and Delgado v. Bastrop in 1948 in Texas. However, the Arizona case went further by stating that separate schooling was unconstitutional (Powers and Patton 2008, 128). The Arizona decision was effective three years before the historic Brown V. Board of Education decision of the U.S. Supreme Court in 1954 which declared separate schooling based on race or ethnicity to be unconstitutional. However, prior to Brown, rulings such as that in Gonzales v. Sheely were applied within particular school districts; a 1952 effort to end segregation across all of Arizona’s school districts failed in 1952 (Navarro 2005, 260). With the Court’s ruling in Brown, a pervasive and discriminatory system that affected both the children of American citizens and the children of unauthorized immigrants met its official demise. On the wage and employment equality front, the 1950 strike at the Empire Zinc Mine near Silver City, New Mexico contributed to the eventual dismantling of the dual-wage system in the mining industry (Benton-Cohen 2009, 268). The strike effectively ended the “heavy-handed tactics long used by the Anglo-dominated law-enforcement agencies and their use of excessive and extra-legal measures commonly employed in the region for over half a century” (French 2010, 84). The message of
New Mexico’s miners resonated across the state border in Arizona. There, the Clifton-Morenci mine “had a long history of brutality toward its workers of Mexican descent” (French 2010, 84).

At the same time as Mexican Americans and the organizations representing them were making progress, a number of socioeconomic factors crystallized into a strong anti-immigrant response. Post-World War II fears of communism and socialism reached heightened after the war. The national media jumped to cover the topic of immigration, grouping racial and ethnic minorities together with the political minorities that many considered threats to the American way of life (French 2010, 78). The mining strikes and the polarizing presence of Senator Joseph McCarthy of Wisconsin in Congress fed the flames of the anti-radical movement which reached its most extreme expression in the early 1950s, the peak years of the Bracero Program. Despite the fact that the ongoing Program was in part intended to control levels of unauthorized immigration by providing a legal avenue for business owners to recruit and employ Mexican laborers at wage rates lower than those acceptable to American workers, the number of unauthorized immigrants increased exponentially during the years of the program. California experienced the most dramatic increase in its ethnic Mexican population due to the Bracero-related immigration to the state’s agricultural areas and escalating birth rates among the earlier generations of immigrants (Navarro 2005, 250-251). Accentuating their visibility during already tense economic and political times, a segment of the ethnic Mexicans of the Southwest left agriculture and settled in the urban areas that they believed offered better economic opportunities in the construction, building maintenance, trucking, manufacturing, garment, domestic service, and hospitality industries (Navarro 2005, 251). Contributing heavily to nation’s concerns, the U.S. experienced a post-war recession and many American laborers became unemployed, particularly in the Southwest. The unemployment of American citizens became a highly publicized social issue when juxtaposed against the presence of so many
geographically concentrated unauthorized immigrants who were willing to accept low wages.

Many of the citizens of the Southwest and the nation jumped to conclusions regarding cause and effect and called on the federal government to solve the issues of the era with greater controls over immigration. Attempting to quell the national outcry, Congress passed the Immigration and Naturalization Act of 1952, also known as the McCarren-Walter Act. A milestone in immigration policy, the 1952 Act served as the foundation of U.S. immigration law until 1965. The legislation’s aims were to tighten immigration controls, exclude potential subversives, and reflect the international alliances that had emerged during the war (Wright 2008, 98-99). The Act’s statutes replaced the remaining raced-based immigration quotas with nationality-based quotas, building on the approach introduced by the Immigration Restriction Act of 1921 but allowing immigration from all countries including Asian nations. “Views on race and on America’s role in the world were changing, and so was the country’s immigration policy” (Lee 1998, 46). The McCarran-Walter Act introduced preferential categories of immigrants, prioritizing family members of American citizens and those applicants in certain job skill categories. The Act also criminalized the act of smuggling persons into the U.S. or sheltering them within the U.S. after unauthorized entry (Wright 2008, 98-99). Interestingly, due to heavy lobbying by the Texas congressional delegation, the law included “the Texas Proviso” which exempted employers of unauthorized immigrants from prosecution under the Act’s statutes (Wroe 2008, 18). Again, the power of Big Business over national immigration policy was evident. McCarran-Walter also allowed the arrest of unauthorized immigrants and tapped the Immigration and Naturalization Service (INS) to enforce the new law.

The INS, the Border Patrol, and other governmental agencies moved quickly in the wake of the passage of the McCarren-Walter Act to escalate the deportation efforts it authorized. Operation Wetback, initiated first in California and Arizona during 1953’s
economic recession, was a paramilitary effort that targeted unauthorized Mexican laborers, referring to them with the pejorative that was based on a migration route that a proportion of them took, swimming across the Rio Grande to Texas. Law enforcement officers searched Mexican and Mexican American communities, arresting and deporting anyone who could not produce adequate documentation. Treatment of all who even looked Mexican was harsh (Navarro 2009, 85). In an interesting twist, many of those apprehended were encouraged to return to the U.S. as braceros, ensuring the continuation of that program for another few years (French 2010, 83). Mexican-American organizations such as LULAC and the American GI Forum, still emphasizing the distinction of their members from the illiterate and unauthorized, supported the Operation while agribusiness objected to it (Navarro 2009, 86). As the economic recession lifted, Operation Wetback waned but did continue at a low level throughout the Southwest until its official termination in 1955 (Navarro 2005, 249). Though of short duration, the Operation was a significant event in immigration history, especially the history of ethnic Mexicans in the Southwest as Laurence French of Western New Mexico University argues:

> Operation Wetback was significant for a number of reasons. It established the Border Patrol as a viable agency while articulating the issues relevant to undocumented Mexicans that exist today: construction of a border fence, use of military-like operations in border enforcement, and legal arguments over who should be punished – businesses who employ undocumented workers or the illegal Mexican who is enticed to the United States for low-paying, often seasonal work. (French 2010, 81)

The Operation cemented mid-twentieth century anti-immigrant attitudes throughout the Southwest and the nation by portraying each authorized and unauthorized Mexican laborer as “a subhuman, despicable character who was prone to crime and violence;” that impression, which originated at the time of the Mexican Revolution, has continued to resonate to the present (French 2010, 81). Government officials in the Southwest joined the anti-immigrant movement
by complaining of the criminality of unauthorized immigrants although crime statistics did not readily substantiate their statements (French 2010, 81). Mexican Americans, along with unauthorized immigrants, were again affected by the rising vehemence of negative public opinion.

Just as the nation as a whole was experiencing political change in the Post-World War II era, Southwest state politics underwent some significant shifts, particularly in Arizona and Texas. This realigned the four border states in terms of their relative conservatism regarding immigration policy and minority rights. Arizona swerved further right after World War II due to the influence of conservative Republicans such as Barry Goldwater. Prominent in both the state and the nation beginning in the 1950s, the native Arizonan popularized the conservative movement across the country. In the process, Goldwater influenced Ronald Reagan’s rise to the presidency in 1980 (Editorial 1998), and trained the young Arizonan Republicans who went on to national leadership, including John McCain, the future Arizonan senator and Republican candidate for President in 2008 (Baca 2010). While the Arizonans who served on the national stage would not frequently be described as extremists, politicians at the state level leaned heavily to the extreme right: “Arizonans have always been reactionary and fairly independent, and somewhere in this cauldron a recipe for conservative extremism was created” (Baca 2010). While Mexican Americans in Arizona had become more politically active after 1950, their relatively small populations within the state prevented them from becoming a political force as they were in the other Southwestern states. They continued to cluster in Tucson and Phoenix where they exercised some influence at the local level (Navarro 2005, 291).

While Arizona was solidifying its political stance on the conservative right, Texas witnessed a major shift in the power base within the leadership of its Democratic party, historically dominant in state politics. A conservative faction of rural agribusiness owners who
supported segregation, anti-labor laws and a regressive tax structure had ruled the Party up to the late 1950s (Montejano 1987, 275). This powerful faction stood against more liberal newcomers including Lyndon B. Johnson and Sam Rayburn. By the end of the decade, the shifts in state population from rural areas to growing urban areas resulted in redistricting and, in the next election, the liberal urban Democrats gained control at the state level (Montejano 1987, 278). Conservative policy was no longer a given. This firm shift amongst Texas’s Democrats coincided with the election of John Fitzgerald Kennedy to the U.S. presidency with vice-president, Lyndon B. Johnson, at his side (Montejano 1987, 274-282).

The demand by Southwestern agribusiness for a large and cheap supply of laborers eased when cotton and sugar beet harvesting was mechanized in the early 1960s (Ngai 2004, 158). As noted earlier, cotton had been the primary crop for which Texas, Arizona and California growers relied on bracero and unauthorized labor. California also relied heavily on braceros and their unauthorized compatriots for tomato harvesting but this also was mechanized by 1965 (Ngai 2004, 166). As labor demand fell, support for the Bracero Program waned. Over time, the Mexican government had become increasingly dissatisfied with the Bracero Program and it was harder to reconcile the program with America’s changing perceptions of civil rights (Chomsky 2007, 19-20). These factors as well as pressure from Mexican officials and labor unions led to the expiry of the program in 1964 (Navarro 2009, 77). Due to its longevity, the legacy of the Bracero Program was a well-established network that supported unauthorized immigration, reliance of Mexican communities on remittances, and continued dependence of U.S. employers on inexpensive Mexican labor (Brick, Challinor, and Rosenblum 2011, 3).

The number of federal programs and the degree of federal activity in New Mexico, a state in which the federal government owned about one-third of the land, transformed the state’s economy beginning in the 1940s during the build up to World War II as noted in Chapter 3.
While the rest of the Southwest dealt with social issues such as segregated education, braceros, mine strikes, and unauthorized immigrants after the war, New Mexico remained out of the fray. The state’s military and scientific industries continued strong throughout the 1950s and 1960s due to the Cold War and the related Korean and Viet Nam conflicts. These motivated extensive federal spending in New Mexico, particularly for scientific laboratories and expanded defense installations. These core industries spun off a small but significant electronics and biomedical industry in the state (Nash 1994, 11-14). New Mexico’s ample natural resources included uranium, copper, potash, coal, petroleum, and natural gas which became an important energy source after 1950 (Nash 1994, 18). Regardless, the state’s economy experienced a number of boom and bust cycles and became even more heavily dependent on federal spending as approximately 4000 of the state’s small scale farms met their demise.

1965 – 1986: The Great Society Welcomes All but the Unauthorized

As American progressed through the twentieth century, Anglo-centrism was replaced, not without upheaval and difficulty, by more inclusive concepts of an ideal citizenry. Eugenics fell into disrepute and public expressions of racism became unacceptable (Chomsky 2007, xv). By 1965, due to the work of local advocacy groups that focused on electoral participation, even Arizona, which had argued for statehood based on its identity as an Anglo state, had six state legislators of Mexican ethnicity (Navarro 2005, 292). Texas’s Lyndon Johnson, who had completed the slain John F. Kennedy’s presidential term and defeated Arizona’s arch-conservative Barry Goldwater in 1964, had already inspired the nation with his vision of a Great Society. That vision encoded a number of federal benefit programs that would come to be viewed as unaffordable and a focus of anti-immigration legislation by the 1990s, leading up to Arizona’s S.B. 1070 in 2010. That would come later. Following the political milestones of the
Civil Rights Act of 1964 and the Voting Rights Act of 1965, President Lyndon Johnson signed into law the Hart-Cellar Act, also known as the Immigration and Nationality Act of 1965 (Wright 2008, 106-108). This Act, which amended the McCarran-Walter Act of 1952, was another milestone in U.S. immigration policy and has affected the ethnic composition of the nation’s immigrant population from 1965 through the present (Lee 1998, 49). 1965’s legislation was deemed necessary due to the inadequacy of the national quota system encoded in the 1952 Act. The United Kingdom, Ireland, and Germany held seventy percent of all slots for legal immigration according to the 1952 legislation and most of the slots were not used (Center for Immigration Studies 1995, 1). Many of those waiting to immigrate to the U.S. legally were from countries that had small quotas. The federal government experienced political pressure to deal with large backlogs (Lee 1998, 48) as well as to align national immigration policy with the spirit of the era of civil rights and international changes including the decolonization of Africa and Asia (Center for Immigration Studies 1995, 3). Hart-Cellar was also a reflection of the trend “after World War II to end legal discrimination based on race and ethnicity” (Center for Immigration Studies 1995, 12). First, Hart-Cellar prioritized entry of family members of U.S. citizens and permanent residents and persons with special occupations, skills, and education in an extension of the preferences introduced in the 1952 Act. Hart-Cellar replaced the national origin quotas of the 1952 legislation with a uniform annual quota of twenty thousand immigrants for each country in the Eastern Hemisphere, with no more than a total of 170 thousand and imposed a total upper limit of 120 thousand for Western Hemisphere countries, with no individual national limits. Hart-Cellar also reserved ten thousand slots yearly for refugees. Although it was not recognized at the time, “without expressed intention or democratic consent” the 1965 Act “widened the American gate just as the [world] population spike was sending a Second Great Wave of human migration surging out of Latin American and
parts of Asia, with eddies out of the Middle East, Russia, and North Africa” (Graham 2004, 97). Despite the ceiling for immigrants from the Western Hemisphere, the Act implicitly encouraged immigrants from Mexico, due to the exemption for family reunion. Although President Johnson stated that the Immigration Act of 1965 was not revolutionary, it proved to be otherwise (Lee 1998, 50). Regardless of country of origin, most Central American immigrants in the U.S. migrated via Mexico during this period. The Hart-Cellar Immigration Act “inaugurated a new era of mass immigration which has affected the lives of millions” (Center for Immigration Studies 1995, 1).

In another border-related change, 1965 inaugurated the era of the twin manufacturing plants known as maquiladoras. The Border Industrialization Program enabled U.S. and international businesses to establish themselves on the Mexican side of the border, employ thousands of Mexicans at low wages, and then import the goods produced in those factories to America duty free (Navarro 2009, 79). This Program resulted from pressure by businesses for “economic arrangements” that would avoid the new environmental requirements for American-based operations while allowing access to a continuous supply of inexpensive labor (French 2010, 96). The maquiladoras brought growth to both sides of the border but, interestingly, did not reduce the level of unauthorized immigration by employing laborers south of the border. According to Laurence French of Western New Mexico University, the likely reason for this result is the factories’ preference for employing women at particularly low wage rates, leaving potential male migrants unemployed. Females moved from rural southern locations to work in the border factories while the males continued to flow into the U.S. illegally. After laboring on the border for a period of time, a percentage of the females also crossed the border (French 2010, 97). Arizona became particularly active in cross-border industry since 1965. The twin cities of Nogales, Arizona and Nogales, Mexico currently house more maquiladoras than any
other region. The maquiladora approach to industry dominates the border between Arizona and the Mexican state of Sonora and Arizona’s border entry points are fundamental gateways for trade between the U.S. and Mexico (Charney and Mwaniki-Lyman 2010, 9).

While the maquiladoras industrialized the border, economic tensions mounted in the Southwest in the early 1970s due to a steep decline in the profitability of the Southwest’s traditional cattle and mining industries. On the Mexican side of the border, the resulting unemployment encouraged increased use of the well-traveled pathways to the U.S. Due to the elimination of the legal immigration opportunities offered by the Bracero Program in 1964 as well as the immigration reform legislation of 1965, Mexican immigration had shifted to a predominantly unauthorized flow; those who overstayed their visas further swelled the ranks of the unauthorized. Fleeing the chaos of civil war and natural disasters in their countries, an additional steady stream of unauthorized immigrants from Central America joined the Mexican migrants at the border, traveling north through Mexico from El Salvador, Guatemala, and Honduras. Together, the authorized and unauthorized immigration flows from Western Hemisphere countries were of a magnitude and duration “probably unparalleled in the history” of the U.S. (Lee 1998, 57). To the eyes of Anglo-Americans in the border states, the migrants were indistinguishable and gave the impression of a large unauthorized Mexican encroachment on American territory. Many of the immigrants gravitated towards their family members in California, especially Los Angeles, where they crowded the already poor inner city areas occupied by African-Americans and earlier waves of Latinos (French 2010, 89). The majority of those fleeing Central America were poor, illiterate in any language, and traumatized by violence and migration. Due to the level of immigration, the economic stress and unemployment in the industries that were predominant in the border regions, and the resultant increase in the population receiving social welfare benefits during that period, residents of the
U.S. in general were not accommodating to the incoming migrants (Lee 1998, 22). The tensions led to isolated incidents of local vigilantism and increasing calls for additional federal legislative action.

Throughout the 1950s an increasing number of unauthorized immigrants from Mexico migrated to urban areas and this pattern increased into the 1960s (Magana 2003, 39). Despite the recessions of the 1950s, a significant minority of the Mexican immigrants who had migrated to the U.S in earlier generations and attained citizenship were moving towards middle class membership by the 1960s. In California for example, one-quarter of Mexican Americans were in business, held white-collar jobs, or were in the professions. (Rodriguez 2007, 199). By the late 1960s, the Latino (Mexican and Central American) population of California was over one and a half million with over half of that population under age 24 (Hayes-Bautista 2004, 39).

Beginning in 1966, ethnic Mexicans “experienced the most dynamic transformation with the epoch of militant protest politics” (Navarro 2005, 303). “Coming of age during a period of social ferment,” young American-born Latinos in the Southwest, initially and predominantly in California, “embarked on a series of political campaigns that became known collectively as the Chicano Movement (Gutierrez 1993, 527). The social and economic split between the American-born youth who were key to the Chicano Movement and the Southwest’s recent Latino immigrants who were predominantly unauthorized, “was nearly entire” (Hayes-Bautista 2004, 55). The Chicano Movement, which valued Latino cultural identity and discouraged assimilation, was active throughout the country. They did not accept the view of their ancestors as immigrants but rather as a colonized minority (Chomsky 2007, viii). Also enervating the drive for Latino rights, Cesar Chavez and the United Farm Workers struck for improvements in conditions and wages for agricultural workers throughout the Southwest while calling on the federal government to control illegal immigration. The reaction to these political movements of
the Civil Rights Era was intense; the backlash labeled all ethnic civil rights organizations as racist and radical (Navarro 2009, 107). When California passed the Dixon Arnett Act in 1971, imposing fines on employers who hired undocumented workers, the Chicanos expressed their objections by taking legal action. California’s courts sided with the Chicanos and invalidated the Act as unconstitutional (Navarro 2009, 99). The Chicano movement continued to strengthen throughout the 1970s and became a focus of national attention when it organized civil rights marches along the California-Mexico border between 1977 and 1981 (Navarro 2009, 111).

Although the level of Chicano militancy dropped around that time, along with the militancy of the other ethnic movements which had achieved many of their goals, the desire for political empowerment and pride in cultural identification introduced by the Chicano Movement lived on. Among their contributions to the cause of minority rights, “Chicano activists advocated the development of a new positive sense of ethnic and cultural identity” (Gutierrez 1993, 528).

The federal government grappled with the renewed public intensity around immigration policy beginning in 1972. The focus of discussion was unauthorized immigration and the end of circular migration the 1965 immigration law inadvertently caused; unauthorized immigrants were crossing the border once but were now staying in the U.S. in order to avoid the possibility of detection introduced by increased border surveillance. Since 1972, American immigration law and debate have continued to focus on unauthorized immigration, in part, due to media attention to the issue. “The media relatively ignored the problems and discontent caused by legal immigration and, instead, devoted most of its attention to illegal immigration” (Lee 1998, 60). Senator Edward Kennedy of Massachusetts and Representative Peter Rodino of New Jersey each introduced legislation in 1972 that made it a felony to knowingly employ unauthorized immigrants. Kennedy’s proposal softened the blow by including amnesty for unauthorized immigrants who had been in the US for three years or more. Both proposals failed (Navarro
2009, 99) but their provisions appeared in later legislative proposals in various combinations. The global recession at mid-decade further heightened interest in the issue of immigration, both authorized and unauthorized. In 1976, the Western Hemisphere Act, another amendment to the Immigration and Nationality Act, was enacted (Wright 2008, 108). The amendment reduced the number of legal immigrants who could enter the U.S. from any one Latin American country (Central America and Mexico) in one year to twenty thousand, not including immediate relatives of U.S. citizens. This change aligned allotments for Western Hemisphere countries with those for Eastern Hemisphere countries (Center for Immigration Studies 1995, 11). In effect, the Act was directed at Mexican migration. Congress also formed a Select Commission on Immigration and Refugee Policy in 1977. One result of initial deliberations was that Congress in 1978 again amended the Immigration and Nationality Act to eliminate hemispheric quotas in favor of a worldwide maximum of 290 thousand, keeping the per country maximum at twenty thousand (Wright 2008, 108). Following on the heels of the proposals by Kennedy and Rodino, the Alien Adjustment and Employment Act of 1977, commonly known as the Carter Plan, made its way through the legislative process but was ultimately defeated. The Plan would have encoded employer sanctions, offered liberal amnesty to illegal aliens, and increased the size of the Border Patrol. Objections came from both immigration advocates who thought the sanctions would incite discrimination and restrictionists who objected to legalizing the status of those who had entered the U.S. without authorization (Cadava 2010, 16). With the Carter Plan’s defeat, the federal government again failed to provide a comprehensive policy response to the concerns of the Southwestern border states.

Coincident with the debates leading up to the failed legislation of the 1970s, a violent incident occurred in August 1976 in the border town of Douglas, Arizona. Known as the Hanigan Case, the incident drew international attention, and further polarized the relationships
between ethnic Mexicans and Anglo-Americans in the state, particularly in the border counties. Douglas is located in the far southeastern corner of Arizona, in Cochise County, and faces Agua Prieta on the Mexican side. Three Douglas ranchers, brothers named Thomas and Patrick Hanigan and their father, kidnapped, tortured, and robbed three unauthorized immigrants whom they encountered on their ranch before instructing the migrants to run back to Mexico. The migrants had been heading for Elfrida, Arizona, due north from Douglas, where they had jobs as farm laborers waiting for them. When the injured immigrants turned to flee south, the Hanigans peppered them with buckshot. Back in Agua Prieta, the migrants sought medical help and reported the incident. The Hanigans were tried three times between 1976 and 1981 although the father died during the process. The first trial was at the local level, the second was a federal trial in Tucson, and the third trial took place in Phoenix due to the perceived inability to seat an impartial jury in Tucson. The first jury, which did not include citizens of Mexican descent despite their thirty percent representation in the county (Cadava 2010, 15), acquitted all three Hanigans; the decision rested on the jury’s acceptance of the defense’s contention that the prosecution’s argument that the migrants’ civil rights had been violated was invalid. The jury decision reflected the understanding that, because the migrants were unauthorized, there was no legal basis for their civil rights (Cadava 2010, 16). The appeal raised the trial to the federal level and that trial resulted in a hung jury. The Department of Justice prosecuted the Hanigan brothers again and a Phoenix jury acquitted Thomas and sentenced Patrick to three years in prison. This outcome was less than satisfactory to many (Cadava 2010, 16), and further bifurcated the population of Arizona along ethnic lines. Throughout the trials, “Southern Arizona became the location of widespread persecution” of ethnic Mexicans. The state’s border citizens also pointed to the ethnic Mexicans as the cause of most social problems; “burglaries there prompted accusations that all Mexican migrants were thieves” (Cadava 2010, 17). The Klu Klux Klan
became prominent in the Douglas area during the Hanigan Case trials and their aftermath, attracting further international attention. The group’s members patrolled the border, hunting for unauthorized immigrants. Their activities, and that of the period’s other anti-immigrant vigilantism, established the model for vigilante activities in the early years of the twenty-first century (Cadava 2010, 18). In that atmosphere, the Bisbee Junction Security Group formed near Douglas with the mission of lobbying for solutions to the issue of immigration along Arizona southern border (Cadava 2010, 18). On the other side of the immigration divide, immigrant advocates incorporated the concept of inherent human rights into subsequent legal cases. From the Hanigan Case forward, legal arguments made a “persistent claim that immigrant rights are human rights” (Cadava 2010, 18). While the Hanigans’ violent response to trespassing was incomprehensible to much of the international community, the nation, and even many citizens who resided in northern Arizona, it is important to recognize that the experience of directly confronting border issues daily often leads to an entirely different viewpoint than the one held at great distances from the border zone. As noted in Chapter 1, historian John Higham, author of the seminal work on U.S. immigration, Strangers in the Land, notes that some restrictionist efforts are reasonable responses to real problems (Kammer 2010, 4). This understanding of the culture of those living along the national border puts a necessary context around the verdicts of the juries in the Douglas and Tucson trials. Based on the Hanigan Case, it is clear that at least a percentage of border area residents view violent protection of the national boundaries as a necessity rather than a radical response.

California, like Arizona, had begun to experience legal cases around immigration in the late 1970s. At the same time as immigration began to surge in the 1970s, a limit imposed on California’s property taxes due to 1978’s Proposition 13 tightened funding for education and other vital public services throughout the state. The population soon began to experience the
cutbacks due to insufficient tax revenue and turned their attention to the impact of immigration on the state’s finances. This increased attention empowered the state’s restrictionists to initiate a number of anti-immigrant initiatives (Navarro 2009, 134). A nationally publicized legal case challenged California’s strong affirmative action admission policies in higher education. *Regents of the University of California v. Bakke*, (438 U.S. 265) made its way to the U.S. Supreme Court. In the case, a white Californian, James Bakke, challenged the University’s rejection of his application for the Medical College at University of California, Davis. Bakke contended that the special admissions procedure for minority applicants violated his rights to equal protection under the Fourteenth Amendment. While the ruling did require the admission of James Bakke to the school on the grounds that the special admissions program’s racial quota requirement was unconstitutional, the Court did allow universities to consider race in admissions policies in order to increase diversity (Navarro 2009, 137). *Bakke* and other such cases became a significant issue in the state and were associated with a number of legal challenges and much public resentment. The issue was to arise again in the 1990s in the form of Proposition 209.

Beginning in the 1960s and continuing through the 1980’s the U.S. economy shifted from an industrial base to a service base; “the mines, mills, and factories were closing, creating a ‘rust belt’ in the very regions that had previously been a magnet for immigrants” (Chomsky 2007, xvi). The deunionization and economic deregulation of the early 1980s under the Reagan administration reduced wages in the “blue collar” sector while the service sector grew, creating a need for increasing numbers of low-wage employees in new occupations. “Unlike traditional manufacturing, which is characterized by a preponderance of middle-income jobs, the majority of service jobs tend to be either extremely well paid or very poorly paid, with relatively few jobs in the middle-income range (Sassen 1998, 47). These low-skilled positions depended on
the physical proximity of the service providers to those requiring services and could not be outsourced. Low-skill job availability, mainly in America’s major cities, as well as active networks of family members and community members drew unauthorized immigrants to the U.S. at the same time as harsh economic conditions in Mexico and Central American nations provided motivation to migrate. Most of the increased opportunity for legal migration that was provided by 1970s legislation occurred in the skilled sector and did not adequately address the magnitude of the ongoing push and pull factors that drive immigration levels. By 1980 a backlog of 173 thousand Mexican visa requests existed (Navarro 2009, 101); there was also a significant backlog for the Central American countries. After dropping somewhat in the early 1970s during the national recession, immigration from Mexico, Central America, and West Indian nations sharply rose again in the early 1980s. Latin Americans including Mexicans regarded the national cap of twenty thousand imposed by the 1970s legislative changes as an additional roadblock to authorized immigration rather than a firmly closed door. Their continued migration was, by necessity, predominantly unauthorized. These laborers met the needs of the growing service economy. The Select Commission on Immigration and Refugee Policy formed by Congress in 1977 reported in 1981 and recommended an amnesty program for certain unauthorized immigrants already in the U.S., employer sanctions, expansion of the Border Patrol, a guest worker program to supply temporary seasonal workers, and an increase in the annual ceiling for total immigration to 350 thousand (Magana 2003, 38). Because they now held jobs in concentrated urban areas throughout the nation rather than solely in agriculture predominantly in the Southwest, and because the women and children who migrated as well as the children born in the U.S. entered social environments other than the workplace usually inhabited by single male laborers, the primarily unauthorized immigrants of the late twentieth century were highly visible to the American public (Rodriguez 2007, 217).
School was one of the places where the newcomers were most obvious. By 1980, both Texas and California were home to an upwardly mobile Mexican American middle class whose interests in education, housing, and other social issues mirrored those of their Anglo neighbors (Rodriguez 2007, 222). Change had come to Texas, once the state with the strongest divisions between its Anglo and ethnic Mexican citizens although the southern and eastern parts of the state lagged in terms of changes in social status (Rodriguez 2007, 235). The liberalization of the state’s Democratic Party had led the way for Mexican Americans in some areas of Texas and at the state level to be “accepted as legitimate political actors and accorded a measure of influence” (Montejano 1987, 9). As evidence, San Antonio in 1981 elected the nation’s first Mexican American mayor of a major city, Henry G. Cisneros. In 1982, a landmark Supreme Court decision on a case originating in Texas, Plyler v. Doe (457 U.S. 202), ruled that states do not have the right to deny the children of noncitizens, including unauthorized immigrants, access to public education (Varsanyi 2010b, 7). The consequences were felt throughout the Southwest and the nation. According to multiple scholars, the ruling’s major impact was the extension of the Constitutional protections offered by the Fourteenth Amendment to the nation’s non-citizens. For states with large populations of unauthorized immigrants such as the four Southwestern states, the economic consequences of the decision would prove especially significant.

Congress continued to grapple with immigration legislation in the 1980s. The 1986 Immigration and Reform Control Act (IRCA) remains the basis of federal policy on unauthorized immigration up to the present day. IRCA’s focus is border enforcement. “The philosophy underlying the IRCA is that undocumented persons come to the United States to find work and therefore displace native workers” (Wroe 2008, 20). The law increased the Border Patrol’s budget significantly. It included employers’ obligations to verify workers’
eligibility for employment and imposed sanctions for hiring unauthorized workers. The employer sanctions immediately overturned the Texas Proviso of 1952 and invalidated a number of state-level laws that imposed civil or criminal fines or prison terms for hiring unauthorized workers. IRCA included a Special Agricultural Worker (SAW) program for admission and legalization of farm workers. In an effort to deal with the social issues that America’s large and entrenched population of unauthorized workers posed by 1986, IRCA offered amnesty and a path towards citizenship to those who had entered the country prior to 1982. Did IRCA meet its goals? SAW ultimately admitted one million Mexican men for seasonal farm work who later found nonfarm jobs and stayed in the U.S., usually bringing their families (Martin 2008, 66). The federal government has prosecuted very few employers under IRCA for hiring unauthorized workers; in 2003 as an example, only seventy-two employers were convicted of violating the law (Hanson 2005, 17). While IRCA did not directly prohibit states and localities from imposing such sanctions, “from the face of IRCA, it is difficult to determine precisely how Congress thought states should be permitted to use their licensing power” (Rodriguez, Chishti, and Nortman. 2010, 37). A number of Supreme Court cases subsequent to IRCA ended in inconsistent findings regarding local and state authority to legislate employer sanctions (Rodriguez, Chishti, and Nortman 2010, 37). Despite its name, the IRCA increased both authorized and unauthorized immigration (Martin 2008, 67). A dip in the level of unauthorized immigration shortly after the passage of the IRCA in 1986 supported the idea that the law was effective but that impression would soon change (Navarro 2005, 445).

1987 – 1990: Unauthorized Immigration Levels Climb and the Last Legislation to Welcome the Huddled Masses Becomes Law

Unauthorized immigration resumed with intensity by 1988, exceeding pre-IRCA levels and undermining the belief in its effectiveness (Navarro 2005, 445). By 1989, nearly three million people already in the U.S. had applied for amnesty under IRCA; seventy percent were
Mexicans (Navarro 2009, 113). Those who attained citizenship under IRCA were then eligible to legally bring family members to America, reinforcing the pattern of “chain migration from poor countries” and further increasing the Mexican presence in the U.S. (Chomsky 2007, 21). Over time, IRCA’s failure became clear; potential unauthorized migrants throughout Latin America interpreted its amnesty provisions to be evidence that the most likely way to become a resident of America was to enter illegally and wait for the next amnesty period (Wright 2008, 181). Writing in 1998, sociologist Saskia Sassen argues that the IRCA “threatens to do harm both to our own society and to the immigrants themselves.” She cites two aspects of the Act as the focus of this conclusion. The employer sanctions will restrict job opportunities for America’s unauthorized immigrants who will become an “immigrant underclass that is legally as well as economically disadvantaged.” The guest-worker program is likely to adversely impact the efforts of American agricultural workers to improve wages and work conditions and will create new linkages that will further develop the strong networks for unauthorized immigration (Sassen 1998, 49). According to Philip Martin of the University of California, Davis, the roots of the post-IRCA migration surge up to the millennium was the Bracero Program that officially ended in 1964, well before IRCA’s passage. This program had created support networks for immigration and a two-sided dependence: that of U.S. employers on low-wage Mexican laborers and that of Mexican communities on the wages available in the U.S. to support families in Mexico or even in the U.S. By the late 1980s, such immigration was “deeply ingrained in both countries” and, up to the present day, “follows a logic of its own that defies government control” (Martin 2008, 62).

California and Texas were particularly affected by the surge in the unauthorized immigration of the period with approximately thirty-seven percent of the period’s immigrants residing in those two states alone (Hanson 2005, 6). “The demographic transition was most
dramatic in the southern half of the state” of California, centering on Los Angeles, where the recession had its deepest impact in the early 1980s (Rodriguez 2007, 242). Between 1980 and 2000, California’s Latino population grew by 132 percent, representing one third of the state’s population; over one million of the state’s residents, typically Mexicans, were unauthorized (Wroe 2008, 173). Although unauthorized immigrants peppered much of America by the 1980s when the new surge began, the challenges posed by the new immigrants in the Southwest were magnified as compared to the rest of the nation, not only in terms of numbers but due to their recent arrival. Those immigrants who are closer to their date of crossing were typically less literate in Spanish as well as English, less skilled, and poorer than the average Mexican and average American and tended to cluster near their points of entry (Martin 2008, 62). Immigrants with longer tenure in the U.S. tend to migrate further north in order to obtain better wages in broader industries. Thus, the Southwest’s immigrant population is typically the lowest skilled and poorest, the newest to come to America (Ngai 2004, 134). California reacted with some of the most stringent anti-immigrant legislative proposals in the nation. Proposition 63 “English Is the Official Language,” which three quarters of California’s voters endorsed (Wroe 2008, 234), was the first in a long line of similar legislation passed in 23 states by 2002 (Martinez 2006, 93). Arizona’s legislation, first passed in 1988 and more stringent than other state laws in its category, outlawed the use of any language other than English by public officials or municipal employees in the course of their work and was never fully enacted (Pitzl 2006). It was ultimately overturned by a Supreme Court ruling in 1999.

Around the time that the 1990 Census enumerated the late twentieth century’s explosive growth in the non-Anglo population of the Southwest, the Immigration Act of 1990 increased opportunities for legal immigration, doubling the annual allowance for permanent employment-based visas known colloquially as “green cards” (Rosenblum and Brick 2011, 6). Interestingly,
this was the opposite of what the majority of America’s citizens had wanted Congress to do (Lee 1998, 4). The Act continued the IRCA’s emphasis on family based, skilled employment based, and refugee immigration. In order to encourage diversity in immigration, the Act added a new preference category for countries with previously low levels of immigration and allotted fifty-five thousand slots to be assigned by lottery (Wright 2008, 115-116). The Act also established a Commission on Immigration Reform which, during President Clinton’s tenure which began in 1993, became known as the Jordan Commission after its chairperson, Barbara Jordan. While the U.S. had issued fewer than three hundred thousand employment-based visas in the 1950s and 1960s, after the Act passed into law, the U.S. issued an average of nine hundred thousand green cards per year (Rosenblum and Brick 2011, 7). Despite this change, the rates of unauthorized immigration continued to climb during the 1990s and the public began to take notice. “Even as the 1990 immigration act was passed in a great hurry and without much public debate, public opinion was already turning against immigration” (Sassen 1998, 11).

The Early 1990s: Globalization Transform the Economy, Border Militarization Begins, and California Passes Proposition 187

The economic globalization of the late twentieth century motivated the movement of southern California’s manufacturing industry, along with that of much of the rest of the U.S., off-shore. “High technology, aerospace, defense, and immigrant-staffed sweatshops” remained and were joined by a growing service industry that paid wages lower than the departed manufacturing sector (Light 2006, 60). Ivan Light of the University of California, Los Angeles, studied the garment industry in Los Angeles and its relationship to immigration, primarily unauthorized. Providing proof behind Saskia Sassen’s statement that a downgraded manufacturing sector generates low-wage jobs (Sassen 1998, 47), the remaining shreds of the garment industry, consisting primarily of sweatshops, expanded anew in the 1990s based on immigrant capital and labor. At the industry’s peak in 1996, it employed approximately 160
thousand people, the vast majority of whom were foreign-born and unauthorized (Light 2006, 87). Of those workers, ninety-three percent were foreign-born in 1990 and eighty percent of the foreign-born were unauthorized (Light 2006, 97). They were also working but living in poverty (Light 2006, 62). While the industry did thrive, its success could not long hide the fact that most factories and shops were in violation of a host of laws. The complexity of state and federal laws and jurisdiction over immigration as well as manufacturing, some level of corruption, the ability of the shops to close and reopen elsewhere overnight, and the hidden nature of unauthorized immigration all contributed to the failure of any level of government to act on this illegality until the mid-1990s. Once public scrutiny of the industry revealed its lack of safety and the health care costs that fell on state taxpayers for the uninsured workers, law enforcement action to clean up the industry to comply with California’s labor laws commenced. The industry, which produced cheap goods that depended on cheap labor, declined swiftly but did not disappear and still functions today (Light 2006, 99-110). Among the lasting consequences of this industry were the heightened awareness of Southern Californians regarding the issue of unauthorized immigration as well as a persistent and large unauthorized immigrant population with poor living conditions and substantial social needs residing in the urban areas of the state.

As globalization of the world’s economies moved forward, the U.S., Canada, and Mexico signed the North Atlantic Free Trade Agreement (NAFTA) into law in December of 1993. NAFTA addressed the flow of goods and services and economic capital across the borders of the North Atlantic nations but did not address the flow of laborers. Although the World Bank report on NAFTA concluded that Mexico benefitted from the treaty and would have had a lower per capita income if NAFTA had not been initiated (Varsanyi 2010b, 9), other analysts agree that NAFTA has not met expectations in terms of leading Mexico to prosperity as was advertised (Martin 2008, 85). Because NAFTA has benefitted Mexico’s business owners
and elite and has adversely affected “Mexico’s poor majority who engage in small-scale farming (Navarro 2009, 126), the flow of immigrants making their way from all regions of Mexico to the U.S. increased once the treaty was active. At the same time as NAFTA integrated North America’s economies, the U.S. increased both the legal restrictions on the migration flows into the U.S. and border enforcement. The NAFTA-driven increase in migration into the U.S. as well as the need to at least temporarily increase control of the southern border was anticipated by the NAFTA nations (Varsanyi 2010b, 9) and America’s actions in 1993 sought to provide that control.

Just as America approached official economic integration of the North American countries via NAFTA, “policymakers were attempting to make the border more secure” (Andreas 2003, 3). The U.S. strategy for border control shifted in 1993 from apprehension of the unauthorized once they had reached America to deterrence of unauthorized immigration prior to crossing (National Immigration Forum 2010, 5). America attempted to create an impenetrable line at the southern border. According to Wayne Cornelius of the University of California, San Diego, the U.S. strategy for controlling unauthorized immigration from Mexico and through Mexico from Central America since 1993 has “emphasized border enforcement, coupled with extremely weak worksite enforcement and no effort to reduce the unauthorized flow by increasing legal-entry opportunities, especially for low-skilled workers” (Cornelius 2008, 1). In anticipation of the Jordan Commission’s expected recommendation to increase border security, President Clinton appointed Janet Reno the first official to be in charge of all border enforcement across the government (Navarro 2009, 129). The Clinton administration strengthened the Border Patrol in 1993 and initiated a number of operations under its auspices. The first of these, called Operation Hold the Line, took place in El Paso, Texas (Navarro 2009, 128) and provided a strong show of force along the immediate border (Massey, Durand, and
Malone 2002, 106). The Border Patrol conducted similar operations in California, Arizona, and other parts of south Texas from 1994 through 1999 (Navarro 2009, 128). The operation in Nogales, Arizona in 1999 was named Operation Safeguard (National Immigration Forum 2010, 7). Although specific programs varied across the Border Patrol’s sectors, together they amounted to an attempt at a border blockade. The operational model “remains the foundation of the [Border Patrol’s] post-9/11 strategy” to the current day (Dunn 2009, 1). Officials claimed that the quasi-military operations were successful. Official statistics did not support that notion (Navarro 2009, 130) but did support the understanding that the operations had shifted preferred border-crossing routes. After 1993, migrants increasingly traversed the remote and dangerous Sonoran desert into the small towns of Arizona’s border region rather than the highly patrolled routes in the urban border regions of Texas and California. Arizona, “which had experienced no significant migration since the 1920s, suddenly reported a sharp increase in cross-border traffic” (Massey, Durand, and Malone 2002, 108). The primary effect of the Border Patrol operations and fence construction in California and Texas in the mid-1990s was to seal off the easier urban migration routes within those states – the intended effect – while pushing migrants to the more dangerous Arizona desert crossings – an unintended consequence. Small towns such as Douglas, Arizona were subject to a “rising tide of migrants crossing their yards, traversing their fields, clogging their bus stations, packing into cheap motels, and congregating at street corners” (Massey, Durand, and Malone 2002, 108). An analysis of migration data and economic patterns led Wayne Cornelius to write: “the pattern of undocumented migrants responding to economic conditions rather than policy decisions has continued during the border enforcement build-up that began in 1993” (Cornelius 2008, 5). The Border Patrol’s well-publicized operations of the early 1990s did promote the idea that border crossers were criminals often involved in terrorism and should be viewed as threats to U.S. security (Koulish 2010, 110). The
second Jordan Commission report issued in 1995 focused on legal immigration and, while noting the value of legal immigration to America, recommended reductions in immigration allowances.

While many factors contribute to the motivation for and levels of unauthorized migration at any point in time, “U.S. immigration control policies clearly play a significant role in shaping the places where unauthorized border crossers attempt to enter the U.S.” (Rubio-Goldsmith et al. 2006, 31). When the U.S. government stepped up efforts to enforce its borders and deter unauthorized immigration, especially in the well-used urban routes in California and Texas, those determined to reach America created a new flow across the southern Arizona desert (Rubio-Goldsmith et al. 2006, 2). The “unprecedented increase” in the number of deaths of those crossing America’s southern border is a primary result of the increased border enforcement initiated during the late 1990s and significantly escalated after the attacks of September 11, 2001. The deaths – as measured by the number of recovered bodies - skyrocketed in Arizona, particularly in the Border Patrol’s Tucson sector in Pima County where the body count far exceeded the count in the Border Patrol’s other eight southern border sectors. The University of Arizona’s Mexican American Studies and Research Center (MASRC) examined the known deaths of unauthorized immigrants between 1990 and 2005. The study’s results, which have been confirmed by further research, reveal “a major public health and humanitarian crisis in the deserts of Arizona” that increased at least up to 2005 when the study concluded. The leading cause of death is heat exposure (Rubio-Goldsmith et al. 2006, 1-4). The study’s authors note that “of all the published counts of [unauthorized border crosser] recovered bodies across the entire US/Mexico border, official US Border Patrol figures are the least inclusive, resulting in the smallest reported totals year after year” (Rubio-Goldsmith et al. 2006, 9) and many organizations including the US Government Accountability Office noted the
serious undercounts by the Border Patrol which appear to be a result of its very narrow criteria for classifying a death as an unauthorized border crosser death and for counting such deaths (Rubio-Goldsmith et al. 2006, 10-11). Considering the deaths in Arizona, it is clear that border enforcement has escalated the cost in human lives along with the monetary cost of unauthorized immigration. Because few crossed the border without a coyote starting in the 1990s, the profitability of the smuggling industry attracted the involvement of organized crime. Criminal enterprises have entangled human migration with the trafficking of narcotics and other illegal products (Rosenblum and Brick 2011, 14). A particularly unfortunate effect of reliance on coyotes is the increase in crime associated with human smuggling; particularly in Phoenix in Maricopa County where anti-immigrant activity built to a fever pitch and the passage of S.B. 1070. Coyotes held immigrants in residential areas in Phoenix until they received full payment, and sometimes more. Rival gangs have kidnapped the immigrants from each other "which has led to open gunfire on streets within Phoenix city limits," earning Phoenix the distinction of being labeled a kidnapping capitol and alarming city residents (De Vivo and Fernandez 2009, 123).

To some members of the public, especially in the Southwest, the level of immigration in the 1980s and 1990s "was tantamount to an invasion of the U.S. by Mexico." Some on the extreme political right even viewed it as a calculated effort by Mexico to reclaim its northern provinces (Navarro 2009, 152-153). Nowhere was this idea more salient than in the state of California which, along with Texas, was the destination of choice for the majority of unauthorized immigrants. "California became a conflict-ridden battleground from 1993 to 1998" over immigration policy (Navarro 2009, 134) and the state’s passage of anti-immigrant legislation set the pattern for the legislative approach to immigration taken by Arizona following the millennium. The ignition for the anti-immigrant fire was the national recession
that rocked California as the 1990s commenced. There, dramatic declines in defense spending and information technology employment caused a severe shortage of tax revenues (Hansen 2006, 111). As the recession deepened, the acquittal of the Los Angeles police officers charged in the 1992 Rodney King case led to rioting in poverty-stricken areas of the city; the presence of recent immigrants amongst the rioters inflamed tensions around the perceived effect of immigrants on the state’s economy (Wroe 2008, 41). Some saw the riots as “a natural outburst of the underlying tensions that the newcomers were creating” (McCarthy and Vernez 1998, 1).

Pete Wilson was the fiscally conservative Californian governor who had been elected in 1990. Faced with a major drop in approval ratings as the end of his first four-year term approached, Wilson jumped on the anti-immigrant bandwagon and based his reelection campaign strategy on the issue of unauthorized immigration, identifying it as a primary cause of California’s economic stress (Wroe 2008, 44). Wilson’s standing in approval polls immediately improved.

He moved forward on his platform, proposing a number of controversial anti-immigrant measures including the submission of claims to the federal government for reimbursement of California’s costs for services to unauthorized immigrants. Arizona and Texas as well as three other states outside the Southwest followed suit but all six lawsuits were dismissed in district courts (Sassen 1998, 11-12). To support his proposals, Wilson cited a number of studies at the time which indicated that states and localities bore the costs of the provision of social services to low-income immigrants while the federal government benefitted by their presence (Martin 2008, 67). The costs Wilson enumerated included law enforcement and incarceration, education, and emergency medical care and his proposals created currency for the linkage between crime and unauthorized immigration. “The reality may have been different than the message, but the illegal immigration-crime-jobs triumvirate constituted a simple and powerful argument” (Wroe 2008, 49).
A wave of anti-immigrant activism, focused primarily on the unauthorized but sweeping others along in its wake, took hold in the state. The center of the activism was the inflammatory Save Our State campaign and its initiative, Proposition 187, which came to vote in 1994, the year that Wilson was reelected. Proposition 187 was an anti-immigration legislative milestone. Most controversially, it denied public services including public education and non-emergency health care to unauthorized immigrants and California’s legal non-citizen residents. It required schools and social service agencies to verify a person’s citizenship prior to providing any services except emergency medical care and to report persons who were without documentation to law enforcement. Proposition 187 also reversed existing California law by requiring that law enforcement officers cooperate with the INS. “The explicit intent of the measure was not just to save the state and the American taxpayers money but to stop illegal immigration” (Jacobson 2008, 84). Proposition 187’s supporters included Democratic Senator Dianne Feinstein who publicly exaggerated the daily counts of unauthorized immigrants and their negative effects of unauthorized immigration on the state’s economy and its quality of life. Senator Feinstein crafted “an image of a state literally drowning in undocumented immigrants from Mexico” (Hayes-Bautista 2004, 127-128). The heated arguments leading up to the election promoted the impression that all Latinos in the state must be present illegally. “Distinctions between U.S.-born Latinos, immigrant Latinos, and undocumented immigrant Latinos became lost in the popular discourse” (Hayes-Bautista 2004, 128). The arguments had caught the voters’ attention. Nearly sixty percent of the voters backed Proposition 187 and reelected Governor Wilson. In an interesting twist, large numbers of Latinos who were permanent residents applied for citizenship in the years leading up to the 1994 election so that they would be able to vote against Proposition 187; for citizenship between 1992 and 1996, once the power of the vote was clear, rose by five hundred percent (Rodriguez 2007, 244).
While economics was a central focus of the Proposition 187 discussion, as Robin Jacobson of Bucknell University who examined the passage of the legislation argues:

Proposition 187 was a struggle for cultural citizenship, which has implications for struggles over jobs, political power, and formal citizenship as well. The lines of battle were about who could legitimately determine the culture of the country. This involved defining Mexicans as being outside American culture. (Jacobson 2008, 90)

Analysis of Proposition 187 to date recognizes the “crucial role for negative attitudes toward immigrants among California voters” in the legislation’s successful passage (Nicholson-Crotty and Nicholson-Crotty 2011, 613). Andrew Wroe of the University of Kent, Canterbury suggests in his analysis of Proposition 187 that a number of additional factors also propelled the citizens of California to pass the legislation. According to Wroe, racism was a significant part of the impetus for the backlash against immigration in the 1990s in California but was not its primary force. California was the primary immigrant receiving state in the 1980s and 1990s. The impending minority status of Anglos in the state was well publicized by the media and “white Californians may have expressed anti-immigrant sentiments because of a threat to their majority status” (Wroe 2008, 6). California’s progressive income taxes and generous public benefits were also a significant factor. The state’s high income, highly educated, and politically connected citizens paid higher taxes than their peers in many other states and were funding most of the public benefits extended to the state’s immigrants. Gordon Hanson of the University of California, San Diego postulates that, among other reasons, this burden caused wealthy voters in California to take a strong anti-immigrant stance when the recession of the 1990s hit. “Native taxpayers in California, with its less-skilled immigrant population and high immigrant uptake of welfare, make relatively large fiscal transfers to immigrant households” due to California’s progressive tax system (Hanson 2005, 38). These tax-conscious voters joined with political conservatives who viewed immigration as a threat to law and order and American culture.
(Hanson 2005, 6-7). Providing further motivation for a pro-Proposition 187 vote were the statistics that academic researchers of the period released during the Proposition’s campaign. Reports indicated that California’s Latino population was more diverse in terms of country of origin than ever before and “more foreign-born than it had been at any time since the 1920s” (Rodriguez 2007, 247). Despite the upward mobility of the Mexican Americans in the Latino group, the state’s Latinos as a whole, especially the most recent immigrants, had higher rates of poverty than other state residents. To what extent was Proposition 187 “the product of a genuine, organic concern of the American public or a product of elite manipulation of mass opinion” (Wroe 2008, 55)? Only by drilling below the media headlines and further into the data would it be apparent that the statistics for Latinos as a group disguised the progress of citizens and legal immigrants. At the summary level, the statistics showed that California’s Mexican and Mexican American population was “largely concentrated at the bottom of the socioeconomic ladder, with very few of them in the ranks of the wealthy” despite their exceptionally high rate of labor force participation in the state (Gutierrez and Zavella 2009, 5-7).

Groups such as LULAC and the Mexican American Legal Defense and Education Fund (MALDEF), founded in Texas in 1968 and headquartered in Los Angeles, challenged Proposition 187 in California’s courts which issued an injunction against its implementation. A long series of challenges to the will of California’s voters had begun. The federal suits were consolidated into one, *League of United Latin American Citizens et al v. Wilson* (Varsanyi 2010b, 2). Over time, the courts dismantled each of Proposition 187’s provisions, leaving for implementation only those regarding the sale and use of false identity. Proposition 187 the Court concluded:

was an unconstitutional regulation of immigration, preempted under the Constitution itself; that Congress had occupied the field of immigration regulation; that 187 invaded that field; and, that there were elements, significant elements of 187, that conflicted or presented obstacles to federal law in the
specific areas that they addressed. (Saenz 2011, 11)

Regardless of its demise, Proposition 187 had a significant impact on the culture of California, the Southwest, and the entire U.S. Many analysts and scholars credit Proposition 187 with influencing future federal and state legislation, further politicizing Latinos, and redefined community and the importance of citizenship (Jacobson 2008, xv). Ultimately Proposition 187 polarized the national discussion around immigration policy and gave voice to the themes at the extremes of the issue: the perception of immigration as an active invasion, the need to protect American sovereignty and culture, and the perception of unauthorized immigrants as economic takers:

In the Post-Proposition 187 world, the fears of invasion take center stage. Again, the failure of Proposition 187 is not read simply as a policy failure or even as the result of an interfering judiciary; rather, it is evidence of the power of the invading forces. … Globalization appears to threaten culture and sovereignty as people migrate easily across borders, bringing their cultures with them. As the world becomes increasingly insecure, the equation of culture and allegiance intensifies, and the restrictionist movement emphasizes the unassimilable Mexican. (Jacobson 2008, 106-107)

The themes that Dr. Jacobson identifies continue to resonate in anti-immigrant activism throughout the nation. In the eyes of many, the threat of powerful minority groups to American culture was validated by the dismantling of Proposition 187 against the expressed will of the majority of California’s voters. Positions were further polarized as a result.

Throughout the immigration surge of the 1980s through the 1990s, some cities, including Los Angeles and Phoenix, remained primary destinations despite a decline in the availability of jobs and housing. The cities, overburdened by poor immigrants, began to enforce “municipal, regional and state ordinances and laws that prohibit slums, sweatshops, and an impoverished lifestyle” by the late 1990s in order to deflect immigrants elsewhere. That deflection transferred part of the burden of immigration to other regions of the state and nation.
As an example, Los Angeles’s solution to the overwhelming burden of immigration relied on city government acting in conjunction with home owners, social justice organizations, business owners, and the established migrant network (Light 2006, xii). Against the backdrop of government enforcement of existing laws and ordinances that affected those living in poverty, the city’s homeowners defended their neighborhoods against the introduction of additional affordable housing. At the same time, social justice organizations acted to improve living conditions in sweatshops and slums and to reduce their number. As availability of jobs and housing at the low end of the economic scale fell, existing migrant networks relayed the information to the potential immigrants in home countries (Light 2006, xii). By practicing what Dr. Light calls a policy of “poverty intolerance,” Los Angeles was able to deflect an estimated one million immigrants to other U.S. destinations during the 1990s alone (Light 2006, xii). The immigrants who already resided in Los Angeles or who were able to settle there in the 1990s and after benefitted from the policy due to improved living conditions. According to Dr. Light, cities turn to this strategy when “national governments cannot or will not constrain immigrant influx to manageable levels, support first-reception areas with targeted relief for their exceptional burdens, or effect long-term immigration’s equal dispersion over the national terrain” (Light 2006, xi). This understanding of local and state action on immigration policy provides some insight into the actions of Arizona, specifically Phoenix and its county, Maricopa, in the early twenty-first century.

**The Late 1990s: State and Federal Government React to Continuing High Levels of Unauthorized Immigration**

While Proposition 187 made its way through the courts, anti-immigration activists throughout the Southwest pushed other propositions and laws forward targeting their state’s immigrant population. By 1996 California’s non-citizens represented nineteen percent of its population, ranking the state as first for that statistic. Nearly a third of the state’s 6,048,000 non-
citizens as of 1996 lived below the poverty level (Tumlin, Zimmermann, and Ost 1999, 13). A hard fact for California was that the growth of the market for specialty crops such as grapes, strawberries, and melons had required an increase in farm laborers since the 1980s despite predictions that harvesting would become increasingly mechanized over time. In fact, “scientists could not develop a machine harvester for premium specialty crops that could replace the sensitivity and dexterity of the human hand. Let alone replicate and implement the work experience of the farm laborer’s mind.” (Du Bry 2007, 5). Despite the social issues that continued to escalate, California agriculture needed Mexican farm workers and, because growers were able to extend harvest periods for these profitable crops, the jobs were almost year-round, encouraging permanent residency by low-skilled migrants (Du Bry 2007, 18). This created an innate tension in the state. In some rural areas, farm laborers “form the whole of the community and the rural class structure in the vacuum of the white exodus” that began during the recessions of the 1970s and continued through the millennium (Du Bry 2007, 11).

Proposition 209, the California Civil Rights Initiative (CCRI), was passed by California voters in 1996 and amended the state constitution to end affirmative action in government employment (Hayes-Bautista 2004, 136). A major point made by the Proposition’s backers was that, while affirmative action in the state had originally been intended to address historical discrimination against Mexican Americans, those benefitting from the preference system were typically recent immigrants who had not been subject to that history (Rodriguez 2007, 257). Proposition 209 has been the subject of many lawsuits in state courts since its passage but as recently as August of 2009, the state’s Supreme Court found it constitutional. Taking aim at California’s bilingual education programs which had been in place since the 1970s, Proposition 227 supporters claimed that bilingual programs hindered English proficiency. California voters
passed Proposition 227 by a significant 61 percent despite the fact that Latinos voted against it by a two to one margin (Navarro 2009, 139).

By 1996 Arizona’s non-citizens represented nine percent of its population, ranking Arizona fifth for that statistic. Nearly half of the state’s over four hundred thousand non-citizens as of 1996 lived below the poverty level (Tumlin, Zimmermann, and Ost 1999, 11). Texas matched Arizona in 1996 in the percentage of its population who were non-citizens although that nine percent was a far greater number of persons, approximately 1,637,000, due to the overall population of the state. As in California, approximately one third of Texas’s non-citizens lived below the poverty level (Tumlin, Zimmermann, and Ost 1999, 52). New Mexico’s non-citizens represented only six percent of its population by 1996, ranking the state thirteenth for that statistic. However, as in Arizona, half of the state’s 104 thousand non-citizens as of 1996 lived below the poverty level (Tumlin, Zimmermann, and Ost 1999, 40). It should be noted that New Mexico is the poorest of the Southwestern states overall so the economic status of its state’s noncitizen was not as exceptional as in the other three more prosperous border states.

Although legal provisions for restricting social benefits vary from state to state, the Urban Institute’s analysis and ranking of the states provides a basis for comparison. On a four-point scale with “one” being the ranking of states most generous with social benefits to non-citizens in 1996, California achieved a ranking of “one,” New Mexico and Arizona achieved a ranking of “three,” and Texas achieved a “four” ranking (Tumlin, Zimmermann, and Ost 1999, 11, 13, 40, and 52). Given the level of benefits in California, the economic downturn in primary economic sectors in the 1980s, the volume of unauthorized immigration to the state, and the state’s progressive tax code, it is not surprising that California led the charge towards benefit restrictions based on citizenship status.
The newly elected Republican-majority Congress of 1996 passed into law two significant immigration-related acts that echoed Proposition 187 and focused on the political hot buttons of the provision of public benefits to non-citizens and the security of the American nation. Prior to the 1996 legislation, “there was no uniform rule governing which categories of non-citizens were eligible for which government-provided benefits and services, and no single statute where the rules were described” (Wasem 2010, 1). The Personal Responsibility, Work Opportunity, and Medicaid Restructuring Act (PRWORA), also known as the Welfare Reform Act, prevented the majority of non-citizens – unauthorized immigrants and authorized legal residents both – from receiving assistance under most federal means-tested programs (Jacobson 2008, 87). PRWORA did allow continuation of emergency medical care and medical care such as immunizations that contributed to the health of the general population. PRWORA provides the limits within which states can exert control over the provision of benefits to legal non-citizens and, to this day, benefit eligibility depends on federal law combined with the laws of individual states (Wasem 2010, 4). Unauthorized immigrants are not eligible for most benefits of federal programs, regardless of their income level (Wasem 2010, 16-18). States, including Arizona, that have passed benefit limitations have been careful to craft their laws accordingly since 1996 (Rodriguez, Chishti, and Nortman 2007, 43). Prior to the passage of PRWORA, “the laws and regulations governing the individual federal assistance programs” including the Supplemental Nutrition Assistance Program (SNAP) which was previously known as food stamps, the Supplemental Security Income (SSI) program, Temporary Assistance for Needy Families (TANF), and Medicaid, determined the coverage available to non-citizens; there was no comprehensive or consistent approach to coverage for authorized non-citizens and even unauthorized non-citizens although the latter were barred from these four major programs and were potentially covered by other social programs such as the Special Supplemental Nutrition
Program for Women, Infants, and Children (WIC) as an example (Wasem 2010, 1-2). Because PRWORA stopped the flow of federal benefits to some non-citizens who were already receiving them, it was highly controversial (Wasem 2010, 2). Although PRWORA clarified the relationship of federal to state law in terms of benefits to non-citizens including unauthorized immigrants, the outcome left the states with significant expenditures for the unauthorized and great leeway in state-level decisions. The primary areas of continued cost to the states were education which judicial decisions had compelled the states to provide, criminal justice, and emergency and preventative health care costs (Wasem 2010, 18). The passage of PRWORA forced states “to make a set of decisions about the eligibility of recent immigrants” for federal programs including SSI, TANF, Medicaid and food stamps” during and after the five year ban on access imposed by the federal government” (Nicholson-Crotty and Nicholson-Crotty 2011, 613). “The cost-shift to the states has broader implications as well, in that it deepens the divide between immigration and immigrant policy,” the term that the Urban Institute uses to refer to the treatment of immigrants by all levels of government once they are in the U.S. (Zimmermann and Tumlin 1999, 50).

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) quickly followed PRWORA and focused on the southern border. IIRIRA granted the federal government the right to construct barriers along the border, again increased funding for the Border Patrol, and expanded federal detention facilities for unauthorized immigrants (Navarro 2009, 133). The debates leading to the passage of IIRIRA occurred in the aftermath of the Oklahoma City bombing and, despite the fact that the perpetrators were all native-born whites, connected terrorism with immigration well before the events of September 11, 2001. Of significance, IIRIRA eliminated legal oversight of the deportation process. Post-IIRIRA, law enforcement officers could easily detain, arrest, “brand as an aggravated felon,” and deport any
person without adequate paperwork (Koulish 2010, 41). IIRIRA also barred unauthorized immigrants who overstayed their visas from applying for reentry for three years and established a required income threshold for authorized immigrants who wished to bring family members into the country. This aspect of the law was intended to keep newly arrived authorized immigrants from eligibility for public benefits (Wright 2008, 119). Of particular significance to immigration law enforcement activity in Arizona and other states, Congress also added a new section to the Immigration and Nationality Act of 1965. Section 287(g) authorized state and local governments to partner with the federal government in the enforcement of federal immigration law (Rodriguez, Chishti, and Nortman 2010, 44). Robert Koulish points out that up to 1996, unauthorized immigrants had broken civil law but not criminal law (Koulish 2010, 18). However, recent changes in law and regulations have made what were civil offenses into felonies. The criminalization of undocumented or inadequately documented immigration “attaches mandatory punishments such as detention and deportation to what used to be civil offenses” (Koulish 2010, 40). In all, the national policy shift embodied in the federal immigration legislation of the period reflected “notions of economic citizenship, not tied to documentation status, created during the struggle over Proposition 187” in California (Jacobson 2008, 87).

The Late 1990s: Changes in Direction

Congress amended the PRWORA Act of 1996 as part of the 1997 Balanced Budget Act. The amendment continued SSI benefits for those authorized immigrants who were receiving SSI by the date that PRWORA became law and made eligible for SSI those authorized immigrants who were in the U.S. by the date PRWORA became law who subsequently became disabled (Wasem 2010, 2). SNAP eligibility was similarly affected by 1998’s Agricultural Research, Extension, and Education Reform Act. Other amendments up to
2009 reinstated benefits for particular subsets of non-citizens who were deemed worthy of them or specifically authorized the states to make decisions on particular categories of cases (Wasem 2010, 3). By 2010, a combination of factors was necessary to determine eligibility.

In 1998, Congress reversed its direction somewhat on immigration policy by passing two laws that reinstated the provision of Food Stamps, Medicaid, and Supplemental Security Income (SSI) benefits to certain categories of unauthorized immigrants. Governor Pete Wilson of California fell from grace within the GOP while Texas’s Governor George W. Bush rose in prominence and onto the Presidential ticket in part due to his Latino-friendly reputation. While campaigning, Governor Bush voiced support for amnesty for unauthorized residents of the U.S., a position he continued to hold after his election. Although it was not evident in the federal anti-immigrant legislation of 1996, leading up to 1998, the GOP had begun to fear its identification with restrictionism. As Andrew Wroe argues:

Faced with significant growth in an increasingly Democratic Latino population, and an immigrant population pushing for citizenship and voting rights as its benefits were squeezed and blame for America’s ills were heaped upon it, some in the GOP thought they had positioned themselves on the wrong side of history, epitomized by Bob Dole’s devastating defeat to Bill Clinton in the 1996 presidential election… The primary reason [for these developments] was a fear of a further political backlash among the fast-growing and increasingly vocal, well-organized, and confident Latino community. (Wroe 2008, 181)

Overall, the federal policy reversals of 1998 caused Congressional critics to contend that national immigration reform legislation of the 1990s taken in sum encouraged migration to the U.S. under any circumstances because it was likely that one could gain legality after arrival (Wright 2008, 124). The swift policy changes revealed the polarization of the GOP and the U.S. public regarding immigration; the Republican Party was “splintered on the issue to the highest levels of party leadership” (Jacobson 2008, 136). Regardless of where Congress and the individual parties stood on the issue at any moment, outrage at the surge of immigration – particularly unauthorized immigration -- and the social and demographic changes it brought to
the Southwest increased leading up to the millennium. The public’s perception of a cultural invasion of America propelled the formation of anti-immigrant movements throughout the Southwest, radiating out from California to the rest of the nation. “Many intersecting factors contributed to the backlash, including a deteriorating economy, environmental worries, crime, the perceived welfare burden imposed by immigrants, and concerns about immigrants’ assimilability and threat to whites’ numerical and cultural dominance” (Wroe 2008, 27). While anti-immigration organizations attempted to stem the tide through previously noted legal initiatives at the state and local level, they also began to organize more radical responses to what they perceived as an extreme threat to American culture and traditions. “The ongoing media coverage helped foment a resurgence of xenophobia, nativism, and racism specifically directed at Mexicanos” (Navarro 2009, 127). Responses to the perceived invasion included the formation of armed militias beginning in the 1990s (Navarro 2009, 153).

As for Arizona in the late 1990s, the switch of migration routes to the remote desert rather than urban border areas of Arizona was further encouraged by the erection of sections of border wall in the Arizona cities of Nogales and Douglas in the late 1990s. “The funnel effect was predictable, but policymakers in Washington calculated that Arizona’s desert would act as a natural deterrent to immigrants and human smugglers. They were wrong.” A direct result of this shift in route was an increase in migrant deaths in Arizona due to harsh desert conditions (DeVivo and Fernandez 2009, 115). The most shocking result of the law enforcement escalation at America’s southern border has been the “more than 4,600 recorded deaths of unauthorized border crossers from 1994 to 2007” (Dunn 2009, 187) and, of course, deaths are recorded only when a body is located. As the Border Control increased its activities, “a crackdown at one porous part of the two-thousand mile border would produce a ‘balloon effect’ elsewhere as immigrants simply changed their place of crossing” (Wroe 2008, 21). In the late 1990s, desert
Arizona with its small, isolated, and conservative towns became the center of the balloon; all the pressures of unauthorized immigration centered on that region and would determine Arizona’s path after the millennium.

Why Arizona? What this History Reveals about Arizona’s Passage of S.B. 1070

It was in the 1960s that politics in Arizona shifted power to the Republican Party, initiating the long term dominance of state politics by the conservative right. This shift paved the way for the passage of anti-immigration legislation on the state and local level for the remainder of the twentieth century and beyond and provided the ideological force behind S.B. 1070 as Chapter 5 will describe. Although extremism was not evident in Arizona’s representation at the federal level, the state did tolerate extreme right-wing viewpoints in its localities and state legislature. The power of restrictionist forces in the state was inadvertently encouraged by two national trends. First, the failure of authorized Hispanic immigrants to seek naturalization and thus the power of the vote contributed to a lost opportunity for the replacement of extremists by moderates or even pro-immigrant legislators over time. “Fully 65 percent of the Mexican immigrants counted in the 1980 Census who had lived in the United States for the five or more years necessary to naturalize were not citizens” (Pachon 1987, 300). While this statistic is national, since most of the Mexican immigrants of the period lived in the Southwestern states, the particular implication for the politics of those states must be recognized. Legislators, due to their dependence on the vote, tend to act on the policy preferences of those citizens who vote. When a subgroup of the population fails to naturalize as is true of a significant proportion of legal Mexican residents of the U.S., publicly elected officials become less accountable to that group. The same group is ineligible for public office and government employment, further limiting their representation and influence in state and national politics (Pachon 1987, 302). While this chapter notes the increased application for
citizenship in the mid-1990s around the issue of Proposition 187 in California, the increase was not at a level that led to enfranchisement of the majority of those eligible for such applications. The voting power of ethnic Mexicans remains relatively untapped.

Writing in 1998, David Lee argues that the liberalization of federal immigration policy of the late twentieth century was in direct opposition to the expressed will of the American people (Lee 1998, 4-9). Up until that time, federal immigration policy had followed the will of the majority on all major points. As a rule, “public policy usually does not diverge from public opinion for an extended period of time on an emotionally charged issue like immigration” (Lee 1998, 7). Lee attributes the discordance of the period to the strength of the Civil Rights groups beginning in the 1960s and the “ascendancy of conservative economics in a globalized economy, which empowered ethnic groups and strengthened Republican support for immigration” (Lee 1998, 122). Regardless of its cause, the discordance frustrated the will of the people. Especially in the Southwestern border states, citizens became inflamed and viewed the federal government as failing to uphold the nation’s laws. The liberal legislation passed into law at the federal level just as Arizona politics were shifting to the right had repercussions all along the national border. The new social safety net and reformulation of legal immigration in the 1960s contributed to the context of a strong anti-immigrant backlash, particularly in the Southwest. First, the social safety net ultimately outpaced the ability of individual states including Arizona to meet the costs of its share for these programs. This was particularly evident when states experienced economic downturns. The recessions of the 1970s and 1980s were national but, in the Southwest, they provided the context for an interpretation of the presence of immigrants as the primary source of economic stress on the state. Second, the immigrants, increasingly poor, low-skilled, and illiterate were also increasingly unauthorized. The unauthorized immigration, predominantly Latino, which rose to unprecedented levels in the
last quarter of the twentieth century was a direct result of inadequacy of federal immigration laws passed during this era coupled with the strong economic push and pull factors described in this chapter. The presence of such a large and culturally homogeneous group of immigrants challenged the Southwest culturally but, due to the level of illegality, also challenged the citizenry’s long-held values of a social hierarchy and law and order. The struggle between the states and the national government over who is responsible for paying for federally-mandated programs as well as obligations for social programs and education for non-citizens that derive from Court decisions continues to the present day but originated in that decade.

Throughout the 1970s the federal government failed in several legislative attempts to reform immigration policy. The Southwestern border states reacted with local and state legislation and even with vigilante activity. The Hanigan Case in southern Arizona served as warning to the nation that the border was reaching a crisis stage where citizens perceived immigration’s threat to law and order to be significant enough that violent response was warranted. The incident, the trials, and the jury verdicts all contributed to further polarization of the region’s immigrant advocates and restrictionists. Vigilantism was alive and well on the Arizona border and would rear its ugly head again in the early twenty-first century. Somewhat powerless to control the southern border due to the unresponsive federal government’s preemptive control over immigration policy, the Southwestern states, predominantly California and Arizona, acted legislatively to chip away at the rights of the non-citizens, authorized and unauthorized, within their borders. English-only laws came into vogue and, although in some states they were merely symbolic, the law in Arizona affected state and local-level government activity. By 1990 when the federal government passed its next major piece of immigration legislation, there was a great divide between federal policy and public sentiment. In fact, the public, especially in the Southwest, resented federal action which consistently caused further
increases in unauthorized immigration. This was the situation when the border militarization beginning in 1993 increased criminal involvement in unauthorized immigration. Once migration involved a great deal of money moving from hand to hand, human smuggling into the U.S. became just one more industry from which criminal enterprises could make a profit (Andreas 2003, 3). The involvement of organized crime in immigration originated in the 1990s and brought fear along the border to a new level.

California’s passage of Proposition 187 was an extreme reaction to an extreme problem, the overwhelming financial stress in the state’s economy due to its strong social safety net during lean economic times coupled with a progressive tax structure that relied on the high incomes of a small subset of state residents to carry the burden. Although Proposition 187 was ultimately dismantled, it served as an important lesson for Arizona which was also interested in stepping into the breach created by federal inaction on comprehensive immigration reform. Legislators in Arizona looked carefully at California when crafting legislation for their state. Proposition 187 of 1994 and its journey through the courts were strong influences on S.B. 1070 in 2010. An analysis of domestic migration from 1995 to 2000 also provides some interesting information about the links between California and Arizona. The Bureau of the Census reported that California was the state that lost the highest number of residents to other states during that period, predominantly to its neighbors, Arizona and Nevada. “Arizona’s net migration from California of 94,000 was the most from any state and represented nearly one third of Arizona’s total net domestic migration of 316,000” (Perry 2003, 4). Drilling into that domestic migration by age group, the Census Bureau further reported that many of the migrants to Arizona were retirees who came disproportionately from California (He and Schachter 2003, 3). Further, northeastern Arizona lost some its older population to domestic migration while southwestern Arizona gained in older population; Maricopa County, Arizona was the county that had the
largest net gain of older people in the U.S. between 1995 and 2000” (He and Schachter 2003, 10). The fact that this group of migrants left California for Arizona in the years immediately after the passage of Proposition 187 and the injunction against its enactment is potentially an influence on the passage of legislation in Arizona limiting social benefits to immigrants during the same decade and the rise to prominence and power of extreme anti-immigrant personalities such as Russell Pearce of Maricopa County, discussed in Chapter 5, during that same timeframe. Clearly, Arizona’s political and demographic changes approaching the millennium established favorable conditions for extremes in anti-immigrant legislation such as S.B. 1070.

Why were Arizona and California more fertile ground than Texas for anti-immigrant legislation in the late twentieth century? Although Texas as also a major receiving state for both authorized and unauthorized immigrants, its politics had experienced a significant shift in its political climate in the 1960s and that shift influenced its stance on immigration issues through the millennium. In 1994 Texas elected the conservative Republican George Bush governor. Mr. Bush had encouraged the Latino vote by criticizing California’s campaign for Proposition 187; he vowed that no similar bill would become law in Texas under his administration (Hanson 2005, 6). Texas, unlike California, did not have a progressive tax code or influential citizens who viewed immigrants as living entirely on their dime. Because Texas relied more heavily on sales taxes for its revenues than it did on income taxes, Bush’s electoral strategy was successful. “In Texas and other states where the labor-market effects of immigration tend to overshadow its public-finance effects, political opposition to immigration appears to be less organized” (Hanson 2005, 6–7). Texas also offered fewer public benefits in general, thus muting the financial impact of low-wage unauthorized immigrants on its citizenry. Texas’s pro-immigrant and pro-Latino message, despite the harsh effects on the national economic downturn in the 1980s and 1990s on the state’s economy, was at least in part due to the fact that the state had
encouraged a close economic and social relationship with Mexico. “California does not need Mexico’s markets; Texas does” (The Economist 1996). Texas by the 1990s was Mexico’s largest trading partner in the U.S. Texas continues to encourage Mexico to expand that trading relationship further (Wroe 2008, 152) and has provided a base for NAFTA whose secretariat is located in Dallas (The Economist 1996). Mexican Americans are a strong voting bloc in Texas’s state legislature and hold many public offices at all levels of government throughout the state. “Latinos run almost every Texan town from San Antonio southwards” (The Economist 1996). This is not the case in California. There, the foreign-born population is more diverse than in Texas. Latinos in 1995 held less than half the number of positions in the state legislature as in Texas, despite the fact that California’s total population was almost double that of Texas (The Economist 1996). All of these factors appear significant in Texas’s moderate stance on immigration in the late twentieth century. New Mexico retained its historical moderate stance, leaving California and Arizona at the crux of state response to immigration issues along the southern border.
CHAPTER 5

BORDER FAILURE: THE FEDERAL GOVERNMENT FAILS TO REFORM IMMIGRATION POLICY AND THE STATES ACT

The 1990 Census enumerated 19.8 million persons born outside the U.S. Based on its 2000 data collection, the Census Bureau reported that its count of the foreign-born had increased to 31.1 million in a decade (Chomsky 2007, xiv). These counts included Census Bureau estimates of the unauthorized immigrant population. Despite the increases in legal immigration opportunities offered by the legislation of the late twentieth century as discussed in the previous chapter, “admissions of lawful permanent residents [LPRs] and temporary immigrants has not kept pace with push factors in Mexico, Central America, and other countries of origin, or with family-and employment-based pull factors within the United States” (Rosenblum and Brick 2011, 13). Most of the opportunity provided by the legislation of the 1990s was in the high-skilled sector of the economy. Unauthorized laborers continued to cross the border in defiance of U.S. law because employment opportunities continued in the unskilled and low-skilled categories. “Employers in these sectors face constraints in hiring legal foreign workers, and now rely extensively on unauthorized immigrants” (Rosenblum and Brick 2011, 13). While earlier waves of immigrants crossing the border into the Southwest had consisted primarily of males who migrated circularly and labored in agriculture, the dispersal of immigrants from the Southwest to the rest of the U.S. and into a variety of occupations such as those in the service industry had shifted the flow to include women and children. Of the estimated 12 million unauthorized immigrants in that population of 31.1 million, approximately forty percent were women and ten percent were children. This estimate does not include the U.S.-born children of unauthorized immigrants as such children are American citizens (Rosenblum and Brick 2011, 14).
Given the salience of the unauthorized immigration issue in the border states at the millennium, the public there cried out for further government control of what many increasingly perceived as an invasion of their territory, culture, and economy. Conservative voters also viewed the overturning of California’s Proposition 187 as a federal assertion of power over the expressed will of the people. As the turn of the century came and went, the federal government struggled with appropriate legislative responses to the issue of unauthorized immigration and the public’s alarm and discontent, flip-flopping back and forth between restrictionist and inclusionist legislation. In the midst of this inconsistent policy trajectory, terrorists attacked the U.S. in both New York City and outside Washington, D.C. on September 11, 2001. The discontent at the border switched into a high gear defense mentality in response to the September 11 attacks and their association with immigrants; all of the hijackers had overstayed their visas. Where the federal government had failed to act to protect the nation’s sovereignty, the states would. States and localities stepped into the breach with a historic level of immigration-related legislation that spanned multiple issue areas including law enforcement and the provision of public benefits. While approximately half of the legislation encoded the eligibility of immigrants for benefits (Nicholson-Crotty and Nicholson-Crotty 2011, 612), that was not the case in Arizona. Arizona was among the states most active in the immigration policy arena and became “all about division, as though every argument we were having as a nation plays out there on a breathtaking scale” (Thornburgh 2011, 42). Here, in the first decade of the twenty-first century, immigration and national security became inextricably intertwined policy areas and Arizona’s S.B. 1070 became state law. As is the cultural tradition in Arizona, citizens “acted first and asked permission from the federal government later” (Thornburgh 2011, 43).

As the century opened, the stage was set for forward action on the issue of unauthorized immigration. First, early in 2000 the AFL-CIO labor union expressed its support for an amnesty program for unauthorized immigrants already working in the U.S. and ended its support for employer sanctions for hiring unauthorized immigrants (Miller 2009, 29). This was a significant policy statement for organized labor and represented a departure from its historic stance. Unions had supported restrictionist legislation based on concerns that immigrants would displace American workers and reduce wages, although union leadership had supported family-based immigration provisions beginning in the 1960s (Lee 1998, 115). Leveraging the Union’s approval, Congress enacted the Legal Immigration and Family Equity Act (LIFE) in late December 2000. The LIFE included a number of provisions that benefitted unauthorized immigrants already in the U.S. (Wright 2008, 124-125). Of particular importance was the extension to April 2001 of the opportunity for certain categories of unauthorized immigrants to adjust their status to permanent legal resident under Section 245(i) of the Immigration and Nationality Act. Congress had added Section 245(i) to the Act in 1994, as described in Chapter 4, so that eligible immigrants would be able to apply for a change in status from within the U.S. It is notable that Congress acted to pass the LIFE despite the public’s consistent disapproval of Congress’s 1998 pro-immigrant tweaks of existing law and amnesty programs in general (Center for Immigration Studies 2006 and Harvard University 2004, 4). Also contributing to a climate favorable to immigration policy progress, in January 2001 George W. Bush, the former Texas governor and a Republican, began his first term as U.S. President. Reform of America’s immigration policy was prominent on his agenda. As Texas Governor, President Bush had forged a strong collaboration with Mexican President Vicente Fox and the two had determined to collaborate on resolving the issue of unauthorized immigration. The political campaigns
leading up to the November 2000 election had sharpened the focus on the issue of the unauthorized and on immigration policy in general. This focus was especially salient in the Southwest due to reports from the 2000 Census that again highlighted the growth of the Latino population and estimates of the unauthorized residing in those states. President Bush built on his already positive relationship with President Fox by forming a joint Migration Working Group. President Fox had based his own election campaign on his intention to protect the interests of the 18 million Mexican migrants whose remittances, amounting to nine billion dollars yearly, were essential to Mexico’s financial and political stability (Wroe 2008, 183). The goal of the Working Group was to create a framework for border safety, resolve the issue of unauthorized migration, and, towards that aim, establish a temporary guest worker program (Wroe 2008, 183). Taking another step to move his immigration agenda forward, President Bush proposed in May 2001 to extend provision 245(i) of the Immigration and Nationality Act, discussed in Chapter 4, to continue to allow unauthorized immigrants to attain permanent resident status. In that pre-September 11, 2001 environment, both American President Bush and Mexican President Fox considered the creation of “an open U.S.-Mexico border, including the free movement of labor, and the creation of a North American community” visionary but within reach (Andreas, 2003, 1).

The individual states of the Southwest at the millennium were also ready for action by the federal government on immigration policy. Texas, as the home of President Bush, was expecting legislation that would encourage its trade relationships with Mexico. In New Mexico, the initial political participation of ethnic Mexicans in the early years of the state’s American history had continued at a level higher than in the other Southwestern border states. New Mexico’s reliance on federal dollars to sustain its economy caused it to look to Washington, D.C. for any relief necessary due to the presence of unauthorized immigrants in the state.
Although anti-immigrant sentiment along California’s southern border could still be intense, there had been a noteworthy change in that state’s politics since the mid-1990s that rivaled that of Texas in the 1960s. Between 1950 and 1990, Republican presidential candidates, with the sole exception of Barry Goldwater who ran against Lyndon B. Johnson in 1964, received the benefit of California’s numerous electoral votes (Unz 2011, 19). By the early 1990s, California’s GOP counted on the support of approximately a third of the state’s Hispanic and Asian citizens. This changed, practically overnight, due to the intensity around Proposition 187 in 1994. Because the Republican representatives in California became more conservative as the 1990s progressed, the GOP no longer held a moderate image in the state and began to lose minority support along with statewide elections (Unz 2011, 19). California “suddenly switched from being the strong anchor of every Republican national campaign to being the equally strong anchor of every Democratic one” (Unz 2011, 19). The state’s once powerful GOP, the force behind Presidents Nixon and Reagan, “was reduced to near irrelevance” in the years following the millennium (Unz 2011, 19). The booming economy of the late 1990s as well as the dismantling of Proposition 187 motivated the state’s citizens to give anti-immigration legislation at the state level a low priority and to return responsibility for immigration policy to the federal level. Arizona by the turn of the century had become the locus for issues regarding unauthorized immigration. The Border Patrol’s Tucson sector became the most active of its nine divisions in the years around the millennium (Regan 2010, xxiii). The Border Patrol reported that the “number of migrants detained in Arizona was double that of the entire rest of the border combined” (Benton-Cohen 2009, 273) once migration routes had shifted to the state. Arizona reacted to the route shift of the mid-1990s with calls for federal law enforcement action as levels of unauthorized immigration continued to increase. But the state’s border citizens also moved towards immediate action at the local level. Some Arizonans formed anti-immigrant
militias. Ranchers along Arizona’s southern border also became more heavily armed (DeVivo and Fernandez 2009, 116). Both militia members and ranchers acted directly to intercept migrants who were attempting to cross the desert into the state. The unofficial and untrained border patrollers typically apprehended the migrants they detected and turned them over to the Border Patrol (Navarro 2009, 160). While the militia movement was a national one, pulling immigration restrictionists from across the country to the border, Arizona was its epicenter and the state became the locus of the new century’s conflicts between nativists, immigrant advocates, and the immigrants themselves. According to Armando Navarro of the University of California, Riverside, “Arizona’s pronounced practice of internal colonialism toward Mexicanos was instilled with a conservative and racist political culture. Its adherence to Republicanism in great part contributed to the rise of vigilantism and the formation of nativist militias” (Navarro 2009, 157-158). The Anti-Defamation League reported that “Arizona was home to militias that were comprised of tax resisters, anti-federal government zealots, sovereignty movements, right-to-trial groups, and a few of the religious right” in the late 1990s (Navarro 2009, 158). Their presence in Arizona would be heavily felt a few years into the new century.

Before Congress could address President Bush’s immigration policy proposals of early 2001, the terrorist attacks of September 11 intervened. Security and protectionist themes, at the heart of immigration restrictionists’ rhetoric, became central concerns and the “border-free vision of North America was one of the first casualties of the devastating terrorist attacks” (Andreas 2003, 1). The country turned in one pivotal day from any consideration of liberalization of immigration law towards immigration control. In the aftermath of the attacks, the government moved swiftly to establish the Department of Homeland Security (DHS) in order to improve and better coordinate all national security activities. Congress then passed the
Patriot Act which granted the new department broad powers (Wright 2008, 126-127). The government moved all federal immigration agencies and departments to DHS, ensuring that “migrants would henceforth be defined through the lens of security, rather than labor markets or law enforcement” (Koulish 2010, 6). In the post-September 11 atmosphere, the differences in American attitudes towards authorized versus unauthorized immigration sharpened. The security concerns and protectionist attitudes engendered by the attacks ensured that “all future immigration legislation will be hindered from proceeding until the nation is satisfied that solutions have been found to the problem of illegal immigration. Shrugging it off as a ‘perplexing problem’ will no longer work” (Wright 2008, 130). Due to improvements in the economy as well as the attacks of September 11, economic concerns related to immigration lessened in priority as compared with security concerns. However, economic concerns did not simply evaporate and remained part of the underlying themes in immigration policy formation. The benefits of the improved economy had not spread to every economic class or area of the country. Immigration’s perceived threat to economic wellbeing, which had been a central concern in the dialog regarding Proposition 187 in California in the mid-1990s, remained a salient issue for some Americans along with national security. The middle class was still suffering from “declining or stagnating real wages, high gas prices and rising costs of the health care system and college fees” as well as the budget constraints created by the tax cuts under President H.W. Bush’s administration in the early 1990s (Douzet 2009, 10). In Arizona, the events of September 11 further inflamed border concerns. In the wake of the terrorist attacks, ranchers such as the Barnett brothers of Cochise County who had become media celebrities in 1999 began to appear even more sympathetic. The brothers had gained national attention for inviting volunteers from across the nation to vacation on their ranches enjoying the outdoors and participating in hunts for migrants along the border. “Virtually every major news outlet,
from network and cable television channels to the leading newspapers and newsweeklies, described how the brothers, frustrated with illegal immigrants crossing their Arizona border ranchlands, rounded up thousands of men and women at gunpoint and turned them over to immigration authorities (Potok 2004). Civil suits against such ranchers were filed by social justice organizations (Navarro 2009, 163-165) and the Barnettts were investigated by the Cochise County’s Sheriff’s Department. In the case of Ronald Morales et al v. Roger Barnett in 2006, the Barnettts were assessed damages (Navarro 2009, 212). However, the apparent acceptance of anti-immigration extremism in Arizona in the form of such organizations as Ranch Rescue founded in 2000 in Cochise County encouraged those on the extreme edge of the issue to relocate to the state (Navarro 2009, 170-173).

2004 – 2006: States Claim Immigration Legislation as their Own

By 2004, Arizona’s immigrant population numbered approximately 831 thousand, more than a two hundred percent increase from 1990. Even more significant to the state was the finding that over three quarters of the immigrants were non-citizens and most were of working age and had migrated for employment (Gans 2008b, 2). The state’s immigrants – both citizens and non-citizens – constituted fourteen percent of the workforce overall and an even higher percentage of the low-skilled laborers typically employed in the state’s agriculture, construction, manufacturing, wholesale trade, and services industries (Gans 2008b, 4). These economic sectors accounted for 43 percent of Arizona’s 2004 GDP (Gans 2008a, 3). In the high-skilled occupations of medicine and science, immigrants represented from 15 to 38 percent of those in specific job categories (Gans 2008b, 5). As of 2004, the distribution of Arizona’s immigrants across the state was quite uneven; certain counties carried a disproportionate share of the burdens, benefits, and challenges of immigration to the state. Maricopa County, Arizona’s manufacturing center and well north of the state’s southern border, was home to more
than two thirds of Arizona’s immigrant population. Pima County housed 14 percent of the immigrants and Yuma County housed seven percent. (Gans 2008b, 16). Both Pima and Yuma were border counties.

After multiple Official English ballot initiatives including an amendment to the state constitution were approved by Arizona voters beginning in 1988 and struck down by the state’s Courts as unconstitutional, 63 percent of Arizona voters in 2003 continued to express their concerns over Arizonan culture and their resentment of unauthorized immigrants by approving Proposition 203 which eliminated bilingual education in the state. While there were other strong arguments against the bilingual education programs in place at the time including insufficient resources, inadequate training of teachers, and insufficient resources, the hostility of the “English Only” political movement and its enervation after the terrorist attacks of September 11, 2001 were strong contributors to passage of Proposition 203 (Martinez 2006, 92). Following on the heels of Proposition 203, Proposition 200, named Protect Arizona Now, mimicked the intent of California’s Proposition 187 (Varsanyi 2010b, 2). 200 required that all persons applying for state-funded public benefits or attempting to vote in Arizona present proof of U.S. citizenship. It also required Arizona’s public employees to report to the U.S. Department of Homeland Security anyone who sought services whom they suspected of being unauthorized (Gutierrez and Zavella 2009, 4). “Most remarkably, [Proposition 200] threatens state workers with fines and four months in jail if they fail to inform federal officials of any non-citizen applying” for any of the benefits that might fall under the legislation’s broad umbrella (Potok 2004). Arizona’s voters passed Proposition 200 “by a 56% margin — despite the nearly universal opposition of their political, business and opinion leaders. Even the revelation that the highest profile activist behind the referendum had brought in a known white supremacist to head her national advisory board didn't seem to bother voters” (Potok 2004). Arizona’s version
stepped carefully around wording in order to avoid the legal challenges its predecessor to the west had incurred. Nonetheless, it was immediately stayed by a federal judge due to concerns over the proposition’s interference in the provision of benefits allowed under federal law (Potok 2004). Clearly, S.B. 1070 of 2010 was not without precedent in the state. Interestingly, 47 percent of Hispanic voters were among those who approved of Proposition 200. Their support is consistent with the finding that Hispanic voters in all states tend to support preconditions to legal immigration as long as a path to citizenship is possible (The Goldwater Institute 2007). The passage of Proposition 200 in 2004 illustrated the willingness of the state to act aggressively and even unconstitutionally to eliminate unauthorized immigrants from the state.

As his first term was drawing to a close in 2004, President Bush proposed a temporary worker program he called the Fair and Secure Immigration Reform Plan but the bill did not reach the point of formal presentation to Congress. State-level action on the immigration issue swung into high gear around 2005 when over three hundred bills were introduced and thirty-eight laws enacted by state legislatures of twenty-five states including Arizona, Texas, and New Mexico; the primary focal points were employment of the unauthorized, identification and drivers licenses, and law enforcement. (National Conference of State Legislatures, April 22, 2009). As evidence of the state’s intention to act to make immigrants unwelcome in the state, Arizona legislators were responsible for the most extreme versions of the proposed legislation. While New Mexico joined Texas and California in offering in-state tuition to certain categories of unauthorized immigrants in 2005, the Arizona Legislature passed H.B. 2030 which, if it had not been vetoed by the governor, would have prohibited unauthorized immigrants from adult education, ESL instruction, in-state tuition, financial aid, and child care assistance (National Conference of State Legislators, August 2005). Arizona did enact H.B. 2592 in 2005 which made Arizona the only U.S. state to prohibit public spending on the establishment or
maintenance of day labor hiring centers. While Arizona’s localities can continue to establish such centers, they must be financed entirely by private funding. This law passed despite the availability of evidence that such centers are beneficial to all stakeholders “including laborers, employers, business interests, and community residents” (Varsanyi 2010a, 144). Also in 2005, Arizona became one of nine states that passed legislation related to human trafficking. Arizona gave local law enforcement officers the authority to arrest and penalize human smugglers. The legislature also attempted to enact enhanced voting requirements and to eliminate consular IDs as valid for voting purposes or for receiving state services but the governor again vetoed both pieces of legislation. In contrast, Texas passed legislation liberalizing identification requirements. (National Conference of State Legislatures, August 11, 2005). Arizona that year attempted to pass three bills related to law enforcement; H.B. 2259 which allows immigration status to be considered during sentencing was enacted. The state legislature also made an unsuccessful attempt to pass a stringent “Official English” law to declare English the only language for state business but this version was not enacted.

President Bush began to form his agenda for his second term in office in 2004 and, as he continued to focus on security and to formulate immigration reform legislation, the anti-immigrant militia movement in the form of the Minutemen Civil Defense Corp increased its activities to protect the border while putting pressure on the federal government to take decisive action on unauthorized immigration (Douzet 2009, 1). Volunteers from across the U.S. traveled to Tombstone, Arizona in 2005 to organize. The media attention to the Minutemen was intense and the movement leveraged that coverage to spread from Arizona to the other border states, even receiving strong endorsement from then California Governor Arnold Schwarzenegger (Navarro 2009, 188). Organized counter-demonstrations also spread along the border; protesters emphasized the abrogation of human rights and the potential for violence due to the presence of
civilians vigilantes. While a number of prominent Minutemen could easily be labeled as extremists, the movement attracted “hundreds of mainstream citizens who found an opportunity to voice their fears and anxieties about massive immigration in a welcoming group and to take some action to serve their country which they consider to be in danger” (Douzet 2009, 6). In naming their group the “Minutemen,” the vigilantes who gathered in Arizona co-opted the sentiment and mythology associated with that group in Revolutionary period history (DeVivo and Fernandez 2009, 117). Their symbol, the coiled rattlesnakes with the motto “Don’t Tread on Me,” portrayed unauthorized immigrants as a threat to the nation. Writing about the Minutemen, Katie Oliviero of the University of Chicago argues that, in choosing their name, “these activists act as living effigies to revitalize mythologized democratic ideals, materializing them in their flesh and protest politics” (Oliviero 2011, 685). The Minutemen dominated the public’s image of the border, and creating the impression of “an apocalyptic national future” in which American culture succumbs to the strangers invading their land (Oliviero 2011, 680). The militia members and members of other anti-immigrant vigilante groups tied “terrorist threat and drug trafficking to labor-related migration, thus creating the perception” that all unauthorized immigrants were engaged in violent criminality (Oliviero 2011, 682). As the Minutemen gained the national media spotlight with dramatic coverage of their military-like patrols and apprehensions of immigrants fleeing across the Arizona desert, Janet Napolitano of Arizona and Bill Richardson of New Mexico, both Democratic governors, declared states of emergency in their border counties and called for the National Guard (Wroe 2008, 194).

In that highly inflamed atmosphere, the U.S. Border Patrol launched Operation Streamline in its Del Rio, Texas sector in 2005 and quickly extended the program to additional sectors including Yuma and Tucson in Arizona (National Immigration Forum 2010, 8). Operation Streamline’s mission was to apprehend all undocumented immigrants, swiftly
prosecute them for criminal violations, funnel them into U.S. prisons, and, at the conclusion of their incarceration, deport them across the southern border (National Immigration Forum 2010, 8). Despite claims of success from the Border Patrol, analysts indicated that the Operation had failed to deter unauthorized immigration while causing significant legislative and law enforcement burden and cost (Moore 2009) as well as constitutional violations such as the en masse hearings held by Tucson, Arizona’s courts (Lydgate 2010, 486). Researchers and economists indicate that the apparent reduction in the unauthorized crossings during the Operation had more to do with the cyclic downturn of the economy than with the Operation itself (National Immigration Forum 2010, 9). In Arizona, judicial records reveal that Operation Streamline witnessed an increase in prosecutions for illegal entry and re-entry and a decrease in prosecutions for smuggling (Lydgate 2010, 482).

In addition to providing the impetus for Operation Streamline, the activism of the Minutemen and the resultant high salience of the immigration issue in the eyes of the American public motivated the House of Representatives to pass a strict immigration reform proposal in December 2005. If it had been passed by the Senate, H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, otherwise known as the Sensenbrenner Bill, would have made unauthorized residency in the U.S. a felony, escalated the penalties for anyone who knowingly employed or harbored non-citizens, and constructed new fences along parts of the U.S.’s southern border (Gans 2006, 1). As the bill came under consideration in the Senate in early 2006, immigrants and their advocates rose in protest (Chavez 2008, 1). Mass public demonstrations strengthened the impression of unauthorized immigrants as a political force and highlighted their contributions to the American economy (Koulish 2010, 186). Approximately 300 thousand Chicagoans demonstrated on March 10 and approximately one half million demonstrated in Los Angeles on March 25. Furthermore, April
10 was deemed a National Day of Action for Immigrant Justice and protests occurred in a number of cities including a protest of approximately one half million in Dallas (Wroe 2008, 195). A nationwide boycott and demonstration on May 1 called the “Day Without Immigrants” followed (Wright 2008, 131). Seemingly in response, and likely with the midterm elections in mind, the Senate passed a much more liberal immigration act than H.B. 4437. The Senate version, written primarily by Senators Kennedy of Massachusetts and McCain of Arizona, offered a path to legal status for the unauthorized residing in the U.S. and a guest worker program (The New York Times 2012). Ultimately, neither the House nor Senate version became law. Disappointed and frustrated citizens pressed further for federal action on the issue. The media coverage of the Latino protests and the promotion of extreme voices on both sides of the issue during 2004 – 2005 “played a tremendous role in the revival of anti-immigrant attitudes” across the nation (Douzet 2009, 8).

Interestingly, the political divisions within Arizona on the topic of immigration align roughly with the northern border of the region that America gained via the Gadsden Purchase in 1853. Tucson’s county, Pima, hugs the border and is home to the University of Arizona and “an old and rooted Hispanic community” (The Economist 2011). Maricopa County to the north has “become a Republican bastion” due to an influx of snowbirds and other retirees who created a “largely white society with more recent Mexican immigrants,” predominantly unauthorized (The Economist 2011). Maricopa County, which includes the state capitol, Phoenix, lies approximately 150 miles from Arizona’s border with Mexico. Maricopa has 3.8 million residents of whom twenty-nine percent self identify as Latino; half of that twenty-nine percent were born outside the U.S. (Provine 2010, 220). According to Terry Greene Sterling, an author-in-residence at the University of Arizona, “Phoenix grew into a predominantly white city, settled by Civil War veterans and Midwesterners who didn’t like Mexicans. Unlike Tucson,
Arizona’s other major city, Phoenix has long displayed hostility toward Mexicans” (Sterling 2010, 41-42). Phoenix was the fastest-growing U.S. city in 2006; sixty-five thousand migrants came from outside the U.S., ninety-six thousand from inside the U.S., and the birth rate exceeded the death rate by forty thousand. “The civic leadership in Phoenix must navigate the dangerous waters of anti-immigrant activism from surrounding Maricopa County and the State of Arizona, with no reassuring signals from the federal level” (Provine 2010, 219). Two particular personalities emerged in the forefront of Arizona’s anti-immigrant movement around the millennium and both came from Maricopa County. The first is County Sheriff Joseph Arpaio who has served the county as Sheriff since 1993, most recently reelected in 2009, and “has been the very vocal face of the anti-immigrant movement in Arizona” (Baca 2010). Sheriff Arpaio’s position is that unauthorized immigration is a serious crime that warrants law enforcement response regardless of whether the immigrant has committed any other criminal violations after entry (Hensley 2010, 2). Although he has been charged with crimes including corruption and civil rights violations and federal authorities have investigated him for many years, Sheriff Arpaio remains pivotal and popular in Arizona (Baca 2010). Although human smuggling was already a federal crime in 2006, Arizona passed a human smuggling law that year intended to punish the traffickers (coyotes) active along the Arizona-Mexican border and to respond to the kidnapping crisis mentioned in Chapter 4. In an interesting application of the law, Sheriff Arpaio used the law to prosecute as felons the migrants for conspiring with coyotes to smuggle themselves. “Not only do deputies charge the smugglers, but many of their customers have also been jailed” (Archibold 2006). Often, migrants are able to plead the felony down to a misdemeanor but first time violators can receive sentences of up to nearly four years in an Arizona prison (Sterling 2010, 49).
The Cochise County Sheriff in 2006 estimated that immigrants - both legal and unauthorized - accounted for only three to four percent of the county’s criminal violations, excluding the trespassing and littering inherent in illegal migrations. Arizonans believe otherwise and, according to Katherine Benton-Cohen, this is likely due in part to the scale of unauthorized immigration at the start of the twenty-first century and its furtive nature which have together undermined Arizonans’ sense of security. The property damage that has occurred in the state is widely reported. “Ranchers’ fences have been cut; their lands have been covered with trash and clothing abandoned by migrants. Thefts and break-ins are a real fear” (Benton-Cohen 2009, 273). “The trend is to blame all of Arizona’s crime on Mexican immigrants” (Baca 2010).

A second influential figure in conservative Arizona politics, Russell Pearce of Mesa, which is just outside Phoenix in Maricopa County, served as Sheriff Joe Arpaio’s chief deputy and was elected to the Arizona Legislature in 2000. Mr. Pearce is a primary figure behind Arizona’s anti-immigrant state legislation and “believes that by scaling back or refusing public benefits or immigrants and cracking down on employers who hire undocumented workers, Arizona will cease to be an appealing destination for newcomers” (DeVivo and Fernandez 2009, 128). In 2006, both California and Arizona proposed and passed state level legislation related to immigration. By 2006, reflective of its overall political shift, California’s legislative efforts aimed to broaden support for immigrants. Arizona tried to make their lives more uncomfortable. Of note, in the area of public benefits which had been the focus of Proposition 187 in 1994, California passed S.B. 1534 in 2006 which authorized cities, counties and hospitals to provide health care and other assistance to any person who would have been eligible for such services if not for the immigration status requirements imposed by the federal PRWORA. California also passed S.B. 1569, legalizing access of any non-citizens who were victims of
trafficking, domestic violence and other serious crime to state and local public benefits including Medi-Cal health care (National Conference of State Legislatures 2006). The Urban Institute’s 1999 analysis of states’ policy choices in the area of benefit provision noted that California after Proposition 187 had a “strong immigrant advocacy” collation which was “likely to plan an important role” in the state’s decisions (Zimmermann and Tumlin 1999, 47). In contrast to California, Arizona that same year passed H.B. 2448/S.B. 2738 which required proof of U.S. citizenship or immigrant status in order to receive health benefits. Unauthorized immigrants in Arizona were entitled to emergency care only. Arizona also passed S.B. 1137 which made elderly unauthorized immigrants ineligible for the Comprehensive Care for the Elderly program. In November of 2006, Arizona voters passed Proposition 300 which denied state-funded scholarships and in-state tuition rates for undocumented students at the state’s public universities (National Conference of State Legislatures 2006). This took effect in 2007. As noted in Chapter 4, Arizona voters had approved a particularly stringent Official English law in 1988 which was challenged as unconstitutional. The Supreme Court ultimately overturned the law in 1999 (Pitzl 2006). The state legislature considered a number of subsequent versions of such legislation; the failure of the 2003 attempt was noted above. In 2006, in the increasing anti-immigrant climate in Arizona, the Arizona Legislature proposed another “Official-English” law and put it to the test of the popular vote. This version was worded to eliminate the legal challenges encountered by the 1988 version, was passed, and stands as state law today. Voters that year also passed with significant margins Proposition 100 which amended the state constitution to deny bail to persons charged with serious felonies who are in the US illegally; Proposition 102 which amended the state constitution to deny the award of punitive damages in civil court cases to persons who are in the US illegally; and Proposition 300, a referendum on a proposal to require citizenship for eligibility for various subsidized services such as in-state
tuition and financial assistance for adult education classes (Provine 2010, 225). The culmination of Arizona’s state-level immigration legislation was the following:

In Arizona, undocumented immigrants cannot legally work, be released from jail on bond, sue American citizens for punitive damages, speak Spanish in state buildings (English is Arizona’s official language), receive in-state college tuition breaks, drive, or seek state benefits. Arizona social workers face criminal misdemeanor charges if they fail to turn in any undocumented immigrant seeking any benefit from the state. (Sterling 2010, 51).

A number of studies conducted in the late 1990s identify the size of the foreign-born population, white resentment of minorities, the legislative proposition system, and the dominance of political conservatism in a state to be accurate predictors of the passage of Official English measures, especially when coupled with a low number of Latinos in the state legislature (Nicholson-Crotty and Nicholson-Crotty 2011, 613). These factors were all present in Arizona beginning in the mid-1990s and supported the passage of legislation such as that of 2006.

Instead of comprehensive reform legislation, Congress passed the 2006 Secure Fence Act which funded the construction of a fence between the U.S. and Mexico along 670 miles of the 1,951 mile border with the goal of protecting the U.S. from criminals and terrorists. The new fence replaces former fencing deemed inadequate (National Immigration Forum, 2010, 3). “One month before the 2006 midterm elections, the Act received substantial bipartisan support as neither party wanted to be viewed as soft on illegal immigration deterrence” (Mize and Swords 2011, 183). Residents of the four border states were mixed in their opinions of the fence. While the Minutemen and some ranchers in Arizona looked forward to the wall between countries, environmentalists and others feared its effects (Regan 2010, 170). As part of the 2008 Consolidated Appropriations Act, the 2006 Act was amended in December 2007 to allow DHS to decide where to build 700 miles of fencing along the border (Koulish 2010, 111). By 2010, much of the fence had been erected – in places it is merely a set of barriers placed widely apart
and “even Robert Gilbert, chief of the Border Patrol’s Tucson Sector, acknowledges that the wall slows migrants down by only a few minutes” in their attempts to cross into Arizona (Regan 2010, 176).


By 2007, when President George Bush again attempted comprehensive reform of federal immigration law, the Mexican population of the U.S., including citizens, legal immigrants, and unauthorized immigrants exceeded thirty million and represented thirty-six percent of Californians, thirty-six percent of Texans, forty-four percent of New Mexicans, twenty-six percent of Nevadans, twenty-six percent of Arizonans, twenty percent of Coloradoans, and eleven percent of Utahans (Navarro 2009, xxxviii). While Mexicans dominate the Latino population in the U.S., Central Americans and South Americans trail closely; most of those migrants arrive in the U.S. via Mexico (Navarro 2009, xxxvii) and are thus relatively indistinguishable from Mexican immigrants in the public’s eye. The estimate of the number of undocumented immigrants living in the U.S. peaked in 2008 at just under 12 million. By 2010, the estimate fell to 11.2 million (*The New York Times* 2012). Analysts attribute this decline to both increased border enforcement in the years since the terrorist attacks of 2001 and falling demand for low-skilled labor since 2007 (Rosenblum and Brick 2011, 13). President Bush’s Comprehensive Immigration Reform Act of 2007 had cross-party support at its introduction and a small bipartisan group of Senators that included Arizona’s John Kyl crafted the bill (*The New York Times* 2012). Consistent with earlier attempts at legislation under the Bush administration, the bill offered a guest worker program and a path to citizenship for over 10 million unauthorized immigrants (Wroe 2008, 9). Just as in 2006 however, the effort met with strong opposition due to its amnesty provisions (*The New York Times* 2012). It never reached a vote and the year ended without improved direction from the federal government on the issue of
unauthorized immigration. “The immigration debate damaged both the Republican Party and the presidency of George W. Bush. It split the party between conservatives and liberals, restrictionists and inclusionists, but it also divided the president from the grassroots and congressional Republicans” (Wroe 2008, 217). A repeat pattern in American history has been the conflicts that arise due to a massive immigration of a group of people who constitute surplus labor in their own economies typically of low education and skills, and are ready to fill low wage occupations. “Those conflicts arose from real as well as perceived economic, social, and cultural threats to living and labor standards achieved and cherished by the native population” What turns the conflicts into hostile action by the citizens of the U.S. has always been the perception of the federal government as unresponsive to the threat perceived by the citizenry (Graham 2004, 12). The political history of the Southwest in the late twentieth and early twenty-first century leading up to the passage of S.B. 1070 in Arizona fits the repeated pattern.

Alongside the debates over national legislation, 2007 witnessed a further escalation in immigration legislation at the state level, both beneficial and restrictive to immigrants. “In 2007 alone, the 50 state legislatures have considered over 1,500 pieces of legislation regulating immigrants and immigration” (Rodriguez et al. 2007, 1). This was a threefold increase over 2006’s already high level of state-level legislative activity regarding immigration with the number of enactments nearly tripled (National Conference of State Legislatures 2008, 1). Clearly, the issue had the attention of the electorate in the early twenty-first century and the states held a variety of positions according to the effects of immigration on their individual states and municipalities. From the point of view of the Southwestern states, the focus of the legislation on “employment, health, identification, driver’s and other licenses, law enforcement, public benefits, and human trafficking” (National Conference of State Legislatures 2008, 1) seems to indicate that “economic costs appear to exceed benefits, especially as the economic
quality of incoming immigrants continues to decline as it has since the 1970s” (Graham 2004, 181). While partisans on both sides of the immigration issue argue their points with references to partial data that often does not account for all economic benefits or costs, most of those who debate immigration policy agree on the point that costs of immigration are not equally shared and fall on those at the lower end of the economic ladder and particular states and localities. In Arizona, the legislation of the period tilted heavily toward the extreme end of the restrictionists’ side of the scale. As he was in much of the period’s other anti-immigrant legislation, state senator Pearce was pivotal in the passage of H.B. 2779, the Legal Arizona Workers Act (LAWA), also known as the Employer Sanctions Act in 2007. The LAWA prohibits business owners from employing an unauthorized immigrant – even unintentionally -- and imposes penalties including the suspension of a business license on violators. Debates leading up to LAWA’s passage identified the federal government’s failure to control unauthorized immigration as the driving force behind the legislation. Specifically, Arizona noted the federal government’s failure to enforce the employer requirements of IRCA which had been law since 1986. H.B. 2779 requires all Arizona employers to use the Department of Homeland Security’s E-Verify database to verify the employment eligibility of job applicants. Passing through E-Verify requires a Social Security Number (SSN) or a green card. If an employee submits a fake SSN or green card ID, LAWA authorizes local government to charge the person with identity theft which is a felony. Arizona’s law is more stringent than similar laws in a number of states including Colorado and Georgia which require E-Verify for only those employers accepting federal contracts. It is also more stringent than the federal law that makes enrollment in E-Verify by employers voluntary. Arizona’s H.B. 2779 also includes a statement of the consequences for employers found to be in violation of the law; penalties include suspension of business licenses (Rodriguez et al. 2007, 9). During the debate leading up to the passage of H.B.
2779, the Arizona Chamber of Commerce joined with immigrant rights groups to form a coalition objecting to the bill on the grounds that it would weaken Arizona’s economy by causing labor shortages in a number of economic sectors including agriculture, construction, and services (Rosenblum and Gorman 2010, 121). Once the bill was passed, the coalition challenged it in court as a violation of the federal government’s preemptive power over immigration law, noting that the IRCA of 1986 was intended to eliminate the opportunity of states to control immigration via employer sanctions (Barnes 2010). The Ninth Circuit Court of Appeals upheld the legality of LAWA because it is premised on enforcement of federal law; the federal government has expressed support for broad E-Verify participation and Congress did not expressly prevent states from requiring the use of E-Verify for all employers (Rodriguez et al. 2007). By early 2010 when the decision came before the U.S. Supreme Court for review, Arizona government had prosecuted only one employer under H.B. 2779 but the law has been used as a basis for over thirty workplace raids in which undocumented workers were arrested (Sterling 2010, 50). By April 2010, that number was three employers, all in Maricopa County (Lofstrom, Bohn, and Raphael 2011, 9). The Supreme Court upheld the lower court’s ruling, stating that LAWA’s licensing revocations and suspensions were not preemptive (Supreme Court of the United States 2010, 2). The Public Policy Institute of California analyzed the effects of LAWA on Arizona’s population. Controlling for the effects of the recession that began in December 2007 and ended in approximately June 2009, the Institute concluded that “data suggest that LAWA caused a decline in the proportion of Arizona’s population that was immigrant” and primarily in that “proportion that was likely unauthorized” and between the ages of 16 to 45, the working population (Lofstrom, Bohn, and Raphael 2011, 17-19). Analyzing employment information, the report also concluded that, in addition to the succeeding in reducing the population of unauthorized immigrants in the state, mandating E-
Verify in Arizona had the unintended effect of “shifting unauthorized workers into less formal work arrangement” and thus expanding underground economies (Lofstrom, Bohn, and Raphael 2011, 26). Rather than leave Arizona, some immigrants choose informal channels for earning money including operating puppy farms, reselling garage sale items at swap meets, working for cash, and working under friends’ identities (Gans 2008a, 18).

Along with LAWA, Arizona passed less pivotal pieces of legislation in 2007 related to various aspects of immigration. These included as illustrative examples, H.B. 2391 and 1291 which required proof of citizenship for two occupations, five law enforcement acts, and H.B. 2467 which required proof of citizenship or legal permanent residency or other lawful presence in the U.S. to receive state public benefits. One of the laws passed by the legislature attempted to block unauthorized immigrants from receiving dialysis. At that time, both federal and state law barred unauthorized immigrants from receiving publicly funded health care with the exception of life-saving emergency care. Consequently, Arizona needed to prove that dialysis was not in that category. The Arizona Center for Disability Law and the William E. Morris Institute for Justice challenged Arizona’s policy in federal court and the court ruled that Arizona must pay for dialysis (Sterling 2010, 162). Arizona made two further efforts on such legislation in 2010 (Gonzalez and Nowicki 2011).

In addition to applying creative interpretations of existing law such as the human smuggling law to act against unauthorized immigrants, Sheriff Joseph Arpaio had obtained the highest number of 287(g) Memoranda of Understanding (MOUs) in the nation by 2007 and used them starting that year against unauthorized immigrants (Waslin 2010, 107). The 1965 Immigration and Nationality Act had included section 287(g) to allow for federal-state partnerships in enforcement of federal immigration law. Since Sheriff Arpaio established the agreements with the Immigration and Customs Enforcement Agency (ICE), the ICE had trained
a significant number of the Maricopa County Deputy Sheriffs in the enforcement of immigration law. “Sheriff Arpaio seized the spotlight on primetime television when he started rounding up undocumented immigrants in Latino neighborhoods” (DeVivo and Fernandez 2009, 120). Interestingly, highlighting the political divisions in the state, at the same time as Maricopa County was establishing shared responsibility for enforcing federal immigration laws, the Phoenix police department asked its officers to avoid inquiring about immigration status in routine encounters but has since experienced severe pressure from the county and state to change that policy (Provine 2010, 225). It is important to note when reviewing Arizona’s history of immigration law enforcement that the rest of Arizona is not as extreme on immigration practice as Maricopa County. “Though few law-enforcement officials will speak publicly about it, their records suggest an unwillingness to follow Arpaio’s lead” (Hensley 2010, 1). Even within Maricopa County, there is some dissention. The Police Chief of Mesa in Maricopa County, just outside Phoenix, “denounced the sweeps as a waste of resources that could be put to better use by keeping the real criminals off the streets” (DeVivo and Fernandez 2009, 121).

As President Obama began his presidency in January 2008, a severe global recession was in progress, the U.S. housing price bubble had already burst, and Wall Street was in a shambles, undermining the national economy. These economic factors would prove to have a significant impact on immigration rates although the level of that effect had not yet been measured. The Latino population of the U.S., including citizens, non-citizen legal residents, and unauthorized immigrants was estimated that year to exceed forty-seven million (Navarro 2009, xxxvii). Latinos remain the fastest growing population in the U.S. and the majority of Latinos in the U.S. are Mexicans (Coates and Siavelis 2009, 4). As of 2009, one third to one half of all new immigration was unauthorized (Coates and Siavelis 2009, 5). Unlike his predecessor
George Bush, President Obama did not undertake comprehensive immigration reform but did act on the justice system’s handling of enforcement of immigration laws by creating a central oversight infrastructure. Rather than workplace raids, the Obama administration used scrutiny of employer’s records to identify possible unauthorized employees who are usually fired rather than deported (*The New York Times* 2012). States continued in 2008 and 2009 to struggle with immigration-related legislation at an unprecedented level. The primary areas of this legislation remained employment restrictions, the provision of identification and drivers licenses, empowering law enforcement agencies within the states, and social benefits including education and health care. All categories of immigrants were addressed including legal immigrants, migrants, seasonal workers, refugees and unauthorized immigrants (National Conference of State Legislatures 2009, 1). The flow of legislation across all of these categories suggests that the states recognize that family preferences integrated into current federal legislation has created a preponderance of mixed-status immigrant household. “If lawmakers want to attract or repel one group of immigrants, they are more likely to do so if they attract or repel the other” (Nicholson-Crotty and Nicholson-Crotty 2011, 616). According to a report of the National Conference of State Legislatures, in the first three months of 2009 alone, the Arizona legislature considered bills in nine of eleven topical immigration-related categories as well as resolutions related to immigration (National Conference of State Legislatures 2009, 1-8).

Most economists agreed that the recession in the U.S. ended before mid-year (Vest 2011, 1). By that time, Arizona’s economy had suffered heavily “recording absolutely stunning losses” and was the hardest hit of any state in the U.S. (Vest 2011, 3). Arizona’s economy in the early twenty-first century relies heavily on the construction of new homes for the baby boomers who migrate to the warmer states. Consequently, the housing price collapse had an especially heavy impact in Arizona and states with similar economies. Between September 2007 and
September 2009, more than 10.3 percent of non-farm workers in Arizona lost their jobs. The University of Arizona’s Economics and Business Center projected in early 2010 that unemployment in the state would not drop below six percent until 2014 (Vest 2011, 5). For some sectors of the state’s economy, including the public sector and real estate, recovery would require years. Unoccupied houses and office buildings pepper the state (Vest 2011, 7) with the U.S. Census Bureau having identified 463,536 vacant housing units in Arizona as of April 2010, representing 16.3 percent of the state’s housing stock (Nadelhoffer, Rice, and Vest 2011, 6). Even where homes are occupied, the housing bust had undermined the economic security of many state residents. In Maricopa County, over half of the homeowners have mortgages that exceed the value of their homes as of 2011 (Thornburgh 2011, 43). The severity of the recession’s affects in Arizona as well as the continued rapid demographic changes in the state due to the national increase in unauthorized immigration and the funneling of much of that immigration into Arizona combined to alarm Arizona’s voters. As Nathan Thornburgh summarized in Time magazine, between World War II and 2011, Arizona’s population grew from just above 700 thousand to just under 6.5 million, with most of that growth occurring since the early 1990s; the state grew by forty percent in the 1990s and twenty-five percent from 2000 to 2010. Arizona as of 2010 is the sixteenth most populous state in the nation (Nadelhoffer, Rice, and Vest 2011, 6). Just short of half of the state’s population growth between 2000 and 2009 was attributable to its Latino, predominantly ethnic Mexican, population and thirty-one percent of the state’s population by 2009 claimed Latino or Hispanic ethnic origins. That population was most numerous in the border counties of Yuma and Santa Cruz where Hispanic residents constituted approximately eighty percent of the residents. In the northern part of Santa Cruz County, Tucson’s Hispanic population was approximately fifty percent of the residents, and further north in the state capitol, Phoenix, the Hispanic population remained about fifty
Continuing up Route 17 from Phoenix to Flagstaff and on to the Grand Canyon, the state became increasingly white (Thornburgh 2011, 43). In addition to the immigrants of the period, retirees from other states accounted for some of the population growth. The retirees were voters, predominantly white, predominantly settled in the northern half of the state above Phoenix, and were especially vulnerable to claims of immigrant violence and absorption of public funds in a time of deep recession (Unz 2011, 20). Employment was still declining in 2010 when the state legislature voted in favor of S.B. 1070 (Vest 2011, 4).

Using data from the 2000 Census and the 2009 American Community Survey conducted by the Census Bureau, the Migration Policy Institute reported that, as of 2009, “about 75 percent of Mexican immigrants resided in five traditional receiving states. California had the largest number with 37.5 percent of the total, followed by Texas (21 percent), New Mexico (7 percent), Illinois, (6 percent), and Arizona (5 percent). Mexicans made up more than half the foreign-born population in three of these states: New Mexico (71 percent), Arizona (68 percent), and Texas (60 percent).” California and Texas are also amongst the top three states in terms of their Central American populations. (Brick, Challinor, and Rosenblum 2011, 13). In sum, between the end of World War II and 2009, well over twenty-five million Mexicans have enter the U.S. illegally or entered legally and illegally overstayed their visas (Gutierrez and Zavella 2009, 2). The Department of Homeland Security indicated in 2010 that the number of unauthorized immigrants living in Arizona dropped significantly since 2008. In that year, the approximate count was 560 thousand. In 2009 the count was approximately 460 thousand with the majority of that group residing in one city – Phoenix (Sterling 2010, 4). Also reflecting a decrease but lower total estimates, the Pew Hispanic Center indicated that Arizona’s unauthorized population in 2009 was approximately 375 thousand and that Arizona was the state with the eighth largest population of unauthorized immigrants but ranked fourth of the
states in terms of the percentage of state population that the unauthorized immigrants represented. Arizona followed California, Nevada, and Texas, in that order (Passel and Cohn 2010, 3). These statistics about the decline of the unauthorized population in Arizona match the estimates of unauthorized immigration rates across the nation as reported by the Pew Hispanic Center using official government data. Pew reported in late 2010 that the annual inflow of unauthorized immigrants to the United States in the March 2007 to March 2009 period reflected a sharp decline and that inflow decline contributed to a decrease in unauthorized residents of the U.S. to 11.1 million in March 2009 (Passel and Cohn 2010, i).

Sheriff Arpaio’s raids of workplaces and sweeps of immigrant communities to round up unauthorized immigrants continued apace in 2009. Writing about Arizona’s anti-immigrant activities, Katherine Benton-Cohen notes the parallels with earlier incidents and personalities in Arizona history such as the Bisbee Deportation discussed in Chapter 3 in her blog post, “When the federal government ignores Arizona’s cries for help at the border, the consequences are ugly” (entry posted May 10, 2010 on the Political Bookworm blog of The Washington Post). In 2009 a voluntary posse joined with Maricopa County Sheriff Arpaio’s staff to conduct the workplace raids and community sweeps that had begun as part of department practice in 2007 (DeVivo and Fernandez 209, 120). While Arpaio’s raids rounded up only a miniscule number of unauthorized immigrants compared to the number who reside in Arizona, “the psychological terror the raids caused was palpable and irreversible” (Sterling 2010, 86). Subsequent to Sheriff Arpaio’s increased use of the 287(g) agreements, “the federal government severed the agreement with Arpaio’s office that authorized deputies to act as immigration agents” (Hensley 2010, 2). Janet Napolitano continued to allow the document checks on inmates under 287(g) (Sterling 2010, 87). The elimination of the agreements did not end the pressure the Maricopa County Sheriff put on Latinos in the county. Shifting the loci of law enforcement operations
from immigrant neighborhoods, Sheriff Arpaio and his staff increased activity in businesses and along the county’s roads and highways in order to arrest immigrants for suspicion of identity theft, fraud, or human smuggling. Maricopa County resumed sweeps of immigrant neighborhoods in Spring 2010, shortly before the passage of S.B. 1070 by the state legislature (Hensley 2010, 3).

2010: Arizona Draws the Line on Unauthorized Immigration

A March 27, 2010 homicide on a remote Cochise County, Arizona ranch influenced attitudes towards immigration within the state of Arizona, the Southwest border states, and the nation. Robert Krentz, a highly-regarded and innovative rancher who was known to help border crossers he encountered on his ranch, was found shot dead on his ATV. His last communication was to radio his brother regarding the presence of an “illegal alien” (Regan 2010, 220). Although the Krentz murder remains unsolved, anti-immigration groups stated that Krentz was murdered by either an unauthorized border-crooser or a drug dealer crossing into the U.S. In the highly charged emotional atmosphere, state senator Russell Pearce leveraged the Krentz murder to push S.B. 1070 through the state legislature. The Arizona Republic, in an article discussing the arguments leading up to S.B. 1070’s passage and reactions after the measure’s passage into law, quoted a number of lawmakers who indicated their support for the bill was based on the need to take some action in the face of federal inaction and the inflamed atmosphere after the Krentz murder (The Arizona Republic 2010). Shortly after the Krentz murder, Senator John McCain and Senator John Kyl promoted a border control plan that involved the deployment of federal troops along the border. The two senators acknowledged that their plan reflected measures they have suggested in the past. Escalating violence including the murder of rancher Krentz, they indicated, was the impetus for consolidating their ideas into a plan to secure Arizona’s border from drug smuggling and unauthorized immigration (Kelly 2010). McCain,
running for reelection, saw an increase in his standing in the state’s polls due to his border security stance. Governor Brewer, facing election after completing the term of Janet Napolitano who had moved on to serve as President Barack Obama’s Secretary of Homeland Security, also benefitted (Regan 2010, 221). The increasing hysteria prompted President Obama and Janet Napolitano to deploy the requested National Guard soldiers to the Southwest border. Arizona was the destination for 524 troops who were further supported by several hundred new Border Patrol agents and Immigration and Customs Enforcement officers (Regan 2010, 221). In the aftermath of these decisions, Governor Brewer continued to escalate the rhetoric with unsubstantiated statements regarding the heavy involvement of unauthorized immigrants in the drug trade and an increasing number of beheadings in Arizona’s desert (Milbank 2010). The lack of evidence did not stop the governor and others including Senator John McCain from making such claims to support the notion that the degree of violence at the Arizona border required the state to step in where the federal government had failed. A review of the records of the Border Patrol’s Tucson, Arizona sector revealed that, while the Patrol had apprehended over 170 thousand undocumented immigrants between October 2009 and July 2010, very few were accused of other crimes or were carrying drugs (Milbank 2010).

In April 2010, Arizona’s state legislature enacted S.B. 1070 and soon followed it with H.B. 2162, which amended S.B. 1070 in order to address racial profiling concerns. This thesis refers to the amended version as S.B. 1070 as it is known in the media and national debate. The aim of S.B. 1070, as stated in Section 1 of the bill, “is to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States” (State of Arizona Senate 2010). The official name of the bill is “Support Our Law Enforcement and Safe Neighborhoods Act.” Protests as well as strong criticism met its passage. At the federal level, President Obama commented that the state law undermined “basic notions
of fairness that we cherish as Americans, as well as the trust between police and our communities that is so crucial to keeping us safe” (Archibold 2010a). S.B. 1070 was to take effect on July 29, 2010 but was held back by an injunction due to a U.S. Department of Justice challenge. Governor Jan Brewer appealed the court injunction and the U.S. Court of Appeals for the Ninth Circuit in San Francisco heard arguments on November 1, 2010 regarding whether the state law violated the federal government’s plenary power over immigration legislation. The court upheld the injunction on April 11, 2011 and the case is on the Supreme Court docket for 2012. Why is S.B. 1070 considered so revolutionary in state immigration law? The law states as its intention, making “attrition [of unauthorized immigrants] through enforcement the public policy of all state and local government agencies in Arizona” (Arizona State Senate 2010). S.B. 1070 is the first law across all the states to require that immigrants carry identity documents that support their authorized status although that is currently a requirement of federal law (Archibold 2010a). The bill enacts the following as part of state law and imposes state penalties for violations (National Conference of State Legislatures 2012, 2-3):

- Prohibits law enforcement agencies at the state and local level from limiting in any way the enforcement of federal immigration law and allows citizens to sue where such violations are believed to have occurred
- Requires law enforcement officers to attempt to determine a person’s legal status when stopping that person for possible violation of any other local or state law or ordinance if the officer suspects that the person may be unlawfully present in the U.S. This provision states that officers cannot consider race, color, or national origin in implementing this requirement. S.B. 1070 identifies the documents suitable for supporting legal status.
- Requires every alien to carry registration documentation which therefore requires that all immigrants be present in the U.S. legally and be registered with the federal government. This trespassing provision of S.B. 1070 is the first in the nation to become state law but is not the first attempt at such legislation. Similar bills were introduced to state legislatures in 2007 in California, 2008 in Arizona and Colorado, and 2009 in Arizona and Texas (National Conference of State Legislatures 2012, 1). Violation of this provision of S.B. 1070 is a
misdemeanor.

- Prohibits laborers who are without documentation from seeking work or working. This provision was particularly aimed at eliminating day laborer sites.

- Prohibits employers inside a vehicle from blocking traffic while hiring laborers on a street, road, or highway. This provision targeted those who use day labor sites to employ workers.

- Requires employers to keep records of the legal status of all employees for three years or for the employee’s duration of employment, whichever is longer.

- Prohibits persons from transporting, concealing, harboring, or shielding unauthorized immigrants or encouraging them to come to Arizona. This provision exempts first responders, emergency medical care providers, and protective service employees.

- Allows the warrantless arrest of anyone that a law enforcement officer believes might have violated a federal law that would have the penalty of deportation. This stipulation was intended to support peace officers in pursuing human smugglers.

In late 2010, National Public Radio (NPR) analyzed “campaign finance reports, lobbying documents, and corporate records” in order to better understand the process that led to the passage of S.B. 1070. A major finding of NPR’s effort was the identification of the private prison industry as a significant contributor to the effort to draft and pass the bill (Sullivan 2010, 2). Reports of the Corrections Corporation of America indicate that the company views immigrant detention as “their next big market” (Sullivan 2010, 3) and, along with other private prison companies, donated to the campaigns of thirty of the thirty-six co-sponsors of S.B. 1070 in the state legislature (Sullivan 2010, 3). Twenty-four of the co-sponsors of S.B. 1070, twenty-one of whom received such campaign contributions, were members of a secretive group called the American Legislative Exchange Conference (ALEC) which includes state legislators and representatives of influential companies including “the billion-dollar Corrections Corporation of America – the largest private prison company in the country” (Sullivan 2010, 2). Interestingly, two top advisors of Governor Jan Brewer were previously lobbyists for the private prison
industry. Brewer signed the bill within four days of its presentation (Sullivan 2010, 4-5), igniting a national controversy. Her predecessor, Secretary of Homeland Security Janet Napolitano, had repeatedly vetoed similar legislation during her tenure as governor (Archibold 2010a). NPR’s analysis aligns with research on the strong impact of industries on America’s immigration policy. In a different slant on that topic – the impact of industries that rely on immigrant labor rather than industries that rely on expenditures related to immigrants – researchers Jill and Sean Nicholson-Crotty also conclude that there is a strong industry influence on immigration policy. Their analysis “suggests that the presence of a large immigrant population and the resultant negative pressure on lawmakers produce restrictive immigrant policies, but only in those states were industries utilizing immigrants are not an important part of the political and economic landscape” (Nicholson-Crotty and Nicholson-Crotty 2011, 612).

In the case of Arizona, the state was not a primary receiving state that provided high levels of employment for unauthorized immigrants and the economic conditions in the state after 2007 eliminated the need for low-skilled laborers. These circumstances heightened resentment of the unauthorized immigrant presence, particularly at the border where their new immigration routes were particularly disruptive to the culture and physical environment. In Arizona in the early twenty-first century the interests of the prison industry, the presence and power of strongly conservative legislators and law enforcement officials, and the resentment of the immigrant population by the state’s residents aligned to create an unstoppable force behind the criminalization of unauthorized migration at the state-level.

Current court challenges to S.B. 1070 have raised constitutional issues including due process, equal protection under the fourteenth amendment, the prohibition on unreasonable search and seizure under the fourth amendment, and preemption of federal authority under the Constitution’s Supremacy clause. The preemption considerations include four potential types of
violations: invasion of the federal’s government’s occupation of the field of immigration regulation, direct conflict with federal immigration law, presentation of an obstacle to federal immigration law, and preemption of an expressed statement in federal immigration law (Saenz 2011, 7-8). At the state level, there are concerns about costs of enforcement in the economically challenged state, racial profiling, and the imposition of unreasonable requirements on law enforcement officers who are tasked with acting on “reasonable suspicions” (National Conference of State Legislatures 2012, 1). Despite its amendment H.B. 2162, S.B. 1070 raises the issue of reasonable suspicion. According to the President and General Council of MALDEF, Thomas A. Saenz, “if you, as a law enforcement officer in Arizona, reasonably suspect that someone is undocumented, then you have a reasonable suspicion that they violated the new state law; that new state crime for being undocumented. Therefore, you have a reason to lawfully stop or detain them” In this circuitous fashion, law enforcement officers can be expected to determine immigration status in every contact (Saenz 2011, 12).

Why Arizona? What this History Reveals about Arizona’s Passage of S.B. 1070

By the millennium, Arizona stood alone among the Southwestern states as a candidate for landmark anti-immigrant legislation. As for New Mexico, “They may sit side by side on the border, they may share historical ties to Mexico; they may have once even been part of the same territory, but Arizona and New Mexico have grown up like distant siblings” (Archibold 2010b). Despite periodic setbacks, that initial political participation of Mexicans in the early years of New Mexico’s American history has continued into the twenty-first century at a level higher than in the other Southwestern border states. That fact alone, and the significant Mexican American population throughout the state, has made the passage of anti-immigration legislation such as that passed in Arizona unlikely in New Mexico. “While New Mexico has had five Hispanic governors, Arizona has had one” (Baca 2010). In addition, “the flow of drugs and
illegal immigrants over the sparsely populated, remote border [of New Mexico], moreover, pales compared with that in Arizona” (Archibold 2010b). At various points in the history of the Southwest, both California and Texas were more likely sources than Arizona of legislation similar to S.B. 1070 as evidenced by California’s legislative action in 1994. Texas’s trade relationship with Mexico makes that state an unlikely source of strongly restrictionist legislation now. California’s shift to political dominance by the Democratic Party, the memories of the upheaval and expense around Proposition 187 in 1994 predisposed California, and the lack of a racial majority in the state disqualify California as a restrictionists force after the millennium. Beginning in 2007, California, which has “one of the nation’s highest undocumented populations and public sentiment in the state regarding illegal immigration is consistently negative and intense” passed eleven pieces of legislation that benefitted immigrants (Nicholson-Crotty and Nicholson-Crotty 2011, 620). Due to redistricting and term limits as well as an increased pool of Latino voters, California localities elected many Latino and Asian officials; even the city of Los Angeles elected a Latino mayor in 2005. By then, most of the state’s affirmative action programs had been reversed, calming the resentment around those programs, and the state’s population no longer included a racial majority (Douzet 2009, 4).

While these factors explain the lack of restrictionist legislation in the rest of the Southwest, they do not explain the unique stew of conditions that propelled Arizona to pass S.B. 1070 in 2010. There are a number of factors that made S.B. 1070 a reality. “Taken as a whole, the literature on state-level immigrant policy making indicates an important role for public opinion and mass attitudes” (Nicholson-Crotty and Nicholson-Crotty 2011, 613). Daniel Hopkins of Georgetown University did a comparative study of public opinion surveys to examine attitudes towards immigration. Dr. Hopkins found that increased media coverage of immigration politics combined with local and sudden demographic change due to immigration
lead to increased negative impressions of immigrants. Demographic change without media
coverage does not provoke the same response. “When faced with a sudden destabilizing change
in local demographics, and when salient national rhetoric politicizes that demographic change,
people’s views turn anti-immigrant” (Hopkins 2009, 36). Both of these conditions were evident
in Arizona in the early twenty-first century leading up to the passage of S.B. 1070. The
funneling of unauthorized immigrants through Arizona’s desert and small border towns shifted
the state’s demographics, particularly in southern Arizona, at a swift rate. At the same time, the
climate of fear over the events of September 11, 2001 had focused the nation and its media on
the external threats to the nation. The immigration policy debates of 2006 and 2007 involved
extreme rhetoric and unanswered calls for action. Together, the changes and national rhetoric
primed Arizona’s citizens for defensive action and an anti-immigration point of view. As an
example of a similar effect, one can consider the legal struggle in California over driver’s
licenses. In 2003, the California State Legislature under Governor Davis passed a bill that
removed restrictions imposed in the 1990s on issuing drivers licenses without proof of lawful
immigration status and a Social Security Number. Davis’s successor, Governor Arnold
Schwarzenegger, immediately overturned the action, reinstating the licensing restrictions (Seif
2010, 275). Many states now have similar laws and the federal government passed the REAL
ID Act in 2005 although Congress is considering a number of bills to amend it. In her analysis
of the constituent letters that supported licensing restrictions, Dr. Hinda Seif of the University of
Illinois found that “most of the writers were older, whiter, and more male than the average
Californian” and that they used “dehumanizing immigration rhetoric” to highlight perceived
criminal, economic, political, and cultural threats” posed by Mexico as a nation and its citizens
who emigrate, rather than addressing the specific issues of the licensing bill. Their views
aligned with the media presentations of the legislation (Seif 2010, 276).
The particularly strong downturn in Arizona economy was an important factor in its overall response to increased levels of immigration in the first decade of the twenty-first century. The state was particularly hard hit by the global economic meltdown due to its reliance on the housing industry which collapsed in 2008 and the presence of many retirees who rely on investment income. Just as in California leading up to Proposition 187, “under the pressure of a national economic downturn, the immigrant workers who made Arizona’s economic growth possible have become the focus of the state’s collective anxiety about its declining economy” (DeVivo and Fernandez 2009, 118). The effects of the poor economy were coupled with the speed of demographic change within the state, already noted as a factor that contributed to heightened attention to the immigration issue in Arizona and thus to the passage of S.B. 1070 in the state. What was it about this rapid change at a time of economic stress that particularly challenged state residents? Demographic information reveals that the immigrants in Arizona are predominantly unauthorized and predominantly Mexican. The challenge of this statistic to the receiving states is that Mexican immigrants are the least educated and lowest skilled of all immigrant groups and certainly less educated that the U.S. population. A clear majority have less than a high school degree and approximately seventy-five percent are limited in English (Rosenblum and Brick 2011, 18-19). “At a time of economic uncertainty, low-educated, low-wage limited English proficient immigrants are a lightning rod for broader concerns about US fiscal problems and labor market restructuring” (Rosenblum and Brick 2011, 22). Mexican women immigrants are the most likely to be outside the workforce, taking care of household or family members (Rosenblum and Brick 2011, 20), a statistic that might contribute to the negative perception of Anglo-Americans as to the industry of Mexicans in general. Along with Hondurans, who are not a significant presence in the Southwest, Mexicans have the lowest median incomes of all immigrant groups (Rosenblum and Brick 2011, 21).
Writing in 1984 at the beginning of the surge in unauthorized immigration, Peter Schuck stated “the more far-reaching implications [of geographic concentration of immigrants] are that immigration policy will acquire an increasing political urgency, and that aspects of immigration law that impose significant costs upon those regions are not likely to be tolerated for long” (Schuck 1984, 46). In order to deal with the influx of immigrants in its state due to the federal immigration decisions of the early 1990s, Arizona demanded federal action. While it was slow in coming and somewhat sporadic in response to the fluctuations in media attention to the immigration issue, the federal government did militarize the border. This was especially true after the attacks of September 11, 2001. But the federal response had a clear downside in terms of the quality of life of residents of the small towns and communities along Arizona’s border. In addition to the ugly presence of a physical wall in some locations, the “ubiquitous law enforcement presence that other regions of America do not experience” as well as the presence of the unauthorized immigrants inflamed the culture of the Arizona border towns. “The social and environmental tolls of a militarized border affect the daily lives of millions of American border residents. Border Patrol agents show up at homes, stop people in the street and in the park” and keep the issue of immigration on the front burner (National Immigration Forum 2010, 12). A significant number of the voters of Arizona began to perceive themselves as under attack, their way of life threatened with extinction. “Strangely, the one strategy to which public officials have committed -- border enforcement – is precisely what makes Arizona the battleground for immigration that it is today” (DeVivo and Fernandez 2009, 118).

Another important factor in the passage of S.B. 1070 was the composition of the Arizonan legislature in 2010 and the personalities of its state officials. First, Arizona’s Latino population is underrepresented in the state legislature. While Arizona’s Hispanic population accounted for thirty percent of the state’s population (Archibald 2010b), Arizona’s state
legislature in 2010 was only sixteen percent Hispanic. This was approximately half of what it should have been in order to reflect state demographics, according to the National Association of Latino Elected and Appointed Officials (Archibold 2010b). Second, a conservative branch of the Republican Party had controlled state politics and the legislature over the long-term. In writing of the risks for the GOP in alienating the large Hispanic voting bloc in the nation and particularly in Arizona, The Goldwater Institute, a conservative Arizona think tank, noted in 2007 that, while Hispanic Republicans did hold prominent offices in states that included Florida, New Mexico, New York, and others, Arizona’s GOP had not placed many Hispanics on the state’s ballots because few Hispanics could win primaries against opponents who voiced strong anti-immigrant rhetoric. The Institute projected that, unless the party stepped forward to incorporate the growing Hispanic population in the state, “Arizona Republicans soon may follow the path of the dinosaurs, the nineteenth century ‘Know-Nothings,’ the California Republican Party and other extinct species, into oblivion” (The Goldwater Institute, 2007). “Arizona’s legislature has long been warped by low voter turnout and uncontested districts” which has encouraged the election of those who cater to the extremes in the state’s political spectrum because citizens with extreme views are more likely to vote (Thornburgh 2011, 44). Both Maricopa County’s Sheriff Arpaio and state senator Russell Pearce are examples of the extreme personalities who have been repeatedly elected in Arizona. In 2011, before his recall from the state senate, Russell Pearce identified the repeal of the Fourteenth Amendment as the highest priority of the state legislature. His intention was to eliminate birthright citizenship (Thornburgh 2011, 44). Governor Jan Brewer, despite falling crime rates in 2009, regularly raised citizens’ alarm by speaking about border terror and its unfair burden on border county residents (Thornburgh 2011, 47).
The passage of California’s Proposition 187 and its dismantling also was a factor behind the passage of S.B. 1070. Proposition 187 in California “is an important precursor, including as foreshadowing some of the exact language used in S.B. 1070” (Saenz 2011, 8). California’s experience had inflamed the Southwest and, while some of the factors that led to its passage had decreased in importance in California since 1994, they became more salient in Arizona where challenging economic times with no end in sight inflamed state residents regarding the increasing cost of any public benefits provided to immigrants. At the same time as Arizona dealt with an increasing unauthorized immigrant population, it received an influx of retirees from the very state where citizens had supported Proposition 187 by an overwhelming majority. Correctly, these new residents of Arizona along with other voters of the state believed that their state and others with high immigrant populations bore the primary burden for the social expenditures due to immigration while gaining few of the benefits (Zimmermann and Tumlin 1999, 50). Whereas Proposition 187 “covered virtually every government service you could imagine” (Saenz 2011, 9), S.B. 1070 “really only looks at law enforcement” in order to survive the challenges of the courts (Saenz 2011, 11).

As a final push behind the passage of S.B. 1070, the murder of Arizona rancher Robert Krentz put a name, a popular face, and a specific violent instance to the fury of Arizona’s border residents regarding the level of border violence in general. They had been clamoring for a legislative response to the atmosphere of lawlessness along the border created by unauthorized immigration itself, the involvement of criminal organization in human smuggling, and the frightening escalation of the drug wars in Mexico, which sometimes spilled over the border into America’s border states. The Krentz murder was the capstone. This widely publicized murder, clearly associated with unauthorized immigration despite the lack of concrete details, was the final straw for the people of Arizona’s border region. The inflamed atmosphere around the
murder and the incident’s timing forever associate border violence with the Arizona state legislature’s passage of S.B. 1070. In the tradition of the border, the state of Arizona took state-level action on a problem that was wracking its territory. Southwest historian Oscar Martinez of the University of Arizona articulates the perspective of the “borderlanders:”

People on the U.S.-Mexican border view the boundary, and the function it is supposed to serve, in terms fundamentally different from those of their compatriots in interior regions. If national laws appear unjust or are viewed as impractical in a border context, it becomes culturally acceptable to work around them or ignore them altogether. (Martinez 1988, 2)

In the aftermath of S.B. 1070’s passage, the federal government must act. First, federal government must wrest power over immigration law back from the states via the courts. This first outcome is likely due to the power of the Constitution and America’s Courts. Second, the federal government should consider the specific conditions of the border states which are in the frontline in addressing unauthorized immigration. Sensible conclusions are possible if legislators are willing to break away from inflamed rhetoric and partisan posturing to look at the history and at the facts. Third, the federal government should craft immigration policy that works for the globalized economy of the twenty-first century. Based on the history of reactive federal immigration law thus far, the third outcome is less sure.
REFERENCES

Primary Sources:

http://azgovernor.gov/dms/upload/PR_042310_StatementByGovernorOnSB1070.pdf


Shelton, Robert. 2010. S.B. 1070, Letter to the University of Arizona campus community.
http://www.arizona.edu/news/sb_1070_arizona%E2%80%99s-new-immigration-law


Secondary Sources:


http://www.nytimes.com/2006/05/10/us/10smuggle.html?_r=1&pagewanted=print
(accessed January 24, 2011).

(accessed January 24, 2011).

http://www.nytimes.com/2010/05/12/us/12newmexico.html?pagewanted=all#
(accessed December 21, 2011).


