

Why Don't Unauthorized Migrants Come Here Legally?

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Why Don't They Come Here Legally?

In the fractious debate surrounding both legal and illegal immigration to the United States, politicians, the public, and pundits alike eventually cycle back to one fundamental question – why don't they come here legally? Why don't the estimated 11.1 million unauthorized immigrants presently in the United States stand in line with the rest of the immigrants seeking to enter lawfully? If our ancestors did it, why can't they?

In the United States today, there are an estimated 11.1 million unauthorized immigrants.(i) Sixty percent of these immigrants are from Mexico.(ii) Another 20 percent are from other Latin American countries.(iii) Eleven percent comes from South and East Asia.(iv) Combined, unauthorized workers comprise more than five percent of the U.S. workforce.(v)

Many understandably ask why these millions of unauthorized immigrants did not seek to come to the United States lawfully. Some argue that if their ancestors could do it, so should the unauthorized immigrants in our country today.

Many of our ancestors didn't actually come here through federal "legal" channels – there weren't restrictive federal immigration laws in place at the time

Yet, until the 1870's, the federal government did virtually nothing to restrict immigration to the United States. In most cases, immigrants who arrived to the United States in search of work or a new life simply settled in the country and became citizens after a period of time.^{vi} In 1875, Congress passed the Page Law, restricting immigration of women engaged in polygamy and prostitution, with enforcement provisions particularly focused on Chinese women.^(vii) Seven years later, in 1882, Congress promulgated the Chinese Exclusion Act of 1882, restricting immigration of Chinese laborers.^(viii) Congress eventually expanded these restrictions on Chinese immigration to exclude Asian immigrants generally.^(ix) However, immigration by those arriving from non-Asian countries was not significantly restricted until the 1920's, by which time many of our immigrant ancestors had already arrived. Indeed, during that period immigration from various parts of the world to the United States was widespread; by 1870, forty percent of the residents of New York, Chicago, and other major metropolitan areas, were foreign-born.^(x)

In 1921, beginning with the Emergency Quota Act, the United States began to restrict immigration through the use of national origins quotas.^(xi) The quota system was restructured multiple times in subsequent years, leaving some regions of the world at a disadvantage at certain points.^(xii) In 1965, amendments to the Immigration and Nationality Act of 1952 abolished the quota system, prioritizing instead family-based immigration.^{xiii} Subsequent immigration laws have been increasingly restrictive. For instance, in 1986, the Immigration Reform and Control Act (IRCA) was passed to control and deter unlawful immigration to the United States, making it unlawful to knowingly hire unauthorized immigrants and increasing border enforcement.^(xiv) Ten years later, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) created penalties for those who had been "unlawfully present" in the country, establishing three and ten year bars to lawful reentry.^(xv)

Today's unauthorized immigrants would prefer to live and work lawfully in the United States if they could.

Moreover, according to two well-regarded opinion surveys of unauthorized immigrants in the United States, the large majority of those unauthorized in the country today would have preferred to enter lawfully if they could have. In fact, some 98 percent of those surveyed indicated that they would prefer to live and work lawfully, rather than in unauthorized status. (xvi)

Under current laws, no "line" for lawful immigration to the United States actually exists for the majority of our immigrants.

So, why didn't they just "stand in line" to do so? For the large majority of unauthorized immigrants, no such "line" exists. Under the current immigration legal framework, lawful immigration to the United States is restricted to only a few narrow categories of persons.^{xvii} Most current unauthorized immigrants residing in the United States are ineligible to enter legally with a "green card" as a lawful permanent resident for the purpose of living and working in the country. This is because most do not have the family relationships required to apply for lawful entry; they do not qualify as asylees because of economic hardship as such status is available only to those who are fleeing persecution; and the majority of the unauthorized do not hold advanced degrees and work in the high-skilled professions that would qualify them for work-sponsored lawful permanent residency.

U.S. immigration laws provide three core means by which an immigrant may obtain lawful permanent residency.^(xviii) First, a qualified family member in the United States may petition to bring a foreign-born family member to the country lawfully. U.S. Citizens may petition for lawful permanent residency for their spouses, parents, children or siblings. Lawful Permanent Residents in the country may petition for their foreign-born spouses and unmarried children. To do so, sponsors must demonstrate an income level above poverty line and must commit to financially support the sponsored, foreign-born family member so that they do not become a public charge. The foreign-born immigrant, in turn, must meet all other eligibility requirements.^(xix) However, there are numeric limitations on most of these family-based categories, resulting in backlogs for entry that often range anywhere from five years to nearly 20 years.

Second, immigrants fleeing political persecution or a well-founded fear of future persecution on account of their race, religion, membership in a particular social group, political opinion or national origin may seek political asylum in the United States or qualify for refugee status. To do so, they must meet a high evidentiary burden. Even if they do qualify for refugee status, there is an annual cap on the number of refugee admissions to the United States, which is set annually and is typically between 70,000 and 80,000.(xx) Most of today's unauthorized immigrants are fleeing poverty in their home countries, not political persecution. As a result, they do not qualify for asylum.

Third, and significantly, there are various immigration categories for workers to be sponsored by a U.S.-based employer to come to the United States to work and live lawfully. However, these categories are limited to multinational executives and professors; those with advance degrees, the exceptional in the arts, sciences or business; and narrowly-defined, specialized workers.xxi Today's unauthorized immigrants are largely low-skilled workers who come to the United States for work to support their families. They work in the agricultural, meatpacking, landscaping, services, and construction industries in the United States. They fill the ranks of U.S. businesses, large and small throughout the country. Over the past several decades, the demand by U.S. businesses for low-skilled workers has grown exponentially, while the supply of available workers for low-skilled jobs in the United States has diminished.(xxii) Yet, there are only 5,000 green cards available annually for low-skilled workers to enter the United States lawfully.(xxiii) This number stands in stark contrast to the estimated 300,000 immigrants who enter the United States unlawfully each year, most of whom are looking for work.(xxiv) The only alternative to this is to secure a temporary work visa through the H-2A (seasonal agricultural) or H2B (seasonal non-agricultural) visa programs which provide temporary status to low-skilled workers seeking to enter the country lawfully. While H-2A visas are not numerically capped, the requirements are onerous. H-2B visas are capped at 66,000 annually. Both only provide temporary status to work for a U.S. employer for one year.(xxv) At their current numbers, these are woefully insufficient to provide legal means for the foreign-born to enter the United States to live and work, and thereby meet our demand for foreign-born labor.

The Catholic Church believes that current immigration laws must be reformed to meet our country's need for low-skilled labor and facilitate the reunification of families.

The Catholic Church believes that immigrants should come to the United States lawfully, but it also understands that the current immigration legal framework does not adequately reunify families and is non-responsive to our country's need for labor. Our country must pass immigration reform laws to ensure the rule of law in the United States, while simultaneously ensuring that the laws that rule are responsive to our economy's demand for labor, rooted in the reunification of family, and respectful of the humanity of the immigrants in our midst. The Church supports immigration reform that would increase the number of visas available for low-skilled workers and facilitate family reunification.

Footnotes

i Jeffrey S. Passel and D'Vera Cohn, *US Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade* (Washington, DC: Pew Hispanic Center, 2010), 1, <https://pewhispanic.org/files/reports/126.pdf>.

ii Passel and Cohn, *U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade*, iv.

iii Id.

iv Id.

v Passel and Cohn, *U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade*, 1, 9.

vi Kevin J. Fandl, *Immigration Posses: U.S. Immigration Law and Local Enforcement Practices*, 34 J. Legis. 18 (2008) ("The United States passed its first immigration law in 1790, which formally moved the topic of immigration from state to federal control and which established a uniform rule of naturalization by requiring residence for two years. This residence requirement was expanded to five years in 1795, where it remains today. It was not until 1798 that an alien registry was established and records of arriving aliens were kept. . . .not until 1862 was a prohibition on a type of immigrant enacted.

Thus, all non-dangerous immigrants were allowed entry into the United States and an opportunity to become citizens through the beginning of the Civil War.").

vii Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 Colum. L. Rev. 641, 643 (April 2005).

viii *Id.* at 645.

ix Kerry Abrams, *The Hidden Dimension of Nineteenth Century Immigration Law*, 62 Vand. L. Rev. 1353, 1354 (October 2009). See also Act of Feb. 5, 1917 (Immigration Act of 1917), ch. 29, § 2, 29 Stat. 874, 876 (repealed 1952) (restricting Asian immigration).

x *Id.*

xi See Act of May 19, 1921 (Quota Act (Three Per Cent Act)), ch. 8, § 2, 42 Stat. 5, 5 (repealed 1952) (establishing the three percent immigration quota limit).

xii See, e.g., Act of May 26, 1924 (Immigration Act of 1924), ch. 190, § 11, 43 Stat. 153, 159 (repealed 1952) (reducing the quota to two percent).

xiii See Pub. L. No. 89-236, 79 Stat. 911 (Oct. 3, 1965).

xiv See Pub. L. No. 99-603 (Act of 11/6/86).

xv See Immigration and Nationality Act § 212(a)(9)(B)(i)(I)-(II).

xvi <https://www.immigrationforum.org/press/release-display/listening-to-the-voices-of-immigrants-in-the-immigration-debate> (last visited, January 6, 2011).

xvii <https://www.uscis.gov/greencard> (last visited, January 6, 2011).

xviii *Id.*

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xix *Id.*

xx <https://www.migrationinformation.org/USfocus/display.cfm?id=734> (last visited, January 18, 2010).

xxi *Id.*

xxii Gordon H. Hanson, *The Economics and Policy of Illegal Immigration in the United States*, Migration Policy Institute (December 2009).

xxiii *Id.* at 6.

xxiv Passel and Cohn, *U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade*, iii.

xxv Hanson, *The Economics and Policy of Illegal Immigration in the United States* at 6.

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