

Immigrants' Rights and Community Mobilization in the United States

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Introduction

United States immigration law and policy have historically been closely linked to political and economic trends. While the U.S. considers itself a “melting pot” and a country of immigrants, the reality is that the immigration laws have also been based on nativism and have fluctuated depending on the economic and political needs of the country. In addition, immigration control has served as a mechanism to keep out people whose political opinions conflict with governmental interests.¹ Throughout U.S. history, public opinion and public policies have always been divided over restrictive or expansive immigration policies. The current immigration debate is no different.

In 1996, spurred on by the support for Proposition 187, a California initiative to restrict immigrants' rights,² the U.S. Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).³ The title of the legislation set the tone: get tough on immigrants; stop illegal immigration and blame immigrants for criminal and welfare problems. The law, among other things, broadened the grounds for deportation, curtailed judicial review of immigration decisions and restricted public benefits for immigrants. The legislation embodied restrictive immigration policy at its worst.⁴

After the passage of the 1996 legislation, heart wrenching stories of the deportation of permanent residents, who had lived in the U.S. for most of their lives. reached the press. Immigrant advocates and sympathetic legislators began to work to attempt to reform the harshness of the new law. At the same time, several other factors contributed to a more favorable climate for immigrants' rights. The 2000 census highlighted that immigrants, particularly Hispanics, comprised a growing and important political constituency.⁵

¹ Bill Ong Hing, *Defining America Through Immigration Policy* (Temple University 2004); Roger Daniels, *Guarding the Golden Door* (Hill and Wang 2004).

² Proposition 187 passed by a margin of 59%. Haya El Nasser and Gale Holland, *187 Awakes a 'Sleeping Giant' Opponents Promise to be 'a Force'* USA TODAY, Nov. 10, 1994, at 6A.

³ Pub. L. No. 104-208, 110 Stat. 3009-546 (1996).

⁴ See generally, Barbara Hines, *So Near Yet So Far Away: The Effect of September 11th on Mexican Immigrants in the United States*, 8 TEX. HISP. J.L. & POL'Y 37, 40 (2002).

⁵ MELISSA THERIEN & ROBERTO R. RAMIREZ, CURRENT POPULATION REPORTS: THE HISPANIC POPULATION IN THE U.S., POPULATION CHARACTERISTICS 1 (2001), available at <http://www.census.gov/population/socdemo/hispanic/p20-535/p20-535.pdf>.

Second, the economic boom of the nineties forged an unlikely alliance, which continues today, between industry, labor and the immigrant community. Business leaders recognized that immigrants, primarily Mexicans, fill jobs that U.S. workers are unwilling to perform. Organized labor concluded that immigrant workers make up a significant workforce that can be unionized. Finally, President George Bush and Mexican President Vicente Fox began bilateral talks in August, 2001 regarding legalization of the undocumented Mexican population in the U.S. The events of September 11, 2001 brought any hope for immigration reform to a screeching halt. Rather than immigration reform, legislators passed even more restrictive immigration measures and focused their efforts on security.⁶

Concomitantly, the government in the nineties embarked on a deliberate border enforcement strategy in a futile attempt to stem the flow of immigrants into the U.S. The government poured billions of dollars into more Border Patrol agents, particularly near urban areas on the Southern border, and introduced high technology detection systems. Consequently, immigrants led by ruthless smugglers began to enter through the deadly unpopulated Arizona desert. Scores of immigrants have died and smuggling has become a lucrative business run by cartels on both sides of the border.⁷ Like the failed war on drugs, despite the government's extraordinary expenditures and border control measures, immigrants continued to arrive in the U.S. in record numbers.⁸

Notably however, during this period of immigration restrictions, undocumented students achieved success in the expansion of access to university education. In 2001, Texas and followed by nine other states enacted legislation to allow undocumented students who graduated from state high schools and who had resided in the state, albeit without legal status, to attend public institutions of higher education.⁹ States were able to enact such legislation because while federal law governs immigration, state law controls education. This significant advance took access to education one step further since undocumented children already have an established constitutional right to attend public schools through high school.¹⁰ Nevertheless, upon graduation from college, these students still have no legal status and cannot work. Despite their precarious legal status, undocumented

⁶ The immigration provisions of the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act, Pub.L. No. 107-56, 115 Stat. 272 (2001). focused primarily on broadening the deportation provisions related to terrorism. It was the 1996 legislation and the recent enactment of the Real I.D. Act of 2005, P.L. 109-13, 119 Stat. 231, that truly restricted due process and other rights of immigrants. *See also*, Barbara Hines, *An Overview of U.S. Immigration Law and Policy Since 9/11*, 12 TEX. HISP. J.L. & POL'Y 9 (2006).

⁷ Hines, *supra*, 12 TEX. HISP. J.L. & POL'Y 9 (2006).

⁸ 900,000 people were apprehended in fiscal 2004 along the southwestern border of the U.S. These statistics that does not include those who enter the U.S. without detection. U.S. CITIZENSHIP & IMMIGRATION SERV., U.S. DEP'T OF HOMELAND SEC., SW. BORDER APPREHENSIONS (2004), available at <http://uscis.gov/graphics/shared/aboutus/statistics/msrsep04/SWBORD.HTM> (Fiscal 2004 runs from October 2003 to October 2004.).

⁹ H.B. 1403, 2001 Leg., 77th Sess. (Tex. 2001). The other states are California, Illinois, Kansas, Oklahoma, Nebraska, New Mexico, New York, Utah and Washington.

¹⁰ *Plyler v. Doe*. 457 U.S. 202 (1982).

students have organized and lobbied around proposed federal legislation entitled the DREAM Act that would allow students to obtain permanent resident status upon completing two years of university or college education.¹¹ Even before the community demonstrations this spring, undocumented students were already well-organized in their advocacy for the DREAM Act, although they had not achieved passage of the bill. Nevertheless, in a significant victory, the DREAM Act is included in the most current Senate proposal on immigration reform.

In 2004, President Bush began to talk again of immigration reform, urging Congress to pass a temporary guest worker program, matching “willing workers with willing employers.” Bush recognized that the U.S. depends on foreign labor and asserted that immigrants should not have to risk their lives to come to the U.S.¹² However, until the community mobilizations, Bush never advocated for legislation that would provide a path to permanent residency for temporary workers nor legalize the millions of undocumented immigrants in the country today. Like the current legislative proposals, he linked any immigration reform to stricter and increased border enforcement, inextricably tying immigration to post 9/11 security issues.

Despite Bush’s call for some type of temporary worker program, in December, 2005, the Republican controlled House of Representatives passed one of the most punitive immigration bills in the country’s history.¹³ The official position of the House majority was that unauthorized immigration had to be controlled before there could be any discussion of measures regarding the 11-12 million undocumented workers in the country. Thus, rather than a holistic approach to issues of security, labor needs and the reality of the undocumented population already in the U.S., the House bill focuses only on increased immigration enforcement. The legislation and ensuing debate has generated an unprecedented mobilization of the immigrant community, the rise of right wing groups such as the Minutemen, a split in both the Republican and Democratic parties over the issue of immigration and a divisive political issue heading into the mid term November 2006 elections.

I. The U.S .House of Representatives’ Legislative Proposal

In December 2005, the House of Representatives passed H.B. 4437, the “Border Protection, Antiterrorism and Illegal Immigration Control Act of 2005.”¹⁴ Ninety-two per cent of Republicans, the majority party in Congress, voted for the bill while 82% of Democrats opposed it.¹⁵ The bill incorporates a tough and punitive enforcement approach

¹¹ Development, Relief, and Education for Alien Minors Act, S. 1545, 107th Cong. (2003); Student Adjustment Act, H.R. 1684, 107th Cong. (2003).

¹² Press Release, The White House, Fact Sheet: Fair and Secure Immigration Reform (Jan. 7, 2004), available at <http://www.whitehouse.gov/news/releases/2004/01/20040107-1.html>; Hines, *supra*, 12 TEX. HISP. J.L. & POL’Y (2005).

¹³ Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, 109th Cong. (2005).

¹⁴ *Id.*

¹⁵ <http://clerk.house.gov/evs/2005/roll661.xml>

and does not include any proposals to legalize the undocumented population nor allow temporary workers into the country.¹⁶

The draconian provisions of H.B. 4437 are many. The bill continues the failed enforcement provisions of prior law, by allocating even more funds for Border Patrol agents and enhanced technology to seal the borders. It mandates the building of approximately 700 miles of fencing, an unprecedented immigration measure in the democratic world; increases the penalties for employers who hire undocumented workers; expands the grounds of deportation and limits judicial review of deportation decisions. The most controversial provisions that generated the community mobilization discussed below makes unlawful presence in the U.S. a felony.¹⁷ Under current law, a person who enters the U.S. illegally and has not been previously deported is guilty of a misdemeanor and may be sentenced to up to six months imprisonment.¹⁸ Thus a migrant who is apprehended during or near the time of the actual crossing into the U.S. may be prosecuted criminally. In practice, the vast majority of migrants who enter for the first time or those who do not have prior deportation or criminal records are not prosecuted but are instead placed in removal proceedings.¹⁹ The proposed legislation makes a first time illegal entry into the U.S. a felony.

Additionally, under current law, remaining in the U.S. is a civil, not a criminal offense. For example, a migrant without status in the country, who is apprehended by the immigration authorities at a job site or on the street cannot be prosecuted unless she has committed some other offense, although she would be placed in removal proceedings. The House of Representatives' bill changes this drastically by making "remaining" in the U.S. a felony. In addition, the bill expands the current smuggling provisions to punish, as a felony, persons who "assist, encourage, direct, or induce a person to remain in the U.S."²⁰ This overly broad provision could, for example, include assistance provided by social service agencies, religious organizations and attorneys.

II. Community Response

Although the House of Representatives passed its version of the immigration bill in December 2005, it was not until March 2006, that the immigrant community and its supporters rallied. Little press coverage had been given to the passage of the House bill until the U.S. Senate began debate on the issue in mid-March. A confluence of factors including grass roots organizing, the position of the Catholic Church, the support of the

¹⁶ The word "amnesty" has been eliminated from the debate by immigration advocates. In an ongoing semantics battle, earned legalization has been substituted, as if immigrants still should do more to "earn" legal status. "Amnesty" is for law breakers, according to Bush and the anti-immigration forces. Press Release, The White House, Fact Sheet: Fair and Secure Immigration Reform (Jan. 7, 2004), available at <http://www.whitehouse.gov/news/releases/2004/01/20040107-1.html>.

¹⁷ A felony carries a sentence of one to five years imprisonment. 18 U.S.C. 3581.

¹⁸ 18 U.S.C. 1325. Illegal entry after a prior deportation is a felony and carries a higher penalty.

¹⁹ The legal term for deportation or the denial of admission at the border is "removal."

²⁰ Sec. 202, H.B. 4437.

Spanish language media and the use of cell phone text messaging and websites led to the phenomenal immigrant demonstrations.

The community mobilization and protests were overwhelming in number and beyond the expectations of any of the organizers.²¹ Hundreds of thousands of people demonstrated across the country from March through May 2006. The spontaneity and grass roots aspects of the marches were significant and will provide material for researchers for years to come. The last time protests of this size took place was during the civil rights and Vietnam era of the 1960s. Although activists had talked of nationwide protests at a human rights coalition meeting in California several weeks earlier, the first demonstration was held in Chicago on March 10, 2006. Remarkably, at least 100,000 people participated,²² learning of the march primarily from a prominent disc jockey on a Chicago Spanish language radio station. From there, the protests spread to Los Angeles where on March 25th at least 500,000 people marched through the streets. Spurred on by these successes, a National Day of Protest was held on April 10th and a “Day without Immigrants” on May 1st in which thousands of immigrant workers stayed away from their jobs, students did not attend school and consumers were urged not to buy products that day.

It is worth noting that protests were organized in all parts of the U.S, including areas where grass roots immigration organizing might seem unlikely. While the largest protests occurred in urban areas with large concentrations of immigrants such as Chicago, Los Angeles, New York City and Dallas, marches and rallies were also held in small towns and farming and rural communities in states such as Kansas, Georgia, and Mississippi. The geographical expanse of the marches demonstrates that the burgeoning immigrant community and the country’s reliance on immigrant labor are nationwide.

Unlike other social protests, the marches had a spontaneous quality to them. Although the immigration marches were organized by a very loose coalition of church, labor and community organizations, they were promoted most effectively across the country by Spanish radio and television stations and by younger Hispanics’ use of internet websites and cell phones.²³ The influence of Spanish radio was also evidenced by the proliferation of U.S. flags after the first demonstrations. After the press reported negative public opinion reactions to Mexican flags seen during the initial demonstrations, disc jockeys successfully urged participants to carry U.S. flags instead. That modification was very

²¹ From the personal perspective of this author after more than 30 years of advocacy and legal work on the behalf of immigrants, the demonstrations were inspiring and emotional.

²² The number of participants in all the demonstrations has varied. Organizers have asserted that more people have attended all of the demonstrations than reported by public authorities and the press.

²³ Brian Knowlton, *Immigration fight unites Latinos, A long-quiet minority comes together against tough proposal*, The International Herald Tribune, News Report, Apr 03, 2006 available at http://news.newamericamedia.org/news/view_article.html?article_id=d23b992784453a00eb6118fca8187fe.

notable during national protests on April 10th and the May 1st “Day without Immigrants” protests.²⁴

Students played an important role in the demonstrations. Interestingly, the internet played an important role in the mobilization of students. For example, in Los Angeles, the 15,000 students who walked out of school on March 27th and the 100,000 students who boycotted classes on May 1st organized through the use of “myspace.com,” a popular internet site for teenagers.²⁵ Many students saw the issue as one of discrimination and racism against the Latino community. Others who were born here rallied against their undocumented parents being labeled as felons and subject to criminal prosecution. One telling slogan seen at the demonstrations was “today we march, tomorrow we vote,” giving notice to politicians that young Hispanics will form a powerful voting bloc in the future. Finally, the undocumented students found an opening for the resolution of their immigration plight as they marched for the passage of the DREAM Act or a legalization program.

The position of the Catholic Church was instrumental as well. The church began to speak out strongly in favor of immigration reform and against the criminalization of migrants and those who assist them. Cardinal Mahoney, the archbishop of the Los Angeles Archdiocese, the largest in the nation, denounced “hysterical anti-immigrant sentiment sweeping the nation,” and urged priests and parishioners to defy the provisions in the law prohibiting assistance to the undocumented community.²⁶ Later, the Catholic church helped in mobilizing the community for the ensuing protests.

The business community has generally also supported a legalization program for workers because it recognizes its dependence on foreign labor.²⁷ Many businesses closed their operations on May 1st to support their immigrant workers or because they feared that many would not show up for work. For example, Tyson Foods, the largest producer and seller of chicken in the U.S., gave its workers the day off on April 10th and closed many of its operations on May 1st²⁸ as did Cargill, the multinational food and meat packing conglomerate.²⁹

²⁴ See, e.g, Jose Cardenas and Eric Deggans, St. Petersburg Times, Immigrant rallies born on air, , April 12, 2006 http://www.sptimes.com/2006/04/12/State/Immigrant_rallies_bor.shtml.

²⁵ http://www.boingboing.net/2006/03/27/1a_student_protests_.html;
http://www.huffingtonpost.com/ari-melber/myspace-mypolitics-imm_b_21854.html.

²⁶ Los Angeles Times, March 1, 2006, available at lexis.com: <http://www.bibdaily.com/pdfs/3-1-06%20church%20Los%20Angeles%20Times.pdf>.

²⁷ <http://www.uschamber.com/issues/index/immigration/default>.

²⁸ *Immigrants Flex Economic Muscle*, available at http://www.cbsnews.com/stories/2006/04/27/politics/main1550032_page2.shtml; *Thousands march for immigrant rights Schools, businesses feel impact as students, workers walk out*, available at <http://www.cnn.com/2006/US/05/01/immigrant.day/index.html>.

²⁹ *A mass appeal for immigration reform*, available at <http://www.jsonline.com/story/index.aspx?id=420038>.

III. **Public Opinion and Backlash**

Despite the support for legal rights for immigrants as evidenced by the nationwide rallies, public opinion still remains very divided. The demonstrations moved immigration issues to the forefront of the public and legislative debate, but did not necessarily achieve the goals of the immigrant community. The issue is still framed in terms of solving a “problem.” Seventy-five per cent of Americans think that the government is not doing enough to prevent illegal immigration. Yet sixty per cent believe that immigrants who have lived in the U.S. for a certain number of years should be provided a means to legal status.³⁰ At the same time, the Minutemen, citizen volunteers who “assist” the border patrol in tracking down undocumented immigrants, and as stated on their website, “to do the job Congress won’t do,” have gained national notoriety. Some commentators have reported that the immigrant marches and the volatility of the immigration debate have increased membership in the Minutemen.³¹ and invigorated white supremacists.³² In addition to “patrolling” the border, the Minutemen have begun to build a symbolic fence along 10 miles on private land on the Arizona border, although no immigration bill has yet passed that authorizes such construction.³³

In response to the immigrant demonstrations, the government did two things. First, it countered criticism of lackadaisical enforcement policies by initiating high profile raids against employers. For example, on April 19, 2006, the Department of Homeland Security (DHS) conducted its biggest worksite enforcement raid in history against IFCO, a large multinational manufacturer with a large immigrant work force. Seven managers and 1,187 employees in twenty-six states were arrested.³⁴ After the raid, the head of the DHS publicly stated that “employers and workers alike should be on notice that the status quo has changed.”³⁵ This raid and reports of others generated fear throughout the immigrant community that DHS would raid workplaces, supermarkets, schools, and community health centers, although none of these rumors were confirmed.³⁶

³⁰ Washingtonpost.com, April 11, 2006 available at http://www.washingtonpost.com/wp-dyn/content/article/2006/04/10/AR2006041001759_pf.html.

³¹ *Minuteman Project gains mainstream appeal*, available at <http://www.msnbc.msn.com/id/12500049/>.

³² “*Rousting the Zealots*,” Time Magazine, June 5, 2006.

³³ Minutemen start installing Ariz. border fence: Civilian border-patrol group seeking federal action along entire border, available at <http://www.msnbc.msn.com/id/13012544/>

³⁴ <http://www.ice.gov/pi/news/newsreleases/articles/060420washington.htm>. The author represents several of the workers arrested at a plant near Austin, Texas. As part of the get tough policy, they have all been held with no bond pending their deportation hearing, although generally DHS sets a bond for persons with no prior criminal record or special factors.

³⁵ *Id.*

³⁶ Far from border, but not from issue-Arrest of 20 immigrants highlights local pipeline, Chicago Tribune, May 18, 2006, available at <http://www.chicagotribune.com/news/nationworld/chi0605180187may18.1.3489469.story?ctrack=1&cset=true>; *On edge over raid rumors*, Dallas Morning News, April 28, 2006, available at <http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/042806dnmetraids.13fba39a.html>.

Nevertheless, fear is an important tool in the government's and immigration opponents' stance against the vulnerable undocumented population.

Second, President Bush announced the unprecedented decision to send 6000 National Guard troops, the reserve branch of the military, "temporarily" to the Southern border, despite the strain on the National Guard already serving in Iraq and complaints from human rights groups and even the Border Patrol union. Bush claims that the National Guard will not actually arrest immigrants but will provide back up support such as intelligence, training, and the repair of fences.³⁷ The first troops arrived on the Arizona border on June 5th.³⁸ Bush's plan is designed to placate the conservative wing of the Republican party and harkens to the Soviet Union era of walls and guard towers. Certainly militarizing the Southern border cannot solve issues of global migration.

In addition to federal initiatives, local governments have taken steps to stop the flow of immigrants across the border or to keep them out of their respective states.³⁹ While states have contemplated these actions in the past, the sharpening of the immigration debate this spring may have contributed to the decision to implement such measures. Because individual states may not enforce federal immigration law, states have framed their proposals in terms of violations of state law. For example, the governor of Texas has initiated a program in which up to 120 million dollars of state funds will be used for additional local law enforcement and police on the border for "Operation Rio Grande" until the federal government fulfills its "its responsibility of securing the border." An additional 5 million dollars will be allocated to placing surveillance cameras on private farm and ranch land so that "landowners will be able to monitor and defend their property from those who might endanger their families." This video feed will not only be available to law enforcement agencies but will be posted on the internet in real time "so that concerned Americans can protect our nation through online neighborhood watch programs."⁴⁰ Advocacy groups have denounced the Texas plan as unproductive and caution that it could result in civil rights violations.⁴¹

Another example occurred in the State of Georgia, a non-border state which has witnessed a large increase in undocumented Mexican immigration. Georgia passed a law which requires that state employees verify legal residence status before providing public

³⁷ *Bush Set To Send Guard to Border*, May 15, 2006, available at http://www.washingtonpost.com/wp-dyn/content/article/2006/05/14/AR2006051400773.html?navat=rss_email/components?nav=slate.

³⁸ *First Guard troops set to work at Mexican border*, June 5, 2005, available at <http://www.cnn.com/2006/US/06/05/guard.border/>.

³⁹ In 2004, Arizona passed Proposition 200, the Arizona Taxpayer and Citizen Protection Act. This law will be discussed by another symposium participant.

⁴⁰ *Perry Authorizes More Border Security Funding, Virtual Border Watch Program*, June 1, 2006, available at <http://www.governor.state.tx.us/divisions/press/pressreleases/PressRelease.2006-06-01.1612>.

⁴⁰ *Id.*

⁴¹ MALDEF Calls On Texas Governor To Avoid Further Civil Rights Abuses And Reconsider Risky Border Plan , June 5, 2006, available at <http://maldef.org/news/press.cfm?ID=316>.

services. Employers who hire undocumented workers may not deduct their wages as business expenses on their state taxes. The law also requires state law enforcement agencies to utilize provisions of federal law which allow them to receive training from the federal government in order to enforce immigration laws.⁴² While having state officials enforce immigration laws plays well among anti-immigrant groups, it has long been opposed by immigrant advocacy groups and some law enforcement organizations as antithetical to community policing. Such a policy diverts police resources from crime to immigration and discourages the undocumented population from reporting crime and cooperating with legitimate police investigations.⁴³

IV. The Senate “Compromise”

Before the spring protests, the Senate was very divided over its approach to immigration reform. The most anti-immigrant Senators advocated enforcement and security legislation similar to the bill passed by the House. Other conservative senators and Bush only supported a temporary worker/ guest worker program which provided no means for immigrants to become permanent residents or eventual citizens. Instead, their proposed legislation limited immigrants’ stay in the U.S. to approximately six years.⁴⁴ Proponents of the guestworker-only plan echoed Bush’s pronouncements that any legalization program was an “amnesty” for lawbreakers. They insisted that undocumented immigrants “should get in line” like legal immigrants to come to the U.S. The fallacy of this rhetoric and popular misconception is that it is virtually impossible for undocumented immigrants to obtain legal status in the U.S. Temporary and permanent immigration through employment is complicated, costly and has very limited applicability to the undocumented workers already unlawfully in the country. Critics of this Senate bill argued that guest worker programs are not workable, lead to a disenfranchised subclass and labor exploitation and do not serve employers’ interests in maintaining a stable and permanent workforce.

Some Republicans joined Democrats to advocate for both a temporary worker program for future workers and a legalization program for any undocumented person who had been in the U.S. for a certain number of years and who had worked or attended school. This bi-partisan proposal also included the DREAM Act, legalization for undocumented university students. Like all other immigration proposals, even this more generous version linked immigration reform to increased unilateral border enforcement and security measures. The bill included large expenditures for border security, increased penalties for employers who hire undocumented workers, expansion of grounds of removal (deportation) and restrictions on judicial review of administrative removal decisions.⁴⁵ Notably, neither of the Senate bills included provisions to make undocumented status a felony nor to build extensive fences along the southern border.

⁴² Georgia Security and Immigration Compliance Act of 2005, S.B. 529, April 16, 2006.

⁴³ http://www.nilc.org/immlawpolicy/LocalLaw/tbl_local_enfrcmnt_0704.pdf.

⁴⁴ Comprehensive Enforcement and Immigration Reform Act of 2006, S.B. 1438, 109th Cong (2006).

⁴⁵ S.B. 1033, Secure America and Orderly Immigration Act of 2005.

These two competing proposals were pending before the Senate when the spring mobilizations began. While the long term impact of the protests remains to be seen, they did achieve several things. First, they were a wake-up call regarding the political clout of the Hispanic voting bloc, although no one knows what percentage of the demonstrators were U.S. citizens who could actually vote. Second, in the midst of the demonstrations, many Senators and Bush publicly stated their opposition to the criminalization of immigrants and those who provide assistance to them. Third, Bush began to advocate for a broader legalization program, similar to the ultimate Senate compromise, discussed below, rather than the guest worker only program he had urged since 2001. He stated that it was not feasible to deport the approximately 11-12 million undocumented people in the country. Finally, the Senate passed a compromise bill discussed below.

The Senate compromise, approved on May 25, 2006, is hardly a resounding victory for immigrants' rights although the community demonstrations pressured legislators and the President to pass some type of legalization program for the undocumented population.⁴⁶ The Senate bill continues to try to solve immigration issues unilaterally and ties immigration reform to increased enforcement. While the Senate bill does not make unlawful presence in the U.S. a crime nor punish those that assist the undocumented, it calls for 370 miles of fencing and huge increases in spending on Border Patrol and high technology on the Southern border. Most migrants will be detained until removed from the U.S. Fines and sanctions against employers who hire the undocumented are increased. The legislation responds to symbolic nativism by declaring that English is the official language of the U.S.⁴⁷

The Senate bill also creates an elaborate and potentially unworkable scheme of several different immigration categories based on length of residence in the U.S. The underlying premise is that undocumented immigrants must "earn" the right to live in the U.S. as if their contributions, such as needed labor in the service, agricultural and construction industries were not enough.⁴⁸ Undocumented immigrants who have lived in the U.S. for five years and have worked for three of those five years or who have attended school and who meet other requirements may apply for legalization.⁴⁹ The Senate bill estimates that 6.7 million people may qualify. Responding to criticism of an amnesty, the Senate compromise requires that immigrants over the age of eighteen pay standard immigration filing fees, a fine in the amount of \$2000, a state impact fee of \$750 plus the payment of all back taxes or an agreement with the government to pay them.⁵⁰ Undocumented workers do not have valid social security numbers and are unable to have taxes deducted from their earnings or pay annual income taxes. The payment of back taxes involves not only the unpaid taxes themselves but also very high penalties and interest. Thus, the filing

⁴⁶ Comprehensive Immigration Reform Act of 2006, S.B.2611, 109th Cong (2006).

⁴⁷ *Id.*, Sec. 767, Sec.769-770. The Senate bill contains other restrictive provisions relating to *inter alia* judicial review and removal proceedings not discussed in this article.

⁴⁸ *Id.* Sec. 245B, Access to Earned Adjustment.

⁴⁹ *Id.*

⁵⁰ *Id.*, Sec. 245B(m); Sec 245B(a)(1)(E).

fees, penalties and back taxes may be an insurmountable obstacle for many immigrants who work in low paying jobs.

Those undocumented immigrants who have been in the U.S. for more than two years but less than five years, a population estimated by the Senate to be 2.7 million, must leave the U.S. in order to obtain temporary legal status. They must pay filing fees, a \$1000 fine, a \$750 state impact fee and depart the U.S. within three years in order to reenter legally. This convoluted process serves no legitimate purpose other to place more obstacles in the path to legalization and burden these immigrants with additional financial burdens of travel to and from the U.S.

There are many limitations on permanent residence for both groups. The first category, those who have been in the U.S for five years. must work another six years in the U.S. before being granted permanent residence. Additionally, permanent residence may not be granted until all the backlogs in the family immigration categories have been cleared out. The current backlogs span many years, although the Senate bill provides for an increase in the annual family immigration quotas. After finally obtaining permanent residence, this group must wait another five years to apply for U.S. citizenship. The second category, those who have been in the U.S. at least two years, cannot become permanent residents until eight years after they obtain their initial temporary status; afterwards it is unclear under what provisions they may become permanent residents. Thus, the “path to citizenship,” the lexicon promoted by Senators supporting this compromise, will be in the very distant future, disenfranchising the new legal immigrants for years to come.

The Senate compromise does include the DREAM Act and special legalization provisions for agricultural workers. The DREAM Act will allow students who have completed high school and subsequently two years of college or military service to become first temporary and then permanent residents through a process in the U.S.

There is no immediate relief for any immigrant who has been in the U.S. for less than two years. If, according to government calculations, the undocumented population is approximately 12 million, 2.6 million people will not be included in either of the two legalization categories discussed above. Clearly, most of this remaining group will not legalize as agricultural workers or university students. This population will only benefit from an ongoing temporary worker (guest worker) provision included in the bill which can only be granted from outside the U.S. The backers of the compromise claim that by increasing enforcement and penalties for hiring the undocumented, these workers will simply go home, a premise that has not been borne out historically. Instead a sub-class of workers with no legal status will continue to exist in the U.S. They may be forced into less lucrative paying jobs, but it is unlikely that they will leave the country.

While the Senate did reach an unexpected compromise in part because of the community mobilizations, some immigrant advocacy organizations oppose the compromise because of its many restrictive provisions and its failure to provide a solution for the entire undocumented population.⁵¹ Others commend the bill as an acceptable compromise.⁵² It

⁵¹ See, e.g. *The Senate Immigration Reform Bill, They Didn't Get It Right*, Immigration Legal Resource Center, available at <http://www.ilrc.org/SIRB.php>; *Senate Approves Sweeping but Flawed Immigration Reform*, National Immigration Law Center, available at <http://www.nilc.org/immlawpolicy/CIR/cir017.htm>.

is unclear at this time position the immigrant community, desperate for any type of legalization, will take in regards to the Senate bill. But what is clear is that the compromise between the Senate and the House, if any agreement is reached, will in all likelihood be an even more restrictive law.

V. Conclusion

Thus the issue remains as to whether the community mobilizations will end up achieving any immigration reform or whether they will form the basis of a broader and more long term democratic and human rights movement. On the legislative front, because the Senate and House immigration bills are so far apart, it is questionable whether the conference committee of both bodies will be able to work out an acceptable proposal. The Senate version is already a substantial compromise from the standpoint of the immigrants' rights community. Any more restrictive provisions will hardly be a victory, although any compromise may provide limited relief for a very small segment of the undocumented population. Many believe that no immigration legislation will be passed before the upcoming mid-term elections. Conservatives believe that the passage of immigration reform, despite President Bush's support, will alienate the right wing base of the Republican support. In an effort to sabotage any passage of the bill, the House of Representatives in late June announced that it would hold public hearings on immigration around the country, in an effort to galvanize anti-immigrant support. On the other hand, progressives hope that the telling slogan seen nationwide at the demonstrations, "Today we march, tomorrow we vote," will favorably influence politicians to pass acceptable, although compromised, immigration reform. Some see the rallies a "coming of age for Latino politics" which may positively affect historically low Hispanic voter turnout.⁵³

What is clear is that the silent majority of immigrant workers have stepped out of the shadows. From an immigrants rights' perspective, the demonstrations were historical and inspirational. They represent a phenomenal display of grass roots political expression. Although the Senate legislative proposal does not meet the needs of the undocumented population and has many shortcomings, it probably would not have passed without the mobilization of the immigrant community. Politicians spoke out against the criminalization of the undocumented population and Bush for the first time stated that he supported legalization for the undocumented, not just a temporary workers scheme. While some may argue that the community mobilizations have emboldened the anti-immigrant forces, such anti-immigrant sentiment has always existed in the U.S. These divisions are nothing new, as the country has always struggled with two competing phenomena-- the myth of the melting pot and xenophobic restrictive tendencies.⁵⁴

⁵² National Immigration Forum; <http://www.immigrationforum.org/DesktopDefault.aspx?tabid=818>

⁵³ Jeff Franks, *Immigration marches energize Hispanic power*, Boston Globe, April 11, 2006, available at http://www.boston.com/news/nation/articles/2006/04/11/immigration_marches_put_charge_in_hispanic_; Jeff Franks, *Immigration marches put charge in Hispanic power*, Reuters, Tue Apr 11, 2006, available at <http://today.reuters.com/business/newsarticle.aspx?type=tnBusinessNews&storyID=nN10368341>.

⁵⁴ Bill Ong Hing, *Defining American Through Immigration Policy* (Temple University Press 2004).

Moreover, as in the civil rights era of the 1960s, groups opposing integration rallied too, only to lose the ultimate battle. One can hope for the same in the immigrant and human rights struggle going on today in the U.S. As one commentator aptly stated, the ultimate question is whether “U.S. society should continue to profit from the labor of 11 million people -- many of whom pick our fruit, nurse our children, clean our workplaces -- without embracing them fully, without honoring their work, without extending to them the same rights and respect we would want for ourselves?”⁵⁵ While that question has not yet been answered, the community mobilizations are a good beginning.

⁵⁵ Van Jones, *Shout 'Viva!' Anyhow: On Being Black at a Latino March*, New America Media, Commentary, May 04, 2006 available at http://news.newamericamedia.org/news/view_article.html?article_id=2144b620afdda046f71ac16480f11375.