



POLICY PAPER

No. 23 (125), July 2015 © PISM

Editors: Wojciech Lorenz (Managing Editor)

Jarosław Ćwiek-Karpowicz • Aleksandra Gawlikowska-Fyk • Dariusz Kała
Piotr Kościński • Sebastian Płóciennik • Patrycja Sasnal • Marcin Terlikowski

The Evolution of U.S. Immigration Policy: Implications for Poland

Piotr Plewa

Over the course of the last 50 years, migration to the United States has transformed from European to Latin American, and predominantly Mexican. Increased legal migration from Latin America has been coupled with increased unauthorised entries from the region. The major challenges facing U.S. policymakers concern their ability to prevent unauthorised entries and the repatriation or integration of those already in the country. With decreased legal and unauthorised immigration rates, Poland has lost the potential to affect U.S. migration policymaking. Hence, it is worthwhile to assess whether the limited benefits stemming from visa-free travel to the U.S. would justify the increase in invested political capital required to secure one of Poland's traditional foreign policy goals.

Latin American migration has outgrown European migration in the U.S. over the past 50 years. As the centre of the U.S. immigration policy debate has moved to Latin Americans, particularly minors who have an unauthorised legal status, the focus on Europeans, most of who are of legal age and have legal status, has shifted away. While the relegation of European migration issues to the political backburner could partially explain the slow progress of the inclusion of Poland to the U.S. Visa Waiver Program (VWP), a key issue has been the high visa-denial rates for Polish citizens applying to travel to the U.S. Because U.S. visa applicants who do not hold stable employment in Poland are most likely to be denied visas, a major factor contributing to the inclusion of Poland to the VWP will be decreasing unemployment in Poland along with improving the economic situation of the country.

Changes in U.S. Immigration Structure

The United States still remains the world's largest migration destination, the aim of some 20% of the migrants globally. The 41.3 million foreigners in the U.S. compose 13% of the country's total population of 316.1 million. If these migrants were gathered together, they would form the most populous state in the U.S. and the world's 31st most populous country. If counting U.S.-born children of migrants, the 80 million first- or second-generation migrants in the country would constitute a quarter of the U.S. population.¹ Over the course of the last 50 years, migration to the U.S. has transformed from European to Latin

¹ J. Batalova, J. Zong, "Frequently Requested Statistics on Immigrants and Immigration in the United States," *Migration Information Source*, 26 February 2015, www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states.

American, predominantly Mexican. The share of Europeans among U.S. migrants has declined, despite the short-lived boost from Eastern Europe in the 1990s.

As the share of European immigrants in the U.S. declined from 75% in 1960 to 12% in 2010, immigration from Latin America and Asia has increased.² Although Europeans and Canadians used to constitute the largest immigrant group in the U.S, neither of these two groups made up more than 15% of the immigrant population as Mexicans do today.

While the share of all Europeans has decreased since the 1960s, the share of Eastern Europeans grew throughout the 1990s. This trend was caused by citizens of the former Warsaw Pact emigrating to the U.S. to join their family members and by those fleeing the war in Yugoslavia. But the temporary rise in Eastern Europeans had little effect on the strength of all Europeans in the U.S. As the political situation in Europe stabilised, the share of refugees from Eastern Europe declined to about 2% in 2011.³

In 2010, Europeans constituted around 12% of all immigrants residing in the U.S. About half of them came from Eastern Europe. Poles were the third most numerous European immigrant group (10%), after the British (14%) and Germans (13%).⁴

The broadening of migration opportunities for Poles in Europe decreased Polish emigration to the U.S. From among the 1.6 million Polish-born living abroad in 1990, 450,000 lived in the U.S., followed by Germany (250,000) and the UK (70,000). From among the 3.6 million Polish-born living abroad in 2013, only half a million lived in the U.S., while 660,000 resided in Germany and 1,150,000 were in the UK.⁵

In 2010, compared to other foreign-born immigrants, European immigrants in the U.S. were more likely to be elderly, educated, proficient in English, and naturalised as U.S. citizens. Consequently, they tended to work in higher-skilled jobs and were less likely to live in poverty.⁶ As a result of good labour and social integration, they attracted less attention than the newly arrived migrants from other parts of the world did.

In 2013, the U.S. issued almost a million permanent residence and work permits, called “Green Cards.” Only 8% of them were granted to European immigrants. With 13%, Mexicans alone obtained more green cards than all European countries combined.⁷ According to the Department of Homeland Security (DHS), around 10% of all citizens naturalised in 2013 came from Europe. As with Green Cards, the number of Europeans naturalised to the U.S. in 2013 was smaller than the number of naturalised Mexicans, who comprised 13% of those taking up U.S. citizenship.⁸

Constituting almost one-third of the foreign-born, Mexicans have emerged as the largest immigrant group in the U.S., thereby replacing Europeans at the core of the immigration policy debate. In 2013, nearly half of U.S. immigrants acknowledged Latino origins. Mexican-born immigrants were the largest immigrant group in the country. They constituted almost one-third of the foreign-born, far ahead of the runners up—those born in India or China (5% each). Hence, Spanish is the most commonly spoken language among U.S. residents who do not speak English at home. While the U.S. Constitution does not define the country’s official language, English is the *de facto* language but could one day be replaced by the language of a dominant migrant group.

The foreign-born population has spread out over recent years, which has also contributed to the internal political debate on immigration. In 1990, California was the only state to have more than a fifth of its population born outside the U.S. By 2014, there were four states in which about one-fifth or more of the

² J. Batalova, J. Zong, *op. cit.*

³ J. Batalova, J. Russell, “European Immigrants in the United States,” MPI, 26 July 2012, www.migrationpolicy.org/article/european-immigrants-united-states#3.

⁴ *Ibidem.*

⁵ “Origins and Destinations of the World’s Migrants, from 1990–2013,” PEW Research Center, 2 September 2014, www.pewglobal.org/2014/09/02/global-migrant-stocks.

⁶ J. Batalova, J. Russell, “European Immigrants ...,” *op. cit.*

⁷ J. Yankay, R. Monger, “U.S. Lawful Permanent Residents: 2013,” May 2014, www.dhs.gov/sites/default/files/publications/ois_lpr_fr_2013.pdf.

⁸ K. Foreman, J. Lee, “U.S. Naturalizations: 2013,” May 2014, www.dhs.gov/sites/default/files/publications/ois_natz_fr_2013.pdf.

population were foreign born: California, New York, New Jersey and Florida.⁹ Mexican immigrants are concentrated in the West and Southwest. More than half live in California or Texas. While largely Democratic California has taken a liberal approach to migrants, facilitating the integration even of unauthorised ones, largely Republican Texas has done just the opposite.

Increases in Both Legal Immigration and Unauthorised Entries

Proportional to its claim to the largest legal migration in the world, the U.S. is also estimated to have the largest unauthorised population. If all unauthorised immigrants in the U.S. lived in the same state, they would constitute the eighth-largest U.S. state. If they had their own country, it would be the 76th largest country in the world; slightly more populous than Cuba.

One reason why the U.S. society has been divided on unauthorised migration from Latin America is that many Mexicans contributed to the development of the U.S. economy and yet were unable to adjust their status due to the inefficiencies of migration regulations.

In 1970, the U.S. unauthorised population varied between 1 million and 2 million. Many of the unauthorised migrants in the 1970s were seasonal agricultural workers who transited between the U.S. and Mexico in response to labour demand. This group was known and appreciated for undertaking tasks others had no interest in completing, but tasks that kept the economy moving, goods and services available, and prices low. As such, their migration was largely uncontroversial. As unemployment in Mexico grew and the U.S. expanded its demand for low-skilled labour, more Mexicans entered the U.S. illegally or lost their legal status while in the U.S.¹⁰ According to Marc Rosenblum from Migration Policy Institute, the U.S. government exacerbated the problem of unauthorised migration by creating disproportionately complex entry requirements despite the high demand for migrant labour.¹¹

The unauthorised immigrant population in the U.S. peaked at 12.2 million in 2007 after growing by approximately half a million people per year from 3.5 million in 1990. After 2007, the trend changed abruptly, and the numbers dropped by about 1 million over the next two years to 11.3 million in 2009, and further since then. The reasons for the drop include economic decline in the country, tightened border enforcement, and voluntary returns mixed with involuntary deportations.

In 2013, DHS apprehended some 660,000 unauthorised migrants. Over 60% of all detentions were made at the border. The Sonora Desert on the Mexico–U.S. border has become a migrant’s graveyard akin to the Mediterranean Sea for the immigrant from Africa to Europe. Most of the detained are from Mexico, Guatemala, Honduras or El Salvador. Nationals from these four countries comprised 93% of all detentions, with Mexicans constituting 64% in 2013.¹² Unlike Latin Americans, authorised migrants from India or China tend to arrive in the U.S. legally, but lose status through overstay.

Even though Mexicans still constitute the majority of unauthorised immigrants, their share has declined in recent years. According to PEW Research Center, the number of Mexicans in the U.S. declined from 6.9 million in 2007 to 5.9 million in 2012. The decrease of a million from 2007 to 2009 overlaps with the

⁹ J. Krogstad, M. Keegan, “15 States with the Highest Share of Immigrants in their Population,” 14 May 2014, www.pewresearch.org/fact-tank/2014/05/14/15-states-with-the-highest-share-of-immigrants-in-their-population.

¹⁰ M. Rosenblum, “Securing the Border: Defining the Current Population Living in the Shadows and Addressing Future Flows,” Testimony before the Senate Committee on Homeland Security and Governmental Affairs, 26 March 2015, www.migrationpolicy.org/research/securing-border-defining-current-population-living-shadows-and-addressing-future-flows.

¹¹ *Ibidem*.

¹² V. Cohn, J. Passel, “Immigrant Workers in Production, Construction Jobs Falls Since 2007 in States, Hospitality, Manufacturing and Construction Are Top Industries,” PEW Research Center, March 2015, www.pewhispanic.org/files/2015/03/2015-03-26_unauthorized-immigrants-passel-testimony_REPORT.pdf.

financial crisis and general economic decline, including layoffs and higher domestic competition for employment.¹³

Unauthorized immigrants account for one-in-twenty people in the U.S. workforce. Because unauthorized immigrants tend to be less educated than either people born in the U.S. or legal immigrants, they are more likely to hold low-skill jobs.¹⁴

Since 1996, the U.S. has become more effective in the removal of unauthorized migrants. Some 4.5 million noncitizens were removed between 1996 and 2012. The deportations peaked in 2013, when 438,000 people were removed—72% to Mexico.¹⁵ Almost as many people were deported during the first five years of the Obama administration (over 1.9 million) as during the entire eight years of the Bush administration (2 million). The Obama administration focused deportations on those intercepted while crossing the border without authorization and unauthorized migrants already present in the U.S. and convicted of crimes.¹⁶

Unlike Europe, the U.S. does not pay migrants to return voluntarily home. Among the many ways aimed at enticing migrants to leave is an “attrition” approach. Some experts claim that if the U.S. started to enforce its own immigration laws, unauthorized migrants already present would be likely to leave voluntarily and prospective new ones would be less likely to come, particularly if it were mandatory for all employers to verify the legal status of their workers.¹⁷

Meanwhile, under the Trafficking Victims Protection Reauthorization Act of 2008, border patrol agents can hold minor children for up to 72 hours before they are turned over to an agency that operates shelters and sends the children to parents or relatives in the U.S. Most of the unaccompanied children are placed in deportation proceedings. However, because of a shortage of detention space and the length of the process, over 85% are eventually released to relatives in the U.S. Keeping migrants in detention is costly and has been criticised for obstructing migrants’ ability to obtain legal assistance.¹⁸

The Immigration and Customs Enforcement (ICE) agency does not monitor most of the unauthorized foreigners it releases. However, the agency reported that 70% of the families released did not comply with the order to report to ICE offices after they reached relatives in the U.S.

In the summer of 2014, when the number of unaccompanied child arrivals peaked at 10,622, the Obama administration took measures to beef up border protection and speed up court processing. Yet, these measures have not solved the root of the problem. They have not worked out viable alternatives to unauthorized and humanitarian migration. The methods to timely and fairly adjudicate migrants’ protection claims have yet to be figured out, too. The 2014 immigration crisis challenged the U.S. government with the question of how can the country protect genuinely vulnerable migrants while restricting the admission of unauthorized immigrants who do not have valid humanitarian claims. It also surfaced the problem of unauthorized minors, many of whom have been in the U.S. for long enough to build stronger ties to the U.S. society than those of their origin.

¹³ J. Passel, “National and State Trends, Industries and Occupations,” 26 March 2015, Testimony before the U.S. Senate Committee on Homeland Security and Governmental Affairs, www.pewhispanic.org/2015/03/26/testimony-of-jeffrey-s-passel-unauthorized-immigrant-population.

¹⁴ J. Passel, V. Cohn, “A Portrait of Unauthorized Immigrants in the United States,” April 2009, www.pewhispanic.org/files/reports/107.pdf.

¹⁵ J.F. Simanski, “Immigration Enforcement Actions: 2013,” September 2014, www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2013.pdf.

¹⁶ K. McCabe, M. Rosenblum, “Deportation and Discretion: Reviewing the Record and Options for Change,” October 2014, www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change.

¹⁷ A. Bruno, “Unauthorized Aliens in the United States: Policy Discussion,” May 2014, <https://fas.org/sgp/crs/homesec/R41207.pdf>.

¹⁸ P. Martin, “Children, Obama Delays Action,” *Migration News*, vol. 21, no. 4, 2014, <https://migration.ucdavis.edu/mn/more.php?id=3929>.

The Immigration Policy Debate in the U.S.

Immigration policy has increasingly become more controversial in the U.S. The current United States Congress and President Obama disagree over how to reform U.S. immigration policy, prevent unauthorised migration, and deal with those already living in the country.¹⁹

The public debate about immigration today is not about the level of immigration or where people come from—as was the case 50 years ago—but about how to keep unauthorised immigrants out and what to do with those who are already in the country.²⁰ In Europe, the question regarding resident unauthorised migrants has been partially addressed through general and relatively frequent legalisations. However, granting legal status to some 11 million unauthorised migrants in the U.S., especially in the context of the economic crisis, would be politically impossible. Except for a single general, large-scale, legalisation in 1986, the U.S. has favoured legalisations aimed at long-term unauthorised residents or at very specific groups, often those with political clout, as in the case of Latinos.²¹

As a result of what became known, informally, as the “wet feet/dry feet policy,” the U.S. would only remove Cubans intercepted at sea (“those with wet feet”). Those who managed to set their feet on U.S. shore (“those with dry feet”) could remain, apply for a Green Card, and, if approved, eventually apply for citizenship. Proud of its heritage as a country of immigration, and aiming to foster human rights, the U.S. government and society nevertheless is deeply divided on deportations.

Another policy affected minors who are immigrants or legal U.S. citizens born to unauthorised immigrants. Between 2011 and 2014, several hundred thousand Central American women and children attempted to enter the U.S. on humanitarian grounds, with their arrivals peaking in June 2014. The women and children would arrive at the border and turn themselves over to U.S. Border Patrol, hoping that, in line with the U.S. refugee law special provisions concerning children, they could not be denied entry or deported without a hearing.

Most Americans support the right of unauthorised immigrants to earn legal status if they meet certain requirements, especially continuous residence, English proficiency and employment.²² Almost half of those who support legal status think that unauthorised immigrants should be able to eventually become citizens, while almost a quarter say the path should only include permanent residency. Permanent residents can be prohibited from re-entry if they resided outside the U.S. for over a year, do not have the right to vote, and are subject to deportation should they violate the law. It is probably the rule on deportation for violations of the law that the nearly one-quarter of survey respondents would like to maintain.

A survey conducted in February 2014 by PEW Research Center found the public evenly divided over whether the increase in deportations was a good or a bad thing.²³ The U.S. Hispanic population says relief from the threat of deportation is more important than a pathway to citizenship.

After years of congressional stalemate, in 2014, President Obama announced significant changes to migration policy, circumventing congressional approval through an executive order, which affects enforcement of existing laws. The policy aims to prevent selected unauthorised migrants and their parents

¹⁹ “Unauthorized Immigrants: Who They Are and What the Public Thinks,” PEW Research Center, January 2015, www.pewresearch.org/key-data-points/immigration.

²⁰ A. Kohut, “50 years later, Americans give thumbs-up to immigration law that changed the nation,” February 2015, www.pewresearch.org/fact-tank/2015/02/04/50-years-later-americans-give-thumbs-up-to-immigration-law-that-changed-the-nation.

²¹ D. Kerwin, “More than IRCA: U.S. Legalization Programs and the Current Policy Debate,” December 2010, www.migrationpolicy.org/research/us-legalization-programs-by-the-numbers.

²² M. Rosenblum, R. Capps, S. Yi-Ying Lin, “Earned Legalization: Effects of Proposed Requirements on Unauthorized Men, Women and Children,” *MPI Policy Brief*, January 2011, www.migrationpolicy.org/research/earned-legalization-effects-proposed-requirements-unauthorized-men-women-and-children.

²³ C. Doherty, R. Suls, “Public Divided Over Increased Deportation of Unauthorized Immigrants,” February 2014, www.people-press.org/2014/02/27/public-divided-over-increased-deportation-of-unauthorized-immigrants.

from deportation through an expanded Deferred Action for Childhood Arrivals (DACA)²⁴ and the newly created Deferred Action for Parents of Americans (DAPA) programmes.²⁵ The policy also aimed to strengthen border security, expand the admission of highly skilled workers and facilitate Green Card applications by certain unauthorised migrants.

Many Latin American immigrants responded positively to the executive orders, which is important because the Democratic Party generally depends on their votes.²⁶

By December 2014, U.S. Citizenship and Immigration Services (USCIS) granted DACA status to about 787,000 individuals.²⁷ About 80% of those approved were Mexicans, followed by Salvadorans (4%), Guatemalans and Hondurans (2% each).²⁸ According to the American Immigration Council, 60% of the 2,400 surveyed recipients had found a job since obtaining DACA status, and almost half increased their earnings.²⁹ Even the Pentagon invited DACA recipients to apply for jobs with the U.S. military if they had language or medical skills.³⁰

President Obama's executive orders expanded the DACA programme's eligibility to 1.49 million (13% of the 11.4 million) unauthorised immigrants. It also announced a new programme, the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). It offered temporary protection from deportation and a three-year work permit to unauthorised immigrants who are parents of a U.S. citizen or lawful permanent resident and who have resided in the U.S. for at least five years.

The Migration Policy Institute (MPI) estimated that about 3.71 million people (33% of all unauthorised immigrants) who are eligible will qualify for DAPA. In total, MPI estimates the anticipated new DAPA and expanded DACA initiative could benefit as many as 5.2 million people, nearly half of the unauthorised immigrants living in the United States.³¹

The opponents of DACA and DAPA argue that the programmes will encourage more unauthorised migration and raise the costs of law enforcement, healthcare and education.³² Republicans have attempted to limit Obama's executive orders regarding DACA and DAPA. Given the temporary nature of the relief offered by them, migrants themselves may hesitate before applying in case the legislation is changed by the next administration or Congressional action in the meantime.

Implications for Poland

Having consolidated its democracy, Poland is no longer a country whose citizens can claim asylum in the U.S. Overstays by Polish visitors have also dropped considerably. The Director of the Center for Immigration Studies, a Washington D.C.-based think-tank, estimated that Poles constitute less than half of one percent of the estimated 11 million unauthorised immigrants in the U.S. Paradoxically, having decreased their legal and unauthorised immigration rates, Poles do not enjoy as much political clout in the U.S. as do Latinos. Hence, Poland's migration-related goals are less likely to garner U.S. politicians' attention than

²⁴ In 2012, the Obama administration launched the Deferred Action for Childhood Arrivals (DACA), which allows certain unauthorised immigrants—those who entered the country before their 16th birthday and enrolled in school—to be exempt from deportation and receive a renewable three-year work permit. It does not provide a path to citizenship.

²⁵ F. Hispman, "President Obama Breaks Immigration Impasse with Sweeping Executive Action," December 2014, <http://migrationpolicy.org/article/top-10-2014-issue-2-president-obama-breaks-immigration-impasse-sweeping-executive-action>.

²⁶ *Ibidem*.

²⁷ "Number of I-821D, Consideration of Deferred Action for Childhood Arrivals by Fiscal Year, Quarter, Intake, Biometrics and Case Status: 2012-2015," USCIS, www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/I821d_performancedata_fy2015_qtr1.pdf.

²⁸ *Ibidem*.

²⁹ P. Martin, "Immigration Reform," *Migration News*, vol. 21, no. 3, 2014, <https://migration.ucdavis.edu/mn/more.php?id=3912>.

³⁰ *Ibidem*.

³¹ M. Chishti, F. Hipsman, B. Eberle, "As Implementation Nears, U.S. Deferred Action Programs Encounter Legal, Political Tests," February 2015, www.migrationpolicy.org/article/implementation-nears-us-deferred-action-programs-encounter-legal-political-tests.

³² *Ibidem*.

those of Mexico. Hence, it can be even harder than in previous years to lobby for access to the visa-free travel regime on the basis of the VWP.

The programme is based on the ability of a candidate country to meet and maintain four key requirements: (1) enhanced law enforcement and security-related data-sharing with the U.S.; (2) maintenance of a high level of counterterrorism, border control and document security; (3) issuance of e-passports; and (4) visa refusal rates below 3%.³³ Related to the fourth requirement is the country's economic stability, demonstrated in part by low unemployment, since it is unemployed migrants who are considered most likely to work illegally in the U.S. and overstay their visas. As of 2014, Poland's visa rejection rate varied by around 6.4%, constituting a major reason for non-admission to the VWP.

It is important to note that VWP allows for tourism, business consultations and transit, as well as travel for medical purposes. However, it does not authorise employment (including by media correspondents), enrolment in credit-based coursework, or permanent residence. If Poland was admitted to the VWP, the average Pole could arrive at the U.S. border without a visa and enter as long as they have never had their visa application rejected and they hold a biometric passport and a return ticket. Travellers would thus save on the tourist/business visa application fee (\$160, valid for up to 10 years) and on the costs of travel to the nearest U.S. consulate from their place of residence. However, it is still up to the border official to decide whether they can enter the United States. While most VWP visitors are let in, a border official who determines that a visitor is likely to overstay the allowed 90 days or might engage in remunerated employment could deny him or her entry without the right to appeal. The lack of a stable source of income in the country of origin is among the many reasons for which VWP citizens can be denied entry.

Immigration policies related to Poles constitute a political niche unlikely to be given priority before the end of the Obama administration or in the very first years of next one, regardless of who wins the 2016 U.S. presidential elections. While Jeb Bush's visit to Poland this year was expected to cast new light on the inclusion of Poland in the VWP, international security issues dominated the discussions. Although Poland has invested considerable efforts in diplomatic, and particularly military, collaboration with the United States, these commitments, no matter how large, should not be connected with the inclusion of Poland in the VWP, which does not bring significant advantages to Polish visitors apart from some public relations points for Polish politicians. Polish governments are more likely to achieve the goal by improving the economy and combating unemployment than through politicising the issue in relations with the U.S.

³³ U.S. Department of State, Visa Waiver Program, <http://travel.state.gov/content/visas/english/visit/visa-waiver-program.html>.