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THE US-MEXICAN BORDER AND CONTEMPORARY AMERICAN IMMIGRATION POLICY

ABSTRACT

There have been several periods in American history that are referred to as turbulent times. They were characterized by a wide range of changes that happened to respond to issues that brought anxiety, threat, discontent, or trouble. Donald Trump's presidency and the Covid-19 pandemic significantly influenced American immigration policy and the lives of immigrants. The present article pays special attention to the Mexican-American border. This area plays a crucial role in migration studies focusing on the Americas for at least two reasons: international relations between Mexico (and the Latin American region) and the United States, and homeland security issues related to irregular and regular migrant flows. This study aims to determine what changes have been implemented in border policy, investigate why they occurred, and finally, discuss their results. The article analyzes the most challenging issues characteristic of the situation of unaccompanied minor migrants, the concept of Trump's wall or the 'remain in Mexico' program. The US-Mexican border studies have played a crucial role in research dedicated to American immigration policy since its inception. Today, it is also an area of concern and special attention is paid to this region due to the dynamics of processes taking place at the border. The work presented here discusses and highlights the most turbulent issues that echoed not only in the United States but also worldwide.

Keywords: immigration, the wall, irregular migration, unaccompanied minors, Covid-19, border policy

INTRODUCTION

The southern border of the United States is not only the geographic and political frontier between two independent states, but it is also the metaphorical line between dreams and reality. It has been known for years to be the busiest of the American borders. Every day, hundreds of foreigners arrive at ports of entry and their cases are processed by border and immigration officials. Numbers are even higher when we also count illegal crossings. Despite the ongoing process of the militarization of the border, including the installation of high technology devices and a growing number of employed officers, the security measures taken to prevent massive flows work only partially. Pew Research Center reported that migrant encounters at the US-Mexico border reached their highest level on record in 2021.¹ The constant flow of both legal and unauthorized migrants has been a focal point in public debates. It is a common belief that American immigration policy is outdated and does not adequately relate to many contemporary issues, especially since new challenges that had never been present in American immigration before appear and demand immediate action. Temporary measures taken by the government do not necessarily solve long-term problems. The necessity of proposing a comprehensive immigration reform was obvious for all American presidents in the 21st century; nevertheless, US Congress could not overcome a legislative limbo due to the lack of compromise between the two dominant parties. President George W. Bush made a significant step by including immigration policy on the security agenda and the responsibility for immigration was shifted from the Department of Justice to the newly created Department of Homeland Security.² This decision aimed to strengthen control over borders and improve enforcement of immigration law within the USA. Since then, the process of securitization of immigration has gained more attention in public debates.

On 28 January 2008, during his State of the Union address, President Bush explained that *America's broken immigration system is a major problem that the American people expect their elected leaders to solve.*³ The border, especially its southern part, was a significant issue on Bush's political agenda. The reason was a large number of people of Latin American origin living there who were eligible to vote. Despite the fact that Latino voters turnout rates were traditionally low, during his presidential campaign for the 2000 election, he made several in-roads into the Latinx population to win its support. The long-standing anti-immigration policy of the Republican Party traditionally

¹ J. Gramlich, A. Scheller, "What's Happening at the U.S.-Mexico Border in 7 Charts," Pew Research Center, 9 November 2021, at <https://pewrsr.ch/3yyuyz0> – 10 July 2022.

² The Homeland Security Act of 2002 introduced a new structure of immigration agencies. It disbanded Immigration and Naturalization Service (INS) and its responsibilities were given to three new units: the U.S. Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP).

³ *Comprehensive Immigration Reform*, The White House, President George W. Bush, at <https://bit.ly/3OkfhrA> – 18 July 2022.

predisposed Latinx to elect democratic candidates. Historically, Hispanic Republicans constituted a stable, albeit not very significant, group of voters of Latin American origin. Mexican-Americans, who constituted the largest Latin American minority group living in the USA, usually supported Democrats. With millions of Mexican-American voters living in the states neighboring with Mexico, Bush put much effort, as a candidate, to prove his strong connections to this country and its citizens. He was giving speeches in Spanish and often stressed that his brother's wife (Jeb Bush, then Florida's governor) was a Mexican-American. Therefore, among many transnational border issues between Mexico and the United States, Bush prioritized immigration (both legal and illegal) with special attention paid to a guest worker program that would allow more Mexicans to work in the United States and establish a path to regularize the immigration status for about three million of undocumented Mexican workers present in the country then.⁴ Bush did succeed in attracting Latinx voters (he managed to garner 40% and 44% of the Latino vote in 2000 and 2004, respectively, in comparison to up to 30% traditionally available to other Republican candidates before and after G.W. Bush's administration), but he failed to introduce the vital comprehensive immigration reform.⁵

The failure was inherited by George W. Bush's successor in the White House, Barack Obama. Despite the support of the so-called 'Gang of 8,' the bipartisan group of leading senators, the overhaul of the nation's immigration laws was not carried out. Obama prioritized comprehensive immigration reform in both campaigns. He failed in his first term but still believed that the second term would give him a chance to achieve the goal. To gain more support for comprehensive immigration reform, he tried to overcome trust issues among immigration restrictionists and show that his administration was not going to accept any illegal immigration behavior. His commitment to the enforcement of the immigration law was demonstrated by the record number of deportations of unauthorized persons who had committed crimes.⁶

American society has always been polarized on immigration issues, especially illegal immigration. Only the case of the so-called Dreamers gained wide public support despite their unauthorized immigration status.⁷ Unfortunately, Congress did not share the same feelings about Dreamers. The DREAM act (Development, Relief and Education for Alien Minors), a nonpartisan piece of legislation first introduced

⁴ R. Gutiérrez, "George W. Bush and Mexican Immigration Policy," *Revue Française d'Etudes Américaines*, vol. 113, no. 3 (2007), pp. 70-76, at <https://bit.ly/3PeAxQM> – 18 July 2022.

⁵ G. Cadava, *The Hispanic Republican: The Shaping of an American Political Identity, from Nixon to Trump*, New York 2020, p. 10.

⁶ T. Golash-Boza, "President Obama's Legacy as 'Deporter in Chief,'" in P. Kretsedemas, D.C. Brotherton (eds), *Immigration Policy in the Age of Punishment: Detention, Deportation, and Border Control*, New York 2018, pp. 37-56.

⁷ The 'dreamer' word was born back in 2001 when the DREAM Act was introduced. It allowed undocumented immigrants to stay in the country legally as long as they met certain requirements. In order to be considered a Dreamer, an immigrant must have arrived in the US before 2007 and must have been younger than 31 back in 2012, when DACA was created. The immigrant must also have gone to high school or joined the military. Besides, the immigrant must have not had any sort of criminal history.

to the US Senate in 2001 by Senators Dick Durbin (D-Illinois) and Orrin Hatch (R-Utah), was unsuccessfully reintroduced by Obama's administration several times between 2009 and 2012. Eventually, President Obama's 2012 executive action, called the Deferred Action for Childhood Arrivals program, temporarily regularized the situation of foreigners brought illegally to the United States as minors who met certain criteria.⁸ The Moore Information Group survey conducted in May 2020 showed that 66% of voters indicated support for DACA, and after providing additional background on the program, the number increased to 71%.⁹ Support for Dreamers did not decrease in American society despite President Trump's significant efforts to end the program.

Although many of Obama's immigration actions were dedicated to in-country issues, the Mexican-American border became a serious challenge due to the 2015 outbreak of the Cuban refugee crisis and the sharp increase in the number of unaccompanied minors and Latin American families. Due to increasing crime, violence, and food insecurity, teenagers from Central America took a risk of a long and perilous journey to the US. They were often smuggled by guides, called 'coyotes,' hired by minor's parents who were already residing in the US. *The Washington Post* reported that by the end of 2014, 137,000 children and families had arrived, twice as many as the year before, while the number of unaccompanied children was nearly three and a half times greater than in 2012.¹⁰ President Obama was trying to secure the border and deter migrant flows by delivering \$750 million in financial aid to Northern Triangle Countries and allowing in-country asylum proceedings. The goal was to increase minors security and well-being by processing their immigration cases for a humanitarian protection at home and offer a legal, safe alternative to undertaking dangerous, unauthorized journeys to the US. Despite the efforts taken by the Obama administration, the problem of an increasing number of unaccompanied minors apprehended at the border did not disappear and returned during Trump's presidency.

The phenomenon of the US-Mexican border lies in its challenging nature. There have always been issues that the US authorities had to face, although, they differed in their character or scope. One of Obama's administration challenges came with a change in American policy toward Cuba. The image of Barack Obama and Raul Castro shaking their hands and declaring 'normalization' in Cuban American policy became an alarming signal for Cuban citizens that the wet foot, dry foot policy would soon end.¹¹ They assumed that this decision would significantly limit their already limited chances

⁸ J.D. Skrentny, J.L. López, "Obama's Immigration Reform: The Triumph of Executive Action," *Indiana Journal of Law and Social Equality*, vol. 2, no. 1 (2013), pp. 62-79, at <https://bit.ly/3PfrQpB> – 18 July 2022.

⁹ "New Polling Shows Majority of Voters Continue to Support DACA," FWD.us, at <https://bit.ly/3yO7jBj> – 18 July 2022.

¹⁰ D. Nakamura, "Trump Has the Same Central American Migrant Problem as Obama," *The Washington Post*, 5 April 2018, at <https://wapo.st/3zdT7Tt> – 18 July 2022.

¹¹ M.J. Kelly, E. Moreno, R.C. Witmer (eds), *The Cuba-U.S. Bilateral Relationship: New Pathways and Policy Choices*, New York 2019.

to emigrate to the US.¹² Introduced in the 1990s, the idea of preferential treatment of Cuban refugees lasted for two decades. According to it, Cuban citizens intercepted at sea would be returned to Cuba, but those who could reach American soil were offered refugee status. Despite the long history of rafters who escaped the island through the Florida Straits, in 2015 Cuban citizens organized their journey through Central America. It meant that when they finally arrived at the US-Mexican border, all of them were entitled to claim the benefits of the dry foot policy. The increasing number of Cuban refugees crossing without authorization the borders of Central American countries led to an immigration crisis in the region. Finally, the decision to end the wet foot, dry foot policy announced by Obama in his last days at the White House in 2017 stemmed the flow and solved the problem of increasing number of Cuban refugees.¹³

As discussed in the introductory remarks above, immigration policy in the United States is an area of special concern. A plethora of issues have been derived from the migration process that influences international relations, affect society, and challenge authorities. In addition, these processes are constantly changing, which explains the need to update and evaluate the research. The present article pays attention to a very special time that affected American immigration policy and the US-Mexican border in particular. During the George W. Bush administration, the turbulent time was based on the 9/11 attacks and their aftermath. The war on terror became a priority and immigration policy was part of it. Even though the 11 September attacks deeply hurt American society and proved that there were weak links in the immigration system, the US Congress remained divided and no major legislation was passed at that time. Neither did the American immigration law change significantly after Barack Obama took office. One of the biggest issues he had to deal with was the increasing number of unaccompanied minors and family units encountered at the US-Mexican border. However, the most turbulent times for immigration were still to come. Donald Trump entered the scene as a hurricane, destroying and deconstructing everything he encountered. The southern border played an important role in his plan. Finally, the Covid-19 pandemic significantly influenced the migration process throughout the world. These changes and challenges became the focal point of the article.

Since the area of American immigration policy and law is 'a never-ending story,' the analysis presented here has been limited to the US-Mexico border issues. The main objective of the work is to analyze and explain how Donald Trump's policy and the Covid-19 pandemic influenced irregular and regular flows of immigrants. How has this turbulent time affected already existing problems and has a worldwide health crisis become an unprecedented challenge for the Biden administration? The article also investigates the effects of Trump's border policy. The narrative of the article has also been limited to issues that have raised controversies and stimulated public debate about the urgent need for immigration reform.

¹² It should be noted that before the introduction of the wet foot/dry foot policy, all Cubans intercepted at the U.S. territorial waters could stay in the U.S. and apply for legal residency.

¹³ A. Neal, *The Oral Presidency of Barack Obama*, Lanham 2018, p. 129.

THE WALL

The concept of a wall, first of all, became a matter of domestic political tension between Republicans and Democrats in Congress, and an international issue between Mexico and the United States rather than a migration issue itself. The idea of building a wall on the border was born decades ago, when in 1993, President Bill Clinton began the installation of border fences to restrict the movement of unlawful immigrants and drugs. Therefore, Donald Trump was not the original inventor of the construction, although his name will probably be forever associated with this project. The expansion of the existing wall was a critical part of his campaign and presidential policy. Declaring that Mexico was going to pay for it, he built tension and gained no support for the idea from the southern neighbor. Due to the President's opinion on Mexican immigrants, whom he called *criminals and rapists*,¹⁴ there was no space for any cooperation on migration issues between Enrique Peña Nieto (the then Mexican president) and Trump. The border wall became a priority on the presidential agenda, despite the cost it would entail. He argued that *the recent surge of illegal immigration at the southern border with Mexico has placed a significant strain on Federal resources and overwhelmed agencies charged with border security and immigration enforcement, as well as the local communities into which many of the aliens are placed*.¹⁵ Therefore, on 25 January 2017, just a few days after taking office, Trump signed Executive Order 13767, titled Border Security and Immigration Enforcement Improvements, which formally launched a construction along the US-Mexican border using existing federal funds. His dedication to the idea was criticized in many public debates, and since then the construction was referred to as 'the Trump wall.' The high cost of the enterprise compared to its benefits was pointed out by Democrats and some Republicans in Congress. After a political struggle that led to a government shutdown for 35 days and declaring a state of national emergency at the southern border of the United States, the President prevailed and the construction began. Finally, in May 2021, Trump's successor Joe Biden canceled all border projects that were being paid for with funds originally intended for the budget of the US Department of Defense.¹⁶

In an international context, the Wall did not improve relations between Mexico and the United States. When Mexican authorities declared that the country would not pay for the construction, Trump assured them that 'there will be a payment; it will be in a form, perhaps a complicated form.'¹⁷ He announced several ideas that would, at least partially,

¹⁴ T.M. Gill, *The Future of U.S. Empire in the Americas: The Trump Administration and Beyond*, Lanham 2020, p. n/a.

¹⁵ *Executive Order: Border Security and Immigration Enforcement Improvements*, The White House Archives, 25 January 2017, at <https://bit.ly/3OqSn1S> – 25 July 2022.

¹⁶ T.S. James (ed.), *The Trump Administration: The President's Legacy Within and Beyond America*, Abingdon 2022, p. 108.

¹⁷ N.D. Maccaskill, "Trump: Mexico Border Wall Construction to Begin 'in Months,'" *Politico*, 25 January 2017, at <https://politi.co/3SBAqQH> – 25 July 2022.

charge these costs to Mexico, like increasing Mexican import tariffs by 20%, blocking remittances, and/or canceling visas unless Mexico makes a one-time payment of \$5 billion to \$10 billion to the US. All received negative responses from members of Congress, economists, and think tanks. Finally, in a response to the disrespectful narration of his northern neighbor, President Nieto canceled the then-planned meeting with Trump.¹⁸

When Biden took office in 2021, border encounters increased significantly.¹⁹ The increasing problem of immigrants attempting to cross the border made him meet with Mexican president Andres Manuel Lopez Obrador at the White House in July 2022. The outcome of the meeting was surprising. Mexico decided to contribute \$1.5 billion to the infrastructure on the southern border to improve the processing of migrant cases and migrants' security over the next two years.²⁰ Despite President Biden's diplomatic approach to Mexico and achieving what the previous administration could not acquire, the relationship between the two neighbors has been complex. *Politico* reminded that Lopez Obrador seemed to have a positive opinion of Trump and called him a friend. He was also one of the last foreign leaders to congratulate Biden after the 2020 election.²¹ Despite political sympathies and antipathies between presidents, migration issues have become a hemispheric challenge and the US-Mexican border has played a significant role in it. It was evident for Lopez Obrador that a successful campaign against human and drug smuggling and irregular migration can be achieved through a dialog and cooperation with the northern neighbor.

According to the Pew Research Center, President Trump's immigration policy and in particular the idea of expanding the Wall, divide Americans. The data also confirmed that the President's immigration policy priorities did not fully correspond to the society's expectations. The most supported issue that Americans were waiting for was the introduction of stricter policies preventing foreigners from overstaying their visas. The construction of the Wall on the southern border was 'somewhat' or 'very' important for 39 percent of respondents. Among Democrats and Democratic leaners, 16 percent supported the idea compared to 67 percent of Republicans and their leaners.²²

In summary, it should also be noted that the southern border policy affected not only Mexican and American societies but also cooperation between the legislative and

¹⁸ "Mexican President Peña Nieto Cancels Trip to Washington," *Chicago Tribune*, 26 January 2017, at <https://bit.ly/3BlNyEe> – 25 July 2022.

¹⁹ According to DHS definition, the category "encounter" refers to inadmissible cases, expulsion cases or/and apprehensions of immigrants reported by U.S. Border Patrol and/or Office of Field Operations conducted under the Title 8 and/or the Title 42. *Reporting Terminology and Definitions*, Department of Homeland Security, at <https://bit.ly/3ChUa6H> – 17 July 2022.

²⁰ A. Shaw, B. Singman, "Mexico to Contribute \$1.5 Billion for Infrastructure at US Southern Border," Fox News, 12 July 2022, at <https://fxn.ws/3zCvGnd>; Z. Kanno-Youngs, "After Summit Snub, Biden Meets with Mexican President," *The New York Times*, 12 July 2022, at <https://nyti.ms/3PHel1T> – 25 July 2022.

²¹ S. Rodriguez, "This Isn't the Trump-Era of U.S.-Mexico Relations. In Fact, It's Wildly Different," *Politico*, 13 July 2022, at <https://politi.co/3JdgUX3> – 25 July 2022.

²² R. Suls, "Less than Half the Public Views Border Wall as an Important Goal for U.S. Immigration Policy," Pew Research Center, 6 January 2017, at <https://pewrsr.ch/3J6Nx90> – 25 July 2022.

executive branches of the American government as well as international relations. The Trump Wall became an issue between the US Congress and President and it brought tension that resulted in government shutdown. The planned expansion of the existing infrastructure was also criticized by European politicians and media. Many activists noted that the Wall is not only a politically defined frontier or territorial barrier, but also significantly influences the environment. These constructions intrude into the natural migration routes of animals and change their habits leading to serious environmental issues.²³ Noteworthy, these arguments are not only used to condemn the construction of the wall on the US-Mexico border. The issue was also debated when Poland started building the wall on the Belarusian border in 2022 after experiencing a serious refugee problem a year earlier.²⁴

In addition, some controversies that accompanied the Trump Wall expansion raised legal concerns and were questioned in courts. Accusations of corruption and speculation undermined trust in Trump's administration. They were connected with a private organization called We Build the Wall, where one of the leaders was Steve Bannon, the President's chief political strategist. He was arrested and charged with fraud in August 2020, but Trump pardoned Bannon in his final hours as President in 2020. The same year, the media reported allegations of illegal activity performed by employed contractors. They were smuggling and hiring unauthorized Mexican workers, presenting false claims for payment, and overcharging for services.²⁵

The image of turbulence caused by the Trump wall would not be complete without mentioning the tension that increased between the federal and state governments. Since Trump took office and launched an anti-immigration policy, mutual relations between local and national governments were tense. The so-called sanctuary cities (or sanctuary states) did not agree to enforce anti-immigration regulations introduced by presidential executive orders. Trump used the strategy of threatening (for example, by cutting off federal grants and financial support for law enforcement) and blaming city governments for increasing immigration-related crimes to make them more cooperative. The authorities of San Francisco often criticized federal immigration policy. According to city officials, turning nurses, doctors, firefighters or police officers into 'deportation forces' did not make communities safer. Therefore, San Francisco sued the Trump administration over

²³ The Department of Homeland Security waived some already existing laws concerning environmental regulations in order to complete the construction. For example, the waiver allowed to bypass the Migratory Bird Conservation Act, National Environmental Policy Act, Clean Water Act, Clean Air Act, Endangered Species Act, and many others (including laws protecting archeological resources or Native Americans' heritage). Cf. M. Hand, "Homeland Security Waives Environmental Review for California Border Project," ThinkProgress, 12 September 2017, at <https://bit.ly/3zg1cGf> – 25 July 2022.

²⁴ D. Main, *Poland's Border Wall to Cut through Europe's Last Old-Growth Forest*, *National Geographic*, 31 January 2022, at <https://on.natgeo.com/3zNixYJ>; L. Tondo, "Poland Starts Building Wall through Protected Forest at Belarus Border," *The Guardian*, 27 January 2022, at <https://bit.ly/3cIoLQm> – 25 July 2022.

²⁵ *United States of America ex. rel. John Doe-1 and John Doe-2 v. Sullivan Land Services Co. and Ultimate Concrete from El Paso, LLC*, Federal Register, 5 February 2020, at <https://bit.ly/3cAEAsb> – 28 July 2022.

the policy of withholding federal law enforcement grants from sanctuary cities and won. The Supreme Court of the United States agreed in 2021 that San Francisco's sanctuary policies comply with federal law.²⁶ California and nineteen other states also sued (*Sierra Club v. Trump*) the Trump administration over its decision to build the wall even without the approval of the US Congress. Since Donald Trump was replaced by Joe Biden, who revoked some of his predecessor's decisions on wall expansion, the Supreme Court decided to postpone its ruling and sent the case back to the circuit court to determine whether further litigation was still required.²⁷

THE 'REMAIN IN MEXICO' PROGRAM

The US-Mexican border issues, especially during the Trump presidency, were often discussed in courts. After legal battles in circuit and appellate courts, some of these litigations were finally settled by the Supreme Court of the United States.²⁸ The American immigration policy between 2017 and 2021 was xenophobic, the number of anti-immigration rules increased significantly, and immigration law enforcement became a priority on the President's agenda. Not only was the society polarized on immigration issues, but also federal and some local governments were unable to reach a compromise on immigration policy. Although it is the exclusive power of Congress to propose and implement adequate solutions to protect the best interest of citizens affected by the migration of foreigners, local governments are the first subject that are influenced by the outcomes of federal immigration policy in most cases.

The immigration policy implemented at the US-Mexican border has always been complex. The reforms of the Trump administration to solve immigration problems usually exacerbated the situation. They were driven by the assumption that only the stemming of the flow of immigrants would put an end to the problem. In 2018, the Department of Justice decided to deny protection to victims of gang and gender-related violence who claimed asylum once they arrived at the US ports of entry. With this

²⁶ *City and County of San Francisco v. William P. Barr*, U.S. District Court for the Northern District of California Case No. 3:17-cv-04642, filed Aug. 11, 2017, and *City and County of San Francisco v. William P. Barr*, U.S. District Court for the Northern District of California Case No. 3:18-cv-05146-JCS, filed Aug. 22, 2018, in *Final Victory for San Francisco in Sanctuary City Case against Trump Administration*, City Attorney of San Francisco, 4, March 2021, at <https://bit.ly/3PJUqoz> – 31 July 2022. It is worth noting that immigration policy of the Trump's administration often failed in courts. California, one of the most immigrant friendly jurisdictions at the times of Trump, also won the so-called 'public charge rule' case that sought to impose a wealth test on foreigners entering the country or applying for legal permanent residency. Cf. *Final Victory for San Francisco and Santa Clara County in Challenge to Trump Administration's 'Public Charge' Rule*, City Attorney of San Francisco, 9 March 2021, at <https://bit.ly/3FHAK09> – 31 July 2022.

²⁷ *Sierra Club v. Trump*, Constitutional Accountability Center, 2 May 2019, at <https://bit.ly/3BtNHwB> – 1 August 2022.

²⁸ S. Sivaprasad Wadhia, "Immigration Litigation in the Time of Trump," *UC Davis Law Review Online*, vol. 53 (2019), pp. 121-139, at <https://bit.ly/3rq82oV> – 27 September 2022.

decision, asylum seekers, mostly from the Northern Triangle countries, were returned from the border and expelled to Mexico. Their number was constantly increasing, migrant shelters quickly became overpopulated, and residents of many Mexican border towns reported insecurity and growing crime rates. Furthermore, in November 2018, the American President issued a new proclamation stating that any migrant encountered outside a lawful port of entry would be denied asylum. Similar to many other decisions of the Trump administration, this one was also reviewed by courts. In both cases, federal judges opposed new regulations. Emmet G. Sullivan from the District Court for the District of Columbia ruled that limiting asylum claims for the victims of violence was *inconsistent with the intent of Congress as articulated in the INA. And because it is the will of Congress – not the whims of the Executive – that determines the standard for expedited removal.*²⁹ Judge Jon S. Tigar of the Northern California District Court issued an injunction banning the new asylum policy, and this ruling was upheld by the US Supreme Court on December 21, 2018.

The failure of a new asylum policy caused by judicial rulings did not discourage the federal administration. In December 2018, the Department of Homeland Security announced the launch of a new program known as 'Remain in Mexico' (the official name 'Migrant Protection Protocols' is less known). The colloquial name reflected the main idea of that plan. To protect the border already overwhelmed by numerous groups of immigrants arriving every day and claiming asylum, the DHS allowed and recommended returning them to Mexico. They were supposed to wait for their status hearings outside the United States. Soon, at the Mexican-American border, a backlog was formed and the situation worsened over time. Immigration judges were overloaded with cases, immigrants (mostly Latin Americans) were stranded in temporary camps awaiting their hearings, residents of Mexican border communities protested and demonstrated their insecurity in the face of growing numbers of migrants in the streets of their towns.

Immigration procedures in the USA are known for their time-consuming character. Not only did the judges need time to establish 'the credible fear' grounds, but the border agents and officers needed to proceed with the cases before sending them to the courts. After the first year, data showed that among the asylum claimant migrant cases, only a small part have received a positive decision, about 0.1% of all completed cases. It became clear that the Migrant Protection Protocols did not protect migrants at all. The difference was more visible while studying data released by the Executive Office for Immigration Review, which said that about 20% of people were granted asylum outside of the 'Remain in Mexico' program.³⁰

Paradoxically, when Biden took office and announced his goal of liberalizing the restrictionism of the Trump's immigration policy, it did not ease the situation. Although Trump was not able to cooperate with liberal border states like California, Biden had a problem with more conservative ones. The Texas and Arizona authorities blamed

²⁹ *Opinion, Grace, et al. v. Matthew G. Whitaker*, United States District Court for the District of Columbia, 19 December 2018, at <https://bit.ly/3OTbVMH> – 1 August 2022.

³⁰ G. Solis, "Remain in Mexico Has a 0.1 Percent Asylum Grant Rate," *The San Diego Union-Tribune*, 15 December 2019, at <https://bit.ly/3P0eSee> – 3 August 2022.

the President for the increase in the number of migrants. They argued that an ongoing surge of Cuban, Venezuelan, Central American, and other Latin American migrants was the effect of Biden's plans to end the Trump-era program 'Remain in Mexico' and Title 42 regulation (see below).³¹ In April 2022, Texas Governor Greg Abbott (R) accused the President Biden of being too lax on border policy and added that the state's response aimed to show 'what Texans have been dealing with every single day, as our communities are overrun and overwhelmed by thousands of illegal immigrants thanks to Biden's open border policies.'³² Texas (with Arizona following shortly afterwards) launched the program of sending buses with unauthorized immigrants to Washington, DC. The data says that since mid-May more than 150 buses have transported about 6000 migrants from Texas and Arizona border communities to Washington, DC and New York.³³ To respond to what Muriel Bowser, the mayor of Washington, DC, named a humanitarian crisis, she called for a help of the national government. As immigration policy is a federal issue, Bowser asked for the assistance of 150 DC National Guard members. The mayor stressed that they are needed to transport immigrants to a temporary processing center and therefore they should not be armed as they will not be participating in domestic surveillance or law enforcement activities.³⁴

UNACCOMPANIED MINORS

The 2018 significantly challenged President Trump's border policy. The US-Mexican border became the focal point of his policy mainly due to a domestic³⁵ and international pressure to end the policy of families separations initiated in 2017 and a large migrant caravan that formed in Honduras. In October, about 200 migrants gathered in San Pedro Sula in Honduras, but the size of the group increased with a snowball effect. Finally, about 10,000 people arrived at the border attempting to enter the USA from Mexico. They came there driven out by the lack of security, violence caused by gangs, and the government inability to protect its citizens.

Among different issues that appeared with a massive inflow of Latin American migrants, border policy had to deal with another specific crisis: unaccompanied

³¹ A. Olivo, "D.C. Mayor Asks for National Guard to Help with Texas, Arizona Migrants," *The Washington Post*, 28 July 2022, at <https://wapo.st/3vw5zf4> – 1 August 2022.

³² C. Mondeaux, A. Giaritelli, "Mayor Browser Requests Activation of DC National Guard over Migrant Buses," *The Washington Examiner*, 28 July 2022, at [on-line:] <https://washex.am/3POpUo1> – 1 August 2022.

³³ Ibid.

³⁴ B. Bernstein, "D.C. Mayor Requests National Guard to Respond to Buses of Illegal Immigrants," *The National Review*, 28 July 2022, at <https://bit.ly/3ONjWCM> – 1 August 2022.

³⁵ The District Judge for the Southern District of California, Dana Sabraw, ordered that all children be reunited with their parents within thirty days. Cf. *Ms. L.; et al., v. U.S. Immigration and Customs Enforcement ("ICE"); et al.*, U.S. District Court, Southern District of California, 26 June 2018, at <https://politi.co/2tx3Xlv> – 4 August 2022.

minors.³⁶ In 2019, the Border Patrol reported record average numbers of about 370 unaccompanied children apprehended a day. Two years later, this number increased to 600 a day.³⁷ Violence and rampant poverty, worsened by the pandemic and devastating hurricanes, have driven young people from Central America, with Guatemalans, Hondurans, and Salvadorans accounting for roughly two-thirds of apprehended unaccompanied children at the Mexican-American border. The rest came mostly from Mexico (73%), where the homicide rate was near record levels amid a long-standing war against drug cartels. At the border, their presence raised concerns and doubts about whether American immigration policy violated their rights and adequately protected the best interests of the child. Doubts were born when the number of detained minors exceeded the capacity of centers for unaccompanied children. The lack of beds available in children's shelters forced immigration officers to place minors in facilities that were not suitable for them. Not only did detention facilities resemble prison environments (barbed wire fences, armed officers), but the media reported that minors were treated with no respect to their rights (lights turned on all night, limited access to bathrooms and toilets, insufficient medical care, placing younger kids with teenagers).³⁸

There are several agencies responsible for UACs and the problem of overcrowding concerns mainly border detention centers managed by Customs and Border Protection (CBP).³⁹ The Department of Health and Human Services (HHS) reported in 2019 that the highest average occupancy of beds in shelters supervised by the Office for Refugee Resettlement was 92%. Although, two years later the number of minors increased to an unprecedented number of 122,000 (FY 2021), average occupancy rate did not exceed 76%.⁴⁰ Sudden growth was caused by President Biden's decision to revoke the expelling of unaccompanied minors under Title 42 regulation.⁴¹ Also health measures taken by the federal and state governments due to the Covid-19 pandemic significantly limited

³⁶ Unaccompanied Alien Minor (UAM) or Unaccompanied Alien Children (UAC) or Unaccompanied Children (UC) refer to children in immigration custody who are under 18, have no lawful immigration status in the USA, and no parent or legal guardian resides in the USA who can provide care.

³⁷ G. Sands, P. LeBlanc, "Nearly Twice as Many Unaccompanied Migrant Children Apprehended Daily at US-Mexico Border as at 2019 Peak," CNN Politics, 24 March 2021, at <https://cnn.it/3QhMntG> – 3 August 2022.

³⁸ "Child Migrants: First Photos Emerge of Biden-Era Detention Centres," BBC News, 23 March 2021, at <https://bbc.in/3EbLPCF>; E. Sullivan, Z. Kanno-Youngs, L. Broadwater, "Overcrowded Border Jails Give Way to Packed Migrant Child Shelters," *The New York Times*, 7 May 2021, at <https://nyti.ms/3rrU5H2> – 29 September 2022.

³⁹ Customs and Border Protection (CBP) apprehends, processes, and initially detains UAC encountered along US borders. DHS's Immigration and Customs Enforcement (ICE) transports them from CBP to Office of Refugee Resettlement (ORR) custody. ORR, which is the part of the Department of Health and Human Services, shelters and places UAC with sponsors, usually family members, as they await an immigration hearing.

⁴⁰ "Latest UC Data – FY2019," Department of Health and Human Services, at <https://bit.ly/3SmSxdO>; "Latest UC Data – FY2021," Department of Health and Human Services, at <https://bit.ly/3vDY0TF> – 3 August 2022.

⁴¹ C. Montoya-Galvez, "U.S. Shelters Received a Record 122,000 Unaccompanied Migrant Children in 2021," CBSNews, 23 December 2021, at <https://cbsn.ws/3brxZQP>; C. Langford, "Biden Ordered to

available beds in shelters. Activists and politicians were worried not only with the capacity of the border detention centers, but also the length of time that the minors spent in HHS custody.⁴² Backlogs in the processing of immigration cases resulted in prolonged stays in these facilities, which significantly questioned the value of existing rules.

The problem of UACs mistreatment was soon politicized. Critics of Donald Trump's policy organized inspections in CBP detention centers and invited the media to report the situation. They often underlined that the President's decision to separate children at the border worsened the problem of overcrowding because numerous children who did migrate with proper custody were considered unaccompanied by border officers. The problem arose as an outcome of 'the zero-tolerance policy' announced in April 2018. According to the new rules, any immigrant encountered outside the lawful ports of entry who attempted to cross the border was to be detained and criminally prosecuted. For family units, this meant the separation of adult migrants from accompanying children and classifying minors as unaccompanied. While their parents or legal guardians awaited deportation, minors were placed under the supervision of the HHS.

The outbreak of the Covid-19 pandemic significantly increased turbulence on the Mexican-American border. The Title 42 regulation authorized the Center for Disease Control and Prevention to prohibit entry into the US persons it indicated as potentially increasing the danger and spread of a communicable disease. Migrants were these cases was that they were not tested for Covid-19, although they were expelled on the grounds of potentially spreading the disease. Originally, Title 42 was first introduced in 1944 as part of the Public Health Service Act. It allowed the temporary suspension of the *introduction of persons into the United States when the [CDC] Director determines that the existence of a communicable disease in a foreign country or place creates a danger of the introduction of such disease into the United States*.⁴³ Since its inception, the regulation has never been used as an immigration authority, but the Trump administration changed it. Title 42 was used to immediately expel those with no valid visas or apprehended between the US ports of entry. Pew Research Center reported that during the first month when Title 42 went into effect, about 61% of all migrants were expelled under the rule.⁴⁴

The policy of expulsions with no exceptional treatment of minors or asylum seekers has been criticized by advocates and some elected officials. Finally, in November 2020,

Stop Exempting Migrant Youth from Expulsion Policy," Courthouse News Service, 4 March 2022, at <https://bit.ly/3vzJcFG> – 3 August 2022.

⁴² It is worth recalling that detention procedures for unaccompanied children in the USA were the subject of litigation that started in the 1980s. The so-called Flores Settlement Agreement of 1997 (and its subsequent changes, e.g., *Flores v. Lynch*, 2016) set immigration detention standards for children. One of the rules said that minors could not be detained for more than three weeks before being released to the custody of a parent or legal guardian.

⁴³ J. Aguilera, *Biden Is Expelling Migrants on COVID-19 Grounds, but Health Experts Say That's All Wrong*, *Time*, 12 October 2021, at <https://bit.ly/3PZcxRX> – 4 August 2022.

⁴⁴ J. Gramlich, "Key Facts about Title 42, the Pandemic Policy that Has Reshaped Immigration Enforcement at U.S.-Mexico Border," Pew Research Center, 27 April 2022, at <https://pewrsr.ch/3JY997J> – 16 August 2022.

a federal judge halted unaccompanied minors' expulsions based on Title 42.⁴⁵ In February 2021, Joe Biden formally rescinded UACs expulsions under Title 42, but CBP still used Title 8 of the US Code to return minors apprehended at the border. Title 8 considers inadmissible any person *who is determined (under regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance*.⁴⁶ The Biden administration planned to end the use of Title 42 by May 23, 2022, however, a federal judge, Judge Robert Summerhays of the US District Court for the Western District of Louisiana issued an injunction preventing the termination of the regulation until the final ruling in the case.⁴⁷

CONCLUSIONS

A Gallup poll released in March 2022 shows that Americans are concerned about unauthorized immigration. In addition, the number of people who express worries is near a two-decade high.⁴⁸ These data relate to the assumption that border issues and, particularly, what happens at the US-Mexican border, are an important part of American politics. Controversies connected with border regulations enforcement influence actions of the authorities and social activism, strengthen political divisions, and raise heated public debates on federal immigration policy. The article highlighted selected issues but it should be noted that a plethora of others have not been discussed here. The US-Mexican border is important in border, economic, political, and cultural studies. Border policy became crucial for Donald Trump's immigration policy and a challenge for Joe Biden's administration. There are no easy answers to the problems that persist on the border. The polarization of public opinion on immigration and the lack of compromise in Congress effectively blocked any attempt to enact a comprehensive immigration reform. As a consequence, this triggered a growing activity of executive power in immigration policy. Executive orders became a handy tool to manage the situation but it was not solid enough to prevent chaos, as we saw during the Trump administration.

This study may be beneficial to understanding the complexity of border issues and the importance of the US-Mexican border in American politics. In May 2022, the number of unauthorized crossings again broke records.⁴⁹ However, this time we observed the surge of nationalities that had been rarely found in the southwest border region,

⁴⁵ *Increasing Numbers of Unaccompanied Alien Children at the Southwest Border*, Congressional Research Service, 5 August 2021, at <https://bit.ly/3PmSegd> – 16 August 2022.

⁴⁶ Title 8 – ALIENS AND NATIONALITY, Sec. 1182 – Inadmissible aliens, in 8 U.S.C. United States Code, 2011 Edition, U.S. Government Publishing Office, at <https://bit.ly/3c0sGYL> – 16 August 2022.

⁴⁷ Y. Liu, B. Vines, "Federal Judge Orders Biden Administration to Continue Title 42," *Lawfare*, 27 June 2022, at <https://bit.ly/3c3OyLX> – 16 August 2022.

⁴⁸ A. Barros, "Poll Finds More Americans Highly Concerned About Illegal Immigration," *VOANews*, 19 April 2022, at <https://bit.ly/3PqTP4P> – 16 August 2022.

⁴⁹ J. Ainsley, "Number of Migrants Crossing Border Hits Another Record, with Surges in Migration

like Indians, Turks, Romanians or Russians (many of these escaping from the war in Ukraine). The growing number of encounters on the US-Mexican border again attracts public attention. Biden has been criticized for his too liberal border policy and blamed for the ever larger numbers of migrant encounters. As discussed here, the Biden administration changed (or was trying to change) some regulations introduced by Trump, which was believed to trigger migration again.

Douglas S. Massey argues that *the border between Mexico and the United States [...] has become a symbolic boundary between the United States and a threatening world. It is not just a border but the border, and its enforcement has become a central means by which politicians signal their concern for citizens' safety and security in a hostile world.*⁵⁰ This narration significantly influenced Donald Trump's idea of the border policy. In this article, his presidency was described as a turbulent time. The chaos that he created in immigration policy was caused by his strong belief that migration was a threat to homeland security. This opinion was based on the assumption that the stream of immigrants included criminals, terrorists, and other 'bad guys' who could hurt American citizens. This is a popular belief, particularly among Republicans, who are also more likely to believe in the so-called 'replacement theory'.⁵¹ When the Covid-19 pandemic started, negative feelings toward foreigners deepened because immigrants were blamed for spreading the virus. The actions taken by then-president Trump aimed to protect American society and they were focused on the US-Mexican border that was *deployed as a symbolic line of defense against foreign threats.*⁵²

Trump's policy corresponded to the views of public opinion that held many misconceptions about immigrants. According to the most recent poll conducted by NPR/Ipsos, more than half of Americans say there is an 'invasion' at the southern border, and more than a third agree with the opinion that *native-born Americans are being systematically replaced by immigrants.*⁵³ A Gallup poll shows today that 38% of Americans expect immigration to decrease compared to 28% in 2020. Even among Democrats, the number of those concerned about immigration increased. In 2021, 12% opted for a decrease while a year later, the idea was supported by 17%.⁵⁴ However, still, seven in ten Americans believe that immigration is beneficial for the US. The polarization of opinion on immigration has been significantly influenced by a turbulent time at the southern border in recent years.

by Nationalities Once Rarely Seen," NBC News, 17 June 2022, at <https://nbcnews.to/3K6hSoI> – 16 August 2022.

⁵⁰ D.S. Massey, "The Mexico-U.S. Border in the American Imagination," *Proceedings of the American Philosophical Society*, vol. 160, no. 2 (2016), pp. 160-177, at <https://bit.ly/3ChOiuq> – 16 August 2022.

⁵¹ The replacement theory is the conspiracy theory that Jews or elites are deliberately replacing white Americans with immigrants and people of color.

⁵² Ibid.

⁵³ J. Rose, "A Majority of Americans See an 'Invasion' at the Southern Border, NPR Poll Finds," NPR, 18 August 2022, at <https://n.pr/3pCJqs4> – 19 August 2022.

⁵⁴ L. Saad, "U.S. Immigration Views Remain Mixed and Highly Partisan," Gallup, 8 August 2022, at <https://bit.ly/3dDPa2d> – 19 August 2022.

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