

Finding Political Openings in a Hostile Country

The immigrant rights movement emerged in the late 1980s and 1990s during a time of great hostility toward immigrants. By that time, anti-immigration advocates had become more sophisticated, national, and legitimate. They included well-respected politicians such as Pete Wilson, scholars such as Samuel Huntington, and sophisticated grassroots activists with national-level reach such as John Tanton and Roy Beck. Many like them argued that immigrants posed an economic problem to the country, but even more importantly, they argued that their inherent culture posed an existential threat to national institutions and identity. Anti-immigration advocates in the 1990s had not only been successful in pushing the idea of the immigrant as a central threat to the country, but they also succeeded in persuading President Clinton and the Republican-controlled Congress to pass laws that rolled back rights, sharply expanded border enforcement, and required local and state officials to deny basic services to immigrants. Most politicians embraced the anti-immigrant ferment and accepted sealing borders and deporting settled undocumented immigrants as common-sense policy responses to this so-called threat. The “war on terror” only augmented hostility and reinforced the “border first” and enforcement instincts of political officials.

Facing greater penalties, restrictions, and surveillance, all undocumented immigrants encountered considerable risks to come out in

public, protest, and make rights claims. How was it possible, in that environment, for undocumented youths to emerge and establish themselves as a prominent group in national immigration debates?

In a rather paradoxical way, the more the government pushed to seal the borders, the more ambiguities and cracks surfaced in the country's immigration system. Repressive measures ran up against liberal legal norms, economic needs of employers, the resource constraints of law enforcement agencies, and humanitarian and moral concerns of the public. A political landscape characterized by general hostility and many cracks provided narrow openings for undocumented groups like refugees, farmworkers, children, and young adults to make claims for basic rights and legalization. While the inhospitable environment reduced the possibilities for big and sweeping immigration reforms, small niche openings provided footholds to push for the legalization of some groups of immigrants. This resulted in an immigrant rights movement characterized by narrower mobilizations and campaigns (from El Salvadoran refugees in the 1990s to the DREAM campaign in the 2000s) aimed at pushing smaller measures that would benefit particular groups of immigrants.

The years 2006–7 marked an important shift in this political environment. After a decade of enacting one restrictive measure after another, the population of undocumented immigrants had grown dramatically and the cracks and contradictions in the country's immigration system had become unavoidable. In response to these problems and the political concerns of top Republican strategists, the Bush administration initiated an effort to pass reforms to fix what many believed to be a broken system. For many immigrant rights advocates, this new opportunity required them to rethink the past strategy of small mobilizations pushing piece-meal reforms. Even though these first efforts to pass comprehensive reform failed, immigrant rights advocates believed that they could pass comprehensive immigration bill in a friendlier Congress if the movement centralized its efforts, both organizationally and strategically, and focused exclusively on securing the 279 congressional votes needed to pass a bill (that is, 219 House votes and 60 Senate votes).⁴ The DREAM Act would be part of comprehensive reform and the DREAMers would serve as an important group in driving this collective effort forward. Thus, in response to the new openings of 2006, the leading immigrant

rights associations began a long effort to centralize and exert control over the many different parts of the movement, hoping that would allow them to focus their energies on pushing through a sweeping law that would benefit most undocumented immigrants once and for all.

The Hostile 1990s

Immigrants and immigrant rights advocates in the 1990s faced an extremely hostile discursive and political environment.⁵ Anti-immigrant forces had begun to produce compelling messages for why federal and state governments should strip immigrants of all rights (social, political, and civil) and forcefully remove them from the country. Immigrants were presented as a core threat to national stability, both economically and culturally. They were viewed as transforming large parts of urban and suburban landscapes into ethnic spaces, making Americans into foreigners in their own country. Immigrants were accused of competing for jobs and being welfare cheats. They drove down the wages of the American working class while bankrupting the welfare state. Anti-immigrant forces argued that even if some immigrants might have sympathetic stories, it would be impossible to grant them basic rights because that would open the “flood-gates” for more immigrants. In order to sustain the integrity of the nation in these global times, tight border restrictions should be put into place and no rights should be given to “illegals.” This overall argument was framed as a matter of life or death for the country.

Where earlier anti-immigrant mobilizations had largely been local and fragmented,⁶ in the late 1980s and early 1990s, anti-immigrant activists began to deliver their message on the national stage through the increased prominence of large and professional anti-immigration associations (for example, Federation for American Immigration Reform, Americans for Immigration Control, Numbers USA, U.S. Inc., among others).⁷ These national organizations served as important vehicles for presenting a strong and compelling anti-immigration message to the media and Congress. Meanwhile, a new generation of public intellectuals began to articulate a coherent discourse that painted immigrants, particularly Latino immigrants, as a *cultural* threat, not simply an economic one, to the nation.⁸ They claimed that Latinos failed to become a part of

the national fabric, and because of their inability to assimilate, these immigrants threatened the cultural coherence of the country. In 1996 Stanford historian David Kennedy wrote in an *Atlantic Monthly* essay, “They [Latinos] can challenge the existing cultural, political, legal, commercial, and educational systems to change fundamentally not only the language but also the very institutions in which they do business. . . . In the process, Americans can be pitched into a soul-searching redefinition of fundamental ideas such as the meaning of citizenship and national identity.”⁹ Latino immigrants were, in short, *irreducibly* different from “normal” Americans. This assertion was coupled with the argument that some Latinos sought to reconquer the American Southwest (*la Reconquista*), with prominent commentators like Patrick Buchanan arguing that Mexicans were a fifth column in the country. According to Leo Chavez, the immigrant threat discourse therefore rested on three major themes: Latinos as competitors for scarce resources; Latinos as irreducibly other; and Latinos as a political force seeking the territorial dissolution of the nation.

Framed in these ways, immigration was an existential problem that required some kind of action by local, state, and national government officials. Anti-immigrant advocates presented a zero-tolerance line, arguing that recognizing even the most basic right of the most innocent immigrant introduced major risks to the national community. When governments recognized the rights of seemingly sympathetic and innocent undocumented immigrants for limited services, immigrants would use this as a toehold to make additional rights claims. This would allow them to accumulate a range of additional rights and privileges in a slow and incremental way. For instance, once primary education was provided to seemingly innocent undocumented children as the result of the Supreme Court ruling *Plyler v. Doe* in 1982, the children graduated from high school and expected the right to attend higher education and work in the country.¹⁰ Granting these rights and privileges would eventually result in the de facto legalization of the population at best, a broad amnesty at worst. Additionally, anti-immigration advocates argued that recognizing basic rights served as a magnet for further rounds of immigration. Recognizing the rights of children born in the United States, who were called “anchor babies,” opened the door to legalizing the status of parents, grandparents,

aunts, uncles, and cousins through family reunification laws. Each immigrant, no matter how innocent or deserving, was conceived as a virus that threatened to spread and eventually drain life from the national host. The aim of anti-immigration advocates was therefore not only to enhance border protections and aggressively strip immigrants of all basic rights but also to apply severe restrictions equally to all undocumented groups. By building a strong and impenetrable wall through border security, enforcement, and the rollback of basic rights, undocumented immigrants would not be able to implant themselves in localities and spread to communities across America. This idea and its associated policy proposals came to be known as “attrition through enforcement” or “self-deportation.”

These arguments achieved great resonance in the public sphere and helped structure the media’s framing of the immigration issue.¹¹ National magazines including *US News and World Report*, *Time*, *Newsweek*, *Business Week*, and others employed the “Latino threat” discourse to frame reporting and editorials on the subject of immigration.¹² As the discourse was diffused through the media, it helped shape public perceptions on immigration. Massey and Pren note, “The relentless propagandizing that accompanied the shift had a pervasive effect on public opinion, turning it decidedly more conservative on issues of immigration even as it was turning more conservative with respect to social issues more generally.”¹³ The effects of media on public perceptions were most powerful in areas undergoing rapid demographic changes: “Sudden demographic changes generate uncertainty and attention. Coverage of immigration in the media can inform people about demographic changes and can politicize those changes in people’s minds. Acting in tandem, local demographics and nationally salient issues can produce anti-immigrant attitudes and outcomes.”¹⁴

In the 1990s these arguments were bolstered by the support of key politicians with national reach. Governor Pete Wilson of California played a particularly important role in 1994. Entering an election year with low levels of voter satisfaction, the one-time moderate Republican took a strong anti-immigration position in his bid for reelection and expressed strong support for Proposition 187 (known as the Save Our State [SOS] initiative). This measure aimed to deny undocumented

immigrants the right to key social services and undocumented children the right to attend primary and secondary schools.¹⁵ Wilson became one of the first national-level politicians to use publicly the term “self-deportation,” and he held up Proposition 187 as a model policy to achieve these ends.¹⁶ His overwhelming reelection was attributed to his support of the measure, giving state and local politicians around the country a blueprint to win campaigns. Proposition 187 won with 59 percent of the vote, only to be deemed unconstitutional by several federal courts.

Seeking to preempt a patchwork of local and state-level variants of Proposition 187, the Clinton administration introduced measures to enhance border security. In 1994, the government introduced Operation Gatekeeper, which reinforced the southern border by expanding the number of border agents by 1,000 per year until 2001, reinforcing the border fence, and bolstering other surveillance methods.¹⁷ In 1996, the Clinton administration supported the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which allocated more resources to border-enforcement and deterrence measures.¹⁸ In addition to allocating more money to border protection, IIRIRA expanded monitoring of immigrant entry and exit data, expedited deportations by lowering the threshold of deportable offenses, restricted judicial discretion during deportation proceedings, and extended periods of admissibility for deported immigrants, among other things. According to Durand and Massey, between 1996 and 1998 the budget of the Immigration and Naturalization Service grew by eight times and the budget of the Border Patrol by six.¹⁹ In this very short period, the latter agency was transformed from one of the most insignificant federal law enforcement agencies in the country into the most funded and best armed.

The heavy emphasis on border enforcement had important effects, but decreasing the number of undocumented immigrants was not one of them.²⁰ Between 1988 and 2002, border crossings shifted from traditional points around San Diego, California, to nontraditional areas in the eastern desert. Arizona increasingly became an entryway for unauthorized border crossings. The increased risks of crossing the border raised the monetary costs of migration, which in turn favored the expansion of the human-smuggling industry. The death rate of unauthorized border crossings also tripled as immigrants were compelled to

pass through dangerous desert terrain. The growing costs and risks of crossing resulted in a lower return rate for migrants, decreasing from approximately 50 percent in 1986 to 25 percent in 2007.²¹ As immigration rates continued to hold steady and return rates plummeted, more immigrants permanently settled in the country, which contributed to the rapid growth of the undocumented population. The population of undocumented immigrants, in other words, grew as a direct response to border enforcement, growing from an estimated 7 million in 1997 to 10 million in 2002 and then to 11.9 million in 2008.

Border enforcement encouraged not only permanent settlement but also families to take hold inside the country. As border enforcement raised the costs and risks of circular migration, migrants were encouraged to raise their families in the United States.²² By 2008 nearly half of undocumented immigrant households were couples with children.²³ While 73 percent of the children of undocumented immigrants were citizens by birth, approximately 1.5 million children were undocumented. This came to account for approximately 16 percent of the total undocumented population.²⁴ The unanticipated consequence of restrictive immigration has therefore been to accelerate family settlement, which has given rise to households with very mixed legal statuses ranging from citizens, permanent residents, temporary residents, to unauthorized migrants and a large population of undocumented children. These undocumented children would eventually fill the ranks of the DREAM mobilizations of the 2000s.

While the population of undocumented immigrants grew and became much more complex, it faced increasingly hostile environments as rights and privileges were rolled back and better enforcement measures were developed to detect and extract immigrants.²⁵ In addition to expanding external border security, IIRIRA created a memorandum of understanding called the 287(g) agreements between federal immigration and local police agencies. These agreements empowered local authorities to enforce federal immigration laws. They also provided local police officials important levels of financial support and training to take on these additional responsibilities. While this program was voluntary, it provided strong incentives for local police agencies to assume a direct role in detecting and removing undocumented immigrants residing in their

jurisdictions.²⁶ Congress, with the support of President Clinton, also passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PROWARA). This law introduced key restrictions on welfare support for permanent and undocumented immigrants.²⁷ This measure made permanent immigrants ineligible for a range of benefits, including food stamps, Supplementary Security Income, welfare, and nonemergency Medicaid for the first five years of their residency in the United States. Undocumented immigrants were made ineligible for publicly funded state and local services. States were permitted to provide undocumented immigrants with in-state services, including in-state tuition for higher education, only if they passed a law that explicitly stated the law's support of this population.²⁸ These measures therefore enhanced the enforcement capacities of the federal government by integrating state and local government officials into its efforts. Local and state officials were now required to use the immigration status of residents as a criterion of detecting whether people belonged in their communities and whether they merited basic rights and privileges.²⁹

Many states and municipalities not only fulfilled their new responsibilities to fight unauthorized migration, but also the new laws increased their leeway to enact their own anti-immigration laws and ordinances. Beginning in the late 1990s and early 2000s, municipalities across the country passed ordinances that specifically targeted the legal status of residents. Some of these ordinances fined landlords and businesses that entered contracts with undocumented immigrants. Other municipalities devised housing regulations to minimize immigrant residency and banned public assembly associated with day-laborer hiring sites.³⁰ These local measures went on to inspire exclusionary state laws beginning with the passage of Arizona's S.B. 1070 in 2010.³¹ These state enforcement policies were legally premised on the grounds that they *complemented* federal authority, rather than supplemented it, and were essentially extensions of federal partnership programs like 287(g) and its follow-up measure, "Secure Communities." These federal measures provided Arizona and other states and localities with the legal opening needed to create their own enforcement policies. Localities were incorporated into federal enforcement measures, and they also began to devise their own restrictive measures to deter the settlement of immigrants within their jurisdictions. As the population

and complexity of undocumented communities grew in response to border security, members of these communities faced increased restrictions, risks, repression, and surveillance in towns and cities across the country.³² Not all undocumented immigrants, however, have been equally exposed to this hostility.³³ Adults and recent migrants were most exposed because they sought work without legal documentation, faced police stops and checkpoints during their daily commutes, bore visible signs of “foreignness” (for example, language, clothing), and were asked for legal identification in daily transactions. Adults were compelled to negotiate and think about their “illegality” as part of everyday living. Undocumented children have been partially shielded because of their cultural assimilation, and their lives have centered on the relatively protected institution of the school. The Supreme Court’s *Plyler v. Doe* ruling of 1982 recognized the right of all children, irrespective of legal status, to attend public schools. This ruling barred school officials from inquiring into the legal status of children and from using such status to deny children the right to an education. As a consequence, undocumented children had a space of relative refuge where they did not have to concern themselves with the implications of their legal status on a daily basis. The issue of their own legality would become a more central issue in their lives as they moved into adulthood and faced increased demands for legal documentation.³⁴

Niche Openings in Hostile Lands

The hostile context of the 1990s and early 2000s put most immigrant rights advocates on the defensive. The near-universal hostility of national politicians in the late 1990s, Democrats and Republicans alike, toward immigration reduced the political possibilities of a national measure for comprehensive immigration reform or an amnesty for undocumented immigrants. Moreover, growing restrictions and stigma directed at undocumented immigrants reduced the willingness of most immigrants to mobilize publicly and make claims for residency status or other basic rights. In this context, rights advocates identified niche openings and pushed for smaller measures that stood a greater likelihood of success. While these measures would not benefit most undocumented immigrants, they would at least provide some groups with additional

protections and rights. These smaller wins were seen by many to be stepping stones that would permit the extension of additional rights and protections further down the road.

There were certain immigrant groups that were well placed to respond to niche openings. In 1990, advocates took advantage of the legal and moral ambiguities regarding the case of El Salvadoran immigrants.³⁵ While government officials recognized that El Salvadorans would qualify for refugee status under the United Nations Convention Relating to the Status of Refugees of 1951, admitting so would make the United States recognize the war and make it complicit in supporting a human rights-violating regime.³⁶ This ambiguity provided immigrant rights advocates an opening to make demands. One participant in this campaign remembered it in the following way: “The US never wanted to admit that they were funding and training the military in El Salvador. They were involved but they didn’t want to admit that there was a war. So they said: ‘Okay, we understand that people cannot be sent back, but we also cannot recognize this war. So we are going to give them Temporary Protective Status.’”³⁷ Responding to this opening, a concerted effort was made by immigrant rights activists in the late 1980s and early 1990s to represent these immigrants as “deserving refugees.”³⁸ They did this by recruiting immigrants with the appropriate legal and cultural attributes, developing frames and stories that stressed these unique attributes, and training immigrants to tell their stories of political persecution and flight to different publics across the country.

Efforts to respond to niche openings continued throughout the decade. Farmworkers enjoyed the support of large growers associations, some Republican politicians, unions, and large segments of the public.³⁹ This particular group of immigrants was not only presented as contributing an important economic function to the country, but it also had developed a compelling story that dated back to the struggles of the United Farm Workers in the 1970s. In another instance, El Salvadorans and Guatemalans saw their temporary status threatened after the passage IIRIRA in 1996. During this time, Congress was also preparing to pass a measure that would legalize asylum-seekers of left-wing regimes in Nicaragua and Cuba (Nicaraguan Adjustment Central American Responsibility Act). Immigrant advocates again saw a niche opening resulting from the legal and moral discrepancy

of this measure. They argued that El Salvadorans and Guatemalans should be granted the same rights as these other groups and be made permanent residents. This group of immigrants was also settled, well integrated, and making important contributions to the country. It was only fair that they should be given the same rights as Cubans and Nicaraguans.

The campaign to legalize the status of undocumented youths was an extension of such piecemeal and incremental approaches of the 1990s. Prominent immigrant rights associations, such as the National Immigration Law Center [NILC], Center for Community Change [CCC], among others, launched a campaign to pass the Development, Relief and Education for Alien Minors Act in 2001. The DREAM Act promised to place undocumented university students and youths performing community service on a path to citizenship. This initiative was a response, in part, to the fact that IIRIRA had placed enormous pressure on the country's enforcement agencies.⁴⁰ As the enforcement net encompassed more immigrants, immigration officials struggled to find better ways to allocate their resources more effectively in order to meet these growing demands. In the late 1990s senior officials argued for the need to prioritize resources by focusing on egregious cases and using prosecutorial discretion to grant deferred action (that is, temporary relief from deportation) on humanitarian grounds. This position was strongly advocated by outgoing INS Commissioner Doris Meissner in an influential memorandum written in 2000.⁴¹ The Meissner memorandum did not become official policy, but it provided an opening for immigrant rights advocates to argue for deferred action on moral and humanitarian grounds. Additionally, indiscriminate and enhanced enforcement raised moral ambiguities among certain segments of the public, with many questioning whether all undocumented immigrants deserved to be treated with equal severity by enforcement agencies. Ramping up enforcement measures had therefore spurred cracks in the country's immigration system and the nation's resolve to enforce repressive laws equally across the undocumented population. Here were openings for those who could demonstrate a fit on moral and humanitarian grounds.

The early advocates of the DREAM Act sought to respond to this particular niche because the measure was designed to legalize a certain

group of undocumented immigrants deemed to have compelling backgrounds and stories: that is, the DREAMers' unique situation as highly assimilated and well-adjusted members of their communities opened up an opportunity for their legalization on humanitarian and moral grounds. Joshua Bernstein, director of Federal Policy of the National Immigration Law Center (NILC), helped draft the original piece of legislation. Eligibility criteria included college students, youths engaged in community service, liberal age requirements, and short periods of US residency. These broad criteria made it easier for the bill to benefit a segment of the immigrant population that extended far beyond the narrow population of youths enrolled in higher education. The original DREAM Act was designed to use an existing niche benefit the maximum number of undocumented immigrants living in the country.

The measure quickly found support among key House and Senate Democrats in 2001, with Richard Durbin becoming a major champion of the bill in the Senate and Luis Gutierrez in the House. Bernstein and his colleagues organized the campaign to build support for the bill. Central to this campaign was the recruitment of a handful of exemplary undocumented students with the most compelling stories to give a face to the core message of the campaign: the DREAM Act was designed to allow these good and productive youths a fair chance to achieve the "American dream." These youths had done everything right, but because of their immigration status, they were denied the possibility of achieving their dreams and condemned to a life on the margins. During these early days, the youths told their stories to the media and personally lobbied members of Congress. Although the original bill failed, strong support by influential supporters in the immigrant rights community and Congress kept it alive through the decade. Senator Durbin would provide consistent support for the measure in Congress and NILC and the Center for Community Change provided consistent support in the immigrant rights community.

In the different cases of refugees, farmworkers, and youths, immigration rights advocates did not necessarily achieve their ultimate goals (permanent residency status and paths to citizenship), but they were able to use available niches to launch campaigns, negotiate with government officials, and in certain instances, extend residency (temporary and permanent) status to some undocumented immigrants. For immigrant

rights advocates, this was the best one could hope under extremely hostile political conditions. In this context, immigrant rights activists were compelled to focus on the battles of groups and issues that stood the strongest chance of success, rather than invest scarce resources in the improbable goal of legalizing all undocumented immigrants.⁴²

Negotiating Immigration Reform in the Age of Terror

The election of George W. Bush in 2000 introduced a very contradictory period for immigration politics. While the Bush administration embraced greater integration with Mexico and more liberal immigration policies, it also unleashed a massive buildup of border security and enforcement measures. Many in the immigrant rights community hoped for a turn away from the anti-immigration policies of the 1990s. The first several months of the Bush administration resulted in a round of high-level talks between administration officials, Congress, and the president of Mexico. The administration's receptive position was reflected in White House statements issued during this time. White House spokesperson Ari Fleischer announced, "There are people who are already in this country, contributing to the American economy even though they may not be legal, and they are paying taxes."⁴³ The administration's moves raised the hopes of many immigrant rights advocates. The director of the National Day Labor Organizing Network (NDLON) remembered the period in the following way: "When Bush talked about immigration it was better than Clinton. There was this synergy between Fox [president of Mexico] and Bush. Bush said, 'We're going to help our neighbor.' That was one of his first priorities—he seemed to mean it. Then Fox comes and delivers a very important speech to the Congress and there was this cheering moment. We were getting close."⁴⁴

The attacks of September 11, 2001, shifted the administration's attention to the "war on terror" and immigration was quickly reframed as a security issue.⁴⁵ The events of the early 2000s provided anti-immigrant advocates with an important opportunity to define the problem of terror as lax border security. Dan Stein, the president of Federation for American Immigration Reform (FAIR), argued that the terrorist attacks were the direct result of what he called "open-borders advocates."

“The nation’s defense against terrorism has been seriously eroded by the efforts of open-border advocates, and *the innocent victims of today’s terrorist attacks have paid the price.*”⁴⁶ The link between terrorism, immigration, and border security was echoed in public statements by prominent government officials and leading Republican activists. Four years after the attack, Secretary of State Condoleezza Rice cited intelligence reports of terrorists using the Mexican border to gain access to the country. “Indeed we have from time to time had reports about Al Qaeda trying to use our southern border.” She went on to argue for the need to bolster border security as a central element of the country’s “war on terror”: “I note worries that terrorists would use the Mexico border as a back door to the United States, and there is the need for closer cooperation and the use of better technology to stop illegal crossings.”⁴⁷ A leading Republican activist, Grover Norquist of Americans for Tax Reform, reiterated the position: “Immigration reform and border security are not competitors; they are the same thing.”⁴⁸ Terrorism and border security had become central discursive frames through which immigration policy would be interpreted and evaluated by conservatives and moderates of the time.

Advocates of the DREAM Act continued their efforts in the early 2000s, but intense anti-immigration hostility and the “border-first” position presented them with powerful headwinds. While many of Senator Durbin’s moderate colleagues favored the DREAM Act, adversaries believed that the eligibility criteria of the DREAM Act would benefit many more undocumented immigrants than just undocumented students. Moreover, without any strong restrictions on family reunification, the DREAM Act would contribute to the mass legalization of family members in the country and provide families outside the country with access to legal residency status. The DREAM Act was criticized as a Trojan Horse because it would open the border to a “flood” of immigration at a time when the country was securing its borders against terrorists. Its adversaries dubbed the measure the Nightmare Act. Senator Durbin responded by expanding bipartisan support and introducing more restrictive eligibility criteria. The revised measure dropped the provision for community service, introduced age caps, denied eligibility to youths with poor moral character (that is, those with criminal records), extended the probationary period for full

permanent residency status, and placed restrictions on family reunification. These changes to restrict the number of “DREAM eligible” youths aimed at broadening Republican support in the Senate and House. In spite of these changes, the DREAM Act failed to pass as stand-alone bills or as attachments to omnibus bills in 2003, 2004, and 2005.

This political and discursive climate closed down narrow openings for measures like the DREAM Act but encouraged the enactment of increasingly repressive measures. Between 2001 and 2005 three new restrictive immigration laws were passed by Congress,⁴⁹ and six different operations were initiated by Homeland Security.⁵⁰ These initiatives combined with IIRIRA to accelerate deportation rates, increasing from a rate of less than 200,000 immigrants per year in 2001, to 300,000 in 2005, and finally to 400,000 by 2009.⁵¹ The discursive coupling of immigration and terrorism played an instrumental role in driving restrictive immigration policies and directing them disproportionately at Mexican immigrants. “None of the terrorist attacks involved Mexicans, and none of the terrorists entered through Mexico. Indeed, all came to the United States on legal visas. . . . Mexicans nonetheless bore the brunt of the deportation campaign launched in the name of the war on terrorism.”⁵²

The “border-first” and enforcement-only push in the first half of the 2000s exposed several important cracks in the immigration system. The growing demands placed on border security and enforcement stretched thin the resources of federal law enforcement agencies. This raised concerns among immigration officials that expanding the scope of enforcement was undercutting their abilities to guard the country from high-priority risks. Officials sought ways to use their discretionary powers to prioritize certain cases and violations over others and welcomed efforts to ease border pressures by expanding legal avenues of migration.⁵³ Moreover, senior Republican strategists had wanted to build their “permanent majority” by attracting Latino voters. The government’s singular focus on border security and enforcement would push Latino voters away from the Republican fold. Lastly, ramped up enforcement was cutting into the supply of labor for several industries heavily reliant on immigrant labor. These industries had begun to express their concerns to Republican leaders in Congress and the White House.

Responding to these pressures, President Bush made immigration reform a central part of his second-term agenda. In 2005, the White House worked with Senate allies John McCain and Edward Kennedy to introduce the Secure America and Orderly Immigration Act (commonly known as the “McCain-Kennedy Bill,” S. 1033). At the center of the bill was a tightly regulated guest workers program that would provide temporary visas with limited rights to workers in specific industries. The administration prioritized the guest workers program over the DREAM Act because of pressures from the hospitality, agriculture, and food-processing industries. The Republican chairman of the Senate Committee on Health, Education, and Labor expressed these economic concerns: “There are not enough visas for temporary workers. We need a plan to offer more visas for temporary seasonal workers.”⁵⁴ In spite of the narrow scope of the bill and the additional resources made available for border security and enforcement, the bill faced stiff resistance by conservative Republicans who preferred a plan that focused only on border security. The general sentiment of these Republicans was conveyed by Tom Delay, the powerful Whip of the House Republican caucus: “I don’t think I’m betraying a confidence. The White House hasn’t done a very good job in being clear to the American people where he [the President] is coming from. *You’ve got to convince the American people that we’re going to secure our borders, that we will actually enforce the laws passed, and only after that can you get to a guest worker program.*”⁵⁵ Delay and other conservative Republicans rejected efforts to introduce a guest worker program without having first sealed the border and enforced existing restrictions.

The White House responded by reframing immigration reform as a measure to enhance border security. “Border security is one of the President’s highest priorities. The President recognizes that we need to be placing as much emphasis on communicating our ongoing efforts to strengthen border security as we are on immigration reform, and he told members [of the House] he wants to continue working with them on this.”⁵⁶ The guest worker program would provide the government with better means to monitor and regulate immigrant labor in specific industries. “I’m for a bill that strengthens our border by providing people with a tamper-proof identity card to let them work in America for jobs

Americans won't do, on a temporary basis, and then go back to their country."⁵⁷ This program would also reduce pressures on the border, enabling enforcement agencies to focus their resources on truly threatening immigrants. Secretary of Homeland Security Michael Chertoff expressed the White House position:

And the fact of the matter is people are rightly upset and distressed about the prospect that we do not have control of our border the way we should. An increasing enforcement along the nation's borders will not alone repair the nation's immigration system. I urge the adoption of a temporary-worker program. . . . It [reform] is a three-legged stool. It requires tough enforcement at the border, tough interior enforcement, and a temporary-worker program to deal with the very real draw.⁵⁸

The guest worker program would therefore strengthen borders by enhancing the capacities of the government to regulate immigrant flows and allowing enforcement agencies to better direct their resources at more threatening migrants.

As the Senate struggled and failed to overcome Republican resistance in this chamber, the House passed a bill that only addressed enforcement issues. The House bill was given the apt title, Border Protection, Anti-terrorism and Illegal Immigration Control Act ("Sensenbrenner Bill," H.R. 4437). The bill aimed to expand the border fence, make it a felony to be undocumented, increase substantially the fines for hiring undocumented workers, require employers to use electronic verification to check the legal status of workers, require federal agencies to take into custody undocumented immigrants held by local agencies (ending "catch and release"), and criminalize assistance to undocumented immigrants.⁵⁹ James Sensenbrenner described the bill, saying, "It will help *restore the integrity of our nation's borders* and *re-establish respect for our laws* by holding violators accountable, including human traffickers, employers who hire illegal aliens and alien gang members who *terrorize* communities."⁶⁰ The bill was strongly supported by the Republican caucus, with 92 percent of House Republicans voting in favor of it. One member of the House expressed his support for the bill: "Our constituents are berserk with fury over the unprotected borders. The borders have been entirely unprotected for far too long. But *until*

*we get the borders under control, we'll never win the war on terror, and it's pointless to discuss the guest worker program.*⁶¹

The failure of the Bush White House and its Senate allies to win over conservative Republicans in the Senate and House led it to pursue another strategy aimed at expanding Democratic support in the Senate. The McCain-Kennedy Bill was reintroduced by Senator Arlen Specter (R) as the Comprehensive Immigration Reform Act of 2006 (S. 2611). The proposed bill combined the border security and guest worker measures of the previous plan with a strategy to legalize the status of millions (but not all) undocumented immigrants in the country. The DREAM Act would now be incorporated into this larger reform bill. The Senate bill was substantially more liberal than the Sensenbrenner bill that had passed in the House in late 2005. The aim was to design a bipartisan Senate bill that would gain overwhelming Democratic support and some moderate Republican support. A compromise between the House and Senate bills would then be negotiated in conference. In spite of criticisms from both sides of the aisle, the Senate succeeded in passing the bill on May 25, 2006.

The next step for immigration reform to become law was to find a compromise between the Senate and House bills. The Bush administration now needed to convince conservative House Republicans by highlighting the restrictive nature of the Senate bill. First, President Bush reminded Republicans that enforcement was central to the Comprehensive Immigration Reform bill: he claimed, "We'll add 6,000 agents by 2008 to build high-tech fences and new patrol roads, and to end 'catch and release' once and for all on the southern border of the United States."⁶² Second, the president argued that the path to legal residency was not an "amnesty" program. For conservative Republicans, "amnesty" undermined the rule of law by rewarding people for "illegal" conduct, and it served as a magnet for millions of more migrants. "We must face the reality that millions of illegal immigrants are already here. *They should not be given an automatic path to citizenship. That is amnesty. I oppose amnesty.*"⁶³ The bill was not an amnesty program because it would not provide "an automatic path to citizenship." It introduced strict criteria to qualify for legal status including language acquisition, long-term settlement (more than five years), the payment of a fine for having broken the law (more than \$2,000), payment of back taxes, steady employment, and no criminal record. Third,

President Bush stressed that the guest worker program enhanced the government's capacities to govern immigration because it allowed officials to monitor labor migrants, steer the movement and economic activities of migrants in the country, reduce possibilities of permanent settlement, and free up enforcement resources by reducing pressures on the border. "We must reduce pressure on our border by creating a temporary worker plan. Willing workers ought to be matched with willing employers to do jobs Americans are not doing on a temporary —temporary — basis."⁶⁴ Comprehensive Immigration Reform would therefore eliminate "illegal" immigration and enhance security by legalizing the status of deserving immigrants, redirecting new immigrants into a restrictive temporary program, and enhancing the enforcement powers of the government against undeserving, criminal, and truly "illegal" immigrants.

The effort to find a compromise for the House and Senate bills failed. House Republicans proved to be unwavering regarding their "border-first" and enforcement position. Speaker of the House Dennis Hastert expressed the Republican position: "Before we can look at other immigration issues, we must first secure the borders."⁶⁵ Though the Comprehensive Immigration Reform Act failed, Congress passed yet another law to reinforce the border fence in October 2006.⁶⁶

In spring 2007, Senate Republicans and Democrats supporting comprehensive reform began their efforts again. In the hope of reaching a compromise with conservative Republicans, a stricter version of the Comprehensive Immigration Reform Act was introduced by its supporters. Senator Edward Kennedy announced, "I'm shifting gears in hopes of winning Republican support and speeding the passage of immigration legislation this spring."⁶⁷ Senate Republicans talked of a "grand bargain" that hinged on a policy trigger. Legalizing eligible undocumented migrants (that is, the pathway to citizenship) would only begin once new border security and enforcement measures were firmly in place. "Negotiators have reached what they called a grand bargain. It includes a series of triggers that require new border security measures to be up and running before the start of any programs to give legal status to people in the country illegally."⁶⁸ The "grand bargain" also introduced restrictions on the temporary-worker program, greater resources for enforcement, and severe restrictions on family reunification. Under this version of the bill, only spouses and children of

new citizens could apply for a visa under the family-reunification provision. The influx of new temporary immigrants would therefore be offset by restrictions on permanent family reunification.

Concerns with this version of the bill were expressed by immigrant rights advocates and many Democratic Senators (including presidential candidates Hillary Clinton and Barack Obama). Barack Obama criticized the bill, arguing, “Without modifications, the proposed bill could devalue the importance of family reunification, replace the current group of undocumented immigrants with a new undocumented population consisting of guest workers who will overstay their visas, and potentially drive down wages of American workers.”⁶⁹ Anti-immigration activists also mobilized against the bill. Numbers USA, an anti-immigration advocacy group, took up a leading role in this effort. “The bill had support from the opinion elite in this country. But we built a grassroots army, consumed with passion for a cause, and used the power of the Internet to go around the elites and defeat a disastrous amnesty bill.”⁷⁰ Failing to garner support by Democrats and Republicans in the Senate, the bill never made it to the Senate floor for a full vote. Senator Edward Kennedy lamented the defeat with the following statement, “We know what they [conservative Republicans] don’t like. What are they for? What are they going to do with the 12 million who are undocumented here? Send them back to countries around the world? Develop a type of Gestapo here to seek out these people that are in the shadows? What’s their alternative?”⁷¹

After several years of struggling and failing to reach a compromise on comprehensive reform, some members of Congress pivoted back to the strategy that focused on smaller and piecemeal measures that stood greater chances of success. Even with the support of a Republican president, Republican Senate leaders, and party elites, hard-line conservatives continued to reject any measure that provided undocumented immigrants with some form of legal status (temporary or permanent) in the country. The only measures conservatives would support were those that enhanced border security and the enforcement capacities of federal and local police agencies. Facing this overwhelming resistance, the best way forward was to identify those parts of the larger comprehensive package that stood a greater chance of success. “The agriculture and student measures have a decent chance of passing this Congress because they have strong champions,

broad bipartisan support, and they have been around for a long time.”⁷² Senator Richard Durbin, the longtime champion of the DREAM Act, mobilized on its behalf immediately after the failure of the Comprehensive Immigration Reform bill in 2007. With regard to agricultural workers, employers’ lobbies argued the need to reform the existing visa programs. “We urge changes like speeding up the H-2A application process, easing housing requirements for guest workers, reducing the required wage for these workers and increasing the types of work they are allowed to do.”⁷³ The Bush administration addressed these concerns through executive decree rather than the legislative process: “The Department of Labor is now in the process of identifying ways the program can be improved to provide farmers with an orderly and timely flow of legal workers while protecting the rights of both U.S. workers.”⁷⁴ Thus, in the face of unwavering conservative hostility, a string of reforms failed between 2005 and 2007. This prompted reform advocates to resume the old strategy of pushing for narrower measures that stood less resistance from conservative political forces and a better chance of success.

The Evolving Strategies of the Immigrant Rights Movement

The hostile context of the 1990s encouraged immigrant rights associations to mobilize in response to whatever niche openings were available to them. A context of general hostility and few niche openings did not favor a unified and centralized social movement. Advocacy in the 1990s to the early 2000s was characterized by relatively small coalitions of different interest groups seeking to push narrow measures for particular groups of immigrants (for example, refugees, agricultural workers, youths, and so on). Coalitions and alliances were formed and broken as different issues and opportunities came to the fore.

Beginning in 2004, efforts were made to create greater unity and coherency across the countless immigrant rights organizations and associations in the country. The Center for Community Change helped create a national network to coordinate immigrant rights campaigns. The new immigrant rights network, called Fair Immigration Reform Movement

(FIRM), was a Center for Community Change project housed in its Washington, DC, headquarters. Other prominent advocacy associations, like NILC, National Council of La Raza, and the Mexican American Legal Defense and Educational Fund, were connected to FIRM but were not formal members. The principal members were regional and local immigrant rights organizations like the Center for Humane Immigrant Rights of Los Angeles, Illinois Coalition for Immigrant and Refugee Rights, and the New York Immigration Coalition.

The rapidly changing political context of 2005–7 intensified efforts to create a more unified and centralized movement to advocate for immigrant rights. In his second term, President Bush moved to gain bipartisan support for the Comprehensive Immigration Reform Act. Simultaneously, powerful anti-immigration advocates in the House had successfully pushed for a string of restrictive laws and policies. In particular, James Sensenbrenner was using the House Judiciary Committee to produce a series of bills that would not only rescind rights and enhance enforcement but also criminalize undocumented status. This particular juncture presented national and local rights associations with strong incentives to coordinate their efforts. The massive demonstrations in opposition to the Sensenbrenner bill in March 2006 provided one of the first opportunities to coordinate efforts on a national scale. FIRM played a role connecting local and national organizations, transmitting information between these organizations, and providing local and regional activists with a common messaging frame. Nevertheless, local immigrant rights organizations took the initiative to plan protest events and mobilize massive turnouts in cities throughout the country.⁷⁵

While efforts were made to protest the most restrictive immigration measures, the leading national organizations (Center for Community Change, National Immigration Law Center, National Council of La Raza, and so on) were also coordinating lobbying efforts concerning the Comprehensive Immigration Reform Act. These organizations, in consultation with their congressional allies, agreed that the DREAM Act should be passed as part of the comprehensive package. The students were one of the most well-liked and least stigmatized groups within the broader immigrant population and their stories resonated well with the moral and humanitarian sentiments of the media, politicians, and the

general public. They were, in this context, held up as the “poster-children” of the general immigrant rights movement and employed as a way to gain broad popular support for Comprehensive Immigration Reform. Just as importantly, the youths had revealed themselves to be extremely effective and energetic grassroots organizers. Their continued participation was viewed by the leadership as important for the passage of the immigration reform bill.

Soon after the failure of Comprehensive Immigration Reform in 2007, Senator Richard Durbin immediately reintroduced the DREAM Act as a stand-alone bill. Durbin believed that a more limited bill stood a greater chance of success. Durbin’s move triggered an important debate among leading immigrant rights groups and their political allies. Prominent rights associations argued that the Senate leadership should reintroduce the Comprehensive Immigration Reform Act with the DREAM Act as a part of the larger bill. They feared that introducing a stand-alone bill for students (or farmworkers for that matter) would split the movement and remove the best-supported and most energetic groups from the comprehensive campaign. An incremental strategy of passing narrower bills for undocumented students or farmworkers would peel off these strategic groups and undermine the unity needed to pass the broader Comprehensive Immigration Reform Act.

The leading immigrant rights associations, politicians, and funders came to a consensus on a strategy to focus their efforts on winning the 279 Congressional votes and 1 presidential signature needed to pass the Comprehensive Immigration Reform Act. The focus was now on Congress passing a single all-encompassing bill. Efforts were also made to centralize key decision-making functions and the infrastructure of the movement. Major foundations like the Atlantic Philanthropies encouraged the national associations to create a new coalition in January 2008. They provided that new coalition, called Reform Immigration for America (RIFA), with \$3.5 million to direct a national campaign to push for the passage comprehensive reform.⁷⁶ While the coalition would include many national and local rights associations across the country, the principal organizations making up the leadership circle were Center for Community Change, National Council of La Raza, and the National Immigration Forum, with the Center for Community Change assuming

the directing role. Other major immigrant rights associations like NILC, MALDEF, and National Day Labor Organizing Network (NDLON) were also important stakeholders of RIFA but played less central roles. In this context, the DREAM campaign was viewed as an integral part of the general struggle to achieve comprehensive reform.

In 2007 NILC had asserted its influence over the DREAM campaign and sponsored the creation of the United We Dream Coalition to support the passage of the DREAM Act as part of a comprehensive bill. The coalition was then supplanted by an organization with the same name. The staff of United We Dream was made up primarily of undocumented youth, but NILC served as its fiscal sponsor and its office was located in NILC's Washington, DC, headquarters. Also, Joshua Bernstein continued to play an influential role in shaping the political and communication strategy of the group. Another RIFA member that developed a strong youth wing was the Los Angeles-based Center for Humane Immigrant Rights of Los Angeles (CHIRLA). This association had developed a youth wing in the late 1990s called Wise-Up, and in 2007, it received a grant to create a statewide network of undocumented support groups on college campuses (the A.B. 540 groups).⁷⁷ CHIRLA worked closely with NILC's United We Dream and was a strong advocate of RIFA's comprehensive strategy. This provided RIFA with direct access to the largest network of undocumented youth activists in the country.

Though the new centralized structure and strategy was able to impose some order over the many different actors and tendencies within the immigrant rights movement, these actors continued to face varied constraints and openings that pulled them in different directions. Maintaining internal unity in the face of the various interests and priorities was a central challenge to RIFA's leadership. Three major factors presented RIFA with important challenges. First, some RIFA associates including NDLON and MALDEF started to shift their attention to draw attention to local, state, and federal enforcement measures. While RIFA insisted that all coalition partners should focus their energies on passing the Comprehensive Immigration Reform Act in Congress, these other associations began to initiate campaigns directed at federal enforcement measures (287[g] and Secure Communities) and repressive state-level laws (Arizona's Support Our Law Enforcement and Safe Neighborhoods Act [S.B. 1070]). Second, these

cracks in the movement's unity widened when key undocumented groups, the DREAMers in particular, became pessimistic about the prospects of passing Comprehensive Immigration Reform in 2010. If there was little possibility of passing a comprehensive bill, many undocumented youths began to argue that RIFA should redirect its support for smaller measures like the DREAM Act, which stood a better chance of passing. Lastly, associations like MALDEF and NDLON argued that comprehensive reform could only be achieved at the cost of accepting major restrictions on who could qualify for legalization and future migration flows. Winning enough support for a supermajority in the Senate and a majority in the House would be difficult if not impossible without accepting major concession on punitive enforcement measures. This raised questions about the costs of passing comprehensive reform in terms of accepting restrictions and new enforcement measures and how these costs would affect different groups of undocumented immigrants in the country. Thus, in spite of RIFA's major efforts to centralize the immigrant rights movement, a number of factors continued to pull the movement in different directions. These tensions would explode in spring 2010 soon after RIFA's first major effort to push the Obama administration and Congress to pass Comprehensive Immigration Reform.

The anti-immigration hostility of the 1990s resulted in the introduction of new government policies to enforce borders and roll back the rights to immigrants, both documented and undocumented. It also resulted in localizing immigration policy by making local officials increasingly responsible for policing undocumented populations in their jurisdictions. For immigrant rights advocates, growing hostility and strong enforcement tendencies shut down hopes for the introduction of a bill in Congress to legalize the status of undocumented residents. Instead, enforcement trends gave rise to legal, political, and normative ambiguities for immigrant groups that could not be easily classified as fully "illegal." Certain refugees (Cubans and Nicaraguans at first, then El Salvadorans and Guatemalans), workers (those in agriculture and increasingly hospitality industries), and youths (those enrolled in higher education) possessed strategic attributes that made them more deserving of some kind of legal status than others. Immigrant rights advocates during the 1990s to the early 2000s therefore

organized smaller campaigns to legalize the status of those who stood the best chances of success rather than invest their scarce resources in the unrealistic goal of legalizing the status of all undocumented immigrants in the United States. The strategic response by the rights community was therefore appropriate and well suited for a context characterized by hostility, enforcement, and slight niche openings.

The growing possibility of comprehensive immigration reform in 2005–7 resulted in a move away from this incremental and piecemeal strategy to a comprehensive one based on centralized unity. The failure to pass comprehensive reform was for some, including funders and leading rights organizations, the result of the movement’s inability to unify and exert its influence in a more effective way. Fragmentation, it was believed, limited the movement’s abilities to use its collective resources in a more concerted manner to influence public debate and pressure key politicians. Centralizing the strategy and the movement’s infrastructure was therefore seen as the only way to overcome the political-ideological hurdles facing them.

The election of a Democratic Congress in November 2006, a Democratic supermajority in the Senate in 2008, and a Democratic president in the same year raised expectations that comprehensive reform could pass in 2009 or 2010. This new window of opportunity reinforced the view that unity, discipline, and centralization were needed to win the 279 votes needed to pass comprehensive reform. While RIFA’s mandate was to centralize and discipline the different components of the movement, there were important forces that continued to fragment the movement. Certain groups continued to face niche openings (youths, farmworkers) and other groups started to direct their attention to new battles over local and federal enforcement measures. As factions within the movement were pulled in different directions, the leadership of RIFA worked to maintain control and unity. Those efforts in the face of these centrifugal forces only magnified tensions between the movement’s central leadership and the multiple groups, factions, and activists making up the movement. These tensions exploded in spring 2010 when DREAMers lost faith in RIFA’s capacities to represent their interests. This was a cathartic moment that marked an important shift in the evolution of the immigrant rights movement and the birth of the “DREAMer” as fully autonomous political group.