

Immigration

Federal Authority, State Impact

- Demographics
- Chronology of Federal Immigration Law
- Impact of Federal Immigration Law on States
- State Legislation Related to Immigration and Immigrants

Scope of Problem

**Estimate of Unauthorized Immigrant Population
in U.S. and Utah**

2004: 10.3 Million (U.S.)

2005: 75-100,000 (Utah)

Pew Hispanic Center

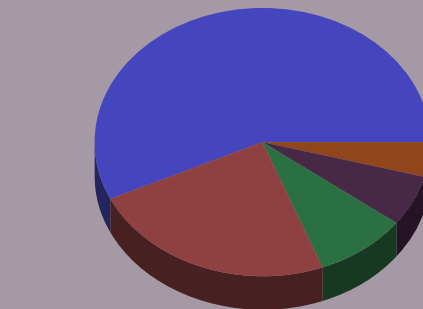
Breakdown by Nation/Region of Origin

10.3 Million Unauthorized Immigrants, cont. (Pew Stats)

- 57% from Mexico
- 24% from rest of Latin America, mainly Central America
- 9% from Asia
- 6% from Europe and Canada
- 4% from Africa, Other Nations

Unauthorized Immigrants

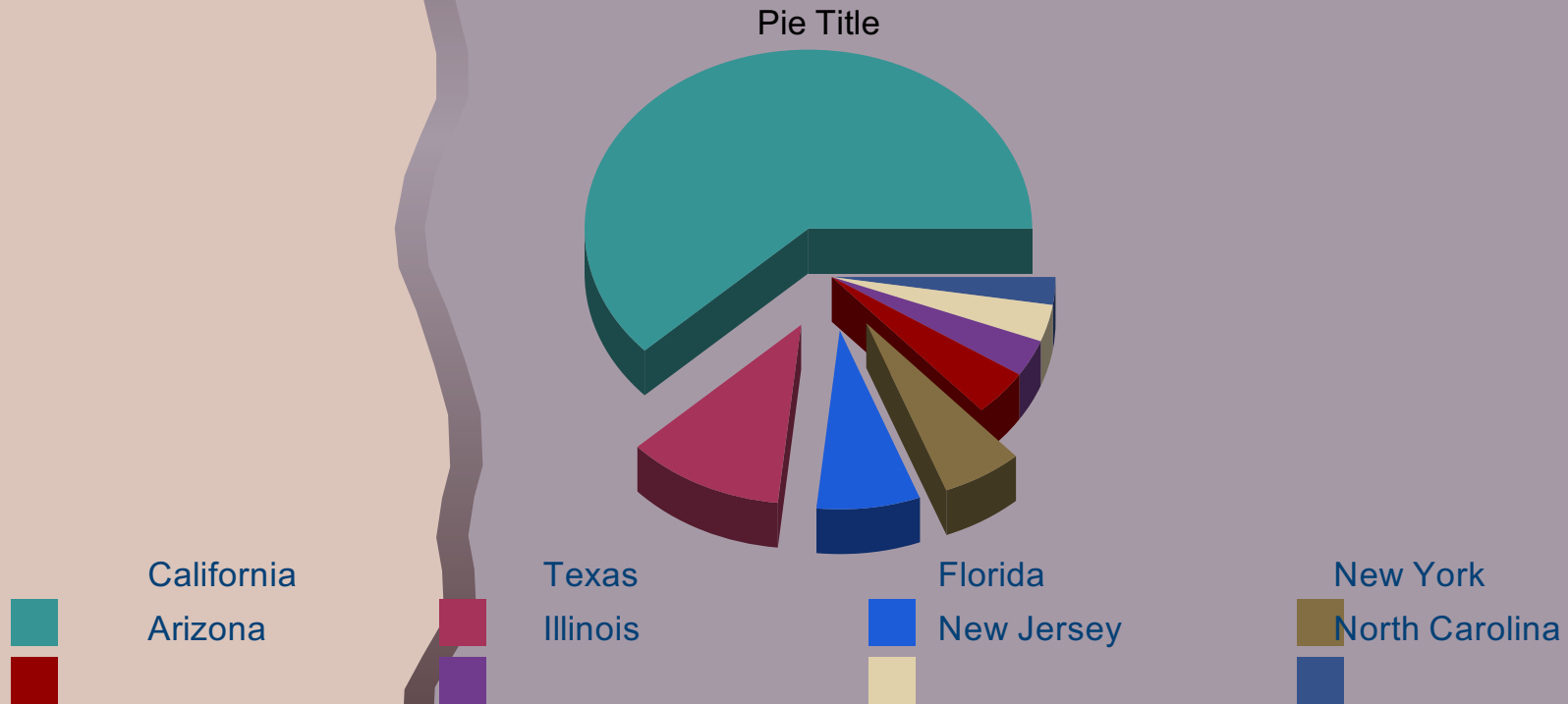
By Nation/Region



Breakdown: Within the U.S.

Locations of Largest Percentages of the United States' Unauthorized Immigrant Population

2/3 of Unauthorized Immigrants Reside in 8 States



Latest Immigration Numbers

Unauthorized Immigrant Population in U.S.

**2006: 11 Million -- Out of Roughly 37
Million Foreign Born, largest in U.S.
History**

*The Center and the Office of Immigration
Statistics, Department of Homeland Security*

Federal Law

Supremacy of Federal Government

- Federal Government has exclusive jurisdiction over immigration policies - the terms and conditions for entry into the U.S.
- States are restricted from enacting their own immigration legislation
- Courts have repeatedly held that no governmental authority, other than Congress and authorized federal agencies, may establish any policy related to immigration

Federal Law -- Chronology

1986 Immigration Reform and Control Act (IRCA)

- **Purpose**: to control illegal or undocumented immigration
- **Procedure**: Employment Eligibility Justification Form for each employee
- **Penalties**: Employers/Employees providing/accepting false documentation, and criminal charges for knowingly hiring or continuing to employ unauthorized worker
- **Provisions**: Legalization for 3 million unauthorized immigrants

Federal Law -- Chronology, cont.

1996 Illegal Immigration Reform and Immigrant Responsibility Act

- Border Control and Enforcement - 6,600 new border patrol agents/staff, increased penalties for violations
- Use of State and Local Law Enforcement in enforcing Immigration laws, denial of certain public benefits to unauthorized immigrants

Federal Law -- Chronology, cont.

Personal Responsibility and Work Opportunity Reconciliation Act of 1996

- Restricted eligibility of legal immigrants for means tested public assistance
- Barred unauthorized immigrants from most public benefits - exceptions
- Immigration Status Verification of all applicants for federal public benefits when benefit is contingent on citizenship or immigration status
- States may provide state/local benefits to qualified aliens through legislation

Federal Law -- Chronology, cont.

2005 Real ID Act

- Minimum Standards for state-issued driver's licenses, verifying lawful presence in U.S., to be accepted for Federal purposes
- State may grant driving privileges that do not comply, but card must clearly state it is unacceptable by any federal agency for I.D. or other purposes; unique design

Federal Law -- Chronology, cont.

Secure Fence Act of 2006

- **Purpose**: Tighten U.S. immigration policies to better secure U.S. borders
- **Provision**: 700-mile fence along the U.S. border with Mexico - Funding not provided in the Act

Federal Law -- Chronology, cont.

Comprehensive Immigration Reform Act of 2007

- Increase security along border with Mexico
- Allow almost all immigrants, not currently authorized, to receive four-year renewable “Z” visas and remain in the U.S. permanently if they report to authorities, pay a fine, learn English, and return to home countries for a time
- Eligible to begin citizenship process once current 4 million applicants are processed
- EEVS - National Employment Verification

Federal Law -Chronology,cont.

Comprehensive Immigration Reform Act of 2007, cont.

- Point System for future immigrant applicants emphasizing skills in demand by U.S. businesses
- State Impact Grant System - assist states in addressing health care and education costs
- Competition Grant Program to assist states in implementing Real ID Act
- Bill is currently on hold in the Senate

Impact of Federal Law on States

Federal Preemption/Current State Activity

- Despite Federal preemption, States are considering immigration proposals
- 2005: 22 States
- 2006: 570 bills introduced
- 2007: 1,169 bills introduced (as of April 13)

Impact of Federal Law on States, cont.

Federal Preemption/Current State Activity, cont.

- Some States acting on absence of specific preemption language
- California's Worker's Compensation Law - immigration status is not a factor in receiving benefits
- Personal injury claims, lost wages

Preemption Argument

Pro and Con

- **For State Action**: should take all possible steps due to failure of current Federal law; reinforcing Federal law may be acceptable
- **Against State Action**: States will not be allowed to legislate where there is Federal law

Impacted Areas

Employment

- U.S. Immigration and Customs Enforcement (ICE) conducts investigations to determine whether employers are complying with the IRCA
- Utah currently has no role in sanctioning employers who break federal law by hiring unauthorized immigrants
- Variety of State proposals introduced

Impacted Areas, cont.

Employment, cont.

- **Pro**: Ineffective Federal law; little chance of sanction due to lack of enforcement
- **Con**: Already against Federal law; potential for uneven/unfair enforcement

Impacted Areas, cont.

Education (K-12 cannot be denied free public education)

- Utah is one of ten States that allow long-term unauthorized immigrant students to become eligible for in-state tuition (eligibility factors unique in the Utah law)
- Efforts to repeal Utah law unsuccessful
- Pro: Good public policy to educate immigrants; opens education doors to those who need it most
- Con: Rewards illegal activity; lower in-state tuition rates unfair, discriminatory

Impacted Areas, cont.

Law Enforcement

- State and Local authority to enforce Federal immigration law - complex issue
- Traditionally State and local authority limited to enforcing criminal provisions
- Some Federal laws authorize limited state enforcement of immigration violations (ex. Memorandum of Understanding (MOU)).
- Federal law permits State and local law enforcement if a “mass influx” requires immediate response and feds obtain consent of State and local supervising dept.

Impacted Areas, cont.

Law Enforcement, cont.

- State and local law enforcement allowed to arrest/detain immigrants not authorized to be in U.S., and had previously been deported or left the country after a felony conviction
- **Pro**: Local law enforcement in best position with local communities
- **Con**: Could damage community relations; extensive training to prevent violation of rights/racial profiling; local resources already stretched thin

Impacted Areas, cont.

Access to Benefits

- Eligibility generally guided by Federal law
- States required to determine citizenship and immigration status of applicants, but eligibility requirements vary state to state
- States may provide family members Temporary Assistance to Needy Families (TANF) benefits if ineligible family members do not disclose immigrant status or SSN
- Emergency room physicians must assess, stabilize any patient

Impacted Areas, cont.

Access to Benefits, cont.

- **Pro**: proof of citizenship laws prevent fraud, provide fairness to taxpayers, and do not deny benefits to anyone lawfully allowed to receive them
- **Con**: State and local employees should not enforce federal immigration law by making judgments on citizenship status of public benefit applicants; Some benefits federally mandated regardless of immigrant status

Impacted Areas, cont.

Sanctuary

A State or local **Sanctuary** policy violates Federal law - policy that prohibits or restricts a government entity or official from sending or receiving from the Immigration and Naturalization Service ICE information regarding the immigrant status of any person

Impacted Areas, cont.

Identification and Drivers' Licenses

- Real ID Act of 2005 requires participating States to verify lawful presence of the applicant in the U.S. for a drivers' license or I.D. card that will be used for a Federal purpose
- Impact analysis found that compliance would more than double the workload of motor vehicle offices

Impacted Areas, cont.

Identification and Drivers' Licenses, cont.

- **Pro**: States requiring only proof of identity rather than legal U.S. residence reward illegal behavior by making it easier for unauthorized immigrants to obtain a driver's license
- **Con**: Driving a necessity if no mass transit available; driver's license not a proof of citizenship, and granting one should not depend on immigration status

State Legislation related to immigration and immigrants

Overview - 2006 State Legislation

- Approximately 570 bills introduced concerning immigrants
- 90 passed; 84 signed into law
- **Education** (Nebraska, Virginia)
- **Employment** (Colorado, Idaho, Pennsylvania)
- **Identification/Driver's Licenses** (Florida, Missouri, Colorado)

State Legislation related to immigration and immigrants, cont.

Overview - 2006 State Legislation, cont.

- **Law Enforcement** (Colorado, Ohio)
- **Public Benefits** (Colorado, Maine, Arizona)
- **Trafficking** (Colorado, Florida)
- **Voting/Elections** (New Hampshire, Missouri, South Dakota)
- **Misc.** (Virginia, North Carolina)

State Legislation related to immigration and immigrants, cont.

Overview - 2007 State Legislation

- 1,169 bills introduced as of April, 2007
- 57 bills, 19 resolutions adopted so far
- **Employment** (employer/employee-based)
- **Education** (immigrant status determined prior to participation in education programs)
- **Law Enforcement** (Memorandums of Understanding (MOU's), enhancement/restrictions on state and local authority)

State Legislation related to immigration and immigrants, cont.

Overview - 2007 State Legislation, cont.

- **Human Trafficking** (criminal penalties, including destroying documents, services for victims)
- **Benefits** (expand health care benefits to specific immigrant populations; children's health proposals that include immigrants)

Staff Support

Follow up Questions

Please contact:

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