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

2004: 10.3 Million (U.S.)

2005: 75-100,000 (Utah)

Pew Hispanic Center
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
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

Pie Title

- California
- Texas
- Florida
- New York
- Arizona
- Illinois
- New Jersey
- North Carolina
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
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
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
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
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
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
Despite Federal preemption, States are considering immigration proposals

- 2005: 22 States
- 2006: 570 bills introduced
- 2007: 1,169 bills introduced (as of April 13)
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
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
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
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.
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
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
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.
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
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)
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)
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)
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

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