

**THE EUROPEAN UNION AND UNITED STATES
IMMIGRATION SYSTEMS: WHY BORDER STATES SHOULD NOT BE
THE BEASTS OF BURDEN**

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I. INTRODUCTION

Paradoxically, the ability to control migration has shrunk as the desire to do so has increased. The reality is that borders are beyond control and little can be done to really cut down on immigration. The societies of developed countries will simply not allow it. The less developed countries also seem overwhelmed by forces propelling emigration. Thus, there must

* To Kevin, Sampson, and Marco. One of you made me coffee while the other two curled up at my feet keeping me warm. Thank you for the support. The author would also like to thank her classmate, Bri Campbell, Note Comment Editor, Dane Dehler, and Supervisor, Professor David Gantz, for their thoughtful comments; this Note flourished because of your time and effort, thank you.

be a seismic shift in the way migration is addressed: governments must reorient their policies from attempting to curtail migration to coping and working with it to seek benefits for all.

-Jagdish Bhagwati, 2003

The European Union (“EU”) and United States immigration systems are parallel because both 1) have union/federal government setting policy for semi-autonomous regions, 2) are plagued by mass illegal immigration,¹ and 3) have border states that are disproportionately burdened in coping and dealing with this illegal immigration.² This Note will review the EU and U.S. immigration systems, their respective immigration histories, and their scholarly views of immigration trends and policies. From this review the analysis will examine how and why border states in both the EU and United States are similarly burdened by mass illegal immigration. Finally, this Note will recommend policy changes to shift the burden of illegal immigration solely away from border states thus making structural adjustments to create more effective and functional immigration systems. As explained in this Note, border states and surrounding communities’ limited ability to cope with mass illegal immigration is a systemic issue within the EU and United States that ultimately affects all member states.³ Because mass illegal immigration is an issue that affects all member states in the EU and United States, both the Commission and Federal systems, respectively need to invest in border states’ efforts to manage mass illegal immigration and enforce local and national immigration policies.

Illegal immigration and its burden on border states affect all EU and U.S. member states regardless of point of entry. These affects include problem solving the cost of massive systems that process asylum applications, family relocation, and navigating the shifts in communities to accommodate recently immigrated individuals and families. Accordingly, the EU and the United States need to shift

¹ Although there are more sensitive terms to describe individuals who enter a nation without correct legal documentation such as *irregular* or *undocumented*, the term *illegal immigration* will be used in this Note. By using this specific term the author is highlighting that border states are alone in the burden of enforcing EU Commission and U.S. Federal immigration laws.

² “[C]omparisons between the European Union and the United States are widely accepted, as the European Union is understood by many to display elements of a federal system sufficient to allow for useful and meaningful comparative analysis.” Erin F. Delaney, *Justifying Power: Federalism, Immigration, and ‘Foreign Affairs,’* DUKE J. OF CONST. L. & PUB. POL’Y 153, 154 (2013).

³ For a list of EU and U.S. member states, see *Countries in the EU and EEA*, GOV.UK, <https://www.gov.uk/eu-eea> (last updated Nov. 12, 2014); see also *50 States and the District of Columbia*, U.S.A.GOV, <http://www.usa.gov/Agencies/State-and-Territories.shtml> (last updated Mar. 9, 2015). This Note primarily focuses on Greece, Italy, and Spain in the EU and Texas, Arizona, and California in the United States.

the burden of paying for border security from border states to a holistic approach. Instead, a system in which all states, regardless of location, contribute an equitable amount to the maintenance of the border and the support of many systems immigrants are processed through, such as hospitals, schools, and the welfare system, needs to be instituted.

II. BACKGROUND

A. The European Union

1. History of Immigration in the European Union

To understand how immigration policy is enforced in the EU, a cursory overview of the formation of the EU and its infrastructure is necessary. The contemporary EU began with the combined endeavors of Belgium, France, Germany, Italy, Luxembourg, and the Netherlands on April 18, 1951, to promote peace after World War II using economic and political means through the creation of the European Coal and Steel Community (“ECSC”) promulgation of the Schuman Declaration.⁴ The ECSC’s success led these six states to sign the Treaty of Rome and create the European Economic Community (“ECC”) that formed the underpinnings allowing people, goods, and services to move freely across borders.⁵ Although August 1961 saw the separation of communist East Germany from West Germany with the Berlin Wall construction, a common agricultural policy in 1962 gave ECC members joint control over food production and ensured that farmers were paid the same price for produce.⁶ The ECC continued its progressive growth in the 1960s with the Yaoundé Convention that liberalized trade with former African colonies.⁷ The institution of free cross border trade between the six members, and the application of the same duties on member imports from outside countries—in other words, the world’s largest trading group was created.⁸ The ECC expanded to include Denmark, Ireland, and the United Kingdom in 1973 and created the European Regional Development Fund a year

⁴ *A Peaceful Europe—The Beginnings of Cooperation*, EUR. UNION, http://europa.eu/about-eu/eu-history/1945-1959/index_en.htm (last visited Sept. 15, 2015); see also *The Schuman Declaration—9 May 1950*, EUROPA.EDU, http://europa.eu/about-eu/basic-information/symbols/europe-day/schuman-declaration/index_en.htm (last visited Sept. 15, 2015).

⁵ *A Peaceful Europe—The Beginnings of Cooperation*, *supra* note 4.

⁶ *The Swinging Sixties—A Period of Economic Growth*, EUR. UNION, http://europa.eu/about-eu/eu-history/1960-1969/index_en.htm (last visited Sept. 15, 2015).

⁷ Lorand Bartels, *The Trade and Development Policy of the European Union*, 18(4) EUR. J. INT’L. L. 715 (2007), <http://ejil.oxfordjournals.org/content/18/4/715.full.pdf+html>.

⁸ *A Period of Economic Growth*, *supra* note 6.

later, which invested funds from monetary wealthy regions into depressed, poor regions for roads, communications, investment, and job improvement.⁹

While the 1980s witnessed three more states joining the ECC, bringing it to a total of twelve members,¹⁰ the 1990s marked a period of many transitions with the reunification of Germany after the fall of the Berlin Wall.¹¹ In 1992, the Treaty on European Union was signed, renaming the ECC the “European Union” and ushering in more political integration via a single currency (implemented in 2001), foreign and security policy, as well as police and judicial cooperation in criminal matters.¹² The iconic EU freedoms such as the uninhibited movement of goods, services, people, and money became possible after this 1992 treaty was signed.¹³ By 2007, the EU had expanded to include twenty-seven members who later signed the Treaty of Lisbon.¹⁴

The states that now comprise the EU historically saw many members of their populations emigrate to colonies in the New World and later to the United States and South American countries.¹⁵ Forced migration also contributed to a history of emigration from European states including the Spanish Expulsion in 1492, where an estimated two hundred thousand Jews and similar numbers of Muslims were driven from Spain, and the multiple conflicts in southeast Europe between Russia, Austro-Hungarian and Ottoman empires.¹⁶ Natural resource (and arguably man-made) disasters like the Irish Potato Famine also contributed to a large and continuous movement of people out of continental Europe.¹⁷ During the Potato Famine one quarter of the Irish population emigrated. This number later escalated to 4.7 million Irish immigrants who followed their family members out

⁹ *A Growing Community*, EUR. UNION, http://europa.eu/about-eu/eu-history/1970-1979/index_en.htm (last visited Sept. 15, 2015).

¹⁰ *The Changing Face of Europe—The Fall of the Berlin Wall*, EUR. UNION, http://europa.eu/about-eu/eu-history/1980-1989/index_en.htm (last visited Sept. 15, 2015).

¹¹ *A Europe Without Frontiers*, EUR. UNION, http://europa.eu/about-eu/eu-history/1990-1999/index_en.htm (last visited Sept. 15, 2015).

¹² *Id.*; *Treaty of Maastricht on European Union*, EUR-LEX, http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_maastricht_en.htm (last visited Sept. 15, 2015).

¹³ *A Europe Without Frontiers*, *supra* note 11.

¹⁴ *Further Expansion*, EUR. UNION, http://europa.eu/about-eu/eu-history/2000-2009/index_en.htm (last visited Sept. 15, 2015).

¹⁵ Ben Hall, *Immigration in the European Union: Problem or Solution?*, OECD OBSERVER (Jun. 2000), http://www.oecdobserver.org/news/archivestory.php/aid/337/Immigration_in_the_European_Union:_problem_or_solution_.html.

¹⁶ *Modern Jewish History: The Spanish Expulsion*, JEWISH VIRTUAL LIBR., <http://www.jewishvirtuallibrary.org/jsource/Judaism/expulsion.html> (last visited Sept. 15, 2015); Hall, *supra* note 15.

¹⁷ Charles A. Wills, *European Emigration to the U.S. 1851–1860*, PBS, http://www.pbs.org/destinationamerica/usim_wn_noflash.html (last visited Sept. 15, 2015).

of Ireland for the rest of the 19th century and continuing into the 20th century.¹⁸ Mass immigration into the EU is a relatively recent phenomenon with a doubling of the foreign workforce from 1960 to 1973.¹⁹ After 1973, immigration into the EU consisted primarily of individuals seeking family reunification and later applications for asylum in part because the expanding work force seldom sought citizenship.²⁰ These asylum applications largely originated from ethnic conflicts after the Cold War such as the 1990s Balkan wars where paramilitaries often targeted civilians.²¹ Over two million refugees fled from the Yugoslav Republics during the ethnic cleansing and violent conflicts in the early 1990s.²² Now individuals from these areas view EU states as a better opportunity to improve their economic status and family's quality of life, rather than risk returning to states still rife with continuous ethnic tensions.²³

2. Scholarly Views of Immigration in the European Union

*Two rival visions of modern Germany clashed: the liberal vision, embraced by the country's elite, of a globalized, open society, and a conservative one, more assertive about national interests and German identity in a chaotic and dangerous world . . . 57 percent of Germany's non-Muslims regard Islam as a threat, and one in four Germans would support a ban on Muslim immigrants.*²⁴

Before delving into scholarly views of immigration in the EU, it is helpful to examine the root of these views via a brief exploration of how communities in EU states are reacting to the immigration debate. PEGIDA (Patriotische Europäer Gegen die Islamisierung des Abendlandes, or "Patriotic Europeans Against the Islamization of the Occident") is an anti-Islamization movement that drew more than 25,000 protesters to German city streets in

¹⁸ *Id.*

¹⁹ Hall, *supra* note 15.

²⁰ *Id.*

²¹ *Id.*

²² Susan M. Akram & Terry Rempel, *Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees*, 22 B.U. INT'L L.J. 1 (2004).

²³ Hall, *supra* note 15; *The Death of a Killer*, WALL ST. J. EUR. (Mar. 13, 2006), <https://advance.lexis.com> (search "death of a killer" "wall street journal Europe" in query box; then follow "News" filter; then use "Narrow By" filter and set "Timeline" for year "2006"; then follow "The Death of a Killer" hyperlink).

²⁴ Lucian Kim, *Germany's Anti-immigrant PEGIDA Isn't a Vladimir Putin Plot. It's Scarier*, REUTERS: THE GREAT DEBATE (Jan. 14, 2015), <http://blogs.reuters.com/great-debate/2015/01/14/germanys-pegida-isnt-a-vladimir-putin-plot-the-truth-is-scarier/>.

response to the Charlie Hebdo shootings in Paris, which later elicited condemning words from Chancellor Angela Merkel.²⁵ PEGIDA and its massive following demonstrate two important characteristics about how EU communities perceive immigration. First, this large gathering of average German citizens rallying under an anti-Islamist organization points to an underlying fear of the *other*.²⁶ Leaders of PEGIDA plainly state distaste for differences in lifestyle and customs practiced by Muslims and a phobia of *traditional* German culture being taken over by these *others*.²⁷ Second, movements like PEGIDA illustrate a general anti-immigration sentiment felt by Germans and many other EU citizens who “feel sidelined by mainstream politicians, who they claim have gone too far in making their country attractive to foreigners at their expense.”²⁸ That said, this anti-immigration sentiment is met with an almost equal number of EU citizens and leaders who advocate for a peaceful co-existence and open arms to immigrants and refugees alike.²⁹

Scholarly views towards immigration in the EU, as exemplified above, can be roughly divided into two parties: those who expound a nationalist anti-immigration perspective and those who see the EU’s future in multicultural assimilation.³⁰ Unlike in the United States, the “melding of Europe’s Muslim communities . . . into Europe’s pluralistic, secular society [is] particularly tricky” because of a perception that immigrants are not integrating effectively (think headscarf debate).³¹ This perception is augmented by recent events such as the Charlie Hebdo shootings, which were perpetrated by homegrown extremists. As a consequence, views that support stronger border security and harsher treatment of immigrants are becoming more popular.³² However, multicultural assimilation, despite current events and change of popular opinion, is still the controlling scholarly view.³³

²⁵ *Record Pegida Rally in Dresden Sparks Mass Rival Protests*, BBC EUR. (Jan. 12, 2015), <http://www.bbc.com/news/world-europe-30777841>.

²⁶ Kim, *supra* note 24.

²⁷ *Id.*

²⁸ Melissa Eddy, *Big Anti-Immigration Rally in Germany Prompts Counterdemonstrations*, N.Y. TIMES, (Jan. 12, 2015), <http://www.nytimes.com/2015/01/13/world/europe/big-anti-immigration-rally-in-germany-prompts-counterdemonstrations.html>.

²⁹ *Id.*

³⁰ Matthew Karnitschnig et. al., *Europe’s Anti-Immigrant Parties Stand to Gain Ground in Wake of Paris Attacks*, WALL ST. J. (Jan. 16, 2015), <http://www.wsj.com/articles/europes-anti-immigrant-parties-stand-to-gain-ground-in-wake-of-paris-attacks-1421371307>.

³¹ *Id.*

³² This trend is particularly poignant in the amount of support nationalists’ parties have gained. For a visual of this trend, see Karnitschnig, *supra* note 30.

³³ Ezio Benedetti, *EU Migration Policy and Its Relations with Third Countries: Russia, Ukraine, Belorussia and Moldova*, PROJECT BRIDGE 1, 3 (2012), http://www.project-bridge.eu/datoteke/Publications/BRIDGE_EU%20migration%20

3. Immigration and Policy Trends in the European Union

Because of the relatively recent formation of the EU in 1951, its history regarding immigration is much shorter than that of the United States³⁴ That being said, in less than 80 years EU immigration policies have been altered considerably.³⁵ In the sixties immigration policies were irregular and consistent only with what individual states decided.³⁶ However, after this era of immigration policy the EU began to transform.³⁷ In particular, the global dimension of immigration:

caused a progressive change of perspective in the adoption of governmental policies in this sector, policy which has been characterized since the early eighties by the slow but progressive renouncing of an unilateral and sectorial approach to the management of migratory flows and the development of an international cooperation policy.³⁸

This shift in immigration policy translates to an approach that is “more and more accepting that it is impossible to stop migration (the zero immigration is at the same time unrealistic and impossible)” and to instead focus on ‘migration management.’³⁹ This migration management approach is more holistic in melding immigration policies with foreign policy to strive for a better outcome for the EU and outside states with potential migrants.⁴⁰ Migration management has increased the use of migration partnerships that “include agreements between governments to better regulate migration, improved cooperation on migration issues between departments of national governments, and the integration of the private sector and civil society groups into migration policy.”⁴¹ However, immigration policy trends appear to be enforced in a less than optimal manner as discussed below.

policy_paper_Dr.Benedetti.pdf.

³⁴ *A Peaceful Europe—The Beginnings of Cooperation*, *supra* note 4. See *The Schuman Declaration—9 May 1950*, EUR. UNION, http://europa.eu/about-eu/basic-information/symbols/europe-day/schuman-declaration/index_en.htm (last visited Sept. 20, 2015).

³⁵ Benedetti, *supra* note 33.

³⁶ *Id.* at 8.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 5.

⁴⁰ Benedetti, *supra* note 33, at 5.

⁴¹ *Id.*

4. How Immigration Policy is Enforced in the European Union; The Burden Placed on Border States

*The allure of Europe for illegal migrants rests primarily in rich countries; the burden of catching and dealing with them should not lie with countries simply because they happen to be en route.*⁴²

The brief overview of how the EU was formed, discussed above, lays the foundation for understanding how the EU creates and enforces its immigration policy. The EU was formed to prevent future conflict between European states and to promote social and economic stability.⁴³ EU immigration policy has similarly focused on the promotion of family unity, human rights, and integration as described in the above policy trend section.⁴⁴ The implementation of immigration policy was intended to protect migrants and foster a pro-assimilation environment; however, its consequences have been to the contrary. In other words, “it is a grand European project, born of integrationist ideals yet undermined by participants’ unwillingness to share costs as well as benefits.”⁴⁵

To begin, the Schengen agreement in 1995 eliminated controls at common borders between EU states to ensure citizens the fundamental right to travel, work, and live in any EU state.⁴⁶ While the freedom to travel is perhaps one of the most iconic and beneficial effects of the EU’s many agreements, it also enables illegal immigrants to travel from any port of entry to wealthier destination states.⁴⁷ However, the Dublin regulation, which establishes a hierarchy of responsibility for member states in processing immigration claims,⁴⁸ also mandates that the state in which an illegal immigrant or refugee entered is responsible for their processing.⁴⁹ The Schengen agreement combined with the

⁴² *Europe’s Huddled Masses; Rich Countries Must Take on More of the Migration Burden*, THE ECONOMIST (Aug. 16, 2014), <http://www.economist.com/news/leaders/21612152-rich-countries-must-take-more-migration-burden-europes-huddled-masses>.

⁴³ *A Peaceful Europe—The Beginnings of Cooperation*, *supra* note 4; see *The Schuman Declaration—9 May 1950*, *supra* note 34.

⁴⁴ Benedetti, *supra* note 33, at 14.

⁴⁵ *Europe’s Huddled Masses; Rich Countries Must Take on More of the Migration Burden*, *supra* note 42.

⁴⁶ Dimitris Avramopoulos, *Schengen Area*, EUR. COMM’N (Apr. 29, 2014), http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/index_en.htm.

⁴⁷ *Europe’s Huddled Masses; Rich Countries Must Take on More of the Migration Burden*, *supra* note 42.

⁴⁸ *Dublin Regulation*, EUR. COUNCIL ON REFUGEES AND EXILES, <http://www.ecre.org/topics/areas-of-work/protection-in-europe/10-dublin-regulation.html> (last visited on Sept. 20, 2015).

⁴⁹ *Asylum and Irregular Immigration in the EU: State of Play*, EUR.

Dublin regulation and illegal immigration means that while illegal immigrants are attracted to wealthier EU states (often the interior or northern EU states), it is border states who are saddled with the expense and administrative burden of catching and processing illegal immigrants.⁵⁰ This is especially true when considering that the majority of impoverished individuals who risk the journey to the EU do so by crossing the Mediterranean Sea or other dangerous routes.⁵¹ For example, in 2014 alone, a reported 3,500 people died in the attempted Mediterranean Sea crossing.⁵² Moreover, Italy recently cancelled its sea rescue Mare Nostrum operation to be replaced by a far smaller border control operation called Triton.⁵³ While Mare Nostrum was specifically designed to prevent immigrant death, Triton only operates near EU coast and has far fewer ships.⁵⁴ Mare Nostrum was cancelled because Italy could no longer afford the nine million euro (twelve million U.S. dollars) a month bill that the rest of the EU refused to contribute to.⁵⁵ Italy is not the only border state without EU assistance for its immigration related expenses; of the 63 million euros Greece spent in 2013 to prevent illegal immigration, EU border agencies only contributed three million euros.⁵⁶

B. The United States

1. History of Immigration in the United States

Legislative attempts to comprehensively reform the U.S. immigration system by bringing it in line with the economic and social realities that spur immigration failed in 2006 and 2007. As a result, many state and local governments are implementing or considering proposals to turn police officers into de facto immigration agents, and to “crack down” on unauthorized immigrants and those who provide them with jobs or housing.

PARLIAMENTARY RES. SERV., 1 (Mar. 25, 2014), http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140776/LDM_BRI%282014%29140776_REV1_EN.pdf.

⁵⁰ *Europe’s Huddled Masses; Rich Countries Must Take on More of the Migration Burden*, *supra* note 42.

⁵¹ *Id.*

⁵² *Hundreds of Migrants Killed in New Mediterranean Tragedy, Says UN*, BBC (Feb. 11, 2015), <http://www.bbc.com/news/world-europe-31414009>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Europe’s Huddled Masses; Rich Countries Must Take on More of the Migration Burden*, *supra* note 42.

⁵⁶ *Id.*

*In short, the United States is as conflicted as ever about its historical identity as a nation of immigrants.*⁵⁷

The very first Americans crossed the Bering Strait between twelve and thirty thousand years ago from Asia.⁵⁸ The North American continent saw the beginning of the second wave of mass immigration when Europeans arrived beginning in 1492.⁵⁹ However, the U.S. federal government did not establish a uniform rule for naturalization until The Naturalization Act of 1790.⁶⁰

A close examination of U.S. trends since 1790 show the continuation of a cyclical pattern of waves of immigration followed by ambivalent, contradictory, and even hostile reactions from the U.S. population.⁶¹ Immigrants who arrive in the United States in search of economic opportunity and political freedom have often been subjected to discrimination based on race and religious beliefs.⁶² Post assimilation and after decades of U.S. citizenship, the descendants of these immigrants take a disparaging perspective of the growing numbers of new immigrant populations.⁶³ In turn, these ambivalent and hostile attitudes are reflected in national immigration policies.⁶⁴ Ironically, it is these caustic and often hostile national immigration policies that are detrimental to the United States's economic interests.⁶⁵ For example, despite the extent to which the United States and Mexico's economies are intertwined, over the past twenty-five years the United States has continued to impose additional legal limits on immigration from Mexico.⁶⁶ Notably, the United States distinguishes visa applicants based upon the labor skill level to encourage high skilled professionals to immigrate while trying to stem the flow of unskilled laborers. This trend was exemplified when President Obama announced "broad procedural changes that will make it easier and faster for high-skilled immigrants, graduates, and entrepreneurs to stay and contribute to the American economy in a transparent effort to maintain U.S. edge over other nations."⁶⁷ More importantly, the United States's expanding

⁵⁷ Walter A. Ewing, *Opportunity and Exclusion: A Brief History of U.S. Immigration Policy*, IMMIGR. POL'Y CTR. (Jan. 2012), http://www.immigrationpolicy.org/sites/default/files/docs/opportunity_exclusion_011312.pdf.

⁵⁸ *Id.*

⁵⁹ *Id.* Note, while a brief history of early North American immigration is given, U.S. immigration in the twentieth and twenty-first century will primarily be examined because this article discusses modern immigration trends and policies in the United States.

⁶⁰ *Congress of the United States*, HARV. U. LIBR., <http://pds.lib.harvard.edu/pds/view/5596748> (last visited Sept. 20, 2015).

⁶¹ Ewing, *supra* note 57.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Ewing, *supra* note 57.

⁶⁷ Chidanand Rajghatta, *Obama Greenlights High-Skilled Immigration; Relief for*

immigration policies since the 1980s has disproportionately burdened border states.⁶⁸

In 1986, in response to rising levels of illegal immigration, the United States passed the Immigration Reform and Control Act of 1986 (“IRCA”).⁶⁹ IRCA was important for three reasons. First, IRCA allowed many immigrants who arrived illegally to apply for legal status.⁷⁰ Not including seasonal workers, IRCA opened the pathway for 1.6 million illegal immigrants to naturalize through its generalized legalization program.⁷¹ Second, IRCA created a temporary category visa for seasonal agricultural workers.⁷² Thirdly, IRCA instituted laws that imposed sanctions on employers who “knowingly” hired people not authorized to work in the United States (generally illegal immigrants) and increased border funding.⁷³ Later, the Immigration Act of 1990 raised the annual immigration cap and granted temporary protection to illegal immigrants fleeing from natural disasters or armed conflicts.⁷⁴ However, in 1996 a shifting political climate translated into the creation of harsher immigration laws.⁷⁵ Beginning in California, in 1994, Proposition 187, titled Save Our State (“SOS”), denied recently naturalized individuals state benefits and illegal immigrants kindergarten through university education access.⁷⁶ However, Proposition 187 was superseded by federal law with the passage of three immigration laws passed in 1996.⁷⁷ The first law was the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) that created new grounds for inadmissibility with a new definition for an aggravated felony and retroactively applied this definition. As a consequence,

H-1B Visa Holders, Spouses, Students, THE TIMES OF INDIA, (Nov. 21, 2014), <http://timesofindia.indiatimes.com/world/us/Obama-greenlights-high-skilled-immigration-relief-for-H-1B-visa-holders-spouses-students/articleshow/45226976.cms>.

⁶⁸ Phil Galewitz, *Medicaid Helps Hospitals Pay For Illegal Immigrants’ Care*, KAISER HEALTH NEWS (Feb. 12, 2013), <http://kaiserhealthnews.org/news/medicaid-illegal-immigrant-emergency-care/>.

⁶⁹ Ewing, *supra* note 57.

⁷⁰ *Id.*

⁷¹ Donald M. Kerwin, *More than IRCA: U.S. Legalization Programs and the Current Policy Debate*, MIGRATION POL’Y INST. (Dec. 2010).

⁷² *Id.*

⁷³ Ewing, *supra* note 57.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Prop. 187 Approved in California*, MIGRATION NEWS (Dec. 1994), https://migration.ucdavis.edu/mn/more.php?id=492_0_2_0; *CA’s Anti-Immigrant Proposition 187 is Voided, Ending State’s Five-Year Battle with ACLU, Rights Group*, ACLU (July 29, 1999), <https://www.aclu.org/immigrants-rights/cas-anti-immigrant-proposition-187-voided-ending-states-five-year-battle-aclu-righ> [hereinafter *CA’s Anti-Immigrant Proposition 187 is Voided*].

⁷⁷ *CA’s Anti-Immigrant Proposition 187 is Voided*, *supra* note 76.

many legal immigrants became newly defined as aggravated felons.⁷⁸ In addition, the new law included a newly created expedited removal process.⁷⁹ Second, the Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”), required legal permanent residents (“LPR”) to wait five years after obtaining their green card before receiving public-benefit programs and ten years before receiving Medicare and Social Security.⁸⁰ Third, the Antiterrorism and Effective Death Penalty Act (“AEDPA”) allowed immigrants, both legal and illegal, suspected of being terrorists to be deported based on secret evidence and more rigorous asylum requirements.⁸¹ Although these 1996 laws were mainly geared to address legal immigrants, they demonstrate how public policy is set by fears and hostility against immigrants in general.⁸² Specific fears and hostilities in the 1990s arose from the newly diversified group of immigrants that consisted of more individuals from Latin and Asian nations than the historically favored European nations; this was exacerbated by the parallel shift of wealthy skilled professionals to poor unskilled labors immigrating into the United States.⁸³ Furthermore, beyond IIRIRA’s increase in border enforcement, these 1996 laws failed to comprehensively address illegal immigration, leaving border states to individually tackle the issue.

After the September 11, 2001 attacks on the World Trade Center, anti-terrorism efforts became closely intertwined with attempts to curb illegal immigration.⁸⁴ Programs like the temporary National Security Entry-Exit Registration System (“NSEERS”) required a second screening of individuals from certain countries that posed possible national security threats were implemented.⁸⁵ More permanent fixtures, like the Enhanced Border Security and Visa Entry Reform Act of 2002 (“EBSVERA”), created new and stringent procedures for visa applicants and travel documents.⁸⁶ The REAL ID Act of 2005 placed more burdens on border states by requiring proof of citizenship or legal immigration status to issue a driver’s license.⁸⁷ Lastly, 850 miles of fence along the United States-Mexico border was built after the Secure Fence Act of 2006 was passed.⁸⁸

⁷⁸ Ewing, *supra* note 57.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Elizabeth S. Rolph, *Immigration Policies Legacy from the 1980s and Issues for the 1990s*, RAND, 7-9 (1991), <http://www.rand.org/content/dam/rand/pubs/reports/2007/R4184.pdf>.

⁸³ *Id.* at 7-12.

⁸⁴ Ewing, *supra* note 57.

⁸⁵ *DHS Removes Designated Countries from NSEERS Registration*, DEP’T OF HOMELAND SEC. (May 2011), <http://www.dhs.gov/dhs-removes-designated-countries-nseers-registration-may-2011>.

⁸⁶ Ewing, *supra* note 57.

⁸⁷ *Id.*

⁸⁸ *Id.*

As demonstrated, these three laws, which were passed post September 11, focused on deterring illegal immigration and the entrance of possible terrorists at the U.S. border. However, as discussed below, this approach to illegal immigration creates a disproportionate burden on border states in administering and paying for these requirements and privileges. It is this disproportionate burden on border states that begs for a federal immigration policy reform. This immigration policy reform should have a more holistic approach in allotting more federal funding for border states, a mandatory periodic review of immigration policy (so as to have the opportunity to update inefficient immigration policies), a national electronic system for immigration processing, and a top-down emphasis on integration from the federal government to avoid *othering* documented and illegal migrants.

2. Scholarly Views of Immigration in the United States

Before examining politicians' and scholars' positions and perspectives on immigration, it is helpful to understand how the average middle class U.S. citizen feels about immigration. This middle class U.S. perspective is important because it in part forms the national debate and what leaders and scholars focus on in immigration.

In general, there are two attitudes towards immigration held by the U.S. middle class, pro and contra. As mentioned in the former section, immigration is a galvanizing topic that resonates from people's fears and anxieties. Murrieta, an average border town in southern California filled with families and those escaping the hustle of the city, exemplifies how the middle class public can view illegal immigration fearfully.⁸⁹ To relieve the burdened Texas processing system, buses full of illegally immigrated mothers and children were sent to Murrieta for processing.⁹⁰ However, Murrieta as a community physically blocked these buses from arriving, and fearful for the safety of the bus passengers, Border Patrol rerouted the buses to San Diego.⁹¹ During a town hall-style meeting Murrieta community members expressed their fear of illegal immigrants in their questions to Border Patrol agents, the Murrieta mayor, and other federal officials, asking, "What happens when they [illegal immigrants] come here with diseases and can overrun our schools? How much is [processing illegal immigrants] [] costing us? How do you know they are really families and aren't some kind of gang or drug cartel?"⁹² While other Murrieta community members expressed their disgust at this reaction to illegal immigrants arriving for processing, this incident

⁸⁹ Jennifer Medina, *The Town Where Immigrants Hit a Human Wall*, N.Y. TIMES, (July 3, 2014), <http://www.nytimes.com/2014/07/04/us/influx-of-central-american-migrants-roils-murrieta-calif.html>.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

demonstrates the habitual fearful reaction many communities have when confronted with illegal immigration.⁹³

Although Murrieta is but one small town in southern California, it exemplifies how illegal immigration is perceived as a predominantly negative phenomenon. Illegal immigration is seen as a crushing drain on community resources, a breeding pool of crime, and a loss of the community's culture. Ann Coulter, a popular conservative pundit, exemplifies this perception by her pronouncement that the United States is threatened more by illegal immigrants than the Islamic State of Iraq and Syria ("ISIS").⁹⁴ Ms. Coulter's argument asserts that while ISIS is geographically far removed from the United States, illegal immigrants have permeated U.S. communities and cities.⁹⁵ Therefore, because illegal immigrants are within our midst, they must be more dangerous than the terrorists who have filmed the decapitation of U.S. citizens.⁹⁶ The anti-immigration perceptions expounded by the town of Murrieta and Ms. Coulter serve to demonstrate how and why illegal immigration is so strongly opposed. Partisan Republican politicians (it should be noted that there are Republican politicians such as Senator McCain who tried unsuccessfully to co-sponsor major immigration reform with Democrats)⁹⁷ often echo this opposition in that any leniency in immigration policy will lead to a rush of illegal immigrants—hence President Obama's self-made 'humanitarian crisis' when minors flooded the United States-Mexico border during summer 2014.⁹⁸ Therefore, Republicans argue, resources should be focused on securing the actual border by building and improving the fence separating the United States and Mexico.⁹⁹ Arizona Representative Martha McSally argues that if individuals without documentation are prevented from entering the United States then the issue of illegal immigration is avoided.¹⁰⁰ Although this often-conservative perspective is logical, it fails to

⁹³ *Id.*

⁹⁴ Catherine Taibi, *Ann Coulter Believes Americans Should Fear 'Illegal Immigrants' More Than ISIS*, THE HUFFINGTON POST (Mar. 26, 2015, 2:59 PM), http://www.huffingtonpost.com/2015/02/26/ann-coulter-isis-immigrants-illegal-aliens_n_6762734.html.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Steve Benen, *McCain Walks Away from His Immigration Bill (Again)*, MSNBC (Aug. 26, 2014, 10:55 AM), <http://www.msnbc.com/rachel-maddow-show/mccain-walks-away-his-immigration-bill-again>.

⁹⁸ Julia Preston & Laura Tillman, *Immigration Advocate, Detained on Texas Border, Is Released in Visa Case*, N.Y. TIMES, (July 15, 2014), <http://www.nytimes.com/2014/07/16/us/Jose-Antonio-Vargas-immigrant-advocate-arrested.html>.

⁹⁹ Perla Trevizo, *\$10 Billion Border Bill Unneeded, Critics Say*, ARIZ. DAILY STAR (Jan. 24, 2015), http://tucson.com/news/government-and-politics/billion-border-bill-unneeded-critics-say/article_86d0a126-2d81-5728-9b8d-7626f34776a2.html.

¹⁰⁰ *Id.*

account for the multitude of illegal immigrants that are already present in the United States and that lose their legal status from visa expiration.¹⁰¹

Supporters of immigration reform tend to focus on more pathways to citizenship and guest worker programs to increase immigrant integration in technology centers such as Silicon Valley.¹⁰² The integration perspective is partially illustrated by President Obama's executive actions including the Deferred Action for Childhood Arrivals ("DACA") and the recent expansion of DACA.¹⁰³ Through DACA more than 4 million of the eleven million illegal migrants in the United States are protected from deportation and many can receive work permits.¹⁰⁴ That said, President Obama's executive actions, although important in physically integrating immigrants into communities, were implemented in a manner that did not foster a national sense of integration to avoid *othering*, but instead polarized the immigration debate to an extreme.

Lastly, some pro-immigration activists believe that border states are not burdened by illegal immigration. Instead they feel that certain issues are politicized in order to justify heightened border security and harsher immigration policies. While there is merit in this view, it is more of a conspiracy theory at its substance. The issue with this perspective is that multiple private, state, and federal entities have collected methodical and non-biased data demonstrating that illegal immigration does negatively impact border states. The Pew Research Center for example, a nonpartisan fact tank, noted that more than half of undocumented migrants, 59% of 11 million people, are uninsured.¹⁰⁵ Given that one third of undocumented migrants' children and one fifth of adult undocumented migrants live in poverty, it is inferential that the free emergency care hospitals are obligated to provide regardless of insurance or legal status is heavily relied upon by these individuals.¹⁰⁶

¹⁰¹ David Seminara, *New Pew Report Confirms Visa Overstays Are Driving Increased Illegal Immigration*, CTR. FOR IMMIGR. STUD. (Sept. 30, 2014), <http://www.cis.org/seminara/new-pew-report-confirms-visa-overstays-are-driving-increased-illegal-immigration>.

¹⁰² Brooke Donald, *Q&A: Stanford Scholars on Immigration Reform*, STANFORD NEWS (Feb. 1, 2013), <http://news.stanford.edu/news/2013/february/qanda-immigration-reform-020113.html>.

¹⁰³ Max Ehrenfreund, *Your Complete Guide to Obama's Immigration Executive Action*, WASH. POST (Nov. 30, 2014), <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/11/19/your-complete-guide-to-obamas-immigration-order/>.

¹⁰⁴ *Id.*

¹⁰⁵ Jeffrey S. Passel & D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, PEW RES. CTR. (Apr. 14, 2014), <http://www.pewhispanic.org/2009/04/14/a-portrait-of-unauthorized-immigrants-in-the-united-states/>.

¹⁰⁶ *Id.*

3. Immigration and Policy Trends in the United States

*As this contradiction between immigration law and economic reality illustrates, the contours of the U.S. immigration system are often shaped more by public fears and anxieties than by sound public policy.*¹⁰⁷

A recent study by Reuters found that 70% of U.S. citizens believe undocumented immigrants threaten their cultural beliefs and customs.¹⁰⁸ Furthermore, 63% of people surveyed believe that documented and legal immigrants place a burden on the U.S. economy.¹⁰⁹ One may potentially assume that the U.S. citizens surveyed by Reuters are simply reacting to current events including Congress' failure to agree on broad immigration reform and President Obama's unilateral track record.¹¹⁰ However, this Reuters survey does more than capture a nation's momentary sentiment; it showcases a habitual reactionary approach to immigration that consists of fear and hostility. The reactionary approach in turn produces aggressive national immigration policy. Aggressive national immigration policy, as described in Part II.B(1), has translated into greater border security (from 5,000 to 20,000 agents) and an increase in pressure on businesses to ensure their employees are documented legal immigrants.¹¹¹

Although these may be effective measures to combat illegal immigration, they place an undue burden on border states. Illegal immigration largely occurs through the 1,954 mile border shared between the United States and Mexico. This means that while the Border Patrol is funded by the federal government, border states such as Texas, California, and Arizona are disproportionately burdened by the administration, enforcement costs of federal immigration laws, and the unpaid healthcare bills accrued by illegal immigrants.¹¹²

¹⁰⁷ Ewing, *supra* note 57.

¹⁰⁸ Alistair Bell, *Americans Worry that Illegal Migrants Threaten Way of Life, Economy*, REUTERS (Aug. 7, 2014).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Donald, *supra* note 102; Manny Fernandez, *Texas Bolsters Border Patrol with its Own*, N.Y. TIMES (Aug. 6, 2014), <http://www.nytimes.com/2014/08/07/us/texas-is-accused-of-overreaching-and-overspending-to-police-border.html>.

¹¹² Byron Pitts, *Illegal Immigrant Births—At Your Expense*, CBS NEWS (Apr. 7, 2008), <http://www.cbsnews.com/news/illegal-immigrant-births-at-your-expense>.

4. How Immigration Policy is Enforced in the United States & The Burden Placed on Border States

The \$500 million Texas Governor Rick Perry spent to equip and pay for the expanded Texas game wardens exemplifies the burden that illegal immigration enforcement places on border states.¹¹³ Although these Texas game wardens do not have the authority to enforce federal immigration laws, they are able to enforce state laws such as human trafficking and drug smuggling codes.¹¹⁴ Texas game wardens to date have made 13,000 arrests, seized 87 million dollars in drugs, and rescued 137 people since Governor Perry's efforts.¹¹⁵ Governor Perry, beyond the purchase of state police helicopters and surveillance airplanes, has also repeatedly called for the assistance of the National Guard.¹¹⁶ While Texas taxpayers are currently bearing the burden of protecting its state borders, Governor Perry has requested the federal government reimburse all border security expenditures.¹¹⁷ However, as some disagree with Governor Perry's tactics, Texas has yet to be reimbursed for managing its borders.¹¹⁸

Rural and sparsely populated counties in the southern reaches of Texas are also burdened through processing the numerous people found deceased from attempting illegal immigration.¹¹⁹ Although technically immigration is a federal issue, these counties have become responsible for completing DNA tests, record searches, and final burial for these deceased individuals.¹²⁰ Thus far, these Texas counties have faced increasing financial hardship and suffer from being short-staffed.¹²¹

Healthcare expenditure for illegal immigrants is an unlikely example of the burden border states bear under current immigration policies. An estimated eight percent of the 4.3 million or 340,000 babies born in U.S. hospitals had parents who were illegal immigrants.¹²² Although this fact may be seen as a positive trend towards naturalizing migrants and holding individuals to the same taxes and community responsibilities as citizens, the majority of these bills for

¹¹³ Fernandez, *supra* note 111.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Fernandez, *supra* note 111.

¹¹⁹ *Bodies Pile Up in Texas as Immigrants Adopt New Routes Over Border*, N.Y. TIMES (Sept. 22, 2013), <http://www.nytimes.com/2013/09/23/us/bodies-pile-up-in-texas-as-immigrants-adopt-new-routes-over-border.html>.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Devin Dwyer, *Study: 8 Percent of U.S. Births to Illegal Immigrants*, ABC NEWS (Aug. 11, 2010), <http://abcnews.go.com/Politics/birthright-citizenship-study-sheds-light-illegal-immigrants-children/story?id=11376791>.

childbirth are left unpaid.¹²³ While birth tourism does generally entail parents paying for the hospital bill for their child's birth,¹²⁴ Arizona alone spends \$150 million statewide each year in unreimbursed healthcare bills for illegal immigrants.¹²⁵ It takes very little creativity to imagine how much Arizona could invest in construction, education, and infrastructure if these funds were not used for unpaid medical expenses. Beyond unpaid hospital bills for childbirth, all medical emergencies are unquestionably sent to border state hospitals.¹²⁶ In 1986, Congress passed the Emergency Medical Treatment and Active Labor Act ("EMTALA"), effectively requiring all hospital emergency rooms to accept emergency health care treatment regardless of ability to pay, insurance, and legal status in the United States if they wish to be eligible to apply for federal medicare funds.¹²⁷ This means that when a hypothetical human smuggler rolls his overloaded SUV near the United States-Mexico border, all car occupants are treated at U.S. hospital emergency rooms and hypothetically the hospitals are not compensated for their care. While unpaid hospital bills caused by illegal immigrants continue to rise, "Congress recently set aside \$1 billion to reimburse states for treating illegal immigrants. Arizona will get \$40 million annually over four years starting in 2005, about one-fourth of what it actually spends."¹²⁸

¹²³ Byron Pitts, *Illegal Immigrant Births - At Your Expense*, ABC NEWS (Apr. 7, 2008), <http://www.cbsnews.com/news/illegal-immigrant-births-at-your-expense/>.

The author would like to make clear that while there is an ongoing debate as to whether the 14th Amendment guarantee that those born on United States soil are automatically citizens should be reinterpreted or amended is generally misinterpreted. Parents of U.S. citizens must wait until their newborn reaches age 21, meet requirements to qualify for I-130 Petition for Alien Relative approval, and then wait for sometimes years for the I-130 to be approved when a visa number becomes available. Furthermore, the author argues that it is in the U.S.' best interest to have naturalized and unified families contributing economically and socially to local communities in place of fragmented families that live in fear of deportation and work illegally. *Bringing Parents to Live in the United States as Permanent Residents*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <http://www.uscis.gov/family/family-us-citizens/parents/bringing-parents-live-united-states-permanent-residents> (last visited Sept. 25, 2015); *I-130, Petition for Alien Relative*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <http://www.uscis.gov/i-130> (last visited Sept. 25, 2015).

¹²⁴ Devin Dwyer, *A New Baby Boom? Foreign "Birth Tourists" Seek U.S. Citizenship for Children*, ABC NEWS (Apr. 14, 2010), <http://abcnews.go.com/Politics/birth-tourism-industry-markets-us-citizenship-abroad/story?id=10359956>.

¹²⁵ David Kelly, *A Hospital on Border Going Over the Edge*, L.A. TIMES (June 20, 2004), <http://articles.latimes.com/2004/jun/20/nation/na-hospital20>.

¹²⁶ *Id.*

¹²⁷ 42 U.S.C.A. § 1395dd (West 2011); *Lessons Learned From EMTALA Enforcement*, STRATEGIC MANAGEMENT (Sept. 2012), <http://compliance.com/articles/emtala-enforcement/>.

¹²⁸ Kelly, *supra* note 125.

As a consequence of the federal government's under-repayment to Arizona and other border state hospitals, many are forced to close or they struggle to provide care with a stretched budget.¹²⁹ The University of Arizona Medical Center's losses were close to one million dollars *per month* in unpaid treatment, while another large private hospital in Tucson simply closed its emergency room to avoid uncompensated medical care.¹³⁰ Worse, in small rural areas where the local hospital is the only viable medical location for miles, its possible closure negatively impacts local communities.¹³¹ Therefore, the high cost of uncompensated emergency hospital bills from illegal migrants, under-refunded by the federal government, is a heavy burden on border states. This is a simple and definitive example of how U.S. federal immigration policy burdens border states that, because of their geographical location, interact with the issue of illegal immigration more than other states.

III. AN ANALYSIS FOR FUTURE REFLECTIONS

*It is clear that undesirable exploitation of migrants and all sorts of racketeering are associated with inefficient border controls.*¹³²

There are roughly three categories for border reform in the EU and the United States. The first is commonly associated with the partisan Republican Party and conservative leaning individuals, who believe that border security should be heightened to stop illegal immigration at the border. This strategy is often referred to as "securing" or "closing the border." This has been shown not to function as well as believed with the doubling of the border patrol and still record number of illegal immigrations crossing the border into the United States. Because of the 1,954 mile border the United States and Mexico share, there is very little chance of any fence retaining its efficacy with cut holes commonly found and a healthy demand for illegal narcotics.¹³³ This also does little to address the issue of what to do with more than 11 million undocumented migrants already in the United States. Deportation is likely too great of an undertaking, with an estimated 30 years necessary to process the current backlog of cases awaiting the immigration court. In 1886 the U.S. Supreme Court ruled that migrants, regardless of documentation status, are afforded Fourteenth Amendment constitutional rights.¹³⁴ Although this is undoubtedly a landmark decision

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Benedetti, *supra* note 33.

¹³³ Trevizo, *supra* note 99.

¹³⁴ *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

securing basic human rights in the United States, these rights translate to time consuming and expensive legal proceedings, especially deportation proceedings. Likewise, in the EU it is nearly impossible to stop the hundreds of thousands of individuals who travel by sea (in often perilous conditions) to reach any number of coastal regions or the many others that enter EU border states via surrounding non-EU member nations.¹³⁵ It is important to note that the immigration trend is not declining but increasing as a global phenomenon demonstrated in the table found in Appendix 1, another justification against treating immigration as a strong-borders-issue. The EU, like the United States, cannot logistically or physically create a border impenetrable to individuals' dreams of a better life or of their drug trafficking business.

The second view is that pro-immigration that expounds the virtues of an open border. While this may relieve the specific issue of illegal immigration, it creates many more. The first foreseeable issue is that the rest of the world operates using geographical borders. Therefore, if the EU and the United States ceased to enforce its borders with other states, an EU-type system would be created without the agreements, policies, and shared understandings that the member states of the EU have. Instead, individuals from all over the world would be able to enter into the EU and the United States without any kind of regulation or manner of managing numbers effectively, massively increasing the population. In turn, this will create a crippling tax on EU and U.S. states that cannot provide for the masses of people entering and using finite community resources such as public and emergency health care, public schools, welfare, and police forces. In short, open borders without any control on the flow of people would not only function to destabilize border states, but it would also create negative outcomes for the entirety of the EU and the United States because of the endless number of people entering and leaving nations in an unregulated fashion.

The third view, endorsed by the author, is a four-part suggestion. The first suggestion is that because the burden placed on border states translates into a systemic issue all EU and U.S. member states end up struggling with, the Commission and Federal government need to dedicate more funds and political will to monetarily support border states and border communities in the managing of borders and enforcing immigration policies.

These funds from the Commission and Federal system can materialize from a number of sources. One could be that all member states contribute a proportionate amount of their GDP to a border security and immigration fund. This would be reminiscent of a tax and similar to the EU budget that primarily relies on the Gross National Income ("GNI") to proportionately draw funds from

¹³⁵ Phillip Connor, *Illegal Immigration by Boat: A Dangerous, but Common Way of Entering Europe*, PEW RES. CTR. (Apr. 30, 2014), <http://www.pewresearch.org/fact-tank/2014/04/30/illegal-immigration-by-boat-a-dangerous-but-common-way-of-entering-europe/>.

each state.¹³⁶ In this regard, the EU and the U.S. members could contribute funds to tackle a national issue without leaving border states to bear the majority of the financial burden.¹³⁷ Using a fund to which all member states contribute would also entail border states calculating and reporting their expenditures to receive necessary funding.¹³⁸ In turn, these calculations and reports produced by border states would help draw attention to issues not solved by current immigration policy. Consequently, the application for funds through the production of calculations and reports on immigration trends would serve to make future immigration policy more efficient and effective.

This group member funding approach based on state GNI/GDP would also include an innovation in responding to current immigration trends. For example, many migrant workers from Mexico are seasonal and would prefer to stay in Mexico but have illegally migrated to United States because of fewer seasonal visas. Therefore, one way to respond to this trend and prevent undocumented migration would be to issue more migrant worker visas.

Another option for the United States is that the federal government could take a percentage of military spending and dedicate it to border security because immigration is a national security issue—think nuclear material stolen in Mexico.¹³⁹ This money would be used not just for border patrol but for fortifying communities to better handle the burdens of immigration. If, say, hospitals in Arizona were not closing because of the multitude of unpaid medical bills for illegal immigrations, the community would be stronger as a whole and better able to support a system where illegal immigration is minimized.

The second part of the author's suggestion is geared more towards the United States than the EU. The EU's immigration policy is decided collaboratively every five years. If the EU and the United States fund border states and border communities to manage borders and to enforce immigration policies, then accordingly such funding deserves national treatment. While the EU decides immigration policy every five years the United States has a more disjointed process in which border patrol is controlled by the federal government and border states handle many other aspects of illegal immigration. For example, while Border Patrol "catches" illegal immigrants, these individuals are either shunted to state or federal courts to be processed, thus creating irregular outcomes

¹³⁶ *Where Does the Money Come From?*, EUR. COMM'N, http://ec.europa.eu/budget/explained/budg_system/financing/fin_en.cfm (last visited Sept. 25, 2015).

¹³⁷ Paul McDonough et al., *Sharing Responsibility for Refugee Protection in Europe: Dublin Reconsidered*, EUR. COUNCIL ON REFUGEES & EXILES (2008), http://www.asyl.at/fakten_1/ECRE_Dublin_Reconsidered_Mar2008.pdf.

¹³⁸ *Id.*

¹³⁹ *Mexico Finds Radioactive Load from Stolen Truck*, REUTERS (July 4, 2014), <http://www.reuters.com/article/2014/07/05/us-mexico-radioactive-idU.S.KBN0FA00Y20140705>.

and an overall disjointed system. Even more recently in the U.S., Immigration and Customs Enforcement (ICE) has shifted to prosecutorial discretion to unburden the massive queue for deportation proceedings; in effect this blurs immigration statuses while giving individual ICE attorneys discretion to decide who is a 'low-priority' for deportation.¹⁴⁰ Therefore, a national committee(s) specifically for immigration policy could make suggestions and ensure that all states in the United States had an opportunity to contribute to the immigration discussion.

The third part of the four-part suggestion is for the EU and the United States to create national electronic systems that link all states in a unified immigration system. Non-border states could process files without disrupting individuals' right to be heard while minimizing resources dedicated to processing illegal immigrants. An individual in immigration proceedings could be processed anywhere in the EU and the United States without disrupting the case or the individual's rights but allowing a shift in the burden of handling immigration cases. While this suggestion may appear on its face to encourage shunting illegal immigrants from one state to another for legal processing, it in fact accomplishes something much more important. First, a comprehensive system will streamline the process for illegal immigrants who, when reuniting with family or searching for employment, often move to a different geographical region. In place of ICE shipping large files across the United States to follow individuals, any ICE attorney will be able to pick up where the last ICE attorney left off. A similar scenario plays out in the EU, where an illegal migrant may enter through Spain and be apprehended but must petition to have her case heard in Germany where her family resides. In place of the EU's current petition system that often rejects cases based on arbitrary reasons or even loses files, an individual could simply be found in a comprehensive electronic system. More important, a comprehensive electronic system for immigration will collect data from all states and be an excellent resource to analyze immigration trends to monitor what immigration policies are working. Although a comprehensive electronic system for immigration will be undoubtedly expensive up front, the streamlining process and data collection will be cost saving in the long term and provide invaluable data sets.

The fourth part of the four-part suggestion regards foreign policy in the form of international aid. As discussed previously, illegal immigration is a repercussion of economic instability, threats to physical health, and natural and man made disasters. In this sense, illegal immigration will not stop unless these

¹⁴⁰ *How to Seek Prosecutorial Discretion from ICE*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT, <https://www.ice.gov/immigrationAction> (last visited Sept. 25, 2015); Muzaffar Chishti & Claire Bergeron, *Questions Arise with Implementation of Obama Administration's New Prosecutorial Discretion Policy*, MIGRATION POL'Y INST. (Feb. 29, 2012), <http://www.migrationpolicy.org/article/questions-arise-implementation-obama-administrations-new-prosecutorial-discretion-policy>.

individuals lack a reason to leave their home country. If an individual can provide for herself and her family without threat of violence, there is little impetus to leave her home, community, culture, and comfort to subject herself to the often dangerous journey and the impoverished conditions many illegal immigrants face when working for meager wages in sub-par work environments in the EU and the United States. Therefore, while the EU and the United States need to address border security as a comprehensive issue that means more than a checkpoint, it also needs to address the root cause of illegal migration. While the EU and the United States have a responsibility to respect national sovereignty, soft power projects that address and support education, individual and public health, and women's rights and ability to provide for herself and her family are viable pathways to support economically undeveloped states in strengthening infrastructure and therefore retaining their citizens.¹⁴¹

Lastly, although integration is not necessarily an area of reform easily manipulated by the EU Commission or the U.S. federal government, it is nonetheless important. While not directly linked to mass illegal immigration, integration of illegal immigrants already present in the EU and the United States is vital. As described in the scholarly views sections, both the EU and the United States are host to xenophobic communities and perspectives.¹⁴² Although individuals are entitled to their opinions and beliefs, globalization trends and the ease of human population movements will continue to support the flow of both documented and undocumented migrants to the EU and the United States. Therefore, in order to provide cohesive and efficient policy creation and implementation it is necessary to normalize the immigration debate and avoid extremism, not rooted in fact but rather based on discrimination against often marginalized groups. The world and its states function on the semi-free trade of goods, services, and knowledge regardless of a nation's desire to curb immigration, documented and undocumented. Unless a nation chooses a foreign policy similar to that of North Korea, the flow of people in and out of a nation is unavoidable. Consequently, the EU and the United States, while focusing on shifting the burden away from border states, should also emphasize integration of present migrants, both documented and undocumented to avoid future conflicted debates and gridlock on the immigration debate. While integration, like any social change, is slow moving, it is important to incorporate into education and public policies that will encourage positive change while eliminating opportunities and climates that foster *othering* of someone simply because they arrived 150 years later than someone else's family did.

¹⁴¹ Wayne King, *Mexican Women Cross Border so Babies Can Be U.S. Citizens*, N.Y. TIMES (Nov. 21, 1982), <http://www.nytimes.com/1982/11/21/us/mexican-women-cross-border-so-babies-can-be-us-citizens.html?pagewanted=all>.

¹⁴² See, *supra*, Parts II.A(2), II.B(2).

IV. CONCLUSION

*Sound policy must also embrace the question of how we integrate immigrants into American society. That is the ultimate test for whether immigration law works or not. In turn, the fundamental prerequisite for integration is that citizens and newcomers alike have confidence in U.S. immigration law and policy. And that confidence needs to begin with a coherent view of the rule of law in immigration law. I have tried to show this evening that competing views of the rule of law can differ profoundly.*¹⁴³

Through careful and thoughtful investigation of EU and U.S. immigration trends, one becomes painfully aware of the fact that immigration issues are only a consequence of a larger issue that leaders and communities are struggling to confront. The world that we inhabit now is nearly alien to the one fifty years ago because of the great technological strides in communication, transportation, biological understanding, and medicine. As life expectancies climbed past forty years old and fifty years old (forty is the new thirty after all), and individuals in Russia conduct transactions with businesses in Panama, and college students travel to Djibouti to enhance their “real world experiences,” the world becomes infinitely more connected. With this enhanced interconnectedness comes an entirely new set of challenges and problems that traditional forms of governance are often woefully inept at perceiving and effectively handling.

First, as described in the analysis above, both the EU and United States need to invest more funds and political will as a Commission and Federal government to bolster aid for border states that are the forefront of facing illegal immigration. Illegal immigration, as argued in this Note, is an issue that affects all states in the EU and in the United States, but its impact is unevenly felt among the border states. An increase in funding and political will by the EU and United States will allow: national and collaborative periodic review of the immigration systems and policy effectiveness; a unifying electronic immigration system that links all member states for streamlined immigrant processing; and continued incorporation of foreign policy that seeks to stem the tide of illegal immigration at the source by offering infrastructure aid to prevent natural or man-made disasters. It is far more inexpensive to aid nations in need than it is to process their floods of refugees in border states.

Hand-in-hand with this suggestion of viewing immigration as an interconnecting global phenomenon is the importance of shifting EU and U.S. perceptions in politics and education to push for the integration of legally present

¹⁴³ Hiroshi Motomura, *The Rule of Law in Immigration Law*, 15 TULSA J. COMP. & INT'L L. 139, 153 (2008), <http://digitalcommons.law.utulsa.edu/cgi/viewcontent.cgi?article=1257&context=tjcl>.

immigrants. In part, the fear of mass illegal migration is fueled by the fear of the *other*. Despite the EU's and U.S.' histories of migration and immigration, a pattern of *othering* new migrants continues to occur. The opening vignette poignantly states that migration can no longer be controlled, but instead government policies must be shifted to cope with and seek benefits from our disappearing, intangible states' borders. While individuals, grassroots movements, and even some not-for-profit organizations can strive for change, true immigration reform can only occur from the top down beginning with the EU Commission and the U.S. federal government. Only when the EU and the United States move beyond traditional normative policy approaches to dealing with all immigration will the *issue* of immigration be cured.

Appendix 1

The global context (migrant stocks, millions)

	1960	1970	1980	1990	2000	2005	2009
World	75.9	81.5	99.8	154.0	174.9	190.6	200,5
Africa	9.0	9.9	14.0	16.2	16.3	17.1	18,9
Asia	29.3	28.1	32.3	50.0	49.9	53.3	60,3
Europe	17.0	21.8	25.4	48.4	56.1	64.1	65,2
Lat. Am. + Carib.	6.0	5.7	6.1	7.0	5.9	6.6	7,2
North Am.	12.5	13.0	18.1	27.6	40.8	44.5	48,9

Source: UNDESA, population division¹⁴⁴



¹⁴⁴ Benedetti, *supra* note 33.