GEORGE R. LA NOUE

Rebalancing *the* Narrative

Higher Education, Border Security, and Immigration

Rebalancing

Higher Education, Border

A report by the

NATIONAL
ASSOCIATION
of SCHOLARS

420 Madison Avenue, 7th Floor
New York, NY 10017

the Narrative:

Security, and Immigration

Authored by

George R. La Noue
Professor Emeritus of Public Policy and Political Science
University of Maryland, Baltimore County

This essay reflects the research and opinions of the author and not necessarily those of any organization.

Published January, 2021

Cover Design by Beck & Stone
Interior Design by Chance Layton
© 2020 National Association of Scholars

About the National Association of Scholars

Mission

The National Association of Scholars is an independent membership association of academics and others working to sustain the tradition of reasoned scholarship and civil debate in America's colleges and universities. We uphold the standards of a liberal arts education that fosters intellectual freedom, searches for the truth, and promotes virtuous citizenship.

What We Do

We publish a quarterly journal, *Academic Questions*, which examines the intellectual controversies and the institutional challenges of contemporary higher education.

We publish studies of current higher education policy and practice with the aim of drawing attention to weaknesses and stimulating improvements.

Our website presents educated opinion and commentary on higher education, and archives our research reports for public access.

NAS engages in public advocacy to pass legislation to advance the cause of higher education reform. We file friend-of-the-court briefs in legal cases defending freedom of speech and conscience and the civil rights of educators and students. We give testimony before

congressional and legislative committees and engage public support for worthy reforms.

NAS holds national and regional meetings that focus on important issues and public policy debates in higher education today.

Membership

NAS membership is open to all who share a commitment to its core principles of fostering intellectual freedom and academic excellence in American higher education. A large majority of our members are current and former faculty members. We also welcome graduate and undergraduate students, teachers, college administrators, and independent scholars, as well as non-academic citizens who care about the future of higher education.

NAS members receive a subscription to our journal *Academic Questions* and access to a network of people who share a commitment to academic freedom and excellence. We offer opportunities to influence key aspects of contemporary higher education.

Visit our website, www.nas.org, to learn more about NAS and to become a member.

Our Recent Publications

Disfigured History. 2020

Dear Colleague. 2020

Corrupting the College Board. 2020

Critical Care. 2020.

The Lost History of Western Civilization. 2020.

Social Justice Education in America. 2019.

Separate but Equal, Again: Neo-Segregation in American Higher Education. 2019.

Beach Books 2010-2019.

The Irreproducibility Crisis of Modern Science. 2018.

Cont

ents

Introduction

The size and characteristics of immigration to the United States have been historically contentious issues. Nevertheless, there is probably a greater partisan division on this subject than ever before. While there are several important pro-immigration expansionist stakeholders, one of the most vocal has been higher education. From the public statements of academic organizations, testimony and litigation sponsored by the higher education establishment, as well as student activism, there has been a consistent effort to oppose border enforcement and to expand multiple forms of immigration.

Policies regarding immigration are complex. One of the unfortunate consequences of the near uniformity of opinion in higher education about legal and illegal immigration issues are that they are almost never debated on campuses. This research report describes some of various dimensions of immigration policy and suggests topics for debate, so that students will be better informed to make their citizen decisions. A nation that does not openly and thoroughly debate the contentious policy problems it faces will be subject to demagoguery from both the right and the left.

Immigration and Border Control Policy: Political Context

Immigration and Border Control Policy: Political Context

In December 2018, the United Nations adopted a *Global Compact for Safe, Orderly and Regular Migration* and the *New York Declaration for Refugees and Migration*, which aimed at providing migrants with basic services, improving legal paths to migration, and using detention as a last option.[1] While the United Nations resolutions assumed that such migration was and should be relatively uncontentious, the swelling waves of migrants have unsettled the politics of countries on almost every continent.[2] Douglas Murray's *The Strange Death of Europe* provides a striking analysis of the political dilemma mass immigration poses to Europe.[3] The United Nations' *Global Compact* itself has been rejected by Austria, Bulgaria, the Czech Republic, Poland, and Slovakia, while the Belgian government had to resign because of its support for the *Compact*.[4] The Obama administration supported these United Nations resolutions, but the Trump administration refused to sign them.[5]

Immigration policy has been a controversial matter in American politics for a long time.[6] The phrase *America is a country of immigrants* is widely used, but it is only partially true. Of all U.S citizens, 87 percent were born in this country and never immigrated here, though it is likely that someone in their family tree did so at some time in the country's history. Because immigration has been a characteristic of building America does not change the fact that contemporary immigration

1 *Global Compact for Safe, Orderly and Regular Migration*, United Nations, 19 December 2018, https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195; *New York Declaration for Refugees and Migration*, United Nations, 15 September 2016, https://www.iom.int/sites/default/files/our_work/ODG/GCM/NY_Declaration.pdf.

2 "Europe's refugee crisis: Migration creates a deepening gulf between East and West," *The Economist*, September 15, 2018.

3 Douglas Murray, *The Strange Death of Europe* (London: Bloomsbury, 2017).

4 Miles Apuzzo and Milan Schreuer, "Belgium Prime Minister Resigns After Revolt Over Migration," *New York Times*, December 18, 2018, https://www.nytimes.com/2018/12/18/world/europe/right-wing-migration-belgium-collapse.html.

5 Nikki R. Haley, *With All Due Respect: Defending America with Grit and Grace* (New York: St. Martin's Press, 2019), pp. 240-242.

6 Otis J. Graham, Jr, *Unguarded Gates: A History of America's Immigration Crisis* (Lanham, MD: Rowman and Littlefield, 2004); Roger Daniels, *Guarding the Golden Door: American Immigration Policy and Immigrants since 1882* (New York: Hill and Wang, 2004) and Mae M. Ngai. *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004).

policy must be recalibrated frequently as conditions in the United States change.

In 2016, 1.75 million legal immigrants and illegal immigrants entered the country. 2016's totals matched the number that came in the record-setting year of 1999.[7] By 2019, 44 million legal immigrants, temporary residents, and illegal immigrants lived in the United States. They made up 15.1 percent of the American population and were by far the largest absolute number of immigrants in any country in the world, although immigrants make up larger proportions of the population of countries such as Australia (28.2 percent) and Canada (21.0 percent).[8] The 44 million persons included 1.1 million legal immigrants admitted just in 2018.[9] Several federal programs exist to facilitate legal immigration. In these programs, about 47 percent of the beneficiaries were immediate relatives, 20 percent were family sponsored, 13 percent were refugees and/or asylum seekers, 12 percent were admitted based on employment-based preferences, and 4 percent were admitted from the diversity immigrant visa program. The 44 million also included more than 11,000,000 illegal immigrants, a quarter of the total. Illegal immigration continues to swell the numbers of total arrivals in America.

In recent decades, there was an uneasy consensus in American politics that, while illegal immigration was abstractly wrong, it was acceptable that enforcement efforts against that practice were erratic and not very successful. Amnesty of various kinds were granted on the theory that it would be the last one necessary to curb illegal immigration, when, in fact, such actions were incentives for others to cross our borders. Gradually, many Americans became aware of the trick being played on them by politicians of both parties.[10]

7 Steven Camarota, "Backgrounder," Center for Immigration Studies, October, 2018.

8 Gilles Pison, "Which countries have the most immigrants?" *World Economic Forum*, March 13, 2019, https://www.weforum.org/agenda/2019/03/which-countries-have-the-most-immigrants-51048ff1f9/; and see "Table 1.1. Population by Sex, Age, Nativity, and U.S. Citizenship Status: 2019," Foreign Born: 2019 Current Population Survey Detailed Tables, United States Census Bureau, https://www2.census.gov/programs-surveys/demo/tables/foreign-born/2019/cps2019/2019-asec-tables-nativity-tab1.xlsx.

9 "Table 7. Persons Obtaining Lawful Permanent Resident Status By Type And Detailed Class Of Admission: Fiscal Year 2018," *2018 Yearbook of Immigration Statistics*, Department of Homeland Security, https://www.dhs.gov/immigration-statistics/yearbook/2018/table7.

10 Christopher Caldwell, *The Age of Entitlement: America Since the Sixties* (New York: Simon and Schuster, 2020) pp 112 -119.

Immigration also drove political change. The transformation of America's political parties made bipartisan policy compromise more difficult as immigration became an ever-more partisan issue. Southern white Democrats and heartland Blue Dog Democrats became almost extinct. Liberal and moderate Republicans melted away. Our parties increasingly became reflections of the demographics of their core national constituencies, transcending regional differences.

In California, the home of Earl Warren and Ronald Reagan, the Republican Party collapsed as the state's demographics changed. By 2018, one of every four California residents was foreign-born, including an estimated 2,626,000 illegal aliens.[11] No Republican has been elected to statewide office in California since 2006.[12] Immense political and economic consequences swiftly followed. Among other things, California decided that illegal immigrants are eligible for in-state higher education tuition, if they have lived in California for at least a year and attended an in-state high school or community college for three years.[13] They are also eligible to serve on school boards or K-12 commissions.[14] California has essentially erased the distinction between citizens and non-citizens in a broad range of state policy, including education.

Republican Party officials understood that they would never win another national election, if Texas and Florida followed California. Democrats who hoped for a permanent national majority became advocates of increased legal immigration and began to abandon even their *pro forma* support for penalties against entry by illegal immigrants. More and more Democratic leaders even began to champion "sanctuary" cities and states that refused to co-operate with federal enforcement agencies seeking to remove illegal aliens. Democratic politicians

11 Matthew O'Brien and Spencer Raley, *The Fiscal Burden of Illegal Immigration on California Taxpayers*, The Federation for American Immigration Reform (2018), https://www.fairus.org/sites/default/files/2018-08/California-Cost-Study-2018-web.pdf.

12 Victor Davis Hansen, "It was Always about the Wall," *Townhall*, December 20, 2018, https://townhall.com/columnists/victordavishanson/2018/12/20/it-was-always-about-the-wall-n2537775.

13 Assembly Bill No. 540 Public postsecondary education: exemption from nonresident tuition, October 13, 2001, California Legislative Information, https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200120020AB540; Section 68130.5, California Education Code, California Legislative Information, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=68130.5.&lawCode=EDC.

14 Senate Bill No. 225 Citizens of the state, October 12, 2019, California Legislative Information, https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB225.

such as President Barack Obama and Senator Charles Schumer reversed their previous opposition to illegal immigration.[15] Schumer, the current minority Senate leader, once said:

> Illegal immigration is wrong, plain and simple. Until the American people are convinced that we will stop future flows of illegal immigration, we will make no progress on dealing with the millions of illegal immigrants who are here now and on rationalizing our system of legal immigration. It's plain, simple and unavoidable.[16]

Schumer even went so far as to support a border wall in 2010 as a part of comprehensive immigration reform package:

> It will finish the job of completing the fence along the entire 700-mile border mile stretch of the Southwest border…In other words, it calls for a breathtaking show of force that will discourage future waves of illegal immigration. It not only calls for completing a literal fence, but it will create a virtual human fence of Border Patrol agents. [17]

But in December 2018, Schumer led the Senate fight to block a vote that would have funded the government because it contained additional funds for a border wall.

Future President Barack Obama said in 2005:

> When Congress last addressed this issue comprehensively in 1986, there were approximately four million illegal

15 Jake Hoffman, "Secure the Borders: Democrats in their Own Words." *Townhall*, December 21, 2018, https://townhall.com/columnists/jakehoffman/2018/12/21/secure-the-border-democrats-in-their-own-words-n2537919; Barack Obama and Mel Martinez, "Coming to America," *The Wall Street Journal*, December 15, 2005, https://www.wsj.com/articles/SB113461703274523154.

16 Jerry Kammer, "Schumer Contradicts Himself: He Was Against the 'Border Surge' Before He Was for It," Center for Immigration Studies, June 25, 2013, https://cis.org/Kammer/Schumer-Contradicts-Himself-He-Was-Against-Border-Surge-He-Was-It.

17 Senator Schumer on Border Security Bill, C-Span, August 12, 2010. Then Senator Joe Biden also supported this bill.

> immigrants living here. [In December 2005], it is estimated that there are more than 11 million. We are a generous and welcoming people, but those who enter our country illegally, and those who employ them, disrespect the rule of law. And because we live in age where terrorists are challenging our borders, we simply cannot allow people to pour into the U.S. undetected, undocumented and unchecked. Americans are right to demand better border security and better enforcement of the immigration laws.
>
> To begin with, the agencies charged with border security require new technology, new facilities and more people to stop, process and deport illegal immigrants. But while security might start at our borders, it doesn't end there. Millions of illegal immigrants live and work here without our knowing their identity and background. That is why we need a guest-worker program to replace the flood of illegals with a regulated stream of legals who enter the U.S. after checks and with access to labor rights. That would enhance security, raise wages and improve working conditions for all Americans. [18]

By 2020, candidates for the Democratic presidential nomination campaigned with proposed policies that would have been unthinkable a few short years before, such as abolishing U.S. Immigration and Customs Enforcement (ICE), decriminalizing illegal immigration, and supporting Medicare for illegal immigrants.[19] The 2020 Democratic platform stated:

18 Kim LaCapria, 2005 Obama Immigration Quote, *Truth or Fiction,* March 12, 2019.

19 Michelle Malkin, *Open Borders Inc.: Who's Funding America's Destruction* (New York: Regnery, 2019); and see also Jerry Kammer, "I'm a Liberal Who Thinks Immigration Must Be Restricted," *New York Times,* January 16, 2020, https://www.nytimes.com/2020/01/16/opinion/immigration-democrats.html.

> Democrats believe immigration is not just a problem to be solved, it is the defining aspect of the American character and our shared history. ... Democrats will continue to work for comprehensive immigration reform that fixes our nation's broken immigration system, improves border security, prioritizes enforcement so we are targeting criminals—not families, keep families together and strengthens our economy. ... We honor our fundamental values by treating all people who come to the United States with dignity and respect and we always seek to embrace—not to attack—immigrants.[20]

It is difficult to discern the Democratic Party's distinction, if any, between legal and illegal immigration in its platform statement. The Party's new positions are a reflection to demographic changes within the party and battleground states.[21]

It was also a response to the emergence of the first effective opposition to existing immigration and border security policies. In 2016, immigration policy took center stage in America's national, state, and local politics as Donald J. Trump successfully challenged the elite consensus on the benign effects of immigration, attacked lax government policy that facilitated the entry of massive numbers of illegal immigrants, and advocated changes to reduce legal immigration. Trump made border security a signature issue to win both the Republican nomination and the Presidential election. In office, Trump criticized immigration preferences for family members—"chain migration"—and the "diversity" visa lottery program, which gave preferences to applicants from countries where relatively few of their countrymen had immigrated. Trump advocated replacing the current immigration system with Australian-style merit-based legal immigration. He also challenged the operation of the Temporary Protected Status (TPS) program, which gave shelter

20 https://democrats.org/where-we-stand/the-issues/immigration-reform/

21 Center for Immigration Studies, "How Immigration Transforms the Electorate," November 13, 2020.

to persons afflicted by natural disasters and other problems, but which was enforced so loosely that most TPS recipients never returned to their native countries.[22]

In 2020, there was no Republican platform. Although voters continued to rank immigration as a significant issue.[23] Trump only occasionally made a defense of his immigration policies in campaign appearances. The struggle to contain COVID-19 and rebuild the economy overshadowed every other issue.

The outcome of the 2016 election shocked many Americans, but the higher education establishment reacted more extremely than most. The majority of Americans without college degrees supported Trump, while the majority of college graduates supported Hillary Clinton. An overwhelming majority of higher education administrators and faculty had backed Clinton.[24] There were many reasons for higher education's dismay, but immigration policy played a role. Patricia McGuire, President of Trinity Washington University, summarized this consensus view immediately after the election. She wrote in the *Chronicle*:

> Candidate Trump's rhetoric denouncing immigrants, threatening to build the wall at the Mexican border, and to engage in mass deportations, deserved more pushback from presidents of colleges that educate significant number of immigrants, including undocumented students, or Dreamers.

> We must not remain silent during the Trump administration. Ensuring that DACA-the Obama administration's order on Deferred Action for Childhood Access, which among other things protects undocumented students in

22 Rafael Bernal, "Trump close to wiping out TPS program for immigrants." *The Hill*, May 11, 2018. https:/thehill.com/latino/387365trump-close-to

23 Federation for American Immigration Reform, New Exit Poll Reveals No Mandate to Institute Radical Agenda on Immigration….." November 16, 2020.

24 Jack Stripling, "A Humbling of Higher Ed," *The Chronicle of Higher Education*, November 11, 2016, https://www.chronicle.com/article/A-Humbling-of-Higher-Ed/238378.

> college- must be a top priority for the sake of justice for our students. We could do even better by using our research and advocacy power to promote better solutions of immigration reforms. . . .
>
> Let's not spend the next four years whining about regulations and complaining about President Trump. Let's raise our voices in advocacy for justice, equity and the liberation of the American psyche from the demons that haunted us in this election.[25]

If a campus president regards those who support immigrant restrictions as demon-haunted, what kind of academic freedom exists for faculty who disagree?

This report will outline the many actions taken by higher education administrators, faculty, and students to oppose any restriction on immigration, legal or illegal. It is not that there is unanimity on the campuses, but those who understand the complexity of immigration policy and the potential consequences of unlimited immigration have remained largely silent. This report concludes with a discussion of immigration issues that should be debated on campuses.

25 Patricia McGuire, "Raising a Voice for Academe Under President Trump," *The Chronicle of Higher Education*, November 10, 2016, https://www.chronicle.com/article/Raising-a-Voice-for-Academe/238370.

The Complexity of Immigration and Border Security Policy

The Complexity of Immigration and Border Security Policy

American immigration policy represents a bundle of issues. How many legal immigrants should be welcomed and what should be their characteristics? How should national borders be secured against illegal entry? What actions should be taken against illegal immigrants already in the country, including those brought here as children? What benefits should be provided to those residing illegally in the country? How should the threat of terrorism affect immigration policy, including those to whom visas should be issued? Among the masses of refugees worldwide, how many should be admitted to the United States and who should have priority? What adjustments in immigration policy should be made as part of the response to COVID-19 and our depleted economy?

Higher education could be an important national asset in seeking answers to these tangled problems if it fostered institutional neutrality on contentious partisan issues, civil disagreement among academics, and a shared commitment to eliciting truth from both conversation and debate.

While the public-at-large has become more engaged with these questions, as with most issues, important and well-organized special-interests have contributed an outsized voice. Many businesses benefit from more consumers and employees that follow legal and illegal immigration. Their national organizations' generally oppose restrictionist policies, creating cross-pressures on Republican politicians. For example, in 2013, the chairman of the pro-expansion National Immigration Forum was from the National Restaurant Association, while Board members included representatives from the American Nursery and Landscape Association and the U.S. Chamber of Commerce. Unions historically objected to increases in the labor supply that might suppress their bargaining power and wages, but their firm alliance with the Democratic party has led them to soften that opposition.

Many religious organizations support expanded immigration and migrant opportunities, particularly, family reunification.[26] Some regard this stance as reflecting their theological commitments.[27] In 2018, during Attorney General Sessions' speech in Boston, a Methodist and a Baptist minister interrupted him from the floor by quoting Matthew 25:34-46: "I was hungry and you did not feed me. I was a stranger and you did not welcome me. I was naked and you did not clothe me." Sessions replied: "I don't believe there is anything in my theology that says a secular nation cannot have lawful laws to control immigration."[28] Some other religious leaders regard increased immigration as an appropriate response to current membership needs. Hispanics now represent 29 percent of all Catholics and 45 percent between the ages of 19 and 25. This expansionist immigration position resonates with Hispanic Evangelical Christians, but also with many Jews and Muslims. Increased immigration also has important financial implications for some religious organizations. The Church World Service, Episcopal Ministries, Hebrew Immigrant Aid Society, Lutheran Immigration and Refugee Services are especially active in refugee resettlement programs financed by the federal government. The largest religious refugee organization, the Migration and Refugee Services agency of the United States Conference of Catholic Bishops, received $742 million from by the United States government between 2008 and 2018.

One stakeholder that might not be on everyone's list is higher education's leadership which has taken a remarkably uniform position for expanding legal immigration and opposing law enforcement against illegal immigration.

The American Council on Education (ACE), joined by 33 other higher education institutions, educators, trustees, and other representatives, filed an unsuccessful *amicus* brief opposing the Trump Administration's restrictions on travel to the United States from several foreign

26 Peter B. Gemma, "Pro-Amnesty Movement Blessed by Church Bosses," *The Social Contract*, Summer 2013, pp, 32-38.
27 Matthew Schmitz, "Immigration Idealism," *First Things*, May 2019.
28 ABC News, October 29, 2018.

countries.[29] In 2018, 65 higher education institutions signed an *amicus* brief protesting Secretary of Homeland Security Kirstjen Nielsen's order recalculating "unlawful presence" from the time a visa holder received an "out of status" order to the time when a person's visa actually expired. Their brief argued that, "This policy will undermine the ability of American colleges and universities to attract and retain top foreign talent."[30] Meanwhile, 450 campus leaders created a new organization in 2017, The President's Alliance on Higher Education and Immigration. The Alliance's mission statement stated that "we are a nation of immigrants" and declared its support for "policies and practices that create a welcoming environment for immigrant, undocumented and international students on our campuses." The Alliance urged administrative support and financial aid for the 120,000 DACA beneficiaries it estimated were enrolled at American colleges and universities.[31]

The failure to draw a distinction between legal and illegal immigration is apparently not controversial on the campuses where these Alliance Presidents were signatories. Michigan State University adopted a "policy of non-discrimination and commitment to current and prospective students who, regardless of immigration status are or aspire to be Spartans."[32] Columbia University offered "stress management" services to students whose immigration status was questionable.[33] New Jersey funded law school clinics at Rutgers and Seton Hall that gave course credit for work assisting immigrants faced with deportation. Georgetown University appointed an Associate Director for Undocumented Students in February 2020 to support those she called "freedom fighters of this moment and time" by building "a conscious

29 *Brief of American Council on Education and 43 Other Higher Education Associations as Amici Curiae in Support of Respondents*, October 4, 2019, https://www.supremecourt.gov/DocketPDF/18/18-587/119483/20191018140346009_ACE%20DACA%20Amicus%20Brief%20Corrected.pdf.

30 Rob Shimshock, "Harvard decries 'destructive' new Trump admin policy," *Campus Reform*, January 2, 2019, https://www.campusreform.org/?ID=11696.

31 Bianca Quilantan, "5 ways universities can support students in a post-DACA world," Morning Education, *Politico*, January 23, 2020, https://www.politico.com/newsletters/morning-education/2020/01/23/5-ways-universities-can-support-students-in-a-post-daca-world-784586.

32 "New Website launched for Undocumented Students," Michigan State University, January 24, 2020, https://clstudies.msu.edu/news/undocumented.html.

33 Celine Ryan, "Columbia offers illegal immigrant students free legal help, 'stress management'," *Campus Reform*, July 17, 2019, https://www.campusreform.org/?ID=13457.

community which can educate and move people toward an awareness of their own privilege."[34] When non-citizen students were not eligible for financial support under the federal Coronavirus Aid, Relief, and Economic Security (CARES) act,[35] several universities used their own money to support them.[36]

California's community colleges alone have about forty centers that assist students "without legal status navigating the complexities of admissions and classes, and connecting them with financial aid."[37] These educational services provide benefits beyond mere sanctuaries. ICE, after all, does not seek to arrest illegal aliens at schools, hospitals, or churches, "to ensure that people seeking to participate in activities or utilize services provided at any sensitive location are free to do so without fear or hesitation."[38]

Sometimes, in an effort to protect illegal immigrants and silence opponents, universities trample on free speech. After some unknown person chalked "deport" and "build a wall" on campus sidewalks at University of Maryland College Park (UMCP), University President Wallace Loh stated that many "young men and women at UMD and elsewhere are questioning where free speech ends and hate speech begins. … Surely when wielded as a weapon hate speech does not deserve constitutional protection." He pointed out that UMD had

> policies in place that protect undocumented students to the full extent the law permits. We have retained staff to support them and invited volunteer attorneys to advise them. … We allocated $100,000 for additional diversity and inclusion programming to benefit all members of the UMD community. We will deploy a trained rapid–response team

34 Jimmy O'Meara, "GU Appoints New Director for Undocumented Students," *The Hoya*, February 14, 2020.
35 Michael Stratford, "DeVos bars undocumented students from emergency Aid," *Politico*, April 21, 2020.
36 Bradley Gamble. "Undocumented Initiatives creates three funds of undocumented students," *The Evergreen* (Washington State University), May 11, 2020.
37 Scott James, "Battles Over Immigration Rattles Community Colleges," *New York Times*, August 2, 2018, https://www.nytimes.com/2018/08/02/education/learning/immigration-community-colleges.html.
38 James, "Battles Over Immigration Rattles Community Colleges."

> in any hate-bias incident in order to provide support to any UMD member who is subject of such an incident.

President Loh, who has a law degree and served as a law dean, did not discuss what kinds of restrictionist expression about border security and immigration policy might be legitimate speech at UMD.[39]

On June 22, 2020, in the midst of the unemployment surge caused by the Coronavirus pandemic, the Trump Administration moved to substantially reduce the number of employment visas for work in the United States.[40] The decision was supported by two April 2020 public opinion surveys. A USA/Today/Ipsos poll found that 79 percent of Americans favored a pause in immigration in the current environment and a *Washington Post*/University of Maryland poll found 65 percent support, cutting across racial and ethnic categories, for a temporary cessation of almost all immigration.[41] The move was opposed by the U.S. Chamber of Commerce and, despite the fact that student visas were exempted, many in higher education voiced concern about the cessation of the employment of foreigners.

39 Wallace M. Loh, "UMD president: we all must 'fight racism, extremism and hate'," *Baltimore Sun*, May 26, 2017, https://www.baltimoresun.com/opinion/op-ed/bs-ed-umd-violence-20170528-story.html.

40 Michael D. Shear and Miriam Jordan, "Trump Suspends Visas Allowing Hundreds of Thousands of Foreigners to Work in the U.S," *New York Times*, June 22, 2020.

41 FAIR, "Polls Show Overwhelming Support for Immigration Pause During Coronavirus Crisis, *Immigration Report*, June 2020.

The Higher Education Establishment's Motivations

The Higher Education Establishment's Motivations

There are more than 3,000 four year colleges and universities in the United States, some with multiple campuses, operated by a variety of sponsors, public and private. There are also scores of higher education associations at the national, regional, and state levels. Given these circumstances, ordinarily it would be difficult to generalize about "higher education." Regarding immigration, however, generalization is not difficult—higher education believes in and advocates for more.

Enrollment Growth

There are several reasons for this consensus. First, like many other institutions, higher education seeks to increase the number and variety of its customers. The higher education establishment opposes immigration control because it fears that any such measure may disrupt the supply of foreign students for American colleges and universities.

The number of foreign students at American campuses grew each year in the decade before 2016. In 2015-2016, U.S. campuses hosted more than 1 million foreign students, including 329,000 from China, 166,000 from India, and 61,000 each from South Korea and Saudi Arabia.[42] Many American universities have become dependent on foreign students for tuition and enrollment quotas. The Florida Institute of Technology and The New School in New York enroll about 32 percent of their students from abroad. The share of foreign students at the University of Rochester increased in just 13 years from 2 percent to 23 percent. According to Jonathan Burdick, Rochester's vice provost for enrollment initiatives, the university achieved this increase by using revenue from full-paying Chinese students and diverting those resources to recruit

42 Michael M. Crow, "Why We Need International Students," *Christian Science Monitor*, February 17, 2017, https://www.compete.org/news/12-general-news/3253-international-students.

students from other parts of the world. About 55 percent of Rochester's international students receive financial aid. Among public universities, many University of California campuses have large numbers of foreign students, even though their high admission standards make it very difficult for in-state Californians to be admitted. The New Jersey City University, a former teachers college enrolling 8,500 students, advertises "Come join our global community," which includes students from more than 100 countries who speak more than 60 languages.

But behind that overall growth curve, there have been significant changes in the countries of origin of these students over time. After the 1979 taking of hostages in the U.S. Iranian embassy, President Jimmy Carter froze $5 billion of Iranian assets in American banks. Iran had been large exporter of students to American campuses, but the Carter Administration ordered the 51,000 Iranian students in the U.S. to register with immigration authorities or face deportation. Within five years, the number of Iranian students dropped 70 percent and currently, there are relatively few Iranian students who were born abroad on American campuses.

Since many American universities are financially dependent on international students, Trump's election threatened to upset this arrangement. Even before any new policy changes were enacted, a 2016 survey showed that 60 percent of foreign students would be less likely to study in the United States if Trump were president.[43] That was an ominous signal. Allen E. Goodman, the President of the Institute for International Education, expressed the higher education establishment's view succinctly: "In our business up is always better than down."[44]

Craig Evan Klafter summarized the situation:

> International students have regrettably become a commodity. Universities and colleges in developed countries actively

43 Karin Fischer, "A Trump Presidency Could Keep Some International Students Away," *The Chronicle of Higher Education*, June 1, 2016, https://www.chronicle.com/article/A-Trump-Presidency-Could-Keep/236662.

44 Karin Fischer, "A History Lesson on the Future of Foreign Enrollments," *The Chronicle of Higher Education*, November 14, 2016, https://www.chronicle.com/article/A-History-Lesson-on-the-Future/238372.

> pursue them. In the United States, for example, there were a record 1,078,822 international students studying during the 2016-2017 academic year accounting for 5.3 percent of all U.S. university and college students. According to the U.S. Department of Commerce which considers international student recruitment as an American export, international students contributed $39.4 billion to the U.S. economy in 2016. The most high-minded universities and colleges recruit international students to serve as leavening for their student bodies and for bringing a truly diverse perspective to their campuses. However, many universities and colleges recruit them for financial gain. In recent years, state universities have increasingly looked to international students to make up for reductions in state appropriations and some have compromised academic standards and skirted accreditation requirements to recruit those students.[45]

Given these enrollment realties, it becomes difficult to raise on-campus questions about the role of international students. It's made even harder by the ideology of some campus leadership, that it is illegitimate, even immoral to question expanded immigration. Michael Roth, President of Wesleyan University began an op-ed on academic freedom with the statement: "We must instead promote the importance of intellectual diversity in higher education, and must be aware of confusing the critical thinking we value with the ready-made ideological positions held by a majority of professors and students." But when he came to immigration policy, he declared:

> We must also not let the administration and its supporters make a mockery of American aspirations toward diversity, equity, and inclusion in our institutions and in the

45 Craig Evan Klafter, "International Student Recruitment Abuses," *Academic Questions* 31, 3 (2018), p. 345 (pp. 345-350), https://search.proquest.com/openview/6cf942431234f8aae0f4e9db549fc338/1?pq-origsite=gscholar&cbl=54147.

> larger society. ... The current demonization of immigrants, for example, is meant to instill a sense of fear and insecurity among folks who have lived in this country for years as productive members of society. Many of our higher education institutions offer support to our undocumented colleagues and friends, and we have pledged not to voluntarily cooperate with federal authorities seeking to intimidate them or deport them.[46]

According to President Roth, then, intellectual diversity about public policy is a good thing, unless the policies in question include immigration policy.

In addition to the ideological support of the many higher education leaders and associations for increased immigration, temporary and permanent, there are internal campus dynamics that support immigration. Because of the complexity of student visa policies, transcript evaluations, financial aid, and sometimes English language competencies and cultural adaptations, almost every sizable campus has an office dedicated to serving the needs of international students. Like most bureaucracies, these offices seek to expand the array of services provided and the number of persons served. Thus, they become advocates for the internationalization of American higher education. Except for financial constraints, there are usually no on-campus opponents to this goal, though some state legislators may object if their constituents are displaced.

Partisan Affiliation

Immigration expansion has become more and more a partisan issue. Higher education administrators and faculty are now overwhelmingly identified with one party, particularly in the public-policy disciplines

46 Michael Roth, "Voting is Good, but Higher Ed Must Do More," *Inside Higher Education*, November 1, 2018).

most relevant to immigration and border security policy. Once a consensus on expanded immigration, legal and illegal, has been announced as institutional policy, further debate about this subject is discouraged.

The professoriate has become steadily more liberal and more Democratic over the last 70 years. When Everett Ladd and Seymour Lipset published *The Divided Academy* in 1975, they found that 37 percent of the faculty over age 55 identified as Republicans, while only 18 percent under 35 identified as such.[47] A national survey in 2005 found that 72 percent of faculty described themselves as liberals and only 15 percent as conservatives, while in English literature, philosophy, political science, and religious studies departments the respective proportions were more than 80 percent and no more than 5 percent.[48] Elite institutions may be even more one sided. Economist Karl Zinsmeister's 2005 study on political affiliations of Stanford University and the University of California Berkeley faculty found overall ratios of Democrats to Republicans of 8 to 1 and 10 to 1. The ratio of Democrats to Republicans was 28 to 1 for sociologists and 30 to 1 for anthropologists.[49] These national results obscure some regional variation: New England faculty are by far the most liberal, while professors in the Rocky Mountain region are less so.[50] The shift by American faculty toward liberal politics is part of a larger global transformation of the professoriate; British professors have also shifted their political affiliations toward the Labour or Green parties and away from the Conservative party.[51]

47 Everett Ladd and Seymour Lipset, *The Divided Academy* (New York: McGraw-Hill, 1975); cited in Howard R. Bowen and Jack H. Schuster, *American Professors: A Natural Resource Imperiled* (New York: Oxford University Press, 1986) p. 42.

48 Stanley Rothman, S. Robert Lichter, and Neil Nevitte, "Politics and Professional Advancement Among College Faculty," *The Forum* 3, 1, Article 2 (2005), p. 6, https://www.conservativecriminology.com/uploads/5/6/1/7/56173731/rothman_et_al.pdf, cited in Howard Kurtz, "College Faculties: A Most Liberal Lot, A Study Finds," *The Washington Post*, March 29, 2005, https://www.washingtonpost.com/archive/lifestyle/2005/03/29/college-faculties-a-most-liberal-lot-study-finds/c06d4382-d46a-4bc5-ae03-0de1860bcdbd/.

49 Karl Zinsmeister, "Case Closed: there's no longer any way to deny it: college campuses are the most politically undiverse places in America," *The American Enterprise* 16, 1 (2005), 42.

50 Samuel J. Abrams, "There are Conservative Professors, Just not in These States," *New York Times Sunday Review*, July 1, 2016, https://www.nytimes.com/2016/07/03/opinion/sunday/there-are-conservative-professors-just-not-in-these-states.html; Samuel J. Abrams "The Blue Shift of the New England Professoriate," Heterodox: The Blog, *Heterodox Academy*, July 6, 2016, https://heterodoxacademy.org/the-blue-shift-of-the-new-england-professoriate/.

51 Noah Carl, "On the Political Views of British Academics," Heterodox: The Blog, *Heterodox Academy*, March 6, 2017, https://heterodoxacademy.org/new-report-on-the-political-views-of-british-academics/.

In 2016, Langbert *et al.* remeasured the party affiliations of faculty in the most policy-focused disciplines (economics, history, journalism/ communications, law, and psychology) at elite institutions. Overall, their research found that professors registered as Democrats outnumbered Republicans by 11.5 to 1. There were striking differences between campuses—1.2 Democrats to 1 Republican at Pepperdine and 3.2 Democrats to 1 Republican at Ohio State. The ratios of Democrats to Republicans were far greater at institutions with high-profile professional and graduate programs: Harvard 10:1, Stanford 11:1, Duke 11:1, Cornell 13:1, UC-Berkeley 14:1, NYU 16:1, Yale 16:1, MIT 19:1, Maryland 26:1, Princeton 30:1, Columbia 30:1, Johns Hopkins 35.1, and Brown 60.1.[52] In 2018, Langbert found that in sociology departments at sixty-one top national liberal arts colleges, the Democrat to Republican ratio was 43.8 to 1, while in departments of anthropology it was 56 to 0.[53] Yet these are not fields in which scientific certainty can be fixed, but are study areas in which multiple perspectives should be welcomed.

Partisan imbalance may also affect the ideologies and behaviors of professors in professional schools. Even in law schools, which do sponsor many debates and forums on selected topics, the faculty are not representative of America, whether you count by race, religion, or partisan affiliation. In 2005, McGinnis, *et. al*. examined the partisan campaign contributions of faculty at the top 21 law schools and found that of those who gave at least $200 to federal campaigns, 81 percent gave wholly or predominantly to Democrats, while just 15 percent gave to Republicans.[54] Recent recruitment patterns are reinforcing the trends of ever-greater under-representation of white, Christian, or Republican law professors.[55] James C. Phillips has asked "Why are there so few

52 Mitchell Langbert, Anthony J. Quain, and Daniel B. Klein, "Faculty Voting Registration in Economics, History, Journalism, Law and Psychology," *Econ Journal Watch* 13, 3 (206), pp. 422-51, https://econjwatch.org/File+download/944/LangbertQuainKleinSept2016.pdf?mimetype=pdf.

53 Mitchell Langbert, "Homogenous: The Political Affiliations of Elite Liberal Arts College Faculty," *Academic Questions* 31, 2 (2018), pp. 186-97, https://link.springer.com/article/10.1007/s12129-018-9700-x.

54 John O. McGinnis, Matthew A. Schwartz, and Benjamin Tisdell, "The Patterns and Implications of Political Contributions by Elite Law School Faculty," *Georgetown Law Journal* 93, 4 (2005), pp. 1167-1212, https://www.scopus.com/record/display.uri?eid=2-s2.0-26844442758&origin=inward&txGid=eb44fcabcf54e66fbc2e25d74c11d81a.

55 James Lindgren "Measuring Diversity: Law Faculties in 1997 and 2013," *Harvard Journal of Law and Public Policy* 39, 1 (2016), pp. 89-152, https://doi.org/10.2139/ssrn.2581675.

Conservatives and Libertarians in Legal Academia?" and concluded that it is not because conservative and libertarian law professors are less qualified, productive, or frequently cited.[56] Not surprisingly, when law professors sign open letters on political and legal matters, their comments follow partisan lines.

Thus, it is difficult to disentangle higher education's institutional growth views on immigration policy from its increasingly active partisan identity. Such partisan identification does not always reflect complete intellectual homogeneity, since political parties generally tolerate limited internal debate. Extreme ratios of partisan affiliation, however, do generally indicate that some policy alternatives will be considered "beyond the range of professional discourse," hence unacceptable. If all the members of an academic department identify with one political party, it should raise questions about whether they will expose students to the best arguments regarding the full range of various policy alternatives under consideration in the public square. Partisan homogeneity may also affect faculty decisions about curriculum, invited speakers, internships, letters of recommendation, hiring, and tenure decisions.[57]

Faculty perspectives may also influence student viewpoints about border security and immigration policy. Generation Z and millennials who constitute the largest cohort of college students have different attitudes about immigration than older cohorts. According to a Pew Research poll, nearly eight in ten believe immigration strengthens rather than burdens the country. A University of Chicago study shows similar support for creating a path to citizenship for "undocumented immigrants."

This expansionist view of immigration among students is often coupled with a denigration of the role of the United States in the world. A January 2020 Pew survey found that young people "express far more

56 James Cleith Phillips, "Why are There So Few Conservatives and Libertarians in Legal Academia? An Empirical Exploration of Three Hypotheses," *Harvard Journal of Law and Public Policy* 39, 1 (2016), pp. 153-207, https://ssrn.com/abstract=2711461.

57 For a discussion of why the conservative/liberal imbalance appears among higher education faculty, see George Yancey, "The Academic Reason Why There Are So Few Conservatives in Academia," *Patheos*, September 18, 2017, https://www.patheos.com/blogs/shatteringparadigms/2017/09/the-academic-reason-why-there-are-so-few-conservatives-in-academia/. The article's comment thread is also very enlightening.

skeptical views of America's global standing" than other adults. They are also much more likely to say it would be acceptable if another country became "as militarily powerful as the U.S."[58] Breaking down this data, it is apparent that two reinforcing trends are at work. First, there are substantial differences among age cohorts and those gaps are growing. Among persons 18-29 years of age, 38 percent said other countries were "better" than the United States, while only 9 percent of persons over the age of 65 held that view. Half of the persons in that younger cohort said it would be acceptable if another country became as militarily strong as the U.S., while only 27 percent of over 65 Americans agreed. It is uncertain whether maturity alone changes these viewpoints or whether younger and older Americans have received different educations/indoctrinations about the American experience and world history.

But there is a second trend in the Pew data that may add some light to the question of causation. Young Republicans/lean Republicans were four times as likely as young Democrats/lean Democrats to say the U.S. "stands above other countries in the world." The latter group was more than three times likely to say there were better countries in the world. Among young Americans, 38 percent of Republicans said it would be acceptable if another country became as militarily powerful as the United States, while 55 percent of Democrats held that view. Do these youngsters have Sweden in mind for being the comparable military power or would they be comfortable if China, Russia or perhaps Iran or North Korea played that role? The survey does not say. Nor does it answer the question of why the age and partisan divisions develop. While it is difficult to disentangle multiple factors of causation and correlation, it is unlikely that the American faculty viewpoints have played no role in younger Americans' increasing hostility to American power, immigration restriction, and border security.

58 Hannah Hartig and Hannah Gilberstadt, "Younger Americans more likely than older adults to say there are other countries that are better than the U.S.," Pew Research Center, January 8, 2020, https://www.pewresearch.org/fact-tank/2020/01/08/younger-americans-more-likely-than-older-adults-to-say-there-are-other-countries-that-are-better-than-the-u-s/.

Reflecting and perhaps appealing to this millennial globalist preference, Senator Bernie Sanders in an October 2018 speech at the Johns Hopkins University School of Advanced International Studies declared:

> In closing let me simply state, in order to effectively combat the forces of global oligarchy and authoritarianism, we need an international movement that mobilizes behind a vision of shared prosperity, security, and dignity for all people that addresses the massive global inequality that exists not only in wealth, but in political power.[59]

How that international movement would result in a political structure of representation, taxation, and regulation, and what place Americans would have in what Sanders called "the new world order" are significant, but unanswered questions.

There are, however, some undiscussed downsides in higher education's commitment to ever increasing numbers of foreign students. American students in a variety of disciplines appear to be increasingly crowded out by foreign rivals. Since 1997, foreign students have received nearly a third of all doctorates awarded by American universities.[60] In 2015, foreign students composed large majorities of graduate students in several disciplines: 81 percent in Electrical Engineering, 81 percent in Petroleum Engineering, 79 percent in Computer Science, 75 percent in Industrial Engineering, 69 percent in Statistics, and 63 percent in Economics.[61] Higher education advocates argue that any restrictions on the flow of international students "will damage American universities global reputation and undercut their completive advantage," but they fail to acknowledge that foreign students inevitably displace a large and growing number of American students.[62]

59 you tube/GK_uHMTBo1Q, October 9, 2018.

60 "Degrees earned by foreign graduate students: Fields of Study and plans after graduation." https://nces.ed.gov/pub98/web/98042.asp

61 Elizabeth Redden, "Foreign Students and Graduate STEM Enrollment," *Inside Higher Ed*, October 11, 2017, https://www.insidehighered.com/quicktakes/2017/10/11/foreign-students-and-graduate-stem-enrollment.

62 Karin Fischer, "An Iranian Student's Visa Was Voided on His Way to America. He Still Doesn't Know Why," *The Chronicle of Higher Education*, October 8, 2019, https://www.chronicle.com/article/An-Iranian-Student-s-Vi-

A broader question is the relative responsibilities of American college and universities to American citizens. Almost all higher education institutions in the U.S. are supported by tax subsidies, tax exemptions, research grants, and student aid provided mainly by American taxpayers. "We recruit the best students, athletes, artists in the world regardless of nationality," is an oversimplified response when millions of American students are denied admission to their first-choice campuses and thousands of American Ph.Ds will never find tenure track faculty positions. When admissions and jobs are given to persons illegally in the country, another policy dimension is added. State legislatures sometimes debate and set limits on the out-of-state enrollments at state universities, but finding the right balance between domestic and international interests in higher education has not received much attention at the national level.

Campuses have not articulated how they weigh their search for status with their obligations as American or "global" institutions. In June 2019, President Lynn Pasquerella of the Association of American Colleges & Universities (AAC&U) addressed the annual New York conference of The Heterodox Academy, a new and fast-growing organization devoted to increasing intellectual diversity in higher education. During her speech, she urged the academics in her audience to teach students how to be global citizens because national borders are "just accidents of history." Her words are supported by AAC&U's Office of Global Citizenship for Campus, Community, and Careers and she saw no apparent irony in representing an American association of state institutions, while arguing against borders.[63]

Commitments to globalism are not rare in higher education. For example, Yale President Peter Salovey (full disclosure my graduate school *alma mater*) wrote recently in the *Yale Alumni Magazine:*

---

sa/247313.

63 Global Citizenship for Campus, Community, and Careers, Association of American Colleges & Universities, https://www.aacu.org/global-citizenship-campus-community-and-careers.

> Today, our mission of education and research demands that we prepare leaders for a complex and interconnected global community. With students from 123 different countries and research endeavors on every continent, Yale is truly a global university tackling our pressing challenges. … Yale aspires to prepare global leaders and global citizens. [64]

Training international students may lead some to stay in the U.S. and make valuable contributions or return home and improve the economic and political security of their countries. Other international students may take with them valuable technological tools that will reduce American economic and military advantages. Fischer's *Chronicle* article cited previously, focused on Peyman Rashidi, an Iranian student who wanted to study artificial intelligence at the University of California, San Diego, but had his visa canceled in the fall of 2019. Whether that decision was arbitrary or, given the conflict between Iran and the U.S., reasonable or even necessary is impossible to know without all the facts. In hindsight, however, would anyone think that educating German nationals in physics or Japanese nationals in aeronautical engineering in the late Thirties would have been a good idea?

64 Peter Salovey, "Global Yale," *Yale Alumni Magazine*, July/August 2019, https://yalealumnimagazine.com/articles/4918-global-yale.

The Higher Education Establishment's Policy Preferences

Testimony

The higher education establishment's formal testimony has focused on keeping the supply of international students unencumbered, while discouraging enforcement of sanctions against students in the country illegally. To document this establishment position over the years would require a book length chapter, so this entry will just note some recent establishment actions.

In 2019, the American Council on Education (ACE) and seven other education organizations objected to proposed fee increases to support the work of the U.S. Citizenship and Immigration Services (USCIS). Congress requires that this agency's functions be financed by fees and its workload has greatly increased in recent years. ACE and its allies stated that while "We support efforts to ensure USCIS is adequately resourced to permit timely processing of requests. … the proposed fees are excessive, burdensome and will adversely impact students, faculty and institutions of higher education." The signatories were particularly concerned about both a new fee for renewal of Deferred Action for Childhood Arrivals (DACA) and the transferal of funds from USCIS to ICE. The letter concluded that, "These proposed fees, along with a broader shift in tone and visa-related policies proposed by the Administration, reinforce the troubling message that we no longer welcome members of the international community who wish to study at American campuses."[65]

The higher education establishment also has actively supported the continuation of residence and citizenship privileges for the roughly 800,000 DACA beneficiaries, persons who claim relatives brought them to the United States as children. After arguing he did not have

65 Ted Mitchell to Samantha Deshommes, "Re: Docket No. USCIS-2019-0010," American Council on Education, December 23, 2019, https://www.acenet.edu/Documents/Comments-USCIS-visa-fees-122319.pdf.

the executive power to grant immunity from lawful deportation procedures, President Obama changed his mind in 2012 and issued an order to shield the DACA cohort. In September 2017, President Trump rescinded the Obama administration's DACA immunity policy. In the course of the ensuing lawsuits to prevent enforcement of that rescission, 44 educational associations submitted *amicus* briefs to the Supreme Court on behalf of DACA recipients. Their brief argued that "DACA has been a symbol of tolerance and openness of our university campuses" and warned that rescinding DACA would broadcast to other foreign-born students and potential students from around the globe a "message of exclusion" and would "irreparably damage the reputation of America's higher education system in the eyes of the world."[66] In addition, 54 members of the American Association of Universities sent letters to congressional leaders to urge them to pass legislation to protect DACA recipients.[67]

The University of California (UC) Board of Regents and UC President Janet Napolitano took the lead in the higher education establishment's DACA campaign by filing a lawsuit challenging the Trump administration's reversal of the Obama policy.[68] When the Ninth Circuit Court of Appeals agreed with their challenge, UC applauded the decision and took credit for it:

> The court's decision ensures that the 800,000 beneficiaries of DACA will be able to retain or renew their grants and continue to legally work, study, serve in the military, and live in the United States. The university encourages all eligible recipients to renew their DACA grants immediately....

66 *Brief of American Council on Education and 43 Other Higher Education Associations as Amici Curiae in Support of Respondents.*

67 Mary Sue Coleman, "Protecting the Dreamers," Association of American Universities, November 20, 2019, https://www.aau.edu/newsroom/mary-sues-desk/protecting-dreamers.

68 Deferred Action for Childhood Arrivals (DACA), U.S. Department of Homeland Security, https://www.dhs.gov/deferred-action-childhood-arrivals-daca; *The Regents of the University of California v. U.S. Department of Homeland Security*, September 8, 2017, https://universityofcalifornia.edu/sites/default/files/UC-DA-CA-Complaint.pdf.

> the university calls on the administration to stop its efforts to rescind the program.

> Under the leaderships of the UC Board of Regents and UC President Janet Napolitano, and with the pro bona assistance of counsel at Covington & Burling, UC is proud to have taken the lead to be the first university to file a lawsuit challenging the government's arbitrary action to end DACA…. The University continues to call on Congress to enact permanent protections for the Dreamers, including a path to citizenship.[69]

When *Homeland Security v. Regents of the University of California* was decided by the Supreme Court in June 2020, the University and its allies won a 5/4 decision, though not on the sweeping grounds they sought. Chief Justice Roberts found that the Trump Administration had the legal authority to rescind the Obama Administration's DACA order and could do so again, if certain procedures were followed. The rescission before the Court, however, did not comply with the Administrative Procedures Act that requires "reasoned explanations for its actions." Among the basis for the Chief Justice's concern was the University of California's brief's argument that these young immigrants had "enrolled in degree programs, embarked on careers, started businesses, purchased homes, and even married and had children."

Caravans, Families, Children, and Border Security

The U.S. border with Mexico is 1,954 miles long and the U.S./Canada border, excluding Alaska, is 3,957 miles long and the Canada/Alaska

69 UC Office of the President, "UC statement on 9th U.S. Circuit Court of Appeals decision on DACA," University of California, November 8, 2018, https://www.universityofcalifornia.edu/press-room/uc-statement-9th-us-circuit-court-appeals-decision-daca.

border adds another 1,558 miles. To prevent unauthorized crossing, the sheer size of U.S. borders, plus a large number of seaports and airports, creates considerable law enforcement problems, even in our high tech era.

Deportation of illegal immigrants has occurred frequently in the Twentieth Century. During the Great Depression, a Mexican Repatriation program was created to encourage voluntary moves back to Mexico and 400,000 persons were repatriated, about half of which were American citizens. In 1954, the Justice Department created "Operation Wetback" which resulted in the deportation of 1,075,186 Mexicans. Deportations have occurred under every modern president, but usually with little public notice. Although some Hispanic organizations objected and President Obama was sympathetic to their concerns and political clout, at least 3 million persons were deported during his eight years in the White House.[70]

After the Trump administration took power, shutting off the flow of illegal immigrants and tightening asylum rules became a priority following the President's repeated campaign promises. Public opinion which always varies widely depending on how the questions are worded seemed mixed about his determination to "build a wall." Congress was divided about appropriating money for the wall and no Mexican pesos for that purpose were in sight. With the vigorous support of Attorney General Sessions, the focus was on increased border security and deportation focused largely, but not exclusively, on persons with criminal records.

That situation remained reasonably stable, until caravans of migrants began forming in Central America, heading for the U.S. border. There were various predictions about size of the different caravans with a U.N. estimate of more than 7,000 persons in one.[71] The Trump administration reacted by threatening to cut off aid to the three countries producing most of those migrants, Honduras, Guatemala, and El

70 Department of Homeland Security, *2017 Yearbook of Immigration Statistics*, Table 39, Office of Immigration Statistics, 2017, https://www.dhs.gov/immigration-statistics/yearbook/2017/table39.

71 Marc Stevenson, "Migrants push ahead to reach U.S." AP story, *Baltimore Sun*, October 25, 2018).

Salvador, and by trying to work with Mexico, which has strict immigration policies about who can stay in its country. Although rising fairly rapidly, the per capita GDP in Honduras is $2,210, Guatemala $3,124, and El Salvador $3,463 compared to the U.S. figure of $54,306. The population of the three Central American countries is a little over 30,000,000. Clearly, if permitted access to the U.S., other caravans would soon form.

Probably the most successful part of the Trump immigration policy was articulating a policy that "refugees" should seek asylum in the first adjacent country and not seek to cross several countries to get to the United States. Under international law, Mexico would be the first country where most Central American asylum seekers should seek residence. With a combination of threats and economic incentives, Trump convinced Mexico to stop caravans from other Central American countries before crossing its southern border. Mexico also agreed to Migrant Protection Protocols or a "Stay in Mexico" policy for asylum seekers whose status has not yet been adjudicated in the United States. With opportunities to enter into the U.S. under previous "catch and release" policies disappearing, pressure on border crossing began to substantially decrease.[72]

Despite previous statements by Sen. Diane Feinstein and President Barack Obama, opposing such forms of illegal entry, Democratic politicians decided to remain mostly silent on the caravan issue before the 2018 midterms. Following cue, most academic associations and leaders decided not to opine on migrant caravans either. There were a few exceptions. Some academic centers, particularly in or near border states have been formed to study migrant issues. This is a perfectly legitimate activity, but like some Mideast centers, their policy concerns and proposals are one-sided, often favoring the case migrants.

When members of a fall 2018 migrant caravan reached the San Diego border, after traversing the length of Mexico, some Tijuana residents, including that City's mayor were resentful. He contrasted their

72 Elliot Spagat, "Illegal Crossings plunge as US extends policy across border," *Associated Press*, January 19, 2020, https://apnews.com/0360a57afc0bd34cd15dfa28e42dc20f.

arrival with the welcome Tijuana gave to 3,000 Haitian refugees fleeing Hurricane Matthew in 2016. The migrants' needs overstressed the City's resources and resulted in tightened U.S. border security, affecting the Tijuana's economy. Nevertheless, Victor Clark-Alfaro, a San Diego State University Latin American Studies Professor, who lives in Tijuana, viewed the problem simply by stating: "There's a lot of expressions of xenophobia against them. There is a division in our society because there are more people who residents don't want to be here."[73]

Xenophobia alone cannot explain the resentment of Mexico's citizens to the caravans. According to a public opinion poll taken by El Universal, a majority of Mexicans didn't want their government to grant asylum to caravan members.[74] Actually, most caravan migrants rejected Mexico's early offer of asylum and resettlement shortly after crossing the Mexican border. The goal was always the U.S. border. Everard Meade, director of the Trans Border Institute of the University of San Diego, however, decided that "Like many places in the world. Tijuana has been infatuated with the kind of neo-nationalism embraced by President Trump, and some political leaders are all too willing to tap it for headlines."

There was some quiet support from higher education for the migrant caravans. The Student Government Association at the University of California Berkeley voted to give $1,500 of student fees to caravans. The University of Florida (UF) is a member of Gainesville's "Welcoming Communities for New Americans" program which makes a point of not distinguishing between legal and illegal immigrants. UF has also accepted a partnership with the United Nations High Commissioner for Refugees to create a Center for Public Interest Communication in its College of Journalism and Communication. The purpose of this new interdisciplinary Center is to "explore new approaches to storytelling and communications strategies grounded in research that can change

73 Dennis Romero, "Migrants met with fear, distain in Tijuana, Mexico," *NBC News*, November 17, 2018.

74 Jerry Kammer, "Mexican Public Opinion on Immigration Tells US Something About Our Own" Center for Immigration Studies, December 10, 2016.

perspectives and increase support for displaced persons."[75] Why a state institution of higher education should commit itself to building a narrative supporting persons who may be illegally entering the United States is uncertain.

The most explosive issue regarding border security concerned the care of children whose parents tried secretly to cross the border or who openly sought refugee asylum status. Sometimes these families struggled across miles of inhospitable desert or mountains on their own. Sometimes they made the trek by paying human traffickers. Those who simply tried to sneak across the border were likely to be deported sooner or later.

About 10 percent of all border crossers asked for asylum asserting they "had a credible fear of return" to their native country. Their claims must be evaluated by immigration judges, a process which can sometimes take months depending on the case load before those tribunals. By 2019 there was a backlog of 786,000 claims for asylum.[76] What should happen to asylum seekers with children? Until 2017, they were released on their own recognizance into America and nearly every such family simply failed to show up for their court date. Customs and Border Protection (CBP) found that 99 percent of the 94,285 Central American family units apprehended in 2017 remained in the country a year later.[77]

The Trump administration replaced the "catch and release" policy with a "zero tolerance policy," which meant asylum seekers would be kept in custody until their claims could be adjudicated.[78] Yet the vast number of illegal aliens and asylum seekers overwhelmed CBP. In Fiscal Year 2019, the CBP apprehended 977,509 persons, the largest number

75 Graham Vyse, "Sanctuary City Mayors Respond to Trump's Threat 'With Open Arms,'" *Governing: The Future of States and Localities*, April 15, 2019, https://www.governing.com/topics/public-justice-safety/gov-mayors-sanctuary-cities-trump.html.

76 For a discussion of the problems in discerning legitimate from fake asylum seekers, focusing on the German experience, see Graeme Wood, "The Refugee Detectives," *The Atlantic*, April 2018, https://www.theatlantic.com/magazine/archive/2018/04/the-refugee-detectives/554090/.

77 Cal Thomas, "Invasion of the County Snatchers," *The Baltimore Sun*, October 27, 2018, https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-1027-thomas-snatchers-20181024-story.html.

78 Ricardo Alonso-Zaldizar, "Trump 'zero tolerance' order blindsided agencies, GAO says," *The Baltimore Sun*, October 25, 2018 https://digitaledition.baltimoresun.com/tribune/article_popover.aspx?guid=8600b5f4-a452-43af-af35-427cfedca3f6.

since FY 2006.[79] In FY 2017 and FY 2018, 11,000 children from more than 90,000 apprehended families had to be housed. Since they could not be kept in jail-like facilities, they were separated from their families and placed in other accommodations of varying quality.

Politicians, editorial writers, and academics who were already predisposed to object to tougher border security jumped on the family separation bandwagon. The American Psychological Association (APA), which represented a membership of nearly 116,000, condemned the family separation policy as

> not only needless and cruel, it threatens the mental and physical health of both children and caregivers. Psychological research shows that immigrants experience unique stressors related to the conditions that led them to flee their home countries in the first place. … The American Psychological Association calls on the administration to rescind this policy and keep immigrant families intact.[80]

Similarly, the National Association of Social Workers called the plan "to separate undocumented immigrant children from their parents … malicious and unconscionable."[81] Ana Mari Cauce, President of the University of Washington, argued that, "The damage for children is especially acute and can interfere not only with mental health and emotional development, but with brain development itself. The fact that American tax dollars are being used to knowingly inflict lifelong trauma on children is a stain on our national character."[82]

79 "2019 Border Apprehensions Establish Sustained Border Chaos," *Immigration Report*, Federation for American Immigration Reform, November 2019, https://www.fairus.org/sites/default/files/2019-12/NL-November-2019-Web_0.pdf.

80 "Statement of APA President Regarding the Traumatic Effects of Separating Immigrant Families," American Psychological Association, May 29, 2018, https://www.apa.org/news/press/releases/2018/05/separating-immigrant-families.

81 "NASW says plan to separate undocumented immigrant children from their parents is malicious and unconscionable," National Association of Social Workers, May 30, 2018, https://www.socialworkers.org/News/News-Releases/ID/1654/NASW-says-plan-to-separate-undocumented-immigrant-children-from-their-parents-is-malicious-and-unconscionable.

82 Megan Zahneis, "Thousands of Professors Call Trump's Family Separation Policy 'Government-Sanctioned Child Abuse,'" *The Chronicle of Higher Education*, June 19, 2018, https://www.chronicle.com/article/Thousands-of-Professors-Call/243709.

The President and Provost of University of Maryland Baltimore County (UMBC) declared that,

> We have watched with grave concern as children have been forcibly separated from their parents at the southern border as part of the U.S. Department of Justice's new 'zero tolerance' immigration policy. … We urge the Department of Justice to reverse this policy immediately and all government agencies involved to work toward reuniting families as quickly as possible.[83]

More than 2000 faculty members nationwide signed an open letter to the U.S. Department of Homeland Security calling government policy "an extreme human rights breach" and "an outright attack by Trump's war against immigrants and people of color," which "has eerie echoes in shameful histories of state dictatorship, ethnogenocide and genocide that have since proven morally reprehensible and illegal under international and human rights [law]."[84]

No academic statement suggested that family reunion should take place south of the border or that parents bore any responsibility for their children's "trauma" by taking them into the United States without permission. Few acknowledged that previous American policy enticed illegal immigrants with no genuine refugee claims to make the journey with their children, or other people's children, and declare themselves refugees so as to secure guaranteed entry into the United States. Nevertheless, academic opinions and widespread press condemnations forced the Trump administration into one of its rare policy retreats, and it abandoned the family separation policy.

83 Freeman Hrabowski and Philip Rous, "Speaking out against enforced family separations," UMBC Family Connection, June 21, 2018, https://familyconnection.umbc.edu/whats-happening-on-campus/?id=77241.

84 Cited in Zahneis, "Thousands of Professors."

Sanctuaries and Public Subsidies

A growing number of states and cities have declared themselves "sanctuaries" for illegal immigrants and passed local ordinances forbidding local officials from cooperating with Immigration and Customs Enforcement (ICE) and sometimes even penalizing them for doing so.[85] On college campuses, several loosely aligned groups formed to sponsor rallies and forums to "protect" enrolled illegal immigrants. Other activists targeted colleges that received ICE research grants. Students at the Johns Hopkins University and the University of Maryland, College Park (UMCP) protested against the universities' and individual professors' contractual relationships with ICE. A petition at Johns Hopkins amassed almost 2,000 signatures arguing that the university's ICE contracts—$7 million in 37 ICE contracts since 2008—"violate human rights" and go "against the university's values."[86] At College Park, 24 student groups led by Political Latinas United for Movement and Action in Society (PLUMAS) rallied against the ICE contracts and even against President Wallace Loh, despite his designation of that school year a "Year of Immigration." The student groups stated jointly that, "We don't understand why the university would want to be associated with an institution that has been part of cruel actions toward families, people, and immigrant communities, especially knowing they have undocumented students on campus. It doesn't matter what the contracts are about." UMCP tried to deflect this criticism by pointing out that its ICE contracts were focused on counter-terrorism, not immigration. The director of the $625,000 contract in question wrote: "While I am very empathetic of [*sic*] concern of students, I hear them, I understand them, it would be counterproductive for us to stop doing good empirical counter-terrorism training."[87]

85 Seth Segal, "A look at the higher ed's attempt to evade ICE this year," *Campus Reform*, December 27, 2019, https://www.campusreform.org/?ID=14145.

86 Thalia Juarez, "Hopkins, UM urged to cut ties with ICE," *Baltimore Sun*, November 16, 2018, https://digitaledition.baltimoresun.com/tribune/article_popover.aspx?guid=30c69965-b22b-4c66-b048-41be7b519412.

87 Juarez, "Hopkins, UM urged to cut ties with ICE."

In 2018, the Trump Administration announced for public comment a new rule that would make it harder for legal immigrants who were not yet citizens to acquire green cards or permanent residency status, if previously they had received some public benefits such as Medicaid, food stamps, and housing subsidies.[88] The higher education establishment came out strongly against the proposed new policy. Miriam Feldblum, executive director of the Presidents Alliance on Higher Education and Immigration, declared that, "By the targeting of the public benefits, especially the Supplemental Nutrition Assistance Program and housing assistance, it's going directly at benefits that help support student success." Janet Napolitano, President of the University of California and former Secretary of Homeland Security in the Obama Administration, added that "Today's decision by the Trump administration to expand the definition of 'public charge' sends a detrimental message internationally—that the United States does not want other countries to send their best and brightest to study and add to the intellectual exchange at our universities, to conduct important research and contribute substantially to our economy among other things."[89]

National Security Travel Restrictions

The higher education establishment has also opposed all attempts by the Trump administration to apply national-security related travel restrictions on foreigners. These spokespersons had not objected when President Obama signed a 2015 law prohibiting citizens of 38 counties who normally could enter the United States without a visa from getting such waivers, if they had visited problematic sites such as Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen.[90] Yet universities immediate-

88 Mattie Quinn, "Trump Administration Releases Final Rule for Legal Immigrants Using Public Benefits," *Governing: The Future of States and Localities*, October 10, 2018, https://www.governing.com/topics/health-human-services/gov-trump-immigration-public-charge-benefits-green-card.html.

89 Elizabeth Reddon, "The 'Public Charge' Rule and Higher Ed," *Inside Higher Education*, August 13, 2019, https://www.insidehighered.com/news/2019/08/13/new-public-charge-rule-has-implications-higher-education-and-students.

90 Linda Qiu, "Why Comparing Trump' and Obama's immigration restrictions is flawed," *Politifact*,

ly joined the legal appeals against the Trump administration's January 2017 ninety-day travel "ban" on foreigners from countries which did not have effective screening for terrorists.[91] When the state of Washington sued the Trump Administration over the travel ban, the University of Washington claimed to be an essential part of the case.[92] By the spring of 2018, when the Supreme Court heard oral arguments regarding the third iteration of the travel ban,[93] the higher education establishment had hardened its stance and now opposed any form of travel ban. On some campuses, law students and others mobilized politically and provided practical assistance to those affected by the travel restrictions.[94]

Many educational associations and individual universities filed *amicus curiae* briefs against the limited Trump's travel bans. The leading higher education brief was filed by the American Council on Education (ACE), joined by thirty-two other higher education associations. ACE stated that "American colleges and universities are part of a worldwide network of learning, research and education," and argued that the "one million international students that attended U.S. colleges and universities add to this country's intellectual and cultural vibrancy and yield and estimated economic impact of $32.8 billion and support 400,000 U.S. jobs."[95]

January 30, 2017, https://www.politifact.com/factchecks/2017/jan/30/donald-trump/why-comparing-trumps-and-obamas-immigration-restri/.

91 Donald J. Trump, "Executive Order Protecting The Nation From Foreign Terrorist Entry Into The United States," Executive Order 13769, January 27, 2017, https://www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states/; *State of Washington and State of Minnesota v. Trump*, 847 F.3d, 1151, (9th Cir. 2017), https://cdn.ca9.uscourts.gov/datastore/opinions/2017/02/09/17-35105.pdf; Goldie Blumenstyk, "Universities Spoke Up in Case That Led to Ruling Halting Trump's Travel Ban," *The Chronicle of Higher Education*, February 5, 2017, https://www.chronicle.com/article/Universities-Spoke-Up-in-Case/239128.

92 Quinn Russell Brown, "Bob Ferguson, Washington's top lawyer, talks travel bans and Trump," *University of Washington Magazine*, n.d., https://magazine.washington.edu/feature/bob-ferguson-trump-human-rights/.

93 Donald J. Trump, "Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats," Proclamation No. 9645, September 24, 2017, https://www.whitehouse.gov/presidential-actions/presidential-proclamation-enhancing-vetting-capabilities-processes-detecting-attempted-entry-united-states-terrorists-public-safety-threats/; *Donald J. Trump, President of the United States, et al., Petitioners v. Hawaii, et al.* (2018), https://www.supremecourt.gov/opinions/17pdf/17-965_h315.pdf.

94 Melinda Beck. "No time to lose," *Yale Alumni Magazine*, March/April 2017, https://yalealumnimagazine.com/articles/4457-yale-law-immigration-order.

95 Molly Corbett Broad to John F. Kelly, January 31, 2017, American Council of Education, https://www.acenet.edu/Documents/ACE-Letter-to-DHS-John-Kelly-International-Students-Scholars.pdf.

ACE added that, "the presence of international scholars and students enriches the experiences of all members of a university community and better prepares students to succeed in and contribute to the global marketplace … The [Administration] Proclamation sends a clarion message of exclusion to millions around the globe that America's doors are not open to foreign students, scholars, lecturers, and researchers."[96] To support their point, they noted a National Science Foundation report that estimated that between 2016 and 2017 the number of enrolled foreign undergraduates on American campuses declined by 2.2 percent and the number of enrolled foreign graduate students declined 5.5 percent.[97]

ACE also invoked the diversity rationale normally used to justify race preferences among American students:

> Syrian students enrolled in American universities are undoubtedly able to contribute to their peers understanding of the wide-ranging consequences of the civil war in Syria in a way no textbook or lecture ever could. Similarly, Iranian students offer a unique perspective on the strengths and weaknesses of the nuclear agreement and other aspects of United States foreign policy students could not absorb by simply reading op-eds in domestic newspapers.[98]

ACE seemed unaware that students from countries ruled by authoritarian regimes might not talk freely about controversial subjects before returning home.[99] But in any case they assured the Court that "*amici* and their members are firmly committed to the security of their campuses and of the United States … security is essential to maintaining

96 *Brief of Amicus Curiae American Council on Education and 32 Other Higher Education Associations in Support of Respondents* [re *Donald J. Trump, President of the United States, et al., Petitioners v. Hawaii, et al.* (2018)], pp. 3-4, 11, https://www.acenet.edu/Documents/Amicus-Brief-Trump-v-Hawaii-as-filed-3-29-18.pdf.

97 Elizabeth Redden, "A Year of Travel Bans," *Inside Higher Education*, February 1, 2018, https://www.insidehighered.com/news/2018/02/01/year-later-trump-administrations-travel-restrictions-opposed-many-higher-ed-are.

98 *Brief of Amicus Curiae American Council on Education*, p. 11.

99 Elizabeth Redden, "Gauging China's 'Influence and Interference' in U.S. Higher education," *Inside Higher Education*, September 12, 2018, https://www.insidehighered.com/news/2018/09/12/wilson-center-releases-study-chinas-influence-and-interference-us-higher-ed.

a productive learning environment." It was just that they "stand ready to help the administration ensure national security in ways that do not undermine our nation's status as the top destination for global talent."[100]

The ACE brief, as well as one submitted by the American Medical Colleges, did help convince Justice Sotomayor that the lower court's national injunction against the travel restrictions "is in the national interest."[101] Justice Breyer's more cautious dissent also noted concern about the slowness in the process of granting waivers, and cited ACE's brief regarding the more than 2,100 scholars from countries who were covered by the Proclamation, but he concluded that "Declarations, anecdotal evidence and numbers taken from *amicus* briefs are not judicial fact findings."[102] The five person majority, however, did not appear to pay any attention to higher education's concerns or the ACE brief. They saw the issues connected with the current ban differently. Was the Proclamation/ban within executive branch authority and had it now been vetted carefully, so that judicial deference was appropriate? Were the policies encompassed in it violations of the Establishment Clause?

The majority opinion written by Chief Justice Roberts, begins by describing the revamped process in which the Department of Homeland Security, in consultation with the State Department and intelligence agencies evaluated the procedures other countries used in evaluating risks of their nationals traveling to the United States. After a fifty day period in which the State Department "made diplomatic efforts to encourage foreign governments to improve their practices," eight countries originally were on the entry restriction list (Chad, Iran, Iraq, Libya, North Korea, Syria, Venezuela, and Yemen) remained. Such large Muslim majority nations as Egypt, Indonesia, Malaya, Pakistan, Saudi Arabia, and Turkey had no change in their status and their nationals were not affected. Since Iraq was a partner in the war against ISIS, it was removed from the original list, but Somalia, with a substantial

100 *Brief of Amicus Curiae American Council on Education*, pp. 5-6.

101 Sonia Sotomayor, "Dissent," in *Donald J. Trump, President of the United States, et al., Petitioners v. Hawaii, et al.* (2018), pp. 23-24.

102 Stephen Breyer, "Dissent," in *Donald J. Trump, President of the United States, et al., Petitioners v. Hawaii, et al.* (2018), pp. 5, 8.

terrorist presence in its borders, was added. For countries on the list, the Proclamation imposed a range of entry restrictions, but exempted lawful permanent residents and provided for case-by-case waivers. Nevertheless, ACE's brief cited the case of Faraj Aljarih, a Libyan master's student at Washington State University, who decided after the ban that it would be hard to stay in the United States and instead enrolled in a Ph.D. program at the University of Ottawa in Canada.[103]

In the end, the positions taken by the higher education associations had little effect on the Supreme Court's decision and may, in fact, have been counterproductive to their own interests. By treating the Proclamation as a blanket "clarion message of exclusion around the globe," they magnified its intention and scope and may well have inadvertently persuaded some students and scholars not covered by the order to avoid the United States. On the other hand, they may have influenced the administration to fine tune its policy, even as their *amicus* brief did not recognize the reality of that narrow tailoring in the final Proclamation. Whatever the case, the higher education position conformed to prevailing campus ideologies, but was not legally influential.

Some higher educational institutions were bitter about their loss in the Supreme Court. The National Association of International Educators with more than 10,000 members decried the Court's decision:

> At a time when we should be making every effort to create connections and ties throughout the world though robust international exchanges with all nations, especially those in the Middle East, the Supreme Court's decision poses a grave threat to our national security and keeps us from building the necessary relationships abroad. … Now the responsibility lies with Congress to stop further emboldening this administration in its anti-immigrant, xenophobic path under the guise of national security. Voters will have the

103 *Brief of Amicus Curiae American Council on Education*, p. 4.

> opportunity in November to demand that our elected officials stand for freedom, equality and opportunity for all.[104]

Apparently, NAFSA believes those values of "equality and opportunity" should be afforded without distinction to citizens and non-citizens. NAFSA urged its followers to tweet "Today's SCOTUS decision tarnishes our reputation & poses a grave threat to our national security."[105]

National Security: Foreign Access to American Higher Education

The national security issues are much more complex than NAFSA has suggested. Some international students will remain in the United States and become productive and patriotic American citizens. Others will return to their native countries and improve the welfare of those inhabitants. Still others may provide rival governments with technological and scientific information that will undermine American strength. Higher education advocates protest any restriction on foreign students without ever acknowledging the possibility that allowing a Chinese or Iranian student, for example, to study in some disciplines in the United States might pose a threat to America's interests and security.[106] Both Chinese and Iranian hackers have attempted to gain access to private research data on campus.[107]

Chinese nationals coming to American campuses have been part of a sustained attempt to gain policy influence and economic and military valuable information from American campuses. China gains influence on campuses worldwide via its sponsorship of Confucius Institutes. Since 2005, there have been 500 worldwide and 103 Institutes on

104 Jill Welch, "America Must Rise Above and Xenophobia," NAFSA, June 26, 2018, https://www.nafsa.org/about/about-nafsa/america-must-rise-above-racism-and-xenophobia.
105 Welch, "America Must Rise Above and Xenophobia."
106 Fischer, "An Iranian Student's Visa Was Voided on His Way to America."
107 Lindsay McKenzie, "On Red Alert," *Inside Higher Education*, March 6, 2019, https://www.insidehighered.com/news/2019/03/06/report-top-universities-us-targeted-chinese-hackers.

American campuses, subsidized by at least $158 million from the Chinese government.[108] The Institutes give the Chinese Communist Party (CCP) influence on American campuses avoiding topics sensitive to the CCP without regard to traditional standards of academic freedom. Worse, Chinese party officials gain a foothold on American campuses to monitor Chinese students.[109] These Institutes can be quite influential. Between its founding in 2007 and its closure in 2019, the North Carolina State University Institute taught more than 30,000 students, hosted events for 636,000 people, and trained 1,330 Chinese language teachers.[110]

In 2018, FBI Director Christopher Wray testified before the Senate Intelligence Committee about the Institutes' potential for espionage. Wray pointed out that "naiveté" in academic circles was exacerbating the problem because the Chinese government was planting spies in American schools. He highlighted the use of the "non-traditional collectors, especially in the academic setting, whether it is professors, scientists, students, we see in almost every field office that the FBI has around the country."[111] Growing public realization of the threat posed by Chinese influence in higher education resulted in legislation to restrict the amount of Pentagon funding to universities that host Confucius

108 Elizabeth Redden, "Who Controls Confucius Institutes?" *Inside Higher Education*, February 28, 2019, https://www.insidehighered.com/news/2019/02/28/two-new-government-reports-examine-questions-chinese-government-control-over; "How Many Confucius Institutes Are in the United States?" National Association of Scholars, May 15, 2020, https://www.nas.org/blogs/article/how_many_confucius_institutes_are_in_the_united_states.

109 Rachelle Peterson, *Outsourced to China: Confucius Institutes and Soft Power in American Higher Education* (New York: National Association of Scholars, 2017), https://www.nas.org/reports/outsourced-to-china; Elizabeth Redden, "Closing a Confucius Institute, at a Congressmen's Request," *Inside Higher Education*, April 9, 2018, https://www.insidehighered.com/news/2018/04/09/texas-am-cuts-ties-confucius-institutes-response-congressmens-concerns.

110 Rachelle Peterson, "Another Confucius Institute Closes," The James G. Martin Center for Academic Renewal, December 17, 2018, https://www.jamesgmartin.center/2018/12/another-confucius-institute-closes/; Samuel Brazys and Alexander Dukalskis, "Why U.S. universities are shutting down China-funded Confucius Institutes, *Washington Post*, January 11, 2019, https://www.washingtonpost.com/news/monkey-cage/wp/2019/01/11/us-universities-have-shut-down-confucius-institutes-heres-what-you-need-to-know/; Ethan Epstein, "How China Infiltrated U.S. Classrooms," *Politico*, January 16, 2018, https://www.politico.com/magazine/story/2018/01/16/how-china-infiltrated-us-classrooms-216327.

111 Michal Kranz, "The director of the FBI says the whole of Chinese society is a threat to the US—and that Americans must step up to defend themselves," *Business Insider*, February 13, 2018, https://www.businessinsider.com/china-threat-to-america-fbi-director-warns-2018-2; Jane Perlez, "F.B.I. Bars Some Chinese Scholars From Visiting U.S. Over Spying Fears," *New York Times*, April 14, 2019, https://www.nytimes.com/2019/04/14/world/asia/china-academics-fbi-visa-bans.html.

Institutes. Public scrutiny and the threat to their finances has led to many universities to cancelling their contracts with the CCP.[112]

Termination of a few Confucius Institutes will by no means end the threat posed by Chinese espionage. Most of the 329,000 Chinese students in America and the unknown number of Chinese professors at American universities are doubtless innocent of any crime, although their training in STEM fields may assist China in its economic and military competition with America. But among their number are spies, for example the unknown companions of UCLA adjunct professor Yi-Chi-Shih, who in 2019 was convicted on 18 federal charges for illegally selling to a Chinese company microchips that can be used in missiles, missile guidance systems, fighter jets, radar, and electronic warfare.[113]

China also facilitates espionage by way of its Thousand Talents Plan, which encourages "collaboration" between Chinese and international scholars on subjects of interest to the Chinese government. In 2020, the U.S. Attorney's office in Boston announced that Charles Lieber, chair of Harvard University's Chemistry and Chemical Biology Department, had accepted large undisclosed payments from Wuhan University and would be charged with illegal collaboration with China. The government also charged two Chinese nationals working in Dr. Lieber's lab. Lieber's research, for which he had also received financing from the U.S. Department of Defense, was studying nanoelectronic sensors technology for "cyborg tissue" that could integrate nanoelectronic devices into synthetic tissue.[114] The military utility of a technology allowing the construction of cyborg soldiers is self-evident.

112 Elizabeth Redden, "3 More Universities Close Confucius Institutes," *Inside Higher Education*, May 1, 2019, https://www.insidehighered.com/quicktakes/2019/05/01/3-more-universities-close-confucius-institutes.

113 David Brennan, "UCLA Professor Stole Missile Secrets for China, Faces 219 Years in Prison," *Newsweek*, July 3, 2019, https://www.newsweek.com/ucla-professor-stole-missile-secrets-china-219-years-prison-espionage-1447286.

114 Tonya Alanez and Travis Anderson, "Harvard scientist charge with lying about ties to Chinese university; two Chinese nationals accused of economic espionage," *Boston Globe*, January 28, 2020, https://www.bostonglobe.com/2020/01/28/metro/federal-prosecutors-boston-announce-charge-against-renowned-harvard-professor-lying-about-ties-program-chinese-university/; Bill Chappell, "Acclaimed Harvard Scientist is Arrested, Accused of Lying About Ties to China, *NPR*, January 28, 2020, https://www.npr.org/2020/01/28/800442646/acclaimed-harvard-scientist-is-arrested-accused-of-lying-about-ties-to-china; Elizabeth Redden, "Harvard Professor Charged in Connection with Chinese Funding, *Inside Higher Education*, January 29, 2020, https://www.insidehighered.com/quicktakes/2020/01/29/harvard-professor-charged-connection-chinese-funding; Michelle Malkin, "Red China's Infection of US Classrooms," *Townhall*, January 29, 2020, https://townhall.com/columnists/michellemalkin/2020/01/29/red-chinas-infec-

A number of university leaders met subsequently at the Chinese Initiative Conference at the Center for Strategic & International Studies in Washington to discuss the problem of foreign influence in American higher education. They identified as problems the decentralized nature of universities and the lack of information and consistent guidelines from the federal government, but had no cogent action to recommend.[115] Few if any universities have the appetite or resources to ferret out this illegal activity. After all, many depend on Chinese students to pay tuition. Chinese gifts or contracts with American universities now total more than $1 billion dollars.[116]

tion-of-us-classrooms-n2560290.

115 Juan Perez, Jr., "Academics fret over foreign influence threats to American research," Morning Education, *Politico*, February 7, 2020, https://www.politico.com/newsletters/morning-education/2020/02/07/academics-fret-over-foreign-influence-threats-to-american-research-785147.

116 Janet Lorin and Brandon Kochkodin, "Harvard Leads U.S. Colleges That Received $1 Billion From China," *Bloomberg News*, February 6, 2020, https://www.bloomberg.com/news/articles/2020-02-06/harvard-leads-u-s-colleges-that-received-1-billion-from-china.

Debating Immigration and Boarder Security Policy on Campus

Debating Immigration and Border Security Policy on Campus

Does the higher education establishment's policy consensus on so many issues stifle debate on individual campuses? A research project I conducted with the assistance of six graduate and law students tested this hypothesis empirically. We examined policy debates and forums with divergent viewpoints in 2014 and 2015 regarding 24 major policy areas in a stratified sample of 97 campuses and 28 law schools enrolling almost a million students. Even though the sample was weighted toward "top" institutions with very large endowments, our research found that campuses sponsored very few such debates. There was only one debate and one forum with divergent viewpoints on immigration policy in the whole sample. More common were panels consisting exclusively of advocates for increased immigration, and limited border enforcement.[117]

Sponsoring debates about contentious and complex subjects in higher education is not impossible. At Arizona State University (ASU), Regent Karrin Taylor Robson sponsored a new program called the Regents' Cup, an annual public policy debate competition among ASU's three campuses. On March 2, 2020, the American Council of Trustees and Alumni (ACTA) hosted a debate at ASU "Resolved: The United States Should Build the Southern Border Wall," obviously an important question in Arizona. The event, co-hosted by Braver Angels (formerly known as Better Angels) and Bridge USA, was well attended by community members and students. According to ACTA, the participants were passionate, but respectful, and many stayed late into the night to continue the discussion. Their enthusiasm demonstrated "the hunger of

117 George R. La Noue, *Silenced Stages: The Loss of Academic Freedom and Campus Policy Debates* (Durham: Carolina Academic Press 2019); George R. La Noue, "Promoting a Campus Culture of Policy Debates," *Academic Questions* 30, 4 (2017), pp. 476-83, https://link.springer.com/article/10.1007/s12129-017-9662-4; George R. La Noue "Encouraging Diverse Policy Viewpoints on Campus," The James G. Martin Center For Academic Renewal, November 17, 2017, https://www.jamesgmartin.center/2017/11/encouraging-diverse-policy-viewpoints-campus/; George Leef, "College Campuses Need More Debate," *National Review*, November 17, 2017, https://www.nationalreview.com/corner/viewpoint-diversity-debate-campus-martin-center-article/; and George R. La Noue, "Faculty Responsibility for On-Campus Policy Debates with Diverse Viewpoints," Heterodox: The Blog, *Heterodox Academy*, November 20, 2017, https://heterodoxacademy.org/faculty-responsibility-for-on-campus-policy-debates-with-diverse-viewpoints/.

our nation's students for unfettered, uncensored exchange with their peers."[118]

So what should be higher education's role in evaluating immigration policy? Although there are a number of research centers, courses, and lectures on campuses related to this subject, there is no way of knowing whether these activities provide balanced viewpoints for students. If the American Council on Education's published positions on immigration policy fairly represent the views of higher education's leaders, we would not expect a fair hearing for dissenting views on many American campuses.

Since immigration and border security policy is one of the top issues in American politics, and centrally related to the nation's future, its omission from campus debates requires explanation. There are several hypotheses explaining that absence. Many administrators have solved their enrollment and tuition anxiety by attracting foreign students. The "diversity and inclusion" mission adopted by so many campuses not only protects American students from criticism, but also foreign students, whether legal or illegal. The repressive "safety" first ideology of student affairs officers also inhibits immigration debates, since some students inevitably would claim that open debate on the topic would make their "undocumented classmates" and their "allies" feel "uncomfortable," "unsafe," or "harmed."

Precisely such "safety" concerns ended a fall 2017 debate at the Seattle University School of Law. The School's Access to Justice Institute and the student chapter of The Federalist Society had scheduled a debate featuring both liberal and conservative viewpoints on immigration policy as a part of Social Justice Monday. Dean Annette Clark subsequently terminated its role in the debate by responding to a student protest against the School's sponsorship of the debate, against the timing of the debate, and ultimately against permitting the debate, period.

118 American Council of Trustees and Alumni, "ACTA Hosts Student Debate at ASU," *Inside Academe* 25, 3 (2019-2020), p. 5, https://www.goacta.org/wp-content/uploads/2020/05/inside-academe-volxxv-no3.pdf.

Clark justified her decision in an email to students by arguing that the Trump administration had:

> generated great fear within vulnerable immigrant communities and has caused real harm, making discussions of immigration policy that include a conservative viewpoint even more painful and anxiety-and anger-producing for those individuals and families who are at risk and for their allies.[119]

The Federalist Society was still allowed to sponsor the debate, but the Law School let it be known how much it regretted the existence of an open debate on immigration policy.[120]

Fostering debate about immigration and border security on American campuses will not be easy. Many college students increasingly hold America and its history in contempt. Many others support increased immigration. Indeed, many of them may never have heard arguments that expansive legal and illegal immigration can have unintended consequences. Students also are increasingly questioning the concept of free speech. A core of activist students is likely to condemn arguments for immigration control and border security as presumptively racist, regarding it as harmful speech that must be excised from the minds and speech of their "ignorant" peers. Even administrators who do not agree with these activists avoid conflicting with their censorious ideology, and so will work quietly to avoid immigration policy debates.

Despite these challenges, it is essential that Americans concerned about current immigration and border security policies and preserving intellectual freedom on campus, find ways to facilitate campus debates

119 Jonathan Turley, "Seattle Law Dean Apologizes For Scheduling a DACA Debate Featuring Conservative Viewpoints," October 11, 2017, https://jonathanturley.org/2017/10/11/seattle-law-dean-apologizes-for-scheduling-a-daca-debate-featuring-conservative-viewpoints/. See also Cal Thomas, "Censorship in Seattle," *Tallahassee Democrat*, October 24, 2017, https://www.tallahassee.com/story/opinion/columnists/2017/10/24/censorship-seattle/790374001/.

120 For parallel suppression of immigration debate in British academia, see Matthew Goodwin and Eric Kaufmann, "What Happened When We Tried to Debate Immigration," *Quillette*, December 8, 2018, https://quillette.com/2018/12/08/what-happened-when-we-tried-to-debate-immigration/.

about these policies. If they do not, students will continue to hear only one viewpoint and remain uninformed.

While academic administrators will rarely welcome open debates on immigration and border security policies and other controversial subjects, in the long run higher education may benefit from hosting them. Higher education's increasing single-mindedness about complex policy questions may be damaging American public support for its enterprise. A 2018 Gallup poll found only 48 percent of American adults have "a great deal" or "quite a lot" of confidence in higher education, down from 57 percent in 2015. Support declined among Democrats (down 6 percent), Independents (down 4 percent), and especially among Republicans (down 17 percent).[121] Lawrence S. Bacow, the new President of Harvard University, acknowledged in his 2018 inaugural address that "more persons than we would like to admit believe that universities are not nearly as open to ideas across the political spectrum as we should be."[122] People are not inclined to support institutions that consistently denigrate or exclude their voice and values. There is no better way to restore public confidence in higher education and the long-term financial support that accompanies such confidence, than by fostering open debates on public policy, including on charged topics such as immigration and border security.

121 Scott Jaschik, "Falling Confidence in Higher Ed," *Inside Higher Education*, October 9, 2018, https://www.insidehighered.com/news/2018/10/09/gallup-survey-finds-falling-confidence-higher-education.

122 Lawrence S. Bacow, "Installation address by Lawrence S. Bacow," Office of the President, Harvard University, October 5, 2018, https://www.harvard.edu/president/speech/2018/installation-address-by-lawrence-s-bacow.

Topics for Debate

Topics for Debate

Campus immigration debates should begin with these fundamental issues.

1. **What is the optimal population size for the United States? By whom and when should these decisions be made?**

Not many politicians have endorsed Matthew Yglesias' book *One Billion Americans: The Case for Thinking Bigger*, but the question of population size will not go away. In 1980, the population of the United States was 226,545,805. By 2019, that population had grown 31 percent to 328,316,410. Immigration has caused a substantial proportion of that population increase. The Pew Research Center estimated that post-1965 immigrants and their descendants made up about 72 million persons in 2015 and will account for about 105 million more by 2065, within a total estimated American population of 441 million.[123]

Population growth benefits some specific corporations, including higher education institutions, but it also has consequences for the quality of life for the many citizens who are less organized to protect their interests. Urban sprawl, traffic congestion, crowded public facilities and amenities, air pollution, water quality and shortages, and habitats for endangered species are only some of the problems affected.

Our politics are tilted toward advocating and rewarding growth of almost every kind, but questions of optimal population size and the role of immigration in population growth are almost never debated in political campaigns or on campuses.

123 "Modern Immigration Wave Brings 59 Million to U.S., Driving Population Growth and Change Through 2065," Hispanic Trends, Pew Research Center, September 28, 2015, https://www.pewresearch.org/hispanic/2015/09/28/modern-immigration-wave-brings-59-million-to-u-s-driving-population-growth-and-change-through-2065/.

2. Are national borders, particularly the United States' borders, legitimate?

Some in an audience may believe that the whole country was stolen from the descendants of the Asians who probably migrated to America and became "Native Americans." Others may regard all national borders as illegitimate taking their position from some United Nations statements or religious doctrines. The unlimited right to migrate can be declared a human right or a moral imperative, but it would be complicated to implement that "right" in an age where anyone can travel anywhere within about 24 hours. As recent political trends around the world show, the threat of unlimited migration changes political fortunes in countries. Although policies about defending those borders vary, nevertheless, all countries have borders. Most Americans support the concept of borders and the particular borders we have, but since there is objection to these beliefs on many campuses, the issue should be debated.

3. If America's national borders are legitimate, how should we deter unauthorized entry?

Despite increased border enforcement, estimates are that in FY 2019, 375,000 foreigners illegally entered, were apprehended, and then were released into the United States, awaiting hearings.[124] About another 150,000 foreigners eluded capture altogether.[125] How should this influx be stopped? Alternatives include physical walls, electronic security systems, and the adoption of a European model of universal identification cards. In 2006, Congress passed with broad bipartisan support the Security Fence Act which would have created about 700 miles of steel border fences had it been implemented.[126] Those opposed to a more

124 Anna Giaritelli, "US released 375,000 illegal immigrants who entered with family members," *Washington Examiner,* February 17, 2020.

125 Eric A. Blair, "More Than 550,000 Foreigners Entered U.S. Illegally in FY 2019, Report Finds," *Gateway Pundit*, November 7, 2019.

126 The bill passed the House 283-138 and the Senate 80-19. H.E.6061-106th Congress (2005-2006): Secure Fence Act https://www.congress.gov.bill/109th-congress/house-bill/6061.

effective wall should be asked whether they are opposed for pragmatic or ideological reasons. If the latter, should existing border walls be torn down? If the issue is cost and effectiveness, what concrete alternatives are preferred, and what policy compromises are acceptable?

4. How much does inadequate border security facilitate illegal drug use in America?

Drug cartels take advantage of America's loose border security to import vast amounts of drugs into the United State. In FY 2019, CBP made record seizures of illegal drugs, including 89,207 pounds of cocaine, 5,427 pounds of heroin, 289,529 pounds of marijuana, 68,545 pounds of methamphetamine, and 2,545 pounds of fentanyl. Probably shipments at least comparably great in scale avoided seizure.[127] Most of these drugs were smuggled in illegally through specified entry points, others were packed-in at remote border crossings. Illegal shipments contributed substantially to the 67,367 American drug overdose deaths in 2018, as well as to other measures of crime, social dissolution, and individual misery.[128] Campuses should debate about whether there is any alternative to secure borders to deter importation of dangerous drugs.

5. What sanctions should there be for violating immigration laws?

If it is agreed there should be some sanctions for illegal immigration, then when and where should enforcement take place? What types of due process should be afforded the different categories of persons seeking to enter the United States without visas? Will burdensome and costly extension of due process procedures to illegal immigrants overwhelm reasonable attempts at border enforcement? Since most illegal

127 Office of Field Operations Nationwide Drug Seizures, CBP Enforcement Statistics Fiscal Year 2020, U.S. Customs and Border Protection, https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics.

128 "Figure 1. National Drug Overdose Deaths—Number Among All Ages, by Gender, 1999-2018," Overdose Death Rates, National Institute on Drug Abuse, https://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates.

immigrants fail to show up for court dates when released on their own recognizance, where should they be held while waiting for their days in court? Campuses debates about the most effective means to sanction violations of immigration law are important.

6. How should the federal government respond to children whose parents have crossed the border illegally or who are seeking, but not have been yet granted, asylum?

Certainly, children should be cared for as humanely as possible. But border crossings occur in waves, often orchestrated by human traffickers sometimes overwhelming existing border facilities. The Obama administration's policy was to distribute these children to relatives and non-profit organizations around the country, until their parent's status could be determined. Some believe that created an incentive for families to cross the border. The Trump administration has tried to keep children of parents awaiting their entry status near the borders but in separate quarters.

The American Psychological Association and other educational leaders condemned this process as child abuse. But the problem is not so simple. In every large jurisdiction in the United States, children are routinely separated from their parents if adult parents are incarcerated or awaiting trial without bail. Fortunately, there are sometimes family members nearby who can take care of the children, but it remains a traumatic experience. Among families that cross America's borders there may not be nearby familial caregivers nearby. Campus debates should be held about realistic alternatives for childcare.

7. What steps should governments take to distinguish citizens from non-citizens within U.S. borders?

U.S. Department of Homeland Security estimates that about 676,000 visitors to the United States have overstayed their visas.[129] The

129 Fiscal Year 2019 Entry/Exit Overstay Report, U.S. Department of Homeland Security, March 30, 2020, p. iv, https://www.dhs.gov/sites/default/files/publications/20_0513_fy19-entry-and-exit-overstay-report.pdf.

9/11 Commission recommended establishing a biometric entry-exit system to track and remove over-stayers, and Congress appropriated limited funds for this purpose, but implementation has been non-existent.[130] Meanwhile, the E-Verify system established in 1995, both to give employers the information about which of their employees are eligible to work in the United States and to require them to employ only workers who are eligible, has languished. Enforcement of E-Verify remains lax despite research demonstrating that the system reduces levels of illegal entry and boosts the earnings of legal immigrants and American-born Hispanic men.[131] Campuses should debate their own use of E-Verify and whether the federal government should secure its borders by completing a biometric entry/exit visa system and/or making all employers use E-Verify.

8. How should the federal government deal with illegal immigrants currently present in the United States?

The United States contains more than 11,000,000 illegal immigrants. Should they all be deported, as the law requires? Should effective deportation enforcement be limited to illegal immigrants who have committed crimes beyond illegal border entry? Should some sort of "amnesty" or "path to citizenship" be provided to some or all illegal immigrants? Should illegal immigrants who claim to have arrived as children be given special status, as in the DACA program? Or should the status quo of toleration of a permanent population of illegal aliens be continued as best representing the consensus of American opinion? Campuses should foster open debates about which of these strategies treats people humanely and best serves the interests and ideals of the United States.

130 The 9/11 Commission Report, https:www9-11commission.gov/report/911Report.pdf.

131 Pia M. Orrenius and Madeline Zavodny, "The impact of E-Verify mandates on labor market outcomes," *Southern Economic Journal* 81, 4 (2015), pp. 947-59, https://doi.org/10.1002/soej.12023.

9. How much power should states and localities have to determine immigration and border control policy?

What flexibility should states and localities have in enforcing policies that deter illegal immigration? Should they be allowed to determine that they are "sanctuaries" that will not cooperate with federal enforcement activities? Should the federal government exercise its power to federalize National Guard units in border states over the objections of state governors? Should states be able to complement federal border control policy with additional policies to criminalize activity that facilitates employment of illegal immigrants?[132] Campuses should sponsor debates about the extent of state and local power to determine immigration and border control policy, and how that power should be exercised.

10. What public benefits should be given to persons in the county illegally and furtively and which of those benefits should be given to persons on the public path to citizenship, but who have not yet attained that status?

A 1982 Supreme Court decision required all public schools to educate school-age children regardless of their legal status.[133] Eighteen states offer illegal aliens in-state tuition rates for their public universities.[134]

A substantial influx of immigrants, legal, illegal, and refugees, can place great stress on urban school systems, which already face considerable problems educating native born students. In Houston and New York 49 percent of the residents speak a language other than English at home In Los Angeles, the comparable percentage is 59, in Chicago 36

132 *Kansas v. Garcia*, https://www.supremecourt.gov/opinions/19pdf/17-834_k53l.pdf. In a complex 5/4 2020 decision, the Supreme Court upheld the state's right to prosecute illegal aliens who stole Social Security numbers to gain employment.

133 *Plyler v. Doe*, 457 U.S. 202 (1982), https://supreme.justia.com/cases/federal/us/457/202/.

134 "US States that Offer In-State Tuition Rates to Undocumented Students," University of the People, https://www.uopeople.edu/blog/us-states-that-offer-in-state-tuition-rates-to-undocumented-students-and-what-to-do-if-your-state-isnt-one-of-them/.

percent, and in Phoenix 38 percent, according to census data.[135] Some immigrant groups are demanding that competitive high school entrance examinations be ended because the new students don't speak English well-enough to pass them.[136] At the University of California, standardized admission tests for its most competitive campuses have become controversial. In other state university systems, objective measures for admissions have been abandoned.

Educational benefits are only one form of public assistance. Many illegal immigrants recieve health services, housing assistance, and food stamps. Whether these benefits should be available to non-citizens and the Trump administration's new public-charge rules are worth debating.

11. How many immigrants and refugees should the United States admit?

According to a Gallup poll, about 14 percent of the world's population would like to migrate permanently, most likely to the United States or Western Europe. This amounts to about 1 billion people or a greater number than now lives in the proposed recipient countries.[137] How many of these migrants should America admit? For example, how many of the 750,000 Rohingya Muslims fleeing genocide in Buddhist Myanmar or the 18,400,000 Coptic Christians persecuted in Egypt should have a right to asylum in America?

135 Bob Dane, "Foreign Language Speakers Straining U.S. Schools," Center for Immigration Studies, September 28, 2018.

136 Thalia Juarez, "Seeking Equity in Education," Baltimore Sun, December 20, 2019.

137 "The Economist at 175."

12. How many refugees fleeing natural disasters, civil war, gang violence or domestic abuse should be admitted to the United States?

Which of these categories of refugees should be able to claim temporary asylum and which should be able to claim permanent asylum? When can remediation of the problem that caused the granting of temporary asylum require repatriation? Should the government be able to terminate "temporary asylum" that has become effectively permanent?[138] These rules should be debated.

13. Should national and local policies aim toward assimilating immigrant groups into American society?

Is *e pluribus unum* still an acceptable goal? If instead multiculturalism is the goal, which separate cultures should be defined and promoted? Marketplace cultural competition in the fields of music, literature, and cuisine create a beneficial diversity. When culture is defined in racial and ethnic affirmative action group categories, however, and governments seek to enforce outcomes reflecting those categories, it energizes a harmful identity politics. Therefore, what government policies in employment, contracting, and academic admissions should define and reinforce those cultural boundaries? Should proportional representation or even reparations be the goal and how can that be done in a way consistent with equal protection clause of the 14th Amendment and other civil rights laws? Whether immigrants are encouraged to see themselves as separate enduring cultural/political groups may well influence the outcomes of those questions. Campuses should foster open debates about whether assimilation is still a proper goal of American immigration policy and whether the failure of some immigrants to assimilate justifies decreasing the number of immigrants.

138 Stephen Dinan, "Trump halts deportation of thousands of Liberians," *Washington Times*, March 28, 2019, https://www.washingtontimes.com/news/2019/mar/28/trump-halts-deportation-thousands-liberians/.

Conclusions

Conclusions

When higher education associations, individual campuses, prominent administrators, and faculty take positions on immigration policy and border security, they consistently favor expansion of legal immigration and oppose most enforcement of border security. Their reasons are both altruistic and self-interested. There is a genuine concern among educators that in a world dominated by global travel, world internet connections, international corporations, and health and climate challenges, American students must be exposed to the world beyond America's borders. Solutions for many problems require international cooperation. These are legitimate educational priorities. But higher education also has a vested interest in growing foreign student enrollment and investment and it has developed an alignment with the Democratic party's agenda on immigration. That may explain why public debates on immigration policy are almost non-existent on campuses.

As this essay demonstrates, America faces a number of important and complex decisions regarding appropriate immigration and border control policies. The worldwide Covid pandemic leading to massive economic dislocation creates immediate and, hopefully short term, problems. Long term immigration issues will not go away, no matter which party is in power. Higher education should help America to make these decision with the necessary information and perspectives by sponsoring forums and debates encompassing the full range of views on these subjects. Higher education does not serve its students or our country well by silencing or avoiding debate on immigration and border control policy.

About the Author

George La Noue is Professor Emeritus of Political Science and Professor Emeritus of Public Policy at the University of Maryland Baltimore County. He served as Director of Policy Sciences graduate program for eighteen years. Prior to coming to the University of Maryland, he was Director of the Teacher's College - Columbia University Graduate Program in Politics and Education. He has taught at American University, the University of Chicago, the University of Miami, and the University of Strasbourg (France).

He graduated *magna cum laude* from Hanover College in 1959 and received his M.A. in 1961 and Ph.D. in 1966 in Political Science from Yale University. He has been awarded the Woodrow Wilson, Danforth, and Public Administration national fellowships

Dr. La Noue's research has focused on education law, civil rights law and public policy. He has published numerous articles and six books. His last book, *Silenced Stages: The Loss of Academic Freedom and Campus Policy Debates* (2019) documents the widespread failure in higher education to sponsor events where complex policy issues are discussed from a variety of viewpoints. He is the author of four encyclopedia entries: "School Decentralization," *Encyclopedia of Education*, "Political Science," *Encyclopedia of Educational Research*, and "Affirmative Action," *World Book Encyclopedia* and the *Encyclopedia of Political Science*. He is the author of ten law review articles.

Professor La Noue has served as President of the Politics of Education Society, as a member of the Editorial Board of *Education and Urban Society*, as a member of the Maryland State Commission on Public School Athletics, the Maryland Department of Education's Commission on Charter schools, the Maryland State Commission on Equal Pay, the Faculty Advisory Committee of the Maryland State Board for Higher Education, the Truancy Reduction Project of the Administrative Office of the [Maryland] Courts and chaired the Task Force on Higher Education of the United States Equal Employment Opportunity

Commission. He was appointed by Mayor Kurt Schmoke to serve as a member of the Mayors Task Force on School Choice. He was also the academic member of the National Institute for Government Purchaser's Universal Certification Committee which certifies procurement officers in the United States, Canada and Ireland. He has been Vice-Chairman of the Maryland Civil Rights Advisory Committee.

A frequent witness for Congressional inquiries, Dr. La Noue is also a well-seasoned trial expert on civil rights cases in federal courts. He has served as Assistant to the Executive Director of the U.S. Equal Employment Opportunity Commission and as the U.S. Department of Labor's principal trial expert in academic equal pay litigation. He has also consulted on a variety of educational and legal problems with the American Civil Liberties Union, the American Alliance for Rights and Responsibilities, the Association of General Contractors, the Association of Governing Boards, the National Council of Churches, the U.S. Department of Education Office of Civil Rights, the U.S. Commission on Civil Rights, and several state governments and universities.

Dr. La Noue is listed in *Who's Who in American Law, International Who's Who in Education*, and *American Men and Women of Science*. In 1992, Dr. La Noue was the American representative to the International Experts Conference on "Legal Measures Against Discrimination on Nationality, Ethnic, and Racial Grounds," sponsored by the Commission on Foreign Affairs of the Senate of Berlin, Federal Republic of Germany. Sponsored by the U.S. Information Agency, the Swedish government, the German government, the Fredrich Ebert Foundation and others, Dr. La Noue has had the opportunity to do research and lecture in fifteen countries.

NATIONAL
ASSOCIATION
of SCHOLARS

ISBN 978-0-9653143-9-8 US$14.99
51499
9 780965 314398