

**THE DREAM ACT:  
ITS PAST AND FUTURE, OPPOSITION, AND THE MEDIA**  
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*This Comment discusses the legislative history and legislative attempts to pass the DREAM Act (or a dream act-like bill), next it goes into a state by state analysis of which states' senators have historically supported or opposed the bill, and then it goes into an economic cost-benefit analysis of how the states whose senators have opposed immigration reform would benefit from such reform, and then thirdly, I did research on what seemed to be one of the plausible explanations for why certain parts of the country are continuously anti-immigrant, even in spite of the potential economic benefits: I discuss the media's role in creating people's anti-immigrant sentiment.*

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## INTRODUCTION

The Dream Act (Development, Relief, and Education for Alien Minors Act) is a proposed federal legislative bill that would create a process for young undocumented immigrants who entered the United States as minors to obtain a pathway to citizenship, subject to a few qualifications. The first version of this type of bill was introduced in the Senate by Dick Durbin and Orrin Hatch as S.1291 in 2001. That particular bill would have protected qualifying aliens from deportation and would have created a process for qualifying immigrants ultimately to be eligible to adjust their status to conditional permanent resident.<sup>2,3</sup> However, S.1291 failed to pass the Senate, and since then Congress has failed to pass comprehensive immigration reform despite numerous attempts.<sup>4</sup>

Congress's failure to pass legislative reform to address the millions of undocumented immigrants living in the United States may be attributed to a variety of causes. Even though as of 2016, 75% of the American public believed that undocumented immigrants currently living in the United States should be allowed

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<sup>2</sup> Dream Act, S. 1291 – 107<sup>th</sup> Cong. (2001-2002).

<sup>3</sup> *A Brief History of Civil Rights in the United States*, Georgetown Law Library, <http://guides.ll.georgetown.edu/c.php?g=592919&p=4170929> (last visited April 15, 2018).

<sup>4</sup> Although not every form of progressive immigration reform bill has been called the DREAM Act, this essay occasionally uses that title to reference other bills that are closely related in effect and purpose.

to stay, the American public is split on how to handle the issue of immigration.<sup>5</sup> In 2018, 74% of the American public favored granting permanent legal status to aliens who migrated to the United States as minors without authorization, yet, according to a survey in 2013, only 43% of the American public believed that undocumented immigrants should be eligible for citizenship.<sup>6</sup>

The American public's growing concern with the gradual increase of unauthorized immigration into the United States and the public's uncertainty on how Congress should address the issue of immigration reform explains in part why Congress has continually failed to pass immigration legislation, yet the true cause may be more complicated. Opponents of immigration reform generally argue that undocumented immigrants put a financial burden on states and steal jobs from American workers. However, if the true reason that some Americans oppose immigration reform could be attributed to concerns over the economic costs and burdens of immigration, then theoretically, an economic analysis of each state should help illuminate why some states support immigration and some states oppose immigration reform.

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<sup>5</sup>Bradley Jones, *Americans' Views of Immigrants Marked by Widening Partisan, Generational Divides*, Pew Research Center (April 15, 2016), <http://www.pewresearch.org/fact-tank/2016/04/15/americans-views-of-immigrants-marked-by-widening-partisan-generational-divides>.

<sup>6</sup> *Most Say Illegal Immigrants Should be Allowed to Stay, but Citizenship is More Divisive*, Pew Research Center, (Mar. 28, 2013) <http://www.people-press.org/2013/03/28/most-say-illegal-immigrants-should-be-allowed-to-stay-but-citizenship-is-more-divisive/>.

However, this is not the case. There are states that benefit economically from immigration but still oppose immigration reform. There are some states that currently have very few non-U.S. born residents that are at present not being greatly impacted by immigration – such as Vermont – that support immigration reform, and some that oppose it.

Therefore, since there is no clear economic rationale to explain why some states oppose immigration, the real reason for some Americans' opposition to immigration seems to stem from a fear of immigrants and improperly formulated beliefs about immigrants. Furthermore, some Americans believe that immigrants harm the social fabric of the United States because of the perception that immigrants do not speak English and do not assimilate into American culture.<sup>7</sup>

A deeper analysis of the issue suggests that some of the fear that citizens have of immigrants comes from ethnocentrism and group animus.<sup>8</sup> As Donald Kinder and Cindy Kam explain in their book, “ethnocentrism is common in a number of different societies. People divide themselves into ‘in-groups’ and ‘out-groups’” and these types of ‘us versus them’ distinctions color public opinion and make it difficult to develop balanced public

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<sup>7</sup> Darrell M. West, *The Costs and Benefits of Immigration*, 126 *Political Science Quarterly* 427, 427-428 (2011).

<sup>8</sup> *Id.* at 427.

policies.”<sup>9</sup> Media exposure is a major determinant of an individual’s belief on an issue. According to a European study, “TV broadcasts on news and politics display a negative impact on openness to immigration. Editorial choices focusing on a more sensationalist/superficial approach (which on the whole is more anxiety-producing), and different abilities to process information among individuals may be possible explanations.”<sup>10</sup> Thus, contemporary American opposition to immigration may be attributed to a fear of immigrants. Negative media coverage of immigrants in the United States perpetuates this fear. In turn, legislators respond to their constituencies' subjective beliefs about immigrants rather than immigration reform's objective and practical implications.

### **I. Legislative Attempts, History, and the Flaws of the Economic Argument**

As noted above, the first attempt to pass the Dream Act was in 2001. Since then, the Dream Act has been introduced in either the House of Representatives or the Senate several times. The most significant attempts to pass the bill occurred in 2006, 2007, 2010,

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<sup>9</sup> Id. (citing Donald Kinder & Cindy Kam, *Us Against Them: Ethnocentric Foundations of American Opinion* (Chicago, IL: University of Chicago Press 2009)).

<sup>10</sup> Jerome Hericourt & Gilles Spielvogel, *Beliefs, Media Exposure and Policy Preferences on Immigration: Evidence from Europe*, 46 *Applied Economics* 225-239 (2014).

and 2013. In 2006, the Senate passed S. 2611, the bipartisan Comprehensive Immigration Reform Act, by a vote of 62-36, but the House of Representatives failed to pass a reconcilable companion bill.<sup>11</sup> In 2007, the Senate reviewed S. 1348, the Secure Borders, Economic Opportunity, and Immigration Reform Act, without any committee consideration. According to a 2013 congressional report, “Several weeks of floor debates ensued, with 30 amendments considered. Cloture, however, failed by a vote of 34-61. The amended bill was re-introduced as S. 1639 and a compromise was reached to bring the bill back to the floor. Cloture on the motion to proceed was invoked for the legislation, after which the Senate debated the bill for three days. Following debate, the Senate did not invoke cloture on the bill by a vote of 46-53.”<sup>12</sup>

Michael Olivas of the University of Houston Law Center points out, “in a situation where sixty votes were needed and every vote counted, four votes who were on record as supporting the legislation did not vote . . . and most unusual and remarkable was the action of Senator Arlen Specter (R-PA), who had been a supporter of the DREAM ACT and who was considered among the most liberal Republicans in the Senate. He voted against the bill, on the credulity-straining grounds that if it were enacted it would

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<sup>11</sup> S. Rept. 113-40, S-744, 113<sup>th</sup> Cong., Border Security, Economic Opportunity, and Immigration Modernization Act, (June 7, 2013) ([congress.gov/congressional-report/113th-congress/senate-report/40/1](http://congress.gov/congressional-report/113th-congress/senate-report/40/1)).

<sup>12</sup> Id.

impede the larger goal of comprehensive immigration reform.”<sup>13</sup>

On the Senate floor on October 24, 2007, he read the following:

Mr. SPECTER. Mr. President, I believe that the DREAM Act is a good act, and I believe that its purposes are beneficial. I think it ought to be enacted. But I have grave reservations about seeing a part of comprehensive immigration reform go forward because it weakens our position to get a comprehensive bill.

Right now, we are witnessing a national disaster, a governmental disaster, as States and counties and cities and townships and boroughs and municipalities -- every level of government -- are legislating on immigration because the Congress of the United States is derelict in its duty to proceed.

We passed an immigration bill out of both Houses last year. It was not conferenced. It was a disgrace that we couldn't get the people's business done. We were unsuccessful in June in trying to pass an immigration bill. I think we ought to be going back to it. I have discussed it with my colleagues.

I had proposed a modification to the bill defeated in June, which, much as I dislike it, would not have granted citizenship as part of the bill, but would have removed fugitive status only. That means someone could not be arrested if the only violation was being in the country illegally. That would eliminate the opportunity for unscrupulous employers to blackmail employees with squalid living conditions and low wages, and it would enable people to come out of the shadows, to register within a year.

We cannot support 12 to 20 million undocumented immigrants, but we could deport the criminal element if we could segregate those who would be granted amnesty only.

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<sup>13</sup> Michael A. Olivas, *The Political Economy of the Dream Act and Legislative Process: A Case Study of Comprehensive Immigration Reform*, Wayne Law Review, 1, 57 (2010).

I believe we ought to proceed with hearings in the Judiciary Committee. We ought to set up legislation. If we cannot act this year because of the appropriations logjam, we will have time in late January. But as reluctant as I am to oppose this excellent idea of the Senator from Illinois, I do not think we ought to cherrypick. It would take the pressure off of comprehensive immigration reform, which is the responsibility of the Federal Government. We ought to act on it, and we ought to act on it now.<sup>14</sup>

The change in position by Senator Specter, coupled with the White House's opposition to the bill (because of the Bush administration's belief that more restrictive immigration policies were necessary), was instrumental in the defeat of the bill.<sup>15</sup>

Shortly before the vote on S. 1369 took place, a White House press release suggested that such a bill should include "strong border and interior enforcement, [and] a temporary worker program, a program to bring the millions of undocumented aliens out of the shadows without amnesty and without animosity." The release went on to state that: "the Administration is sympathetic to the position of young people who were brought here illegally as children and have come to know the United States as home. Any resolution of their status, however, must be careful not to provide incentives for recurrence of the illegal conduct that has brought the

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<sup>14</sup> Id.

<sup>15</sup> Id. at 59.

Nation to this point.”<sup>16</sup> Consequently, Congress failed to pass a Dream Act in 2007 and to protect unauthorized minors because of the viewpoint that leniency towards them would only reward the behavior of their parents, in line with the existing policy of decreasing immigration.

One of the narrowest defeats of the Dream Act came in 2010. H.R. 5281, the Removal Clarification Act of 2010, managed to pass the House of Representatives on December 08, 2010 on a 216-198 vote.<sup>17</sup> However, the bill went on to die in the Senate, where supporters of the bill were unable to break a Republican filibuster, and the cloture vote failed 55-41.<sup>18</sup> This time, Democratic Senators Kay Hagan of North Carolina; Mark Pryor of Arkansas; Ben Nelson of Nebraska; and Jon Tester and Max Baucus of Montana voted against the bill.<sup>19</sup> Once again, the failure of the bill’s passage was considered a victory for conservatives, who argued that the bill was a mass amnesty plan. Before the

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<sup>16</sup> Office of Mgmt. & Budget, A Statement of Administrative Policy: S.2205 – Development, Relief, and Education for Alien Minors Act of 2007 (2007), available at <http://www.whitehouse.gov/omb/legislative/sap/110-1/s2205sap-s.pdf>).

<sup>17</sup> Removal Clarification Act of 2010, H.R. 5281, 111<sup>th</sup> Cong. (2009-2010). Available at <https://www.congress.gov/bill/111th-congress/house-bill/5281/all-actions-without-amendments>.

<sup>18</sup> Scott Wong and Shira Toeplitz, DREAM Act dies in Senate, Politico (Dec. 18, 2010) available at <https://www.politico.com/story/2010/12/dream-act-dies-in-senate-046573>).

<sup>19</sup> Id.

Senate vote, Senator Jeff Sessions (R-Ala.) argued that “this bill is a law that at its fundamental core is a reward for illegal activity.”<sup>20</sup>

Finally, the next significant attempt to pass Immigration Reform occurred in 2013. S. 744, originally sponsored by Senator Schumer (D-NY), passed the Senate by an impressive 68-32 margin.<sup>21</sup> The bill had bipartisan support in the Senate, but encountered strong opposition in the House, where House Majority Leader John Boehner (R-OH) refused to bring the bill to a vote in the House. According to NPR, the senate bill “include[d] a path to citizenship for illegal immigrants, a provision that’s anathema to the majority of House Republicans, most of whom reside in electorally safe, predominantly white districts.”<sup>22</sup> Furthermore, House Speaker John Boehner reportedly reassured his party that “he will not allow an immigration bill to pass without a majority of the majority, a practice referred to as the Hastert Rule.”<sup>23</sup> Thus, in 2013, comprehensive reform once again was unable to pass, but this time due in large part to Republican control of the House of Representatives and the procedural advantages that are afforded to the majority party in the House.

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<sup>20</sup> *Id.*

<sup>21</sup> Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113<sup>th</sup> Congr. (2013-2014).

<sup>22</sup> Lizz Halloran, *House GOP: We Won't Consider Senate Immigration Bill* (July 10, 2013) NPR.org/sections/itsallpolitics/2013/07/10/200860744/house-gop-wont-consider-senate-immigration-bill.

<sup>23</sup> *Id.*

## II. State by State Voting Record on Immigration Reform

Each state in the United States has two senators that are elected to represent the interests of their respective states in the United States Senate. Presumably, each state's senatorial voting record should be demonstrative of each state's position on a particular bill, and generally aligned with the state's best interests on new policy considerations. While in practice there are many different factors that may influence a senator's decision to vote in a particular way, generally senators will make politically safe votes that will not jeopardize their reelection prospects. This may be particularly true in the case of immigration reform, where the topic of immigration is divisive among certain electorates. The fervent opposition to lenient immigration reform has caused some senators to vote against policies that would be beneficial to their state economically. This can be shown by examining which state's senators have consistently voted against comprehensive immigration reform, or Dream Act-like bills and by analyzing the economic impacts on each of those states.

This essay will focus on the voting records of senators in the major legislative attempts to pass reform in the form of the 2007 S. 2205, the 2010 H.R. 5281, and the 2013 S.744. Of these three major attempts, there have been some notable voting patterns where certain state's senators have used their votes to oppose

immigration reform a majority of the time (at least 4/6 of their possible votes). The following states have consistently voted against the above-referenced immigration reform bills:

Alabama; Arizona (opposed the bill in 2007 and 2010 but flipped in favor in 2013); Georgia; Idaho (minus Senator Craig in 2007); Kansas (minus Senator Brownback in 2007); Kentucky (minus Senator Bunning who did not vote in 2010); Mississippi (minus Senator Lott in 2007); Missouri (minus Democrat Senator McCaskill who voted in favor in 2010 and 2013); Montana (voted against in 2007, and 2010, but flipped in favor in 2013); Nebraska (voted in favor in 2007 but against it in 2010 and 2013); North Carolina (minus Senator Hagan in 2013); Oklahoma; South Carolina (minus Senator Graham who opposed passage in 2010, but flipped in favor in 2013); Tennessee (opposed in 2007 and 2010, but supported in 2013); Texas (minus Senator Hutchinson in 2007); and Wyoming. South Dakota and Arkansas were consistently split on their voting records on these immigration reform bills, with three of the state's votes in favor and three opposed.<sup>24,25,26</sup>

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<sup>24</sup> Roll Call Vote 110<sup>th</sup> Congress – 1<sup>st</sup> Session, S. 2205, Oct. 24, 2007, [https://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=110&session=1&vote=00394](https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=110&session=1&vote=00394).

<sup>25</sup> Roll Call Vote, 111<sup>th</sup> Congress, 2<sup>nd</sup> Session, H.R. 5281, Dec. 18, 2010. [https://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=111&session=2&vote=00278](https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=111&session=2&vote=00278).

<sup>26</sup> Roll Call Vote, 113<sup>th</sup> Congress, 1<sup>st</sup> Session, S. 744, June 27, 2013, [https://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=113&session=1&vote=00168](https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=113&session=1&vote=00168).

Of the states that share a southern border with Mexico, only Texas and Arizona have consistently voted against these bills the majority of the time (although both AZ. Senators voted in favor of the 2013 bill). New Mexico Senators voted in favor of the bill the majority of the time, 5 out of 6, and California Senators supported the bill the majority of the time. There is also no suggestion that states that border Mexico are more likely to vote against federal immigration reform simply due to their proximity to Mexico. There is more evidence that senators vote on immigration more in line with their party affiliation, but the various legislative attempts have also seen bipartisan support and bipartisan opposition. For example, Republican controlled Utah voted in favor of the bill in 2007. In 2010 Utah Senator Bennett voted in favor of passage, while Utah Senator Hatch did not vote, and then in 2013, Senator Hatch voted in favor, while Senator Lee voted against the bill (all of Utah's senators were Republicans during these periods).<sup>27,28</sup>

According to Pew Research Center, in 2014 the five states, including the District of Columbia, with the most undocumented immigrants residing within the state were California, Texas, Florida, New York, and New Jersey, in that respective order.<sup>29</sup> Of

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<sup>27</sup> Id.

<sup>28</sup> These data came from a comparison of the state-by-state comparison of senators' voting records on S. 2205, H.B. 5281, and S. 744.

<sup>29</sup> *Estimated unauthorized immigrant population, by state, 2014*, Pew Research Center Hispanic Trends. (Nov. 3, 2016).

those five, only Texas has consistently voted against the three major immigration reform bills the majority of the time, whereas the other four have voted in favor of the bills the majority of the time. The six states with the lowest population of undocumented immigrants in 2014 were Oklahoma, South Dakota, Maine, West Virginia, North Dakota, Montana, and Vermont, with Vermont ranked at 51. Of these six states, Oklahoma and Montana voted against the major immigration reform bills the majority of the time (although Montana senators supported the 2013 bill), and South Dakota senators split 3-3 on the three bills.<sup>30,31,32,33</sup> Thus, the states with the highest populations of undocumented immigrants have not consistently voted against immigration reform, nor have the states with the lowest populations, although it has been closer on the latter end of the spectrum.

It is also worth noting that in June 2017, after Donald Trump assumed the presidential office, State Attorneys General from Texas, Alabama, Arkansas, Louisiana, Idaho, Kansas, Tennessee, South Carolina, Nebraska, and West Virginia issued a threat to the Trump administration that they would challenge DACA in federal court if the administration would not dismantle the Obama-era DACA program (Deferred Action for Childhood

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<sup>30</sup> Id.

<sup>31</sup> Roll Call Vote 110<sup>th</sup> Cong., *supra*.

<sup>32</sup> Roll Call Vote 111<sup>th</sup> Cong., *supra*.

<sup>33</sup> Roll Call Vote 113<sup>th</sup> Cong., *supra*.

Arrivals).<sup>34</sup> Those ten states challenged DACA on the grounds that the executive order exceeded the president's constitutional authority by attempting to legislate in the area of immigration reform. Each of those listed states' senators have repeatedly opposed congressional legislative action over the last decade.

### III. Dismantling the Economic Impact Argument

The most common argument that opponents of immigration advance is the mistaken belief that immigrants do not pay taxes, they steal jobs, and they are a burden on states' welfare and educational systems. However, this argument does not withstand scrutiny. According to a study by the American Center for American Progress, an independent nonpartisan public policy institute, the United States as a whole would experience significant economic benefits if unauthorized immigrants already residing in the United States were given legal status.<sup>35</sup> Additionally, the economies of each state would also benefit if immigrants were given the opportunity to obtain legal status and citizenship.<sup>36</sup> According to the study:

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<sup>34</sup> Tal Kopan, *States try to Force Trump's Hand on DACA*, CNN Politics (July 1, 2017).

<sup>35</sup> Roberty Lynch & Patrick Oakford, *National and State-by State Economic Benefits of Immigration Reform*, Center for American Progress (May 17, 2013), <https://www.americanprogress.org/issues/immigration/reports/2013/05/17/63295/national-and-state-by-state-economic-benefits-of-immigration-reform/>.

<sup>36</sup> *Id.*

Both the acquisition of legal status and citizenship enable undocumented immigrants to produce and earn significantly more. These resulting productivity and wage gains ripple through the economy because immigrants are not just workers—they are also taxpayers and consumers. They pay taxes on their higher wages and they spend their increased earnings on the purchase of goods and services including food, clothing, and homes. This increased consumption boosts business sales, expands the economy, generates new jobs, and increases the earnings of all Americans.<sup>37</sup>

As of 2013, if the estimated 11.1 million undocumented immigrants in the United States were provided legal status, the increase in the United States GDP over a 10-year period would be \$832 billion.<sup>38</sup> Immigration reform would increase the personal income of all Americans by \$470 billion over a 10-year period, and would create 121,000 new jobs each year, on average.<sup>39</sup> Furthermore, undocumented immigrants would also earn \$392 billion more and pay an additional \$109 billion in taxes over 10 years.<sup>40</sup>

According to the study over a 10-year period, Alabama with an estimated 100,000 undocumented immigrants would see 1,000 new jobs created annually and an increase in tax revenue of \$370 million.<sup>41</sup> Arizona, with an estimated 400,000 undocumented

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<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> Id.

<sup>41</sup> Id.

immigrants would see an increase of tax revenue by \$1,464,000,000 and 3,400 new jobs created annually. Georgia, with 425,000 undocumented immigrants would see an increase in tax revenue by \$2,352,000,000 and 6,400 new jobs created annually. Idaho, with 35,000 undocumented immigrants would see an increase in tax revenue by \$62,000,000 and 200 new jobs created annually. Kansas would see an increase in tax revenue by \$195 million and 700 new jobs created annually. Kentucky would see an increase in tax revenue by \$264 million, with 700 new jobs created annually. Missouri would see an increase in tax revenue by \$253 million and 700 new jobs created annually. Nebraska would see an increase in tax revenue by \$136 million, with 400 new jobs created annually. North Carolina would see an increase in tax revenue by \$1,542,000,000 with 5,000 new jobs created annually. Oklahoma would see an increase in tax revenue by \$250,000,000 with 700 new jobs created annually. South Carolina would see an increase in revenue by \$200 million with 800 new jobs created annually. And finally, Texas would see the greatest increase (of these states mentioned), with an increase in revenue of \$6,533,000,000 and 21,000 new jobs created annually.<sup>42</sup> Thus, this study has shown that even the states that have regularly opposed

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<sup>42</sup> Id.

immigration reform would see a significant economic benefit from granting legal status to undocumented immigrants.

According to Darrell West, vice president of governance studies and director of the Center for Technology Innovation at the Brookings Institute, “immigrants tend to come to America during their young working period, when they are paying taxes and not drawing extensively on public pensions. For example, 24.6 percent of adult immigrants are aged 25 to 34 and 28.3 percent are 34 to 44 years old. Only 4.4 percent are 65 years or older. . . [Y]oung immigrants are more likely to be taxpayers than service requirees. They are also more likely to become homeowners and taxpayers. But the older immigration pool, the more likely are immigrants to be beyond their prime working years and to require expensive government health and pension benefits.”<sup>43</sup>

Further, according to West, “most immigrants, [authorized or unauthorized], are not allowed to participate in Medicaid, Supplemental Security Income, food stamps, Temporary Assistance to Needy Families, or the State Children’s Health Insurance program.<sup>44</sup> Illegal immigrants are not able to receive any forms of welfare, public health care, or retirement benefits.”<sup>45</sup>

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<sup>43</sup> West, *supra* at 432.

<sup>44</sup> Although the original source uses the term “legal and illegal,” for the purposes of this essay those terms have been exchanged for the more neutral term of “authorized and unauthorized” immigrants.

<sup>45</sup> *Id.* at 433-34.

Nonetheless, “despite particular rules, some immigrants receive public assistance.” However, “studies have found that the percentage getting aid is less than for U.S. households as a whole. Overall, 5 percent of American households receive cash assistance, compared to 1 percent for undocumented immigrants.”<sup>46</sup>

Education is another exception to the general pattern of exclusion of public benefits to immigrants. Pursuant to the U.S. Supreme Court case, *Plyler v. Doe*, states and localities are barred from denying immigrants access to elementary or secondary education.<sup>47</sup> In that case, the Supreme Court reviewed a 1975 Texas law that withheld public funding for children who came to the country without authorization and it allowed local schools to deny enrollment to those students.<sup>48</sup> The Supreme Court found that the law violated the 14<sup>th</sup> Amendment and was therefore unconstitutional.<sup>49</sup> That decision established that public schools must educate youth regardless of immigration status. This same logic also applies to emergency health care. Hospitals must provide emergency treatment to patients regardless of ability to pay or immigration status, although one California study found that “undocumented Mexicans and other undocumented Latinos

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<sup>46</sup> Id.

<sup>47</sup> *Plyler v. Doe*, 457 U.S. 202 (1982).

<sup>48</sup> West, at 434.

<sup>49</sup> Id.

reported less use of health care services and poorer experiences with care compared with their U.S.-born counterparts.”<sup>50</sup>

Nonetheless, according to West, “several studies have found that immigrants pay income, Social Security, and Medicare Taxes. A national Immigration Forum and Cato Institute report estimated that immigrants paid \$162 billion in federal, state, and local taxes. Another project undertaken by the National Research Council claimed that ‘the average immigrant pays nearly \$1,800 more in taxes than he or she costs in benefits.’”<sup>51</sup> According to a 2007 study conducted by the White House Council of Economic Advisors, immigrants raised the American GDP by \$37 billion per year.<sup>52</sup>

Another area of fear that Americans cite is that immigrants supposedly steal American jobs. This belief and fear, not surprisingly, grows during periods of rising unemployment.

According to West:

Critics fear that foreigners take jobs that otherwise would go to Americans or reduce wage gains through increased job competition. There is evidence of negative wage effects for native-born Americans without a high school diploma. For these individuals, yearly wages dropped 1.1 percent due

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<sup>50</sup> Alexander N. Ortega, Hai Fang, Victor H. Perez, John A. Rizzo, Olivia Carter-Pokras, Steven P. Wallace & Lillian Gelberg., *Health Care Access, Use of Services, and Experiences Among Undocumented Mexicans and Other Latinos*, 167 *Archives of Internal Medicine* 2354-2360 (2007).

<sup>51</sup> West, 435, (citing Stephen Moore, *A Fiscal Portrait of the Newest Americans* ((Washington DC: National Immigration Forum & Cato Institute, 1998)).

<sup>52</sup>White House Council of Economic Advisers, *Immigration’s Economic Impact* (Washington D.C: Executive Office of the President, The White House, 20 June 2007), 3.

to immigration. This clearly disadvantages native residents and raises legitimate fears concerning the impact of job competition on native-born Americans. However, the same study found that for most other workers, immigrants complement rather than substitute for the efforts of native workers. Researchers found that “90 percent of native-born workers with at least a high-school diploma experienced wage gains from immigration ranging from 0.7 percent to 3.4 percent, depending on education.”<sup>53</sup> For those people, the crowding-out effect is not a major problem.<sup>54</sup>

As reported by the U.S. Bureau of Labor Statistics, “foreign-born workers were more likely to be involved with the service industry, transportation, or material-moving occupations. They often took entry-level jobs in custodian services, restaurants, or construction that were poorly paid and not very desirable.”<sup>55</sup> Many scholars of economics suggest that by-and-large, low skilled immigrants do not compete with native American workers for work, with the exception of a minor but existing effect on the wages and employment of low skilled American workers who have not completed high school. Nevertheless, this is very strong evidence that the country would profoundly benefit from legislation that would grant legal residency and a pathway to citizenship to the undocumented citizens currently residing in the United States.

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<sup>53</sup> Id. at 435-436 (quoting Gianmarco I. P. Ottaviano & Giovanni Peri, *Rethinking the Effect Of Immigration On Wages*, 10 *Journal of the European Economic Association* 152-197, (2012)).

<sup>54</sup> Id. at 435-436.

<sup>55</sup> *Foreign-Born Workers: Labor Force Characteristics in 2008*, U.S. Bureau of Labor Statistics, Washington, DC, 26 March 2009.

There is also historical evidence to support this position. According to the Judicial Committee Report for S. 7444 in 2013, “studies of the 1986 immigration reform law found that legalizing previously undocumented workers increased wages by close to 10 percent or more, reflecting increases in worker productivity that benefit the broader economy.”<sup>56</sup> Moreover, “a path to citizenship for the undocumented population will also balance out an aging population and protect the future of Social Security, by empowering a new class of lawful workers who can pay into the system.”<sup>57</sup> The Independent Chief Actuary of the Social Security Administration estimated that S. 744 will add more than \$200 billion to the Social Security Trust Fund over the next decade. His analysis found that undocumented workers in particular will pay \$170 billion more in Social Security and Medicare payroll taxes if they are allowed to come out of the shadows and work legally.<sup>58,59</sup>

There are clearly strong economic projections that proponents of immigration reform can cite in support of their arguments. It is worth noting, however, that there are also existing studies that suggest a contrary conclusion. For example, the Federation for American Immigration Reform (FAIR), in a 2013

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<sup>56</sup> S. Rept. 113-40, S-744, 113<sup>th</sup> Congr., Border Security, Economic Opportunity, and Immigration Modernization Act, (June 7, 2013) ([congress.gov/congressional-report/113th-congress/senate-report/40/1](http://congress.gov/congressional-report/113th-congress/senate-report/40/1)).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*, (citing *Letter from Social Security Office of the Chief Actuary to Senator Marco Rubio* (May 8, 2013)).

study, argued that the estimated annual costs of illegal immigration at the federal, state and local level was “about \$113 billion; nearly \$29 billion at the federal level and \$84 billion at the state and local level.”<sup>60</sup> FAIR’s studies are often cited by conservatives on mainstream news outlets such as Fox news, and FAIR officials have testified in Congress dozens of times.<sup>61</sup> The \$113 billion-dollar figure above was even used by Donald Trump during his 2016 presidential campaign.<sup>62</sup> However, FAIR is a conservative advocacy organization that has been labeled a “hate-group” by the Southern Poverty Law Center (SPLC), and the 2013 study has been criticized for being inaccurate and biased by the American Immigration Council, the CATO Institute, and the Competitive

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<sup>60</sup> *The Costs of Illegal Immigration on United States Taxpayers – 2013 Edition*, Federation for American Immigration Reform, (Aug. 2013), [fairus.org/issue/publications-resources/fiscal-burden-illegal-immigration-2013](http://fairus.org/issue/publications-resources/fiscal-burden-illegal-immigration-2013).

<sup>61</sup> Ed Barnes, *Illegal Immigration Costs U.S. \$113 Billion a Year, Study Finds*, Fox News U.S. (July 06, 2010) <http://www.foxnews.com/us/2010/07/02/immigration-costs-fair-amnesty-educations-costs-reform.html>.

<sup>62</sup> Miriam Valverde, *Donald Trump says Illegal Immigration Costs \$113 Billion a Year*, Politifact, (Sept. 1, 2016), <http://www.politifact.com/truth-o-meter/statements/2016/sep/01/donald-trump/donald-trump-says-illegal-immigration-costs-113-bi/>.

Enterprise Institute.<sup>63,64,65,66,67</sup> Specifically,, according to Alex Nowrasteh of the CATO institute, “FAIR’s report reaches that conclusion [in its 2013 study] by vastly overstating the costs of illegal immigration, undercounting the tax revenue they generate, inflating the number of illegal immigrants, counting millions of U.S. citizens as illegal immigrants, and by concocting a method of estimating the fiscal costs that is rejected by all economists who work on this subject.”<sup>68</sup> While some may be argue that many of the thinktanks and public research organizations that deal with immigration research are biased, the bias of FAIR in its anti-immigrant advocacy is particularly egregious.

All in all, there are many complications when it comes to estimating the fiscal and economic impact of immigration. Nevertheless, the majority of scholars of economics agree that

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<sup>63</sup> Mark Potok, *FAIR: Crossing the Rubicon of Hate*, Southern Poverty Law Center, (Dec. 11, 2007), [www.splcenter.org/hatewatch/2007/12/11/fair-crossing-rubicon-hate](http://www.splcenter.org/hatewatch/2007/12/11/fair-crossing-rubicon-hate).

<sup>64</sup> See *Federation for American Immigration Reform*, Southern Poverty Law Center, available at <https://www.splcenter.org/fighting-hate/extremist-files/group/federation-american-immigration-reform>, for SPLC’s reasons for designating FAIR as a “hate-group.”

<sup>65</sup> *Statistical Hot Air: FAIR’s USA Report Lacks Credibility*, (Mar. 29, 2011) <https://www.americanimmigrationcouncil.org/research/statistical-hot-air-fair%E2%80%99s-usa-report-lacks-credibility>.

<sup>66</sup> Alex Nowrasteh, *FAIR’s “Fiscal Burden of Illegal Immigration” Study is Fatally Flawed*, *CATO Institute*, (Sep. 29, 2017), <https://www.cato.org/blog/fairs-fiscal-burden-illegal-immigration-study-fatally-flawed>.

<sup>67</sup> Alex Nowrasteh, *A FAIR Criticism, A Critique of the Federation for American Immigration Reform’s “The Fiscal Burden of Illegal Immigration on United States Taxpayers,”* Competitive Enterprise Institute, (Oct. 25, 2011) <https://cei.org/sites/default/files/Alex%20Nowrasteh%20-%20WebMemo%20-%20A%20FAIR%20Criticism.pdf>.

<sup>68</sup> *Id.*

immigrants positively benefit the economy and, in particular, granting undocumented immigrants in the United States a pathway to legal residency and citizenship would benefit the United States economy in the long term. Thus, the economic basis for opponents of immigration reform is unfounded and, as noted above, even the states that routinely oppose immigration reform would stand to benefit individually from reform. However, the evidence seems to show that when it comes to public opinion on immigration as it factors into policy reform, it is not the factually grounded arguments that are the most important, but rather, the public's perception of immigrants.

#### **IV. The Media's Role in Anti-Immigrant Sentiment**

The way that the media and politicians frame the immigration debate greatly affects the public's policy preferences when it comes to immigration reform. In recent years, conservative media outlets and republican politicians have used negative and anxiety-producing rhetoric when referencing immigrants. This negative rhetoric, in which immigrants are framed as criminals, welfare magnets and job thieves, has had a negative impact on the American public's perception of immigrants and immigration.

Jennifer Merolla, Karthick Ramakrishnan, and Chris Haynes conducted a study that tested how framing the immigration

debate can affect individuals' preferences on different policies of legalization. According to their finding:

For all the battles fought over the terms used to describe immigrants without legal status (illegal versus undocumented versus unauthorized), it does not appear that such frames make a perceptible difference for public opinion, at least with respect to the set of policies we examined. By contrast, we find relatively strong framing effects with respect to how immigration policies are described. For legalization, Americans had far more restrictive preferences when the policy was termed as an amnesty rather than as an opportunity to eventually become legal citizens, and the effect was similar among different partisan groups. Thus, whether or not "amnesty" becomes more or less prominent in media coverage will have a substantial effect on whether or not Americans support immigrant legalization.<sup>69</sup>

Regarding the DREAM Act, "including language that immigrants came over as young children led to less restrictive preferences, and even tilted support slightly in favor of the policy. The positive effect of adding this wording held for all registered voters and had even stronger effects among Republicans."<sup>70</sup> Although the study did not find that the way that immigrants themselves are termed had a significant effect on how individuals formulate their opinion, the study did find that the reference to "amnesty" invoked a strong reaction among voters. Additionally,

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<sup>69</sup> Jennifer Merolla, Karthick Ramakrishnan & Chris Haynes, "Illegal," "Undocumented," or "Unauthorized": *Equivalency Frames, Issue Frames, and Public Opinion on Immigration*, 11 *Perspectives on Politics*, 789-807, 800, (Sept. 2013).

<sup>70</sup> *Id.*

when discussing the DREAM Act, mentioning that children came over at a young age tended to invoke more sympathetic reactions among voters, most significantly Republicans.<sup>71</sup>

However, the study also analyzed how different news sources referenced certain terms between 2007 and 2011. The study included the Washington Post, Washington Times, New York Post, New York Times, CNN, Fox, and MSNBC. The study found that Fox news, when discussing legalization, referenced “amnesty” 56% of the time, and “path to citizenship” only 20% of the time. When discussing a DREAM Act, Fox news referenced children 75% of the time, the second lowest of all of the news sources included in the study.<sup>72,73</sup> Comparatively, the New York Times referenced amnesty only 23% of the time when discussing Legalization and referenced children 91% of the time when discussing the DREAM Act.<sup>74</sup> This shows that, in general, conservative news sources tend to frame the policy discussion in a restrictionist way, whereas more liberal sources tend to frame the policy discussion in way that is more favorable to immigrants.

In a different study by Lauren Feldman that tested the hostile media effect, it was found that partisans whose personal

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<sup>71</sup> Id.

<sup>72</sup> The Washington Times referenced children 70% of the time when discussing the DREAM Act.

<sup>73</sup> Id. at 792.

<sup>74</sup> Id.

issue positions were most aligned with conservative ideologies (i.e., pro-war, anti-government healthcare, and anti-illegal immigrant partisans) were more likely to underestimate bias in opinionated news that aligned with their point of view.<sup>75</sup> Feldman suggests that this may be because “conservative political talk radio, which has been popular since the early 1990s, likely helped accustom its listeners—who are disproportionately conservative—to bias in the news media. At the same time, the widespread assumption among conservatives that the news media, in general, are liberally biased, might lead them to perceive conservatively opinionated media (like Glen Beck) to be fair and balanced.”<sup>76</sup> Feldman also found that conservative-leaning participants were more likely to exaggerate bias in non-opinionated news as well as non-opinionated news that was not aligned with their partisanship.<sup>77</sup> However, liberally minded partisans were also subject to selective perception, and overall, a partisan’s agreement with the news material influences how much bias is recognized in opinionated news. Moreover, “even in the presence of blatant journalist opinionation, audiences filter their perceptions of news through the lens of their own partisanship.”<sup>78</sup>

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<sup>75</sup> Lauren Feldman, *Partisan Differences in Opinionated News Perceptions: A Test of the Hostile Media Effect*, 33 *Political Behavior* (September 2011) 407-432.

<sup>76</sup> *Id.* at 427-28.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

The conclusion that individuals are less likely to perceive bias in a news source when it comports with their existing point of view has concerning ramifications when it comes to the immigration debate. Individuals whose personal beliefs are already aligned with certain conservative ideologies, such as immigration restrictionism, will be more likely to dismiss reasonable news coverage that is more favorable to immigrants. Conversely, when news sources such as Fox promote negative opinions about immigrants, conservative viewers will be more likely to find such opinions to be reasonable.

News media also impacts the formation of beliefs.

According to a study conducted by Jerome Hericourt and Gilles Spielvogel, “the type of media content is crucial in explaining the shaping of beliefs regarding the economic impact of immigration; individuals spending more time to get informed on the news and political matters through newspapers and, to a lesser extent, radio, have a better opinion on the economic impact of immigration.”<sup>79</sup> However, “TV broadcasts on news and politics display a negative impact on openness to immigration. Editorial choices focusing on a more sensationalist/superficial approach (which on the whole is more anxiety-producing), and different abilities to process

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<sup>79</sup> Jerome Hericourt & Gilles Spielvogel, *Beliefs, Media Exposure and Policy Preferences on Immigration: Evidence from Europe*, 46 *Applied Economics* 225-239, 227 (2014).

information among individuals may be possible explanations.”<sup>80</sup>

The negative effect is worsened by the vast increase in commercialization of mass media networks, which has caused them to adopt a sensationalist approach to the issues, effectuating negative public perceptions. When it comes to immigration coverage, according to the study, “the old and new media alike are therefore more inclined to focus on immigration if it can be linked to problems, such as crime, the economic crisis, or violent political controversy.”<sup>81</sup> Sensationalist media coverage of immigration issues has worsened the public opinion on immigration reform and immigrants in general, and this effect has made it more challenging to get the American public reasonably unified in sensible immigration reform.

### CONCLUSION

Congress has needed to pass a comprehensive immigration reform bill for several years. Congress has come close to passing immigration reform on a few occasions: in 2007, 2010, and 2013. However, they have fallen short each time. A major obstacle in implementing a progressive legislative bill has been resistance in Congress by conservatives, reinforced by American’s nativist and

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<sup>80</sup> Id. at 239.

<sup>81</sup> Id. at 226.

anti-immigrant attitudes. Certain states, mainly in the Midwest and South, that would stand to benefit economically from immigration reform, continue to resist immigration reform at every opportunity. This stance on their part defies their own economic and fiscal interests.

However, public opinion and fear of immigrants, in those states, as well as everywhere, is often driven not by objective beliefs about immigrants, but by subjective beliefs. These subjective beliefs are susceptible to manipulation by sensationalist news media outlets, who stand to obtain better viewership when they perpetuate news that is anxiety-producing. This incentivizes news outlets to link immigrants with criminal activity, danger, and conflict. As a result, the immigration debate has grown increasingly polarized.

The plausibility of future immigration reform, based on the research contained herein, is not too bright insofar as it relates to all undocumented immigrants in the United States. Fox news remains the most watched cable news program, and they have a long track record of negatively portraying immigrants. In addition, the rhetoric of President Donald Trump during his 2016 presidential election will likely have caused anti-immigrant to surface and spread.

While the prospects of immigration reform that will be lenient to all immigrants currently residing in the United States may be bleak, there is hope for a DREAM Act-like bill. The portrayal of “Dreamers” as children who came into the United States as children in the media has been demonstrated to have positive effect on America’s openness to immigration reform, across all political spectrums, in some academic studies. Thus, a bill to extend DACA could certainly be possible. The main obstacle to this is the Republican counterargument that such “amnesty” towards Dreamers would further incentivize future illegal immigration. This argument has existed and has been used continuously throughout the immigration debate from the 2000’s to the present. Public sympathy for Dreamers is growing, and this argument may be overcome, but likely only to the extent that it directly benefits the Dreamers themselves.

