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Congress tried to fix immigration back in 1986. Why did it fail?



By **Brad Plumer** January 30, 2013

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The last time Congress enacted sweeping immigration reform was back in 1986. [That bill](#), signed by Ronald Reagan, looked a lot like [the proposals being put forward](#) today. There was a path to citizenship for existing illegal immigrants, coupled with tighter border enforcement.

There was just one problem —

Not quite. (Dennis Cook/AP)

the 1986 reform didn't work. The law was supposed to put a stop to illegal immigration into the United States once and for all. Instead, the exact opposite happened. The number of unauthorized immigrants living in the country soared, from an estimated 5 million in 1986 to [11.1 million today](#).

Opponents of expanded immigration [often point to](#) the 1986 bill as proof that "amnesty" is doomed to failure. And even the bill's main co-sponsors, former senator Alan Simpson (R-Wyo.) and former representative Romano L. Mazzoli (D-Ky.)

[have conceded](#) that "legitimate questions can be raised about the effectiveness of" the law, though they insist the basic framework was sound.

So here's a look at what the [Immigration Reform and Control Act of 1986](#) actually did, why it faltered, and whether there are any lessons to learn from the attempt:

What did the 1986 immigration law do? Two big things. First, there was the "amnesty" bit. Any unauthorized immigrants who had already been living in the United States continuously since 1982 became eligible for temporary legal status, after paying a \$185 fee and demonstrating "good moral character." After 18 months, they could then become eligible for green cards, provided they learned to speak English.

Second, there was the enforcement bit. The law aimed to secure the U.S.-Mexico border against illegal crossings with new surveillance technology and a bigger staff. The bill also, for the first time in history, imposed penalties on businesses that knowingly hired or employed unauthorized immigrants.

How many immigrants took advantage of amnesty? The law awarded green cards to about 2.7 million immigrants, all told — including about 1 million farm workers. It was the largest legalization program in U.S. history.

But, importantly, that still left at least 2 million unauthorized immigrants untouched. Many of those people didn't qualify for legal status under the law because they had arrived in the United States after 1982. Others simply didn't know about the amnesty, in part because outreach and publicity was often patchy in many communities.

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And there was no real plan for this large pool of remaining immigrants. "Everyone assumed they would just leave, that the new employer restrictions would push them out," says Doris Meissner of the Migration Policy Institute. As it turns out, that didn't happen.

Why were the employer restrictions so ineffective? During the debate in Congress, the bill's sponsors ended up watering down the sanctions on employers to attract support from the business community, explains Wayne Cornelius of the Center for Comparative Immigration Studies at U.C. San Diego. "The end result was that they essentially gutted the employer sanctions," he says.

Under the final law, [all employers had to do](#) to avoid sanctions was to make sure their workers had paperwork that "reasonably appears on its face to be genuine." If the documents were decent fakes, that wasn't the boss's problem. In fact, employers were actually penalized if they scrutinized a worker's nationality too aggressively.

What's more, industries such as agriculture, construction and landscaping often skirted the paperwork rules by relying on contractors and subcontractors. That made it easier for companies to maintain plausible deniability. In California, up to [80 percent](#) of seasonal harvesting is done through contractors — and unauthorized immigrants are thought to make up a massive portion of the workforce.

Why were the border restrictions ineffective? Poor funding, for one. Congress didn't provide enough money to ramp up Border Patrol hiring until the mid-1990s:

(Douglas Massey)

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As a result, a New York Times [article](#) from 1989 found that illegal border crossings actually appeared to be increasing in the early years after the law had passed:

And when Congress finally did start funding border security, there were some unintended consequences. As Princeton sociologist Douglas Massey [has explained](#) (pdf), the beefed-up Border Patrol ended up driving immigrants away from their traditional crossing spots near El Paso and San Diego. Unauthorized immigrants began moving to all parts of the country, rather than staying concentrated in California, Texas and Illinois. (Another effect: The number of border-crossing deaths rose dramatically.)

So the 1986 law didn't work? Not quite. The number of unauthorized immigrants in the country rose from roughly 5 million in 1986 to 11.1 million today. Part of that was due to flimsy enforcement measures. But a major conceptual flaw in the bill, says Doris Meissner, was that the authors of the bill simply misjudged the high demand for immigrant labor in the United States.

"Congress didn't foresee at the time that employers would want more immigrants in the years ahead," Meissner says. As a result, the law never set up a good process to provide as many *legal* immigrants as the labor markets would demand in the years ahead.

That meant that after the 1986 reform passed, there was a bottleneck for legal immigration and weak rules against illicit hiring. Given the still-high demand for foreign labor, the end result was, predictably, a boom in illegal immigration.

So if the 1986 law failed, why will [a new round of immigration reform](#) be any different? The hope is that

legislators have learned from their past mistakes. "A great deal of what's being talked about now reflects understanding of the flaws of the earlier bill," says Meissner. That includes more stringent border security as well as a legalization provision that covers all unauthorized immigrants, not just a portion.

But Meissner also notes that the world has changed significantly since 1986. For one, illegal immigration [appears to have leveled off](#) in the past few years (*see right*). That partly reflects the U.S. recession, but also better border enforcement and changes in the Mexican economy. What's more, she says, the relevant immigration agencies are no longer as bare-bones and ineffective as they were back in 1986. That all makes the promise of a legalization-for-enforcement trade more credible.

Yet even the authors of the 1986 bill have worried that Congress could repeat some of the mistakes of the past. For one, there's still no reliable and tamper-proof system to prove legal residency — a national ID card, say — that would make employer enforcement airtight. "We believe that our ... approach is still relevant and workable if carried out vigorously," Mazzoli and Simpson [wrote](#) in 2006. But, of course, that's still a big "if."

Further reading:

--The Migration Policy Institute has a [helpful policy brief](#) (pdf) on the lessons of the 1986 immigration law.

--Dylan Matthews [explores some possible ways](#) to bolster enforcement against companies that hire unauthorized immigrants.

