

Politics

# What is often called 'illegal immigration' isn't really treated as illegal

December 20, 2016 · 10:45 AM EST

By [Daniel Connolly](#)



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Rosalio Navarro, right, worked with his youngest son Rigo Navarro in the winter of 2012 to build a storage enclosure in the back of a truck. They were prepping the truck for the long drive from Memphis to visit relatives in Mexico.

Credit: Karen Pulfer Focht/The Commercial Appeal

I'm a news reporter and I've been writing about Mexican immigration for many years. Last month, I covered an anti-Trump rally in Memphis, Tennessee, where I live.

At one point the protesters chanted, "Let's be loud! Let's be clear! Immigrants are welcome here!"

I [tweeted the chant](#). Responses came back quickly.



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"*Legal* immigrants are always welcome here," one person wrote.

Another person wrote: "The irony? No one ever suggested immigrants weren't welcome. Just follow the law."

I often hear this type of comment. Republican presidential candidate Sen. Ted Cruz made similar remarks on the campaign trail: "I think most Americans, when we look at immigration, follow a very basic principle: Legal good, illegal bad," [he said](#) while on a tour of the southern border.

On the surface, that seems to make sense. But it misses an important point.

What we may think of as “illegal immigration” isn’t actually illegal. At least, not very often.

Away from the borders, the federal government rarely enforces immigration law. Why? For one, businesses want a reliable, low-cost work force. But for years, immigration has been so politically explosive that Congress hasn’t increased the number of legal visas.

The solution: tolerate illegal immigration. Both Republican and Democratic presidential administrations have quietly permitted the continued presence of people — particularly Mexican immigrants — who managed to enter illegally or overstay visas.

“If there is one constant in US border policy, it is hypocrisy,” Princeton University scholar Douglas Massey and colleagues wrote in their 2002 book about Mexican immigration, [Beyond Smoke and Mirrors](#). “Throughout the twentieth century the United States has arranged to import Mexican workers while pretending not to do so.”

Legal scholar Eric Posner refers to the situation as an “illegal immigration system.” He says it's wrong to think that unauthorized immigrants live here illegally.

"Little effort is made to stop them from working or to expel them," he wrote in [a 2013 essay](#).

The economy's demand for low-cost labor leads to a hands-off approach. Posner compared the situation to police officers choosing not to enforce traffic laws:

"In other words, the odds of being punished for participating in the illegal immigration economy are something like the odds of being given a ticket for driving 56 mph in a 55 mph zone."

In some cases, unauthorized immigrants can even win legal status, he wrote. And the government focuses most of its attention on unauthorized immigrants who have committed crimes.

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Consider the story of Rosalio Navarro, a friendly, talkative man who was 59 when I met him several years ago. If you've ever had a shot of tequila, you can thank people like him, because he grew up in [the actual town of Tequila](#) in Mexico's Jalisco state. For years, he worked in the grinding, low-paid job of harvesting and hauling the agave plants used to make the drink.

He wanted better opportunities, so he crossed the border illegally to work in the US. In the 1980s, he had a stroke of luck.

"That was when everything changed for me, thanks to President Ronald Reagan, who made the Simpson-Rodino law, and that's when I got my papers," he said in Spanish.

The [1986 amnesty](#) brought him legal status and eventually, citizenship. Today he splits his time between Mexico and Memphis, where members of his family live.

Reagan wasn't the only president to protect unauthorized immigrants. Bill Clinton's administration dramatically reduced immigration raids in US workplaces. George W. Bush proposed an amnesty, but couldn't get it through Congress. And President Barack Obama signed an executive order that temporarily provided work permits to hundreds of thousands of young people brought to the country as children.

You may have heard immigration advocates refer to Obama as the "[deporter-in-chief](#)" for sending huge numbers of immigrants out of the country. But most of those deportations happened right near the border. Enforcement of immigration laws in non-border areas has dropped significantly during his tenure, [according to a 2014 analysis by the Los Angeles Times](#), and most of those deportations followed criminal convictions. The most recent statistics show deportations from the interior dropped to about 69,000 for the 2015 fiscal year ([PDF](#)). It was the lowest number in any of the past eight years.

Immigration enforcement in the interior of the country often angers people, particularly the immigrants' employers. A [classic case played out in the Vidalia onion fields of Georgia in 1998](#). Immigration raids scared off workers and disrupted the harvest. The onion growers complained to members of Congress, who not only got the enforcement stopped, they arranged a temporary amnesty until the workers could bring in the onions.

By contrast, border enforcement generates little backlash.

The political dynamic has resulted in a combination of heavy border enforcement, light interior enforcement and occasional legalizations, like the one Navarro received. And unauthorized immigrants are staying put, rather than crossing and re-crossing the border. By 2014, an

estimated 11.1 million unauthorized immigrants lived in the US and they had stayed in this country for a median of nearly 14 years, [according to the Pew Hispanic Center](#).

If our government truly treated the presence of unauthorized immigrants as illegal, it's hard to imagine how so many millions of these immigrants could stay for so many years.

In my experience, unauthorized immigrants often live openly, buying houses, running small businesses, raising US citizen children and sometimes paying federal income taxes under their own names; the Internal Revenue Service issues individual Tax Identification Numbers that help them do it.

But unauthorized immigrants have limited rights. Generally, they have no chance at citizenship, no right to vote, limited access to social programs, and no right to travel back to their home countries and return — even when a family member is dying.

And on the relatively rare occasions that immigration law *is* enforced in the interior of the country, it can be severe. The law treats many immigration violations as civil offenses, not as crimes. And yet:

"Whether characterized as a matter of civil or criminal law, and whether carried out by federal, state, or local officials, every type of immigration law enforcement shares a common central feature: imprisonment," legal scholar César Cuauhtémoc García Hernández wrote in [a paper published in the California Law Review last year](#).

In an interview, he says border enforcement doesn't just affect freshly arrived immigrants — it can also impact long-term immigrants who live in the border zone as well as those who are trying to return to families in the US interior.

***More: [These asylum-seekers are being forced to raise their kids in immigration 'jails'](#)***

And that brings us back to Navarro. Is he a “bad” immigrant who broke the law? Or a “good” immigrant because he got the amnesty that opened the door to citizenship?

It's the wrong question to ask. Within the illegal immigration system, there's often no bright line difference between immigrants who came legally and those who broke immigration law.

That's key to understanding how we got here — and a key to understanding what might happen in a Trump administration.

Decades of hands-off federal policy have allowed millions of unauthorized immigrants to put down roots. If Trump follows through with his campaign promise of large-scale deportations in

the US interior, it would mean casting out families that have lived here for years and disrupting the lives of their citizen children. It would represent a big shock to the economic and social order — perhaps a much bigger shock than many people imagine.

Some communities would cheer the change. Others would resist.

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