

# **Circumventing deadlock through venue-shopping: Why there is not only talk in US immigration policies in times of economic crisis**

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## **Abstract**

This article addresses the question how the financial and economic crisis that hit the US in the late 2000s impacted on immigration policies. Drawing on Kingdon's multiple streams model and combining it with the notion of two-level games, we find that while the policy stream and the problem stream would call for both restrictive and liberalising changes, the political stream impedes change: The fact that Congress is since long divided over a Comprehensive Immigration Reform (CIR) impedes any restrictive or liberalising changes. With problems resulting from current policies being intensified through the global economic crisis, however, actors favouring either restrictive or liberal policy change look for alternative venues to pursue their policy aims. Through legislative changes on the state level or via executive orders by the president, policies can be changed on a lower level without a CIR.

Tags: deadlock, economic crisis, immigration policies, multiple streams, USA

## 1. Introduction

The global economic and financial crisis since 2008 has proved to be a major challenge for the Western world. It entailed both a rise in unemployment rates and a decrease in public spending in many European countries and the United States (US).

External shocks like economic crises have been found to substantially impact immigration policies in the past. Given the rise in unemployment and the decreased demand in labour force, crises can be expected to evoke “a climate conducive to a restrictive regime” (Beets/Willekens 2009: 6; Newton 2008: 60). Points in case are the Depression of 1920/21 in the US and the economic downturn following the Oil crisis in 1970s which both led to implementation of restrictive immigration policies (Hatton/Williamson 2009). Yet, at the same time a crisis also pronounces the hardships of illegal immigrants that have no access to social benefits and thus suffer significantly when losing their occupation. The recent crisis has been described as the worst financial crisis since the Great Depression by the International Monetary Fund (The Guardian 10 April 2008) and can thus be expected to have significantly impacted on immigration policies in the US, as the US was hit particularly hard by the crisis (Huffington Post 21 June 2012; The Atlantic 20 March 2013). Effects of the crisis are observed in the years from 2008 to 2012, the time crisis indicators such as a rise in unemployment and GDP decrease were particularly salient. This article aims at answering the question of *how the global economic crisis has impacted US immigration policies*.

We find that while there is no policy change induced by Congress, substantive changes on the state levels and through Presidential Executive Orders can be observed. While policy change is blocked through deadlock in Congress, pressures from their constituencies for either liberal or restrictive changes make politicians search for alternative venues to realise their policy aims.

We argue that this situation can be explained based on both venue-shopping as introduced by Baumgartner and Jones (1993) and the multiple streams model suggested by Kingdon (1995): While both the policy stream (i.e. policy ideas that are present among politicians and experts) and the problem stream (i.e. the non-functionality of the current immigration system) would call for change, the political situation of deadlock in Congress impedes change. The reason for impeded change is that both actors with liberal preferences and actors with restrictive preferences present in the Congress rather have incentives for defection than cooperation on the issue matter, as defection results in more favourable policy outcomes for each of them: They can rather accept the absence of policy change they desire than they are willing to adopt changes of the status quo based on the policy preferences of their adversaries.

Thus, proponents of restrictive change, such as political actors from US states that are affected over proportionally by illegal immigration, foster restrictive change on the local level and adopt policy aiming at immigration control enforcement that has so far been blocked in Congress (Steil/Vasi 2014). In contrast, examples for liberal change are the executive orders lanced by President Obama aiming at temporal legalisations of undocumented immigrants.

With this study we aim to contribute to the wider debate on whether external shocks do entail either restrictive or liberalising policy change. Our core finding is that while external shocks create pressures for change, these pressures need to be taken up by political actors to be transformed into actual policy change. Where change does not happen, pressures for change look for alternative venues and entail a politicisation of the issue. This study is based on an analysis of literature as well as policy documents on a number of decisions that have been made in the immigration policy area in the US between 2008 and 2012. In addition, we have conducted 15 interviews in fall 2012, at the height of the economic crisis, in which collective actors such as unions and employers but also politicians and think tanks elaborated on what they considered viable policies in times of crisis.<sup>1</sup>

## **2. Multiple Streams and Venue-Shopping as a theoretical framework to study policy change in times of crisis**

We aim at explaining the impact of the crisis on US immigration policies by drawing on Kingdon's multiple streams approach and combining it with the venue-shopping theory (Baumgartner and Jones 1993). According to Kingdon (1995) policy change can be explained by a convergence of the problem stream, the policy stream and the politics stream. Analogously, the lack of change is based on an absence of this convergence. In line with Kingdon, the problem stream means the issue or the policy problem to be addressed. The policy stream covers the policy ideas that aim at its solution. The politics stream is the institutional setting and the political actors involved. In this article we argue that the absence of a political stream favourable to change can account for the policy deadlock that we observe in US immigration policies in Congress. Moreover, we argue that the absence of such a favourable political stream can be best explained drawing on the deadlock game in game theory. Following this model non-cooperation is most beneficial to all actors involved, both individually and collectively, which eventually leads to policy stasis. Yet, given the immense

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<sup>1</sup> We thank Heike Brabandt for undertaking the interviews as well as Steffen Mau from University of Bremen for initiating research on the US.

pressures for change by their constituencies, which were amplified through the economic crisis, proponents of change look for alternative venues to pursue their aims. Thus, we contribute to the empirically rich body of literature on policy stasis in the US (Mansbridge/Martin 2013; McCarthy 2007) by adding a yet missing theoretical explanation for this state of affairs.

According to the multiple streams model the policy stream concerns policy ideas that are constantly around in what Kingdon calls the “policy primeval soup” (Kingdon 1995: 116). These policy ideas are usually based on different preferences: While some actors might be more concerned about immigrants’ effective access to rights, others might favour a limitation of immigration levels or aim at more selectivity in immigrant admission. Based on these preferences actors build ideas of both causal relationships (i.e. about what *is*) and what could be policy responses. The policy ideas thus are solutions which they can sell to decision-makers. Yet, it needs crucial events for these policy ideas to get noticed and gain political weight (Kingdon 1995: 113). Further, an ambivalent stance toward immigrants is a recurrent feature in the US discourse on immigration (Newton 2008: 1). At the same time, immigrants are seen as “villainous invaders” and “heroic founders” (ibid.). Thus, a crisis entailing a rise in numbers of unemployment can arguably help particularly promoters of restriction of immigration gain ground (Newton 2008: 60). These could use the event to argue for a cut in immigration to ensure a stronger protection of national workers. Simultaneously, a crisis highlights the hardship undergone by illegal immigrants. Yet, to implement change and restriction or liberalisation of policies the political stream has to come in as well. The political stream comprises things such as “the public mood, pressure group campaigns, election results, partisan or ideological distributions in Congress, and changes of administration” (Kingdon 1995: 145). The increasing number of Latino voters has been found to put pressure on the Democrats for introducing liberalising changes for the legalisation of their yet ‘illegally’ staying family and friends. In 2005, for instance, 84% of the Latino population supported the legalisation through the so-called ‘path to citizenship’ (Suro 2005: 10). We argue that it is particularly the political stream which impedes change in Congress through deadlock. According to game theory in a deadlock game the actors involved in the game benefit rather from the defection than from cooperation. In this sense the game is a zero sum game. Each actor would benefit most in case of their own defection and the cooperation of the other actor. Yet, the second best outcome for both actor 1 and actor 2 would be that both of them defect.

The least beneficial outcome for either of them would be obviously their own cooperation and the defection of the other actor. Thus, an outcome where both of them defect is highly likely.

Yet, with the crisis, the problem stream that supports the preferences of proponents of both liberal and restrictive change intumesces and their policy ideas face a rising demand with the electorate at least in some highly affected states (Fetzer 2006). Thus, with deadlock in Congress, politicians need to look for alternative political venues (Baumgartner and Jones 1993) to pursue their aims and satisfy their constituencies. Generally, Republicans prefer restrictive policies, particularly as regards border enforcement (Fetzer 2006; Milner and Tingley 2008). Democratic politicians, on the other hand, have stronger preferences for the legalisation of illegal immigrants, due to the fact that immigrants are part of their electorate (Lopez and Minushkin 2008). Thus, Republicans search for venues where they do not encounter liberal veto players. The state level is particularly well-suited for restrictive change, as Republicans hold the majorities in state legislatures<sup>2</sup>. The democrats can circumvent restrictive veto players through Executive Presidential Orders which the President can pass without any interference of the opposing party in Congress.

### ***3. The Problem Stream: An ineffective immigration system in times of economic crisis***

The US immigration system in the 2010s is characterized as „bad for migrants, employers and the national interest“ (Martin 2011a: 24). This is especially due to high hurdles immigrants face: Unless they have family-ties to US citizens, it is quite difficult to immigrate to the US. However, even those who are eligible for family-based immigration are confronted with long waiting periods due to a backlog (Council on Foreign Relations 2009: 51). Visa streams for high- and low-skilled immigrants are criticized as they do not match business demands adequately and are overly complex (ibid.: 50-59; Hansen 2009: 11-13; Hanson 2009: 4). In addition, a large number of unauthorized immigrants entered the country in the past two decades of which some moved to states that haven't had experiences with immigration so far (Jones-Correa 2012: 4)<sup>3</sup>. The latest estimates of January 2012 suggest an overall number of

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<sup>2</sup> In 2008 and 2010 the Republicans controlled 14 state legislatures but managed to increase this number up to 27 in 2012 (see NCSL 2015).

<sup>3</sup> In fact, according to Jones-Correa (2012) the seven states with the largest growth in immigrant population (North Carolina, Georgia, Arkansas, Nevada, Tennessee, South Carolina, and Nebraska) in the period from 1990 to 2009 haven't "had attracted significant numbers of immigrants before 1990" (4). What is more, Steil and Vasi (2014: 1134) showed that the Latino population growth is a strong and significant predictor of the adoption of anti-immigrant ordinances at the local level in the period from 2006 to 2011.

11.4 million unauthorized immigrants residing in the US with a share of 59% being of Mexican origin (Baker and Rytina 2013). Interestingly, it is estimated that 30-45% of the unauthorized population legally entered the country but then overstayed their visa (Hanson 2009: 3; Pew 2006). The economic crisis hit legal and, in particular, unauthorized immigrants most severe as sectors that employed many immigrants (i.e. construction, retail and food) were highly affected by the economic downturn (Papademetriou and Terrazas 2010: 44-46; Tilly 2011: 679; Green and Winters 2010: 1068). The outcome of the economic crisis were stagnating numbers in the (estimated) population of unauthorized immigrants and decreasing illegal immigration (Hofer, Rytina, Baker 2012: 1).

The last major legislative reforms addressing shortcoming of the US immigration system were the Immigration Reform and Control Act (IRCA) 1986, the Immigration Act of 1990 and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) 1996 (Schain 2012: 210-215; Migration Policy Institute 2013). While the IRCA tried to tackle the situation of a growing population of undocumented immigrants with an amnesty and employer sanctions, the Immigration Act of 1990 aimed especially at skilled workers with the creation of the H-1B visa program (ibid.; 104 Stat. 4978, §205). In addition, the IIRIRA combined greater border enforcement with a cut of social security benefits for immigrants (i.e. Social Security Federal public benefits; 110, Stat. 3009; see also Newton 2008: 53-63). Moreover, the IIRIRA enabled “local and state police (...) to enforce federal immigration law” (Varsanyi 2010: 2) under provision 287(g)<sup>4</sup>. Nevertheless, the IRCA was unsuccessful in diminishing the inflow of illegal workforce and the Immigration Act of 1990 played its part in making the system more complex (Schain 2012: 213; Martin 2011b: 80). Not surprisingly, the widely acknowledged problems of the current US immigration policies also influence public opinion: The Pew Research Center (2013: 2) found that 75% of the respondents see the need for at least major changes in the US immigration system. More precisely, the same survey observed that while three-fourths of the respondents want a possibility for unauthorized immigrants to stay legally (73%) and think that the government can do more to reduce illegal immigration (a lot more: 53%; somewhat more: 30%), there is little consensus whether to increase or reduce legal immigration (increase: 25%, decrease: 36%).

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<sup>4</sup> In this regard the IIRIRA can be seen as a prerequisite to devolution in the field of immigration policies. Additionally, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and the Antiterrorism and Effective Death Penalty Act (both also 1996) were part of this development. While the PRWORA cut down legal immigrants' eligibility for social services (i.e. Food Stamps, Medicaid) and “devolved authority over select social services to the states” (Varsanyi 2010: 2), the latter “gave local police the authority to arrest previously deported noncitizen felons” (ibid.).

#### ***4. The Policy Stream: Ideas for the reform of an ineffective immigration policy***

Against the background of the picture drawn in the previous section, a comprehensive immigration reform (CIR) becomes a compelling solution to the problems of the US immigration system. The next section shows what the CIR as the major policy idea for re-establishing effectiveness of US immigration policy entailed and how actors' preferences coincided or collided with the CIR in times of economic crisis. The crisis can be considered the crucial event that finally buried the CIR as a policy response and fix to the ineffective immigration policy of the US. The next two sections explain how actor positions on the CIR became ever more divisive during the crisis leading to deadlock in Congress. However, due to rising problem pressure actors adopted parts of the CIR at venues other than the Congress.

Since the 2000s various forms of comprehensive immigration reform (CIR) have been debated in the US (for a history of proposed CIRs cf. Rosenblum 2011). Moreover, two presidents supported a CIR, by now, with little effect (Hanson 2009: 3). 'Comprehensive immigration reform' does not only entail the promise of fixing an ineffective immigration policy but also insinuates that actors could agree more easily on a package deal rather than individual policy. Comprehensiveness means that every major stakeholder's primary interest would be achieved while at the same time the adoption of all policies would entail compromises on actors' positions. (Freeman 2009: 65-69; Rosenblum 2011: 10-13). CIRs entailed – in different compositions - “increased enforcement, a guest worker scheme and a path to legalization” (Freeman 2009: 69; Rosenblum 2011: 1). These three elements of immigration reform are key areas of US immigration policy. First, the call for increased enforcement touches upon border control, primarily at the southern US border, and stepping up internal control measures by means of ID and status checks at the work place (“E-verify”) as well as in public places. Second, the expansion of guest worker schemes is meant to broaden the legal channel for the temporal demand for low- and highly-skilled labor. Such measures accommodate the demands of industry and business for a steady supply of labor. Third, by legalisation the estimated ten to twelve million undocumented migrants in the US would be getting the opportunity to legalise their status. Interestingly, points that are also debated, namely the significance of family-reunification or the problem of visa-overstaying, do not expand into proposals for a CIR. The rationale of a CIR is to get the approval of all stakeholders by implementing parts of their agenda (Marquez and Witte 2009: 3). Accordingly, actors worried by the level of undocumented immigration should be won for the reform by the plan to step up border control and internal enforcement. An amnesty on a broad

scale could win the consent of unions and civil rights groups, traditionally concerned with measures protecting people from exploitation. Employers' interest in labour supply is met by the offer of temporary labour migration programmes (Freeman 2009: 65-69; Rosenblum 2011: 10-13).

From the background of crisis, in 2012 actors that promoted either legalization of undocumented immigrants or temporary labour migration for skilled and unskilled workers felt that they had a harder time lobbying for their cause (Interview Chamber of Commerce, National Council of la Raza (NCLR)). Left, liberal, and actors of the right see the crisis as a reason for an increasing polarization of opinions in the immigration policy area. In particular, those parts of the comprehensive immigration reform package are met with resistance that do not only debate closure but also legalization of the undocumented and openness for select groups of migrant workers. Concerning the debate, representatives of think tanks leaning to the left and right confirm that immigration has become a highly politicized topic. A policy advisor from the left leaning think tank, the National Immigration Forum, confirms, that "It is controversial to talk about the idea of foreign born individuals coming to the US when there are people here who are struggling to survive, who are native born Americans." Using stronger language, but making a similar observation, a representative from the more conservative Center for Immigration Studies holds that "people do not have jobs, and they see illegal aliens having jobs. And we, as Americans, do not have them. So, there are numbers of levels of outrage, that have caused devastation."

The sensitivity of the topic was reflected in the agenda of the Democratic and Republican party platforms that competed in the presidential election in 2012. In this regard, a unionist observed: "political campaigns avoid the topic like the plague. You will see very little about immigration, if anything at all, in the current presidential campaign. From the politicians' standpoint, immigration is just a divisive issue on all sides (Interview AFL-CIO). The crisis co-occurs with policy deadlock in Congress and highlights the 'divisiveness' of actors over immigration policy reform. The crisis increased pressure for change but compromise among actors proved to be impossible since defection and maintenance of the status quo was more beneficial for actors than cooperation. This uncompromising stance in combination with institutional constraints in congressional politics reinforced deadlock over immigration reform. Why positions among actors are irreconcilable and how the pressure for change promoted shifting venues for immigration reforms will be shown in the next section.



### ***5. The Politics Stream: Why there is deadlock in Congress over immigration reform***

The economic crisis put a halt to immigration reform efforts at the federal level (Rosenblum 2011: 12). Moreover, the US Congress is not only divided on content but also blocked institutionally. The US political system contains “multiple veto points” (Rosenblum 2011: 11; Hansen 2009: 13): For instance, the presidential veto or the Senate filibuster (Martin 2013). US bicameralism makes it necessary that both Houses agree on a bill to become law. In the US system politicians’ interest representation does not necessarily overlap with general party positions. Even though Democrats have a broader immigrant constituency than Republicans determining a more pro-immigration and pro-rights attitude, US politics leave room for very local and specific interests (Interview Republican Senator). Positions of politicians in the House of Representatives or Senate are defined by the interest of the respective constituency as well as business, unions, and other groups in these constituencies (Facchini and Steinhardt 2011: 735). This means assuming Republicans would show a tough stance on undocumented migration and call for border enforcement while Democrats would all be in favour of immigration and the granting of rights to the undocumented hardly meets a complex reality. In fact, Republicans that are open to the interests of business in their constituency, for example the agriculture, hotel, and tourism industry, can turn a blind eye on efforts for border enforcement against illegal immigration. Similarly, the Democrats’ assumed liberal stance on immigration into the US could be obstructed by organized labour, claiming the depression of wages due to immigration (Interview AILA). Accordingly, there can be divisiveness on immigration within parties. At the same time, the presidential election in 2012 showed that candidates largely coincided with their respective party platforms: President Obama as well as Governor Romney generally agreed on legal and skilled immigration; however Obama and the Democrats were in favour of comprehensive immigration reform, while Republicans and their candidate put priority on immigration enforcement (Boyer 2012).

Reconciliation among the political groups becomes even more difficult considering the interests and influence of the main stakeholders: business and unions. We interviewed representatives of two union umbrella organisations: AFL-CIO (American Federation of Labor and Congress of Industrial Organisations) representing 13.5 million workers and the smaller Change to Win federation (4.2 million members) who speaks for many Latino workers. Both unions strongly support an immigration reform that focuses on the rights of workers, migrant as well as native workers. The unions’ policy to improve access to rights as well as working conditions is the legalization of the undocumented, opposition to temporary

guest worker programmes, and a focus on worksite enforcement instead of border enforcement. For a representative of AFL-CIO, the essence of immigration reform boils down to “employer accountability” (Interview AFL-CIO). If migrant workers are able to claim rights with their employer and these rights are enforced at the worksite exploitation of workers because of unfair working conditions can be reduced. Hence, an amnesty for the undocumented is an indispensable condition for claiming rights (Interview Change to Win). For unions, border enforcement is less of an issue as long as illegal employment is contained. Employment opportunities for undocumented create an incentive for crossing the border illegally. Unions criticize employers for “fabricating” labour shortages in order to claim for the expansion of temporary worker programmes (Interview AFL-CIO). Those programmes are not only said to affect wages negatively (Borjas 2005) but also to put the migrant worker in a dependent relationship with the employer since working contract and residence status are combined (Interview AFL-CIO). The rights focus of unions as well as an interest in gaining more members explains their opposition to temporary labour migration schemes and lobby for legalization. Thus, they rather keep the status quo than compromise their position on temporary labour migration.

On the employers’ side, the US Chamber of Commerce representing the interest of 3 million American businesses, immigration is considered to be a tool for securing the economy’s supply with labour. The focus of employers’ lobbying efforts is on expanding temporary worker programmes, for highly as well as lesser skilled migrant workers. In this regard, opposition towards the unions’ position is strongest (Interview US Chamber of Commerce). The Chamber sees measures that improve worksite enforcement of immigration and labour law critical but is not opposed to them. Employers claim a system that only applies to new hires leaving room to maintain undocumented employees in their workforce. However, this would not mean opposition to legalisation of undocumented immigrants. Employers have an interest in a “stable workforce”.<sup>5</sup> The argument in favour of legalisation builds on immigrants’ contribution to the economy and compliance with a set of “strict criteria” that would allow undocumented migrants to earn citizenship.<sup>6</sup> A steady supply of workers in all sectors fuels production and keeps wages, also for the highly skilled, lower (Borjas 2005).

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<sup>5</sup> See US Chamber of Commerce “Priorities for 2014”, [www.uschamber.com/sites/default/files/2014\\_policy\\_priorities-september\\_2014.pdf](http://www.uschamber.com/sites/default/files/2014_policy_priorities-september_2014.pdf), accessed 10 October 2014

<sup>6</sup> See US Chamber of Commerce “Fixing our Broken Immigration System” <http://immigration.uschamber.com/uploads/sites/400/Summary%20Immigration%20Priorities%20in%20the%20House%207-16-2013.pdf>, accessed 10 October 2014

Although US employers face strong opposition from unions with regard to temporary labour migration programmes common ground on the issue of legalisation can be observed. Therefore, legalization is the area in which policy output was most likely.

For the US Chamber of Commerce, immigration is part of the “American Fabric” which, managed in an orderly way, has an overwhelmingly positive impact on economy and society. Whether immigration still is “vitaly important to the success” (National Immigration Forum) of the US is questioned by some actors. The position of two lobby groups, Numbers USA as well as FAIR (Federation for American Immigration Reform) show how a high level of immigration to the US and suggestions for regulatory reform have become a heavily contested issue. The positions of FAIR and Numbers USA would mean a radical change to the idea of immigration as being part of the American Fabric. They want to substantially lower immigration levels and push strongly for the enforcement angle of the comprehensive immigration reform. As a consequence, no compromise on a comprehensive reform package is possible since expansion of admission for temporary workers and legalization of undocumented workers are fundamentally opposed.

Both groups argue that high levels of immigration impact negatively on social justice in the US as well as on the environment. Population growth based on immigration is said to have a negative impact on wages, the distribution of welfare benefits as well as the environment in the US. The latter point of criticism is based on “urban sprawl” related to population growth and needs for housing. Roy Beck, an environmentalist and founder of Numbers USA sees the American worker with lower skills and lower education being harmed by immigration. Pressure on wages particularly in the low-skilled sector would contribute to massive social injustice. At the same time, immigrants are blamed for being “net users of government services” (Interview Numbers USA). The same relationship between immigration and local poverty is made by FAIR: “We cannot afford to support the impoverished ranks if we continue to keep bringing in more and more. We do have a responsibility to the people of the US who are poor or do not have health insurance.” Concerning the economic crisis it is criticized that immigration policy does not respond to changes in supply and demand for workers on the labour market. “We are admitting the same number of people now our unemployment is over 8 per cent, as we did when it was under 5 per cent. [...] how do we fix the immigration system that addresses the needs we have in this country?” (Interview FAIR). Both groups’ aim for “population stability” the end of population growth induced by

immigration. This would entail the reduction of immigration to one quarter of its current size of one million admissions per year. In order to achieve this threshold, the green card and diversity lotteries would be abolished, family based migration would be reduced to spouses and children only, and border and worksite enforcement increased. Immigration would not be stopped, because in terms of labour migration, a strict focus on immigration of the highly skilled is claimed. According to their own evaluation FAIR and Numbers USA were successful in lobbying Congress against legalisations of undocumented (Interview FAIR and Numbers USA). Both lobby groups, consider the status quo in US immigration regulation, which actually allows a million people each year to immigrate, to benefit the party families and business interests. Since immigrants are likely to increase the Democrats’ electorate and Republicans please their “backbone”, the industry and business with a steady supply of labour, change cannot be expected from the Congress (Interview Numbers USA).

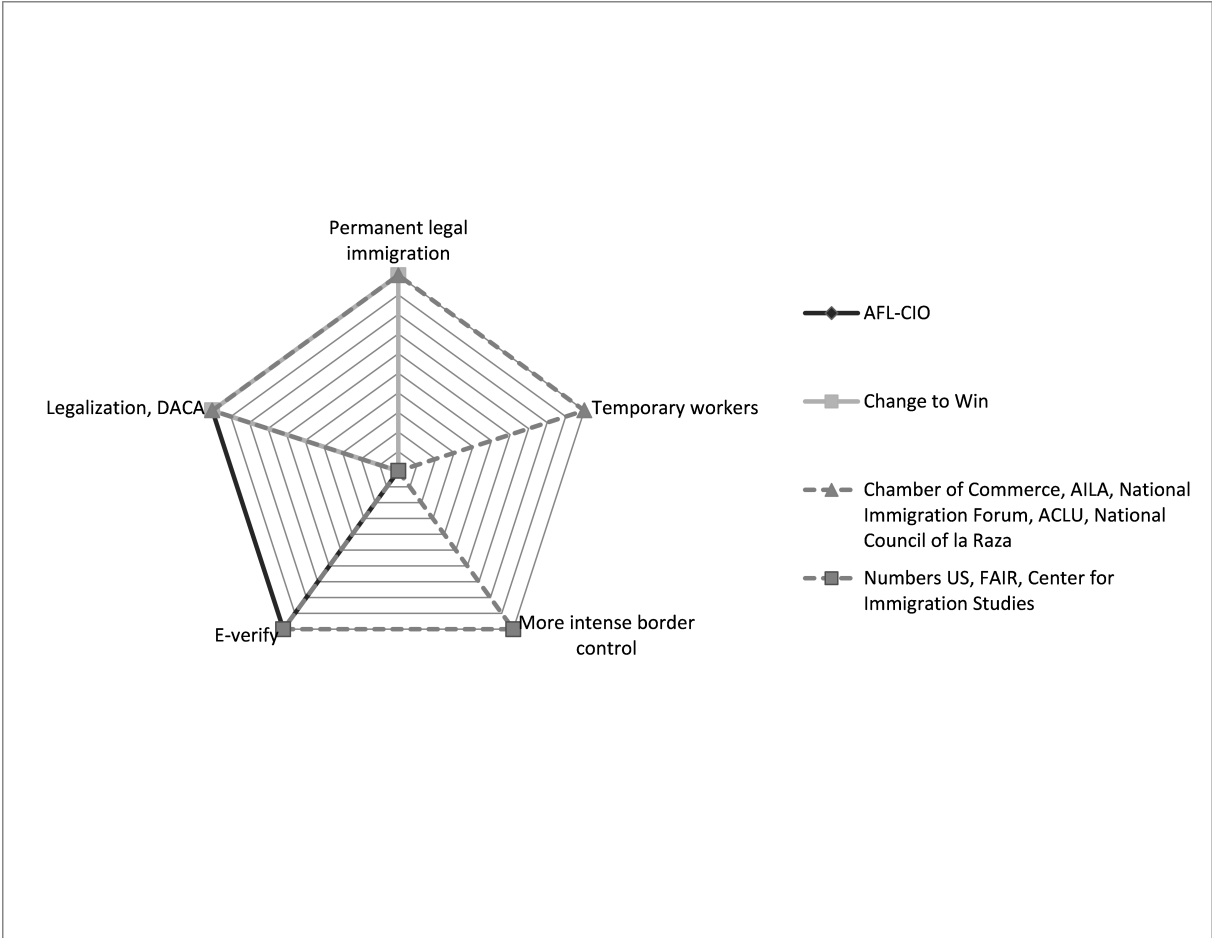


Figure 1. Interest group positions on immigration reform

Figure 1 provides information on interest groups and their objectives in a CIR. Points at the outer side of the triangle indicate support of i.e. stricter enforcement measures, while points in

the center show interest group position against this part of CIR. As explained above stakeholders' and interest groups' positions are extremely divisive on the issue. On the one hand, the Latino civil rights organization NCLR and the labor union AFL-CIO support an amnesty for unauthorized immigrants already residing in the US while being opposed to extended enforcement. Their liberal position is partly supported by the US Chamber of Commerce. They, however, strongly favor temporary labor migration programmes that are not supported by the unions. On the other hand of the "ideological (...) divide" (Marquez and Witte 2009: 20), the nativist organizations FAIR and Numbers US are opposed to any part of CIR but extended enforcement.

Studying actors' divisiveness over a comprehensive immigration reform Martin (2011a: 25) holds that the status quo "is the second-best option for those who cannot achieve their first-choice solution" as "most unauthorized migrants get the higher wage jobs they seek and most employers get work done cheaper with such migrants" (ibid.: 17)<sup>7</sup>. Therefore, he observes "talk but no action" (ibid.: 32) in times of crisis. We contest this argument and show how actors searched for alternative venues to bring about change in immigration policy.

### ***6. In Search of New Venues: Immigration control at the state level and executive orders by the President***

The claim that US politics was completely unable to produce legislative change is slightly inaccurate. Change can be observed, however, not induced by policy making in Congress. Immigration policy-making shifts to the US states as well as the President (Varsanyi 2010). Against the procedural rules that are laid down in the constitution, the "states take immigration into their own hands" (Interview Immigration Policy Center). Such policy devolution can be observed in southern US states most affected by illegal border crossers. Recent anti-immigrant legislation in Arizona and Alabama that aim against undocumented immigrants' access to government services such as education or infrastructure, have caused concern among policy observers (Boyer 2012: 1). Not only are states overstepping their competences in this field, state legislation is overwhelmingly targeted at Latinos causing fear of a backlash against workers from Mexico or central America (Interview National Immigration Forum). In addition, anti-immigrant ordinances issued by municipalities (local

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<sup>7</sup> A similar explanation for the inability reform is put forward by Hanson (2009).

level) are constantly on the rise since the failures of comprehensive immigration reform (Steil and Vasi 2014: 1110; Varsanyi 2010: 11).

Since the late nineteenth century, immigration policy-making laid in the hands of the federal government. Only recently “state and local immigration policy activism has exploded” (Varsanyi 2010: 9). This devolution was made possible by the 104<sup>th</sup> Congress under Republican majority through three, aforementioned, legislative acts that passed Congress in 1996: The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), the Antiterrorism and Effective Death Penalty Act and the Illegal Immigration Reform Immigrant Responsibility Act (IIRIRA) (Varsanyi 2010: 2). However, state and local actors did not use these newly created possibilities immediately by (ibid.). Varsanyi (2010: 11) argues that politicians became more active on the state and local level to “earn political capital on the issue of immigration reform”. Only the repeated failures to reform the immigration system “opened a veritable Pandora’s Box of state and local immigration control initiatives seeking to fill the policy void” (Cornelius 2010: vii). In fact, in the presidential elections in 2012 it could be observed that Republicans are critical of the effectiveness of federal measures for immigration enforcement and push for devolution to the state level. In contrast, Democrats are opposed to state government attempts to take on immigration enforcement (Boyer 2012).

Another example for a shift in venues is executive orders adopted by the President. Those orders supersede majorities in the Congress and again highlight the inability of Congress to legislate. The Dream Act, which would have legalized the status of young “deserving” undocumented migrants, did not gain a majority in the Senate. Republican Senators blocked the bill in 2010. By executive order President Obama bypassed approval of the Congress allowing for deferred action, pending the deportation, for this specific group in August 2012. Among others, requirements for qualification are that undocumented youth must have no criminal record and pursue either serving in the military or higher education. The justification for the original bill was not only based on moral grounds such as fairness; the group in question was brought to the country by their parents and thus had not broken immigration law intentionally. But also, the White House referred to the economic crisis and the positive budgetary implications that legalization of this group would entail: “President Obama believes that [...] an important part of rebuilding our economy [...] is making our immigration system

functional, efficient, and accountable.”<sup>8</sup> Economic and security needs justified pressing for passage of comprehensive immigration reform as well as the DREAM Act. It was calculated that passing the DREAM Act would bring \$ 2.2 billion revenue over ten years (ibid: 20-21). Eventually the DREAM Act did not pass but the President’s executive order on “Deferred Action for Childhood Arrivals” had the same intention.<sup>9</sup> The executive order was not only the adoption of a first piece of the deadlocked comprehensive immigration reform but also framed as response to the crisis. In that sense not only venue shopping could be observed but also the intersection of policy, problem and politics streams. The executive order offered a new political venue for decision-making: the unresolved problem of the undocumented immigrant population gained fiscal urgency during the crisis and met with a policy that had been debated for quite some time. Some actors claimed their lobbying efforts of the Obama administration for this executive order (Change to Win, NCLR). The unions, civil rights groups and organisations that represent Latino interests welcomed the Presidents initiative as a first step for large scale legalization (ACLU, AFL-CIO, Change to Win, NCLR). Others criticized that the executive order bypassed Congress in order to win the vote of the Latino Community in the election year (Republican Senator, FAIR). And, restriction minded groups feared that deferred action allowing for the Dream Act to be executed would be the wedge for comprehensive immigration reform (FAIR).

State legislation on immigration as well as executive orders indicate a shift in venues for immigration policy making: enforcement is decided on the state level and legalisation of the undocumented is executed in bypassing a Congressional majority. Among the suggested policies that are part of a comprehensive immigration reform unions and employers would only agree on legalisation, enforcement was not on their agenda and temporary immigration of workers heavily contested. Accordingly, the President maintained the status quo and opted for a piecemeal approach on legalisation. Observers from the left deemed this approach as the only way forward in a deadlocked Congress (Interview Change to Win, AFL-CIO, AILA, ACLU).

## 7. Conclusion

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<sup>8</sup> See the agenda of the White House for the Hispanic Community from 2012: [http://www.whitehouse.gov/sites/default/files/rss\\_viewer/hispanic\\_agenda\\_final.pdf](http://www.whitehouse.gov/sites/default/files/rss_viewer/hispanic_agenda_final.pdf), accessed 17 December 2014

<sup>9</sup> For the details of the program see the website of the department of homeland security: <http://www.dhs.gov/deferred-action-childhood-arrivals>, accessed 17 December 2014

This paper set off to answer the question of what is the impact of the economic and financial crisis on immigration policies in the United States, a country that has been hit hard by this crisis. We find that the crisis has highlighted policy problems that have been present before and aggravated these problems. US immigration policies have been described as “bad for migrants, employers and the national interest” (Martin 2011a: 24). Yet, a CIR is stuck in Congress given absence of strong majorities and the divergent preferences of Republicans and Democrats. With policy ideas for each liberal and restrictive change being present for a long time and with the problem stream aggravating, i.e. on the one hand the increasing problems of illegal border-crossings and on the other hand the hardship of people who have no access to any rights at all based on their illegal status, both policy proponents of liberalisation and restriction look for alternative venues to pursue their policy aims. Republicans who hold the majorities in most state legislatures pass restrictive policies on the state level where they do not encounter liberal veto players. Points in case are the 287(g) agreements between the US Immigration and Customs Enforcement agencies (ICE) and local enforcement partners (police) which are by now in place in 17 states (ICE 2014; Coleman 2012), municipality and city ordinances (Steil and Vasi 2014; Varsanyi 2008). As far as the Democrats are concerned, the Presidential Decrees, e.g. the deferred action on childhood arrivals from 2012 and others passed by President Barack Obama in 2014 can equally be considered as an attempt to forum-shop for policy venues where no restrictive veto-players can be found (Migration Policy Institute 2014).

The contribution of this article is two-fold: On the one hand we have theorized the current situations of deadlock on the CIR and policy change on the state levels which have been widely discussed but so far not comprehensively explained. On the other hand, we show that the crisis has rather aggravated or highlighted problems that have been present since a long time. Thus, the crisis cannot be considered the root of current policy change, but rather a moderating variable amplifying the problem pressure that entailed change.



Appendix 1

Interest group	Admission		Enforcement		Amnesty	
	Permanent legal immigration = Family Economic Migration		Temporary workers	More intense border control, apprehension and deportation, local enforcement by States	E-verify “employer verification” <sup>1</sup>	Legalization, Dream Act (DACA, deferred action for childhood arrivals)
AFL-CIO (labor union)	Yes Labour immigration should strictly work on labour shortages		No	No	Yes	Yes
Change to Win	Yes =permanent legal immigration		No	No	No	Yes
Chamber of Commerce	Yes, but shift focus to employment	Yes, reduce per country caps, first come first serve based on skills	Yes	No borders need to be secure but be not be sealed	Yes and No More critical than supportive, System should work in a manageable way	Yes
Numbers US	Yes, for spouses and minor children, no chain migration,	Lower ceilings, open to skilled, cut the diversity and green card lottery		Yes	Yes	NO
FAIR	Lower ceilings overall, focus on skills			Yes	Yes	No

Interest group	Admission		Enforcement		Amnesty	
AILA	Yes Family migration as well as economic migration is supported	Yes Facilitations for temporary worker programs are demanded	No increase in control	No, E-verify is flawed and puts a burden on business	Yes	
National Immigration Forum	Yes on all issues		No Further enforcement, control intensity and costs are too high already	NO Do not punish workers for an immigration system that does not work	Yes	
Center for Immigration Studies	- Lower ceilings - saturation point reached with immigration - get rid of family unity	- focus on people who can help the economy get going again	Yes	Yes Keep illegal aliens from being hired	No	
ACLU	Yes Family reunification is a human right	Not really their focus, but Yes	Not really their focus, but Yes For skilled and unskilled	No More intensification, against state level immigration control	No Concerns about privacy and accuracy of the system	Yes
National Council of la Raza	Yes - in favour of family reunification	Not really their focus, but Yes - permanent labour migration better than temporary	Yes - particularly for seasonal workers	No - against states enforcing immigration law - against further intensification of control	No - will hurt Latino workers and Latino small businesses	Yes

<sup>1</sup> Employer verification systems are used to check workers employment eligibility (now referred to as E-Verify) (see Rosenblum 2011: 6).

Appendix 2: Institutional affiliation of interviewees

<b>Institutional affiliations of US interviewees</b>	<b>Date of Interview</b>
	Washington D.C.
American Immigration Lawyers Association (AILA)	11 September 2012
Immigration Policy Center	11 September 2012
American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)	11 September 2012, 15 October 2012
Federation for American Immigration Reform (FAIR)	12 September 2012
US Chamber of Commerce	13 September 2012
Numbers USA	13 September 2012
Change to Win	14 September 2012
Republican Senator	17 September 2012
National Immigration Forum	17 September 2012
Center for Immigration Studies	18 September 2012
American Civil Liberties Union (ACLU)	18 September 2012
National Council of La Raza (NCLR)	19 September 2012

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