

The Constitution and Immigration

Background: Immigration and its Challenges Throughout United States History

What role has immigration, and Americans' reactions to it, played in United States history?

The United States, a nation of immigrants, has been profoundly affected by the continuous yet changing flow of new people from an ever-increasing number of places to its shores. By 1790 the census counted 3.9 million residents in the new nation (Native Americans not included), the majority from northern and western Europe. The Constitution, ratified three years prior, offered little guidance on how to manage this influx aside from granting Congress the power both to determine the naturalization process and, after a twenty year interval, to end the international slave trade. Congress did, in fact, establish the first Naturalization Act in 1790 and voted in March 1807 to prohibit the importation of slaves as of January 1, 1808. Moreover, though the colonies counted thousands of indentured servants among its immigrants, those numbers declined following the Revolution; by the beginning of the nineteenth century European immigration was increasingly free of indenture. Immigration slowed in the early 1800s as war raged in Europe, but the idea of the United States as a land of immigrants—voluntarily and by brutal force—was already entrenched.

Between 1820 and 1880 hundreds of thousands of immigrants poured into the United States beckoned by expanding land and opportunity and motivated by famine, poverty, and prejudice at home. Many of these immigrants filled the demand for unskilled labor in America's burgeoning industries, and built the railroads that linked the coasts and helped the nation expand geographically, politically, and economically. Immigrants, especially those willing to do jobs that native-born Americans didn't want, were enthusiastically welcomed by industrialists in need of cheap labor, but faced backlash and prejudice from Americans with different views. A nativist undercurrent accompanied this influx of immigrants. Increased immigration also exacerbated existing prejudices, including anti-Catholic hostility to the Irish and the racist response to the Chinese. Moreover, during periods of economic decline, immigrants became targets of native-born Americans' ire to an even greater extent and later, in World War I, wartime tensions also heightened nativism as immigrants were suspected of supporting the United States' enemies. This cycle of embracing and opposing immigration would become entrenched in United States history and contribute to laws aimed at restricting the immigrants most likely to "steal" jobs and resist "Americanization."

As granted by Article I, Section 8, Clause 4 of the Constitution, "The Congress shall have Power To...establish an uniform Rule of Naturalization...."; laws restricting immigration, therefore, were under Congress's purview; federal legislation reflected Americans' increased nativist sentiments. The Chinese Exclusion Act, passed in 1882 in response to white Americans' assertions that the Chinese were responsible for a decline in wages and available jobs, prohibited Chinese laborers from immigrating to the United States and forced Chinese residents to carry special documentation. Furthermore, against the backdrop of post-World War I isolationist sentiments the Immigration Act of 1924 sought to "preserve the ideal of U.S. homogeneity"¹ by establishing strict quotas that severely limited the number of Southern and Eastern European immigrants entering the country and preventing Asian immigration. Despite fighting

¹ "[The Immigration Act of 1924 \(The Johnson-Reed Act\)](#)," Office of the Historian, accessed February 3, 2020.

fascism and anti-Semitism abroad during World War II, the United States denied entry to European Jews and others attempting to escape mass murder by the Nazis and forced Japanese Americans, targeted as security threats, into internment camps—as act required by Executive Order and upheld by the Supreme Court. The Constitution, some argue, with its requirement that the president be native-born, is a nativist document in and of itself.

In the post World War II era an increasing number of immigrants came to the United States seeking refuge from persecution, dictatorships, and violence in their own nations. Beginning with European immigrants seeking resettlement after the devastation of the Second World War, refugees sought to flee wars in Southeast Asia and oppression in Communist nations in Eastern Europe and Latin America. Cuban refugees, in particular, braved the ninety-mile journey in the hope of escaping the Castro regime; the U.S.'s “wet foot, dry foot” policy rewarded those who succeeded with a path to citizenship a year after their arrival. In 2001 the DREAM Act was first introduced in Congress. If passed, this bill would grant residency to undocumented children brought to the United States as minors and attending school in the United States. The federal act has yet to pass, though its existence created a generation known as “DREAMers,” a term that has come to mean “undocumented youth who have big hopes and dreams for a better future”². Additionally, in 2012 the Department of Homeland Security announced its Deferred Action for Childhood Arrivals (DACA) policy, under which undocumented children could seek temporary, renewable lawful status in the United States.

In the late twentieth and twenty first century, much of the conversation concerning immigration focused on undocumented immigrants, their status in the U.S., and their right to be here, topics that contribute to heated battles inside and outside the halls of government. Moreover, the idea of immigrants as security threats—something the Supreme Court addressed during World War II (*Korematsu v. U.S.* (1944)) and the Cold War (*Shaughnessy v. Mezei* (1953))—came front and center as a result of the 2017 travel ban prohibiting immigrants from eight nations from entering the country (and again, recently, with the addition of six new countries to the travel ban). In general, open expressions and actions taken in the name of nativism have become more common since the Trump administration's positions and policies on immigration—including building a border wall, the termination of DACA, and the widespread deportation of undocumented immigrants— took center stage following the 2016 election. This incarnation of nativism represents the last wave of the right wing backlash against the 1960s. While earlier waves were directed against the civil rights movement via attacks on affirmative action, the feminist movement via opposition to the ERA, this wave seeks to limit the impact of the Immigration Act of 1965 and the great diversity/waves of immigration it encouraged in a racialized way.

In her 2019 book *America for Americans*, Erika Lee asserted, “I did not fully understand how central xenophobia has been to the making of the United States, and how effective it has been in American politics. I failed to recognize both its power and resilience”³. Lee came to this realization watching the 2016 Republican convention and witnessing the way that the assembled crowd “went crazy for Trump's

² “[What is the DREAM Act and Who Are the Dreamers?](#),” Anti-Defamation League, accessed February 3, 2020. Various states, including New York, have passed laws providing opportunities and protection to undocumented minors, including access to drivers' licenses and state-funded financial aid for higher education.

³ Erika Lee, *America for Americans* (New York: Basic Books, 2019), 5.

message” as he “identified immigration as one of the greatest threats to the United States and promised to restore America’s ‘immigration security’”⁴. Though the United States is a nation of immigrants, an idea Lee—the granddaughter of Chinese immigrants—does not ignore, xenophobia is as much a part of our nation’s immigration history as the immigrants themselves. The impact of these anti-immigrant sentiments, and the laws made and actions taken in their name, are thus integral to an historical analysis of immigration in the United States.

What does the Constitution say about immigration?

The Constitution does not include the word immigration. It is the Supreme Court’s job to interpret how the powers granted to the government by the Constitution apply to immigration. Naturalization, the power granted to Congress by the Constitution, is the legal process a non-citizen must go through in order to become a citizen. The Supreme Court has interpreted this power to mean that only the federal government, and not state governments, can grant citizenship to immigrants. Congress used this power to pass laws laying out the process for becoming a citizen of the United States. This process takes at least one year to complete, and can sometimes take much longer. Once a person is a citizen of the United States, they are entitled to all the rights and privileges of citizenship.

Do immigrants have constitutional rights?

Documented and undocumented immigrants have rights under the Constitution even if they are not citizens. Many parts of the Constitution use words such as “people” or “person” rather than “citizen,” and therefore apply to everyone who is physically on United States soil. For example, the Fourteenth Amendment states that the government cannot “deny to any person within its jurisdiction the equal protection of the laws.” In *Plyer v. Doe* (1982), the Supreme Court interpreted this clause to mean that if citizens have access to free, public school, so too should undocumented immigrant children.

The Sixth Amendment says, “in all criminal prosecutions, the accused shall...have the assistance of counsel for his defense.” In *Gideon v. Wainwright* (1963), the Supreme Court interpreted this clause to mean if that a person is too poor to hire a lawyer, the government must appoint one. However, the government is only required to appoint a lawyer to someone accused of a felony. Immigrants who cross the border illegally are charged with a misdemeanor. As a result, many immigrants are required to defend themselves in court and are often tried en masse, in trials that last only minutes per defendant.

The Fifth Amendment, meanwhile, states, “no person shall be ... deprived of life, liberty, or property, without the due process of law.” The Supreme Court has interpreted “liberty” to include parents’ right to direct their children’s upbringing. In *Moore v. City of East Cleveland* (1977), for example, the Supreme Court ruled that a city ordinance that prohibited a grandmother from living with her grandchild was unconstitutional because it violated the right to family integrity. Though this case did not pertain to immigration, it established a precedent regarding keeping families together. As related to immigrant rights, this issue would arise in May 2018 when the Trump administration announced a “zero-tolerance policy” under which all adults entering the United States illegally would be criminally prosecuted while any accompanying children would be separated. In June, the President signed an executive order changing the policy and requiring that migrant families be kept together. More than 2,000 children had already

⁴ Lee, 2.

been separated from their parents by that time. Parents who had been separated from their children sued in California federal court.

For More Information, Please See:

- “[Chapter 1: The Nation’s Immigration Laws, 1920 to Today](#),” Pew Research Center, September 28, 2015.
- “[Immigration Timeline](#),” The Statue of Liberty-Ellis Island Foundation, Inc., accessed December 3, 2019.
- “[U.S. Immigration Timeline](#),” History.com, modified May 14, 2019.

US Immigration History: Key Events and Statutes (via [The History Channel](#))

1790: The *Naturalization Act of 1790* allows any free white person of “good character,” who has been living in the United States for two years or longer to apply for citizenship. Without citizenship, nonwhite residents are denied basic constitutional protections, including the right to vote, own property, or testify in court.

1819: The United States passes the *Steerage Act of 1819* requiring better conditions on ships arriving to the country. The Act also calls for ship captains to submit demographic information on passengers, creating the first federal records on the ethnic composition of immigrants to the United States.

1849: America’s first anti-immigrant political party, the *Know-Nothing Party* forms, as a backlash to the increasing number of German and Irish immigrants settling in the United States.

1875: The Supreme Court declares that it’s the responsibility of the federal government—not the states—to make and enforce immigration laws.

1882: The United States passed the *Chinese Exclusion Act*, barring Chinese immigrant laborers from entering the country. The act comes in response to American workers blaming the Chinese for a decrease in available jobs and lower wages. The 1882 Act is the first in American history to place broad restrictions on certain immigrant groups.

1891: The *Immigration Act of 1891* further excludes who can enter the United States, barring the immigration of polygamists, people convicted of certain crimes, and the sick or diseased. The Act also created a federal office of immigration to coordinate immigration enforcement and a corps of immigration inspectors stationed at major ports of entry.

1907: The United States and Japan sign the *Gentlemen’s Agreement*. Japan agrees to limit Japanese emigration to the United States to certain categories of business and professional men. In return, President Roosevelt urges San Francisco to end the segregation of Japanese students from white students in San Francisco schools.

1917: The *Immigration Act of 1917* establishes a literacy requirement for immigrants entering the country and halts immigration from most Asian countries.

1924: The *Immigration Act of 1924* establishes nationality quotas, issuing visas to 2 percent of the total number of people of each nationality in the United States at the 1890 census. This law severely limits the number of immigrants allowed into the United States, favors immigrants from Northern and Western Europe, and completely bans Asian immigrants. The U.S. Border Patrol is established, as well.

1942: Labor shortages during World War II prompt the United States and Mexico to form the *Bracero Program*, which allows Mexican agricultural workers to enter the United States temporarily. The program lasts until 1964.

1948: The United States passes the nation's first refugee and resettlement law to deal with the influx of Europeans seeking permanent residence in the United States after World War II.

1952: The *McCarran-Walter Act* formally ends the exclusion of Asian immigrants to the United States.

1965: The *Immigration and Nationality Act*, one aspect of the Great Society, ends the national origin quotas enacted in the 1920s. Over the next five years, immigration from war-torn regions of Asia, including **Vietnam** and **Cambodia**, would more than quadruple. Family reunification became a driving force in U.S. immigration.

1986: President **Ronald Reagan** signs into law the *Simpson-Mazzoli Act*, granting amnesty to more than 3 million immigrants living illegally in the United States.

2001: First proposal of the *Development, Relief and Education of Alien Minors (DREAM) Act*, which would provide a pathway to legal status for undocumented immigrants brought to the United States illegally by their parents as children. Neither the original bill, nor subsequent iterations of it, pass.

2012: President Barack Obama signs *Deferred Action for Childhood Arrivals (DACA)*, which temporarily shields some Dreamers from deportation, but doesn't provide a path to citizenship.

2017: President Donald Trump issues two executive orders—both titled “Protecting the Nation from Foreign Terrorist Entry into the United States”—aimed at curtailing travel and immigration from six majority Muslim countries (Chad, Iran, Libya, Syria, Yemen, Somalia) as well as North Korea and Venezuela. Both of these travel bans are challenged in state and federal courts.

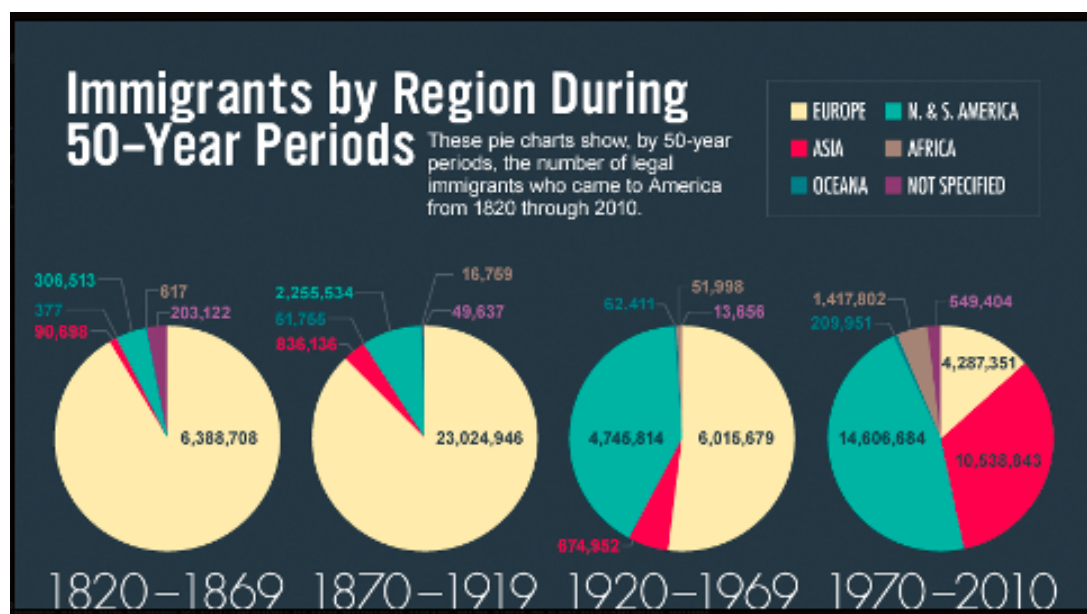


Image Source: [Scholastic](#)

Essential Questions:

- How do political, social, and economic changes in the United States influence immigration policy?
- To what extent does the Constitution protect immigrants in the United States?
- To what extent is immigration a constitutional issue in the twenty-first century?

Objectives: *Using these resources, students should be able to...*

- Identify and discuss major legislation and Supreme Court decisions pertaining to immigration.
- Explain the trends and changes in immigration policy in the United States over time.
- Evaluate whether the Constitution sufficiently protects the United States' immigrant population.
- Assess whether immigration can be considered a constitutional issue in the twenty-first century.

Resources

Legislation and Executive Actions

[Chinese Exclusion Act \(1882\)](#)

Whereas in the opinion of the Government of the United States the coming of Chinese laborers to this country endangers the good order of certain localities within the territory thereof: Therefore, *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That from and after the expiration of ninety days next after the passage of this act, and until the expiration of ten years next after the passage of this act, the coming of Chinese laborers to the United States be, and the same is hereby, suspended; and during such suspension it shall not be lawful for any Chinese laborer to come, or having so come after the expiration of said ninety days to remain within the United States....

[Comprehensive Immigration Law of 1924](#)

Sec. 11. (a) The annual quota of any nationality shall be 2 per centum of the number of foreign-born individuals of such nationality resident in continental United States as determined by the United States census of 1890, but the minimum quota of any nationality shall be 100.

Sec. 12. (a) For the purposes of this Act nationality shall be determined by country of birth, treating as separate countries the colonies, dependencies, or self-governing dominions, for which separate enumeration was made in the United States census of 1890...

[Immigration and Nationality Act of 1965](#)

...Exclusive of special immigrants... the number of aliens who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 203(a) (7) enter conditionally, (i) shall not in any of the first three quarters of any fiscal year exceed a total of 45,000 and (ii) shall not in any fiscal year exceed a total of 170,000.... The 'immediate relatives'... shall mean the children, spouses, and parents of a citizen of the United States: Provided, That in the case of parents, such citizen must be at least twenty-one years of age. The immediate relatives specified in this subsection who are otherwise qualified for admission as immigrants shall be admitted as such, without regard to the numerical limitations in this Act.

[Executive Order 13769 \(2017\)](#)

...It is the policy of the United States to protect its citizens from foreign nationals who intend to commit terrorist attacks in the United States; and to prevent the admission of foreign nationals who intend to exploit United States immigration laws for malevolent purposes.... to ensure that adequate standards are established to prevent infiltration by foreign terrorists or criminals... I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order...

Supreme Court Decisions (summaries for each case can also be found on [oyez.org](https://www.oyez.org))

As the government's role in immigration policy expanded over time, multiple factors and the way in which they influence(d) laws and decisions pertaining to immigration have emerged as topics for the courts to decide.

United States v. Wong Kim Ark (1898)

Wong Kim Ark was born in 1873 in the city of San Francisco, in the State of California and United States of America, and was and is a laborer.... Wong Kim Ark, ever since his birth, has had but one residence, to-wit, in California, within the United States, and has there resided, claiming to be a citizen of the United States, and has never lost or changed that residence... he remained in the United States, claiming to be a citizen thereof, until 1894, when he... again departed for China on a temporary visit and with the intention of returning to the United States, and he did return thereto by sea in August, 1895, and applied to the collector of customs for permission to land, and was denied such permission upon the sole ground that he was not a citizen of the United States.

It is conceded that, if he is a citizen of the United States, the acts of Congress, known as the Chinese Exclusion Acts, prohibiting persons of the Chinese race, and especially Chinese laborers, from coming into the United States, do not and cannot apply to him.

[The purpose of this case is to determine the answer to] the single question stated at the beginning of this opinion, namely, whether a child born in the United States, of parent of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicil and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States. For the reasons above stated, this court is of opinion that the question must be answered in the affirmative.

**The Court affirmed Wong Kim Ark's status as a United States citizen by a 6-2 majority.*

Plyler v. Doe (1982)

The question presented by these cases is whether, consistent with the Equal Protection Clause of the Fourteenth Amendment, Texas may deny to undocumented school-age children the free public education that it provides to children who are citizens of the United States or legally admitted aliens.

In May, 1975, the Texas Legislature revised its education laws to withhold from local school districts any state funds for the education of children who were not "legally admitted" into the United States. The 1975 revision also authorized local school districts to deny enrollment in their public schools to children not "legally admitted" to the country.... These cases involve constitutional challenges to those provisions. The court determined that the State's concern for fiscal integrity was not a compelling state interest... that exclusion of these children had not been shown to be necessary to improve education within the State... and that the educational needs of the children statutorily excluded were not different from the needs of children not excluded...

Finally, appellants suggest that undocumented children are appropriately singled out because their unlawful presence within the United States renders them less likely than other children to remain within the boundaries of the State, and to put their education to productive social or political use within the State. Even assuming that such an interest is legitimate, it is an interest that is most difficult to quantify.... It is difficult to understand precisely what the State hopes to achieve by promoting the creation and perpetuation of a subclass of illiterates within our boundaries... It is thus clear that whatever savings might be achieved by denying these children an education, they are wholly insubstantial in light of the costs involved to these children, the State, and the Nation.

**The Court's 5-4 decision secured access to public education for undocumented children.*

Vartelas v. Holder (2012)

Panagis Vartelas, a native of Greece, became a lawful permanent resident of the United States in 1989. He pleaded guilty to a felony (conspiring to make a counterfeit security) in 1994, and served a prison sentence of four months for that offense. Vartelas traveled to Greece in 2003 to visit his parents. On his return to the United States a week later, he was treated as an inadmissible alien and placed in removal proceedings. Under the law governing at the time of Vartelas' plea, an alien in his situation could travel abroad for brief periods without jeopardizing his resident alien status.

This case presents a question of retroactivity not addressed by Congress: As to a lawful permanent resident convicted of a crime before the effective date of IIRIRA [Illegal Immigration Reform and Immigrant Responsibility Act], which regime governs, the one in force at the time of the conviction, or IIRIRA? If the former, Vartelas' brief trip abroad would not disturb his lawful permanent resident status. If the latter, he may be denied reentry. We conclude that the relevant provision of IIRIRA...attached a new disability (denial of reentry) in respect to past events (Vartelas' pre-IIRIRA offense, plea, and conviction). Guided by the deeply rooted presumption against retroactive legislation, we hold that [this provision] does not apply to Vartelas' conviction. The impact of Vartelas' brief travel abroad on his permanent resident status is therefore determined not by IIRIRA, but by the legal regime in force at the time of his conviction.

**Vartelas' 1994 conviction occurred prior to the IIRIRA's enactment. Therefore, the Court decided 6-3 that he was not subject to its travel prohibition.*

Trump v. Hawaii (2018)

On September 24, 2017... the President issued the Proclamation before us—Proclamation No. 9645, Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats....

Plaintiffs challenged the Proclamation—except as applied to North Korea and Venezuela—on several grounds. As relevant here, they argued that the Proclamation contravenes provisions in the Immigration and Nationality Act (INA)... Plaintiffs further claimed that the Proclamation violates the Establishment Clause of the First Amendment, because it was motivated not by concerns pertaining to national security but by animus toward Islam.

The Proclamation is squarely within the scope of Presidential authority under the INA. Indeed, neither dissent even attempts any serious argument to the contrary, despite the fact that plaintiffs’ primary contention below and in their briefing before this Court was that the Proclamation violated the statute. The First Amendment provides, in part, that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” ...Plaintiffs believe that the Proclamation violates this prohibition by singling out Muslims for disfavored treatment...

The Proclamation... is facially neutral toward religion. Plaintiffs therefore ask the Court to probe the sincerity of the stated justifications for the policy by reference to extrinsic statements—many of which were made before the President took the oath of office... We may consider plaintiffs’ extrinsic evidence, but will uphold the policy so long as it can reasonably be understood to result from a justification independent of unconstitutional grounds.

The Proclamation is expressly premised on legitimate purposes: preventing entry of nationals who cannot be adequately vetted and inducing other nations to improve their practices. Under these circumstances, the Government has set forth a sufficient national security justification to survive rational basis review. We express no view on the soundness of the policy. We simply hold today that plaintiffs have not demonstrated a likelihood of success on the merits of their constitutional claim.

**The Court decided 5-4 in favor of the president, stating that the proclamation addressed national security concerns and did not discriminate on the basis of religion.*

Coverage and Commentary

- [Sanctuary cities](#): Galvan, Astrid and Lee, Morgan. “Trump sanctuary city idea could help migrants stay in the U.S.” AP News. April 14, 2019.
- [DACA](#): Peralta, Eyder. “Obama Goes It Alone, Shielding Up To 5 Million Immigrants From Deportation.” National Public Radio. November 20, 2014.
- [Detention Centers](#): Aguilera, Jasmine. “‘Ticking Time Bomb’: New Government Report Details Overcrowding, Prolonged Detention and Security Risks at Border Patrol Facilities.” *Time*. July 2, 2019.

Suggested Discussion Questions

- Under what conditions is the United States justified in prohibiting immigration? Under what conditions do you think the United States' restrictions are not justified?
- How has U.S. immigration policy changed over time? What similarities and differences do you see in the policies and precedents established throughout U.S. history?
- Why do you think the Framers gave Congress the power to determine rules for Naturalization? Do you think that Congress should still have this power in the twenty-first century?
- How has/does the Constitution protect immigrants? How does it fail to do so?
- How does each branch of the government play a different role in the immigration process? Do you think that checks and balances are necessary for immigration?
- Why do you think the government has, at times, treated immigrant children differently than adults? Do you think that children and adults should be treated differently? Why or why not?

Suggested Activities and Extensions

Class Activities

1. Living Timeline:

Ask students to line up based on when they or their family (whichever ancestors arrived first) immigrated to the United States. Students' only interaction should be to ask each other when their families arrived so that they find their place in the timeline. Once all students find their place, have them state when they/their families came and where they came from. After all students share (teachers can share, too!), ask the following questions:

- What trends or patterns do you see in our class's immigration stories?
- How do these trends and patterns relate to or reflect the changing immigration laws and historical events that we learned about?
- What commonalities do you see among the immigration histories in our classroom? What differences do you see?

****Note to teachers-** this activity could be sensitive for students depending on their immigration status. It is important to be mindful of that if a student does not want to participate.

2. Socratic Seminar:

In a Socratic Seminar, teachers pose a single question to students that requires them to assert and support an opinion; students engage in a discussion based on that question in which they state their own arguments and interact with their classmates. Teachers step in only when the discussion lags or needs to be redirected.

Teachers should begin by asking students, *"Has the federal government used the powers granted to it by the Constitution to sufficiently protect immigrants in the United States?"* Students must cite primary and secondary sources, like those included here, in their responses. Teachers can also ask the follow up question, *"Should the state be given more power over immigration in the twenty-first century?"*

3. *Jigsaw:*

Students are broken up into groups of 3-4 with each student given information on Supreme Court decisions on immigration policy (these documents can be modified to meet learners' needs, and teachers can specifically assign documents based on students' strengths). Each student will read their document, and write down in their own words what the Court was trying to decide and what they decided. Students will then share their cases with the other members of their group. Groups will use this information to answer the question, "To what extent has the Constitution protected immigrants in the United States?" Groups can choose one of the following to present their response:

- Write a report to deliver to the class answering the question; cite information from the cases in the report
- Draw a poster or political cartoon visually expressing their response; visual should clearly include information from the cases (i.e. an immigrant child going to school)
- Create a tableau indicating their response, with one student explaining the meaning behind parts of the tableau
- Write a poem or a song answering the question, specifically citing evidence from the cases

Students will present their work to the class.

4. *Role Play- Supreme Court Proceeding:*

Students will consider whether the U.S. government's recent immigration policies are constitutional. Teachers can use a real-life law or Executive Order or create their own general law (see below for an example). The teacher will divide the class into three groups- Supreme Court Justices, lawyers for the government, and lawyers for the immigrant advocacy groups. The lawyers for the government and the immigrant advocacy groups will prepare statements to read to the Court supporting their argument that the government should/should not be able to prohibit groups of people from immigrating to the U.S. The Justices will prepare lists of questions to ask both sides in order to help them understand each side's position and further explain their opening statement. The Justices will then deliberate, vote, and issue a statement explaining their decision.

Sample Law:

SB 2019: The federal government may prohibit ethnic and/or religious groups from entering the country and establishing residency here if members of those groups might pose political or economic threats or security risks to the United States.

At the conclusion of the activity, the teacher can ask the following questions:

- How were both sides' arguments informed by the United States' previous policies regarding immigration?
- Does the Constitution protect immigrants? Are constitutional protections enough to ensure immigrants have access to the opportunities they seek in this country?
- Should the United States be able to restrict immigration? Why or why not?

Extension Activities

1. Students can study Deferred Action for Childhood Arrivals (DACA) in greater depth. Students can research how this law came about, why people supported/opposed it, whom the law helps, and the challenges it currently faces. Using this research, students can do one of the following:

- Write a letter to an elected official declaring their support or opposition to DACA and explaining their position.
- Write an editorial or draw a political cartoon asserting their position on DACA.
- React to the Supreme Court's decision in [*Department of Homeland Security v. Regents of the University of California*](#). Students can, among other options, choose which of the Justices' positions they agree with and express their opinion orally or in writing.

2. On December 2, 2019 NPR reported that the Trump administration proposed raising citizenship application fees (“[Why It's Getting More Expensive For Some Immigrants To Become U.S. Citizens](#)”). The changes were set to go into effect in October 2020, though a federal judge in California issued an injunction temporarily halting the fee increase. Students will read the article and consider the constitutionality of Trump administration's proposals based on the following principles:

- Congress's power to establish rules for naturalization
- Fourteenth Amendment right to equal protection
- Fifth Amendment right to life, liberty, and property

3. Ask students: Should we amend the Constitution to offer immigrants more protections? If so, what should we include in those amendments?