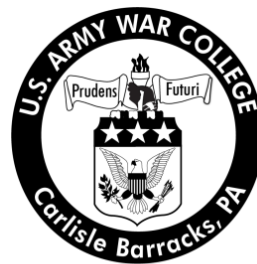


A Broken Immigration System: Two Vital Remedies Before Policy Reform

by

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United States Army War College
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TWO VITAL REMEDIES BEFORE POLICY REFORM**

by

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ABSTRACT

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The United States is a nation of immigrants; indeed, with the exception of Native Americans, every family in the United States has its historical roots somewhere else. Immigrants have built the country, defended its borders, and expanded the economy; restrictionists also say they have diluted the culture, burdened society, and drained government resources. Regardless of individual perspectives on the impact and importance of immigrants to the United States, all agree the immigration system itself is broken because it takes too long to immigrate legally (if that option exists for the individual), while the numbers of illegal immigrants continues to rise. Before policy makers can determine how to remodel immigration policy and the immigration system to serve America's ongoing familial, social, and economic needs, two major symptoms of the current system must be addressed: the backlog of immigrant visa applications and illegal immigration.

A BROKEN IMMIGRATION SYSTEM: TWO VITAL REMEDIES BEFORE POLICY REFORM

As President Ronald Reagan noted in 1981, the United States is a nation of immigrants; indeed, with the exception of Native Americans, every family in the United States has its historical roots somewhere else.¹ Immigrants have built the country, defended its borders, and expanded the economy; restrictionists say they have also diluted the culture, burdened society, and drained government resources.² The Independent Task Force on Immigration (the Task Force) at the Council on Foreign Relations believes immigration “is an important part of [America’s] core values as a nation.”³ Regardless of individual perspectives on the impact and importance of immigrants to the United States, there is “a widespread and accurate perception that the immigration system is not working nearly as well as it should be, either for Americans or for many of the immigrants.”⁴

Immigration has long been a multi-layered, complicated policy issue that is influenced by a myriad of factors, not the least of which are state and local politics, individual histories, biases, and experiences, and competing priorities and equities. One can certainly assume that any attempt at reform will be equally complicated because of these factors and more. Scholars Jeffrey Passel and Michael Fix contend that U.S. immigration policy is thought to be “driven [solely] by economic goals,” when instead it is based on a complex, multi-faceted set of goals that also cover moral, social, and cultural reasons for immigration. “U.S. immigration policy needs to be viewed as not one, but three fundamentally different sets of rules ... governing legal immigration ... humanitarian admissions ... and those that control illegal entry.”⁵ Each of these three

immigration sub-components has its own history that is reflected in the laws, policies, and practices that govern it; each also affects the other due to the interwoven nature of immigration-related issues.

Many immigration scholars focus their writing primarily on the problem of illegal immigrants and the related concerns of sovereignty, enforcement, and border security. Another camp focuses almost exclusively on the need to support the U.S. economy by increasing the number of specialized worker visas allocated to nonimmigrants. As a result, the immigration decision-makers often narrow their attention on ways to increase employment-based short-term visa allocations, or look to address the steady stream of illegal migrants through tightened screening procedures and border security, enhanced employer disincentives for hiring illegal aliens, and increased deportations. All of these aspects of immigration are important in the larger policy debate, and they will influence the future of any reform decisions. Likewise, there should be thoughtful consideration in the immigration debate as to whom should be allowed to immigrate, including development of a way to determine the “right” mix of family members, workers, and humanitarian admissions (refugees, asylees, and special immigrants) authorized to emigrate to the United States.

This paper contends, however, that discussion of these issues is important, but akin to putting the cart ahead of the horse. There will never be lasting, useful reform of the immigration system unless lawmakers resolve the two most pressing concerns of the existing legal immigration system. Specifically, solutions must be developed to address the huge backlog of immigrant visa cases and the unprecedented number of illegal immigrants already resident in the United States. Both are the operational fallout

of a flawed system. The manner in which these two issues are handled now will (and should) inform any future debate on immigration reform because their remedies have strategic implications for future policy development. Politically salable, workable plans to mitigate these two critical issues will require short-term changes to policy that may create the political space necessary to develop comprehensive reform options that in turn result in a “working immigration system that alleviates long and counterproductive backlogs and delays, and ensures that whatever laws are enacted by Congress are enforced thoroughly and effectively.”⁶

This paper seeks to address these two fundamental issues, while setting aside discussion of immigration as a national security and foreign policy tool or a subject related to humanitarian admissions, law enforcement, and border security, which are all far-reaching topics worthy of separate in-depth analysis. By looking at current immigration statistics through the lens of the immigration process, including the primary categories of immigrants and the means by which they enter the United States, it will become clear how immigration reform in 1965 caused shortcomings that continue to limit the effectiveness of the current policy. A brief assessment of the benefits and costs of immigrants to the United States will serve to frame the importance of immigration to the U.S. economy, which will always be a critical component of any meaningful discussion of immigration policy. A review of past immigration reform proposal failures highlights how attempts to provide workarounds for small, more manageable issues have done little to remedy in any real way the fundamental problems that exist. Lastly, proposals for resolving the two biggest problems may alleviate the pressure on the current system, provide a political proving ground for

possible long-term policy changes to the system, and serve as guideposts to a new strategic framework for immigration reform.

The Existing Immigration System

Susan Miller describes the three ways to enter the United States as the “front door, the side door, or the back door.”⁷ The front door represents those immigrants who arrive legally as the result of a self-petition, family or work relationships, or because they fall into a category of individuals whom the United States has decided should be here, such as special immigrants, refugees, and asylees.⁸ Side-door immigrants are also a side effect of the immigration process: they enter the United States legally, but in a nonimmigrant, temporary status that enables them to become eligible to adjust status legally by becoming legal permanent residents (LPRs, who are also known as “green card” holders⁹). Finally, back-door immigrants are individuals in the United States without authorization who may have entered legally and overstayed their period of authorized stay or purposely entered the United States illegally.¹⁰ This category is also a side effect of a broken system.¹¹ Each of these means of entering the United States poses unique challenges and should be considered influential as future comprehensive reform proposals are developed.

How Does the System Work?

The Immigration Reform Act of 1965 (Hart-Celler Act) forms the basis for the present-day immigration process. When enacted, it completely restructured the 1952 Immigration and Nationality Act (INA) by eliminating a system based on national origins that President John F. Kennedy said in 1963 had “no basis in either logic or reason.”¹² This shift countered a long-standing quota system that had allocated 70 percent of all immigrant visas annually to Western Europeans, specifically to citizens of Great Britain,

Ireland, and Germany, while it limited immigration from most countries to 100 individual visas per year.¹³ Thus, for the first time, U.S. immigration policy prioritized family reunification over all other types of immigration and allowed nationals of any country to be admitted to the United States if they had the requisite familial or work relationship.¹⁴ Further, the act removed numerical limits on immigration for the immediate relatives of American citizens (regardless of their country of origin), while it almost doubled the annual immigration limit in numerically controlled categories to 290,000. As a result, “family integration ... became the centerpiece of national policy.”¹⁵ In the human rights-centered 1960s, the legislation was seen as an “extension of the civil rights movement,”¹⁶ and it passed with overwhelming support, in part because the revisions were seen as “humanitarian.”¹⁷

Opponents of the restructuring, however, were concerned that the changes would alter the fabric of American culture through a rapid rise in immigration numbers overall and a shift in the source countries from whence immigrants would arrive.¹⁸ They worried that such a dramatic shift in the national immigration strategy would have a long-term impact on immigration, a notion that Senator Edward Kennedy (D-MA) refuted in early 1965.

First, our cities will not be flooded with a million immigrants annually. Under the proposed bill, the present level of immigration remains substantially the same. ... Secondly, the ethnic mix of this country will not be upset. ... In the final analysis, the ethnic pattern of immigration under the proposed measure is not expected to change as sharply as the critics seem to think.¹⁹

Rep. Emanuel Celler (D-NY), the bill’s co-sponsor, also thought there would be no substantive change in the mix of future immigrants. Regarding specific concerns about an increase in the number of Africans and Asians who might be admitted, he said,

“Since the people of Africa and Asia have few relatives here, comparatively few could immigrate [sic] from those countries because they have no family ties in the U.S.”²⁰

President Lyndon Johnson concurred. In a public statement when he signed the legislation at the Statue of Liberty on October 3, 1965, Johnson tried to counter any lasting opposition to the new law by characterizing it as a means of remedying a quota system that had been “untrue to the faith that brought thousands to these shores even before we were a country.”

This bill we sign today is not a revolutionary bill. It does not affect the lives of millions. It will not restructure the shape of our daily lives, or really add importantly to either our wealth or our power. ... This bill says simply that from this day forth those wishing to immigrate to America shall be admitted on the basis of their skills and their close relationship to those already here.²¹

Immigration numbers since 1965 show that the opponents were right. The seemingly simple change to prioritize immediate relatives without limit actually “overwhelmed all other objectives” of the 1965 legislation and has resulted in a dramatic shift in the American population’s makeup.²² More than 20 years ago, immigration trackers were already noting that 1965–1990 had seen the largest and longest increase in immigration since the turn of the 19th century.²³ Fast-forward another two decades, and the change in numbers is even more dramatic. In the 42 years from 1965 to 2007, the United States has accepted more than 40,000,000 immigrants.²⁴ In addition, the current U.S. population is now fully 11 percent immigrants, a proportion not seen since the turn of the 19th century.²⁵ So why did the 1965 reform result in what Darrell West calls “chain immigration”?²⁶

The 1965 reform is the blueprint for immigration that still exists. Under its framework, the Congress sets an annual numerical limit on the number of visas that can

be issued to all immigrants, using per-country and preference category limits that are derived from a formula in the INA.²⁷ Immediate relatives (IRs) of American citizens may immigrate without limit, and if IR category family members are in the United States, they can avoid the immigrant visa process entirely by requesting adjustment of status through the U.S. Citizenship and Immigration Service (USCIS). A second set of family- or work-based immigrants comprise cases in “preference” categories that reflect the priorities laid out in the 1965 reform and subsequent legislative amendments.²⁸

In practical terms, this means that American citizens are allowed to petition for their spouses, unmarried children, and parents, all of whom are considered immediate relatives (and thus they move to the head of the case processing line); these individuals are not counted against any annual immigration limit.²⁹ Citizens can also petition in preference categories for sons/daughters (whether married or not) and siblings. Adult LPRs, regardless of how long they have lived in the United States, can file preference petitions on behalf of any spouse, child, or unmarried son/daughter. When an LPR becomes an American citizen (after the typical five-year wait), he gains the right to petition in the IR categories on behalf of his married sons/daughters, siblings, and parents, while any existing cases for spouses and unmarried sons/daughters get reprioritized. Because many of the family preference and all of the work categories automatically include the principal applicant in addition to his spouse and children, one immigrant petition usually translates into multiple immigrant visa numbers being used. Likewise, one immigrant admission (family- or work-based) usually results in almost-immediate follow-on petitions made by that new immigrant on behalf of left-behind family members. With this framework, the idea of a steady funnel of immigrants from

countries around the world resulted almost immediately in a chain immigration phenomenon — especially for countries with high immigration, large families and/or a high propensity to pursue naturalization (such as Mexico and the Philippines). Over time, as more people have emigrated to the United States and filed follow-on petitions for their family members, the steady funnel has become an ever-widening river. It is difficult to believe that the authors of the 1965 reform foresaw anything close to an exponential increase in immigrant numbers or in a backlog of waiting petitions, yet that is what has happened. In fact, as of November 2011, more than 4.6 million family- and work-related immigrant visa applicants were in the queue awaiting appointments.³⁰ To put this number in context, it would take 12.5 years of appointments to clear this backlog — assuming no new immigrant petitions were accepted by USCIS after January 1, 2012, the worldwide limit of preference category visas remained at approximately 366,000 per year, all visas available were issued each year, and then only if the per-country cap of 25,900 immigrants for 2012 was lifted entirely.³¹

Pia Orrenius and Madeline Zavodny believe the current immigration policy is inflexibly skewed toward family reunification, when instead the policy should be more dynamic and allow the U.S. government to flex over time how it prioritizes family- and employment-based immigration.³² The Task Force agrees, stating in its report that the lengthy delays in allowing immigration from some countries are “so long that the applicant may well have finished most of his or her working life before arriving in the United States,” which does nothing to serve American economic needs, while it also makes “a mockery of the concept of family reunification.”³³ The *Visa Services Bulletin* put out in February 2012 to assist U.S. consular sections with scheduling March 2012

appointments lends credence to these assertions. According to this *Bulletin*, the shortest wait time for family preference (based on the priority date of the petition) is for children of LPRs; appointments can be scheduled for applicants whose petitions were originally filed earlier than July 1, 2009, which means they have waited almost three years just for the visa appointment.³⁴ Unmarried sons/daughters of American citizens must currently wait seven years for their appointments, unless they hail from Mexico, which extends that wait by 11 years.³⁵ The longest delay, however, is for the siblings of American citizens, who must wait anywhere between 11.5 and 23.5 years for their cases to become eligible for scheduling.³⁶ Although many categories of employment-based immigrant visa cases can be processed immediately, applicants in the lower-skilled workers categories must wait between six and 10 years for their cases to be scheduled because of per-country limits. Without doubt, it is hard to believe that a wait time of one or two generations could be considered meaningful family reunification or of benefit to the U.S. economy.³⁷

Yet despite long wait times, statistics show that demand to move to the United States with an immigrant visa is at an all-time high. For the fiscal year ending September 30, 2010, 482,052 individuals were issued immigrant visas to allow them to move permanently to the United States; somewhat surprisingly, fewer than three percent of these were issued as the result of an employment-based petition.³⁸ In the same year, more than one million people became legal permanent residents of the United States, half of whom were already in the United States and eligible to adjust status. Included in this number are more than 252,000 people who were immediate relatives of American citizens and over 136,000 (each) who were in the United States

as the result of employment, refugee or asylee status. The remaining 476,049 were new arrivals who entered the United States using immigrant visas they received at a U.S. embassy or consulate overseas.³⁹ Highlighting the difficulty for those without family members or waiting employers to petition for their entry into the United States, during the annual 30-day registration period that ended in December 2011, close to eight million individuals submitted entries for the Diversity Visa Lottery Program in the hopes of receiving one of only 55,000 immigrant visas available under that program.⁴⁰

Absent a marital relationship, a family member, or an employer who can petition on an intending immigrant's behalf, the only option is to enter the United States legally as a short- or long-term nonimmigrant.⁴¹ During the 2010 fiscal year, the Department of State issued 6,422,751⁴² nonimmigrant visas to applicants who planned to visit the United States temporarily to conduct business or to be tourists, students, diplomats, investors, and temporary workers; this figure does not include those who entered visa-free under the Visa Waiver Program.⁴³ Demand for nonimmigrant visas continues to rise worldwide, especially in Brazil and China, where visa appointments are up more than 40 percent in the first quarter of fiscal year 2012 (compared to 2011), prompting the State Department to increase consular staffing and window interviewing space in both countries in order to accommodate the demand.⁴⁴ Consular officers who issue nonimmigrant visas and USCIS officers who admit nonimmigrants to the United States do their best to ensure the traveler has no immigrant intent, and the person may very well not be an intending immigrant when the visa is first issued or the person is admitted to the United States. However, U.S. immigration laws allow people in many instances and under a wide variety of circumstances to adjust legally their status from

nonimmigrant to long-term nonimmigrant or permanent resident status, thereby bypassing the direct immigration process. Statistics from USCIS for 2010 show that an almost equal number of people adjusted their status as the result of being in the United States for a non-family-related reason as those who entered the United States as immigrants.⁴⁵ It is highly doubtful that this side-door effect was what the framers of the 1965 reform intended; status adjustments for nonimmigrants is certainly an issue that should be revisited in future immigration reform reviews.

Coming on the heels of the end of the “Bracero” worker treaty with Mexico in 1964, another unexpected, and certainly unintended, consequence of the 1965 reform was a rise in illegal immigration.⁴⁶ In 1965, it was illegal for someone to work without authorization, but it was also considered perfectly acceptable for a company or individual to hire an undocumented worker.⁴⁷ With no disincentive to hire illegal workers, employers did so with impunity and minimal effort. “They had little to do ... but reap the benefits of a century of promotion” [of the benefits of working in the United States].⁴⁸ Throughout the 1970s, high unemployment and severe inflation coincided with large waves of refugees from Cuba, the Soviet Union, and Indochina,⁴⁹ raising public alarm about the growing tide of immigrants (legal and otherwise). INA amendments in 1976 and 1978 reconfigured the preference system slightly, but they did not include the employer sanctions for hiring undocumented workers that many wanted.⁵⁰ In the early 1980s, attempts to decrease the inflow of illegal aliens through legislative proposals to sanction employers died at every attempt, prompting President Jimmy Carter and Congress to create in 1979 the bipartisan Select Commission on

Immigration and Refugee Policy (SCIRP) to study immigration and its impact on the United States.⁵¹

SCIRP's work culminated in its final report in January 1981, which stressed the importance of immigration to U.S. society, but argued for "closing the back door to undocumented immigration while opening slightly the front door to accommodate more legal immigration." The report outlined the need for employer sanctions and recommended increasing preference immigration numbers to 350,000, a number the Commission believed would be sufficient to speed family reunification and clear the backlog of cases. SCIRP also felt that both initiatives would help decrease illegal migration. The Commission recommended developing an independent immigrant category within the existing system to diversify the immigrant mix and allow for the legal immigration of nationals from countries that were underrepresented in the United States, a precursor to what is now known as the "diversity visa lottery" (DV) program. The "impact of SCIRP was to legitimize the duality of the employer sanctions and 'popularize' the legalization approach ... that you cannot have one without the other."⁵² Most importantly, the commission's bipartisan identification of illegal immigration as the "critical issue confronting the nation both framed and focused the next five years of immigration debate."⁵³

Following the SCIRP report, and after years of repeated attempts and failures at immigration reform, Congress passed a compromise bill in late 1986. The Immigration Reform and Control Act of 1986 (IRCA) attempted to stem the illegal immigrant tide in several ways. The law made it unlawful for an individual or company to hire or recruit undocumented workers or to continue their employment if their authorization expired; it

also implemented financial and criminal penalties for doing so. It required employers to verify the legal status of each worker through documentation and forced federal welfare programs to check the eligibility of non-citizens for their programs, which decreased the number of illegal aliens on the welfare rolls, but resulted in a rise in the use and availability of false identity documents.⁵⁴ These employer sanctions were expected to counter the “pull” for illegal immigrants of the U.S. economy.⁵⁵ The Act increased funding for border security and created an office within the Justice Department to oversee new anti-discrimination safeguards designed to protect workers on the basis of national origin. In addition to expanding the H-2A agricultural foreign workers program, IRCA provided a legalization track for permanent residency for up to 350,000 undocumented workers who could prove they had lived in the United States for the preceding three years and during those years had worked at least 90 days each in the agriculture industry. The Act also allowed certain Cuban and Haitian refugees to become LPRs and provided a legalization track for any resident who could not be excluded for other reasons and who had been residing continuously in the United States since before January 1, 1982.⁵⁶ The goal of these “amnesty” programs was to regularize the status of more than three million undocumented workers in the United States at the time in order to “wipe the slate clean.”⁵⁷

Unfortunately, the positive impact was short-lived. Not all of those who were eligible chose to take advantage of the amnesty program, while the lure of jobs continued to entice emigrants from countries with weaker economies. The Pew Hispanic Center estimates there are now 11.2 million illegal immigrants in the United States, while Department of Homeland Security (DHS) puts the number closer to 10.8

million.⁵⁸ DHS also estimates that of these 10.8 million, more than 60 percent entered prior to 2000 (19 and 43 percent, respectively, during the 1980s and 1990s), and more than half were admitted legally and chose to overstay.⁵⁹ Regardless of how they entered the United States or why they have remained, the presence of so many illegal immigrants “diminishes respect for the law, creates potential security risks, weakens labor rights, strains U.S. relations with its Mexican neighbor, and unfairly burdens public education and social services in many states.”⁶⁰

Why Immigration Matters

The Task Force asserts that “economics should not be the only factor shaping American immigration policy decisions, but neither can the United States simply ignore the vast economic forces that drive international migration.”⁶¹ President Barack Obama agrees.

The United States reaps numerous and significant economic rewards because we remain a magnet for the best, brightest, and most hardworking from across the globe. Many travel here in the hopes of being a part of an American culture of entrepreneurship and ingenuity, and by doing so strengthen and enrich that culture and in turn create jobs for American workers. From U.S. Steel to Google, Inc., immigrants have long helped America lead the world.⁶²

In 2010, more than 35 million people⁶³ entered the United States for tourism, bringing more than \$152 billion to the U.S. economy.⁶⁴ In academic year 2010–2011, 723,277 international students contributed more than \$20.2 billion to the U.S. economy.⁶⁵ The Internal Revenue Service estimates that from 1996–2003, illegal immigrants paid approximately \$50 billion in federal taxes and that 60 percent of all undocumented workers work “on the books.”⁶⁶ In Oregon, which is not considered a high-volume immigration state, the Institute on Taxation and Economic Policy estimates that between 110,000–220,000 illegal aliens pay between \$154–309 million in taxes

each year.⁶⁷ Almost one-third of all U.S. patent applications are filed by immigrants, and more than 25 percent of all new businesses are started by immigrants.⁶⁸ Based on these statistics, immigrants and long-term “temporary” residents of the United States clearly benefit the U.S. economy.

A study conducted by the National Venture Capital Association (NVCA) determined that since 1990, immigrants have founded one in every four publicly held, venture-backed companies and more than 40 percent of all venture-backed, publicly held companies in the technology-manufacturing arena.⁶⁹ NVCA’s research indicates that highly skilled immigrants, in particular, help the United States to retain its competitive advantage in the global economy by creating new jobs, new technologies, and new industries.⁷⁰ The Small Business Association’s (SBA) Advocacy Office concurs with NVCA’s assessment of the importance of immigrants to the U.S. economy. According to the SBA, immigrant-founded businesses generated \$67 billion, or 11.6 percent, of all U.S. business income using Census 2000 data.⁷¹

John Bellows, Department of Treasury Acting Assistant Secretary for Economic Policy, made the case for the importance of immigration to the U.S. economy in a statement in May 2011. He noted that immigrant workers are “more likely to hold an advanced degree and are almost twice as likely [as Americans] to hold a Ph.D, while at the other end of the scale, immigrant workers complement the work of lower-skilled native-born workers, “playing an important role in the economy by filling niches where the domestic supply of workers is limited.”⁷² The Hamilton Project at the Brookings Institution adds that the complementary nature of foreign-born and native U.S. workers increases the productivity of both and raises the standard of living for American workers

by lowering prices, especially for “immigrant-intensive” services such as gardening, child care, and cleaning services.⁷³ Statistics from the Congressional Budget Office (CBO) also show that foreign-born men in the United States, regardless of their legal status, are across the board more likely to be employed than Americans who are in the same age brackets, even though the foreign-born men find it more difficult to find work initially.⁷⁴

The CBO asserts that “most efforts” to determine the net effect of immigration on tax revenues indicate that immigrants have a positive effect at the federal level by contributing more in taxes than they use in federal services; the office also notes that their impact at the local and state government taxes is mixed.⁷⁵ Detractors, however, believe that immigrants (legal and not) only drain scarce resources. John Isibister argues that the question is complicated, because illegal immigrants “impose less of a fiscal burden than legal immigrants of the same nationality,” while legal immigrants are more likely to take advantage of the social benefits available to them. He also argues that the national origin of the immigrant is a determining factor in the associated financial burden of the immigrant, since “different ethnic groups have different rates of participation in the welfare system.”⁷⁶ At the state and local levels, unauthorized immigrants tend to participate in social benefit programs at higher rates than legal immigrants do, while their wages are generally lower and they have less disposable income to spend on items subject to sales tax. Illegal immigrants are less likely to have health insurance, which can place a burden on hospital emergency rooms partly financed by federal funds and mandated to provide services regardless of the legal status of the user,⁷⁷ but these migrants are also least likely to take advantage of some

local services for fear of their illegal status being discovered and being deported. The tax gains from illegal immigrants do not necessarily offset their impact on expenditures for law enforcement, education, and health care, but CBO estimates that overall the net impact of immigrants on local and state budgets is “most likely modest.”⁷⁸

In order to avoid detection as illegal workers, many must use false or fraudulent Social Security numbers to allow employers to withhold local, state and federal income taxes. In 2004, Internal Revenue Service estimates indicated that six million illegal immigrants were filing individual tax returns each year, an estimate that mirrors the Social Security Administration’s (SSA) assumption that about half of all unauthorized immigrants pay Social Security taxes — even though they cannot benefit in the future from their contributions.⁷⁹ The Social Security Advisory Board has indicated that this financial inflow to the SSA vault is and will remain vital to a system that is increasingly burdened by an aging American population that is increasing its draw of SSA benefits.⁸⁰

The Task Force summarizes concerns about the economic important of immigration succinctly:

More than half the recent growth in the U.S. labor force has come from immigration, and nearly all future growth will come from immigrants or from current workers delaying retirement. ... If the U.S. loses its economic edge, its power will diminish. Getting immigration policy right is therefore critical to U.S. economic and political leadership [in the world].⁸¹

Piecemeal Patches Don’t Work

While it is clear that the immigration system is broken, the ideal manner in which to fix it is less clear. Family reunification may be at the heart of current immigration policy, but the numerical limits imposed on immigrant numbers delay reunification for years, if not decades. Lengthy delays for workers to enter the United States legally minimizes their ability to contribute to America’s economy and has the follow-on effect

of encouraging others to bypass the system altogether, resulting in a steady stream of illegal migrants. American schools, colleges, and universities educate more than 700,000 international students each year, yet most of them must return home because they have no means of staying in the United States to put their new knowledge to work for American companies. Legislation designed to address some of these issues have only served to further complicate the system, which is now overwhelmingly complex due to “years of makeshift fixes to specific problems ... [via] ad hoc adjustments [that] have created a dysfunctional system.”⁸²

For example, the Immigration Act of 1990 included several important changes to the 1965 INA reform. In addition to making permanent the DV lottery program that had seen its temporary birth with IRCA, the 1990 legislation set new, increased, annual limits on immigration levels and redefined some aspects of the preference system. IRCA also created a new employment preference category of 10,000 immigrant visas each year for individuals who could invest between \$500,000 and \$1 million in a new commercial enterprise that would employ at least 10 full-time legally resident workers (not including the investor’s spouse or children).⁸³ This might have been a great idea, but implementation is affected by the existing system, resulting in more than 1,800 individuals waiting in the queue for appointments in this investor immigrant category.⁸⁴

The Development, Relief, and Education for Alien Minors Act (the DREAM Act) of 2007 was intended to regularize the status of more than one million children in the United States who had no role in their caretaker’s decision to break American immigration laws and bring them to the United States illegally. The Act, which has not passed despite several attempts by Congress since 2007, would have afforded legal

status to any child who had lived in the United States for at least five years, graduated high school, demonstrated good moral character, and been admitted to the college-level program or joined the U.S. military. Opponents of the DREAM Act believe that it “rewards unlawful behavior and [will] serve as a magnet for future violations.”⁸⁵

A bill put forth by Senator Schumer in October 2011, “Visa Improvements to Stimulate International Tourism to the United States of America Act (VISIT USA Act)” included, among other items, a renewal nonimmigrant visa for individuals who invest (and maintain) “at least \$500,000 in U.S. residential real estate, of which at least \$250,000 must be for a U.S. primary residence where such person will reside for more than 180 days per year.”⁸⁶ This nonimmigrant visa is in effect a side-door option to legal residency, since it would allow the individual’s spouse and children to remain in the United States full-time. The bill is interesting in that it seeks to regularize the status of “snowbirds” — those who live part of each year in their home country during temperate seasons, move to warmer climes in the United States during the winters, and who are continually butting up against 183-day limitations on their ability to stay in the United States.

Addressing Big Problem Number 1: The Case Backlog

In the scholarly immigration literature, Orrenius and Zavodny are two of a small cadre of authors who have acknowledged the importance of the overwhelming backlog of immigrant visa applicants. Unfortunately, clearing 4.6 million visa applicants out of the pipeline with only 366,000 visas available each year and more petitions being filed every day will make it difficult to eliminate the backlog entirely. A significant reduction in the backlog is possible, however, by increasing the numbers of available visas and recalibrating how visas are allotted to each country. Because chain immigration has

become a very real issue that must be addressed in the 47 years since implementation of the Hart-Cellar Act, it would be foolhardy to make any decision about increasing the number of visas available to potential immigrants each year without careful consideration of their follow-on petitioning rights. Indeed, it is impossible to envision any future, effective legislative change to immigration law that does not include some sort of limitation on the ability of new immigrants to file petitions or which redefines the family members for whom a petition can be filed. The need to “restrict in new ways the number of family members who can be sponsored by U.S. citizens and legal permanent residents” is a politically charged issue that split the Council on Foreign Relations Immigration Task Force.⁸⁷ Some within the group argued that certain family member categories should be “phased out” as potential immigrants, while others felt that “extended family networks” remain an important part of the U.S. social fabric and a component of U.S. immigration policy. There is no doubt that family member sponsorship will remain a politically charged issue, and that imposing restrictions on the “right” of Americans and LPRs to petition for family members should be a key question for lawmakers to consider when they attempt to reform the immigration system. Absent a change to this cornerstone of immigration policy, the United States will only continue to see increased chain immigration and related long-term backlogs as the ever-growing U.S. population continues to file greater numbers of petitions for family members to emigrate to the United States.

Orrenius and Zavodny argue that only those people who are immediate relatives (spouses/children) of Americans and LPRs should be allowed to remain in the queue. For all other intending immigrants, they feel the U.S. government should simply remove

them from the backlog by cancelling their cases and refunding all related fees to the petitioner.⁸⁸ Even if this idea could make it past the political fallout that would ensue, it is problematic financially.⁸⁹ It seems more reasonable to address this backlog by processing the current cases to conclusion more quickly by increasing the number of available visas while concurrently implementing some sort of moratorium on new petitions filed by these new immigrants.

An important factor to consider in processing the backlog cases more quickly is the need to increase inflows without overwhelming overseas consular offices, which are already working at full capacity. One way to accomplish this would be to allow certain immigrant visa applicants to apply for nonimmigrant visas instead and allow them to adjust status once in the United States, in effect making them quasi-immigrant visas; this process is already in place for fiancés and certain spouses/children of Americans and LPRs.⁹⁰ This side-door option could speed the immigration of individuals in targeted categories (because nonimmigrant visas have no numerical limitations), while minimizing the impact on overseas posts and still requiring those individuals to undergo the same security and medical checks that currently exist for all immigrant cases.

For example, the terms of INA 201 limit the total number of employment-based immigrant visas to 144,000 (for 2012), with no more than 10,080 coming from any one country. Due to the per-country cap and a complex prioritizing system within the employment-based sub-categories, the actual number of visas issued is always significantly less than the aggregate number authorized. Using data from the existing backlog, the total number of waiting employment-based visa cases combine to less than one full year's allowable entries (currently 123,333 applicants). By lifting the per-country

cap, all employment-based visa cases could be processed in one year, an option that would be speed entry for qualified applicants in this category.⁹¹ This group is also an ideal target for fast-tracking, since all but 2,616 of the applicants are in sub-categories that require Department of Labor pre-certification by the petitioning employer that he has been unable to find workers in the United States to do the jobs — pre-vetting that should counter any concern about adding unemployed workers to the U.S. economy.⁹²

Barring the use of a nonimmigrant visa as a *de facto* immigrant visa for cases to be fast-tracked, the only other way to increase inflow is to increase dramatically the overall numbers of immigrant visas available each year and adjust the per-country cap. If all employment-based cases were fast-tracked, the family preference categories could be parsed in a way that is reasonable and reflective of existing queues by country. The backlog could be reduced by 25 percent over three years if the total number of family preference-based cases was doubled to 452,000 and the per-country cap was lifted; unfortunately, this would still leave 3.145 million visa applicants still waiting in the queue.⁹³ Other options that might reduce this number further include:

1. Suspending for several years the DV program to allow those annual 55,000 allocated visas to be used for other pending cases or new options as noted below;
2. Expediting all cases involving unmarried sons/daughters under age 30 so that they might enter and contribute to the economy as workers more quickly;
3. Enacting S.1746 (VISIT USA) to develop an “intending immigrant” nonimmigrant visa category (similar to a fiancé visa) for any principal

beneficiary (in any category) who can show proof of residential real estate ownership as referenced above,⁹⁴ and/or

4. Allowing intending immigrants with a pending case to expedite their cases if they qualify under a points-based scheme similar to those in use in Australia, Canada, and the United Kingdom, where workers are prioritized for entry if they meet certain educational, work, and linguistic standards.

Addressing The Other Big Problem: 11 Million Illegal Immigrants

Addressing the status of illegal aliens present in the United States is possibly the most contentious issue for discussion, the most complicated to get “right,” and the most important to resolve quickly, efficiently, and fairly; it also “led to the failure of Congressional efforts at immigration reform in 2006 and 2007.”⁹⁵ Even if the United States had the budget and required staffing to effect the deportation of all 11 million illegal immigrants, the courts, detention facilities, and police forces needed to identify, locate, arrest, hold, and process the detainees do not exist. More importantly, the Task Force recognizes that “given both the expense and the further damage mass deportation would do to America’s economy and to its reputation as a nation of immigrants, such an effort would not be in the country’s interest.”⁹⁶ Increased security through enhanced border patrols and border barriers might stop the inflow of illegal migrants, but neither will decrease the number of illegals already here — and may actually encourage others who might leave to stay for fear of not getting back into the United States. Unpalatable though it may be to those focused on the rule of law, a path to legal status may be the only viable option to deal with this thorny problem.

In considering any regularization of status for the illegal immigrant population in the United States, several factors must be considered. Primary in these is concern that

the United States cannot afford another amnesty program like the one in 1986.

Amnesty, a legal act of forgiveness for past offenses, in essence rewards those who are here illegally for having broken the law. Instead, any path toward legal status must include penalties that reflect American core values of respect for the rule of law and personal responsibility for one's actions, and a staged path that requires ongoing commitment by the immigrant to the United States. Legalizing the status of illegal immigrants without requiring them to demonstrate how they have been or are becoming contributing participants in the public-private partnership between citizen and state may only serve to increase the burden on social and economic infrastructures.

This paper proposes that, similar to the comprehensive reform proposals of 2006 and 2007, all illegal immigrants wishing to earn a path toward legalization would be required to pay a fine, demonstrate they have no other ineligibilities, pass security and criminal background checks, demonstrate past and/or present gainful employment, show evidence that they have paid taxes on wages earned, and master some level of English.⁹⁷ Legalization would occur in stages, with additional requirements the applicant must meet along the way before being accorded additional rights. The consequences of not meeting these additional requirements would serve as tripwires to prompt deportation. There are two important elements that distinguish this proposal from other past recommendations. While the vast majority of illegal immigrants would be legalized in stages, those who qualify would be afforded the opportunity to expedite the process to permanent legal status by proving their contribution to the U.S. economy. For example, individual cases could be expedited if the immigrant has created a business that employs a certain number of non-family members, has purchased a home worth

more than the median price in his geographic region (using cash or with a mortgage that does not require private mortgage insurance), or through demonstration of savings/investments at a certain level sustained over time. Most importantly, however, to avoid the chain immigration phenomena, these immigrants would be penalized for breaking U.S. immigration law in the long-term through a delay in their ability to naturalize as U.S. citizens and through restrictions on their privilege of petitioning for family members until they become citizens.

Conclusion

An immigration policy put into place more than 45 years ago continues to underpin the present-day system in such a way that it has become ineffective at meeting the needs of a 21st century America. Before policymakers can address changes to immigration policy and practice through reform of any type, it is vital that the two primary failures of the existing system be addressed so that the resolutions themselves can aid in moving the reform debate forward. As long as millions of individuals are waiting to emigrate to the United States, it will remain impossible for politicians to gain the public support they need to propose changes to policy, especially any that may restructure who can petition and reprioritize who can enter and when. Absent this backlog, or with prospects for it being reduced in the near future, it is more likely that significant shifts in existing policy can be discussed and that the political will to effect those changes might exist. Putting into place a process to reduce substantially, and relatively quickly, the huge queue of existing legal immigration cases, while limiting follow-on petitioning rights will allow politicians to test the public's resiliency regarding restrictions to future family preference categories and limits on petitioning abilities. Public responses to these limitations may then assist policy makers

in determining how to balance economic, humanitarian, and family reunification admissions in future immigration policies in ways that are practical, fair, balanced, and adjustable over time.

Earned legalization for those illegally present in the United States is the right policy choice, but one that must be made with care and attention to the politics and implications of normalization of status. The United States cannot afford to legalize 11 million individuals without also ensuring they do not create a greater backlog of future family immigrants. Individuals must earn the right to stay here permanently through the payment of fines and proof of societal involvement via work histories, payment of taxes, and learning English. Those who can demonstrate financial support to the economy through job creation, investment, and home ownership should be afforded a fast track to permanent legal status. All, however, must realize that there will remain residual effects of their lack of respect for the rule of law through a series of steps to gain permanent legal status and citizenship, along with lifetime restrictions on their ability to petition the government for other family members to enter the United States.

Revising U.S. immigration policy and practice to fit 21st century needs will, without doubt, be fraught with difficulty because there are conflicting priorities and interests that make almost all elements of the problem contentious. Politicians are going to need to make hard choices and work together, as they did in the 1960s and 1980s, to build an immigration system that works for America long-term. It is vital, however, that lawmakers start to work immediately on remedies that will enable them to move the debate forward in a meaningful way. “If the United States continues to mishandle its immigration policy, it will damage one of the vital underpinnings of

American prosperity and security, and could condemn the country to a long, slow decline in its status in the world.”⁹⁸

Endnotes

¹ Ronald Reagan, *The Papers of the President, Ronald Reagan, 1981*, Vol. I (Washington, DC: Government Printing Office, 1982), 676–77, cited in Michael LeMay and Elliott Robert Barkan, eds., *U.S. Immigration and Naturalization Laws and Issues: A Documentary History*, (Westport, CT: Greenwood Press, 1999), 276.

² Linda Chavez, “The Reality of Immigration,” *Commentary* (July/August 2009) in William Dvorak, ed., *Immigration in the United States* (New York: The H.W. Wilson Company, 2009), 43.

³ Council on Foreign Relations, *U.S. Immigration Policy*, Independent Task Force Report No. 63 (New York: Council on Foreign Relations Publications Office, 2009), 27.

⁴ *Ibid.*, 6.

⁵ Jeffrey S. Passel and Michael Fix, “Myths About Immigrants,” *Foreign Policy* 95 (Summer 1994): 151, in ProQuest (accessed February 5, 2012). Full quote: “U.S. immigration policy needs to be viewed as not one, but three fundamentally different sets of rules: those that govern legal immigration (mainly sponsored for admission for family and work); those that govern humanitarian admissions (refugees and those granted asylum); and those that control illegal entry.”

⁶ Council on Foreign Relations, *U.S. Immigration Policy*, 7.

⁷ Susan Martin, “The Politics of US Immigration Reform,” in Sarah Spencer, ed., *The Politics of Migration: Managing Opportunity, Conflict and Change* (Malden, MA: Blackwell Publishing, 2003), 138.

⁸ As noted, this paper will not discuss the politics or policies related to U.S. humanitarian admissions.

⁹ The cards given to legal permanent residents to prove their legal U.S. residence used to be green, making a ‘green card holder’ synonymous with being an LPR.

¹⁰ This includes the children of legal and illegal immigrants who were brought here as minors and whose age precludes them from self-determination regarding where they should live and/or limits their options for adjustment to legal status on their own.

¹¹ Human Rights Watch, *Tough, Fair, and Practical: A Human Rights Framework for Immigration Reform in the United States* (July 2010), 20.

¹² John F. Kennedy, *Public Papers of the Presidents of the United States* (Washington, DC: U.S. Government Printing Office, 1964), 594–597, cited in Center for Immigration Studies,

Three Decades of Mass Immigration: The Legacy of the 1965 Immigration Act (September 1995), <http://www.cis.org/articles/1995/back395.html> (accessed February 5, 2012).

¹³ Lawrence Auster, *The Path to National Suicide: An Essay on Immigration and Multiculturalism* (Monterey, VA: The American Immigration Control Foundation), 11, and Center for Immigration Studies, *Three Decades of Mass Immigration*.

¹⁴ Frank D. Bean, Georges Vernez, and Charles B. Keely, *Opening and Closing the Doors: Evaluating Immigration Reform and Control* (Santa Monica, CA: The RAND Corporation, and Washington, DC: The Urban Institute Press, 1989), 12. The history, interpretation and impact of U.S. immigration policy since the nation's founding fills multitudes of books. For the purposes of this paper, the historical focus is on immigration from 1965 to present day, since the 1965 legislative revision serves as the basis for how existing immigration policy continues to operate.

¹⁵ Darrell M. West, *Brain Gain: Rethinking U.S. Immigration Policy* (Washington, DC: Brookings Institution Press, 2010), 30–31.

¹⁶ Center for Immigration Studies, *Three Decades of Mass Immigration*.

¹⁷ West, *Brain Gain*, 32.

¹⁸ Edward Hutchison, *Legislative History of American Immigration Policy, 1798–1965* 376 (Philadelphia: University of Pennsylvania Press, 1981), cited in Bill Ong Hing, *Defining America Through Immigration Policy* (Philadelphia: Temple University Press, 2004), 94.

¹⁹ Edward Kennedy (U.S. Senate, Subcommittee on Immigration and Naturalization of the Committee on the Judiciary, Washington, DC, February 10, 1965), 1–3, cited in Center for Immigration Studies, *Three Decades of Mass Immigration*.

²⁰ Emanuel Celler, *Congressional Record* (August 25, 1965), 21812, cited in Center for Immigration Studies, *Three Decades of Mass Immigration*.

²¹ Lyndon B. Johnson, *Public Papers of the Presidents of the United States* (Washington, DC: U.S. Government Printing Office, 1966), 1037–1040, cited in Center for Immigration Studies, *Three Decades of Mass Immigration*.

²² Auster, *The Path to National Suicide*, 15.

²³ *Ibid.*, 15; the U.S. Department of Homeland Security, *Yearbook of Immigration Statistics: 2010* (Washington, DC: U.S. Department of Homeland Security, Office of Immigration Statistics, August 2011), 5; and Martin, “The Politics of US Immigration Reform,” in Spencer, *The Politics of Migration*, 138.

²⁴ James W. Thompson, “The Problem That Refuses to Leave,” *USA Today Magazine* (January 2009) in William Dvorak, ed., *Immigration in the United States* (New York: The H.W. Wilson Company, 2009), 35.

²⁵ John Isbister, *The Immigration Debate: Remaking America* (West Hartford, CT: Kumarian Press, Inc., 1996), 32–39, and Michael Greenstone and Adam Looney, “Ten

Economic Facts About Immigration,” *Policy Memo* September 2010 (The Hamilton Project: Brookings Institute), 1.

²⁶ West, *Brain Gain*, 33.

²⁷ Each month, a *Visa Services Bulletin* from the State Department alerts posts to the petition priority cut-off date that is considered “current” for case processing, and the electronic tracking system allocates visa numbers to U.S. embassies and consulates (each visa equals one number and is tied to the nationality of the applicant). As consular officers issue visas, the total is rolled up and counted against the total authorized, which in turn determines how many visa numbers will be available in the following month.

²⁸ Family preference categories are: first preference (F1) are the unmarried, adult sons/daughters of U.S. citizens; second preference (F2A) are the spouses and unmarried children of LPRs; second preference (F2B) are the unmarried adult sons/daughters of permanent residents; third preference (F3) are the married sons/daughters (any age) of U.S. citizens; and fourth preference (F4) are the siblings of adult U.S. citizens. U.S. Citizenship and Immigration Services, *Preference Categories*, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=1d383e4d77d73210VgnVCM100000082ca60aRCRD&vgnnextchannel=1d383e4d77d73210VgnVCM100000082ca60aRCRD> (accessed February 26, 2012).

²⁹ Because of birthright citizenship in the U.S., the Immigration and Nationality Act (as amended) requires petitioners to be over the age of 21. As such, it also makes the distinction between children (those under age 21) and sons/daughters (offspring who are over age 21).

³⁰ U.S. Department of State, *Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based Preferences Registered at the National Visa Center as of November 1, 2011*, (Washington, DC: U.S. Department of State, November 1, 2011), <http://www.travel.state.gov/pdf/WaitingListItem.pdf> (accessed on January 21, 2012).

³¹ The authorized number of preference visas changes each year. Annual family-sponsored immigrant visa issuance totals from 1992–2010 range from a high of 226,057 in 1993 to a low of 129,414 in 2002; numbers have climbed each year since 2002 to a new high of 200,567 in 2010. For 2012, the per-country limit of immigrants in numerically controlled categories, as imposed by INA 202, will be 15,820 for family-based cases and 10,080 for employment-based cases. (Source: U.S. Department of State, *Immigrant and Nonimmigrant Visas Issued*) U.S. Citizenship and Immigration Service, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=aa290a5659083210VgnVCM100000082ca60aRCRD&vgnnextchannel=aa290a5659083210VgnVCM100000082ca60aRCRD> (accessed on January 21, 2012); and U.S. Department of State, *Annual Report of Immigrant Visa Applicants*.

³² Pia M. Orrenius and Madeline Zavodny, *Beside the Golden Door: U.S. Immigration Reform in a New Era of Globalization* (Washington, DC: American Enterprise Institute for Public Policy Research, 2010), 30–34.

³³ Council on Foreign Relations, *U.S. Immigration Policy*, 51.

³⁴ The priority date is the official term for the date the petition was accepted by USCIS. When an applicant appears for an interview, he must prove he is qualified for the visa and has no ineligibilities. There is never any guarantee of visa issuance at an appointment, and if the applicant's case is incomplete for whatever reason (including the need for additional administrative processing by the Department of State), the delay until issuance of the visa can at times be quite protracted.

³⁵ In this category, petitions by American citizens for their unmarried sons/daughters who hold Mexican nationality are current for scheduling if they were filed before May 1, 1993; that date moves forward to June 22, 1997, if the intending immigrants are from the Philippines and to February 1, 2005, if they are from any other nation. U.S. Department of State, *Visa Services Bulletin*, No. 42, Vol. IX, (Washington, DC: U.S. Department of State, February 8, 2012).

³⁶ Family members from the Philippines have the longest wait time, with a current priority date of December 22, 1988; Mexican national petitions with priority dates earlier than May 22, 1996, are considered current for scheduling purposes. All other nationalities have a current priority date of October 8, 2000. U.S. Department of State, *Visa Services Bulletin*, No. 42.

³⁷ E-3/EW workers require a permanent, full-time job offer to work in one of three categories in a position for which the Department of Labor has certified qualified workers are not available in the United States. The three categories are skilled (those whose job is not seasonal or temporary and which requires a minimum of two years training or work experience, not of a temporary or seasonal nature), professional (someone whose job requires at least a U.S. baccalaureate degree or a foreign equivalent), or unskilled, non-seasonal labor, which requires less than two years training or experience. Indian workers in these categories must have priority dates prior to August 22, 2002, to be scheduled; for Chinese E-3 and EW immigrants that date is January 1, 2005 and April 22, 2003, respectively. All other nationalities in these categories have a current priority date of March 15, 2006. U.S. Department of State, *Visa Services Bulletin*, No. 42.

³⁸ Employment-based visas numbered 12,701 for the year. U.S. Department of State, *Immigrant and Nonimmigrant Visas Issued at Foreign Service Posts Fiscal Years 1992–2010*, <http://www.travel.state.gov/pdf/MultiYearTable1.pdf> (accessed on January 31, 2012).

³⁹ U.S. Department of Homeland Security, *Yearbook of Immigration Statistics*, 18–24. There is always a difference between the number of issued immigrant visas and the number of entrants because most immigrants' visas are valid for initial entry up to six months from the date of issuance.

⁴⁰ DV entries are done electronically in December of one fiscal year for the following fiscal year's program; the statistics cited are for entries in the DV-2013 program done in December 2011. The total number of entries was halved from the total for the DV-2012 program because Bangladesh nationals were eliminated from eligibility. U.S. Department of State, *DV Applicant Entrants by Country*, http://travel.state.gov/pdf/DV_Applicant_Entrants_by_Country_2007-2013.pdf (accessed on January 20, 2012). Although 55,000 visas are available each year, since 1992 the highest annual number of diversity visas issued in the program's current format was only 49,771. (Source: U.S. Department of State, *Immigrant and Nonimmigrant Visas Issued*.)

⁴¹ Because of high demand and long wait times, many go around the immigrant visa system and move to the U.S. permanently (and legally) through marriage to an American citizen, a highly popular option that can be confirmed by the hundreds of thousands of results in an online “marry a U.S. citizen” Google search. Fiancé nonimmigrant visas are available for those who live outside the U.S. but intend to marry within 60 days of arrival in the U.S.; they then adjust status with USCIS. Those already in the U.S. can marry an American and apply for adjustment of status immediately, regardless of how they entered the U.S. A small number of individuals can self-petition as investors and extraordinary individuals.

⁴² This figure reflects the individuals who were found eligible for visas out of the total 8,319,235 who applied; this figure does not include individuals who traveled to the U.S. visa-free under the Visa Waiver Program. U.S. Department of State, *NIV Workload by Visa Category FY 2010*, <http://www.travel.state.gov/pdf/FY2010NIVWorkloadbyVisaCategory.pdf> (accessed on January 31, 2012).

⁴³ “Temporary” can be a misleading term when discussing visas. Almost all of the 81 different categories in which nonimmigrant visas may be issued allow individuals to live, study and/or work in the U.S. for as much as five years (renewable); individuals with these visas may also be able to adjust status to become legal permanent residents, although not everyone with the option to do so will choose to become an LPR. Travelers who enter visa-free under the Visa Waiver Program are not allowed to adjust status.

⁴⁴ U.S. Department of State video, *Let’s Talk Numbers*, http://travel.state.gov/visa/visa_5663.html (accessed February 26, 2012).

⁴⁵ U.S. Department of Homeland Security, *Yearbook of Immigration Statistics*, 18–19.

⁴⁶ Mexicans have worked in agricultural jobs in the United States since the early 1900s. During World War II, much in the same way that American women backstopped men in the industrial economy, Mexican labor kept the agricultural economy afloat, most notably under a treaty with Mexico that created the controversial Bracero program. Under the treaty, which was in place from 1942 to 1964, the U.S. government recruited workers in poor, isolated Mexican provinces on behalf of American private employers. The program was overseen by the Farm Security Administration (FSA), which was to manage the inflow of workers through both quantitative and qualitative control of work contracts, wages, and living and work conditions. Unfortunately, because FSA was woefully understaffed, it was never able to guarantee the minimum conditions set forth in the treaty, which allowed employers to take advantage of workers, gave rise to an increase in black market recruiting and smuggling of workers, and gave employers the incentive to bypass the bond, contracting fee, and other safeguards designed to protect Bracero program participants. Hing, *Defining America*, 126–133.

⁴⁷ Bean, Vernez, and Keely, *Opening and Closing the Door*, 20.

⁴⁸ Hing, *Defining America*, 131–133.

⁴⁹ Michael C. LeMay, *Anatomy of a Public Policy: The Reform of Contemporary American Immigration Law* (Westport, CT: Praeger Publishers, 1994), 32.

⁵⁰ Center for Immigration Studies, *Three Decades of Mass Immigration: The Legacy of the 1965 Immigration Act* (September 1995), <http://www.cis.org/articles/1995/back395.html> (accessed February 5, 2012).

⁵¹ LeMay, *Anatomy of a Public Policy*, 34.

⁵² Hing, *Defining America*, 157.

⁵³ LeMay, *Anatomy of a Public Policy*, 35.

⁵⁴ Daniel James, *Illegal Immigration: An Unfolding Crisis* (Lanham, MD: University Press of America, 1991), 6.

⁵⁵ Michael LeMay and Elliott Robert Barkan, eds., *U.S. Immigration and Naturalization Laws and Issues: A Documentary History*, (Westport, CT: Greenwood Press, 1999), 282.

⁵⁶ LeMay, *Anatomy of a Public Policy*, 55–58; Bean, Vernez, and Keely, *Opening and Closing the Door*, 26–34; LeMay and Barkan, eds., *U.S. Immigration and Naturalization Laws and Issues*, 282–288.

⁵⁷ LeMay and Barkan, eds., *U.S. Immigration and Naturalization Laws and Issues*, 282; Spencer Abraham and Lee H. Hamilton, co-chairs, *Immigration and America's Future: A New Chapter; Report of the Independent Task Force on Immigration and America's Future* (The Migration Policy Institute, The Manhattan Institute for Policy Research, and The Woodrow Wilson International Center for Scholars, 2006), 20.

⁵⁸ Jeffrey S. Passel and D'Vera Cohn, "Unauthorized Immigrant Population: National and State Trends, 2010," (Washington, DC: Pew Hispanic Center, February 1, 2011) <http://www.pewhispanic.org/2011/02/01/unauthorized-immigrant-population-national-and-state-trends-2010/> (accessed on January 29, 2012); U.S. Department of Homeland Security, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2010* (Washington, DC: U.S. Department of Homeland Security, Office of Immigration Statistics, February 2011), 3.

⁵⁹ U.S. Department of Homeland Security, *Estimates of the Unauthorized Immigrant Population*, 3.

⁶⁰ Council on Foreign Relations, *U.S. Immigration Policy*, 5.

⁶¹ *Ibid.*, 50.

⁶² Barack Obama, *Building a 21st Century Immigration System* (Washington, DC: The White House, 2011), 1.

⁶³ U.S. Department of Homeland Security, *Nonimmigrant Admissions to the United States: 2010, Annual Flow Report* (Washington, DC: U.S. Department of Homeland Security: Office of Immigration Statistics, August 2011) http://www.dhs.gov/xlibrary/assets/statistics/publications/ni_fr_2010.pdf (accessed February 4, 2012).

⁶⁴ “USA: International Tourism to Help the Economy,” <http://www.tourism-review.com/usa-international-tourism-to-help-the-economy-news3061> (accessed February 4, 2012) and Sylvie Branch, “International Tourism Could Spark American Economy,” (December 29, 2011) <http://news.yahoo.com/international-tourism-could-spark-american-economy-163900468.html> (accessed February 4, 2012).

⁶⁵ NAFSA: Association of International Educators, “The Economic Benefits of International Education to the United States for the 2010-2011 Academic Year: A Statistical Analysis,” http://www.nafsa.org/_/File/_/eis2011/USA.pdf (accessed January 23, 2012).

⁶⁶ Obama, *Building a 21st Century Immigration System*, 13.

⁶⁷ Oregon Center for Public Policy, *Undocumented Workers Are Taxpayers, Too* (January 25, 2012) <http://www.ocpp.org/2012/01/25/iss20120120undocumented-workers-are-taxpayers-too/> (accessed February 21, 2012).

⁶⁸ John Bellows, “The Many Contributions of Immigrants to the American Economy,” *Treasury Notes* (U.S. Department of the Treasury, May 25, 2011) <http://www.treasury.gov/connect/blog/Pages/The-Many-Contributions-of-Immigrants-to-the-American-Economy.aspx>, accessed January 22, 2012.

⁶⁹ Stuart Anderson and Michaela Platzer, *American Made: The Impact of Immigrant Entrepreneurs and Professionals on U.S. Competitiveness* (National Venture Capital Association, ND), 30.

⁷⁰ Anderson and Platzer, *American Made*, 11.

⁷¹ Robert W. Fairlie, “Estimating the Contribution of Immigrant Business Owners to the U.S. Economy,” *Small Business Research Summary* No. 334 (Small Business Administration, Office of Advocacy: November 2008).

⁷² John Bellows, “The Many Contributions of Immigrants.”

⁷³ Greenstone and Looney, “Ten Economic Facts About Immigration,” 5.

⁷⁴ Congressional Budget Office, “A Description of the Immigrant Population: An Update,” (Washington, DC: The Congress of the United States, June 2011), 19.

⁷⁵ Congressional Budget Office, “The Impact of Unauthorized Immigrants on the Budgets of State and Local Governments,” (Washington, DC: The Congress of the United States, December 2007), 1.

⁷⁶ Isbister, *The Immigration Debate*, 157.

⁷⁷ Congressional Budget Office, “The Impact of Unauthorized Immigrants,” 8.

⁷⁸ Congressional Budget Office, “The Impact of Unauthorized Immigrants,” 3.

⁷⁹ Paula N. Singer and Linda Dodd-Major, "Identification Numbers and U.S. Government Compliance Initiatives," *Tax Notes*, Vol. 104 (September 20, 2004), 1429–1433, cited in Congressional Budget Office, "The Impact of Unauthorized Immigrants," 6.

⁸⁰ Social Security Advisory Board, *Issue Brief #1: The Impact of Immigration on Social Security and the National Economy* (Washington, DC: Social Security Advisory Board, December 2005), 3.

⁸¹ Council on Foreign Relations, *U.S. Immigration Policy*, 13.

⁸² *Ibid.*, 57.

⁸³ U.S. Citizenship and Immigration Services, "EB-5 Immigrant Investor Visa Description," <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=facb83453d4a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=facb83453d4a3210VgnVCM100000b92ca60aRCRD> (accessed February 21, 2012).

⁸⁴ U.S. Department of State, *Annual Report of Immigrant Visa Applicants*.

⁸⁵ Ruth Ellen Wasem, *Overview of Immigration Issues in the 112th Congress* (Washington, DC: Congressional Research Service, March 21, 2011), 14.

⁸⁶ *Visa Improvements to Stimulate International Tourism to the United States Act*, S.1746, 112th Congress, 1st sess. (October 20, 2011), <http://www.govtrack.us/congress/bill.xpd?bill=s112-1746&tab=summary>.

⁸⁷ Council on Foreign Relations, *U.S. Immigration Policy*, 91.

⁸⁸ Orrenius and Zavodny, *Beside the Golden Door*, 88.

⁸⁹ Of the 4.6 million visa applicants waiting for appointments, almost 3.9 million individuals would be removed from the queue using this concept. It is near impossible to provide a reasoned estimate of the financial payout required for removing people from the queue since petition filing fees have changed over time, but if one were to assume that one-third of these 3.9 million cases represent original petitions (so each case has two derivative beneficiaries) and that the average filing fee paid was \$200, eliminating the potential applicants from the future immigrant pool would cost approximately \$260 million, not including staff time to close out the cases.

⁹⁰ This is already being done with the K and V nonimmigrant visas, so precedent exists to use this method.

⁹¹ U.S. Department of State, "Annual Report of Immigrant Visa Applicants."

⁹² U.S. Department of State, "Annual Report of Immigrant Visa Applicants."

⁹³ *Ibid.* By prioritizing spouses/sons/daughters, the backlog could be reduced by one-quarter in three years using the following framework.

Visa Category	Starting Total	Year 1 Reduction	Year 2 Reduction	Year 3 Reduction	Remainder
	4,501,066				
F1	295,168	295,168	—	—	—
F2A	322,636	111,832	210,804	—	—
F2B	517,119	15,000	200,000	302,119	—
F3	846,520	15,000	21,196	110,000	700,324
F4	2,519,623	15,000	20,000	39,881	2,444,742
	Total remaining				3,145,066

⁹⁴ S.1746.

⁹⁵ Council on Foreign Relations, *U.S. Immigration Policy*, 76.

⁹⁶ *Ibid.*, 78.

⁹⁷ Council on Foreign Relations, *U.S. Immigration Policy*, 77. A waiver of the ineligibility that attaches due to length of illegal presence would need to be incorporated into the INA.

⁹⁸ *Ibid.*, 6.

