

SPECIAL REPORT

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An Agenda for American Immigration Reform

Edited by James Jay Carafano, PhD, John G. Malcolm, and Jack Spencer

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Foreword

Kay Coles James

The toughest policy issues call for honest, clear, and bold solutions. Throughout my career in government and public policy, few issues have presented challenges like America's flawed immigration system and broken borders. For decades, Congress has tried and failed to deliver satisfactory solutions. This situation cannot stand. Now is the time for action.

This is too important an issue not to get right and too important an issue to be driven by partisan agendas. Immigration, after all, is one of the fundamental building blocks that help to make America the unique nation that it is.

For over two centuries, the United States has welcomed millions of people from every corner of the globe. During the Constitutional Convention of 1787, James Madison expressed his wish "to invite foreigners of merit and republican principles among us. America was indebted to emigration for her settlement and prosperity." That open, welcoming attitude exists today, as evidenced by the fact that the United States lawfully admits over a million foreigners per year, more than any other country.

With that in mind, the research team at The Heritage Foundation set out to deliver a complete answer to the challenges posed by border security and immigration. They have developed solutions that work to the benefit of all Americans. The recommendations in this report address the fundamental issues: effective border security, dealing appropriately with those who are already unlawfully present in the United States,

enforcing immigration law, reforming legal immigration, and ensuring that those who assimilate become a genuine part of the great American community.

Our team developed meaningful and effective solutions by identifying and assessing the most vexing contemporary challenges for immigration and border security. We then applied principled analysis to produce comprehensive recommendations. Americans need to know where conservatives stand on immigration. This paper fills that need.

Fixing the problem requires some tough medicine. Amnesty is not the answer. We must stand strong against those who advocate open borders. Our borders must be secured—and yes, that means building more barriers (a wall if you will) along our southern border. Individuals who are here illegally do not have a right to stay. Our laws have to be enforced. It is only fair to millions of Americans that we expect those who join our great nation to respect its laws and add to its wealth and welfare.

At Heritage, we're committed to solving this challenge. This report is a start, and you can count on us to provide the best research both now and in the future to ensure that policymakers are equipped to make the right decisions.

We know these are the right solutions. We are ready to fight for them because we believe the freedom, safety, and prosperity of all Americans is something worth fighting for.

An Agenda for American Immigration Reform

Edited by James Jay Carafano, PhD, John G. Malcolm, and Jack Spencer

To address immigration and border security in a manner that keeps America free, safe, and prosperous, Congress must take a step-by-step approach to the full range of issues: Reject amnesty and open borders; secure our southern border; end “catch and release;” combat transnational criminal networks, fraud, humanitarian abuses, and human trafficking; restore the integrity of immigration enforcement; and sustain productive regional engagement. Our flawed immigration system cannot be fixed without adoption and implementation of these initiatives. Legal immigration reform should include transitioning to a merit-based system, ending practices like birthright citizenship, and promoting patriotic assimilation. Moreover, legal immigration, border security, and enforcement reforms should stand alone and advance on their own merits, not bundled into a comprehensive package.

Introduction

Despite a protracted debate on immigration and border security that has lasted more than a decade, Congress has failed to address these issues in a manner that will keep America free, safe, and prosperous. This must end. The role of Congress is critical in crafting a proper path forward. Congress must address the full range of issues but take a step-by-step approach.

For many years, experts at The Heritage Foundation have laid out a problem-solving road map for addressing the obstacles to immigration and border security reform. These measures include rejecting amnesty and open borders; securing our southern border; ending “catch and release”; combatting transnational criminal networks, fraud, humanitarian abuses, and human trafficking; restoring the integrity of immigration enforcement; and sustaining productive regional engagement.

All of these measures support the goal of reducing the unlawfully present population and deterring future illegal immigration. Major elements of that reform package, however, have yet to be implemented.

It is impossible to fix our broken borders and flawed immigration system without the adoption and implementation of these initiatives.

Legal immigration reform is another important step. An effective legal immigration system is part of a powerful deterrent against illegal immigration, protects American sovereignty, respects the rule of law, preserves American identity, and contributes to the wealth and welfare of the nation. These reforms include transitioning to a merit-based system, ending practices like birthright citizenship, and promoting patriotic assimilation.

In addition, it is important that legal immigration, border security, and enforcement reforms not be bundled into a comprehensive package. They should stand alone and advance on their own merit.

The agenda for reform outlined in this paper was developed by:

- **Assessing the problem.** Our current system stands on a clear constitutional foundation that

established the sanctity of popular sovereignty, respect for the rule of law, and the protection of human liberty. Over many decades, that clarity has been lost through political compromise and contradictory impulses. In addition, shifting security, economic, and cultural challenges that often promote contrasting priorities must also be addressed.

■ **Establishing principles.** To remain true to the foundation established by the Constitution and adapt border security, enforcement, and immigration law to address contemporary challenges, our research identified four key principles to evaluate and prioritize our recommendations:

1. *Respect the consent of the governed.* There is no right to become a citizen or remain unlawfully present in the U.S.; there is no place in America for a policy of “open borders.”
2. *Preserve patriotic assimilation.* This is a nation where immigrants become American, and it must remain so.
3. *Do not compromise national security and public safety.* We must know who is entering the country and have resilient and efficacious means to screen against malicious threats and remove people that break the law or are a danger to American citizens.
4. *Respect the rule of law.* Those who enter illegally are violating the rule of law; the Law of Nations Clause of the Constitution guarantees the power to control immigration.

■ **Defining an agenda for action.** This agenda provides a guide for mastering the challenges faced by legislators in crafting an effective agenda that addresses present-day conditions. These recommendations include border security, enforcing the law, and legal immigration reforms. They conform to the four guiding principles outlined above.

Taken together, this package of reforms addresses the scope of what needs to be accomplished to restore the integrity and effectiveness of border and immigration enforcement, preserve the sovereignty of Americans, and modernize the legal immigration system.

Assessing the Problem

Significant factors complicate the problem of reforming legal immigration, enforcement, and border security. The United States cannot have borders and immigration that better serve all Americans without addressing them.

Chain Migration and the Visa Lottery. Since 2000, the U.S. has provided lawful permanent residence (LPR)—a “green card”—to around one million foreigners each year. In fiscal year (FY) 2016, for instance, the U.S. awarded 1.18 million green cards. After five years of U.S. residence, LPRs are able to apply for U.S. citizenship. The number of green cards that can be awarded is generally limited by law and is split into various categories and preferences. (See Table 1.)

The largest category is family-based, which is divided into capped and uncapped portions. Immediate relatives of U.S. citizens (defined as spouses, children, and parents) have no numerical limit, and the U.S. awarded 566,706 green cards to this group in 2016. Other family categories are capped at various levels. Overall, the U.S. awarded 68 percent of its green cards in 2016 for family-based reasons.

Employment-based green cards are the next-largest category, with only 140,000 statutorily allowed every year. In FY 2016, only 11.65 percent of green cards went to immigrants for employment reasons. In addition to these categories, no more than 7 percent of green cards can be awarded to citizens of any one country.¹

For some time, the family reunification preference has been a means to extend green cards well beyond the nuclear family. In essence, once a family member is legally allowed within the country, a chain begins that extends out to the farthest reaches of a family. Similarly, while family-based immigrants contribute to the U.S. economy in some ways, depending on their education and skill level, the current system does not consider their skills or productivity, but merely their relation to someone already living in the United States. A review of the economic literature from scholars of various ideological and academic leanings finds that higher-skilled and more-educated immigrants bring greater economic benefits from entrepreneurship and innovation than lower-skilled or less-educated immigrants bring.²

Given the finite number of available slots for entering this country, family migration is coming not merely at the expense of the U.S. and its citizens, but also

TABLE 1

Breakdown of Lawful Permanent Residence Admissions, FY 2017

Type and Class of Admission	Number	Percentage
TOTAL	1,127,167	100.0%
Family-Sponsored Preferences	232,238	20.6%
First: Unmarried sons/daughters of U.S. citizens and their children	26,219	2.3%
Second: Spouses, children, and unmarried sons/daughters of alien residents	113,500	10.1%
Third: Married sons/daughters of U.S. citizens and their spouses and children	23,260	2.1%
Fourth: Brothers/sisters of U.S. citizens (at least 21 years of age) and their spouses and children	69,259	6.1%
Immediate Relatives of U.S. Citizens	516,508	45.8%
Spouses	292,909	26.0%
Children	74,989	6.7%
Parents	148,610	13.2%
FAMILY AND RELATIVES SUBTOTAL	748,746	66.4%
Employment-Based Preferences	137,855	12.2%
First: Priority workers	41,060	3.6%
Second: Professionals with advanced degrees or aliens of exceptional ability	39,331	3.5%
Third: Skilled workers, professionals, and unskilled workers	38,083	3.4%
Fourth: Certain special immigrants	9,504	0.8%
Fifth: Employment creation (investors)	9,877	0.9%
Diversity	51,592	4.6%
Refugees	120,356	10.7%
Asylees	25,647	2.3%
All other	42,971	3.8%

SOURCE: U.S. Department of Homeland Security, *2017 Yearbook of Immigration Statistics*, “Table 6. Persons Obtaining Lawful Permanent Resident Status by Type and Major Class of Admission: Fiscal Years 2015 to 2017,” <https://www.dhs.gov/immigration-statistics/yearbook/2017/table6> (accessed February 13, 2019).

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at the expense of other people who want to come to the U.S. legally.

The idea of selecting new citizens based on their skills is not unique or new. For example, since 2006, according to a U.S. Law Library of Congress study, Canada has pursued reforms to “focus [its]

immigration system on fueling economic prosperity and to place a high priority on finding people who have the skills and experience to meet Canada’s economic needs.”³ And since 2008, Canada has been “tightening its immigration policies and focusing on economic class immigrants (i.e., immigrants who

have the skills and abilities to contribute to Canada's economy) and short-term labor needs."⁴ In 2016, Canada awarded 26 percent of its permanent resident visas on the basis of family connections and 52 percent to immigrants on an economic basis.⁵ In addition, several other developed nations—including Australia, the United Kingdom, New Zealand, Japan, South Korea, Denmark, Austria, Germany, Hong Kong, the Czech Republic, and Romania—successfully employ merit-based immigration systems.

Another significant problem with the status quo is the limit of 7 percent per country on green cards.⁶ The per-country limit has led to significant backlogs for immigrants from large immigrant-sending countries such as India, Mexico, the Philippines, and China. This policy ignores both the value of and the justification for individual immigrants coming to the U.S. exclusively because of their country of origin, and the result is clearly discriminatory.

Similarly, the Diversity Immigrant Visa Program, otherwise known as the “visa lottery” program, awards 50,000 visas per year drawn from a “random selection among all entries to individuals who are from countries with low rates of immigration to the United States.”⁷ A lottery is hardly a purposeful design for determining who can become an LPR—and eventually a citizen—in the United States.

Meritless Legal Claims. The current immigration court system has a backlog of over 800,000 cases. Immigrants with viable claims of asylum or other meritorious claims for legal status in the United States should have confidence that their cases will be handled in a fair, legal, and expeditious manner, but because our immigration court system is overwhelmed, outdated, and in dire need of reform, cases of merit are lumped in with meritless cases, each of which can take years to resolve.

It is a common dilatory tactic for aliens to file applications for relief that lack legal and factual merit due to the length of time required for immigration judges to adjudicate them, especially those on a nondetained docket. This tactic is perhaps the single greatest reason for the backlog of cases pending adjudication in every immigration court throughout the Executive Office of Immigration Review (EOIR), especially for recent entrants seeking asylum and withholding of removal.

Practically speaking, there is no downside for an alien with counsel or one appearing *pro se* not filing an application for relief regardless of the lack of a

factual basis or support by relevant case law through controlling precedent.⁸ All trial participants know that if the alien expresses any sort of harm, the immigration judge is duty-bound to provide them a Form I-589 application for relief, grant a continuance for them to file the application, and then schedule an individual hearing on the merits and prepare an exhaustive oral or written decision if the application is denied.⁹ Given the common practice by the Department of Homeland Security (DHS) not to appeal discretionary decisions favorable to the alien to the Board of Immigration Appeals (BIA), many immigration judges apparently grant relief from removal to avoid the considerable time required to prepare an oral or written decision.

In every state, federal, and administrative court system in the United States, judges routinely issue summary decisions in cases based solely on the documents filed in the record and without taking any testimony from the parties or their witnesses under oath in open court. If a typical state court judge were required to issue the same degree of precision, either orally or in writing, in every case and for any request by the parties, as is currently the practice in immigration courts, their docket would be at a virtual standstill.

In *Iqbal v. Ashcroft*,¹⁰ the Supreme Court of the United States established a workable standard for federal judges to adjudicate motions to dismiss for failure to state a claim for relief under Federal Rule of Civil Procedure 12(b)(6). This “plausibility” standard ensures that the nonmovant’s evidence is afforded the utmost probative value before a judge’s summary denial of their claim is given deference on appellate review. Applying the *Iqbal* standard in the immigration context, summary dismissal of an alien’s claim for relief would be proper when, upon consideration of the application for relief and supporting documents in the record, it is clear that the applicant’s claims are not supported by law, that one or more facts necessary to assert a valid claim have not been alleged, or that facts exist that necessarily defeat the applicant’s claims. That standard, however, did not stand.

In April 2018, the U.S. Supreme Court decided the case of *Sessions v. Dimaya*.¹¹ The Court held that part of the Immigration and Nationality Act (INA) used to deport criminal aliens was unconstitutionally vague. At issue was a provision of the INA that defines what a crime of violence is for purposes of immigration removal proceedings.¹² Under federal

law, if an alien is convicted of an “aggravated felony,”¹³ he is subject to deportation even if he is in the country legally. The definition of “aggravated felony” incorporates by reference 18 U.S.C. §16(b), which defines “crime of violence” to encompass “any...offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.”¹⁴ The statute lists specific offenses that fall under the definition of “aggravated felony,” one of which is a “crime of violence” punishable by at least a year in prison.

James Dimaya was an LPR from the Philippines. After his second conviction for first-degree burglary in California, the United States moved to deport him. The immigration court ordered him removed, but the Ninth Circuit and Supreme Court held that Section 16(b) was unconstitutionally vague. If immigration judges are forced to proceed without legislative clarity as to what a crime of violence is for purposes of ordering a criminal alien removed, many dangerous felons and recidivist alien criminals will remain in this country even after conviction.

Another issue of concern is the Ninth Circuit Court of Appeals misinterpretation of the *Flores v. Reno* settlement agreement or “*Flores* settlement,” in which the Clinton Administration agreed to release unaccompanied alien minors within 20 days. This encourages illegal border crossing and fraudulent claims.¹⁵

The Ninth Circuit recently held that the *Flores* settlement requires the DHS to release from its custody all children, even if they are with their parents, so when adults cross the border with a child, DHS is required to release the child within 20 days. Since the parents broke the law by crossing the border illegally, the government tries to detain and prosecute them after their asylum claims are completed, and since that will take more than 20 days, the DHS has to release the child, leaving the government with the choice of detaining the parents or releasing them all.

With the end of the zero-tolerance policy, the DHS has decided that it will simply release anyone accompanied by a child in order to comply with *Flores v. Reno*. As a result, the number of family units crossing the border is skyrocketing, overwhelming the DHS’s ability even to figure out basic details of their travel and exhausting the immigration court system.

Legislative Missteps. The current structure of quotas based on the INA has put tremendous strain on the system, increasing illegal immigration and

jeopardizing the ability of the United States to recruit and retain those who want to come to America to improve their own lives and those of other Americans. The resulting frustration with the immigration system from virtually every ideological perspective has contributed significantly to the demand for reform.

In the past few decades, the national debate has revolved around how best to enforce existing immigration laws, how best to stem the tide of illegal immigration into the United States, what we should do about the millions of illegal immigrants residing in the United States, and what should be done to change our legal immigration system. One approach to solving these interrelated and vexing issues has been to pass a “comprehensive immigration reform” law. On its surface, that approach might seem reasonable, as we are a country of problem solvers, and anything Congress can do to fix a problem once and for all is necessarily appealing.

In practice, however, the fix-it-all-at-once approach has contributed to the problem and should not be repeated. The most recent example is the Reagan-era Immigration Reform and Control Act of 1986, otherwise known as the Simpson–Mazzoli Act.¹⁶ Amnesty kicked in immediately, and over 3 million illegal aliens gained legal status in the United States. Employers found ways to skirt the new law: They complied technically with the verification requirements by accepting what looked like genuine work documents, regardless of what they reasonably should have known about the veracity of the documents.¹⁷ In addition, money for increased border security was not appropriated immediately.

By 1989, illegal immigration border crossings had increased as the lure of jobs and future amnesty drove millions to cross the U.S.–Mexico border.¹⁸ Strengthened border patrols in some areas merely dispersed illegal crossings to other areas.¹⁹ Today, millions of illegals are living inside the United States.

Security and Public Safety. The security and public safety risks to U.S. come in several forms, both through legal and illegal channels.

Terrorist Use of the Legal Immigration System. Bad actors can attempt to use U.S. legal immigration to harm the U.S. The 9/11 attacks by terrorists who legally entered the U.S. for the sole purpose of executing an attack served as a wakeup call to this reality. The Bush Administration instituted significant changes in its immigration and traveler vetting, and the U.S. system is now far better connected, with incoming

visitors directly screened against many U.S. interconnected databases and watch lists. As a result, the available data show that few terrorists have managed to sneak through U.S. vetting since the improvement in our vetting systems.

In FY 2017, according to the Department of Homeland Security and Department of Justice, DHS encountered 335 individuals on the Terrorist Screening Data Base (TSDB) attempting to cross the border by land. While that report did not specify the proportion made up of illegal border crossings vs. the proportion made up of attempts to cross at ports of entry, other DHS data suggest that the vast majority were likely at ports of entry (POEs). Although illegally crossing the border is not a common avenue for terrorist travel, U.S. border security and immigration enforcement must remain capable and vigilant, continuing to take appropriate measures to thwart terrorist travel and presence in the U.S.²⁰ The lessons of 9/11 must not be forgotten.

Criminality by Visitors and Immigrants. The more common risk has come from individuals who visit or immigrate to the U.S. and go on to engage in illegal behavior but have no clear intention of doing so when they are admitted to the U.S. At its simplest, the more people in the U.S., whether citizens, immigrants, or visitors, the bigger the population of people who could commit some sort of crime. The U.S. should know whether its immigration policy is creating a less safe and secure nation. In terms of nonterrorist crime, the research is mixed on the effects of immigration on crime.²¹

Cross-Border Criminality. While borders have been an uncommon avenue for terrorism, they have served as a common path for crime. Specifically, the activities of transnational criminal organizations (TCOs) pose significant challenges to the U.S.

The opioid crisis has refocused attention on the issue of drug smuggling. For example, in FY 2017, the U.S. seized 62,331 pounds of cocaine at POEs and 9,346 pounds elsewhere along the border as well as 1,196 pounds of fentanyl at POEs. DHS estimates that at ports of entry, it seized only 2.1 percent of the inbound cocaine, a percentage that has been dropping in recent years.²²

Human trafficking is another challenge posed by criminal organizations. Human trafficking involves the use of force, fraud, or coercion to induce some sort of labor or act. Thousands of individuals are trafficked into the U.S. every year for the purposes of forced

labor and sex slavery. TCOs also engage in countless other illegal behaviors, including money laundering to move and hide their ill-gotten wealth and weapons smuggling, among many others.

Illegal Immigration Across Land Borders. In FY 2018, 398,579 individuals were apprehended crossing the southern border, up from the 46-year low of 303,916 in FY 2017. Apprehensions are widely (and somewhat counterintuitively) viewed as a proxy for how many people are crossing the border illegally. Both figures are significantly down from the more than a million yearly apprehensions that occurred regularly from 1983 to 2006, so in terms of sheer numbers, the illegal immigration problem at the southern border is smaller than it has been.

In other ways, however, illegal immigration is more problematic than the overall numbers indicate. The recent use of caravans to come to the U.S. threatens to overwhelm U.S. borders. The rise in children and family migrants also makes enforcement much harder by consuming additional resources. This includes the *Flores* settlement, which makes it very difficult to detain and remove unaccompanied children and family units, especially when combined with asylum claims, which also have increased drastically in recent years.²³ The vast majority of asylum claims at the U.S. southern border are not ultimately granted.

Loopholes that prevent enforcement are drawing more illegal immigrants to the U.S. because the U.S. simply cannot remove them fast enough. An agreement with Mexico late last year to keep asylum seekers in Mexico while they apply for asylum is a significant step in the right direction, but the loopholes remain.

Illegal Immigration Through Visa Overstays. In recent years, about two-thirds of new illegal immigrants have been those who overstayed a visa, not those who crossed the border illegally. In FY 2017, 606,926 visitors and other nonimmigrants overstayed their visas for more than 60 days, evincing a desire to remain in the U.S. illegally.²⁴ In FY 2016, there were 628,799 overstays for more than 60 days.²⁵ Holders of student, work, or cultural exchange visas are the most likely to overstay, and Visa Waiver Program (VWP) visitors are the least likely: Overstay rates of countries like Djibouti, Eritrea, and the Solomon Islands were more than 20 percent, while rates for VWP nations like Japan, Monaco, and Singapore were less than 0.2 per cent.

Culture and Society. Fifteen years ago, Heritage Foundation analysts observed that “more than any other nation in history, our country and its system of equal justice and economic freedom beckons not only the downtrodden and the persecuted—indeed all those ‘yearning to breathe free’—but also those who seek opportunity and a better future for themselves and their posterity.”²⁶ Those sentiments are as true today as they were then.

This attitude did not come into being all by itself; at all levels, governments and institutions played an active role in the Americanization process. The Founders knew that the new country would attract even more immigrants, so they believed in assimilating and educating them, as well as the native-born, to inculcate the nation’s philosophy into a new population, giving American democracy its “demos.”

Over the past few decades, however, America has drifted away from assimilating immigrants. Elites in government, the culture, and the academy have led a push toward multiculturalism, which emphasizes group differences. This transformation has taken place with little input from rank-and-file Americans, who overwhelmingly support assimilation.

Only since 1965 has government taken the radical position that immigrants must be categorized as victims deserving of compensatory justice through racial preferences in educational admissions, government contracting, and employment. The experience of African Americans—the only people in America whose ancestors were brought here against their will as slaves—was mistakenly analogized to the experience of voluntary immigrants from Latin America, Africa, and Asia.

This oppressor–oppressed narrative is now taught to America’s K–12 schoolchildren, reinforced in colleges and universities, and repeated constantly in the media and the culture. The rhetoric of victimhood has also had profound effects on policy toward immigrants. It is not just that assimilation is no longer encouraged; it is now actively discouraged by governments at all levels, most perniciously in the schools, workplaces, and all other centers of public life. Rather than an invitation to be included in the American community, assimilation is now described as a humiliating demand that those who are presumed to be marginalized must conform to the identities of their supposed oppressors.

Our approach to immigrants since 1965 has been a mistake, and the consequences of this mistake will

harm America’s ability to continue to offer the freedom and prosperity that immigrants came here seeking in the first place.

Previous immigrants assimilated to American life and succeeded, but indoctrinating people into the victimization narrative has not produced successful immigrants: Instead, it has only produced more and more people claiming victim status. Interpreting all disparities of outcome through a lens of racism preempts any serious discussion of differences in culture, behavior, and interests and how those differences might help or hinder someone from succeeding in this country.

In 1989, analysts at Heritage rightly argued for pro-family, pro-growth legal immigration policies for America.²⁷ We still believe that America has been good for immigrants and that immigrants have been good for America.²⁸ Nevertheless, the current family-based immigration system, which allows and encourages immigrants to go far outside their immediate family to sponsor dozens of other relatives to emigrate to the United States, takes away the ability of the American people to choose who gets to immigrate to this country and become members of our society. Instead, that choice is made by the immigrant and inures to the benefit of extended family members, leading to chain migration.²⁹

The opportunity for economic advancement is the key reason many come to the United States, but that leaves to chance who decides to take concrete steps to come to America and better their lives, and when and how they do that. A better system is one that expands and reforms employment-based immigration policies and moves away from a primarily family-based system. Attracting the best and brightest from around the globe, based on their skills and education and the demand signal of the market, while not injuring the economic and job opportunities of America citizens, is in our national interest.

Immigration programs like the diversity visa program and the per-country immigration caps may have made sense in the past, but they make little sense in a 21st century immigration system that is designed to select future Americans in a purposeful manner based on merit, their skills, and the demands of an ever-evolving and dynamic work force, regardless of their race, ethnicity, or national origin.

Inextricably intertwined with reforming the legal immigration system is the dire need to recommit ourselves to policies that live up to our national motto, *E*

Pluribus Unum: out of many, one. At the 1976 Democratic Convention, Congresswoman Barbara Jordan warned that “the great danger America faces [is] that we will cease to be one nation and become instead a collection of interest groups.”³⁰ Regrettably, her fears have been partially realized.

Welfare and Dependence on Government. Obviously, much more than education or skills should go into a decision about whether to admit this or that type of person. At the same time, however, ignoring those objective qualities and leaving to chance who one allows to become a citizen is not a prudent way to remain a country that can compete and thrive in the global economy.

Today, legal immigration by lower-skilled immigrants (those with a high school degree or less) imposes substantial fiscal costs on U.S. taxpayers.³¹ Congress must decide whether admitting large numbers of lower-skilled immigrants serves the national interest. Part of that decision must include the costs of doing so.

Government provides four types of benefits and services that are relevant to this issue: direct benefits such as Social Security, Medicare, unemployment insurance, and workmen’s compensation; means-tested welfare benefits that provide cash, food, housing, medical care, and services to roughly 100 million low-income Americans through such programs as Medicaid, food stamps, the refundable earned income tax credit, public housing, Supplemental Security Income, and Temporary Assistance to Needy Families (TANF);³² public education; and population-based services like police, fire, highways, parks, and similar services. These services generally have to expand as new immigrants enter a community.³³

Legal immigrant households receive significantly more welfare, on average, than U.S.-born households. Overall, the fiscal deficits or surpluses for legal immigrant households are the same as or higher than those for U.S.-born households with the same education level, but the fiscal burden imposed by lower-skilled immigrants is not principally due to means-tested welfare. The welfare benefits received are large, but the combined benefits received from Social Security, Medicare, public education, and population-based services are significantly larger.³⁴

As documented by the National Academies of Sciences, Engineering, and Medicine (NAS),³⁵ a rough estimate of the real future net outlays to be paid by taxpayers (in constant 2012 dollars) for low-skilled

immigrants is around \$514,000 per immigrant over 75 years³⁶ in “net present value”³⁷ (the total amount of money that the government would have to raise today and put in an account earning 3 percent above the inflation rate in order to cover future costs).³⁸ Over the past decade and a half, an average of 228,000 legal, lower-skilled adult immigrants have arrived in the U.S. each year.³⁹ Assuming a similar inflow in the future, some 2.3 million lower-skilled legal immigrants will enter the U.S. over the next decade. The fiscal net present values of these immigrants to the taxpayers will be around negative \$423 billion.⁴⁰

In other words, the government would immediately need to raise taxes by \$423 billion and place the money in an account earning 3 percent to cover the net future costs associated with admitting 2.3 million lower-skilled adult legal immigrants. In reality, however, the future costs will be hidden and passed on to future taxpayers. The future net outlays (benefits given less taxes paid) for the inflow of 2.3 million lower-skill immigrants will be around \$1.18 trillion (in constant 2012 dollars).⁴¹

In addition to the annual inflow of some 228,000 lower-skilled legal immigrants in the last decade and a half, there has been a similar inflow of some 240,000 lower-skilled illegal immigrants.⁴² As noted, because they have more limited access to government benefits and services than do legal immigrants, illegal immigrants are somewhat less fiscally costly than comparable legal immigrants.⁴³ Any effort to legalize the future inflow of illegal immigrants would, therefore, increase future fiscal costs.

Economic Growth and Prosperity for All Americans. In the economics literature, it is widely accepted that the overall economic impact of immigration is economic growth. Businesses tend to respond to increased immigration by investing in new capital (for example, by building additional factories), which suggests that immigration does not crowd out existing work.⁴⁴ While some research may show that immigration leads to an increase in relative wages between skill groups, research also shows that it generally causes aggregate income to rise.

Even economist George Borjas, whose work tends to support the most pessimistic views of immigration, concedes that overall economic growth is positive: “The presence of all immigrant workers (legal and illegal) in the labor market makes the U.S. economy (GDP) an estimated 11 percent larger (\$1.6 trillion) each year.”⁴⁵ And a recent NAS review of the literature

implores readers to “[c]onsider how different the U.S. growth path would be had all immigration been cut off 10, 20, or 30 years ago: Clearly GDP would be much smaller, and perhaps per capita GDP would be as well—in no small part because the United States would have an older population with a considerably lower percentage of individuals active in the workforce.”⁴⁶

However, other research suggests that immigration may have a downward impact on per capita GDP.⁴⁷ In fact, expanding the size of the economy does not necessarily mean that per capita incomes will have increased. This is particularly true if immigration is focused on low-skilled workers rather than high-skilled technical workers. As the NAS has stated, under some conditions, “[i]mmigration will affect only the size of the economy: more GDP will be produced. The United States will be a bigger economy, but the average income of all its inhabitants will remain unchanged.... [Increasing immigration] will not change the well-being of natives as measured by their per capita income....”⁴⁸ Addressing such concerns requires sound immigration policies based on a merit-based system, immigration enforcement, and pro-growth economic policies that will allow American workers and the American economy to prosper.

Guiding Principles for a Reform Agenda

If it is to deal sensibly and effectively with immigration reform, Congress must rise above the politics of the moment and “take the time to deliberate and develop a clear, comprehensive, meaningful, and long-term policy concerning immigration, naturalization, and citizenship that is consistent with the core principles, best traditions, and highest ideals of the United States.”⁴⁹ This is difficult in a political environment that is consumed with the topic of the moment.

The first step is to start with common-sense principles, as good policies flow from sound principles. To this end, based on the contemporary challenges that are frustrating effective reform, our research identified four principles that should guide Congress in reforming the nation’s immigration system, enforcement, and border security.⁵⁰

Principle #1: Respect the consent of the governed. The United States is a sovereign nation. The very idea of sovereignty implies that each nation has the responsibility and obligation to determine its own conditions for immigration, naturalization, and citizenship.

Individuals who are not citizens do not have a *right* to American citizenship without the consent of the American people as expressed through the laws of the United States. Through those laws, the people of the United States invite individuals from other countries, under certain conditions, to join them as residents and fellow citizens. Congress has the constitutional responsibility “[t]o establish an uniform Rule of Naturalization” that sets the conditions of immigration and citizenship and ensures the fairness and integrity of the legal process by which immigrants enter the country legally and, in many cases, become American citizens.

Principle #2: Do not compromise national security and public safety. Every nation has the right, recognized by both international and domestic law, to secure its borders and ports of entry and thereby control the goods and persons coming into its territory. Americans have always been and remain a generous people, but that does not mitigate the duty imposed on the United States government to know who is entering, to set the terms and conditions of entry and exit, and to control that entry and exit through fair and just means.

This task is all the more important after the events of September 11, 2001. A disorganized and chaotic immigration system encourages the circumvention of immigration laws and is a clear invitation to those who wish to take advantage of our openness to harm this nation. Secure borders, especially in a time of terrorist threat, are crucial to American national security.

Principle #3: Preserve patriotic assimilation. The United States has always welcomed immigrants who come to this country honestly, with their work ethic and appreciation of freedom, seeking the promises and opportunities of the American Dream. This is because the founding principles of this nation imply that an individual of any ethnic heritage or racial background can become an American.

However, those same principles also call for—and a successful immigration policy is only possible by means of—a deliberate and self-confident policy to assimilate immigrants and educate them about this country’s political principles, history, institutions, and civic culture. This may be a nation of immigrants, but it is more accurate to say that this is a nation where immigrants are Americanized, sharing the benefits, responsibilities, and attachments of American citizenship. While the larger formative

influence occurs through the social interactions and private institutions of civil society and through public and private education, the federal government has a significant, albeit limited, role to play in ensuring the success of this crucial process.

Patriotic assimilation is the bond that allows America to be a nation of immigrants. Without it, America either ceases to be a nation with a distinct character, becoming instead a hodgepodge of groups, or it becomes a nation that can no longer welcome immigrants. It cannot be both a unified nation and a place that welcomes immigrants without patriotic assimilation.⁵¹

Principle #4: Respect the rule of law. Immigration is no exception to the principle that the rule of law requires the fair, firm, and equitable enforcement of the law. Failure to enforce immigration laws is unfair to those who obey the law and go through the regulatory and administrative requirements to enter the country legally.

Those who enter and remain in the country illegally are violating the law, and condoning or encouraging such violations causes a general disrespect for the law and encourages further illegal conduct. Forgiving the intentional violation of the law in one context because it serves policy objectives in another undermines the rule of law. Amnesty is appropriate only when the law unintentionally causes great injustice or when particular cases serve the larger purposes of the law. Those who break immigration laws should not be rewarded with legal status or other benefits and should be penalized on any road to citizenship.

The power to control immigration is built into the very definition of sovereignty.⁵² Under the Law of Nations Clause of the Constitution, Congress is granted authority over immigration policy.⁵³ The foundational writers of the laws of nations, whose works the Founders followed, agreed that immigration, because it necessarily deals with foreign governments and foreign nationals, falls under this clause.⁵⁴ Nevertheless, the executive has clear authority to enforce our nation's immigration laws.

Essential Elements of an Effective Reform Agenda

The principles that we established were used to identify and prioritize the following significant elements of our reform agenda.

Establishing Border Security and Regional Cooperation

- **Implement effective border security.** Congress must appropriate funding for cost-effective border security measures paired with robust enforcement.⁵⁵ The U.S. must build a system that welds all of the nation's border assets into a single coherent security enterprise that deploys the right asset to the right place at the right time. This will require key investments in border infrastructure, organization, technology, and resources. These initiatives include such controversial but essential tools as additional border "wall," expanded detention space, and (as required) the temporary and efficacious use of support from the Department of Defense.
- **Take a more deliberate approach to border staffing.** With the Inspector General expressing serious concerns about Customs and Border Protection's ability to hire and use new agents effectively, Congress and the Administration should proceed deliberately and realistically in providing funds for this purpose.⁵⁶
- **Provide more funding for Coast Guard acquisitions.** This will ensure that the Coast Guard can acquire the right mix of vessels, including Fast Response Cutters and Offshore Patrol Cutters, as well as appropriate unmanned aerial systems.⁵⁷
- **Improve U.S. government public affairs efforts to discourage illegal immigration.** As a component of a broader regional strategy to prevent illegal immigration, a targeted public affairs campaign to inform would-be migrants about the dangers of the journey and U.S. immigration law would serve to deter caravans. The caravan was in Mexico City for nearly a week, and during that time, the U.S. government missed an opportunity to provide the migrants with information on entry requirements into the U.S. Instead, the migrants were provided with inaccurate information and coached by left-wing activists. Clearly, U.S. government efforts to dissuade migrants about illegal immigration to the U.S. are not working.⁵⁸
- **Align U.S. assistance funding levels to Mexico with U.S. national security interests.** A safer and more prosperous Mexico will reduce the

security threats to the U.S., alleviate the drivers of illegal immigration, and allow both countries to focus on productive matters in the bilateral relationship. Yet U.S. assistance to Mexico in the form of the Merida Initiative has decreased from the all-time high of \$639.2 million in FY 2010 to \$130.9 million in FY 2017.⁵⁹

- **Assess the efficacy of the Central American development package, the U.S. Strategy for Engagement in Central America.** Following the 2014 unaccompanied-minor crisis at the U.S. southern border, the U.S., El Salvador, Guatemala, and Honduras launched this program to address the factors driving illegal migration in the region. Guatemala’s northern neighbor Mexico collaborates with the U.S. in an effort to mitigate these shared challenges. The volume and frequency of illegal immigration toward the U.S. indicates a shortcoming. Congress should request impact reports from implementing agencies that gauge whether the programs are meeting their intended objectives.⁶⁰
- **Improve Central America’s border security capacity.** Uncontrolled borders in the northern triangle are a long-standing problem. The insecurity in these regions allows criminality to proliferate and mass movements of people across state lines. The U.S. and Mexican governments should work with their regional counterparts to improve their border security policies and programs. They should support El Salvador, Guatemala, and Honduras in expanding border patrols to ungoverned areas, modernizing border crossings, and encouraging the creation of joint border patrols. The U.S. Department of Homeland Security should host an annual high-level border-control working group to share best practices with the region.
- **Elevate the standard of cooperation with regional governments.** Foreign aid investments by U.S. partners have led to few tangible improvements, and continued illegal immigration is causing U.S. policymakers to question the utility of foreign aid investments by the U.S. Rather than cutting assistance, Congress and the Administration should evaluate whether current foreign assistance conditions have produced measurable improvements in the region.

Dealing with Illegal Immigration and Unlawful Presence

- **Do not grant amnesty.** Amnesty undermines the rule of law and encourages more unlawful migration.⁶¹ Grants of amnesty, regardless of the form of the reward they give to aliens who knowingly enter or remain in the U.S., discourage respect for the law, treat lawbreaking aliens better than law-following aliens, and encourage future unlawful immigration into the United States.

If America suddenly awards legal status to aliens unlawfully in the United States, it will be treating them better than aliens abroad who follow America’s immigration procedures and patiently await their opportunity to get a visa authorizing them to come to the United States. Such action—as past amnesties have proved—will also spur more aliens to enter or remain unlawfully in the United States in the confident expectation that Congress will continue to enact future amnesties that provide aliens unlawfully in the U.S. a shortcut to legal status. The government should pursue a measured set of approaches to a wide variety of immigration issues, but in all events, it should exclude amnesty for aliens unlawfully in the United States.

- **Do not legalize Deferred Action for Childhood Arrivals (DACA).** DACA was the unilateral executive program implemented by President Barack Obama without appropriate legal authority or the approval of Congress. This effort is fundamentally flawed, amounts to an amnesty, and will only encourage even more illegal immigration.⁶²
- **Give immigration law judges summary judgment and contempt authority.** As of October 24, 2018, 786,303 immigration cases were pending in immigration courts, up from 186,090 in 2008. During that same 10-year period, the average wait time for the disposition of a case in immigration court went from 438 days in 2008 to 718 days in 2018. This is unacceptable and needs to change. One of the main reasons for the huge backlog is the fact that immigration judges do not have the summary judgment authority⁶³ that is common to federal and state court judges. Summary judgment authority allows judges to refuse to schedule cases that lack legal merit, but because immigration judges do not have that authority, meritless cases

clog the dockets. Congress should amend existing statutes to give immigration judges this authority.

- **Amend the Immigration and Naturalization Act in response to *Sessions v. Dimaya*.** In 2018, the U.S. Supreme Court held in *Sessions v. Dimaya* that a part of the Immigration and Nationality Act used to deport criminal aliens was unconstitutionally “vague.”⁶⁴ The Court refused to approve the removal of a permanent resident alien after his second felony conviction for first-degree burglary because it was not one of a long list of specific offenses that are considered “aggravated” felonies that subject an alien to deportation and was not a “crime of violence.”

Aliens who are legally in this country are guests who should be allowed to remain here only as long as they abide by our laws. When someone commits a felony of any kind, it is a very serious offense. When someone repeatedly commits misdemeanor crimes, that is also evidence that he or she has no respect for our laws and should not be allowed to remain as a guest in our country. This federal law is overly complicated and should be simplified to read as follows: “Any alien convicted of a felony offense or of two or more misdemeanor offenses, regardless of their nature, under the Federal or the State or the Territorial laws of the United States, shall be deported.”

- **Do not change the authority for temporary relief from deportation to allow *de facto* amnesty or a path to citizenship.** Any legislation that addresses the status of DACA recipients, persons in temporary protected status, or persons in other programs should not allow open-ended residence in the United States or grant a path to citizenship. Temporary relief from deportation or removal should be for a reasonable, defined period. Aliens should be required to reapply for admission to the United States after deportation or removal.
- **Adjust authorities for permission to reapply for admission based on significant reductions in illegal immigration.** Aliens who have been unlawfully present in the United States for over one year (with the exception of aliens who entered the United States before April 1, 1997) and are deported or removed must wait at least

10 years before applying for permission to enter the U.S. Based on significant reductions in illegal immigration, it might be appropriate to adjust this requirement to offer an incentive to illegal immigrants to leave the U.S. voluntarily and seek to return through lawful immigration or a nonimmigrant visa. Similarly, Congress might consider adjustments for requirements to qualify for cancellation of removal, but only after substantial and sustained reductions in illegal immigration. No program should include an automatic pathway to citizenship.

- **Allow for the sharing of Social Security no-match data with the Department of Homeland Security and expand E-verify to the extent practical.** The illegal workforce is too big to address through police action alone. The quickest gains in enforcement with the least effort and expense will come from giving employers the incentive to follow the law and avoid hiring illegal labor. Specifically, the government needs to target its enforcement efforts to encourage employers to verify the work statuses of employees whom they have reason to believe may be unauthorized to work—as they are already required to do by law—and to cease employing unauthorized workers.⁶⁵

Improving Immigration Enforcement

- **Increase funding for immigration court judges, prosecutors, and associated staff.** The U.S. immigration adjudication and court system is falling farther and farther behind. More immigration judges, prosecutors, and staff to assist in immigration proceedings, as well as more U.S. Citizenship and Immigration Services (USCIS) asylum officers, are essential to enforcing U.S. immigration laws in a timely and effective manner.⁶⁶
- **Adjust the asylum claim process.** Congress can improve the asylum system in many ways. Rather than applying for asylum at U.S. borders, asylum seekers travelling to the U.S. southern border should be required to have their asylum claims heard by a USCIS asylum officer at a U.S. consulate in Mexico. Interviewers should also ask the asylum seeker why he or she did not assert asylum in other countries, such as Mexico. Immigration officials should consider failure to explain the refusal to

pursue asylum in other countries in making their decisions. Congress could also consider new standards that make it even harder for illegal border crossers to claim asylum. The Administration should also pursue safe-third-country and other agreements with countries in Latin America to promote better control of the asylum process.⁶⁷

- **Close the loopholes.** For example, Congress should reject the Ninth Circuit's recent interpretation of the *Flores* settlement. *Flores* has been interpreted to require DHS to release from its custody all children, even if they are with their parents. Thus, when adults cross the border with a child, DHS is required to release the child within 20 days. Since the parents broke the law by crossing the border illegally, the government tries to detain and prosecute them after their asylum claims are completed, and since that will take more than 20 days, the DHS has to release the child, leaving the government with the choice of detaining the parents or releasing them all. Congress should legislate to allow accompanied children to remain with their parents while awaiting asylum adjudication or prosecution of misdemeanor violations of immigration law.⁶⁸
- **Strengthen immigration enforcement.** U.S. laws must be enforced if additional illegal immigration is to be deterred. The U.S. should judiciously increase the number of Immigration and Customs Enforcement (ICE) agents; expand the 287(g) program that trains and deputizes state and local law enforcement officers to assist ICE in enforcing U.S. immigration laws; curb sanctuary cities; expedite removals of illegal immigrants caught at U.S. borders; streamline the removal process; increase resources to immigration courts; and ensure that aliens show up at court hearings by maximizing the use of detention facilities.⁶⁹
- **Strengthen the 287(g) program.** Designed to enable state and local government to help enforce federal immigration laws, 287(g) was under assault during the Obama Administration, which sought to cut funding, access to, and use of the program. Congress should seek to widen 287(g) usage by increasing funding for the program and requiring DHS to enter into a 287(g) agreement with any state and local governments that request entry into the program—with significant consequences

should DHS not meet this requirement in a timely fashion.

- **Ramp up comprehensive immigration-fraud evaluations.** The U.S. is a generous nation that provides many people with immigration benefits, but there are many who abuse the system. Given the value of U.S. visas and citizenship, the U.S. should do more to investigate fraud, both on a case-by-case basis and through more complete assessments and investigations.⁷⁰
- **Do not address legal immigration reform in a comprehensive "deal."** Instead, advance legal reforms on their own merit. In 2007 and in 2013, comprehensive efforts failed to get through the legislation process, and the policy faults of each of those efforts will be present in any bill that tries to address too many topics at once. In these cases and in all future efforts, the trade-offs that must be made to compromise with partisan demands will peel off potential supporters and mire the legislation in political and policy problems.

A compromise on immigration is not like a compromise on other issues: Satisfying partisan demands cannot be made without breaching principles. A comprehensive reform effort subjects the fate of policies with universal appeal to the fate of the most controversial topics. For instance, everyone agrees that asylum cases should be adjudicated much more quickly, but that reform has yet to be made because it is wrapped up in the failed comprehensive efforts of the past.

The key is to begin by working on the solutions on which many can agree rather than insisting on a comprehensive approach that divides Americans. Humanitarian reforms like asylum standards should be addressed in legislation that is separate from legislation that implements merit-based legal immigration. Washington must implement the mandates already on the books, follow through on existing initiatives, and employ the authorities that Congress has already granted before taking on new obligations.

- **Establish a merit-based immigration system.** Congress should modify the family preference system and move to a new merit-based system of

visas. This shift from family-based to merit-based immigration would prioritize economically and fiscally beneficial immigration and better serve the national interest.

Such a system should be designed in a way that recognizes that the market is the best and most objective way to identify those who will benefit the economy. This starts with requiring immigrants to have an offer of employment or financial means of self support before entering the country. The government would not be picking winners and losers among industries, job categories, or immigrants. The offer of employment is an objective market signal. If there were more requests for green cards than were available, Congress could consider a limited points system that again would place emphasis on the market. Another approach would be to implement an auction system whereby employers would pay for the permits of the immigrant labor they need.⁷¹

For example, a company's offered compensation to the immigrant would have significant priority, as compensation provides objective evidence of market demand. Other heavily weighted factors could include financial resources and assets, educational achievement, professional credentials, job experience, and fluency in English. These factors, while not perfect or completely objective measures, are designed to focus on reasonable measures of economic and fiscal impact that avoid government micromanagement and burdening American taxpayers with higher levels of government welfare assistance.

One way to ensure that merit-based green card candidates are indeed working or otherwise providing significant benefit to the U.S. would be to make their legal permanent residence conditional for the first several years. In order to transition from a conditional lawful permanent resident (LPR) to full LPR status, immigrants should be required to maintain employment for most of the conditional period even though they would be allowed to switch jobs. The total period of time required to hold a green card before becoming a citizen—five years—would remain unchanged, but a requirement that the holder not be a public charge before becoming a U.S. citizen could be added.

- **Focus on the nuclear family and end chain migration.** Congress should allow immediate relatives to remain uncapped while restricting the definition of immediate relatives to one's spouse and minor children. Congress should cut all or almost all of the current family preferences for extended family, thus ending chain migration. U.S. citizens could continue to sponsor their parents, but only for a renewable temporary visa that would not make them eligible for any welfare benefits and would require the citizens to provide proof of health insurance and financial support of their parents. It is worth noting that these extended family members may have other legal avenues for immigrating to the U.S.
- **End the Diversity Immigrant Visa (“Lottery”) Program.** Congress should eliminate the Diversity Immigrant Visa Program, which provides 50,000 immigrant visas annually to random individuals from countries with low rates of immigration to the United States. The United States should evaluate potential citizens individually. Rather than leave to chance the question of who gets an immigrant visa, Congress should decide on the qualifications of potential citizens and take into consideration their experience, professional credentials, and education. The Diversity lottery treats people not as individuals, but as the means to create representation from various countries artificially. Congress should end this system because it does not serve the national interest and discriminates based on national origin.
- **End per-country immigration caps.** Under the Immigration and Nationality Act, employment-based immigrants are subjected to a per-country ceiling or cap.⁷² The arbitrary per-country caps should be eliminated and replaced with a system that serves the national interest.⁷³ Over the years, numerous proposals have been introduced in Congress to revise or eliminate the per-country ceiling on employment-based lawful permanent residents.⁷⁴ This can be done in a variety of manners. For example, H.R. 392, which was introduced in 2017 by then-Representative Jason Chaffetz (R-UT) and eventually gained over 300 cosponsors, would have eliminated the per-country “limits for employment-based green cards, while doubling the limits for family-based immigrants.”⁷⁵

- **End universal birthright citizenship.** The universal granting of birthright citizenship to all children born in the United States regardless of the parents' immigration status is the result of a misinterpretation of the Fourteenth Amendment and is inconsistent with the intent of the amendment's framers. The legislative history of the amendment makes clear that its purpose was to bestow citizenship only on those who owed their permanent, undivided allegiance to the United States and were subject to the fullest extent of its jurisdiction.⁷⁶ In particular, this meant the newly freed slaves, who were lawful and permanent U.S. residents and not subject to any foreign power.⁷⁷

Congress should clarify the federal definition of "citizenship" in a manner that is consistent with the original understanding of the Fourteenth Amendment by explicitly stating that only the U.S.-born children of individuals subject to the complete jurisdiction of the United States are citizens by virtue of birth on U.S. soil. This would include the children of lawful permanent resident aliens referred to in *United States v. Wong Kim Ark*⁷⁸ but would exclude the U.S.-born children of illegal or temporarily present aliens.⁷⁹

Granting automatic citizenship has a serious and often devastating financial impact on American taxpayers by rewarding and encouraging illegal or exploitive immigration. Medicaid and its state corollaries dole out over a \$1 billion annually just to cover the costs of physical births to illegal alien mothers, whose children are rewarded with citizenship—a status from which the entire family draws substantial benefits.⁸⁰

Universal birthright citizenship has also led to the development of a substantial and growing "birth tourism" industry, which refers to the practice of pregnant foreign women traveling to the United States for the purpose of giving birth to their children on U.S. soil in order to ensure his or her U.S. citizenship.⁸¹ The birth tourism industry is driven primarily by the promise that families will reap the benefits of having a U.S. passport holder in the family—benefits like access to public schools, in-state tuition rates, low-interest student loans, and tax-exempt student loan payments—without any of the corresponding duties of citizenship.⁸² While

the exact number of "birth tourist" babies born in the United States every year is unknown, most estimates conclude that it is in the tens of thousands and growing rapidly.⁸³ The industry is rife with opportunities to defraud American taxpayers and the United States government and presents serious national security concerns.

Both birth tourism and illegal immigration compound the problem of "chain migration" because these presumed citizens are allowed to sponsor the immigration of immediate family members, who often take immigration priority over other well-deserving immigrants with valuable skills that could enhance the American economy.⁸⁴

- **Promote Patriotic Assimilation.** Those who wish to see immigration continue must see to it that the whole edifice of victimhood, oppressor-oppressed, compensatory justice, racial preferences, coercive diversity, etc., is dismantled. This is a large undertaking, but if America is to continue to take in immigrants—and we will—policymakers must be ready to overhaul policies that do not blend well with immigration.

Congress must put an end to measures that coerce immigrants and their American children and grandchildren into pan-ethnic identity traps. We must stop categorizing them as victims with protected status and start mandating that they participate in all aspects of society. Immigrants came to be American, not to join synthetic nations within the nation.

The executive branch should stop dividing society into groups by rescinding the 1977 OMB directive and its 1997 revision that divide the population into "Hispanics," "Asians," etc., and the courts should finally declare racial preferences in admissions and government contracts to be unconstitutional.

Candidates for citizenship should demonstrate a strong understanding of America's language (English), history, and civic life. The patriotic rituals surrounding the naturalization ceremony should be augmented to reinforce the transformational character of the event. Once immigrants go through naturalization, they are expected to have

no other national loyalty, whether to the lands of their birth or to a “nation within a nation.”⁸⁵

The government should return to the ethos that once an immigrant is naturalized, he or she should be encouraged, in Washington’s words, to “get assimilated to our customs.”⁸⁶ Public schools should therefore reinforce these values and not, as they do now, divide school children into ethnic boxes to teach even math according to “culturally responsive teaching.”⁸⁷

Rigorous studies indicate statistically significant positive effects of school choice or private schooling on the teaching of civic values, while the civics

education provided in public schools is currently falling short.⁸⁸ Government schools must do a better job of instilling civic values, and policymakers at the state level should provide more charter schools and private school choice options for families.⁸⁹

The Way Forward

Together, these recommended policies, if adopted and implemented, would address the contemporary challenge of the need to fix broken borders and a flawed immigration system in a manner that is at once fair, equitable, responsible, humane, and prudent. They represent an agenda that is focused on what is best for the welfare of *all* Americans.

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16. Immigration Reform and Control Act of 1986, P.L. 99-603, 99th Cong., November 6, 1986, <https://www.congress.gov/bill/99th-congress/senate-bill/1200> (accessed February 14, 2019). The law was nicknamed the Simpson-Mazzoli Act after the two Members of Congress who chaired their respective subcommittees, Senator Alan Simpson (R-WY) and Representative Romano L. Mazzoli (D-KY). The act imposed penalties on businesses that knowingly hired or employed illegal aliens and was supposed to secure the border by hiring more border patrol agents and increase surveillance on the border. In exchange for this increased enforcement, President Reagan agreed to offer immediate amnesty to approximately 3.1 million illegal aliens (out of the approximately 5 million) living in the United States continuously since 1982.
17. Brad Plumer, "Congress Tried to Fix Immigration Back in 1986. Why Did It Fail?" *The Washington Post*, January 30, 2013, https://www.washingtonpost.com/news/wonk/wp/2013/01/30/in-1986-congress-tried-to-solve-immigration-why-didnt-it-work/?utm_term=.c75a02c68d92 (accessed February 14, 2019).
18. Roberto Suro, "1986 Amnesty Law Is Seen as Failing to Slow Alien Tide," *The New York Times*, June 18, 1989, <https://www.nytimes.com/1989/06/18/us/1986-amnesty-law-is-seen-as-failing-to-slow-alien-tide.html?pagewanted=all&src=pm> (accessed February 14, 2019).
19. Plumer, "Congress Tried to Fix Immigration Back in 1986?"

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20. U.S. Department of Homeland Security and U.S. Department of Justice, *Executive Order 13780: Protecting the Nation from Foreign Terrorist Entry into the United States, Initial Section 11 Report*, January 2018, <https://www.dhs.gov/sites/default/files/publications/Executive%20Order%2013780%20Section%2011%20Report%20-%20Final.pdf> (accessed February 14, 2019).
21. See, for example, Steven A. Camarota, “Non-Citizens Committed a Disproportionate Share of Federal Crimes, 2011-16,” Center for Immigration Studies, January 10, 2018, <https://cis.org/Camarota/NonCitizens-Committed-Disproportionate-Share-Federal-Crimes-201116> (accessed February 14, 2019), and Alex Nowrasteh, “Immigration and Crime—What the Research Says,” Cato Institute, July 14, 2015, <https://www.cato.org/blog/immigration-crime-what-research-says> (accessed February 15, 2019).
22. U.S. Department of Homeland Security, Office of Immigration Statistics, *Department of Homeland Security Border Security Metrics Report*, May 1, 2018, https://www.dhs.gov/sites/default/files/publications/BSMR_OIS_2016.pdf (accessed February 14, 2019).
23. Ana Rosa Quintana and David Inserra, “Managing the Central American Caravans: Immediate Enforcement Corrections and Regional Engagement Strategy Required.” Heritage Foundation Backgrounder No. 3372, January 25, 2019, <https://www.heritage.org/immigration/report/managing-the-central-american-caravans-immediate-enforcement-corrections-and>.
24. U.S. Department of Homeland Security, *Fiscal Year 2017 Entry/Exit Overstay Report*, https://www.dhs.gov/sites/default/files/publications/18_1009_S1_Entry-Exit-Overstay_Report.pdf (accessed February 14, 2019).
25. U.S. Department of Homeland Security, *Fiscal Year 2016 Entry/Exit Overstay Report*, <https://www.dhs.gov/sites/default/files/publications/Entry%20and%20Exit%20Overstay%20Report%2C%20Fiscal%20Year%202016.pdf> (accessed February 14, 2019).
26. See Edwin Meese III and Matthew Spalding, “The Principles of Immigration,” Heritage Foundation *Backgrounder* No. 1807, October 19, 2004, p. 1, <https://www.heritage.org/report/the-principles-immigration>.
27. Stephen Moore, “A Pro-Family, Pro-Growth Legal Immigration Policy for America,” Heritage Foundation *Backgrounder* No. 735, November 6, 1989, http://s3.amazonaws.com/thf_media/1989/pdf/bg735.pdf.
28. Meese and Spalding, “The Principles of Immigration,” p. 1.
29. Moore, “A Pro-Family, Pro-Growth Legal Immigration Policy for America.” Moore concluded that family-based immigration, which we called the “family preference system” at the time, did not foster chain migration. He relied on a U.S. General Accounting Office report, which concluded that “massive chain migration is generally not occurring.” U.S. General Accounting Office, *Immigration: The Future Flow of Legal Immigration to the United States*, GAO/PEMD-88-7, January 8, 1988, p. 5, <https://www.gao.gov/assets/150/145996.pdf> (accessed February 13, 2019). Moore called for an expansion of the family preference system, citing among other reasons the 15-year backlog of immigrants waiting to come to the United States. In the 30 years since that paper was issued, massive chain migration has become the norm, thus requiring a new approach.
30. Barbara Jordan, “1976 Democratic National Convention Keynote Address,” July 12, 1976, <https://www.americanrhetoric.com/speeches/barbarajordan1976dnc.html> (accessed February 14, 2019).
31. Moore, “A Pro-Family, Pro-Growth Legal Immigration Policy for America,” p. 9. Moore observed that “immigrants generally come to the U.S. to work and improve their economic condition, not to collect welfare.” He noted that the “share of foreign-born collecting public assistance—including unemployment compensation, food stamps, Supplemental Security Income, and Aid to Families with Dependent Children (AFDC)—was 12.8 percent versus 13.9 percent for native born” and opined that most immigrants “pay more in taxes over their lifetime than they receive in governmental benefits, thus resulting in a net fiscal benefit to the U.S. Treasury.”
32. Robert Rector and Vijay Menon, “Understanding the Hidden \$1.1 Trillion Welfare System and How to Reform It,” Heritage Foundation *Backgrounder* No. 3294, April 5, 2018, <https://www.heritage.org/sites/default/files/2018-04/BG3294.pdf>.
33. For purposes of calculating fiscal incidence, the cost of public goods such as national defense and scientific research should be excluded. The cost of interest on existing government debt should be excluded when determining the fiscal impact of new immigrants.
34. Steven A. Camarota and Karen Zeigler, “63% of Non-Citizen Households Access Welfare Programs Compared to 35% of native households,” Center for Immigration Studies, December 2018, <https://cis.org/sites/default/files/2018-11/numbers-welfare-18.pdf> (accessed February 14, 2019).
35. National Academies of Sciences, Engineering and Medicine, *The Economic and Fiscal Consequences of Immigration*, ed. Francine D. Blau and Christopher Mackie (Washington: National Academies Press, 2017), pp. 323-566.
36. Converting a net present value figure into future outlays requires information on the exact distribution of costs over time. Those data are not provided by the National Academy of Sciences. This estimate uses the NAS discount rate of 3 percent and assumes that the constant-dollar fiscal costs are allocated equally over time.
37. The net present value of a future stream of benefits or costs is the amount that would have to be invested today to purchase the stream of benefits or cover the stream of costs. Because the initial investment is assumed to earn interest over time, the amount needed to purchase a future stream of benefits is less than the sum total of the future benefits (which are called the nondiscounted value). For example, the current purchase price of an annuity is less than the sum of the value of the projected future benefits. To calculate the present value of a future benefit or cost, the future dollar value is divided by one plus the interest (or discount) rate raised by an exponent equaling the number of years in the future. The present value of \$1,000 received 20 years from now is \$485. See, for example, Ian Jacques, *Mathematics for Economics and Business, Sixth Edition* (Pearson Education Limited, 2009), p. 242.
38. Three percent is the discount or interest rate used in National Academy of Sciences net present value calculations.

39. An average of 470,000 lower-skilled immigrants entered annually from 2000–2015 according to the Annual Social and Economic Supplement (ASEC) to the U.S. Census Bureau’s Current Population Survey. Of these, some 230,000 were legal immigrants. Legal status by education level was based on Heritage Foundation imputation of immigrant legal status onto the March 2011 ASEC to match overall illegal immigrant totals reported in Michael Hoefler, Nancy Rytina, and Bryan Baker, “Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011,” U.S. Department of Homeland Security, Office of Immigration Statistics, March 2012, https://www.dhs.gov/sites/default/files/publications/Unauthorized%20Immigrant%20Population%20Estimates%20in%20the%20US%20January%202011_0.pdf (accessed February 13, 2019). Around 45 percent of lower-skill legal immigrants did not have a high school degree, and 55 percent had only a high school degree. In addition to the annual inflow of 230,000 lower-skill legal immigrants, there was a matching annual inflow of 240,000 illegal lower-skill immigrants on average during the period.
40. This figure equals the 2.3 million immigrants times a net present value of negative \$184,000 per immigrant.
41. This represents the nondiscounted cost in constant 2012 dollars given the stated discount rate of 3 percent per annum.
42. See Hoefler, Rytina, and Baker “Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011.”
43. The net cost of illegal immigrant households was around \$54 billion per year in 2010. The native-born children of illegal immigrants are deemed to be U.S. citizens and are therefore eligible for all means-tested welfare. These children are eligible for public education, and according to the U.S. Supreme Court’s ruling in *Plyler v. Doe*, 457 U.S. 202 (1982), the foreign-born children of illegal immigrants are also eligible. Illegal immigrants also benefit from most population-based services.
44. Giovanni Peri, “The Economic Benefits of Immigration,” Center for Latin American Studies, University of California at Berkeley, *Berkeley Review of Latin American Studies*, Fall 2013, pp. 14–19, <http://clas.berkeley.edu/sites/default/files/shared/docs/tertiary/BRLASFall2013-Peri.pdf> (accessed February 14, 2019).
45. George Borjas, “Immigration and the American Worker: A Review of the Academic Literature,” Center for Immigration Studies, April 9, 2013, p. 1, <https://cis.org/sites/cis.org/files/borjas-economics.pdf> (accessed February 14, 2019). According to Borjas, even if there are minute economic gains from general immigration, each \$1.00 of net gain requires a wage loss of \$11.40 to American workers.
46. National Academies of Sciences, Engineering, and Medicine, *The Economic and Fiscal Consequences of Immigration*, ed. Francine D. Blau and Christopher Mackie (Washington: National Academies Press, 2016), p. 218.
47. See Peter Dungan, Tony Fang, and Morley Gunderson, “Macroeconomic Impacts of Canadian Immigration: Results from a Macro-Model,” Institute for the Study of Labor *Discussion Paper* No. 6743, July 2012, p. 17, <http://ftp.iza.org/dp6743.pdf> (accessed February 5, 2019). Similarly, some studies report negative effects of population growth on per-capita income or per-worker wages. See, for instance, Steven N. Durlauf, Paul A. Johnson, and Jonathan R. W. Temple, “Growth Econometrics,” Chapter 8 in *Handbook of Economic Growth, Vol. 1A*, ed. Philippe Aghion and Steven N. Durlauf (Elvesier, 2005), pp. 652–663. Naturally, one should not conflate population growth with the growth in legal immigration.
48. National Research Council, *The New Americans: Economic, Demographic and Fiscal Effects of Immigration*, ed. James P. Smith and Barry Edmonston (Washington: National Academy Press, 1997), pp. 156–157. Durlauf, Johnson, and Temple provide a comprehensive review of all major cross-country growth models. A few studies show negative effects of population growth on per-capita income or per-worker wages. Others show null effects. In general, since there is no theoretical or empirical basis for concluding that an increase in labor supply increases per-worker wages, nearly all models ignore this variable. See Durlauf, Johnson, and Temple, “Growth Econometrics,” in *Handbook of Economic Growth, Vol. 1A*, pp. 652–663; Derek D. Healey and Andrew Hodge, “The Effect of Population Growth on Economic Growth: A Meta-Regression Analysis of the Macroeconomic Literature,” *Population and Development Review*, Vol. 35, No. 2 (June 2009), pp. 221–248; and Allen C. Kelley and Robert M. Schmidt, “Evolution of Recent Economic-Demographic Modeling: A Synthesis,” *Journal of Population Economics*, Vol. 18, No. 2 (June 2005), pp. 287–289. As growth economist Daron Acemoglu puts it: “[T]here does not seem to be any evidence in the postwar data or from the historical data of the past 200 years that faster population growth leads to a higher equilibrium growth rate [of per capita income.]” Daron Acemoglu, *Introduction to Modern Economic Growth* Princeton, NJ: Princeton University Press, 2009), p. 448.
49. See Meese and Spalding, “The Principles of Immigration,” p. 1.
50. *Ibid.* These principles and the text under them are taken from the 2004 Meese–Spalding *Backgrounder*.
51. Mike Gonzalez, “Patriotic Assimilation Is an Indispensable Condition in a Land of Immigrants,” Heritage Foundation *Special Report* No. 174, January 8, 2016, p. 1, <https://www.heritage.org/immigration/report/patriotic-assimilation-indispensable-condition-land-immigrants>.
52. The Supreme Court agrees. In *Chae Chan Ping v. United States*, which established the “plenary power doctrine,” the Court clarified that “the government of the United States, through the action of the legislative department, can exclude aliens in its territory is a proposition which we do not think open to controversy. Jurisdiction over its own territory to that extent is an incident of every independent nation. It is a part of its independence. If it could not exclude aliens it would be to that extent subject to the control of another power.” *Chae Chan Ping v. United States*, 130 U.S. 582 (1889). No sovereign nation can exist without clearly delineating its borders and having the power to defend them. The Constitution clearly presumes this by granting Congress the authority, for example, to demarcate the nation’s borders by adding new states to the Union. So too is the power granted to “repel invasions.” In addition, Article 4, Section 4 guarantees that the United States shall protect each state “against invasion.” If these powers are granted to Congress in order to protect the nation’s sovereignty from foreign threats, it is inconceivable that the Congress would not also possess the power to regulate foreign migration into the nation. Without control of the nation’s borders, American sovereignty is effectively defined by foreigners and foreign nations.

53. The Framers derived their understanding of the Law of Nations especially from the works of Samuel Pufendorf, Emer de Vattel, and William Blackstone. According to Pufendorf, a sovereign state not only has the right to decide who to exclude, but also the right to punish those who disregard its decision. He deemed it “very gross and absurd, to allow others an indefinite or unlimited Right of traveling and living among us, without reflecting either on their Number, or on the Design of their coming; whether supposing them to pass harmlessly, they intend only to take a short view of our Country, or whether they claim a Right of fixing themselves with us for ever.” Vattel makes a similar point, also in the context of the laws of nations: “The sovereign may forbid the entrance of his territory either to foreigners in general, or in particular cases, or to certain persons, or for certain particular purposes, according as he may think it advantageous to the state. There is nothing in all this that does not flow from the rights of domain and sovereignty.” Blackstone argues that “by the *law of nations* no member of one society has a right to intrude into another” and that “it is left in the power of all states, to take such measures about *the admission of strangers*, as they deem convenient.” See Samuel Pufendorf, *Of the Law of Nature and Nations: Eight Books*, trans. Basil Kennett, Vol. 3 (Oxford: Printed for J. Walthoe, 1729), p. 193; Emer de Vattel, *The Law of Nations, Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns* (Indianapolis, IN: Liberty Fund, 2008), Book II, Chapter VII, p. 309; William Blackstone, *Commentaries on the Laws of England*, 4 volumes (Oxford 1765-1769), Book I, Chapter VII. See also the various arguments made by Robert Natelson in *The Original Constitution: What It Actually Said and Meant*, 3rd ed. (Colorado Springs: Apis Books, 2015), pp. 106-108, and “The Constitution Does Indeed Permit Immigration Caps as Part of ‘the Law of Nations’,” *The Hill*, May 15, 2017, <https://thehill.com/blogs/pundits-blog/immigration/333368-the-constitution-does-indeed-permit-immigration-caps-as-the> (accessed February 14, 2019).
54. Vattel’s *Law of Nations* was held in highest esteem and was relied upon by the Framers. For example, upon receiving a copy, Benjamin Franklin wrote that his copy of Vattel “came to us in good season, when the circumstances of a rising state make it necessary frequently to consult the law of nations.... [T]hat copy which I kept...has been continually in the hands of the members of our congress.” Benjamin Franklin, letter to Charles-Guillaume-Frédéric Dumas, December 9, 1775, <https://founders.archives.gov/documents/Franklin/01-22-02-0172> (accessed February 15, 2019). While Secretary of State, Jefferson wrote to French diplomat Edmond-Charles Genet that their dispute should be settled by “appeal to enlightened and disinterested judges. None is more so than Vattel.” Thomas Jefferson, letter to Edmond C. Genet, June 17, 1793, http://memory.loc.gov/service/mss/mtj/mtj1/018/018_0821_0825.pdf (accessed February 15, 2019). For Vattel’s influence on arguments for American independence, see William Ossipow and Dominik Gerber, “The Reception of Vattel’s *Law of Nations* in the American Colonies: From James Otis and John Adams to the Declaration of Independence,” *American Journal of Legal History*, Vol. 57, Issue 4 (December 2017), pp. 521-555.
55. James Jay Carafano, “We Need Trump’s Border Wall Plus Other Measures to Reduce Illegal Immigration,” Fox News, December 21, 2018, <https://www.foxnews.com/opinion/we-need-trumps-border-wall-plus-other-measures-to-reduce-illegal-immigration> (accessed February 14, 2019); David Inserra, “Congress Must Re-Set Department of Homeland Security Priorities: American Lives Depend on It,” Heritage Foundation *Special Report* No. 175, January 3, 2017, <https://www.heritage.org/homeland-security/report/congress-must-re-set-department-homeland-security-priorities-american>; James Jay Carafano, “Safeguarding America’s Sovereignty: A ‘System of Systems’ Approach to Border Security,” Heritage Foundation *Backgrounder* No. 1898, November 28, 2005, <https://www.heritage.org/homeland-security/report/safeguarding-america-sovereignty-system-systems-approach-border-security>.
56. David Inserra, “House Border Security Bill a Strong Step Forward but Improvements Still Needed,” Heritage Foundation Issue Brief No. 4778, October 30, 2017, <https://www.heritage.org/homeland-security/report/house-border-security-bill-strong-step-forward-improvements-still-needed>.
57. *Ibid.*
58. Quintana and Inserra, “Managing the Central American Caravans: Immediate Enforcement Corrections and Regional Engagement Strategy Required.”
59. *Ibid.*
60. *Ibid.*
61. David S. Addington, “Encouraging Lawful Immigration and Discouraging Unlawful Immigration,” Heritage Foundation *Backgrounder* No. 2786, March 27, 2013, <https://www.heritage.org/immigration/report/encouraging-lawful-immigration-and-discouraging-unlawful-immigration>.
62. Hans A. von Spakovsky, “Why Congress Should Not Legalize DACA: The Myths Surrounding the Program,” Heritage Foundation *Backgrounder* No. 3269, December 4, 2017, <https://www.heritage.org/immigration/report/why-congress-should-not-legalize-daca-the-myths-surrounding-the-program>.
63. Fed.R.Civ.Pro. 12(b)(6).
64. 548 U.S. ____ (2018).
65. Charles D. Stimson and Andrew M. Grossman, “No-Match Immigration Enforcement: Time for Action,” Heritage Foundation *Legal Memorandum* No. 25, May 16, 2008 <https://www.heritage.org/immigration/report/no-match-immigration-enforcement-time-action>; Robert Rector, “Reducing Illegal Immigration Through Employment Verification, Enforcement, and Protection,” Heritage Foundation *Backgrounder* No. 2192, October 7, 2008, <https://www.heritage.org/immigration/report/reducing-illegal-immigration-through-employment-verification-enforcement-and>.
66. David Inserra, “Immigration Law and Enforcement in Dire Need of Clarity and Major Overhaul,” Heritage Foundation *Backgrounder* No. 4912, October 24, 2018, <https://www.heritage.org/immigration/report/immigration-law-and-enforcement-dire-need-clarity-and-major-overhaul>.
67. *Ibid.*

68. Ibid.
69. David Inserra, "Dreaming of Amnesty: Legalization Will Spur More Illegal Immigration," Heritage Foundation *Issue Brief* No. 4777, October 30, 2017, <https://www.heritage.org/immigration/report/dreaming-amnesty-legalization-will-spur-more-illegal-immigration>.
70. Inserra, "Congress Must Re-Set Department of Homeland Security Priorities."
71. For examples of auction systems, see Pia M. Orrenious and Madeline Zavodny, *Beside the Golden Door: U.S. Immigration Reform in a New Era of Globalization* (Washington: AEI Press, 2010), <http://www.aei.org/wp-content/uploads/2017/02/Beside-the-Golden-Door.pdf> (accessed February 14, 2019), and Giovanni Peri, "Rationalizing U.S. Immigration Policy: Reforms for Simplicity, Fairness, and Economic Growth," Brookings Institution, Hamilton Project *Discussion Paper* No. 2012-01, May 2012, https://www.brookings.edu/wp-content/uploads/2016/06/05_immigration_peri_paper.pdf (accessed February 14, 2019).
72. Immigration and Nationality Act, §202(a)(2), 8 U.S.C. §1152. See also William A. Kandel, "Permanent Employment-Based Immigration and the Per Country Ceiling," Congressional Research Service *Report for Members and Committees of Congress*, updated December 21, 2018, <https://crsreports.congress.gov/product/pdf/R/R45447> (accessed February 14, 2019).
73. See, for example, Maria L. Ontiveros, "H-1B Visas, Outsourcing and Body Shops: A Continuum of Exploitation for High Tech Workers," *Berkeley Journal of Employment and Labor Law*, Vol. 38, Issue 1 (2017), pp. 2-46.
74. Ibid.
75. See Bier, "Are the Per-Country Limits Necessary to Promote 'Diversity'?"
76. See, for example, *Congressional Globe*, 39th Cong., 1st Sess., 2893 (May 30, 1866) (Senator Johnson) ("[A]ll that this amendment provides is, that all persons born in the United States and not subject to some foreign Power—for that, no doubt, is the meaning of the committee who have brought the matter before us—shall be considered citizens of the United States."); *Ibid.*, 2897 (Senator Williams) ("In one sense, all persons born within the geographical limits of the United States are subject to the jurisdiction of the United States, but they are not subject to the jurisdiction of the United States in every sense.... I understand the word here, 'subject to the jurisdiction of the United States,' to mean fully and completely subject to the jurisdiction of the United States."); *Ibid.*, p. 2893 (Senator Trumbull) ("It cannot be said of any Indian who owes allegiance, partial allegiance if you please, to some other Government that he is 'subject to the jurisdiction of the United States.'"); *Ibid.*, p. 2895 (Senator Howard) ("I concur with the honorable Senator from Illinois, in holding that the word 'jurisdiction,' as here employed, ought to be construed so as to imply a full and complete jurisdiction on the part of the United States, whether exercised by Congress, by the executive, or by the judicial department; that is to say, the same jurisdiction in extent and quality as applied to every citizen of the United States now."). The same premise was also seen in the construction of the Civil Rights Act of 1866, which was enacted by the same Congress that passed the Fourteenth Amendment, with the Amendment intended to constitutionalize the protections of the Act. See *ibid.*, p. 572 (Senator Trumbull) ("[Senator John Henderson] from Missouri and myself desire to arrive at the same point precisely, and that is to make citizens of everybody born in the United States who owe allegiance to the United States. We cannot make citizens of a child of a foreign minister who is temporarily residing here. There is difficulty in framing the amendment [concerning the Civil Rights Act's citizenship clause] so as to make citizens of all the people born in the United States and who owe allegiance to it. I thought that might perhaps be the best form in which to put the [act's citizenship clause] at one time, 'That all persons born in the United States and owing allegiance thereto are hereby declared to be citizens'; but upon investigation it was found that a sort of allegiance was due to the country from persons temporarily resident in it whom we would have no right to make citizens, and that that form would not answer.").
77. See, for example, *ibid.*, p. 2896 (Senator Howard) (stating that the Fourteenth Amendment was drafted and introduced because the Joint Committee on Reconstruction "desired to put this question of citizenship and the rights of citizens and freedmen under the civil rights bill beyond the legislative power of such gentlemen as the Senator from Wisconsin, who would pull the whole system up by the roots and destroy it, and expose the freedmen again to their old masters"); *ibid.*, p. 504 (Senator Johnson) (connecting the purpose of the Civil Rights Bill with that of legislatively overturning *Dred Scott v. Sandford*—a Supreme Court opinion holding that people of African descent were not and could never become U.S. citizens—and arguing that a constitutional amendment would be needed to accomplish this); "Speech of Hon. John M. Broomall of Pennsylvania on the Civil Rights Bill; Delivered in the House of Representatives March 8, 1866," Congressional Globe Office, p. 3, <https://babel.hathitrust.org/cgi/pt?id=yale.39002053501418;view=1up;seq=5> (accessed February 14, 2019) ("The first provision of the [Civil Rights Act] declares that all persons born in the United States and not subject to any foreign Power are citizens of the United States.... The objection to this part of this bill is that it calls the negro a citizen. And why should it not? Civilized man must of necessity be a citizen somewhere. He must owe allegiance to some Government.... Now, the negro in America is civilized...and of necessity must owe allegiance somewhere. And until the opponents of this measure can point to the foreign Power to which he is still subject, the African potentate to whom after five generations of absence he still owes allegiance, I will assume him to be what the bill calls him, a citizen of the country in which he was born.")

78. The Court's holding in *Wong Kim Ark* was extremely narrow, going only so far as to state that "a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicile 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." 169 U.S. 649, p. 705 (1898). The Court further tied Wong Kim Ark's allegiance to the lawful, permanent domicile of his parents at the time of his birth. *Ibid.*, pp. 693–694 (The Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children *born here of resident aliens*.... Every citizen or subject of another country, *while domiciled here*, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States. Chinese persons, born out of the United States, remaining subjects of the emperor of China, and not having become citizens of the United States, are entitled to the protection of and owe allegiance to the United States, *so long as they are permitted by the United States to reside here*....") (emphases added). This limited application of birthright citizenship (i.e., to the children of lawfully present, permanently domiciled aliens) was reaffirmed without expansion in *Kwock Jan Fat v. White*, 253 U.S. 454 (1920) (noting that neither party disputed "that if petitioner is the son of Kwock Tuck Lee and his wife, Tom Ying Shee, he was born to them when they were permanently domiciled in the United States, [he] is a citizen thereof, and is entitled to admission to the country").
79. This is also consistent with the earliest legal commentaries on the meaning of the Amendment's Citizenship Clause, including those of renowned constitutional and international law scholars. See Thomas M. Cooley, *The General Principles of Constitutional Law in the United States* (Boston: Little, Brown, 1880), pp. 241–243; Alexander Porter Morse, *A Treatise on Citizenship, by Birth and by Naturalization, with Reference to the Law of Nations, Roman Civil Law, Law of the United States of America, and the Law of France; Including Provisions in the Federal Constitution, and in the Several State Constitutions, in Respect of Citizenship; Together with Decisions Theron of the Federal and State Courts* (Boston: Little, Brown, 1881), p. 238; Francis Wharton, *A Treatise on the Conflict of Laws, or Private International Law* (Philadelphia: Kay and Brother, 1881), pp. 32–35; Samuel Freeman Miller, *Lectures on the Constitution of the United States* (New York: Banks and Brothers, 1893), p. 278. Further, the view that birthright citizenship was limited to the U.S.-born children of permanently domiciled, lawfully present aliens continued to prevail as the proper interpretation of *Wong Kim Ark* for at least the first decades following the decision. See, for example, Henry Campbell Black, *Handbook of American Constitutional Law, Third Edition* (St. Paul, MN: West Publishing Company, 1910); Hannis Taylor, *A Treatise on International Public Law* (Chicago: Callaghan and Company, 1901), p. 220; William Edward Hall, *A Treatise on International Law* (Oxford: Clarendon Press, 1904), pp. 224–225, 227; John Westlake, *International Law* (Cambridge: Cambridge University Press, 1904), pp. 219–220.
80. Matthew O'Brien, Spencer Raley, and Jack Martin, *The Fiscal Burden of Illegal Immigration on United States Taxpayers (2017)*, Federation for American Immigration Reform, <https://fairus.org/sites/default/files/2017-09/Fiscal-Burden-of-Illegal-Immigration-2017.pdf> (accessed February 15, 2019). See also Michael D. Antonovich, Los Angeles County Board of Supervisors, press release, "County Spent Nearly \$639 Million in the Past Year to Support Families of Illegal Aliens," <http://michaeldantonovich.com/2014/08/22/county-spent-nearly-639-million-in-the-past-year-to-support-families-of-illegal-aliens/> (accessed February 15, 2019) (detailing the annual costs borne by one California county for the provision of aid and public benefits to illegal alien families and estimating a total of \$629 million in annual overall taxpayer expenditures on behalf of illegal immigrants in that county); Madeleine Pelner Cosman, "Illegal Aliens and American Medicine," *Journal of American Physicians and Surgeons*, Vol. 10, No. 1 (Spring 2005), <https://www.jpands.org/vol10no1/cosman.pdf> (accessed February 15, 2019) (exploring the financial burdens carried by United States hospitals and other medical facilities as a result of unpaid and unreimbursed medical care for illegal aliens); Steven A. Camarota, "Deportation vs. the Cost of Letting Illegal Immigrants Stay," Center for Immigration Studies, August 2017, <https://cis.org/sites/default/files/2017-07/deportation-vs-stay-costs.pdf> (accessed February 15, 2019) (estimating an average lifetime net fiscal drain of \$65,292 per illegal alien per year, for a total annual fiscal drain of \$746 billion attributable to illegal immigration).
81. See Jennifer Medina, "Arriving as Pregnant Tourists, Leaving with American Babies," *The New York Times*, March 28, 2011, <https://www.nytimes.com/2011/03/29/us/29babies.html> (accessed February 14, 2019).
82. See Cynthia McFadden, Sarah Fitzpatrick, Tracy Connor, and Anna Schecter, "Birth Tourism Brings Russian Baby Boom to Miami," NBC News, January 9, 2018, <https://www.nbcnews.com/news/us-news/birth-tourism-brings-russian-baby-boom-miami-n836121> (accessed February 14, 2019); Calum MacLeod, "Chinese Flock to USA to Give Birth to U.S. Citizens," *USA Today*, April 1, 2015, <https://www.usatoday.com/story/news/world/2015/04/01/china-usa-birth-tourists-business-strong/24887837/> (accessed February 14, 2019); Keith B. Richburg, "Consultants Offer Special U.S. Delivery: For Many Pregnant Chinese, American Passport Is Strong Lure," *The Washington Post*, July 18, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/17/AR2010071701402.html> (accessed February 14, 2019).
83. See Steven A. Camarota, "There Are Possibly 36,000 Birth Tourists Annually," Center for Immigration Studies, April 28, 2015, <https://cis.org/Camarota/There-Are-Possibly-36000-Birth-Tourists-Annually> (accessed February 14, 2019); Glenn Kessler, "'Birth Tourists' and 'Anchor Babies': What Trump and Bush Got Right," *The Washington Post*, August 25, 2015, https://www.washingtonpost.com/news/fact-checker/wp/2015/08/25/birth-tourists-and-anchor-babies-what-trump-and-bush-got-right/?utm_term=.4acbfdf22dfb (accessed February 14, 2019).
84. See Jessica Vaughan, "Immigration Multipliers: Trends in Chain Migration," Center for Immigration Studies, September 2017, https://cis.org/sites/default/files/2018-01/vaughan-chain-migration_0.pdf (accessed February 14, 2019); Vernon M. Briggs, Jr., "The Report of the Commission on Immigration Reform (i.e., the Jordan Commission): A Beacon for Real Immigration Reform," *Progressives for Immigration Reform Policy Brief No. 09-1*, January 2009, <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1195&context=articles> (accessed February 13, 2019). See also Brett D. Schaefer and James Jay Carafano, "Scrutinize Special and Other Green Card Eligibility Categories as Part of the Effort to Modernize the U.S. Immigration System," *Heritage Foundation Issue Brief No. 4818*, February 15, 2018, <https://www.heritage.org/immigration/report/scrutinize-special-and-other-green-card-eligibility-categories-part-the-effort>, and Jessica Zuckerman and Landon Zinda, "STEM Jobs Act: Next Step for High-Skilled Immigration Reform," *Heritage Foundation Issue Brief No. 3792*, December 4, 2012, <https://www.heritage.org/immigration/report/stem-jobs-act-next-step-high-skilled-immigration-reform>.

85. U.S. Office of Management and Budget, Directive No. 15, "Race and Ethnic Standards for Federal Statistics and Administrative Reporting (as adopted on May 12, 1977)," <https://wonder.cdc.gov/wonder/help/populations/bridged-race/directive15.html> (accessed February 15, 2019). See also Richard Delgado and Jean Stefanic, *Critical Race Theory: An Introduction* (New York: New York University Press, 2017), p. 69.
86. See, for example, Matthew Spalding and Patrick J. Garrity, *A Sacred Union of Citizens: George Washington's Farewell Address and the American Character* (Lanham, MD: Rowman and Littlefield, 1996, p. 118, and George Washington, letter to John Adams, November 15, 1794, <https://founders.archives.gov/documents/Washington/05-17-02-0112> (accessed February 14, 2019).
87. Mike Gonzalez, "Montgomery County's Wrong Tack on Culturally Diverse Education," *The Washington Post*, January 20, 2017, https://www.washingtonpost.com/opinions/montgomery-countys-wrong-tack-on-culturally-diverse-education/2017/01/20/ae613906-de67-11e6-acdf-14da832ae861_story.html?utm_term=.55d7120d5e98 (accessed February 14, 2019).
88. Patrick J. Wolf, "Civics Exam: Schools of Choice Boost Civic Values," Harvard University, Program on Education Policy and Governance, PEPG/07-05, 2007, https://www.researchgate.net/publication/228381540_Civics_Exam_Schools_of_choice_boost_civic_values (accessed February 14, 2019).
89. Their charters include their own mission statements and curricula and have a separate school board. We should be encouraging the growing number of civically minded charter schools, such as the Great Hearts and Barney Charter initiatives.



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