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The Economics of Immigration Reform

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The Economics of Immigration Reform

Howard F. Chang*

In this article, I draw upon economic theory and recent empirical work on the economic and fiscal effects of immigration to evaluate some recent proposals for immigration reform in terms of their effects on the economic welfare of natives in the United States. In particular, I consider the Reforming American Immigration for a Strong Economy (“RAISE”) Act, a bill that would cut immigration to half of its current level. President Donald Trump has endorsed the RAISE Act and has insisted that many of its provisions be part of any legislation legalizing the status of unauthorized immigrants granted relief under the Deferred Action for Childhood Arrivals (“DACA”) program. I compare this restrictionist proposal to the comprehensive immigration reform bill passed by the Senate in 2013, which would have liberalized admissions to the United States. I conclude that economic analysis militates in favor of liberalizing our immigration restrictions, as proposed in 2013, instead of imposing the drastic new restrictions proposed in the RAISE Act.

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The people of the United States and our elected representatives remain sharply divided on the issue of immigration. In August 2017, President Donald Trump announced his support for an immigration bill introduced by Republican Senators Tom Cotton and David Perdue, the Reforming American Immigration for a Strong Economy (“RAISE”) Act.¹ If enacted, the RAISE Act would slash legal immigration drastically, cutting immigration in half within a decade.² This announcement reveals that President Trump’s hostility toward immigration is not limited to unauthorized immigration but instead extends more broadly to legal immigration as well.

In September 2017, the Trump administration announced its decision to rescind the Deferred Action for Childhood Arrivals (“DACA”) program adopted in 2012 by President Barack Obama for certain immigrants who immigrated illegally as children.³ The DACA program provides these unauthorized immigrants temporary but renewable protection from deportation and authorization for employment in the United States. Although President Trump urged Congress to provide these immigrants relief from deportation through legislation,⁴ in October 2017, he released a long list of restrictionist provisions he would demand in exchange for any such relief.⁵ His long list of demands includes the new immigration restrictions proposed by the RAISE Act.⁶ Restrictionist demands by President Trump and his Republican allies in Congress have remained obstacles to efforts to enact legislation granting relief to DACA recipients.⁷

These proposed restrictions stand in stark contrast to the comprehensive immigration reform bill passed by the Senate in 2013 with bipartisan support (68-32, with all Democrats and fourteen

¹ Reforming American Immigration for a Strong Economy Act, S. 1720, 115th Cong. (2017); David Nakamura, *Trump, GOP Senators Introduce Bill to Slash Legal Immigration Levels*, WASH. POST (Aug. 3, 2017), https://www.washingtonpost.com/news/post-politics/wp/2017/08/02/trump-gop-senators-to-introduce-bill-to-slash-legal-immigration-levels/?utm_term=.903007a09063.

² See Nakamura, *supra* note 1.

³ Michael D. Shear & Julie Hirschfeld Davis, *Trump Moves to End DACA and Calls on Congress to Act*, N.Y. TIMES (Sept. 5, 2017), <https://nyti.ms/2x7xOo2>.

⁴ *Id.*

⁵ Priscilla Alvarez, *The White House Lays Out Its Conditions for Extending DACA*, ATLANTIC (Oct. 8, 2017), <https://www.theatlantic.com/politics/archive/2017/10/the-white-house-lays-out-its-demands-for-daca/542376/>.

⁶ See *id.*

⁷ See Alicia Parlapiano, *Dreamers’ Fate Is Now Tied to Border Wall and Other G.O.P. Immigration Demands*, N.Y. TIMES (Feb. 15, 2018), <https://nyti.ms/2Bu16i2> (noting that the Senate voted on, but failed to pass, three different immigration plans due to President Trump’s demands).

Republicans voting in favor), the Border Security, Economic Opportunity, and Immigration Modernization Act (“2013 bill”).⁸ The Republicans in control of the House of Representatives, however, never brought the 2013 bill up for a vote, because conservative members opposed any “amnesty” for unauthorized immigrants.⁹ Unlike the RAISE Act, the 2013 bill would have included several reforms that would liberalize admissions to the United States.¹⁰ Which of these contrasting approaches would improve our immigration system?

As the reference to a “Strong Economy” in the title of the RAISE Act suggests, its proponents tout the bill on economic grounds. What does economic theory suggest about the effect of immigration on economic welfare? For the economist, the international migration of workers is one facet of globalization, which economists understand to mean our evolution toward a world economy that is integrated across national boundaries.¹¹ Economists generally welcome the development of such a global common market, prescribing free trade in goods as the regime that maximizes global economic welfare. Economists also recommend liberalized trade as a policy that is likely to produce gains for each national economy.

Economists also recognize that the same theory that they apply to international trade in goods also applies to international trade in other markets.¹² Nations can gain from the free movement of not only goods but also workers because labor mobility allows them to enjoy gains from international trade in the labor market. We would expect workers to migrate from economies that offer them low wages to economies that offer them higher wages. As a result of this migration, the output of the global economy grows. Higher wages in the country of immigration imply that the marginal product of labor is higher

⁸ Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. (2013); see Ed O’Keefe, *Senate Approves Comprehensive Immigration Bill*, WASH. POST (June 27, 2013), https://www.washingtonpost.com/politics/senate-poised-to-approve-massive-immigration-bill/2013/06/27/87168096-df32-11e2-b2d4-ea6d8f477a01_story.html?utm_term=.f95da6eeacb2.

⁹ Ashley Parker & Jonathan Weisman, *Republicans in House Resist Overhaul for Immigration*, N.Y. TIMES (July 10, 2013), <https://nyti.ms/2Nit2Zu>.

¹⁰ See *infra* Part III.A.

¹¹ See Howard F. Chang, *Liberalized Immigration as Free Trade: Economic Welfare and the Optimal Immigration Policy*, 145 U. PA. L. REV. 1147, 1148-49 (1997) [hereinafter *Liberalized Immigration*].

¹² This discussion draws from Howard F. Chang, *The Economic Impact of International Labor Migration: Recent Estimates and Policy Implications*, 16 TEMPLE POL. & CIV. RTS. L. REV. 321, 322 (2007) [hereinafter *Recent Estimates*].

there than in the country of emigration. That is, higher wages for the same worker mean that the worker produces more value in the country of immigration than in the country of emigration. Labor migration generally leads to net gains for the world as a whole, because labor flows to the economy where it can produce the most value. Thus, basic economic theory raises a presumption in favor of the free movement of workers. Immigration restrictions distort the global labor market by interfering with the efficient allocation of workers among national economies, thereby wasting human resources and generating poverty in countries of emigration.

The greater the inequality in wages among countries, the costlier the distortion of the global labor market caused by immigration restrictions, and the greater the gains from liberalizing labor migration. Given the degree of wage inequality in the world, it should be apparent that the economic gains from liberalized labor migration are enormous.¹³ These considerations militate in favor of liberalized migration, not reduced levels of migration.

The proponents of the RAISE Act, however, do not seek to promote global economic welfare. Instead, Senator Perdue looks to the national interests of the United States, complaining that our current immigration system “does not meet the needs of our economy.”¹⁴ Furthermore, President Trump makes clear that he discounts the interests of prospective immigrants when he weighs the costs and benefits of immigration reforms. He claims that the RAISE Act would replace current immigration policies with a system that “puts America first.”¹⁵

What light does the economic literature shed on these claims regarding our national economic welfare? Suppose we were to set aside the interests of immigrants and instead adopt the “America first” perspective suggested by President Trump and other advocates of the RAISE Act. In this article, I will focus narrowly on the effects of our current flow of immigrants on the economic welfare of natives, that is, those born in the United States. This article draws upon economic theory and recent empirical work on the economic and fiscal effects of immigration into the United States and evaluates these recent

¹³ For surveys of some empirical estimates of these gains, see *id.* at 323-24 and Michael A. Clemens, *Economics and Emigration: Trillion-Dollar Bills on the Sidewalk?*, 25 J. ECON. PERSP. 83, 83-87 (2011).

¹⁴ Peter Baker, *Trump Supports Plan to Cut Legal Immigration by Half*, N.Y. TIMES (Aug. 2, 2017), <https://nyti.ms/2hnAref> (quoting Sen. Perdue).

¹⁵ *Id.* (quoting President Trump).

proposals for immigration reform in terms of their effects on the economic welfare of natives.

In Part I, I will review estimates of the economic and fiscal benefits of immigration, which suggest that liberalizing rather than restricting access to immigrant visas would serve the economic interests of natives. In Part II, I rebut claims that the RAISE Act would serve the national interest by improving the selection of immigrants. In Part III, I compare the RAISE Act with the comprehensive immigration reform bill passed by the Senate in 2013, which would have liberalized admissions to the United States. I discuss how the 2013 bill would do a better job of serving the economic interest of natives than the RAISE Act. In Part IV, I conclude that economic analysis militates in favor of liberalizing our restrictive immigration laws instead of imposing new restrictions like those proposed in the RAISE Act, suggesting that the 2013 bill provides a much more promising framework for comprehensive immigration reform.

I. NET BENEFITS FOR NATIVES FROM IMMIGRATION

Would the effects of immigrant workers in the labor market be in the economic interest of natives? Economists agree that the effect of immigrant workers in the labor market is on balance positive for natives as a group. If we examine the effects of immigrants in the labor market, we find that the natives of the country of immigration, taken together, will on balance gain from the immigration of workers.¹⁶ Natives enjoy a net gain from employing immigrant workers: they gain a surplus in excess of what they pay immigrants for their labor. In 2014, the economist George Borjas produced a range of crude estimates for the surplus that natives enjoy as a result of the participation of immigrants in our labor market, and using a variety of assumptions, he derives estimates ranging from \$2.6 billion to \$201.8 billion in income every year.¹⁷

Even as natives enjoy net benefits from immigrant workers in the labor market, however, immigrants may still pose a risk of a fiscal burden on natives through the public treasury. In fact, Senator Cotton cites the threat of a fiscal burden in defense of the RAISE Act. He claims that many immigrants are a “net cost to our economy because of the transfer payments” they receive through “public assistance”

¹⁶ Chang, *Recent Estimates*, *supra* note 12, at 324-25.

¹⁷ GEORGE J. BORJAS, IMMIGRATION ECONOMICS 158 (2014) [hereinafter IMMIGRATION ECONOMICS].

programs.¹⁸ President Trump claims that the RAISE Act would “save taxpayers billions and billions of dollars.”¹⁹ The empirical evidence, however, suggests that immigrants generally confer a fiscal benefit rather than impose a fiscal burden on natives.

A. Fiscal Impact

In 1997, the National Research Council (“NRC”) conducted the first study to attempt a comprehensive calculation of the fiscal impact of immigration in the United States, taking into account the contributions made to tax revenues and the costs imposed on the public treasury not only by the immigrants themselves but also by their descendants.²⁰ The NRC generated a range of estimates for the total fiscal impact, including the effects at the state level as well as those at the federal level, using a variety of assumptions.²¹ Using the most reasonable set of assumptions for its “baseline” scenario, the NRC found that the average recent immigrant in 1996 had a positive fiscal impact of \$80,000 in net present value in 1996 dollars.²²

More recently, in 2017, the National Academies of Sciences, Engineering, and Medicine (“National Academies”) updated those NRC estimates, accounting for changes in circumstances over the intervening two decades.²³ The National Academies generate a range of estimates of the total fiscal impact of immigration in the United States, again using a wide variety of assumptions.²⁴ Although the National Academies use more conservative assumptions than used for

¹⁸ Peter M. Robinson, *Senator Tom Cotton, Immigration Reform, and the RAISE Act*, HOOVER INST. (Feb. 27, 2017), <https://www.hoover.org/research/senator-tom-cotton-immigration-reform-and-raise-act> (quoting Sen. Cotton).

¹⁹ Andrew V. Pestano, *Trump Unveils Merit-Based Immigration Bill Favoring English-Speaking Applicants*, UPI (Aug. 2, 2017, 1:27 PM), <https://upi.com/6615402> (quoting President Trump).

²⁰ NAT’L RESEARCH COUNCIL, *THE NEW AMERICANS: ECONOMIC, DEMOGRAPHIC, AND FISCAL EFFECTS OF IMMIGRATION* 302 (James P. Smith & Barry Edmonston eds., 1997) [hereinafter NRC] (noting that “we must include in the calculation changes in taxes and expenditures associated not only with the immigrant, but also with her descendants”).

²¹ *See id.* at 337.

²² *See id.* at 325-26, 336-37.

²³ NAT’L ACADS. OF SCIS., ENG’G, & MED., *THE ECONOMIC AND FISCAL CONSEQUENCES OF IMMIGRATION* 413 (Francine D. Blau & Christopher Mackie eds., 2017) [hereinafter NATIONAL ACADEMIES] (noting that “both immigrants and government budgets have changed since the mid-1990s, when a similar exercise was undertaken”).

²⁴ *See generally id.* at 428-60 (providing a variety of estimates).

the NRC's baseline scenario,²⁵ they nevertheless generate estimates showing that current immigrants have a much greater positive fiscal impact than they did twenty years ago. Under the set of assumptions that most closely approximates the NRC's baseline scenario, the National Academies found that the average recent immigrant has a positive fiscal impact of \$279,000 in net present value in 2012 dollars.²⁶ That is, even after accounting for inflation, the fiscal benefit conferred by the average immigrant has more than doubled in the past twenty years.²⁷

Unlike the NRC report, the National Academies report presents a wide range of estimates without identifying a single set of assumptions as the most reasonable to use as a baseline scenario. The more agnostic stance adopted by the National Academies may be a response to objections raised by the economist George Borjas, who has disputed the assumptions adopted by the NRC for its baseline scenario.²⁸ Borjas served on both the panel that produced the 1997 NRC report and the panel that produced the 2017 National Academies report.²⁹ Given the relatively agnostic stance adopted by the National Academies, a closer examination of the assumptions adopted by the NRC is useful for understanding how the assumptions underlying the NRC baseline scenario are more reasonable than the alternatives and why immigration confers such a large fiscal benefit on natives in the United States.

1. Public Goods

First, the NRC notes that “a larger population helps to bear the costs of so-called public goods — those that provide services to all in the population at a cost that does not rise with the size of the population.”³⁰ As any introductory economics textbook explains, the defining features of a “public good” are that “people cannot be

²⁵ For an extended discussion of these assumptions, see *infra* Part I.A.2.

²⁶ See NATIONAL ACADEMIES, *supra* note 23, at 446.

²⁷ According to the Consumer Price Index (CPI) calculated by the U.S. Bureau of Labor Statistics, \$279,000 in 2012 dollars is equivalent to about \$191,000 in 1996 dollars. See BUREAU OF LAB. STAT., U.S. DEP'T OF LABOR, TABLE 24: HISTORICAL CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS (CPI-U), at 4 (2017), <https://www.bls.gov/cpi/tables/historical-cpi-u-201709.pdf>.

²⁸ See GEORGE J. BORJAS, HEAVEN'S DOOR: IMMIGRATION POLICY AND THE AMERICAN ECONOMY 124-25 (1999) [hereinafter HEAVEN'S DOOR] (objecting to the NRC assumptions about future fiscal policies).

²⁹ NATIONAL ACADEMIES, *supra* note 23, at v; NRC, *supra* note 20, at iii.

³⁰ NRC, *supra* note 20, at 302.

prevented from using a public good” and that “one person’s use of a public good does not reduce another person’s ability to use it.”³¹ A classic textbook example of a public good is national defense, because “it is impossible to prevent any single person from enjoying the benefit of this defense,” and “when one person enjoys the benefit of national defense, he does not reduce the benefit to anyone else.”³² That is, a pure public good like national defense is not subject to congestion and is thus not “rival in consumption.”³³ The NRC notes that other public goods include “research on health and science.”³⁴

The NRC distinguishes these public goods from other government services, such as “services from roads, sewers, police and fire departments, libraries, airports, and foreign embassies,” which “are highly congestible.”³⁵ Insofar as immigration increases the population served, a larger population would “crowd the existing social infrastructure, including roads, libraries, airports, sewage and water supply systems, and public buildings,” and these “congestion costs” would require a government to increase its expenditures to maintain the same quality of service for natives.³⁶ Therefore, the NRC treats these goods “as if immigrants raise both the demand for them and the cost of meeting that demand, in proportion to their numbers.”³⁷ The different treatment of public goods has a significant effect on the NRC’s calculations. For example, if the NRC were to treat public goods as if they were “congestible goods,” then the NRC would have concluded that the average immigrant imposes a net fiscal cost of \$5,000 rather than providing a net fiscal benefit of \$80,000 in net present value in 1996 dollars.³⁸ This important effect is no surprise, as noted by the National Academies, because “public goods such as national defense represent a large part of the federal budget.”³⁹

The National Academies also note that “interest on the national debt” may be treated as a pure public good.⁴⁰ The federal government

³¹ N. GREGORY MANKIW, *PRINCIPLES OF MICROECONOMICS* 226 (5th ed. 2008).

³² *Id.* at 228.

³³ *Id.*

³⁴ NRC, *supra* note 20, at 302; *see* MANKIW, *supra* note 31, at 229 (noting that basic research is also a public good).

³⁵ NRC, *supra* note 20, at 303.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 346.

³⁹ NATIONAL ACADEMIES, *supra* note 23, at 357. National defense alone “accounts for about 18 percent of the U.S. federal budget.” *Id.* at 345.

⁴⁰ *Id.* at 345.

would owe this interest on a certain stock of debt that would exist even in the absence of more immigration. These interest payments “represent the cost of servicing debt attributable to past spending and deficits from which new immigrants did not benefit.”⁴¹ As the NRC notes, “a larger population helps to bear the burden of the preexisting public debt through tax payments to cover interest or repayment charges.”⁴² Treating interest payments as a public good has an important effect. For example, if the NRC were to treat them as a “private good” rather than as a public good, then the NRC would have concluded that the average immigrant provides a net fiscal benefit of only \$31,000 rather than \$80,000 in net present value in 1996 dollars.⁴³

The National Academies agrees that “it is reasonable to omit the per capita cost of pure public goods, such as national defense, for the incremental cost to government of a single additional citizen,” because “the addition of a single citizen through immigration or birth cannot plausibly increase defense spending” or spending on any other pure public good.⁴⁴ The National Academies report, however, presents many estimates based on scenarios that treat public goods as if they were private goods subject to congestion.⁴⁵ With this change in assumptions, the National Academies would conclude that the average recent immigrant provides a net fiscal benefit of only \$195,000 rather than \$279,000 in net present value in 2012 dollars.⁴⁶

Thus, the National Academies report presents some estimates based on the false assumption that public goods are private goods. Why present these estimates as if they were as plausible as those based on the assumption that public goods are public goods? The National Academies report offers a peculiar explanation, claiming that “for larger increases in population through sustained immigration,” it may be better to assume that “spending on public goods” increases “with

⁴¹ *Id.* at 364.

⁴² NRC, *supra* note 20, at 302-03.

⁴³ *Id.* at 345.

⁴⁴ NATIONAL ACADEMIES, *supra* note 23, at 461-62.

⁴⁵ *See id.* at 364, 394-95. For example, the first four of eight scenarios presented assume that immigrants “incur the average cost of public goods,” as if they were congestible private goods. *Id.* at 364. The report presents five tables of estimates for the fiscal impact of immigrants and their descendants. *See id.* at 445-59. Two of these tables treat public goods as if they were private goods. *See id.* at 454-59.

⁴⁶ *Compare id.* at 446 (estimating net fiscal benefit of \$279,000 when public goods are excluded), *with id.* at 455 (estimating benefit of \$195,000 when public goods are included).

the resulting population.”⁴⁷ The only support the report offers for this alternative assumption is the empirical claim that “over time, public goods such as defense spending have been correlated with gross domestic product (GDP) and population size.”⁴⁸

The report’s alternative assumption here is based on a non sequitur. Even if we assume that the empirical claim is true, this observation would not imply that public goods should be treated as if they were private goods subject to congestion. If a nation decides to increase its spending on a pure public good like national defense or basic research, then the government does not do so because congestion requires an increase in spending to maintain the same level of the relevant service to its residents. Rather, the nation is choosing to take the fiscal benefit generated by a larger population and spend that extra tax revenue on a higher level of service to be enjoyed by each of its residents. That is, the nation chooses to consume that fiscal benefit, say, in the form of a stronger national defense, or in more resources devoted to a search for a cure for cancer. This higher spending buys benefits that the nation deems to be greater than the fiscal costs.⁴⁹ In other words, the nation would be responding to a lower cost per capita for the same quantity of pure public goods by choosing to buy more of those goods, which would increase benefits for all residents, including natives and their descendants. Far from imposing any incremental costs on natives, more immigrants would allow natives to consume a larger stream of benefits from pure public goods while maintaining the same cost per capita for those goods. Thus, the NRC adopted the most reasonable treatment of public goods for its baseline scenario, and the alternative assumptions considered by the National Academies are based on an error in reasoning.

2. The National Debt

To generate estimates of fiscal impact, the NRC also had to make some assumptions about future fiscal policies in order to make realistic projections regarding future taxes and expenditures.⁵⁰ As the

⁴⁷ *Id.* at 462.

⁴⁸ *Id.* at 345.

⁴⁹ If a citizen disagrees and regards the spending to be a waste of money, then that citizen has a quarrel with the government’s spending decisions, not with its immigration policy. If immigration causes population growth, this growth still does not compel the nation to spend any more than the government already spends on pure public goods.

⁵⁰ This discussion draws on observations made by Howard F. Chang, *Introduction*, in *LAW AND ECONOMICS OF IMMIGRATION*, at xi, xxxii-xxxiii (Howard F. Chang ed.,

NRC explains, “any government faces an overall constraint on its ability to use deficit finance,” which implies that no government can “let its debt grow without limit relative to the economy.”⁵¹ The problem confronting the NRC is that under “current fiscal rules” in the United States, “tax and expenditure policies will cause the debt to explode over time.”⁵² Therefore, the NRC assumes that the federal government brings the growth of the national debt under control through “a future fiscal adjustment,” that is, through “changes in taxes and expenditures” that stabilize “the ratio of debt to GDP . . . at some point.”⁵³

George Borjas objects to this assumption, which he argues “builds in the conclusion: immigration is beneficial because the country can spread the pain of a large tax bill over a larger population.”⁵⁴ This conclusion, however, is not built into the NRC’s assumption so much as it is built into economic reality under the circumstances. The NRC explains that the alternative scenario, in which “debt never has to be controlled,” is unreasonable because this alternative “clearly leads to unrealistic debt levels.”⁵⁵

The NRC’s assumption is important to the calculation of the fiscal impact of the average immigrant. When the NRC adopts the alternative assumption, with no “budget adjustment,” the NRC projects that the average immigrant imposes a modest net fiscal burden of \$15,000 rather than providing a net fiscal benefit of \$80,000 in net present value in 1996 dollars.⁵⁶ Yet, even if we were to adopt this alternative scenario, in which “debt never has to be controlled,” then natives would never have to bear this supposed \$15,000 fiscal burden through tax increases or spending cuts because this scenario assumes that the government can borrow without limit.⁵⁷ Indeed, this scenario assumes that “the debt is allowed to grow with neither tax increases nor benefit cuts,” so that *by assumption* natives bear no increased tax burden as a result of immigration.⁵⁸ Instead, in this scenario, taxpayers would avoid bearing this supposed \$15,000 fiscal burden by borrowing, increasing the national debt without limit, and

2015) [hereinafter *Introduction*].

⁵¹ NRC, *supra* note 20, at 299.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ BORJAS, HEAVEN’S DOOR, *supra* note 28, at 125.

⁵⁵ NRC, *supra* note 20, at 338.

⁵⁶ *Id.* at 337.

⁵⁷ *See id.* at 338.

⁵⁸ *Id.*

making “all interest payments . . . by borrowing rather than by raising taxes.”⁵⁹ This scenario is hardly what restrictionists have in mind when they claim that immigration imposes a burden on taxpayers.⁶⁰

Thus, for immigration to impose any fiscal burden on taxpayers that they cannot avoid by borrowing, a scenario must assume that a budget constraint ultimately imposes some limit on debt, so that more deficit spending today requires more fiscal restraint at some point in the future. The NRC appropriately makes such an assumption in its “baseline scenario.”⁶¹ Once a projection makes such a “fiscal sustainability” assumption, however, then the net fiscal impacts of immigrants must be “greater in a positive direction,” precisely because immigrants and their descendants would help shoulder the burden of “future spending cuts and tax increases.”⁶² This effect is why the NRC finds that a future budget adjustment implies an improved fiscal impact for the average immigrant. As soon as a scenario acknowledges that deficits have consequences for future taxpayers, the calculations must include the value of immigrants and their descendants as taxpayers who will share the future burden of the national debt. For this reason, a nation in debt should eagerly welcome more newcomers, who will help pay for the debts that natives have incurred through the public sector. The unrealistic alternative in which “debt never has to be controlled” is a scenario in which taxpayers do not need to bear any burden as a result of debt and thus “the effects of debt sharing are inconsequential.”⁶³

The National Academies report fails to include any scenario with a budget constraint like that adopted by the NRC’s baseline scenario.

⁵⁹ *Id.*

⁶⁰ For example, President Trump claims that the cuts to legal immigration proposed by the RAISE Act would “save taxpayers billions and billions of dollars.” Pestano, *supra* note 19 (quoting President Trump).

⁶¹ NRC, *supra* note 20, at 325. The NRC considers different assumptions for the timing of a future fiscal adjustment and finds that delaying this adjustment into the future increases the net present value of the average immigrant. *See id.* at 337-38. Thus, although the NRC baseline scenario assumed that fiscal adjustments would hold the debt/GDP ratio fixed starting twenty years later, in 2016, this assumption yields a relatively conservative estimate of the fiscal benefit conferred by the average immigrant in 1996, given that the national debt is now growing at an unsustainable rate. *See* Thomas Kaplan, *Federal Budget Deficit Projected to Soar to Over \$1 Trillion in 2020*, N.Y. TIMES (Apr. 9, 2018), <https://nyti.ms/2Hna41c> (reporting that according to the Congressional Budget Office, the national debt is now on track to reach 96% of GDP by 2028, rising to “a higher level than any point since just after World War II and well past the level that economists say could court a crisis”).

⁶² NATIONAL ACADEMIES, *supra* note 23, at 461.

⁶³ NRC, *supra* note 20, at 338.

Instead, the National Academies report uses three different budget scenarios,⁶⁴ and “all three of these scenarios assume unsustainable increases in deficits and debt over time.”⁶⁵ Therefore, all three scenarios limit the fiscal benefit that immigrants and their descendants would contribute to deficit reduction or debt service and thus build in a bias against a positive fiscal impact from immigration. In this sense, all of the estimates reported by the National Academies are based on budget assumptions more conservative than used by the NRC baseline scenario. The National Academies scenario that comes the closest to fiscal sustainability is the “Deficit Reduction” scenario, which assumes some “tax increases and spending cuts” that at least reduce “the gap between federal spending and revenue.”⁶⁶ The Deficit Reduction scenario that also treats public goods properly (that is, as public goods) is the scenario that predicts that the average recent immigrant confers a net fiscal benefit of \$279,000 in net present value in 2012 dollars.⁶⁷ Although this prediction is the largest positive estimate presented by the National Academies report, even this estimate is at best a lower bound on what the appropriate calculation would derive using more reasonable assumptions regarding future budget adjustments.

All estimates of fiscal impact presented by the National Academies are conservative estimates, not only because they all derive from scenarios that fail to impose any budget constraint on borrowing, but also because they all measure “the future net fiscal impact of an immigrant and descendants over a 75-year time horizon.”⁶⁸ For a nation engaged in deficit spending, which shifts tax burdens to future generations, any calculation based on a limited time horizon will include the fiscal burden imposed by the current generation while excluding the fiscal benefit of future generations who must pay taxes to service the debt that they inherit. Thus, a limited time horizon biases the estimates of net fiscal impact in a negative direction, because much of the fiscal benefit of the average immigrant derives from the fiscal benefits produced in the more distant future. The NRC reports that after seventy-five years, the United States would realize only fifty-three percent of the long-run net present value of the fiscal benefit ultimately conferred by an immigrant and the immigrant’s

⁶⁴ NATIONAL ACADEMIES, *supra* note 23, at 410-12.

⁶⁵ *Id.* at 438.

⁶⁶ *Id.* at 411 (describing the “Deficit Reduction” scenario).

⁶⁷ *Id.* at 446.

⁶⁸ *Id.* at 410.

descendants.⁶⁹ These estimates indicate that the net fiscal benefit of the average recent immigrant over a seventy-five-year time horizon has more than quadrupled in real terms over the past twenty years.⁷⁰ These considerations also suggest that if the National Academies had performed a calculation based on more appropriate assumptions, like those used by the NRC in its baseline scenario, the total long-run net present value of the fiscal benefit ultimately conferred by the average immigrant would prove to be more than double the \$279,000 estimate presented in the National Academies report. Thus, that figure represents a very conservative estimate for the fiscal benefit conferred by the average immigrant today.

B. *Costly Backlogs and the Case for Liberalized Quotas*

In short, the economic literature suggests that natives on balance gain from immigration under current policies. If anything, the estimated economic and fiscal impacts of immigration militate in favor of higher levels of immigration, not lower levels. If we consider federal immigration laws from the perspective of economics, then the primary problem with our current admissions policies is that they are they are unduly restrictive. We have made it far too difficult for valuable workers and taxpayers to enter the United States. Quotas severely limit the supply of visas well below the demand for these visas and thereby create costly backlogs for those waiting for their immigration visas.

A glance at the Visa Bulletin from the U.S. State Department for May 2018 reveals the magnitude of the problem for various categories of immigration visas. For example, brothers and sisters of U.S. citizens receiving immigration visas waited at least thirteen years for their visas.⁷¹ Married sons or daughters of U.S. citizens waited at least twelve years for their visas.⁷² All categories of family-based

⁶⁹ See NRC, *supra* note 20, at 343. This figure implies that over a 75-year time horizon, the United States would realize only \$42,400 of the \$80,000 net present value that the NRC predicts as the net fiscal benefit of the average immigrant.

⁷⁰ See *supra* notes 27, 69. The NRC and the National Academies both use a three percent real discount rate to calculate net present values. NATIONAL ACADEMIES, *supra* note 23, at 413 (using “a relatively conservative real discount rate of [three] percent”); NRC, *supra* note 20, at 325 (using three percent for the baseline scenario and other rates for alternative scenarios).

⁷¹ The sponsors for these immigrants filed their visa petitions no later than October 1, 2004. See BUREAU OF CONSULAR AFF., U.S. DEP’T OF STATE, VISA BULLETIN: IMMIGRANT NUMBERS FOR MAY 2018, at 2 (2018), https://travel.state.gov/content/dam/visas/Bulletins/visabulletin_May2018.pdf.

⁷² The sponsors for these immigrants filed their visa petitions no later than February 1, 2006. See *id.*

immigration subject to quotas have backlogs, even spouses and minor children of lawful permanent resident aliens.⁷³

Furthermore, our immigration system also includes quotas that limit the number of these immigration visas available to any one country, and these quotas are completely insensitive to the population and to the demand for these visas in that country.⁷⁴ These country quotas require our admissions process to discriminate against some applicants based on their national origin if they come from one of the countries that send us the greatest number of immigrants. Thus, if the sibling of a U.S. citizen comes from Mexico, then the wait is even worse than it is for most countries: that Mexican sibling has waited twenty years for a visa.⁷⁵ If that sibling comes from the Philippines, then the wait is even longer: that sibling has waited more than twenty-three years for a visa.⁷⁶

These country quotas not only aggravate backlogs for family-sponsored immigration visas but also create backlogs for employment-based immigration visas. For natives of India, even skilled workers and professionals have waited ten years for an employer-sponsored visa.⁷⁷ Even professionals holding advanced degrees or workers with exceptional ability from India will have waited more than nine years, and those from China will have waited more than three years.⁷⁸ These preference categories already reserve most employer-sponsored immigration visas for skilled workers with offers of employment, who are likely to contribute to the public treasury by paying income taxes and unlikely to rely on any means-tested entitlement programs.⁷⁹ Their immigration is especially likely to promote the economic welfare of those of us already here.

⁷³ The sponsors of these spouses and children filed their visa petitions no later than June 1, 2016. *See id.*

⁷⁴ *See* 8 U.S.C. § 1152(a)(2) (2018) (placing limits on the total number of family-sponsored and employment-based immigrant visas per country).

⁷⁵ The sponsors of these immigrants filed their visa petitions on January 8, 1998. *See* BUREAU OF CONSULAR AFF., *supra* note 71.

⁷⁶ The sponsors of these immigrants filed their visa petitions on February 1, 1995. *See id.*

⁷⁷ The employers of these immigrants applied or filed on May 1, 2018. *See id.*

⁷⁸ The employers of these Indian immigrants applied or filed on December 22, 2018, and the employers of these Chinese immigrants applied or filed on September 1, 2014. *See id.*

⁷⁹ *See* Howard F. Chang, *Migration as International Trade: The Economic Gains from the Liberalized Movement of Labor*, 3 UCLA J. INT'L L. & FOREIGN AFF. 371, 397 (1998) [hereinafter *Migration as International Trade*].

In fact, the studies conducted by the NRC and the National Academies found that age at the time of admission is an important factor determining the total fiscal impact of an immigrant.⁸⁰ In general, the younger the immigrant at the time of arrival, the more years the immigrant can spend working in the United States, the more tax revenues the immigrant will contribute to public coffers prior to retirement, and the more positive the immigrant's total fiscal impact.⁸¹ In fact, immigrants to the United States are often young adults who will not participate in entitlement programs for the elderly for many years.⁸²

The older the immigrant at the time of entry, the less the immigrant will pay in taxes over the immigrant's remaining years in this country, and the less favorable the fiscal impact of that immigrant. So longer backlogs make not only the immigrants but also natives worse off. Long waiting periods mean that immigrants enter later in life, limiting the years during which they can contribute to our economic welfare by providing labor as workers and by paying taxes to the public treasury.

II. SELECTING IMMIGRANTS

One might think that the obvious solution to the problem of excess demand for immigration visas would be to increase the visa supply, which would allow immigrants to enter while still young and thereby increase their economic and fiscal contributions to the welfare of natives. Liberalized quotas would improve the fiscal impact of each immigrant who enters more quickly as well as increase the influx of valuable workers and taxpayers. So how do the proponents of the RAISE Act justify reductions in the flow of immigrants instead of liberalizing reforms? Senator Cotton complains that "so many immigrants enter this country without job skills, or with very few skills," so that they are "less likely to pay taxes" and "more likely to

⁸⁰ See NATIONAL ACADEMIES, *supra* note 23, at 445-59; NRC, *supra* note 20, at 350 (noting that "the fiscal impact of an immigrant varies widely depending on age at arrival in the United States").

⁸¹ See NRC, *supra* note 20, at 328-35; see also NATIONAL ACADEMIES, *supra* note 23, at 445-59.

⁸² See NATIONAL ACADEMIES, *supra* note 23, at 417 (noting that "our forecast of . . . net fiscal impact begins at a more advantageous age for government budgets" because "an average new immigrant today is more likely to be of working age than 20 years ago"); NRC, *supra* note 20, at 353 ("The average fiscal impact of immigrants under the baseline assumptions is positive in part because they tend to arrive at young working ages . . .").

use public assistance.”⁸³ The virtue of the cuts imposed by the RAISE Act, according to this rationale, is that they exclude categories of immigrants likely to impose a fiscal burden.

A. Fiscal Effects

In particular, the RAISE Act would cut family-sponsored immigration by eliminating visas for siblings and adult children of U.S. citizens, perversely eliminating precisely those visa categories that face the greatest excess demand.⁸⁴ Family-sponsored immigration accounts for most legal immigrants to the United States.⁸⁵ Proponents of the RAISE Act, however, offer no empirical evidence that these family-sponsored immigrants impose a net fiscal burden. Furthermore, the RAISE Act would also replace existing categories of employment-based immigration with a system that awards points based on education, the ability to speak English, high-paying job offers, and age.⁸⁶ According to an estimate reported by the *New York Times*, only two percent of adult U.S. citizens would pass the thirty-point minimum required by this points system.⁸⁷

These drastic cuts to immigration go far beyond anything justified by the prospect of a fiscal burden and would instead exclude many immigrants who would have a positive impact on the economic welfare of natives. Estimates by the National Research Council in 1997 and by the National Academies in 2017 both indicate that we can expect the average immigrant with at least a high-school education to have a positive fiscal impact overall, including the fiscal impact of their descendants.⁸⁸ Only twenty-one percent of recent immigrants who are twenty-five years old or older have less than a high-school

⁸³ Robinson, *supra* note 18 (quoting Sen. Cotton).

⁸⁴ See Reforming American Immigration for a Strong Economy Act, S. 1720, 115th Cong. § 4 (2017); Nakamura, *supra* note 1.

⁸⁵ See Baker, *supra* note 14 (reporting that family-sponsored immigrants accounted for sixty-four percent of immigrants to the United States in 2014).

⁸⁶ See S. 1720 § 5; Julia Gelatt, *The RAISE Act: Dramatic Change to Family Immigration, Less So for the Employment-Based System*, MIGRATION POLY INST. (Aug. 2017), <https://www.migrationpolicy.org/news/raise-act-dramatic-change-family-immigration-less-so-employment-based-system>.

⁸⁷ Quoc Trung Bui, *How Many Americans Would Pass an Immigration Test Endorsed by Trump?*, N.Y. TIMES (Aug. 23, 2017), <https://www.nytimes.com/interactive/2017/08/23/upshot/immigration-quiz-raise-act-trump.html>.

⁸⁸ See NATIONAL ACADEMIES, *supra* note 23, at 446; NRC, *supra* note 20, at 334.

education, and fifty-five percent of these immigrants have more than a high-school education.⁸⁹

B. *Income Distribution*

Proponents argue that the least skilled immigrants not only pose a risk of a fiscal burden but also drive down wages for the least skilled native workers. President Trump claims that “the RAISE Act will give American workers a pay raise by reducing unskilled immigration.”⁹⁰ Similarly, Trump’s policy adviser Stephen Miller defended the exclusion of “low-skill workers” as based on “compassion for American workers.”⁹¹ Immigration restrictions, according to this theory, protect native workers from foreign competition and thereby raise their wages. Does this protectionist theory provide a sound justification for restrictive immigration policies?

1. *Wage Effects*

Studies of the effects of immigration in U.S. labor markets have shown little evidence of any significant effects on native wages or employment, even for the least skilled native workers. When the National Academies surveyed the vast economic literature studying the wage effects of immigration in the United States, it concluded that “native dropouts tend to be more negatively affected by immigration than better-educated natives,” but “when measured over a period of more than 10 years, the impact of immigration on the wages of natives overall is very small.”⁹² In fact, “[e]stimated negative effects tend to be smaller (or even positive) over longer periods of time (10 years or more).”⁹³

Why does the entry of immigrant workers have so little effect on the wages of native workers? One reason is that the demand for labor does not remain fixed when immigrants enter the economy. Immigrant workers not only supply labor but also demand goods and services, and this demand will generate greater demand for locally supplied

⁸⁹ NATIONAL ACADEMIES, *supra* note 23, at 415.

⁹⁰ Sheldon Richman, *Unskilled Immigrants Do Not Harm Americans*, AM. INST. ECON. RES. (Aug. 15, 2017), <https://www.aier.org/research/unskilled-immigrants-do-not-harm-americans> (quoting President Trump).

⁹¹ Baker, *supra* note 14 (quoting Stephen Miller).

⁹² NATIONAL ACADEMIES, *supra* note 23, at 267.

⁹³ *Id.* For another survey of this literature, see Chang, *Introduction*, *supra* note 50, at xv-xxvii.

labor.⁹⁴ Furthermore, the entry of immigrant workers will increase profits for owners of capital in the sectors of the economy employing those workers, which will stimulate more investment in those sectors. The expansion of these sectors of the economy will also increase the demand for the types of labor employed in those sectors, which in turn would tend to offset the wage effects of increased labor supply.⁹⁵

Furthermore, the empirical evidence indicates that immigrant workers and native workers are imperfect substitutes in the labor market, so they often do not compete for the same jobs. In fact, immigrants in the United States tend to specialize in some occupations while natives specialize in others, based on the comparative advantage enjoyed by natives in English language skills.⁹⁶ Thus, immigrant workers compete with one another far more than they compete with native workers. Indeed, immigrant workers may complement rather than compete with native workers, so that the net effect of an influx of immigrants may be to increase the demand for native labor and thereby increase native wages rather than depress them.⁹⁷

To the extent economists do find any evidence of a negative impact, it seems largely confined to natives with less than a high-school education and at most suggests a reason to worry about the immigration of workers with less than a high-school education.⁹⁸ Given the small effects of immigration on native wages, however, protectionist policies seem particularly misguided. Like trade barriers, immigration restrictions sacrifice gains from trade and thus reduce the total wealth of natives in the country of immigration. If immigration restrictions confer any benefit on any native worker, they do so only by inflicting a larger cost on other natives. In this sense, protectionist immigration restrictions would be a costly way to transfer wealth from some natives to other natives.

⁹⁴ See Chang, *Liberalized Immigration*, *supra* note 11, at 1184.

⁹⁵ See Howard F. Chang, *Immigration Restriction as Redistributive Taxation: Working Women and the Costs of Protectionism in the Labor Market*, 5 J.L. ECON. & PUB. POL'Y 1, 9 (2009) [hereinafter *Redistributive Taxation*].

⁹⁶ See Giovanni Peri & Chad Sparber, *Task Specialization, Immigration, and Wages*, 1 AM. ECON. J. APPLIED ECON. 135, 145 (2009).

⁹⁷ See Gianmarco I.P. Ottaviano & Giovanni Peri, *Rethinking the Effect of Immigration on Wages*, 10 J. EUR. ECON. ASS'N 152, 187 (2012) (presenting estimates in which most, or all, native workers experienced economic gain from the immigration of workers to the United States from 1990 to 2006).

⁹⁸ See NATIONAL ACADEMIES, *supra* note 23, at 267 (noting that “some studies have found sizable negative short-run wage impacts for high school dropouts” whereas other studies have found “small to zero effects”).

2. Tax Reform as a Less Costly Response to Income Inequality

To the extent that we are worried about after-tax income inequality, we could probably do more good at lower cost through progressive tax reforms than we can through new immigration restrictions.⁹⁹ We could transfer the same wealth through the tax system rather than through protectionism and probably would thereby make all classes of natives better off than they would be under more restrictive immigration policies because immigration yields a net gain for natives as a group.¹⁰⁰ Given the small adverse effects of immigration and the small number of native workers who may find their wages reduced by the influx of immigrant labor, a fairly small increase in the progressivity of our tax rates would suffice to offset any increase in income inequality among natives resulting from immigration.

Redistribution through the tax system, of course, is not costless. Raising taxes on those with high incomes to make those with lower incomes better off will reduce the incentives for taxpayers to earn more income. Redistributive taxes would distort the incentives to work, to save, and to invest. These costly distortions, however, are inherent in any redistribution to address income inequality, whether the redistribution occurs through the tax system or through restrictive immigration policies. For example, if immigration restrictions reduce the return to capital or make wealthy natives less well off because they find the services they use to be more costly when fewer immigrant workers are available,¹⁰¹ then we have reduced the incentives to invest or to become wealthy. If immigration restrictions really do increase the wages of high-school dropouts relative to more educated workers, then they also reduce the incentives for students to complete high school and to invest in human capital. Immigration restrictions cause the same costly distortions as redistributive taxes would, and in addition, they sacrifice the gains that natives would enjoy from employing immigrants in the labor market.¹⁰² Immigration restrictions

⁹⁹ For a more extended discussion setting forth this thesis, see generally Chang, *Redistributive Taxation*, *supra* note 95.

¹⁰⁰ *See id.* at 11-12.

¹⁰¹ *See* Patricia Cortes, *The Effect of Low-Skilled Immigration on U.S. Prices: Evidence from CPI Data*, 116 J. POL. ECON. 381, 382 (2008) (finding that “low-skilled immigration lowers the prices of immigrant-intensive services such as gardening, housekeeping, babysitting, and dry cleaning”).

¹⁰² For a more general statement of the principle applied here, see Louis Kaplow & Steven Shavell, *Why the Legal System Is Less Efficient than the Income Tax in Redistributing Income*, 23 J. LEG. STUD. 667, 667-68 (1994) (noting that “using legal rules to redistribute income distorts work incentives fully as much as the income tax

needlessly introduce a second distortion on top of the distortion that is inherent in income redistribution.

This double distortion need not increase the cost of redistribution, however, if the two distortions “counteract one another.”¹⁰³ In theory, the second distortion might mitigate the first distortion and thereby reduce the efficiency costs of redistribution. As I have noted in prior work, however, the empirical evidence on the effects of immigration “gives us ample reason to think that protectionist immigration restrictions introduce additional distortions that instead aggravate the distortion in work incentives associated with redistribution.”¹⁰⁴ In particular, this evidence indicates that immigration restrictions drive up the cost of “services demanded disproportionately by households with working women” such as child care, food preparation, and housekeeping.¹⁰⁵ The participation of working women in the labor force “is particularly sensitive to economic incentives.”¹⁰⁶ This disparate impact on households in which both spouses work is especially likely to discourage work, which implies that “protectionist immigration restrictions distort labor supply more than necessary” to redistribute income from the wealthy to the poor.¹⁰⁷ Thus, the special distortions introduced by immigration restrictions aggravate the

system — because the distortion is caused by the redistribution itself — and also creates inefficiencies in the activities regulated by the legal rules”).

¹⁰³ Chris William Sanchirico, *Deconstructing the New Efficiency Rationale*, 86 CORNELL L. REV. 1003, 1017 (2001).

¹⁰⁴ Chang, *Redistributive Taxation*, *supra* note 95, at 16.

¹⁰⁵ *Id.* at 17-18.

¹⁰⁶ *Id.* at 16.

¹⁰⁷ *Id.* at 19. After the publication of Chang, *Redistributive Taxation*, *supra* note 95, several studies by economists soon supplied empirical evidence confirming the predicted effects of immigration on female labor supply in various countries. See, e.g., Guglielmo Barone & Sauro Mocetti, *With a Little Help from Abroad: The Effect of Low-Skilled Immigration on the Female Labor Supply*, 18 J. LAB. ECON. 664, 669 (2011) (finding that immigrants are significantly and positively associated with hours worked by “highly educated” native women in Italy); Patricia Cortes & Jessica Pan, *Outsourcing Household Production: Foreign Domestic Workers and Native Labor Supply in Hong Kong*, 31 J. LAB. ECON. 327, 331 (2013) (finding that the admission of foreign domestic workers increased the labor force participation of mothers with young children in Hong Kong); Patricia Cortes & Jose Tessada, *Low-Skilled Immigration and the Labor Supply of Highly Skilled Women*, 3 AM. ECON. J. APPLIED ECON. 88, 90 (2011) (finding that low-skilled immigration has a positive and statistically significant effect on hours worked for working women in the United States); Lidia Farre et al., *Immigration, Family Responsibilities and the Labor Supply of Skilled Native Women*, 11 B.E. J. ECON. ANALYSIS & POL’Y 1, 31 (2011) (finding that female immigrants increase the employment of college-educated native women with young children). For a survey of this literature, see Chang, *Introduction*, *supra* note 50, at xxix-xxx.

distortions inherent in income redistribution, supplying even more reasons to favor redistribution through the tax system instead.

C. *Rising Skill Levels Among Immigrants*

In any event, if we are worried about the effects of the least skilled immigrants in our labor market, then new restrictions on legal immigration are misguided for another reason: most immigrants with less than a high-school education have immigrated without authorization, not legally.¹⁰⁸ Furthermore, although one would hardly know it, given the alarmist tenor of the debate over immigration, the flow of unauthorized immigrants into the United States has slowed to a trickle during the past decade. In fact, the unauthorized population has shrunk in absolute terms since 2007, after rising steadily during the preceding two decades.¹⁰⁹ Net illegal immigration has been negative since the Great Recession, and lower fertility and improved economies in Latin America make this new reality likely to persist into the future.¹¹⁰ It is no coincidence that the population of less skilled immigrants has also become stable during the past decade, after growing dramatically during the preceding two decades.¹¹¹

In short, the RAISE Act, President Trump's proposed "border wall," and other costly and draconian proposals to increase border security¹¹² are misguided reactions to a perceived unskilled influx that largely no longer exists. The fiscal impact of the average immigrant has improved dramatically over the past twenty years precisely because immigrants are now more educated than ever before.¹¹³ The RAISE Act is based on

¹⁰⁸ In 2013, "nearly two-thirds of the U.S. foreign-born adult population with 12 or fewer years of schooling" were unauthorized immigrants. Gordon Hanson et al., *The Rise and Fall of U.S. Low-Skilled Immigration* 1, (Nat'l Bureau of Econ. Research, Working Paper No. 23753, 2017).

¹⁰⁹ See *id.* at 1 (reporting that the unauthorized immigrant population "declined in absolute terms between 2007 and 2014, falling on net by an annual average of 160,000 individuals" after growing from 1990 to 2007 "by an annual average of 510,000 individuals"); see also Jeffrey S. Passel & D'Vera Cohn, *Overall Number of U.S. Unauthorized Immigrants Holds Steady Since 2009*, PEW RES. CTR. (Sept. 20, 2016), <http://www.pewhispanic.org/2016/09/20/overall-number-of-u-s-unauthorized-immigrants-holds-steady-since-2009/>.

¹¹⁰ See Hanson et al., *supra* note 108, at 2, 4-5, 30-44.

¹¹¹ See *id.* at 2 (reporting that "the overall population of low-skilled immigrants of working age remained stable" between 2007 and 2014, after "rising from 8.5 million to 17.8 million" from 1990 to 2007).

¹¹² See Parlapano, *supra* note 7 (discussing proposed plans to phase out the Deferred Action for Childhood Arrivals program).

¹¹³ See NATIONAL ACADEMIES, *supra* note 23, at 414 (finding that "today's

a false and outdated stereotype of the average immigrant to the United States.

Current immigration policies have already successfully promoted the immigration of those with higher levels of education. Existing categories of employment-based immigration already require high levels of education, skill, or wealth, and the RAISE Act seems unlikely to offer much improvement over these visa categories.¹¹⁴ Even family-sponsored immigration is subject to an exclusion ground that denies visas to those deemed “likely at any time to become a public charge.”¹¹⁵ This determination not only already takes into account the education, skills, assets, and age of the prospective immigrant but also, since 1996, has required sponsors to sign legally binding affidavits of support.¹¹⁶ Since 1996, these sponsorship requirements, which obligate sponsors to support all the relatives that they sponsor for immigration and to demonstrate the means to do so, have raised barriers that tend to screen out less educated family-sponsored immigrants.¹¹⁷ Furthermore, in “in determining the eligibility and the amount of benefits” of these family-sponsored immigrants “for any Federal means-tested public benefits program,” federal law deems the “income and resources” of these family-sponsored immigrants to include the “income and resources” of anyone who executed one of

immigrants have more people in the highest educational groups and fewer in the lowest”); Richard Fry, *Today's Newly Arrived Immigrants Are the Best-Educated Ever*, PEW RES. CTR. (Oct. 5, 2015), <http://www.pewresearch.org/fact-tank/2015/10/05/todays-newly-arrived-immigrants-are-the-best-educated-ever/>.

¹¹⁴ See Gelatt, *supra* note 86 (noting that the RAISE Act brings at best “slight” changes to “the employment-based immigration system,” with “the points structure largely echoing the existing preference for higher-educated, higher-paid workers or for investors”); Alex Nowrasteh, *Sens. Cotton and Perdue's Bill to Cut Legal Immigration Won't Work and Isn't an Effective Bargaining Chip*, CATO INST. (Aug. 2, 2017), <https://www.cato.org/blog/sens-cotton-perdues-bill-cut-legal-immigration-wont-work-isnt-effective-bargaining-chip> (noting that the RAISE Act “does not increase skilled immigration at all” because it “does not increase the numerical cap” for employment-based immigration).

¹¹⁵ 8 U.S.C. § 1182(a)(4)(A) (2018).

¹¹⁶ See *id.* § 1182(a)(4)(B) (listing factors to be taken into account in applying this exclusion ground); *id.* § 1182(a)(4)(C) (requiring a sponsor to execute “an affidavit of support”).

¹¹⁷ See *id.* § 1183. The obligation to support family-sponsored immigrants would tend to prevent or deter sponsorship for the least educated immigrants, who would be expected to earn the lowest wages and be the most likely to become eligible for means-tested public benefits in the future. See Chang, *Migration as International Trade*, *supra* note 79, at 404-06 (noting the barriers to sponsorship created by the requirement of affidavits of support).

these affidavits of support.¹¹⁸ Thus, family-sponsored immigrants are less likely to receive means-tested public benefits than other immigrants who are otherwise similarly situated. Furthermore, family-sponsored immigrants are especially likely to adapt well to our labor market because their relatives in the United States can facilitate integration into our economy and our society. Finally, in a world in which countries compete to attract global talent, the ability to sponsor relatives for immigration may give the United States an advantage over other destinations in recruiting the most skilled immigrants.¹¹⁹ These considerations suggest that family-sponsored immigration confers net benefits on natives, especially since 1996, making it especially perverse for the RAISE Act to target this category of immigrants for new restrictions.

D. Youth at the Time of Entry

Even immigrants with less than a high-school education will have a positive fiscal impact if they immigrate while they are still young. Recall that youth at the time of entry is an important factor determining the total fiscal impact of an immigrant. Under the most reasonable assumptions considered by the National Academies, even the average recent immigrant with less than a high-school education who enters while less than twenty-five years old will have a positive total fiscal impact of \$56,000 in net present value in 2012 dollars.¹²⁰

This empirical evidence indicates that the RAISE Act is especially perverse when it imposes new restrictions on the immigration of children. The RAISE Act would continue to allow U.S. citizens and permanent resident aliens to sponsor minor children for immigration but would restrict the class of eligible children, by bringing the age limit down from twenty-one to eighteen years old.¹²¹ This restriction would exclude young immigrants who are especially likely to contribute to the public treasury.

President Trump's decision to rescind DACA is similarly perverse from a fiscal perspective. The eligibility criteria for DACA ensures that beneficiaries immigrated while younger than sixteen years old and will

¹¹⁸ 8 U.S.C. § 1631(a) (2018).

¹¹⁹ See Chang, *Migration as International Trade*, *supra* note 79, at 400-06.

¹²⁰ See NATIONAL ACADEMIES, *supra* note 23, at 446. Similarly, the NRC found that under its baseline scenario, the average immigrant who arrives at age twenty-one or younger will have a positive fiscal impact, even if the immigrant has less than a high-school education. See NRC, *supra* note 20, at 358.

¹²¹ See Reforming American Immigration for a Strong Economy Act, S. 1720, 115th Cong. § 4(a)(1) (2017); Gelatt, *supra* note 86.

have at least a high-school education or the equivalent.¹²² These young and educated immigrants are especially likely to confer net benefits on natives through the public treasury. The expiration of their employment authorization or their deportation would perversely undermine their ability to contribute to the economic welfare of natives through their participation in the labor market and the payment of taxes. These are immigrants we should be eager to keep in our workforce and in our tax base; they should not be subject to removal. Congress would be serving the nation's economic interests to grant legal status to DACA recipients and other immigrants like them, without the restrictions imposed by the RAISE Act on legal immigration.

III. THE ALTERNATIVE OF LIBERALIZING REFORMS

Immigration reform could promote more skilled immigration without the RAISE Act's drastic cuts to immigration levels. For example, although the White House cites the points systems used to select immigrants in Canada and Australia as models for the RAISE Act,¹²³ both of those countries also admit immigrants at much higher rates than the United States. As a fraction of their populations, Canada allows immigration levels more than twice as high as allowed under U.S. policies, and Australia allows immigration levels more than three times as high as allowed under U.S. policies.¹²⁴ In fact, as a fraction of their populations, both Canada and Australia admit more family-based immigrants than the United States.¹²⁵ If Congress were to take Canada and Australia as models for immigration reform in the United States, then reform would take the form of liberalization rather than more severe restrictions.

¹²² See Memorandum from Janet Napolitano, Sec'y, U.S. Dep't of Homeland Sec., on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012), <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

¹²³ See President Donald J. Trump Backs RAISE Act, WHITE HOUSE (Aug. 2, 2017), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-backs-raise-act/> (describing the RAISE Act as using a system "similar to the merit-based immigration systems used by Canada and Australia").

¹²⁴ See Nowrasteh, *supra* note 114 (noting that in 2013, while U.S. immigration was equal to 0.31% of the U.S. population, Canadian immigration was equal to 0.74% of Canada's population, and Australian immigration was equal to 1.1% of Australia's population).

¹²⁵ *Id.*

A. The Comprehensive Immigration Reform Proposed in 2013

The comprehensive immigration reform bill passed by the Senate in 2013 would have liberalized our immigration laws in various respects. Like the RAISE Act, the 2013 bill would have adopted a new merit-based points system for visas, but unlike the RAISE Act, the 2013 bill would have added this category of visas to the existing employment-based immigration categories rather than replacing these categories.¹²⁶ Furthermore, the 2013 bill would have not only legalized many unauthorized immigrants already in the United States but also taken significant steps to address the problem of backlogs in our current system for legal immigration and expanded access to visas in several other respects.

First, unlike the RAISE Act, the 2013 bill would have provided sufficient visas to clear existing visa backlogs within seven years.¹²⁷ Unauthorized immigrants given legal status by the bill would not adjust their provisional status to permanent resident status until those backlogs were eliminated.¹²⁸ These legalized immigrants would generally have to spend ten years in provisional status and would go to the back of the line for permanent resident status, behind those who have been waiting patiently for their immigration visas.¹²⁹

Second, unlike the RAISE Act, the 2013 bill would have treated spouses and children of lawful permanent resident aliens as “immediate relatives,” which would exempt them from quotas entirely.¹³⁰ Spouses and minor children of U.S. citizens can already enter as “immediate relatives” without any ceilings.¹³¹ The 2013 bill would have extended this treatment to the spouses and minor children of lawful permanent resident aliens. This solution would give priority to nuclear families and avoid backlogs for these relatives without taking immigration visas from any other categories.

Third, unlike the RAISE Act, the 2013 bill would also have eliminated all quotas on the most skilled employment-based immigrants, including those with extraordinary ability, outstanding professors and researchers, multinational executives and managers, those with doctorate degrees, physicians, or workers who recently

¹²⁶ See Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. §§ 2301, 2302 (2013).

¹²⁷ See *id.* § 2302.

¹²⁸ See *id.* § 2102 (specifying application procedures for adjustment of status).

¹²⁹ See *id.* § 2302(c)(3)(B) (requiring at least ten years of legal status before adjustment to permanent resident status).

¹³⁰ See *id.* § 2305.

¹³¹ 8 U.S.C. § 1151(b)(2)(A)(i) (2018).

received advanced degrees in science, technology, engineering, or mathematics (“STEM”) fields from universities in the United States.¹³² These STEM immigrants would also be exempt from labor certification requirements.¹³³ Furthermore, the spouses and children of employment-based immigrants would not count toward quotas, which will allow more of these skilled immigrants to enter.¹³⁴ By eliminating or liberalizing quantitative restrictions on both family-sponsored and employment-based immigration, the 2013 bill would have eliminated or reduced backlogs and thus would have been far better than the RAISE Act at increasing the economic and fiscal benefits of immigration.

Fourth, like the RAISE Act, the 2013 bill would have eliminated ceilings based on the country of origin from all employment-based immigrant visas.¹³⁵ These per country quotas have caused long waits for immigrants from the two most populous countries in the world, China and India. Like the RAISE Act, the 2013 bill would allocate these visas on a country-neutral basis. This reform would be even better if it also applied to family-based visas, which should also be available without any discrimination based on national origin. Discrimination based on national origin needlessly introduces costly distortions in the allocation of visas.¹³⁶

Fifth, like the RAISE Act, the 2013 bill would have eliminated immigration visas for siblings of U.S. citizens, but unlike the RAISE Act, the 2013 bill would have eliminated such visas for adult children of U.S. citizens only if those children are married and more than thirty-one years old.¹³⁷ Although the 2013 bill would needlessly impose these new restrictions on family-sponsored immigration, at least under the 2013 bill, they would have an alternative. Under the 2013 bill, in the future, these relatives of U.S. citizens could apply for immigration visas under a new merit-based points system, which would award points based on factors such as education, employment

¹³² See S. 744 § 2307(b)(1).

¹³³ See *id.* § 2307(b)(2).

¹³⁴ See *id.* § 2307(b)(1).

¹³⁵ See S. 744 § 2306; Reforming American Immigration for a Strong Economy Act, S. 1720, 115th Cong. § 5(b) (2017).

¹³⁶ See Howard F. Chang, *Liberal Ideals and Political Feasibility: Guest-Worker Programs as Second-Best Policies*, 27 N.C. J. INT'L L. & COM. REG. 465, 471 (2002) [hereinafter *Liberal Ideals*]; Alan O. Sykes, *International Cooperation on Migration: Theory and Practice*, 80 U. CHL. L. REV. 315, 330-31 (2013) (drawing an analogy between distortions due to visa discrimination and trade diversion due to discrimination in tariffs).

¹³⁷ See S. 744 § 2307(a)(1).

experience, and youth, with at least some weight placed on family reunification.¹³⁸ Like the RAISE Act, the 2013 bill designed its points system to select those expected to have the most positive effect on the U.S. economy, but unlike the RAISE Act, the 2013 bill would award some points for family ties to U.S. citizens.¹³⁹

Thus, although proponents of the RAISE Act cite Canada as a model for its points system, the 2013 bill included a points system that would more closely resemble the points system used by Canada, which also awards points based on family ties. The Canadian system recognizes that an adult relative living in Canada improves the ability of an immigrant to adapt to the Canadian economy and society. In fact, the Canadian system awards points for a far broader set of relatives than those currently allowed to sponsor relatives under the existing system in the United States.¹⁴⁰ The points system in the 2013 bill would have acknowledged not only the moral relevance of family reunification but also the economic advantages of having a family network in the United States to facilitate adaptation and integration into our society. A points system would perform this role even better by awarding points for a broader set of relatives, as the Canadian system does.

Sixth, unlike the RAISE Act, the 2013 bill would have provided nonimmigrant visas for family-sponsored immigrants to enter, live in, and work in the United States while waiting for approval of their immigration visas.¹⁴¹ Thus, in the future, backlogs would not prevent the reunification of families nor delay the contributions that immigrants can make to our economy through the labor market or the public treasury. This reform would improve the expected economic and fiscal impact of each family-sponsored immigrant by allowing each relative to spend more productive years in the United States as a worker and taxpayer.¹⁴²

¹³⁸ See *id.* § 2301(a)(1).

¹³⁹ See *id.* (awarding points to siblings and married sons and daughters of citizens).

¹⁴⁰ Canada awards “adaptability” points to an immigrant for not only parents, children, and siblings but also grandparents, grandchildren, aunts, uncles, nieces, and nephews living in Canada, whether as a Canadian citizen or a permanent resident. See *Six Selection Factors – Federal Skilled Workers (Express Entry)*, GOV'T OF CAN., <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/become-candidate/eligibility/federal-skilled-workers/six-selection-factors-federal-skilled-workers.html#toc5> (last visited Sept. 9, 2018).

¹⁴¹ See S. 744 § 2309.

¹⁴² For a similar proposal to allow prospective immigrants waiting in backlogs to enter on nonimmigrant visas while waiting for their immigration visas, see Chang, *Liberal Ideals*, *supra* note 136, at 466-67.

Finally, unlike the RAISE Act, the 2013 bill would have created new nonimmigrant visa programs for less skilled workers: one program for agricultural visas and another for other workers.¹⁴³ These W visas would allow workers to enter for a three-year period and would be renewable.¹⁴⁴ These visas would allow workers within each category to leave one employer to work for another employer registered with the program, unlike past programs for guest workers, including the Bracero program, which typically tied each guest worker to a specific employer.¹⁴⁵ The freedom to leave one employer and to accept employment with another would give workers more power to assert their rights against employers and thus prevent abuses, without sacrificing the economic benefits that natives derive in the labor market from employing alien workers.¹⁴⁶

In fact, an ideal program would offer the guest worker even more mobility than the 2013 bill did, including the ability to move freely among all sectors of the economy, rather than confining any guest workers to the agricultural sector.¹⁴⁷ Full labor mobility would allow workers to pursue the best employment offer as market conditions change. This mobility would not only increase freedom and expand opportunities for the guest worker but also improve the efficiency of the labor market because it would allow workers to move among sectors in response to shifts in the demand for their labor.

B. Nonimmigrant Visas

From the perspective of the economic interests of natives, these nonimmigrant visas may be an effective response to concerns regarding the fiscal impact of less skilled alien workers.¹⁴⁸ Through these guest-worker programs, natives enjoy the benefits of employing these workers in the labor market but do not bear the fiscal burden of providing the set of public benefits that these workers would receive if they had permanent residence and access to citizenship through naturalization. Although immigrants can gain full access to public benefits upon naturalization, only those “admitted for permanent

¹⁴³ See S. 744 §§ 2231, 4702.

¹⁴⁴ See *id.* §§ 2232, 4703.

¹⁴⁵ See *id.*; see also Howard F. Chang, *Guest Workers and Justice in a Second-Best World*, 34 U. DAYTON L. REV. 3, 7 (2008) [hereinafter *Guest Workers*].

¹⁴⁶ See Chang, *Liberal Ideals*, *supra* note 136, at 470-71.

¹⁴⁷ See Chang, *Guest Workers*, *supra* note 145, at 7-8.

¹⁴⁸ See *id.* at 4.

residence” may naturalize as U.S. citizens.¹⁴⁹ Guest workers admitted on nonimmigrant visas are not admitted as permanent residents and are therefore not eligible for most public benefits and are not eligible for naturalization.

Our laws generally exclude not only unauthorized immigrants but also nonimmigrants from a broad range of public benefits. With only narrow exceptions, these aliens are ineligible for “any Federal public benefit.”¹⁵⁰ Because nonimmigrant visas can give less skilled alien workers access to our labor markets without granting full access to the benefits available to citizens, these visas may allow the most liberal admissions policies possible for these aliens without imposing a fiscal burden on natives.

By allowing natives to enjoy gains from trade with guest workers in the labor market, the approach adopted by the 2013 bill would be more likely to promote the economic welfare of natives than the RAISE Act. In fact, we could even go beyond the 2013 bill and accommodate the desire of some guest workers to remain by allowing guest workers to renew their visas for an indefinite number of multiple periods.¹⁵¹ As long as we restrict their access to public benefits, they seem unlikely to impose a net fiscal burden on the public treasury.¹⁵²

Such a program, however, raises the prospect of de facto permanent residents with only restricted access to citizenship and to public benefits. If we expand our objectives beyond a narrow focus on the economic interests of natives, then we may find this prospect troubling. The political theorist Michael Walzer argues that a society that relies on guest workers for labor is “a little tyranny” in which guest workers are ruled “by a band of citizen-tyrants.”¹⁵³ From the perspective of the interests of the guest workers, or from the perspective of principles of “political justice” in a “democratic state,” the ideal policy would provide the option of lawful permanent residence and ultimately, access to citizenship.¹⁵⁴

¹⁴⁹ 8 U.S.C. § 1427(a) (2018).

¹⁵⁰ *Id.* § 1611(a).

¹⁵¹ See Chang, *Guest Workers*, *supra* note 145, at 12 (suggesting that we “allow guest workers to renew their nonimmigrant visas with no limit on the number of possible renewals”).

¹⁵² See *id.* (citing empirical evidence suggesting that a guest worker “would probably have a net positive impact” even if the worker “has less than a high-school education”).

¹⁵³ MICHAEL WALZER, *SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY* 52, 58 (1983).

¹⁵⁴ *Id.* at 60 (arguing that the right to citizenship through naturalization should be “subject only to certain constraints of time and qualification”).

C. *The Path to Citizenship*

To better reflect democratic ideals, we could offer a path to citizenship for guest workers who compile a sufficiently long record of employment while avoiding any criminal activity. In fact, under the 2013 bill, workers on W visas could apply for permanent residence through a merit-based points system, which would award points for each year spent working lawfully in the United States up to a limit of twenty points.¹⁵⁵ With a path to possible permanent residence and ultimately citizenship, admission as a guest worker need not imply permanent status as an alien.

Would a path to citizenship for less skilled immigrants raise the prospect of a fiscal burden? Not if we require guest workers to spend years in nonimmigrant status first, which would delay their access to the full set of public benefits that are available to citizens. This delay would improve the fiscal impact of each guest worker who adjusts status to that of a permanent resident. The longer the delay, the greater the improvement in the fiscal impact of each immigrant. The estimates generated by the NRC for the fiscal impact of immigrants suggest that we could allow even less skilled immigrants to naturalize without imposing a net fiscal burden if a sufficiently long period with limited access to public benefits has passed.¹⁵⁶

These observations would apply not only to guest workers on W visas but also legalized immigrants with provisional status. The 2013 Senate bill would have allowed these aliens to work and pay taxes in the United States without access to specified public benefits while seeking permanent resident status.¹⁵⁷ By denying legalized immigrants access to public benefits for many years, the 2013 bill would have

¹⁵⁵ See Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. § 2301(a)(1) (2013).

¹⁵⁶ Taking the fiscal impact of an immigrant's descendants into account, the NRC found that the average immigrant with less than a high-school education imposes a net fiscal burden of only \$13,000 in net present value in 1996 dollars under the NRC's baseline scenario. See NRC, *supra* note 20, at 334. The NRC also found that the 1996 welfare legislation would improve the fiscal impact of the average immigrant by \$8,000 by excluding immigrants from seven specified means-tested benefits for only their first five years in the United States. See *id.* at 339. Nonimmigrants are ineligible for "any Federal public benefit," which includes an even broader set of benefits than those considered by the NRC. 8 U.S.C. § 1611(a) (2012). Thus, the NRC estimates suggest that a sufficiently long period of nonimmigrant status would avoid the fiscal burden otherwise predicted for an immigrant with less than a high-school education.

¹⁵⁷ See S. 744 §§ 2101(a), 2211(c)(3) (restricting access to public benefits for legalized immigrants and for guest workers).

improved the fiscal impact of each immigrant while still providing a path to permanent resident status.

In reality, access to citizenship is a matter of degree. A guest worker could have the opportunity to adjust status only after a short period in the United States or only after a long period. We can demand many years of work experience in the United States, or we can impose less demanding requirements. Congress could choose any point along this continuum to satisfy critics concerned about the impact of less skilled immigrants on the public treasury. By adjusting the number of points a guest worker could earn through years of work in the United States and by adjusting the number of immigrant visas issued through this points system, we can adjust the guest worker's prospects for permanent residence and the number of years that a guest worker could expect to wait to adjust status.

In fact, the flexibility of such a points system is a virtue that might also facilitate a political compromise on a path to citizenship for unauthorized immigrants granted legal status. In 2013, some Republicans in the House of Representatives expressed a willingness to grant legal status to unauthorized immigrants, but they also objected to the "special" path to citizenship provided by the Senate bill.¹⁵⁸ A possible compromise would allow legalized immigrants to apply for permanent resident status through the same immigration system that is open to all prospective immigrants. If Congress were to liberalize that immigration system enough, so that enough legalized immigrants could have a realistic chance of eventually obtaining permanent resident status, then we could have the basis of a compromise that might finally allow comprehensive immigration reform to emerge from Congress.

CONCLUSION

Although the proponents of the RAISE Act advance economic claims on behalf of their restrictionist proposals, these claims do not hold up under scrutiny. In fact, the economic and fiscal effects of immigration imply net benefits for natives, both in the labor market and through the public sector. Economists estimate that immigrant workers add

¹⁵⁸ See, e.g., Julia Preston, *Illegal Immigrants Are Divided Over Importance of Citizenship*, N.Y. TIMES (Nov. 20, 2013), <https://www.nytimes.com/2013/11/21/us/illegal-immigrants-divided-over-the-importance-of-citizenship.html> (reporting on Republicans in Congress open to an "appropriate legal status for unlawful immigrants" and "allowing those with family ties here to naturalize eventually through regular channels" but opposed to "any special path to becoming Americans").

billions of dollars per year to the real income of natives in the United States by supplying their labor to our labor market. Furthermore, immigration also makes us better off by increasing tax revenues in the United States. These findings suggest that higher levels of immigration would produce even larger benefits for the U.S. economy. So why not liberalize our immigration policies instead of imposing new restrictions?

The comprehensive immigration reform bill passed by the Senate in 2013 would have liberalized our immigration laws in various respects and thus would have done a much better job than the RAISE Act in serving the economic interests of natives. The RAISE Act's hostility toward family-sponsored immigration, in particular, lacks a sound basis in empirical evidence or careful economic analysis. The 2013 bill would improve the economic and fiscal benefits of immigration by clearing backlogs and expanding access to both immigrant and nonimmigrant visas. The liberalizing proposals in the 2013 bill provide a promising foundation for comprehensive immigration reform and should be the basis for future changes to the laws governing legal immigration in the United States.