

A Proposal for Immigration Reform

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Introduction

The COVID-19 crisis threatens to disrupt patterns of migration crucial to global economic recovery. As an American immigration historian and a non-resident fellow of the Migration Policy Institute, I offer a path towards turning the current conversation from one threatening greater immigration restriction to a more constructive one of policy reform.

The COVID-19 public health crisis has stunningly reminded Americans of a critical characteristic of the country's workforce, the contributions of the foreign-born who have emigrated to the United States. Data compiled by the Washington, D.C. think-tank, the Migration Policy Institute, indicates that immigrants account for 18 percent or 2.6 million of the estimated 14.7 million people employed in healthcare in the United States.¹ They are concentrated in certain key occupations. Twenty-eight percent of all U.S. physicians are foreign-born, as are 24 percent of dentists, 38 percent of home health aides, and 26 percent of personal care aides. Such data suggests the critical need for immigration policy reform that would allow healthcare to be enriched by the skills and energy of immigrants and refugees to this country. However, the healthcare industry is only the most immediate of concerns.

In addition to their role fighting the pandemic, newcomers, whatever their immigration status, are likely to play a critical role in reconstructing a United States now in economic shambles. Recall that, following the devastation of New Orleans by Hurricane Katrina, foreign-born construction workers, legal and unauthorized, rebuilt the city. The low cost of agricultural produce has long depended upon a migrant labor force from south of our borders and again of varied legal status.

At the other end of the economy, foreign-born technological innovators and entrepreneurs have long stimulated our economy with their insights and investments. The United States issues more patents – evidence of innovation – than any country in the world, and immigrants have received about a quarter of them in the past decade. At Intel, the world's largest maker of semiconductors, 40 percent of the patents are for innovations developed by Chinese or East Indian immigrants. Immigrants create patents

at twice the rate of native-born Americans because they disproportionately earn degrees in science and engineering as well as other STEM fields. They comprise 24.0 percent of the U.S. science and engineering workforce holding bachelor's degrees and 47 percent of science and engineering workers who have Ph.D.'s. Some return to their home countries, but many continue their relationship with the American economy by staying here or communicating long-distance via the Internet. Immigrants have started 52.0 percent of Silicon Valley's technology companies, co-founding firms such as Google, Intel, eBay, and Yahoo.²

A recent Executive Order suspended for sixty days the issuance of green cards, although there were exemptions for medical workers and some others deemed vital in the current crisis. Immigrant advocates fear that such restrictions will proliferate and become part of a new restrictionism. However, aside from zealously securing the border with walls of concrete and paper walls of regulations, there has been no real discussion about how to craft an admissions policy that meets the economic needs of the United States and would position this country to participate in a global economic recovery.³

What might such a plan look like?

Admission Priorities

The cornerstone of revised legal immigration policy must be occupational preference. The concept of occupational preference is hardly new. Previous legislation passed by Congress, such as the 1965 Hart-Celler Act and the 1986 Immigration Reform and Control Act, included occupational preference provisions. Less clear has been the extent to which occupational preference should outweigh other categories of admissions preference such as family reunification and how that preference system should be determined in a way that allows for a robust but flexible policy that is responsive to changes in the economy, especially technological and scientific innovations. It is also imperative that prioritizing the admission of those in needed occupations is not then undermined by denying those engaged in such necessary occupations ample opportunity for employment after arrival.⁴

The needs of reconstructing the American economy demand that occupational preference be made the highest priority in any reform of immigration policy for both white-collar and blue-collar jobs. Implementation and planning are key. In the past, point systems have been used to give preference to those in some occupations rather than others. Some reformers have favored lottery systems as fairer. However, more recently some scholars pondering U.S. immigration reform have suggested that instead of the randomness of lotteries, or a point system that must be updated regularly to reflect changes in labor market needs, that there be a system of employer-based auctions such as those in Australia, where employers choose the workers that they view as most likely to contribute to their profitability.⁵ Seasonal labor needs will also require a temporary work visa program that is more robust and better regulated to protect temporary workers from exploitation and unsafe labor conditions than that currently in place. More important than which system of selection is implemented is that it reflects a commitment to economic pragmatism and that the mechanism for determining which occupational categories are preferred be determined in such a way that immigration policy is less a political football than it has been in the past.

Implementation and Planning – The Machinery of Change

In recent years immigration has been an issue of intense partisan polarization. In another era of partisan polarization, the turn of the twentieth century, Progressive reformers – Democrats and Republicans – turned to non-partisan structures – commissions – to meliorate, although not eliminate bloody political battles. This is an idea worth revisiting, though, by creating an Immigration Admissions Commission.⁶

The Immigration Admissions Commission would need to include representation of labor, manufacturing, agriculture, and new technologies as well as bipartisan participation. It would not be an advisory board but an independent body with binding regulatory authority, much like the U.S. Security and Exchange Commission, or the Board of Governors of the Federal Reserve System. The latter is appointed by the President and confirmed by the Senate for staggered 14-year terms. This commission would be the organizational structure to create five-year plans to determine how immigration admissions (number and occupational preference) might be adjusted for the subsequent five years to serve the economy's needs best. The fact that the plan could be altered every five years in response to data-driven studies might curb (though unlikely eliminate entirely) the virulent partisanship that currently diminishes the possibility of reform. Long-term appointments to the commission would enhance the likelihood of members forming relationships that would encourage compromise and an atmosphere of comity among Commissioners representing different interests.

In addition to its deliberations on five-year plans for legal immigration admission, a subcommittee of this Immigration Admission Commission would also make recommendations for regulating issuance of temporary visitor work visas and altruistic admissions based upon humanitarian concerns, including family reunification. Current definitions of "refugee" and "asylee" would be retained, and the number of individuals in these categories would be adjusted annually by the Commission in response to humanitarian concerns.

Immigrant Policy

Since the late nineteenth century, the United States government has created policies that govern the number of people who are admitted into the country and the criteria for admission. However, we do little on the federal level to aid the incorporation of immigrants into society, especially the economy. The federal government does not conduct or subsidize language training or job training for immigrants, nor does it provide job placement services, continuing education, or protection against workplace exploitation. That obligation is left to private agencies and state and local governments, placing an undue hardship on poorer states and localities. This must change. Moreover, these same opportunities should be extended to workers born in the United States. No policy will succeed if it seems to give an unfair advantage to immigrants at the expense of the native-born. Moreover, such additional opportunities will enhance the ability of American workers to compete on an even plane with immigrant arrivals, though there is little evidence that immigrants threaten the jobs of American workers. Overall, the American educational system needs to focus more on vocational training and an apprenticeship program like that in Germany, which would benefit natives and newcomers alike.

Newcomers, as well as natives, would benefit enormously from an educational reorientation that would offer young women and men marketable skills, especially those important to revitalizing our infrastructure. Many opinion writers have spoken of the need for a national service corps designed on the New Deal model of the Civilian Conservation Corps or the Works Progress Administration.⁷ Job training could begin in this new national service and continue in vocational training and apprenticeship programs.

Unauthorized Immigration and a Path to Legalization

A major stumbling block to agreement on immigration reform has been the fate of unauthorized immigrants. Over the past decade, estimates of how many unauthorized are in the population vary from nine to over eleven million. Among Washington policymakers, the word "amnesty" has become a forbidden utterance. However, the last full amnesty was issued by President Ronald Reagan as part of the agreement over the 1986 Immigration and Reform Act (IRCA). The current debate is most contentious over what penalty ought to be exacted from those who have come unauthorized. Some demand fines; others insist upon deportation and application for admission after ten years. The controversy over the Deferred Action for Childhood Arrivals (DACA) program has led some unauthorized immigrants to despair. They feel that they may never be the recipients of any compassion and leniency.⁸ Many proposals work to distance newcomers from society rather than promote integration with the communities where they reside.

An alternative proposal might be a community service program, administered under state and local supervision. Unauthorized immigration breaks American law. However, American law is not all-of-a-kind. Some violations of immigration law, such as entering the United States in an unauthorized fashion constitute a violation of administrative law only and is punishable by exclusion or deportation but does not constitute a felony under criminal law. However, certain violations of immigration law may also be violations of criminal law, and certain criminal behavior can result in immigration penalties. An example of the former includes

illegal reentry, fraud, or smuggling, while examples of the latter include certain federal or state crimes that subject the individual to imprisonment and then deportation.⁹ An individual violating immigration law but not criminal law may be detained pending removal proceedings to be certain that they will appear for their hearing, but not as a criminal punishment. Just as some Americans who break criminal laws are assigned community service, the government might institute a system of assigning community service to unauthorized immigrants who have broken only administrative law. Such community service supervised by state or local authorities would allow some unauthorized newcomers who have broken administrative law to remain in the United States while strengthening relationships with their neighbors and communities. For example, those who earn their livings in construction or lawn services could dedicate their service assignment to repairing or restoring local parks and playgrounds. Those with childcare skills could put those to use at community institutions such as childcare services. The community service would have a finite time limit – e.g., two years – and be regulated so as not to interfere with the occupational and family obligations of newcomers.

Border Enforcement

Every sovereign nation has an obligation to control its borders for the benefit of its citizens and to do so in a spirit of compassion and generosity toward those who wish to enter. It is unlikely that in the foreseeable future, there will be a cessation of unauthorized efforts by migrants to enter the United States. Walls, checkpoints, and interdictions by Border Patrol will not disappear. There must be an extensive expansion of enforcement, including a process of application adjudication that is fair and compassionate regardless of the cost. The reality of children separated from their parents at our borders contradicts the basic human values that we, as a nation have historically professed. It must cease. Electronic capabilities such as E-Verify to check the legal status of job applicants must be encouraged and expanded. While individual identity cards for all residents of the United States often receive negative responses, other forms of identification using biomarkers are possibilities to be explored to identify newcomers who have overstayed visas.

Conclusion

Immigration reform should expand immigration, not contract it. Immigration is advantageous to America's economic growth and to our role in a global recovery. However, this expansion will require greater planning and preparation for integrating immigration into a long-term economic comeback. Throughout its history, the United States has tapped into a reservoir of talent and energy from other societies and cultures to great success. From the earliest days of our country, immigration has been a source of talent and energy. Now it must be regulated so that the flow of talent is consciously directed at growing the economy while helping newcomers fulfill their desire for opportunity.

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The Center for Growth and Opportunity at Utah State University is a university-based academic research center that explores the scientific foundations of the interaction between individuals, business, and government.

The Immigration and Economic Recovery Symposium explores what role immigrants play in the economic recovery of the United States post-COVID crisis.

The views expressed in this paper are those of the authors and do not necessarily reflect the views of the Center for Growth and Opportunity at Utah State University or the views of Utah State University.

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- 3 Ming Hsu Chen and Zachary New, "Silence and the Second Wall," *Southern California Interdisciplinary Law Journal* 27 (2019), University of Colorado Law Legal Studies Research Paper No. 19-4, <https://ssrn.com/abstract=3342798>;
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- 4 Other countries, such as Australia, have sometimes erred in creating additional hurdles to employment after admission for those who were given occupational preference because they were regarded as potentially benefiting the Australian economy. See Massimiliano Tani, "Selective Immigration, Occupational Licensing, and Labour Market Outcomes of Foreign-Trained Migrants," IZA Institute of Labour Economic, IZA DP No.11370. See, <https://www.iza.org/publications/dp/11370/selective-immigration-occupational-licensing-and-labour-market-outcomes-of-foreign-trained-migrants>
- 5 Pia Orrenius and Madeline Zavodny, "An Auctions Approach to Immigration Policy," *The Center for Growth and Opportunity at Utah State University*, February 20, 2020, <https://www.thecgo.org/research/an-auctions-approach-to-immigration-policy>
- 6 A.C. Pigou, *The Economics of Welfare*, 4th edition (New York: Macmillan, 1932), pp.332-333. Pigou among others has reservations about such commissions because of the possibility that they will merely become the engines to serve the interests of organizations or individuals represented on such bodies.
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