
The Irrationality of Enforcement? An Economic Analysis of U.S. Immigration Law

Larry J. Obhof

As the influence, and indeed the precision, of the science of economics have grown, economic arguments have come to play an increasingly dominant role in the public debates surrounding many issues. Legislators, legal scholars, and other policymakers have long used economic analyses to explain or predict laws' long-term impacts and effectiveness in achieving public policy goals. Such analysis, however, has been lacking in the field of immigration law. It is an area that tends to be governed more by economic fallacies than by facts.

Few would dispute that economic self-interest is the primary impetus behind the imposition of restrictive immigration laws. Surprisingly few decision-makers, however, have applied economic theory to the analysis of immigration laws.¹ Most legal scholars have failed to utilize empirical studies to examine the costs and benefits of immigration restrictions. As others have noted, even the leading immigration law textbooks lack so much as a basic introduction to the economics of migration.² In this Essay, I will explain the economic theory that predicts the results of restrictive immigration policies. I will then analyze the empirical findings associated with immigration in the United States, and explain what they tell us about restrictive immigration policies.

The economic welfare of natives and "distributive justice" among natives are often advanced as reasons to reduce immigration.³ Data suggest, however, that "neither [of these] objective[s] provides a sound justification for restrictive laws regarding employment-based and family-based immigration."⁴ In fact, an economic analysis of U.S. immigration law and its consequences suggests that relaxing various restrictions on immigration would raise both global and national economic welfare.⁵

This Essay does not discuss issues relating to immigration that are not economic in nature. Recent terrorist attacks and subsequent threats to national security have drawn attention to this extremely important but often neglected area of the

Larry J. Obhof is a 2003 J.D. candidate at Yale Law School, and a graduate of Ohio State University. He wishes to thank Peter H. Schuck, whose October 2000 speech on immigration sparked an interest in the subject, and Alvin K. Klevorick, who provided invaluable guidance in researching and writing about the topic.

law. There are a number of non-economic arguments in favor of restrictive immigration laws, some of which are likely to have merit, and many of which do not. These arguments, particularly those dealing with national security, are beyond the scope of this Essay. Because economic concerns have traditionally provided the social and political thrust for restricting immigration, this Essay discusses only the economic critique put forward by the critics of expansive immigration.

I begin with a discussion of the basics of international labor mobility, which illustrates the relationship between labor and other factors of production. It describes the economic model of international labor mobility, and explains how the free movement of labor is substantively similar to the free trade of goods. Second, I offer an overview of the international labor market. I describe the economic incentives that lead to migration, and point out the various ways immigration policies can affect these incentives.

I next analyze the impact of immigration, both legal and illegal, on the U.S. economy. I review the relevant research and dispel several myths about the relationship between immigration and labor-market outcomes for native workers. Like many economists, I find scarce evidence that immigrants have an adverse impact on the earnings and employment opportunities of natives. Last, I critique the current status of immigration restrictions in the United States, and find that such laws ignore economic realities and fail to represent the interests of the polity. I propose a number of changes to current policy, including easing or eliminating a number of counterproductive restrictions. Among these suggestions are loosening restrictions on family-based immigration, expanding employment-based immigration, increasing guest-worker programs (including a new bilateral guest-worker agreement between the United States and Mexico), and replacing immigration quotas with “immigration tariffs.”

I. INTERNATIONAL LABOR MOBILITY

Labor migration is an international factor movement, much like the transfer of capital via international borrowing and lending.⁶ “The principles of international factor movement do not differ in their essentials from those underlying international trade in goods.”⁷ Just as labor-abundant countries may import capital-intensive goods or acquire capital by borrowing abroad, capital-abundant countries may import labor-intensive goods or employ migrant workers.⁸

It is easiest to explain factor mobility through the use of a simple economic model in which the world is not economically integrated.⁹ Assume that the world is made up of only two countries, “Mexico” and the “United States,”¹⁰ “each with two factors of production, land and labor.”¹¹ The two countries produce only one good, known generically as “output.”¹² In the absence of trade, “[t]he only way for these

economies to become integrated with each other is via movement of either land or labor.”¹³ Because land “by definition cannot move . . . this is a model of integration via international labor mobility.”¹⁴ Without the introduction of factor movements, the output of each country will depend solely on the quantities of land and labor with which it is endowed.¹⁵

Assume also that Mexico and the United States have the same level of technology but different land-to-labor ratios.¹⁶ If Mexico is the labor-abundant country, workers in Mexico will earn less than those in the United States, while land in Mexico will earn more than land in the United States.¹⁷ Mexican workers would therefore like to move to the United States.¹⁸ If workers are permitted to move between the two countries, workers will move from Mexico to the United States.¹⁹ As economists Paul R. Krugman and Maurice Obstfeld have noted, such movement would “reduce the [Mexican] labor force and thus raise the real wage in [Mexico], while increasing the labor force and reducing the real wage in [the United States].”²⁰ If there are no obstacles to labor movement, this process should continue until each country has the same labor-to-land ratio, and the marginal product of labor is the same in the two countries.²¹

This redistribution of the world’s labor force has two main effects. First, real wage rates converge.²² The marginal product of labor in the United States falls as the ratio of labor to land rises; with each substitution of labor for land, it becomes increasingly difficult to employ more labor on a given amount of land.²³ Thus, real wages rise in Mexico and fall in the United States.²⁴ Second, the world’s output increases.²⁵ The United States’ output rises due to the increased supply of labor, while Mexico’s falls due to its decrease in labor.²⁶ The United States’ gain is larger than Mexico’s loss because workers have migrated to the country in which they have a higher marginal product of labor (i.e., they have moved to the country which had the lower initial labor-to-land ratio).²⁷ These overall gains may be substantial. “In fact,” states Howard F. Chang, “studies suggest that the gains to the world economy from removing immigration barriers [would] be enormous.”²⁸

Despite an overall gain, some people may be hurt by the change.²⁹ “Those who would have originally worked in [Mexico] receive higher real wages, but those who would have originally worked in [the United States] receive lower real wages,” point out Krugman and Obstfeld.³⁰ They add that “[l]andowners in [the United States] benefit from the larger labor supply, but landowners in [Mexico] are [relatively] worse off.”³¹ Thus, while international labor mobility may theoretically allow everyone to be made better off, it may actually leave some groups worse off in practice.³²

The main impetus behind restrictive immigration policies (and the concern about illegal immigration) comes from the belief that large immigrant flows, while not reducing native-held jobs one-for-one, may indeed be harmful to American workers.³³ Such arguments are based on a single-market analysis where only the effects on the

market for unskilled labor are examined.³⁴ In this model, immigration increases the supply of unskilled labor and lowers both wages and employment levels of unskilled native workers.³⁵ Ronald G. Ehrenberg and Robert S. Smith state that some natives “leave the market in response to the reduced wage, and those who stay earn less.”³⁶ Even if immigration flows had this result, however, it is wrong to assume that such flows would have a negative effect on Americans as a whole.³⁷ As wages decrease and employment increases, the goods and services produced by this labor increase in quantity and decrease in price.³⁸ Thus, as Ehrenberg and Smith point out, immigration of labor “benefits consumers using the output of this labor.”³⁹ Furthermore, low-skilled immigrants often work in agriculture and similar markets that produce food and other necessities; it is therefore low-income natives that benefit the most from these decreases in price.

Employers of immigrant labor increase profits due to the rise in production and the decrease in per-unit labor costs.⁴⁰ Increasing profits lead to increased investment and provide an incentive for more people to become employers, ultimately increasing the country’s capital stock and creating the opportunities for some workers to become owners.⁴¹ Thus, even using a single-market analysis in which demand for unskilled labor remains stable, the effects of immigration are likely to range from ambiguous to quite beneficial.

This analysis of the market for labor has assumed that an influx of immigrants has no effect on the demand curve for unskilled labor.⁴² This is probably a valid assumption when one looks at only one market, because the fraction of their earnings that the immigrants in this market spend on the goods and services that they themselves produce may be relatively small.⁴³ In the real world, however, immigrants spend money in a number of other markets, and the increased demand for goods and services creates job opportunities for others.⁴⁴ “Thus,” argue Ehrenberg and Smith, “workers who are not close substitutes for . . . immigrant labor may benefit from immigration because of the increase in consumer demand” caused by the increase in the size of the working population.⁴⁵

Trade in factors of production is, in purely economic terms, very much like trade in goods; it occurs for the same reasons and produces similar results.⁴⁶ One scholar notes that “[f]ree trade theory taken to its limits thus means that it would be redundant to advocate for both free trade in goods and free migration because the former would simply be a substitute for the latter.”⁴⁷ One must look beyond economic theories, however, and examine how those theories hold up in the real world. A theory is valid only so long as it accurately portrays reality, and data are essential to the public debate surrounding immigration.

II. WHO MIGRATES?

The mechanics of the labor market are substantively no different than the exchange of goods for currency. In this market, transactions involve the exchange of monetary compensation from buyer to seller for one's labor.⁴⁸ The international labor market allocates persons willing to leave their current countries among the host countries willing to admit them.⁴⁹ Potential migrants are looking for the best country in which they can live.⁵⁰ As George J. Borjas notes, "[j]ust as the labor market guides the allocation of workers to firms, the immigration market guides the allocation of persons to countries."⁵¹

Changes in parameters guiding these transactions, such as immigration policies, alter the size and composition of immigrant flows into the recipient countries.⁵² For example, regulations often generate variations in the costs among potential migrants. U.S. immigration policy makes immigration costs almost prohibitive for persons who do not already have a relative residing here, and several countries, including Australia and Canada, use a "point system" designed to promote the immigration of "desirable" persons.⁵³ Whenever Congress changes immigration policy, immigration costs are altered for potential migrants, and a different flow of people will enter the United States.⁵⁴

Highly educated workers have much to gain by moving to countries that pay a higher price for their skills.⁵⁵ Because immigration is costly, and workers with little education have relatively less to gain by immigrating to such countries, they are less likely to move.⁵⁶ Migrating to the United States is therefore most attractive to highly educated immigrants if the rate of return to increased schooling is higher here than in the country of origin; the United States is less likely to attract educated immigrants if the workers originate in countries that value education more.⁵⁷

According to Borjas, "there is a strong positive correlation between the extent of income inequality in a particular country and the rate of return to schooling in that country."⁵⁸ Countries with highly dispersed incomes pay relatively higher returns to education and skills than do countries with more egalitarian income distributions.⁵⁹ In Mexico, for example, education is rewarded with very high relative incomes. Less-skilled Mexican workers, however, have little protection from poor labor-market outcomes.⁶⁰ Unskilled Mexicans thus have the most incentive to come to the United States, while skilled Mexicans have the least incentive to migrate.⁶¹ Mexican migrants to the United States are therefore likely to be unskilled.⁶²

Two arguments are typically used to justify restrictions on immigration. "The first," says Borjas, "is that immigrants have an adverse impact on the earnings and employment opportunities of native-born Americans."⁶³ The second is that immigrants find it hard to adapt or assimilate in the United States because of their very different

cultural, political, and economic backgrounds; this not only prevents immigrants from assimilating but also “splinter[s] the nation’s national identity.”⁶⁴ Proponents of these arguments typically base their case on the following axioms, rather than evidence. First, it is commonly believed that immigrants “crowd natives out” of the labor market, and thus have a significant adverse impact on native earnings and employment opportunities.⁶⁵ Second, it is believed that most legal immigrants are highly skilled, hard-working people who are relatively successful in the labor market,⁶⁶ and that most illegal aliens are “single men working in agricultural jobs,” and “have an adverse impact on the opportunities of less skilled natives.”⁶⁷ Lastly, it is an axiom of the anti-immigration argument that U.S. immigration policy is a “ticking population time bomb,” and that family-based immigration could allow practically everyone in the world to qualify for entry into the United States.⁶⁸

These impressions about the immigrant experience are false. Immigrants in the United States have only a small impact on the earnings and employment opportunities of natives. Empirical analysis shows that even a significant increase in the number of immigrants has negligible effects on the average wage of natives and has little or no effect on the labor force participation rates and employment of practically all native groups.⁶⁹ Furthermore, even illegal aliens have only a minor impact on the earnings and employment opportunities of natives.⁷⁰ Despite the common stereotype, moreover, most illegal aliens are not single men working in agriculture. Like their legal counterparts, illegals are typically men and women who live with their immediate families and who work in non-agricultural jobs.⁷¹

There is also little reason to suspect that the immigrant population will explode because of family-reunification provisions in current immigration policy. In fact, “[c]ontrary to popular belief, the number of relatives sponsored by immigrants residing in the United States is relatively small.”⁷² Evidence also suggests that “persons who migrate as part of a family unit are more skilled than single or unattached immigrants,” which contrasts sharply with the commonly held belief that family-sponsored immigration leads to waves of migration of unskilled foreigners.⁷³

How can one explain the discrepancies between empirical facts, common misperceptions, and the law? Why do the public and the majority of policymakers hold beliefs contrary to the facts? What, if any, policy changes should be made to conform law and economic realities?

III. THE LABOR-MARKET IMPACT OF IMMIGRATION ON NATIVE WORKERS

The presumption that immigrants have an adverse impact on the labor market has long been the main justification for policies designed to restrict the size and composition of immigrant flows into the United States. Despite this almost universal

assumption, however, economists have come to a very different conclusion. There is little evidence that immigrants have a sizeable adverse impact on the earnings and employment opportunities of natives in the United States.⁷⁴ There appears to be a “deep chasm” dividing public opinion and the findings of academic studies.⁷⁵

There are two popular theories about the ways that immigrants affect the native labor market, both of which lack any solid empirical basis. Some observers assert that immigrants take jobs away from natives; as immigrants enter the labor market, natives are displaced from jobs. “At its most extreme,” says Borjas, “this hypothesis suggests that immigrants displace natives on a one-to-one basis.”⁷⁶ It assumes that a native worker inevitably loses his job every time an immigrant enters the United States. This assertion, George Borjas argues, is based not on any empirical evidence but on a set of assumptions about the way the U.S. labor market works and the types of immigrants allocated to the United States by the immigration market.⁷⁷ These premises are: (1) the number of jobs in the American economy is fixed, and new workers must compete with native workers for that limited number of jobs; (2) immigrants are perfectly interchangeable with natives in the production process (i.e., immigrants and natives are “perfect substitutes”); and (3) “immigrants are willing to work for lower wages than equally productive natives.”⁷⁸

The assertion that the U.S. economy has a fixed number of jobs is false. Even the most basic economic model shows that increases in population, including those stemming from immigration, boost demand for goods and services and thus lead to higher employment.⁷⁹ It is also unlikely that a typical immigrant is a perfect substitute in production for a native worker. New entrants differ in their familiarity with the labor market, proficiency in English, and educational background. Finally, there is no evidence that immigrant labor is actually cheaper than equally skilled native labor.⁸⁰ The wage rates of legal immigrants are equal to those of their native counterparts in similar jobs, and even illegal aliens have the same wage rates as legal immigrants once differences in observable demographic characteristics are taken into account.⁸¹

The second popular theory about the immigrant experience in the U.S. labor market holds that immigrants have no impact on the labor-market opportunities of natives. Under this view, immigrants cause little displacement of natives because immigrants “take on a distinct set of jobs, jobs that the native labor force refuses to accept.”⁸² This theory divides the labor market into two sectors, a primary sector (where the “good” jobs are), and a secondary sector (where the “bad” jobs are). In this model, immigrants are crowded into the “bad” jobs that natives do not want.⁸³

This theory is easily dispelled. The hypothesis that the economy is segmented is extremely simplistic and not empirically justified. In a market economy, a labor shortage in the secondary sector would increase competition for the workers willing to provide these services and lead to a bidding war among employers for the few persons willing to work in that sector. This would tend to equalize wages between the primary

and secondary sectors, and eventually even natives would be willing to work in the so-called “bad” jobs.

Economic theory has held true – there is a great deal of overlap among the occupational distributions of immigrants and natives. It is true, for example, that 15% of immigrant workers are operators and fabricators, but so are 11% of natives.⁸⁴ Similarly, 28% of native workers are managers and professionals, but so are 21% of immigrants.⁸⁵ Moreover, if immigrants indeed take jobs that natives do not want, the non-wage aspects of the jobs employing the typical immigrant and those employing the typical native should differ significantly. Borjas suggests, for example, that one might expect immigrants to face more unpleasant working conditions.⁸⁶ This does not appear to be the case. “In fact,” says Borjas, “the available evidence indicates that immigrants and natives have roughly similar working conditions.”⁸⁷

Borjas concludes that there is no compelling reason for assuming that immigrants are either “good” or “bad” for natives. Some immigrant groups will be substitutes in production for some native groups but may complement the skills of others. He contends that:

If immigrants and natives are substitutes, the earnings and employment of native workers should be relatively lower in markets in which immigrants are in abundant supply. By the same token, if immigrants and natives are complements, native earnings and employment should be relatively lower in labor markets where few immigrants reside.⁸⁸

Thus, when immigrants and natives are complements, the presence of immigrants should increase native productivity in tasks where native workers have a comparative advantage, and therefore lead to higher native employment as well.

Comparing native earnings in labor markets in which immigrants are a large part of the labor force with earnings where their number is statistically insignificant, data from a 1980 U.S. Census geographic cross-section reveal that immigration has had a small impact on native wages. In fact, the decline in wages attributable to an increase in the number of immigrants is typically very small. A 10% increase in the size of the immigrant population reduces native earnings by only 0.2%.⁸⁹ This supports the hypothesis that natives and immigrants are, on average, very weak substitutes in production. Furthermore, disaggregating the labor force by sex, age, race, and ethnicity does not alter the basic finding.⁹⁰

Such findings have been remarkably consistent over time. In a more recent analysis, Borjas draws on two studies that correlate changes in the weekly earnings of native workers with increases in immigration that occurred over a ten-year period in particular localities (using states and metropolitan areas as the units of analysis).⁹¹ Borjas measures the impact of immigration on native wages during the 1980s, for example, by correlating the change in native wages between 1980 and 1990 with the change in the number of immigrants in the locality over the same period.

If one interprets these correlations as measures of the effect of immigration on native wages, the impacts of immigration range from positive, on one hand, to statistically irrelevant on the other. Borjas notes:

[T]he entry of one more immigrant for every ten native workers increase[d] the average wage of native men by 6 percent if the immigrants entered in the 1960s, increase[d] it by 1 percent if the immigrants entered in the 1970s, and reduce[d] it by 1 percent if the immigrants entered in the 1980s.⁹² A similar change in the number of immigrants reduce[d] the wage of native men who are high school graduates by 3 percent in the 1970s, but increase[d] it by 2 percent in the 1980s.⁹³

The negative effects of immigration, if one is to believe these findings, are nonexistent at best and ambiguous at worst.

It is most frequently argued that blacks (particularly those who are unskilled) comprise the group whose economic progress is most likely to be hampered by the entry of immigrants into the United States.⁹⁴ On the contrary, Borjas reports that blacks residing in cities with relatively large numbers of immigrants actually have higher wages than those in other labor markets.⁹⁵ He finds that a 10% increase in the number of immigrants increases the average black wage by about 0.2% percent.⁹⁶ More recent empirical studies have also shown neutral and even positive effects of immigration on low-income Americans.⁹⁷

Using Immigration and Naturalization Service (INS) administrative data, Borjas extrapolates these findings to allow comparison between labor markets with relatively high and low levels of illegal immigrants. These comparisons also demonstrate no significant impacts on native wages. For example, a 10% increase in the size of the Mexican illegal population reduces the earnings of men by an average of less than 0.1%, but increases the earnings of women by 0.2%.⁹⁸

If there is no evidence that an increase in the supply of immigrants has a significant adverse impact on the earnings of natives, why is this negative effect a typical assumption of the political debate? Policymakers often assume that immigrants and natives are strong substitutes in production. Additional studies, however, indicate that the employment effects of immigration are as negligible as the wage effects.⁹⁹ It is commonly, and erroneously, believed that immigrants adversely affect native employment in a number of ways. If the entry of immigrants into the labor market lowered the native wage, natives would have fewer incentives to work because decreasing wages would reduce the attractiveness of entering (or remaining in) the labor market. It is also commonly held that increased labor-market competition will cause natives to have difficulty finding work and thus lead to higher unemployment rates.

Studies using the same methodology followed in Borjas' analyses of wage rates have found that a 10% increase in the number of immigrants reduces the labor force participation of white natives by only 0.1%, reduces the number of weeks worked by 0.3% (or less than 1 day), and does not affect the native unemployment rate.¹⁰⁰ Data also indicate that immigrants have little measurable impact on the labor force participation rates or weeks worked of black men.¹⁰¹

Although Borjas and others have made significant contributions through the use of geographic-area comparisons, a variety of problems impede this methodology. Most importantly, immigrants tend to locate in large cities, which have both high costs of living and high wage rates. Using a cross-section in metropolitan areas therefore yields large and positive effects, which may not accurately reflect how immigration would affect the wage levels of natives who do not live in metropolitan areas.¹⁰² A second approach to metropolitan-area studies involves using data from two time periods and asking whether the changes in labor-market outcomes for natives are affected by changes in the immigrant concentration.¹⁰³ Using the change in metropolitan-level outcomes controls any fixed differences between cities. Permanent differences in cost-of-living effects, and thus higher wage rates, are also controlled using this approach.¹⁰⁴ An important problem remains. If immigrants migrate to cities that are experiencing economic growth (during a flourishing labor market, for example), then an increase in the percentage of immigrants will be correlated with transitory changes in the local labor market.¹⁰⁵ This will bias results toward finding a positive effect of immigration on labor-market outcomes.¹⁰⁶ The important question is thus not whether the labor-market outcomes appear positive in these metropolitan areas, but what the labor market would have been like if the immigrants had not come. If the market would have been even better, then one could say that immigration had an adverse effect.¹⁰⁷

To avoid this problem, one must find an instrument for measuring the effects of the change in the percentage of immigrants in an area.¹⁰⁸ Such an instrument must be strongly correlated with the change in the percentage of immigrants but uncorrelated with the change in the labor-market outcome of the study.¹⁰⁹ Joseph Altonji and David Card advocate using the "initial stock" of immigrants in a metropolitan region as an instrument for measuring the difference in the percentage of workers who are of foreign origin.¹¹⁰ Altonji and Card use Census data to analyze the effects of an increase in the immigrant concentration in Standard Metropolitan Statistical Areas on the labor-market outcomes of low-skilled native workers between 1970 and 1980.¹¹¹ Their estimates set the average age, average education, and total population in each metropolitan area.¹¹² They find that immigration unexpectedly improves the unemployment rate and has no significant effect on labor participation.¹¹³ Thus, although the conjecture that immigrants take away jobs from natives has been a prime force behind efforts to make immigration policy more restrictive throughout American

history, the relevant evidence demonstrates that such displacement is (at least in recent years) numerically insignificant.

These findings on employment effects are reinforced by David Card's study of the impact of the "Mariel Boatlift" on Miami's wage and unemployment rates.¹¹⁴ Between April and September 1980, approximately 125,000 Cubans left Cuba from the port of Mariel in a flotilla of pleasure boats, rafts, and fishing vessels. The Mariel immigration added 45,000 to the Miami labor force, increasing its size by 7%.¹¹⁵ Two-thirds of the "Mariels" had not completed high school, and because unskilled workers made up 30% of Miami's labor force, this represented an increase in Miami's unskilled labor force of more than 16%. One would expect the wages and employment levels of Miami's unskilled workers to fall as a result, but this did not occur. The wages and employment levels of unskilled black workers in Miami actually rose relative to those of unskilled blacks in four comparison cities (Atlanta, Los Angeles, Houston, and Tampa). Even among Hispanics, the unemployment rate fell faster than in comparison cities from 1982 to 1985.¹¹⁶ For outward migration flows of natives to account for this result, natives would have had to respond by moving almost immediately.¹¹⁷ As Howard Chang has noted, however, this is inconsistent with evidence that an adverse shock reduces wages for up to a decade before interstate migration equilibrates wages across regions.¹¹⁸ Card concluded that there is no indication of any short- or long-term impact of the Mariel Boatlift on the wages and unemployment rates of non-Cubans in Miami.¹¹⁹

A number of relatively low-wage industries employ large numbers of semi-skilled laborers, including apparel and textiles, agriculture, furniture, and restaurants.¹²⁰ It is possible that immigrants could move heavily into one industry in a given area and thus depress that industry's wages. This does not, however, change the fact that over the great expanse of the American economy, including all industries and labor markets, the average effect of increased immigration on both wages and employment levels will be negligible.

IV. EXTENDING THE ANALYSIS

A 1997 analysis by the National Research Council (NRC) offered the most thorough inquiry to date into the economic effects of immigration. This study reached the conclusion that economic theory predicts: If we examine the impact of immigrants on the labor market, we find that the natives of the host country, taken together, will gain from the immigration of labor. Although wages may fall for some native workers who compete with immigrant labor, this is merely a transfer of wealth among natives. This loss is offset by an equal gain for those who employ labor, who gain surplus in excess of what they pay immigrants for their labor. Consumers also gain as they obtain goods and services from immigrant-intensive industries at a lower cost. Natives

as a group enjoy a net gain, which has been calculated to be between 1 and 10 billion dollars per year.¹²¹ This may be modest in relation to the size of the U.S. economy, but it represents a significant gain in absolute terms.¹²² Indeed, as Chang points out, “like trade barriers, immigration barriers sacrifice these potential gains and . . . reduce the total wealth of natives as a group.”¹²³

To measure the economic effect that immigrants have on the public sector, the NRC study calculates the estimated taxes paid and costs imposed by immigrants.¹²⁴ Past calculations have typically estimated only the fiscal effects of immigrant-headed households; the NRC correctly notes that a proper accounting of the total fiscal impact of immigration must also include the fiscal effects of all the descendants of immigrants.¹²⁵ Once the NRC includes projections regarding the education and income of future generations and adds their fiscal effects to those of their forebears, the data suggest that descendants of current immigrants are likely to have a net positive fiscal impact, whether or not their immigrant forbears are educated.¹²⁶ This occurs because the descendants of relatively unskilled immigrants show substantial upward mobility.¹²⁷ The positive fiscal impact of an immigrant’s descendants ranges from \$76,000 to \$93,000, depending on the immigrant’s education level.¹²⁸ Overall, the NRC finds that the average immigrant will produce a net fiscal benefit of \$80,000 (in 1996 dollars).¹²⁹

Although the NRC finds that the average immigrant with less than a high school education imposes a net fiscal cost of \$13,000,¹³⁰ this is greatly affected by the immigrant’s age. The younger the immigrant at time of entry, the more tax revenues the immigrant will contribute. Even an immigrant with less than a high school education produces a net fiscal benefit if he or she enters the United States by the age of twenty-one.¹³¹ The average immigrant with a high school education produces a net surplus of \$51,000, and the average immigrant with more than a high school education produces a net surplus of \$198,000.¹³² Because these immigrants make a positive contribution to the public sector, there is no economic rationale for excluding them.¹³³ Based on the NRC’s findings, concerns about the fiscal impact of immigration are justified only with regard to the unskilled and the elderly.¹³⁴

In addition to the benefits that we can quantify, immigration also yields a number of economic benefits that are difficult to quantify. Skilled foreign workers may “(1) increase the quality of the workforce, (2) bring new ideas and know-how to U.S. firms, which can lead to innovation, (3) transfer new skills and knowledge to their [native] co-workers, and (4) increase diversity in the workplace”¹³⁵ Reducing restrictions on skilled foreign workers makes a larger applicant pool available to U.S. companies and raises the skill level of workers employed.¹³⁶ As Jonathan Todres has noted, immigration could also push native workers to improve their skills to compete more effectively.¹³⁷

The presence of skilled foreign workers would drive innovation in U.S. businesses. The U.S.-Japanese auto industry example illustrates that U.S. businesses can learn from the methods of production utilized in other countries.¹³⁸ Indeed, the "greater the size of the pool of knowledge and ideas," the greater the chances of innovation.¹³⁹ By employing skilled foreign workers, a corporation greatly expands the size of the pool of knowledge in the firm.

Employing skilled foreign workers facilitates the transfer of knowledge to U.S. workers, producing gains beyond what can be achieved by merely examining foreign countries' business practices.¹⁴⁰ Employing such workers is particularly important because the United States cannot expect all new ideas and innovations to come from within its own borders. Studies show, in fact, that a large percentage of new technical ideas of some firms are attributable to outside sources.¹⁴¹ These may constitute as much as two-thirds of some firms' ideas, with up to one-third coming from overseas.¹⁴² The most common method of transfer of ideas has been the movement of persons to new areas.¹⁴³ U.S. firms and workers must have access to foreign workers if they are to fully benefit from new ideas developed in other countries.

V. THE IRRATIONALITY OF ENFORCEMENT?

The evidence that legal immigrants benefit the U.S. economy is clear. In addition, however, several factors suggest that unskilled *illegal* immigration may actually provide a larger net surplus than unskilled *legal* immigration. First, illegal immigrants typically come to the U.S. to work, not for family reunification.¹⁴⁴ Although these workers tend to be poor, they are ineligible for government programs that transfer wealth to low-income citizens.¹⁴⁵ Importantly, though, despite their wish to hide from the government, even illegal immigrants cannot avoid paying most taxes (including payroll, sales, and property taxes).¹⁴⁶ In fact, approximately 75% of illegal immigrants have their income taxes withheld, and less than a third of these file for a refund.¹⁴⁷ In addition to contributing to the efficiency of American labor markets, illegal immigrants often disproportionately favor public coffers.

If the transaction of illegal immigration is an economically efficient offense, then who are its victims? Not the migrants themselves. Because their conduct is voluntary, we can presume that it benefits them.¹⁴⁸ In fact, unauthorized immigrants from Mexico receive wages in the U.S. nearly nine times larger than those in their homeland.¹⁴⁹ If the data show that the benefits to the country as a whole are quite large, while the presumed harm is ambiguous or nonexistent, no economic rationale exists for enforcement, especially when it is expensive. If the presence of illegal immigrants yields a benefit, then enforcing restrictive immigration barriers not only hurts the economy, but also consumes scarce resources that could be more productively employed somewhere else. At the very least, one would expect the net effects of

illegal immigration to be studied more before the polity allocates enormous resources to stopping it.¹⁵⁰

The view of illegal immigration as a “victimless crime” is quite widespread.¹⁵¹ Many people employ illegal aliens, Congress regularly grants amnesty to large numbers of undocumented aliens, numerous local governments refuse to cooperate with the INS or to enforce the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), and most citizens are reluctant or unwilling to report suspected illegal immigrants to the authorities.¹⁵² Furthermore, the United States is the only major immigrant-receiving country without a significant nativist or restrictionist political party.¹⁵³ Even organized labor, traditionally a strong opponent of expansive immigration, favors both a new amnesty for long-term resident undocumented aliens and the repeal of the 1986 employer sanctions law that discourages firms from hiring undocumented workers.¹⁵⁴

The law presumably coincides with some appraisal of the polity’s best interests. But if the law is actually inconsistent with those interests, then one has no choice but to question its value. The United States should develop policies more in tune with economic realities. Some changes in U.S. immigration law, based on these realities, may alleviate many of the problems associated with immigration.

VI. POLICY PROPOSALS

Although some immigrants have a negative impact on the public sector, increased restrictions on immigration are not appropriate responses. Such measures would limit productive as well as unproductive migration. As Howard Chang has pointed out, the appropriate response is fiscal.¹⁵⁵ Restrictions on eligibility for public benefits, for example, can eliminate the fiscal impact of unskilled immigration without excluding would-be migrants from the United States.¹⁵⁶ This objective already underlies restrictions on access to various entitlement programs; indeed, current law generally excludes non-citizens from any federal public benefits.¹⁵⁷ Aliens admitted for permanent residence are ineligible for federal benefits for their first five years within the country,¹⁵⁸ and permanent resident aliens are ineligible for Supplemental Security Income and food stamps.¹⁵⁹ States may also exclude resident aliens from benefits under both federal and state programs.¹⁶⁰ These laws, codified in Congress’ 1996 welfare legislation, improve the total fiscal impact of the average immigrant by \$8,000.¹⁶¹

Aliens deemed “to become a public charge” may be excluded,¹⁶² and consular officers have broad powers to screen out immigrants who may negatively affect the public treasury.¹⁶³ To avoid these grounds for non-admission, sponsoring relatives frequently provide affidavits of support. Consequently, the availability of family-based visas is effectively limited to those petitioners (or sponsors) with adequate levels

of income. This process attracts relatively skilled aliens, whose potential incomes allow them to benefit from family-sponsored immigration. Even if a skilled sponsor's relatives are unskilled, as long as the family as a whole does not impose a net fiscal cost, the immigration of that family is in the economic interests of natives.¹⁶⁴ Further, the IIRIRA requires nearly all family-based immigrants to submit an affidavit of support, which binds the sponsor to support the sponsored alien.¹⁶⁵ This renders many family-based immigrants ineligible for public benefits by making them more reliant on their sponsors.¹⁶⁶ Although this policy may pose a problem if the sponsor's resources are somehow depleted, such concerns are at least partly met by a further requirement. The sponsor must demonstrate "the means to maintain" at least 125% of the federal poverty income for "a family unit of a size equal to the number of members of the sponsor's household (including family and non-family dependents) plus the total number of other dependents and aliens sponsored by that sponsor."¹⁶⁷ Such a policy improves the fiscal impact of those who choose to migrate, while dissuading those of modest means from sponsoring relatives for immigration.

Given current policies, it is likely that liberalizing or eliminating family-based quotas would serve the national economic interest. This would increase the immigration of valuable workers; it would also allow individuals to enter sooner, thus increasing the economic contribution made by each immigrant.¹⁶⁸ Liberalized quotas would reduce costly backlogs, which would allow immigrants to spend more of their working (and taxpaying) lives in the United States, thereby improving the fiscal impact of the average family-based immigrant.¹⁶⁹ Based on the NRC study, it appears that the national economic interest would be served best by a rule admitting young or educated immigrants regardless of their sponsors' incomes.¹⁷⁰

It is difficult to see how quantitative restrictions on employment-based immigration visas serve the national economic interest. Quotas allocate visas of this kind primarily to "priority workers," a group that typically includes skilled professionals. Few unskilled workers obtain such visas (the total is usually around 10,000 out of 140,000),¹⁷¹ and fiscal policies, employer sponsorship, and the "public charge" provision already ensure that skilled immigrants should have a net positive economic effect. Visa allocations for these types of immigrants are therefore redundant. Furthermore, even unskilled and uneducated immigrants can have a net positive impact if their access to public benefits is restricted.¹⁷² Groups deemed likely to have a negative fiscal impact if treated as citizens can be admitted instead as non-citizens (i.e., workers not eligible for many government assistance programs, such as Medicaid or Supplemental Security Income). Temporary workers, even if unskilled, are likely to have a net positive fiscal impact on natives,¹⁷³ so there is no economic rationale for restricting their entry.

Increased guest-worker programs would help to relieve the market pressures that lead to illegal immigration. This was clear during and after the "Bracero"

program, through which the U.S. brought in hundreds of thousands of guest workers annually from 1942 to 1964. The decline in the admission of such workers was closely correlated with an increase in illegal immigration,¹⁷⁴ so one could infer from this that a legal temporary worker program will actually reduce illegal immigration.¹⁷⁵ In fact, former INS Commissioner Raymond F. Farrell attributed dramatic increases in Mexican illegal immigration to the end of the Bracero program and the imposition of quotas.¹⁷⁶ In 1961, the INS reported 30,000 deportations of Mexicans.¹⁷⁷ After the end of the Bracero program in 1964 and the imposition of quotas in 1965, these numbers skyrocketed. By 1967, the INS had reported 108,000 deportations in a single year.¹⁷⁸

A new bilateral labor agreement between the United States and Mexico could provide significant advantages over unilateral immigration policy.¹⁷⁹ First, the countries could more effectively achieve their goals through a cooperative effort. The policies of each nation can influence migration patterns, and an optimal agreement would take this into account. Secondly, the differences in the socio-political atmosphere of the two countries, as well as weaknesses in the Bracero program itself, indicate that a new agreement should not follow the Bracero model.¹⁸⁰ Nevertheless, the Bracero program provides some insight into how any future bilateral immigration program should be structured.

Conditions pulling Mexicans to the United States include the demand for immigrant labor by U.S. employers, opportunities for much higher wages, and family connections in this country.¹⁸¹ Conditions pushing Mexicans to leave Mexico include demographic population growth, urban and rural insecurity, economic restructuring disruptions, and severe degradation of the environment in Mexico.¹⁸² Because these conditions provide powerful incentives to migrate, it may be impossible to completely control illegal immigration from Mexico. The relevant goal, rather, should be maintaining migration at a tolerable level.¹⁸³ As during the Bracero program, both countries can benefit from having legitimate Mexican migrants temporarily work in the United States. Emigration provides Mexico with a safety valve for economic and political pressure from a large, poverty-stricken population.¹⁸⁴ Mexican immigrants provide U.S. employers with efficient labor, keeping the cost of products down for consumers.¹⁸⁵ Furthermore, if the migrants are legal, the governments can impose safeguards to protect human rights.¹⁸⁶ These overlapping goals highlight the desirability of a new bilateral program.

A novel idea suggested by Howard Chang involves the payment of an “immigration tariff,” equal to the present discounted value of any net costs that we expect a worker who attains citizenship to impose on natives after attaining citizenship.¹⁸⁷ Although tariffs sacrifice gains from trade (or, in this case, gains from the free movement of labor), they produce some revenue for the government, which quotas do not.

Quotas on immigration make the option to immigrate scarce, and this scarcity makes the option to immigrate valuable. Such value can be measured in "quota rents," which are equal to the amount that an immigrant's after-tax wages are higher than those that prevail in alternative labor markets.¹⁸⁸ An ideal tariff would take the form of a charge for admission, which would be similar to quantitative restrictions, except that the available visas would be allocated to their highest-value users (i.e., those most willing to pay).¹⁸⁹ Selling visas would allow the United States to capture quota rents.¹⁹⁰ It would also allow the immigrants themselves to choose whether and when to migrate, based on their own preferences, rather than limiting migration of certain groups to meet artificial quotas.

The payments suggested by Chang, while tariffs by definition, could have the opposite effect of traditional tariffs. Although such a policy would discourage immigration by those who are unable or unwilling to pay, the use of such tariffs may actually increase the total number of immigrants if more protectionist policies, such as labor-certification requirements, are loosened. Assume, for example, that labor-certification requirements have a dissuasive effect on more potential immigrants than do immigration tariffs. The incremental increase of new immigrants will be larger than the incremental decrease imposed by the tariff – the total immigrant flow will thus increase. This contrasts sharply with tariffs on goods, which lead to a decrease in trade.

Immigrants need not have the resources to pay a tariff at the border; tariffs could easily take the form of monies withheld from income earned after immigration.¹⁹¹ Given the relatively modest size of the average unskilled immigrant's negative fiscal effect (\$13,000),¹⁹² such tariffs would not be exorbitant. Many immigrants already pay smugglers large sums (in many cases multiple times) to enter as illegals. This implies that the same workers would be willing to pay a significant fraction of their incomes as a tariff, particularly given that the tariff, unlike the smuggler, offers an ensured result.¹⁹³ Natives would also benefit from this money going to the treasury, which could allow either a reduction in their taxes or an increase in government services.¹⁹⁴

To the extent that unskilled guest workers and immigrants affect the income distribution among natives, the correct response is fiscal.¹⁹⁵ The deadweight loss of protectionism is greater than the potential deadweight loss of redistributive measures, such as progressive tax and transfer policies. We can replace an inefficient rule with a more efficient rule without making any class worse off, provided that we compensate those that are hurt by the change.¹⁹⁶ If immigration reduces the wages of some natives, then raising taxes on those natives who are benefited while lowering taxes on those who are hurt by immigration could leave all classes better off.¹⁹⁷ Protectionist policies already cost more than would a tax designed to compensate those hurt by increased

immigration. It simply makes economic sense to allow broader immigration and to compensate natives through the use of redistributive measures.

VII. CONCLUSION

Americans cling to the nation's immigrant roots. Nearly all political figures support expansionist immigration policies, most citizens support legal immigration, and many view illegal immigration as a "victimless crime." The purported negative economic effects of immigration are ambiguous and unsubstantiated, but the benefits are established and substantial. Increasing immigration leads not only to more efficient markets, but also to greater innovation among native workers and firms. Even if promoting the welfare of natives is our only objective, basic economics argues that our laws should allow more immigration than they currently do.

The reforms I suggest here are not meant to be all-inclusive, and they promise not a panacea, but only the possibility of a more effective and coherent law than we currently have. It is likely that one or more of these measures would alleviate some problems associated with migration into the United States, though it is not clear to what extent. What is clear, however, is that current policy is failing to meet both of its primary objectives: to embody the will of the citizenry and to act in the polity's best interests. New policies, based on sound economic principles and facts, must replace policies based on false assumptions and economic fallacies.

Notes

1. *See, e.g.*, Howard F. Chang, *The Economic Analysis of Immigration Law*, in *MIGRATION THEORY: TALKING ACROSS DISCIPLINES* 205, 205 (Caroline B. Brettell & James F. Hollifield eds., 2000).
2. *Id.*
3. *Id.* at 206.
4. *Id.*
5. *Id.*
6. PAUL R. KRUGMAN & MAURICE OBSTFELD, *INTERNATIONAL ECONOMICS: THEORY AND POLICY* 159 (4th ed. 1997).
7. *Id.* For the traditional economic analysis of international factor movements, including labor immigration, *see id.* at 159-79.
8. *Id.* at 159.
9. *Id.* at 160.
10. These names are obviously not chosen at random. Krugman and Obstfeld's model uses the generic names "Home" and "Foreign," but "Mexico" and "the United States" may be more appropriate for the purposes of this analysis. While the United States receives legal and illegal immigrants from all over the world, the vast majority of each category come from Mexico and Latin America.
11. KRUGMAN & OBSTFELD, *supra* note 5, at 160.
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.* at 161.
17. *Id.*
18. *Id.* U.S. landowners would also like to move their land to Mexico, but this is impossible. *Id.*
19. *Id.* at 161.
20. *Id.* at 161-62.
21. *Id.* at 162.
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. 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, 373 (Fall 1998/Winter 1999). *See also* Bob Hamilton & John Whalley, *Efficiency and Distributional Implications of Global Restrictions on Labour Mobility*, 14 *J. DEV. ECON.* 61 (1984) (providing estimates suggesting that the gains from free migration of labor would more than double worldwide real income; their most conservative estimate suggesting that the gains would be over 13% of worldwide real income).
29. KRUGMAN & OBSTFELD, *supra* note 5, at 162.
30. *Id.*
31. *Id.*

32. *Id.* Whether or not groups are actually left worse off, however, is one of the main points of contention of this Essay. It is also possible that the gains from the movement of labor could be used to offset the purported losses to any particular group.
33. RONALD G. EHRENBURG & ROBERT S. SMITH, *MODERN LABOR ECONOMICS: THEORY AND PUBLIC POLICY* 351 (5th ed. 1994).
34. *Id.* at 357.
35. *Id.*
36. *Id.* at 358.
37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.*
41. *Id.*
42. *Id.* at 352.
43. *Id.*
44. *Id.*
45. *Id.*
46. KRUGMAN & OBSTFELD, *supra* note 5, at 164; *see also* PAUL R. KRUGMAN, *POP INTERNATIONALISM* 65 (1996) (stating that imports of labor-intensive products are like an indirect form of low-skill immigration).
47. Shubha Ghosh, *The Legal, Economic, and Policy Roles of Immigrant Entrepreneurs in the Immigration Debate*, 5 *UCLA ASIAN PAC. AM. L.J.* 15, 17 (Spring 1998).
48. GEORGE J. BORJAS, *FRIENDS OR STRANGERS: THE IMPACT OF IMMIGRANTS ON THE U.S. ECONOMY* 8 (1990).
49. *Id.* at 9.
50. *Id.* Although non-pecuniary factors are often involved, immigration patterns are largely driven by differences in real wages between countries. Wage differentials are also important in explaining both external and internal migration patterns. *See, e.g.*, James A. Dunlevy & Don Bellante, *Net Migration, Endogenous Incomes and the Speed of Adjustment to the North-South Differential*, 65 *REV. ECON. & STAT.* 66 (1983).
51. BORJAS, *supra* note 48, at 9.
52. *Id.*
53. *Id.* at 11.
54. *Id.* at 13. The difference in the composition of the immigrant flow will depend on the importance of the changes in policy (*i.e.*, the more substantive the change in policy, the greater the expected impact on the composition of the immigrant flow).
55. *Id.* at 15.
56. *Id.* This is not to say, however, that those with less education will have no incentive to migrate. An individual worker responds to the improvement that he expects to experience in his absolute living standard as a result of migration. Even uneducated or low-skilled workers could have much to gain if the entire wage distribution is higher in the country to which they migrate.
57. *Id.* It is important to note that although those who are most likely to gain by migration are more likely to move, each individual responds to the improvement that he or she expects in his or her absolute standard of living as a result of migration. Immigrants could have much to gain in absolute terms if the entire wage distribution is higher in the country to which they migrate. Thus, in the example above, the United States may still attract many educated immigrants from countries that

value education more (as well as uneducated immigrants from countries that value education less) if these immigrants expect an increase in their absolute standard of living.

58. *Id.* at 16.
59. *Id.*
60. *Id.* at 17.
61. *Id.*
62. *See id.*
63. *Id.* at 4.
64. *Id.*
65. *Id.* at 5.
66. *Id.*
67. *Id.*
68. *Id.* at 6.
69. *Id.* at 19; JAMES P. SMITH & BARRY EDMONSTON, *THE NEW AMERICANS: ECONOMIC, DEMOGRAPHIC, AND FISCAL EFFECTS OF IMMIGRATION* 220 (1997) (stating that “the weight of the empirical evidence suggests that the impact of immigration on the wages of competing native workers is small”); Rachel Friedberg & Jennifer Hunt, *The Impact of Immigration on Host Country Wages, Employment and Growth*, 9 J. ECON. PERSP. 23, 42 (1995) (stating that “the effect of immigration on the labor market outcomes of natives is small”).
70. BORJAS, *supra* note 48, at 19.
71. *Id.*
72. *Id.* at 21.
73. *Id.* at 21-22.
74. *Id.* at 80-81; *see also* SMITH & EDMONSTON, *supra* note 69, at 220; Friedberg & Hunt, *supra* note 69, at 42.
75. GEORGE J. BORJAS, *HEAVEN’S DOOR: IMMIGRATION POLICY AND THE AMERICAN ECONOMY* 62 (1999).
76. BORJAS, *supra* note 48, at 81.
77. *Id.* at 81.
78. *Id.* at 81-82.
79. *Id.* at 82. Interestingly, despite stating this fact explicitly in *FRIENDS OR STRANGERS*, Borjas himself overlooks it in his later analysis in *HEAVEN’S DOOR*. *See* BORJAS, *supra* note 75, at 67. In *HEAVEN’S DOOR*, Borjas states that “the jobs that flow into the immigrant areas are moving from someplace else – the job gains in the immigrant areas are another city’s actual or potential job losses.” *Id.* at 67. While this may be true in some circumstances, the increase in demand for goods and services stemming from population growth necessitates the creation of new jobs, not just a transfer of jobs between geographic areas. *See infra* note 118 and accompanying text.
80. BORJAS, *supra* note 48, at 82. In fact, the relevant question is not whether or not immigrants are *willing* to work for lower wages than natives, but whether or not they actually do work for lower wages.
81. *Id.* at 72. For an explanation of this claim, see Douglas Massey, *Do Undocumented Workers Earn Lower Wages? New Evidence from Mexico*, 21 INT’L MIGRATION REV. 236 (Summer 1987). Massey’s study “compares the earnings of legal and illegal aliens and reports that, on average, illegal aliens have about 37% lower earnings than legal immigrants.” BORJAS, *supra* note 48, at 72. Illegal aliens are also younger, less proficient in English, more likely to work on a farm, and have less experience with American employers than their legal counterparts. *Id.* These factors imply that

- illegal aliens have lower wages than legal immigrants not because employers exploit them, but because they are less skilled.
82. BORJAS, *supra* note 48, at 83.
83. *See* BORJAS, *supra* note 75, at 79 (critiquing the theory that immigrants impact the labor market opportunities of natives).
84. *Id.*
85. *Id.*
86. *Id.* at 80.
87. *Id.* According to Borjas, the typical native works in a job that has 4.6 injuries per hundred workers annually, while the typical immigrant works in one that has 4.4 injuries. Similarly, about 8% of both natives and immigrants are employed in “midnight shifts.” *Id.* *See also* Daniel S. Hamermesh, *Immigration and the Quality of Jobs*, in *HELP OR HINDRANCE? THE ECONOMIC IMPLICATIONS OF IMMIGRATION FOR AFRICAN AMERICANS* 75 (Daniel S. Hamermesh & Frank D. Bean eds., 1998).
88. BORJAS, *supra* note 48, at 86.
89. *Id.* at 86-87.
90. *Id.* at 87.
91. BORJAS, *supra* note 75, at 68-69. Borjas’ state-level results are drawn from George J. Borjas et al., *How Much Do Immigration and Trade Affect Labor Market Outcomes?*, 1 *BROOKINGS PAPERS ON ECON. ACTIVITY* 24 (1997). The metropolitan-area results are drawn from Robert F. Schoeni, *The Effect of Immigrants on the Employment and Wages of Native Workers: Evidence from the 1970s and 1980s* (March 1997)(unpublished manuscript, on file with the RAND Corporation).
92. BORJAS, *supra* note 75, at 68.
93. *Id.* at 68-69.
94. *Id.*
95. *Id.*
96. BORJAS, *supra* note 48, at 88.
97. *See, e.g.*, Kristen F. Butcher, *An Investigation of the Effect of Immigration on the Labor Market Outcomes of African Americans*, in *HELP OR HINDRANCE? THE ECONOMIC IMPLICATIONS OF IMMIGRATION FOR AFRICAN AMERICANS* 149 (Daniel S. Hamermesh & Frank D. Bean eds., 1998). Butcher analyzes changes in the “fraction immigrant” (i.e., the percentage of the population that consists of immigrants) in geographic areas and changes in labor-market outcomes between 1980 and 1990. *Id.* at 160. She finds that in metropolitan areas an increase in the fraction immigrant was correlated with an increase in the growth of black men’s wages during the 1980s. *Id.* at 161. For example, a 1% increase in the immigrant share is associated with a one hundred forty dollar increase in annual earnings. *Id.* Although this represents a statistically insignificant percentage of total annual earnings, for the purposes of this analysis the fact that the correlation is positive is itself important.
98. BORJAS, *supra* note 48, at 90.
99. *Id.* at 91.
100. *Id.*
101. *See* Butcher, *supra* note 97, at 159-61. Butcher finds that an increase in the percentage of immigrants increases both the number of blacks employed and the average number of weeks worked. Neither correlation is significantly greater than zero; Butcher finds them statistically insignificant.
102. *Id.* at 152.
103. *Id.*

104. *See id.*

105. *Id.*

106. *See id.*

107. *Id.*

108. *Id.*

109. *Id.* at 153.

110. *Id.*; *See* Joseph Altonji & David Card, *The Effects of Immigration on the Labor Market Outcomes of Less-Skilled Natives*, in IMMIGRATION, TRADE, AND THE LABOR MARKET 201 (John M. Abowd & Richard B. Freeman eds., 1991). An analysis by Robert Schoeni uses similar techniques, but includes data from the 1990 Census. Schoeni also uses metropolitan area-specific cost-of-living adjustments to control for the fact that wages may increase more rapidly in areas where the foreign-born population increased, merely because the cost of living rose more quickly. *See also* Schoeni, *supra* note 91.

111. Butcher, *supra* note 97 at 153.

112. *Id.*

113. Altonji & Card, *supra* note 110, at 222-23. Altonji and Card do find, however, that an increase in the percentage of immigrants may have a negative but statistically insignificant effect on the average earnings of black men with low levels of education (less than thirteen years). Their results for uneducated black women are similar: a negative but statistically insignificant change in average earnings. *See also*, Schoeni, *supra* note 91. Schoeni's results are similar, but he also finds positive effects of immigration on the average weekly earnings of black female high school graduates during the 1980s.

114. For a full discussion of the Mariel Boatlift and its economic consequences, see David Card, *The Impact of the Mariel Boatlift on the Miami Labor Market*, 43 INDUS. & LAB. REL. REV. 245 (1990).

115. *Id.* at 248.

116. *Id.* at 250-51. The wages of non-Cuban Hispanics working in Miami remained stable from 1979 to 1985. Although there was a small decline in average Cuban wage rates, this occurred because the 45,000 Mariels had an average wage 34% lower than that of Cubans living in Miami before the boatlift. The wages of pre-boatlift Cuban workers remained stable.

117. Chang, *supra* note 1, at 210.

118. *Id.* (citing Oliver J. Blanchard & Lawrence F. Katz, *Regional Evolutions*, 1 BROOKINGS PAPERS ON ECON. ACTIVITY 1 (1992)).

119. Card, *supra* note 114, at 255 ("First, the Mariel immigration had essentially no effect on the wages or employment outcomes of non-Cuban workers in the Miami labor market. Second, and perhaps even more surprising, the Mariel immigration had no strong effect on the wages of other Cubans.").

120. *Id.* at 256.

121. SMITH & EDMONSTON, *supra* note 69, at 153; *see also* George J. Borjas, *The Economic Benefits from Immigration*, 9 J. ECON. PERSP. 7 (1995) (estimating that the approximately 10% of the American workforce who are immigrants add roughly 0.1% to the GDP accruing to other Americans, or about \$7 billion); George E. Johnson, *The Impact of immigration on Income Distribution Among Minorities*, in HELP OR HINDRANCE? THE ECONOMIC IMPLICATIONS OF IMMIGRATION FOR AFRICAN AMERICANS 75 (Daniel S. Hamermesh & Frank D. Bean eds., 1998); George E. Johnson, *Estimation of the Impact of Immigration on the Distribution of Income Among Minorities and Others*, (Unpublished Mimeograph) (Feb. 1997) (estimating that a hypothetical 8% increase in unskilled immigrants would raise national output accruing to natives by \$2.5 billion, or about 0.036% of the GDP).

122. SMITH & EDMONSTON, *supra* note 69, at 153.
123. Chang, *supra* note 1, at 212.
124. For a detailed account of the NRC calculations, including a discussion of the methodology used, see SMITH & EDMONSTON, *supra* note 69, at 297-362. For the purposes of this Essay, understand that the lifetime fiscal effects of an immigrant and his descendants can be divided into two categories: 1) the fiscal benefits and costs of adding one more person to the population regardless of immigrant status, and 2) the fiscal benefits and costs associated with the special characteristics of immigrants, such as age at arrival, time since arrival, English language ability, and education. The cost per capita of providing a given level of services declines as population rises because more taxpayers share the unchanging total costs. Thus, the cost of a purely public good, such as national defense, does not measurably increase with the size of the population. Other services, such as roads and police departments, have a public aspect but increase in cost as the population increases. These costs are included in the NRC's calculations, which estimate both the taxes paid and the costs imposed by an immigrant and his descendants. Also included as costs are traditional government outlays, such as Medicaid, Supplemental Security Income, and education costs.
125. Chang, *supra* note 1, at 215; see SMITH & EDMONSTON, *supra* note 69, at 298. For further analysis of immigrants' effects on the public sector, see Peter H. Schuck, *Alien Ruminations*, 105 YALE L.J. 1963, 1985 (1996) (book review) (citing Jeffrey S. Passel & Rebecca L. Clark, *How Much Do Immigrants Really Cost? A Reappraisal of Huddle's "The Cost of Immigrants"* (Feb. 1994) (unpublished research report, on file with author)). Schuck, Passel, and Clark criticize previous estimates for systematically understating tax collections from immigrants; overstating service costs for immigrants; failing to take account of the economic value generated by immigrant entrepreneurs and immigrant consumer spending; overstating job displacement impacts; overstating the size of the immigrant population, especially illegals; and ignoring the fact that many natives also use more in services than they pay in taxes.
126. SMITH & EDMONSTON, *supra* note 69, at 328-30.
127. *Id.* at 356-57; Chang, *supra* note 1, at 215.
128. SMITH & EDMONSTON, *supra* note 69, at 334.
129. *Id.*
130. *Id.*
131. *Id.* at 328; Chang, *supra* note 1, at 216; see also Barry R. Chiswick et al., *The Labor Market Status of Immigrants: Effects of the Unemployment Rate at Arrival and Duration of Residence*, 50 INDUS. & LAB. REL. REV. 289 (1997). According to Chiswick and his co-authors, recent immigrants have a lower employment ratio and a higher unemployment rate than those with a longer duration in the country, but the effect is short-lived. The employment differential declines sharply with duration and disappears by ten years' residence in the United States. The unemployment difference disappears even sooner — by the end of the first year or, at latest, by the third year. Similar patterns have been found in the large cross-sectional data sets from the 1970 and 1990 Censuses and the 1976 Survey of Income and Education, suggesting that there has been no change over time in the effect of duration of residence on employment and unemployment status.
132. SMITH & EDMONSTON, *supra* note 69, at 334.
133. Chang, *supra* note 1, at 216.
134. *Id.*
135. Jonathan Todres, *Lessons from the Trade Arena: A Proposal to Change U.S. Immigration Law for the Benefit of U.S. Workers*, 1 SAN DIEGO INT'L L.J. 49, 65 (2000).
136. *Id.*

- 137.*Id.*
- 138.*Id.* at 66; *see also* Iwao Nakatani, *Competitive Assymetries: The United States & Japan*, in NATIONAL COMPETITIVENESS IN A GLOBAL ECONOMY, 41, 44-46 (David P. Rapkin & William P. Avery eds., 1995).
- 139.Todres, *supra* note 135, at 66 (quoting CYRIL S. BELSHAW, THE CONDITIONS OF SOCIAL PERFORMANCE: AN EXPLORATORY THEORY 54 (1970)).
- 140.*Id.* at 68.
- 141.*Id.* (citing J.E.S. PARKER, THE ECONOMICS OF INNOVATION: THE NATIONAL AND MULTINATIONAL ENTERPRISE IN TECHNOLOGICAL CHANGE 25 (1974)).
- 142.PARKER, *supra* note 141, at 25.
- 143.*Id.* at 26; Todres, *supra* note 135, at 68.
- 144.EHRENBERG & SMITH, *supra* note 33, at 363.
- 145.*Id.* Illegal immigrants do, however, impose fiscal costs associated with maintaining some government services. *See infra* note 124.
- 146.EHRENBERG & SMITH, *supra* note 33, at 363.
- 147.GREGORY DEFREITAS, INEQUALITY AT WORK: HISPANICS IN THE U.S. LABOR FORCE 228 (1991).
- 148.Peter H. Schuck, *Law and the Study of Migration*, in MIGRATION THEORY: TALKING ACROSS DISCIPLINES 187, 199 (Caroline B. Brettell & James F. Hollifield eds., 2000).
- 149.Chang, *supra* note 1, at 224 (citing *Mexican Deportees Report Good Treatment*, UPI, Apr. 21, 1996, available in LEXIS, Nexis Library, UPI File) (reporting that Mexican immigrants receive an average of \$278 per week in the United States, compared with \$30.81 per week in Mexico).
- 150.For a similar view, *see* EHRENBERG & SMITH, *supra* note 33, at 363.
- 151.Schuck, *supra* note 148, at 200.
- 152.*Id.* at 200. *See generally* Peter H. Schuck, *The Open Society*, THE NEW REPUBLIC, Apr. 13, 1998, at 19.
- 153.Peter H. Schuck, *Immigration at the Turn of the New Century*, 33 CASE W. RES. J. INT'L L. 1, 6 (Winter 2001).
- 154.*Id.*
- 155.Chang, *supra* note 1, at 216.
- 156.Of course, both legal and illegal immigrants have effects on the cost side of public services beyond the provision of direct benefits. These costs are discussed *infra* note 124. In most cases, the net benefit associated with increased immigration would be greater than the costs associated with such services. Furthermore, because most illegal immigrants pay taxes, even illegals may add more to government coffers than they consume in services. *See infra* note 147 and accompanying text.
- 157.*See, e.g.*, 8 U.S.C. § 1611(a) (2001).
- 158.8 U.S.C. § 1613(a) (2001).
- 159.*Id.* at § 1612(a) (2001).
- 160.*Id.* at § 1612(b) (2001).
- 161.SMITH & EDMONSTON, *supra* note 69, at 339; Chang, *supra* note 1, at 217.
- 162.8 U.S.C. § 1182(a)(4) (2001).
- 163.Chang, *supra* note 1, at 218.
- 164.One could argue that if a sponsor in the U.S. is skilled, while the immigrating relative outside the U.S. is unskilled, permitting the latter to enter imposes a cost on natives. This argument ignores the possibility that a productive sponsor (who, by assumption, provides a benefit larger than the loss due to his sponsored relative) could also choose to emigrate to be with the sponsored relative. This is not implausible for close family members or spouses. Such emigration would impose a net cost

- on natives. Further, strong restrictions on family-based immigration may dissuade would-be sponsors from moving to the U.S. in the first place, again imposing a net cost on natives (though in the form of decreased future gains, rather than present losses).
- 165.8 U.S.C. § 1183(a)(1)(A)-(C) (2001).
166. *See id.* at § 1631(a) (2001).
167. *Id.* at § 1183(f)(1)(E), (6)(A)(iii) (2001).
168. Chang, *supra* note 1, at 220.
169. *Id.*
170. *See supra* note 131 and accompanying text.
- 171.8 U.S.C. §§ 1151(d)(1)(A), 1153(b)(3)(A)(iii) (2001); Chang, *supra* note 1, at 221.
172. Chang, *supra* note 1, at 222.
173. *Id.*
174. *Id.* (citing JULIAN SIMON, *THE ECONOMIC CONSEQUENCES OF IMMIGRATION* 286 (1989)).
175. *Id.*; *see also* SIMON, *supra* note 174, at 302 (“A legal temporary worker program will indeed reduce illegal immigration.”); William F. Shugart, II et al., *The Political Economy of Immigration Restrictions*, 4 *YALE J. ON REG.* 79, 87 (Fall 1986) (“Illegal immigration is clearly a substitute for legal entry. When immigration policy is restrictive, we expect an increase in the number of aliens entering the U.S. illegally.”).
176. Samuel W. Bettwy, *A Proposed Legislative Scheme to Solve the Mexican Immigration Problem*, 2 *SAN DIEGO INT’L L.J.* 93, 109 (2001) (citing *Hearing Before the House Committee on the Judiciary*, 92nd Cong., 19 (1971) (statement of Raymond F. Farrell, INS Commissioner)).
177. *Id.* (citing INS, U.S. DEP’T OF JUSTICE, ANN. REP. (1961)).
178. *Id.* (citing INS, U.S. DEP’T OF JUSTICE, ANN. REP. (1967)).
179. The U.S. currently has a unilateral temporary guest worker program, the H-2A program, which allows migrant workers to temporarily enter the United States to perform unskilled agricultural labor. *See* 8 U.S.C. § 1101(a)(15)(H)(ii)(a) (2001).
180. For further discussion on this point, see Maria Elena Bickerton, Note, *Prospects for a Bilateral Immigration Agreement with Mexico: Lessons from the Bracero Program*, 79 *TEX. L. REV.* 895, 909 (2001). Bickerton notes that the U.S. government did not adequately enforce protections for the Bracero workers. Braceros received insufficient food and substandard housing, and suffered inadequate wages, unsafe working conditions, and unemployment during the contract periods. Many deserted their employers. *See also* KITTY CALAVITA, *INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION, AND THE I.N.S.* 42-43 (1992).
181. Bickerton, *supra* note 180, at 915 (citing Luis Herrera-Lasso, *The Impact of U.S. Immigration Policy on U.S.-Mexico Relations*, 3 *UCLA J. INT’L L. & FOREIGN AFF.* 357, 360, 369 (Fall 1998/Winter 1999)).
182. *Id.*
183. *Id.*
184. *Id.* at 916; Marc. R. Rosenblum, *My Neighbor, Myself: Mexican Influence on U.S. Migration Policy*, 3 *UCLA J. INT’L L. & FOREIGN AFF.* 527, 540 (Fall 1998/Winter 1999).
185. Bickerton, *supra* note 180, at 916; *see also* Joel Millman, *The Outlook: U.S. Farmers Seek New Bracero Program*, *WALL ST. J.*, Aug. 31, 1998, at A1.
186. Bickerton, *supra* note 180, at 916. *But see* Michael Holley, *Disadvantaged by Design: How the Law Inhibits Agricultural Guest Workers from Enforcing their Rights*, 18 *HOFSTRA LAB. & EMP. L.J.* 575 (Spring 2001). Holley looks specifically at the current H-2A agricultural guest worker program, and argues that the administrative and judicial remedies available to H-2A workers are so

inadequate that H-2A workers are more vulnerable to workplace abuses than are domestic farm workers.

187. Chang, *supra* note 1, at 223.

188. Chang, *supra* note 28, at 380.

189. *Id.*

190. *Id.*

191. *Id.* at 380-81. Such a policy would require the development of a government-collection mechanism, which is certainly not a simple or inexpensive exercise. If accompanied by a relaxation of other restrictions, however, this mechanism could conceivably be funded by some of the resources currently spent on INS enforcement.

192. *See infra* notes 130-31 and accompanying text.

193. Some have argued to the author that immigration tariffs or similar policies could create a group of “second-class citizens” (and, in a literal sense, a form of state-sponsored indentured servitude) by requiring immigrants to pay off their tariffs. This “second-class citizen” argument makes the assumption that the U.S. should either grant everyone the same rights and privileges (including, apparently, the “right” not to pay a tariff), or not let them enter the country at all. Such arguments ignore the fact that these costs are factored automatically by an individual immigrant, who decides for himself whether or not the costs are outweighed by the benefits of migration.

It is particularly problematic to argue that one who stands to gain much through immigration should not be permitted to do so merely because he *could* gain more under a different legal regime. Such all-or-nothing arguments would invariably protect the status quo, and would, in the subjective name of “fairness,” condemn many potential immigrants to live in countries where their economic opportunities are much lower.

194. Chang, *supra* note 28, at 381-82.

195. Chang, *supra* note 1, at 212-13.

196. *Id.* at 213. This is one of the fundamental tenets of economic efficiency. *See also* Louis Kaplow & Steven Shavell, *Why the Legal System is Less Efficient than the Income Tax in Redistributing Income*, 23 J. Legal Studies 667, 669 (1994). Kaplow and Shavell argue that a move to a more efficient rule can be accompanied by an adjustment in income taxes, and thus allow for compensation through the tax system.

197. Chang, *supra* note 1, at 213 (citing Barry R. Chiswick, *Illegal Immigration and Immigration Control*, 2 J. Econ. Persp. 101, 107 (1988)).