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“The United States’ Broken Immigration Policy: The Labor Shortage and a Public Policy Solution”

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*"Here at our sea-washed, sunset gates shall stand A mighty woman with a torch, whose flame
Is the imprisoned lightning, and her name Mother of Exiles. From her beacon-hand
Glow world-wide welcome; her mild eyes command. The air-bridged harbor that twin cities
frame. 'Keep, ancient lands, your storied pomp!' cries she with silent lips. 'Give me your tired,
your poor, Your huddled masses yearning to breathe free, The wretched refuse of your teeming
shore. Send these, the homeless, tempest-tost to me, I lift my lamp beside the golden door!"*

-Emma Lazarus, "The New Colossus," 1883

Introduction

Migration is not a new phenomenon. The United Nations (U. N.) asserts that across time, at any given moment, an average of three percent of the global population is migratory.¹ Yet, in the modern context, countries around the world are struggling as they are confronted with mass immigration as of people from other lands seek entrance. Host governments struggle with integrating immigrants into their states and citizen populations are divided as to whether immigration is an ultimate good and whether the method of immigration should matter.²

Numerous moral questions surround the issue of immigration everywhere in the world. Among these are how strangers should be treated. There are numerous passages in the Bible that make the moral underpinnings of immigration clear. For example, in Deuteronomy 10:19, “Love ye therefore the stranger: for ye were strangers in the land of Egypt” and in Leviticus 19:34, “But the stranger that dwelleth with you shall be unto you as one born among you, and thou shalt love him as thyself; for ye were strangers in the land of Egypt: I am the Lord your God.” Similarly, Exodus 22:21, Leviticus 10:33-34, Deuteronomy 23:16, Ezekiel 47:22-23, Hebrews 10:9-10, Romans 12:13, and 1 Peter command believers to not only do foreigners no wrong, but to be hospitable to strangers.

While a sustained migration rate of three percent is considered “normal” in the course of human events, in the post-Cold War era, there has been a marked and sustained increase in global migration rates. It is estimated that in 2019, 3.5% of the global population was migratory.³ This is an increase from 2.8% reported in 2000.⁴ While a half percent increase may seem like a small percentage, but it represents more than 8.5 million additional migrants.⁵

The United States (U.S.) currently hosts an estimated 47 to 50 million immigrants – legal and illegal. Economic opportunity is attributed to being the primary reason that the U.S. is the most desired destination for migrants.⁶ It appears that for the past decades, migration to the U.S. has continued to increase, recent changes in immigration policy by the Biden Administration have contributed to “surges” of immigration, especially illegal immigration, across the United States’ southern border.⁷ Current estimates assert that 14-15% of the U.S. population is foreign-born, an increase from a low of 5% in 1965.⁸ If current trends continue, according to Texas Lieutenant Governor Daniel Patrick, 20% of the U.S. population will be foreign-born, illegal

¹ United Nations Department of Economic and Social Affairs, “Population Facts,” *United Nations*, 2019.

² Tim Dixon et. Al, “Attitudes Toward National Identity, Immigration, and Refugees in Italy,” *More in Common*, 2018; Max R. Lemberg, “The Problem of Refugee Immigration,” *Australian Quarterly* 90, no. 2 (2019).

³ Migration Policy Institute (MPI), “Unauthorized Immigrant Populations by Country and Region, Top States and Countries of Resident,” *Migration Policy Institute*, 2019; UN, “Population Facts,” 2019.

⁴ UN, “Population Facts,” 2019, 1-2; Hein de Haas et. Al, « International Migration : Trends, Déterminants, and Policy Effects,” *Population and Development Review* 45, No. 4 (2019): 888-890.

⁵ Worldometer, “Current World Population,” *Worldometer.com*, 2021.

⁶ Steven Camarota and Karen Zeigler, “Estimating the Illegal Immigrant Population Using the Current Population Survey,” Center for Immigration Studies, 2022; Iva Mihaylova, “Russia’s New Concept for the State Migration Policy Until 2025 A Reform Towards Effective Policies for International Economic Migrants?” *Geopolitics, History, and International Relations* 9, no. 1 (2017): 177; UN, “Population Facts,” 2019.

⁷ Camarota and Zeigler, “Estimating the Illegal Immigrant Population,” 2022; United States Customs and Border Control, “The Immigration Reform and Control Act (IRCA) Prohibits Employment Discrimination,” *U.S. Department of Justice*, 2009.

⁸ Andrew Baxter and Alex Nowrasteh, “U.S. House of Representatives, The Immigration and Nationality Act of 1952 (The McCarran-Walter Act),” *U.S. House of Representatives Office of the Historian*, 2021; Immigration Learning Center (ILC), “Quick Immigration Statistics: United States,” *Immigration Learning Center*, 2022; MPI, “Immigrant Profiles & Demographics – U.S. Data,” 2022.

immigrants by the end of President Biden's current term.⁹ Interestingly, today one-in-five (20%) of all workers in Texas is an immigrant and 8% of those workers are illegal immigrants..¹⁰

Questions remain as to whether the current "wave" of immigrants is a net negative or positive for the United States. The motto of the United States of America is *E pluribus unum*, a Latin term meaning, "out of many, one." The nation is composed mostly of the world's diaspora that have come to this continent over the course of the past 500 years. Perhaps "out of many, one" is best exemplified in the sentiment expressed in part by Emma Lazarus in her poem "The New Colossus" to send, "Your huddled masses yearning to breathe free, the wretched refuse of your teeming shore...I lift my lamp beside the golden door!"¹¹

Development of U.S. Immigration Policy

The United States is a republic composed of 50 individual and sovereign states, each having constitutions and established laws of their own. However, this collection of states is bound into one nation by the Constitution of the United States of America. The Constitution expressly allocates the power to Congress to establish certain universal laws and policies for the nation, preventing confusion and conflict that would result if a unifying document did not exist. In the eighteenth and nineteenth centuries, the various states bestowed citizenship on immigrants.

Concerning immigration, the U.S. Constitution is moot. However, it does address naturalization, which is the act of becoming an American citizen. Article 1, Section 8, Clause 4 of the Constitution specifically grants to the United States Congress the power to establish a "uniform Rule of Naturalization." An American, therefore, can be "native born" but can also be "naturalized," in other words "non-native-born." Further, naturalization is defined by the Supreme Court as "the act of adopting a foreigner and clothing him with the privileges of a native citizen."¹²

Immigration Law

Current U.S. immigration law and policy is grounded, primarily, by three formative pieces of 20th Century legislation.¹³ By the late 19th century, approximately 15% of the U.S. population was foreign-born with urban areas, such as New York City, reporting first-generation immigrants comprising more than 50% of the population.¹⁴ The Page Law of 1875 was among the first attempts at comprehensive federal immigration policy. It established "blanket exclusions" and "barred zones," that denied immigration from specific regions of the world.¹⁵

⁹ Daniel Patrick, "20% of the American Population Will Be Here Illegally by the end of Biden's Term," *The Geller Report*, 2022.

¹⁰ MPI, "Frequently Asked Statistics," 2022.

¹¹ Emma Lazarus, "The New Colossus," *National Parks Service*, 1883.

¹² *Boyd v. Nebraska ex rel. Thayer*. 1892, 143 U.S. 135, 162 (1892).

¹³ We recognize that there were other immigration bills passed. These include the Immigration Act of 1882, the Chinese Exclusion Act (1882), the 1921 Emergency Quota Act, Immigration and Nationality Act of 1952 Act, the 1986 Immigration Reform and Control Act, The 2002 Entry Reform Act, the 2006 Secure Fence Act, are but a few examples of other legislation passed. (Baxter & Nowrasteh, 2021; U.S. House of Representatives. 2022.; U.S. House of Representatives Office of the Historian, 2022)

¹⁴ Andrew Baxter and Alex Nowrasteh, "A Brief History of U.S. Immigration Policy from the Colonial Period to the Present Day," *CATO Institute*, 2021.

¹⁵ National Park Service, "Ulysses S. Grant, Chinese Immigration, and the Page Act of 1875," *National Parks Service*, 2022.

The Immigration Act of 1917 built upon this legislation by severely limiting or specifically excluding immigration from identified states in the international system. It also excluded political “radicals,” those deemed mentally “deficient,” prostitutes, and other “unfavorables.”¹⁶ The exclusion of Asian migrants was completed with the Immigration Act of 1924.¹⁷ Quotas based on nation of birth were imposed, limiting immigration, and favoring migrants from western European nations.¹⁸

The Immigration Act of 1965 (Hart-Celler Act of 1965) ended the quota system and limited immigration based on migrants state of origin and established a policy that emphasized skilled labor and prioritized migrants with “family already living in the United States.”¹⁹ Under this legislation, 74% of immigrant visas were designated for immigrants with relatives living in the U.S. The remaining 26% were reserved for “skill-based” immigration. Of these, 10% were designated for “professions of exceptional ability in sciences and arts and their spouses and children,” another 10% for other skilled labor categories, and six percent was designated for refugees with an emphasis placed on those fleeing Communism or the Middle East.²⁰ The impact and long-term implications of what came to be known as “The Family Reunification Clause” was underestimated by legislators at that time, as migrants moved quickly to take advantage of the provision. The number of “first-generation immigrants” has grown from approximately 5% of the U.S. population in 1965 to approximately 14-15% in recent years with 63% holding a Lawful Permanent Resident designation based on familial relationships.²¹

Lawful and Unlawful Immigration

The U.S. Government utilizes two primary immigration categories of legal immigration/residency: Lawful Permanent Residents and Nonimmigrant Residents.²² Lawful Permanent Residents, for example, are foreign- born immigrants have been granted “Lawful Permanent Residence” in the United States but are not citizens more commonly known as “green card holders.” People in this category can be immediate relatives of U.S. Citizens, have family-sponsored preference, be sponsored by an employer, be refugees and asylum seekers, or be from states in the international system that has “relatively low levels” of risk.²³ Nonimmigrant residents or “resident nonimmigrants” are foreign nationals who have been temporarily admitted

¹⁶ Mae M. Ngai, “Nationalism, Immigration Control, and the Ethnoracial Remapping of America in the 1920s,” *Organization of American Historians Magazine of History* 21, no. 3 (2007); Peter H. Schuck, “The Transformation of Immigration Law,” *Columbia Law Review* 84, no. 1 (1984).

¹⁷ Baxter and Nowrasteh, “A Brief History of U.S. Immigration Policy,” 2021.

¹⁸ Schuck, “Transformation of Immigration Law,” 1984, 13.

¹⁹ Catherine Lee, “Family Reunification and the Limits of Immigration Reform: Impact and Legacy of the 1965 Immigration Act,” *Sociological Forum* 30, no. 1 (2015); U.S. House of Representatives, “Immigration and Nationality Act of 1965,” *History, Art & Archives U.S. House of Representatives*, 1965.

²⁰ Lee, “Family Reunification,” 2015, 540-541

²¹ Baxter and Nowrasteh, “A Brief History of U.S. Immigration Policy,” 2021, 7, 22; ILC, “Quick Immigration Statistics,” 2022; MPI, “Immigrant Profiles & Demographics,” 2022.

²² U.S. Department of Homeland Security, “Immigrant Classes of Admission,” *U.S. Department of Homeland Security*, 2022.

²³ Julie G. Rosicky, “Addressing the Root Causes of Migration: Building and Coordinating Social Services for Children and Families across Borders in the Northern Triangle and Beyond,” *Children’s Voice* 25, no. 1 (2016).

into the United States. This is typically in the form of a student or work visa but can also include business and casual travel.²⁴

Unauthorized immigrants are foreign-born, non-citizen, non-legal residents of the United States. Colloquially, they are referred to as illegal immigrants.²⁵ Illegal immigration is not a phenomenon that is unique to the U.S. nor is the U.S. the only state in the international system that struggles to address the problem. For example, in 2019, 16.1% of Germany's, 21% of Canada's, 12.8% of France's, 13.7 % of the United Kingdom's and 47.3% of Luxemburg's populations were foreign-born.²⁶ These statistics approximate recent U.S. immigration rates of 14-15% of the total U.S. population.²⁷

Illegal immigration into the United States takes place across all land and sea borders of the nation and its territories, some thousands of miles from the mainland. However, in the United States, people tend to associate immigration, mostly illegal, with the southern border between the states of Texas, New Mexico, Arizona, California, and the United Mexican States (Mexico). This is a border that divides the richest and most powerful nation in the world from one of the most impoverished regions of the world, Mexico, Central, and Latin America. In 2019, approximately 10.9 million Mexican-born individuals were living in the United States. This group accounted for approximately 5,313,000 or approximately 51% of all unauthorized immigrants.²⁸ It is likely, though, that those identified as crossing the southern border represent only a fraction of illegal immigrants into the United States.^{29, 30}

Illegal Immigration and the Present Day Labor Shortage—Pros and Cons

The United States is facing a labor shortage with 11.4 million job openings on the last day of April 2022.³¹ Despite the lingering effects of COVID and inflation, the April 2022 U.S. unemployment rate was 3.6%, employers "continued to struggle to hire new workers."³² Economic analysts such as Richard Krashevski (1986) and the Organization of Economic

²⁴ U.S. Customs and Border Control, "Immigrant Classes of Admission, *U.S. Department of Homeland Security*, 2021.

²⁵ U.S. Department of Homeland Security, "Immigrant Classes of Admission," *U.S. Department of Homeland Security*, 2022.

²⁶ Organization of Economic Co-operation and Development (OECD), "Foreign-Born Population," 2021; Oxford University Migration Observatory, "Migrants in the UK: An Overview," *Oxford University*, 2020, 1.

²⁷ U.S. Department of Homeland Security, "Population Estimates," *U.S. Department of Homeland Security*, 2022.

²⁸ MPI, "Net Number of Migrants by Country, 1950-2020 (by Five-Year Intervals)," *Migration Policy Institute*, 2019.

²⁹ Of more than 300 ports of entry identified by U.S. Customs and Border Protection, only eight are along the U.S./Mexico border: San Diego, El Centro, Yuma, Tucson, El Paso, Big Bend, Del Rio, Raredo, and Rio Grande Valley. (USCBP, 2022)

³⁰ This article in no way seeks to undermine the importance of the human rights travesties that have accompanied the recent surge in illegal immigration, minimize the impact of transient immigration policies, or ignore the impact that the lack of inconsistent enforcement of current immigration law has had on the opportunities those with evil intent. Nor do we seek to neglect the blatant erosion of the respect for the rule of law or reward lawlessness. God forbid (Romans 13: 3-4)! These are critical components of a larger discussion on overall immigration policy. Recognizing this, this article addresses just one aspect of the vastly complex topic of immigration policy – the demographic necessity for more immigration in light of recent illegal immigration surges.

³¹ U.S. Bureau of Labor and Statistics, "The Employment Situation – April 2022," *U.S. Bureau of Labor Statistics*, 2022.

³² *Ibid.*

Development (2021), assert that full employment ranges between four and six and a half percent. Current U.S. unemployment levels are below even the more modest conceptualizations of full employment of four percent. The simple truth is that the U.S. not only needs immigrants it needs more immigrants to fill some of the necessary and vital jobs needed in society. In short, the U.S. needs more people and it needs them now!

In 2021, the population of the United States grew by 392,665 or 0.1%. This is the lowest rate of annual growth since its founding.³³ Similarly, while adult populations grew in the United States between 2010 and 2020, the child population (under age 18) actually shrank by 1 million or 1% during the same period.³⁴ The birth rate for U.S. women fell to 1.7 children per woman in 2019. This is below the minimum birth rate of 2.1 children per woman needed to sustain a population.³⁵ Exacerbating the impact of decreasing in birthrates, the median age of the U.S. is also increasing. As birthrates decline, people are also living longer.³⁶

Low birth rates and an aging population can impact the sustainability of the workforce within a generation. For example, in the agriculture sector (workers that maintain crops and tend livestock), farmers report a need for seasonal workers at harvest time and rely on a robust immigrant community. Farmers, when faced with a labor shortage, often turn to hiring illegal immigrants to ensure their crops are harvested on time. However, the Immigration Reform and Control Act of 1986 made it illegal for employers with over four employees to knowingly hire illegal immigrants.³⁷ This puts farmers in a lose-lose dilemma—either losing a crop due to an insufficient labor pool (either through lack of numbers or an unwillingness to engage in “hard labor”) or allowing crops to rot in the fields.³⁸ The choices become either financial ruin or violating the law to survive.

Costs of Illegal Immigration

Though there is a demonstrated demographic need for more immigrants into the U.S., there are also costs associated - especially with illegal immigration. Advocates for increased illegal immigration point to the fact that most illegal immigrants work and pay taxes like most American citizens. While this is factually accurate, it is also accurate that illegal immigrants are net recipients of federal funds. In 2017, illegal immigrants paid \$18.9 billion in taxes in the form of state and federal income taxes, social security, Medicare, sales, and excise taxes. The U.S. Government spent \$134.9 billion in federal expenditures attributable to illegal immigrants. This is a net cost to the American taxpayers of \$115 billion (about \$350 per person in the US) in the form of education, Medicare, justice/judicial, welfare, and other federal expenditures.³⁹ The

³³ USAFacts, “State of the Union,” *USAFacts.org*, 2022.

³⁴ *Ibid.*

³⁵ UN, “World Fertility and Family Planning 2020,” *United Nations*, 2020; World Bank, “World Development Indicators – United States 2000-2020,” *The World Bank*, 2022.

³⁶ USAFacts, “State of the Union,” 2022.

³⁷ U.S. Department of Justice, “The Immigration Reform and Control Act (IRCA) Prohibits Employment Discrimination,” *U.S. Department of State*, 2009.

³⁸ Easter, 2010.

³⁹ Matthew O’Brien and Spencer Raley, “The Fiscal Burden of Illegal Immigration on United States Taxpayers,” *FairUS.org*, 2017.

National Research Council (NRC), in 1997, also found that there was a net negative fiscal impact on the American population.

When viewed alone, the economic cost of illegal immigration could be interpreted as compelling evidence to call for a reduction of immigration. This is only one consideration of many, however. The net economic impact of illegal immigration must be viewed in light of other short and long-term implications of immigration.

Economic Opportunity for Immigrants

Economic opportunity is viewed as a primary motivation for migration to the U.S. Evidence of realized economic benefits in the U.S. can be gleaned from the use of money transfers from the U.S. to Northern Triangle states⁴⁰ and Mexico in the form of remittances. Remittances are defined as "the sum of personal transfers between resident and non-resident individuals."⁴¹ Immigrants work in the U.S. and send funds to their families in their home countries. Beginning in 2016, Latin America began experiencing record numbers of remitted funds from the United States.⁴² Remittances to Northern Triangle states, especially Mexico, have steadily increased since 2016 with remittances topping \$40 billion in 2020. From December 2021 through February 2022, remittances from the U.S. to Mexico totaled \$12.5 billion. At this pace, remittances just to Mexico will top \$50 billion in 2022.⁴³ The World Bank estimates that remittances to Mexico from the U.S. represents as much as 3% Mexico's gross domestic product (GDP).⁴⁴

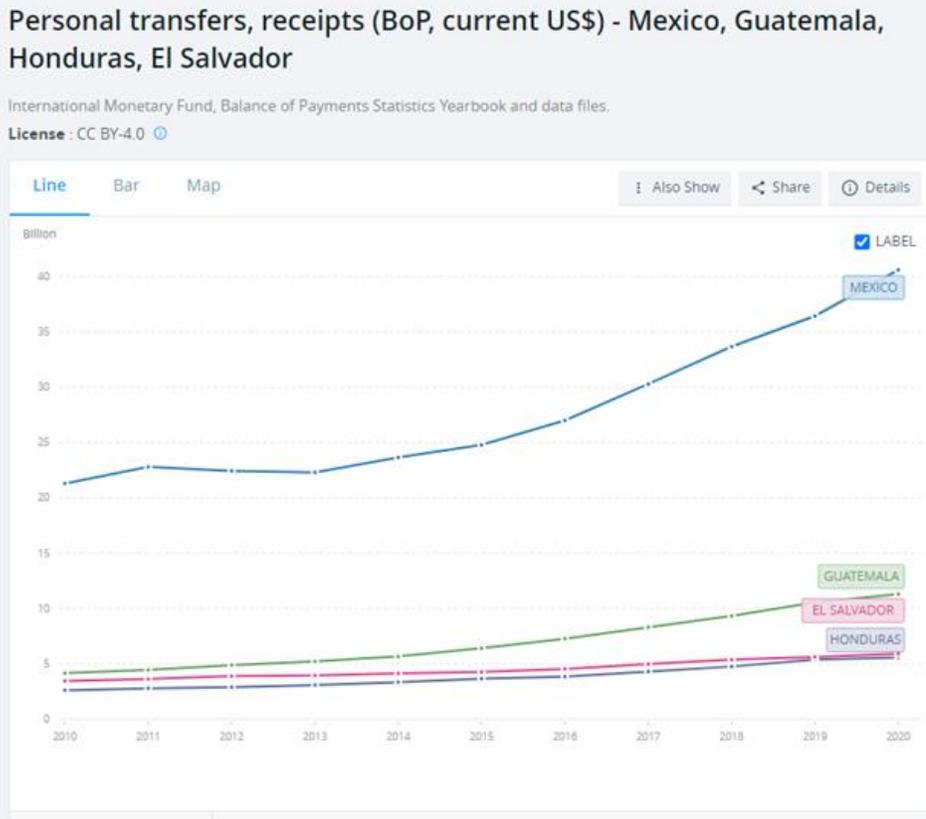
⁴⁰ Northern Triangle states are defined as El Salvador, Guatemala, and Honduras. (Cheatham, 2021; U.S. Government Accountability Office [GAO], 2022)

⁴¹ World Bank, "How do you define remittances?" *World Bank*, 2022.

⁴² Abby Budiman and Phillip Connor, "Migrants from Latin America and the Caribbean Sent a Record Amount of Money to Their Home Countries in 2016," *Pew Research*, 2018.

⁴³ Banxico.org, "Economic Information System: Income from Remittances – (CE81)," *Banxico.org*, 2022; Preston Huennekens, "Mexico Received \$50 Billion in Remittances from the United States – Why Don't We Tax it?" *FairUS.org*, 2021.

⁴⁴ MPI, "Net Number of Immigrants by Country," 2019.



(Source: World Bank Data, 2022)

Not only is there sufficient economic opportunity for migrants to live a better life in the U.S., but the opportunity is also such that it can benefit loved ones left behind. Entire communities in Mexico have been supported by funds sent back by illegal immigrants working in the U.S.⁴⁵ Remittances have been on a record pace since 2019 as a growing number of immigrants living in the United States send extra money to relatives back home.⁴⁶ Further, remittances to the migrant's home country suggests that they are simply seeking a method of financial stability and not a desire to move to the U.S.

Seasonal Labor and Work Visas

A significant number of remittances to home countries come from (illegal) seasonal workers.⁴⁷ The U.S. Department of Labor (USDOL) defines seasonal labor as employment as a result a need for a temporary increase in staffing to accommodate seasonal increases in

⁴⁵ Associated Press, "Adams' Argument for the Defense, *National Archives*, 2022.

⁴⁶ Reuters Staff, "Remittances to Mexican Families Rise to Record High for February," *Reuters*, 2021.

⁴⁷ Associated Press, "Adams' Argument," 2022.

business.⁴⁸ H-2A visas are temporary visas issued for agricultural work.⁴⁹ During fiscal 2021, 317,000 H-2A visas out of a total 2,792,210 visas were issued. (Martin, 2022; U.S. Department of State, 2022)⁵⁰ Ninety-three percent of these visas were issued to Mexican nationals, one percent was issued to Guatemalans, another half of a percent were issued to El Salvadorians, Hondurans, and Nicaraguans combined. The remaining H-2A visas were issued to citizens of other countries.⁵¹ More H-2A visas were issued in 2021 than in 2020. However, they represent only 16.7% of the total number of visas issued and they failed to keep pace with labor demands.⁵²

Immigrants, legal and otherwise, pose a short-term cost to the American taxpayers. However, immigrants are *already* filling a critical need in the U.S. labor market by providing needed labor. As indicated above, the U.S. is currently at full employment as there are not enough workers available in the country to fill the labor demand. If the native U.S. labor pool were sufficient to maintain the U.S. economy, the economic opportunities available to immigrants would not exist at current levels and U.S. citizens would fill these positions. Low birth rates and an aging population have created a labor deficit to the point that there is a demand for labor that the native-born population cannot meet. Immigrants, legal or otherwise, recognize the opportunity and are willing to fill the labor void.

While it is factually accurate that illegal immigrants are breaking statutes, *this particular group* of immigrants seek the same opportunities that American citizens take for granted – the chance to work for a fair wage and to take care of their loved ones, even if means sending funds “home” through remittances. As such, these immigrants are not the “real criminals.” These are the people that should be welcomed into the United States under certain circumstances and restrictions, as the long-term benefits will outweigh the short-term cost. James 2:16 warns that if, “...one of you say to them, ‘Go in peace, be warmed and filled,’ and yet you do not give them what is necessary for their body, what use is that?” It is duplicitous to fault immigrants for seizing upon opportunities and the blessings of their labor, that they are willing to work for themselves, when Americans cannot meet their own labor needs. This does not mean, however, that law should be cast aside when it becomes inconvenient or even no longer reflective of reality. Respect for the rule of law is a critical component of the American social contract and it must be protected.

A Policy Solution to Solve the Labor Shortage Problem

The overarching problem with U.S. immigration laws is that they are confusing, they are not applied evenly or equally, and enforcement is difficult. At the heart of immigration laws in

⁴⁸ U.S. Department of Labor, “Seasonal Employment/Part-Time Information,” *U.S. Department of Labor*, 2022.

⁴⁹ U.S. Department of State, “Temporary Worker Visas,” *U.S. Department of State*, 2022; There are other temporary visas issued by the U.S. government. Some of these visas include H-2B visas, which are issued for temporary non-agricultural work and H-3 visas for professional training. (U.S. Department of State, 2022) As they are beyond the scope of this article, they are acknowledged but not developed.

⁵⁰ Philip Martin, “A Look at H-2A Growth and Reform in 2021 and 2022,” *Woodrow Wilson International Center for Scholars*, 2022; U.S. Department of State, “Temporary Work Visas,” 2022.

⁵¹ Martin, “A Look at H-2A Growth,” 2022.

⁵² *Ibid.*

the U.S. in the difficulty of gaining legal admittance to the country. Difficulty of access and admittance to the U.S. creates the nexus of “opportunity and willingness” to enter the country illegally especially for economic opportunity. Andrés Manuel López Obrador, President of Mexico, said that, according to his calculations, “The U.S. economy is going to need between 600,000 and 800,000 workers per year...”⁵³ Migrant workers can mitigate the short-term challenge of declining labor pools and the long-term impact of an declining labor pool. More importantly, they fill jobs that others do not want in the agriculture and other service sectors of the economy, which needs them. For example, according to the U.S. Bureau of Labor Statistics, the agricultural sector alone is projected to grow by 2-percent per year from 2020 to 2030. Without this labor pool, the economies of various states (such as Texas) could collapse.

Enforcement of often changing and unclear laws and policies is difficult. The real danger in illegal immigration does not lie in the poor soul coming into the United States for employment, it lies in those that perpetrate crimes against humanity, such as the trafficking of human beings and drugs, kidnapping, slavery, terrorism, and other crimes. When law enforcement officers spend their time chasing border crossings for the wrong reason, they can become overwhelmed and ineffective. Hector Garza, president of the Laredo [Texas] Border Patrol union chapter, recently explained there was “a sense of frustration and concern for what’s happening on the border”⁵⁴ because agents were spending their time processing migrants rather preventing drug smuggling, stopping human trafficking, and arresting people with serious criminal records. In short, they are chasing the non-violent work-seekers and forgoing the child-traffickers and drug cartels.

To solve the “Broken Immigration Policy” as it relates to the “Labor Shortage” in the United States requires deliberative thoughtful legislative action with a tough-minded balance between firmness and compassion. There is a meaningful distinction between legal and illegal immigration and how policy can aid in rectifying the “crisis” of a labor shortage. Immigration policy has become a “proverbial hot potato” issue for decades for both sides of the political spectrum. The Constitution expressly allocates the power to Congress to establish these policies, however, the institution has either been unwilling or unable to come to an agreement to provide relief to the continuing problem of illegal immigration. Ricks wrote, “The branch of the federal government that has failed most in recent years has been Congress. Two of its major functions are to be the voice of the popular will and a check on the executive...The Framers of the Constitution probably would be surprised and chagrined by the passivity of Congress in recent decades...”⁵⁵

Congress has the opportunity (capacity) to resolve this problem but appears to lack the willingness (political will) to confront the complex problems that require well thought-out solutions to address immigration. In short, it seems it has become much easier to point fingers at each other rather than seek a workable solution to the problem. Further, Congress has largely ceded immigration policy to the Executive Branch which often issues confusing and ineffective executive orders that are easily changed by subsequent administrations. For example, in June 2022, President Joseph R. Biden announced that he is negotiating with Spain to take migrants

⁵³ Jorge Ramos, “The Perpetual Crisis at the Border – and What We Can Do About It,” *New York Times*, 2021.

⁵⁴ Geneva Sands, “Leaked Audio and Video Show Border Patrol Agents Confronting Homeland Security Secretary at meetings,” *Cable News Network (CNN)*, 2022.

⁵⁵ Thomas E. Ricks, “First Principles: What America’s Founders Learned from the Greeks and Romans and How That Shaped Our Country,” (New York, NY: Harper, 2010), 190.

that are massed at the southern U.S. border.⁵⁶ Necessary immigration policies require solutions across a broad spectrum to include the securing of porous borders, the promotion of democratic principles and freedoms abroad, working with the neighboring state of Mexico to prosecute human trafficking and the so-called "Coyotes," drug smugglers, and other criminals. However, the most urgent immigration policy needs are addressing immigration laws and the status of those seeking employment in the U.S. All these ideas require thoughtful deliberation, clarification, and action. Congress should abandon the omnibus approach and adopt an incremental approach of legislation because of the complexities that immigration policies present that must balance differing interests.

First on the agenda, Congress, with utmost urgency, should develop, establish, and implement an effective, workable, and reasonable "Guest Worker Policy." The data has shown that a significant number of immigrants are simply seeking a better method of earning an income.⁵⁷ Many of those do not desire to make a move to the United States, rather many (up to 49%) seek seasonal/agricultural-type employment.⁵⁸ An expanded and more effective "Guest Worker Program" would be of benefit to both the immigrant and the United States. From the immigrant standpoint, it would take "living life in the shadows" where they have little legal protections or recourse out of the equation, hamper human trafficking, and provide a general sense of normality. For the hiring businesses, a guest worker program would provide for a more stable workforce that the business could rely on long term and include steep penalties and sanctions for hiring illegal workers. Specifically the new "Guest Worker Policy" would include the following:

In order to qualify for "Guest Worker Status," the applicant:

- Would have to fill a specific employment need in the United States to be determined by the matching of skills the foreign worker has with the specific need of an potential employer.
- Would be contingent on criminal background, a drug test, and health issues as determining factors which workers could qualify for a temporary work permit.
- Would have to be a process that could be completed in a relatively short time frame; currently some "Green Card" applications take up to 15-years for approval(Farmworkerjustice.org, 2022)Would have to begin the application process in their home country and remain there until approved to work in the U.S.
- Would understand the status was a "priviledge" and not a "right."

The new "Guest Worker Policy:"

- Would partner with the various states where labor is needed.
- Would be easily enforceable because those coming into the U.S. would be registered and documented and they would have a destination known to the government.
- Would be renewable for the next agriculture harvest season, even if paired with a different employer, provided the migrant worker conducted themselves

⁵⁶ Jaime Johnson, "Joe Biden to send refugees to Spain as migrant crisis worsens," *The Telegraph*, 2022.

⁵⁷ MPI, Immigrant Profiles & Demographics," 2022.

⁵⁸ Ibid.

in a manner consistent with the laws of the state where they were employed and those of the United States.

- Could provide a path to Lawful Permanent Residents (Green Card holder) and, even, citizenship should the seasonal worker desire to pursue a more permanent status in the U.S. provided they met the qualifications.

“Guest Worker Policy” Implementation:

- Would be administered jointly by the U.S. Border Patrol, the U.S. State Department, the U.S. Department of Labor, and the various states where labor is needed.
 - The Border Patrol would serve as the law enforcement body.
 - The State Department would conduct the background checks, conduct the drug and health screenings, and manage the visa process.
 - The Labor Department and the various states would be responsible for matching workers with employers and monitoring the progress of both the employer and seasonal worker.

Benefits of the “Guest Worker Policy:”

- Would contract the “informal economy.”
- Would greatly curtail or eliminate workplace intimidation and abuse.
- Would bring hardworking people out of the “shadows.”
- Would support economic growth in the United States.
- Would provide desperately needed labor.
- Would eliminate the net drain on scarce public resources.
- Would free law-enforcement resources to pursue those that commit crimes against humanity.

This policy recommendation would require federal and cross-agency cooperation, coordination, communication, the elimination of agency “turf-wars,” establishing streamlined systems for processing immigrants, and an establish an efficient monitoring system. In short, the United States needs robust immigration to bolster its declining population and workforce if it hopes to maintain its position in the global community. Guest Worker Program migrants would be viewed as a solution to labor shortages, declining birth rates, and an aging population.

Conclusion

We do not argue that there should be open borders or lax immigration policies, or that the U.S. should be expected to “take everyone.” Nor do we argue that we have all the answers. The opposite, we argue that the United States must have just, enforceable, and effective immigration laws and policies and a first step would be making an effective, workable, and reasonable “Guest Worker Program.” Immigration policy is difficult and complex with both national and international implications. Congress must fulfill its duty to make the necessary changes to immigration policy. By establishing a more robust “Guest Worker Program,” temporary work visas would be issued to those who merely seek an income and desire to return to their home

countries, resulting in decreased illegal immigration. Further, law enforcement officers would be able to focus their efforts on preventing serious crimes. Margaret D. Stock (2022), attorney with the Anchorage office of Cascadia Cross Border Law Group LLC. wrote, "Our lawmakers could boldly address the need for reforms across the U.S. immigration system, from the asylum process to refugee vetting to legalizing agricultural workers and dreamers, to make it easier for immigrants to get green cards."⁵⁹ To fulfill the promise America has made to the world, the nation must fulfill "*the Mother of Exiles*" (Lady Liberty) promise of "...*I lift my lamp beside the golden door!*"

In December 1770, John Adams while defending British soldiers accused of murder during the Boston Massacre said, "Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passion, they cannot alter the state of facts and evidence."⁶⁰ The facts are that there is a labor shortage in the United States and there are people willing to fill that shortage. The real question is does Congress have the "will" to solve this problem, regardless of individual "wishes, inclinations, or the dictates of passion," when a solution is evident.

⁵⁹ Margaret Stock, "What the U.S. military needs is an infusion of immigrants," *The Washington Post*, 2022.

⁶⁰ John Adams, "Adams' Argument for the Defense: 3-4 December 1770," *National Archives*, 2022.

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