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Moving Beyond Comprehensive Immigration Reform and Trump: Principles, Interests, and Policies to Guide Long-Term Reform of the US Immigration System

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Executive Summary

This paper introduces a special collection of 15 papers that chart a course for long-term reform of the US immigration system. The papers look beyond recent legislative debates and the current era of rising nationalism and restrictionism to outline the elements of a forward-looking immigration policy that would serve the nation's interests, honor its liberal democratic ideals, promote the full participation of immigrants in the nation's life, and exploit the opportunities offered by the increasingly interdependent world. This paper highlights several overarching themes from the collection, as well as dozens of proposals for reform. Together, the papers in the collection make the case that:

- Immigration policymaking should be embedded in a larger set of partnerships, processes, and commitments that respond to the conditions that force persons to migrate.
- The US immigration system should reflect liberal democratic values and an inclusive vision of national identity.
- It is incumbent on policy and opinion makers to publicize the broad national interests served by US immigration policies.
- Policymakers should, in turn, evaluate and adjust US immigration policies based on their success in furthering the nation's interests.
- The United States should prioritize the gathering and dissemination of the best available evidence on migration and on the nation's migration-related needs and programs, and should use this information to respond flexibly to changing migration patterns and new economic developments.
- Immigrant integration strengthens communities and represents an important, overarching metric for US immigration policies.

- The successful integration of the United States' 43 million foreign-born residents and their progeny should be a national priority.
- An immigration federalism agenda should prioritize cooperation on shared federal, state, and local priorities.
- An immigration federalism agenda should recognize the federal government's enforcement obligations; the interests of local communities in the safety, well-being and participation of their residents; the importance of federal leadership in resolving the challenges posed by the US undocumented population; and the need for civil society institutions to serve as mediators of immigrant integration.
- Immigration reform should be coupled with strong, well-enforced labor standards in order to promote fair wages and safe and healthy working conditions for all US workers.
- Fairness and due process should characterize US admission, custody, and removal decisions.
- Family unity should remain a central goal of US immigration policy and a pillar of the US immigration system.
- The United States should seek to craft "win-win" immigration policies that serve its own interests and that benefit migrant-sending states.
- US immigration law and policy should be coherent and consistent, and the United States should create legal migration opportunities for persons uprooted by US foreign interventions, trade policies, and immigration laws.
- The United States should reduce the size of its undocumented population through a substantial legalization program and seek to ensure that this population never again approximates its current size.

Introduction

In July 2016, the Center for Migration Studies of New York (CMS) initiated its US immigration reform project to provide an evidence base, vision, and policy framework to guide long-term reform of the US immigration system.[1] An advisory group conceptualized the project and helped to identify themes and issues for a special collection of papers.[2] This

1 In this paper, the term "US immigration system" encompasses the US refugee protection system.

2 The group included Edward Alden, Bernard L. Schwartz senior fellow, Council on Foreign Relations; Kevin Appleby, senior director of international migration policy, Center for Migration Studies (CMS), who also served as a special co-editor of the collection; Michael Doyle, university professor and director, Columbia Global Policy Initiative, Columbia University; Joanna Dreby, associate professor, University at Albany, State University of New York; Douglas Gurak, professor emeritus, Cornell University and Editor, *International Migration Review*; Jacqueline Hagan, professor of sociology, The University of North Carolina at Chapel Hill; Josiah Heyman, director, Center for Interamerican and Border Studies, professor of anthropology and endowed professor of border trade issues, The University of Texas at El Paso; Donald Kerwin, executive

introduction to the collection will highlight the findings, themes, and policy ideas from 15 papers published in CMS's *Journal on Migration and Human Security (JMHS)* and as *CMS Essay*s.

The collection does not constitute a blue ribbon commission report, or an expert consensus on immigration reform. Instead, the papers outline important aspects of a forward-looking immigration policy that would serve the nation's interests, honor its liberal democratic ideals, promote the full participation of immigrants in the nation's life, and exploit the opportunities offered by an increasingly interdependent world.

This paper discusses the papers in this collection, while also drawing on select papers from *JMHS* special collections on the US refugee protection system on the 35th anniversary of the Refugee Act of 1980[3]; the US immigration enforcement system on the 20th anniversary of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA)[4]; and the global refugee protection system.[5]

The papers in this collection cover a large number of topics, including the conditions driving migration, the national interests served by US immigration policies, nationalism, nativism,

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3 The Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980), established the US refugee resettlement program and sought to bring US asylum law into compliance with international law, particularly the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. The papers in the US refugee protection collection examine compliance with the letter and spirit of international and domestic law, barriers to protection, individual protection program, and due process issues. In his introduction to the collection, Kerwin (2015) outlines and contextualizes the findings and recommendations from these papers. In other *JMHS* articles, Tara Magner (2016) and Melanie Nezer (2014) analyze the refugee, asylum, and temporary protection provisions in bills taken up by Congress in recent years.

4 The Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009-546 (1996), did as much to create the legal and programmatic infrastructure of the US immigration enforcement system as any legislation in the last century. It laid the groundwork for new federal/local immigration data-sharing and enforcement programs; increased border and interior enforcement; expanded expedited and summary removals; established bars to admission based on past undocumented status; restricted relief from removal based on family ties and other equities; expanded mandatory detention; and created new income and support requirements for visa petitioners.

5 The papers seek to present new and promising ideas to strengthen the global system of refugee protection. CMS's US immigration reform initiative arose out of a three-day event that joined officials from the United Nations, regional bodies, and states with scholars, researchers, and nongovernmental organizations (NGOs) in anticipation of the UN Summit on Addressing Large Movements of Refugees and Migrants on September 19, 2016.

citizenship, immigrant integration, legal immigration reform, family-based immigration, seasonal farm workers, undocumented residents, immigration enforcement, labor standards enforcement, the discontinuities in the US immigration system, due process, and migration governance issues. This paper highlights the collection's major findings, themes, and proposals for reform.

Findings, Themes, and Proposals for Reform

Immigration policymaking should be embedded in a larger set of partnerships, processes and commitments that respond to the conditions that force persons to migrate.

Nations bear the primary responsibility for creating the conditions that allow their residents to flourish and, thus, for abating conditions like poverty, persecution, violence, and social upheaval. These conditions, as well as natural and manmade disasters, upend people's lives, spur large-scale migration, and place migrants in situations of great vulnerability. They also make it more difficult for migrants to find a permanent home. To address the causes of forced migration, US immigration policymaking should be situated within a broader set of diplomatic, development, rule of law, and security partnerships and processes.[6]

Over the last decade, more than 150 UN member states and thousands of civil society representatives have convened through the Global Forum on Migration and Development — a state-led, nonbinding process — to discuss how to maximize the benefits of migration and reduce its inevitable tensions and costs. From these discussions, a consensus has emerged on the need to support the disaster relief and development initiatives of expatriate communities, leverage the positive effects and reduce the costs of migrant remittances, and otherwise realize migration's development potential. The United States should participate fully in the migration and development dialogue and in similar processes that treat migrants as development actors[7] and that champion development as a way to obviate the necessity to migrate. It should also seek to promote processes like circular migration that facilitate migration-related development inputs.

In that vein, Philip Martin argues for migration-related investments in communities of origin and destination. In "Immigration Policy and Agriculture: Possible Directions for the Future," Martin explains that farm employers, especially in the western United States, have historically relied heavily on immigrant workers, including the undocumented. An estimated 17 percent of those employed in the agriculture industry lack legal status (Martin

6 The global crisis in refugee protection, for example, can be attributed to refugee-producing situations like armed conflict, terrorism, and breakdowns in the rule of law. The overarching need in these circumstances is to anticipate, prevent, forego, and mitigate refugee-producing conditions, which cannot be accomplished by refugee and immigration policies alone (Kerwin 2016, 86, 118).

7 Scholars have long recognized migration as an essential development and anti-poverty strategy. A modest "relaxation of barriers" to labor migration can lead to immense wage gains for persons moving from developing to developed states (Clemens, Montenegro, and Pritchett 2008). Increased income would, in turn, allow expatriates to contribute to poverty reduction and economic development in their communities of origin (Porter 2017).

2017, 253). Seventy percent of US crop workers — not counting those with H-2A visas[8] — were born in Mexico and 70 percent of foreign-born crop workers lack immigration status (ibid., 254). The steady, decade-long decrease in Mexican immigration to the United States has led to a shortage of immigrants who can supplement and replace the "aging and settling" US farm labor work force (Warren 2017; Martin 2017, 258), which may be further diminished by increased immigration enforcement.

Farm labor employers are responding to this labor shortage by resorting to "4-S" strategies: (1) "satisfying" current workers by offering them bonuses; (2) "stretching" the work force by using mechanical aids and increasing productivity through management changes; (3) "substituting" workers through increased mechanization; and (4) "supplementing" the current workforce with H-2A workers (Martin 2017, 258-59). Martin proposes using the monies not paid for Social Security and unemployment insurance taxes under the H-2A program to fund mechanization of the US agricultural sector and economic development in migrant-sending communities (ibid., 261). One idea would be to provide H-2A workers with tax refunds upon leaving the United States, which could be matched by governments in migrant-sending communities to promote development. Martin also proposes investment in US commodity-specific boards as a way to develop strategies to reduce dependence on agricultural hand labor over time.

The World Economic Forum's 2016 report on global risk found conflict, violence, water crises, climate change, and economic factors to be strongly associated with rising involuntary migration (WEF 2016, 15). In "Mainstreaming Involuntary Migration in Development Policies," John Harbeson (2016) argues that "state fragility" produces more involuntary migrants than even civil war and conflict.[9] State fragility results from the absence or breakdown in the "social contract" between individual citizens and groups, which undermine the "government contract" or the agreement over the terms by which governments can act on behalf of their citizens.

In response, Harbeson proposes that development policies should address "socioeconomic, cultural, and political distress" in migrant-sending states. In addition, the United States and other developed states should help to "lay the groundwork for building stronger, more durable states," characterized by their citizen's engagement in "consensual problem solving." US development policies, Harbeson argues, should contribute to citizen empowerment and inclusion in fragile states, which will allow their members to flourish and to migrate (if at all) by choice, not necessity.

The US immigration system should reflect liberal democratic values and an inclusive vision of national identity.

From an historical perspective, the election of a nativist president who has consistently denigrated immigrants might be understood in light of:

8 The H-2A program allows petitioning employers or agents to bring foreign workers to the United States to fill temporary agricultural jobs. Among other requirements, petitioners must show that there is a shortage of able, willing, qualified and available US workers for the position, and that the foreign worker will not have an adverse effect on the wages and working conditions of US workers.

9 Harbeson (2016) attributes mass migration from Syria, Afghanistan, Iraq, Kosovo, Albania, Pakistan, Eritrea, Nigeria, Iran, Ukraine, and Russia to state fragility. He defines fragile states as those "so weakened and tenuously held together that the very possibility of there being effective government within them is at risk."

- the record US foreign-born population of 43 million;
- the changed composition (since 1965) of the states of origin of immigrants;
- the 9/11 attacks and near daily terrorist atrocities throughout the world;
- the economic hardship caused by the great recession and its aftermath;
- the struggles of many Americans who feel that their prospects and their children's prospects are diminishing, and that they are on the losing side of globalization; and
- the perceived lack of responsiveness by US political parties to these concerns.

Yet, not all of these considerations align with the profile of Trump supporters. One pre-election analysis, for example, found "no clear picture between social and economic hardship and support for Trump" and "no link whatsoever between greater exposure to trade competition or competition from immigrant workers and support for nationalist policies in America" (Rothwell and Diego-Rosell 2016, 19). However, Trump attracted higher levels of support from persons in racially and culturally isolated communities, "with worse health outcomes, lower social mobility, less social capital, greater reliance on social security income and less reliance on capital income." (ibid., 1,19). The need to understand and respond to the concerns of these Americans may be a pre-requisite to positive immigration reform (Young 2017).

Two papers in this collection address the bitter divisions in the nation, which have made it difficult to forge political consensus or even speak a common language on immigration reform. In "You Are Not Welcome Here Anymore: Restoring Support for Refugee Resettlement in the Age of Trump," Todd Scribner examines the ideology and worldview that underlies opposition to the US refugee resettlement program, despite its extraordinary success in resettling more than 3.2 million refugees since 1975 and saving countless lives.[10] He observes that, until the collapse of the Soviet Union, the US refugee resettlement program operated under a Cold War paradigm. However, Trump administration officials, advisors and supporters view the program from a pre-political world view that includes many of the features of Samuel Huntington's Clash of Civilizations hypothesis.[11]

Compelling policy arguments, Scribner avers, will not convince these skeptics to support resettlement. Rather, he urges refugee advocates to place "less emphasis on advocacy efforts aimed at Congress and the administration" and more on engaging individuals, on "cultural and personal formation," and rethinking "the fundamental narratives that guide our decision making and thus our self-understanding as a nation" (Scribner 2017, 279).

In "Making America 1920 Again? Nativism and US Immigration, Past and Present," Julia Young (2017) finds an historical analogue to Trump-era hostility towards immigrants in

10 In an earlier paper, Anastasia Brown and Todd Scribner (2014) attributed diminished support for the US refugee resettlement program to poor information sharing, a one-size-fits-all integration metric (self-sufficiency through early employment), the changed composition of refugee flows, federal funding shortages, insufficient support for communities that experienced rapid refugee influxes, and large-scale secondary migration.

11 Huntington argued that culture and religion, rather than ideology or political or economic systems, would increasingly be the source of global conflict.

the late 19th and early 20th century. The earlier era experienced conditions including the Depression of 1893, five years of double-digit unemployment, the Russian revolution, the homeland security fears engendered by World War I, industrialization and its "losers," and three decades (by 1920) of large-scale immigration of "new" and different immigrants.

Young also identifies recurrent nativist tropes. Today's nativists characterize undocumented Mexicans as rapists, drug dealers, and prostitutes; Muslims as a national security threat; Mexicans and Central Americans as unassimilable; and refugees as both a security threat and unassimilable. In the late 19th and early 20th centuries, nativists vilified southern and eastern Europeans, Asians (particularly Chinese and Japanese), and Mexicans, arguing they were unassimilable due to "race, ethnicity, and culture" (ibid, 219).[12]

Nativist policy prescriptions have converged over time as well. As Alan Kraut (2016a) puts it: "Over fourteen million arrived in the United States between 1900 and the 1920s before Congress built a wall – not of bricks and mortar, but of laws and procedures." The Immigration Act of 1924 (the Johnson-Reed Act)[13] established an annual limit of 150,000 immigrants from Europe, and set annual admission quotas by nationality at two percent of the number of a nation's residents in the United States in 1890, a time of low numbers of southern and eastern European residents. It also barred Japanese immigration. Today's immigration restrictionists set impossible-to-meet enforcement goals, propose ever harsher enforcement programs, seek massive cuts in legal migration, and would substantially cut and permanently cap refugee resettlement numbers.

Young concludes that nativism never completely disappears and, unfortunately, immigrants and their ancestors can and do adopt nativist attitudes themselves. However, nativism can subside and proposed nativist legislation can be defeated. That said, she sees Donald J. Trump as a *sui generis* nativist president and champion of the nativist agenda. "Today's nativists," she writes, "have an outlet that earlier generations did not: a president who not only seems to agree with many of their argument, but who also stokes the flames of his nativism so explicitly and aggressively" (Young 2017, 228).

To counteract nativism, Young proposes that proponents of strong immigration policies should:

- "publicize the economic, social, and cultural contributions" of "groups targeted by nativist policies";
- develop a greater understanding of the concerns of Trump supporters and "respond to nativism within that group";
- educate a broader audience on the "social, cultural, financial, and moral" costs of nativism;
- publicize the manifold contributions of immigrants and the benefits of robust immigration policies; and

12 In "Nativism, An American Perennial," Alan Kraut (2016b) writes: "Even as the promise of affordable land and abundant jobs lured foreigners, native-born Americans, some only a generation or two themselves from arrival or even less, sought to slam shut the door in fear of job competition, the distortion of their cultural values, challenges to their religious beliefs, or even the dilution of their gene pool by amalgamation."
13 Pub. L. No. 68–139, 43 Stat. 153 (1924).

- promote the ideals and interests that would be served by sound immigration reform legislation (ibid., 224, 229-31).

It is incumbent on policy and opinion makers to publicize the broad national interests served by US immigration policies. Policymakers should, in turn, evaluate and adjust US immigration policies based on their success in furthering the nation's interests.

The US immigration system should serve the nation's interests. Yet, a large swath of the US public questions the interests served by this system, as well as the ability of the federal government to administer and enforce its laws. In "National Interests and Common Ground in the US Immigration Debate: How to Legalize the US Immigration System and Permanently Reduce Its Undocumented Population," Donald Kerwin and Robert Warren seek to clarify the purpose and goals of US immigration policies by analyzing presidential signing statements on seminal immigration reform legislation over nearly a century. They begin with the Johnson-Reed Act of 1924, end with the Homeland Security Act of 2002[14] which created the US Department of Homeland Security (DHS), and include President Truman's veto of the Immigration and Nationality Act of 1952 (the McCarran-Walter Act).[15] They find broad consensus on the following interests and propositions regarding the US immigration and refugee laws:

- "Families constitute the fundamental building block of society and their integrity should be preserved.
- Admissions policies based on national origin, race or privilege offend the US creed and civic values.
- Fairness and process should characterize admission and removal decisions.
- Providing haven to persons fleeing persecution and violence reflects US history, tradition, and its core commitment to liberty, freedom and dignity.
- Immigrants embody the US tradition of self-sufficiency, hard work and drive to succeed, and further the nation's economic competitiveness.
- All US residents deserve access to 'the benefits of a free and open society' (Reagan 1986).
- A system characterized by 'fair, orderly and secure' migration upholds the rule of law (ibid.).
- Illegal migration challenges US sovereignty, threatens US security, and devalues citizenship.
- Criminals and security threats flout US ideals, should not be admitted, and forfeit the right to remain." (Kerwin and Warren 2017, 299)

The political branches of the federal government should publicize the national interests advanced by US immigration policies and should evaluate and adjust these policies in light of these interests. At the same time, they should acknowledge that "none of the interests

14 Pub. L. No. 107–296, 116 Stat. 2135 (2002).
15 Pub. L. No. 82–414, 66 Stat. 163 (1952).

served by immigration policies — family, economic, or humanitarian — can be achieved *only*" by these policies (Kerwin and Warren 2017, 303). The success and integrity of immigrant families, for example, depends not only on the ability of their members to live together, but also on a range of domestic policies, public and private institutions, affiliations, and personal attachments. Socioeconomic attainment by immigrants and their progeny depends, in large part, on educational opportunity, the state of the economy, and an open job market. US refugee and humanitarian programs invariably "depend upon collaboration from other states, local communities, nongovernmental actors, and the affected populations themselves" (ibid.). "Temporary" protection will extend indefinitely without development, diplomatic, and rule of law initiatives in sending states that create the conditions that allow their residents to stay or return (Kerwin 2014a, 63).

These insights affirm the need to "mainstream" immigration and refugee concerns in development policies and in a range of other foreign and domestic policymaking processes as well. At present, "mainstreaming" does not occur (even within DHS) to the degree necessary to meet the national interests that the US immigration system is intended to serve (Kerwin and Warren 2017, 305; Meissner and Kerwin 2009, 92-95).

The United States should prioritize the gathering and dissemination of the best available evidence on migration and on the nation's migration-related needs and programs, and should use this information to respond flexibly to changing migration patterns and new economic developments.

This collection does not take on the difficult and speculative task of projecting long-term trends that might influence US employment, family, and humanitarian admissions. However, it makes the case that US immigration and refugee policies need to rely on credible and timely research and data to meet their underlying goals. As it stands, the US employment-based immigration system has not been overhauled for 52 years or substantially revised for 27 years. Moreover, US law does not currently include a mechanism (short of new legislation) to adjust visa levels or categories based on changed US needs or priorities. "[T]he system's lack of flexibility and responsiveness" represents "a glaring deficiency" (Kerwin and Warren 2017, 309).

Over the last decade, there have been several proposals to align US immigration policies with its labor needs. At least two proposed an independent commission to produce research on labor needs and economic trends that would inform adjustments in immigration admissions (Meissner et al. 2006, 41-43; Marshall 2009, 22).

The United Kingdom has established an independent advisory body to analyze and report on labor shortages and the impacts of immigration.[16] However, the political branches of the US government lack a formal, independent body which could:

- "identify the nation's evolving labor, family or humanitarian needs that might be met through immigration, including on a state and local level;
- identify shortages in skills and occupations necessary to promote that nation's economic competitiveness;

16 The Migration Advisory Committee, https://www.gov.uk/government/organisations/migration-advisory-committee/about.

- assess the labor market contributions and other trajectories of those who enter via different categories of admission, including family-based visas;
- propose adjustments in legal admission levels and categories to reflect the nation's needs and interests;
- conduct research on the views of immigrants of the US immigration system in order to strengthen legal immigration programs and better understand and address non-compliance with the law (Ryo 2017); and
- champion access by researchers to relevant datasets in order to build a more extensive evidence-base on which Congress and the executive can make policy judgments in this area." (Kerwin and Warren 2017, 309-10)

Pia Orrenius and Madeline Zavodny argue that the status quo undermines US competitiveness: "Rigid caps for permanent residents and some categories of temporary foreign workers have resulted in tremendous backlogs and inefficient lotteries and have discouraged countless potential would-be immigrants from applying or staying in the United States; they may even encourage some companies to open or expand operations overseas instead of domestically" (Orrenius and Zavodny 2017, 189). The misalignment between US labor needs and available workers also incentivizes illegal migration and hiring.

By contrast to US legal immigration policies, the US refugee resettlement program provides for annual adjustments in the numbers and origin of resettled refugees based on US priorities, changed country conditions, and protection needs.[17] Beyond refugee admissions, the US immigration system should have more flexibility and options for admitting imperiled persons who do not meet the narrow refugee standard (Kerwin 2014a, 51-53, 62-63). The United States should also rely on the growing body of data, indices, and state performance rankings to direct its development and diplomatic interventions;[18] to anticipate and plan for large-scale migrations; and to inform refugee admission and humanitarian parole priorities (Kerwin and Warren 2017, 310-11).

Scholarly papers and human rights reports have extensively documented the US immigration enforcement system's growth, strategies, constituent parts, legal underpinnings, criminalization, informalization, privatization, rule of law alignment, misuse of detention, and failed reforms (von Sternberg 2014; ACLU 2014; MRS/USCCB and CMS 2015; Kerwin 2014b; Schriro 2017). Other reports have focused on the effects of enforcement, particularly removals, on children and families (Chaudry et al. 2010). A recent article detailed the effect of mass deportation policies on US mixed-status families, communities, the housing market, and the broader economy (Warren and Kerwin 2017a).

Only in recent years has the effectiveness of US border enforcement efforts received significant scrutiny. In "Is Border Enforcement Effective? What We Know and What it Means," Edward Alden points out that Congress, the Immigration and Naturalization Service (INS), and DHS traditionally employed apprehensions as the primary metric for

17 Each year, the president, in consultation with Congress, sets refugee admission levels and allocates refugee numbers by region and to an unallocated reserve.

18 These important resources cover development, human rights, the rule of law, civil rights, receptivity to business, corruption, transparency, human capital, state fragility, poverty, and religious liberty.

assessing border control, with the Border Patrol citing both high and low numbers of arrests as evidence of their effectiveness (CLINIC 2001, 10). As Alden observes, however, this metric does not count multiple arrests of the same person ("recidivism") or actual entries. Since 2006, the Border Patrol has used data on "turn backs" (people who illegally cross and return to Mexico), "got aways" (those who enter and elude capture), and apprehensions to measure "known unauthorized entries" (Argueta 2016, 22). However, with the exception of apprehensions, DHS has never made this data publicly available. Congress and the Trump administration have agreed upon the politically advantageous, but unachievable goal for border enforcement of "no unlawful entries."[19] Alden (2017, 485) argues that the best metric would be total illegal entries.

In 2015, the Institute for Defense Analysis (IDA) produced "the first serious estimates of successful illegal entries," finding that entries through the US-Mexico border had fallen from 1.8 million in FY 2000 to less than 200,000 in FY 2015 (ibid., 486). During this period, the "deterrence rate," the percentage of unsuccessful border crossers who plan to cross again, fell from 90 percent to 60 percent, while the likelihood of apprehension rose from 40 percent to 55 percent. Moreover, these trends persisted over "the strongest period of job creation in the post-World War II era" when the unemployment fell below 5 percent (ibid., 484).[20] Alden concludes that the IDA study provides "the first compelling evidence that enforcement" — in particular, the strategy of imposing distinct consequences (including criminal prosecutions) based on the severity of the violation — significantly contributed to a reduction in illegal entries across the southern border (ibid., 484-85).

At the same time, he argues that increased border enforcement investments and harsher consequences for illegal entries and re-entries may produce diminishing returns for three reasons.[21] First, Mexican migration to the United States has decreased sharply since 2007, and a high percentage of the Central American border crossers over the last several years have been asylum seekers, who have different incentives than economic migrants and require different treatment under domestic and international law. Second, many deportees seek to re-enter the United States to live with their families. Deterrence strategies will be less successful in these circumstances. Third, roughly two-thirds of the newly undocumented have overstayed visas, rather than illegally crossed a border (Warren and Kerwin 2017b). Moreover, overstays leave the undocumented population at relatively high rates (40 percent between 2008 and 2015), compared to 24 percent of undocumented border crossers (Warren 2017, 505). Thus, the growing proportion of overstays "could portend" further declines in the US undocumented population (ibid.).

Combined, these three developments seem to obviate the need for significant new border commitments, and particularly cast doubt on the wisdom of building a 2,000 mile wall. The US-Mexico border is, and will likely remain, far more secure than when Congress initiated its enforcement build-up a quarter century ago. Rather than make questionable new investments in border enforcement, Alden proposes that DHS should instead release

19 Secure Fence Act of 2006, Pub. L. No. 109- 367, 120 Stat. 2638 (2006); Border Security and Immigration Enforcement Improvements, Executive Order No. 13767, 82 Fed. Reg. 8793 (Jan. 25, 2017).

20 In addition, illegal entries had begun to fall before the Great Recession (Warren 2017).

21 As the Institute for Defense Analysis study showed, marginal increases in apprehension rates have led to substantial decreases in recidivism rates and illegal entries.

its enforcement data and research to allow for a more grounded and vigorous public debate on the future of border enforcement.

In "The Promise of a Subject-Centered Approach to Understanding Immigration Noncompliance," Emily Ryo (2017) makes the case for "subject-centered" research to inform immigration policy. This research seeks to assess how those most affected by immigration enforcement experience and view these policies.[22] Ryo's earlier work found that undocumented residents see themselves as "law-abiding individuals who valued legal order and respected national sovereignty notwithstanding their violations of US immigration law" and who migrated because it was "the only morally appropriate way to fulfill their deeply felt personal responsibility to provide for their families" (ibid., 290).

Ryo (ibid., 292) argues that subject-centered research contributes to a recognition of the "basic humanity and moral agency" of the undocumented. It can also lead to an appreciation of the human costs of US enforcement policies, the adoption of strategies to promote "voluntary compliance" with the law, and the creation of more effective and humane policies (ibid.). As it stands, migrants will not likely abide by laws that they think impede family survival.

Immigrant integration strengthens communities and represents an important, overarching metric for US immigration policies. The successful integration of the United States' 43 million foreign-born residents and their progeny should be a national priority.

From the perspective of immigrants and their families and communities, integration might be the best metric for determining the success of the immigration experience.[23] The nation's well-being will increasingly turn on the success of its 43 million foreign-born residents and their children.

In "Working Together: Building Successful Policy and Program Partnerships for Immigrant Integration," Els de Graauw and Irene Bloemraad (2017, 117) report that while immigrants continue to integrate successfully (albeit with large variations by group), the United States lags behind other developed states in important indicia of integration like naturalization rates, voter registration, metrics of economic self-sufficiency, homeownership, workplace equality, and poverty rates.

To improve immigrant integration outcomes in the United States, de Graauw and Bloemraad propose the creation of a national integration program, led by a national immigrant affairs office that would build on the work of the Bush and the Obama administrations to coordinate immigrant and refugee integration initiatives across all relevant federal agencies and levels of government.[24] Such an office would need to be "vertically integrated to include different

22 Josiah Heyman (2013) has written persuasively on the need to engage border residents in the design and implementation of enforcement policies that largely take place in their communities. Community members are uniquely situated to understand the consequences of enforcement programs on the well-being and vitality of their communities.

23 US immigration and refugee protection policies also serve a range of other foreign and domestic policy interests.

24 Over the last 60 years, federal integration efforts have focused on citizenship, English-language services, and a patchwork of additional programs that do not amount "to a coherent national program of immigrant

levels of government and horizontally applied across public and private sector actors" (ibid.,118).

The authors see the "growing activism by cities and states" as particularly promising, including in 44 cities with formal offices dedicated to immigrant affairs and immigrant communities and in the 90 municipalities with "commissions, committees, councils, task forces, boards, initiatives, and programs dedicated to immigrant issues or immigrant communities (ibid., 111-12).[25] They also highlight public-private partnerships and immigrant advocacy networks that prioritize and advance integration. A central component of a coherent, national policy would be the ability of immigrants, refugee and grassroots organizations to help shape and implement integration policies (ibid., 117).

Integration depends on the skills, talents, and human capital of immigrants, as well as the resources, characteristics, and reception of the receiving community. In "Citizenship After Trump," Peter Spiro (2017) writes that "as a general matter, the United States is culturally oriented to the assimilation of immigrants" and "assimilation has been enabled by the [nation's] lack of a hard ethnic or religious national identity." However, the issue of national identity has been strongly contested over the last few years, particularly during the long presidential campaign and in the early months of the Trump administration.

In his first inaugural address, George W. Bush characterized the United States as the "story of flawed and fallible people united across the generations by grand and enduring ideals. The grandest of these ideals is an unfolding American promise that everyone belongs, that everyone deserves a chance, that no insignificant person was ever born" (Bush 2001). The question arises: Is this still the nation's prevailing vision? Is the United States a nation bound by a set of civic ideals — dignity, equality, freedom and opportunity — and to the institutions that preserve them, or does it define itself by race, ethnicity, religion, and other characteristics that make citizenship inaccessible to large categories of immigrants? If the latter, then nothing that immigrants without these characteristics bring, build, or contribute to the nation will lead to their membership. While exclusionary nationalism is often seen as a revolt against globalization, Spiro (2017) observes that "right-wing and restrictionist" movements have become transnational.

During the presidential campaign, Trump proposed rescinding the 14th amendment's guarantee of birthright citizenship, which has been an essential expression of the nation's identity and commitment to immigrant integration. Yet Spiro does not believe that the Trump administration is likely to attempt this radical change or otherwise to make citizenship a priority. Nor, he argues, should pro-immigrant groups provoke a debate they might lost over citizenship law and policies. The "deficits" of US citizenship policy, he writes, "are minor," the sole exception being the $725 application fee, "and there is good reason to expect them to stay that way, Trump's radicalism notwithstanding."

Spiro recommends that immigrants pursue citizenship for instrumental reasons (protection and benefits). However, he foresees that Trump will continue to "devalue citizenship as

integration" (de Graauw and Bloemraad 2017, 111)

25 These entities seek to "facilitate interaction between immigrants and native-born residents, highlight the economic contributions of immigrants, streamline services to immigrants and support immigrant civic engagement and entrepreneurial activity" (ibid.,114).

a bond of social solidarity, by exacerbating and exploiting US political polarization."[26] The "erosion of citizenship solidarities," he writes, should lead individuals and groups to pursue local, regional, and global alliances that can safeguard their rights and that more strongly reflect their social identities.

An immigration federalism agenda should prioritize cooperation on shared federal, state and local priorities. It should also recognize the federal government's enforcement obligations; the interests of local communities in the safety, well-being, and participation of their residents; the importance of federal leadership in resolving the challenge posed by the US undocumented population; and the need for civil society institutions to serve as mediators of immigrant integration.

Immigration federalism is a permanent feature of the US immigration landscape.[27] Indeed, US immigration policy necessarily emerges from the tensions and interplay between federal, state, local, and civil society institutions.

While the federal government establishes and implements immigration law, states and localities play important and often contested roles in immigration enforcement and immigrant integration. At present, some states and localities seek to enhance federal enforcement policies, and others to promote safe and welcoming communities for all their residents. Some civil society groups, in turn, have promoted whole-of-community responses to the needs of immigrants, including the undocumented (Kerwin et al. 2017), while others have championed "self-deportation" policies and supported local police participation in immigration enforcement.

In "Enforcement, Integration, and the Future of Immigration Federalism," Cristina Rodriguez(2017) maintains that federalism — both "enforcement" and "integration" federalism[28] — provides a framework for considering the extent to which local immigration priorities can diverge from federal policy, the tension between immigrant control and inclusion, and the scope of permissible conflict between the federal government, states and localities on these issues.[29]

In its first decision on immigration federalism in 30 years, the Supreme Court in *Arizona v. United States*[30] "substantially curtailed (without eliminating) autonomous local enforcement measures that diverged from the federal enforcement agenda" (ibid., 516). The court invalidated provisions of Arizona's SB 1070 that supported federal goals (like preventing unauthorized work), but that adopted different means for achieving them (making unauthorized work a misdemeanor under state law). It also articulated a theory of preemption that treated federal enforcement *priorities* as federal law.

26 Similarly, Alan Kraut (2016a) argues that Trump's "America first" rhetoric seeks to marginalize large sectors of society and fray the bonds of citizenship.

27 This term speaks to the distinct responsibilities and contributions of the federal government, states, localities, and civil society to US immigration policy.

28 These two forms of federalism overlap in that enforcement invariably affects integration, and integration policies can work at cross purposes to enforcement initiatives.

29 Immigration federalism disputes increasingly involve states and localities (Rodriguez 2017, 536).

30 567 U.S. __, 132 S.Ct. 2492 (2012).

The case for local cooperation with the federal government may be strongest when federal law has established a role for states and localities in enforcement, as IIRIRA did in creating the Section 287(g) program.[31] Perhaps the most consequential area of intergovernmental cooperation involves information sharing. Under the Secure Communities program, states, counties, and localities send the fingerprints of persons they arrest to the FBI's Integrated Automated Fingerprint Identification System (IAFIS) database. As required by federal statute, the Federal Bureau of Investigation forwards this information for screening by DHS's biometric identification system (IDENT) to detect immigration violations. In addition, the federal government can use its spending power to incentivize localities "to serve federal objectives [on immigration] by conditioning federal funds on compliance with certain terms" (ibid., 523).[32]

On the other hand, a DHS mandate that local officials detain persons (to allow federal officials time to take custody of them) beyond their normal release dates "fits comfortably within" the prohibition against commandeering (forced participation) set forth in the Tenth Amendment to the US Constitution (ibid.). And, several lower courts have held that honoring federal detainer requests that require holding detainees beyond the period they would otherwise be released constitutes an unconstitutional seizure under the Fourth Amendment (ibid., 520).

Rodriguez writes that an "enforcement détente" might be in the mutual interests of the federal government and localities, given the importance of maintaining functional, cordial intergovernmental relations, and given the value of federal-local cooperation not only with respect to law enforcement writ large, but also across other domains." (ibid., 526).[33] In fact, most localities already respond favorably to detainer requests that involve violent criminals. Moreover, "enforcement cooperation extends well beyond local assistance of federal deportation policy and can include joint efforts that even enforcement skeptics could support, such as cooperation to target smuggling rings" (ibid.).

To further a coordinated approach to integration, Rodriguez proposes an "intergovernmental strategy that plays to the institutional competencies of the different levels of government," in which the federal government would "provide a strong integration scaffolding, which would include sharing information, coordinating best practices, and providing robust resource support," while localities would administer "the institutions most vital to immigrant integration" (ibid, 531-33). Like de Graauw and Bloemraad, Rodriguez argues that public/private partnerships and the active participation of civil society will be vital to such a system.

She sets forth several principles that should guide a US federalism agenda. First, the federal government should "acknowledge the reasons for local resistance to federal enforcement" (ibid., 512).[34]

31 This program permits DHS to train and partner with state and local law enforcement agencies on federal immigration enforcement priorities.

32 As a caveat, only Congress — not the Executive — can place restrictions on federal grants.

33 To that end, as Rodriguez observes, states and localities can opt to avoid federalism disputes, while achieving their preferred policy outcomes. For example, if they seek to minimize the deportation of their residents due to minor criminal violations, they can amend their criminal laws and charging practices.

34 It would also behoove policymakers to recognize how immigrants and immigrant communities see and

Second, it is inevitable that complications will arise from immigration federalism, as it seeks to reconcile "the federal government's constitutional and statutory responsibilities" to enforce the law, with the "lived realities of immigrant communities" (ibid., 510). Moreover, immigration federalism's government actors have distinct institutional imperatives which influence their views on immigration and integration, apart from their ideological or political orientations.[35]

Third, resolving the challenge of a large undocumented population is ultimately a task for the political branches of the federal government. States and localities have substantial influence over immigration policy: they can adopt policies and enter public/private partnerships that seek to treat the undocumented and their families as full community members, or they can make life so difficult for the undocumented that they will be forced to leave. However, the question of status and a possible path to citizenship must ultimately be addressed by the federal government.

Fourth, federalism is not served by instrumental legal claims — like on the scope of executive discretion on how to enforce the law — that might further "preferred policy objectives in one context," but "might do the opposite in another" (ibid., 512).

Although counterintuitive in light of the volume of federal litigation in the first months of the Trump administration, immigration federalism highlights the importance of democratic processes and the hard work of citizenship. Federal, state, and local governments each occupy important space in our federal system, and can significantly influence the treatment of immigrants, and the well-being of their communities.

Immigration reform should be coupled with strong, well-enforced labor standards in order to promote fair wages and safe and healthy working conditions for all US workers.

An extensive literature documents gaps in US labor standards and workplace health and safety laws, under-resourced enforcement strategies, the use of immigration enforcement to suppress labor organizing, and the exploitation of undocumented and other vulnerable workers to drive down wages and working conditions.[36] Combined, these factors subvert one of the core goals of US immigration policy, to meet US labor needs without diminishing the job prospects, wages, or working conditions of natives.

In "Segmentation and the Role of Labor Standards Enforcement in Immigration Reform," Janice Fine and Gregory Lyon argue that this goal cannot be met without strengthened labor standards enforcement, comprised of "vertical" enforcement (strong, government-enforced standards) and "lateral" mechanisms that enlist affected workers, worker centers, and other community-based institutions. Fine and Lyon observe that these individuals and institutions have both direct knowledge of labor standards violations and a strong incentive to remedy them.

experience integration policies (Ryo 2017).

35 Even ideologically aligned federal, state, and local administrations may differ on immigration enforcement and integration issues, given their distinct institutional imperatives.

36 For a slightly dated review of the relevant literature, see Kerwin and McCabe (2011).

Fine and Lyon (2017, 434) argue that firm management practices, outdated laws, and insufficient labor standards enforcement — rather than immigrants themselves — undermine labor markets and working conditions. At the same time, immigrant laborers, particularly the undocumented, endure widespread exploitation, with negative implications for other workers. "In a well-functioning immigration system," they write, "migrant workers should not be used as a strategy for employers to evade basic labor and employment laws" (ibid., 437).

A legalization program would remove one area of vulnerability (lack of status) for low-wage workers. However, it would need to be coupled with strengthened and well-resourced labor standards enforcement. The authors endorse recent bills that would increase the penalties for unpaid wages, unpaid overtime wages, and retaliatory discrimination or whistle-blowing (ibid., 445). In addition, they support measures that would allow immigrants to report violations of the law and participate in investigations without fear of reprisal (ibid.). They also propose that temporary visa holders should receive the same labor rights as citizens, so that employers can no longer use "immigration status as leverage against workers to hold down wages" (ibid.). They conclude that "[e]xpanding the scope of immigration reform to include labor standards enforcement is fundamental to ensuring that the rights of immigrants are upheld and all workers, immigrants or otherwise, stand on equal footing not just with each other, but with their employers as well" (ibid., 446).

Fairness and due process should characterize US admission, custody and removal decisions.

In the US immigration debate, politicians and other opinion makers regularly describe illegal entries as a failure of "rule of law" and a breach of sovereignty. Yet the rule of law speaks to the aspiration that legal systems protect fundamental rights, ensure accessible, full, and fair processes, and impartially adjudicate claims (Kerwin 2014b). While the immigration courts offer a modicum of due process, the removal adjudication system does not honor the rule of law, protect rights, or impartially adjudicate claims to remain. Of primary concern, the overwhelming majority of persons removed never see the inside of a court, but are subject to summary, non-court removal processes (ACLU 2014).[37]

In her article "Immigration Adjudication: The Missing 'Rule of Law,'" Lenni Benson points out that summary, non-court removal procedures make access to an impartial adjudicator and legal counsel nearly impossible. As such, these processes deny persons facing removal an opportunity to present their claims. Moreover, they have created a "vulnerable and trapped class of residents" who will not leave the country due to their fear of the criminal consequences of re-entry and "who have few ways to correct or regularize their status" (Benson 2017, 343).

37 "Expedited removal," for example, applies to noncitizens who attempt to enter the United States without or with improper documents. Reinstatement of removal applies to persons who were ordered removed or departed voluntarily while under a removal order, and who re-entered the United States. DHS no longer publicly releases yearly data on summary or expedited removals. However, in 2013, these two processes alone accounted for 83 percent of all removals (Simansky 2014, 5). Administrative removals apply to noncitizens who are not legal permanent residents (LPRs) and who committed an "aggravated felony," a broad class of crimes that includes crimes that are neither aggravated or felonies. To receive a stipulated order of removal, a noncitizen must admit the factual claims against him or her, concede deportability or inadmissibility, and waive his or her right to appeal the removal order (ACLU 2014, 29). An immigration judge must sign off on stipulated orders, but not afford a hearing.

An unfortunate effect of the division of the former INS into three DHS agencies has been diminished appreciation by immigration enforcement agents of the agency's protection responsibilities. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) agents tend to view protection as a barrier to performing their jobs, not one of their statutory responsibilities. Of particular concern, border officials are required to refer persons subject to expedited removal to a "credible fear" interview by an asylum officer if they ask to apply for asylum or express a fear of persecution.[38] If deemed to have a credible fear, an asylum seeker is referred to immigration court where he or she can seek asylum in removal proceedings.

However, many CBP officials refuse to refer asylum seekers to "credible fear" interviews, and produce intentionally false "sworn" statements from them (Human Rights First 2017). They also seek to dissuade asylum seekers from pursuing a claim by mischaracterizing US asylum standards and threatening them with lengthy periods of detention and separation from their family members.

Procedural requirements also serve to block access to asylum. The one-year (from entry) asylum filing rule, for example, bars the claims of high percentages of bona fide asylum seekers (Schrag et al. 2010).[39]

The perennially under-resourced US immigration court system struggles under a backlog of nearly 600,000 cases, which have been pending an average of 670 days. This backlog presents another rule of law and due process challenge (TRAC 2017). The US immigration court system is a branch of the Department of Justice (DOJ). The American Bar Association (ABA), National Association of Immigration Judges, and other groups have raised concerns related to the system's fairness, professionalism, funding, and even (on occasion) its independence. The latter concern will likely be more acute in the Trump administration.

US immigration law lacks sufficient options for resolving cases. Removal proceedings tend to be all or nothing affairs, leading either to removal or, less commonly, legal status and the ability to remain. Exacerbating this problem, DHS officials fail to exercise discretion in referring cases (or not) to this system. In addition, immigration judges cannot weigh and act on the individual circumstances in the cases before them, which contributes to case backloads and exacerbates resource deficiencies (ibid., 335). As Benson points out: "If immigration policies allowed people to regularize their status, had a mechanism for correcting errors of judgment, or contained fines or punishments for immigration rules that were proportionate to the interests at stake, it is very likely that it would not be under the current strain" (ibid., 337).

The lack of court-appointed counsel for indigent or other vulnerable immigrants also looms large as a barrier to the full and fair adjudication of claims. Legal representation facilitates more informed decisions in removal cases, increases court efficiency, and operates as a check on the treatment of detainees in custody (ibid., 351). As several studies have demonstrated,

38 Immigration and Nationality Act (INA) §235(b)(1)(A)(ii).

39 The provision was enacted to address concerns related to fraudulent asylum claims, which it has failed to do (Schrag et al. 2010). Similarly, expedited removal started as a tool to "weed out weak claims with little likelihood of success on the merits," but it has become a pillar of the immigration enforcement system (Benson 2017, 344).

legal representation also makes it several times more likely that asylum seekers and others in removal proceedings will prevail in their claims (Ramji-Nogales, Schoenholtz, and Schrag 2009). The adversarial nature of removal proceedings, their substantive and procedural complexity, and the immense (sometime life and death) consequences of adverse decisions make effective *pro se* representation virtually impossible (Kerwin 2005).

The manifest need to reform the US detention system, to minimize the use of detention, and to rid the system of privately owned and administered prisons have been well-documented (MRS/USBBC and CMS 2015). The pervasive use of immigration detention also undermines due process. Detention burdens the ability of persons in removal proceeding to corroborate their claims or to secure counsel. An exhaustive study of 1.2 million removal cases between 2007 and 2012 found that only 14 percent of detainees obtained legal representation, compared to two-thirds of non-detainees (Eagly and Shafer 2016). The lack of representation, confusion over the status of their cases and seemingly indefinite confinement in dismal conditions leads many to abandon their claims.

The civil removal adjudication system inappropriately provides fewer substantive and procedural protections than the US criminal justice system (Ahmed, Appelbaum, and Jordan 2017). DHS can, in theory, exercise discretion in deciding which undocumented persons to apprehend and place in removal proceedings. However, unlike criminal prosecutors who have broad discretion in negotiating plea agreements, the discretion of ICE trial attorneys and DOJ immigration judges is tightly circumscribed. In addition, the absence of *mens rea* (knowledge and intent to break the law) cannot be invoked as a defense to removal, even in the cases of undocumented persons brought to the United States as children.

Strong immigration enforcement policies should be accompanied by an equally strong commitment to due process, fairness, and the rule of law. If adopted, the following proposals would create a more rights respecting and efficient removal adjudication system.

- Congress should broaden the equitable relief from removal, affording particular weight to the claims of persons who have not knowingly or intentionally violated the law, and it should provide options short of removal (like fines) that would allow government attorneys to settle cases.
- Congress and DHS should substantially limit, if not abandon entirely, expedited removal, and should instead either deny noncitizens admission or provide them with full removal proceedings in immigration court. (Benson 2017, 342)
- All removal cases should be adjudicated or reviewed by an immigration judge (MRS/USCCB and CMS 2016, 194).
- Congress should significantly increase funding to the immigration court system and should establish a funding benchmark for the immigration courts at roughly 5 percent of the budget of the two DHS enforcement agencies, CBP and ICE.
- Congress should create an independent Article 1 immigration court[40] like the US Tax Court or US Bankruptcy Court, or an independent adjudicatory agency for immigration

40 Article 1, Section 8 of the US Constitution grants Congress the right to establish "Tribunals inferior to the supreme Court."

like the National Labor Relations Board or the Occupational Safety and Health Review Commission (ABA 2010, 6-4 to 6-40).

- DHS officials should be afforded the resources and responsibility to investigate and review the files of persons who are subject to removal prior to referring them for removal (Benson 2017, 340-341). In deciding whether to place a noncitizen in removal proceedings, they should assess the individual equities in the case, including US family ties, length of residence, business ties, blameworthiness, and the severity of the immigration violation.
- DHS officials should be allowed to grant stays of removal based on a similar set of equitable considerations (Benson 2017, 340).
- ICE attorneys should be given the legal authority and "bargaining tools" — to grant temporary work authorization, conditional residency, and legal status in limited cases — that permit the settlement of cases, short of removal (ibid., 341).
- CBP and ICE agents should not be granted authority to screen asylum seekers or to make removal decisions.
- Congress should establish a statute of limitations for civil immigration violations, which would contribute to a fairer adjudicatory process and "afford a sense of finality and security to persons who have built strong equitable ties and have lived in the United States for many years" (ibid., 348).
- Congress should eliminate mandatory detention, use detention only as a last resort (not the default option) when no other less restrictive alternatives can ensure the immigrant's appearance throughout the removal adjudication process, and subject custody decisions to court review, regular hearings, and reasonable bond levels.
- Congress and DHS should substantially invest in effective, community-based alternative to detention programs (MRS/USCCB and CMS 2015, 186-89, 192-93; Noferi 2015).
- DHS should disinvest in private prisons, which provide less transparency and accountability in carrying out a function that implicates fundamental liberty interests and that should thus be met by government officials (MRS/USCCB and CMS 2015, 184-86, 192).
- Congress should rescind the one-year asylum filing deadline (Schrag et al. 2010).
- The federal government should provide for government-funded counsel for indigent and particularly vulnerable persons (like children and the mentally ill), and sufficient funding to advise everybody in removal proceeding of their legal rights and options.

Family unity should remain a central goal of US immigration policy and a pillar of the US immigration system.

Family unity has been the cornerstone of US legal immigration policies since 1965, and family-based visas account for two-thirds of immigrant (permanent) visas awarded each year. The US refugee program and several non-immigrant (temporary) programs

also prioritize the admission of family members. However, family-based immigration is disfavored by the Trump administration and many in Congress, in comparison to "merits-based" policies that favor skilled workers.

In "US Immigration Policy and the Case for Family Unity," Zoya Gubernskaya and Joanna Dreby argue that family-based immigration brings economic benefits, and operates as a de facto immigrant support and integration policy at no cost to the government. While family-based immigrants are often viewed as a social burden, the differences in human capital between employment-based and family-based visa beneficiaries disappear over time (Gubernskaya and Dreby 2017, 423). Unlike employment-based immigrants, the authors report that the status of family-based immigrants "does not depend on their employers." (ibid., 424). This "gives them more freedom to make the best use of their skills and experiences" and "motivates them to invest in education," increasing their employment opportunities and income (ibid.). Family-based immigrants also benefit from the assistance provided by their US family members in the areas of "housing, healthcare access, transportation, school enrollment, and enrichment activities for children," which facilitate their integration (ibid).

The authors propose that family unity remain a centerpiece of US immigration policy due to the "[p]ositive socioeconomic outcomes of family immigrants and their children and evidence of [the] economic, social, and psychological benefits of family support" (ibid., 426). They conclude that the family serves as a "buffer that aids immigrant integration, provides a social and economic safety net for new Americans, helps to incorporate [them], and builds new businesses in the United States" (ibid.).

Gubernskaya and Dreby also underscore how US policies undermine, divide, and stress US families, particularly those with undocumented members. For example, many potential visa beneficiaries who have a qualifying relationship with a US citizen or legal permanent resident (LPR) must live apart from their petitioning family member for years due to visa backlogs, which vary based on family preference category and nationality. Undocumented border crossers living in the United States who have a qualifying family relationship to a US citizen or LPR must leave the country for consular processing when their visa priority date becomes current. In departing, however, they become subject to multi-year bars to re-entry based on unlawful presence. These bars operate as a disincentive to leaving the country and, thus, securing status (Kerwin, Meissner, and McHugh 2011). The Obama administration established a procedure to pre-adjudicate waivers to the bars (USCIS 2016), but even if the waiver is pre-approved, consular processing can lead to long-term separation from US family members.[41]

Beyond these well-documented provisions, US citizens with undocumented spouses must often forego many of the benefits of citizenship, including travel and (often) the right to live with their spouse in the United States. In addition, US children in mixed-status households experience unrelenting stress from the threat of a parent's deportation and,

41 INA Section 245(i) allows undocumented persons who pay a substantial fine to adjust to LPR status in the United States, but this process is available only to the small minority of visa beneficiaries whose petitions were filed on or before April 30, 2001. As a result, very few persons who have illegally crossed US borders can adjust status under this provision. By contrast, persons who entered legally but overstayed the period of their temporary visas are considered to have been "admitted" and, thus, can adjust status in the United States.

when deportation occurs, immense emotional and financial hardship (Gubernskaya and Dreby 2017, 422). Minimum income requirements also discriminate against lower-income US citizens or LPRs who petition for and financially sponsor family members for visas (Lopez 2017, 240).

To address these problems, the authors propose ending the long-term separation of LPRs from their family members, allowing prospective visa recipients to join petitioning family members in the United States, and creating a new path to legal status for fathers and mothers of US citizen children (Gubernskaya and Dreby 2017, 425). These reforms would provide greater opportunities for gaining legal status and contesting removal based on family ties in the United States. Congress should also repeal the bars to re-entry based on unlawful presence or, in the alternative, allow potential family-based visa beneficiaries who illegally crossed a border to adjust status in the United States (Lopez 2017, 247). In addition, it should repeal the minimum income requirement for sponsorship of a family member (ibid.).

In "Separated Families: Barriers to Family Reunification After Deportation," Deborah Boehm puts a human face on how US immigration policies and enforcement practices divide families (Boehm 2017, 403-04).[42] In three compelling case studies, Boehm illustrates the very limited relief from removal under US law based on family ties.[43] "Cancellation of removal," the main form of equitable relief is available to non-LPRs who have been continuously present in the United States for at least 10 years, can demonstrate moral character, have not been convicted of a broad array of crimes, and can show demonstrate "exceptional and extremely unusual hardship" to a US citizen or LPR spouse, parent, or child.44 Once removal occurs, family reunification "through legal channels" becomes even less likely (ibid, 402).

Boehm (ibid., 413) proposes that the United States "create policies with enough flexibility to facilitate family unity in the United States," recognize the rights of US citizen children to family unity by liberalizing the standard for cancellation of removal, and accommodate "a path to authorized return after deportation."

The United States should seek to craft "win-win" immigration policies that serve its own interests and that benefit migrant-sending states. Such policies will enjoy broad acceptance and be more likely to achieve their purposes.

The success of US immigration policies invariably depends on cooperation from other nations, "whether in responding to the causes of forced migration, promoting the humane treatment of migrants in transit, protecting migrants in destination states, or receiving returning nationals" (Kerwin and Warren 2017, 305). Cooperation will be more forthcoming when US policies benefit states of origin and their citizens. In responding to large-scale refugee and migrant movements, cooperation has been strongest on interception and immigration enforcement policies (Frelick, Kysel, and Podkul 2016). Yet US legal

42 Removals affect far more persons than those removed. For example, there are 6.6 million US citizens, including 5.7 million children, living in households with undocumented residents, mostly their parents (Warren and Kerwin 2017).

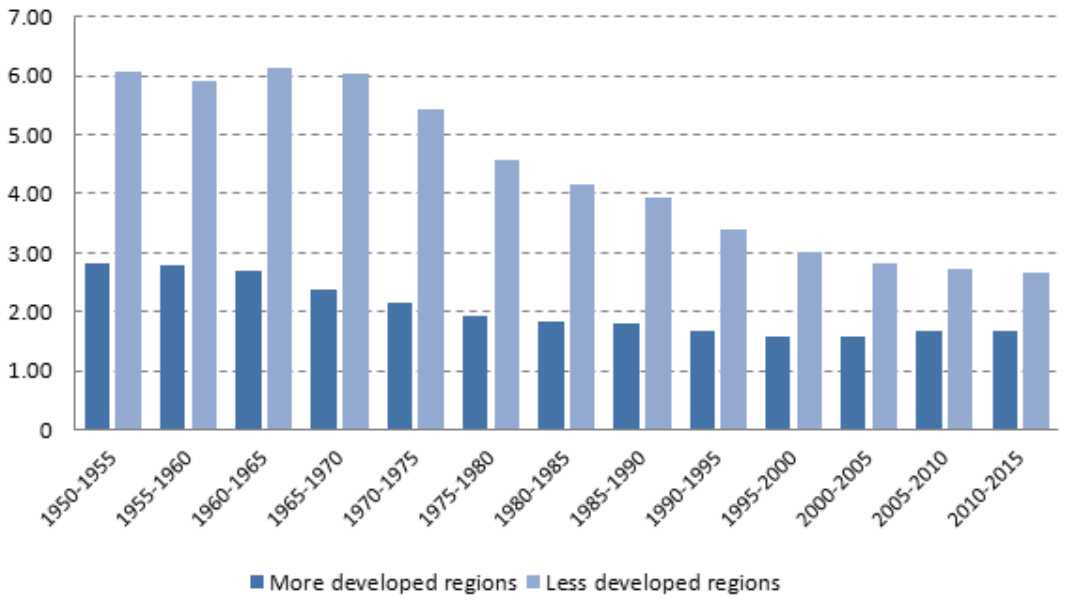
43 Boehm also points out the limited categories of family members for whom visas are available.

44 INA § 240A(b).

immigration policies can offer a more promising vehicle for meeting the diverse needs of migrant-sending states.

The outline of potential win-win "labor migration" policies can be seen in data on the aging and shrinking workforces in developed states, and younger populations in developing states. Fei Guo (2016) refers to global demographic realities as the "'silent' driving force" behind international migration. As Figure 1 illustrates, total fertility rates[45] have fallen well below the population replacement level in most developed regions and states. As a result, these states have experienced structural shortages in both the unskilled and skilled labor force.

Figure 1. Total Fertility Rate, 1950-2015



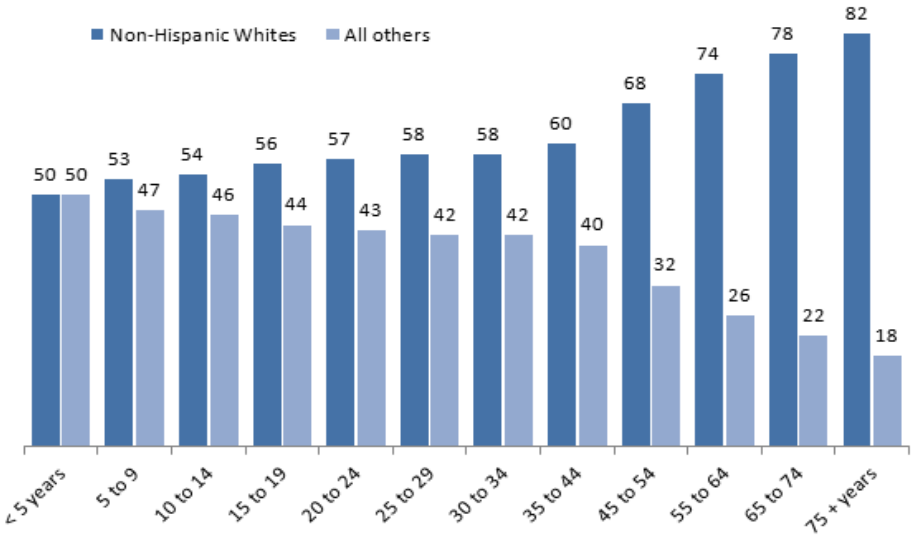
Source: Guo (2016, 4), using data from the UN Population Division's *World Population Prospects 2015 Revision.*

Robust immigration policies cannot alone ensure sustainable working age populations and address unsustainable levels of aging. However, it is also the case that *without* more vigorous and pro-active immigration policies, developed states will be able to establish an acceptable ratio between retirement and working age residents.

This stark dynamic has been mitigated in the United States by the relative youth and high fertility rates of its large immigrant population (Reznik, Shoffner, and Weaver 2005-2006, 38). Nonetheless, the challenge remains immense. Each day until 2030, 10,000 members of the 76 million US Baby Boomer generation will turn 65. As evidence of the aging of "white" America, there are roughly an even number of non-Hispanic whites and "all other" ethnic groups represented among US children age five and below, but the percentages of whites rise steadily by age group, topping out at 82 percent among US residents age 75 and above (Figure 2).

45 Total fertility rate refers to the average number of children born to each woman in a nation.

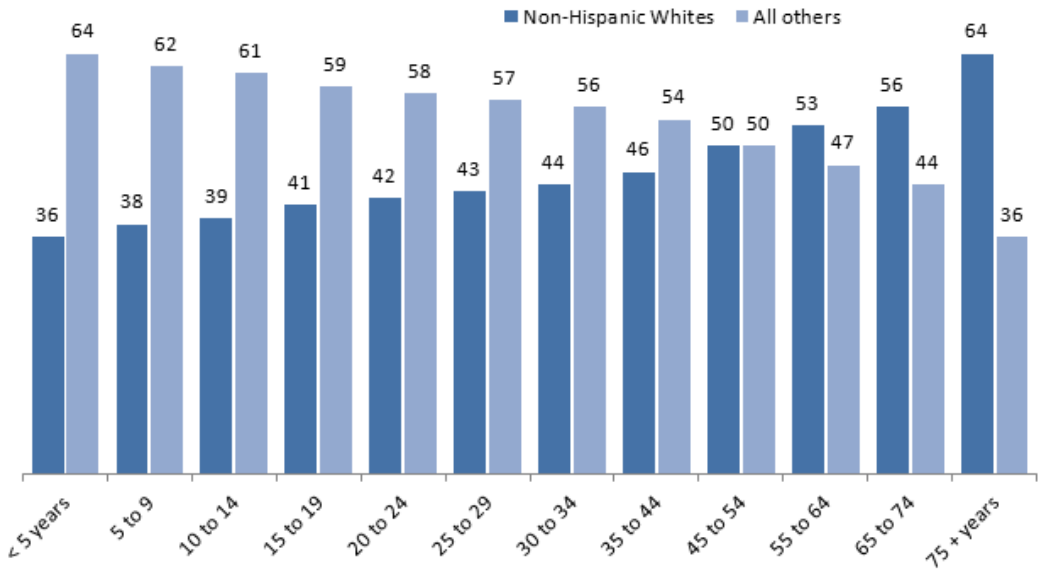
Figure 2. The Current Population of the United States by Age Group and Ethnicity (ACS, 2009-2014)



Source: Klineberg (2017, 16-17) using data from the US Census Bureau's 2009-2013 American Community Survey 5-year estimates.

By 2050, non-Hispanic whites will constitute 36 percent of US children age 5 or below, but 64 percent of residents age 75 and above (Figure 3).

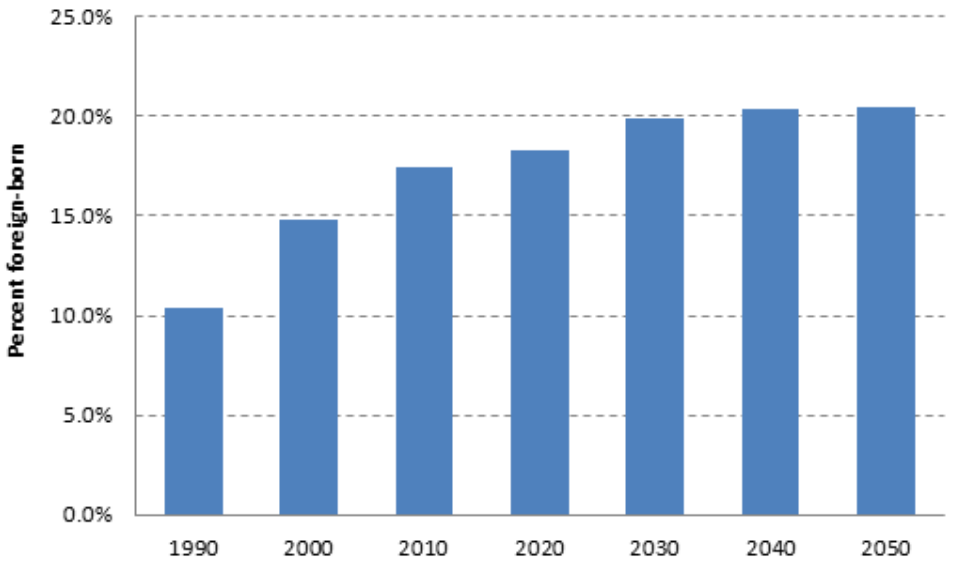
Figure 3. The Projected Population of the United States by Age Group and Ethnicity in 2050



Source: Klineberg (2017) using data from US Census Bureau's 2012 National Population Projections, Alternative Net International Migration Series (Constant Series).

Between 1990 and 2030, the percent of the foreign-born population between the prime working ages of 18 and 64 is projected to double to 20 percent and it will continue to increase, although at a slower rate, from 2030 to 2050 (Figure 4). By contrast, the percentage of the US population age 65 and over is projected to increase from 13 to 20 percent between 2010 and 2030 (Ortman, Velkoff, and Hogan 2014, 2-3),

Figure 4. Percent of Foreign-born in the Population Aged 18 to 64: 1990 to 2050



Source: Kerwin and Warren (2017), using data from the US Census for 1990 to 2010, and Colby and Ortman (2014) for 2020 to 2050.

To address this emerging demographic crisis, the United States should reform its legal immigration policies and make it a national priority to attract necessary skilled and unskilled workers over the next three decades. If it fails to do so, policymakers and the public may well be looking back nostalgically on the era of large-scale undocumented migration from Mexico in the 1990s and early 2000s.

US immigration law and policy should be coherent and consistent, and the United States should create legal migration opportunities for persons uprooted due to US foreign interventions, trade policies, and immigration laws.

In "Creating Cohesive, Coherent Immigration Policy," Pia Orrenius and Madeline Zavodny argue that the US immigration system often works at cross purposes with itself. Policymakers often fail to anticipate or account for the likely consequences of US immigration programs. US immigration laws, for example, have generated a need for visas for family members of primary program beneficiaries and others, but have often failed to meet this need.

The Immigration Reform and Control Act of 1986 (IRCA)[46] program legalized 2.7 million

46 Pub. L. No. 99-603, 100 Stat. 3445 (1986).

persons,[47] but did not offer derivative status to their close family members, sowing the seeds of the current 4.26 million person family-based immigration backlog (Orrenius and Zavodny 2017, 183; DOS-BCA 2016). Based on the experience of IRCA and other laws, Orrenius and Zavodny urge Congress to consider the ramifications of immigration laws and policies on future flows to the United States and provide for the legal admission of the family members of direct beneficiaries (Orrenius and Zavodny 2017, 189).

They also point to mismatches between temporary non-immigrant work visas and permanent employment-based visas that foreclose the possibility of permanent status for non-immigrants with US job offers and, thus, work at cross-purposes with US economic and labor needs (ibid., 184, 190). They propose that temporary workers who qualify for permanent employment-based visas should be able to apply and receive them in a timely manner, without having to meet additional burdensome requirements (ibid., 191).

Congress has also created temporary programs, like Temporary Protected Status (TPS), for populations that often need long-term protection (Bergeron 2014). Orrenius and Zavodny (2017, 190) propose that TPS recipients who cannot be safely returned home after one extension of status be allowed to apply for permanent status.

Kerwin and Warren (2017) argue that policy coherence also requires that the United States anticipate and take steps to minimize forced migration resulting from its foreign interventions, trade policies, and other international commitments. Because US military interventions, for example, can reasonably be expected to uproot large numbers of persons, the United States should take steps to minimize the dislocation and to secure refuge for the displaced, including through the US refugee resettlement and immigration programs. In addition, the North American Free Trade Agreement (NAFTA) uprooted large numbers of Mexican family farmers, but did not offer legal migration opportunities for most displaced workers (Fernández-Kelly and Massey 2007, 99).

The United States should reduce the size of its undocumented population through a substantial legalization program and seek to ensure that this population never again approximates its current size.

In recent years, it has become evident that the era of large-scale illegal immigration and undocumented population growth has come to a close and that the US legal immigration system must be reformed to preserve and build on this progress (Warren 2017).

The Trump administration has embarked on a mass deportation policy, which will devastate families, the economy, and the social fabric (Warren and Kerwin 2017a). By contrast, a broad legalization program will strengthen families, communities, and the economy. A legalization program would also acknowledge the transitional nature of immigration status (many undocumented persons will ultimately attain legal status under current laws), the high (and growing) percentage of undocumented residents with long tenure and strong

47 IRCA included four legalization programs: (1) a general program for persons who lacked status from January 1, 1982 to the date of the bill's enactment, and who met continuous presence and other requirements; (2) a Special Agricultural Worker (SAW) program that applied to persons who performed seasonal agricultural work for at least 90 days in a 12-month period in 1985 and 1986; (3) a registry program for persons who arrived in the United States prior to January 1, 1972; and (4) a small program for certain "Cuban-Haitian" entrants who arrived prior to January 1, 1982.

equitable ties (including children) in the United States, the blamelessness of undocumented persons brought to the United States as children, and the large population eligible for status who do not know it or cannot afford to pursue it (Kerwin and Warren 2017, 320; Warren and Kerwin 2015, 99-100).[48]

Beyond an earned legalization program, Congress should substantially advance the registry cut-off date and automatically move the date forward by one year each year thereafter (Kerwin and Warren 2017, 322-23). The registry program offers status to long-term undocumented residents who entered by a statutorily set date, can demonstrate good moral character, are not ineligible for citizenship, and are not inadmissible on certain security and other grounds.[49] Since the program's inception in 1929, Congress has infrequently advanced the cut-off date for entry. Most recently, in 1986, IRCA set this date at January 1, 1972, meaning that virtually no undocumented persons now qualify for the program. However, if Congress advanced the date to January 1, 2002, five million persons would potentially be able to register.[50]

To many, IRCA offers positive proof that a legalization program will invariably spur high levels of illegal migration. However, IRCA's shortcomings need not be repeated in a future legalization program.[51] "Coherent, flexible, fact-based" policies that are "closely aligned to US interests" will help to keep this population in check,[52] as will the elimination of barriers to legal status like the three- and ten-year bars and the limited eligibility for the Section 245(i) program (Kerwin and Warren 2017, 321-22). A registry program that regularly advanced the qualifying date of entry would also minimize the size of this population.

In the meantime, US immigrant-serving agencies should initiate a massive legal screening program for low-income undocumented immigrants, accompanied by a public education

48 The US undocumented population includes: (1) a high percentage of the 4.26 million persons languishing in family-based visa backlogs; (2) a large number — in the 15 percent range —who may be eligible for an immigration benefit or relief, but do not know it or cannot afford the cost or have otherwise chosen not to pursue it (Wong et al. 2014; Kerwin et al. 2017, 9); (3) millions who will ultimately gain status under current laws (Jasso et al. 2008); (4) 1.9 million with 20 years or more of US residency, 1.6 million with 15 to 19 years of US residency, and 3.1 million with 10 to 14 years of US residency (Warren and Kerwin 2015, 98-100); (5) 3.9 million parents of US citizens or LPRs who would have qualified for the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program; and (6) 2.5 million brought to the United States at age 15 or under (Warren and Kerwin 2015, 95; Kerwin and Warren 2017, 321).

49 INA §249.

50 Another way to legalize long-term undocumented residents would be to allow them to apply affirmatively for "cancellation of removal," rather than to have to wait until they are in removal proceedings.

51 Among its shortcomings, IRCA failed to: (1) reform the US legal immigration system in ways that would have allowed it to accommodate the high demand for lower-skilled work (met by undocumented workers) in the 1990s and early 2000s; (2) provide derivative status to the close family members of its beneficiaries, thus laying the groundwork for the current multi-year backlogs in the family-based immigration system; (3) legalize sufficient numbers of undocumented persons; (4) account for the possibility (which quickly came to pass) that legalized agricultural workers would leave this work and be replaced by undocumented workers; and (5) meaningfully enforce IRCA's employer verification and sanctions program (Kerwin and Warren 2017, 315-16).

52 Immigration reform can occur without increasing the total number of visas granted per year if the federal government reissues the visas of persons who emigrate (Warren and Kraly 1985). Between 2010 and 2015, the average annual emigration of visa holders was 284,000 (Kerwin and Warren 2017). Re-issuing these visas could remove a political barrier to immigration reform.

and advocacy campaign to allow those who may qualify for legal status to pursue it (Wong et al. 2014, 300).

Conclusions

The papers in CMS's US immigration reform collection outline an immigration system that furthers the nation's interests, reflects its values, and takes into account the perspectives of individuals and communities most affected by US policies. Several themes — along with dozens of policy proposals — emerge from these papers.

First, immigration policymaking should be embedded in a larger set of partnerships, processes, and commitments that respond to the conditions that force persons to migrate.

Second, the US immigration system should reflect liberal democratic values and an inclusive vision of national identity. Effective and humane policies require engaged and active citizens. As the papers illustrate, elected officials on national, state, and local levels, as well as civil society institutions, can all influence immigration policy for better or worse.

Third, it is incumbent on policy and opinion makers to publicize the broad national interests served by US immigration policies. Policymakers should, in turn, evaluate and adjust these policies based on their success in furthering the nation's interests. The United States cannot advance any of the interests served by its immigration system without sound legal immigration policies. Thus, legal immigration reform must be the cornerstone of the US immigration reform agenda.

Fourth, the United States should prioritize the gathering and dissemination of the best available evidence on migration and on the nation's migration-related needs and programs, and should use this information to respond flexibly to changing migration patterns and new economic developments. Such evidence would include research on the knowledge and perspectives of the most affected individuals and communities.

Fifth, immigrant integration strengthens communities and represents an important, overarching metric for US immigration policies. The successful integration of the United States' 43 million foreign-born residents and their progeny should be a national priority. The papers argue for a robust commitment to immigrant integration from the perspectives of immigrants, families, US workers, and host communities.

Sixth, an immigration federalism agenda should prioritize cooperation on shared federal, state, and local priorities. It should also recognize:

- the federal government's enforcement obligations;
- the interests of local communities in the safety, well-being, and participation of their residents;
- the importance of federal leadership in resolving the challenge posed by the US undocumented population; and
- the need for civil society institutions to serve as mediators of immigrant integration.

Seventh, immigration reform must be coupled with strong, well-enforced labor standards

in order to promote that nation's interest in fair wages and safe and healthy working conditions for US workers.

Eighth, fairness and due process should characterize US admission, custody, and removal decisions. A system that honored due process and fundamental fairness would minimize the use of detention, provide legal representation at no cost to indigent and other vulnerable persons, create a well-funded Article 1 immigration court, and eliminate non-court removals.

Ninth, family unity should remain a central goal of US immigration policy and a pillar of the US immigration system. Family-based immigration furthers a core national interest (intact families), contributes necessary workers, and facilitates immigrant integration.

Tenth, the United States should seek to craft "win-win" immigration policies that serve its own interests and those of migrant-sending states. Such policies will enjoy broad acceptance and be more likely to achieve their purposes.

Eleventh, US immigration law and policy should be coherent and consistent, and the United States should offer legal migration opportunities to persons uprooted due to US foreign interventions, trade policies, and US immigration laws. Coherence also demands effective policymaking and good governance. To that end, the collection raises several governance imperatives, including the need to:

- mainstream immigration and refugee concerns into other policymaking processes;
- link immigration reform with strengthened labor standards enforcement;
- make immigrant integration a unifying national priority; and
- build an immigration federalism agenda rooted, in part, in shared federal, state, and local immigration priorities.

Twelfth, the United States should reduce the size of its undocumented population through a substantial legalization program, and seek to ensure that this population never again approximates its current size. This need represents a recurrent theme in this collection of papers. The authors support a legalization program to preserve US families, to strengthen the economy, to further immigrant integration, to promote labor standards enforcement, to reduce nativism, to create coherent laws, to ease the burdens on the immigration enforcement system, and to recognize the equitable ties of undocumented persons to the United States.

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