

THE IMPACT OF A **POINT-BASED**
IMMIGRATION SYSTEM ON AGRICULTURE
AND OTHER BUSINESS SECTORS

By **Stuart Anderson**

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ABOUT THE AUTHOR

Stuart Anderson is Executive Director of the National Foundation for American Policy, a non-profit, non-partisan public policy research organization in Arlington, Va. Stuart served as Executive Associate Commissioner for Policy and Planning and Counselor to the Commissioner at the Immigration and Naturalization Service from August 2001 to January 2003. He spent four and a half years on Capitol Hill on the Senate Immigration Subcommittee, first for Senator Spencer Abraham and then as Staff Director of the subcommittee for Senator Sam Brownback. Prior to that, Stuart was Director of Trade and Immigration Studies at the Cato Institute in Washington, D.C., where he produced reports on the military contributions of immigrants and the role of immigrants in high technology. He has an M.A. from Georgetown University and a B.A. in Political Science from Drew University. Stuart has published articles in the *Wall Street Journal*, *New York Times*, *Los Angeles Times*, and other publications. He is the author of the book *Immigration* (Greenwood, 2010).

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ABSTRACT

America's tradition as a nation of immigrants is governed by laws. Today's immigration laws aim to balance the needs of employers seeking workers and U.S. citizens reuniting with close relatives. Recently, some elected officeholders have advocated changing those laws to significantly reduce legal immigration, eliminate family visa categories, and introduce a point system to replace employer-sponsored visa categories.

The impact of such a change and the current debate over legal immigration carry profound implications for what kind of nation we will be and whether our economy will be growing, diverse and vibrant or stagnant and closed to outsiders. The evidence indicates that reducing legal immigration and eliminating family and other immigration categories will not increase wages for U.S. workers. Instead, cutting immigration will reduce U.S. economic growth, since labor force growth, of which immigrants are a vital part, is closely connected to the growth of America's economy.

Data show the skill level of recent immigrants has been rising and is far higher than many policymakers perceive.

The educational achievements of the children of immigrants provide further proof that today's immigrants and their families are assimilating as did prior generations.

Evidence indicates that America's separation of executive and legislative powers makes it unlikely that a point system could operate effectively or in a manner similar to those in Canada or Australia, which have parliamentary systems of government and agencies with the authority to make rapid and unilateral changes to a point system when problems arise. That would not be possible under our laws and structure. Moreover, under a point system, as envisioned, U.S. employers would no longer decide which employees are most valued. Instead, admissions would be subject to government-designed criteria. Attempting to institute an immigration system based on awarding points for particular ages, degrees or language ability ignores the contributions of immigrants throughout American history, the diversity of today's U.S. economy and the need for workers across the skill spectrum in sectors that include agriculture, construction and hospitality, as well as science and technology.

We need to balance our nation's need for workers who have different skills with family-based immigration. S. 744, bipartisan legislation which passed the U.S. Senate in 2013, thoughtfully pointed in this direction. Our immigration system can be designed to increase the immigration of people with a high level of skills without either eliminating the ability of employers to sponsor individual employees or reducing family immigration. For example, Congress could eliminate the per-country limit for employment-based immigration categories, increase the number of green cards for employment-based immigrants, and additionally could establish a pilot program for an "independent" category of immigrants, such as in Australia, alongside existing family and employment categories. Bipartisan efforts to identify workable solutions like these serve the interests of American workers and their families, helping our economy grow.

Will America remain a nation of immigrants? The results of the coming debate will provide the answer.

EXECUTIVE SUMMARY

Based on an examination of the Canadian and Australian immigration systems, including interviews with attorneys and business people familiar with those systems, as well as analysis of the current economic situation of U.S. employers, this report has reached the following conclusions:

THE RAISE ACT, WERE IT TO BECOME LAW, WOULD LIKELY PRODUCE A NUMBER OF HARMFUL OUTCOMES. The bill's large reduction in legal immigration would lower America's rate of economic growth and would cause over 4 million people to be summarily eliminated from family and employment-based immigration backlogs after waiting in line for many years. Establishing a point system in place of employer sponsorship substitutes the judgement of a few lawmakers for the wisdom of hundreds of thousands of individual employers in America that petition for workers across the skill spectrum.

REDUCING IMMIGRATION WOULD HARM ECONOMIC GROWTH AND ECONOMISTS BELIEVE MORE, NOT FEWER, WORKERS ARE BETTER FOR AN ECONOMY. Cutting legal immigration in half would reduce the rate of economic growth in the United States by an estimated 12.5 percent from its projected level, according to Joel Prakken, senior managing director and co-founder of Macroeconomic Advisers. Immigrants are an important part of labor force growth, which is a key ingredient of economic growth.

THERE IS NO EVIDENCE THAT ELIMINATING CERTAIN FAMILY CATEGORIES WILL RAISE WAGES FOR ANY U.S. WORKERS. Eliminating the three family categories most targeted by immigration critics – the siblings and unmarried and married adult children of U.S. citizens – would prevent an estimated 25,000 or fewer working age immigrants with less than a high school degree from immigrating to the U.S. each year. Preventing the entry of 25,000 people, about 0.01 percent of the nearly 160

million people in the U.S. labor force, spread throughout the year and across the nation, would have no impact on the wages of lower-skilled U.S. workers. Giovanni Peri, chair of the economics department at the University of California, Davis, examined 30 years of empirical research and concluded, “Decades of research have provided little support for the claim that immigrants depress wages by competing with native workers. Most studies for industrialized countries have found, on average, no effect on the wages of native workers.” Peri found, “There is little evidence of immigration lowering wages of less educated native workers.” Approximately 82 percent of family immigrants are the “immediate relatives” of U.S. citizens – spouses, parents and children under 21 – and the spouses and minor children of lawful permanent residents (LPRs).

RECENT IMMIGRANTS ARE MORE LIKELY TO EARN A COLLEGE DEGREE THAN NATIVES AND 84 PERCENT OF RECENT ARRIVALS EARN A HIGH SCHOOL DEGREE OR HIGHER. While a key premise of establishing a point system is a perceived low educational level of current legal immigrants, in fact, the skill level of immigrants is rising and both recent immigrants and their children are more likely to graduate college than native-born Americans. Contrary to conventional wisdom, Census data show 84 percent of individuals admitted legally to the United States between 2010 and 2014 had a high school degree or higher, according to the Migration Policy Institute, only 4 percentage points lower than the 88 percent of all adults in the U.S. (25 years and older) with at least a high school degree. Assimilation is alive and well in America. “Among 18-to-24-year-old children of immigrants, [only] 7 percent have not completed high school and are not enrolled in school,” according to the Pew Research Center. “Almost half (48 percent) of immigrants coming to the United States between 2011 and 2015 were college graduates (compared to 31 percent of U.S.-born adults in 2015),” according to the Migration Policy Institute. Census data show the number of immigrant college graduates rose 90 percent from 2000 to 2015 and

recent arrivals are far more likely to have degrees than the residents of many of the states where they reside. “In Michigan and Ohio while 59 to 63 percent of recent arrivals had at least a bachelor’s degree, 26 to 27 percent of the native born were college graduates,” notes MPI.

THE U.S. ALREADY ADMITS HUNDREDS OF THOUSANDS OF PEOPLE ANNUALLY ON “MERIT” THROUGH EXISTING TEMPORARY AND PERMANENT VISA CATEGORIES. Counting as skilled workers only the approximately 140,000 new employer-sponsored immigrants (green card recipients) ignores the many professionals and researchers who work in America long-term on temporary visas for 3 to 6 years or longer in H-1B status, as L visa holders (intracompany transferees), O visas for individuals with “extraordinary ability” and NAFTA professionals from Mexico and Canada. “The U.S. already has ‘merit-based’ immigration, in the form of a preference system for employment-based visas,” said Lynn Shotwell, executive director, Council for Global Immigration, a business trade association. “While current H-1B and green card numbers aren’t sufficient, employers don’t want a system that removes or limits their ability to hire or sponsor a specific individual, across the skill spectrum, or have the federal government set up a point criteria that may not be relevant to employer needs or keep up with changes in the economy.”

THE U.S. GOVERNMENT PROJECTS A NEED FOR WORKERS AT ALL SKILL LEVELS. It is a mistake to assume the U.S. economy needs only workers with high levels of education. Citing data from the Bureau of Labor Statistics (BLS), the Center for American Progress recently reported, “Noteworthy occupations from the list of the 30 largest-growing occupations include: cooks, construction laborers, janitors and other cleaners, software developers, computer systems analysts, and maids and house-keeping cleaners. Each of these jobs is expected to add more than 100,000 jobs by 2024, and they already have larger shares of immigrants than the national average.”

TIMES ARE TOUGH FOR COMPANIES LOOKING FOR WORKERS IN SECTORS SUCH AS AGRICULTURE, MEAT PACKING AND CONSTRUCTION.

Today, employers of lower-skilled workers experience the worst of two worlds: 1) they cannot find enough workers and 2) many of the workers they do find are not in legal status and face (possible) deportation. The situation is particularly bad in agriculture. “Immigrant labor accounts for 51 percent of all dairy labor, and dairies that employ immigrant labor produce 79 percent of the U.S. milk supply,” according to economists at Texas A&M. “Eliminating immigrant labor would reduce the U.S. dairy herd by 2.1 million cows, milk production by 48.4 billion pounds and the number of farms by 7,011. Retail milk prices would increase by an estimated 90.4 percent.”

A LACK OF WORKERS IN AGRICULTURE, CONSTRUCTION AND OTHER SECTORS CAN LEAD TO JOB LOSS IN COMPLEMENTARY SECTORS.

When employers cannot find enough workers on the farm or to complete construction projects, it prevents job creation in other sectors. “Every job created in agriculture and forestry-related industries results in another 1.6 jobs in the Virginia economy,” according to the University of Virginia, and further analysis would find similar results in other states. An adequate supply of labor allows U.S. farmers to be competitive in global markets. “According to a U.S. Department of Agriculture (USDA) model, each \$1 billion of agricultural exports supported 6,800 American jobs in 2011,” reported the Joint Economic Committee. While higher consumer prices garner most of the press attention, the offshoring of production can be the most damaging economic impact when employers in agriculture and other sectors cannot find enough workers. A study by Bryant University economist Edinaldo Tebaldi on the economic impact of the construction industry in Rhode Island (and which would show similar impacts in other states) determined that \$10 million in construction output directly or indirectly supports 146 jobs, and that “Each 100 jobs created in the construction industry support 83 jobs in other sectors.”

THE PURPOSE OF POINT SYSTEMS IN CANADA AND AUSTRALIA IS TO ATTRACT MORE IMMIGRANTS, NOT REDUCE LEGAL IMMIGRATION. In Australia, the point system is designed to supplement employer-sponsored immigrants by allowing “independent” immigrants – those without job offers or not already working for an Australian employer – the chance to immigrate and is only used for permanent residence, not for the equivalent of H-1B temporary visas. In contrast, the recent RAISE Act is an attempt to reduce legal immigration.

A HIGH LEVEL OF LEGAL IMMIGRATION IS A MAJOR COMPONENT OF THE CANADIAN AND AUSTRALIAN IMMIGRATION SYSTEMS. The high level of legal immigration, not their point systems, is the key defining characteristic of the Canadian and Australian immigration systems. Relative to the size of their populations, Canada and Australia admit two to three times as many immigrants each year as the United States, the equivalent of 2.5 to 3 million annually in the U.S. based on America’s population.

EMPLOYER SPONSORSHIP, NOT THE POINT SYSTEMS, HELP COMPANIES FIND WORKERS IN AUSTRALIA AND CANADA. “The point system is not at all important for corporate immigration in Australia,” said Tim Denney, an attorney with Berry Appleman & Leiden in Sydney. “The points system comes into play when an individual seeks to migrate to Australia and does not have a business operating in Australia willing to sponsor him or her upfront for either a temporary work visa or permanent residence.” Canadian employers hire high- skilled foreign nationals primarily through temporary visas. Gaining permanent residence through the point system is usually closely tied to the applicant’s prior work experience in Canada.

THE CANADIAN POINT SYSTEM IS NOT HELPFUL FOR SPONSORING LOWER-SKILLED WORKERS. “Virtually all of the immigration streams are focused

on highly skilled and educated immigrants,” according to Dan Kelly, president and CEO of the Canadian Federation of Independent Business (CFIB). “There is nothing wrong with that in general, but it starts to break down when the needs of Canadian employers is often in the low or semi-skilled occupational categories.”

CANADIAN EMPLOYERS HAVE OFTEN CRITICIZED THEIR COUNTRY’S POINT SYSTEM AND THE U.S. IMMIGRATION SYSTEM IS NOT CAPABLE OF MAKING QUICK CHANGES. Canadian employers have often criticized the Canadian point system and fixes have happened only because the Canadian government has unilateral authority to make the kind of quick changes to immigration policy that are not possible under our laws and government structure.

THE SEPARATION OF AUTHORITIES BETWEEN THE LEGISLATIVE AND EXECUTIVE BRANCHES OF THE U.S. GOVERNMENT LIKELY MAKES IT IMPOSSIBLE FOR ANY POINT SYSTEM TO WORK EFFECTIVELY AND IN A MANNER SIMILAR TO POINT SYSTEMS IN CANADA AND AUSTRALIA, WHICH ARE GOVERNED BY PARLIAMENTARY FORMS OF GOVERNMENT. Few appreciate how fundamentally different Canadian and Australian immigration law is from that of the United States. The Canadian and Australian immigration systems operate under statutory authority that is extremely broad by U.S. standards, granting almost absolute authority to bureaucratic agencies, under the authority of a prime minister, to decide how many immigrants to admit annually and under what criteria. When problems arise, the immigration agencies in those countries can issue new rules with a speed and authority unimaginable in the United States. In contrast, it took nearly 20 years for U.S. Citizenship and Immigration Services to publish a regulation on the American Competitiveness and Workforce Improvement Act, which became law in 1998. Moreover, all efforts at establishing a point system in the United States have involved attempting to lock into place rigid criteria that could only be overturned by statute, since members of Congress see their role as passing laws and view the role of federal agencies as implementing those laws.

To supporters inside and outside of the administration and in Congress adopting a point system may be seen as a tactical means to reduce legal immigration. However, fewer immigrants will mean fewer workers and that will make it more difficult for employers of all types, as well as for the U.S. economy and economic growth. We need to balance our nation's need for workers who have different skills with family-based immigration. S. 744, bipartisan legislation which passed the U.S. Senate in 2013, thoughtfully pointed in this direction. Our immigration system can be designed to increase the immigration of people with a high level of skills without either eliminating the ability of employers to sponsor individual employees or reducing family immigration. For example, Congress could eliminate the per-country limit for employment-based immigration categories, increase the number of green cards for employment-based immigrants, and additionally could establish a pilot program for an "independent" category of immigrants, such as in Australia, alongside existing family and employment categories. Bipartisan efforts to identify workable solutions like these serve the interests of American workers and their families, helping our economy grow.

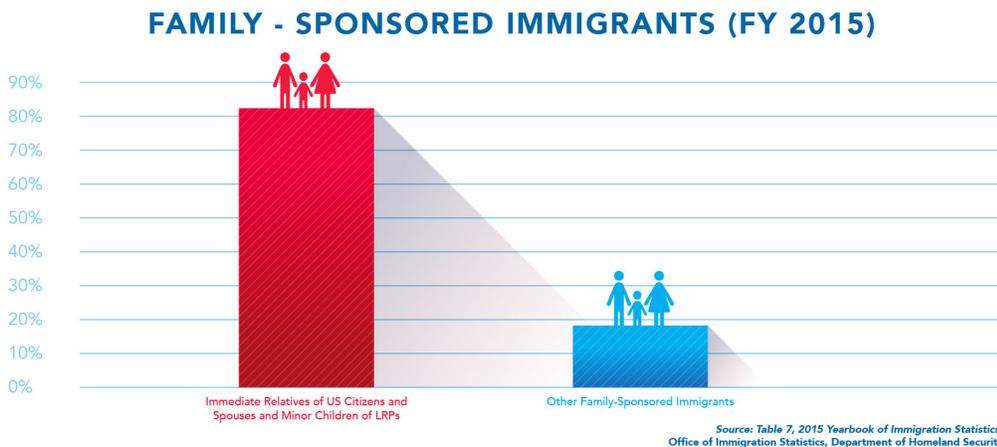
PART I

OVERVIEW OF THE U.S. LEGAL IMMIGRATION SYSTEM

The current legal immigration system attempts to balance the needs of employers seeking workers and U.S. citizens reuniting with close relatives. The two primary problems plaguing the legal immigration system are long waits for permanent residence (green cards) due to low quotas and per-country limits, and the difficulties employers face in sponsoring both high-skilled and low-skilled workers for employment.

A U.S. citizen can sponsor for immigration (permanent residence) a spouse, a minor child, a sibling and a married or unmarried adult child 21 years or older. A lawful permanent resident can sponsor a spouse, a minor child or an adult unmarried child. U.S. employers can sponsor for immigration primarily foreign nationals who hold a bachelor's degree or higher and a relatively small number of immigrants with less than a college degree. Employment-based immigration also includes up to 10,000 green cards a year for investors (\$500,000 or \$1 million) and some "special immigrants," such as ministers. Refugees and asylum seekers can gain permanent residence, as can 50,000 Electronic Diversity Visa Lottery winners each year from countries that send fewer immigrants to the United States. Half of an immigration category's quota can include the dependents of the principal person sponsored.

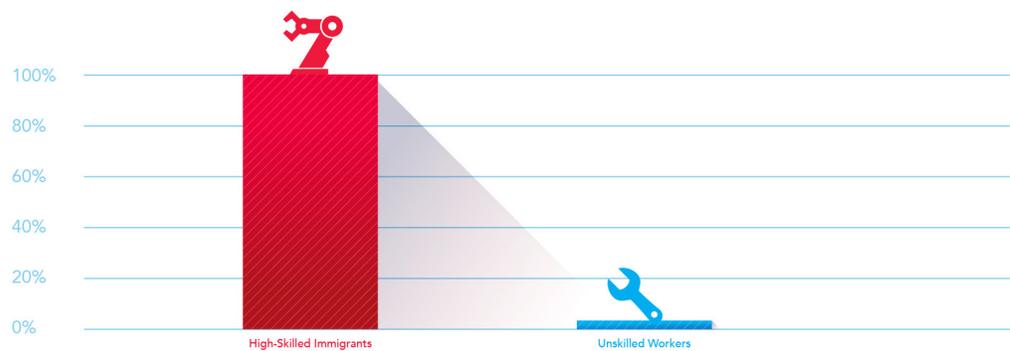
Figure 1



Approximately 82 percent of family immigrants are the “immediate relatives” of U.S. citizens — that is, spouses, parents and children under 21 — and the spouses and minor children of lawful permanent residents (LPRs). Almost 99 percent of employer-sponsored immigrants have a college degree, and only a little over 1 percent in fiscal year 2015 were “needed unskilled workers,” according to the Department of Homeland Security.¹

Figure 2

EMPLOYER-SPONSORED IMMIGRANTS (FY 2015)



Source: Table 7, 2015 Yearbook of Immigration Statistics, Office of Immigration Statistics, Department of Homeland Security. Individuals who received permanent residence via the first, second and third employment-based preferences.

Family- and employer-sponsored immigrants face long wait times because of insufficient numbers of visas, strong demand and per-country limits that cap the number of immigrants from a single country within a preference category. An analysis of the Visa Bulletin, published monthly by the U.S. State Department, reveals that today a U.S. citizen would wait more than 20 years for a married adult child from Mexico or the Philippines to immigrate legally to the United States. The wait time is similar for unmarried adult children from Mexico or brothers or sisters from Mexico or the Philippines. U.S. citizens with relatives from other countries would expect to wait more than a decade before either a married adult child or a sibling could immigrate to America.²

Wait times are also long for many employer-sponsored immigrants. In the third employment preference (the most common preference), a foreign national from India

¹ Calculations from Table 7 of 2015 Yearbook of Immigration Statistics, Office of Immigration Statistics, Department of Homeland Security, December 2016.
² Visa Bulletin, U.S. Department of State, July 2017.

can wait decades for an employment-based green card because of the large number of Indian applicants and the small annual allowance of approximately 3,000 visas a year under the per-country limits.³ The wait for potential immigrants from China and the Philippines is typically three to five years in that category. The wait for Indians in the second employment preference is a decade or longer.⁴

Those in family-sponsored immigrant visa backlogs usually wait outside the country, whereas the vast majority of employer-sponsored immigrants wait inside the United States while working in H-1B temporary status. While in H-1B status, a foreign national is typically unable to start a business and may avoid changing jobs due to the chance that it could affect his or her pending green card application.

In 2013, Congress had a good opportunity to permanently fix the backlog problems experienced by employer-sponsored immigrants but failed to do so. S. 744, which passed the Senate in 2013, would have kept the 140,000 annual limit on employment-based green cards but would have effectively increased the category by exempting several types of individuals from that limit.⁵ The bill would have eliminated both the backlog and wait times for employer-sponsored immigrants, according to the Congressional Budget Office.⁶

Counting as skilled workers only the approximately 140,000 new employer-sponsored immigrants (green card recipients) ignores the many professionals and researchers who work in America long-term on temporary visas. An estimated 600,000 or more individuals currently work in the United States for three to six years or more in H-1B status.⁷ In fiscal year 2015, U.S. Citizenship and Immigration Services (USCIS) approved 113,603 H-1B petitions for initial employment.⁸ In fiscal year 2016, the State Department approved 165,178 L visas for intracompany transferees (managers, executives and professionals with “specialized knowledge” as well as their dependents), 28,171 O visas for individuals with “extraordinary ability” and 24,530 visas for North American Free Trade Agreement (NAFTA) professionals.⁹

³ *Reforming America's Legal Immigration System, NFAP Policy Brief, National Foundation for American Policy, September 2015.*

⁴ *Visa Bulletin and additional analysis.*

⁵ *Individuals such as dependents, Ph.D. recipients, and foreign nationals with a master's degree or higher in a science, technology, engineering or math (STEM) field from a U.S. university would have been exempted.*

⁶ *Congressional Budget Office Cost Estimate of S. 744, Congressional Budget Office, June 18, 2013. "The increase in the number of visas available each year plus the availability of recaptured visas (totaling about 250,000) would enable everyone in the backlog for employment-based visas to be admitted by the end of 2016."*

⁷ *Estimate based on U.S. Citizenship and Immigration Services data.*

⁸ *Characteristics of H-1B Specialty Occupation Workers, Fiscal Year Annual Report to Congress, U.S. Citizenship and Immigration Services, Department of Homeland Security, March 17, 2016.*

⁹ *These numbers include visas for new workers and extensions, as well as dependents. Table XVI(A) Classes of Nonimmigrants Issued Visas, Fiscal Years 2012-2016, U.S. Department of State. Thousands of Canadians were not included in the FY 2016 TN numbers because they were not required to get visas to enter the U.S.*

TABLE 1 HIGH-SKILLED TEMPORARY VISAS

HIGH-SKILLED TEMPORARY VISA	NUMBER OF VISAS/PETITIONS
H-1B (workers in specialty occupation)	113,603 H-1B petitions (initial employment)*
L (intracompany transferee)	165,178 visas
O (extraordinary ability)	28,171 visas
TN (NAFTA professional)	24,530 visas**

Source: Table XVI(A) Classes of Nonimmigrants Issued Visas, Fiscal Years 2012-2016, U.S. Department of State. Visa numbers are for FY 2016 and include new workers and extensions as well as dependents; *H-1B petitions for FY 2015 in *Characteristics of H-1B Specialty Occupation Workers*, Fiscal Year Annual Report to Congress, U.S. Citizenship and Immigration Services, Department of Homeland Security, March 17, 2016. **Does not include Canadians, who are not required to obtain TN visas.

Employers often use temporary visas to fill niches in the U.S. labor market, but few employers are pleased with current visa policies. The supply of H-1B visas, limited by law, has been exhausted every year for the past 15 fiscal years. The L visa category has seen a high rate of denials, particularly for professionals born in India.¹⁰ O visas have at times seen more denials than expected and can be subject to narrow interpretations, while NAFTA visas have seen increased scrutiny at the border with Canada. As will be discussed in greater detail, employers are also not pleased with the categories governing lower-skilled workers, finding them bureaucratic and insufficient to meet labor needs.

Increasing Skill Level of Immigrants to the United States

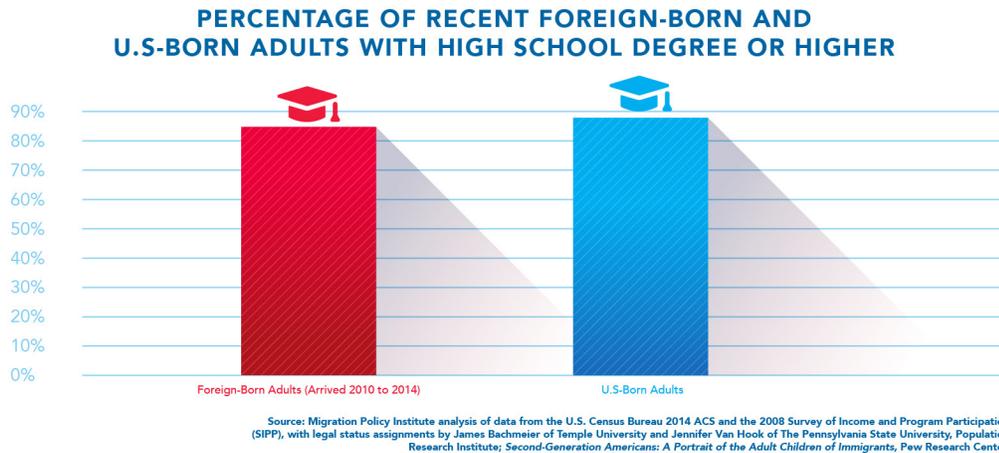
While a key premise of establishing a point system is a perceived low educational level for current legal immigrants, in fact, the skill level of immigrants is rising. Further, both recent immigrants and their children are *more likely* than native-born Americans to graduate college. Moreover, contrary to claims that the U.S. admits mostly unskilled workers, Census data show 84 percent of individuals admitted legally to the United States between 2010 and 2014 had a high school degree or higher, according to the Migration Policy Institute (MPI).¹¹ This is only 4 percentage points lower than the 88 percent of all adults in the U.S. (25 years and older) who have at least a high school degree.¹²

¹⁰ *Reforming America's Legal Immigration System, NFAP Policy Brief.*

¹¹ *Migration Policy Institute analysis of data from the U.S. Census Bureau 2014 ACS and the 2008 Survey of Income and Program Participation (SIPP), with legal status assignments by James Bachmeier of Temple University and Jennifer Van Hook of The Pennsylvania State University, Population Research Institute. Special thanks to Jeanne Batalova of MPI.*

¹² *"Second-Generation Americans: A Portrait of the Adult Children of Immigrants," Pew Research Center, February 7, 2013*

Figure 3



Educational attainment is even higher for the children of immigrants. “Among 18-to-24-year-old children of immigrants, [only] 7 percent have not completed high school and are not enrolled in school,” according to Pew Research Center.¹³ This improvement in educational achievement over their parents demonstrates that the children of immigrants assimilate and enter the economic mainstream as well as or better than their predecessors.

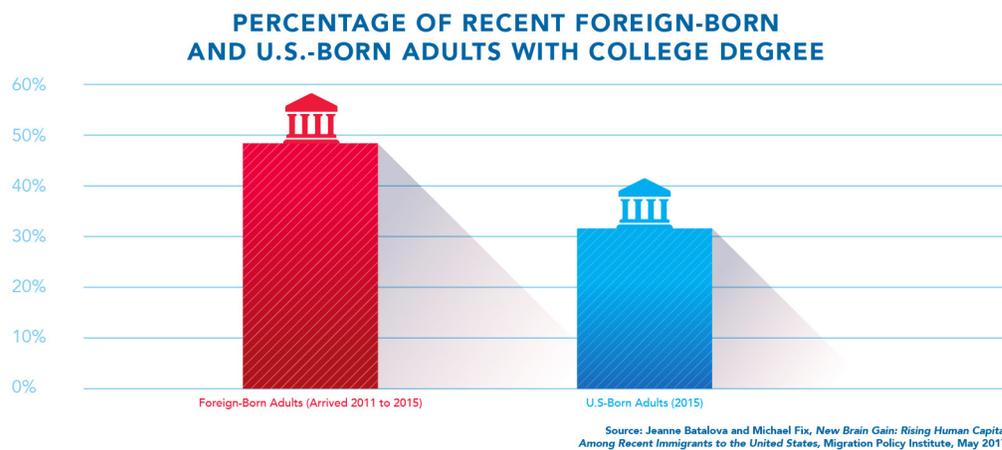
The children of immigrants are more likely to finish high school than all adults 25 or older in the U.S. (90 percent vs. 88 percent) and are more likely to complete college, with 36 percent of the adult children of immigrants attaining a college degree compared with 31 percent of U.S. adults overall.¹⁴ Moreover, many children of immigrants are poised to be among America’s highest achievers. For example, “83 percent (33 of 40) of the finalists of the 2016 Intel Science Talent Search, the leading science competition for U.S. high school students, were the children of immigrants,” according to a study by the National Foundation for American Policy. “That compares to 7 children who had both parents born in the United States. The science competition has been called the ‘Junior Nobel Prize.’”¹⁵

When it comes to obtaining a college degree, immigrants’ education level has been rising and as a whole surpasses that of native-born citizens. According to the MPI, “analysis of data from the U.S. Census Bureau finds that almost half (48 percent) of im-

¹³ *Ibid.*
¹⁴ *Ibid.*
¹⁵ Stuart Anderson, *The Contributions of the Children of Immigrants to Science in America*, NFAP Policy Brief, National Foundation for American Policy, March 2017.

migrants coming to the United States between 2011 and 2015 were college graduates (compared to 31 percent of U.S.-born adults in 2015) ... This rise in immigrants' educational attainment is correlated with increasing flows from Asia, although it should be noted that about one-quarter of recent immigrants from Latin America are college graduates."¹⁶

Figure 4



Census data show the number of immigrant college graduates rose 90 percent from 2000 to 2015 and recent arrivals are far more likely to have degrees than the residents of many of the states in which they live.¹⁷ “In Michigan and Ohio, while 59 to 63 percent of recent arrivals had at least a bachelor’s degree, 26 to 27 percent of the native-born were college graduates,” notes the recent MPI analysis.¹⁸ All of the figures in the analysis include unauthorized immigrants, who typically have lower levels of education than legal immigrants. Analysis limited to those who arrived and are working in the United States legally would show an even higher level of immigrant education level.¹⁹

¹⁶ Jeanne Batalova and Michael Fix, *New Brain Gain: Rising Human Capital Among Recent Immigrants to the United States*, Migration Policy Institute, May 2017.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ This was confirmed by MPI calculations.

PART II

UNDERSTANDING HOW POINT SYSTEMS WORK IN CANADA AND AUSTRALIA

Under a point system, a government grants permanent residence to immigrants based on points received for characteristics such as age, language ability and education. Then, the government aims to admit a predetermined number of immigrants, either overall or just within a particular category of immigrants, by establishing the number of points that individuals need to gain permanent residence during that year. (In the United States, gaining permanent residence is colloquially called obtaining a “green card.”)

The point system concept has gained renewed attention in the United States. In a February 28, 2017, speech to Congress, President Trump stated he wanted to move the U.S. immigration system toward a point system similar to the ones used in Canada or Australia.²⁰ Then, on August 2, 2017, President Trump stood at a White House press event with Sen. Tom Cotton (R-Ark.) and Sen. David Perdue (R-Ga.) and endorsed a revised version of the Reforming American Immigration for a Strong Economy (RAISE) Act. As discussed in more detail in Part 3, the RAISE Act would eliminate several family immigration categories, cap refugee admissions at 50,000 annually and, according to its authors, reduce legal immigration by 50 percent over 10 years.²¹

The RAISE Act would not increase the number of immigrants admitted to the United States based on skills. Instead, it would eliminate the current employment-based immigration categories and use the 140,000 immigrant visas reserved for those categories to establish entry via a point system, with points awarded based on age, education and English language ability.

The president and the senators said the point system in the bill is modeled on such systems in Canada and Australia. Below and in the section that follows are detailed looks at how the immigration systems operate in those countries and whether the RAISE Act would work the same - or even attempt to achieve the same goals - as the point systems in Canada and Australia. In addition, the analysis asks whether it is possible for

²⁰ “Donald Trump’s Congress Speech (Full Text),” CNN, March 1, 2017. In the speech, Trump said, “Protecting our workers also means reforming our system of legal immigration. The current, outdated system depresses wages for our poorest workers, and puts great pressure on taxpayers. Nations around the world, like Canada, Australia and many others – have a merit-based immigration system.”

²¹ “Reforming American Immigration for a Strong Economy (RAISE) Act,” Fact Sheet, Sen. Tom Cotton and Sen. David Perdue.

the United States to adopt systems like Canada and Australia given the significant differences in America's system of government, specifically its separation of legislative and executive branch authorities.

Purpose of Point Systems to Attract More Immigrants to Canada and Australia

The purpose of the point systems in Canada and Australia is to attract more immigrants to these countries, which have small populations, whereas most U.S. advocates for a point-based system want to use it to eliminate family immigration categories and reduce the number of immigrants to the United States. In Australia, the point system is designed to supplement employer-sponsored immigrants by allowing “independent” immigrants — those without job offers or those not already working for an Australian employer — the chance to immigrate. It is used only for permanent residence, not for the equivalent of H-1B temporary visas, as some have suggested in the United States. Similarly, in Canada, the point system has been used to attract those without a connection to Canada. However, the Canadian system has evolved to give greater weight to work experience in Canada.

A High Level of Legal Immigration Is a Key Component of Canadian and Australian Immigration Systems

The high level of legal immigration, not their point systems, is the key defining characteristic of the Canadian and Australian immigration systems. Relative to the size of their populations, Canada and Australia admit two to three times as many immigrants each year as the United States.²²

As Table 2 illustrates, this means that if the U.S. admitted legal immigrants at the same rate as Canada, relative to population size, America would admit about 2.5 million immigrants a year (two and a half times as many as are currently admitted). Similarly, the U.S. would admit approximately 2.9 million immigrants a year if it admitted legal immigrants at the same rate, relative to population size, as Australia.²³

²² Dept. of Homeland Security, CIA, Government of Canada, Government of Australia. Rate equals annual immigration level as a percent age of country's population. See also Stuart Anderson, “Does Donald Trump Plan to Admit 2.5 Million Immigrants a Year? (Hint: Kind of Like Canada,” *Forbes*, March 4, 2017. In 2015, the annual flow of new legal immigrants to Canada represented 0.77 percent of its population (271,847 new immigrants into a population of approximately 35 million), while in Australia, in 2015-16, the annual flow was 0.90 percent of its population (207,325 new immigrants into a population of 23 million). In comparison, the annual flow of new immigrants into the United States in 2015 was 0.32 percent of the U.S. population (1,051,031 new immigrants into a population of about 324 million).

²³ *Ibid.* This underestimates immigration to Australia, since it does not include people from New Zealand allowed to settle permanently without quota.

TABLE 2**U.S. IMMIGRATION LEVELS IF ADMITTED AT SAME RATE AS CANADA AND AUSTRALIA**

CURRENT ANNUAL U.S. LEGAL IMMIGRATION	1 million
U.S. LEVEL IF ADMITTED IMMIGRANTS AT SAME RATE AS CANADA	2.5 million
U.S. LEVEL IF ADMITTED IMMIGRANTS AT SAME RATE AS AUSTRALIA	2.9 million

Source: Dept. of Homeland Security, CIA, Government of Canada, Government of Australia. Rate equals annual immigration level as a percentage of country's population.

Noah Klug, a director at the Fragomen law firm who has practiced immigration law in Australia, notes the numbers show that the overall level of immigration is a crucial part of Australia's immigration system. Even for temporary visas, Australia has annually admitted about the same number of high-skilled visa holders as the United States despite Australia having only 10 percent of the U.S. population.²⁴ Attorney Peter Reikai explains that Canada's high rate of immigration has important practical implications. "If we brought in the same numbers every year as the Americans do on a per capita basis we would get through our spouses and a few parents and some refugees and really have very little room left for the economic immigrants."²⁵

It's Not the Point Systems That Help Employers Find Workers in Australia and Canada

In both Canada and Australia, the temporary-visa regime plays a key role for employers seeking to hire workers for positions at different skill levels. "The points system is not at all important for corporate immigration in Australia," said Tim Denney with Berry Appleman & Leiden in Sydney. "The points system comes into play when an individual seeks to migrate to Australia and does not have a business operating in Australia willing to sponsor him or her up front for either a temporary work visa or permanent residence."²⁶

²⁴ Interview with Noah Klug, March 3, 2017; Stuart Anderson, "Does Donald Trump Plan to Admit 2.5 Million Immigrants a Year? (Hint: Kind of Like Canada)," *Forbes*, March 4, 2017.

²⁵ *Ibid.*

²⁶ *State of Immigration, Business Roundtable*, March 2015.

This contradicts many misconceptions Americans have held about Australia’s immigration system.

Lawyers who have practiced in Australia note that focusing on the point system misses how employers actually utilize the country’s immigration system. “In my mind, what is important to note when looking to Australia’s point system for insights into the U.S. immigration system is that (1) it is only used in Australia for permanent residency applications, not temporary work visas, and (2) it is not the only means to obtain permanent residency in Australia,” said Klug. “There are a number of routes, including employer-sponsored permanent residency, which represent a much smoother process than in the U.S. and include a streamlined route for foreign nationals already working for the company on a temporary work visa.”²⁷

TABLE 3
AUSTRALIA’S SKILL STREAM (2015-16)

EMPLOYER-SPONSORED CATEGORY	GENERAL SKILLED MIGRATION CATEGORY (POINT SYSTEM)	OTHER (POINT SYSTEM)
Regional Sponsored Migration Scheme - 12,269 people	Skilled Independent - 43,994	Business Innovation and Investment Programme - 7,260
Employer Nomination Scheme - 35,981	State and Territory Government Nominated - 24,650	Distinguished Talent - 200
	Skilled Regional - 4,196	

Source: Government of Australia.

Out of the 207,235 total immigrants Australia admitted in 2015-16, only 72,840, or 39 percent, gained permanent residence via Australia’s point system.²⁸ Employers can sponsor immigrants directly through either the Employer Nomination Scheme or the Regional Sponsored Migration Scheme, which accounted for 23 percent of total immigration, and 37 percent of immigration through Australia’s “Skill” stream. “The Regional

²⁷ Interview with Noah Klug.
²⁸ Government of Australia.

Sponsored Migration Scheme (RSMS) enables employers in regional and low population growth areas of Australia to sponsor skilled employees,” according to Australia’s Department of Immigration and Border Protection.²⁹ Among employer-sponsored immigrants, 86 percent were already living in Australia, typically working on a temporary visa.³⁰

Australia’s point system, which covers only part of the country’s immigration system and a portion of the “Skill” stream, contains three subcategories: Skilled Independent, State and Territory Government Nominated and Skilled Regional. Points are awarded based on a combination of age, education, qualifications, work experience and other factors, including whether an occupation is listed on a Skilled Occupation List. The government sets a point level that must be achieved to obtain permanent residence during that year within the numerical limit established by the government. The Department of Immigration chooses within that limit the number of visas allocated to General Skilled Migration (point system) and how many are provided to the Employer-Sponsored category (Employer Nomination Scheme and Regional Sponsored Migration Scheme). The top 5 occupations for the Skill stream in 2015-16 were accountant, software engineer, cook, registered nurse and external auditor.³¹

Individuals who want to immigrate to Australia via the point system part of the immigration system must submit an online Expression of Interest (EOI) through SkillSelect. The Expression of Interest asks for information such as occupation, work experience, education and English language ability. “These skilled workers and business people can then be found and nominated for skilled visas by Australian employers or state and territory governments, or they might be invited by the Australian Government to lodge a visa application,” according to the Australian Department of Immigration and Border Protection. “All people interested in the points based skilled migration or business investment and innovation visa programmes will need to submit an EOI and receive an invitation in order to lodge a visa application.”³²

At the same time, some elected officials have advocated the United States, at least on the surface, move toward the immigration systems of Canada and Australia,

²⁹ Department of Immigration and Border Protection, Australian Government, 2015-16 Migration Programme Report.

³⁰ *Ibid.*

³¹ *Ibid.*

³² <https://www.border.gov.au/Busi/Empl/skillselect>.

employers in those nations are dealing with new or existing restrictions that can make it more difficult to hire and retain foreign workers at different skill levels. “Australia is clamping down on business immigration significantly,” notes attorney Noah Klug.³³

Canadian Employers Often Criticized Their Country’s Immigration Point System

Canadian employers have at times vocally criticized the Canadian immigration point system and fixes have happened only because the government in Canada has the type of unilateral authority to make quick changes to immigration policy unlikely ever to be seen in the United States. “For the Canadian Chamber and its members who employ highly skilled international talent, the situation has become untenable and dismaying,” according to a January 2016 report by the Canadian Chamber of Commerce, the country’s leading business organization. “The actual design of the system has had negative effects across high-value growth sectors, from high tech to financial services to academic research,” states the report. “Policy approaches that were born of suspicion, negativity and reprisal were applied to the Temporary Foreign Worker Program (TFWP) and then similarly and inappropriately applied to Express Entry.”³⁴

Starting in January 2015, Express Entry allowed individuals to go online, indicate their interest in immigrating to Canada and, if they received enough points, be invited to apply for permanent residence. Around this time, Canada’s immigration service tightened its rules on temporary visas, including the widespread use of Labour Market Impact Assessments (LMIAs). The crux of the problem was that Canadian immigration officials counted as “arranged employment” only jobs for which employers had already received Labour Market Impact Assessments. Therefore, people received the most points – and could immigrate – simply because their jobs had such assessments attached to them.

In practice, this meant executives of major corporations, intracompany transferees, and even neurosurgeons – all of whom were exempt from Labour Market Impact

³³ Interview with Noah Klug.

³⁴ *Immigration for a Competitive Canada: Why Highly Skilled International Talent Is At Risk*, Canadian Chamber of Commerce, January 2016, p. 5.

Assessments – were failing to garner enough points to immigrate under Express Entry.³⁵ “The employer’s role in selecting the most qualified and skilled talent ... has been thwarted,” noted the Canadian Chamber of Commerce report.³⁶ In addition, Labour Market Impact Assessments for temporary visas became more difficult to obtain, at the same time they became more critical for permanent residence under Express Entry.

After facing months of criticism, the Canadian government switched course and started to award more points for individuals such as executives. Employers are still not pleased with Express Entry, but the most egregious problems have been addressed, according to Patrick Snider, the Director of Skills and Immigration Policy with the Canadian Chamber of Commerce. He believes there is still more work to be done.³⁷ “Express Entry is, of course, a zero-sum game where changes in criteria create a new loser for every new winner,” notes Peter Reikai, an attorney at Reikai LLP in Toronto. “The question, as always, is are we picking the right applicants?”³⁸

U.S. Immigration System is Not Capable of Making Quick Changes

The corrections made to Express Entry should give no U.S. policymaker solace, since such rapid changes would likely be impossible in the United States. In November 2016, U.S. Citizenship and Immigration Services (USCIS) finalized regulations on the ability of high-skilled professionals on H-1B temporary visas to obtain employment authorization documents (EADs) while waiting for employment-based green cards (for permanent residence). The regulations would have been unremarkable except for one thing: The laws for which USCIS wished to provide greater clarity had been passed nearly two decades earlier.³⁹

Ironically, the 2007 Senate bill (S. 1348) whose proposed point system was most analogous to the RAISE Act, would have *prohibited* the kind of flexibility that has en-

³⁵ Interview with Peter Reikai, April 20, 2017.

³⁶ *Immigration for a Competitive Canada: Why Highly Skilled International Talent Is At Risk*, p. 6.

³⁷ Interview with Patrick Snider, May 26, 2017.

³⁸ Interview with Peter Reikai.

³⁹ <https://www.federalregister.gov/documents/2016/11/18/2016-27540/retention-of-eb-1-eb-2-and-eb-3-immigrant-workers-and-program-improvements-affecting-high-skilled>. *The American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) and the American Competitiveness in the Twenty-first Century Act of 2000 (AC21)*.

abled Canadian and Australian officials to correct their point systems when they have functioned poorly. Section 502 of S. 1348 stated above a chart detailing the point system the following: “The merit-based evaluation system shall initially consist of the following criteria and weights.” Then, the legislative language added: “no modifications to the selection criteria and relative weights accorded such criteria that are established by” the bill “shall take effect earlier than the sixth fiscal year in which aliens described in section 101(a)(15)(Z) of this Act are eligible for an immigrant visa.”⁴⁰ In practice, that would have meant no change in the criteria and weights for 14 years. Given how difficult it is to pass an immigration bill, expecting Congress to step in and make additional legislative changes to a point system that is not working would be a large leap of faith.

The U.S. System of Government Is Likely Incompatible with Canadian and Australian Point Systems

The separation of authorities between the legislative and executive branches of the U.S. government likely make it impossible for any point system to work effectively and in a manner similar to the point systems in Canada and Australia, both of which have parliamentary forms of government. The immigration systems of both countries operate under statutory authority that is astonishingly broad by U.S. standards and grants almost absolute authority to bureaucratic agencies, under the authority of a prime minister, to decide how many immigrants to admit and under what criteria. Moreover, when problems arise and criteria need to be changed, immigration agencies issue new rules with a speed and authority unimaginable in the United States. In America, it often takes years for the federal government to issue new regulations, even when a U.S. agency decides to issue them, and even then, new rules can be subject to litigation.

Amy M. Nice, a former attorney adviser in the Office of the General Counsel at the Department of Homeland Security (DHS), notes that it would be surprising, and perhaps even unconstitutional, for Congress to cede unilateral authority (i.e., authority without standards for exercising it) to the executive branch since Article I, Section 8 of the Constitution states that Congress shall ensure there is a uniform law of immigration

⁴⁰ Section 502 of S. 1348 (2007); Stuart Anderson, *The Point System's Impact on Foreign Nurses and Other Potential Immigrants*, NFAP Policy Brief, National Foundation for American Policy, June 2007.

and naturalization.⁴¹ She questions whether DHS staff would possess the expertise (if anyone does) to decide which skills are needed in the U.S. economy, a decision that today is made by hundreds of thousands of individual employers making hires in the marketplace and through the current employer sponsorship system under U.S. immigration law. She asks: “Could the APA [Administrative Procedure Act] ‘notice and comment’ rulemaking process accommodate such a difficult subject? Would we want DHS to change the points criteria without formal rulemaking? Would that be better or worse? Why would Congress think DHS is competent to figure out annual or other revisions to the point system admission criteria?”⁴²

Likely few members of Congress appreciate how fundamentally different Canada and Australia’s immigration laws are from those of the United States. “If the United States adopted the same immigration system as Canada, then the president of the United States, via the Secretary of Homeland Secretary, could set the level of legal immigration in a given year at zero, 500,000 or 5 million, whichever level he prefers,” said Reikai. “In addition, the president could establish or eliminate entire categories of immigrants and decide on the number of immigrants in each category.”⁴³

As noted, Canada and Australia have parliamentary systems, which combine certain legislative and executive branch authorities in a way that make direct analogies to the United States difficult. “It is a collaborative process in Australia, but if you tried to graft it onto the U.S. political system you could get completely different results,” said Noah Klug, an American who worked for years as an immigration attorney in Australia.⁴⁴

Such a system would be the opposite of the current U.S. immigration system, whereby Congress establishes the law on the number and categories of immigrants and the executive branch implements the law. In general, the only exception is the process of deciding on the number of refugees admitted each year, which the president proposes in consultation with Congress.

In contrast, Canada’s Immigration and Refugee Protection Act states, “The Minister must, on or before November 1 of each year . . . table in each House of Parliament

⁴¹ The U.S. Supreme Court has interpreted naturalization to be read as “immigration” more generally.

⁴² Interview with Amy M. Nice, August 4, 2017.

⁴³ Interview with Peter Reikai, April 20, 2017.

⁴⁴ Interview with Noah Klug, May 18, 2017.

a report on the operation of this Act . . . (2) The report shall include a description of . . . (b) in respect of Canada, the number of foreign nationals who became permanent residents, and the number projected to become permanent residents in the following year.”⁴⁵ In this context, the “Minister” is the Minister of Immigration, Refugees and Citizenship Canada, also known as the “Minister of Immigration,” who serves at the pleasure and direction of the Prime Minister of Canada.

The law is similar in Australia. “Under section 85 of the *Migration Act 1958* (the Act), the Minister for Immigration and Border Protection has the power to ‘cap’ or limit the number of visas which can be granted each year in a particular visa subclass,” according to the Australian government’s Department of Immigration and Border Protection.⁴⁶ Australia’s prime minister, through the country’s immigration minister, has additional authorities: “Under section 39 of the Act, the Minister has the power to set the maximum number of visas of a class that may be granted in a particular financial year.”⁴⁷

In both Canada and Australia, ministers have the authority to select the characteristics of immigrants and the number of points awarded for characteristics such as age or education, as well as to set a “pass” mark for the point total in order to limit the number of immigrants selected through the point system each year.

In addition to the almost unlimited authority given to government ministers in immigration matters, the immigration systems in Canada and Australia also differ dramatically from the U.S. immigration system in the role they grant to provincial and regional authorities in selecting immigrants, albeit within the numbers chosen by federal authorities.

Studying the way other countries operate their government functions can sometimes yield interesting ideas. But it can also lead to misconceptions if Americans do not understand fully how that function operates under a different set of laws and system of government.

Canadian Point System Not Helpful for Lower-Skilled Workers

While Canadian employers of high-skilled professionals have complained the loudest over problems with Canada’s Express Entry, companies trying to attract low-skilled workers have also been unhappy. Patrick Snider of the Canadian Chamber of Commerce

⁴⁵ *Immigration and Refugee Protection Act, Section 94. Emphasis added.*

⁴⁶ *Fact Sheet – Managing the Migration Programme, Department of Immigration and Border Protection, Government of Australia. “Capping ensures the planning levels for various migration categories, decided by the government for each Migration Programme year, are not exceeded.”*

⁴⁷ *Ibid.*

notes that the temporary visa categories in Canada have become so burdensome that “most companies don’t want to use them.”⁴⁸ Moreover, employees in lower-skilled jobs with temporary visas are generally not able to stay permanently, no matter how much their employers value them.

When Express Entry was first announced, Dan Kelly, president and CEO of the Canadian Federation of Independent Business, said he thought the new system would “do zero” for employers looking to fill jobs that did not require a large amount of education. “That is our criticism of the Express Entry system, that it still prohibits lower-skilled workers from coming to Canada and taking the jobs that are going begging in our economy,” said Kelly.⁴⁹

Close to three years later, Kelly continues to believe Express Entry does not work well for employers who need to hire lower-skilled workers. He does approve of corrections made to give greater weight to job offers. “To clarify, we do support the overall direction of the Express Entry system as it allows a greater role for employers and job offers in the immigration system,” said Kelly. “The chief advantage is that the immigrant is more likely to come for a specific job, reducing the challenge of immigrant credentials and helping to ensure immigrants are spread across the country in areas where people are needed for jobs.”⁵⁰

However, Kelly sees the same problems for his members, particularly small- and medium-sized businesses. “Our major criticism, though, still stands,” said Kelly. “Virtually all of the immigration streams are focused on highly skilled and educated immigrants. There is nothing wrong with that in general, but it starts to break down when the needs of Canadian employers are often in the low or semi-skilled occupational categories. While the temporary foreign worker program used to help, it is virtually shut down for most employers with more junior-skilled categories.”⁵¹

Kelly highlights a key difference between Canada and the United States: Canada, with the U.S. on its southern border, has a relatively low level of unauthorized immigration. “The U.S. has the relief valve of many undocumented workers to fill gaps in job

⁴⁸ Interview with Patrick Snider.

⁴⁹ Susana Mas, “Express Entry Immigration Starts Jan. 1, Leaving Employers Uncertain,” *CBC News*, November 21, 2014.

⁵⁰ Interview with Dan Kelly, May 17, 2017.

⁵¹ *Ibid.*

categories Americans don't want," said Kelly. "While we still have a decent program for agricultural jobs, the restaurants, hotels and general laborers the country needs are often found lacking."⁵²

Employers in the Canadian meat-processing industry have criticized the Canadian immigration system. "Three years after former Prime Minister Stephen Harper tightened restrictions on foreign workers to force employers to hire more Canadians, processors from British Columbia to Nova Scotia say the move compounded a labor shortage from which they have not recovered," reported *The Financial Post*. "We are really concerned going forward how we're going to be able to fill our positions," said Claude Vielfaure, president of HyLife Ltd., a Manitoba-based pork processor.⁵³

U.S. point-system advocates generally ignore the fact that both Canada and Australia allow provinces or regions to play a role in sponsoring individuals or receiving an allocation of visas to admit immigrants. In the past, these practices have helped lower-skilled workers in some areas gain permanent residence. "A key theme of the past few decades has been the growth of the Provincial Nominee Programmes, which now account for a significant portion of the economic immigrants," notes Reikai. "Some of these provincial programmes are now partnered with the federal Express Entry programme management, with selected Provincial Nominees eligible for a high number of 'points' under federal Express Entry criteria."⁵⁴ Similarly, Australia allows employers in particular regions and the regions themselves to put forward potential immigrants.⁵⁵

52 *Ibid.*

53 Andy Hoffman, Mario Parker and Jen Skerritt, "America Next? How Canada Curbed Foreign Workers and Hobbled its Meat Industry," *The Financial Post*, February 17, 2017.

54 Interview with Peter Reikai.

55 Jason Riley, "On Immigration, Washington Doesn't Know Best," *The Wall Street Journal*, May 2, 2017. Recent bills introduced by Senators Ron Johnson (R-Wis.) and Rep. Ken Buck (R-Colo.) would give states a role in admitting immigrants, first in temporary status and then as permanent residents.

PART III

THE RAISE ACT AND THE ECONOMIC IMPACT OF SIGNIFICANTLY REDUCING LEGAL IMMIGRATION

The key elements of the RAISE Act involve reducing legal immigration by 50 percent and eliminating most family-immigration categories, while the inclusion of a point system in the bill and its controversial features also garnered media attention. The bill, discussed in a White House press event on August 2, 2017, contains almost the verbatim text of the version of the RAISE Act (S. 354) introduced in the U.S. Senate on February 13, 2017. The only major difference is in the second half of the new text: Instead of leaving the employment-based immigration categories intact as in the original version of the bill, the revised version eliminates all of those categories and replaces them with a point system.

The inclusion of a point system conforms, at least on the surface, to President Donald Trump's call in a February 28, 2017, speech to Congress to award green cards based on "merit." President Trump did not call for reducing legal immigration either in that February speech or in a May 2017 interview with *The Economist*.⁵⁶ His appearance at the release of the revised version of the RAISE Act in August 2017 places him in favor of dramatically reducing legal immigration to the United States.

Reducing Legal Immigration by 50 Percent

By eliminating several immigration categories, the RAISE Act would reduce legal immigration by 50 percent. "The RAISE Act would lower overall immigration to 637,960 in its first year — a 41 percent drop — and to 539,958 by its tenth year — a 50 percent reduction," according to Sen. Tom Cotton (R-Arkansas) and Sen. David Perdue (R-Georgia).⁵⁷ Since immigrants are a major source of labor force growth in the United States, reducing legal immigration carries major implications for the U.S. economy, particularly for eco-

⁵⁶ Eliana Johnson and Josh Dawsey, "Trump Crafting Plan to Slash Legal Immigration," *Politico*, July 12, 2017; "Transcript: Interview with Donald Trump," *The Economist*, May 11, 2017. The interview includes the following text: "Do you want to curb legal immigration? Trump: Oh sure, you know, I want to stop illegal immigration.

And what about legal immigration? Do you want to cut the number of immigrants? Trump: Oh legal, no, no, no. I want people to come into the country legally. No, legally? No. I want people to come in legally. But I want people to come in on merit. I want to go to a merit-based system. Actually two countries that have very strong systems are Australia and Canada. And I like those systems very much, they're very strong, they're very good, I like them very much. We're going to a much more merit-based system. But I absolutely want talented people coming in, I want people that are going to love our country coming in, I want people that are going to contribute to our country coming in. We want a provision at the right time, we want people that are coming in and will commit to not getting . . . not receiving any form of subsidy to live in our country for at least a five-year period.

But the numbers of those people could be as high as the numbers that are coming in legally now? You're not looking to reduce the numbers? Trump: Oh yeah, no, no, no, no, we want people coming in legally. No, very strongly. Now they're going to be much more strongly vetted as you see."

⁵⁷ "Reforming American Immigration for a Strong Economy (RAISE) Act," Fact Sheet, Sen. Tom Cotton and Sen. David Perdue.

conomic growth and entrepreneurship, as well as for employers and individuals waiting in backlogs. It would also represent the largest reduction in immigration since the legislation in 1924 to establish “national origins” quotas as a way to prevent Italians, Greeks and East Europeans, particularly Jews, from immigrating to the United States.

The bill accomplishes this large-scale reduction primarily by eliminating all but two family immigration categories. Under the RAISE Act, American citizens would no longer be allowed to sponsor for immigration their adult children (married or unmarried), their siblings or their parents. Lawful permanent residents could no longer sponsor their unmarried adult children. Moreover, while U.S. citizens could still sponsor a spouse without numerical limit, only children 17 years old or younger could be sponsored as “immediate relatives” (rather than the 20 years old or younger under current law). While lawful permanent residents could theoretically still sponsor a spouse or minor child (17 years old or younger) under the bill, it is possible that none would be allowed into the country. That is because the bill sets an annual limit of 88,000 spouses and minor children, but requires anyone paroled into the country who has not left the U.S. within one year (and not received permanent residence within two years) to be subtracted from the 88,000 limit.⁵⁸

As will be discussed, all of the people in employment-based and family-sponsored preference categories whose categories the bill would eliminate have been waiting in backlogs. Except for those with applications pending within a year of passage, those individuals would be prevented from immigrating to the United States under the bill unless they could enter via the point system.⁵⁹

The bill also reduces legal immigration by denying future opportunities to immigrate for those who might have received permanent residence under the Diversity Immigrant Visa program (50,000 per year) and by limiting refugee admissions to 50,000 per year. Placing a hard cap on refugee admissions would tie the hands of a president to respond to world events and, as observers have pointed out, would diverge from America’s centuries-old tradition of providing refuge to the oppressed.

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*See Section 4 of the revised RAISE Act.
The bill provides 2 points for family-based immigrants with applications eliminated by the bill who apply under the point system.*

Ending Family and Employment Categories Eliminates Applications for More Than 4 Million People Waiting to Immigrate Legally

The most immediate impact of the RAISE Act would be to eliminate the applications of more than 4 million people currently waiting in immigration backlogs. According to the State Department, as of November 1, 2016, 4,367,052 applicants were on the waiting list in employment-based and family-sponsored preference categories.⁶⁰ Approximately 2.5 million of the applicants were in the category for siblings of U.S. citizens, about 1 million were the adult children of U.S. citizens and about 700,000 were spouses and minors or adult unmarried children of lawful permanent residents. The leading countries of origin for people in the backlogs are Mexico, Philippines, India, Vietnam and China.⁶¹

The irony of eliminating people from backlogs who applied legally to immigrate is that lawmakers who oppose providing legal status to unauthorized immigrants often argue that it would be unfair to those waiting in immigration backlogs. Sen. Cotton, co-author of the RAISE Act, wrote an op-ed in *The Wall Street Journal* in 2013 that criticized a Senate bill that included legalization. “This approach is unjust and counterproductive. We should welcome the many foreigners patiently obeying our laws and waiting overseas to immigrate legally,” he wrote.⁶²

The State Department waiting list does not include the hundreds of thousands of employment-based immigrant applicants who are waiting for their green cards while working in the U.S., primarily in H-1B status. Such individuals would receive adjustment of status with the U.S. Citizenship and Immigration Services (USCIS) inside the U.S.

Under current law, high-skilled individuals with a pending green card application can remain in the U.S. working in H-1B status beyond the customary six-year limit. However, since the RAISE Act would eliminate the applications of employer-sponsored immigrants waiting in green card backlogs, such individuals would be forced to leave the country unless they gained enough points under the point system within the first year, and perhaps not even then, depending on how long the new process takes. This would disrupt lives and business activity across America.

⁶⁰ Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based Preferences Registered at the National Visa Center as of November 1, 2016, U.S. Department of State.

⁶¹ Ibid.

⁶² Tom Cotton, “Tom Cotton: It’s the House Bill or Nothing on Immigration,” *The Wall Street Journal*, July 10, 2013.

Those who deal with such applicants on a regular basis appreciate the significance. This legislation is really cold-hearted,” according to Vic Goel, managing partner of Goel & Anderson, LLC. “I’ve concluded that not only would there be no mechanism for H-1B extensions beyond 6 years, but even more troubling is no mention of any transition plan for those who are affected by backlogs in the employment-based visa categories that will be eliminated.”⁶³

The RAISE ACT Does Not Increase Skilled Immigration and Is Not Similar to Canadian and Australian Systems

While Sen. Cotton and Sen. Perdue have argued that their bill would give “priority” to “skilled” immigrants and is modeled on immigration laws in Canada and Australia, the RAISE Act would not increase the number of people with skills immigrating to the United States. Instead, it would in effect transfer the 140,000 immigrant visas used annually for employment-based immigration categories to admit individuals and their dependents who receive the most points each year under a new point system.

The immigration system described in the RAISE Act fundamentally differs from the Canadian and Australian immigration systems. First, the bill’s goal is to significantly reduce immigration, whereas the purpose of Canadian and Australian immigration policies is to attract immigrants. As noted in Part 2, Canada and Australia currently admit about two to three times as many immigrants as the United States as a proportion of their populations, a figure that would become even more stark if the RAISE Act became law.

Second, Canada and Australia maintain significant roles for employers, including employer roles in regional and provincial programs. This feature is absent from the RAISE Act. In Australia, employer sponsorship for permanent residence operates alongside a point system, which is used mostly for people who immigrate without a current employer. In Canada, Express Entry strongly favors people currently working with a skilled temporary-visa status in Canada, also completely absent from the RAISE Act. Canadian attorney Peter Reikai sums up the point system in the RAISE Act as follows: “The bill somewhat resembles previous iterations of the Canadian point system which, on paper, looked like they were creating great immigrants for the labor market, but in fact were creating lots of taxi drivers with PhDs.”⁶⁴

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Stuart Anderson, “Cotton and Trump Team Hand America a Bad Bill,” *Forbes*, August 3, 2017.
Ibid.

Third, there is no flexibility in the RAISE Act's point system and, as discussed, likely never could be, given the U.S. political system and the role of Congress as compared to the parliamentary systems of Canada and Australia. Still, those familiar with how other countries operate their point systems were surprised by the bill. "I was reading through the RAISE Act, thinking to myself, how could they lock themselves into all of this?" said attorney Noah Klug. "What if it turns out that more weight needs to be given to certain criteria? Or if another aspect of the program simply isn't working? In Australia and Canada, they can (and do) easily make changes to the points system and qualifying occupations when they determine that this is necessary as a result of changes in the country's skilled labor needs. The U.S. would not be able to do so."⁶⁵

The RAISE Act's Point System Would Leave Employers Out of the Equation

Responding to the RAISE Act, *The Wall Street Journal* editorial board explained the primary problem with point systems vs. employer sponsorship, writing, "Any point system is also arbitrary and reflects the biases of politicians ... rather than the needs of employers."⁶⁶ Can a handful of people drafting legislation in a room anticipate the vast and varied needs of employers across the skill spectrum in an economy the size of that of the United States?

Under U.S. law, employers can sponsor individuals for permanent residence. While the current system has problems — low annual limits and per-country limits that produce long wait times — at least high-skilled foreign nationals can work in the country while waiting for a green card, and employers can reasonably expect that valued employees can work for them long-term in the U.S. As a practical matter, all of that would disappear if the RAISE Act became law. Even the relatively small number of individuals employers sponsor through the Other Workers category (currently 5,000 per year for those without a college degree) would likely no longer be able to immigrate.

Gaining permanent residence in the United States will be an even more fierce competition that will occur twice a year as USCIS will select about 70,000 individuals

⁶⁵ Interview with Noah Klug, August 4, 2017.
⁶⁶ "How to Increase Illegal Immigration," *The Wall Street Journal*, August 4, 2017.

among an estimated hundreds of thousands of applicants. It will be only 70,000 a year, since dependents will count toward the 140,000 limit.⁶⁷ A simple analysis of the numbers in relation to current backlogs illustrates how the RAISE Act is unworkable and will lead to disruption and lost talent.

The approximately 70,000 green cards a year for new principal applicants under the bill will be woefully inadequate for the individuals currently waiting in employment-based immigrant backlogs, never mind future applicants. (It is also probable that many of those removed from the family-sponsored immigrant backlogs would apply for entry via the new point system.)⁶⁸ The impact of such a low number given current backlogs and the inability of individuals to remain in H-1B status past six years is significant. For the sake of argument, assuming 210,000 principal applicants waiting today in employment-based preference categories (the figure is likely higher), if all of them achieved enough points to receive green cards, then the 210,000 individuals would take the 70,000 slots under the bill's point system for the first three years of the bill — leaving no green cards for anyone else. Further, in this scenario, at least two-thirds of those waiting in backlogs who did not gain a green card under the point system in the first year would be forced to leave the country if they already have exhausted their 6 years of H-1B status. This would be the case for many of these individuals.

Given the at least hundreds of thousands of applicants who would be hoping to receive one of approximately 70,000 principal slots, even small differences could prevent an applicant from gaining permanent residence. The education level or English language ability of one's spouse could change one's destiny, as points can be subtracted from an applicant's score depending on the characteristics of one's wife or husband.⁶⁹ There is no way to know in advance what score would be sufficient to gain permanent residence under the point system in a given year.

Under the RAISE Act, an applicant for the point system would receive between 0 and 12 points based on his or her "English language assessment test ranking."⁷⁰

⁶⁷ Under current law, the dependents of the principal applicant are counted against annual limits in categories for permanent residence.

⁶⁸ Interview with Greg Siskind, August 6, 2017.

⁶⁹ Section 5 of the revised version of the RAISE Act.

⁷⁰ All references in this section of the paper to the bill's criteria for the point system come from Section 5 of the revised version of the RAISE Act. See also Greg Siskind, "Siskind Summary: Section by Section Review of the RAISE Act," August 2, 2017.

An applicant's age would also make a significant difference under the bill. An individual anywhere from 26 to 30 years old would receive 10 points, those ages 22 to 25 or 31 to 35 would get 8 points, those ages 18 to 21 or 36 to 40 would receive 6 points, those ages 41 to 45 would get 4 points, and those ages 46 to 50 would get 2, with individuals 51 or older getting no points.

Educational level would also play a major role in determining points awarded. An applicant would receive 5 points for a foreign bachelor's degree, 6 points for a U.S. bachelor's degree, 7 points for a foreign master's degree in a science, technology, engineering or math (STEM) field, 8 points for a U.S.-based master's degree in STEM, 10 points for an applicant with a "foreign professional degree or a doctorate degree in STEM," and 13 points for applicants with a "United States professional degree or a doctorate degree in STEM."

Applicants would also gain points for job offers based on salary level: 150 to 200 percent of the median salary of the state in which a job is located nets 5 points, 200 to 300 percent of the median salary in the state nets 8 points and 300 percent or higher of the median salary in the state nets 13 points. In what appears to be separate from a job offer, an applicant could also gain 6 points for an investment of \$1.35 million for "at least three years, and [the individual will] play an active role in the management of such commercial enterprise as the applicant's primary occupation." The applicant would get 12 points if the investment is \$1.8 million or more.

The RAISE Act also includes a provision that would apply to at most a handful of people each year based on the narrow language of the bill. The bill awards 25 points if the applicant is a "Nobel Laureate or has received comparable recognition in a field of scientific or social scientific study," and 15 points if an individual "earned an individual Olympic medal or placed first in an international sporting event in which the majority of the best athletes in an Olympic sport were represented."

Beyond the problem that the annual number allotted to the point system is very low relative to the people in immigrant backlogs, many individuals who expect to gain permanent residence under current law would likely be out of luck under the RAISE Act.

Nurses, who typically obtain a bachelor's degree abroad, would be at a disadvantage in points for education and possibly salary level as well. An executive would be placed at a distinct disadvantage unless he is young for a leadership position in a multinational company and could lose points based on his or her highest level of degree. Athletes in team sports and people in entertainment and the arts will have trouble under the point criteria in the bill, as will fashion models.⁷¹ Universities could struggle to attract talent because jobs in education may not pay high enough to gain sufficient points, or the degree may not be U.S.-based or in a STEM field.

In general, nobody knows for sure who would gain enough points to obtain permanent residence under the system proposed in the RAISE Act. And that lack of certainty may be the biggest problem. Individuals and businesses make choices based on probable outcomes and, to the extent possible, certainty. Turning permanent residence in the United States into a game of roulette will discourage people from choosing America as a place to be educated, start businesses or make their careers. And it will likely encourage U.S. companies to invest more resources in foreign countries, where they can reliably employ valued foreign-born employees long-term.

The problems with the point system in the RAISE Act lead to an obvious question: Why not let employers decide, as they do now, how important it is for an individual to speak English at a certain level or whether a certain degree is integral to that person's job? Neither Bill Gates nor Mark Zuckerberg completed college, and both have managed to get by in America.

The U.S. Government's Track Record in Picking a Number or Levels

U.S. attempts under current law to choose a number or level for immigration purposes do not inspire confidence. "The U.S. government has a terrible track record in picking a number for immigration purposes," said Craig Regelbrugge, senior vice president at AmericanHort, the horticulture industry association, and cochairman of the Agriculture Coalition for Immigration Reform. "Based on the history we've seen, there's no evidence

71 *Greg Siskind, "Siskind Summary: Section by Section Review of the RAISE Act."*

the government understands the labor market well enough to pick any number that makes sense in the real world.”⁷²

Since 1990, the key categories with government-set numerical limits have been woefully inadequate for both green cards and temporary visas, yet Congress has failed to act. The Immigration Act of 1990 imposed new restrictions on the use of H-1s, forming a new category known as H-1B, and also placed a limit of 65,000 on the number of new H-1B visa holders each year.⁷³ Having failed to anticipate or respond to increased demand for high-skilled labor, Congress has watched as the supply of H-1B visas has been exhausted each of the past 15 fiscal years. The annual limit of 66,000 on H-2B visas for seasonal nonagricultural workers has also been exhausted most years since 1990. As discussed earlier, family-sponsored immigration limits have generated a backlog of more than 4 million, according to the State Department.⁷⁴ The 1990 act established a 140,000 yearly quota on employment-based green cards that, when combined with per-country limits, has caused high-skilled professionals from India to wait potentially decades for permanent residence.⁷⁵

Reducing Immigration or Eliminating Family Categories Will Not Increase U.S. Worker Wages

One of the arguments made for establishing a point system and reducing legal immigration is that it would help boost worker wages, even though economists agree that immigration has little to no impact on native wages or unemployment. “Decades of research have provided little support for the claim that immigrants depress wages by competing with native workers,” notes Giovanni Peri, chair of the economics department at the University of California–Davis. “Most studies for industrialized countries have found, on average, no effect on the wages of native workers.” After examining 30 years of empirical research, Peri found, “There is little evidence of immigration lowering wages of less educated native workers.”⁷⁶

⁷² Interview with Craig Regelbrugge, April 14, 2017.

⁷³ Congress passed legislation in 1998 and 2000 that temporarily increased the annual limit on H-1B petitions for FY 1999, 2000, 2001, 2002 and 2003.

⁷⁴ *Reforming America's Legal Immigration System, NFAP Policy Brief, National Foundation for American Policy, September 2015.*

⁷⁵ *Ibid.*

⁷⁶ Giovanni Peri, “Do Immigrant Workers Depress the Wages of Native Workers?” *IZA World of Labor*, May 2014.

Research by critics has generally only alleged a negative impact of immigration on the wages of native-born high school dropouts who, it is argued, compete with immigrants without a high school degree. However, eliminating the three family categories most targeted by immigration critics – the siblings and unmarried and married adult children of U.S. citizens – would prevent an estimated 25,000 or fewer working-age immigrants with less than a high school degree from immigrating to the U.S. each year. (Entrants in the three categories come to only about 109,000 immigrants annually, and only about 75,000 of them are working-age adults, many with college degrees. Based on data from the Migration Policy Institute, likely only one-third or fewer did not complete high school.)⁷⁷ Preventing the entry of 25,000 people, about 0.01 percent of the nearly 160 million people in the U.S. labor force, spread throughout the year and across the nation, would have no impact on the wages of lower-skilled native-born workers.

Recent research has provided more evidence that adding immigrants of different skill levels benefits Americans. “Immigrant diversity not only leads to higher wages on average and overall, it also leads to higher wages for workers at different skill levels and at different positions in the labor market,” says Richard Florida, director of the Martin Prosperity Institute at the University of Toronto and Global Research Professor at New York University.⁷⁸ Florida cites research by Thomas Kemeny (University of Southampton) and Abigail Cooke (University of Buffalo) that “suggest that urban immigrant diversity produces positive and nontrivial spillovers for U.S. workers. This social return represents a distinct channel through which immigration generates broad-based economic benefits.”⁷⁹

The research helps dispel the notion that reducing immigration will boost wages or employment for U.S. workers. “Even though the diversity of higher-skilled immigrants in workplaces has a bigger effect on wages in workplaces (as opposed to across metros overall), the diversity of lower-skilled immigrants has a positive effect – albeit a smaller

77 2015 Yearbook of Immigration Statistics, Office of Immigration Statistics, U.S. Department of Homeland Security, December 2016; Migration Policy Institute calculations of recent legal arrivals to the U.S. Applicants for a Diversity Immigrant Visa must have a high school degree or two years of work experience in particular occupations.

78 Richard Florida, “Immigrants Boost Wages for Everyone,” *CityLab*, June 27, 2017.

79 Thomas Kemeny and Abigail Cooke, “Spillovers From Immigrant Diversity in Cities,” *Journal of Economic Geography*, May 31, 2017. See also Michael A. Clemens, Ethan G. Lewis and Hannah M. Postel, “Immigration Restrictions at Active Labor Market Policy: Evidence from the Mexican Bracero Exclusion,” *IZA Institute of Labor Economics*, January 2017.

one – on workers’ average wages across the four skill groups,” notes Florida. “There is no evidence that immigrants depress the wages of workers whether they work in well-paid high-skill jobs or low-paid less skilled jobs. Ultimately, this is some of the most powerful evidence yet that immigrants are good for cities and for the U.S. economy as whole.”⁸⁰

The reason immigrants do not have the negative impact on wages and employment that some fear is that when individuals enter the labor market to fill jobs, they also increase the demand for labor (i.e., create more jobs) through consumer spending, renting apartments, buying houses, making investments, starting business and through other means. *The Economist* explained that the belief that new workers and an increase in the supply of labor are bad for native-born workers is based on a “common fallacy.” What is this fallacy? “It is that the output of an economy, and hence the amount of work available, is fixed. Both history and common sense show that it is not. Economists call this the lump of labor fallacy.”⁸¹

Economists Believe More, Not Fewer, Workers Are Better for an Economy

Economists and employers dispute the notion that a smaller workforce with little to no growth in the labor force is good for the U.S. economy, even though this is an argument advanced by key Trump immigration advisers.⁸² “The United States now relies more than ever on demographics to defend its economic power,” explains Ruchir Sharma, chief global strategist at Morgan Stanley Investment Management and author of *The Rise and Fall of Nations: Forces of Change in the Post-Crisis World*. “In the past decade, population growth, including immigration, has accounted for roughly half of the potential economic growth rate in the United States, compared with just one-sixth in Europe, and none in Japan.”⁸³

Productivity and labor force growth are two key elements of economic growth. And a higher rate of economic growth improves the standard of living in a society. “Since

⁸⁰ Richard Florida, “Immigrants Boost Wages for Everyone.”

⁸¹ “One lump or two?” *The Economist*, November 25, 1995.

⁸² Joshua Green, “Does Stephen Miller Speak for Trump? Or Vice Versa?,” *Bloomberg Businessweek*, February 28, 2017; Senator Jeff Sessions, *The Immigration Handbook for the New Republican Majority*, January 2015.

⁸³ Ruchir Sharma, “To Be Great Again, America Needs Immigrants,” *The New York Times*, May 6, 2017. *Emphasis added.*

2005, per capita gross domestic product has grown on average by 0.6 percent a year in the United States, exactly the same rate as in Japan and virtually the same rate as in the 19 nations of the Eurozone,” notes Sharma. “In other words, if it weren’t for the boost from babies and immigrants, the United States economy would look much like those supposed laggards, Europe and Japan. Indeed, if the United States population had been growing as slowly as Japan’s over the last two decades, its share of the global economy would be just 15 percent, not the 25 percent it holds today. Moreover, immigrants make a surprisingly big contribution to population growth. In the United States, immigrants have accounted for a third to nearly a half of population growth for decades.”⁸⁴ Without immigration, the U.S. labor force problem is only going to get worse. “In 2016, the fertility rate in the United States was the lowest it has ever been,” reported the *New York Times*.⁸⁵

Lower Immigration Levels Would Have a Negative Impact on Economic Growth

Cutting legal immigration in half (as proposed in the RAISE Act) would reduce the rate of economic growth in the U.S. by an estimated 12.5 percent from its projected level, according to Joel Prakken, senior managing director and co-founder of Macroeconomic Advisers. That’s because immigrants are such an important part of labor force growth, which is a key ingredient of economic growth. “Prakken said a proposed bill in the Senate would limit immigration, reducing it to roughly half the 1.1 million immigrants who arrived in 2015,” according to CNBC. “He said over time that could dent the secular growth rate of 2 percent by about a quarter point.” That comes to a 12.5 percent reduction from the projected level of 2 percent. “The effect gets bigger over time because the Census assumptions for immigration keep growing and growing and growing, and the bill would not allow any growth,” said Prakken.⁸⁶ Reducing legal immigration would conflict with the Trump administration’s stated goal of increasing economic growth in America to well above the 2 percent level.⁸⁷

⁸⁴ *Ibid.*

⁸⁵ Nicholas Bakalar, “U.S. Fertility Rate Reaches a Record Low,” *The New York Times*, July 3, 2017.

⁸⁶ Patti Domm, “This Is What Immigration Means to the U.S. Economy in Two Charts,” CNBC, March 28, 2017.

⁸⁷ Kelsey Brugger, “Mnuchin Says ‘Not Going to Be Satisfied With 2% Growth,’” Bloomberg, June 20, 2017.

PART IV

LABOR DIFFICULTIES FACING EMPLOYERS IN AGRICULTURE, CONSTRUCTION AND OTHER SECTORS

It is a mistake to assume the U.S. economy needs only workers with high levels of education. Citing data from the Bureau of Labor Statistics (BLS), the Center for American Progress (CAP) recently reported that “from 2014 to 2024, the BLS projects that an additional 458,000 personal care aides, 348,400 home health aides and 262,000 nursing assistants will be added to the U.S. workforce, a total of nearly 1.1 million jobs.” CAP also reported that in 2014, “approximately one-quarter of workers in these occupations were born outside the United States. Demand for workers to fill these roles will outpace supply.”⁸⁸ The data show that industries that require a variety of skills are poised to add many jobs in the coming years. As CAP reported, “The list of the 30 largest-growing occupations include: cooks, construction laborers, janitors and other cleaners, software developers, computer systems analysts, and maids and housekeeping cleaners. Each of these jobs is expected to add more than 100,000 jobs by 2024, and they already have larger shares of immigrants than the national average.”⁸⁹

The Situation Today for Employers of Lower-Skilled Workers

Today, many companies in sectors that employ lower-skilled workers experience the worst of both worlds: They cannot find enough workers, and many of the workers they do find do not have legal status and thus face potential deportation under the Trump administration’s new immigration enforcement policies.

It is generally acknowledged, and supported by federal surveys, that about half of farm workers for crops such as grapes and strawberries are not legally authorized to work in the United States.⁹⁰ That means continuing with current immigration enforcement policies and imposing a point-based immigration system – which would likely re-

⁸⁸ Nicole Prchal Svajlenka, “Immigrant Workers Are Important to Filling Growing Occupations,” Center for American Progress, May 11, 2017.

⁸⁹ *Ibid.*

⁹⁰ “Just more than half of all farmworkers had work authorization,” according to Findings from the National Agricultural Workers Survey (NAWS) 2013-2014 A Demographic and Employment Profile of United States Farmworkers, Research Report No. 12, U.S. Department of Labor Employment and Training Administration Office of Policy Development and Research, December 2016. Given response bias, the survey likely underestimates the proportion of unauthorized immigrants in the farm workforce.

duce the number of workers without college degrees – would make the situation more perilous for farms and businesses. Without a vast increase in the number of legal workers, industries that rely on foreign workers face difficult times, particularly if the Trump administration is successful in deporting many unauthorized immigrants.

H-2A and H-2B visas – the two primary temporary visas available for employers of lower-skilled workers – can only be used for seasonal workers. H-2A is used for agricultural work visas. Even though many employers consider the H-2A process burdensome and bureaucratic, the demand for workers has become so intense that the number of H-2A visas has doubled over the past five years, from 65,345 to 134,368 between 2012 and 2016.⁹¹

Craig Regelbrugge of the trade group AmericanHort says that if H-2A numbers continue to increase, it will be difficult for government processing to keep up to provide workers in a timely fashion. “The system is already straining,” said Regelbrugge. “It’s already hard for employers now to gain approvals in time for peak season.”⁹² He also says that further increases in immigration and enforcement or implementing mandatory E-Verify for businesses could cripple employers in agriculture and related sectors. “It’s clear that some in the Trump administration see the goal of immigration policy is to shrink the supply of labor, without understanding the impact on employers of such a policy.”⁹³

H-2B visas are used for nonagricultural seasonal work, including such varied jobs as summer resort staffing, landscaping, seafood processing, and crab picking. Unlike H-2A, which has no annual cap, H-2B visas are limited to 66,000 a year. As a result, the supply of visas is exhausted each year. Even modest improvements to H-2B can engender severe opposition. A provision in a recently passed spending bill that would allow H-2B workers who had previously received an H-2B visa to not count against the annual cap for the remainder of fiscal year 2017 was greeted with a *Washington Times* headline that read, “Cheap Foreign Labor to Flood Workforce After Spending Bill Doubles Number of Visas.”⁹⁴

91 U.S. Department of State, *Report of the Visa Office 2016, Table XVI(B), FY 2012-2016.*

92 Craig Regelbrugge.

93 *Ibid.*

94 Stephen Dinan, “Cheap Foreign Labor to Flood Workforce After Spending Bill Doubles Number of Visas,” *Washington Times*, May 1, 2017.

An Insufficient Supply of Agricultural Workers Reduces Jobs in Other Sectors

Throughout 2017, as in years past, news media have noted the number of rotting crops due to farmers' inability to locate enough workers. "Last year marked the fifth consecutive year Santa Barbara County's agriculture industry has struggled with labor shortages, which have ranged from 15 to 26 percent," reported the *Santa Barbara Independent*. "Farmers, therefore, must leave crops to rot in the fields. An estimated \$13 million of strawberries, broccoli, leafy greens and other unharvested produce were plowed under last year, up from five years ago when losses amounted to an estimated \$4.4 million, according to the region's Grower- Shipper Association."⁹⁵

A study from New American Economy explains why articles about rotting crops continue to appear. "In the last decade, as fewer young agricultural workers have come to the United States, the number of field and crop laborers available to farms has been rapidly declining," according to a study by economist Stephen G. Bronars. "This drop has created a severe labor shortage in many key parts of the country vital to American farmers and iconic crops. It has also had an impact far beyond rural America: The lack of workers has not only hurt the ability of U.S. farms to grow and expand, it has cost our economy tens of thousands of jobs in related industries like trucking, marketing, and equipment manufacturing."⁹⁶ The report notes, "Between 2002 and 2014, the number of full-time equivalent field and crop workers has dropped by at least 146,000 people, or by more than 20 percent."⁹⁷ During this time, less than 3 percent of the decline in foreign field and crop workers was made up by U.S.-born workers.⁹⁸ The result? "Had labor shortages not been an issue, production of these crops could have been higher by about \$3.1 billion a year. Given that farm revenues often trickle down to other industries in our economy, that \$3.1 billion in additional farm production would have led to almost \$2.8 billion in added spending on non-farm services like transportation, manufacturing, and irrigation each year. That spending would have created more than 41,000 additional non-farm jobs in our economy annually."⁹⁹

⁹⁵ Kelsey Brugger, "Labor Shortage Leaves \$13 Million in Crops to Rot in Fields," *Santa Barbara Independent*, June 22, 2017.

⁹⁶ Stephen G. Bronars, *A Vanishing Breed: How the Decline in U.S. Farm Laborers Over the Last Decade Has Hurt the U.S. Economy and Slowed Production on American Farms*, *New American Economy*, July 2015.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

A second report, also from New American Economy, explained that one consequence of the lack of labor is that U.S. farmers have become less competitive in global markets. “The tens of thousands of domestic jobs that could have been created if the U.S. had not had to increase its reliance on imported produce would have improved America’s job creation numbers during a period when the economy has struggled to create a sufficient number of new positions,” the study found. “Although several key states like Washington, California and Florida grow the majority of America’s fresh fruits and vegetables, fresh produce production is an issue affecting wide swaths of America: Recent agriculture censuses have shown that at least 42 states are actively producing fresh fruits and vegetables for the commercial market.”¹⁰⁰

Becoming less competitive in global markets because of a lack of workers carries a cost for U.S. farmers. “The inability of U.S. growers to keep pace with rising consumer demand at home has represented a major lost opportunity for many rural, American communities dependent on the agriculture industry,” the study concluded. “Had U.S. fresh fruit and vegetable growers been able to maintain the domestic market share they held from 1998-2000, their communities would have enjoyed a substantial economic boost, resulting in an estimated \$4.9 billion in additional farming income and 89,300 more jobs in 2012 alone. The increase in production necessary to stave off a growing reliance on imports would also have raised U.S. Gross Domestic Product by almost \$12.4 billion that year.”¹⁰¹

Dairy Industry is Ground Zero – and Struggling to Find Workers

The dairy industry is ground zero in the current immigration debate. “Immigrant labor accounts for 51 percent of all dairy labor, and dairies that employ immigrant labor produce 79 percent of the U.S. milk supply,” according to economists Flynn Adcock, David Anderson and Parr Rosson of Texas A&M University. “Eliminating immigrant labor would reduce the U.S. dairy herd by 2.1 million cows, milk production by 48.4 billion pounds

¹⁰⁰ Stephen G. Bronars, *No Longer Home Grown: How Labor Shortages Are Increasing America’s Reliance on Imported Fresh Produce and Slowing U.S. Economic Growth, Partnership For a New American Economy, March 2014.*

¹⁰¹ *Ibid.*

and the number of farms by 7,011. Retail milk prices would increase by an estimated 90.4 percent.” The report noted that if immigrants were removed from dairy farms, it would cause U.S. economic output to drop by \$32 billion and reduce employment by more than 208,000 jobs, with most of the losses taking place in “input supply sectors and services provided to U.S. dairy farms.”¹⁰²

Although the Trump administration has pledged to help Wisconsin farmers compete better with the Canadian dairy industry via trade actions, strict immigration enforcement policies have indirectly made life more difficult for dairy farmers. “There is no legal agricultural visa for the year-round work of dairy farms,” reports National Public Radio. “If it’s strictly enforcement-only, build the wall and deport all of our farm workers, then we’re going to have serious problems when it comes to growing food and providing enough food to feed our ourselves,” notes Steve Ammerman of the New York Farm Bureau.¹⁰³

An estimated 80 percent of the laborers on large Wisconsin dairy farms are immigrants, and many of them work without legal status.¹⁰⁴ “If you remove Mexican labor, (dairy) farms would go out of business. That’s a given,” said John Rosenow, a Buffalo County, Wisconsin dairy farmer who milks about 550 cows at his farm. Approximately half of Wisconsin’s agricultural revenue comes from dairy.¹⁰⁵ “Dairy farmers say they get almost ‘zero’ response’ from native-born job applicants even when the pay is comparable with nearby factories,” reported the *Milwaukee Journal*.¹⁰⁶

Some argue that employers should just raise wages to attract more workers. But many employers note that this ignores economic reality. “If we paid people \$20 an hour, we may just price ourselves out of business. In fact, we would,” said Shelly Mayer, a dairy farmer from Slinger, Wisconsin.¹⁰⁷ Farmers compete with both domestic and foreign producers, which means they cannot raise prices unilaterally. Moreover, when the price of milk or other goods rise, it decreases the demand for those products.

Losing immigrant labor would harm dairy farmers. “The permanent loss of significant portions or all immigrant labor would have major negative economic impacts on the U.S. dairy sector,” note Adcock, Anderson and Rosson in their research. According

102 Flynn Adcock, David Anderson and Parr Rosson, *The Economic Impacts of Immigrant Labor on U.S. Dairy Farms*, Texas A&M Agrilife Research, Center for North American Studies, August 2015.

103 David Sommerstein, “Dairy Farmers Fear Loss of Labor Under Trump Immigration Actions,” NPR, January 26, 2017.

104 Rick Barrett, “Dairy Farmers Fear Trump’s Immigration Policies,” *Milwaukee Journal Sentinel*, March 6, 2017.

105 *Ibid.*

106 *Ibid.*

107 *Ibid.*

to their report, “A 50-percent labor loss would be expected to reduce fluid milk sales by dairies by \$5.8 billion while the economic loss throughout the U.S. economy would [be] \$16.0 billion. The majority of the losses occurring off the dairy farm (\$10.2 billion) would be due to declining purchases by dairies from sectors that support dairy farm operations, such as input supply (fuel and feed), transportation, real estate and wholesale trade.”¹⁰⁸

Many of the losses would also be seen in sectors connected to the dairy industry. According to Adcock, Anderson and Rosson, “A complete loss of immigrant labor would reduce dairy fluid milk sales by \$11.6 billion, or 23.4 percent, and result in total economic losses to the U.S. economy of \$32.1 billion. Nearly \$14.1 billion of these losses would occur in sectors supporting dairy farm operations while another \$6.4 billion would be lost due to reduced household income in dairy operations and supporting sectors.”¹⁰⁹

While dairy farmers are experiencing problems, the challenges go far beyond Wisconsin farms. “Rural meatpacking and food processing plants also are threatened by Trump’s immigration policies, as are furniture factories although nobody knows for sure how deep the deportations could go,” reports the *Milwaukee Journal*.¹¹⁰ David Swenson, an economist at Iowa State University in Ames, said new restrictions on immigration are not going to lead to more Americans working in meat packing plants or related industries, estimating three-quarters of the workers at meat packing facilities in Iowa today are immigrants.¹¹¹

Construction: Another Sector in Need of Workers

Construction is another industry in which a lack of immigrant workers could lead to job loss in complementary sectors. An analysis of the economic impact of the construction industry in Rhode Island determined that \$10 million in construction output directly or indirectly supports 146 jobs. The report concluded, “Each 100 jobs created in the construction industry support 83 jobs in other sectors.”¹¹² Although the research focused on

¹⁰⁸ Flynn Adcock, David Anderson and Parr Rosson, *The Economic Impacts of Immigrant Labor on U.S. Dairy Farms*.

¹⁰⁹ *Ibid.*

¹¹⁰ Rick Barrett, “Dairy Farmers Fear Trump’s Immigration Policies.”

¹¹¹ Andy Hoffman, Mario Parker and Jen Skerritt, “America Next? How Canada Curbed Foreign Workers and Hobbled Its Meat Industry,” *Bloomberg News*, February 16, 2017.

¹¹² Edinaldo Tebaldi, *The Economic Impact of the Construction Industry on the Economy of Rhode Island in 2013*, Bryant University, March 2014.

Rhode Island, “It would be reasonable to assume that the impacts are similar in other states,” according to Edinaldo Tebaldi, an associate professor of economics at Bryant University and author of the study. “The technology, construction methods and standards are somewhat homogeneous across states. Thus, the size of the employment and income multipliers are also expected to be similar across states.”¹¹³

In short, other jobs are affected when construction projects cannot be completed. “The price of materials is just one driver of overall construction costs. The cost of construction labor tends to be much more variable across geographies and over time, so it typically has a larger impact on overall cost trends,” said Andrea Cross, the Americas head of office research at CBRE, a real-estate services firm. As Cross told *World Property Journal* in 2016, “The collapse of the housing market and subsequent recession affected supply-side dynamics for new construction throughout the country, as a substantial number of construction workers left the industry during the downturn and never returned.”¹¹⁴ The number of workers in construction-related jobs fell by nearly 1 million workers, or about 16 percent, from 2005 to 2015. “As a consequence, many markets have faced considerable labor shortages as new construction workers left the industry during the downturn and never returned,” noted *World Property Journal*.¹¹⁵

Fewer construction workers means that work goes uncompleted or delayed. “About two-thirds of the contractors who are struggling with the labor shortages gripping the construction industry say it has become a challenge to finish jobs on time,” reported the *Wall Street Journal*, citing a new survey from USG Corp and the Chamber of Commerce. Demographics is a major part of the problem. “You had an aging workforce in an industry that doesn’t lend itself to long careers because it’s hard, physical work and then you lose a whole bunch of people,” said Steve Jones, senior director of Dodge Data & Analytics, which helped produce the survey. *The Wall Street Journal* notes, “Industry officials are warning that labor shortages will become more acute if the Trump administration moves ahead with its plan to spend \$1 trillion on infrastructure.”¹¹⁶

¹¹³ Interview with Edinaldo Tebaldi, July 11, 2017.

¹¹⁴ Michael Gerrity, “Despite Global Commodity Price Declines, Labor Shortages Driving Up Construction Costs in U.S.,” *World Property Journal*, June 14, 2016.

¹¹⁵ *Ibid.*

¹¹⁶ Peter Grant, “Labor Shortage Squeezes Real-Estate Developers,” *The Wall Street Journal*, June 27, 2017.

Offshoring of Production and the Loss of Related Jobs

While higher consumer prices garner a lot of press attention, the offshoring of production can also be damaging when employers in agriculture and other sectors cannot find enough workers. “When the product is grown, harvested, transported and processed somewhere else, *all* the jobs associated with these functions are exported, not just the seasonal field jobs,” according to economist James Holt. “These include the so-called ‘upstream’ and ‘downstream’ jobs that support, and are created by, the growing of agricultural products. U.S. Department of Agriculture studies indicate that there are about 3.1 such upstream and downstream jobs for every on-farm job. Most of these upstream and downstream jobs are ‘good’ jobs, i.e., permanent, average or better paying jobs held by citizens and permanent residents. Thus, we would be exporting about three times as many jobs of U.S. citizens and permanent residents as we would farm jobs filled by aliens if we restrict access to alien agricultural workers.”¹¹⁷

An analysis by the University of Virginia concluded, “Every job created in agriculture and forestry-related industries results in another 1.6 jobs in the Virginia economy.”¹¹⁸ The use of economic multipliers means similar results would be expected in other states. An adequate labor supply allows U.S. farmers to compete in global markets. “According to a U.S. Department of Agriculture (USDA) model, each \$1 billion of agricultural exports supported 6,800 American jobs in 2011,” reported the Joint Economic Committee. “These jobs include positions on farms, in the food processing industry, in the trade and transportation sector and in other supporting industries.”¹¹⁹

As noted earlier, an insufficient supply of workers harms America’s economic growth and would affect current and future standards of living. It also influences whether businesses will remain or invest in a particular geographic area. *The Washington Post* recently described in detail the situation of manufacturer Zimmer Biomet, which makes artificial orthopedic devices at a facility in Indiana but “is struggling to find enough workers, despite offering some of the region’s best pay and benefits.”¹²⁰ The economic

117 James S. Holt, speech to the California Board of Food and Agriculture, Del Mar, California, April 26, 2006.

118 Terance J. Rephann, *The Economic Impacts of Agriculture and Forest Industries in Virginia*, Weldon Cooper Center for Public Service, University of Virginia, June 2013.

119 *The Economic Contribution of America’s Farmers and the Importance of Agricultural Exports*, Joint Economic Committee, U.S. Congress, September 2013.

120 Danielle Paquette, “In This Part of the Midwest, the Problem Isn’t China. It’s Too Many Jobs,” *The Washington Post*, June 20, 2017; Stuart Anderson, “With 6 Million Job Openings, Will Critics Still Blame Immigrants for ‘Taking Jobs’ From Americans?” *Forbes*, June 24, 2017.

consequences of such a situation are felt across many business sectors: “The lack of laborers not only threatens to stunt the growth of these companies, experts warn, but it could also force them to decamp their home town in search of workers,” noted *Washington Post* reporter Danielle Paquette. “With the U.S. unemployment rate at a 16-year low of 4.3 percent, employers across the country are dealing with a dearth of potential hires. Economists say that talent shortages are growing constraints on the country’s economic expansion, especially as millions of baby boomers enter retirement.”¹²¹ Madeline Zavodny, a professor of economics at the University of North Florida, said the lack of workers indicates a need for workers across the skill spectrum, noting “Continued economic growth requires more U.S. natives to enter the U.S. labor market and demonstrates the need for foreign-born workers.”¹²²

PART V CONCLUSION

Fewer immigrants means fewer workers and that will make it more difficult for the U.S. economy, economic growth and employers of all types. However, admitting fewer immigrants is the objective of supporters of the RAISE Act and often of advocates of instituting a point system in the United States.

Facts would appear to contradict three important premises behind changing the current legal immigration system to the one envisioned by the RAISE Act or similar proposals that may follow it.

First, the United States is not admitting primarily low-skilled immigrants with no education, as critics have argued. “Almost half (48 percent) of immigrants coming to the United States between 2011 and 2015 were college graduates (compared to 31 percent of U.S.-born adults in 2015),” according to the Migration Policy Institute. The number of immigrant college graduates rose 90 percent from 2000 to 2015. Census data show 84 percent of individuals admitted legally to the United States between 2010 and 2014 had a high school degree or higher.¹²³ Only 7 percent of the children of immigrants (age 18 to 24) have not completed high school or enrolled in school.¹²⁴

121 *Ibid.*

122 Anderson, “With 6 Million Job Openings, Will Critics Still Blame Immigrants for ‘Taking Jobs’ From Americans?”

123 Batalova and Fix, *New Brain Gain: Rising Human Capital Among Recent Immigrants to the United States*; Migration Policy Institute calculations.

124 *Second-Generation Americans: A Portrait of the Adult Children of Immigrants*, Pew Research Center.

Second, advocates claim that eliminating green cards for the adult children and siblings of U.S. citizens would raise the wages of lower-skilled workers.¹²⁵ But a closer examination of the data discredits this claim. Previous attempts at reducing immigration, such as ending the Bracero program in 1964, did not lead to higher wages for farm workers.¹²⁶ And that involved hundreds of thousands of workers working in identical occupations. Turning to the present day, it's clear that preventing the entry of 25,000 people of working age without a high school degree (the approximate number who enter annually without such a degree in those three immigration categories), about 0.01 percent of the U.S. labor force, coming in throughout the year and in different parts of the country, would have no impact on the wages of lower-skilled U.S. workers. Moreover, as economist Giovanni Peri has explained, "Decades of research have provided little support for the claim that immigrants depress wages by competing with native workers."¹²⁷

Third, reducing immigration and the supply of labor would harm economic growth. Productivity and labor force growth are two essential elements of a nation's economic growth. Immigration is an increasingly important part of U.S. labor force growth. Cutting legal immigration by half would reduce America's rate of economic growth by an estimated 12.5 percent from its projected level, according to Joel Prakken, senior managing director and co-founder of Macroeconomic Advisers. "The effect gets bigger over time because the Census assumptions for immigration keep growing and growing and growing," said Prakken.¹²⁸

A point system that focuses on education levels would not help employers in industries such as agriculture and construction. Any advantages employers of lower-skilled workers gain in Canada's and Australia's immigration systems come not from national point-based systems, which are used for permanent residence but from temporary visa categories, ways of gaining permanent residence outside of the point systems and rules that allow provinces and regions to play a role in immigration policy.

Cutting legal immigration will reduce the supply of labor available to employers and a point system, as envisioned, would substitute the opinion of the federal govern-

125 Eliana Johnson and Josh Dawsey, "Trump Crafting Plan to Slash Legal Immigration," *Politico*, July 12, 2017. A spokesperson for Sen. Tom Cotton said, "Sen. Cotton knows that being more deliberate about who we let into our country will raise working-class wages."

126 Michael A. Clemens, Ethan G. Lewis and Hannah M. Postel, "Immigration Restrictions at Active Labor Market Policy: Evidence from the Mexican Bracero Exclusion," *The National Bureau of Economic Research*, February 2017.

127 Peri, "Do Immigrant Workers Depress the Wages of Native Workers?."

128 Domm, "This Is What Immigration Means to the U.S. Economy in Two Charts."

ment on which workers are valuable in place of employers. “The best judges of worker merit are not federal officials but potential employers,” notes George Mason University professor Ilya Somin. “They are the ones in the best position to know what qualifications are actually useful for the job at hand, and they have far better incentives to get the decision right than government bureaucrats do.”¹²⁹

Enabling U.S. employers to hire workers across the skill spectrum allows companies to grow, innovate and create more jobs in the United States. “Points-based systems are extremely bureaucratic and statist,” noted *The Telegraph*. “Rather than allowing businesses to decide what skills they need among their workers by giving or refusing job offers and then capping visas as and when the government so desires, they rely on immigration officials administering a whole extra layer of box-ticking.”¹³⁰ This is the crux of the problem.

“The U.S. already has ‘merit-based’ immigration, in the form of a preference system for employment-based visas,” said Lynn Shotwell, executive director for the Council for Global Immigration, a business trade association. “While current H-1B and green card numbers aren’t sufficient, employers don’t want a system that removes or limits their ability to hire or sponsor a specific individual, across the skill spectrum, or have the federal government set up a point criteria that may not be relevant to employer needs or keep up with changes in the economy.”¹³¹

A point system is unlikely to address key problems in the U.S. immigration system, including the fate of approximately 11 million people in the country without legal status, the lack of a reliable year-round work visa for lower-skilled jobs and the long waits for green cards experienced by family and employment-based immigrants.

Given the separation of legislative and executive branch responsibilities in the U.S. system of government, it is likely that no point system similar to those operating in Canada and Australia could ever work in America. The role of the U.S. Congress is to pass laws whose intent cannot be changed without passing a new law. Yet the flexibility to adapt quickly is what makes the current Canadian and Australian systems function. Under the

129 Ilya Somin, “Trump’s Cruel and Counterproductive Effort to Slash Legal Immigration,” *The Washington Post*, August 3, 2017.

130 Juliet Samuel, “Britain Does Not Need or Want an Australian-Style Immigration System,” *The Telegraph*, September 6, 2016.

131 Interview with Lynn Shotwell, July 11, 2017.

U.S. system of government Congress ceding unilateral authority to executive branch agencies to set numbers and criteria for immigration is unthinkable. Even if Congress did, such agencies are unlikely to be nimble enough to react to changing needs in a timely way as they have at times taken decades even to issue new regulations related to immigration.¹³²

While there is nothing wrong with studying ideas from other countries, we should recognize the limitations of such exercises. We need to balance our nation's need for workers who have different skills with family-based immigration. S. 744, bipartisan legislation which passed the U.S. Senate in 2013, thoughtfully pointed in this direction. Our immigration system can be designed to increase the immigration of people with a high level of skills without either eliminating the ability of employers to sponsor individual employees or reducing family immigration. For example, Congress could eliminate the per-country limit for employment-based immigration categories, increase the number of green cards for employment-based immigrants, and additionally could establish a pilot program for an "independent" category of immigrants, such as in Australia, alongside existing family and employment categories. Bipartisan efforts to identify workable solutions like these serve the interests of American workers and their families, helping our economy grow. And we should remember that a balanced legal immigration system that serves American interests and integrates ambitious, hard-working immigrants of varying skill levels is what will make America great for generations to come.

¹³² This does not mean establishing a "commission" to set annual or other limits on immigrant and temporary visas would be a good idea. In general, the main advocates for such a commission have been opponents of employment-based immigration. Ray Marshall, former Secretary of Labor under President Carter, has argued foreign nationals should be permitted to work in the U.S. only after a commission finds a "certified labor shortage." Yet Marshall also argued there had not been any such shortage in science and engineering for the previous 25 years. That means if such a commission had been in effect and agreed with Marshall's conclusion, then no high-skilled foreign nationals would have been allowed to work in America for the prior 25 years, including the entirety of the 1990s and 2000s. One of the problems with a commission setting immigration quotas is that if high tech companies cannot find the workers they need, that would be unlikely to show up as a "shortage" in government data, since the companies would either abandon the work, contract with outside firms or hire employees in foreign countries. See *A Commission to Regulate Immigration? A Bad Idea Whose Time Should Not Come*, NFAP Policy Brief, National Foundation for American Policy, May 2009; Ray Marshall, *Immigration for Shared Prosperity*, Economic Policy Institute, Washington, D.C., 2009.

APPENDIX

RECENT U.S. ATTEMPTS TO ESTABLISH A POINT SYSTEM

Comprehensive Immigration Reform Act of 2007, S. 1348

Previous legislative attempts to insert a point system into U.S. immigration law have failed. A 2007 Senate bill (S. 1348) attempted to impose a point system and is worth examining, since it contains elements of the current Reforming American Immigration for a Strong Economy (RAISE) Act. The point system in the 2007 Senate bill failed to meet employers' needs or to attract their support. The crux of the problem was that companies do not want generally skilled people. Rather, they want to hire and sponsor for immigration-specific individuals they have identified and recruited for their business needs.

The backstory to the 2007 bill is worth recounting. The Bush administration needed support to enact immigration reform, which it largely defined as the legalization of up to 11 million people living in the United States in unauthorized status. As their price for supporting a legalization bill, Sen. Jon Kyl (R-Ariz.) and other Senate Republicans requested that the legislation establish a point system as a way to eliminate most family-immigration categories and even employment-based preference categories.¹³³

The bill mandated a point system in place of most family and all employment categories and awarded points based largely on education. But it also attempted to mix in other criteria so that newly legalized people could qualify under the point system and, perhaps, also to attract support across different industries. Yet the bill would have produced a series of embarrassing outcomes. Here are a few of the likely outcomes if S. 1348 had become law:

(1) Since the bill retained per-country limits, the legislation would have largely favored individuals from countries with lower populations that sent fewer immigrants to America. For example, if 100,000 people from India scored 80 points or higher, but 1,200 individuals from Iceland scored 40 points or lower, all 1,200 individuals from Iceland

¹³³ Stuart Anderson, *Immigration* (Denver, Colorado: Greenwood, 2010), p. 20. After S. 1348 failed on a "cloture" vote, a bill was introduced, S. 1639, that contained many of its elements as amended.

would receive green cards, while 80,000 to 90,000 people from India with much higher scores would not be allowed to immigrate to the U.S. because of limits on the number of immigrants from one country.¹³⁴

(2) In an attempt to help employers across different industries, the bill would have produced strange results. Under the bill's point system, a physicist who worked overseas would have a better chance of gaining admission under the point system if he were offered a job cooking at Burger King than a job teaching physics at Stanford University.¹³⁵

(3) Immigrants in specialty professions that do not require a high level of education (such as nursing) would likely have been barred from entry in large numbers under the bill's point system.

The bill failed to pass the Senate. Immigration legislation also did not advance in the House of Representatives in 2007 or 2008. In the end, the point system contained in the Senate bill became primarily a lesson in how not to reform the legal immigration system.

Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744

S. 744, which the Senate passed in 2013, set aside numbers for “merit-based immigrants.” The worldwide level was set at 120,000 immigrants a year but could have grown to 250,000 a year. But this aspect of the bill was meant as an adjunct to the country's legal immigration system rather than its central component.¹³⁶

Much of the point system in S. 744 was designed to funnel individuals in family- and employment-based immigrant backlogs – as well as previously unauthorized immigrants (Registered Provisional Immigrants, or RPIs) legalized by the bill – through the legal immigration system. The merit-based “track-two” system in S. 744 was designed largely for that purpose.¹³⁷ “It is critical to the authors of the bill that the visa backlog be

¹³⁴

Ibid.

¹³⁵

Ibid.

¹³⁶

Section 2301 of S. 744 “passed Senate amended, June 27, 2013.

¹³⁷

Ibid.

eliminated and that those who followed the rules receive legal status before RPIs can qualify for green cards,” concluded an analysis by the American Immigration Council.¹³⁸

In short, the purpose of the “merit-based” system in S. 744 was the opposite of the RAISE Act, which aims to reduce legal immigration, and would have represented a significant increase in legal immigration

First, the point system in S. 744 only supplemented the legal immigration system as a type of fifth wheel. Second, under S. 744 employers could still directly sponsor immigrants with green cards. Third, the merit-based categories in S. 744 were used as part of the process to legalize millions of people in the country unlawfully. Fourth, S. 744 assumed that the 3 to 4 million people waiting in family- and employment-based categories would all be “grandfathered in” and would not be penalized for having waited in line for their turn to immigrate legally. (By contrast, the RAISE Act does not honor the applications of such individuals.)

S. 744 eliminated the Diversity Visa and brothers and sisters of U.S. citizens visa categories, and made the married sons and daughters of U.S. citizens 31 years or older ineligible for immigration. However, it tried to create additional avenues for immigration for such individuals within the merit-based tiers, while also honoring their approved immigration applications.¹³⁹

¹³⁸ “A Guide to S. 744: Understanding the 2013 Senate Immigration Bill,” American Immigration Council, July 10, 2013.
¹³⁹ Understanding the context helps one appreciate why the bill contained not only two separate merit-based tracks but also, in merit-based “track one” (distinct from “track two”), two separate “tiers” – one for skilled and another for those with less education. In Tier 1, designed primarily for higher-skilled immigrants, the bill awarded points based on education, employment experience, entrepreneurship, “high demand occupations,” “civic involvement,” English language ability, “siblings and married sons and daughters of U.S. citizens” (with points for various ages) and country of origin (extra points for immigrants from countries sending fewer immigrants). Tier 2, designed for lower-skilled immigrants, previously unauthorized immigrants being legalized, and those in immigrant backlogs, did not award points for education and instead allocated points for employment experience, a job offer in high-demand “tier 2” occupation, caregiver, “exceptional employment record,” civic involvement, English language ability, “siblings and married sons and daughters of U.S. citizens” (with points for various ages) and country of origin (extra points for immigrants from countries sending fewer immigrants).

NFAP

National Foundation
for American Policy

National Foundation for American Policy
2111 Wilson Blvd., Suite 700
Arlington, VA 22201
www.nfap.com



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IMMIGRATION
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National Immigration Forum
50 F Street NW, Suite 300
Washington, D.C. 20001
www.immigrationforum.org

