US Immigration Policy & Reform:
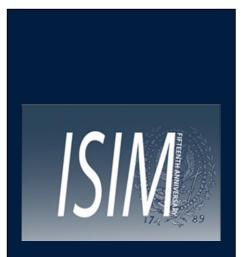## What does the evidence tell us?

Institute for the Study of International Migration

GEORGETOWN UNIVERSITY

Priorities for U.S. Immigration Reform

2015

Report on a series of expert roundtables
Georgetown University, Washington D.C.

ABOUT THE PROJECT

The Institute for the Study of International Migration, with the support of the MacArthur Foundation, organized a series of public presentations, as well as expert roundtables that addressed the multiple challenges of immigration reform. The aim of the project was to inform debate on immigration reform, with a focus on addressing the challenges of implementation. This final report summarizes those debates.

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Executive Summary

There is widespread agreement that the U.S. immigration system needs reform. While there have been numerous improvements to immigration benefits and the development of greater enforcement mechanisms for immigration law, most elements of the system are in dire need of change. With political deadlock on comprehensive immigration reform, the Congress and the Administration should pursue options that improve immigration policies and their implementation through administrative action or targeted legislation. While such initiatives are not a substitute for more systemic change, they could increase the effectiveness, efficiency and fairness of the U.S. immigration system until more comprehensive reform is enacted.

The Institute for the Study of International Migration, with funding from the John D. and Catherine T. MacArthur Foundation, held eight expert roundtables that brought together researchers, policymakers, stakeholders and opinion leaders. The participants in these roundtables debated the evidence and options for family, employment and humanitarian immigrant admissions, as well as, policy on enforcement in the interior of the United States and at the border. An additional roundtable sought lessons in past legislation to address the situation of undocumented migrants already in the country. Summaries of these roundtables are presented in this report; detailed reports can be found on the Institute's website (https://isim.georgetown.edu/immigrationpolicy).

Immigrant Admissions

Family — Family reunification is at the core of the immigration system, intended to make admission equitable and to smooth integration, with intact families providing a safety net for new arrivals. There are many advantages to family immigration that both resonate with American values and make economic sense, but the large admissions backlog creates long waiting times for some close family members. One suggestion is to allow both U.S. citizens and legal permanent residents (LPRs) to sponsor spouses and minor children without numerical limits, but reduce quotas for more distant relatives such as adult brothers and sisters of U.S. citizens to immigrate to the United States. Another concern relates to the so-called "deeming requirement," in which sponsors in the United States must prove they have sufficient income to support the immigrant newcomers without regard to the potential earnings ability of the immigrants to be admitted. Some parents are able to sponsor only a few family members at a time, delaying admission of spouses and their children, who spend much of their formative period in their home countries. Policies should recognize that timely family reunification is not only humane, but also economically beneficial— increasing the number of wage earners, raising household income levels, and boosting integration.

Employment —Most employment-based immigration admissions involve temporary visas, but the need for temporary work visas is disputed. For example, experts dispute the severity

of shortages of workers in Science, Technology, Engineering and Math (STEM) fields. Likewise, they argue over the nature of demand for workers issued the popular H-1B specialty visa for temporary work primarily in highly skilled occupations including STEM jobs. Do employers hire H-1Bs because they are the best and brightest or because they are young and can be paid lower wages? There is also debate over elements of the H-2 visa programs for temporary or seasonal jobs. The experts agreed upon ways to improve the visa requirements for the admission of temporary workers. In considering the number of temporary workers that should be admitted to the United States, experts suggested a number of possible approaches such as piloting market-based programs that test employer demand by requiring wages set higher than prevailing levels, requiring large one-time sponsorship fees, or establishing auction markets where employers bid for the number and type of visas based on their need for workers. Moreover, greater freedom of movement (portability) between employers for temporary visa holders would improve workers' rights. More timely access to permanent visas would also reduce the potential for exploitation of immigrant workers. Holding the employer, rather than intermediaries, responsible for working conditions would increase employers' incentives to assure worker safety and well-being on the job. Investigations of workplace conditions after workers are admitted would incentivize good conduct and reassure stakeholders.

Humanitarian Protection — The number of refugees, asylum seekers and displaced persons worldwide is larger than at any time since World War II. During the past 60 years, the United States has played a leadership role in ensuring adequate protection and assistance for refugees in three significant ways: as a donor, as a member of the Executive Committee of the UN High Commissioner for Refugees, and as the principal country of resettlement. The United States' current refugee and asylum policies are inadequate, suggesting an urgent need for reform. Roundtable participants agreed that the asylum system must improve its ability to identify and protect *bona fide* asylum seekers. Given severe processing backlogs, many argued for more resources so that the U.S.CIS asylum officer corps and the immigration courts could adjudicate cases more quickly and help reduce the case backlog (particularly within the immigration courts). It was suggested that a "children's corps" be established within the Department of Homeland Security (DHS), mirroring the role of the asylum corps, to adjudicate children's asylum and other humanitarian claims. More and better legal representation should also be available for children with immigration cases before the immigration courts.

Persons entering the United States without documentation may be expeditiously removed unless they can establish a believable fear of persecution or torture if they are returned home (referred to as credible fear). Many asylum officers spend the majority of their time on these credible fear interviews, which are conducted as part of the expedited removal process. Most of these interviews result in a finding of credible fear of persecution, enabling adults and children to proceed to file an asylum claim, although the number of denials of credible fear has grown recently. Some of the experts recommended that the officials who conduct the credible fear determinations should also be able to grant asylum in meritorious cases.

Participants also called for reforms to make the U.S. refugee resettlement program more agile, especially by streamlining security reviews for individuals who face imminent harm in their country of origin and who pose no risk to the United States. There is also need for an increased and more stable level of funding to facilitate the integration of refugees as they arrive in the United States.

Participants addressed temporary protected status (TPS) whereby foreign persons in the United States are permitted to stay legally in the United States because conditions such as armed conflict or environmental disaster temporarily prevent their return. They agreed that TPS should be an alternative to asylum and resettlement for those who do not meet the formal legal definition of a refugee. They also recommended individuals with TPS should be allowed to transition to lawful permanent residence status if the conditions that necessitated TPS continue beyond a seven-year benchmark.

Enforcement

Detention — The United States maintains the largest immigrant detention system in the world. Yet many of those now subject to detention pose little risk to public safety and do not pose a risk of flight if released. Programs offering alternatives to detention (ATDs), especially for migrant families, have proven to be promising as a way to release migrants with minimal risk to communities, thereby reduce the cost to the taxpayer of detention. While generally agreeing that detention should be a last resort, participants recommended ways to improve detention practice. An independent body established to monitor detention standards could help ensure effective implementation of those standards. A Risk Classification Assessment (RCA) tool, utilized by the U.S. Immigration and Customs Enforcement's (ICE), may prove valuable in assessing whether apprehended migrants should be detained. If successful, it should be adapted for use by other federal agencies that detain immigrants, such as Customs and Border Protection (CBP). Participants also expressed concerns about the facilities where persons are detained. Between ICE-owned facilities, or private facilities contracted by ICE, or state and local jails under contract with ICE (Intergovernmental Service Agreement Facilities), the latter may be the least satisfactory as they are subject to the least oversight by immigration authorities. The implementation of internal detention standards, tailored to different facilities by ICE, is a welcome development.

Removals — In 1996 Congress established streamlined deportation procedures that enable the government to deport noncitizens without a hearing before an immigration judge. Officers of the Department of Homeland Security using administrative and other summary removals procedures have deported or "removed" (the formal term used by the government) about 3.7 million non-citizens from the United States since 2003. There is a need for greater oversight of the removal process. Moreover, alternatives to removal should be prioritized for those whose deportation to their home countries is a low priority. An effective removal system prioritizes cases, removing those who pose a risk while providing relief from deportation to those with compelling reasons to remain in the United States.

Immigration courts are underfunded, leading to growing case backlogs that are particularly acute in the asylum system. The experts called for additional funding to increase the number of immigration judges and otherwise enable the immigration court system to reduce backlogs. When cases take years to adjudicate, effective enforcement of immigration laws is difficult, leaving all parties unsatisfied. There is little justice for those with *bona fide* claims to asylum, or other forms of protection, who remain in a legal state of limbo until their cases are resolved.

Some experts argued that local law enforcement agencies should not be involved in federal immigration enforcement. Others asserted that programs that engage local authorities in identifying deportable immigrants can be effective tools, especially in the interior of the United States where immigrants may not routinely interact with immigration officials. All agreed on a need to clarify priorities and procedures among ICE and local law enforcement actors. Participants also agreed that federal and local law authorities should address the mistrust of law enforcement felt by the non-citizen population. Building trust with the immigrant community can encourage non-citizens to report and help solve crime.

Interior enforcement — The Immigration Reform and Control Act of 1986 (IRCA) imposed punishments, called "employer sanctions," on employers who fail to confirm that new workers are authorized to work or who knowingly hire unauthorized workers. Employers comply with this law by checking their employees' documents and completing a form called the I-9. Critics have long questioned the effectiveness of the I-9 hiring process because it is difficult to verify identity or work authorization through documents alone. Many policymakers support the notion of mandating a national electronic verification system (E-Verify) now used in some workplaces to verify that an employee is authorized to work in the United States.

If a mandatory system were to be established, implementation will require interagency coordination between the Social Security Administration and the Department of Homeland Security. Participants discussed possible challenges to the rollout of a nationwide employment verification program, as well as strategies that might improve its success. Initial challenges include the assurance of data accuracy, employer compliance, and prevention of identity fraud. All administrative actions should provide clear guidelines on how to correct records, combat misuse and safeguard privacy.

A reliable nationwide verification system will not eliminate the need for enforcement of labor standards. Some employers may continue to hire unauthorized migrants precisely because they are unauthorized and thereby exploitable. This could create an uneven playing ground of some employers undercutting the market with the potential to negatively impact all workers and a race to the bottom in degrading working conditions. Employers may threaten to report unauthorized workers to immigration enforcement officials and thereby circumvent compliance with labor laws. Enforcement of labor laws would become an important adjunct to a national work verification system. The challenge must address the overlapping responsibilities of ICE with other enforcement agencies. The enforcement of labor law can

and should play a key role in the enforcement of U.S. immigration laws, to protect the rights of all workers and to counter the demand for unauthorized workers.

Border enforcement — The number of persons apprehended crossing the borders varies year to year with the numbers who attempt to cross into the United States and the effectiveness of interdiction efforts. Border apprehensions have been near a historic low for several years because more effective interdiction has discouraged movement across the border and because the number of migrants attempting entry has declined. Nevertheless, the large volume of people and goods both legally and illegally moving across America's borders confronts border enforcement with multiple tasks. All serious observers agree that controlling illegal movement of persons and contraband is paramount. Yet some policymakers demand that the Border Patrol achieve "operational control," defined as the interception of all unauthorized foreigners, before they will consider support for broader forms of immigration reform.

This stance raises problems. It is not possible to completely seal the border against undocumented migration and targeting financial resources to achieve that end may conflict with other pressing enforcement demands. Experts suggest that "comprehensive management" should be the goal and that the DHS should be charged with deploying resources efficiently and effectively. Advanced analytics might identify risks along the border and help to focus agency resources where needed. Budgets need to expand at Ports of Entry to reflect the increased traffic associated with international trade and legal border crossers. Facilitation of commerce and border control is two sides of the same coin. Federal resources should be optimally allocated in order to realize the economic benefits of our borderlands while ensuring our security.

Legalization

Lessons from the past —Political discord has led to a failure to fairly and effectively deal with unauthorized migration which continued to grow after the Immigration Reform and Control Act (IRCA) of 1986 which was intended to curtail unauthorized entry. Today's undocumented migrant population in the United States is large and includes many households of mixed immigration statuses; family members who are legal residents, U.S. citizens, or undocumented. Congressional debate over the past decade has sounded out many ways of addressing this increasingly complex problem, often stipulating that unauthorized individuals earn the right of legal permanent residency, but there has been no legislative solution. President Obama took Executive Action in June 2012 to defer the removal of certain unauthorized immigrants who entered the United States without status as children. He attempted to expand the program in November 2014 to include parents of U.S. citizens and lawful permanent residents, although that program was blocked by a federal court order and is still subject to litigation.

Whatever form future regularization programs may take, stakeholders at all levels of government and civil society will face significant challenges to implement them. A lack of strategic preparation will compound those challenges. Roundtable participants concluded that

the federal agencies likely to be charged with carrying out legislative or administrative legalization programs should engage in planning exercises based on a variety of possible scenarios that assume different criteria and facts on the ground. Such exercises will facilitate the future implementation of the timely, orderly and fraud-free regularization of eligible individuals. Most of the participants of this roundtable had experience based on IRCA's legalization of nearly 3 million persons inside the United States and they debated the lessons it holds for addressing today's unauthorized population. Those lessons point to three key factors: flexibility should be built into programs, public-private partnerships are effective in encouraging and preparing unauthorized migrants to apply for regularization, and organizational capacity must be scaled-up in advance of a program launch with up-front funding from sources other than application fees.

Looking Forward

Today's international migration presents the United States with great benefits, but its mismanagement generates accumulating economic and social costs. The last major legislation to reform the legal admission system was in 1990 following legislation in 1986 to control undocumented migration. Since then, problems with immigration policy in its entirety have continued to mount. This report suggests ways to improve border and interior enforcement, address legal admission priorities, safeguard U.S. humanitarian commitments, and better prepare for tomorrow's immigration challenges. There are no perfect solutions to immigration dilemmas, only trade-offs between competing goods. The suggestions presented in this report are a way forward in targeted ways in the absence of, or combined with, comprehensive reform.

History and the Reform Debate

Almost all experts agree that the U.S. immigration system needs reform, but they dispute individual reforms or whether reform should be comprehensive or targeted. To be sure, major revisions of immigration policy have been historically infrequent. Disagreement over the shape of comprehensive reform, however, is no justification for a failure to make changes where possible. The fact that there have been often unremarked, albeit incremental changes, demonstrates that reforms can be made.

Until 1875, few laws regulated immigration to the United States. Numerical quotas on immigrant admissions were not adopted until 1921 or made permanent until 1924. Modest changes in the legal admissions system were included in the 1952 Immigration and Nationalities Act (INA). The 1965 Amendments to the INA more fundamentally reformed the law by lifting the national origins quotas that were originally adopted in 1921 and retained in 1952. The preference system and per-country limits were extended to Western Hemisphere immigration in 1976. The Immigration Act of 1990 restructured both family and employment admissions, but no significant changes have been made to legal admission policy since.

The Immigration Reform and Control Act (IRCA) of 1986 offered a path to lawful status and citizenship for nearly 3 million undocumented immigrants. The law also mandated "employer sanctions," designed to punish employers who hired immigrants not authorized to work. Over the following decade, under both Democratic and Republican administrations, there was little effective enforcement of employer sanctions. Moreover, IRCA covered only the undocumented population in the United States at the time of its enactment and did not address future flows of migrants. As a result, many policy makers have been skeptical that a comprehensive immigration reform package would be implemented fully.

The Commission on Immigration Reform, a bipartisan creation of the 1990 Act known as the Jordan Commission after Senator Barbara Jordan, secured input from stakeholders with different perspectives and proposals designed to improve the system. Its major recommendations to change the visas available to families, or to simplify temporary work visas, were not adopted. Other Commission recommendations, however, set in play changes from the electronic verification of individual immigrants' authorization to work, to an increase in the number of interior removals (deportations). It influenced changes in the nation's asylum program and government efforts to facilitate immigrant integration. But the system's basic structure remained unaltered.

Despite a lack of systemic reform of immigration laws, at least four significant developments in immigration policymaking have impacted the legislative landscape. First, Congress mandated the devolution of certain migration management activities to the state and local

level, with many localities embracing this role and asserting their authority. Second, legislative proposals targeted specific visa classes, especially for skilled workers, and generated some bipartisan agreement favoring increasing available visas. Third, the Bush and the Obama administrations developed immigration policy through administrative and regulatory procedures. Regulatory features of this debate tend to escape the radar of many; nevertheless, they have often become a central feature of the policy terrain.[1] The fourth development is that immigration policymaking itself has evolved from a backburner issue to one that commands national attention.

During the first decade of the 21st century, Congress debated several proposals for change but made little progress toward reforming the system. Senate bills for comprehensive immigration reform were introduced and debated in 2006 and 2007, only to fail due to disagreements primarily over regularization of the undocumented population or the scope of immigration law. After these failures by Congress to enact immigration legislation, and with the economic crisis starting in 2008, reform was taken off the legislative agenda. The Obama Administration used its executive authority to reshape regulatory and enforcement policies, especially related to the enhanced use of discretion in removal proceedings, but more fundamental changes in policies were left aside.

President Obama promised to pursue comprehensive legislation in 2008, but did not act on that promise in his first term. Some experts and legislators argued that incremental reform was the only way forward. At the same time, a number of private-sector Commissions made recommendations typically for the regularization of the undocumented population and more aggressive enforcement of laws controlling migration. A few proposed completely restructuring the immigrant admission system and the creation of a standing commission to recommend changes in the numbers of visas offered. The re-election of President Obama in 2012 appeared to give comprehensive reform new life and the Senate passed bipartisan and comprehensive legislation in 2013. However, the House of Representatives did not act on that bill and few observers expect comprehensive reform legislation to emerge from the current Congress.

Despite political stalemate, there appears to be considerable consensus among experts and the public as to the contours of an immigration reform package: enforcement against unauthorized migration, measures to address the large population of undocumented migrants already in the United States, and new admission policies to enable the immigration system to respond more efficiently to future demand for workers. In the absence of likely legislative action, there has also been growing interest in exploring administrative reforms and stand-alone legislative initiatives that would make immigration policies more effective, efficient, and fair. While recognizing that such reforms will not address some of the most deep-seated

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[1] This is less the case today following President Obama's executive actions taken in the past year which have brought attention to how the system is administered outside of Congressional legislation.

problems in the current system, they can make a profound difference in the ways in which policies affect immigrants and natives alike.

As the debate on immigration reform proceeds, it is important that policy makers have access to the best ideas as they consider legislative and administrative options and approaches. This project held a series of meetings that brought together researchers, policymakers, stakeholders and opinion leaders to assess the evidence on the major domains of the immigration system and to deliberate their policy ramifications.

Family Immigration: Visa Channels and Management Challenges

Family reunification is a core value of the U.S. immigration system. The policy was first adopted in the Immigration and Nationality Act of 1965, which overturned the existing system of national quotas in favor of a more universal visa preference system that emphasized family and employer sponsorship. This system was last adjusted through the Immigration Act of 1990, which made minor changes to the family-based visa category, designated new visa categories for employment-based immigrants, and created a diversity visa lottery that admits 50,000 immigrants annually from countries with low levels of immigration.

From its adoption, the elimination of national origins quotas was intended to make the U.S. immigration system more equitable. Its provisions, particularly the ability of U.S. citizens and lawful permanent residents (LPRs or green card holders) to sponsor immediate family members and to petition for the admission of extended family members, have been important in increasing the number of immigrants from nations previously excluded under the national origin quotas of the 1920s. Family reunification is seen as means by which immigrants' integration is facilitated, as a newly arriving immigrant joins a family that can provide a safety net. This safety net also keeps family-based immigration at a low cost to the U.S. taxpayer, as the sponsoring families support the new immigrant shouldering many of the costs of integration.

Despite the positive goals of a family-based immigration system, challenges remain. Some debate centers on the definition of family. Currently, the United States defines family primarily as the immediate or nuclear family of spouses and their children. Current U.S. policy also allocates visas for admission as an LPR to adult unmarried children of citizens and LPRs, as well as parents, married children and siblings of U.S. citizens. Many argue that family should continue to be defined broadly to include parents, siblings, and adult children. However, opponents of expansive definitions express concern that the inclusion of married children and siblings leads to a phenomenon they call "chain migration," which greatly expands the number and categories of individuals who may immigrate to the United States.

The number of visas available each year for entry as an LPR is limited by statute and a complicated formula for counting against certain caps. As a result, there is a large backlog of family members who are eligible to be admitted to the United States as an LPR, but who must wait in a virtual line until a visa becomes available to them. The large admissions backlog highlights the disparity between the limits on sponsorship of citizens and LPRs. While there is no numerical cap on the number of spouses, minor children and parents of U.S. citizens who may be admitted annually as LPRs, the spouses and minor children of LPRs face an effective cap of 87,900 admissions annually. These visas are not fully subject to per-country limits. Unlike U.S. citizens, LPRs are not able to sponsor parents, married children or siblings. Arguably, the long backlogs generated by the caps on LPR sponsorship undermine the traditional emphasis on family reunification.

Meeting participants suggested a number of potential solutions to address these current challenges. One would be to adopt a hybrid approach that increases access to admission for spouses and minor children while winnowing down, but not eliminating, access for other family members. Both U.S. citizens and LPRs would be able to sponsor spouses and minor children without numerical limits. One participant suggested that children up to the age of 26 could be included in the category that is exempt from numerical limits, following the precedent set in the Affordable Care Act, which allows children to remain on their parents' health insurance policies up to the age of 26. At the same time, others suggested the admission categories for siblings and adult children could be eliminated. Extended family connections would be given priority, however, for admission under employment-based categories.

Some participants suggested moving to something like a point system for admission as an LPR, with family members of U.S. citizens and current LPRs receiving additional points. Most participants, however, were uncomfortable with a point system. They noted that Canada has moved away from a pure point-based admissions program because workers who were admitted on points have not fared well in the labor market.

Finally, participants were concerned that any future legalization program may put pressure on family-based admissions. For example, if currently unauthorized individuals are given immigration relief and (immediately or eventually) obtain lawful status, would they be able to sponsor family members from their countries of origin? Would they be able to sponsor family members who currently reside in the U.S. without lawful status? If so, these changes would greatly increase the number of applicants in a system that already has a significant backlog for family-based immigration petitions. However, to bar them from applying for family members would undermine the principal of family reunification. Most participants felt that, with family reunification as a core value, policy reform should protect the family and remove inefficiencies that make lawful family reunification difficult.

Some participants felt that restrictive immigration policies may hamper immigrant integration. One concern is the strict requirement for a U.S. citizen or LPR to demonstrate the financial ability to support a family member they sponsor for admission. Since 1996, a higher

requirement for proving adequate income (called "deeming") has resulted in some family sponsors being able to bring over only a few family members at a time. Poor immigrant families then lack their working-age members who contribute to the household and they struggle to escape poverty. Some families can afford to sponsor the admission of their children only after first working for many years in the United States, after the children have received the bulk of their education in their countries of origin. Children who come at older ages, often with poor education and language skills, may be a higher burden on taxpayers over the course of their lifetime than they would have been if they arrived at a younger age.

Another challenge to successful family reunification is the strict bar on admission for those who were previously in the United States illegally. Individuals who were present in the country unlawfully for six months must remain outside the country for three years. Those present without lawful status for a year or more must remain outside the United States for ten years before being lawfully admitted. These long periods of entry fracture family unity and may make integration more difficult. It may be preferable to permit exceptions to these rules in cases where exclusion of a family member creates hardship for the family.

Creating informed and well-designed policies for family admissions is difficult because there is a lack of data to answer questions about the specific causes and consequences of family immigration. Meeting participants noted that little of the data that measures social and economic impacts of individuals admitted to the United States allow for comparison of families and their visa class of admission. While census data record information about foreign-born respondents, they do not capture immigration admission statuses. Better data could inform policy and improve programmatic responses.

Several recommendations evolved from the roundtable discussion that address challenges to family-based immigration. These recommendations include:

- Allow LPRs to sponsor spouses and minor children without numerical limits in the same way as U.S. citizens.

- Allow the cutoff age for minor children to rise from the current age of 21 to 26.

- Reexamine sponsorship requirements to make sure barriers are not so high that they prevent timely family reunification of immediate family members.

- Improve the collection and dissemination of better data and analysis, perhaps through the creation of an independent commission, to effectively inform policymaking on all aspect of immigration.

Highly Skilled Migration: STEM Supply and Policy Challenges

Highly skilled foreign workers are admitted as either permanent immigrants, on either employment- or family-based visas, or as temporary visa holders. Highly skilled tends to refer to workers with at least a college education. Most highly educated foreign workers admitted to the United States based on their skills are employed in occupations in science, technology, engineering or mathematics (STEM). More STEM workers are admitted annually on temporary visas, although practically all immigrants ultimately admitted as permanent green carders were first admitted on temporary visas; ultimately, most adjust to permanent visas via employment- and not family-based admissions.

The annual demand for highly educated foreign workers tends to outrun the number of visas allotted; yet, there is controversy about the commonly-asserted domestic shortage of scientific and engineering workers. Universities and employers claim that foreign students fill shortages created by a lack of domestic student interest in STEM fields. Critics say that the large numbers of foreign students and workers undermine the attractiveness to domestic students of STEM studies and jobs. But there are some signs of shortages in specific STEM fields. Perhaps the most consistent difficulty reported by employers is in finding the right worker for a specific job.

Foreign students are permitted to work for one year after completing their U.S. degree, or up to 29 months for STEM graduates, on Optional Practical Training (OPT). The number of OPT workers has grown significantly in recent years and some participants expressed concern that it is becoming an employer alternative to regulated temporary work visas.

There are several visas available for highly skilled workers, the best known and most used is the H-1B specialty visa. The H-1B admits employer-sponsored workers, most of whom have a college degree in professional occupations, for up to six years. More than half of all H-1B visas are granted for employment as computer science or technology professionals. While many H-1B petitions are awarded to small employers, the majority of H-1B petitions are awarded to large employers in the Computer Systems Design and Related Services industries. Some experts question whether the H-1B visa offsets actual shortages in the U.S. labor supply or generates an incentive for outsourcers.

The specialty work visa has been a major pathway for foreign students into the U.S. labor force. In turn, most H-1B workers obtain permanent residence through employment-based visas for admission as legal permanent residents. The waiting times for these visas have grown significantly in recent years, especially for applicants from India and China. In response to increases in the waiting period for employment-based visas, Congress enacted legislation to allow H-1B visa holders to remain in the United States and work beyond the visa's six-year period of stay (while they wait for a permanent visa to become available). The system frustrates employers who have to deal with uncertainty, and the number of workers stuck in backlogged visa lines continues to grow.

Employers argue that the cap on H-1B visas should be raised, explaining that they face domestic worker shortages and that the number of petitions exceed the visas available, year after year. Critics, on the other hand, argue that demand for visas is not the same as demand for workers. They say that H-1B workers displace domestic workers and that young H-1B workers are paid lower salaries than domestic workers and save employers money.

At the same time, there is greater agreement about the general inadequacy of the number of visas for the admission of highly skilled foreign professionals as LPRs. The limit on LPR admissions for workers means that the temporary visa holders and their employers face long backlogs before the foreign worker is awarded permanent status. A number of participants argued for a practical, accessible path to permanent residence that will ensure admission of high skilled individuals, as well as stability for workers and employers.

Many roundtable participants argued that U.S. policymakers should study lessons from abroad. Alternative high skilled visa systems, such as point systems described above, typically select immigrants based on their human capital, sometimes also awarding points for family relationships in the receiving country. While many observers find the idea of objective point systems attractive, points alone do not ensure that individuals who score high points are employable.

Other experts argue that market forces should test employer demand (e.g., if employers truly face shortages of domestic labor, they should be willing to pay a premium to sponsor a foreign worker). The Commission on Immigration Reform in 1997 recommended that employers pay a $10,000 fee for the right to employer a foreign worker. In recent years, some economists have recommended that visas be auctioned off. These ideas are untested; accordingly, some experts recommend implementing pilot programs to evaluate how well such alternatives would resolve the debate over shortages and legitimate employer demand for either temporary or permanent workers.

At the same time, proposals in Congress would make it easier for foreign students who complete a graduate degree in a STEM field to obtain LPR status, as well as increase the number of H-1B visas available each year. In contrast, some experts argue that the debate should address the protection of workers; the Government Accountability Office (GAO) has found high levels of visa fraud and observers report not only that H-1Bs are paid too little, but also that many are employed and housed in substandard conditions. Post-employment investigations at U.S. worksites should be more regularly enforced to ensure a level playing ground for all employers and to protect both foreign and domestic workers. As for visa fraud, visa applicants sometimes misrepresent their education or experience. The DHS Citizenship and Immigration Services' Administrative Site Visit and Verification Program (ASVVP) conducts checks to ensure that visa applications comport with reality, but the program needs more officers to carry out this enforcement function effectively.

Although the United States is the largest country of immigration in absolute numbers and continues to attract the lion's share of the brightest workers from around the world, the expert participants in the roundtables criticized current U.S. policies from numerous perspectives. Policies are too inflexible, setting artificial caps on admission that do not adjust to meet changing economic demands. Others criticize the lack of flexibility of visa programs to meet the legitimate demands of employers. Policies fail to prioritize the admission of workers who will contribute most to U.S. competitiveness. Some believe policies create unfair competition by creating incentives for U.S. employers to hire foreign instead of domestic workers. Still others see the potential for abuse of workers trapped in temporary visa status because of the long waiting time for permanent residence.

Low-Wage Migration: Present Challenges, Future Supply

The United States has admitted migrant labor on the H-2 visa program for temporary and seasonal jobs since the 1950s. The H-2 visa requires that the Department of Labor certify that the job an employer intends to fill will not adversely affect the wages and working conditions of similar U.S. workers and that there are not sufficient U.S. workers for such a job. Afterwards the employer petitions the DHS's Citizenship and Immigration Services to fill the certified position with an approved visa applicant. Like other temporary work visas, the employer controls who is hired and the foreign workers' continued employment is dependent on the employer, particularly for the H-2 visa which restricts switching employers during their period of employment. The Immigration Reform and Control Act (IRCA) of 1986 created the H-2A visa for agriculture and the H-2B for lower-skilled work in other seasonal industries, making two separate visa categories where there had been one.

There is no annual cap on the number of H-2A visas. There were roughly 6,000 H-2A visas issued per year in the early 1990s, but by 2000 that number increased to 30,000, and the numbers more than doubled to 74,000 in 2013. The H-2A workers represent five to ten percent of all hired agricultural workers. With about one-half of agricultural jobs still filled by unauthorized workers, the H-2A could play a more important role as an alternative supply of labor. Mexico has been the major supplier of H-2 workers and is likely to remain the major source in the near future. The top six crops of employment are tobacco, oranges, onions, hay, apples, and nurseries. There are three common complaints about the H-2A program: the process of getting a worker is cumbersome, employers complain that the required wage is too high, and advocates worry that workers are tied to employers, creating conditions for potential abuse. Some experts point out that H-2A workers are, nevertheless, protected compared to unauthorized workers.

Outside of agriculture, the H-2B visa program has also grown, from around 10,000 visas issued in 1990 to 45,000 in 2000, and up to 58,000 in 2013. The H-2B program is capped at 66,000 visas annually. Employer demand is highest for landscape workers, followed by jobs in forestry, amusement parks, housekeeping, and commercial grounds-keeping. Advocates

for additional H-2B visas argue that there is large untapped employer demand for this program. Critics are concerned with a lack of worker protections, poor transparency, and weak enforcement of visa regulations.[2] The H-2B visa confers fewer rights to workers compared with the agricultural H-2A. The latter provides immigrant workers with transportation and housing. The recruitment process for H-2Bs is often outsourced to employment agencies, removing responsibility from the ultimate employer in cases of fraud.

The roundtable debated whether temporary programs for low-wage workers can efficiently allocate labor while ensuring the humane treatment of migrant workers. As the number of temporary workers increases, contradictory problems become difficult to manage. One argument suggests as many as one million visas should be awarded annually because that is the real demand for labor. Very large visa programs, however, magnify the challenge of how best to ensure that migrant workers return home at the end of their authorized time period. Ultimately, workers on temporary visas are most likely to return home when their jobs are restricted to seasonal or temporary (peak-load) jobs. At the same time, large numbers of guestworkers can impede investment and the technological alternatives employers could pursue, perpetuating inefficiencies that are not in the long-term interest of U.S. competiveness.

The roundtable participants agreed that regulatory principles must address how to protect workers' rights, meet employer demand, and support efficient markets. There was some agreement on the following:

- Visa-work portability, or the ability to change employers while holding the same visa, is important. Permitting visa holders to shift between employers gives them an independence that is fundamental to efficient marketplaces.

- It is reasonable to expect that an employer's initial job offer includes a wage that is fair and will not undercut the domestic market.

- The federal government should step up post-employment enforcement audits and investigations to ensure that employers are engaging in fair employment practices.

- Third parties, such as recruiters and contracted crew bosses, are involved in the market for foreign workers and require scrutiny. Recruiters often charge illegal fees that trap immigrant workers in a form of indentured servitude. More oversight of third parties, and enforcement of worker protections, is required.

- Policymakers should consider options to better manage the number of temporary workers admitted to the United States including: an independent Commission that would set visas numbers annually, requiring employers to pay market rates to sponsor visaholders, or the creation of visa auction markets. Combined with visa portability,

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[2] Government Accountability Office, 2015. "H-2A and H-2B Visa Programs: Increased Protections Needed for Foreign Workers," GAO-15-154, http://www.gao.gov/assets/670/668875.pdf

such approaches address critics' concerns and could be attractive to employers. More efficient market mechanisms should enhance employers' access to labor and protect workers' interests.

There is no shortage of proposals for reform, but there is substantial concern about substituting untested ideas for known policies. Policymakers should consider how the alternatives address stakeholders' concerns, but they should also be aware that some ideas are untested and they might phase in reforms or use small scale pilot programs.

Refugee, Asylum and Other Humanitarian Policies: Challenges for Reform

In light of the important role played by the United States in protecting migrants who are forced to flee their countries of origin, reform of the U.S. refugee, asylum and alternative protection systems should receive high priority from policymakers. Although legislation is needed to address some of the problems raised in the workshop, participants outlined numerous administrative and financing options that would enhance the country's capacity to respond to the needs of people fleeing life-threatening situations at home and in transit. A similar situation existed in the mid-1990s when the last major set of asylum reforms were put in place. A public-private partnership that engaged a broad spectrum of stakeholders produced policies that worked well for a couple of decades. A similar partnership is needed today.

Under U.S. law, and in keeping with the 1951 UN Refugee Convention, individuals who fear persecution in their home countries may apply for asylum, if they are already in the United States, or resettlement, if they are outside of the country. To obtain such protection under U.S. law, applicants must show that they are unable or unwilling to return home because of past persecution or a well-founded fear of future persecution if they return. The reason for past or possible persecution must have to do with the individuals' race, religion, nationality, membership in a particular social group, or political opinion. Individuals who receive asylum or are resettled are allowed to apply for permanent residency after one year, and U.S. citizenship after five years.

There are two avenues to seek asylum inside the United States. After arrival, asylum seekers may of their own volition make an affirmative application to asylum officers in the Department of Homeland Security (DHS). Applicants who have been apprehended by DHS prior to filing a claim must present a defensive application for asylum in immigration court, an adversarial process in which a DHS attorney may argue against the individual's asylum claim.

Participants agreed that the U.S. asylum system must become more efficient, while improving its ability to protect *bona fide* asylum seekers. Participants recommended that resources be increased for both the DHS Asylum Corps, which reviews affirmative applications, and the immigration courts in order to reduce the current case backlog.

Allowing cases to move more quickly through asylum proceedings would be beneficial to genuine refugees who would receive asylum more quickly.

Child asylum seekers require special forms of protection. To ensure that the best interest of the child is at the heart of asylum proceedings involving children, participants recommended that DHS should develop a "Children's Corps" with a role similar to asylum officers. The Children's Corps would conduct non-adversarial interviews with unaccompanied migrant children to screen for asylum or other relief from deportation. Children should have access to higher quality and more widely-available legal representation in immigration courts. Also needed is more information and training for legal representatives working with children.

The United States has a long history of welcoming refugees from around the world. Of the one percent of refugees around the globe that are resettled annually, half are resettled in the United States. Since 1975, the United States has resettled three million refugees. In recent years, about 70,000 refugees have been admitted each year. Unlike other immigration categories, there is no set ceiling on refugee admissions. The President, in consultation with Congress, sets an overall admission number and allocation among regions each year. [3] Within these allocations, there are three priorities for admission: individual cases referred to the program by virtue of their circumstances and apparent need for resettlement, groups designated under similar terms, and individual cases from designated nationalities granted access for purposes of reunification with family members already in the United States.

Participants urged reforms to make the U.S. refugee resettlement program more agile in responding to the needs of refugees in immediate need of protection and in providing durable solutions to those refugees with no other durable solutions. The processing of refugees for admission to the United States has been slowed significantly by background and national security checks. Although progress has been made in speeding up the security check process, participants felt that more needs to be done to increase the efficiency of the program. The experts argued that the current guidelines, which are designed to exclude individuals who could pose a security risk to the United States, are overly-strict and negatively impact many individuals who have urgent resettlement needs.

To build greater support for refugee resettlement, participants recommended increased advocacy efforts with state and federal government representatives to provide education on the value of refugee programs. Public events, such as meetings between elected officials and constituents, can provide an opportunity for refugees to raise awareness and tell their stories. Ensuring a more stable source of funding, and guarding against transfer of funds from resettlement to equally meritorious uses, would increase state and local support as well as help facilitate integration.

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[3] The level of admissions for FY16 has been raised to 85,000.

Participants agreed that alternatives to asylum and resettlement should be used to cover those who do not meet the legal refugee definition, but are still in need of protection from life-threatening situations that force flight from or prevent return to a home country. Temporary Protected Status (TPS) and Humanitarian Parole are two such provisions. The TPS provisions permit foreign persons to stay legally in the United States because conditions such as armed conflict or environmental disaster temporarily prevent their return. Humanitarian Parole permits individuals to apply for admission into the United States for urgent humanitarian reasons, or if there is a significant public benefit, for a period of time equal to the emergency or humanitarian situation. Many experts felt that the TPS provisions should be adjusted to allow transition to lawful permanent residence status if the conditions that necessitated TPS continue beyond a specified period. Participants suggested that seven years may be an appropriate benchmark. TPS should allow for family reunification when family members are also in danger or do not qualify on their own under the TPS provisions. Funding should be allocated to assist TPS recipients to return to their home countries if conditions permit.

Detention and Removal: What Now and What Next?

The United States maintains the largest immigrant detention system in the world. There are two federal agencies that detain most noncitizens within the U.S. DHS: Immigration and Customs Enforcement (ICE); and Customs and Border Protection (CBP). The ICE agency oversees the largest detention apparatus in the interior of the nation. In part due to funding allocations determined by Congress, most notably the "detention bed mandate" first included in the 2010 Department of Homeland Security Appropriations Act, the practice of detention has grown. While there have been efforts to improve detention procedures and conditions, participants identified challenges and debated constructive recommendations.

Detention

Most roundtable participants believed that detention should be a last resort, not a preferred option. ICE has used an assortment of Alternatives to Detention (ATD), from centers with relatively lenient custody restrictions to electronic surveillance such as ankle monitors and community-based programs. These ATD programs have shown success and are significantly less costly than detention. Participants urged, in particular, that families should be placed in ATDs rather than detention facilities.

Participants noted favorably that ICE has developed a Risk Classification Assessment (RCA) to assess which immigrants subject to deportation proceedings should be detained and which may be released without posing a risk of flight or to public safety. The RCA is a valuable tool for assessing humanitarian equities and vulnerabilities. Participants agreed it could be used at different stages in detention and removal to evaluate an individual's changing circumstances. It should also be adapted where necessary and used by Customs and Border Protection (CBP) to determine who should be held for detention in the border zone.

Participants expressed concerns about the facilities where persons are detained. Between IEC-owned facilities, private facilities contracted by ICE, and state and local jails under contract with ICE (Intergovernmental Service Agreement Facilities), some argue that the latter are the least satisfactory because they are subject to the least oversight by Federal immigration authorities. The ICE-owned facilities are expensive, but offer more accountability and better implementation of ICE detention standards for detention center safety, security, order, care, activities, justice, administration and management. As ICE strives to consolidate detention facilities, some facilities placed in isolated areas where migrants have less access to legal counsel or community and family support. Participants urged action to ensure access to quality legal services for all detainees.

Detention may compound problems for migrants. Those who experience physical and psychological harm prior to arrival in the United States, such as asylum seekers, are particularly vulnerable. Participants believed there should be more appropriate, personalized, and accessible orientation programs for immigrants placed in detention facilities. Materials might be offered in multiple languages. ICE has taken steps to break down bureaucratic barriers and improve accountability, establishing an online detainee locator whereby individuals can be tracked to their place of detention; and a dedicated call center to answer questions. Participants welcomed the implementation of internal standards by ICE. Standards tailored to different facilities, such as those holding migrants less than 72 hours, may lead to better protection outcomes. Participants thought an independent monitoring body could help ensure effective implementation of standards.

In FY2014, the Office of Refugee Resettlement (ORR) received a total of 57,496 referrals of unaccompanied children from DHS, compared with nearly 25,000 in 2013 and only 6000 to 8000 in prior years. Roundtable participants thought the system was ill-prepared to respond effectively to the surge in unaccompanied children, raising questions about the capacity of ORR to address future large increases in such movements. High and increasing levels of violence in Central America pose a risk to migrants deported from the United States and returned to their countries of origin. Many participants argued for efforts to better integrate those persons into their home communities, while long-run solutions may involve more than immigration reform instead dealing with the root causes of violence.

Removals

Since its inception in 2003, the DHS has deported or "removed" (the formal term used by the government) about 3.7 million non-citizens from the United States. Some key statistics were discussed from a recent report on formal removals, published by the Migration Policy Institute.[4] While acknowledging that reforms for a better functioning removal system have

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[4] Marc Rosenblum and Kristin McCabe, 2014. "Deportation and Discretion: Reviewing the Record and Options for Change," Migration Policy Institute, http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change

been difficult to achieve given the current political landscape, participants noted examples of incremental reform. Given the volume of removals and their associated costs to mixed-status families where parents are sometimes taken from households with citizen children, and the substantial costs to taxpayers, participants discussed and argued for alternative options other than removals when appropriate.

Immigration courts are underfunded and face heightened demand as ICE places more individuals in removal proceedings. According to the Transactional Records Access Clearinghouse (TRAC), the courts have a backlog of over 350,000 pending cases, creating long delays in the resolution of individual cases. Participants called for increased funding to hire additional immigration judges and to otherwise support the immigration court system.

There has been a significant increase in DHS-administered removals, under which the immigrant facing deportation does not have a hearing before an immigration judge. The rise in administrative removals generates concern among advocates that immigrants' due process rights are not safeguarded in these expedited processes. There is a need for greater scrutiny and oversight of administrative and other summary removals.

Participants were especially concerned with the impact of expedited removal provisions in place since 1996 on asylum seekers. Persons entering the United States without documentation may be expeditiously removed unless they can establish a 'credible fear' of persecution or torture if they are returned home. If they demonstrate credible fear, they are able to apply for asylum in the United States as a defense to deportation. Credible fear grant rates have decreased since instructions went to adjudicators in February 2014 that emphasized that there must be a *substantial and realistic* possibility that the applicant will prevail in his or her claims to asylum, rather than the minimal possibility standard that some adjudicators had been using. Participants also noted with concern that asylum officers were diverted from doing full asylum reviews to undertaking credible fear interviews as the volume of those in expedited removal procedures increased, leading to a growing backlog in asylum decisions. Similar backlogs were also facing the immigration court, which is responsible for hearing the asylum claims made by those who pass credible fear.

Some participants urged that those who pass the credible fear standard have their full asylum hearing before asylum officers, rather than undergoing a defensive asylum proceeding before the immigration courts, in order to streamline the process. Participants also urged greater transparency in the process through which CBP officers determine whether or not to refer apprehended migrants for a credible fear interview. One way discussed to improve the overall process is to increase the number of asylum officers so as to balance both sets of responsibilities. Another was to ensure that all migrants in removal proceedings are represented by legal counsel. Migrants who receive counsel tend to fare better in their hearings and the proceedings tend to be more expeditious. Migrants who are placed in mandatory detention may effectively lack access to legal counsel because their detention facilities are in remote areas or because they cannot locate a lawyer to represent them. Those on the non-detained docket may also find it difficult to find counsel or hire representatives

with inadequate experience. Some participants recommended a legally-mandated right to counsel.

Many migrants who are subject to removal come to the attention of ICE when they are identified by state and local enforcement agencies within the United States. Some experts argued that local law enforcement agencies should not be involved in federal immigration enforcement. Others asserted that programs such as Secure Communities, that engage local authorities in identifying deportable immigrants, are effective tools, especially in the interior of the United States where immigrants may not routinely interact with immigration officials.[5] All agreed on a need to clarify priorities and procedures among ICE and local law enforcement actors. Participants also agreed that federal and local law enforcement should address the high levels of mistrust of law enforcement felt by the non-citizen population. Building trust with the immigrant community can encourage non-citizens to report and help solve crime.

Finally, participants called for greater involvement in and assistance to migrants' countries of origin to stem the root causes of flight such as violence, organized crime, or persecution. Experts also recommended that efforts be made to ensure that those who are returned to their home countries are able to successfully reintegrate, in part as a way to reduce possible re-migration and to address the criminal activity unemployed returnees may engage in in their countries of origin.

Enforcement in the Workplace: Challenges, Past and Present

The Immigration Reform and Control Act of 1986 (IRCA) imposed employer sanctions on employers who fail to verify the identity and employment authorization status of all new hires in the United States. The law required all new hires to present documentation to prove their identity and authorization to work. The Law also introduced the Form I-9 to record information from the documents presented. Critics have long questioned the effectiveness of the I-9 form, which assumes a good faith effort by employers to demand proper papers from prospective employees, and to recognize fraudulent papers when they are presented.

Most employers act in good faith and do what they can to ensure the authenticity of the documents provided by employees. Other employers, however, knowingly accept false papers with little fear of being investigated. Work authorization systems must be effective and simple if they are to be successful and used nationwide. The I-9 form requirement co-exists with an electronic employment verification system (E-Verify) that is designed to be simpler and to provide rapid feedback. Employers query the online system to verify a correspondence between a worker's name and social security (or alien) number. E-Verify is a

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[5] President Obama abolished Secure Communities in November 2014, several months after this roundtable discussion. He established a successor known as the Priority Enforcement Program (PEP) in July 2015 which is similar but targets convicted criminals.

voluntary program but currently is required for all or selected groups of new hires in some states and for many Federal contractors. Some roundtable participants cautioned that E-Verify is not always accurate or complied with by employers and therefore it might not be ready for nation-wide implementation as the only method of complying with the law. All participants believed the greatest problem with E-Verify is when employers do not follow proper procedures following issuance of a Tentative Nonconfirmation (TNC) that results when the information entered for new hires does not initially match electronic government identification records. False negative TNC determinations can have severe consequences for workers if they are not allowed to correct the problem and they may be viewed as suspect by their prospective employers. Meanwhile, false positive determinations of identity can permit unauthorized workers to obtain employment. Most participants agreed that successful national mandatory E-Verify would require closer interagency coordination between the Social Security Administration and the Department of Homeland Security.

To address identity fraud, participants were divided between biometrics and knowledge-based identification systems. Biometrics is promising, but some experts questioned whether it is feasible to implement on a national scale. A knowledge-based employee verification system could be an alternative; here information provided by the worker would be compared against a database that collects third-party information. But there are ample challenges, particularly with the accuracy of the system and the privacy of information collected.

Participants discussed possible challenges to the rollout of a nationwide employment verification program, as well as strategies that might improve its success. Initial challenges include the assurance of data accuracy, employer compliance, and prevention of identity fraud. All administrative actions should provide clear guidelines on how to correct records, combat misuse and safeguard privacy. More controversially, some participants suggested that the United States adopt a national identity database, similar to those used in certain OECD countries, as a best solution.

At the same time, some employers misuse the system and place workers, authorized and unauthorized alike, in a vulnerable position. Some noted that E-Verify and the Form I-9 can be used to threaten workers who might report workplace violations. Some participants mentioned that there have been incidences where employers have used E-Verify with retaliatory intent to undermine worker rights. Creating the right incentives for employers will remain important for effective worksite enforcement and to offset exploitation of the system. For workers, many believed reforms should include protections for whistle-blowers. Employees should be able to remain on the job while contesting a TNC determination.

E-Verify will not automatically eliminate unauthorized workers from the labor force. Even if Congress enacted a law offering with a general amnesty program to undocumented migrants, unauthorized employment would not disappear. Instead some employers would hire workers off-the-books, subcontract workers through middlemen, or take their entire operation underground. Additional measures will need to be taken to identify and prosecute employers who intentionally violate the law.

Stepped-up enforcement of labor laws will be necessary because some employers may circumvent work authorization requirements and underpay their workforce. In these cases, labor law is an additional tool to ensure authorized employment and to guard against an uneven playing field that can induce other employers to lower their wages to be competitive. Otherwise, employers may use the threat of an I-9 audit, or identify unauthorized workers to ICE, as a way of circumventing their legal obligations to all workers. Employees are also sometimes misclassified as independent contractors, thereby removing responsibility for their work authorization from the employer. The legal risk faced by unauthorized workers was heightened in 2002 when the U.S. Supreme Court limited worker protections in *Hoffman Plastic Compounds, Inc. versus the National Labor Relations Board (NLRB)* which ruled that unauthorized workers who engage in union activities may not claim back wages.

Certain strategies that would reduce workers' vulnerabilities were discussed. In several European countries, the ultimate employer, the end-users, are held responsible for workers' rights and status. The U.S. Senate's last comprehensive immigration reform legislation (S.744, passed in 2013), which was not passed by the House, addressed the adverse consequences of the *Hoffman* case and provided whistle-blower protection in disputes. California requires that companies verify that labor standards are upheld by their business suppliers. One participant argued that proactive education campaigns for employers could improve compliance.

Participants also believed the enforcement challenge must address the overlapping responsibilities of ICE and national and state labor departments. A good example is found in the recent Memorandum of Understanding (MOU) between the U.S. Department of Labor and ICE that states that both agencies will respect the labor rights of all workers, regardless of immigration status. When labor laws are properly and aggressively enforced, employers have greater incentives to comply with the law, lessening the demand for unauthorized workers.

The enforcement of labor law can and should complement or reinforce U.S. immigration laws to protect the rights of all workers, but also to counter demand for unauthorized workers. Authorized immigrant workers and native workers alike benefit from worksite enforcement of both immigrant work authorization and labor rights.

Border Enforcement in the 21st Century

Agents of the Department of Homeland Security apprehend undocumented entrants at the border and process a yet larger volume of legal entrants and trade goods. Nevertheless, debate often focuses on the entrants apprehended at the border. Border apprehensions are thought to be a reliable indicator of changes in the number of undocumented migrants and the numbers of apprehensions have declined to near a historic low. Compared with a record 1.6 million apprehensions of undocumented migrants in 2000 and 1.2 million in 2005, there were only 364,768 apprehensions in Fiscal Year 2012; and an additional 262,769 removals by ICE.

Despite these statistics, public opinion polls and political rhetoric reinforce a perception that the border remains "uncontrolled." Participants believed to a large degree that perceptions about undocumented entry can be attributed to two factors: the difficulty of measuring the effectiveness of border security measures and the disagreement over what border control entails. Reliably capturing or measuring the movement of goods or people, particularly clandestine movements, is extremely difficult. Setting organizational goals to achieve border control should incorporate not only reliable metrics, but also a consideration of how best to achieve actual control over all border movement.

While the participants agreed that controlling illegal movement is paramount, defining "operational control" of the border as 100 percent interdiction raises problems. While it is possible to measure the number of migrants apprehended attempting to cross the border, there are no precise methods for measuring the either the number of apprehended migrants who decide to return home, or the number of migrants who ultimately enter the United States undetected. "Effective control" of the border, defined as the achievement of persistent surveillance and the apprehension of say a lesser 90 percent of undocumented crossers, is little more realistic. An objective of near zero entries while laudable in theory may not be possible to measure adequately as there is no reliable way to count migrants who are not apprehended.

An emphasis on perfect operational control of undocumented entries can undermine the strategic deployment of resources to detect and combat security threats. Facilitating the lawful movement of people and goods across America's borders, while preventing the transport of contraband and undocumented migration, confronts border enforcement with multiple tasks. When resources are limited or inflexibly allocated, then the overall control of the border may suffer. What is more, the border is no longer "out of control," as it arguably was in the early 1990s. Significant resources are available to enforce cross-border activities, and the declines in undocumented entries over the past decade demonstrate this progress. These facts are not sufficiently acknowledged by policymakers and are not fully understood by the public.

A successful strategic principal should be one that can be both reliably measured and effectively implemented. The participants discussed an alternative framework for border management whereby all elements of enforcement are considered for achieving maximal security by targeting realistic and achievable goals. Control of the border through "comprehensive management" may be a better way to achieve the efficient and effective deployment of resources to best secure the border. Advanced analytics can help identify segmented risks along the border and focus agency resources where needed. More readily-available data and metrics will assist the DHS deploy its resources and assure the public that it is meeting its goals

Control of people and goods and the facilitation of legal cross-border movement are two sides of the same coin. To reflect the increased traffic associated with international trade and

lawful border crossers, there needs to be sufficient resources for legal Ports of Entry (POE). Participants suggested a few principles that would improve control at POEs. Officials should have the flexibility to shift personnel and resources between the Border Patrol and inspection authorities within and across corridors. The data collected at POE's and better analytics could be used to more effectively monitor the efficiency of POEs and allow for a better allocation of organizational and financial resources. Some argued that Customs and Border Protection (CBP) should strive for 100 percent inspection rates at these entry points. Other participants felt that the budget allocated to POE management should be increased.

International travelers and trade represent billions of dollars to the United States; facilitating this movement is in the nation's interest and enforcement is central to ensuring national security. Officials have made significant progress in managing the movement of goods and people at the border. The Western Hemisphere Travel Initiative has been instrumental in modernizing trade and facilitating crossings at legal points of entry. The Initiative employs different strategies to deal with different kinds of travelers, such as the Trusted Traveler Programs and the Ready Lane - Radio Frequency Identification. Participants suggested that facilitation of international trade should be a focus of border security in the dialogue with Mexico and other stakeholders. By placing emphasis on economic competitiveness and development, a platform of mutual interest can be established where border security can be a key pillar.

The United States should also pursue greater collaboration with Mexico in managing human mobility at the border, undocumented entry, the return of Mexican migrants, transit migration from other countries, and crime control. The treatment of deported migrants and the protection of their safety and human rights must be a top priority. Some participants pointed to the CBP's Mexico City Relocation Project as one example of how best to relocate migrants. At the same time, Mexico needs to commit more resources towards receiving returnees in a humane and effective manner.

Participants urged policymakers to think strategically about America's goals at its borders. Security is a necessary priority; however, it cannot be the only priority. Migration and the movement of goods occur across borders and takes place within border communities. Ongoing evaluation efforts should be carried out on the quality of life, safety and effects of border enforcement on the general wellbeing of border communities. The research community needs to create metrics that can accurately and credibly measure wellbeing.

Borders should not be thought of only as a protective wall against the potential threat of undocumented migration; they must also be secured against importation of instruments of crime or terrorism, contraband, or illegal trade. At the same time, huge volumes of tourists, workers, business travelers, and legal trade of all sorts must be facilitated. Managed well, our borders can be as secure as possible and a source of tremendous economic growth. As reform of America's immigration system moves forward, stakeholders would do well to keep in mind that the challenges at the border are interdependent.

Looking Back to Move Forward: Examining Past Legalization Programs

Despite the uncertainty of legislative and administrative proposals, experts anticipate that policy shifts will address the status of the resident undocumented population. The current undocumented population is large and includes many mixed-status households, with family members who are legal residents or U.S. citizens, and others who are undocumented. Addressing the status of undocumented residents speaks to the rights of legal residents and U.S. citizens. Today's debate over immigration reform must resolve deep divisions, but everyone will ultimately benefit from resolving one of America's most troublesome political problems. Government and non-governmental actors should be prepared.

For over two decades the U.S. Congress has been unable to enact legislation to regularize the status of the undocumented population which now represents between11 to 12 million individuals. Many proposals offer lawful status to the unauthorized population, combined with varying requirements for eligibility. President Obama supports these approaches, but Congress has not acted. First in June 2012 and then in November 2014, he took executive action to offer relief, called "deferred action," to certain undocumented immigrants. Deferred action offers immigrants without status a reprieve from deportation and permission to work lawfully in the United States for a set period of time (typically two or three years). The June 2012 program offered deferred action to certain young undocumented immigrants. The November 2014 program expended eligibility under the June 2012 program and offered deferred action to the undocumented parents of U.S. citizen and LPR children. In February 2015, however, the President's expanded deferred action plans were blocked by a federal court injunction and, as of this writing, remained blocked.

Whatever form future regularization efforts take, there will be significant challenges in implementing them. The IRCA experience demonstrates the many issues confronting the successful execution of any program (whether enacted by Congress or created under Executive Branch authorities) that regularizes the status of unauthorized migrants. Any lack of strategic preparation will compound those challenges.

Many executive branch agencies have not adequately prepared for implementation of a large-scale program. Roundtable participants concluded that federal agencies likely to be charged with carrying out a legalization program should engage in planning exercises based on possible scenarios. The agencies should run different scenarios for legalizing migrants based on the language of different legislative proposals. Given various possibilities, they should consider how to facilitate the implementation of the timely, orderly and fraud-free regularization of eligible individuals. Learning lessons from prior experiences with legalization, including the June 2012 program for young immigrants (called "Deferred Action for Childhood Arrivals" or DACA), is essential for effective implementation of any new and larger programs.

Participants believed that the U.S. Citizenship and Immigration Services (USCIS), the Federal agency likely to shoulder the greatest responsibility for a regularization program, should consider developing an advisory board for scenario building exercises. Experts should be drawn from the public and private sphere; have programmatic and subject area knowledge; and include those with experience from IRCA's implementation. This forum would help anticipate how to best respond to future Congressional directives.

Existing proposals for legalization differ significantly. For example, some proposals would involve a very lengthy provisional status (such as 10-13 years) before the legalized population could become Lawful Permanent Residents. Participants found it difficult to anticipate the impact of imposing such a long period of provisional status, given the potential for unforeseen circumstances and unintended consequences. Experts felt that it would be prudent to study the long-term impacts of a prolonged provisional status to inform future policymaking.

The bottom line is that if comprehensive immigration reform ultimately occurs, there will be significant implementation challenges, participants believed, especially for federal agencies, state and local governments, and community organizations. There will be issues to be addressed if the Executive Branch expands deferred action on removal for groups aside from those currently benefiting from the June 2012 DACA program. At the same time, if reform efforts fail in Congress and the nation is left with the existing legal framework, other implementation challenges will arise.

Participants noted that any new legalization program will look very different at the end than in the beginning, likely expanding in scope throughout the implementation process and requiring flexibility within the agencies in charge of administering the program. Many individuals who were not in IRCA's original eligibility guidelines were added during the period of application. The Immigration and Naturalization Service (the predecessor agency to the bureaus currently in the Department of Homeland Security) largely succeeded in demonstrating flexibility during IRCA's implementation. Program administrators responded to issues by customizing rules at different points throughout the implementation process. In this respect, IRCA points to a challenging paradox that will be experienced in any new, massive legalization effort: Agencies are, by necessity, cautious of acting preemptively while Congress is deliberating. However, if the agencies wait to plan for administering a program until legislation passes, they are more likely to falter in the implementation stage. Moreover, the agencies may fail to plan for Administrative actions that might require them to process resident migrants who are unlikely to be apprehended or removed. Strategic planning exercises based on multiple scenarios—some legislative, others administrative—is essential to achieve successful implementation and to budget accordingly.

Roundtable participants agreed that the following lessons of prior legalization programs should be part of any strategic planning process: 1) Flexibility should be built into legalization programs because circumstances change over the course of any regularization initiative; and 2) Public-private partnerships are effective in encouraging and preparing

unauthorized migrants to come forward but, to be most effective, there must be significant scaling up of private-sector capacity. More recently, DACA has forged new partnerships that should be utilized in any future legalization efforts.

The fee required for legalization applicants in IRCA and other legalization initiatives ensured that the monies to administer the program come from the applicants themselves. With the proper setting of fees, costs can be proportional to the number of applicants. A significant disadvantage, however, is the up-front costs of training, infrastructure and outreach, which if not adequately funded can compromise implementation. The IRCA experience suggests that some funding be provided through tax revenues to help agencies and non-governmental service providers properly hire and train staff before a regularization program launches. Federal funding also needs to be relatively fluid and not constrained too tightly by fiscal year, as some applications will arrive in one fiscal year but be adjudicated in a subsequent year.

Substantial thought should be given to the physical location of the offices that will process applications for any legalization program. The IRCA experience helped establish that community-based offices were most efficient in serving the applicants. Community locations were more convenient to the applicants. They also reduced the fear held by many undocumented immigrants of entering a federal building where law enforcement and service agencies often operate side by side.

Resources for applicants who do not speak Spanish will be required. The IRCA outreach focused primarily on Spanish-speaking communities and did not serve other language communities as well. Attention also needs to be paid to isolated groups, such as domestic workers, agricultural workers, women who work in the home, the elderly and disabled, as well as those in new settlement areas with little infrastructure for serving immigrants. Sufficient planning attention needs to be given to identify the scope of these challenges.

A large residual population of unauthorized migrants was not eligible for the legalization program in IRCA as the individuals had arrived in the United States after January 1, 1982—the effective date in the statute. This gap was a result of delays in passage of the legislation; the date of arrival was written into the bill in 1982 and was not updated before the bill was finally enacted in 1986. Participants urged that steps be taken to minimize the residual population in any future legalization program. Experts also recommended that policymakers plan for the admission of the families of the newly legalized who currently reside abroad.

IRCA mandated a longitudinal survey of the regularized population which resulted in very useful information about patterns of undocumented migration and the impacts of legalization on beneficiaries' earnings, employment and other immigrant integration measures. Similar studies should be authorized by any new legislation.

Language and civics requirements in IRCA led to significant engagement by public educational facilities which offered English as a Second Language and other courses to the eligible population. The costs were covered by State Legalization Impact Assistance Grants

(SLIAG), which the federal government was slow to implement. Nonetheless, the SLIAG funds provided useful resources for states and localities that provided services to the newly legalized population. If future legislation links the awarding of lawful permanent residence to English language acquisition and/or a standard level of civics knowledge, it will be essential for Congress to appropriate resources to community colleges and other organizations providing classes to eligible immigrants.

Looking Forward

Today's international migration presents the United States with great benefits, but its mismanagement generates accumulating economic and social costs. The United States has about 42 million or one-fifth of the world's international migrants and admits over 1.1 million immigrants annually. The United States also has about half the world's 20 million-plus unauthorized migrants and has been debating what to do about this population for decades. The last major legislation to reform the legal admission system was in 1990 following legislation in 1986 to control undocumented migration. Since then, problems with immigration policy in its entirety have continued to mount.

Most debates over US immigration reform have been over comprehensive proposals with three major elements: more border and interior enforcement to prevent the entry and employment of unauthorized foreigners, legalization for most unauthorized foreigners in the United States that eventually can lead to legal immigrant status and possible U.S. citizenship, and new and expanded temporary worker programs. Republicans generally emphasize enforcement and temporary workers, while Democrats emphasize legalization and expanded permanent immigration. The failure of comprehensive reforms prompted President Obama in 2012 and 2014 to give some undocumented foreigners a temporary legal status; the 2014 effort was blocked by courts. Of course, a resolution of undocumented migration remains a top priority, but there are other pressing issues that should be addressed as well.

This report suggests ways to improve border and interior enforcement, address legal admission priorities, safeguard U.S. humanitarian commitments, and better prepare for tomorrow's immigration challenges. There are no perfect solutions to immigration dilemmas, only trade-offs between competing goods. The suggestions presented in this report are a way forward in targeted ways in the absence of, or combined with, comprehensive reform.