

# Rethinking the U.S. Legal Immigration System

## A Policy Road Map

### RETHINKING U.S. IMMIGRATION POLICY INITIATIVE

BY MUZAFFAR CHISHTI, JULIA GELATT, AND DORIS MEISSNER

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Built on a scaffolding first established in 1952 and buttressed in 1965, the U.S. legal immigration system saw its last major updates more than three decades ago in 1990. In the intervening years, its criteria for selecting immigrants through various streams have proven to be misaligned with the key factors shaping migration to the country and with the national interest.

The consequences of this failure to update immigration laws based on current realities have been enormous for the country and for its economy. It is the principal cause of the present population of 11 million unauthorized immigrants in United States and of the mounting backlog in legal immigration streams—the two hallmarks of what is commonly called a broken immigration system. Of the 11 million unauthorized immigrants, 8.7 million entered during the 1990s and early 2000s, mostly because of an absence of legal pathways for migration.<sup>1</sup> Currently, more than 1 million people with willing U.S. employer sponsors are waiting in line—mostly inside the United States—for years or even decades for a green-card slot to open up for them.<sup>2</sup> Meanwhile, the U.S. population continues to age, with dark predictions for the future ratio of workers to retirees, the solvency of the Social Security system, and the growth of the U.S. labor force and economy.

It is therefore not surprising that the centerpiece of President Joe Biden's immigration reform bill,

introduced in Congress in February 2021, is a path to legal status for the unauthorized immigrant population.<sup>3</sup> The measure also proposes substantial increases to annual immigration levels. But it does not fundamentally change the structure of the legal immigration system and the manner in which most immigrants are selected for admission, which is necessary not only to make sure that the experience of the past is not repeated, but to build a structure for future needs of the country.

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The United States is badly in need of an update to its legal immigration system, whose employment-based and family-based capped visa categories remain unchanged since 1990, so that the country can again embrace legal, orderly immigration as a source of economic and social strength. Such reforms should embrace the benefits of legal immigration to the U.S. economy and labor force, the mitigation of the negative effects of an aging population, and the promotion of American values of diversity and family unity. And any future policy for selecting immigrants should have built-in flexibility so that employment-based immigration levels adjust to

periods of lower or higher need, depending on the state of the economy and the labor market.

The sections that follow sketch the broad contours of some of the most needed reforms in the legal immigration system, with a particular focus on adjustments to employment-based and family-sponsored immigration. It is a road map for ongoing work by the Migration Policy Institute (MPI) laying out more detailed proposals for reshaping the various legal immigration streams (see Box 1).

### BOX 1 About the Rethinking U.S. Immigration Policy Project

This road map is part of a multiyear Migration Policy Institute (MPI) project, Rethinking U.S. Immigration Policy. At a time when U.S. immigration realities are changing rapidly, this initiative aims to generate a big-picture, evidence-driven vision of the role immigration can and should play in America's future. It will provide research, analysis, and policy ideas and proposals—both administrative and legislative—that reflect these new realities and needs for immigration to better align with U.S. national interests.

To learn more about the project and read other reports and policy briefs generated by the Rethinking U.S. Immigration Policy initiative, see [bit.ly/RethinkingImmigration](https://bit.ly/RethinkingImmigration).

## 1 Economic and Demographic Realities

Immigration policy should fundamentally be tailored to serve U.S. national interests. As such, it should reflect factors inside the United States that create a need for immigrant workers and position the country well to benefit from immigration. The age structure of the U.S. population and shifts in the U.S. economy are two such factors, both of which

clearly establish sustained immigration as an asset that benefits the country and the economy.

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### A. An Aging Population

The U.S. population is aging, setting the United States on a course toward the fiscal, economic, and social challenges that Japan and some European countries have been facing for some time. Due to the aging of the baby boom generation and declining fertility rates, the number of U.S. residents past retirement age (over age 65) grew by more than one-third between 2010 and 2020, while the number of children under age 18 declined and the working-age population held steady. As these trends continue, the U.S. Census Bureau projects that by 2034, the country will have more seniors than children.<sup>4</sup> And by 2040, one in five U.S. residents is projected to be age 65 or older.<sup>5</sup>

On the fiscal front, without any changes to current policy, the U.S. Social Security system is set to deplete its reserves by 2035 as increasing numbers of retirees draw their benefits.<sup>6</sup> The burden of funding Social Security and health benefits for retirees—both Medicare and Medicaid—will be spread across a smaller number of active workers. Increasing taxes too much to cover these costs could discourage people from joining the labor market, while cutting other government spending to offset them could harm future economic vitality if such cuts affect key social programs and investments in children or basic infrastructure that supports economic activity.

Population aging also create strong demand for health-care workers and caregivers. If such workers are in short supply, U.S. workers may opt out of the

workforce to care for aging relatives themselves, further lowering the available labor pool. Because immigrants tend to come to the United States in their prime working years, a steady flow of immigrants can greatly help, but not solve, all of these problems by supporting the growth of the U.S. workforce, filling specific labor market gaps, and helping to maintain a higher worker-to-retiree ratio as the country finds its way through the retirement years of the baby boom generation.<sup>7</sup>

## **B. Changing Labor Market Demand and U.S. Workers' Skills**

Over the past 30 years, the U.S. economy has seen a fundamental restructuring, with large declines in employment in the manufacturing sector and major increases in the service sector. These shifts have, in turn, greatly affected the sets of skills in demand in the labor market. The number of workers employed in manufacturing jobs fell by 5 million between January 1990 and January 2020, while the number of workers in health care and social services (hospitals and clinics, nursing homes, community services, and daycares) grew by 11.5 million, and the number working in leisure and hospitality (arts, entertainment, recreation, hotels, restaurants, and bars) grew by 7.5 million.<sup>8</sup> Of course, employment across industries fell sharply during the recession brought on by the COVID-19 pandemic and associated lockdown and social-distancing measures, particularly in the leisure and hospitality industry. But as vaccination efforts have picked up speed and the economy has begun to reopen, labor demand in service-based industries has rebounded.

In its latest projections of future employment growth, calculated before the pandemic began, the U.S. Bureau of Labor Statistics (BLS) projected that the largest job growth over the coming decade would occur in jobs in the health-care and social ser-

vices, professional and business services (professional services, management, and administrative support), and leisure and hospitality industries.<sup>9</sup> Many of the occupations projected to grow the most require no more than a high school diploma or short on-the-job training. They include home-health and personal-care aides, fast-food workers, cooks, laborers and movers, landscaping workers, janitors, waitstaff, and construction workers.

Even as these types of lower-skill jobs grow, the educational attainment of American workers is rising. In 1970, slightly more than half of U.S. residents ages 25 and older had a high school diploma. By 2019, that share had risen to 90 percent.<sup>10</sup> Over the same period, the share of U.S. adults with four years or more of college education rose from 11 percent to 39 percent.<sup>11</sup> Therefore, there are fewer and fewer U.S.-born workers looking for jobs with low skill requirements, even as the economy is, current recession aside, generating growing numbers of such jobs.

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Meanwhile, on the other end of the occupational spectrum, demand for skilled workers has been outpacing the supply of U.S. workers with the desired skills. This is particularly the case in the science and technology fields, as evidenced by rising wages for this group.<sup>12</sup> And the BLS projects strong growth ahead for high-skilled jobs such as software developers and testers, health services managers, financial managers, and accountants and auditors.

High-skilled immigration is a source of economic growth, innovation, job creation, and overall com-

petitiveness for the United States.<sup>13</sup> Immigrant workers, who are both as likely as U.S. workers to have an advanced degree and more likely to lack a high school diploma, are well positioned to fill unmet demand in jobs across the skills spectrum in the labor market.<sup>14</sup>

### C. *Implications for Immigration*

The U.S. economy could adjust to having fewer low-wage workers, even if the adjustment might be uncomfortable. A lower supply of workers willing to accept low-wage jobs would incentivize offshoring of jobs that can be done overseas and greater investments in automation for those roles that cannot be done abroad, building on efforts already underway to create fruit- and vegetable-picking machines, self-serve checkout stations in stores and restaurants, and cleaning machines. Short of such adaptations, the costs of some services and goods could simply rise, as nonessential services such as restaurant meals become occasional luxuries rather than regular habits.

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However, the declining working-age population and labor force will have a much broader and deeper impact. The strain placed on government budgets by the need to support an aging population without a large working population to provide tax revenues would likely come at the cost of slashed expenditures on other social or economic priorities, such as infrastructure or children's health and education. An aging, shrinking workforce could also slow or even

stall the overall growth of the economy, particularly given that older workers tend to be less mobile and less innovative.<sup>15</sup> Along with addressing barriers to employment faced by U.S. workers, who have shown declining labor force participation rates,<sup>16</sup> a sustained level of immigration is thus a smart policy choice to mitigate the long- and short-term effects of population aging.<sup>17</sup>

Immigration can also help address mismatches between the skills in demand by employers and the skills of U.S.-born workers, at both the high- and lower-skilled ends of the labor market, and particularly in growing occupations in the health-care and social service fields. In addition, immigration has the bonus effect of helping with some of the other challenges facing the labor force—lower rates of mobility among U.S. workers, which has led to mismatches between where jobs are and where workers live, and declining innovation. Drawn to economic opportunities, immigrants often move to the places where their skills are most in demand. Immigrants also start new businesses at higher rates than U.S.-born workers, generating new jobs, and college-educated immigrants tend to be more innovative, outpacing their U.S.-born, college-educated peers in generating more new patents.<sup>18</sup>

### D. *Dysfunctions in the Current Selection System*

The outdated U.S. immigration system stands in the way of employers' ability to hire needed workers through sensible, managed, legal pathways. The annual employment-based green-card allocation was set in 1990, at a time when the baby boom generation was in its prime working years, and before the internet, new technology, and expanded globalization reshaped the economy. The employment-based immigration stream is too small to facilitate the immigration of needed workers; the number of employment-based green cards available

each year—just 140,000—is much smaller than the roughly 500,000 new foreign-born workers the U.S. economy absorbed each year prior to the pandemic.<sup>19</sup> That is to say that most foreign-born workers join the workforce through channels outside of the employment-based green-card system, through family-based immigration streams, temporary work visas, humanitarian channels, or as unauthorized immigrants. More than half of those 140,000 green cards go to the spouses and minor children of foreign workers with employer sponsors, meaning that sponsored workers account for less than 7 percent of the roughly 1.1 million total green cards issued annually. The great majority of these limited slots go to college-educated workers, with just 10,000 reserved for low-skilled positions.<sup>20</sup> This highly restricted employment-based migration stream has led to three types of dysfunction: backlogs, unauthorized immigration, and the long-term use of so-called temporary visas.

## Backlogs

Because visa categories and their allotted numbers are misaligned with the realities of today's supply and demand, nearly 1 million people are in line for an employment-based green card, and 3.8 million people are waiting abroad for a family-based green card with an approved initial petition.<sup>21</sup> With the share of green cards that can be given to immigrants from any one country capped at 7 percent in the family- and employment-based categories, backlogs are much bigger for some countries than others—with longest waits for would-be immigrants from Mexico, the Philippines, India, and China.<sup>22</sup> For example, if everyone with an approved petition in the backlog for an employment-based green card as of November 2020 stayed in that line until a green card became available, Indian nationals would wait an impossible 223 years for a second-preference category (EB-2) green card, while workers from countries other than India and China would face no wait at all.<sup>23</sup>

## Unauthorized Immigration

Lacking legal pathways, some migrants turn to illegal immigration to join family members or work in the United States, often both. Strong demand for Mexican workers to fill low-wage agricultural, landscaping, and construction jobs, which had been filled without numerical limits prior to 1965, persisted even after annual immigration from Mexico was strongly limited. What had been legal labor flows morphed into illegal ones. At the height of illegal immigration to the United States, between 1995 and 2000, more than 500,000 people joined the unauthorized immigrant population each year, mostly by coming across the border illegally.<sup>24</sup> More recently, those without a family member or employer able to sponsor them, as well as those unwilling to wait in sometimes decades-long backlogs, have come to the country on a lawful temporary visa and then unlawfully overstayed it.<sup>25</sup>

## Expansive, Long-Term “Temporary” Immigration

Employers looking to hire for jobs with lower-skill requirements—for which few green cards are available—as well as those seeking to hire foreign workers who face long green-card backlogs increasingly rely on temporary visas to access the workers they need. In fiscal year (FY) 2019, the State Department issued 644,000 multiyear visas to temporary workers and their spouses—nearly five times more than the number of employment-based green cards available each year.<sup>26</sup> Nearly half of those visas went to H-1B workers and their dependents, a growing number of whom stay in the country past the normally allowed six years while waiting in line for green cards. Locking workers into multiyear, “temporary” arrangements, in which their right to stay in the country is tied to their employer, creates conditions in which workers are willing to accept wages and working conditions they might not otherwise tolerate. This, in turn, affects conditions for U.S. workers and creates

incentives for employers to hire more-exploitable temporary workers over U.S. workers.<sup>27</sup>

## 2 A Fresh Look at Policy Challenges, Old and New

MPI is advancing a new framework for legal immigration, one that expands employment-based admissions, bridges temporary and permanent immigration streams, and introduces flexibility in immigration levels, while also advancing long-standing American values of family unity, humanitarian protection, and diversity. The sections that follow sketch out that vision.

### A. Addressing the Unauthorized Immigrant Population

Meaningful and responsible reform of the U.S. immigration system must begin with addressing the challenge of the country's existing unauthorized immigrant population. Not only does illegal immigration present a moral dilemma, it has been the central element of the immigration policy debate for more than two decades. A large segment of the unauthorized population has developed deep roots in U.S. communities. Sixty percent of unauthorized immigrants had lived in the United States for ten years or more as of 2018, and many have U.S.-born children, perform jobs essential to the country's economic productivity and lifestyles, pay taxes, and have built stable communities.<sup>28</sup> Imagining they should all uproot themselves and return to their countries of origin is simply unrealistic; it would cause massive harm to U.S. families, destabilize communities, and disrupt the economy. In acknowledging this central reality, the responsible course of action is to provide unauthorized immigrants an opportunity to regularize their status. There is broad-based public support for this idea.<sup>29</sup>

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Legalization could be accomplished in incremental steps and entail eligibility requirements such as a minimum length of residence in the United States, work history, payment of taxes and application fees, and absence of serious criminal history. Alternatively, discrete measures could legalize subsets of the overall unauthorized population, such as DREAMers, Temporary Protected Status (TPS) holders, essential workers, close family members of U.S. citizens or permanent residents, or farmworkers. Such an approach to legalization could adopt measures MPI explored in a February 2021 report, which include a new, one-time program or adjustments to existing provisions.<sup>30</sup> Among these options are:

- ▶ Eliminating the three- and ten-year bars to re-entry for those who have spent six or more months in the United States without authorization
- ▶ Moving forward the registry date, which allows unauthorized immigrants in the country as of a given date the opportunity to apply for green cards
- ▶ Grants of protection from deportation and work authorization, short of a full path to permanent residence and U.S. citizenship.

### B. Rethinking the Broader System

This road map focuses primarily on a new vision for an employment-based immigration system as the most pressing need for change. But it also recognizes needed updates to the other three main legal

immigration streams—family-sponsored admissions, the Diversity Visa program, and humanitarian programs.

A new policy vision must:

- ▶ be driven by evidence, including current assessments of the U.S. labor market, and have built-in flexibility to accommodate changes in the economy;
- ▶ enhance America’s ability to compete for sought-after global talent;
- ▶ reflect the real-life preferences of migrants today, including for circular migration;
- ▶ reduce the chances of growth of a future unauthorized immigrant population;
- ▶ promote deeply held American values such as family unity, diversity, and offering protection to those in need; and
- ▶ uphold the principles of transparency, timeliness, and predictability.

### 3 The Elements of a Restructured Employment-Based System

The first step in overhauling employment-based immigration to better reflect economic and demographic realities is to increase the number of foreign-born workers admitted for employment purposes. The second is to design a system that takes into account the behavior of the principal stakeholders in employment-based immigration—employers and workers. These goals call for three streams of employment-based admissions: (1) short-term or seasonal work visas; (2) direct admission as perma-

nent residents; and (3) a newly conceived bridge visa, which adapts a long-advanced MPI idea for a provisional visa.<sup>31</sup>

#### A. *Seasonal and Short-Term Workers*

This first stream would be limited to workers who take up jobs that are short-term or seasonal in nature. Examples of seasonal occupations include harvesting one crop, seasonal fishing, and working at a summer or winter resort. Similarly, any job that by its nature lasts less than a year would be classified as a short-term job.

In such jobs, the workers would be sponsored by an employer, but they would be guaranteed the same worker protections as comparable U.S. workers, including the ability to bring legal action against their employers—a right most temporary workers do not possess. In these jobs, the workers and their employers know when the job will end. The expectation is that workers will return to their countries of origin after the job is completed, with the possibility of returning for another seasonal or short-term job in the future. Because stays in the United States would be very short—shorter than those usually experienced by current H-2A (agricultural) or H-2B (nonagricultural) temporary workers—family members would not be allowed to join the worker on dependent visas during their stay in the United States.<sup>32</sup> The number of workers in the seasonal/short-term category would be relatively small because of the creation of a new category of bridge visas described below.

#### B. *Direct Admission as Permanent Residents*

The direct admission of immigrant workers as permanent residents would be limited to those recognized as the best and brightest in their fields.

Eligibility criteria for direct admission would be close in definition to the first-preference category in the current employment-based system. People of extraordinary ability as well as outstanding professors and researchers would fit this definition. In addition, professionals in strategically important fields or critical industries could enter the country under this category. Examples of occupations and industries of strategic importance could include cyber security, energy independence, and biomedical research.

Professionals in this category would either be self-sponsored or sponsored by an employer for specific employment purposes. Their immediate family members would be allowed to join them. They would not be subject to labor certification or labor market tests, nor would per-country numerical limits apply to them. With countries around the world competing to attract and retain talented professionals, the idea is to make the United States a destination of choice by facilitating their immigration and integration in as seamless a manner as possible.

### C. *Bridge Visa*

A new bridge visa, as conceived by MPI, would open up employment-based immigration pathways for needed workers across the skills spectrum, align temporary and permanent immigration streams, provide greater labor rights than those available to current temporary workers, and provide options for shorter-term and longer-term migration. This new category would be the dominant stream of foreign workers admitted to the United States for employment purposes. It would also more accurately reflect how immigration and labor markets already operate, given that 80 percent of people who obtained employment-based green cards in recent years did so by adjusting from a temporary visa with which they were already working in the United States.<sup>33</sup> But it would allow this pathway for lower- and middle-skill jobs in addition to high-skilled ones (which dominate current adjustments from temporary to

permanent visas), and would avoid the mismatches in numbers and national origins that currently exist between temporary and permanent immigration streams.

This category, which will be the subject of forthcoming work by MPI's Rethinking U.S. Immigration Policy initiative, would have the following key features:

- ▶ **Employer sponsorship.** Bridge visas would not be limited to certain occupations or skill levels, and thus would be the admissions channel for all employment-based immigrants not covered by the seasonal/short-term category or eligible for direct admission as permanent residents. To qualify, the worker would need an employer sponsor, and the employer would need to go through a newly efficient and more meaningful labor certification process.
- ▶ **Employer precertification.** Employers could be precertified to sponsor a worker on a bridge visa. Precertified employers would need to establish a history of compliance with labor laws and immigration laws. And they would need to demonstrate systematic efforts to recruit U.S. workers and to upgrade the skills of their existing workforce. Employers who are not precertified would have to obtain an individual labor certification, establishing that the hiring of the sponsored foreign worker will not lead to the displacement of a U.S. worker or undermine wages or working conditions. Foreign workers hired in "shortage occupations" (discussed below in Section 6) would be exempted from the labor certification process.
- ▶ **Portability.** Bridge visas would be portable, meaning workers on a bridge visa would not be tied to the single employer who initially sponsors them. Workers who wish to move to a new job within the same occupational



category would be able to switch employers freely.<sup>34</sup> Employers seeking to hire a worker who holds a bridge visa issued in a different occupational category would need to qualify through the labor certification process. Spouses and minor children of bridge visa holders could be admitted as their dependents, but to obtain work authorization, they would need their own employer sponsor for a bridge visa.

- ▶ **Access to legal recourse.** Workers on bridge visas would have labor rights and protections equal to those for U.S. workers. They would have access to courts and the right to bring private causes of action to redress violations of their rights. Based on income eligibility, they would also have access to representation by the Legal Services Corporation (LSC), an independent nonprofit created by Congress in the 1970s. For low-income workers, the legal aid LSC offers is especially critical for meaningful access to courts. In turn, access to the courts and adequate representation would be important for the integrity of the new visa regime, given the troubled history of exploitation and retaliation in temporary worker programs.
- ▶ **Duration and circularity.** Workers on a bridge visa would be admitted for a period of three years. They could then apply for a three-year extension. After renewing their initial visa, workers could apply for permanent residence at any time before their second three-year period is up. Alternatively, they could return to their countries of origin at any time during the six years and be eligible for another bridge visa at a future time. To adjust to permanent resident status, workers would have to demonstrate a history of steady employment in the United States, as well as current and continuing employment.

## D. *A Pilot Points System*

To complement the bridge visa, seasonal/short-term visa, and direct-to-permanent pathways, the United States should also pilot a points-based immigration system. This model, used by Canada, Australia, and some other countries, has won adherents in the United States. However, successful points-based systems have typically operated within parliamentary systems, where it is possible for the government to readily and regularly tweak points allocations and thresholds to achieve the desired immigration levels and profiles. It is less clear how a points system would operate within the U.S. context, where the legislative branch may not be controlled by the same political party as the executive, and any needed changes to the points system would likely be held up by lengthy and contentious debates in Congress.<sup>35</sup>

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Such a system could allocate points based on, for example, human-capital characteristics, sponsorship by an employer or a state or local government, or a credible plan for employment-creating entrepreneurship. This would allow simultaneous testing of local immigrant sponsorship—an idea that has gained traction in U.S. policy discussions but not yet been tested—and testing of the idea of an entrepreneur or start-up visa, to admit those who have demonstrated they can launch a new business and create U.S. jobs.<sup>36</sup> Rather than simply adopting such models wholesale, their feasibility should be tested for the distinct realities of the U.S. labor market, business practices, and political traditions.

Legislation establishing such a pilot should allocate funding for the collection and analysis of administrative and survey data to allow for the assessment of the program's efficacy and to compare the outcomes of immigrants selected in a points system to those of workers selected through direct employer sponsorship and the bridge visa.

## 4 Reforms to Other Legal Immigration Streams

Along with employment-based immigration, family-based immigration is the other main legal pathway, followed by humanitarian admissions and the Diversity Visa program. As with employment-based immigration, these streams could be updated to better serve national interests.

### A. Family-Based Immigration

Family-sponsored immigration must remain a major priority of the U.S. selection system. It supports the stability of communities and families, and advances the deeply rooted American value of family unity. Families also provide a reliable safety net when a new immigrant arrives and is adjusting to life in the United States. Beyond social and emotional support, families also typically provide important linkages to employment opportunities that help newcomers integrate into the labor market.

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However, the current system through which U.S. citizens and permanent residents can sponsor family

members for immigration has developed dysfunctions of its own. Though there is currently no wait for lawful permanent residents to sponsor spouses or children for immigration, in past years the wait stretched as long as three years.<sup>37</sup> The selection system should be changed so that spouses and minor children of permanent residents are treated the same as the immediate relatives of U.S. citizens, with no annual quotas. At the same time, some other family-based categories have such long backlogs that the promise of immigration has become symbolic. For example, U.S. citizens wishing to sponsor adult, married children from the Philippines face a wait of up to 67 years, while those siblings from Mexico face an impossible wait of up to 157 years.<sup>38</sup> These categories deserve a fresh look.<sup>39</sup> Some family members aspiring to immigrate through the current family-sponsored categories may find it faster to do so through the expanded employment-based streams this road map proposes.

### B. Refugee Resettlement and the Asylum System

The third stream of legal immigration, humanitarian admissions, suffered four years of antagonism under the Trump administration. The United States had traditionally been the world leader in permanently resettling internationally recognized refugees, but it ceded that position to Canada in 2018,<sup>40</sup> as the Trump administration cut the annual refugee resettlement ceiling to ever lower numbers—45,000 for FY 2018 continuing to just 15,000 for FY 2021, compared to a ceiling of 70,000 or more in most fiscal years since the resettlement program was formally created in 1980.<sup>41</sup> Reduced refugee arrivals have choked off funding to the broad network of nongovernmental organizations that assist refugees upon their arrival in the United States. The Biden administration pledged to increase the refugee admissions ceiling for FY 2021,<sup>42</sup> and to raise it further to 125,000 for FY 2022.<sup>43</sup> Scaling up to this level will

require rebuilding the U.S. refugee vetting and resettlement systems.

### *Humanitarian admissions suffered four years of antagonism under the Trump administration.*

Likewise, the U.S. asylum system—a key pathway for migrants who arrive in the United States seeking protection—is sorely in need of repair and reform. Efforts to do so must ensure that asylum claims can be heard and adjudicated in a timely manner and with due process, while upholding U.S. obligations under international humanitarian agreements. Efficient adjudication is imperative, given that the U.S. immigration court system faces a backlog of more than 600,000 asylum cases.<sup>44</sup> MPI experts have in previous work proposed revamping the U.S. asylum system to allow U.S. Citizenship and Immigration Services (USCIS) asylum officers to fully adjudicate asylum claims originating at the border, rather than referring them to immigration courts after the initial credible-fear screening; such a move would capitalize on the investments of time and expertise already made by asylum officers in these cases, enable asylum seekers with meritorious claims to more quickly receive protection, and help reduce the courts' backlog.<sup>45</sup> It would also be important to guarantee the right to counsel to the most vulnerable asylum seekers.<sup>46</sup>

### *C. The Diversity Visa Program*

Up to 55,000 green cards are granted annually to immigrants from countries where relatively few immigrants to the United States originated in recent years (fewer than 50,000 in the prior five years).<sup>47</sup> This Diversity Visa program plays several important roles in the U.S. immigration system. While originally designed to facilitate immigration from Ireland, it has allowed a pathway to the United States for migrants from some African countries (such as Egypt,

Ethiopia, Cameroon, and the Democratic Republic of Congo) and from a diverse array of countries in other regions, ranging from Turkey to Ukraine to Nepal, with large numbers coming from countries facing upheaval and conflict.<sup>48</sup>

It is the only pathway that allows enterprising and ambitious people from around the world to make their way to the United States without having a family member or employer already in the country to sponsor them.<sup>49</sup> Through opening immigration to individuals from more countries, it plays a diplomatic role in spreading information about and hopefully positive experiences with the United States to countries that do not already have strong U.S. connections. And, though applicants are not required to have more than a high school diploma or equivalent, or two years of mid-level work experience, Diversity Visa recipients are, overall, a highly educated group, with an estimated 50 percent holding a bachelor's or higher degree.<sup>50</sup> Therefore, the Diversity Visa program should be preserved in its current form.

## **5 Key Considerations for Building a Modernized Visa System**

Fully modernizing the legal immigration system would require introducing several other changes. Careful thought should be given to how many green cards are allocated to each of the remaining visa categories within both the family- and employment-based systems, as well as to the 7 percent cap imposed on immigration from each country.

High demand from a small number of countries—namely Mexico, India, China, and the Philippines—is responsible for most of the backlog in the immigration system. Given the varied size of the populations of countries around the world, and the varying strength of ties to the United States through proxim-

ity, past migration, trade, wars, and other factors, applying the same low per-country cap to all countries puts the immigration system at odds with on-the-ground realities. Congress has been debating various proposals that would eliminate per-country caps on employment-based green cards and raise them to 15 percent for family-based green cards. Biden has endorsed a similar idea in his proposed bill.<sup>51</sup>

On the employment side, eliminating per-country caps would lead to much higher levels of immigration from India and China, which together make up 94 percent of the employment-based green-card backlog,<sup>52</sup> particularly as backlogs first clear. Rather than eliminating per-country caps, Congress could consider keeping per-country caps but setting them higher, at perhaps 25 percent initially, to preserve more national-origin diversity in the immigration system, with the possibility for further adjustments over time, as will be described in the next section.

Another big challenge for any effort to revise how green cards are allocated is that of how to deal with the millions of people who are waiting in line for numerically limited green cards to become available. Honoring the promises made to them could delay the implementation of a new system by years or even decades, while simply telling them to apply again through a new system would raise concerns about fairness. Providing new, expanded pathways, as described above, could allow some people in the backlog to immigrate sooner, partially resolving this issue.

*An effective legal immigration system, once better aligned with national interests and how migration works on the ground, must also be accompanied by effective enforcement.*

A third area worthy of thoughtful review is the alphabet soup that is the nonimmigrant visa system. This currently ranges from A visas for ambassadors and diplomats to the V visa that allows family members to wait inside rather than outside the United States if they have been waiting since 2000 for a family-based green card. Re-examining the need, in current times, for each type of visa should be a priority, with the aim of greater coherence in the visa system.

Finally, an effective legal immigration system, once better aligned with national interests and how migration works on the ground, must also be accompanied by effective enforcement. Worksite enforcement, to ensure that U.S. employers do not hire workers who lack work authorization, can help, along with enhanced enforcement against labor violations, to turn off the “jobs magnet” for illegal immigration and establish level a playing field—improvements that would help deter both illegal border crossings and visa overstays.

## 6 Bringing Flexibility into the Number of Immigrants Admitted Annually

Caps on the number of people admitted to the United States for employment-based immigration are statutorily fixed. Political paralysis on immigration has prevented Congress from enacting even the most common-sense changes in immigration policy for decades, including adjustments in the number of immigrants admitted every year. This inability to accommodate and adjust to the real needs of the labor market illustrates an overarching failing in the present system. After all, the Federal Reserve adjusts interest rates for the United States regularly in response to various and changing economic and

fiscal conditions. There is no counterpart for similarly adjusting employment-stream immigration levels to meet changing labor needs.

*Political paralysis on immigration has prevented Congress from enacting even the most common-sense changes in immigration policy for decades, including adjustments in the number of immigrants admitted every year.*

As part of transforming the U.S. legal immigration system, a mechanism should be created to build such flexibility into immigration levels—an independent, expert body within government. This idea builds on earlier MPI proposals for a “Standing Commission on Labor Markets, Economic Competitiveness, and Migration”<sup>53</sup> and will be the subject of a forthcoming MPI publication. This new, high-level independent body would be established by Congress. In its structure, it could be patterned after the Census Bureau or the BLS, and it would be staffed by professionals with expertise in analyzing demographic, labor market, economic, and immigration trends. It would have the authority to request additional evidence from government immigration agencies, and the ability to fund surveys necessary for conducting its work. Its conclusions would all be data driven and evidence based.

During the independent body’s two-year start-up period, the level of employment-based immigration would be fixed at about 450,000 per year, which is close to the number of foreign-born workers being absorbed by the U.S. economy each year.<sup>54</sup> This number would include the 140,000 green cards allocated to the employment-based categories under the current law, plus some slots transferred from family-based categories.

After the initial two years, the independent body would recommend to the president and Congress the number of immigrants to be admitted per year through the bridge visa category, the seasonal/short-term temporary visa category, and the pilot points system for the following two years. The recommendation would be based on expert analysis of the labor market, including consideration of the demand for jobs in specific sectors of the economy, the availability of U.S. workers, and their levels of training and experience. It would also examine the broader economic picture at both national and regional levels. Finally, it would analyze the number and characteristics of immigrants admitted in the family and humanitarian categories, since these newcomers also play important roles in the U.S. labor market.

Similar recommendations on numerical levels for employment-based immigration would then be made every two years. The overall recommendation made by the independent body would be presented both to the president and Congress. Unless Congress enacts legislation not to accept the recommendation, the body’s recommended immigration levels would take force.

Over time, as the body deepens its expertise and research acumen and builds confidence in its recommendations, it might also provide advice on other matters. These could include adjustments to the per-country caps applied to family- and employment-based immigration streams, to address big backlogs for a particular national-origin group, or to facilitate more diverse admissions if a small number of countries are dominating immigration streams. The body could also be tasked with designating “shortage occupations,” for which hiring could be done without a labor certification process (see Section 3.C.). Building on the experience of other countries that have delegated immigration decision-making to an independent body, the scope of

the independent body's work and recommendations could broaden over time.<sup>55</sup>

## 7 Conclusion

The United States faces a number of urgent immigration policy-making needs. In the early days of the Biden administration, public attention has been drawn to the challenges presented by migrant arrivals at the U.S. southern border. And Congress is focused on considering options for legalizing some of the country's 11 million unauthorized immigrants. As urgent as these issues are, the aging of the labor force and the country's ongoing demand for workers with skills outside those held by U.S. workers make reforming the legal immigration system an equally pressing issue.

Current immigration policies are mismatched with market forces and demographic realities. These mismatches have led to serious dysfunctions in the immigration system—from illegal migration to untenable backlogs and an overreliance on temporary visas for long-term employment situations. Sustain-

ing the growth of the U.S. labor force and avoiding the accumulation of new unauthorized immigrant populations will require deep reforms to the U.S. immigration system, beyond those contemplated by the Biden administration's legislative proposal. Building legal pathways for needed workers across the skills spectrum, aligning temporary and permanent pathways, and building flexibility into immigration levels and categories—as outlined in this road map—can bring the legal immigration system into line with economic and demographic imperatives. At the same time, recommitting to family, diversity, and humanitarian pathways can help ensure that immigration policies remain aligned with the country's values.

Harnessing the benefits of immigration has long been a source of strength for the United States. Redesigning immigration pathways to match with today's realities—and building flexibility so that the system can evolve to match tomorrow's as well—would allow the United States to better reap the advantages of immigration for its economy and society.

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*Current immigration policies are mismatched with market forces and demographic realities. These mismatches have led to serious dysfunctions in the immigration system.*

## Endnotes

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## About the Authors



### MUZAFFAR CHISHTI

Muzaffar Chishti, a lawyer, is a Migration Policy Institute (MPI) Senior Fellow and Director of MPI's office in New York, based at the New York University School of Law. His work focuses on U.S. immigration policy at the federal, state, and local levels; the intersection of labor and immigration law; immigration enforcement; civil liberties; and immigrant integration.

Prior to joining MPI, Mr. Chishti was Director of the Immigration Project of the Union of Needletrades, Industrial & Textile Employees (UNITE). Mr. Chishti was educated at St. Stephen's College, Delhi; the University of Delhi; Cornell Law School; and the Columbia School of International Affairs.

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### JULIA GELATT [@J\\_Gelatt](#)

Julia Gelatt is a Senior Policy Analyst at MPI, working with the U.S. Immigration Policy Program. Her work focuses on the legal immigration system, demographic trends, and the implications of local, state, and federal U.S. immigration policy. Previously, she worked as a Research Associate at the Urban Institute.

Dr. Gelatt earned her PhD in sociology, with a specialization in demography, from Princeton University, where her work focused on the relationship between immigration status and children's health and well-being. She earned a bachelor of the arts in sociology/anthropology from Carleton College.

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### DORIS MEISSNER

Doris Meissner, former Commissioner of the U.S. Immigration and Naturalization Service (INS), is a Senior Fellow at MPI, where she directs the Institute's U.S. immigration policy work. Her responsibilities focus on the role of immigration in America's future and on administering the nation's immigration laws, systems, and government agencies. Her work and expertise also include immigration and politics, immigration enforcement, border control, cooperation with other countries, and immigration and national security.

From 1993 to 2000, she served in the Clinton administration as Commissioner of the INS. Her accomplishments included reforming the nation's asylum system; creating new strategies for managing U.S. borders; improving naturalization and other services for immigrants; shaping responses to migration and humanitarian emergencies; strengthening cooperation with Mexico, Canada, and other countries; and managing growth that doubled the agency's personnel and tripled its budget.

In 1986, Ms. Meissner joined the Carnegie Endowment for International Peace as a Senior Associate. There, she created the Endowment's Immigration Policy Project, which evolved into MPI in 2001.

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