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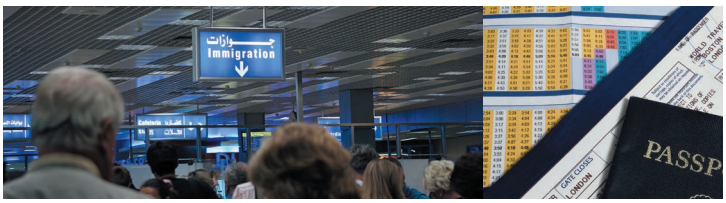
The Way Forward on Immigration Reform

A Memo to the President and the Congress



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THE GALBRAITH INITIATIVE ON IMMIGRATION

A Report by the Miller Center at the University of Virginia

JANUARY 2014

Faulkner House, home to the Miller Center, University of Virginia

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Acknowledgments

The Miller Center gratefully acknowledges the generous support of Rosemary and John Galbraith, who initially proposed that the Center apply its analytic and expository capabilities to examining the complex and compelling subject of immigration.

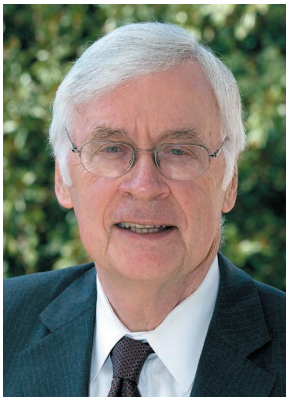
John Galbraith was formerly president and owner of Securities Fund Investors, Inc., the distribution and management company for the Templeton Growth Fund, Ltd., and for additional companies as the group grew in assets. He and Sir John Templeton took their merged companies public, listed their shares on the London Stock Exchange, and subsequently sold their holdings to Franklin Resources Company.

At the Miller Center, we believe that it is the responsibility of American citizens and institutions to be vigilant, constructive, innovative, determined, and optimistic. Rosemary and John Galbraith have demonstrated just those traits throughout their lives.

The record of philanthropic support of Rosemary and John Galbraith is without peer in the history of the Miller Center, excepting only the founding endowment. They are due the thanks of all who esteem the Center's mission of providing critical insights and historical perspective to address America's governance challenges.

Letter from Gerald L. Baliles

Director and CEO, Miller Center, University of Virginia
Governor of Virginia (1986–1990)



On behalf of the Miller Center at the University of Virginia, I thank you for your interest in this report on the Galbraith Initiative on Immigration. To be an American is a precious birthright for many, a precious achievement for some, and a precious hope for others. So it is now, so it has ever been. In the sweep of our nation's history, immigration is a recurring theme, sometimes expansive, sometimes restrictive, but always fraught with both opportunity and challenge.

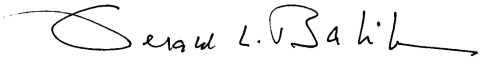
Under the Rosemary and John Galbraith Initiative on Immigration, the Miller Center has convened scholars and stakeholders in pursuit of insights that might move the nation out of a long period of dead-end division on immigration and toward constructive solutions. The Initiative has encompassed formal debate, scholarly colloquia, academic papers, public forums, and a national public policy conference. As broad in perspective as in process, the Initiative featured participants from many different points along the political and academic spectrum. The participants contested, but seldom clashed, as the objective was not soundbites but civil discourse.

In the sweep of our nation's history, immigration is a recurring theme, sometimes expansive, sometimes restrictive, but always fraught with both opportunity and challenge.

We hope the results, synthesized in this report, will help inform the national discussion that even now seems to be gathering toward a critical decision point.

With its emphasis on applying the lessons of history to the nation's contemporary challenges, and with its strictly nonpartisan discipline, the Miller Center is an ideal venue to consider such pressing issues of governance. The subject of immigration is especially entangled in our past and in need of historical perspective as we contend today with the consequences of decisions that seemed like solutions a generation ago but are manifestly failing today.

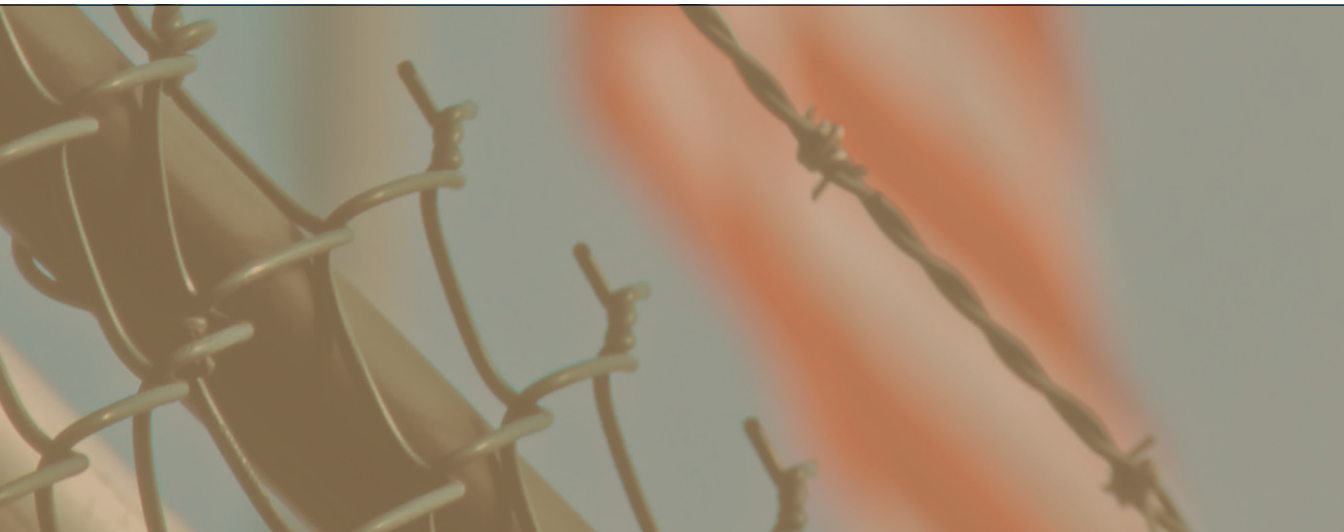
We are deeply grateful to Rosemary and John Galbraith, whose financial support made this timely initiative possible.



Gerald L. Baliles
Charlottesville, Virginia
January 2014

Introduction

The Galbraith Initiative informs the immigration debate on the brink of far-reaching reform.



The Rosemary and John Galbraith Initiative on Immigration brought scholars, policymakers, and practitioners together at the Miller Center at a moment when the nation appears on the cusp of reforms that would bridge—if not reconcile—the deep divisions in policy prescriptions and public opinion over immigration. In colloquia, Forums, and a national conference in Washington, DC, in October 2013, the Miller Center's Galbraith Initiative examined the contentious issue from the perspectives of history, economics, law, demographics, and politics.

The Galbraith Initiative's discussions and presentations provide a multilayered context for the public and legislative debate, now in motion, that holds the promise of fixing America's broken immigration system. With room for policy nuance and variation, four overarching elements of a solution arose repeatedly in the discussions:

- Effective, verifiable border control
- Reliable interior enforcement, particularly at the workplace
- Economically rational visa preferences
- Pragmatic resolution of the legal status of the shadow population of unauthorized immigrants that has developed in the nearly three decades since the last major attempt at reform

Genuinely addressed, these four elements furnish the framework for a substantial compromise, the outline of a negotiation to resolve the conflicting interests over immigration. This report is not pointedly prescriptive but will reflect varying perspectives and voices from the Galbraith programs in a nonpartisan effort to inform the discussion and contribute to emerging solutions.

Whether as a comprehensive bill or a series of smaller but coordinated bills, reform legislation and purposeful, accountable execution could reset the broken system and redirect the flow of immigration to lasting legal, authorized, intentional channels.

Socially, technologically, and politically, the moment is ripe. Post-9/11 American society shows a greater willingness both to pay for a secure homeland and to relinquish some expectations of privacy in the interest of that security. Advances in technology and communications equip the current reform effort to correct crippling shortcomings of the last overall reform in 1986 and avoid its manifest failures. Imperatives in the economy and increasing pressure for social justice meld a coalition of diverse mainstream interests in search of a durable, pragmatic solution that will bring millions of unauthorized immigrants and their families out of the shadows.

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The Sweep of History

America's immigration system historically swings between expansive and restrictive policies.

The Miller Center's debate on immigration, held at the New York Public Library in 2008, was moderated by noted journalist Robert MacNeil (center).

Immigration control is an essential element of sovereignty. Yet with immigration, as with other fundamentals of sovereignty—trade, foreign relations, currency, and more—perspectives change, and different eras or circumstances require different approaches. For better and worse, policies adapt to conditions as solutions to problems, not as immutable principles. So, from the nation's founding until today, America's immigration system has swung back and forth between expansive and restrictive policies, sometimes encompassing elements of both. Reference to this expansive/restrictive pendulum, described particularly by University of Oregon Professor Daniel Tichenor, underlay many of the Galbraith discussions and observations by distinguished scholars of varying viewpoints and disciplines from around the country.[1]

In the early days of the republic, the expansionist culture of the settler society persisted from the colonial era. Immigrants, primarily from western and northern Europe, especially England, Scotland, and Ireland, supplied labor and population for a developing frontier economy and society. (The forced migration of Africans into slavery served the economic imperative, though that is immigration policy only in its darkest dimension.)

In the early- to mid-19th century, the beginnings of industry in the northeast and agricultural development in the Midwest called for more labor and more outward settlement, attracting a wave of European immigrants who sought the work and opportunity they could not find in the Old World. Many of these immigrants, especially from Ireland

[1] A full list of the participants in the programs of the Galbraith Initiative is in the Programs and Participant Biographies section on page 29.

and Austria, brought a Roman Catholic culture unwelcome to some in mostly Protestant America, spawning the first of what would be a recurring nativist, anti-immigrant impulse. That anti-Irish, anti-Catholic movement coalesced in politics as the Know-Nothing Party, influencing national elections but without success, until the mid-1840s. During the same period, Chinese immigrants drawn to California by the boom of the Gold Rush and recruited for the construction of the transcontinental railroad encountered their own racial and economic hostility. That culminated eventually in the nation's first restriction on immigration by specific national origin: the Chinese Exclusion Act of 1882, which banned further Chinese immigration and forbade citizenship to Chinese people.

From the nation's founding until today, America's immigration system has swung back and forth between expansive and restrictive policies, sometimes encompassing elements of both.

Economic opportunity in the rapidly growing United States, combined with collapsing opportunity at home, continued to draw European immigrants, largely from southern and eastern Europe, at the end of the 19th century. Serving and served by an expansionist immigration policy—at least regarding Europeans—they became the backbone of industrial America. But their numbers inspired another nativist reaction from organizations such as the American Protective Association and Immigration Restriction League, whose members pressed for a more restrictive national policy. In response, a series of laws passed in the 1920s capped total immigration and established specific quotas by national origin—while expanding the ban on Chinese immigrants to apply to all Asians.

Omitted from the national origin quotas were immigrants from the Western Hemisphere because an expansionist immigration policy served the needs of agriculture in the west. Seasonal, temporary Mexican farm workers were encouraged to cross the border until work vanished in the Great Depression. By World War II, a new agricultural labor shortage spawned the Bracero Program, under which Mexican farm workers took temporary jobs cultivating and harvesting American crops. Over the course of its two decades, the Bracero Program re-established a pattern of Mexican migrant farm workers as "guest workers" in the U.S. economy.

The modern era of U.S. immigration was born with the Immigration Act of 1965, ending the national origin quotas. Except for a minimal crack in the ban allowed in World War II and codified in 1952, the 1965 law opened the door to Asian immigrants for the first time since 1929 and Chinese in particular since 1882. Although the race-based national origin quotas were lifted in favor of skill-based and family-reunification preferences, the 1965 act was itself a hybrid of restriction and expansion, as it also ended decades of the essentially unrestricted legal flow (and ebb) of temporary migrant workers from Mexico and extensive, related permanent immigration. In that change, some scholars identify the seed of subsequent decades of unauthorized Mexican immigration as it disrupted long-standing patterns of seasonal workers coming and going, permanent residents increasing,

and well-established social networks interacting across the border—without any change in the demand for labor.

The 1965 reform ignited a new movement of immigrants to the United States. Immigrants from Latin America, especially Mexico, account for more than half of the total, but the 1965 law unexpectedly also attracted immigrants from Asia and Africa. To say America is a nation of immigrants is a historical cliché, but it is also a contemporary fact: The United States attracts one out of five immigrants globally, more than the next five nations combined, according to a 2013 report from the United Nations Population Division. The number of foreign-born people in the country climbed steadily until it reached a record 40.4 million in 2011, according to the Pew Research Center. That was 13 percent of the total population, only slightly less than the nearly 15 percent at the peak of the great wave of European immigration around the beginning of the 20th century.

Of that 40.4 million in 2011, according to Pew, 11.1 million were unauthorized immigrants—four out of five from Latin America, and most of those from Mexico. Academics, activists, and analysts on all sides of the immigration debate regard 11 million to 12 million as a reasonable, if imprecise, estimate of the unauthorized population, acknowledging that a Census-quality count of people with reason to hide or mislead is unattainable. One outlying estimate in 2005 put the total around 20 million.

The number of unauthorized immigrants peaked at 12 million in 2007, according to Pew, with most scholars attributing the decline and leveling off since to a reduction in unauthorized Mexican immigration (and some voluntary returns) due to the lack of jobs in the Great Recession and subsequent slow recovery. New estimates suggest that the unauthorized population is on the rise again. The temporary wrinkle in the upward trend is consistent with the analysis that the 1965 law unintentionally but effectively created an unlawful flow of immigrants by capping legal immigration from Latin America without altering what became known as the American "jobs magnet."

As the trend and the scope of the problem became more obvious and unpopular, a debate ensued in the 1980s that resulted in a milestone attempt to realign immigration control, the Immigration Reform and Control Act of 1986 (IRCA). Conditions had changed, perspectives had changed, needs had changed—but immigration policy did not keep up. The 1986 law reset the meter with an amnesty for many unauthorized immigrants, made a priority of border control to stem further unlawful immigration, and promised to enforce immigration status at the workplace. Only the amnesty worked as promised: improvements in border security faltered for years, and unauthorized immigration increased; workplace enforcement languished because as a practical matter, hiring unauthorized workers remained largely penalty-free.

In 1994, a bipartisan national commission led by former Texas Representative Barbara Jordan made it clear that the 1986 reform had not fixed the system: "Serious problems undermine present immigration policies, their implementation, and their credibility: people who should get in find a cumbersome process that often impedes their entry; people

Alejandro Mayorkas, the current deputy secretary of the Department of Homeland Security, spoke at a Forum in 2011.

who should not get in find it all too easy to enter; and people who are here without permission remain with impunity."

The decades since brought additional legislation intended to correct IRCA's failings, including additional Border Patrol agents, expanded physical barriers and drone surveillance on the southern border, and voluntary pilot programs to verify employment eligibility at businesses. Yet the number of unauthorized immigrants continued to rise. As Rey Koslowski indicated in his presentation, the number of Border Patrol agents doubled from 6,000 to 12,000 from 1997 to 2007, and the number of unauthorized immigrants in the country also doubled, from six million to 12 million.

The issues persist. At a Miller Center debate at the New York Public Library in 2008, which focused on whether immigration reform required a "path to citizenship," the debaters touched on many of the conflicting views highlighted in the Galbraith programs and still swirling as the prospect of immigration reform comes into focus in Congress.

The divisions also persist. Speaking at a Miller Center program in Charlottesville in 2011, Alejandro Mayorkas, then-director of the U.S. Citizenship and Immigration Services, said, "Now it seems that in challenging economic times, the discussion and debate about immigration policy and what it should and should not be has become acutely divisive and vitriolic." Though he expressed his wish that calm and reasoned debate might produce "holistic" solutions in Congress, he acknowledged that the outlook for reform at that moment was not optimistic.

The 2012 presidential campaign and election results gave fresh impetus to another full overhaul of the broken immigration system. The framing issues are familiar: more secure borders; interior enforcement, especially workplace enforcement; temporary worker programs that match gaps in the job market; and some form of legalization for the millions of unauthorized immigrants in the country now. The debate is joined by Congress in a polarized environment, in which the lasting loyalty of increasingly pivotal Hispanic voters is at stake but the recurring nativist impulse has also been activated. As Mark Krikorian of the Center for Immigration Studies told a Galbraith Forum, immigration reformers face a "trust gap"—for Americans at large to embrace a broad immigration solution, especially one that includes legalization, they have to have reason to believe it's not 1986 all over again.

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The political moment holds far-reaching possibilities. University of New Mexico Professor Gabriel Sanchez's Galbraith presentation showed how the Latino vote was a key to President Obama's reelection in 2012 and will be increasingly important in future elections. Most Latino voters do not yet profess any partisan loyalty, but immigration is a salient issue for them, according to his research. Will this round fit into Daniel Tichenor's historical grid as a nativist backlash, or was the 2012 election a "reckoning" that will move the Republican Party to pivot away from those elements? As Williams College Professor Nicole Mellow described, this immigration debate could be analogous to the Civil Rights debate in 1964 when the Democratic Party left its segregationist wing behind, losing the conservative South but gaining the durable and nearly unanimous loyalty of African-American voters. By her analogy, the Republican Party could back immigration reform and regroup around its moderates, leaving its nativists behind but forging alliances with Latino voters that will keep it competitive in elections to come.

At a Miller Center Forum a few months after the 2012 election, John Morton, then-director of Immigration and Customs Enforcement (ICE), agreed that the demonstrated importance of the Hispanic vote could spur action in Congress. "And a lot of the ideals that those voters bring are just bedrock American values—working hard, family, church," he said. "So I am hopeful that we have a window, a real window here, and we will see true bipartisan effort—and this has to be bipartisan for this to succeed—to comprehensively reform the law. We can't do it piecemeal."

The Forum

The Galbraith panelists break down the immigration debate into its essential questions.

The Rosemary and John Galbraith Conference on Immigration included a panel on how the media have covered immigration reform.

At Forums and colloquia in Charlottesville and at a national conference in Washington, DC, the Galbraith Initiative assembled scholars and experts from across the country, representing different disciplines, different points of view, and different prescriptions for addressing America's broken immigration system. But their wide-ranging discussions, papers, and presentations returned repeatedly to two broad points about what must be fixed.

First, U.S. immigration policy in the modern era has failed in part because within it was embedded an irreconcilable conflict. On one hand, it blocked the flow of immigrant workers. On the other hand, it left jobs wanting workers, and employers free to hire unauthorized immigrants. For decades, national commissions and lawmakers understood that the American "jobs magnet" persistently undermined border control. Or, as Professor Rey Koslowski of the State University of New York at Albany described this fundamental flaw, America put up two signs on the border: "No Trespassing" and "Help Wanted." Immigration reform will break again unless it recognizes and aligns those forces in a coordinated, balanced system of border control and interior enforcement, including visa policies.

Second, the shadow population of nearly 12 million unauthorized immigrants is a remnant of failed policies. For reasons of economics as well as social justice, immigration reform should bring them into open society. But the means, pace, and ultimate outcome of that journey to legal status will vary according to their responsibility, commitment, and contribution.

Those two broad points break down into the four key aspects of immigration reform: border control, interior enforcement, visa policy, and legalization. What follows is a selection of ideas and observations from Galbraith programs, grouped according to those four aspects of the issue.

Border Control

Border control is "the starting point of sovereignty," as Mark Krikorian described it in his Galbraith Forum with Manuel Pastor. Even if unauthorized immigrants are motivated by economic opportunity, he argued, their illegal entry is "an act of contempt for American sovereignty." Against that backdrop, the legislative emphasis on secure borders in immigration policy revisions in the past 20 years plays to a visceral political impulse. That emphasis continues in the comprehensive immigration reform bill passed by the U.S. Senate in June 2013, which bargained to a bipartisan supermajority by adding $38 billion to build more fencing and double the number of Border Patrol agents along the southern border.

As Rey Koslowski's presentation at the Washington conference spelled out, heavier border patrolling and surveillance don't necessarily deliver enforcement results. The number of agents doubled from 1997 to 2007, but unauthorized immigration continued to rise. The Senate bill calls for 38,000 Border Patrol agents, which would again double the number of current agents. "Illegal migration is more a function of demand for labor than a function of inadequate fencing," Koslowski said.

The "trust gap" explains the insistence on secure borders before any of the current unauthorized immigrants start on a path to citizenship.

Border fencing and thousands more Border Patrol agents may be overkill, but it's a dramatic demonstration that the architects of the next overhaul of immigration law are determined not to allow a rerun of the broken promise of the 1986 reform. That time, reform critics say, amnesty was executed, but the promise of additional border control was abandoned.

Mark Krikorian called the problem a "trust gap." Most people would support a path to citizenship for millions of unauthorized immigrants who work, he said, except that they expect a new cohort of unauthorized immigrants would just take their place. "Very few people actually believe our political class will enforce the limitations," Krikorian said. The "trust gap" explains the insistence on secure borders before any of the current unauthorized immigrants start on a path to citizenship.

Then-ICE Director Morton acknowledged that gap. "Any system in which you have lawlessness on the scale of 11 million doesn't sit well, even if a lot of those people were coming for reasons that you can understand," he said. "You can understand why people

Mark Krikorian (left) and Manuel Pastor (center) provided new perspectives on the immigration debate at a 2012 Forum, moderated by the Miller Center's Douglas Blackmon.

get frustrated when you have a level of dysfunction at that level, and it lasts not over one administration or two administrations but decades."

Muzaffar Chishti, director of the Migration Policy Institute at the New York University School of Law, assessed the emphasis on border security as an exaggerated political response, in which funding for border patrol and enforcement overwhelms other gaps in the system, especially workplace enforcement. "Politics doesn't match the policy need," he said. To Rey Koslowski, the emphasis on fences, drones, and Border Patrol agents along the southern border between ports of entry robs energy and dollars from customs inspections and immigration checks at those ports of entry and even more important, from eligibility checks at U.S. workplaces. Some research shows that as many as one in four unauthorized entries occur at ports of entry where apprehension is estimated to be half as effective as along the 1,954-mile southern border.

Increasingly secure borders pose a paradox in enforcement, Hunter College Professor Nancy Foner said at the Washington conference. Where Mexican immigrants once worked temporarily and then recrossed the border to return to Mexico, the "militarization" of border enforcement now dissuades them from risking the return trip, and they join the "permanent" unauthorized population.

Interior Enforcement

Away from the borders, immigration enforcement has two distinct dimensions: workplace checks on eligibility and follow-up on lawful immigrants who have overstayed their visas. Several Galbraith presenters made the case that to be effective, immigration reform needs to balance the emphasis on external border control and the emphasis on interior enforcement—and balance the resources accordingly.

Workplace enforcement has been largely absent or ineffective for many reasons, including easily counterfeited eligibility documents, limited use of database technology, and simple opposition from business interests. In addition, employer sanctions have been sparingly applied. Effective electronic verification systems have been deployed in voluntary pilot programs and even made mandatory by some states (and prohibited by others), but participation remains limited. However, momentum is gathering. Mandatory electronic verification by employers (e-verify) is a feature of the Senate immigration reform bill that passed in June 2013 and a House bill in the committee process.

Rey Koslowski drew a distinction between U.S. interior enforcement and that of countries in the European Union and the Organization for Economic Co-operation and Development (a global association of the "developed" nations): EU and OECD countries exercise border control throughout their borders, where the U.S. is "fixated" on external border crossers between ports of entry. For example, the Senate reform bill would allocate $44.5 billion to external border security—fences, drones, agents—and $750 million to make e-verify mandatory for practically every U.S. employer. "It's brilliant symbolic politics, even if it's not effective," he said. Providing the resources to effectively address the demand for unauthorized workers would ultimately discourage the supply, Koslowski argued, and that would make the control of external borders easier.

To be effective, immigration reform needs to balance the emphasis on external border control and the emphasis on interior enforcement—and balance the resources accordingly.

As Muzaffar Chishti described the modern-era history of workplace enforcement, verifying whether someone they wanted to hire was eligible to work was not considered the job of business before 1986, and the 1986 reform applied penalties only for "knowingly"

Janice R. Fine and Muzaffar Chishti discussed workplace and border security at the Rosemary and John Galbraith Conference on Immigration.

hiring an unauthorized immigrant (a test seldom failed). Even when frustration with the 1986 law's lax application spurred a new push for electronic verification in 1996, it was mostly voluntary. But the system is expanding. Federal contractors are now required to use the e-verify system, and 20 states require some employers, mostly their public contractors, to use it.

In his keynote address at the Washington conference, University of Virginia Law Professor David A. Martin said vigilance at the border must remain, but it has already been achieved. Now, he said, "The single most important step is to shut off the main attraction that still fuels attempts to make it past the Border Patrol: *access to U.S. jobs*." He would redirect the billions in the Senate bill now slated for fence construction and doubling the Border Patrol and instead finance an employer-based verification system that could positively identify job applicants. Businesses would have a device that could match an applicant's fingerprint with information on a "swipe card" that would be issued to every authorized worker, whether citizen or foreigner.

If that solution is unappealing because it ventures too close to a national identity card, which is political poison, or because the fingerprint data and equipment are too expensive, Martin has a fallback. Integrate state driver's license photos with the federal e-verify database to frustrate counterfeit IDs and enable an employer to at least determine that the person applying for a job is the person in the e-verify database.

Martin's application of technology echoes that of other presenters. That emphasis is encapsulated in a message repeated in encouragement of the current move for broad immigration reform: "This is not 1986."

David Martin delivered the keynote address at the Galbraith Conference.

The same technology lift applies to the other aspect of interior enforcement: monitoring visa overstays.

Estimates say one-quarter to one-half of unauthorized immigrants entered the country on legal visas or border-crossing permits and then stayed beyond the stipulated date of departure. But tracking visa overstays has required expensive investigation and legwork, so it has been a low priority except when other information indicates a criminal or national security threat. Electronic tracking and entry tracking with biometric data (digital fingerprints and digital photos) have been inadequately applied to visa overstays, but their expansion is part of the legislative discussion around the current reform proposals.

The Department of Homeland Security's Immigration and Customs Enforcement division limits its field investigations of individuals whose visa term is expired to those whose name triggers another law enforcement database of public safety or national security concerns. Biometric tracking already takes place at ports of entry. Its expansion to the exit process is intended to enable ICE to more quickly and accurately track the coming and going of visitors. But the exit system is now planned for only airports and seaports, so people who leave by land exits would not close the loop on their visas. That hole in the system renders it much less valuable, many say. David Martin argues further that using biometric exit information to learn that someone whose visa has expired has not left the country is very expensive and not very valuable because it tells ICE nothing about where the person might be. The system's only affirmative information ends up tracking the people who are no problem, the ones who leave, he said.

The debate over "immigration federalism" also bears on interior enforcement. Although immigration law is chiefly the domain of the national government, various states have attempted to enact controls on unauthorized immigrants.

The debate over "immigration federalism" also bears on interior enforcement. Although immigration law is chiefly the domain of the national government, various states have attempted to enact controls on unauthorized immigrants. Reinforcing that border control is an element of national sovereignty, the courts have generally pushed states away from border enforcement but allowed them to

Carol Swain (center) spoke on immigration federalism at a colloquium. The Miller Center's Sidney Milkis (left) moderated, and U.Va. School of Law's John Harrison (right) provided comments.

regulate immigrants' access to certain state and local services, such as education. Vanderbilt University Law Professor Carol Swain, in a Galbraith colloquium in Charlottesville, argued that states should play a larger role, especially in the face of the national government's inaction, and particularly as "laboratories" for different approaches to the effects of unauthorized immigrants on state and local responsibilities. In her paper for the Galbraith Initiative, she wrote, "The federal government may preempt states where it is necessary to have a unified policy, and broader Constitutional provisions will ensure that state legislation protects individual rights." And further, that "immigration is no longer a purely national issue, it is a state issue in the same vein as education, crime control, and the regulation of health, safety, and welfare."

Mark Krikorian also argues for some state prerogatives, particularly in traditional areas of state and local responsibility, such as public education and public health. "The economic benefits of immigration tend to be national, but the costs tend to be local," he said.

Professor Karthick Ramakrishnan of the University of California, Riverside, takes a dimmer view of state action on immigration enforcement. He said that the local effect of federal inaction is overstated and manipulated by "issue entrepreneurs" for political advantage.

Rational Visa Policy

From country-by-country caps to outright bans, from specific limits for specific jobs to favored status for state interests such as family reunification, the visa system has been used to establish immigration preferences throughout every era of U.S. immigration policy. Critics of the 1986 reform say another of its failures was that the cap on low-skilled, non-agricultural workers was set too low—creating a demand for unauthorized workers across the southern border. The "magnet" of jobs attracted a steady flow of unauthorized job seekers. As Manuel Pastor put it in his discussion in Charlottesville with Mark Krikorian: "Since 1986, we frustrated the market. People came to meet the demand."

The visa system has been used to establish immigration preferences throughout every era of U.S. immigration policy.

Rutgers University Professor Janice Fine described competing theories of labor immigration control. In the business-oriented model, the market controls the flow, and the state gets out of the way. In the labor-oriented model, the state measures and predicts labor shortages and acts as gatekeeper to allow immigrants with specific job skills but keeps out others.

The preference allotted to graduates with science, technology, engineering, or math degrees (STEM) is an example. Fine said the gap for non-American STEM workers is overstated by technology businesses, but that preference is embedded in the Senate's reform bill. A related element of the bill assigns priority green card status to holders of PhD degrees in any subject or master's degrees in STEM subjects. "Yet we have huge demand for lesser-skilled workers and not just in agriculture but home health aides, janitors, and others," Fine said.

With that demand in mind, the AFL-CIO and the U.S. Chamber of Commerce fashioned a compromise around a new category in the Senate bill: the W visa for lower-skilled, non-agricultural workers. Its quota is adjustable, according to identified job needs not limited to specific occupations or trades. Businesses must demonstrate that they have tried to hire American workers, and when they hire foreign workers on W visas, they must pay prevailing wages and include the W workers under the protection of U.S. labor laws. A W visa is also portable, so an immigrant worker is not tied exclusively to one employer.

Julia Preston and Rey Koslowski participated in the Galbraith Conference in Washington, DC.

For the next immigration reform to succeed, a reinvented visa system needs to be designed to accommodate what immigration scholars call "future flow." Well-designed and flexible, a new visa system can avoid the fatal attraction of the American "jobs magnet." In Rey Koslowski's prescription, better allocation of visas should trump border control: "Address the demand, not the fencing."

The Shadow Society

A snapshot of the 11.1 million unauthorized immigrants in the U.S., as estimated by the Pew Research Center in 2011, reveals a society far more diverse, engaged, and complex than any stereotype. As described by Pew and others, based on Census reports and surveys:

- Mexicans account for 58 percent of unauthorized immigrants. Another 23 percent come from other Latin American nations. Eleven percent are Asian. Four percent are from Europe or Canada. Three percent are from Africa.
- Two-thirds have been in this country for 10 years or longer.
- Eight million are working; most of the rest are family members.
- They account for 5.4 percent of the American workforce and 25 percent of American farm workers—and that number does not count temporary workers.
- Nine million live in mixed-status families, including 4.5 million children born in the U.S. whose parents are unauthorized immigrants. Forty-six percent are parents of minor children. Nearly half of unauthorized immigrant households are couples with children. Another 1 million children were born outside the U.S.
- One million are under age 18. Children of unauthorized immigrants make up 6.8 percent of students enrolled in U.S. public elementary and secondary schools.
- They are likely to be poorly educated, with less than a high school degree. Of those with a high school degree, however, almost half are in college.
- About a third of the children and a fifth of the adults live in poverty—about twice the rate of the U.S. population generally. Most are uninsured.

At the Galbraith Conference in Washington, DC, Nancy Foner reviewed statistics like those and filled in some details about the cliché of "living in the shadows." The unauthorized immigrants have no social or economic mobility, she said. Income statistics show that their income and living standards tend not to improve over the years. Medical care means the emergency room for most. Because the parents are afraid to apply, their children don't participate in after-school programs, community activities, or even—in the case of U.S.-born children who are citizens—government-sponsored benefits. The children live with economic uncertainty because of their parents' generally low-paying jobs and with even greater uncertainty under the continual risk of deportation.

Manuel Pastor provided an economic overlay to that close-up portrayal. He said most economists conclude that immigrants contribute substantially to the U.S. economy and GDP growth, and they are more likely to have a job or be self-employed than their "co-ethnics." Pastor said it's very difficult statistically to distinguish between high-skilled and low-skilled immigrants, who are often combined in communities, such as Silicon Valley. "Behind every software engineer is an army of nannies and gardeners and service workers, which is being filled by the low end of the labor market, often unauthorized workers," he said.

Nancy Foner advocates legalization as a moral issue and a human rights issue, but also because it is a path to assimilation for immigrants, a breakout from isolation. "It is well to remember that the undocumented, whatever their national origins, are the kind of people that America likes to celebrate as immigrants who made this country great—with the grit, ambition, and determination to do well," Foner wrote. "They come to work to improve their own and their children's lives—and they work long and hard to do so. They want to live the American Dream, and make a better life for themselves and their children."

Legalizing newcomers, she said, is the best way to encourage progress and cultural assimilation. Marriage to non-immigrants also bolsters the cultural change from immigrant to American.

David Martin urges legalization as an enforcement measure. "To be durable and effective, reform has to build over the next five or so years a 'fixed' system of control and compliance that will deter and marginalize law-breaking, while allowing for swift, fair, and effective enforcement against noncompliance. It is simply not feasible financially or politically to get to that point if the system is expected to punish and remove some 10 or 11 million well-rooted unauthorized residents, two-thirds of whom have been here longer than 10 years." Such a reset of the stage, he says, will enable immigration enforcement to refocus on recent unlawful entrants and visa overstayers or on criminals.

The legalization plan envisioned in the Senate bill is no overnight certification, but, for most, a process of a decade or more, with no guarantee of success. Unauthorized immigrants are first brought into open society as Registered Provisional Immigrants, the opening step in a journey to potential citizenship—a journey longer for some than others. RPI status enables work, travel, and other freedoms, but it doesn't confer benefits such as food stamps, supplemental income, Medicaid, Affordable Care Act subsidies, or other means-tested benefits. Their Social Security benefits accumulation would begin with their work in RPI status, regardless of whether or how much they paid into the system as unauthorized workers. For most, the path is a ten- to 15-year trek from RPI status to the green card of a Lawful Permanent Resident and finally application for citizenship. "Dreamers"—the million-plus immigrants who were brought to this country as children—would have a shorter path but still at least five years of RPI status before they could apply for citizenship. Established seasonal farm workers too would have a slightly shorter path—ten years through RPI and LPR status to application for citizenship.

Summary and Conclusions: The Way Forward

It's not 1986. The tools are ready, and the time is ripe.

John Morton, then-director of Immigration and Customs Enforcement (ICE), spoke at a 2013 Forum.

Summary and Conclusions

That America's immigration system is broken is not in dispute. That Americans want it fixed is not in dispute.

So Congress should not let its own disputes block the path to a solution. Lawmakers should get on their own path to citizenship, tone down the rhetoric, and use the legislative process to find success in a common cause.

Former ICE Director John Morton presided over increased deportation rates and border security but sees the scope of the problem as beyond only stricter enforcement. "I have tried to come at it with some hard-eyed sympathy and some pragmatism," he said. "There are some parts of the system now where the emperor has no clothes, and we need comprehensive immigration reform. We need Congress to recognize that the system is broken and to come in and thoughtfully work together to get to a better place."

The Way Forward on Immigration Reform—A Memo to the President and the Congress

- Recognize the failures of the 1986 reform, not look back and blame but focus forward on what is needed.
- Acknowledge that the tools of border control are better today, such as the database tools and web communications that make port of entry monitoring and interior enforcement fast and reliable.
- Build on proven systems such as SEVIS and US-VISIT (now the Office of Biometric Identity Management) to track visas.
- Make e-verify mandatory.
- To close the "trust gap" and win the confidence of the American people, apply a reasonable standard of verification to border security.
- Don't settle for an executive branch stipulation that the borders are tight, but don't make accountability unachievable by imposing impossible standards and measurements of success.
- Balance the resources allotted to border security and workplace enforcement.
- Deny access across the border but also deny access to jobs. Longer, taller fences and more surveillance drones won't overcome the attraction of the U.S. "jobs magnet."
- Bring 11 million men, women, and children out of the shadows and into legal status, and establish appropriate, varying paths to American citizenship. Some, like the Dreamers, will be comparatively short. Some will take more than a decade of commitment. Some will fail. Some will be denied.

Fixing the broken immigration system could be a moment that fractures and further divides the American political system. Or it could be a moment that finds middle ground and the promise of a solution—promise, as in compromise, meaning "promise together."

"Our broken immigration system has brought us much polarization and bitterness," David Martin observed as he closed his keynote address at the Washington conference. "It is not beyond the reach of policy science to design fixes, though it will be a true test of our political leaders to see whether we can muster the will to accomplish real repair rather than just creating a different arena for a new battle of sound bites a few years down the road."

Just as the immigration pendulum has swung back and forth from expansion to restriction, times will change, and needs will change again. But it's possible now to compromise in order to create an immigration solution for this generation and perhaps the next. The tools are available, and the time is right to balance security with justice.

Programs and Participant Biographies

IMMIGRATION REFORM: POLITICS, POLICY AND PROCESS

The Rosemary and John Galbraith Conference on Immigration
Washington, DC, October 10 & 11, 2013

Conference Participants

Muzaffar Chishti is director of the Migration Policy Institute at the New York University School of Law. He is chairman of the board of directors of the National Immigration Law Center and serves on the boards of directors of the New York Immigration Coalition and the Asian American Federation. Chishti has testified extensively on immigration policy issues before Congress. In 1992, as part of a U.S. team, he assisted the Russian Parliament in drafting its legislation on forced migrants and refugees. He is a 1994 recipient of the New York State Governor's Award for Outstanding Asian Americans and a 1995 recipient of the Ellis Island Medal of Honor.

Janice R. Fine is associate professor of labor studies and employment relations at the School of Management and Labor Relations at Rutgers University. She is the author of *Worker Centers: Organizing Communities at the Edge of the Dream*. Prior to becoming a professor at Rutgers, Fine worked as a community, labor, coalition, and electoral organizer for more than 25 years.

Nancy Foner is Distinguished Professor of Sociology at Hunter College and the Graduate Center of the City University of New York. She is the author or editor of 16 books, including *One Out of Three: Immigrant New York in the Twenty-First Century*. She is the recipient of the 2010 Distinguished Career Award from the International Migration Section of the American Sociological Association. In 2011, Foner was elected to the American Academy of Arts and Sciences.

Ted Hesson is the immigration editor of Fusion, a joint venture of ABC News and Univision. He has written about immigration policy and politics, and also covers drug policy and justice-related issues. Before joining Fusion in 2012, he served as online editor for Long Island Wins, a non-profit organization focusing on local and national immigration issues.

Rey Koslowski is associate professor of political science in the Rockefeller College of Public Affairs and Policy at the State University of New York at Albany and a nonresident fellow of the Migration Policy Institute. He is author of *The Evolution of Border Controls as a Mechanism to Prevent Illegal Immigration* and editor of *Global Mobility Regimes*. Koslowski directs a MacArthur Foundation-funded research project on the "International Context of Immigration Reform: U.S., Mexico and Beyond."

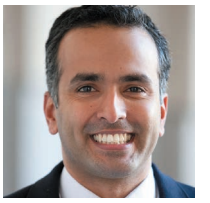
Taeku Lee is professor of political science and professor of law at the University of California, Berkeley. He has written numerous books and articles on racial and ethnic politics, public opinion and survey research methods, and political participation and social movements. Lee was co-principal investigator of the 2008 and 2012 National Asian American Survey, and has served on the Board of the American National Election Studies, the Board of the General Social Survey, and the Council of the American Political Science Association.

Ryan Lizza is the *New Yorker*'s Washington correspondent, covering the White House, Congress, and national politics. His 2008 profile of Barack Obama was a finalist for the 2009 National Magazine Award for reporting, and his 2010 article about Obama's failed climate-change legislation effort received a Toner Prize for Excellence in Political Reporting honorable mention and a National Press Foundation Dirksen Award for Distinguished Reporting of Congress honorable mention. Lizza was the 2012 recipient of the National Press Club's Edwin M. Hood Award for Diplomatic Correspondence and in 2013, was awarded the Aldo Beckman Memorial Award for journalistic excellence by the White House Correspondents' Association.

David A. Martin is the Warner-Booker Distinguished Professor of International Law at the University of Virginia. His many publications include a leading casebook on immigration and citizenship law, now in its seventh edition. As principal deputy general counsel of the Department of Homeland Security from January 2009 to December 2010 and in earlier government service at the Department of State and the Department of Justice, he was closely involved in critical legal and policy developments in the immigration field.

Nicole Mellow is an associate professor of political science and chair of the Leadership Studies program at Williams College. Her publications include *The State of Disunion: Regional Sources of Modern Partisanship* and with Jeffrey K. Tulis, *Legacies of Loss in American Politics*.

Julia Preston is the national immigration correspondent for the *New York Times*. She was a member of the team that won the 1998 Pulitzer Prize for reporting on international affairs for its series that profiled the corrosive effects of drug corruption in Mexico. Preston is a 1997 recipient of the Maria Moors Cabot Prize for distinguished coverage of Latin America and a 1994 winner of the Robert F. Kennedy Award for Humanitarian Journalism. She is the author, with Samuel Dillon, of *Opening Mexico: The Making of a Democracy*.



Karthick Ramakrishnan is associate professor of political science at the University of California, Riverside, where he directs the National Asian American Survey and is writing a book on the rise of state and local legislation on immigration over the past decade. Prior publications include four books and many articles in social science and law journals. Ramakrishnan has held fellowships at the Russell Sage Foundation, the Woodrow Wilson International Center for Scholars, and the Public Policy Institute of California.

Beth Reinhard is a political correspondent for *National Journal*. Prior to joining *National Journal* in 2010, Reinhard was the political writer at the *Miami Herald*. She covered local, statewide, and national campaigns and wrote a weekly column on politics for 11 years. She previously worked at the *Palm Beach Post*, *Education Week*, and the *Home News*.

Gabriel Sanchez is associate professor of political science and interim executive director of the Robert Wood Johnson Foundation Center for Health Policy at the University of New Mexico. He also serves as director of research for Latino Decisions and director of the American Economic Association Summer Training Program. He is a co-author of *Hispanics and the U.S. Political System*, one of the most popular Latino politics textbooks in colleges today. Sanchez has been the principal or co-principal investigator on several large-scale surveys, including the Latino Decisions National Poll on Health Care Reform, and the Collaborative Multi-racial Post-election Study.

Audrey Singer is a senior fellow in the Metropolitan Policy Program at the Brookings Institution. Her areas of expertise include demography, international migration, United States immigration policy, and urban and metropolitan change. Her work currently focuses on federal, state, and local policy responses to immigration; the new geography of immigration; and the economic, social, political, and civic integration of immigrants.

Ray Suarez is chief national correspondent on *PBS NewsHour*. He joined the *NewsHour* in October 1999 as a Washington-based senior correspondent. His new book, *Latino Americans: The 500-Year Legacy That Shaped a Nation*, is the companion volume to a documentary series airing on PBS. In 2010, Suarez was inducted into the Hall of Fame of the National Association of Hispanic Journalists. He is a co-recipient of NPR's 1993–1994 and 1994–1995 duPont-Columbia Silver Baton Awards. He was honored with the 1996 Ruben Salazar Award from the National Council of La Raza and the 2005 Distinguished Policy Leadership Award from UCLA's School of Public Policy.

Daniel J. Tichenor is the Philip H. Knight Professor of Social Science and Senior Faculty Fellow at the Wayne Morse Center for Law and Politics at the University of Oregon. His book, *Dividing Lines: The Politics of Immigration Control in America*, won the American Political Science Association's Gladys M. Kammerer Award for the best book in American national policy. He is also the recipient of the Jack Walker Prize, the Mary Parker Follett Award, and the Polity Award for scholarship on political organizations, parties, and democratic representation.

Conference Directors

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Sidney Milkis, White Burkett Miller Professor and Faculty Associate, Miller Center & University of Virginia

Daniel J. Tichenor, Philip H. Knight Professor of Social Science and Senior Faculty Fellow at the Wayne Morse Center for Law and Politics, University of Oregon

IMMIGRATION FEDERALISM: WHY IT MATTERS FOR NATIONAL REFORM

Charlottesville, Virginia, March 8, 2013

Carol Swain is professor of political science and professor of law at Vanderbilt University. Her most recent book is *Be the People: A Call to Reclaim America's Faith and Promise*. Swain's highly acclaimed book, *Black Faces, Black Interests: The Representation of African Americans in Congress*, was named one of the seven outstanding academic books of 1994 by *Choice* magazine; received the 1994 Woodrow Wilson Prize for the best book published in the U.S. on government, politics, or international affairs; received the Hardeman Prize for best scholarly work on Congress during 1994–1995; and was the co-winner of the Key Award for the best book published on Southern politics. Her opinion pieces have been published in the *New York Times*, the *Washington Post*, the *Wall Street Journal*, the *Washington Times* and *USA Today*. She is a regular contributor to the "Great American Panel" segment on Fox News' *Hannity* show and has been a regular contributor to CNN's *Lou Dobbs Tonight*.

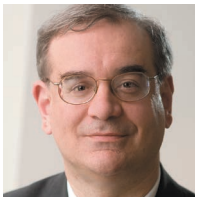
WHAT NOW? THE NEXT GREAT IMMIGRATION DEBATE

Charlottesville, Virginia, January 14, 2013

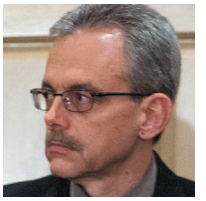
John Morton served as the director of Immigration and Customs Enforcement (ICE) from 2009 to July 2013. ICE is the principal investigative arm of the U.S. Department of Homeland Security and the second-largest investigative agency in the federal government. Prior to his appointment by the president, Morton spent 15 years at the Department of Justice, where he served as assistant U.S. attorney, counsel to the deputy attorney general, and acting deputy assistant attorney general of the criminal division. During his tenure at ICE, Morton strengthened ICE's investigative efforts, with a particular emphasis on border crimes, export controls, intellectual property enforcement, and child exploitation. He also sought to prioritize ICE's immigration enforcement efforts around the removal of criminal offenders, recent border violators, and those who ignore orders of removal or obtain immigration status by fraud.

A MELTING POT, OR NOT: PERSPECTIVES ON THE IMMIGRATION DEBATE

Charlottesville, Virginia, December 3, 2012



Mark Krikorian is executive director of the Center for Immigration Studies, a Washington, DC-based think tank that promotes stricter immigration standards and enforcement. Frequently testifying before Congress, he has published articles in the *Washington Post*, the *New York Times*, and the *National Review*. He is the author of *The New Case Against Immigration: Both Legal and Illegal* and *How Obama is Transforming America Through Immigration*.



Manuel Pastor is professor of American studies and ethnicity at the University of Southern California, where he also serves as director of USC's Program for Environmental and Regional Equity and co-director of USC's Center for the Study of Immigration Integration. He is the author of *Uncommon Common Ground: Race and America's Future* and *This Could Be the Start of Something Big: How Social Movements for Regional Equity Are Transforming Metropolitan America*.

A CONVERSATION WITH ALEJANDRO MAYORKAS

Charlottesville, Virginia, December 12, 2011

Alejandro Mayorkas, deputy secretary of the Department of Homeland Security, was director of U.S. Citizenship and Immigration Services in 2011. In that position within the Department of Homeland Security, he oversaw the world's largest immigration service. Mayorkas has served as the U.S. attorney for the Central District of California and previously was a partner in the law firm of O'Melveny and Myers LLP. In 2008, he was named one of the 50 Most Influential Minority Lawyers in America by the *National Law Journal*. Mayorkas previously served as an assistant U.S. attorney for the Central District of California from 1989 to 1998. Nominated by President Obama on April 24, 2009, he was unanimously confirmed by the U.S. Senate on August 7, 2009.

NATIONAL DISCUSSION AND DEBATE SERIES: IMMIGRATION

Resolved: "Our national interests require a path to citizenship for the 12 million illegal immigrants presently here."
New York, New York, May 15, 2008

For the resolution:
Tamar Jacoby, CEO and President of ImmigrationWorks
Eliseo Medina, International Secretary-Treasurer of the Service Employees International Union

Against the resolution:
Mark Krikorian, Executive Director of the Center for Immigration Studies
Vernon Briggs, Jr., Emeritus Professor of Industrial and Labor Relations at Cornell University

Moderator:
Robert MacNeil, award-winning journalist

The Miller Center is a nonpartisan affiliate of the University of Virginia that specializes in presidential scholarship, public policy, and political history and strives to apply the lessons of history to the nation's most pressing contemporary governance challenges.

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