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BETTER MIGRANT RIGHTS HELP NATIVE WORKERS

Gaurav Khanna & Anna Brown

ABSTRACT

The political debate on immigration has revolved around a few issues—how immigrants affect the wages and employment of domestic workers; how immigration affects crime, entrepreneurship and innovation; and how immigrants affect the fiscal burden on host nations. Arguments on these issues shape laws and policies in countries that both send and receive migrants, which in turn help shape the size and composition of the migrant workforce around the world. However, the analysis of costs and benefits of migration is complicated by economic and social dynamics that underlie these policies. An understudied, yet related, issue is how migrant worker rights affect domestic labor of immigrant-receiving countries. While directly unexplored, the literature points to many indirect effects of migrant rights on native workers. In this Article, we use evidence from historical and contemporary economics literature to discuss the effect of migrant worker rights on native-born residents.

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INTRODUCTION

Immigrant worker rights protect migrant workers from employer exploitation. However, the effects of these rights on migrant workers themselves are ambiguous. On one hand, protecting workers from exploitation in the workplace helps workers earn higher wages, receive more comprehensive benefits, and enjoy safer workplaces, which are clearly valuable to all workers. On the other hand, these same laws may dissuade employers from hiring migrant laborers to avoid potential liability. The ability to hire low-wage workers makes migrant labor attractive to many employers.¹ To that end, more robust migrant worker rights may make migrant workers less attractive to potential employers. As a result, the net benefit of migrant rights on migrant workers themselves is unclear, as migrant rights may indeed hurt the employment prospects of immigrants.

With the exception of refugee programs, generally, host country immigration policy is mostly driven by the expected impacts on domestic workers. Immigration policy is often less concerned with the effects on migrant workers. Instead, the impact of migrant rights

1. George Borjas, *The Economic Analysis of Immigration*, in 3A Handbook Lab. Econ. 1698, 1709–28 (1999).

on native-born residents has a profound impact on immigration policy. Political feasibility of migrant labor laws would then depend on how the receiving country is affected. These laws shape not just the composition of the immigrant workforce, but also the sending and receiving economies. Therefore, understanding the impact of migrant worker rights on receiving economies is not just academically important, it is crucial to immigration policymaking.

In this Article, we examine the possible impacts of migrant labor laws on receiving economies by focusing on the broader consequences of immigration policies. Specifically, we examine the academic literature on immigration's impact on wages, the employment of domestic workers, crime, the location and prevalence of production and innovation, and the national budget. This literature spans historical and contemporary economic timeframes.

This Article focuses on the United States, with some supporting work in other contexts. The United States's composition as a "Nation of Immigrants"² provides insight that can be applied more broadly. Currently, one in every eight persons residing in the United States was born abroad.³ We assert that lessons from the U.S. context can be applied to other similar nations, especially those which host large numbers of migrants, particularly in Europe, Canada, and Australia.

Migrant labor laws in the United States protect immigrant workers from employer exploitation. The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) of 1983 is one of the most important pieces of immigration legislation in the United States that affects low-skilled immigrants.⁴ This act repealed the Farm Labor Contractor Registration Act (FLRCA) of 1964, which mandated certification of farm labor contractors and coincided with the elimination of the Bracero program.⁵ The MSPA seeks to provide migrant farm workers with fairer compensation, suitable working conditions, and protections from occupational hazards.⁶ It also mandates standards for employee transportation and housing in some instances.⁷ Similarly, the Immigration

2. JOHN F. KENNEDY, *A NATION OF IMMIGRANTS* (1959).

3. U.S. Census Bureau; American Community Survey, 2016 American Community Survey 1-Year Estimates, Table S0501; generated by Forrest Tym; using American FactFinder; available at <http://factfinder2.census.gov> [<https://perma.cc/PF9C-MD7Z>]; (February 8, 2019).

4. Migrant and Seasonal Agricultural Worker Protection Act of 1983 (MSPA), 29 U.S.C. §§ 1801–1872 (1983).

5. Farm Labor Contractor Registration Act of 1963 (FLCRA), Pub. L. No. 88–582, 78 Stat. 920 (1964) (repealed 1983).

6. 29 U.S.C. §§ 1801–1872.

7. *Id.*

Act of 1990 ensures that workers in “specialty occupations,” many of whom are on H-1B visas, are paid fairly.⁸

Despite the focus of these two Acts on migrant worker rights, many see the wage floors as being motivated to protect the competitiveness of American workers.⁹ A theme of this analysis is how migrant protection laws may indeed help US-born workers by protecting their competitiveness in the labor market.¹⁰

In Part I, we discuss the migrants’ impact on the wages and the employment of native workers, and how strengthening migrant rights may affect these impacts. In Part II, we analyze the relationship between immigration, and migrant rights and crime, as it relates to immigrants and native residents. We discuss the effects of migrant rights on entrepreneurship and innovation in Part III. Part IV explores the fiscal burden, tax contribution and welfare payments to migrants. In the final part of this Article, we analyze the impact of strong migrant rights policies on the government’s fiscal situation, suggesting potential implications for national economies in general.

I. THE IMPACT OF MIGRANT RIGHTS ON WAGES AND THE EMPLOYMENT OF NATIVE WORKERS

The media and political discourse tend to highlight concerns that immigration hurts US-born workers. It is argued that negative effects may manifest through lower wages and fewer employment opportunities for U.S.-born workers. However, the evidence shows a more mixed picture of immigration’s impact on the labor market.

David Card’s Article on the Miami labor market after the Mariel Boatlift provides a depiction of one of the earliest meaningful relationships between immigration and native unemployment rates.¹¹ The

8. Immigration Act of 1990, 8 U.S.C. § 1182 (2013).

9. The Immigration Act of 1990 increased the total amount of legal migrants allowed into the United States and was thought to be beneficial to migrants. However, this legislation was also enacted to protect U.S. workers by, for instance, instituting wage floors for high-skill migrants on H-1B visas. Gaurav Khanna & Nicolas Morales, *The IT Boom and Other Unintended Consequences of Chasing the American Dream* 6–8 (Ctr. for Global Dev., Working Paper No. 460, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3015317# [<https://perma.cc/559C-8BDU>]; SARAH PIERCE AND JULIA GELATT, MIGRATION POLICY INSTITUTE, *EVOLUTION OF THE H-1B: LATEST TRENDS IN A PROGRAM ON THE BRINK OF REFORM* 9–10 (2018), <https://www.migrationpolicy.org/research/evolution-h-1b-latest-trends-program-brink-reform> [<https://perma.cc/6P6W-6FCY>].

10. See John Bound et al., *Understanding the Economic Impact of the H-1B Program on the US*, in *HIGH-SKILLED MIGRATION TO THE UNITED STATES AND ITS ECONOMIC CONSEQUENCES* 109 (Gordon Hanson et al. eds., 2017).

11. David Card, *The Impact of the Mariel Boatlift on the Miami Labor Market*, 43 *INDUS. & LAB. REL. REV.* 245 (1990).

Marief Boatlift was a mass emigration of Cubans to Miami in 1980.¹² It increased the size of the Miami workforce by 7 percent in just a few months, yet native unemployment rates did not change relative to those of other cities.¹³

However, in studying the impacts of immigration, George Borjas suggests focusing on the education and experience levels of migrants compared with similar, native-born workers.¹⁴ Borjas finds that a 10 percent increase in the share of immigrants in the local population lowers native wages by 4 percent.¹⁵ In the 1990s, immigrants earned 16 percent less than native-born workers, and 33 percent of all immigrants fell in the bottom two deciles of the U.S. wage distribution.¹⁶ Since migrant workers, who are not legally protected, face much lower wages compared with their native counterparts, such protections may benefit US-born workers by keeping their labor competitive.

The fear of adverse impacts on native wages and employment prospects has driven a long history of exclusionary immigration policies. Often, such policies have been motivated by resentment against foreign workers who are paid lower wages. This resentment may also be driven by racial prejudices and xenophobia. A recent re-examining of certain historical episodes of exclusionary migration policy shows that these policies were based on unsubstantiated concerns of wage compression.¹⁷ Often, the fear of depressed wages and lost employment may be based on false perceptions and lack of evidence.

A. A History of Exclusion

One of the earliest examples of foreign labor exclusion in U.S. law is the Chinese Exclusion Act of 1882.¹⁸ Since the 1850s, Chinese laborers had worked in the United States, primarily on the Transcontinental Railroad, but also in mining, agriculture, and factories.¹⁹ Chinese

12. *Id.*

13. *Id.*

14. George Borjas, *The Labor Demand Curve is Downward Sloping: Reexamining the Impact of Immigration on the Labor Market*, 118 Q.J. ECON. 1335, 1340 (2003).

15. *Id.* at 1349.

16. Borjas, *supra* note 1, at 1723–28.

17. MICHAEL A. CLEMENS, ETHAN G. LEWIS, HANNAH M. POSTEL, IZA INSTITUTE OF LABOR ECON., IZA DISCUSSION PAPER NO. 10512, IMMIGRATION RESTRICTIONS AS ACTIVE LABOR MARKET POLICY: EVIDENCE FROM THE MEXICAN BRACERO EXCLUSION 30–31 (2017), <http://fip.iza.org/dp10512.pdf> [<http://perma.cc/N5F6-HW2Z>].

18. *Chinese Immigration and the Chinese Exclusion Acts*, OFFICE OF THE HISTORIAN, <https://history.state.gov/milestones/1866-1898/chinese-immigration> [<https://perma.cc/R8ZW-52N8>] (hereinafter *Chinese Immigration*).

19. Jie Zong and Jeanne Batalova, *Chinese Immigrants in the United States*, MIGRATION POLICY INSTITUTE (Sept. 2017), <https://www.migrationpolicy.org/article/>

workers were accused of stealing U.S. jobs and depressing wages because they provided low-wage labor.²⁰ Chinese workers on the railroad worked longer hours and paid for their own lodging and food.²¹ This made Chinese workers about 33 percent cheaper to hire than white employees.²² As a result, employers were more likely to hire Chinese workers.²³ In 1882, Congress passed the Chinese Exclusion Act in response to growing U.S. natives' resentment toward Chinese laborers.²⁴ The Act required all Chinese immigrants to carry documentation on their persons, stating their legal and work statuses.²⁵ More dramatically, the Act completely halted all Chinese immigration for ten years.²⁶

Even as immigrant-sending countries shifted from East Asia to Europe, the same fear of wage and employment effects led to a more restrictive U.S. immigration policy in the 1920s.²⁷ About 30 million Europeans migrated to the United States between 1850 and 1920.²⁸ Between 1921 and 1924, the United States imposed immigration quotas based on historical migration from different countries.²⁹ Xenophobia motivated these policies, as exemplified by historian Robert Fleegler.³⁰ In support of the quotas, Representative Ira Hersey of Maine argued, "We have thrown open wide our gates and through them have come other alien races, of alien blood, from Asia and southern Europe . . . with their strange and pagan rites, their babble of tongues."³¹

Unfounded data and popular perceptions drove this widespread fear of wage depression. In the 1960s, exclusionary immigration policy manifested in the termination of the Bracero Program.³² The Kennedy Administration feared seasonal low-skill workers from Mexico were depressing wages for other farm workers in the United States.³³ In

chinese-immigrants-united-states [<https://perma.cc/E55X-EB5Y>].

20. *See id.*

21. Alexander Saxton, *The Army of Canton in the High Sierra* 35 *PACIFIC HISTORICAL R.* 141, 149 (1966).

22. *Id.*

23. *Id.*

24. *Chinese Immigration*, *supra* note 18.

25. *Id.*

26. *Id.*

27. Ran Abramitzky & Leah Boustan, *Immigration in American Economic History*, 55 *J. ECON. LIT.* 1311, 1313 (2017).

28. *Id.* at 1314.

29. *Id.* at 1317.

30. *See* ROBERT L. FLEEGLER, *ELLIS ISLAND NATION: IMMIGRATION POLICY AND AMERICAN IDENTITY IN THE TWENTIETH CENTURY* 1–16 (2013).

31. *Id.* at 21.

32. Bracero Agreement, Mex.-U.S., Aug. 4, 1942.

33. Statement by the President Upon Signing Bill Governing Recruitment of Mexican Agricultural Workers, *PUB. PAPERS* 639 (Oct. 4, 1961).

1964, President Kennedy publicly discussed the concerns of the Program, stating, “[S]tudies of the operation of the Mexican labor program have clearly established that it is adversely affecting the wages, working conditions and employment opportunities of our own agricultural workers.”³⁴ Initially, the administration mandated more robust migrant rights by raising the required wage rate, but the Johnson administration reversed this trend, stopping migration under the Bracero Program altogether in 1964.³⁵ A recent re-examination of historical data from that period by Clemens, et al., finds that many of these fears were unsubstantiated.³⁶ Indeed, excluding Mexican workers did not lead to a rise in wages for U.S. workers.³⁷ Agricultural wages proved to be less elastic than previously assumed, and farmers replaced labor with capital in the form of mechanization.³⁸

B. Migrant Rights and Labor Market Opportunities for Natives

So how does granting legal status to immigrants affect wages for migrant workers? In a study conducted by the U.S. Department of Labor, researchers found that granting legal status to migrant workers results in a wage increase of 15.1 percent for such immigrants.³⁹

Robert Lynch’s analysis provides a look at downstream effects on overall national income. Lynch uses sophisticated prediction models to determine the increase in income and GDP when immigrants were granted either legal status or citizenship.⁴⁰ The most immediate impact studied by Lynch was for immigrants to receive both legal status and citizenship in 2013 (the year of the study).⁴¹ Over the next ten years, the U.S. GDP would increase cumulatively by \$1.4 trillion.⁴² On an individual level, the analysis predicts an additional \$791 billion of personal income over the same period, along with the creation of 203,000 jobs each year.⁴³

34. *Id.*; CLEMENS, LEWIS & POSTEL, *supra* note 17, at 4–5.

35. *Id.* at 3.

36. *Id.* at 31.

37. *Id.*

38. *Id.*

39. Robert Lynch & Patrick Oakford, *The Economic Effects of Granting Legal Status and Citizenship to Undocumented Immigrants*, CENTER FOR AM. PROGRESS (March 20, 2013, 8:44 am), <https://www.americanprogress.org/issues/immigration/reports/2013/03/20/57351/the-economic-effects-of-granting-legal-status-and-citizenship-to-undocumented-immigrants/> [<https://perma.cc/85UY-2TDH>].

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

The impact of immigrant legal status may be particularly strong for native workers who share race or ethnicity with the migrant workforce. Immigrants often need to hide their undocumented status when they do not have legal protections. As a result, employers may hesitate to hire legal Hispanic workers for fear of inadvertently hiring an undocumented worker. In turn, U.S. citizens of Hispanic origins may perversely see their employment opportunities curtailed.

Cynthia Bansak and Steven Raphael study how sanctions on employers for hiring undocumented workers cause business owners to discriminate against hiring US-born Latino workers, inadvertently hurting the employment prospects and wages of such workers.⁴⁴ When the 1986 Immigration Reform and Control Act (IRCA) was enacted, companies could be sanctioned if found liable for employing undocumented workers.⁴⁵ This had an especially detrimental impact on documented Latino workers in the agricultural sector.⁴⁶ Employers became nervous about unauthorized workers, causing employers to reduce employing those of Hispanic descent, resulting in a reduction in employment for the Latino population.⁴⁷ Absence of legal status may therefore impose informal costs on authorized U.S. workers of Hispanic descent.

II. CRIME IN RECEIVING COUNTRIES

Even as the discussion on the impact of immigration has predominantly focused on wages and employment, a growing discourse on the relationship between immigration and criminal activity has gained attention. The current U.S. President has strongly alluded to a link between immigrants and crime.⁴⁸ In this part, we review the link between immigration and crime and ask how migrant rights and legal status affect the propensity of immigrants to commit crime. Although studies indicate a low crime rate among migrant populations relative to natives, granting migrants legal status could further curb the crime rate among the migrant population.

44. Cynthia Bansak & Steven Raphael, *Immigration Reform and The Earnings of Latino Workers: Do Employer Sanctions Cause Discrimination?*, 54 INDUS. LAB. REL. REV. 275 (2001).

45. *Id.* at 276.

46. *Id.* at 277.

47. *Id.*

48. Salvador Rizzo, *The Trump Administration's Misleading Spin on Immigration, Crime and Terrorism*, WASH. POST (Jan. 7, 2019), https://www.washingtonpost.com/politics/2019/01/07/trump-administrations-misleading-spin-immigration-crime-terrorism/?noredirect=on&utm_term=.a2f3cd7f6138 [<https://perma.cc/6AHH-A32A>].

A. Immigration and Crime in the United States

Between 2001 and 2017, Gallup polls consistently reflected that roughly half (45 percent to 58 percent) of American respondents believe immigrants make the crime situation worse,⁴⁹ even while the evidence does not support this theory. Robert Adelman, et al., studied U.S. metropolitan areas between 1970 and 2010, finding that increases in immigration are correlated with decreases in both violent (homicides, assaults, etc.) and property crimes (burglary, motor vehicle theft, etc.).⁵⁰

Similarly, Kristin Butcher and Anne Piehl found that incarceration rates are lower for immigrants, and far lower for newly arrived immigrants.⁵¹ Butcher and Piehl also demonstrate that the threat of deportation does not drive these lower incarceration rates, but rather, migrants who choose to come to the United States have a lower baseline propensity to engage in criminal activities than the nativeborn U.S. population.⁵²

Data showing lower incarceration rates among immigrants than native born have also been corroborated by think-tanks like the Cato Institute⁵³ and the American Immigration Council.⁵⁴ The Cato study estimates that if native-born citizens had the same incarceration rates as undocumented migrants, there would be 893,000 fewer inmates.⁵⁵ Furthermore, if native citizens had the same incarceration rates as legal migrants, there would currently be 1.4 million fewer inmates in the United States. However, ambiguity in the data makes analysis in this area difficult.⁵⁶ Even as most administrative data on arrests do not contain immigration statuses, the American Community Survey—the largest household survey in the United States—collects incarceration data.⁵⁷

49. *Immigration*, GALLUP POLL, <http://news.gallup.com/poll/1660/immigration.aspx> (last visited Feb. 17, 2019) [<https://perma.cc/36TG-5KNS>].

50. Robert Adelman, Lesley Williams Reid, Gail Markle, Saskia Weiss & Charles Jaret, *Urban Crime Rates and the Changing Face of Immigration: Evidence Across Four Decades*, 15 J. ETHNICITY CRIM. JUST. 52 (2017).

51. Kristin F. Butcher & Anne Morrison Piehl, *Why Are Immigrants' Incarceration Rates So Low? Evidence on Selective Immigration, Deterrence, and Deportation* 24–25 (Nat'l Bureau of Econ. Research, Working Paper No. 13229, 2007), <https://www.nber.org/papers/w13229.pdf> [<https://perma.cc/C2X8-M49W>].

52. *See id.* at 25.

53. MICHELANGELO LANDGRAVE & ALEX NOWRASTEH, CATO INSTITUTE, *CRIMINAL IMMIGRANTS: THEIR NUMBERS, DEMOGRAPHICS, AND COUNTRIES OF ORIGIN* 2–4 (2017).

54. Walter Ewing et al., *The Criminalization of Immigration in the United States*, AM. IMMIGRATION COUNCIL (Jul. 13, 2015), <https://www.americanimmigrationcouncil.org/research/criminalization-immigration-united-states> [<https://perma.cc/BEP5-DFTJ>].

55. LANDGRAVE & NOWRASTEH, *SUPRA* note 53, at 2.

56. *Id.*

57. U.S. Census Bureau; American Community Survey, 2016 American Community

Yet, this data does not account for ex-felons and criminals who are not incarcerated.

George Borjas, et al., present a notable exception, asserting that if immigration lowers wages for African-American men, it leads to higher crime rates among this population.⁵⁸ Native workers hurt by fewer employment opportunities, in the face of immigration, may resort to criminal activities.⁵⁹ Yet, this has strong implications for the role of migrant rights. One would expect, based on the discussion in the previous part, more robust migrant rights would prevent such wage compressions, and may lower African-American incidences of crime.

B. Migrant Rights and Immigrant Incarceration Rates

How might migrant rights and legal status affect the likelihood of immigrants committing crimes? If immigrants are not given the legal status needed to find legitimate employment, they are more likely to turn to informal work or, potentially, criminal activity.

The best evidence linking migrant status and immigration incarceration rates is from Italy. Paolo Pinotti studies the effect of work-related residence permits on immigrant arrests.⁶⁰ Italy issues a fixed number of permits per year, distributed on a first-come, first-served basis.⁶¹ Comparing migrant applications that just miss out to migrants that do receive the work permit, the Article finds that getting legal working status cuts the incarceration rate by more than half.⁶² Indeed, migrants without legal work status had meager outside opportunities, and in high-crime environments, the best alternative may be crime.⁶³ Italian incarceration rates are lower than in the United States, yet there may be relevant implications for the United States. For instance, Scott R. Baker shows how the Immigration Reform and Control Act (IRCA) of 1986, which gave legal status to three million immigrants in the United States, similarly led to a marked decrease in crime.⁶⁴ This Article uses variation in

Survey 1-Year Estimates, available at <https://www2.census.gov/programs-surveys/acs/methodology/questionnaires/2016/quest16.pdf?#> [https://perma.cc/H7EE-AT45]; (Feb. 8, 2019).

58. George Borjas, Jeffrey Grogger & Gordon Hanson, *Immigration and African-American Employment Opportunities: The Response of Wages, Employment, and Incarceration to Labor Supply Shocks* (Nat'l. Bureau of Econ. Research, Working Paper No. 12518, 2007), <https://www.nber.org/papers/w12518.pdf> [https://perma.cc/7LAT-EH9B].

59. *Id.*

60. Paolo Pinotti, *Clicking on Heaven's Door: The Effect of Immigrant Legalization on Crime*, 107 AM. ECON. R. 136 (2017).

61. *Id.* at 139.

62. *Id.* at 153–162.

63. *Id.* at 164.

64. Scott R. Baker, *Effects of Immigrant Legalization on Crime*, 105 AM. ECON. REV.

the timing of legalization across different parts of the country to show that legalization led to a 3 percent to 5 percent decrease in crime rates.⁶⁵

In fact, the relationship between crime and lack of legal status may be a self-reinforcing cycle: an absence of worker rights may induce immigrants to commit crimes,⁶⁶ whereas an increase in crime sours sentiments towards migrants, reducing the likelihood of migrants achieving legal employment status. This result may reinforce beliefs that immigrants hurt the country.⁶⁷ Giving migrants legal working status may help to mitigate this cycle.

III. ENTREPRENEURSHIP AND INNOVATION

Entrepreneurship is a cornerstone of economic growth in the United States and across the world. The propensity of immigrants to start a new business may affect native workers' jobs and productivity. Immigrants open small businesses, like restaurants and salons, and expand service sector industries, like gardening, housekeeping, and child-care.⁶⁸ Legal rights provide security and freedom to such potential entrepreneurs, and an assurance they will be able to stay and grow their business.⁶⁹ Starting a business is time-intensive and requires significant capital investment upfront, but the benefits to the local populations prove to be very positive.⁷⁰ Therefore, providing legal permanence and stability to immigrants may help incentivize long-term local investments like businesses.⁷¹ These new businesses may lead to an increase in jobs and a larger tax base.⁷² While much of the literature has focused on the potential of H-1B visa-holders to develop new patents and technologies,⁷³ there is strong evidence suggesting that this relationship between immigration and innovation holds more broadly.⁷⁴

210 (2015).

65. *Id.* at 210.

66. *Id.* at 211–12; Pinotti *supra* note 60, at 164.

67. *See generally* GALLUP, *supra* note 49.

68. Patricia Cortes, *The Effect of Low-skilled Immigration on U.S. Prices: Evidence from CPI Data* 116 J. POL. ECON. 381, 382 (2008).

69. *Id.* at 389.

70. *See generally id.*

71. *Id.*

72. *Id.* at 413–14.

73. *See, e.g.,* William R. Kerr & William F. Lincoln, *The Supply Side of Innovation: H-1B Visa Reforms and U.S. Ethnic Invention* (Nat'l Bureau of Econ. Research, Working Paper No. 15768, 2010), <http://www.nber.org/papers/w15768.pdf> [<https://perma.cc/39CR-SZTE>].

74. *See* Kirk Doran & Chung Eun Yoon, *Immigration and Invention: Evidence from the Quota Acts* (Nat'l Bureau of Econ. Research, 2018), <http://www.nber.org/chapters/c14102.pdf> [<https://perma.cc/39UL-VFSB>]; Petra Moser et al., *German Jewish émigrés and*

A. Entrepreneurship in the IT Sector

High-skill migration is predominantly concentrated in the information technology (IT) sector.⁷⁵ Many highly-skilled migrants work at established technology firms, but others work for or create smaller start-ups in the industry.⁷⁶ Many of Silicon Valley's top entrepreneurs, including the current CEOs of Google-Alphabet, Microsoft, and Tesla, are immigrants, and the founders of companies like Google and Apple are either children of immigrants or immigrants themselves.⁷⁷

The number of computer scientists in the United States who were born abroad has steadily risen from less than one-in-ten in 1994 to about one-in-four by 2012.⁷⁸ Yet, most technology workers enter on H-1B visas, which are temporary work visas that are valid for three years and renewable up to another three years.⁷⁹ At the end of the six-year period, these highly-skilled workers must either leave the country or apply for a costly green card that has a long waitlist, particularly for citizens of India and China.⁸⁰ Many immigrants return to their home countries, bringing with them skills acquired in Silicon Valley, and start their own businesses in their home countries.⁸¹ Such forces, set into motion by the six-year H-1B limit, have shifted production from the United States to India.⁸²

Extending the H-1B limit or making the green card process easier would provide immigrants with a longer legal work status in the United States and allow employers to retain high-skill talent. Holding onto computer scientists would allow the IT sector to grow in the United States, which benefits firms and consumers of IT products. Growth in

U.S. Invention, 104 AM. ECON. R. 3222, 3239 (2016); Jennifer Hunt & Marjolaine Gauthier-Loiselle, *How Much Does Immigration Boost Innovation?*, 2 AM. ECON. J.: MACROECONOMICS 31, 31–33 (2010).

75. Khanna & Morales, *supra* note 9, at 7.

76. See Arnobio Morelix, *The Heros of America's Startup Economy Weren't Born in America*, Inc., <https://www.inc.com/arnobio-morelix/inc-entrepreneurship-index-2018-q1.html> [<https://perma.cc/C3TQ-FSFS>].

77. *Immigrant Founders of the 2017 Fortune 500*, CENTER FOR AMERICAN ENTREPRENEURSHIP, <http://startupsusa.org/fortune500> [<https://perma.cc/W3U7-T3D7>] (last visited June 29, 2019); Joanna Glasner, *Immigrants Founded or Lead About Half of Most-Funded U.S. Unicorns*, CRUNCHBASE (June 22, 2018), <https://news.crunchbase.com/news/immigrants-founded-or-lead-about-half-of-most-funded-us-unicorns> [<https://perma.cc/LD69-M9PG>].

78. Khanna & Morales, *supra* note 9, at 48.

79. *Id.* at 7.

80. *Id.*; Laura D. Francis, *U.S. May Speed Green Cards for Some Countries, Make Others Wait*, BLOOMBERG (Oct. 31, 2018), <https://news.bloomberglaw.com/daily-labor-report/us-may-speed-green-cards-for-some-countries-make-others-wait-1> [<https://perma.cc/3RM4-76L9>].

81. Khanna & Morales, *supra* note 9, at 2.

82. *Id.*

the IT sector may have downstream effects on other industries that use software, like banking and manufacturing, while raising the productivity of other sectors of the economy as well.⁸³

These broader benefits may manifest themselves outside the IT sector as well. Research shows that hiring H-1B workers was strongly associated with firms introducing newer products on the market across various consumer goods sectors. This type of product-churning captures a different type of innovation that is often examined in studies that use patenting data.⁸⁴

One road block to these positive effects is the legalization of immigrants with entrepreneurial ambitions. Unless immigrants are certain they will be allowed to remain within a country, they may not invest in developing a business in that country. This highlights a problem faced by many migrants who have ambitions to start businesses but will not because they know they may not be able to stay in the country for long.

B. Patenting and Innovation

Economic and productivity growth is driven by innovation.⁸⁵ What impact does migration have on inventiveness and patent creation? In 2000, immigrants represented 24 percent of the U.S. workforce in science and engineering who hold a bachelor's degree, which increases to 47 percent when looking at those who hold doctoral degrees.⁸⁶ Fluctuations in H-1B visas are found to have a significant impact on the number of patents submitted in the United States.⁸⁷ From 2000–2005, 40 percent of H-1B recipients were from India and 10 percent from China.⁸⁸ After the technology boom in the 1990s, a cap on H-1B visas was implemented and growth was stalled.⁸⁹ William Kerr and William Lincoln use this variation, as this led to differential impacts across cities in the United States.⁹⁰ Kerr and Lincoln find that an H-1B population that was higher than 10 percent was associated with a 1 percent to 4

83. *See id.*

84. *See generally id.*

85. Robert Barro, *Determinants of Economic Growth: A Cross-Country Empirical Study* (Nat'l Bureau of Econ. Research, Working Paper No. 5698, 1996), <https://www.nber.org/papers/w5698.pdf> [<https://perma.cc/7MZV-7RW9>]; Ann P. Bartel & Nachum Sicherman, *Technological Change and Wages: An Interindustry Analysis*, 107 J. POL. ECON. 285, 309 (1999).

86. Kerr & Lincoln, *supra* note 73, at 1.

87. *Id.* at 23.

88. *Id.* at 6.

89. *Id.* at 8.

90. *Id.*

percent increase in Indian and Chinese patenting in those cities.⁹¹ Even as the H-1B program has attracted the best and brightest minds from across the globe, the law stipulates that after six years, many must leave or apply for a costly green card.⁹² As mentioned above, this green card process has a long waiting period for citizens of India and China, discouraging many from remaining in the United States.⁹³

The H-1B program is a post-1990s phenomenon. However, similar occurrences can also be observed historically with earlier waves of immigrants.⁹⁴ And while the H-1B program attracts innovators, we may expect other types of immigration to attract workers that may not be innovators. Having a large workforce may spur innovation among native-born inventors as well.⁹⁵ This suggests native-born invention is, at least in part, driven by the opportunity to employ a potentially larger workforce, which immigrants may help provide. Legal working rights, in many ways, allow firms and companies to hire such workers, spurring growth and invention in corresponding industries.

In the 1920s, the United States instituted country-specific quotas to restrict migration from Southern and Eastern European countries as well as from Asia.⁹⁶ This impacted different cities in the United States differentially. Kirk Doran and Chung Eun Yoon studied the impacts of these quotas on patenting rates at the city-level.⁹⁷ They found that a decrease in immigration was strongly associated with lower patenting rates.⁹⁸ Indeed, lower patenting was not among immigrants themselves, but among natives. For every 10 percent decrease in immigration, patent applications by incumbent native-born inventors decreased by 0.5 percent.⁹⁹ This is somewhat contrary to earlier thoughts on the subject. While it has been believed by many that innovation stems from labor scarcity as a necessity, Doran and Yoon use quantitative analysis to suggest that innovation is actually a product of opportunity; having more immigrants allowed native-born inventors to patent more.¹⁰⁰

91. *Id.* at 2.

92. *Id.* at 7.

93. *Id.*; Francis, *supra* note 80.

94. *See* Doran & Yoon, *supra* note 74; Moser, *supra* note 74, at 3252–53; *see* Hunt & Gauthier-Loissele, *supra* note 74.

95. Doran & Yoon, *supra* note 74, at 22.

96. *Id.* at 5.

97. *Id.* at 2–3.

98. *Id.* at 16.

99. *Id.*

100. *See id.* at 22.

C. Refugee Rights and Innovation

When considering migrant rights, the plight of refugees plays a prominent role. Waves of refugees in the past have brought potential inventors and scientists to U.S. shores. Strong refugee resettlement programs and rights backing refugees help facilitate quicker integration into the United States workforce, thereby allowing them to contribute more easily to innovative endeavors.¹⁰¹ George Borjas and Kirk Doran's study of the collapse of the Soviet Union and the emigration of Soviet mathematicians is a case in point.¹⁰² Soviet mathematicians joined U.S. universities, published prolifically, and were highly cited.¹⁰³ Although some of their native-born peers were subsequently displaced, the advances of mathematics made by Soviet mathematicians may have been to the benefit of all in the country, and could thus spur advances in other fields of science and engineering that relied on mathematics.¹⁰⁴

Since World War II, refugee rights have been considered to be relatively strong compared to those in previous years.¹⁰⁵ During World War II, the United States turned away Jewish refugees fleeing Nazi Germany, and rejected proposals to take in children.¹⁰⁶ One such instance of this was the *MS St. Louis* in 1939.¹⁰⁷ The ship was turned back to Europe and other western European nations agreed to accept the refugees, yet they were all soon under Nazi rule, and many perished in the Holocaust.¹⁰⁸

Jewish refugees that did make it to the United States had few rights. Many had to acquire multiple affidavits from sponsors to work in the United States, and others had to fight against waves of anti-Semitism.¹⁰⁹ Petra Moser, et al., studied the impact of Jewish refugees on patenting in the United States. German Jews fleeing Nazi Germany came to the United States and were strongly associated with

101. Kalena E. Cortes, *Are Refugees Different from Economic Immigrants? Some Empirical Evidence on the Heterogeneity of Immigrant Groups in the United States*, 86 REV. ECON. STAT. 465 (2004); HAMUTAL BERNSTEIN & NICOLE DUBOIS, URBAN INSTITUTE, BRINGING EVIDENCE TO THE REFUGEE IMMIGRATION DEBATE 3, https://www.urban.org/sites/default/files/publication/97771/2018_05_15_bringing_evidence_to_the_refugee_integration_debate_finalized.pdf [<https://perma.cc/Y954-V5G3>].

102. George Borjas & Kirk Doran, *The Collapse of the Soviet Union and the Productivity of American Mathematics*, 127 Q.J. ECON. 1143 (2012).

103. *Id.* at 1169, 1191–93.

104. *Id.* at 1182–83, 1200.

105. SARAH OGILVIE & SCOTT MILLER, *REFUGEE DENIED: THE ST. LOUIS PASSENGERS AND THE HOLOCAUST* 15–28 (Univ. Wis. Press, 1st ed. 2010).

106. *See generally id.*

107. *Id.*

108. *Id.* at 29.

109. Moser, *supra* note 74, at 3223–24.

an increase in patenting, especially in fields like chemistry.¹¹⁰ Many Jewish refugees who fled Nazi Germany were highly skilled workers, such as physicians, academics, and musicians.¹¹¹ They brought their skills with them and shared these skills with the Americans with whom they innovated.

Such patenting activity was also present in the private sector, where businesses could grow with newer inventions.¹¹² The authors find that many U.S. workers switched to becoming inventors—many of them had never patented before but were now collaborating with Jewish émigrés to patent new products.¹¹³ Therefore, this created a network of inventors which had long-lasting effects.¹¹⁴ These skills were not only passed horizontally to their counterparts, but also vertically as the younger generations benefited from information-sharing as well.¹¹⁵ In sum, the authors found that Jewish migration led to a dramatic increase in patents by the migrants themselves and in collaboration with their American partners.¹¹⁶

IV. THE FISCAL BURDEN: TAXES AND WELFARE

A. Migrant Rights and the Tax Base

A very tangible repercussion of restricting migrant worker rights is the impact on a government's fiscal burden. Weak rights may discourage immigrants from reporting their income if work is undocumented. Under-reporting income shrinks the formal tax base. Similarly, undocumented migrants may not be eligible for insurance, adding to healthcare costs in times of emergency.

When considering the burden on welfare programs, legal status may help alleviate the burden on welfare expenditures. Undocumented workers may find it difficult to find employment, causing them to rely on welfare programs. Legal status may ameliorate these issues and ease the U.S. fiscal burden.

While many immigrants pay taxes through sales taxes, documented workers also add to the tax base through their wages. In 2014, immigrants paid \$223.6 billion in federal taxes and \$104.6 billion in

110. *Id.* at 3222–26.

111. *Id.* at 3222, 3252–53.

112. *See id.* at 3251.

113. *Id.* at 3250–51.

114. *Id.*

115. *Id.*

116. *Id.* at 3252–53.

combined states and local taxes.¹¹⁷ Contrary to popular belief, undocumented migrant workers also pay taxes, mostly income taxes, which are estimated to at \$11.7 billion.¹¹⁸ Incredibly, this would increase by \$2.2 billion if undocumented migrants were granted legal status.¹¹⁹ As the United States heads towards a fiscal deficit of up to \$804 billion,¹²⁰ a larger tax base could significantly help chip away at this debt.

B. Migrant Rights and Healthcare Costs

Healthcare costs have become a hotly debated issue in America due to the rising costs of treatment and insurance. Currently, federal funding cannot cover unauthorized residents, with the notable exception of emergency services.¹²¹ Without access to preventative treatment, these costs create a substantial sum of up to \$4.6 billion paid by the federal government.¹²² A further \$2.8 billion is financed by local and state governments, \$3 billion through increased insurance subsidies, \$1.5 billion in physician charity, \$900 million in federal subsidies due to non-profit hospital tax exemptions, and \$5.7 billion from employer tax exclusions.¹²³ This adds up to a striking \$18.5 billion total. By granting legal status to immigrants, this cost could be significantly reduced, as migrants would be eligible for insurance coverage, allowing for better preventative care and less emergency room spending. At the same time, employers may choose to hire undocumented migrant workers over native-born workers if employers do not need to cover undocumented migrants. This may hurt the employment prospects of native workers, and legal status for migrants would force employers to cover migrants while incentivizing them to also consider hiring native-born workers.

C. Migrant Rights and Welfare

A comparison between welfare program usage by undocumented and documented immigrants was analyzed by the Center for

117. Melissa Cruz, *Yes, All Immigrants – Even Undocumented – Pay Billions in Taxes Each Year*, AM. IMMIGRATION COUNCIL (Apr. 16, 2018), <http://immigrationimpact.com/2018/04/16/undocumented-immigrants-pay-taxes> [https://perma.cc/Q4CM-Q4SW].

118. *Id.*

119. *Id.*

120. Sam Fleming, *U.S. Annual Budget Deficit to Exceed \$1tn By 2020, CBO Says*, FIN. TIMES (Apr. 9, 2018), <https://www.ft.com/content/715039dc-3c20-11e8-b9f9-de94fa33a81e> [https://perma.cc/2XBX-NLCZ].

121. Chris Conover, *How American Citizens Finance \$18.5 Billion in Health Care for Unauthorized Immigrants*, FORBES, Feb. 26, 2018, <https://www.forbes.com/sites/theapothecary/2018/02/26/how-american-citizens-finance-health-care-for-undocumented-immigrants/#73a43b12c479> [https://perma.cc/R3PQ-ZS33].

122. *Id.*

123. *Id.*

Immigration Studies.¹²⁴ The study uses a crude method to classify whether or not they expect a survey respondent to be documented.¹²⁵ In 2012, it was determined 49 percent of households headed by a legal immigrant rely on one or more welfare programs while 62 percent of households headed by an illegal immigrant use one or more welfare programs.¹²⁶ The Supplemental Nutrition Assistance Program (SNAP) sees a large discrepancy in usage between legal and undocumented residents.¹²⁷ 36 percent of legal immigrants access SNAP, while 57 percent of undocumented residents utilize this program.¹²⁸ Much of this difference can be found in the employment opportunities available to each group, with undocumented workers having significantly less access to jobs and frequently offered payment below minimum wage.¹²⁹ Providing legal status to undocumented workers may make it easier for them to find employment opportunities and earn higher wages, as discussed above.¹³⁰ This may ensure that undocumented workers do not have to rely on welfare payments, easing the welfare burden of the U.S. government.

D. Future Generations and the Fiscal Burden

When considering the fiscal burden, intergenerational dynamics play a major role. Children of currently undocumented individuals who are born in the United States can join the U.S. workforce, adding to productivity and expanding the tax base. Alan Auerbach and Philip Oreopoulos discuss the fiscal impact of immigration on current and future generations.¹³¹ They find this impact is heavily dependent on the

124. STEVEN A. CAMAROTA, CTR. FOR IMMIGRATION STUDIES, WELFARE USE BY LEGAL AND ILLEGAL IMMIGRANT HOUSEHOLDS: AN ANALYSIS OF MEDICAID, CASH, FOOD, AND HOUSING PROGRAMS 1-2 (2015), https://cis.org/sites/default/files/camarota-welfare-illegals_1.pdf [<https://perma.cc/3YZS-DV5P>].

125. The study uses the SIPP data, and assumes the overwhelming majority of those who do not enter the country as lawful permanent residents are likely to be undocumented. This is a strong assumption as many workers (those on student, H-1B, H-2B, spouses of those on other visas) do not enter as lawful permanent residents. To refine this definition, the study uses information on demographics (age, region of origin, education, sex, and whether they receive welfare) to define legal status. This method is especially problematic as the definition of legal status rests on receiving welfare, but the outcome of interest is also receiving welfare.

126. CAMAROTA, *supra* note 124, at 1-2.

127. *Id.*

128. *Id.*

129. *See id.* at 12.

130. As a reminder, protecting migrant workers allows them to earn higher wages, and so employers are less likely to favor migrants over native-born workers.

131. Alan Auerbach & Philip Oreopoulos, *Generational Accounting and Immigration in the United States*, at 2 (Nat'l Bureau of Econ. Research, Working Paper No. 7041, 1999),

generation upon which the burden is placed.¹³² When trying to reduce the deficit, taxes will need to be increased and welfare benefits will need to be cut.¹³³ If these measures are implemented in the current generation, immigration can have a negative impact, causing a greater burden for natives.¹³⁴ However, if this burden was placed on the next generation, the impact would weigh more heavily on new immigrants.¹³⁵ This is because the future generation will include both new immigrants and second-generation immigrants.¹³⁶ When this is taken into account, immigration can reduce the fiscal burden to natives.

CONCLUSION

In this Article, we find there are several areas where strengthening migrant worker rights benefits native-born workers, outweighing any costs borne by them. In terms of wages and employment, granting immigrants legal working status not only increased their welfare, but kept native workers competitive by disallowing lowered wages for immigrants. Crime is another large area that sees a positive impact from strengthening migrant worker rights. Criminal behavior is widely understood to be a result of necessity and when given legal employment opportunities at livable wages, crime is reduced. Entrepreneurship and innovation are both greatly increased when immigrants see the United States as offering a stable future with the opportunity to contribute their skills and knowledge. Lessons from refugee migrations and immigration exclusion policies of the past speak to the potential pitfalls of such exclusion. Lastly, we find that the fiscal burden can be greatly reduced if immigrants are given working status and allowed to contribute to the tax base.

<http://www.nber.org/papers/w7041> [<https://perma.cc/658E-TVCQ>].

132. *Id.* at 21.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

