

Immigration Policy: Myths, Realities, and Reforms

Peter H. Schuck*

I am delighted to be part of the conference that is being held here at Washburn University School of Law. I would like to thank Dean Romig, Professor Reggie Robinson, Professor David Rubenstein, and Professor Shawn Leisinger and anybody else who has been involved with the convening of the conference and inviting me here. It is a great pleasure and an honor. I hope that I will be able to provide some interesting material for you to digest with your meal.

I call the talk *Immigration Policy: Myths, Realities, and Reforms*, and I want to emphasize some of the different aspects of immigration policy that I believe are not well understood. So I am dividing the talk into four parts: (1) an introduction, (2) some myths and misunderstandings about immigration, (3) some thoughts about immigration reform, and, finally, (4) some concluding remarks.

I. INTRODUCTION

I view the Immigration Act of 1965¹ as perhaps the most important nation shaping statute ever enacted—at least in the modern era. This is a very strong statement, of course, but I think in terms of defining the future of our nation, none is more important, with the possible exception of the contemporaneous civil rights legislation of 1964 and 1965. One of the interesting things about the Immigration Act of 1965 is that it was adopted very much in the wake of—and in the spirit of—the civil rights movement.

On a comparative basis, America is by far the most immigrant-friendly nation in the world. Indeed, there aren't many countries in the world with immigration policies that accept immigrants on a basis other than their ethnic relationship or colonial experience with the mother country. Canada accepts more legal immigrants than the United States does as a percentage of its population, and Sweden, which has only nine million people, has accepted 30,000 refugees. So on a percentage-of-population basis, those countries are

* Simeon E. Baldwin Professor of Law Emeritus, Yale Law School. These edited remarks were originally delivered on October 20, 2011, at the Capitol Plaza Hotel in Topeka, Kansas, as part of the Washburn University School of Law's *Breaching Borders: State Encroachment into the Federal Immigration Domain?* Symposium.

1. Act of Oct. 3, 1965, Pub. L. No. 89-236, 79 Stat. 911 (amending 8 U.S.C. § 1151 (1952)).

very generous as well, but they are also very different from the United States in some important respects. Canada is a vast land mass with a very low population, while Sweden is a very small, wealthy country that confines its admissions largely to refugees. I believe that our own immigration policy has been much more courageous in terms of courting the risks of the potential political and social conflicts that immigration, especially multi-ethnic immigration, inevitably engenders.

The participants in the conference are probably familiar with the basic parameters of our immigration policy, but for the rest of you, let me review some of the essentials. First, we admit more than a million legal, permanent residents every year, and out of a foreign-born population of over thirty-five million living in the United States today, about twelve and a half million are legal permanent residents ("LPRs"). Of course, a lot of foreign-born were LPRs who have naturalized as citizens over time. The United States is the most diverse receiving nation in terms of the distribution of countries of origin, and our population is currently more diverse than it has ever been in its history. In addition to the more than one million LPRs whom we admit each year, we grant about 100,000 humanitarian admissions—that is to say, refugees and asylees—each year. That is a very large number relative to any other country in the world. Again, Sweden has been extraordinarily generous in accepting refugees—given its very small population—but in absolute numbers the United States is alone.

Let me now make several points about the relationship of immigrants to American society. They assimilate faster here than in the few other countries that actually admit broad categories of immigrants—as distinguished from accepting asylum claimants occasionally or admitting their co-ethnics from other countries.² I believe that this is attributable less to the law than to the nature of our civil society, our culture, our economy, and our political values.

I analyze this at length in my book, *Diversity in America: Keeping Government at a Safe Distance*, where I explore a variety of reasons why the United States has been so relatively successful in integrating immigrants from the very beginning of America's existence during the colonial period. Our history, of course, is studded with some grave injustices, exclusions, and discrimination that were all too common until the civil rights movement and the 1965 immigration reform. But the nature of our polity and its relationship to immigration has changed dramatically since then.

One very striking feature that distinguishes the United States from any other country with respect to immigration is that we are the only country in the world with no nativist or restrictionist party. The Republican Party is strikingly and importantly divided on the immigration issue. Kansas

2. PETER H. SCHUCK, *DIVERSITY IN AMERICA: KEEPING GOVERNMENT AT A SAFE DISTANCE* (2003).

Secretary of State Kris Kobach is a major participant in the debate within the Republican Party, and he favors restriction. But neither Kris nor any other significant element of the Republican Party or, indeed, of any other part of American politics is either nativist or xenophobic. Many groups and citizens wish to admit fewer immigrants because they believe that the current levels are too high, but their restrictionism is largely what I call principled or pragmatic in character; the vast majority of them do not assert that foreigners are inherently inferior to anyone born in the U.S.

American public opinion is ambivalent about immigration and always has been. The general view among the American public today, and as far back as we know from public opinion polling on this issue, is that Americans are very proud of their immigration history. We admire the immigration experience in the United States in general and especially those immigrants whom we know personally. Still, Americans want less immigration than they think we've had in the past, but bear in mind that the public tends to believe that many more immigrants are in the U.S. than is actually the case.³ In short, Americans tend to believe that immigration is a good thing—but that too much of a good thing is not such a good thing and may even be a bad thing.

II. MYTHS AND MISUNDERSTANDINGS ABOUT IMMIGRATION

I now turn to the myths and misunderstandings about immigration. I call them misunderstandings as well as myths because in some cases, it is not so much that people believe something that is false; it is simply that they do not fully understand the relevant facts, the context in which these issues arise, and their significance.

A. Political Salience

The first myth or misunderstanding is that immigration is a dominant hot-button issue for most Americans. Certainly one might get that impression reading the newspapers or watching TV. In fact, however, immigration is pretty far down the list of concerns for most Americans. In May 2011, at the height of the controversy over Arizona's SB 1070, only ten percent of Americans said that immigration was their top concern, and it was fifth on the list in general terms.⁴ At a time of high unemployment, endless foreign policy imbroglios, and the many other concerns that preoccupy Americans, immigration policy is not near the top.

3. See Carl Bialik, *Americans Stumble on Math of Big Issues*, WALL ST. J., Jan. 7, 2012, <http://online.wsj.com/article/SB10001424052970203471004577144632919979666.html> (citing Sides-Citrin study on persistence of overestimates of number of legal and illegal immigrants).

4. Lydia Saad, "Jobs" Drops to No. 2 on Americans' List of Top Problems, GALLUP POLITICS (May 12, 2010), <http://www.gallup.com/poll/127949/Jobs-Drops-No-Americans-List-Top-Problems.aspx>.

B. Responsiveness to Public Opinion

A second myth or misunderstanding is that mass public opinion shapes immigration policy. In fact, immigration policy—more than most public policies—is shaped by elites whose views are more pro-immigration than the general public's. I have explained this in the chapter I authored in *Debating Immigration*,⁵ in which I analyze the extent to which elites control the shape and thrust of public policy in this particular domain.

C. Political Alliances

Another important and interesting feature of immigration politics is that it does not divide people along the familiar and simplistic liberal/conservative axis. Immigration policy creates very strange bedfellows. On the more liberal side of the spectrum, for example, labor unions that are liberal on most policy issues have been strong advocates of immigration restriction in the past. This has changed somewhat over the last ten years or so, but labor unions remain quite ambivalent about immigration. They now see greater opportunities to organize immigrant workers than they formerly did, but by and large—and certainly historically—unions and their members have been some of the fiercest opponents of immigration. Much the same is true of blacks and of some other groups traditionally on the liberal side of the political spectrum—although again, this is changing somewhat as black politicians seek to form liberal coalitions with Hispanics.

On the conservative side, the editorial page of the *Wall Street Journal* and many business interests that tend to be conservative on a wide range of issues tend to favor expansive immigration policies—for both ideological-libertarian reasons and because more immigration will assure an adequate and relatively cheap labor supply. The opportunistic coalitions that form around immigration policy debates, then, are not the ones that one might ordinarily expect. Indeed, some of the most important restrictionist groups in the United States describe themselves as pro-environment, labor-friendly, and population-control organizations because they believe that immigration threatens those particular values.

D. Restrictionist Policies

Another myth is that U.S. immigration policy is becoming more restrictionist, and the mass media accounts of local, state, and national conflicts over immigration policy seem to support that view. In fact, however, the levels of permanent admissions to the United States in recent

5. Peter H. Schuck, *The Disconnect Between Public Attitudes and Policy Outcomes in Immigration*, in *DEBATING IMMIGRATION* 17 (Carol Swain ed., 2007).

years are at—or very close to—an all-time high, and these high levels of admissions have continued for many years. Significantly, Congress has passed no significant restrictions on immigration since 1996, and the 1996 restrictions were almost entirely concerned with facilitating the removal of deportable criminals and others who are illegally present in the U.S., not with the admissions of permanent resident aliens.⁶ So although the 1996 law is often characterized as restrictive—and this is true in many important respects—it was directed largely toward criminal, undocumented, and otherwise illegally present aliens, such as visa abusers and overstays.

E. Immigrants Are Basically All the Same

The next myth is that Americans do not distinguish among immigrants but instead treat immigrants as a generic category. In fact, American attitudes are very positive toward legal immigrants even with respect to refugees and asylees who tend to impose greater fiscal burdens on localities in the United States and assimilate more slowly, largely because of the exigencies that brought them to the United States and their relative lack of education. By and large they need more social services to accommodate them because they suffer from a variety of anxieties and other conditions that make their settlement in the United States more challenging and protracted. Despite their difficulties, however, Americans tend to be very supportive of and sympathetic toward refugees and asylees. Illegal immigrants are a different story. Americans want them excluded from public services and removed from the country, particularly when no small children are implicated. For example, the Obama administration has targeted deportable criminal aliens and removed record numbers of them (albeit still a small fraction of those under federal control who are legally subject to deportation) through several new enforcement programs, including an especially controversial one called Secure Communities.⁷

In fact, as I was discussing with Secretary Kobach today, many states, including some of those with large immigrant populations, have rejected the spirit, and perhaps the letter, of the 1996 federal law; they continue to provide social welfare benefits to illegal aliens even though the 1996 law prohibited giving them benefits funded under federal programs. In fact, a number of states have tried to make life much easier for most immigrants—who are deportable under federal law. My own city and state of New York are leading that group of deportation-resisting jurisdictions.

6. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996) (codified as amended in scattered sections of 8 U.S.C.).

7. See *Secure Communities*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, http://www.ice.gov/secure_communities/ (last visited Feb. 28, 2012) (explaining the Secure Communities program to the public).

F. Benefits and Costs

Another myth is that immigrants pay their way. In fact, according to most immigration economists and the most authoritative study—the National Academy of Sciences report in 1997—they do pay their way but only barely.⁸ Some more recent studies have concluded that immigrants actually *do not* pay their way in general, even when one takes into account the tax revenues and economic value produced by their labor and consumption activities and by the sales and local property taxes.

It is not easy to analyze this question and there are different views about it, but what seems fairly clear is that the costs that states and localities incur for providing the undocumented with social services such as education, health care, law enforcement, and the criminal justice system balance pretty closely with the economic benefits that they generate. Except for sales taxes, however, most of the taxes that they pay go not to states and localities but to Washington—what I call a “fiscal mismatch.” This mismatch creates some unfortunate incentives and inequities: states and localities must bear the full costs of providing public services to illegal aliens, yet most of the taxes they pay go to Washington, mostly in the form of payroll taxes and income taxes—to the extent that they pay them. This mismatch may cause the federal government to be less vigorous about enforcement than it would be if it were bearing the full cost of weak enforcement.

Although a federal statute, the State Criminal Alien Assistance Program (“SCAAP”),⁹ is supposed to reimburse states and localities for the criminal justice system costs that illegal immigrants impose on them, Congress has not fully funded it, so the vast majority of those costs are still borne by local governments.

Illegal immigration to the United States disproportionately harms low-income workers. Illegal immigrants probably benefit most of the people in this room in that they provide services and labor that reduce the costs of many of the things that we desire and consume, including the cost of our food, our child care, and many of the other areas in which they work. In contrast, their effects on the employment and wages of low-income American workers are negative. The best studies by labor economists suggest that even if illegal immigrants benefit the economy generally—a point that remains quite controversial—they do tend to reduce job opportunities for many low-income American workers and either reduce their wages or, what is much the same thing, prevent those wages from rising.

8. See generally THE NEW AMERICANS: ECONOMIC, DEMOGRAPHIC, AND FISCAL EFFECTS OF IMMIGRATION (James P. Smith & Barry Edmonston eds., 1997).

9. The State Criminal Alien Assistance Program was created by the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 1823–24 (1994) (codified as amended at 8 U.S.C. § 1231(i) (2006)).

G. State and Local Hostility to Immigrants

The next myth, stemming from recent enactments in Arizona, Alabama, and some other states authorizing certain enforcement actions by state and local officials who encounter those they suspect of being undocumented, is that states and localities are hostile to immigration. In fact, it appears that Arizona accepts more refugees per capita than almost any other state¹⁰—a very interesting fact that, so far as I know, is seldom if ever mentioned. Instead, the popular view is that Arizona is unremittingly hostile to illegal immigrants or to immigrants generally, even though the Arizona statute targets only those reasonably suspected of being undocumented, not legal immigrants. This is not to endorse these statutes—some or all of them may well be preempted and thus unconstitutional, and some provisions are unwise—but merely to debunk the myth.

Many of the main immigrant-destination states and localities give the undocumented some protection and even benefits. California just enacted the State Dream Act¹¹ which is designed not only to protect from deportation many young people who are in illegal status, but also to extend certain benefits such as in-state tuition rates and scholarships to them—if they’ve met certain criteria such as graduating from high school or serving in the military. In Illinois, Cook County has ordered its officials not to cooperate with ICE, the federal immigration enforcement agency, and not even to respect their detainers for incarcerated criminal aliens.¹² New York City, San Francisco, New Haven, and some other jurisdictions similarly instruct their officials not to assist federal enforcement—and to make life easier for the undocumented in a variety of ways, sometimes by issuing them identification cards designed to conceal their status. Utah, Washington, Maryland, and a number of other states have recently taken steps to protect illegal immigrants by issuing them driver’s licenses and in-state tuition benefits.

H. Barriers to Citizenship

Another myth is that 9/11 and its aftermath have made American society less generous in regard to citizenship. In fact, there’s been no legal change with respect to the acquisition or loss of citizenship, and the naturalization exam that was adopted in 2008 is even easier to pass than before, according to most analysts. In 2010, just under 620,000 legal immigrants naturalized—a number that is down from the previous few years but still very high in historical terms.

10. Jason DeParle, *Arizona Is a Haven for Refugees*, N.Y. TIMES, Oct. 8, 2010, <http://www.nytimes.com/2010/10/09/us/09refugees.html>.

11. Assemb. B. 130, 2011 Leg., 2011–12 Reg. Sess. (Cal. 2011) (enacted) (chaptered by Secretary of State in Chapter no. 93).

12. *Legislative Updates*, FEDERATION FOR AMERICAN IMMIGRATION REFORM (Feb. 6, 2012), http://www.fairus.org/site/News2/2055731557?page=NewsArticle&id=24829&security=1601&news_iv_ctrl=1012.

I. Growth in Illegal Migration

The next myth is that the undocumented immigrant population in the United States is steadily growing. In fact, the total has declined by about one to two million people as a result of heightened enforcement by the Obama administration, the economic recession, and lower fertility in Mexico and other source countries.

J. Immigration and Inequality

Another myth is that immigrants are causing greater inequality in the United States. This may be true, but whether it is depends a lot on whether one is measuring inequality to include the improved economic status that the immigrants themselves achieve when they come to the United States. We absorb an enormous number of very poor, very low-skilled people, mostly from Mexico, and this absorption does, as I suggested before, affect the wage levels and job opportunities of low-income Americans. These newcomers, of course, have gained enormously by migrating to the United States. After all, wage levels here average about seven to eight times the wage levels in Mexico. If one counts their gains as increases in equality for those living in the United States, then the inequality analysis becomes a lot more complicated.

K. English Language Dominance

The last myth or misunderstanding that I shall mention is that the large migration of Hispanics to the United States threatens the primacy of the English language here. In fact, the English fluency acquired by the second generation immigrants (i.e., the children of immigrants) basically tracks the historical path of English acquisition in previous cohorts of immigrants. I hasten to add, however, that the data on English fluency among immigrants are somewhat difficult to evaluate because the data are based mostly on self-reporting. That is, the second generation is asked how often they speak English, how well they speak English, whether they speak it at home, and so forth, so we cannot be certain about the accuracy of these responses. Nevertheless, most sociologists who study this phenomenon believe that today's second generation is doing no worse than previous generations—the generations who we always celebrate for having integrated well into American life.

III. IMMIGRATION REFORM

I shall say just a few words on immigration reform. Although there is much to be said (and even more to be done) on this subject, let me focus on a few elements of possible reform. Many of the problems of American

immigration policy today might be improved, and there is widespread agreement among all but hard-core restrictionists concerning what must be done, at least if we put aside the details (where God tends to dwell). Many Republicans are opposed to some of these reforms, either in principle or in the specific forms in which they have been proposed, and the Obama administration made a tactical decision not to push immigration reform when it assumed office in 2009 with a Democratic-controlled Congress. I have already noted that the administration has ratcheted up the level of enforcement against criminal aliens.

Many policy variables come into play when one thinks seriously about how to design a legalization program (opponents call it amnesty, which is also true), so it is difficult to speak about it in the abstract. Nevertheless, it is clear to me—but not to my friend Secretary Kobach—that a legalization program must ultimately be adopted, and it must be liberal enough to induce illegal immigrants to apply for it because they always have the option of continuing the status quo of remaining in the shadows. Although the status quo is hardly what they want, most will presumably find it better than the alternative of being detained and deported. This means that enticing them into a legalization/amnesty program means, as a practical matter, that the benefits of participation to them will have to be fairly generous. Some difficult moral issues arise with such a reform. For example, should the would-be immigrants who are eligible for legalization be admitted before those who have waited in line for a visa for many years? Is it proper to reward those who have broken the law in the past, and if not, how must they be forced to pay for that illegality before they can qualify? I believe—again, contrary to Secretary Kobach—that a more carefully tailored Dream Act at the federal level is also a desirable change, but it will have to be demanding enough to include only those young people who have evidenced their strong commitment to the United States and their willingness and readiness to advance their own education and acquisition of human capital. I think that the Dream Act bill that was advanced and then failed in Congress was not as well-drafted in those respects as the Congress will demand before approving it.¹³

One clearly desirable reform would be to advance the date for registry, which is a provision that now provides that if you have lived here since 1971 in illegal status and if you have otherwise complied with the law, you are eligible for a green card.¹⁴ I believe that this provision—which was enacted in 1986—ought to be updated periodically so that somebody who has resided here for, say, twenty years and has met those conditions ought to be eligible for legal status. It is true that this would reward people for having violated the law and gotten away with it for a long period of time, which certainly

13. See Development, Relief, and Education for Alien Minors Act of 2010, S. 3992, 111th Cong. (2010).

14. See 8 U.S.C. § 1259 (2006).

raises a question of fairness and morality, but that is not the only factor that should be considered.

A second important element of immigration reform is to increase the number of highly-skilled immigrants. According to a very recent article that I co-authored on this subject, only about nine percent of the annual permanent admissions to the United States are skills-based,¹⁵ which is manifestly inadequate in terms of the needs of our economy and society. The H-1B visa category for *temporary* workers with relatively high skills has been reduced to only 65,000 a year, which is one-third the number of visas that this program granted as recently as ten years ago.¹⁶ As many commentators have noted, this is simply cutting our nose to spite our face. We are helping to educate and train folks and then sending them back after they have acquired the human capital that we desperately need in this country. We must increasingly compete with other countries for them and for foreign investors. The days when all highly-skilled immigrants wanted to come to the United States and had no attractive alternative are gone. Now they can go to Canada, to Australia, or to a few other countries that are also trying to entice them with the prospect of permanent resident status and high-paying jobs.

Senator Schumer recently proposed a law that would provide some additional visas to those who are willing to invest in American real estate, particularly residential real estate, to help absorb some of the vast inventory of homes that are underwater, thereby reducing the overhang of unoccupied homes and thus reducing the length of time that the housing market will take to hit bottom so that it can begin to recover.¹⁷ This too should be seriously considered. On the other hand, a pending proposal to extend the E-visa from Australian workers to Irish workers, on extremely favorable terms, revives the long-discredited tradition of giving special treatment to applicants from particular countries in employment-based admissions.¹⁸

A third element of immigration reform concerns seasonal guest workers. We need them and they need us. We must ensure that they are working here under fair conditions, that they can return to the United States each harvesting season, and that they will return home at the season's end. Having specified these conditions, I must concede that it is very difficult to ensure that they will, in fact, return at the season's end. As one expert on guest workers has said of the European programs, there is nothing more permanent than a temporary guest worker program.¹⁹

15. Peter H. Schuck & John E. Tyler, *Making the Case for Changing U.S. Policy Regarding Highly Skilled Immigrants*, 38 FORDHAM URB. L.J. 327, 347 (2010).

16. *Id.* at 343.

17. Nick Timiraos, *Foreigners' Sweetener: Buy House, Get a Visa*, WALL ST. J., Oct. 20, 2011, http://online.wsj.com/article/SB10001424052970203752604576641421449460968.html?mod=rss_whats_new_us_business.

18. See Fairness for High-Skilled Immigrants Act of 2011, S. 1983, 112th Cong. § 3 (2011).

19. Philip Martin, *There is Nothing More Permanent Than Temporary Foreign Workers*, CENTER FOR IMMIGRATION STUDIES 3 (Apr. 2001), <http://www.cis.org/articles/2001/back501.pdf>.

A fourth element of reform is to repeal the per-country caps on permanent visas and accept more highly-skilled Mexicans. We have, of course, a very long history with Mexico. Much of this history has been bitter and conflicted, but our two economies are highly integrated and we could benefit from admitting more highly-skilled Mexicans who can succeed in the United States. (Needless to say, I am unimpressed by the “brain drain” argument—partly because of the importance of remittances from foreign workers in the U.S. to development in their home countries, and partly because these countries should have to compete by making their own economies more attractive to their skilled workers.)

In order to increase the effectiveness of immigration enforcement, we must do something that is far below the radar screen of all but the most knowledgeable observers. We need to increase the number of detention beds because the current shortage is a key limiting factor on enforcement. When no detention beds are available, then the ICE officials will not apprehend and hold deportable aliens, which defeats the whole purpose. ICE has increased the number of detention beds very substantially in the last few years, but there are still shortages in many places, which constrains the government’s ability to enforce the immigration laws.

Employer sanctions have also not been strongly enforced in the United States. There is much to be said for strengthening those sanctions, and every administration promises to do so. There is little to show for these promises.

There is also a strong case to be made for deporting criminal immigrants more quickly than they are now being deported once their claims of a right to remain in the United States have been finally adjudicated and their appeals exhausted.²⁰ A long-standing federal statute precludes (with few exceptions) the deportation of even those immigrants whose deportability has been firmly established until they have served their full sentences in federal and state prisons.²¹ At a time when the Supreme Court has ordered an end to unconstitutional overcrowding in the prison system²²—this is a good time to change that provision so that criminal immigrants can be deported before, not after, they go to already-overcrowded American prisons. This is a complex problem, which I have explored at great length elsewhere.²³

Another important reform is to restore some of the official discretion over the government’s duty to detain and deport, which Congress withdrew in the 1996 law. Immigration officials need the power to take into account the many human and other factors that should inform decisions about whom to deport and under what circumstances—even with respect to those who are clearly

20. Peter H. Schuck, *Do Not Go Directly to Jail*, N.Y. TIMES, Dec. 6, 2010, <http://www.nytimes.com/2010/12/07/opinion/07Schuck.html>.

21. 8 U.S.C. § 1231(a)(4)(A) (2006).

22. *Brown v. Plata*, 131 S. Ct. 1910, 1922–24 (2011).

23. A full-length but still-unpublished analysis of this issue can be obtained from the author.

deportable as a matter of law. Finally, as I mentioned earlier, the SCAAP Program ought to be fully funded so that state and local governments do not suffer fiscally from the failures of federal immigration enforcement. The failure of Congress to fund SCAAP is little short of scandalous.²⁴ Many other reforms should be seriously considered, but that is a matter for another day.

IV. CONCLUSION

Let me conclude with just a few points. First, immigration has been one of America's great successes, perhaps its most important one—for so much else has turned on it. Our immigration history and policy in the last forty-five years has contributed significantly to improving the quality of American life and in diversifying our population in ways from which I think we benefit and of which we can be proud. We are distinctive, if not unique, in the world in this respect.

Secondly, immigration is demographically important for an aging population like ours. In Japan, Russia, and many of the European Union countries, the birth rates are well below replacement. Partly as a result of this "birth dearth," they face dire economic prospects, whereas the United States is a demographic outlier among modern post-industrial societies in having a relatively high birth rate, which is essential to, but also a consequence of, a dynamic, optimistic, creative American society. Having said that, we must be able to select those immigrants whom we want based on our national interests, properly understood (except for asylees and refugees whom we are legally and morally obliged to protect). I have suggested that our primary national interests in immigration today, apart from the humanitarian admissions portion of our policy, are to attract highly-skilled immigrants along with their closest family members, to encourage naturalization, and to control illegal migration more effectively.

Realistically, any reforms that we adopt in order to manage the illegal migration problem more effectively will not solve it. Too many factors remain outside of our control, including a very long border with Mexico, economic and demographic pressures from other developing countries in the region, and geo-political conditions over which we have little influence. Because U.S. political, economic, and ethical constraints also limit what is possible under these circumstances, we must be realistic about our ability to fine-tune the migration flows in today's world. Nevertheless, we can certainly do a much better job than we have been doing, particularly if we are guided by the facts and not by the myths.

Thank you.

24. *Id.*