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The Unsung Latino Entrepreneurs of Appalachia

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The Unsung Latino Entrepreneurs of Appalachia

Eric Franklin Amarante, *University of Tennessee College of Law*



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THE UNSUNG LATINO ENTREPRENEURS OF APPALACHIA

*Eric Franklin Amarante**

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ABSTRACT

The story of Latinos in Appalachia, when told, is dominated by the plight of migrant workers drawn to meat processing factories or agricultural work, with very little attention paid to Latino entrepreneurship in Appalachia. However, the first generation of migrant workers inspired a surprising collateral entrepreneurial effect: a raft of small businesses owned by (and focused on) the new Latino population surged into small town Appalachia. These businesses, which include restaurants, tiendas, pastelerias, and tortillerias, not only serve the growing Latino population, but also have a tremendously positive effect on local and state economies. These businesses hire employees, rent previously unused commercial space, increase the local demand for goods and services, and provide much-needed tax revenue. The phenomenon of Latino

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entrepreneurship is an unmitigated positive for small towns that have otherwise experienced great difficulty in producing and promoting small business activity.

This Essay will focus on the economic effect of Latino-owned businesses in Appalachia and will conclude with some strategies that might help support these businesses, including providing Spanish translations of local and state business forms (e.g., formation documents, annual reports, etc.), simplifying state business entity and licensing regimes, and changing the requirements for the visa program based upon business investment.

I. INTRODUCTION

In the summer of 2017, I moved from Las Vegas to Knoxville. The cultural differences between “Sin City” and the “Gateway to the Great Smoky Mountains” are too numerous to mention, but I felt relatively prepared for the move. I spent a good amount of my childhood living in Texas and traveling throughout the Southeast so I was reasonably well-prepared for the culture of East Tennessee (i.e., I knew a fair amount about the regionally distinct variants of barbecue, and I had an ease with the word “y’all”). If I had any concerns, they were primarily about tacos.

In Vegas, I had grown accustomed to delicious street tacos. My wife and I had tacos at least once a week, and I spent my waning months in Vegas trying to prepare for a taco shortage in East Tennessee. (Lest you think my concerns frivolous, I suggest you have an *al pastor* taco from *El Buen Pastor* before rendering judgment.)¹

Sadly, my fears were confirmed. Although Knoxville proved to be more culinarily adventurous than I anticipated, and I quickly found a number of very good restaurants, the taco scene was predictably underdeveloped. I resigned myself to learning how to make homemade tortillas and searched online for mail-order dried *chiles*.

But that all changed when I went to Morristown. Morristown, a city of about 30,000 people located approximately 45 minutes northeast of Knoxville, provided a most unexpected and pleasant surprise. I went to Morristown to represent a nonprofit dedicated to revitalizing the downtown area. Like many small towns, Morristown’s main street suffered a long decline in commercial activity over the past few decades. My client worked to reverse that trend by attracting businesses to downtown Morristown. But before I got to Morristown’s main street, I was shocked to see three *tacquerias*, a *tortilleria*, and a *panaderia*. I hadn’t seen signs in Spanish since I left Nevada and it felt a little surreal to see a traditional Mexican bakery on a main thoroughfare in a small town in East Tennessee. I later learned that Morristown also boasts a fantastic tamale shop, several Mexican restaurants, and a number of other Latino-owned or Latino-focused shops. I now routinely make the one-and-a-half-hour roundtrip to get

¹ El Buen Pastor is a taco truck on the corner of East Bonanza and Las Vegas Boulevard.

handmade tortillas, freshly-made *queso*, and some of the most delicious *pan dulce* I've had in the United States.

At first blush, Morristown strikes many as an unlikely home for such a concentration of Latino-focused commerce. But for the past 20 years, Latino immigrants from as far as Guatemala came to Morristown for work in tomato fields and poultry plants.² Upon further investigation, I learned that Morristown is not an anomaly. A number of small towns throughout Appalachia have a surprisingly large and vibrant Latino population.

The first generation of Latino immigrants in Appalachia were migrant workers drawn to employment in factories or agriculture.³ But as migrants came to Dalton, Georgia,⁴ Morganton, North Carolina,⁵ and Morristown⁶ to work in agriculture, poultry processing plants, and carpet factories, they inspired a surprising collateral entrepreneurial effect: a host of small businesses owned by (and focused on) this new Latino population surged into these areas. These businesses not only serve the Latino migrant workers but also have a tremendously positive effect on the local economies. They hire locally, increase local spending, rent previously unused commercial space, and contribute revenue in the form of property, payroll, and sales taxes. An increase in Latino-owned businesses is an unmitigated positive for small Appalachian towns that have otherwise experienced great difficulty in producing and promoting small business activity.

However positive their effect, these businesses operate with very little support from the cities and states in which they operate. Given the lack of Spanish-language documents for starting businesses, the byzantine administrative hurdles for obtaining appropriate licenses and permits, and the general anti-immigrant sentiment of the United States (and the South in particular), it is a wonder that these businesses ever get off the ground, let alone thrive.

The unharnessed potential of Latino-owned businesses in the U.S. has captured the imagination of researchers, commentators, and policymakers. This is due to two apparently contradictory pieces of data: (i) Latino-owned

² Julia Preston, *A Slippery Place in the U.S. Work Force*, N.Y. TIMES (Mar. 21, 2009), <https://nytimes.com/2009/03/22/us/22immig.html>.

³ Lisa R. Pruitt, *Latina/os, Locality, and Law in the Rural South*, 12 HARV. LATINO L. REV. 135, 137–38 (2009) (noting that the rural South “has attracted significant numbers of Latina/os in the past decade or so, who are primarily coming to work in the low-wage jobs long associated with the region”).

⁴ See generally DONALD E. DAVIS ET AL., VOICES FROM THE NUEVA FRONTERA: LATINO IMMIGRATION IN DALTON, GEORGIA (2009).

⁵ See generally LEON FINK & ALVIS E. DUNN, THE MAYA OF MORGANTON: WORK AND COMMUNITY IN THE NUEVO NEW SOUTH (2003).

⁶ See generally GLOBAL CONNECTIONS & LOCAL RECEPTIONS: NEW LATINO IMMIGRATION TO THE SOUTHEASTERN UNITED STATES (Fran Ansley & Jon Shefner eds., 2009).

businesses are formed at a rate that greatly outpaces the rate of other groups,⁷ and (ii) the production of Latino-owned businesses lags behind other firms by as much as 75%.⁸ By one estimate, if the sales of Latino-owned businesses were equivalent to non-Latino-owned businesses, it would represent a \$1.38 trillion boon to the U.S. economy.⁹ The great potential, therefore, of Latino-owned businesses is obvious, and policymakers struggle to identify ways to support this population.

Part II of this Essay will discuss the scope of who is meant by the word “Latino” and what has, in the past, driven Latino immigration to different parts of the United States. Part III will explore the economic effect of Latino-owned businesses in small Appalachian towns, and Part IV will focus on some strategies that might help support these businesses, including providing Spanish translations of local and state business forms (e.g., formation documents, annual reports, etc.), simplifying state business entity and licensing regimes, and lowering the investment threshold for EB-5 Visa requirements. Part V concludes the Essay.

II. LATINO ENTREPRENEURS: “THEY ARE NOT THE PROBLEM. THEY ARE THE SOLUTION.”¹⁰

A. *What Is a Latino?*

Before discussing the unharnessed potential of Latino entrepreneurship in Appalachia, it is wise to spend a few moments discussing precisely what we mean when we say “Latino.” Many folks might be more familiar with the term “Hispanic” due to its use in the U.S. Census. The census defines “Hispanic or Latino” as “a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.”¹¹ There are a number of frustrating aspects of this definition. Even if one can set aside the absurd broadness of the definition, the literal meaning of Hispanic is “of or

⁷ See STANFORD GRADUATE SCH. OF BUS., STATE OF LATINO ENTREPRENEURSHIP 2016: RESEARCH REPORT 5 (2016), https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/report-slei-state-latino-entrepreneurship-2016_0.pdf (noting that “the five-year average growth rate in the number of Latino firms has remained at double or triple that of the national average for the past fifteen years”).

⁸ *Id.* at 6 (“Latino firms . . . made one-quarter of what non-Latino firms made in sales in 2012.”).

⁹ *Id.*

¹⁰ HERNANDO DE SOTO, THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE 37 (2000).

¹¹ KAREN R. HUMES ET AL., U.S. CENSUS BUREAU, C2010BR-02, OVERVIEW OF RACE AND HISPANIC ORIGIN: 2010, 2 (2011), <https://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>.

relating to the people, speech, or culture of Spain or of Spain and Portugal.”¹² Thus, the term defines a people by direct reference to the colonizers (i.e., Spain or Portugal), rather than the precolonial cultures of the native populations that lived in the areas now known as Cuba, Mexico, Puerto Rico, South America, and Central America.¹³ Second, in addition to the rather offensive notion of defining a people by their colonizers, the term is inaccurate. Not all people from these areas have adopted the “speech” or “culture” of Spain or Portugal. Although many Latino immigrants speak Spanish, many of the Guatemalan immigrants who have moved to Tennessee speak one of the many Mayan dialects favored in rural Guatemala, and some parts of South America speak English,¹⁴ French,¹⁵ or Dutch.¹⁶ Thus, any reference that hinges upon language spoken will necessarily be under-inclusive.

This Essay is not the first to criticize the term “Hispanic.” Perhaps Douglas Massey put it best by bluntly stating that “[t]here is, in short, no Hispanic population.”¹⁷ As proof, Massey highlights the fact that “Hispanics share no common historical memory and do not comprise a single, coherent community. Rather, they are a disparate collection of national origin groups with heterogeneous experiences of settlement, immigration, political participation, and economic incorporation”¹⁸

¹² See *Hispanic*, MERRIAM-WEBSTER: DICTIONARY, <https://www.merriam-webster.com/dictionary/Hispanic> (last visited Mar. 28, 2018).

¹³ David Gonzalez, *IDEAS & TRENDS: What's the Problem with 'Hispanic'? Just Ask a 'Latino'*, N.Y. TIMES (Nov. 15, 1992), <http://www.nytimes.com/1992/11/15/weekinreview/ideas-trends-what-s-the-problem-with-hispanic-just-ask-a-latino.html> (noting that critics of the term Hispanic “say it recalls the colonization by Spain and Portugal and ignores the Indian and African roots of many people it describes”).

¹⁴ The official language of Guyana is English. *Guyana*, ETHNOLOGUE: LANGUAGES WORLD, www.ethnologue.com/country/GY (last visited Mar. 28, 2018).

¹⁵ The official language of French Guiana is French. *French Guiana*, ETHNOLOGUE: LANGUAGES WORLD, www.ethnologue.com/country/GF (last visited Mar. 22, 2018).

¹⁶ The official language of Suriname is Dutch. *Suriname*, ETHNOLOGUE: LANGUAGES WORLD, www.ethnologue.com/country/SR (last visited Mar. 28, 2018).

¹⁷ Douglas S. Massey, *Latinos, Poverty, and the Underclass: A New Agenda for Research*, 15 HISP. J. BEHAV. SCI. 449, 454 (1993).

¹⁸ *Id.*

In this light, identifying a person as “Hispanic” is about as illuminating as identifying someone as “White”¹⁹ or “Black.”²⁰ Such labels tell the listener very little about the person’s culture, what language the person speaks, or the person’s ethnicity or nationality. The labels are, in short, not terribly informative.²¹ Practically speaking, the only thing these categories communicate is either how the speaker views him or herself or (more disturbingly) how the questioner views the speaker.²²

The persistence of the U.S. Census Bureau’s use of the term “Hispanic”²³ highlights the ability of the state to “manufacture ethnicities and even races by the simple expedient of cataloguing and treating people ‘as if’ they belonged to

¹⁹ “White” is defined in the 2010 Census as “a person having origins in any of the original peoples of Europe, the Middle East, or North Africa.” LINDSAY HIXSON, U.S. CENSUS BUREAU, C2010BR-05, THE WHITE POPULATION: 2010, 2 (2011), <https://www.census.gov/prod/cen2010/briefs/c2010br-05.pdf>. Ta-Nehisi Coates is only the most recent critic to argue that “white” has no affirmative meaning. *See generally* TA-NEHISI COATES, BETWEEN THE WORLD AND ME (2015).

²⁰ “Black” is defined in the 2010 Census as “a person having origins in any of the Black racial groups of Africa.” *See* SONYA RASTOGI ET AL., U.S. CENSUS BUREAU, C2010BR-06, THE BLACK POPULATION: 2010, 2 (2011), <https://www.census.gov/prod/cen2010/briefs/c2010br-06.pdf>. For a discussion of the meaning of “Black” and the U.S. Census, see Lawrence Wright, *One Drop of Blood*, NEW YORKER (July 25, 1994), <https://www.newyorker.com/magazine/1994/07/25/one-drop-of-blood>.

²¹ One might justifiably argue that any racial label will ultimately lack much meaning. Discussing the absurdity of the “one drop rule,” which held that an individual with any amount of “black blood” shall be considered Black, Professor Kwame Anthony Appiah said,

[L]ook, my mother is English; my father is Ghanaian. My sisters are married to a Nigerian and a Norwegian. I have nephews who range from blond-haired kids to very black kids. They are all first cousins. Now, according to the American scheme of things, they’re all black—even the guy with blond hair who skis in Oslo. That’s what the one-drop rule says. [The notion] that you should be able to assign every American to one of three or four races reliably—is crazy.

See Wright, *supra* note 20, at 49. As Wright notes, “Whatever the word ‘race’ may mean elsewhere in the world, or to the world of science, it is clear that in America the categories are arbitrary, confused, and hopelessly intermingled.” *Id.* at 53.

²² Jeffrey S. Passel & Paul Taylor, *Who’s Hispanic?*, PEW RESEARCH CTR. (May 28, 2009), www.pewhispanic.org/2009/05/28/whos-hispanic/ (“For example, some 99% of all immigrants from Mexico call themselves Hispanic. But just 87% of immigrants from Venezuela adopt this label, as do 86% of immigrants from Argentina, 70% of immigrants from Spain, and only 67% from Panama. As for race, 54% of all Hispanics in the U.S. self-identify as white, 1.5% self-identify as black, 40% do not identify with any race and 3.8% identify as being two or more races.”).

²³ *See* U.S. CENSUS BUREAU, WHY WE ASK: HISPANIC ORIGIN, <https://www2.census.gov/programs-surveys/acs/about/qbyqfact/2016/Hispanic.pdf> (“We ask whether someone is of Hispanic, Latino, or Spanish origin to create statistics about this ethnic group. Hispanic origin statistics are used in planning and evaluating government programs and policies to ensure they fairly serve the needs of each community and to monitor against discrimination in these programs and in society.”).

the same group.”²⁴ Despite the census terminology, this Essay will use the term “Latino” except when directly quoting from sources. “Latino” is defined as “native or inhabitant of Latin America” or “a person of Latin American origin living in the U.S.”²⁵ Thus, “Latino” does not connote colonization and avoids inaccurate assumptions about language. Unfortunately, this term is not representative of how many so-called “Latinos” view themselves. When asked, most people from Cuba, Mexico, Puerto Rico, or South and Central America prefer to identify with their families’ country of origin.²⁶ An individual doesn’t often self-identify as “Latino” or “Hispanic,” but more likely views him- or herself as Cuban, Mexican, Puerto Rican, Columbian, etc.²⁷ But for the purposes of this Essay, which attempts to broadly characterize the relatively recent immigrant experience in Appalachia, a group term is helpful, if neither entirely accurate nor even preferred by the subject group.²⁸

B. Destinations, Old and New

Much has been written about the size, growth, and influence of the Latino population in the United States.²⁹ Perhaps this is due to the capaciousness of the term “Latino,” which, as the previous section noted, purports to encompass people who hail from over 20 different countries.³⁰ Given this expansiveness, perhaps it should be no surprise that the Latino population in the United States, as of 2016, was as high as 56 million and represented as much as 18% of the

²⁴ See Alejandro Portes, *The New Latin Nation: Immigration and the Hispanic Population of the United States*, in GLOBAL CONNECTIONS & LOCAL RECEPTIONS: NEW LATINO IMMIGRATION TO THE SOUTHEASTERN UNITED STATES 3, 13 (Fran Ansley & Jon Shefner eds., 2009).

²⁵ See *Latino*, MERRIAM-WEBSTER: DICTIONARY, <https://www.merriam-webster.com/dictionary/Latino> (last visited Mar. 28, 2018).

²⁶ Paul Taylor et al., *When Labels Don’t Fit: Hispanics and Their Views of Identity*, PEW RES. CTR. (Apr. 4, 2012), <https://www.pewhispanic.org/2012/04/04/when-labels-dont-fit-hispanics-and-their-views-of-identity/>.

²⁷ *Id.* (“A majority (51%) say they most often identify themselves by their family’s country of origin; just 24% say they prefer a pan-ethnic label.”).

²⁸ Compounding the problematic nature of this term is the fact that this decision overlooks the gender implications of the word Latino. Raul A. Reyes, *To Be or Not to Be Latinx? For Some Hispanics, That Is the Question*, NBC NEWS (Nov. 7, 2017, 11:59 AM), <https://www.nbcnews.com/news/latino/be-latinx-or-not-be-latinx-some-hispanics-question-n817911>.

²⁹ See *supra* notes 2, 13, 17, and 22–23.

³⁰ *Hispanic vs. Latino*, DIFFEN, https://www.diffen.com/difference/Hispanic_vs_Latino (last visited Mar. 28, 2018) (including countries in the Caribbean (Cuba, Dominican Republic, and Puerto Rico), South America (Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay, and Venezuela), and Central America (Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama)).

population of the United States.³¹ As if these numbers were not impressive enough, the U.S. Latino population is growing.³² The Latino population's growth rate has been "accounting for half of national population growth since 2000," making it the "principal driver of U.S. demographic growth."³³

Although large and growing, Latinos in the U.S. tend to live in a relatively concentrated manner, with the majority living in only four states: California, Texas, Florida, and New York.³⁴ This concentration explains why the majority of academic studies focus on these states, otherwise known as "gateway" destinations.³⁵ However, the concentration of the U.S. Latino population has been noticeably diluted with a slow migration of Latinos to less traditional destinations.³⁶

For most of U.S. history, the southern states have not experienced much immigration, with the traditional South boasting "a smaller percentage of immigrants than any other region of the country."³⁷ However, while the absolute number of Latinos in traditional destinations remains quite high, the past two decades have witnessed a noticeable shift in immigration patterns from gateway destinations to lesser-known destinations.³⁸ Dubbed "new destinations" by sociologists and immigration academics, a number of states in the South and Southeast have seen dramatic increases in Latino immigration.³⁹ As Professor Alejandro Portes noted,

³¹ Antonio Flores, *How the U.S. Hispanic Population Is Changing*, PEW RESEARCH CTR. (Sept. 18, 2017), <http://www.pewresearch.org/fact-tank/2017/09/18/how-the-u-s-hispanic-population-is-changing/>.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ See David T. Lichter & Kenneth M. Johnson, *Immigrant Gateways and Hispanic Migration to New Destinations*, 43 INT'L MIGRATION REV. 496, 497 (2009); see also Pruitt, *supra* note 3, at 139.

³⁶ Joel Kotkin & Wendell Cox, *The U.S. Cities Where Hispanics Are Doing the Best Economically*, FORBES (Jan. 30, 2015, 8:52 AM), <https://www.forbes.com/sites/joelkotkin/2015/01/30/the-u-s-cities-where-hispanics-are-doing-the-best-economically/#2f1dec252e1a>.

³⁷ HELEN B. MARROW, *NEW DESTINATIONS DREAMING: IMMIGRATION, RACE, AND LEGAL STATUS IN THE RURAL AMERICAN SOUTH* 2–3 (2011) (noting that Americans "living in the traditional South have been the most isolated from immigration").

³⁸ Kotkin & Cox, *supra* note 36.

³⁹ See Jamie Winders, *Placing Latino Migration and Migrant Experiences in the U.S. South: The Complexities of Regional and Local Trends*, in *GLOBAL CONNECTIONS & LOCAL RECEPTIONS: NEW LATINO IMMIGRATION TO THE SOUTHEASTERN UNITED STATES* 223, 225 (Fran Ansley & Jon Shefner eds., 2009) ("According to the 2000 census, the U.S. Hispanic population increased by 57.9 percent in the 1990s. During the same period, many southern states' Hispanic population increased by more than 300 percent. Although in sheer number, the South's Latino communities

In 1990, eleven states had a Hispanic population of less than 1 percent; by 2000, the figure had dropped to just three states. Georgia, for example, went from 1.7 percent Hispanic in 1990 to 5.3 percent in 2000, a 312 percent increase due to an inflow of over three hundred thousand people.⁴⁰

Of particular interest to this Essay, this growth in southern and southeastern states is also reflected in a number of small towns in Appalachia. These towns have welcomed, to varying degrees, significant immigrant populations, transforming the towns' cultural and economic characters.⁴¹

These immigrants were drawn to such nontraditional destinations for a very traditional reason: jobs.⁴² For decades, the U.S. has systematically treated Mexico as the primary source of cheap labor for a number of industries.⁴³ In addition to American agriculture, an industry that has long looked south of the U.S. border to fill labor needs, many nontraditional destinations boasted food processing plants.⁴⁴

Food processing, especially meat processing, is a particularly dangerous and unpleasant job. From a safety perspective, a Government Accountability Office ("GAO") report on workplace safety and health in meat and poultry processing plants notes the "hazardous conditions" workers must endure, "including tasks associated with musculoskeletal disorders, exposure to chemicals and pathogens, and traumatic injuries from machines and tools."⁴⁵ In more visceral terms, one poultry plant worker reported that "[i]t smells like a

are smaller than those in California and Texas, the effects of Latino populations that double or triple in a few years are significant in southern cities and towns.").

⁴⁰ Portes, *supra* note 24, at 4.

⁴¹ Some new destinations in Appalachia include Dalton, Georgia, see DAVIS ET AL., *supra* note 4, Morganton, North Carolina, see FINK & DUNN, *supra* note 5, and Morristown, Tennessee, see Preston, *supra* note 2.

⁴² See Anita Drever, *Tennessee: A New Destination for Latina and Latino Immigrants*, in GLOBAL CONNECTIONS & LOCAL RECEPTIONS: NEW LATINO IMMIGRATION TO THE SOUTHEASTERN UNITED STATES 65, 69 (Fran Ansley & Jon Shefner eds., 2009) ("In part, [Latinos] were pulled to the region by the employment vacancies that opened up in a variety of economic sectors.").

⁴³ Portes, *supra* note 24, at 5 ("The modest educational and occupational composition of Mexican and Central American migration is not due to unusually bad educational systems in the sending counties but to their geographic location. Many countries in Asia and Africa are poorer and have larger proportions of poorly educated peasants, but they do not share a two-thousand-mile border with the world's first economy. This geographic accident has operated to turn Mexico, a large country, into the principal low-wage labor reservoir for the American economy.").

⁴⁴ Drever, *supra* note 42, at 70 ("Although food processing work is dirty, dangerous, and difficult, it does provide a steadier income than seasonal farmwork, another occupation often held by Latino workers with minimal formal education . . .").

⁴⁵ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-16-337, WORKPLACE SAFETY AND HEALTH: ADDITIONAL DATA NEEDED TO ADDRESS CONTINUED HAZARDS IN THE MEAT AND POULTRY INDUSTRY (2016), <https://www.gao.gov/assets/680/676796.pdf> (quoting the GAO Highlights).

combination of chicken blood and bleach.”⁴⁶ To make matters worse, workers in meat processing plants are routinely overworked and mistreated with reports of not only dangerous conditions, but also insufficient bathroom breaks that require workers to wear adult diapers.⁴⁷

Given these unappetizing conditions, it is little wonder that plant owners face difficulty staffing such jobs. Further, the relatively strong economy of the 1990s meant that the most dangerous, least attractive jobs held no interest for local populations.⁴⁸ Why work with chicken carcasses in an adult diaper when you can move to the big city and work behind a desk? Facing a labor shortage, plant owners turned to immigrant labor, which was not only more readily available, but also cheaper and less likely to complain to authorities about poor working conditions.

The result was a mini-migration from traditional destinations to new destinations, with some immigrants arriving at new destinations directly from their home country.⁴⁹ Much of this population is settling in the South, and some are making their way into Appalachia.⁵⁰

If one examines my home state of Tennessee, you might be forgiven for thinking this trend has overlooked the Volunteer State. In Tennessee, Latinos make up as little as 5% of the total population, putting it 37th in the country.⁵¹ However, although the absolute numbers of immigrants moving into Tennessee are relatively low in comparison to the numbers of Latino immigrants in California and Texas, the immigration into small towns of even small numbers of immigrants can have a dramatic effect.⁵² The town mentioned at the beginning

⁴⁶ Tess Owen, *Chicken Industry Workers Wear Diapers Because Bosses Allow No Breaks, NGO Says*, VICE NEWS (May 11, 2016, 4:00 PM), [news.vice.com/article/chicken-industry-workers-wear-diapers-because-bosses-allow-no-breaks-ngo-says](https://www.vice.com/article/chicken-industry-workers-wear-diapers-because-bosses-allow-no-breaks-ngo-says).

⁴⁷ See OXFAM AM., NO RELIEF: DENIAL OF BATHROOM BREAKS IN THE POULTRY INDUSTRY 5 (2016), https://www.oxfamamerica.org/static/media/files/No_Relief_Embargo.pdf.

⁴⁸ See Drever, *supra* note 42, at 70 (“Tennessee’s sinking unemployment rate during the 1990s meant that the pool of labor that could be relied on to do the state’s dirtiest, most dangerous tasks was soaked up by better paying jobs with less strenuous working conditions.”); see also Pruitt, *supra* note 3, at 148.

⁴⁹ Drever, *supra* note 42, at 73 (“The expanding employment opportunities and the information made available about them were complemented by two factors that have pushed Latinos out of other parts of the United States: the high cost of living in many gateway cities combined with intense competition for jobs and business investment opportunities within these Latino communities.”).

⁵⁰ *Id.* at 65 (“Estimates from the 2005 American Community Survey ranked Tennessee and other new-destination states such as Georgia and North Carolina among the top twenty recipients of foreign-born people between 2000 and 2005.”).

⁵¹ *Demographic Profile of Hispanics in Tennessee, 2014*, PEW RES. CTR., <http://www.pewhispanic.org/states/state/tn/> (last visited Mar. 28, 2018).

⁵² Drever, *supra* note 42, at 67 (“Much of Tennessee has barely been touched by Latino migration. A few places, however, have been transformed dramatically.”).

of this piece, Morristown, is a prime example. Although the absolute number of Latinos in Morristown is small when compared to traditional destinations, Hamblen County, where Morristown is located, is 11% Hispanic or Latino, according to U.S. Census Data Mapper.⁵³ Even more dramatic, 20.7% of the population of Morristown is Hispanic.⁵⁴

Thus, towns like Morristown across Appalachia lure Latinos from all over the hemisphere to work in agriculture and meat processing. But it bears repeating: this is hard and difficult work where laborers are frequently mistreated, underpaid, and exploited. It should therefore be no surprise that many seek a better way to make a living, and many Latinos find a better life in entrepreneurship.

III. THE BENEFITS OF LATINO ENTREPRENEURSHIP

A. *A Taco Truck on Every Corner?*

For some reason, the Latino entrepreneur has been vilified as a symptom of our country's broken immigration system. One famous example of this was the rather clumsy statement by Marco Gutierrez, founder of *Latinos for Trump*, who warned that Obama-era immigration policies would result in "taco trucks on every corner."⁵⁵ Setting aside the inanity of the statement, one wonders why an entrepreneur is ever considered a negative. This Section will not attempt to make this rather difficult case but will instead discuss how Latino entrepreneurship should be seen as a positive.

The story of the Latino entrepreneur is inextricably intertwined with the story of federal immigration law. Not that long ago, many Latino immigrants were migrants, crossing the border for seasonal work and returning to their home country to spend the off-season with their families.⁵⁶ Many of these migrants had little interest in settling in the U.S.; they simply followed the jobs necessary to support their families. But changes to immigration law in the 1990s created an enforcement system which effectively locked immigrants into the United States.⁵⁷ The primary culprit of this phenomenon is the Illegal Immigration

⁵³ *Hamblen County, TN*, DATAUSA, <https://datausa.io/profile/geo/hamblen-county-tn/> (last visited Mar. 28, 2018).

⁵⁴ *Morristown, TN*, DATAUSA, <https://datausa.io/profile/geo/morristown-tn/> (last visited Mar. 28, 2018).

⁵⁵ Niraj Chokshi, *'Taco Trucks on Every Corner': Trump Supporter's Anti-Immigration Warning*, N.Y. TIMES (Sept. 2, 2016), <https://www.nytimes.com/2016/09/03/us/politics/taco-trucks-on-every-corner-trump-supporters-anti-immigration-warning.html>.

⁵⁶ Jorge Durand et al., *The New Era of Mexican Migration to the United States*, J. AM. HISTORY: ARTICLES, <http://archive.oah.org/special-issues/mexico/jdurand.html> (last visited Mar. 28, 2018).

⁵⁷ MARC R. ROSENBLUM ET AL., CONG. RESEARCH SERV., R42560, MEXICAN MIGRANTS TO THE UNITED STATES: POLICY AND TRENDS 9–10 (2012), <https://fas.org/sgp/crs/row/R42560.pdf>.

Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), which created bars to reentry for certain immigrants.⁵⁸ Under IIRIRA, a person who leaves the U.S. after more than 180 days of unlawful residence is subject to a three-year bar to reentry.⁵⁹ If the person resided in the U.S. for more than a year before leaving the U.S., the bar to reentry is 10 years.⁶⁰ Finally, and most drastically, if a person is ordered removed or deported and voluntarily leaves the United States, any subsequent attempt at reentry will result in a permanent bar.⁶¹

For many immigrants, the obvious answer to IIRIRA’s bars to reentry is to never leave the United States. If an immigrant receives “well-informed advice,” they will “soon learn that departing from the United States will quite likely delay or destroy their chances of achieving lawful status.”⁶² Thus, a law that was intended to hinder immigration actually created an incentive for undocumented immigrants to not only stay in the U.S.,⁶³ but to move their families to the U.S. as well.⁶⁴ If one combines the perverse incentives of IIRIRA with increased border enforcement, it is no surprise that the “traditional cyclical migrant flow” is a thing of the past.⁶⁵ Once a family settles in the U.S., many recognize the high cost of traditional destinations and look elsewhere for lower costs of living and better employment prospects. With many Appalachian towns serving as the ultimate destination for such families, it behooves policymakers to consider whether this is a good thing and whether it should be supported. The balance of this Section argues that the answer to both questions is an emphatic “yes.”

⁵⁸ Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (codified as amended in scattered sections of 8 U.S.C.).

⁵⁹ Marielena Hincapié, *Aquí Estamos y No Nos Vamos: Unintended Consequences of Current Immigration Law*, in GLOBAL CONNECTIONS & LOCAL RECEPTIONS: NEW LATINO IMMIGRATION TO THE SOUTHEASTERN UNITED STATES 89, 103 (Fran Ansley & Jon Shefner eds., 2009).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 103–04.

⁶⁴ According to Professor Portes, “Because workers without papers find it more and more difficult to maintain their traditional commuting pattern across the border, they opt to bring their families and settle them permanently in the U.S. side.” See Alejandro Portes, *The New Latin Nation: Immigration and the Hispanic Population of the United States*, in A COMPANION TO LATINA/O STUDIES 15, 18 (Juan Flores & Renato Rosaldo eds., 2009).

⁶⁵ Portes, *supra* note 24, at 4.

B. *Sé Tu Propio Jefe*⁶⁶

Following the rich and storied tradition of immigrant business ownership in the U.S., many Latino immigrants opt to start their own businesses.⁶⁷ Latino-owned businesses are a largely underappreciated American success story. According to the 2012 Survey of Business Owners, there were 3.3 million Hispanic-owned businesses in the U.S.,⁶⁸ a number that represents the highest growth rate in the country.⁶⁹

The reasons for an immigrant's propensity for business ownership and self-employment are obviously personal to each business owner, but we can make some reasonable assumptions about this population. From one point of view, it makes sense that immigrants might look to find means of achieving economic stability beyond jobs in agriculture (which is seasonal) and food processing (which is dangerous and unpleasant). Further, the jobs available to most immigrants do not provide much hope of economic advancement, which might convince immigrant workers to consider entrepreneurship. This is known as the *blocked mobility theory*,⁷⁰ and studies show that "barriers in traditional labor markets and low human capital acquisition tend to be the driving forces behind the growth of self-employment activity among Latinos, especially the foreign-born."⁷¹ Although not all self-employment is glamorous, sometimes consisting of domestic work or landscaping, "the preponderance of research in the area suggests that, even in its less attractive forms, self-employment offers

⁶⁶ This is Spanish for "Be Your Own Boss."

⁶⁷ Alexandra Starr, *Latino Immigrant Entrepreneurs: How to Capitalize on Their Economic Potential* 2 (July 2012) (unpublished manuscript), https://www.cfr.org/sites/default/files/pdf/2012/07/CFR_WorkingPaper13_Starr.pdf ("But Mexicans are in fact the immigrants who launch the greatest number of new companies in the United States every year.")

⁶⁸ *Hispanic-Owned Businesses in the U.S.*, U.S. CENSUS BUREAU (July 15, 2016), <https://www.census.gov/library/visualizations/2016/comm/hispanic-businesses.html>.

⁶⁹ See STANFORD GRADUATE SCH. OF BUS., *supra* note 7, at 5 (noting that the "growth in the number of Latino-owned firms in the United States is outpacing growth in number among other firms").

⁷⁰ Simon C. Parker, *Why Do Small Firms Produce the Entrepreneurs?*, 38 J. SOCIO-ECON. 484, 486 (2009) ("The blocked mobility theory takes a dual labour market perspective and argues that peripheral workers, who are excluded from attractive jobs offered by large employers in the primary labour market, are confined to low-paying unattractive jobs often without union protection in small firms located in the secondary sector. Workers who become frustrated with jobs in the secondary sector may therefore try entrepreneurship as a last resort.") (citations omitted).

⁷¹ Bárbara J. Robles & Héctor Cordero-Guzmán, *Latino Self-Employment and Entrepreneurship in the United States: An Overview of the Literature and Data Sources*, 613 ANNALS AM. ACAD. POL. & SOC. SCI. 18, 21 (2007).

immigrants better outcomes than other available options.”⁷² Indeed, Latino entrepreneurs “often earn at least as much as native workers, and some immigrant entrepreneurs become quite wealthy.”⁷³

The phenomenon of self-employment has positive effects that extend beyond the individual who decides to become self-employed. The existence of Latino-owned businesses makes newly-arrived immigrants feel more comfortable and often results in more employment opportunities for Latinos.⁷⁴ Thus, Latino entrepreneurship and self-employment has positive effects on the individual and the larger immigrant community by providing safer, more consistent, and better paying employment.

However, the Latino immigrant’s propensity for entrepreneurship cannot be explained solely by poor employment prospects. After all, many populations face poor employment prospects and do not boast the same entrepreneurial success.⁷⁵ One factor might be the cultural advantages many Latinos might have in developing successful enterprises. Some commentators suggest “[t]heir Latino heritage is in many cases a bonus, from spotting market niches in their home countries and knowing how to navigate the bumpy regulatory terrain to developing products that appeal to U.S. Latinos who have more and more money to spend.”⁷⁶ Indeed, many of the more entrepreneurial members of the U.S. Latino population recognized the unique business opportunity presented by the growing Latino population in the United States. With millions of immigrants living and working in the U.S., Latino entrepreneurs identified a decidedly underserved and relatively captive market.⁷⁷

C. *Coming Soon to a Long-Deserted Strip Mall Near You!*

Mini-malls, strip malls, and other decentralized commercial districts have experienced a slow and steady decline for decades. This was due, in part,

⁷² Stephanie A. Bohon et al., *Mexican Self-Employment in Old and New Latino Places*, in GLOBAL CONNECTIONS & LOCAL RECEPTIONS: NEW LATINO IMMIGRATION TO THE SOUTHEASTERN UNITED STATES 197, 200 (Fran Ansley & Jon Shefner eds., 2009).

⁷³ *Id.* at 199.

⁷⁴ *Id.* at 200 (noting that “living in a community with self-employed immigrants means a pool exists of employers who are usually willing to hire recent immigrants”); see also Starr, *supra* note 67, at 4 (“Low-income Latino immigrant entrepreneurs have given new life to moribund rural and inner-city communities. Mexican-American business owners hire a disproportionate share of ethnic minorities, a group that tends to suffer higher rates of unemployment during economic recessions.”).

⁷⁵ *Ethnic and Racial Minorities & Socioeconomic Status*, AM. PSYCHOL. ASS’N, <http://www.apa.org/pi/ses/resources/publications/minorities.aspx> (last visited Mar. 28, 2018).

⁷⁶ Starr, *supra* note 67, at 3.

⁷⁷ *Id.* (“In particular, they are uniquely poised to take advantage of the large Latino consumer market in the United States and the proximity of the United States to Spanish-speaking consumer markets in Latin America.”).

to the federal and state subsidization of development in downtown commercial centers, the movement toward urban living, and the rise of online shopping.⁷⁸ The decline was dramatically accelerated by the Great Recession, which left large swaths of commercial real estate ignored and unused throughout the country.⁷⁹ Although the recent economic stability has helped restore economic activity to many downtown and central commercial districts, the economy has not convinced most entrepreneurs to take advantage of the long-vacant strip malls and similar commercial areas throughout the country.

The Latino entrepreneur is, however, an exception to this general trend. In some lucky towns, the empty storefronts and dilapidated strip malls that plague many small towns now boast productive and vibrant Latino-owned businesses.⁸⁰ These businesses “have helped revitalize city commercial strips and small-town Main Streets across the country”⁸¹ by “spiffing up aging minimalls and downtowns.”⁸² This success story can be explained by simple supply and demand. From the supply perspective, there is a glut of low-rent commercial space throughout America, with precious few entrepreneurs willing to open businesses outside of commercial centers and urban areas. From the demand perspective, the Latino immigrant population provides a motivated and entrepreneurial population⁸³ and a built-in market. Although this is as true in Los Angeles as it is in Morristown, “new destinations may be [more] conducive to immigrant self-employment because new Latino immigrants in these destinations have fewer places to acquire ethnically defined goods and services.”⁸⁴ The poor job prospects of most immigrants pair perfectly with the lack of access to Latino-focused products, and the availability of low-rent commercial space makes it possible for Latino entrepreneurs to thrive. In this manner, “Latino immigrants are creating companies that expand the tax base, create jobs, and breathe new life into depressed commercial districts.”⁸⁵

D. Why We Ought to Encourage Latino Entrepreneurship

A skeptic might reasonably ask if this phenomenon is an overall positive for the U.S. economy. The previous Sections set forth arguments on how Latino

⁷⁸ Edward T. McMahon, *The Future of the Strip?*, URBANLAND (Mar. 2, 2011), <https://urbanland.uli.org/economy-markets-trends/the-future-of-the-strip/>.

⁷⁹ *Id.*

⁸⁰ Starr, *supra* note 67, at 1.

⁸¹ *Id.*

⁸² Drever, *supra* note 42, at 65.

⁸³ *See supra* notes 70–73.

⁸⁴ Bohon et al., *supra* note 72, at 203.

⁸⁵ Starr, *supra* note 67, at 17. “Increasing entrepreneurialism among U.S. Latino immigrants would pay large dividends by creating jobs, raising Latino incomes, and boosting the larger economy.” *Id.* at 2.

entrepreneurship helps the individual entrepreneur, immediately-surrounding Latino communities, and the long-dormant commercial real estate sector. Thus, Latino entrepreneurship is clearly a boon to a few narrowly-defined communities. However, this Section will present persuasive evidence that proves Latino entrepreneurship is good for the U.S. economy as a whole.

The data largely shows that, in general, immigration has a net positive effect on the U.S. economy.⁸⁶ The key is to look at immigration from a generational perspective. Although data suggests that first generation immigrants cost more than they contribute, this deficit is quickly made up by the second generation.⁸⁷ By the third generation, immigrants are a consistent net benefit to the U.S. economy.⁸⁸ These data are generally mirrored at the state level, but a quick look at one state, Tennessee, is instructive. For the three year period between 2011 and 2013, it is estimated that a first generation immigrant generated \$12,000 in state and local revenues.⁸⁹ For the same period, second generation immigrants generated \$11,750, and third generation immigrants generated \$12,250.⁹⁰ Compare this to the expenditures of \$12,700 for first generation immigrants, \$10,500 for second generation immigrants, and \$11,500 for third generation immigrants.⁹¹ Therefore, the net difference between state and local revenues and expenditures in Tennessee is a positive, with a loss of \$700 for first generation, a gain of \$1,250 for second generation, and a gain of \$750 for third generation. Thus, “[b]y the second generation, immigrants are a net win for the states as a whole . . . contributing in revenues more than they cost in expenditures.”⁹²

Beyond the bottom-line net benefit created by immigrants, the mere “presence of immigrant workers (authorized and unauthorized) in the labor market has made the U.S. economy much larger—perhaps 11 percent larger.”⁹³ This represents “an increase equivalent to \$1.6 trillion of GDP in 2012” and can

⁸⁶ Cesar Maximiliano Estrada, *How Immigrants Positively Affect the Business Community and the U.S. Economy*, CTR. FOR AM. PROGRESS (June 22, 2016, 9:00 AM), <https://www.americanprogress.org/issues/immigration/news/2016/06/22/140124/how-immigrants-positively-affect-the-business-community-and-the-u-s-economy/>.

⁸⁷ THE NAT’L ACADS. OF SCIS. ENG’R MED., *THE ECONOMIC AND FISCAL CONSEQUENCES OF IMMIGRATION* 541 (Francine D. Blau & Christopher Mackie eds., 2017), <https://www.nap.edu/read/23550/chapter/1> [hereinafter *CONSEQUENCES OF IMMIGRATION*] (“For the 2011-2013 period, first generation independent person units incurred a net cost on average of \$1,600 per unit per year, compared to a net benefit of \$1,700 for second generation independent person units and \$1,300 for third-plus generation units.”).

⁸⁸ *Id.*

⁸⁹ *Id.* at 518.

⁹⁰ *Id.*

⁹¹ *Id.* at 521.

⁹² *Id.* at 526.

⁹³ *Id.* at 282.

be projected to amount to “about \$2 trillion” in 2016.⁹⁴ On a very basic level, this influx of labor “supplies workers, which increases GDP and has helped the United States avoid the fate of stagnant economies created by purely demographic forces—in particular, an aging . . . workforce.”⁹⁵ In this manner, Latino immigration helps the U.S. economy by supplementing the available pool of labor.

It is important to note that some of these data represent immigration generally and are therefore not limited to Latino immigration. Thus, we should be careful about extrapolating these data for the purposes of this Essay. But even without a rigorous study of the economic effects of Latino immigrant entrepreneurs in small towns, we can make some fairly safe assumptions. First, to state the painfully obvious, the more money Latino immigrants have, the more money they will spend.⁹⁶ This, in turn, helps the U.S. economy.⁹⁷ But this economic boost goes beyond a simple influx of cash into the economy. On the state level, there is an incentive to improve the financial capacity of Latino immigrants because they “pay local taxes directly through sales tax (particularly relevant for Tennessee, given that state’s whopping 9.25 percent sales tax, imposed on virtually all consumer purchases including food), and they pay indirectly through the property taxes paid by their landlords (or directly if they themselves are property owners).”⁹⁸ Thus, the very real increase in tax revenue stands as a distinct and obvious incentive for states and localities to encourage Latino entrepreneurship.

Beyond increased tax revenue, there are some collateral positive effects of Latino immigration on housing costs⁹⁹ and the reduction of prices of certain services.¹⁰⁰ The latter of these effects has a nonobvious but “particularly

⁹⁴ *Id.*

⁹⁵ *Id.* at 317.

⁹⁶ See Pruitt, *supra* note 3, at 152 (noting that “host communities are seeing economic benefits as revenues for once-failing businesses rise”).

⁹⁷ Starr, *supra* note 67, at 2.

⁹⁸ Drever, *supra* note 42, at 80.

⁹⁹ CONSEQUENCES OF IMMIGRATION, *supra* note 87, at 294 (“Immigration significantly impacts local housing markets by contributing to the demand for apartments and single-family homes. If there is a resultant increase in home prices, then this raises the wealth of current homeowners.”).

¹⁰⁰ *Id.* at 292 (“Though the evidence is somewhat limited, the intensive infusion of lower-cost foreign born labor into certain occupational sectors would be expected to reduce prices, benefiting consumers who purchase these goods and services. Among the foreign-born, unauthorized workers may do disproportionately more to reduce prices because they earn less than otherwise comparable authorized works, foreign- or native-born.”). A “10 percent increase in the share of low-skilled immigrants in the labor force of a city reduces prices of immigrant-intensive services, such as gardening, housekeeping, babysitting, and dry cleaning, by approximately 2 percent.” *Id.* (citation omitted). Somewhat paradoxically, the higher income households are more likely to benefit from this, as they are “more likely than low-income households to consume products such as child care, landscaping, and restaurant meals that are immigrant-intensive in production.” *Id.* at 293.

important” positive effect on the U.S. economy.¹⁰¹ By making it less expensive to hire domestic workers and landscapers, high income households have more time on their hands to engage in more economically-productive endeavors.¹⁰²

IV. ¿COMO PODEMOS AYUDARTE?¹⁰³

Given that Latino entrepreneurship helps the individual entrepreneur and his or her family,¹⁰⁴ the local Latino community,¹⁰⁵ and local and state coffers,¹⁰⁶ it seems plain that it would behoove policymakers to consider how to support this activity. This Section will discuss a few potential options for such support, starting with the least difficult and most politically palatable options (translating paperwork necessary for starting businesses and simplifying the business entity and licensing regimes) and ending with the more difficult and politically fraught options (lowering the investment threshold for the investor visa).

A. *Translate Necessary Paperwork*

Perhaps the easiest way to facilitate Latino entrepreneurship would be to translate the necessary business formation documents into Spanish. Given the number of Latino-owned businesses, it appears that the factors that make business ownership enticing are strong enough to encourage Latino entrepreneurs to overcome any language difficulties inherent in starting businesses. However, there is a chance that many of the Latino entrepreneurs are not following the many complicated and obscure requirements for business operation. The requirements of business ownership are notoriously under-enforced by authorities and ignored by business owners.¹⁰⁷ The primary reason

¹⁰¹ *Id.*

¹⁰² *Id.* (“Immigrants working in child care and other household services influence labor market dynamics (and patterns of consumption) in a particularly important way. The lower cost of these services made possible by the increased supply of labor for their provision has allowed native and of course some immigrant families with comparatively high levels of education and income to outsource them. As a result, individuals in these households are able to redirect labor toward higher-earning market occupations.”). Cortes and Tessada found a “striking correspondence between the availability of low-cost, flexible housekeeping and child care services provided by the foreign-born and increases in the number of hours of worked by women in high-salary jobs.” *Id.*

¹⁰³ This means “How can we help you?” in Spanish.

¹⁰⁴ *See supra* notes 70–73.

¹⁰⁵ *See supra* note 74.

¹⁰⁶ *See supra* note 89–92.

¹⁰⁷ One survey shows that approximately 12% of small business owners do not know what regulations apply to their business. NAT’L SMALL BUS. ASS’N, 2017 NSBA SMALL BUSINESS REGULATIONS SURVEY 4 (2017), <http://www.nsba.biz/wp-content/uploads/2017/01/Regulatory-Survey-2017.pdf>. This same survey suggests that 30% of small business owners spend, annually, 40 hours or more “dealing” with new state and local regulations. *Id.* at 5.

for this is not nefarious—there are few entrepreneurs actively avoiding these administrative hurdles and fees—rather, the noncompliance is simply due to a lack of awareness of the requirements.¹⁰⁸ How does one learn, for example, of the county requirements for particular business licenses, or the proper means by which to calculate a state franchise tax? Absent proper legal advice, many business owners are simply unaware of the local and state requirements for businesses.

This problem, one that confounds all entrepreneurs, is compounded for Latino entrepreneurs for whom English is a second language. To the extent Latino entrepreneurship is a financial boon for localities and states, the very least a governmental authority might do is translate the Secretary of State documents regarding state business entity formation and licensing into Spanish, and local authorities (e.g., counties and cities) can and should do the same for their own regulations.¹⁰⁹

B. Simplifying State Business Entity and Licensing Regimes

Beyond the language barrier, entrepreneurs of all origins (i.e., native and Latino) face a remarkably complex regime governing business entity choice. Many entrepreneurs are interested in forming a business entity for a number of reasons, ranging from the limitation of liability provided by many entities to simply adding the legitimacy of the “LLC” or “Inc.” appendage to the entrepreneur’s endeavor.¹¹⁰ Whatever the reason for seeking business entity formation, states are doing entrepreneurs no favors. Most states have as many as a dozen potential business entities ranging from the more prosaic (corporations, limited liability companies, and general partnerships), to those with hyper-specific purposes (cemetery corporations¹¹¹ or corporations for irrigation, drainage, water supply, or flood control),¹¹² to relatively new forms (benefit corporations¹¹³ and low-profit limited liability companies).¹¹⁴ The number of available entities is indefensibly high, and states continue to add entities without much apparent consideration of how the new entities render existing entities either irrelevant or duplicative.¹¹⁵ This phenomenon is known as “entity

¹⁰⁸ See generally *id.* (explaining the regulatory burden on small businesses).

¹⁰⁹ This will not help all Latino entrepreneurs, as a number of Latinos’ first language is something other than Spanish. For example, many immigrants who speak a Mayan dialect have found their way to East Tennessee. See *supra* notes 14–16.

¹¹⁰ See Eric H. Franklin, *A Rational Approach to Business Entity Choice*, 64 U. KAN. L. REV. 573, 573 (2016).

¹¹¹ See, e.g., TENN. CODE ANN. §§ 46-2-101 to -107 (West 2018).

¹¹² See, e.g., OR. REV. STAT. ANN. §§ 554.005 to .590 (West 2018).

¹¹³ See, e.g., TENN. CODE ANN. §§ 48-28-101 to -109 (West 2018).

¹¹⁴ See, e.g., 805 ILL. COMP. STAT. ANN. 180/1-26 (West 2018).

¹¹⁵ Franklin, *supra* note 110, at 575.

proliferation,¹¹⁶ and entity proliferation's primary product is confusing entrepreneurs.¹¹⁷ Less directly, but no less concerning, is entity proliferation's ability to confuse not only lawyers that purport to provide advice to entrepreneurs,¹¹⁸ but also judges charged with resolving disputes related to these entities.¹¹⁹ In an earlier article, I have suggested how simplifying this regime—a process known as “entity rationalization”—would help spur business activity, lower transactional costs, and make the jobs of entrepreneurs, lawyers, and judges much easier.¹²⁰ These benefits would extend to Latino entrepreneurs in the same manner.

Unfortunately, the confusion facing an entrepreneur does not end with business entity choice. After this choice, the next step is to navigate state and local licensing regimes. These rules can be difficult to find,¹²¹ can be counterintuitive, and may even conflict with other licensing regimes.¹²² As noted above, some scholars suggest that Latino entrepreneurs, familiar with similar bureaucratic mazes in their home countries, are particularly well-suited to face and overcome this administrative hurdle.¹²³ Hernando de Soto famously quantified the maddening process for starting a small business in Peru, ultimately learning that it took his team 289 days to properly register the business at a cost of \$1,231.¹²⁴ Although Latino entrepreneurs may be accustomed to unreasonable bureaucracy and administrative hassle, there is no reason the policymakers should ignore the inefficiencies in our own licensing and permitting schemes. Simplifying these regimes would help not only Latino entrepreneurs, but all business owners.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 576–79.

¹²¹ Often, the substance of these licensing schemes is found in municipal codes, which present navigational difficulties for most law students, let alone immigrant entrepreneurs. See Lori Johnson et al., *Research Instruction and Resources in the Transactional Skills Classroom: Approaches to Incorporating Research Instruction into Transactional Skills Courses*, 18 *TRANSACTIONS: TENN. J. BUS. L.* 643, 652 (2016).

¹²² *Id.*

¹²³ Starr, *supra* note 67, at 3.

¹²⁴ DE SOTO, *supra* note 10, at 18–20 (“To get an idea of just how difficult the migrant’s life was, my research team and I opened a small garment workshop on the outskirts of Lima, Peru. Our goal was to create a new and perfectly legal business. The team then began filling out the forms, standing in the lines, and making the bus trips into central Lima to get all the certifications required to operate, according to the letter of the law, a small business in Peru. They spent six hours a day at it and finally registered the business—289 days later. Although the garment workshop was geared to operating with only one worker, the cost of legal registration was \$1,231—thirty-one times the monthly minimum wage.”).

C. Lowering Investment Threshold for EB-5 Visas

In addition to translating documents and simplifying business legal regimes, there is an obvious way to encourage immigrant entrepreneurship: provide more visas for immigrants interested in starting businesses. Indeed, the EB-5 visa was designed precisely for this purpose.¹²⁵ Initially, the EB-5 visa program provided green cards to foreign investors willing to invest \$1,000,000 in the U.S. in businesses that employed 10 or more people.¹²⁶ Quickly realizing that a dollar goes much further in rural Tennessee than San Francisco, the EB-5 visa program evolved to include “a type of investment possibility . . . involving regional centers that could initiate investment projects, allowing individuals to invest \$500,000 . . . so long as the money was going towards impoverished parts of the U.S., where the employment rate was at least 150% of the national average.”¹²⁷

Although the lower threshold was a welcome development for smaller cities, \$500,000 is still a hefty investment for many small towns. During the Obama Administration, there was some movement to lower the investment threshold further, cresting with a proposal by Senators John Kerry and Richard Lugar that would lower the investment threshold to \$100,000 and reduce the job creation requirement to as few as five employees.¹²⁸ Unfortunately, the Kerry-Lugar proposal did not come to fruition.

In light of the positive economic impact of Latino immigrants in new destinations, it is worth reconsidering a lower threshold. Clearly, a million-dollar investment in a town like Morristown would be an unreasonable expectation for most Latino immigrants. Even the lower threshold of \$500,000 is probably too much for a city with a median salary just over \$30,000 and a median property value of \$110,000.¹²⁹ To the extent we would like to encourage Latino entrepreneurs to come to nontraditional destinations, hire locally, rent long-deserted commercial space, and contribute tax revenue, lowering the EB-5 threshold would be a good start. Unfortunately, there are signs that we are going in the wrong direction. Unlike the movement spearheaded by Kerry and Lugar, “the Department of Homeland Security proposed increasing the minimum

¹²⁵ See *What Is the EB-5 Program?*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (Nov. 30, 2010), https://www.uscis.gov/archive/blog/2010/11/what-is-eb-5-program_30.

¹²⁶ *About the EB-5 Visa Classification*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (Feb. 12, 2018), <https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/about-eb-5-visa-classification>.

¹²⁷ Andy J. Semotiuk, *Looking into the Crystal Ball at the EB-5 Investor Immigration Program and Trump's Raise Act*, FORBES (Aug. 8, 2017, 1:55 PM), <https://www.forbes.com/sites/andyjsemotiuk/2017/08/08/looking-into-the-crystal-ball-at-the-eb-5-investor-immigration-program-and-trumps-raise-act/#6e81a3e022af>.

¹²⁸ StartUp Visa Act of 2010, S. 3029, 112th Cong. (2011).

¹²⁹ See *Morristown, TN*, *supra* note 54.

investment amount required” for high unemployment or rural areas from \$500,000 to \$1.35 million in early 2017.¹³⁰ Although this change has not been implemented, the general thrust of the current administration is to increase the EB-5 investment threshold and lower immigration (both legal and illegal). Thus, the likelihood of lowering the investment threshold to promote Latino entrepreneurship is low.

Indeed, the entire EB-5 program may disappear. Critics, driven by anti-immigrant sentiment or fears of corruption¹³¹ and charges of ineffectiveness,¹³² often push to scuttle the program. These critics may be winning, as Congress has largely avoided passing any long-term extension of the program, opting instead to pass a series of short-term extensions.¹³³

In all likelihood, the political difficulty of the EB-5 visa program has little to do with investment thresholds. Rather, opponents of the EB-5 program might take issue with the fact that EB-5 holders get permanent resident status, do not need to be active in the business (i.e., may be a passive investor), and have a path to U.S. citizenship.¹³⁴ Given the fraught state of immigration policy under the Trump administration, the possibility of expanding the potential population of EB-5 program participants likely exists solely in the realm of fantasy.¹³⁵

¹³⁰ Ellen Sheng, *New Proposal Seeks to Raise Minimum Investment for EB-5 Visa*, FORBES (Jan. 26, 2017, 6:00 AM), <https://www.forbes.com/sites/ellensheng/2017/01/26/new-proposal-seeks-to-raise-minimum-investment-for-eb-5-visa/#12ea389c2ee1>. “The proposal suggests raising the minimum investment to \$1.8 million for developments in low- to average-unemployment areas, up from the current \$1 million.” *Id.*

¹³¹ Edward Helmore, *Immigrant Investor Program Under Fresh Scrutiny as Chinese President Visits US*, GUARDIAN (Apr. 7, 2017, 4:00 PM), <https://www.theguardian.com/us-news/2017/apr/07/immigrant-investor-program-eb-5-trump-xi-jinping-meeting>.

¹³² Eric Posner, *Citizenship for Sale*, SLATE (May 13, 2015, 10:00 AM), http://www.slate.com/articles/news_and_politics/view_from_chicago/2015/05/eb_5_visa_program_for_immigrant_investors_this_path_to_citizenship_is_a.html.

¹³³ See Gabi Maspons, *EB-5 Investor Visa Program May Face Dramatic Change*, MIAMI TODAY (Oct. 10, 2017), <http://www.miamitodaynews.com/2017/10/10/eb-5-investor-visa-program-may-face-dramatic-change/> (“The future of the program is uncertain, as Congress has had trouble passing a long-term extension, and continue pushing back the expiration date. On Sept. 30, Congress yet again delayed the expiration to Dec. 8, and local and national experts are unsure what’s up next for the program. . . . Though the continued short-term delays are designed to buy Congress more time to draft reforms, most people believe Dec. 8 will bring another short-term extension.”); see also Semotiuk, *supra* note 127.

¹³⁴ See Muzzaffar Chisti & Faye Hipsman, *Controversial EB-5 Immigrant Investor Program Faces Possibility of Overhaul*, MIGRATION POL’Y INST. (May 25, 2016), <https://www.migrationpolicy.org/article/controversial-eb-5-immigrant-investor-program-faces-possibility-overhaul>.

¹³⁵ There is, however, another solution that might serve a similar purpose: the E2 visa. This program allows noncitizens to enter and work in the U.S. while they run their business, provided they make a “substantial” investment in the enterprise. See *E-2 Treaty Investors*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (Jan. 14, 2014), <https://www.uscis.gov/working-united-states/temporary-workers/e-2-treaty-investors>. Unfortunately, “substantial” is not properly defined and is subject to

V. CONCLUSION

The story of Latino entrepreneurship in Appalachia remains largely unacknowledged. This is unfortunate. Latino entrepreneurship provides dignified employment for many Latino immigrants, helps isolated Latino communities both financially and culturally, and supports revenue-starved local and state governments. Rather than being ignored, Latino entrepreneurship should be widely-celebrated and well-supported. Forward-thinking policymakers would be wise to consider implementing programs that promote, encourage, and support Latino immigrants. This Essay suggested a few potential options, including providing Spanish translations of local and state business forms, simplifying state business entity and licensing regimes, and lowering the threshold for the EB-5 visa program, each of which would help support this vital population. However, the first step is recognizing Latino entrepreneurs for what they are: embodiments of the American dream. Rather than demonize Latino entrepreneurs as an invading threat, we should praise their courage, inventiveness, and entrepreneurial spirit. More selfishly, policymakers in Appalachia would be wise to focus on this population, as Latino entrepreneurs appear to stand alone in their interest in revitalizing commerce in rural America. We should do whatever we can to laud, nurture, and support them.

POSTSCRIPT

On April 5, 2018, a few days before this Essay went to press, 97 people were arrested in a meat processing plant near Morristown in the "largest single workplace raid in a decade."¹³⁶ The impact on the community has been immeasurable. The day after the raid, hundreds of students stayed home from school.¹³⁷ Some of the children were left without any care takers and have taken shelter in a local church.¹³⁸ Throughout Morristown, businesses were closed and

a number of apparently subjective judgments. See *id.* This uncertainty makes the E2 program an unattractive one for most immigrants.

¹³⁶ Maria Sacchetti, *ICE Raids Meatpacking Plant in Rural Tennessee; 97 Immigrants Arrested*, WASH. POST (Apr. 6, 2018, 4:51 PM), https://www.washingtonpost.com/local/immigration/ice-raids-meatpacking-plant-in-rural-tennessee-more-than-95-immigrants-arrested/2018/04/06/4955a79a-39a6-11e8-8fd2-49fe3c675a89_story.html.

¹³⁷ Ryan Devereaux & Alice Speri, *The Day After Trump's Ice Raid in a Small Tennessee Town, 550 Kids Stayed Home from School*, INTERCEPT (Apr. 10, 2018), <https://theintercept.com/2018/04/10/ice-raids-tennessee-meatpacking-plant/>.

¹³⁸ *600 Menores No Regresaron a la Escuela Luego de "Mega Radada" de ICE*, OPINIÓN (Apr. 9, 2018), <https://laopinion.com/2018/04/09/600-menores-no-regresaron-a-la-escuela-luego-de-mega-radada-de-ice/>; see also *At Least 50 Detained in Tennessee Immigration Raid*, WKYT,

the streets were eerily quiet. Residents who have been in the area for nearly two decades¹³⁹ were stolen away to a detention center in Jena, Louisiana to await their trial.¹⁴⁰ If they are deported, many of their family members will leave Morristown to reunite with their loved ones in Mexico, El Salvador, Honduras, or Guatemala. While the human impact of this callous action is obvious, the economic impact on Morristown will undoubtedly be devastating.

<http://www.wkvt.com/content/news/At-least-50-detained-in-Tennessee-immigration-raid-478981663.html> (last updated Apr. 6, 2018).

¹³⁹ See Devereaux & Speri, *supra* note 137; see generally Matt Laken et al., *Protests, Vigils Decry Immigration Raid, Arrests at Grainger Slaughterhouse*, KNOX NEWS, <https://www.knoxnews.com/story/news/2018/04/09/protests-vigils-decry-immigration-raid-arrests-grainger-slaughterhouse/498527002/> (Apr. 9, 2018).

¹⁴⁰ See *SPLC Will Represent Immigrants Arrested in Tennessee Raid*, SPLC: SOUTHERN POVERTY LAW CENT. (Apr. 10, 2018), <https://www.splcenter.org/news/2018/04/10/splc-will-represent-immigrants-arrested-tennessee-raid>.