

2017

AMERICA FIRST: IMPROVING A RECALCITRANT IMMIGRATION AND REFUGEE POLICY

M. Akram Faizer

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Faizer, M. Akram (2017) "AMERICA FIRST: IMPROVING A RECALCITRANT IMMIGRATION AND REFUGEE POLICY," *Tennessee Law Review*: Vol. 84: Iss. 4, Article 5.

Available at: <https://ir.law.utk.edu/tennesseelawreview/vol84/iss4/5>

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AMERICA FIRST: IMPROVING A RECALCITRANT IMMIGRATION AND REFUGEE POLICY

M. AKRAM FAIZER *

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This paper will discuss the need for developed and mature democracies, such as the United States, to take in substantially more refugees and economic migrants in view of the demand surge for international migration and the obvious humanitarian imperative. It will then argue that this will not happen under the current paradigm, whereby rich-world democracies that allow refugees and economic migrants to settle fail to take adequate measures to ensure safe repatriation and resettlement to migrants' countries of origin. This failure leads to unconsented permanent residency and subsequent

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naturalization that fuels a backlash by nativists and social conservatives, as evidenced by the Trump, Le Pen, and Brexit phenomena.¹ The fact that migration to rich-world countries almost invariably leads to permanent residency has the perverse consequence of placing undue pressure on rich-world governments, including the U.S., to do their utmost to exclude both refugees and economic migrants. The current commitment by developed nations to exclude third-world migrants, as evidenced by the maltreatment of Syrian and Rohingya refugees and economic migrants from Latin America, Eritrea, Afghanistan, and sub-Saharan Africa,² has everything to do with the failure to repatriate these migrants when feasible. This failure also untethers migrants from their countries of origin, which undermines long-term economic growth and democratization in the developing world.³ The Trump Administration could take the lead in global migration issues by changing the U.S.'s current immigration and refugee resettlement program by substantially expanding access to temporary residency in lieu of immigration and permanent residency. By doing so, the U.S., and other rich countries that might follow, will be able to address the migration demand to improve global well-being while being responsive to the legitimate needs and concerns of their own citizens.

INTRODUCTION

At the turn of the last century, my grandfather, Dr. Mohamed Casim Mohamed Kaleel, traveled from his native Colombo, Ceylon, to the United Kingdom to study medicine at the venerable Edinburgh University. Upon graduation, he started practicing medicine in Dublin, Ireland, a city he truly loved. Notwithstanding the fact that the United Kingdom was the center of a clearly racist Empire where white Britons had superior rights to their colonial subordinates, the Empire afforded Dr. Kaleel freedom of movement and residency. It was the fear of a Japanese invasion of Ceylon and a concomitant need

1. Ronald F. Inglehart & Pippa Norris, *Trump, Brexit, and the Rise of Populism: Economic Have-Nots and Cultural Backlash* 16 (Harv. Kennedy Sch. Faculty Research Working Paper Series No. RWP16-026, 2016).

2. *Id.* at 15 (generally noting that “[h]ostile attitudes towards migrants, ethnic and racial minorities, commonly directed against refugees, asylum-seekers, and guest workers in Europe, especially toward Muslims, are expected to be an important source of resentment.”)

3. William J. Carrington, *Brain Drain Revisited: The Economic Impact of Immigration*, HARV. INT’L REV. (Aug. 30, 2013), <http://hir.harvard.edu/article/?a=10388>.

for doctors that prompted British authorities to ask him to return to Ceylon. Dr. Kaleel did so, met the woman who became his wife, subsequently advocated for Ceylon's independence from the U.K., and then served in Ceylon's first post-independence government as Health Minister. He eventually had ten children, many of whom, including my mother, migrated to first-world English-speaking democracies.

Paradoxically, nearly a full century later, while racial discrimination is illegal in all first-world nations,⁴ the citizens of these nations are increasingly unaccepting of global migrants. This is evidenced by President Trump's advocacy of a 2,000 mile border wall with Mexico⁵ and the rise of anti-immigration populist parties throughout the developed world.⁶ The tragic plight of Syrian, Eritrean, and other refugees⁷ and the rich-world's reluctance to accept them⁸ demonstrates how migration from the developing world to mature democracies is unwelcome. Myanmar's genocide of its Rohingya Muslim minority and the refusal of other South and Southeast Asian nations to welcome them⁹ demonstrates that persecution of migrants is not relegated to the global north. The dynamics behind the migratory surge, including war, collapsing state

4. See, e.g., International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195; see also United Nations Treaty Collection, Chapter IV: Human Rights (Feb. 11, 2011, 12:33 PM), https://web.archive.org/web/20110211223019/http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en (listing all nations who are signatories to or who have ratified the Convention).

5. Joshua Partlow, *For Mexicans, Trump's Bid Isn't so Funny Anymore*, WASH. POST, Aug. 19, 2015, at A06.

6. Griff Witte, Michael Brinbaum & James McAuley, *Will Trump Tilt Balance in Europe?*, WASH. POST, Jan. 19, 2017, at A13.

7. See, e.g., Zachary Laub, *Authoritarianism in Eritrea and the Migrant Crisis*, COUNCIL ON FOREIGN RELATIONS (Sept. 16, 2016), <http://www.cfr.org/eritrea/authoritarianism-eritrea-migrant-crisis/p37239> (discussing Eritrean refugees); Gary Simpson, *For Afghan Refugees, There's No Going Back*, HUMAN RIGHTS WATCH (Apr. 13, 2017, 12:00 AM), <https://www.hrw.org/news/2017/04/13/afghan-refugees-theres-no-going-back> (discussing Afghan refugees); *Syria Emergency*, U.N. HIGH COMM'R FOR REFUGEES [UNHCR], <http://www.unhcr.org/en-us/syria-emergency.html> (last visited Oct. 11, 2017) (discussing Syrian refugees).

8. Jie Zong & Jeanne Batalova, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION POLICY INST. (Mar. 8, 2017), <http://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states> (noting President Trump's reduction in the refugee admission ceiling from 50,000 down from 110,000 at the end of the Obama Administration).

9. *Who Will Help Myanmar's Rohingya?*, BBC NEWS (Jan. 10, 2017), <http://www.bbc.com/news/world-asia-38168917>.

structures, economic dislocation, climate change, and an anticipated population explosion in the Middle East and sub-Saharan Africa, will not abate. Nor will the causes of rich-world recalcitrance, including Islamophobia, xenophobic authoritarianism, socio-economic and intergenerational immobility, income and wealth inequality and, most importantly, unconsented-to migration-based political and cultural changes.¹⁰

I. AN ARGUMENT FOR CHANGING THE CURRENT RECALCITRANT
IMMIGRATION POLICY TO PROVIDE TEMPORARY RESIDENCY FOR
INTERNATIONAL MIGRANTS

In view of global demand, rich countries, including the U.S., have a humanitarian obligation to substantially increase the admission of international economic migrants and refugees (collectively “migrants”). This must be done in a manner that avoids a political backlash or causes an uptick in social dislocation and nativism. This will be exceedingly difficult and will require rethinking how rich-world nations approach the issue of global migration. As long as rich countries continue to treat asylum and migration as a form of immigration, popular pressure will deprive policymakers of the ability to accommodate migrants at the needed level. My proposal is to recognize the humanitarian imperative of welcoming migrants and to foster support for such a disposition by untethering migration from permanent residency and eventual naturalization by means of a substantially expanded temporary residency program. Rich-world governments will have political support to welcome far more migrants than is currently the case because the policy addresses the concerns of conservatives and nationalists who bemoan the cultural and political consequences of permanent international migration and strengthens the position of liberals and moderates who argue for humanitarian admission. The policy will improve overall global well-being because it will lead to the admission of far more temporary residents and will protect the sending states of the developing world by protecting them against an irrevocable loss of their most capable citizens.

Although admitting far greater numbers of temporary residents risks undermining social cohesion and creating a problematic tiered-

10. By this I mean the demographic consequences brought about by generations of unauthorized migration and asylum. When this migration is outside a receiving state's immigration laws, the argument can be made that migration-based demographic changes are not consented to by the receiving state.

system of residency by depriving migrants' U.S. born children of citizenship, it is a necessary requirement for a bipartisan immigration compromise. Much of the nativist opposition to immigration is caused by economic insecurity, income inequality, and socio-economic immobility within rich-world countries.¹¹ Therefore, advocates for migrant rights will also have to push for domestic political reforms in rich-world countries to encourage socio-economic and intergenerational mobility. These include labor market reforms, greater progressivity in the tax code, and ensuring access to high-quality public schooling, health care, and higher education as a citizenship right. The need for these reforms is beyond the scope of this paper and is addressed in my previous piece published in the *Pennsylvania State Law Review*.¹²

President Trump's election was facilitated by the U.S. electorate's backlash over the fact that the nation's demographics have changed dramatically due to the country's failure to address the permanent residency of illegal migrants, many of whose children have become citizens based on the country's provision of birthright citizenship.¹³ President Trump could address his supporters' concerns and provide for a far better alternative to the status quo by adopting policies designed to encourage greater acceptance of migrants in conjunction with stricter border and immigration enforcement. This is a needed change in view of the rise of right-wing populism as manifest by Trump's election, the United Kingdom's Brexit vote to leave the European Union, Marine Le Pen's reaching the second round of the French Presidential election, the success of the far right AFD Party in Germany, and the growth of far-right political parties in other mature democracies.¹⁴ It is, moreover, a necessary policy change should rich countries seek to fulfill their humanitarian obligation to accommodate the current international migratory surge and avoid becoming

11. Gerald F. Seib, *World Economic Forum: Outlook 2016 (A Special Report) – Capital Journal: Behind the Rise of Populism, Economic Angst*, WALL ST. J., Jan. 20, 2016, at R6.

12. M. Akram Faizer, *The Privileges or Immunities Clause: A Potential Cure for the Trump Phenomenon*, 121 PA. ST. L. REV. 61 (2016).

13. Inglehart & Norris, *supra* note 1, at 15; Zong & Batalova, *supra* note 8 (stating that in 2016 “immigrants and their U.S.-born children now number approximately number 84.3 million, or 27 percent of the U.S. population”).

14. See Inglehart & Norris, *supra* note 1, at 6.

unwelcoming hostages to a fortress-like mentality that demeans the Enlightenment and the idea of global human rights.¹⁵

II. THE MIGRATION CRISIS AND ITS CAUSES

The scale of global migration is massive. According to the Pew Research Center, if all of the world's international migrants, defined loosely as individuals living in a country different from their birthplace, were added together, they would constitute the world's fifth most populous country with 244 million residents.¹⁶ This number has grown by 200% since 1960, which is larger than the 150% growth in world population during the same period.¹⁷ The number becomes substantially larger if it were to include the children and grandchildren of international migrants.¹⁸ Indeed, the Middle East has the fastest growing international migrant population, having grown from 25 million in 2005 to more than 54 million in 2015.¹⁹

Of the nearly 250 million international migrants, only 16 million, or 8 percent, are international refugees.²⁰ This, however, understates the scale of worldwide displacement because more than two-thirds of the 60 million persons displaced from their homes due to war and other forms of conflict still reside in their birth countries.²¹ To illustrate, the civil war in Syria has led to the displacement of more than 13.5 million people in a country that had a population of slightly more than 21 million before the current civil war.²² Of these, nearly 6.4 million are internally displaced.²³ Columbia, with more than 7 million internally displaced citizens due to the just-ended civil war

15. Jimmy Wu, *An Enlightened Approach to Illegal Immigration*, HARV. POL. REV. (Mar. 8, 2010), <http://harvardpolitics.com/united-states/an-enlightened-approach-to-illegal-immigration/>.

16. Philip Connor, *International Migration: Key Findings from the U.S., Europe and the World*, PEW RESEARCH CTR. (Dec. 15, 2016), <http://www.pewresearch.org/fact-tank/2016/12/15/international-migration-key-findings-from-the-u-s-europe-and-the-world/>.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. INTERNAL DISPLACEMENT MONITORING CTR., *GLOBAL REPORT ON INTERNAL DISPLACEMENT 4* (2017), <http://www.internal-displacement.org/assets/publications/2017/20170522-GRID.pdf> [hereinafter GLOBAL REPORT ON INTERNAL DISPLACEMENT].

23. *Id.*

between the government and FARC rebels²⁴, has one of the world's highest rates of internally displaced people.²⁵

Although international displacement is a growing phenomenon, the evidence demonstrates that the vast majority, or 97% of the world's population, have not crossed an international border. The fact that there is such concern about global, as opposed to internal, migration, stems from the political and economic power of the major migration corridors' destination countries, such as the United States, which is the end route of the one-way migration corridor from Central America and Mexico to the United States.²⁶ The scale of this migration will substantially increase with population growth,²⁷ climate change,²⁸ and the geopolitical and economic consequences of American geopolitical retrenchment.²⁹ For example, in 2050, Africa's population will have increased to 2.4 billion persons, which is double today's population of 1.2 billion.³⁰ Similarly, the Arab world is experiencing a manifest youth bulge with more than two-thirds of the population less than thirty years of age.³¹ Moreover, in view of the relatively small populations of most developed countries, international migrants and their families can greatly affect the demographic balance of receiving states. Several European countries, including Norway, Sweden, and Austria, have seen migrants as a proportion of their total populations increase by more than one

24. FARC is the Spanish acronym for the Marxist-Leninist Revolutionary Armed Forces of Columbia. *FARC*, ENCYC. BRITANNICA (Aug. 16, 2017), <https://www.britannica.com/topic/FARC>.

25. INTERNAL DISPLACEMENT MONITORING CTR., *COLUMBIA* (2016), <http://www.internal-displacement.org/countries/colombia>.

26. *Id.*

27. *World Population to Reach 9.8 Billion in 2050 and 11.2 Billion in 2100*, U.N. DEPT OF ECON. & SOC. AFFAIRS (June 21, 2017), <https://www.un.org/development/desa/en/news/population/world-population-prospects-2017.html> [hereinafter *World Population*].

28. Julia Toscano, *Climate Change Displacement and Forced Migration: An International Crisis*, 6 ARIZ. J. ENVTL. L. & POL'Y 457, 460 (2015).

29. Inglehart & Norris, *supra* note 1, at 3.

30. Mohammed Adam, *Africa's Population Explosion a Global Problem: Continent Faces Challenges Made Worse by Poverty, Climate Change*, OTTAWA CITIZEN, Mar. 17, 2016, <http://ottawacitizen.com/opinion/columnists/adam-africas-population-explosion-is-everyones-problem>.

31. ARAB HUMAN DEVELOPMENT REPORT 2016: YOUTH AND THE PROSPECTS FOR HUMAN DEVELOPMENT IN A CHANGING REALITY, UNITED NATIONS DEVELOPMENT PROGRAMME 4 (2016), <http://www.arabstates.undp.org/content/dam/rbas/report/AHDR%20Reports/AHDR%202016/AHDR%20Final%202016/ExecutiveENG.pdf>.

percent in 2015 alone, largely due to a surge in migrants from Syria, Afghanistan, and Somalia.³²

Migration to the developed world will only increase in time for reasons of geopolitics, state failure, civil war, climate change, and the fact that more and more migrants, 80% of whom reside in the developing world, will find ways of reaching mature democracies such as the U.S.³³

III. RICH WORLD RECALCITRANCE AND ITS CAUSES

A brief analysis of the international migration numbers affecting four rich countries—the United States, the United Kingdom, France and Canada—shall follow. This is hardly a representative grouping as Australia, New Zealand, and many countries in Southeast Asia, the Middle East, and Western Europe are sought-after destinations for many migrants. They are used as examples because they represent paradigmatic examples of, in the case of the U.S., U.K., and France, a backlash against migrants, and, in the case of Canada, an apparently more tolerant and accepting approach. Although greater acceptance of migrants can be partially achieved by enacting progressive legislation to address domestic socio-economic inequality and inter-generational immobility, much of the current backlash is explained by the fact that countries such as the U.S., the U.K, and France are situated on major world migratory routes³⁴ and these countries' failure to undertake effective repatriation has led to a populist backlash against the very idea of international migration.

32. Phillip Connor & Jens Manuel Krogstad, *Immigrant Share of Population Jumps in Some European Countries*, PEW RESEARCH CTR. (Jun. 15, 2016), <http://www.pewresearch.org/fact-tank/2016/06/15/immigrant-share-of-population-jumps-in-some-european-countries/>; see also Eurostat Newsrelease, *Record Number of Over 1.2 Million First Time Asylum Seekers Registered in 2015* (Mar. 4, 2016), <http://ec.europa.eu/eurostat/documents/2995521/7203832/3-04032016-AP-EN.pdf/790eba01-381c-4163-bcd2-a54959b99ed6>.

33. *New Report: Developing Countries Host 80% of Refugees*, UNITED NATIONS REG'L INFO. CTR. FOR W. EUROPE <http://www.unric.org/en/world-refugee-day/26978-new-report-developing-countries-host-80-of-refugees-?format=pdf> (last visited Oct. 8, 2017).

34. Eve Conant, *The World's Congested Human Migration Routes in 5 Maps*, NAT'L GEOGRAPHIC: DATA POINTS (Sept. 19, 2015), <http://news.nationalgeographic.com/2015/09/150919-data-points-refugees-migrants-maps-human-migrations-syria-world/>.

A. U.S. Migration

The U.S. is a country of some 324 million persons with a net migration rate of 3.9 per 1,000 persons, which places it on the lower end of developed countries with respect to in-migration rates.³⁵ A right to immigration is not guaranteed under the U.S. Constitution, as no provision therein requires the admission of non-U.S. persons into U.S. territory.³⁶ That said, the U.S. Supreme Court has used the doctrine of field preemption to preclude state and local governments from attempting to either register or assist with the deportation of unauthorized migrants because the federal government has historically occupied the field of immigration and naturalization.³⁷ This means the federal government and not the states is supreme in the areas of immigration, asylum and deportation. The Fourteenth Amendment's Equal Protection Clause has also been of limited historical use to non-resident alien foreigners.³⁸ Indeed, the federal courts have historically been reluctant to effectively use this provision to protect racial minorities from what looks like invidious discrimination.³⁹ Although recent decisions by the Fourth and Ninth

35. *The World Factbook: Country Comparison: Net Migration Rate*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2112rank.htm#us> (last visited Oct. 8, 2017) [hereinafter *Net Migration Rate*].

36. U.S. CONST. art. IV, § 2; *id.* amend. XIV, § 1. The Privileges and Immunities Clause of Article IV, Section 2 and the Privileges or Immunities Clause of Fourteenth Amendment, Section 1, protect U.S. Citizens from denial of fundamental rights. Moreover, Congress has plenary authority under Article I, Section 8, Clause 4 to establish uniform laws of naturalization. U.S. CONST. art. I, § 8, cl. 4. *See also*, United States *ex rel* Knauff v. Shaughnessy, 338 U.S. 537, 542 (1950) (stating that “an alien who seeks admission to this country may not do so under any claim of right.”)

37. *Arizona v. United States*, 567 U.S. 387, 403 (2012) (preempting Arizona's attempt to enforce federal immigration laws without the federal government's consent); *Hines v. Davidowitz*, 312 U.S. 52, 74 (1941) (invalidating Pennsylvania's attempt to issue alien registration cards in addition to federal Green Cards under the doctrine of field preemption).

38. Although the Supreme Court, in *Graham v. Richardson*, 403 U.S. 365, 376 (1971) concluded that resident aliens have a right to welfare benefits on the same terms as U.S. Citizens, the federal courts have not concluded that the equal protection clause applies to preclude discrimination against unauthorized migrants.

39. *See Korematsu v. United States*, 323 U.S. 214, 218–19 (1944) (concluding the Fourteenth Amendment's Equal Protection Clause does not protect Japanese nationals or Americans of Japanese descent from being forcibly segregated in internment camps). *But see Graham*, 403 U.S. at 371–72 (stating that “classifications based on alienage, like those based on nationality or race, are inherently suspect and

Circuit Courts of Appeal adjudicating President Trump's Executive Orders banning travel from seven majority-Muslim countries appear to demonstrate that green card holders are protected from arbitrary exclusion under the Equal Protection Clause,⁴⁰ the Supreme Court, which was set to review the second Executive Order until it was mooted by yet another version, has consistently held that the President has broad inherent executive power to exclude foreigners under Article II of the U.S. Constitution,⁴¹ while Congress has enacted laws allowing for immigration and temporary residency as well as refugee resettlement.⁴² The U.S. historically grants approximately one million legal immigrants green cards and 600,000 temporary worker visas on an annual basis.⁴³ This, in conjunction with the 100,000 or so refugee admissions annually,⁴⁴ is completely inadequate in view of the migration demand. This inadequacy, which could have forthrightly been addressed by a proactive temporary residency program, has resulted in an apparently insurmountable illegal

subject to close judicial scrutiny.”); *see also* Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017); Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 9, 2017).

40. *Hawaii v. Trump*, 859 F.3d 74 (9th Cir. 2017); *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 605 (4th Cir. 2017);

41. The U.S. Supreme Court dismissed an appeal of the second Executive Order as moot in *Trump v. Int'l Refugee Assistance Project*, No. 16-1436, 2017 U.S. LEXIS 6265 (Oct. 10, 2017). *See United States ex rel Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950) (stating that the right to exclude aliens is “inherent in the executive power to control the foreign affairs of the nation”); *see also* U.S. CONST. amend. II, § 1 (“[T]he executive power shall be vested in a President of the United States.”).

42. *See, e.g.*, Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 Stat. 911 (1965); United States Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980).

43. Jill H. Wilson, *Immigration Facts: Temporary Foreign Workers*, BROOKINGS (June 18, 2013), <https://www.brookings.edu/research/immigration-facts-temporary-foreign-workers/>.

44. Jens Manuel Krogstad & Jynnah Radford, *Key Facts About Refugees in the U.S.*, PEW RESEARCH CTR. (Jan. 30, 2017), <http://www.pewresearch.org/fact-tank/2017/01/30/key-facts-about-refugees-to-the-u-s/> (noting that the number of refugees entering the U.S. fluctuate with approximately 112,000 entering per year from 1990—1995 and nearly 85,000 entering in 2016). Indeed, the Trump Administration has announced that it will substantially reduce the number of refugee admissions and cap it at 50,000. *See* Camila Domonoske, *U.S. Refugee Admissions Pass Trump Administration Cap of 50,000*, NAT'L PUB. RADIO (July 12, 2017, 6:49 PM), <http://www.npr.org/sections/thetwo-way/2017/07/12/536899605/u-s-refugee-admissions-pass-trump-administration-cap-of-50-000>.

immigration problem, as the U.S. is now home to nearly 11 million undocumented or unauthorized residents.⁴⁵

The U.S. has benefited from immigration in that its population is 72 million higher than it would be but for the enactment of the 1965 Immigration and Nationality Act.⁴⁶ The increased population has corresponded with increased racial and ethnic diversity. To illustrate, the proportion of non-Hispanic whites dropped from 84% in 1965 to 62% and, as of 2015, continues to fall, largely because the Hispanic and Asian populations have grown during this time frame from 4% and 1% to 15% and 6%, respectively.⁴⁷ Because of lower fertility in the native-born population, a full 88% of future U.S. population growth will be attributable to immigration and the descendants of these immigrants.⁴⁸ This, however, places pressure on a country's absorptive capacity to integrate newcomers, especially when the majority of the population is relatively stagnant with respect to both population and economic productivity and fears cultural and economic displacement.⁴⁹ For example, enactment of the 1986 Simpson-Mazzoli Immigration Reform and Control Act,⁵⁰ which regularized the status of previously illegal migrants, was facilitated by U.S. economic and population growth, which was 3.5% and 1.7% respectively, under the Reagan Presidency when Islamic fundamentalism and geopolitical

45. Jens Manuel Krogstad, Jeffrey S. Passel & D'Vera Cohn, *5 Facts About Illegal Immigration in the U.S.*, PEW RESEARCH CTR. (Apr. 27, 2017), <http://www.pewresearch.org/fact-tank/2017/04/27/5-facts-about-illegal-immigration-in-the-u-s/>; Jerry Markon, *U.S. Illegal Immigrant Population Falls Below 11 Million, Continuing Nearly Decade-Long Decline Report Says*, WASH. POST (Jan. 20, 2016), https://www.washingtonpost.com/news/federal-eye/wp/2016/01/20/u-s-illegal-immigrant-population-falls-below-11-million-continuing-nearly-decade-long-decline-report-says/?utm_term=.c0703d683358.

46. *Hispanic Trends: Modern Immigration Wave Brings 59 Million to U.S., Driving Population Growth and Change Through 2065*, PEW RESEARCH CTR. (Sept. 28, 2015), <http://www.pewhispanic.org/2015/09/28/modern-immigration-wave-brings-59-million-to-u-s-driving-population-growth-and-change-through-2065/>.

47. *Id.*

48. *Id.*

49. *New PRRI/The Atlantic Survey Analysis Finds Cultural Displacement – Not Economic Hardship – More Predictive of White Working-Class Support for Trump*, PUB. RELIGION RESEARCH INST. (May 9, 2017), <https://www.prii.org/press-release/white-working-class-attitudes-economy-trade-immigration-election-donald-trump/>.

50. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359.

instability were unheard-of problems to most western citizens.⁵¹ The success of President Trump's populist xenophobia is, in turn, attributable to the fact that economic and population growth in post-financial-crisis America are 1.5% and .75%, respectively, in a period of geopolitical instability and fear of political Islam.⁵² Furthermore, compared to other developed nations, the U.S. has very high levels of income inequality as measured by a GINI index of 45.0,⁵³ and socio-economic intergenerational immobility as evidenced by the fact that between 50% and 60% of Americans' relative income is explained by that of their parents.⁵⁴ These are far higher measures of inequality than in the U.S.'s northern neighbor, Canada, which has been lauded for an altogether more welcoming approach to migrants.⁵⁵ That said, unlike Canada, which is surrounded by the U.S. and three major oceans, the U.S. is the destination point of a major migratory route from Central America and Mexico, which explains the unauthorized immigration problem.⁵⁶ The 11 million unauthorized immigrants, in conjunction with the fear of Islamic extremism and domestic economic insecurity, are the obvious explanations for domestic disquiet over the issue. Less discussed is how the substantial in-migration of developing-world residents has changed the nation's political culture in a manner that arguably explains much of the backlash that resulted in President Trump's election. This is due to both the

51. Ruchir Sharma, *Why Trump Can't Make It 1981 Again*, N.Y. TIMES (Jan. 14, 2017), <https://www.nytimes.com/2017/01/14/opinion/sunday/why-trump-cant-make-it-1981-again.html?mcubz=0>.

52. *Id.*

53. *The World Factbook: Country Comparison: Distribution of Family Income – Gini Index*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2172rank.html> (last visited Nov. 14, 2017) (explaining that the “Gini index measures the degree of inequality in the distribution of family income in a country. The more nearly equal a country's income distribution, the lower its Gini index The more unequal a country's income distribution, the higher its Gini index If income were distributed with perfect equality the index would be zero; if income were distributed with perfect inequality, the index would be 100.”); *see also* Erik Sherman, *America is the Richest, and Most Unequal*, COUNTRY FORTUNE (Sept. 30, 2015), <http://fortune.com/2015/09/30/america-wealth-inequality/>.

54. Julia B. Isaacs, *International Comparisons of Economic Mobility*, BROOKINGS INST. (Jul. 2, 2016), https://www.brookings.edu/wp-content/uploads/2016/07/02_economic_mobility_sawhill_ch3.pdf.

55. *The Last Liberals: Why Canada is still at Ease With Openness*, ECONOMIST (Oct. 29, 2016), <http://www.economist.com/news/briefing/21709291-why-canada-still-ease-openness-last-liberals>.

56. Connor, *supra* note 16; Krogstad, Passel & Cohn, *supra* note 45.

Immigration and Naturalization Act of 1965⁵⁷ and the insufficiently-acknowledged migration incentives that have resulted in development of the above-referenced migration route. The former effectively ended preference for European immigrants and led to a marked uptick in racial minority immigration.⁵⁸ The latter is attributable to relatively strong economic performance in the U.S. compared to the economic and political crises that developed in Mexico and Central America in the 1980s.⁵⁹ To illustrate the political consequences, if the same proportion of white voters as compared to racial minority voters that voted for Jimmy Carter in his landslide loss to Ronald Reagan in 1980, voted for Barack Obama in 2012, the popular vote tally in the 2012 election would have been in Mitt Romney's favor.⁶⁰ Obama won reelection because the white vote fell from nearly 90% of the electorate in 1980 to approximately 73% in 2012 and continues to fall.⁶¹ A full 73% of Asian Americans and 71% of Hispanics, who comprise 4.5% and 10% of the U.S. voting populations respectively, voted for President Obama in the 2012 presidential election.⁶² This, in conjunction with the fact that African Americans overwhelmingly vote for the Democratic Party candidate, meant that President Obama was able to win a decisive electoral college victory and earn more than 51%

57. Immigration and Nationality Act of 1965, 8 U.S.C. § 1152.

58. *Id.*

59. Sarah J. Mahler & Dusan Ugrina, *Central America: Crossroads of the Americas*, MIGRATION POLICY INST. (Apr. 1, 2006), <http://www.migrationpolicy.org/article/central-america-crossroads-americas>.

60. Chris Cillizza & Jon Cohen, *President Obama and the White Vote? No Problem*, WASH. POST. (Nov. 8, 2012), https://www.washingtonpost.com/news/the-fix/wp/2012/11/08/president-obama-and-the-white-vote-no-problem/?utm_term=.16e237000d5e. President Carter lost to President Reagan by a 50% to 41% margin in 1980, *1980 Elections Carter vs Reagan*, HISTORY CENTRAL, <http://www.historycentral.com/elections/1980.html> (last visited Nov. 8, 2017), while President Obama defeated Mitt Romney by a 51% to 47% margin. David Jackson, *CNN Poll: Romney Would Now Beat Obama (But Not Clinton)*, U.S.A. TODAY (July 27, 2014, 10:54 AM), <https://www.usatoday.com/story/theoval/2014/07/27/barack-obama-mitt-romney-hillary-clinton-elections-2012-2016/13237053/>.

61. *Id.*

62. Mark H. Lopez & Paul Taylor, *Latino Voters in the 2012 Election: Obama 71% Romney 27%*, PEW RESEARCH CTR. (Nov. 7, 2012), <http://www.pewhispanic.org/2012/11/07/latino-voters-in-the-2012-election/>; Karthick Ramakrishnan, *How Asian Americans Became Democrats*, AM. PROSPECT (Jul. 26, 2016), <http://prospect.org/article/how-asian-americans-became-democrats-0>.

of the popular vote while winning only 39% of the white vote.⁶³ This is a disquieting phenomenon for nativists and conservatives.⁶⁴ Indeed, although much of President Trump's support is explained by his demotic characterization of unauthorized immigrants, it would be wrong to conclude that this fully explains his decisive electoral college win.⁶⁵ His base expressed understandable disquiet over the previous failure of both major political parties to either enhance border security to prevent continued unauthorized immigration or repatriate the undocumented migrants living in the country.⁶⁶ Mass migration has had serious political repercussions. A Pew Research Center study finds that half of Americans want immigration to be reduced and incorrectly blame immigrants for a disproportionate share of the nation's crime and economic problems.⁶⁷ This is in spite of the fact non-immigrants have nearly two and three times the incarceration rate of unauthorized and legal immigrants, respectively.⁶⁸ These perceptions vary by immigrants' region of origin, with Americans most likely to hold negative views about immigrants from Latin America and the Middle East.⁶⁹ Amid the uproar regarding President

63. Steve Phillips, *What About White Voters?*, CTR. FOR AM. PROGRESS (Feb. 5, 2016), <https://www.americanprogress.org/issues/race/news/2016/02/05/130647/what-about-white-voters/>.

64. Jens M. Krosstad, *10 Facts for National Hispanic Heritage Month*, PEW RESEARCH CTR. (Sept. 15, 2016), <http://www.pewresearch.org/fact-tank/2016/09/15/facts-for-national-hispanic-heritage-month/> (demonstrating that the projected number of Hispanic voters is expected to grow).

65. The President lost the popular vote to Hillary Clinton by over two percentage points and nearly three million votes, but won the Electoral College by a margin of 306 to 232. *2016 Presidential Election Results*, POLITICO (Dec. 13, 2016), <http://www.politico.com/2016-election/results/map/president>.

66. Carroll Doherty, *5 Facts About Trump Supporters' View of Immigration*, PEW RESEARCH CTR. (Aug. 25, 2016), <http://www.pewresearch.org/fact-tank/2016/08/25/5-facts-about-trump-supporters-views-of-immigration/>; Henry Enten, & Perry Bacon Jr., *Trump's Hardline Immigration Stance Got Him to the White House*, FIFTYTHIRTYEIGHT (Sept. 12, 2017, 5:59 AM) <http://www.pewresearch.org/fact-tank/2017/01/30/key-facts-about-refugees-to-the-u-s/>.

67. *Hispanic Trends: Modern Immigration Wave Brings 59 Million to U.S., Driving Population Growth and Change Through 2065*, PEW RESEARCH CTR. (Sept. 28, 2015), <http://www.pewhispanic.org/2015/09/28/modern-immigration-wave-brings-59-million-to-u-s-driving-population-growth-and-change-through-2065/>.

68. Michelangelo Landgrave & Alex Nowrasteh, *Criminal Immigrants: Their Numbers, Demographics, and Countries of Origin*, 1 IMMIGRATION: RESEARCH & POLY BRIEF 2 (Mar. 15, 2017), https://object.cato.org/sites/cato.org/files/pubs/pdf/immigration_brief-1.pdf

69. *Id.*

Trump's recent Executive Orders⁷⁰ suspending the U.S.'s refugee resettlement program and temporarily banning the entry of individuals from six majority Muslim countries, the political culture has conveniently forgotten how ungenerous the Obama Administration and all rich countries are on this issue.⁷¹ For example, the Obama Administration admitted only 85,000 refugees for the fiscal year ending in September 2016 and planned on admitting only 110,000 for fiscal year 2017,⁷² both of which are negligible numbers in view of the scale of the international refugee problem — e.g. there are an estimated 16 million refugees worldwide⁷³ and the United States alone is home to approximately 11 million undocumented or illegal economic migrants.⁷⁴ The Obama Administration's response to these problems, namely, a refusal to abide by its own "red line" and intervene to stop the Syrian Genocide⁷⁵ and a belatedly issued Presidential Executive Order to designate a large subset of undocumented residents as non-deportable,⁷⁶ has proven to be both unworkable and counterproductive.

The refugee surge that is affecting Jordan, Lebanon, Turkey, and the European Union⁷⁷ is most likely caused by the effects of global climate change in conjunction with the political consequences brought about by the American-led invasion of Iraq in 2003 and the Obama Administration's decision to subsequently disengage from the Middle

70. Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017); Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 9, 2017).

71. Krogstad & Radford, *supra* note 45.

72. *Id.* (stating that the number of refugees admitted in 2017 "will likely decline from 110,000 to 50,000"); Jie Zong & Jeanne Batalova, *Refugees and Asylees in the United States*, MIGRATION POL'Y INST. (June 7, 2017), <https://www.migrationpolicy.org/article/refugees-and-asylees-united-states>.

73. Connor, *supra* at note 16.

74. Krogstad, Passel, & Cohn, *supra* note 45.

75. Matt Spetalnick & Jonathan Landay, *Syria's Civil War to Mar Obama Legacy*, REUTERS (Dec. 13, 2016, 1:14 PM), <https://www.reuters.com/article/us-mideast-crisis-syria-obama-analysis/syrias-civil-war-to-mar-obama-legacy-idUSKBN14228S>.

76. Adam Liptak & Michael D. Shear, *Supreme Court Tie Blocks Obama Immigration Plan*, N.Y. TIMES, (June 23, 2016), <https://www.nytimes.com/2016/06/24/us/supreme-court-immigration-obama-dapa.html>.

77. Kathy Gilsinan, *The Confused Person's Guide to the Syrian Civil War: A Brief Primer*, ATLANTIC (Oct. 29, 2015), <https://www.theatlantic.com/international/archive/2015/10/syrian-civil-war-guide-isis/410746>

East.⁷⁸ With respect to unauthorized migration to the U.S., the Obama Administration's failure to obtain a bipartisan immigration compromise was largely attributable to the Democratic Party's failure to disentangle the demand for economic migration from the current immigration and naturalization paradigm as well as the Republican Party's reflexive nativism. This resulted in the issuance of an ineffective Executive Order on the issue, which was enjoined by the federal courts⁷⁹ and still had the parlous consequence of inciting a backlash on the right that facilitated Trump's election as President.

How might the federal government have better anticipated and addressed the demand for unauthorized migrants? My argument is that it could have forthrightly been addressed by a proactive temporary residency and worker program, used in conjunction with development assistance provision to the sending states of Mexico and Central America. This would have minimized the incentives for unauthorized migration, protected guest workers from the perils of undocumented status and ensured the public that migration-based demographic changes are legitimate. The fact that neither political party pushed for such a program, all the while refusing to provide for either greater border enforcement or stepped-up deportation, facilitated the current populist backlash.

Although the U.S. resettles more refugees than any other developed country⁸⁰ and has resettled more than 3 million persons since 1975,⁸¹ its expected refugee resettlement number of 50,000⁸² this year is relatively minuscule and inadequate in view of the total number of refugees and displaced persons worldwide. The fact that a non-existent threat from Syrian refugees was seized upon by the President to temporarily suspend the U.S. Refugee Assistance Program⁸³ evidences that the disquiet felt about Islam and unauthorized migration has superimposed itself onto the refugee

78. Vikram Mansharamani, *A Major Contributor to the Syrian Conflict? Climate Change*, PBS NEWSHOUR (Mar. 17, 2016), <http://www.pbs.org/newshour/making-sense/a-major-contributor-to-the-syrian-conflict-climate-change>.

79. *2014 Executive Actions on Immigration*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <https://www.uscis.gov/immigrationaction> (last visited Aug. 19, 2017).

80. *Refugee Admissions*, U.S. DEP'T OF STATE, <https://www.state.gov/j/prm/ra/> (last visited Oct. 8, 2017).

81. *Id.*

82. Krogstad & Radford, *supra* note 45.

83. See Larisa Epatko, *Trump Suspends Refugee Program to Defend U.S. Against "Terrorists"*, PBS NEWSHOUR: THE RUNDOWN (JAN. 30, 2017, 1:00 PM), <http://www.pbs.org/newshour/rundown/trump-suspends-refugee-program-defend-u-s-terrorists/>; see also Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017).

crisis and demands a response. The response, however, should recognize that concerns about migration's consequences are legitimate while allowing for expanded migration so that the U.S. can maintain its moral authority as the world's leading nation and fulfill its obligation to help with the problems confronting international migrants.

B. U.K. Migration

In the U.K, the foreign-born population increased from 3.8 million in 1993 to over 8.7 million in 2015.⁸⁴ Anxiety about international migration is especially pronounced because London, which remains the world's financial and cultural center,⁸⁵ is the destination of choice for much of the world and is now only 45% white British.⁸⁶ European Union (E.U.) expansion has led to marked uptick in migration from poorer E.U. member states such as Poland, Portugal, and Romania.⁸⁷ For example, in 2016, on the eve of the Brexit vote, the U.K. received a record 250,000 citizens from other E.U. countries, while U.K.'s outmigration to the rest of the E.U. numbered only 117,000, a net migration of 133,000 that is consistent with the previous two years.⁸⁸ In 2016, approximately 3.6 million E.U. citizens resided in the U.K.,⁸⁹ which is substantially higher than the 1.2 million Britons who reside in the rest of the E.U.,⁹⁰ and annual total immigration reached a record 650,000 in the run-up to the Brexit vote.⁹¹ Anxiety surrounding

84. Cinzia Rienzo & Carlos Vargas-Silva, *Migrants in the UK: An Overview*, MIGRATION OBSERVATORY (Feb. 21, 2017), <http://www.migrationobservatory.ox.ac.uk/resources/briefings/migrants-in-the-uk-an-overview>.

85. Simon Calder, *London, Capital of the World*, INDEPENDENT (Dec. 22, 2007, 12:00 AM), <http://www.independent.co.uk/travel/news-and-advice/london-capital-of-the-world-766661.html> (stating that London "outstrip[s] global rivals as the centre of economic performance and cultural significance").

86. *London's Population: White Shuffle, Not White Flight*, ECONOMIST (Jan. 9, 2016), <http://www.economist.com/news/international/21685490-white-shuffle-not-white-flight>.

87. Rienzo & Vargas-Silva, *supra* note 87.

88. Joseph O'Leary, *EU Immigration to the UK*, FULL FACT (June 7, 2017), <https://fullfact.org/immigration/eu-migration-and-uk/>.

89. *EU Citizens Living in the UK*, FULL FACT (Aug. 25, 2017), <https://fullfact.org/immigration/eu-citizens-living-uk/>.

90. Joseph O'Leary, *Brits Abroad: How Many People from the UK Live in Other EU Countries?* FULL FACT (Mar. 23, 2017), <https://fullfact.org/europe/how-many-uk-citizens-live-other-eu-countries/>

91. Alan Travis, *Immigration to UK Hit Record Levels Prior to Brexit Vote, Data Shows*, THE GUARDIAN (Dec. 1, 2016), <https://www.theguardian.com/uk->

this migration paradigm explains the impetus behind the pro-Brexit vote to withdraw from the E.U. The migration numbers include an increase in the number of asylum seekers seeking refugee status to 41,280, a number that is disproportionately comprised of Iraqi and Iranian asylees.⁹² Although net migration to the U.K. remains relatively modest, the saliency of the issue, in conjunction with lower economic growth and lower living standards since the 2008–2009 financial crisis, explains not only the Brexit vote but hamstrings negotiations over the terms of Britain’s eventual withdrawal from the E.U.⁹³ Although departure from the E.U. will likely not affect the status of non-Britons already residing legally in the U.K., it will enable the British government to regain some control of its borders because the U.K. will no longer be required to prospectively observe E.U. citizenship rules. However, the reinstatement of national controls must be done in a manner that both respects Britain’s national sovereignty and protects the rights of vulnerable international migrants. This will only be forthcoming if the British public is assured that migration will not irrevocably alter the nation’s demographic composition, which, in turn, will only be feasible if migrants are admitted on a temporary basis, with a goal toward eventual repatriation.

C. French Migration

Perhaps no other developed nation has been so systematically traumatized by international migration as France, which has just seen both its major political parties roundly rejected in the first round of the country’s presidential election in April 2017 and the extreme right-wing Presidential candidate, Marine Le Pen, succeed to a run-off election against the eventual winner, President Emmanuel Macron, whose surprising success also represents a rejection of the political mainstream.⁹⁴ France, whose economy and population is of similar size to that of the U.K., suffers from higher unemployment

news/2016/dec/01/immigration-to-uk-hit-record-levels-in-run-up-to-brexit-vote-latest-figures-show.

92. *Id.*

93. Janan Ganesh, *Theresa May’s Untenable Premiership Might Last*, FIN. TIMES (Oct. 9, 2017), <https://www.ft.com/content/2baa2102-accb-11e7-aab9-abaa44b1e130>

94. Zack Beauchamp, *Macron vs. Le Pen: The French Presidential Election, Explained*, VOX (May 6, 2017, 2:28 PM), <https://www.vox.com/world/2017/5/5/15543294/french-election-macron-le-pen>.

and lower economic growth than its cross-Channel neighbor.⁹⁵ This is a potent mix for xenophobic authoritarianism. The National Front's slogan of "Two Million Unemployed is Two Million Immigrants Too Many" is paradigmatic.⁹⁶ Although France's net migration rate is a moderate 1.1 per 1,000 inhabitants per year, which is substantially below that of the U.S.,⁹⁷ much of the French disquiet surrounding immigration is not about present immigration trends as much as the demographic consequences of previous decades of immigration, in conjunction with a fear of political Islam and a relatively stagnant domestic economy. President Emmanuel Macron's success requires not only a resuscitation of France's economy and the introduction of labor market reforms to allow for greater social mobility, but also a demonstration that E.U. membership does not inevitably mean loss of border control. This will most likely require France to revisit the E.U. migration rules and adopt a temporary visa program that assures the broader French public that migration does not irrevocably lead to permanent residency and social dislocation.

D. Canadian Migration

Canada, unlike the U.S., U.K., and France, has been far more generous to international migrants. To illustrate, Canada's foreign-born population of 20% and its net migration rate of 5.7 per 1,000 residents per year, places it at the top of the developed world regarding these metrics.⁹⁸ Moreover, unlike in the U.S. or Western Europe, the dynamics of Canadian democracy protect migrants from political scapegoating and populist xenophobia. All four major

95. *United Kingdom v. France*, INDEXMUNDI, <http://www.indexmundi.com/factbook/compare/united-kingdom.france> (last visited Oct. 11, 2017) (comparing the population and economies of the United Kingdom and France).

96. Adam Nossiter, *French Far-Right Leader Finds Ready-Made Issue*, N.Y. TIMES, Oct. 16, 2015, at A8.

97. *Compare Net Migration Rate*, *supra* note 35 (last visited October 8, 2017) (noting the net migration rate of the U.S. is 3.90) *with The World Factbook: Europe: France*, CENT. INTELLIGENCE AGENCY (Aug. 1, 2017), <https://www.cia.gov/library/publications/the-world-factbook/geos/fr.html>. See also *United States v. France*, INDEXMUNDI, <http://www.indexmundi.com/factbook/compare/united-states.france> (last visited Oct. 11, 2017) (comparing the net migration rates of the United States and France).

98. *Net Migration Rate*, *supra* note 36; Jaime Weinman, *Does Canada Already Have a Trumpian Immigration Policy?*, MACLEAN'S (Jan. 13, 2017), <http://www.macleans.ca/politics/worldpolitics/does-canada-already-have-a-trumpian-immigration-policy/>.

political national parties—the Liberal Party, the Conservative Party, the New Democratic Party, and the Bloc Québécois—take liberal positions on international migration.⁹⁹ The reasons for this are many. First, unlike the U.S. or Western Europe, Canada does not border a developing nation and is therefore not a destination on a major international migration route.¹⁰⁰ This enables it to have greater control than either the U.S. or Western Europe over who crosses its borders and avoid the same level of anti-migrant backlash. Second, Canada's immigrants and asylees, the vast majority of whom are legally admitted,¹⁰¹ may be eligible for naturalization within only three years¹⁰² and tend to reside in key marginal parliamentary constituencies in urban areas such as Greater Toronto, Montreal, and Vancouver.¹⁰³ As a result, immigrants in Canada are more likely to naturalize than those in America¹⁰⁴ and their votes tend to be more sought-after than those of the median voter.¹⁰⁵ That said, native-born Canadians do not have atypically positive attitudes to international migrants.¹⁰⁶ Canada's use of a points system to select immigrants based on their skills and education level belies a claim of

99. See, e.g., *Canada Election 2015: Where do the Parties Stand on Immigration?*, CIC NEWS (Sept. 2, 2015), <https://www.cicnews.com/2015/09/canada-election-2015-parties-stand-immigration-095975.html#gs.UDH8wWY>.

100. Conant, *supra* note 34.

101. Laurent Martel & Carol D'Aoust, *Report on the Demographic Situation in Canada: Permanent and Temporary Immigration to Canada 2012 to 2014*, STATISTICS CANADA (July 5, 2016), <http://www.statcan.gc.ca/pub/91-209-x/2016001/article/14615-eng.htm>.

102. Sofya Aptekar, *Making Sense of Naturalization: What Citizenship Means to Naturalizing Immigrants in Canada and the USA*, 17 J. INT'L MIGRATION & INTEGRATION 1143, 1145 (2015); *Find Out if You're Eligible: Citizenship*, GOV. OF CANADA (Nov. 10, 2017), <http://www.cic.gc.ca/english/citizenship/become-eligibility.asp> (noting that a permanent resident who has been present in Canada for at least three of the five years preceding an application for citizenship may be eligible for Canadian citizenship).

103. Michael Kuzmin, Arik Motskin, & Zack Gallinger, *Mapping Canada's Mosaic of Immigrant Communities*, THE10 AND3 (Apr. 28, 2015), <http://www.the10and3.com/mapping-canadas-mosaic-of-immigrant-communities/>.

104. *Divergent Trends in Citizenship Rates Among Immigrants in Canada and the United States*, STATISTICS CANADA (Nov. 27, 2015), <http://www.statcan.gc.ca/pub/11f0019m/2011338/part-partie1-eng.htm> (noting that by 2006, 79% of immigrants in Canada were naturalized citizens while only 46% of immigrants in the United States were naturalized citizens).

105. Adnan R. Khan, *Canada's Immigration System is no Kinder than America's*, MACLEAN'S (August 11, 2017), <http://www.macleans.ca/opinion/canadas-immigration-system-is-no-kinder-than-americas>.

106. Weinman, *supra* note 98.

humanitarianism¹⁰⁷ as it exacerbates the brain-drain problem suffered by much of the developing world.¹⁰⁸ Indeed, unlike the U.S., where immigrant children are typically raised in low-education households, one-third of Canada's high-education households have at least one immigrant parent.¹⁰⁹ What also distinguishes Canada from the U.S., the U.K, and France is that social mobility in Canada is substantially higher.¹¹⁰ For countries such as the U.K, France, and the U.S., between 40 and 50 percent of income inequality is passed on across the generations.¹¹¹ For Canada, this number is less than 20 percent.¹¹² There are many reasons for this discrepancy, including the relative higher status of women, lower levels of social exclusion suffered by the poor and racial minorities, and the affordability and accessibility of quality education.¹¹³ That said, notwithstanding Canada's more generous approach to international migrants, it is altogether too small of a country in view of the size of its labor force to successfully integrate more than a token number of migrants. Although it is a moral beacon to many, its policies, which favor attracting the high-skilled and educated, excludes the most vulnerable displaced persons. Indeed, based on survey evidence, it is unlikely that native-born Canadians would support a substantial uptick in the number of international migrants.¹¹⁴

IV. DISTINGUISHING ECONOMIC MIGRANTS AND REFUGEES

International migrants include economic migrants and refugees. Economic migrants lack protection under the Refugee Convention¹¹⁵

107. *Id.*

108. See Carrington, *supra* note 3 (noting that Canada has been "aggressive in [its] effort to recruit and their policies have led them to admit disproportionate numbers of highly skilled immigrants").

109. Miles Corak, *Economic Mobility*, in PATHWAYS: POVERTY & INEQUALITY REPORT 2016 51, 57 (2016), <http://inequality.stanford.edu/sites/default/files/Pathways-SOTU-2016-Economic-Mobility-3.pdf>.

110. *Id.* at 52.

111. *Id.* at 51–52; Isaacs, *supra* note 54.

112. Isaacs, *supra* note 54.

113. Corak, *supra* note 109, at 57.

114. David Akin, *Canadians Not So "Exceptional" When It Comes to Immigration and Refugee Views, New Study Finds*, NAT'L POST (Feb. 6, 2017), <http://news.nationalpost.com/news/canada/canadian-politics/canadians-not-so-exceptional-when-it-comes-to-immigration-and-refugee-views-new-study-finds>.

115. See Convention Relating to the Status of Refugees art. I, July 28, 1951, 19 U.S.T. 6267, 189 U.N.T.S. 137 [hereinafter Refugee Convention] (defining the scope of the Convention as applying only to refugees).

and are largely absorbed into rich countries as both legal and unauthorized immigrants. Although many economic migrants work on temporary visas, these visas are largely unavailable to unskilled workers because the number of such visas available for unskilled workers is altogether negligible in view of the overall demand,¹¹⁶ which, in turn, incentivizes unauthorized migration. Refugees, who are protected under the Refugee Convention, are entitled to file asylum claims in developed nations.¹¹⁷ The rich-world's concern for refugees, however, is altogether inadequate in view of refugee needs and the fact that most refugees are either internally displaced¹¹⁸ or forced, for practical reasons, to migrate to unwelcoming developing nations as is the case with most Syrian, Eritrean, Somali and Rohingya refugees.¹¹⁹

A. *Economic Migrants*

The international community does not recognize a moral imperative to provide sanctuary for economic migrants. Refugees are entitled to claim protection under the Refugee Convention while economic migrants are excludable and deportable under international law, because there is no entitlement for migrants to seek asylum based on economic need. That said, the vast majority of global migration is attributable to people seeking to improve their quality of life.¹²⁰ Although economic migration is understandable in that it provides obvious material benefits to migrants, it imposes costs on the receiving countries and can, if not properly regulated, undermine social cohesion and increase racial and ethnic polarization.¹²¹ As such, developed countries must evaluate economic migration not only based on concern for the migrants themselves, but also for their own citizens who struggle with the consequences of globalization and deserve a hearing as to migration-based cultural and economic changes. Accordingly, my proposal is to recognize the economic benefits of migration to both the receiving states and the migrants themselves and to allow for broader acceptance of economic migration by means

116. Wilson, *supra* note 43.

117. Refugee Convention, *supra* note 115.

118. GLOBAL REPORT ON INTERNAL DISPLACEMENT., *supra* note 23.

119. Louis Højen, *Columbia's "Invisible Crisis": Internally Displaced Persons*, COUNCIL ON HEMISPHERIC AFFAIRS (Feb. 2, 2015), http://www.coha.org/colombias-invisible-crisis-internally-displaced-persons/#_ednref1.

120. See Martin Wolf, *The Benefits of Migration Are Questionable*, FIN. TIMES (Sept. 29, 2015), <https://www.ft.com/content/509c8f5a-65c3-11e5-a28b-50226830d644>.

121. See *id.*

of an expanded guest worker and temporary residency program. This would allow migrants to legally reside and work productively, while assuring the native-born population that these migrants will neither access government services in perpetuity, nor naturalize and change the political culture.

Most importantly, it protects these migrants from the stigma of illegality that facilitates a backlash against their presence, which both isolates them and facilitates their exploitation by unscrupulous employers and human traffickers.¹²² Although economic migrants lack the treaty and customary international law protections offered to refugees, the lack of international protection offered economic migrants is clearly an outdated relic. Although most economic migrants are currently absorbed into first-world societies by means of immigration and naturalization policies, that are altogether inadequate in light of the migration demand and the economic need for migrants in much of the developed world. Furthermore, in view of the population explosion that is expected in Africa, the Middle East and other regions of the global south,¹²³ migration demand will only increase over time.¹²⁴ Rich countries such as the U.S. have a choice. They can continue with the status quo, which means that the unauthorized migration problem will grow and remain unaddressed. This, in turn, will make President Trump's campaign proposal to build a wall on the Mexican border, over time, a relatively benign border security measure in a country that will have adopted a fortress-like mentality to exclude the outside world. To paraphrase the great French diplomat Talleyrand, this would be "worse than a crime. It [would be] a blunder."¹²⁵ The U.S. can encourage other rich countries to avoid this dystopia by recognizing and addressing the migration demand by means of a much-expanded temporary worker and

122. See Jennifer Rankin, *Human Traffickers 'Using Migration Crisis' to Force More People into Slavery*, THE GUARDIAN (May 19, 2016, 2:18 AM), <https://www.theguardian.com/world/2016/may/19/human-traffickers-using-migration-crisis-to-force-more-people-into-slavery> (describing the vulnerability of migrants to human trafficking and forced labor).

123. *World Population*, *supra* note 28 (stating that "[b]etween 2017 and 2050, the populations of 26 African countries are projected to expand to at least double their current size").

124. Tim Cocks & Edward McAllister, *Africa's Population Boom Fuels "Unstoppable" Migration to Europe*, REUTERS (Oct. 13, 2016, 9:06 AM), <https://www.reuters.com/article/us-europe-migrants-africa-analysis/africas-population-boom-fuels-unstoppable-migration-to-europe-idUSKCN12D1PN>.

125. This statement is attributed to Talleyrand after he learned of Napoleon's decision to execute the Duke of Enghien in 1804. William D. Rogers, *"Power" to "Law": It's Not as Bad as All That*, 23 WIS. INT'L J. 39 (2005).

residency program that allows migrants the opportunity to legally improve their living standards in developed-world countries on a temporary basis so that their skills and purchasing power are not forever lost to their countries of origin. I would advocate expanding the current number of 600,000 annual temporary work visas to 2–3 million per year and account for this by reducing the number of permanent residency green cards from the current one million per year to a negligible number. Those 2–3 million temporary visas are to be issued to both skilled and unskilled workers for a period of up to five years and the visa holders are to be given access to private sector jobs in the U.S. economy on terms that are equal with U.S. citizens. The visas, which are to be first offered to economic migrants currently working and living illegally in the U.S., are to be issued with strict conditions that visa holders are expected to repatriate at the end of the visa term unless good cause can be shown for one-year extensions.

B. Refugees

The 1951 Refugee Convention defines a refugee as a person who,

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.¹²⁶

Internally Displaced Persons are those who have been forced to flee their homes for the same reasons as refugees, but remain in their own country and have not crossed an international border.¹²⁷ To illustrate the difference, there are currently 22.5 million refugees and 65.6 million displaced persons worldwide.¹²⁸ Of the 22.5 million refugees that do cross international frontiers, the vast majority move to developing nations of the global south¹²⁹ with only 3.2 million

126. Refugee Convention, *supra* note 115.

127. *Internally Displaced People*, UNHCR, <http://www.unhcr.org/en-us/internally-displaced-people.html> (last visited Oct. 8, 2017).

128. *Figures at a Glance*, UNHCR: STATISTICAL YEARBOOKS, <http://www.unhcr.org/en-us/figures-at-a-glance.html> (last visited Oct. 8, 2017).

129. *Id.*

awaiting asylum claims in developed first-world nations¹³⁰ This means that 86 percent of refugees under the UNHCR's mandate¹³¹ currently reside in low to moderate income countries close to conflict areas.¹³² The Refugee Convention requires signatory countries to, among other things, provide refugees with identification and travel papers, offer them the possibility of assimilation and naturalization, and most importantly, not refole or forcibly return refugees to the country where they "would be threatened on account of . . . race, religion, nationality, membership of a particular social group[,] or political opinion".¹³³ Although developing-world nations typically fall short of the obligation to allow refugees the opportunity to assimilate and naturalize,¹³⁴ all signatories to the Refugee Convention are bound by the obligation of non-refoulement while the circumstances giving rise to refugee status continue.¹³⁵ The U.S. and other developed countries abide by this requirement largely because the refugees granted asylum into their jurisdictions are typically granted permanent residency with a means of subsequent naturalization.¹³⁶

130. Adrian Edwards, *Global Forced Displacement Hits Record High*, UNHCR, (Jun. 20, 2016), <http://www.unhcr.org/afr/news/latest/2016/6/5763b65a4/global-forced-displacement-hits-record-high.html>.

131. See AN INTRODUCTION TO INTERNATIONAL PROTECTION: PROTECTING PERSONS OF CONCERN TO UNHCR, UNHCR 7 (2005) (noting that "UNHCR's mandate is to provide . . . international protection to refugees and to seek permanent solutions for them"). Under this mandate, UNHCR defines a refugee as "any person who . . . is outside of his/her country of origin or habitual residence and is unable to return there because of serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order." *Id.* at 61.

132. Adrian Edwards, *Global Forced Displacement Hits Record High*, UNHCR, (Jun. 20, 2016), <http://www.unhcr.org/afr/news/latest/2016/6/5763b65a4/global-forced-displacement-hits-record-high.html>.

133. Refugee Convention, *supra* note 115.

134. *Id.* at 241–42. See also Craig Considine, *The Rohingya are the New Palestinians*, FOREIGN POL'Y (Sept. 2017), <http://foreignpolicy.com/2017/09/26/the-rohingya-are-the-new-palestinians/>; *The Rohingya Crisis*, EUROPEAN COMM'N (Oct. 2017), http://ec.europa.eu/echo/files/aid/countries/factsheets/rohingya_en.pdf.

135. CATHERINE DAUVERGNE, THE NEW POLITICS OF IMMIGRATION AND THE END OF SETTLER SOCIETIES 21–22 (2016); Refugee Convention, *supra* note 119, at art. 1C (5) & (6) (providing that where the circumstances giving rise to refugee status cease to exist, the Convention no longer applies to that person and she can be returned to the country of origin).

136. For example, in the U.S., asylees are typically given permission to apply for permanent residency green cards after one year and can apply for naturalization three years thereafter. Ilona Bray, *When an Asylee or Refugee Can Apply for U.S. Citizenship*, NOLO, <https://www.nolo.com/legal-encyclopedia/when-asylee-refugee-can-apply-us-citizenship.html> (last visited Nov. 8, 2017); *Green Card for Asylees*, U.S.

This whole scheme is problematic. First, although developed countries like the U.S. do abide by the Refugee Convention's requirements of assimilation, naturalization, and non-refoulement, this is, by implication, premised upon doing the utmost to exclude refugees from their jurisdictions.¹³⁷ As Hathaway and Neve have written:

Even though international law presently requires no more than the provision of rights-regarding temporary protection, Northern states, in law or in practice, have historically afforded refugees permanent status. As the interest-convergence between refugees and developed countries has disappeared, Northern states have sought to avoid the arrival of refugees by adopting policies of external deterrence. Because developed states have the logistical capacity to prevent the arrival of many, and sometimes most, refugees, they have been able to implement *non-entrée* practices that prevent refugees from even reaching their frontiers. Since legal duties arise only once refugees successfully access a state's jurisdiction, *non-entrée* practices are a relatively invisible, and hence politically expedient, means to ensure that refugees are never in a position to assert their legal right to protection.¹³⁸

Developed countries effectively prevent refugees from being able to file refugee claims. Hathaway and Neve write as follows:

Specifically, most Northern states impose a visa requirement on the nationals of refugee-producing states, and penalize airlines and other transportation companies for bringing unauthorized refugees into their territories. By refusing to grant visas for the purpose of making a claim to asylum, Northern countries have been able to insulate themselves from many potential claimants of refugee status. The United Nations High Commissioner for Refugees (UNHCR) has expressed concern that visas are a serious obstacle to the admission to protection of refugees, and may in some instances

CITIZENSHIP & IMMIGRATION SERVS. (July 10, 2017), <https://www.uscis.gov/greencard/asylees>.

137. James C. Hathaway & R. Alexander Neve, *Making Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection*, 10 HARV. HUM. RTS. J. 115, 119 (1997).

138. *Id.* at 119–20.

put refugees at serious risk of *refoulement*, that is, of return to the country in which they assert they will be at risk of grave harm.¹³⁹

Resistance to honoring duties owed to refugees follows from a growing concern about migration-based demographic changes.¹⁴⁰ Hathaway and Neve explain that “the legal right of refugees to [evade typical] immigration control rules means that persons not of a state’s choosing [can] effectively be entitled to [permanently] join its community” and effectuate permanent demographic changes.¹⁴¹ This, in societies like the U.S. that have “a tradition of equating refugee status with the right to remain permanently . . . ,” leads to fear of widespread and undesired social change.¹⁴² Moreover, “even in those Northern states that have a long tradition of receiving immigrants, there is concern about the non-selective nature of the duty to admit refugees.”¹⁴³ This is a problem not limited to the rich countries of the global north.¹⁴⁴ Many East Asian states, “including Brunei, China, Japan, and Malaysia, are preoccupied with avoiding the arrival of refugees of distinct cultural or ethnic backgrounds.”¹⁴⁵ This presents refugee advocates with the reality that refugee admission consistent with the Refugee Convention’s purposes and global refugee needs, requires eventual repatriation to address the legitimate concerns about unconsented to cultural change in receiving states.¹⁴⁶ Hathaway and Neve write:

[i]t is presently politically unwise to insist that states permanently enfranchise all refugees. Such a stance holds refugees hostage to a major project of social transformation. We need instead to accommodate the need of refugees to flee with the prevalence of often narrow understandings of community inspired by the rise of ethnic nationalism and the demise of the Cold War interest-convergence. This accommodation will clearly not amount to a complete recognition of the right of the present inhabitants of states to exclude all outsiders. Yet the terms upon which refugees enter

139. *Id.* at 120.

140. *Id.* at 138.

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.* at 138–39.

a foreign state could be qualified to prevent refugees from becoming pawns in the internal struggles of asylum states over the meaning of community. In particular, a solid and dependable system of refugee protection need not have any enduring impact on the receiving state's communal self-definition. It could instead be oriented to ensuring that, at least in most cases, refugees ultimately repatriate to their own country when conditions permit.¹⁴⁷

This is not to heartlessly violate the international law against refoulement. Rather:

temporary protection can be structured in a way that recognizes and protects core human rights, encourages self-reliance, and preserves the social, political, and cultural identity of the refugee community. If return is made practicable by an empowering system of repatriation aid and development assistance, the solution-oriented protection system we propose has the potential to renew asylum capacity regularly. As a reasonable and principled compromise between the needs of refugees and the migration control objectives of host governments, temporary protection will encourage states to live up to their international protection responsibilities, rather than avoid them.

This is because the repatriation of most, if not all, refugees sends a clear signal that the system is not just a "back door" route to permanent immigration. As it becomes understood that refugees are received on an extraordinary basis and that their presence does not require any fundamental adjustment to the host community's self-definition, the implied threat presently associated with the arrival of refugees can be defused. The failure to promote repatriation, on the other hand, is inconsistent with the logic of refugee status as a situation-specific trump on immigration control rules. Because refugees are admitted on the basis of necessity, it cannot legitimately be asserted that they should routinely be entitled to stay in the host state once the harm in their own country has been brought to an end.¹⁴⁸

147. *Id.* at 139.

148. *Id.* at 140.

V. PROPOSAL FOR GREATER PROVISION OF TEMPORARY RESIDENCE PERMITS TO ADDRESS MIGRANT NEEDS

The best approach to dealing with the immigration and refugee crisis would be for developed countries to take a more proactive approach to dealing with issues related to the Global Commons¹⁴⁹ such as climate change, state failure, and international crises. It will also require them to relieve the burden on developing nations and resettle a far greater number of refugees and displaced persons within their nations. These are not likely to be forthcoming responses from developed nations such as the U.S. if refugee and displaced person resettlement requires permanent residency provision. This is because active involvement to address global problems will be deterred should rich nations feel obliged to permanently resettle conflict victims. Similarly, with respect to resettlement in rich countries, the current provision of asylum status followed by permanent residency leads those countries to not only avoid the issue, but, as is their response to Haitian refugees, who sought asylum to the U.S. after the 1991 coup against former President Jean Bertrand Aristide and the January 12, 2010 magnitude seven earthquake that decimated the country,¹⁵⁰ actually devote hard and soft resources to effectively prevent asylum claims from being effectuated.¹⁵¹ Although requiring the eventual repatriation will be difficult to administer, it will, if effectively and humanely done, provide political support to political moderates seeking international engagement and humanitarian resettlement. It will ideally stem the backlash against migrants that is evidenced by President Trump's suspension of the U.S. Refugee Assistance

149. *IEG of the Global Commons*, U.N. ENVIRONMENT: LAW DIVISION, <http://staging.unep.org/delc/GlobalCommons/tabid/54404/Default.aspx> (last visited Oct. 8, 2017) (identifying four global commons recognized by international law: "the High Seas; the Atmosphere; Antarctica; and, Outer Space.")

150. Mike Clary, *U.S. Sending Boat People Back to Haiti*, L.A. TIMES (Nov. 19, 1991), http://articles.latimes.com/1991-11-19/news/mn-72_1_boat-people; Spenser S. Hsu, *Officials Try to Prevent Haitian Earthquake Refugees from Coming to U.S.*, WASH. POST (Jan. 18, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/01/17/AR2010011701893.html>.

151. See, e.g., Lizzie Dearden, *Germany Offers Asylum Seekers Up To €1,200 Each to Voluntarily Return to Their Home Countries*, THE INDEPENDENT (Feb. 3, 2017, 3:01 PM), <http://www.independent.co.uk/news/world/europe/germany-offer-asylum-seekers-1200-euros-voluntarily-return-home-countries-refugees-crisis-merkel-a7561701.html>.

Program and his Administration's repeated and ill-advised attempts to ban travelers from seven majority-Muslim countries.¹⁵²

A. Temporary Residence Permits

The current paradigm of granting permanent residency to migrants has the effect of encouraging developed democracies to prevent the entry of those most in need. This is because nativist opposition to migrants, which is legitimized by the political and cultural consequences of unauthorized migration and naturalization, is forcefully being effectuated to create a fortress-like approach to national sovereignty. By stepping-up assistance to all migrants, the U.S. can once again lead the community of nations on an issue of compelling importance to global well-being. This will only be forthcoming if its citizens can be assured that allowing for greater migration will not distort the political culture based on migrant permanent residency. Migrants are to be issued five-year temporary residency permits that will allow them to live, work, and travel as is the case with refugees resettled in the U.S. under the Refugee Admissions Program.¹⁵³ The temporary residency permits are to be renewed for one-year periods only if the migrant can show good cause or a significant hardship if repatriated.

An obvious objection to this proposal is that it treats these individuals unequally compared to citizens and permanent residents. It also will require receiving states to devote more resources to deport unwilling migrants than is currently the case. However, all new policies meant to address a particular set of problems create new ones. Here, the problems engendered by the policy, though real, are altogether more defensible than the status quo. As we have seen, assuring migrants de jure equality has had the perverse consequence of preventing them from accessing developed countries and improving their living standards. Although repatriation is harsh, it does not violate the Refugee Convention's prohibition against refoulement because the Convention specifically authorizes repatriation to

152. See Zeke J. Miller, *President Trump Is Suspending a Refugee Program and Banning Visas from 7 Countries*, N.Y. TIMES (Jan. 27, 2017) (explaining Trump's stance on suspending the refugee program, and counter arguments from democrats and republicans alike), <http://time.com/4652552/president-trump-is-suspending-a-refugee-program-and-banning-visas-from-7-countries/>.

153. *U.S. Refugee Admissions Program FAQs*, U.S. DEPT OF STATE (Jan. 20, 2017), <https://www.state.gov/j/prm/releases/factsheets/2017/266447.htm>.

countries of origin when conditions are safe to do so.¹⁵⁴ The current paradigm of asylum-granting followed by permanent residency encourages states to disregard the Refugee Convention's purpose and spend great resources to prevent the entry of would-be refugee claimants. Examples of this include not only President Trump's temporary suspension of the U.S. Refugee Assistance Program, but Australia's decision to process and house refugees in the Micronesian state of Nauru to prevent refugees from effectuating asylum claims on Australian territory¹⁵⁵ and France's creating of an artificial international zone within Paris's De Gaulle Airport to prevent asylum seekers from making claims on French soil.¹⁵⁶

A similar pattern is at play with respect to economic migrants. The U.S.'s abject failure to address the issues of economic inequality and insecurity has led to the rise of populist, anti-immigration sentiment.¹⁵⁷ Britain's failure to address the issue since the 1990s led to the Brexit vote to withdraw from the E.U.¹⁵⁸ and France's political polarization on the issue led to the evisceration of both major political parties and led Marine Le Pen succeeding to a run-off in the 2017 French Presidential election.¹⁵⁹ The rich-world is disregarding the obvious demand for migration and is harming global well-being by resorting to a fortress approach to avoid migration's demographic consequences. The current cumbersome and outdated immigration laws have the effect of incentivizing the uncertainty, exploitation, resentment, and backlash against immigrants because it forces most of the world's unskilled migrants and refugees into an unauthorized immigration paradigm. This leaves them vulnerable to criminal and economic exploitation by unscrupulous employers and traffickers.¹⁶⁰

154. Refugee Convention, *supra* note 115, at art. 1C (5) & (6) (regarding the cessation of refugee status, provides that where the circumstances giving rise to refugee status cease to exist, the Convention no longer applies to that person and she can be returned to the country of origin).

155. Helen Davidson, *Offshore detention: Australia's recent immigration history a 'human rights catastrophe'*, THE GUARDIAN (Nov. 12, 2016), <https://www.theguardian.com/australia-news/2016/nov/13/offshore-detention-nauru-immigration-history-human-rights>.

156. Simon Troller, *Lost in Transit Insufficient Protection for Unaccompanied Migrant Children at Roissy Charles de Gaulle Airport*, HUMAN RIGHTS WATCH (Oct. 29, 2009), <https://www.hrw.org/report/2009/10/29/lost-transit/insufficient-protection-unaccompanied-migrant-children-roissy-charles>.

157. Inglehart & Norris, *supra* note 1, at 10.

158. *Id.* at 6.

159. Nossiter, *supra* note 96; see also Inglehart & Norris, *supra* note 1, at 6.

160. *Immigration Relief for Vulnerable Populations: Human Trafficking, Crime Victims, Domestic Violence and Child Abuse*, U.S. CITIZENSHIP & IMMIGRATION SERVS.

Offering an expanded temporary residency program would provide substantial benefits for migrants, the receiving states, the sending states and overall global well-being.

B. Changing Birthright Citizenship Laws

Birthright citizenship in the U.S. stems from the U.S. Constitution's Fourteenth Amendment, which provides, in relevant part, that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside."¹⁶¹ This provision was ratified in 1868 and effectively reversed *Dred Scott v. Sandford*,¹⁶² which concluded that African Americans born in the U.S., unless naturalized, cannot be U.S. citizens and therefore lack the right to sue for their freedom in federal court on diversity of citizenship grounds.¹⁶³ Although some argue that the "under the jurisdiction thereof" language might exempt the children of illegal migrants from birthright citizenship,¹⁶⁴ this is a minority position and is not the position adopted by the U.S. government, which currently grants U.S. citizenship to all those born in the U.S. except the children of foreign diplomats.¹⁶⁵ In Canada, birthright citizenship stems from the Citizenship Act,¹⁶⁶ which provides that all persons, with the exception of the children of diplomatic personnel or foreign government employees, are entitled to Canadian citizenship by law.¹⁶⁷ Other developed nations such as Australia, New Zealand, France, the

(July 2011), <https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/T-U-VAWA-relief.pdf> (last visited 10/25/2017). See also *Human Trafficking, Capitol Hill Hearing Testimony Before the H. Comm. On Foreign Affairs*, 110th Cong. (2007) (statement of Barbara Shailor, Director AFL-CIO).

161. U.S. CONST. amend. XIV, § 1.

162. *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

163. *Id.* at 403, 405.

164. Dan Stein & John Bauer, *Interpreting the 14th Amendment: Automatic Citizenship for Children of Illegal Immigrants?* 7 STAN. L. & POL'Y REV. 127 (1996).

165. U.S. CONST. amend. XIV, § 1; *Green Card for a Person Born in the United States to a Foreign Diplomat*, U.S. CITIZENSHIP & IMMIGRATION SERVS. (Feb. 17, 2016), <https://www.uscis.gov/green-card/other-ways-get-green-card/green-card-person-born-foreign-diplomat-united-states/green-card-person-born-united-states-foreign-diplomat>.

166. Citizenship Act, R.S.C. 1985, c C-29 (Can.).

167. *Id.*

United Kingdom and Ireland abandoned birthright citizenship.¹⁶⁸ With respect to the U.S. and Canada, though, birthright citizenship will have to be revisited with respect to migrants, be they illegal, temporary or refugees. For Canada, this will require nothing more than for the Parliament of Canada to enact an amendment to the Citizenship Act.¹⁶⁹ For the U.S., although purists may argue that this would require a constitutional amendment, the actual contours of the limitations on natural born citizenship and the “under the jurisdiction thereof” language have never been spelled out.¹⁷⁰ My proposal would be to have international migrants, prior to entry, permanently renounce the citizenship rights of any of their children born in the territorial U.S., on the ground that such births would not be under the U.S.’s jurisdiction for Fourteenth Amendment purposes. It would be, in effect, akin to the birth of a diplomat’s child on U.S. territory, i.e. the child is not entitled to U.S. citizenship on the grounds his parents are not “subject to the jurisdiction” of the U.S. government. Although this would be a reinterpretation of the Fourteenth Amendment, I see nothing problematic with this approach because it would not be an improper denial of citizenship rights as was the case in *Dred Scott*, but a means of facilitating humanitarian migration.

C. Preventing and Addressing State Failure and International Crises

A more generous approach to migrants, in conjunction with a plan for repatriation, will encourage developed nations to spend greater resources addressing problems related to the Global Commons such as climate change, state failure and political instability in the developing world. This is because rich nations seeking to safely repatriate migrants will be encouraged to devote necessary resources to address these problems. Although superficially problematic, the repatriation requirement is a key component here because the current paradigm of limited asylum and permanent residency deters rich countries from the required international engagement level. For example, the U.S. and its European allies might have spent additional

168. Howard Foster, *Time to End Birthright Citizenship?*, HUFFINGTON POST: THE BLOG (Jan. 27, 2012, 1:19 PM) (explaining the issue with interpreting the citizenship clause, and the dangers of doing so incorrectly), http://www.huffingtonpost.com/howard-foster/birthright-citizenship_b_1236860.html.

169. *Making Canada’s Laws*, PARLIAMENT OF CANADA (Dec. 2011), <https://lop.parl.ca/About/Parliament/GuideToHoC/making-e.htm> (describing the Canadian parliamentary process for enacting laws).

170. See *United States v. Wong Kim Ark*, 169 U.S. 649 (1898).

resources to address state failure in Libya and Syria if it did not fear the moral requirement to provide asylum with further involvement. The same applies with respect to economic migrants because the U.S. and other developed states would be forced to encourage economic development in sending-regions such as Central America and Mexico. Should rich countries collectively agree to adopt a dramatically increased temporary residency program, they will, in effect, be forced to devote additional resources to democratization and economic development in the developing world. For receiving states in Europe, Canada, and Australia, it will mean devotion of resources that are currently not spent.¹⁷¹ For the U.S., it will most likely mean reallocation of resources from Israel and Turkey¹⁷² to more vulnerable states with an emphasis on human development and job creation as opposed to military spending. It will also require states to take a more proactive approach to climate change and its concomitants, including political instability and state failure.

Rich nations, including the U.S., however, have a moral obligation to take in a greater number of global migrants in view of the migratory surge and coming population bulge in the developing world.¹⁷³ This will only be forthcoming with a repatriation requirement that will force rich countries to strategically prevent and address international crises.

D. Mitigating a Brain Drain from the Developing World

Another benefit of granting migrants temporary status as opposed to permanent residency is that it would mitigate the baneful consequences of “brain drain” from the developing world.¹⁷⁴ An ever-

171. See e.g., Zi-Ann Lum, *Canadian Foreign-Aid Spending So Low it's a Potential Tragedy: Report*, HUFFINGTON POST (January 13, 2017), http://www.huffingtonpost.ca/2017/01/13/canada-foreign-aid_n_14150162.html; see also Monica Farrell, *U.S. Foreign Aid Spending – Too Much or Not Enough?* FOREIGN POLICY ASS'N (Nov. 8, 2013), <https://foreignpolicyblogs.com/2013/11/08/u-s-foreign-aid-spending-too-much-or-not-enough/>.

172. See Max Bearak and Lazaro Gamero, *The U.S. Foreign Aid Budget Visualized*, WASH. POST (October 18, 2016), <https://www.washingtonpost.com/graphics/world/which-countries-get-the-most-foreign-aid/>; Nick Thompson, *Seventy-Five Percent of U.S. Foreign Military Financing Goes to Two Countries*, CNN (Nov. 11, 2015), <http://www.cnn.com/2015/11/11/politics/us-foreign-aid-report/index.html>.

173. *World Population*, *supra* note 28.

174. See Dhananjayan Sriskandarajah, *Reassessing the Impacts of Brain Drain on Developing Countries*, MIGRATION POLICY INST., (Aug. 1, 2005),

increasing number of persons with post-secondary education from developing nations now live permanently in rich-world countries.¹⁷⁵ To illustrate, African countries lose 20,000 skilled personnel to the developed world each year.¹⁷⁶ That means that Africa is continuously losing people who might improve public health and foster economic development, democratization, and government accountability. Although the solution to the brain-drain phenomenon is not simple and does not lie in closing off access to rich-world labor markets, it requires taking steps to ensure migrants remain invested in their countries of origin by providing them only temporary residency in developed nations as much as feasible. To conjecture, Mexico's economy and democracy would be better placed today if the Mexicans who migrated to the U.S. in previous generations had remained invested in Mexico's development. The same could be said of North and West Africans in France and South Asians in the U.K. By limiting migrants to temporary visas, rich world governments can help foster democratization and economic development in the Global South that, in view of the population disparities between the Global North and South, would be an obvious improvement in global well-being.

CONCLUSION

If immigration and asylum laws were amended to allow for a large increase in temporary residence permits to facilitate ingress and egress across international frontiers, migrants would not become illegal immigrants, but would instead be legal temporary residents with the ability to live, work, and pay taxes in destination countries. Because the policy will require eventual repatriation and would deny migrant children birthright citizenship, bipartisan support for accepting more migrants will likely be forthcoming.

Continuing to incentivize repatriation to countries of origin by means of providing only temporary residence and work authorization without opportunity for permanent residency will definitely be problematic in that it will create an unequal residency paradigm that is anathema to liberal internationalists. That said, the current focus on equal permanent residency for all is causing more harm than good by effectively depriving the vast majority of migrants the physical security and economic opportunity that only rich-world nations can

<http://www.migrationpolicy.org/article/reassessing-impacts-brain-drain-developing-countries>.

175. *Id.*

176. *Id.*

currently provide. It also disincentivizes rich countries from working within an international community to prevent and address international crises and undermines third-world democratization and economic growth by permanently depriving developing nations of crucial human capital.

My proposal will strike some as both naïve and harsh. Naïve because it perhaps understates rich world countries' opposition to migrants, and harsh in that it contemplates and indeed advocates repatriating these migrants to their countries of origin and denies them the opportunity for either permanent residency or citizenship. Recognizing there are problems related to migrant repatriation, my proposal at least considers all relevant interests in seeking to advance global well-being. These interests are those of receiving states, which fear the demographic and backlash consequences of permanent migration, the sending states, who consistently lose human capital to the developed world, and most importantly, the migrants themselves, who are effectively disallowed access to developed countries under the current paradigm. Obviously, my proposal does not directly address the issues of economic insecurity and socio-economic immobility, which are the other obvious causes for nativism and hostility to migrants in much of the developed world. These problems should be addressed as a moral imperative regardless of how they affect attitudes to migrants. However, taking steps toward remediating inequality and providing for socio-economic and intergenerational mobility is a necessary but altogether insufficient basis for changing attitudes to migrants.

Recognizing my proposal is a mere starting point, my hope is that it will stimulate a needed conversation about changing the current approach, which inadvertently and unfortunately treats migrants as toxins pervading an interconnected world and denies the reality of global migration and how this phenomenon will grow with time, based on state failure, climate change, and uneven population and economic growth further. By expanding access to migration on the condition that it be for no more than for a definite duration, developed countries can engender sufficient political support to greatly expand the number of migrant visas issued each year, address their citizens' legitimate concerns about migration's consequences and proactively deal with the problems that engender problematic levels of global migration.

At the start of the previous century, my grandfather traveled from what was then Ceylon to the U.K. as an Imperial subject. Recognizing the benighted views of many Imperial administrators, including incorrect suppositions as to racial hierarchy, they saw individual

British subjects as assets entitled to freedom of movement and residency. Although today's world has laudably rejected the legitimacy of both empire and ethnic superiority, my grandfather's descendants who hold Sri Lankan passports lack the same freedom of movement he took for granted. This is because first-world destination countries largely refuse to admit Sri Lankans because they fear that admission will irrevocably lead to illegal and unwelcome permanent residency. My hope is that changing our approach to global migration will encourage rich world citizens to welcome global migrants, facilitate migrants' ability to improve their lives and, in the end, improve global well-being. President Trump, who has unequivocally opposed his country's current approach to both immigrants and refugees, might consider this proposal as a means to address his supporters' concerns and facilitate U.S. leadership on the issue.

