

Policy Analysis

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Building a Wall around the Welfare State, Instead of the Country

by Alex Nowrasteh and Sophie Cole

Executive Summary

Economists generally believe that immigration increases the size of the economy, improves productivity, and is an economic boon for almost all parties. Moreover, historically, immigration has been a net positive for the federal budget, improving the long-run fiscal condition of the United States. Changes to federal laws, many of which are proposed in the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, could further improve the fiscal impact of future immigration.

Critics of immigration reform worry about immigrants disproportionately consuming public benefits. Instead, they should support legal

changes to immigrant welfare eligibility. Eliminating immigrant welfare eligibility for Temporary Aid to Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP or food stamps), Supplemental Security Income (SSI), Medicaid, and other programs would, in the words of the Cato Institute's late Chairman Emeritus William Niskanen, "build a wall around the welfare state, not around the country." Doing so would reduce immigrant welfare dependency and could increase the pace of intergenerational mobility among immigrants. Such measures would also be constitutional. This policy analysis shows how to implement those reforms.

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Further restricting immigrant access to welfare will not only advance sound public policy, it will likely improve the public's assessment of immigration reform overall.

Introduction

The Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (immigration reform bill) excludes some immigrants from receiving federal welfare. The bill prevents registered provisional immigrants (RPI), blue card holders, and the new guest workers from receiving federal means-tested welfare benefits.¹ Regardless of those barriers and existing ones, opponents of immigration reform are focusing on the supposed fiscal costs of immigration reform by assuming that welfare rolls would be swollen under the proposed reform, thus worsening the long-term fiscal shape of the United States.²

Sen. Jeff Sessions (R-AL) recently expressed such concerns, saying: “Many of the 11 million undocumented people don’t have high school diplomas. Making them eligible for welfare, social services and health care will be hugely expensive.”³ Former senator Jim DeMint (R-SC), now president of the Heritage Foundation, echoed Sessions’ statement when he said: “Delaying eligibility for federal benefits to newly legalized immigrants merely puts off the day of reckoning. The truly enormous costs come when unauthorized immigrants start collecting retirement benefits.”⁴

The effects of immigration reform on welfare and the fiscal shape of the U.S. government are legitimate concerns. Every net new dollar spent on welfare worsens the fiscal condition of the federal government, sustains debilitating dependency, and creates labor market rigidities.⁵ Immigration has historically been a net positive for the Treasury over the long run,⁶ but decreasing immigrant welfare use through legal reforms will increase the fiscal benefits of immigration reform in the short and medium runs too. This analysis provides numerous ideas on how to exclude or limit noncitizen access to federal means-tested welfare programs.

Generally, low-income immigrants have lower rates of welfare use than low-income

native-born citizens and receive smaller benefits when they are the beneficiaries.⁷ However, all immigrants are *more* likely to receive means-tested welfare benefits than all native-born Americans because immigrants are poorer on average.⁸ Immigrants pay more into Medicare Part A than they currently receive in benefits because they are less likely to be of benefit-receiving age than native-born Americans.⁹ They will have even less access to benefits under the proposed immigration reform bill than they currently do—but that alone does not deter criticism that immigrants will abuse the welfare state.¹⁰

The biggest concern that Americans have about unauthorized immigration, shared by 44 percent of those polled in a recent survey, is that unauthorized immigrants were overburdening government services.¹¹ A similar poll from three years ago found that 84 percent of Americans were concerned that immigrants are overburdening government services.¹² In 2010, 86 percent of Republicans, 64 percent of Democrats, and 76 percent of independents agreed with the statement that “ILLEGAL immigrants do more to weaken the U.S. economy because they don’t all pay taxes but use public services.”¹³ In the same year, 84 percent of respondents were either “very concerned” or “somewhat concerned” that “illegal immigrants might be putting an unfair burden on U.S. schools, hospitals and government services.”¹⁴

Since immigrant access to public benefits shapes so much of the public’s perception of immigration, further restricting immigrant access to welfare will not only advance sound public policy, it will likely improve the public’s assessment of immigration reform overall.

Given the enormous patchwork of federal statutes providing for public benefits, the statutes identified below are not an exhaustive list of laws that determine noncitizen access to public benefits. However, we aim to provide interested parties with a firm starting point and analysis.

Economic Benefits of Immigration

Most economists agree that immigration increases the size of the economy, improves productivity, and increases the income of almost all parties affected.¹⁵ The academic debate concerning immigration is over the size of the benefits and who the main beneficiaries are,¹⁶ not whether the benefits outweigh the costs.¹⁷

Migrants are mainly drawn to economic opportunity in the United States. Wages for identical workers in the United States are on average 2.53 times as high as in Mexico, providing a powerful magnet for Mexican immigrants.¹⁸ Wage disparities between identical Asian and American workers are even greater,¹⁹ which is especially important for future migrant flows.²⁰ Workers in India, Vietnam, and the Philippines, three large immigrant source countries, can expect to see their wages increase by about 6, 6.5, and 4 times, respectively, by moving to the United States.²¹ Greater worker productivity in the United States is the source of such massive international disparities and gains from movement.

The migration of workers to the United States is a rational and mutually beneficial response to varying economic opportunities across countries. Immigration of healthy and peaceful people, like the flow of goods, services, and capital across borders, typically benefits the majority of people in both the destination and source countries.²²

Immigration benefits the American economy in several ways. Immigrant workers fill gaps in the labor market, even in some periods of unemployment. The “segmentation hypothesis” explains that immigrants are disproportionately represented in the lowest and highest skilled occupations because the gap between the supply of workers and the demand for them is greatest in those segments of the labor market.²³ That hour-glass shape of the immigration labor pool complements the native-born workforce, where a much larger share of workers falls

in the middle range in terms of skills and education. As a result, immigrants do not typically compete for the kinds of jobs held by the vast majority of American workers—which is better for the immigrant’s earning potential, too. Instead, immigrants migrate to those segments of the job market where most Americans are either over- or under-qualified.²⁴

Immigrant workers with different skills and education than natives actually increase wages for most Americans. Natives have a comparative advantage in jobs that require English communication skills and so are paid higher wages. Low-skilled immigrants typically have poorer English language skills and therefore a comparative advantage in lower-paid jobs that require brawn.²⁵ Immigrants who are not as highly skilled thus cluster in jobs that do not require English language proficiency, such as construction, agriculture, and manufacturing. Natives respond to immigrant clustering by moving into skilled positions, for example, foremen and management, where they can use their language skills more productively. As a result, immigration-induced complementary task specialization makes Americans more productive.²⁶ Newer low-skilled immigrants have a negative impact on the wages of previous immigrants, because their skill sets are so similar.²⁷ Native wage earners continue to see improvements, with the possible exception of American workers with less than a high school degree, who are about 8 percent of adult workers and who may have experienced a 4.7 percent wage decline from 1990 to 2006 due to immigration.²⁸

Occupational clustering by unauthorized immigrants supports the complementary task specialization hypothesis. Nationwide, unauthorized immigrants are estimated to make up 25 percent of farm workers, 19 percent of maintenance staff, 17 percent of construction workers, 12 percent of workers in food preparation 10 percent of employees in manufacturing production, and about 5 percent of the total workforce.²⁹ Compared to just 8 percent of native born American

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adults who did not graduate high school, 47 percent of unauthorized immigrant adults are not high school graduates.³⁰ (In 1960, 50 percent of working-age adult Americans had not completed high school.)³¹ Occupations filled by lower-skilled workers have not gone away but low-skilled native born Americans have shrunk dramatically as a percentage of the population as immigrants have filled those occupations. Crucially, American demand for the goods and services produced by those professions has not diminished.

Immigration increases labor mobility, thus decreasing labor market inefficiencies and increasing economic growth.³² By allowing poor workers to work in the United States, even temporarily on guest worker visas, they can accumulate massive savings compared to what they could accumulate in their home countries. According to calculations by economist Michael Clemens, allowing just 3,000 more Bangladeshis to work in the United States for one year would produce roughly the same in extra income for Bangladeshis as does the vaunted Grameen Bank, a pioneer in microcredit lending for the poor in Bangladesh.³³ Merely allowing some low-skilled workers to temporarily work in developed countries would be a huge boon to economic development across the globe.

Because of the legal dangers of working without authorization, unauthorized immigrant workers have artificially depressed wages compared to legal workers with the same skills. Business sanctions, through bureaucratic requirements and the potential of massive fine and punishment, have encouraged hiring through subcontractors and off-the-books cash payments.³⁴ Employer sanctions operate like taxes with much of the cost being passed on to the unauthorized workers through adjustments in quantity demanded, ultimately lowering wages.³⁵

Employers and subcontractors are compensated for the legal risk of hiring unauthorized workers by offering lower wages or worse working conditions. In recent years that risk has been escalating. In 2009 Immigration and Customs Enforcement (ICE)

began rapidly expanding the number of inspections and audits of business owners' I-9 records.³⁶ ICE routinely investigates over 1,000 businesses at a time, often remotely.³⁷ Fines for certain violations have increased by almost 16 fold since 2008 to \$10,463,988 in 2011.³⁸ These government actions diminish the productivity and bargaining power of immigrant workers, decreasing their contributions to American economic growth.

Furthermore, an illegal labor economy with the threat of deportation disincentivizes unauthorized immigrants from acquiring human capital that would increase their productivity and thus raise their wages. Since deportation would void much of those investments, which are mostly U.S.-specific, unauthorized immigrants acquire human capital at a lower rate than their legal co-workers. Unauthorized workers legalized through the 1986 Reagan reform saw their wages increase in the short term by 2.1 to 13 percent because of their new lawful work status.³⁹

A 1995 Labor Department study found that those legalized immigrant workers responded by investing in their skills and education. The study found that, “[f]or many, legalization appears to have been a turning point. Suddenly, there was a surge of investment in language skills, education, and training.” Specifically, 43 percent of Mexican men undertook some kind of skill enhancement training following legalization, “more than a doubling of the previous rate of human-capital accumulation for most origin groups.”⁴⁰ The immigration reform bill would likely have a similar result on those legalized today.⁴¹

Most economic studies of immigration focus entirely on how it impacts native-born Americans—a method rarely used in evaluating other international economic policies like trade.⁴² The benefits of immigrating reaped by the immigrants themselves should be included in these calculations just as the gains by both parties are counted in other areas of economic analysis. Only a few economists rightly include the massive economic benefits to immigrants, many

Table 1
Welfare Program (Percent Use)

Welfare Program	Noncitizen	Citizen
Medicaid	15.60	18.70
Supplemental Nutrition Assistance Program	18.40	14.40
Supplemental Security Income	1.44	2.10
Temporary Assistance to Needy Families	1.57	0.98
Unemployment Benefits	3.56	3.88

Source: *Integrated Public Use Microdata Series—Current Population Survey*, March 2011.

Table 2
Welfare Benefit Level (Average Per Beneficiary Unit)^a

Welfare Program	Noncitizen (\$)	Citizen (\$)
Medicaid	4,340	4,257
Supplemental Nutrition Assistance Program	3,748	3,799
Supplemental Security Income	7,075	7,090
Temporary Assistance to Needy Families	3,667	3,338
Unemployment Benefits	7,141	7,784

Source: *Integrated Public Use Microdata Series—Current Population Survey*, March 2011.

^aBenefit for Medicaid, SSI, TANF, and Unemployment benefits are per individual. Supplemental Nutrition Assistance Program (SNAP or food stamps) benefits are calculated on a family basis.

of whom could also be called “new Americans,” as part of their analysis of the benefits of immigration.⁴³ However, even excluding the biggest beneficiaries of immigration, the immigrants themselves, still reveals that the benefits outweigh the costs.⁴⁴

Fiscal Benefits of Limiting Welfare to Citizens

In the long run, the benefits of increased immigration are fiscally positive for the United States,⁴⁵ especially when taking into consideration increased tax revenues, the effects of welfare reform,⁴⁶ a larger and faster growing economy,⁴⁷ and the low rate of im-

migrant welfare use.⁴⁸ Reforming immigrant access to welfare programs by, in the words of William Niskanen, “building a wall around the welfare state, not around the country” will reduce the fiscal costs of immigration.⁴⁹

Survey data from the March 2011 Integrated Public Use Microdata Series of the Current Population Survey (iPUMS-CPS) reveals the percentage of nonnaturalized immigrants and American citizens on different welfare programs (see Table 1).

Restricting noncitizen access to welfare will have a relatively small yet positive fiscal effect. For the programs listed in Table 2, noncitizens use 6.7 percent of total welfare expenditures while comprising 7.1 percent of the population.⁵⁰ American citizens used

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the remaining 93.3 percent while comprising 92.9 percent of the population.⁵¹ Preventing noncitizens from accessing means-tested welfare programs will immediately save taxpayers more than \$29 billion for the five programs under discussion.⁵² Grandfathering in welfare reform of this kind by allowing noncitizens currently eligible for welfare to maintain their access or phasing in welfare eligibility by class of noncitizen over a period of years would produce a positive fiscal effect, albeit a smaller one than denying welfare to all noncitizens.

Limiting means-tested welfare programs for noncitizens would immediately save taxpayers billions of dollars, while reforming access to entitlement programs for currently unauthorized immigrants naturalized under the immigration reform bill could limit entitlement payouts in the future. Entitlement reform along these lines would have a positive but more speculative long-run fiscal impact than merely restricting means-tested welfare programs. Additionally, not counting work done while an immigrant was unauthorized toward qualification requirements for Social Security and Medicare payments would marginally diminish the number of legalized immigrants who could receive those benefits. Adjusting the age at which legalized immigrants can receive entitlement benefits may be a politically difficult reform but it would yield a positive fiscal impact.

If welfare access to noncitizens was more limited, some immigrants would choose to naturalize or do so earlier than they otherwise planned in order to gain access to public benefits. That phenomenon was small but observed after the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) barred immigrants from most means-tested welfare programs, although it was difficult to differentiate the effect of anti-immigrant laws in California, such as Proposition 187, on immigrant naturalization rates.⁵³

There is scant historical evidence that welfare induces immigrants to move from

states with relatively fewer benefits to states with greater benefits.⁵⁴ From 2000 to 2009, the fastest growth in the immigrant population occurred in states with the lowest per capita social spending, while the slowest growth occurred in the states with the highest social spending.⁵⁵ Instead, states with the lowest social spending have more favorable economic policies that have increased economic growth and job opportunities, and this is a stronger attraction for immigrants than welfare.

The cost of moving between states is high, which explains why some immigrants choose not to move for small welfare benefits, but the cost of naturalization is also relatively high. The N-400 Application for Naturalization form costs \$685 per applicant, a significant deterrent for low-income immigrants who wish to naturalize.⁵⁶ The high cost of naturalization would likely dampen, although not eliminate, any rush to naturalize that would occur if the strict welfare restrictions were enacted.

How many immigrants will naturalize for welfare is *ex ante* unknowable because the reforms included herein are so much more stringent than what currently exist. The dynamic and rational response by some current immigrants to naturalize would diminish the benefits of walling off welfare, although 100 percent of them would have to naturalize to reach the welfare status quo, all else remaining equal. Additionally, naturalization would open up a broader swath of the lifetime earnings of immigrants to taxation. The long path to citizenship for those immigrants legalized under the proposed immigration reform bill would not add welfare costs until many years after implementation.

Effects of Walling Off Welfare

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Table 3
Welfare Program (Percent Use, Adults Below 200 Percent of Poverty Line)

Welfare Program	Noncitizen	Native-Born Citizen
Medicaid	19.7	25.6
Supplemental Nutrition Assistance Program	29.0	32.5
Temporary Assistance to Needy Families, Supplemental Security Income, Unemployment Benefits	2.7	2.9

Source: *Integrated Public Use Microdata Series—Current Population Survey*, March 2011.

percent less likely to be enrolled in Medicaid than all native-born Americans, 31 percent less likely to use Supplemental Security Income (SSI), and 8 percent less likely to be on unemployment (see Table 1). However, all noncitizens are 28 percent more likely to receive Supplemental Nutrition Assistance Program (SNAP or food stamps) and 60 percent more likely to receive Temporary Aid to Needy Families (TANF) than all native-born Americans (see Table 1).

Comparing means-tested welfare use between only poor native-born Americans and poor noncitizens shows less welfare use among poor immigrants (see Table 3). People in poverty, regardless of immigration status, are most likely to use means-tested welfare benefits and be affected by eliminating their benefits. Poor noncitizens are about 23 percent less likely to be enrolled in Medicaid, 11 percent less likely to be receiving SNAP benefits, and about 7 percent less likely to receive all forms of cash assistance through TANF, SSI, and unemployment insurance than their poor native-born equivalents (see Table 3).⁵⁷ Poor uninsured immigrants currently rely much more on clinics and health care centers that accept cash than government-subsidized medical care.⁵⁸ That trend would intensify if Medicaid were no longer available.

The success of second generation immigrants in the United States in terms of education, income, home ownership rates, civic assimilation, and poverty rate convergence

with natives is evidence that welfare is not needed to promote intergenerational mobility or immigrant assimilation.⁵⁹ By reducing the small amount of immigrant welfare dependency that exists, the pace of intergenerational mobility could actually increase.

Labor force participation rates and skill acquisition are two important components for spurring upward mobility. To the extent that means-tested welfare programs decrease labor force participation rates and skill acquisition, they can hold back the pace of economic advancement. Labor market regulations and rigidities that produce higher unemployment, including those created by generous unemployment benefits, have diminished the pace of economic assimilation for immigrants in European countries.⁶⁰ Fortunately, most immigrants in the United States have not been held back by welfare. Foreign born adults have a labor force participation rate of 67 percent while for the native born it is 63.6 percent.⁶¹ Immigrants between the ages of 45 and 64 are more likely to be in the labor force than natives in the same age ranges although natives are more likely in other age groupings.⁶² Immigrant men are much more likely to be in the workforce than native-born men, but immigrant women are a little less likely to be in the labor force than native-born women.⁶³ Reducing welfare payments to immigrants could actually increase their labor force participation rates. Welfare dependency has not much distorted the economic advancement

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of current immigrant groups but the potential should be avoided in the future.

The historical example of Puerto Rican welfare dependency on the United States mainland and their relatively slow economic advancement is a cautionary tale. Poor people on the American mainland from Puerto Rico and other U.S. protectorates are American citizens by birth, but they have shared many characteristics with immigrants, such as low education and poor English language skills. When Puerto Ricans began moving to the mainland in large numbers during the 1950s and 1960s,⁶⁴ they became eligible for welfare programs available to other citizens. That is one reason they have advanced economically at a slower rate than immigrant groups from even poorer countries like Mexico or the Dominican Republic.⁶⁵ The rate of welfare usage among people from American protectorates who reside on the mainland is much higher than that of any immigrant group in the United States.⁶⁶ While recent data and analysis are hard to come by because Puerto Ricans are not technically immigrants, the relatively slow rate of assimilation among Puerto Ricans suggests that welfare can reduce the economic potential of immigrants.

Other poor and low-skilled immigrant groups, like Dominicans, did not receive the generous welfare benefits that Puerto Ricans did, but their successive generations more rapidly and more successfully assimilated into the American economy.⁶⁷ Excluding all noncitizens from welfare will save the taxpayers money and potentially increase the pace of immigrant economic assimilation.

Identifying the Welfare State

Building a high wall around the welfare state is an important, but not the only, component of a freer immigration policy. Liberalizing immigration is so important to future economic growth in the United States and the rest of the world that barring means-

tested welfare and entitlement programs to noncitizens and allowing more lawful immigration would be a tremendously beneficial shift in policy.⁶⁸

Consequently, barring welfare access to all noncitizens is an admittedly ambitious reform. The statutes we identify could be altered to be less extensive, for example, by banning welfare until individuals have held green cards for 10 years or banning it for noncitizens unless they are refugees or barring certain welfare benefits but leaving others unaltered. As mentioned, welfare access could also be grandfathered in, allowing some current immigrants to maintain their eligibility while barring future immigrants from benefits. Regardless of the extent of such changes, the statutes identified provide a blueprint for walling off welfare or at least limiting its availability.

Personal Responsibility and Work Opportunity Reconciliation Act

The PRWORA introduced restrictions for federal means-tested benefits related to immigration status and duration of U.S. residence.⁶⁹ The resulting federal and state provisions regarding immigrants' access to health and human services have created a patchwork of complicated, and often confusing, eligibility rules. Additionally, PRWORA has since been amended and partially undermined.

PRWORA defined three categories of immigrant status: qualified, not qualified, and lawfully present. While different public programs have different qualifications, noncitizens who are "qualified" are eligible for federal benefit programs. This group includes refugees, individuals who have been granted asylum, lawful permanent residents, Cubans who are subject to the "wet foot/dry foot" policy, Haitians under Temporary Protected Status, victims of domestic abuse, victims of trafficking, people paroled by the Department of Homeland Security for one year and those already granted relief from deportation. Therefore, in order to deny federal welfare benefits to noncitizens, PRWO-

RA's immigrant eligibility definitions would need to be amended and strengthened.

PRWORA restricted access to welfare programs for lawfully present immigrants based on when they arrived in the United States and the duration of U.S. residence. Since 1996, under PRWORA, most legal noncitizens are ineligible for federal benefits for their first five years of residence in the United States. After five years, they may enroll if they meet the programs' other eligibility requirements.⁷⁰

Nonqualified immigrant status is not synonymous with unauthorized immigrant status. Various lawful immigration and visa categories such as students, tourists, asylum seekers, and others also comprise nonqualified immigrants.⁷¹

PRWORA was an important reform to welfare that limited access to welfare for native born Americans and immigrants alike. Numerous barriers to immigrant welfare use have been whittled down since 1996 in subsequent pieces of legislation. Reforms should bar noncitizens from accessing welfare programs mentioned under PRWORA or at least repair the five-year bar for federal benefits imposed on green card holders that has been watered down over the last 11 years.⁷²

Temporary Assistance for Needy Families

PRWORA established the Temporary Assistance for Needy Families program. TANF replaced Aid to Families with Dependent Children, Job Opportunities, and the Basic Skills Training and the Emergency Assistance programs. TANF is a program of temporary assistance that incentivizes recipients to return to the workforce. TANF was reauthorized as part of the Deficit Reduction Act of 2005.

The immigrant eligibility restrictions are not part of the TANF law but are free-standing provisions that cover the eligibility of noncitizens for public benefits, and were originally enacted via Title IV of PRWORA and subsequent amendments. The statutory provisions for the TANF program simply

refer to these "special rules relating to the treatment of certain aliens." Therefore, to restrict the TANF program to U.S. citizens, amending and restrengthening PRWORA's eligibility definitions (as mentioned in the Medicaid and Personal Responsibility and Work Opportunity Reconciliation Act sections above) would wall off TANF to noncitizens.

The U.S. citizen children of unauthorized immigrants can receive TANF benefits, so unauthorized immigrants can collect TANF on behalf of their children by filing a child-only case. The Office of Family Assistance, a branch of the Administration for Children and Families, issues the regulations for child-only cases. More stringent filing requirements in this area could weed out some fraudulent cases.

Supplemental Security Income

SSI is a federal income supplement program for the aged, the blind, and disabled persons who have little or no income. PRWORA regulates noncitizen eligibility for SSI by excluding "not qualified" immigrants who were not already receiving SSI benefits, most qualified immigrants who entered the country after the welfare law passed, and seniors without disabilities who were in the United States before that date. Thus, in 2008 Congress enacted an extension of eligibility for refugees who ran up against the seven-year time limit in the SSI Extension for Elderly and Disabled Refugees Act.⁷³ Some refugees can get two additional years of SSI under specific circumstances.⁷⁴ Persons over 18 years of age must submit a declaration that they are making a good faith effort to pursue citizenship and can receive an additional third year of SSI if they have an application for citizenship pending. The 2008 extension expired on September 30, 2011, and so is no longer an issue. Reforming PRWORA (as mentioned in the Medicaid and the Personal Responsibility and Work Opportunity Reconciliation Act sections above) along these lines would make SSI available to only U.S. citizens.

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Medicaid

Medicaid is a medical assistance program jointly financed by state and federal governments for low-income individuals. It is managed by the states and was first enacted in 1965 as an amendment to the Social Security Act of 1935.

Federal law dictates that states may not reduce other welfare benefits for people when they become eligible for Medicaid. States may not impose citizenship or residency requirements aside from requiring that an applicant be a resident of the state. Neither the age of the applicant nor employment status may count as restrictions to receiving Medicaid.

In 2010 the Patient Protection and Affordable Care Act expanded Medicaid eligibility starting in 2014; individuals earning an income up to 133 percent of the poverty line qualify for coverage, including adults without dependent children.⁷⁵ However, the U.S. Supreme Court ruled in *NFIB v. Sebelius* that states do not have to agree to this expansion in order to continue to receive Medicaid funding.⁷⁶ As of 2013, several states have declared that they will not expand eligibility.

While Congress and the Centers for Medicare and Medicaid Services (CMS) set out the general rules under which Medicaid operates, each state runs its own program. Under certain circumstances, an applicant may be denied coverage. As a result, the eligibility rules differ significantly from state to state, although all states must follow the same basic framework.

Comparing low-income adult immigrants to low-income adult Americans reveals how the latter are more likely to use benefits than the former. Only 19.7 percent of poor noncitizen adults below 200 percent of the poverty line receive Medicaid compared to 25.6 percent of similarly poor native-born Americans and 29 percent of similarly poor naturalized Americans.⁷⁷ Regardless of the generally lower poor noncitizen use rates, noncitizens should not have access to Medicaid and Medicaid/CHIP.⁷⁸ Comparing *all* noncitizens to *all* citizens,

however, reveals that noncitizens are more likely to use Medicaid and TANF.⁷⁹

Emergency Medicaid

Emergency Medicaid covers the treatment of an emergency medical condition.⁸⁰ Federal law generally bars unauthorized immigrants from Medicaid coverage, but part of the state-federal health insurance program pays approximately \$2 billion a year for emergency treatment to cover a group of patients widely believed to be unauthorized immigrants, mainly reimbursing hospitals for delivering babies.⁸¹ This program is running up extraordinary costs and stranding patients in prolonged hospital stays because the program only covers inpatient hospital care, not rehabilitation or nursing home care. Just as each state administers its own Medicaid program, individual states also administer their Emergency Medicaid programs.

States are constrained by federal law in their ability to provide public benefits to certain types of “nonqualified” aliens, but all states provide all persons coverage for emergency medical services. Most states have borrowed essential definitions and restrictions on immigrant access to Emergency Medicaid from federal law, creating some degree of regulatory conformity across states. For example, because the federal PRWORA allows the provision of only emergency benefits to nonqualified aliens, most states have borrowed the federal definition of emergency medical condition in order to ensure their compliance. Noncitizens should be counted as nonqualified aliens for the purposes of this program.⁸²

Medicaid Proof of Citizenship Requirements for Receipt of Benefits

The Deficit Reduction Act of 2005⁸³ required citizens to provide documentary proof of citizenship, such as an original birth certificate or passport, to enroll in or renew Medicaid coverage. However, the legislation did not change the documentation requirements for noncitizens, thus creating a loophole that many could take advantage of to

circumvent the rules. Requiring Medicaid applicants to present satisfactory evidence of citizenship to receive benefits would close this loophole.⁸⁴

Medicaid Verification Rules

When a federal agency denies a federal program to nonqualified immigrants, the law requires the state or local agency to verify the immigration and citizenship status of applicants. However, many federal agencies fail to specify which of their programs provide federal public benefits, creating a loophole whereby state agencies are not obligated to verify immigration statuses. Additionally, Medicaid applicants must prove their citizenship and immigration status to authorities but loopholes built into the Privacy Act of 1974 prevent the verification of a welfare applicant's immigration status.

According to the Privacy Act, which regulates the use of Social Security Numbers (SSNs) by government agencies,⁸⁵ states cannot send information gathered in applications for Medicaid to United States Citizenship and Immigrations Services (USCIS).⁸⁶ While it is important that that information should not be used for immigration enforcement purposes, it should be used to deny benefits to applicants who give suspicious or fraudulent SSNs to receive benefits. Altering the Privacy Act to allow states to establish citizenship for applicants for Medicaid, SCHIP, TANF, and Food Stamps will close this loophole.⁸⁷

Under an important exception contained in the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA),⁸⁸ nonprofit charitable organizations that disperse federal benefits are not required to "determine, verify, or otherwise require proof of eligibility of any applicant for such benefits." Removing this exception that relates specifically to the immigrant benefits restrictions in IIRIRA would close a loophole.⁸⁹

Supplemental Nutrition Assistance Program

Prior to the welfare reform of 1996

(PRWORA), most noncitizens lawfully residing in the United States were eligible for SNAP benefits. With the enactment of PRWORA, most lawfully present noncitizens lost eligibility.

In 1998 Congress began restoring eligibility to some noncitizens who entered the United States before August 22, 1996, including certain elderly, children, disabled, and noncitizens who were members of Hmong or Highland Laotian tribes who rendered assistance to the United States during the Vietnam War. Full restoration of SNAP eligibility to noncitizens was included in the Farm Bill of 2002.⁹⁰ It broadly restored SNAP eligibility to most lawfully present noncitizens who resided in the United States for five years, children under 18, and individuals receiving disability-related assistance or benefits.

Due to the 2002 Farm Bill restorations,⁹¹ noncitizens—from poor working families and their children to elderly people lawfully residing in the United States age 65 or older on August 22, 1996, and the disabled—once again had access to SNAP. In April 2003 qualified aliens who had lived in the United States for at least five years regained eligibility, and in October 2003, eligibility was restored to all qualified alien children without a waiting period. As a result, in 2004, approximately one million noncitizens became eligible for SNAP benefits. Noncitizens should not be able to receive SNAP benefits.⁹²

Additionally, households receiving food stamps face lax reporting requirements to prove their eligibility. More stringent reporting requirements would prevent the currently widespread fraud and abuse of the food stamp program. Requiring frequent reporting, such as weekly, would allow denial of the program to families shortly after they become ineligible for food stamps.⁹³

Earned Income Tax Credit

The Earned Income Tax Credit (EITC) is available to single or married persons with children and who work at least part-time. EITC is a refundable tax credit, meaning that if the worker did not pay taxes, or paid

More stringent reporting requirements would prevent the currently widespread fraud and abuse of the food stamp program.

The EITC should be restricted to citizens, but all workers should be able to take the deduction so that taxes are not raised on noncitizen workers.

less than the amount of the credit, the IRS will send him or her a check for the balance. The EITC is the nation's largest means-tested cash assistance program for workers with low incomes. Persons receiving the EITC pay no federal income tax and instead receive cash assistance from the government based on their earnings and family size. All persons who file a return and are eligible for EITC receive it because the IRS will process it automatically. However, persons whose employment is not reported to the IRS or who do not file an income tax return will not receive the credit.

EITC is available only to lawful immigrant workers but the law allows immigrants to claim it for up to three years prior to obtaining lawful work status by filing a tax return for the years in which they were legally ineligible to work. The immigrant eligibility definition provided in The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 does not apply to the EITC. Rather, the PRWORA sought to prevent unauthorized aliens from receiving the EITC by requiring that the SSN be valid for employment in the United States. Since a valid SSN must be provided for everyone listed on the tax return, this was thought to be an adequate deterrence at the time. However, due to widespread use of fake, improperly obtained, or shared SSNs, this has proven to be less than an adequate means to prevent ineligible immigrants from claiming the EITC. The EITC should be restricted to citizens, but all workers should be able to take the deduction so that taxes are not raised on noncitizen workers.⁹⁴

Pell Grants

A Pell Grant is a monetary grant from the U.S. government to students to pay for their college education. The program is limited to students who demonstrate financial need, who have not earned their first bachelor's degree, and who are not enrolled in certain post-baccalaureate programs, through participating institutions. These grants are not loans and do not have to be repaid.

The U.S. Department of Education uses a standard formula to evaluate the applicant's information by guaranteeing he or she is an undergraduate student who has not yet earned a bachelor's degree, is a United States citizen or an eligible noncitizen, and has a high school diploma or a GED or can demonstrate the ability to benefit from the program.

The Pell Grant is covered by legislation titled the Higher Education Act of 1965 (HEA).⁹⁵ The HEA was legislation signed into United States law on November 8, 1965, as part of President Lyndon Johnson's Great Society domestic agenda. "Financial assistance for students" is covered in Title IV of the HEA.

Reauthorization for the HEA of 1965 is coming up at the end of 2013. Limiting Pell Grant eligibility to only U.S. citizens would be easy to accomplish since it requires an amendment to the HEA during the next congressional reauthorization.⁹⁶

Housing Vouchers

The Housing Choice Voucher program is the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market. Section 8 of the Housing Act of 1937⁹⁷ authorizes the payment of rental housing assistance to private landlords on behalf of approximately 3.1 million low-income households. Housing Choice Vouchers are administered locally by public housing agencies (PHAs). The PHAs receive federal funds from the U.S. Department of Housing and Urban Development to administer the voucher program. The PHA determines eligibility for a housing voucher, based on the total annual gross income and family size. Eligibility is generally limited to U.S. citizens but some small specified categories of noncitizens have access.⁹⁸

Social Security

The Social Security program provides monthly cash benefits to retired and disabled workers, their dependents, and survivors of

deceased workers. To qualify for benefits, workers must work in Social Security-covered jobs for a specified period of time. Generally, workers need 40 quarters of coverage (QCs) to become eligible for benefits, while fewer credits are needed for disability and survivor benefits, depending on the worker's age.⁹⁹

Workers do not automatically qualify for Social Security retirement benefits. Nondisabled and nonsurvivor beneficiaries must work and pay a minimum level of Social Security taxes for at least 40 QCs during their working lives. These 40 QCs do not have to be consecutive. Once an individual has worked and paid Social Security taxes for the required 40 QCs, they are fully qualified to receive Social Security retirement benefits. In 2013 a worker will earn one credit for each \$1,160 in earnings, up to a maximum of four credits annually.¹⁰⁰ To claim Social Security retirement benefits, one has to be fully insured and reach full retirement age, which varies from 65 to 67 depending on the year of birth.¹⁰¹ Restricting the counting of QCs toward Social Security benefits until some level of legal immigration status is conferred would decrease outlays and incentivize more years of employment.¹⁰²

Increasing the work requirements from 40 QCs to 60 QCs for unauthorized immigrants who are legalized and eventually gain naturalization under the provisions of the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 would be politically difficult but would guarantee a more positive cash flow for Social Security.¹⁰³ Raising the Social Security eligibility ages for U.S. citizens who were legalized and eventually naturalized under the provisions of the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 would improve the system's cash flow.¹⁰⁴ These reforms could be viewed as a penalty for violating immigration laws or a stepping stone toward broader entitlement reform.

Medicare

Medicare covers approximately 40 mil-

lion Americans and is administered by the Centers for Medicare and Medicaid Services. It covers qualified immigrants, naturalized citizens, citizens born in the United States who are over the age of 65, and some individuals who are younger with serious disabilities, kidney failure, and Lou Gehrig's Disease. There are three types of Medicare: Medicare Part A, which contributes to inpatient hospital, nursing, and home health care; Medicare Part B, which contributes to outpatient treatment, medical equipment and supplies; and Medicare Part D, which covers prescription drugs.¹⁰⁵

Most U.S. citizens and permanent residents can receive Medicare benefits if their employer paid into the Medicare system for 10 years. To qualify for Medicare, applicants must also fall into one of the following categories: be at least 65 years old and be qualified for Social Security retirement benefits, have received Social Security Disability benefits for at least two years, receive railroad retirement or disability benefits, or have one of a few qualifying medical conditions.

U.S. citizens and permanent residents who are already receiving Social Security checks are automatically enrolled into Medicare, and their benefits start at the beginning of the month in which they turn 65. Individuals who are not receiving Social Security payments or who are eligible before they turn 65 need to apply via the Social Security Administration website or local office. There are specific waiting periods, benchmarks, and programs that individuals must have qualified for in order to receive Medicare for one of the qualifying sicknesses or disabilities.

Raising the Medicare eligibility age for U.S. citizens who were unauthorized immigrants and eventually legalized and naturalized under the provisions of the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013¹⁰⁶ would decrease outlays, but it is impossible to know how much this far in advance. By comparison, gradually raising the eligibility age for all recipients by two years over the

Raising the Social Security eligibility ages for U.S. citizens who were legalized and eventually naturalized would improve the system's cash flow.

next decade would lower Medicare outlays by 5 percent in 2035.¹⁰⁷ Unauthorized immigrants were 5.4 percent of the workforce in 2008 so it is unlikely that delaying entitlement benefits for that cohort will have more than a minor fiscal impact.¹⁰⁸

The Constitutionality of Restricting Welfare Eligibility to U.S. Citizens

Restricting noncitizen access to welfare raises some constitutional concerns. Alienage classifications are distinctions made in law that treat citizens and noncitizens differently and typically deny a benefit or an opportunity to noncitizens that are available to citizens. The U.S. Constitution affords certain protections only to citizens. For example, under the Fifteenth and Nineteenth Amendments, one must be a citizen in order to vote or stand for national elected offices.¹⁰⁹ Another example is the Privileges or Immunities Clause in Section 1, Clause 2 of the Fourteenth Amendment which holds that “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”¹¹⁰ However, the Equal Protection Clause of the Fourteenth Amendment makes no such citizenship distinction and is thus the basis for constitutional challenges to alienage classifications. It reads, “No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.”¹¹¹ This clause originally applied only to the states; however, it was later read to be judicially enforceable against the federal government through the Due Process Clause of the Fifth Amendment.¹¹²

The government must inevitably draw distinctions upon citizenship in the creation, execution, and operation of laws. In response, the U.S. Supreme Court has been confronted with the question of what level of scrutiny to apply.¹¹³ Although the Supreme Court’s cases scrutinizing laws that

treat immigrants differently than citizens are complicated, it is clear that restricting noncitizen access to welfare would survive constitutional review.

When states have excluded noncitizens or treated them differently the Court has given those laws strict scrutiny under the Equal Protection Clause.¹¹⁴ For example, in *Graham v. Richardson*, the Court struck down state restrictions on welfare benefits paid to legal aliens as a violation of the Equal Protection Clause of the Fourteenth Amendment.¹¹⁵ Arizona required residency for a set period of time before receiving entitlement programs, while Pennsylvania granted welfare to only citizens and not aliens.¹¹⁶ The Court held that classifications based on alienage are “inherently suspect and subject to close judicial scrutiny”¹¹⁷ since aliens are “a prime example of a “discrete and insular” minority.”¹¹⁸ The Court also considered how state immigration policies could interfere with federal authority over aliens.¹¹⁹ “State laws that restrict the eligibility of aliens for welfare benefits merely because of their alienage can conflict with . . . overriding national policies in an area constitutionally entrusted to the federal Government.”¹²⁰ The Court had similar concerns in the recent decision of *Arizona v. United States*, where it held that the state law usurped the federal government’s authority to regulate immigration laws and enforcement and was thus preempted.¹²¹

The Court would later allow small exceptions to state alienage classifications. Under the “political function” exception, state laws receive the less-strict rational basis review.¹²² The political function exception applies when states classify on the basis of citizenship in a manner so “bound up with the operation of the State as a governmental entity as to permit exclusion from those functions of all persons who have not become part of the process of self-government.”¹²³ For example, the “political function” exemption allows states to require U.S. citizenship in order to work as police,¹²⁴ probation officers,¹²⁵ public school teachers,¹²⁶ or in the

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competitive classified civil service.¹²⁷ This is not, however, limitless, as aliens cannot be prohibited from some roles essential to civil society such as becoming notary publics.¹²⁸

When it comes to the federal government making alienage classifications, the result has been rather different. The Court is more deferential when scrutinizing alienage classifications made at the federal level. While the standard has never been clearly articulated, federal alienage classifications and restrictions upon aliens' eligibility for welfare programs receive rational basis review. This lower standard not only reflects the Court's respect for Congress as a co-equal branch of government, but also the Court's understanding that the national government has interests in immigration that are related to core functions of the federal government, especially national defense and foreign policy.

In *Matthews v. Diaz*, the Court upheld a federal law requiring aliens to be admitted for permanent residence and in continuous residence in the United States for at least five years in order to qualify for enrollment in the Medicare Part B supplemental medical insurance plan.¹²⁹ The Court suggested that Congress be given considerable deference in this sort of line-drawing since its plenary power over immigration extends to and justifies a broad range of classifications and distinctions in benefits and entitlement programs.¹³⁰ "Congress regularly makes rules that would be unacceptable if applied to citizens,"¹³¹ but "the fact that an Act of Congress treats aliens differently from citizens does not in itself imply that such disparate treatment is 'invidious.'"¹³²

The Equal Protection Clause of the Fourteenth Amendment concerns relationships between aliens and states, not aliens and the federal government.¹³³ As the unanimous decision in *Matthews v. Diaz*, written by Justice Stevens, found, "neither the overnight visitor, the unfriendly agent of a hostile foreign power, the resident diplomat, nor the unauthorized entrant, can advance even a colorable constitutional claim to share in the bounty that a conscientious sovereign

makes available to its own citizens."¹³⁴ The Court held that "it is unquestionably reasonable for Congress to make an alien's eligibility depend on both the character and the duration of his residence."¹³⁵

When the Equal Protection Clause of the Fourteenth Amendment is applied to the federal government through the Due Process Clause of the Fifth Amendment, its impact and resulting protection is substantially less. The Due Process Clause of the Fifth Amendment protects both aliens and citizens.¹³⁶ However, it does not lead to the conclusion that "all aliens are legally entitled to enjoy all the advantages of citizenship... [or] that they are in a single homogenous legal classification."¹³⁷ A vast number of statutes, including the whole of Title 8 of the United States code, are based on the legitimacy of distinguishing between citizens and aliens.¹³⁸

"For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the federal Government."¹³⁹ The Constitution allows the federal government more freedom in its exercise of power over aliens than that of the states. In this, there is a need for "flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication."¹⁴⁰ Moreover, "some line is essential" and "any line must produce some harsh and apparently arbitrary consequences."¹⁴¹ The Court distinguished *Graham v. Richardson* as state-level welfare policy, thus substantially different than a law arising from and committed to the political branch of the federal government.¹⁴²

Later, in *Atkins v. Parker*, the Court upheld the restriction of food stamps to U.S. citizens and aliens in specified categories.¹⁴³ The court held that "[a] welfare recipient is not deprived of due process when the legislature adjusts benefits levels... The legislative determination provides all the process that is due."¹⁴⁴ The court held that undocumented children have the right, under the Fourteenth Amendment, to a state-provided

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public education.¹⁴⁵ Yet, this too concerned a state law intervening in a domain constitutionally reserved to the federal government, and the court is much more protective of undocumented children than alien adults.

In the areas of immigration and naturalization, the Court gives Congress great deference. The Court consistently reaffirms this, holding that “over no conceivable subject is the legislative power of Congress more complete than it is over the admission and exclusion of aliens. Our cases have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.”¹⁴⁶

In light of this long history of deferring to the federal government’s alienage classifications, the Court will likely find that the potential restrictions and distinctions are constitutionally permitted. The courts have affirmed that Congress has had plenary power over immigration since the 19th century even though there is no clear grant of power to the federal government to regulate immigration.¹⁴⁷ The Supreme Court developed this plenary power doctrine as a largely extraconstitutional theory of federal legislative authority over immigration—alternatively arguing that power over immigration is a necessary and inherent attribute of sovereignty, related to the war power as a matter of foreign affairs, or as inherent in the commerce clause.¹⁴⁸ Under current jurisprudence, if other constitutional requirements are met, the legislative or executive branches are largely free to decide the issue under current precedents, and the judiciary has minimal power to interfere.¹⁴⁹ Reducing welfare benefits for immigrants and federal spending overall are legitimate national interests that will easily pass the Court’s deferential standard of review.

Conclusion

Building an even higher legal wall around the welfare state will make immigration re-

form more fiscally beneficial for American taxpayers. It will increase the fiscal and economic benefits from lower-skilled immigrants and, importantly, reduce native-born American opposition to a more open American immigration policy. Contrary to what immigration restrictionists wrongfully believe,¹⁵⁰ halting international labor movements in a world as economically integrated as ours is impossible without hampering economic growth. Instead of trying in vain to halt immigration, we should turn our energy toward reforming welfare, making it less accessible to all, eliminating it altogether, or lowering the benefit levels.

Notes

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70. PRWORA, 8 U.S.C. § 1612(a) (1)-(2) (1996).

71. These provisions of the Act are contained in Title IV, Subtitle A.

72. 8 U.S.C. § 1611(a), § 1612(a)(1), and §1612(a)(2) could be changed to bar noncitizens from accessing welfare programs mentioned under the PRWORA. 8 U.S.C. § 1613(a) explains the five-year eligibility of qualified aliens for federal means-tested public benefits that has been watered down over the last 11 years. That section could be amended to ban all noncitizens or to reinforce the original intent of that provision. On top of those changes, definitions set for in 8 U.S.C. § 1621(a) and 8 U.S.C. §1641(b) could also be changed to cement any changes made in the preceding sections.

73. SSI Extension for Elderly and Disabled Refugees Act, Pub. L. No. 110-328, 122 Stat. 2567 (2008).

74. These circumstances are: (1) under age 18 or over 70; or (2) have been lawful permanent residents (LPRs) for less than 6 years; or (3) have a pending application for LPR status, filed within 4 years of getting SSI; or (4) are a Cuban or Haitian entrant; or (5) were granted withholding of deportation or removal; or (6) have a pending application for citizenship.

75. Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 119-124 Stat. 1025 (2010).

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78. 8 U.S.C. § 1611 explains which immigrants are ineligible for welfare benefits. Section 1611(b) (1)(A) lays out an important exception that forces states to pay for emergency medical conditions for immigrants that are unrelated to organ transplants. Furthermore, a part of the original Medicaid statute, 42 U.S.C. §1396d(a), could be changed so that only citizens are eligible.

79. Authors’ calculations from the American Community Survey, 2011 1-Year Estimates, S0501 and the March 2011 Current Population Survey.

80. 42 U.S.C. § 1396b(v), “a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in (A) placing the patient’s health in serious jeopardy, (B) serious impairment to bodily functions, or (C) serious dysfunction of any bodily organ or part.”

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84. Section 6036 of the Deficit Reduction Act changed 32 U.S.C. §1396b(x)(1). Amending that section to require documentary evidence of citizenship could reduce welfare fraud.
85. The Privacy Act of 1974, 5 U.S.C. §552a (1974).
86. 5 U.S.C. §552a Mississippi Division of Medicaid, "Important Information for Immigrants," <http://www.medicaid.ms.gov/Documents/IMPORTANT%20INFORMATION%20YOU%20NEED%20TO%20KNOW%20ENGLISH.pdf>.
87. Privacy Act §7(a)(2)(A); 5 U.S.C. §552a.
88. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1642(d), § 508.
89. Ibid.
90. Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134 (2002).
91. Title IV of the Farm Security and Rural Investment Act of 2002 is officially cited as the "Food Stamp Reauthorization Act of 2002." Subtitle D—§4401 provides for the restoration of benefits to legal immigrants.
92. Repealing 8 U.S.C. 1612(a)(2)(F) and 8 U.S.C. 1612(a)(2)(J) would deny Supplemental Nutrition Assistance Program (SNAP, or food stamps) benefits to disabled noncitizens and noncitizens' children, respectively. Repealing 8 U.S.C. 1612(a)(2) would restrict SNAP benefits to so-called "qualified aliens."
93. Changing the reporting requirements under 7 U.S.C. 2015(c)(1) would cut down on fraudulent claims.
94. 26 U.S.C. Section 32(c)(1)(A)(ii)(l) defines "eligible individuals" for the Earned Income Tax Credit (EITC). Amending it so that "eligible individual" is redefined as a U.S. citizen would restrict the EITC to citizens. In order to deny unauthorized immigrants the tax refund but still allow them to take the deduction, a section could be added that reads: "In the case of all non-citizens, the amount of the Earned Income Tax Credit (EITC) shall not exceed the tax liability of the taxpayer."
95. 20 U.S.C. 1070a, Title IV, Part A, Subpart 1.
96. 20 U.S.C. § 1091(a)(5) determines Pell Grant eligibility based on citizenship status.
97. 42 U.S.C. § 1437f.
98. 8 U.S.C. § 1611(b)(1)(E) contains exceptions to the general rule that aliens are ineligible for housing benefits. Repealing it would limit the benefit to U.S. citizens. Amending 42 U.S.C. § 1436(a) so that only U.S. citizens are eligible to receive federal housing benefits will eliminate housing vouchers for noncitizens.
99. Stanley Tomkiel III, *The Social Security Benefits Handbook* (Naperville, Illinois: Sphinx Publishing), §201-§215 and §601-§605.4.
100. Ibid., Appendix 2.
101. Ibid., Appendix 7.
102. Adding to 42 U.S.C. 414(a) a category of eligible U.S. citizen recipients who were legalized and naturalized under the Border Security, Economic Opportunity and Immigration Modernization Act of 2013 will only count their QCs after they earned registered provisional immigrant status green card, or citizenship status.
103. Reforming 42 U.S.C. 414(a) and § 404.110(b) of the Code of Federal Regulations are two places to start although many other statutes would need to be reformed to enact this change.
104. § 404.409 of the Code of Federal Regulations would need to be amended to increase the beneficiary's eligibility age for those legalized under the Border Security, Economic Opportunity and Immigration Modernization Act of 2013. A small alteration to § 416.202(a)(1) of the Code of Federal Regulations would confirm that U.S. citizens born in the United States could retire and begin claiming Social Security at age 67 while unauthorized immigrants who are legalized and naturalized U.S. citizens under the Border Security, Economic Opportunity and Immigration Modernization Act of 2013 would be able to retire and begin to claim Social Security at an older age. The early retirement option, which allows beneficiaries to retire at age 62 and claim benefits under Social Security in 42 U.S.C. 402(a), would need to be changed to push back the eligibility age for unauthorized immigrants legalized and naturalized under the immigration

reform law before the Senate. § 404.310 of the Code of Federal Regulations would need to be changed to conform with those alterations to 42 U.S.C. 402(a).

105. Michael F. Cannon and Chris Edwards, “Medicare Reforms,” *Downsizing Government*, September 2010, <http://www.downsizinggovernment.org/sites/downsizinggovernment.org/files/pdf/hhs-medicare-reforms.pdf>.

106. Raising the eligibility age to 70 and increasing the work requirements for unauthorized immigrants legalized under this reform bill requires altering 42 U.S.C. 1395c, 42 U.S.C. 1395o, and 42 U.S.C. 1395i–2(a).

107. “Raising the Ages of Eligibility for Medicare and Social Security,” Congressional Budget Office (Washington: Government Printing Office, 2012), p. 6.

108. Passel and Cohn, p. 12.

109. U.S. Const. amend. XV; U.S. Const. amend. XIX.

110. U.S. Const. amend. XIV, § 1, cl. 2.

111. U.S. Const. amend. XIV.

112. *Bolling v. Sharpe*, 347 U.S. 497 (1954).

113. When analyzing whether governmental decisions or laws are constitutional, the Supreme Court will use a hierarchy of standards (commonly referred to as levels of scrutiny) to weigh the government’s interest against a constitutional right or principle.

114. To pass strict scrutiny, a law or policy must be justified by a compelling *governmental interest*, *narrowly tailored to that goal*, and *the least restrictive means* available to achieve that goal or interest.

115. *Graham v. Richardson*, 403 U.S. 365 (1971).

116. *Ibid.*, p. 367.

117. *Ibid.*, p. 372.

118. *Ibid.* (quoting *United States v. Carolene Products Co.*, 304 U.S. 144, 152–153, n.4 (1938)).

119. *Ibid.*, p. 377.

120. *Ibid.*, p. 378.

121. *Arizona v. United States*, 567 U.S. (2012).

122. Rational basis review requires a plaintiff to prove that a governmental action is not ratio-

nally related to a merely hypothesized legitimate government interest in order to succeed in a legal challenge.

123. *Ambach v. Norwick*, 441 U.S. 68 (1979).

124. *Foley v. Connelie*, 435 U.S. 291 (1978).

125. *Cabell v. Chavez-Salido*, 454 U.S. 432 (1982).

126. *Ambach v. Norwick*, 441 U.S. 68 (1979).

127. *Sugarman v. Dougall*, 413 U.S. 634 (1973).

128. *Bernal v. Fainter*, 467 U.S. 216 (1984).

129. *Mathews v. Diaz*, 426 U.S. 67, 69 (1976).

130. *Ibid.*

131. *Ibid.*, p. 80.

132. *Ibid.*

133. *Ibid.*, pp. 70–72.

134. *Ibid.*, p.80.

135. *Ibid.*, p. 83.

136. *Ibid.*, p. 78.

137. *Ibid.*

138. *Ibid.*, p. 79.

139. *Ibid.*, p. 81.

140. *Ibid.*, p. 81.

141. *Ibid.*, p. 83.

142. *Ibid.*, pp. 84–85.

143. *Atkins v. Parker*, 472 U.S. 115 (1985).

144. *Atkins v. Parker*, at 129.

145. *Plyler v. Doe*, 457 U.S. 202 (1982).

146. *Fiallo v. Bell*, 430 U.S. 787, 792 (1977).

147. *Chae Chan Ping v. United States*, 130 U.S. 581 (1889); *Nishimura Ekiu v. United States*, 142 U.S. 651 (1892); *Fong Yue Ting v. United States*, 149 U.S. 698 (1893); *Lem Moon Sing v. United States*, 158 U.S. 538 (1895); *Wong Wing v. United States*, 163 U.S. 228 (1896); *The Japanese Immigrant Case (Yamataya v. Fisher)*, 189 U.S. 86 (1903); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537 (1950); *Carlson v. Landon*, 342 U.S. 524 (1952); *Harisiades v. Shaughnessy*, 342 U.S. 580 (1952); *Shaughnessy v. United*

States ex rel. Mezei, 345 U.S. 206 (1953); *Galvan v. Press*, 347 U.S. 522 (1954); *Leng May Ma v. Barber*, 357 U.S. 185 (1958); *Kleindienst v. Mandel*, 408 U.S. 753 (1972); *Fiallo v. Bell*, 430 U.S. 787 (1977); *Jean v. Nelson*, 472 U.S. 846 (1985); and *Reno v. Flores*, 507 U.S. 292 (1993).

148. *Chae Chan Ping v. United States*, 130 U.S. 581 (1889).

149. *Mathews v. Diaz*, 426 U.S. 67, 81 (1976).

150. Borjas, *Heaven's Door*, pp. 120–21.

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