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State-Based Visas

A Federalist Approach to Reforming U.S. Immigration Policy

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EXECUTIVE SUMMARY

Michigan Governor Rick Snyder and Senator Rand Paul (R-KY) recently proposed a regional visa program that would allow immigrants to live and work exclusively in Detroit or other cities in the United States. A regional immigration option through a state-based visa program would create a temporary work permit that would allow participating states to manage the flow and regulate the quantity of temporary migrants who want to live and work within their borders. Ideally, law-abiding visa holders would be eligible for renewal and free to apply for permanent residency during their stay in the United States. Although overseen by the federal government, a state-based visa program would allow state governments to craft a better-functioning work-visa program that is more adaptable to their local

economic conditions than the present system run by the federal government—perhaps even supplying lessons for future federal work-visa programs.

A state-based visa program would direct immigration to the states that want it without forcing much additional immigration on those that do not. Unlike existing employment-based visas that tie foreign workers to one firm, state-based visa holders would be free to move between employers in the state—leading to thicker, more equitable, and more efficient local labor markets. A state-based visa would increase prosperity by allowing additional migration to portions of the country and economy that demand them. Successful international experiences with regional visas in Australia and Canada provide some valuable policy lessons and hint at the major economic benefits of such a policy in the United States.

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INTRODUCTION

U.S. immigration policy currently prevents many productive foreign workers and entrepreneurs from contributing to the American economy. To help move American immigration policy in a more open direction, policymakers should consider including principles of federalism as part of immigration reform. By allowing states a greater say in managing immigration, the United States can reap economic benefits by allowing state experimentation with different levels of immigration.

State-based visas would be temporary work visas that allow the visa holder to live and work anywhere within the sponsoring state. Law-abiding visa holders would be eligible for renewal and free to apply for permanent residency during their stay in the United States. Under the work permit, the migrant worker would be unable to work for an employer outside of the state, but if the migrant becomes a permanent resident, he or she would be able to travel freely around the United States. Although overseen by the federal government, the program would allow state governments to work with local governments and employers to tailor a state-based immigration strategy to meet their local economic demands.

Successful regional visa programs in Canada and Australia have aided economic and population growth in formerly depressed regions. American policymakers could apply lessons learned in those countries when creating a similar program in the United States. Based on the experiences of Canada and Australia with their regional visa programs, we outline many of the options that are open to American policymakers for designing and implementing a state-based visa program.

THE ECONOMIC BENEFITS OF STATE-BASED IMMIGRATION

There are millions of hard working and talented people throughout the world who would gladly move to the United States if given the chance. There are also many states within the

United States that would be happy to welcome them but are currently prevented from doing so because of federal immigration restrictions. A federalist approach to immigration policy would give states a greater say in the numbers and types of foreign workers that they allow in. State-based visas would allow those states that want immigration to recruit the foreign workers that best meet their local economic needs. If a state does not want additional immigrants, it would simply choose not to issue any state-based visas. If the migrants who enter on a state-based visa eventually earn lawful permanent residency (LPR) status then they would be able to move to other states, but not all workers would choose LPR status and they would likely move to areas with economic growth, which are also likely to be areas that support state-level guest-worker visas. In short, state-based visas would be good for the United States because they would funnel additional immigrants to parts of the country where they will generate the largest benefits.

American nominal and real wages are also affected by immigration. A worker's nominal wage is the dollar amount of his paycheck, while the real wage is the actual quantity of goods and services that his paycheck can buy. Immigration has modest positive effects on the nominal wages of most American workers because immigrants do not generally compete with many Americans for the same jobs. Rather, immigrants tend to complement the work of natives and thereby increase their wages.¹ Americans of varying skill levels are impacted differently. In the short run, there are positive effects on wages for U.S.-born workers with at least a high-school degree but small negative nominal wage effects on those without a high-school degree.² However, in the long run there is a modest positive wage effect on all workers as the rest of the economy adjusts to the presence of the immigrants, likely outweighing the short-run negative impact on the wages of U.S.-born workers who have not completed high school.³ The wages of U.S.-born high-school dropouts relative to those of U.S.-born high-school graduates have remained nearly

constant since 1980, despite pressures from immigrant inflows that increase the relative supply of low-skilled labor.⁴

Real wages generally increase as a result of immigration because it lowers the costs of certain goods and services by expanding supply. For example, firms that provide services such as child care, gardening, housekeeping, and home health care make relatively intensive use of immigrant workers. In the absence of immigration, the prices of such services would be higher for natives.⁵

Beyond wages, immigrants can shore up faltering housing markets on the demand side. Jacob Vigdor, a professor of public policy and economics at Duke University, finds that immigrants substantially boost housing demand—each immigrant in the United States adds, on average, 11.6 cents to the value of a home in their local county.⁶ Immigration is especially beneficial for less desirable neighborhoods. Drawn by lower housing prices, the immigrants who arrive in such neighborhoods help to create a virtuous circle in which the vitality of the neighborhood improves and the area once again begins to attract middle and working class Americans. Immigrants were particularly effective in staunching the decline of population in New York City over the past few decades.⁷ Immigrants tend to avoid areas where the price of housing is higher and move to areas where housing supply is more elastic—bringing old housing back onto the market rather than driving up the price for existing housing.⁸

There are negative externalities associated with housing vacancies, so an immigration-driven increase in population is going to have much higher positive spill-over effects in areas where population is declining—like in the Rust Belt.⁹ This is a major reason why mayors in cities such as Dayton, Ohio, and Baltimore, Maryland, are experimenting with policies designed to attract and retain immigrants.¹⁰ In January 2014, Michigan Governor Rick Snyder proposed carving out a share of federal EB-2 employment green cards specifically for the city of Detroit.¹¹ In contrast, areas in which the supply of housing is more inelastic

and housing vacancy rates are near zero, such as San Francisco, will experience crowding from additional migrants, be they immigrants or newcomers from elsewhere in the United States. That is not to suggest that a city like San Francisco does not benefit from immigration, just that cities like Dayton have comparatively more to gain from attracting immigrants.

Immigrants tend to be especially entrepreneurial and innovative. They are 30 percent more likely to start a business than non-immigrants¹² and were founding members of 25 percent of venture-capital-backed companies that went public between 1990 and 2006.¹³ Immigrants or children of immigrants founded 40 percent of the Fortune 500 companies in the United States.¹⁴ On the innovation side, immigrant college graduates are more likely to file a patent than similarly educated native-born Americans. A 1 percent increase in the share of immigrant college graduates increases patents per capita by about 15 percent, after accounting for the fact that the presence of high-skilled immigrants tends to increase innovation by the native born.¹⁵ In addition to starting new businesses and developing new technologies, immigrants help to facilitate trade and investment links with their home countries.¹⁶

Immigration also affects government finances. Taxes paid by immigrants and their children generally exceed the costs of the public services that they use on the federal level. High-skilled immigrants are particularly beneficial for the federal treasury. Relaxing green card and H-1B constraints would produce net positive effects on the federal budget running into the tens of billions of dollars over a 10-year period.¹⁷ Even lower-skilled immigrants generally have a positive impact on the federal budget, often consuming fewer government services than their educationally similar U.S.-born counterparts and having higher labor-force participation rates.¹⁸ Although immigrants produce a fiscal surplus at the federal level, the U.S.-born citizen children of immigrants are a fiscal cost at the local level due primarily to school costs.¹⁹

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A federalist approach to immigration is preferable to one entirely dominated by the federal government because states can better understand the fiscal costs and benefits of additional immigrants. Because state and local governments incur much of the short-term fiscal costs of immigration, it is important that they have a say in directing the optimal flow.²⁰ A state-based visa program will allow states to harness additional economic gains from immigration without relying upon the federal government to change immigration policy for the entire nation. While not all immigrants who enter on state-based visas would stay in the state they initially settled in, evidence from Australia and Canada suggests that out movement would be minor.

In the United States, agricultural workers are highly mobile due to the migratory and seasonal nature of their labor, so they are most likely to illegally leave the states they are permitted to work in for work opportunities elsewhere. States could solve this issue by entering into voluntary agreements with each other to share agricultural guest workers by allowing them to move back and forth. For instance, California farmers could be allowed to hire an individual guest worker for the spring and summer while Washington farmers would be able to hire the same worker in the fall to help with the harvesting of different crops. In addition to state agreements to manage guest workers, it is important that a state-level guest-worker visa for agricultural workers operate similarly to an earlier agricultural visa: the so-called Bracero program. Under Bracero, about five million Mexican farm workers legally entered the United States for work from 1942 to 1964 and returned home in a process called circular migration.²¹ One deficiency of Bracero was the legal difficulty of a migrant changing employers, which should be corrected. After Bracero was ended in 1964, the resulting unauthorized immigrants that still worked in agriculture continued to circularly migrate: from 1965 to 1985, there was an estimated 26.7 million entries of unauthorized Mexican migrants into the United States and 21.8 million departures

to Mexico.²² Circular migration ended when increased border security after 1986 raised the cost of moving back and forth, incentivizing permanent settlement in the United States.²³

Legal changes could also incentivize compliance with the terms of the visa. For instance, following the visa regulations should guarantee the guest worker the ability to return the next year. In addition, a bond system for migrant workers, funded by migrant and employer contributions whereby the migrant and employer lose their contributions if the migrant violates the terms of his work visa, would also disincentivize illegal work.²⁴ Further incentives to follow the law are also provided by the market. Authorized immigrants realize a wage premium relative to unauthorized immigrants of around 6 to 25 percent, so working in the black market would come with a steep and immediate wage penalty.²⁵ Higher and more mid-skill professions are less mobile so it is unlikely that these rules would be needed for those guest workers there. States can judge the costs and benefits of immigration better than the federal government can.

CHANGING THE POLITICAL ECONOMY OF IMMIGRATION

The federal government dictates immigration policy in the United States but state and local governments occasionally pursue immigration-enforcement policies that affect the flow of immigrants to their jurisdictions. These policies often create conflict between the objectives of the federal immigration policy and the objectives of the state and local governments.²⁶ A state-based visa program would allow states to choose to offer lawful immigration opportunities instead of the enforcement-only policies that some of them currently pursue.

For example, in 2010 the state of Arizona passed Senate Bill 1070 (SB 1070) in an effort to stop the flow of unauthorized immigrants into the state and force the ones settled there to leave.²⁷ Among other things, the law required immigrants to carry immigration docu-

ments and made it illegal for an immigrant to apply for work without federal authorization.²⁸ The federal government challenged SB 1070 in court, and the Supreme Court found that much of the bill was discriminatory and preempted by federal law.²⁹

Arizona was determined to deter unauthorized immigrants but other localities want to attract them. Cities such as Baltimore, Los Angeles, New York, and Dayton are passing laws designed to make it easier for immigrants to live and work in their jurisdictions. The local pro-immigration strategies often reflect desires to spur population and economic growth.³⁰ Pro-immigration measures include prohibiting police and local services from asking about an individual's immigration status, issuing state identification cards, and limiting cooperation with federal immigration enforcement to that required by law.³¹ States should be able to go even further by creating legal immigration opportunities.

Federal immigration reform pits median voters in pro-immigration states against median voters in anti-immigration states. Some voters feel vulnerable to the additional inflows of immigrants favored by pro-immigration states, and pro-immigration states feel that their economic development prospects are hamstrung by the restrictions favored by anti-immigration states. A state-based visa provides an opportunity to mitigate these differences on the state level as each state pursues its own policies, even though there will be some unavoidable immigrant movement between states.

By creating a state-based visa program, the United States would not be stepping into the unknown with an untested approach to immigration policy. Similar policies have worked well elsewhere.

REGIONAL IMMIGRATION POLICIES AROUND THE WORLD: LESSONS AND OUTCOMES

Economic and other policy objectives that differ by territory have inspired the adapta-

tion of regional visas. For example, the United States has a special visa policy for Guam and the Marianas Islands,³² just as France has a special visa policy for Guadeloupe and Martinique.³³ But for our purposes, immigration policies in Canada and Australia are most instructive. Both Canada and Australia use regional immigration policies that are similar to the state-based policy proposed here. They do so to address the labor-market and population-growth demands of specific provinces in Canada and states in Australia. The regional immigration programs in Canada and Australia are useful guides for American policymakers considering a state-based immigration program in the United States.

Canada's Provincial Nominee Program

The Canadian Provincial Nominee Program (PNP) was established in 1998 to encourage foreign entrants to disperse throughout Canada as opposed to concentrating in traditional immigration hubs. It is a permanent residency program offered by participating provinces and territories under the supervision of Canada's national government.³⁴ The Canadian national government sets PNP quotas for each province or territory, allowing them to create their own program within this framework.³⁵ These parameters are in place to ensure the PNP is used by provinces and territories for the purposes of economic development and satisfying labor-market demand, instead of pursuing refugee or family reunification immigration policies.³⁶ Within these parameters the provinces and territories are able to form their own immigration program according to their respective economic demands. The PNP is now the second-largest source of economic immigration in Canada. In 2011, Canada admitted more than 38,000 migrants through the PNP.³⁷

Procedurally, the PNP is relatively simple. A prospective foreign entrant must first apply to one of the 11 participating provinces or territories.³⁸ This initial application is then reviewed by provincial or territorial level government offices where the applicant is either

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rejected or nominated.³⁹ If nominated, the applicant must then make a separate application to Citizenship and Immigration Canada (CIC), the Canadian government entity in charge of overseeing national immigration rules and regulations.⁴⁰ If the applicant is not excludable for another reason under Canadian law—for being a suspected terrorist, for instance—then he or she is approved for permanent residency in the nominating province or territory.⁴¹

One of the issues encountered by the PNP is retention of immigrants by the province or territory to which they initially move. Since the Canadian program is a permanent-residency program, there is no legal incentive for a PNP recipient to maintain residency in the province or territory that nominated them for admittance to Canada. The PNP application only states the intent of the foreign national; the program does not legally restrict a nominee’s working and living arrangements once in the country. The lack of state control over the movement of the entrants can lead to wide variances of retention rates among the provinces and territories. For example, in 2006 Prince Edward Island nominated 125 foreign entrants to live and work in the region, yet three years later only 30 of them, or 24 percent, remained in the province.⁴² On the other hand, British Columbia nominated 705 foreign entrants in 2006, and by 2009, 655, or 92.9 percent, remained in the province.⁴³ While the retention rates can vary widely, the PNP overall had a three-year retention rate of about 78.5 percent for the years 2006 and 2007, the last years for which this data was available.⁴⁴ Therefore, despite the failure of some provinces to retain provincial nominees, a majority of nominees stayed within their nominating region after a three-year period even without restrictions on their ability to live and work throughout Canada.

An evaluation of the PNP performed by the Canadian federal government in 2011 concluded the program has been “successful at regionalizing the benefits of immigration,” and there is a “continuing need” for the pro-

gram.⁴⁵ The evaluation did find that only one of the participating provinces and territories uses a government-determined economic plan to measure labor shortages that can be filled by foreign nominees, while the others rely on input from local stakeholders and generalized labor-market information.⁴⁶ Regardless, interviews with stakeholders, including employers, indicated a continuing need for PNP, and that, overall, the program aligned with the economic development objectives of the Canadian federal government.⁴⁷ The interviewees believed the program addressed the needs of local and regional labor markets. Ninety percent of all PNP immigrants reported employment or self-employment earnings within a year of settling in a Canadian province.⁴⁸ However, that percentage includes PNP immigrants in the Atlantic Provinces, which accept many fewer immigrants and are economically depressed compared with the rest of Canada. The PNP immigrants who go to Manitoba, British Columbia, Alberta, and Saskatchewan—more economically dynamic provinces—have a first-year employment average of 96 percent.⁴⁹

Australia’s Regional Immigration Program

Australia began using regional immigration programs in 1996. The programs have changed over the years and, operationally, Australia’s programs are much more complicated than the Canadian Provincial Nominee Program. Australian regional visas are split into a number of subcategories that allow states, localities, employers, and even family members to sponsor a foreign entrant into a particular region.⁵⁰ Additionally, applicants for the purpose of General Skilled Migration may receive extra points for having previously lived or studied in certain regions in Australia.⁵¹

An important difference between the Canadian program and the Australian system is that some temporary-resident categories place legal restrictions on where the foreign entrant can live and work. For example, applicants for the Skilled-Regional Sponsored visa can

be nominated by a state or territory through a state migration plan or a relative living in the region.⁵² If the applicant meets the basic requirements and passes the “Points Test,” which ensures that would-be entrants meet the skills and attributes needed in Australia, then he or she is granted a four-year temporary visa. The visa requires that the applicant must live, work, and study exclusively in the specified region or territory for two years.⁵³ After this two-year period the visa holder can apply for permanent residency.⁵⁴ For 2010 and 2011, Australia issued 4,265 Skilled-Regional Sponsored visas, 1,520 of which were family sponsored and 2,745 of which were state- or territory-government nominated. In this same year, 4,615 of the people who had previously held the Skilled-Regional Sponsored visa received permanent residency.⁵⁵

Australia has another regional program called the Regional Sponsored Migration Scheme (RSMS). This program allows employers to petition for entrants in specific regions based on labor shortages.⁵⁶ The entrant must be entering a full-time job with at least a two-year duration.⁵⁷ From 2010 to 2011, Australia welcomed 11,120 migrants through the RSMS program.⁵⁸ A 2004 survey commissioned by Australia’s Department of Immigration and Border Protection found that 80 percent of employers rated the RSMS as an 8 or above on a scale of 1 to 10.⁵⁹ The same survey found that 90 percent of migrants found that the program met their expectations, and 91 percent were living in the same region as their RSMS employer.⁶⁰ A total of 15,385 migrants entered Australia on both the Skilled-Regional Sponsored and RSMS visa programs in 2010 and 2011.

In the long term, the success of any regional immigration program hinges on the ability of the participating states to retain foreign entrants. In the case of Australia, this is of particular concern in South Australia, a region that is losing population. A study on the plans of foreign entrants into South Australia showed that only 11 percent had plans to move outside of South Australia entirely. The study therefore suggests that South Australia would retain a

majority of the entrants it attracted on the region-based immigration scheme.⁶¹ The survey results are promising for both the region and the broader success of region-based immigration schemes in Australia.

HOW A STATE-BASED VISA PROGRAM COULD WORK IN THE UNITED STATES

Regional immigration visas are admittedly small programs in Canada and Australia, but they work well and there is little evidence that larger versions would face different problems. How might a scaled up version of such a system work in the United States? Under a state-based visa program, the federal government could establish entry parameters and allot a certain number of visas to participating states. The states would then recruit immigrants or allow state businesses to do so. The federal government could either set the number of region-based visas arbitrarily in advance, decide on the number after receiving petitions from participating states, or allow an unlimited number if states request them. Aside from determining the number of state-based visas and providing security clearance for would-be visa holders, the administrative duties of the federal government would be minimal. Determinations about which immigrants can be sponsored under this program and the terms of the visa could be left largely to the states.

Similar to how the Canadian PNP is managed, states should be allowed to sponsor visas for immigrant applicants after the federal government checks whether they are excludable under federal laws. The visa holder would be allowed to bring his or her dependents, subject to clearance by the federal government, or the decision about dependents could be devolved to the states. Dependents should not count against a state’s allotment of state-based visas if the numbers are capped, but that matter could swing either way in the final design of the program. The federal government could also establish the term of the state-based visa, and the visa could be renewable, provided the

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visa holder and his dependents satisfy the conditions of the program. As a starting point, the term for state-based visas could be the same as the term for the H-1B specialty employment visas—three years. Similar to the H-1B specialty employment visa, the state-based visa should be a nonimmigrant dual-intent visa that allows the visa holder to apply for a green card while working. This means that visa holders would be allowed to apply for permanent residency during their stay—again, provided the visa holder and his dependents meet the conditions of the program and remain in good standing under U.S. law.

In keeping with the federalist nature of this approach, many of the conditions placed on state-based visa holders would be left up to the discretion of the state governments. State labor departments, workplace commissions, or labor commissions could administer the visas. The states could determine the source countries from which they would like to recruit, perhaps targeting the areas from which sizeable numbers of people have already immigrated, thereby giving newcomers access to existing communities and social networks. The states could decide whether to restrict the employment and residence of a visa-holder to the state as a whole or a specific region within the state, such as a municipality. The federal government could even allow neighboring states to collaborate in their issuance of state-based visas. For example, Connecticut, New York, and New Jersey might reach an agreement in which a visa-holder from any one state is required to reside in the sponsoring state but free to work in the others, or vice versa.

The states could also set conditional requirements for full-time employment within their borders. For example, they could determine the maximum number of weeks that a visa holder could go between full-time jobs. Some states may decide to require would-be visa holders to demonstrate proof of employment before arriving. Other states could adopt a system similar to the diversity visa lottery (which currently allows 50,000 immigrants who enter a lottery from certain countries to come to

United States without a job offer) in which candidates considered employable by the state gain entry even if they do not have a specific job offer. State governments might also develop special investment criteria for recruiting foreign entrepreneurs.⁶² The fewer the restrictions the better, but regardless of their level of complexity, such a visa would result in an increase in lawful worker immigration.

Once in the United States, visa holders would ideally be free to work for any firm or organization within the designated state. Should they change jobs, states would most likely require the worker to notify the proper state agency of the change and their new employer would be required to affirm this change. Compared to employment-based visas such as the H-1B or the H-2A, state-based visas can offer visa holders and employers more flexibility in the local labor markets while also ensuring that the visa holder stays in the designated state. States could even register employers in their states that demand immigrant workers and allow immigrants to move between those employers with an absolute minimum of oversight. A state-based visa program should include a state-exchange program under which a visa holder can quickly apply for and receive sponsorship from another participating state. This sort of flexibility would benefit immigrants, firms, and state economies alike.

State-based visas would complement existing investment visas for immigrant investors, such as the EB-5 visa program.⁶³ Under the EB-5 program, foreigners obtain a green card if they invest \$1,000,000 or more in the United States, or \$500,000 in select distressed areas and hire a certain number of workers. State-based visa holders would be in the United States on a temporary basis with the option of eventually applying for permanent residency. The EB-5 visa, on the other hand, offers permanent residency very quickly. Those differences between the EB-5 visa and the state-based visa mean the two systems would likely complement each other rather than compete.

Finally, Congress could also reconsider the role that states play in legalizing unauthorized

immigrants. It would be possible, for example, to give the states the option of using state-based visas to sponsor unauthorized immigrants—either those who are already living and working within their borders or those living in other states or regions. California and Utah have already tried to create their own guest-worker visa policies without permission from the federal government, but legal concerns halted their efforts⁶⁴—an issue that would be solved if the federal government created a state-level visa.⁶⁵ Those legal concerns would no longer be relevant if states were allowed some discretion in running their own guest worker visa programs.

ENFORCEABILITY, CONSTITUTIONALITY, AND FREEDOM OF CHOICE

The state-based visa proposal described here raises a few common concerns involving issues of enforceability, constitutionality, and the restrictions placed on the mobility of visa holders. Though these concerns merit careful attention, none of them poses an insurmountable obstacle to the implementation of a successful state-based visa program. The program proposed here is consistent with constitutional principles. What's more, the evidence from region-based immigration programs in Canada and Australia suggests that effective enforcement of state-based visas is possible. State-based visas would offer immigrants far more freedom and choice than the current employment-based visa system. In short, state-based visas are not only legal and enforceable, they offer big improvements in efficiency and equity compared to existing American visa programs.

Enforceability

State-based visas are largely self-enforcing. The possibility of a path to permanent residency will likely keep violations of the state-based visa conditions to a minimum. Violations are also likely to be low because states will have the opportunity to prescreen the candidates,

selecting those who are most likely to stay put. The high retention rates in the Canadian and Australian programs are reassuring on this point. The Canadian Provincial Nominee Program is one in which a nominee's commitment to stay in the nominating province is strictly voluntary. Because the state-based program in the United States would combine screening and recruitment with legal conditions on residency, the retention rates would likely be even higher.

The state-based visa structure would also allow states to confirm that visa holders are satisfying the conditions of their stay. For example, if the visa holder changes jobs, he or she would most likely have to notify the appropriate state agency of the name and location of the new employer. The new employer would then be required to file papers with the state, allowing the government to compile evidence of compliance with the conditions of the visa. Enforcement on the local level is likely to be more effective, especially of a legal work program, than monitoring on the federal level. The likelihood that a state-based visa holder would move outside of the region for a higher wage is quite low because authorized immigrants realize a wage premium relative to unauthorized immigrants of around 6 to 25 percent—assuming that leaving the state would be unlawful.⁶⁶ Thus, violations of the terms of the visa would likely come at the cost of a substantial decrease in wages.

Constitutionality

The state-based visa program described here is also fully consistent with current interpretations of the Constitution. Historically, the Supreme Court has interpreted Congress to have “plenary power” over immigration, generally giving deference to the political branches of the federal government as an extension of the Naturalization Clause under Article I, section 8, clause 4, which gives Congress the power “To establish an uniform Rule of Naturalization.”⁶⁷ Under current interpretations, this gives Congress the sole power to establish naturalization guidelines. However, Congress

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can also allow states to be involved in immigration policy in areas besides naturalization, such as managing a state-based visa within federal guidelines.⁶⁸ Some immigration policies, with the exception of naturalization, can be partly devolved to the states within a range of powers permitted by the federal government.

The recent case of *Arizona v. United States*, which decided the constitutionality of Arizona's strict immigration laws, reiterates the point that states are allowed to participate in immigration policy and enforcement, but only within the scope permitted by the federal government.⁶⁹ In debating the case of *Arizona v. United States*, Peter Spiro, an immigration law scholar at Temple University's Beasley School of Law, wrote, "[I]n *Arizona*, the Supreme Court constricted the possibilities for unilateral state innovation on immigration, both good and bad. That does not stop the federal government from affirming state discretion."⁷⁰ A state-based visa program does just that—allowing states to participate in the selection of immigrants under guidelines permitted by the federal government which is consistent with current interpretations of the Supremacy Clause and the plenary power of the federal government in the matter of immigration.

It is also important to note that U.S. law defines a nonimmigrant visa holder as "an alien who seeks temporary entry to the United States for a specific purpose," and the federal government may set conditions in accordance with this purpose.⁷¹ For example, in the current immigration system a foreign entrant may be required to be attached to a singular petitioning employer under a number of employer-based non-immigrant visas, such as the H-1B. Like holders of employment-based visas, state-based visa holders would be nonimmigrants with a temporary right to live and work in the United States and an option to pursue permanent residency. As such, the state-based system is simply a variation on the condition being attached to the foreign entrant.

Once a state-based visa holder obtains lawful permanent residency, also known as a green card, he or she is free to live and work anywhere

in the United States. This is an important point for participating states. The state-based visa program is not a panacea for states suffering from chronic out-migration and dwindling tax bases. State-based visas give states the opportunity to attract new residents and boost economic growth. But to recruit and retain foreign-born workers and their families, state and local governments will have to demonstrate that they are capable of providing public safety, basic public services, and a legal environment that encourages economic growth. If they fail to do so, state-based visa holders will return to their home countries or move to other states once they obtain permanent residence.

Freedom of Choice

In terms of freedom of choice, the state-based visa program offers an improvement over existing employment-based visas. For starters, a state-based visa program would result in a net increase in lawful immigration opportunities, thus creating opportunity where none previously existed. State-based visas would also create an alternative to the current employment-based visas, which have serious drawbacks. As it stands, these visas tie immigrants to one employer, effectively limiting where the immigrant can live and strictly limiting where he or she can work. Though state-based visas would come with conditions on the location of an immigrant's residence and employment, they could also give the visa-holder far more choice about whom to work for. If the visa holder has a better opportunity with a different regional employer, he or she would be free to pursue it without needing to change the visa's sponsorship.

For those reasons, the state-based visa would be more equitable than existing employment-based visas. The current employer-based system grants monopsony power to the employer that sponsors work visas. As a result, the sponsoring employers have immense bargaining power over workers on employer-based visas that the Department of Labor (DOL) tries to mitigate by regulating the wages and hours of the visa holders—and oftentimes fails.⁷² The best defense against abusive employers is not

the DOL, but the ability of the worker to quit and find a new job. Workers with a fully portable work visa would be able to switch jobs away from dishonest employers, but government visa rules prevent this natural response. The DOL regulators cannot possibly substitute for this self-correcting response, nor should they even try. States should avoid these issues by making their visas as portable as possible.

The state-based program allows regional labor markets to achieve outcomes that federal regulators cannot. Because state-based visa holders can work anywhere in the designated state, regional employers would have to compete to employ the visa holders just like they must compete to employ all other workers. Visa holders would be part of an integrated labor market, so no one firm would be able to hire an immigrant at a wage that is below the going market rate due to a government grant of monopsony privilege.

CONCLUSION

A more state-based approach to immigration policy is consistent with American traditions of federalism and regional experimentation with economic policy. State and local governments are better positioned than Washington when it comes to understanding local economic demands and the local capacity for additional immigrants. They should have a larger role in recruiting the foreign entrants who live and work within their borders.

Unlike existing employment-based visas that tie foreign workers to one firm, state-based visa holders would be free to work for any employer they'd like within the state—leading to thicker, more equitable, and more efficient local labor markets. Other conditions could also be attached to the state-based visas by the states, such as bars to the usage of state public benefits or rules regarding full-time employment.

A state-based visa program would largely direct immigration to the states that want it without forcing many additional immigrants on the states that do not. Immigrant movement from states that sponsor these visas to

other states is inevitable but, given the experience of Canada and Australia, it would likely be a relatively small number. The program would be particularly attractive to regions that are struggling with population decline. In such areas, immigration can revitalize neighborhoods, stabilize housing markets, expand the local tax base, deepen the local pool of human capital, attract and encourage new businesses, and generate job growth.

States are also in a better position to understand any potentially adverse impacts from immigration and adjust their sponsorship or other public policies accordingly, be it nominal wage impacts on vulnerable groups such as native high-school dropouts or budgetary impacts on state and local authorities. By allowing states to tailor immigration policy to local needs, region-based visas would help to shift a state's median voter toward supporting a more open immigration policy.

Regional immigration programs in Canada and Australia can inform American policymakers of the benefits and potential designs for a state-based visa program. The Canadian and Australian programs enjoy high retention rates and popularity among participating regions, migrants, and firms. The United States should follow suit.

NOTES

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