EVIDENCE-FREE IMMIGRATION POLICYMAKING IN THE AGE OF TRUMP

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A Quintet of Evidence-free Policy Prescriptions

Here is the menu of evidence-free policy prescriptions most favored by anti-immigration groups and politicians these days:

1. ***Invest more heavily in border enforcement***, because the existing level of enforcement is significantly deterring illegal entries, and doing more (building a new border "wall," deploying more Border Patrol agents, prosecuting 100% of migrants apprehended through the federal court system, and separating migrant families) would discourage even more potential migrants from trying to enter the U.S. from Mexico without authorization.

2. ***Government should do nothing that incentivizes more migration***. All public benefits allegedly do that – certainly welfare, food stamps, access to health care and education, driver's licenses. Also, the opportunity to legalize your status, and programs like DACA that offer temporary protection from deportation – all encourage illegal immigration. Instead, government should only create <u>disincentives</u> for migration, like threatening a lengthy incarceration if one is apprehended crossing the border, or separating parents from their children if they are caught entering as a whole family.

3. ***"Chain migration" should be ended,*** by changing the legal immigration system to sharply curtail visas based on family ties and emphasize "merit" criteria like job skills and formal education. Birthright citizenship should be repealed, preventing so-called "anchor babies" from gaming the system to provide benefits to their relatives.

4. ***Sanctuary cities (and states, like California and Oregon) cause more crime and should be prohibited***. Local police should be used as force-multipliers to carry out larger numbers of deportations.

5. ***The United States should pressure Mexico to do more to stop illegal migration.*** Currently, Mexico "does nothing" to curb the flow into the United States, the restrictionists allege.

What Does the Evidence Show?

The basic problem with these policy prescriptions is that there is no scientifically defensible evidence to support any of them. If you believe in *evidence*-based policy-making, here are the facts that you need to know:

Border enforcement and Family Separation

President Trump continues to insist that illegal immigrants are "pouring" across the border, but in fact, Border Patrol apprehensions in recent years have fallen to early-1970s levels. The current spike in apprehensions at the border is being driven by Central Americans (especially unaccompanied children) who are fleeing home-country violence and poverty -- neither of which would be reduced by stronger U.S. border enforcement. In the last fiscal year, only one-third of migrants apprehended by the Border Patrol were from Mexico. Most of the rest were from Honduras, El Salvador, and Guatemala.

There is an overwhelming consensus among academic experts that Mexico has ceased to be a country of large-scale emigration to the United States. The pool of potential Mexican migrants has been sharply depleted since the 1990s, due in part to Mexico's long-term transition to a low-fertility country, as well as permanent settlement of undocumented migrants in United States. Circular, short-term Mexico to U.S. migration has largely ceased, partly due to tougher border enforcement.

Moreover, there is a much higher incidence of "stay-at-homes" in Mexico today – people with an extremely low propensity to migrate to the U.S. -- than before the Great Recession. For example, the proportion of potential migrants interviewed by my field research team in one traditional migrant-sending community in Yucatán who were planning to migrate to the U.S. in the next 12 months plummeted from 17 percent in 2006 to just 2.5 percent in our 2015 field study.

Today, decisions to forego migration to the U.S. are being shaped by a new calculus of factors, like the growing attractiveness of migration to cities within Mexico, the risks of exposure to drug and gang violence on the way to the U.S. border, and family dynamics like a lack of social network contacts in the U.S. The fact that there has been no rebound in Mexican migration to the U.S. since the Great Recession ended -- despite a robust U.S. job market -- is a strong indicator that the diminished flow is likely to be permanent.

On May 11, President Trump's chief of staff, John Kelly, announced the formal adoption of a family separation policy, under which undocumented immigrants apprehended at the border together with their children will be incarcerated in federally-funded prisons for months while awaiting prosecution and deportation. The ACLU is suing the Trump administration to block the family separation policy, but it remains in effect. The new policy is to treat the parents as people-smugglers and prosecute 100 percent of them in federal courts. Their children are being taken away and put into juvenile detention facilities or foster care for an indeterminate period. More than 11,000 migrant children are currently in federal custody; 339 of the parents are now

headed to federal lock-ups in Oregon and Washington, hundreds or thousands of miles from where their children are being held.

These families are overwhelmingly Central American – not Mexican – and are trying to protect their children from home-country violence. They are not "illegal aliens" who snuck across the border and became fugitives from justice. The vast majority of them present themselves to U.S. immigration inspectors at the border and request asylum.

Gen. Kelly claimed "deterrence" as the rationale for the family separation policy. In reality, it amounts to mindless cruelty. The children, whose emotional health can be permanently damaged by such treatment, are collateral damage in the Trump administration's ham-fisted attempts to construct deterrence in various forms. Consider the choice that Mr. Kelly and his boss want parents to make: Stay home and face the near certainty that your children will risk being recruited into violent gangs or killed, versus coming to the U.S. border and trying your luck to gain some measure of protection for them. What responsible parent would choose the stay-home option?

The piecemeal building of Trump's border "wall" as Congress ladles out the funding is purely symbolic. We already have a virtual wall, consisting of stadium-intensity lighting, highly advanced radar systems, thermal imaging, high-definition cameras, double- and in some places triple-fencing in all urban areas and stretching out into the desert and the Pacific Ocean.

We have built a formidable obstacle course along our southern border, but field interviews show that more than 90 percent of undocumented migrants who try to enter the U.S. are eventually successful, on the same trip to the border. The extant empirical research shows that continued construction of physical barriers at the border will not appreciably deter people trying to escape low-end poverty and violence.

Effects of Public Benefits on Decisions to Migrate

A huge body of evidence from field research on motives for migration, involving tens of thousands of face-to-face interviews with experienced Mexican migrants and potential first-time migrants to the U.S. shows that Mexicans have migrated because of greater economic opportunity in the U.S. (more jobs, better wages) and family ties to the U.S. (close relatives already living here), or a combination of these two factors.

In the case of migrants from Central America, the desperate need to flee gang- or drug-traffic-related violence is a powerful motive, as well as lack of jobs in their home countries. Among migrants from Honduras, El Salvador, and Guatemala, it is virtually impossible to separate lack of economic opportunity from violence as drivers of migration.

But there is simply no evidence from field interviews with Mexican and Central American migrants that access to health care or other kind of public benefit, like DACA protection, significantly influences decisions to migrate. It stands to reason that denying public benefits wouldn't deter unauthorized migration. Nevertheless, the so-called "magnet hypothesis" was

the rationale used by Congress to exclude undocumented immigrants from Obamacare. The time-worn notions that immigrants are all potential public charges and disproportionately use tax-supported services remain key elements of the anti-immigration catechism.

Chain Migration

The phrase "chain migration" has been weaponized in recent years by anti-immigration groups and conservative news media. Social scientists have a less pejorative name for this type of migration: "socially-networked migration," or "family reunification migration." It simply means that some people migrate to the U.S. because they have family ties to this country – like Italians and many other previous generations of immigrants. If you migrate because of family ties, you are, in effect, trying to reunify your family, within the U.S. The term "chain migration" implies that family-based immigration is nefarious, harmful, burdensome, or at least of no benefit to the United States.

Essentially, the debate over "chain migration" is a campaign to drastically reduce the total number of immigrants arriving in the U.S. through our legal immigration system – probably by at least half. That's what folks like Stephen Miller, Donald Trump's senior White House advisor on immigration, want to happen. Under the proposal that Mr. Miller has been pushing, only spouses and underage children of U.S. citizens would be eligible for visas – not parents or siblings.

Currently, about 64% of legal-entry visas are based on family ties, so the most expeditious way of reducing the overall level of legal immigration is to cut family-based visas. A strictly employment-based system prioritizing job skills and education would admit many fewer people -- if only because the U.S. is competing with other First World countries for highly-skilled and professional workers.

The net effect of changing our legal immigration system in this way – replacing family-based visas with skills-based visas – would be to "whiten" the immigration flow and reduce the share of Mexicans in the foreign-born. By far the largest group of foreigners now applying for family-based visas are Mexicans. The same "whitening" logic applies to Trump's insistence on eliminating the "diversity visa lottery" program, which grants visas to about 50,000 applicants per year from under-represented nations, mainly African countries.

One of Donald Trump's favorite "alternative facts" is the notion that once someone gets a visa through family ties, he or she can immediately sponsor an *unlimited* number of family members for visas, including distant relatives. Actually, under current law, U.S. citizens can petition for visas only for their spouse, parents, siblings, and married adult children. If you have just a green card – not U.S. citizenship – you can sponsor only your spouse and unmarried children for a permanent-resident visa.

That said, there's a very long line for visas, because of numerical limits placed on each category of family-based immigrants each year, as well as a limit on the number of visas available to nationals of a given country. No group of immigrants from a single country can exceed 7 percent of the total number of people immigrating to the U.S. in a single fiscal year. That restriction penalizes applicants from high-visa-demand countries like India, Mexico, and the Philippines.

As of November 1, 2017, there were more than 3.9 million people waiting in line for family-based visas. Depending on the country of origin, a sponsor's own immigration status (green-carder vs. US citizen), and the visa applicant's relationship to their sponsor, the waiting period can last from several months to decades, in the case of high-demand countries.

A variation on "chain migration" that is favored by some anti-immigration groups and politicians is the inflammatory notion of "anchor babies," i.e., children born to undocumented women living in the United States, who migrated illegally for the express purpose of giving birth on U.S. soil. The child would be a U.S. citizen by birth (unless we repeal the 14th amendment to the Constitution) and could then sponsor their parents and other family members for visas.

The parent of an "anchor baby" would have to wait for his or her child to reach the age of 21 to be eligible for a visa. In addition, they would have to leave the U.S., return to the home country, and have their child begin the long process of applying for a family reunification visa. And if they have lived in the U.S. illegally for a year or more, there is a 10-year ban on re-entering the United States. So, all told, the undocumented parents of a so-called anchor baby could easily face a 24-to-31-year wait to complete the legal immigration process. Accordingly, it's difficult to imagine that having an "anchor baby" was the goal of very many people who enter illegally or who overstay a tourist visa. Clearly, this is a highly inefficient way of gaining legal status in the United States.

Sanctuary Cities and States

The debate over "sanctuary cities" (and in the case of California and Oregon, "sanctuary states") is also clouded by numerous misrepresentations. First among them is the notion that sanctuary jurisdictions endanger public safety, by turning loose hordes of violent illegal alien felons who prey on law-abiding citizens. This claim is consistent with the notion that all immigrants are a potential threat to the physical security of Americans – a line pushed constantly by both Donald Trump and Attorney General Jeff Sessions.

The reality is that there is no correlation between sanctuary cities and crime rates. In fact, there is a large body of research showing that counties with sanctuary policies have *lower* crime rates than counties where the police collaborate actively with federal immigration authorities. Part of the explanation is that sanctuary cities have large immigrant populations, and extensive research shows that immigrants commit crimes at far *lower* rates than native-born U.S. citizens.

A national survey of hundreds of police chiefs found that a large majority of them opposed having their police officers participate in immigration enforcement, because it undermines trust between the police and immigrant communities. Crimes are more likely to be reported, and witnesses to crimes are more likely to come forward, if undocumented immigrants don't fear that local police are operating as agents of ICE.

The latest evidence comes from a field experiment run by my UC San Diego colleague Tom Wong last fall. Half of the undocumented Mexican nationals living in San Diego County who were interviewed in the survey were asked whether they would be more or less likely to cooperate with local law enforcement if they knew that the police do *not* work with ICE on immigration enforcement. The other half of interviewees were asked were asked about cooperation if they knew that the police *were* working with ICE. The results show that 64 percent of the latter group said they were less likely to report a crime they had witnessed, and 46 percent said they were less likely to report being a victim of a crime.

Another myth is that sanctuary laws prevent federal immigration agents from doing their jobs. In fact, there is absolutely nothing that protects undocumented residents of sanctuary cities from being apprehended and deported. Local police can't interfere with immigration arrests. But sanctuary jurisdictions *do* require that immigration agents have a warrant issued by a judge, or approved by a judge, in order to take someone out of a jail when they have finished serving their time or when they have posted bail. That's a Fourth Amendment issue. ICE can't just issue their own so-called "administrative warrant" and claim that it passes legal muster, with no judicial scrutiny.

Attorney General Sessions is suing the state of California, over three new laws that make it more difficult for federal immigration agents to operate there. But if you read the California laws, they don't prevent ICE agents from collecting and deporting undocumented immigrants who have committed a serious or violent crime, or those for whom ICE has obtained a judge's warrant. The relevant state law only blocks blanket ICE access to jails and court houses, and warrant-less re-arrests. ICE can still go into a private business and demand to see employee hiring records, but only if they have a court order or a subpoena – no fishing expeditions.

The fundamental issue is whether the federal government can compel states and localities to cooperate with federal immigration enforcement, and punish them if they don't by taking away federal grant funds. This will wind up being decided by a Supreme Court ruling.

Mexico's "Total Failure" of Immigration Control

In Mr. Trump's fantasyland, illegal aliens are "pouring into" the U.S. from Mexico, totally unimpeded by the Mexican government. In fact, since the 1980s, and especially during the presidency of Enrique Peña Nieto, Mexico has implemented a serious trategy of controlling migrant transportation routes that lead north.

Mexican officials have collaborated extensively with their U.S. counterparts to keep undocumented third-country migrants bottled up in Mexico and away from the U.S.-Mexico border. Mexico's eportations of undocumented transit migrants have skyrocketed. In recent years, Mexico has been apprehending and deporting more transit migrants from Central America than the U.S. has been deporting -- in some years, twice as many.

Large numbers of transit migrants do manage to escape detection while they are in Mexico or bribe their way to the U.S. border. But it's simply not true that Mexico is making no effort to stop them.

Trump's mass deportation campaign

Immigration arrests are up nationally by more than 42 percent since Trump took office. But the 226,119 removals conducted in the 2017 fiscal year still don't match the Obama administration's record. Obama ramped up deportations to build credibility with Congress, trying to persuade it to enact comprehensive immigration reform. That effort collapsed in 2013.

The big difference is that the Trump administration has ditched Obama's approach of targeting serious criminals and potential terrorists. What we have now is an indiscriminate dragnet. Every person unlawfully present in the U.S. is now a priority for deportation – which means that there *are* no real priorities. And there are plenty of ways in which an undocumented immigrant can be swept up -- even in sanctuary cities and counties.

Mr. Trump and Jeff Sessions would have us believe that every undocumented immigrant being rounded up is a criminal who goes around committing acts of violence against law-abiding citizens. Trump is particularly obsessed with MS-13 gang members. But MS-13 gang members are a tiny fraction of the undocumented immigrants now being removed – exactly 0.003 percent in the 2017 fiscal year.

ICE claims that 92 percent of undocumented immigrants that it removed in the last fiscal year were "criminal aliens." But ICE's definition of "criminal" is extremely broad. The agency's own statistics show that the single largest category of removals consists of people who have committed a traffic offense, or were arrested for minor drug possession, or had an immigration violation (such as re-entering the country after having been deported or using false papers to gain employment). Illegal entry *per se* is not a criminal violation; it's a civil offense.

Two-thirds of those being rounded up now are people who have lived in the U.S. for long periods – between 10-20 years, on average. They are people who often have U.S.-born children, who are fully employed and are paying taxes. Many of them own and operate their own small businesses. Uprooting people like that and breaking up their families serves no socially useful purpose. It does not create a deterrent for potential new migrants. It has negative economic impacts on businesses and communities. It doesn't make anyone safer. And it costs a lot of taxpayer dollars – upwards of $12,000 per deportation, including the $180 per day (for about three months) that we spend to detain an undocumented immigrant while awaiting removal.

There are several practical constraints on the Trump administration's capacity to carry out its mass deportation campaign. There aren't enough ICE agents to round up and incarcerate much larger numbers of immigrants. Local police would have to be used extensively as force-multipliers, but this is opposed by most police chiefs, including virtually all in our largest cities. And there is a lack of capacity in federal detention facilities. Only About 34,000 beds are currently available for immigration detainees, per night.

What's the point of all this? First, there's the obvious political rationale: keeping one of Mr. Trump's central campaign promises ("They'll all be gone, folks," Trump promised a huge rally in Phoenix four months before the election). Second, aggressive immigration enforcement in the interior of the country – far from the border – certainly strikes terror into immigrant families and communities. To the extent that it forces undocumented immigrants to live in constant fear, it may cause some of them to consider returning to their home country. That's clearly the hope of immigration restriction extremists in the Trump administration: that aggressive enforcement will induce mass self-deportation, thereby eliminating the need to hire tens of thousands of more ICE agents to root them out.

But mass self-deportation is likely to remain a fantasy of immigration hawks. To make it happen, the federal government would have to make undocumented workers truly *unemployable.* To accomplish that, worksite enforcement – raids and audits of hiring records -- would have to be ramped up to a level never seen in this country. That would provoke a chorus of complaints to Congress from impacted businessmen and local officials. The economic cost of removing so many essential workers would be too high, especially when our labor market is tightening. It's the worst possible time to be purging our work force of immigrants.

 The Trump administration says that can be done by forcing all employers to verify the legal status of job applicants, using an on-line data-base-matching system called "E-Verify" that has been around since 1996. Except for federal agencies and contractors, and employers in states that have their own laws requiring employers to use the system, participation is voluntary. Nationally, just 10 percent of businesses use E-Verify, nationally.

Mandatory E-Verify wouldn't work *without* issuing new, highly-secure identity cards to everyone in the labor force. That would cost tens of billions of dollars and take probably a decade to implement. Congress has steadfastly resisted that idea on civil liberties grounds. Absent a biometric, universally issued ID, borrowed documents containing valid information that pertains to someone else can still be used to get a job. That's why the E-Verify system isn't taken seriously by professionals within the immigration bureaucracy. It wouldn't change most employers' hiring practices, because even if they suspect document fraud, the on-line system won't flag it, and there is no credible risk of prosecution if an employer simply doesn't use the system, even if it's mandated by federal law. Thus, it's no magic bullet -- just more political nonsense.

The Common Denominator

What strings these evidence-free policies and policy prescriptions together is a hard, cold political calculus: At least for now, a significant segment of the U.S. electorate can be motivated to vote, for Republican candidates, by appealing to nativist attitudes. Scapegoating immigrants for economic grievances and demonizing them as criminals (or potential criminals) has been an integral part of American political praxis since the mid-18th Century. The only new wrinkles today are social media and highly partisan electronic media that serve as giant megaphones for anti-immigrant politicians.

Donald Trump has taken us back to the 1920s, the previously most virulent nativist era. The administration's four horsemen of the anti-immigrant apocalypse – Stephen Miller, Mr. Trump's chief domestic policy adviser; Attorney General Jeff Sessions; chief-of-staff John Kelly; and the president himself – have created an absolutely toxic environment for immigration policy-making. Congress is so badly divided on the issue that it can't even pass a bill to extend protections for DACA recipients. (I remain deeply skeptical that the House Republicans can agree on a bill that can also pass the Senate and win Mr. Trump's approval.) What's most needed – comprehensive immigration reform legislation with a generous path to legalization – looks like a distant mirage.

What must change to detoxify the policy environment? In a word, demography. The U.S. birthrate has already fallen to a 30-year low, and a reversal of that trend is highly unlikely. Our fertility rate would be even lower if we hadn't had a last great wave of Mexican immigration, in the 1990s and 2000s. With unemployment at 3.8 percent -- last seen for a sustained period in the 1990 -- labor shortages are spreading through the U.S. economy, from nursing homes to fast-food restaurants. We are also faced with the need to replace 76 million retiring baby-boomers. How? There aren't enough native-born teenagers entering our labor force. And Mexico's long-time role as a large-scale supplier of labor to the U.S. has ended, due in part to the 70 percent decline in Mexico's fertility rate over the last half century.

Eventually, these demographic trends could take much of the political sting out of immigration. They may even yield a Congress willing to enact comprehensive reform, and a president who defends immigration rather than decrying it. But in the short term, undocumented immigrants and their U.S.-born children will face major challenges. Organizations like the ones represented in this conference will play a vital role in buffering them from hyper-aggressive and randomly applied immigration enforcement. More power to you!