



Legal Immigration

Summary and Key Talking Points

Policy Proposals

1. Establish a merit-based immigration system under which America selects the majority of future immigrants based on skills as opposed to the current majority family-based system under which immigrants select future immigrants based on their relations.
2. End chain migration.
3. End universal birthright citizenship.

Quick Facts

1. Many countries around the world such as Canada, Australia, and the United Kingdom use merit-based immigration systems successfully.
2. In Canada, 56 percent of immigrants are admitted based on merit; in Australia, 62 percent of immigrant admissions are merit-based; in the United States, however, fewer than 15 percent of immigrant admissions are based on merit.
3. In 2017, the Congressional Budget Office estimated that about 4.5 million U.S. citizens under the age of 18 have at least one inadmissible or deportable parent.

Power Phrases

Safe, Prosperous, and Free

- U.S. immigration policy should keep the American people safe, prosperous, and free.

A System for the 21st Century

- Our current legal immigration system is outdated and fails both immigrants and Americans.
- Prioritizing “merit”—the ways immigrants can contribute to the country—over distant family connections, like many other countries do, helps ensure immigrants can thrive in our country while maximizing the benefits of immigration for Americans.

Step-by-Step Reforms

- Congress must consider the full range of necessary reforms to legal immigration, border security, and enforcement, using a step-by-step approach to address each on its own merits rather than a comprehensive approach that often leads to amnesty.

The Issue

The Biden Administration has caused considerable damage to America by opening our southern border, and among those who have been most severely victimized by such poor policies are those who have sought to immigrate to the U.S. lawfully. By seeking to erase the line between legal and illegal immigration, the Administration's policies force those who have followed the rules to wait longer for their immigration applications to be adjudicated. Additionally, efforts to effect needed reforms in our legal immigration system will be further delayed because those who care about border security will need to restore a secure border before tackling the legal side of the immigration equation. When legal immigration is addressed, reform must be designed for the 21st century to maximize the benefits of legal immigration for America and minimize its costs.

Under the current system, the U.S. provides lawful permanent residence—a green card—to around one million foreigners each year. In fiscal year 2019, for example, the U.S. granted 1.032 million green cards. Green cards are allotted according to decades-old statutes. As a result, the largest category of green card distribution is to family members of U.S. citizens and lawful permanent residents. In 2019, the U.S. granted 709,904 green cards—more than two-thirds of the total granted—based on a recipient's status as a family member or an immediate relative. Of this subtotal, more than 500,000 were given to spouses, children, and parents—"immediate relatives" under U.S. law—who can receive an unlimited number of green cards each year. By contrast, only 139,458 green cards were awarded based on employment. The Diversity Visa Program lottery issued approximately 43,000 visas, and approximately 139,000 green cards were issued to refugees, asylees, and individuals in other categories.

By comparison, countries like Canada and Australia grant the majority of their permanent visas for economic reasons. Other nations also define "immediate relatives" more narrowly to include only spouses and minor children. These policies make sense because these countries are using immigration to maximize national interests. By focusing on merit-based immigration, countries can ensure that immigrants contribute to the economy and will not consume government benefits at the expense of existing taxpayers. The U.S. system, however, minimizes American fiscal considerations and fails to maximize our national interests.

The COVID-19 pandemic has made the need for an economy-based immigration system even clearer. The premise behind such a system is not simply to bring in more employment-based immigrants and fewer family-based immigrants. Rather, the idea is to have an overall immigration system that is attuned to America's needs. With unemployment at historic highs because of paid unemployment and other factors, the employment priority is to get Americans back to work. Accordingly, the federal government needs to exercise great care in crafting and revising immigration policies so that they benefit both individual Americans and the American economy.

Beyond issues of money and economic growth, immigration is also about assimilating people with certain values and principles. Historically, governments and institutions at all levels have played an active role in the Americanization process. The Founders knew that the new country would attract even more immigrants, so they believed in assimilating and educating them, as well as the native-born, to inculcate the nation's philosophy into a new population, giving American democracy its "demos." Over the past few decades, however, America has drifted away from assimilating immigrants: Elites in government, the culture, and academia have led a push toward multiculturalism, which emphasizes group differences. Instead of *E pluribus unum*—out of many, one—assimilation is seen as a humiliating demand that the purportedly marginalized conform to the identities of their supposed oppressors. This view must not be allowed to control U.S. policies.

Recommendations

Establish a merit-based immigration system. Congress should modify the family preference system and move to a new merit-based system of visas. A shift from family-based immigration to merit-based immigration would prioritize economically and fiscally beneficial immigration and better serve our national interest. Such a system should be designed in a way that recognizes that the market is the best and most objective way to identify those who will benefit the economy. This starts with requiring immigrants to have an offer of employment (an objective market signal) or financial means of self-support before entering the country. The government would not be picking winners and losers among industries, job categories, or immigrants.

If there are more requests than available green cards, Congress could consider a limited points system or an auction that again would emphasize the market. For example, the compensation offered to an immigrant by a company would have significant priority, as compensation provides objective evidence of market demand. Other heavily weighted factors could include financial resources and assets, educational achievement, professional credentials, job experience, and fluency in English. These factors, while not perfect or completely objective measures, would focus on reasonable measures of economic and fiscal impact, avoiding both government micromanagement and the need to burden American taxpayers with higher levels of government welfare assistance.

One way to ensure that merit-based green card candidates are indeed working or otherwise providing significant benefit to the U.S. would be to make their legal permanent residence conditional for the first several years. To transition from a conditional lawful permanent resident (LPR) status to full LPR status, immigrants should be required to maintain employment for most of the conditional period, although they would be allowed to switch jobs. The total time required to hold a green card before becoming a citizen—five years—would remain unchanged, but a requirement that the holder not be a public charge before becoming a U.S. citizen could be added.

Focus on the nuclear family and end chain migration. Congress should allow the number of immediate relatives who are granted residency to remain uncapped while restricting the definition of immediate relatives to spouses and minor children. Congress should cut all or almost all of the current family preferences for extended family, thereby ending chain migration. U.S. citizens could continue to sponsor their parents, but only for a renewable temporary visa that would not make them eligible for welfare benefits and would require the citizens to provide proof of health insurance and financial support of their parents. It is also worth noting that extended family members may have other legal avenues for immigrating to the U.S.

End the Diversity Immigrant Visa (Lottery) Program. Congress should eliminate the Diversity Immigrant Visa Program, which provides 50,000 immigrant visas annually to random individuals from countries with low rates of immigration to the United States. The United States should evaluate potential citizens individually. Rather than leave to chance the question of who gets an immigrant visa, Congress should decide based on the qualifications of potential citizens, taking into consideration experience, professional credentials, and education. The Diversity lottery treats people not as individuals, but as the means to artificially create representation from various countries. Congress should end this system because it does not serve the national interest and discriminates based on national origin.

End universal birthright citizenship. The granting of birthright citizenship to all children born in the United States regardless of the parents' immigration status is both the result of a misinterpretation of the Fourteenth Amendment and inconsistent with the intent of the amendment's framers. The legislative history of the amendment makes clear that its purpose was to bestow citizenship only on those who owed their permanent, undivided allegiance to the United States and were subject to the fullest extent of its jurisdiction. In particular, this meant the newly freed slaves, who were lawful and permanent U.S. residents and not subject to any foreign power. Congress should clarify the federal definition of "citizenship" in a manner that conveys its

consistency with the original understanding of the Fourteenth Amendment by explicitly stating that only the U.S.-born children of individuals subject to the complete jurisdiction of the United States are citizens by virtue of birth on U.S. soil. This would include the children of lawful permanent resident aliens referred to in *United States v. Wong Kim Ark* but would exclude the U.S.-born children of illegal or temporarily present aliens.

Promote patriotic assimilation. Policymakers should overhaul policies that do not blend well with immigration. Concepts such as victimhood, oppressor–oppressed, compensatory justice, racial preferences, and coercive diversity are harmful and should not govern policy. Congress must put an end to measures that coerce immigrants and their American children and grandchildren into pan-ethnic identity traps. We must stop categorizing people as victims with protected status and start mandating that they participate in all aspects of society. Immigrants come to the United States to be American, not to join synthetic nations within the nation.

The executive branch should stop dividing society into groups. Specifically, it should rescind the 1977 Office of Management and Budget (OMB) directive and its 1997 revision that divides the population into “Hispanics,” “Asians,” and other such categories. In addition, the courts should finally declare racial preferences in admissions and government contracts to be unconstitutional.

Candidates for citizenship should demonstrate a strong understanding of America’s language, history, and civic life. The patriotic rituals surrounding the naturalization ceremony should be augmented to reinforce the event’s transformational character. Once immigrants go through naturalization, they are expected to have no other national loyalty, whether to the lands of their birth or to a “nation within a nation.” The government should return to the guiding principle that once an immigrant is naturalized, he or she should be encouraged, in George Washington’s words, to “get assimilated to our customs.”

Public schools should reinforce these values and should not use “culturally responsive” teaching methods (used to teach even mathematics) that divide children into different ethnic boxes. Rigorous studies indicate statistically significant positive effects of school choice or private schooling on the teaching of civic values while the civics education provided by public schools is falling short. Government schools must do a better job of instilling civic values, and policymakers at the state level should provide more charter schools and private school choice options for families.

Facts + Figures

FACT: Many countries around the world successfully use a merit-based immigration system to advance their national interests.

- Countries that use a merit-based system include Canada, Australia, New Zealand, and the United Kingdom, among others.
- Fifty-six percent of those who immigrate to Canada are admitted based on merit, and 62 percent of those who immigrate to Australia are admitted based on merit, compared with fewer than 15 percent in the U.S.

FACT: Unlimited birthright citizenship is not required by the Constitution and is harmful to an effective immigration system.

- The current implementation of the Fourteenth Amendment grants citizenship to nearly all children born in the United States, but this contradicts both the history and the original meaning of the amendment.
- Few advanced global economies use unlimited birthright citizenship, as it attracts illegal immigration and birth tourism. For example, no country in Europe provides unrestricted birthright citizenship.

FACT: Assimilation and Americanization are essential correlates of immigration.

- George Washington stated that immigration succeeds when “by an intermixture with our people, they, or their descendants, get assimilated to our customs, manners and laws: in a word, soon become one people.”
- Abraham Lincoln pointed out that the Founding ideas present in the Declaration of Independence can be grasped by immigrants. He said that they act as “the electric cord in that Declaration that links the hearts of Patriotic and liberty-loving men together.”
- In a 1919 letter to the American Defense Society, Theodore Roosevelt emphasized the importance of assimilation into American society, saying that “we should insist that if the immigrant who comes here in good faith becomes an American and assimilates himself to us, he shall be treated on an exact equality with everyone else.”

Additional Resources

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Lora Ries, “How the Left Uses Children as Pawns in Immigration Policy,” Heritage Foundation *Commentary*, August 16, 2021.

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Lora Ries, “The Left’s Immigration Policies Are Endangering Children,” Heritage Foundation *Commentary*, May 22, 2021.

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The Heritage Foundation, “U.S. Citizenship Act of 2021,” *Factsheet* No. 200, February 23, 2021.

Mike Howell, “America May Soon Face Unlimited Illegal Immigration,” Heritage Foundation *Commentary*, January 13, 2021.

James Jay Carafano, John G. Malcolm, and Jack Spencer, eds., “An Agenda for American Immigration Reform,” Heritage Foundation *Special Report* No. 210, February 20, 2019.

David Inserra, “Legal Immigration and the U.S. Economy: How Congress Should Reform the System,” Heritage Foundation *Backgrounder* No. 3281, January 30, 2018.