

Call for Papers for an Issue on:

**The Legal Landscape of U.S. Immigration in the Twenty-First Century**

Edited by

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In 2015, 1,051,031 non-citizens applied for, and received, lawful permanent residence (U.S. Department of Homeland Security 2016). Although the existing legal visa system certainly offers lawful permanent residency to more people now than it did decades earlier, since the 1980s it has been unable to satisfy immigration demands (Rosenblum 2017). Debates about U.S. immigration have reinvigorated scholarly interest in the visa admission system—its goals, number and type of visas offered—as well as fueled new studies about the relationship between legal visas and where they fit in immigration law and practice. Among other issues, scholars have examined differences in merit vs. family-based visas, temporary work visas and their consequences, and the intended and unintended consequences of practices and policies derived from immigration law.

This proposed issue of *RSF* aims to publish new scholarship that will improve understanding about the legal landscape of U.S. immigration and speak to contemporary debates about immigration policy. The issue will highlight findings from empirical studies that examine visa issues related to U.S. immigration, and emphasize the existing U.S. visa system as well as its place in legal law and practice. The overarching objective for the issue is to publish new studies designed to understand the landscape of legal immigration in the United States.

Legal Visa System

Although immigration became a driver of public policy and democratic elections worldwide by the 1990s (Cornelius 2004), key components of U.S. immigration policy are plagued by inconsistency and incoherence (Orrenius and Zavodny 2017). With many questions unanswered for decades, debates persist about how many, and what types of, immigrants the United States should take every year. In August 2017, for example, many debated the RAISE Act, which favors granting more visas to skilled workers and reducing family reunification by implementing a points-based entry system. Currently, Congressional members have proposed several immigration measures that, among other things, propose certain numbers and types of permanent residency visas, and address – in different ways – how U.S. citizens or foreign-born lawfully permanent residents can petition for relatives to join them.

Studies examine questions related to these debates, such as the relationship between employment-based visas and skilled immigration. For example, Orrenius, Peri and Zavodny (2013) show that employment-based visas are usually allocated to those who happen to be first in line, or randomly via a lottery. They

also find evidence that suggests making employment-based visas harder to obtain discourages highly skilled individuals from coming to the United States in the first place. Relatedly, Shih (2016) shows that reductions in H-1B visas in 2004 reduced enrollment of international students at US colleges and universities by about 10 percent, and Kato and Sparber (2013) show that the reductions specifically discouraged high-ability foreign students from attending U.S. colleges and universities. Also supportive of H-1B visas are the findings from Kerr and Lincoln (2010), who show that a larger number of H-1B visas is positively associated more science and engineering employment and patenting.

In addition, studies have cautioned against the unintended effects of removing family-based visas and replacing them with skilled-based visas. For example, although Duleep and Regets (1996a) find that immigrant education levels are positively correlated with the share of immigrants admitted with work-based visas, they also report that education levels correlated with the share of immigrants admitted as siblings. In addition, Duleep and Regets (2002) find that wage growth of the more vs. less educated is higher among immigrants from economically developing countries than counterparts from developed countries. Based on these and other studies, Duleep and Regets (2014) conclude that skilled migrants may not only arrive through employment-based visas, but also through family-based visas when sponsored by other skilled household members in the United States.

Some suggest that the United States establish a point-based system to assign visas. However, as Hunt (2017) notes, there is no clear theoretical or empirical evidence suggesting that immigrants' economic contributions under a point system are greater than under a system that prioritizes family reunification. Even if family reunification favors low-skill immigration, Hunt argues, low-skilled immigrants generate an immigration surplus by lowering the wages of competing low-skilled U.S. natives. Others, however, point out that native wages do not significantly drop with immigration because of task specialization and complementarities in production between immigrants and natives (Peri and Sparber 2009; Peri and Ottaviano 2012). Lewis (2005) further proposes that the reason for the small impact of immigration on wages of competing native-born workers is that technology, rather than wages, responds to the local skill mix offered by immigration. As he notes, immigrants "who are relatively concentrated in less interactive and more manual jobs free up natives" to work in other, possibly preferable, jobs.

To resolve some of the problems in the legal visa system, some suggest implementing market-based reforms. For example, Peri (2012) proposes an auction-based system to allocate temporary employment visas to employers who value them most highly. Hanson (2012) argues how a new immigration system would need to be sold to the American public to personally convince them of the benefits. Although there is evidence of the significant contributions of high-skilled immigration to innovation and productivity growth and of low-skilled immigration to improve labor market efficiency, the downside is undocumented immigration, which imposes costs on U.S. taxpayers at the state and local levels (National Academy of Sciences 2016). However, given that illegal immigration is not growing, Massey (2011) argues that the real issue now is to consider "how to deal with the millions of workers and family members who arrived in the past and are now part of the life of hundreds of communities." Some are likely sponsoring their relatives for lawful permanent residency visas, driving the demand for family-based visas.

Although these studies address some questions related to employment, family, and student visas, there are few studies related to the visas going to victims of certain crimes, refugees, and persons requesting asylum after arriving at a U.S. border. How do these types of visas contribute to immigrant inflows, and to what extent do they address U.S. interests and/or humanitarian rights? Thus, one objective of the proposed *RSF*

*Journal* issue is to publish new studies on the various types of visas shaping immigration inflows and delineating the current immigration system (such as employment, family or student visas, among others). The goal is to better understand the roles they play, their rationales, consequences (intended or unintended) and, in turn, how proposed policy changes may influence immigration and the legal system.

### Placing Visas in U.S. Immigration Law and Practice

In addition to social scientists who study aspects of the immigration visa system, we will solicit contributions from legal scholars whose primary interests relate to the ways in which visas fit in the U.S. immigration system and its practice. Legal scholars examine the relationship between law and practice, citizenship, the criminal justice and asylum systems, procedural justice, deportation, executive orders and immigrant rights. Two important, and broad, contributions in this regard include Bosniak (2008) and Motomura (2006). Bosniak's (2008) *The Citizen and the Alien: Dilemmas of Contemporary Membership* examines the citizenship dilemmas related to inclusion and exclusion and how they are embedded in U.S. immigration laws and institutions. Motomura's (2006) *Americans-in-Waiting: The Lost Story of Immigration and Citizenship in the United States* analyzes immigration law across two centuries and reveals a salient shift in U.S. law away from the idea that immigrants will become future citizens.

Some legal scholars use experimental and survey methods to examine contemporary immigration law and practice. One, for example, has examined judges' decisions in immigration bond hearings (Ryo 2016), legal attitudes of immigrant detainees (Ryo 2017a), the normative effects of immigration law (Ryo 2017b), and the role of lawyers in immigration bond hearings (Ryo 2018). Others have also looked into how immigration law relates to family separation of children in detention (Yablon-Zug 2012), prosecutorial discretion in immigration decisions (Wadha 2015; Burch Elias 2017; Cox and Rodriguez 2018), deportation (Kanstrom 2010; Chin 2011), executive orders (Chen 2017), and the adjudication of asylum (Schoenholtz, Schrag, and Ramji-Nogales 2014).

Finally, a few social scientists also consider various research questions related to immigration law and practice. For example, FitzGerald et al. (2017) examine all immigration laws in Western Hemisphere countries from their year of independence to 2010, and consider the spatial and temporal patterns in how these laws selected for those able to be assimilated. Lopez (2015) examines the family consequences of U.S. citizenship laws whereby U.S. citizens who are married to non-citizens become legally obliged to live the immigrant experience or become immigrants in their spouses' national origins. Finally, Wasem (2018) examines shifts in U.S. immigration law and policy, focusing on how and when various government agencies administered the Immigration and Nationality Act and its amendments. Therefore, the second objective of the proposed *RSF Journal* issue is to publish studies that advance our understanding about where and how visas fit into immigration law and practice.

### **PROPOSED ISSUE**

Publishing new scholarship that addresses research questions about the visa system and the nexus between visas and immigration law and practice, the proposed issue will improve our understanding of the legal landscape of U.S. immigration. Broadly speaking, we are interested in manuscripts that consider the intended and unintended consequences of legal visa system and immigration law.

As editors of this issue, we will write an introductory chapter framing the issue, providing a comprehensive description of the existing visa system (for a brief description, see Appendix A), overviewing shifts in

immigration laws and policies implemented in recent decades, and introducing the various manuscripts in the issue. We will invite proposals from scholars working on these topics across a variety of social science disciplines including anthropology, demography, economics, geography, legal studies, political science, psychology, and sociology. (See Appendix B for a list of scholars whose research suggests they would submit to the call for abstracts). We will welcome scholarship that uses different methodological approaches and data sources.

Below is a set of possible questions for the issue. This list is intended to provoke interest among a wide range of scholars from different disciplines and to provide mere examples of topics that would be of interest. It is not intended to provide an exhaustive list of topics of interest.

- Sample questions about the overall visa system:
  - What features and inequalities underlie the immigrant visa system and immigration law? To what extent do specific features and inequalities reflect the characteristics of groups and institutions?
  - How does the current immigrant visa system help explain the demand for U.S. immigrants?
  
- Sample questions on specific types of visas:
  - Employment-based visas: How have the types of employment-based visas changed over time? What rules govern employment-based admissions, and what consequences do such rules have? To what extent does demand for employment-based visas match supply, and what consequences does this (mis)match have?
  - Student visas: How are foreign students related to the visa system and immigration law? What are the short and long-term consequences of increases/decreases in international students, including for the U.S. labor market?
  - Family-based visas: How has the legal immigration system, emphasizing family reunification, contributed to the U.S. demographic composition and its labor market? How is it related to the share of the population living in poverty, qualifying for means-tested programs, or those employed in low-skill vs. high-skill jobs? How do other components of U.S. immigration, such as naturalizations, nonimmigrant visas, refugees, and the larger policy environment, affect the family-based visa system? For instance, since highly skilled immigrants also have families, how would restricting family migration influence high-skill immigration?
  - Other types of visas: Approximately 50,000 diversity visas are allocated every year. Visas are also allocated every year to refugees and persons seeking asylum, and others receive special immigrant visas. What are these visas and what role do they play in the context of U.S. immigration? What is known about the economic contributions and integration of migrants receiving these visas?
  - Links to unauthorized immigration: To what extent is the existing immigrant visa system related to unauthorized migration? How do recent efforts to verify legal status for potential immigrant workers influence the employment of authorized immigrant workers?
  
- Sample questions about immigration law and practice:

- What features and inequalities are associated with immigrant visas and the practice of immigration law? To what extent do specific features and inequalities reflect the characteristics of groups and institutions?
- What is the relationship between immigrant visas, law, and practice, past and present?
- In what ways is the practice of immigration law, and the law itself, related to the visa system?

## Anticipated Timeline

Prospective contributors should submit a CV and an abstract (up to two pages in length, single or double spaced) of their study along with up to two pages of supporting material (*e.g.* tables, figures, pictures, etc.) no later than 5 PM EST on 11/8/18 to:

<https://rsf.fluxx.io>

All submissions must be original work that has not been previously published in part or in full. Only abstracts submitted to <https://rsf.fluxx.io> will be considered. Each paper will receive a \$1,000 honorarium when the issue is published. The journal issue is being edited by Katharine M. Donato, Donald G. Herzberg Professor of International Migration in Georgetown University's School of Foreign Service, and Catalina Amuedo-Dorantes, professor of economics at San Diego State University. All questions regarding this issue should be directed to Suzanne Nichols, director of publications, at [journal@rsage.org](mailto:journal@rsage.org) and not to the email addresses of the editors of the issue.

A conference will take place at Russell Sage in New York City on 4/26/19. The selected contributors will gather for a one-day workshop to present draft papers (due on 3/28/19, a month prior to the conference) and receive feedback from the other contributors and editors. Travel costs, food, and lodging will be covered by the foundation. Papers will be circulated before the conference. After the conference, the authors will submit their final drafts on or before 7/8/19. The papers will then be sent out to three additional scholars for peer review. Having received feedback from reviewers and the *RSF* board, authors will revise their papers before 10/16/19. The full and final issue will be published in the fall of 2020. Papers will be published open access on the *RSF* website as well as in several digital repositories, including JSTOR and UPCC/Muse.

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## **Appendix A: Description of the U.S. Legal Immigrant Visa System**

Most immigrants receive visas in the family or employment-based visa categories. To be eligible to apply for an immigrant visa, a foreign citizen must be sponsored by a U.S. citizen relative, U.S. lawful permanent resident, or a prospective employer, with a few exceptions.

### Family-based Immigration:

- U.S. citizen files an immigrant visa petition for a spouse, son or daughter, parent, brother or sister.
- U.S. lawful permanent resident files an immigrant visa petition for: spouse or unmarried son or daughter.

### Employer-based Immigration:

- A U.S. employer can sponsor certain skilled workers who will be hired into permanent jobs. In some specialized fields, U.S. law allows prospective immigrants to sponsor themselves. In addition, U.S. law provides a number of special immigrant categories, as well as an immigrant investor program.
- U.S. law limits the number of visas available each year, with certain limits by country. In these limited categories, whenever the number of qualified applicants exceeds the available immigrant visas, there will be a waiting list. In this situation, available immigrant visas will be issued in the chronological order in which petitions were filed.

### Other:

- A U.S. citizen can also petition for the immigration of a foreign fiancé(e) to be married in the United States, or an orphan adopted abroad/to be adopted in the United States.
- Several immigrant visa categories that cover special types of workers or special circumstances are established by U.S. laws.
- The U.S. also conducts an annual program for Diversity Visas.

### Nonimmigrant Visas:

There are more than 20 major categories of nonimmigrant visas, covering different reasons for travel. The five most common types are business travel/tourism visas (B-1, B-2), student visas (F-1, M-1), exchange visitor visas (J-1), crew member/transit visas (C-1/D) and specialty worker visas (H-1B).

**B-1/B-2:** These are visitor visas for travelers coming to the United States for business (B-1), tourism/vacation (B-2) or a combination of both. In 2016, the United States issued 6,965,466 B-1, B-2 and B-1/B-2 combo visas.

**F-1/M-1:** This visa is for students coming to the United States to attend grade school, college, seminary or other types of academic institutions. Students have 60 days to leave the United States after they have completed their studies. In 2016, the United States issued 482,033 F-1/M-1 visas.

**J-1:** Issued to participants in private sector cultural exchange programs. Cultural exchange categories include scholars, interns, teachers, seasonal workers, au pairs and professional trainees. In 2016, the United States issued 339,712 J-1 visas.



**C-1/D:** This visa is a combination crew member/transit visa issued to employees of airlines and cruise ships whose jobs involve continuous travel in and out of the United States. The C-1 visa is a transit visa, while the D visa is for crew members. Both visas are required for workers who come from other countries to work on a United States-based ship or aircraft. In 2016, the United States issued 295,140 C-1/D visas.

**H-1B:** This visa is for specialty workers, highly skilled professionals in fields including engineering, technology, medicine and higher education. There are three subcategories of H-1B visas. The H-1B1 is a free trade agreement visa for specialty workers from Chile and Singapore. The H-1B2 is for specialists who will work on projects for the Department of Defense Cooperative Research and Development program. The H-1B3 visa is for fashion models of "distinguished merit and ability." In 2016, the United States issued 180,057 H-1B visas.

### **Immigrant Visas:**

The immigrant visa application process begins with a petition, which must be approved by US Citizenship and Immigration Services. Once the petition is approved, the applicant pays fees and files paperwork with the National Visa Center. After documents are submitted, an interview is scheduled with an officer at the nearest US embassy or consulate. At the end of the interview, the applicant is told whether he or she has been approved or denied.

The main categories of immigrant visas are Immediate Relative (IR), Family Preference (F), Diversity Immigrants (DIV), Employment Preference (E) and Special Immigrants (SIV).

**Immediate Relatives (IR-1, IR-2, IR-3, IR-4, IR-5, CR-1, CR-2).** The State Department issues an unlimited number of visas to individuals who have a close family relationship with a US citizen.

**IR-1 and CR-1 (conditional residence):** These visas are for spouses. An immigrant who has been married to a US citizen for less than two years is a conditional resident, with a CR-1 visa. In 2016, the United States issued 133,465 IR-1 and CR-1 visas.

**IR-2 and CR-2 (conditional residence):** This visa is for unmarried children (under the age of 21) of US citizens. In 2016, the United States issued 67,381 IR-2 and CR-2 visas.

**IR-3:** These visas are for orphans who are adopted abroad by US citizens. In 2016, the United States issued 1,292 IR-3 visas.

**IR-4:** This visa is for orphans who are brought to the United States and the adoption process is conducted domestically. In 2016, the United States issued 566 IR-4 visas.

**IR-5:** These visas are for parents of US citizens who are 21 or older. In 2016, the United States issued 108,788 IR-5 visas.

**Family-Sponsored Preference (F1, F2A, F2B, F3, F4).** The State Department issues a limited number of visas to individuals who have more distant family connections to US citizens. Family-sponsored preference visas also may be issued to relatives of individuals who are Lawful Permanent Residents (green card holders or LPR).

**F1:** This visa is for unmarried sons or daughters of US citizens and their children under the age of 18. In 2016, the United States issued 21,800 F1 visas.

**F2:** This visa is for spouses, minor children and unmarried sons and daughters (21 and older) of green card holders or LPRs. In 2016, the United States issued 109,740 F2 visas.

**F3:** These visas are for married sons and daughters of US citizens and their spouses. F3 visas may also be issued to grandchildren of US citizens who are under the age of 18. In 2016, the United States issued 22,590 F3 visas.

**F4:** This visa is for siblings of adult US citizens and their spouses or minor children. In 2016, the United States issued 61,368 F4 visas.

**Diversity Immigrants (DV).** Diversity visas are available to individuals who live in countries with low rates of immigration to the United States. These visas are granted via a lottery system. The countries eligible for diversity visas are grouped into six regions. An individual who lives in a country not included in the diversity program may qualify for the lottery if his or her spouse was born in one of the eligible countries. Diversity visa applicants must have a high school education or at least two years of qualifying work experience. In 2016, 45,664 DV visas were issued.

**Employment-Based Preference (E1, E2, E3, E4, E5).** The State Department issues about 25,000 employment preference immigrant visas annually. In most cases, the potential employer files an Immigrant Petition for an Alien Worker on behalf of the applicant. In some cases, an applicant who does not have a specific job offer may file a petition on his or her own behalf. There are five categories for these visas.

**E1:** Priority workers qualify for this visa. Priority workers include people with “extraordinary ability” in science, the arts, business or sports; professors and researchers who are renowned worldwide, and managers or executives from overseas affiliates of US-based companies. In 2016, 2,361 E1 visas were issued.

**E2:** Applicants who have advanced college degrees or “exceptional abilities” qualify for this visa. E2 visas are for highly skilled professionals or those with “exceptional ability” in science, the arts or business. Most individuals applying for E2 visas must have a labor certificate approved by the Department of Labor. Generally, employers file petitions on behalf of workers. In some cases, however, applicants with “exceptional abilities” may self-petition for a visa. In 2016, the United States issued 2,155 E2 visas.

**E3:** This visa is for skilled and unskilled workers, as well as professionals who have at least a four-year college degree. All applicants must have petitions submitted by their prospective employers as well a labor certificate approved by the Department of Labor. In 2016, 10,301 E3 visas were issued.

**E4:** This visa is for special groups of immigrants who may apply for a visa without getting labor certification. E4 subgroups include clergy members, employees of the US government abroad and immigrant broadcasters. In 2016, 1,734 E4 visas were issued.

**E5:** This visa is for foreign nationals who are investing capital in US businesses. The minimum investment is \$1 million for the visa; or foreign nationals who invest in a commercial enterprise in certain targeted

geographic areas with high unemployment rates may get a visa for a \$500,000 investment as a job-creating measure. In 2016, 8,505 E5 visas were issued.

**Special Immigrants (SIV):** Special immigrant visas are issued to several subgroups, including Iraqis or Afghans who worked on behalf of the government, Iraqi and Afghan translators, and green card holders who are returning to the United States after spending a year or longer abroad. In 2016, the United States issued 16,176 SIV visas.