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Guest Workers and Justice in a Second-Best World

Cover Page Footnote

I would like to thank symposium participants at the University of Dayton School of Law for helpful comments.

GUEST WORKERS AND JUSTICE IN A SECOND-BEST WORLD

Howard F. Chang*

ABSTRACT

This essay offers a defense of guest-worker programs and a critique of the objections raised by Michael Walzer and by other critics of such programs. Although critics commonly complain that guest workers are vulnerable to exploitation by employers, we can design guest-worker programs that minimize the risk of such exploitation. Ready access for relatively unskilled guest workers to citizenship and to public benefits, however, generates a fiscal burden for the public treasury. A right to equal treatment for aliens yields perverse results unless aliens are also entitled to equal concern when the host country decides whether to admit the alien to its labor market. By failing to extend such concern and favoring the interests of incumbent residents instead, Walzer harms alien workers by endorsing the alternative of exclusion. A cosmopolitan theory of justice that extends equal concern to all persons worldwide avoids such a perverse result by raising a presumption in favor of the free movement of workers across borders. The problem with this approach is the failure of most citizens to adopt such a cosmopolitan view of justice and their reluctance to bear the fiscal burden that such liberal policies would impose. Given the political infeasibility of the liberal policies implied by ideal principles of justice, we should adopt an expanded guest-worker program as a second-best policy that represents an improvement over the status quo alternative of exclusion. We can expand the rights of guest workers to include the right to change employers, the right to bring their immediate families with them, the option of permanent residence, and the opportunity to naturalize under appropriate conditions after a sufficiently long period of alienage. We can adopt these reforms without imposing a fiscal burden on natives, thereby bringing these reforms within the realm of the politically feasible.

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I. INTRODUCTION

With the number of unauthorized immigrants currently living among us estimated to be about twelve million,¹ it seems apparent that we need immigration reform, but the country is bitterly divided over what we must do. For those who advocate comprehensive immigration reform, the changes in our immigration laws must include expanded opportunities for relatively unskilled alien workers to gain legal access to our labor markets. President George W. Bush proposed that we use large-scale guest-worker programs in an attempt to satisfy the large and persistent demand for relatively unskilled labor in the United States that attracts so many unauthorized immigrants.² In fact, both the reform bill passed by the Senate in 2006 and the compromise bill considered by the Senate in 2007 would have created such programs.³ Thus, recent reform proposals debated in Congress would have brought relatively unskilled alien workers into the United States on nonimmigrant visas rather than on immigrant visas.

From the perspective of the economic interests of natives, guest-worker programs may be an optimal response to concerns regarding the impact of relatively unskilled alien workers on the public treasury. Empirical evidence suggests that relatively unskilled immigrants on average have a net negative fiscal impact on natives in the United States.⁴ Through guest-worker programs, natives enjoy the benefits generated by these workers in the labor market but do not bear the fiscal burden of providing the full set of public benefits that these workers would receive if they had ready access to permanent residence and, ultimately, citizenship. Although immigrants can gain full access to public benefits upon naturalization, only aliens "admitted for permanent residence" may naturalize as U.S. citizens.⁵ Alien workers admitted only on nonimmigrant visas are not admitted as permanent residents and are thus not eligible for most public entitlements and are not eligible to naturalize. Our laws generally exclude not only unauthorized immigrants but also nonimmigrants, including temporary

¹ Jeffrey S. Passel, *Pew Hispanic Center, A Pew Research Center Project, Publication, Modes of Entry for the Unauthorized Migrant Population* 3, 6, <http://pewhispanic.org/factsheets/factsheet.php?FactsheetID=19> (May 22, 2006). The total population of the United States reached 300 million in October 2006. See Sam Roberts, *A 300 Millionth American. Don't Ask Who.*, 53 N.Y. Times A15 (Oct. 18, 2006).

² See e.g. *Pres. Bush Renews Call for a Temporary Worker Program*, 82 Interpreter Releases 274 (2005); *President Bush Announces Immigration Initiative*, 81 Interpreter Releases 33 (2004).

³ See Sen. 1639, 110th Cong. (June 28, 2007); Sen. 2611, 109th Cong. (May 25, 2006); Thomas Alexander Aleinikoff et al., *Immigration and Citizenship: Process and Policy* 459-60 (6th ed., West 2008); *Senate Passes Immigration Bill, Conference Needed to Resolve Senate and House Differences*, 83 Interpreter Releases 1037 (2006).

⁴ The National Research Council found in 1996 that the average immigrant with less than a high-school education imposed a net fiscal cost of \$13,000 in net present value, even after taking into account the fiscal benefits that the immigrant's descendants would confer in the future. See Natl. Research Council, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration* 334 (James P. Smith & Barry Edmonston eds., Natl. Acad. Press 1997).

⁵ 8 U.S.C. § 1427(a) (2000).

workers, from a broad range of public benefits. With only narrow exceptions, these aliens are ineligible for “any Federal public benefit.”⁶ Because guest-worker programs can give relatively unskilled aliens access to our labor markets without necessarily providing full access to the benefits provided to citizens, these programs may allow the most liberal admissions policies possible for these aliens without imposing a fiscal burden on natives.

Jorge Durand and Douglas Massey report that “most migrants seek to work abroad only temporarily” and argue that guest-worker programs would satisfy the desire of migrants to do so.⁷ If citizens are unwilling to admit relatively unskilled workers as legal permanent residents because they anticipate the fiscal burden that such admissions would entail, then we could use guest-worker programs instead to address the demand for such workers and the demand of the guest workers themselves for temporary visas. Alien workers would gain from having a legal alternative to illegal entry and life as an unauthorized immigrant, which leaves them subject to deportation by the government and vulnerable to abuse by employers.

From the perspective of the interest of the aliens, or from the perspective of liberal principles of justice, however, the ideal policy would provide the option of permanent residence and access to citizenship. Liberal ideals would treat these alien workers as equals, entitled to access to citizenship and to the full set of public benefits provided to citizens. This perspective suggests that if we admit workers to our labor market, then we must extend the benefits of full membership to them as well. From this perspective, by admitting unskilled workers, we make them objects of our concern and thus worthy recipients of citizenship and the full set of benefits that we provide to natives. The political theorist Michael Walzer takes such a position, claiming that a society that relies on guest-worker programs to meet its labor needs is “a little tyranny,”⁸ in which guest workers “are ruled . . . by a band of citizen-tyrants.”⁹ Walzer argues that the disenfranchisement of guest workers violates the “principle of political justice” in a “democratic state.”¹⁰

In this essay, I offer a defense of guest-worker programs and a critique of the objections raised by Walzer and by other critics of such programs. These objections may be interpreted either narrowly or broadly. In Part I, I respond to Walzer’s narrow objection, which complains that guest workers have been vulnerable to exploitation. I suggest that we can

⁶ 8 U.S.C. § 1611(a) (2000).

⁷ Jorge Durand & Douglas S. Massey, *Borderline Sanity*, Am. Prospect 29 (Sept. 24, 2001) (available at http://www.prospect.org/cs/articles?article=borderline_sanity).

⁸ Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* 52 (Basic Books, Inc., Publishers 1983).

⁹ *Id.* at 58.

¹⁰ *Id.* at 60.

design guest-worker programs that minimize the risk of exploitation by employers. In Part II, I turn to a broader claim based on the right of guest workers to equality and to citizenship. I argue that this broader claim yields perverse results unless aliens are also entitled to equal concern when the host country decides whether to admit the alien to its labor market. By failing to extend such concern, Walzer harms alien workers by endorsing the alternative of exclusion.

In Part III, I argue that a cosmopolitan theory of justice that extends equal concern to all persons worldwide avoids such a perverse result by raising a presumption in favor of the free movement of workers across borders. The problems with this approach are the failure of most citizens to adopt such a cosmopolitan view of justice and their reluctance to bear the fiscal burden that such liberal policies would impose. In Part IV, I conclude that given the political infeasibility of the liberal policies implied by ideal principles of justice, we should adopt a liberalized guest-worker program as a second-best policy that represents an improvement over the status quo alternative of exclusion. We can expand the rights of guest workers to include the right to change employers, the right to bring their immediate families with them, the option of permanent residence, and the opportunity to naturalize under appropriate conditions after a sufficiently long period of alienage. I argue that we can adopt these reforms without generating a fiscal burden for the public treasury, thereby bringing these reforms within the realm of the politically feasible.

II. EXPLOITATION

Walzer declares his principle of justice in sweeping and absolute terms: "Men and women are either subject to the state's authority, or they are not; and if they are subject, they must be given a say, and ultimately an equal say, in what that authority does."¹¹ Is the line between tyranny and democracy, however, such a simple matter of black and white? After all, other aliens present in the United States as nonimmigrants, such as tourists, business visitors, and students, are "subject to the state's authority," just as guest workers are. Is Walzer suggesting that all those other nonimmigrants must also "be set on the road to citizenship"¹² simply because they are "subject to the state's authority" in a democratic state? Elsewhere, Walzer qualifies his claim without further explanation, stating that "the processes of self-determination through which a democratic state shapes its internal life, must be open, and equally open, to all those men and women who live within its territory, *work in the local economy*, and are subject to local law," yet even here he concedes that his "argument doesn't plausibly apply to

¹¹ *Id.* at 61.

¹² *Id.* at 60.

privileged guests,” such as “technical advisors, visiting professors, and so on.”¹³ If his argument is to be limited, then there must be something especially disturbing about the typical guest worker that distinguishes those aliens from other nonimmigrants.

Perhaps guest workers are different, because they are often relatively uneducated aliens and therefore may be especially vulnerable to abuse or exploitation by their employers. Walzer distinguishes guest workers from “tourists,” noting that guest workers “are typically an exploited or oppressed class.”¹⁴ He draws this conclusion from a description of guest-worker programs “based chiefly on the legal situation in the early 1970s.”¹⁵ Similarly, other critics of guest-worker programs often point to “the real and perceived abuses of past ‘guest worker’ programs” such as the Bracero program in effect from 1942 to 1964 in the United States.¹⁶ Kevin Johnson, for example, complains that the Bracero program “created an exploitable and exploited cheap labor force” and asserts that “[t]here is no reason to believe that a new ‘temporary’ worker program would be any different.”¹⁷

Past programs, including the Bracero program, however, tied each guest worker to a specific employer, and there is no need for guest-worker programs to limit the worker’s mobility in this way in the future. Freedom to leave an employer and to take employment elsewhere would give workers greater power to assert their rights against employers and thus prevent abuses, without either destroying the economic gains that natives enjoy from employing alien workers or generating a fiscal burden. The bill passed by the Senate in 2006, for example, would have allowed guest workers to change employers.¹⁸ The portability of the guest worker’s visa allowed the bill to win the support of Hispanic groups such as La Raza. As the president of the National Council of La Raza explained: “Workers would not be at the mercy of abusive employers in that they could change jobs and alert the authorities to mistreatment.”¹⁹ Similarly, Durand and Massey argue that “the right to change jobs would free them to participate in unions and to report violations of their labor rights.”²⁰

An ideal program would offer the guest worker full mobility, including the ability to move freely among various sectors of the economy.

¹³ *Id.* (emphasis added).

¹⁴ *Id.* at 59.

¹⁵ *Id.* at 56.

¹⁶ Daniel T. Griswold, *Center for Trade Policy Studies, Willing Workers: Fixing the Problem of Illegal Mexican Migration to the United States* 19, <http://www.freetrade.org/pubs/pas/tpa-019.pdf> (Oct. 15, 2002).

¹⁷ Kevin R. Johnson, *Legal Immigration in the 21st Century*, in *Center for Immigration Studies, Blueprints for an Ideal Legal Immigration Policy* 37, 41 (Richard D. Lamm & Alan Simpson eds., 2001).

¹⁸ See Sen. 2611, 109th Cong. (2006); Aleinikoff, *supra* n. 3, at 459.

¹⁹ Janet Murguía, *A Change of Heart on Guest Workers*, *Wash. Post* B7 (Feb. 11, 2007).

²⁰ Durand & Massey, *supra* n. 7, at 28.

As Daniel Griswold observes, “complete mobility” not only among different employers but also among different sectors of the economy would give workers “full freedom to change jobs” and thus to obtain the highest wages and best working conditions available.²¹ This mobility would be best not only for the guest worker but also for the efficiency of the labor market, because it “would allow the supply of labor to shift” among sectors in response to changing market demand.²² Once guest workers are free to seek any job in the United States, then all sectors of the economy can benefit from hiring them.

Once we give the guest worker the same rights in the workplace enjoyed by citizens, we greatly reduce the risk of exploitation by abusive employers. If this risk is the ultimate source of Walzer’s concern about guest-worker programs, then his objection is really a matter of degree, and a program that provides complete mobility for the guest worker seems much less vulnerable to his objection. On the other hand, guest workers remain “subject to the state’s authority,” and if Walzer really believes that all those “subject to the state’s authority” must be “given a say . . . in what that authority does,” then complete mobility for the guest worker would not be an adequate response to his broader objection.

III. THE IMMIGRATION PARADOX

Can Walzer really mean it when he claims that all those “subject to the state’s authority” must be “given a say . . . in what that authority does,” given his other views on immigration policy? After all, prospective immigrants who seek to enter the United States are also “subject to the state’s authority,” specifically, the state’s authority to regulate immigration. The broader principle of justice stated by Walzer would seem to imply that the prospective immigrant must be “given a say . . . in what that authority does,” including that authority’s restrictions on immigration. Yet Walzer also claims that national governments should have a relatively free hand in restricting immigration.²³

In such a moral framework, the immigration of relatively unskilled workers poses a fundamental problem for liberals.²⁴ Ready access to citizenship and all public benefits for a large number of relatively unskilled immigrants would probably prove to be costly for the public treasury. The empirical evidence suggests that unskilled alien workers are likely to have a net negative fiscal impact if granted ready access to citizenship. Thus, if the

²¹ Griswold, *supra* n. 16, at 19.

²² *Id.*

²³ Walzer, *supra* n. 8, at 35-48.

²⁴ The following discussion draws from an earlier publication by Howard F. Chang, *The Immigration Paradox: Poverty, Distributive Justice, and Liberal Egalitarianism*, 52 DePaul L. Rev. 759, 769-71 (2003).

welfare of incumbent residents determines admissions policies, and we anticipate the fiscal burden that the immigration of the poor would impose, then a decision to favor the interests of incumbent residents would preclude the admission of relatively unskilled workers in the first place. This moral stance produces an anomaly: Our commitment to treat these workers as equals once admitted would cut against their admission and thereby make them worse off than they would be if we rejected such a commitment. Walzer would urge us to exclude the alien worker rather than admit that alien as a guest worker. But why should we choose the alternative of exclusion, which makes the excluded alien even worse off than the alternative of a guest-worker program?

By agreeing to obligations of distributive justice toward alien workers if admitted, we harm them. These aliens would be better off if we agreed never to care about their welfare and never to treat them as equals. If concern for the welfare of poor immigrants motivates generous fiscal policies toward them, then it seems perverse to cite these policies as a reason to exclude the very immigrants whose welfare we would seek to improve through these public benefits. This moral stance is unsatisfactory from the perspective of human welfare.

It seems incoherent to turn away the relatively unskilled alien, citing a negative fiscal effect on current residents, given that we always have the option of admitting that alien subject to restrictions on access to public benefits. This less restrictive alternative would improve the welfare of both the alien and current residents compared to the alternative of exclusion. This admission would also transform the alien into a resident, however, and if we care about the welfare of all residents, then the same distributive concerns that justified generous policies for other poor residents would apply to the poor immigrant as well.

This paradox lies at the heart of immigration policy. A commitment to treat the immigrant as an equal can backfire against the alien seeking to immigrate, because the immigrant's access to this equal concern does not arise unless we admit the immigrant. If the act of admission triggers obligations of justice, then we can avoid these obligations by choosing to exclude. This stance begs the question of whether we can legitimately base admission policies on the interests of incumbent residents alone.

Unless the admission decision itself also respects the alien as an equal, the result is perverse. Thus, the source of the "immigration paradox" is the contingent nature of the obligation to treat the alien as an equal. That is, this problem is inherent in making obligations of justice contingent on admission. We cannot begin our normative analysis by assuming that we do not admit the aliens in question. If we make obligations of justice contingent on whether we admit them in the first place, then our normative

framework becomes a function of our immigration policies and cannot provide an independent standard that we can use to evaluate these policies.

IV. COSMOPOLITAN LIBERAL IDEALS AND POLITICAL FEASIBILITY

We can avoid the immigration paradox if we adopt a normative criterion that is independent of our policy choices. Two options present themselves. First, we could favor the interests of natives and discount the interests of immigrants. This nativist perspective suggests guest-worker programs as the optimal admission policy for relatively unskilled aliens. Second, we can adopt a cosmopolitan perspective that extends equal concern to all individuals, including aliens. Either alternative provides a criterion that is independent of our admission policies and thus avoids the circularity that underlies the immigration paradox. The criterion that is consistent with liberal ideals, however, is cosmopolitan rather than nativist. Only the cosmopolitan perspective offers a satisfactory framework for the evaluation of our immigration policies under a liberal theory of justice.

A cosmopolitan perspective that extends equal concern to all individuals, including aliens, would imply not only more generous fiscal policies but also more liberal admission policies for relatively unskilled workers than the nativist perspective would imply. Estimates of the gains that the world could enjoy by liberalizing international migration indicate that even partial liberalization would not only produce substantial increases in the world's real income but also improve its distribution.²⁵ If we begin with equal concern for all persons, then immigration barriers are morally suspect and demand justification. All immigration restrictions discriminate against individuals based on their alienage. Most aliens are born aliens because our nationality laws deem them to be aliens based on immutable characteristics, including the geographic location of their birth (that is, national origin) and the citizenship of their parents at the time of their birth.²⁶ For a liberal society that declares that "all men are created equal,"²⁷ this discrimination based explicitly on circumstances of birth is at odds with ideal principles of social justice.

The problem with the cosmopolitan escape from the "immigration paradox" is the failure of most citizens to adopt such a cosmopolitan perspective. Given this failure, cosmopolitan liberals face a constraint of political feasibility that prevents realization of all their ideals. As a matter of political reality, the interests of citizens have in fact played the dominant

²⁵ See World Bank, *Global Economic Prospects 2006: Economic Implications of Remittances and Migration* 25-35 (World Bank 2006) (available at http://siteresources.worldbank.org/INTGEP2006/Resources/GEP_i-xii.pdf); Bob Hamilton & John Whalley, *Efficiency and Distributional Implications of Global Restrictions on Labour Mobility*, 14 J. Dev. Econ. 61, 70-74 (1984).

²⁶ See U.S. Const. amend. XIV, § 1; 8 U.S.C. § 1401 (2000).

²⁷ *The Declaration of Independence* [¶2] (1776).

role in the public debate over immigration policies. This feature of the real world may impose a constraint on the set of policy alternatives open to us as a practical matter.

The cosmopolitan liberal would prefer that aliens have access both to our labor market and to public benefits and citizenship. As a matter of political reality, however, citizens are unlikely to admit aliens under those generous conditions in the numbers that cosmopolitan ideals would require, given the fiscal burden that those liberal policies would entail. As long as citizens are reluctant to bear the fiscal burdens that cosmopolitan liberalism would impose, they are likely to restrict access to permanent residence. Given these constraints, cosmopolitan liberals face a tradeoff: significantly liberalized access to our labor markets for relatively unskilled alien workers will likely require some restrictions on alien access to public benefits and citizenship to have a realistic chance of enactment.²⁸ Under these circumstances, guest-worker programs may represent the only alternative to exclusion or illegal immigration for many aliens.²⁹ These aliens would be better served if liberals were to seek to improve these guest-worker programs rather than to prevent their adoption or to eliminate them.

V. IMPLICATIONS FOR IMMIGRATION REFORM

In light of the foregoing observations, we should adopt an expanded guest-worker program as a matter of political necessity, given the fiscal burden that the admission of a large number of relatively unskilled workers would otherwise entail and the reluctance of citizens to bear such a burden. Liberals should seek to minimize deviations from the ideal immigration policy but at the same time must remain sensitive to the need to improve the fiscal impact of relatively unskilled alien workers. How should we design a guest-worker program with these considerations in mind?

For example, how should we respond to the common complaints that guest workers often prefer to stay permanently and that it can be difficult to ensure that these workers leave?³⁰ One response is to make sure a new guest-worker program has better incentives for workers to return

²⁸ Empirical evidence indicates that immigrant access to public assistance generates significant political opposition to immigration. See generally Gordon H. Hanson, *Why Does Immigration Divide America?* *Public Finance and Political Opposition to Open Borders* (Inst. for Intl. Econ. Aug. 2005); Gordon H. Hanson, Kenneth Scheve & Matthew J. Slaughter, *Public Finance and Individual Preferences over Globalization Strategies*, 19 *Econ. & Pol.* 1 (2007).

²⁹ The following discussion draws from an earlier publication by Howard F. Chang, *Liberal Ideals and Political Feasibility: Guest-Worker Programs as Second-Best Policies*, 27 *N.C. J. Intl. L. & Com. Reg.* 465, 477-81 (2002).

³⁰ See Philip L. Martin & Michael S. Teitelbaum, *The Mirage of Mexican Guest Workers*, 80 *For. Affairs* 117, 119-20, 124-25 (Nov.-Dec. 2001).

home.³¹ Perhaps the government of the host country could withhold a fraction of a guest worker's wages to be paid only once the worker returns to that worker's home country.

We could also accommodate the desire of guest workers to remain, however, by lifting restrictions on the duration of their residence and employment in the host country. As long as we restrict their access to public benefits, they seem unlikely to impose a net fiscal burden on the public treasury. After all, the National Research Council found in 1996 that once we take the positive fiscal effect of an immigrant's descendants into account, an immigrant with less than a high-school education imposes a net fiscal cost of only \$13,000 in net present value.³² Furthermore, the same study also estimates that by excluding immigrants from seven specified means-tested benefits for only their first five years in the United States, welfare legislation passed in 1996 improved the total fiscal impact of the average immigrant by \$8,000.³³ These estimates suggest that an alien who *never* obtains access to these public benefits, as would be the case for a guest worker with only a nonimmigrant visa, would probably have a net positive fiscal impact even if the alien has less than a high-school education. Indeed, we exclude nonimmigrants from an even broader set of public benefits than those denied immigrants.³⁴ Thus, it would not generate a fiscal burden to allow guest workers to renew their nonimmigrant visas with no limit on the number of possible renewals. If we allow guest workers to stay as long as they wish, then this option would address the concerns expressed by Christina Rodriguez, who worries that guest-worker programs often fail to provide "the security of . . . the right to remain, or the security of a continued presence,"³⁵ a failure which erects "obstacles to the integration process" that incorporates "immigrants and their children" into the host society.³⁶

In fact, empirical evidence suggests that it would be in the interest of natives to allow even relatively unskilled immigrants to bring their immediate families with them, to allow their spouses to work, and to encourage their children to remain permanently in the United States. The National Research Council finds that on average, the fiscal impact of the descendants of an immigrant "is always positive, regardless of the

³¹ See Philip L. Martin, *Guest Workers: New Solution or New Problem?* 2007 U. Chi. Leg. Forum 289, 296 (2007) (suggesting that "the worker's share of payroll taxes could be refunded when the migrant surrenders his or her work visa in the country of origin").

³² See Natl. Research Council, *supra* n. 4, at 334.

³³ See *id.* at 339.

³⁴ See 8 U.S.C. § 1611(a).

³⁵ Cristina M. Rodriguez, *Guest Workers and Integration: Toward a Theory of What Immigrants and Americans Owe One Another*, 2007 U. Chi. Leg. Forum 219, 223.

³⁶ *Id.* at 222.

immigrant's age at arrival and education level."³⁷ Furthermore, the same study finds that even relatively unskilled immigrants have a net positive fiscal impact on average if they immigrate as children, because the younger an immigrant is upon arrival, the more years of work the immigrant can perform in the United States, and the more the immigrant will contribute in taxes prior to retirement.³⁸ Thus, the immigration of the children of even relatively unskilled alien workers would improve the fiscal impact of those workers. Indeed, the more children they bring, the larger the fiscal benefit their immigration confers on the United States.

Giving guest workers the option of *de facto* permanent residence while avoiding a net fiscal burden, however, requires us to restrict their access to citizenship and to public benefits. To better reflect what Rodriguez calls "the spirit of social cooperation that should characterize a democratic society,"³⁹ we could offer guest workers the opportunity to naturalize under appropriate conditions. For example, many reform proposals would offer a path to citizenship for guest workers who compile a record of employment and avoid criminal activity.⁴⁰ Indeed, as the president of La Raza noted approvingly, the bill passed by the Senate in 2006 would have given guest workers "the opportunity to earn a path to permanent status -- and ultimately citizenship."⁴¹ Thus, admission as a guest worker need not entail permanent status as an alien.

Access to citizenship for relatively unskilled alien workers need not impose a fiscal burden on incumbent residents if we require a sufficiently long period of alienage before eligibility for naturalization. By requiring guest workers to spend some years in nonimmigrant status first, we delay their access to the full set of public benefits that we provide to citizens. This delay itself would improve the fiscal impact of each immigrant. The longer the delay, the greater the improvement in the immigrant's fiscal impact. Thus, we could allow even a relatively unskilled immigrant to naturalize without imposing a net fiscal burden if a sufficient period of alienage with limited access to public benefits has passed. We could also require guest workers to have paid a sufficient amount in taxes before they could adjust their status, so as to ensure that those who adjust status are likely to have a net positive fiscal impact.

³⁷ Natl. Research Council, *supra* n. 4, at 329. Note that these descendants confer a net fiscal benefit even though the Fourteenth Amendment of the U.S. Constitution provides citizenship to anyone born in the United States, including the children of nonimmigrants. See U.S. Const. amend. XIV, § 1 ("All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.").

³⁸ See Natl. Research Council, *supra* n. 4, at 328-29.

³⁹ Rodriguez, *supra* n. 35, at 223.

⁴⁰ Aleinikoff, *supra* n. 3, at 488.

⁴¹ Murguia, *supra* n. 19, at B7.

In reality, access to citizenship is a matter of degree. As Walzer concedes, naturalization is subject to “constraints of time and qualification.”⁴² Guest workers might have the opportunity to adjust status only after a short period of residence or only after a long period. We might demand a long work history and a large amount of taxes paid or impose less stringent requirements. These requirements might be so lax as to ensure that virtually all guest workers can eventually become citizens or so demanding that only a few ultimately naturalize. Although Walzer seems to suggest otherwise, there is no bright line in this spectrum of alternatives to separate democracy from tyranny; there are only different shades of gray, different degrees of deviation from liberal ideals. We could choose any point along this continuum to satisfy restrictionists concerned about the fiscal impact of relatively unskilled immigrants or the political impact of their naturalization and participation in the electorate.

In fact, the 2007 bill considered by Congress would have given guest workers the opportunity to apply for permanent residence through a “new merit-based point system” and would have awarded some points for years of “U.S. work experience.”⁴³ By adjusting the points awarded for work experience as a guest worker or by awarding points for taxes paid, and by adjusting the total number of immigrant visas issued through such a system, we can adjust the guest worker’s prospects for permanent residence and the number of years that a guest worker could expect to wait to adjust status. By choosing an appropriate point along this continuum, Congress can settle on a compromise that can make a large number of admissions for relatively unskilled guest workers politically feasible.

From a cosmopolitan perspective that extends equal concern to aliens and natives, expanded guest-worker programs represent an improvement over the status quo alternative of exclusion. Therefore, cosmopolitan liberals should support liberalizing reforms that include guest-worker programs, even while seeking the broadest rights possible for aliens within the constraints of political feasibility. While it would be a mistake to pretend that this compromise is ideal from a liberal perspective, it would also be a mistake to forego worthwhile reforms because they fall short of the ideal.

⁴² Walzer, *supra* n. 8, at 60.

⁴³ Aleinikoff, *supra* n. 3, at 461.