

1965 AND ALL THAT: FEDERAL LAWS THAT INCREASE POPULATION AND ILLEGAL IMMIGRATION

An NPG Forum Paper
by Edwin S. Rubenstein

The U.S. has never had a formal population policy – has never tried to directly limit population growth or fertility rates. Any such policy would likely start with constraints on groups with the highest fertility rates: the poor, the poorly educated, minorities, and immigrants. The politics of such a move would be daunting. Charges of racism, elitism, and government meddling in a decision best left to husband and wife, are unavoidable. Government interference in these matters is simply un-American.

Yet the same groups opposed to direct population controls are staunch advocates of Federal policies that do the opposite: increase fertility and population growth. This paper examines three of them: the 1965 Immigration Act, the Earned Income Tax Credit, and the Emergency Medical Treatment and Active Labor Act. (EMTALA). These programs were not designed with population growth in mind. They achieve that result indirectly, by promoting family reunification, paying cash benefits that rise with family size, and offering free medical care to illegal aliens. Each has made a profound impact on the size and demographics of their target populations.

THE 1965 IMMIGRATION ACT

“The bill that we sign today is not a revolutionary bill. It does not affect the lives of millions. It will not reshape the structure of our daily lives, or really add importantly to either our wealth or our power...The days of unlimited immigration are past.” – President Lyndon B. Johnson at the signing ceremony, October 3, 1965.

“[O]ur cities will not be flooded with a million immigrants annually. Under the proposed bill, the present level of immigration remains substantially the same... Secondly, the ethnic mix of the country will not be upset...”¹ Senator Edward Kennedy (D-MA), the bill’s floor manager in 1965.

“Total quota immigration is now 156,782; under the proposed bill it would rise to 164,482.”² - Senator Robert F. Kennedy (D-NY).

The 1965 Immigration Act literally changed the face of America. It gave rise to an era of mass immigration – both legal and illegal – and unleashed demographic forces that radically changed the size and composition of U.S. population. When the law was being debated, however, these mega trends were beyond the imagination of lawmakers. It was the height of the civil rights movement. The historical significance of the new law lay primarily in that it would replace the national origins quotas that had been in place since the 1920s.

The 1921 National Origins Act capped annual immigration for each country at 2% of a country’s immigrant population in the 1890 Census. The formula was designed to favor Western and Northern European immigrants at the expense of those from Southern and Eastern Europe, where most post-1890 immigrants came from. For this reason, the 1921 legislation is widely called “racist.”

From the perspective of 2018, the most persuasive evidence that this law was color blind is the absence of any numerical limit on immigrants from Mexico or any other Western Hemisphere country. It created a de facto open border regime, under which a Mexican could purchase a U.S. visa (for 5 cents) and enter legally.³ American employers hired plenty of them. But the need for such labor was attenuated, in part because the government “safety net” was, by today’s standards, rudimentary – available only for natives who were genuinely unable to work. Under these circumstances, there are few jobs that Americans “do not want to do.”

World War II changed all that. With fifteen million men in their prime working years called to arms, labor shortages were widespread. In 1942 Congress passed the Bracero law, enabling California farmers to bring in millions of Mexican

farmworkers. It was intended to be a wartime expedient, but the war ended in 1945 while the Bracero program ended in 1964. Too late: by 1960, according to Douglas Massey and Karen Pren, “a massive circular flow of Mexican migrants had become deeply embedded in employer practices and migrant expectations” and was sustained by immigrant networks.⁴ Those networks exploded along with Mexico’s population, which grew from 35 million in 1960 to 100 million at the end of the millennium.

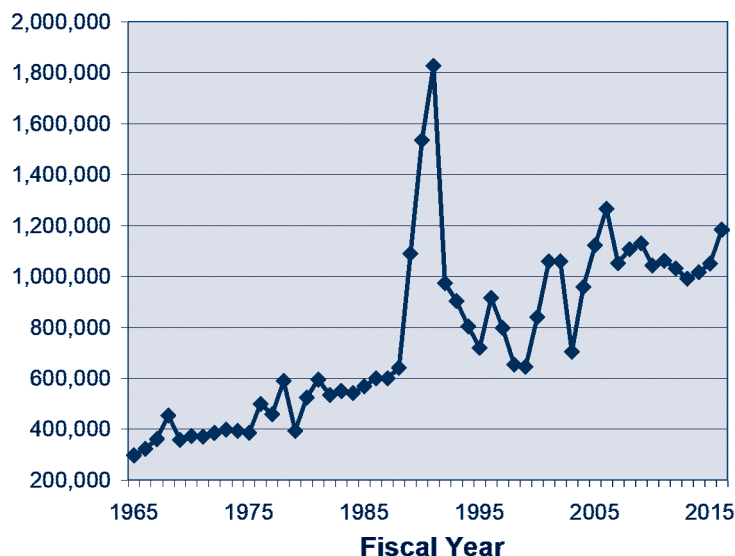
The 1965 Act made things worse – in the name of “fairness.” The new law allocated visas equally across countries, with an annual limit of 20,000 visas per country. Mexico’s quota was set at that level, even though the number of Mexicans applying for permanent resident status had averaged 50,000 a year through the 1950s.⁵

The 1965 law capped global legal immigration to the U.S. at 290,000 a year, with 170,000 visas allocated for entrants from the Eastern Hemisphere and 120,000 allocated for immigrants from the west. No country was allowed more than 20,000 legal entrants. President Johnson and the Senators Kennedy probably had those quotas in mind when they claimed the country would not be inundated with new immigrants. But reality intervened: The number of new Legal Permanent Residents (LPRs) rose from 297,000 in 1965 to an average of about 1 million annually in the mid-2000s.

Since 1965 more than 39 million persons have been granted the coveted LPR status, giving them green cards and a path to citizenship.

Annual Number of Persons Granted U.S. Legal Permanent Resident Status, 1965-2016

(Data: DHS, Yearbook of Immigration Statistics, 2016, Table 1.)



Our cities *were* inundated with a million plus immigrants annually. The ethnic mix *did* change. What happened? Blame the chain. The 1965 law did not cap the number of spouses, minor children, or parents of U.S. citizens that are allowed into the country each year. A process known as “chain migration” enabled naturalized citizens to bring in entire families outside the country quotas.

The chain process, described by Historian David Reimers, works like this:⁶ A skilled Asian male is certified by the Labor Department to enter the country on a temporary, high-tech worker visa. He does so well that his employer applies for a green card on his behalf. He gets it. As a Legal Permanent Resident he can petition to have his wife and children join him. After five-years the couple becomes naturalized citizens, enabling them to bring in their parents and siblings also – all outside the numerical country quota. Their brothers and sisters repeat the process, bringing in *their* spouses and children, et cetera, et cetera et cetera

In Reimer’s example, that solitary Asian temp generates an additional 19 Legal Permanent Residents within 10 years. Amazing? Not really. This process is merely compound interest applied to immigrants rather than investments. Over time, they both increase exponentially. What *is* amazing is that only one of the 19 new LPRs – the initial temp – is admitted on the basis of work skills. The 18 others are admitted solely because they are members of his extended family.

In theory, the chain migration process was available to Europeans also, but Asians had been excluded from normal immigration channels for nearly one hundred years. Years of pent up demand propelled them to the front of the line. They were the first to apply, the first to become citizens, and the first to pull the family unification chains. As a result, the number of new legal immigrants from Asia went from about 130,000 in the decade before 1965 (1950 to 1959) to about 1,500,000 in the decade after 1965. Over the same period new legal entrants from Europe fell from 1.4 million to 826,237 – a decline of 40%. The share of legal immigration from Europe fell from 56.2% in the decade prior to 1965 to 19.5% in the decade after 1965. In 2016 only 8.3% of new legal immigrants were from Europe.

In fairness to LBJ and the Senators Kennedy, much of what transpired over the past five decades reflects laws enacted after 1965. The big spike in LPRs in the late 1980s and early 1990s, for example, reflects the amnesty of nearly 3 million illegal aliens in the 1986 Immigration Reform and Control Act (IRCA) as well as refugees from Cuba and Vietnam.

The so-called “Reagan Amnesty” was the carrot half of a quid-pro-quo. The stick – a crack-down on employers who knowingly hire illegals, was in the law also:

“...It is unlawful to hire an alien, to recruit an alien, or to refer an alien for a fee, knowing the alien is unauthorized to work in the United States...It is unlawful to hire an individual for employment in the United States without complying with employment eligibility verification requirements. Requirements include examination of identity documents and completion of Form I-9 for every employee hired. ...”

Fines for knowingly hiring an illegal alien currently range from \$4,313 per worker for the first offense, \$10,781 for the second offense, to a hefty \$21,563 per worker for employers convicted of a third offense.⁸ The chance a U.S. employer will actually be prosecuted for this offense is minimal, however. An estimated 7 million illegals work in the U.S. today, yet in recent years ICE worksite audits have generated between \$5 million to \$9.5 million in annual fines.⁹ Do the math, and you get average fines of between 71 cents to \$1.90 per illegal hire per year, effectively no deterrent for U.S. employers looking for cheap help.

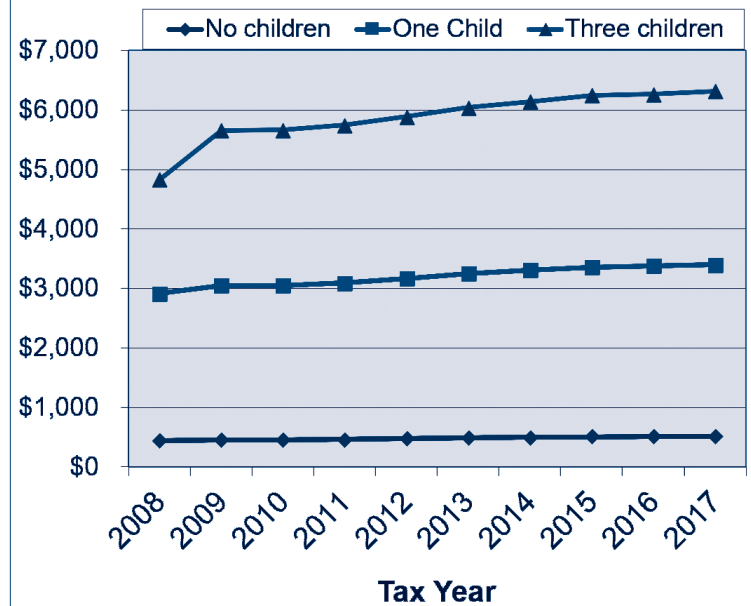
THE EARNED INCOME TAX CREDIT (EITC), 1975

EITC originated as an income supplement to help low income families pay Social Security taxes. Pursuant to that goal, the credit was calculated much like the payroll tax – as a flat percentage of earnings. Over the decades its mission was expanded. Today, it is a refundable” tax credit, meaning that credit payment is calculated independently of the tax payment. If the credit exceeds the filer’s tax liability, the government pays the difference in cash.

More importantly, EITC payments are increasingly linked to family size – the amount of resources used by the family – rather than family tax payments – the amount a family contributes to society. The pro-procreation incentives of the tax credit have increased in recent years:

In 2008 a family with no children received a maximum EITC payment of \$438; a family with one child received up to \$2,917, while two or more children bumped the maximum payment up to \$4,824. Thus, in 2008 families with children could receive EITC refunds that were 11-times larger than those available to those with no children (\$4,814 versus \$438).

Maximum EITC Payment Rises With Family Size, 2008-2017
(Data: Tax Policy Center; Center for Budget and Policy Priorities)



In 2009 the Obama administration exacerbated the pro-child bias by adding a fourth EITC bracket, for families with three or more children. Subsequent inflation adjustments widened the dollar gap between refunds available to the childless and those with children.

On returns filed in April 2018 childless families were eligible for an EITC payment of up to \$510, while a family with three or more children received as much as \$6,318. The presence of children triggers a 12-fold rise in EITC this year.

In dollars, the refund gap between childless households and those with three or more children rose from \$4,386 in 2008 to \$5,808 in 2017. That’s an increase of \$1,452, or 33.1%, in EITC’s pro-procreation incentive over this period.

While these dollar amounts may seem modest to most taxpayers, they are irresistible windfalls for low income workers, a big incentive to procreate – or at least claim to. The IRS estimates that as much as 54% of incorrect filing claims under the EITC involve fraudulent child custodial claims.¹⁰ Yet the tax collection agency does little to verify the existence of children claimed on tax returns.

But most children claimed on EITC tax returns are real – and therein lies the problem. The decision to have children may be influenced, at least in part, by the generous tax credit.

It is impossible to determine how many births are directly attributable to the EITC. Circumstantial evidence suggests such a linkage. First and foremost: the rapid growth of births to immigrant mothers eligible for the EITC. In 1970 immigrant mothers accounted for about 6% of U.S. births. By 2002 their share more than tripled, to 22.7%. (Even in 1910 – the peak of the Great Wave – only 21.9% of births were to foreign-born mothers).¹¹ While births to immigrants and native-born women have declined since the Great Recession, the share of all U.S. births to immigrant women in 2015 – 19.9% – is more than three-times what it was prior to the EITC.

The EITC's child-bearing incentives are far more pervasive among immigrant households.

Immigrant households with children under 18 are about 66% more likely to be eligible for EITC than comparable households headed by natives. This reflects their larger family size and lower average incomes.

The pro-child bearing incentives of EITC could explain why immigrant fertility rates are higher in the U.S. than in their country of origin.

Immigrant mothers from most countries have more children in the U.S. than in their home country. Throughout the world, a woman's educational level is a key determinant of her fertility, with more educated women generally having fewer children than the less educated. Yet even after controlling for education differences, immigrant fertility is higher here than in the home country.

Clearly, something happens here that does not happen there. The availability of EITC and other pro-child public benefits to low income, poorly educated immigrants, is surely one factor.

Fertility rates for both native-born and immigrant women have dropped over the past decade. However, the latest data indicate foreign-born women of all major races and ethnicities will have more children over their reproductive lifetimes than native-born women in their respective groups. The pattern closely mirrors eligibility for the tax credit:

Fertility and EITC eligibility rates for white and Asian immigrants are below the average for all immigrants. By contrast, Black and Hispanic immigrants were the most fertile and the most likely to qualify for the EITC in 2015. In fact, they are the only immigrant groups with Total Fertility Rates (TFRs) above the 2.1 level needed to keep population stable over the long run.

EITC eligibility rates, 2015

| | |
|---|-------|
| All immigrants | 23.5% |
| Immigrant households with children | 39.6% |
| All natives | 10.9% |
| Native households with children | 23.9% |

Data source: Steven A. Camarota and Karen Zeigler, *Immigrants in the United States: A profile of the foreign-born using 2014 and 2015 Census Bureau Data*, October 2016, Table 12.

The EITC Effect? Immigrant Fertility Rates are Higher in U.S. Than in Home Country

| Country of origin | TFR in Home Country | TFR in U.S. |
|-----------------------|---------------------|-------------|
| Mexico | 2.40 | 3.51 |
| Philippines | 3.22 | 2.30 |
| China | 1.70 | 2.26 |
| India | 3.07 | 2.23 |
| Vietnam | 2.32 | 1.70 |
| Korea | 1.23 | 1.57 |
| Cuba | 1.61 | 1.79 |
| El Salvador | 2.88 | 2.97 |
| Canada | 1.51 | 1.86 |
| United Kingdom | 1.66 | 2.84 |

Total Fertility Rate (TFR) is the number of children a woman can be expected to have in her reproductive years. Estimates are based on analysis of 2002 American Community Survey data. Data source: Steven Camarota, "Birth Rates Among Immigrants in America," Center for Immigration Studies, October 2005. Table 1. <http://www.cis.org/articles/2005/back1105.pdf>

Total Fertility Rates, 2015

| | Native-born | Immigrants |
|-----------------|-------------|------------|
| White | 1.74 | 1.99 |
| Black | 1.69 | 2.56 |
| Asian | 1.59 | 1.76 |
| Hispanic | 1.85 | 2.38 |

EITC Eligibility Rates, 2015

| | Native-born | Immigrants |
|-----------------|-------------|------------|
| White | 8.4% | 10.3% |
| Black | 18.7% | 21.3% |
| Asian | 8.9% | 13.7% |
| Hispanic | 20.4% | 35.8% |

Data: Steven Camarota and Karen Ziegler, Center for Immigration Studies, 2016 and 2017.

TFR represents the expected number of children a woman will have over the course of her lifetime, based on current birth rate trends. TFR comparisons are particularly useful when there are large age differences among groups. If, say, female immigrants are much younger than female natives, the TFRs of the two groups will not be affected. By contrast, birth rates – calculated as births per 100,000 population – will generally be larger in the group with the younger population.

Put differently, the TFR reflects the desire of women in the various groups to have children. The prospect of a generous child benefit such as EITC can certainly affect that decision. And if history is any guide, the immigrant/native fertility gap will remain intact in future generations. That is, fertility rates of the U.S.-born descendants of today's immigrants will exceed by a similar margin those of the descendants of today's natives.

Even small differences in fertility rates can produce large differences in population growth if they persist over a long period of time. They are the demographic equivalent of compound interest rates.

In this way immigrants influence future population growth by more than their numbers might suggest. Over time immigrants die, but their U.S.-born offspring will have children themselves, followed by grandchildren and subsequent generations. A sophisticated population projection methodology is required to measure the impact of future immigrants on future population growth.

The Census Bureau's 2014 national population projections are the first to incorporate separate fertility assumptions for native and foreign-born women. Higher fertility rates for immigrant women and their U.S. born children, some of it attributable to EITC, is one factor behind the steady rise in the U.S. population over the projection period.

Total U.S. population is expected to increase by 98.0 million, or 31%, from 2014 to 2060. Over this time frame the native-born population is projected to rise 22.3%, and the immigrant population is projected to rise by 84.7%. The foreign-born population will account for 37% of U.S. population growth between 2014 and 2060.

A full accounting for immigration must add U.S.-born children and grandchildren of immigrants arriving during this period. Census estimates that 39.8 million children – about 20% of all U.S. births – will be born to immigrant mothers who arrive during the projection period. We have

not seen Census estimates of grandchildren. Meanwhile, about 300,000 immigrants die each year, and an equal number voluntarily leave (emigrate.)

A comprehensive analysis requires projecting U.S. population under a zero immigration scenario, and comparing the results with the actual Census projections. While the official Census projection does not include a zero-immigration scenario, a 2013 Census blog item does.

Under current immigration policy U.S. population will rise to 420 million in 2060, versus 341 million if no immigration was allowed over the 2012 to 2060 period.¹² This implies that immigrants arriving over the next 45 years, and their U.S. born children and grandchildren, will add 79 million to U.S. population by 2060. More than two-thirds of U.S. population growth over this period will be due to immigration.

RACE, ETHNICITY, AND THE EITC

Minorities qualify for the EITC at higher rates than whites because their incomes are lower. Their average credit payment is larger due to larger family size. The latter difference is especially pronounced for Hispanic households. The Hispanic TFR in 2015 was 2.05 children per woman. This value is higher than for any of the race groups; white and Asian TFRs are 1.75 and 1.67, respectively, and the Black TFR is 1.81. The higher rate for Hispanic women is in large part due to the relatively high fertility of Hispanic immigrants, who have a TFR of 2.38.¹³

By 2060 the Hispanic population will be 2.1-times larger than today, there will be 2.2-times more Asians, and 36% more Blacks. By contrast, there will be 16.5 million fewer non-Hispanic whites, a reduction of 8.5%.

A mother's culture, education, and earnings potential are undoubtedly more important than the prospect of a higher EITC payment when she decides to have another child. But for many low income immigrants, the credit is a factor. Even a tiny change in average fertility rates, when compounded over time, has enormous consequences.

A MODEST PROPOSAL

Pro-child, yet anti-marriage. Anti-poverty, yet harmful to workers whose wages rise above the poverty threshold. The EITC tries to be everything to everybody, and ends up being a complicated, fraud- riddled mess. Policymakers should restore the credit to its original mission: an offset to payroll taxes paid by the poor.

| U.S. Population by Nativity, 1970 to 2060 (population in thousands) | | | | |
|---|---------|-------------|--------------|-----------------------------|
| | Total | Native-born | Foreign-born | Foreign-born share of Total |
| 1970 | 204,401 | 194,788 | 9,613 | 4.7% |
| 1980 | 227,537 | 213,864 | 13,673 | 6.0% |
| 1990 | 248,623 | 229,023 | 19,600 | 7.9% |
| 2000 | 281,646 | 250,478 | 31,168 | 11.1% |
| 2010 | 309,350 | 269,394 | 39,956 | 12.9% |
| 2014 National Projections | | | | |
| 2014 | 318,748 | 276,398 | 42,350 | 13.3% |
| 2020 | 334,503 | 286,611 | 47,692 | 14.3% |
| 2030 | 359,402 | 302,545 | 56,957 | 15.8% |
| 2040 | 380,213 | 315,103 | 65,116 | 17.1% |
| 2050 | 398,328 | 326,030 | 72,299 | 18.2% |
| 2060 | 416,795 | 338,564 | 78,230 | 18.8% |
| Projected Increase, 2014-2060 | | | | |
| Persons | 98,047 | 62,166 | 35,880 | |
| % | 20.8% | 22.5% | 84.7% | |
| Data: Census Bureau (1970-2010); 2014 National Projections (2014-2060). | | | | |

To do this we should strip all procreation incentives from the EITC and focus on payroll tax-related aspects of the credit. The mechanics are simple: a single EITC phase-in rate of 7.65% (equal to the combined Social Security and Medicare payroll-tax liability) with maximum benefits available at the poverty thresholds for single workers and families, should be made available to all taxpayers. Differentiation by family size should be left to the personal income tax, via personal deductions, and the non-refundable child tax credit, which is available only to people who pay income tax.

THE EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT OF 1985 (EMTALA)

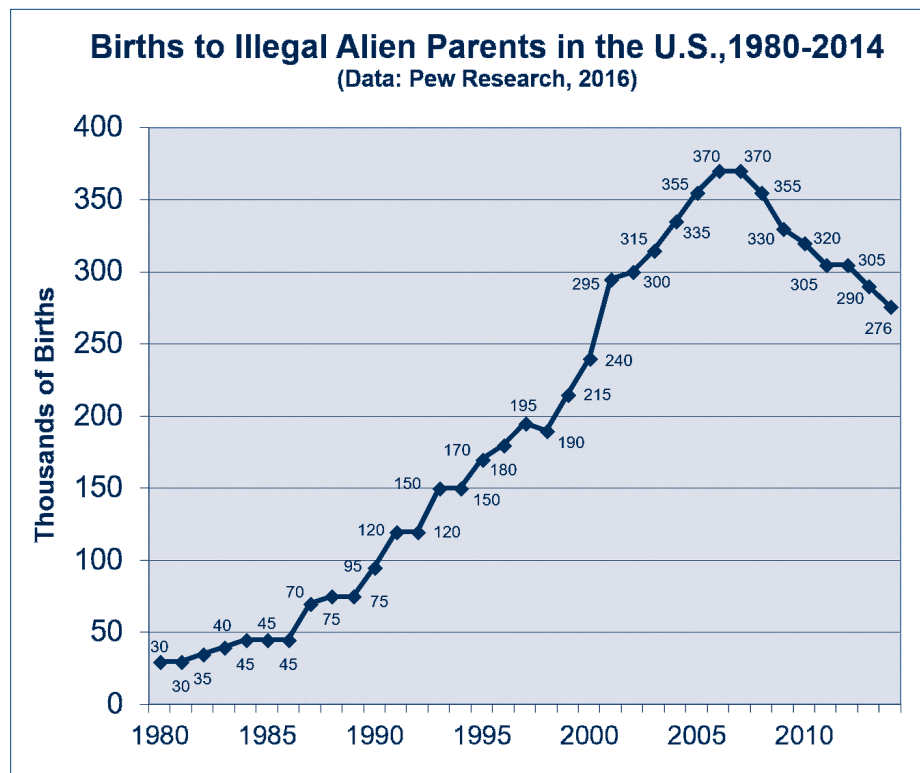
Immigrants earn less than natives, are older, and are more likely to be without health insurance. While the Affordable Care Act (AKA, Obamacare) reduced the health insurance gap between native-born and immigrants, its subsidies are available only to lawfully present immigrants.¹⁴ As a result, un-insurance rates for non-citizens, a group that includes illegal aliens – remain conspicuously above those of native-born and naturalized citizens.

However, there is one medical service available to all immigrants, legal and illegal alike: the Emergency Room (ER). The Emergency Medical Treatment and Active Labor Act of 1985 (EMTALA) requires every hospital emergency room in the nation to treat illegal aliens for free. An “emergency,” as defined by this statute, is any complaint brought to the ER, from hangovers to hangnails, from gunshot wounds to AIDS. The hottest ER diagnosis, according to medical lawyer Madeleine Cosman, is “permanent disability” a vaguely defined condition that covers mental, social, and personality disorders.¹⁵ Today’s opiate addiction and alcoholism are among the fastest growing “disabilities.”

Unlike other laws affecting illegal aliens, EMTALA is vigorously enforced. Hospital ERs must have physicians available to them at all times from every department and specialty covered at the hospital. The Feds impose fines of up to \$50,000 on any physician or hospital refusing to treat an ER patient, even when the attending physician examines and declares the patient’s illness or injury to be a non-emergency. Lawyers and special interest groups are granted more authority than doctors in these matters.

Mexicans regard EMTALA as “their” entitlement: Ambulances drive from Mexico to U.S. border hospitals, drop off indigent patients, and leave – secure in the knowledge that their fares will be admitted. EMTALA requires hospitals to accept anyone who is within 250 yards of a hospital no matter how they got there. Any patient coming to a hospital ER requesting “emergency” care must be screened and treated until ready for discharge, or stabilized for transfer – whether or not insured, “documented,” or able to pay. A woman in labor must remain to deliver her child.

About 275,000 babies were born to illegal alien mothers in 2014, or about 7% of the 4 million births in the U.S. that year.¹⁶ Seven percent may sound low until you consider that illegals are just 3.5% of the entire U.S. population. The disparity reflects the relatively high share of illegal alien females of child bearing age, and their high



fertility rate (average births per mother) relative to native-born females.

While births to illegal alien mothers declined noticeably after the Great Recession, the number and share of such births have generally skyrocketed since EMTALA was enacted.

How many of these 275,000 birth mothers came here specifically to give birth? There are no hard answers to this question. It is clear from press reports, however, that these are not rare events. San Diego Fire and Rescue crews “were called to the San Ysidro border crossing for nearly 160 childbirth emergencies in 2012 – one almost every other day” according to the San Diego Union Tribune. Though the reporter could not ascertain what percentage of births were to non-citizens – federal laws prohibit emergency crews and hospital teams from asking – the individuals interviewed said that “such calls continued in 2013, with 15 childbirth emergency calls to the gateway into Tijuana in January, eight in February, and 17 in March.”¹⁷

CBS News interviewed one Mexican woman who crossed the border nine months pregnant. The report noted that she was “rushed to a south Texas hospital to undergo a C-section – a \$4,700 medical procedure that won’t cost her a dime. She qualifies for emergency Medicaid”¹⁸

“Do many women in Mexico make the choice to have their children in the United States?” asked CBS. “Yes,” the

woman said through a translator. “I know people who have done that. Things are much better here in the United States because they help children so much more.”

The U.S.-born baby is, of course, a U.S. citizen, whose illegal alien parents are eligible to receive, on the baby’s behalf, food stamps, nutrition from the Women, Infants, and Children (WIC) program, and numerous tax benefits, including the EITC.

Most importantly, the newborn is deportation insurance for its parents. Illegal aliens facing deportation can argue that to deport one or more parents would create an “extreme hardship” for the new baby. If an immigration officer agrees, we’ve added a new adult to the nation’s population. At age 21 the former birthright citizen baby can formally apply for green cards for parents and siblings, and they, in turn, can start their own immigration chains.

Do no harm. That is the hallmark of medical practice. Why not the same for our immigration laws?

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