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Fake Marriages, Asylum, and Gas Station Robberies: Institutional Determinants of Migrants' Strategies

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Abstract

I study institutional and political determinants of migrants' immigration strategies using the United States' immigration system as a case study. Drawing from work that theoretically connects decisions to immigrate legally vs. illegally as well as theoretical insights from literature on the economics of crime, I show how relative probabilities of successful migration using different strategies and relative utility gained using different strategies weigh heavily in immigrants' calculus. To do so, I use qualitative evidence of migrant strategies in the face of migration policy constraints. These various policy constraints lead to a variety of different tactics revolving around decisions regarding whether to immigrate legally, to commit visa fraud, or to choose one type of visa over another. In the process, I also build on a rich body of Public Choice literature to demonstrate how complicated regulatory systems, in this case regulatory systems that quantitatively restrict migration, encourage rent-seeking by both migrants and non-migrants.

Keywords: Immigration, Institutions, Policy, Visas, Rent-seeking

JEL Codes: K37; J68; D02

Statements and Declarations

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1. Introduction

A recurring theme in sitcoms involves an immigrant who finds his stay in the United States jeopardized. What follows is inevitably a comically entrepreneurial solution to legally stay in the country, usually in the form of marrying a native. This is precisely what the immigrant Fez does when he marries Eric's sister to avoid being deported in the hit series *That '70s Show* ("I'm Free," 2003). A more recent sitcom, *Superstore*, revisits the theme of the desperate undocumented immigrant's attempt at legitimacy, with a slight twist. In this twist, a main character named Mateo wishes to transfer stores, because his boyfriend is the district manager of the store at which he currently works. However, such a transfer requires a background check and supporting documents, which Mateo realizes he does not have after being told by a family member he was brought to the U.S. illegally as a child. After refusing to marry his coworker Jonah, he searches online for alternative solutions and discovers the U-visa, given to immigrants who are victims of violent crimes. The solution is simple: instead of enduring the embarrassment of marrying a coworker with whom he already does not get along, Mateo asks Jonah to punch him in the face ("Mateo's Last Day," 2017).

It's often said comedy lies at the intersection of humor and truth. Indeed, there is such a thing as a U-visa, and manipulation of that visa has been documented in several court cases (U.S. Attorney's Office for the District of South Carolina 2019; U.S. Attorney's Office for the Southern District of Mississippi 2016).

The purpose of this paper is to analytically explore the strategies of immigrants and other rent-seeking agents as they try to maximize their likelihood of successful migration, including using visa fraud, and the determinants of those strategies. In doing so, I rely on the institutional environment of the U.S. visa system and the incentives it provides as an explanation. Institutions are often described as the "rules of the game," those "humanly devised constraints that structure political, economic and social interaction" (North 1991, p.

97). These humanly devised rules guide behavior and assign special statuses to people and objects that enable the performance of specific functions (Searle 2005, pp. 21-22). In the United States, and most countries around the world, one way in which people are granted special status and allowed to perform specific functions is through immigration status. Not only are undocumented immigrants subject to different rules, assigned different statuses, and allowed to perform different functions compared to natives and documented migrants (Gleeson and Gonzales 2012), but different documented immigrants are afforded different privileges and allowed to perform different functions in society according to their different statuses (Helbling et al. 2017). These rules and constraints on immigrant behavior according to different statuses in turn guide immigration strategies. For example, immigration policy can impact the incentives to immigrate legally or illegally, to avoid detection when migrating illegally, to engage in visa fraud and manipulation (legal or illegal), to accumulate human capital, or to simply apply for a different visa altogether (Schaeffer and Kahsai 2011; Engbersen and Broeders 2009; McCallen 2021; Bray 2019; Stark et al. 1997; Stark et al. 1998; Schaeffer 2007; Beine et al. 2008). This line of literature, which this paper builds on, argues that immigrants actively and rationally respond to incentives provided by immigration legislation.

How immigrants decide to migrate and how they respond to institutional constraints and incentives revolving around their immigration statuses has deep implications for the desirability and efficacy of immigration policy, particularly insofar as the goal of immigration policy is to allow certain types of immigrants into the country and keep other types of immigrants out. To the extent immigration policy is designed to keep certain types of immigrants out of the host country and to the extent these “unwanted” types of immigrants can fake or create eligibility for entry into the host country, immigration policy falls short.

In pursuing this research question, I contribute to a couple lines of literature. First, I contribute to literature on determinants of immigration and impacts of immigration restrictions and enforcement on economic outcomes generally and immigrant decision-making specifically. Much work has been done on impacts of immigration restrictions and their enforcement, with mixed results regarding the efficacy of this enforcement on levels and flows of illegal immigration (Hanson and Spilimbergo 1999). Much less work has been done on immigration strategies, and the work that has been done focuses on the strategies undocumented immigrants utilize to avoid detection specifically (Massey et al. 2016) or on how immigrants build human capital in their home countries to increase probabilities of successful migration (Stark et al. 1997; Stark et al. 1998; Schaeffer 2007; Beine et al. 2008), not on how immigrants navigate institutional environments in host countries to maximize their likelihood of successful immigration generally. In contributing to this literature, I build on the work of Schaeffer and Kahsai (2011), who model undocumented migration as an imperfect substitute for documented migration and find amnesty increases the desirability of illegal migration. I extend this model by analyzing how different types of visas may act as a substitute for one another and how the probability of successfully migrating using a specific visa type can be manipulated.

I also contribute to a deep literature on how government policy can encourage rent-seeking and other forms of corruption (Krueger 1974; Ades and Di Tella 1999; Fisman 2001). When governments restrict output with taxes or quantitative restrictions, welfare suffers because of both deadweight loss and shifts in activity from productive wealth generation to unproductive wealth redistribution (Tullock 1967; Baumol 1996). In the context of immigration, productive firms often expend scarce resources in attempts to extract rents arising from quantitative restrictions on the supply of foreign labor, and illegal human smugglers are able to do the same (Powell 2012). My paper contributes to this line of

research by focusing on rent-seeking by immigrants gaming the visa system of the United States.

Finally, I contribute to literature that focuses on the rational calculations of criminals and how probabilities of detection influence decisions of people committing crimes or contemplating crime. Visa fraud and undocumented migration, two strategies for migrants, are criminal in nature, and the probabilities of engaging in these activities are related to the rewards for engaging in those activities and the probabilities of being caught engaging in those activities. Thus, this research acts as an application of Becker's seminal work on crime and punishment (Becker 1968).

Next, I outline theory underlying how institutional rules governing immigration can act as a determinant of visa fraud and which type(s) of visas immigrants decide to apply for. I then describe the specific institutional setting of the U.S. immigration system. After connecting how institutional rules theoretically can govern immigration strategies with empirical evidence in the form of real-world cases in the U.S., I discuss shortly how immigration restrictions strategically respond to immigrant behavior. Finally, I conclude with implications and policy recommendations.

2. Theory

2.1 A General Theoretical Relationship Between Legal and Illegal Immigration

Consider the choices faced by one who wishes to immigrate. To do so, I turn to a theoretical model of immigration developed by Schaeffer and Kahsai (2011). An individual who wishes to migrate has three broad choices: stay home, immigrate legally, or immigrate illegally.

Since this person wants to immigrate, I consider the decision to stay at home a least-preferred option; whether or not an individual migrant chooses to stay at home or immigrate (legally or illegally) depends on the relative benefits these individuals expect to accrue from each option, and often there are huge benefits associated with immigration compared with staying home.

Indeed, these relative benefits are so huge, immigrants often choose not to stay home when border enforcement increases, but to choose more expensive methods of migrating illegally, like using more dangerous routes or hiring better quality, more expensive coyote (human smuggler) services (Cornelius and Salehyan 2007; Cornelius and Lewis 2006; Massey et al. 2015; Massey et al. 2016).

Illegal and legal migration are substitutes insofar as both allow the immigrant to enter their destination country of choice. However, it is clear that illegal immigration is an inferior substitute for legal immigration – both types of immigrants enjoy a stay in the host country, but legal immigrants are afforded many more privileges, and their stays are less tenuous than those of illegal immigrants. In other words, absent quotas on legal immigration, there is no incentive to migrate illegally (Orrenius 2001).

But, there are quite a few immigration restrictions in most developed nations that are popular destinations for migrants (Helbling et al. 2017). Further, these immigration restrictions do not impact the chances of successful migration uniformly for all immigrants – immigrants from more populous, richer, and culturally similar countries immigrate with higher chances of success (Lawson and Lemke 2012; Falck et al. 2012; Krieger et al. 2018) and immigrants with higher levels of human capital are more likely to experience success when immigrating (Borjas 1987; Mahroum 2001).

It is worth noting that probabilities of successful migration do not simply refer to the probability of entering the United States successfully, particularly in the case of illicit migration as illegal immigrants must actively avoid detection after entry if they wish to enjoy the benefits associated with successful migration. To make this point clear, recall sitcom examples introduced earlier and consider how at any given point, an undocumented migrant's stay in the host country can be jeopardized, in turn impacting that immigrant's behavior. Thus, the probability of successful migration is dynamic in nature, particularly for illegal

immigrants because of their tenuous legal status. This dynamic nature in turn impacts aforementioned relative benefits associated with different forms of migration – a shorter stay implies fewer benefits. Even for legal immigrants, probabilities of successful migration are dynamic, because conditions that qualify one for a certain visa, like marriage or work at a specific employer, can change.

Unless illicit migration is completely unenforced, illegal migration is always associated with a probability of success less than one. Similarly, unless there are zero quotas on immigration, legal migration is always associated with a probability of success less than one. Because the decision to migrate is based on the relative benefits of migration and these benefits are discounted according to probabilities of successful migration, a simple theoretical model, first developed by Schaeffer and Kahsai (2011), can be used to predict when an immigrant will decide to immigrate legally vs. illegally based on the following two expected outcomes:

$$E[U_L] = p_L U(Y_L) + (1 - p_L) U(Y_{NM}), \quad (1a)$$

$$E[U_I] = p_I U(Y_I) + (1 - p_I) U(Y_{NM}), \quad (1b)$$

Here, $E[U_L]$ and $E[U_I]$ denote the expected utilities associated with legal immigration and illegal immigration, respectively. Similarly, p_L represents the probability of successful legal immigration and p_I represents the probability of successful illegal immigration. Finally, $U(Y_L)$ represents the utility associated with legal migration, $U(Y_I)$ denotes the utility associated with illegal migration, and $U(Y_{NM})$ tells us the utility associated with not migrating, and these utilities are concave. Recall, $U(Y_L) > U(Y_I) > U(Y_{NM})$.

Holding immigration policy constant, the relationship between p_L and p_I will depend on the individual. For individuals who find the obtainment of a visa relatively easy, like high-skilled immigrants from rich, populous, and culturally similar countries, it is likely that $p_L > p_I$. For immigrants who do not experience preferential treatment under immigration regimes

and find the benefit of obtaining a visa very difficult, it is likely $p_I > p_L$. This second condition is very likely for many immigrants attempting to enter the United States: the backlog for some visas is so long, many immigrants are more likely to die than live to see their cases adjudicated (Enright and Bedi, 2022).

Either way, the condition in which an individual is indifferent between legal and illegal immigration is expressed with the following equality:

$$E[U_L] = E[U_I], \quad (2a)$$

$$p_L U(Y_L) + (1 - p_L)U(Y_{NM}) = p_I U(Y_I) + (1 - p_I)U(Y_{NM}), \quad (2b)$$

This equality can be rewritten as such:

$$p_I - p_L = p_I \frac{U(Y_I)}{U(Y_{NM})} - p_L \frac{U(Y_L)}{U(Y_{NM})}, \quad (2c)$$

The first fraction on the right side of (2c) represents the utility gain associated with migrating illegally relative to staying home; the second fraction of (2c) represents the utility gain of migrating legally relative to staying home. If the left side of this equation is greater than the right side, the immigrant in question strictly prefers legal immigration over illegal immigration. Equilibrium occurs if either $Y_L > Y_I$ and $p_L < p_I$ or if $Y_L < Y_I$ and $p_L > p_I$; however, the second set of conditions is very unlikely. Though it is entirely likely many immigrants find $p_L > p_I$, especially high-skilled immigrants from culturally similar origin countries, because legal immigration affords more privileges and opportunities compared to illegal immigration (Orrenius 2001), it is very unlikely potential income when migrating legally is greater than potential income when migrating illegally for any given immigrant. Further, illegal immigrants suffer a wage penalty to compensate employers for the risk of hiring them (Rivera-Batiz 1999). Thus, we need only consider the first set of conditions where the utility associated with legal immigration is higher than the utility associated with illegal immigration *and* the probability of successful legal migration is lower than the probability of successful illegal migration.

In other words, it only makes sense to migrate illegally if the probability of successful illegal immigration sufficiently outweighs the probability of successful legal immigration to offset expected lower utility associated with illegal immigration relative to legal immigration. While immigrants experiencing preferential treatment under a given immigration regime probably find the above condition unlikely, for low-skilled immigrants, it can be very likely. Quota limits in many popular immigration destinations are strict, meaning the probability of legal immigration is at or near 0 for many. Even for some high-skilled immigrants, particularly immigrants from India and China, quotas based on countries of origin can make it difficult or impossible to migrate legally under a work visa (Enright and Bedi 2022).

2.2 Extending the Model

However, as Schaeffer and Kahsai (2011) point out, because many migrants are eligible for multiple visas, some are able to select which visas to apply for or apply for a different visa if denied the first time. Further, each visa type offers different waiting lines and different probabilities of success. Thus, besides the decision to migrate legally or illegally, a migrant also has many different options regarding visa type. Of course, the same can be said regarding illegal migration – there are several ways to immigrate illegally and each method offers different potential utilities and different probabilities of success. For instance, an immigrant can hire a coyote to cross a border, take a less patrolled and more dangerous route, or simply come on a tourist visa and overstay that visa (Cornelius and Salehyan 2007; Cornelius and Lewis 2006; Massey et al. 2015; Massey et al. 2016; Vaughan 2022). We can easily incorporate this into the theoretical model above developed by Schaeffer and Kahsai (2011) to build a more general model consisting of more than two options.

Now, I assume a certain number of types of visas and denote that number N . Thus, v_1, v_2, \dots, v_N denote the first visa type, the second visa type, and the N^{th} visa type, respectively. Each of these visa types will also have different probabilities of success defined

as $p_{v_1}, p_{v_2}, \dots, p_{v_N}$, where p_{v_1} is the probability of successfully migrating under v_1 , p_{v_2} is the probability of successfully migrating under v_2 , and p_{v_N} is the probability of successfully migrating under v_N . If successful migration occurs, each visa types also offers different utilities. Of course, we can do something similar with different illegal immigration strategies such that I_1 is one way of migrating illegally, I_2 represents a second way of migrating illegally, and I_N represents an N^{th} way of migrating illegally. Each of these methods of illegal migration will have different probabilities of success such that p_{I_1} denotes the probability of successful migration using method I_1 , p_{I_2} denotes the probability of successful migration using method I_2 , and p_{I_N} denotes the probability of successful migration using method I_N . And, finally, each of these strategies of illegal migration will offer different utilities.

Now, this more general model includes a variety of options by which an immigrant can immigrate legally or illegally. In the context of the above base model developed by Schaeffer and Kahsai (2011), one can imagine each immigrant being indifferent between all options when the expected values of those options are equal. I avoid writing such an equality out mathematically; the intuition is simple. This general model suggests that if the relative expected value of one strategy goes up, immigrants at the threshold will opt for that strategy.

While many immigrants may have a multitude of options to enter the United States in theory, in reality immigrants choose between options at the threshold. Thus, while extending the model to include more than two options captures more fully the variety of migration strategies, legal and illegal, a given immigrant can choose from, each immigrant realistically chooses between only a couple options with the highest relative expected values. Which options those are depends on individual characteristics of each migrant, because individual migrant characteristics heavily influence the relative utilities of different migration strategies as well as the chances of success accompanying each of those strategies. This means one can make simple tweaks to the baseline Schaeffer and Kahsai (2011) model above to derive

meaningful, testable hypotheses of how individual immigrant characteristics act to moderate the link between immigrant behavior and incentives created by immigration policy. In doing so, one can predict how a given migrant will respond after a shock to relevant immigrant strategy utilities and probabilities of success.

2.3 Comparative Statics and Decisions at the Threshold

With the above in mind, I start by solving a model with two visa types. Each visa type will have a probability of success such that p_{v_1} is the probability of successful immigration under v_1 and p_{v_2} is the probability of successful immigration under v_2 . Now an immigrant will decide to immigrate based on the following three expected outcomes:

$$E[v_1] = p_{v_1}U(Y_{v_1}) + (1 - p_{v_1})U(Y_{NM}), \quad (3a)$$

$$E[v_2] = p_{v_2}U(Y_{v_2}) + (1 - p_{v_2})U(Y_{NM}), \quad (3b)$$

$$E[U_I] = p_I U(Y_I) + (1 - p_I)U(Y_{NM}), \quad (3c)$$

where p_x (with x equal to immigration strategies v_1 , v_2 , and I) continues to represent the probability of successful migration using strategy x , $U(Y_x)$ continues to represent the utility of migration using strategy x , and $E[x]$ continues to represent the expected value of migration using strategy x . Insofar as visa applications are legal and non-fraudulent in nature, we also continue to assume $U(Y_L) > U(Y_I) > U(Y_{NM})$ – this implies utility under any type of visa that is obtained legally outweighs utility under illegal immigration (or under any type of visa that is obtained illegally). I now assume the immigrant in question is legally eligible for multiple visa types such that illegal immigration is unnecessary to achieve the goal of migration. For many immigrants, particularly high-skilled immigrants or immigrants with family already residing in the U.S., legal eligibility for multiple visas realistically precludes any consideration of illegal migration. This means one should not expect such immigrants to be particularly prone to migrate illegally. I am left with equations (3a) and (3b), and I arrive at

the condition in which an immigrant is indifferent between v_1 and v_2 with the following equation:

$$E[U_{v_1}] = E[U_{v_2}], \quad (4a)$$

$$p_{v_1}U(Y_{v_1}) + (1 - p_{v_1})U(Y_{NM}) = p_{v_2}U(Y_{v_2}) + (1 - p_{v_2})U(Y_{NM}), \quad (4b)$$

And again, this inequality can be rewritten:

$$p_{v_2} - p_{v_1} = p_{v_2} \frac{U(Y_{v_2})}{U(Y_{NM})} - p_{v_1} \frac{U(Y_{v_1})}{U(Y_{NM})}, \quad (4c)$$

Now on the right side of the equality, the first fraction of (4c) represents the utility gain associated with migrating under v_2 relative to staying home; the second fraction of (4c) represents the utility gain of migrating under v_1 relative to staying home. If the left side of this equation is greater than the right side, the immigrant in question strictly prefers immigration under v_1 compared to immigration under v_2 . Equilibrium occurs if either $Y_{v_1} > Y_{v_2}$ and $p_{v_1} < p_{v_2}$ or if $Y_{v_1} < Y_{v_2}$ and $p_{v_1} > p_{v_2}$.

Either set of conditions is likely depending on the institutional regime governing immigration and the person in question. Besides offering different probabilities of success and different waiting times, various visas also offer different potential incomes – some visas do not allow work, for example. Thus, once an immigrant who is eligible for multiple visas decides to immigrate legally, probabilities of successful migration under these visas as well as potential utility these visas offer begin to weigh heavily in the immigrants' calculus. There are a number of pairs of visas that are more or less substitutes for one another in the U.S. and that simultaneously offer different probabilities of success and similar expected utilities. This means a general testable hypothesis is that immigrants and their lawyers will actively apply for visas with higher probabilities, holding expected utilities more or less constant.

Discussion of evidence supporting this hypothesis is saved for later.

What about those migrants who are denied and/or ineligible for any visa? Do these migrants have an option other than staying home or migrating illegally? Indeed, there is an option: potential illicit migrants are also able to *make themselves eligible* for certain visas, and this strategy has been satirized in a number of television shows, including those mentioned at the beginning of this paper. This set of choices can also be incorporated into our model. Now I assume the migrant in question has been denied legal entry and is not eligible for any visas. This immigrant can decide to immigrate based on two options: she can migrate illegally, or she can try to raise the probability of getting in using a certain type of visa. Indeed, a migrant who was originally eligible for multiple visas may fall into this category of migrants if all her visa applications are denied. Functionally, this is similar to considering a migrant who faces the choice of migrating illegally vs. legally, with a few caveats. This immigrant will decide to immigrate illegally or manufacture eligibility for a visa based on the following two expected outcomes:

$$E[v_M] = p_{v_M}U(Y_{v_M}) + (1 - p_{v_M})U(Y_{NM}), \quad (5a)$$

$$E[U_I] = p_I U(Y_I) + (1 - p_I)U(Y_{NM}), \quad (5b)$$

where p_{v_M} represents the probability of successful migration using a strategy of manufacturing eligibility for a visa, $U(Y_{v_M})$ represents the utility of migration using a strategy of manufacturing eligibility for a visa, and $E[v_M]$ represents the expected value of migration using a strategy of manufacturing eligibility for a visa. Our terms associated with illegal migration are the same as they are in previous equations. Equilibrium, similar to other situations previously analyzed, can be expressed as:

$$E[U_{v_M}] = E[U_I], \quad (6a)$$

$$p_{v_M}U(Y_{v_M}) + (1 - p_{v_M})U(Y_{NM}) = p_I U(Y_I) + (1 - p_I)U(Y_{NM}), \quad (6b)$$

This inequality can also be rewritten:

$$p_I - p_{v_M} = p_I \frac{U(Y_I)}{U(Y_{NM})} - p_{v_M} \frac{U(Y_{v_M})}{U(Y_{NM})}, \quad (6c)$$

Now on the right side of this equation, the first fraction of (6c) represents the utility gain associated with migrating illegally relative to staying home; the second fraction of (6c) represents the utility gain of migrating under a visa in which eligibility is manufactured relative to staying home. If the left side of our equation is greater than the right side of our equation, the immigrant in question strictly prefers immigration under v_M compared to immigration under illegal immigration. Equilibrium occurs if either $Y_{v_M} > Y_I$ and $p_{v_M} < p_I$ or if $Y_{v_M} < Y_I$ and $p_{v_M} > p_I$.

Which set of conditions applies has to do with how tenuous an immigrants' illegal stay in a country is compared to the likelihood they can manufacture eligibility for a visa successfully *and* relative utilities associated with migrating illegally compared to migrating while attempting to manufacture eligibility for a visa. To fully appreciate this, note there are high potential costs baked into the utility of not migrating successfully when one tries to immigrate illegally. In the case of illegal immigration, the immigrant is not simply sent home to experience the same utility he would have experienced had he never migrated if caught. Instead, this immigrant will often face prison sentences first, as happened during an immigration raid in Postville, Iowa, in 2008 (Juby and Kaplan 2011).

What about the case of manufacturing eligibility for a visa? To understand this fully, it is helpful to consider that eligibility for a visa can be manufactured more or less illegally or the probability of successful migration under a specific visa can be manipulated. Illegal manufacturing of a visa is normally considered fraudulent, and like the case of illegal immigration, visa fraud implies potentially high costs baked into the utility function of not migrating successfully, evidenced by court cases dealing with marriage and U-visa fraud. Thus, we should not expect immigrants who are legally eligible for migration strategies offering relatively high utilities to illegally manufacture a visa. This implies another testable

hypothesis – we should not expect high-skilled immigrants to be prone to illegal manufacture of visas. When we do observe illegal manufacture of visas, it should be either because the probability of success of a legal visa is quite low or because the illegally manufactured visa offers higher relative expected utility. On the other hand, we should expect low-skilled immigrants from poorer or culturally distant countries to drive the illegal manufacturing of visas, because these immigrants generally have fewer legal options due to their lack of eligibility for many visas.

However, there are legal ways in which probabilities of successful migration under certain visas can be manipulated – lawyers can be hired, resources can be invested in knowledge of how best to navigate the immigration system of the intended destination country, and immigrants can invest in human capital in their home country (Stark et al. 1997; Stark et al. 1998; Schaeffer 2007; Beine et al. 2008)

Again, discussion of specific examples of this is saved for an analysis of our case study – the U.S. visa system. But before using this case study to empirically analyze the theory presented above, it is helpful to provide an overview of the evolution of U.S. immigration law.

3. Context

3.1 U.S. Immigration Policy History

A recurring theme throughout modern U.S. immigration policy history is the degree of centralization in the American immigration system, with not only an overall quota on the number of migrants, but per-country and per-visa-type quotas as well.

The modern United States immigration visa system was established with the introduction of the Hart-Celler Act of 1965, a series of amendments to then-current immigration law “intended to purge immigration law of its racist legacy by replacing the old quotas with a new system that allocated residence visas according to a neutral preference

system based on family reunification and labor force needs” (Massey and Pren 2012, p. 1). Specifically, this new set of amendments repealed the current national-origins quota, initiated a visa system for family reunification and skills, set a quota for Western Hemisphere migrants, and set a 20,000 per-country limit for Eastern Hemisphere migrants. This new system of quotas was meant to replace national origin quotas enacted during the 1920s that placed limits on the entry of Southern and Eastern Europeans, particularly Russian Jews and Italian and Polish Catholics, groups considered at the time “unassimilable.” These amendments were followed by a shift in the composition of immigrants in the U.S., resulting in a substantial increase in immigration from Asia and Latin America. In addition, the U.S. ended the Bracero program with these amendments, a program for hiring short-term foreign workers originally intended as a temporary wartime measure. Massey and Pren (2012, p. 22) highlight one consequence: “...the United States shifted from a de jure guestworker program based on the circulation of bracero migrants to a de facto program based on the circulation of undocumented migrants,” as the United States saw a substantial increase in the numbers of undocumented migrants entering the U.S. throughout the 70s and 80s. Not only did undocumented populations rise, but as border enforcement increased in an effort to make quotas credible, undocumented migration transitioned from a circular flow of temporary workers operating primarily in three states into a permanently settled population of families living in all 50 U.S. states (Massey et al. 2016).

Indeed, very cursory evidence for the above outlined theory can be seen with these developments. Recall, undocumented immigration is an inferior substitute for legal immigration, meaning it is only the profit maximizing choice for migrants when the probability of successful illegal migration, p_I , is greater than the probability of successful legal migration, p_L . Probabilities of successful legal migration go down as quotas become more strict and bureaucratic red tape involved with migrating legally becomes more

burdensome; probabilities of successful illegal immigration go down as border enforcement is tightened. Both these dynamics happened during the early developments of modern U.S. immigration policy, albeit in perhaps counterintuitive ways. First, before the Bracero program was ended, probabilities of legal immigration were quite high, as migrants did not even need to immigrate permanently to enjoy the benefits of migration – they could simply come to the U.S. for a time, work, and go back home with their earnings. This created a situation in which the incentive to immigrate illegally was quite low, and low levels of illegal immigration can be witnessed during this time relative to when the Bracero program was ended.

Theory above can also be used to understand how immigration transitioned from a circular flow of temporary workers into a permanent settlement of families after border enforcement increased with help from Massey et al. (2016). As border enforcement increased past the 1970s and into the 1980s, probabilities of successful illegal migration necessarily decreased. At first, it is reasonable to expect undocumented immigration to decrease as a result. However, decreased probabilities of entering the U.S. successfully after increased border enforcement only represent part of the story. Also accompanied by this increased border enforcement were decreased probabilities of reentering Mexico after coming to the U.S. illegally. Circular, temporary illegal migration became much more risky than one-time, permanent immigration as a result, because two risky border crossings are riskier than one risky border crossing. This outcome becomes even less surprising when we also consider expected gains in utility from leaving Mexico to live in the United States – wages in the U.S. are consistently high relative to wages in Mexico, and Hanson and Spilimbergo (1999) provide evidence using border apprehensions that undocumented migration is more sensitive to changes in relative wages than to changes in border enforcement.

The 1980s saw a rise in the public's attention towards undocumented migrants, and the Immigration Reform and Control Act of 1986 was passed. This act began the practice of

sanctioning businesses for knowingly hiring illicit workers, provided the first, and only since, amnesty for illegal aliens already residing in the United States, and increased border enforcement. Four years later, the United States would pass another amendment, the Immigration Act of 1990, increasing legal immigration ceilings, creating a diversity admissions visa category (a visa category specifically designed for migrants from nations historically sending low levels of immigrants to the United States), and tripling the number of visas for priority workers and professionals with U.S. job offers.

More recently, The Homeland Security Act of 2002 was enacted, which moved all transportation, customs, immigration, and border security agencies under the jurisdiction of the Department of Homeland Security.

3.2 Current US Immigration Law – Quotas on Quotas

Current US immigration law allows an annual worldwide limit of 675,000 permanent immigrants, with exceptions for certain immediate family members. Further, there are around 22 classes of visas divided into about 185 different visa types, separated into two broad categories: 1.) immigrant visas for those intending to permanently reside in the U.S and 2.) nonimmigrant visas intended for temporary visits (though some nonimmigrant visas, like the U-visa to be discussed below, allow holders eligibility for permanent status after a certain length of time).

As previously stated, one of the major intended goals of the U.S. immigration system is family reunification, and this is reflected in U.S. allocations of family-based visas. Indeed, the only category of migrants with no yearly numerical limit imposed on it is the category reserved for the immediate relatives of U.S. citizens, including spouses, unmarried minor children, and parents. In addition, the U.S. allows certain family-based preference categories yearly: 23,400 unmarried adult children of U.S. citizens, 87,900 spouses and minor children of legal permanent residents, 26,300 unmarried adult children of legal permanent residents,

23,400 married adult children of U.S. citizens, and 65,000 brothers and sisters of U.S. citizens. The worldwide quota on family-based preference allocation for the above five groups of migrants is 480,000 minus visas issued to immediate relatives and parolees plus unused employment visas from previous fiscal years, and the floor for these preference categories is 226,000.

A second major goal of U.S. immigration policy is to encourage employment-based migration. Over 20 types of visas for temporary nonimmigrant workers are available; however, because these workers are not legal permanent residents, and their employment-based visas do not themselves provide opportunity for permanent status, these visa types are not controlled by the same quotas by which immigrant and other nonimmigrant visas are controlled. For intended permanent employment, there are five preference categories, with the U.S. allowing (yearly) 40,000 “persons of extraordinary ability,” 40,000 members of professions holding advanced degrees, 40,000 skilled workers with at least two years of training or experience (with a quota within this quota of 5,000 “other” unskilled laborers), 10,000 “special immigrants,” and 10,000 persons who will invest \$500,000 to \$1 million in a job-creating enterprise that employs at least 10 full time U.S. workers. The worldwide quota on employment-based migration is 140,000 for principal applicants and their dependents (Kandel 2014).

The United States also maintains per-country limits such that no group of permanent immigrants from a single country is allowed to exceed seven percent of the total number of individuals immigrating to the United States in a single fiscal year. While the intended purpose of this legislation is to prevent the domination of United States immigration patterns by any one group, concerns over how this bill disproportionately impacts immigrants from populous countries like India have prompted debate, resulting in a current bill that has passed

the U.S. Senate to phase out these per-country caps for employment-based green cards (Kreighbaum and Gilmer 2022).

Refugees and asylees are also an important migrant category in the U.S. The quota for this group of immigrants is slightly more flexible relative to other immigrant quotas, as each year the president, alongside Congress, determines numerical limits for refugee admissions, and these yearly limits are broken down into limits for different regions of the world. While the admission of refugees fell drastically after 9/11, quotas have increased as technologically superior methods of conducting security checks have been developed. For example, in 2016, numerical limits for refugees were 25,000 for Africa, 13,000 for East Asia, 4,000 for Europe and Central Asia, 3,000 for Latin America and the Caribbean, and 34,000 for Near East and South Asia, with an additional 6,000 visas issued on unallocated reserve, for a total of 85,000 (U.S. Department of State 2015). Asylum is also an option for individuals already in the U.S. who are seeking protection. While there is no limit on the number of people who may be granted asylum per year, 23,533 persons were granted asylum in 2014. Additionally, refugees and asylum seekers are eligible for legal permanent residence status after one year of receiving asylum or refugee status.

The diversity visa program allocates 55,000 visas to individuals from nations that have sent less than 50,000 immigrants to the U.S. over the last five years. These visas are selected via a computer-generated lottery.

The final type of visa relevant to this study is the U-visa, a nonimmigrant visa reserved for the victims of crimes and their immediate relatives and established in 2000. While this visa is a nonimmigrant visa, there are sets of circumstances that allow the adjustment of status to legal permanent resident. The congressionally mandated limit on U-visa admissions per year is 10,000.

Now that I've provided context for how theory can be applied to the context of U.S. immigration policy, I turn to more detailed discussion that connects how institutional rules theoretically can govern immigration strategies with empirical evidence in the form of real-world cases.

4. Connecting Theory with Context

In the current theoretical context, there are two very broad ways by which immigrants can “game” the visa system in the United States if they wish to avoid illegal migration or staying at home – they can decide between different visas that are more or less substitutes for one another based on relative probabilities of successful migration associated with each visa or they can try to manufacture eligibility for a visa. If they decide to manufacture eligibility for a visa, they can do so more or less legally or illegally, though we will see there is considerable grey area in between. I discuss each broad option in turn.

4.1 Substituting Between Visas

One way immigrants utilize institutional rules in the U.S. immigration system is to decide between different types of visas that are more or less substitutes for one another. As we will see, qualitative evidence fits nicely into the framework of our model above, as the primary consideration for most immigrants when using this strategy are the probabilities of successful migration under various visas, particularly when substitutable visas offer similar utilities.

Two pairs of visas that fit the above description and are very close substitutes for one another for a select group of people are the I-130 visa, reserved for “immediate relatives”, and the K-1, or fiancée, visa. In the case of the I-130 visa, “immediate relative” status is reserved for the spouses of a U.S. citizen, unmarried children of a U.S. citizen under the age of 21, and parents of a U.S. citizen over the age of 21. Here we see a clear way I-130 visas can be substitutes for K-1 visas – because spouses of U.S. citizens are considered an immediate relative, if an immigrant is denied a K-1 visa or feels the probability of being

accepted on a K-1 visa is low, he or she can simply marry a little earlier than intended and apply for immigration under an I-130 visa. Similarly, if an immigrant is denied entry under an I-130 visa or feels successful migration under an I-130 is unlikely, that immigrant can simply postpone marriage and apply under a K-1 fiancée visa. While this option is theoretically intuitive, do immigrants actually do this?

While data on applications is incompletely and inconsistently measured, other types of evidence indicate migrants do often consider K-1 and I-130 visas substitutes. For example, a number of law firms openly advertise application under an I-130 in the circumstance of a denied K-1 visa, and if a couple is truly keen on the process going as quickly as possible, they can apply for a CR-1 visa, which is essentially an I-130 visa for couples that have been married less than two years (Johnson and Daud 2021; Patel 2021; Bray 2022a.). This option becomes even more appealing given immediate relative visas are the only visa type with no associated quota limit, meaning the probability of successful migration under this visa type is not negatively impacted by numerical limits.

Not only are these visas very close substitutes for people who are not yet married, but differences in probabilities of successful migration under a K-1 visa relative to a CR-1 or I-130 visa can vary greatly from administration to administration. A particularly jarring example of this can be seen during the transition from the Obama administration to the Trump administration. In 2015, under the Obama administration, 99% of fiancée petitioners eventually got their K-1 visa; in 2017, the first complete year under the Trump administration, face-to-face interviews became required during the process and the acceptance rate plummeted to 66.2% (North, 2018). Thus, not only are immigrants actively encouraged to exploit these institutional loop holes in the system, but these loop holes can also be quite large. While lawyers are not necessary for fiancée and marriage visas, having a lawyer can

help greatly both in terms of filing petitions correctly and understanding alternatives in the case of denied petitions (Bray 2019).

Another pair of visas that represent very close substitutes for one another are the asylum and refugee visas. In fact, the key difference between these two visas does not rest on *who* applies, but *where* they apply – while both asylum and refugee visas are for those who fear persecution or unsafe conditions in their home countries, refugee visas are reserved for people who apply outside the U.S. while asylum visas are reserved for those who apply within the U.S. or at a port of entry. Thus, if a person is denied refugee status, one option is to simply enter the U.S., perhaps on a temporary tourist visa, and apply for asylum once state-side. Unfortunately, data on asylum and refugee applications are even more difficult to come by compared to data on other visa types because of privacy concerns. However, we also see examples of immigrant law firms and refugee organizations actively advertising this type of visa strategy (Gasson 2022; OECD 2016). Asylum visas, otherwise known as humanitarian visas, are not the only visas advertised as substitutes by agencies designed to help immigrants navigate complicated institutional environments either – the OECD also encourages individuals who have been denied refugee status to apply for labor visas, student visas, and family reunification visas (2016). At the same time, others may be discouraged from using this strategy – some immigrants avoid applying for refugee status if doing so endangers family in the home country or complicates returning to the home country (Schaeffer 2010).

The list of visas that can be used as substitutes for one another goes on, and this list and the various recombinations it entails can become quite long given the number of U.S. visas available. As one last example, we can consider the different types of visa options open to an immigrant who gets denied an H-1B visa, which is intended for workers in an occupation that requires both specialized knowledge and at least a bachelor's degree. This immigrant can also apply for a country-specific diversity visa, an investor visa, a

multinational executive/manager visa, an extraordinary ability visa, a trainee visa, an entrepreneurial parole visa, or a spousal work authorization visa (Jennings Immigration Law Office 2022).

4.2 Manufacturing Eligibility Legally

Besides using different visas as substitutes for one another, immigrants can actively try to raise their probabilities of successful migration under different types of visas. While this can be done more or less legally, we begin with an analysis of legal ways in which probabilities of successful migration under visas can be manipulated.

A common legal way of raising probabilities of successful migration is through lawyers. While evidence of this has been provided for immigrants applying for fiancée and marriage visas, asylum visas act as a prime example. Because asylum does not grant legal protection to everyone who faces unsafe conditions in the home country, having a case that convinces a judge certain criteria are met can go a long way toward a successful asylum petition, and lawyers significantly help in this endeavor. Indeed, asylum provides protection only for those facing harm due to race, religion, nationality, membership in a particular social group, or political opinion. Migrants without lawyers generally do not realize this and submit asylum applications based on fears arising from sets of circumstances that are not protected, even when these same migrants are members of protected classes. As a result, denial rates for the represented (about 50% in 2016) are significantly lower than those for the unrepresented, at about 90% in 2016 (Pena 2018). Thus, one simple way immigrants can raise their probability of successful migration is by simply investing in a lawyer, and this option can be used by immigrants applying for other types of visas as well.

Another way probabilities of successful migration can be manipulated legally can be illustrated with an already familiar example – marriage visas. Not only are marriage visas close substitutes to K-1 visas, but marriage in a foreign country can also alleviate concerns

from consular officers that a marriage is fraudulent – actual marriage represents a higher sunk cost for immigrants compared to engagement (Patel 2021; Johnson and Masumi 2021).

Immigrants can further raise their probability of a successful marriage visa petition by preparing for interviews. While this strategy can be used for interviews dealing with any type of visa, marriage visa interviews can be especially difficult. Not only are couples subjected to multiple interviews during various steps of their visa petition, but levels of scrutiny become higher as the couple goes through the process. During the submission of an I-130, the couple can be asked for a first interview, which is relatively simple and asks basic questions about the marriage. The couple can also be required to conduct further interviews during consular processing, where officers are able to check consistencies in applications regarding dates, details, etc. Finally, if consular officers become suspicious, a “Stokes” interview can be conducted, where the couple is separated and asked identical sets of questions about their marital lives. These questions can include, but are not limited to, what types of gifts are exchanged during holidays, when family is visited, birth dates, and even what types of contraception is used (Bray 2022b.). Finally, in some cases, another interview and follow-up questions are required after a two-year conditional residence period.

However, simple steps can be taken to decrease the probability consular officers suspect fraud. For example, if each person in a couple has matching sets of keys to a house or apartment or if the couple has some shared bank account, consular officers are much less likely to ask for follow-up interviews (Bray 2022c.). And, of course, immigrants and their spouses can prepare for individual questions together before interviews happen, though often an interview can happen without notice during application submissions. This rigorous interview process increases the marginal benefits of having a lawyer when entering on a spousal visa – lawyers can provide needed guidance for undertaking simple steps described above and handling interview questions (Bray 2022c.)

Finally, it is worth noting a more long-term method already identified in the literature by which immigrants can “manufacture” eligibility: investing in human capital in the home country. While many in the literature have worried about a “brain drain”, or a mass exodus of high-skilled workers from developing countries, others have pointed out immigration provides immigrants in developing countries an incentive to invest in human capital in the first place. This incentive arises both because human capital provides a greater return in developed countries with good institutions that encourage investment and because the immigration restrictions of wealthy countries often favor immigrants with high levels of human capital. In this way, immigration can entail brain *gains*, and the immigration policies of many wealthy countries, including the U.S., have the potential to exacerbate this phenomenon by incentivizing human capital accumulation for those in developing countries (Stark et al. 1997; Stark et al. 1998; Schaeffer 2007; Beine et al. 2008).

4.3 Manufacturing Eligibility Illegally

Finally, there are ways in which visa eligibility can be manufactured illegally. This strategy is otherwise known as visa fraud, and the institutional rules governing the U.S. visa system create several interesting incentives that guide immigrant behavior during their attempts to secure their stay.

Again, we can turn to marriage visa fraud as an example, where there are several notable instances of this type of fraud being prosecuted. Take a recent case in which migrants and their lawyers were prosecuted for fraudulent marriage visa applications, with one notable 2019 case in which 96 individuals were charged in a large-scale marriage fraud scheme (U.S. Attorney’s Office for the Southern District of Texas 2019). In this scheme, each beneficiary spouse entered into an agreement in which between \$50,000-\$70,000 was paid to obtain lawful permanent residence.

And fake marriages are not the only way to create visa eligibility. There have also been notable cases in recent memory of asylum fraud, including one case in which a Queens-based immigration attorney was sentenced to five years in prison for the operation of a scheme to submit fraudulent asylum applications (U.S. Attorney’s Office of the Southern District of New York 2019). Three individuals in New York were particularly creative in their use of visa fraud: these people helped immigrants enter the United States under an obscure visa known as a P-3 visa, reserved for “culturally unique artists”. To make the scam more believable, fake photo sessions were organized, and immigrants were primed on how to adequately answer questions from customs officials. Once in the United States, these immigrants had the option of simply letting their visas expire or paying the defendants in this case to organize a visa renewal (U.S. Department of Justice 2018a.). Two others in Los Angeles organized a student visa scheme in which their “education consulting” firm secured student visas for immigrants by counterfeiting transcripts and hiring others to impersonate prospective students while taking entrance exams (U.S. Immigration and Customs Enforcement 2021).

There is another particularly nefarious type of fraud that has begun to be taken advantage of: U-visa fraud. Indeed, in 2017, an attorney based out of Indianapolis, Indiana pled guilty to U-visa fraud for more than 250 different clients by filing false applications in return for money (U.S. Department of Justice 2018b.), and attorneys are not the only ones receiving kick-backs for such manipulation. In 2016, twelve defendants plead guilty to marriage and U-visa fraud in Jackson, Mississippi (U.S. Department of Justice 2016). This included a number of would-be immigrants, their lawyer for drafting and submitting false applications, and a Jackson Police Department Officer for being paid cash to submit false police reports. Not one month later, a special agent with ICE-Homeland Security Investigations (HIS) and an attorney were charged with bribery, conspiracy to defraud the

U.S., and obstructing an official investigation by the Department of Homeland security in a quid-pro-quo scheme whereby the special agent obtained numerous deferrals of deportation and other immigration-benefits for migrants in exchange for over \$5,000 cash and free legal services provided by the attorney involved in the investigation (Goodlatte and Grassley 2016). Indeed, some are willing to go to rather extreme lengths in order to make themselves eligible for the notorious U visa: on March 27, 2019, a citizen of Honduras and a citizen of El Salvador living in Culpepper, VA, faced charges for a scheme in which the two staged an armed robbery and kidnapping at their place of employment, a gas station in Culpepper (Department of Justice 2019). In a separate case in Greenville County, South Carolina, two individuals, were charged with staging an armed robbery in order to acquire U-visas for three foreign nationals (USCIS 2019). In Minnesota, a woman was prosecuted for charging immigrants \$2,000 per person to cut their arms with box cutters (U.S. Attorney's Office for the District of Minnesota 2020).

In the context of our front-end theory, it is important to note that in most cases of illegally manufacturing a visa, the defendants are low-skilled workers from developing countries that are culturally distant from the U.S., like Central and South America and India, as well as low-skilled illegal immigrants facing deportation. This is important, because theory above predicts these types of immigrants to have lower chances of successful legal immigration under most visas. At the same time, illegal manufacture of visas described above can carry rather extreme legal, psychological, and/or physical costs. Thus, we should not expect high-skilled immigrants with other, cheaper options to be likely to manufacture visas in illegal ways described above, and this expectation is mostly fulfilled in observations of visa fraud cases. Instead, we usually see immigrants with very few other options engaging in fraudulent behavior. Indeed, Indian immigrants seem to be particularly represented among defendants in visa fraud cases, and this can also be explained easily with our front-end

theory. Because of India's huge population and its status as a developing country coupled with country of origin quotas in the United States, the probability of successful migration through more legal avenues is much lower for Indians, even if they are not low-skilled, compared to other migrants.

Finally, a more general illegal strategy immigrants can take does not revolve around manufacturing eligibility for a visa. Instead, immigrants can, and often do, come to the United States on a temporary, non-immigrant visa and simply stay and avoid detection, a particularly effective strategy if immigration enforcement is concentrated at the border. In 2020, DHS estimated that out of a stock of approximately 10.5 million undocumented immigrants, about 684,499 immigrants were in the United States on overstayed visas, down from a high of 739,478 in 2016 (Vaughan 2022).

Further, the share of undocumented immigrants who overstay visas (as opposed to crossing the border illegally) has been steadily rising (Lopez et al. 2021) such that for seven consecutive years (from 2012-2018), visa overstay numbers have exceeded the number of immigrants who are estimated to have crossed the border illegally (Gonzales 2019).

The fact that overstays have exceeded illegal border crossings is particularly relevant for theory outlined above. According to theory, as border patrol becomes more tight and the probability of a successful illegal border crossing goes down relative to the probability of a successful temporary non-immigrant visa application, we should expect visa overstays to begin to increase relative to illegal crossings. This is what seems to be happening. In 2003, under the Bush administration, Congress created the Department of Homeland Security and all its various subdivisions, including U.S. Customs and Border Protection [CBP], charged with enforcing immigration law at the border. In 2005, CBP instituted the Consequence Deliver System [CDS], meant to toughen enforcement on the border and deter future illegal crossing attempts. A key feature of this new policy was that illegal crossers were now subject

to criminal charges instead of simply being allowed to return to their home countries, usually Mexico, voluntarily and without further consequences. This did two things. First, the CDS significantly decreased the utility associated with a failed illegal crossing attempt. Now, instead of simply experiencing the utility associated with not migrating, immigrants were subject to penalties, including fines and prison time. This new policy also significantly decreased the probability of successful illegal immigration.

While the CDS was instituted in 2005, seven years before the U.S. witnessed higher instances of overstays compared to illegal crossings, it was not until 2011 until the CDS was systematically applied across the entire U.S.-Mexico border. This last development in 2011 significantly impacted probabilities of successful illegal migration in a negative way, particularly since alternate routes were scrutinized more heavily (Chishti et al. 2017). Thus, over the past several years, the U.S. has experienced phenomena that is understood very easily in the context of this paper's theoretical framework and the overall institutional environment of the U.S. visa system. As the probability of successful illegal migration has gone down, the likelihood of immigrants to overstay their visas instead of trying to cross illegally has also gone up.

5. When Legislation Responds Back

Finally, while not the focus on this paper, it is worth noting that immigrants are not the only actors who respond strategically. Immigration legislation also responds strategically to the decisions made by immigrants. This leads to an interesting strategic interaction between immigrant behavior and immigration legislation and enforcement.

One obvious example of this can be seen in the literature on how natives respond politically to increases in immigration. While negative responses from natives, especially natives in precarious economic circumstances, to increased migration, especially migration from culturally distant places, manifest in support of restrictionist immigration policy, positive

exposure to immigrants seems to improve attitudes towards immigrants (Bedi and Jia 2022; Tabellini 2020). This implies a nonlinear relationship between waves of different types of immigrants and native attitudes towards those immigrants that is corroborated by historical evidence from the United States. Each new wave of immigrants from more and more culturally distant places spurred often deeply racist anti-immigrant sentiments towards that migrant group. Irish immigrants were often accused of shiftlessness and drunkenness and Italians were associated negatively with sexuality and crime; however, after a few decades of observable assimilation, attitudes towards these groups of migrants shifted in more positive directions (Russel 2011). More recently, Hispanic and Middle Eastern immigrants have taken the brunt of anti-immigrant sentiments – historic evidence suggests these sentiments will improve as these more culturally different immigrants begin to integrate more into U.S. society (Abramitzky and Boustan 2022).

More related to the contents of this paper, other political actors, like immigration officials, also respond to the immigration strategies of immigrants trying to game the system. Immigration officials are well aware of different ways immigrants can bypass immigration restrictions and have responded to changes in immigrant behavior over the years. For example, after the Bracero program, a tightening of immigration quotas encouraged illegal immigration into the U.S. Immigration officials responded with increased border enforcement in an effort to make credible new quotas, though this ended up backfiring by incentivizing illegal immigrants to stay permanently as opposed to making multiple temporary trips (Massey et al. 2016).

More recently, immigration officials have attempted to respond quite actively to visa fraud. Recall how fiancée visa applications acceptances dropped significantly after Trump took office (North, 2018). This sudden shift in how deeply K-1 applications were scrutinized happened largely in an effort to curb fraud in this area. Immigration officials have also

become more suspect of U-visa petitions as fraud has become increasingly observable (Orloff et al. 2010).

While further discussion of this topic is outside the scope of this paper, it is important to recognize the legislation immigrants respond to is not completely exogenous – it responds to the behaviors of immigrants. This strategic interaction between immigrants and immigration policy represents a dynamic environment where political actors and the immigrants these actors seek to regulate constantly repond to each other.

6. Implications and Policy Solutions

The above theory and qualitative empirical evidence carries important implications. The first is that centralized immigration policy, particularly as it becomes more complex, fails insofar as the intended goal is to achieve a particular composition of immigrants based on particular factors. For example, take an immigrant who is eligible for multiple visas, say a work visa and a family reunification visa. That immigrant has two options (if he or she decides to come legally): come on a work visa or come on a family visa. If work visa quotas have been reached, that immigrant is going to come on a family visa if a legal route is decided upon. But what if that immigrant is coming primarily for work and is only eligible for a family visa because some distant uncle is already in the U.S.? In this case, did immigration policy “work” in the sense that the intended composition of family reunification immigrants and labor market immigrants was reached?

The failure of immigration policy to achieve intended compositions of immigrants becomes even more obvious when we consider manufactured visas. If a person marries a native citizen to become eligible for a visa and the marriage actually ends up being normal in the sense that both partners live together, share bank accounts, and have children, is immigration policy successful at helping politicians and electorates arrive at intended levels and types of migration? Even more obvious are cases of outright fraud and overstays –

certainly when an immigrant is successful at outright visa fraud or overstaying, say, a student visa, immigration policy has “failed”, at least marginally, in the sense intended goals were not reached.

We can also reexamine evidence provided in previous sections to highlight this implication. One of the cornerstones of immigration reform in 1965 was the promotion of family reunification and a movement away from explicitly racist quotas promoting immigration from western and northern Europe through the early 20th century. However, family reunification was not just chosen as a cornerstone of immigration policy because it was politically more palatable than prior quotas – many legislators viewed family reunification as a tool to more subtly target certain racial groups and preserve what homogeneity currently existed. This is evidenced by quotes like, “Since the peoples of Africa and Asia have very few relatives here, comparatively few could immigrate from those countrys,” from Rep. Emanuel Celler (D-NY) (Wolgin 2018). Yet, from 1960-2019, the U.S. experienced a 29-fold increase in Asian immigrants (Hanna and Batalove 2021).

This analysis of immigrant strategies also implies complex visa institutions and immigrant regulations encourage a massive amount of rent-seeking and fraudulent behavior, in turn entailing high social costs (Tullock 1967). In seminal work on regulation and rent-seeking, Anne Krueger (1974) noted how quantitative restrictions on international trade, like import licenses, creates rents for which individuals compete, and her analysis applies quite nicely to immigration institutions, where quantitative restrictions are imposed in the form of quotas. Indeed, immigration quotas fit Krueger’s third category of licensing, whereby immigration officials decide on license allocations, quite nicely. While opportunities for rent-seeking in the form of bribery and attempts to manipulate the distribution of visas is limited by using a first-come, first-serve system of visa allocation, there are plenty of

opportunities for firms and other interest groups to lobby the government in efforts to change the number of available licenses, or visas in this context (Powell, 2012).

Further, besides rent-seeking behavior from immigrants, lawyers, and police officers described in prior sections, simply consider how quantitatively restricting the labor supply impacts the incentives of U.S. employers to rent-seek beyond attempts to impact the availability of visas through lobbying activity. These firms now have an incentive to capture as many visa slots as possible, and when this legal method becomes unavailable, firms can turn to illegal forms of rent-seeking to acquire foreign labor.

For example, firm Cognizant Technology Solutions is currently under investigation for applying for L-1 and B-1 work visas for employees despite directing these employees to perform work requiring the more expensive H-1B visa (The Economic Times 2021). This strategy is a particularly good example of high-skilled immigrants, or rather those acting on behalf of high-skilled immigrants, engaging in fraud because of higher expected utilities associated with certain visa types. Staffing schemes can also be quite lucrative under these regulatory regimes – two former executives of PerfectVIPs, Inc. are currently under investigation for filing fraudulent H-1B visas. In this case, the defendants filed visas meant for employees working in house – these employees were then outsourced to other firms, providing PerfectVIPs an advantage over other staffing firms (U.S. Attorney’s Office Northern District of California 2022). Two other executives formerly affiliated with Regal Hospitality Solutions LLC are under investigation for encouraging staff to stay in the U.S. under tourist visas while working in order to avoid fees associated with the renewal of work visas (U.S. Department of Justice 2021). This fraudulent behavior is quite common, and a recent count of complaints to the Federal Trade Commission dealing with immigration scams numbered 12,540 for the years 2011-2014 (and these are just observed scams) (Pedroza 2022).

One last implication worth mentioning is that the costs of fraud and underground, black-market migration fall disproportionately on low-skilled and poor immigrants. Immigrants from wealthy nations are favored by the visa policy of popular destination countries (Lawson and Lemke 2012), as are immigrants who are highly educated (Borjas 1987; Mahroum 2001) and from culturally similar countries (Falck et al. 2012; Krieger et al. 2018). Poorer migrants are less likely to be eligible for multiple visas and to have room to substitute between different types of visas legally. Poorer migrants are also less able to afford lawyers and make other investments that can increase their probability of being able to enter the U.S. through legal channels.

In terms of policy recommendations, a few general recommendations seem likely to alleviate the aforementioned issues. A simplified immigration code with fewer and less specific visa categories would create fewer opportunities for manipulation and substitution. Making quotas less strict can also alleviate the issue, as quotas are *the* reason probabilities of successful legal migration are less than one. However, keyhole solutions also exist. Kreuger (1974) demonstrates how the welfare loss from tariffs is lower than welfare losses arising from equivalent quantitative restrictions. Therefore, instead of quantitatively limiting immigration to the U.S., legislators could achieve similar levels of immigration with less welfare loss by simply taxing immigrants a certain amount for legal entry – while this may still incentivize illegal migration and some forms of visa manipulation, coupled with a simplified visa regime, a reform like this would do much to remove perverse incentives embedded in current U.S. immigration policy. And, considering the value immigrants derive from migration (Hanson and Spilimbergo, 1999), there is potential so transfer large amounts of wealth from rent-seekers to government coffers.

This transfer of wealth could be used to impact the way policy responds to immigration as well. For example, some have suggested a possible keyhole solution to

immigration that would tax immigrants and distribute those taxes to individuals who are likely to experience negative impacts due to immigration, like low-skilled natives in precarious economic circumstances and naturalized immigrants already in the U.S. who are direct competitors with new immigrants (Caplan, 2019). These wealth transfers have the potential to alleviate negative native attitudes towards immigrants. Thus, taxing immigration instead of quantitatively restricting immigration has the potential dual impact of marginally decreasing incentives to rent-*seek* *and* making restrictions to immigration less politically necessary in the first place.

7. Conclusions and Potential Future Avenues of Research

I have provided an extension of a theoretical model on the relationship between documented and undocumented immigration developed by Schaeffer and Kahsai (2011). In doing so, I've shed light into how institutional environments, particularly institutional environments governing immigration law, guide the behaviors of immigrants entering the U.S. And while the deadweight costs of immigration policy in the form of direct lobbying and coyote services have been well documented (Powell 2012), I provide evidence of still more potential deadweight costs associated with rent-seeking caused by immigration restrictions.

While this study represents an important contribution in understanding immigration strategies and their institutional determinants, more work could help shed light on this phenomenon. First, it would be helpful to understand the institutional incentives at work in immigration policy in other countries. This would allow a comparative analysis of different immigration institutions and their impact on immigration strategies and subsequent compositions of immigrants. Second, a lack of consistently recorded and reliable data on visa applications in the United States prevents a more quantitative analysis that could shed light on the magnitude of this phenomenon. With better data on visa applications, perhaps from other countries, we can develop more fine-tuned insights regarding how immigrants respond

to institutional constraints. Better data on non-immigrant visa applications in the United States would be particularly helpful in testing theory outlined above in the context of the negative relationship between illegal border crossings and visa overstays. Because different non-immigrant visas, like tourist visas, offer different probabilities of success, better data on the probabilities of successful applications would allow researchers to examine exactly how immigrants who overstay visas respond to increased border enforcement by applying for different temporary visas.

The story outlined in this paper also only represents half of the strategic interaction between immigrants and political actors who influence immigration law. While the responses of immigrants to immigration law are important, so too are the responses of political actors in host countries to the strategies employed by immigrants. While there has been a lot of work done regarding the impacts of increased migration on political opinions in the host country (Bedi and Jia 2022; Tabellini 2020), much less work has been done on how immigration authorities respond to immigrant behavior and the determinants of those interactions.

Finally, the analysis in this paper has deeper implications in that much that has been discussed can be applied to emigration restrictions as well. If immigrants respond to barriers imposed by host countries, it makes sense that emigrants do the same when faced with barriers in the home country. Indeed, immigration restrictions in wealthy countries have the same effect as Berlin Wall style emigration restrictions in poorer, more totalitarian countries in that both prevent international mobility (Laurin, 2010). And, while some research has been done on the determinants of emigration (Hunt 2006), less has been done on the strategies emigrants take in response to these restrictions. Like responses by fraudulent U-visa applicants, responses by individuals facing emigration restrictions can be quite extreme – Ida Siekmann, the first victim of the Berlin Wall, died jumping out of her apartment window trying to bypass emigration restrictions (Baron 2011). Further, though emigration restrictions

have become rare since the fall of the Berlin Wall, they have seen a resurgence in places like Australia in the form of COVID-19 restrictions (Zhou, 2021), making the study of emigration restrictions increasingly relevant.

Tragedies revolving around illegal migration, like the deaths of 46 migrants in a tractor-trailer in Texas, are blamed by politicians on lax border control and exploitative coyotes (Glebova 2022). However, when the institutional foundations of behavior are recognized, it becomes clear tragedies like this can be entirely explained by perverse incentives that guide rational human behavior. And if these tragedies can be explained with a careful analysis of institutions, they can be solved the same way.

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