

In the wake of another terror attack—the New York City vehicle attack on pedestrians in October 2017—allegedly inspired by the extremist beliefs and agenda of Islamic State of Iraq and Syria (ISIS),¹ President Trump has re-affirmed his commitment to passing a merit-based, as opposed to lottery-based immigration system—stating, that he's “going to ask Congress to immediately initiate work to get rid of this program...we need merit based.”² The word merit, however, is defined in a rather suspect way. The Act he supports, called the RAISE (Reforming American Immigration for a Strong Economy) Act, would accumulate points for young adult status, doctoral or advanced degrees, a Nobel prize, Olympic medals, monetary investment in the US, and strong English skills.³ Ultimately, his program would boil down to point accumulation based on parameters that emphasize one thing: the more opportunities a person was afforded at a young age, the more valuable the United States would find her. Privilege will be the gateway. The screaming problem with this approach is that the trope of the average American immigrant is a person *seeking* opportunity—escaping war-torn, economically distressed, or tyrannical governments. Thus, migrants are in a ‘Catch-22’ under this system: to reach the security and better future they seek, they must already be leaps and bounds more successful than the average American.

The perpetrator in the aforementioned New York City attack, Sayfullo Saipov, was legally in the United States from Uzbekistan via the Diversity Visa Lottery Program, and his legal status was granted in 2010.⁴ The program under which he was granted legal status creates a “pathway” for people to enter the country and become citizens legally.⁵ Trump has called this Diversity Visa Lottery Program (hereinafter “The Diversity Program”) a “Chuck Schumer Beauty,” but this hardly tells the whole story.⁶ The Diversity Program, that was indeed *backed* by Senator Chuck Schumer in 1990, randomly selects up to 50,000 people annually (from countries that have had fewer than 50,000 people immigrate to the US in the past five years) and grants them a legal green card to enter the United States, which eventually results in permanent resident status.⁷ It has an autumn application period: from which approximately 15 million applications are submitted, with fewer than half of a percentage (.33%) of those people getting accepted.⁸ Once selected by computer randomization, these people are vetted by United States security checks.⁹ To qualify as an applicant, the people must have a high school education or skill-trained job.¹⁰ Schumer is not

¹ See Shimon Prokupecz et al., *Note Found Near Truck Claims Manhattan Attack Done for ISIS, Source Says*, CNN (Nov. 6, 2017, 9:39 AM), <http://www.cnn.com/2017/10/31/us/new-york-shots-fired/index.html>.

² Yeganeh Torbati & Jeff Mason, *Trump Calls for Ending Visa Program After N.Y. Attack, Blasts Democrats*, REUTERS (Nov. 1, 2017, 6:38 AM), <http://www.reuters.com/article/us-new-york-attack-trump/trump-calls-for-ending-visa-program-after-n-y-attack-blasts-democrats-idUSKBN1D14JL>.

³ RAISE Act, S. 1720, 115th Cong. (2017).

⁴ See Corey Kilgannon & Joseph Goldstein, *Sayfullo Saipov, the Suspect in the New York Terror Attack, and His Past*, NY TIMES (Oct. 31, 2017), <https://www.nytimes.com/2017/10/31/nyregion/sayfullo-saipov-manhattan-truck-attack.html>; Torbati, *supra* note 2.

⁵ *Id.*

⁶ Derek Hawkins, et al., ‘A Chuck Schumer Beauty’: Trump Calls for End to Diversity Visa Program, Washington Post (Nov. 1, 2017), https://www.washingtonpost.com/news/morning-mix/wp/2017/11/01/extreme-right-gins-up-a-culprit-for-n-y-terror-attack-chuck-schumer/?utm_term=.9cdf33001e59.

⁷ Miram Jordan, *Diversity Visa Lottery: Inside the Program That Admitted a Terror Suspect*, NY TIMES (Nov. 1, 2017), <https://www.nytimes.com/2017/11/01/us/diversity-visa-lottery.html>. Kilgannon & Goldstein, *supra* note 4.

⁸ *See id.*

⁹ *Id.*

¹⁰ Molly Olmstead, *President Trump Attacks “Diversity” Visa Program That Was Actually Created to Benefit the Irish*, SLATE MAG. (Nov. 1, 2017, 11:10 AM), http://www.slate.com/blogs/the_slatest/2017/11/01/diversity_visa_lottery_explaining_program_donald_trump_blaming_after_new.html.

even close to the whole picture, however, and this rhetoric by Trump will likely have the effect of drawing a further wedge between parties on the issue of immigration. This program started, in fact, as a President George H.W. Bush bipartisan-supported initiative under the 1990 Immigration Act.¹¹ The bipartisan support was unbelievably strong (hardly reminiscent of agreements in our current Congress) and it passed with an 89-9 margin.¹²

Since its inception, but predominantly since the September 11th, 2001 terrorist attacks, people have been vocal critics about the safety of the Diversity Program—concerned with allowing dangerous people into the country.¹³ Though this is not *wholly* untrue, as there have been a small handful of people who have committed large crimes from this program, the percentage of people who have been dangerous is likely at a ratio lower than (or at least on par with) the actual criminal rate of the US general population. Only two cases in the past ten years have been reported wherein a Diversity Program immigrant committed a publicized crime: in 2011 (a Diversity Program visa recipient shot two people) and this year's October 2017 attack, with the former not being classified as terrorism.¹⁴ Additionally, in 2007, the Government Accountability Office (GAO) issued a report stating concern for the potential of fraud in the Diversity Program—without providing any concrete support on how, when, or if this was frequently occurring.¹⁵ It is incredibly disheartening and absolutely abhorrent that Saipov committed such a heinous act in the US and that innocent lives were lost—it truly makes me feel ill in vulnerable public spaces—but it is incredibly low-hanging fruit and fear mongering to chalk a national security threat up to a single instance of abusing a system.

Additionally, more common national tragedies spring up from our own US-born population, as evidenced by the sickening mass murders in Las Vegas¹⁶ and at a Texas church¹⁷ in the past two months. In all large pools of people there will statistically be people who do not follow the letter of law and act in ways loathsome to most others. However, misattributing the presence of one anomaly in a group of many, to a complete failure of a program is inherently flawed and politically manipulative. The Diversity Program is not broken because it allowed two 'bad apples' into the system, just as much as the Airforce is not an inherently broken system because the Texas shooter was a member. The narrative surrounding American-born killers is that they needed mental health help (which is certainly true an underlying factor)—but when the perpetrator allows an anti-immigrant or fear-infusing purpose to be promulgated, there is no hesitation for the media, and in this case our President, to sidetrack the conversation and use the fear affiliated with the term "terrorism" to push political aims that may be extremely attenuated. I will concede, absolutely,

¹¹ Hawkins, *supra* note 6. Interesting side note: Senator Schumer was actually part of a faction that recently tried overturning the Diversity Program. See Jordan, *supra* note 7.

¹² *Id.*

¹³ *Id.*

¹⁴ See Olmstead, *supra* note 10.

¹⁵ U.S. GOV'T ACCOUNTABILITY OFF., GAO-07-1174, BORDER SECURITY: FRAUD RISKS COMPLICATE STATE'S ABILITY TO MANAGE DIVERSITY VISA PROGRAM 27 (2008) (Stating "[t]he DV program is vulnerable to fraud committed by and against DV applicants, but State has not compiled comprehensive data on detected and suspected fraudulent activity.")

¹⁶ See Tom Jackman, *In Las Vegas shooting, Could Police or Mandalay Bay Have Acted to Save Lives?*, WASHINGTON POST (Nov. 1, 2017), https://www.washingtonpost.com/news/true-crime/wp/2017/11/01/mandalay-bay-says-four-armed-officers-were-on-the-32nd-floor-as-the-las-vegas-shooter-attacked-should-they-have-acted/?utm_term=.7de292ed6a84.

¹⁷ See Peter Holley, et al., *At Least 26 Dead in South Texas Church Shooting, Officials Say*, WASHINGTON POST (Nov. 6, 2017), https://www.washingtonpost.com/news/post-nation/wp/2017/11/05/reports-multiple-people-shot-at-texas-church/?utm_term=.de01eae62502.

that when a person claims to do something in the name of ISIS (a political extremist group), then it is by American legal definition an act of terrorism and that label is, therefore, appropriate.¹⁸ I will also concede the corollary: that when a person claims no affiliation to political, racial, or religious organizations for the cause of their crime, they are not *legally* considered terrorists. For the sake of this paper, whether the US definition of terrorism, which was not codified in the Code of Federal Regulations until after the September 11th terrorist attacks, is itself problematic, will be tabled. Despite that point being pushed to the side, my argument stands: an aberration does not stand for the whole and the ISIS threat is not an inherent product of the Diversity Program.

President Trump additionally stated his disapproval of “chain” based legal immigration pathways—programs wherein family members of legally granted citizens are able to link to that family member’s legal status and enter the country with that citizen.¹⁹ It is unconfirmed, but alleged by President Trump, that Saipov had upwards of twenty members of his family granted with him through this chain program.²⁰ The RAISE Act would absolutely have precluded members of my family and most others just in the past two or three generations. It was co-sponsored by Senators from Arkansas and Georgia, Tom Cotton and David Perdue, respectively.²¹ It has, however, been an idea perpetuated for several decades.²² Aside from the merit system, it would limit the aforementioned “chain” aspect of immigration from the 1965 Immigration Act to only immediate family members, and interprets immediate family narrowly. Though I thoroughly disagree with the presented merit system, I do see the benefit in drawing lines at certain levels of family members that can be tacked onto a single legal immigration grant—as line-drawing is important to not cause later immigration caps that will affect people who otherwise would be accepted.

Regarding the merit aspect, I actually took the citizenship scoring test under RAISE and would only meet the thirty-point threshold if my salary is at least \$77,900 when I enter the legal profession—though I graduated from a prestigious private university and attend a top-twenty law school. I am 24, giving me 8 points (with the ideal age range being 26-30, granting the maximum 10 points).²³ A legal degree or non-scientific postgraduate or professional degree seems to be completely moot in this system: a bachelor’s degree in the US accrues 6 points, and there are six levels above, granting different points for any degree above bachelors granted in the US or abroad, but *only in STEM* (Science, Technology, Engineering, and Mathematics).²⁴ So after my \$500,000-worth of American education, I have still accrued only 6/13 points in the education category. My English fluency gives me 12 points, with ‘moderate’ English granting half of that amount. So, after three categories, my total is 26 points.²⁵ This, in itself, also shows a narrow conception of what it means to be an acceptable American and a fear of other: the immigrant communities just in the last century would have often not met this language threshold.

The category I find most outlandish due to its sheer emphasis on the *rich or bust* theme of the merit system is the award of 13 points for a US job offer with a salary of \$155,800 and above,

¹⁸ See 38 U.S.C. § 2656f.

¹⁹ Kilgannon & Goldstein, *supra* note 4.

²⁰ Torbati, *supra* note 2.

²¹ Priscilla Alvarez, *Can a Decades-Old Immigration Proposal Pass Under Trump?*, The Atlantic (Aug. 21, 2017), <https://www.theatlantic.com/politics/archive/2017/08/can-a-decades-old-immigration-proposal-pass-under-trump/537138/>.

²² *Id.*

²³ RAISE Act, S. 1720, 115th Cong. (2017).

²⁴ *Id.*

²⁵ *Id.* Note: these are based on English equivalency test score thresholds.

and 0 points offered for a salary lower than or equal to \$77,900.²⁶ Assuming that a Vanderbilt Law graduate decided to utilize her law degree for public service (which, thankfully many of our graduates do), the average legal public sector salary out of Vanderbilt Law is \$54,500; thus, a civil servant with seven years of education would score 0 on this question.²⁷ Essentially, I would not meet the citizenship standard if I went into public service, but assuming, *arguendo*, that I go into the private sector, I would barely make the cut if I make \$77,900-\$103,900 (giving me five points, totaling 31).²⁸ The next two questions are reserved for such a small portion of the population that they are essentially null: whether a person has a Nobel Prize or other similar prestigious international award, and whether she is an Olympic medalist.²⁹ I clearly score a 0 on these two. The final question reaffirms that the exorbitantly rich are welcome and others can suffer in their own countries: how much money the person plans on investing in the US.³⁰ Sub-\$1.35 million in investments offers 0 points in any currency, foreign currency between \$1.35 and \$1.8 million grants 6 points, and above that amount or by creating a new enterprise, 12 points awarded.³¹

I absolutely recognize my privileges that I have been afforded, and am unbelievably fortunate and thankful for the opportunities I have. I would not have them if I did not live in the United States. If a person who was afforded the educational opportunities that I have been is not (or, if so, barely) eligible for the merit system, it is incredibly clear how few people could meet this threshold. Even if I completed my identical credentials and had abroad citizenship, I would not be welcome to stay under the RAISE Act. The Act has other problematic aims: to reduce refugee allowance to 50,000 and to cut legal immigration itself in half—with the chain linking to only minor children and spouses.³² Additionally, economic experts from across both aisles almost unanimously agree that this will actually harm GDP growth and the national economy, despite the shrouding of this issue as a benefit for the economy—due to loss of low-cost laborers.³³

Further, if merit were defined differently: as not having a criminal background, or with concrete educational plans, or with clear, legal refugee status³⁴ (indicating a concrete persecution fear)-like factor weighing, the program could possibly be more palatable. If the Act passes, however, the message is clear: if one can provide monetary capital, prestige, and assimilate well-enough that we cannot tell she is an outsider she *may* be welcome, but if she is trying to make a better, more productive life, but has yet to achieve that goal, she has no value to the United States. The American Dream is no longer attainable, unless one is already in the upper echelon; and pure human capital cannot win over competing aims of money and fear mongering.

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²⁶ These numbers are calculated in terms of percentages above the median income of the applicant's proposed state: with the lowest level offering 0 points unless 150% of the state's median. These numbers are based on the national median.

²⁷ *Id.*; Vanderbilt University, Best Law Schools, US NEWS & WORLD REPORT 2018, <https://www.usnews.com/best-graduate-schools/top-law-schools/vanderbilt-university-03147> (last visited Nov. 7, 2017).

²⁸ RAISE Act, S. 1720, 115th Cong. (2017).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² RAISE Act, S. 1720, 115th Cong. (2017).

³³ Heather Long, *It is a 'Grave Mistake' for Trump to Cut Immigration in Half*, WASHINGTON POST (Aug. 2, 2017), https://www.washingtonpost.com/news/wonk/wp/2017/08/02/its-a-grave-mistake-for-trump-to-cut-legal-immigration-in-half/?utm_term=.7b5766832220.

³⁴ *See generally* 8 U.S.C. § 1101(a).