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2017 Symposium Lecture: Economic Impact of Immigration Regulations

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2017 SYMPOSIUM LECTURE:
ECONOMIC IMPACT OF IMMIGRATION REGULATIONS

*Lakshmi Challa**

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LECTURE

One of the things I want to say before I go into my presentation is about the sanctuary cities that they were talking about earlier. I thought that was fascinating and great, but, and especially now, because we are seeing all these ridiculous ads of how they have MS-13, and how sanctuary cities will keep MS-13, it will bring MS-13 into your neighborhoods. Because the whole idea—and I don't even like the term "sanctuary city," because it's not really a sanctuary. "Sanctuary" you think of *Hunchback of Notre Dame*, where he goes up and he says, "Sanctuary! Sanctuary!" and you know, he is given refuge—if you're a criminal and if you're a MS-13 and you're found to have committed a crime, what they are already doing when you are arrested is the fingerprints are being shared with [Immigration and Customs Enforcement (ICE)]. The difference in implementing what is known as 287(g)¹—287(g) is memorandum where ICE gets into a relationship with local law enforcement.

Now I think about 13 or 14 years ago we were—Virginia was thinking about doing this and I was appointed to be on Senator [Kenneth] Stolle's Illegal Immigration Task Force—a criminal immigration task force, and if you look at an article² that two [University of North Carolina (UNC)] students wrote about how the economic effects are of these so-called sanctuary cities, its really detriment to forget about the racial profiling, which, I had pointed out, is—I remember in the meeting Delegate [David] Albo said at the time is, "It's not a big deal. It's not criminal aliens." Under 287(g), they can ask the immigration status of anyone who has committed a traffic infraction or supposed traffic infraction. So anytime you are stopped by the police for speeding or for maybe a rolling stop, the police can look at you and say, "Can you show me your immigration documents?"—now what I had told Senator [sic] Albo is, "They're not going to ask Senator Albo. They're not going to ask anyone that looks like you. But they are going to stop me, but that's okay because, I'm an attorney and I know that I can say I'm a U.S. citizen, and they can't say anything beyond that. But what if they stop my mom? What if they stop a 16-year-old kid? Is that the kind of society that we want to live in? Where we now are allowing U.S. citizens to be stopped because of the way they look?"

¹ See Illegal Immigration Reform and Immigrant Responsibility Act, Pub.L. 104–208, 110 Stat. 3001(1996) (codified at 8 U.S.C. § 1357(g)).

² Mai Thi Nguyen & Hannah Gill, Interior Immigration Enforcement: The Impacts of Expanding Local Law Enforcement Authority, URBAN STUDIES (2016).

And in North Carolina, what had happened was the immigrant community became so scared to come out. Remember that they are consumer, so they stopped going to grocery stores, they stopped going to church, because the policemen would actually target the churches by the Latino community and as a result it hurt their economy tremendously. So, I encourage you, it's UNC, it's the economic aspect of 287(g). Take a look at that article. It was fantastic and it doesn't even go to about community policing, right. So if the police—if people are scared the police are going to ask them about their immigration status, they will be less likely to report crimes that are against them. They are less likely to cooperate with police to go after real criminals. Please look at that article. Sorry, I had to make that plug!

So I'm talking about the economic impact of immigration. We talk now-a-days—when you hear about immigration you hear about laws. You hear about travel bans. You hear about terrorists. There is fear and this whole idea of trying to restrict immigration. Immigration is very critical for economic development. And we are at an approximate 3 percent GDP growth, and everyone wants to think everything's all "hunky dory," and "why do we need economic development?" Well, we have a ridiculous trillion something something something, I don't even know what that number looks like, debt. We have an aging population, so labor is going to be a big issue. And in the background looming is the concern about inflation. So if we don't increase our GDP, there's going to be all sorts of problems down the road. Now, there's this committee for a responsible federal budget. They're a fiscally conservative committee, right? And, so, the committee said the three things that are needed to ramp up our economic growth are innovation, in terms of manufacturing, for efficient and effective technologies and so forth, that help us produce more in a more efficient manner. They say capital investment is really critical: The U.S. is currently the largest recipient of foreign direct investment, but there are a lot of countries that are barking at the bit to get a piece of our action, and foreign companies are not going to be really excited about investing in a country where you're uncertain your key employees cannot come here to oversee that investment. And they said, three, the greatest impact is immigration, and immigration touches on all those things because immigration not only increases your labor force, but it also is the key spark for innovation there and that's the focus of what I'm going to be talking about. So I'm hoping by the end of this, in my 30 minutes or so, that I can—that you will at least think that when you think about economic development, you will think about innovation, you'll think about investment, you'll think about immigration. And when you think of immigration, you won't think of walls, you'll think of bridges to opportunity. You won't think of fear. You will think of resources and invaluable talent. So with that, let's get started.

So it's investment, immigration, and innovation, international talent. In today's climate, the biggest challenge is—especially with business tools and so forth—so the idea of startups is so different than it was in the past. It's new applications, it is in robotics and manufacturing, it's in artificial intelligence, or Internet of things. And we want those folks to come to the U.S. and we want that to be launched here, and the reason is the U.S. is still the platform for a global marketplace. But we're making it very, very difficult, and so higher education actually is a great economic booster for us.

When you have foreign nationals coming to school, you can see here that the international students contribute so much in revenue. I spoke last year to about 42 business schools across the U.S., including Yale, Cornell, Stanford, [University of Texas (UT)] Austin, and University of Illinois-Champaign. And University of Illinois said, if they didn't have their international students, they would not be able to, to continue to sustain themselves. They pay out-of-state tuition, they buy produce, they are consumers, and then if they stay in the community, they really become big assets.

For example, in Ohio, Ohio has come up with a great program and it's trying to attract a lot of international students to their locality, and because they find that they are great economic drivers—not only in the terms of the revenue they bring as students, but labor force—you get a talented labor force. If a company like Facebook is coming here, one of the things they are going to look for is, "Do we have access to talent—a talented labor force?"

The other thing is that they often start businesses and so forth, so they add to the community and one great example of that is, if you all are familiar with, the Shamim [Hotels]. He started out as an engineer in Richmond, they bought their first hotel, they now have fifty. They are one of the largest employers in our area, and they are responsible for all the all the construction going on downtown. They remodeled two hotels. They are bringing a "Moxy," which is a very high-end European hotel to Richmond. They are only one of—there are only three Moxy's opening in the United States and one of them is going to be in Richmond, and in a 300-mile radius, there is not going to be another Moxy. And distillery and restaurants, so it's not only the number of people they employ but the number of jobs they create indirectly.

Another example is we had a panelist the other day—came here as a student, he now travels to over 23 countries helping them with their energy needs, reducing their emissions, trying to make their energy plants more efficient in terms of coal and gas—and he was saying that we cannot sustain the power that we need without coal. But what he is able to do is he's come up with a product—he has eight patents—where he can use the same ener-

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gy, but use only half of the coal, thereby reducing the emissions. Every time he comes into the United States, he gets stopped by immigration, asking, "what are you doing representing the United States in energy?" And he says, "I'm the expert." And he's a permanent resident now, but it's ridiculous what kind of scrutiny he has to go through. There are 22 other countries that would love to have him but he chose to stay here, and I think it's phenomenal that the whole pool of talented resources we get when they come here for their studies and what that can do in terms of the economy. So, \$20 out of the \$87 billion [in net growth]—start-ups were responsible for that amount and we have made it very difficult for startups to stay in this country, and I'm going to talk about some of the regulations that were here before that are going through some problems in terms of this area. So, start-ups were responsible for all the net growth in the United States.

The other thing is: do you know how many major metros grew without immigrants? Anybody have any idea, if there is any metro that grew in the United States without immigrants? The number of that is zero. So, the other thing I wanted to bring out is the idea about nativism, that we only want certain types of people in the United States, is not new. The very first Naturalization Act of 1790 said the only people that could naturalize were white people—free, white people—that resided here for two years and were of good moral character. And then in 1924, an even more draconian naturalization act was passed where no Asians were allowed, eastern Europeans were capped, and, of course, for western Europeans there was no cap, there was no limitation. And that's very Brexit-like, the Brexit people, Bannon, everyone's kind of a certain type of European, not all Europeans, but a certain type of Europeans—that preferential status has always been there. And I always laugh, because we are a country of immigrants. With each immigrant community coming in, once you're in, you're like, "Okay, I'm in. I don't want the next folks coming in." So the Italian immigrants, the Irish immigrants, the German immigrants—what we were hearing about the South American or the Latino immigrant community now, that's what they were saying before. They don't speak English. They have a different culture. They talk differently. We're going to be absorbed by them. We're no longer going to retain any of our originality. And in fact, Jefferson said this, he was concerned the Germans would Germanize us instead of becoming Anglicized. So here we are, we have Oktoberfest going on, we celebrate St. Patty's day, and Italian food is almost a staple of our American cuisine, right? So America didn't become diluted with all of this. Instead, those cultures have woven into the American fabric, and made us more enriched and fortified. And I think if we just remember that, I think we will remember what is so great about the country.

Okay so, in Virginia, I was shocked to find this out, Virginia has one of the top foreign-born populations in the U.S., and about 67,000 of them are self-employed, and look at all the jobs they create. 168,000 Virginians are employed by immigrant-owned firms, and I work very closely with Virginia Economic Development Authority, the State's Department of Trade and Commerce, and even with the Greater Richmond Partnership, and they have told me that 80 percent of their investment into Virginia is foreign direct investment. So it's really critical for our economy. And in fact, Virginia's new American Fortune 500 firms employ 475,000 people globally, and of the Fortune 500 companies in general, 42 percent of them were founded by immigrants or children of immigrants. And the interesting thing is my grandfather came here in the 1940s, my dad came here and my grandfather went back to work for the United Nations, my dad came here in the early [19]60s, he impregnated my mother before he came over here, so I came over after some time with my mother with Chapel Hill as my Plymouth Rock. I'm also senior counsel at LeClairRyan. So Gary LeClair is a son of a Dreamer. So, it's very interesting how—and Gary—I certainly have not done as much as he's done, and I don't think I could, he's pretty remarkable—but he started a two-person law firm close to 30 years ago. They now employ 600 people in over 26 odd states. So, there's something about that idea, because when you come here, and your parents come here, it's not an easy process, it's very difficult. So you are all about the American dream, and that this is the place I can make it happen and maybe that in your blood and seeing what your parents struggled with helps propel you into trying to make sure you do the very best with the opportunities you're given. Sometimes when you've lived with that all your life you don't realize how great the country is, and then when somebody else comes in and sees all of what we have, they want to make sure that they utilize the resources.

So, VISA options for students. One thing that people don't realize is the process for immigration to the United States they think is fairly easy. The way you would think about it—about the extreme vetting process—and like we're handing out green cards to everybody that's coming down the road, the permanent residence cards. That's not how it works. So a vast majority of our masters degree programs in STEM have international students. And in fact, when they come—when you come in as a student, you have to have the intent to return home. So, the school gives you an I-20 for admission where they confirm that you meet the eligibility of admission, you also have the financial wherewithal to take care of your tuition and stay, and so forth, and then they issue this document that's called an I-20, and they send it to the foreign student that's overseas. The foreign student, then, has to go to the consulate, which is run by the Department of State, so you have the Department of State taking care of all the consular provisions all over the

world, issuing VISAs. You have the Department of Homeland Security here in the U.S. that's dealing with anyone under the jurisdiction of the United States, which would be U.S. companies and foreign nationals that are residing in the United States. And then in some instances you have to deal with the Department of Labor. So, since there's no—since the university does not have to file any petition with the Department of Homeland Security, they don't have to, they're not subject to that, so they just have to send the documents to the foreign national overseas who goes to process the VISA. When they go to process the VISA, they have to establish that they need to return to their home country. And some of the things they look for to establish they need to return to their home country is property, bank statements, and so forth. And if you think about it, that whole idea, and then when they come here we're trying to figure out ways in which to keep them here, it's such a contradiction in terms of policy among the three agencies that are working on it.

And the other thing is, it's incredibly limiting to a really smart person, who may not be very rich. They may not have their own house, but they're taking out a loan, or what have you, to send their child here and it becomes very difficult. They get three minutes, and the consular officers—I was honored to be able to present with them at a Department of Commerce event last year, because I got to share the stage with all the Counselor Generals in India, and they said "Well, we don't look at the documents." And I'm like, "Damn, we spend so much time preparing those documents!" But they said, "We, it just depends on how—what the person says, and, if they can answer our questions right." And I'm sitting there thinking, "It's scary. It takes hours to get—and sometimes it takes so long to get an appointment, you have to go for hours, and, partly, the Counselor Generals are very nice, they're just incredibly overworked. And so they're not in the best state." So it's unfortunate that that's what they have.

So as an F-1 student you can't work outside of campus, you can work only in school for 20 hours a week, it's limited. And you can work in the library. I actually attended the University of Richmond as an F-1 student, and at that time there weren't too many at the University of Richmond. And I used to work in the library and I'd do research for J.P. Jones, but I was limited to 20 hours a week. I became a permanent resident by the time I graduated—it was a lot easier back then. But after you finish your course of study, you're eligible for [optional practical training (OPT)]. The only way you can work outside the university, I mean outside your academic institution, while you're in school is if they have something called CPT. CPT is curricula practical training, which means it has to be incorporated into curriculum. Let's say you're an MBA. A lot of MBAs, they have to have some

work-related matters. So they're permitted to work outside with permission from the designated school official that is overseeing all the international students. And after you complete your education, you're allowed to file for optional practical training, which allows you to work in the United States for one year, right? If you're a STEM graduate, you can file for up to three years, if you meet certain requirements of optional practical training.

So there you are, you're graduating, you've got one year, what are your options afterwards? Well everybody has heard about the H-1Bs. H-1B is usually the best use of an immigration vehicle to get work-authorized in the United States. There's only 85,000 H-1Bs that are allotted per year. The quota opens up in—the [U.S. Customs and Immigration Service's (USCIS)] fiscal year is from October, and you're allowed to file six months in advance, so April 1st, April Fool's Day, is the first day that you can file. So last year for 85,000 slots, there were 266,000 applications. And they are not reviewed merit-based; they are reviewed through a lottery. So, if you're that student, especially a non-STEM student where you don't have three years to get a couple bites of the apple, it really becomes problematic in terms of finding what's your next path. That's why these business schools are trying to find innovative ways to work on that. And we're doing a couple of things with universities where we're trying to leverage entrepreneur hubs, and we're trying to do one for the city of Richmond as well. But some of the things that we've told universities is “just don't look at straightforward H-1B. Try to make sure, whether your students are eligible for other things.” So O-1 is an individual with extraordinary ability, and they have to meet certain criteria, and they can get a work-authorized status in the U.S.

We did a really cool one for someone out of the University of Virginia. This gentleman, he produces buffalo mozzarella from Colombia. When he went to visit his home country Colombia, he saw all these water buffalo there and they were just used to haul stuff, and he goes “You know we got a lot of green here.” So he went to Italy, learned how to make buffalo mozzarella. And everyone kept telling him, including the U.S. Department of Agriculture, that there's no way you can do it in Colombia, they don't have the sophisticated equipment, they're used to milking cows manually, and you have to bring it from there to here. There's so much you would have to do. But he was able to do it. And if you go into Whole Foods and any other place and you see Buf Creamery. You will see that it is a product of an O-1. And then he went on to do cocoa, using cocoa to make chocolate, and so his product has now won international awards in chocolate. And the amazing thing is he went and he retrained the indigenous community, the communities that are forgotten in Colombia, to make these products, and he had them shipped to the United States on the back of flowers were being shipped to

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the U.S. from Colombia already, so there's no carbon footprint for his product coming into the U.S. market. And it was pretty extraordinary. So O-1 is an option for some people.

E2. That's a strange beast. Okay, so there are about 22 odd countries—it's a treaty-based VISA—so about 22 odd countries that have treaties with the United States, including Iran. But these are all old treaties, there's no new treaties that have come in, so the emerging markets where you want to really have that relationship—bilateral relationship in terms of investment and trade, we don't have them. But if you are one of those 22 countries then there is "E-Trade" and there is also "E-Investor." E-Investor is a good mechanism to boost your start-up in the U.S. There is no specific amount you have to invest in in an "E," they just have a substantiality test. So the substantiality test means that whatever the amount of the investment is, the the E-investor, that's the national from that country, has to establish a substantial amount. So if you are talking about \$10 million, then you know the amount would be less; but if you are talking about a \$200,000 overall investment, because it's service-oriented, you want to see a substantial part of that \$200,000 in the investment. The other test they have is the marginality test. The marginality test says that, the E-investor has to create jobs for more than himself and his family. But he's got a five-year period to do this. So a solid business plan in place that shows that he will be able to hire more people will allow him the ability to boost a start-up in the U.S.

There's also a permanent residence process that's called the EB-5 program. It's called EB-5, because "EB" stands for "employment-based" permanent residence and it's the fifth preference. EB-5 program allows you to invest \$500,000 or \$1 million and create 10 U.S. jobs. What's the difference between \$500,000 and \$1 million? Well, it depends on the geographic location. If you want to invest in a rural area or an area where there is high unemployment, then you are allowed to do so, because they want to entice you to invest in those areas to boost the growth. If you want to—if your investment is going to be in a major city like Loudon County, you [must] invest a million dollars, and either way you got to create 10 jobs. But there are two types of EB-5 projects, and these projects are either regional centers, or they are individual investments. So, if I am a person—if I'm a foreign national—I want to build a hotel here, then I can do it myself. Hotels will clearly get the jobs that I need, and you can leverage your investors, depending on what type of hotel it is and how many employees you are going to have.

There are also things called "regional centers," where they have specific projects. And these regional centers have to first get certified by the USCIS. They have to get an economist to use the various styles [to assess] how this project will create employment, so they are able to leverage indirect em-

ployment, the construction workers, the plumbers, everybody else. It's been a very popular program, there's a lot of fraud in it, but I think if we use it correctly, there's a lot of things that can be leveraged by that.

So these are the limited things that people who want to start a business in the U.S. can use, as opposed to France and Canada, and other countries where they have provisions for start-ups. Chile has a program where they invite people from all over the world and they provide housing for the one who wins the investment. They provide start-up money. So, everyone else realizes how important and enticing those global entrepreneurs are.

The two things that I'm going to leave with—I'm going to talk about [Deferred Action for Childhood Arrivals (DACA)] a little bit, and I want to talk about some new regulations that are currently looming.

So, DACA is a program that allowed students through Executive Order—because we couldn't get the DREAMER Act done, and not everyone was eligible for DACA, you would have to arrive here before you were 16, you would have to arrive before June 15, 2007, you would have been under 30, and if you have committed certain crimes, and so forth, you are not eligible, you would have been in schools. So there are certain criteria for it—but it allows those "Dreamers," if you will, to apply for work authorization and have a deferred status. So "deferred" doesn't mean in any way that they are excused. It doesn't give them any status in the U.S.—it doesn't give them any, but it just says the priority of deportation: you are going to in the back of the line. So you feel a little safe. And I've got the stats up there about DACA, but I want to tell you—after the election, there were groups around the Commonwealth that asked me to go and speak to their DACA students. And when I would go out to speak to them, these are people that don't have their parents, that don't have the college plan where they have money to go to school. So, DACA allowed them to go to school through in-state tuition. Before then, Virginia was like a "don't ask, don't tell." So, University of Virginia, if you were here undocumented, you are not allowed to go to school, Virginia Tech is not going to ask you, [Virginia Commonwealth University (VCU)] is not going to ask you. So admission was different, but you have pay out-of-state tuition. So, DACA allow them to go to school with in-state tuition, and many of them have two jobs.

I met young, one young man, big smile on his face. He's doing architectural diagrams during the day, he's cleaning office space at night as a janitor, and he's going to school full-time. And when Attorney General [Jeff] Sessions said, "These kids are taking jobs," I'm like "my son would never do that." To see that excitement, and for that child to be the first child in the family to ever go to college, it's fantastic—just think about what reverse

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that would be. What are we going to do with these kids? It's wonderful because 90 percent of them are in the workforce, and they are creating taxes and jobs, and it would be lost revenue. There is a tremendous fear, even though the government has assured everyone they are not going to go after the DACA recipients, they're scared, their parents are scared. And it is really unfortunate, but I do believe that the Fox poll—I used Fox, because we can see what the context is—that 80 percent of Americans are supporting some sort of pathway for Dreamers. Let's hope that there's 30,000 DACA eligible people here, 21,000 did not—what President Trump did trying to rescind DACA, so these people who were going to expire before March next year, March 5th, they had to apply for an extension by October 5th of this year—I think about 21,000 of them could not do it, and so I think it's unfortunate, but in the Commonwealth, DACA recipients [contributed] \$70 million in taxes.

So lastly, I just want to go through some changes that are taking place within Immigration. Number 1 you know about: there's entrepreneurial rule that came out, it was also an Executive Order. It was supposed to roll out early June, President Trump rescinded that—I mean, he said we'll wait and see until March. And the entrepreneurial rule would have allowed these students that are here in business schools to do a start-up. There are certain requirements they would have to have met, but it's something everyone was supportive of. And they weren't given the status, they were given parole, because through Executive Order, you can't give a status, only Congress can do that, so they gave a parole. A national venture capital association, and three start-ups filed suit against the stop of the Executive Order, and they asked for an injunction and said, they didn't go through notice and comment, so the entrepreneurial rule should be allowed to go on until March. And they said that these three companies—there was a repairable harm to them, because they had to open their offices in Canada, because they didn't have authorization to stay in the United States. October 20th, the judges are going to hear the case.

So the travel ban earlier this week or it was late last week was struck down by Hawaii and Maryland. They kept in touch with Venezuela and North Korea, but they found the Muslim countries they targeted there was not enough substantial information to show the entry of those individuals would be detrimental to the United States.

Another roll out was data collection. The government can now get data on social media, from not only foreign nationals and permanent residents, but naturalized citizens. So anyone who is not born in the United States, anyone who communicates with people who are not, so all of you may know, because you heard me speak today, may be subject to. But I said, the funny

thing is that means the First Lady is going to subject to this, and you expect, the President is communicating with his wife, that he would be subject to this—so, really impacts everyone. And they are looking to reduce the number of illegal immigration to the United States, which everyone has said would be very detrimental, and they want to bring into a merit-based system, and they keep saying it's akin to Australia and Canada. I want all of you to try take that test.

If I didn't go to law school, I wouldn't—I'm over 50, you don't get any points—I wouldn't be eligible. That was horrible. We are also seeing longer times, tougher adjudication standards, increased interviews, and document requirements, and higher rates of [requests for evidence]. So although currently the climate doesn't look good, I feel that it's almost like that disruptive change. So what I'm hoping for is enough businesses can appeal to President Trump, who himself is a businessman, about the benefit. He is benefiting from immigration, the only pro-benefit and pro-immigration thing that he did this year was to increase the H-2Bs, and that's because Mar-A-Lago filed for 79 of those increases.

So with that I thank you for the opportunity, I know I went through a vast, complex subject in a very short period of time, and if you all have any questions, or if you want any of the materials, you can email "info@challa.com," and we'll send you the UNC report, or any of the other documents that support the economic growth. Thank you very much!