

# REMITTANCES AND THE CHARITABLE DEDUCTION: A NEW APPROACH TO ENCOURAGING DEVELOPMENT IN MEXICO

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*“We don’t care if we have to walk eight days, fifteen days—it doesn’t matter the danger we put ourselves in. If and when we cross alive, we will have a job to give our families the best.”*<sup>1</sup>

#### INTRODUCTION

As the government prepares to overhaul immigration,<sup>2</sup> the sentiment of the nation’s Latino immigrant workers is mixed. In a recent Pew Hispanic Center survey, approximately one-third of those interviewed expressed satisfaction with the direction of the United States.<sup>3</sup> At the same time, sixty-one percent described discrimination against Latinos as a “major problem” fueled by the group’s perceived immigration status.<sup>4</sup> Secretary of Homeland Security Janet Napolitano has announced that the administration will take a three-pronged approach to reforming immigration: increased enforcement of the nation’s immigration laws, facilitating legal immigration, and enacting a new pathway for immigrants to earn legal status.<sup>5</sup> These changes will have numerous effects on the nation’s undocumented immigrants<sup>6</sup> and legal permanent residents (LPRs).<sup>7</sup>

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1. *How Does Illegal Immigration Impact American Taxpayers and Will the Reid-Kennedy Amnesty Worsen the Blow? Hearing Before the H. Comm. on the Judiciary*, 109th Cong. 56 (2006) [hereinafter *Hearing*] (statement of Wayne Cornelius, Professor, University of California San Diego) (quoting a Mexican immigrant the researcher had recently interviewed).

2. Julia Preston, *White House Plan on Immigration Includes Legal Status*, N.Y. TIMES, Nov. 14, 2009, at A10.

3. MARK HUGO LOPEZ ET AL., PEW HISPANIC CTR., *ILLEGAL IMMIGRATION BACKLASH WORRIES, DIVIDES LATINOS*, iv (2010).

4. *See id.* at i–ii.

5. Preston, *supra* note 2.

6. This note deliberately avoids using the term “illegal alien” as it is “‘racially loaded, ambiguous, imprecise, and pejorative.’” Francine J. Lipman, *The Taxation of Undocumented Immigrants: Separate, Unequal, and Without Representation*, 9 HARV. LATINO L. REV. 1, 2 n.2 (2006) (quoting Beth Lyon, *When More “Security” Equals Less Workplace Safety: Reconsidering U.S. Laws that Disadvantage Unauthorized Workers*, 6 U. PA. J. LAB. & EMP. L. 571, 576 (Spring 2004)). Instead, I will utilize the term “undocumented immigrant” to reference “‘people who presently possess no proof of any right to be present in the United States . . .’” *Id.* Similarly, I will use the term “undocumented workers” to “describe people who are forbidden under the immigration laws to work for pay.” *Id.*

7. The Department of Homeland Security defines legal permanent residents as “persons granted lawful permanent residence, for example, ‘green card’ recipients, but not those who had become U.S. citizens.” NANCY RYTINA, DEP’T OF HOMELAND SEC. OFFICE OF IMMIGRATION STATISTICS, *ESTIMATES OF THE LEGAL PERMANENT RESIDENT*

Revising the nation's immigration laws will significantly impact the remittances that immigrant workers send back to their home country. Remittances are informally defined as "cross-border payments of relatively low value, [and are] often recurrent person-to-person payments by migrants."<sup>8</sup> Generally, there are two recognized types of remittances. The first, known as personal remittances, is best conceived of as money that migrant workers send to their family members abroad.<sup>9</sup> The second type is referred to as collective remittances, which represent money that Hometown Associations (HTAs)<sup>10</sup> and federations<sup>11</sup> (collectively referred to as "migrant organizations") obtain from their members and transfer abroad to benefit specific communities.<sup>12</sup>

Given the strong connection between migration and remittance sending, it can safely be said that remittances are a global phenomenon.<sup>13</sup> Remittances are increasingly recognized as the newest tool for development<sup>14</sup> after land-titling and microfinance.<sup>15</sup> Consequently,

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POPULATION IN 2008 1 (2009), [http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_lpr\\_pe\\_2008.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_lpr_pe_2008.pdf).

8. THE INT'L MONETARY FUND, INTERNATIONAL TRANSACTIONS IN REMITTANCES: GUIDE FOR COMPILERS AND USERS 70 (2009).

9. Paul Wolfowitz, *Foreword* to WORLD BANK, GLOBAL ECONOMIC PROSPECTS 2006: ECONOMIC IMPLICATIONS OF REMITTANCES AND MIGRATION, at vii (2006) [hereinafter WORLD BANK, IMPLICATIONS] (defining remittances as "the money that migrants send home to their families . . .").

10. HTAs are generally defined as "informal associations" of immigrants from the same village or region that operate in the United States (or any country of destination for immigrants) to provide support for its members and invest in development projects in their country of origin. See Donald F. Terry, *Remittances as a Development Tool*, in BEYOND SMALL CHANGE: MAKING MIGRANT REMITTANCES COUNT 3, 12 (Donald F. Terry & Steven R. Wilson eds., 2005).

11. Federations are best conceived of as a coalition of HTAs that work with the Mexican consular offices located in the United States. Germán A. Zárate-Hoyos, *The Development Impact of Migrant Remittances in Mexico*, in BEYOND SMALL CHANGE: MAKING MIGRANT REMITTANCES COUNT 159, 182–83 (Donald F. Terry & Steven R. Wilson eds., 2005).

12. See SOC. SCI. RESEARCH COUNCIL, MIGRANT REMITTANCES AND DEVELOPMENT: RESEARCH PERSPECTIVES 41 (Richard H. Adams et al. eds., 2009), [http://essays.ssrc.org/remittances\\_anthology/wp-content/uploads/2009/08/SSRC-Web-Anthology-on-Migrant-Remittances-Development.pdf](http://essays.ssrc.org/remittances_anthology/wp-content/uploads/2009/08/SSRC-Web-Anthology-on-Migrant-Remittances-Development.pdf).

13. See, e.g., WORLD BANK, IMPLICATIONS, *supra* note 9, at xi–xvi.

14. This note adopts the definition of "development" articulated by the United Nations Development Programme: "[Development] is about creating an environment in which people can develop their full potential and lead productive, creative lives in accord with their needs and interests . . . . Development is thus about expanding the choices people have to lead lives that they value." *The Human Development Concept*, UNITED NATIONS DEV. PROGRAMME, <http://hdr.undp.org/en/humandev/> (last visited Feb. 12, 2011). While this is a broad definition, it is particularly suitable for the analysis that follows in Part II, which assesses a variety of factors deemed indicators of development. See *infra* Part II.

they have become the subject of extensive socioeconomic studies—though they have garnered significantly less attention from the legal academy.<sup>16</sup>

Despite remittances' international reach, their effect on sending and recipient countries is highly context-specific. Their impact depends on a variety of factors, including the migration policies of the countries involved, the respective nation's willingness to engage in policy dialogue, and the prevailing economic climate in the recipient country.<sup>17</sup> This is significant because lessons learned from studying remittances in one part of the world cannot easily be applied elsewhere.<sup>18</sup> This paper focuses on North-South<sup>19</sup> remittance flows from the United States to Latin America and the Caribbean region, with particular emphasis on the remittance corridor between the United States and Mexico.<sup>20</sup>

I argue that we should use the charitable deduction<sup>21</sup> to encourage increased sending of collective remittances to further devel-

15. See Ezra Rosser, *Immigrant Remittances*, 41 CONN. L. REV. 1, 3 (2008). A 2003 World Bank report is widely recognized as bringing the remittance phenomenon to public attention. See Dilip Ratha, *Workers' Remittances: An Important and Stable Source of External Development Finance*, in GLOBAL DEVELOPMENT FINANCE 2003: STRIVING FOR STABILITY IN DEVELOPMENT FINANCE 157, 166 (The World Bank ed., 2003) [hereinafter Ratha, *Workers' Remittances*], <http://siteresources.worldbank.org/INTRGDF/Resources/GDF2003-Chapter7.pdf>.

16. Rosser, *supra* note 15 at 5–6 (noting that the author's work is the first law review article on remittances). For a survey of the remittance literature, as well as to observe the volume of socioeconomic studies on this subject, see DOVELYN RANNVEIG AGUINAS, MIGRATION POLICY INST., REMITTANCES AND DEVELOPMENT: TRENDS, IMPACTS, AND POLICY OPTIONS: A REVIEW OF THE LITERATURE (2006), [http://www.migrationpolicy.org/pubs/mig\\_dev\\_lit\\_review\\_091406.pdf](http://www.migrationpolicy.org/pubs/mig_dev_lit_review_091406.pdf), and SOC. SCI. RESEARCH COUNCIL, *supra* note 12.

17. AGUINAS, *supra* note 16, at 6.

18. See *id.* at 5 (“Overall, in light of the rather complex interaction of economic, social, and political implications of remittances, the literature suggests that ultimately the net impact of remittances on development will still vary from context to context . . .”).

19. This term describes the prevailing pattern of migration and remittance flows that affects the United States. See Roberto Suro, *A Survey of Remittance Senders and Receivers*, in BEYOND SMALL CHANGE: MAKING MIGRANT REMITTANCES COUNT 21, 23 (Donald F. Terry & Steven R. Wilson eds., 2005) (“Remittances and migration form part of a single channel through which people move north and money moves south.”). This is to be distinguished from South-South migration and remittance flows, which is beyond the scope of this paper. For more information on South-South remittance flows, see Dilip Ratha & William Shaw, *South-South Migration and Remittances* (The World Bank, Working Paper No. 102, 2007), available at <http://site.resources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/SouthSouthMigrationandRemittances.pdf>.

20. For a list of countries included within Latin America and the Caribbean region, see *infra* Appendix A.

21. See *infra* Part I.E.

opment in Mexico, but that this subsidy should not apply to personal remittances.<sup>22</sup> In Part I, I introduce the reader to personal remittances and collective remittances, highlighting both their economic magnitude and third parties that have an effect on each remittance process. I then discuss the charitable deduction. In Part II, I set forth my argument and the criteria used to evaluate it. I assess my proposal in light of socioeconomic studies that have been conducted on personal and collective remittances and whether each type of remittance is in accordance with tax law, theories underlying the charitable deduction, and tax policy. Finally, in Part III, I provide concluding remarks and emphasize that any proposed change to the immigration system must consider the effect on remittances.

## I.

### REMITTANCES & THE CHARITABLE DEDUCTION

According to the Multilateral Investment Fund and the Pew Hispanic Center, “[i]n Latin America, remittances are essential to the survival of millions of families and of whole national economies.”<sup>23</sup> In this Part, I distinguish between personal remittances and collective remittances by defining each and assessing their economic significance. The focus then shifts to consider the third parties that inform each remittance process. Finally, I explore the charitable deduction and introduce the way this subsidy works.

#### A. *Personal Remittances and their Economic Significance*

Personal remittances have been defined as “the money that migrants send home to their families . . . .”<sup>24</sup> Authorities recognize two variants of personal remittances. “Formal remittances” are defined as “remittances which enter a country through official banking channels . . . .”<sup>25</sup> In contrast, “informal remittances” enter a country by hand through the efforts of the sender or her relatives, or through agents providing informal remittance services.<sup>26</sup>

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22. Analysis concerning whether the subsidy should be structured as a deduction or credit is beyond the scope of this paper.

23. ROBERTO SURO, PEW HISPANIC CTR., REMITTANCE SENDERS AND RECEIVERS: TRACKING THE TRANSNATIONAL CHANNELS 5 (2003), <http://pewhispanic.org/files/reports/23.pdf>.

24. See *supra* text accompanying note 9.

25. SOC. SCI. RESEARCH COUNCIL, *supra* note 12, at 21.

26. “Informal remittances” are defined as “all types of money transfer services that do not involve formal contracts, and hence are unlikely to be recorded in national accounts.” Caroline Freund & Nikola Spatafora, *Remittances: Transaction Costs, Determinants, and Informal Flows* 2 (The World Bank Policy Research Working Paper

Formal remittances to Latin America and the Caribbean totaled approximately \$69 billion in 2008.<sup>27</sup> Of this amount, approximately \$25 billion (2.47% of the Mexican GDP) was sent to Mexico,<sup>28</sup> the third most significant remittance recipient country in the world.<sup>29</sup> While the total amount of money sent through remittances to the region represents roughly 20% of worldwide remittance flows to developing countries,<sup>30</sup> this number may be understated because it fails to account for informal remittances. It is estimated that informal remittances to Mexico constitute approximately 10% of formal remittances.<sup>31</sup> This suggests that total remittances transferred to Mexico in 2008 were approximately \$27.5 billion, or 2.7% of the Mexican GDP.<sup>32</sup>

According to the World Bank's most recent Migration and Remittances Factbook, the United States is the world's top remittance-sending country.<sup>33</sup> In 2008, approximately \$45.9 billion was sent from

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Series, Working Paper No. 3704, 2005), available at [http://essays.ssrc.org/remittances\\_anthology/wp-content/uploads/2009/07/Topic\\_4\\_Freund\\_Spatafora.pdf](http://essays.ssrc.org/remittances_anthology/wp-content/uploads/2009/07/Topic_4_Freund_Spatafora.pdf).

27. MANUEL OROZCO, MIGRATION AND REMITTANCES IN TIMES OF RECESSION: EFFECTS ON LATIN AMERICAN AND CARIBBEAN ECONOMIES 12 tbl.6 (2009) [hereinafter OROZCO, RECESSION], <http://www.thedialogue.org/PublicationFiles/Migration%20and%20remittances%20in%20times%20of%20recession%20Effects%20on%20Latin%20American%20economies.pdf>. A table listing remittances to countries in Latin America and the Caribbean is listed in Appendix A.

28. OROZCO, RECESSION, *supra* note 27, at 12; see also *infra* Appendix A.

29. DILIP RATHA ET AL., MIGRATION AND DEVELOPMENT BRIEF 11: MIGRATION AND REMITTANCE TRENDS 2009 3 Box 1 (2009), <http://siteresources.worldbank.org/INT-PROSPECTS/Resources/334934-1110315015165/MigrationAndDevelopmentBrief11.pdf>. The only two developing countries to receive more money than Mexico were India, which received \$52 billion, and China, which received \$49 billion. *Id.*

30. Remittance flows to developing countries were approximately \$338 billion in 2008. *Id.* at 1. Remittance flows to Latin America and the Caribbean totaled approximately \$69 billion. OROZCO, RECESSION, *supra* note 27, at 12.

31. SURO, *supra* note 23, at 11. This amount is significantly lower in comparison to other developing countries. Analysis of one hundred developing countries suggests that informal remittances are approximately 35–75% of formal remittances, with significant regional variations. See Freund & Spatafora, *supra* note 26, at 27–28. The authors indicate that variability in informal remittance flows turns on the existence of robust financial systems within countries. *Id.* at 27. The evidence in Mexico appears to support this finding, with 40% of remittances sent through banks, 20% sent through wire transfer services, and 20% sent through the postal service. SURO, *supra* note 23, at 11.

32. I arrived at the percentage of GDP indirectly by dividing Mexico's GDP, as listed in Appendix A, by the amount of remittances sent to Mexico in 2008 to determine an estimate of total GDP. Dividing \$27.5 billion by the estimate of total GDP for 2008 yields 2.7%.

33. THE WORLD BANK, MIGRATION AND REMITTANCES FACTBOOK 2008 14 (2008) (indicating that \$42.2 billion was transferred from the United States in 2006). The next highest remittance sending country was Saudi Arabia, which transferred \$15.6 billion abroad in 2006. *Id.*

the United States to Latin America and the Caribbean.<sup>34</sup> Remittance sending is not confined to a handful of states; rather, it is national in scope and affects all states to varying degrees. While ten states each transferred more than \$1 billion to the region, remittances from California alone totaled \$14.6 billion,<sup>35</sup> or 0.8% of the state's GDP.<sup>36</sup>

From 2001 through 2008, remittances to Latin America and the Caribbean region experienced positive annual growth.<sup>37</sup> While they increased annually by an average of 17% between 2003 and 2006, this rate decreased to 11% and 2% in 2007 and 2008, respectively.<sup>38</sup> The most recent figures indicate that Mexico received approximately \$21 billion in remittances in 2009.<sup>39</sup> This represents a 16% decrease in remittances, which is less than experts had expected.<sup>40</sup> Multiple factors have been cited for the decrease, including unemployment,<sup>41</sup> decreased earnings,<sup>42</sup> the housing crisis,<sup>43</sup> and deportations.<sup>44</sup> However,

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34. See Bendixen & Associates, Presentation, Survey of Latin American Immigrants in the United States 31 (Apr. 30, 2008), available at [http://www.bendixenandassociates.com/studies/IDB\\_2008\\_National\\_Survey\\_Presentation.ppt](http://www.bendixenandassociates.com/studies/IDB_2008_National_Survey_Presentation.ppt).

35. *Id.* at 33. A complete listing of state remittances to Latin America and the Caribbean region is contained in Appendix B.

36. I arrived at this figure by dividing total remittances sent from California, listed in Appendix B, by total GDP in California of \$1.8 trillion in 2008. Bureau of Economic Analysis, *Gross Domestic Product by State*, U.S. DEP'T OF COMMERCE, <http://www.bea.gov/regional/gsp/> (last visited Feb. 12, 2011).

37. OROZCO, RECESSION, *supra* note 27, at 12 tbl.6. The increase in remittances to the region is inextricably tied to increased migration flows to the United States. See SURO, *supra* note 23, at 5 ("Today's remittance flows to Latin America are an obvious outgrowth of the migration to the United States . . ."); Rosser, *supra* note 15, at 8 ("Driving the growth in the size of the U.S. remittance market to Latin America is the U.S. Latino population growth.").

38. OROZCO, RECESSION, *supra* note 27, at 12 tbl.6.

39. The Multilateral Investment Fund, *Remittances to Latin America and the Caribbean 2009*, INTER-AM. DEV. BANK, [http://www.iadb.org/mif/remesas\\_map.cfm?language=english](http://www.iadb.org/mif/remesas_map.cfm?language=english) (last visited Feb. 12, 2011).

40. See MANUEL OROZCO, INTER-AM. DEV. BANK, UNDERSTANDING THE CONTINUING EFFECT OF THE ECONOMIC CRISIS ON REMITTANCES TO LATIN AMERICA AND THE CARIBBEAN 7 (2009) [hereinafter OROZCO, UNDERSTANDING], <http://www.thedialogue.org/PublicationFiles/FINAL%20OROZCO.pdf> (estimating that 45% of remittance senders will send less in 2009 than they did the previous year).

41. OROZCO, RECESSION, *supra* note 27, at 5 (asserting that the unemployment rate for Latinos increased to 8%); Manuel Orozco, *Are Trends in Money Transfers to Latin America Shifting Downward?*, FOCAL POINT (Canadian Found. for the Americas, Ont., Can.), Nov. 2008, at 1, 3 [hereinafter Orozco, *Trends*], <http://www.thedialogue.org/PublicationFiles/FOCALPoint%20November%202008.pdf> (explaining that the economic crisis has caused 125,000 Mexican migrants to lose their jobs); Marc Lacey, *Money Starts to Trickle North as Mexicans Help Out Relatives*, N.Y. TIMES, Nov. 16, 2009, at A1 (discussing how the high rate of unemployment has forced Mexican families to send money to relatives in the United States).

42. OROZCO, RECESSION, *supra* note 27, at 8 (explaining that between the third quarters of 2007 and 2008, real earnings for Latino immigrants that had arrived in the

this is a worldwide trend that experts expect to abate more quickly in Latin America and the Caribbean than in other global regions.<sup>45</sup>

The flow of personal remittances to Mexico is significant not just in terms of absolute dollars, but also as a percentage of Mexico's GDP. This is noteworthy in light of the magnitude of the remittance outflows from the United States and that much of this money is directed towards Mexico. It suggests that the charitable deduction could play an important role in encouraging increased sending of personal remittances.

### B. *Entities that Affect the Sending of Personal Remittances*

In addition to studying the magnitude of international monetary flows, researchers have also scrutinized the characteristics of remittance senders to try to identify factors that influence these money transfers. One study found that Latino remitters in the United States are slightly more likely to be young Mexican men with low incomes and little education.<sup>46</sup> Estimates project that approximately 16% of remittance senders are U.S. citizens, 37% are LPRs, and 42% are undocumented immigrants.<sup>47</sup> Furthermore, foreign-born Latino immigrants predominantly work in the service industries and construction,<sup>48</sup> earning an average annual income of \$24,000 before taxes.<sup>49</sup>

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United States since 2000 decreased by approximately 5%); Orozco, *Trends*, *supra* note 41, at 3 (explaining that 18% of migrants said they were earning less than the year before).

43. The housing crisis has affected Latinos both as borrowers and as laborers. See OROZCO, RECESSION, *supra* note 27, at 9 ("Hispanics were twice as likely as whites to receive highly predatory option-adjustable rate mortgages. . . . [O]ne in 12 mortgages given to Hispanics in 2005 and 2006 will result in foreclosure."); *id.* at 6 (explaining that the construction sector lost 283,000 jobs formerly filled by migrant workers).

44. OROZCO, RECESSION, *supra* note 27, at 9 (identifying that 320,000 people were deported in 2007, of which 96% were from Latin America and the Caribbean region).

45. See RATHA ET AL., *supra* note 29, at 2.

46. Sergio Bendixen & Erin Onge, *Remittances from the United States and Japan to Latin America: An In-Depth Look Using Public Opinion Research*, in BEYOND SMALL CHANGE: MAKING MIGRANT REMITTANCES COUNT 41, 48 (Donald F. Terry & Steven R. Wilson eds., 2005). The study also found that 47% of remittance senders are female. *Id.* at 49 fig.3.2. The authors noted that two-thirds of migrants that remit in the United States are Mexican; the remainder are from other Latin American countries. *Id.* at 48.

47. *Id.* at 48–49. The authors indicate that the remaining 5% did not specify citizenship status. *Id.* at 49.

48. See OROZCO, RECESSION, *supra* note 27, at 7 fig.2.

49. Bendixen & Onge, *supra* note 46, at 51. In 2008, 48% of Latino remittance senders earned less than \$20,000, 36% earned between \$20,000 and \$30,000, and the remaining 16% earned more than \$30,000. *Id.*

These workers generally remit approximately \$240 per month.<sup>50</sup> One study has shown that homeownership, education, and income positively contribute to remittance flows.<sup>51</sup> However, as previously indicated, the economic crisis placed downward pressure on these transfers in 2009.<sup>52</sup>

While remittance senders tend to be men, remittance recipients are primarily women towards the bottom of the socioeconomic scale.<sup>53</sup> The money these individuals receive is primarily used to meet basic needs—though a small amount is spent on such items as education, business, investment, and leisure.<sup>54</sup>

Immigrants have a number of options available to remit money through formal channels.<sup>55</sup> The Mexican remittance market is charac-

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50. *Id.* at 52; OROZCO, UNDERSTANDING, *supra* note 40, at 8 (identifying the average remittance amount in 2008 as \$241 per payment). This is consistent with more recent region-wide data, which demonstrates that the average amount remitted is approximately \$280. OROZCO, RECESSION, *supra* note 27, at 12 tbl.6. However, the absolute amount of money remitted and the tendency to remit are inversely correlated with the amount of time the migrant is away from home. Bendixen & Onge, *supra* note 46, at 52. After the immigrant has been in the United States for ten years, transfers are made, on average, eleven times per year and decrease to \$167 per payment. *Id.* at 54 tbl.3.13; *see also* SURO, *supra* note 23, at 6 (confirming this general trend).

51. Jorge Durand et al., *International Migration and Development in Mexican Communities*, 33 DEMOGRAPHY 249, 259 (1996).

52. *See supra* text accompanying notes 39–40. That immigrants are unable to remit as much as they had in the past places them in an uneasy situation, given that they consider the act of sending money home to be a “sacred and intensely emotional duty.” Roberto Suro, *A Survey of Remittance Senders and Receivers*, in BEYOND SMALL CHANGE: MAKING MIGRANT REMITTANCES COUNT 21, 25 (Donald F. Terry & Steven R. Wilson eds., 2005).

53. Bendixen & Onge, *supra* note 46, at 43–44 (“In nearly every country studied, women are overrepresented as recipients relative to their proportion in the overall population.”). *But see* SURO, *supra* note 23, at 8 (“The MIF-PHC studies conducted in five Latin American countries demonstrate that the remittance flow is reaching a broad swath of the population. . . . [T]he survey findings should dispel any notions that this phenomenon is limited to or even substantially concentrated among the very poor.”).

54. Bendixen & Onge, *supra* note 46, at 42; Rosser, *supra* note 15, at 14 (indicating that in El Salvador, 80% of remittances are spent on basic needs, 2% on investment, 1% on initiating or expanding a business, and 2% on leisure); SURO, *supra* note 23, at 11 (describing the nature of items on which remittance money is spent).

55. There are three means of transferring funds (wire transfer, money order, and informal transfer) and four types of entities that are able to process a remittance transaction: “nationwide companies, regional businesses, international banks or credit unions, and unlicensed entrepreneurs.” MANUEL OROZCO, THE REMITTANCE MARKETPLACE: PRICES, POLICY, AND FINANCIAL INSTITUTIONS 8 (2004) [hereinafter OROZCO, MARKETPLACE], <http://pewhispanic.org/files/reports/28.pdf>.

terized as “consolidating”<sup>56</sup> and is on the verge of becoming a “mature” market.<sup>57</sup> As of 2010, there were twenty-one remittance service providers operating in Mexico.<sup>58</sup> Due to the competitive marketplace, the cost of sending money to Mexico was 6.2% of the total amount transferred.<sup>59</sup>

The U.S. government has taken an active role in facilitating and monitoring remittances. The Federal Reserve Bank has established an Automated Clearinghouse system (ACH) with the Mexican Central Bank.<sup>60</sup> The ACH process first requires U.S. banks to sign up for the system. When an individual executes a remittance transaction at a participating bank, the money is sent to the Federal Reserve Bank and then transferred to the Mexican Central Bank.<sup>61</sup> This process lowers transaction costs and enables the government to better monitor international monetary flows.<sup>62</sup> In addition, the Federal Deposit Insurance Corporation has actively encouraged banks to accept both the *mátricula consular*,<sup>63</sup> a type of identification card, and the Internal Revenue Service’s (IRS) Individual Taxpayer Identification Number (ITIN)<sup>64</sup> as acceptable documentation to open a bank account.<sup>65</sup> These

56. A remittance market characterized as consolidating means that market shares are fluid, firms are consolidating, and there are continuing innovations in cost efficiency. *See id.* at 11–12.

57. A mature market means that the market is stable, transfer costs are low, and there are no more than ten large firms in competition. *See id.* at 10.

58. MANUEL OROZCO ET AL., A SCORECARD IN THE MARKET FOR MONEY TRANSFERS: TRENDS IN COMPETITION IN LATIN AMERICA AND THE CARIBBEAN 32 (2010).

59. *Id.* at 12.

60. OROZCO, MARKETPLACE, *supra* note 55, at 37.

61. *See id.* at 24.

62. *See id.* at 37. The federal government also has oversight over money transfer businesses. These firms are regulated by the Office of the Comptroller of the Currency, the Financial Crimes Enforcement Network, and the Office of Foreign Assets Control. *Id.* at 7. To facilitate international monitoring, the applicable regulations also require remittance senders to “provide identifying information both for themselves and the recipient . . .” *Id.* In addition, the G-8 Countries have created the Financial Action Task Force to develop policies aimed at preventing money laundering and terrorist financing. *See* AGUINAS, *supra* note 16, at 52.

63. *See infra* note 67 and accompanying text.

64. The ITIN is similar to a social security number in that it provides LPRs and undocumented workers with a unique identifier enabling them to file tax returns. Lipman, *supra* note 6, at 22. Its role is limited to facilitating the filing of taxes; they do not affect immigration status or establish eligibility for employment, social security benefits, or the Earned Income Tax Credit. IMMIGRATION POLICY CTR., THE FACTS ABOUT THE INDIVIDUAL TAX IDENTIFICATION NUMBER (ITIN): AN ITIN IS NOT AN IMMIGRATION BENEFIT 1–2 (2009), <http://www.immigrationpolicy.org/sites/default/files/docs/ITIN%20fact%20sheet%20063009.pdf>. It is important to note that information collected by the IRS cannot be shared with other federal agencies, such as the Department of Homeland Security, to combat illegal immigration. *See* I.R.C. § 6103(a) (2010). To obtain an ITIN, an individual must file Form W-7, Application

measures have been particularly successful—58% of Mexican migrants now have bank accounts.<sup>66</sup>

The Mexican government has taken two important steps to facilitate remittance sending. First, to encourage its citizens to open bank accounts and remit money through formal channels, the Mexican government began issuing official identity cards, known as *matricula consulars*, through its consulates in the United States.<sup>67</sup> To obtain the card, an immigrant must provide a copy of his Mexican birth certificate, another official document establishing Mexican citizenship (e.g., driver's license), and proof of a U.S. address.<sup>68</sup> The card has proven especially popular with both immigrants and banks; in the first nine months of 2002, 740,000 *matriculas* were issued, and sixty-six banks had agreed to accept the cards as proof of identity in establishing bank accounts.<sup>69</sup>

The second important development is a matching funds program instituted by the Mexican government in 1997 called *Iniciativa Ciudadana 3x1* (3x1 Program) for collective remittances. Under this program, each \$1 remitted by an HTA is matched with \$1 each from the federal government, the state government, and the municipal government.<sup>70</sup> The funds are devoted to projects that serve vital commu-

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for IRS Individual Taxpayer Identification Number. See Treas. Reg. § 301.6109-1(d)(3)(ii) (2008). The form requires the individual to provide his name, address, foreign tax identification number, and the reason for requesting the ITIN. *Id.* The taxpayer may be required to provide documentation establishing proof of immigration status, such as a passport, driver's license, birth certificate, identity card, or other documentation. *Id.* § 301.6109-1(d)(3)(iii).

65. OROZCO, MARKETPLACE, *supra* note 55, at 38. This is important because undocumented immigrants often lack the generally accepted forms of identification necessary to establish a bank account, such as a driver's license. See Suro, *supra* note 19, at 29.

66. Orozco, *Trends*, *supra* note 41, at 3. This takes on added significance when one considers that only 30% of Mexican migrants had bank accounts five years earlier. *Id.*

67. See Ratha, *Workers' Remittances*, *supra* note 15, at 166. The *matricula consular* contains the immigrant's name and picture, address in the United States, and attests to their Mexican citizenship. ROBERTO SURO, PEW HISPANIC CTR., SURVEY OF MEXICAN MIGRANTS: PART ONE 2 (2005), <http://pewhispanic.org/files/execsum/41.pdf>.

68. ROBERTO SURO ET AL., PEW HISPANIC CTR. & MULTILATERAL INV. FUND, BILLIONS IN MOTION: LATINO IMMIGRANTS, REMITTANCES, AND BANKING 14 (2002), <http://pewhispanic.org/files/reports/13.pdf>. The card cannot be used as a driver's license and does not establish proof of residency or the right to work. See *id.*

69. Ratha, *Workers' Remittances*, *supra* note 15, at 166.

70. JORGEN CARLING, INT'L PEACE RESEARCH INST., MIGRANT REMITTANCES AND DEVELOPMENT COOPERATION 48 (2005), [http://www.prio.no/files/file46220\\_carling\\_2005\\_migrant\\_remittances\\_and\\_development\\_cooperation.pdf](http://www.prio.no/files/file46220_carling_2005_migrant_remittances_and_development_cooperation.pdf).

nity needs such as the development of infrastructure and construction of schools and hospitals.<sup>71</sup>

A number of factors and entities influence the sending of personal remittances. As noted earlier, the majority of remittance senders are Mexican laborers without U.S. citizenship who earn approximately \$24,000 per year.<sup>72</sup> Furthermore, remittance recipients primarily spend the money they receive on meeting basic needs.<sup>73</sup> This suggests a conflict: while one may feel a strong desire to help remittance recipients, remittance senders may not make enough money to fully utilize the charitable deduction. Nevertheless, to the extent that this is true, it is reassuring that neither the U.S. nor Mexican governments have erected regulatory roadblocks placing an undue burden on the remittance process.

### C. *Collective Remittances and their Economic Significance*

Collective remittances represent money that migrant organizations obtain from their members and transfer abroad to benefit specific communities.<sup>74</sup> As with personal remittances, collective remittances can be transferred formally and informally. There are at least three ways that HTAs and federations send money to fund development projects in Mexico: representatives of the organization may personally carry the funds to Mexico; the money may be deposited in a local Mexican bank; or, if the entity is participating in the 3x1 Program, the funds will be deposited in a Mexican bank account established by the state or municipality.<sup>75</sup>

The projects that HTAs and federations fund are predominantly altruistic.<sup>76</sup> Thus, collective remittances are best conceived as “unre-

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71. *See id.*

72. *See supra* note 49 and accompanying text.

73. *See supra* note 54 and accompanying text.

74. *See supra* text accompanying note 12.

75. MANUEL OROZCO, U.S. AGENCY FOR INT’L DEV., HOMETOWN ASSOCIATIONS AND THEIR PRESENT AND FUTURE PARTNERSHIPS: NEW DEVELOPMENT OPPORTUNITIES? 11–12 (2003), <https://www.thedialogue.org/PublicationFiles/final%20USAID%20HTA%20Report.pdf>.

76. *See* Manuel Orozco & Eugenia Garcia-Zanello, *Hometown Associations: Transnationalism, Philanthropy, and Development*, BROWN J. WORLD AFF., Spring/Summer 2009, at 1, 3 [hereinafter Orozco & Garcia-Zanello, *Transnationalism*]. HTAs and federations identify projects to fund through direct observation, communicating with contacts in the home country, and partnering with outside institutions. *See id.* at 6. Both groups typically delegate oversight responsibility to a community member or relative to monitor the project’s status and ensure that funds are appropriately spent. *See* MANUEL OROZCO & KATHERINE WELLE, HOMETOWN ASSOCIATIONS AND DEVELOPMENT: A LOOK AT OWNERSHIP, SUSTAINABILITY, CORRESPONDENCE, AND

quited and unilateral private donations.”<sup>77</sup> Manuel Orozco has identified three types of philanthropic activities that collective remittances fund:

[The first category,] [c]haritable work . . . includes the donation of clothes, construction material for the town church, or small cash amounts to purchase goods for local religious festivities. A second type of activity is oriented toward improving the infrastructural conditions of the town. Here, the associations raise money to pave streets, build parks, create sewage treatment plants, filter water, buy (or maintain) cemetery plots, or build health care facilities. A third group comprises activities oriented toward “human development,” which refers to the day-to-day education and health of the townspeople. These activities include funds for scholarships, library books, health supplies and medicine, and sports equipment.<sup>78</sup>

While smaller in volume and under-studied relative to personal remittances, collective remittances represent an important source of funds for Latin America and the Caribbean region. Official estimates place collective remittances to Central America at approximately one percent of all remittances, though it is expected that this number will increase by 3–5% within the next five years.<sup>79</sup> HTAs and federations raise money to fund development projects through direct donations and by hosting various social events.<sup>80</sup> However, federations have also established websites through which visitors can make donations.<sup>81</sup> Individual HTAs generally raise less than \$20,000 per year<sup>82</sup> and invest

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REPLICABILITY 14 (2006), [http://essays.ssrc.org/remittances\\_anthology/wp-content/uploads/2009/08/Topic\\_9\\_Orozco.pdf](http://essays.ssrc.org/remittances_anthology/wp-content/uploads/2009/08/Topic_9_Orozco.pdf).

77. See MANUEL OROZCO, *LATINO HOMETOWN ASSOCIATIONS AS AGENTS OF DEVELOPMENT IN LATIN AMERICA* 7 (2000) [hereinafter OROZCO, AGENTS], <http://www.thedialogue.org/PublicationFiles/Orozco%20Assoc%20-%20HTAs.pdf>.

78. *Id.* at 7–8 (citation omitted). HTAs have increasingly spent money on income-generating projects. WORLD BANK, *IMPLICATIONS*, *supra* note 9, at 95 Box 4.3. These investments are excluded from the scope of the paper as they can generally be considered non-philanthropic activities.

79. WORLD BANK, *IMPLICATIONS*, *supra* note 9, at 95 Box 4.3.

80. RAFAEL ALARCÓN, *THE DEVELOPMENT OF HOMETOWN ASSOCIATIONS IN THE UNITED STATES AND THE USE OF SOCIAL REMITTANCES IN MEXICO* 4 (2002), [http://essays.ssrc.org/remittances\\_anthology/wp-content/uploads/2009/08/Topic\\_9\\_Alarcon.pdf](http://essays.ssrc.org/remittances_anthology/wp-content/uploads/2009/08/Topic_9_Alarcon.pdf) (“HTAs raise money in the United States through the organization of dances, beauty pageants, raffles, picnics, rodeos, [and collecting] membership dues and private donations.”). Federations use the same means to raise money. See, e.g., FEDERACIÓN CALIFORNIANA DE MICHOACANOS, <http://www.fecademich.org/> (last visited Feb. 12, 2011).

81. See, e.g., FEDERACIÓN CALIFORNIANA DE MICHOACANOS, <http://www.fecademich.org/> (last visited Feb. 12, 2011).

82. Manuel Orozco, *Migration, Money, and Markets: The New Realities for Central America*, in *BEYOND SMALL CHANGE: MAKING MIGRANT REMITTANCES COUNT* 193, 202 (Donald F. Terry & Steven R. Wilson eds., 2005).

in projects that cost less than \$10,000.<sup>83</sup> The most recent figures indicate that donations by HTAs to Mexico totaled \$30 million in 2003.<sup>84</sup> While there is a paucity of comparable data for federations, at least one such organization reported receiving \$1.1 million in contributions in 2009.<sup>85</sup>

At first glance, collective remittances appear to better accord with one's notion of charity than personal remittances. Collective remittances are spent on projects in an immigrant's country of origin that benefit the entire community, rather than a specific family. While in absolute dollars personal remittances dwarf collective remittances, collective remittances have the potential to increase in future years. For these reasons, they may benefit more than personal remittances from the charitable deduction.

#### D. *Entities that Affect the Sending of Collective Remittances*

The number of HTAs across the United States has mushroomed over the last twenty years.<sup>86</sup> Today there are 3,000 Mexican HTAs located across the nation.<sup>87</sup> Approximately 16% of Mexican immigrants report that they belong to an HTA.<sup>88</sup> HTAs can remain independent organizations or organize into larger groups known as federations (groups of HTAs) and *Congresos* (a national organization

83. WORLD BANK, IMPLICATIONS, *supra* note 9, at 95 Box 4.3.

84. OROZCO & Garcia-Zanello, *Transnationalism*, *supra* note 76, at 7.

85. This consists of \$1,076,733 in contributions and \$41,920 relating to in-kind contributions. COUNCIL OF MEXICAN FEDERATIONS IN NORTH AMERICA, FINANCIAL STATEMENTS: DECEMBER 31, 2009 3 (2009), [http://www.cofem.org/pdfs/COFEM\\_FinalFS2009.pdf](http://www.cofem.org/pdfs/COFEM_FinalFS2009.pdf).

86. HTAs initially formed in migrant communities located in the United States to facilitate the newly-arrived immigrants' transition to American life and help maintain a sense of culture. See OROZCO, AGENTS, *supra* note 77, at 3. There is evidence that these immigrant clubs began to form in the United States as early as the 1920s in response to exclusionary practices newly-arrived immigrants encountered. Sarah Lynn Lopez, *Migrant Remittances and the Mexican State: An Emergent Transactional Development Model?* 12 (Inst. for the Study of Soc. Change, Working Paper No. 37, 2009), available at <http://escholarship.org/uc/item/58k8g8zm>. The contemporary HTA still performs a social function for immigrant communities, but it is now predominantly philanthropic in nature. Orozco & Garcia-Zanello, *Transnationalism*, *supra* note 76, at 4.

87. Orozco & Garcia-Zanello, *Transnationalism*, *supra* note 76, at 1. While this paper focuses on Mexican HTAs, there are a number of HTAs associated with other Latin American and Caribbean countries located across the United States. See *id.* at 1-2.

88. *Id.* at 2 tbl.1. Additionally, demographic studies have found that HTA members are not representative of the Mexican migrant population in the United States. HTA members originate primarily from rural areas and are generally older, better educated, and have higher earnings than Mexican migrants as a whole. See Zárate-Hoyos, *supra* note 11, at 183.

representing migrants from a specific country).<sup>89</sup> While the increase in the number of Mexican HTAs is primarily due to the efforts of migrants, Mexican consulates have also assisted by recognizing these groups as legal entities and helping them channel funds to impoverished communities in Mexico.<sup>90</sup>

There are two avenues through which HTAs can receive official recognition from the Mexican or U.S. governments. First, the Mexican government advises that any immigrant group interested in forming an HTA register with their local consulate in the United States.<sup>91</sup> The Mexican government also provides HTAs with the option of enrolling in an official directory—accessible online—to facilitate communication among HTAs and future immigrants.<sup>92</sup> Second, while individual HTAs have generally not sought official recognition from the U.S. government,<sup>93</sup> there is evidence that some federations have obtained official nonprofit status in the United States. For instance, of the twenty-eight federations listed on the Mexican Consulate’s Los Angeles website,<sup>94</sup> at least ten are included in the IRS’s Publication 78,<sup>95</sup> which lists all organizations “eligible to receive tax deductible charita-

89. See Zárate-Hoyos, *supra* note 11, at 182.

90. *Id.* at 183.

91. See Instituto de los Mexicanos en el Exterior, *Organización Comunitaria*, SECRETARÍA DE RELACIONES EXTERIORES, [http://www.ime.gob.mx/ime2/index.php?option=com\\_content&task=view&id=96&Itemid=68](http://www.ime.gob.mx/ime2/index.php?option=com_content&task=view&id=96&Itemid=68) (last visited Feb. 12, 2011).

92. See Instituto de los Mexicanos en el Exterior: Directorio de Organizaciones y Clubes de Oriundos, *Directorio de Organizaciones y Clubes de Oriundos*, SECRETARÍA DE RELACIONES EXTERIORES, <http://www.ime.gob.mx/DirectorioOrganizaciones/> (last visited Feb. 12, 2011) [hereinafter Directorio de Organizaciones y Clubes de Oriundos]. The directory lists the name, profile, date of establishment, president, number of members, and email contact for each HTA. *Id.*

93. See Manuel Orozco & Rebecca Rouse, *Migrant Hometown Associations and Opportunities for Development: A Global Perspective*, MIGRATION INFORMATION SOURCE (2007), <http://www.migrationinformation.org/feature/display.cfm?ID=579> (“For the most part, these groups . . . do not have official nonprofit status, such as 501(c)3 [sic] status in the United States.”).

94. See Consulado General de Mexico en Los Angeles, *Organización Comunitaria*, SECRETARIA DE RELACIONES EXTERIORES, <http://www.sre.gob.mx/losangeles/> (follow “Comunidades” hyperlink; then follow “Organización Comunitaria” hyperlink) (last visited Feb. 12, 2011).

95. Those federations that were identified as included in Publication 78 include: Federación México Unido, Hidalguenses de California, Federación de Clubes Jaliscienses, Federación Californiana de Michoacanos Lázaro Cárdenas Del Río, Federación Californiana De Michoacanos, Asociacion De Michoacanos En California, Organizacion Regional de Oaxaca, Federación Poblana de California Internacional, Fraternidad Sinaloense de California, and Federación de Clubes Zacatecanos del Sur de California. See *Search for Charities*, INTERNAL REVENUE SERV., <http://www.irs.gov/charities/article/0,,id=96136,00.html> (last visited Feb. 12, 2011).

ble contributions.”<sup>96</sup> While HTAs and federations both seek official recognition from the Mexican government, only the latter are likely to formally register with the U.S. government.

The Mexican Ministry of Social Development (SEDESOL), which administers the 3x1 Program, publishes the operating rules, guidelines, and forms for participation on its website.<sup>97</sup> SEDESOL imposes a number of requirements that HTAs must meet to participate.<sup>98</sup> Project proposals are reviewed and approved by a Committee of Validation and Attention to Migrants (COVAM), comprised of migrant, federal, state, and municipal representatives for each respective state.<sup>99</sup> COVAM also has authority to determine the selection criteria for projects, subject to federal budgetary thresholds.<sup>100</sup> Similar to HTA-funded projects, members of the recipient community and the HTA are responsible for monitoring the project’s status.<sup>101</sup> Thus, the requirements for participating in the 3x1 Program are fairly rigorous.<sup>102</sup>

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96. See *Search for Charities*, INTERNAL REVENUE SERV., <http://www.irs.gov/charities/article/0,,id=96136,00.html> (last visited Feb. 12, 2011).

97. *Programa 3x1 para Migrantes*, SEDESOL, <http://www.microrregiones.gob.mx/p3x1.php?func=0> (last visited Feb. 12, 2011).

98. For instance, the HTA must officially register for the program, certify that it has sufficient money to cover its financial obligation, and demonstrate that the project contributes to the recipient community’s infrastructure, economy, or social development. SECRETARÍA DE DESARROLLO SOCIAL, *Lineamientos Operativos de los Proyectos Productivos para el Fortalecimiento Patrimonial, del Programa 3x1 para Migrantes 2010* [Operational Guidelines], 3.1 Criterios y Requisitos de Elegibilidad, *Diario Oficial de la FEDERACIÓN* [D.O.], 29 DE ENERO DE 2010 (MEX.) [HEREINAFTER GUIDELINES]; SECRETARÍA DE DESARROLLO SOCIAL, *Acuerdo por el que se Modifican las Reglas de Operación del Programa 3x1 para Migrantes, para el Ejercicio Fiscal 2010* [Rules of Operation], 3.3 Criterios y Requisitos de Elegibilidad, *Diario Oficial de la FEDERACIÓN* [D.O.], 28 DE DICIEMBRE DE 2009 (MEX.) [HEREINAFTER RULES].

99. Rules, *supra* note 98, at 3.7.4 Comité de Validación y Atención a Migrantes. In addition to approving project proposals, COVAM is also responsible for specifying funding timelines and ensuring that projects are completed. *Id.*

100. *Id.* Federal support for infrastructure projects is capped at Mex\$800,000, while funds for employment related projects are limited to Mex\$300,000. *Id.* at 3.5 Tipos y Montos de Apoyo.

101. ALINA ROCHA MENCAL, *PROGRAMA 3X1 PARA MIGRANTES 8* (2007), <http://www.odi.org.uk/resources/download/1283.pdf>.

102. There is evidence, though, that the program’s procedures have not deterred HTAs from participating. See generally *Directorio de Organizaciones y Clubes de Oriundos*, *supra* note 92, (providing a listing of registered HTAs). For instance, the number of projects the 3x1 Program has funded has increased by 160% since 2002. 942 projects were funded in 2002, whereas the 3x1 Program provided funding for 2,457 projects in 2008. Ad-Hoc Expert Meeting on Contribution of Migrants to Development: Trade, Investment, and Development Linkages, Geneva, Switz., July 29, 2009, *Program 3x1 for Migrants*, 17. The Program’s reach has similarly expanded from twenty participating Mexican states in 2002 to twenty-seven in 2009. *Id.* at 5.

In contrast to personal remittances, there is more formal government involvement in the collective remittance process. It is encouraging that the Mexican government proactively facilitates the organization of HTAs and federations. More significant, however, is the fact that the U.S. government has recognized that federations are eligible to receive tax deductible contributions. This suggests that the charitable deduction can be used to encourage increased sending of collective remittances.

### E. *The Charitable Deduction*

The charitable deduction<sup>103</sup> represents one way in which an immigrant worker's remittance sending may be subsidized through the tax system. This tax subsidy made its first appearance in a 1917 bill that raised tax rates to finance World War I.<sup>104</sup> While the benefit was originally targeted towards individual taxpayers, corporations became eligible to claim the charitable deduction shortly thereafter.<sup>105</sup> The operative provision for the charitable deduction is I.R.C. § 170. I.R.C. § 170(c) lists a number of entities eligible to receive deductible contributions, including "public charities," states and their political subdivisions, veterans' organizations, fraternal societies, and cemetery companies.<sup>106</sup> Eligible public charities include organizations "operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition . . . or for the prevention of cruelty to children or animals."<sup>107</sup> Thus, the reach of I.R.C. § 170 is quite broad.

While the rules governing the deduction of charitable contributions are fairly complex, it is sufficient for the purposes of this Note to provide a brief overview of the mechanics behind deductibility. First, eligibility for this subsidy is limited to those taxpayers who itemize their deductions, thereby excluding those who elect the standard deduction.<sup>108</sup> Second, the donation must satisfy the quid pro quo test, meaning the taxpayer does not receive consideration equivalent to her

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103. I.R.C. § 170 (2006).

104. War Revenue Act, ch. 63, § 1201(2), 40 Stat. 300, 330 (1917) (current version at I.R.C. § 170).

105. David E. Pozen, *Remapping the Charitable Deduction*, 39 CONN. L. REV. 531, 537-38 (2006).

106. I.R.C. § 170(c).

107. *Id.* § 170(c)(2)(B).

108. See Individual Income Tax Act of 1944, ch. 210, Pub. L. No. 315, § 9(a), 58 Stat. 231, 236-37.

contribution.<sup>109</sup> Finally, the deductibility of contributions for individuals is generally limited to 50% of taxable income.<sup>110</sup>

The charitable deduction represents the best option to encourage increased remittance sending.<sup>111</sup> The tax subsidy's history indicates that it has expanded to encapsulate an ever-increasing range of activities. The fact that personal remittances and collective remittances are focused on improving the welfare of others suggests that both should be eligible for the charitable deduction. However, as will be shown, personal remittances violate a requirement central to the operation of the charitable deduction.

## II.

### THE CHARITABLE DEDUCTION'S ROLE IN FACILITATING REMITTANCE FLOWS

Given that I.R.C. § 170 is well-suited to encourage remittance sending, the next line of inquiry becomes one of policy: should Mexican immigrant workers be able to utilize the charitable deduction for sending remittances to their home country? I argue in this part that the charitable deduction should not be used to encourage increased sending of personal remittances; however, the charitable deduction should be used to facilitate increased sending of collective remittances. The socioeconomic and tax implications of both types of remittances justify this treatment. First, however, I identify and define the criteria that will be used to assess the proposal.

#### A. *Framework for Evaluating the Deductibility of Remittances*

The following analysis proceeds along two lines of inquiry. First, I evaluate the case for deducting personal and collective remittances from a socioeconomic viewpoint. Where possible, I rely on research that focuses on determining the effect of remittances on Mexico. How-

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109. See *Hernandez v. Comm'r*, 490 U.S. 680, 690–92 (1989).

110. I.R.C. § 170(b)(1)(A). This limit is reduced to 30% of taxable income for donations of appreciated property. *Id.* § 170(b)(1)(C).

111. A second option that may permit immigrants to claim the charitable deduction for remittances is Article 22 of the United States-Mexico Tax Treaty. Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, art. 22, U.S.-Mex., Sept. 18, 1992, S. TREATY DOC. NO. 102-7 [hereinafter Treaty]. Paragraph 2 of Article 22 permits citizens and residents of the United States to contribute directly to public charities in Mexico and claim the charitable deduction for such contributions. However, many reasons counsel against using the treaty to facilitate remittance sending. See Michael W. Durham, *Grantmaking Under the U.S.-Mexico Treaty: Old Frustrations, New Promise*, COUNCIL ON FOUNDS., July 2007, <http://www.cof.org/templates/content.cfm?ItemNumber=10633&navItemNumber=5262>.

ever, many significant studies have been conducted on data gathered from Latin America and the Caribbean region. Since Mexico is included in this region, I utilize these studies in evaluating the argument.

Next, I focus on assessing the deductibility of remittances from a tax perspective. First, I assess whether deducting personal and collective remittances is in accordance with tax law. This requires an inquiry into the Code's private inurement standard, which prohibits the charitable deduction when the donation "inures to the benefit of any private shareholder or individual."<sup>112</sup> I then consider whether the tax law's "water's edge policy"<sup>113</sup> forecloses the deductibility of donations abroad. This policy effectively prohibits the deductibility of donations made directly to a foreign entity.<sup>114</sup> I also assess whether individuals sending personal and collective remittances can realistically be expected to claim the charitable deduction based on the subsidy's mechanics.

Second, I evaluate whether the deductibility of collective and personal remittances is justified under theories of the charitable deduction. The first theory, William D. Andrews's base-defining rationale, posits that charitable contributions should be excluded from the donor's taxable income because donations represent a diversion of money from private consumption to "common goods."<sup>115</sup> The second analytical framework, treasury efficiency theory, posits that the charitable deduction can be justified because it substitutes private provision of charitable goods and services for similar goods and services provided by the government.<sup>116</sup> Next, I evaluate the argument from a utilitarian perspective for the charitable deduction<sup>117</sup> assuming both an

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112. I.R.C. § 170(c)(2)(C) ("'[C]haritable contribution' means a contribution or gift to or for the use of [a public charity] . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual.").

113. Pozen, *supra* note 105, at 535.

114. *Id.*

115. See William D. Andrews, *Personal Deductions in an Ideal Income Tax*, 86 HARV. L. REV. 309, 346 (1972). Andrews's rationale is grounded on the Haig-Simons definition of personal income as consumption plus accumulation of wealth. See *id.* at 320–21.

116. Pozen, *supra* note 105, at 556. The treasury efficiency theory is the oldest of the subsidy rationalizations for the charitable deduction. *Id.* The treasury efficiency theory was expressly cited by Congress as justification for the charitable deduction when it imposed the water's edge policy in the Revenue Act of 1938: "The exemption from taxation of money or property devoted to charitable and other purposes is based upon the theory that the Government is compensated for the loss of revenue by its relief from financial burden which would otherwise have to be met by appropriations from public funds . . ." *Id.* at 543 (quoting H.R. REP. NO. 75-1860, at 19–20 (1938)).

117. Utilitarianism focuses on the benefit that accrues to the recipient of charitable funds "compared to the alternative use of the lost revenues." *Id.* at 558 (quoting Mark P. Gergen, *The Case for a Charitable Contributions Deduction*, 74 VA. L. REV.

isolationist-utilitarian stance, which is principally concerned with the welfare of Americans,<sup>118</sup> and a universalist-utilitarian view, which is concerned with enhancing global welfare.<sup>119</sup> I also assess whether the argument violates horizontal equity, which requires that taxpayers with the same amount of income pay the same level of tax.<sup>120</sup>

Finally, I determine whether using the charitable deduction to encourage increased remittance sending is justified based on tax policy. I explore the purported effect immigrant workers have on the public coffers, both at the national and state levels.

### B. Socioeconomic Impact of Personal Remittances

Governments and economists are enthusiastic about personal remittances because they have been shown to alleviate poverty in developing countries. In one widely cited study, researchers found that a “10% increase in per capita official international remittances will lead, on average, to a 3.5% decline in the share of people living in poverty.”<sup>121</sup> A similar World Bank study found that remittances have decreased “extreme poverty”<sup>122</sup> by more than 35% in Mexico, the Dominican Republic, and El Salvador, and have cut “moderate poverty”<sup>123</sup> by an average of 19%.<sup>124</sup> This is especially important in Latin America and the Caribbean region, where 9.5% of all inhabitants lived in extreme poverty and 22.6% lived in moderate poverty in 2002.<sup>125</sup>

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1393, 1404 (1988)). Thus, this theory’s main mode of inquiry is cost-benefit analysis with the goal of maximizing social welfare. *See id.*

118. *See id.* at 579.

119. *See id.* at 582.

120. *See* Lipman, *supra* note 6, at 50.

121. Richard H. Adams, Jr. & John Page, *Do International Migration and Remittances Reduce Poverty in Developing Countries?*, 33 *WORLD DEV.* 1645, 1660 (2005); *see also* INT’L MONETARY FUND, *WORLD ECONOMIC OUTLOOK APRIL 2005: GLOBALIZATION AND EXTERNAL IMBALANCES* 76 (2005) [hereinafter *WORLD ECONOMIC OUTLOOK*], available at <http://www.imf.org/external/pubs/ft/weo/2005/01/index.htm> (follow hyperlink under “Chapter II”) (reaching similar conclusion).

122. The World Bank defines “extreme poverty” as living on \$1 per person per day. *See* Pablo Acosta et al., *Do Remittances Lower Poverty Levels in Latin America?*, in *REMITTANCES AND DEVELOPMENT: LESSONS FROM LATIN AMERICA* 87, 90 (Pablo Fajnzylber & J. Humberto López eds., 2008).

123. The World Bank defines “moderate poverty” as living on \$1 to \$2 per person per day. *See id.*

124. *See id.*; *see also* *WORLD BANK, IMPLICATIONS*, *supra* note 9, at 121 (summarizing a study finding that remittances have lowered the proportion of the population living in poverty by 2% in the southern Mexican states of Guerrero and Oaxaca).

125. *See* *WORLD BANK, IMPLICATIONS*, *supra* note 9, at 9 tbl.1.3. This amounts to approximately forty-two million people living in extreme poverty, and 119 million people living in moderate poverty. *Id.* One objection raised to remittances is that they increase inequality; however, the evidence is far from conclusive. *See id.* at 121 (“[R]emittances sometimes go disproportionately to better-off households and so

Researchers have also discovered two strong connections between remittances and child welfare. First, several studies have shown a link between increased literacy and school attendance among children from Latin America and the Caribbean region and receipt of remittances.<sup>126</sup> This is noteworthy, given that investments in education generally yield high social returns.<sup>127</sup> Second, several researchers have found a positive correlation between remittances and improvements in child health. For instance, several studies conclude that an increase in remittances leads to a statistically significant reduction in infant mortality<sup>128</sup> and is connected with higher birth weights.<sup>129</sup> Thus, remit-

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widen disparities, but in other cases they appear to target the less well off, causing disparities to shrink.”). The general thrust of the academic research concedes that remittances may increase inequality in the short term, but that this shift is transient and leads to greater equality in the long term. David McKenzie & Hillel Rapoport, *Network Effects and the Dynamics of Migration and Inequality: Theory and Evidence from Mexico*, 84 J. DEV. ECON. 1, 3–4 (2007) (“These findings suggest that migration may increase inequality in the sending regions in the short term, but that this would be viewed as a temporary phenomenon, as migration has a strong equalizing effect once migration networks are sufficiently developed.”).

126. See Alejandra Cox & Manuelita Ureta, *International Migration, Remittances, and Schooling: Evidence from El Salvador* 23 (Nat’l Bureau of Econ. Research, Working Paper No. 9766, 2003) (finding that in El Salvadoran urban areas, remittances decrease the risk that a child will drop out of elementary school by 54% and the risk that the child will drop out of junior high and high school by 27%); Ernesto López-Córdova, *Globalization, Migration and Development: The Role of Mexican Migrant Remittances* 15 (Inst. for the Integration of Latin America and the Caribbean/Integration, Trade and Hemispheric Issues Div., Working Paper No. 20, 2004), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=668126](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=668126) (finding that “remittances have an important and statistically significant impact in reducing child illiteracy . . . and raising school attendance . . . .”); Gordon H. Hanson & Christopher Woodruff, *Emigration and Educational Attainment in Mexico* 24 (April 2003) (unpublished study), [www.childmigration.net/files/Hanson\\_2003.pdf](http://www.childmigration.net/files/Hanson_2003.pdf) (finding that “children in migrant households complete significantly more years of schooling”).

127. See WORLD BANK, *IMPLICATIONS*, *supra* note 9, at xiii.

128. See Nicole Hildebrandt & David J. McKenzie, *The Effects of Migration on Child Health in Mexico* 3 (The World Bank Policy Research Working Paper Series, Working Paper No. 3573, 2005), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=719041](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=719041); López-Córdova, *supra* note 126, at 14 (“[A] five-percent point increase in the fraction of remittance-receiving households would result in a decline of 1.4 infant deaths on average, equivalent to a 4.7 percent decline in infant mortality.”). The World Bank credits improved health-related knowledge, as well as increased wealth, for the reduction in child mortality rates. See WORLD BANK, *IMPLICATIONS*, *supra* note 9, at 126.

129. See Hildebrandt & McKenzie, *supra* note 128, at 3; Reanne Frank & Robert A. Hummer, *The Other Side of the Paradox: The Risk of Low Birth Weight among Infants of Migrant and Nonmigrant Households within Mexico*, 36 INT’L MIGRATION REV. 746, 746 (2002) (“The analysis demonstrates that membership in a migrant household provides protection from the risk of low birth weight largely through the receipt of remittances.”). The authors explain that remittances are able to produce this effect because the receipt of this money is associated with improved health care, nutrition, and standards of living. See *id.* at 760.

tances enable developing countries to make important investments in health and education.

Remittances also affect the labor market in recipient countries. Researchers have found that outward migration of low-skilled workers leads to a decline in unemployment and an increase in wages for those workers remaining in the recipient country.<sup>130</sup> Despite this positive effect, one serious concern is that receiving remittances may lead to substitution effects in recipient households that decrease labor supply and welfare. As noted by the World Bank:

Remittances may tend to reduce the supply of labor provided by remaining household members, who may take a portion of the remittance gain as leisure. This *income effect* is generally not a concern, because it represents part of the welfare gain from remittances. By contrast, remittances may change the return to supplying labor, for example, if the migrant conditions the remittance on low household income. Such a *substitution effect* will reduce the welfare gain from remittances by distorting household labor decisions.<sup>131</sup>

However, subsequent studies present a more nuanced picture. For example, researchers have found that the tendency to reduce labor turns on household location, availability of work, and gender, with women more likely than men to leave the labor market when they receive remittances.<sup>132</sup> From a microeconomic perspective, personal remit-

130. See WORLD BANK, *IMPLICATIONS*, *supra* note 9, at xiv (“[I]n some countries, low-skilled emigration can raise demand for the remaining low-skilled workers (including poor workers) at the margin, leading to some combination of higher wages, lower unemployment, less under-employment, and greater labor force participation.”); Prachi Mishra, *Emigration and Wages in Source Countries: Evidence from Mexico*, 82 J. DEV. ECON. 180, 181 (2007) (finding that a “10% decrease in the number of Mexican workers due to emigration in a skill group (defined by schooling and experience) increases the average wage in that skill group by about 4 percent,” with results varying based on education).

131. See WORLD BANK, *IMPLICATIONS*, *supra* note 9, at 123–24. This general observation is confirmed by a study noting that the hours worked per week fall for both men and women in El Salvador that receive remittances. See Pablo Acosta, *Entrepreneurship, Labor Markets, and International Remittances: Evidence from El Salvador*, in INTERNATIONAL MIGRATION, ECONOMIC DEVELOPMENT & POLICY 141, 144 (Çağlar Özden & Maurice Schiff eds., 2007) [hereinafter Acosta, *Entrepreneurship*].

132. See Acosta, *Entrepreneurship*, *supra* note 131, at 143–44 (“Results suggest that labor force participation falls for remittances recipient women, but not among men.”). Similar results have been observed in Mexico. Researchers found that while men reduced their formal sector work, this reduction was offset by an increase in informal sector work. See Catalina Amuedo-Dorantes & Susan Pozo, *Migration, Remittances, and Male and Female Employment Patterns*, 96 AM. ECON. REV. 222, 226 (2006). By contrast, women in rural areas decreased their labor supply, with no related offset. *Id.* Acosta cautions that these results should not be interpreted negatively. Rather, decreased female participation in the labor market may signify an increased household

tances have a positive effect on reducing poverty and improving child welfare; however, this must be balanced against their purported detrimental impact on the labor market.

Shifting to a macroeconomic perspective, personal remittances have been shown to provide a source of stable capital flow and smooth consumption.<sup>133</sup> That remittance flows can be counter-cyclical is particularly important given the frequency with which natural disasters, economic crises, and political crises have affected Latin America and the Caribbean region. For instance, the World Bank found that remittances to Mexico increased in response to the abrupt devaluation of the peso in 1994.<sup>134</sup> Personal remittances are a reliable source of capital during times of crisis that can offset shortfalls in the recipient household's liquidity, thereby ensuring that the household continues to meet its basic needs.<sup>135</sup>

In addition, banks in recipient countries can obtain access to low-cost financing and improve creditworthiness by securitizing future remittance flows.<sup>136</sup> The first deal of this type occurred in Mexico in 1994.<sup>137</sup> Since then, the magnitude of remittance securitizations has

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investment in human capital such as education or child-care. See Acosta, *Entrepreneurship*, *supra* note 131, at 157.

133. TASK FORCE ON REMITTANCES, INTER-AM. DIALOGUE, ALL IN THE FAMILY: LATIN AMERICA'S MOST IMPORTANT INTERNATIONAL FINANCIAL FLOW 4 (2004); see also Matteo Bugamelli & Francesco Paternò, *Do Workers' Remittances Reduce the Probability of Current Account Reversals?* 3-4 (The World Bank Policy Research Working Paper Series, Working Paper No. 3766, 2005), available at [http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2005/11/08/000016406\\_20051108154014/Rendered/PDF/wps3766.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2005/11/08/000016406_20051108154014/Rendered/PDF/wps3766.pdf) ("We find that indeed workers' remittances increase financial stability in emerging markets and developing economies by reducing the probability of current account reversals."). Note that these studies predate the most recent economic crisis.

134. See WORLD BANK, IMPLICATIONS, *supra* note 9, at 100. The Caribbean countries also experienced an increase in remittances in response to economic difficulties. The World Bank found that a 1% decrease in real GDP was linked to a 3% increase in remittances from 1980–2002. *Id.*

135. *Id.* at 99. Remittances' ability to exert this counter-cyclical effect depends on a stable U.S. economy—a factor absent during the recent economic crisis.

136. WORLD BANK, IMPLICATIONS, *supra* note 9, at 101. This process generally requires a borrower, such as a bank located in the remittance recipient country, to pledge its future remittance receivables to a special purpose vehicle (SPV) located offshore. *Id.* Once this occurs, the SPV then issues the related debt to investors. *Id.* When the immigrant worker abroad remits money, correspondent banks channel the funds to a trustee account outside the recipient country, whereupon interest and principal payments are made to the investors. *Id.* at 102 fig.4.7. The correspondent bank simultaneously notifies the borrower of the remittance, requiring the latter to credit the bank account of the individual remittance recipient. *Id.* Any excess money that the trustee account receives is forwarded to the borrower. *Id.*

137. *Id.* at 102.

increased significantly.<sup>138</sup> These transactions are a less expensive alternative to sovereign debt, because the securities issued often have a higher investment grade.<sup>139</sup> Further, such deals enable banks in developing countries to build credit history, which lowers future borrowing costs.<sup>140</sup> Despite these benefits, there are several barriers to increased utilization of these deals, including large fixed costs, the absence of an adequate legal infrastructure, and the time required to arrange these types of transactions.<sup>141</sup> Given the promising results, at least one expert has called for further research to determine how best to facilitate these transactions.<sup>142</sup>

It remains unclear whether personal remittances lead to economic growth. For instance, a number of studies show a positive correlation between receipt of remittances and economic growth.<sup>143</sup> These studies cite remittances' ability to overcome credit constraints and fund investment in education, health care, and entrepreneurial activity.<sup>144</sup> Other research, though, shows that remittances have no effect on

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138. In 2003, the volume of remittance securitizations reached \$2.8 billion worldwide. See *id.* at 103 fig.4.8; see also Ratha, *Workers' Remittances*, *supra* note 15, at 161 Box 7.1 (describing a \$300 million bond offer by Banco do Brasil in 2001); José de Luna Martínez, *Workers' Remittances to Developing Countries: A Survey with Central Banks on Selected Public Policy Issues* 29 (The World Bank Policy Research Working Paper Series, Working Paper No. 3638, 2005), available at [http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2005/06/08/000012009\\_20050608121914/Rendered/PDF/wps36380rev.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2005/06/08/000012009_20050608121914/Rendered/PDF/wps36380rev.pdf) (reporting a \$125 million securitization transaction in El Salvador in 2003, as well as a \$200 million transaction in Mexico in 1999).

139. See WORLD BANK, *IMPLICATIONS*, *supra* note 9, at 102 (“By mitigating currency convertibility risk . . . the future flow securitization structure allows securities to be rated better than the sovereign credit rating.”). For example, El Salvador’s securitized remittances were deemed investment grade and were ranked “two to four notches” above the country’s sovereign debt, which was considered sub-investment grade. *Id.*

140. *Id.* Another purported benefit is that remittances promote development of financial systems in developing countries. Researchers have found that “remittances help alleviate credit constraints on the poor, substitut[e] for the lack of financial development, improv[e] the allocation of capital, and therefore accelerat[e] economic growth.” See Paola Giuliano & Marta Ruiz-Arranz, *Remittances, Financial Development, and Growth* 30 (Int’l Monetary Fund, Working Paper No. 05/234, 2005), available at <http://www.imf.org/external/pubs/ft/wp/2005/wp05234.pdf>.

141. See WORLD BANK, *IMPLICATIONS*, *supra* note 9, at 103.

142. See Martínez, *supra* note 138, at 29.

143. See WORLD BANK, *IMPLICATIONS*, *supra* note 9, at 104 (citing multiple studies finding a connection between remittance-linked factors and economic growth); Giuliano & Ruiz-Arranz, *supra* note 140, at 30 (linking remittances to the development of financial systems); PIA M. ORRENIUS ET AL., *DO REMITTANCES BOOST ECONOMIC DEVELOPMENT? EVIDENCE FROM MEXICAN STATES* 21 (2009), <http://siteresources.worldbank.org/INTINTERNATIONAL/Resources/1572846-1253029981787/6437326-1253030102669/Orrenius.pdf>.

144. WORLD BANK, *IMPLICATIONS*, *supra* note 9, at 104.

growth.<sup>145</sup> At the opposite end of the spectrum, one widely cited study concludes that remittances negatively impact the economic growth of remittance receiving countries.<sup>146</sup> The factors cited as detracting from growth include remittances' effect on the labor supply, both in the form of worker exodus and the labor-leisure tradeoff.<sup>147</sup> However, subsequent studies criticized these negative findings.<sup>148</sup>

Critics raise two additional concerns. The first is that personal remittances negatively impact exchange rates, which can make activities such as agriculture and manufacturing unprofitable in developing countries.<sup>149</sup> However, as in other areas of remittance research, contradictory studies raise more questions than they answer.<sup>150</sup> The second, related concern is that remittances lead to inflation in the recipient

145. See *id.* at 105 (“One recent study of the impact of remittances on growth over an extended period (1970–2003) for 101 developing countries found no significant link between remittances and per capita output growth . . . .”); WORLD ECONOMIC OUTLOOK, *supra* note 121, at 76 (“[T]here is no statistically significant direct link between real per capita output growth and remittances . . . .”).

146. See Ralph Chami et al., *Are Immigrant Remittance Flows a Source of Capital for Development?*, 52 IMF STAFF PAPERS 55, 77 (2005) (“Our empirical estimations reveal considerable evidence that remittances tend to be negatively correlated with GDP growth . . . .”). The authors assert that the negative effect on economic growth is due in part to the income and substitution effects of receiving remittances. *Id.*

147. WORLD BANK, IMPLICATIONS, *supra* note 9, at 104–05.

148. See Hillel Rapoport & Frédéric Docquier, *The Economics of Migrants' Remittances* 66–67 (Inst. for the Study of Labor, Working Paper No. 1531, 2005), available at <http://repec.iza.org/RePEc/Discussionpaper/dp1531.pdf> (indicating that Chami's study disregards the effect of remittances on investment and human capital formation); ORRENIUS ET AL., *supra* note 143, at 21 (finding that remittances have a positive effect on the labor market, even leading to increased employment in high-migration states); *supra* text accompanying note 131 (discussing the upward pressure placed on wages and the demand for labor linked to remittances).

149. See WORLD BANK, IMPLICATIONS, *supra* note 9, at 104. This adverse effect is grounded in the theory that countries that receive remittances will undergo currency appreciation, all other things being equal. See Catalina Amuedo-Dorantes & Susan Pozo, *Workers' Remittances and the Real Exchange Rate: A Paradox of Gifts*, 32 WORLD DEV. 1407, 1408–1409 (2004). This could impact real exchange rates because “an increase in spending may raise the relative price of nontraded goods, appreciating the real exchange rate.” *Id.* at 1409. This negatively impacts the affected country's export competitiveness in international trade, thereby making domestic activities such as agriculture and manufacturing unprofitable. See *id.* at 1408.

150. As a threshold matter, “it is plausible that this effect exists and is significant for some small economies where remittances are very high.” See WORLD BANK, IMPLICATIONS, *supra* note 9, at 104. For example, one study of thirteen countries in Latin America and the Caribbean region found that doubling remittances would cause a 22% increase in the real exchange rate. *Id.* A competing study reaches the opposite conclusion, finding that remittances do not affect a country's competitiveness and that the relative stability of remittances means that “Dutch disease” effects are not a primary concern. See *id.*

country.<sup>151</sup> As the World Bank noted, “[t]he local spending of remittance income will generate further income for other local households, which in turn is likely to cause local inflation for nontraded goods and possibly a small increase in national inflation.”<sup>152</sup>

After assessing the socioeconomic literature, the case for using the charitable deduction to encourage increased sending of personal remittances is unclear. On the one hand, personal remittances have been shown to mitigate poverty, improve child welfare in Mexico, and facilitate borrowing. On the other hand, personal remittances raise two significant concerns. First, it is unclear whether personal remittances are capable of encouraging economic growth in recipient countries. Second, the extent to which personal remittances have an adverse effect on a recipient country’s labor market is troubling. While encouraging, the socioeconomic studies do not definitively justify using the charitable deduction to facilitate increased sending of personal remittances.

### C. *Socioeconomic Impact of Collective Remittances*

Academics and researchers have generally been receptive to the beneficial effects they observed in connection with collective remittances. For instance, they found that collective remittances directly improve the communities to which they are directed.<sup>153</sup> This seems intuitive considering the nature of the projects migrant organizations fund<sup>154</sup> and that these remittances can comprise at least fifty percent of the public works budget for some recipient communities.<sup>155</sup> Collec-

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151. The argument is that an increase in a recipient country’s money supply—caused by remittance inflows—is not matched by an increase in domestic production, thereby causing the price of domestic goods to increase. See Rosser, *supra* note 15, at 21.

152. WORLD BANK, *IMPLICATIONS*, *supra* note 9, at 125. The phrase “nontraded goods” describes those goods that are produced and consumed entirely within a domestic economy, such as retail trade, services, and construction. See Christine Ebrahim-zadeh, *Dutch Disease: Too Much Wealth Managed Unwisely*, FIN. & DEV., Mar. 2003, at 50.

153. See Orozco & Garcia-Zanello, *Transnationalism*, *supra* note 76, at 7 (“Mexican HTAs are having a direct effect on communities by providing goods and services that benefit collective needs in health, education, and economic infrastructure.”); WORLD BANK, *IMPLICATIONS*, *supra* note 9, at 96 Box 4.3 (“Resources have gone primarily to rural areas, where they have increased the supply of essential services (health, education, roads, and electricity).”).

154. See *supra* text accompanying note 78.

155. See Orozco & Garcia-Zanello, *Transnationalism*, *supra* note 76, at 4 (“In Mexican hometowns with fewer than 3,000 people, HTA donations are equal to more than 50 percent of the municipal public works budget. In towns with populations of less than 1,000 people, HTA donations can amount to up to seven times the public works budget.”).

tive remittances are a positive force for development in the communities that receive them.

One concern is that collective remittances may lead to greater inequality for communities that fail to send workers abroad.<sup>156</sup> This is particularly salient given the varying immigration rates among Mexican communities. For instance, researchers observed that while there has been an increase in the number of HTAs, seventy percent are connected with four Mexican states.<sup>157</sup> Improving collaboration between HTAs and third parties, such as government actors or international aid organizations, may mitigate this problem by more effectively channeling these funds.<sup>158</sup> However, it is generally agreed that more can be done to improve cooperation amongst these entities.<sup>159</sup>

A related concern is that HTAs suffer from internal and external coordination problems. Internal strife may result given that these organizations are voluntary and their members lack expertise in evaluating competing development projects.<sup>160</sup> Similarly, the way that migrant organizations function entails an environment in which competing views are expressed, which may lead to internal division and decreasing effectiveness.<sup>161</sup> The federation structure may mitigate these problems by providing a forum for structured debate and decision-making. External coordination problems stem from a lack of understanding regarding the projects that will best serve recipient communities.<sup>162</sup> However, as with the problem of inequality, this issue may be resolved by increased collaboration with third parties.<sup>163</sup>

156. See CARLING, *supra* note 70, at 49.

157. Zárate-Hoyos, *supra* note 11, at 184. As of 2001, half of these collective remittances seemingly went to 460 municipalities, which comprised 16% of Mexico's population. See *id.*

158. See Orozco & Garcia-Zanello, *Transnationalism*, *supra* note 76, at 15; see also WORLD BANK, IMPLICATIONS, *supra* note 9, at 95–96 Box 4.3 (“[I]n some cases . . . where HTAs have exchanged or debated project ideas and investment climate issues with the local and state governments, they are believed to have been successful.”).

159. See Orozco & Garcia-Zanello, *Transnationalism*, *supra* note 76, at 15 (“[I]nternational organizations, foundations and governments have the potential to link their development priorities to the work of the diaspora, helping HTAs to define their goals and better operationalize their strategies.”).

160. See *id.* at 4.

161. See WORLD BANK, IMPLICATIONS, *supra* note 9, at 96 Box 4.3 (“[HTAs] can also become divided and weaken their own advocacy potential . . .”).

162. See *id.* (“[HTAs] may not have the best information about the needs of the local community, or they may have different priorities.”); see also Orozco & Garcia-Zanello, *Transnationalism*, *supra* note 76, at 5 (“[M]any [HTAs] do not effectively work with local community stakeholders to understand local development priorities and ensure that the beneficiary community will properly care for new facilities or donations.”).

163. See *supra* text accompanying note 158.

The remittance literature raises several concerns regarding government matching programs at both the association and state levels. Researchers have noted that HTA involvement in matching fund programs diminishes over time.<sup>164</sup> At the state level, experts have expressed concern that matching programs divert public funds away from more socially important projects.<sup>165</sup> This problem may be exacerbated if the money was initially intended to alleviate conditions in more impoverished areas.<sup>166</sup> An additional concern is the risk of fraud perpetrated by government officials.<sup>167</sup> However, since increased collaboration among migrant organizations and third parties leads to greater transparency and accountability, these concerns may also be mitigated.

Despite these issues, it bears repeating that migrant organizations make significant contributions to the domestic communities in which they operate, as well as the Mexican villages in which they invest. HTAs improve the cohesiveness of immigrant communities in the United States.<sup>168</sup> Their altruistic investments in infrastructure, education, and health facilities are generally recognized as important for promoting development in recipient communities.<sup>169</sup> It is not surprising that researchers have found that collective remittances positively contribute to the quality of life in beneficiary communities.<sup>170</sup> Furthermore, each concern identified above can be mitigated through increased communication and collaboration. The investments that migrant organizations make in their communities of origin are an important tool for promoting development in Mexico and suggest that the charitable deduction is well-suited to encouraging this type of remittance flow.

#### D. *Remittances and the Tax Law*

Despite personal remittances' proven effect in alleviating poverty in Mexico, these transfers should not be deductible, because such a policy would be incompatible with the tax law. First, it is important to remember that personal remittances are private transfers of money be-

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164. Zárate-Hoyos, *supra* note 11, at 185. While it is not clear why participation drops off, the operating rules and guidelines issued by SEDESOL attempt to foreclose the possibility of an HTA abandoning the program in the middle of a project. See *supra* note 98 and accompanying text.

165. See WORLD BANK, *IMPLICATIONS*, *supra* note 9, at 96 Box 4.3.

166. See *id.*

167. Zárate-Hoyos, *supra* note 11, at 185.

168. See *supra* note 86 and accompanying text.

169. See *supra* notes 76–78 and accompanying text.

170. See *supra* note 153 and accompanying text.

tween two individuals.<sup>171</sup> Subsidizing personal remittances would be correctly viewed as an instance of private inurement, which I.R.C. § 170 expressly prohibits.<sup>172</sup> For example, in *Davis v. United States* the parents of Mormon missionaries were not permitted to claim the charitable deduction after directly funding their children's missionary activities.<sup>173</sup> Furthermore, the tax law's "water's edge policy" forecloses deductibility of direct donations abroad.<sup>174</sup> Finally, given that the average taxpayer sending personal remittances earns approximately \$24,000 per year,<sup>175</sup> it is unlikely that he will be able to justify itemizing her deductions; rather, she would opt to claim the standard deduction.<sup>176</sup> Thus, expanding the deduction to cover personal remittances would contravene current tax law and is not likely to benefit individuals who send personal remittances.

In contrast, collective remittances better align with the tax law's notion of charity. They represent the donation of money from private individuals for philanthropic purposes, such as charitable work, infrastructure improvements, and activities aimed at "human development."<sup>177</sup> These activities are consistent with the IRS's notion of charity<sup>178</sup> and avoid the private inurement issue that affects personal remittances.<sup>179</sup> Critics may assert that there is private inurement if funded projects benefit HTA members' relatives that remain in Mexico. However, this argument fails to consider that donations to one's place of worship, alma mater, or local museum do not violate the private inurement standard.<sup>180</sup> In addition, the "water's edge policy" would not imperil the deductibility of contributions to federations be-

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171. See *supra* note 9 and accompanying text.

172. I.R.C. § 170(c)(2)(C) (2010) ("'[C]haritable contribution' means a contribution or gift to or for the use of [a public charity] . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual.").

173. *Davis v. United States*, 495 U.S. 472, 488–89 (1990) (holding that parents' deposit of funds into their sons' checking account could not be deemed a contribution to the Church of Jesus Christ of Latter-day Saints under I.R.C. § 170).

174. Pozen, *supra* note 105, at 535.

175. Bendixen & Onge, *supra* note 46, at 51.

176. In 2009, an individual taxpayer would have needed in excess of \$5,700 of itemized deductions to justify foregoing the standard deduction. See *Standard or Itemized Deductions*, INTERNAL REVENUE SERV., <http://www.irs.gov/newsroom/article/0,,id=105101,00.html> (last visited Feb. 12, 2011).

177. See *supra* note 78 and accompanying text.

178. See Treas. Reg. § 1.501(c)(3)-1(d)(2) (2009) (describing the types of activities that satisfy the definition of "charitable" with respect to section 501(c)(3) of the Internal Revenue Code).

179. See *supra* note 172 and accompanying text.

180. See *supra* note 107 and accompanying text.

cause the Code permits donations to domestic entities that re-donate overseas.<sup>181</sup>

Finally, HTA and federation members are more likely than personal remittance senders to claim the charitable deduction. HTA members' characteristics differ significantly from the migrant population as a whole. They tend to be older, better educated, have higher earnings, and have resided in the United States for a longer period of time.<sup>182</sup> Another significant factor is that they tend to be homeowners.<sup>183</sup> Given the magnitude of the home mortgage interest deduction for many taxpayers, it is likely that HTA members already itemize their deductions. Not only are collective remittance senders likely to find support in the tax law for the deductibility of their donations, but they also are already positioned to claim the charitable deduction.

### *E. Remittances and Theories Underlying the Charitable Deduction*

Personal remittances to Mexico should not be subsidized because subsidizing private transfers between family members cannot be justified under existing theories of the charitable deduction. Given the

181. Pozen, *supra* note 105, at 541. The IRS may disallow a deduction if the domestic entity merely serves as a conduit for the donated funds. *Id.* (citing Rev. Rul. 63-252, 1963-2 C.B. 101). The IRS will find that a conduit exists if the domestic charity lacks discretionary authority and merely passes along earmarked funds to a foreign entity. *See id.* This is not the function that HTAs or federations serve. Rather, they retain discretionary authority by reviewing and approving projects and pay for their projects from the general funds that they have raised. *See* Rev. Rul. 63-252, 1963-2 C.B. 101, at 103-05 (describing a situation analogous to federations' operations, which the IRS expressly approved).

182. Zárate-Hoyos, *supra* note 11, at 183. Despite these personal characteristics, approximately two-thirds of all taxpayers are unable to itemize their deductions due to "insufficient taxable income" or a failure to "exceed the zero-bracket amount plus exemptions." Alice Gresham Bullock, *Taxes, Social Policy and Philanthropy: The Untapped Potential of Middle and Low-Income Generosity*, 6 CORNELL J.L. & PUB. POL'Y 325, 333 (1997).

183. Zárate-Hoyos, *supra* note 11, at 183. A Pew Hispanic Center study of foreign born Hispanics throughout the nation indicates a correlation between date of arrival in the United States and homeownership: 60.8% of household heads that arrived before 1990 are homeowners, 39.2% of household heads that arrived between 1990 and 1999 are homeowners, and 19% of household heads that arrived in 2000 and later are homeowners. PEW HISPANIC CTR, STATISTICAL PORTRAIT OF HISPANICS IN THE UNITED STATES, 2008, at tbl.40 (2010), <http://pewhispanic.org/files/factsheets/hispanics2008/2008%20Hispanic%20Profile%20Final.pdf>. A focus group study with forty-two participants belonging to five HTAs in Los Angeles and Orange County bears out these findings. The interviewees—whose median year of arrival in the United States was 1974—indicated that 71.4% own homes in the United States while 59.5% own homes in Mexico. RAFAEL ALARCÓN ET AL., MIGRANT REMITTANCE TRANSFER MECHANISMS BETWEEN LOS ANGELES AND JALISCO, MEXICO 11-12 (1998), [http://naid.sppsra.ucla.edu/Papers/Research%20Reports/C18\\_1998.pdf](http://naid.sppsra.ucla.edu/Papers/Research%20Reports/C18_1998.pdf).

mechanics of the transaction, personal remittances fail Andrews's base defining rationale<sup>184</sup> because they cannot be said to divert money to common goods; rather, they directly fund private consumption. Personal remittances also do not fit within the treasury efficiency framework<sup>185</sup> because the individuals that are receiving the money—Mexican citizens located in Mexico—are not in a position to receive goods and services from the U.S. government. Finally, personal remittances fail to find support under an isolationist-utilitarian stance<sup>186</sup> due to the risk that LPRs and undocumented workers may substitute donations currently made to domestic entities for increased remittances.<sup>187</sup> Even if one expands the scope of utilitarianism beyond an isolationist stance, encouraging increased personal remittances may reduce social welfare in the recipient country.<sup>188</sup> Deducting personal remittances is therefore not feasible under any of the theories that seek to explain the charitable deduction.

Enabling personal remittance senders to deduct amounts sent to family members abroad also violates horizontal equity. If undocumented workers and LPRs were eligible to deduct their remittances, the deduction would fail to accrue to similarly situated taxpayers who send money to relatives located within the United States.<sup>189</sup> In effect, expanding the deduction to cover personal remittance senders would send a disconcerting message to the nation's low- and middle-income citizens that the consumption and investment of LPRs and undocumented workers are more deserving of tax relief.

Collective remittances, in contrast, are justifiable under each of the three theories underlying the charitable deduction. Given that donations to federations divert donated funds from private consumption to "common goods," donations to migrant organizations would appropriately be excluded from the tax base under Andrews's theory and thus are entitled to the charitable deduction. Treasury efficiency theory initially seems to counsel against permitting the charitable deduction for donations to migrant organizations since the ultimate beneficiaries are located outside the United States. However, this ignores the fact that the U.S. government currently classifies remittances

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184. See *supra* note 115 and accompanying text.

185. See *supra* note 116 and accompanying text.

186. See *supra* notes 117–118 and accompanying text.

187. See *supra* note 119 and accompanying text.

188. See *supra* Part II.B.

189. There are also ramifications under the utilitarian theory since denying U.S. citizens the charitable deduction may decrease their subjective social welfare. See Pozen, *supra* note 105, at 579–80.

as official U.S. aid.<sup>190</sup> Thus, collective remittances to Mexico are a substitute for foreign direct aid provided by the U.S. government.<sup>191</sup> Collective remittances can also be justified under a universalist-utilitarian view<sup>192</sup> since these transfers are viewed as more redistributive than donations to domestic charities. While this paper does not seek to minimize the plight of the destitute in the United States, it is important to remember that almost a quarter of those living in Latin America and the Caribbean region live on less than \$2 per day.<sup>193</sup> A rough interpersonal utility comparison,<sup>194</sup> assuming that a more impoverished individual gains greater utility from one unit of aid compared to a wealthier individual,<sup>195</sup> reveals that collective remittances may better maximize global welfare relative to domestic giving.<sup>196</sup>

Similarly, the equity considerations linked to collective remittances are, at most, negligible since all individual taxpayers are free to donate to federations. Whether a non-Hispanic taxpayer *will* donate to a migrant organization is another question. Instead, it is likely that a non-Hispanic taxpayer would elect to donate her money to an organization that better accords with her subjective values. Thus, the likely use of alternative avenues for charitable contributions restores any horizontal inequity between the HTA member and the non-Hispanic taxpayer.

Although the deductibility of personal remittances cannot be justified under any theory of the charitable deduction, collective remit-

190. See Rosser, *supra* note 15, at 56.

191. Note that treasury efficiency may also be satisfied to the extent that collective remittances have beneficial economic and democratizing effects in Mexico leading to decreases in the rate of illegal immigration to the United States. See *Hearing, supra* note 1, at 58 (testimony of Wayne Cornelius) (“Micro-development programs . . . are needed to discourage emigration. I am referring to programs to support small business development . . . and programs to expand physical infrastructure—roads, telecommunications, irrigation facilities, and so forth.”); DIEM NGUYEN ET AL., THE HERITAGE FOUND., NEXT STEPS FOR IMMIGRATION REFORM AND WORKPLACE ENFORCEMENT 4 (2009), [http://s3.amazonaws.com/thf\\_media/2009/pdf/bg2241.pdf](http://s3.amazonaws.com/thf_media/2009/pdf/bg2241.pdf) (asserting that the United States should promote economic development and governance in Latin America to reduce illegal immigration).

192. See Pozen, *supra* note 105, at 582 (“[M]any utilitarians—including many tax scholars—would find such a[n] [isolationist-utilitarian] restriction to be morally arbitrary, if not grotesque.”).

193. See *supra* notes 121–125 and accompanying text.

194. Pozen writes that “[i]nterpersonal utility comparisons may be taboo in modern economic theory, but philosophers since Rawls have acknowledged that we inevitably make at least approximate interpersonal comparisons.” Pozen, *supra* note 105, at 583.

195. See *id.*

196. See *id.* (“The United States has no shortage of deprived populations, to be sure, but the reallocation of charitable flows under a more generous international deduction system would, on balance, channel aid to needier beneficiaries.”).

tances are not subject to the same objection. Collective remittances enjoy a claim to deductibility extending beyond their accordance with the letter of the tax law. Using the charitable deduction to facilitate increased remittance sending is justified under tax theory as an appropriate approach to further development in Mexico.

*F. Tax Policy and the Burgeoning Population of Immigrant Workers*

Application of the charitable deduction to collective remittances also finds support in tax policy. Since enactment of the Revenue Act of 1913, undocumented immigrants and LPRs have been subject to income tax to the same extent as U.S. citizens.<sup>197</sup> In addition, approximately seventy-five percent of undocumented immigrants and LPRs pay their payroll taxes, resulting in contributions of as much as \$7 billion to Social Security each year.<sup>198</sup> IRS estimates also indicate that more than half of the approximately eleven million undocumented workers in the United States file income tax returns.<sup>199</sup> This demonstrates that many of the nation's undocumented immigrants and LPRs are meeting their tax obligations.<sup>200</sup>

Tax related concerns regarding immigration proceed along two main lines of argument. The first is that immigrants consume a significant amount of welfare benefits. For instance, a Center for Immigration Studies (CIS) report implies that the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) failed to decrease immigrants' reliance on welfare; rather, the number of immigrant households on the welfare rolls increased by four percent (or 750,000) since 1996, with "immigrant households compris[ing] a growing share of all households using the welfare system."<sup>201</sup> For many in the United States, these conclusions confirm an already commonly accepted view that immigrants impose a net cost on the public

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197. Lipman, *supra* note 6, at 18.

198. See Eduardo Porter, *Illegal Immigrants are Bolstering Social Security with Billions*, N.Y. TIMES, Apr. 5, 2005, at A1.

199. Lipman, *supra* note 6, at 24, 9 (stating IRS estimates that indicate that six million income tax returns are filed by undocumented workers each year).

200. Most undocumented workers have an important incentive to file their taxes since it is a required step for naturalization. Virginia Harper-Ho, *Noncitizen Voting Rights: The History, the Law and Current Prospects for Change*, 18 LAW & INEQ. 271, 295-96 (2000).

201. STEVEN A. CAMAROTA, CTR. FOR IMMIGRATION STUDIES, BACK WHERE WE STARTED: AN EXAMINATION OF TRENDS IN IMMIGRANT WELFARE USE SINCE WELFARE REFORM 1 (2003), <http://www.cis.org/articles/2003/back503.pdf>.

coffers.<sup>202</sup> The second line of argument, a variation of the first, asserts that immigrants pay less in taxes than they receive in welfare benefits. For instance, a Heritage Foundation study concluded that low-skill immigrant households impose a net annual cost of approximately \$19,500 on the fisc, which is almost double the amount of taxes these households pay.<sup>203</sup>

Pro-immigrant groups have attacked these assertions as “demonstrably false.”<sup>204</sup> In particular, the Center on Budget and Policy Priorities (CBPP) sharply criticized the CIS report. Using the same data set as the CIS, the CBPP concluded that “the percentage of legal noncitizens participating in each of the major means-tested federal programs—Medicaid, Food Stamps, Temporary Assistance for Needy Families (TANF), and SSI—has *declined* significantly since 1996.”<sup>205</sup> In fact, the CBPP found that the increase CIS observed in Medicaid benefits for immigrant households was wholly due to increased use of the State Children’s Health Insurance Program (SCHIP) by U.S. citizen children of undocumented immigrants.<sup>206</sup> Ultimately, the CBPP

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202. See JULIAN L. SIMON, *THE ECONOMIC CONSEQUENCES OF IMMIGRATION* 112 (2d ed. 2002) (“A 1986 poll showed that ‘47 percent of Americans felt that *most* immigrants wind up on welfare . . . .’”); Kristina M. Oven, *The Immigrant First as Human: International Human Rights Principles and Catholic Doctrine as New Moral Guidelines for U.S. Immigration Policy*, 13 NOTRE DAME J.L. ETHICS & PUB. POL’Y 499, 504–05, 508 (1999) (explaining that negative views about immigrants are prevalent during times of economic crisis, leading to the widely held view that immigrants will cause “the inevitable downfall[ ] of the United States.”); Richard Sybert, *Population, Immigration and Growth in California*, 31 SAN DIEGO L. REV. 945, 995–96 (1994) (referencing a number of polls which indicate that respondents feel that immigrants represent a net drain on the California economy).

203. ROBERT RECTOR & CHRISTINE KIM, THE HERITAGE FOUND., *THE FISCAL COST OF LOW-SKILL IMMIGRANTS TO THE U.S. TAXPAYER* 1–2 (2007), [http://s3.amazonaws.com/thf\\_media/2007/pdf/sr14.pdf](http://s3.amazonaws.com/thf_media/2007/pdf/sr14.pdf). A final argument coloring the debate is less substantive, but nonetheless insidious in its effect on the level of discourse regarding this issue. A minority of commentators, including those who have the ear of Congressional representatives, have used opportunities to better inform the public debate as a platform to make misleading characterizations and generalizations about Latino culture across the United States. See, e.g., *Hearing, supra* note 1, at 31, 35 (statement of Robert Rector, The Heritage Foundation) (asserting that low-income Latino immigrants across the United States have developed a culture of high welfare use and crime). While no further attention will be paid to this final argument, it is important to note it primarily because of its potential to distort the immigration debate.

204. See Lipman, *supra* note 6, at 2.

205. LEIGHTON KU ET AL., *CTR. ON BUDGET & POLICY PRIORITIES, NONCITIZENS’ USE OF PUBLIC BENEFITS HAS DECLINED SIGNIFICANTLY SINCE 1996: RECENT REPORT POINTS MISLEADING PICTURE OF IMPACT OF ELIGIBILITY RESTRICTIONS ON IMMIGRANT FAMILIES* 1 (2003), <http://www.cbpp.org/archiveSite/4-14-03wel.pdf>.

206. *Id.* at 1–2.

found that the CIS report was “misleading,”<sup>207</sup> a result echoed by subsequent studies of welfare utilization by immigrants.<sup>208</sup>

These findings seem intuitive given the legal restrictions placed on LPR and undocumented workers’ access to welfare benefits following passage of PRWORA. LPRs who entered the United States before August 22, 1996<sup>209</sup> are generally ineligible for food stamps and supplemental security income (SSI).<sup>210</sup> LPRs that entered the United States after August 22, 1996 are ineligible for food stamps and SSI until they obtain U.S. citizenship or complete forty quarters of work.<sup>211</sup> Furthermore, they generally cannot receive federal TANF or Medicaid benefits until they have lived in the United States for five years.<sup>212</sup> The only social service undocumented immigrants have access to is emergency medical care;<sup>213</sup> their children are also able to enroll in public elementary and secondary education.<sup>214</sup> Undocumented workers are systematically excluded from all other government benefits, including food stamps,<sup>215</sup> TANF, federal housing

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207. *Id.*

208. *See* SIMON, *supra* note 202, at 314–15 (summarizing findings indicating that undocumented workers use fewer social services than U.S. citizens due to fear of apprehension, while both LPRs and undocumented workers require less health care because they enter the United States when they are young and therefore in less need of health services); RANDY CAPPAS ET AL., THE URBAN INST., A PROFILE OF LOW-INCOME WORKING IMMIGRANT FAMILIES 5 (2005), [http://www.urban.org/UploadedPDF/311206\\_B-67.pdf](http://www.urban.org/UploadedPDF/311206_B-67.pdf) (“[L]ow-income working immigrant families are less likely than comparable native families to receive [health care, food, income, and housing assistance.]”).

209. This date is significant because it is the day the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 was enacted into law. Pub. L. No. 104-193, 110 Stat. 2105 (1996).

210. SHAWN FREMSTAD, CTR. ON BUDGET & POLICY PRIORITIES, IMMIGRANTS AND WELFARE REAUTHORIZATION 3 (2002), <http://www.cbpp.org/files/1-22-02tanf4.pdf>. Even those LPRs that entered the United States before August 22, 1996 are eligible for food stamps if they were disabled, older than sixty-five years of age on August 22, 1996, or completed forty quarters of work. *See id.* Similarly, LPRs continue to be eligible for SSI if they are a disabled or elderly immigrant who received SSI prior to August 22, 1996. *See id.* These individuals are eligible for TANF and Medicaid at the option of the states in which they reside. *Id.*

211. *Id.*

212. *Id.*

213. *See* 42 U.S.C. § 1396b(v) (2006) (providing that the federal government will pay a state for medical care provided to unlawfully admitted aliens only if such treatment was administered to deal with an emergency medical condition).

214. *See* Plyler v. Doe, 457 U.S. 202, 230 (1982) (ruling that children of undocumented immigrants cannot be excluded from public elementary and secondary schools).

215. *See* 7 U.S.C. § 2015(f) (2006) (restricting undocumented workers’ access to food stamps).

assistance, Medicaid,<sup>216</sup> Medicare,<sup>217</sup> SSI,<sup>218</sup> unemployment insurance,<sup>219</sup> social security,<sup>220</sup> and the Earned Income Tax Credit.<sup>221</sup> Contrary to CIS's claims, immigrant workers face significant barriers to accessing federal welfare benefits.

Pro-immigrant groups and researchers also adamantly oppose accusations that LPRs and undocumented workers impose a "net drain" on the tax base. The general consensus among "eminent economists" appears identical, particularly with respect to undocumented workers.<sup>222</sup> One argument raised by these advocates is that undocumented workers and LPRs subsidize both Social Security and Medicare.<sup>223</sup> Julian L. Simon goes further, noting that, "[t]he tax and welfare data *together* indicate that, on balance, immigrants contribute to the public coffers an average of \$1,300 or more per year, *each year*.<sup>224</sup> With respect to undocumented workers, Simon concludes that "the overall excess of government revenues over government cost caused by the illegal aliens is very great, absolutely as well as relatively . . . ."<sup>225</sup>

216. See 8 U.S.C. §§ 1611, 1641 (2006) (denying undocumented workers access to federal benefits).

217. See *id.* § 1611(a), (c)(1)(B) (prohibiting undocumented workers from obtaining access to federal health benefits).

218. See SOC. SEC. ADMIN., SUPPLEMENTAL SECURITY INCOME (SSI) FOR NONCITIZENS 1 (2008), <http://www.ssa.gov/pubs/11051.pdf>.

219. See 26 U.S.C. § 3304(a)(14)(A) (2006) (prohibiting undocumented workers from receiving unemployment insurance).

220. See 42 U.S.C. §§ 402(y), 405(c)(2)(B)(i) (2006) (preventing undocumented workers from receiving Social Security benefits); 8 U.S.C. § 1611(a), (c)(1)(B) (2006) (excluding undocumented workers from obtaining access to federal retirement benefits).

221. 26 U.S.C. § 32(c)(1)(D) (2006) (prohibiting undocumented workers from claiming the Earned Income Tax Credit).

222. See Lipman, *supra* note 6, at 4 ("Eighty-five percent of eminent economists surveyed have concluded that undocumented immigrants have had a positive (seventy-four percent) or neutral (eleven percent) impact on the U.S. economy."); see also COUNCIL ON ECON. ADVISERS, EXEC. OFFICE OF THE PRESIDENT, IMMIGRATION'S ECONOMIC IMPACT 2 (2007), available at [http://georgewbush-whitehouse.archives.gov/cea/cea\\_immigration\\_062007.html](http://georgewbush-whitehouse.archives.gov/cea/cea_immigration_062007.html) (concluding that, "[t]he long-run impact of immigration on public budgets is likely to be positive").

223. See Porter, *supra* note 198 (explaining that \$7 billion in taxes were contributed to Social Security in 2003, much of it from undocumented workers' use of incorrect social security numbers). Undocumented workers subsidize Medicare because they pay taxes for benefits that they will never receive. See IMMIGRATION POLICY CTR., THE ECONOMICS OF IMMIGRATION REFORM: WHAT LEGALIZING UNDOCUMENTED IMMIGRANTS WOULD MEAN FOR THE U.S. ECONOMY 3 (2009), <http://www.immigrationpolicy.org/sites/default/files/docs/EconomicsofCIRFullDoc.pdf>. The taxes levied on LPRs, the legal barriers they encounter during their first five years of residency, and low participation rates in benefit programs result in these workers providing a net benefit to Medicare. See CAPPS, *supra* note 208, at 4, 6.

224. SIMON, *supra* note 202, at 315 (first emphasis added).

225. *Id.* at 318.

Finally, findings at the state level support the argument that LPRs and undocumented workers make significant contributions to the tax base. A report studying New York State indicated that immigrants contributed more than \$19.3 billion in taxes in 1995, of which \$6 billion went to the state and local governments.<sup>226</sup> Other state level studies have reached similar conclusions.<sup>227</sup> These studies demonstrate that application of the charitable deduction to collective remittances is warranted.<sup>228</sup>

#### CONCLUSION

Undocumented workers and LPRs have good reason to be concerned about discrimination and the shape of immigration reform. A bill recently signed into law in Arizona “would make the failure to carry immigration documents a crime and give the police broad power to detain anyone suspected of being in the country illegally.”<sup>229</sup> In addition, an outline of the federal government’s plan to overhaul immigration shows that it would perpetuate the current enforcement regime and may even go further by enacting more stringent measures.<sup>230</sup>

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226. JEFFREY S. PASSEL & REBECCA L. CLARK, URBAN INST., *IMMIGRANTS IN NEW YORK: THEIR LEGAL STATUS, INCOMES, AND TAXES* (1998), <http://www.urban.org/url.cfm?ID=407432>.

227. See, e.g., RANDY CAPPS ET AL., THE WINTHROP ROCKEFELLER FOUND., *A PROFILE OF IMMIGRANTS IN ARKANSAS: EXECUTIVE SUMMARY 5* (2007), [http://www.urban.org/UploadedPDF/411441\\_Arkansas\\_Summary.pdf](http://www.urban.org/UploadedPDF/411441_Arkansas_Summary.pdf) (finding that immigrants have a positive net fiscal impact on the state budget of \$19 million); RANDY CAPPS ET AL., THE CMTY. FOUND., *CIVIC CONTRIBUTIONS: TAXES PAID BY IMMIGRANTS IN THE WASHINGTON, D.C., METROPOLITAN AREA 5* (2006), [http://www.urban.org/UploadedPDF/411338\\_civic\\_contributions.pdf](http://www.urban.org/UploadedPDF/411338_civic_contributions.pdf) (reporting that immigrant households in the Washington, D.C., area paid \$9.8 billion in taxes, of which \$1.6 billion were state taxes and \$1.1 billion were local taxes); EMILY EISENHauer ET AL., RESEARCH INST. ON SOC. & ECON. POLICY, *IMMIGRANTS IN FLORIDA: CHARACTERISTICS AND CONTRIBUTIONS 7* (2007), [http://www.risep-fiu.org/wp-content/uploads/2009/03/immigrants\\_spring\\_2007\\_reduced.pdf](http://www.risep-fiu.org/wp-content/uploads/2009/03/immigrants_spring_2007_reduced.pdf) (finding that immigrants paid \$4.5 billion in state and local taxes, resulting in a positive net contribution of \$1,500 per immigrant to the tax base); JUDITH GANS, UDALL CTR. FOR STUDIES IN PUB. POLICY, *IMMIGRANTS IN ARIZONA: FISCAL AND ECONOMIC IMPACTS 3* (2008), <http://udallcenter.arizona.edu/immigration/publications/impactofimmigrants08.pdf> (“[I]mmigrants in Arizona generated a net 2004 fiscal contribution of about \$940 million towards services such as public safety, libraries, road maintenance, and other areas.”).

228. The studies cited take into account the use of public services that are easily quantifiable. It is important to note, though, that undocumented workers and LPRs also benefit from “public goods” such as national defense and law enforcement. However, the exact benefit that they receive from the provision of these goods is difficult to quantify.

229. Randal C. Archibold, *Arizona Enacts Stringent Law on Immigration*, N.Y. TIMES, Apr. 23, 2010, at A1.

230. Julia Preston, *2 Senators Offer Immigration Overhaul*, N.Y. TIMES, Mar. 19, 2010, at A11 (“The plan calls for a big increase in immigration agents patrolling

Both take tough stands on immigration. Both also fail to recognize the importance of remittances for the United States and developing countries, and the role remittances can play in immigration reform.<sup>231</sup>

This paper has demonstrated the importance of remittances not only for the families that rely on them to meet basic needs, but also for the communities in which these families live. Personal remittances play a vital role in reducing poverty and increasing educational opportunities. Likewise, collective remittances lead to investment in infrastructure, education, and health facilities in migrants' home countries. The United States also benefits from the remittance phenomenon when undocumented immigrants and LPRs pay taxes and use domestic banks to send money abroad.

Personal remittances should not be eligible for the charitable deduction; however, the tax subsidy *should* be used to facilitate increased sending of collective remittances. This result is justified based on consideration of the many socioeconomic studies that have been conducted on the topic, tax law, tax theory, and tax policy. When Congress convenes to debate immigration reform, it is imperative that they consider the effect their proposals will have on remittances, as well as the families and communities that depend on them. While remittances are no panacea for the issues facing Mexico or other countries in Latin America and the Caribbean region, they represent an important tool for development that the U.S. government should encourage.

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workplaces, and would require all workers, including *legal immigrants and American citizens*, to present a tamper-proof Social Security card when they apply for jobs. Biometric identity information would be stored on the card . . . .") (emphasis added).  
231. See *supra* note 191.

APPENDIX A: REMITTANCES TO LATIN AMERICA AND THE  
CARIBBEAN REGION<sup>232</sup>

Remittances to Latin America and the Caribbean, 2001–2008  
(selected countries, annual data in \$ millions)

Countries	2001	2002	2003	2004	2005	2006	2007	2008	Migrants (#)	(% GDP)	Avg. remitted
Argentina	100	184	225	270	780	850	920	955	318,333	0.34	250
Belize			73	77	81	93	100	110	45,833	8.30	200
Bolivia	103	104.2	340	421.6	860	989	1050	1097	507,417	8.06	180
Brazil	2600	4600	5200	5624	5793	7373	7166	7200	750,000	2.29	800
Colombia	1756	2431	3067	3857.30	4126	4200	4521	4842	1,513,095	2.31	267
Costa Rica	80.25	134.82	306	320	400	520	582	624	186,298	2.34	279
Cuba	930	1138.5	1194	1194	1100	1000	1000	1200	583,333	2.29	200
Chile							800	880	333,333	0.52	220
D. Republic	1807	2111.5	2216.55	2438.20	2560	2747	3120	3148	1,204,375	7.47	218
Ecuador	1430	1575	1657	1740	1827	2893	3118	2822	682,030	5.87	345
El Salvador	1911	220	2316.3	2548	2830	3316	3695	3788	878,748	18.35	359
Guatemala	584.3	1690	2106	2680.7	2993	3610	4128	4315	919,578	12.75	391
Guyana	90	119	137	143	260	270	423	415	206,834	36.73	167
Haiti	810	931.5	978	1026	1077	1100	1650	1870	1,277,626	30.01	122
Honduras	460	770	862	1134	1763	2359	2561	2707	930,874	21.60	242
Jamaica	967.5	1229	1426	1497	1651	1770	1860	2034	1,227,754	17.95	138
Mexico	8895	10502	13266	16613	20034	23053	26075	25145	5,646,015	2.47	371
Nicaragua	660	759	787.5	809.55	901	950	960	1056	691,253	18.13	127
Panama			220	231	254	292	340	325	108,333	1.55	250
Paraguay				506	550	650	750	700	191,538	5.68	305
Peru	930	1265	1295	1360	2495	2869	2900	2960	1,469,662	2.56	168
Suriname				50	55	102.3	115	120	40,000	6.16	250
T.& Tobago	40.9	58.5	88	93	97	110	125	130	43,333	0.64	250
Uruguay			42	105	110	115	115	130	43,333	0.51	250
Venezuela	136	235	247	259	272	300	331	832	424,119	0.35	163
LAC	24290	32045	38048	44997	52868	61531	68405	69605	20,223,049	0.34	280
R. Growth		32%	19%	18%	17%	16%	11%	2%			
# Countries	19	19	22	24	24	24	25	25			

Source: Central Banks, and IADB. GDP: ECLAC, Migrants: global migration database; Remittances: survey data and ECO, 2008.

232. Remittances: Regulation and Disclosure in a New Economic Environment: Hearing Before the Subcomm. on Fin. Insts. of the H. Fin. Servs. Comm., 111th Cong. (2009) (prepared statement of Manuel Orozco, Senior Associate, Inter-American Dialogue), <http://www.thedialogue.org/PublicationFiles/Testimony%20house%20of%20reps%20060309%20FINAL.pdf>.

APPENDIX B: REMITTANCES FROM THE UNITED STATES<sup>233</sup>

	<b>2008 Foreign Born Adults (in thousands)</b>	<b>Percentage That Send Remittances</b>	<b>Frequency (per year)</b>	<b>Average Amount</b>	<b>Total (in millions)</b>
California	5,759	52%	15	\$325	\$14,599
Texas	2,799	30%	16	\$320	\$4,299
New York	1,427	53%	16	\$325	\$3,933
Florida	1,354	48%	15	\$315	\$3,071
Illinois	924	58%	15	\$350	\$2,813
New Jersey	704	56%	17	\$290	\$1,943
Georgia	460	53%	16	\$370	\$1,443
Arizona	694	39%	17	\$295	\$1,357
North Carolina	371	59%	16	\$355	\$1,243
Virginia	314	59%	16	\$345	\$1,023
Maryland	261	55%	17	\$335	\$818
Nevada	311	49%	18	\$280	\$768
Colorado	325	49%	15	\$320	\$764
Massachusetts	303	45%	15	\$320	\$654
Washington	231	44%	15	\$375	\$572
Connecticut	158	52%	16	\$330	\$434
Oregon	175	55%	14	\$320	\$431
Tennessee	139	58%	15	\$340	\$411
Wisconsin	124	44%	15	\$370	\$399
Indiana	146	49%	16	\$340	\$389
Pennsylvania	146	44%	16	\$360	\$370
New Mexico	186	31%	15	\$400	\$346
Minnesota	107	58%	15	\$370	\$344
Michigan	124	49%	16	\$340	\$331
South Carolina	110	58%	15	\$340	\$325
Utah	130	31%	15	\$400	\$242
Alabama	75	57%	15	\$340	\$218
Oklahoma	114	36%	16	\$325	\$213
Ohio	79	49%	16	\$340	\$211
Louisiana	71	57%	15	\$340	\$206
Rhode Island	68	52%	15	\$330	\$175
Iowa	52	58%	15	\$370	\$167
Arkansas	86	46%	14	\$300	\$166
Kentucky	55	58%	15	\$340	\$163
Idaho	65	55%	14	\$320	\$160
Kansas	81	36%	16	\$325	\$152
Nebraska	58	51%	15	\$305	\$135
Missouri	63	46%	14	\$300	\$122

233. BENDIXEN & ASSOC., SURVEY OF LATIN AMERICAN IMMIGRANTS IN THE UNITED STATES 33–37 (2008), available at [http://www.bendixenandassociates.com/studies/IDB\\_2008\\_National\\_Survey\\_Presentation.ppt](http://www.bendixenandassociates.com/studies/IDB_2008_National_Survey_Presentation.ppt).

	<b>2008 Foreign Born Adults (in thousands)</b>	<b>Percentage That Send Remittances</b>	<b>Frequency (per year)</b>	<b>Average Amount</b>	<b>Total (in millions)</b>
Delaware	44	52%	15	\$330	\$113
Mississippi	34	57%	15	\$340	\$99
Dist. of Columbia	29	52%	15	\$330	\$75
Hawaii	16	49%	14	\$430	\$47
Alaska	15	49%	14	\$430	\$44
New Hampshire	17	41%	15	\$385	\$40
Wyoming	15	51%	15	\$305	\$35
Maine	11	41%	15	\$385	\$26
South Dakota	9	51%	15	\$305	\$21
North Dakota	6	51%	15	\$305	\$14
Vermont	5	41%	15	\$385	\$12
West Virginia	4	49%	16	\$340	\$11
Montana	2	51%	15	\$305	\$5
Total					\$45,900

