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COMMENTS

IMMIGRATION HYPOCRISY AND ITS DESTRUCTIVE EFFECT ON THE ECONOMY AND FAMILIES

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For almost 250 years, the United States has provided opportunity for billions of people to improve their life and the lives of their families through gainful employment. Currently, the Pew Research Center estimates over eleven million undocumented immigrants are currently residing in the United States.¹ The vast majority of these immigrants are not qualified to receive state or federal assistance, do not panhandle, and do not live in free housing.² Thus, it is logical to conclude they are here working and contributing their wages to our economy through direct spending and paying federal and state taxes. This paradox begs the question as to how these persons can be employed without proper documentation.

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1. JEFFREY S. PASSEL ET AL., AS GROWTH STALLS, UNAUTHORIZED IMMIGRANT POPULATION BECOMES MORE SETTLED, PEW RESEARCH CTR. 4 (2014), *available at* http://www.pewhispanic.org/files/2014/09/2014-09-03_Unauthorized-Final.pdf.

2. *See* Daniel T. Griswold, *Immigration and the Welfare State*, 32 CATO JOURNAL 159, 168 (2012) (stating that despite their contributions to the economy, undocumented immigrants are ineligible to receive benefits due to their unauthorized status).

Another major problem created by the United State's immigration system is the loss of skilled labor due to uselessly restrictive quotas on visas like the H-1B, and waiting periods for permanent residency that can last anywhere from ten to twenty years.³ College graduates with degrees in engineering and math are being sent home because they are unable to win a visa lottery that shows no preference to different categories of labor based on need.⁴ Every attempt to fix these inequities has been met with unjustified vitriol based on fear and myths, which are mostly centered on the mantra of securing the border before exploring any fix to the system.⁵ It is possible to fix many of the problems at the border by bringing undocumented immigrants in this country out of the shadows and improving our economy by retaining the talent produced in American universities.⁶ Comprehensive immigration reform would drastically reduce the incentives for undocumented immigration, dependence on nefarious drug cartels for transportation to the United States, and generate additional tax revenue to pay for added border security.⁷

3. See *USCIS Reaches FY 2015H-1B Cap*, U.S. CITIZENSHIP AND IMMIGR. SERV., <http://www.uscis.gov/news/uscis-reaches-fy-2015-h-1b-cap-0> (last updated Apr. 10, 2014) (reporting “[o]n April 10, 2014, USCIS completed a computer-generated random selection process, or lottery, to select enough petitions to meet the 65,000 general-category cap and 20,000 cap under the advanced degree exemption” after receiving 172,500 H1B petitions during the filing period beginning April 1).

4. See, e.g., Jens Manuel Krogstad, *Visa Cap cuts Off Immigrants with Advanced Degrees*, USA TODAY (Jan. 9, 2013, 4:43 PM), <http://www.usatoday.com/story/money/business/2013/01/09/immigration-science-technology-engineering-math-jobs/1566164> (discussing Kazeem Olanrewaju's issue: a man with two doctorates in chemical and biochemical engineering, from U.S. institutions, faces the possibility of being kicked out because the Visa cap hit the statutory limit).

5. See Julian Hattem, *Bipartisan Senate Bill Eyes Immigration Reform for Tech Worker*, THEHILL.COM (Jan. 13, 2015, 5:47 PM), <http://thehill.com/policy/technology/229348-senators-eye-immigration-reform-for-tech-workers> (quoting Republican Senator Marco Rubio asserting, “[a]n immigration system for the 21st century will be judged by whether it provides the conditions for both security and economic growth, . . . [t]he reforms in this legislation lead the way to such a system, which I believe we can ultimately achieve after meeting the immediate challenges of securing our borders and improving internal enforcement”).

6. See Diana Furchtgott-Roth, *Do Immigrants Boost Economic Growth? Yes*, REAL CLEAR MARKETS (Dec. 2, 2014), http://www.realclearmarkets.com/articles/2014/12/02/do_immigrants_boost_economic_growth_yes_101413.html (citing statistics showing that a large portion of graduate degrees earned by immigrant, non-citizens provide a significant portion of the highly skilled labor force); see also Matthew Kolodziej, *H-1B Visa Cap for High Skilled Workers Maxed Out in Record Time*, IMMIGR. IMPACT (April 7, 2014), <http://immigrationimpact.com/2014/04/07/h-1b-visa-cap-for-higher-skilled-workers-maxed-out-in-record-time/> (arguing that 85,000 H-1B cap for high-skilled non-citizen employees is still insufficient to properly meet U.S. employers' demands).

7. See David Dyssegaard Kallick, FISCAL POL'Y INST., PRESIDENT'S IMMIGRATION ACTION EXPECTED TO BENEFIT ECONOMY: HIGHER TAX REVENUES EXPECTED, AND POS-

Immigration reform is an issue that continues to resurface in the arenas of American politics and law. Beginning with the Alien and Sedition Acts in the 18th century, those who live in the United States of America have hotly debated the amount and type of immigrants that should be accepted into the country, as well as the manner in which they should be accepted.⁸ As recently as 1986, the U.S. Congress and President Reagan passed the Immigration Reform and Control Act (IRCA).⁹ This act established amnesty for millions of undocumented workers, as well as an employment verification document, the Form I-9, that put the onus on employers to confirm the work authorization of their employees.¹⁰

Since the law came into effect in November 1986, every employee working in the United States must present acceptable employment authorization documents at the time of hire to complete the Form I-9.¹¹ However, the system created a significant loophole which resulted in a “don’t ask [too much], don’t tell” policy that benefits the employers and has an adverse effect on undocumented employees. In an attempt to close this gap, the federal government created and refined the employment verification process in recent years by developing a secure database reference system called E-Verify.¹² Though the program still has several

ITIVE IMPACT ON U.S.-BORN WORKERS (2014), <http://fiscalpolicy.org/wpcontent/uploads/2014/11/Administrative-relief-economic-and-fiscal-impacts-press-release.pdf> (arguing immigration reform would result in substantial increased state and local tax revenue, on the order of one to two billion dollars a year, depending on how comprehensive the reform becomes); see also Peter Andreas, *Redrawing the Line: Borders and Security in the Twenty-First Century*, 28 INT’L SEC. 78, 84–95 (2003) (discussing how drug cartels act as clandestine transnational actors motivated by high profits and market demand to smuggle people across the border).

8. See Andrew Soergel, *A History of Immigration Reform*, U.S. NEWS (Nov. 20, 2014, 5:54 P.M.), <http://www.usnews.com/news/articles/2014/11/20/a-history-of-immigration-reform> (pointing out when the Alien and Sedition Acts of 1798 were rescinded, they were replaced by more liberal immigration policies); see also Nathaniel Parish Flannery, *Immigration Debate: What’s More Important, Border Security or Protecting Immigrant Workers?*, FORBES (Sept. 9, 2013, 8:45 AM), <http://www.forbes.com/sites/nathanielparishflannery/2013/09/09/immigration-debate-whats-more-important-border-security-or-protecting-immigrant-workers> (addressing the debate surrounding whether there should be a legal pathway to citizenship or more border security).

9. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359.

10. See Lori A. Nessel, *Undocumented Immigrants in the Workplace: The Fallacy of Labor Protection and the Need for Reform*, 36 HARV. C.R.-C.L.L. REV. 345, 355–61 (2001) (discussing the enactment and enforcement of the IRCA and asserting the INS became empowered to regulate the workplace at the expense of labor and immigration policy goals).

11. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359.

12. See generally U.S. CITIZENSHIP AND IMMIGR. SERV., E-VERIFY USER MANUAL FOR EMPLOYERS (2014), available at http://www.uscis.gov/sites/default/files/files/nativedocuments/E-Verify_Manual.pdf (describing the internet based program E-Verify and how it

issues, it continues to expand and proliferate throughout the United States.¹³

E-Verify is an online employment verification system that the federal government has continuously improved and expanded since the late 1990s.¹⁴ It began as the Basic Pilot Program and required employers who enrolled in the voluntary program to call the Social Security Administration and confirm the employment eligibility of the candidate.¹⁵ By 2004, the Basic Pilot Program had been expanded to encompass all states, and converted a web-based user interface.¹⁶ In 2007, the program was renamed E-Verify and began its current state of expansion.¹⁷ Over the past five years E-Verify legislation has been passed in several states requiring companies with public contracts, and sometimes private businesses, to enroll in the program.¹⁸

Most practitioners believe the E-Verify program will continue to expand, and will be a cornerstone of any comprehensive congressional immigration reform bill. Though the E-Verify program has enhanced the ability of companies to eliminate undocumented workers from their workforce, it still contains many issues that leave our employment verification practices broken and susceptible to being easily exploited. First, the E-Verify program is voluntary on a national level.¹⁹ Businesses located in states without mandatory requirements have little or no incentive to enroll in the program, and those who historically have the highest rate of undocumented workers actively avoid any additional layers of oversight in order to minimize exposure to liability and shrinking their talent pool.²⁰ Additionally, the program can still be circumvented

enables employers to verify employment eligibility of potential employees while complying the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act).

13. See *E-Verify State Map*, LAWLOGIX, <http://www.lawlogix.com/e-verify> (last visited Apr. 18, 2015) (visually illustrating how many states require the use of E-Verify for some type of employment and providing to links to state specific information).

14. See generally U.S. CITIZENSHIP AND IMMIGR. SERV., HISTORY AND MILESTONES: E-VERIFY (2014), available at http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/HistoryMilestones/E-Verify_History_and_Milestones.pdf (summarizing major milestones in the history of the E-Verify program).

15. *Id.* at 1–2.

16. *Id.* at 2–3.

17. *Id.* at 3–4.

18. *Id.* at 4–9.

19. See *DHS is Serious About I-9 Enforcement. Are You?*, HIRERIGHT (Jan. 30, 2012), <http://www.hireright.com/blog/2012/01/dhs-is-serious-about-form-i-9-enforcement-are-you-e-verify> (reporting that E-Verify is a voluntary program for most organizations and discussing recent trends among employers).

20. See JOSH STEHLIK ET AL., VERIFICATION NATION: HOW E-VERIFY AFFECTS AMERICA'S WORKERS 9–10 (2013), available at www.nilc.org/document.html?id=957 (re-

through stolen identities.²¹ If the identification numbers match the provided name, E-Verify will return a “work authorized” message regardless of the authenticity of the actual document.²² Though the program has aimed to make the employment verification process more reliable and useful, E-Verify still leaves gaping holes in the already patchwork Form I-9 and employment verification system.²³

As E-Verify is still mostly a voluntary program, employers are forced to use the widely abused and ineffective Form I-9 system. To complete the Form I-9, an employer must review all documents that are listed as acceptable in the Form I-9 directions, determine if they “appear genuine” and “reasonably relate to the person presenting them.”²⁴ Under current law, the employer is held to a “reasonable standard,” and is protected from fines during an Immigration and Customs Enforcement (ICE) audit if their Forms I-9 documents, presented during employment verification, were not obviously fraudulent, the Form I-9 was properly completed, and the employer had no knowledge of the fraud.²⁵ However, an employer must immediately terminate any employees who are found to be undocumented by ICE or face possible prosecution for knowingly employing unauthorized workers.²⁶

marking that employers who unconstrained by E-Verify have competitive advantage against those which must comply with the E-Verify requirements).

21. See GOV’T ACCOUNTABILITY OFFICE, EMPLOYMENT VERIFICATION: FEDERAL AGENCIES HAVE TAKEN STEPS TO IMPROVE E-VERIFY, BUT SIGNIFICANT CHALLENGES REMAIN 16 (2010), available at <http://www.gao.gov/new.items/d11146.pdf> (noting that E-Verify continues to be vulnerable to fraud and identity theft from both employers and undocumented workers).

22. *Id.* at 24.

23. See *U.S. v. Garcia-Ochoa*, 607 F.3d 371, 376 (4th Cir. 2010) (recognizing the I-9 form is the main support of undocumented employment verification—enforcement of which is heavily dependent on the truthfulness of the actors); JOSH STEHLIK ET AL., *supra* note 20 (highlighting the absence of proper monitoring and education of employers on the proper use of E-Verify will diminish the program’s ability to further advance the goals of the system); see also Roger Tsai, *How to Advise Employers on Immigration Issues*, 20 UTAH BAR J. NO. 3, 32–34 (2007), available at https://www.utahbar.org/wp-content/uploads/2014/10/2007_may_june.pdf (explaining the obligations that Form I-9 imposes on employers). There is significant opportunity for fraud due to the number of documents that are available to prove identity and or work authorization that are acceptable for Form I-9. *Id.* at 34. *But see* HIRERIGHT, *supra* note 19 (claiming that “E-Verify provides added protection from hiring unauthorized workers”).

24. U.S. CITIZENSHIP AND IMMIGR. SERV., EXAMINING DOCUMENTS: I-9 CENTRAL, <http://www.uscis.gov/i-9-central/acceptable-documents/examining-documents> (last visited Apr. 8, 2015) (detailing the guidelines for accepting and declining acceptable documents to complete the Form I-9).

25. ALISON SMITH, CONG. RESEARCH SERV., RS22180, UNAUTHORIZED EMPLOYMENT OF ALIENS: BASICS OF EMPLOYER SANCTIONS 2–6 (2005).

26. *Id.*

This is where the hypocrisy begins—when the terminated employees take their documents down the street to a competitor who accepts them without fear of reprisal from the government, leaving a gap in the original employer's labor force that will most likely be filled with more undocumented workers.²⁷ This charade is allowed because companies are not required to check on an applicant's previous employment history under Form I-9 law, and are protected from any liability as long as Form I-9 procedures are followed. This cycle continues under the guise of enforcement, even though the undocumented alien remains in the country and neither employer has incentive to increase their scrutiny of employment verification documents beyond the minimum the law requires.

The enforcement of the Form I-9 has increased dramatically over the past decade,²⁸ and I have personally witnessed the devastating effect the system has had on employers and employees alike who are trying to provide the labor and wages a capitalist society needs to thrive. During my time as an immigration attorney, I have represented small businesses and Fortune 500 companies during ICE initiated Form I-9 audits. I have first-hand experience terminating long-time employees under orders from the federal government; these employees had worked diligently at a job they excelled at. I also counseled employers, devastated that they were losing ten, fifteen, or even twenty years' worth of experience to competitors.

Unfortunately, many states and business owners who support an enforcement first immigration policy and decry reform are the same parties benefitting most from this broken system.²⁹ Politicians rail against practical immigration reform³⁰ but conduct business in buildings built by un-

27. See Francis Wilkinson, *Why I Hire Undocumented Workers*, BLOOMBERG VIEW (Mar. 12, 2014, 12:23 PM) <http://www.bloombergview.com/articles/2014-03-12/why-i-hire-undocumented-workers> (quoting an employer in favor of undocumented workers stating, "We have to have paperwork on these guys We just don't have to have it be legitimate.").

28. See HIRERIGHT, *supra* note 19 (reporting since 2009, ICE audited over 6,000 Form I-9 programs and restricted 441 employers and individuals from obtaining federal contracts).

29. See IMMIGR. POL'Y CTR., THE FALLACY OF "ENFORCEMENT FIRST" 1 (2013), available at http://www.immigrationpolicy.org/sites/default/files/docs/borderenforcement_0.pdf (explaining enforcement first as the stance for adequately enforcing current laws before attempting reform of current laws).

30. See, e.g., Lee Fang, *Ted Cruz: Block Immigration Reform to Help Republicans in 2014*, THE NATION (Dec. 23, 2013, 12:09 AM), <http://www.thenation.com/blog/177693/ted-cruz-block-immigration-reform-help-republicans-2014> (recognizing Senator Ted Cruz's stance against immigration reform was based on the impact it would have for Republicans trying to retake the Senate in the 2014 elections); Stephen Dinan, *Boehner puts breaks on immigration reform*, WASHINGTON TIMES (Nov. 13, 2014), <http://www.washingtontimes.com/news/2013/nov/13/boehner-house-wont-negotiate-senate-immigration/?page=all> (reporting on House Speaker John Boehner's statement rejecting the Senate's immigration

documented workers, restaurants serviced by undocumented workers, and houses cleaned by undocumented workers.³¹ These same people also claim they care too much about border security to give work authorization and documentation to persons who arrived in the U.S. illegally,³² yet they do not want to pay for unwieldy and logistically impossible mass deportation.³³ They instead prefer to continue supporting a system that employs millions of people working under false names and identification numbers, leaving them vulnerable to ill-willed employers and others looking to take advantage of people in a desperate situation, as well as operating in a shadow of society conducive to further illegal activity.

The quickest way to improve national security is to bring these workers that our economy obviously needs out of the shadows, conduct background checks, and provide them documentation that makes them visible and accountable within our justice and labor system. A temporary and/or seasonal worker program for manual labor and agricultural jobs would provide more security than a fence ever could, would create a more stable economic environment for businesses to operate in, and fill labor shortages that employers claim cannot be filled exclusively by citizens and permanent residents.

bill and discussing Senator Marco Rubio's abandonment of the same senate bill which he helped draft).

31. See generally, Manuel Valdez, *Audits of companies for illegal immigrants rise*, ASSOCIATED PRESS (Dec. 23, 2012, 3:22 PM), <http://www.usatoday.com/story/money/business/2012/12/23/audits-illegal-immigrants/1787213/> (listing businesses that have been audited by Immigration and Customs Enforcement to include restaurants, manufacturing companies, construction, food packaging, janitorial services, and farms—some of the companies have national recognition, such as Heinz, GE and Subway).

32. See, e.g., Senator Rand Paul, *Immigration*, PAUL.SENATE.GOV, <http://www.paul.senate.gov/?p=issue&id=12> (last visited Apr. 8, 2015) (announcing Senator Rand Paul's stance on immigration issues, including creation of a border fence, increasing border patrol, and construction of military bases to protect the border); Sabrina Siddiqui, *Rand Paul on Obama's Immigration Executive Action: 'We Should Take Him to Court,'* Huffington Post (Nov. 19, 2014, 6:11 PM), http://www.huffingtonpost.com/2014/11/19/rand-paul-immigration-executive-action_n_6188458.html (last updated Nov. 19, 2014, 7:59 PM) (reporting on Senator Paul Rand's and House Republicans' discussion to sue President Obama over his executive action providing work authorization to undocumented parents of legal permanent resident children).

33. See generally JESSICA VAUGHAN, CTR. FOR IMMIGR. STUDIES, DEPORTATION NUMBERS UNWRAPPED: RAW STATISTICS REVEAL THE REAL STORY OF ICE ENFORCEMENT IN DECLINE (2013), available at <http://cis.org/sites/cis.org/files/Deportation-Numbers-Unwrapped.pdf>. (reporting that funding for ICE was increased in 2012 from \$5.6 to \$5.9 billion to tackle problems involved with deportation, such as locating undocumented aliens who have been arrested).

The United States would benefit greatly from an expanded temporary worker program centered on so-called “unskilled labor.”³⁴ Currently, the closest approximation of such a program is the H-2A/H-2B visa program for temporary or seasonal agricultural and non-agricultural workers.³⁵ Unfortunately, these programs have restrictions that make them impractical to apply for, including the requirement the petitioning company prove there are not enough U.S. workers available for unfilled positions, and the need for the worker’s services are extremely temporary.³⁶ In order to do so, the company must apply for a Department of Labor certification confirming that the local need for foreign labor exists with several forms and other evidence that the local labor market and wages will not be affected by the temporary workers.³⁷ This practice is self-defeating, as the current Form I-9 laws have allowed thousands of workers with fraudulent documentation to work in the United States already, providing further evidence that the need for the labor already exists and that it would not drastically affect wages.³⁸

The central flaw in these programs is they lack the certainty of “skilled” labor visas by restricting the companies to only fill a “temporary need.”³⁹ After an ICE Form I-9 audit, employees who have been successful at their jobs and thrived in the United States for many years are termi-

34. See Alfonso Serrano, *Bitter Harvest: U.S. Farmers Blame Billion-Dollar Losses on Immigration Laws*, TIME (Sept. 21, 2012), <http://business.time.com/2012/09/21/bitter-harvest-u-s-farmers-blame-billion-dollar-losses-on-immigration-laws> (explaining that not having an expanded, efficient temporary worker program is proving to be costly for the United States).

35. 8 C.F.R. § 214.2(h)(2) (2014). H-2A classification pertains to an alien coming to the United States to perform agricultural work. *Id.* H-2B classification pertains to aliens coming to the United States to perform non-agricultural work. *Id.*

36. See U.S. CITIZENSHIP AND IMMIGR. SERV., H-2B TEMPORARY NON-AGRICULTURAL WORKERS, <http://www.uscis.gov/working-united-states/temporary-workers/h-2b-non-agricultural-workers/h-2b-temporary-non-agricultural-workers> (last updated Jan. 17, 2014) (stating the qualifications and requirements needed to qualify for H-2B classification).

37. U.S. DEP’T OF LAB., H-2A TEMPORARY AGRICULTURAL PROGRAM (Oct. 22, 2009), <http://www.foreignlaborcert.doleta.gov/h-2a.cfm> (last updated Jan. 08, 2015).

38. See Montserrat C. Miller, *Fraudulent documents and the Form I-9*, LEXOLOGY (Jan. 3, 2013), <http://www.lexology.com/library/detail.aspx?g=8f9fc8da-2326-4c97-bedf-19d74c891587> (explaining that employers are bound by the reasonable person standard when examining employee documentation and asserting that the employer may only reject documentation if the documents do not reasonably appear to be genuine).

39. See U.S. CITIZENSHIP AND IMMIGR. SERV., H-1B SPECIALTY OCCUPATIONS, DOD COOPERATIVE RESEARCH AND DEVELOPMENT PROJECT WORKERS, AND FASHION MODELS (last updated Sept. 3, 2014) <http://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-dod-cooperative-research-and-development-project-workers-and-fashion-models> (discussing that employers have a limited ability in extending H-2B visas for their skilled workers since extensions are much more limited and require

nated and ineligible to apply for an H-2A or H-2B visa.⁴⁰ An effective temporary low-skill worker program would function similar to the H-1B visa and allow an individual multiple years of work authorization at a particular job, which could then be renewed as needed. Eventually these workers could become eligible for Permanent Resident status if their employer decided to apply for an employment based adjustment. Of course, a grandfather period would need to be created to allow those already working in the United States without authorization the ability to apply with an appropriate waiver. By instituting a broader visa program for construction workers, restaurant assistance, and other jobs traditionally filled by the undocumented, we can ensure that businesses can hold on to their talent and fill holes in the economy that the current documented U.S. labor refuses to supply.

The system currently in place for obtaining skilled worker visas is also inefficient and harmful to the technology and energy-based corporations driving the cutting edge of our economy.⁴¹ The current H-1B cap of 65,000 visas per year, plus an additional 20,000 for persons with a graduate degree from a U.S. university, is usually met on the first day applications are accepted; this leaves many applicants with no option except to leave the country and return home with their skills.⁴² Again, people will claim that those jobs should be offered to persons who are already legally

the employees to leave the country for at least three uninterrupted months between maximum working periods of three years).

40. See U.S. IMMIGR. AND CUSTOMS ENFORCEMENT, FORM I-9 INSPECTION OVERVIEW (June 26, 2013), <http://www.ice.gov/factsheets/i9-inspection> (describing the inspection process of ICE and penalties that may be imposed on employers). Employers determined to have knowingly hired or continuing to employ violations (employees with fraudulent Form I-9) shall be required to cease the unlawful activity and may be fined. *Id.*

41. See Ajay Malshe, *From Obsolete to Essential: How Reforming Our Immigration Laws Can Stimulate and Strengthen the United States Economy*, 3 ALB. GOV'T. L. REV. 358, 365 (2010) (explaining how the current system “prevents the United States from retaining the best and brightest workers from around the world,” and noting that when U.S. companies are not able to hire foreign workers they are more likely to outsource their work in order to meet the labor demands). A 2008 survey indicated that 65% of companies outsourced work overseas because of “an insufficient supply of skilled visas or foreign nationals.” NAT'L FOUND. FOR AM. POL'Y, H-1B VISAS AND JOB CREATION 8 (2008), available at <http://www.nfap.com/pdf/080311h1b.pdf>; Jonathan Rothwell, *Short on STEM Talent*, US NEWS (Sept. 15, 2014, 8:00 AM), <http://www.usnews.com/opinion/articles/2014/09/15/the-stem-worker-shortage-is-real> (identifying the significant shortage the U.S. economy is facing in skilled professionals, such as 40,000 computer science degree earners graduating annually, but there are approximately 4 million job vacancies).

42. U.S. CITIZENSHIP AND IMMIGR. SERV., *supra* note 3. See Sofia Faruqi, *In the High-Skill Visa Lottery, America Loses*, WALL ST. J. (Nov. 10, 2014), <http://www.wsj.com/articles/sofia-faruqi-in-the-high-skill-visa-lottery-america-loses-1415665210> (telling how a woman in 2013, with an M.B.A from an Ivy League school had to leave the U.S. after failing to obtain the H1-B visa).

in the country, especially during a time when the unemployment rate exceeds 5%.⁴³ The truth is, corporations would fill their labor force with persons already in the U.S. that have indefinite labor authorization if it was at all possible.⁴⁴ Contrary to popular myth, the wage of every H-1B worker must be approved by USCIS, based on the type of job, experience required, and location the individual is working in.⁴⁵ This process is also time consuming and costly, as the employer must pay up to \$2,325 in United States Citizenship and Immigration Services (USCIS) filing fees and \$2,000–\$4,000 to an immigration attorney for every renewal, not to mention the actual wage and benefits of the employee.⁴⁶

The cost and inefficiencies of applying for H-1B work authorization visas are still not enough to deter employers, providing further evidence that there truly is a professional labor shortage, especially in the fields involving science, technology, engineering, and math (STEM).⁴⁷ Bill Gates, Mark Zuckerberg, and other industry leaders have been speaking on this issue for years with little to show for it, always being stymied by unfounded xenophobic fear that citizens are losing their jobs to immigrants.⁴⁸ Again, many of the same politicians and other vocal opponents to immigration reform proclaim the need for free flowing capital and deregulation, but selectively choose to tie up the labor market in red tape to

43. See, Laura Wides-Munoz & Paul Wiseman, *Backlash stirs against foreign worker visas*, USA TODAY (July 6, 2014, 1:58 PM), <http://www.usatoday.com/story/money/business/2014/07/06/backlash-stirs-in-us-against-foreign-worker-visas/12266783> (echoing the voices of several skilled, American workers who feel as though they are competing for the same jobs as foreign workers).

44. See Matthew Deluca, *Tech Demands More H-1B Visas as Critics Cry Foul*, NBC NEWS (Apr. 10, 2014), <http://www.nbcnews.com/business/business-news/tech-demands-more-h-1b-visas-critics-cry-foul-n77161> (reporting that less than 40% of students entering university intend to pursue a degree in a STEM field consequently leaving job positions in STEM vacant).

45. 8 C.F.R. § 214.2(h).

46. See U.S. CITIZENSHIP AND IMMIGR. SERV., H-1B FISCAL YEAR (FY) 2016 CAP SEASON, <http://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-fiscal-year-fy-2016-cap-season> (outlining the different fees that an employer may have to pay when filing an H-1B application).

47. See Kolodziej, *supra* note 6 (affirming that companies that have international competitors are in great need of H-1B visas to maintain a leadership position in the fields of science and math). Five days after the start of filing, H-1B visas run out and leave hundreds of thousands of jobs vacant, which in turn only hampers the U.S. economy and leaves the U.S. falling behind other countries in science and high tech. *Id.*

48. See Deluca, *supra* note 44 (explaining that the fear that Americans will lose their jobs to immigrants is unfounded because, on average, every foreign-born student who graduates with an advanced degree in STEM from a university in the U.S. creates 2.62 jobs for American workers). Companies such as Microsoft, Intel and Facebook have been lobbying to raise or abolish the cap in H-1B visas because H-1B visas allow companies to attract some of the brightest professionals within the STEM fields. *Id.*

satisfy misinformed people and organizations convinced they are protecting the citizenry.⁴⁹

The lack of a temporary worker program and the underserved professional worker visa programs are creating a labor deficit in the United States that harms industry and detracts from the values that built our country.⁵⁰ Claiming that the border must be secured before we can explore reform is akin to scrapping the space program until all educational, humanitarian, and economical problems on Earth are solved. Not only is it short sighted, but repairing a flawed labor market and developing a worker program that controls and manages the flow of immigrant labor through comprehensive immigration reform would do more for our country's financial future and homeland security than any stimulus package or regiment of border agents could ever hope to accomplish.⁵¹

49. See *id.* (outlining that those who oppose the issuance of more H-1B visas point to an unemployment rate of computer workers that has not recovered to pre-recession levels as evidence that there are American computer workers that are out of jobs and therefore, should be the ones taking up those jobs instead of immigrants). Advocates for more H-1B visas, however, can point to multiple studies that prove that highly-skilled immigrants create American jobs rather than taking them away. *Id.*

50. See Malshe, *supra* note 41, at 363–66, 382–86 (criticizing the limited amount of H-1B visas awarded each year and proposing an increase in the cap to meet labor demands); JACOB FUNK KIRKEGAARD, *THE ACCELERATED DECLINE IN AMERICA'S HIGH-SKILLED WORKFORCE: IMPLICATION FOR IMMIGRATION POLICY, POLICY ANALYSES IN INTERNATIONAL ECONOMICS* (2007), available at <http://www.piiie.com/publications/briefs/kirkegaard4136.pdf> (describing the decline in highly skilled American workers and suggesting reform of immigration policies to welcome skilled foreign workers to boost the US economy).

51. See THE WHITE HOUSE, *BUILDING A 21ST CENTURY IMMIGRATION SYSTEM* 23–26 (2011), available at http://www.whitehouse.gov/sites/default/files/rss_viewer/immigration_blueprint.pdf (acknowledging the challenges of limited employment visas and proposing programs to encourage foreign students to stay in the United States, encourage foreign entrepreneurs to start their businesses in the United States, strengthen H-1B visa programs, and establish temporary worker programs for lower skilled workers when no American workers are available); see also Furchtgott-Roth, *supra* note 6 (advocating legislation expanding the number of visas allocated to low-skilled and high-skilled workers to encourage economic growth in the United States).