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SANDRA DAY O’CONNOR COLLEGE OF LAW
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EDITOR INTRODUCTION

The 2015 Law Journal for Social Justice Symposium, “Contemporary Discrimination” focused on current concerns regarding civil rights and civil liberty. Discussions ranged from the political legislative process, resistance in enforcement of civil rights judgments, and sexual orientation employment discrimination. Panelists included politicians, scholars from diverse backgrounds, practicing attorneys and community organizers.

Drawing on broader considerations, this issue features articles analyzing an array of concerns in the criminal, civil and international tribunals. The first article, *You Have Your Whole Life in Front of You...Behind Bars*, written by Rachel Forman, begins this issue by discussing a need to ban life without parole sentences for juvenile non-homicide offenders. Inalvis M. Zubiaur, in *Death Row: Mentally Impaired Inmates and the Appeal Process*, continues the focus on sentencing by engaging concerns regarding capital punishment. Next, in *Injection and the Right of Access*, Timothy F. Brown argues for increased access to lethal injection procedures to understand its constitutionality. Shifting consideration to the civil sphere, Victor D. Lopez & Eugene T. Maccarrone raise issues about privacy, due process, public policy and the basic fairness of traffic enforcement by camera, in *Traffic Enforcement by Camera*. Beginning the focus on international concerns, *Fictitious Labeling*, by Efe Ukala, discusses “recommendations that may help curb constitutional issues resulting from deportation.” Brittany Fink, in *Increase Quota, Invite Opportunities, Improve Economy*, proposes amendments to the DREAM Act that extend the path to citizenship.” Katharine Villalobos then focuses on the sociology of immigration in *The Crucible*, using historical examples to discuss the War on Terror. *Falling Through the Cracks* by Marissa N. Goldberg changes the focus to international law and unique considerations of women in the drug trade industry. Finally, *Seeking Truth in the Balkans* by Erin K. Lovall and June E. Vutrano concludes the issue by discussing the role of international law in seeking justice following the wars in the Balkans. Together these articles analyze issues that raise important questions about fairness and civil rights in the domestic and international contexts.

Special thanks to the entire staff of the Law Journal for Social Justice, who helped create this edition.

Kristyne Schaaf-Olson
2014-2015 Editor-in-Chief
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INCREASE QUOTA, INVITE OPPORTUNITIES, IMPROVE ECONOMY: AN EXAMINATION OF THE EDUCATIONAL AND EMPLOYMENT CRISIS OF UNDOCUMENTED IMMIGRANTS AND INDIVIDUALS FROM ABROAD

By Brittany Fink*

Introduction

Maria Fernandez is not only the Valedictorian of her high school graduating class in North Carolina, but she is also the class president, the star of the women's volleyball and basketball teams, and the president of the National Honors Society. Among her impressive list of accomplishments, there is one that will fail to find a spot: future college graduate. As a three year-old, Maria's parents illegally crossed the Mexican-American border with Maria in their arms. Because of this journey, Maria is classified as an undocumented immigrant. Undocumented immigrants are granted limited rights in the United States,¹ and the right to attend college at an affordable cost is not one of them.

Ms. Fernandez lives in a state that does not allow undocumented immigrants to attend its colleges and universities at an in-state tuition rate or receive federal funds for education. Maria is not technically barred from attending college in North Carolina, but she will only be able to attend if she pays out-of-state tuition ranging anywhere from \$27,000² to \$44,000³ per year. Even if Maria can pay \$108,000 to \$176,000 for four years at a North Carolina university, she still faces another huge obstacle: work

* Brittany Fink graduated summa cum laude from West Virginia University, where she received a Bachelor of Arts in Spanish and Political Science. She received her Juris Doctor from West Virginia University College of Law in 2014. She was an Associate Editor and the Alumni and Executive Assistant for the West Virginia Law Review. Brittany Fink is an Associate at Lewis Glasser Casey & Rollins, PLLC in Charleston, West Virginia.

¹ Both undocumented and documented workers are covered by the National Labor Relations Act and undocumented children have the right to attend elementary public schools. KEVIN R. JOHNSON ET AL., UNDERSTANDING IMMIGRATION LAW 449, 458 (1st ed. 2009).

² *Cost and Financial Aid*, NORTH CAROLINA A&T STATE UNIV., <http://www.ncat.edu/admissions/undergraduate/cost-financial-aid/index.html> (last visited June 22, 2015).

³ *Tuition and Fees*, THE UNIV. OF NORTH CAROLINA AT CHAPEL HILL, <http://finance.unc.edu/saur/student-account-services/tuition-and-fees/> (last visited June 22, 2015).

authorization. Undocumented immigrants are not allowed to work in the United States.⁴ Because Maria was illegally brought to the United States as a toddler, state and federal law restrict her from furthering her education, working legally in the United States, and becoming a productive member of society.

Feng Sun was born and raised in Shanghai, China. After obtaining a student visa, Feng attended and graduated from an American university. Post-graduation, Feng failed to obtain a work visa that would allow him to remain in the United States to work. Feng returned to China shortly thereafter and secured a job with a Chinese business. Feng used everything he learned from his graduate studies in America to develop a new product that is now used world-wide. Because of the restrictive work visa limitation in the United States, China's economy benefited from Feng's American education to the detriment of the United States.

The two previous fictitious stories exemplify the obstacles and difficulties that both undocumented and hopeful immigrants face in becoming students and employees in the United States. Some state and federal laws, proposed and enacted, have recognized these problems and tried to resolve them. The Immigration Act of 1990⁵ created the H-1B visa, which authorizes non-immigrants⁶ to work temporarily in the United

⁴ As of June 15, 2012, certain qualified undocumented immigrants can obtain work authorization for two years. See *Deferred Action for Childhood Arrivals*, U.S. DEP'T OF HOMELAND SECURITY, <http://www.dhs.gov/deferred-action-childhood-arrivalsarrivals> (last updated July 2, 2013).

⁵ The Act "increased the limits on lawful immigration to the United States, revised all grounds for exclusion and deportation, authorized temporary protected status to aliens of designated countries, revised and established new nonimmigrant admission categories, revised and extended the Visa Waiver Pilot Program, and revised naturalization authority and requirements." Immigration and Nationality Act of 1990, 8 U.S.C. § 1101 (2012); See also *Definition of Terms*, U.S. DEP'T OF HOMELAND SECURITY, <http://www.dhs.gov/definition-terms#13> <http://www.dhs.gov/definition-terms#13> (last visited June 22, 2015).

⁶ It is important to recognize and understand the different titles of immigration a person can receive (i.e. nonimmigrant, immigrant, and illegal immigrant). The Department of Homeland Security defines the different types of immigration as follows:

[A nonimmigrant is an] alien who seeks temporary entry to the United States for a specific purpose. The alien must have a permanent residence abroad (for most classes of admission) and qualify for the nonimmigrant classification sought. The nonimmigrant classifications include: foreign government officials, visitors for business and for pleasure, aliens in transit through the United States, treaty traders and investors, students, international representatives, temporary workers and trainees, representatives of foreign information media, exchange visitors, fiance(e)s of U.S. citizens, intracompany transferees, NATO officials, religious workers, and some others." An immigrant is referred to as a "permanent resident alien" by the Department of Homeland Security and is defined as "An alien admitted to the United States as a

States.⁷ In 2001, Congress proposed the Development, Relief and Education for Alien Minors (“DREAM Act”) to give undocumented immigrants the right to attend American universities at an affordable cost and to obtain government assistance by means of loans and grants.⁸ More notably, the DREAM Act allows for a path to legal residency status and citizenship. On June 15, 2012, the U.S. Department of Homeland Security (“DHS”) announced that the Deferred Action for Childhood Arrivals will exercise prosecutorial discretion and grant work authorization to those undocumented immigrants who meet certain requirements.⁹ Even though

lawful permanent resident. Permanent residents are also commonly referred to as immigrants; however, the Immigration and Nationality Act (INA) broadly defines an immigrant as any alien in the United States, except one legally admitted under specific nonimmigrant categories (INA section 101(a)(15)). Lawful permanent residents are legally accorded the privilege of residing permanently in the United States. They may be issued immigrant visas by the Department of State overseas or adjusted to permanent resident status by the Department of Homeland Security in the United States.

Definition of Terms, supra note 5.

⁷ The United States Immigration Services describes the function of the H-1B visa:

U.S. businesses use the H-1B program to employ foreign workers in specialty occupations that require theoretical or technical expertise in specialized fields, such as scientists, engineers, or computer programmers. The H-1B visa has an annual numerical limit “cap” of 65,000 visas each fiscal year. The first 20,000 petitions filed on behalf of beneficiaries with a U.S. master’s degree or higher are exempt from the cap. Additionally, H-1B workers who are petitioned for or employed at an institution of higher education or its affiliated or related nonprofit entities or a nonprofit research organization, or a government research organization are not subject to this numerical cap.

H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <http://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-fiscal-year-fy-2016-cap-season> (last visited Jan. 17, 2013).

⁸ Development, Relief, and Education for Alien Minors Act of 2011, H.R. 1842, 112th Cong. § 1 (2011).

⁹ *Deferred Action for Childhood Arrivals, supra* note 4. DHS lists the requirements to be:

You came to the United States before reaching your 16th birthday. You have continuously resided in the United States since June 15, 2007, up to the present time. You were under the age of 31 as of June 15, 2012. You entered without inspection before June 15, 2012, or your lawful immigration status expired as of June 15, 2012. You are currently in school, have graduated or obtained your certificate of completion from high school, have obtained your general educational development certification, or you are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States. You have not been

each of these enacted and proposed solutions sounds great on paper, implementation has not solved the problems these immigrants face.

This Note proposes amendments to the DREAM Act, including provisions that extend the path to citizenship. Moreover, this Note also argues that the H-1B visa quota needs to be increased in order to address immigration problems while simultaneously improving our economy. More H-1B visas should be available to American businesses. Consequently, both measures will promote innovation, while improving our economy.

Part I of this Note outlines the history of the DREAM Act, the Deferred Action for Childhood Arrivals, and the H-1B visa. Part II debunks the myths of immigration in the United States, outlines the benefits our country receives from immigration, and discusses the need for an increased H-1B visa quota. Part III proposes a solution that will help lead to cooperation in Congress in order to facilitate the passing of a law that will tackle problems with undocumented immigrants and foreigners wishing to work in the United States. Finally, Part IV concludes that the country will benefit from a different solution than that which is proposed currently by the DREAM Act and how an increased H-1B quota will positively affect the economy.

I. BACKGROUND

A. Children Of Undocumented Immigrants Who Were Pursuing the American Dream

Each year, around 65,000 undocumented immigrants graduate from American high schools.¹⁰ These undocumented immigrants are typically brought here as children when their parents illegally enter into the U.S. in hopes of building a better life. Of these undocumented graduates, only a handful have the opportunity to attend a college or university at an affordable rate.¹¹ Even though undocumented immigrants are afforded the

convicted of a felony, significant misdemeanor, or three or more misdemeanors, and do not otherwise pose a threat. You were present in the United States on June 15, 2012, and at the time of making your request for consideration of deferred action with USCIS. *Id.*

¹⁰ Christine Armario, *Young Immigrants May Find College Elusive*, FOX NEWS, (Aug. 17, 2012), <http://www.foxnews.com/us/2012/08/17/young-immigrants-may-find-college-elusive/>.

¹¹ Currently, twelve states allow undocumented immigrants to receive in-state tuition at their universities. See Ann Morse & Kerry Birnbach, *In-State Tuition and Unauthorized Immigrant Students*, NCSL: The NATIONAL CONFERENCE OF STATE LEGISLATURE, (Feb. 19, 2014) <http://www.ncsl.org/research/immigration/in-state-tuition-and-unauthorized-immigrants.aspx>.

undeniable right to attend public primary and secondary schools,¹² colleges and universities are not required to extend the same educational opportunities to undocumented students.¹³

B. The DREAM Act, a Failed Attempt to Make Dreams Come True

Both Democrats and Republicans proposed the DREAM Act¹⁴ to help undocumented immigrants achieve the same academic success as other students. The DREAM Act has been proposed several times since 2001 but has yet to pass.¹⁵ However, undocumented immigrants are not without help: DHS, along with President Obama, issued the Deferred Action for Childhood Arrivals, which affords certain rights to undocumented immigrants.¹⁶ The biggest benefit for undocumented immigrants from the Deferred Action for Childhood Arrivals is decreased mental anguish and decreased fear of deportation.¹⁷

¹² See *Plyer v. Doe*, 457 U.S. 202 (1982).

¹³ See *id.*

¹⁴ Senators Dick Durbin (D-Ill.) and Orrin Hatch (R-Utah) introduced the DREAM Act in 2001. *Dream Act-Lite Plan Circulating Among Republicans: Report*, THE HUFFINGTON POST, http://www.huffingtonpost.com/2012/11/15/dream-act-lite-republicans_n_2139750.html (last updated Nov. 15, 2012, 5:45 PM); See also the current proposed version of the DREAM Act., Development, Relief, and Education for Alien Minors Act of 2011, S. 952, 112th Cong. (2011).

¹⁵ *The Dream Act*, AMERICAN IMMIGRATION CTR. (May 18, 2011), <http://www.immigrationpolicy.org/just-facts/dream-act#congress>. A brief legislative history of the DREAM Act from the American Immigration Center:

In past years, the DREAM Act has come up for a vote several times and has garnered as many as 48 co-sponsors in the Senate and 152 in the House, yet it has failed to become law. It passed the Senate Judiciary Committee twice, by a 16-3 vote in 2003-2004, and by a voice vote without dissent as an amendment to the comprehensive immigration reform (CIR) bill (S. 2611) in 2006. After a similar CIR bill failed in 2007, the DREAM Act was considered as a stand-alone bill (S. 2205), which garnered a bi-partisan majority vote of 52-44 in the Senate, but failed to reach the 60 votes needed to invoke cloture. On December 8, 2010, the DREAM Act was brought up and passed in the House by a vote of 216-198 (H.R. 5281). However, when it reached the Senate on December 18, 2010, it fell five votes short of cloture, receiving 55 yeas and 41 nays. *Id.*

¹⁶ *Deferred Action for Childhood Arrivals*, *supra* note 4. (“[DHS] will exercise prosecutorial discretion as appropriate to ensure that enforcement resources are not expended on low priority cases, such as individuals who came to the United States as children and meet other key guidelines”).

¹⁷ *Id.*

If the DREAM Act were passed, undocumented immigrants would be able to wake up with a similar sense of security as they do with the Deferred Action program. The DREAM Act would not automatically give undocumented immigrants, who have gone through the United States public school system, permanent residency status and citizenship rights, instead individual applicants would have to meet a number of criteria as outlined by the Act.¹⁸ Once an applicant meets all of the criteria, he is eligible to receive conditional permanent resident status spanning between six to eight years.¹⁹

C. H-1B Visas: Plays a Bigger Role in the American Economy Immigration than the Quota Alludes

Making a more permanent policy than that of the Deferred Action program and amending the DREAM Act are just two parts of immigration reform that are needed in order to move our country in the right direction. However, it is not the only part of immigration reform our country needs to implement. Undocumented immigrants are not the only type of individuals who can contribute positively to the American economy. Foreigners looking to temporarily work in the United States, or “non-immigrants,” also help strengthen our economy.²⁰ In order to achieve immigration reform as a whole, the H-1B quota for foreign workers needs to be drastically increased.

The H-1B visa²¹ was introduced in 1990 by the Immigration and Nationality Act.²² The H-1B visa allows American businesses to hire foreign workers in specialty occupations that require technical expertise in certain areas such as science, engineering, and computer programming.²³

¹⁸ Development, Relief, and Education for Alien Minors Act of 2011, *supra* note 27.

¹⁹ *Id.* After an undocumented immigrant has completed at least two years of college or two years of military service, he could then apply to have the conditional status removed and the permanent status would be credited toward the five-year wait for citizenship. *Id.*

²⁰ Walter Ewing, *Foreign Students Add Billions of Dollars to the U.S. Economy Each Year – And That’s Just the Beginning*, AMERICAN IMMIGRATION COUNCIL: IMMIGRATION IMPACT (Nov. 20, 2012), <http://immigrationimpact.com/2012/11/20/foreign-students-add-billions-of-dollars-to-the-u-s-economy-each-year-and-thats-just-the-beginning/>.

²¹ An H-1B beneficiary is “a specialty worker whose petition to work temporarily in the United States has been approved by the Department of Homeland Security.” *See Definition of Terms, supra* note 5.

²² U.S. GOV’ ACCOUNTABILITY OFFICE, GAO-11-26, REFORMS ARE NEEDED TO MINIMIZE THE RISKS AND COSTS OF CURRENT PROGRAM 1 (2011).

²³ *Id.*

For the past nine years, the H-1B visa cap has been set at 65,000 with an additional 20,000 for the Advanced Degree Exemption Cap (“ADE”).²⁴

Given the long waits for green cards, “H-1B visas often remain the only way an employer can hire an outstanding international student or bring a talented foreign national to work in America.”²⁵ While other work visas also allow American employers to hire foreign employees,²⁶ “[r]esearch shows H-1B visa holders are important to innovation, entrepreneurship and job creation in America.”²⁷ Given the state of the United States’ economy, our country’s immigration quotas need to invite innovation and job creation, not create problems for employers and skilled workers.²⁸

II. ANALYSIS: DEBUNKING COMMON IMMIGRATION MYTHS, THE BENEFITS OF PASSING THE DREAM ACT, AND THE NECESSITY OF INCREASING H-1B VISAS

Since 2001, the DREAM Act has failed to pass in both the House and Senate.²⁹ In a democracy, the actions of legislators reflect the wishes of their constituents. Around 75% of Americans who oppose immigration believe that immigration as a whole is bad for the economy.³⁰ “However, Americans’ perceptions about immigration are skewed from the many immigration myths that float around.” This section shows that these myths are false, outlines why undocumented immigrants should have access to

²⁴ *H-1B Fiscal Year (FY) 2016 Cap Season*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <http://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-fiscal-year-fy-2016-cap-season> (last updated May 5, 2015).

²⁵ *H-1B Visas by the Numbers: 2010 and Beyond*, NAT’ FOUND. FOR AM. POL’Y, <http://www.nfap.com/pdf/1003h1b.pdf> (last visited June 22, 2015) (“In FY 2009, 27,288 different employers hired at least one individual on a new H-1B petition, according to USCIS.”).

²⁶ The J-1 and L-1 visa are two types of other work authorization visas. See generally, *Exchange Visitors*, U.S. CITIZENSHIP AND IMMIGR. SERVICES, <http://www.uscis.gov/working-united-states/students-and-exchange-visitors/exchange-visitors> (last updated Sept. 9, 2015); see also *L-1A Intracompany Transferee Executive or Manager*, U.S. CITIZENSHIP AND IMMIGR. SERVICES, <http://www.uscis.gov/working-united-states/temporary-workers/l-1a-intracompany-transferee-executive-or-manager> (last updated June 17, 2013).

²⁷ *H-1B Visas by the Numbers: 2010 and Beyond*, *supra* note 25 at 2.

²⁸ *Id.*

²⁹ *Dream Act-Lite*, *supra* note 14.

³⁰ Arian Campo-Flores, *Why Americans Think Immigration Hurts the Economy*, NEWSWEEK (May 13, 2010, 8:00 PM), <http://www.newsweek.com/why-americans-think-immigration-hurts-economy-72909>.

higher education, and highlights the positive benefits our economy and country will see if the DREAM Act were passed and the H-1B quota was increased.

A. Myth Busters: Science Disproves Common Myths About Immigration

The public's opinion plays a role in why immigration-reform laws have failed to pass. However, many of the negative statements Americans make regarding immigration lack a factual foundation. Some of the popular myths about immigration are that immigrants take American jobs,³¹ overuse public benefits,³² burden U.S. society without a countervailing benefit,³³ and do not pay taxes.³⁴ Below are the four most prominent myths.

i. Undocumented Immigrants Steal Jobs From American Citizens

Americans have historically feared they will lose jobs to undocumented immigrants who might acquire legal status.³⁵ A poll by Rasmussen Reports found that 40% of respondents believe that undocumented immigrants take jobs from American citizens.³⁶ However, economist Diana Furchtgott-Roth believes that because “immigrants have a smaller share of high school diplomas and B.A.s, which is where native

³¹ See AVIVA CHOMSKY, “THEY TAKE OUR JOBS!” AND TWENTY OTHER MYTHS ABOUT IMMIGRATION 3 (2007).

³² Douglas S. Massey, *Five Myths About Immigration: Common Misconceptions Underlying US Border-Enforcement Policy*, 4 IMMIGR. POLICY IN FOCUS (Aug. 2005), http://web.stanford.edu/group/scspi/_media/pdf/key_issues/immigration_policy.pdf.

³³ David Cole, *The New Know-Nothingism: Five Myths about Immigration*, THE NATION 139 (Oct. 7, 1994), http://www.bethechangeconsulting.com/sites/default/files/worksheets/Food_4_thought_Five-Myths-about-Immigration.pdf.

³⁴ G.M. Filisko, *Chasing the Dream: Sorting Fact and Myth is Biggest Obstacle to Immigration Reform*, ABA JOURNAL (May 1, 2012, 9:50 AM), http://www.abajournal.com/magazine/article/chasing_the_dream_sorting_fact_and_myth_is_biggest_obstacle_to_immigration.

³⁵ *Immigration Reform and Job Growth*, IMMIGR. POLICY CTR. (Jan. 20, 2011), <http://www.immigrationpolicy.org/just-facts/immigration-reform-and-job-growth>.

³⁶ *Poll: Half say immigrants not taking jobs*, UNITED PRESS INT'L (Aug. 25, 2011, 11:28 PM), http://www.upi.com/Top_News/US/2011/08/25/Poll-Half-say-immigrants-not-taking-jobs/UPI-66431314329314/.

workers tend to be concentrated, they do not compete directly with most native-born workers.”³⁷

A report by the President’s Council of Economic Advisers (“CEA”) found that “immigrants not only help fuel the Nation’s economic growth, but also have an overall positive effect on the American economy as a whole and on the income of native-born American workers.”³⁸ Another key finding from this report was that native-born Americans actually benefit from immigrants because immigrants complement native-born Americans and help increase their income.³⁹ States that have taken illegal immigration into their own hands in order to protect jobs will actually find economic disaster. Arizona crafted legislation that not only harmed workers, but harmed its economy as well.⁴⁰ This was not surprising because, “when undocumented workers are taken out of the economy, the jobs they support through their labor, consumption, and tax payments disappear as well.”⁴¹ A survey by the CATO Institute found that “Arizona-style laws are economically destructive and inimical to growth.”⁴²

The popular belief that immigration leads to a loss of jobs for Americans is not only incorrect, but when policies are created to drive undocumented immigrants out of the state, it results in widespread unemployment. Continuous immigration encourages new businesses to find a home in the United States, which leads to job creation.⁴³ It is predicted that if the DREAM Act were to pass, around 1.4 million new

³⁷ Diana Furchtgott-Roth, *America Needs Immigration for Economic Growth*, MARKETWATCH (Feb. 8, 2013, 8:10 a.m.), <http://www.marketwatch.com/story/america-needs-immigration-for-economic-growth-2013-02-08>.

³⁸ *Immigration Myths and Facts*, AM. CIVIL LIBERTIES UNION (Jan. 2008), <https://www.aclu.org/immigration-myths-and-facts>.

³⁹ *Id.*

⁴⁰ Alabama legislation drove tens of thousands of state taxpayers, workers, and consumers out of the state. When these undocumented immigrants left Alabama, so did \$260 million in tax revenue. Walter Ewing, *Arizona’s Immigration Policies are an Economic Disaster*, AM. IMMIGRATION COUNCIL (Sep. 27, 2012), <http://immigrationimpact.com/2012/09/27/arizonas-immigration-policies-are-an-economic-disaster/>.

⁴¹ Ewing, *supra* note 40 (quoting Raul Hinojosa-Ojeda & Marshall Fitz, *A Rising Tide or a Shrinking Pie*, CTR. FOR AM. PROGRESS, Mar. 2011, http://www.immigrationpolicy.org/sites/default/files/docs/rising_tide_final.pdf).

⁴² *Id.* (quoting Alex Nowrasteh, *The Economic Case against Arizona’s Immigration Laws*, THE CATO INST. (Sep. 25, 2012), <http://www.cato.org/sites/cato.org/files/pubs/pdf/PA709.pdf>).

⁴³ Tyler Cowen, *How Immigrants Create More Jobs*. N.Y. TIMES (Oct. 30, 2010), <http://www.nytimes.com/2010/10/31/business/economy/31view.html>.

jobs would be created and at least \$10 billion would be added to the nation's revenue by 2030.⁴⁴

ii. Undocumented Immigrants Abuse Federal Public Benefits

In 2010, 67% of American voters believed that illegal immigration creates a significant restraint on the U.S. budget.⁴⁵ More specifically, 66% of American voters believed that government money and services attract illegal immigrants to the United States.⁴⁶ Contrary to popular belief, undocumented immigrants are not eligible for federal public benefits.⁴⁷ Even legal immigrants have difficulty reaping the benefits of federal programs as they cannot receive such benefits until they have lived in the United States for over five years.⁴⁸

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 eliminates undocumented immigrants' eligibility for Social Security benefits even if they have paid taxes.⁴⁹ Further, immigrants actually are less likely than an American citizen to use federally offered public services.⁵⁰ Finally, the DREAM Act does not create the opportunity for undocumented immigrants to immediately get in line for federal programs. Instead, once given the conditional permanent residency status, an individual will begin paying taxes that are used for federal programs and will not be able to reap the benefits until he or she becomes an American citizen.⁵¹

⁴⁴ Marshall Fitz, *Time to Legalize Our 11 Million Undocumented Immigrants: Putting Undocumented Immigrants on the Road to Citizenship Will Help Congress Overcome a Host of Other Policy Roadblocks*, CTR. FOR AMERICAN PROGRESS (Nov. 14, 2012), <https://www.americanprogress.org/issues/immigration/report/2012/11/14/44885/time-to-legalize-our-11-million-undocumented-immigrants/>.

⁴⁵ *67% Say Illegal Immigrants Are Major Strain on U.S. Budget*, RASMUSSEN REPORTS (Mar. 3, 2010), http://www.rasmussenreports.com/public_content/politics/current_events/immigration/67_say_illegal_immigrants_are_major_strain_on_u_s_budget.

⁴⁶ *Id.*

⁴⁷ Filisko, *supra* note 34.

⁴⁸ *Immigration Reform and Job Growth*, *supra* note 35. Undocumented immigrants cannot receive benefits from any of the following federal programs: Temporary Assistance for Needy Families, Medicaid, Medicare, Social Security, Supplemental Social Security, and food stamps. *Id.* See also Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), 8 U.S.C.A. § 1611 (West).

⁴⁹ *Id.* Immigrants cannot even become eligible for Social Security benefits until they become permanent residents.

⁵⁰ Douglas S. Massey, *supra* note 32.

⁵¹ *Id.*

⁵¹ JOHNSON ET AL., *supra* note 1. "Undocumented immigrants are barred from receiving any of the chief federal public benefit programs: TANF, Food Stamps,

iii. Undocumented Immigrants Do Not Contribute to Tax Revenue

Another popular myth is that undocumented immigrants use up social services and do not contribute by paying taxes. In 2010, a Gallup poll found that only 32% of Americans believe that illegal aliens pay their fair share in taxes, while 62% of Americans believe that illegal aliens are a cost burden on U.S. taxpayers.⁵² However, undocumented immigrants pay sales taxes every day when they purchase gas from a gas station, when they buy their groceries, when they stop for a quick bite at a fast food restaurant, and when they pay their rent. The National Research Council of the National Academy of Sciences found that “on average, immigrants generate public revenue that exceeds their public costs over time.”⁵³

A CBS News/New York Times Poll conducted in 2010 found that 74% of Americans believe that undocumented immigrants weaken the U.S. economy because they don’t all pay taxes but still use public services.⁵⁴ Even though a majority of Americans believe that undocumented immigrants do not contribute to tax revenues, they actually pay more in taxes than they will receive in benefits throughout their lifetime.⁵⁵ The National Council of La Raza conducted a study that found undocumented immigrants will pay, on average, approximately \$80,000 more in taxes than they use in government services.⁵⁶

One of the biggest government programs that undocumented immigrants contribute to, but receive nothing from, is Social Security. Undocumented immigrants cannot receive valid Social Security numbers; however, they can apply for an Individual Taxpayer Identification Number (“ITIN”) that allows them to file tax returns.⁵⁷ Even though the Internal

Medicaid, SSI, unemployment compensation, school loans and grants, and subsidized housing.” *Id.*

⁵² *Public Opinion Polls on Immigration*, FED’N. FOR AMERICAN IMMIGRATION REFORM, <http://www.fairus.org/facts/public-opinion> (last visited June 22, 2015).

⁵³ *Immigration Myths and Facts*, *supra* note 38.

⁵⁴ *Immigration*, POLLINGREPORT.COM, <http://www.pollingreport.com/immigration.htm> (last visited June 22, 2015).

⁵⁵ Alberto Ponce de Len, *Undocumented Immigrants Pay More in Taxes Than They Receive in Benefits*, TRUTHOUT (May 7, 2010), <http://archive.truthout.org/undocumented-immigrants-pay-more-taxes-than-they-receive-benefits59264>.

⁵⁶ *Id.*

⁵⁷ *General ITIN Information*, IRS, <http://www.irs.gov/Individuals/General-ITIN-Information> (last updated May 27, 2015) (“An Individual Taxpayer Identification Number is a tax processing number issued by the Internal Revenue Service. IRS issues ITINs to individuals who are required to have a U.S. taxpayer identification number but who do not have, and are not eligible to obtain a Social Security Number from the Social Security Administration.”).

Revenue Service (IRS) does not differentiate between legal or illegal status, IRS Commissioner Mark Everson told Congress in 2006 that “many illegal aliens, utilizing ITINs, have been reporting tax liability to the tune of almost \$50 billion from 1996 to 2003.”⁵⁸ Further, that same time period reported around \$41 billion from Social Security and Medicare taxes, which makes the total amount of federal taxes from ITINs roughly \$90 billion during an eight year span.⁵⁹ The Institute for Taxation and Economic Policy compiled estimates and reported that undocumented immigrants paid \$11.2 billion in taxes in 2010.⁶⁰

The Social Security Administration (“SSA”) pointed out in 2008, that the Social Security system benefits from undocumented immigrants: “Overall, any type of immigration is a net positive to Social Security. The more people working and paying into the system, the better.”⁶¹ Undocumented immigrants do not drain federal programs,⁶² but instead greatly contribute to the tax system annually.⁶³

Although many Americans think undocumented immigrants take from the economy, the truth is they contribute to the economy via taxes and the consumption of goods.⁶⁴ With the passage of the DREAM Act, undocumented immigrants will be able to increase their contributions to tax revenue.

iv. Immigration is Bad for the United States’ Economy

Even though there is a consensus among most economists that immigration provides a small net boost to the economy, about 74% of respondents in a 2010 New York Times/CBS News poll believed that illegal immigrants weakened the economy.⁶⁵ If the DREAM Act were

⁵⁸ Jana Kasperkevic, *Illegal Immigrant: We Do Pay Taxes, And The Government Knows Exactly Who We Are*, BUS. INSIDER (Mar. 16, 2012, 3:55 PM), http://articles.businessinsider.com/2012-03-16/news/31199931_1_residency-and-taxpaying-illegal-immigrants-taxation-and-economic-policy.

⁵⁹ *Id.*

⁶⁰ *Id.* (These estimates included \$8.4 billion in sales taxes, \$1.6 billion in property taxes and \$1.2 billion in state personal income taxes.)

⁶¹ *Id.*

⁶² The author of this Note would like to acknowledge that undocumented immigrants play a role in the costs of health care; however, health care costs are not discussed in detail because it is outside the scope of this Note.

⁶³ *See id.*

⁶⁴ *Is the Legalization of Immigrants in the Country Illegally a Good Solution to Illegal Immigration in America?*, PROCON.ORG, <http://immigration.procon.org/view.answers.php?questionID=001362> (last updated Sept. 7, 2010).

⁶⁵ Campo-Flores, *supra* note 30. “Immigrants provide cheap labor, lower the prices of everything from produce to new homes, and leave consumers with a little more money

passed, an additional \$329 billion would be added to the American economy by 2030.⁶⁶ A study conducted by the Center for American Progress found many positive consequences of passing the Dream Act.⁶⁷ The DREAM Act will help rebuild the economy by educating the undocumented immigration population, allowing them to obtain higher paying jobs and increase their consumption of goods and contribution of tax revenue to the federal government.⁶⁸

In June 2012, the White House released a list of ten ways immigrants help build and strengthen our economy.⁶⁹ They are: immigrants start businesses;⁷⁰ immigrant-owned businesses create jobs for American workers;⁷¹ immigrants are also more likely to create their own jobs;⁷² immigrants develop cutting-edge technologies and companies;⁷³ immigration boosts earnings for American workers;⁷⁴ immigrants are our

in their pockets. They also replenish—and help fund benefits for—an aging American labor force that will retire in huge numbers over the next few decades.” *Id.*

⁶⁶ Juan Carlos Guzman & Raul C. Jara, *The Economic Benefits of Passing the Dream Act*, CTR. FOR AM. PROGRESS (Oct. 2012), <https://www.americanprogress.org/wp-content/uploads/2012/09/DREAMEcon-7.pdf>.

⁶⁷ “[T]he act provides a boost to the nation, by granting legal immigration status to 2.1 million young people and incentivizing higher education. The \$148 billion in higher earnings that result from DREAMers being able to work legally and achieve greater education leads to increased spending on goods and services such as houses, cars, and computers. [This] spending ripples through the economy, supporting another \$181 billion in induced economic impact, the creation of 1.4 million new jobs, and more than \$10 billion in increased revenue.” *Id.*

⁶⁸ *Id.*

⁶⁹ Jason Furman and Danielle Gray, *Ten Ways Immigrants Help Build and Strengthen Our Economy*, THE WHITE HOUSE BLOG (July 12, 2012, 10:09 AM), <http://www.whitehouse.gov/blog/2012/07/12/ten-ways-immigrants-help-build-and-strengthen-our-economy>.

⁷⁰ “According to the Small Business Administration, immigrants are 30 percent more likely to start a business in the United States than non-immigrants, and 18 percent of all small business owners in the United States are immigrants.” *Id.*

⁷¹ “According to the Fiscal Policy Institute, small businesses owned by immigrants employed an estimated 4.7 million people in 2007, and according to the latest estimates, these small businesses generated more than \$776 billion annually.” *Id.*

⁷² “According the U.S. Department of Labor, 7.5 percent of the foreign born are self-employed compared to 6.6 percent among the native-born.” *Id.*

⁷³ “According to the National Venture Capital Association, immigrants have started 25 percent of public U.S. companies that were backed by venture capital investors. This list includes Google, eBay, Yahoo!, Sun Microsystems, and Intel.” *Id.*

⁷⁴ “Increased immigration to the United States has increased the earnings of Americans with more than a high school degree. Between 1990 and 2004, increased immigration was correlated with increasing earnings of Americans by 0.7 percent and is expected to contribute to an increase of 1.8 percent over the long-term, according to a study by the University of California at Davis.” *Id.*

engineers, scientists, and innovators;⁷⁵ immigrants boost demand for local consumer goods;⁷⁶ immigration reform legislation like the DREAM Act reduces the deficit;⁷⁷ comprehensive immigration reform would create jobs;⁷⁸ and comprehensive immigration reform would increase America's GDP.⁷⁹

Even though polls indicate a portion of Americans believe immigration is bad for the economy, the statistics don't lie. Instead of harming the economy, passing a newly revised DREAM Act would bring about millions of jobs, billions in increased revenue, hundreds of billions in induced economic impact, and be the financial boost our economy needs.

B. Immigration Improves the Economy and Invites Innovation

A poll taken in September 2014 indicated more than 50% of Americans support policies that would create a path toward citizenship for undocumented immigrants.⁸⁰ These poll results are good, according to economist Diana Furchtgott-Roth, who said, "America needs immigrants more than immigrants need America," and "[w]ith declining GDP and high unemployment, we need immigrants to grow our economy, right here, right now."⁸¹ Immigration also leads to innovation within the United

⁷⁵ "According to the Census Bureau, despite making up only 16 percent of the resident population holding a bachelor's degree or higher, immigrants represent 33 percent of engineers, 27 percent of mathematicians, statisticians, and computer scientist[s], and 24 percent of physical scientists. Additionally, according to the Partnership for a New American Economy, in 2011, foreign-born inventors were credited with contributing to more than 75 percent of patents issued to the top 10 patent-producing universities." *Id.*

⁷⁶ "The Immigration Policy Center estimates that the purchasing power of Latinos and Asians, many of whom are immigrants, alone will reach \$1.5 trillion and \$775 billion, respectively, by 2015." *Id.*

⁷⁷ "According to the nonpartisan Congressional Budget Office, under the 2010 House-passed version of the DREAM Act, the federal deficit would be reduced by \$2.2 billion over ten years because of increased tax revenues." *Id.*

⁷⁸ "Comprehensive immigration reform could support and create up to 900,000 new jobs within three years of reform from the increase in consumer spending, according to the Center for American Progress." *Id.*

⁷⁹ "The nonpartisan Congressional Budget Office found that even under low investment assumptions, comprehensive immigration reform would increase GDP by between 0.8 percent and 1.3 percent from 2012 to 2016." *Id.*

⁸⁰ Miller, S.A., *Support Drops for 'Path to Citizenship' for Illegal Immigrants*, WASHINGTON TIMES (Sep. 10, 2014), <http://www.washingtontimes.com/news/2014/sep/10/support-drops-path-citizenship-illegal-immigrants/>.

⁸¹ Roth, *supra* note 38.

States. Furchtogg-Roth found that start-up companies lead to economic growth and immigrants start new American companies at greater rates than donative-born citizens.⁸² Without immigrants, our country would not have the luxury of Google, Coors' beer, Heinz ketchup, or shopping at the click of a button on eBay.⁸³ Immigration policies encourage innovation and economic growth.⁸⁴

i. Increases in H-1B Visa Quota Will Lead to Innovation

As a country, we restrict the ability of undocumented immigrants to further their education, but we also restrict the ability of those we educate from abroad to get jobs after graduating from a United States college or university. Due to limited quotas for foreign graduates, the United States will face a projected shortfall of 223,800 workers in science, technology, engineering, and mathematics by 2018.⁸⁵ The ADE cap limits the number of visas available for foreign students who graduate from American universities. The ADE cap, which is currently set at 20,000 visas per year, prevents American companies from hiring talent that could benefit their companies individually and the U.S. economy generally.⁸⁶ In the 2013/2014 academic year, there were 886,052 international students enrolled at colleges and universities across the United States.⁸⁷ Upon graduation, only a small number of international students will have the opportunity to receive an H-1B visa under the ADE cap.

It is evident that H-1B visas are critical to supplying the United States with skilled foreign nationals who contribute tremendously to the specialized fields in which they work. Foreigners who come to the United States on an H-1B visa also contribute positively to labor and the

⁸² *Id.* "Examples include Sergey Brin's Google, Andrew Grove's Intel; Jerry Yang's Yahoo; Pierre Omidyar's eBay; and Elon Musk's PayPal and SpaceX, to name a few. Alexander Graham Bell, Levi Strauss, Adolph Coors, and Henry Heinz were all immigrants who founded profitable new American businesses." *Id.*

⁸³ *Id.*

⁸⁴ *See id.*

⁸⁵ Shelby Pasell, *U.S. Losing High-Skilled Workers to Australia, Canada, and China, Report Says*, IMMIGRATION IMPACT (Jun. 4, 2012), <http://immigrationimpact.com/2012/06/04/america-losing-high-skilled-workers-to-australia-canada-and-china-report-says/>.

⁸⁶ Ronald Shapiro, *More H-1B Visas Would Benefit U.S. Economy*, JD SUPRA BUSINESS ADVISOR (Sept. 28, 2012), <http://www.jdsupra.com/legalnews/more-h-1b-visas-would-benefit-us-econo-32844/>.

⁸⁷ *Open Doors Data International Students*, INSTITUTE OF INT'L EDUCATION, <http://www.iie.org/en/Research-and-Publications/Open-Doors/Data/International-Students> (last visited June 22, 2015).

economy.⁸⁸ Undocumented immigrants and individuals wishing to obtain H-1B visas face extraordinary challenges in furthering their education and obtaining employment in the United States. When highly qualified Chinese and non-American Indian workers were asked why they were leaving the United States instead of working here, many indicated there were H-1B visa related issues that prompted them to leave.⁸⁹

Charles Kenny, an economist at the Center for Global Development and the New America Foundation, recommended the government increase immigration quotas as a means to improve the economy.⁹⁰ Speaking specifically to H-1B visas, Kenny stated his beliefs that the low quota adversely affects the high-tech industry and makes it extremely hard for international students to get jobs post-college graduation.⁹¹ Because of the difficulty of obtaining an H-1B visa, foreign students who graduate from American universities with engineering and science degrees are returning home instead of applying their talents in the United States.⁹² After several years of American education, foreign students return to their home countries and use what they have learned to create new companies and products in their country, causing the United States to fall behind in the innovation realm. However, when we retain foreign graduates, we are able to benefit from their inventive ideas and business creations.

⁸⁸ Stuart Anderson, *No Hiring New H-1B Visa Holders for the Next 15 Months*, FORBES (June 13, 2012, 9:45 PM), <http://www.forbes.com/sites/stuartanderson/2012/06/13/no-hiring-new-h-1b-visa-holders-for-the-next-15-months/>. In a study for the American Enterprise Institute and the Partnership for a New American Economy, economist Madeline Zavodny found a connection between companies hiring H-1Bs and overall employment: “The data show that states with greater numbers of temporary workers in the H-1B Program for skilled workers. . . had higher employment among US natives. Specifically: Adding 100 H-1B workers resulted in an additional 183 jobs among U.S. natives.” *Id.*

⁸⁹ *H-1 B Visas by the Numbers: 2010 and Beyond*, *supra* note 25.

⁹⁰ *Economist Calls for Complete Reform of US Immigration System*, WORKPERMIT.COM (Nov. 1, 2012), <http://www.workpermit.com/news/2012-11-01/economist-calls-for-complete-reform-of-us-immigration-system>. “[Kenny] says that the US needs more unskilled migrants to work in agriculture and other sectors. It also needs more skilled immigrants to work in high tech industries. It should also encourage foreign investors to immigrate to the US and encourage students who graduate from U.S. universities to stay in the country.” *Id.*

⁹¹ *Id.*

⁹² Moira Herbst, *Why the U.S. Is Losing Foreign Graduates*, BLOOMBERG BUSINESS (Mar. 19, 2009), http://www.businessweek.com/technology/content/mar2009/tc20090318_162454.htm. (“70% of engineers with PhD’s who graduate from U.S. universities are foreign-born and return to their homes after graduation because there are greater job opportunities for them.”); Eric Savitz, *Danger: America Is Losing Its Edge In Innovation*, FORBES (Jan. 20, 2011, 7:52 PM), <http://www.forbes.com/sites/ciocentral/2011/01/20/danger-america-is-losing-its-edge-in-innovation/>.

In order to compete with other countries for the foreign individuals our universities educate, we need to create friendlier visa policies and more numerous immigrant job opportunities. A study by the Brookings Metropolitan Policy Program found employers want more H-1B visas.⁹³ Neil Ruiz, one of the authors of the report, said, “Congress must increase its responsiveness to fluctuations in H-1B visa demand,” because the demand for H-1B visas tremendously exceeds the quota.⁹⁴ As indicated from the 2010-2011 fiscal year, when 300,000 H-1B visas requests were made,⁹⁵ the quota for H-1B visas, both under the Regular and ADE Cap, needs to be increased immensely.

C. “Solution” to the Immigration Problems-What Legislative Steps Should Be Taken To Make The “DREAM” a Reality and Increase the H1-B Quota System

This Note argues that the proposed DREAM Act should implement changes so undocumented immigrations do not have to “hide behind the scenes” anymore. While sending undocumented immigrants home is not the answer, neither is blanket amnesty. Because the Deferred Action for Childhood Arrivals failed to make great strides for immigration law, the DREAM Act needs to be revised.

i. The Deferred Action for Childhood Arrivals is a Step in the Right Direction, But Misses the Mark

After years of waiting for a potential change in immigration policy, President Obama sidestepped Congressional action and offered a “deferred action” program for undocumented youths. On June 15, 2012, Obama outlined the Deferred Action for Childhood Arrivals that will allow qualified undocumented immigrants⁹⁶ to receive work authorization for two years without the fear of deportation. The deferred action program falls short of offering the benefits that the DREAM Act does, but is a step

⁹³ Neil G. Ruiz, Jill H. Wilson and Shyamali Choudhury, *The Search for Skills: Demand for H-1B Immigrant Workers in U.S. Metropolitan Areas*, BROOKINGS (July 18, 2012), <http://www.brookings.edu/research/reports/2012/07/18-h1b-visas-labor-immigration#overview>.

⁹⁴ Tovin Lapan, *Report Argues For Increased Visas For High-Skilled Labor: Demand Outpaces Supply, But Critics Question Impact on U.S. Workforce*, LAS VEGAS SUN (July 19, 2012, 2:00 a.m.), <http://lasvegassun.com/news/2012/jul/19/report-argues-increased-visas-high-skilled-labor/>.

⁹⁵ *Id.*

⁹⁶ For the requirements of the Deferred Action Program, *See Deferred Action for Childhood Arrivals*, *supra* note 9.

in the right direction. While the deferred action program is a great start, its temporary measures fails to greatly improve the immigration situation as it stands.

First, it is significant to note that there is no guarantee as to how long the deferred action program will remain in place. Even though it can be renewed, it can also be terminated at any time. Those individuals who sign up could be exposing themselves to future deportation once the government has collected their information through the program. For those who are denied, the risk is even greater because the government may try to immediately deport those unprotected individuals. Second, the deferred action program fails to offer a path to any type of legal status. An individual will not be able to gain permanent residency which would allow him to become a naturalized American citizen in the future. Third, there is no guarantee that those who do qualify for the program will actually be granted employment authorization. Finally, the program does not offer educational and other benefits that the DREAM Act does. Some states like Arizona do not allow qualified individuals to apply for a driver's license and others continue to deny in-state tuition to undocumented immigrants.⁹⁷

The deferred action program guarantees "rights" and "protection" for those individuals who have desperately waited for something like this to come along. However, by signing up for the program, they take the risk of increasing their chances of future deportation. Without a more comprehensive immigration reform policy, undocumented immigrants, who could greatly benefit our country as workers, may continue to hide behind the scenes and stray from contributing to our economy.

ii. A Revised DREAM Act Will Lead to Positive Changes in Immigration Reform

Many undocumented workers "hide behind the scenes" due to their immigration status. Most will avoid coming out into the light and taking steps towards legality because they currently do not have a path to follow to do so. Undocumented immigrants face difficulty obtaining a visa, permanent residency status, work authorization, but the hardest goal for an undocumented immigrant to achieve is American citizenship.⁹⁸ The ability

⁹⁷ David Adams, *For Young Immigrants Who Get Deferrals, The Battle Is Far From Over*, HUFFPOST MIAMI, http://www.huffingtonpost.com/2012/08/17/battle-far-from-over-deferred-action-immigration_n_1799724.html (last updated Oct. 17, 2012).

⁹⁸ Erika Niedowski, *Undocumented Students Face Obstacles Even After College*, HUFFPOST LATINO VOICES (Oct.3, 2011), http://www.huffingtonpost.com/2011/10/03/undocumented-students-face-obstacles-even-after-college_n_991832.html (last updated Dec. 3, 2011) ("Many have no immediate pathway to legal status and, under current federal immigration law, employers cannot legally hire them.").

to obtain American citizenship is a goal that many Americans fear undocumented immigrants will obtain too easily if the DREAM Act is passed.⁹⁹ In order to pacify this fear, the DREAM Act needs to be changed in order to make the path to citizenship a more in-depth process. This section outlines the problem of gaining citizenship for undocumented immigrants and proposes a solution that would not grant “overnight amnesty” to undocumented immigrants.

As written, the DREAM Act has failed to pass for over a decade. While it has nearly been passed several times, the divergent views on how the country should handle immigration reform has led to its ultimate failure. Even though the bill was first proposed by a Democrat and Republican with wide support from both the House and the Senate, it now finds trouble gaining majority support with the Senate.¹⁰⁰

Because the provisions of the DREAM Act have not changed since 2011, it is likely the bill will not pass again as Republican support continues to decrease.¹⁰¹ The DREAM Act needs to be amended in order to appease the Republicans. A new and improved DREAM Act needs to incorporate the spirit of permanency of the DREAM Act and the intended goals of the deferred action program.

There is not a current work visa that is suited for undocumented immigrants. If the undocumented immigrants were required to fill out any of the visas available now, it would be like trying to fit a square peg in a round hole. These undocumented immigrants are not living abroad trying to legally enter the country through an H-1B visa, as many of them do not have specialized skills. These undocumented immigrants are not trying to gain citizenship through a family visa as their parents themselves are illegal. These undocumented immigrants do not fit into any visa category in the United States. Instead, these undocumented immigrants were brought to the United States without a choice as children. They cannot

⁹⁹ Sen. Jeff Sessions, *Sen. Session: 10 Reasons to Oppose Dream Act*, NUMBERSUSA, <https://www.numbersusa.com/content/news/december-17-2010/sen-sessions-10-reasons-oppose-dream-act.html> (last updated Dec. 17, 2010).

¹⁰⁰ Last year, Reid tried to bring it to the floor twice: the first time, pre-midterm election 2010, its fate perished with a defense authorization bill; and the second, during the lame-duck period, it fell five votes short of passing a needed filibuster-proof hurdle. The final Senate vote, 55-41, closely reflected the country’s attitude toward the legislation at the time, as captured in a Gallup poll, which found 54 percent of American citizens wanted the DREAM Act, while 42 percent did not. Karoun Demirjian, *Harry Reid Reintroduces the DREAM Act: Action From Democrats Follows Obama’s Call for Immigration Reform*, LAS VEGAS SUN (May 11, 2011, 11:28 a.m.), <http://www.lasvegassun.com/news/2011/may/11/harry-reid-reintroduces-dream-act/>.

¹⁰¹ *Id.* (Research has found that “[m]ost Republicans who have supported the measure in years past—such as Sens. John Cornyn of Texas, Jon Kyl of Arizona, John McCain of Arizona and Lindsey Graham of South Carolina—also withheld their votes.”).

return to their native country, as it no longer symbolizes “home” to them. The idea of sending these undocumented immigrants back to their country of origin is a thought that should never be entertained by legislators. Not only would it be inhumane to send all of the undocumented immigrants to their country of origin, but it would be extremely costly to do so.

Undocumented immigrants need the opportunity to attend college, join the military, and be authorized to work in order for them to be able to positively contribute to the country’s economy. A new solution should contain the requirements for those who qualify under the DREAM Act currently should remain the same. The ability to receive higher educational funding should also remain part of the DREAM Act. However, the conditional permanent resident requirement should not be removed after six years and instead a work visa requirement should be implemented before receiving permanent resident status. With this work visa, an undocumented immigrant would have to meet certain working requirements for five years before the conditional status can be removed. Many Americans are fearful that any type of reform that leads to citizenship is unfair, and it will open the floodgates to additional illegal immigration. Putting aside the merits of the fairness argument, the fears of an America flooded by immigrant citizens are unfounded. Even after President Reagan’s amnesty program went into effect in 1987, “only two-fifths of those who became legal permanent residents through that program have gone on to become citizens” to this day.¹⁰²

Once the conditional status is removed and the undocumented immigrant has acquired permanent resident status, then he should follow the normal route to naturalization. By extending the time that it takes an undocumented immigrant to become a naturalized citizen, it requires an undocumented immigrant to put more into the society that he will one day take from. This proposed solution keeps the permanency that the DREAM Act already encompasses, but takes away the amnesty feel of prior DREAM Act proposals. While this may seem like a lengthy process, hopeful legal immigrants outside of the United States may have to wait as long as ten to twenty years to finally get the chance to enter the country legally.¹⁰³ This route will allow those who were brought here without a

¹⁰² Peter Skerry, *A Third Way on Immigration*, LOS ANGELES TIMES (Dec. 16, 2012), <http://www.brookings.edu/research/opinions/2012/12/16-immigration-skerry>.

¹⁰³ The current wait for a family visa ranges from three to twenty-three years based on the applicant’s home country and preference rank. The current wait for an employment-based visa is up to nine years also based on the applicant’s home country and preference rank. Stokely Baksh, *How Long Do Immigrant Families “Wait in Line”?* *Sometimes Decades*, COLORLINES (Jul. 25, 2011, 12:28 PM), <http://colorlines.com/archives/2011/07/visa.html>.

choice to now have the ability to determine how their future should proceed.

iii. Increase H-1B Visas

Our current quota for H-1B visas fails to allow intelligent individuals to bring innovation and talent to our country. Some of those individuals that we turn away and some of the non-immigrant students who cannot obtain jobs post-graduation from a university often “go on to become the best entrepreneurs and job creators of other countries.”¹⁰⁴ In order to combat the problems we face in regard to immigration law, the government must increase the ADE cap under H-1B visas to allow more students to have post-graduation job opportunities and the chance to use the knowledge our country has given them. The regular cap under H-1B visas also needs to be increased to allow employers to hire foreign individuals who will help our country grow economically and educationally.

CONCLUSION

It comes as no surprise that one bill cannot solve the immigration problems our country faces; however this Note outlines a new solution that would take a step in the right direction with immigration reform. If an improved DREAM Act were implemented now, then future undocumented immigrants will be restricted from access to citizenship through such a solution. If the H-1B visa quota is increased now, our country will see many positive benefits in the future. Accomplishing these goals will not come easy as there is a general consensus among Americans that immigration has many negative consequences for our country, however, economists and data show otherwise. Passing the DREAM Act will greatly improve our economy in the future and increasing the H-1B visa will bring innovation and skilled workers to the United States.

Even though the Deferred Action for Childhood Arrivals has given some undocumented immigrants the opportunity to work in the United States without the fear of deportation, the program does not create a path to college or citizenship for undocumented immigrants. Currently, “DREAMers” have little opportunity to attend college and their educational opportunities end after high school graduation. Some of the best and brightest in American high schools are restricted from becoming

¹⁰⁴ Shapiro, *supra* note 86. Shapiro found that “[t]housands of the most promising students at our universities are bound for foreign destinations, and they will use their skills and creativity to expand the economy of *other* countries.” (Emphasis added). *Id.*

the best and brightest following graduation. By passing the DREAM Act, many university and college doors will open for undocumented immigrants to continue their education. Finally, an amended DREAM Act will create a longer, but much needed, path to citizenship for undocumented immigrants.

Since the economic recession in 2007,¹⁰⁵ the United States has struggled with unemployment and job loss, and has had difficulty promoting job creation. Employment-based visas have proven crucial to the economy, as foreign employees bring innovation and job creation. Demand for foreign employees by means of H-1B visas greatly exceeds the quota that has been set since 2003.¹⁰⁶ The current H-1B visa quota restricts the ability for American businesses to hire these individuals, thereby restricting our ability as a country to be more competitive with other countries. The United States needs to increase its H-1B quota to accommodate the growing need for foreign employees that will lead to job creation and economic growth domestically. As a whole, our economy can benefit from these changes in immigration policies.

The longer our immigration policies keep the status quo, the bigger the problems and the more challenging the solutions our country will face in the future. Each year we go without immigration reform, hundreds of thousands of undocumented immigrants will continue to enter the United States undetected. Until the government works as a collective whole, immigration reform will continue to be a stagnant idea. As a part of immigration reform, the government should increase visa quotas and invite opportunities in order to improve our economy.

¹⁰⁵ Chris Isidore, *It's Official: Recession Since Dec '07*, CNN MONEY (Dec. 1, 2008, 5:40 PM), <http://money.cnn.com/2008/12/01/news/economy/recession/index.htm>.

¹⁰⁶ *H-1B Fiscal Year (FY) 2013 Cap Season*, <http://www.uscis.gov/news/uscis-reaches-fiscal-year-2013-h-1b-cap>.

