Increase Quota, Invite Opportunities, Improve Economy: An Examination of the Educational and Employment Crisis of Undocumented Immigrants and Individuals from Abroad

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I. 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 the impressive list of accomplishments, there is one that will fail to find a spot: future college graduate. As a three year-old, María’s parents illegally crossed the Mexican-American border with María in their arms. Because of this journey, María is classified as an undocumented immigrant. Undocumented immigrants are granted limited rights in the United States, but 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 with an in-state tuition rate or receive federal funds for education. María is not technically barred from attending college in North Carolina, however, she will only be able to attend if she can afford to pay out-of-state tuition ranging anywhere from $27,000 to $44,000 per year. Even if María can pay $108,000 to $176,000 for four years at a North Carolina university, she still faces another huge obstacle: work authorization. Undocumented immigrants are not allowed to work in the United States. Because María, a well-rounded and successful student-athlete, was illegally brought to the United States as a toddler, state and federal law restrict

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).
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. Feng obtained a student visa and attended and graduated from a United States’ university. Post-graduation, Feng failed to obtain a work visa that would allow him to remain in the United States and work. Even though Feng had the opportunity to apply to work in the United States, there are a limited number of visas that are granted to foreign graduates. Feng returned to China shortly after graduating and obtained 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 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 to becoming students and employees in the United States. Some state and federal law, proposed and enacted, has recognized these problems and tried to solve them. The Immigration Act of 1990[^5] created the H-1B visa which authorizes non-

immigrants to work temporarily in the United States. The Development, Relief and Education for Alien Minors ("DREAM Act") was proposed in 2001 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. More notably, the DREAM Act allows for a path to legal residency status and citizenship. On June 15, 2012, the Department of Homeland Security announced that the Deferred Action for Childhood Arrivals will exercise prosecutorial discretion and grant work authorization to those undocumented

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 to be:

A nonimmigrant is “[a]n 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, fianc(é)es 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 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 H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9a89243c6afa7543f6e1a/?vgnextoid=73566811264a3210VgnVCM100000b92ca60aRCRD&vgnextchannel=73566811264a3210VgnVCM100000b92ca60aRCRD (last visited Jan. 17, 2013). 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.

Id.

immigrants who meet certain requirements. Even though each of these enacted and proposed solutions sounds great on paper, implementation has not solved the problems both sets of immigrants face.

This Note argues the DREAM Act needs to be amended and the H-1B visa quota needs to be increased in order to address immigration problems while simultaneously improving our economy. The DREAM Act needs to add provisions that lengthen the path to citizenship in order to get both House and Senate approval. More H-1B visas should be available to American businesses. Both measures will bring innovation and improve our economy.

Part I of this Note outlines the history of the DREAM Act, the Deferred Action for Childhood Arrivals, the naturalization process, current political views on immigration reform, 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 with how 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.

II. BACKGROUND

As a country founded by immigrants, immigration has had a continuous impact on the creation and development of our country. The vast majority of Americans are the descendants of people who immigrated to the United States since the 1500s. During the colonial era (1600-1775), huge waves of immigration hit the shores of the United States. Another wave of immigration hit from 1815

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9 Deferred Action for Childhood Arrivals, supra note 4. The Department of Homeland Security 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 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.

until 1865, a large portion of which was drawn in by the California Gold Rush and the building of railroads in the mid-1800s.\footnote{California Gold Rush (1848–1858), \textsc{Harvard Univ. \ Library}, http://ocp.hul.harvard.edu/immigration/goldrush.html (last visited Dec. 28, 2013); \textit{Immigration, Railroads, and the West}, \textsc{Harvard Univ. \ Library}, http://ocp.hul.harvard.edu/immigration/railroads.html (last visited Feb. 23, 2013).} Up until this time, immigration was not only accepted, but welcomed. However, in 1882, for the first time in history, the federal government crafted legislation to prohibit immigration.\footnote{United States Immigration Before 1965, supra note 10.} The Chinese Exclusion Act not only stopped Chinese immigration for ten years, but also prohibited Chinese from becoming American citizens.\footnote{Id.} After 1882, the government did not hesitate to create new policies restricting immigration. The first immigration quota was created in 1921 and the Immigration Act of 1924 created a more detailed quota system that essentially prohibited Asian immigrants.\footnote{Id.}

As exemplified by the Chinese Exclusion Act, immigration policies are shaped by the atmosphere at the time they are implemented. Immigration dropped during the global depression of the 1930s and World War II.\footnote{Walter A. Ewing, \textit{OPPORTUNITY AND EXCLUSION: A Brief History of U.S. Immigration Policy}, \textsc{American Immigration Council} (Jan. 2012), http://www.immigrationpolicy.org/sites/default/files/docs/Opportunity_Exclusion_011312.pdf.} In order to accommodate refugees from Europe and the Soviet Union, Congress passed special legislation to allow these types of immigrants to enter the United States.\footnote{Id.} Congress passed the Immigration and Nationality Act in 1952\footnote{See Immigration and Nationality Act (INA) (McCarran Act) (McCarran-Walter Act), 8 USCA § 1101 (2012).} and amendments to the Act in 1965 created a shift in immigration patterns in the United States.\footnote{United States Immigration Before 1965, supra note 10.} The Immigration and Nationality Act abolished quotas based on nationality and permitted family sponsored immigration.\footnote{Id.} The Immigration Reform and Control Act of 1986 attempted to address immigration problems by granting some undocumented immigrants amnesty, but also penalizing employers for knowingly hiring undocumented immigrants.\footnote{Ewing, supra note 15.} Finally, the Immigration Act of 1990 and the Illegal Immigration Reform and Immigration Responsibility Act (1996) created new visas and new grounds for inadmissibility to and removal from the United States.\footnote{Id.} Even though the laws have changed over the years, the reasons for immigration have remained much the same. Like a majority of
immigrants who inhabit our country today, many immigrants of the distant past came to America seeking economic opportunity.\textsuperscript{22} Currently, without the DREAM Act, many who wish to pursue the American dream have difficulty in doing so.

\textbf{A. Children of Undocumented Immigrants Who Were Pursuing the American Dream}

Each year, around 65,000 undocumented immigrants graduate from American high schools.\textsuperscript{23} These undocumented immigrants typically were brought here as children when their parents crossed the border illegally in hope of building a better life than what they would have had in their country of origin. Out of these undocumented graduates, only a handful has the opportunity to attend a college or university at an affordable rate.\textsuperscript{24} Even though undocumented immigrants are afforded the undeniable right to attend public primary and secondary schools,\textsuperscript{25} colleges and universities are not required to extend the same educational opportunities to undocumented students.\textsuperscript{26}

\textbf{B. The DREAM Act, a Failed Attempt to Make Dreams Come True}

Both Democrats and Republicans proposed the DREAM Act\textsuperscript{27} to help undocumented immigrants achieve the same academic success as other students they go to school with. The DREAM Act has been proposed several times since 2001 but has yet to pass.\textsuperscript{28} However, undocumented immigrants are not without

\textsuperscript{22} Id.
\textsuperscript{23} Christine Armario, \textit{Young Immigrants May Find College Elusive}, \textit{Associated Press}, Aug. 17, 2012.
\textsuperscript{24} Currently twelve states allow undocumented immigrants to receive instate tuition at their universities. \textit{See} Ann Morse & Kerry Birnbach, \textit{In-State-Tuition and Unauthorized Immigrant Students Nat'l Conference of State Legislature}, NCSL (Nov. 22, 2011) \url{http://www.ncsl.org/issues-research/immig-in-state- tuition-and-unauthorized-immigrants.aspx}.
\textsuperscript{25} \textit{See} Plyer v. Doe, 457 U.S. 202 (1982).
\textsuperscript{26} \textit{See} id.
\textsuperscript{28} 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
help: the Department of Homeland Security, along with President Obama, issued the Deferred Action for Childhood Arrivals which affords certain rights to undocumented immigrants. The biggest benefit of the Deferred Action for Childhood Arrivals is decreased mental anguish and decreased fear of deportation. Qualified undocumented immigrants will be able to wake up each day knowing they have a newfound protection they were once not afforded.

If the DREAM Act were passed, then undocumented immigrants would be able to wake up with a similar 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, but instead individual applicants would have to meet a number of criteria as outlined by the Act. An individual will qualify for the DREAM Act if he came to the United States at age 15 or younger at least five years before the date of the bill’s enactment, has maintained good moral character since entering the United States; and has graduated from an American high school, received a GED, or has been accepted into an institution of higher education.

Once an applicant meets all of the criteria, he is eligible to receive conditional permanent resident status spanning between six to eight years. 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.

The DREAM Act does not come without its restrictions; there are a number of factors that would make an applicant ineligible for relief under the Act. If a student has failed to attend a removal proceeding for whatever reason,

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.


29 Deferred Action for Childhood Arrivals, supra note 4. (“The Department of Homeland Security (“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.”) Id.

30 Id.

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

32 Id.

33 Id.

34 Id.
he could be ineligible under DREAM Act standards.\textsuperscript{35} It would also hurt an individual’s chance of eligibility if he ever made a false claim of citizenship or “made a misrepresentation about [his] status to receive a government benefit.”\textsuperscript{36} Even if one does meet all the requirements of the DREAM Act, it is still a long road to citizenship for undocumented immigrants.

C. Naturalization: A Long Journey for Foreigners Abroad and Living in the United States

In 2011, around 694,000 people were naturalized in the United States.\textsuperscript{37} Naturalization is the process by which foreign citizens or nationals are granted U.S. citizenship after meeting all of the requirements that American laws require.\textsuperscript{38} The process for naturalization is as difficult as it long and an immigrant must take numerous steps before becoming an American citizen.

In order to become a naturalized citizen, one must be at least 18 years of age, have been granted lawful permanent resident status in the United States, and have lived in the country continuously for five years.\textsuperscript{39} Other requirements include good moral character; a strong understanding of the United States government and history; and the ability to speak, read, and write the English language.\textsuperscript{40} One of the most challenging steps in the path to naturalization is receiving permanent resident status. The Immigration and Nationality Act outlines the numerous ways a person may obtain permanent resident status.\textsuperscript{41} Even after becoming an American citizen, one is not immediately given all the rights that a natural born citizen receives. For example, naturalized citizens must wait five years before becoming eligible for social benefits, such as Temporary Assistance for Needy Families, Medicare, Medicaid, Social Security, Supplemental Social Security, and food stamps.\textsuperscript{42} For many people, the journey

\textsuperscript{35} Id.
\textsuperscript{38} Id.
\textsuperscript{40} U.S. Naturalizations: 2011, supra note 37.
\textsuperscript{42} See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).
to becoming a naturalized American citizen is a long one with many requirements.

D. Political Sentiments towards the DREAM Act and Immigration Reform

During a naturalization ceremony held at the White House in July 2012, President Obama spoke about the importance of immigration to our country: “The lesson of these 236 years is clear – immigration makes America stronger. Immigration makes us more prosperous. And immigration positions America to lead in the 21st century.”

President Obama, along with other Democratic and Republican politicians, supports the DREAM Act and immigration reform as a whole. Former President George Bush shared President Obama’s sentiments towards immigration now and in the future: “Immigrants come with new skills and new ideas. They fill a critical gap in our labor market. America is a nation of immigrants. Immigrants have helped build the country that we have become, and immigrants can help build a dynamic


tomorrow.”45 Melanie Roussell, the spokeswoman for the Democratic National Convention, vocalized the views of the Democrats and said, “[T]he President and Democrats support the DREAM Act and are committed to taking steps toward passing it.”46

The general consensus amongst politicians including President Obama is that immigration reform needs to be substantial and it needs to be implemented quickly.47 However some politicians were not happy with the quick measure President Obama implemented in June 2012 with the Deferred Action for Childhood Arrivals. Republican Senator Marco Rubio, while supporting immigration reform, expressed his concerns with the immigration situation and his hesitation with the temporary measures of the President’s deferred action program:

In a blink of an eye, this two-year period will go by, and these kids don’t want to be here for two years; they want to be here for the rest of their lives. We have to find a solution to their problem that’s humanitarian, that solves their problem but that doesn’t encourage illegal immigration in the future.48

With similar requirements of the DREAM Act, the Deferred Action for Childhood Arrivals is not an automatic right of all undocumented immigrants. Instead, individuals must meet a number of criteria before receiving the benefits of the program. An individual must meet all of the requirements listed in the executive order.49 After meeting all the requirements of the program individuals will become “eligible for an exercise of prosecutorial discretion to prevent them from being placed into removal proceedings or removed from the United States.”50


47 “President Obama plans to push Congress to move quickly in the coming months on an ambitious overhaul of the immigration system that would include a path to citizenship for most of the 11 million illegal immigrants in the country, senior administration officials and lawmakers said last week.” Julia Preston, Obama Will Seek Citizenship Path in One Fast Push, N.Y. TIMES (Jan. 12, 2013), https://www.nytimes.com/2013/01/13/us/politics/obama-plans-to-push-congress-on-immigrationoverhaul.html.


49 Deferred Action for Childhood Arrivals, supra note 9.

Even though the Deferred Action for Childhood Arrivals offers a two year “protection” for undocumented immigrants, there are many things the initiative does not offer. It does not offer a permanent sense of security, as it can be revoked at any time.\textsuperscript{51} The deferred action program is not meant to be a means of amnesty or immunity.\textsuperscript{52} The program also does not allow an individual to obtain lawful immigration status or the opportunity to obtain a green card or citizenship.\textsuperscript{53} Finally, the program is limited to the individual applicant as a family member cannot piggy back on the applicant in order to gain deferred action.\textsuperscript{54}

The Republican Party leadership has recently concluded that immigration reform is a significant political issue. After President Obama’s victory in the 2012 election, the Republican Party finally saw the importance of immigration reform and Senator John McCain warned fellow Republicans if they do not act on immigration reform it could have a negative impact on future elections for the GOP.\textsuperscript{55} He is not the only senator to recognize the need to play an active role in changing the current immigration system as seven other senators signed a bipartisan immigration reform framework in early 2013.\textsuperscript{56} Now that Republicans are on board, Senate Majority Leader Harry Reid thinks it’s finally time that Congress passes a bill on comprehensive immigration reform.\textsuperscript{57} When speaking about the possibility of a bill on comprehensive immigration reform passing, Reid said, “It’s certainly gonna pass the Senate . . . [a]nd it would be a bad day for our country and a bad day for the Republican Party if they continue standing in the way of this.”\textsuperscript{58} Even though both sides are ready to make moves towards reform, not everyone is on the same page when it comes to the methods of accomplishing these changes. For Obama, a path to citizenship is key, but some Republicans believe that tougher border control should play a critical


\textsuperscript{52} Id.

\textsuperscript{53} Id.

\textsuperscript{54} Id.


\textsuperscript{56} Four Republican senators and Democratic senators four drafted a framework for immigration reform which creates the opportunity for undocumented immigrants to gain citizenship. Elise Foley, Harry Reid On Immigration Reform: ‘This Legislation Is Going To Pass’, HUFFINGTON POST (Feb. 3, 2013), http://www.huffingtonpost.com/ 2013/02/03/harry-reid-immigration-reform_n_2610182.html.

\textsuperscript{57} Id.

\textsuperscript{58} Id.
role. However, even with their differing views on what plan will work, it is evident that both sides want to see change in 2013.

E. 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 in order to move our country in the right direction. However, it is not the only part of immigration reform our country needs to recognize. The DREAM Act would help undocumented immigrants living in the United States to gain citizenship over time, which would allow undocumented immigrants to positively contribute to our economy. Undocumented immigrants are not the only type of immigrants who can contribute positively to the United States economy though. Non-immigrants, or foreigners looking to temporarily work in the United States, also help strengthen our economy. In order to achieve immigration reform as a whole, the H-1B quota for foreign workers needs to be drastically increased.

59 Obama said, “We all agree that these men and women should have to earn their way to citizenship. But for comprehensive immigration reform to work, it must be clear from the outset that there is a pathway to citizenship.” Matt Spetalnick, Obama pushes Congress on immigration, split emerges, THOMAS REUTERS (Jan. 29, 2013), http://www.reuters.com/article/2013/01/30/us-usa-immigration-obama-idUSBRE90S06U20130130; Senator Rubio voiced his concerns Obama’s plan:

I am concerned by the president’s unwillingness to accept significant enforcement triggers before current undocumented immigrants can apply for a green card. . . . Without such triggers in place, enforcement systems will never be implemented and we will be back in just a few years dealing with millions of new undocumented people in our country.

Id.


The H-1B visa was introduced in 1990 by the Immigration and Nationality Act. 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. The number of H-1B visas issued each year is determined by a number of factors, including the overall economic conditions, overall employment conditions, employment demand for different professions and industry sectors, the overall consumer perception and many more. These same factors tend to influence how quickly the H-1B cap will be reached. An example of these factors influencing the quota occurred during the dotcom boom era of the 1990s when the H-1B Visa cap was raised to 195,000 for a span of three years. For the past eight years, the H-1B visa cap has been set at 65,000 with an additional 20,000 for the Advanced Degree Exemption cap (“ADE”).

In 2009, only .06% of the total American labor force was made up of H-1B visa holders. This small percentage of workers accurately reflects how difficult it is for individuals to receive an H-1B visa. Individuals who live abroad and want to obtain their first H-1B visa will apply for an H-1B visa under the regular cap. Graduates of United States’ universities or colleges with a Master’s degree or higher can apply for an H-1B visa under the ADE cap.

While the low quota for H-1B visas poses a hurdle for employers and immigrants, the process for receiving the visa can be just as challenging. The employer is initially required to fill out a Labor Certification Application (“LCA”) with the Department of Labor. This form will ensure that the foreign workers are not taking jobs that an equally qualified United States worker could

63 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.” Definition of terms, supra note 5.


67 Id.

68 Id. H-1B Fiscal Year (FY) 2013 Cap Season, supra note 6. “The ADE Cap was invented in 2005 to help foreign students of universities and colleges within the United States obtain U.S. jobs post-graduation.” Id.


70 Id.

71 Id.

fulfill.\(^{73}\) Once the Department of Labor approves the LCA, an employer, not the immigrant, must file a petition on the immigrant’s behalf.\(^{74}\) Finally, once the petition has been approved, the H-1B worker can apply with the U.S. Department of State for an H-1B visa and with the U.S. Customs and Border Protection for admission to the United States in the H-1B classification.\(^{75}\)

This application process and quota system is not only restrictive for non-immigrants, but also for employers. H-1B visa quotas have been found to restrain small business expansion in the current economy.\(^{76}\) Small businesses hit road bumps as they are forced to wait to hire specialized employees that require an H-1B visa. Employees find “this constraint is slowing their renewed growth, while unfairly disadvantaging small businesses that lack the resources necessary to navigate America’s complex immigration code.”\(^{77}\) Even though America’s technology, service-based economy, and demand for high-skilled labor have increased greatly over the last decade, the H-1B quota has not increased but instead has actually been cut in half.\(^{78}\) Over the past five years the number of international students in the United States has grown;\(^{79}\) however, the quota for H-1B visas hasn’t changed since 2003 when it dropped from 195,000 to 65,000.\(^{80}\)

With restrictive quotas for the necessary work visas, foreign graduates of U.S. graduate programs are going to competitor countries that have easier access to jobs post-graduation. For example, Canada and Australia have made it

\(^{73}\) Id. The process for a labor certification is described below:
Labor certification for permanent employment requires a firm to undergo an extensive, government-supervised search for U.S. workers before the petition to hire a foreign-born worker can be approved. Once the Department of Labor (DOL) certifies that no qualified U.S. worker is available for the position and the wages and working conditions of existing workers will not be harmed by bringing in an additional foreign worker, then DHS and the Department of State can proceed with processing the green card application.

\(^{74}\) Id.


\(^{77}\) Id.

\(^{78}\) Id.


\(^{80}\) H-1B Visas by the Numbers: 2010 and Beyond, supra note 69.
easier for foreign graduates to work in their countries with more flexible visa policies and immigrant work rights.\textsuperscript{81} The United Kingdom and Singapore are also becoming more attractive to foreign graduates because they have created start-up visas for investors who will create new job opportunities.\textsuperscript{82} While other countries are making it easier for foreign graduates to work, bring innovation, and boost their economies, the United States is failing to do the same. Currently, there are two frequent ways a foreign graduate can obtain employment in the United States: applying for Optional Practical Training (“OPT”) or an H-1B visa.

Optional Practical Training is designed so undergraduates and graduates on an F-1\textsuperscript{83} visa can work for a maximum of one year without having to obtain an H-1B visa.\textsuperscript{84} In order to qualify for OPT, the training has to be directly related to the F-1 student’s major area of study.\textsuperscript{85} Even though a foreigner need not go through OPT before obtaining an H-1B visa, many employers often file H-1B petition after a foreigner completes a year with OPT.\textsuperscript{86} If a foreign student chooses not to go through OPT, then an employer can sponsor him for an H-1B visa.\textsuperscript{87} Foreign students have added difficulty because American employers may not wish to deal with the hassle of an H-1B visa. University of Pennsylvania’s director of Career Services, Patricia Rose said, “Some employers will not recruit international students because they do not have the resources to sponsor students for visas.”\textsuperscript{88}

\footnotetext{81}{Recently, the Australian government streamlined its visa process for international graduates and established post-study work rights, which allow students to look for work in any field for two to four years following graduation. Recent Canadian policies have encouraged international students to get a foothold in the workforce, offering flexible work permits for students and off-campus and postgraduate work permits. Barbara Burgower Hordern, \textit{US fails to link international students with immigration, says IIE}, \textit{UNIVERSITYWORLDNEWS} (Jun. 2012), http://www.universityworldnews.com/article.php?story=20120602082117310.}


\footnotetext{83}{The F-1 Visa (Academic Student) allows you to enter the United States as a full-time student at an accredited college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program. \textit{Students and Employment, U.S. CITIZENSHIP AND IMMIGRATION SERVICES}, http://www.uscis.gov/portal/site/uscis (last visited February 2, 2013).}

\footnotetext{84}{\textit{Student Exchange and Visitor Program}, \textit{U.S DEP’T OF HOMELAND SECURITY} (April 23, 2010), http://www.ice.gov/doclib/sevis/pdf/opt_policy_guidance_042010.pdf. An F-1 student who has attended an SEVP-certified college, university, conservatory, or seminary on a full-time basis for at least one academic year may be authorized for up to 12 months of OPT per education level. \textit{Id.} at Section 3.2.}

\footnotetext{85}{\textit{Id.} at Section 3.1.}

\footnotetext{86}{\textit{Id.}}

\footnotetext{87}{\textit{Id.}}

\footnotetext{88}{David Britto, \textit{International students struggle for U.S. employment: Some careers are off-limits to students from other countries}, \textit{THE DAILY PENNSYLVANIAN} (Mar. 22, 2012), http://www.thedp.com/index.php/article/2012/03/international_students_struggle_for_u.s._employment.}
American businesses that do recruit international students in order to remain competitive, take advantage of H-1B visas. Given the long waits for green cards, "H-1B visas remain often the only way an employer can hire an outstanding international student or bring a talented foreign national to America to work."\(^{89}\) While other work visas also allow American employers to hire foreign employees,\(^{90}\) "[r]esearch shows H-1B visa holders are important to innovation, entrepreneurship and job creation in America."\(^{91}\) 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 these skilled workers.\(^{92}\)

III. ANALYSIS: A DEBUNKING OF COMMON IMMIGRATION MYTHS, 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.\(^{93}\) In a democracy the actions of legislators are supposed to reflect the wishes of their constituents. There is a critical mass of vocal Americans who oppose immigration because they believe that immigration as a whole is bad for the economy.\(^{94}\) Therefore, it seems logical that a law attempting to grant undocumented immigrants a path to citizenship has not passed by majority vote.\(^{95}\) However, Americans’ skewed perceptions about immigration emanate from the many immigration myths that float around. Amending and passing the DREAM Act will give access to higher education for undocumented immigrants. The section shows why these myths are false, outline why undocumented immigrants should have access to higher education, and highlight 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: Factual Data that Disproves Common Myths about Immigration

Americans constantly have an opinion on the impacts—negative and positive—of immigration on our country. These opinions play a role in why immigration-reform laws have failed to pass. 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,\textsuperscript{96} overuse public benefits,\textsuperscript{97} burden U.S. society without a countervailing benefit,\textsuperscript{98} and do not pay taxes.\textsuperscript{99} However, all of these myths are far from the truth.

1. Undocumented Immigrants Steal Jobs from American Citizens

Americans have historically feared they will lose jobs to undocumented immigrants who might acquire legal status.\textsuperscript{100} A poll by Rasmussen Reports found that 40% of respondents believe that undocumented immigrants take jobs from citizens.\textsuperscript{101} This fear is exacerbated by the high unemployment rates experienced in the United States in the past five years.\textsuperscript{102} 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 workers tend to be concentrated, they do not compete directly with most native-born workers.”\textsuperscript{103}

\textsuperscript{96} See Aviva Chomsky, “THEY TAKE OUR JOBS!” AND TWENTY OTHER MYTHS ABOUT IMMIGRATION (2007).
\textsuperscript{103} Diana Furchtgott-Roth, America needs immigration for economic growth, MARKETWATCH (Feb. 8, 2013), http://articles.marketwatch.com/2013-02-08/commentary/36981276_1_foreign-born-workers-native-born-workers-immigrants-work.
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.”104 Another key finding from this report shows that United States natives actually benefit from immigrants because immigrants complement natives and help increase their incomes.105 States that have taken illegal immigration in their own hands in order to protect the jobs in their state will actually find economic disaster. Arizona crafted legislation that not only harmed workers, but harmed its economy as well.

Arizona passed laws that essentially drove out tens of thousands of the state’s taxpayers, workers, and consumers.106 In 2007 Arizona passed the Legal Arizona Workers Act which prohibits employers from knowingly or intentionally hiring an “unauthorized alien.”107 In 2010 Arizona passed the Support Our Law Enforcement and Safe Neighborhoods Act (SB 1070), which “requires state and local law enforcement agencies to check the immigration status of individuals it encounters and makes it a state crime for noncitizens to fail to carry proper immigration documentation.”108 Because this law mirrored federal law that requires all aliens to register with the United States Government,109 the United States Justice Department (“DOJ”) challenged it on constitutional grounds. The DOJ argued this law took the federal government’s authority to regulate immigration.110 In Arizona v. United States the Supreme Court held that three out of four sections of Arizona’s law were preempted by federal law.111 However, the court upheld the provision allowing Arizona state
police to investigate the immigration status of an individual stopped, detained, or arrested if there is reasonable suspicion that the individual is in the country illegally. The Court emphasized the role and power of the federal government over state government:

The National Government has significant power to regulate immigration. With power comes responsibility, and the sound exercise of national power over immigration depends on the Nation’s meeting its responsibility to base its laws on a political will informed by searching, thoughtful, rational civic discourse. Arizona may have understandable frustrations with the problems caused by illegal immigration while that process continues, but the State may not pursue policies that undermine federal law.

Justice Kennedy wrote in the majority opinion of Arizona v. United States, “Immigration policy shapes the destiny of the Nation.” States that pass immigration laws play an active role in our Nation’s destiny. Since the decisive ruling of Arizona v. United States on the limits of immigration enforcement, five states have passed similar laws to Arizona: Alabama, Georgia, Indiana, South Carolina, and Utah. Although the purpose of these laws was to improve the economy, these laws have produced several unintended, deleterious economic effects. These laws drove immigrants out of the states and caused losses in jobs, tax revenue, and labor. A study found that around 80,000 undocumented immigrants migrated out of the state of Alabama after it passed a similar law to that of Arizona. When these undocumented immigrants left Alabama, so did $260 million in tax revenue. Georgia experienced job loss as many farm and restaurant owners complained of labor shortages in 2012. A study by the Public Policy Institute of California suggests that Arizona lost almost 17% of undocumented workers since 2010. These numbers are 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

112 See id.; The Supreme Court held that the preliminary injunction against provision requiring officer conducting stop, detention, or arrest to verify person’s immigration status with Federal Government if officer had suspicion that the person was unlawfully in United States was improper. Id.  
113 Id. at 2510.  
114 Id.  
116 Id.  
117 Id.  
118 Id.  
119 Id.  
120 Id.
well.”  

A survey by the CATO Institute found that “Arizona-style laws are economically destructive and inimical to growth.”

Even in states where there is a small undocumented immigrant population, the loss of these immigrants still have a strong negative impact on jobs and the economy. In West Virginia, where undocumented immigrants comprised less than 0.5% of the workforce (less than 10,000) and Latinos and Asians only comprised 1.2% and 0.7% of the population, the impact on the economy would be undeniable if these immigrants left the state.

Legal and undocumented immigrants have a strong purchasing power in the state. In 2010, the Latino purchasing power was $647.3 million and the Asian purchasing power was $602.7 million. Finally, collectively, Latino-owned and Asian-owned business had sales and receipts of $722.8 million and employed 5,681 people in 2007. Even to a state like West Virginia that has a small immigrant population, immigration has a positive effect on the state’s economy. If the undocumented workers were removed from West Virginia, the state would lose $26.6 million in economic activity, $11.8 million in gross state product, and around 180 jobs.

West Virginia’s diversity may be small, but it plays a large role in the economy. Not only are these types of immigration laws economically destructive in terms of job loss and decreases in tax revenue for a state, but also involve unnecessary litigation costs as groups have started filing class actions against the states that have passed these types of laws. Charging violations of the Supremacy Clause and the Fourth Amendment, these lawsuits challenge the constitutionality of laws fashioned after Arizona’s law.

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, widespread job loss is also created. Continuous immigration encourages businesses to find a home in the United States which leads to job creation. It is predicted that if the DREAM Act were to pass around

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121 Ewing, supra note 106..
122 Id.
124 Id.
125 Id.
126 Id.
128 Id. The American Civil Liberties Union (ACLU) and the National Immigration Law Center (NILC) have filed class actions against Georgia and Indiana for their restrictive immigration laws. Id.
1.4 million new jobs would be created and at least $10 billion would be added to the nation’s revenue by 2030.\footnote{Fitz, supra note 61.}

2. Undocumented Immigrants Abuse Federal Public Benefits

In 2010, 67% of American voters believed that illegal immigration creates a significant restrain on the U.S. budget.\footnote{Id.} More specifically, 66% of American voters believed that government money and services attract illegal immigrants to the United States.\footnote{Id.} Currently, there are over a 100 million individuals receiving some form of federal public benefit,\footnote{Eduardo Munoz, Over 100 million US residents on welfare, TV-Novosti (Aug. 9, 2012) http://rt.com/usa/news/ million-us-residents-welfare-268/} but out of those 100 million, not one is an undocumented immigrant.\footnote{See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), supra note 42.} However, contrary to popular belief, undocumented immigrants are not eligible for federal public benefits.\footnote{Id.} 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.\footnote{Id.} 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.\footnote{Id.}

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 eliminated undocumented immigrants’ eligibility for Social Security benefits even if they have paid taxes.\footnote{Douglas S. Massey, supra note 100; See also Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), supra note 42.} Further, immigrants actually are less likely than an American citizen to use federally offered public services.\footnote{Id.} Finally, the DREAM Act does not create the opportunity for undocumented immigrants to get in line for federal programs right away. Instead, once given the conditional permanent residency status, an individual will actually be paying taxes that are used for such programs and will not be able to reap the benefits until he or she becomes an American citizen.\footnote{JOHNSON ET AL., supra note 1. “Undocumented immigrants are barred from receiving any of the chief federal public benefit programs: TANF, Food Stamps, Medicaid, SSI, unemployment compensation, school loans and grants, and subsidized housing.” Id.}
3. Undocumented Immigrants do not Contribute to Tax Revenue

Another popular myth is that undocumented immigrants do not pay taxes and instead use the social services provided by the taxes American citizens pay. 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. However, undocumented immigrants pay taxes every day when they purchase a gallon of gas from a gas station, when they buy their groceries at the store, when they stop for a quick bite through the drive-thru at a fast food restaurant, and when they pay their rent every month to their landlords. The National Research Council of the National Academy of Sciences even found that “on average, immigrants generate public revenue that exceeds their public costs over time.”

A CBS News/New York Times Poll conducted in 2010 found that 74% of Americans believe that undocumented immigrants do more to weaken the U.S. economy because they don’t all pay taxes but use public services. 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. 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. Undocumented immigrants are not eligible for most Federal Public assistant programs, even though it is estimated that more than half of undocumented immigrants are working “on the books” and their earnings are subject to withholdings.

One of the biggest government programs that undocumented immigrants contribute to, but receive nothing from is the Social Security system. 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. Even though the Internal Revenue Service (IRS) does not differentiate between legal or illegal status, IRS

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142 Immigration Myths and Facts, supra note 104.
145 Id.
146 Id.
147 General ITIN Information, IRS, http://www.irs.gov/Individuals/General-ITIN-Information (last visited Feb. 20, 2013) (“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”). Id.
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.” 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.

While undocumented immigrants are not eligible for certain federal benefits such as Social Security or Medicare, an undocumented immigrant who files a tax return can receive refundable credits. In 2010, a report by the Treasury Inspector General for Tax Administration found that claims for the Additional Child Tax Credit to amount to $4.2 billion. Even though undocumented immigrants collected billions from the Additional Child Tax Credit, they also paid billions in taxes in 2010. The Institute for Taxation and Economic Policy compiled estimate and reported that undocumented immigrants paid $11.2 billion in taxes in 2010.

Undocumented immigrants receive refundable credits when they file their taxes with an ITIN, however, they pay more in taxes than they actually benefit. As Mark Hinkle, Deputy Press Officer at the Social Security Administration (“SSA”), pointed out in 2008, 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.” Undocumented immigrants do not drain federal programs, but instead greatly contribute to the tax system annually.

Although Americans think that undocumented immigrants take from the economy, the truth is they contribute to the economy via taxes and the

149 Id.
150 Id.
151 If the amount of your Child Tax Credit is greater than the amount of income tax you owe, you may be able to claim the Additional Child Tax Credit. Ten Facts about the Child Tax Credit, IRS (Feb. 10, 2011), http://www.irs.gov/uac/Ten-Facts-about-the-Child-Tax-Credit.
154 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.) Id.
155 Alberto Ponce de Leon, supra note 144.
156 Kasperkevic, supra note 148.
157 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.
158 See id.
consumption of goods. With the passage of the DREAM Act, undocumented immigrants will be able to increase their contributions to tax revenue.

4. 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, around 75% of respondents in a New York Times/CBS News poll believed that illegal immigrants weakened the economy. It is no surprise there is much opposition to the DREAM Act, as Americans popularly believe that legalizing undocumented immigrants will cost more than any benefits that would occur if it were passed. However, if the DREAM Act were passed, an additional $329 billion would be added to the American economy by 2030. A study conducted by the Center for American Progress found many positive consequences of passing the Dream Act:

[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. These 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.

The DREAM Act will help rebuild our 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.

In June 2012, the White House released a list of ten ways immigrants help build and strengthen our economy. The top ten reasons include:

160 Campo-Flores, supra note 94. Immigrants provide cheap labor, lower the prices of everything from produce to new homes, and leave consumers with a little more money 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.
162 Id.
163 Id.
164 Id.
immigrants start businesses;\textsuperscript{166} immigrant-owned businesses create jobs for American workers;\textsuperscript{167} immigrants are also more likely to create their own jobs;\textsuperscript{168} immigrants develop cutting-edge technologies and companies;\textsuperscript{169} immigration boosts earnings for American workers;\textsuperscript{170} immigrants are our engineers, scientists, and innovators;\textsuperscript{171} immigrants boost demand for local consumer goods;\textsuperscript{172} immigration reform legislation like the DREAM Act reduces the deficit;\textsuperscript{173} comprehensive immigration reform would create jobs;\textsuperscript{174} and comprehensive immigration reform would increase America’s GDP.\textsuperscript{175}

The statistics show all the positive consequences if the DREAM Act were to pass. Even though polls indicate a portion of Americans believe that 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

\textsuperscript{166} 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. \textit{Id.}

\textsuperscript{167} 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. \textit{Id.}

\textsuperscript{168} 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. \textit{Id.}

\textsuperscript{169} 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. \textit{Id.}

\textsuperscript{170} 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. \textit{Id.}

\textsuperscript{171} 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, 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. \textit{Id.}

\textsuperscript{172} 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. \textit{Id.}

\textsuperscript{173} 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. \textit{Id.}

\textsuperscript{174} 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. \textit{Id.}

\textsuperscript{175} 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. \textit{Id.}
of jobs, billions in increased revenue, hundreds of billions in induced economic impact, and be the financial boost our economy needs.

B. Educational Opportunities for All: A Look at Why Undocumented Immigrants Should Have the Opportunity to go to College

Passage of the DREAM Act will also open many doors to education for a large portion of the undocumented immigrant population. And as a country founded on and presently affected by immigration, it is inevitable that immigration will continue to play a role in the shaping of our country in the future. By 2043, the contribution of immigration to diversity will become apparent as white people will no longer make up a majority of Americans.\footnote{Census: Whites no longer a majority in U.S. by 2043, CBS NEWS (Dec. 12, 2012), http://www.cbsnews.com/8301-201_162-57558742/census-whites-no-longer-a-majority-in-u-s-by-2043/} This diversity is already apparent in the classroom as 45 percent of all students in K-12 are Hispanics, blacks, Asian-Americans, and others.\footnote{Id.} Some states, such as Hawaii, California, New Mexico, and Texas, have already experienced the minority population becoming greater than 50 percent.\footnote{Id. (The District of Columbia and four states — Hawaii, California, New Mexico and Texas.)} This multicultural student population includes a small group of undocumented immigrants.\footnote{Jeffrey Passel and D’Vera Cohn, A Portrait of Unauthorized Immigrants in the United States (Apr. 14, 2009) http://www.pewhispanic.org/2009/04/14/iv-social-and-economic-characteristics/} Children with undocumented parents make up 6.8% of those students enrolled in K-12.\footnote{Id.} While there are no laws that require colleges to admit or prohibit the admission of undocumented immigrants,\footnote{Advising Undocumented Students, COLLEGE BOARD, http://professionals.collegeboard.com/guidance/financial-aid/undocumented-students (last visited Jan. 20, 2013).} public education until twelfth grade cannot be denied based on immigration status.\footnote{See Plyer v. Doe, 457 U.S. 202 (1982).} In a majority of the states, undocumented immigrants are not qualified for in-state tuition or funding for college, which may be a reason why in 2005 there were only 50,000 undocumented immigrants in colleges around the country.\footnote{Roberto G. Gonzales, Wasted Talent And Broken Dreams: The Lost Potential Of Undocumented Students, IMMIGRATION POLICY CTR., http://www.fosterquan.com/content/documents/policy_papers/WastedTalentAndBrokenDreams.pdf (last visited Jan. 23, 2013).}
1. Undocumented Immigrants’ Educational Journey Should Not End in 12th Grade

Currently, a person’s immigration status dictates one’s ability to attend college, but “[t]he sharp rise in demand for skilled labor over the past few decades has made it more urgent than ever to provide access to post-secondary education for all.”\textsuperscript{184} Undocumented immigrants continue to fall behind their legal classmates. Only 49\% of undocumented immigrants who are between the ages of 18 to 24 and have graduated high school are in or have attended some college, while the numbers for legal immigrants and U.S. born-residents are 76\% and 71\% respectively.\textsuperscript{185} One of the many reasons undocumented immigrants do not attend college post high school graduation is due to the high financial cost of attending. The average American student is able to pay about 55\% of the cost of college by means of student loans, grants, and scholarships and parental help.\textsuperscript{186} With a 439\% increase in the price of tuition and fees between 1982 and 2007, help from outside sources is becoming a necessity.\textsuperscript{187} While the average American student is able to receive this financial help, most undocumented immigrants and legal foreign students are restricted from receiving financial aid, creating another roadblock to attending college.

Research indicates that creating educational opportunities for immigrants, both legal and undocumented, is extremely beneficial to the economy of the United States.\textsuperscript{188} It has been found that individuals who attend college pay higher taxes and are less likely to depend on public support.\textsuperscript{189} Advocates of allowing undocumented immigrants to attend college “argue that these students would ultimately pay more taxes and make greater contributions as professionals and citizens.”\textsuperscript{190} Undocumented immigrants will never have the ability to pay higher taxes and contribute to the economy if they are not given the chance to further their education and obtain higher paying jobs post-graduation.

There is also an argument that foreign students who are non-immigrants should have educational opportunities in the United States. Legal foreign students positively contribute to the economy and in 2011-2012 academic year, international students contributed around $21.81 billion to the United States economy.\textsuperscript{191} A small state like West Virginia was even able to feel the economic

\textsuperscript{185} Christine Armario, \textit{supra} note 23.
\textsuperscript{186} Id.
\textsuperscript{187} Id.
\textsuperscript{188} Guzmán and Jara, \textit{supra} note 164.
\textsuperscript{189} Baum, Sandy and Stella M. Flores, \textit{supra} note 184.
\textsuperscript{191} Ewing, \textit{supra} note 62.
impact of foreign students. The net contribution to West Virginia’s economy by foreign students and their families was $60 million during the 2011-2012 academic year.\footnote{The Economic Benefits of International Students to the U.S. Economy Academic Year 2011-2012, NAFSA, http://www.nafsa.org/_/File_/eis2012/West_Virginia.pdf.}

International students do more than just contribute financially to the United States, they:

build bridges between the United States and other countries,

bring global perspectives into U.S. classrooms, demand courses in the sciences and engineering, which makes it possible for U.S. colleges and universities to offer those courses to U.S. students,

support programming and services on campus for all students by paying out-of-state tuition, funded largely by non-U.S. sources, and support local businesses and communities with their spending on rent, transportation, and other expenses.\footnote{Explore International Education: What Is the Value of International Students to Your State in 2012?, NAFSA, http://www.nafsa.org/Explore_International_Education/Impact/Data_And_Statistics/What_Is_the_Value_of_International_Students_to_Your_State_in_2012_/ (last visited Nov. 20, 2013).}

Allowing international students to attend United States universities and colleges is just as beneficial as allowing legal and undocumented immigrants to attend the same universities.

Educational opportunities in college and graduate schools for undocumented immigrants and foreign students will benefit the United States economy now and in the future. However, these benefits will never happen if undocumented immigrants find too many road bumps on the path to college.

Some of these road bumps were smoothed out with the issuance of the most influential case defining the rights of undocumented immigrants to attend public school. In \textit{Plyer v. Doe}\footnote{457 U.S. 202 (1982) (holding that unauthorized students have the constitutional right to a free primary and secondary education).} the United State Supreme Court struck down a Texas statute that attempted to deny free public education to alien children.\footnote{See id.} The Texas statute charged alien children tuition to attend public elementary and secondary schools, which would deny the free public education available to all other students in the United States.\footnote{Id.} Looking to the Equal Protection Clause of the Constitution, United States Supreme Court Justice Brennan found that a state could not enact a statute that would discriminate against a certain group by defining members of that group as nonresidents.\footnote{Id. at 227.} One of the key findings in \textit{Plyer} was that “immigration and naturalization policy is within the exclusive powers of the federal government.”\footnote{Olivas, supra note 36.} While \textit{Plyer} stands for the proposition that
public school children grades in K-12, regardless of residency status or immigration status, have a right to free public education, it fails to discuss whether these rights also extend to the college setting.199

2. In-State Tuition Should be available for Undocumented Immigrants in the State Where They Reside

State colleges and universities do not have an obligation to provide the same access to education and educational funds to undocumented immigrants as to other students. However, if a state does allow an undocumented immigrant to receive a benefit based on residency within the state, citizens or nationals must be eligible for the same benefit, regardless of residency.200 This federal provision requires a university to forgo nonresident tuition rates if it allows undocumented students to get in-state tuition based on residency.201 Many states are unwilling to forgo such monetary gains from charging out-of-state tuition. The statute essentially requires an undocumented immigrant to pay full out-of-state tuition, without the aid of federal or state funding, as their immigration status precludes that as well.

There are a small number of states that do allow undocumented students to obtain in-state tuition. Texas was the first state to do so in 2001, and eleven states followed in Texas’ footsteps: Connecticut, Illinois, Kansas, Maryland, Nebraska, New Mexico, New York, Oklahoma, Utah, and Washington.202 Not surprisingly, some states have enacted legislation that would bar undocumented students from receiving in-state tuition.203 In order to avoid the problems Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act creates with waiving out-of-state tuition rates, some states that allow undocumented immigrants to qualify for in-state tuition rates have crafted their legislations so that the requirements are based on a number of factors not just residency alone.204 Even though some states allow undocumented immigrants to receive in-state tuition, these potential students do not always qualify for state financial-aid in certain states.

199 Plyer, 457 U.S. at 226.
200 Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act states: An alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident. See Aliens and Nationality Act, 8 U.S.C. § 1623(a) (2006).
201 Id.
203 Id.
California, on the other hand, passed legislation that grants undocumented immigrants in-state tuition and fee rates and also allows them to receive financial aid to the colleges and universities throughout the state. In the 2012 election, Maryland passed a version of the DREAM Act that was approved by popular vote. In cases where undocumented immigrants can prove they attended a Maryland high school for three years and their parents filed state income taxes during that time, then the law allows them to receive in-state tuition rates.

With such inconsistency among states, some undocumented immigrants will not have the ability even to attend college, let alone be afforded in-state tuition and the opportunity to receive financial aid. In order to combat this inconsistency, undocumented immigrants need the opportunity to acquire residency status in order to have the ability to attend college at an affordable rate. The most recent version of the DREAM Act in May 2011 attempted to give undocumented immigrants these educational opportunities, but failed to pass in the Senate. A solution resembling the DREAM Act that pleases both sides would accomplish this goal. Passage of the DREAM Act will give undocumented immigrants many more opportunities to attend college and would be acknowledgement of the fact that encouraging more undocumented immigrants to attend college and join the skilled work force is an investment in the future of the U.S. economy.

C. Immigration Improves the Economy and Invites Innovation

Recent polls indicate that more than 70% of Americans support policies that would create a path toward citizen for undocumented immigrants. These poll results are good because economist Diana Furchtgott-Roth believes that “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.” Immigration also leads to innovation within the United States. Furchtgott-Roth also found that start-up companies lead to economic growth and immigrants start new American companies at greater rates.

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205 California DREAM Act, A. B. 130, 131 (Cal. 2011) (AB 130 allows students who meet AB 540 criteria (California Education Code 68130.5(a)) to apply for and receive non-state funded scholarships for public colleges and universities. AB 131 allows students who meet AB 540 criteria to apply for and receive state-funded financial aid such as institutional grants, community college fee waivers, Cal Grant and Chafee Grant.) http://www.csac.ca.gov/DREAM_act.asp.


207 Id.

208 See Development, Relief, and Education for Alien Minors Act of 2011, supra note 8.

209 Roberto G. Gonzales, supra note 183.

210 Roth, supra note 103.
than do the native-born.\textsuperscript{211} 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.\textsuperscript{212} Immigration policies encourage innovation and economic growth.\textsuperscript{213}

1. States that Welcome Immigration Welcome Economic Improvement

Some cities and states took the economic predictions about the DREAM Act seriously and are starting to acknowledge the beneficial results that come from accommodating immigrants. For example, Dayton, Ohio has created a comprehensive immigration plan to welcome immigrants to their city.\textsuperscript{214} The “Welcome Dayton Plan” was adopted to help change the city’s culture and views towards immigration to make immigrants feel more welcomed and part of the community.\textsuperscript{215} Ohio’s “Welcome Dayton Plan” is an example of how “[w]elcoming immigrants with proactive policies of incorporation produces healthier, better-educated, more-productive, and higher-earning workers, consumers, entrepreneurs, and taxpayers. Declaring war on immigrants does just the opposite by forcing them further into the economic and social margins.”\textsuperscript{216} Other cities like Chicago and Philadelphia are also working towards opening their cities to immigration.\textsuperscript{217} Houston, Texas, is becoming known for its diversity and encouragement of immigration.\textsuperscript{218} In November 2011, Houston Mayor Annise Parker created the Office of International Communities and named Terence O’Neill as the head of this office.\textsuperscript{219} Speaking toward the programs’ goals, O’Neill stated, “We’re trying to brand Houston as a welcoming city. We want the one thing you remember about Houston to be that it’s welcoming to all people. Texas friendliness transcends any barriers.”\textsuperscript{220} Like the

\textsuperscript{211} 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.

\textsuperscript{212} Id.

\textsuperscript{213} See id.


\textsuperscript{215} Id. A section of downtown Dayton is being set aside as an “international marketplace for immigrant entrepreneurs.” Id.

\textsuperscript{216} Id.


\textsuperscript{218} Id.

\textsuperscript{219} Id.

\textsuperscript{220} Id.
other cities welcoming immigration, Houston believes in the positive benefits immigration will bring.221


From the 1930s until today, American immigration policies have seen a number of changes, changes that have created different routes and possibilities for potential immigrants. Once change that has occurred was the creation of the H-1B visa in the 1990s.222 The H-1B visa has allowed many foreign individuals to come to the United States and bring their knowledge and skills to the job market.

Albert Einstein, the world’s most famous theoretical physicist, was born and raised in Germany but became an American citizen in 1940 after living in the United States for only seven years.223 In order to immigrate legally in the United States, Albert Einstein applied for a visa to teach in California in 1932.224 After being granted the visa, Albert Einstein moved to the United States, where he remained for the rest of his life.225 If a company wanted to hire Albert Einstein under our nation’s immigration policies today, his route to citizenship would not be so easily achieved. Given Albert Einstein’s expertise in the field of science, a company would be able to sponsor him for an H-1B visa226 and then hire him. In 1940, Albert Einstein became an American citizen after seven years; however, today the process to citizenship can often take up to as long as eleven years.227

221 Id. (Businesses and community groups have become active participants, taking the lead in projects like the employment initiative. The key, he explains, is demonstrating to residents that integrating new people into the city is beneficial to the community as a whole. “Success is when every single person in Houston says it’s great to have all these people from all over the world,” O’Neill says. “Success is when the average person will realize that this is a really good thing for us.”) Id.

222 See Immigration and Nationality Act of 1990, supra note 5.

223 Gary Chodorow, Albert Einstein on U.S. Visa Policy, http://lawandborder.com/?p=549. (He entered the U.S. in 1933 and chose to settle here after the Nazi party came to power in his native Germany.)

224 Id.

225 Alan Whyte and Peter Daniels, The FBI and Albert Einstein, WORLD SOCIALIST WEB SITE (Sep. 3, 2002), http://www.wsws.org/en/articles/2002/09/eins-s03.html. On December 10, 1932 he set sail for the US, arriving on January 12, 1933. A little more than two weeks later, Adolf Hitler took power in Germany, and the Einstein’s’ stay in America became a permanent one.

226 H1B Visa Quota and H1B Cap Systems Explained, supra note 66. The US H-1B visa is a non-immigrant visa that allows US companies to employ foreign workers in specialty occupations that require theoretical or technical expertise in specialized fields such as in architecture, engineering, mathematics, science, and medicine.

227 Id. A more in depth understanding of the H-1B process is described below:

Even though the H-1B visa is a non-immigrant visa, it is one of the few US visa categories recognized as dual intent, meaning the H-1B visa holder can apply for and obtain a US Green Card while in the US on an H-1B visa. If you are still in the US on an H-1B visa and wish to remain in the US for more than six
Finally, obtaining the H-1B visa is a difficult task because it is capped at 65,000 visas per year and the quota is usually met quickly. Therefore with today’s immigration policies and the quick allotment of visas, it would be more difficult for Albert Einstein to obtain an H-1B visa. Who suffers more when individuals with advanced skills like those of Albert Einstein are not able to obtain a visa to work legally in the United States? While that individual will still be able to pursue employment opportunities in their countries or others, our nation loses the potential strides and advancements that such Albert Einstein-like individual could contribute.

Albert Einstein wrote about the importance of immigration of specialized workers in the Bulletin for Atomic Scientist. In 1952 he expressed his concerns about the United States’ visa policy:

> The free unhampered exchange of ideas and scientific conclusions is necessary for the sound development of science, as it is in all spheres of cultural life. In my opinion there can be no doubt that the intervention of political authorities of this country in the free exchange of knowledge between individuals has already had significantly damaging effects. The intrusion of the political authorities into the scientific life of our country is especially evident in the obstruction of the travels of American scientists and scholars abroad and of foreign scientists seeking to come to this country. Such petty behavior on the part of a powerful country is only peripheral symptoms of an ailment which has deeper roots.

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 economy.230

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228 Elizabeth Dwoskin, *H-1B Visas Hit the Cap, Sending Companies to Plan B*, BUS. WK., June 13, 2012. Dwoskin found that:

> On the first business day in April, U.S. Citizenship and Immigration Services opens the rounds of petitioning for these coveted visas for highly skilled foreign workers. The speed at which the cap is reached is a loose indicator of the economy’s state. In 2008, the cap was reached in a single day: April 2. In 2009, applications were sluggish and took eight months to reach the cap. In 2011, the slots were filled in seven months. In 2012, the slots were filled in two months.

Id.

229 Chodorow, supra note 223.

immigrants and individuals wishing to obtain H-1B visas face extraordinary challenges in furthering their education and obtaining employment in the United States. When some highly qualified Chinese and Indian workers were asked why they were leaving the United States instead of working here, they indicated there were H-1B visa related issues that prompted them to leave.\footnote{H-1 B Visas by the Numbers : 2010 and Beyond, (2010), supra note 69.} The DREAM Act was designed to help solve the dilemma for undocumented immigrants who currently reside in the United States, but the H-1B quota system has not been increased to help the thousands upon thousands of individuals who wish to work in the United States, especially those individuals graduating from American universities and colleges.

3. 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 that we educate from abroad to get jobs post-graduation from a United States college or university. Due to our quotas for foreign graduates, the United States will face a projected shortfall of 223,800 workers in science, technology, engineering, and mathematics by 2018.\footnote{Ronald Shapiro, More H-1B Visas Would Benefit U.S. Economy, JD SUPRA (Sept. 28, 2012), http://www.jdsupra.com/legalnews/more-h-1b-visas-would-benefit-us-econo-32844/.} The ADE cap monitors 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, limits American companies from hiring talent that could benefit their companies individually and the U.S. economy generally.\footnote{New Open Doors Data, INSTITUTE OF INT’L EDUCATION (2012), http://www.iie.org/en/Research-and-Publications/Open-Doors.} In the 2011/2012 academic year, there were 764,495 international students enrolled at colleges and universities across the United States.\footnote{Economist calls for complete reform of US immigration system, WORK PERMIT (Nov. 1, 2012), http://www.workpermit.com/news/2012-11-01/economist-calls-for-complete-reform-of-us-immigration-system.} Upon graduation, only a small number of international students will have the opportunity to receive an H-1B visa under the ADE cap.

Charles Kenny, an economist at the Center for Global Development and the New America Foundation, has recommended the government increase immigration quotas as a means to improve the economy.\footnote{He 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}
to H-1B visas, Mr. Kenny thinks the low quota adversely affects the high-tech industry and is making it extremely hard for international students to get jobs post college graduation.\textsuperscript{236} 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 showcasing their talents in the United States.\textsuperscript{237} After several years of American education, foreign students return to their home countries and use what they have learned here to create new companies, drugs, and other products in their country, causing our country to fall behind in the innovation realm. When we retain foreign graduates, we are able to benefit from their inventive ideas and business creations.

Vivek Wadhwa, a professor at Duke University, believes the United States should be doing its best to keep foreign graduates in the United States, not driving them away:

Rather than inciting populist sentiment against foreigners and fostering a new nativism, policymakers could instead provide incentive programs to encourage foreign immigrant entrepreneurship, perhaps pairing fast-track residency status with launching of companies . . . \[t\]his would help ensure that those who want to stay and start companies can do so.\textsuperscript{238}

Oregon Professor Daniele J. Tichenor also thinks foreign immigrants are highly beneficial to our country: \textquotedblleft The country benefits from bringing in highly skilled immigrants to add to the country’s brain power, encourage innovation and enhance cultural diversity.\textsuperscript{239} Wadwha emphasizes the benefits foreign graduates bring to the United States, as many immigrants had a part in founding many successful companies such as eBay, Yahoo, Intel, and Google.\textsuperscript{240}

In order to compete with other countries for the foreign individuals our universities educate, we need to create friendlier and more numerous visa policies and immigrant job opportunities. Some commentators have noted on the important of H-1B visas: \textquotedblleft In a global age when other nations are strategically tapping immigrant talent to meet the needs of their economies, we can no longer
afford to delay needed reforms to our own system." The recently proposed STEM Act is a step in the right direction as it creates 55,000 permanent resident visas per year for foreigners with U.S. advanced degrees in math, science, technology and engineering. A study by the Brookings Metropolitan Policy Program found that employers want more H-1B visas. Neil Ruiz, one of the authors of the report, believes “Congress must increase its responsiveness to fluctuations in H-1B visa demand” because the demand for H-1B visas tremendously exceeds the quota. As an indication from the 2010-2011 fiscal year when 300,000 H-1B visas requests were made, the quota for H-1B visas, both under the Regular and ADE Cap, needs to be increased immensely.

D. “Solution” to the Immigration Problems—What Legislative Steps Should Be Taken to Make the “DREAM” a Reality and Increase the H-1B Quota System

This Note argues that the proposed DREAM Act should implement the following changes so that undocumented immigrations do not have to “hide behind the scenes” anymore. The requirements for those who qualify under the DREAM Act 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.

There is not a current work visa that would be fitting for an undocumented immigrant to apply. 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 and need to be accommodated under current immigration laws. 

241 Pasell, supra note 82.
245 Id.
246 Id. at Section 9.
States without a choice as children. They are not criminals and did not consciously break the law when they “crossed” the border. Some have been here since age two and now find themselves, 16 years later and graduating from high school, with nowhere to go, no job attainable, and in constant fear of deportation building up. They cannot return to their native country, as it no longer symbolizes “home” to them. Their home is defined by the communities they have grown up, the friends they have known for over a decade, the schools they have attended until graduation, the streets they have played on, the stores they have shopped in, and the American soil they have walked on since the day they entered the United States as a child. 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 too costly to do so.  

While sending undocumented immigrants home is not the answer, neither is blanket amnesty. 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. Contrary to popular belief, undocumented immigrants still pay taxes on a daily basis with every gas tank they fill up, every meal they purchase at Applebee’s, and every article of clothing they purchase at a retail store.

Therefore, after meeting the requirements of the DREAM Act that would normally lead to the removal of conditional status to permanent resident status, an undocumented immigrant should then have to apply for a work visa. 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 not fair because it would open the floodgates. 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-fifth of those who became legal permanent residents through that program have gone on to become citizens” to this day.

After an undocumented immigrant works for five years with a work visa, then the conditional status should be removed. Once the conditional status is removed and the undocumented immigrant has acquired permanent resident

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248 ICE deported almost 393,000 people from the U.S. in 2010. At $12,500 per person the cost to remove them was almost $5 billion. *Feds Estimate Deportation Costs $12,500 Per Person*, ASSOCIATED PRESS (Jan. 27, 2011), http://cnsnews.com/news/article/feds-estimate-deportation-costs-12500-person.


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.

1. 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 immigrants\(^{251}\) 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 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 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 will not allow qualified individuals to apply for driver’s license and others will continue to deny in-state tuition to undocumented immigrants.\(^{252}\)

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

\(^{251}\) For the requirements of the Deferred Action program, See Deferred Action for Childhood Arrivals, supra note 9.

as workers may continue to hide behind the scenes and stray from contributing to our economy.

There is a belief amongst those who oppose the DREAM Act that it would encourage future illegal immigration; however, the restrictions imposed by the DREAM Act prohibit it from being the path to illegal immigration. Instead, the DREAM Act is an incentive for undocumented immigrants to finish school instead of giving up when they know there is nothing for them post high school graduation. Guan Guzman, a revered scholar in this field, has identified the benefits of the Act: “[E]nacting the law would provide an incentive for their further education because for most of those who would be eligible the legalization provisions can only be attained through completion of high school and some college.” Further, the number of undocumented immigrants has declined slightly since 2005. This decline can be attributed to the fact that undocumented immigrants are now having children in the United States and 73% of children of undocumented immigrants in 2008 were American citizens by birth. Finally, it is important to note the one restriction that limits future immigration: the undocumented immigrant must have lived in the United States five years prior to the date of enactment of the bill.

Many of these illegal 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 undocumented immigrant is American citizenship. This difficult goal is also one that Americans fear undocumented immigrants will obtain too easily if the DREAM Act is passed. 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. The next section of this Note outlines the problem of gaining citizenship for undocumented immigrants and why the solution would not grant “overnight amnesty” to undocumented immigrants.

253 Guzmán and Jara, supra note 161.
254 Id.
255 Passel, Jeffrey and Cohn, supra note 179.
256 Erika Niedowski, Undocumented Students Face Obstacles Even After College, HUFFINGTON POST (Oct.3, 2011) http://www.huffingtonpost.com/2011/10/03/undocumented-students-face- obstacles-even-after-college_n_991832.html. (“Many have no immediate pathway to legal status and, under current federal immigration law, employers cannot legally hire them.”). Id.
2. How to Deal with Individuals Who Cannot Follow the Path that Others Do for Naturalization

A hopeful foreigner living outside of the United States must do research to determine which legal path will lead towards a naturalized American citizenship. There are multiple ways one may accomplish naturalization and different “lines” one may take in order to do so. However, currently, there is no “line” for those who are deemed “DREAMers” to enter. Our nation struggles to find the solution of what to do with undocumented immigrants who were brought here as young children or infants. We also struggle with setting a quota that allows more hard working individuals from abroad to work in the United States. Our current laws fail to give undocumented immigrants the opportunity to take steps towards bettering their lives. Even though undocumented immigrants are afforded the right to attend school until high school graduation, there are no guarantees for post-secondary education.\footnote{See Plyer v. Doe, 457 U.S. 202 (1982).} 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.”\footnote{Ronald Shapiro, supra note 233. 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.}

In order to combat the problems we face in regard to immigration law, the government needs to increase the ADE cap under H-1B visas to allow more students to have post-graduation job opportunities and use 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. Legislators need to work together further on drafting the DREAM Act so that it is more appealing to both sides and is more of a permanent versus temporary fix. The DREAM Act should not give undocumented immigrants the right to conditional permanent residency status so easily, but instead after attending college or committing years to service in our military, individuals who meet the criteria already set out should then have to apply for a work permit or a new type of work visa that can lead to permanent residency status and eventually citizenship. Those students who do not wish to pursue a graduate or professional degree should have the opportunity to work and after working a certain number of years, should be able to take steps towards gaining permanent residency status like the individual with an H-1B visa. 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.\footnote{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}
brought here without a choice to now have a decision as to how their future should proceed.

The most recent version of the DREAM Act was introduced in May 2011 and has many of the same provisions as the versions presented in the past decade. In order to receive conditional permanent residency status under the DREAM Act, an undocumented immigrant must show by a preponderance of the evidence that he has been continuously physically present in the United States for at least five years before the enactment of the Act, he was 15 years old or younger when he entered the United States, and he must be of good moral character since entering the United States. While meeting these requirements, he must also not have violated other provisions such as felony or misdemeanor conviction. Finally, he must have been admitted to an institution of higher education in the United States or earned a high school diploma or obtained a general education development certificate in the United States.

If an undocumented immigrant fulfills all of those requirements, passes a background test, and meets the rest of the requirements outlined by the Act, then he will be given permanent resident status on a conditional basis for up to six years, subject to termination if he ceases to meet any of the Act’s provisions. One of the most essential components of the Act is the higher education assistance afforded to undocumented immigrants.

After six years, an undocumented immigrant will become eligible for removal of the conditional basis if he was of good moral character during the six years, acquired a degree from an institution of higher education in the United States or has completed at least two years, in good standing, in a program for a bachelor’s degree or higher degree in the United States or has served in the Uniformed Services for at least two years and, if discharged, received an honorable discharge.

As written, the DREAM Act has failed to pass for the past decade. While it has almost passed several times, the divergent views on how the country should


262 *Id.* The DREAM Act also requires that:

[An individual] must not have ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion; and has not been convicted of any offense under Federal or State law punishable by a maximum term of imprisonment of more than 1 year; or 3 or more offenses under Federal or State law, for which the alien was convicted on different dates for each of the 3 offenses and imprisoned for an aggregate of 90 days or more.

263 *Id.* An undocumented can also serve in the military to be given conditional permanent residency status. *Id.*

264 *Id.*

265 *Id.*

266 *See id.* at Section 5 for more requirements necessary to remove conditional status.
handle immigration reform has led to its ultimate failure. Even though the bill was first proposed by both a Democrat and Republican with vast support from both the House and the Senate, it now finds trouble gaining majority support with the Senate. The DREAM Act is anticipated to be re-introduced in both the House and Senate in early 2013.

If the provisions of the DREAM Act have not changed since 2011, then it is likely the bill will not pass again as Republican support continues to decrease. The DREAM Act needs change in order to appease the Republicans. Frustrated with the lack of cooperation in Congress, President Obama issued an executive order in June 2012 that contained some of the language from the DREAM Act. 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.

IV. CONCLUSION

It comes to no surprise that one bill cannot solve the immigration problems our country faces; however this Note outlines a new solution that would take the country 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

267 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), http://www.lasvegassun.com/news/2011/may/11/harry-reid-reintroduces-dream-act/.


269 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.” Harry Reid reintroduces the DREAM Act: Action from Democrats follows Obama’s call for immigration reform, LAS VEGAS SUN (May 11, 2011), http://www.lasvegassun.com/news/2011/may/11/harry-reid-reintroduces-dream-act/.

270 See Deferred Action for Childhood Arrivals, supra note 4, (“Individuals who demonstrate that they meet the guidelines [of the order] may request consideration of deferred action for childhood arrivals for a period of two years, subject to renewal, and may be eligible for employment authorization.”). Id.
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 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 the best and brightest post-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 United States hit an economic recession in 2007, the United States has struggled with unemployment, job creation and job loss, and more. 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. The low H-1B visa quota restricts the ability for American businesses from hiring these individuals, 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 needs to increase visa quotas and invite opportunities in order to improve our economy.

272 H-1B Fiscal Year (FY) 2013 Cap Season, supra note 65.