



November 19, 2020

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
H-232, The Capitol
Washington, D.C. 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
S-230, The Capitol
Washington, D.C. 20510

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
H-204, The Capitol
Washington, D.C. 20515

The Honorable Charles E. Schumer
Minority Leader
United States Senate
S-221, The Capitol
Washington, D.C. 20510

Dear Speaker Pelosi and Leaders McConnell, Schumer, and McCarthy:

Engine works with a network of startups, incubators, accelerators, and support organizations within the technology sector that depend on access to the best and most qualified employees to succeed. These companies often start small, but have the ability to grow and thrive, serving as a primary source of net job creation in the country. Not only do these startups rely on innovative talent (from many different countries) to excel, but many of these job-creating startups are founded by foreign-born entrepreneurs, who create ventures that help grow the American economy and employ countless American workers. Given that more than half of the United States' billion dollar startups have an immigrant founder, the contributions of immigrants cannot be overstated or overlooked.¹

As such, we are deeply concerned by the administration's continued actions to undermine America's visa programs, limiting the pool of high-skilled talent that contribute to America's vibrant workforce and provide the tech industry with the talent they so desperately need, particularly amidst the pandemic, and we encourage Congress to take steps to support and expand the H-1B visa program. Both the decision to suspend entry for H-1B and other visa recipients and recent efforts to further restrict H-1B visas by limiting the qualifications for eligibility will result in a decrease in innovation and American economic growth, and will hamper new startup formation.² And a proposed rule to replace the H-1B visa lottery³ with a system that prioritizes petitioners that would receive the highest wages does a disservice to companies struggling to fill talent gaps across multiple levels of employment, and would particularly harm those in early stages of their careers and international students. As we previously stated in a letter signed by 118 startups and technology companies to President Trump, welcoming high-skilled workers to the United States does not hurt our nation or

¹ National Foundation for American Policy, *New Research: More Than Half of America's Billion-Dollar Startups Have an Immigrant Founder* (Oct. 24, 2018),

<https://nfap.com/wp-content/uploads/2018/10/Billion-Dollar-Startups.DAY-OF-RELEASE.October-2018.pdf>.

² Jay Srinivasan, *Trump's Latest Immigration Restrictions are Bad News for American Workers*, Tech Crunch (Oct. 14, 2020), <https://techcrunch.com/2020/10/14/trumps-latest-immigration-restrictions-are-bad-news-for-american-workers/>.

³ Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions, 85 Fed. Reg. 69236, November 2, 2020.

American workers. Instead, these workers “bolster innovation, create new jobs and employment opportunities, and contribute to the development of critically needed technologies.”⁴

The administration wrongly asserts that new Department of Homeland Security (DHS) rules, which include limiting the list of qualifications eligible to receive an H-1B visa, are essential to halt the replacement of American workers by foreign born talent.⁵ Moreover, DHS argues such action is urgently needed particularly amidst the pandemic and that roughly 500,000 American workers have been displaced by foreign talent.⁶ But this “data” is flawed, research supports the opposite conclusion,⁷ and American businesses agree.⁸ Studies have shown that the H-1B program doesn’t limit American job opportunity. Instead, it ultimately creates new jobs for American workers,⁹ and—if the program were expanded—could result in the creation of up to 1.3 million new U.S. jobs.¹⁰ Nor does the presence of H-1B workers indicate a stagnation or depression of wages for American workers.¹¹ Further, evidence suggests that limiting the H-1B visa allocation to 65,000 visas per year has had a depressive effect on job growth, estimating that “had the U.S. government not rejected 178,000 H-1B visa petitions in computer-related fields in the 2007 and 2008 visa lotteries, U.S. metropolitan areas could have created as many as 231,224 tech jobs for U.S.-born workers in the two years that followed.”¹² And the U.S. Chamber of Commerce, along with twelve other organizations, filed suit against DHS challenging the rule and the reasoning DHS asserts for its necessity.¹³ Engine, along with 45 other prominent U.S. firms, filed an amicus brief to the court in opposition of the rule changes due to the innovative and necessary contributions H-1B workers make to the U.S. economy.¹⁴

Not only do current and proposed restrictions on H-1B visas limit job creation in the U.S., but the unfavorable immigration environment surrounding high-skilled immigration may lead multinational companies to transfer jobs out of the country or choose to entirely grow their endeavors elsewhere.¹⁵ According to the American Immigration Council, one study found that multinational companies responded to H-1B restrictions

⁴ See coalition letter to President Trump, available at:

<https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/5f08b00efaca2273b482af16/1594404879200/H-1B+Letter+to+Trump+Administration.pdf>.

⁵ Strengthening the H-1B Nonimmigrant Visa Classification Program, 85 Fed. Reg. 63918, Oct. 8, 2020; and Kate Duffy, *The Trump administration has made further restrictions to its H-1B visa programme that it says will ensure American employees are not 'replaced' by overseas workers*, Business Insider (Oct. 7, 2020),

<https://www.businessinsider.com/us-h1b-visa-rules-restrictions-cut-visas-by-third-unveiled-2020-10>.

⁶ *Id.*; and Department of Homeland Security, Department of Homeland Security and Department of Labor Rule Restores Integrity to H-1B Visa Program (Oct. 6, 2020),

<https://www.dhs.gov/news/2020/10/06/department-homeland-security-and-department-labor-rule-restores-integrity-h-1b-visa>.

⁷ Srinivasan, *supra* note 2.

⁸ Business Today, *6 top US firms, including Apple, Facebook, Google, support lawsuit against H-1B visa rule changes* (Oct. 31, 2020),

<https://www.businesstoday.in/current/world/46-top-us-firms-including-apple-facebook-google-support-lawsuit-against-h-1b-visa-rule-changes/story/420533.html>.

⁹ Madeline Zavodny, *The Impact of H-1B Visa Holders on the U.S. Workforce*, National Foundation for American Policy (May 2020),

<https://nfap.com/wp-content/uploads/2020/05/The-Impact-of-H-1B-Visa-Holders-on-the-U.S.-Workforce.NFAP-Policy-Brief.May-2020.pdf>.

¹⁰ Srinivasan, *supra* note 2.

¹¹ American Immigration Council, *the H-1B Visa Program* (April 2, 2020),

<https://www.americanimmigrationcouncil.org/research/h1b-visa-program-fact-sheet>.

¹² *Id.*

¹³ Business Today, *supra* note 8.

¹⁴ Brief of Amici Curiae Leading Business Organizations and Companies in Support of Plaintiffs’ Motion for Preliminary Injunction to Stay Agency Action or for Partial Summary Judgment, Chamber of Commerce of the United States of America, et al., v. Department of Homeland Security, et al, Case No. 20-cv-07331-JSW (2020).

¹⁵ American Immigration Council, *supra* note 11.

“by increasing employment at their existing foreign affiliates and by opening new foreign affiliates—particularly in India, China, and Canada.”¹⁶ Indeed, according to the National Foundation for American Policy, “[t]he fact that the H-1B program either improves job opportunities for U.S. workers or has no effect indicates that the program enables employers to hire foreign workers when they cannot hire U.S. workers,” and that absent needed H-1B visas, the solution for employers is to instead hire talent overseas.¹⁷ But this isn’t ideal both for job creation or for employers, as bringing workers in-country is thought to result in increased productivity over offshoring jobs.¹⁸

Also critical, high-skilled talent is essential for new startup formation and growth and for fostering innovation in the United States. Many H-1B recipients go on to found cutting-edge companies (and create jobs), and they choose to do so in the United States. Restricting the pathways for critical talent to enter the United States means more of these companies will be founded elsewhere, taking with them new jobs and ideas that could elevate America’s economy. Indeed, studies have shown that “immigrants found businesses at twice the rate of the native born, starting about 30% of all new businesses in 2016 and more than half of the country’s billion-dollar unicorn startups.”¹⁹ And many of the most well known American brands and tech companies were similarly founded by immigrants.²⁰ But instead of opening new pathways to allow for greater numbers of new, innovative companies to take root in the United States, the administration is narrowing those pathways and policymakers must work to undo these efforts. Where other countries welcome high-skilled, foreign-born talent for the contributions they might bring, including through an entrepreneur visa, the U.S. is only continuing to narrow the already restrictive mechanisms foreign-talent can use to devote their skills to American economic growth.

That is why it is critical that in this time of extreme economic uncertainty caused by the COVID-19 pandemic, policymakers work to embrace innovation and the contributions of foreign-born talent, strengthen and expand the H-1B visa program, and consider the talent needs of America’s startups and tech community. The contributions of immigrants are woven into the fabric of American innovation—turning our backs on immigrants now not only runs counter to the ideals of our nation, but risks our nation’s position as the leading economic and technological powerhouse of the world. If policymakers are truly dedicated to lifting up the American workforce, they will work to preserve and grow the H-1B visa program, so that the needs of American companies are met, new jobs are created, and new ideas can flourish.

Sincerely,

Engine

cc:

Representative Jerrold Nadler (D-NY), Chairman, House Judiciary Committee
Representative Jim Jordan (R-OH), Ranking Member, House Judiciary Committee
Senator Lindsey Graham (R-SC), Chairman, Senate Judiciary Committee
Senator Dianne Feinstein (D-CA), Ranking Member, Senate Judiciary Committee

¹⁶ *Id.*

¹⁷ Zavodny, *supra* note 9.

¹⁸ *Id.*

¹⁹ Srinivasan, *supra* note 2.

²⁰ *Id.*