

**Henry Clay Center for Statesmanship  
College Student Congress**

**To:** United States House Judiciary Subcommittee on Immigration and Citizenship

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**Re:** Immigration Reform

**Introduction**

The United States is facing a crisis over the vast number of immigrants currently entering and residing in the country. This crisis is associated with economic, societal, and political complications. The multi-faceted problem of immigration requires a bipartisan solution, specifically with regards to the amount of immigration judges and the resulting efficiency of the system, the H-2B seasonal work visa, and the categorical classifications of asylum seekers.

- There is a backlog of immigration cases and applications, which requires more judges and a restructuring of the immigration court system.
- With open jobs in America and a low cap for seasonal work visas, there should be revisions to the H-2B visas to create more legal work opportunities for immigrants.
- There are five categories for which asylum seekers can apply for asylum which are not exhaustive, the membership in a particular social group should be specified to include groups such as victims of domestic and gang violence and the LGBTQIA+ community.

**Background**

The American immigration system has grown to include complicated parts including different agencies, applications, and courts. Over time, this system has seen an overwhelming number of people applying for immigration as well as a large number of undocumented immigrants entering through unauthorized methods. Within the federal government, various departments/agencies play a role in the immigration process, including the Department of Homeland Security, State, Labor, among others. Currently, immigration laws are overseen and cases are adjudicated by the Department of Justice's Executive Office for Immigration Review. The immigration court system under the EOIR has 424 active judges and 64 courts across the country. With 876,552 cases on the docket, however, there must be some reform in order to create a more effective and efficient system for all.

For entrance into the United States, generally, one must obtain a visa with the intentions to visit, study, or work. The purpose of a visa is to endorse the legal allowance of a person into a country. The permitted entrance includes an extended stay for a specified period of time, which is defined by the type of visa for which one holds. For economic purposes, the United States allows work under the H-2A and H-2B programs. The H-2A program currently allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary and seasonal agricultural jobs. Along with the H-2A, H-2B provide a temporary visa for entrance into the States based on non-agricultural employers' needs to temporarily fill jobs.

Every year there are thousands of individuals who seek asylum in the United States. Those seeking asylum are labeled as refugees and under this refugee status they are unwilling or unable to return to their home country because of a fear of being persecuted in the future or a lack of protection currently. Asylum seekers are persecuted based on race, religion, nationality, membership in a particular social group, or political opinion. Individuals who are granted asylum are able to obtain a path to citizenship, may receive certain benefits, and are able to work in the United States. In order to be granted asylum status, individuals often have to provide a substantial amount of proof highlighting their persecution or documentation that they have reason to fear persecution in the future. Asylum officers conduct credible fear interviews and either accept or deny their claims. If an individual's claims are accepted their case will then appear in the immigration court and a judge will decide if they should be granted asylee status.

### **Problem Definition**

Immigration is currently a problem in the United States due to the vast number of immigrants that enter and reside in the country. A significant portion of the problem stems from a three-fold origin. First, the status quo for the immigration process severely lacks the proper resources necessary for attainment of an efficient process. There are currently 424 active immigration judges in sixty-four immigration courts; however, this is insufficient and warrants reform because as of April 2019, there are 876,552 pending cases. With the present system, it can take up to two years to see an immigration judge for the asylum process and up to twenty-four years the general immigration process. Therefore, there is a significant need for an increase in judges, clerks, and interpreters in order to not only speed up the overall process but also to help alleviate the judge's workload.

Second, the current seasonal work visa system features a low cap that leaves many employment opportunities in the United States unfilled. There are currently only 66,000 temporary work visas available, while there is 7.5 million open jobs in the United States. Furthermore, the H-2B visa for non-agricultural workers requires the employer to file for and hold the visa, which greatly restricts the workers by preventing them from taking other jobs. The status quo creates a monopoly-esque situation, in which workers are unable to take advantage of the market forces that increase wages and create better working conditions. Therefore, there is a critical need to revise the H-2B visa in order to provide more seasonal work opportunities for foreign workers in the United States.

Finally, the immigration courts are facing a severe backlog in the asylum process. As of March 2018, there are over 318,000 pending cases and individuals could wait more than four years for their case to be processed. Those seeking asylum are often left in a state of uncertainty, left facing threat and danger in their home countries, or left without proper pro bono counseling due to a lack of translators and education. According to Guion Johnstone, a leading immigration lawyer, some immigration judges do not understand the difference between refugees and asylees; therefore, it is crucial that a system is developed that provides a more comprehensive education and training process to judges. Furthermore, there are currently five categories for those seeking asylum: race, religion, nationality, membership in a particular group, and political opinion; however, this is not an exhaustive list. For example, domestic and gang violence do not fit appropriately into any of the former categories. Therefore, there needs to be a clear definition of the grounds on which asylum seekers may seek protection.

### **Policy Goal and Criteria**

Our goal is to improve the efficiency of the immigration system, provide more opportunities for legal entry into the country, and limiting costs to American citizens. The policy recommendation put forth by this body addresses the inadequacies and inefficiencies present in immigration today. If effective, there will be fewer number of cases and backlogs, an increase in revenue due to taxes, and an increase in economic productivity. The criteria used to determine the proposed policy was political and administrative feasibility,

efficiency of the court system, equity in the tax structure, and sustainability. The feasibility of this program was an important part of our deliberations so that the policy is ensured to last. One of the biggest issues we saw affecting the immigration crisis is the inefficiency within the court system. Our proposed policy ensures that efficiency in the court system expands through the increased number of immigration judges. There will also be equity in taxes between immigrants and American citizens. With this proposed policy, there will be a horizontal equity within a progressive income tax system, meaning that immigrants will pay the same number of taxes that other American citizens pay in their same tax bracket. The taxes from immigrants will help sustain the policies enacted and will go towards funding the existing and new immigration judges.

## **Recommendations:**

### **Immigration Courts and Judges**

Revision of the allocation of judges in the immigration system will allow for more efficiency in the overall system. Specifically, revision of the system will ...

- Increase number of immigration judges by 300, including staff
  - This will work to alleviate the case burden on each judge and work through the backlogged number of cases
- Create an independent court system by 2025 under a United States Court of Immigration under the judicial branch by Article 1 Congressional powers
  - Elimination of the Executive Office of Immigrant Review and roles and responsibilities will be housed under the Immigration Court system
  - Judicial appointments will be through presidential appointment and Senate confirmation instead of appointment by the Attorney General

### **Economic Work Visa**

A revised H-2B seasonal work visas will allow for more foreign workers to apply for non-agricultural, temporary work opportunities in the United States. Specifically, the revised H-2B visa will ...

- Allow employees to apply for visas
- Allow for the H-2A Visas to remain uncapped
- Allow for the H-2B Visas to fluctuate based on the economy
- Allow H-2B recipients who qualify for Medicaid to receive benefits
- Conviction for a serious felony results in immediate placement in removal proceedings

### **Asylum**

A revised asylum system will allow for more educational opportunities and a more exhaustive categorical classification for those seeking asylum. Specifically, the revised asylum system will ...

- Specify “membership in a particular social group”
- Improve equitable access to resources without increasing taxes
- Improve education and training of judges

## **Conclusion**

There is an immigrant crisis in the United States. That problem, in part, stems from the inefficiency of the immigration system. By increasing the number and education of immigration judges, the quality and efficiency of the immigration system should increase. By expanding the categorical classification of asylees, it allows for more opportunity for those seeking protection. Furthermore, by increasing the amount of seasonal work visas available, there will be a rise in temporary workers that fill the open economic opportunities and bolster the economy. Moreover, an increase in flexibility in the ease in crossing the border for seasonal work will diminish the fear associated with entry and reentry into the United States. In conclusion, the amount of immigrants in the United States can be reduced as a result of immigration reform.

## References:

- “Asylum in the United States.” *American Immigration Council*, FACT SHEET Asylum in the United States, 14 Mar. 2018, [www.americanimmigrationcouncil.org/research/asylum-united-states](http://www.americanimmigrationcouncil.org/research/asylum-united-states).
- “Congress Should Establish an Article I Immigration Court.” *Article I Immigration Court*, Federal Bar Association, 2019, [www.fedbar.org/Advocacy/Article-1-Immigration-Court.aspx](http://www.fedbar.org/Advocacy/Article-1-Immigration-Court.aspx).
- “Empty Benches: Underfunding of Immigration Courts Undermines Justice.” *American Immigration Council*, 17 June 2016, [www.americanimmigrationcouncil.org/research/empty-benches-underfunding-immigration-courts-undermines-justice](http://www.americanimmigrationcouncil.org/research/empty-benches-underfunding-immigration-courts-undermines-justice).
- Executive Office for Immigration Review. “Workload and Adjudication Statistics.” *The United States Department of Justice*, The United States Department of Justice, 17 May 2019, [www.justice.gov/eoir/workload-and-adjudication-statistics](http://www.justice.gov/eoir/workload-and-adjudication-statistics).
- “Fact Sheet: H-2B Visas.” *National Immigration Forum*, 25 July 2018, [immigrationforum.org/article/fact-sheet-h-2b-visas/](http://immigrationforum.org/article/fact-sheet-h-2b-visas/).
- Fidler, Katherine. “The Inefficient U.S. Immigration System: A Texas Perspective.” *Taxes Public Policy Foundation*, July 2016.
- “H-2B Temporary Non-Agricultural Workers.” *USCIS*, U.S. Citizenship and Immigration Services, 20 Oct. 2009, [www.uscis.gov/working-united-states/temporary-workers/h-2b-temporary-non-agricultural-workers](http://www.uscis.gov/working-united-states/temporary-workers/h-2b-temporary-non-agricultural-workers).
- “h2b Workers Salaries.” *h2b Workers Salaries*, SimplyHired, [www.simplyhired.com/salaries-k-h2b-workers-jobs.html](http://www.simplyhired.com/salaries-k-h2b-workers-jobs.html).
- How Do I Sponsor an Employee for U.S. Permanent Resident Status?* U.S. Citizenship and Immigration Service, Oct. 2013.
- Kamal, Rabah, and Cynthia Cox. “How Has U.S. Spending on Healthcare Changed over Time?” *Peterson-Kaiser Health System Tracker*, 10 Dec. 2018, [www.healthsystemtracker.org/chart-collection/u-s-spending-healthcare-changed-time/#item-health-spending-growth-has-outpaced-growth-of-the-u-s-economy\\_2017](http://www.healthsystemtracker.org/chart-collection/u-s-spending-healthcare-changed-time/#item-health-spending-growth-has-outpaced-growth-of-the-u-s-economy_2017).
- Moffett, Dan. “How the W Visa Proposal Would Work.” *ThoughtCo*, 17 Mar. 2017, [www.thoughtco.com/the-w-visa-program-1951766](http://www.thoughtco.com/the-w-visa-program-1951766).
- “NHE-Fact-Sheet.” *Centers for Medicare & Medicaid Services*, 26 Apr. 2019, [www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/nationalhealthexpenddata/nhe-fact-sheet.html](http://www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/nationalhealthexpenddata/nhe-fact-sheet.html).
- Office of Immigration Statistics OFFICE OF STRATEGY, POLICY & PLANS. “Annual Flow Report REFUGEES AND ASYLEES: 2017.” *Homeland Security*, Mar. 2019, [www.dhs.gov/sites/default/files/publications/Refugees\\_Astylees\\_2017.pdf](http://www.dhs.gov/sites/default/files/publications/Refugees_Astylees_2017.pdf).

Skowronski, Jeanine. "A State-by-State Guide to Medicaid: Do I Qualify?" *Policygenius Magazine*, Policygenius Magazine, 26 Jan. 2018, [www.policygenius.com/blog/a-state-by-state-guide-to-medicaid/](http://www.policygenius.com/blog/a-state-by-state-guide-to-medicaid/).

Smith, Kate. "The Facts on Immigration: What You Need to Know in 2019." *CBS News*, CBS Interactive, 4 Feb. 2019, [www.cbsnews.com/news/donald-trump-on-immigration-topics-likely-2019-state-of-the-union-fact-check/](http://www.cbsnews.com/news/donald-trump-on-immigration-topics-likely-2019-state-of-the-union-fact-check/).

"'Tough, Fair, and Practical' | A Human Rights Framework for Immigration Reform in the United States." *Human Rights Watch*, 8 July 2010, [www.hrw.org/report/2010/07/08/tough-fair-and-practical/human-rights-framework-immigration-reform-united-states](http://www.hrw.org/report/2010/07/08/tough-fair-and-practical/human-rights-framework-immigration-reform-united-states).