



October 27, 2014

Dear President Obama:

I write as one member of the U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole. I write to express my concern regarding reports that you plan on issuing an executive order that purports to grant legal status and work authorization to millions of illegal immigrants after the November elections.¹ My concerns center around the effect such grant of legal status will have on two subsets of American workers: low-skilled workers, particularly low-skilled black workers, and high-skilled STEM workers.

These concerns have been renewed thanks to a USCIS draft solicitation projecting a “potential ‘surge’ in PRC and EAD card demand for up to 9M cards during the initial period of performance to support possible future immigration reform initiative requirements.”² Furthermore, the solicitation provides that “the estimated maximum for the entire contract is 34 million cards.”³ Given that the base ordering period is 02/01/15-01/30/16, with optional ordering periods that last only until 01/30/20, this solicitation contemplates that USCIS will grant an estimated 34 million Permanent Resident Cards (PRC) and Employment Authorization Documents (EAD) in only five years.⁴ Many of the Permanent Resident Documents will go to people who have resided in the United States for years. However, the difference between the minimum number of orders per year (4 million) and the estimated maximum (34 million) suggests that USCIS expects to have a demand for 9 million to 14 million documents as a result of an executive amnesty or guest worker program.⁵

Such an increase in lawful workers would have a deleterious effect on low-skilled American workers, particularly black workers. In 2008, the U.S. Commission on Civil Rights held a briefing regarding the impact of illegal immigration on the wages and employment opportunities of African-Americans.⁶ The testimony at the briefing indicated

¹ Cassie Spodak *et al.*, *Obama: Waiting will make immigration executive action ‘more sustainable,’* CNN.com, Sept. 7, 2014, <http://www.cnn.com/2014/09/06/politics/obama-immigration/>.

² USCIS, Draft Solicitation HSSCCG-14-R-00028, Attachment 1, “Next Generation Card Consumables Statement of Work”, at 2, Oct. 6, 2014, available at <https://www.fbo.gov/index?id=a432eb7928319f1e3c020b40ee924ce3>.

³ USCIS, Draft Solicitation HSSCCG-14-R-00028, at 5, Oct. 6, 2014, available at <https://www.fbo.gov/index?id=a432eb7928319f1e3c020b40ee924ce3>.

⁴ *Id.* at 1-4.

⁵ *Id.* at 5.

⁶ U.S. COMMISSION ON CIVIL RIGHTS, THE IMPACT OF ILLEGAL IMMIGRATION ON THE WAGES AND EMPLOYMENT OPPORTUNITIES OF BLACK WORKERS [hereinafter THE IMPACT OF ILLEGAL IMMIGRATION], available at http://www.usccr.gov/pubs/IllegImmig_10-14-10_430pm.pdf.



that illegal immigration disproportionately impacts the wages and employment opportunities of African-American men.⁷

The briefing witnesses, well-regarded scholars from leading universities and independent groups, were ideologically diverse. All the witnesses acknowledged that illegal immigration has a negative impact on black employment, both in terms of employment opportunities and wages. The witnesses differed on the extent of that impact, but every witness agreed that illegal immigration has a discernible negative effect on black employment. For example, Professor Gordon Hanson's research showed that "Immigration . . . accounts for about 40 percent of the 18 percentage point decline [from 1960-2000] in black employment rates."⁸ Professor Vernon Briggs writes that illegal immigrants and blacks (who are disproportionately likely to be low-skilled) often find themselves in competition for the same jobs, and the huge number of illegal immigrants ensures that there is a continual surplus of low-skilled labor, thus preventing wages from rising.⁹ Professor Gerald Jaynes's research found that illegal immigrants had displaced U.S. citizens in industries that had traditionally employed large numbers of African-Americans, such as meatpacking.¹⁰

Illegal immigration has a disparate impact on African-American men because these men are disproportionately represented in the low-skilled labor force. The Census Bureau released a new report on educational attainment after the Commission issued its report. This report, released in February 2012, found that 50.9 percent of native-born blacks had not continued their education beyond high school.¹¹ The same report found that 75.5 percent of foreign-born Hispanics had not been educated beyond high school, although it does not disaggregate foreign-born Hispanics who are legal immigrants from those who are illegal immigrants.¹² However, Professor Briggs estimated that illegal immigrants or former illegal immigrants who received amnesty constitute a third to over a half of the total foreign-born population.¹³ Foreign-born Hispanics who are in the

⁷ *Id.* at 3, Finding 5:

Illegal immigration to the United States in recent decades has tended to depress both wages and employment rates for low-skilled American citizens, a disproportionate number of whom are black men. Expert economic opinions concerning the negative effects range from modest to significant. Those panelists that found modest effects overall nonetheless found significant effects in industry sectors such as meatpacking and construction.

⁸ *Id.*, at 26.

⁹ *Id.* at 37, 38-39

¹⁰ *Id.* at 31.

¹¹ CAMILLE L. RYAN & JULIE SIEBENS, U.S. CENSUS BUREAU, EDUCATIONAL ATTAINMENT IN THE UNITED STATES: 2009 (Feb. 2012), at 7, *available at* <http://www.census.gov/prod/2012pubs/p20-566.pdf>.

¹² *Id.*

¹³ THE IMPACT OF ILLEGAL IMMIGRATION, *supra* note 6, at 35-36.



United States illegally are disproportionately male.¹⁴ African-Americans who have not pursued education beyond high school are also disproportionately male.¹⁵ These poor educational attainment levels usually relegate both African-American men and illegal immigrant men to the same low-skilled labor market, where they must compete against each other for work.¹⁶

The proposed executive order will also have a negative effect on young African-Americans at the outset of their working lives. Young, low-skilled workers are facing enormous difficulties in this economy. A recent study from the Brookings Institution found, “Only about half of high school graduates not enrolled in post-secondary education and less than 30 percent of high school dropouts worked in a given month in 2011.”¹⁷ Black teens had the highest labor underutilization rate (defined as encompassing the unemployed, the unemployed who desire employment but are not actively looking, and the underemployed) of any ethnic group – 60 percent.¹⁸ Furthermore, “Several variables were negatively associated with teen employment rates in a given metropolitan area. ... [including] the presence of immigrants with less than a bachelor’s degree.”¹⁹

¹⁴ Peter Skerry, *Splitting the Difference on Illegal Immigration*, NATIONAL AFFAIRS (Winter 2013), at 5 (“Of the undocumented immigrants over the age of 18 currently residing in the U.S., there are approximately 5.8 million males, compared to 4.2 million females.”), available at http://www.nationalaffairs.com/doclib/20130102_Skerry.pdf.

¹⁵ THE IMPACT OF ILLEGAL IMMIGRATION, *supra* note 6, at 52; see also Anne McDaniel, Thomas A. DiPrete, Claudia Buchmann & Uri Shwed, *The Black Gender Gap in Educational Attainment: Historical Trends and Racial Comparisons*, 48 DEMOGRAPHY 889, 890 (2011) (“It is well known that black males trail black females on a range of key educational outcomes, including high school graduation, college enrollment, and college completion.”), available at <http://jrnetsolserver.shorensteincenter.netdna-cdn.com/wp-content/uploads/2011/10/fulltext.pdf>.

¹⁶ THE IMPACT OF ILLEGAL IMMIGRATION, *supra* note 6, *Statement of Vernon M. Briggs, Jr.*, at 37.

[I]t is not everywhere that there is likely to be significant competition between low skilled black workers and illegal immigrant workers, but there are ample circumstances where there is – such as the large metropolitan labor markets of Los Angeles, New York, San Francisco, Chicago, Miami and Washington-Baltimore. Moreover, some of the fastest growing immigrant concentrations are now taking place in the urban and rural labor markets of the states of the Southeast – such as Georgia, North Carolina and Virginia, which never before were significant immigrant receiving states in previous eras of mass immigration. Indeed, about 26 percent of the nation’s foreign-born population are now found in the states of the South – the highest percentage ever for this region. There is mounting evidence that many of these new immigrants in this region are illegal immigrants.

¹⁷ Andrew Sum *et al.*, *The Plummeting Labor Market Fortunes of Teens and Young Adults*, THE BROOKINGS INSTITUTION, March 2014, at 4, available at http://www.brookings.edu/~media/Research/Files/Reports/2014/03/14%20youth%20workforce/Youth_Workforce_Report_FINAL.pdf.

¹⁸ *Id.* at 7.

¹⁹ *Id.* at 11.



This will affect young people for the rest of their lives, as those who work during their teenage years have more successful careers than those who did not.²⁰

If you look at the labor force participation rate, the news is even grimmer. In September 2014, the labor force participation rate for civilians over 25 with less than a high school diploma was only 44.3 percent.²¹ Surely some of the 55 percent who aren't in the labor force would like to work. But what is the point of continuing to look for jobs when they are so scarce? This problem too will be exacerbated by legalizing illegal immigrants.

Granting work authorization to millions of illegal immigrants will devastate the black community, which is already struggling in the wake of the recession that began in 2007 and the subsequent years of malaise. Americans of all racial groups have seen their incomes stagnate since the recession. African-Americans have been particularly hard-hit, however. Their median wages were already the lowest of any racial or ethnic group, and they have not recovered from the recession.²² In 2007, median black household income was \$35,219 and declined to \$34,218 in 2008.²³ In 2013, median black household income was \$34,598 – better than during the worst of the recession, but still not back to the 2007 level.²⁴ In contrast, median non-Hispanic white household income declined from \$57,030 in 2007 to \$55,530 in 2008.²⁵ Yet by 2013, their income had rebounded to \$58,270.²⁶ The median income of Asian and Hispanic households had also rebounded by 2013.²⁷

Granting legal status to millions of people who are in the United States illegally will continue to depress the wages and employment opportunities of African-American

²⁰ Lydia DePillis, *The other unemployment crisis: Teenagers are being left out of the recovery*, Wash. Post, May 1, 2014, <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/05/01/the-other-unemployment-crisis-teenagers-are-being-left-out-of-the-recovery/>.

²¹ BUREAU OF LABOR STATISTICS, Table A-4, *Employment status of the civilian population 25 years and over by educational attainment*, Sept. 2014, <http://www.bls.gov/news.release/empsit.t04.htm>.

²² Carmen DeNavas-Walt et al., *INCOME, POVERTY, HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2008*, U.S. CENSUS BUREAU (2009), at 6, available at <http://www.census.gov/prod/2009pubs/p60-236.pdf>.

²³ *Id.*

²⁴ Carmen De Navas-Walt and Bernadette D. Proctor, *INCOME AND POVERTY IN THE UNITED STATES: 2013*, U.S. CENSUS BUREAU (2014), at 6, available at <http://www.census.gov/content/dam/Census/library/publications/2014/demo/p60-249.pdf>.

²⁵ Carmen DeNavas-Walt et al., *INCOME, POVERTY, HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2008*, U.S. CENSUS BUREAU (2009), at 6, available at <http://www.census.gov/prod/2009pubs/p60-236.pdf>.

²⁶ Carmen De Navas-Walt and Bernadette D. Proctor, *INCOME AND POVERTY IN THE UNITED STATES: 2013*, U.S. CENSUS BUREAU (2014), at 6, available at <http://www.census.gov/content/dam/Census/library/publications/2014/demo/p60-249.pdf>.

²⁷ *Id.* One caveat is that the median income of Asian households reached \$69,633 in 2012, but strangely declined to \$67,065 in 2013. Regardless, this means that the 2012 median income of Asian households surpassed their 2007 median income of \$68,643.



men and teenagers. It also will depress the wages and employment opportunities of African-Americans going forward. Since 1986, we have seen that granting legal status to illegal immigrants, or even mere rumors that legal status will be granted, increases illegal immigration. Likewise, the evidence indicates that the flood of illegal immigrants across our southern border is mostly attributable to your directive granting temporary legal status to people allegedly brought to the United States as children. This is unsurprising. When you incentivize bad behavior, you get more of it.

Finally, I would like to say a few words about the supposed need for an increased number of high-tech visas. There is little evidence, other than the protestations of tech titans and politicians, that there is a shortage of STEM workers in the United States. Statistics suggest otherwise. Five professors who, variously, study economics, public policy, labor, and computer science recently wrote, “[the] Census reported that only one in four STEM degree holders is in a STEM job ... As longtime researchers of the STEM workforce and immigration who have separately done in-depth analyses on these issues ... none of us has been able to find any credible evidence to support the IT industry’s assertions of labor shortages.”²⁸ Others note, “America ‘produces far more science and engineering graduates than there are S&E job openings – the only disagreement is whether it is 100 percent or 200 percent more.’”²⁹

Furthermore, if there is a shortage of IT workers, why aren’t wages increasing?³⁰ Hal Salzman notes that wages in the IT field fell after the dot-com bubble burst in 2000, and “[are] well below their earlier peak and now hover around wage levels of the late 1990s.”³¹ Also, as Jay Schalin notes, the fact that STEM graduates are more likely to be employed than those with other degrees does not mean that they are employed in STEM fields or at high wages. For example, students who graduated with chemistry degrees had a 6.6% unemployment rate, but had a “starting mean salary of \$32,000 [which] is surprisingly below average for all graduates, equal to those with sociology degrees.”³² The problem is not that there are insufficient STEM graduates; the problem is that tech

²⁸ Ron Hira, Paula Stephan *et al.*, *Bill Gates’ tech worker fantasy*, USA TODAY, July 27, 2014, <http://www.usatoday.com/story/opinion/2014/07/27/bill-gates-tech-worker-wages-reforms-employment-column/13243305/>

²⁹ George Leef, *An Imaginary Crisis*, quoting Michael Teitelbaum, FALLING BEHIND: BOOM, BUST, AND THE GLOBAL RACE FOR SCIENTIFIC TALENT, The John William Pope Center for Higher Education Policy, May 21, 2014, <http://www.popecenter.org/commentaries/article.html?id=3014#.VEkTVfnF91k>.

³⁰ Hal Salzman, *What Shortages? The Real Evidence About the STEM Workforce*, ISSUES IN SCIENCE AND TECHNOLOGY 58, 64 (Summer 2013), available at <http://policy.rutgers.edu/faculty/salzman/science/What%20Shortages-Issues%20S&T-Summer2013-Salzman-Final.pdf>.

³¹ *Id.* at 64.

³² Jay Schalin, *A Solution for a Bygone Era*, The John William Pope Center for Higher Education Policy, May 24, 2012, <http://www.popecenter.org/commentaries/article.html?id=2698#.VEkQ5PnF91k>.



companies do not want to pay the wages American workers would demand absent a continual influx of high-tech visa holders.³³

And, contra the claims so often heard in the public square, elite American STEM students are just as capable as are elite foreign STEM students.³⁴ The statistics are skewed in part because they often compare elite foreign STEM students to American students as a whole.³⁵ In fact, there is some evidence that American STEM students are more talented than foreign STEM students.³⁶ The tech industry is begging for an increase in foreign STEM workers not because there are not enough American STEM workers, or

³³ Hira *et al.*, *supra* note 28.

Those supporting even greater expansion [of IT visas] seem to have forgotten about the hundreds of thousands of American high-tech workers who are being shortchanged – by wages stuck at 1998 levels, by diminished career prospects and by repeated rounds of layoffs.

...

Unfortunately, companies are exploiting the large existing flow of guest workers to deny American workers access to STEM careers and the middle-class security that should come with them. Imagine, then, how many more Americans would be frozen out of the middle class if politicians and tech moguls succeeded in doubling or tripling the flow of guest workers into STEM occupations.

³⁴ Salzman at 63.

³⁵ *Id.* at 63.

[T]he average test scores of countries that are of most concern as economic competitors would be dismal if a more representative sample of their students were tested, as is the case in the United States. China and India, in particular, have very large illiterate populations that would lead to devastatingly low averages.

³⁶ Norman Matloff, *Are Foreign Students the ‘Best and Brightest’? Data and implications for immigration policy*, ECONOMIC POLICY INSTITUTE (Feb. 2013), at 3-4.

The study finds that the tech industry’s “genius” claims for these groups [those who first entered the United States as foreign students in computer science or electrical engineering] are not supported by the available data. Compared to Americans of the same education and age, the former foreign students turn out to be weaker than, or at most comparable to, the Americans in terms of salary, patent applications, Ph.D dissertation awards, and quality of the doctoral program in which they studied.

For some readers of this report, perhaps the most surprising result here will concern work in research and development (R&D). The industry has emphasized that it needs foreign workers in order to keep its innovative edge over other countries, yet the data show the former foreign students are significantly *less* likely to work in R&D than the Americans. In other words, H-1B and related programs are not raising U.S. levels of talent and innovation in the tech fields, and are in some ways reducing them.

...

Isn’t it good to have as many engineers as possible, even if they aren’t geniuses? The answer is no, because the H-1B and green card programs have been causing an internal brain drain of tech talent in the United States. ... these programs squeeze out U.S. citizens and permanent residents and make the field unattractive to this country’s most talented young domestic students.



UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC 20425

www.usccr.gov

because they are insufficiently talented, but due to “its desire for young, cheap, and immobile labor.”³⁷

Some members of your administration have attempted to dismiss questions about why DHS would issue a draft solicitation for such a large number of identity documents.³⁸ Yet given that the solicitation itself states that it contemplates immigration reform, and you have publicly discussed issuing work authorizations via executive action (and have indeed done so in the past under Deferred Action for Childhood Arrivals), it seems prudent to take DHS at its word. Again, I urge you to forego any such executive action.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Kirsanow".

Peter Kirsanow
Commissioner

cc: Honorable Marcia L. Fudge, Chair, Congressional Black Caucus

³⁷ Hira *et al.*, *supra* note 28.

³⁸ Dave Boyer, *White House denies covert plan to issue millions of green cards*, WASHINGTON TIMES, Oct. 22, 2014, <http://www.washingtontimes.com/news/2014/oct/22/wh-denies-covert-plan-issue-millions-green-cards/>.