Response to Questions
from the
Senate Judiciary Committee
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representing the
Washington Alliance of Technology Workers,
Local 37083 of the Communication Workers of America,
the AFL-CIO ("WashTech"),
before the
Senate Committee on the Judiciary
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## Questions from Senator Blumenthal

**1. In your view, would it help to make more information regarding nonimmigrant worker visa programs available to the public without the need to rely on the FOIA process?**

Yes, making such data available would eliminate any doubt about the nature of H-1B and other guest worker programs.

This information should organized in a standard format and be made available on the Internet.

**2. Can you talk about what kinds of data should be made available and how such data could be used?**

All data from DHS's I-129 petitions except personal identifying information should be available. The corresponding data for all work authorizations not covered by I-129 should be available as well (*e.g.*, work authorizations under student visas).

Examples of the type information that would help monitor these programs include:

- Data for measuring diversity:
  - a) Age
  - b) Gender

    c) Country of Origin
- Education
    a) Degrees
    b) Institutions Granting the Degrees
- Economic Impact
    a) Occupation Code
    b) Wage
    c) Identifier of any Labor Condition Application(s) or Labor Certification
    d) Work Location
    e) Employer Name and Address
    f) Attorney Name and Address
- System Flow Data
    a) Application Dates
    b) Prior immigration status
    c) Any change in immigration status

Currently, there is very little data available about any other guest worker programs. For example, there is no way to even estimate the geographic distribution of workers on L-1 visas.

## Questions from Senator Sessions

**1. What specific enforcement problems exist relative to the H-1B program?**

The Department of Labor's Inspector General's Semiannual Reports highlight the general problem of enforcement in the H-1B program:

> The Department's administration of the foreign labor certification process, which permits U.S. businesses access to foreign workers to meet their workforce needs while protecting the jobs and wages of U.S. workers, has been an ongoing concern to the OIG since the mid-1990s. Among our concerns is that DOL is statutorily required to certify H-1B applications unless it deter-

> mines them to be "incomplete or obviously inaccurate." Given this fact, it is not surprising that OIG investigations have shown the H-1B program to be susceptible to significant fraud and abuse, particularly by immigration attorneys, labor brokers, dishonest employers, and organized criminal enterprises. Our investigations have revealed schemes in which fraudulent applications were filed with DOL on behalf of fictitious companies, individuals, and unscrupulous businesses seeking to acquire foreign workers.[1]

### A. Problems with the LCA approval process.

The first step in making an H-1B visa petition is that the employer files a Labor Condition Application ("LCA") with the Department of Labor. The LCA is where the employer certifies that it will comply with all the labor protection provisions of the H-1B program.

As the Inspector General pointed out, § 1182(n) limits the review of LCAs. The Department of Labor, "shall review such an application only for completeness and obvious inaccuracies." This requires Department of Labor to approve all LCAs within 7 days unless "the application is incomplete or obviously inaccurate." The employer knows that it can put anything down on the LCA and that it will be approved as along as the form is filled out correctly.

The Department of Labor is explicitly prohibited from reviewing LCAs after they are approved.[2] This means the entire LCA process is a giant paper shuffling exercise.

A number of bills (including S.744, 113th Congress) address the restriction on LCA approval by rewording the text with no change in effect.

The solution to this enforcement problem is to merely delete the following text in 8 U.S.C. § 1182(n)(1):

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[1] Office of Inspector General for the U.S. Department of Labor, Semiannual Report to Congress, Apr. 1–Sept. 30, 2014, p. 4

[2] 8 U.S.C. § 1182(n)(2)(G)(v)

~~The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary finds that the application is incomplete or obviously inaccurate, the Secretary shall provide the certification described in section 1101 (a)(15)(H)(i)(b) of this title within 7 days of the date of the filing of the application.~~

Another problem is that employers can file an LCA without having any specific worker identified. This makes enforcement of many LCA provisions impossible. At the approval time, the Department of Labor has no way to know how the LCA will actually be use. For example, the employer can certify on the LCA that it is not displacing Americans then use that LCA months later when it actually does displace Americans. LCA should be filed for a specific, identified worker.

**B. Problems with enforcing the prevailing wage requirement.**

8 U.S.C. § 1182(n)(1) requires the employer to pay H-1B aliens the greater of the prevailing wage for the occupation and location or "the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question." That would appear to set the prevailing wage as the floor for H-1B wages.

However, 8 U.S.C. § 1182(p) throws two twists into the prevailing wage calculation. First, § 1182(p)(1) specifies that for universities, the prevailing wage should only take into account university wages in the same location and occupation. That means, in most cases, the prevailing wage for a university job is what the university pays.

The second twist is that § 1182(p)(4) requires the Department of Labor to provide "4 levels of wages commensurate with experience, education, and the level of supervision." There has never been a skill-based wage survey because *skill* is so subjective that it could never be measured. The same provision directs the Department of Labor, "Where an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3, the difference between the 2 levels offered, adding the quotient thus obtained to the first level and subtracting that quotient from the second level."

The Department of Labor had a 2-level wage survey when the provision was enacted. The Department of Labor to took its existing survey, as required, and created four levels from it. The result of this statutory requirement is that the H-1B wage levels are the 17th, 34th, 50th (the prevailing wage), and 67th percentiles.[3]

While Congress requires the Department of Labor to provide four skill-based prevailing wages, there is no requirement that the H-1B worker be paid at according to his actual skill. Even if there were such a requirement, it would be unenforceable because skill is a subjective measurement.

The prevailing wage rules under § 1182(p) make it impossible to enforce the prevailing wage requirement of § 1182(n)(1).

The solution to this specific problem is to delete 8 U.S.C. § 1182(p)(1) and (4).

**C. Problems with enforcement.**

The next problem is that § 1182(n)(2)(G) spells out the specific circumstances when the Department of Labor can (and cannot) enforce the H-1B program. For example, the personal approval of the Secretary of Labor is required before suspicious patterns can be investigated.

This problem can be solved by replacing § 1182(n)(2)(F) and (G) with "The Secretary of Labor has authority to en-

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[3] 79 Fed. Reg. 14,451

force the provisions of this section."

### D. Allowing the subcontracting of H-1B workers hinders enforcement.

The volume of H-1B abuse cases involving employers that contract out H-1B labor overwhelms the Wage and Hour Division. For example, Upani Consultants obtained between 25 and 99 fraudulent H-1B visas. Rather than actually employing foreign workers, the company charged them to remain on the books.[4]

The user of the H-1B program to provide contract labor is incompatible with the stated premise of the program: to supply labor where United States workers are unavailable. Allowing employers to farm out H-1B workers anywhere in the country makes compliance verification extremely difficult.

If Congress has any resolve to end H-1B abuse, it will abolish the practice of using H-1B for contract labor.

### E. No recourse for American workers.

There is no legal cause of action for Americans who are adversely affected by H-1B program abuse.

### F. The H-1B statutes are overly long, deceptive, convoluted.

The fundamental problem with the H-1B statutes is that they have been carefully crafted to allow an employer to abuse the system with impunity—as long as you have a guide who understands the tangle. The H-1B program should be rewritten in no more than three pages of printed text.

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[4] Michael Matza, *Chesco case highlights H-1B immigration scams*, Philadelphia Enquirer, Mar. 19, 2015

**2. How is it legal for employers to use the H-1B program to replace American workers with foreign labor?**

The H-1B statutes are overly long, deceptive, and complicated. The provisions governing the replacement of Americans (8 U.S.C. § 1182(n)(1)(E) and (F)) provide excellent examples of convoluted statute writing.

Subsection (E) superficially restricts the direct replacement of Americans. However, piece together the two levels of indirection and one finds that it is legal to directly replace an American with an H-1B worker unless:

1. The H-1B worker is paid less than $60,000; AND
2. The H-1B worker does not have a graduate degree; AND
3. The employer has more than 15% of its workers on H-1B visas (not counting those earning more than $60,000 or having a graduate degree) or has been found to be a willful violator within 5 years; AND
4. The replacement takes place within 90 days of making the visa petition.

That protects effectively no one because those four conditions are unlikely to ever occur. To illustrate, H-1B petitions are usually filed in April for visas beginning in October. The recipient of such a visa (petition made more than 90 days in advance) can replace an American.

Subsection (F) applies to indirect replacements of Americans. That is where one company fires its American workers and uses another company supply H-1B replacements. Again, piecing together the levels of indirection, one finds that an American can be replaced indirectly at will unless:

1. The H-1B worker is paid less than $60,000; AND
2. The H-1B worker does not have a graduate degree; AND

3. The employer has more than 15% of its workers on H-1B visas (not counting those earning more than $60,000 or having a graduate degree); AND
4. The H-1B employer has not inquired of the U.S. worker's employer as to whether within the period beginning 90 days before and ending 90 days after the date of the placement of the H-1B worker with the U.S. worker's employer, the U.S. worker's employer has displaced or intends to displace a United States worker; AND
5. The H-1B employer has knowledge that within the period beginning 90 days before and ending 90 days after the date of the placement of the H-1B worker with the U.S. worker's employer, the U.S. worker's employer has displaced or intends to displace a United States worker.

Note that the LCA may be filed in advance of having any identified candidate for the H-1B visa. Even if, the Department of Labor were not restricted to checking the form is filled out correctly, there would be insufficient information (*i.e.*, the worker's education) to validate the correctness of the LCA.

The authors of these provisions have taken great care to ensure that employers can use H-1B workers to replace Americans nearly at will.

**3. What specific things must an employer do in terms of recruiting from the domestic workforce before making use of the H-1B program to bring in new workers to the United States?**

An employer has no recruitment requirements unless:

1. The H-1B worker is paid less than $60,000; AND
2. The H-1B worker does not have a graduate degree; AND
3. The employer has more than 15% of its workers on H-1B visas (not counting those earning more than $60,000 or having a graduate degree) or has been found to be a willful violator within 5 years.

If all three conditions apply, the employer must attest to this statement—

> Recruitment and Hiring: Prior to filing any petition for an H-1B nonimmigrant pursuant to this application, the employer took or will take good faith steps meeting industry-wide standards to recruit U.S. workers for the job for which the nonimmigrant is sought, offering compensation at least as great as required to be offered to the H-1B nonimmigrant. The employer will (has) offer(ed) the job to any U.S. worker who (has) applied and is equally or better qualified that the H-1B nonimmigrant

—by checking this box on this LCA form:

| | |
|---|---|
| 4. **I have read and agree** to Additional Employer Labor Condition Statements A, B, and C above and as fully explained in Section I – Subsections 1 and 2 of the Labor Condition Application – General Instructions Form ETA 9035CP. **§** | ☐Yes ☐No |

**4. What protections exist for American workers in S. 153, the Immigration Innovation Act of 2015?**

There are none.

**5. Please explain how S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act, would have affected American workers in general, and specifically, the impacts of the bill's provisions dealing with the H-1B program.**

S.744 would have been devastating to the American middle and working classes because it would have created a flood of foreign labor without any real protections for domestic workers.

S.744 was excessively complex. The Immigration Act of 1952, creating the current immigration system, was about 15,000 words. S.744 was about 180,000 words. Reform of the immigration system does not require a bill 12 times as long as the bill that created the system in the first place. When you read S.744, you can see that the excess length was deliberate and unnecessary.

The major change of S.744 is that it would have made the immigration system significantly more complex. One of the interpretation problems in S.744 is the large number of drafting errors. For example, the H-1B provisions appear to create two different texts for 8 U.S.C. § 1182(n)(3)(B).

Due to the size of S.744 I limit the rest of the discussion to its potential effect on the H-1B program.

### A. S.744 would have made the H-1B program even more complex.

One of the reasons the current H-1B program is dysfunctional is that there are separate rules that apply when:

- The employer is H-1B dependent
- The employer is an academic institution
- The employee is an exempt H-1B non-immigrant[5]
- The employee has a graduate degree from a U.S. institution

S.744 would have added to that separate rules for:

- Intending Immigrants—those for whom a green card labor certification or petition has been filed.
- H-1B Skilled Worker Dependent Employers—Employers with more than 15% of their employees on H-1B visas in job categories that require either extensive or considerable preparation.

Real reform would have eliminated these separate categories and have one set of rules that applied to all workers and employers.

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[5] The exempt non-immigrant category would remain under S.744 but all the references to it would have been deleted.

### B. S.744 would have greatly increased the number of H-1B visas and added great complexity for determining the H-1B quota.

Section 4101 of S.744 would have defined the H-1B quota using six pages of statute. Under this system the H-1B quota per year would range from 155,000 to 220,000. When employers use more visas, the quota automatically goes up. When employers use fewer visas, the quota goes down. While described as "Market Based" the caps would not be tied to any market other than the market for visas.

Such a system would provide no benefit. Effectively, the same result could have been obtained simply by setting the quota to 220,000.

This absurdly long definition of the H-1B quota follows the general pattern in S.744 of making everything more convoluted and long winded. One gets the sense that this was done deliberately to keep people from reading the bill and understanding what it would have done.

### C. Large H-1B employers would have to avoid the H-1B Dependent Employer classification.

S.744 includes two restrictions on larger users of H-1B visas. First, it would have banned H-1B Dependent Employers from contracting out their employees. Second, by 2016, it would have limited the percentage of H-1B (and L-1) workers (not counting Intending Immigrants) to 50%.

S.744 provides an escape route for such employers. Its definition of *H-1B Dependent Employer* treats the new category of *Intending Immigrants* as United States workers. An employer can make an H-1B worker an Intending Immigrant by filing a Labor Certification towards permanent residency (but does not have to file the permanent residency petition). These petitions just have to be filed; no approved.

S.744 actually contains an incentive for employers to hire large numbers of H-1B worker. Companies with 30-

to 50-percent of their workers on H-1B visas have to pay a $5,000 fee. Having more than 50% of workers on H-1B visas avoids that fee (allowable when the H-1B workers are Intending Immigrants).

The apparent purpose of this aspect of S.744 is to drive legal fees. Employers would have been faced with the choice of paying a §5,000 fee to the government or pay a legal fee for filing a labor certification. Note that the labor certification would only have to be filed to get the Intending Immigrant exception. The certification would not have to be approved nor would the employer have to act further if it be approved.

### D. The H-1B prevailing wage system.

Section 4211 of S.744 would have changed the prevailing wage system under 8 U.S.C. § 1182(p). Instead of the current four levels (17th, 34th, 50th, and 67th percentiles) to three levels (33rd, 50th, and 66th percentiles) with the lowest wage group no lower than 80% of the mean. This would allow employers to pay H-1B workers up to 20% less than the actual prevailing wage.

### E. S.744's non-displacement requirements are nonsensical.

Section 4101 of S.744 would have rewritten the restrictions on displacing Americans. However, these restrictions are nonsensical due to drafting errors.

### F. Enforcement

Currently, the Department of Labor is required to approve all H-1B Labor Condition Applications within 7 days where the form is filled out correctly. S.744 devotes a page to reword the restriction. The revised text would have required the Department of Labor to approve all H-1B labor condition applications within 14 days as long as the form is filled out correctly. This essentially is an entire page of the bill devoted to doing absolutely nothing.

**6. What data should the Department of Homeland Security (DHS) collect regarding OPT participants to ensure that the public has access to information on the specifics of the program?**

I generalize this question to include all work programs operating under student visas. In addition to personal identifying information, DHS should know:

- Diversity Information
  a) Age
  b) Gender
  c) Nationality
- Educational Information
  a) Degrees
  b) The alien's course of study
  c) Granting Institutions
- Economic Impact
  a) Job classification
  b) Work Location
  c) Employer
- Purpose Information
  a) The contact information for the school
  b) The educational justification for the work
  c) The date of graduation and the termination data of OPT.
  d) The data of termination of employment.
  e) Any changes in immigration status.

**7. Can you please provide additional information as to why aliens who participate in the OPT program are cheaper to employ than Americans?**

Under the current tax laws, an employer must pay an amount equal to 6.2% of the employee's wages for Social Security tax and an additional 1.45% for Medicare Tax. Workers must pay the same amount deducted from their wages. Aliens on student visas and their employers are exempt from these taxes. Therefore, the employer can offer the same take home pay to OPT workers while paying 15.3% (2 x (6.2%+1.45%)) less in taxes and wages.

In addition, the employer does not have to pay OPT workers at all. In the contract labor industry there are times when the employer will not have billable work for the employees. For OPT (and not H-1B) the employer can simply not pay the worker during periods of idleness.

When workers on OPT are actually being paid, the employer can pay as little as the minimum wage. Workers on OPT require employment to remain in the United States. In particular, they require the employer to sponsor them for an H-1B visa if they want to move through the immigration process. This allows employers to offer taxpayer-provided immigration benefits as a fringe benefit to OPT workers. Such benefits are routinely promoted in job advertisements seeking OPT workers.

## Questions from Senator Sessions

**1. How should the OPT program be reformed to better protect U.S. workers?**

The Optional Practical Training Program ("OPT") should be abolished because it is in direct conflict with the requirements for F-1 student visas.

F-1 student visa status is defined as:

> 8 U.S.C. § 1101(a)(15)(F)(i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study … at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution …, which institution or place of study shall have agreed

> to report to the Attorney General the termination of attendance of each nonimmigrant student

That reflects the normal definition of a *student* as one who attends school. Allowing aliens to work on student visas after graduation is in direct, irreconcilable conflict with the definition of F-1 student status.

It would not be practicable to implement a rational student visa program that supports both study and work because it would require the enforcement overhead for ensure legitimate student status as well as the overhead for ensuring proper guest worker status.

A rationally functioning student visa should be for study only; not for work and not for immigration. In the past Congress has been clear on the point. However, there are an increasing number of misguided bills that would attempt to transform student visas from a non-immigrant educational program into a stepping-stone for immigration.

**2. Does S.744 or the "I Squared" bill solve the problems associated with the OPT program?**

The I-Squared bill does not address OPT.

**3. Could you explain the ways by which you understand firms use the H-1B and L-1 programs to facilitate the offshoring of U.S. jobs and describe the impacts on the U.S. workforce and economy of such offshoring?**

The large users of H-1B visas employ what is known in the industry as an *offshore/onshore model*. In this model these companies place a relatively small number of visa workers on the client site to provide direct support and to acquire business knowledge.

The per person-per hour cost of the on site workers (generally H-1B) charged to the customer tends to be slightly higher than the cost of a United States worker, while those of the offshore workers is much less. This pricing structure is designed to drive as much work as possible overseas where the profit margins are higher and to make the foreign companies better trained to take on larger projects in the future. On projected I worked on, we used at least six offshore workers for each H-1B worker on site.

In the case of Southern California Edison, media reports say that 80% of the work is being moved to India and 20% of the jobs will remain in the United States with H-1B workers.

At SCE, each H-1B worker here represents 5 American jobs lost.

**4. What is the "B-1 in lieu of H" visa category provided for in the State Department's Foreign Affairs Manual? What is your understanding of the way in which this visa category is used to bring foreign workers to the U.S. outside of the H-1B and L-1 programs?**

The Foreign Affairs Manual defines "B-1 in lieu of H" as

> There are cases in which aliens who qualify for H-1 or H-3 visas may more appropriately be classified as B-1 visa applicants in certain circumstances; e.g., a qualified H-1 or H-3 visa applicant coming to the United States to perform H-1 services or to participate in a training program.[6]

*That* definition is innocent. If an alien needs to come to the United States to—

- Attend a four-week product training program; or
- Negotiate a contract

[6] 9 FAM 41.31 N11

- Spend two weeks diagnosing a problem with the employer's product

—it would make no sense to require him to get a guest-worker visa to activities of such short duration.

However, the definition gets expanded around the world. This is how the Chennai Consulate defines *B1 in Lieu of H*:

> Individuals may apply for a B1 or B1/B2 visa to perform H-1B work in the United States as long as they fulfill the following criteria:
>
> - Hold the equivalent of a U.S. bachelor's degree
> - Plan to perform H-1B-caliber work or training
> - Will be paid only by their foreign employer, except reimbursement of incidental travel costs such as housing and per diem. The employee must not receive any salary from a U.S. source.
> - The task can be accomplished in a short period of time.[7]

That definition is significantly different from that of the Foreign Affairs Manual because it describes a substitute for an H-1B visa of some indefinite "short" duration.

B visas should not require "H-1B-caliber work". A B visa would be perfectly appropriate for an automobile assembly line worker coming to the United States for two weeks of training. The consulate is describing a substitute for H-1B visas, not a visitor visa.

I have seen first hand B visas being used as a substitute for H-1B and L visas. The operating mechanism is that the worker either gets the B visa in his home country or enters under a visa waiver. The alien leaves the coun-

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[7] http://chennai.usconsulate.gov/types_of_visas/temporary-employment-holp/b1-in-lieu-of-h2.html

try then returns at regular intervals. I have seen cases where the State Department catches such visa chaining. The foreign worker returns home to India to get his visa renewed then never comes back.

I have seen two motivations for using B visas in lieu of H-1B visas. One is to circumvent the restrictions on H-1B visas (quotas, prevailing wage). The other is to assist the alien to avoid paying income taxes.[8]

**5. How does the H-1B program impact the racial and gender diversity of STEM workforce?**

This is the starting point in the industry. 1% of Google's workforce is African-American; 2% are Hispanic (compared to 38% of the California workforce); 83% are male.[9]

According to the Bureau of Labor Statistics, between 2013 and 2014, employment in computer related occupations grew from 3,573,120 to 3,834,180 (+261,060). In 2013, there were 79,870 H-1B visas for computer workers—roughly 30% of the job growth. With 70% of H-1B workers coming from India and China alone, the H-1B program itself imports few workers that would be classified as disadvantaged minorities.

That means women and disadvantaged minorities in the U.S. are do not even have the ability to compete for about 1/3rd of the new jobs in the computer industry.

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[8] The United States does not expect B holders to pay income tax. The alien's home country's tax authorities assume the alien is paying taxes in the United States.

[9] Elizabeth Weise, "Tech: Where the women and minorities aren't,"USAToday, Aug. 15, 2014

**6. On February 24, 2015 USCIS announced the publication of a final rule granting employment authorization to tens of thousands of H-4 spouses of H-1B workers. What is your understanding of the legal authority upon which USCIS is basing this regulation? Is it the same employment authorization authority that DHS asserts underlies the OPT program? DACA?**

Under the Immigration Reform and Control Act of 1986 ("IRCA"), Congress introduced penalties for hiring "unauthorized aliens" and provided for the legalization of certain illegal aliens already in the country. IRCA contained seven specific directives for the attorney general to authorize aliens in the legalization process to work.

IRCA defined those who it was unlawful to hire as:

> 8 U.S.C. § 1324a(H)(3) DEFINITION OF UNAUTHORIZED ALIEN.—As used in this section, the term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney General

By excluding all others, that definition permits employers to hire (1) permanent residents; (2) those admitted on work visas; and (3) those IRCA directed the Attorney General to provide with work authorizations during the legalization process.[10]

DHS has recently adopted a novel interpretation of 8 U.S.C. § 1324a(H)(3)(B). Under this interpretation, the phrase "authorized to be so employed by this Act or by the Attorney General" means Congress granted DHS "unfettered" authority to authorize aliens to work in the United

[10] *See*, S. Rep. 99-132, p. 48

States.[11] DHS has made that claim in the context of authorizing aliens to work on H-4 visas; reversing the policy in place for 25 years.[12] It has made the same claim for work on student visas ("since 1986, Congress has expressly delegated to the Secretary broad discretion to determine when noncitizens may work in the United States").[13] DHS has made this claim to justify DACA.[14] DHS has made the same claim of authority to justify DAPA.[15]

The claim that § 1324a(h)(3)(B) confers such authority on DHS is preposterous on its face—taking a provision banning the hiring of authorized aliens and asserting it grants unfettered authority to DHS to allow aliens to work. It undermines the entire structure of the immigration system (there is no point in Congress specifying which visas allow aliens to work when DHS can allow any alien to work). It is in direct conflict with other, later statutes (*e.g.*, 8 U.S.C. § 1182(a)(5)(A) that bars the admission of "any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor" unless the Secretary of Labor—not DHS—has "determined and certified" that such employment will not adversely affect the employment, wages or working conditions of similarly employed U.S. workers). It is in Conflict with nearly all court interpretation of 8 U.S.C. § 1324a. It also conflicts with the legislative history of the Immigration Reform and Control Act.

DHS has taken an obscure clause from a definition and used it to claim its authority to set immigration policy ex-

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[11] 80 Fed. Reg. 10,294

[12] *Id.*

[13] *Washington Alliance of Technology Workers v. U.S. Department of Homeland Security*, Defendant's Memorandum of Law in Support of Its Motion for Summary Judgment, p. 19 (Citing § 101 of IRCA).

[14] *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1062 (9th Cir. 2014)

[15] *Texas v. United States*, 2015 U.S. Dist. LEXIS 18551 (S.D. Tex. Feb. 16, 2015)

ceeds that of Congress. If Congress refuses to step in to block this interpretation, it will become irrelevant in immigration policy.