

Employment and Diversity-Based Visas: Why Birthright Citizenship Is Not All That Is Wrong With America's Immigration System

As the American immigration system presently operates, various incongruities exist for those seeking to permanently immigrate to the United States. Requirements and processing times differ greatly depending on an individual's home country and the type of relationship the individual has with a U.S. sponsor (e.g., familial vs. employment based). For example, as of December 2016, the most recent application under review for brothers and sisters of U.S. citizens from the Philippines is from May 22, 1993, while the EB-5's employment-based visa processing date for investors from the Philippines is listed as "Current." Consider the hypotheticals of Maria Guinto and Maricris Llamador Gunigundo:

Maria Guinto is a 32-year-old woman from the Philippines. Her only brother, Erik Lumaban, is a United States citizen. Erik is the only family that Maria has left, as her parents were killed in a car accident when she and Erik were both very young and neither of her parents had any brothers or sisters. Thus, Maria wishes to join her brother and his wife in the United States and to become a U.S. citizen herself. To do so, Maria must prove that she has a qualifying family relationship. In this case, the fact that Maria is the sister of a U.S. citizen places her in the fourth family-sponsored preference. As such, Maria will wait over twenty years for her turn to obtain a legal immigrant visa. This does not include the time it will take U.S. Citizenship and Immigration Services (USCIS) to process her application, which can be up to sixteen months, or longer, depending on the volume of applications.

On the other hand, Maricris Llamador Gunigundo, a wealthy Filipino investor, has made his fortune by constructing and operating high-end hotels in and around the Philippines. Maricris is an avid traveler and frequently travels to the United States on vacation. However, Maricris is unhappy with the amount of time it takes for him to obtain visitor visas to the United States and with the lines he must stand in when entering the country. Thus, Maricris decided that he would like to obtain an American green card to enter and exit the United States more easily. He then decided that he is willing to invest the required \$1 million in a new commercial enterprise in the United States. This investment will qualify Maricris for the fifth employment-based category, or an EB-5 visa. As such, USCIS will

review Maricris's application immediately, though he may experience some wait time for USCIS to actually process his application.

This hypothetical illustrates just one of many discrepancies that exist in the American immigration system today and highlights the unfair advantages that the very wealthy are provided over those seeking to join their families here in the United States. As such, the United States should alter its immigration system by reallocating the EB-5 employment-based visas and all diversity lottery visas to the family-sponsored category in order to increase the number of visas granted to family members of lawful permanent residents and U.S. citizens each year.

2017]	EMPLOYMENT AND DIVERSITY-BASED VISAS	415
INTRODUCTION		415
I. HISTORY AND EXPLANATION OF AMERICA’S IMMIGRATION SYSTEM...		419
A. America’s Immigration System: An Overview		419
B. The Family-Sponsored, Employment-Based, and Diversity Visa Programs		424
1. Family-Sponsored Visa Program.....		424
2. Employment-Based Visa Program.....		427
3. Diversity Lottery Visa Program.....		431
II. WHY THE NUMBER OF FAMILY-SPONSORED VISAS SHOULD BE INCREASED: A PLEA TO CONGRESS		434
A. Employment-Based and Diversity Lottery Visas: Why Changes Must Be Made.....		435
1. Controversy with the EB-5 Visa.....		435
2. Problems with the Diversity Lottery System		438
B. Importance of Family Reunification: Why America Must Reform Its Immigration System		440
1. Families’ Central Role in the Societal Incorporation of New Immigrants		441
2. The Family-Based Versus Employment-Based Visa Holder Contributions		443
3. Reducing Illegal Immigration Rates		445
III. FAMILY V. ECONOMY: POTENTIAL COUNTERARGUMENTS TO INCREASING FAMILY- SPONSORED VISAS		447
CONCLUSION.....		452
APPENDIX A: FINAL ACTION DATES FOR FAMILY-SPONSORED PREFERENCE CASES (DECEMBER 2016)		453
APPENDIX B: FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES (DECEMBER 2016)		454
APPENDIX C: THE DIVERSITY IMMIGRANT (DV) CATEGORY FOR THE MONTH OF DECEMBER (DECEMBER 2016)		455

INTRODUCTION

During the second Republican (“GOP”) primary debate on September 16, 2015, Senator and Presidential Candidate Marco Rubio outlined his views on immigration reform, stating: “[America needs] to modernize our legal immigration system so you come to America on the basis of what you can contribute economically, not whether or not simply you have a relative

living here.”¹ The Senator’s comment also rings true with many other Americans. Generally thought to be based on ability and achievement,² for a great majority of immigrants the “American Dream” provides a chance to create a better life for their children and families.³ However, for many immigrant families, achieving the American Dream can quickly become a lost effort due to the negative effects of family separation and having to choose between country and family.⁴

With limited exceptions, America’s current immigration system annually accepts 675,000 permanent immigrants worldwide.⁵ Immigration to the United States is prioritized based upon the principles of reunifying families and “admitting immigrants with skills that are valuable to the U.S. economy, protecting refugees, and promoting diversity.”⁶ Noticeably, the “[p]reference allocation for family-sponsored immigrants” is the first category of immigrant visas discussed in the Immigration and Naturalization Act (“INA”) Section 203.⁷ This is important because family reunification has been, and should remain, at the heart of America’s immigration system.⁸ Family-based visas seek to accomplish the goal of reunification. However, with visa opportunities available that hinder that policy, such as the “immigrant investor” visas (EB-5) and diversity lottery

1. *Wednesday’s GOP Debate Transcript, Annotated*, WASH. POST (Sept. 16, 2015), <http://www.washingtonpost.com/news/the-fix/wp/2015/09/16/annotated-transcript-september-16-gop-debate/> [<https://perma.cc/SG8A-Z3DT>].

2. JAMES TRUSLOW ADAMS, *THE EPIC OF AMERICA* 404 (1931) (describing the American Dream as “that dream of a land in which life should be better and richer and fuller for everyone, with opportunity for each according to ability or achievement.”).

3. Vincent N. Parrillo, *The Immigrant Family: Securing the American Dream*, 22 J. COMP. FAM. STUD. 131, 131 (1991).

4. *How Families Are Affected*, UNITEFAMILIES, <http://unitefamilies.org/eng/learn/families.html> [<https://perma.cc/5W2M-WFH3>].

5. IMMIGRATION POLICY CTR., AM. IMMIGRATION COUNCIL, *HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS* 1 (2016) [hereinafter *HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS*], https://www.americanimmigrationcouncil.org/sites/default/files/research/how_the_united_states_immigration_system_works.pdf [<https://perma.cc/8G7B-53P9>].

6. *Id.*; see also U.S. Citizenship and Immigration Services Fee Schedule, 81 Fed. Reg. 73,292, 73,296 (Oct. 24, 2016) (to be codified at 8 C.F.R. pts. 103, 204, and 205) (stating USCIS “understands the importance of facilitating family reunification”).

7. Immigration and Naturalization Act (INA), 8 U.S.C. § 1153, 79 (Supp. III 2012).

8. Karen DeYoung & Sue Anne Pressley, *U.S. Orders Return of Cuban Boy*, WASH. POST (Jan. 6, 2000), <http://www.washingtonpost.com/wp-srv/WPcap/2000-01/06/030r-010600-idx.html> [<https://perma.cc/52E5-5P53>] (quoting former Immigration and Naturalization Service Commissioner Doris Meissner: “[F]amily reunification has long been a cornerstone of both American immigration law and INS practice.”).

visas,⁹ it is hard to see how our current immigration system is advancing that goal.

Today, America's immigration system allows for five specific types of immigration: (1) family-based immigration; (2) employment-based immigration; (3) diversity immigration; (4) refugee and asylee immigration; and (5) other forms of humanitarian relief.¹⁰ However, this Comment will discuss only family-based immigration, a single type of employment-based immigration (EB-5), and diversity immigration.

In 2015,¹¹ the number of persons who obtained lawful permanent resident ("LPR")¹² status via the family-sponsored preferences totaled 213,910; the number of persons who obtained LPR status via the employment-based preferences totaled 144,047; and the number of persons who obtained LPR status via the diversity lottery system totaled 47,934.¹³ While these numbers may suggest the success of the family-sponsored LPR program, serious deficiencies remain. Among those waiting for their application to become "current"¹⁴ in order to gain entry to the United States

9. See AM. IMMIGRATION COUNCIL, THE EB-5 VISA PROGRAM: WHAT IT IS AND HOW IT WORKS 1 (2016) [hereinafter THE EB-5 VISA PROGRAM: WHAT IT IS AND HOW IT WORKS], https://www.americanimmigrationcouncil.org/sites/default/files/research/eb-5_visa_program_what_it_is_and_how_it_works.pdf [<https://perma.cc/MA86-NEPU>] (explaining that there are 10,000 EB-5 visas available of the 675,000 total visas available each fiscal year); see also IMMIGRATION POLICY CTR., AM. IMMIGRATION COUNCIL, DIVERSITY VISA SYSTEM: A FACT SHEET 1 (Apr. 4, 2011) [hereinafter DIVERSITY VISA SYSTEM: A FACT SHEET], https://www.americanimmigrationcouncil.org/sites/default/files/research/Diversity_Visa_System_Fact_Sheet_040411.pdf [<https://perma.cc/77JZ-JK4H>] (explaining that there are 50,000 diversity visas available of the 675,000 total visas available each fiscal year).

10. HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS, *supra* note 5.

11. All statistical data in this Comment has been updated as of December 29, 2016, unless otherwise noted.

12. A Lawful Permanent Resident, or LPR, is "[a]ny person not a citizen of the United States" who resides "in the U.S. under legally recognized and lawfully recorded permanent residence as an immigrant." *Lawful Permanent Resident (LPR)*, U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP'T OF HOMELAND SEC., <https://www.uscis.gov/tools/glossary/lawful-permanent-resident-lpr> [<https://perma.cc/B2S3-36TW>]. "LPR" is also synonymous with "Permanent Resident Alien," "Resident Alien Permit Holder," and "Green Card Holder." *Id.*

13. OFFICE OF IMMIGRATION STATISTICS, DEP'T OF HOMELAND SEC., 2015 YEARBOOK OF IMMIGRATION STATISTICS 18 (2016), https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_2015.pdf [<https://perma.cc/WVP4-MCDX>] [hereinafter 2015 YEARBOOK OF IMMIGRATION STATISTICS].

14. When an application becomes "current," the priority date in which the foreign national's petition for a visa to the United States was filed meets the most recent qualifying date and can continue to be processed. *Family-Based Immigrant Visas*, BUREAU OF CONSULAR AFFAIRS, U.S. DEP'T OF STATE, <http://travel.state.gov/content/visas/en/immigrate/>

are 310,884 unmarried sons or daughters of United States citizens, 700,212 spouses and children or unmarried sons and daughters of current LPRs, 781,810 married sons or daughters of United States citizens, and 2,466,667 brothers and sisters of adult United States citizens.¹⁵ As of November 2016, many of these family members' applications are backlogged from February 2015 and even as far as December 2003.¹⁶ Given these and other problems, immigration remains a hot-button issue, with many Americans contending the immigration system needs an upgrade.¹⁷

This Comment discusses the immigration system of the United States and the need to (1) eliminate the EB-5, employment-based visa category, and (2) dispose of the diversity lottery in order to limit the disparity of visa opportunities for family-based immigration applicants. Part I of this Comment provides a brief history and a general explanation of America's immigration system and how certain current visa systems operate. Part I also includes more in-depth information on the family-based, employment-based, and diversity visas. Part II of this Comment provides an overview of the strengths and weaknesses of the employment-based and diversity-based visa programs, and why the number of family-sponsored visas should be increased. Part III addresses the counterarguments to increasing family-sponsored visas, including concerns about the ability of family-sponsored immigrants to provide for themselves without

family/family-preference.html#1 [https://perma.cc/93PD-QJPW] [hereinafter *Family-Based Immigrant Visas*].

15. These numbers are as of November 1, 2016. U.S. DEP'T OF STATE, ANNUAL REPORT OF IMMIGRANT VISA APPLICANTS IN THE FAMILY-SPONSORED AND EMPLOYMENT-BASED PREFERENCES REGISTERED AT THE NATIONAL VISA CENTER AS OF NOVEMBER 1, 2016, at 2 (2016) [hereinafter ANNUAL REPORT OF IMMIGRANT VISA APPLICANTS IN THE FAMILY-SPONSORED AND EMPLOYMENT-BASED PREFERENCES REGISTERED AT THE NATIONAL VISA CENTER AS OF NOVEMBER 1, 2016], <https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingListItem.pdf> [https://perma.cc/AL3E-7VVM]; see *Immigrant Numbers for December 2016*, VISA BULLETIN (Bureau of Consular Affairs, U.S. Dep't of State), Dec. 2016, at 2 [hereinafter *Visa Bulletin: Immigrant Numbers for December 2016*], https://travel.state.gov/content/dam/visas/Bulletins/visabulletin_December2016.pdf [https://perma.cc/W8NK-25H6] (defining each of the family-sponsored preferences found in the Annual Report).

16. *Visa Bulletin: Immigrant Numbers for December 2016*, *supra* note 15. See *infra* Section II.B (discussing the way these numbers fit into America's overall immigration scheme and what each means).

17. See *Immigration Polling Tells Congress to Act*, WASH. POST (July 9, 2014), https://www.washingtonpost.com/blogs/right-turn/wp/2014/07/09/immigration-polling-tells-congress-to-act/?utm_term=.3edfc617da11 [https://perma.cc/J7T8-CQ9S]; see also *CNN Poll: 88% of Americans Support Immigration Reform with a Path to Citizenship*, AM.'S VOICE (Sept. 7, 2016), http://americasvoice.org/press_releases/cnn-poll-88-americans-support-immigration-reform-path-citizenship/ [https://perma.cc/XLS4-KS5U].

government support and the opportunity for family-sponsored immigrants to change America's culture. Ultimately, this Comment concludes that while there are possible disadvantages to increasing the number of family-sponsored visas, the benefits greatly outweigh any costs associated with doing so. As such, the United States should alter its immigration system by reallocating the EB-5 employment-based visas and all diversity lottery visas to the family-sponsored category to increase the number of visas granted to family members of LPRs and U.S. citizens each year.

I. HISTORY AND EXPLANATION OF AMERICA'S IMMIGRATION SYSTEM

America's current immigration system is a tangled and complicated mess of policy and statutes.¹⁸ This Part provides a brief introduction to America's immigration system. Section I.A provides a basic overview of America's immigration system and its history. Section I.B provides a more in-depth explanation of the family-sponsored, employment-based, and diversity lottery visa categories.

A. *America's Immigration System: An Overview*

The INA is the comprehensive body of law governing America's immigration policy.¹⁹ Congress created the INA in 1952 to help organize all of the previously enacted immigration statutes in the United States.²⁰ Introduced as the McCarran-Walter Act of 1952,²¹ this bill compiled all of the immigration laws in Title 8 of the United States Code.²² Not only did the INA centralize America's immigration laws, but it also provided for "a major revision of the existing immigration and nationality laws."²³ The 1952 INA was the predecessor of the current United States visa selection

18. Shruti Rana, *Chevron Without the Courts?: The Supreme Court's Recent Chevron Jurisprudence Through an Immigration Lens*, 26 GEO. IMMIGR. L.J. 313, 320 (2012).

19. HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS, *supra* note 5, at 1.

20. *Immigration and Nationality Act*, U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP'T OF HOMELAND SEC., <https://www.uscis.gov/laws/immigration-and-nationality-act> [<https://perma.cc/5PF7-7544>] (last updated Sept. 10, 2013).

21. Immigration and Nationality (McCarran-Walter) Act of 1952, Pub. L. No. 82-414, 66 Stat. 163.

22. *Immigration Law: Federal Law & Legislative History*, NEW ENGLAND LAW, <http://libraryguides.nesl.edu/content.php?pid=459876&sid=3764443> [<https://perma.cc/RG6B-VQNU>] (last updated Aug 29, 2016, 12:12 PM).

23. *History of U.S. Immigration Laws*, FED'N FOR AM. IMMIGRATION REFORM, http://www.fairus.org/facts/us_laws [<https://perma.cc/FDU8-8HM3>] (last updated Jan. 2008).

system.²⁴ It provided a quota system of four major categories, with 50% allotted “to aliens with high education or exceptional abilities” and the other three categories “divided among specified relatives of U.S. citizens and permanent resident aliens.”²⁵ This system placed a high priority on national origin as the determining factor for immigrant admission.²⁶ In 1965, Congress again made notable changes to America’s immigration system by amending the 1952 INA.²⁷ The 1965 amendments repealed the national origins quota system and substituted a system focused on distributing immigrant visas via a seven-category preference system.²⁸ The next major adjustment to the INA occurred in 1990.²⁹ The Immigration Act of 1990³⁰ included provisions that increased skilled labor positions.³¹

A Department of Homeland Security (DHS) Customs and Border Protection (CBP) officer authorizes immigrant admission to the United States.³² Upon arriving in the United States, a visa “allows [an individual] to travel to the port-of-entry and request permission to enter the United States.”³³ A CBP officer authorizes admission of all non-US citizens at the port-of-entry.³⁴ That CBP officer will also determine how long an individual may remain in the U.S. on any particular visit.³⁵ Upon entry, “how long you can stay and the immigration classification you are given is shown as a recorded date . . . on your admission stamp or paper Form I-94,

24. *Id.*

25. *Id.*

26. *See id.*

27. *Id.*

28. This preference system places priority on reunification of families, needed skills, and refugees. *Id.*

29. Prior to 1990, the issue of illegal immigration was addressed in the Immigration Reform and Control Act (IRCA) of 1986. *Id.* This was an important change in how America dealt with illegal immigration but is outside the scope of this Comment.

30. Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978.

31. MUZAFFER CHISHTI & STEPHEN YALE-LOEHR, THE IMMIGRATION ACT OF 1990: UNFINISHED BUSINESS A QUARTER-CENTURY LATER (JULY 2016), <http://www.migrationpolicy.org/research/immigration-act-1990-still-unfinished-business-quarter-century-later> [<https://perma.cc/5UYE-L2GV>].

32. *U.S. Visas: Glossary*, BUREAU OF CONSULAR AFFAIRS, U.S. DEP’T OF STATE, <http://travel.state.gov/content/visas/en/general/glossary.html#A> [<https://perma.cc/6ZLU-UWSR>] (defining “Admission”).

33. *Id.*

34. *Id.*

35. *Id.*

Arrival/Departure Record.”³⁶ Additionally, “[i]f you want to stay longer than the date authorized, you must request permission from DHS.”³⁷

Generally speaking, to obtain admission to the United States on a family-based immigrant visa, the individual’s relative, who is a United States citizen residing in the United States,³⁸ must file a Petition for Alien Relative (I-130)³⁹ with USCIS, a subsection of DHS.⁴⁰ The filing date of the petition is critical because it is considered the applicant’s “priority date.”⁴¹ After USCIS approves the I-130, USCIS sends it to the National Visa Center (NVC) where it is assigned a case number.⁴² NVC then holds the petition until “an applicant’s priority date meets the most recent qualifying date.”⁴³

In order to proceed, an applicant must then consult the Visa Bulletin, which “indicates when statutorily limited visas are available for issuance to prospective immigrants based on their individual priority date.”⁴⁴ Put

36. *Id.*

37. *Id.*

38. *Family-Based Immigrant Visas, supra* note 14. Further, if the United States citizen is filing for a sibling or parent, he or she must be age twenty-one or older. *Id.*

39. The Form I-130 can be found here: U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP’T OF HOMELAND SEC., I-130, PETITION FOR ALIEN RELATIVE (Feb. 27, 2017), <http://www.uscis.gov/sites/default/files/files/form/i-130.pdf> [<https://perma.cc/687Y-VBAW>].

40. *Family-Based Immigrant Visas, supra* note 14.

41. *Id.* “Priority date” is the date that

determines a person’s turn to apply for an immigrant visa. In family immigration, the priority date is the date when the petition was filed at a DHS office or submitted to a U.S. Embassy or Consulate abroad. In employment immigration, the priority date may be the date the labor certification application was received by the Department of Labor (DOL).

U.S. Visas: Glossary, supra note 32.

42. *Family-Based Immigrant Visas, supra* note 14. The NVC

gives each immigrant petition a case number. This number has three letters followed by ten digits (numbers). The three letters are an abbreviation for the overseas embassy or consulate that will process the immigrant visa case

The digits tell us exactly when NVC created the case. For example a case with the number MNL2001747003 would be a case assigned to the U.S. Embassy in Manila. 2001 is the year in which NVC received the case from USCIS (formerly INS). The petition was received at the NVC on September 1st, which is the 247th day of the year, so 747 represents the ordinal date (247) plus 500. The 003 shows that it was the third case created for Manila on that day.

U.S. Visas: Glossary, supra note 32.

43. *Family-Based Immigrant Visas, supra* note 14.

44. *When to File Your Adjustment of Status Application for Family Sponsored or Employment-Based Preference Visas: November 2015*, U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP’T OF HOMELAND SEC., <https://www.uscis.gov/visabulletin-nov-15> [<https://perma.cc/V8M7-GAKF>] (last updated Nov. 3, 2015).

differently, the Visa Bulletin system provides a way to calculate the available number of visas for the individual preference categories of both the family and employment-based visas each year.⁴⁵ These categories are further divided into preference categories subject to the Visa Bulletin.⁴⁶ For example, family-sponsored immigration is broken into four preference categories: (1) unmarried sons and daughters of U.S. citizens; (2) spouses and children of LPRs and unmarried sons and daughters of LPRs; (3) married sons and daughters of U.S. citizens; and (4) brothers and sisters of U.S. citizens (if petitioner is twenty-one years or older).⁴⁷ Each preference category is assigned a priority date⁴⁸ based on the type and preference of the visa applied for.⁴⁹ These priority dates then help determine when an oversubscribed category is cut off⁵⁰ from processing until more visas of that type become available.⁵¹ The U.S. Department of State describes this process as follows:

Whenever the number of qualified applicants for a category exceeds the available immigrant visas, there will be an immigration wait. In this situation, the available immigrant visas will be issued in the chronological order in which the petitions were filed using their priority date. The filing date of a petition becomes what is called the applicant's priority date. Immigrant visas cannot be issued until an applicant's priority date is reached. In certain categories with many approved petitions compared to

45. HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS, *supra* note 5, at 1–3. Diversity visas are not subject to the Visa Bulletin in the same way the family-sponsored and employment-based categories are. Instead, they are awarded on a lottery system. DIVERSITY VISA SYSTEM: A FACT SHEET, *supra* note 9.

46. *Id.*

47. THOMAS ALEXANDER ALEINIKOFF ET AL., IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY 274 (7th ed. 2012).

48. The Visa Bulletin is published each month by the U.S. Department of State Bureau of Consular Affairs and its priority dates are subject to change accordingly. *Visa Bulletin*, BUREAU OF CONSULAR AFFAIRS, U.S. DEP'T OF STATE, <http://travel.state.gov/content/visas/en/law-and-policy/bulletin.html> [<https://perma.cc/J6EQ-D7N7>].

49. HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS, *supra* note 5, at 1–3.

50. The date for “cut off” is defined as

[t]he date that determines whether a preference immigrant visa applicant can be scheduled for an immigrant visa interview in any given month. When “C” (meaning Current) is listed instead of a specific date, that means all priority dates are eligible for processing. The cut-off date is the priority date of the first applicant who could not be scheduled for a visa interview for a given month. Applicants with a priority date earlier than the cut-off date can be scheduled. However, if your priority date is on or later than the cut-off date, you will need to wait until your priority date is reached (becomes current).

U.S. Visas: Glossary, *supra* note 32.

51. See *Visa Bulletin: Immigrant Numbers for December 2016*, *supra* note 15, at 3–6.

available visas, there may be a waiting period of several years, or more, before a priority date is reached.⁵²

Once an applicant's priority date is current, the Application to Register Permanent Residence or Adjust Status⁵³ must be filed and is used to apply to adjust⁵⁴ to LPR status.⁵⁵

The process for obtaining admission to the United States with an employment-sponsored visa is similar to that for a family-based visa, with some exceptions. For an employment-based visa, an "applicant's prospective employer or agent must first obtain a labor certification⁵⁶ approval from the Department of Labor."⁵⁷ The employer must then file an Immigrant Petition for Alien Worker⁵⁸ with USCIS according to the applicable employment-based preference category.⁵⁹ USCIS will then either accept or deny the petition; if approved, the petition will be sent to the NVC and assigned a case number.⁶⁰ Similar to the family-based process for obtaining an immigrant visa, the applicant must then wait for

52. *Family-Based Immigrant Visas*, *supra* note 14.

53. Form I-485 can be found here: U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP'T OF HOMELAND SEC., I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS [hereinafter FORM I-485], <http://www.uscis.gov/sites/default/files/files/form/i-485.pdf> [<https://perma.cc/9ALC-QMAQ>] (last updated Jan. 17, 2017).

54. Adjustment of status refers to the process where an eligible applicant shifts from nonimmigrant to immigrant (LPR) status while maintaining his or her presence in the United States. *See generally U.S. Visas: Glossary*, *supra* note 32.

55. *Visa Availability and Priority Dates*, U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP'T OF HOMELAND SEC., <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-and-priority-dates> [<https://perma.cc/VG78-F44F>] (last updated Nov. 5, 2015); *see also* FORM I-485, *supra* note 53.

56. Labor certification is

[t]he initial stage of the process by which certain foreign workers get permission to work in the United States. The employer is responsible for getting the labor certification from the Department of Labor. In general, the process works to make sure that the work of foreign workers in the United States will not adversely affect job opportunities, wages and working conditions of U.S. workers.

U.S. Visas: Glossary, *supra* note 32.

57. *Employment-Based Immigrant Visa*, BUREAU OF CONSULAR AFFAIRS, U.S. DEP'T OF STATE, <http://travel.state.gov/content/visas/en/immigrate/employment.html> [<https://perma.cc/HCL8-ZTJJ>] [hereinafter *Employment-Based Immigrant Visa*].

58. To access Form I-140, which is the employment-based version of the I-130, refer to: U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP'T OF HOMELAND SEC., FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER, <http://www.uscis.gov/sites/default/files/files/form/i-140.pdf> [<https://perma.cc/FQX4-6PJ6>].

59. *Employment-Based Immigrant Visa*, *supra* note 57.

60. *Id.*

their priority date to meet “the most recent qualifying date,” taking into consideration the Visa Bulletin, as described above.⁶¹

Severe discrepancies exist among processing dates depending on an individual’s preference category and home country. For example, the most current priority date⁶² for a family-sponsored visa is February 22, 2015⁶³ for spouses and children of LPRs, not including those from Mexico, while the most recent application being reviewed for brothers and sisters of U.S. citizens from the Philippines is from May 22, 1993.⁶⁴ On the other hand, the EB-5’s employment-based visa processing date is listed as “Current” as of December 2016, with the exception of those from China, which has a current processing date of March 22, 2014.⁶⁵ This means that anyone, except those from China, currently wishing to have their application processed for an EB-5 visa may do so immediately while spouses, children, and siblings of both LPRs and citizens could have to wait another year at best, and at most roughly another twenty-five years.

While America’s immigration system can be confusing as a whole, navigating the individual visas can be even more challenging. The family-sponsored, employment-based, and diversity visa programs at issue in this Comment are discussed in the next section.

B. The Family-Sponsored, Employment-Based, and Diversity Visa Programs

The family-sponsored, employment-based, and diversity visa programs, though similar in many aspects, can vary widely in practice. This Section provides a more in-depth explanation of the family-sponsored, employment-based, and diversity lottery visa categories, specifically the qualifications and requirements necessary for each.

1. Family-Sponsored Visa Program

The family-sponsored preference category, like every other immigrant visa category, has certain requirements that must be fulfilled in order for

61. *Id.*

62. As a reminder, these dates represent an applicant’s priority date, and “immigrant visas cannot be issued until an applicant’s priority date,” or processing date, is reached. See *Family-Based Immigrant Visas*, *supra* note 14.

63. *Visa Bulletin: Immigrant Numbers for December 2016*, *supra* note 15, at 2. This was the most current date as of the writing of this Comment. See *infra* Appendix A for the Family-Sponsored Visa Bulletin from December 2016.

64. *Id.*

65. *Id.* at 4. See *infra* Appendix B for the Employment-Based Visa Bulletin from December 2016.

one to become eligible to apply.⁶⁶ For example, “a U.S. citizen or LPR sponsor must petition for an individual relative . . . [,] meet minimum income requirements, and sign an affidavit of support⁶⁷ stating that the sponsor will be financially responsible for the family member(s) upon arrival in the United States.”⁶⁸ In total, there are 480,000 family-based visas available every year,⁶⁹ though the number of visas issued often exceeds the number available.⁷⁰ In order to determine how many of the 480,000 family-based visas may be allotted to the preference categories,⁷¹ the U.S. Department of State subtracts the number of immediate relative visas from the 480,000 available and distributes the remaining visas throughout the family preference categories.⁷² The total distributed throughout the remaining categories may not, by law, be less than 226,000.⁷³ Any unused employment-visas from the previous fiscal year may also be used as additional family-preference visas.⁷⁴

There are two ways by which family members of United States citizens or LPRs may bring certain family members to the United States as a means of legal immigration.⁷⁵ First, in certain circumstances,

66. HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS, *supra* note 5, at 3.

67. An affidavit of support is “[a] document promising that the person who completes it will support an applicant financially in the United States. Family and certain employment immigration cases require the I-864 Affidavit of Support, which is legally binding. All other cases use the I-134 Affidavit of Support.” *U.S. Visas: Glossary*, *supra* note 32.

68. HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS, *supra* note 5, at 3.

69. *Id.* at 2.

70. For example, the number of family-sponsored visas and visas given to immediate relatives of U.S. citizens totaled 649,763 in 2013. OFFICE OF IMMIGRATION STAT., DEP’T OF HOMELAND SEC., 2013 YEARBOOK OF IMMIGRATION STATISTICS 18 (Aug. 2014), https://www.dhs.gov/sites/default/files/publications/ois_yb_2013_0.pdf [<https://perma.cc/MAE9-VURX>].

71. The preference categories in the family-based visa system include: unmarried sons and daughters of U.S. citizens (F1), spouses and children of LPRs (F2A), unmarried sons and daughters (twenty-one years of age or older) of LPRs (F2B), married sons and daughters of U.S. citizens (F3), and brothers and sisters of adult U.S. citizens (F4). *Visa Bulletin: Immigrant Numbers for December 2016*, *supra* note 15, at 2.

72. HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS, *supra* note 5, at 2.

73. *Id.*

74. *Id.*

75. *Id.* at 1. LPRs may file petitions for their spouses or unmarried sons or daughters. *Id.* U.S. citizens may file petitions for their spouses, sons or daughter, parents, and brothers or sisters. *The Immigrant Visa Process*, BUREAU OF CONSULAR AFFAIRS, U.S. DEP’T OF STATE, <http://travel.state.gov/content/visas/en/immigrate/immigrant-process.html> [<https://perma.cc/HYT4-4N9G>].

family-based immigrants may be admitted as immediate relatives.⁷⁶ Second, individuals may immigrate through the family preference system.⁷⁷ The family preference system is broken into four distinct categories.⁷⁸ The first category, F1, includes unmarried sons or daughters of U.S. citizens and their minor children.⁷⁹ The second category, F2, includes spouses, minor children and unmarried sons and daughters, age twenty-one or older, of LPRs.⁸⁰ The third category, F3, includes married sons and daughters of U.S. citizens and their spouses and minor children.⁸¹ Lastly, the fourth category, F4, includes brothers and sisters of U.S. citizens, and their spouses and minor children (as long as the petitioner is at least twenty-one years old).⁸² The number of visas applicable to each category includes: F1 (23,400),⁸³ F2 (114,200),⁸⁴ F3 (23,400);⁸⁵ and F4 (65,000).⁸⁶ Here, it is important to note that only a spouse, parent,⁸⁷ son or daughter (twenty-one years or older), or brother or sister may petition for a foreign relative to apply for immigration to the United States.⁸⁸ This means “[g]randparents, aunts, uncles, in-laws, and cousins cannot sponsor a relative for immigration,”⁸⁹ contrary to what many Americans believe.

76. HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS, *supra* note 5, at 1. There are an unlimited number of visas available for immediate relatives, which include: spouses of U.S. citizens, unmarried children of U.S. citizens twenty-one years old or younger, orphans adopted abroad by a U.S. citizen, orphans to be adopted in the U.S. by a U.S. citizen, and parents of U.S. citizens if the U.S. citizen is at least twenty-one years old. *Green Card for an Immediate Relative of a U.S. Citizen*, U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP'T OF HOMELAND SEC., <https://www.uscis.gov/green-card/green-card-through-family/green-card-immediate-relative-us-citizen> [<https://perma.cc/8SF6-4H5H>] [hereinafter *Green Card for an Immediate Relative of a U.S. Citizen*]. This “special immigration priority” allows them to bypass having to wait for a visa number to become available in order to come to the United States. *Id.*; Immigration and Naturalization Act (INA), 8 U.S.C. § 1101(b)(1) (2012 & Supp. 2016) (defining “child” to include orphans adopted abroad and orphans to be adopted abroad).

77. HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS, *supra* note 5, at 1.

78. *Family-Based Immigrant Visas*, *supra* note 14.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. Immigration and Naturalization Act (INA), 8 U.S.C. § 1153(a)(1) (Supp. III 2012).

84. *Id.* § 1153(a)(2).

85. *Id.* § 1153(a)(3).

86. *Id.* § 1153(a)(4).

87. *See id.* § 1101(b)(2) for the immigration definition of “parent.”

88. *Family-Based Immigrant Visas*, *supra* note 14.

89. *Id.*

2. *Employment-Based Visa Program*

The employment-based visa program gives foreign immigrants an opportunity to become permanent residents of the United States via an employer.⁹⁰ Approximately 140,000 employment-based visas are available each year.⁹¹ The five preference categories for employment-based immigrant admission include: first preference EB-1 (priority workers), second preference EB-2 (professionals holding advanced degrees and persons of exceptional ability), third preference EB-3 (skilled workers, professionals, and unskilled workers (other workers)), fourth preference EB-4 (certain special immigrants), and fifth preference EB-5 (immigrant investors).⁹²

The EB-1 preference category is further broken into subcategories, which include aliens with extraordinary ability, outstanding professors and researchers, and multinational executives or managers.⁹³ Aliens with extraordinary ability include foreign nationals who demonstrate “extraordinary ability in the sciences, arts, education, business, or athletics through sustained national or international acclaim. [The] achievements must be recognized in [his or her] field through extensive documentation.”⁹⁴ Similarly, an outstanding professor or researcher

must demonstrate international recognition for . . . outstanding achievements in a particular academic field . . . [h]ave at least 3 years[*] experience in teaching or research in that academic area . . . [and] must be entering the United States in order to pursue tenure or tenure track teaching or comparable research position at a university or other institution of higher education.⁹⁵

USCIS designates particular evidence that aliens with extraordinary ability and outstanding professors and researchers must provide to prove they qualify for the status they claim.⁹⁶ Lastly, a multinational manager or executive

90. *Employment-Based Immigrant Visa*, *supra* note 57.

91. *Id.*

92. *Permanent Workers*, U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP'T OF HOMELAND SEC., <https://www.uscis.gov/working-united-states/permanent-workers> [<https://perma.cc/56B5-24KE>] (last updated July 15, 2015) [hereinafter *Permanent Workers*].

93. *Employment-Based Immigration: First Preference EB-1*, U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP'T OF HOMELAND SEC., <https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-first-preference-eb-1> [<https://perma.cc/T2AT-JAEY>] (last updated Oct. 29, 2015).

94. *Id.*

95. *Id.*

96. *Id.*

must have been employed outside the United States in the 3 years preceding the petition for at least 1 year by a firm or corporation and . . . must be seeking to enter the United States to continue service to that firm or organization. . . . [One's] employment must have been outside the United States in a managerial or executive capacity and with the same employer, an affiliate, or a subsidiary of the employer.⁹⁷

The EB-2 preference category includes aliens with advanced degrees, those with exceptional ability, or aliens seeking a national interest waiver.⁹⁸ In order to qualify for the EB-2, an alien with an advanced degree must apply for a job that “require[s] an advanced degree and [the alien] must possess such a degree or its equivalent (a baccalaureate degree plus 5 years progressive work experience in the field).”⁹⁹ An alien claiming exceptional ability must show exceptional ability in sciences, arts, or business.¹⁰⁰ Aliens requesting a national interest waiver “are requesting that the Labor Certification be waived because it is in the interest of the United States.”¹⁰¹ Similar to the EB-1, those aliens seeking an EB-2 must provide certain evidence proving the status they wish to claim.¹⁰²

The EB-3 includes aliens who are professionals, skilled workers, and unskilled workers.¹⁰³ Professionals must establish that they hold a U.S. baccalaureate degree or its foreign degree equivalent, and that this type of

97. *Id.*

98. *Employment-Based Immigration: Second Preference EB-2*, U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP'T OF HOMELAND SEC., <https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-second-preference-eb-2> [<https://perma.cc/4FPN-XLTG>] (last updated Oct. 29, 2015) [hereinafter *Employment-Based Immigration: Second Preference EB-2*].

99. *Id.*

100. *Id.* Exceptional ability means “a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.” *Id.*

101. *Id.*; see also *National Interest Waiver*, U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP'T OF HOMELAND SEC., <https://www.uscis.gov/eir/visa-guide/eb-2-employment-based-second-preference/national-interest-waiver> [<https://perma.cc/SMA4-GBP7>] (explaining that “when deciding whether to grant a waiver of the labor certification requirement, USCIS looks at all of the evidence to see whether the national benefits [the alien] offer[s] are so great that they outweigh the national interests inherent in the labor certification process,” and that the “purpose of the labor certification process is to protect the national interests of the United States by ensuring that the wages and working conditions of U.S. workers employed in the same field would not be adversely affected.”).

102. *Employment-Based Immigration: Second Preference EB-2*, *supra* note 98.

103. *Employment-Based Immigration: Third Preference EB-3*, U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP'T OF HOMELAND SEC., <https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-third-preference-eb-3> [<https://perma.cc/WA2U-QZWT>] (last updated July 15, 2015).

degree is normally required for entry into their occupation.¹⁰⁴ Further, professionals “must be performing work for which qualified workers are not available in the United States.”¹⁰⁵ Skilled workers must show at least two years of either job experience or training and, like professionals, must show they are “performing work for which qualified workers are not available in the United States.”¹⁰⁶ On the other hand, unskilled workers “must be capable, at the time the petition is filed . . . of performing unskilled labor (requiring less than [two] years training or experience), that is not of a temporary or seasonal nature, for which qualified workers are not available in the United States.”¹⁰⁷ Every subcategory in the EB-3 requires labor certification and “a permanent, full-time job offer.”¹⁰⁸

The EB-4 preference category consists of “special immigrants.”¹⁰⁹ Special immigrants currently include: religious workers, broadcasters, Iraqi and Afghan translators, Iraqi and Afghan nationals who have assisted the U.S., International Organization employees, physicians, Armed Forces members, Panama Canal Zone employees, NATO-6 employees, and their family members.¹¹⁰ The special immigrants in the EB-4 category have two options when petitioning for an immigrant visa: (1) an employer can file a Petition for Amerasian,¹¹¹ Widow(er), or Special Immigrant, or (2) the special immigrant may self-petition as an employee.¹¹²

Lastly, only investors and entrepreneurs may qualify for an EB-5 visa.¹¹³ Arguably the most controversial type of employment-based visa,

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Permanent Workers*, *supra* note 92.

110. *Employment-Based Immigration: Fourth Preference EB-4*, U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP’T OF HOMELAND SEC., <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fourth-preference-eb-4> [<https://perma.cc/4ZX3-KGL5>] (last updated Sept. 21, 2016) [hereinafter *Employment-Based Immigration: Fourth Preference EB-4*].

111. Amerasian in this context means an individual who “was born in Korea, Vietnam, Laos, Kampuchea, or Thailand after December 31, 1950, and before October 22, 1982, and was fathered by a U.S. citizen.” U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP’T OF HOMELAND SEC., FORM I-360, INSTRUCTIONS FOR PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT 1, <https://www.uscis.gov/sites/default/files/files/form/i-360instr.pdf> [<https://perma.cc/Y6NH-SH28>] (last updated Dec. 23, 2016).

112. *Employment-Based Immigration: Fourth Preference EB-4*, *supra* note 110.

113. *EB-5 Immigrant Investor Program*, U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP’T OF HOMELAND SEC., <https://www.uscis.gov/eb-5> [<https://perma.cc/DT8P-9T5T>] [hereinafter *EB-5 Immigrant Investor Program*].

this Comment proposes it should be cut. The EB-5 preference category is also known as the Immigrant Investor Program.¹¹⁴ This type of immigrant visa allows foreign investors, subject to certain criteria, to apply for green cards within the United States.¹¹⁵ Congress created the EB-5 Immigrant Investor Program in 1990 to stimulate the United States' economy.¹¹⁶ The program, administered by USCIS, creates new jobs and invites foreign investors to invest a minimum of \$500,000 venture capital in "targeted employment areas"¹¹⁷ or \$1 million generally.¹¹⁸ This program requires that all investors invest in new commercial enterprises.¹¹⁹ A new commercial enterprise is a "commercial enterprise"¹²⁰ established after November 29, 1990, or, if established on or before November 29, 1990, a commercial enterprise that is (1) "[p]urchased and the existing business is restructured or reorganized in such a way that a new commercial enterprise results, or (2) [e]xpanded through the investment so that at least a 40-percent increase in the net worth or number of employees occurs."¹²¹ An important aspect of the EB-5 program is that it requires the creation or preservation of "full-time positions for at least 10 qualifying employees."¹²²

Currently, Congress allows 140,000 visas through the employment-based visa program each year.¹²³ Of that total, the EB-1, EB-2, and EB-3 categories "shall first be made available in a number not to

114. *Id.*

115. Immigration and Naturalization Act (INA), 8 U.S.C. § 1153(b)(5) (Supp. III 2012).

116. *About the EB-5 Visa Classification*, U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP'T OF HOMELAND SEC., <https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/about-eb-5-visa> [<https://perma.cc/D9B2-VP5D>] (last updated Feb. 16, 2017).

117. A targeted employment area is "an area that, at the time of the investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate." *Id.* A rural area is "any area not within either a metropolitan statistical area (as designated by the Office of Management and Budget) or the outer boundary of any city or town having a population of 20,000 or more according to the most recent decennial census of the United States." *Id.*

118. *Id.*

119. *Id.*

120. A commercial enterprise is defined as "any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to: [a] sole proprietorship[;] [p]artnership (whether limited or general)[;] [h]olding company[;] [j]oint venture[;] [c]orporation[;] [b]usiness trust, or [o]ther entity, which may be publicly or privately owned." *Id.* A commercial enterprise does *not* include "noncommercial activity such as owning and operating a personal residence." *Id.*

121. *Id.*

122. *Id.*

123. HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS, *supra* note 5, at 4.

exceed 28.6 percent of such worldwide level.”¹²⁴ Further, visas in the EB-4 and EB-5 categories “shall be made available, in a number not to exceed 7.1 percent of such worldwide level.”¹²⁵ Accordingly, the EB-1 has a yearly numerical limit of 40,000, plus any unused visas from the EB-4 and EB-5 preference categories.¹²⁶ The EB-2 has a yearly numerical limit of 40,000, plus any unused visas from the EB-1 preference category.¹²⁷ The EB-3 has a yearly numerical limit of 40,000, plus any unused visas from the EB-1 and EB-2 preference categories (however, unskilled laborers are restricted to 5,000).¹²⁸ Lastly, the EB-4 has a yearly limit of 10,000, as does the EB-5.¹²⁹ The INA also further limits how many foreign nationals from each country may immigrate to the United States under any one category.¹³⁰ As such, a single country may not “exceed seven percent of the total amount of people immigrating to the United States in a single fiscal year.”¹³¹

3. Diversity Lottery Visa Program

The Immigration Act of 1990 created the diversity lottery visa system, which allows legal immigration from countries with low rates of immigration to the United States.¹³² Diversity lottery visa holders are typically from countries within Africa, Asia, and Eastern Europe that have “fewer than 50,000 total immigrant admissions over the preceding five years,”¹³³ but no one single country is permitted to receive more than 7% of

124. Immigration and Naturalization Act (INA), 8 U.S.C. § 1153(b)(1) (Supp. III 2012); see §§ 1153(b)(2)(A), (b)(3)(A). The “worldwide level” refers to the 675,000 legal permanent immigrant visas that the INA provides may be given out each year. NAT’L COUNCIL OF LA RAZA, BASIC FACTS ON IMMIGRATION 2 (2004), [http://www.lawhelp.org/files/7C92C43F-9283-A7E0-5931-E57134E903FB/attachments/B2DAF111-BDB8-656B-F313-C5E6ECD70F65/300391file_Basic_Facts_on_immigration_final\[1\].pdf](http://www.lawhelp.org/files/7C92C43F-9283-A7E0-5931-E57134E903FB/attachments/B2DAF111-BDB8-656B-F313-C5E6ECD70F65/300391file_Basic_Facts_on_immigration_final[1].pdf) [https://perma.cc/GG5R-AXYW]. This number is then further divided amongst the visa categories subject to the worldwide level; for example, the family-based visa category is allotted 480,000 of that 675,000. *Id.*

125. 8 U.S.C. § 1153(b)(4); see also § 1153(b)(5)(A).

126. HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS, *supra* note 5, at 4–5.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.* at 5.

131. *Id.*

132. DIVERSITY VISA SYSTEM: A FACT SHEET, *supra* note 9, at 1; RUTH ELLEN WASEM & KARMA ESTER, CONG. RESEARCH SERV., RS21342, IMMIGRATION: DIVERSITY VISA LOTTERY 1 (2004).

133. DIVERSITY VISA SYSTEM: A FACT SHEET, *supra* note 9, at 1–2.

the diversity visas available in that year.¹³⁴ This system provides an available route to legal immigration for those who do not have family or employment opportunities that would otherwise allow for immigration to the United States.¹³⁵ Today, the diversity ceiling is set at 50,000 visas.¹³⁶ Each principal visa recipient is also allowed to obtain visas for his or her spouse and children.¹³⁷ This particular category of immigrant visa consists of about 4% of all LPR admissions annually.¹³⁸

In order to apply for the diversity lottery, applicants must (1) be a native (or married to a native) of one of the qualifying countries, (2) “have a high school education or its equivalent, or [two] years[’] experience in an occupation which requires at least [two] years of training or experience, and [(3)] be admissible under the Immigration and Nationality Act (INA).”¹³⁹ Applications are completed online, and winners are chosen via a random computerized selection.¹⁴⁰ Those who are chosen are notified by the State Department and then have a limited period of time to complete and file the required paperwork, showing they are still eligible for admissibility to the United States as LPRs.¹⁴¹

Once the Department of State notifies the diversity lottery winner that their application was selected, the process by which the winner receives a visa depends on where the foreign national resides.¹⁴² For example, a lottery winner living outside the United States will immigrate via consular processing, where the U.S. embassy in the lottery winner’s home country

134. *The Diversity Visa Process*, BUREAU OF CONSULAR AFFAIRS, U.S. DEP’T OF STATE, <http://travel.state.gov/content/visas/en/immigrate/diversity-visa/entry.html> [<https://perma.cc/2KXY-2F7B>].

135. DIVERSITY VISA SYSTEM: A FACT SHEET, *supra* note 9, at 1.

136. *Id.* See *infra* Appendix C for the Diversity Visa Bulletin from December 2016.

137. DIVERSITY VISA SYSTEM: A FACT SHEET, *supra* note 9, at 1. For example, in 2015, the United States awarded diversity lottery visas to 24,374 principals (new arrivals), 10,723 spouses (new arrivals), and 11,569 children (new arrivals). 2015 YEARBOOK OF IMMIGRATION STATISTICS, *supra* note 13, at 23.

138. DIVERSITY VISA SYSTEM: A FACT SHEET, *supra* note 9, at 1.

139. *Id.*

140. *Id.*

141. *Id.*; WASEM & ESTER, *supra* note 132, at 5.

142. *Green Card Through the Diversity Immigrant Visa Program*, U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP’T OF HOMELAND SEC., <https://www.uscis.gov/green-card/other-ways-get-green-card/green-card-through-diversity-immigration-visa-program/green-card-through-diversity-immigrant-visa-program> [<https://perma.cc/H7NF-CBSN>] (last updated Feb. 14, 2014) [hereinafter *Green Card Through the Diversity Immigrant Visa Program*].

will issue the immigrant visa.¹⁴³ Other lottery winners, who are legally residing in the United States either through a nonimmigrant visa or through other legal means, must apply to USCIS at the time of their notification in order to adjust status.¹⁴⁴ Adjustment of status in this case requires a foreign national to show (1) he or she was chosen to receive a diversity visa through the diversity lottery, (2) there is an immigrant visa immediately available upon filing the Application to Register Permanent Resident or Adjust Status,¹⁴⁵ and (3) admissibility to the United States.¹⁴⁶ In order to determine if a visa is available, the lottery winner is subject to the most recent Visa Bulletin, but not in the same way family-sponsored and employment-based immigrant visas are subject to the Visa Bulletin.¹⁴⁷ The Diversity Lottery's Visa Bulletin¹⁴⁸ is divided into two sections: B and C.¹⁴⁹ Section B provides the visa availability for the current month, while Section C provides the visa availability for the subsequent month, both of which are divided into Diversity Immigrant categories by region (e.g., Africa, Asia, Europe, etc.).¹⁵⁰

The chart in Section B demonstrates the number of Diversity lottery visas allotted for each particular region for the current month.¹⁵¹ These numbers are important because “[w]hen the cut-off is met, visas will be available in that month for the applicants with Diversity Immigrant lottery rank numbers below the specified cut-off numbers for their geographic areas.”¹⁵² Section C, on the other hand, contains a chart that shows the following month's cut-off, or the “advance notification of Diversity Immigrant visa availability.”¹⁵³ This means that anyone with a rank

143. *Consular Processing*, U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP'T OF HOMELAND SEC., <http://www.uscis.gov/green-card/green-card-processes-and-procedures/consular-processing> [https://perma.cc/SK7B-P33F] (last updated July 17, 2015).

144. *Green Card Through the Diversity Immigrant Visa Program*, *supra* note 142.

145. *Id.*

146. *Id.* Admissibility is controlled by Immigration and Naturalization Act (INA), 8 U.S.C. § 1182(a) (Supp. III 2012). Aliens deemed inadmissible under this statute are “ineligible to receive visas and ineligible to be admitted to the United States.” *Id.* Requirements may include, but are not limited to, an alien's health, criminal history, association with terrorist organizations, previous removal from the United States, or accrual of unlawful presence. *Id.*

147. *See Green Card Through the Diversity Immigrant Visa Program*, *supra* note 142.

148. *See infra* Appendix C.

149. *Id.*

150. *Id.*; *see also Visa Bulletin: Immigrant Numbers for December 2016*, *supra* note 15, at 6.

151. *Green Card Through the Diversity Immigrant Visa Program*, *supra* note 142.

152. *Id.*

153. *Id.*

number that is lower than the cut-off number provided in Section C's chart is eligible to file for adjustment of status.¹⁵⁴ Not only does this allow lottery winners the opportunity to file for adjustment of status up to seven weeks before a visa number can be set aside, it also gives USCIS more time to decide whether an individual is eligible for adjustment of status before the fiscal year ends.¹⁵⁵ It is important to note that an adjustment application for an individual hoping to adjust through the diversity lottery system cannot be adjudicated until a visa can be set aside for that particular individual.¹⁵⁶

In comparing the total numbers allotted to each of the family-based, employment-based, and diversity visas above, it is noticeable that the majority of visas are already allotted to the family-based visa category.¹⁵⁷ Yet, there are still millions of husbands, wives, children, brothers, and sisters waiting to be reunited with their family members here in the United States.¹⁵⁸ However, instead of uniting those families, America's current immigration system allows 10,000 visas per year to go to foreign nationals that can afford the \$500,000 or \$1 million EB-5 visa, and 50,000 visas to those who are lucky enough to be chosen in the diversity-based visa program.¹⁵⁹ Congress can better accomplish its goal of family reunification by redistributing visas from the employment-based and diversity lottery visa categories to the family-based preference category.

II. WHY THE NUMBER OF FAMILY-SPONSORED VISAS SHOULD BE INCREASED: A PLEA TO CONGRESS

The employment-based and diversity lottery visa systems are burdens to family reunification because Congress could reallocate the visas currently allotted to the employment-based and diversity categories to family-based visas. There are several problems with the EB-5 and diversity lottery systems. When weighed against the benefits of the family-sponsored system, it becomes clear that Congress should eliminate these problematic systems, and free up 60,000 visas for the family

154. *Id.*

155. *Id.*

156. *Id.*

157. There are 480,000 visas available in the family-based category, 140,000 visas available in the employment-based category, and 50,000 visas available in the diversity visa category. HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS, *supra* note 5, at 2–6.

158. ANNUAL REPORT OF IMMIGRANT VISA APPLICANTS IN THE FAMILY-SPONSORED AND EMPLOYMENT-BASED PREFERENCES REGISTERED AT THE NATIONAL VISA CENTER AS OF NOVEMBER 1, 2016, *supra* note 15, at 2.

159. See discussion *infra* Sections I.B.2–3.

members of immigrants. This Part begins by addressing the weaknesses and strengths of the EB-5 and diversity lottery systems before delving into an analysis of why the family-sponsored system should receive more visas.

A. *Employment-Based and Diversity Lottery Visas: Why Changes Must Be Made*

In the past few decades, American lawmakers placed a higher focus on employment-based visas and appear to have forgotten the importance of family reunification.¹⁶⁰ In fact, Congress has placed such high emphasis on skills-based visas that foreign nationals can now seemingly “purchase” visas via the EB-5 employment-based preference category. These visas may inevitably lead to citizenship in the United States; therefore, immigrants may effectively purchase citizenship.¹⁶¹ Additionally, America’s diversity lottery is an arbitrary and random aspect of our immigration system that is subject to few applicant requirements. Both of these methods of distributing American visas should be eliminated.

1. *Controversy with the EB-5 Visa*

The EB-5 visa category allows foreign nationals to effectively purchase American green cards.¹⁶² University of Chicago Law School professor Eric Posner labeled this program as a “scam.”¹⁶³ Texas Congressman John Bryant referred to this program as “sell[ing] our [American] birthright” and questioned our “self-respect as a nation.”¹⁶⁴ This program is essentially allowing wealthy foreign nationals “to cut the

160. For example, in a July 2015 report, the Obama Administration made suggestions on how to streamline America’s immigration system, all of which included ways to positively impact employment-based visas. The report did not propose any changes to the family-based visa processes. WHITE HOUSE, MODERNIZING & STREAMLINING OUR LEGAL IMMIGRATION SYSTEM FOR THE 21ST CENTURY 29–30 (July 2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/final_visa_modernization_report1.pdf [<https://perma.cc/7WRY-GWAN>].

161. See *id.* at 30–31; Sujeet Rajan, *US Is Wrong to Sell Citizenship Through EB-5 Visa, Give Green Cards to H-1B, EAD Holders Waiting for 10 Years*, AM. BAZAAR (May 20, 2015), <http://www.americanbazaaronline.com/2015/05/20/us-is-wrong-to-sell-citizenship-through-eb-5-visa-give-green-cards-to-h-1b-ead-holders-waiting-for-10-years/> [<https://perma.cc/WT7P-VNTM>].

162. See Rajan, *supra* note 161; see also *EB-5 Immigrant Investor Program*, *supra* note 113 (explaining that under the EB-5 program, those immigrants that are granted an EB-5 visa are eligible to apply for a green card (lawful permanent residence)).

163. Rajan, *supra* note 161.

164. Peter Elkind & Marty Jones, *The Dark, Disturbing World of the Visa-For-Sale Program*, FORTUNE (July 24, 2014), <http://fortune.com/2014/07/24/immigration-eb-5-visa-for-sale/> [<https://perma.cc/L5T7-SY4Y>].

visa line ahead of others who have waited for years” by buying their citizenship.¹⁶⁵ Further, many foreign nationals in search of an EB-5 visa “buy the visa as a security cover for their families and themselves if they were to ever be forced to leave their country, or prefer to have their sons and daughters ultimately settle down in the US.”¹⁶⁶

In addition, the EB-5 program is fraught with fraud and corruption.¹⁶⁷ Because an investor’s concern with the minimum \$500,000 investment is often minimal compared to the desire for a green card from the United States, a particularly high risk of fraud exists within the EB-5 program.¹⁶⁸ Over one hundred complaints were filed with the Securities and Exchange Commission (SEC) between January 2013 and January 2015 regarding possible securities fraud within the EB-5 visa program.¹⁶⁹ One such case began in February 2013.¹⁷⁰ The SEC charged Anshoo Sethi, a regional center¹⁷¹ operator in Chicago, for fraud when he allegedly cheated “\$11 million in administrative fees from over 250 investors” after convincing

165. Kevin Sullivan, *Foreign Citizens Making Big Investments in U.S. in Exchange for Green Cards*, WASH. POST (Mar. 21, 2013), https://www.washingtonpost.com/politics/foreign-citizens-making-big-investments-in-us-in-exchange-for-green-cards/2013/03/21/ecf250d2-8d72-11e2-b63f-f53fb9f2fcb4_story.html [<https://perma.cc/4XMJ-UH6M>].

166. Rajan, *supra* note 161.

167. Press Release, U.S. Sec. & Exch. Comm’n, SEC: Lawyers Offered EB-5 Investments as Unregistered Brokers (Dec. 7, 2015), <https://www.sec.gov/news/pressrelease/2015-274.html> [<https://perma.cc/B5S5-7QV9>]; Press Release, U.S. Sec. & Exch. Comm’n, SEC Announces Asset Freeze Against Alleged EB-5 Fraudster in Seattle Area (Aug. 25, 2015), <https://www.sec.gov/news/pressrelease/2015-173.html> [<https://perma.cc/K82C-NSQ7>]; Press Release, U.S. Sec. & Exch. Comm’n, SEC Charges Oil Company and CEO in Scheme Targeting Chinese-Americans and EB-5 Investors (July 6, 2015), <https://www.sec.gov/news/pressrelease/2015-141.html> [<https://perma.cc/KYH7-Y9WW>]; *Investor Alert: Investment Scams Exploit Immigrant Investor Program*, U.S. SEC. & EXCH. COMM’N (Oct. 1, 2013), https://www.sec.gov/investor/alerts/ia_immigrant.htm [<https://perma.cc/FX6N-MUZI>].

168. Matthew Mosk, *Dozens of Fraud Investigations Target US Immigration Program for Rich Foreigners*, ABC NEWS (Aug. 12, 2015, 3:35 PM), <http://abcnews.go.com/US/dozens-fraud-investigations-target-us-immigration-program-rich/story?id=33042081> [<https://perma.cc/SYX9-UL9W>].

169. *Id.*; *see, e.g.*, Press Release, U.S. Sec. & Exch. Comm’n, SEC Halts Texas-Based Scheme Targeting Foreign Investors Seeking U.S. Residency Through EB-5 Visa Program, (Oct. 1, 2013), <https://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539854731> [<https://perma.cc/LH46-ZE2H>]; *e.g.*, Complaint & Demand for Jury Trial, Sec. Exch. Comm’n v. Yang, No. 5:15-cv-02387 (C.D. Cal. Nov. 19, 2015); Complaint, SEC v. Ramirez, No. 7:13-cv-00531 (S.D. Tex. Sept. 30, 2013).

170. SEC v. Chi. Convention Ctr., LLC, 961 F. Supp. 2d 905 (N.D. Ill. 2013).

171. A regional center helps sponsor “capital investment projects for investment by EB-5 investors.” Kate Kalmykov & James Cormie, *EB-5 Regional Center*, EB5 INVESTORS, <http://www.eb5investors.com/eb5-basics/eb-5-regional-center> [<https://perma.cc/Z68N-MVVE>].

them to invest in his hotel project that was invalid due to improper building permits.¹⁷² More recently, in April of 2016, the SEC charged Ariel Quiros and William Stenger with fraud when they allegedly “made false statements and omitted key information while raising more than \$350 million from investors [under the EB-5 Immigrant Investor Program] to construct ski resort facilities and a biomedical research facility in Vermont.”¹⁷³ Similarly, in June of 2016, the SEC charged Charles C. Liu and Xin “Lisa” Wang, a husband and wife pair, with fraud when they misused roughly two-thirds of the \$27 million “they raised from investors for the purpose of building and operating a new cancer treatment center that would use proton beam radiation to help oncology patients in Southern California.”¹⁷⁴

However, supporters of the EB-5 program would argue that advantages do exist.¹⁷⁵ In theory, this program brings in billions of dollars to the U.S. economy and helps create tens of thousands of jobs in the United States.¹⁷⁶ Further, much of that capital is directed to underserved areas in desperate need of investment.¹⁷⁷ Unfortunately, there is very little data to confirm these claims,¹⁷⁸ and “[a]nalysis of available data strongly suggest that the failure rate has been very high, and that the economic

172. *Chi. Convention Ctr.*, 961 F. Supp. 2d at 907.

173. Press Release, U.S. Sec. & Exch. Comm’n, SEC Case Freezes Assets of Ski Resort Steeped in Fraudulent EB-5 Offerings (Apr. 14, 2016), <https://www.sec.gov/news/pressrelease/2016-69.html> [<https://perma.cc/FG5X-XF4G>]; see also Ellen Sheng, *Foreign Investors Defrauded Through U.S. EB-5 Visa Program*, FORBES (Aug 1, 2016, 12:12 AM), <http://www.forbes.com/sites/ellensheng/2016/08/01/foreign-investors-defrauded-through-u-s-eb-5-visa-program/#3c626eb54afe> [<https://perma.cc/JBT6-FC45>].

174. Press Release, U.S. Sec. & Exch. Comm’n, SEC Halts EB-5 Scheme Stealing Investments in Cancer Center (June 2, 2016), <https://www.sec.gov/news/pressrelease/2016-105.html> [<https://perma.cc/6WL8-GES9>]; Suzanne Barlyn, *SEC Charges Couple with Fraud in Chinese Investor Visa Scheme*, REUTERS (June 3, 2016, 3:59 AM), <http://www.reuters.com/article/us-sec-fraud-investors-idUSKCN0YO2QP> [<https://perma.cc/P4V6-2UBE>]; see also Suevon Lee, *Couple’s EB-5 Operation Is a \$27M Scam, SEC Says*, LAW360 (June 2, 2016, 8:07 PM), <http://www.law360.com/articles/803169/couple-s-eb-5-operation-is-a-27m-scam-sec-says> [<https://perma.cc/ELF8-ZBWE>].

175. See, e.g., THE EB-5 VISA PROGRAM: WHAT IT IS AND HOW IT WORKS, *supra* note 9.

176. *Id.*

177. Kenneth Rapoza, *Why Congress Will Extend the EB-5 Immigrant Visa Program*, FORBES (Sept. 27, 2016, 9:00 AM), <http://www.forbes.com/sites/kenrapoza/2016/09/27/why-congress-will-extend-the-eb-5-immigrant-visa-program/#16f2e0c63442> [<https://perma.cc/84AQ-D7H9>].

178. See generally Angelo A. Paparelli, Mahsa Aliaskari, & Andrew L. Berg, *Without Greater Investor Protection, EB-5 Is Unsustainable*, LAW360 (Nov. 1, 2016, 10:22 PM), <https://www.law360.com/articles/856071/without-greater-investor-protection-eb-5-is-unsustainable> [<https://perma.cc/RB4T-MCT6>].

benefits provided by the EB-5 program have been negligible, at best.”¹⁷⁹ Further, a 2005 Government Accountability Office report, which evaluated the execution of the program from 1992 to 2004, found that “after 12 years the EB-5 program had only led to \$1 billion (instead of the predicted \$48 billion) in investments and there was no reliable accounting of jobs created.”¹⁸⁰ Thus, due to the unfairness, fraud, corruption, and lack of success of the EB-5 program, it should be eliminated in favor of programs promoting family reunification.

2. *Problems with the Diversity Lottery System*

The diversity lottery system is a chance-based system granting American green cards on the luck of the draw. Critics of the diversity lottery point out a major problem in the way in which this system is organized, because recipients of this visa may “not have the same ‘stake in our country’s success’ as family and employment-based immigrants.”¹⁸¹ Not only is this system completely arbitrary in that “winners” are not chosen due to familial ties or a particular skill set needed in the United States, the diversity system actually hinders what it claims to provide: diversity.¹⁸² As explained above, Congress organized the diversity lottery system based on geographical region and prohibits foreign nationals from certain countries from applying.¹⁸³ For example, natives from Bangladesh, Nigeria, Peru, Canada, China, the United Kingdom, and Brazil, among others, are not eligible to apply for the diversity lottery program because an excess of 50,000 natives from these countries have immigrated to the United States in the past five years.¹⁸⁴ Therefore, many critics of this

179. Eric A. Ruark & Aniq Moinuddin, *Selling America Short: The Failure of the EB-5 Visa Program*, FED’N FOR AM. IMMIGRATION REFORM 1 (2012), http://www.fairus.org/site/docserver/fair-eb5-2012_rev.pdf [<https://perma.cc/P2XW-KCHL>].

180. *Id.*; see also 2015 YEARBOOK OF IMMIGRATION STATISTICS, *supra* note 13, at 18 (showing that the first year the maximum number of visas were actually approved was 2014, and that from 2006 to 2013, the largest number of EB-5 visas approved in any single year did not exceed 8,600).

181. Melissa Chapaska, Note, *The Immigration Gamble: Eliminating the Diversity Visa Program*, 5 WIDENER J.L., ECON. & RACE 67, 74 (2013) (quoting H. R. REP. NO. 112-275, at 7 (2011); *Hearing on the Diversity Immigrant Program Elimination Before the H. Judiciary Subcomm. on Immigration Policy & Enforcement*, 112th Cong. (2011) (Testimony of Rep. Goodlatte, Member H. Judiciary Comm.)).

182. See generally BUREAU OF CONSULAR AFFAIRS, U.S. DEP’T OF STATE, INSTRUCTIONS FOR THE 2016 DIVERSITY IMMIGRANT VISA PROGRAM (DV-2016) 1 (2016), http://travel.state.gov/content/dam/visas/DV-2016-Instructions-Translations/DV_2016_Instructions_English.pdf [<https://perma.cc/Q4ZT-HVKJ>].

183. *Id.*

184. *Id.*

program claim that it “does not diversify the American population; instead, the program only diversifies the immigrant population.”¹⁸⁵ This is important to note in considering whether the diversity lottery is doing what it claims to do.¹⁸⁶

Further, just as with the EB-5 visa, the diversity lottery system is rampant with fraud.¹⁸⁷ Both the Department of State and USCIS provide warnings on their websites to caution against the fraudulent means scammers are using to steal money from diversity lottery applicants.¹⁸⁸ For example, the Federal Trade Commission has received hundreds of reports from diversity lottery applicants who received emails, phone calls, or letters from scammers informing them that they had “won” the lottery and requiring them to remit payment via wire transfer.¹⁸⁹ This, however, is a scam as the only way an applicant can check his status is through the Department of State’s website.¹⁹⁰ Other scammers may try to charge applicants money in exchange for assisting with the application or promise to increase one’s chances of being selected.¹⁹¹ These are also scams as there is no application fee for entering the diversity lottery, and drawing for the lottery is both computerized and random.¹⁹² On the other hand, some applicants actually defraud the system itself “[b]y submitting multiple entries, sometimes under false aliases, . . . seek[ing] to increase their

185. Chapaska, *supra* note 181, at 71.

186. *Id.*

187. See *Fraud Warning: Diversity Visa Program Scammers Sending Fraudulent Emails and Letters*, BUREAU OF CONSULAR AFFAIRS, U.S. DEP’T OF STATE, <http://travel.state.gov/content/visas/en/general/fraud.html;%20http://www.uscis.gov/news/alerts/be-aware-diversity-visa-scams> [<https://perma.cc/TE4W-L5E9>].

188. *Id.*; *Be Aware of Diversity Visa Scams*, U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP’T OF HOMELAND SEC., <https://www.uscis.gov/news/alerts/be-aware-diversity-visa-scams> [<https://perma.cc/ZC53-ALQY>] (last updated Feb. 24, 2011).

189. Bridget Small, *Copycat Scammers and the Visa Lottery*, FED. TRADE COMM’N: CONSUMER INFO. BLOG (Oct. 27, 2015), <https://www.consumer.ftc.gov/blog/copycat-scammers-and-visa-lottery> [<https://perma.cc/UDC2-T85M>]; Rosario Mendez, *Seen and Heard: Diversity Visa Lottery Scams*, FED. TRADE COMM’N: CONSUMER INFO. BLOG (Nov. 24, 2014), <https://www.consumer.ftc.gov/blog/seen-and-heard-diversity-visa-lottery-scams> [<https://perma.cc/H4JH-AJP9>]; *Diversity Visa Lottery Scams*, FED. TRADE COMM’N: CONSUMER INFO. BLOG (May 2011), <https://www.consumer.ftc.gov/articles/0080-diversity-visa-lottery-scams> [<https://perma.cc/BS69-7HEU>].

190. Mendez, *supra* note 189.

191. *Diversity Visa Lottery Scams*, FED. TRADE COMM’N: CONSUMER INFO. BLOG (May 2011), <https://www.consumer.ftc.gov/articles/0080-diversity-visa-lottery-scams> [<https://perma.cc/BS69-7HEU>].

192. *Id.*; Mendez, *supra* note 189.

chance of selection in the lottery.”¹⁹³ If the applicant is selected under one such alias, he or she “must then obtain and use fraudulent documents to support the visa application.”¹⁹⁴ Thus, considering the lack of diversity this program actually provides and the amount of fraud involved, Congress should eliminate the diversity lottery system and reallocate its 50,000 visas to promote family reunification in the family-sponsored visa categories.

B. Importance of Family Reunification: Why America Must Reform Its Immigration System

Congress needs to reevaluate the American immigration system by refocusing on family reunification.¹⁹⁵ The family has rightfully been described as “the nucleus of civilization and the basic social unit of society” and “the linchpin of society, both economically and socially.”¹⁹⁶ Thus, family reunification is important for many reasons. Three in particular guide the argument for the reevaluation of America’s current immigration system: (1) the central role families play in incorporating new immigrants socially; (2) the economic contribution family-sponsored visa holders make to American society;¹⁹⁷ and (3) the impact family reunification could have on decreasing illegal immigration to the United States.¹⁹⁸ This Section will discuss these reasons in turn.

193. Chapaska, *supra*, note 181, at 76; *see also Diversity Visa Program and Its Susceptibility to Fraud and Abuse: Hearing Before the Subcomm. on Immigration Border Sec., & Claims of the H. Comm. on the Judiciary*, 108th Cong. 30–32 (2004) (statement of Dr. Steven A. Camarota, Ph.D., Director of Research, Center for Immigration Studies).

194. *Diversity Visa Program and Its Susceptibility to Fraud and Abuse*, *supra* note 193, at 2.

195. *Immigration Backlogs Are Separating American Families*, NAT’L IMMIGRATION FORUM (July 26, 2012), <https://immigrationforum.org/blog/immigration-backlogs-are-separating-american-families/> [<https://perma.cc/KTP2-AVKE>]; *Family Reunification and Employment Visas*, AJC: GLOB. JEWISH ADVOC., http://www.ajc.org/site/c.7oJILSPwFfJSG/b.8452641/k.1633/Family_reunification_and_employment_visas.htm [<https://perma.cc/92KR-KB8X>]; *see generally* PATRICIA HATCH, LEAGUE OF WOMEN VOTERS, U.S. IMMIGRATION POLICY: FAMILY REUNIFICATION 5, http://lww.org/files/ImmigrationStudy_FamilyReunification_Hatch.pdf [<https://perma.cc/H6HY-3E4C>]; *see generally* IMMIGRATION POLICY CTR., AM. IMMIGRATION COUNCIL, THE ADVANTAGES OF FAMILY-BASED IMMIGRATION 1 (Mar. 2013) [hereinafter THE ADVANTAGES OF FAMILY-BASED IMMIGRATION], https://www.americanimmigrationcouncil.org/sites/default/files/research/fact_sheet_on_family_immigration_0.pdf [<https://perma.cc/T73H-TVPP>].

196. William Bennett, *Stronger Families, Stronger Societies*, N.Y. TIMES (Apr. 24, 2012, 6:43 PM), <http://www.nytimes.com/roomfordebate/2012/04/24/are-family-values-outdated/stronger-families-stronger-societies> [<https://perma.cc/TCJ2-6XRQ>].

197. THE ADVANTAGES OF FAMILY-BASED IMMIGRATION, *supra* note 195, at 1–2.

198. *See* HATCH, *supra* note 195, at 4.

1. *Families' Central Role in the Societal Incorporation of New Immigrants*

The assimilation of new immigrants into our society relies heavily on family and communities.¹⁹⁹ Families “help each other adjust to their new surroundings by pooling resources and sharing responsibilities.”²⁰⁰ Families and the communities they create “operate as sources of critical resources for newcomers, including opportunities for employment, access to credit, and different kinds of support.”²⁰¹ Different kinds of support could include health care, childcare, and elder care.²⁰² Family members who provide household care and are not employed in the traditional sense “have a major impact on individual and public well-being, as well as on the human development potential of [a] countr[y].”²⁰³ These “readily available” resources give new immigrants a means of support until they can obtain employment or create their own business venture.²⁰⁴ During a 2013 hearing on the separation of nuclear families under U.S. Immigration Law, the American Jewish Committee gave the following congressional testimony:

Allowing immigrant families to more easily reunite with their loved ones strengthens our economy and promotes a strong social fabric in our communities. Promoting family unity incentivizes integration and economic development, as families provide strong foundations for learning English, purchasing a home, pursuing job opportunities, starting a business, preparing children for college, and strengthening the foundation of our communities. When families are together, the money they earn fuels the U.S. economy through taxes, investments, and the purchasing of goods and services. Because of the strong economic and social value of family unity, enhancement of the family immigrant visa category must be a priority of immigration reform.²⁰⁵

199. THE ADVANTAGES OF FAMILY-BASED IMMIGRATION, *supra* note 195, at 1.

200. NAT'L IMMIGRATION FORUM, *supra* note 195.

201. THE ADVANTAGES OF FAMILY-BASED IMMIGRATION, *supra* note 195, at 1.

202. *Id.* at 2–3.

203. PAN AMERICAN HEALTH ORGANIZATIONS, THE INVISIBLE ECONOMY AND GENDER INEQUALITIES: THE IMPORTANCE OF MEASURING AND VALUING UNPAID WORK vii (2010), http://new.paho.org/hq/dmdocuments/2010/unpaid_work.pdf [<https://perma.cc/KAK7-UBQ8>].

204. THE ADVANTAGES OF FAMILY-BASED IMMIGRATION, *supra* note 195, at 1.

205. *Separation of Nuclear Families Under U.S. Immigration Law: Hearing Before the Subcomm. on Immigration & Border Sec. of the H. Comm. on the Judiciary*, 113th Cong. 9, 94 (2013) (statement of the AJC on Comprehensive Immigration Reform) <https://www.gpo.gov/fdsys/pkg/CHRG-113hhrg79881/pdf/CHRG-113hhrg79881.pdf> [<https://perma.cc/KQ66-CFFJ>].

By having additional family members to take care of the home, children, and elderly, other family members who *are* employed in the traditional sense can continue to support the family as a whole and ultimately contribute to the economy.²⁰⁶

Additionally, family structure directly affects the American economy. Studies show that both parents contributing to household income, as opposed to only one parent making an income, reduces poverty rates.²⁰⁷ Growing up with both parents is also associated with higher levels of educational and occupational achievement.²⁰⁸ Further, children in two parent households also grow up with less cognitive, emotional, and social problems as “[d]ual-parent households often maintain higher standards of living, therefore providing more effective parenting skills with less stressful life circumstances.”²⁰⁹ Therefore, it is important that Congress allow both parents of immigrant children to immigrate to or remain in the United States in order to maintain stable households. This allows children to stay in school and ultimately contribute to America’s economy.

Thus, family reunification directly affects both the American society and economy. For immigrants who left family behind, a change in the number of family-sponsored visas could mean bringing their family to America, thereby supplementing their support system.²¹⁰ Similarly, those families who are in the United States with a parent (or other family member) waiting to obtain LPR status via consular processing outside of the United States would directly benefit from family reunification in the creation of a more stable home environment.²¹¹ Thus, by reallocating employment-based and diversity lottery visas to family-sponsored categories, a higher rate of family reunification would be possible.

206. THE ADVANTAGES OF FAMILY-BASED IMMIGRATION, *supra* note 195, at 3.

207. Households with two parents that are able to contribute to the family income are less susceptible to fall into financial hardship as households with only one parent able to contribute financially. Melinda Kedro, *Data on Single Parent vs. Dual Parent Households*, THE BUMP, <http://living.thebump.com/data-single-parent-vs-dual-parent-households-15860.html> [<https://perma.cc/5DBQ-TZ7D>].

208. Kelly Musick & Ann Meier, *Are Both Parents Always Better Than One? Parental Conflict and Young Adult Well-Being*, 28 RURAL N.Y. MINUTE, Apr. 2009, at 1, <https://www.human.cornell.edu/pam/outreach/upload/parentalconflict.pdf> [<https://perma.cc/K97E-39DS>].

209. Kedro, *supra* note 207.

210. THE ADVANTAGES OF FAMILY-BASED IMMIGRATION, *supra* note 195, at 1–2.

211. *Id.*

2. *The Family-Based Versus Employment-Based Visa Holder Contributions*

Family-based visa holders contribute to America's economy and eventually tend to earn more than employment-based visa holders.²¹² However, there is a commonly held misconception that family-sponsored visa holders will not be able to support themselves upon arriving in the United States and will instead be doomed to become a "public charge."²¹³ The idea is "[s]ince immigrants admitted under an occupation preference already have skills valued by a U.S. employer, it seems likely that their human capital is more readily transferable to the U.S. labor market than kinship-admitted immigrants."²¹⁴

However, while many employment-based visa holders have a pre-determined manner in which they will support themselves, "[t]he initial differences in earnings between family-based and employment-based immigrants tend to narrow dramatically over time[.]"²¹⁵ allowing new family-sponsored immigrants to "become the most upwardly mobile of American workers."²¹⁶ This upward mobility will benefit not only the immigrants themselves but also the economy at large.²¹⁷

Additionally, communities created by immigrant families positively contribute to America's economy through the development of big business.²¹⁸ Businesses owned by immigrant families are becoming a critical piece in the puzzle to the "revitalization and job growth in nearly every major metropolis, from New York and Miami to Chicago and Los

212. *Id.* at 2.

213. Public charge "refers to becoming dependent upon the government for the expenses of living (food, shelter, clothing, etc.)." *U.S. Visas: Glossary*, *supra* note 32.

214. Harriet Orcutt Duleep & Mark C. Regets, *Admission Criteria and Immigrant Earnings Profiles*, 30 INT'L MIGRATION REV. 571, 577 (1996).

215. THE ADVANTAGES OF FAMILY-BASED IMMIGRATION, *supra* note 195, at 2. In fact, studies show that "immigrants often start their U.S. lives at substantially lower earnings, but experience faster earnings growth than natives with comparable years of education and experience." Harriet Orcutt Duleep & Daniel J. Dowhan, *Research on Immigrant Earnings*, 68 SOC. SEC. BULL. 31, 31 (2008), <https://www.ssa.gov/policy/docs/ssb/v68n1/68n1p31.html> [<https://perma.cc/TT4R-HZWD>].

216. THE ADVANTAGES OF FAMILY-BASED IMMIGRATION, *supra* note 195, at 1 (noting that "[t]his is explained by their high rates of post-immigration human capital investment."). "Human capital investment activities include learning English, pursuing various forms of informal and formal U.S. schooling and training, and becoming knowledgeable about U.S.-specific institutions, production methods, and technical terms." Duleep & Dowhan, *supra* note 215, at 33.

217. THE ADVANTAGES OF FAMILY-BASED IMMIGRATION, *supra* note 195, at 1.

218. *Id.* at 1–2.

Angeles.”²¹⁹ Evidence shows “extended immigrant families and close-knit immigrant communities ease the economic assimilation of new immigrants and promote investment in U.S. human capital as well as the formation of businesses.”²²⁰ Between 1995 and 2005, immigrants founded, or assisted in founding, 25% of high tech companies.²²¹ As of 2013, “40% of the largest U.S. companies [were] founded by immigrants or their children.”²²² In a 2013 survey by the National Venture Capital Association, 13% of the immigrant founders in the survey were family-sponsored visa holders including companies such as Google, eBay, Intel, and Yahoo!²²³

Lastly, families who are permitted to come to the U.S. and maintain their family unit via family-sponsored visas help keep money within the American economy.²²⁴ It is not uncommon for immigrants to send money home to help provide for family members they left behind in their home countries.²²⁵ However, if Congress permitted those family members to enter the U.S. via family-sponsored visas, money that would otherwise be sent abroad can instead be invested domestically.²²⁶ In 2013 alone, an

219. ASIAN AMERICAN JUSTICE CENTER, THE ECONOMIC IMPACT OF FAMILY-BASED IMMIGRATION 1, http://www.advancingequality.org/sites/aaajc/files/FamilyImmigrationEconomy_0.pdf [https://perma.cc/7DBR-QYPP]; see generally CTR. FOR AN URBAN FUTURE, A WORLD OF OPPORTUNITY (Feb. 2007), https://nycfuture.org/pdf/A_World_of_Opportunity.pdf [https://perma.cc/65T5-6FCJ].

220. THE ADVANTAGES OF FAMILY-BASED IMMIGRATION, *supra* note 195, at 1 (quoting Harriet Orcutt Duleep & Mark C. Regets, *Family Unification, Siblings, and Skills*, in IMMIGRANTS AND IMMIGRATION POLICY: INDIVIDUAL SKILLS, FAMILY TIES, AND GROUP IDENTITIES 219, 238 (Harriet Orcutt Duleep & Phanindra V. Wunnava eds., 1996)).

221. Robert Lenzner, *40% of the Largest U.S. Companies Founded by Immigrants or Their Children*, FORBES (Apr. 25, 2013, 4:41 PM), <http://www.forbes.com/sites/robertlenzner/2013/04/25/40-largest-u-s-companies-founded-by-immigrants-or-their-children/> [https://perma.cc/Y2SW-WQJ5].

222. *Id.*

223. STUART ANDERSON, NAT’L VENTURE CAP. ASS’N., AMERICAN MADE 2.0: HOW IMMIGRANT ENTREPRENEURS CONTINUE TO CONTRIBUTE TO THE U.S. ECONOMY 16 (2013), <http://nvca.org/research/research-resources/> [https://perma.cc/N2YC-Z2BB]; Jennifer Martinez, *House Republicans Place Priority on Immigration Fix for High-Skilled Workers*, THE HILL (Feb. 5, 2013, 8:09 PM), <http://thehill.com/policy/technology/281229-house-republicans-place-priority-on-immigration-fix-for-high-skilled-workers> [https://perma.cc/2EU3-FDZ8].

224. ASIAN AMERICAN JUSTICE CENTER, *supra* note 219, at 2.

225. Andrew Wainer, *Remittances and Immigration*, HUFFINGTON POST (Oct. 24, 2012, 2:33 PM), http://www.huffingtonpost.com/andrew-wainer/remittances-and-immigration_b_2010873.html [https://perma.cc/C7CT-KQUX]; Audrey Singer & Anna Paulson, *Financial Access for Immigrants: Learning from Diverse Perspectives*, BROOKINGS INST. POLICY BRIEF, Oct. 2004, at 2, <https://www.brookings.edu/wp-content/uploads/2016/06/cr19.pdf> [https://perma.cc/4EJW-YG5J].

226. ASIAN AMERICAN JUSTICE CENTER, *supra* note 219, at 2.

estimated \$53.8 billion in remittances were sent to Spanish-speaking Latin American countries.²²⁷ Of those remittances, nearly all of the \$22 billion to Mexico came from the United States.²²⁸

3. *Reducing Illegal Immigration Rates*

Legal family reunification will help decrease the illegal immigration rates currently encouraged by America's immigration system.²²⁹ Family reunification needs to be made a higher priority in America's immigration system. The huge delay in processing times illustrates this need because "[e]ach year that the current family preference and country quotas remain in place, the backlogs increase, and the waits for families to reunite grow longer, testing the patience of everyone involved."²³⁰

Upon review of the December 2016 Visa Bulletin, visa processing for unmarried sons and daughters of U.S. citizens (F1) from Mexico may now occur for those who hold a priority date earlier than April 15, 1995.²³¹ Visa processing for married sons and daughters of U.S. citizens (F3) from the Philippines may now occur for those who hold a priority date earlier than August 15, 1994.²³² Visa processing for spouses and children of LPRs (F2A) for all countries may now occur for those who hold a priority date earlier than February 22, 2015.²³³ These numbers illustrate the extremely long wait period—over twenty years—for some applicants and the discrepancy in wait time between the different preference categories. As if these numbers are not discouraging enough, the waiting periods for each category often do not advance in real time.²³⁴ For example, upon review of the November 2016 Visa Bulletin, the processing date for unmarried sons and daughters of U.S. citizens from Mexico was April 8, 1995.²³⁵ Thus,

227. D'Vera Cohn, Ana Gonzalez-Barrera, & Danielle Cuddington, *Remittance Trends*, PEW RES. CTR.: HISP. TRENDS (Nov. 14, 2013), <http://www.pewhispanic.org/2013/11/14/2-remittance-trends/> [<https://perma.cc/RQY5-H4B7>].

228. *Id.*

229. See HATCH, *supra* note 195, at 4.

230. *Id.* at 3.

231. *Visa Bulletin: Immigrant Numbers for December 2016*, *supra* note 15, at 2.

232. *Id.*

233. *Id.* The one exception in this category is Mexico. Any spouse or child of an LPR with a priority date of February 15, 2015 from Mexico may have his or her visa processed. *Id.*

234. HATCH, *supra* note 195, at 3.

235. *Immigrant Numbers for November 2016*, VISA BULLETIN (Bureau of Consular Affairs, U.S. Dep't of State), Nov. 2016, at 2 [hereinafter *Visa Bulletin: Immigrant Numbers for November 2016*], https://travel.state.gov/content/dam/visas/Bulletins/visabulletin_November2016.pdf [<https://perma.cc/46YA-8PW8>].

one month later the processing date had only advanced seven days. Additionally, the processing date for married sons and daughters of U.S. citizens from the Philippines was August 8, 1994, and one month later that date had also only advanced seven days.²³⁶ Lastly, the processing date for spouses and children of LPRs for all countries was January 22, 2015.²³⁷

In comparing the Visa Bulletin from November 2016 to December 2016, within a span of only one month, the only category that has advanced in real time is that for spouses and children of LPRs.²³⁸ Even more alarming is the fact that some processing times have advanced as little as one week for other categories.²³⁹ With such little advancement in processing times, it could be twenty years before married sons and daughters of U.S. citizens from the Philippines can legally join their family members in the United States.²⁴⁰ The Independent Task Force on Immigration and America's Future deems these waiting periods "inhumane," stating that "such waits mean that a large portion of such individuals' productive working years that make immigration a good investment will have passed by the time many ever arrive in the United States."²⁴¹

Further, many relatives of U.S. citizens and LPRs who wish to someday obtain an immigrant visa do not qualify for non-immigrant visas "on the grounds that they are 'intending immigrants' and likely to overstay their visas. Thus, all legal channels for the family to reunite in the U.S. within a reasonable period of time are effectively blocked."²⁴²

As a result, many family members search for another way to enter the United States, often via an illegal entry.²⁴³ In 2014, there were an estimated 11.1 million illegal immigrants in the United States.²⁴⁴ Also in

236. Compare *id.* with *Visa Bulletin: Immigrant Numbers for December 2016*, *supra* note 15, at 2.

237. *Visa Bulletin: Immigrant Numbers for December 2016*, *supra* note 15, at 2. Again, with the exception of Mexico which has a priority date of January 8, 2015 for this visa category. *Id.*

238. Compare *id.* with *Visa Bulletin: Immigrant Numbers for December 2016*, *supra* note 15, at 2.

239. Compare *Visa Bulletin: Immigrant Numbers for November 2016*, *supra* note 235, at 2, with *Visa Bulletin: Immigrant Numbers for December 2016*, *supra* note 15, at 2.

240. HATCH, *supra* note 195, at 3.

241. *Id.* (quoting MEISSNER, ET AL., MIGRATION POLICY INST., IMMIGRATION AND AMERICA'S FUTURE: A NEW CHAPTER 22 (Sept. 2006)).

242. *Id.* at 4.

243. *Id.*

244. Jens Manuel Krogstad, Jeffrey S. Passel & D'Vera Cohn, *5 Facts About Illegal Immigration in the U.S.*, PEW RES. CTR. (Nov. 3, 2016), <http://www.pewresearch.org/fact->

2014, Immigration and Customs Enforcement (ICE) conducted a total of 315,943 removals, 213,719 of which were individuals attempting to enter the United States unlawfully.²⁴⁵ On top of that, there are a considerable number of individuals that illegally enter the U.S. undetected. Arguably, there is a direct correlation between the separation of families as a result of America's inefficient family-based visa system and illegal immigration.²⁴⁶ Family reunification can play an important role in curbing illegal entry into the United States and an overhaul of America's immigration system is needed to help do so. Thus, because of the central role families play in incorporating new immigrants socially, the economic contribution family-sponsored visa holders make to American society, and the impact family reunification could have on decreasing illegal immigration to the United States, family-sponsored visas should take priority over alternative, problematic immigration programs.

III. FAMILY V. ECONOMY: POTENTIAL COUNTERARGUMENTS TO INCREASING FAMILY- SPONSORED VISAS

While family reunification has always been, and must continue to be, a cornerstone of the American immigration system, many Americans and critics of our current immigration system do not believe that the number of family-sponsored visas should be increased.²⁴⁷ Opponents of this idea believe immigrants who are granted a visa will bring additional family members with them, thereby creating other substantial problems for America's economy, culture, and overall wellbeing.²⁴⁸ For example, many Americans believe that increasing family-sponsored visas will cause job

tank/2016/11/03/5-facts-about-illegal-immigration-in-the-u-s/ [https://perma.cc/AW89-VA YK].

245. *DHS Releases End of Year Statistics*, U.S. IMMIGRATION & CUSTOMS ENF'T, DEP'T OF HOMELAND SEC. (Dec. 18, 2014), <https://www.ice.gov/news/releases/dhs-releases-end-year-statistics> [https://perma.cc/VF8K-9JWJ].

246. See HATCH, *supra* note 195, at 4.

247. See IMMIGRATION POLICY CTR., AM. IMMIGRATION COUNCIL, TACKLING THE TOUGHEST QUESTIONS ON IMMIGRATION REFORM, https://www.americanimmigrationcouncil.org/sites/default/files/research/ipc_shortanswers_0726.pdf [https://perma.cc/M86V-A42M] [hereinafter TACKLING THE TOUGHEST QUESTIONS ON IMMIGRATION REFORM]; see Carrie Dann, *Humanity? Practicality? Amnesty? The Arguments for and Against Immigration Reform*, NBC NEWS (Apr. 12, 2013, 12:43 AM), http://nbcpolitics.nbcnews.com/_news/2013/04/12/17707895-humanity-practicality-amnesty-the-arguments-for-and-against-immigration-reform?lite [https://perma.cc/EBW8-SWYR].

248. TACKLING THE TOUGHEST QUESTIONS ON IMMIGRATION REFORM, *supra* note 247, at 14–19.

opportunities for native-born Americans to dwindle.²⁴⁹ Adherents of this idea believe an increase in immigrants will lead to an increase in the amount of foreign-born workers “taking” American jobs.²⁵⁰ This idea, known as the “Lump of Labor,” posits that there is only so much work to go around and if a foreign-born immigrant takes a job, he or she is ultimately taking that job from someone else (arguably, a native-born American).²⁵¹ While it is true that as of November 2014, “1.5 million fewer native-born Americans [were] working than in November 2007, [and] 2 million more immigrants (legal and illegal) were working,”²⁵² it is important to note that unemployment rates for both foreign-born and native-born workers ages sixteen and older have been roughly the same from 2000 to 2014.²⁵³ Often times the unemployment rates for native-born Americans and immigrants are separated by only a fraction of a point.²⁵⁴ For example, in 2014, the unemployment rate for native-born workers was 5.6%, while the unemployment rate for foreign-born workers was 5.3%.²⁵⁵ Thus, the fears held by many are not founded in fact.

Further, while there is the possibility that immigrants, whether legal or illegal, take jobs that could have gone to native-born workers, immigrants also help create jobs.²⁵⁶ Immigrants undoubtedly increase the overall size of America’s population but in doing so, also help to increase the size of America’s economy.²⁵⁷ According to David Card, an economist at the University of California, Berkley, “[i]mmigrants bring long-term benefits at no measurable short-term cost.”²⁵⁸ Additionally, studies show

249. *See id.*

250. *See id.*

251. Adam Davidson, *Debunking the Myth of the Job-Stealing Immigrant*, N.Y. TIMES MAG. (Mar. 24, 2015), http://www.nytimes.com/2015/03/29/magazine/debunking-the-myth-of-the-job-stealing-immigrant.html?_r=0 [https://perma.cc/Y676-TACE].

252. Steven A. Camarota, *Unskilled Workers Lose Out to Immigrants*, N.Y. TIMES (Jan. 6, 2015), <http://www.nytimes.com/roomfordebate/2015/01/06/do-immigrants-take-jobs-from-american-born-workers/unskilled-workers-lose-out-to-immigrants> [https://perma.cc/Y3UD-4RW6].

253. Rob Garver, *Are Immigrants Really Taking American Jobs?*, FISCAL TIMES (Aug. 26, 2015), <http://www.thefiscaltimes.com/2015/08/26/Are-Immigrants-Really-Taking-American-Jobs> [https://perma.cc/9UDW-DAAX].

254. *Id.*

255. *Id.*

256. Tim Worstall, *Of Course Immigrants Take Jobs From People; But They Also Create Them For Others*, FORBES (Apr. 4, 2015, 9:07 AM), <http://www.forbes.com/sites/tim-worstall/2015/04/04/of-course-immigrants-take-jobs-from-people-but-they-also-create-them-for-others/#2715e4857a0b63aa12ee1534> [https://perma.cc/N7DV-DVPE].

257. Davidson, *supra* note 251.

258. *Id.*

immigrants and native-born American workers with the same level of education tend to complement, not compete with, each other for employment.²⁵⁹ This is because many immigrants “have limited English language or technical skills,” and are therefore seeking out jobs that many native-born Americans are not.²⁶⁰

Another argument against increasing the number of immigrant visas is that immigrants are taking advantage of America’s public benefits.²⁶¹ However, most legal immigrants are not eligible to receive federal Medicaid, food stamps, Temporary Assistance to Needy Families, or Supplemental Security Income during their first five years in the United States.²⁶² Further, studies show that even when eligible for public benefits, low-income immigrants use public benefits at a lower rate than low-income native-born Americans.²⁶³ As a result, the cost of public benefits to native-born Americans is significantly higher than the cost of public benefits to non-citizen immigrants (e.g., family-sponsored LPRs).²⁶⁴ For example, in 2011, over 25% of native-born Americans in poverty received Medicaid, while only 20% of non-citizens received Medicaid, and 33% of native-born Americans received food stamp benefits, while 29% of non-citizens received the same benefit.²⁶⁵ Overall, studies show that when

259. Tanvi Misra, *Immigrants Aren’t Stealing American Jobs*, ATLANTIC (Oct. 21, 2015), <http://www.nationaljournal.com/next-america/workforce/immigrants-arent-stealing-american-jobs?q=> [<https://perma.cc/K3KN-ERJ2>].

260. For example, a 2013 survey showed that the top ten occupations for immigrant workers without high school diplomas were as follows: maids and housekeepers, cooks, miscellaneous agricultural workers, construction laborers, janitors and building cleaners, grounds maintenance workers, drivers/sales workers and truck drivers, laborers and freight, stock and material movers, carpenters, and cashiers. On the other hand, the top ten occupations for native workers without high school diplomas included: cashiers, drivers/sales workers and truck drivers, janitors and building cleaners, cooks, laborers and freight, stock and material movers, construction laborers, maids and housekeepers, grounds and maintenance workers, waiters and waitresses, nursing, and psychiatric and home-health workers. *Id.*

261. TACKLING THE TOUGHEST QUESTIONS ON IMMIGRATION REFORM, *supra* note 247, at 7.

262. *Id.* at 16–17; OFFICE OF THE ASSISTANT SEC’Y FOR PLANNING & EVALUATION, *Summary of Immigrant Eligibility Restrictions Under Current Law*, U.S. DEP’T OF HEALTH & HUMAN SERVS. (Feb. 25, 2009), <https://aspe.hhs.gov/basic-report/summary-immigrant-eligibility-restrictions-under-current-law> [<https://perma.cc/68RZ-DNVU>].

263. Leighton Ku & Brian Bruen, *Poor Immigrants Use Public Benefits at a Lower Rate than Poor Native-Born Citizens*, ECONOMIC DEVELOPMENT BULLETIN (CATO Institute/Center for Global Liberty & Prosperity), Mar. 4, 2013, at 1, <https://object.cato.org/sites/cato.org/files/pubs/pdf/edb17.pdf> [<https://perma.cc/BA92-KKPM>].

264. *Id.*

265. *Id.* at 2–3.

low-income foreign-born immigrants receive public benefits, “the average value of benefits per recipient is almost always lower than for the native-born.”²⁶⁶ Finally, all four family-sponsored preference categories require an affidavit of support.²⁶⁷ An affidavit of support is not only legally enforceable but must remain in effect for ten years or until the visa holder becomes a U.S. citizen,²⁶⁸ thereby reducing the likelihood immigrants will need to seek assistance from the state.

A third argument, and potentially the most troubling to opponents of increasing the number of family-based visas, is “chain migration.” Chain migration “refers to a process by which family-based immigration creates self-perpetuating and expanding migration flows, as foreign nationals who obtain lawful permanent resident status and citizenship then sponsor other relatives under the same family-based immigration provisions under which they themselves were sponsored.”²⁶⁹ Opponents argue single family-sponsored LPR admission has the potential to produce hundreds of new immigrants.²⁷⁰ However, America’s current immigration system requires a U.S. citizen to file the petition for family-sponsored visas (with the exception of the F2 category²⁷¹) and studies show that many LPRs eligible to apply for citizenship elect not to do so.²⁷² An estimated 13.3 million LPRs were living in the United States as of January 2012—8.8 million of which were eligible to apply for U.S. citizenship²⁷³—yet only 757,434 persons were naturalized in 2012.²⁷⁴ Thus, it is unlikely that the

266. *Id.* at 7.

267. *U.S. Visas: Glossary*, *supra* note 32 (defining “Affidavit of Support”).

268. U.S. CITIZENSHIP & IMMIGRATION SERVS., *Affidavit of Support*, DEP’T OF HOMELAND SEC., <https://www.uscis.gov/green-card/green-card-processes-and-procedures/affidavit-support> [<https://perma.cc/QBT4-HV4W>] (last updated Aug. 29, 2013).

269. WILLIAM A. KANDEL, CONG. RESEARCH SERV., U.S. FAMILY-BASED IMMIGRATION POLICY 23 (Feb. 17, 2016), <https://fas.org/sgp/crs/homsec/R43145.pdf> [<https://perma.cc/A8P7-EXVC>].

270. *Id.* at 23–24.

271. As discussed above, this category is for spouses, minor children, and unmarried sons and daughters (age twenty-one or older) of LPRs. *Visa Bulletin: Immigrant Numbers for December 2016*, *supra* note 15.

272. KANDEL, *supra* note 269, at 24.

273. Nancy Rytina, *Estimates of the Legal Permanent Resident Population in 2012*, POPULATION ESTIMATES (Dep’t of Homeland Sec./Office of Immigration Statistics), July 2013, at 1, https://www.dhs.gov/sites/default/files/publications/ois_lpr_pe_2012.pdf [<https://perma.cc/WF92-Y8LZ>].

274. James Lee, *U.S. Naturalizations: 2012*, ANN. FLOW REP. (Dep’t of Homeland Sec./Office of Immigration Statistics), March 2013, at 1, https://www.dhs.gov/sites/default/files/publications/ois_natz_fr_2012.pdf [<https://perma.cc/98WK-QFTG>].

idea of chain migration will lead to a large influx of family-sponsored visa holders in the United States.²⁷⁵

Lastly, opponents posit that increased immigration negatively impacts the environment due to issues such as urban sprawl and high resource consumption.²⁷⁶ For example, opponents attribute population growth to critical water shortages that have affected some areas of the United States.²⁷⁷ Opponents also argue that immigrants dramatically increase their carbon footprint by becoming “greater consumers and polluters” once they arrive in the United States, thereby negatively affecting our environment.²⁷⁸ While urban sprawl and dwindling resources are very real problems in America, and should be addressed sooner rather than later, there is very little evidence suggesting that these problems are the result of increased immigration.²⁷⁹ A scientific study by the U.S. Commission on Immigration Reform found “there exists very little direct causal analysis of relationships

275. Similarly, opponents argue that immigrants that have entered the United States illegally are encouraged to marry and have children on American soil in the hopes that their child may one day petition for them on a family-sponsored visa. However, the family-sponsored preference categories currently do not include the option to petition for one’s parent, even as an American citizen. *Immigrant Numbers for January 2016*, VISA BULLETIN (Bureau of Consular Affairs, U.S. Dep’t of State), Jan. 2016, at 2 [hereinafter *Visa Bulletin: Immigrant Numbers for January 2016*], https://travel.state.gov/content/dam/visas/Bulletins/visabulletin_january2016.pdf [<https://perma.cc/4TSA-C9BY>]. While U.S. citizen children may petition for their parents as an immediate relative if the U.S. citizen child is over the age of twenty-one, that argument is not at issue in this Comment. *Green Card for an Immediate Relative of a U.S. Citizen*, *supra* note 76.

276. CULTURE WARS: AN ENCYCLOPEDIA OF ISSUES, VIEWPOINTS, AND VOICES 274 (Roger Chapman ed., 2010); FED’N FOR AM. IMMIGRATION REFORM, U.S. IMMIGRATION AND THE ENVIRONMENT: REDUCE IMMIGRATION-DRIVEN U.S. POPULATION GROWTH TO BUY TIME IN THE RACE TO SAVE THE ENVIRONMENT 14 (Sept. 2016), http://www.fairus.org/DocServer/research-pub/FAIR_2016_Environmental_Report.pdf [<https://perma.cc/NRL3-LJ96>].

277. ERIC A. RUARK & MATTHEW GRAHAM, FED’N FOR AM. IMMIGRATION REFORM, RUNNING DRY: LOOMING WATER SHORTAGES IN THE UNITED STATES 1 (Sept. 2012), http://www.fairus.org/docserver/water_report2.pdf [<https://perma.cc/XE6X-RXYS>].

278. *Environmental Impact*, FED’N FOR AM. IMMIGRATION REFORM, <http://www.fairus.org/issue/environmental-impact> [<https://perma.cc/HXC7-YKAR>] (last updated June 2009) (arguing that high levels of immigration to the United States has increased methane production, freshwater consumption, industrial carbon dioxide production, energy consumption, cattle production, fertilizer consumption, and fish production).

279. Ben Whitford, *Does Immigration Hurt the Environment?*, GUARDIAN (Aug. 1, 2008, 10:00 AM), <http://www.theguardian.com/commentisfree/2008/aug/01/immigrationpolicy.usa> [<https://perma.cc/46KA-WPJP>].

among population, immigration and environment in the United States.”²⁸⁰ Thus, while there are arguably downsides to increasing the number of family-sponsored visas available, the arguments on which many opponents often rely pale in comparison to the benefits of doing so.

CONCLUSION

The United States should alter its immigration system by reallocating the EB-5 employment-based visas and all diversity lottery visas to the family-sponsored category in order to increase the amount of visas granted to family members of LPRs and U.S. citizens each year. This would increase family reunification and in turn improve America’s society, advance the economy, and help curb illegal immigration. Congress therefore needs to reevaluate the American immigration system, most specifically how the numbers of visas between the five types of visa applications are allotted, and even more precisely, to permanently reassign EB-5 visa and diversity lottery numbers to the family-based immigration category.

*Cassidy Cloninger**

280. ELLEN PERCY KRALY, U.S. COMM’N ON IMMIGRATION REFORM, U.S. IMMIGRATION AND THE ENVIRONMENT: SCIENTIFIC RESEARCH AND ANALYTIC ISSUES iv (Feb. 1995), <https://migration.ucdavis.edu/mn/cir/kraly/text3.htm> [<https://perma.cc/2A7Q-6YGP>].

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APPENDIX A: FINAL ACTION DATES FOR FAMILY-SPONSORED
PREFERENCE CASES (DECEMBER 2016)²⁸¹

Family Sponsored	All Chargeability Areas Except Those Listed	China (Mainland Born)	India	Mexico	Philippines
F1	01DEC09	01DEC09	01DEC09	15APR95	15SEP05
F2A	22FEB15	22FEB15	22FEB15	15FEB15	22FEB15
F2B	08MAY10	08MAY10	08MAY10	15OCT95	01MAR06
F3	15FEB05	15FEB05	15FEB05	08DEC94	15AUG94
F4	22DEC03	01OCT03	01APR03	15MAY97	22MAY93

281. On the chart, the left column indicates the preference category within the family-based visa program. The top row indicates the country from which an applicant comes from. The listing of any date indicates that the class is oversubscribed, while a “C” means current. *Visa Bulletin: Immigrant Numbers for December 2016*, *supra* note 15, at 3.

APPENDIX B: FINAL ACTION DATES FOR EMPLOYMENT-BASED
PREFERENCE CASES (DECEMBER 2016)²⁸²

Employment Based	All Chargeability Areas Except Those Listed	China (Mainland Born)	El Salvador Guatemala Honduras	India	Mexico	Philippines
1st	C	C	C	C	C	C
2nd	C	22 SEP 2012	C	01 FEB 2008	C	C
3rd	01 JUL 2016	01 JUL 2013	01 JUL 2016	15 MAR 2005	01 JUL 2016	01 JUN 2011
Other Workers	01 JUL 2016	01 NOV 2005	01 JUL 2016	15 MAR 2005	01 JUL 2016	01 JUN 2011
4th	C	C	15 JUL 2015	C	15 JUL 2015	C
Certain Religious Workers	C	C	15 JUL 2015	C	15 JUL 2015	C
5th Non-Regional Center (C5 and T5)	C	22 MAR 2014	C	C	C	C
5th Regional Center (I5 and R5)	C	22 MAR 2014	C	C	C	C

282. On the chart, the left column indicates the preference category within the employment-based visa program. The top row indicates the country from which an applicant comes from. The listing of any date indicates that the class is oversubscribed, while a "C" means current. *Id.* at 5.

APPENDIX C: THE DIVERSITY IMMIGRANT (DV) CATEGORY FOR THE
MONTH OF DECEMBER (DECEMBER 2016)²⁸³

Region	All DV Chargeability Areas Except Those Listed Separately	
Africa	20,400	Except: Egypt: 8,700 Ethiopia: 9,000
Asia	3,500	Except: Iran: 3,200 Nepal: 2,200
Europe	14,000	
North America (Bahamas)	5	
Oceania	525	
South America, and the Caribbean	650	

283. For any given month, immigrant numbers in the diversity lottery category are available to qualified diversity lottery applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with diversity lottery regional rank numbers below the specified allocation cut-off number. *Id.* at 6.