

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DOMINGO ARREGUIN GOMEZ et al.,

Plaintiffs,

v.

DONALD J. TRUMP, President of the United
States of America et al.,

Defendants.

Civil Action No. 1:20-cv-01419

DECLARATION OF ALEX NOWRASTEH

I, **Alex Nowrasteh**, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am the Director of Immigration Studies at the Cato Institute where, among other things, we produce original research on how immigration affects the economy, culture, security, politics, and society broadly. Most of our immigration-related research focuses on the United States, but we also research the effects of immigration policies in other countries. The goal of immigration research at the Cato Institute is to promote a better understanding of the benefits and costs of immigration and to highlight how a lightly regulated and minimally restrictive immigration policy is consistent with the principles of individual liberty, free markets, limited government, and peace.

2. I hold a Master of Science degree in Economic History from the London School of Economics, and my academic research for the past five years has focused on how immigrants have affected the economic institutions in the countries where they settle, whether they affect terrorism, and how immigrants affect the housing market in major American cities. I have published numerous peer-reviewed publications in academic journals such as *The World Bank Economic Review*, the *Journal of Economic Behavior and Organization*, *Economic Affairs*, the *Fletcher*

Security Review, and the *Journal of Bioeconomics*. I have also published numerous policy reports at the Cato Institute that present new information and findings about how immigrants affect the United States. My body of research has been cited hundreds of times in peer-reviewed academic journals and thousands of times in the media. I also appear regularly on Fox News, MSNBC, Bloomberg, NPR, CSPAN, and numerous television and radio stations across the United States to discuss immigration and economic policy.

3. I am familiar with Presidential Proclamation 10014, entitled “Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak,” signed by President Trump on April 22, 2020 (the “April Proclamation”). The April Proclamation suspended the entry of immigrants to the United States through all categories of family-, employment-, and diversity-based immigrant visas, barring certain exceptions, for 60 days, primarily on the ground that “[t]here is no way to protect already disadvantaged and unemployed Americans from the threat of competition for scarce jobs from new lawful permanent residents by directing those new residents to particular economic sectors with a demonstrated need not met by the existing labor supply.”

4. I am also familiar with Presidential Proclamation 10052, entitled “Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak,” signed by President Trump on June 22, 2020, as amended by Presidential Proclamation 10054, signed by President Trump on June 29, 2020 (the “June Proclamation,” and, together with the April Proclamation, the “Proclamations”). The June Proclamation extended the April Proclamation’s entry suspension for immigrants through the end of this calendar year, December 31, 2020. It also suspended the entry of most non-immigrant workers on H-1B, H-2B, L-1, and certain J-1 visas through the end of this calendar year. The June Proclamation justified

these entry suspensions on the grounds that there are not “sufficient alternative means to protect unemployed Americans from the threat of competition for scarce jobs from new lawful permanent residents,” and that “the present admission of workers within [the H-1B, H-2B, L-1, and J-1] nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery.”

5. The assumption underlying both Proclamations—that immigrants and foreign-born workers “displace” and “disadvantage” United States workers, especially during a time of economic contraction—is economically baseless and counterproductive.

6. The United States is experiencing what amounts to a national natural disaster, like an earthquake or a hurricane. While unemployment in the United States has spiked, the cause is clear: it’s the pandemic, not the immigrants. The pandemic is preventing both foreign workers and Americans from working most jobs involving person-to-person contact. Once the pandemic subsides, people will return to restaurants, hotels, gyms, and movie theaters, and those employers will demand both U.S. and foreign workers again. Economic data bear this out: workers who say that they were on temporary layoff account for 96 percent of the increase in unemployment from January to the peak in April 2020.¹ By June, the number of unemployed had already fallen by nearly 2.6 million.²

¹ April: U.S. Bureau of Labor Statistics, *Unemployed persons by reason for unemployment* (April 2020), <https://web.archive.org/web/20200527071945/https://www.bls.gov/news.release/empsit.t11.htm>;

January: U.S. Bureau of Labor Statistics, *Unemployed persons by reason for unemployment* (January 2020), <https://web.archive.org/web/20200214193959/https://www.bls.gov/news.release/empsit.t11.htm>.

² June: U.S. Bureau of Labor Statistics, *Unemployed persons by reason for unemployment* (June 2020), <https://web.archive.org/web/20200708011920/https://www.bls.gov/news.release/empsit.t11.htm>.

7. The pandemic is thus not unlike other natural disasters that severely but temporarily affect the job market. After Hurricane Katrina in 2005, for example, unemployment in New Orleans spiked to 15.1 percent – nearly as much as it has in the states hardest hit by COVID-19.³ When the storm passed, foreign workers poured into the state and rebuilt much of New Orleans.⁴ Five months later, New Orleans’ unemployment rate had fallen below the pre-storm level.⁵

8. In severely restricting most legal immigration—particularly the immigration of highly skilled workers, the Proclamations are actually counterproductive to their stated goal of protecting United States workers and aiding the post-COVID economic recovery. These highly skilled workers would fill positions for which there are no United States workers immediately available, and participate in the economy as consumers of goods, services, and real estate.

9. For example, the **L-1 program** allows multinationals to bring key employees—either managers and executives, or employees with specialized knowledge of the sponsoring company’s business operations or products—to the United States. This has been an essential visa program for businesses looking to invest or expand in the United States because intracompany transfers have firm-specific human capital, which is knowledge about how that specific firm operates internally, that is more valuable to the firm than similarly-skilled workers who don’t know about how the individual firm functions internally. Much like skills learned in technical education, firm-specific human capital is very valuable, but it can only be learned on the job. New workers require much

³ U.S. Bureau of Labor Statistics, *Databases, Tables & Calculators by Subject - Local Area Unemployment Statistics*, <https://www.bls.gov/data/#unemployment>.

⁴ Richard Gonzales, *Latinos Get Little Thanks For Rebuilding New Orleans*, NPR (Dec. 10, 2011, 8:02 AM), <https://www.npr.org/2011/12/10/143390961/latinos-get-little-credit-for-rebuilding-new-orleans>.

⁵ U.S. Bureau of Labor Statistics, *Databases, Tables & Calculators by Subject - Local Area Unemployment Statistics*, <https://www.bls.gov/data/#unemployment>.

time to accrue firm-specific human capital before they can be productive employees. Suspending the L-1 visa program for the rest of the year—with the possibility of further extensions — dissuades investment in the United States because multinational companies will not be able to bring in trusted and experienced employees with firm-specific human capital to help establish, expand, and further develop operations here. This will slow job growth in this country going forward because it raises the cost for multinational firms to expand within the United States. According to the Congressional Research Service, the L-1 “is considered a visa category essential to retaining and expanding international businesses in the United States.”⁶ And in a letter to President Trump in May 2020, the U.S. Chamber of Commerce and hundreds of businesses wrote that restricting the L-1 visa was a “significant concern” because it “plays a direct role in supporting job creation and job retention in the United States, as well as expanding U.S. advanced manufacturing, continuing U.S.-centered research and development, increasing exports from the U.S., and encouraging foreign direct investment into the U.S.”⁷

10. The **H-1B program** allows businesses to hire foreign workers in “specialty occupations” which generally require at least a college degree. H-1B workers are disproportionately employed in information technology and computer science jobs, which are essential during a time when many United States workers are transitioning to remote employment. Preliminary research has found

⁶ Ruth Wasem, *Temporary Professional, Managerial, and Skilled Foreign Workers: Policy and Trends*, Congressional Research Service Report No. R43735 (Jan. 13, 2016), <https://fas.org/sgp/crs/homesec/R43735.pdf>.

⁷ Letter from 324 employers and trade, industry, and higher education associations and groups across the American economy focused on the high-skilled workforce to President Donald J. Trump, Secretary of State Michael Pompeo, Secretary of Labor Eugene Scalia, and Acting Secretary of Homeland Security Chad Wolf (May 21, 2020), <https://www.semiconductors.org/wp-content/uploads/2020/05/324-Signatory-Business-Letter-to-President-and-Secretaries-Nonimmigrant-Visa-Facts-5-21-2020.pdf>.

that “the ability to work remotely has reduced the risk of job loss early in the [Covid-19] crisis by 32 to 53 percent.”⁸

11. Although the June Proclamation states that “more than 20 million United States workers lost their jobs in key industries where employers are requesting H-1B and L workers to fill positions,” it is impossible to evaluate this assertion empirically because the Proclamation does not list the industries it considers to be “key.”

12. More importantly, however, employers cannot use the H-1B and L visa programs to hire any workers they wish to from a given *industry*. They can only hire someone seeking to work in a *specific type of job or occupation*. The Department of Labor, for example, sets the wage rate for an H-1B visa sponsorship application based on the occupation of the sponsored worker, not the average wages for the entire industry.⁹ There is thus a glaring mismatch between the statistic cited in the June Proclamation and its entry suspension on H-1B and L workers: That U.S. workers may have lost jobs in unspecified *industries* does not show that any significant percentage of those workers were in the specific kinds of *jobs* for which employers are seeking to sponsor H-1B and L visas.

13. Indeed, if the administration had looked at key H-1B occupations, rather than key industries, the data would have revealed that from January to May 2020, total employment *increased* by about 185,000 in the top 20 H-1B occupations, which account for 85 percent of all

⁸ Adam Ozimek, *Safety In Remote Work*, Upwork.com, <https://www.upwork.com/press/economics/safety-in-remote-work>.

⁹ U.S. Dep’t of Labor, Employee and Training Administration, *Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs*, https://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

H-1B sponsorship requests.¹⁰ Unemployment in H-1B occupations generally has been falling since April, the most recent month for which we have been able to analyze the available data. There is, again, a mismatch: the June Proclamation is banning workers *who are still in demand*, in occupations that desperately demand workers in the United States, because workers in other occupations and industries have been temporarily displaced by a pandemic. Understood in context, the economic data refute the Proclamation's statement that H-1B and L-1 workers are contributing to the United States unemployment rate.

14. The **H-2B program** allows U.S. employers to hire seasonal nonagricultural workers. It requires sponsoring businesses to offer all jobs to unemployed United States workers before they can hire H-2B workers. It is therefore impossible for the limited number of H-2B workers allowed each year—a total of 66,000—to be responsible for the “17 million United States jobs” that the Proclamation states “were lost in industries in which employers are seeking to fill worker positions tied to H-2B nonimmigrant visas.” For a job starting on June 24, H-2B recruitment of U.S. workers would have occurred between April 10 and June 3, a time when the unemployment rate was higher than it was in mid-June.¹¹ Unemployed Americans already rejected 100 percent of the jobs for which H-2B workers are hired.

15. By suspending the H-2B program, the June Proclamation is preventing about 1,500 U.S. employers from filling desperately demanded positions that they could not fill with U.S workers,

¹⁰ Integrated Public Use Microdata Series, Current Population Survey, <https://cps.ipums.org/cps/index.shtml>, (last visited July 28, 2020).

¹¹ U.S. Dep't of Labor, Employee and Training Administration, *Foreign Labor Certification H-2B Temporary Non-Agricultural Program*, https://www.foreignlaborcert.doleta.gov/2015_H-2B_IFR.cfm (stating that a job order must be filed 75 days prior to the date of need); 20 C.F.R. § 655.40 (stating that referrals from a job order must be accepted until 21 days prior to the date of need).

forcing these employers to downsize or shift production techniques. The biggest crabmeat processor in Virginia, for example, is shuttering its plant because H-2B workers are not available.¹² The goal during an economic recovery should be to help businesses get back to the pre-pandemic status quo as quickly as possible. But the longer that employers are unable to fill these temporary seasonal jobs—which they cannot fill with U.S. workers—the less demand will be created for other, better, permanent jobs in the economy, which will delay the recovery and hurt U.S. workers in other industries and sectors.

16. The **J-1 program** includes intern, trainee, teacher, camp counselor, au pair, and summer work/travel programs, and was created to “increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange.”¹³ The largest of the J-1 programs subject to the June Proclamation is the Summer Work/Travel Program, which allows foreign exchange students to come experience the country and work in temporary summer jobs in places like Ocean City, Maryland and Nantucket, Massachusetts. As with H-2B workers, U.S. businesses cannot hire and J-1 summer work/travel employees if doing so would “displace” a United States worker. Thus, while the Proclamation cites the high unemployment rates “for young Americans, who compete with certain J nonimmigrant visa applicants,” the largest J-1 program—the Summer Work/Travel Program, which is capped at 109,000 participants and has averaged around 105,000 participants in recent years—is not causing young Americans to lose their jobs or contributing to the 29.9 percent unemployment rate for 16-

¹² Timothy Wheeler, *Fewer work visas, coronavirus deliver one-two punch to Bay’s blue crab industry*, Bay Journal News Service (May 4, 2020, 2:30 PM), <http://www.theprincegeorgejournal.com/news/fewer-work-visas-coronavirus-deliver-one-two-punch-to-bays-blue-crab-industry/>.

¹³ Pub. L. No. 87-256, §101, Sept. 21, 1961, 75 Stat. 527 (1961), <https://www.govinfo.gov/content/pkg/STATUTE-75/pdf/STATUTE-75-Pg527.pdf>.

to 19-year-olds, or the 23.2 percent unemployment rate for 20- to 24-year-olds, cited by the Proclamation.

17. In addition, the Proclamation suspends the au pair and teacher programs at the exact time when U.S. workers are trying to figure out how they can work from home while simultaneously raising and educating their children safely. Moreover, research has shown that expanding childcare increases the productivity of U.S. workers, particularly women, which results in higher incomes. It is plainly and severely counterproductive to restrict entry of workers who could ease the childcare and educational burden that parents and schools are acutely experiencing as the beginning of the next school year looms.

18. Apart from the irrationalities that permeate the June Proclamation's non-immigrant visa restrictions, the fundamental premise justifying all the Proclamations' entry suspensions—that visa restrictions are necessary to protect U.S. jobs because foreign-born workers take jobs from Americans—is contradicted both by history and decades of economic research.

19. First, history shows us that the government's attempts to restrict legal immigration to combat recessions and high unemployment leads to disastrous results. President Herbert Hoover, for example, vastly reduced legal immigration in 1931 during the Great Depression, and orchestrated mass deportations of approximately a half million Mexican workers. But rigorous economic research establishes that these actions had, at best, no effect, and at worst, a negative effect on the U.S. wages and job opportunities.¹⁴

¹⁴ Jongkwan Lee, et al., *The Employment Effects on Mexican Repatriations: Evidence From The 1930's* (Nat'l Bureau of Econ. Research, Working Paper No. 23885, 2017), <https://www.nber.org/papers/w23885.pdf>; see also Francisco E. Balderrama & Raymond Rodríguez, *Decade of Betrayal: Mexican Repatriation in the 1930s* (UNM Press, 2006).

20. Similarly, in 1964, Congress terminated the “Bracero” agreements between the United States and Mexico and began excluding manual laborers from Mexico, with the goal of improving wages and employment for domestic farm workers by reducing the total size of the workforce in the United States—exactly the same justification used by both Proclamations. Peer reviewed economic research, however, found that ending lower-skilled migration for farm workers had little measurable effect on the labor market for Americans who worked in those occupations—except to slow wage growth.¹⁵ Farmers chose to use more expensive machines to harvest crops, and altered the crops they planted, instead of raising wages.

21. History also provides very strong empirical evidence of the inverse: Even an extraordinarily massive infusion of foreign workers—far beyond the flows the United States is experiencing now—does not increase unemployment *even during a recession*. In 1980, when the country was in recession with unemployment climbing, the so-called Mariel Boatlift resulted in 125,000 Cuban refugees arriving in Miami, increasing the city’s labor force by 7 percent in six months. This would be like 23 million immigrants coming to the United States in six months today. Although both Miami and the rest of the country had increasing unemployment rates due to the recession, the Mariel boatlift had *no impact* on Miami’s unemployment rate, which fared no differently than the unemployment rates in other cities.¹⁶

22. Second, theory and empirical economic research have soundly debunked the “lump of labor fallacy,” *i.e.*, the fundamental misconception that there is a fixed amount of work in a society,

¹⁵ Michael Clemens, et al., *Immigration Restrictions as Active Labor Market Policy: Evidence from the Mexican Bracero Exclusion*, 108(6) Am. Econ. Rev. 1468, 1468-1487 (2018), <https://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.20170765>.

¹⁶ Michael Clemens & Jennifer Hunt, *The Labor Market Effects of Refugee Waves: Reconciling Conflicting Results*, 72 ILR Rev. 818, 818-857 (2019), <https://journals.sagepub.com/doi/abs/10.1177/0019793918824597>.

such that any job held by an immigrant or foreign-born worker could be held by a United States citizen. There is also little evidence of the so-called “displacement effect,” where immigrants and foreign-born workers push native-born United States workers out of the labor market. The number of jobs available depends on myriad economic factors and is never stable. Economic research has never established that immigration and foreign-born workers have any significant negative impact on the jobs available to U.S. workers in the U.S. labor market—even in extreme cases like the Mariel Boatlift. To the extent the so-called displacement effect is ever observed in practice—which is seldom—it is very small and less than a one-for-one change.¹⁷

23. Furthermore, there is ample evidence that immigrants slightly raise the relative wages of native-born Americans, which would not occur if there was substantial displacement or competition between immigrants and native-born Americans.¹⁸ This effect occurs because immigrants and native-born Americans have different skills, disparate levels of English fluency, and different levels of productivity. Thus, immigrants and native-born workers are complements in the labor market, not substitutes. However, immigrants are substitutes with other immigrants in the labor market, which is why there is significant evidence that immigrants do tend to lower the relative wages of *other immigrant workers*.

¹⁷ Giovanni Peri & Vasil Yasenov, *The Labor Market Effects of a Refugee Wave: Applying the Synthetic Control Method to the Mariel Boatlift* (Nat’l Bureau of Econ. Research, Working Paper No. 21801, 2017), <http://www.nber.org/papers/w21801>; *see also* The Nat’l Acad. Of Scis., Eng’g., and Med., *The Economic and Fiscal Consequences of Immigration* 197-278 (The National Academies Press 2017), <https://doi.org/10.17226/23550>.

¹⁸ George Borjas, *Immigration Economics* 120 (2014); Gianmarco Ottaviano and Giovanni Peri, *Rethinking The Effect Of Immigration On Wages*, 10 J. of the Eur. Econ. Assoc. 152 tbl.6 (2012), <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1542-4774.2011.01052.x>; Alex Nowrasteh, *Wage Effects Of Immigration Are Small*, CATO Inst. (Apr. 10, 2017, 12:15 PM), <https://www.cato.org/blog/wage-effects-immigration-are-small>.

24. The complementary effects of immigrant labor can be most directly observed in two areas. First, a huge percentage of H-1B workers work in IT, which has been essential in transitioning Americans to remote work. Without the contributions of these highly skilled foreign-born workers who specialize in IT and computer science, many Americans who can keep their jobs by working remotely would have been adding to the unemployment ranks.¹⁹ Economic research has found that H-1B visas for Indians increased the global standard of living by approximately \$14.7 billion in 2010. About 96 percent of those economic gains accrued to the migrants themselves, but about 3 percent (\$431 million) accrued to Americans and 1 percent to Indians in India. Those benefits accrue annually. Much of the benefit was also provided by IT firms in India that grew, in part, due to returning IT workers from the United States as well as the general increase in computer science graduates spurred by U.S. demand for Indian technology workers. Those Indian IT firms, in turn, exported IT services to the United States and insourced workers. These positive economic effects would only grow in importance today with the increase in remote work, such that more H-1B workers may be necessary to help additional workers work from home.

25. Second, skilled American women spend more time working and less time on house and child care when there is a higher local population of lower-skilled immigrants.²⁰ Skilled American women specialize in their occupations and hire out home and child care services to immigrants, increasing incomes for both groups. Reducing the number of lower-skilled immigrant workers who

¹⁹ Gaurav Khanna & Nicolas Morales, *The IT Boom and Other Unintended Consequences of Chasing the American Dream* (Ctr. For Glob. Dev. Working Paper No. 460, Aug. 2017) <https://www.cgdev.org/sites/default/files/it-boom-and-other-unintended-consequences-chasing-american-dream.pdf>.

²⁰ Patricia Cortes & Jose Tessada, *Low-Skilled Immigration and the Labor Supply of Highly Skilled Woman*, 3 *Am. Econ. Journal: Applied Econs.* 88, 88-123 (July 2011), <https://www.aeaweb.org/articles?id=10.1257/app.3.3.88>.

can supply childcare services, such as those on the J-1 au pair program, will increase the opportunity cost for female employment and diminish the number of skilled American women who can remain in the workforce.

26. In addition, well established economic research demonstrates that in restricting the entry of highly skilled workers, such as “specialty occupation” workers through the H-1B visa program, the Proclamation will reduce innovation in the United States and cut American productivity, efficiency, and job growth. Many highly skilled foreign-born workers who come to the United States tend to specialize in engineering, computer science, or other “STEM” occupations, and economic research has established that “a 1 percentage point increase in the foreign STEM share of a city’s total employment increased the wage growth of native college-educated labor by about 7-8 percentage points and the wage growth of non-college-educated natives by 3-4 percentage points.”²¹

27. Perhaps most importantly, all immigrants and foreign-born workers create jobs because they participate in the economy as consumers of goods and services. By reducing the number of consumers, and thus reducing demand, the Proclamations will reduce the number of employment opportunities, because employers won’t have as many customers as they otherwise would. Recent research estimating this effect, based on data from 1980 to 2000, indicates that each immigrant creates 1.2 local jobs for local workers, with most of those jobs going to native workers—meaning that local workers *benefit* from the arrival of more immigrant consumers.²²

²¹ Giovanni Peri, Kevin Shih, & Chad Sparber, *STEM Workers, H-1B Visas, and Productivity in US Cities*, 33 J. of Labor Econs. S225, S225-S255 (July 2015), <https://www.journals.uchicago.edu/doi/abs/10.1086/679061?mobileUi=0&journalCode=jole&>.

²² Gihoon Hong & John McLaren, *Are Immigrants a Shot in the Arm for the Local Economy* (Nat’l Bureau of Econ. Research, Working Paper No. 21123, 2015), <https://ideas.repec.org/p/nbr/nberwo/21123.html>.

28. In a review of the academic literature on immigration, a panel of economists at the National Academies of Sciences, Engineering, and Medicine concluded that “immigration can lower native unemployment by reducing search costs for employers” and “entry of new workers through migration increases the likelihood of filling a vacant position quickly and thus reduces the net cost of posting new offers.”²³ The panel wrote: “Though immigrants compete with natives for these additional jobs, the overall number of new positions employers choose to create is larger than the number of additional entrants to the labor market.”

29. During the recovery, we want employers to reopen and begin hiring as quickly as possible. Preventing them from filling open positions—in many cases, positions for which they cannot find willing and qualified U.S. workers—delays their ability to expand production and create more jobs that would aid the post-COVID recovery. Immigration and the entry of foreign-born workers through the H, J, and L programs create jobs. By discouraging foreign investment and blocking both desperately demanded workers and the consumers who would fuel demand and the economic recovery, the Proclamations will undermine job growth and hurt the economy.

²³ The Nat’l Acad. Of Scis., Eng’g., and Med., *The Economic and Fiscal Consequences of Immigration* 165-196 (The National Academies Press 2017), <https://www.nap.edu/read/23550/chapter/8?term=unemployment#194>.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 30, 2020 at Herndon, Virginia



Alex Nowrasteh