

In order to protect immigrants, Hattie and I negate.

Contention One is Exploitation

Increasing the quota of H-1B visas increases exploitation in two 2 ways.

First, Body-Shopping.

Ontiveros '17 explains that outsourcing centers known as “body shops” deal in the buying and selling of cheap working bodies by sponsoring H-1B workers and contracting them out to tech companies. **Park '15** furthers that 10,000 companies annually apply for H-1B visas, but over ⅓ of the 85,000 go to 13 of these outsourcing “body shops,” which flood the lottery with hundreds of thousands of applications.

These body shops exploit immigrants in a few ways:

a) Fear of Deportation

In order to maintain their immigration status, H-1B holders need to remain employed, which is why **Al Jazeera 17** explains that employers hold all the power over employees, leading employees to be afraid of retribution if they speak out against abuse.

b) Low Wages

Barry 13 explains that by making immigrants live in fear of deportation and losing their jobs, employers maintain enough leverage over them to ensure workers have little to no power in negotiating salaries. This leads **Hira 11** to conclude that H-1B workers are paid as much as 60% less than American workers.

c) Liquidation fees

Ontiveros '17 writes if a worker leaves a company before the agreed contract date, companies can force H-1b workers to pay thousands in legal and administrative fees. These fees are often so large that H-1B's can't afford to quit harmful work environments, creating what **Ontiveros** calls indentured servitude.

d) Dehumanization

Black '16 of UC Berkeley writes that because body shops are not US companies, their workers, although they are contracted to US companies, are not protected by US labor laws. He concludes that in this process, immigrants are treated as objects and are thus dehumanized, living as commodities and tools for profit.

Second, H-4 Visa Laws.

As **Kulkarni 18** writes, when an immigrant is given an H-1B visa, their spouse and family apply for an H-4 visa.

However, this program is extremely flawed.

The **American Immigration Council 18** explains that in 2015, 84% of H-4 holders did not receive employment authorization, or an EAD. This will only get worse, as **Natarajan 18** writes that Trump plans to eliminate the EAD program, meaning there will be no option for H-1B spouses to work.

This is harmful for two reasons.

a) Financial Dependence.

The News Minute 17 explains that without EAD's, womxn risk deportation if they leave their husbands or if their husbands get their visa status taken away. A lack of financial freedom leads **Nair 17** to report that womxn feel enslaved to their husbands because they live at the will of the working husband in the family.

b) Domestic Abuse.

As **Crossette 18** explains, the imbalance created by one spouse with a job creates a dynamic ripe for abuse. This is why **Dutt 17** explains that 90% of domestic violence cases among immigrant groups involve H-4 visa holders who are unable to escape their spouse because of financial dependence. Moreover, **Abraham '05** writes that oftentimes spouses are lured here by their H-1B holding spouses under a false premise. In reality, she concludes that most womxn find it comparatively worse to be in the US, as intense isolation, cultural differences, language barriers, and America's racist legal system culminate in rampantly unreported abuse.

Contention Two is Brain Drain

Wills et al 17 writes that Indian migration to the United States has caused a massive brain drain.

Kahn and Gardin 17 further that there are ten-thousand five hundred medical positions held by H-1B visa workers. In other words, the **New Horizon College of Engineering 17** quantifies that 38% of doctors in the US are Indian immigrants.

Duttgupta 11 writes that India is desperate for doctors, with a ratio of less than one doctor to every 1,000 people. This lack of medical care causes death: **India Times 15** notes that 27% of deaths in India are due to a lack of medical attention. Concerningly, **The Guardian 18** explains that more than 2 million children below the age of 5 die every year.

Thus, we negate.

Cards:

Contention 1:

Ontiveros, Maria L. “H-1B Visas, Outsourcing and Body Shops: A Continuum of Exploitation for High Tech Workers” 2017. UC Berkeley. Berkeley Journal of Employment & Labor Law.

<https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1499&context=bjell> // HB

The H-1B program was originally intended to help American companies and workers like the hypothetical Raji Patel. He could provide needed, hard-to-find technical expertise to a company, make a decent living, and perhaps become an American citizen. Unfortunately, the visa rules are set up in such a way as to leave him powerless to protest poor treatment, overwork, or lack of pay. At the same time, American workers like the hypothetical Roger Greenman have to compete with Raji and other H-1B workers or find themselves displaced. As a result, their living standards decline. Finally, the lives of some of the H-1B workers like Sanjiv Gupta are even worse. They arrive in America to find broken promises about the job they thought would be waiting for them and the amount of money they would earn. Bound by contracts with unconscionable penalties, they find themselves unable to quit and go home, even if they want to. Better enforcement of the visa laws, as well as state and federal causes of action, can help ameliorate the situation, but true change will only happen with revisions to the guest worker visa program, so that it is no longer a system of unfree labor. **Created in 1990, the H-1B program allows U.S. companies to sponsor non-immigrant visas to temporarily employ foreign workers with bachelor's degrees in specialty fields like engineering, computer programming, and science. India and China, in that order, are the top two countries from which H-1B recipients hail. Supporters argue that the program brings in overseas talent to fill a job gap, but critics say it promotes outsourcing and gives away American positions to lower-paid workers. Companies in the United States subcontract a variety of functions and have been doing so for many years. Rather than employing workers directly to perform a function, the company will contract with another company (the subcontractor) to perform that function. Subcontracting a function often allows a company to decrease operating costs or to hire a group that specializes in something outside the company's area of expertise. For example, many companies will subcontract with a janitorial service to have 70. Interview with Kathryn Burkett Dickson, supra note 42. Dickson credits the close ties among the workers for the remarkable claims rate in the case of over 95%. 71. AnnaLee Saxenian, Brain Circulation: How High-Skill Immigration Makes Everyone Better Off, 20 BROOKINGS REV. 28 (2002) 72. Rudrappa, supra note 40, at 371. 73. Underwood, supra note 70, at 740. 74. Id. H-1B VISAS, OUTSOURCING AND BODY SHOPS 15 its premises cleaned or a landscaping company to have its grounds maintained. When subcontracting a function, the company generally does not control and direct how that function is performed. 75 Instead, the company instructs the subcontractor about what it wants accomplished and leaves it to the subcontractor to determine how the work is staffed, performed, and completed. When a company contracts with a subcontractor in another country to have the jobs performed abroad, the subcontracting is often referred to as “offshoring.” The company hands off an entire business function to another company outside the United States. Companies typically subcontract or offshore functions that are outside the core competencies or traditional work of the company. 76 Offshoring has been a growing trend since the late 1990's and, although the practice is being modified and adjusted, it shows no sign of disappearing. 77 Outsourcing is a related, though slightly different type of work shifting. Outsourcing occurs when a company contracts with another company (a vendor) to provide a service or product that has traditionally been performed by the company. 78 In addition, the work is performed with the company's own assets or personnel, even as the cost for the production or performance is shifted to the vendor. 79 For example, the company will sign a contract with the vendor to perform its information technology function for a set fee. The vendor may use the company's computer hardware and information, while providing the manpower to perform the function. Outsourcing requires a greater connection between the company and the vendor because technological and organizational information will inevitably flow between the two parties. As the cases discussed below illustrate, in the context of H-1B workers, employers, subcontractors, or body shop owners can be found to have procured forced labor through abuse or threatened abuse of the legal process when they manipulate the visa immigration process to prevent employees from quitting or leaving employment. The employers who require employees to pay large sums of money before they can quit can be found to have procured forced labor through threats of serious financial harm. Either of these actions can be found to violate the TVPA**

Park, H. (2015). *How Outsourcing Companies Are Gaming the Visa System*. [online] Nytimes.com. Available at:

<https://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html> [Accessed 5 Apr. 2018]. // HB

H-1B visas are designed to bring foreign professionals with college degrees and specialized skills to fill jobs when qualified Americans cannot be found. But in recent years, global outsourcing companies have dominated the program, winning tens of thousands of visas and squeezing out many American companies, including smaller start-ups. 13 outsourcing companies took nearly one-third of all H-1B visas in 2014. Congress set a limit of 85,000 visas annually, and more than 10,000 companies applied in 2014. But just 20 companies received more than 32,000 visas, according to Ronil Hira, a professor at Howard University who studies visa programs and analyzed federal H-1B data. The top 20 included several large outsourcing firms that provided temporary workers for businesses like Disney and Toys “R” Us. United States Citizenship and Immigration Services approves the visas on a first-come-first-served basis, beginning each year on April 1. **Federal officials allow only one application for each foreign worker, but companies can submit an unlimited number of applications for their employees, so global outsourcing giants can, and do, submit many requests. The outsourcing companies dominate the visa program by flooding the system with applications. H-1B visas are granted by a computer-run lottery** if the number of applications exceeds the annual quota in the first week, which has happened in recent years. To prepare an H-1B visa application, employers must first submit a public document, known as a labor condition application, to the Department of Labor. Companies can apply for more than one employee based on one labor condition application, and many outsourcing firms use one application to apply for 10 or more workers. The more labor condition applications a company gets approved, the more H-1B applications it can submit. Because H-1B visa applications are not public record, the labor condition applications are an indicator of how many applications a company intends to file. **With more applications, the number of visas given to outsourcing companies has risen sharply.** Since 2011, as the American economy returned to growth, there has been a spike in the number of H-1B visas granted to outsourcing companies. **Some companies are receiving at least four times as many visas as they did just a few years ago.**

Ontiveros, Maria L. “H-1B Visas, Outsourcing and Body Shops: A Continuum of Exploitation for High Tech Workers” 2017. UC Berkeley. Berkeley Journal of Employment & Labor Law.

<https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1499&context=bjell> // HB

Many of the activities of the body shop employer violate the visa laws. The problems for a body shop worker like Sanjiv Gupta often begin in India. **High-tech workers who are desperate for jobs in the United States may be charged huge fees to apply for an H-1B visa. 107 Workers like Sanjiv are willing to pay a \$3,000 fee in order to land a job in the United States allegedly paying \$75,000 per year because an Indian college graduate earns approximately \$4,500-\$6,000 per year; however, it will be extremely difficult for them to come up with the equivalent of six months' earnings. 108 They may have to borrow the fee from friends or, in some instances, the labor broker. Body shops hide the illegal fee collection by making the employee pay the fee to a subsidiary company in India or to a relative of the company's owner. 109** In order to process the visa, the body shop may engage in several different types of fraud. The most common is to generate a false “client letter” that states that a job exists when it in fact does not. These letters take many forms—they “can be issued by a corporation that's actually an empty shell, a real company selling letters to staffing firms or someone creating pure forgeries.” 110 Sponsors may also pressure employees in India to create false resumes or pad them with a process known as “spicing of the resume” so the employee appears to possess the correct education or experience to qualify for the visa. 111 Once an individual like Sanjiv gets an H-1B, he may be required to sign a contract promising to pay the body shop a variety of fees, including liquidated damages, if he stops working before the end of their contract. 112 The liquidated damages stated in the contract generally range from \$10,000 - \$30,000. 113 On its face, this type of fee may seem reasonable to prevent an H-1B worker from leaving a subcontractor to go work directly for a client or a competitor, although even that form of employment restriction is not allowed in several states. 114 However, when **these fees prevent a worker from escaping an abusive situation and returning home, they become much more like a bonding fee creating indentured servitude, because the employee cannot quit until he earns enough to pay off the fee. Enforcement of these provisions is not just an idle threat. Body shops wield this power often, suing to enforce the provisions in hundreds of cases.** 115 Employees who engaged in resume fraud are especially at risk because they have broken the visa rules and can be prosecuted for visa fraud—even if they committed the fraudulent act at the behest of the body shop. According to one body shop worker, “You can pretty much see a leash on my neck with my employer. It's kind of like a hidden chain.”

The visa rules operate in a parallel manner. The party who sponsors the visa for the guest worker effectively owns and controls the labor of the immigrant. The pure H-1B is required to work exclusively for the sponsor because the visa is given for a specific job with a specific employer. Free American, non-visa workers are not so constrained. For the outsourcing H-1B and especially

the body shop worker, the subcontracting company and the labor agency determine when and where the immigrant works. The visa sponsor controls the income given to the guest worker and is able to hire him out as he wishes. Free, non-visa workers, on the other hand, get to determine for whom they work. When a worker does not own or control his own labor, he is not free labor. C. Immigration, Commodification and the Human Supply Chain One way to conceive of slavery is as the nation's first immigration policy.147 Slaves were brought to the United States to work, under an official 141. The Meanings of Forced Labour, INT'L LAB. ORG. (Mar. 10, 2014), http://www.ilo.org/global/topics/forced-labour/news/WCMS_237569/lang-en/index.htm. 142. See Kenneth M. Stampp, THE PECULIAR INSTITUTION: SLAVERY IN THE ANTE-BELLUM SOUTH 192 (Vintage Books 1989) (1956). 143. See Stephen Plass, Private Dispute Resolution and the Future of Institutional Workplace Discrimination, 54 HOW. L.J. 45, 51 (2010). 144. Ontiveros, supra note 130, at 690. 145. See Jenny Bourne Wahl, THE BONDSMAN'S BURDEN: AN ECONOMIC ANALYSIS OF THE COMMON LAW OF SOUTHERN SLAVERY 49-77 (1998). 146. Vernon Valentine Palmer, The Customs of Slavery: The War Without Arms, 48 AM. J. LEGAL HIST. 177, 177 (2006). 147. See generally Rhonda V. Magee, Slavery as Immigration?, 44 U.S.F. L. REV. 273 (2009). 26 BERKELEY JOURNAL OF EMPLOYMENT & LABOR LAW Vol. 38:1 policy that infringed their human rights, their labor rights, their citizen rights, and their civil rights in order to maximize production and maintain a system of racial supremacy.148 The history of guest worker programs in the agricultural industry continued this system of oppression.149 When guest workers are brought to the United States for their labor, but denied their human rights, they are commodified and viewed as labor, not as human beings. This is uncomfortably similar to the ultimate commodification of human beings that took place during slavery where people, also immigrants, were literally bought and sold.150 As discussed in the context of undocumented workers and guest workers, "[t]he wrong of slavery was the commodification and dehumanization of a racially defined group of workers."151 The H1B program is simply the most recent program created to bring in Asian immigrant workers, keep them powerless, and push "non-white workers into commodity status, further disempowering them, while simultaneously benefiting capital."152 For Asian immigrants, the history of oppressive labor immigration systems includes the recruitment of workers in Hawaiian sugarcane plantations, California gold mines, and for the construction of the transcontinental railroad,153 as well as for California agriculture.154 On the Hawaiian sugarcane plantations, "Filipinos" were listed on supply manifests right in between "fertilizer" and "fuel."155

H-4's

Bhargavi **Kulkarni** . January 20, 20 **18** , "Spouse of a Lesser God: Precarious Future of H4 Visa Work Authorizations." India Abroad, www.indiaabroad.com/indian-americans/spouse-of-a-lesser-god-precious-future-of-h-visa/article_d8150c7e-fd73-11e7-b68d-5394c559cc24.html // RH Amrit Bhattacharya was tired of commuting long distance for work, wanted to be with his daughters and wife and yearned for job flexibility. So when the Obama administration issued an executive order in 2015 allowing dependent spouses to get an employment authorization document, or EAD, enabling them to hold jobs , Bhattacharya, 38, relinquished his H-1B visa and gladly transferred to an H-4 EAD, on his wife Rashmi Prabhu's work visa. "The change in status not only gave me the chance to be with my family, it also made it easier for me to look for a role that I was aspiring for," the Chicago-based Bhattacharya told India Abroad. However a recent announcement from the Department of Homeland Security has imperiled Bhattacharya and thousands like him who opted for the H-4 EAD. The reasons are contained in an item published in the DHS Fall 2017 Regulatory agenda, "Removing H-4 Dependent Spouses from the Class of Aliens Eligible for Employment Authorization." Simply put, the Trump administration may rescind the H-4 EAD provision. If implemented, it will have a life-altering impact on countless Indian families, many of whom are in the limbo of a green card backlog, which according to many closely tracking the process, can stretch as long as 70 years. *rachelharris*

Bhargavi **Kulkarni** . January 20, 20 **18** , "Spouse of a Lesser God: Precarious Future of H4 Visa Work Authorizations." India Abroad, www.indiaabroad.com/indian-americans/spouse-of-a-lesser-god-precious-future-of-h-visa/article_d8150c7e-fd73-11e7-b68d-5394c559cc24.html // RH According to the latest USCIS data, more than 90 percent of all H-4 visa holders are women and more than 150,000 of them Indian citizens. Thus a change in the EAD ruling would be a big blow to the morale of women who have re-started their careers after a long, forced hiatus and struggling with their dependent status in the U.S. That's something Heta Madlani, 36, of Hackensack, New Jersey, can relate to. When she came to the U.S. in 2010, she had to put her career on hold as her H-4 status did not allow her to work. Determined not to sit at home and while away her time, she found a volunteer position at Big Apple Greeter in New York City. She worked there for eight months and took a break to care for the couple's first-born child. Once their daughter turned 3, Madlani was ready to explore other volunteer options but the H-4 EAD provision was issued. The new rule changed Heta's life, her husband Jigar Madlani, 42, told India Abroad. With her volunteer experience in the U.S. and legal experience in India, she started working in NJ 211 – a state-sponsored program, first as a contractor and then as a permanent employee. But now her career is back in jeopardy. Her husband says he cannot imagine his wife coming back to a full-time homemaker role. Her job, he says, "is not so much about helping the family [financially], it's also giving back to the society." The looming threat has hurt his family, Jigar Madlani says. "Financial challenges can be dealt with," he says. "Who will take care of the mental problems?" Meghana Damani, 38, a Jersey City, New Jersey-based filmmaker feels that if the H-4 EAD does get revoked, those affected will lose trust in the government, the system and core American values such as liberty, equality and democracy . Once an H-4 dependent herself, Damani, now a U.S. citizen, has closely worked with women on H-4 who later transferred to an H-4 EAD. She made a documentary about her life as the holder of an H-4 and is currently working on a web series on H-4 EAD. She said she's seen so many women going from earful and anxious housewives to confident and happy working women contributing to the future of their families. If the work authorization does get revoked, Damani said many women, will continue to be stuck in domestic violence situations perpetuated by this visa. "Marriages will continue to fall apart. Children will once again be adversely affected by this sudden change which brings change to their family dynamics." *rachelharris*

American Immigration Council. (2018). *The H-4 Visa Classification*. [online] Available at: <https://www.americanimmigrationcouncil.org/research/h-4-visa-classification> [Accessed 6 Apr. 2018]. //HB

<u>Year</u>	<u>H-4 Visa #</u>										
2015	124,484	102,119	8 2	4,154	3	2,493	2	1,108	1	1,329	1
2016	131,051	110,003	8 4	4,601	4	2,161	2	1,065	1	1,178	1
<u>2017</u>	<u>136,393</u>	117,522	8 6	4,770	3	2,066	2	955	1	828	1

Source: U.S. Department of State Bureau of Consular Affairs, “Nonimmigrant Visa Issuances by Visa Class and by Nationality: FY1997-2017 NIV Detail Table,” accessed March 20, 2018.

Employment Authorization for the H-4 Visa Category On May 26, 2015, U.S. Citizenship and Immigration Services (USCIS) implemented a new regulation which permitted certain H-4 dependents to work in the United States. Under the regulation, the only H-4 dependents eligible to apply for employment authorization are H-4 **spouses** of H-1B nonimmigrants who are in the multistep process of becoming lawful permanent residents (LPRs) or who have H-1B status under the amended American Competitiveness in the 21st Century Act of 2000. Work authorization for eligible H-4 spouses is unrestricted, meaning that the H-4 dependents can work for any employer. Yet their work authorization, like their immigration status, is dependent on the H-1B worker maintaining a valid immigration status. In the two years that followed implementation of the regulation authorizing employment for certain H-4 spouses, the U.S. government approved nearly 105,000 H-4 applications for employment authorization (Table 2). **Table 2: Approved Employment Authorization Documents (EAD) for H-4 Spouses of H-1B Visa Recipients of applied, FY 2015-2017**

Fiscal Year	Number of Approvals of EADs for H-4 Spouses
2015	26,858
2016	41,526
<u>2017*</u>	<u>36,366</u>

* Numbers reported by USCIS Oct. 1, 2016, through June 29, 2017. **Source:** U.S. Citizenship and Immigration Services, “EADs by Classification and Basis for Eligibility, Oct. 1, 2012 - June 29, 2017,” Immigration and Citizenship Data, updated Feb. 28, 2018.

Closely linked with the law of coverture is the doctrine of chastisement. —As master of the household, || Reva Siegel explains, —a husband could command his wife’s obedience, and subject her to corporal punishment... if she defied his authority. || 68 Blackstone explains this need for a husband to —give his wife moderate correction, || because —as he is to answer for her 68 Reva B. Siegel, —The Rule of Love || : Wife Beating as Prerogative and Privacy, 105 Yale L.J. 2117, 2123. 20 A Woman’s Place [28-Feb-13] misbehavior, the law thought it reasonable to intrust him with this power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his apprentices or his children. || 69 This aspect of coverture continues to manifest itself in the laws pertaining to domestic violence. 70 The power of petition in immigration law reinforces the notion that women are the property of their husbands and therefore the lawful objects of chastisement. The dependent dynamic between principal visa holders and their spouses becomes more problematic when the marital relationship is placed under strain. The amount of power principals have over their spouses’ immigration status and the rights it entails situates H-4 visa holders to be more vulnerable to domestic violence.71 This presents a challenge to women who must make a decision whether to stay in a violent marital relationship, or leave and risk the consequences—including loss of immigration status.72 69 1 William Blackstone, Commentaries *444 (cited in Reva B. Siegel, —The Rule of Love || : Wife Beating as Prerogative and Privacy, 105 Yale L.J. 2117, FN18). 70 For example, Douglas Scherer notes that coverture prevented women from bringing civil suits for domestic violence because the legal merger between husband and wife essentially meant the suit was tantamount to the husband bringing a case against himself, which is the underlying sentiment behind the doctrine of interspousal immunity. Priya told The Hindu that after suffering numerous beatings by her husband, she managed to file a police complaint and had him arrested. However, because as an H-4 spouse she had no access to bank accounts and other paperwork — all of which were controlled by her husband — she was unable to afford an attorney to fight the case. She was left praying for a denial of visa renewal for her husband for she had no other means to reach out to her family back in India....A similar case was Poorvi who, despite overcoming financial hurdles and completing a U.S. academic degree, faced marital trouble, loneliness and spousal abuse that ultimately led to divorce. || 28-Feb-13] A Woman’s Place 21 —Domestic violence || is a broad term, referring to —the abuse of power and control in an intimate relationship. || 73 Violence may be physical in nature, but frequently includes psychological abuse. This can include withholding money or access to resources like the family car, threats of divorce or denial of access to children. This may also include threats pertaining to the abuser’s control over the spouse’s immigration status, such as refusals to file paperwork pertaining to the spouse’s immigration status, giving misinformation or denying access to information about the spouse’s immigration status, or threatening deportation.74 This psychological abuse is compounded by the isolation and economic dependence experienced by many H-4 visa holders. Such economic dependence is the major obstacle to immigrant women seeking to leave a violent relationship.75 There is also a strong correlation between economic dependence and the severity of abuse.76 In interviews with South Asian immigrant women, Anita Raj also found that deportation threats and refusal to file for change of status were also significantly related to physical abuse and sexual abuse, and that batterers prevent access to immigration documents as part of a strategy to control their spouses.77 The vulnerability of spousal visa holders cannot be discussed independently from their systematic subordination within the U.S. immigration system, which facilitates this pattern of abuse. A survey of organizations in the United States that serve the South Asian community reveals that, across these organizations, H-4 visa holders make up anywhere from twenty to seventy-five percent of their domestic violence clients. 78 73 Leti Volpp, Family Violence Prevention Fund, —Working with Battered Immigrant Women: A Handbook to Make Services Available || 3 (1995). 74 See Lauren Gilbert, Family Violence and U.S. Immigration Law: New Development, Immigr. Briefings, March 2001, at 33 n.4 (citing the Family Violence Prevention Fund of San Francisco’s Power and Control Wheel). 75 Mary Ann Dutton et al., —Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrants, || 7 Geo. J. on Poverty L. & Pol’y 245, 295-96. 76 Michael J. Strube & Linda S. Barbour, The Decision to Leave an Abusive Relationship: Economic Dependence and Psychological Commitment, 45 J. Marriage & Fam. 785, 790-92 (1983). 77 Anita Raj et al., “Immigration policies increase south Asian immigrant women’s vulnerability to intimate partner violence,” J Am Med Womens Assoc. 2005 Winter;60(1):26-32. 78 Shivali Shah, —Middle Class, Documented, and Helpless: The H-4 Visa Bind, || in BODY EVIDENCE: INTIMATE VIOLENCE AGAINST SOUTH ASIAN WOMEN IN AMERICA (2007) at 200-2001. 22 A Woman’s Place [28-Feb-13] Even so, there is reason to believe that domestic violence rates may be even higher; H-4 visa holders may face obstacles accessing services, given the potential compounded factors of social isolation, lack of awareness around legal rights, limited language proficiency, and stigma associated with domestic violence.79 The lack of work authorization combined with the dependent immigration status for H-4 make these not unexpected, though no less tragic. Leslye Orloff, former director of the Immigrant Women’s Project at Legal Momentum, notes that economic dependence has a strong correlation with severity of abuse.80 Dependence on a spouse for both financial sustenance and immigration status is something of a perfect storm for domestic violence: a study of 189 married immigrant South Asian women found that individuals with partner-dependent visas, regardless of income and education, were more likely to suffer physical and sexual violence from their husband than those with other immigration status.81 This comparison includes women with work visas, green cards, and U.S. citizenship.82 The focus on the breadwinner is reinforced by the central role of employers, who not only control the hiring, sponsorship, and application processes for H-1-B visa holders, but also play a significant role in lobbying on behalf of the H-1-B program.83 Derivative visa holders face additional 79 See, e.g. Susan Girardo Roy, —Restoring Hope or Tolerating Abuse? Responses to Domestic Violence Against Immigrant Women, || 9 Geo. Immigr. L.J. 263, 271 (1995). 80 Leslye Orloff, Women Immigrants and Domestic Violence, in WOMEN IMMIGRANTS IN THE UNITED STATES, ed. Philippa Strum and Danielle Tarantolo 49 at 52 (Woodrow Wilson International Center for Scholars, 2003) (—Like all battered women, 67.1 percent of battered immigrant women report lack of access to money as the one of the largest barriers to leaving an abusive relationship. ||) 81 Anita Raj et al., “Immigration policies increase south Asian

immigrant women's vulnerability to intimate partner violence," J Am Med Womens Assoc. 2005 Winter;60(1):26-32. 82 Anita Raj et al., "Immigration policies increase south Asian immigrant women's vulnerability to intimate partner violence," J Am Med Womens Assoc. 2005 Winter; 60(1):26-32. 83 Large corporations are regular speakers at congressional hearings on matters affecting business immigration. See Examining Strengthening American Competitiveness for the 21st Century: Hearing of the S. Comm. On Health, Education, Labor, and Pensions, 110th Cong. 10 (2007) (featuring testimony from Bill Gates, Chairman, Microsoft Corporation). See also Comprehensive Immigration Reform: Business Community Perspectives: Hearing Before the Subcomm. On Immigration, Citizenship, Refugees, Border Security, and International Law of the H. Comm. On the Judiciary, 110th Cong. 9 (2007) (featuring testimony of Laszlo Bock, Vice President, People Operations, Google, Inc.). There is little comparable representation and legislative influence for nonimmigrant 28-Feb-13] A Woman's Place 23 complications in obtaining access to their immigration information because, although the immigration attorney ostensibly represents the employer, principal visa holder, and derivatives, the principal is frequently the point of contact after arriving in the United States.⁸⁴ Principal visa holders may exploit the fact; Shivali Shah reports that a number of immigration attorneys reported —irate calls from H-1B clients forbidding them from further contact with their wives. One attorney tells me that she has received files at her firm with covers stating: **'DO NOT TALK TO WIFE.'** ⁸⁵ Again, the nature of the visa creates a disincentive to report the violence. Many authors have written about the reluctance of immigrant women to contact the police with respect to DV cases.⁸⁶ The psychological abuse of H-4 visa holders often includes threats that the principal or his spouse will be deported if police respond to a domestic violence call. Domestic violence is indeed a deportable offense,⁸⁷ and if the principal is subject to removal, so is the rest of his family. Numerous critics of enforcement of domestic violence laws have also pointed out that it is not uncommon for a victim to be arrested alongside or instead of the perpetrator, whether as the result of dual arrest policies or in response to reciprocal accusations.⁸⁸ An arrest might cost the H-4 her visa status, but it could also cost her safety—a visit from the police or an arrest spouse visa holders, even in the context of domestic violence prevention. See Shivali Shah, note – infra. ⁸⁴ ABA Model Rule 1.7 titled Conflict of Interest: Current Clients provides the ethical basis for representing multiple clients: —a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer. ⁸⁵ Despite this guidance, immigration attorneys do represent employers without considering possible conflicts of interest between the employer and employee, and between the employee and his spouse. See Shivali Shah, note 80 infra. ⁸⁶ Shivali Shah, Trapped, On a H-4, The Hindu, November 28, 2004, available at <http://www.hindu.com/mag/2004/11/28/stories/2004112800380300.htm>. ⁸⁷ See, e.g. Elizabeth Schor, Domestic Abuse and Alien Women in Immigration Law: Response and Responsibility, 9 CNLJLP 697, 706-8; Linda Kelly, —Domestic Violence Survivors: Surviving the Beatings of 1996, ¹¹ Geo. Immigr. L.J. 303, 304 (1997). ⁸⁸ Specifically, domestic violence is considered a crime pursuant to 8 U.S.C. § 1227(a)(2)(E) or an aggravated felony pursuant to 8 U.S.C. § 1101(a)(43)(F), as defined in 18 U.S.C. § 16(a). ⁸⁸ See Joan Zorza, Women Battering: High Costs and the State of the Law, 28 Clearinghouse Rev. 383, 387 (1994). ²⁴ A Woman's Place [28-Feb-13 may provoke the abuser and jeopardize the spouse's physical and financial security. The potential for abuse is clear in the inherent structure of the visa, and the way it facilitates economic dependence for H-4 visa holders and places exclusive control of a derivative's immigration status in the hands of the principal. Though abuse does not exist in every relationship, it is worth noting that the dysfunction of a skewed power dynamic within a marriage may introduce tension and discordance into otherwise solid relationships.⁸⁹

Natarajan, N -- H4 EAD holders brace for proposed rule change as Trumpism takes hold of immigration agenda - Firstpost. (2018). Firstpost. Retrieved 7 April 2018, from <https://www.firstpost.com/world/h4-ead-holders-brace-for-proposed-rule-change-begin-prep-for-worst-case-scenario-4310909.html> // R Marsh

The H4 EAD trail hasn't gone cold, it's a tense and muted countdown to a proposed rule change the Trump administration **is likely** to put out as early as February which may seek **to overturn an Obama era regulation that allowed dependents of H1B workers to pursue employment in the USA**. The spoiler arrived well in advance in the form of an agenda item in the federal register. The Department of Homeland Security minced no words: **"Removing H-4 Dependent Spouses from the Class of Aliens Eligible for Employment Authorization" is how the intent** was worded in its Fall 2017 Regulatory agenda. Trump's pick for DHS chief Ms Nielsen will be in the spotlight as the H4 decision barrels towards the finish line. Unless there's some esoteric wordplay here, it seems to say clearly that **the DHS wants to amend the original rule published for H4 EAD** in 2015. Two separate themes exist here - one is the legal case itself which is Save Jobs USA versus DHS and the other is the Trump government's pet method of dealing with these issues. There isn't much the Trump administration can do about the court case which has a life of its own but the government has certainly made no secret of the fact that it is not going to aggressively defend the existing rule either. As in the case of the Dreamers Act, **the government is simply allowing the programme to fade away rather than tamper with it on a retrospective scale**. The attendant chaos and disruption fit neatly into the broader theme of economic nationalism that put Trump into the White House in 2016. **In the case of the H4 EAD too, the government may end up using the same method - whenever the H4 EAD expires is where the road ends - if the intention is to end the programme and that's what it seems like so far**.

Thenewsminute.com. (2018). [online] Available at: <https://www.thenewsminute.com/article/why-trumps-plan-forbid-spouses-h-1b-visa-holders-work-bad-idea-73981> [Accessed 27 Apr. 2018]. //HB

This means that if an H-4 visa holder were to experience domestic violence, for example, she would be unable to leave without putting her visa status in jeopardy. While Citizenship and Immigration Services did issue a **memorandum** in 2016 granting work authorization to abused spouses of nonimmigrants under the Violence Against Women Act, victims must have **proof** of abuse, such as police reports, court records or reports from social service agencies. As advocates have **shown**, this can be difficult for immigrant women to obtain, and **many would rather drop domestic violence cases than risk deportation. In cases where an H-1B worker loses his job or experiences something worse, the rest of the family could be deported**. This point was driven home dramatically in the case of Sunayana Dumala, the widow of H-1B worker Srinivas Kuchibhotla, who was **murdered** in Kansas by a white supremacist in February. After she returned to India for Kuchibhotla's funeral, she was barred from reentering the U.S. since her deceased husband's visa was no longer valid. Dumala's state congressman intervened personally to help obtain her temporary work authorization and to apply for her own H-1B visa or a "U" visa, usually reserved for immigrant victims of crime.

Nair, D -- 2017). *The untold stories of H1-B visa wives*. YourStory.com. Retrieved 6 April 2018, from <https://yourstory.com/2017/03/h1-b-visa-wives/> // R Marsh

"It may sound cliched, but the culture shock bell curve plays out effectively. After the awe and amusement at the new place, **women** are bound to **experience** pangs of **loneliness, trauma from isolation from their families back in India, the feeling of being unwanted and more**. Having children around at home may ease that trauma a little, but it does not mitigate the shock," says Radhika.

Inter-continental relocation is displacement in reality, even if it happens by choice. **Women go through an identity crisis during the initial years of stay in the US. Some women can get suicidal because of their loss of empowerment, and feeling of enslavement can make them go through chronic depression**.

Crossette, Barbara. "U.S. H-4 visa harbors hidden heartbreak for women". India Abroad. 2018. Barbara Crossette was formerly the New York Times chief correspondent in Southeast Asia and South Asia, and the paper's UN bureau chief from 1994 to 2001. https://www.indiaabroad.com/blogs/u-s-h-visa-harbors-hidden-heartbreak-for-women/article_63f2d132-0656-11e8-ae19-e7e737c53a63.html // HB
Imagine an accomplished young woman – we can call her Amrita – who has a caring husband and maybe a child or two. He is a highly skilled professional in his field with a doctorate or even post-doctorate qualifications. She has the same level of achievement or possibly higher. He has been offered a good job in the United States. She has not, and U.S. regulations may prevent her from finding one when she arrives. That's where the trouble often starts. **In the welter of words surrounding American immigration in the Trump era, there is a little-discussed spouse issue that gets scant attention in the U.S. media**. This is not about family reunification, which Trump seems to see as a threat to America and wants to end or severely curtail. **It is about the limitations placed on a spouse, usually a woman, who accompanies her husband to the United States and what tragedies can follow**. India is among those countries with strong traditionally arranged marriage systems. But Indian marriages today, even when arranged, are no longer the marriages of yore, when a young

woman, sometimes barely educated, is bundled off as a bride to the family of an ambitious, possibly older man from a different social environment who will sooner or later “outgrow” her.

In contemporary India, says Satarupa Gupta of Manavi, a New Jersey-based support group for women, arranged **marriages** are now most likely to **involve a decision made by the couple, who may be about the same age and equally educated or professionally qualified. But when an American job opportunity or transfer to an international company with a U.S. base opens, that can spell the end of equality. Gupta tells the story of how life can spiral downward into violence for an Indian wife. The H-1-B and L-1 visas, best known and most sought after among Indian professionals, allow the visa holder to bring a spouse and dependent children on an H-4 or L-2 visa that permits entry to the U.S. but carries few or no benefits beyond that.** For a relatively brief period in 2015-2016, the Obama administration relaxed the rule for H-4 visa holders allowing a spouse to hold a job if she (or he) could secure an employment authorization document (EAD). But in December 2017, the Trump anti-immigration wave led to a decision that might soon be announced saying that a paying job would again be prohibited by the U.S. Citizenship and Immigration Service, part of the Department of Homeland Security. As it has been widely reported, H-1-B visa numbers may also be curtailed for all foreigners; Indians account for the largest number of those granted now. **“When she comes here on this H-4 visa and she’s a highly qualified woman who was earning this big salary back home, she may find that she cannot work,”** said Gupta, **a specialist in dealing with domestic abuse. “Then she’s put into an apartment or a very small house, and she doesn’t even have a Social Security card or a driving license.”** Many women do volunteer work if that is an option. Others simply get isolated and trapped. **“She can’t drive; she can’t go anywhere,”** Gupta said. “So she’s stuck in the house and she has to depend on her husband, even like to bring the milk -- or if she has a baby, to bring the diapers. **Everything is dependent on the husband. So this gives the other spouse an enormous amount of power over the life of another human being.** Her passport is being kept under lock and key, so she has nothing – no identity.” **“In a lot of cases the men take advantage of this,”** she said. “This may not be in the beginning, but then he suddenly realizes he is in an all-powerful position.” She added that domestic abuse cannot necessarily be linked to the imbalance in their lives, but that the tension that arises because of it can aggravate a troubled relationship. “There are a lot of women’s rights organizations in India,” Gupta said, “but they are looking to the rights of women in that country. There are not a lot of organizations that can tell her what can happen if she goes to another country.” Immigration processes can be very different country to country, however. Unlike the U.S., numerous governments around the world are more accommodating to a spouse, woman or man, in a temporary immigrant status. “It’s completely different in New Zealand,” Gupta said, “It’s completely different in Australia. In most of the European countries they have some rights. But here they cannot. So what happens is that they cannot anticipate that. People don’t come to us here until they are in trouble.” Manavi began as an organization working with women from across South Asia, who are still its central focus. But the organization does not turn away calls for help from others such as Middle Easterners and East Asians. It is one of several dozen help organizations or programs in New York-New Jersey area, many of them offering multilingual services to women in immigrant communities who may not know their rights or how to seek assistance. Among these groups are the Domestic Harmony Foundation, which supports projects to end domestic violence and exploitation in Muslim families. There is also Sakhi for South Asian Women, a widely known and respected decades-old organization offering not only services for women who have been abused or sexually assaulted but also economic empowerment programs for those who are able to work. For Indo-Caribbean women there is Jahajee Sisters, which has very recently borne the shock of a brutal murder on Jan. 1 of one of its community, a 26-year-old woman with two preschool-age children who was stabbed repeatedly by her husband. Manavi, an organization supporting women in crisis for more than 30 years, offers a panoply of services including counseling, free legal clinics (including on how to file for divorce) and a transient safe house for women at great risk. The organization has been receiving funding from a U.S. Department of Justice program dealing with violence against women. “We get federal grants because we work in preventing domestic violence and sexual assault,” Gupta said. An annual gala in April raises additional funds among Indian-Americans and others in the community. **Whatever combination of factors may come together to make life difficult for a wife, including her fear of losing her children if she would decide to return to India, the story seems to end the same way. Gupta said: “It is mostly women who sacrifice their careers.”**

CNN. 2013. “H-4 Visa, A Curse”. <http://ireport.cnn.com/docs/DOC-917520>

H4 spouses are badly beaten and abused by their highly skilled husbands. Due to their financial dependence many of them don’t speak because still in our countries divorce is a big taboo. Also, if she goes back, it will be hard for her to get a job because lack of work experience. So, from both ends we are dead. Even we don’t have money to hire an attorney to look after the case. In many cases, the H1B spouse threatens the abused H4 visa spouse to go back to her native country alone or give him a divorce (mutually without alimony) after that she can take the baby. According to the law, an American born kid can be taken by any parent out the states only after the consent other parent.

Ela **Dutt**. February 23, 20**17**. “H4 Visa Holders Who Are Victims of Domestic Abuse Can Get EAD, Rules USCIS.” News India Times. NEWS INDIA TIMES. www.newsindiatimes.com/immigrant-domestic-violence-survivors-allowed-to-work // RH

“I definitely think it is the right step. **Ninety percent of the cases I was dealing with were women not able to leave their spouses because of financial reasons.**” Raval said. “The form also mentions a safe mailing address – which I really like. Plus, even if a victim’s visa documents are lost or stolen, they can file the form. A lot of times abusers take away the documents and never return them,” she said. *Rachelharris*

Contention 2:

Wills & Gan & Mindlin & Sheerin 2017 India to U.S. Migration Case Study.

www.researchgate.net/publication/319607611_India_to_US_Migration_Case_Study // R Marsh

Indian migration to the U.S. dates back to the the 1800s, but more recent **legislation resulted in a large flow of highly skilled Indian workers to the U.S.** While this has boosted the U.S. economy and led to the creation of more jobs, **India has not experienced** the same degree of **beneficial effects. Those who emigrate** typically continue to exchange valuable information— in the form of investments and **remittances**— back with India to increase productivity and **stimulate** the economy. Yet, this has **have** not proven to counteract **the great economic loss due to this outflow of their most educated and skilled laborers.** This paper specifically explores the ways in which Indian immigration to **the U.S. has contributed to an academic phenomenon known as “brain drain,”** and the **adverse** as well as positive **effects** that this flow of human capital has on both the U.S. and Indian economies. Further, we examine how President-Elect Trump’s administration will likely handle **lof the H-1B visa program.**

Kahn, P., & Gardin, T. (2017). Distribution of Physicians With H-1B Visas By State and Sponsoring Employer. *JAMA*, 317(21), 2235. doi:10.1001/jama.2017.4877

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5815043/>

The Trump administration has proposed policy changes to the H-1B visa program, which allows immigrants to work temporarily for a specific employer. An analysis of 2016 data from the US Department of Labor Office of Foreign Labor Certification (OFLC) reveals that **US employers were certified to fill approximately 10,500 H-1B physician positions nationwide.** This study investigated which states and hospitals or physician groups employ large numbers of physician visa holders to assess the potential effect of changes to the visa program.

New Horizon College of Engineering (2017) Why should we stop Brain Drain in India | Top 10 Engineering

Colleges: <http://newhorizonindia.edu/nhengineering/stop-brain-drain-india/> // R Marsh

A few years ago, a government survey revealed that as many as 12% scientist and **38% doctors in U.S. are Indians** and in NASA 36% or 4 out of 10 scientists are Indians. If that not enough to satisfy India's prowess in the scientific and corporate field then digest this- 34% of employees at Microsoft, 28% at IBM, 17% at intel, 13% at XEROX and more than 12% at google are Indians. **This emigration of highly trained or qualified people from the particular country is known as brain drain. When a country becomes a chief exporter of academic talent then, brain drain said to occur.**

Duttagupta, Ishani. "Indian Healthcare: Stop The Brain Drain Of Doctors." *The Economic Times*, **2011**.

<https://economictimes.indiatimes.com/indian-healthcare-stop-the-brain-drain-of-doctors/articleshow/9677156.cms>. // HB

The reports are in. And things don't look good. **India just does not have enough doctors. There are only 6.13 lakh physicians in the country against a requirement for 13.3 lakh — a staggering shortage of just over 50%**, according to the World Health Statistics 2010 report. **India has less than one doctor for a thousand people** (0.6) as compared to China (1.4 doctors per thousand). In absolute numbers, the US — whose population is a fourth of India's — has more doctors than India. Now analyse another set of numbers. The British Association of Physicians of Indian Origin (BAPIO) estimates that the UK has over 40,000 Indian doctors who are treating about half the population of Britain while **the American Association of Physicians of Indian Origin (AAPI) puts the US figures at 50,000.**

Sivakumar B| TNN. **The India Times**. Times of India. **2015**.

<https://timesofindia.indiatimes.com/india/27-of-deaths-in-india-for-want-of-medical-attention/articleshow/49474537.cms> // HB

Nearly 27% of the total deaths in India happen due to a lack of medical attention at the time of death, according to the 2013 civil registration data released by the Census directorate. Data based on 27 states and Union territories also indicated that only 43% of the total deaths happen in institutions and only 3.9% of the rest under the care of a qualified allopathic doctor. As against the number of deaths, 71% of the total births happen in institutions and other births get care from physicians, nurses, mid-wives etc. **Experts say a large percentage of deaths happen without medical care due to high cost and inaccessibility to medical care in rural and hilly areas. According to experts, many people die due to lack of minor surgeries** (Bell weather surgeries) and globally too in 2010, an estimated 16.9 million people died (32% of all deaths worldwide) due to lack of access to surgery and anaesthesia. A Lancet commission report says the above figure surpasses the number of deaths due to AIDS (1.46 million), **tuberculosis** (1.2 million) and **malaria** (1.17 million). "The government is still obsessed with communicable diseases and there are separate departments for such diseases in the health ministry, but surgical treatment is treated as an orphan without any representation," founder of Narayana Hrudayalaya, Dr Devi Shetty told TOI.

The Guardian **2018**. <https://www.theguardian.com/world/2009/oct/04/india-slums-children-death-rate> // HB

Nearly two million children under five die every year in India – one every 15 seconds – the highest number anywhere in the world. More than half die in the month after birth and 400,000 in their first 24 hours. A devastating report by Save the Children, due out on Monday, reveals that the poor are disproportionately affected and the charity accuses the country of failing to provide adequate healthcare for the impoverished majority of its one billion people. While the World Bank predicts that India's economy will be the fastest-growing by next year and the country is an influential force within the G20, **World Health Organisation figures show it ranks 171st out of 175 countries for public health spending.** Malnutrition, neonatal diseases, diarrhoea and pneumonia are the major causes of death. Poor rural states are particularly affected by a dearth of health resources. But even in the capital, Delhi, where an estimated 20% of people live in slums, the infant mortality rate is reported to have doubled in a year, though city authorities dispute this.