
PROPOSING A LOCALLY DRIVEN ENTREPRENEUR VISA

I. INTRODUCTION

“The history of the United States is in part made of the stories, talents, and lasting contributions of those who crossed oceans and deserts to come here.”¹ The economic contributions of the immigrant population are renowned. Immigrants are more likely to own a business than are nonimmigrants,² “[m]ore than 40 percent of Fortune 500 companies were founded by an immigrant or the child of one[,] . . . [and] immigrants were more than twice as likely as native-born Americans to start a new business in 2010.”³ Immigrant entrepreneurs generate nearly twelve percent of U.S. business income.⁴ This historical trend may very well persist, but the backdrop against which it will play out has changed significantly and will continue to do so. In the face of a difficult and shifting economic landscape at both the national and local levels, the need for widespread revisions to U.S. immigration policy is clear.

The conventional narrative surrounding U.S. immigration policy and, given its current state, the U.S. economy as a whole, often features an overextended nation with too few jobs and too few resources — in short, a view that there simply is not enough room for an influx of immigrants.⁵ Nevertheless, a defining trait in many declining U.S. cities today is a vast supply of vacant space. For example, according to the 2010 Census, Detroit’s population has dropped to below 800,000,⁶ a twenty-five percent decline since 2000, representing one of the largest population decreases by percentage in a large urban area in U.S. history.⁷ While Detroit’s decline may represent the most striking example, its story is part of a larger phenomenon, with many cities

¹ *Arizona v. United States*, 132 S. Ct. 2492, 2510 (2012).

² ROBERT W. FAIRLIE, *ESTIMATING THE CONTRIBUTION OF IMMIGRANT BUSINESS OWNERS TO THE U.S. ECONOMY* 13 (2008), available at <http://archive.sba.gov/advo/research/rs334tot.pdf>.

³ Michael R. Bloomberg, *Obama, Romney Immigration Silence Hurts Economy*, BLOOMBERG (Aug. 13, 2012, 6:46 PM), <http://www.bloomberg.com/news/2012-08-13/obama-romney-immigration-silence-hurts-economy.html>.

⁴ FAIRLIE, *supra* note 2, at 32.

⁵ See, e.g., Steven Camarota, *Too Many: Looking Today’s Immigration in the Face*, NAT’L REV., July 29, 2002, at 35.

⁶ Press Release, U.S. Census Bureau, U.S. Census Bureau Delivers Michigan’s 2010 Census Population Totals, Including First Look at Race and Hispanic Origin Data for Legislative Redistricting (Mar. 22, 2011), available at http://www.census.gov/newsroom/releases/archives/2010_census/cb11-cn106.html.

⁷ Katharine Q. Seelye, *Detroit Census Confirms a Grim Desertion Like No Other*, N.Y. TIMES, Mar. 23, 2011, at A1.

across the United States experiencing significant population decline and a corresponding decrease in economic activity.⁸ Meanwhile, “roughly 14,000 [federal government] buildings and structures [are] designated as excess and thousands of others . . . are underutilized” across the country.⁹

This Note proposes and examines a method to help struggling localities¹⁰ take advantage of their abundance of space to spur local economic activity: an entrepreneur visa allowing for entry into the United States of individuals of any skill level who commit to creating and sustaining small and medium-sized businesses under the sponsorship of a qualified local government entity. This “Entrepreneur Visa” program would be implemented by the federal government with much discretion afforded to participating localities. The primary goal would be to enhance economic activity in areas facing difficult economic conditions and declining populations.¹¹ The program would aim to stimulate economic growth by leveraging the immigrant population — a group that has been an important contributor to the U.S. economy — to create businesses where others may be less willing to do so because of the localities’ decline. A secondary aim would be to make more effective use of the thousands of government buildings across the country that are underutilized and contributing to urban blight by making these buildings available to the new business owners as part of the implementation of the Entrepreneur Visa program.

Part II of this Note summarizes the current landscape of United States visa programs involving investment, entrepreneurship, or employment. Part III details the proposed Entrepreneur Visa program and discusses the benefits of including immigrant entrepreneurs of low and ordinary skills among those potentially eligible for the visa, as well as the respective roles of localities and the federal government in the program. Part IV considers the legal issues pertaining to the proposal, particularly the balance of power among federal, state, and local entities. Part V examines the main virtues of an Entrepreneur Visa pro-

⁸ See, e.g., JUSTIN B. HOLLANDER, *SUNBURNT CITIES* (2011) (discussing urban decline in the “Rustbelt” and “Sunbelt”); see also generally *REBUILDING AMERICA’S LEGACY CITIES* (Alan Mallach ed., 2012). Many cities “have continued to lose population, see their neighborhoods decay and . . . grapple with high unemployment and poverty.” Henry G. Cisneros & Gregory S. Lashutka, *Foreword to REBUILDING AMERICA’S LEGACY CITIES*, *supra*, at xi, xi.

⁹ *Excess Federal Buildings Interactive Map*, THE WHITE HOUSE, <http://www.whitehouse.gov/21stcenturygov/tools/excess-map> (last visited May 10, 2013).

¹⁰ While the nature of this program may lead to participation mostly by urban centers, the term “localities” is meant to encompass declining suburban and rural areas as well, since such areas would also be eligible for participation in the program.

¹¹ By generating significant economic growth in the aggregate and by providing an opportunity to track different local approaches and learn from successes, this program could have a positive impact at the national level as well.

gram, Part VI considers several concerns about the proposal, and Part VII concludes.

II. THE CURRENT LANDSCAPE: EMPLOYEE, INVESTOR, AND ENTREPRENEUR VISAS

There are four existing employee-, investor-, or entrepreneur-based visa regimes that are most relevant for the purposes of this Note. The first is the H-1B nonimmigrant employment visa, which provides for the entry of qualified workers hired by a U.S. company for a “specialty occupation.”¹² An individual who receives this visa must have a post-secondary degree in the field of highly specialized knowledge that is required for the successful performance of the specialized occupation.¹³ Thus, the H-1B visa provides an opportunity for foreigners with the requisite high-level skills for a “specialty occupation” to fill gaps — mostly as employees¹⁴ — in the resident labor force.

The second relevant visa regime is the EB-5 program. Under this regime, immigrants can obtain a visa if they invest a threshold amount of capital in a new commercial enterprise¹⁵ that will benefit the U.S. economy while creating at least ten jobs for U.S. citizens or immigrants who have lawfully entered the country.¹⁶ The program targets “immigrant investor[s],”¹⁷ broadening the scope of immigrant participation beyond mere employment to include proprietary investment in a business or project. As a result, the program arguably has the potential to impact the economy on a larger scale than the H-1B program. However, by requiring a minimum investment from applicants of between \$500,000 and \$1,000,000 (depending on the level of unemployment in the area in which the investment is made),¹⁸ the program is obviously biased toward wealthy individuals.

The third relevant visa regime is the E-Visa category, which primarily “includes treaty traders and investors who come to the United

¹² 8 U.S.C. § 1184(i) (2012).

¹³ See 8 C.F.R. § 214.2(h)(4)(i)(A)(1) (2013).

¹⁴ In 2011, U.S. Citizenship and Immigration Services opened the door for *entrepreneurs* to obtain an H-1B visa if they are “able to establish the necessary employer-employee relationship.” *USCIS Initiatives to Promote Startup Enterprises and Spur Job Creation: Fact Sheet*, U.S. CITIZENSHIP & IMMIGR. SERVICES, DEP’T OF HOMELAND SECURITY, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=3f412bfb4cf81310VgnVCM10000082ca60aRCRD> (last visited May 10, 2013).

¹⁵ “New commercial enterprise” includes businesses established more than twenty years ago. See *EB-5 Immigrant Investor*, U.S. CITIZENSHIP & IMMIGR. SERVICES, DEP’T OF HOMELAND SECURITY, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=fac83453d4a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=fac83453d4a3210VgnVCM100000b92ca60aRCRD> (last visited May 10, 2013).

¹⁶ 8 U.S.C. § 1153(b)(5)(A).

¹⁷ See *EB-5 Immigrant Investor*, *supra* note 15.

¹⁸ See *id.*

States under a treaty of commerce and navigation between the United States and the country of which the treaty trader or investor is a citizen or national.”¹⁹ Thus, the E-Visa regime encompasses a variety of individuals, including investors, employees, and people running import-export businesses.²⁰ Under the E-Visa regime, “[o]rdinary skilled or unskilled workers do not qualify.”²¹ Similar to the H-1B visa, the E-Visa is a nonimmigrant visa,²² so it does not afford visa holders with a potential path to citizenship.²³

Lastly, there are several employment-based visas under the Immigration and Naturalization Act²⁴ (INA) that “may be granted . . . based on job preferences delineated by the [INA].”²⁵ These employment-based visas favor highly skilled individuals or executives at existing companies.²⁶ Like the EB-5 visa, they offer a path to citizenship.

III. A PROPOSAL: THE ENTREPRENEUR VISA PROGRAM

An Entrepreneur Visa would allow individuals possessing a broader spectrum of skill sets and levels than those targeted by the existing employee-, investor-, or entrepreneur-based visa regimes to enter the United States. Individuals entering the country on Entrepreneur Visas would be required to articulate their plans for businesses that they intend to start and provide information about their work experience to demonstrate their ability to create and manage a business successful-

¹⁹ *E-Visas*, U.S. CITIZENSHIP & IMMIGR. SERVICES, DEP’T OF HOMELAND SECURITY, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=cfb45b46645fe210VgnVCM10000082ca60aRCRD> (last visited May 10, 2013).

²⁰ Currently, eighty countries have treaty agreements with the United States that make them participants in the E-Visa program. *See Treaty Countries*, U.S. DEP’T OF STATE, http://travel.state.gov/visa/fees/fees_3726.html (last visited May 10, 2013).

²¹ *Visas for Treaty Traders and Treaty Investors*, U.S. DEP’T OF STATE, http://travel.state.gov/visa/temp/types/types_1273.html (last visited May 10, 2013). Qualified applicants must be essential employees of their firm, have supervisory or executive roles, or offer highly specialized skills that the firm seeks. *See id.* Alternatively, applicants must have a significant investment in the United States that has a large economic effect. *See id.*

²² *See id.*

²³ *See Visa Denials*, U.S. DEP’T OF STATE, http://www.travel.state.gov/visa/frvi/denials/denials_1361.html (follow “INA Section 214(b) — Visa Qualifications and Immigrant Intent” hyperlink) (last visited May 10, 2013) (describing the requirement that applicants “sufficiently demonstrat[e] that [they] have strong ties to [their] home country that will compel [them] to leave the United States at the end of [their] temporary stay”).

²⁴ 8 U.S.C. §§ 1101–1537 (2012).

²⁵ Margaret Benenati, Note, *The Exclusion of HIV-Positive Aliens: United States Immigration Policy and International Human Rights Law*, 4 J. TRANSNAT’L L. & POL’Y 93, 94 (1995); *see also* 8 U.S.C. § 1153(b) (2012).

²⁶ Under the INA, first preference is given to individuals of extraordinary ability, outstanding academics, and multinational executives; second preference is given to members of advanced-degree professions and individuals of exceptional ability; and third preference is given to individuals who can address unmet demand for skilled labor. *See Benenati, supra* note 25, at 94 n.14.

ly.²⁷ To bolster their chances of success, applicants could submit business plans that would include detailed budgets and the projected number of employees that the businesses would employ. In addition, depending on the preference of the participating locality, individuals entering the country on such visas might be required to commit minimum amounts of capital toward the businesses. It would be important, however, that the visa regime include a cap on the minimum amount that any locality could require, to avoid redundancy with the EB-5 visa — which requires a minimum investment of at least \$500,000 from the individual seeking the visa — and to allow for greater diversity of immigrants and corresponding businesses.²⁸

Entrepreneur Visa holders would be sponsored by localities that would qualify based on certain indicators, including net population loss, unemployment, and declining tax revenues. Each locality would receive a fixed number of visa slots, determined at the federal level, based on these indicators. The locality would then have the discretion to decide which entrepreneurs qualify for a visa based on the projected viability of the proposed business, the local government's view of the area's needs in terms of industries, and other factors like the characteristics of the resident population.²⁹ Aside from federally imposed limits on the issuance of Entrepreneur Visas, the decision regarding how many visas to grant — and even whether to grant any visas at all — would be in the hands of the locality, based on the premise that the locality would know more about local needs than would the federal government. Thus, localities would have as much autonomy as possible to design the types of programs that they viewed as the best fit given the needs of their particular economies and the demographics of existing residents.³⁰

The Entrepreneur Visa would be conditional upon the solvency of the business and the outcome of semiannual reviews conducted by local government officials. The reviews would assess the past performance of, and the entrepreneur's updated plans for, the business, as

²⁷ This information would be conveyed by the individuals themselves in oral or written form with the help of an interpreter or translator, as needed.

²⁸ Many "immigrant investors" have used the EB-5 program in recent years to place their capital in hotel and other development projects. See, e.g., Janet Morrissey, *Visas-for-Dollars Program a Boon to Hotel Developers*, N.Y. TIMES DEALBOOK (Sept. 6, 2012, 6:54 PM), <http://dealbook.nytimes.com/2012/09/06/visas-for-dollars-program-a-boon-to-hotel-developers>.

²⁹ Even if the applicant did not demonstrate a certain level of English proficiency or have a certain educational background, a locality might still accept the application based on the area's assessment of its own needs and the plausibility of the business's success under the applicant's supervision.

³⁰ The federal government would provide the legal basis, but because localities would have such extensive control over the program, it is reasonable to place a significant portion of the financial burden on them. Another approach might involve cost sharing between the federal government and participating localities.

well as the entrepreneur's efforts to manage the company.³¹ After maintaining acceptable status for a certain period of time, the entrepreneur could transition from a temporary green card to an unconditional visa and eventually have the opportunity to apply for citizenship.³² Any program participants who abandoned their businesses before the required time commitment or reported fraudulent results would face cancellation of their visas and deportation.

The federal government would also play a role in this program. The Department of Homeland Security (DHS) would be involved in processing the visas. This involvement would impose some costs on DHS, but the fact that an "immigration bureaucracy" already exists in the United States could limit these costs.³³ Unlike other visa programs, certification from the Department of Labor would not be required for Entrepreneur Visa holders,³⁴ since the visas would be allotted to localities, and local officials alone would select entrepreneur applicants. DHS, however, would maintain the ability to prohibit certain individuals from entering the country due to security or other concerns of the federal government. Additionally, keeping track of Entrepreneur Visa holders to ensure that they have not defected from their projects would inevitably require federal involvement through Immigration and Customs Enforcement (ICE). These efforts would be supplemented by local governments, leading to potential cost savings for the federal government. Localities would be responsible for monitoring the ongoing status of the businesses — and therefore the continued involvement of the visa holders — in order to ensure that the

³¹ As with many other issues that require further refinement, this Note does not propose a specific system for measuring the viability of each business. Nevertheless, the importance of crafting an appropriate framework for defining sufficiently strong performance to justify an extension of the Entrepreneur Visa to a particular individual cannot be understated. Ensuring that the business maintains the incentive to manage risks and maximize profits, rather than targeting certain specified metrics that would risk distorting those goals, is of utmost importance. A successful system would likely involve a combination of practical quantitative and qualitative measures as well as frequent — for example, quarterly — communication between the entrepreneur and the relevant local government official.

³² The entrepreneur's immediate family members would be free to join her as temporary green card holders from the outset, with the opportunity to undertake the same path to eventual citizenship.

³³ Shikha Dalmia, *Canada Shows How U.S. States Can Fix Immigration*, BLOOMBERG VIEW (Nov. 28, 2012, 6:37 PM), <http://www.bloomberg.com/news/2012-11-28/canada-shows-how-u-s-states-can-fix-immigration.html> ("Given that the U.S. already has a large immigration bureaucracy dedicated to performing labor certifications and other tasks that would be redundant under such a system, it should be able to handle all [subfederal] requests expeditiously.")

³⁴ For example, as part of the H-1B process, the employer of an H-1B applicant must file a Labor Condition Application, which requires that the employer make various statements to ensure that the employer's decision to employ an immigrant does not negatively affect other employees (or potential employees). See *Work Authorization for Non-U.S. Citizens: Workers in Professional and Specialty Occupations (H-1B, H-1B1, and E-3 Visas)*, U.S. DEP'T OF LABOR, <http://www.dol.gov/compliance/guide/h1b.htm> (last updated Sept. 2009) [hereinafter *Work Authorization for Non-U.S. Citizens*].

businesses have not failed or that reported financial metrics (or any other data requested by the locality) have not been fabricated. A potential added layer of cost protection for the federal government is that, in light of the localities' desire to attract responsible entrepreneurs, local governments would have an incentive to carefully and effectively select applicants who are not viewed as being at high risk to abandon the business, leading to fewer defections.³⁵

This proposed visa is comparable to, but nevertheless distinguishable from, visas already in existence in the United States, including the H-1B visa, the EB-5 and other employment-based visas, and the E-Visa. The primary differences between the proposed Entrepreneur Visa and the H-1B visa are that the Entrepreneur Visa would involve individuals starting new businesses — taking advantage of the greater economic benefits that come from startups³⁶ while avoiding the risk that the visa applicant would be taking a job away from a native job-seeker — and that the Entrepreneur Visa would be open to a broader range of individual skill sets than the H-1B visa, which is reserved for those taking positions in “specialty occupations.”³⁷ In contrast to the EB-5 program, the Entrepreneur Visa would not necessarily involve a minimum capital contribution; it would also require the visa applicant to manage the day-to-day operations of the business rather than simply making a passive investment in a project proposed and executed by another manager. As discussed, the other employment-based visas under the INA heavily favor highly skilled individuals and do not pertain to individuals starting new businesses. Lastly, while the E-Visa does pertain, in part, to individuals starting new businesses, it does not offer a potential path to citizenship, and it excludes individuals of ordinary or lesser skills.

One element in particular that differentiates the proposed Entrepreneur Visa program from all other U.S. programs would be its involvement of — and its granting of significant discretion to — local governments. On this point, a much closer parallel is Canada's provincial-nominee program,³⁸ which provides a powerful illustration of the Entrepreneur Visa program's plausibility: “Under this system, 13 provincial entities sponsor a total of 75,000 worker-based permanent resi-

³⁵ Moreover, it is unlikely that this program would be abused since immigrants considering illegal entry into the United States would likely not bother attempting to gain entry through this rather rigorous process.

³⁶ See TIM KANE, EWING MARION KAUFFMAN FOUND., THE IMPORTANCE OF STARTUPS IN JOB CREATION AND JOB DESTRUCTION 6 (2010), available at http://www.kauffman.org/uploadedfiles/firm_formation_importance_of_startups.pdf (noting that “[s]tartups create an average of 3 million new jobs annually,” a much higher number than for all other firms combined).

³⁷ *Work Authorization for Non-U.S. Citizens*, *supra* note 34.

³⁸ See generally Dalmia, *supra* note 33.

dencies a year.”³⁹ As in the proposed Entrepreneur Visa program, under the Canadian program, “[e]ach province can pick whomever it wants for whatever reason — in effect, to use its quota, which is based on population, to write its own immigration policy.”⁴⁰ The Canadian program is different in several ways, including that it is provincial rather than local and that it allows for the granting of visas for reasons that go beyond economic purposes.⁴¹ The Canadian program also differs from the proposed program in that it permits visas to be granted to *workers* generally, rather than focusing on *entrepreneurs*.

The key element of Canada’s visa program — the fact that it bestows significant discretion upon provinces to determine their own goals and needs — is a critical similarity to the proposed Entrepreneur Visa program. “The government in Ottawa can’t question either the provinces’ criteria or their methods of recruitment. Its role is limited to conducting a security, criminal and health check on foreigners picked by the provinces.”⁴² Another similarity is that the Canadian program does not differentiate between higher- and lesser-skilled workers. This element is a virtue compared to the existing U.S. visa framework, which emphasizes higher-skilled individuals while not taking advantage of lesser-skilled immigrants’ willingness to create and manage businesses that may generate new opportunities for current residents in the United States.⁴³

IV. LEGAL CONSIDERATIONS RELATED TO THE PROPOSAL

While state and local governments would share an interest in increasing employment in the locality in question, the two entities may not agree on the best approach for awarding Entrepreneur Visas. There is certainly no guarantee that state and local governments would agree on either the most appropriate or most politically palatable mechanisms to spur employment and economic activity: “The fact that cities and states often have divergent interests also raises the intriguing possibility that the national government might ally itself with cities to protect them from their states.”⁴⁴ There are two main components of the Entrepreneur Visa program that could raise questions about how much a state could interfere with the implementation by a

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *See id.*

⁴² *Id.*

⁴³ Immigrant entrepreneurs of ordinary skills start businesses in industries such as construction, hospitality, retail trade, and transportation that can create a significant number of jobs for natives. *See generally* ROBERT W. FAIRLIE, *OPEN FOR BUSINESS* (2012), available at <http://www.renewoureconomy.org/sites/all/themes/pnae/openforbusiness.pdf>.

⁴⁴ GERALD E. FRUG ET AL., *LOCAL GOVERNMENT LAW* 238 (5th ed. 2010).

locality of this program⁴⁵: the immigration-policy component of the proposal and the economic development component of the proposal.

The immigration component of the program raises questions about the role of the state in implementing immigration policy. As the Supreme Court noted in *Arizona v. United States*,⁴⁶ “[t]he Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”⁴⁷ Accordingly, the Court held that several elements of an Arizona law were preempted.⁴⁸ In an older case, a similar result was reached in a context that quite closely overlaps with what might occur as a result of the proposed Entrepreneur Visa program. In *Truax v. Raich*,⁴⁹ the Supreme Court assessed the constitutionality of a law passed in Arizona that limited the number of nonvoter and non-native-born employees to no more than twenty percent of a company’s staff.⁵⁰ Observing that “[t]he authority to control immigration . . . is vested solely in the Federal Government,” the Court held the denial “to aliens [of] the opportunity of earning a livelihood when lawfully admitted to the State” to be impermissible.⁵¹

Under the proposed program, Entrepreneur Visa holders — by virtue of having been lawfully admitted into the United States — would be constitutionally protected from state efforts to enact statutes limiting their ability to engage in work. The dominance of the federal government in the field of immigration would preempt significant state interference. Nonetheless, the *Arizona* Court emphasized that “[c]onsultation between federal and state officials is an important feature of the immigration system.”⁵² For example, the federal government could require that localities consult with state officials regularly as part of maintaining eligibility. Such an arrangement would be beneficial to the program since the relevant state may be able to offer a helpful viewpoint, whether it is eager for localities to participate or is pessimistic about the program’s projected net impact. The state could balance a granular understanding of local needs with a big-picture view of what could be helpful for the state as a whole and identify possible opportunities for coordina-

⁴⁵ See generally *id.* at 118–236 (discussing questions involving city-state relations, including the delegation of power from states to cities, the implied powers that cities have, and the merits and scope of state control over localities versus home rule).

⁴⁶ 132 S. Ct. 2492 (2012).

⁴⁷ *Id.* at 2498.

⁴⁸ *Id.* at 2510 (“[T]he State may not pursue policies that undermine federal law.”). For example, Arizona had made it a misdemeanor to be an alien without carrying the necessary documents, *id.* at 2497–98, and had required police officers to inquire about an individual’s immigration status during an unrelated interaction with someone reasonably suspected of residing in the United States illegally, *id.* at 2507.

⁴⁹ 239 U.S. 33 (1915).

⁵⁰ See *id.* at 35.

⁵¹ *Id.* at 42; see *id.* at 41–43.

⁵² *Arizona*, 132 S. Ct. at 2508.

tion among localities. Regardless of a federal requirement, the nature of the proposed Entrepreneur Visa program — including its openness to drawing on the resources and expertise of various stakeholders⁵³ — should encourage state-local consultation.

As for the locally driven economic-initiative component of the program, the initial question is whether the particular state permits localities to act independently upon matters of local concern, since a locality's participation in the proposed program would be dependent upon the state's willingness to allow such activity.⁵⁴ Thus, a locality looking to take advantage of this program would need to have enough room to maneuver under "home rule."⁵⁵ If a locality aspiring to participate in the program is not located in a home-rule state, short of taking the chance that the state would tacitly permit the locality's involvement in the program, the local government would be forced to obtain permission through the passage of a specific state enabling statute granting the relevant authorization to localities in that state.⁵⁶

Examining local government law in Detroit offers a useful example. According to the Michigan Supreme Court, "Michigan is a home rule state. Home-rule local governments are vested with general constitutional authority to act on all matters of local concern not forbidden by state law."⁵⁷ Thus, localities in Michigan have significant leeway to undertake initiatives intended to benefit their citizens, so long as the relevant ordinance does not "directly conflict[] with the state statutory scheme or if the state statutory scheme [does not] preempt[] the munic-

⁵³ Stakeholders might include, inter alia, local universities, metro-area counties, and local businesses. See generally SAMUEL R. STALEY ET AL., *GIVING A LEG UP TO BOOTSTRAP ENTREPRENEURSHIP* (2001), available at <http://reason.org/files/ps277.pdf>.

⁵⁴ See, e.g., Nestor M. Davidson, *Cooperative Localism: Federal-Local Collaboration in an Era of State Sovereignty*, 93 VA. L. REV. 959, 980 (2007) ("The conventional view of local government identity that has developed in the interstices of constitutional law holds that local governments exist as creatures of the state, with questions of local structure, power, and immunity ultimately subject to plenary state control.").

⁵⁵ No universal definition of the term appears to exist. See James S. Macdonald & Jacqueline R. Papez, *Over 100 Years Without True "Home Rule" in Idaho: Time for Change*, 46 IDAHO L. REV. 587, 599 (2010). However, "home rule" can be defined by two components: its "restriction[] on the power of the state legislature to legislate concerning local municipal governments . . . [and its] grant to municipalities of authority to act in . . . very limited circumstances without prior authorization from the state legislature." Terrence P. Haas, Note & Comment, *Constitutional Home Rule in Rhode Island*, 11 ROGER WILLIAMS U. L. REV. 677, 682 (2006). More than forty U.S. states provide for home rule, and just over half of those states do not require enabling legislation. See *Home Rule in the States*, COMMUNITY ENVTL. LEGAL DEF. FUND, <http://celdf.org/home-rule-in-the-states> (last visited May 10, 2013). In some home-rule states, a locality would still have to submit a petition in order to gain sufficient room to maneuver rather than simply acting on the basis of being a "home rule" city. Massachusetts is one example. See, e.g., *Bresnahan v. City of Gloucester*, No. 11-P-1304, 2012 WL 3029885 (Mass. App. Ct. Jul. 26, 2012) (discussing a home-rule petition seeking explicit permission to act from the state legislature).

⁵⁶ See generally FRUG ET AL., *supra* note 44, at 118–236.

⁵⁷ *Airlines Parking, Inc. v. Wayne Cnty.*, 550 N.W.2d 490, 494 n.18 (Mich. 1996).

ipality's ordinance by 'occupying the field of regulation which the municipality seeks to enter, to the exclusion of the ordinance, even where there is no direct conflict between the two schemes of regulation.'"⁵⁸

This view reflects the position of the Michigan state legislature. In 1966, the legislature granted localities the authority "to perform . . . any function or service not prohibited by law, which shall include . . . [p]olice protection, fire protection, planning, zoning, education, health, welfare, . . . and any other function or service necessary or beneficial to the public health, safety, and general welfare of the county."⁵⁹ As part of an assessment of a locality's exercise of this authority, the Michigan Supreme Court has examined the objectives motivating a specific action. For example, in *County of Wayne v. Hathcock*,⁶⁰ Wayne County had condemned property in order to create jobs, stimulate private investment, "stem[] the tide of . . . population loss," and "support[] development opportunities."⁶¹ The court held these goals to be "within the scope of Wayne County's powers."⁶² Participation in the proposed Entrepreneur Visa program would involve similar — and in some cases identical — goals as those discussed in *Hathcock*. Thus, if Detroit participated in the program, it seems plausible that the local government's implementation of the economic initiative tied to the program would pass muster under home-rule scrutiny.⁶³

Another legal concern involves freedom of movement. The Supreme Court has identified a constitutional right to movement⁶⁴ as well as a constitutional right to travel.⁶⁵ In *Truax*, the Court held that an immigrant without citizen status, "[b]eing lawfully an inhabitant of Arizona, . . . [was] entitled under the Fourteenth Amendment to the equal protection of its laws. The description — 'any person within its jurisdiction' — as it has frequently been held, includes aliens."⁶⁶ The Court went on to say that the Due Process and Equal Protection Clauses of the Fourteenth Amendment apply to people within a specific jurisdiction "without regard to any differences of race, of color, or of

⁵⁸ *AFSCME v. City of Detroit*, 662 N.W.2d 695, 707 (Mich. 2003) (quoting *People v. Llewellyn*, 257 N.W.2d 902, 904 (Mich. 1977)).

⁵⁹ MICH. COMP. LAWS ANN. § 45.515(c) (West 2011).

⁶⁰ 684 N.W.2d 765 (Mich. 2004).

⁶¹ *Id.* at 775.

⁶² *Id.* at 776 (quoting MICH. COMP. LAWS § 213.23 (1979) (amended 2006)).

⁶³ A locality situated in a state with a less generous, or nonexistent, home-rule policy would be forced to seek passage of an empowering statute. *See supra* p. 2412.

⁶⁴ *See Paul v. Virginia*, 75 U.S. 168, 180 (1868) (discussing each citizen's "right of free ingress into other States, and egress from them").

⁶⁵ *See Shapiro v. Thompson*, 394 U.S. 618, 629 (1969) (noting that citizens are "free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement").

⁶⁶ *Truax v. Raich*, 239 U.S. 33, 39 (1915) (quoting U.S. CONST. amend. XIV, § 1).

nationality.”⁶⁷ Thus, immigrants can expect to enjoy freedom of movement with respect to ordinary travel within the United States.

With respect to work, however, restrictions on movement do exist — at least in a de facto sense — in the case of the H-1B visa. If an H-1B visa holder chooses to relocate to another area without the permission of the employer, that individual might lose her job and visa. Even if the employer were on board with the move, it would be required to apply to amend the visa to move the employee to another location,⁶⁸ which amounts to a barrier to movement. By analogy, a temporary prohibition against moving a business to a location outside of the sponsoring locality would be justifiable in the context of the proposed Entrepreneur Visa. Once an Entrepreneur Visa holder applied for and eventually obtained permanent residency, however, such a restriction would no longer exist.

V. ARGUMENTS IN FAVOR OF AN ENTREPRENEUR VISA PROGRAM

The Entrepreneur Visa program proposed in this Note differs from existing U.S. visa programs by combining three key features: emphasis on small businesses, inclusion of non-high-skilled entrepreneurs, and empowerment of local governments.

A. *The Economic Impact of Immigrants and Small Business*

Two components of this program underlie its potential effectiveness: the integration of additional immigrants into the economy and the focus on stimulating the creation of small and medium-sized enterprises. Managed effectively, immigration can serve as an important driver of economic growth in the United States. A 2010 study found that U.S. sectors with high immigrant participation have created more jobs than sectors with much lower immigrant involvement; the results held for low-skilled labor as well.⁶⁹ In general, “[i]mmigration can boost the supply of skills different from and complementary to those of natives, increase the supply of low-cost services, contribute to innova-

⁶⁷ *Id.* (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886)).

⁶⁸ See Dep’t of Homeland Sec., U.S. Citizenship & Immigration Servs., Form I-129, Petition for a Nonimmigrant Worker (revised Oct. 7, 2011), available at <http://www.uscis.gov/files/form/i-129.pdf>.

⁶⁹ See Tyler Cowen, *How Immigrants Create More Jobs*, N.Y. TIMES, Oct. 31, 2010, at BU6; see also David Bier, *Low-Skilled Immigrant Workers Are Vital Contributors to the Economy*, FORBES (Sept. 12, 2012, 12:12 PM), <http://www.forbes.com/sites/realspin/2012/09/12/low-skilled-immigrant-workers-are-vital-contributors-to-the-economy>.

tion, and create incentives for investment and efficiency gains.”⁷⁰ In addition:

Immigration improves US productivity in the long run primarily by boosting the economic efficiency of production, and by encouraging adjustments in the way the US economy functions (as firms reorganize their production to take advantage of immigrant labor, and immigrant and native workers gravitate towards occupations that best suit their skills and abilities).⁷¹

Immigrants also experience increased purchasing power as a result of newfound opportunities in the United States,⁷² which can further stimulate local economies.

Another positive element of the Entrepreneur Visa program would be the promotion of small business activity. Small businesses play a major role in the U.S. employment landscape, accounting for well over half of new jobs in the United States,⁷³ and “[t]he importance of small business to economic development in countries around the world is well recognized.”⁷⁴ Because this program would offer a low-cost option to encourage further activity at the small-business level that would not significantly overlap with existing Small Business Administration (SBA) assistance,⁷⁵ the program would be an efficient complement to the SBA’s efforts.

B. The Value of Non-High-Skilled Immigrant Entrepreneurs

Part of what differentiates this proposal from other visa programs is its inclusion of immigrant entrepreneurs of ordinary and low skills.⁷⁶

⁷⁰ GIOVANNI PERI, MIGRATION POL’Y INST., THE IMPACT OF IMMIGRANTS IN RECESSION AND ECONOMIC EXPANSION 6 (2010) (citations omitted), available at <http://www.migrationpolicy.org/pubs/peri-june2010.pdf>.

⁷¹ *Id.* at 4.

⁷² See Matthew Yglesias, *DREAM On*, SLATE (June 20, 2012, 11:48 AM), http://www.slate.com/articles/business/moneybox/2012/06/obama_and_the_dream_act_america_needs_much_bigger_bolder_immigration_reform.html.

⁷³ See Major L. Clark, III & Radwan N. Saade, *The Role of Small Business in Economic Development of the United States: From the End of the Korean War (1953) to the Present* 8 (Office of Advocacy, U.S. Small Bus. Admin., Working Paper, 2010), available at <http://archive.sba.gov/advo/research/rs372tot.pdf> (“60 to 80 percent of all new jobs come from small businesses.”).

⁷⁴ Sarah Birrell & Lea Waters, *The Role of Mentoring and Peer Support in Contributing to Perceived Progress Towards Small Business Success: A Cross Sectional Study*, 12 INT’L J. ORGANISATIONAL BEHAVIOUR 33, 33 (2007).

⁷⁵ See *What We Do*, U.S. SMALL BUS. ADMIN., <http://www.sba.gov/about-sba-services/what-we-do> (last visited May 10, 2013) (discussing the SBA, a federal agency that provides assistance to U.S. small businesses primarily in the form of financing, entrepreneurial development, federal procurement, and advocacy). The SBA provides assistance to noncitizens in some cases. For example, the 7(a) Loan Eligibility Program is available to businesses owned by noncitizens. See *7(a) Loan Program Eligibility*, U.S. SMALL BUS. ADMIN., <http://www.sba.gov/content/7a-loan-program-eligibility> (last visited May 10, 2013).

⁷⁶ One might argue that the proposed Entrepreneur Visa program should be open to the millions of undocumented immigrants already living in the United States. Of course, the need for

Much of the attention on the benefits of immigration has focused on high-skilled workers. “But while the case for high-skilled immigrants is strong[,] . . . an excessive focus on the idea of importing supergeniuses and talented engineers tends to obscure the fact that essentially any able-bodied, hard-working migrant is good for the American economy.”⁷⁷ In addition, low-skilled labor stimulates economic activity that complements related factors of production.⁷⁸

What about *entrepreneurs* with lesser skills?⁷⁹ There are numerous reasons why low- and ordinary-skilled entrepreneurs could be significant contributors to local economies. First, the traditional image of the urban street is filled with the businesses of low- and ordinary-skilled entrepreneurs. A barber shop or food truck, for example, can create jobs while not requiring advanced schooling. Second, exposure to different and potentially better ways of conducting business, as well as varied life experiences, is a benefit to the economy that does not derive exclusively from high-skilled immigrants. Merely by virtue of having lived elsewhere, lower-skilled immigrants may import new and creative approaches that can have a positive impact in the United States.⁸⁰

These intuitions have material support. Immigrants own a significant share of lower-skilled businesses in the United States,⁸¹ with “[t]he largest contribution of new immigrant business owners by education level [coming] from those who have lower than a high school educa-

reform to address issues surrounding this group of immigrants is of paramount importance, and a blueprint for such reform is outside the scope of this Note.

⁷⁷ Yglesias, *supra* note 72.

⁷⁸ *See id.* (“This can be most clearly seen in agriculture. . . . Much of the land [in the United States] is only profitable to cultivate at a wage level that few American workers find appealing. When we cut off the flow of migrant farm workers, . . . it leads in the short term to crops rotting in the fields and in the long term to less land being cultivated.”).

⁷⁹ Because the program would include a wide range of individuals, it should not be thought of as a way to bring in only the lowest-skilled individuals and hope that they operate businesses in a sophisticated and successful manner from the start. Also, the lack of focus on high-skilled individuals would not bar high-wealth individuals, or at least individuals with a nontrivial amount of money, who would be happy to deploy capital toward a business of their own in exchange for an immigrant visa to reside in the United States. Demand for EB-5 visas suggests that there is no reason to believe that individuals with, for example, between \$100,000 and \$500,000 available for investment in their own businesses would not be interested in this Entrepreneur Visa. As previously discussed, *see supra* p. 2406, the E-Visa allows individuals to enter the United States without a minimum capital requirement, but the E-Visa provides individuals with *nonimmigrant* status, offering a less attractive opportunity in the long run.

⁸⁰ See Gianmarco I.P. Ottaviano & Giovanni Peri, *The Economic Value of Cultural Diversity: Evidence from US Cities*, 6 J. ECON. GEOGRAPHY 9, 10 (2006) (“Who can deny that Italian restaurants, French beauty shops, German breweries, Belgian chocolate stores, Russian ballets, Chinese markets, and Indian tea houses all constitute valuable consumption amenities that would be inaccessible . . . were it not for . . . foreign-born residents? . . . Cultural diversity, therefore, may . . . increase consumption variety and improve the productivity of natives.”).

⁸¹ FAIRLIE, *supra* note 2, at 32.

tion.”⁸² Thus, it is clear that high skills are not a requirement for entrepreneurial activity, and there is reason to be confident that a program that includes lower-skilled immigrant entrepreneurs can lead to the creation and management of successful businesses.⁸³

Lower-skilled immigrant entrepreneurs could contribute to local economies in a variety of ways. Immigrant artisans and restaurateurs could stimulate economic activity by attracting tourists and residents interested in these cultural improvements. Businesses as wide-ranging as fish markets and nail salons could create jobs and reduce blight in the process.⁸⁴ Immigrant-owned businesses may thus make previously declining localities safer and more vibrant.

C. Local Government Involvement

“[E]ffective local self-government, as an important constituent part of our system of government, must have sufficient power to deal effectively with the problems with which it must deal.”⁸⁵ By granting significant power to localities, the Entrepreneur Visa program would “permit different local communities to pursue legal responses more tailored to the conditions that each faces”⁸⁶ and avoid “treat[ing] the entire . . . economy as monolithic and pretend[ing] that distant federal bureaucrats can effectively cater to local job markets.”⁸⁷ Also, an approach that empowers localities would take advantage of “the smaller

⁸² *Id.* at 21.

⁸³ There are several reasons not to push for an economic program that focuses only on lower-skilled natives or targets natives in general. First, it should be noted that an immigrant entrepreneur program would not detract from traditional Small Business Administration programs available to natives. See *SBA Loan Programs*, U.S. SMALL BUS. ADMIN., <http://www.sba.gov/loanprograms> (last visited May 10, 2013). Second, the opportunity cost of moving from one part of the United States to another or of launching a new business is often higher for a U.S. native than is the opportunity cost faced by immigrants coming from countries with fewer economic opportunities. Immigrant founders were part of “[t]wenty-eight percent of all new businesses started in the United States in 2011[,] . . . [a number that] far outpace[d] the immigrant share of the U.S. population (12.9 percent) and the U.S. workforce (16.3 percent).” FAIRLIE, *supra* note 43, at 8. Thus, there appears to be some validity to the claim that immigrants are simply more willing than natives to take a chance on starting new businesses.

⁸⁴ See FAIRLIE, *supra* note 43, at 3 (noting that “[i]mmigrants start more than 25 percent of all businesses in seven of eight sectors of the economy that the U.S. government expects to grow the fastest over the next decade,” including arguably lesser-skilled sectors such as construction, retail trade, transportation and utilities, and leisure and hospitality).

⁸⁵ *State v. Hutchinson*, 624 P.2d 1116, 1120 (Utah 1980); see also David J. Barron, *The Promise of Cooley’s City: Traces of Local Constitutionalism*, 147 U. PA. L. REV. 487, 491 (1999). This proposal could also be presented as a state-driven program, but the most effective approach likely would involve placing as much control as possible with the economically struggling locality rather than with the state. The locality will have much more knowledge about local economic conditions and the program’s likely local effects and will have more at stake in the resolution of local economic difficulties.

⁸⁶ David J. Barron, *Reclaiming Home Rule*, 116 HARV. L. REV. 2255, 2343 (2003).

⁸⁷ Dalmia, *supra* note 33.

size of local institutions[,] provid[ing] an opportunity for building the kind of ‘civic capacity’ that some political scientists increasingly perceive to be necessary to solve seemingly intractable public problems.”⁸⁸

Giving localities such flexibility would allow them to serve as “laboratories” for testing different methods aimed at spurring economic growth.⁸⁹ This environment would provide an important opportunity for observation of best practices and comparison among different visa regimes.⁹⁰ Such an opportunity is not available under a nationally implemented immigration policy. A regime that allows for differentiation, where participation levels are different across — and even nonexistent in some — localities, would foster comparative research and provide a chance to obtain a clearer and more nuanced understanding of the costs and benefits of immigration. In addition, the possible implementation of high-variance policies at the local level should increase the overall quality of policies in the long term because “variance increases the probability of finding excellent policies.”⁹¹ Thus, a locally differentiated approach creates an opportunity to “learn[] through the experience of one jurisdiction without having to impose a high-variance policy on all jurisdictions.”⁹² While such an approach at the national level likely would face insurmountable opposition, applying high-variance policies at the local level — where specific plans might be easier to articulate and justify — could result in learning that leads to improved design and implementation of programs across the country over time.

This program would also provide a low-cost opportunity for local governments to encourage economic activity through entrepreneurial endeavors. The local government’s main functions in the program — making decisions about the potential viability of proposed businesses,

⁸⁸ Barron, *supra* note 86, at 2341.

⁸⁹ *Cf.* *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (“To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”). While Justice Brandeis made his “laboratories of democracy” argument with respect to states, the logic behind the argument also applies to localities. *See, e.g.*, Richard Briffault, *Home Rule for the Twenty-First Century*, 36 URB. LAW. 253, 259 (2004) (“[I]f the fifty states are laboratories for public policy formation, then surely the 3,000 counties and 15,000 municipalities provide logarithmically more opportunities for innovation, experimentation, and reform.”); Kathleen S. Morris, *The Case for Local Constitutional Enforcement*, 47 HARV. C.R.-C.L. L. REV. 1, 36 (2012) (“[C]ities, counties, and other local governments can be ‘laboratories,’ too.” (quoting *New State Ice*, 285 U.S. at 311) (Brandeis, J., dissenting)).

⁹⁰ *See* Barron, *supra* note 86, at 2336 (“[A] decentralized system can create beneficial opportunities for policy experimentation and generation in one jurisdiction that, once adopted, can shape the preferences of both higher-level institutions and neighboring jurisdictions.”).

⁹¹ Yair Listokin, *Learning Through Policy Variation*, 118 YALE L.J. 480, 484 (2008).

⁹² *Id.* at 552.

assessing the competence of the entrepreneurs proposing them, and possibly providing assistance to successful Entrepreneur Visa applicants by marshaling the resources of various stakeholders — entail a lower opportunity cost as compared to options such as deploying capital to develop specific sectors⁹³ or providing tax breaks to large corporations.⁹⁴ Thus, the proposed Entrepreneur Visa program offers local governments a reduced amount of risk. This advantage is particularly important considering that these local governments that would be eligible for the program already face budgetary challenges due to decreased economic activity.

Potential concerns about entrepreneurs — particularly non-high-skilled individuals — successfully managing new businesses could be addressed through assistance from the local government and other relevant stakeholders.⁹⁵ The role of local government could take many forms. Dallas, for example, has five Business Assistance Centers, which “assist new and small businesses and serve as a community resource for business information and business needs assessment.”⁹⁶ Another example is in the Atlanta area, where various organizations offer programs for entrepreneurs.⁹⁷ In addition, “nonprofit groups have increasingly taken on the task of encouraging small business development.”⁹⁸ The Aspen Institute’s Self Employment Assistance Program found more than 500 such programs across the United States in 2005,⁹⁹ with most programs focused on the provision of loans, training, or technical assistance.¹⁰⁰

The Pittsburgh Technology Council (PTC) offers another compelling example. The PTC pools resources to encourage investment in and growth of technology companies in the Pittsburgh area.¹⁰¹ The

⁹³ The consequences of a negative outcome from directly deploying capital are magnified by the greater amount of capital required. In contrast, auxiliary support of small businesses would likely involve lower costs and would spread costs across businesses in various sectors rather than betting on one particular sector.

⁹⁴ The proposed Entrepreneur Visa program has the potential to be more efficient than tax incentive programs designed to convince large corporations to move to an area: “[T]he more states give to businesses, the less they have available in the short term to spend on basic services, a calculation made more stark by the recession.” Louise Story, *Lines Blur as Texas Gives Industries a Bonanza*, N.Y. TIMES, Dec. 3, 2012, at A1.

⁹⁵ See, e.g., STALEY ET AL., *supra* note 53, at 76–77.

⁹⁶ STALEY ET AL., *supra* note 53, at 71.

⁹⁷ *Id.* at 74 (noting that the organizations offer various forms of business development assistance, educational programs, and financing to small business owners).

⁹⁸ MAGNUS LOFSTROM, PUB. POL’Y INST. OF CAL., *ENTREPRENEURSHIP AMONG CALIFORNIA’S LOW-SKILLED WORKERS* 8 (2010), available at http://www.ppic.org/content/pubs/report/R_410MLR.pdf.

⁹⁹ *Id.*

¹⁰⁰ See STALEY ET AL., *supra* note 53, at 60.

¹⁰¹ See *About Us*, PITTSBURGH TECH. COUNCIL, <http://www.pgtech.org/aboutus/about-our-region.aspx> (last visited May 10, 2013).

program provides companies with opportunities to build their networks, gain media attention, collaborate among participants, and partner formally with other organizations. The PTC also helps companies raise capital by exposing them to investors, providing support for designing a growth plan, and testing out ideas with mentors. In addition, the program helps companies save money by offering supplemental resources, publicizing the companies' work, providing training to employees, and giving companies the chance to share discounts.¹⁰² Given the nature of the PTC, the focus has been primarily on technology companies that are run by high-skilled entrepreneurs. But the fact that high-skilled entrepreneurs need assistance with managing technically complex businesses provides support for, rather than undermines, the idea that entrepreneurs with ordinary skills could benefit from — and should receive — assistance in their efforts to build less complicated businesses.

Another form of assistance to participating entrepreneurs would — like the Entrepreneur Visa program in general — involve federal-local cooperation. With thousands of federal government buildings across the United States categorized as either vacant or underutilized,¹⁰³ Entrepreneur Visa holders could take advantage of such space — plus vacant *local* government buildings — for a limited period of time to further develop their ideas and build up their products and services while paying little to no rent.¹⁰⁴ This initiative would present a low-cost and low-risk opportunity to support new businesses.¹⁰⁵ By concentrating businesses in one location, the initiative could encourage interaction between companies, provide a geographic locus for a set of

¹⁰² See *Why Join?*, PITTSBURGH TECH. COUNCIL, <http://www.pgtech.org/why-join/member-benefits/default.aspx> (last visited May 10, 2013).

¹⁰³ See U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-370T, FEDERAL REAL PROPERTY: THE GOVERNMENT FACES CHALLENGES TO DISPOSING OF UNNEEDED BUILDINGS 4 (2011) (statement of David J. Wise, Director, Physical Infrastructure Issues before the House Subcommittee on Economic Development, Public Buildings and Emergency Management), available at <http://www.gao.gov/assets/130/125472.pdf>.

¹⁰⁴ Precedent exists for using vacant government buildings for more productive purposes. For example, after hundreds of thousands of New York City housing units were abandoned during the 1970s, the city eventually converted these units into affordable housing under its "Ten Year Plan for Housing" and revitalized numerous neighborhoods in the process. See Furman Ctr. for Real Estate & Urban Policy, *Housing Policy in New York City: A Brief History* 2–4 (Furman Ctr. for Real Estate & Urban Policy, Working Paper No. 06-01, 2006), available at http://furmancenter.org/files/publications/AHistoryofHousingPolicycombined0601_000.pdf. Another example took place in a business context. Zappos, an online shoe retailer, moved its headquarters from Henderson, Nevada, to Las Vegas, Nevada, in order to occupy the recently vacated city hall. See Jennifer Medina, *Las Vegas Gets New City Hall, and a Mullet*, N.Y. TIMES, Dec. 27, 2010, at A9.

¹⁰⁵ The costs would need to be controlled since they could grow significantly with the use of a large number of buildings, the processing of applications, and the hiring of supervisors for each site. The government would also need to account for the potential liability associated with hosting such enterprises in public buildings.

targets for potential investors, and lead to heightened performance.¹⁰⁶ Transforming empty buildings into vibrant entrepreneurial centers could also have a positive impact on the neighborhoods where such spaces are located by increasing economic activity, safety, and cultural richness.¹⁰⁷

VI. KEY CONCERNS ABOUT THE PROPOSAL

A. *Concerns About the Burden on Participating Local Governments*

Of course, the burden on participating localities cannot be ignored. Most significantly, localities that are already struggling would be allocating resources toward an untested program while diverting those limited resources from the provision of education, healthcare, poverty relief, and job training, among other important public goods and services. But this program makes sense even in such a challenging context because immigrant workers have a long-term positive effect on the economy¹⁰⁸ and — perhaps more importantly — immigrating *entrepreneurs* (rather than employees) could have an immediate positive impact by creating jobs for native workers in the shorter term. Conversely, if the program does not succeed and proves to be a further drain on resources, the locality can end the program quite quickly.

Another question pertains to the local government's ability to assess accurately the viability of applicants' proposed businesses. Expecting government officials to be experts in such assessments would be unrealistic, but localities could utilize other resources, including small business experts and other relevant stakeholders, to develop mechanisms for attracting the best entrepreneurs to their areas. In contrast to other options for catalyzing local economic activity — such as supporting particular industries or providing tax breaks to a much smaller pool of larger businesses — spreading resources across a wide variety of Entrepreneur Visa holders would reduce the financial risk associated with the program.

In addition, local governments might be forced to share the costs associated with starting a business to avoid an unnecessarily large number of failures. Thus, local governments may need to marshal

¹⁰⁶ This heightened performance has been seen in other contexts, albeit in technology-focused environments. One example is MIT's Building 20, where a mix of groups "who knew little about one another's work," became "a legend of innovation, widely regarded as one of the most creative spaces in the world." Jonah Lehrer, *Groupthink: The Brainstorming Myth*, NEW YORKER, Jan. 30, 2012, at 22, 26.

¹⁰⁷ See, e.g., Medina, *supra* note 104 (noting that "[c]ity officials expect that" an influx of Zappos employees "will vastly improve the atmosphere in a place that is pockmarked with vacant storefronts and where locals still warn visitors to be careful at night").

¹⁰⁸ PERI, *supra* note 70, at 10.

nongovernmental resources, including outside investor capital, to help launch businesses. Costs could be moderated by the efforts of resident immigrants seeking to keep visa holders in the country — and hoping to be able to bring in additional immigrants through the Entrepreneur Visa program — and the efforts of other local stakeholders who understand the benefits of an infusion of new businesses in the locality. Such individuals could create a supportive environment — by connecting entrepreneurs to networks and other resources as well as offering guidance on how to manage a new enterprise — that decreases the likelihood of failure.

Another issue would be the risk of fraud, a risk that also affects the EB-5 program. That program has been extended until September 2015,¹⁰⁹ which demonstrates that it enjoys support from Congress and the Obama Administration. Nevertheless, the EB-5 program has been mired in corruption resulting in part from its reliance on third-party developers and middlemen rather than directly on the immigrant visa holder.¹¹⁰ While the Entrepreneur Visa program may pose less of a risk because it would cut out middlemen, it would still likely require supervision to guard against fraud and ensure accurate recordkeeping by the visa holder. To reduce costs, the federal government could employ a randomized auditing program whereby a certain percentage of the businesses in the program (or a minimum number of businesses in each locality) would be audited each year. Local governments could collect the data and the federal government could audit a certain portion on a randomized basis. This approach would mitigate the costs to the federal government compared to an audit of every business involved in the program. If a business is found to have overstated its results — in terms of financial performance or job creation, for example — the visa holder would face deportation.

B. Political Concerns

At a time when budgetary concerns represent a major issue that crosses party lines, any program that can catalyze economic activity might have strong support; nonetheless, some political issues may hin-

¹⁰⁹ See *USCIS Program Extension Alert*, U.S. CITIZENSHIP & IMMIGR. SERVICES, DEP'T OF HOMELAND SECURITY, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnnextoid=b117cc278d03a310VgnVCM100000082ca60aRCRD> (last updated Oct. 5, 2012).

¹¹⁰ See, e.g., Morrissey, *supra* note 28 (“The program has had its share of problems. . . . In some cases, a foreign investor would commit money with a promissory note, then never hand over the cash. There were also cases where middlemen would siphon off cash, leaving little for the developers. Other times, developers took the cash but never built the project.”). There have been some signs of improvement, however, regarding the problem of fraud. See *id.* (“The government has worked to clean up the program. Investors are now required to pay the full amount upfront and any fees to middlemen must be paid separately.”).

der the feasibility of the proposed Entrepreneur Visa program. For instance, the strongly local nature of this program would balkanize immigration policy, causing myriad differences that could lead to confusion. Furthermore, owners of existing businesses might lobby local officials to prevent the entrance of entrepreneurs as a protectionist tactic. Also, politicians in Washington would have to be willing to place a significant amount of trust in the local politicians making the bulk of the substantive decisions relating to the program. In addition, because immigrant employees' starting to work in a new area involves "adjustments [within the economy that] may take a few years to unfold fully,"¹¹¹ the likelihood of delayed benefits might make politicians averse to such a program. Lastly, politicians at all levels may face difficulties convincing their constituents of the worthiness of the program given that it dedicates resources to immigrant entrepreneurs at a time when many Americans in the relevant localities are out of work. Thus, politicians who support the program would need to communicate clearly and steadfastly the idea that immigrant businesses produce jobs and economic benefits to U.S. citizens.

VII. CONCLUSION

Current U.S. immigration policy is flawed in various ways.¹¹² While there is growing consensus in favor of structural reform,¹¹³ a piecemeal and more specifically targeted approach to immigration policy — including such items as the aforementioned EB-5 program and President Obama's recent decision to allow undocumented immigrants who arrived in the country as minors to remain and work in the United States¹¹⁴ — can also have a significant positive impact on the economy. An Entrepreneur Visa program could contribute to such a piecemeal approach.

The Entrepreneur Visa program proposed in this Note offers a compelling possibility for improving areas experiencing a reduced number of economic opportunities by taking advantage of an entrepreneurially active group. Given that previous forms of economic vi-

¹¹¹ PERI, *supra* note 70, at 4.

¹¹² See generally IMMIGRATION POL'Y CTR., *BREAKING DOWN THE PROBLEMS* (2009), available at http://immigrationpolicy.org/sites/default/files/docs/Problem_Paper_FINAL_102109_0.pdf; Bloomberg, *supra* note 3 ("[W]hile other nations are making powerful appeals to attract ambitious immigrants, the U.S. is . . . falling behind in the global competition for talent."); see also generally *Developments in the Law — Immigrant Rights & Immigration Enforcement*, 126 HARV. L. REV. 1565, 1583–1607 (2013).

¹¹³ See, e.g., *Immigration Reform: Washington Learns a New Language*, ECONOMIST, Feb. 2, 2013, at 21, 21.

¹¹⁴ Alejandro Mayorkas, *Deferred Action for Childhood Arrivals: Who Can Be Considered?*, WHITE HOUSE BLOG (Aug. 15, 2012, 11:55 AM), <http://www.whitehouse.gov/blog/2012/08/15/deferred-action-childhood-arrivals-who-can-be-considered>.

brancy are losing relevance in these locales, and that immigrants may have a higher tolerance for the risks associated with starting a new business¹¹⁵ as well as a higher willingness to live in these declining areas, this proposal offers a logical solution. At the same time, by giving the federal government the responsibility for addressing security concerns, the program would ensure a careful balancing of federal and local roles.

Many of the details of the Entrepreneur Visa program would require further refinement during the planning and even implementation phases. Some examples include shaping the scope of the struggling localities that would qualify, deciding the amount of emphasis that should be placed on lower-skilled immigrants, and defining a satisfactory effort to manage a business. In sum, much more work is needed to fully design and understand the potential net impact of this proposed program. Nonetheless, with many areas in the United States on a downward trend economically, and with the national economy struggling in recent years, the Entrepreneur Visa program could provide opportunities to create much-needed economic growth at the local level, with the added possibility of improving the economy on a national scale.

¹¹⁵ See Bloomberg, *supra* note 3.