

POLITICS & POLICY

'You're Fired — Now Train Your Replacement'

By IAN SMITH | April 28, 2015 8:00 AM

What could get self-proclaimed socialist Bernie Sanders and rock-ribbed Republican Jim Inhofe to agree? The two senators have teamed up in their support for an investigative enquiry into the billion-dollar utility Southern California Edison, which has been firing American tech workers and replacing them with lower-paid foreign workers brought here through the controversial H-1B visa program.

And now the first lawsuit has been filed in response to the H-1B visa fallout at SCE. The plaintiff, Save Jobs USA, is a group of former veteran employees at SCE who after their firing were forced to train the foreign workers due to replace them. Such treatment of American workers shouldn't come as a surprise considering that the corporation is also a **major contributor** to **MALDEF**, one of the biggest illegal-alien-advocacy groups in the country.

The development couldn't come at a worse time for Big Tech in general and Utah senator Orrin Hatch in particular. Hatch has been a big supporter of H-1Bs since they were created by Ted Kennedy's Immigration Act of 1990, and he recently introduced a bill that doubles H-1B allotments and (even in the words of pro-amnesty groups) creates a "wish list" for the trillion-dollar tech industry.

H-1B “high-tech” employment visa, but on the related H-4 visa that applies to the *wives* of H-1B holders. A Department of Homeland Security rule published in the Federal Register in February purports to allow H-4 holders the right to work in the country. According to DHS estimates, 179,600 of these work permits will be doled out in the first year alone, with 55,000 more going out in subsequent years. Also according to the rule, DHS has given itself the option of *expanding* the program to other groups in future. The lawsuit asserts basically what H-1B expert Norm Matloff **said** recently, that the new H-4 visa rule is yet another example of U.S. Citizen and Immigration Services “taking the law into their own hands.”

If the court finds that DHS has abused its power in awarding the foreign spouses with work permits, many of the 85,000 H-1B holders who every year enter the middle and higher end of the labor market would probably have fewer incentives to leave their homelands in the first place. As a result, India wouldn't suffer a “**brain drain**” and America wouldn't suffer an “**internal brain drain**” of Americans out of scientific and technical fields. In other words, with the exclusion of **short-sighted corporate managers** such as those at SCE, everybody would win.

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A member of the group filing this week's suit, Julie Gutierrez, had been working as a computer-systems analyst at SCE for more than 20 years. Last summer, upper management notified her that she and hundreds of her colleagues would be replaced by H-1B “high tech” workers sourced by Tata Consultancy Services, an American subsidiary of India's largest conglomerate, **Tata Group**. Like other displaced SCE employees recently **profiled** by the *Los Angeles Times*, Gutierrez and her colleagues are technicians who do not necessarily possess the “highly specialized knowledge” that is supposed to be the standard for the H-1B visa so

costs.

SCE informed Gutierrez she was going to be let go, and then added that she'd have to stay on and train the worker brought in from overseas to replace her. Accept indignity on top of displacement, they basically ordered, or lose your severance and unemployment benefits. Gutierrez was required to spend an additional six weeks to train her replacement; in February SCE finally gave her the boot. (Other SCE employees were reportedly forced to **sign gag orders** blocking them from criticizing the company in public.) According to her group's complaint, she is still jobless and is currently competing against H-1B and H-4 workers in the computer job market.

The complaint against DHS revolves around two functions of the new visa rule. Besides creating a new category of competitors against American workers, the H-4 rule states: "A primary purpose of this rule is to help U.S. businesses *retain* the H-1B non-immigrants" (emphasis added). In other words, the rule works to draw in potential H-1B workers from abroad (and who are used to far lower salaries and living standards) while providing work permits to brand-new competitors (their potentially high-skilled spouses) who will directly compete with people like Julie Gutierrez. According to the complaint, advertisements for H-4 visa holders are already popping up on engineering job boards online.

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Among the legal claims is that the authority to create work permits under the H-4 visa cannot be found in the Immigration and Nationality Act or elsewhere. But the plaintiffs say that even if a statutory basis could be found, DHS acted “arbitrarily and capriciously” when it concluded that the rule would have only “minimal labor market impacts.” As mentioned, DHS has admitted that the program will hand out nearly 200,000 work permits to new foreign job competitors in the first year, with a further 55,000 every year afterward. This alone shows that DHS’s “finding” that American workers won’t be affected was merely conjecture.

Elsewhere, Save Jobs USA claims that the Department of Labor failed to certify that the new visa rule won’t “adversely affect wages and working conditions” of similarly employed American workers — that such certifications exist will probably surprise those workers in immigrant-heavy industries who have seen flat-line wages for decades. By contrast, many foreign-visa supporters believe that tech companies must interview Americans first before tapping the pool of H-1B workers; however, there is **no such requirement** in the law. One expert **testified** before Congress last month that “employers can easily hire an H-1B worker at wages far below what an American worker is paid.”

The H-4 and H-1B programs, like most employment visas, confer benefits to other country’s citizens at the expense of American workers. It’s a corporate subsidy paid for by the middle class and everyone from Senator Sanders to Senator Inhofe now seems to agree.

As the late Democratic senator Eugene McCarthy warned in 1992, right after the creation of the H-1B program, we cannot let America become “**a colony of the world.**” For the members of Save Jobs USA and other workers like them, this

waves that banner will pull in a new and growing constituency that's begging to be heard: the displaced American worker.

— *Ian Smith is an attorney in Washington, D.C.*



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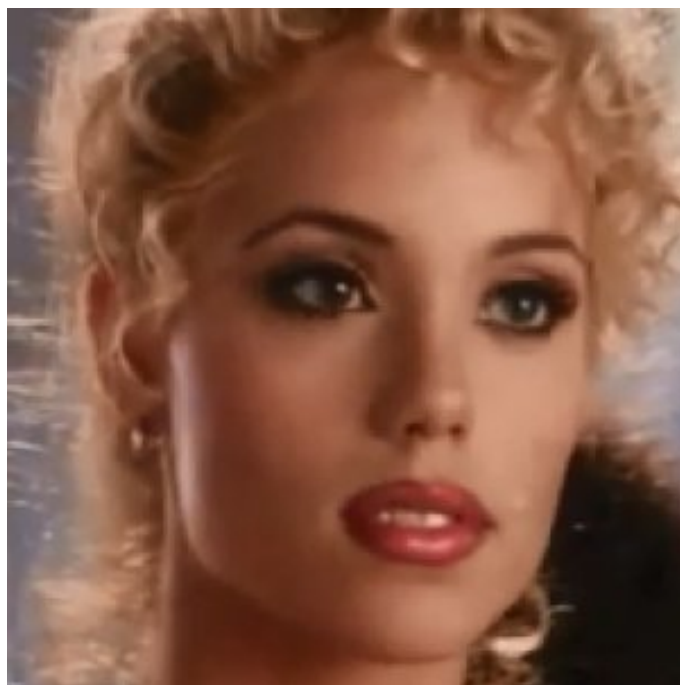
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