NATIONAL VENTURE CAPITAL ASSOCIATION
Funding innovation. Empowering entrepreneurs.

October 13, 2016

VIA www.regulations.gov

The Honorable Jeh Johnson
Secretary of Homeland Security
Washington, DC 20528

RE: DHS Docket No. USCIS-2015-0006; *International Entrepreneur Rule*

Dear Secretary Johnson,

On behalf of our nation's venture capital investors and the entrepreneurs they partner with, the National Venture Capital Association (NVCA)[1] appreciates the opportunity to comment on the *International Entrepreneur Rule* and thanks the Department of Homeland Security (DHS) for its attention to this critical proposal. The *International Entrepreneur Rule* will accelerate entrepreneurship and job creation by allowing talented startup founders to build successful enterprises in the United States, rather than overseas.

Venture capital and its impact on U.S. economic growth

Venture capitalists invest in and partner with startups to create fast-growing and thriving enterprises with breakthrough ideas. Venture capitalists invest anywhere from the very early stage, where a startup has little more than an idea and a couple of people, to growth-stage startups, where there is some revenue coming in and the focus is on effectively scaling the business. Venture capital (VC) is in search of 'the next big thing,' whether in software, biotechnology, cybersecurity, medical devices, fintech, or many other areas. There is often a misconception that venture capitalists are like any other investment fund manager and simply write checks to entrepreneurs. The fact is successful venture capitalists don't *pick* winners, they

[1]Venture capitalists are committed to funding America's most innovative entrepreneurs, working with them to transform breakthrough ideas into emerging growth companies that drive U.S. job creation and economic growth. As the voice of the U.S. venture capital community, the National Venture Capital Association empowers its members and the entrepreneurs they fund by advocating for policies that encourage innovation and reward long-term investment. As the venture community's preeminent trade association, NVCA serves as the definitive resource for venture capital data and unites its members through a full range of professional services. For more information about the NVCA, please visit www.nvca.org.

build winners by partnering with entrepreneurs to develop and scale a successful enterprise. This often means a venture capitalist will, among other things, sit on the board of a startup, recruit talent, share their professional network, facilitate business opportunities, provide strategic advice and counsel, and assist with an IPO or M&A transaction.

Venture capital-backed startups have and continue to make incredible contributions to the U.S economy. A recent study from researchers at Stanford University and the University of British Columbia found that 42 percent of U.S. companies that have gone public since 1974 can trace their roots to venture capital.[2] These VC-backed companies account for 85 percent of all research and development spending of companies that went public after 1974. On July 29, 2016, venture capital reached a milestone when the top 5 U.S. companies by market capitalization—Alphabet, Amazon, Apple, Facebook, and Microsoft—were all venture backed. While venture's past is impressive, what is really exciting is what lies ahead as the industry partners with entrepreneurs to identify solutions to our nation's deadliest diseases, technological challenges, and security threats.

Impact of entrepreneurs to U.S. economic growth

The United States is the envy of the world when it comes to startups and entrepreneurship. This is due, in significant part, to the ingenuity and creativity of immigrant entrepreneurs who choose to build and grow their businesses in the United States. Venture-backed companies with at least one immigrant founder include iconic American brands like eBay, Facebook, Google, Intel, LinkedIn, Zipcar, and Tesla Motors.

A 2013 NVCA study found that fully one-third of U.S. venture-backed companies that went public between 2006 and 2012 had at least one immigrant founder.[3] More recently, the National Foundation for American Policy found that "[i]mmigrants have started more than half (44 of 87) of America's startup companies valued at $1 billion dollars or more."[4] These so-called "unicorns" are driving innovation in various sectors. A recent *Harvard Business Review* piece reveals that while "[i]mmigrants constitute 15% of the general U.S. workforce. . .they account for around a quarter of U.S. entrepreneurs. . .This is comparable to what we see in innovation and patent filings, where immigrants also account for about a quarter of U.S.

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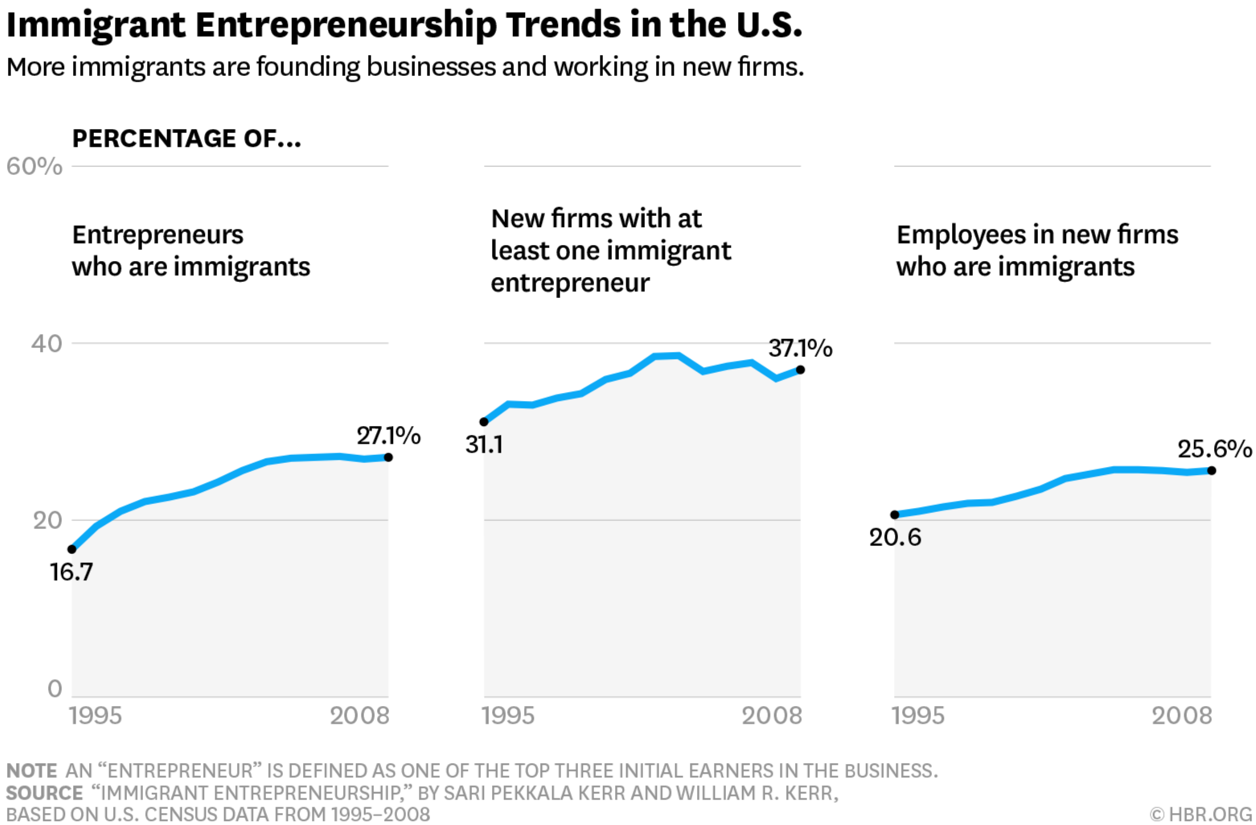
[2] Will Gornall and Illya Strebulaev, *The Economic Impact of Venture Capital: Evidence from Public Companies* (November 1, 2015), Stanford University Graduate School of Business Research Paper No. 15-55, *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2681841.

[3] National Venture Capital Association and National Foundation for American Policy, *American Made 2.0: How Immigrant Entrepreneurs Continue to Contribute to the U.S. Economy* ("American Made 2.0") at 4, *available at* http://nvca.org/?ddownload=668.

[4] Stuart Anderson, National Foundation for American Policy, *Immigrants and Billion Dollar Startups*, *available at* http://nfap.com/wp-content/uploads/2016/03/Immigrants-and-Billion-Dollar-Startups.NFAP-Policy-Brief.March-2016.pdf.

inventors."[5] Within VC-backed firms, 31% of founders are immigrant entrepreneurs.[6] In addition, immigrants startups "that survive do grow at a faster rate in terms of employment, payroll, and establishments for the next six years" than startups founded by natives.[7]



<u>The *International Entrepreneur Rule* and areas that should be sustained in a final rule</u>

The *International Entrepreneur Rule* would establish criteria for the use of parole for startup entrepreneurs with significant capital financing "whose entry into the United States would provide a significant public benefit through the substantial and demonstrated potential for rapid growth and job creation."[8] DHS believes the rule would

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[5] Sari Pekkala Kerr and William Kerr, *Immigrants Play a Disproportionate Role in American Entrepreneurship*, (October 3, 2016), Harvard Business Review, *available at* https://hbr.org/2016/10/immigrants-play-a-disproportionate-role-in-american-entrepreneurship?utm_source=twitter&utm_medium=social&utm_campaign=harvardbiz.

[6] *Id.*

[7] *Id.*

[8] Department of Homeland Security, *International Entrepreneur Rule*, DHS Docket No. USCIS-2015-0006, (hereinafter "International Entrepreneur Rule"), *available at* https://www.uscis.gov/sites/default/files/USCIS/Laws/Articles/FR_2016-20663_793250_OFR.pdf.

> encourage foreign entrepreneurs to create and develop start-up entities with high growth potential in the United States, which are expected to facilitate research development in the country, create jobs for U.S. workers, and otherwise benefit the U.S economy through increased business activity, innovation and dynamism.[9]

To be considered for a discretionary grant of parole under the proposed rule, an individual must demonstrate that he or she: (1) has recently formed a startup in the U.S. and has substantial potential for rapid growth and job creation; (2) is an entrepreneur of the startup and is well-positioned to advance the entity's business; and (3) can validate the entity's substantial potential for rapid growth and job creation, such as through significant investment from U.S. investors (i.e. $345,000 from qualified investors or government grants totaling $100,000) with established records of successful investments.

As constructed, the *International Entrepreneur Rule* will ensure impressive immigrant entrepreneurs may remain in the U.S. to grow their business. There are, however, important aspects of the rule that are important to sustain in a final rule.

•**<u>Recognition of investor syndicates:</u>** The rule states that a qualifying investment may come "from *one or more* qualified U.S. investors."[10] NVCA commends DHS for its recognition that it is often multiple VC firms—termed 'syndicates'—that collaborate to support an entrepreneur during a financing round. Many talented entrepreneurs would not meet the investment threshold if the qualifying investment amount needed to come from a single investor.

•**<u>Three entrepreneurs may qualify per startup:</u>** The rule specifies that "no more than three entrepreneurs may receive parole with respect to any one qualifying entity"[11] and that each entrepreneur must hold at least a 15 percent ownership interest in the entity at the time of adjudication.[12] Allowing multiple co-founders to qualify under the same startup recognizes an important reality of the entrepreneurial ecosystem, as startups frequently bring together multiple individuals to build a successful company. To take a famous example, it was Bill Hewlett and Dave Packard together who teamed up in a Palo Alto, California garage to form Hewlett Packard, the eventual computer powerhouse.

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[9] *Id.* at 8.

[10] *Id.* at 42 (Emphasis added).

[11] *Id.*

[12] *Id.* at 9-10.

•**Flexibility in meeting capital requirement:** In the absence of receiving $345,000 in investment or the requisite government grant, DHS contemplates an entrepreneur may qualify for parole if he or she "partially meets one or more of the [funding criteria and] provides additional reliable and compelling evidence that his or her entry would provide a significant public benefit to the United States."[13] This flexibility is important, as not all startups have the same capital needs and a new enterprise could be poised for rapid growth and job creation despite raising less than the qualified investment threshold.

•**Investment, revenue *or* job creation as a metric for re-parole:** To qualify for three years of re-parole, an entrepreneur may demonstrate "continued potential for rapid growth and job creation" through additional substantial investments, revenue generation, or job creation.[14] It is imperative that an entrepreneur seeking re-parole be given multiple avenues to demonstrate the continued potential of an enterprise. If, for example, an entrepreneur was required to demonstrate revenue generation within two years of parole then many VC-backed startups would not qualify as fast-growing, young companies are often pre-revenue for many years as a business is scaled.

Areas of improvement for the *International Entrepreneur Rule*

The *International Entrepreneur Rule* can be considerably improved with several changes that reflect the entrepreneurial ecosystem.

•Longer initial parole period: In its final rule, DHS should establish an initial parole period of *three* years, with possible re-parole of *two* years, rather than the proposed initial time period of two years, with a possible extension of three years. By establishing a more generous time period on the front end, venture capitalists will have more confidence that paroled entrepreneurs will remain in the country during the critical initial period of growth and not be as distracted with uncertain immigration status.

•Serial entrepreneurs: As drafted, the *International Entrepreneur Rule* envisions that an entrepreneur must remain at the same startup throughout the parole and re-parole time period. In its final rule, DHS should account for the scenario when an entrepreneur qualifies for initial parole then begins *another* startup during the initial parole period. That individual ought to be able to remain in the country under parole and qualify for re-parole if his or her second startup meets the qualifications of parole and re-parole, respectively.

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[13] *Id.* at 11.

[14] *Id.* at 14.

•**U.S. citizens or lawful permanent resident:** The rule specifies that "[i]f the investor is an organization, the investor would need to be. . .majority owned and controlled, directly or indirectly, by U.S. citizens or lawful permanent residents."[15] DHS should clarify that for the purposes of satisfying this test, DHS will examine whether a majority of the general partners of a venture capital *firm* (who make all investment decisions) are U.S. citizens or lawful permanent residents and not whether the limited partners of a venture capital *fund* (who do not make investment decisions) are U.S. citizens or lawful permanent residents. It is immaterial whether a foreign individual or entity invests in a particular VC fund as that individual or entity has no say over whether a VC firm invests in the startup of a given entrepreneur.

•**Established record of success:** DHS proposes that a qualifying investor has "an established record of successful investments in start-up entities [and] such a record would include, during the 5-year period prior to the date of filing of the parole application, 1 or more investments in other start-up entities in at least 3 separate calendar years in exchange for equity or convertible debt comprising a total of no less than $1,000,000."[16] NVCA appreciates the sentiment behind this limitation, but encourages DHS to adopt a flexible approach to determining what constitutes an established record of successful investments. For example, one could imagine a newly established venture capital firm that is composed of seasoned venture capitalists who were all successful in building startups at *other* VC firms. If that new firm invests in an entrepreneur who applies for parole, DHS should look at the totality of experience of the partners of the firm or lead partner on the investment, and not merely the limited success of the new firm.

•**15% ownership stake:** DHS proposes that up to three entrepreneurs may qualify for parole per startup and that each founder must own 15% or more of the startup to qualify for parole or 10% or more for re-parole.[17] DHS acknowledges that "entrepreneurs may possess larger equity stakes in the start-up entity at the time of formation [but that this equity stake] may be diluted significantly during financing rounds, or by the provision of equity compensation to key personnel within the entity."[18] Indeed, it is frequently the case that as a startup grows and goes through financings, increasing portions of the company are sold to venture and other investors. According to a 2015 survey that included compensation data for 236 founders, the median total percentage of fully diluted ownership for a founder is 12%.[19] The fact that VC is investing in the startup—and therefore diluting the share of the company owned by its founders—is itself a sign the startup is prospering or has potential to do so. This dilution is not, however, a sign that the important *role* of a founder is diminished; quite the contrary, as many

[15] *Id.* at 45.

[16] *Id.*

[17] *Id.* at 9, 31.

[18] *Id.* at 38-39.

[19] 2015 Private Company Compensation Report conducted by J. Thelander Consulting.

founders maintain leadership roles in a startup as the enterprise grows, even as their ownership percentage is decreasing. Therefore, we encourage DHS to adopt a flexible approach to ownership thresholds to account for the possibility that a startup with multiple founders may not meet the threshold simply because it has been successful in raising capital.

The *International Entrepreneur Rule* and economic growth

As successful as immigrant entrepreneurs have been, their true potential has not been realized because of the lack of a reliable immigration category, such as a Startup Visa,[20] which is strongly supported by NVCA. In the absence of a Startup Visa, the *International Entrepreneur Rule* is needed to "correct the flaw in current U.S. immigration law that generally prevents foreign-born entrepreneurs from staying in the United States unless they received permanent residence through another route, such as family or employer sponsorship."[21] This must change if we are to jump start our economy and return to historical GDP growth rates. Encouraging entrepreneurship is a trusted method for economic growth, with data demonstrating that "[n]ew businesses account for nearly all new job creation."[22]

We cannot delay in welcoming immigrant entrepreneurs who will employ our citizenry and raise our standard of living, as global entrepreneurs are being heavily recruited by other countries that want to create entrepreneurial ecosystems of their own. Countries as diverse as Australia, China, Germany, and Singapore are supporting entrepreneurs through pro-startup public policy. As a result, the United States' share of global venture capital investment has fallen from approximately 90% in the early 1990s to 54% in 2015.[23] China has attracted nearly $20 billion in venture investment this year alone and is now the second largest destination in the world for venture capital. The European Union received $12.8 billion in venture investment last year. And in three of the last four years, at least half of the top ten largest venture investments in the world have occurred *outside* the U.S.[24]

The *International Entrepreneur Rule* would help reverse these alarming trends by attracting the world's greatest entrepreneurs back to the United States where they can build companies that will revolutionize industries and ensure our economy is dynamic well into the future.

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[20] *See* S. 744 (Subtitle H), *Border Security, Economic Opportunity, and Immigration Modernization Act* (113th Congress); *See also* S. 181 (Section 4), *Startup Act* (114th Congress).

[21] *See* American Made 2.0 at 22.

[22] Kaufman Foundation, *Entrepreneurship Policy Digest* (September 14, 2015), *available at* http://www.kauffman.org/~/media/kauffman_org/resources/2014/entrepreneurship%20policy%20digest/september%202014/entrepreneurship_policy_digest_september2014.pdf.

[23] Data compiled jointly by Thompson Reuters and the National Venture Capital Association.

[24] *Id.*

The entrepreneurial ecosystem thanks you for your leadership on this important issue.

Sincerely,

Bobby Franklin
President and CEO