

NOTE

IMMIGRATION AND ESPORTS:
THE ISSUE OF LEGITIMACY AND ITS IMPACT ON THE
UNITED STATES VISA PROCESS

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I. INTRODUCTION

At the beginning of 2015, William “Leffen” Hjelte was on his way to becoming the greatest *Super Smash Bros.* player in the world.¹ He had just won B.E.A.S.T. 5, one of the game’s most prestigious Esports tournaments.² After his victory at B.E.A.S.T. 5, Leffen subsequently achieved status as the third ranked *Super Smash Bros.* player internationally.³ Leffen’s goal was to become

1. See Ryan Burden, *Super Smash Bros. Player Leffen Denied Visa*, COMICS GAMING MAG. (Apr. 29, 2016), <https://www.cgmagonline.com/2016/04/29/super-smash-bros-player-leffen-denied-visa/> [https://perma.cc/N6AN-CVZP]; Paul Tamburro, *eSports Player Denied Visa as “Super Smash Bros. Melee is Not a Legitimate Sport”*, MANDATORY (Apr. 29, 2016), <https://www.mandatory.com/culture/983369-esports-player-denied-visa-super-smash-bros-melee-not-legitimate-sport> [https://perma.cc/P96P-NWD8] (noting that Leffen was ranked as the number three player in the world).

2. See Burden, *supra* note 1; Daniel “Tafokints” Lee, *Leffen’s 5 Most Memorable Matches*, RED BULL (Oct. 12, 2016), <https://www.redbull.com/us-en/5-most-memorable-leffen-matches> [https://perma.cc/T2FF-3ZJJ].

3. See Burden, *supra* note 1; Tamburro, *supra* note 1.

the “God Slayer” by beating The Five Gods, a group of players that had dominated the *Super Smash Bros.* scene for the past six years.⁴ By all accounts, Leffen was about to do just that.

However, a twist of fate would derail Leffen’s career and throw him out of the race for champion of *Super Smash Bros.*⁵ It was not a sudden falloff in Leffen’s performance or external distractions that kept him from fulfilling his goal.⁶ Rather, it was something that he could not control: his lack of status as an “athlete” under the United States’ P-1A visa requirement.⁷

On his way to the major US *Super Smash Bros.* tournament, The Big House 5, Leffen, a Swedish resident, was deported and his visa request was denied.⁸ Later, Leffen released a video reading aloud the denial letter he received from the United States Citizenship and Immigration Services (“USCIS”).⁹ Specifically, Leffen revealed that the USCIS does not consider *Super Smash Bros.* a legitimate sport for purposes of the P-1A visa.¹⁰

This denial was detrimental to Leffen’s career.¹¹ Forced to play primarily in Europe for more than a year, Leffen had virtually no access to US *Super Smash Bros.* competitions that often featured the best players, and he lost out on major tournament prize money.¹² Moreover, Leffen was not allowed to train with US-based

4. See Craig Alphonse, *The Resurgence of the Godslayer*, RED BULL (Apr. 28, 2016), <https://www.redbull.com/us-en/the-resurgence-of-the-godslayer> [<https://perma.cc/69PG-SEG4>]; Burden, *supra* note 1.

5. See Steven Jurek, *White House Responds to ‘Free Leffen’ Petition, Won’t Make any Changes to Esports Visa Policies*, DOT ESPORTS (June 28, 2016), <https://dotesports.com/general/news/white-house-free-leffen-petition-response-3523> [<https://perma.cc/47LR-G4EF>]; John “Zidiane” Silva, *White House Responds to #FreeLeffen Petition: ‘Decline[s] to Address’ Leffen’s Case*, SHORYUKEN (June 28, 2016), <http://shoryuken.com/2016/06/28/white-house-responds-to-freeleffen-petition-declines-to-address-leffens-case/> [<https://perma.cc/GDC6-GJ3P>].

6. See Jurek, *supra* note 5; Silva, *supra* note 5.

7. See Jurek, *supra* note 5; Silva, *supra* note 5.

8. See Burden, *supra* note 1; Tamburro, *supra* note 1.

9. Red Bull Gaming, *Cultivation Leffen: Resurrection – The Rejection*, YOUTUBE (Apr. 28, 2016), https://www.youtube.com/watch?v=MdVejJOYp-M&feature=emb_logo [<https://perma.cc/CXF2-AUCY>].

10. *Id.*

11. See Burden, *supra* note 1; Tamburro *supra* note 1.

12. See Burden, *supra* note 1; *Genesis 3 (Super Smash Bros Melee Singles): Tournament Results*, ESPORTS EARNINGS, <https://www.esportsearnings.com/tournaments/16458-genesis-3-ssbm-singles> [<https://perma.cc/4LR6-K3NP>] (last visited Dec. 3, 2019) (describing that the first, second, and third place players in Genesis 3, a major Esports

Super Smash Bros. players who comprise a majority of the top players in the world.¹³ Unable to practice with the world's best players, Leffen's skill level deteriorated and he was no longer the caliber of player that he was prior to his visa denial.¹⁴ As Leffen would later describe: "[i]t felt like all of your heart, hopes[,] and dreams were ripped right out of you, constantly . . ." ¹⁵

Leffen's struggles reflect issues that foreign Esports players face when trying to compete in the United States.¹⁶ Specifically, Leffen's situation embodies the inconsistency and unpredictability of the US visa system as it pertains to admitting Esports players into the United States for competition.¹⁷ This Note will explain the source of this inconsistency and offer solutions to help ease the visa burden for Esports athletes. Specifically, this Note presents arguments that Esports are legitimate "sports" and Esports players are consequently "athletes" that should receive more consistent, favorable results when applying for P-1A visas. Additionally, this Note suggests certain mechanisms that the US Esports industry may utilize to help athletes qualify for P-1A visas in the future.

Part II provides comprehensive background information on the Esports industry and introduces visa options available to Esports players, namely the P-1A visa. Part III discusses the issue of Esports legitimacy in the United States and how that impacts the US visa process, and it also analyzes how other countries have addressed Esports legitimacy. Part IV argues that Esports are legitimate sports for the purposes of the P-1A visa. Part V delineates additional initiatives that may increase the legitimacy of Esports to help players more reliably obtain P-1A visas. Part VI concludes by summarizing the arguments in this Note, namely that the USCIS should streamline the visa process by allowing Esports

tournament that Leffen missed due to visa denial, won US\$10,940, \$4,376, and \$2,188 respectively).

13. See Burden, *supra* note 1; Tamburro, *supra* note 1.

14. See Burden, *supra* note 1; Tamburro, *supra* note 1.

15. Brian Funes, *Leffen Finally Has a Visa – Now What?*, RED BULL (Oct. 6, 2016), <https://www.redbull.com/us-en/leffen-on-his-visa-approval-and-plans-moving-forward> [<https://perma.cc/9S4Y-6V59>].

16. See Bridget A.J. Whan Tong, *A New Player has Entered the Game: Immigration Reform for Esports Players*, 24 JEFFREY S. MOORAD SPORTS L.J. 351, 369-86 (2017).

17. See *id.* at 369-86.

players to qualify for P-1A visas on a more consistent basis because Esports are legitimate sports.

II. THE RISE OF ESPORTS AND THE VISA CONNUNDRUM

A. A Primer on the Esports Industry

Esports (or “electronic sports”) are a form of professional video game playing.¹⁸ Players compete against each other in various video games in front of live crowds across the world.¹⁹ In most Esports events, teams, backed by corporate sponsors, compete for prize pools as part of a league or tournament.²⁰ In addition to live events, the competitions are also broadcasted on streaming services such as Twitch, YouTube, and WatchESPN.²¹ These broadcasts are known as “shoutcasts,” and they are emblematic of traditional sports: there are play-by-play announcers who describe the gameplay in real time, color commentators who provide background details and insight, player interviews, and replay and strategy analysts.²²

1. The Games

With over one hundred million active users, *League of Legends* is the most popular Esports game in the world.²³ Like many of the most prominent Esports games, *League of Legends* is a Multiplayer Online Battle Arena (“MOBA”).²⁴ MOBAs are character-based games in which teams of five or six players use strategy to coordinate unique character abilities to destroy or gain control of

18. See Jacqueline Martinelli, *The Challenges of Implementing a Governing Body for Regulating ESports*, 26 U. MIAMI INT’L & COMP. L. REV. 499, 502 (2019).

19. See *id.* at 502-05.

20. See Laura L. Chao, “You Must Construct Additional Pylons”: *Building A Better Framework for Esports Governance*, 86 FORDHAM L. REV. 737, 739 (2017).

21. See Martinelli, *supra* note 18, at 502-03.

22. See Tong, *supra* note 16, at 356.

23. See *id.* at 361.

24. *Id.* at 361.

an objective, which is usually defended by the other team.²⁵ Other popular MOBAs include *Overwatch* and *DOTA 2*.²⁶

In addition to MOBAs, the First-Person Shooter (“FPS”) genre is also very popular in Esports.²⁷ FPSs are games in which players control a character that primarily shoots guns or uses melee weapons or explosives to eliminate the other characters and complete objectives, such as detonating bombs, to win matches.²⁸ These games are played from the “first-person” perspective, where the player sees the action through the eyes of the character they are controlling.²⁹ *Counter Strike: Global Offensive* (“CS:GO”) and *Call of Duty* are some of the most popular FPS games in Esports.³⁰

Additionally, the Battle Royale game type has gained considerable popularity in Esports.³¹ Battle Royales are shooting games that pit teams or individuals against each other in a fight to be the last player(s) standing. Each game has a ring that shrinks over the course of the match and damages players outside of its boundaries, forcing players closer together to engage in fights towards the end of the match.³² Arguably the most popular Battle Royale game, *Fortnite*, has become a cultural phenomenon.³³ The 2019 *Fortnite* World Cup, held in the Arthur Ashe tennis stadium in Queens, New York, drew over two million streamers between Twitch and YouTube, and the game is even played by a number of celebrities outside of Esports.³⁴

25. See Kyle Kenny, *How Visa Issues Combined with Recent Franchising Agreements Effect Current Esports Players and the Future Landscape of Esports*, PENN. ST. J. L. & INT’L AFF. (Oct. 30, 2018), <https://sites.psu.edu/jlia/1256-2/> [<https://perma.cc/PJ82-P5WW>].

26. See *id.*

27. See Tong, *supra* note 16, at 362-63.

28. See *id.* at 363.

29. See *id.* at 351.

30. See Martinelli, *supra* note 18, at 502.

31. See Darren Allan, *Well-Known Battlegrounds: The Rise of Battle Royale Games*, TECHRADAR (Mar. 20, 2019), <https://www.techradar.com/news/well-known-battlegrounds-the-rise-of-battle-royale-games> [<https://perma.cc/9M7Q-LJGV>]; Phil Hornshaw, *The History of Battle Royale: From Mod to Worldwide Phenomenon: From PUBG to Apex Legends, This is how Battle Royale Happened*, DIGITAL TRENDS (Apr. 10, 2019), <https://www.digitaltrends.com/gaming/history-of-battle-royale-games> [<https://perma.cc/DXX5-CXK8>].

32. See Allan, *supra* note 31; Hornshaw, *supra* note 31.

33. See Allan, *supra* note 31; Hornshaw, *supra* note 31.

34. See Justin Kirkland, *10 Celebrities who play Fortnite, Ranked*, ESQUIRE (May 11, 2018), <https://www.esquire.com/entertainment/g20139550/celebrities-playing->

Fighting and sports games are also a staple of the Esports scene.³⁵ Fighting games have their own Esports tournament, known as the Evo Championship.³⁶ At Evo 2019, 279,000 viewers tuned in to watch the *Super Smash Bros. Ultimate* final.³⁷ Similarly, the soccer game *FIFA* has enjoyed considerable success as the world's premier sports game, which has prompted the development of profitable tournaments with many participants.³⁸ For example, *FIFA's* 2018 championship included more than six million players competing for a US \$400,000 prize pool.³⁹

2. The Industry – Financing and Franchising

The advent of streaming has made competitive videogaming easily accessible for consumers and provided an infrastructure in which Esports can flourish.⁴⁰ Indeed, it is expected that in 2019, 30.3 million people in the United States will watch an Esports event at least once a month.⁴¹ The 2017 *League of Legends* world

fortnite/ [https://perma.cc/G6AD-LAB]; Todd Spangler, *Fortnite World Cup Finals 2019 Draws Over 2 Million Live Viewers*, VARIETY (July 29, 2019), <https://variety.com/2019/digital/news/fortnite-world-cup-finals-2019-live-viewers-championship-1203282771/> [https://perma.cc/T8NJ-NKXV];

35. See Mel Hawthorne, *Top 10 Competitive Fighting Games you Need to Follow*, ESPORTS.NET (Jan. 1, 2019), <https://www.esports.net/news/fighting-games/top-10-competitive-fighting-games/> [https://perma.cc/6SKA-ZKCL]; Trent Murray, *An Introduction to Watching Fighting Games as Esports*, ESPORTS OBSERVER (Feb. 26, 2018), <https://esportsoobserver.com/introduction-fighting-games-esports/> [https://perma.cc/M2MK-WUBX].

36. See *Evo 2019 World Finals*, AXS, <https://www.axs.com/artists/1103142/evo-2019-world-finals-tickets> [https://perma.cc/SQ3F-WXB9] (last visited Oct. 8, 2019); Hawthorne, *supra* note 35.

37. See Dexter Tan Guan Hao, *Super Smash Bros. Ultimate sets Evo Viewership Record*, DOT SPORTS (Aug. 5, 2019, 5:00 AM), <https://dotesports.com/fgc/news/smash-bros-ultimate-sets-evo-viewership-record> [https://perma.cc/PB5D-C7T6]; Sherif Saed, *Super Smash Bros. Ultimate Breaks Evo 2019 Viewership Records*, VG 24/7 (Aug. 5, 2019, 1:55 PM), <https://www.vg247.com/2019/08/05/super-smash-bros-ultimate-new-viewership-records-evo-2019/> [https://perma.cc/8CA3-NR97].

38. See John T. Holden, Marc Edelman, & Thomas Baker, *A Short Treatise on Esports and the Law: How America Regulates Its Next National Pastime*, 2020 U. ILL. L. REV., 19 (forthcoming 2020)

39. *Id.*

40. See Martinelli, *supra* note 18, at 502-03.

41. See Douglas Clark, *US Esports ad Revenues will Grow 25% in 2019*, EMARKETER (Mar. 14, 2019), <https://www.emarketer.com/newsroom/index.php/us-esports-ad-revenues-will-grow-25-in-2019/> [https://perma.cc/XGL4-EVP9]; Hilary Russ, *U.S. Esports Advertising Revenue to top \$200 Million by 2020: Report*, REUTERS (Mar. 14, 2019, 6:13 AM),

championship drew 106 million viewers, which was more than the 103.4 million viewers that watched the 2018 Super Bowl.⁴² Moreover, the 2018 *DOTA 2* championship audience was larger than the individual audiences for the Tour De France, Wimbledon, Daytona 500, and US Open viewership.⁴³

This level of exposure has prompted investors to claim their stake in Esports.⁴⁴ For example, companies such as Coca-Cola, Amazon, McDonalds, Red Bull, and Intel have partnered with and sponsored Esports events and teams.⁴⁵ Moreover, top-rank investors—including Robert Kraft, Magic Johnson, and Rick Fox—now own Esports teams.⁴⁶ With this degree of financing and advertisement revenue, Esports is expected to become a US\$1.1 billion industry in 2019, and the United States is predicted to share in the US\$409 million revenue that North America is anticipated to generate, which is thirty-seven percent globally.⁴⁷

Esports players are typically salaried by game developers and their respective teams.⁴⁸ While a career in Esports can certainly be lucrative, player salaries vary significantly, and total income is greatly impacted by sponsorships and streaming revenues.⁴⁹ Top players can earn more than US\$1 million per year, but minimum salaries in top-tier leagues are substantially lower than those in

<https://www.reuters.com/article/us-videogames-outlook-advertising/u-s-esports-advertising-revenue-to-top-200-million-by-2020-report-idUSKCN1QV1AE> [https://perma.cc/KR8E-EKHD].

42. See Christopher Ingraham, *The Massive Popularity of Esports, in Charts*, WASH. POST (Aug. 27, 2018, 2:59 PM), <https://www.washingtonpost.com/business/2018/08/27/massive-popularity-esports-charts/> [https://perma.cc/CAW5-4KZ8]; See Joe Otterson, *TV Ratings: Super Bowl LII Slips 7% From 2017 to 103.4 Million Viewers*, VARIETY (Feb. 5, 2018, 7:06 AM), <https://variety.com/2018/tv/news/super-bowl-lii-ratings-1202687239/> [https://perma.cc/M7G8-C65M].

43. See Ingraham, *supra* note 42.

44. See Tong, *supra* note 16, at 354-55.

45. See *id.* at 355; Kenny, *supra* note 25.

46. Kenny, *supra* note 25.

47. Christina Gough, *Global Esports Market Revenue Share 2019, by Region*, STATISTA (Mar. 14, 2019), <https://www.statista.com/statistics/443147/estimate-of-global-market-revenue-of-esports-by-region> [https://perma.cc/YM7Z-R9XH]; see Hilary Russ, *Global Esports Revenues to top \$1 Billion in 2019: Report*, REUTERS (Feb. 12, 2019), <https://www.reuters.com/article/us-videogames-outlook/global-esports-revenues-to-top-1-billion-in-2019-report-idUSKCN1Q11XY> [https://perma.cc/B3BA-HLVK].

48. Tong, *supra* note 16, at 357.

49. See Holden et al., *supra* note 38, at 21-25.

traditional sports.⁵⁰ Moreover, Esports players typically are younger than their traditional sport counterparts.⁵¹ The average age for a *League of Legends* player, for instance, is approximately twenty-one years old, and players often begin their professional careers at age fifteen.⁵²

In many ways, the structure of Esports franchising is like that of traditional sports.⁵³ Indeed, the developers of *League of Legends* and *Overwatch* have established their own leagues: the League of Legends Championship Series and Overwatch League, respectively.⁵⁴ Each league has a season, an offseason, and a trade deadline.⁵⁵ Like traditional sports, comprehensive schedules are necessary for Esports players because the competition and practice schedule for optimal performance is arduous.⁵⁶ Lastly, Esports are often played in sports stadiums in front of thousands of fans supporting their favorite teams and players.⁵⁷

The Overwatch League, in particular, operates akin to that of major sports leagues.⁵⁸ The Overwatch League is composed of independently owned and operated teams, and teams engage

50. *Id.* at 21.

51. *See id.*

52. *See id.*; Tong, *supra* note 16, at 357.

53. *See* Dave Consolazio, *Money in Esports: Where Does it Come From?*, HOTSPAWN (Aug. 21, 2018), <https://www.hotspawn.com/money-in-esports-where-does-it-come-from> [<https://perma.cc/A5LT-C33Z>]; Max Miceli, *How the Franchising Model Shook up North American Esports in 2018*, ESPORTS OBSERVER (Jan. 28, 2019), https://esportsobserver.com/franchising-north-america-2018/#jeg_loginform [<https://perma.cc/CAA5-T5ZQ>].

54. *See* Holden et al., *supra* note 38, at 24.

55. *See* Holden et al., *supra* note 38, at 21-25. *See League of Legends 2019 Official Rules*, LEAGUE OF LEGENDS (Jan. 10, 2019), https://nexus.leagueoflegends.com/wp-content/uploads/2019/01/2019-LCS-Rule-Set-v19.3_uh6o67g0zd58db0o5p08.pdf [<https://perma.cc/ERV4-VD8X>] (the trade deadlines are called “roster locks”); Overwatch League Summary of Official Rules: 2019 Season, https://bnetcmsus-a.akamaihd.net/cms/content_entry_media/bb/BB6C30EC530B1549590044543.pdf [<https://perma.cc/4WQZ-S25H>] (describing the “transfer window”).

56. *See* Graham Ashton, *What is the Optimum Training Time for Esports Players?*, ESPORTS OBSERVER (Dec. 28, 2017), <https://esportsobserver.com/optimum-player-training-time/> [<https://perma.cc/V4VC-AMUN>]; Harrison Jacobs, *Here's the Insane Training Schedule of a 20-Something Professional Gamer*, BUSINESS INSIDER (May 11, 2015, 1:05 PM), <https://www.businessinsider.com/pro-gamers-explain-the-insane-training-regimen-they-use-to-stay-on-top-2015-5> [<https://perma.cc/W7AD-WJ6C>].

57. *See* Tong, *supra* note 16, at 358 (noting that the League of Legends North American Championship sold out Madison Square Garden in 2015).

58. *See* Holden et al. *supra* note 38, at 13.

directly with the league (headed by a commissioner) and must abide by league regulations, including a code of conduct.⁵⁹ Moreover, Overwatch League teams have ties to particular cities and are members of geographic divisions.⁶⁰ For instance, the Atlanta Reign, New York Excelsior, and Philadelphia Fusion are part of the Atlantic Division, while the Chengdu Hunters, Los Angeles Gladiators, and Vancouver Titans are teams in the Pacific Division.⁶¹ As members of their respective teams, players are paid a salary and receive financial bonuses based on their performance in their league (e.g. playoff appearances or championship wins).⁶²

Yet, there are still distinct differences between traditional sports and Esports franchising.⁶³ In a traditional sports structure, there are two sides to every transaction: on one side are the team owners (whose agreements form the basis of a league) and on the other side are the players.⁶⁴ Esports, on the other hand, includes a very powerful third party: the game developer.⁶⁵ In some Esports, game developers compensate the players in conjunction with their teams.⁶⁶ Additionally the game developers own the game and its intellectual property, and they pay out licenses which grant permission to use the game in various ways, including league play and tournaments.⁶⁷ For instance, Activision Blizzard offers a “community license” for third parties who are interested in using

59. See *id.* at 50; Overwatch League Summary of Code of Conduct: 2019 Season, https://bnetcmsusa.akamaihd.net/cms/content_entry_media/3w/3WAQ5TR2GGX11554233713822.pdf [<https://perma.cc/45PZ-ES64>] (mandating that players may not engage in cheating, betting on matches, illegal conduct outside of competition, or unprescribed prescription drug use).

60. See Activision Blizzard, *The Overwatch League – Teams*, <https://overwatchleague.com/en-us/teams>; *Overwatch League 2020 Teams and Rosters*, ESPN (Oct. 23, 2019), https://www.espn.com/esports/story/_/page/overwatchrostersseason3/overwatch-league-2020-teams-rosters-%7C-esports-%7C-espn [<https://perma.cc/K9ME-RH3K>] [hereinafter ESPN].

61. Activision Blizzard, *supra* note 60; ESPN, *supra* note 60.

62. See Consolazio, *supra* note 53; Miceli, *supra* note 53.

63. See Chao, *supra* note 20, at 744-45.

64. See Timothy Heggem, “It’s Complicated”: *Analyzing the Potential for Esports Players’ Unions*, 6 ARIZ. ST. SPORTS & ENT. L. J. 447, 455 (2017).

65. See *id.* at 456.

66. See David Segal, *Behind League of Legends, Esport’s Main Attraction*, N.Y. TIMES (Oct. 10, 2014), <https://www.nytimes.com/2014/10/12/technology/riot-games-league-of-legends-main-attraction-esports.html> [<https://perma.cc/9AVZ-HXA>].

67. See Heggem, *supra* note 64, at 456.

its titles (including *Overwatch*), for various competitions.⁶⁸ If analogized to traditional sports, the NFL, MLB, and NBA would each own their respective sports of football, baseball, and basketball.⁶⁹

The role of game developers thus has a significant impact on the governance of Esports leagues.⁷⁰ Specifically, the league and the game developer are often the same entity.⁷¹ Indeed, Riot Games, the developer of *League of Legends*, and Activision Blizzard, the developer of *Overwatch*, are the governing bodies of their respective leagues.⁷² This structure puts players and teams in a subservient position because they are dependent on developers to continue to support their games in order to maintain the viability of the league.⁷³

In turn, labor relations in Esports are complicated, and some game developers have exercised considerable control over employment terms and conditions for Esports players.⁷⁴ To date, there is no true union that resembles the typical players association seen in traditional sports leagues, and current Esports players associations do not have collective bargaining power.⁷⁵ Furthermore, certain game developers have taken non-traditional avenues to dictate the labor status of players, which may resemble an attempt to prevent union formation.⁷⁶ For instance, Riot Games, as the league operator of the League of Legends Championship Series, has created a players association for its *League of Legends*

68. *Organize Your own Community Esports Competition*, BLIZZARD, <https://communitytournaments.blizzardesports.com/en-us/> [https://perma.cc/LKP4-UMJ9] (last visited Nov. 11, 2019); see Dom Sacco, *Blizzard Quietly Makes Changes to Overwatch Community Tournament Requirements*, ESPORTS NEWS UK (Dec. 30, 2017), <https://esports-news.co.uk/2017/12/30/blizzard-overwatch-community-tournament-changes/> [https://perma.cc/WSX7-LFPA].

69. See Heggem, *supra* note 64, at 456.

70. See *id.*

71. See Holden et al., *supra* note 38, at 23.

72. See *id.* at 24.

73. See *id.*

74. See Heggem, *supra* note 64, at 456-57 (noting that *League of Legends* developer, Riot Games, specifies the contract term duration, minimum player compensation, and grounds for contract determination of the players participating in its North American Challenger Series and League Championship Series).

75. See *id.* at 447-48.

76. See Holden et al., *supra* note 38, at 47.

players.⁷⁷ This unilateral action has driven considerable debate on the status of Esports players as employees or independent contractors, and consequently whether Riot Games is in violation of the National Labor Relations Act (“NLRA”).⁷⁸

On the other hand, efforts made by players in the *Overwatch* League may resemble a trend towards operating labor relationships more like traditional sports.⁷⁹ Former *Overwatch* professional and coach Thomas “Morte” Kerbusch has partnered with labor attorney Ellen Zavian to develop the first grassroots union in Esports.⁸⁰ According to Zavian, the *Overwatch* union would be modeled after the National Football League Players Association (“NFLPA”) and Major League Baseball Players Association (“MLBPA”).⁸¹ A true *Overwatch* union would be a big step for Esports, as players would gain the collective bargaining power to counterbalance the significant control currently possessed by the leagues and game developers.⁸²

3. An International Sensation

Finally, because the internet—and online streaming in particular—has disseminated Esports across the globe, Esports competitions have attracted an international audience and inspired players from various countries to pursue a career in

77. *Id.* at 47-48.

78. See 29 U.S.C. § 158 (2018) (delineating that it is an unfair labor practice of an employer to interfere with the “formation or administration of any labor organization or contribute financial or other support to it”); Minnie Che, *Is Riot Games in Violation of the NLRA for Funding its Own Union?*, ON LABOR (May 1, 2019), <https://onlabor.org/is-riot-games-in-violation-of-the-nlra-for-funding-its-own-union> [https://perma.cc/GN59-KAD2] (noting that Riot Games might be in violation of 29 U.S.C. § 158 for funding a labor organization).

79. See Maddy Myers, *Pro Gamers are Getting Serious About Unionizing*, KOTAKU (Mar. 14, 2018), <https://compete.kotaku.com/pro-gamers-are-getting-serious-about-unionizing-1823770452> [https://perma.cc/B6F7-MKQQ]; Jonathan Kogel, *State of the Esports Player Union: Drawbacks and Legal Challenges*, THE ESPORTS OBSERVER (May 8, 2018), <https://esportsobserver.com/state-of-the-esports-union/> [https://perma.cc/K4R5-TBGC].

80. Liz Mullen, *Two Groups vie to Establish Esports Players Associations*, SPORTS BUS. J. (Mar. 12, 2018), <https://www.sportsbusinessdaily.com/Journal/Issues/2018/03/12/Esports/PAs.aspx> [https://perma.cc/3WWE-7D]9]; Myers, *supra* note 79;

81. See Mullen, *supra* note 80; Myers, *supra* note 79.

82. See Holden, et al., *supra* note 38, at 47.

Esports.⁸³ Consequently, the Esports ecosystem is a truly international phenomenon.⁸⁴ This is particularly evident in the structure of Esports leagues and events, team rosters, and the location of live competitions.⁸⁵

Riot Games, for instance, has organized leagues for *League of Legends* in North America, Europe, China, South Korea, Taiwan, and Southeast Asia.⁸⁶ The winners of these regions play in the League of Legends World Championship to be crowned the best *League of Legends* team in the world.⁸⁷ Similarly, independent Esports tournaments, such as the Overwatch World Cup, are organized to determine a world champion among nationally-based teams.⁸⁸

The players that compete in these leagues and tournaments come from all over the world, and this is particularly true for leagues established in the United States.⁸⁹ For instance, the League of Legends Championship Series, based in the United States and

83. See Jonathan Deesing, *Esports – What is This Worldwide Phenomenon?*, LIFEWIRE (June 24, 2019), <https://www.lifewire.com/esports-basics-4147163> [<https://perma.cc/W46X-XGPV>]; *The Competitive Video Game Scene Erupts into a Global Industry*, FINANCIAL BUZZ (July 19, 2019, 9:00 AM), <https://www.prnewswire.com/news-releases/the-competitive-video-game-scene-erupts-into-a-global-industry-300887881.html> [<https://perma.cc/8LDP-QL4J>].

84. See Intergalactic Gaming, *ESPORTS: The Complete Guide 2017/2018*, MEDIUM (Nov. 16, 2018), <https://medium.com/@IGGalaxy/esports-the-complete-guide-17-18-ead8cd668def> [<https://perma.cc/PE5X-XU3F>]; Deesing, *supra* note 83.

85. See Intergalactic Gaming, *supra* note 84; *An Introduction to the Esports Ecosystem*, ESPORTS OBSERVER, <https://esportsobserver.com/the-esports-eco-system/> [<https://perma.cc/7E32-6FB9>] (last visited Jan. 21, 2020).

86. Intergalactic Gaming, *supra* note 84; League of Legends, *About LOL Esports*, LOLESPORTS, <https://eu.lolesports.com/en/about/about-lol-esports> [<https://perma.cc/73HN-TWFZ>] (last visited Jan. 22, 2020).

87. See Intergalactic Gaming, *supra* note 84; League of Legends, *supra* note 86.

88. Jacob Wolf, *Team USA Finally Claims Gold at Overwatch World Cup*, ESPN (Nov. 3, 2019), https://www.espn.com/esports/story/_/id/27990473/team-usa-claims-gold-overwatch-world-cup [<https://perma.cc/DNC5-PJ3V>]; Blizzard Entertainment, *2019 Overwatch World Cup*, <https://overwatchleague.com/en-us/overwatch-world-cup> [<https://perma.cc/YH98-ZH5L>].

89. See e.g., *Top Player Rankings for Overwatch League*, ESPORTS EARNINGS, <https://www.esportsearnings.com/leagues/493-overwatch-league/top-players> [<https://perma.cc/WM7K-DSWX>] (last visited Nov. 26, 2019) (delineating top players by nationality in the US-based Overwatch League); *Players*, OVERWATCH LEAGUE, <https://overwatchleague.com/en-us/players> [<https://perma.cc/6DBS-V2VA>] (last visited Jan. 22, 2020).

Canada, is composed of players from over twenty-five countries.⁹⁰ Additionally, more than fifty percent of players in the US Overwatch League are South Korean, and over twenty countries are represented on Overwatch League rosters.⁹¹

Moreover, participation in live Esports events requires that the players physically be present in any given location across the globe.⁹² Thus, Esports players frequently travel internationally to attend competitions, and the free movement of players is necessary for Esports to function.⁹³ This fundamental feature likely will not change anytime soon.⁹⁴ For instance, the Overwatch League, composed of teams across the United States, Europe, and China, recently announced that next season, teams are required to play home and away games in the cities in which the respective teams are associated.⁹⁵ Many players also transfer teams between seasons, which often involves changing regions (for example, from Europe to North America).⁹⁶ Consequently, those players

90. See *Top Country Rankings for LoL Championship Series*, ESPORTS EARNINGS, <https://www.esportsearnings.com/leagues/185-lol-championship-series/countries> [<https://perma.cc/G5TH-VWF9>] (last visited Nov. 11, 2019); *Worlds 2019: Player Nationalities*, DEVTRACKERS.GG, <https://devtrackers.gg/leagueoflegends/p/f4f91134-worlds-2019-player-nationalities> [<https://perma.cc/A8DP-JG4Y>] (last visited Jan. 22, 2020).

91. See *Top Country Rankings for Overwatch League*, ESPORTS EARNINGS, <https://www.esportsearnings.com/leagues/493-overwatch-league/countries> [<https://perma.cc/5G4S-9D5D>] (last visited Oct. 26, 2019); Overwatch League, *supra* note 89.

92. See Noah Smith, *'It's not as Awesome as People Imagine': Esports Players say 'Dream Job' is More Than Fun and Games*, WASH. POST (Dec. 13, 2018, 9:53 AM), <https://www.washingtonpost.com/sports/2018/12/13/its-not-awesome-people-imagine-esports-players-say-dream-job-is-more-than-fun-games/> [<https://perma.cc/T3AS-7F4W>]; Andrew Webster, *Blizzard Explains how Home and Away Games will Work in the Overwatch League*, VERGE (July 16, 2019, 8:00 AM), <https://www.theverge.com/2019/7/16/20694642/blizzard-overwatch-league-home-away-games-esports-2020> [<https://perma.cc/LFT3-LU8T>].

93. See Smith, *supra* note 92; Rob Zacny, *The Toll of Travel on Esports Athletes*, RED BULL (Sept. 4, 2014), <https://www.redbull.com/us-en/the-toll-of-travel-on-esports-athletes> [<https://perma.cc/65LY-WPYG>].

94. See Eric Chan, *Overwatch League Teams Will Officially Move to Home Cities in 2020*, NBC SPORTS (Mar. 15, 2019), <https://www.nbcsports.com/philadelphia/fusion/overwatch-league-teams-will-officially-move-home-cities-2020> [<https://perma.cc/297J-Q5R9>]; Webster, *supra* note 92.

95. See Chan, *supra* note 94; Webster, *supra* note 92.

96. See Tong, *supra* note 16, at 358.

immigrate to the United States to train and compete with their teams during the season.⁹⁷

B. Esports and US Immigration – the Visa Options Available to Esports Players

Due to the popularity of Esports within its borders, the United States is a significant player in the global Esports industry.⁹⁸ This prominence amid the international structure of Esports has made it necessary for Esports players to be able to travel to the United States to compete in competitions and train with their teams.⁹⁹ As such, Esports players may pursue several avenues to lawfully be admitted into the United States to fulfill their Esports obligations.

One option for Esports players is to apply for the visa waiver program (“VWP”).¹⁰⁰ Under the VWP, citizens of participating countries may stay in the United States for up to ninety days for business or tourism without obtaining a visa.¹⁰¹ Citizens of qualifying countries may utilize the VWP for the occasional business trip or vacation.¹⁰²

However, the VWP is not the best choice for Esports players. One issue with the VWP is that travelers are only allowed to stay in the United States briefly and may not renew the VWP for a longer period.¹⁰³ Because the seasons for US-based Esports are often longer than ninety days, the VWP does not provide an adequate timeline for players to compete in the US on a consistent basis.¹⁰⁴

97. *See id.*

98. *See supra* Section II.A.2.

99. *See supra* Section II.A.3.

100. *See* U.S. Dep’t of State – Bureau of Consular Affairs, *Visa Waiver Program*, U.S. DEP’T OF STATE, <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html> [<https://perma.cc/C4VK-XP5Y>] (last visited Dec. 30, 2019); *see also* Kevin Hitt, *Sources: Esports Orgs Break US Visa Law to Save Money, Government to Crack Down*, UPCOMER (May 21, 2019), <https://upcomer.com/cod/story/1418378/sources-esports-orgs-break-us-visa-law-denial> [<https://perma.cc/3PQW-DA23>].

101. *See* U.S. Dep’t of State, *supra* note 100.

102. *See id.*

103. *See id.*

104. *See, e.g.*, Overwatch League, *Match Schedule*, <https://overwatchleague.com/en-us/schedule> [<https://perma.cc/DKV9-25JX>] (last visited Dec. 30, 2019); Cass Marshall, *Here’s how the Overwatch League’s 2020 Season will Work*, POLYGON (July 16, 2019, 2:40 PM), <https://www.polygon.com/2019/7/16/20696633/overwatch-league-2020-season->

Further, it may be illegal for salaried Esports players to play in US tournaments under the VWP.¹⁰⁵ Because most Esports players are salaried, the VWP presents a significant limitation to a considerable number of Esports players wishing to compete in the United States.¹⁰⁶

Due to the VWP's potential pitfalls, it is often necessary for international players to obtain a visa for Esports competitions.¹⁰⁷ Players obtain visas primarily through their teams and the league or game developers who file a petition with the USCIS.¹⁰⁸ In its current state, the visa process for international Esports players is fraught with uncertainty.¹⁰⁹

1. B-1 & B-2 Visas

One option for Esports athletes are B-1 and B-2 non-immigrant visas, which are for "business" and "pleasure," respectively.¹¹⁰ Under the B-1 visa, "business" refers to "conventions, conferences, consultations[,] and other legitimate activities of a commercial or professional nature."¹¹¹ It does not include local employment or labor for hire.¹¹² B-1 visas are reserved for aliens temporarily performing services, but without a contract or other prearranged employment.¹¹³ B-2 visas are

format-home-games [<https://perma.cc/S5EX-44F8>] (noting that the Overwatch League's third season will run from February through August).

105. See Hitt, *supra* note 100 (noting that paying a salary to a foreign-based Esports team "[i]n my professional opinion . . . would be a violation of the VWP"); U.S. Dep't of State, *supra* note 101 (delineating that visitors coming to the United States for business purposes may not be paid by any source in the United States, or alternatively that they may qualify tourists if they are amateurs and not being paid for sports or contests in the United States).

106. See Tong, *supra* note 16, at 357.

107. See U.S. Dep't of State - Bureau of Consular Affairs, *What is a U.S. Visa?*, <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/frequently-asked-questions/what-is-us-visa.html> [<https://perma.cc/3SWT-DHNB>] (last visited Oct. 14, 2019).

108. See Kenny, *supra* note 25.

109. See Tong, *supra* note 16, at 352.

110. See 22 C.F.R. § 41.31(b)(1)-(2) (2006) (defining visits for "business" and "pleasure").

111. *Id.*

112. *Id.*

113. See *id.*

utilized by individuals entering the United States for “pleasure,” including “tourism, . . . medical treatment, . . . or service.”¹¹⁴

Esports players have resorted to applying for B-1 or B-2 visas in the past, but under the language of the statute they likely do not qualify for these visas.¹¹⁵ Esports players train and participate in competitions, but they do not attend the conventions or conferences as specified in the statute for a B-1 visa.¹¹⁶ Moreover, Esports players are employed and salaried under contract with their respective teams and, in some instances, game developers, which violates B-1’s prohibition of “prearranged employment.”¹¹⁷ Additionally, because players are employed, salaried, and may receive monetary bonuses for their performances in tournaments, they do not qualify for a B-2 visa because they are not entering the United States for “pleasure” under the language of the statute.¹¹⁸

2. H-1B Visa

Another potential option for Esports athletes are H-1B visas.¹¹⁹ H-1B visas allow for temporary admission of aliens that work in a “specialty occupation.”¹²⁰ A specialty occupation requires the “attainment of a bachelor’s degree or higher degree in the specific specialty (or its equivalent).”¹²¹ An employee can meet the education requirement by obtaining a bachelor’s degree from the United States, an equivalent foreign degree, certification in the specialty occupation, or by having experience equivalent to the completion of a US Baccalaureate or higher degree.¹²² Three years of experience is equivalent to one year of college, meaning that a player would need twelve years of relevant experience to satisfy the education requirement.¹²³

114. *Id.* (noting that recreational purposes under a B-2 visa are “tourism, amusement, visits with friends or relatives, rest, medical treatment, and activities of a fraternal, social, or service nature”).

115. *See* Tong, *supra* note 16, at 371.

116. *See id.*

117. *See id.*

118. *See* 22 C.F.R. § 41.31(b)(1)-(2), *supra* note 110.

119. *See* Tong, *supra* note 16, at 374.

120. *See* 8 U.S.C. § 1101(a)(15)(H)(i)(b) (2014).

121. 8 U.S.C. § 1184(i)(1)(b) (2015).

122. 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) (2017).

123. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (2017).

Sensibly, Esports players have avoided the H-1B visa because they usually do not meet the requirement of performing in a “specialty occupation.”¹²⁴ First, Esports players start their careers at a young age and often choose to compete rather than to attend college and obtain a bachelor’s degree, the key requirement for an H-1B visa.¹²⁵ Further, although certain colleges, including Ohio State University and the University of Utah, are beginning to offer video game scholarships and Esports degrees, Esports are not typically taught in higher education and thus limit a player’s ability to get a degree in the field of Esports.¹²⁶ Because three years of training counts towards one year of college, a player could qualify for an H-1B visa after twelve years, but this time frame far exceeds the average four to five year career of Esports players.¹²⁷

3. O-1A Visa

Alternatively, O-1A visas may be utilized by a select few Esports players.¹²⁸ O-1A visas are temporary visas reserved for individuals who exhibit “extraordinary ability in the sciences, arts, education, business[,] or athletics which has been demonstrated by

124. See 8 U.S.C. § 1184(i) (2015).

125. See Josh Raven, *How Riot’s age Restrictions Hurt its Brightest Talents*, DOT ESPORTS (May 27, 2015, 10:24 PM), <https://dotesports.com/league-of-legends/news/sencux-riot-games-age-restrictions-1895> [<https://perma.cc/B2SE-XSDQ>] (stating that “LCS [League Championship Series] players are required to drop everything including school, jobs, friends, and family to move to Berlin or Los Angeles”); Chelsea Stark, *Gaming to pay the Rent*, MASHABLE (Oct. 7, 2014), <https://mashable.com/2014/10/07/gaming-to-pay-the-rent/> [<https://perma.cc/DC7G-DH6G>].

126. See Douglas Belkin, *Liberal Education: At This College, Videogames Are a Varsity Sport*, WALL ST. J. (Sept. 1, 2014, 10:35 PM), <https://www.wsj.com/articles/a-college-offers-videogame-scholarships-for-league-of-legends-1409625331> [<https://perma.cc/MR8S-JSYC>]; Noah Smith, *Ohio State is Latest Power Conference School to Embrace Esports While NCAA Sits Idle*, WASH. POST (Oct. 11, 2018, 1:52 PM), <https://www.washingtonpost.com/sports/2018/10/11/ohio-state-is-latest-power-conference-school-embrace-esports-while-ncaa-sits-idle/> [<https://perma.cc/84BH-TKGC>]; *Colleges are Starting Degrees in Esports, With \$36,000 Programs*, CBS NEWS (Oct. 1, 2019, 3:32 PM), <https://www.cbsnews.com/news/college-esports-universities-launch-degrees-in-esports/> [<https://perma.cc/3MVQ-TWHY>].

127. See Patrick Shanley, *Gamers’ Plight: Why so Many Esports Players Retire by 25 – and What Comes Next*, THE HOLLYWOOD REPORTER (Sept. 24, 2019, 6:00 AM), <https://www.hollywoodreporter.com/news/gamers-plight-why-e-sports-players-retire-by-25-1242628> [<https://perma.cc/KV2U-9TJC>]; Smith, *supra* note 92.

128. See Tong, *supra* note 16, at 378.

sustained national or international acclaim.”¹²⁹ This “extraordinary ability” is achieved by demonstrating a level of expertise “indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.”¹³⁰ In order to demonstrate this “extraordinary ability,” Esports players must provide evidence of either a major award (such as a Nobel Prize), or at least three other pieces of evidence from ten different categories, such as authorship of published material, evidence of a contribution of major significance, or the display of work in exhibitions or showcases.¹³¹

The O-1A visa is not a reliable option for most Esports players because of the high evidentiary standard required to prove “extraordinary ability.”¹³² The only Esports players that would likely qualify for an O-1A visa because of a major award are those that have won a major Esports championship.¹³³ While some players may qualify by demonstrating evidence from the other categories, the O-1A visa is not a broad or easily applicable standard to the majority of Esports players, and it is not one upon which players should depend. Further, exclusively relying on the O-1A visa would essentially restrict US Esports competitions to players who have already won major championships, which would effectively prevent up-and-coming players from succeeding in Esports and limit Esports earnings to those who are already accomplished.

4. EB-1 Visa

The EB-1 visa, like the O-1A visa, also requires applicants to demonstrate “extraordinary ability.”¹³⁴ The EB-1 is an employment-based visa that has the same evidentiary requirements as the O-1A visa.¹³⁵ The main difference is that EB-1

129. 8 C.F.R. § 214.2(o)(1)(ii)(A)(1) (2019).

130. 8 C.F.R. § 214.2(o)(3)(ii) (2019).

131. See 8 C.F.R. § 204.5(h)(3) (2016); see also *Kazarian v. U.S. Citizenship & Immigr. Servs.*, 596 F.3d 1115, 1119 (9th Cir. 2010) (holding that receipt of a Nobel Prize is a “quintessential example of a major award” for purposes of an O-1A visa).

132. See Tong, *supra* note 16, at 379.

133. See *id.* at 379-80.

134. See 8 C.F.R. § 204.5(h)(2) (2017).

135. See *id.* § 204.5(h)(3); see also *Employment-Based Immigration: First Preference EB-1*, U.S. CITIZENSHIP & IMMIGR. SERVS. [USCIS] (2005), <https://www.uscis.gov/working->

visas are green cards, which allow for legal permanent resident status in the United States, rather than the temporary stay permitted by O-1A visas.¹³⁶

In addition to the “extraordinary ability” issues discussed above, EB-1 visas have added complications that make them a headache for Esports players.¹³⁷ Specifically, EB-1 visas are subject to certain quotas:¹³⁸ 140,000 employment-based green cards are currently available each year and the total number of employment-based immigrants of each country is capped at seven percent.¹³⁹ This means that Esports players from countries like China and India, which have a considerable number of EB-1 applicants per year, often wait over nine years before being admitted for permanent residency.¹⁴⁰ Due to the typically short careers of Esports players, this kind of wait presents a considerable issue.¹⁴¹

Additionally, a bill that has been proposed in Congress could further complicate the EB-1 visa process for Esports players.¹⁴² The Fairness for High-Skilled Immigrants Act seeks to eliminate the seven-percent cap on employment-based visas in order to redistribute green card wait times in a more equitable fashion.¹⁴³

united-states/permanent-workers/employment-based-immigration-first-preference-eb-1 [https://perma.cc/U3XF-DP92] (last visited Oct. 15, 2019).

136. See 8 U.S.C. § 1101(a)(20) (defining “lawfully admitted for permanent residence”); 8 C.F.R. § 204.5(h); 8 C.F.R. § 214.2(o)(1)(ii)(A)(1) (2019).

137. See Bill Cooney, *Potential Visa Change Could Make it Harder for Esports pros to Become US Residents*, DEXERTO (Aug. 12, 2019, 4:06 PM), https://www.dexerto.com/esports/potential-visa-change-harder-esports-pros-us-residents-905651 [https://perma.cc/SWA2-TGLM]; Jessica Conditt, *A Popular Immigration Bill is bad News for US Esports*, ENGADGET (Aug. 16, 2019), https://www.engadget.com/2019/08/16/esports-immigration-visa-fairness-act-senate/?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLnNvbS8&guce_referrer_sig=AQAAANhUYyGSuyOMPZl3qBP1UPmK3Kv-4GzXTPHStCEuoa2_YSmLd83c0Dkh0w-z8HEafh5hHFdm2Q-ABnxUnpFS63qSKdacA7HfQ0rLFWu9KIBT9_e3gkKfs14TfpliiFkuc_VV1Y0u5cTlPQ2-CUjt36yclojXYwa6lH01SM1 [https://perma.cc/QJ2A-KPR2].

138. See 8 U.S.C. § 1151(d)(1)(a).

139. *Id.*; 8 U.S.C. § 1152(a)(2).

140. David J. Bier, *Immigration Wait Times From Quotas Have Doubled: Green Card Backlogs are Long, Growing, and Inequitable*, CATO INST. POL’Y ANALYSIS NO. 873 (June 18, 2019), https://www.cato.org/publications/policy-analysis/immigration-wait-times-quotas-have-doubled-green-card-backlogs-are-long [https://perma.cc/N96Q-BGXS].

141. See Shanley, *supra* note 127; Smith, *supra* note 92.

142. See Cooney, *supra* note 137; Conditt, *supra* note 137.

143. See H.R. 1044, 116th Cong. (1st Sess. 2019).

While this is helpful for Esports players from China and India, this bill could significantly delay admission for players from countries with shorter wait times, such as South Korea, Western Europe, and Canada.¹⁴⁴ These shorter-wait time countries represent a significant portion of the Esports player pool, which means that a considerable segment of the industry is at risk of being harmed by the bill.¹⁴⁵ The bill was passed in the House of Representatives, but it is unclear whether it will achieve similar success in the Senate.¹⁴⁶

5. P-1A Visa

The final, and most promising, option for Esports players is the P-1A visa.¹⁴⁷ For an Esports player to secure a P-1A visa, they must (1) be an “athlete” at “an internationally recognized level of performance”; (2) be a professional athlete; (3) play as an athlete or serve as a coach of a team in the United States and “a member of a foreign league or association of 15 or more amateur sports teams” or; (4) perform as a professional or amateur athlete in an ice skating production.¹⁴⁸ The first and second factor are the most applicable to Esports players.¹⁴⁹

To demonstrate an “internationally recognized level of performance,” players must provide several evidentiary pieces of documentation, including a written consultation from an appropriate “labor organization,” a copy of their contract with the league, a schedule, and an explanation of competition.¹⁵⁰ The player must also present at least two other pieces of information demonstrating, for example, participation in a “major United States sports league,” participation in an “international competition with a national team,” a written statement from an official in the

144. See Cooney, *supra* note 137; Conditt, *supra* note 137.

145. See Cooney, *supra* note 137; Conditt, *supra* note 137.

146. See Marissa E. Cwik et al., *Congress Considers Removing Country caps for Employment-Based Immigrant Visas and Proposes Changes to H-1B Visa Program*, OGLETREE DEAKINS (July 11, 2019), <https://ogletree.com/insights/2019-07-11/congress-considers-removing-country-caps-for-employment-based-immigrant-visas-and-proposes-changes-to-h-1b-visa-program/> [<https://perma.cc/FT7T-ZRD3>]; Cooney, *supra* note 137.

147. See Tong, *supra* note 16, at 381.

148. See 8 U.S.C. § 1184(C)(4)(A).

149. See Tong, *supra* note 16, at 381-82.

150. See *P-1A Internationally Recognized Athlete: Evidence to Submit*, USCIS, <https://www.uscis.gov/working-united-states/temporary-workers/p-1a-athlete> [<https://perma.cc/YGF9-98PX>] (last visited Nov. 17, 2019) [hereinafter *P-1A*].

governing body of the sport, international ranking, or some honor achieved in the sport, among others.¹⁵¹ Moreover, for purposes of P-1A visas, Congress defines “professional athletes” as individuals employed as an athlete on a team in an association of six or more professional sports teams and the combined revenues of those teams must exceed US\$10 million per year.¹⁵²

P-1A visas are the best option for Esports players because they apply the most broadly and do not face the same risk of violation under the extensive requirements of the other visa options.¹⁵³ Indeed, most high-level professional Esports leagues are comprised of more than six professional teams and earn more than US\$10 million in total revenue per year pursuant to the P-1A “professional athlete” requirement.¹⁵⁴ Moreover, a P-1A visa can be used by both professional and amateur Esports athletes, and the “internationally recognized level of performance” factor seems to include Esports players because they typically achieve some kind of level of international recognition.¹⁵⁵

However, both the “internationally recognized level of performance” and “professional athlete” requirements mandate that those who qualify for P-1A visas are, in fact, athletes.¹⁵⁶ Additionally, the majority of evidentiary requirements required by the USCIS to prove an “internationally recognized level of performance” use the word “sport” and have underlying assumption that only someone who participates in a “sport” or “sports league” meets the P-1A visa requirements.¹⁵⁷ Thus, there are certain complications that are still present in the P-1A visa despite its potential to be universally utilized by Esports players, specifically whether Esports players are actually “athletes” participating in a “sport” in the eyes of the USCIS.

151. *See id.*

152. *See* 8 U.S.C. § 1154(i)(2) (2014).

153. *See* Tong, *supra* note 16, at 353-54.

154. *See id.* at 382.

155. *See id.*

156. *See* 8 U.S.C. § 1154(i)(2) (2014).

157. *See P-1A, supra* note 150.

III. QUALIFYING FOR THE P-1A VISA – THE ISSUE OF ESPORTS
LEGITIMACY

A. Esports Legitimacy in the United States

In 2013, Riot Games was able to successfully negotiate the first P-1A visa for Canadian *League of Legends* player Danny “ShiphTUR” Le.¹⁵⁸ This was initially seen as a landmark moment in which the USCIS, going forward, would recognize Esports players as professional athletes and consequently Esports as a legitimate sport.¹⁵⁹ Indeed, some Esports players have been able to successfully obtain the P-1A visa, primarily through the “internationally recognized level of performance” track.¹⁶⁰ As Riot Games Esports manager Nick Allen noted, Esports were finally legitimate in the eyes of the US government.¹⁶¹

In the aftermath of Riot Games’ success, applying for P-1A visas has become the status quo, and Esports players continue to petition for these visas on a consistent basis. Players rely on other visa options as a sub-optimal alternative if, for instance, their P-1A visas are denied.¹⁶² Unfortunately, Riot Games’ initial victory has been far from universal for other Esports players.¹⁶³ Since 2013, Esports players have only been able to obtain P-1A visas on a sporadic and unpredictable basis.¹⁶⁴ Arguably the most infamous example of an Esports player being denied a P-1A visa occurred with Leffen.¹⁶⁵ As discussed above, Leffen was denied a P-1A visa

158. See Kenny, *supra* note 25; see also Paresh Dave, *Online Game League of Legends Star gets U.S. Visa as pro Athlete*, L.A. TIMES (Aug. 7, 2013, 12:00 AM), <https://www.latimes.com/business/la-xpm-2013-aug-07-la-fi-online-gamers-20130808-story.html> [<https://perma.cc/HG33-VT9G>].

159. See Paul Tassi, *The U.S. now Recognizes Esports Players as Professional Athletes*, FORBES (July 14, 2013, 11:27 AM), <https://www.forbes.com/sites/insertcoin/2013/07/14/the-u-s-now-recognizes-esports-players-as-professional-athletes/#634745bf3ac9> [<https://perma.cc/3GG3-ZCF3>]; Chris Welch, *‘League of Legends’ Gamer Granted US Visa Recognizing him as a Professional Athlete*, VERGE (Aug. 11, 2013, 2:43 PM), <https://www.theverge.com/2013/8/11/4611180/league-legends-gamer-gets-visa-recognizing-him-as-pro-athlete> [[https://perma.cc/G3M\]-9D8](https://perma.cc/G3M]-9D8)].

160. See Tong, *supra* note 16, at 382.

161. See Tassi, *supra* note 159.

162. See Tong, *supra* note 16, at 351-53.

163. See *id.* at 352.

164. See *id.*

165. See Burden, *supra* note 1; see also Tamburro, *supra* note 1.

in 2015 and left out of US competition for over a year, missing key events including Genesis 3, Battle of the Five Gods, and Evo.¹⁶⁶ Leffen's deportation led to considerable outcry from Esports players and fans, mainly because the USCIS asserted that *Super Smash Bros. Melee* was not a "legitimate sport."¹⁶⁷

In 2016, over one hundred thousand individuals signed a petition seeking that the USCIS recognize Esports players as athletes under the same consideration as traditional athletes.¹⁶⁸ The petition was filed under the Obama Administration's "We the People" initiative in which citizens could directly petition the White House.¹⁶⁹ If more than one hundred thousand people signed the petition under this initiative, the White House was required to respond, and in fact did so in the case of Leffen's visa.¹⁷⁰ In its official announcement, the White House noted that Esports players are not necessarily precluded from being granted Esports visas, but it also acknowledged that "[i]t[is] important to remember that every case, regardless of what sport it involves[,] is different and is reviewed on its own merits."¹⁷¹

Leffen's experience best illustrates the underlying issues with Esports athletes qualifying for P-1A visas, namely that the United States does not universally respect the legitimacy of Esports as real

166. See Funes, *supra* note 15; Lydia Mitrevski, *The Hindering Blemish of Work Visas in Esports*, ESPORTS INSIDER (Feb. 10, 2017), <https://esportsinsider.com/2017/02/work-visas-in-esports> [<https://perma.cc/M3AR-M395>].

167. See Steven Jurek, *White House Responds to 'Free Leffen' Petition, Won't Make any Changes to Esports Visa Policies*, DOT ESPORTS (June 28, 2016, 10:23 AM), <https://dotesports.com/general/news/white-house-free-leffen-petition-response-3523> [<https://perma.cc/46F8-2FYX>]; Tamburro, *supra* note 1.

168. See Jurek, *supra* note 167; Kyle Wolmarans, *The White House Responds to the 100,000 Strong Petition now Called "Free Leffen"*, CRITICAL HIT (June 29, 2016), <https://www.criticalhit.net/gaming/white-house-responds-100000-strong-petition-now-called-free-leffen> [<https://perma.cc/VV8H-JMPR>].

169. Daniel George, *'Esports as Athletes' Petition gets an Official White House Response*, FANSIDED (June 29, 2016), <https://fansided.com/2016/06/29/esports-athletes-petition-gets-official-white-house-response> [<https://perma.cc/ZHP2-UJP3>]; Jurek, *supra* note 167.

170. *We the People*, THE WHITE HOUSE, <https://petitions.whitehouse.gov/responses> [<https://perma.cc/486A-HB23>] (last visited Nov. 29, 2019); Jurek, *supra* note 167.

171. *A Response to Your Petition on eSports*, THE WHITE HOUSE, <https://petitions.obamawhitehouse.archives.gov/petition/uscis-should-recognize-all-esports-legitimate-sports-so-international-players-can-come-us-p1-visas/> [<https://perma.cc/K7U6-ZG4J>] (last visited Jan. 22, 2020).

sports nor its players as athletes.¹⁷² It is these issues of legitimacy, coupled with the case-by case basis of USCIS visa review, that leave Esports players without a reliable means of obtaining visas in order to compete in the United States. The fate of a P-1A visa may depend on whether the reviewing USCIS officer believes Esports are legitimate sports, and there is minimal guidance as to how officers should handle these visas for Esports players.¹⁷³

Part of this lack of guidance stems from the absence of a legal definition of “athlete” or “sport.”¹⁷⁴ While this does not necessarily disqualify Esports players, there is a prevailing cultural viewpoint that Esports players are glorified video game players, not athletes, when compared to those in traditional sports.¹⁷⁵ Moreover, because there is no official association to encompass all Esports teams on an international or national scale, Esports currently do not possess the same institutional legitimacy enjoyed by traditional sports, which is part of the evidentiary showing for a P-1A visa.¹⁷⁶

B. Esports Legitimacy Internationally – A Comparison and Model

Given Esports’ lack of legitimacy in the United States, an international comparison is useful to demonstrate the path that other countries have taken in legitimizing Esports. This comparison will illuminate the impact that Esports legitimacy has on improving the visa process for US-bound Esports players. In particular, looking to other countries may provide guidance as to how the United States should assess immigration issues for Esports players in the future.

172. See Mitrevski, *supra* note 166; Tong, *supra* note 16, at 383.

173. See *A Response to your Petition on eSports*, *supra* note 171; Wolmarans, *supra* note 168.

174. See Professional and Amateur Sports Protection Act, 28 U.S.C. § 3701 (2016) (defining “amateur sports organization” and “professional sports organization” but not “athlete” or “sport”).

175. See Jesse Aaron, *The Controversial Dichotomy Between Sports and Esports*, HUFFINGTON POST (Feb. 18, 2015, 4:25 PM), https://www.huffpost.com/entry/the-controversial-dichoto_b_6692052 [<https://perma.cc/D886-5BNC>]; Vlad Savov & Sam Byford, *Can Video Games be Sports?*, VERGE (July 11, 2014, 1:30 PM), <https://www.theverge.com/2014/7/11/5890907/can-video-games-be-sports> [<https://perma.cc/EC27-49FY>].

176. See Tong, *supra* note 16, at 368.

1. South Korea

Due to both a cultural and governmental commitment to Esports institutionalization, South Korea is the country leading the effort to legitimize Esports.¹⁷⁷ South Korea has seen widespread cultural acceptance of Esports beginning in 1990, when the South Korean government established a nation-wide broadband network for faster internet connection.¹⁷⁸ This initiated a gaming revolution, and video game centers started springing up across the country.¹⁷⁹ Players began competing in these centers, known as “bangs,” quickly establishing one of the world’s first Esports ecosystems.¹⁸⁰

As Esports became entrenched in South Korean culture, it rapidly gained recognition as a sport and was broadcast on numerous television channels.¹⁸¹ In 2018, South Koreans spent twenty-nine percent of their week engaging with Esports and only twenty-seven percent engaging with traditional sports.¹⁸² With this level of engagement, Esports has had a significant impact on the South Korean economy.¹⁸³ For instance, in 2017 the online gaming industry earned US\$5.92 billion dollars in exports, and the

177. See Paul Mozur, *For South Korea, E-Sports is National Pastime*, N.Y. TIMES (Oct. 19, 2014), <https://www.nytimes.com/2014/10/20/technology/league-of-legends-south-korea-epicenter-esports.html> [https://perma.cc/E8GL-C8XC]; See also Emin Ozkurt, *Esports in South Korea – a Short Overview of the Legal Ecosystem*, LAWINSPORT (Apr. 10, 2019), <https://www.lawinsport.com/content/articles/item/esports-in-south-korea-a-short-overview-of-the-legal-ecosystem> [https://perma.cc/V73R-Q2BY].

178. *Id.*

179. *Id.*

180. *Id.*

181. See Agence France-Presse, *South Korea’s Obsession with Esports has Turned it into a Video Gaming Power*, TECH2 (July 21, 2018, 6:08 PM), <https://www.firstpost.com/tech/gaming/south-koreas-obsession-with-esports-has-turned-it-into-a-video-gaming-power-4789851.html> [https://perma.cc/S9YV-7CF9]; See also Mozur, *supra* note 177.

182. Nicole Pike & Guy Port, *The Esports Playbook: Asia*, NIELSEN (2008), <https://www.nielsen.com/wp-content/uploads/sites/3/2019/04/nielsen-esports-playbook-asia.pdf> [https://perma.cc/4PMP-2UKU].

183. See *Size of the Gaming Market in South Korea From 2006 to 2020 (in trillion South Korean won)*, STATISTA, <https://www.statista.com/statistics/825058/south-korea-gaming-industry-size/> [https://perma.cc/58DK-LAZT] (last visited Jan. 22, 2020); Ping Zhou, *South Korea Computer Gaming Culture*, THOUGHTCO. (July 19, 2018), <https://www.thoughtco.com/south-korea-computer-gaming-culture-1434484> [https://perma.cc/6PZ5-J86Y].

entire South Korean gaming market is estimated at US\$14.89 billion.¹⁸⁴

Due to its cultural popularity and economic impact, the South Korean government has taken steps to provide structure to the Esports industry.¹⁸⁵ In particular, the Korea e-Sports Association (“KeSPA”) was established as an organized branch under the umbrella of South Korea’s Ministry of Culture, Sports, and Tourism.¹⁸⁶ KeSPA’s main objectives are to improve the legitimacy of Esports, regulate Esports, and distribute broadcasting rights.¹⁸⁷

KeSPA also helps provide legal aid for Esports players, particularly in the area of immigration.¹⁸⁸ In fact, on September 5, 2017, KeSPA partnered with Legacy Pro Law, a Los Angeles-based law firm, to provide advice on visa issues for South Korean Esports players.¹⁸⁹ Moreover, KeSPA plays a structural role in processing athletic visas for foreign Esports players competing in South Korea.¹⁹⁰ South Korea’s temporary athletic visa, known as the C-4 visa, requires a recommendation from Korea’s Ministry of Culture, Sports, and Tourism.¹⁹¹ As KeSPA is an arm of the Ministry, it is able to streamline the visa process, allowing Esports players to obtain athletic visas on a more reliable basis and help expedite the visa

184. See *Export Value of the Gaming Industry in South Korea from 2011 to 2017*, STATISTA, <https://www.statista.com/statistics/827854/south-korea-gaming-industry-export-value/> [<https://perma.cc/UP6Z-KAH8>] (last visited Jan. 22, 2020); See *Gaming Market*, *supra* note 183.

185. See Mozur, *supra* note 177; Ozkurt, *supra* note 177.

186. See Ozkurt, *supra* note 177; Jonathan Pan, *Esports, the Next Olympic Sport*, MEDIUM (Sept. 13, 2017), <https://medium.com/@jonpan/esports-the-next-olympic-sport-8a5cbfe4f08f> [<https://perma.cc/HRZ4-4ME9>].

187. See Chao, *supra* note 20, at 758; Ozkurt, *supra* note 177.

188. See Young Jae Jeon, *Protecting pro Gamers in South Korea: Q&A with KeSPA*, ESPN (Sept. 21, 2017), https://www.espn.com/esports/story/_/id/20775150/q-kespa-representative [<https://perma.cc/7MEF-963X>]; Jaeic “Koth” Lee, *Korea E-Sports Association, Signs an Official Legal Advisory MOU with Law Firm ‘Legacy Pro Law’*, INVEN GLOBAL (Sept. 5, 2017), <https://www.invenglobal.com/articles/2889/korea-e-sports-association-signs-an-official-legal-advisory-mou-with-law-firm-legacy-pro-law> [<https://perma.cc/K4PG-55Z7>].

189. See Jeon, *supra* note 188; Lee, *supra* note 188.

190. See Jeon, *supra* note 188; Lee, *supra* note 188.

191. See, e.g., *Visa Requirements*, EMBASSY OF THE REPUBLIC OF KOREA IN THE PHILIPPINES, https://overseas.mofa.go.kr/phen/brd/m_3277/view.do?seq=684588&srchFr=∓srchTo=&srchWord=&srchTp=&multi_itm_seq=0&itm_seq_1=0&itm_seq_2=0&company_cd=&company_nm=&page=2 [<https://perma.cc/EWC6-KHRG>] (last visited Nov. 29, 2019).

process so that foreign athletes can compete in South Korean Esports competitions.¹⁹²

2. Russia

Similarly, Russia legitimized Esports in 2001 after recognizing that competitive video gaming had a sizeable Russian viewership and could benefit its economy.¹⁹³ Russian officials have also acknowledged the athletic nature of Esports compared to traditional sports.¹⁹⁴ Recently, Russia's Minister of Sports, Pavel Kolobkov, stated that he sees Esports as an authentic sport because it possesses the characteristics of a traditional sport, namely training methodology, rules, and tournament systems.¹⁹⁵ Consequently, the Ministry has included Esports on the government's list of officially recognized sports, and Esports players now earn official sporting grades, which are standardized rankings based on level of performance.¹⁹⁶

Like South Korea, Russia established its own association known as the Russian Esports Federation, which falls under the control of Russia's Ministry of Sport.¹⁹⁷ The Federation elaborates and submits regulations for sport grades, submits competition plans into the state annual competition calendar, and carries out

192. See Jeon, *supra* note 188; Ozkurt, *supra* note 188.

193. See Sam Cooke, *Russia's Minister of Sport Recognises Esports at St. Petersburg Economic Forum*, ESPORTS INSIDER (May 30, 2018), <https://esportsinsider.com/2018/05/russias-minister-of-sport-recognises-esports-at-st-petersburg-economic-forum> [<https://perma.cc/2EKC-AVXG>]; David Hoppe, *Why Isn't Russia an Esports Superpower?*, GAMMA LAW (Nov. 30, 2019), <https://gammalaw.com/why-isnt-russia-an-esports-superpower/> [<https://perma.cc/6LWR-K8QR>].

194. See Cooke, *supra* note 193; Ferguson Mitchell, *Russian Minister of Sport Talks Esports: 'Quite an Established Sphere'*, ESPORTS OBSERVER (May 30, 2018), <https://esportsoobserver.com/russian-minister-of-sport-talks-esports/> [<https://perma.cc/6MWW-TZE6>].

195. See Cooke, *supra* note 193; Mitchell, *supra* note 194.

196. See Cooke, *supra* note 193; Samuel Lingle, *Esports is now a Sport in Russia*, DOT SPORTS (June 9, 2016, 5:30 PM), <https://dotsports.com/general/news/esports-is-a-sport-russia-3412> [<https://perma.cc/EEG8-788G>].

197. See Cooke, *supra* note 193; *Russian e-Sports Federation, Accreditation in the Ministry of Sport*, INT'L E-SPORTS FED'N (June 28, 2017), <https://www.ie-sf.org/news/russian-e-sports-federation-accreditation-in-the-ministry-of-sport/> [<https://perma.cc/2E6A-VXXZ>].

official Esports events.¹⁹⁸ As it pertains to immigration, Russia's official recognition of Esports has led to fewer visa issues for Esports athletes competing within its borders.¹⁹⁹

3. France

The French government has also begun to formally recognize Esports.²⁰⁰ In 2016, the French Senate unanimously adopted La Loi pour une République Numérique (the "Digital Republic Bill"), which dissociated Esports events from gambling and expanded the definition of athletes to include Esports players.²⁰¹ Under the "athlete" classification, French Esports professionals can now partake and contribute to government pensions and other social nets.²⁰²

Additionally, Article 42 of the Digital Republic Bill provides a framework for professional Esports players' contracts.²⁰³ Specifically, Article 42 delineates the Esports titles approved by the French government and regulates the age at which players may

198. See Cooke, *supra* note 193; *Russian e-Sports Federation, Accreditation in the Ministry of Sport*, *supra* note 197.

199. See Sajid Paik, *Esports Recognized as a Regular Sport in Russia and Italy*, TALKESPORT (June 16, 2016), <https://www.talkesport.com/news/world/esports-recognized-russia-italy-sport/> [<https://perma.cc/52QN-KFFF>]; Mike Stubbs, *How Epicenter Transformed the Moscow Esports Scene*, RED BULL (Mar. 27, 2018), <https://www.redbull.com/us-en/moscow-esports-scene-epicenter-interview> [<https://perma.cc/PZW6-F8R3>] (describing an interview with CEO of Epic Esports Events, Maksim Maslov; Maslov asserts that "[t]here are also no visa issues; Russia always welcomes representatives of every kind of sport, including Esports").

200. See Adrien Auxent, *Esports are now Officially Legal in France*, ESPORTS OBSERVER (Sept. 30, 2016), <https://esportsobserver.com/esports-are-now-officially-legal-in-france> [<https://perma.cc/9SFY-CPAU>]; John Paolo "Sandata" Bago, *To Encourage Esports Growth, the French Government is Proposing a bill That Recognizes Esports Events and Players*, INQUIRER.NET (Mar. 28, 2016), <https://esports.inquirer.net/14499/to-encourage-esports-growth-the-french-government-is-proposing-a-bill-that-recognizes-esports-events-and-players> [<https://perma.cc/D8QY-TE54>].

201. See Auxent, *supra* note 200; Bago, *supra* note 200.

202. See Bago, *supra* note 200; Saira Mueller, *Esports Players may Soon be Recognized as Athletes in France*, DOT ESPORTS (Mar. 24, 2016, 4:16 PM), <https://dotesports.com/general/news/esports-players-athletes-france-3018> [<https://perma.cc/CM8J-SLP2>].

203. Auxent, *supra* note 200; Benjamin Znaty, *France is "Stepping up its Game" with the Adoption of new Esports Regulatory Rules*, BIRD & BIRD (July 2017), <https://www.twobirds.com/en/news/articles/2017/france/france-is-stepping-up-its-game-with-adoption-of-esports-regulatory-rules> [<https://perma.cc/52ZP-76RS>].

participate in tournaments.²⁰⁴ In doing so, the bill formally acknowledges Esports as a profession and differentiates Esports players from tourists, who are disqualified from athletic visas.²⁰⁵ With these mechanisms in place, pundits believe that foreign Esports players should have fewer issues obtaining French visas.²⁰⁶

4. China

Likewise, the Chinese government has legitimized Esports by defining Esports as a profession.²⁰⁷ China's Ministry of Human Resources and Social Security delineated that an Esports Professional is someone who competes in Esports tournaments, performs at Esports events, or trains with other professional players.²⁰⁸ This new definition will likely provide Esports players easier access to Chinese working visas so that they may compete in China.²⁰⁹

Additionally, China has established infrastructure that may help the visa process.²¹⁰ This year, the China Internet Association

204. See Adrien Auxent, *French Politics Places Hard Regulations Over the Esports Industry*, ESPORTS OBSERVER (Mar. 9, 2016), <https://esportsobserver.com/french-politics-places-hard-regulations-over-esports/> [https://perma.cc/MP3D-RPTP]; Jas Purewal & Isabel Davies, *The Esports Explosion*, 9 LANDSLIDE 2, (Nov./Dec. 2016), https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2016-17/november-december/esports-explosion-legal-challenges-opportunities/ [https://perma.cc/BYL4-GWVK].

205. See Auxent, *supra* note 200; Mueller, *supra* note 202.

206. See Auxent, *supra* note 200; Mueller, *supra* note 202 (noting that the Digital Republic Bill may make France more attractive compared to other European countries that have visa issues).

207. See Zac Cameron, *China Officially Recognizes Esports as a Profession*, TWIN GALAXIES (Feb. 8, 2019, 3:39 AM), https://www.twingalaxies.com/feed_details.php/4405/china-officially-recognizes-esports-as-a-profession/7 [https://perma.cc/C2SB-AZNS]; Peter Upton, *Esports in China: Industry Boom Leads to Official Recognition*, CHINA BRIEFING (Oct. 9, 2019), <https://www.china-briefing.com/news/esports-in-china-industry-boom-leads-official-recognition/> [https://perma.cc/Q8EX-4MQW].

208. Cameron, *supra* note 207; Jerome Heath, *China Officially Recognizes Esports as a Profession*, DOT ESPORTS (Feb. 6, 2019, 11:22 AM), <https://dotesports.com/business/news/china-recognizes-esports-as-profession> [https://perma.cc/EQ7W-6VVS].

209. See Cameron, *supra* note 207; Heath, *supra* note 208.

210. See Hongyu Chen, *China to Establish Esports Work Council, Weibo Partners With OWL and Soccer Team Wolverhampton Wolves*, ESPORTS OBSERVER (Mar. 6, 2019), <https://esportsobserver.com/china-recap-march6-2019/> [https://perma.cc/G4QA-

announced plans to create an Esports Work Council in order to “promote, reinforce, and standardize the Esports industry” and “guide [E]sports into a sustainable way.”²¹¹ This council has received wide government support from the Chinese Propaganda Department, the Ministry of Industry and Information Technology, the Ministry of Culture and Tourism, and the General Administration of Support of China.²¹² This type of backing could help solve visa issues in China going forward.²¹³

IV. ESPORTS SHOULD BE CONSIDERED LEGITIMATE SPORTS FOR PURPOSES OF THE P-1A VISA

Similar to the countries discussed above, the United States has a massive financial stake in Esports.²¹⁴ Unlike these countries, however, the United States has not taken the necessary steps to streamline the visa process for the foreign players that make up a significant portion of its competition base.²¹⁵ For the United States to maintain its momentum in the industry, it is critical that it displays high-quality Esports on television and streaming services, which inevitably requires the talent of foreign players.²¹⁶ Thus, a consistent, reliable visa process is imperative for the continued success of the US Esports industry.

Given the successes of other foreign regimes, it is evident that legitimizing Esports in the eyes of the government could make the visa process more consistent by allowing Esports athletes to qualify for P-1A visas. The biggest obstacle is convincing the USCIS and other government officials that Esports are analogous to traditional sports. At present, there are inherent similarities

23U2]; Radoslav “Nydra” Kolev, *China Looking to Establish Regulatory Esports Work Council*, VPESPORTS (Mar. 7, 2019), <https://www.vpesports.com/more-esports/china-looking-to-establish-regulatory-esports-work-council> [<https://perma.cc/VNZ3-EQ3Q>].

211. See Chen, *supra* note 210; Kolev, *supra* note 210.

212. See Chen, *supra* note 210; Kolev, *supra* note 210.

213. See Kolev, *supra* note 210; see also Radoslav “Nydra” Kolev, *ENCE are the Fourth Team to Withdraw From WESG 2018*, VPESPORTS (Mar. 5, 2019), <https://www.vpesports.com/csgo/news/ence-are-the-fourth-team-to-withdraw-from-wesg-2018> [<https://perma.cc/Q549-NRTM>] (discussing one example of widespread visa issues that had prevented players from competing in China prior to the announcement of the Esports Work Council).

214. See *supra* Section II.A.

215. See *supra* Section III.A.

216. See *supra* Section II.A.

shared by Esports and traditional sports, and thus Esports should be regarded as legitimate sports and Esports players should be considered athletes. However, there are still mechanisms that can be put in place in order to improve legitimacy and help Esports players meet the requirements for a P-1A visa.

A. Esports Involve the Dictionary Elements of a Sport: Physical Effort, Skill, and Competition

Admittedly, sitting in front of a computer with a mouse, keyboard, or controller is not normally what comes to mind when someone thinks of an athlete.²¹⁷ In fact, likely the opposite is true: there is a stereotype that video game addicts are unathletic and not physically fit.²¹⁸ As noted, there is no legal definition of “athlete” or “sport,” and there is very little legislative history and court opinions that opine on these definitions.²¹⁹ The P-1A visa definition also does not help much, where “professional athletes” are defined as individuals employed as athletes on teams in a professional sports association, but there is no guidance as to what constitutes an “athlete” or “sport.”²²⁰

Absent a legal definition, dictionaries are the most reliable source for defining a sport and can provide a consistent standard for assessing the athlete status of Esports players.²²¹ The Oxford Dictionary defines a sport as “an activity involving physical effort and skill in which an individual or team competes against another or others.”²²² Merriam-Webster, on the other hand, connotes that a sport is a “physical activity engaged in for pleasure,” or “a particular activity (such as an athletic game) so engaged in.”²²³

Certainly, Esports are competitions between teams who participate in a game or match.²²⁴ It also takes a considerable

217. See Daniel Kane & Brandon D. Spradley, *Recognizing Esports as a Sport*, THE SPORT May 2017, at 1.

218. See generally *Id.*

219. See 28 U.S.C. § 3701 (2016).

220. See 8 U.S.C. § 1154(i)(2) (2014).

221. See Kane & Spradley, *supra* note 217.

222. *Sport*, POCKET OXFORD AMERICAN DICTIONARY (2d ed. 2008).

223. *Sport*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (10th ed. 1998).

224. See *supra* Part II.A.

amount of skill to become a professional Esports athlete.²²⁵ Esports require technical dexterity to manipulate buttons on a controller, keyboard, or mouse to effectively control the on-screen avatar in a given video game.²²⁶ In fact, some professional players can perform more than 300 actions a minute, or approximately ten per second.²²⁷ There is also a significant level of mental skill required, as the outcome of many Esports contests depend on opponents strategizing and outsmarting each other.²²⁸ This skill is developed over the course of lengthy practice sessions, often lasting between twelve and fifteen hours.²²⁹

However, there is a debate as to whether Esports can meet the physical effort or activity elements that are consistent under the definition of “sport.”²³⁰ While competitive videogaming does not necessarily require the gross motor skills (such as jumping, running, and sliding) of traditional sports, it certainly calls for advanced fine motor skills,²³¹ which involve precise movements with increased accuracy and control utilizing small muscle groups.²³² The particular muscle groups used by Esports players are the hand and wrist muscles, which are the primary mechanisms for moving their in-game avatar and aiming.²³³ Through repetitive overuse, certain Esports players have experienced injuries similar to those of their traditional sport counterparts, including carpal tunnel syndrome, tennis elbow, and

225. See Seth E. Jenny et al., *Virtual(ly) Athletes: Where Esports Fit Within the Definition of “Sport”*, 69 *QUEST* 1, 7 (2017).

226. *Id.*

227. Douglas Heaven, *Esports: Pro Video Gaming Explodes With big Prize pots*, *NEW SCIENTIST* (Aug. 13, 2014), <https://www.newscientist.com/article/mg22329823-900-esports-pro-video-gaming-explodes-with-big-prize-pots> [<https://perma.cc/49VN-SGDJ>]; Kevin Wong, *StarCraft 2 and the Quest for the Highest APM*, *ENGADGET* (Oct. 24, 2014), <https://www.engadget.com/2014/10/24/starcraft-2-and-the-quest-for-the-highest-apm/> [<https://perma.cc/66DH-HRLD>].

228. See Jenny et al., *supra* note 225.

229. See Holden et al., *supra* note 38, at 21.

230. See Kane & Spradley, *supra* note 217.

231. See Jenny et al., *supra* note 225, at 9, 10.

232. See *id.*

233. See Emanuel Maiberg, *Achilles’ Wrists: Meet the Doctor who is Saving Esports Careers*, *VICE* (July 16, 2015), https://www.vice.com/en_us/article/ypw7pm/achilles-wrists-meet-the-doctor-who-is-saving-esports-careers [<https://perma.cc/QH7E-F8QF>]; Jodie Valade, *Not Your Father’s Injuries for Esports Gamers*, *GLOBAL SPORT MATTERS* (Apr. 9, 2018), <https://globalsportmatters.com/health/2018/04/09/not-your-fathers-injuries-for-esports-gamers/> [<https://perma.cc/44SM-D26S>].

trigger finger.²³⁴ Further, the lack of gross motor skills is not controlling when defining a sport. For example, archery and shooting are still considered Olympic sports despite their lack of gross motor skills.²³⁵

Other scientific studies provide metrics for assessing physical effort, including basal metabolic rate and perceived exertion.²³⁶ Basal metabolic rate considers blood circulation, which can be measured by blood pressure.²³⁷ Studies have indicated that blood pressure is raised while playing video games, which shows that Esports players undergo physical exertion while they play.²³⁸ Perceived exertion, on the other hand, measures how strenuous an activity feels.²³⁹ Heart rate is one of the key gauges of perceived exertion, and it has been proven that Esports players experience increased heart rate measured at upwards of 160 – 180 beats per minute during competition, which is similar to the heart rate of someone running a mile.²⁴⁰ Thus, there is a strong argument that Esports can meet the “physical effort” or “physical activity” element of the “sports” definition, and therefore should be legitimately considered on par with traditional sports to satisfy the “professional athlete” requirement of the P-1A visa.

B. Esports Has Experienced Institutionalization Similar to Traditional Sports

Beyond dictionary definitions, certain institutions are starting to acknowledge the legitimacy of Esports.²⁴¹ Robert Morris University, for instance, established the first varsity Esports program in 2014, and today there are more than one hundred

234. Maiberg, *supra* note 233; Luke Plunkett, *The Injuries That are Ending Esports Careers*, KOTAKU (July 15, 2015), <https://kotaku.com/the-injuries-that-are-ending-esports-careers-1718373200> [<https://perma.cc/2QJJ-JGMP>].

235. Jenny et al., *supra* note 225, at 10.

236. See Kane & Spradley, *supra* note 217.

237. See generally Tao Chen et al., *Basal Metabolic Rate is Correlated With Blood Pressure Among Young Population*, 9 INT’L. J. CLINICAL & EXPERIMENTAL MED. 12375 (2016)

238. See Kane & Spradley, *supra* note 217.

239. See *id.*

240. See *id.*; see also Jake Middleton, *The Importance of Exercise Training for Esport Athletes*, PREDATOR, <https://www.acer.com/ac/en/US/content/training-room-importance-of-exercise> [<https://perma.cc/ZA6K-X3NY>] (last visited Mar. 1, 2020).

241. See Holden et al., *supra* note 38, at 62-63.

varsity Esports programs at various universities that offer scholarships to attract students.²⁴² Additionally, the International Olympics Committee (“IOC”) is considering adding Esports to the 2024 Olympic games.²⁴³ Demonstrating its commitment, the IOC is overseeing an Esports tournament that will take place in Tokyo in the lead up to the 2020 Olympics.²⁴⁴ As these institutions begin to treat Esports like they do traditional sports, there is even more reason for the US government and the USCIS to view Esports as a legitimate sport and Esports players as legitimate athletes.

Beyond the sport itself, the structure of Esports demonstrates similarities to traditional sports.²⁴⁵ Just like traditional sports, Esports have a franchising system, where there are teams, leagues, a salary system in which players are compensated by their teams, central organizing committees (including league commissioners), schedules (now including the Overwatch League’s home and away schedule), and rules.²⁴⁶ This franchising system almost exactly mirrors the franchising arrangement of traditional sport professional leagues.²⁴⁷

Esports leagues are also based in the United States and teams are often associated with international cities. For instance, the Shanghai Dragons, London Spitfire, and Paris Eternal, are a few of the international teams in the Overwatch League.²⁴⁸ This international franchising directly applies to the “internationally recognized level of performance” requirement under a P-1A visa, and it satisfies the evidentiary requirement of participation in a “major United States sports league” for foreign players.²⁴⁹

242. *Id.*

243. See Martinelli, *supra* note 18, at 501.

244. See Eric Chan, *International Olympic Committee and Intel to Host \$500,000 eSports Tournament Ahead of 2020 Tokyo Olympics*, NBC SPORTS (Sept. 11, 2019), <https://www.nbcsports.com/philadelphia/fusion/international-olympic-committee-and-intel-host-esports-tournament-ahead-2020-tokyo> [<https://perma.cc/WX7X-KXTU>]; Amrita Khalid, *Intel is Hosting an Olympics-Sanctioned Sports Tournament in 2020*, ENGADGET (Sept. 11, 2019), <https://www.engadget.com/2019/09/11/intel-is-hosting-an-olympics-sanctioned-esports-tournament-in-20/> [<https://perma.cc/4SXU-YVMW>].

245. See *supra* Section II.A.

246. See Holden et al., *supra* note 38, at 20-25.

247. See *id.*

248. See *id.* at 13; see also *Teams*, OVERWATCH LEAGUE, <https://overwatchleague.com/en-us/teams> [<https://perma.cc/Z6CA-2LKA>] (last visited Mar. 1, 2020).

249. See 8 U.S.C. § 1184(C)(4)(A); *P-1A*, *supra* note 150.

Additionally, Esports typically have yearly international competitions in which players from the same country form teams and compete against other teams representing their respective nations, a system that is similar to the World Cup or Olympics.²⁵⁰ This should satisfy the evidentiary requirement for participation on an “international competition with a national team.”²⁵¹

V. INITIATIVES FOR LEGITIMIZING ESPORTS – HOW THE US CAN HELP THE VISA PROCESS FOR ESPORTS PLAYERS

US officials can also look to international regimes as evidence that Esports are legitimate. As discussed above, there are a number of countries that formally recognize Esports and have established Esports associations under the guidance of particular government bodies.²⁵² South Korea’s KeSPA and the Russian Esports Federation are marquee examples of legitimizing Esports through government institutions.²⁵³ To date, however, there is no similar institutionalization of Esports in the United States.²⁵⁴

A. Establishing an International Esports Association

Bringing Esports within the US bureaucracy is an unlikely prospect given that other major US sports leagues are private entities.²⁵⁵ There are, however, alternatives to incorporating Esports under the umbrella of the US government. Specifically, there are international associations that are made up of national institutions and represent Esports players in various matters.²⁵⁶ The International E-sports Federation (“IeSF”) is one the most

250. See Blizzard Entertainment, *supra* note 88 (laying out the 2018 Overwatch World Cup Standings); Wolf, *supra* note 88 (describing the US *Overwatch* team’s victory in the *Overwatch* World Cup).

251. See *P-1A*, *supra* note 150.

252. See *supra* Section III.B.

253. See *id.*

254. See Chao, *supra* note 20, at 756–61.

255. See Nathaniel Grow, *Regulating Professional Sports Leagues*, 72 WASH. & LEE L. REV. 2 573, 577-78; Mathilda S. McGee-Tubb, *Where is the Line? Options for Professional Leagues and Teams Facing On-Field Player Social Activism*, MINTZ (Feb. 22, 2018), <https://www.mintz.com/insights-center/viewpoints/2186/2018-02-where-line-options-professional-leagues-and-teams-facing> [<https://perma.cc/Q2Y2-7NE2>] (noting that professional sports leagues are private entities).

256. See Chao, *supra* note 20, at 764-65.

reputable of these organizations.²⁵⁷ Currently, there are fifty-six nations that are members of the IeSF,²⁵⁸ and the United States is represented in the IeSF through its national Esports association known as the United States eSports Federation (“USEF”).²⁵⁹

At first glance, it appears that the IeSF could help Esports players meet the P-1A requirement for “internationally recognized level of performance.”²⁶⁰ However, while the IeSF performs valiant work in promoting, legitimizing, and setting standards for Esports, its membership does not include all professional Esports players across every Esports title, and it lacks status as the sole governing body of Esports.²⁶¹ This is primarily because the various stakeholders in the Esports industry (including publishers, league, organizers, teams, players, etc.) have interests that sometimes diverge drastically and thus choose not to join the organization.²⁶² Beyond the IeSF, there are other international organizations, including the World Esports Association (“WESA”), World eSports Council (“WeSC”), and Esports Integrity Coalition (“ESIC”) that each suffer from the same issues as the IeSF.²⁶³

The lack of a true Esports governing body is detrimental to the P-1A visa process. Without a governing international association, it is more difficult for athletes to demonstrate the evidentiary requirement of a “written statement from an official in the

257. *Id.*

258. See IeSF, *Member Nations*, <https://www.ie-sf.org/about/#member-nations> [<https://perma.cc/EK2N-H6EX>] (last visited Mar. 1, 2020).

259. *Id.*

260. See 8 U.S.C. § 1184(C)(4)(A)(i)(I).

261. Specifically, members of the IeSF have to be part of a “National Esports Federation” (for instance, the USEF) that complies with IeSF criteria and is the “controlling body” for a single country. Because not all countries have “controlling bodies,” and because not every country that has professional Esports players has its own National Esports Federation, inevitably some professional Esports players are not included in the IeSF. See International e-Sports Federation Statutes, arts. 2 & 10, INT’L E-SPORTS FED. (Oct. 10, 2016), https://www.ie-sf.org/images/9j6q2plki25i/1Fjm3fEACgag0oEuOMGG0Q/96e69683abe60fa6b27b20bd42ad0d27/IeSF_Statutes__As_of_Oct_08_2016_.pdf [<https://perma.cc/JJK2-JC6H>].

262. See Chao, *supra* note 20, at 765 (noting the risk the United States may face by deferring to an international body, particularly as it pertains to protecting the interests of domestic stakeholders).

263. See *id.* at 764-65; World Esports Association, Code of Conduct and Compliance for Teams and Players (Dec. 2017); *Who we are*, ESIC, <https://esic.gg/about> [<https://perma.cc/8M65-3QRL>] (last visited Oct. 27, 2019).

governing body of the sport” for a P-1A visa.²⁶⁴ Further, a comprehensive governing body could provide the infrastructure to establish international rankings in Esports, or awards for high-level of performance, such as Player of the Year or Rookie of the Year accolades. These rankings and awards would demonstrate other P-1A evidentiary factors and help prove that Esports players are part of an “internationally recognized level of competition.”²⁶⁵ Thus, establishing a cohesive international unit that can encompass all qualified Esports, set standards, and provide a productive infrastructure will help legitimize Esports and help Esports players qualify for P-1A visas.²⁶⁶ The international nature of Esports makes cooperation possible, and overcoming potential legal hurdles is a necessary step in providing reliable access to visas for Esports players.

B. Establishing Labor Unions

Finally, establishing labor unions could help solve legitimacy issues and aid players in obtaining P-1A visas because a written consultation from a labor association is required to demonstrate “internationally recognized level of performance.”²⁶⁷ Riot Games has already established an association for its *League of Legends* players, which is a step in the right direction.²⁶⁸ However, the type of association that Riot Games established may not be the type contemplated by USCIS for purposes of a P-1A visa.²⁶⁹

There is no definition for “labor organization” for purposes of a P-1A visa, but the USCIS does provide a list of organizations that have sent consultation letters on behalf of players.²⁷⁰ This list includes traditional sports unions such as the Major League Soccer

264. See *P-1A*, *supra* note 150.

265. See 8 U.S.C. § 1184(C)(4)(A).

266. See Chao, *supra* note 20, at 764-45.

267. See *P-1A*, *supra* note 150.

268. See Holden et al., *supra* note 38, at 47-48

269. See *Address Index for I-129 O and P Consultation Letters*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/working-united-states/address-index-i-129-o-and-p-consultation-letters> [<https://perma.cc/7EAC-9B6Y>] (last visited Oct. 28, 2019) (disregarding any mention of Riot Games’ labor association or any Esports labor association).

270. See *id.*

Players Union and the National Basketball Players Association.²⁷¹ These associations are different than the Riot Games association because they qualify as true unions: they are the product of *player* self-organization and they “engage in . . . concerted activities for the purposes of collective bargaining.”²⁷² The Riot Games association, on the other hand, was unilaterally formed by the league.²⁷³

Because traditional sport unions, with collective bargaining power, are formally recognized by the USCIS, Esports players should form unions that closely resemble those of traditional sports.²⁷⁴ Fortunately, players in the Overwatch League are making efforts to do just that.²⁷⁵ With the goal of forming a labor union on par with the NFLPA and MLBPA that possesses collective bargaining power, the Overwatch League currently stands as the model to be followed by other Esports leagues.²⁷⁶

The collective bargaining process itself can be helpful in streamlining the visa process for Esports players. For instance, players could negotiate for league officials to help the players with evidentiary aspects of the P-1A visa, such as securing a guarantee that any player may obtain a written statement from a league official. While these types of guarantees are not usually bargained for in traditional sports,²⁷⁷ Esports requires frequent international

271. *Id.*

272. See Holden et al., *supra* note 38, at 41-44; see also National Labor Relations Board, Basic Guide to the National Labor Relations Act, NAT’L LAB. REL. BOARD 7-8, <https://www.nlr.gov/sites/default/files/attachments/basic-page/node-3024/basicguide.pdf> [<https://perma.cc/2NPH-SSP4>] (last visited Oct. 28, 2019).

273. See Holden et al., *supra* note 38, at 47-48 (noting Riot Games’ effort to prevent union formation amongst *League of Legends* players); see also Paresh Dave, *In e-sports, it’s the Bosses who are Rallying for a Union*, L.A. TIMES (May 26, 2017 12:55 PM), <https://www.latimes.com/business/technology/la-fi-tn-esports-unions-20170526-htmlstory.html> [<https://perma.cc/FUV8-7EQ6>] (discussing Esports player’s reliance on Riot Games for advocating on their behalf).

274. *P-1A*, *supra* note 150

275. See Myers, *supra* note 79 (describing Thomas “Morte” Kerbusch’s effort to create an independent *Overwatch* union); Kogel, *supra* note 79.

276. See *id.*

277. See Major League Soccer Collective Bargaining Agreement, at 18 (2015), available at <https://s3.amazonaws.com/mlspa/Collective-Bargaining-Agreement-February-1-2015.pdf?mtime=20180213190926> [<https://perma.cc/37N9-DJX5>] (although the MLS CBA does note that the MLS will pay for any fees associated with obtaining a player visa); National Hockey League Collective Bargaining Agreement, at 225-26 (guaranteeing payment for immigration fees); National Football League Collective

travel to the United States from foreign countries, which is particularly unique. Esports players unions, once formed, should focus their negotiating efforts on securing visa support from their leagues.²⁷⁸

However, in order to form a union, players must actually want to be a part of one.²⁷⁹ Under the NLRA, a union may be established only if a majority of employees assert a desire to unionize, which is usually expressed by signing cards or petitions.²⁸⁰ The concern with Esports is that there are a multitude of games and individual leagues based around those games, which might mean that players have varying interests.²⁸¹ Additionally, Esports players have expressed a lack of attention when signing contracts with teams and leagues, which has resulted in players agreeing to harmful contract terms.²⁸² This does not indicate that the players would make the effort to unionize.

However, the work done by Morte in the Overwatch League indicates that players are beginning to take unionizing more seriously, perhaps due to the exploitation that Esports players have experienced in the past.²⁸³ Beyond *Overwatch*, *CS: GO* players

Bargaining Agreement (2011), available at <https://nflabor.files.wordpress.com/2010/01/collective-bargaining-agreement-2011-2020.pdf> [<https://perma.cc/73K3-UR4A>] (disregarding any mention of immigration or visas); Major League Baseball Collective Bargaining Agreement (2012), https://ipmall.law.unh.edu/sites/default/files/hosted_resources/SportsEntLaw_Institute/2012MLB_MLBPA_CBA.pdf [<https://perma.cc/2DBK-6GLX>] (disregarding immigration or visas).

278. See *supra* Section II.A.3.

279. See National Labor Relations Board, *supra* note 272, at 9.

280. See National Labor Relations Board, *Your Right to Form a Union*, NAT'L LAB. REL. BOARD, <https://www.nlr.gov/rights-we-protect/whats-law/employees/i-am-not-represented-union/your-right-form-union> [<https://perma.cc/JC8Z-PZNQ>] (last visited Oct. 28, 2019).

281. See Kogel, *supra* note 79; Jonathan Stoler, *10 Labor and Employment Considerations in Esports*, SHEPPARD MULLIN LLP (June 12, 2019), <https://www.lawofthelevel.com/2019/06/articles/esports/labor-employment-considerations-esports-athletes/> [<https://perma.cc/SK2R-AZD5>] (questioning whether players have a sufficient community of interest).

282. See Dave, *supra* note 273 (noting that players signed contracts requiring them to attend promotional events, and the players later realized that they had agreed to the stipulations); Aabicus Lee, *The Dangers of eSports Contracts: Don't Sign Before you Read This*, DAILY ESPORTS (Apr. 21, 2019), <https://www.dailyesports.gg/the-dangers-of-esports-contracts-dont-sign-before-you-read-this/> [<https://perma.cc/MZ8X-KJ9Z>].

283. See Dave, *supra* note 273; see also Myers, *supra* note 79.

are also forming a player's association under the efforts of Scott "SirScoots" Smith, a longtime Esports veteran.²⁸⁴ This union will not be legally certified because players are not signing unionization cards, but it demonstrates that players are interested in banding together.²⁸⁵ In terms of potential varying interests, thus far players have organized as individuals competing in their respective leagues under their respective titles.²⁸⁶ In this sense, Esports players' interests are likely to be aligned in a similar fashion as traditional sports players who play their sport within their respective sports leagues.²⁸⁷ While there remains much to be seen about the future of unions in Esports, it seems that more players favor unionizing, and this trend could have positive implications for securing P-1A visas.²⁸⁸

VI. CONCLUSION

Because of the United States' financial impact on the Esports industry, it plays a critical role in the global Esports ecosystem. In order to preserve this position, it is imperative that the United States presents first-rate Esports talent by allowing the best players from across the globe to compete in its competitions. In its current state, the US visa system is unnecessarily hindering the ability of foreign Esports players to do so.

The most effective way to address this issue is by streamlining the US visa process and allow foreign Esports players to qualify for P-1A visas as professional athletes. Currently, the USCIS, and perhaps the American public generally, are reluctant to acknowledge that Esports are akin to traditional sports and Esports players are athletes, and this is significantly harming the chances for Esports players to obtain P-1A visas. This Note identifies certain countries that formally recognize Esports to provide a reference point for Esports legitimacy within the United

284. See Myers, *supra* note 79; Mullen, *supra* note 80.

285. See Myers, *supra* note 79; Mullen, *supra* note 80.

286. See Myers, *supra* note 79; see Holden et al., *supra* note 38, at 41-42 (describing the *League of Legends* labor association as composed of *League of Legends* players).

287. See Holden et al., *supra* note 38, at 41-44.

288. See Dave, *supra* note 273; Khuong B. Nguyen, *Visas for Esports Gamers on the Rise*, THE NAT'L L. REV. (Mar. 25, 2019), <https://www.natlawreview.com/article/visas-esports-gamers-rise> [<https://perma.cc/R99W-N4GQ>].

States. Perhaps, in looking to these countries, the United States will see Esports in a new light.

Moreover, this Note reinforces Esports legitimacy by demonstrating that Esports meet all the necessary elements of sport and are institutionally similar to traditional sports. In identifying these similarities, hopefully US officials will see that these sports are far more similar than not, and that Esports athletes should be treated with increased esteem during the visa process. Finally, this Note identifies certain avenues that can further legitimize Esports and consequently help the effort for Esports athletes to obtain P-1A visas. For the foregoing reasons, it is time for the United States to give Esports athletes, who sacrifice almost everything to pursue their sport, the respect they deserve. Otherwise, the players, the United States, and the Esports industry will continue to suffer.