

S. HRG. 114-831

**IMMIGRATION REFORMS NEEDED TO PROTECT
SKILLED AMERICAN WORKERS**

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

MARCH 17, 2015

Serial No. J-114-7

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U.S. GOVERNMENT PUBLISHING OFFICE

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**IMMIGRATION REFORMS NEEDED
TO PROTECT SKILLED
AMERICAN WORKERS**

TUESDAY, MARCH 17, 2015

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., in Room 226, Dirksen Senate Office Building, Hon. Charles E. Grassley, Chairman of the Committee, presiding.

Present: Senators Grassley, Hatch, Sessions, Cornyn, Flake, Vitter, Perdue, Tillis, Schumer, Durbin, Klobuchar, and Blumenthal.

**OPENING STATEMENT OF HON. CHARLES E. GRASSLEY,
A U.S. SENATOR FROM THE STATE OF IOWA**

Chairman GRASSLEY. I will call the hearing to order.

Usually, I wait for the Ranking Minority Member, but Senator Leahy said that we could proceed. And when he comes or if there is anybody that is speaking for the Democrats that wants to speak, I will call on them after I am done speaking. I am going to call on Senator Cornyn also to make a statement.

My opening statement is about 8 minutes long. So, I hope that you will bear with me.

A woman contacted me last week to share her story about being laid off from a company after 20 years and replaced by a foreign worker. She said her young son already knows two computer programming languages, but she is having second thoughts about steering him into the field of computers and information technology.

Today's hearing will focus on our immigration policies and the need for reforms to better protect American workers. We will hear from witnesses about the H-1B visa program. Most people believe that employers are supposed to recruit Americans before they petition for an H-1B worker or that they are supposed to hire a U.S. worker if that person is equally or better qualified, and, of course, we found out that is just not true.

Over the years, the program has become a Government-assisted way for employers to bring in cheaper foreign labor. It has gotten away from its intended purpose of complementing the U.S. workforce. And I believe, when it comes to complementing the U.S. workforce, after Americans are given first choice, that we would all agree that if we need workers, we need workers, but only under those circumstances.

Moreover, the program is highly susceptible to fraud and abuse. A Government report has shown a 20 percent violation rate in a random sample of these petitions. Another Government report said that program oversight was fragmented and restricted.

The Center for Investigative Reporting describes how some employers exploit foreign workers and withhold wages. Then, there are stories about how U.S. workers are treated. Time and again we hear about how U.S. workers are being laid off, forced to train their replacements, many of whom are not truly skilled.

This is the case with Southern California Edison, which started laying off 500 American workers from its IT department last August. The company replaced them with foreign H-1B workers.

A number of laid-off employees have come forward to share their stories with me. I have been told how the U.S. workers had to train their replacements, knowing all along that they were going to lose their jobs to individuals who did not possess the skills that the present employee had. They said to me, and we can understand it, that that is humiliating.

I invited Southern California Edison to join us today. I thought they would want to defend their actions and explain why U.S. workers have been left high and dry. Unfortunately, they declined any invitation.

Despite legal loopholes and inadequate oversight, some employers do not like the red tape associated with the H-1B visa program. That is why they are finding alternative routes to import foreign workers. For example, some are using the B-1 visa. Infosys, the number 1 user of the H-1B visas, entered into a \$34 million settlement with the DOJ for allegations of systematic visa fraud and abuse of immigration processes.

The company allegedly coached employees applying for B-1 visas, providing them with specific instructions on how to deceive U.S. consular officials with their visa interviews. They enter and work for little or no money.

Today we will hear from a man who blew the whistle on this company for visa fraud. We will also hear about the Optional Practical Training program. That program goes by the initials, OPT. OPT provides foreign students the opportunity to work for a U.S. employer, but there is no numerical cap. There are no wage requirements. There is no rule that the student have an offer of employment before being granted a work permit.

This OPT program also lacks adequate oversight. Foreign students, sometimes aided by school officials, are currently abusing the OPT program to acquire unauthorized employment in the United States, and the Federal Government does not know where tens of thousands of foreign workers on OPT are located, who they are working for, or what they are doing while staying in the United States.

Aside from the national security risks, there is concern that these foreign students are taking jobs from qualified American students. It is no secret that foreign students are being targeted.

In 2013, IBM placed ads on their website with the following mandatory job requirement: quote, "Should have a valid OPT work permit for legal work authorization in the United States," end of quote. The job, however, was located in Idaho. The Department of

Justice reached a settlement agreement where the company agreed to pay \$44,400 in civil penalties for discriminating against Americans.

I would also like to have you pay some attention to this poster. It is a brazen "Help Wanted" ad. In this ad, the employer is looking for candidates with valid H-1B visas to work in the United States and the skill set needed is, quote, "any technical skill is fine," end of quote.

All this raises the question as to why we in Congress would simply increase the supply of foreign workers without adding more protections for American workers. Claims that there just are not enough U.S. workers willing and able to take these skilled jobs fall flat when we read stories about big layoffs in the tech industry.

Bills have been introduced that would increase the annual caps from 65,000 to 115,000, some as high as 195,000, but this only makes the problem worse. It does not close the loopholes or prevent abuse. It does not make sure that American workers are put before foreign workers. It only increases the supply of cheaper foreign labor.

Increasing the supply of H-1B visas alone also will not help smaller U.S. companies who are already shut out of the program because the big corporations take thousands of visas each year. The number 1 user of the program is bringing in more than 6,000 new workers each year.

The top 10 companies that use H-1B programs swallow up over 50 percent of the supply of available visas.

Instead of simply increasing the supply of visas or even including that, real reforms are needed.

Senator Durbin and I introduced legislation in the past to get at the problem. Our bill would increase worker protections. It would require all employers seeking to hire H-1B workers to first make a good faith effort to recruit Americans.

Our bill would revise H-1B prevailing wage determination requirements. It would lengthen the period surrounding the hiring of H-1B workers during which U.S. workers may not be laid off, and it would prohibit employers from advertising for only H-1B workers, like the ad I referenced a while ago.

Finally, it would give the executive branch enhanced authority to investigate employer compliance and it would set a random audit scheme to keep employers honest.

Some say that Congress should pass the 2013 immigration bill as if it would make the problem go away, but it does not solve the problems facing American workers.

During the debate on that bill, I offered pro-American worker amendments. They were all defeated.

I am glad that we have AFL-CIO President Trumka here today to shed light on how S.744 missed the boat. Other professional trade unions weighed in against S.744, and I will put their recent statements in the record.

[The information appears as submissions for the record.]

Chairman GRASSLEY. Today we are telling the story. The voices of American workers ought to be heard. The livelihood of U.S. workers and families are on the line. Will we do everything we can to protect future generations who desperately want to work in the

high-skilled sectors, or will we simply ignore the plight of those who have lost their jobs and had to train their foreign replacements?

We cannot fail the American worker. Reforms are needed to put integrity back into our immigration system and to ensure that American workers and students are given every chance to fill vacant jobs in this country.

[The prepared statement of Chairman Grassley appears as a submission for the record.]

Chairman GRASSLEY. Because Senator Cornyn has to go to the floor, I am going to call on him now and he will not ask questions, but he will make a statement and then put questions in the record.

**OPENING STATEMENT OF HON. JOHN CORNYN,
A U.S. SENATOR FROM THE STATE OF TEXAS**

Senator CORNYN. Thank you, Mr. Chairman. As you know, we have a bill on the floor that I will be going down to speak and be filling the Chair on the Chairman's behalf.

But I appreciate very much the Chairman holding this hearing because I think there are a lot of misconceptions about H-1B visas and high-skilled worker visas. We have had a lot of debate since I have been in the Senate about immigration reform, but the one thing I thought we agreed upon was America would be a better place, a more productive place if we were able to continue to attract the best and brightest minds from around the world. In fact, we do and we educate them at our colleges and universities. And sending them home after we have subsidized their education and helped them get a Ph.D. or a master's degree in a STEM field strikes me as foolish.

But I share your concern about abuses in the actual application of the law and if we find people cutting shortcuts, shortchanging American workers or violating the law, I think we ought to go after them with every tool at our disposal.

But it is hard to ignore the benefits of attracting high-skilled foreign talent and entrepreneurs. I know that there is a lot of controversy about immigration in the country, but I thought that we agreed that legal immigration was a good thing. It is, I guess, not true. There are actually some people who think we ought to reduce legal immigration, as well.

But it is hard for me to ignore the benefits of attracting high-skilled foreign talent and entrepreneurs. We all know the stories of Intel, eBay, Yahoo and Google, companies founded, in part or in whole, by immigrants that employ thousands of American workers.

In Texas, immigrants and their children have helped found numerous Fortune 500 companies, like AT&T, Texas Instruments, Fluor Corporation, National Oilwell Varco, and Marathon Oil, and we will hear from Mr. Billhardt here during the question, from Austin, Texas.

Immigrant-owned companies employ hundreds of thousands of Americans and help fuel the economy by bringing in more than \$775 billion in revenue each year. In the words of Dallas Federal Reserve researchers, immigrants help power and grease the economy's engines. That is because new talent and ideas help American

businesses lead the pack and compete against foreign competition and create jobs right here in America.

America's lack of a sensible and coherent high-skilled and employment-based immigration policy has caused our Nation to lose too many entrepreneurs and job-creators to our competitors abroad, who are all too happy to take advantage of our failure to effectively compete for talent.

In order to remain competitive in today's global marketplace, U.S. companies must have access to a high-skilled temporary labor pool from abroad. The H-1B visa program, I agree with you, Mr. Chairman, should be a supplement to hiring American workers if we can find the talent here.

But it is a shining example of what we could accomplish with an immigration system that focuses on securing talent and fostering economic growth, an immigration system that advances the American dream while improving the lives of U.S. foreign workers.

According to the American Enterprise Institute, each approved H-1B worker is associated with an additional 1.83 jobs among U.S.-born workers. Over the years I have put forward a number of proposals to ensure that our immigration system is designed to meet the needs of our dynamic economy, including the STAR Act, the SKILLS Act, and the global competitiveness.

I am also encouraged by the work of Senator Hatch on the I-Squared Act and Representative Issa on the SKILLS Visa Act. All of these bills would focus on much needed increases to the H-1B temporary worker visa. It would recapture unused temporary and permanent visas and increase access to green cards for high-skilled immigrants, reforming our immigration system in a way that helps the American worker and future generations to compete on the world stage, while growing our economy, benefiting all Americans.

Unfortunately, President Obama has failed to work with Congress to achieve common sense reform of our high-skilled and employment-based immigration system. Instead the President has used immigration reform as a cynical talking point and trying to drive a wedge between Americans on something we should all be able to achieve consensus on, which is how do we improve our legal immigration system in a way that reflects our values and reflects our economic interests.

I hope we will use this hearing to discuss ways Congress can work together and get serious about reforming our immigration system in a way that respects legal immigrants and fundamentally protects the interests of American workers and the American economy.

High-skilled and employment-based immigration reform is one of the most important and bipartisan areas in the broader debate, and I believe that Congress has an opportunity to address this issue in a way that respects the needs of American businesses and workers.

Mr. Chairman, let me close just by saying one of the really important reasons why this hearing is so necessary is because there are so many anecdotes and misconceptions about the H-1B visa system.

For example, the idea that you can legally hire a cheaper foreign worker and replace an American worker for a lower wage is illegal.

It is illegal. And if it is happening, it ought to be prosecuted. It ought to be enforced.

But the idea that somehow H-1B is a way to bring in cheap foreign labor and fire Americans is false or, at least, that is not what Congress has intended and that is not what the law says.

So, if those sorts of things are happening, we need to go after it with everything we have got.

And thank you very much for giving me a chance to say a few words.

Chairman GRASSLEY. There will be two things before we call on the panel. Since Senator Leahy could not come, I said I would give any Democrat that showed up an opportunity to say something, and then we will call on the Chairman of the Subcommittee for a short statement, and then we will go to the witnesses.

**OPENING STATEMENT OF HON. CHARLES E. SCHUMER,
A U.S. SENATOR FROM THE STATE OF NEW YORK**

Senator SCHUMER. Thank you, Mr. Chairman. I will be any old Democrat today.

[Laughter.]

Senator SCHUMER. First, I appreciate the opportunity to briefly speak about the high-skilled visa program, how immigrants contribute to our economy, what Congress should be doing to ensure that our immigration system helps rather than hurts American workers.

First, fortuitous scheduling, St. Patrick's Day. It is a day when all across America we commemorate the diverse contributions of Irish immigrants and their descendants and that they have made and continue to make.

In fact, in immigration reform, the bill that passed the Senate, we had some provisions to help Irish immigrants and people from Ireland come to America. It is very difficult for them. It is one of the reasons I am so passionate about passing the comprehensive bill.

Now, today we are here to discuss a group of immigrants that are mischaracterized, in my judgment, as harming Americans, taking their jobs, even some would say distorting our culture. But high-skilled immigration has helped fuel economic growth in America for the past several decades. Programs like H-1B, L-1, and J-1, bring very talented people to America. They want to be here. It is great that they want to be here. The most talented, innovative people in the world want to come to America, and here, they work as innovators and they create jobs.

Our booming tech sector relies on foreign skilled workers. Our university and medical research facilities benefit from their breakthroughs, and so does our workforce. For every 100 H-1B workers, an additional 183 jobs are created for American-born workers.

Plain and simple, it is a myth that the H-1B visa program takes jobs away from Americans. Let me talk about my State of New York. One-third of all New York businesses are owned by immigrants. Many of them are just little mom-and-pop shops, people struggling to climb that American ladder of success and they work so hard.

This idea that our immigrants do not work hard, when I look around New York, I see the opposite. They work real hard.

Between 2006 and 2010 in New York, immigrant-owned businesses generated \$12.6 billion in business income.

So, Congress has an important ongoing role to play in keeping the H-1B program flexible and suited to the current labor market. It just does not make sense to have an immigrants-need-not-apply policy when we have so many help wanted signs at high-tech companies and research universities here in the U.S.

We know our businesses need and deserve to attract the best talent to keep America number 1, and that has been a hallmark of America, since in my day, the new immigrants in my State, the new immigrants were English. They were trying to come in when the Dutch had established New York.

So, this is an age old issue and there are always tensions and it always works out.

Of course, at the same time, we have to do a lot more to inspire, educate and train our own young people to thrive in STEM programs, and we can do both by striking the right balance with the H-1B visa program. I have got about a dozen ideas that have already passed the Senate. What about improving the Department of Labor certification process to revise wage requirements for workers and require employers to post jobs on a DOL site? How about using thousands, maybe millions of dollars in new application fees paid by employers to fund STEM grants, scholarships and training for America workers?

How about new procedures for investigating worker complaints, new rules designed to reduce employees' dependence on H-1B and new restrictions on hiring foreign workers to displace U.S. workers?

In our bill, we worked long and hard, some of the people at this table know, to get business and labor to support an H-1B program and I think we found a pretty good balance. It can always be made better.

So, Mr. Chairman, it was supported by the U.S. Chamber of Commerce and the AFL-CIO. So, I think this is a great opportunity.

I just want to say one more thing. We have to do this in a comprehensive way. I know some people have ideas, let us just do this piece, let us just do that piece. That will not work, never has, will not again. You cannot leave large numbers of people behind as you try to make our immigration system fair and comprehensive.

And I would hope and pray that our House colleagues would see the light and put together some kind of program similar to the one that passed with bipartisan support, strong bipartisan support last Congress.

Thank you, Mr. Chairman.

Chairman GRASSLEY. Some of the reforms you mentioned should be done are in legislation that I have introduced and I thank you for mentioning that.

Senator Sessions.

**OPENING STATEMENT OF HON. JEFF SESSIONS,
A U.S. SENATOR FROM THE STATE OF ALABAMA**

Senator SESSIONS. Thank you, Chairman Grassley, and thank you for your long-term interest in this issue and your leadership today.

Let me just say that I am perfectly willing to discuss converting our immigration system to a more high-tech-oriented system, more skill, more language skills, more science and engineering skills, and any of those other skills. That is a very important thing. We admit 1 million a year. We ought to dedicate that more, like Canada or Australia, to higher skilled persons.

But this H-1B program is a jobs program. It is a temporary job process by which a corporation says they cannot fill a job and they need a temporary worker. It is not an immigration program.

They are not intended to come here and start a business that is going to hire lots of people. And it is being abused by a huge degree.

It absolutely is replacing, firing causing workers today to be fired from their job and required to train people who take those jobs, and it is not acceptable. This is not what the program is about.

So, dedicated workers at Southern California Edison were laid off and forced to train guest workers to replace them, and it has happened in other places. The same companies lobbying Congress for more foreign workers are laying off workers.

Bill Gates wrote an op-ed demanding more foreign workers the same week Microsoft laid off 18,000. Today we are going to examine two vital questions. Will bringing in more guest workers help or hurt the wages and employment prospects of American workers? A fair question, I think. And do we have a shortage of STEM workers? And the truth is, colleagues, we do not have shortage; 75 percent of the people who graduate with STEM degrees are not working in STEM fields. That is just a fact.

So, we are going to listen to, I guess, the arguments that go forth, but I will just note this. We are going to have two experts, Professor Salzman and Professor Hira, and I can name a group of others that have joined with them, and I am not aware that their data and their facts have ever been disputed and it is the truth. And the myth out here needs confronted. That is where we are heading.

So, Mr. Chairman, thank you. I do not want to take too much time. But I used to believe we had a shortage of IT workers more than any other area in the country. When we debated this in 2007, I accepted that fact. Now, I realize that the facts are not that and, in fact, we do not have a shortage.

Chairman GRASSLEY. I will introduce our panel and then the panel will speak, and then we will have questions.

We have Richard Trumka, President, AFL-CIO, a position he has held, I believe, since September 2009. Mr. Trumka has devoted his career to advocating for American workers. He is the son of a coal miner who also worked the mines himself. Today he is here on behalf of the 12.5 million working men and women who belong to the Federation.

Ron Hira is a faculty member at Howard University, a Professor of Public Policy. Professor Hira has done research into the implica-

tions of offshoring high-skilled jobs and has previously served as vice president for the IEEE-USA, the largest engineering professional society in America. As a licensed engineer, he has firsthand knowledge of the STEM industry and job market.

Bjorn Billhardt, the founder and Chairman of the Board of Enspire Learning. Mr. Billhardt is recognized as an authority in the field of e-learning and simulation design.

We also have Jay Palmer. He represents the voice of American workers. Mr. Palmer was employed at Infosys until he blew the whistle on the company's fraudulent immigration and visa practices.

Benjamin Johnson, executive director of the American Immigration Council. Mr. Johnson has been in the immigration field for over 20 years and has written extensively on immigration.

John Miano, an attorney who works with and represents the Washington Alliance of Technology Workers. He is well known for his defense of American workers who are displaced by foreign workers.

Hal Salzman, professor at Rutgers, where he focuses on STEM education and workforce supply. Professor Salzman has conducted numerous studies and published several articles on the IT industry, including software design work practices and on science and engineering workforce issues.

I would also like to note that I invited representatives of three executive branch agencies to testify today. I had hoped the Departments of State, Labor, and Homeland Security would share their insight on some of the issues. However, the three Departments declined.

I thank all of our witnesses for coming, and we will start with President Trumka.

STATEMENT OF RICHARD L. TRUMKA, PRESIDENT, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, WASHINGTON, DC

Mr. TRUMKA. Thank you, Chairman Grassley and Members of the Committee. Thanks for the opportunity to testify.

I do not have to tell you that working people are struggling in this economy. Wages for the bottom 70 percent have been flat since the late 1970s, while gains from increased productivity of our workforce have flowed almost exclusively to the top 10 percent. That kind of wage stagnation and wealth concentration is not due to immutable economic forces. It is the result of corporate interests that insist upon low wages so that profits can grow higher.

The rules are currently rigged against working families and our unjust immigration system is one of the many forces making it harder for them to get ahead. Real immigration reform is an important part of the large structural change that needs to happen to create an economy where wages grow, wealth is fairly shared, workers are protected, and democracy is restored in the workplace.

While far from perfect, S. 744 created a broad and inclusive pathway to citizenship and demonstrated that a comprehensive approach to fixing our system is possible when we all work together.

The labor movement was proud to play a role in negotiating with the business community to create a new type of employment-based

visa system that was based on real market needs, not the whims of employers. That included key worker protections. the W visa should serve as a model for future reforms.

But, while we supported S. 744 as a whole, we do not support the high-skilled provisions as stand-alone legislation. We are particularly disturbed to see the requirements to hire U.S. workers removed and protections against displacement gutted by the Hatch amendment during mark-up.

When employers can hire undocumented workers with a wink and a nod and then fire them when they seek to organize a union or complain about unpaid wages or unsafe working conditions, it is not just undocumented workers who are hurt, but all workers. And when employers like Southern California Edison can replace hundreds of steady middle class jobs with captive guest workers who earn a fraction of the wage for the same work, then we know our broken immigration system is facilitating a race to the bottom.

Eighty-three percent of the H-1 visas are in the one or two level, which means the 33 percentile were less, with 50 percentile recognizing the local prevailing wage in those areas.

Overhauling our immigration system is a core priority to the labor movement and we remain steadfast in that goal.

I want to be clear about this. Expanding captive guest worker programs is not the way to do it. As we have said repeatedly, Congress must reform guest worker programs rather than expand it, and the law should unambiguously state that it is illegal to replace a U.S. worker with an H-1B worker under any circumstances.

In addition, we have the following recommendations. One, employers should be required to fill jobs with the most qualified American applicant and should be able to recruit from abroad only when a real need exists and can be proven.

Two, employers should be required to pay H-1B workers the same rate that they would pay an American worker. In fact, we think they should be required to pay the 75 percentile wage so that we can end the perverse incentive to prefer to hire guest workers.

Three, workers in the H-1B program should have increased job mobility and the right to self-petition for permanent residence.

Yet, instead of enacting commonsense reforms such as these, the I-Squared bill would more than triple the number of H-1B visas at a time when three out of four American STEM degree holders cannot find work in their field.

This is particularly problematic because access to a large pool of guest workers makes it easier for employers to exclude traditionally under-represented classes of workers such as women and communities of color. And evidence of abuse and wage suppression continues to mount.

I urge this Committee to call for a comprehensive review of wage rates and hiring practice across our entire employment-based system and that should include the L-1, J-1, and OPT programs, who should no longer be allowed to masquerade as exchanges, internships, and student programs.

Mr. Chairman, my time is up, and I look forward to working with this Committee and the Members of it to reform the program and make it work for all American workers.

[The prepared statement of Mr. Trumka appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Mr. Trumka.
Professor Hira.

STATEMENT OF RONIL HIRA, PH.D., P.E., ASSOCIATE PROFESSOR, PUBLIC POLICY, HOWARD UNIVERSITY, WASHINGTON, DC

Professor HIRA. Thank you, Chairman Grassley and Ranking Member Leahy, and the Members of the Committee for inviting me to testify today.

I also want to acknowledge Chairman Grassley, Senators Durbin and Session's efforts and leadership in pushing for reforms to protect both American workers, as well as foreign guest workers and, maybe even more importantly, in shedding light on how the H-1B program actually works in practice.

Even this morning we have heard many of the myths about the H-1B program espoused not only by policymakers, but we hear it often by journalists who get basic facts about the program wrong. I will hit some of those myths shortly.

Congress and multiple administrations have inadvertently created a highly profitable business model of bringing in cheaper H-1B workers to replace American workers and to substitute for American workers. In explaining the H-1B program rules, the U.S. Department of Labor clearly states, "The Immigration and Nationality Act requires that the hiring of a foreign worker will not adversely affect the wages and working conditions of U.S. workers comparably employed." That is a direct quote from the website that describes the H-1B program to employers.

The reality is that, in fact, the intent of the law is not being met. The recent replacement of 500 American IT workers at Southern California Edison shows that this intent is clearly not being met and that U.S. workers are clearly getting adverse effects in terms of their wages and their working conditions.

Myth number 1 is, employers must prove that there are no qualified workers before hiring an H-1B. We heard this this morning. In fact, there are no requirements to demonstrate that there is any shortage of American workers before hiring an H-1B worker.

The Southern California Edison story tells you that straight up. Not only are they not recruiting American workers, they are directly replacing American workers. They are taking their jobs directly. Even sitting in their cubicles, they are replacing those folks.

So, there is no recruiting requirement and H-1B workers are replacing Americans. They are substituting for Americans. And often-times employers are earmarking jobs directly for H-1B workers.

Another major myth is that—and we heard this, again, this morning—is that H-1B workers cannot be cheaper than Americans because employers must pay, quote-unquote, "the prevailing wage."

Congress' intent in requiring a legally defined prevailing wage is to ensure that H-1B workers are paid what American workers are paid and that they are not pushing down those wages.

The reality, of course, though, is that they can legally do this because of the way that the prevailing wage rules are written and the law is written, and we see this, again, in the Southern California

Edison case. This is a perfect definitive case study of H-1B workers being paid below what American workers were being paid.

The Southern California Edison IT workers, American workers were being paid \$110,000 a year. Their H-1B replacements are being paid \$70,000 a year. That is more than \$40,000 in cost wage savings right there, a \$20 million windfall for Southern California Edison in reducing wages.

There cannot be a clearer case of the H-1B program being used for cheaper labor. And Southern California Edison is not alone. It is not an isolated case. It is Disney, it is Harley-Davidson, it is Northeast Utilities, it is Xerox up in Rochester, New York.

Tata and Infosys, the two outsourcers in the case of Southern California Edison, brought in 12,000 workers in Fiscal Year 2013—12,000 H-1B workers. That is 12,000 jobs that should have gone to Americans—or should have stayed with Americans.

And just to put some scale on this, Facebook, one of our high-flying tech companies, hired 2,000 workers during that same year. So, you have got 12,000 H-1B workers coming in. Facebook hired all—2,000 H-1Bs, Americans, everybody, it only grew by 2,000. So, this is a very widespread and massive problem.

In fact, the Indian government dubs the H-1B program the outsourcing visa.

I will just close with saying this. There are no villains in this story. If you create a profitable business model where you can substitute cheaper guest workers for Americans, many businesses will take advantage of that. Their primary interest and duty is to try to maximize shareholder value and they will find ways to do that regardless of what we might think in terms of whether that is a good or bad thing for America. It is the responsibility of the Government to ensure that it is a good thing for America.

Thank you.

[The prepared statement of Prof. Hira appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Professor Hira.
Mr. Billhardt.

**STATEMENT OF BJORN BILLHARDT, FOUNDER
AND PRESIDENT, ENSPIRE, AUSTIN, TEXAS**

Mr. BILLHARDT. Good morning, Chairman Grassley, Ranking Member Leahy, and Members of the Committee. My name is Bjorn Billhardt and I am an immigrant from Germany. I live in Austin, Texas with my wonderful wife and three beautiful children.

In 2012, I had the incredible privilege of becoming an American citizen. I am grateful to share my story here today because I believe it demonstrates the significant contributions that immigrants can make to our country every day, as well as the shortcomings of our current immigration system.

I came to Pflugerville, Texas as an exchange student in high school and I instantly fell in love with the United States. When I arrived in the 1990s, America allowed me to dream big. My parents never went to college and I did not see many opportunities for me to become who I wanted to be and utilize my talents in Germany.

Studying in the United States allowed me to gain the skills to become an entrepreneur and at the age of 26, while getting my

business school degree in the United States, I started my own company, Enspire, without outside funding or family help.

After 14 years in business, Enspire now has over \$5 million in revenue. We employ 30 American workers and we sell our leadership development programs and e-learning courses to dozens of Fortune 500 companies. Last year, our educational software was used in over 20 countries.

In many ways, my journey mirrors that of many high-skilled immigrants. I studied on an F-1 visa, was able to stay here on a study extension visa, the OPT, applied for an H-1B visa to grow my company, and in 2006 I was able to apply for a green card and eventually citizenship.

It was a long, hard road, but I count myself lucky that I came to the United States when I did, because today my story would have been impossible and American jobs would have not been created because of the current cap and restrictions placed on the H-1B work visa.

The global competition for talent is real. I feel it every day trying to grow my business. And our broken immigration system stands in the way of allowing us to be competitive with other nations.

For example, just last week, I spoke with a brilliant recent Ph.D. in chemistry from Notre Dame University who was hired as a management consultant by a consulting firm in Houston to help U.S. energy companies compete in the global marketplace.

He said that after a few years of consulting, he wants to become an entrepreneur, and I am sure he will. Yet, despite his brilliance, his Ph.D. and a strong desire to stay in the United States, he is uncertain if he can stay. If he has to leave, he says he will move to London, Shanghai, or somewhere else and we will lose out not just on his skills, but on the possibility of another great American company being created and the jobs that it will bring.

This does not make sense to me. The reality is immigrants like me boost our economy by creating jobs for Americans and studies show that for every 100 H-1B workers, an additional 183 jobs are created for workers born in the United States.

I can also tell you as an entrepreneur that the world is not standing still. When I left Germany in the 1990s, there was only one country that allowed people like me to dream big as entrepreneurs and that was the United States. But my younger cousins in Germany point out that there are vibrant startup communities in cities like Berlin and London and Singapore and Dubai.

It makes no sense to me for this great country that I love to turn away talented, hungry and hardworking individuals who want to put their passions to work here. Immigrants are what has made this country exceptional since our founding days. We need to expand opportunities for immigrants to contribute to this great country so that we can continue to be that exceptional country that attracted me to come here when I was young.

Thanks for allowing me to share my story. I hope Congress can step aside from partisan politics and find a compromise that will take steps to modernize our immigration system.

I am honored to have the opportunity to testify today.

[The prepared statement of Mr. Billhardt appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Mr. Billhardt.
Now, Mr. Palmer.

**STATEMENT OF JACK B. PALMER, JR., AN AMERICAN WORKER,
MONTGOMERY, ALABAMA**

Mr. PALMER. Good morning, Chairman Grassley, Members of the Committee. I am Jay Palmer from Montgomery, Alabama. A special "hello" to Senator Sessions, as well.

I am the whistleblower in the Infosys case. I lived it. I saw it. I saw Americans being replaced. I saw—we brought in H-1B workers. It did not matter if you had skills or not. We brought them in, I set them in cubicles and watched the Americans train them only in the name of the dollar.

I am here today to talk a little bit about who cannot be here today and talk. I am the displaced American worker that cannot speak out due to being harassed, blackballed, or possibly sued; the one who was forced to sign a non-disparaging remarks agreement in order to get a severance package; the employee that my company chose not to invest in in order to replace me with cheaper labor, cheaper labor that I had to train, train to do my job that I learned over the past 15 or 20 years.

They call it knowledge transfer, but we all know that is an illusion. It is all about cheaper labor. I am the employee who pays their taxes, mortgages, and takes their kids to the park, the one who helps his co-worker, his neighbor, and shops locally; the one who now has nothing, has lost their job and will possibly lose their home.

I am the middle-class worker that has been displaced by greed and illegal business schemes or fraud. The American worker who sent you to Washington can also send you home. I am an Edison employee. I am a Harley-Davidson employee—yes, Harley-Davidson, the staple of American pride. I am displaced.

I am now the American—now, I am the future American worker. I am in college with no hope of the IT world because of cheap labor being brought in. I can learn. I have student loans, maybe the first one in my family to ever go to college. I am the student who works and goes to college in order to become better.

Maybe I work 25 hours a week at a Subway or a Walmart and spend countless hours studying trying to learn a trade and become better in the IT world; the one who has ideas and has dreams. Maybe I am your son, maybe I am your daughter chasing that American dream or what is left of it.

I am the student whose parent was displaced by the H-1B worker. I am the University of Alabama graduate or the RIT graduate that cannot get a job or has been hired and then replaced again after several years in the workplace.

Let me tell you who we are not. I am not Mr. Murthy or Mr. Shibulal of Infosys who refused to hire American workers, who looks every way possible not to hire an American worker; also, thumbs their noses at U.S. law and refuses to honor the laws of the Texas court to appear.

We are not the one—we are not the one that said law will follow business, business will not follow the law in the United States.

That was Infosys' Nandita Gurjar talking about politics in the United States.

We are not the ones that even mistreat the Indian workers that come over by saying we are paying them a prevailing wage, which we all know that is not true.

The Indian workers work with fear and overlooking the intimidation when a worker has to give their managers in India kickbacks and do not receive their entire prevailing wage, which is absolutely too low.

How about paying the H-1B worker the same salary that the displaced American worker is making? At that point in time, we will see really how specialized this talent is.

We are not high-powered lawyers or former Secretary of DHS that was hired to contradict his own policy, that has no conscience and cripples the American worker, not only their jobs, but their dignity.

We are not the ones that worked against the AUSAs to enforce the law or prosecute the law, intentionally try to deceive DHS and State Department agents, this only in the name of money. May God help their souls.

The Edison worker, their names were anonymous because they are not allowed to be here today. The DHS and State Department employees or the agents are not allowed to be here today because they will speak the truth and the agencies do not want Congress to know the truth.

I ask this Committee to be their voice, to be their hope, raise the wage floor to equal displaced American salaries, tighten the law, bring back the American dream. I also ask supporters of the I-Squared Act—I read a statement that companies had come to certain Senators and said, “We do not have enough skilled workers.” Send me the companies, I will send you workers.

In closing, I watched this on a daily basis of Americans being displaced. I sat in the offices in meetings with companies that displaced American workers only because the Americans that had been there 15 or 20 years were being paid too much money. I stayed at night and helped these people that came over on H-1Bs learn skills. They are not skilled workers. These companies bombard our system with H-1B applications and whoever gets them, they are sent over no matter their skill level. I know. I watched it. It continues to happen today.

I thank you for your time. I hope you will listen to me.

[The prepared statement of Mr. Palmer appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Mr. Palmer.
Now, Mr. Johnson.

STATEMENT OF BENJAMIN E. JOHNSON, EXECUTIVE DIRECTOR, AMERICAN IMMIGRATION COUNCIL, WASHINGTON, DC

Mr. JOHNSON. Mr. Chairman, Members of the Committee, thank you for the opportunity to appear before you today on behalf of the American Immigration Council.

For more than 25 years, the American Immigration Council has been dedicated to providing policymakers and the public with re-

search and analysis on the critical issues shaping immigration policy and law.

Although the title of today's hearing suggests that some minds have already been made up on this issue, my hope, however naive, is that this hearing will allow us an opportunity to engage in a thoughtful conversation about the role that immigration can and should play in building a prosperous, growing 21st century America. Today foreign workers fill a critical need, particularly in STEM fields. Now more than ever, we need an honest conversation about reforms that can improve and strengthen the admission of these immigrants into our labor force. But to do that, we must move beyond the myths, stereotypes and hyperbole that distract from that conversation and that seek to pit native-born workers against their foreign-born colleagues.

The undeniable fact is that the U.S. job market is not a zero sum game in which workers must fight each other for a fixed number of jobs. The United States has the most dynamic, most powerful economy the world has ever known, and immigrants of all types and skills from every corner of the globe have worked shoulder to shoulder with native-born workers to build it.

The overwhelming weight of research shows that in our dynamic labor market, skilled immigrants complement their U.S.-born counterparts. Skilled immigrants help create new jobs and new opportunities for economic expansion. Indeed, foreign workers positively impact the wages and employment opportunities of native-born workers across our economy.

The important role that skilled immigrants play in our economy extends far beyond the worlds of computer and high tech, and skilled immigrants are helping to shape communities far beyond Silicon Valley. They are making enormous contributions in almost every corner of our economy, including manufacturing, medical research, health care delivery and agriculture.

Their contributions have helped rebuild economies in places like Des Moines, Iowa, Tuscaloosa, Alabama, Raleigh, North Carolina, Atlanta, Georgia, Phoenix, Arizona.

For me, the bottom line is this. In today's global economy, where other countries are spending billions of dollars to compete with America's ability to attract immigrants, we cannot take this issue for granted. If we continue to ignore the need for immigration reform or adopt policies that discourage skilled immigrants from helping America to innovate, lead and create more high paying jobs, we run the enormous risk that America will be left behind without a robust innovation and entrepreneurial sector. Innovation is the key to growing the U.S. economy and creating jobs. In turn, the key to innovation is attracting, growing and retaining a skilled workforce. Foreign-born workers, especially STEM workers, have been and will continue to be a critical part of this equation.

The question this Committee must be asking is what policies would help us fulfill the promise of an immigration system that serves a 21st century global economy while protecting the rights and promoting the opportunities for all workers.

Research supports the creation of a revamped and revitalized immigration system with updated visa caps and the elimination of per country quotas; a system that retains talented individuals who are

educated here in the United States; a system that supports STEM education right here at home; a system that encourages compliance with rules and safeguards against exploitation and abuse and that allows for more flexibility, predictability and consistency.

The good news is that these reforms are achievable and that lasting immigration reform is within our reach. The key to success is not to pursue these issues in isolation. Maximizing the economic contributions of skilled immigrants is important work, but it is only one component of the broad-based reforms that our system desperately needs.

We must realize that immigrant job creators, entrepreneurs and innovators come in all stripes and all sizes. They come to our shores not only through employment-based channels, but through family reunification, as refugees and asylees. They can also be found in the population of unauthorized workers here today.

The importance of reforming our system, all aspects of it, to further our prosperity cannot be overstated. We owe it to ourselves and to our future to once again support and pass bipartisan, comprehensive immigration reform that is good for business, good for workers, and good for families.

Thank you. I look forward to the conversation.

[The prepared statement of Mr. Johnson appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Mr. Johnson.

Now, Mr. Miano.

STATEMENT OF JOHN M. MIANO, J.D., ATTORNEY, WASHINGTON ALLIANCE OF TECHNOLOGY WORKERS, BELLEVUE, WASHINGTON

Mr. MIANO. Mr. Chairman and Members of the Committee, I thank you for allowing me to speak with you today. I have been told that the Congress is not fully aware of the post-completion Optional Practical Training program program, better known as OPT.

My client, Wash Tech, is the plaintiff in a lawsuit against the Department of Homeland Security over its OPT regulations and this lawsuit has drawn attention to this largely unknown guest worker program.

OPT is different from most other guest worker programs because it was created entirely by regulation, not by Congress. OPT is one of several work authorizations operating under F-1 student visas. There is no statutory authorization whatsoever for aliens to work on student visas. However, over the years, the INS and DHS have allowed such work through regulation.

These regulations started off innocently, but grew incrementally. In the 1950s, aliens could work on student visas only if the school certified that the work was required or recommended by their school and it was part of their curriculum.

In 1992, the INS created the OPT program that allowed aliens to work for up to a year after graduation when they were no longer students.

Finally, in 2008, industry groups came up with a scam to use OPT as a means to circumvent the H-1B quotas and DHS responded by promulgating regulations that allowed aliens who were not able to get an H-1B visa to work for up to 35 months on a stu-

dent visa, and these regulations are at issue in Wash Tech's lawsuit.

After the 2008 regulations, the number of aliens approved for OPT has grown from 28,000 to 123,000 in 2013. So, given those trends, it is likely that America's largest tech guest worker program is now student visas.

OPT workers are not students, by any definition of the word, statutory or plain English, but they are working on student visas. DHS simply turns these aliens loose on the job market without any supervision, even allowing them to be unemployed to look for work.

There are no labor protections whatsoever under OPT and, worse yet, employers do not have to pay aliens on student visas Social Security and Medicare tax. So, this makes OPT workers inherently much less expensive to hire than Americans.

So, when you are considering the effect that foreign labor is having on American technology workers, you need to take into account that the H-1B program has doubled in size since 1998, OPT is adding 100,000 more workers, and there is an alphabet soup of other programs adding even more foreign labor.

The only pending bill I have talked about is the I-Squared bill and I just have to say that I find this bill extremely disturbing because it demonstrates a very warped sense of priorities. The highest priority in the bill is more foreign labor.

Someone has gone through the immigration and identified any place where an increase could be created and has collected them together into one incoherent bill.

The second priority of the I-Squared bill is to benefit foreign workers. For example, it allows H-1B aliens to remain in the U.S. for up to 60 days for job changes. However, the interests of American workers, the voters, are simply ignored in the I-Squared Act.

We have Americans at Southern California Edison, Northeast Utilities in Connecticut, Cargill in Minnesota, Walt Disney World in Florida, being replaced by cheap foreign workers and the response of I-Squared is to supply industry with more foreign replacements to put even more Americans out of work.

When I read the I-Squared Act, I have to ask where is the outrage in Congress over American citizens legally being bypassed and displaced for jobs in their own country.

American citizens should be coming first and they should be the first priority in our immigration bills.

I thank you.

[The prepared statement of Mr. Miano appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Mr. Miano.

Now, Professor Salzman.

STATEMENT OF HAL SALZMAN, PH.D., PROFESSOR, E.J. BLOUSTEIN SCHOOL OF PLANNING AND PUBLIC POLICY AND J.J. HELDRICH CENTER FOR WORKFORCE DEVELOPMENT, RUTGERS UNIVERSITY, NEW BRUNSWICK, NEW JERSEY

Professor SALZMAN. Mr. Chairman, Members of the Committee, thank you for inviting me to speak today.

My colleagues and I have examined the impact of guest workers in the high-skilled labor market using multiple methods, data indi-

cators, from field work and interviews of technology firms coast to coast, around the globe, to an analysis of large national data sets.

So, in considering whether there is a shortage, we want to examine evidence about the supply of U.S. STEM graduates and workers, the size of current and proposed guest worker flows, and the impact on the U.S. workforce and, importantly, innovation.

Based on our analyses, we find the preponderance of evidence is fairly clear that, A, the U.S. supply of top performing graduates is large and far exceeds the hiring needs of the STEM industries, with only one of every two new STEM graduates finding a STEM job.

Future demand for computer science graduates can be met by just half to two-thirds of the current annual supply of U.S. computer science graduates.

The guest worker supply, however, is very large and it is highly concentrated in the IT industry, leading to both stagnant wages and job insecurity. Moreover, the primary function of IT guest worker programs is to facilitate the offshoring of work, though a growing function of these programs is now to replace American workers on U.S.-based projects.

The number of guest workers under the current policies is equal to two-thirds of the current entry level and early career hiring in industry. Moreover, current guest worker policies for students and new graduates provide incentives for universities to establish master's programs that, as their business model, almost exclusively recruit foreign students into lower quality programs that provide easy entry into the U.S. labor market, fueling the oversupply of entry level STEM workers.

Proposed legislation, such as I-Squared, the SKILLS Act, and S. 744, would expand the supply of guest workers to levels greater than the total number of new technology jobs. That is, these changes in immigration policy provide enough guest workers to fill every new job opening in the IT workforce with a reserve large enough to allow firms to legally substitute young guest workers for their incumbent workforces.

Now, one of the overlooked provisions or, at least, less discussed is, the green cards for grads provisions in the I-Squared, S. 744, and other bills which provide incentives for universities to establish master's programs that function as a global services business, offering a green card for the price of a graduate degree, primarily or even exclusively enrolling foreign students and excluding U.S. students.

The I-Squared green card provision is just a means, by another name, to create a glut of STEM workers who will flood the labor market with the predictable consequences of any market glut and along the way, it will erode the Nation's innovation foundation that is anchored in American universities as they close their doors to U.S. students, just as the California State University system did when it declared its graduate programs were closed to State residents and, in order to increase revenues, favored admissions to foreign students, who now comprise over 90 percent of some STEM master's programs.

In sum, the current immigration policies and the proposed changes that increase the supply of STEM guest workers will accel-

erate the already deteriorating career prospects for STEM graduates and workers.

Considering the evidence, it would be wise for us to be concerned about the state of technology careers when making Government policies that will fundamentally distort the market.

We cannot expect to build a strong American STEM workforce and encourage innovation by developing policies that undermine the quality of STEM jobs here.

Thank you.

[The prepared statement of Prof. Salzman appears as a submission for the record.]

Chairman GRASSLEY. Thank you very much. I wish I knew whether the vote was going to start right at 11.

Assuming a vote, Senator Sessions and I will take turns chairing. The vote is starting right now. I will go vote.

Senator Sessions, you ask questions first and then it will be Senator Klobuchar and then it would be Senator Flake and then it would be Senator Blumenthal and then it would be Senator Tillis and then Senator Durbin, in that order.

So, I will go vote. You ask questions.

Senator SESSIONS [presiding]. Well, thank you. This is a very good panel and we are discussing, I think, a very important subject.

Our colleagues, on some of the opening statements, seemed to indicate that they do not favor what has happened. Well, we are Congress. We are supposed to stop it and not facilitate it, and the I-Squared bill seems to me to not only maybe triple the number of H-1B workers at a time I do not think that that is justified, it also does not improve the controls over the program.

So, Professor Salzman, in an article that appeared in U.S. News and World Report, you wrote, quote, "Guest workers currently make up two-thirds of all IT hires." That is two-thirds of all information technology hiring in America that is done by the guest workers.

What would happen if the guest worker green card provisions in the Gang of Eight bill or the SKILLS Act or I-Squared became law? How would it change things?

Professor SALZMAN. Well, it would dramatically increase the number, because we find, based on those estimates, it would provide enough guest workers to fill 100 percent of the jobs with perhaps 50 percent left in reserve that could then be used to backfill and replace current workers.

So, the current bills supply more than even what the industry says it needs to fill every new job.

Senator SESSIONS. And you have written that universities graduate twice as many people with STEM degrees—science, technology, engineering, mathematics degrees—each year as there are job openings in this field

Would you comment on that?

Professor SALZMAN. Yes. Overall, our universities are very good at providing the workforce that is needed. Current numbers suggest half to—only about half to two-thirds of graduates find a job in a STEM field. And what is important to also note is when we do observe a shortage, as has happened in the petroleum industry,

you see wages go up and when wages have gone up, student enrollments increase dramatically.

In other words, students are very sensitive to the market signals about where there is demand, where wages go up, and they respond. So, it raises the curious question, which is if there is demand out there, why we have not seen wages increase.

Senator SESSIONS. I could not agree more. I tell my business friends, well, free markets, you believe in those, do you not? Why are not wages going up if we have a shortage?

What can you tell us about the trends? Maybe, Professor Hira, what can you tell us about the wage trends over the last decade or so for IT workers?

Professor HIRA. Well, the wage trends, as Professor Salzman and others have looked at, I mean, obviously, if you have got a shortage, what you would see, we have a market economy, you would see wages go up, and they have not. They have been flat for 15 years, which was not true in the 1990s when wages went up very significantly in computer science and IT occupations, in the 1990s during the dot-com run-up, and that is important.

Wages going up is important because it induces people to go into those fields. So, incumbent workers will switch into IT and you saw a very large increase there, but it also sends a signal to our education market that students should study this, and we saw a doubling of the number of computer science graduates during that timeframe.

What you see here is now really a flat labor market and it is mostly caused by the guest worker programs.

Senator SESSIONS. Can you explain whether an H-1B employer has to recruit American workers before hiring foreign workers?

Professor HIRA. The impression one gets from listening to the press, as well as many policymakers, is that—and certainly the industry itself—is that they search low and high and they just cannot find Americans, and only then, after they cannot find an American, do they turn to an H-1B worker.

That is absolutely not true. It is not required by the law or the regulations and it is not true in practice. We see this over and over again. The Southern California Edison case is just the most flagrant example of that, but Disney and many others, as well as companies like DeLoitte, which is now hiring only H-1B workers to service the State of California unemployment insurance IT system.

Senator SESSIONS. State employees basically affirm that serving the State of California—

Professor HIRA. State of California to do the unemployment insurance IT system. Instead of hiring Americans, they are bringing in H-1B guest workers because they never had to recruit H-1Bs, and there are huge numbers of layoffs in the tech industry. HP is laying off 55,000 and IBM has shrunk by 55,000 over the last few years.

Senator SESSIONS. Well, you two professors, I think it is important, colleagues, to know that you have been joined by—in effect, I think it is fair to say—I will ask you, Professor Salzman, if this is correct.

That, a Mr. Teitelbaum has just written a book and an article in The Atlantic, "The Myth of the Science and Engineering Shortage." He agrees with you and signed an op-ed with you.

Also, Professor Paula Stephan and Norm Matloff, the Federal Reserve of Atlanta staff, did a study that proved wages fall with excessive immigration.

Lindsay Lowell at Georgetown University Public Policy Institute, the Economic Policy Institute, these are respected, independent voices that are expressing concern, are they not, and really, in essence, agree with your fundamental statements?

Professor SALZMAN. Absolutely. It even goes further than that, which is even some of the researchers who have been pushing for expansion also, when they look at the wage data, come to the same conclusion. We are all looking at the same data and it is very clear that flat wages have been the dominant trend.

In fact, Tony Carnevale, also at Georgetown, who usually supports expanded guest worker programs, said if you are a bright American in math, you would be crazy to go into a STEM field because other fields pay more. So, even there is acknowledgment.

Senator SESSIONS. Thank you.

Senator KLOBUCHAR, I am sorry. You are recognized.

Senator KLOBUCHAR. I just wanted to get it in before the vote here.

Thank you all for coming. I did want to just step back one minute and talk about the importance of getting a comprehensive bill done. I know we are focused on this one issue and I wanted to thank especially Mr. Trumka for his incredible work on that Senate bill and how difficult that was in negotiating it.

As you all know, a version of the I-Squared bill was in there and I know certainly it was not your favorite thing that it was in there, Mr. Trumka, but I did want to say thank you for the comprehensive bill and stress how important that is; if we are really going to move forward on any of this, that we try again to get a comprehensive bill that was incredibly bipartisan in the Senate, every one worked it out.

I just wondered if you would, Mr. Trumka, talk about the importance of seeing a comprehensive bill like that again.

Mr. TRUMKA. Absolutely. The current system is broken and it is being used to drive down the wages of every worker out there, whether you are an undocumented worker or your family came on the Mayflower.

It is necessary that we fix that program in the long run and the only way to do that is to bring it all together, because we surely would not have supported the H-1B provisions, and that is particularly true after the Hatch amendments gutted the protections that you did not have to really search for Americans and hire them first.

So, without comprehensive immigration reform, it will be difficult to get things done.

Senator KLOBUCHAR. Thank you very much. I appreciate that.

Mr. Billhardt, thank you for your story. I think you know you are part of the story in America where 90 of our Fortune 500 companies were actually founded by immigrants; 200 of our Fortune 500 companies founded by immigrants or kids of immigrants; 30 percent of our U.S. Nobel laureates were actually immigrants.

Certainly, in my State, I have seen firsthand, small businesses, big, in our workforce, the difference immigrants have made.

Could you talk about why now we are seeing some people wanting to start businesses in places like Canada or London or Shanghai instead of here because of some of these limitations?

Mr. BILLHARDT. Absolutely. The challenges—so for us, for me, as an entrepreneur, it is about staying competitive. That is—my number 1 job in creating jobs here in America is to figure out what I can do to be competitive in the global marketplace. And it is not about salary or paying less salary. We pay competitive wages here in the United States to everyone that has the right job and that has the right skills.

What is happening, though, is that because of a lot of the restrictions that are being placed on the H-1B and the cap, there are some people that we educate here in the United States that get taxpayer money to get their Ph.D. that could put their skills to work here in the U.S. and help grow American jobs, and instead what is happening is they have to go back to their home country or go somewhere else and compete with the American companies that are trying to create jobs. That is at the heart of, I think, the problem. And I am here not to testify for the H-1B high-skilled immigrants. I think we can—we can take care of ourselves. I am here to testify on behalf of my country. We need these people to help our economy grow, and they are going elsewhere. The world is not standing still and if we do not find ways to keep them here after we have educated them, I believe a lot of success stories, entrepreneurial success stories will be created not here in the United States, but will be created elsewhere.

Senator KLOBUCHAR. Mr. Johnson, following up on that. I think it gets lost that part of this bill also makes it easier for students who—you have discussed this in your testimony—obtain advanced degrees in the U.S. can stay and work so that we are not training our competition to simply go back to their home country and start the businesses in their home country.

And one important part of this is increasing the availability of green cards.

The I-Squared legislation has provisions to make it easier for U.S. STEM advanced degree holders, as has been discussed, to obtain employment-based green cards. It also addresses recapturing some of the green cards that we have not used in the past and taking a closer look at some of the per country limits.

Could you talk about the impact of some of those provisions?

Mr. TRUMKA. Absolutely. Thank you. I mean, in fact, we spend a lot of time talking about the dysfunctions in the temporary system and we may have differing views about what those dysfunctions are, but the reality is it really is about both the temporary system and the permanent green card system. I mean, those two things have been—they need to work hand-in-hand and right now they do not.

We do have limits on the green cards that really cause enormous backlogs. Those backlogs then spill over and create all kinds of tensions and dysfunctions within the temporary visa system as people who are looking to put down permanent roots in the United States

are prevented from doing so, needing to stay in an H-1B or a temporary visa because of the green card backlog.

So, those dysfunctions feed off of each other in a way that cause real problems for us and, again, not only the overall numbers, but I think we also have to look at the fact that spouses and children are included in these—in our numerical limits for workers.

So, we are giving away employment-based visas to spouses and children.

Senator KLOBUCHAR. Right. And we have had that with the Mayo Clinic, with doctors and their spouse then cannot come in or cannot get a job.

I know my colleagues have to go vote, too, so I am going to stop there. I do have some questions that I will put on the record about the current system, some improvements that we could make about enforcing the laws on the books, going after violations. And I know, also, Mr. Trumka had some good ideas about the job mobility.

But I have run out of time here, so I will put those on the record. Thank you, everyone.

Chairman GRASSLEY [presiding]. Senator Flake, would you like to ask questions before you go vote?

Senator FLAKE. Yes. I will do it quickly. I will not take the full 5 minutes.

Mr. Salzman, I was interested in your testimony. You are saying that there are far more graduate students in STEM—I am sorry—graduates for the field than we need, than the economy needs.

Would it be your position, then, that we not have any influx of migration for STEM, in the STEM field, for graduates in the STEM field?

Professor SALZMAN. No, not at all, because a large number of those are, in fact, foreign students. The issue is twofold. One, that the H-1B is highly concentrated in one industry and its primary function is to use for offshoring of IT. So, that is the primary function of the H-1B.

In terms of the universities, no. We should have a good flow, but a diverse flow. So, when a program—and we have looked at that and it is in my written testimony—70, 80, 90 percent of a program are exclusively foreign students, that is not an international education. That is not trying to bring in the best and the brightest.

That is a business model that provides entry into the labor force and the incentives in I-Squared are distorting the incentives on this in the universities because we make a lot of money in master's programs. So, that will encourage the wrong flow and, in fact, paradoxically undermine the very strength of the universities.

Senator FLAKE. I just have to say that testimony that we hear here directly contradicts what we hear, obviously, and you would concede that, from the industry. They will say, in very compelling testimony, that they have jobs that they advertise for that simply go unfilled and are required—need for the economy to bring people in.

Mr. Billhardt, can you comment on that?

Mr. BILLHARDT. There are help wanted signs in every single tech company that I know in Austin right now, and I am happy to make introductions.

Professor SALZMAN. I would be very happy to accept.

Senator FLAKE. Mr. Johnson, would you agree that the predominant purpose of the H-1B program is for offshoring?

Mr. JOHNSON. No, I would disagree with that. The H-1B program has brought enormous value. It gives us an opportunity to fill gaps in our labor market where they exist and do so in a way that is nimble and responsive and operates in real time.

But I just want to point out, it is included in my testimony, you look at the unemployment rates, U.S. citizen unemployment rates in the fields, computer network architects, 1.6 unemployment rate, these are effectively full employment in the majority of the categories that we are talking about that have H-1B usage.

Overall in STEM categories, you are talking about a 2.5 percent unemployment rate. So, the idea that somehow folks are not being able to get jobs or that employers are not going after every worker that they can possibly find, I think, is belied by the evidence.

Senator FLAKE. Well, thank you. I have got to go vote, but let me just say my supposition is that if we looked over the past 30 years and looked in the tech field, we would see the same statistics—you would find the same if you were to study previous decades.

Yet, had we taken the policy suggestions that have been made today and not had a robust H-1B program or not had a robust program to allow those who graduate at our universities to stay—and, frankly, in my view, it ought to be more robust—what would our economy look like today? What would we look like if you took—basically, if you look at Silicon Valley, a third or half of the companies have been formed, the big ones, by foreign-born students who have come here and were allowed to stay.

So, I hope that we can continue on. I was a proud sponsor of the so-called Gang of Eight bill and also the I-Squared bill. I have sponsored the STAPLE Act for years to allow those who graduate from our universities to stay here.

But before I run and vote, Mr. Chairman, I ask unanimous consent that statements provided for today's hearing from the U.S. Chamber of Commerce, Partnership for a New American Economy and the Council for Global Immigration, the Society for Human Resources Management be included in the record.

Senator GRASSLEY. Of course, they will be included, without objection. And there is no objection.

[The information appears as submissions for the record.]

Chairman GRASSLEY. I will ask questions. We may have a second vote. I think somebody will be back here before I have to go, so we will not have to recess the hearing.

I have got three short questions. I am going to put them up on a chart. I would like to have you say whether you agree or disagree, but if somebody wants to say maybe or offer a rationale for disagreeing, you would have the opportunity, maybe in 15 seconds. But I would like to hurry through these so I can get to other questions.

I am going to ask each one of you to say whether you agree or disagree.

All employers should make a good faith effort to recruit U.S. workers before hiring a H-1B visa holder. Mr. Trumka?

Mr. TRUMKA. Agree, absolutely.

Chairman GRASSLEY. Mr. Hira?

Professor HIRA. Agree.

Chairman GRASSLEY. Mr. Billhardt?

Mr. BILLHARDT. When I hire people, I do not hire people based on their resume. I hire individuals and I need to find the exact right individual for a particular job. That will create more American jobs.

Chairman GRASSLEY. So, I can put you down for disagreeing then, or maybe.

Mr. BILLHARDT. I did not say that.

[Laughter.]

Mr. BILLHARDT. But I need to have the right person in the right job and it is false to assume that every job, every H-1—that I just hire because someone has a skill on their resume. I need to hire the right person.

Chairman GRASSLEY. Mr. Palmer?

Mr. PALMER. I 100 percent agree.

Chairman GRASSLEY. Mr. Johnson?

Mr. JOHNSON. I am sorry. The lawyer in me gets stuck on what do we mean by good faith effort. I think employers are trying to do everything they can to fill positions. So, I think that this is already happening. If what we are talking about is micro managing it or putting added bureaucracies on top of—top of what I believe is already happening, then, I think, the answer to that is, “no.”

Chairman GRASSLEY. Mr. Miano?

Mr. MIANO. I will go back to my computer days, not my lawyer days, and say yes.

Chairman GRASSLEY. Mr. Salzman?

Professor SALZMAN. Yes, absolutely.

Chairman GRASSLEY. The next question: All employers should be required to attest that they did not or will not displace a U.S. worker before bringing an H-1 visa holder in.

Mr. Trumka?

Mr. TRUMKA. Absolutely agree.

Chairman GRASSLEY. Mr. Hira?

Professor HIRA. Agree.

Chairman GRASSLEY. Mr. Billhardt?

Mr. BILLHARDT. If that had happened when I was starting Enspire, there would not be 30 American jobs today.

Chairman GRASSLEY. Mr. Palmer?

Mr. PALMER. Agree.

Chairman GRASSLEY. Mr. Johnson?

Mr. JOHNSON. Attest to who? Who is going to oversee it? I mean, again, I would resist the temptation to search for—this is sort of a problem in search of a solution—or a solution in search of a problem. This is happening and unemployment rates indicate that displacement is not a widespread problem.

This ought to be targeted where there is evidence of fraud and where there are legitimate concerns about the hiring practices of employers.

Where there are those concerns, then, I am all in favor of overseeing those kinds of activities.

Chairman GRASSLEY. Mr. Miano?

Mr. MIANO. Yes.

Chairman GRASSLEY. Mr. Salzman?

Professor SALZMAN. Agree.

Chairman GRASSLEY. The third chart: All employers should offer a job to any U.S. worker who applies and is equally or better qualified for a job before hiring an H-1B visa holder.

Do you agree or disagree, Mr. Trumka?

Mr. TRUMKA. Absolutely agree.

Chairman GRASSLEY. Mr. Hira?

Professor HIRA. Agree.

Chairman GRASSLEY. Mr. Billhardt?

Mr. BILLHARDT. I need to stay competitive as an entrepreneur. I need to find the very best person that I can find for a job.

Chairman GRASSLEY. Mr. Palmer?

Mr. PALMER. Absolutely agree.

Chairman GRASSLEY. Mr. Johnson?

Mr. JOHNSON. I think I have been clear about the need to resist micro management.

Chairman GRASSLEY. Very clear.

Mr. JOHNSON. Yes, sir.

[Laughter.]

Chairman GRASSLEY. Mr. Miano?

Mr. MIANO. Yes.

Chairman GRASSLEY. And, Mr. Salzman?

Professor SALZMAN. Yes.

Chairman GRASSLEY. Now, I go to questions for Mr. Palmer. I appreciate your testimony about your experience and about what you have heard about employees at other companies.

Based on your experience and what you have heard, are the foreign workers being brought over to replace Americans better qualified and are they truly what we refer to as the best and the brightest?

Mr. PALMER. Absolutely not. Sir, I have been a part of companies bringing over only—bringing over H-1Bs only because of the lower wages and salary. These people work 9 and 10 hours a day trying to learn the job of an American and then they spend 9 or 10 hours a night online back to India trying to learn the software.

It is not competitive hiring. It is competitive firing. This is all about money. It is all it is about. I lived it and I have to totally disagree with some of the statements. I mean, I sat there and watched skilled Americans being replaced for a dollar and I sat there and we train these people 50, 60, 70 hours week and their skills were just not there.

They bombard the consulate with H-1B applications. Whoever gets one, no matter what your skill set is, you are coming to the United States and you have got to learn it when you get there. That is not specialized talent. That is not the spirit of the H-1B program.

Chairman GRASSLEY. Mr. Hira, I have a question for you. Southern California Edison did not bring in H-1B visa holders. Rather, they contracted with big out-placement firms to bring in foreign workers. Thus, California Edison is one step removed. The company said that they were cutting costs and making their business more efficient.

With respect to what Southern California Edison and other companies have done, what do you say to those who say that cutting labor costs in this manner increases corporate efficiency and, in the long run, is good for American consumers?

Professor HIRA. Well, it definitely does cut wages and saves money, and certainly every executive is being pressured by shareholders to do so.

Whether some of that money that is saved gets pocketed by Infosys and Tata, some of that money gets pocketed by Southern California Edison, some of it gets pocketed by shareholders, and a little bit goes to perhaps the customers, we will see.

Of course, Southern California Edison is quite profitable. But it is a lose-lose situation for American workers. It is a lose-lose situation for the American economy.

You are basically trading jobs away to bring a little bit of extra profit to Southern California Edison.

Chairman GRASSLEY. More of a legal question, Mr. Hira. Do you believe that what Southern California Edison did is allowed under the H-1B laws; and, if so, do you believe it should continue to be legal?

Professor HIRA. I believe that the Secretary of Labor has a statutory authority to investigate Southern California Edison, as well as many other cases. And until and unless he does so, we will not know whether there were willful violations, whether there were illegal acts that took place there.

Certainly this is not an isolated case. This is a very widespread phenomena. This is how most of the H-1B program is being used. We are talking about 40,000-50,000 a year going to these offshoring firms that have exactly the same business model.

Chairman GRASSLEY. Then, also for you, does the Senate-passed bill from 2013 solve the problems associated with H-1B and L-1 programs?

Professor HIRA. No. Unfortunately, S. 744 would actually make the problem worse and I say that for American workers knowing that the status quo is so terrible that you have to your foreign replacements.

Southern California Edison would be happening whether S. 744 was law and that is—not only would it be happening, it would be happening in lots more places because it would have increased the cap of the H-1B. It would have increased and multiplied what has happened at Southern California Edison many times over.

The players might be different. You might not have Tata or Infosys bringing in the cheaper H-1B and L-1 workers. You might have IBM or Accenture doing that, but the same business practice would be happening and the same effects on the American workers getting their jobs destroyed.

Chairman GRASSLEY. Mr. Johnson and Mr. Billhardt, as I said previously, the top 10 companies that use the H-1B program swallow up over 50 percent of the supply of available visas. The big corporations take thousands of visas while many small businesses struggle to get one or two.

I would like to know your thoughts about changing the way we distribute visas and prioritizing them to help U.S. companies that need them most.

Two questions. When distributing H-1B visas, should the law give priority to certain employers or categories of H-1B workers and should we give priority to employers who are based in the United States?

Start with Mr. Johnson and then Mr. Billhardt. Then I will call on Senator Vitter.

Mr. JOHNSON. Well, I will say that what we have now, which, I think, is the worst of all possible situations, that we issue visas based on a random lottery because our quota is essentially met on a single day does not give us any opportunity to be able to evaluate the merits and compare the relative values of one application versus another.

The other thing I would point out is that we have to—if you look over time, the demand for H-1B visas has been completely consistent with economic trends. We have to remember that in the 1990s or around 2000 when we had much higher numbers, 100,000-plus visas available. In years where the economy was down, we did not meet that quota.

So, the rise and fall of H-1B demand mirrors the economy, the performance of the economy in a way that suggests that it is responsive to the economy and that freeing up the cap and allowing—moving away from this sort of ridiculous lottery system that we have now is really the answer to be able to sort out what is the best way to use this program for its intended purpose, which is to fill critical gaps in our labor market.

Chairman GRASSLEY. Before I go to Mr. Billhardt, the second question I asked. Should we give priority to employers who are based in the United States?

Mr. JOHNSON. I have not given that much thought. I mean, I think, as a general rule, that would sound—

Chairman GRASSLEY. Then let us move on to Mr. Billhardt. Answer both questions.

Mr. BILLHARDT. Thank you, Chairman. I think the lottery is at the heart of the problem. If there was a lottery when I graduated from business school, the uncertainty it would have created for me would have made it very hard to start my business in Austin versus back in Berlin.

So, at the heart of it is at the lottery and at the heart of the lottery is the number. And so the easy solution is to increase the number, and I am somewhat shocked to hear the numbers that were thrown out here.

I do not see that happening in the real world. I do not see, in the real world, that two-thirds of all IT jobs are going to H-1B workers. There are very few H-1B jobs right now that are given out and I know a lot of people that are currently in the system that are wavering, do I stay here or do I go and start a company in Dubai.

So, it is the numbers that need to increase and the lottery needs to be replaced with if you have the merits and there is a company that is willing to hire you for the wages that are fair. No one is arguing, I think, here against trying to find ways to limit the abuses of the system. I think we are all on one page. There are abuses and those can be limited and should be limited and there

are some heartbreaking stories that I think can be—we can figure out a way to make those abuses go away.

But as a whole, we are going to fall behind as a country if we make it a lottery system and limit the number of H-1Bs to such a degree that people right now are much more inclined to start their businesses and hire workers overseas instead of starting businesses here.

I have many stories of entrepreneurs in Austin that are in this particular situation right now.

Chairman GRASSLEY. What about hiring—American-based company?

Mr. BILLHARDT. I do not have too much—I have not put much thought to that either.

Mr. MIANO. Can I get a 20-second opportunity to answer that?

Chairman GRASSLEY. Yes.

Mr. MIANO. In which to say that I understand and respect the sentiment, but I would say that in today's globalized economy, that is tough. I mean, what about Toyota, what about Hyundai, what about Mercedes? There are lots of communities that are spending a lot of resources to attract these very important companies into their communities and I think we need to be careful about just sort of blanket easy rules about favoring one over the other if they are creating jobs and really helping to build the American economy.

Mr. BILLHARDT. I would agree with that. And if I can add one more thing. There was a discussion here around the OPT, the optional practical training, and placing restrictions on that.

I just want to put on the record here that Enspire would not exist today and 30 American jobs would not be here if there were any restrictions on the OPT.

When I was a student and I was in grad school, I had \$25,000 in student debt. That is all I had. I had nothing else. I would have been hard-pressed to find anything in that first year that I could have proven to a government bureaucracy to give me a visa.

So, that OPT and the nonrestrictive nature of that was actually quite critical for the success of my business. And I do not know of any company that is hiring workers just for 1 year. That is not a lot of value in that.

Chairman GRASSLEY. Senator Vitter.

Senator VITTER. Thank you very much, Mr. Chair. And thanks to all of our witnesses. This is a really important topic. I just have a few questions.

Mr. TRUMKA, do you think the hiring of illegal aliens undercuts the wages of some American workers?

Mr. TRUMKA. I think the current broken system undermines the wages of all Americans because they are allowed to be cheated out of the wages that they earn, misclassified. If they report unsafe conditions or unhealthy conditions, they get fired. And so everybody works under unsafe conditions.

Senator VITTER. Specifically, do you think when American businesses hire illegal aliens, specifically, do you think that undercuts the wages of some American workers?

Mr. TRUMKA. Under the current system, it does because they have no rights and they are allowed to misclassify them, utilize them in ways that are they are not intended to.

Senator VITTER. Okay. Let me ask about part of the new system. Do you think legalizing illegal aliens, giving them a legal status and giving them work authorization undercuts the wages of some American workers?

Mr. TRUMKA. I do not think it would do that. I think it would have the opposite effect. If you fix the system—

Senator VITTER. You think increasing the supply of labor—

Mr. TRUMKA. These workers could come out of the shadows—I'm trying to answer your question, Senator. These workers could come out of the shadows. They would have the rights to have a voice on the job, the right to have right wages, not be misclassified, not be able to be fired for reporting unfair and unsafe conditions, and, as a result, it would be better.

They are currently here working. They work with no rights and because they have no rights, they are used to drive down the wages of every American.

Senator VITTER. That goes, I guess, to my first point.

Professor Hira, do you think the hiring of illegal aliens negatively affects the wages and employment opportunities specifically of some African-American workers?

Professor HIRA. My area of expertise is on the high skill immigration side, but I think it is pretty obvious that it does have that kind of effect in the current system.

Senator VITTER. Great. And for all the panel members, if you can just give a quick answer and quick explanation.

To each of you, do you believe there is a significant shortage of STEM workers in the U.S. now?

Mr. TRUMKA. I do not believe there is a specific shortage. When one out of four STEM workers can only find employment in their field, I do not believe there is a shortage.

When wages are not increasing that field, but are actually decreasing and are now at 1998 levels, I do not think there is a shortage.

Senator VITTER. Professor?

Professor HIRA. I would say that there is no shortage. The evidence shows that whether you look at the employment figures, whether you look at the wages, whether you look at the unemployment rates. All of those indicate that there is no shortage whatsoever.

Senator VITTER. Mr. Billhardt?

Mr. BILLHARDT. In Austin, Texas where I live, there are far more tech companies looking for qualified workers in all areas than they can currently find.

Senator VITTER. That is fine. My question was national. Do you have an opinion about whether there is a significant shortage of STEM workers in the United States?

Mr. BILLHARDT. I am in the technology industry, so I can speak for all the cities that I know that hire technology workers and I can say absolutely, yes.

Senator VITTER. Mr. Palmer?

Mr. PALMER. I can only speak to technology and there is absolutely no shortage.

Senator VITTER. Mr. Johnson?

Mr. JOHNSON. I believe that there is a shortage and I think the only way that you can sort of torture the evidence to tell you otherwise I think is to confuse what it is that we are talking about when it comes to STEM.

I think the various definitions of what constitutes STEM and when a job is in STEM or when a worker is coming from STEM, that gets all very confused.

Biology positions, they are not part of STEM, which sort of distorts our view of how is it that we are studying this thing.

I will say that employers and the labor market do not really care what folks with green eye shades think about where people are coming from, whether their degree is part of this demographic calculation or not.

What they need is workers in jobs when they need them where they need them.

Senator VITTER. So, just to be clear, what are the workers that you think should be taken out of the analysis, that you think are in the analysis that lead some of your panelists colleagues to an opposite conclusion?

Mr. JOHNSON. I think that is actually a really complicated question. I think what I would argue for is that there be consistency and that the usage of STEM match its broader application in the labor force.

Senator VITTER. So, what workers do you think should be taken out of that category?

Mr. JOHNSON. To try to do an exhaustive list of that, I mean, in the—

Senator VITTER. Do not worry about being exhaustive. Give me the top three.

Mr. JOHNSON. I think biology workers, I think physicians. I think certain folks need to be taken out of that STEM category, to not have physicians in there and to have people who get a degree in medieval literature is odd.

So, I just think a complete reassessment and agreed terminology is important.

Senator VITTER. Are you saying that medieval history majors are currently classified as STEM workers? I missed the point.

Mr. JOHNSON. Yes. Social science degrees can be a very broad category that includes an odd array of agrees.

Senator VITTER. Mr. Miano, let me go back to my basic question. Is there a significant STEM worker shortage in the United States?

Mr. MIANO. No. And, may I give you a roundabout answer? I want to give the up-front answer first to you. Believe it or not, I am actually in the young lawyer's division. It may not appear that way. And if you had said to me 15 years ago that you are going to be a lawyer now, I would have said you are crazy, because I was happy as a computer programmer, I loved what I was doing.

But what happened was, I was working as a consultant and the companies were firing Americans, replacing them—bringing in foreign workers. The foreign workers were largely incompetent, but they are cheap.

The technology managers are tearing their hair out because their choice, being given by the accounting departments, is either take

these foreign workers or nothing—and the accounting departments are celebrating, oh, you see, I got these guys for \$10 an hour less.

Watching that and then seeing a scholarship to law school, I took the message that Congress was sending me and went to law school.

Senator VITTER. It even drove you to law, which is really underscoring the point.

Mr. JOHNSON. Yes.

[Laughter.]

Senator VITTER. Mr. Salzman?

Professor SALZMAN. A couple points of clarification, since I do actually study the STEM workforce and its definitions. And I will say that my colleagues in the biology department will be very upset to know they are no longer considered a science. That is the S in STEM. History is not considered part of STEM. There is some confusion about the definitions, but those are not confused by anybody that I know.

But there is an interesting confusion about shortage and I would have thought our lawyer friends would have talked about that, which is distinguishing between a complaint about hiring and what is a real shortage, you are unable to find people.

I have a shortage in finding terrific, top graduate students who will work for minimum wage and if you ask me, I would call that a shortage. But I have great graduate students and I pay them a little bit more.

And this is real, I do not want to minimize it, there is a hiring problem out there. Anybody who hires, who is a real manager, knows it is tough to find people and you have to be competitive, and that is what is called the market. And a lot of the complaint we hear are from companies that cannot compete in the labor market. A small, 30-person entrepreneurial firm will not be able to compete with a Google for top talent. That is the market.

I am not sure it is the business of Congress to go change the market because people cannot find what they want at the price that they want. That is not a shortage anymore—

Senator VITTER. I wish we lived by your rule. We would stop doing three-quarters of what we can do here in Congress.

Professor SALZMAN. We are just trying to get you to stop this one. That will be a—

Senator VITTER. I understand. Thank you. I did not mean to cut you off. Thank you.

Mr. BILLHARDT. Can I add just a little bit to whether biology is a STEM or not? But I actually think that whole question kind of defeats it. I was a philosophy undergraduate and a business major. I would have not fallen into the STEM category, and yet I am creating American jobs here in America.

So, I think that I was missing the point in this debate about whether it is, what is a STEM job and what specific fields are in that, is truly the point that I tried to make earlier. When I hire as an entrepreneur, I am not hiring based on a skill set that is listed on a resume. I am hiring an individual and I need to hire that individual with their unique aspects and skills to fulfill a specific job that allows me to create the most competitive product in a global marketplace.

If I do not find that person, if I cannot hire that person, then my competitor—our biggest competitor is located in Sweden—they will be the happy. They will be the one benefiting if I cannot hire that specific individual with those individual skills.

So, trying to classify what is STEM and what is not STEM, I think, misses the point of the fact that in order to grow our economy and be competitive in the market, we need to find the very best people specific to a job. And you bet there are American jobs on the line if I do not find that one engineer, because I cannot find the next engineer that is American-born, I cannot find the support engineer, I cannot find the salesperson that supports that product because that salesperson will be hired in Sweden.

Senator VITTER. Thank you, Mr. Chairman.

Senator SESSIONS [presiding]. Thank you, Senator Vitter.

Well, there are a number of things that I think are indisputable. I will ask Professor Hira. This is a U.S. Census Bureau statement, their official statement.

The U.S. Census Bureau reported today that “74 percent of those who have a bachelor’s degree in science, technology, engineering and math, commonly referred to as STEM, are not employed in STEM occupations,” closed quote.

Do you think that is an accurate statement and what does it mean to Americans who are graduating from colleges today looking to have a career in STEM?

Professor HIRA. Well, I would say two things. I think it is an accurate statement and we believe the Census Bureau.

Second, if there really was a dire shortage, as is being claimed by industry and some folks on the panel here, you would see those Southern California Edison workers not training their foreign replacements, not taking on that kind of indignity.

They would instead be quitting because there would be all these great IT jobs that they could go to. The reality is those 500 people have lost their jobs, and I have spoken to a number of them. Some of them have no prospects for a job. Others are taking wage cuts and the like.

So, that is the reality of what that data point shows, of what the Census shows.

Also, I would point out that engineering technology, IT has traditionally been the ladder up from the working class to the middle class. I am an engineer, I am a second generation engineer, but the engineers I work with, many of them come from working class backgrounds. That is being shut off by the H-1B program. You are not bringing in the specialized, unique folks that Mr. Billhardt is talking about. You are bringing in ordinary IT workers. They are not filling the skills gap. The skills gap is that the foreign worker does not have the skills, as Jay Palmer has talked about, as the Southern California Edison story shows us. It is the American workers who are training their replacements.

Senator SESSIONS. Thank you.

Mr. Palmer, you worked some in India and you went there.

Mr. PALMER. Yes, sir. I was actually in India when—it is in my written statements or my written testimony—when they devised—the Infosys devised a plan on how to cheat the American Government.

Senator SESSIONS. All right. Go ahead.

Mr. PALMER. Sir, if they could not get H-1Bs, they started sending over people on B-1s and B-1s is the business visa and that is really where the \$34 million settlement came from.

Senator SESSIONS. Let me just ask you this. See if you can be succinct about this answer. It seems to me that Infosys and other companies identify graduates from engineering, STEM programs in India and they gather them and almost like a temp service, because these are not really immigrants. They are not coming to America to live here permanently. They are coming here only to work at a certain job.

And that you put those together and with regard to the classic case of California Edison, what they did was the contract was with Infosys, was it not?

Mr. PALMER. Absolutely.

Senator SESSIONS. And they did not really have a contract and they laid off—400 or so IT workers at California Edison were laid off.

Mr. PALMER. Yes, sir.

Senator SESSIONS. They then contracted with this subcontractor who brought in these workers and paid them \$40,000 a year. I believe, Mr. Trumka, you said less. Is that the way it works?

Mr. PALMER. Yes, sir. That is the way it works, absolutely. And if they get the \$40,000, if the worker really gets the prevailing wage, which many times they do not, they are having to give kickbacks to their company and et cetera, et cetera, but that is exactly what happens.

Senator SESSIONS. Now, Mr. Hira, is that essentially your analysis of it as a professor?

Professor HIRA. Yes. I have been studying this for a very long time and Southern California Edison is just the most visible case. You have got to understand that my cousins—and I have cousins in India who graduate from good IT colleges. The starting salary or the average wage for an IT worker there is about \$6,000 a year.

I have seen the Infosys contracts and we have had family come over with some of these companies and to get even the prevailing—the minimum wage here, which would be \$60,000, they are very happy to do that.

They are coming in at below market wages and what Congress is basically saying is any American professional who makes more than \$60,000, your job is up for grabs. you must train your foreign replacement.

Mr. PALMER. And, sir, just to add one more thing. I was asked to change contracts to try to hide it from the American Government. And additionally, they bring people over and they pay them in India, meaning that they are not paying taxes, they are increasing their profits.

So, for example, as Dr. Hira said, the \$6,000 a year, that is what they are getting. They are not getting the prevailing wage. It is ridiculous.

Senator SESSIONS. But it is good experience and a net increase over the salary in India.

Mr. PALMER. Sir?

Senator SESSIONS. They have good experience and they have a net increase in income over what they might have in India.

Mr. PALMER. Well, their experience is not good at all. I mean, they are coming over here, they are unskilled. It is just a potpourri of people coming over, as Dr. Hira can attest, and we are training them and we are laying off Americans and the Americans are training them. And to get the benefits, they are having to sign these basically non-disparaging remarks where they cannot even talk about it.

That is why they are not here today, sir.

Senator SESSIONS. I have some confidential statements and it is disappointing and I would like to talk about that more.

Senator Durbin.

Senator DURBIN. Thank you, Senator Sessions. And thanks to the panel for being here.

I was one of the Gang of Eight—Group of Eight, that worked on the comprehensive immigration reform bill. It reached a point in the deliberations that went on for months—months—where I said this is no longer the comprehensive immigration reform bill. This is the H-1B reform bill and other provisions.

We spent more time talking about H-1B than anything else, anything. And I think there was obvious reason for that. There is a lot of money to be made in this pursuit and there are a lot of companies that really look at this in an honest way, wanting to have access to talent that they believe they cannot find in order to keep the company's doors open.

President Trumka, I do not know if you stole my speech or I stole yours, but the three points that you made are the three key points, as far as I am concerned. You have spelled it out here in terms of first responsibility, hire Americans. And I do not know how many times I said that in the closed door sessions. I said we cannot walk out this door if we do not establish that our first responsibility is to hire unemployed Americans. How in the world can we rationalize anything else?

What we tried to do—and you were involved in it on a day-to-day, week-to-week, month-to-month basis, the conversation about what are we going to pay these folks. Is this going to be such a low wage that it disadvantages American workers? That, to me, was key to it.

The second, and it goes right to your second point, that the pay be in an equal situation.

The other thing, too, you talk about the rights of workers in H-1Bs. There is a form of servitude here where they are stuck and they can be mistreated, abused at the expense of the American workforce, and I think what Mr. Palmer and others have said, with virtually no resource.

Professor Hira, you have been very helpful to us as we have developed this.

There was one provision in the bill which Senator Grassley and I introduced which lit up the scoreboard in India when we started talking about Tata and Infosys, who are the leaders in this whole effort year in, year out, where we tried to draw a line about H-1B visas. If your company has more than 50 employees and 50 per-

cent or more of those employees are H-1B visas, then you are out of the competition.

Mr. JOHNSON, does that sound unreasonable?

Mr. JOHNSON. The way you have said it, it certainly does not sound unreasonable.

Senator DURBIN. Good. I was hoping for your endorsement.

[Laughter.]

Mr. JOHNSON. Again, I think the axioms you are talking about are important, hiring U.S. workers, I get that. But if I can hire a worker, whether it is a foreign worker or a U.S. worker, if I can hire a worker that can help me create five more jobs that will employ that many more Americans, then that has to be prioritized first. We need to figure out how to grow ourselves out of this unemployment problem, not try to fight for scraps off the table.

Senator DURBIN. Would you agree that the starting point, though, is hire an American first?

Mr. JOHNSON. Again, Senator, with all due respect, I understand the axiom and, in many respects, I agree with it. But, again, if we are just focused on hiring Americans first and we are not focused on how do we grow ourselves out of the unemployment situation that we are in, then ultimately we are all going to lose. We have to figure out how do we grow ourselves out of this.

Senator DURBIN. Well, we hope with the wage conversation, that offering comparable wages paid to Americans, paid to H-1Bs, that we are going to avoid some of the worst abuses.

And let me concede the obvious. I have visited Illinois Institute of Technology. They brought in a Chinese student who was working on his Ph.D., who was just absolutely phenomenal. And he wanted to stay in the United States. And I thought to myself, why would we let him go? We brought him over here, we educated him. He has all the promise in the world to not only be a good employee, but a good employer at some point, and, why would we not want that to happen right here in the United States?

So, one of the things we put in the comprehensive immigration bill, which was not favored by many people on the other side of the aisle, only 14, but one thing we said was in that circumstance, if you graduate with an advanced degree in the STEM subjects, I think this is how it read, and you have a job offer in the United States, we will offer you a green card.

So, it gave them a chance to stay at the highest levels of academic achievement and performance. Does that address what you were trying to create as a finite exception to hire an American?

Mr. JOHNSON. Absolutely. I agree with those principles, as well. Those are practices that I think we employ and ought to enshrine in law. But, again, I go back to the trouble with a more simplified axiom of just you have to hire the American first.

Again, totally agree with the sentiment. I think we have to figure out how to balance that with the overarching need for all of us to figure out how do we grow ourselves out of the doldrums.

Senator DURBIN. Well, I want to put the H-1B factories out of business. I think anyone who comes before us will never ever be able to justify that, in my mind. I think there is exploitation going on there at the expense of the American economy in the short and the long run.

I also want to make sure that we are rewarding and encouraging talent to come to the United States. You only have to look at the Fortune 500 and see how many of them were immigrants to this country to realize—as the son of an immigrant, I can say this—immigrants can do something good for this country. They have over and over again.

Mr. Billhardt, you have an interesting story that really uses that talent from overseas to create American jobs; do you not?

Mr. BILLHARDT. I do. I do. And I want to respond to your question from earlier on whether it is the right thing to put the H-1B factories with 50 percent or more H-1B workers out of business. I actually think that is a reasonable provision and I think that could actually help quite a bit how it may solve some of the problems that we heard on the panel here, because I think that is somewhat at the heart of what the current problem is.

But at the same time, I think we still need to increase the cap so that there is not a lottery system that will prevent some of the people that you met and that I know from staying here and starting businesses here.

There is one more point that I think is important, because you asked about hire American first. I think, in principle, all of us agree that that is a good idea, too, but there is a problem for me as an entrepreneur and that is the bureaucracy that will be created if I have to figure out—if I have to justify every single time that I am trying to hire the person with the right skills, why someone else that on paper has the same skill, but is not maybe necessarily the right fit for that particular job.

If I have to justify that, that is putting bureaucracy between me and my ability to grow the business.

Senator DURBIN. But you see, that is the tricky part. That is the tricky part. If you are dealing with two engineers with similar backgrounds and similar experience and one that clicks with you and you think this person will fit right in my organization—

Mr. BILLHARDT. Exactly.

Senator DURBIN [continuing]. But he happens to be the H-1B.

Mr. BILLHARDT. Exactly, because it is not the skills on paper that matter. It is finding the right fit, because if I do not find that right fit, my company will not grow and I cannot grow American jobs that go with it.

So, it is not, I think, that anyone does not want to hire Americans first, I think that is a good sentiment, but if we put restrictions on entrepreneurs that are unreasonable, where we have to prove something that we cannot prove, because on paper it is the same skill, then we are hurting our competitiveness.

Senator SESSIONS. Thank you.

Senator DURBIN. Could I ask for 30 additional seconds?

Senator SESSIONS. Yes. Make it 10 minutes.

[Laughter.]

Senator DURBIN. I know it is so good you want it to go longer.

Senator SESSIONS. Well, it is not all bad. You make some good points.

Senator DURBIN. That is the most complimentary thing the Senator from Alabama has ever said about me.

Senator SESSIONS. No, it is not.

Senator DURBIN. "Not all bad."

[Laughter.]

Senator SESSIONS. I have great admiration for you.

Senator DURBIN. Thank you.

Senator SESSIONS. Go ahead, Senator.

Senator DURBIN. I am going to give 30 seconds to my friend, Mr. Trumka. You were asking—seeking recognition?

Mr. TRUMKA. Yes. I just wanted to say, if these programs are so good, only less than 10 percent of them—of the people coming in under H-1B visas, ever become permanent here—less than 10 percent. So, if they are so good, if they are not used to drive down wages, why is it 10 percent? And why is it that 9 out of 10 H-1B users are body shops? Between the years of 2010 and 2012, 9 out of 10 H-1B users were body shops or out-placement firms that are used to drive down wages.

Senator DURBIN. It is clearly abusive and Senator Grassley and I have a bill, which I would even ask Senator Hatch to take a look at. You might find it appealing.

Thank you, Senator Sessions.

Mr. PALMER. Senator, I want to add one more thing. While with Infosys—and Dr. Hira can attest—we were not allowed to hire Americans. And he has done some research on it and he has got stories, as I do.

I, as a hiring manager, was not allowed to hire an American. Thank you.

Senator DURBIN. That stinks.

Senator SESSIONS. Senator Hatch.

Senator HATCH. I am happy to welcome all of you here today. Rich, it is good to see you again.

Mr. TRUMKA. Good to see you, Senator.

Senator HATCH. We have a lot of respect for the tough job that you have and we will talk a little bit today—

Mr. TRUMKA. I cannot hear you, Senator.

Senator HATCH. I have got to get this microphone to work.

Well, let me just begin by saying this about today's hearing. I would be surprised that there is anyone here that thinks we do not need to reform our immigration laws. I find it ironic, though, that the same folks who fought the immigration reform last Congress are now arguing that our immigration laws, particularly as they relate to high-skilled workers, are broken and encourage abuse.

Now, you cannot have it both ways. America and American companies need more high-skilled workers. This is an undeniable fact. America's high-skilled worker shortage has become a crisis. Last year, American companies were unable to hire nearly 90,000 high-skilled workers that they need to grow their businesses.

They need them to develop innovative technologies and to compete with the international competitors that are many, now. And I agree that we need to make overdue changes to our high-skilled visa categories, but proposals that impose hefty fees, higher fines, exhaustive Labor Department scrutiny, or requirements to pay H-1B workers artificially high entry-level wages discourage—rather than encourage—the world's best and brightest to come to the United States.

Now, many other countries have policies in place to attract highly educated individuals from around the globe in order to boost their economies, policies that try to grab our own American-educated Ph.D.s. I find it extremely problematic that we educate these folks and then we push them out of the country.

Canada comes down and advertises in America to get our Ph.D.s, our master's degrees, and engineers to go to Canada. After all, high-skilled workers are essential to boost productivity and grow our economy. And as the American Enterprise Institute has confirmed, each foreign-born worker with a STEM degree who remains in the United State creates an average of more than 2.5 American jobs.

These are jobs that could be unionized and I think that needs to be pointed out. In today's global and technology-driven economy, businesses will go wherever human capital can be found, be that Canada, Chile, China or India.

Now, to strengthen America's economy, we have to ensure that human capital can come here and can stay here. That is why I introduced the I-Squared Act, which has bipartisan support in the Senate, including from Senators Klobuchar, Flake, Coons and Blumenthal on this Committee, as well as broad support from technology companies and from businesses in other sectors that hire high-skilled professionals.

The I-Squared Act takes a coherent and constructive approach to high-skilled immigration by addressing the immediate need to provide American employers with greater access to high-skilled workers, while also addressing the long-term need to invest in America's STEM education.

If, however, we render the H-1B program unworkable, high-skilled workers have another option or should I say options, and that is to go north of the 49th parallel or to go to these other countries that are starting to be able to compete very, very well with our country.

Failure to reform our high-skilled immigration system is forcing American companies to outsource their innovation centers to countries like Canada. I love our folks up in Canada, but there is no reason for us to be stupid here.

Such isolationist policies will never succeed in today's global economy. Now, I might want to remind my friend, Mr. Trumka, that the high-skilled amendment to S.744 was a bipartisan compromise with Senator Schumer. I am trying to do things in a bipartisan way that will create jobs in our country and benefit our people and keep those people that we spend a lot of money educating here in America where they can help American jobs and create American industries, and, frankly, it makes a lot of sense to me to do that.

How much time do I have here? I have got 15 seconds.

Senator SESSIONS. You have got longer than that.

[Laughter.]

Senator SESSIONS. As long as I am Chair, you can have some more time.

Senator HATCH. Well, thank you. He is a formidable opponent, I have got to admit. But I love him, he's just a great buy, I will tell you.

Now, Mr. Johnson, let me ask you this. Do you agree that the hiring abuses many of today's witnesses have referenced could be resolved by making a few relatively minor changes to existing law? I would like to have an answer on that from you.

Mr. JOHNSON. Yes, sir, I do. I think it is possible to make some targeted reforms, not over-complicate this, and make significant progress in not only improving the return on our investment in the H-1B and other high-skilled programs, but limiting instances of fraud and abuse.

Senator HATCH. In particular, I am referring to the 1998 law which requires H-1B-dependent businesses to provide recruitment attestations and prohibit secondary layoffs for H-1B employees who are paid less than \$60,000 per year. You are aware of that.

Mr. JOHNSON. Yes, sir.

Senator HATCH. Is the current \$60,000 salary exemption adjusted for inflation?

Mr. JOHNSON. No, sir. Much like the cap itself, that number is frozen in time back in 1998.

Senator HATCH. What would happen if we raised the exemption to \$95,000 a year?

Mr. JOHNSON. Then H-1B-dependent employers would either have to pay that wage or be subject to the additional attestation requirements.

Senator HATCH. Well, it seems that the right answer to U.S. worker displacement is to update the 1998 law for H-1B-dependent companies. Would that be a solution?

Mr. JOHNSON. That would certainly help. Again, just as a general principle, I think it makes no sense to ignore aspects of our immigration law and allow them to be frozen in time, particularly when we are talking about a time when our economy was dramatically different than it is today, not just in terms of wages, but in terms of production and job creation and all those kinds of things.

So, it makes no sense to have those numbers stuck in time and to not address them.

Senator HATCH. What kind of economic boost can we expect if we update our high-skilled immigration system?

Mr. JOHNSON. That is a great question. I think, because, first of all, we have, I think, been mired in dysfunction in terms of high-skilled immigrants and because of the incredibly diverse role that they play in our economy, coming up with a precise number is, I think, incredibly difficult.

But there is no question we are talking about billions of dollars in increased productivity and output and tens of thousands of jobs. I will say that there was a study that looked at the impact of the components of the comprehensive immigration reform bill, just the high-skilled visa components, and it estimated that as a result of those changes, there would be more than 400,000 new jobs in the U.S. and about \$42 billion in increased GDP by 2020.

A lot of that has got to do with multiplier effects. A lot of that has got to do with unleashing the power, releasing sort of the strange hold that we have on high-skilled immigration.

Senator HATCH. It seems that we spend too much time talking about the occasional shortcomings of the system rather than the economic benefits of welcoming foreign-born, high-skilled workers

who want to stay here, especially after they have been educated here.

I think that is important. A 2014 Government Accountability Office report found that in the period between the 2002 and 2003 academic year and the 2011–2012 academic year, 23 percent of graduate degrees earned by foreign students were in the core STEM fields of life and physical sciences, engineering, computer science, and math, compared to only 2 percent of graduate degrees earned by U.S. citizens and green card holders.

How do you respond to those who argue that there are more U.S. STEM graduates than suitable jobs?

Mr. JOHNSON. Well, Senator, I think my testimony and the back-and-forth we have had today makes pretty clear that I believe that there is a shortage. I believe that the unemployment numbers in the overwhelming number of categories that we are talking about here in the STEM categories point to a shortage.

I will take this time to say that I understand that Senator Sessions was asking about, sort of, workers going in other occupations. I will say that from a larger economic perspective, I am not really sure what difference that makes.

If somebody in the Senate decided that they needed an engineer because having the skills and talents of an engineer in the work that you are doing is important or if I decided that I wanted to have somebody a STEM background, but the Senate or my organization are not classified as STEM occupations, I am not sure that really matters in terms of providing opportunities for people who have STEM skills.

The fact that our economy really is broadly demanding those kinds of skills—the banking industries and educational institutions and all kinds of institutions want those kinds of skill sets—is a good thing for STEM education.

Senator HATCH. Let me just say this, Mr. Chairman, one more comment: You know, my State of Utah, it is a go-go State. It basically is competitive with every other State in the country, and I have to say, it is like number 2. It is number 1 where people want to go and create businesses.

And yet, my high-tech business there, from which I would like to get some of these graduates that we educate to work for them, they cannot find enough engineers or enough highly educated people to keep up with the demand.

And I have to say that we call Utah, “Silicon Slopes.” And it is competing pretty well with Silicon Valley down in California. I know both areas very well. And the jobs that they create are monumental.

We would be penny wise and pound foolish to not do the H-1B bill, which we have worked on and worked on and worked on to try and get it so that it meets the needs of everybody at this table. And if you have better ideas, get them to me, because I have no desire to politicize this thing.

I want more jobs fulfilled in our country. I want more jobs created. I want to keep these highly intelligent people in our country to help us not only with jobs, with national security and everything else.

All I can say is that it is hard for me to understand why anybody would be against the H-1B bill, and if you have better ideas, get them to me. I am open to those and so are my cosponsors who are bipartisan.

Last time it got called up, we had 26 bipartisan cosponsors, most of them—the majority were Democrats. And we did not even try to go out and get more. We would have gotten a lot more if we would have tried.

So, do not give up because you have some ideas against some of these things. Help us to understand why your ideas are better than what I am talking about and help us to know how we can do this in a better, more equal, more intelligent way.

We are open to these type of things. But I can tell you this. Our country is a stupid country in some ways. We just push these people and we educate them in the greatest educating colleges and universities in the world, as a general rule, and then we push them out of our country when we need them. And we need them to create jobs and that means a lot of union jobs, as well.

I do not get it, to be honest with you, why we would not be doing that in the best interest of our country.

On the other hand, I am going to read every testimony that has been given here today and pay very strict attention. You folks are fine people. You have all been here. I happen to think Mr. Trumka is a very important man in this country and a fine man to boot and he has fought for his union members. And it is no secret I was a friend of his predecessors. We worked all over the world on free trade unionism.

But to stop it here because we are afraid it might interfere with some jobs, it is going to create jobs. And, frankly, we have got to wake up in this country or we are going to wind up being not the greatest country in the world, but having competition that we might not be able to keep up with.

So, I am concerned about it and if people have better ideas, get them to me or get them to those who are working with me on these matters and we will certainly give every consideration to them.

You have been very kind to me, Senator Sessions, and I appreciate being able to make my comments and have this time.

Senator SESSIONS. Very good, Senator Hatch, and thank you for the years you spent studying and thinking about this issue.

I would just say that in the debate in 2007, I was under the impression that the one area we had a shortage was in the IT area. The area was booming. Let me ask Professor Salzman.

Professor Salzman, if the I-Squared bill passes, what percentage—100 percent of the jobs could be filled by the guest worker H-1B program; is that correct?

Professor SALZMAN. Close. The I-Squared bill would provide 150 percent of what the IT industry says it needs each and every year. So, I think Brad Smith from Microsoft said you need 120,000 each year. Our estimated of I-Squared would be about 180,000. Right now we have two-thirds. So, it is pretty hard to find a shortage in gross numbers.

Now, these hiring difficulties, our friends down here may have trouble hiring people and competing with the Googles, but as I

said, I believe that is the way the market works. But the sheer numbers do not show any shortage.

Senator HATCH. But you are aware that we were 90,000 H-1B openings short this year.

Professor SALZMAN. Well, short—

Senator HATCH. And that is every year that we come up—

Professor SALZMAN. Short is not—I am not sure that is how I would characterize losing the lottery. On Black Friday after Thanksgiving, not everybody gets their half-priced TV, and on Saturday we do not hear about shortages of TV.

The H-1B lottery is a 20-percent-off sale on labor, and not everybody gets their 20 percent off, and they are disappointed. I understand that disappointment, but I am not sure it is a shortage.

You just cannot find it in the data. You cannot find it on the streets. You cannot find that happening.

Senator HATCH. H-1Bs were filled in 1 week this year.

Professor SALZMAN. Yes.

Senator HATCH. And we need, according to everybody I talk to, about 90,000 more openings and we do not have them. That is what we are trying to do with I-Squared, is to fulfill those openings.

Professor SALZMAN. I would also like to—

Senator SESSIONS. I think I had the floor.

[Laughter.]

Senator HATCH. Sorry.

Senator SESSIONS. I am so used to Chairman Hatch telling me what to do.

Senator HATCH. Now, now, I have let you interrupt me many times.

[Laughter.]

Senator SESSIONS. Well, this is a Challenger, Gray & Christmas study, and it was produced in January of this year and it talked about the increase in job cuts that we are having.

Computer jobs, there were 59,500 computer job cuts, 19,000 electronics, 21,000 telecom—a total of 100,000 job cuts in this area.

So, I know people tell me they want more people and I guess they hope they are going to get something special, but 60 percent of these job cuts were in the computer world, according to this report.

I saw in Barron's, I ordered a copy of the report. That is where I read about it.

Mr. Trumka, I know you have got a schedule to keep. So, if you get to the point you have to leave, do not hesitate and we thank you for the long time you have given us and your comments.

Well, look, I think there is some common ground. I think it is obvious that it is in the national interest that the 1 million people that immigrate to America each year who are on a path to citizenship and come lawfully, we should tilt that number to more high-skilled people. That is so obvious. Like Canada, like Australia, like other countries around the world are doing.

So, this program is a program designed, according to the Los Angeles Times in a critical piece on the California Edison, they say, "the purpose is to allow employers to fill slots for which adequately

trained Americans are not available, not to replace existing workers with cheap foreign labor,” closed quote.

Well, is that not what happened, Mr. Hira, in—well, I will ask Mr. Palmer. Is that not what happened when you—

Mr. PALMER. Yes, sir.

Senator SESSIONS [continuing]. Replaced people actually in the jobs, doing the jobs, to our understanding, adequately?

Mr. PALMER. Absolutely that is what happened. Mr. Hatch, the day after those visas, the visa number or the cap was met, 500 of those H-1Bs came over to the United States and they replaced those workers at Edison.

Senator SESSIONS. Now, Mr. Hira, were these all people who are at super levels of intelligence and education that are superior to our college graduates or were some of them just going to be normal computer operators and probably would be that the rest of their lies?

Professor HIRA. Yes. So, if you look at the numbers for Tata and Infosys, the two outsourcers in this case, about 80 percent of their workers, they bring H-1Bs, hold no more than a bachelor’s degree.

Senator SESSIONS. Eighty percent.

Professor HIRA. Eighty percent. And they are the top two H-1B recipients. They got 12,000 alone in Fiscal Year 2013.

These are ordinary IT workers with ordinary skills, skills that more than abundantly available here in the U.S., the Edison one chose you right way, and/or you could be training students into those fields and train them up fairly quickly.

This is what Infosys and Tata do. They train their workers. Over 6 weeks, you can train people to go into those positions very easily. They are taking those jobs from Americans.

Mr. PALMER. Mr. Sessions, just let me say one thing. If you want to stop this H-1B replacement of American workers, raise the wage floor to equal what that American worker was making and if it is truly specialized talent and it is truly a job an American cannot do, they will bring that person in, because I am telling you the Americans are making \$120,000 a year and since 1998 the wage floor has been \$60,000-some-odd. All they are doing is cutting costs.

So, raise the wage floor and they will stop this replacement of American workers.

Mr. BILLHARDT. Senator Sessions, I am not sure I am allowed to do this, but can I ask a question?

Senator SESSIONS. All right. You can ask Senator Hatch.

[Laughter.]

Senator HATCH. If I could interrupt. I just want to know what you, Mr. Johnson and Mr. Billhardt, what you have to say about what Mr. Salzman has said, Mr. Palmer, and Mr. Hira.

Mr. BILLHARDT. Senator Durbin had an interesting proposition. There are clearly some abuses of the system and they are clearly committed by companies that have a certain profile. Senator Durbin seemed to think that if there was an amendment or a provision that would allow for companies that have more than 50 percent of their workforce being H-1B visas, that they would have a different status than other companies.

Do you think that would solve some of the problems?

Senator SESSIONS. Well, perhaps. I just believe the data, the academic data shows there is not a shortage.

There could be a shortage in Silicon Valley where it costs you \$500,000 to have a one-room house.

Mr. BILLHARDT. If we are lucky.

Senator SESSIONS. But that is their problem, not mine. I do not have to fix that. And I have got to tell you that my understanding of our role is to serve the national interest of the people of the United States.

Professor Salzman, I believe you have indicated, and others, a number of others have said this trend of having such a large number of foreign tech workers is depressing wages, but it is also depressing the likelihood that American kids will go into these fields because they do not see the prospects for good pay after borrowing money to go to college.

Also, you might address the comment that a number of members have made this morning that H-1B is being used primarily by American college graduates rather than people who have graduated from colleges abroad.

So, those two points.

Professor SALZMAN. Let me, again, maybe make also a first comment. I think part of where the confusion may be is about what the predominant use of H-1B is for, which is, about two-thirds is used for offshoring by the IBMs and by the Infosyses. So, that is the predominant use.

And what I think some of the other panelists have talked about is probably the 10 to 15 percent use that is really a talent search and if we do not separate those out, I think that confuses the conversation.

So, there probably is a real talent search, but it is a very small part of what the use of H-1B is for, and that we ought to think about seriously supporting.

But it is the larger two-thirds that is used to move jobs offshore. So, whatever the pay, they are just leaving. And those are the jobs where they undercut, as I think Mr. Palmer has talked about, replacements both here and offshore. So, that is, I think, the key point.

So, your question, Senator Sessions, was about the——

Senator SESSIONS. I forgot.

[Laughter.]

Senator SESSIONS. Discouraging graduates.

Professor SALZMAN. Discouraging U.S. graduates. You know, we have—we look for kind of natural experiments that tell us what is the counterfactual, so it is not just a hypothetical, and we have that.

We have an example of petroleum engineers where there was an observed shortage, not a hiring difficulty. There were not enough people because of major changes in the industry.

Wages shot up dramatically and the enrollments almost tripled. And what is interesting is that the enrollments—in graduates, rather, were almost all U.S.—in fact, the increase was all U.S. students, both immigrant and native, who responded to the wage signals.

So, the fundamental question we have to ask is, in the IT industry about this shortage, where are the wage signals, where are the wage increases that would draw people in? And we have the earlier period during the dot-com boom, wages were going up, Americans flocked to this field.

That is not happening now. So, the picture just does not hold with the complaints about hiring. There are hiring complaints. It is how the market works. Those are real. But that is not a shortage because a shortage would result in wages going up. And, to your point, the students see that. The students see this as a discouraging signal about where careers are, and where to go to.

And the “S” in STEM is science. If you ask your colleagues across town at the National Institutes of Health, the number 1 problem they have today is the lack of good jobs for Ph.D. biomedical scientists and the fear that the poor career prospects are discouraging people.

In fact, we have a large project called the BEST Program to find alternative careers for Ph.D. scientists. So, the scientists are being discouraged. We do not have a shortage in scientists, we do not in engineers, we do not in mathematicians.

So, out of STEM, all this discussion is about “T,” which is the IT field, and, as we have said, we do not see it there either.

Senator SESSIONS. Go ahead.

Senator HATCH. Let me just say this. I understand that about biomedical sciences. Primarily, probably we are talking about a lot of engineering businesses and the IT world that really does not find enough really competent people to do the job that they know they can do and that they can create jobs with them.

I think we agree. We want to encourage U.S. students to study STEM fields. I-Squared creates a fund to encourage American STEM students and that is one of the things we are trying to do.

I am going to pay very strict attention to what all of you have said here today, but I still do not think you have hit the nerve that we need to hit in this country. Mr. Johnson, you wanted to interrupt there for a minute.

Mr. JOHNSON. Well, I want to challenge the notion that H-1B workers are being paid less. I think the most comprehensive study that I know on this issue from December 2011, from the Institute, a study of labor, one that was repeated by the Brookings Institute in 2013 and found the same results, which were that H-1B workers are paid more than U.S. native-born workers with a bachelor’s degree generally and even within the same occupation and industry for workers with similar experience. This suggests that they provide hard to find skills.

So, I am happy to share a copy of this with anybody who wants it. I do not—and I also want to say that, in general, the wages in these STEM occupations are going up. I agree that they are not going up in the same way that we have seen wages going up in the past. I acknowledge that we have a challenge in terms of understanding how the industries may be changing, this dynamic about wage stagnation.

But, I think the idea that those problems can be solved through the immigration system is wrong. I think there are many other factors in place here, not the least of which is that we see increasingly

companies choosing to put profits back into shareholder coffers rather than into infrastructure or wage development.

So, there are lots of things going on in a very changing economy. I think the idea that you will solve those problems through immigration is wrong and I think all of the evidence indicates that there is no correlation between the presence of immigrants in particular occupations and wage depression.

Senator SESSIONS. Mr. Miano?

Thank you, Senator Hatch, and thank you for your leadership.

Mr. MIANO. I just wanted to comment that the Brookings result that has the wages of H-1B workers being comparable or higher than U.S. workers requires two tricks that you have to do mathematically.

First, you have to exclude geographic regions. So, for example, the wages in California are a lot higher than they are in Indiana. And the Brookings Institute, even though their own study shows that H-1B workers are highly concentrated in a few high wage States, when they do their wage calculations, they do not take that geography into account.

The second trick you have to do is you have to divide age groups and compare age groups, but you have to compare the right age groups to get the discrepancy, to get the result that Americans—that H-1B workers earn as much as Americans do.

Mr. JOHNSON. Those are two points and Brookings has really good responses to both of those things. Again, I think, the answer here is to have a fact-based debate that is removed from stereotypes, myths, and assumptions, and really bring that kind of data and analysis more to the immigration debate.

Senator SESSIONS. I agree. Professor Salzman, we need to go away from myths.

Professor SALZMAN. Just a quick statement that you left out from that same Brookings report. I quote, "It is likely that the extra supply of foreign-born workers does bring downward pressure on the wages of incumbent workers, as research suggests." So, that is from the same Brookings report Mr. Johnson was citing.

Senator SESSIONS. Well, Professor Borjas at Harvard, I think, he did it by skill set and found the more of a skill set that you have, a flow of foreign labor does pull down wages. And if you bring in more cotton, the price of cotton falls; bring in more labor, the price of labor falls or it does not rise.

I do not think it will solve all of our problems, but it is a factor.

This is a poll that asked a simple question. We do not get these kinds of questions very often by pollsters. They are usually paid by somebody with an agenda, it seems to me.

But the question was if a company is having a hard time finding workers, should the company raise wages and improve working conditions before they bring in more workers from abroad. It was 75 to 8 was the total. Among African-Americans, 88 to 3; and, among Hispanics, 71 to 11.

So, I do not think this—I think this is the basic, commonsense approach. We should ask ourselves what we are doing.

So, Professor Hira, I think you have written about minority groups, Hispanics and African-Americans, and how some of these policies are impacting them. Would you comment on that?

Professor HIRA. Sure. The tech industry has had really a terrible track record in hiring under-represented minorities, African Americans, Hispanics, and also women. And by bringing in H-1B workers, you are basically allowing them to continue that track record.

The vast majority of people who are coming into the tech industry on H-1Bs are coming from either India or China, mostly from India, and most are men. And so that, again, exacerbates the problems of gender inequalities there.

And if anybody thinks that Apple and Google and many of these other Silicon Valley-based firms will not take advantage of cheaper labor, they should pay attention to the wage-fixing scandal that has engulfed those firms recently, where they actually settled, and there are pretty detailed emails from the executives, billionaire executives, Eric Schmidt and the late Steve Jobs, basically saying we will not poach your workers and colluding to basically fix wages.

If they would do that which is apparently against the law, it would not be surprising that a lot of firms would have this pressure to go ahead and try to bring in cheaper workers on H-1Bs, and that is why you see such—a lot of lobbying from the industry is because it is extraordinarily profitable to bring in cheaper workers rather than keep your income at once rather than investing in workforce development and the like.

Senator SESSIONS. Well, as you said, I think, in the beginning, businesses do what businesses do and if we create a law that allows them to bring in unlimited numbers of foreign workers, we are going to expect what we get.

How many, Professor Hira, are H-1B workers and related Ls and Os that are here in America today and how big of an impact does it have on the economy?

Professor HIRA. Well, this is kind of interesting and this goes to some of these studies that Mr. Johnson talks about. No one actually knows how many H-1Bs are here at any one time because the Government does not keep track of what happens to H-1Bs once they are here.

Some leave, some stay, some convert. There is no tracking. So, the estimates are the stock is about 650,000, but we are kind of guessing at what that number is.

With the L-1s, we have even less transparency. We have no idea how many folks are here on L-1s, even how many are coming by employers, because there are these blanket petitions that happen. Probably 350,000, then you add in the OPT, you add in the J-1s. You are talking over a million people in those occupations, mostly concentrated in those occupations. It has a very distorting effect on the labor market because you are not talking about 140 million Americans. You are talking about that specific labor market, which is about 3 or 4 million.

Senator SESSIONS. Well, people are not commodities. We compare labor to commodities, but they are not commodities. They are human beings. They have families. They have hopes and dreams. They want stability in their life. They like to have a good job at a company like the biggest utility in California, California Edison. How much better does it get? I have got the letters here from people without their names, Mr. Palmer, because if they say what they

know and think about this, they will lose the buyouts that they had to have.

I just would say that this Congress represents the people of the United States. And, yes, bringing in talent to America is a good thing, but we have no obligation to yield to the lust of big businesses, and these big businesses, the new ones in the high-tech world are the same moguls that used to run the oil and the steel industries. They all want more profits and lower pay for workers. That is just what they do.

Mr. Zuckerberg is worth \$27 billion. I guess he is 27 years old, I am not sure. So, he wants more foreign workers. I would like to think he might want to pay his employees more and maybe not have quite so many billions, if he would like to be helpful and maybe he could get more local workers.

So, I just would say, first, I think that is our responsibility and we provide education and goals, job training, high skills programs that try to help people take these jobs and we need to try to have those people first. I think that is what the polling data shows. I think the American people are right and just in asking for that. So, thank you for it.

Mr. Palmer, my understanding, from a number of statements we have gotten, they have called without names or submitted statements without names because if they speak out, they would lose any of the post-employment benefits they might have. That is on that program.

Would you comment on that?

Mr. PALMER. Yes, sir. I received—I gave my phone number to several newspaper people who had talked offline to some of the Edison workers and they reached out to me. And it was the same rhetoric we have heard today, you know, what have I done wrong or if I talk about this or if I do not train my replacement, I am not going to get my severance package and I am going to be sued. And that is absolutely true. That is the fear and intimidation that these people go through. They are blind-sided, absolutely blind-sided.

Senator SESSIONS. Mr. Hira, is that true in other places in these kinds of situations?

Professor HIRA. Yes, it is absolutely true. When I was in Rochester teaching at RIT, which is one of the top engineering colleges in the U.S. and in the world, a number of our graduates, Americans, were working at Xerox. They were training their foreign replacements with an outsourcer, HCL, and I spoke to a number of them.

These were people with advanced degrees, Americans with advanced degrees and not just doing ordinary IT work. They were doing product engineering, so designing the Xerox copiers and those kinds of things.

They were training their replacements and they were not able to talk to anybody. They were even afraid to speak to reporters who have some measure of shield.

There are a couple of reasons that American workers do not have these rights or are not willing to speak out. One is, of course, the severance package. But if they refuse to train their foreign replacement, if they say, look, the labor market, I am not going to do it,

they are going to be terminated with cause, which means they will not even get their unemployment insurance. And they know that if they speak out publicly and use their names, that they will be blackballed from the industry. No one will hire them. And Mr. Palmer has lived this himself.

Mr. PALMER. Yes. I am actually an unemployed IT worker and I have 20-some-odd years. Nobody will touch me because everybody is cheating, and I do mean everybody. These companies are just—it is so hard to enforce. And you know, I did what I did and I really at the time did not know what I was doing, but I knew it was the right thing.

And I will also tell you, Senator, I was at Heidrick and Struggles in Chicago and I was with Infosys and they brought in HCL to replace the entire 40-member IT staff. It got so out of hand because they were blind-sided that they sent everybody home and the next day we did not go to work. But I was with Infosys and we had a project there, too.

The employees in the IT department got so upset and, again, they just shut the office down because of basically almost a riot on their hands, because they were blind-sided by HCL.

Senator SESSIONS. It is painful. If you read the statements that we have got of people—

Mr. PALMER. Yes, absolutely.

Senator SESSIONS. And look at this. These are some reports recently. I have mentioned Microsoft and laying off 18,000 workers. Hewlett-Packard laid off 29,000 in 2012; Cisco, 4,000 in 2013 and an additional 8,000 cut in the last 2 years; United Technologies, 3,000; American Express, 5,400; Proctor and Gamble, 5,700; T-Mobile, 2,250.

Here are some articles. Business Insider in July of last year, mass layoffs in the tech industry are up 68 percent. Another one, the Spectrum, the electrical engineers trade publication, massive worldwide layoff underway at IBM.

So, I just, frankly, do not see this.

Mr. BILLHARDT. But, Senator Sessions, in your opening statements, you talked about the free market economy and Mark Zuckerberg has billions, but his company is also creating a lot of American jobs.

I think no one here on this panel, no one in America wants for jobs to be lost in America. No one wants there to be low paying jobs here in America. But the one thing that I know that will sure depress American wages and that will make Americans lose their jobs is if the next Facebook is created in the shores of Shanghai. That is what is going to make American jobs be lost.

Senator SESSIONS. Well, I understand that. Mr. Zuckerberg is a brilliant person. He has done—my wife very much likes Facebook. [Laughter.]

Senator SESSIONS. And I get good information from her about what she finds out. So, I do think this is important.

But as I understand it, Facebook only has 7,000 employees and you said, I believe, 2,000 of those are H-1B workers. And so it is not that big a deal in terms of Facebook. And would you not agree—

Mr. BILLHARDT. But smaller companies like mine, it is a big deal for us. Mr. Zuckerberg has a lot of lawyers. I do not.

Senator SESSIONS. All right. Well, what about a program that would allow people from around the world to apply under our normal immigration system as exceptional talents, let us say, and they submit academic work, test scores they may take, maybe they have English skills, all of which would make them more successful in the United States?

Why could we not do that as part of the basic immigration system of America rather than focusing it on trying to say that the workers we are bringing in are these high-skilled workers, since most go back to their country?

Mr. BILLHARDT. I mean, I actually think there is some consensus, at least, that some of the abuses of the companies that are bringing in—where the workforce is 50 percent H-1B workers, those types of things can be—probably are not the right uses for the H-1B visa.

But I will say that if I have to prove extraordinary ability after I graduated from business school, I did not have many papers published under my name there. So, I would have not started my company here if I had to prove that level of burden.

And so the H-1B program was the one thing that helped me establish my company here, hire American workers, and ultimately apply for extraordinary ability, which I got, but it took me 6 years to get there.

Senator SESSIONS. All right. Does anyone have something they would like to contribute?

Professor Hira?

Professor HIRA. I just wanted to come back to the layoffs. The actual layoffs that you are referring to actually underestimate what these current firms are doing. For example, IBM no longer calls their layoffs layoffs. They call them resource actions and they do this in a very clever way to avoid the WARN Act and the mass lay-off announcements. They lay people off in dribs and drabs.

And the alliance at IBM, which is a worker group at IBM, made a statement to the Committee here saying that they have just brought 800 workers in to replace—from offshore on H-1Bs and L-1s to replace American workers here, and this has been going on at IBM over and over again.

So, it is not just the firms that get 50 percent or have more than 50 percent of H-1Bs in their workforce. It is companies like IBM and Accenture and DeLoitte that would have never been curbed by S. 744 or any other bills that have been out there.

They have the same exact business model and IBM has shrunk its U.S. workforce from 127,000 to 77,000 over the last decade, at the same time as increasing its Indian workforce from 6,000 to 100,000.

You are basically seeing a whole scale shift of the workforce from the U.S. to India not because there is a skills gap, but because you can pay people in India much less and you can bring in, import those workers from India to the U.S. to undercut those American workers and replace them.

Senator SESSIONS. Well, I do have a statement here about that from the workers at IBM.

Mr. Miano, I believe you wanted to wrap us up.

Mr. MIANO. Yes. I want to make one comment about reform and this is what I call for rational reform; it is that the Congress needs to make things simple. And I put the illustration that the immigration system was created in 1952 in about 125 pages. Comprehensive reform from the last session was 1,168 pages.

If you told me as an assignment to write a new H-1B program, I would probably do it one, two, maybe three pages. Currently, it is a giant, sprawling system and the problem that creates is that it is so convoluted that you cannot tell what is happening.

For example, the displacement of Americans, to figure that out, you have to go through two levels of indirection in the statutes to figure out that it is perfectly legal to replace Americans except under certain oddball conditions.

So, really what you essentially need to do is keep the lawyers out and have it written—have it designed by engineers to have a rational immigration system.

For example, in S. 744, there are provisions in there that simply rewrote the statute so that it had the same effect. It was just text, it was just verbiage in there that had no purpose other than adding length to the statute.

So, if someone comes up with a comprehensive immigration bill, it should be 200 pages. If someone comes up with a comprehensive immigration reform bill and it is 600, 700, 800, 900, 1,000 pages, you guys would all be saying whoa.

Senator SESSIONS. I think that has much validity and I share that view for a lot of reasons. The old criminal laws were so plain and so simple and so direct and they had certain counts that you had to fulfill, and then we write these multi-page things, and I do not know.

So, I would like unanimous consent to insert several letters in the record. Many of these letters and statements are from trade unions that represent U.S. workers, including engineers and teachers.

[The letters appear as submissions for the record.]

I would also like to include several letters from workers who have been laid off by companies in recent weeks and months, some of which are heartbreaking. And many of these people cannot speak on the record, but wanted to have a voice in today's discussion.

So, the record will remain open for 1 week for additional questions, and I hope that you will be—if questions are submitted to you, we would appreciate it if you could respond.

Thank you for a good discussion. I know it was a little more loose than we normally have, but, I think it allowed people like Senator Durbin and Senator Hatch to make their points who have wrestled with these issues for some time.

Thank you. We are adjourned.

[Whereupon, at 12:46 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Hearing before the
Senate Committee on the Judiciary

On

“Immigration Reforms Needed to Protect Skilled American Workers”

Tuesday, March 17, 2015
Dirksen Senate Office Building, Room 226
10:00 a.m.

Mr. Richard Trumka
President
AFL-CIO
Washington, D.C.

Professor Ron Hira
Associate Professor of Public Policy
Howard University
Washington, D.C.

Mr. Bjorn Billhardt
Founder and President
Enspire
Austin, TX

Mr. Jay Palmer
An American Worker
Montgomery, AL

Mr. Benjamin E. Johnson
Executive Director
American Immigration Council
Washington, D.C.

Mr. John Miano
Attorney
Washington Alliance of Technology Workers
Bellevue, WA

Professor Hal Salzman
E.J. Bloustein School of Planning and Public Policy
J.J. Heldrich Center for Workforce Development
Rutgers University
New Brunswick, NJ

Statement by Charles E. Grassley
“Immigration Reforms Needed to Protect Skilled American Workers”
March 17, 2015

A woman contacted me last week to share her story about being laid off from a company after twenty years and replaced by a foreign worker. She said her young son already knows two computer-programming languages, but she’s having second thoughts about steering him into her field of computers and information technology.

The focus of today’s hearing is on our country’s immigration policies and the need for reforms to better protect American workers. With that, I would like to talk about some of our visa programs to shed light on what is happening to American workers.

We’ll hear from witnesses about the H-1B visa program which allows employers to import so-called “specialty” workers from abroad. The program was intended to serve employers who could not find the skilled workers they needed in the United States. Most people believe that employers are supposed to recruit Americans before they petition for an H-1B worker. Yet, under the law, most employers are not required to prove to the Department of Labor that they tried to find an American to fill the job first. And, if there is an equally or even better qualified U.S. worker available, the company does not have to offer him or her the job. Over the years the program has become a government-assisted way for employers to bring in cheaper foreign labor, and now it appears these foreign workers take over – rather than complement – the U.S. workforce.

Even though the annual H-1B cap is 65,000, the actual number of foreign workers coming in through the program is much more because of numerous exemptions. For example, in Fiscal Year 2014, the agency in charge approved 315,857 H-1B petitions.

The program is highly susceptible to fraud and abuse. But, don’t take it just from me. In 2008, the Fraud Detection and National Security unit within U.S. Citizenship and Immigration Services (also known as USCIS) released a Benefit Fraud and Compliance Assessment regarding the program. The agency’s own report highlighted the serious and rampant fraud and abuse that is taking place. In fact, it showed a 20% violation rate in a random sample of H-1B petitions. The violations in this sample were stunning: people weren’t working where they were supposed to. Documents were forged. Foreign workers weren’t being paid what they were promised. Job duties were significantly different from the position description listed in their application to the Department of Labor. Site visits established that the reported business locations were non-existent, there was no evidence of daily business activity, the business locations were unable to support the number of employees claimed, or there was no evidence that the employers ever intended for the beneficiaries to fill the actual jobs offered.

According to the report, “In one instance, the position described on the petition and [Labor Condition Application] was that of a business development analyst. However, when USCIS conducted its review, the petitioner stated the H-1B beneficiary would be working in a laundromat doing laundry and maintaining washing machines.”

In January 2011, the U.S. Government Accountability Office (GAO) published a report on the H-1B program in which it found that program oversight by Homeland Security and Labor is “fragmented and restricted.” It said this restricted oversight and statutory changes weaken protections for U.S. workers.

In October 2014, the Center for Investigative Reporting did an investigation of the program. It described how some H-1B employers exploit foreign workers, withhold wages, and force them into contracts that make them reluctant to ever speak up.

Then there are stories about how U.S. workers are treated. Time and again, we hear about how U.S. workers are being laid off and forced to hire their replacements, many of whom are not truly skilled. This is the case with Southern California Edison, a utility company that started laying off 500 American workers from its “IT” department last August. The company replaced them with foreign H-1B workers. The company opted to lay off Americans and instead contract that work out to two overseas-based IT consulting companies, which also happen to be some of the largest users of H-1B visas. In 2013, one of the two IT companies paid \$34 million in a civil settlement after allegations of systemic visa fraud and abuse, but was not prohibited from continuing to petition for H-1B workers.

Since I gave a speech on the floor of the Senate a couple weeks ago on this topic, a number of laid-off company employees have come forward to share their stories with me. I have heard about how the company forced them to sign non-disparagement agreements in order to receive their severance package. I have been told how the U.S. workers had to train their replacements -- for weeks and months -- knowing all along that they were going to lose their jobs to cheaper workers who didn't possess the skills they had. They said it was humiliating.

Worse yet, most of the 500 jobs that had been held by Americans at Southern California Edison will eventually just move overseas. According to the Los Angeles Times, Edison admits that eventually about 70% of the work will shift overseas permanently.

Again, this is not new. As noted in a February 16 Los Angeles Times editorial entitled “End H-1B Visa Program’s Abuse,” Edison’s actions are “part of a years-long trend among companies of misusing H-1B visas to undercut wages and offshore high-paying American jobs.”

I invited Southern California Edison to join us today. I thought they would want to defend their actions and explain why U.S. workers have been left high and dry. Unfortunately, they declined my invitation.

Despite lax requirements in the law and very little oversight by the federal agencies in charge, some employers don't like the red tape associated with the H-1B visa program. That is why they are finding alternative routes to import foreign workers.

Take, for example, the L visa program. The L-1 visa is for temporary intra-company transfers of personnel from a company's overseas office to its U.S. offices. A U.S. company may transfer

personnel to the U.S. to work in a managerial, executive, or “specialized knowledge” capacity under the L visa program. In fiscal year 2013, USCIS approved 11,944 L-1 petitions.

Unlike the H-1B program, there is no cap on the number of L-1 visas that may be issued each year and there is no requirement that employers pay L-1 workers the locally prevailing wage or even the actual wage being paid to similarly qualified employees.

The problems with the L visa are not as apparent, especially since USCIS squashed an internal report that highlighted fraud and abuse. The agency seemingly didn’t want another black eye as they had with the H-1B program.

Nonetheless, there are problems. In August 2013 the DHS Office of the Inspector General, at my request, examined the potential for fraud and abuse in the L-1 program. The OIG found problems with several aspects of the L-1 program, in particular the adjudication of L-1B “specialized knowledge” petitions and petitions for “new offices” being opened in the U.S. by L-1 transferees. Regarding specialized knowledge workers, the OIG said that it agreed with the USCIS Administrative Appeals Office that Congress intended for the L-1 program to benefit only a small number of beneficiaries: “A liberal definition of specialized knowledge would open the category to an unlimited number of foreign workers. ... Because it is not clear which employees should be granted L-1B visas, and because there are no numerical limits on the number that can be approved each year, the potential number of beneficiaries is limitless.” And yet, a liberalized definition of specialized knowledge – implemented by executive memo and not by regulations requiring public comment – is exactly what we can expect from the Administration’s promised executive actions. Regarding L-1 workers opening new offices in the U.S., the OIG found that “that there are program integrity risks with new office petitions” and that “[n]ew office petitions and extensions are inherently susceptible to abuse because much of the information in the initial petition is forward-looking and speculative.”

Just last year, a Fremont, California tech company, Electronics for Imaging, Inc., was found by the Department of Labor to have violated the Fair Labor Standards Act for having grossly underpaid a group of Indian nationals who the company had transferred on L-1 visas from its office in India to install a new computer system at the headquarters facility in Fremont. Specifically, the company flew eight L-1B workers from Bangalore, India to California and paid them only \$1.21 per hour to work 120-hour weeks. The \$1.21 hourly rate was equivalent to what the employees made in Indian rupees at their workplace in India. Importantly, though the company was found by DOL to have violated the Fair Labor Standards Act for paying the workers below the State’s minimum wage, it did not apparently violate any of the terms or conditions of the visa program because there is no prevailing wage requirement.

Some employers are also using the B-1 visa to get around the already weak wage requirements and protections of the H-1B visa. Under the law, persons may be admitted to the United States in “B” visa status “temporarily for business or temporarily for pleasure.” Such visitors may not, however, be “coming for the purpose of ... performing skilled or unskilled labor.”

State Department field guidance, however, allows an exception to the general prohibition on persons performing skilled or unskilled labor in B status in cases where the foreign worker is

performing services in the U.S. that would otherwise qualify for H-1B status, is employed by an overseas entity, and receives no remuneration from a U.S. source. This State Department exemption has historically been called the "B-1 in lieu of H" provision.

In 2011, after learning of potential abuse of the B visa, I wrote to the Departments of Homeland Security and State asking whether either agency was considering eliminating the "B-1 in lieu of H" loophole. Despite assurance that State was "in the process of discussing with DHS removing or substantially modifying the B-1 in lieu of H guidelines," there has still been no action.

Years have passed, the abuse continues, and both the Department of State and Department of Homeland Security continue to do absolutely nothing to address the B-1 in lieu of H issue or clarify by regulation what, exactly, B-1 visitors are authorized to do while they're in the United States. Just last October, Infosys, the number one user of H-1B visas entered into a \$34 million settlement with the Department of Justice for allegations of systematic visa fraud and abuse of immigration processes. Among those allegations was that Infosys had attempted to bypass the prevailing wage requirement and other U.S. worker protections of the H-1B program by instead sending workers to the U.S. on B-1 visas to perform skilled labor on extended assignments at U.S. client worksites. The company allegedly coached employees applying for B-1 visas, providing them with specific instructions on how to deceive U.S. consular officials in their visa interviews.

Today, we will hear from the man who blew the whistle on this company for this visa fraud.

In addition to these nonimmigrant visa programs, we'll hear about how foreign students on U.S. soil are being targeted by some employers. Employers have a pool of cheaper labor right here at home, and have resorted to using a special program known as Optional Practical Training (OPT) to bypass the H-1B visa program. OPT is a program that provides foreign students in F-1 visa status the opportunity to obtain work for a U.S. employer during and/or after completing an academic program in the United States. It was created by regulation, not by Congress.

There is no cap on the number of foreign students who may be employed in the U.S. in OPT, nor is there a requirement that the OPT workers be paid the locally prevailing wage or even the actual wage being paid to similarly qualified employees. There is also no requirement that the student have an offer of employment before being granted a work permit. In fiscal year 2013, USCIS granted employment authorization to 123,328 F-1 students under the OPT program.

In March 2014, the Government Accountability Office (GAO) issued a report finding that U.S. Immigration and Customs Enforcement (ICE) exercised inadequate oversight of the OPT program. Specifically, the GAO found that ICE's Student and Exchange Visitor Program (SEVP) has not identified or assessed risks associated with OPT, such as potential fraud or noncompliance with ICE regulations. The report highlighted several other deficiencies in the program, including: 1) foreign students, sometimes aided by school officials, are currently abusing the OPT program to acquire unauthorized employment in the United States; 2) the federal government does not know where tens of thousands of foreign students in the OPT program are located, who they are working for, or what they are doing while staying in the United States; 3) there is a lack of coordination within ICE, inconsistent collection of

information by ICE, and inadequate monitoring mechanisms in place to ensure program compliance; and 4) there was insufficient oversight to ensure students were engaging in work that was in their field of study.

One year ago, last March, I sent a letter to Secretary Jeh Johnson requesting that the Department place a moratorium on the OPT program until the Secretary could certify that the foreign students were located and that the program no longer posed a threat to national security. That request has been ignored, and there's been no evidence that the program has been fixed.

Aside from the national security risks posed by the program, there is also the concern that OPT is allowing employers to use foreign students to bypass worker protections in other immigration programs. Foreign students don't have to be paid at all, and when they are paid they are substantially cheaper than U.S. workers because employers are generally not required to make the 7.65% wage contribution on their behalf for Social Security and Medicare taxes. They also become susceptible to exploitation because they are desperate to stay in the country.

Foreign students are being targeted. In 2013, IBM placed ads on their webpage with the following mandatory job requirement: "Should have a valid OPT work permit for legal work authorization in the United States." And, the job was located in Idaho. The anti-discrimination provision of the Immigration & Nationality Act does not permit employers to express or imply a preference for temporary visa holders over U.S. workers, for any employment opportunity in the United States. The Department of Justice opened an investigation. In late 2013, the Department of Justice announced it had reached a settlement agreement with IBM under the terms of which the company agreed to pay \$44,400 in civil penalties, revise its hiring and recruiting procedures and train its human resources personnel to ensure compliance with law, and to be subject to reporting requirements for a period of two years.

Allow me to show an example of a brazen help wanted ad. In this ad, the employer is looking for candidates with valid H-1B visas to work in the United States. The skill set needed? "Any technical skill is fine."

These job ads are often found, and according to Bright Future Jobs director, Donna Conroy, staffing agencies and recruiters are well aware they can avoid hiring Americans—and do so brazenly on Internet job portals, excluding Americans from high paying jobs in the tech sector.

Now that I have laid out a number of problems with our immigration policies, it raises the question as to why we in Congress would simply increase the supply for foreign workers without adding more protections for American workers. Claims by U.S. businesses that there just aren't enough U.S. workers willing and able to take these skilled jobs fall flat when we read stories about recent big layoffs in the tech industry. Bills have been introduced that seemingly ignore the plight of U.S. workers. Some bills would increase the annual number of H-1B visas from 65,000 to 115,000, or as high as 195,000 per year. This only makes the problem worse. It doesn't close the loopholes or prevent abuse. It doesn't make sure that American workers are put before foreign workers. It only increases the supply of cheaper foreign labor. Increasing the supply of H-1B visas alone also won't help smaller U.S. companies who are already shut out of the program because the big corporations take thousands of visas each year. The number one

user of H-1B visas is bringing in over 6,000 new workers each year. The top ten companies that use the H-1B program swallow up over 50% of the supply of available visas.

Instead of just increasing the supply of visas, real reforms are needed.

For years, I have worked with my colleague from Illinois, Senator Durbin. We have introduced legislation to get at the problems. Our bill would increase worker protections. Most importantly, it would require all employers seeking to hire an H-1B worker to first make a good faith effort to recruit an American worker.

Additionally, in the past, our bill would: (1) revise H-1B prevailing wage determination requirements; (2) require Internet posting and description of H-1B employment positions; (3) lengthen the period surrounding the hiring of an H-1B worker during which U.S. workers may not be laid off; (4) prohibit employer advertising that makes a position available only to, or gives priority to, H-1B nonimmigrants; and (6) limit the number of H-1B and L-1 employees that an employer of 50 or more workers in the United States may hire. The bill would also give DOL enhanced authority to investigate employer compliance, and it would set up a random audit scheme to keep employers honest.

The Durbin/Grassley bill would also reform the L-1 visa program. It would do so by establishing a prevailing wage requirement for L-1 workers and increasing DOL's authority to investigate applications for fraud.

Some may also say that Congress should pass the 2013 immigration bill, as if it would make the problems go away. That bill – S. 744 – may have been a good first step in acknowledging the problems with these visas, but it far from solved the crisis facing skilled American workers.

S. 744 attempts to address the concern that employers are able to bring in foreign workers without looking at American workers first. It says that an employer must take good faith steps to recruit U.S. workers, and the employers have to advertise the job on a Department of Labor website. However, the bill states that only some employers – so-called “dependent” employers with a high percentage of foreign workers – must offer the job first to any U.S. worker that is equally or better qualified. Why we wouldn't make such a requirement apply to all employers?

The bill also includes an unnecessarily generous provision allowing employers to forego counting “intending immigrants” in their workforce numbers when calculating whether the percentage of foreign workers in their workforce puts them over the “dependent” percentage threshold. Because the bill would impose stricter U.S. worker protection standards for dependent employers, employers with a large percentage of H-1B workers and who would otherwise be classified as H-1B dependent employers could get around the worker protections, wage requirements, and displacement rules simply by applying for Green Cards for their foreign workers. The Green Card application carveout doesn't actually require the worker to have followed through and gotten the Green Card. All the company has to do is file the application. I'm told there has been an uptick in green card applications by dependent or near-dependent companies simply so such employers can use this loophole should it ever become law.

During this committee's consideration of S. 744, I offered several pro-U.S. worker amendments. Every amendment I offered was defeated. Ensuring that U.S. workers have the first opportunity at high paying, high skilled jobs in this country seems like a no-brainer to me.

I'm glad AFL-CIO President Trumka is here to shed light on how S. 744 missed the boat. Back in May 2013, Mr. Trumka wrote an opinion piece for *USA Today* saying that hi tech is not looking to bring in H-1B visa holders for a few years at a time because there is a shortage of tech workers, but instead want a massive expansion of H-1B visa holders "because they can pay them less." He concluded: "This is not about innovation and job creation. It is about dollars and cents."

The International Federation of Professional and Technical Engineers, a branch of the AFL-CIO which represents 90,000 engineers opposed the committee-passed bill saying, "Hundreds of thousands of foreign STEM workers will enter the United States each year for the sole purpose of working in jobs that Americans would normally do." They said, at the time, that "the bill fails miserably in fixing the worker abuses inherent in the program."

The Communications Workers of America, which represents 700,000 men and women in the telecommunications industry, said that the committee's immigration bill would "create preferential treatment for foreign born workers." They also said, "We can spend millions to educate a STEM workforce but without employers willing to hire these U.S. STEM workers, our work is for naught."

Today, the story must be told. The voices of American workers must be heard. The lives of U.S. workers and families are on the line. Will we do everything we can to protect future generations who desperately want to work in the high skilled sector? Or, will we simply ignore the plight of those who have lost their jobs and had to train their foreign replacements?

We cannot fail the American worker. Reforms are needed to put integrity back into our immigration system, and to ensure that American workers and students are given every chance to fill vacant jobs in this country.

With that, I want to introduce today's witnesses.

First, we have Richard Trumka who is the President of the AFL-CIO, a position he has held since September 2009. Mr. Trumka has devoted his career to advocating for American workers. He's the son of a coal miner who also worked the mines himself. Today, he's here on behalf of 12.5 million working men and women who belong to the federation.

Our next witness, Ron Hira is faculty with Howard University where he is a professor of public policy. Professor Hira has done research into the implications of offshoring high-skilled jobs and has previously served as vice president for IEEE-USA, the largest engineering professional society in America. As a licensed engineer, he has first-hand knowledge of the STEM industry and job market.

Next up is Bjorn Billhardt, the founder and Chairman of the Board for Enspire Learning. Mr. Bjorn is recognized as an authority in the field of e-learning and simulation design.

We also have Jay Palmer here today. He represents the voice of American workers. Mr. Palmer was an employee of Infosys until he blew the whistle on the company's fraudulent immigration and visa practices.

Next is Benjamin Johnson. He is the Executive Director of the American Immigration Council. Mr. Johnson has been in the immigration field for over 20 years, and has written extensively on immigration policy.

Our next witness, John Miano is an attorney who works with and represents the Washington Alliance of Technology Workers. He is well known for his defense of American workers who are displaced by foreign workers.

The last witness is Hal Salzman, a professor at Rutgers University where his focus is on STEM education and workforce supply. Professor Salzman has conducted numerous studies and published several articles on the IT industry, including software design and work practices, and on science and engineering work force issues.

Finally, I would note that I invited representatives of three Executive Branch agencies to testify today. I had hoped the Departments of State, Labor, and Homeland Security would share their insight on some of the issues I have mentioned. However, all three departments declined.

I want to thank each of you for being here, and I look forward to your testimony. Mr. Trumka, you may begin.

**Statement Of Senator Patrick Leahy (D-Vt.),
Ranking Member, Senate Judiciary Committee,
Hearing on “Immigration Reforms Needed to Protect Skilled American Workers”
Tuesday, March 17, 2015**

Almost two years ago, the Senate came together to pass comprehensive legislation to reform our broken immigration system. The bipartisan Border Security, Economic Opportunity, and Immigration Modernization Act (S.744) took meaningful steps to help U.S. businesses fill critical job needs, while ensuring protections remain in place to help and train American workers. Importantly, it did so while focusing on our broken immigration system as a whole. The Senate bill acknowledged that we can only modernize our complex immigration system if we also work to reunite families, address decades-long visa backlogs, and, above all, create an attainable path for the millions of people who already call this country home to become full and lawful participants in our society.

Today’s hearing focuses on problems with the H-1B and other visa programs that are used to bring high-skilled workers into the United States. I and many other Senators have heard consistently about the need for improvements to these programs to ensure that U.S. companies can attract world-class talent and continue to lead on the global stage. We have also heard troubling stories of abuses that have caused the displacement of American workers. These visa programs must be used to complement the U.S. workforce, not displace it.

One topic that I hope will be discussed during this hearing is the meaningful contribution that immigrant workers make to the U.S. economy, and the ways in which a healthy immigration system can grow the country’s economic base and create jobs that benefit all Americans.

Today, we will hear from a witness who shares such a story: Bjorn Billhardt came to the United States as a high-school exchange student, later earned degrees from the University of Texas and Harvard Business School, and subsequently stayed in the United States to start a successful education business that now employs over 40 people. Mr. Billhardt’s experience illustrates the value of an immigration system that welcomes diverse backgrounds and keeps promising graduates of our universities here in the United States, where they can contribute to our culture and our economy.

Some of the witnesses today will speak about concerns with the H-1B program. I share many of those concerns, and agree they must be addressed. In fact, many of those concerns were directly addressed in the bipartisan comprehensive immigration legislation this Committee approved and the Senate *passed* last Congress. That bill contained vital measures to improve the functioning and administrability of the H-1B program. It included important provisions to protect both foreign and American workers from exploitation and displacement. Many of those measures were added to the bill by this Committee after hearing testimony from some of the same witnesses and organizations that appear before us today.

While I did not agree with every provision in S.744, I respected the bipartisan compromise the Senate achieved through a deliberative and thoughtful process. Forty-two witnesses testified before this Committee on the topic of immigration reform during the 113th Congress. With the

full participation of all members of the Judiciary Committee, and with unprecedented transparency and fairness to all in offering amendments, we held several public markups to consider comprehensive immigration legislation. We considered 212 amendments, and we adopted 136 of them – all but 3 on a bipartisan basis. The Judiciary Committee reported S.744 with a bipartisan vote of 13-5, and the full Senate, after further debate and amendment, passed the legislation with a strong bipartisan vote of 68-32.

The bill was a landmark achievement not only for this thorough process, but because of its comprehensive approach to fixing our broken immigration system. Piecemeal efforts are an inadequate solution for a system as complex and interconnected as our immigration laws. We need an immigration system that lives up to American values: one that not only ensures that America can access the best talent to remain competitive and at the forefront of innovation, but also allows families to be reunited and respects the diversity and inclusion that has made our Nation great. We need an immigration system that treats individuals with dignity and respects due process rights and civil liberties. One that shields the most vulnerable among us, including children, crime victims, asylum seekers, and refugees. And, finally, one that will reinvigorate our economy and enrich our communities through meaningful and comprehensive reform.

I hope that this hearing focuses on constructive solutions about how to reform an immigration system that those on all sides acknowledge must be fixed. I look forward to learning what those who voted against much-needed reform last congress will propose as a comprehensive solution to our broken immigration system this year.

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Prepared Statement by U.S. Senator David Vitter of Louisiana
“Immigration Reforms Needed to Protect Skilled American Workers”
Senate Committee on the Judiciary
Tuesday, March 17th, 2105

Mr. Chairman,

Thank you for holding a hearing on the effects our current immigration scheme has on the American worker. Over the last several years, there has been a theme that Congress must act to “fix our broken immigration system.” Nearly everyone with any interest in the immigration system uses this phrase and believes that our immigration system is broken. But what exactly is “broken” about our immigration system?

I suspect that my friends on the other side of the aisle believe that our immigration system is broken only in that it attempts to limit the number of people that enter the U.S. each year. Furthermore, it seems that these folks believe our immigration system is broken because not every person that wants to come to our country can become a citizen immediately.

What has been lost in the past debate, and what I believe to be “broken” about our immigration system, is that it doesn’t serve the needs of ordinary Americans. We need an immigration system that serves the interests of Americans; all Americans. The current debate focuses on how best to give amnesty to over 11 million illegal aliens, and not on how we should have prevented 11 million illegal aliens from entering and living in our country in the first place. Another common theme in the public discourse surrounding immigration reform is how best to get foreign workers to fill jobs in key industries. It is my opinion that this thinking is the polar opposite of what Congress should be doing. We should be answering the

question, how do we best protect American workers from having their wages undercut by cheap, foreign labor.

It is my hope that this hearing will begin to change how we discuss and debate reforming our legal immigration system. We need to put the success of American workers and American businesses first and foremost in this discussion, and these two interests do not need to be necessarily divergent. This committee needs to take an honest look at the needs of American businesses to attract and retain skilled workers in a way that doesn't harm American citizens.

TESTIMONY OF BJORN BILLHARDT BEFORE THE SENATE JUDICIARY COMMITTEE

Tuesday, March 17, 2015

Good afternoon Chairman Grassley, Ranking Member Leahy, and members of the committee. My name is Bjorn Billhardt. I am an immigrant from Germany. I came to the United States as a high-school exchange student and have spent most of my adult life in the United States. I studied at two American universities before founding a software business that employs dozens of talented professionals in central Texas. I live in Austin, Texas with my wonderful wife and three beautiful children. In 2012 I had the incredible privilege of becoming an American citizen.

It is an honor to address the committee today. I am grateful for the opportunity to share my story, which I believe demonstrates the significant contributions immigrants make to our country every day, as well as the shortcomings of our current immigration system, which I submit is badly broken and fails to live up to the promise of this country.

I came to America when I was 15 as an exchange student in Pflugerville, Texas and instantly fell in love with this country. I knew I wanted to build my life here. After high school, I won scholarships to the University of Texas and then Harvard Business School. At the age of 26, while at Harvard, I started my own company, Enspire, without outside funding or family help. After 14 years in business, Enspire has over \$5 million in revenue, employs more than 30 Americans, and sells leadership development programs and e-learning software to dozens of brand-name organizations such as GE, MIT, and the World Bank. Last year, our educational software was used in over 20 countries.

I am grateful for the opportunities I have had in the United States. I believe my life would be very different had I remained in Germany. When I arrived in the U.S. in the 90s, America allowed me to dream big. My parents never went to college, and as an introverted teenager without connections, I was not able to thrive in my home country. Studying in the United States allowed me to gain the education and confidence to prepare for a career in entrepreneurship. If I had stayed in Europe, I know I would have followed a different and less fulfilling path.

That said, it was extremely difficult for me to remain in the U.S. My family did not have the money to support me in college, and while I had earned scholarships it was hard to make ends meet given the limited work opportunities available to students on F-1 visas. I was able to stay in the United States after I graduated thanks to the study extension visa.

After my study extension visa expired, I applied for an H-1B visa in order to grow my company. This was an extremely difficult process, even though at that point

my company was already generating revenues far in excess of my salary. Without the H-1B visa program, Enspire would not exist today and create jobs for dozens of Texans.

In 2006, I was able to apply for a permanent green card – and eventually citizenship – based on extraordinary ability.

While I have found great success in the United States, my story is far from unique. Immigrants or their children have founded over 40% of Fortune 500 companies. Without immigrant entrepreneurs, the United States would not be home to companies like Google, eBay, and Yahoo! – and it is easy to imagine that if those companies aren't grown in the U.S., they would have been created overseas, and we would have missed out on that innovation and those American jobs. Skilled immigrants also boost our economy by creating new jobs for American workers. Studies show that for every 100 H-1B workers, an additional 183 jobs are created for workers born in the United States.

I count myself lucky that I came to the United States when I did. Today, my story would have been impossible due to the current cap and restrictions placed on H-1B work visas.

Just last week, I spoke with a recent Ph.D. in Chemistry from Notre Dame University who was hired as a management consultant in my home state of Texas. He told me that through government-sponsored scholarships and grants, the U.S. had invested approximately half a million dollars into his education here in the states. As a foreign national, he was excited to accept a job offer in Houston, and bring his expertise to bear helping U.S. energy companies succeed in the global marketplace.

Yet, despite his brilliance, his PhD, and his strong desire to stay in the United States, he pegged his chances to win a slot in this year's H-1B lottery system at less than 60%. If he cannot stay, he said, he will move to London, Shanghai, or somewhere else where his talents are valued – and we will lose out on those skills for our own economy.

The truth is that the world is not standing still. When I graduated from high school in the 1990s, there was only one country that allowed people to dream big – the United States. So I fought very hard to come here and stay. But my younger cousins in Germany point out that there are now vibrant startup communities in cities like London and Berlin - and Singapore, and Dubai. When faced with the obstacles the United States currently presents to talented individuals, I am unfortunately not surprised that more and more entrepreneurs decide to establish their companies elsewhere rather than fight to stay here, even after they have earned educations invested in and funded by U.S. taxpayers.

America is still the land of opportunity for many people like me around the world. But if we don't fix our broken immigration system now, I also know that other countries will step in to fill the void.

We cannot let America become complacent. We cannot turn away talented, hungry, and hard-working individuals who want to put their passions to work here. We need to expand opportunities for immigrants to contribute to this great country, so we can continue to be the country that attracted me to come here in the first place – the country that represents freedom, liberty, and opportunity across the world.

There should not be a random lottery system that decides whether a brilliant U.S.-educated chemist can start his career in Houston or has to move to London or Shanghai against his will. These are the types of people the United States has always attracted, that have built our country since our founding days through their hard work. These are the people we should fight to attract and keep – not turn them away. But that is what is happening today. And it is hurting the competitiveness of the country that I love.

Thank you again for the opportunity to share my story with the committee today. I hope Congress can step aside from partisan politics and find a compromise that will take steps to modernize our badly broken immigration system. I know all of you on the Senate committee are committed to finding a solution to this problem. I am honored to have the opportunity to testify today.

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Testimony Given By

Ronil Hira, Ph.D., P.E.,
Associate Professor of Public Policy
Howard University, Washington DC

In A Hearing Before The
Judiciary Committee
U.S. Senate

On
"Immigration Reforms Needed to Protect Skilled American Workers"

March 17, 2015

Dirksen Senate Office Building

I want to thank Chairman Grassley, Ranking Member Leahy, and the members of the committee for inviting me to testify today. My name is Ronil Hira. I am a professor of public policy at Howard University in Washington DC. I am also a research associate with the Economic Policy Institute in Washington DC. I have been studying high-skill immigration policy for the past fifteen years, so I appreciate the opportunity to share my thoughts about what Congress and the Executive Branch can do to establish much-needed reforms to our immigration policy to ensure that skilled American workers are protected.

I want to acknowledge Senators Grassley, Durbin, and Sessions' leadership in pushing for reforms to protect both American workers and foreign guestworkers. I would also like to acknowledge their tireless efforts to shed light on how these programs are used, and misused, in practice. Most Americans, journalists, and many policymakers are unaware of how these programs are used to undercut American workers and in many cases replace them. This hearing is extremely important.

I also would like to note that I am the son of immigrants. My parents, both of whom were professionals, left India in the 1950s in search of a better life. After leaving India, they first lived in France for six years but decided to leave primarily because my late mother, who was a physician, could not practice medicine there. Subsequently, they received the opportunity to immigrate to America, immediately receiving greencards, and later became naturalized citizens. They had long and productive careers, my late father as an engineer and my late mother as an anesthesiologist. My wife's family has a similar immigrant story. My wife was born in India. Her father left India in 1970 to do graduate work in geology, first in the U.S. and later in Canada. He began working at Howard University as a professor of geology on an H-1 visa, a predecessor to the H-1B, before becoming a permanent resident and subsequently a citizen. High-skilled immigration has directly benefited my family enormously. The opportunity to testify is a professional honor but it is also very meaningful to me personally.

I. The Intent of Our Immigration Law is to Protect American Workers - Instead Our Guestworker Programs Inflict Serious Harm on Them

Congress and multiple Administrations have inadvertently created a highly lucrative business model of bringing in cheaper H-1B workers to substitute for Americans. There are mainframe-sized loopholes built into the H-1B program's design - the statutory law, regulations, administrative law, and policy guidance - and a complete disinterest on the part of multiple Administrations in enforcing the current rules, however weak they may be. Some of these loopholes are intentional, some are not, but they all add up to a system that *encourages* employers to exploit the H-1B program for cheap labor. Given the extraordinarily high profits involved in using guestworkers instead of Americans, it should surprise no one that many employers are taking advantage of this business model and lobbying to expand it.

In explaining the H-1B program rules the U.S. Department of Labor prominently and plainly states, "The Immigration & Nationality Act (INA) requires that the hiring of a foreign worker

will not adversely affect the wages and working conditions of U.S. workers comparably employed."¹

The clear intent of the law [8 U.S. Code §1182], is that hiring foreign workers will not harm American workers. Yet the H-1B program is most definitely harming American workers, harming them badly, and on a large scale. Most of the H-1B program is now being used to import cheaper foreign guestworkers, replacing American workers, and undercutting their wages. So, contrary to intent of the INA, the use of the program is indeed "adversely affecting American workers' wages and working conditions." The scale of this damage is large and its effects long lasting, adversely impacting: the careers of hundreds of thousands of American workers; future generations of students; and, America's future capacity to innovate. This is not just adversely affecting a few workers. The H-1B program is very large with approximately 120,000 new workers admitted annually. Once admitted those workers can remain in the U.S. up to six years. While no one knows exactly how many H-1Bs are currently in the country, analysts estimate the stock of H-1B workers at 600,000.

There are hundreds of thousands of additional guestworkers admitted on L-1 and OPT visas, and they too are harming the job prospects of American workers. Because Congress never expected L-1 and OPT workers to be potential competition to American workers those programs have virtually no rules to protect American workers. That expectation was incorrect. As with the H-1B program, these guestworker visa programs are now being used too to replace and undercut American workers.

Congress needs to significantly overhaul these programs to protect American workers in order to meet the intent of the INA. And the Executive Branch needs to use its full authority to investigate and stamp out any violations that are occurring. Further, it needs to propose and promulgate new regulations and policy guidance to ensure compliance with its own statements about the INA.

Current protections in the H-1B program are seriously flawed. Skilled guestworker programs can serve important purposes: bringing in workers with unique or specialized skills; serving as a bridge to employment-based permanent immigration for specialized workers; and, offering practical training for foreign students. But those positive uses have been overwhelmed by the use of these programs for cheaper labor.

II. Southern California Edison Case Exposes Major Flaws in Protections for American Workers

The recent case of Southern California Edison (SCE) illustrates the most flagrant abuses of the H-1B program and exposes the flaws in the protections for American workers. As reported by *ComputerWorld* and the *Los Angeles Times*, SCE is replacing its American workers with H-1B workers hired by outsourcers Tata and Infosys. To add insult to injury, SCE forced its American workers to train their H-1B replacements as a condition of receiving their severance packages. There could not be a clearer case of the H-1B program being used to harm American workers'

¹ <http://www.foreignlaborcert.doleta.gov/pwscreens.cfm>

wages and working conditions. And no clearer example demonstrating that the protections for American workers in the H-1B program are woefully inadequate. The SCE case is flagrant but isn't an isolated case. Disney in Florida reportedly did something similar to 500 American workers a few weeks ago. Many other cases have been documented such as Cargill in Minnesota, Harley Davidson in Wisconsin, and Northeast Utilities and Pfizer both in Connecticut. In addition to directly replacing American workers, H-1Bs are also widely being used instead of recruiting and hiring Americans. There are countless other examples, some reported and some not. Even when they are not replacing American workers, employers turn to H-1B workers without ever considering American workers. Recent news reports indicate that Deloitte Consulting is using exclusively foreign workers to upgrade the State of California's unemployment insurance computer systems. It is a sad irony that firms are importing guestworkers to service the unemployment system when hundreds of thousands of Americans who have the skills to do this work are unemployed and underemployed. And this isn't the first time H-1Bs have worked on an unemployment insurance system. The state of Indiana gave a similar contract to India-based Tata a decade ago and it too hired only guestworkers to do the work.

When I tell the story of SCE to a variety of people including Congressional staff they are astonished. They believe there are protections built into the H-1B program to prevent exactly what is happening at SCE. But they are wrong. There are widespread myths about the protections for American workers and how the program works in practice.

Myth: Employers must prove there are no qualified American workers before hiring an H-1B.

Reality: There are no requirements to demonstrate a shortage of Americans prior to hiring an H-1B. Employers do not need to recruit American workers for a job filled by an H-1B. In fact, a job can, and often is, earmarked for an H-1B worker. The SCE case demolishes the myth of H-1Bs only being hired when no American worker can be found - American workers were already doing the job and being replaced by H-1Bs. In the words of one SCE worker, "there wasn't a single job being taken over by foreign workers that wasn't already being done by an American." Obviously there is no shortage of Americans in this case. In fact, the American SCE workers were not considered for the position with SCE's contractors Tata and Infosys. And of course there was no shortage in the case of Cargill, Disney, Northeast Utilities, and Harley-Davidson.

Solution: Prior to hiring an H-1B, all employers should be required to actively recruit American workers and required to hire qualified American applicants. Explicitly ban all displacement of American workers by all employers. This would ensure that the H-1B program is being used as it is intended, to complement the American labor force. The technology industry has claimed that there is a dire systemic shortage of American workers and their jobs are going unfilled. If this is true then it should be effortless for them to meet these recruitment and hiring requirements.

Myth: H-1B workers cannot be cheaper than Americans because employers must pay the "prevailing wage."

Reality: Congress' intent of requiring that a legally defined "prevailing wage" be paid to H-1B workers was to ensure that H-1B workers were not pushing down the wages of American workers. To fulfill that, H-1B wages are supposed to be set at least at the market rate. But most

H-1Bs are paid below that market wage, and they are hired because they are cheaper than American workers. And this is perfectly legal. Why? Because the "prevailing wage" rules, in statute and regulations, are poorly designed and written. Employers can easily hire an H-1B worker at wages far below what an American worker is paid. Simply put, the H-1B program has become a cheap labor program. While it is well known in the industry that the cost savings of hiring an H-1B over an American are approximately 25%, SCE provides us with the most definitive case study to examine the cost savings. We can make a clear apples-to-apples comparison of wages because the H-1B workers are taking over the exact same jobs currently performed by American workers. See Table 1 below. SCE published a compensation study that showed its IT workers were paid an average of \$110,466 per year. We know Tata and Infosys pays its new H-1B workers on average \$65,565 & \$70,882 respectively.² Therefore, the cost savings are approximately \$40,000 per worker per year, which is a wage savings of about 43%. Multiply that by the 500 workers being replaced and there's a windfall of \$20 million each and every year by replacing American workers with H-1Bs.

SCE was very explicit about its motivations. Los Angeles Times columnist Michael Hiltzik interviewed a number of SCE workers. One told him the following:³

"They told us they could replace one of us with three, four, or five Indian personnel and still save money," one laid-off Edison worker told me, recounting a group meeting with supervisors last year. "They said, 'We can get four Indian guys for cheaper than the price of you.' You could hear a pin drop in the room."

<p align="center">Table 1 Tata & Infosys Pay Their H-1Bs 43-49% Less Than The Southern California Edison IT Workers They Are Replacing</p>					
FY13 H-1B Rank	Firm	FY13 New H-1Bs Received	Firm's Average Wage for H-1Bs	Wage Savings vs. American Workers	Wage Savings in %
1	Infosys	6,269	\$70,882	\$39,584	43%
2	Tata Consultancy	6,163	\$65,565	\$44,901	49%
SCE Workers: Average Base Pay for IT Specialists/Engineers (2013)			\$110,466		
<p>Sources: H-1B: USCIS I-129 microdata; SCE workers: http://www3.sce.com/sscc/law/dis/dbattach5e.nsf/0/7BDB1F4E1B3463E688257C21008144AE/\$FILE/SCE-06%20Vol.%2002%20Part%202.pdf</p>					

Why would an H-1B worker accept seemingly sub-standard wages? Because these wages are often much higher than the wages they can earn in their home country. For example, in India, the typical wage for an IT worker is \$6,000 per year. Even if they are paid 40% less than the market

² These data were obtained from the I-129 petition data submitted by each firm to USCIS. I received these data through a Freedom of Information Act request.

³ <http://www.latimes.com/business/hiltzik/la-fi-hiltzik-20150222-column.html#page=1>

wage in America, the \$60,000 they earn in America is an order of magnitude more than they would back home. Given the demographics of India, there are more than 400 million people under the age of 18, there is a reserve army of labor from low cost countries willing and able to take over vast swaths of American jobs at far lower wages.

Infosys and Tata Consultancy have been top H-1B employers for a number of years. These two India-based IT firms specialize in outsourcing and offshoring, are major publicly traded companies with a combined market value of about \$115 billion, and are the top two H-1B employers in the United States. In Fiscal Year (FY) 2013, Infosys ranked first with 6,269 H-1B petitions approved by the government, and Tata ranked second with 6,193. As with the SCE scandal, these leading offshore outsourcing firms use the H-1B program to replace American workers and to facilitate the offshoring of American jobs. Because of this, Americans lost more than 12,000 jobs to H-1B workers in just one year to those two companies alone.

Most of the top H-1B employers employ the exact same business model as Tata and Infosys. Hundreds of thousands of American workers have lost their jobs due to H-1B program misuse and hundreds of thousands more are losing wages.

Solution: Raise the minimum "prevailing wage" to at least the average (mean) wage. If the H-1B workers we would like to target have specialized skills, shouldn't they be paid at least the average wage? This will not completely eliminate the use of H-1B workers as cheaper labor but it would help clean up some of the most flagrant abuses. Further, the Department of Labor should periodically do special wage surveys of the most common H-1B occupations such as Computer Systems Analyst. And the Department of Labor & USCIS should begin reviewing the labor condition applications and I-129 petitions to ensure that the position listed is being classified correctly for both occupation and skill level.

Myth: Compliance with the program's rules that protect American workers is robust.

Reality: Compliance with the H-1B program depends almost exclusively on a whistle blower coming forward to flag violations. This is the worst and most ineffective method of ensuring compliance. Whistle blowers are almost always retaliated against if they come forward. Further, many workers, foreign and American, do not even know when violations are being made. Even in those cases where they are aware of a violation it is difficult for them to gather evidence that could prove it. It is also very unlikely that an H-1B worker will complain if he is being exploited, either by being underpaid or mistreated, a frequent occurrence. The employer holds the visa and if the worker complains the employer can easily terminate that worker. If terminated, the foreign worker is out-of-status and must leave the country immediately. That threat alone is enough to scare away many potential whistle blowers. But there are other tactics used to intimidate and bully H-1B workers into indentured servitude including employment bonds (literal indenture) and the threats of liquidated damages lawsuits. See the groundbreaking investigative stories, "Techsploitation," by the Center for Investigative Reporting (CIR) that chronicles many of these abuses.⁴ The "ecosystem of fear" is pervasive according CIR. Here is how one H-1B worker described his dilemma:⁵

⁴ <https://beta.cironline.org/investigations/techsploitation/>

⁵ <http://www.revealnews.org/article/job-brokers-steal-wages-entrap-indian-tech-workers-in-us/>

"You can pretty much see a leash on my neck with my employer," said Saravanan Ranganathan, a Washington-area computer security expert here on an H-1B visa. "It's kind of like a hidden chain ... and you'd better shut up, or you'll lose everything."

One of the more egregious abuses is the use of employment bonds - requiring H-1B workers to pay a king's ransom to be allowed to quit their job with an employer. CIR profiles a series of employment bonds used by Tata, the number two H-1B recipient in FY13:⁶

Former Tata workers say the company tried to collect fees from them after they quit. Many immigrant tech workers say they are bound to their jobs this way, despite a federal law banning companies from penalizing H-1B visa holders for quitting. ... Indian workers hired for U.S. jobs received an employee manual explaining that they would be sued for up to \$30,000 if they left before the end of their contracts. The company also threatened to withhold retirement benefits.

The whistle blower, Jack "Jay" Palmer, who is here today, shows that even when violations are found, the government is unwilling to sanction the firms sufficiently to change their employment behavior. Jay Palmer, an employee at Infosys, was asked by the company to sign letters to the government in order to import guestworkers. He and the company knew the letters contained false information. Jay believed that signing those letters would deceive the government and refused. When he notified the company internally of these problems, instead of correcting them, Infosys retaliated against him. He was isolated, shut out of any work, and received threats, including ones on his life, from unknown persons. With no recourse provided by the company, Jay then went to the government to explain what was happening. After enduring a three-year ordeal, with no guarantee of success, there was some vindication. The government charged Infosys with a variety of transgressions of the visa programs such as the B-1 and H-1B. The government settled with the company for \$34 million, the largest recorded immigration fine ever.⁷ While that fine may be a record, it is miniscule to Infosys. It was a mere 0.4% of Infosys' \$8.2 billion in annual revenues. From the perspective of Infosys executives, the fine was a small addition to their cost of doing business, and it did nothing to persuade the company from changing its behavior. It also sent a very clear signal to all of the other firms abusing the guestworker programs: even if you get caught for serious violation you will get nothing more than a slap on the wrist. The government should have debarred the company from the visa programs to send a signal to the market that protections for American workers really matter. One of the firms at the center of the SCE scandal is Infosys, the very company that the government gave a pass to. The government settled all right, and American workers are paying a huge price.

Jay persevered through an ordeal that should not be meted out on anyone. He is a true hero to American IT workers. He has also rendered himself unemployable, during the prime of his career. He can no longer work in an industry to which he dedicated 25 years of his life. Now, in his mid-forties is it really fair to ask him to completely shift to a new occupation because he did the right thing?

The American workers at SCE are in a similar situation. They would like someone to investigate whether there are violations of the H-1B program, but they have neither the resources nor knowledge about how to do so. Eight months ago SCE told their workers that it is outsourcing

⁶ <http://www.revealnews.org/article-legacy/case-study-tata-consultancy-services/>

⁷ <http://www.sec.gov/Archives/edgar/data/1067491/000106749113000061/exv99w02.htm>

most IT functions and that they wanted them to train their guestworker replacement. If they said no, SCE would terminate them with cause and they would lose not only a severance package but also eligibility for unemployment insurance. Even the ones who did not sign a non-disparagement agreement know that if they speak out they will be blacklisted by the industry and render themselves unemployable.

The SCE workers are wondering: "Why should I lose my job when the work still needs to be done? Why is the government doing this to me and my family?" Adding to the injustice of losing their jobs, the SCE workers are being forced to do something that is so common in the industry it is a term of art: "knowledge transfer," an ugly euphemism that means being forced to train your own foreign replacement. The SCE workers are, "demoralized; in disbelief; beyond furious; down in the dumps; feeling anguish; depressed; feeling dehumanized; feeling humiliated; worrying about the future; worrying about paying the bills." The SCE workers rightly place the culpability squarely on SCE executives, the President, and Congress. One worker simply said, "Shame on Edison for doing this and shame on our politicians for enabling it."

The human toll on SCE workers is incalculable. And the signal it sends to all American IT workers and students cannot be underestimated. The government has policies to eliminate your job with guestworkers. Not a single government official has met with the SCE workers to explain why they are losing their jobs to guestworkers.

The Secretary of Labor has the statutory authority to investigate the case of Southern California Edison but has chosen not to. No one knows why the Secretary of Labor has turned a blind-eye to the SCE case and the many other cases that have been documented. He has not made any public statements about them. He should thoroughly investigate these cases, and if he finds violations, debar the companies from using guestworker visas. If he doesn't find violations, he should use all of his authority to propose and promulgate new regulations and policy guidance to fix these problems. Further, the Secretary of Labor should notify Congress of areas that require statutory changes, and work with Congress to get those passed.

The Obama Administration has very recently promulgated rules that create a new guestworker program for the spouses of H-1B workers. The rationale for those rules was to keep H-1B workers happy. If it has the authority and interest to keep guestworkers happy, why is it so reluctant to help American workers when they are so clearly being harmed by the H-1B program?

SOLUTION: Short term - Ask Secretary of Labor Thomas Perez and Wage & Hour Division Chief David Weil to investigate the SCE and other reported cases of American workers being replaced. Ask Secretary of Labor Perez to propose and promulgate any new regulations to protect American workers. Long-term - Institute a random audit of at least 1% of all employers each year. Grant a private right of action to H-1B workers to ensure they have a way to defend their rights through the judicial system.

III. Outsourcing by the Tens of Thousands - Practices at Southern California Edison are Common

Table 2 below shows that nine of the top ten H-1B employers in FY13 used the program principally to outsource American jobs to overseas locations. Outsourcing firms received more than half of the H-1B visas issued in FY13. The list is a who's who in the Indian outsourcing industry. In fact, Indian Government officials refer to the H-1B as the "Outsourcing Visa." Tata and Infosys, the two outsourcing companies hired by Southern California Edison to replace its American workers, were the *top 2* H-1B recipients in 2013. The rest of the outsourcing firms use the program the same way - for cheap labor and to facilitate the offshoring of American jobs.

FY13 H-1B Rank	Company Name	FY13 Approved New H-1Bs	Uses H-1B For Outsourcing
1	INFOSYS TECHNOLOGIES	6,269	Y
2	TATA CONSULTANCY SERVICES	6,163	Y
3	COGNIZANT TECH	5,192	Y
4	ACCENTURE LLP	3,321	Y
5	WIPRO LIMITED	2,638	Y
6	HCL AMERICA INC	1,732	Y
7	IBM INDIA PRIVATE LIMITED	1,363	Y
8	LARSEN & TOUBRO INFOTECH	1,163	Y
9	SATYAM COMPUTER SVCS LTD	1,072	Y
10	MICROSOFT CORPORATION	1,039	N
Total		29,952	9 of 10 Offshoring

Sources: USCIS I-129 & Author's Analysis

H-1B advocates often conflate the H-1B with a legal permanent residence (a greencard). The H-1B program is a temporary non-immigrant work permit. An H-1B is not legal permanent residence (a greencard). The employer holds the visa, not the worker, and if the H-1B worker is laid off he must leave the U.S. This provides enormous leverage over the H-1B worker.

The employer, not the worker, has the discretion of applying for a greencard for an H-1B worker. And most of the top H-1B employers don't sponsor their H-1B workers for greencards. By my estimates less than half of H-1Bs are being sponsored for greencards. As Table 3 below shows, most of the top H-1B employers are using the program for cheaper temporary labor - as a vehicle to outsource jobs overseas rather than as a bridge to permanent immigration. Just to use one example - Accenture received 3,321 H-1Bs yet applied for a mere 4 greencards for its H-1B workers in FY13. That is a 0.1% rate, or 1 greencard application for every 830 H-1B workers.

Tata received more than six-thousand H-1B workers and applied for exactly ZERO greencards for its H-1B workers in FY13.

Table 3 Top H-1B Companies Don't Sponsor Workers for Greencards: Only 1 in 50 H-1Bs is Sponsored for a Greencard				
FY13 H-1B Rank	Company Name	FY13 Approved New H-1Bs	Greencard Applications for H-1Bs	Immigration Yield = GC Apps / H-1Bs
1	INFOSYS TECHNOLOGIES	6,269	7	0%
2	TATA CONSULTANCY SERVICES	6,163	0	0%
3	COGNIZANT TECH	5,192	152	3%
4	ACCENTURE LLP	3,321	4	0%
5	WIPRO LIMITED	2,638	1	0%
6	HCL AMERICA INC	1,732	128	7%
7	IBM INDIA PRIVATE LIMITED	1,363	0	0%
8	LARSEN & TOUBRO INFOTECH	1,163	29	2%
9	SATYAM COMPUTER SVCS LTD	1,072	22	2%
10	MICROSOFT CORPORATION	1,039	381	37%
Total		29,952	724	2%

Sources: H-1B Data: USCIS I-129;
2012 PERM DATA:
http://www.foreignlaborcert.doleta.gov/docs/py2012_q4/PERM_FY2012_Q4.xlsx
2013 PERM DATA: http://www.foreignlaborcert.doleta.gov/docs/perm/PERM_FY2013.xlsx

IV. The L-1 and OPT Guestworker Programs Have *No* Protections & Are Harming American Workers

The L-1 visa and F-1 visa Optional Practical Training (OPT) programs are in many ways more harmful to American workers than the H-1B program. They have no protections for American workers or foreign workers. There are no recruitment or non-displacement requirements for either program. American workers can and are replaced by these workers. The scandalous case in of Siemens, of Lake Mary Florida, forcing its American workers to train foreign L-1 visa replacements hired by Tata has been well documented.⁸

Neither the L-1 nor the OPT have *any wage floor*, a cap, recruitment requirements, or non-displacement. Further, both programs are subject to virtually no federal scrutiny or oversight. We have no idea how many L-1 visa holders are here at any one time, and unlike the H-1B, we don't even know how many are approved for each company because of blanket petitions (for which no

⁸ <http://www.bloomberg.com/bw/stories/2003-03-05/a-mainframe-size-visa-loop-hole>

publicly available government data exist). A review of L-1 visa issuance, I-129, and admissions data suggest the stock of L-1 workers is likely to be in the neighborhood of 300,000. In addition, employment authorization document data from DHS suggest there are likely to be about 200,000 L-2 spouses working in the labor market, who accompany the principal L-1 beneficiaries.

With no wage floor, the L-1 visa program offers wage arbitrage opportunities even greater than with the H-1B. Workers can be paid home country wages. The wage differentials between America and India, the source country for the largest share of L-1s, are staggering. In the case of an information technology worker from India, this could mean a salary of just \$8,000 per year. Even including the housing allowances and living expenses often given to these workers, the wages would be far below market.

For an example of just how low L-1 visa wages can be, one needs to look no further than the case of Electronics for Imaging. The San Jose Mercury News reported that Electronics for Imaging was paying its guestworkers from India \$1.21/hour to install computers and mistreating them.⁹ Those workers were imported on an L-1 visa, for work that should have been paid at an hourly rate of \$19 to \$45 per hour. Shockingly enough, the firm was not in any violation of the L-1 program because there is no wage requirement. Instead they were found to have violated the minimum wage laws. Electronics for Imaging isn't some obscure company. It is Silicon Valley based publicly traded firm with more than half a billion dollars in revenue.

Would adopting a wage floor harm firms? The industry lobbying coalition, Compete America, heartily endorsed the *IDEA Act of 2011* introduced in the House in the 112th Congress.¹⁰ That bill included a wage floor for L-1 workers, something that doesn't exist now.

Similarly to the H-1B, the L-1 program has been extensively used to support the outsourcing of American jobs overseas, as Table 4 shows.

⁹ http://www.mercurynews.com/business/ci_26778017/tech-company-paid-employees-from-india-little-1

¹⁰ See: <http://www.competeamerica.org/media/ideaact2011>

L-1 Use Rank	Company	L-1s Obtained FY02-11	Uses L-1 for Outsourcing
1	Tata Consultancy Services	25,908	Y
2	Cognizant Technology	19,719	Y
3	IBM India	5,722	Y
4	Wipro	5,507	Y
5	Infosys	4,015	Y
6	Satyam (now Mahindra Satyam)	3,274	Y
7	HCL America	1,974	Y
8	Schlumberger	1,479	N
9	Price Waterhouse Coopers	1,375	Y
10	Hewlett Packard Intel Corp	1,254	Y

Source: DHS OIG: http://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-107_Aug13.pdf

Turning to the OPT. There is virtually no oversight of the OPT program, and a recent GAO report titled *STUDENT AND EXCHANGE VISITOR PROGRAM: DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization*, raised serious concerns about its operation. Universities and colleges are the ones who evaluate whether the position meets the OPT eligibility for their students. But the GAO warned that basic data collection in OPT is so bad that Immigration and Customs Enforcement (ICE) "cannot determine whether students with employment authorization are working in jobs related to their studies and not exceeding regulatory limits on unemployment." Thus, it is impossible to know if the program is working as intended. It should also be obvious to anyone that a serious conflict-of-interest exists when the entity that sells its educational services to a foreign student is also evaluating whether to approve a particular job as meeting the intent of the OPT. In fact, the data show the unsurprising result of this programmatic scheme: 96 percent of applications for OPT are approved—virtually a rubber stamp.

In 2008, Optional Practical Training (OPT) was extended from 12 to 29 months for STEM graduates to fill what was then called a shortage in the STEM field. But the government does not publish an occupational shortage list. If it did, it could allow OPT STEM extensions in identified shortage occupations. That's what a smart policy and program would look like. Instead, DHS publishes a lengthy list of STEM degrees that are eligible for the OPT STEM extension, many with a dubious link to actual STEM occupations such as HVAC technician. More importantly it does not link the availability of OPT to the real world conditions of the job market for graduates

with the listed STEM degrees. Biological sciences are included on the list even though no one can argue that there is a shortage of graduates in biology.

Even more concerning is that since it was conceived for training rather than work, OPT workers do not have to be paid at all. I know of a few cases of OPT workers with STEM degrees who are working without being paid a salary at all. B. Lindsay Lowell, a research professor at Georgetown University, estimates that OPT workers are paid a mere 40% of equivalent US workers. And many of the major beneficiaries of the OPT STEM extension are obscure universities with dubious credentials. For example, students from the unaccredited University of Northern Virginia, which was raided by USCIS investigators, received 189 OPT STEM extensions, 14th on the list of all universities. According to media reports USCIS has revoked University of Northern Virginia's ability to issue any new F-1 student visas for international students. For those foreign students who wish to work in the United States for extended periods of time, rather than simply obtain practical training, they should have their employers use the H-1B program.

In order to provide a scale of the OPT program, data from FY13 (the last year for which data are available) show that there were 123,000 foreign students working in the United States through the OPT program. This makes the OPT similar in size to the H-1B program, but with no rules. Approximately 20,000 have qualified for the 29-month STEM extension in each of the past two years. (See Table 5)

TABLE 5		
Participants in the Optional Practical Training program (F-1 visa), Fiscal Years 2008-2015		
	Total approvals*	STEM extension approvals
2008	28,497	1,143
2009	90,896	5,237
2010	96,916	9,984
2011	105,357	12,961
2012	115,303	15,827
2013	123,328	19,034
2014	unavailable	21,513
Totals	560,297	85,699
<p>Note: *Approvals of employment authorization applications for Optional Practical Training.</p> <p>Source: GAO, http://www.gao.gov/assets/670/661192.pdf; USCIS OPT data acquired through Freedom of Information Act request.</p>		

President Obama targeted the OPT and L-1 programs as part of his announcement in November of executive immigration actions. All indications are that instead of proposing protections for American and foreign workers, the President plans to increase the ease and attractiveness of using these programs for cheaper labor. The expectation is that the Administration would tie the hands of Consular Officers and USCIS adjudicators when interpreting what constitutes "specialized knowledge," making it far easier to bring in workers on L-1Bs who have ordinary knowledge and despite the problems in this category that the DHS Office of Inspector General identified in 2006 and 2013. It was also reported in the Washington Post that the Administration is considering expanding the types of degrees eligible for OPT STEM extensions and extending their duration to *four years!*

It should be noted that the OPT program's legality is questionable because the regulations that create it are arguably inconsistent with the F-1 visa statute. A pending federal lawsuit brought by tech workers against DHS is challenging the legality of the OPT STEM extension; the plaintiffs identified numerous individual cases where unemployed U.S. STEM workers were displaced by the program.

In the past, legitimate concerns have been raised about practical training programs for foreign nonimmigrant graduates. In the 1990 Immigration Act, Congress created a three-year pilot program similar to OPT, but which allowed foreign graduates to also be employed in fields unrelated to their degree (unlike the current OPT program). That pilot program required employers to pay a prevailing wage and recruit U.S. workers for 60 days. It also mandated a report to Congress on the program's impact on the U.S. labor market. The resulting 1994 joint report on the program by the Immigration and Naturalization Service and the Labor Department advised Congress not to extend the pilot program because it "is inconsistent with the statutory intent of the F-1 nonimmigrant visa," "run[s] counter ... to an affirmative policy of U.S. labor force development," and "may have adverse consequences for some U.S. workers." The 1990 pilot program was tiny compared to the current OPT program ("fewer than 5,000 students" in the first two years) and found to have negative impacts. But the government has yet do conduct a similar study on the labor market impact of the 120,000 OPT workers employed every year.

SOLUTIONS TO L-1 & OPT: Short term - The Executive Branch should use all of its authority to investigate abuses of the L-1 and OPT visa program. USCIS should propose and publish a rule on "specialized knowledge" through Administrative Procedure Act notice and comment, rather than through an interpretive guidance memo, as it plans to do. The Executive Branch should propose minimum wage regulations in the L-1 and OPT programs. DHS has broad legal authority to require that a minimum wage be paid as a condition of admission for L-1 workers (based on occupation and local area), and there is no statutory prohibition on creating a minimum or prevailing wage rule for OPT workers. Employers seeking to hire workers in an OPT status should also be required to advertise positions for 30 days in a centralized database and give hiring preference to any available U.S. workers. Because literally hundreds of thousands of U.S.-born and legal permanent residents graduate with STEM degrees from U.S. universities each year, such a requirement could realistically result in 100,000 jobs going to U.S. worker STEM grads instead of nonimmigrants on F-1 visas. Finally, require GAO, in

conjunction with DOL, to conduct a major study on the impact of the OPT program on the labor market.

V. Guestworker Visas Are Closing Off Pathways to the Middle Class, Exacerbating Racial, Gender, and Age Discrimination

Professional jobs have been an important rung on the ladder to the middle class. Computer Occupations in particular have been a traditional path from working class to the middle class. Exploitation of the H-1B and other guestworker programs is shutting that pathway down and as we see in the case of Southern California Edison, many are being forcibly sent down from the middle class.

This is especially troubling since the technology industry has a terrible track record on diversity. There are very low rates of hiring of African-Americans and Hispanics as well as women. And age discrimination is an open secret in the technology industry. The SCE workers are typically in their 40s and 50s and are men and women of all races. While the H-1Bs being imported for IT occupations are almost all Indian men in their 20s and 30s.

VI. Every Business Has an Incentive to Replace American Workers With Cheaper Guestworkers - The Business Model is Extraordinarily Profitable

So why is program practice clearly failing the intent of the law? There are mainframe-sized loopholes built into the program's design - the statutory law, regulations, administrative law, and policy guidance - and a the disinterest in enforcing the rules. Some of these loopholes are intentional, some are not, but they all add up to a system that *encourages* employers to exploit the H-1B program for cheap labor.

Combine those vast loopholes with the fact that replacing Americans with guestworkers is extraordinarily profitable and you have a recipe for massive and widespread abuse. Pioneers of using guestworkers instead of Americans, such as Infosys, are earning net profits of 20-25% in a sector, IT Services, where a net margin of 6-8% is considered doing well. Infosys now has a market cap of more than \$40 billion largely thanks to America's policy not to protect American workers from unfair competition from H-1Bs. And the effects multiply as firms like Accenture, IBM, HP, and Deloitte are induced to adopt the H-1B business models of Infosys and Tata.

The executives making these decisions aren't villains, they are simply acting rationally by taking advantage of a business opportunity to reduce labor costs. Some would even argue that it is the fiduciary responsibility of these executives to exploit loopholes. The *raison d'etre* of contemporary firms has become to maximize shareholder value.

The tax system offers a good illustration. While many may not like the practice, no one is surprised when firms take advantage of loopholes in the tax code to store and cycle profits through offshore tax havens. Many of America's most venerable companies, including Apple,

Microsoft, GE, and Google use various schemes like the Dutch-Sandwich and Double-Irish to minimize the taxes they pay.¹¹

Just as in taxes, it is rational and expected that firms seek to lower their labor costs. The recent wage-fixing scandal in Silicon Valley should be a reminder that even the most well-respected and richest companies and executives, including the late Steve Jobs from Apple and Google's Eric Schmidt, are laser focused on lowering labor costs. In the wage-fixing scandal they appeared to be willing to cross the line into collusion to keep the wages of their engineers down.¹²

Harming American Companies That Hire American Workers - The Reshoring of IT Services Is Being Crushed by H-1B & L-1 Policies

The H-1B program harms employers that hire American workers. Domestic sourcing companies, such as Ameritas Technologies, Nexient, and Rural Sourcing hire American workers, and invest in education and training those workers. Neeraj Gupta, founder of Nexient, testified before this Committee during the hearing on S.744. These firms have a real chance to create high paying middle class jobs but they are at a disadvantage because their competitors can freely hire H-1B and L-1 workers who can be paid less.

If we want to "insource" or "re-shore" then the best way to do so is to increase the protections for American workers.

VII. H-1B Legislative Policy Proposals Would Inflict Even More Harm on American Workers

A number of bills introduced in the 113th and 114th Congress' have proposed to significantly expand the H-1B program. Three, in particular, deserve some mention for this hearing. The SKILLS Act introduced Congressman Issa in the 113th provides very large increases in the H-1B program but would not improve the protections for American workers.

The Immigration Innovation Act introduced in both the 113th and 114th Congress' at least triple the number of H-1Bs and provide no protection for American workers. IEEE-USA, which represents more than 200,000 American engineers, said the Immigration Innovation Act would, "destroy the U.S. high-tech workforce."

S.744, the Border Security, Economic Opportunity, and Immigration Modernization Act, passed the U.S. Senate in 2013. I would refer you to my detailed testimony on S.744 given on April 22, 2013. Back then, I thought the bill would do more harm than good but was a step in the right

¹¹ <http://www.bloomberg.com/news/articles/2010-10-21/google-2-4-rate-shows-how-60-billion-u-s-revenue-lost-to-tax-loopholes>

¹² <http://pando.com/2014/01/23/the-techtopus-how-silicon-valleys-most-celebrated-ceos-conspired-to-drive-down-100000-tech-engineers-wages/>

direction. It never solved the fundamental issue that H-1B workers could be paid less than American workers. It set the "prevailing wage" at 20% less than the wage Americans are getting. Subsequent to that hearing, the bill was amended during markup, to strip key provisions that would protect American workers. One provision that was stripped is particularly important: the requirement that employers hire qualified Americans who apply. It rendered the recruitment protections meaningless. Firms could simply collect resumes and then ignore them, preferring to hire the H-1B who could be paid 20% less than the American worker.

S.744 had provisions targeting the heaviest users of the H-1B program in order to prevent the flagrant abuses of the H-1B program like those at SCE. But even if S.744 became law it wouldn't stop what is going on at SCE. The outsourcing companies might be different names - Accenture, IBM, or Deloitte - instead of Tata and Infosys, but the result would be the same. SCE workers would be training their cheaper H-1B replacements, albeit at Accenture instead of Infosys.

These bills all have overly generous greencard provisions in them for STEM workers and very low eligibility standards. These were not addressed in the hearings on S.744. While I believe that the US economy and American labor market can absorb somewhat higher levels of greencards for skilled workers without adversely impacting American workers, the numbers in these bills will be high enough to create significant negative impacts for American workers. Many of the skilled greencard provisions are uncapped and bypass the labor certification process, so there is no way to predict, nor control, the future dynamics of those seeking greencards.

S.744 proposed to eliminate labor certification for all STEM graduate students and eliminate the cap on their numbers. This will create perverse incentives in the market. Employers will be tempted to replace their older incumbent workers with cheaper fresh graduates, fueling age discrimination. And universities will be placed in a conflict of interest situation by becoming the sole gatekeeper for issuing greencards. Universities will essentially be able to sell greencards to foreign students. Given that Master's degrees are short in duration, and have little oversight from outside bodies, this provision will make it inexpensive for foreigners to purchase greencards. We will see a flood of foreign student applications, which will crowd out American students from the STEM fields. Those foreign students will in turn flood the labor market in the STEM fields, depressing wages, and further steering American students from studying these fields.

This key issue was not addressed in any of the hearings on this bill yet it might have the most lasting and largest impact on the American labor market. Congress, not Universities, should be making decisions on who can immigrate to the United States.

Skilled greencard provisions should be carefully crafted to include high standards, institute a labor certification, and the program should be capped.

The upshot is that all of these bills would inflict significantly more harm on American workers than the status quo. And the status quo is terrible for American workers - they are training their guestworker replacements.

The good news is that we have a blueprint from which to work. S.600, the H-1B and L-1 Visa Reform Act of 2013, introduced by Senators Grassley and Brown in the 113th Congress would

solve most of the significant problems with both the H-1B and L-1 visa programs. A reintroduced version should also include wage and recruitment rules for nonimmigrant workers in the OPT program and for the TN visa. It should also include a private right of action to ensure that foreign workers can exercise their rights.

VIII. Training is More Trojan Horse Than Panacea -There is No Systemic Shortage of American Technology Workers & Training Programs Such as Tech Hire are a Distraction at Best & Misinformation at Worst

The White House recently announced a \$100 million initiative to train workers for IT jobs. As an educator I'm always pleased when the government recognizes the importance of training and education, but the simple fact is that this and other training initiatives are a distraction from what needs to be done to fix the IT labor market.

The Tech Hire initiative is based on a false premise: that there is a shortage of American IT workers and jobs are going unfilled. As my fellow panelist, Professor Hal Salzman, has shown, there is no shortage of IT workers. In making its case for Tech Hire, the White House is using proprietary, non-governmental, data on job openings from a private consulting firm to make the case that there is a shortage and to justify the program. No one knows the methodology that the consulting firm uses and how to interpret the numbers. The White House compounded the problem by claiming that these jobs are going "unfilled." As everyone knows, except maybe the White House's Chief Technology Officer, there is enormous churn in the IT labor market, so there are always large numbers of openings. Openings are not a good indicator of demand. Of course, if there were many jobs going unfilled we'd see very rapid increases in wages for IT jobs. That hasn't happened since the late 1990s.

The Tech Hire initiative also has no teeth to create jobs. Firms that are participating have no requirement to even consider the trainees for positions. The White House has not explained why any employer would hire one of these American trainees instead of a cheaper guestworker. So, the White House is making promises it knows it cannot keep.

What is particularly disturbing about the Tech Hire program is that it is funded by fees collected from H-1B applications in order to fill a "skills gap." The irony and absurdity of this program and its rationale is certainly not lost on the SCE workers training their H-1B replacements!

An American SCE IT worker is losing her job to an H-1B replacement, and is training that foreign worker. It's abundantly clear that the American IT workers have the superior skills. They are then told by the White House that the \$1,000 paid in fees to the government for the H-1B will be used to "fill the skills gap" because there aren't enough trained IT workers.

The SCE worker loses his \$110,000 job so that the government can collect \$1,000 in fees to fund training for the phantom skills gap. What a terrible deal for America and its taxpayers.

The technology industry has long offered the Trojan Horse of paying training fees in exchange more H-1Bs. This is fool's gold for American workers. It is a lose-lose situation. American

workers lose their jobs to H-1Bs, lose wages and bargaining power to H-1Bs, and the government spends pennies on training for jobs that are cheaper to fill with H-1Bs.

IX. Immigration Policy Should Be Made By Congress, Not the U.S. Trade Representative

Given the widespread use of both H-1B and L-1 visas by offshore outsourcing firms, Congress should take affirmative steps to make it clear that both guestworker programs and permanent residence are immigration—and not trade—policy issues. In 2003, the U.S. Trade Representative (USTR) negotiated free trade agreements (FTAs) with Chile and Singapore, which included additional H-1B visas for those two countries, and constrained Congress from changing laws that govern the L-1 visa program. In response, many members of Congress felt it was important to reassert that Congress, not the USTR, has jurisdiction over immigration laws. But no law was ever passed. Without legislation, the muddying of trade and immigration policy will keep recurring. Most recently, it appears that some L-1 visa provisions were included as a side agreement in the Korea-U.S. Free Trade Agreement. Many countries, including India, have pressed for more liberalized visa regimes through trade agreements including proposing a new GATS work visa. Congress, not the U.S. Trade Representative, should have the authority to change these laws, and Congress should pass a law reaffirming its jurisdiction over immigration.

The Trans-Pacific Partnership deal which is being negotiated in secret, reportedly includes "labor mobility" provisions, usurping Congress' ability to set immigration law. Congress should instruct the US Trade Representative to eliminate any Mode 4 provisions from the agreement.

X. CONCLUSION

In conclusion, let me say that I believe the United States benefits enormously from high skilled immigration, especially in the technology sectors. We can, and should, encourage the best and brightest to come to the United States and settle here permanently. But our future critically depends on our homegrown talent, and while we should welcome foreign workers, we must do it without undermining American workers and students. Closing the H-1B and L-1 visa loopholes would ensure that the technology sector remains an attractive labor market for Americans and continues to act as a magnet for the world's best and brightest. These are not mutually exclusive options. We can find the right sets of solutions that provide the proper balance.

Proponents of expanding the H-1B & L-1 programs have repeatedly made claims that the programs are needed because there is a shortage of American workers with the requisite skills, and the foreign workers being imported are the best and brightest. If that is indeed the case, then those employers should not object to these sensible protections for both American and foreign workers. The policies I have proposed pose no limitations on employers' ability to hire foreign workers who truly complement America's talent pool.

Written Testimony of

Benjamin Johnson
Executive Director
American Immigration Council

Before the
Committee on the Judiciary
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Introduction

Mr. Chairman and members of the committee, thank you for the opportunity to appear before you today and provide testimony on behalf of the American Immigration Council. For more than 25 years, the American Immigration Council has been dedicated to providing policymakers and the public with research and analysis on the critical issues shaping immigration law and policy, and to promoting a deeper appreciation for the role that immigration has played throughout America's proud history as a nation of immigrants.

Although the title of today's hearing suggests a more negative view of immigration, my hope is that this hearing will provide an opportunity to engage in a thoughtful conversation about the role that immigration can and should play in building a prosperous, growing, 21st century America. In today's labor market, foreign workers fill a critical need—particularly in the Science, Technology, Engineering, and Math (STEM) fields. It is crucial that we have an honest conversation about targeted reforms that can improve and strengthen the admission of legal immigrants into our labor force. Now more than ever, we must move the current immigration debate beyond the stereotypes, myths, and hyperbole that distract from that conversation, and which seek to pit native-born workers against their foreign-born colleagues. The U.S. job market is not a "zero-sum game" in which workers compete against each other for a fixed number of jobs. The United States has created the most dynamic and powerful economy the world has ever known, and immigrants of all types and skills, from every corner of the globe, have worked shoulder to shoulder with native-born workers to build it.

The overwhelming weight of the current research on immigration shows that in our dynamic labor market, skilled immigrants *complement* their U.S.-born counterparts. (This is even truer now with unemployment rates at their lowest since May 2008, before the financial crisis).¹ Skilled immigrants' contributions to the U.S. economy help create new jobs and new opportunities for economic expansion. Indeed, foreign workers *positively* impact the wages and employment opportunities of native-born workers across our economy.

The important role that skilled immigrants play in our economy extends far beyond the world of computers and high tech, and the positive impact of their contributions are helping to reshape communities far beyond Silicon Valley. Skilled immigrants and entrepreneurs are making

¹ CNN Money, "Good news: Unemployment at lowest in 7 years," March 6, 2015, at <http://money.cnn.com/2015/03/06/news/economy/february-jobs-295000-us-economy/>, citing U.S. Bureau of Labor Statistics, "Employment Situation Summary," March 6, 2015, at <http://www.bls.gov/news.release/empsit.nr0.htm>.

enormous contributions in almost every aspect of our economy, including manufacturing, medical research, healthcare delivery, and agriculture. Their contributions have helped rebuild economies in places like Des Moines, Iowa; Tuscaloosa, Alabama; and Raleigh, North Carolina.

This is not a new story. Immigrants have played an incredibly valuable role in our economy from our nation's beginning. But, in today's global economy, where other countries are spending billions of dollars to compete with America's ability to attract immigrants, we cannot take this issue for granted. If we continue to ignore the need for immigration reform or adopt policies that discourage skilled immigrants from helping American businesses to innovate, lead, and create high-paying jobs—and, instead, create an unwelcoming environment that drives immigrants to other countries that compete against us—we run the enormous risk that America will be left behind in today's global economy, without a robust innovation and entrepreneurial sector.² Economists, social scientists, business leaders, and a broad range of other experts agree that innovation is the key to growing the economy and creating jobs. In turn, the key to innovation is building, growing, attracting, and retaining a skilled workforce.³ Foreign-born workers, especially STEM workers, have been and will continue to be a critical part of this equation. According to Peri, Shih, and Sparber, STEM workers “are the main inputs in the creation and adoption of scientific and technological innovation.”⁴

One of the most pressing policy challenges of our time is wrestling with the critical policy choices that must be made to truly fulfill the promise of an immigration system that serves a 21st century economy. Research supports the creation of a revamped and revitalized immigration system with updated visa caps and per-country quotas and that retains talented individuals who were educated in the United States. Such a system would also support STEM education; more effectively comply with rules and safeguard against exploitation and abuse; and allow for more flexibility, predictability, and consistency.

In considering these policy options, though, we should recognize that maximizing the economic contributions of skilled immigrants is not an isolated enterprise, but an integral component of systematic immigration reform. Skilled immigration encompasses a wide range of individuals with very different educational and occupational backgrounds. Immigrant job creators, entrepreneurs, and innovators often come to these shores not only through employment-based channels but through family reunification and the admission of refugees and asylees. They can also be found within the population of unauthorized workers. As such, real, lasting reform can only be achieved by rising above the current political rancor and crafting bipartisan, comprehensive immigration reform.

I. High-Skilled Workers Play an Integral Role in the U.S. Economy

A broad range of new research and analysis has demonstrated that skilled immigrant workers do not take American jobs, but complement American workers. In the process, skilled immigrant workers actually *boost* the wages of native-born workers. This research also demonstrates the

² The Chicago Council, *US Economic Competitiveness at Risk: A Midwest Call to Action on Immigration Reform* (Chicago, IL: The Chicago Council on Global Affairs, February 2013), at http://www.thechicagocouncil.org/sites/default/files/2013_ImmigrationTaskForce_Final.pdf.

³ *Ibid.*

⁴ Giovanni Peri, Kevin Y. Shih, and Chad Sparber, *Foreign STEM Workers and Native Wages and Employment in U.S. Cities*, NBER Working Paper No. 20093 (Cambridge, MA: National Bureau of Economic Research, 2014), at <http://www.nber.org/papers/w20093>.

various ways that high-skilled immigration helps the American economy—by creating jobs in diverse economic sectors (not just technology) and across the United States, on both coasts and in the heartland.

A. Skilled Foreign Workers Complement Native-Born Workers and Boost Their Wages

Highly skilled immigrants complement their native-born peers; they do not substitute for them. This is true throughout all high-skilled occupations, and particularly in STEM fields. The United States faces challenges in meeting the growing needs of an expanding knowledge-based innovation economy. Arguments that immigrants are freezing out native-born workers or depressing wages are rebutted by the best available empirical evidence.

1. Foreign Workers Fill a Critical Need in the U.S. Labor Market, Particularly in the STEM Fields

STEM employers report thousands of unfilled positions, with STEM jobs taking longer to fill than non-STEM jobs, according to job openings data. That so many high-paying jobs are going unfilled reflects a significant shortage of American workers to fill these skilled positions.⁵

Recent demand for labor exceeds supply for particular tech occupations. According to The Conference Board, in January 2015 there were over five vacancies advertised online for every one unemployed person in a “computer and mathematical science” occupation: 599,800 total ads and 107,200 unemployed.⁶ Additionally, the number of online ads for “computer and mathematical science” jobs increased by 12 percent from March 2014 to February 2015—from 536,400 to 599,800—indicating increased demand.⁷

In addition, tellingly, the unemployment rates of STEM degree holders are much lower than the national unemployment rate⁸ because STEM degree holders’ skills are in demand, in both STEM and non-STEM occupations. As to STEM occupations, many have shown low unemployment rates over the past decade (2.7 percent as of February 2015) compared to the overall national unemployment rate (5.5 percent as of February 2015) {see Table 1}.⁹ Additionally, the 2011 unemployment rate was only 3.15 percent for U.S.-citizen STEM workers with Ph.D.s, and 3.4 percent for those with master’s degrees, compared to the national 2011 unemployment rate of

⁵ Darrell M. West, *The Paradox of Worker Shortages at a Time of High National Unemployment* (Washington, DC: The Brookings Institution, 2013), at <http://www.brookings.edu/research/papers/2013/04/11-worker-shortage-immigration-west>.

⁶ The Conference Board, “Online Labor Demand Increased by 184,100 in February” (New York, NY: The Conference Board, 2015), at http://www.conference-board.org/pdf_free/press/PressPDF_5401_1425421579.pdf.

⁷ The Conference Board, “Online Labor Demand Falls 292,100 in March” (New York, NY: The Conference Board, 2014), at https://www.conference-board.org/pdf_free/press/PressPDF_5143_1396375046.pdf.

⁸ Information Technology Industry Council, the Partnership for a New American Economy, and the U.S. Chamber of Commerce, *Help Wanted: The Role of Foreign Workers in the Innovation Economy* (Washington, DC: December 2012), at <http://www.renewoureconomy.org/sites/all/themes/pnae/stem-report.pdf>.

⁹ U.S. Census Bureau and Bureau of Labor Statistics, Tabulation of Current Population Survey (CPS) microdata for employment and unemployment of persons by occupation and US citizenship status. The data set is pooled monthly CPS samples for 12 months—December 2013 through November 2014. Observations are weighted using the Bureau of Labor Statistics (BLS) composite monthly weight variable. Monthly weights were divided by 12, so totals are estimates of average monthly employment over the year. The 12 months of observations are the most recent 12 months available as of January 2015.

almost 8 percent.¹⁰ In some STEM occupations, the unemployment rate is even lower. Unemployment among Petroleum Engineers is 0.1 percent, for Computer Network Architects it is 0.4 percent, and for Nuclear Engineers it is 0.5 percent.¹¹

Why do some of these occupations have any unemployment at all? According to the Information Technology Industrial Council, “zero unemployment is neither attainable nor necessarily desirable. As companies reorganize, businesses open and close, and people look to change jobs or move from city to city, some degree of unemployment is inevitable and may even be healthy.”¹² The Federal Reserve Bank of San Francisco has argued that it is “well understood that some ‘frictional’ unemployment, which involves the search for new jobs and the transition between occupations, is a necessary accompaniment to the proper functioning of the economy in the long run.”¹³ And if unemployment is too low, economists believe that inflation may occur. Furthermore, many of the above-mentioned occupations are experiencing low unemployment rates that indicate “full employment,” generally defined as the lowest unemployment rate consistent with stable inflation, varying depending upon economic conditions.¹⁴

Table 1. Unemployment Rate for U.S.-Citizen Workers in Selected STEM Fields, 12-month average for December 2013 to November 2014

Main Job Occupation	Native-born citizens unemployment rate	All Citizens Unemployment rate	Workers who are non-citizens
Aerospace engineers	0.2%	0.4%	5.9%
Computer network architects	1.8%	1.6%	11.1%
Information security analysts	1.7%	1.6%	3.7%
Electrical and electronic engineers	1.2%	1.8%	11.4%
Mechanical engineers	1.5%	1.9%	8.8%
Database administrators	2.2%	1.9%	10.3%
Chemists and materials scientists	2.4%	2.1%	8.3%
Computer hardware engineers	1.9%	2.5%	10.6%
Network and computer systems administrators	2.9%	2.7%	4.6%
Industrial engineers, including health and safety	2.0%	2.7%	7.6%
Civil engineers	2.9%	2.8%	6.0%
All STEM occupations (including ones not listed above)	2.9%	2.9%	10.6%
All occupations	5.6%	5.6%	8.6%

Source: U.S. Census Bureau and Bureau of Labor Statistics. Tabulation of Current Population Survey (CPS) microdata for employment and unemployment of persons by occupation and US

¹⁰ Information Technology Industry Council, the Partnership for a New American Economy, and the U.S. Chamber of Commerce, *Help Wanted: The Role of Foreign Workers in the Innovation Economy* (Washington, DC: December 2012) at <http://www.renewoureconomy.org/sites/all/themes/pnae/stem-report.pdf>.

¹¹ *Ibid.*, p. 2.

¹² *Ibid.*, p. 4.

¹³ Federal Reserve Bank of San Francisco, *Economic Letter 99-04* (1999), at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.200.9660&rep=rep1&type=pdf>.

¹⁴ *Ibid.*

citizenship status. The data set is pooled monthly CPS samples for 12 months—December 2013 through November 2014. Observations are weighted using the Bureau of Labor Statistics (BLS) composite monthly weight variable. Monthly weights were divided by 12, so totals are estimates of average monthly employment over the year. The 12 months of observations are the most recent 12 months available as of January 2015.

These statistics show that foreign STEM workers fill a critical need, rather than taking native-born workers' jobs. High-skilled foreign-born workers supplement the native-born workforce, and employers in different places request high-skilled visas for hard-to-fill jobs.¹⁵ Indeed, the metropolitan areas and occupations in which employers most request the H-1B high-skilled visa correspond to places and jobs where there is the greatest demand for skilled workers.¹⁶ Native-born workers have low unemployment rates even in STEM fields with large shares of foreign-born workers. And, H-1B workers earn significantly higher earnings than native-born workers with bachelor's degrees or higher, suggesting that these H-1B workers have specialized skills not readily available.¹⁷

Additionally, demand is rising for STEM workers in both STEM and non-STEM fields. Georgetown University's Center on Education and the Workforce points out that as more organizations seek to improve innovation and expand technology use, more employers in more fields compete for STEM competencies—knowledge, skills, and abilities like research, analysis, and quantitative and computer skills.¹⁸ Indeed, in today's data- and technology-oriented economy, many STEM degree holders use their degrees in a wide variety of jobs, including those outside of specifically defined STEM occupations.¹⁹

Thus, in the same way that not all writing majors become novelists and not all history majors become historians, not everyone graduating college with an undergraduate STEM degree chooses to pursue a graduate education in a STEM field or stay within a specifically defined STEM occupation. There is no evidence to suggest that, collectively, individuals with STEM expertise working outside of their trained fields have been pushed out of these fields by foreign-born workers.

2. Foreign-Born Workers Help, Not Harm, American Workers

Research shows that foreign-born high-skilled workers do not harm American workers. A key indication of this is that the wages of STEM workers have grown. Total real median annual wage growth (in 2012 dollars) for several STEM occupations from 2001 to 2012 was higher than the

¹⁵ American Immigration Council, *Fueling the Recovery: How High-Skilled Immigrants Create Jobs and Help Build the U.S. Economy* (Washington, DC: American Immigration Council, 2013), at <http://www.immigrationpolicy.org/just-facts/fueling-recovery>.

¹⁶ American Immigration Council, *H-1B Program's Impact on Wages, Jobs, and the Economy* (Washington, DC: American Immigration Council, 2014), at <http://www.immigrationpolicy.org/just-facts/h-1b-program%E2%80%99s-impact-wages-jobs-and-economy>.

¹⁷ Jonathan Rothwell and Neil G. Ruiz, *H-1B Visas and the STEM Shortage* (Washington, DC: The Brookings Institution, 2013), at <http://www.brookings.edu/research/papers/2013/05/10-h1b-visas-stem-rothwell-ruiz>; Magnus Lofstrom and Joseph Hayes, "H-1Bs: How Do They Stack Up to US Born Workers?" *IZA Discussion Paper No. 6259* (Bonn, Germany: IZA, 2011), at <http://ftp.iza.org/dp6259.pdf>.

¹⁸ Anthony P. Carnevale, Nicole Smith, and Michelle Melton, *STEM: Science, Technology, Engineering, Mathematics* (Washington, DC: Center on Education and the Workforce, Georgetown University, 2013).

¹⁹ Economics and Statistics Administration, "STEM: Good Jobs Now and for the Future" (Washington, DC: U.S. Department of Commerce, 2011), at <http://www.esa.doc.gov/reports/stem-good-jobs-now-and-future>.

median for all occupations, according to the Cato Institute.²⁰ And, while real wages for all workers fell slightly over the past decade, wages for STEM workers rose over that time period, as the Center for American Progress points out.²¹ Moreover, for occupations with the most requests for high-skilled visas, wage growth in recent years has been much higher than the national average. And in the metropolitan areas with the largest number of high-skilled visa requests, the average wages for STEM occupations are high.²²

The presence of skilled immigrants also boosts native-born wages by encouraging innovation, boosting the local economy, and increasing productivity. For example, a 2014 report found “a positive, large, and significant effect of foreign STEM workers on wages paid to college educated native workers.”²³ The report also found that “[w]age increases for non-college educated natives are smaller but still significant.”²⁴ In particular, the authors note that “a one percentage point increase in the foreign STEM share of a city’s total employment increased wages of native college educated labor by about 7 to 8 percentage points and the wages of non-college educated natives by 3 to 4 percentage points.”²⁵ According to the authors, “these results indicate that growth in STEM workers spurred technological growth by increasing productivity, especially that of college educated workers.”

In sum, overwhelming evidence points to a scarcity of high-skilled workers in the United States labor market, and indicates that high-skilled foreign-born workers can help fill the gap—supplementing rather than harming native-born workers and contributing to wage growth.

B. Immigrants Creating Jobs

Time and again, researchers across numerous disciplines have found that high-skilled immigration creates new jobs for Americans.²⁶ For example, a 2012 report found that each foreign-born graduate from a U.S. university with an advanced degree who stays in the U.S. to work in a STEM occupation creates an average of 2.62 jobs for American workers.²⁷ Innovation on the job also translates into strong entrepreneurial tendencies, which in turn create jobs.

²⁰ Alex Nowrasteh, “Is There a STEM Worker ‘Shortage’?” (Washington, DC: Cato Institute, 2014), at <http://www.cato.org/blog/there-stem-worker-shortage>.

²¹ Philip Wolgin, “Nativist Think Tank Spreads Misleading Claims About High Skilled Immigration,” *ThinkProgress* (Washington, DC: Center for American Progress, 2014), at <http://thinkprogress.org/immigration/2014/05/22/3440236/anti-immigrant-cis-misleads-high-skilled/>.

²² American Immigration Council, *H-1B Program’s Impact on Wages, Jobs, and the Economy* (Washington, DC: American Immigration Council, 2014), at <http://www.immigrationpolicy.org/just-facts/h-1b-program%E2%80%99s-impact-wages-jobs-and-economy>.

²³ Giovanni Peri, Kevin Y. Shih, and Chad Sparber, “Foreign STEM Workers and Native Wages and Employment in U.S. Cities,” *NBER Working Paper No. 20093* (Cambridge, MA: National Bureau of Economic Research, 2014), at <http://www.nber.org/papers/w20093>. The report examined the effect of foreign STEM workers on the wages and employment of college-educated and non-college-educated workers across 219 U.S. cities from 1990 to 2010. The authors of this report examined the distribution of foreign-born STEM workers in 1980 and used the introduction and variation of the H-1B visa program in 1990 that granted entry to new foreign-born college-educated, mostly STEM, workers so that they could study the before-and-after effects of the H-1B program.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Neeraj Kaushal and Michael Fix, *The Contributions of High-Skilled Immigrants* (Washington, DC: Migration Policy Institute, 2006), at <http://www.migrationpolicy.org/research/contributions-high-skilled-immigrants>.

²⁷ Information Technology Industry Council, the Partnership for a New American Economy, and the U.S. Chamber of Commerce, *Help Wanted: The Role of Foreign Workers in the Innovation Economy* (Washington, DC: December 2012), p. 3, at <http://www.renewoureconomy.org/sites/all/themes/pnae/stem-report.pdf>.

According to a 2011 report from the Partnership for a New American Economy, immigrants were founders of 18 percent of all Fortune 500 companies, including many high-tech giants. The newer the company, the more likely it was to have an immigrant founder.²⁸ A 2012 report concluded that immigrant-founded engineering and technology companies founded between 2006 and 2012 in the U.S. employed around 560,000 people and produced over \$63 billion in sales in 2012.²⁹ The report's authors note that immigrants will undoubtedly "remain a critical asset for maintaining U.S. competitiveness in the global economy."³⁰

Immigrants bring job-creating innovation and ideas not only to the businesses they create, but to the businesses within which they work. A September 2010 report from the Brookings Institution notes that "among people with advanced degrees, immigrants are three times more likely to file patents than U.S.-born citizens."³¹ The benefits of these patents extend to native-born researchers and scientists. There is evidence that foreign-born and American-born scientists are benefiting from and building off of each other's work. The increased number of patents received by immigrants coincides with an increase in the number of patents awarded to native-born Americans, thus increasing the overall innovative capacity of the U.S.³²

In many U.S. metropolitan areas, the innovation economy, and the high-skilled jobs related to it, drive prosperity for a broader base of workers living in the region, through more jobs and higher salaries.³³ Innovation industry and STEM jobs tend to have higher than average multiplier effects, which spur greater job creation, especially in the surrounding localities.³⁴ Jobs in the innovation economy generate a disproportionate number of local jobs in other industries. An analysis of 11 million American workers in 320 metropolitan areas shows that each new high-tech job in a metropolitan area creates five additional long-term local jobs outside of the high-tech sector.³⁵ Furthermore, the five new jobs created for each new high-tech job benefit a diverse group of workers: two new jobs for professional workers such as attorneys and doctors, and three new positions in nonprofessional occupations such as service industry jobs.³⁶

²⁸ Partnership for a New American Economy, *The "New American" Fortune 500* (New York, NY: June 2011), pp. 11, 17, 21, at http://www.nye.gov/html/om/pdf/2011/partnership_for_a_new_american_economy_fortune_500.pdf.

²⁹ Vivek Wadhwa, AnnaLee Saxenian, and Francis Daniel Siciliano II, *Then and Now: America's New Immigrant Entrepreneurs: Part VII* (Kansas City, MO: Ewing Marion Kauffman Foundation, October 2012), at http://www.kauffman.org/~media/kauffman_org/research%20reports%20and%20covers/2012/10/then_and_now_americas_new_immigrant_entrepreneurs.pdf.

³⁰ *Ibid.*, p. 27.

³¹ Michael Greenstone and Adam Looney, *Ten Economic Facts About Immigration* (Washington, DC: The Hamilton Project of The Brookings Institution, September 2010), p. 11, at http://www.brookings.edu/~media/research/files/reports/2010/9/immigration-greenstone-looney/09_immigration.pdf.

³² William R. Kerr and William F. Lincoln, *The Supply Side of Innovation: H-1B Visa Reforms and US Ethnic Invention*, Working Paper No. 09-005 (Boston, MA: Harvard Business School, December 2008).

³³ Jonathan Rothwell, "Regional Inequality and 'The New Geography of Jobs'" (Washington, DC: The Brookings Institution, August 7, 2012), at <http://www.brookings.edu/blogs/the-avenue/posts/2012/08/07-regional-inequality-rothwell>.

³⁴ Mark Muro, "Multiplier Effects: Connecting the Innovation and Opportunity Agendas" (Washington, DC: The Brookings Institution, August 23, 2012), at <http://www.brookings.edu/blogs/the-avenue/posts/2012/08/23-multiplier-effects-muro>.

³⁵ Enrico Moretti, *The New Geography of Jobs* (New York, NY: Houghton Mifflin, 2012).

³⁶ *Ibid.*

C. Beyond High-Tech: Skilled Professionals in Agriculture, Manufacturing, and Healthcare

Although the high-tech industry garners the most public attention regarding high-skilled immigration, high-skilled immigrants play a host of other crucial roles in the U.S. economy and society. The agriculture industry, crucially important to the country's food security, relies on skilled workers, including engineers, scientists, and technicians.³⁷ Different companies across industries now create software, such as auto manufacturers for cars, appliance manufacturers for "smart" appliances, and healthcare companies to manage medical data.³⁸ A 2011 McKinsey Global Institute report estimated that by 2018 there will be a potential shortfall of 1.5 million data-savvy managers and analysts to fill U.S. positions requiring know-how of big data analysis.³⁹

The healthcare industry provides a key example of the contributions of, and need for, high-skilled immigrants. As of 2013, 22 percent of all U.S. healthcare professionals were foreign-born.⁴⁰ Immigrants also play a major role in specialized areas of medicine. For example, a 2013 report found that over 40 percent of cancer researchers at top U.S. cancer institutes are immigrants.⁴¹

Moreover, as the U.S. population grows older and grows in size, immigrant physicians, nurses, and other healthcare workers will play increasingly important roles. Recent research finds that the United States is experiencing an expanding shortage of physicians which will worsen in coming decades. Studies suggest that by 2025 the United States will require up to 90,000 more physicians,⁴² including nearly 52,000 primary-care physicians.⁴³ Additionally, the Department of Health and Human Services (HHS) reports that, as of January 2013, there were 5,864 primary-care Health Professional Shortage Areas (HPSAs) with 57 million people living in them.⁴⁴

³⁷ Stephanie Mercier, *Employing Agriculture: How the Midwest Farm and Food Sector Relies on Immigrant Labor* (Chicago, IL: The Chicago Council on Global Affairs, 2014), at http://www.thechicagocouncil.org/sites/default/files/Midwest_Ag_final.pdf.

³⁸ Written Testimony of Brad Smith, General Counsel and Executive Vice President, Legal and Corporate Affairs, Microsoft Corporation, to U.S. Senate Judiciary Committee, Hearing on High-Skilled Immigration, Washington D.C. (April 22, 2013), at <http://www.judiciary.senate.gov/imo/media/doc/04-22-13BradSmithTestimony.pdf>.

³⁹ McKinsey Global Institute, "Big data: The next frontier for innovation, competition, and productivity" (May 2011), at http://www.mckinsey.com/insights/business_technology/big_data_the_next_frontier_for_innovation.

⁴⁰ Governor's Advisory Council for Refugees and Immigrants Task Force on Immigrant Healthcare Professionals in Massachusetts, "Rx For Strengthening Massachusetts' Economy And Healthcare System" (December 2014), pp. 11-12 & fn. 9, at http://www.miracoalition.org/images/stories/gac_task_force_report_final-12.18.14.pdf, analyzing data from the 2013 National Survey of College Graduates (NSCG), at <http://www.nsf.gov/statistics/srvygrads>.

⁴¹ Stuart Anderson, *The Contributions of Immigrants to Cancer Research in America* (Arlington, VA: National Foundation for American Policy, 2013), at http://www.nfap.com/pdf/NFAP_Policy_Brief.The%20Contributions%20of%20Immigrants%20to%20Cancer%20Research%20in%20America.March%2005%202013.pdf.

⁴² Association of American Medical Colleges' Center for Workforce Studies, *Physician Supply and Demand Through 2025: Key Findings* (Washington, DC: American Association of Medical Colleges, 2015), at <https://www.aamc.org/download/426260/data/physiciansupplyanddemandthrough2025keyfindings.pdf>.

⁴³ Stephen Peterson, et al., "Projecting US Primary Care Physician Workforce Needs: 2010-2025," *Annals of Family Medicine* 10, no. 6 (November/December 2012).

⁴⁴ Paul McDaniel, "Skilled Immigrants Filling U.S. Health Care Needs," *Immigration Impact* (Feb. 25, 2013), at <http://immigrationimpact.com/2013/02/25/skilled-immigrants-filling-u-s-health-care-needs/>, citing U.S. Department of Health and Human Services Health Resources and Services Administration, "Shortage Designation: Health Professional Shortage Areas & Medically Underserved Areas/Populations," at <http://www.hrsa.gov/shortage/>.

These shortages will not be limited to doctors. Dentist-to-population ratios have been dropping for the past decade and are expected to decline further by 2020, with dentist shortages particularly acute for children as well as low-income and minority communities.⁴⁵ Studies also project significant shortages in pharmacists, mental health professionals, and public health professionals.⁴⁶

The opportunity for immigrants to fill these gaps is significant.⁴⁷ Moreover, foreign-trained physicians are more likely than U.S. medical graduates to work in underserved and rural areas and provide primary care.⁴⁸ Employing immigrant physicians would, in turn, reduce state healthcare costs by improving preventative and chronic disease care. For example, a study suggested that Minnesota could save over \$63 million by using foreign-trained physicians to address shortages in medically underserved areas.⁴⁹

D. Beyond Silicon Valley: High-Skilled Immigrants Helping the Heartland

Beyond Silicon Valley, high-skilled immigrants and immigrant entrepreneurs are significantly contributing to local economies and communities across America and in the heartland. Examples include:

- In Iowa, skilled workers—immigrant and native-born—contribute to the success of many Iowa-based companies and institutions such as Rockwell Collins and the University of Iowa. Des Moines has become a key center of the “Silicon Prairie” technology corridor.⁵⁰ It is home to Dwolla, an online and mobile money transfer company that is a developing success story, having attracted millions in venture capital funding.⁵¹ Further, Des Moines

⁴⁵ The Pew Charitable Trusts, “In Search of Dental Care: Two Types of Dentist Shortages Limit Children’s Access to Care” (June 2013), at http://www.pewtrusts.org/~media/legacy_uploadedfiles/pes_assets/2013.Insearchofdentalcarepdf.pdf.

⁴⁶ See U.S. Department of Health and Human Services, Health Resources and Services Administration, Bureau of Health Professions, “The Adequacy of Pharmacist Supply: 2004 to 2030” (December 2008), at <http://bhpr.hrsa.gov/healthworkforce/reports/pharmsupply20042030.pdf>; U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, Psychologists*, 2012-2013 Edition, at <http://www.bls.gov/oooh/Life-Physical-and-Social-Science/Psychologists.htm#tab-1>; and Teddi Dimeley Johnson “Shortage of U.S. Public Health Workers Projected to Worsen: About 250,000 New Workers Needed,” *The Nation’s Health* 38, no. 4 (2008), at <http://www.medscape.com/viewarticle/573792>.

⁴⁷ Allison Squires and Hiram Beltrán-Sánchez, “Strengthening Health Systems in North and Central America: What Role for Migration?” (Washington, DC: Migration Policy Institute, February 2013), at <http://www.migrationpolicy.org/research/strengthening-health-systems-north-and-central-america-what-role-migration>.

⁴⁸ Linda Rabben, “Credential Recognition in the United States for Foreign Professionals” (Washington DC: Migration Policy Institute 2013), pp. 4, 6-7, at <http://www.migrationpolicy.org/research/credential-recognition-united-states-foreign-professionals>.

⁴⁹ Minnesota Department of Health, Task Force on Foreign-Trained Physicians, “Report to the Minnesota Legislature” (January 2015), at <http://www.health.state.mn.us/news/pressrel/2015/physiciantaskforce012815.html>.

⁵⁰ Matt Vasilogambros and Mauro Whiteman, “Do the Most Hipster Thing Possible—Move to Des Moines,” *National Journal* (Oct. 16, 2014), at <http://www.nationaljournal.com/next-america/population-2043-do-the-most-hipster-thing-possible-move-to-des-moines-20141016>.

⁵¹ Lynn Hicks, “Dwolla founder’s burden of starting a tech revolution,” *USA Today* (Jan. 21, 2013), available at <http://www.usatoday.com/story/money/business/2013/01/20/dwolla-founder-ben-milne-1849469>; Eric Markowitz, “30 Under 30: Taking On the Entire Banking System,” *Inc.* (July 2, 2012), at <http://www.inc.com/30under30/eric-markowitz-ben-milne-founder-dwolla.html>.

hosts the Iowa Startup Accelerator⁵² and Gravitare, a co-working space,⁵³ after hosting the tech incubator Startup City Des Moines from 2011 to 2014.⁵⁴

- The same goes for Alabama, which has attracted a variety of large companies—Mercedes Benz U.S. International, Hyundai, Honda, and several aerospace industry companies—to move there and create jobs in the state. Alabama’s universities also require a skilled pool of workers, which is supplemented by skilled immigrant talent. The University of Alabama at Birmingham (UAB) is the largest single employer in Alabama with more than 23,000 employees, a major medical center, and a major medical research university.⁵⁵ UAB played a large role in Birmingham’s shift from an industrial iron and steel manufacturing center to a post-industrial service-oriented city. In 2013, UAB’s annual economic impact on Alabama exceeded \$5 billion.⁵⁶
- In Texas, San Antonio and Austin have built knowledge economies around the universities and research industries located there. Houston attracts high-skilled workers for the area’s oil industry.
- In South Carolina, Greenville and Spartanburg have attracted industries that need high-skilled workers.
- And the universities, research organizations, and corporations of the North Carolina Piedmont, in Charlotte, Greensboro, Raleigh, and the Research Triangle area, create a high demand for high-skilled workers.

An increasing number of local communities are recognizing the need to be receptive to immigrants—for example, as large numbers of U.S. workers have been migrating from “Rustbelt” cities to the “Sunbelt,” and cities must replenish their labor force. As a result, a growing list of cities and towns across the heartland are officially becoming places of welcome and openness to immigration.

In Michigan, for example, while only six percent of the state’s population is foreign-born, immigrants founded around one-third of high-tech companies in the state over the past decade.⁵⁷ The state, through its “Welcoming Michigan” campaign of building immigrant-friendly communities, clearly sees the need to attract immigrants to the area.⁵⁸ Detroit also recognizes this need. In 2010, the city released the “Global Detroit” report, which documents a start-up rate

⁵² Iowa Startup Accelerator, at <http://www.iowastartupaccelerator.com/>.

⁵³ Megan Bannister, “Move-in begins as Des Moines’ Gravitare opens to public,” *Silicon Prairie News* (Sept. 3, 2014), at <http://siliconprairienews.com/2014/09/gravitate-move-in/>.

⁵⁴ Megan Bannister, “Come celebrate the last three years in Des Moines with StartupCity,” *Silicon Prairie News* (Aug. 12, 2014), at <http://siliconprairienews.com/2014/08/come-celebrate-the-last-three-years-in-des-moines-with-startupcity/>.

⁵⁵ University of Alabama at Birmingham, “UAB Annual Impact on the Alabama Economy” (Birmingham, AL: University of Alabama at Birmingham, 2014), at <http://www.uab.edu/impact/>.

⁵⁶ *Ibid.*

⁵⁷ The Chicago Council, *US Economic Competitiveness at Risk: A Midwest Call to Action on Immigration Reform* (Chicago, IL: The Chicago Council on Global Affairs, February 2013), p. 23, at <http://www.thechicagocouncil.org/publication/us-economic-competitiveness-risk-midwest-call-action>.

⁵⁸ Welcoming Michigan, <http://www.welcomingmichigan.org/content/learn-more>.

for immigrant-founded high-tech firms in Michigan that is six times the rate of the native-born population.⁵⁹

Additionally, nearly 50 cities and counties such as Dayton, OH⁶⁰ have passed “welcoming resolutions”—formal proclamations by local elected leaders expressing their recognition of the importance of immigration to their local economy, and their openness to the continued contributions of immigrants.⁶¹ In Minnesota, local leaders also acknowledge the positive contributions of immigrants. As a member of the Minnesota Chamber of Commerce states: “Immigrants aren’t just an asset because they numerically increase the workforce. They are also playing a key role as entrepreneurs in Minnesota and have transformed neighborhoods in both Minneapolis and St. Paul while helping revitalize downtowns in several regional centers around our state.”⁶²

Finally, from 2008 to 2012, the following five metro areas experienced the fastest growth in foreign students: Corvallis, Oregon; Dayton, Ohio; Tuscaloosa, Alabama; Louisville, Kentucky; and Eugene, Oregon.⁶³ Not surprisingly, foreign students who remain in the United States following graduation tend to stay in the same geographic area where they studied.⁶⁴ In fact, around 45 percent of foreign students extend their visas to work in the same metropolitan area.⁶⁵ In Michigan, for example, the Michigan Global Talent Retention Initiative is the nation’s first international student retention program. GTRI partners with 32 Michigan college campuses and has over 60 “Global Opportunity” employers to help connect Michigan’s 28,000 international students (over 60 percent of whom are STEM majors) with unmet talent needs of Michigan companies.⁶⁶

II. The Problems with the Current Immigration System and Policy Recommendations

Most observers agree that our current immigration system is outdated and dysfunctional, making it more difficult for the United States to compete in the global marketplace and attract the power and potential of high-skilled immigrants. Yet our immigration laws and policies remain mired in the past and are often an impediment to achieving economic growth, job creation, and global competitiveness. As it stands, the current immigration system simply does not provide the numbers of visas needed to respond to the legitimate demands of our dynamic economy. High-skilled immigrants face years of waiting for an available visa and an endless array of bureaucratic delays. And immigrants who are enrolled in or graduate from U.S. universities are increasingly being recruited to other countries where immigration processes are far more welcoming.

⁵⁹ Global Detroit, *Global Detroit: Final Report* (Detroit, MI: 2010), p. 57, at http://www.welcomingamerica.org/wp-content/uploads/2011/06/global_detroit_full_report_with_appendices.pdf.

⁶⁰ Welcome Dayton, <http://www.welcomedayton.org/>.

⁶¹ Welcoming America: Building a Nation of Neighbors, <http://www.welcomingamerica.org/about-us/accomplishments>.

⁶² Bill Blazar, Senior Vice President of Public Affairs and Business Development, Minnesota Chamber of Commerce, quoted in Chicago Council, *US Economic Competitiveness at Risk*, p. 40.

⁶³ Neil G. Ruiz, *The Geography of Foreign Students in U.S. Higher Education: Origins and Destinations* (Washington, DC: The Brookings Institution, 2014), at <http://www.brookings.edu/research/interactives/2014/04/geography-of-foreign-students/#M10420>.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Global Detroit, “GTRI” (Detroit, MI: Global Detroit, 2014), at <http://www.globaldetroit.com/partner-initiatives/gtri/>.

Other countries are spending billions of dollars trying to recruit high-skilled workers, and global competition is only becoming more fierce. For now, the United States continues to be in a position of strength in the global battle for talent. But if we squander this opportunity to reform our immigration system, we are jeopardizing a competitive advantage that has been critical to establishing ourselves as the world leader in innovation and entrepreneurship.

The following policy recommendations provide a framework for exploring such reforms.

- *Update the Current Visa Caps and Per-Country Quotas to Reflect the Needs of Our 21st Century Global Economy*

Our current visa caps and per-country quotas are out of touch with current economic realities. The Immigration Act of 1990 provided the last major revision of our immigration system. It raised the annual ceiling on employment-based immigration from 56,000 to 140,000 and created the five employment-based immigration preferences in place today. For context, in 1990 only 15 percent of American households had a personal computer.⁶⁷

Despite dramatic changes to our economy since then—such as the entire technology boom—our immigration laws have not been updated to reflect current realities. For example, under current U.S. law, no more than 140,000 employment-based green cards are issued in a fiscal year. Wait times for skilled immigrants range from 6 to 12 years (or more) in most categories.⁶⁸ Moreover, the H-1B visa for highly skilled immigrants is currently capped at 65,000 visas per year, with 20,000 additional visas for foreign professionals who graduate with a Master’s or Doctorate from a U.S. university. The demand for these visas has outstripped supply every year since 2003, when the quotas were reduced from 195,000 back down to the 65,000 limit set in 1990. In some years, the limit has been reached on the first day the visas are made available.⁶⁹

Our immigration policies should take steps to eliminate the immigrant visa backlog. The long wait for visas means that employers seek out temporary workers when what they really need is permanent workers. As a result, the temporary visa programs are strained. This is inefficient and should be addressed by Congress.

Our laws and policies also must recognize that the H-1B and other temporary nonimmigrant visa programs play an important role in U.S. economic growth, innovation, and competitiveness. Companies, including those that make world-class products and deliver services to clients across the economy, rely on these visa programs to fill labor-market gaps and perform critical business functions.

⁶⁷ Written Testimony of Brad Smith, General Counsel and Executive Vice President, Legal and Corporate Affairs, Microsoft Corporation, to U.S. Senate Judiciary Committee, Hearing on High-Skilled Immigration, Washington D.C. (April 22, 2013), p. 8, at <http://www.judiciary.senate.gov/imo/media/doc/04-22-13BradSmithTestimony.pdf>.

⁶⁸ Stuart Anderson, “U.S. Immigration Reform Should Focus on Improving the Employment-Based Visa System,” Immigration Reform Bulletin (Washington, DC: Cato Institute, January 2011), at http://object.cato.org/sites/cato.org/files/pubs/pdf/irb_january2011.pdf; National Foundation for American Policy, “Employment-Based Green Card Projections Point to Decade-Long Waits” (November 2009), at <http://www.nfap.com/pdf/091117pb.pdf>.

⁶⁹ Immigration Policy Center, *High-Skilled Workers and Twenty-First Century Innovation: The H-1B Program’s Impact on Wages, Jobs, and the Economy* (Washington, DC: American Immigration Council, April 2014), at <http://www.immigrationpolicy.org/just-facts/h-1b-program%E2%80%99s-impact-wages-jobs-and-economy>.

One lesson learned from the immigration reforms of 1986 and 1990 is that it is impossible to predict the business conditions or the demands of the U.S. labor market years in advance. We should not box ourselves in with arbitrary visa caps and per-country quotas.⁷⁰

- *Create Pathways to Retain Talent Educated and Trained in the United States*

Growing numbers of U.S.-educated immigrants are returning to their home countries. Yet, these graduates offer much-needed skills and talent and can help to address our current labor shortages and ensure that the United States remains competitive in a global market. The Brookings Institution's Metropolitan Policy Program concluded that, "metro areas that retain high shares of their foreign graduates under the temporary Optional Practical Training (OPT) program tend to be either large diversified economies (e.g., New York, Los Angeles), or specialized labor markets that align closely with foreign graduates' training (e.g., Honolulu, Seattle, Las Vegas)."⁷¹ Particularly in the latter category, it is crucial for these markets to retain those graduates whose training is aligned with local needs. The U.S. immigration system should provide clear and efficient pathways to both permanent residence and temporary work visas for foreign-born graduates of U.S. universities.

- *Support STEM Education in the United States to Prepare for Future Labor Needs*

Although the United States needs policies that help retain talented foreign-born graduates from our universities, at the same time, we must commit to strengthening and encouraging STEM education at the secondary and post-secondary levels, as well as retraining our mid-career workers. Dedicated funding from increased private sector visa fees to support STEM education and training is crucial to this effort. Immigration and education reforms together will help solve the problem of a more robust U.S. STEM pipeline.

- *Pursue Enforcement Actions Against Employers Who Violate the Laws in Order to Protect U.S. Workers*

Certainly, instances of abuse must be taken seriously, and our permanent and temporary immigration categories can and should be strengthened to guard against fraud and to protect workers. For example, there are employers who bring an H-1B worker here and fail to pay the required wage or who cheat the system by calculating the required wage in an inexpensive market and then employing the person in a more expensive market where the wage would be higher. These are serious violations, but they are violations that can be enforced under today's rules. Any solution to this problem, including improved enforcement, that denies the important role that our temporary skilled worker visas play in a global economy is a dangerous mistake.

- *Implement Reforms that Will Increase Flexibility, Predictability, and Consistency in the Immigration Process*

⁷⁰ Immigration Policy Center, *The U.S. Economy Still Needs Highly Skilled Foreign Workers* (Washington, DC: American Immigration Council, 2011), at http://immigrationpolicy.org/sites/default/files/docs/U.S._Economy_Still_Needs_Highly_Skilled_Foreign_Workers.pdf.

⁷¹ Neil G. Ruiz, *The Geography of Foreign Students in U.S. Higher Education: Origins and Destinations* (Washington, DC: The Brookings Institution, 2014).

More flexibility, predictability, and consistency are needed in the U.S. immigration system. For example, the permanent-temporary visa dichotomy often fails to work in the best interests of employers or workers. In some cases, employers may only be able to obtain visas for temporary workers when they actually need permanent workers. Workers who arrive on temporary visas may find permanent jobs, but are unable to adjust to a permanent visa under the current system. And employees are limited in their ability to change jobs, even though this adversely impacts both individual workers and the U.S. economy. Put simply, our legal immigration system does not have the flexibility needed to respond to the country's evolving economic needs.

Moreover, our current system lacks consistency and predictability in the adjudication of immigration applications. For example, visa denial rates have gone up and, increasingly, employers must respond to time-consuming Requests for Evidence (RFE) after they have submitted an application. According to the National Foundation for American Policy, there are "numerous examples of superfluous Requests for Evidence. Employers say delaying applications for months effectively kills applications for people working on time-sensitive projects."⁷² Also, "if one considers that in FY 2011 63 percent of all L-1B petitions received a Request for Evidence and 27 percent were issued a denial, that means U.S. Citizenship and Immigration Services adjudicators denied or delayed between 63 percent to 90 percent of all L-1B petitions in 2011. In comparison, in FY 2004, only 2 percent of L-1B petitions for employees with specialized knowledge involved a Request for Evidence." Additionally, "denial rates for H-1B petitions increased from 11 percent in FY 2007 to 29 percent in FY 2009. For H-1B petitions, the Request for Evidence rate rose from 4 percent in FY 2004, to a high of 35 percent in FY 2009, according to USCIS."⁷³ Clearly, these inefficiencies and the uncertainties they perpetuate are costly to employers and employees.⁷⁴

Reforms should create a nimble and efficient system that responds in real-time to the needs of the market by giving employers the ability to fill positions quickly. This includes increased ability to transition from one visa to another; expanded portability, which would provide more flexibility in changing jobs; and clearer rules and adherence to established policies.

III. Conclusion

As the Council on Foreign Relations' Independent Task Force on U.S. Immigration Policy noted several years ago:

"Immigration has helped make the U.S. economy, despite its recent difficulties, into the world's strongest and most dynamic; maintaining that economic advantage is the foundation of America's influence and power in the world. If the United States loses its economic edge, its power will diminish. Getting immigration policy right is therefore critical to U.S. economic and political leadership."⁷⁵

⁷² Stuart Anderson, "New Research Finds Soaring Denial Rates for High Skill Professionals," *Forbes* (February 12, 2012), at <http://www.forbes.com/sites/stuartanderson/2012/02/12/new-research-finds-soaring-denial-rates-for-high-skill-professionals>.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ Jeb Bush, Thomas F. McLarty III, and Edward Alden, *U.S. Immigration Policy: Independent Task Force Report No. 63* (Washington, DC: Council on Foreign Relations, 2009), p. 13, at <http://www.cfr.org/immigration/us-immigration-policy.p20030>.

The United States must not squander the brain gain it has enjoyed in the past by letting its outdated immigration system decay. Many other countries around the world have taken steps to attract high-skilled workers who are now choosing other destinations when they encounter barriers for migration to the United States. For the United States to remain globally competitive, we must embrace the contributions and opportunities brought by high-skilled immigrants.

Yet, we must be mindful that the admission of high-skilled immigrants, though a critical part of our immigration system, is only one piece of a much larger system that has been largely abandoned. Our elected leaders must strive to create a workable, humane system of immigration that benefits workers, families, and business across the entire country and economy. Today's hearing provides a welcome opportunity to delve into an integral aspect of this important conversation.

Testimony of
John M. Miano, J.D.
representing the
Washington Alliance of Technology Workers,
Local 37083 of the Communication Workers of America,
the AFL-CIO (“WashTech”),
before the
Senate Committee on the Judiciary
March 17, 2015

About Washtech

WashTech/CWA was formed in 1998 by Microsoft contract employees in Redmond, Washington and quickly affiliated with the 700,000-member strong Communications Workers of America (CWA).

By working with the CWA and taking the lead on issues that affect our fellow high-tech workers, our voices are being heard—in the press, in the boardrooms, and in Congress. High-tech workers from Silicon Valley to Boston are joining together to work to keep the jobs for which many of us were educated and trained.

Our Mission

WashTech/CWA is an innovative and influential union whose members advocate for all technology workers in Washington State and beyond.

We are a visionary community of activists and a leading voice for our members in the global economy.

We help build economic security and fair working conditions through collective action, bargaining and legislative advocacy.

Introduction

In my oral testimony I focused on the OPT guestworker program. This written testimony has three parts. The first part surveys a number of guestworker programs and identifies some of the problems in each. For many of these guestworker programs, there is very little information available. The second part puts forth a plan for reforming guestworker programs in general as part of an overall reform of the immigration system. The third part addresses pending legislation—at this point in time, the I-Squared Act.

The Post Completion OPT Program

The post completion Optional Practical Training program (“OPT”) is likely to be America’s largest guestworker program. The number of OPT guestworkers has soared in recent years from 28,497 in 2008 to 123,328 in 2013. For comparison there were 128,292 H-1B visas approved in 2013. Given those trends, is it likely there are already more aliens entering the workforce on OPT than H-1B.

OPT is unique among guestworker programs in that it is entirely the creation of regulation. There is no statutory authorization whatsoever for aliens to work on student visas.

On its own initiative, the Immigration and Naturalization Service started allowing aliens to work on student visas in 1947 through regulation. At that time, work on student visas was limited to that which was required or recommended by the school and the work was supervised by a training agency. By 1986, the INS was permitting some aliens to work after graduation on student visas when the school certified a similar work experience was not available in their home countries. In 1991, the INS started allowing all graduates to remain in the United States to work for up to a year after graduation. In 2002, USCIS allowed aliens to work after graduation without having ties to a school. In 2008, USCIS expanded the duration of OPT to up to 35-months for the very purpose of circumventing the statutory limits on H-1B visas. DHS recently announced that it will extend the duration even longer.

OPT has no labor protections of any kind. Aliens on OPT do not even have to be paid at all. While DHS requires aliens to work in an area related to their major area of study, DHS has no ability to ensure that this happens. Under OPT, over 125,000 foreign workers a year are simply turned loose in America with no supervision or restrictions.

Congress has exempted aliens on student visas from Social Security and Medicare tax. Therefore, aliens working on OPT are inherently cheaper to employ than Americans. This arrangement makes OPT ideal for the contract labor (bodyshopping) industry. An employer can hire aliens on OPT then farm them out to other companies. The industry practice is for the employer to take a percentage of the wages paid by the company where the alien actually works. Unlike H-1B, the employer does not have to pay the alien when he is not billing.

The fundamental problem with OPT is that these aliens are on student visas but they are not students by any definition of the word. Under the statutory definition of F-1 student visa status, aliens on student visas must be *bona fide* students, solely pursuing a full course of study at an approved academic institution. In creating OPT, the INS (and now DHS) have simply ignored the statutory requirements Congress imposed on student visas.

DHS does not published data on OPT so there is little information available. I have received data on OPT obtained through FOIA. The clear trend in the data was that the academic institutions supplying the largest number of OPT workers tended to be those with low admission standards.

WashTech's lawsuit alleges that DHS did not follow the procedures required by the Administrative Procedure Act when it promulgated the 2008 regulations expanding OPT. DHS promulgated the regulations without giving notice and comment; resorted to misrepresentation to establish a worker shortage; and improperly used incorporation-by-reference in the regulation. WashTech's also challenged the OPT program itself as being in excess of DHS's statutory authority.

In November 2014, the District Court for the District of Columbia held that WashTech had standing to bring the action but that it could not pursue the claims addressing whether the OPT program, as it existed prior to 2008, is lawful. The case is scheduled to be over April 6th, 2015.

I. Student visas should be solely for students.

Congress's sound policy of student visas being solely for education is under attack. Industry views foreign students as a source of cheap labor and universities see foreign students

as a source of full tuition and means to pack graduate programs beyond economic need. An immigration system that uses student visas as a source of foreign labor is inherently unworkable and unenforceable.

II. Congress should look at the role the doctrine of legal standing plays in administrative abuse.

It is worth pointing out the role the doctrine of standing plays in this abuse. Congress delegates authority to agencies to implement regulations. At the same time Congress has delegated the authority to ensure those regulations conform to its statutes to the Federal Courts.

The Supreme Court has created rules of standing that a plaintiff must overcome before challenging regulatory abuse. Unfortunately, standing is more politics than law. *See, e.g.*, Richard J. Pierce, "Is Standing Law or Politics?", 77 N.C.L. Rev. 1741. The body of case law addressing standing is inconsistent (to be polite).

Agencies can ignore their statutory authority and the procedures required by law because they work under the assumption that they can get challenges to unlawful regulations dismissed on standing.

Precompletion OPT and Curricular Practical Training (CPT)

The pre-completion OPT program and CPT programs also allow aliens to work on student visas while enrolled at a school. There is very little known about these programs because DHS reports no data. I have seen evidence that there are operating in the U.S. that are merely functioning as conduits for aliens to enter the job market under student visas through CPT. The information I have seen suggests that a comparison of work locations to school locations will show widespread abuse in these programs. I believe one would find large numbers of aliens are working in locations so remote from their school that they could not possibly be attending classes as well.

A New Threat to the Immigration System

There has been a long history of administrative abuse of the immigration system. Over time, the executive branch starts admitting labor on visas for which such labor is not intended. In point of fact, the H-1B visa was created to counter such administrative abuse.

DHS has recently adopted a new interpretation of the Immigration Reform and Control Act of 1986. Under this interpretation, DHS claims a provision that bans employers from hiring illegal aliens grants it unlimited authority to authorize aliens to work in the United States.

In other words, DHS is now claiming that it—not the Congress—determines the conditions for aliens to work in the United States.

DHS recently used this interpretation to justify authorizing aliens on H-4 visas to work (with no labor protections whatsoever) when Congress has not granted them that authority.

If Congress does not rein in this interpretation, every protection for working Ameri-

cans in the immigration system can be wiped out.

B Visas

B visitor visas are not supposed to be used for work in the United States. However, this is clearly happening. When I worked for Digital Equipment in the early 1990's, I saw first hand the company using B visas to import foreign workers. Then the purpose was to assist foreign contract workers to dodge income taxes. When a B visa expired, the foreign workers took a vacation to Bermuda or the Bahamas, got a new B visa, and returned to the United States.

In the early 2000's, working as a computer consultant I saw, first hand, foreign outsourcing companies using B visas to circumvent H-1B visas. Certain foreign consultants would suddenly disappear for a few weeks to return home every so often to get a new B visa.

The foreign workers would throw a party when a coworker switched to an H-1B visa because that meant they had to be paid more and they became eligible for green cards.

We knew the names of the companies supplying the foreign workers but we did not know which company supplied each specific worker. Therefore, it was impossible to know which companies were we using B visas.

Infosys, the largest user of H-1B visas, recently settled a lawsuit with the Department of Justice over using B visas to import foreign workers.

L Visas

L (intrancompany transfer) visas authorize admission to managers, executives, or employees with specialized knowledge.

There is virtually no data available on L visas. There is great concern among labor groups over this program because there are no labor protections and there is suspicion that employers are using the "specialized knowledge" path to circumvent restrictions on other guest worker programs.

O Visas

O visas for highly skilled workers are not generally a concern for labor right now. The high standards required for an O visa make this program the most difficult to abuse. However, this view will change if the standards for O visas are lowered. There has been talk of administrative proposals to do just that and signs that the O visa standards are being ignored in some instances.

American workers would not want to see a repeat of what happened with the H-1 visa that existed before 1991. The H-1 visa was intended to serve the purpose of the current O visa. Because it was only supposed to apply to highly skilled workers, it contained no labor protections. However, the INS started classifying anyone with a college degree as being eligible for H-1 visas. This deprived professional occupations any protection from foreign labor. Congress responded to this administrative abuse by creating the H-1B visa and imposing limits on admissions.

H-4 Visas

H-4 visas are for dependents of H-1B visa holders. On February 25, 2015, DHS, without any statutory authority, announced it would allow certain H-4 holders to work. Congress should be concerned that DHS now believes *it* has the authority to determine which visas allow aliens to work.

H-1B Visas

I can say the most about H-1B visas because, as little as it is, there is more information available about this program than any other.

I. The H-1B Program has been a complete failure.

Excerpts from the legislative history of the H-1B program demonstrate that it has been an abject failure. 2 Igor I. Kavass, Bernard D. Reams, Jr., *The Immigration Act of 1990: A Legislative History of Pub. L. No. 101-649* 1997.

The Committee believes that increased immigration levels should not lead to a dependence on foreign workers. P. 45

Giving more foreign labor to industry is like giving cocaine to an addict: they simply want more. The number of industry leaders who come to Congress begging for more foreign labor demonstrates that the H-1B program created dependence on foreign labor.

Employers seeking foreign workers have a special obligation to ensure that obtaining workers from abroad is a last resort. P. 45

As we can see from Southern California Edison, Walt Disney World, Northeast Utilities, ... foreign labor has become the first choice.

[U]nwarranted administrative expansion of the statutory terms in the H-1 category has resulted in a labor impact necessitating a limitation on those admissions. [sic] P. 75

The number of H-1 visas Congress found excessive in 1990 was 78,000. P. 44. The Immigration Act of 1991 set the H-1B cap at 65,000. In FY 2013 the number of new H-1B petitions approved was 128,291.

II. H-1B has a poorly defined purpose.

H-1B workers are officially *non-immigrants*. At the same time, H-1B workers are explicitly allowed to apply for immigrant status. The various provisions of the H-1B program are confused because the program is not strictly for guestworkers.

III. The H-1B statutes are overly long, convoluted, and misleading.

The H-1B program is worthy of 2, maybe 3 pages of statute. The H-1B statutes are so confusing that it takes a lawyer just to figure out the fee for an H-1B visa in any given circumstance.

There are separate rules for:

- H-1B Dependent employers
- Exempt H-1B workers
- Academic and research employers
- And separate H-1B-look-alike visas for different countries.

There should be one set of rules that apply to all H-1B visas. The complexity has been growing unchecked over the years.

One of the clearest examples is enforcement. It would take one sentence to say, “The Department of Labor has authority to enforce the provisions of this section.” Instead, the H-1B statutes go on for pages specifying when and when not, the DoL may enforce the law.

IV. H-1B allows foreign workers to be paid extremely low wages.

The current law allows H-1B workers to be paid at the 17th percentile of U.S. wages. 8 U.S.C. § 1182(n) requires H-1B workers to be paid at least the prevailing wage. However, 8 U.S.C. § 1182(p) requires the Department of Labor to provide four skill based prevailing wages. There is no requirement that H-1B worker be paid at his actual skill level (If there were such a requirement, it would be unenforceable—how does one objectively measure skill?).

Skill Level	Wage Percentile	% of LCAs	Programmer Wage in D.C.
IV (Highest)	67th	5%	\$96,907
III	50th	8%	\$82,971
II	34th	31%	\$69,056
I (Lowest)	17th	56%	\$55,120

Notice that if that law required H-1B workers to be paid at least the actual prevailing wage, the H-1B quota would not come close to being used up.

Also notice employers call H-1B workers “highly skilled” when they want more of them but employer say those same workers are low skilled when it comes to determining what they have to be paid.

V. The H-1B statutes explicitly allow employers to replace Americans with foreign workers.

An employer may replace an American worker with an H-1B worker (either directly or indirectly) unless:

1. The replacement worker does not have a master's degree; and
2. The worker is paid less than \$60,000; and
3. The employer has more than 15% of its workforce on H-1B visas (not counting those paid at least \$60,000 or with master's degrees or higher) or has been found to have committed a willful violation within the past five years; and
4. The replacement takes place within 90 days of filing the H-1B visa petition.

When the H-1B quota is used up more than 90 days before the start of the fiscal year, these restrictions never apply. In many areas of the country, the average wage for a tech-

nology worker is much higher than \$60,000. There are many “quickie” master’s degree programs. Therefore, all four of these conditions are unlikely to occur together.

The ability to replace Americans is deliberately hidden through two layers of indirection within the H-1B statutes. 8 U.S.C. § 1182(n)(1) bans replacing Americans except in the case of an application described in 8 U.S.C. § 1182(n)(1)(E), which allows such replacements to take place when the foreign workers meets the requirements of 8 U.S.C. § 1182(n)(3). Combining the provisions of those three subsections gives the restrictions listed above.

Examples of Companies That Have Replaced Americans with H-1b Workers

- AIG¹
- AT&T²
- Bank of America³
- Best Buy⁴
- Cargill⁵
- Harley-Davidson⁶
- The Kansas City Star⁷
- Lucent⁸
- Merrill Lynch⁹
- NASD¹⁰
- A.C. Nielsen¹¹
- Microsoft¹²
- Molina Healthcare¹³

¹ William Branigin, *White-Collar Visas: Back Door for Cheap Labor?*, WASHINGTON POST, Oct. 21, 1995, A1

² Douglass Crouse, *Dun Workers Fear Layoffs*, DAILY RECORD, June 3, 2000

³ Lisa Vaas *Fair Trade on Jobs?*, EWEEK, May 13, 2002

⁴ Carol Sliwa, *Best Buy Hit With Lawsuit Over Layoffs of IT Workers*, COMPUTERWORLD, Nov. 22, 2004

⁵ Mike Hughlett, *Cargill to outsource IT services; 900 jobs affected*, MINNEAPOLIS STAR-TRIBUNE, Mar. 27, 2014

⁶ Laura Wides-Munoz and Paul Wiseman, *Backlash stirs in US against foreign worker H-1B visas*, ASSOCIATED PRESS, July 7, 2014

⁷ *KC Star lays off about 30*, KANSAS CITY BUSINESS JOURNAL, Sept. 17, 2008

⁸ Douglass Crouse, *Dun Workers Fear Layoffs*, DAILY RECORD, June 3, 2000

⁹ Brian Grow, *A Mainframe-Size Visa Loophole*, BUSINESSWEEK, Mar. 5, 2003

¹⁰ William Branigin, *White-Collar Visas: Back Door for Cheap Labor?*, WASHINGTON POST, Oct. 21, 1995, A1

¹¹ Press Release, Nielsen and Tata Consultancy Services Reach Agreement in Principle for IT & Operations Support Services Worldwide, A.C. Nielsen, Oct. 18, 2007

¹² Patrick Thibodeau, *Microsoft signs outsourcing pact with Indian giant Infosys*, COMPUTERWORLD, Apr. 13, 2010

¹³ Patrick Thibodeau, *Fired IT workers file lawsuit claiming H-1B workers replaced them*,

- Northeast Utilities¹⁴
- Pfizer¹⁵
- Prudential¹⁶
- SeaLand¹⁷
- Southern California Edison¹⁸
- Walt Disney World¹⁹

*Memo to Dun & Bradstreet Employees Asking them to Cooperate as they
are Replaced by Foreign workers.*

From: Hessamfar, Elahe
Sent: Monday, March 20, 2000 1:16 PM
To: D&B GTO U.S.²⁰
Subject: Offshore development

Dear all,

As the business world around us becomes more and more competitive, large companies such as ours must find new ways to become more nimble and flexible to be able to respond more quickly to the competitive environment. We must sharpen our focus on our core competencies and move to outsource work that can be done more efficiently by others. GTO's strategic value lies in the expertise we offer our business partners in how to effectively use technology to solve business problems.

In the second half of 1999, we began to look seriously at the possibility of offshoring both software development and application maintenance as a means to reduce the cost structure of GTO. By moving to this type of model, we can become a more flexible organization by adding or reducing resources based on business needs. As we move to a more variable resourcing strategy that includes work being done at off-shore development centers, the skills desired and roles required within GTO will change. Changing our operational model in this way

COMPUTERWORLD, July 12, 2011

¹⁴ Patrick Thibodeau, *Utility cuts IT workforce, hires Indian outsourcers*, COMPUTERWORLD, Oct. 1, 2013

¹⁵ Kevin Fogarty, *Pfizer Accused of Using U.S. Workers to Train Foreign Replacements*, eWeek, Nov. 5, 2008

¹⁶ Julie Gallagher, *Prudential Continues To Take Offshore Plans to New Levels*, INSURANCE & TECHNOLOGY, Mar. 7, 2002

¹⁷ William Branigin, *White-Collar Visas: Back Door for Cheap Labor?*, WASHINGTON POST, Oct. 21, 1995, A1

¹⁸ Patrick Thibodeau, *H-1B loophole may help California utility offshore IT jobs*, COMPUTERWORLD, Apr. 17, 2014

¹⁹ Greg Fox, *Walt Disney World information technology workers laid off*, WESH Orlando, Jan. 30, 2014

²⁰ Memo to Dun & Bradstreet Global Technology Organization

will create new opportunities for individuals within GTO who have the skills to be business analysts, designers, architects, project leaders, quality assurance analysts and other roles with greater business impact.

We've chosen two organizations to assist us in this endeavor - WIPRO Infotech and Cognizant Technology Solutions (CTS).²¹ These vendors have established Off-shore Development Centers (ODCs) in India where they build and support software for many large corporations such as ours. Over the course of the next year, these two organizations will become extensions to the GTO organization. We've asked them to assist us in determining the priority in which systems will be moved off-shore. In order to facilitate this prioritization, representatives of both companies are meeting with application development and support teams to understand our applications. I ask that you consider them as members of our team and give them your full cooperation during this analysis. In the future, project teams will be composed of a mix of D&B resources, on-shore resources from these firms,²² as well as off-shore resources in India. Within our model, all parties will work under the guidance and direction of the Program Manager as I outlined to you in a recent communication.

Marcia Hopkins has been named the Program Manager for this strategic initiative. She is tasked with creating the overall plan for implementing the off-shore model in GTO. By end of the first quarter, she will set the priority for off-shoring existing application support, maintenance and new software development. In addition, she will define the infrastructure elements (the "factory") required to successfully manage resources in India as part of our development teams and develop the plan for implementing those elements. Finally, the off-shore program plan will address the "people" elements of this transition including: identifying the roles needed to support the new model, inventorying the skills and roles that exist today versus those required in the future and defining the process for transitioning work from employees to off-shore consultants in cases where that makes business sense.

The process of moving work to the ODCs will begin in April and continue throughout the next eighteen months. I know that you must be wondering "what happens if my job gets transferred to the ODC?"

I assure you that these decisions will not be made lightly. Decisions to move work off-shore will be made after careful analysis of the business situation and will only be done in cases that make business sense. If your current role is to be impacted, you will be provided with notice to begin retraining or to interview for other internal positions. Should no suitable alternative exist for you at the time your application/project moves off-shore, severance benefits will be provided to you under the Career Transition Plan.

Your continued commitment and dedication are necessary to ensure a smooth transition to this new model. I thank you in advance for your support & cooperation and we will continue to update you with more specifics of the program as

²¹ Wipro and Cognizant are two of the largest users of H-1B visas.

²² Offshoring companies use H-1B visas to provide on-site support.

they evolve. In the interim, if you have any questions, please feel free to contact your manager, Marcia Hopkins or Jean Chesterfield.

VI. The H-1B program allows employers to bind the foreign workers to their employer.

In the United States, Employers have the benefit of employment-at-will where they can terminate employees for any reason or no reason at all (with a few public policy exceptions). In addition to that advantage, the H-1B program explicitly authorizes employers to assess "liquidated damages" against H-1B workers who quit. An H-1B worker who tries to change jobs can find himself in the position of having to pay tens of thousands of dollars to his former employer.

Ironically, this change was added to H.R. 3736, 105th Congress, at the same time the provisions explicitly allowing employers to replace Americans with H-1B workers were added.

The problem is not just Indian Companies

Here is an advertisement posted on IBM's corporate web site for a programming job in Bentonville, Arkansas. Applicants must be on OPT and be Indians. Notice that the indexed work location was listed as "Bangalore, Chennai, Hyderabad, Kolkata, Pune" so that Americans would not find it using a search by location.

9/20/12 Jobs at IBM - Powered by netMEDIA - Job Application Developer - C++ Landed - GBS

Jobs at IBM

- Job search
- Browse jobs
- Job basket
- Contact us
- Help



Select your language
English

Application Developer - C++ (Landed) - GBS			
Job ID	GBS-0508729	Job type	Full-time Regular
Work country	India	Posted	01-Aug-2012
Work city	Bangalore, Chennai, Hyderabad, Kolkata, Pune	Job area	IT & Telecommunications (non consulting)
Travel	Up to 3 days a week (home on weekends-based on project requirements)	Job category	IT Specialist
Business unit	GD	Job role	Application Developer
Commissionable/Sales- Incentive jobs only	No	Job role skillset	C++

Job description
2.5 to 3 yrs of Experience in C/C++/Unix. Exposure to SDLC, Communication and analytical skills. Coding experience is a must

Desired Candidate Experience

At least one year of professional experience in IT programming or skill relevant application development

Graduate with at least a Master's degree in a STEM degree program (Science, Technology, Engineering, or Mathematics) from a US university

Flexible to travel or relocate anywhere within the US based on project requirements

Should have a valid OPT work permit for legal work authorization in the US

Must possess India work authorization.

WORK Location: Bentonville, AR

Required

- Bachelor's Degree
- English: Fluent

IBM is committed to creating a diverse environment and is proud to be an equal opportunity employer. All qualified applicants will receive consideration for employment without regard to race, color, religion, gender, gender identity or expression, sexual orientation, national origin, genetics, disability, age, or veteran status.

[View similar jobs](#)
[View all jobs for this location](#)
[View all jobs for this country](#)

IBM was fined \$44,000 for placing these and similar advertisements. Such penalties are far to small to prevent this kind of abuse. In comparison, IBM's CEO earned

\$19,345,125 in 2014. The fine for flagrant discrimination against American workers is about a half-day's pay for IBM's CEO.

Companies cannot find workers because of poor recruitment.

I. Computer jobs are over specified.

Compare the first search result on Monster for an attorney job at a regional law firm near my home—

The image is a screenshot of a job listing on the Monster website. At the top, the company name 'Brach Eichler L.L.C.' is displayed. Below this, there is a sidebar on the left and a main content area on the right. The sidebar, under the heading 'Job Summary', lists the following information: Company: Brach Eichler L.L.C.; Location: Roseland, NJ 07068; Industries: Legal Services; Job Type: Full Time (indicated by a radio button) and Employee (indicated by a radio button). The main content area is titled 'Attorney' and 'About the Job'. It features the company logo 'BRACH EICHLER LLC' and a bolded statement: 'One of New Jersey's Top 40 law firms has the following positions available:'. Below this, two job positions are listed: 'Real Estate Associate with 2 to 5 years experience in transactional real estate needed for a very busy investment real estate practice. NJ Bar admission required; NY Bar admission preferred.' and 'Healthcare Associate with 7+ years experience dedicated to healthcare, corporate and regulatory matters. NJ Bar admission required; NY Bar admission preferred.'

—to the first Java programming job in a search on DICE:

Job Description:

The Architecture Group at IPC R&D is seeking experienced software engineers and architects to join a team of hands on system architects. The ideal candidate will have a strong background in software development, will have a passion for technology, be creative and have expertise in one or more of the following areas –

- Core J2EE – Enterprise application architectures, web applications, application layer scaling & clustering, J2EE technology stack, frameworks like Spring etc.
- Security – Standards, PKI, key management, compliance etc.
- Policy/Rules engines, RBAC, ABAC, Identity management etc.
- Distributed databases – Relational or NOSQL
- VOIP, SIP, converged-communications, CTI etc.

The position requires a strong background in software development preferably in Java and in a J2EE environment, except in the case of candidates who have security as their core area of expertise. The functions of the System architect includes interfacing with Product Management to analyze market requirements and come up with high level solutions, often by building proofs of concepts, reference implementations and feasibility studies. The position also requires making architectural presentations to stakeholders, including customers. The candidate should be able to collaborate well with peer architects, the software development and Quality engineering teams and other stakeholders. The system architect should be able to think through a problem and come up with solutions that leverage technology, with focus on cost and time to market.

Required Experience:

- Software development experience in a Java/J2EE environment as lead developer or architect.
- End to End product development experience.
- Experience working with Linux or any other flavor of UNIX.
- Must have built products, either as lead designer or architect that have been successfully delivered to the field.
- Strong interpersonal and communication skills.
- Strong presentation skills.
- Well versed with TCP/IP based networking and troubleshooting.
- Prior experience as web architect or web application development a plus.
- Experience with open source frameworks and technologies.

Required Education:

- Bachelor's or Master's degree in Computer science or a related field.

Note the specificity of the programmer job requirements to the generality of the lawyer job requirements. Keep in mind the candidate has to get past both the recruiting company and the actual hiring company (if it even exists). The lawyer candidate applies directly to the hiring firm.

The firms that supply H-1B workers get around this problem by making fraudulent resumes.

II. Few job postings are for actual jobs.

These are the C++ jobs listed within 10 miles of my home on DICE.

(C++) jobs in 07901

11 positions

1

Sip/VOIP/C++ Systems Engineer

Case Interactive Union, NJ 7 Hours Ago

Embedded Software Engineer

TerkoTech IT/Security Staffing Summit, NJ 1 Month Ago

Enterprise Network Product Firmware And Software Engineer

LGS Innovations LLC Florham Park, NJ 4 Weeks Ago

Director Architecture - Facets Development Job

Trizetto Corporation Union, NJ 11 Hours Ago

**Salesforce Developer / Salesforce Technical Consultant
Salesforce.co**

Comrise New Providence, NJ 5 Hours Ago

Salesforce Technical Consultant

Marsh Consulting Services New Providence, NJ 44 Minutes Ago

Salesforce Developer-H1 Transfers Are Also Welcome

AppsFusion Inc New Providence, NJ 6 Hours Ago

Software Engineer - .NET Job

Trizetto Corporation Union, NJ 11 Hours Ago

Salesforce.com Developer

Beacon Hill Staffing Group, LLC New Providence, NJ 3 Hours Ago

Selenium Automation Lead

AgreeYa Solutions Union, NJ 7 Days Ago

Systems Engineer

Shain Associates Berkeley Heights, NJ 1 Day Ago

Not a single posting is for an actual job. These are all postings made by agencies. A job

seeker has no way to tell if the poster is just collecting resumes or whether there is a job. In fact, some of those listed are duplicates. For example, these—

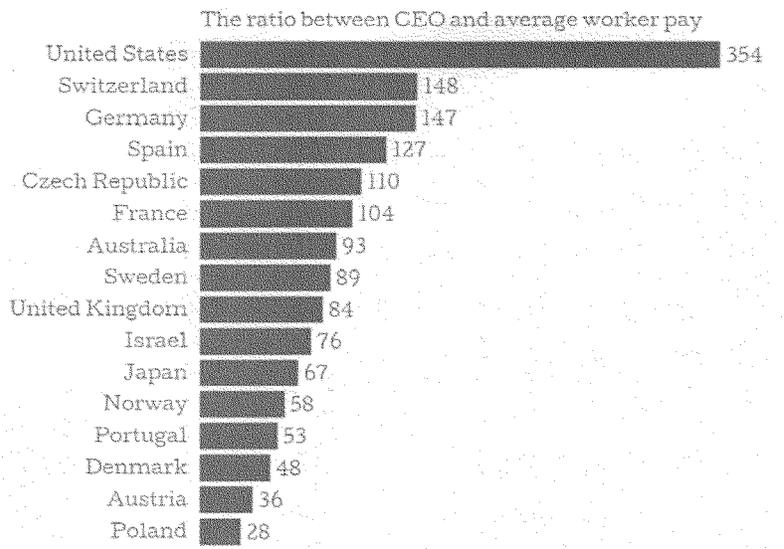
- Salesforce Developer / Salesforce Technical Consultant Salesforce.co
- Salesforce Technical Consultant
- Salesforce Developer-H1 Transfers Are Also Welcome
- Salesforce.com Developer

—clearly are all for the same job posted through different agencies. American technology workers are frustrated because they hear repeated claims that there are huge numbers of jobs available but, when they go to job boards, there are few, if any real jobs posted.

We have a broken labor market for American Citizens

- Wages for working Americans have been flat
- Major technology companies collude over hiring in violation of Anti-Trust laws
- All net job growth is going to people not born in the United States.
- Financial Incentives are twisted. The CEO of Northeast Utilities (Now Eversource) replaced 200 Americans with H-1B workers and received a \$1,300,000 pay raise. Boston Globe, March 13, 2015. Roughly one-third of the on-paper savings from 200 job losses are going straight into the CEO's pocket.
- The wage gap between workers, including skilled workers, and CEO's is soaring.

It pays to be a CEO in the U.S.



Made with Chartbuilder

Data: How Much (More) Should CEOs Make?

Washington Post, September 24, 2014

It is time for real Reforms.

I. American workers must come first.

Since the creation of the H-1B program, Congress's priorities has been:

1. Give employers access to cheap labor; then
2. Help H-1B workers stay in the job market

—with American workers completely ignored.

American workers should be the *first* concern in when addressing the importation of labor.

II. Create a cause of action for Americans against employers who abuse guest worker programs.

Currently, the only recourse for Americans who are adversely affected by H-1B is to file a complaint with DoL and hope that it is acted on. Such complaints must fit the narrow bounds of DoL's enforcement authorization.

Congress should create a cause of action for Americans who have been the victims of H-1B abuse; one that should cover indirect use of H-1B workers as has taken place at Southern California Edison.

III. The statutes should be clearly written and easy to understand.

The Immigration Act of 1952 creating the current system was about 125 pages long. S.744 from last session, "Comprehensive Immigration Reform" was 1,168 pages. The reason for the length of S.744 was to hide the endless mischief the bill contained.

For example, one problem that the Department of Labor Inspector General repeatedly raises in its reports to Congress is that DoL must approve all H-1B labor condition application within seven days as long as the form is filled out correctly.

S.744 devoted a page to addressing that issue by rewording the sentence so that the DoL must approve all H-1B labor condition applications within 10 days as long as the form is filled out correctly. In other words, the authors of S.744 took affirmative steps to ensure H-1B abuse could go on with impunity and used length to hide their abuse.

IV. Reduce the number of guestworker programs.

Under the Immigration Act of 1952 there were two guest worker programs. Now there are so many that it is nearly impossible to count them all.

A. End treaty guest worker programs.

Currently there are dedicated visas for Mexico & Canada, Chile, Singapore, and Australia. That will simply encourage other countries to demand the same. There have been recent proposals to add Ireland and Korea to the list. An immigration system that sets aside separate visas for individual countries is unworkable.

V. Establish clear paths for entry into the U.S.

Dual intent should be abolished. Non-immigrants should come to the United States for a single purpose so the alien knows where he stands when he arrives on our shores and that the system can be enforced.

Allowing non-immigrants (low standard) apply for green cards (high standard) has an entirely predictable result: backlogs.



The New Jersey Turnpike Merging six lanes into three lanes. Allowing H-1B workers to apply for green cards has the same effect.

VI. Make guestworkers be guestworkers.

A. Limit guest workers to short terms of admission.

Guest worker programs should authorize admission for no more than 2 years.

B. Require guest workers to have an actual, identifiable job before they arrive.

The largest use of H-1B and OPT guest workers is to farm them out to other companies. That permits the abuse we have seen at Northeast Utilities in Connecticut, Southern California Edison, and Walt Disney World in Florida. Allowing guest workers to be subcontracted out puts the in direct competition with United States workers.

C. Require guest workers to be paid at the 67th percentile.

If guestworkers actually have special skills that cannot be found in the United States, they would be paid a wage that is much higher than average. Ensuring all guestworkers be paid a higher than average wage would restrict the program to truly high skilled workers. In point of fact, just limiting H-1B visas to workers who are paid the actual prevailing (*i.e.*, the median wage for the occupation and location) would ensure the H-1B quota would not come close to be reached.

VII. Eliminate green card queuing.

Change the permanent residency system so that it makes decisions. Establish preference criteria for green cards and pick the most qualified applicants at regular intervals. Reject the others and let them move forward in their lives.

VIII. Eliminate employment-based green cards.

Immigrants should sponsor themselves and have control over their immigration process. Having a job offer could be part of the selection criteria. However, immigration should be for immigrants and should not be a corporate fringe benefit.

IX. Centralize enforcement.

Currently enforcement of employment-based immigration is scattered across agencies and provisions. For example, now an employer that abuses the system and gets barred from the H-1B program can still get foreign labor on student visas or other programs. Enforcement should apply across all immigration programs.

X. Protect Critical Infrastructure.

The power grid is a critical part of American infrastructure. It cannot be secure when its software is created by foreign guestworkers and managed by foreign offshoring companies. Foreign guest workers should be prohibited from working on critical infrastructure and projects with national security implications.

XI. Require DHS to make all employment-based visa data available with only PID removed.

With the low cost of disk storage and the facilities of the Internet, there is no reason why comprehensive data about all guest worker programs should not be on-line and available for the public to monitor what is going on. Personally Identifiable Data can easily be removed.

Pending Legislation

It is now over twenty years since I first started researching guest worker programs. I am disheartened every time I examine legislation in this area. How many Southern California Edisons, Walt Disney Worlds, Cargills, Northeast Utilities, ... Sealands or AIGs is it going to take to get Congress to address H-1B abuse?

Looking at the major pending H-1B bill, the I-Squared Act, my hope for the future sinks even further. I have gone through the bill and applied all of its edits to the U.S. Code.

In regard to protections for U.S. workers, there are none in the I-Squared Act.

In regard to enforcement, there is nothing. Or I should say it is worse than nothing because the I-Squared Act makes enforcement more difficult because it restricts DHS when processing renewals of H-1B visas.

If some lobbyist when through the entire immigration system, looked for every possible place to increase the amount of foreign labor, and put them in one bill without any coherent plan, we would have the I-Squared Act. There are so many increases that enacting

the I-Squared Act would mean unlimited foreign labor.

To illustrate how nonsensical the I-Squared Act is, this is how the quota on H-1B visas would read if the bill were enacted:

8 U.S.C. § 1184(g)(1)

(A) under section 101(a)(15)(H)(i)(b) of this title, may not exceed the sum of—

- (i) the base allocation calculated under paragraph (9)(A); and
- (ii) the allocation adjustment calculated under paragraph (9)(B); and

...

(9)(A) The base allocation of nonimmigrant visas under section

101(a)(15)(H)(i)(b) for each fiscal year shall be equal to—

(i) the sum of—

(I) the base allocation for the most recently completed fiscal year; and

(II) the allocation adjustment for the most recently completed fiscal year;

(ii) if the number calculated under clause (i) is less

than 115,000, 115,000; or

(iii) if the number calculated under clause (i) is more

than 195,000, 195,000.

(B)(i) If the number of cap-subject nonimmigrant visa petitions approved under section 101(a)(15)(H)(i)(b) during the first 45 days petitions may be filed for a fiscal year is equal to the base allocation for such fiscal year, an additional 20,000 such visas shall be made available beginning on the 46th day on which petitions may be filed for such fiscal year.

(ii) If the base allocation of cap-subject nonimmigrant visa petitions approved under section 101(a)(15)(H)(i)(b) for a fiscal year is reached during the 15-day period ending on the 60th day on which petitions may be filed for such fiscal year, an additional 15,000 such visas shall be made available beginning on the 61st day on which petitions may be filed for such fiscal year.

(iii) If the base allocation of cap-subject nonimmigrant visa petitions approved under section 101(a)(15)(H)(i)(b) for a fiscal year is reached during the 30-day period ending on the 90th day on which petitions may be filed for such fiscal year, an additional 10,000 such visas shall be made available beginning on the 91st day on which petitions may be filed for such fiscal year.

(iv) If the base allocation of cap-subject nonimmigrant visa petitions approved under section 101(a)(15)(H)(i)(b) for a fiscal year is reached during the 185-day period ending on the 275th day on which petitions may be filed for such fiscal year, an additional 5,000 such visas shall be made available beginning on the date on which such allocation is reached.

(v) If the number of cap-subject nonimmigrant visa petitions approved under section 101(a)(15)(H)(i)(b) for a fiscal year is at

least 5,000 fewer than the base allocation, but is not more than 9,999 fewer than the base allocation, the allocation adjustment for the following fiscal year shall be -5,000.

(vi) If the number of cap-subject nonimmigrant visa petitions approved under section 101(a)(15)(H)(i)(b) for a fiscal year is at least 10,000 fewer than the base allocation, but not more than 14,999 fewer than the base allocation, the allocation adjustment for the following fiscal year shall be -10,000.

(vii) If the number of cap-subject nonimmigrant visa petitions approved under section 101(a)(15)(H)(i)(b) for a fiscal year is at least 15,000 fewer than the base allocation, but not more than 19,999 fewer than the base allocation, the allocation adjustment for the following fiscal year shall be -15,000.

(viii) If the number of cap-subject nonimmigrant visa petitions approved under section 101(a)(15)(H)(i)(b) for a fiscal year is at least 20,000 fewer than the base allocation, the allocation adjustment for the following fiscal year shall be -20,000.

That is simply NUTS!

Where is the outrage in Congress when Americans citizens legally are being displaced and bypassed for jobs in their own country?

John M. Miano
Summit, N.J.
March 15, 2015

“Immigration Reforms Needed to Protect Skilled American Workers”

Tuesday, March 17 at 10:00 a.m.,
Room 226 of the Dirksen Senate Office Building,
Statement of Jack (Jay) B. Palmer Jr.

Lowndes County, Alabama

Members of the Committee, I am Jack (Jay) B. Palmer Jr. of Lowndes County Alabama. I am the whistleblower in the Infosys visa fraud case which resulted in the largest visa fraud settlement in US history (\$34 million).

I am a whistleblower and an out of work American; blackballed in the industry.

I sincerely thank Senator Grassley and his staff for allowing me to provide testimony in regards to my experiences. I hope the information I provide will help the committee better understand the ways that companies are intentionally violating our visa laws, avoiding paying Federal, state and local income taxes, and inflating their stock prices.

Over the past month I have spoken to many Edison workers. Their stories are atrocious. They have been threatened, muzzled and asked to train less qualified individuals as their replacements. These people are the back bone of our economy.

We are their voice. We are the only one they have left because they were FORCED to sign non-disparaging remark clauses in order to get their benefits. They have been muzzled.

Here are some of their remarks:

- “I feel cheated and betrayed”
- “how can this happen”
- “I will lose my home”
- “This is all I know, I did nothing wrong”
- “We are disposable , a piece of trash discarded into the streets”

- “Americans need to wake up (expletive) this WILL happen to others”
- “ I have lost all confidence in our system”

Companies such as Infosys *continue* to abuse the B1 and H1B visa laws as well as the income tax and SEC guidelines. This is wide spread within the United States. Americans are being displaced at record numbers. Contrary to what companies like Infosys claim, that fact is that Americans can do these jobs and do them well. Instead, foreigners are working full-time jobs in the U.S. without paying income taxes and are not qualified. In these difficult times, it is inconceivable that Infosys and other foreign companies are avoiding paying income taxes, abusing visa laws and then laughing and saying, “Law will follow business, Business will not follow law”. This quote is from Infosys’ Nandita Gurjar, who was the Global Head of Human resources.¹

I cannot emphasize enough that the H-1B workers that are replacing the U.S. workers have minimal skills and little to no business knowledge. The idea of knowledge transfer is absurd; Americans are training these people on how to do their job. Most of the H1B workers come into a particular job having zero skills for that job.

I know because I managed hundreds if not thousands of these employees. Factually, I was tasked to ensure they were trained once they got here. Additionally, companies like Infosys bombard the consulate with H1B applications. No matter who is chosen, no matter what their skill set is, they are coming to the U.S. and they have to learn the needed skills once they get here. These are just the cold hard facts. As statistics can validate, most of these workers have only a bachelor’s degree: how is this specialized talent?

¹ (Source World HRD conference 2010 <https://www.youtube.com/watch?v=xjQJgBlzES8>)

Majority of H-1Bs Hold No More than Bachelors ²					
H-1B Rank	Firm	FY10-12 New H-1Bs Received	BS Share	MS Share	PhD Share
1	Cognizant	17,964	81%	19%	0%
2	Tata	9,083	78%	22%	0%
3	Wipro	8,726	63%	35%	0%
4	Infosys	6,550	86%	14%	0%
5	Accenture	5,799	73%	27%	0%
6	Microsoft	4,766	62%	33%	4%

Outsourcing Visa: Top 10 H-1B Employers (FY10-12)			
9 of 10 Offshoring ³			
H-1B Rank	Firm	FY10-12 New H-1Bs Received	Significant Offshoring
1	Cognizant	17,964	X
2	Tata Consultancy	9,083	X
3	Wipro	8,726	X
4	Infosys	6,550	X
5	Accenture	5,799	X
6	Microsoft	4,766	
7	IBM	3,770	X
8	Larsen & Toubro	3,286	X
9	HCL	3,074	X
10	Deloitte	2,850	X

² Source Dr. Ron Hira.

³ Source Dr. Ron Hira.

	TOTAL	65,868	9 of 10
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My real life experiences have educated me to the point that Congress must not increase the H-1B visa cap. This will only displace more American workers. I cannot understand the logic behind the absurd thought process of the I-Squared Act. Seriously, how does laying-off Americans and increasing the H1B cap increase American jobs? Senator Blumenthal stated that people came to him saying there were not enough skilled workers in his state. Senator Blumenthal have you asked the replaced American employees at Aetna and Cigna if they want to work? They were replaced with cheap labor that had to be trained. Why not train the workers you laid off? It's because the wage floor for H1B workers is too low. Let's make the salary of an H-1B worker the same as the employees they are replacing. Gentlemen, let's level the playing field for the American worker? Raise the wage floor and reduce the cap. Why is it that some of my skilled colleagues who were laid off 4 years ago still don't have work? Companies will not invest in the American worker but chose to bring in cheap labor.

What I have come to learn is that H-1B workers are supposed to have specialized talent. Factually, I have had customers reject H-1B workers because they did not have the experience or talent that was needed. One of my customers actually refused to have any other H-1B workers and forced us to hire some with experience or they would pull the contract. We hired an experienced American worker. The difference was that she was a TALENTED (laid-off) worker and her salary was higher. Again, there has not been a position that an American citizen could not perform.

I have read statements from NASSCOM stating that if the cap is not increased and with the current visa restrictions, the Indian economy would suffer. Let me ask the committee, what about our economy? H1B workers spend a minimal amount of money in the U.S. and usually live eight people to a room. These are indentured servants and most of the time they have to give kickbacks to their offshore managers.

What about the years and years of ignoring the laws? These companies maliciously do not hire Americans and look at ways to circumvent policy and law

instead of working with it. Look at the stock and growth of these large foreign companies in a down environment -- they are not suffering. However, they are still asking for more “handouts” to increase their margin. Every company is out to make a profit, but when you knowingly defraud the system, it is concerning. I have witnessed outsourcing companies bring over H-1B workers who have been trained by American workers and then they replaced the American workers. Does this not violate the spirit of the H-1B laws? The only specialized talent these workers have is they will work for low wages. These are tasks that an existing worker could perform.

In January 2009 while I was a Principal at Infosys, I personally witnessed over 7,000 American jobs cut at Home Depot in Atlanta. Months before these American employees trained their replacements from Infosys and other Indian based companies. The only reason was cheap labor.

In August of 2010, I was at Hedrick and Struggles in Chicago when HCL (an Indian company) took over the IT department. I was with Infosys and we had illegal B-1 visa workers. Hedrick employees were “forced” to train HCL employees in order to receive their compensation package. This situation turned hostile due to the fact that the American workers were blindsided.

B1 Fraud

B1 visas are the easiest visas to acquire, least expensive (\$500), and by far the easiest with which to commit fraud. Over the past 5 years I have witnessed this fraud and sadly most people are NOT educated on the B1 visa. Let me explain the B1 Visa.

- THERE IS NO B-1 CAP.
- Cost around \$500.00.
- Employees are to be paid in their own country, not by U.S. entity.
- Can be received in 30-60 days.
- Is a 10 year multi- entry visa.
- Employee owns the visa not the Employer.

- Covers a wide range of activities for visiting business representatives such as attending meetings, consulting with associates, engaging in negotiations, taking orders for goods produced and located outside the United States, attending conferences, and researching options for opening a business in the United States (such as locating or entering into a lease for office space.
- Employment, however, is not permitted.
- Consulting with business associates.
- Traveling for a scientific, educational, professional or business convention, or a conference on specific dates.
- Settling an estate.
- Negotiating a contract.
- Participating in short-term training.
- Transiting through the United States: certain persons may transit the United States with a B-1 visa.
- Deadheading: certain air crewmen may enter the United States as deadhead crew with a B-1 visa.

The Fraud

The reality is the B-1 visa program is being used to bring workers in and displace American workers. Factually, the prevailing wage does not apply to the B-1. Some workers are being paid (on average) \$2.00 an hour while companies such as Cisco and Goldman Sachs are paying the companies (such as Infosys) upwards of \$150.00 an hour. The employees have no rights and are being paid their salary in India which is about \$5,000.00 U.S. dollars a year.

The living conditions of the workers are horrific. Many times 6-8 people are living in a hotel room or 1 bed apartment.

Many of the workers do not want to be in the United States. I know this because I was asked to change contracts for companies in order to cover up the fraud.

This systematic fraud also enables companies from paying taxes on the workers. Additionally, with this illegal business scheme, profits are

inflated and stock prices are sky rocketed. I ask members of this committee, Where is the SEC? This has been reported.

Monitoring and Enforcement

There is no easy way to police this behavior. Once a B-1 visa holder enters the country they can disappear because, again, the employee owns the visa not the employer. During the Infosys investigation there were 169 employees in the United States that could not be found. Therefore, if an employee disappears, they can go to work for a “mom and pop” placement company. They can do this on a 1099 that does not require the use of E-Verify because they fall under the minimum requirements. I am knowledgeable of this activity and witnessed it.

Federal agents rely on whistleblowers to deliver information about this behavior when in fact they should be conducting surprise inspections. Due to funding and manpower this is few and far between.

Prosecution

Although Federal agents can provide iron clad cases; AUSAs are sometimes weary about prosecution. Also, companies hire high powered, well-funded lawyers to defend the cases and “drown” our AUSA’s in paper work. Additionally, the political backing from large companies is also a deterrent. Even though the law is clear, consultants such as Michael Chertoff are telling AUSAs they will never win because of the arguable loop holes in the law. An example of this is the true legal definition of work and specialized talent. In the Infosys case Mr. Chertoff was a consultant for the law office of Wilmer Hale. I was informed by a high ranking Special Agent that he “threw the American people under the bus” by contradicting his prior policy and rulings. This was a “sad day for America”.

Solution

This is simple, we need to tighten the visa law and enforce the law. Until a major company is disbarred from the visa program or someone is indicted from a major company, this behavior will continue. Have a B-1 Cap and monitor the visas.

Story of me, a Whistleblower

I am former employee of Infosys as a Principal Consultant in the Enterprise Solutions Practice from August 2008 until 2013. At times I felt my only support came from Senator Grassley, his staff, and the investigating federal agents. At this time I continued to be harassed and blackballed in the industry.

At Infosys, I witnessed and received emails, screen-shots and other documents proving that Infosys intentionally violated our visa and tax laws for the purpose of increasing revenues. I filed an internal Whistleblower Complaint that was ignored. In January 2011, I reported these violations and cooperated with the State Department, Department of Homeland Security, the Internal Revenue Service, and other agencies in a criminal investigation against Infosys and some of its employees. I was considered a Federal Witness and was afforded protection under this recognition. My cooperation led to a Grand Jury investigation of Infosys.

Infosys Technologies Limited (INFY NASDAQ) provides information technology (IT) and consulting services worldwide. The company was founded in 1981 and is headquartered in Bangalore, India. Currently there are over 130,000 employees worldwide. Of the employees, 98% are Asian, 1% other, and less than 1% American. Infosys has over 15,000 foreign nationals working in the U.S. Financially, Infosys has a market cap of 40 billion dollars. Currently the company has approximately \$4 billion (USD) cash in the bank with no debt. Annual sales are over 6 billion per year with a quarterly growth rate of 14.9%. Stock prices have risen from \$21 a share in March 2009 to a market close of \$71 per share January 20th, 2011. Currently over 3.5 billion dollars a year is derived from the U.S.

I joined the company because I was told that Infosys was founded on hard work, determination, and entrepreneurship. However, somewhere along the

journey this path and ideology became jaded. I am still loyal to the core company ethics, but I could not be a part of its illegal activities.

From August 2008 until March 2010, my employment at Infosys had been a good experience and I enjoyed much success with my colleagues and customers. Factually speaking, I had been recognized by customers and Infosys Management for exceptional work. In March of 2010, as a result of hard work and delivering success at Baker Hughes Oil, an Infosys client, I was invited to India. The work at Baker Hughes Oil implemented technology to assist in preventive measures which could avoid future oils spills such as that in the Gulf of Mexico. Hence the invitation to Infosys Headquarters in Bangalore, India for an enterprise solutions “Actionize” planning meeting. As a Principal in the company, this was an honor for me and I was the only American invited from my practice. During the meeting one of the topics was the H1-B visa “crisis”. This visa category applies to people who should have special training and work in a specialty occupation such as IT. According to USCIS, “The job must meet one of the following criteria to qualify as a specialty occupation:

- Bachelor’s or higher degree or its equivalent is normally the minimum entry requirement for the position.
- The degree requirement for the job is common to the industry or the job is so complex or unique that it can be performed only by an individual with a degree.
- The employer normally requires a degree or its equivalent for the position.
- The nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor’s or higher degree.

Infosys is an “H-1B Dependent Employer” and is the biggest “user” of the H-1B program. Infosys’ H-1B visa eligibility was reduced from over 4500 to around 400 in 2009/2010. Also, application fees were increased and more restrictions were placed on the application and approval processes.

During these meetings in India, it was discussed that there was the need to and that there were ways to “creatively” get around these H-1B limitations and processes and to work the system in order to increase profits and the value of

Infosys' stock. Much of this was very new to me and I did not fully understand the implications of these decisions at the time.

There were many "side/off-record" conversations between management/Indian delivery managers and U.S. based Engagement Managers during these meetings. It was made very clear that Infosys was going to continue and increase the use of the B-1 visa program to get around the tough restrictions the U. S. had placed on the H-1B program by sending lower level and unskilled Infosys Indians to the U.S. to fulfill the high demand for its customers at a lower cost to Infosys. (Please note that at a time of economic volatility and crisis in the U.S., Infosys stock tripled). There was no monitoring of the B1 system and it was understood that "no one would ever know". Infosys also decided to flood the consulate with applications in order to get as many approved as possible no matter the level of an individual's skill. This was totally about profit and not hiring Americans for jobs in the U.S. due to higher salary requirements. This was confirmed to me by several current and former HR staff members. Their names have been turned over to federal investigators. It was my understanding that Infosys submitted upwards of over 7,000 applications thinking that if some were approved it would be a win for increased profit margins.

As you know, B1 visas are designated as Temporary Business Visas. According to U.S. CIS, B1 visitors can only come to the U.S. for such things as a scientific, educational, and professional or business conventions, or a conference on specific dates, settling an estate, negotiating a contract or participating in short-term training. B1 visitors are not allowed to "work" at a job. However, Infosys sent B1 employees to the U.S. for the specific purpose of working full time jobs at client sites. Infosys saw this as a win-win; under current H-1B laws, a foreign national in the U.S. must make a minimum of 65k a year and pay U.S. taxes. However, when Infosys employees come to the U.S. on B-1 visas, Infosys pays them their Indian salaries. Infosys calls it a "stipend" to avoid Indian and U.S. laws and taxes, but in actuality, these B-1 employees are being paid a salary for their work in the U.S. and Infosys did not withhold Federal or state taxes. Infosys, however, charged its U.S. clients/companies U.S. rates for the employees thus getting full reimbursement from their American clients for Infosys' labor costs.

During the meetings in India, it was strategically talked about ways for the B-1 employees to go “undetected” while coming through the port of entry. Infosys even created an internal website of “do’s and don’ts” such as “Do not mention activities like implementation, design & testing, consulting etc., which sound like work. Also do not use words like, work, activity, etc., in the invitation letter. Please do not mention anything about the contract rates as you’re on a B-1 Visa.”

In May of 2010, the consulate started denying Infosys B1 visa applications due to the large number of applications Infosys were submitting. The consulate told Infosys they needed “Americans” or American Companies to issue “welcome letters” in order to avoid the suspension. The way I suddenly became involved is that my Indian managers in the U.S. and India started asking me to write these “welcome letters” and were very insistent. They would state that if I did not do this it would drastically affect the company’s profit because we did not have people in the U.S. to complete the work. Also, they threatened it would affect my salary and standing in the company. Basically, what these letters do is falsely claim that the foreign employee is coming for a “visit” rather than to “work.” I was very concerned about these letters and contacted Infosys HR because the content of the template of the letter was false. HR told me these people could not come to the U.S. to work on B1 visas. Past events in my mind started to click. Since I knew the letter was a lie and because HR confirmed that B1s were not allowed to work at client sites, I refused to write the letters. At the time, I did know that I had several illegal people working for me in Houston. This came to light when I was informed Infosys was not paying one of my employees enough in his “stipend” to survive in the US. This person emailed me asking for me to approve the “reloading” of his Indian cash card. At that time, he explained to me the process and how many of the Indians rebelled over having to come over to work and continue to receive the low Indian salaries instead of what the H-1B visa employees were making. The Indians knew Infosys was charging American companies American Salaries for illegal B1 workers and that H-1B visa people received \$60,000 + a year when they received less than \$5,000. Hence, Infosys increased their “stipends”. Once the “cash cards” were reloaded with the “stipends” the employees could then make cash withdrawals and charge/debit what they needed to support themselves in the U.S. Again, no taxes were withheld although the B1 workers were gainfully employed in the United States and Infosys was charging its customers fulltime wages.

On July 1 2010, I was asked to join a conference call in regards to me not cooperating with writing the letters. During this call I was chastised for not being a team player. At that time I was sent to another project and different division so I could do no harm to my current delivery manager. The problem was the new project with a new delivery manager had the same problem and had illegal people there too. The problem with this was the contract was not "Fixed Price" (FP) but was "Time and Material" (T&M). In order for Infosys' scheme to work, the U.S. contracts had to be written as FP contracts and not as T&M contracts. The reasoning is that on a FP contract, a customer is charged a lump sum for labor. The people who are actually doing the "work" do not have to be named to the customer but they are named on internal labor spreadsheets in order to come up with a cost and price. There were some customers such as Baker Hughes that wanted to see the names of the staff and Infosys did furnish these names and some of the people named were illegal. On a T&M contract, the people doing the actual work must be named along with their hourly rate. This is when the proverbial cat came out of the bag. It became increasingly evident of the wide spread and intentional illegal activities. There were emails and requests for me to rewrite T & M contracts to FP contracts and I would not do it. This was in August 2010. At this time I called our company attorney, Jeff Friedel. Over the next month I spoke with several people in HR and they were all scared of losing their jobs and said they could do nothing as this problem was bigger than they were.

In September of 2010, apparently I was causing problems with the Infosys Engagement Directors in the U.S. and India because I would not go along with this illegal activity. I blatantly told them how illegal it was to send people over on B1 visas and I constantly complained that Infosys was sending me "freshers" on H-1B Visas. A "fresher" is a common Indian term for a person with no experience or specialized talent, usually just out of college.

Infosys then sent an Indian Delivery Manager over from India to talk to me about how important it was to keep this quiet. She then explained to me Infosys' entire system of fraud that the U.S. Engagement Managers would need to staff the project.

- (1) They would contact the Indian offshore managers.

(2) They would go into the system and create a fraudulent work letter in the system (This is an open system and anyone can access and execute this).

(3) They then go into the pay system and gather the bank information to ensure they have a debit card; all Indian employees are required to use 1 of 3 banks which are designated by Infosys.

(4) At this point there is the need for a letter from someone from the U.S. to write which falsely sets out the reason for the visit.

(5) Then you have to ensure the contract is a fixed price.

(6) At this time the person comes over for the designated time period.

Infosys had learned the “cooling off” period for B1 Visas so not to raise concern. It is important to note that this equates to thousands of people coming over and not paying taxes even though they are “gainfully employed”.

On October 11th 2010, I called Infosys’ in-house corporate counsel, Jeff Friedel, and informed him again of the violations. He told me to file a whistleblower complaint and said he would handle the situation. Before doing this, I read and re-read the Infosys Whistleblower Policy along with the Sarbanes-Oxley law. I expected Infosys to follow policy and bring an outside SOX counsel in and investigate the charges. They never did and to this date have not hired an unbiased independent counsel to investigate this unlawful conduct. I spoke to Mr. Friedel in order to make sure I was doing everything by the letter of the policy and law. He stated I was and he “promised that he would protect me”. Therefore, I filed an Internal Whistleblower Complaint in regards to the illegal activities including B1 Visa Fraud and illegal I-9 activity. He stated it would come to him via the email system.

Over the next few days, I provided Jeff with additional information and provided names and spreadsheets which showed Jeff where illegal Infosys employees were working. Additionally, an HR Manager and I provided Jeff with thousands of people who had never filed LCA (Labor Condition) paperwork to work in different states. I also gave him cases in which Infosys Managers were intentionally committing fraud to avoid paying state and local taxes. Infosys did not enforce these changes because there are fees associated with them and the work behind the documentation. An HR manager stated that “it has been a long known

problem and we can't do anything, it's just the way we do business and we can't control what they do in India.”

During the last week of October 2011, I became worried because of harassing and threatening phone calls I was receiving due to the Internal Whistleblower Complaint I filed. Then I travelled to Dallas, TX to meet with Infosys HR in regards to whistleblower evidence and threats I had received. During this meeting I gave HR copies of illegal workers visas and other information.

At the end of October I was transferred to the Axis Capital project in Alpharetta, Ga. At that site there were 2 B1 visa people on site performing paid work. They left within weeks of me being there.

Over the next three months, I repeatedly asked Jeff for updates and continued to provide him with evidence that showed that these illegal activities were still happening. I also researched and validated that I had illegal people on projects since August 2008 when I joined Infosys. Additionally, other inside Infosys employees provided me with information of illegal B1 workers at Wal-Mart, Johnson Control, Goldman Sachs, American Express and other customers. Again, during this time period I was receiving threatening and harassing emails and calls and was called names such as “stupid American”. This was reported with no intervention from Infosys. I begged Infosys management and the whistleblower team to remove me from this environment which they did not. Of course all of this is heavily documented.

In November 2010, I authored an outline of how Infosys could monitor and control the illegal activities and sent it to Jeff Friedel. Infosys Management did not respond or take appropriate actions. I was only alienated more.

As December 2010 came, I was approached by an Infosys employee that sent me an alarming spreadsheet which had a list of illegal B1 workers at Johnson Control. These people were working full time testing software code and writing scripts but were paid their salaries by Infosys depositing money into the cash card accounts without withhold or paying any income tax. This spreadsheet also had

people in India with their B1 status and their availability to come to the Johnson Control Project for work. Let me again say, not meetings, but gainful employment and not paying taxes. I turned this information over to Jeff Friedel and others. This resulted in more threats and harassment for me.

Infosys withheld a large portion of my bonus because I filed the whistleblower complaint. This was admitted to me by the Indian Delivery Manager. After 8 months of trying to help solve the problem, it became clear that that Infosys was not going to stop the illegal activity and retaliations including loss of bonuses. Infosys left me no choice. During the first week of January 2011, I decided it was imperative to report this information to the appropriate authorities. On February 23th, 2011, I filed a civil suit against Infosys in Lowndes County Alabama. News spread fast of the civil action.

On the following Monday, February 28th, I reported to work at Axis Capital in Alpharetta, GA only to find a death threat on my desk. I reported this threat to Infosys, but all they did was deny that the threat came from an Infosys employee.

I think it is important for this Committee to understand the lengths that Infosys has taken to cover up these crimes and to retaliate against me. I am not asking for help from the Committee; that will come through the judicial system. This is important because based on the communications my attorney and I have received there are numerous people with more information of wrongful conduct not just by Infosys but many other companies as well. However, these people have expressed their fears of retaliation if they come forward. Based on the way I have been threatened, harassed and retaliated against, it is easy to understand their concerns.

As mentioned above, Infosys never hired an Independent SOX whistleblower counsel to review the allegations. Instead, it hired criminal defense lawyers who represented to my attorney and the attorney for the other Whistleblower that they were "Independent Infosys Whistleblower Counsel." At this time the federal authorities were in full investigative mode and I had talked to them on many occasions. When Infosys got wind of my cooperation with the authorities, their criminal defense lawyer wanted to confiscate my laptop which contains all of the documentation of the illegal activities. When I refused to give it to him because the federal government told me not to, Infosys threatened to fire

me. I filed another Whistleblower Complaint against Infosys because internal Whistleblower Policy clearly tells employees to cooperate with federal authorities. Infosys did nothing towards the violation of its own policy and by their defense counsel. The Department of Homeland Security served a warrant for my laptop. They now have it in their possession.

I have received death threats from Infosys employees and Infosys has done nothing to protect me. I have suffered financial losses. Infosys has “put me on the bench” which means I draw my salary but sit at home and am not assigned to any project. I know there are openings at Infosys for my skill set, but Infosys will not assign me a project which will result in a big loss of my bonus for this year. Also, Infosys has totally alienated me from the company. They will not let me work on a project at a client site, will not let me into an Infosys office, and I cannot participate in company pursuits of business. I sit at home. No one calls me or emails me or will have anything to do with me. This is after they told me I have done nothing wrong and they would protect me. This is the most blatant disregard of a Whistleblowers rights. Infosys has maliciously violated the spirit of the Whistleblower policy and the law.

On July 18, 2011, I filed yet another whistleblower complaint in regards to the continued harassment. I even copied senior management including the CEO and CFO, and have received no response.

I do not regret blowing the whistle and refusing to be a part of this illegal conduct. However, there are many other witnesses who are scared to go through what I have been through and therefore remain silent. In fact, my attorney and I received over 40 correspondences from individuals at other Indian companies stating that the same type of H-1B and B1 fraud is being committed.

The abuse of the B1 and H1 visa laws as well as the income tax laws is wide spread in this country. Americans are being displaced and foreigners are working full time jobs in the U.S. without paying income taxes. It is somewhat ironic that as this Subcommittee meets and considers my testimony, our President and Congress are facing very difficult financial debt ceiling decisions. In these difficult times, it is inconceivable that Infosys and other foreign companies are avoiding paying income taxes and abusing visa laws and then laughing and calling those who stand

up for what is right “stupid Americans.” My real life experiences have educated me to the point that Congress does not need the H1B Cap.

What I have come to learn is that H-1B's are supposed to be specialized talent. Factually, I have had customers reject H-1B workers because they did not have the experience or talent. There has not been a position that an American citizen could not perform. These companies maliciously do not hire Americans and look at ways to circumvent policy and law instead of working with it. Look at the stock and growth of these large foreign companies in a down environment -- they are not suffering. However, they are still asking for more “handouts” to increase their margin. Every company is out to make a profit, but when you knowingly defraud the system it is concerning. I have witnessed outsourcing companies bring over H-1B talent that have been trained by American workers and then they replaced the American workers. Does this not violate the spirit of the H-1B laws? The only specialized talent these workers have is they work for a said company and then transfer the work to offshore teams. These are tasks that an existing worker could perform.

In closing, thru all the whistle-blower heartache, I would do it again. The agents should be commended on their hard work for upholding the law.

I thank you.

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Statement of

Hal Salzman, Ph.D.

Professor

Edward J. Bloustein School of Planning & Public Policy

John J. Heldrich Center for Workforce Development

Rutgers, The State University of New Jersey

Hearing on:

“Immigration Reforms Needed to Protect Skilled American Workers”

Submitted to the

Senate Committee on the Judiciary

U.S. Senate

March 17, 2015

Mr. Chairman and members of the committee, thank you for inviting me to speak on the topic of “Immigration Reforms Needed to Protect Skilled American Workers,” and in particular on high-skill labor demand and supply, and the size and impact of the high-skill guestworker labor force. My analysis draws on several decades of workforce research on technology industries, globalization, and several recent in-depth studies of science, technology, engineering, and math (STEM) labor supply and currently, on STEM educational pathways and attainment. This research was conducted with my colleagues Leonard Lynn at Case Western Reserve University, Lindsay Lowell at Georgetown University, and Daniel Kuehn at American University, and has been funded by the Sloan Foundation, the National Science Foundation (NSF) and the Kauffman Foundation.¹

Assessing approaches to immigration reform for high-skill workers involves, at the core of the issue, understanding whether the nation benefits from technology firms using their current levels of high-skill guestworkers and the likely impact of various legislative changes proposed such as those in I-Squared, The SKILLS Act, and S.744. Let me start with a point on which nearly all are in agreement: guestworkers can be an important source of labor market adjustment and can contribute to U.S. industry and productivity. *Thus*, the issue is *not* about whether or not to have guestworkers; it is about determining the right number and the policies governing their work conditions. In terms of high-skill guestworkers, primarily on H-1B and L visas, determining the right number, or evaluating whether increases or decreases in the number are best for the economy, and impact on the American worker, we want to know: Is there a shortage that impedes business productivity and growth and national prosperity? Answering this question depends fundamentally on examining the evidence about three issues:

- (1) The adequacy of supply of U.S. STEM graduates and workers²;
- (2) The size of current and proposed guestworker flows;
- (3) Impact on U.S. workforce, on innovation capacity, and on the nation.

When considering the issues of whether there are enough U.S. students and workers to fill STEM jobs, whether industry has a real labor shortage or is just dissatisfied with the time and effort it takes to find the workers it wants, or is dissatisfied with the wages it needs to pay to get the workers it wants, let me say that there is no single study that conclusively answers those questions; our measures are often imprecise or at an aggregate level that may not address the situation in each and every firm or industry. What we want to consider, thus, is what is indicated by the *preponderance of evidence*, and what are the *most direct and relevant measures* of the demand for, and impact of, STEM guestworkers.

¹ The projects are supported through grants from the Alfred P. Sloan Foundation, the National Science Foundation, (Human and Social Dynamics Program, #SES-0527584; Social Dimensions of Engineering, Science, and Technology #0431755); and the Kauffman Foundation. Expert research assistance and analysis was provided by David Hersh and Susan Ferrara. The views expressed are those of the author and should not be attributed to Rutgers University, the J.J. Heldrich Center or the E.J. Bloustein School, the National Science Foundation, the Alfred P. Sloan Foundation, or the Kauffman Foundation. This research was conducted with my colleagues Leonard Lynn at Case Western Reserve University, Lindsay Lowell at Georgetown University, and Daniel Kuehn at American University. Author’s papers cited and excerpted are available at policy.rutgers.edu/STEM

² “U.S. workers” and domestic workers/workforce denotes both native and immigrant workers, and both citizen and permanent resident (green card) workers; that is, from a labor market perspective, the labor pool is segmented into those workers in the U.S. who comprise the labor pool directly available to employers as distinct from the guestworker labor pool, which is available only through policies and conditions set by Congress.

My colleagues and I have examined the key questions using multiple methods, data, and indicators—from fieldwork and interviews at firms in the U.S. and globally, to analysis of large, national datasets. The preponderance of evidence is quite clear that:

(1) The U.S. supply of top performing graduates is large and far exceeds the hiring needs of the STEM industries, with only half of new STEM graduates finding jobs in a STEM occupation (and only a third of all STEM graduates in the workforce holding a STEM job);

(2) All market indicators, such as wages and employment rates suggest that, with few exceptions, an ample supply of labor is available given current and projected demand (demand for computer science graduates, as stated by the information technology (IT) industry, can be met by just half to two-thirds of the current annual supply of U.S. graduates);

(3) Guestworker supply is large and highly concentrated in the IT industry; it is likely a factor in the flat wage levels in the IT industry and perhaps for a substitution of young, entry-level guestworkers for experienced, incumbent, U.S. workers;

and most importantly,

(4) The *predominant* function of IT guestworker visa programs is to facilitate the offshoring of IT work—that is, the ability of firms to move IT work from the U.S. to offshore locations is highly dependent on their supply of H-1B and L visas for their companies. These are companies such as IBM, Accenture, Deloitte, Ernst & Young, as well as the internationally based firms such as Infosys, Wipro, and TCS.

The second, and growing use of guestworkers is by product firms and U.S.-based service firms to staff their workforces for largely domestic-based projects. The largest H-1B visa sponsors among these would include Microsoft, Google, Intel, Oracle, Apple, and Amazon (Top 100 H-1B Visa Sponsors, 2013). There are then a number of smaller firms that provide, in aggregate, significant staffing services both temporary and permanent. These firms supply guestworkers to a range of other firms and are more often identified as those offering substantially lower wages and engaging in substandard labor practices.

These findings suggest that:

(5) The large use of guestworkers by firms in each of these segments combine, in aggregate, to distort the STEM labor market, with the number of guestworkers equal to two-thirds of current entry-level and early-career hiring. It is high-skill guestworker policies, rather than market competition, that currently determine working conditions and job opportunities for U.S. STEM workers, with diminished opportunities for students and workers who wish to pursue a career in the IT industry.

(6) Current guestworker visa policies for students and new graduates appear to provide incentives to colleges and universities to establish master's degree programs that, as their business model, almost exclusively recruit foreign students into lower quality programs that provide easy entry into the U.S. labor market, further expanding the supply of entry-level STEM workers.

(7) Proposed high-skill guestworker legislation would expand the supply of guestworkers to levels greater than the total number of new technology jobs; that is, these visa changes would provide enough guestworkers to fill every new job opening in the IT workforce with a reserve

large enough to allow firms to legally substitute young guestworkers for their incumbent workforce, both directly and through expanded offshoring.

(8) “Green Cards for Grads” provisions in I-Squared and other bills would further distort the U.S. higher education system, providing incentives for colleges and universities to establish, or expand current master’s degree programs as a “global services” business that offers a green card for the price of a graduate degree, and that are offered primarily or even exclusively for foreign students and directly or indirectly exclude U.S. students.

In sum, current policies and the proposed changes in visa and immigration policies that increase the supply of high-skill guestworkers are likely to exacerbate the already deteriorating labor force conditions and career prospects for STEM graduates and workers. Notably, it is only the IT industries that claim worker shortages whereas in nearly all other STEM fields there is an acknowledged need to address problems of oversupply and, in many science fields, poor career prospects for STEM graduates (e.g., National Institutes of Health, 2012; Stephan, 2012).

1. The Supply of STEM Graduates

The U.S. STEM workforce numbers about 7.5 to 8 million, or about 5 percent of the workforce. The computer occupations comprise about half (48.5%) of the STEM workforce at 3.7 to 4 million workers. According to the Bureau of Labor Statistics (BLS) projections for IT job growth, which is comprised of replacements (for those leaving the workforce because of retirements and job separations—layoffs and quits) and growth of the workforce, the IT industry needs approximately 124,000 new workers each year. Microsoft’s Washington representative and counsel Brad Smith (in his Congressional testimony) uses an earlier BLS projection of an annual increase of 122,000³, and the trade organization Code.org, echoed by the Computing Research Association, use 150,000 as the expected annual demand for new IT workers (Harsha, 2014). Smith and these associations then assert that the BLS workforce growth estimates represent the demand exclusively for computer science graduates. Matched against annual computer science graduation of 67,000 in 2012, the claim of a supply shortage is made. It is these statistics and claims that are repeated widely.

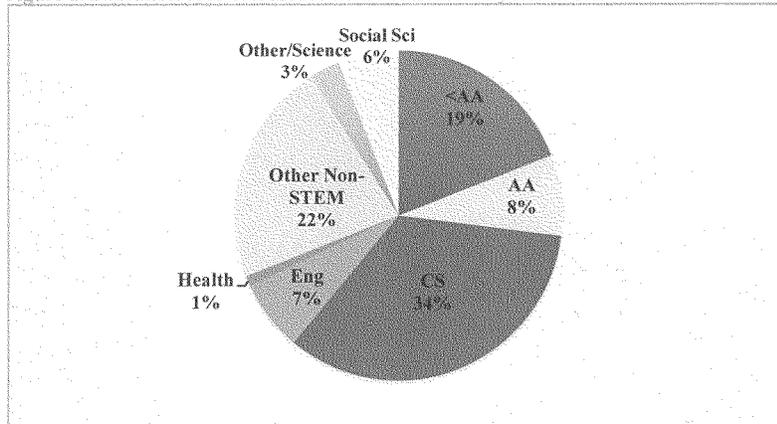
However, such claims misinterpret the BLS workforce projections for the computer occupations in asserting it is a demand only for computer science graduates. For example, Daniel Costa conducted a detailed study of these computer science shortage claims by Microsoft and other companies and shows the evidence does not support these claims because, among other reasons, “[i]t is a well-known fact that computer science graduates are not the only source of new hires in computing....less than one-fourth to less than one-half of workers in computing occupations have a computer science degree” (Costa, 2012). In fact, of those currently in computer occupations, only 14 percent hold a computer science degree and another 4 percent have electrical engineering degrees. Since that reflects the education level of the entire current IT workforce of all ages, it could understate the current cohort education levels.

Examining recent cohorts of all new entrants into IT occupations who have a postsecondary education, we find 34 percent have a bachelor’s or master’s computer science degree (See Figure 1); of just the pool of four-year college graduates entering computer occupations, 46 percent have a computer science degree.

³ In a notable misstatement of the BLS projections, Brad Smith testified before the Senate Committee on the Judiciary in 2013 that, “The Bureau of Labor Statistics has projected approximately 122,000 new job openings each year in computing occupations requiring at least a bachelor’s degree through the end of this decade. Yet nationally, our universities are only producing approximately 51,000 bachelor’s degrees in computer science each year” (Smith, 2013). In fact, as clearly stated in the BLS projections, these openings are for computer occupations at all education levels and fields of study, of which about one-third are for those with at least a bachelor’s degree in *any* field (U.S. Bureau of Labor Statistics, 2014). This misstatement has, however, been widely reported as evidence of “shortage” (e.g., Thoppil, et al., 2013).

About 36 percent of entrants into computer occupations do not have any four-year degree. Thus, we estimate that demand for new workers in computer occupations with a computer science degree as approximately 29 percent of the BLS projection of total demand for new workers (64% of new workforce entrants in computer occupations have a four-year degree and 46% of those have a degree in computer science, or 29% of all new workforce entrants). Using the actual educational composition of the computer occupations as an estimate of hiring demand by education and degree, the supply of computer science graduates needed to meet industry demand would be approximately 36,500 computer science graduates each year (based on the BLS projection of 124,000 new jobs; see U.S. Bureau of Labor Statistics, 2014). Figure 2 shows the historical graduation numbers of computer science graduates.

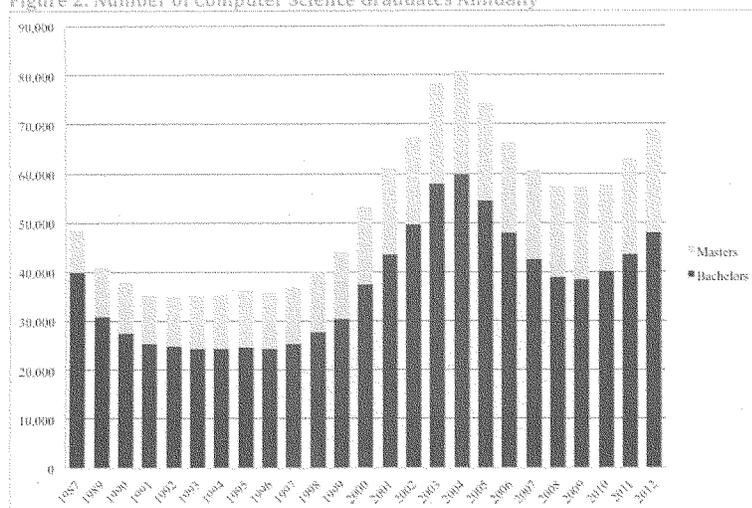
Figure 1: Education of IT Workforce with Postsecondary Education



Source: National Center for Education Statistics. (2013). 2003–2004 Beginning Postsecondary Students Longitudinal Study (BPS) [Restricted data file]. Washington, DC: U.S. Department of Education; tabulations by authors.

Current graduation rates indicate that projected employment demand specifically for computer science (CS) graduates can be met by about half of the current supply of 65,000 to 70,000 CS graduates (with at least a bachelor's degree) each year, and the balance of demand can be met by those graduating with a range of other degrees, as is the historical pattern. Even if current industry hiring is for a much greater level of computer scientists than historical hiring patterns, the current pool of graduates would provide sufficient numbers of computer scientists to meet industry demand. Our analysis of a large, nationally representative survey of a recent college cohort by the National Center for Educational Statistics finds that only two-thirds of computer science graduates went into IT jobs in 2009 (that would include all IT jobs, not just those for formally defined "computer occupations"). Of those not landing an IT job, half said they found a better job elsewhere. Fully one-third reported there were no IT jobs available (although this was the year after the start of the Great Recession, this is only slightly lower than the historical trend; Salzman, et al., 2013). Also worth noting is that an additional 64,341 students earned an associate degree or certificate in IT in 2012, also far exceeding the expected growth of 44,600 new IT workers with less than a bachelor's degree for work in the computer occupations (many of whom do not require an associate degree or certificate).

Figure 2: Number of Computer Science Graduates Annually



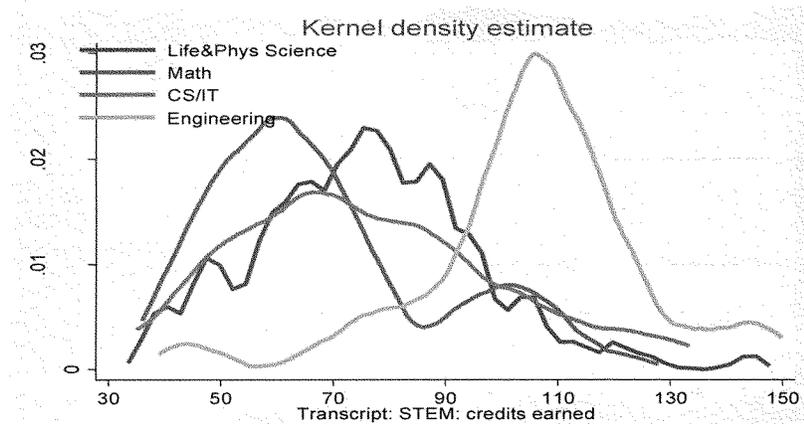
Source: National Center for Education Statistics, Higher Education, General Information Survey and Integrated Postsecondary Education Data, 1987–2012; tabulations by Daniel Kuehn, American University; David Hersh and Hal Salzman, Rutgers University.

STEM beyond IT

The demand for guestworkers and the various claims of “shortages” often discuss the labor market demand as a more general STEM workforce and industry problem. As noted above, guestworkers are predominantly employed in the IT industry, and are predominantly used to support offshore software development, with a second significant use to provide lower cost labor for positions in the U.S., either directly for software product firms or for their subcontractors and personnel staffing firms. If there really were a shortage of technical and scientific talent in the U.S., we should observe it in other STEM industries, not just in IT. In fact, most of the other STEM occupations and industries—science, engineering, and math—should have workforces that are more difficult to develop given the more demanding requirements and longer time period required for education and training. Of all the STEM fields, “T”, which is almost exclusively computer science at the four-year college degree level, and math (also an IT “feeder” major) are the least demanding fields of all the STEM disciplines in terms of STEM credit hours.

Computer science and math majors take far fewer STEM credits than either science or engineering graduates, as can be seen in Figure 3, which plots the distribution of credit hours by major (of those graduating at four-year colleges). It should, thus, be easier to expand the number of computer science and math majors than science and engineering majors given current resources. It is hard to understand how such education or supply failures would occur only in a field that would appear to be the most readily responsive to market demand given the lower credit hour requirements (i.e., which provides easier entry during college since it would take fewer credits to fulfill the major requirements than either science or engineering).

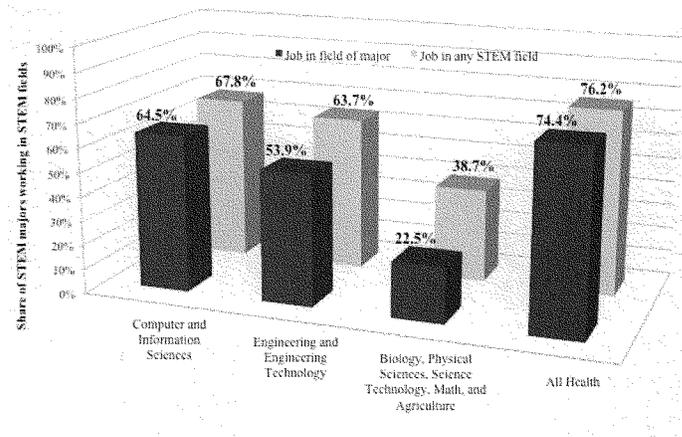
Figure 3: Credit Hours by Graduating Major



Source: National Center for Education Statistics. (2013). 2003–2004 Beginning Postsecondary Students Longitudinal Study (BPS) [Restricted data file]. Washington, DC: U.S. Department of Education, tabulations by authors.

Yet, science and engineering firms are not claiming they need guestworkers to address a shortage. In fact, study after study of science careers consistently find there is a glut of Ph.D. life scientists resulting in poor employment prospects for new graduates and postdoctoral scientists (e.g., Teitelbaum 2008, 2014; Stephan, 2012; Freeman, 2004; NIH, 2012). The National Institutes of Health (NIH) has developed a program to help new biomedical Ph.D.s find alternative careers in the face of “unattractive” job prospects in the field, where less than a quarter of Ph.D. graduates will find a career research and teaching position (NIH, 2012). The NIH Director’s “Broadening Experience in Scientific Training” (BEST) program was launched three years ago in response to findings by many researchers and the NIH Advisory Committee to the Director Biomedical Workforce Task Force, which found few career opportunities for biomedical scientists in traditional science fields; this program is intended to address the oversupply of biomedical scientists by developing alternative career paths they can pursue. Overall, in the science fields, there are twice as many university graduates at the bachelor’s degree level than the number who enter into a science occupation every year. Similarly, engineering schools graduate 50 percent more graduates than find jobs in engineering each year (see Figure 4); the one engineering area where there has been a shortage, petroleum engineering, is the exception that proves the rule (see discussion of petroleum engineers, below).

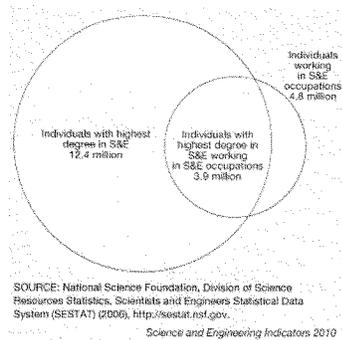
Figure 4: Occupational Field of STEM College Majors One Year After Graduation, 2009



Source: National Center for Education Statistics. (2013). 2003–2004 Baccalaureate and Beyond Survey (B&B) [Restricted data file]. Washington, DC: U.S. Department of Education; tabulations by authors.

If we examine the entire workforce, of all incumbent workers currently employed, a recent study by the U.S. Census Bureau finds that of those who have a STEM degree (excluding social sciences), only 36% are employed in a STEM field (U.S. Census Bureau, 2012). This is consistent with the NSF analyses of field of degree and occupation. Figure 5 shows the NSF analysis of degree holders and occupations, showing less than one-third of science and engineering degree holders are in a science or engineering occupation. Although some portion of the STEM degree holders who are not in a formal STEM job are no doubt working in jobs utilizing their STEM education, the evidence suggests there is still a very large supply of STEM educated workers available to STEM industries if there were demand for them. The evidence does not reflect a deficit in the number of STEM graduates in the workforce or in our current annual production rates of STEM graduates.

Figure 5: Highest Degree in S&E and Occupation



Rather than “shortages,” the concern about the STEM workforce overall is about the worsening career prospects and indications that supply far in excess of demand weakens the labor market in these fields, motivating students to pursue careers elsewhere. This was the finding in the analysis of changes in the composition of STEM graduates going into STEM jobs over the past three decades. Findings show that although the overall supply remained strong, fewer of the highest performing students were going into STEM jobs (Lowell, Salzman, et al., 2009). Other STEM workforce researchers find similar outcomes and evidence supporting similar conclusions. Even the lead author of a widely-cited study that asserted the need for more STEM graduates, Tony Carnevale of Georgetown University’s Center on Education and the Workforce said, “If you’re a high performing math student in America, from a purely economic point of view, it’s crazy to go into STEM” (Light and Silverman, 2011). And, in fact, many of the top students flock to Wall Street and corporate law firms and other non-STEM jobs.

It is thus curious that claims about “STEM shortages” only assert a need to fill IT jobs for which, paradoxically, the vast majority are not filled by STEM graduates. Nor do most IT jobs require the education or training of a STEM degree (which, in any case, is the least demanding of all STEM fields in terms of STEM credit hours). Moreover, these shortage claims rest almost entirely on employer reports about the difficulties they face in hiring but little substantiating evidence of a shortage.

Fieldwork research including ours (Lynn and Salzman, 2010; Salzman, 2000), finds that reports of hiring difficulties often reflect unrealistic expectations. Traditionally, during tight labor markets, such as before the dot-com crash, employers will hire good candidates who may not be “perfect,” but the firms will invest in training them. However, recent studies of employer recruiting find a *decrease* in recruitment intensity and little evidence of efforts to address unmet hiring needs. Peter Cappelli (2012) of the Wharton School concludes that employers have become willing to wait, hoping for the perfect candidate, the “purple squirrel,” believing that unemployment is high and there must be someone who will not require training. Because it is a slow economy, there is less urgency to fill positions quickly and a longer search time is possible.

Do Markets Work? The Case of Petroleum Engineering⁴

Petroleum engineering offers an important case of observed labor market shortages and the market response of firms and students. It is instructive to consider in light of current claims about market failure in the IT sector and industry’s assertion that they are unable to obtain the needed supply of graduates from U.S. colleges and universities. This case is of further interest because, as noted above, engineering is the most demanding college major in terms of credit hours, technical content, and time to completion whereas computer science and math degrees have the lowest course hour distribution of the STEM fields, suggesting increases in engineering supply should be more difficult to achieve than in other fields.

In the 1970s, the building of the Trans-Alaska Pipeline and increased oil exploration in other regions led to rapidly increasing demand for petroleum engineers. By 2002, however, *Occupational Outlook* forecast an employment decline “because most of the petroleum-producing areas in the United States already have been explored” (BLS, 2004), and this continued to be the forecast through the 2008 edition of *Occupational Outlook*. In the most recent edition, 2014-2015 however, the BLS forecast changed to a projected employment increase of 26 percent over the coming decade because “petroleum engineers increasingly will be needed to develop new resources, as well as new methods of extracting more from

⁴ This section is excerpted from Lynn, Salzman, and Kuehn (2015) “Dynamics of Engineering Labor Markets: Petroleum Engineering and Responsive Supply” in Freeman, R. and H. Salzman (eds.) *Engineering in a Global Economy* (forthcoming, 2015) NBER and University of Chicago Press.

existing sources.” The shift to greater exploration followed the 2008 oil price spike, which also increased the returns to investments in types of oil extraction that were previously cost-prohibitive (e.g., tar sands), thus increasing the demand for petroleum engineers, especially those with new skill sets.

The number of job openings began to exceed the number of graduates around 2002, even though there still had been no overall workforce growth. This was because of retirements and little hiring since the earlier oil boom and hiring expansion of the 1970s and 1980s. In some interviews with managers in oil companies in the mid-2000s, high levels of concern were found because the large cohort of engineers hired in the 1970s and 1980s was retiring just as the firms were launching large development and maintenance projects. This underlying demand was then exacerbated by the oil price spike, which intensified exploration efforts as higher oil prices made previously unprofitable exploration profitable.

The response to this confluence of events—little hiring for many years, a current workforce that was aging and retiring, and sudden increase in oil exploration—led to a classic textbook example of market disequilibrium. The earlier shortage had already led to increases in starting salaries, but with the oil price spike petroleum engineering starting salaries rose even further, becoming the highest of all fields of engineering for new bachelor’s degree graduates (National Association of Colleges and Employers, 2010). Starting salaries jumped from an already high \$43,674 in 1997 to \$50,400 in 1999. Starting salaries rose further to \$55,987 in 2003, \$61,516 in 2005 (Bureau of Labor Statistics, 2004, 2006), and \$86,220 in 2010 (National Association of Colleges and Employers, 2010).

In all these years, petroleum engineering salaries were higher than other engineering salaries but, until the spike in demand, the petroleum engineering starting salary premium was relatively small. For example, the 1997 \$43,674 starting salary for petroleum engineers was only slightly greater than that for the second highest paid engineering field, chemical engineers, who received an average starting salary of \$42,817. In 2010, however, the starting salary of \$86,220 for petroleum engineers was much higher than that of the second highest field, still chemical engineering, which was only \$65,142 (National Association of Colleges and Employers, 2010).

In response to this and other market signals the number of new petroleum engineering degrees awarded by U.S. universities more than tripled (*American Oil & Gas Reporter*, 2010). In just the period from 2007-2008 to 2010-2011, U.S. university petroleum engineering departments increased the number of Ph.D. graduates from 39 to 95. Texas A&M and Colorado School of Mines more than tripled their output of new graduates from 42 to 128 and 32 to 100, respectively. Reports from some petroleum engineering programs indicate an even greater increase in demand in subsequent years (TTU, 2010). The dramatic increase in petroleum engineering followed the steep rise in starting salaries, which in turn reflected an observable increase in industry demand. This would seem to be a clear textbook case of efficient and responsive market functioning. It seems to show that normal market mechanisms, namely wage increases, can dramatically and quickly increase supply. The immediate and dramatic increase is all the more remarkable given the credit hour and course demands of the engineering degree—further raising doubts about claims that colleges and universities are not able to graduate enough computer science students to meet market demand.

2. Guestworker Flows⁵

The H-1B nonimmigrant visa use is dominated by the IT sector. Under international trade law, the United States may not restrict the annual number of H-1B visas to fewer than 65,000 annually, but U.S. law has been amended to provide an additional 20,000 visas for foreign STEM graduates of U.S. universities, and there is no cap on the number of H-1Bs sponsored by nonprofit employers such as universities.

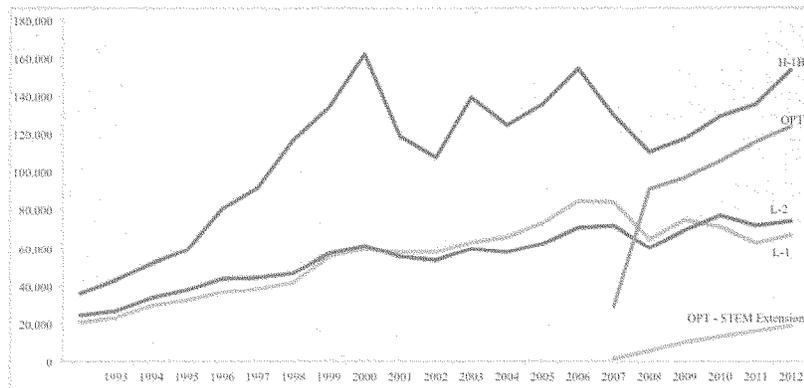
⁵ This section is excerpted from Salzman, et al., (2013).

The next largest visa used by STEM employers is the L-1 visa for intracompany transferees. The L-1 has two categories, the L-1A for executives and managers (it permits work for up to seven years) and the L-1B for employees with “specialized knowledge” (it permits work for up to five years). Spouses and children of L-1 workers may be admitted with an L-2 visa, which grants the L-2 holder work authorization for the same amount of time as the principal L-1 holder. There are no caps on the L visa, and its use has increased over time.

An unknown but substantial proportion of foreign students on F-1 nonimmigrant student visas change status directly to the H-1B visa if sponsored by an employer, while many other foreign students first work after graduation through the Optional Practical Training (OPT) program. The permitted stay to work under the OPT was two years in the past, but it has been changed to 12 months. In 2008, however, the program was extended by 17 months for graduates in STEM fields, meaning that these graduates can work on OPT status for a total of 29 months.⁶ Another temporary visa that often supplies workers for IT jobs is the O-1 visa for workers of extraordinary ability (10,590 total O-1 visas were issued in 2012).

Figure 6 shows the annual number of visas issued to guestworkers in the relevant visa categories, i.e., the H-1B, the L, and foreign-student OPT workers (see Appendix A for method and calculations). The number of workers hired in these visa categories has been growing over time. The H-1B trends reflect the booming demand during the dot-com bubble years and a congressional cap that was raised to 195,000 (it dropped down to 65,000 in 2003). The H-1B numbers dropped sharply after 2001, only to rise again up until the recession of 2008. Use by employers of all of the guestworker visa programs declined following the crash of the economy in 2008, but it has been increasing since that time. In FY2011, these guestworker visa programs totaled 372,000 workers.

Figure 6: Guestworker Visas Issued Annually, By Program or Visa Category, 1991-2011



Source: Department of State (2012) and Department of Homeland Security (2008 and unpublished DHS data).

⁶ The government’s rationale for the 17-month extension was to “reduce some of the hardship imposed by the H-1B visa cap.” At the time the extension was created, the H-1B cap for the fiscal year was reached quickly, and the OPT program was intended to allow employers to keep STEM graduates employed in the country while they waited for an H-1B visa to become available (Thibodeau 2008).

The predominant employers of guestworkers are either in the IT industry or in non-IT industries but with IT occupations to fill. For the H-1B workers, about 50 to 60 percent are approved for employment in formally defined IT occupations.⁷ There are no official, detailed statistics on the occupational categories of L-1 visa holders, but a 2006 study by the Department of Homeland Security (DHS) Office of the Inspector General (OIG) concluded that the evidence suggested the L-1 visa was effectively “The Computer Visa.” The study noted that, although “the L-1 visa program is not specifically tailored for the computer or information technology industries, the positions L-1 applicants are filling are most often related to computers and IT.” In addition, “...nine of the ten firms that petitioned for the most L-1 workers were computer- and IT-related outsourcing firms that specialize in labor from India...[and] almost 50 percent of the L-1B (specialized knowledge) petitions...named beneficiaries...born in India” (DHS 2006, 4). Other analysts have also concluded that the L-1 visa is primarily used for the IT industry and IT occupations, and that the number of all L visas has been steeply increasing since the Inspector General’s report in 2006. There are no publicly available data on the number of L-2 visa holders (for spouses of L-1 visa holders) who have been granted employment authorization by DHS or where they are employed. There are also no publicly available occupational or employer data on initial OPT visas (the maximum 12-month work permit provided to all college graduates on an F-1 visa), but data was obtained on the 17-month OPT-STEM extension applicants for 2008 through early 2013. This analysis found the vast majority (77 percent) were for IT occupations and/or IT firms (the other major group is biomedical and pharmaceutical industries). Because these guestworker programs are clearly used most intensively by the IT industry and for IT occupations, the focus of this analysis is on the IT workforce to identify the role of guestworkers and potential workforce impacts.

The H-1B and F-1/OPT guestworker visa categories are primarily for workers with at least a bachelor’s degree, though the H-1B category does permit use of experience as a degree equivalent.⁸ Except for L-1 visas granted under a “blanket” petition, which requires the worker to possess a college degree, the main L-1 visa categories do not have a college degree requirement; they require only that the worker be coming to fill a managerial/executive position (L-1A) or a position requiring specialized knowledge (L-1B). However, the 2006 DHS OIG report suggested that the L visa is more likely to be used by employers to import workers with a foreign college degree of three years instead of the U.S. standard of four years, than to hire those without a college degree at all. The L-2 spousal/child visa has no education, degree, or skill requirement (but the spouse may work, unlike, say, the spouse of an H-1B visa holder). Given the wide range of educational levels in the IT workforce, guestworkers at many different education and skill levels could be employed in the IT sector. The combined number of annual IT guestworker entrants (of those with work visas eligible for employment) for FY2011 is thus conservatively estimated to range from 134,000 to 228,000.

The crucial question is: How significant is the flow of guestworkers into the IT labor market? We first look at this flow as consisting of the pool of eligible IT workforce entrants. Ideally we would want to know how many job openings were filled by guestworkers and how many were filled from the domestic labor pool (again, the domestic labor pool comprises both citizens and permanent residents). Unfortunately, the data on job openings in the IT field are not available; the best data available to address this question measure job tenure of those in IT occupations.⁹ We examine the number of IT workers who

⁷ The IT occupations are those classified by the Bureau of Labor Statistics; some analyses classify workers based on the business of their employer, whether or not they hold a formal IT occupation. This leads to some inconsistency in estimates of “IT workers.” In general, occupational analyses include only IT occupations, and the industry analyses use all workers in IT firms. This guestworker analysis examines both occupation and industry, as noted in the figures.

⁸ See Immigration and Nationality Act, Section 214(i); 8 USC 1184(i).

⁹ Jobs that started in the last year are a reasonable proxy for new hires in the absence of new hire data. Job tenure information is taken from the January 2012 Current Population Survey’s “Job Tenure” supplement, and should therefore serve as a reasonable proxy for jobs started in 2011 (data are available on new hires and job openings by industry, but not occupation; these data will be reviewed below).

began their jobs in the year 2011 and were still employed in January 2012, and we compare that to the number of guestworkers who were approved for initial work in 2011. While the annual entry of guestworkers could be taking IT jobs that were opening due to turnover, as well as those newly created, we cannot ascertain these two types of jobs openings from these data. Because these are the only reliable data available on new guestworker entrants, as well as on total new IT jobs, we compare these two measures to gauge the relative supply of guestworkers in the IT sector.¹⁰

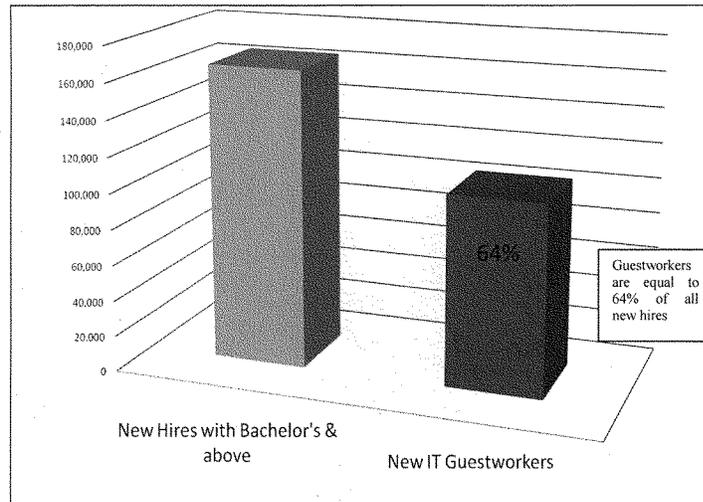
We estimate that during FY2011, 372,516 high-skill guestworkers were issued visas to enter the U.S. labor market, and, of these workers, between 134,000 and 228,500 were available for IT employment. We use the mid-range estimate of 160,755 IT guestworkers for the year FY2011.

Hiring and Age/Education of the IT Workforce

In January 2012, 698,412 workers reported that they started an IT job over the course of 2011. These estimates of the number of potential new guestworkers in IT fields equal, at the mid-range estimate of 160,755, almost a quarter of all new hires in these occupations. However, as discussed earlier, the IT workforce is comprised of workers with a wide range of skills and education, while the high-skill guestworker programs are specifically designed to limit this guestworker population to those with particular skills and/or a college degree. In fact, the data on high-skill guestworkers show that nearly all have at least a bachelor's degree. We thus examine the characteristics of the new guestworkers and jobs held by workers with similar educational backgrounds and age groups. The population of IT workers with a college degree (bachelor's and above) who started their jobs during 2011 is 483,692. Of these, the 160,755 guestworkers represent approximately a third of all new IT jobs (specifically, we estimate the number of guestworkers to range from a low of 28 percent to a high of 47 percent of the number of all IT jobs in 2011 that were filled by a college graduate hired in that year). One-third (34.3 percent) of workers who began their IT jobs in 2011 were under the age of 30; among guestworkers approved for H-1B visas for initial employment in 2011, the under-30 share was 57 percent (DHS 2012). An even higher share of F-1/OPT guestworkers are likely to be under the age of 30, since it is a benefit extended to recent college graduates. A more detailed analysis of the age distributions of U.S. workers beginning their IT jobs during 2011 and H-1B guestworkers approved for initial employment shows striking differences: more than half (52 percent) of new U.S. IT hires were over the age of 35, compared to only 18 percent of H-1B new workers. If we examine IT new hires and IT guestworkers under the age of 30—the population of entry-level and early-career workers—we find that the number of new guestworkers in 2012 was equal to nearly two-thirds (64%) the number of *all* new hires under age 30 in the United States (Figure 7).

¹⁰ An alternative measure would be to divide the annual change in the population of temporary workers by the annual change in the total workforce. But we cannot do that here because the only estimates available at this time are the annual entry numbers. An estimate based on employment change for H-1Bs was conducted for the late 1990s, and it found that the H-1B visa averaged 20 percent of total employment growth during that decade. During the peak years of H-1B entries, however, growth in the H-1B workforce was over half of total IT employment growth (Lowell 2001, 131-62).

Figure 7: New IT Hires/Guestworkers Ages 30 & Below



Source: Authors' analysis of Current Population Survey Job Tenure Supplements microdata; Department of State (2012); Department of Homeland Security (2008 and unpublished DHS data).

3. Who Uses Guestworkers and What is Their Role? How U.S. Guestworker Policy Supports Offshoring of IT Work

The predominant demand for guestworkers is in the IT industry and, within the IT industry, it is by the offshoring companies. The use of guestworkers is required to support offshore IT development because a portion of the project team (often estimated as about one-third of the entire project team) is dedicated to managing the customer account in the United States, to do requirements analysis, quality assurance, implementation, and liaise with the offshore team. Without this onshore team, it would be nearly impossible for a company to do offshore development. It is thus not the case, as often asserted, that without guestworkers firms would move their work offshore. It is, in fact, quite the opposite: without guestworkers, conducting work offshore would be much more difficult and the cost savings would be substantially reduced. This finding is based partly on fieldwork (Salzman, 2000; Salzman and Biswas, 2001), but also comes directly from the statements of offshoring companies in their U.S. Security and Exchange Commission (SEC) filings (10-K and 20-F forms).

Infosys, one of the larger Indian IT consulting and services firms, and one of the larger users of H-1B visas in 2013, states that provisions in the early drafts of Senate legislation (no longer in current versions such as I-Squared) that would "...require employers to pay higher wages & conduct U.S. worker recruitment, and limit number of H-1B and L-1 workers in a company's U.S. workforce and ability of company to place H-1B and L-1B workers in third party worksites..." would lead to a situation where the "...cost of doing business would increase" (Infosys, 20-F, 2014). The result of such legislation would be that, "Any restriction on ability to deploy trained offshore resources at client locations may require Infosys to replace existing offshore resources with local resources, or hire additional local resources,

potentially *at higher wages.*" [emphasis added] This is because, according to Infosys, the "...majority of professionals in the U.S. hold H-1B visas or L-1 visas; *ability of our technology professionals to engage in work-related activity abroad depends on ability to obtain the visas and permits.*"[emphasis added] Further, "Reliance on work visas for a significant number of technology professionals makes Infosys particularly vulnerable to such changes and variations as it affects our ability to staff projects with technology professionals who are not citizens of the country where the work is to be performed."

It is worth noting that nowhere does Infosys state that it would be unable to find sufficient workers in the U.S. and who are eligible to work (i.e., U.S. citizen, permanent resident, or current holders of work visas) but, rather, that it would raise their costs and require them to change their business model to one relying on U.S. hiring.

Another large IT offshoring company, Wipro, discusses proposed restrictions on guestworker visas as well. They note it would affect their "...ability to compete for and provide services to clients in U.S." because they might not be able to "...continue to be able to obtain any or a sufficient number of H-1B and L-1 visas for our onsite employees on the same timeframe as we currently maintain." Interestingly, Wipro discusses as a potential risk to their business growth and revenue the increased scrutiny of L visa workers by United States Citizenship and Immigration Services, noting specifically that it would limit use of labor that is "...essentially an arrangement to provide labor for hire rather than in connection with the employee's specialized knowledge." It would seem the implication is that such enforcement would curtail current practices.

It is not just the Indian offshore firms that note the impact of potential restrictions on use of guestworkers. The U.S. consulting firm Accenture, also a large H-1B employer with a large offshore operation, notes in its 10-K that if it is "...unable to deploy needed talent because of increased regulation of immigration or work visas, including limitations placed on number of visas granted, limitations on type of work performed or location in which work can be performed, and new or higher minimum salary requirements, could be more difficult to staff employees on client engagements and increase costs." Worth noting is that the problem appears to be one of costs and difficulty in offshore staff working in the U.S., but not a potential "shortage" of workers.

Cognizant, a New Jersey based IT consulting company with large offshore development operations, reports that the "...U.S. Congress has recently considered and may consider in the future extensive changes to U.S. immigration laws regarding admission of high-skilled temporary and permanent workers. *If such provisions are signed into law, cost of doing business in the U.S. would increase...[and would]... impair ability to staff projects with professionals who are not citizens of the country where the work is to be performed.*" Their report further notes that, "...Any inability to travel could cause us to incur additional unexpected costs and expenses or could impair our ability to retain the skilled professionals we need for our operations." [emphasis added]

This review of selected company SEC filings about "Quantitative and Qualitative Disclosure About Market Risk" finds that companies that use offshore software development (both U.S. and non-U.S. firms) have business models that depend upon access to large numbers of guestworker visas. Further, that these guestworker visas provide a cost advantage over hiring from the U.S. labor force, as noted throughout the SEC disclosures. Importantly, there is no mention by U.S. or non-U.S. companies that guestworker visas provide labor that would otherwise be unavailable in the U.S., only that using U.S. workers would increase costs and make offshoring less profitable and potentially uncompetitive with firms that did development work solely or largely in the U.S.

It should be noted that there are a few companies that have decided to develop IT services firms that are based exclusively on domestic sourcing, namely hiring from the U.S. labor pool rather than using guestworkers, and on conducting the development work wholly within the U.S. (Thibodeau, 2012). These

are companies such as Nexient¹¹, led by Neeraj Gupta, Rural Sourcing Inc.,¹² founded by Monty Hamilton after he left Accenture consulting, and Brian Keane who founded Ameritas Technologies¹³ after he left the IT services business his father founded and that Brian developed into an offshoring company, which was later sold to an offshoring firm. These firms demonstrate there are alternatives to offshoring in this industry that could expand if there were changes in guestworker policy that did not continue the current distortion of the market.

4. Impacts

Historical trends in wages

The impact of guestworkers on the labor market and wages can be assessed through a number of different measures. As noted earlier, we are examining multiple measures to understand dominant trends and whether multiple measures are consistent in indicating labor market impacts. We first examine several different measures of wages: by occupation, by industry, by geographical region. Then we examine wages, guestworker supply, and computer science graduate trends. Beginning in the 1990s, wages and employment rose steeply to a peak during the dot-com boom. (This trend has been reviewed in recent research by Costa, 2012; Lazonick, 2009; Lazonick, et al., 2014; and Matloff, 2013 as well as by other researchers in recent years.) Through the 1990s and until 2004, we observe the expected relationship between unemployment and wages; in the 1990s unemployment was low and wages grew strongly, both signs of growing demand for IT workers. After the bursting of the dot-com bubble, a period of high unemployment was accompanied by a tapering off of IT wage growth. However, starting around 2004, a different pattern emerges. Although the recovery of the 2000s brought down unemployment and increased employment, wage growth never resumed. These flat wages do not appear to reflect a level of unmet demand.

A more detailed analysis of the IT industry has been undertaken by Lazonick (2009),¹⁴ who focused on four key information and communication technology areas: semiconductors, software publishing, computer programming, and computer system design, with data up to 2006. Figure 8 updates the data to 2010.¹⁵ Lazonick's analyses also examine the employment and wage trends in different industry segments

¹¹ Nexient describes the company as: "...is the pioneer in onshore agile software development services. Launched in 2009, the company today has over 60 scrum teams across 5 US based delivery centers supporting dozens of Fortune 500 and high growth mid-market enterprises."

¹² Rural Sourcing describes its business model as one that "...utilizes software development centers in tier 2 cities within the same country or geographic domain as the project. ...providing efficient and knowledgeable US teams working in an Agile software development environment. This methodology enables us to build development, management and consulting teams catered to an organization's needs without creating unnecessary overhead and additional management priorities...."

¹³ Ameritas's business model is developed on their mission, stated as: "We believe strongly that our domestic outsourcing services bring greater convenience and higher responsiveness to dynamic business needs. Add our relentless focus on quality, and our drive to continually improve productivity and cost effectiveness, and the result is a superior customer experience that easily surpasses other outsourcing options...[and provides "value to clients" because it can deliver services where] "Ability to outsource projects not suited for offshore delivery...[and where they can] Demonstrate a commitment to US job creation; American job creation; Rebuild US IT capabilities by developing domestic outsourcing capabilities and growing the pool of trained and experienced resources."

¹⁴ See Lazonick (2009, 18-20, 57-66). Lazonick uses U.S. Census Bureau County Business Patterns data to chart employment and real wages by industrial classification, by state and zip code from 1994. The latest available data are for 2010 (<http://censtats.census.gov/cbpnaic/cbpnaic.shtml>). Updated charts in Lazonick, et al., 2014.

¹⁵ SIC classifications for 1994–1997 and NAICS classifications for 1998–2010:

- Semiconductor and related devices: SIC 3674, NAICS 334413
- Software publishing: SIC 7372, NAICS 511610 and 334611

and regions, with particular focus on the high-tech regions of Silicon Valley in California, the Route 128 corridor in Massachusetts, and the cities of Dallas and Austin in Texas. The trends in each of these labor markets show similar patterns: steep increases in employment and wages during the dot-com boom, a collapse in 2001, and then increases in employment and wages in some industry segments and regions (but still well below the peaks of 2000) until the crash of 2008.¹⁶

There are important differences in trends by region and occupation. Policy discussions about the IT and guestworker labor markets tend to focus on Silicon Valley and big product companies like Apple. But as the following figures show, the Silicon Valley pattern in employment and wage levels is not representative of the industry as a whole. For example, a sharp increase in computer system design employment in Silicon Valley in 2010 was primarily the result of the dramatic growth of employment at Apple in response to the success of the iPhone and the launch of the iPad, but significant employment and compensation increases were not observed in other locations.

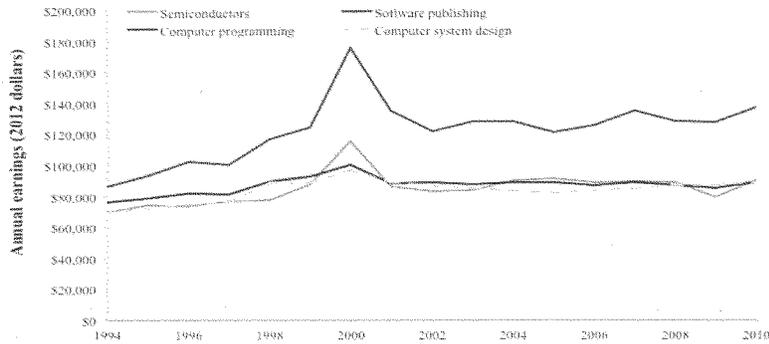
Programming employment exhibited the strongest growth during the dot-com boom and again before the 2008 recession, but computer design and semiconductor employment experienced no recovery. Programming is the lower paid and generally lower skilled of the occupations, and there is a secular decline in wages over the past decade: in many cases they even fall below the lowest levels reached after the dot-com crash (Figure 8).

Even in the dynamic technology regions of Silicon Valley, Route 128, Dallas, and Austin, the local earnings data shown in Figure 9 for workers in computer programming and computer system design reveal no signs of the rising wages that would be expected to occur if employers were hiring in a market that had a limited supply of workers.

-
- Computer programming services: SIC 7371, NAICS 541511
 - Computer system design: SIC 7373 plus half of 7379, NAICS 54152.

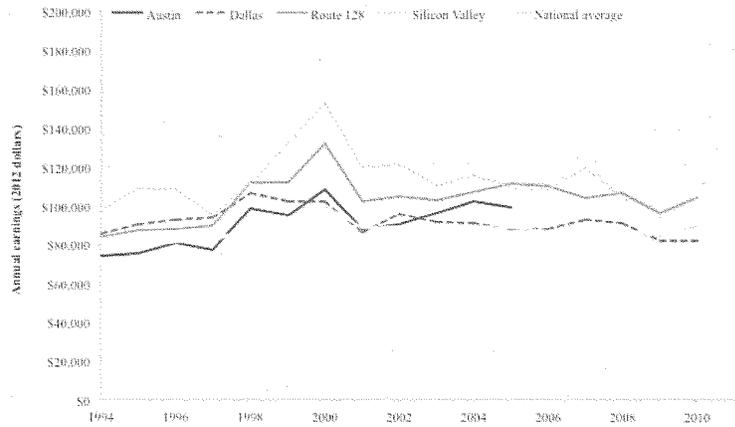
¹⁶ These figures, with data through 2006, appear in Lazonick (2009); the figures included here are updated and graciously provided to the author by William Lazonick.

Figure 8: Earnings by industry: Average Annual Earnings of U.S. Employees in Semiconductors, Software Publishing, Computer Programming, and Computer System Design, 1994-2010



Source: Lazonick (2009), updated by Lazonick using U.S. Census Bureau County Business Patterns data and provided to the authors (Salzman, et al., 2013); also in Lazonick, et al., 2014.

Figure 9: Earnings by Geographical Region: Average Annual Earnings of Full-Time Computer Programming Employees in Austin, Dallas, Route 128 Corridor, and Silicon Valley, 1994-2010



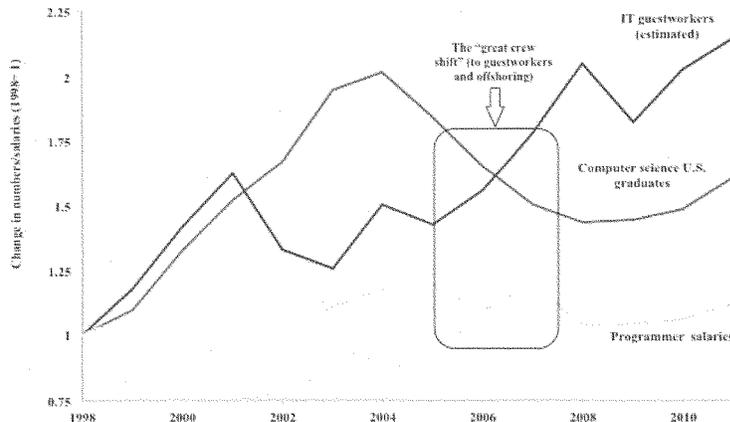
Source: Lazonick (2009), updated by Lazonick using U.S. Census Bureau County Business Patterns data and provided to the authors (Salzman, et al., 2013); also in Lazonick, et al., 2014.

H-1B workers and IT wages

The overall wage trends, as shown above and detailed in Salzman et al., (2013) and Lazonick (2009), and many other studies demonstrate a pattern of largely stagnant wages that suggest a sufficient, and perhaps ample supply of workers in most regions and computer occupations. As the example of petroleum engineers shows, a tight labor supply will be reflected in wage increases and a consequent increase in supply. Conversely, as a Brookings report observes, “it is likely that the extra supply of foreign-born workers does bring downward pressure on the wages of incumbent workers, as research suggests” (Rothwell and Ruiz, 2013).

In examining wage and both domestic and guestworker supply, we can observe several trends that may explain the flat salaries shown in the analysis in the previous section. As shown in Figure 10, in the late 1990s through early 2000s wages were increasing as was the number of computer science graduates and guestworkers. This was due to the high demand created by Y2K remediation work and the growing dot-com bubble as well as general IT growth. When the dot-com bubble burst, wages fell and both U.S. computer science graduate enrollments and guestworker numbers declined (with a lag in graduates because those already enrolled at the time of the crash completed their degrees in the subsequent two to three years). However, as the IT industry recovered, we observe sharp increases in the number of guestworkers but a continued decline in U.S. computer science graduates and continued declines and stagnation of salaries. It was during this period that there was the great “crew shift” to using guestworkers both in the U.S. and a significant increase in offshore IT development, which relies on guestworkers in the U.S. and transfer of work to offshore teams. All these factors would suggest there was a fundamental structural change in the IT labor market that allowed firms to have an ample workforce supply without having to raise wages.

Figure 10: Change in Programmer Salaries and in Numbers of U.S. STEM-related Graduates and IT Guestworkers, 1998-2011



Note: Optional Practical Training (OPT) visa numbers for 2009, 2010, and 2011 are estimated based on the 2008 total reported by the Department of Homeland Security. The initial OPT estimates use the OPT-extension ratio to initial

OPT in 2008, and OPT-STEM extension statistics for 2007–2013 are used to estimate 2009, 2010, 2011 initial OPT visas. Source: Department of State (2012) and Department of Homeland Security (2008 and unpublished DHS data).

Table 1 shows a preliminary analysis of the U.S. workforce and H-1B workforce in the same IT occupations. There is substantial average wage savings gain by using H-1B workers, which we estimate now comprise over 40 percent of the current, total workforce in these occupations (the data on the U.S. workforce provides detailed occupational breakouts but the H-1B data combine these two computer occupations). What is remarkable is that these workforce averages, which are for all workers in these occupations with a bachelor’s degree or higher, are lower for the H-1B workforce yet the H-1B workforce is a workforce comprised of nearly twice the proportion of workers with a master’s degree. *That is*, despite a workforce composed of a substantially greater number of workers with a postgraduate degree (nearly twice the proportion of the domestic workforce), their average wages are *lower*. In a preliminary analysis of wages and education, Lowell and Salzman (in preparation) find that, as would be expected in the labor market, U.S. workers with a master’s degree receive higher wages than those with a bachelor’s degree, and it is a wage premium that increases among older workers with a master’s degree. However, in the H-1B workforce there is, on average, no wage premium for a master’s degree. That is, for most H-1B workers with a master’s degree, they do not earn more than an H-1B worker with a bachelor’s degree. The implications of this finding are discussed in more detail in the next section.

Table 1: U.S. and H-1B wages and workforce

	% Masters	Annual Average Salary	Number of Workers		
Domestic Workforce					
Computer scientists and systems analysts	25%	\$79,895	234,239		
Computer programmers	21%	\$79,185	225,292		
H-1B workforce					
			1st & 3rd Year Approvals	Estimated 6 Year Population	Est. Percent of Domestic IT Workforce
Computer Sci/Systems Analyst & Programmers (combined)	45%	\$75,873	78,113	195,283	42.5%

Source: DHS H-1B data; calculations by authors (Lowell and Salzman, forthcoming).

5. “Green Cards for Grads”

In response to the “handcuff” provisions of H-1B visas (e.g., employer sponsorship that limits mobility), various policies such as those in the I-Squared Act would increase the speed, ease, and availability of green cards for STEM graduates. The justification is that, by providing free labor market mobility to workers, they can obtain market wages and that they won’t be “sent home” after receiving a U.S. education. This is presumed to provide a benefit to the U.S. as well as preventing them from “competing against us” by going to work in another country. Although a well-intentioned response to the documented abuses of the H-1B program, the I-Squared and other green card proposals do not appear to consider the evidence about the impact of the current H-1B, CPT, OPT, and OPT-extension programs on higher education and impact in the STEM labor market.

First, although the assertion that “we’re educating them and then sending them home” is widespread and oft-repeated, there is scant evidence available to accurately assess this claim, but that evidence which is

available suggests quite the opposite is occurring. The one study that did examine Ph.D. graduates found there has been no change in the return rate (Finn, 2012). One informal follow up that was done of cases reported in the media found none had, in fact, been compelled to leave because of an inability to obtain a visa (Matloff, 2014). Matloff concludes: "The lobbyists' claims that we are losing outstanding technological talents to our competitor nations due to low visa caps is just false. There must be some examples somewhere, but the examples given by the advocates themselves just don't support their claims." In earlier work that Leonard Lynn, Pamela Meil, and I conducted of technology entrepreneurs in India and China (Lynn, et al., 2012), we found that those returning had all done so because they wanted to live and work in their home country (often after many years, and professional success, in the U.S.). That is, the "pull" factors to home country seem to be the primary motivating factor rather than "push" factors in the U.S.

Second, the "loss" of graduates is often described as the potential loss of the next Google founder, or other innovator. This claim is not based on any evidence, the cases cited are anecdotal and often not illustrative of the claim (e.g., Google's co-founder, Brin, immigrated as a child with his family leaving the dissolving Soviet Union) and, importantly, fail to consider the evidence about the predominant types of students and jobs the colleges and visa programs support. That is, these guestworker programs are largely to support offshore development work and generally for routine programming work, not the innovation work that makes headlines. Moreover, the very notion that sequestering talent in the U.S. can either feasibly prevent global migration or doing so would further US "competitiveness" is a case of old generals fighting the last (cold) war. The globalization of industry requires a much different strategy that leverages global migration for national prosperity and advances the global commons of innovation (see Lynn and Salzman, 2004, 2006, 2015, for discussion).

Third, and perhaps most importantly, the incentives provided by easy U.S. labor market entry through colleges and universities as now exists with the CPT, OPT, OPT-extension, and H-1B programs have led to growth of graduate programs that, at the extreme are fraudulent programs (Bartlett, Fischer, and Keller 2011), but in the main have grown to target foreign students as part of a business model to generate revenue rather than provide a high quality, graduate-level education. These are programs in lower tier schools and programs in higher ranked schools but are structured to serve foreign students with a lower quality education. The institutions with some of the highest ratios of OPT-STEM extension awards to enrollments (Stratford University, University of Bridgeport, and Northwestern Polytechnic University; see Table 2) were found by a 2011 *Chronicle of Higher Education* investigation to target foreign students as the primary population for their programs (Bartlett, Fischer, and Keller, 2011).

These colleges specialize in acquiring student visas and (for students with F-1 visas) OPT employment authorization for their students. In addition to tuition, students are often charged up to \$3,000 in fees for obtaining the work authorization. At some universities, such as Tri-Valley University in California, the authors of the *Chronicle* study report that students do not even attend classes; the business model was "selling permission to live and work in the United States on student visas." Institutions specializing in acquiring OPT employment authorization for their students that do not act as egregiously as Tri-Valley University still keep their instructional expenses down with substantial reliance on online education, or they hold classes only occasionally throughout the semester.

Table 2: Universities with the largest number of OPT approvals, 2010--2012

	OPT Approvals (fiscal 2012)	Cumulative OPT Approvals Through fiscal 2010	IT and Computer Science Share of OPTs (fiscal 2012)	IT and Computer Science Completions (2010-2011)
Silicon Valley University	181	546	95.6%	N/A
University of Bridgeport	160	1,378	16.9%	62
Lamar University	124	452	2.4%	16
Texas A&M University-	114	492	33.3%	7

Kingsville				
Northwestern Polytechnic University	110	704	48.2%	118
University of Houston-Clear Lake	109	321	56.9%	188
Stratford University	107	1,834	95.3%	343
San Jose State University	106	674	34.9%	357
Illinois Institute of Technology	102	781	48.0%	299
International Technological University	95	412	36.8%	155

Note: IT and computer science completions include all computer science majors and all computer software engineering majors. Discrepancies between IT and computer science completions and IT and computer science OPTs may result from differential reporting to different agencies for different major categories (for example, reporting "software engineering," which is counted here simply as "engineering"). Source: Authors' analysis of Optional Practical Training (OPT) application data, and National Center for Education Statistics, Higher Education, General Information Survey and Integrated Postsecondary Education Data System.

The data on OPT and OPT-STEM extension use by universities, and the investigation of both abuse and legal but questionable practices by universities suggest there is a need for more research and consideration of the impact of expanding this type of program. The types of changes proposed in I-Squared not only would expand the numbers of guestworkers but, by granting permanent residency, would also increase the incentives for foreign students to enroll in, and for colleges to expand these programs. Moreover, there would be potentially quite dramatic impact on the labor market if colleges and universities expand with essentially no limits to increases of student and graduate flows that would be encouraged by changes such as those proposed in I-Squared. Abuses have been found in some college programs responding to high foreign-student demand for entry into the U.S. IT labor market. These colleges also appear to be serving the labor demand of some firms that hire students without even minimal college-level education and without much, if any, apparent IT experience or background. In other segments of the college market, even in well-established schools, there appears to be extensive use of the OPT extension (suggesting that there are students who are unable to find regular employment even a year after graduating or that their employers either have not prioritized their employment in H-1B applications or they did not win an H-1B visa in the annual lottery), and programs are expanding by targeting foreign student enrollments. Providing permanent residency for STEM graduates could have quite significant impacts on the education system as well as the labor market.

Tables 3 and 4 show colleges, grouped by Carnegie Class, that have the largest percentage of their computer science masters students on a student F-visa. As these charts show, these are colleges that appear to have programs largely if not almost exclusively serving foreign students. These enrollment patterns reflect a business model for these colleges: master's degree programs generate high revenue and because entry into the U.S. labor market is relatively easy, it becomes a means of expanding the labor supply. Interestingly, the preliminary analysis finds that the vast majority of H-1B IT workers with a master's degree have little to no wage premium over an IT worker with a bachelor's degree, suggesting that these master's degree programs are not providing students a master's level education but rather the entry-level skills into the IT field (U.S. students with master's degrees in computer science do have a wage premium over U.S. bachelor's degree students).

Table 3: Master Computer Science Degrees Awarded to Students on F-Visas

	Total MS /CS degrees	F-Visa Graduates	F-Visa graduates as percent of all graduates	% of all FV grads
Research Universities-Very High Research Activity	7,448	3,921	53%	41.9%
Research Universities-High Research Activity	4,579	2,567	56%	27.4%
Master's Colleges and Universities	5,854	2,152	37%	23.0%
Doctoral/Research Universities	2,341	619	26%	6.6%
Not Classified	411	17	4%	0.2%
Special Focus Institutions-Other	308	76	25%	0.8%
TOTAL	20,941	9,352	45%	100%

Source: National Center for Education Statistics, Higher Education, General Information Survey and Integrated Postsecondary Education Data System, 2012. Analysis by Hal Salzman and David Hersh, Rutgers University.

Table 4: Universities with Highest Percentage of F-Visa Graduates in Computer Science

Carnegie Classification	University/College	Number of F-Visa Graduates	FV/US Ratio	F-Visa graduates as percent of all graduates
Doctoral/Research Universities	Texas A & M University Kingsville	49	24.5	96%
Doctoral/Research Universities	Indiana State University	24	24.0	96%
Doctoral/Research Universities	Texas A & M Univ.- Corpus Christi	38	12.7	93%
Doctoral/Research Universities	Central Michigan University	30	3.3	77%
Doctoral/Research Universities	Sam Houston State University	12	3.0	75%
Doctoral/Research Universities	University of North Carolina at Charlotte	95	2.5	71%
Doctoral/Research Universities	Illinois State University	13	1.9	65%
Doctoral/Research Universities	Marquette University	5	1.7	63%
Doctoral/Research Universities	Oakland University	13	1.6	62%
Doctoral/Research Universities	University of Nebraska at Omaha	39	1.3	57%
Doctoral/Research Universities	University of San Francisco	32	1.2	54%
Research U.-High Research Activity	Texas Tech University	45	22.5	96%
Research U.-High Research Activity	Louisiana Tech University	11	11.0	92%
Research U.-High Research Activity	Rutgers University Newark	11	11.0	92%
Research U.-High Research Activity	University of Texas at Arlington	40	10.0	91%
Research U.-High Research Activity	University of Missouri Kansas City	51	8.5	89%
Research U.-High Research Activity	Kansas State University	27	6.8	87%
Research U.-High Research Activity	Wichita State University	47	6.7	87%
Research U.-High Research Activity	New Mexico State University	13	6.5	87%
Research U.-High Research Activity	Illinois Institute of Technology	221	6.3	86%
Research U.-High	University of Akron Main	29	5.8	85%

Research Activity	Campus			
Research U.-High Research Activity	University of Texas at Dallas	252	4.8	83%
Research U.-High Research Activity	University of Louisiana at Lafayette	41	4.6	82%
Research U.-High Research Activity	SUNY at Binghamton	72	4.5	82%
Research U.-High Research Activity	Old Dominion University	26	4.3	81%
Research U.-Very High Research Act.	University at Buffalo	164	10.9	92%
Research U.-Very High Research Act.	University of Houston	88	8.0	89%
Research U.-Very High Research Act.	Louisiana State University and Agricultural & Mechanical College	23	7.7	88%
Research U.-Very High Research Act.	University of Arizona	73	6.1	86%
Research U.-Very High Research Act.	Stony Brook University	102	6.0	86%
Research U.-Very High Research Act.	University of Illinois at Chicago	48	6.0	86%
Research U.-Very High Research Act.	Indiana University Bloomington	69	4.9	83%
Research U.-Very High Research Act.	University of Southern California	349	4.8	83%
Research U.-Very High Research Act.	Washington State University	9	4.5	82%
Research U.-Very High Research Act.	University of Nebraska Lincoln	18	3.6	78%
Research U.-Very High Research Act.	University of Missouri Columbia	14	3.5	78%
Research U.-Very High Research Act.	Wayne State University	26	3.3	76%
Master's Colleges and Universities	Maharishi University of Management	116	38.7	97%
Master's Colleges and Universities	Monmouth University	22	22.0	96%
Master's Colleges and Universities	Northwest Missouri State University	72	18.0	95%
Master's Colleges and Universities	University of Maryland Eastern Shore	17	17.0	94%
Master's Colleges and Universities	Valparaiso University	17	17.0	94%
Master's Colleges and Universities	Bradley University	46	15.3	94%

Master's Colleges and Universities	Western Kentucky University	29	14.5	94%
Master's Colleges and Universities	University of Texas at Tyler	13	13.0	93%
Master's Colleges and Universities	Oklahoma City University	24	12.0	92%
Master's Colleges and Universities	University of Bridgeport	62	10.3	91%
Master's Colleges and Universities	University of Houston Clear Lake	150	9.4	90%

Source: National Center for Education Statistics, Higher Education, General Information Survey and Integrated Postsecondary Education Data System, 2012. Analysis by Hal Salzman and David Hersh, Rutgers University.

In summary, any expansion of foreign student entry into the U.S. labor market in IT is likely to exacerbate rather than remediate the current, negative impacts of large guestworker flows on the labor market. Further, and very importantly, it is likely to exacerbate what appears to be growth of a college and university business model of providing entry into the U.S. labor market that would otherwise be difficult to obtain; the provisions of the I-Squared legislation could expand the numbers of master's degree programs that are primarily offering degrees as the cost of obtaining a green card, easy entry into the U.S. labor market, and perhaps a moderate level of skill and education. The evidence suggests the impact would be depressing wages, as is currently reflected by the lack of a wage premium for H-1B master's degree holders and growth of degree programs that exclude U.S. students, either indirectly (as evident in the colleges with high concentration of F-visa graduates) or directly, as in the case of California State University-East Bay, which stopped admitting state residents into its graduate programs and admitted almost exclusively international students into its computer science program (which is about 90 percent international students; Jaschik, 2012, Matloff, 2012). This was the University's explicitly stated strategy to increase revenue to make up for budget deficits by excluding state residents who would pay lower tuition rates than out-of-state and international students. As the chart above suggests, this appears to be a "global services" business model pursued by a number of colleges and universities across the country.

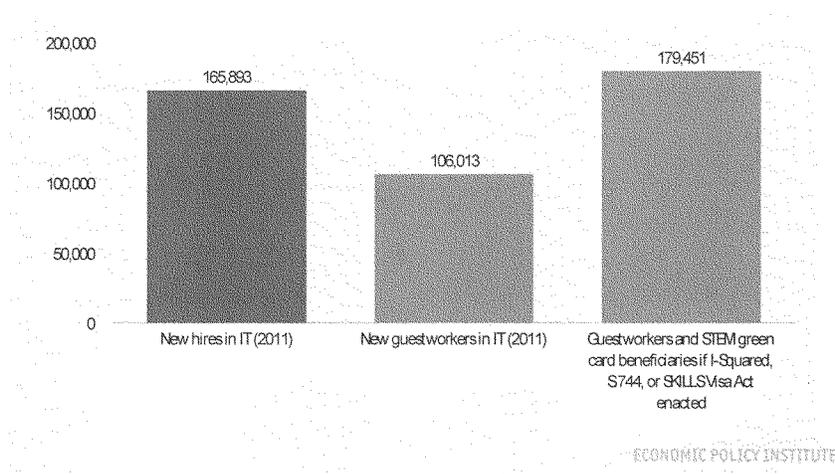
6. Summary and Concluding Remarks

Analysis of the data finds that high-skill guest worker programs supply the preponderance of all new hires for the IT industry. The inflow of guest workers is equal to half of all IT hires each year and fully two-thirds of annual hires of workers younger than 30.

As the wage analyses show, wages in IT jobs have been stagnant for over a decade while guestworkers have steadily increased, now comprising 40 percent or more of all current workers in some computer occupations. The evidence strongly indicates that the current levels of guestworker supply are a key factor in the depressed wages of U.S. IT workers, by both providing a large supply of entry-level and early-career workers that can be legally substituted for U.S. workers and, in particular, substitute younger guestworkers for older incumbent workers (again, this is permissible within the current law). Important to note is that the large supply of guestworkers is required by IT services firms for them to profitably support offshore development. That is, as stated in these companies' SEC filings, without a large supply of guestworkers they would be unable to move IT work offshore at competitive rates. At the very least, they would have to hire U.S. workers for the portion of their workforce on assignment in the U.S. (and the growth of "domestic sourcing" firms suggests alternative business models are viable).

As increases in the supply of guestworkers are being debated and proposals developed to speed the path to green cards, U.S. colleges are already graduating more than twice as many STEM graduates than the number of STEM openings generated by our economy each year. In short, the overwhelming evidence does not support a need for the escalating numbers of new guestworkers called for in the I-Squared legislation, S. 744, or The SKILLS Act. As Figure 11 shows, increases of the magnitude proposed would supply guestworkers for more than 100 percent of the industry's hiring needs. Such increases can only exacerbate current trends of stagnant wages and poor career opportunities in IT and STEM fields. In particular, the likely impact of large-scale guestworker programs, which stand to hurt all STEM graduates, will have especially negative impacts on minorities who are underrepresented in high tech, as well as other, recently arrived foreign-born workers who compete most with newcomers.

Figure 11: College-Educated Workers in Information Technology Jobs Under 30 Years Old and Current and Proposed Guestworkers in IT



Summary: Labor Markets and the Economy¹⁷

Markets are supposed to reflect demand through the price mechanism of markets. In the case of labor, the “price” is wages. How can it be then, that if the IT industry is experiencing labor shortages, wage levels in this highly profitable industry are no higher than they were in the last millennium? How can an industry expect to attract the best workers without raising wages? Is there what economists call a “market failure” here? As the evidence presented suggests, STEM labor markets do work as expected. In the case of petroleum engineers—a field that is more demanding in terms of course credit hours than computer science, and thus greater constraints to rapid change in supply—shortages led to wage increases which, in turn, led to near tripling of graduates. There is no plausible explanation for the observed IT labor market trends and outcomes other than, quite simply, large supplies of guestworkers that allow many firms to swap out higher paid, high-skill domestic workers for lower paid guestworkers, as found by many researchers.

¹⁷ This summary is drawn on and excerpts from Salzman, Lowell, Kuehn, 2013b; <http://www.pbs.org/newshour/making-sense/the-bogus-high-tech-worker-sho/>

All the evidence suggests the IT labor market is still bound by the usual dynamics of supply and demand. When we look at the trends of the past 20 years, we see that when wages increase, the number of computer science graduates increases. When wages fall, the number of graduates falls. When the supply of guestworkers increases, wages stay flat, and too many domestic students must find employment in other fields.

Some commentators argue that this last result is good for the economy: science and engineering skills are now being used in millions of non-STEM jobs. But an alternative view is that far too many domestic STEM graduates are in jobs that do not fully use their education, which represents a loss of our greatest source of innovators. Moreover, students observing these trends pursue careers outside of STEM fields, putting their talents to work in industries such as finance and law but not contributing to the innovation that drives the long-term and sustainable strength of the nation.

Yes, employers claim they have thousands of unfilled job openings, but the evidence is hardly compelling. Only about half to two-thirds of engineering graduates find engineering jobs and fewer than half of graduating Ph.D. scientists find career jobs. At the largest IT jobs website DICE.com, about half of the advertisements are for contract, short-term, and part-time jobs—not the types of jobs that U.S. graduates will find attractive nor the types of jobs that will allow these graduates to pay off student loans, much less enter the middle class. Those on the front lines of IT now tell students that given the industry's stagnant wages and unstable career tracks, better students should seek jobs elsewhere. An extensive survey of a recent college cohort by the National Center for Educational Statistics corroborates their advice. Only two-thirds of computer science graduates went into IT jobs in 2009. Of those not landing an IT job, half said they found a better job elsewhere. Fully one-third reported there were no IT jobs available.

This was also the finding in the analysis of changes in the composition of STEM graduates going into STEM jobs over the past three decades (Lowell, et al., 2009). We found that although the overall supply remained strong, fewer of the highest performing students were going into STEM jobs.

Meanwhile studies by Peter Cappelli of the Wharton School and by Burt Barnow of George Washington University find a *decrease* in the intensity of firms' recruitment efforts since the recession and an *increase* in pickiness about whom they are willing to hire. Again, the inference seems obvious: the supply of potential workers is already plentiful relative to employer demand. This should be the evidence that guides current legislation rather than anecdotal accounts and thin claims about the need for guestworkers and the U.S. falling behind in the global high-tech talent search.

H-1B guestworkers are concentrated in computer programmer and system analyst jobs. But most of these are commodity-like production jobs in IT services, doing back office programming for companies. A disproportionate number of H-1Bs provide onshore customer management for offshore programming teams. Ironically, without the visas, much of the programming work couldn't have been offshored in the first place.

There may be highly innovative guestworkers, but most are in jobs far away from the innovation frontier. Ron Hira at Howard University found that few of the largest H-1B employers could be considered technology innovators, with most generating very low levels of patents. So an often-heard argument for a massive increase in guestworkers—that we'll gain a few key innovators for America—is in reality a high stakes lottery with few winners but, like most lotteries, many losers. Large increases in the number of guestworkers will not ensure that we admit, among the tens of thousands of guestworkers, the few geniuses who could make a decisive contribution relative to American workers. If the intent of guestworker and immigration policy is to attract the high performing students and workers with potential to innovate and make substantial contributions to the economy, a much different set of policies is needed than those currently proposed.

In Conclusion

Currently, U.S. colleges graduate far more scientists and engineers than find employment in those fields every year—about 200,000 more—while the IT industry fills as much as two-thirds of its entry-level and early-career positions with guestworkers. At the same time, IT wages have stagnated for over a decade. We cannot expect to build a strong STEM workforce and encourage domestic innovation by developing policies that undermine the quality of STEM jobs. Before asking government to intervene in labor markets by handing out more guestworker visas and green cards to STEM graduates, we should ask for audits of shortage claims and workforce impacts as a first step toward developing evidence-based policy on this issue, an issue critical to the nation's future.

In sum, current immigration policies and the proposed changes that increase the supply of STEM guestworkers are likely to accelerate the already deteriorating career prospects for STEM graduates and workers. Considering the evidence, it would be wise for us to be concerned about the state of technology careers when making government policies that will fundamentally distort the market. We cannot expect to build a strong STEM workforce and encourage American innovation by developing policies that undermine the quality of STEM jobs.

Appendix A ¹⁸

Estimating the Number of Annual Guestworker Entrants to the IT Workforce

In order to estimate the number of guestworkers who are available to work in the IT sector, we need to know the number in each visa category who have been entering IT jobs. Data show that the majority of H-1Bs are employed in IT jobs, and that large shares of both L-1 visa holders and foreign students working on the OPT visa can be found in IT jobs. Although it is not known the extent to which the L-2 spousal/child visa is used for IT or STEM fields, we include it here because IT recruiters are targeting this group of visa holders in advertisements, and there has been a sharp increase in the number of L-2 visas issued. As explained below, a range is calculated in which the lower bound is based on minimal STEM workers being drawn from the L categories and none being drawn from the other visa categories (though there is likely some flow from these other groups, as there are nearly 400,000 employment-eligible visas issued each year in categories such as J-1, J-2, E-2, and O-1). As such, we can be reasonably certain that these are conservative estimates, erring on the side of undercounting rather than overcounting the number of guestworkers available to enter the labor force.

The occupational and industry data are available only for the H-1B visa petitions approved by DHS and for the OPT-STEM extension visa, though there are estimates of the industry employment of L-1 guestworkers, as discussed above. DHS also provides detail on the H-1B population by education and age. We use these figures to develop estimates of the total number of guestworkers entering annually into the IT workforce.¹⁹

The only common data available for most guestworkers are the State Department's tallies of annual visas issued, but DHS releases data on employer petitions for H-1B workers. A total of 192,990 H-1B petitions were approved in FY2010, of which 76,627 were for "initial employment"; the balance were for renewals. In FY2011, DHS reported there were 105,395 initial employment H-1B petitions approved for which occupation was known; another 1,150 initial employment H-1B petitions were approved but occupation was not known. The State Department, which issues the actual visas, reports significantly more H-1B visas than there are DHS petitions. The number of visas issued in a given year may exceed the number of H-1B petitions approved by DHS because a petitioner approved in one year might not apply for, or be issued the actual visa, until the following year. The State Department visa statistics are used because the data are reliable and can be obtained for other visas. In FY2011, 51,570, or 49 percent of the initial H-1B employment visas, were identified by DHS as "computer-related occupations" (DHS 2012). The percentage of H-1B guestworkers in IT has been reported as significantly greater in the past two years than the 49 percent in IT in previous years, according to industry watchers and knowledgeable experts, and the DHS statistics report only the number of H-1B petitions approved for work in IT occupations, not the number working for IT employers but in non-IT occupations. Thus, there is evidence that the actual share of new H-1B guestworkers in the IT field is larger than the reported 49 percent and appears to be growing.

There are no detailed statistics on the 70,728 issued in FY2011, but, as noted above, the OIG investigation and knowledgeable experts both estimate that a higher percentage work in the IT industry

¹⁸ This appendix is excerpted from Salzman, et al., 2013.

¹⁹ The term "guestworker labor pool" is used to denote the group of people who are newly eligible entrants; they are part of the flow rather than the stock of workers. The only data available are the number of visas issued in a given year, and some of those visa holders may not start work in the year the visa is issued; however, there are also new workforce entrants issued visas in prior years, minimizing any net differences. These estimates are broad enough to be minimally affected by any net differences, and labor markets, particularly wages, are largely affected by the size of the pool of available workers rather than by the number actually employed. Thus, the size of the pool, even if larger than the actual number of new labor force entrants, is as important as the actual flow of workers entering the labor force.

than is the case for the H-1B population (it has been suggested that the expansion of L visas is disproportionately used by the IT industry). Applying the same distribution, of 49 percent, as a conservative estimate (i.e., it would tend to undercount rather than overcount the number) would yield 35,280 guestworkers on L-1 visas in IT jobs (in range estimates, 21,000 is used as the lower bound and 53,000 as the upper bound for L-1 IT guestworkers in FY2011).

The L-2 visa count is 69,233 for FY2010 and 76,949 for FY2011 (in FY2011, the number of L-2 visas was greater than the number of L-1 visas issued). One would expect a lower proportion would be in the IT industry, but since there is some correspondence between the education and occupations of L-1 visa holders and the education and occupations of their spouses and adult children (who are eligible for L-2 visas), the number of L-2 visa holders in IT would be nontrivial. Further, because the IT industry is composed of such a wide range of education levels and backgrounds, the L-2 pool could be used throughout the IT occupational range even if the person was not formally trained in IT. It has also been noted that there has been an increase in recruitment ads targeting L-2 visa holders for the IT industry. We will include 30,000 L-2 visa holders in the upper bound and 10,000 as the lower bound of this segment of the guestworker IT pool.²⁰

The number of F-1/OPT guestworkers has been increasing, from approximately 70,000 in 2008 to an estimated 89,000 in 2010.²¹ An analysis of the occupation and industry/employers for all of the 14,499 OPT-STEM extension approved petitions in FY2011 was conducted. This analysis included all those employed in an IT occupation and STEM graduates working for an IT company. The findings show that 77 percent, or 11,103, of OPT-STEM extension guestworkers in FY2011 were in IT. To estimate the *initial* OPT IT guestworker population, a range of 35 percent to 65 percent of the total initial OPTs issued was used (it is lower than the OPT-STEM extension rate since initial OPT visas are also provided to students outside of STEM).

²⁰ As noted above, estimates of guestworkers drawn from the several other employment visas or spousal employment visas are not included—totaling nearly 400,000 employment-eligible visas issued in FY2011—but presumably some number of these visa holders are also entering the IT industry; the L-2 visa holders are included because observers have noted that IT recruiters are specifically advertising for L-2 visa holders.

²¹ Initial OPT data are not routinely provided, and a single source for series data has not been identified; only the OPT-STEM extension data were obtained (released to a third party via the Freedom of Information Act). OPT data are listed in other sources, such as the 2008 DHS Interim Final Rule establishing the 17-month STEM OPT extension (“Extending Period of Optional Practical Training by 17 Months for F-1 Nonimmigrant Students With STEM Degrees and Expanding Cap-Gap Relief for All F-1 Students With Pending H-1B Petitions,” 73 F.R. 18944, 18950, April 8, 2008); “Currently, DHS estimates, through data collected by SEVP’s Student and Visitor Exchange Information System (SEVIS), that there are approximately 70,000 F-1 students on OPT in the United States. About one-third have earned a degree in a STEM field.” The regulation is available at <http://www.gpo.gov/fdsys/pkg/FR-2008-04-08/pdf/E8-7427.pdf>.

Table A1: Annual Guestworker Visa Issuances, Estimated Total and Estimated Number Approved for Employment in IT, 2010-2013

Visa Program	2010 Total	For IT Workforce	2011 Total	For IT Workforce	2012 Total	For IT Workforce	2013 Total	For IT Workforce
H-1B	117,409	57,530	129,134	63,276	135,530	66,410	153,223	75,080
L-1	74,719	36,612	70,728	34,657	62,430	30,591	66,700	32,683
L-2	69,233	17,308	76,949	19,237	71,782	17,945	74,104	18,526
OPT	96,916	38,766	105,357	42,143	115,303	46,121	123,328	49,331
OPT-STEM extension	9,984	3,994	12,961	5,184	15,827	6,330	19,034	7,613
Total	368,261	154,210	395,129	164,497	400,872	166,888	436,389	181,674

Source: Department of Homeland Security reports and data provided through a third party and obtained via Freedom of Information Act. The initial OPT estimates use the OPT-extension ratio to initial OPT in 2008, and the OPT-STEM extension statistics for 2007-2013.

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Testimony of
Richard L. Trumka
President
AFL-CIO

Hearing on the
"Immigration Reforms Needed to Protect Skilled American Workers"

Before the
Senate Judiciary Committee
March 17, 2015

Chairman Grassley, Ranking Member Leahy and members of the committee.

Thank you for the opportunity to testify on this important topic.

The AFL-CIO is a federation of 56 unions that represents 12.5 million working men and women. We strive to ensure that every person who works in this country receives decent pay, good benefits, safe working conditions, and fair treatment on the job.

I know I don't have to tell you that working people are struggling in this economy. I'm sure you hear that every day from your constituents, just as I do from our members.

In a recent survey, almost 90% of our members said that their income was either falling behind or just staying even with the cost of living. Just let that sink in.

Nationwide, only 8% of them feel like they are getting ahead, and more than half feel like they are getting pulled under. And the numbers tell us that their concerns are real.

Wages for the bottom 70% have been flat since the late 1970s, while almost all the gains from the increasing productivity of our workforce have flowed to the top 10%.

This kind of wage stagnation and wealth concentration is not the inevitable outcome of immutable economic forces.

It is the result of powerful elites, big corporations, Wall Street -- and yes, Silicon Valley -- designing and insisting upon an economy where wages stay low so that profits can grow higher.

The rules are rigged against working families, and our unjust immigration system is one of the many forces making it harder for them to get ahead. We know that real

immigration reform is an important part of the larger structural change that needs to happen to once again create an economy where wages grow and where the wealth we produce is shared fairly; an economy that protects workers and favors democracy in the workplace.

For far too long, our rigged immigration system has allowed employers to drive down wages and working conditions in our country.

The brunt of the impact has been borne by immigrant workers, who face the highest rates of wage theft, sexual harassment, and death and injury on the job. But our entire workforce suffers when we allow standards to erode as millions of workers struggle to support their families without the status to assert their rights.

When employers can hire undocumented workers with a wink and a nod and then fire them when they seek to organize a union or complain about unpaid wages or unsafe working conditions, it is not just undocumented workers who are hurt, but all workers.

And when employers like Southern California Edison (SCE) can replace hundreds of steady middle class jobs with captive guest workers who earn a fraction of the wage for the same work, then we know that our broken immigration system is facilitating a race to the bottom.

Recognition of these concerns brought the labor movement together in 2009 around a shared set of principles that would create a different sort of immigration system—one that promotes shared prosperity and shared values of dignity, fairness, opportunity, voice and justice.

That framework guided our participation in historic negotiations with the business community and paved the way for the bipartisan comprehensive immigration reform bill passed by this Chamber in 2013.

The Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744) demonstrated that a comprehensive approach is possible when lawmakers take seriously their obligation to solve problems, and I applaud the leadership that many members of this committee demonstrated in that process.

While far from perfect, the bipartisan immigration reform bill created a broad and inclusive pathway to citizenship, strengthened protections for workers and devised a new type of employment-based visa system tied to real labor market needs, not the whims of employers.

In addition to being the right thing to do, the Congressional Budget Office projected that over time the reforms would net billions in new revenues, substantially reduce the deficit and raise the wages for our entire workforce.

As part of that bill, the labor movement was proud to play a role in creating a new type of visa program, which included core worker protections and can serve as a model for any future immigration reform policies we adopt as a nation.

While we supported S. 744 as a whole, we were disappointed to see Senator Orrin Hatch's amendment pass during mark-up, eroding requirements that all H-1B employers abide by anti-displacement provisions, recruit U.S. workers prior to hiring an H-1B worker and give first preference in hiring to qualified U.S. applicants.

Labor's unity framework for immigration reform includes five carefully balanced and inter-connected components, so we do not support a piecemeal approach to immigration—particularly one that does not include a pathway to citizenship for the 11 million.

If S. 744 had been broken into pieces, we certainly would not have supported the high-skilled provisions as stand-alone legislation.

So today, we ask you to commit to work with us to support the type of real immigration reform that can help build a stronger economic future for our nation and support the basic civil and human rights and dignity of all workers, rather than providing yet another nod to corporate interests.

The labor movement has made overhauling our dysfunctional immigration system a core priority, and we will remain steadfast in pursuing that urgent goal next week, next month and next year.

But I am here to tell you, and I want to be really clear about this, that expanding captive guest worker programs is not the way to do it.

In fact, the types of reforms outlined in the recently-introduced I-Squared bill would take us exactly in the wrong direction.

The insatiable employer demand for more guest worker visas says more about what is wrong with our economy than about the most urgent problems with our immigration system.

As currently structured, the H-1B visa program allows employers to stifle wages, create a captive workforce, and make previously full time jobs insecure and temporary.

At a time when we face unprecedented levels of inequality and decades of wage stagnation, it is irresponsible to expand access to employment-based temporary work

programs that will continue to hold down wages, increase worker vulnerability, and reduce social mobility for deserving workers.

As we have said repeatedly, Congress must consider legislation to reform guest worker programs rather than expand them, and the law should unambiguously state that it is illegal to replace a U.S. worker with an H-1B guest worker under any circumstances, whether directly or through secondary displacement—and there should be no cheap and easy exemptions permitted, as there are now.

In addition, we have a straightforward set of reform recommendations that we believe would address the structural problems with our employment-based visa programs and help to protect all workers:

1) *Employers should be required to fill jobs with the most qualified American applicant, and should be permitted to recruit from abroad only when a real need exists – and can be proven.*

In order to ensure that all workers on American soil feel connected and protected, it is essential to prevent employer practices that exploit guest worker programs to undercut or displace an existing American workforce.

If the need for workers with a specific skill set is real, then we see no reason for employers to object to a real process that verifies it.

I ask you, if employers are seeking to hire immigrant workers on temporary visas for reasons other than shortage, what are their motives?

Hiring that seeks to suppress standards for wages and working conditions harms workers on all sides, and it harms our economy.

That is why we have insisted that the availability of employment-based visas should be tied to the real needs of the U.S. labor market, as determined by a commission of experts – not high paid lobbyists.

If I may quote from a recent letter written by Chairman Grassley:

“All employers who bring in visa holders should be held accountable and prove that foreign workers are needed. All employers, not just some, should be required to make a good faith effort to recruit U.S. workers. All employers, not just some, should be required to attest that they did not or will not displace a U.S. worker when applying for a foreign worker. All employers, not just some, should be required to offer the job to a U.S. worker who is equally or better qualified. Anything short of this is failing the American people and those struggling to find jobs in today’s economy. Acting unilaterally for some businesses without providing protections for U.S. workers would be detrimental to the future of our workforce.”

I couldn't have said it better myself.

Most people I talk to assume that employers already have to document that they cannot find an American worker before they can recruit an H-1B worker—because that is only logical. It is high time our policies supported that logic by requiring a meaningful labor market test.

2) *Employers should be required to pay workers in the H-1B program at the same rate they would pay American workers.* As long as we allow guest workers to be paid less than their local counterparts for the same work, we create clear and perverse incentives to prefer to hire through programs like the H-1B and cultivate a race to the bottom.

If the shortage so touted by the tech lobby were real, we should expect to see wages raising in an effort to attract scarce workers.

Yet high tech workers today cannot purchase any more goods with their income than they could in 1998, and they face increased insecurity on the job, as our IT worker brothers and sisters in Southern California can surely attest.

According to a Government Accountability Office analysis of data from the U.S. Department of Labor (DOL), 54 percent of H-1B visas are certified at the Level 1 wage (17th percentile wage) and 29 percent are certified at Level 2 wage (33rd percentile wage).

Both the Level 1 and Level 2 wage are below the local average wage for the occupation (the 50th percentile wage). That means that 83 percent of H-1B visas are certified below the local average wage in the occupation. The AFL-CIO supports an increase in the prevailing wage standard for guest workers to the 75th percentile of the prevailing U.S. wage, so that employers do not have an incentive to hire temporary guest workers. This would also create an incentive for employers to invest in training U.S. workers.

3) *Workers in the H-1B program should have increased job mobility and the right to self-petition for legal permanent resident status, rather than having to rely upon an employer to petition for them.*

At present, not only are H-1B workers tied to a single employer who can essentially fire them at will by terminating their visa, but even after six years of employment, the power to decide whether that worker can stay in the country and obtain a green card rests solely in the hands of the employer.

Currently, less than 10 percent of firms actually sponsor their workers for permanent status.

Low rates of retention of H-1B workers for permanence make clear that this program is being misused to replace stable, middle class jobs with a contingent, disposable workforce that employers can underpay and then replace at will.

The AFL-CIO continues to insist on these essential reforms before we consider expansion of the H-1B program, and we have a few good models to look to for language.

The H-1B and L-1 Visa Reform Act put forward by Senators Durbin and Grassley in the 111th Congress would increase recruitment of, and investment in, U.S. workers; improve wage standards; and strengthen the Department of Labor's audit authority and ability to prevent and penalize fraud and misrepresentation.

In addition, the worker protections included in S744 would have protected workers from exploitation by foreign labor recruiters, and afforded H-1B workers the right to self-petition for permanence.

Yet instead of enacting common-sense reforms such as these, the I-Squared bill would more than triple the number of H-1B visas, at a time when the U.S. census indicates that only one in four STEM degree holders in the U.S. is able to find work in the field. Perhaps acknowledging the lack of empirical evidence of shortage, the "market-based escalator" in the I-Squared bill would peg visa caps to employer demand for indentured and underpaid guest workers, rather than actual labor market needs – essentially saying to employers that the more H-1B workers they apply for, the more they can get.

This type of escalation could have a catastrophic impact on the ability of new graduates to get work in their fields.

Already in 2011, a staggering two-thirds of college educated IT workers under 30 were guest workers.¹

It bears noting that many of the very employers who insist that there is a shortage of high skilled workers have a documented record of collusion to suppress wages.

Indeed, high tech employers are actively lobbying for increased access to H-1B workers even as we see significant layoffs in the industry, signaling that it is yet another strategy to prevent the normal escalation of wages for highly skilled employees working in a highly profitable industry.

Tech tycoons have gotten rich while wages in the technology sector have stagnated.

If the hard work of America's tech workers is ever to pay off, we need to craft policy that benefits the people who actually write code, rather than just rewarding industry executives who write checks.

Our goal should be an America in which our young tech workers can pay off their student loans, not one in which Larry Ellison can build ever more extravagant yachts.

Moreover, between 2010 and 2012, 9 of the top 10 users of H-1B visas were companies specializing in offshore outsourcing.

Outplacement firms, also known as “body shops,” are staffing companies that hire thousands of H-1B workers and then place the workers with third-party employers.

The third-party employer may then contract the worker to a different employer. Passing a worker from employer to employer increases the difficulty of enforcing H-1B laws, especially because liability and accountability is technically limited to the employer who first petitioned for the visa.

The AFL-CIO believes that staffing companies dependent on temporary visas should be barred from the H-1B program.

As the government’s own auditors have reported, the large majority of the wage and hour complaints DOL receives are related to activities at body shops.ⁱⁱ Such violations should not be tolerated.

Labor Shortage Claims Are Not Supported by Data

Flat wages, an abundant supply of new talent, and unemployment rates belie industry claims of a labor shortageⁱⁱⁱ.

The unemployment rate for engineers has doubled since the last recession and prospects for employment have diminished for all U.S. STEM graduates.

According to the Current Population Survey, in May 2013 there were 403,065 unemployed STEM workers actively looking for work around the country (132,238 of the unemployed were in computer occupations).^{iv}

These levels of unemployment demonstrate the folly of raising the H-1B cap without an actual assessment of the labor market.

During the depths of the Great Recession, employment of computer skilled workers dropped 24,310 workers in 2008 and 2009, while American colleges were graduating 131,296 new bachelor and associates degree holders in computer science. Yet, in those two years, while jobs were shrinking and new graduates were desperately looking for work, the Department of Homeland Security granted more than 130,000 new H-1B visas to do computer work.

This is particularly problematic because the presence of a large visa-contingent workforce appears to make it easier for employers to exclude traditionally underrepresented classes of workers, such as women and communities of color.

Indeed, female unemployment in some computer-related occupations was as high as 24 percent in 2014, and women face the highest unemployment rates in occupations that employ a disproportionately high number of guest workers.^v

Unemployment rates are also unacceptably high for Hispanic computer systems analysts, with 14.5 unemployed in 2012.^{vi}

Leading employers in Silicon Valley recently disclosed their record on the diversity of their workforce, showing very weak black representation (roughly 3%).

By contrast, the high presence of African Americans (roughly 17%) in the large Internet computer technology corridor of the District of Columbia and its Maryland and Virginia (DMV) suburbs highlights the underperformance of Silicon Valley in building a representative workforce.

Moreover, expanding de facto guest worker programs like Optional Practical Training (OPT)—through which employers hire more than 120,000 young college graduates per year who hold F-1 visas—but do not even guarantee that those foreign graduates are paid the minimum wage, let alone the prevailing wage, chase Americans out of computer science and creates a self-fulfilling “shortage” as Americans respond to a relatively better market as engineers in other fields. Second, it is far from a race neutral policy.

Like all Americans, about 30% of African Americans who earned baccalaureates earn them in science and engineering fields. But African Americans who choose science were once far more likely to choose computer science as a major.

In 2002, 14.5% of black science and engineering majors chose computer science, versus 11.5% for all Americans. But by 2012, because of declining job prospects, the share of black science majors choosing computer science fell to 9.8%.

The next Sergei Brin might be sitting in an American classroom right now, but if that future innovator cannot get an entry-level job in high tech because employers prefer importing temporary workers, entrepreneurial innovations will not occur in the United States.

Greater Scrutiny and Fresh Approaches Needed

Unfortunately, evidence of the abuses and wage suppression that pervade our vast employment-based visa system continues to mount:

- The recent SCE scandal highlights blatant displacement using the H-1B program to undercut local wages by more than \$30,000 per worker. Not only were local workers fired, they were forced to train their H-1B replacement and sign non-

disparagement agreements as a condition of their severance packages.

- Electronics for Imaging brought intercompany transferees to California through the L-1 program and paid them an outrageous \$1.21 per hour, purportedly the same rate they earned in rupees in India, rather than the local market rate of \$19-45 per hour.

- The H-2B program has now been halted due to legal challenges brought by employers who did not want to submit to the common-sense wage and local recruitment requirements issued by the Department of Labor, and instead asserted that DOL lacked authority to regulate the terms of the seasonal work program.

Numerous official investigations have documented that violations are not isolated, and indeed are consistently experienced throughout the system.

Considering the overwhelming evidence of problems, a comprehensive review of wage rates and hiring practices across all employment-based visa programs seems clearly warranted, and I urge this committee to call for such a review in order to shed light on the way in which these programs are being used by employers.

A basic premise of that review should be that no employment-based program should lack prevailing wage regulations, and that all visa programs that put workers into the labor market should be regulated as work programs and not disguised as exchanges, internships, or student programs.

This would compel the establishment of prevailing wage standards for the L-1, J-1, and OPT programs, and compel review of the levels and practices of a great number of others.

In addition, we should not lose sight of the important new model that was pioneered with the W Visa.

This hard-negotiated framework created a research bureau that would work to ensure that future flows of workers into our communities are responsive to the real needs of the labor market and aligned with actual market wage rates.

The W program that S744 would have created also would have turned the captive work structure of the dominant U.S. guest worker programs on their head by ensuring that the workers would have a degree of control over their own visas, rather than being entirely controlled by employers, and that the workers would also have a pathway to stay in the country if they desired to do so and were able to meet certain minimum requirements.

Temporary work visa programs have historically been structured to disempower both American workers and those being recruited from abroad.

W model offers a rights-based and data-centered alternative which should be brought to fruition.

Conclusion

We need immigration reform—not just for immigrants’ rights, but for the rights of all working people.

Those reforms must be based on the premise that we can build an immigration system that helps to lift all boats, rather than exacerbating the vulnerabilities that workers already feel in our increasingly precarious labor market.

The ability to exploit any worker lowers standards for all workers, and the AFL-CIO insists that strengthening worker protections is essential to reforming our immigration system and getting our economy back on track.

That means that we must defend and expand the rights of all workers, regardless of immigration status, including the right to organize, the right to a living wage, the right to overtime, the right to equal pay, and the right to bargain to raise our wages.

We must also fight for economic policies that put full employment and wages that rise with productivity ahead of Wall Street profits – or Silicon Valley’s.

An economy built on wage suppression, radical inequality and racial exclusion does not work.

It produces weak growth, financial crises, and political instability.

But there is another path—one that will restore rights and produce broadly shared prosperity.

We *can* build a system where workers’ wages rise as we create more wealth, and implementing reforms that create a fair and just immigration system that adds value to our economy is a necessary component for creating a level playing field—rather than one that’s used to degrade wages and working conditions—for immigrant and American workers alike.

Our nation’s workers are hungry for accountability from lawmakers, and expect concrete action to build an economy that works for working people.

They know that things do not have to be the way they are, and they are no longer willing to accept the status quo.

They know that they deserve to share in the wealth we all create together, and the labor movement will demand policies that create a more fair economy and a more functional democracy.

As Congress resumes the debate on immigration reform, we hope the Senate will focus on the core flaws in our immigration system that contribute to economic inequality and wage stagnation, rather than advancing low-road employment models that have contributed to the erosion of the middle class.

Instead of wasting time on measures that increase division, discrimination, and exploitation, we look forward to working with you to advance comprehensive immigration reforms that protect worker rights and create a broad and inclusive pathway to citizenship.

ⁱ Hal Salzman, Daniel Kuehn, and B. Lindsay Lowell, "Current and proposed high-skilled guestworker policies discourage STEM students and grads from entering IT," Economic Policy Institute. May 2013.

ⁱⁱ "H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program."

ⁱⁱⁱ "Guest Worker Programs and the STEM Workforce," DPE Fact Sheet. 2013.

^{iv} Anthony P. Carnevale & Ban Cheah, "Hard Times 2013: College Majors, Unemployment and Earnings," Georgetown University Center on Education and the Workforce. May 2013.

^v "Women in STEM and the Impact of Guest Worker Visas," DPE Fact Sheet. 2014.

^{vi} "Impact of Guest Worker Visas on Hispanic STEM Workers," DPE Fact Sheet. 2013.

QUESTIONS SUBMITTED TO MR. BILLHARDT, PROF. HIRA, MR. JOHNSON, MR. MIANO,
MR. PALMER, PROF. SALZMAN, AND MR. TRUMKA BY SENATOR BLUMENTHAL

Question for The Panel

Would transparency help?

Two witnesses at this hearing pointed in their testimony to a lack of publicly available information on nonimmigrant worker programs. In fact, some of the analysis discussed at the hearing involved data that was available only through FOIA, a process I know can be slow, difficult, and expensive.

The hearing discussed a number of incidents of apparent abuse of nonimmigrant visa programs for high-skilled workers. These abuses raise the obvious question of whether the American people are seeing an indication of systemic problems or a small number of unscrupulous companies abusing fundamentally sound programs. And it is worth pointing out that the potential for abuse goes beyond visa programs targeted at high-skilled workers. If anything, visa programs that allow employers to bring in workers without significant skills lend themselves even more to abuse.

Whether your goal is reforming nonimmigrant visa programs or simply rebuilding Americans' confidence in these programs, increased transparency could be an important part of the solution.

- a. In your view, would it help to make more information regarding nonimmigrant worker visa programs available to the public without the need to rely on the FOIA process?**

- b. Can you talk about what kinds of data should be made available and how such data could be used?

QUESTIONS SUBMITTED TO MR. BILLHARDT, PROF. HIRA, MR. JOHNSON, MR. MIANO,
MR. PALMER, AND PROF. SALZMAN BY SENATOR GRASSLEY

Senator Chuck Grassley
Questions for the Record
U.S. Senate Committee on the Judiciary
“Immigration Reforms Needed to Protect Skilled American Workers”

1. TO MR. BENJAMIN E. JOHNSON

- Do you believe that the replacement of Southern California Edison workers by H-1B workers discussed at the hearing is allowed under the H-1B laws, and if so, do you believe it should continue to be legal?
- In your written testimony you state that “skilled immigrant workers do not take American jobs, but complement American workers.” How is this an accurate statement in light of the layoffs that happened at Southern California Edison, Northeast Utilities, and other companies around the country?

2. TO MR. BJORN BILLHARDT

- Should the law give priority for visas to any specific categories of H-1B workers, and if so, which categories?
- During the hearing you said that “there are clearly some abuses of the system and they're clearly committed by companies that have a certain profile.” What are the abuses you are aware of and what is the company profile you had in mind?
- Do you believe that what Southern California Edison did is an “abuse” of the H-1B program?

3. TO PROFESSOR RON HIRA

- Do you believe that the replacement of Southern California Edison workers by H-1B workers discussed at the hearing is allowed under the H-1B laws, and if so, do you believe it should continue to be legal?
- Should the law give priority for visas to any specific categories of H-1B workers, and if so, which categories?
- We frequently hear that the majority of the students in graduate schools in engineering and computer sciences are international, and their education is often subsidized by the US government. Mr. Billhardt provided one such example in his testimony. Is the H-1B program being used primarily to retain these students?

- Could you explain the ways by which you understand firms use the H-1B and L-1 programs to facilitate the offshoring of US jobs and describe the impacts on the US workforce and economy of such offshoring?
 - During the hearing we heard about an American Enterprise Institute study (Madeline Zovodny, “Immigration and American Jobs”) that concludes that each H-1B creates 1.83 additional jobs for Americans. There was also reference to a 2008 National Foundation for American Policy study that concluded that each H-1B worker creates 5 new jobs (see <http://www.nfap.com/pdf/080311h1b.pdf>). Are you familiar with the studies in question? Do you agree with the studies’ conclusions?
 - Does the AEI study or any other similar study you know of measure the job-creating powers of *American* workers?
 - During the hearing there was discussion of a 2013 article by the Brookings Institution (“H-1B Visas and the STEM Shortage”) that stated that “H-1B workers are paid more than U.S. native-born workers with a bachelor’s degree generally (\$76,356 versus \$67,301 in 2010) and even within the same occupation and industry for workers with similar experience.” Do you agree with the conclusions in that Brookings article?
 - If the minimum wage for exempting H-1B Dependent employers from recruitment and non-displacement were raised from \$60,000 to \$95,000, would this solve the problems in the H-1B program?
 - Do the top H-1B employers generate large numbers of patents?
 - How does the H-1B program impact the racial and gender diversity of STEM workforce?
 - What is the “B-1 in lieu of H” visa category provided for in the State Department’s Foreign Affairs Manual? What is your understanding of the way in which this visa category is used to bring foreign workers to the U.S. outside of the H-1B and L-1 programs?
4. TO MR. JOHN MIANO
- How should the OPT program be reformed to better protect U.S. workers?
 - Does S.744 or the “I Squared” bill solve the problems associated with the OPT program?
 - Could you explain the ways by which you understand firms use the H-1B and L-1 programs to facilitate the offshoring of U.S. jobs and describe the impacts on the U.S. workforce and economy of such offshoring?

- What is the “B-1 in lieu of H” visa category provided for in the State Department’s Foreign Affairs Manual? What is your understanding of the way in which this visa category is used to bring foreign workers to the U.S. outside of the H-1B and L-1 programs?
- How does the H-1B program impact the racial and gender diversity of STEM workforce?
- On February 24, 2015 USCIS announced the publication of a final rule granting employment authorization to tens of thousands of H-4 spouses of H-1B workers. What is your understanding of the legal authority upon which USCIS is basing this regulation? Is it the same employment authorization authority that DHS asserts underlies the OPT program? DACA?

5. TO MR. JAY PALMER

- Could you please expand on the type of work that you saw was being done by foreign workers in B-1 business visitor status at U.S. client company worksites?

6. TO PROFESSOR HAL SALZMAN

- April 1 is the opening day of the Fiscal Year 2016 H-1B filing season. Many believe that all 85,000 cap-subject H-1B visa slots will be allocated within days of the opening day of the H-1B filing season and that such demand for H-1B visa numbers means that the U.S. suffers from a shortage of tech workers able to fill those jobs. During the hearing you remarked that this phenomenon does not indicate a shortage of U.S. workers for those jobs so much as a shortage of *discounted* labor. Could you please expand on your answer?
- According to a 2012 publication by the U.S. Chamber of Commerce, the unemployment rate among petroleum engineers is 0.1 percent. Is the appropriate response to a low unemployment rate in a particular STEM field necessarily to increase levels of H-1B visas?
- According to the testimony provided by Mr. Johnson, the unemployment rates for some STEM occupations appear low. Do low unemployment rates indicate full employment in these fields?
- Could you explain the ways by which you understand firms use the H-1B and L-1 programs to facilitate the offshoring of US jobs and describe the impacts on the U.S. workforce and economy of such offshoring?
- During the hearing we heard about an American Enterprise Institute study (Madeline Zovodny, “Immigration and American Jobs”) that concludes that each H-1B creates 1.83 additional jobs for Americans. There was also reference to a 2008 National Foundation for American Policy study that concluded that each H-1B worker creates

- 5 new jobs (see <http://www.nfap.com/pdf/080311h1b.pdf>). Are you familiar with the studies in question? Do you agree with the studies' conclusions?
 - Does the AEI study or any other similar study you know of measure the job-creating powers of *American* workers?
- During the hearing there was discussion of a 2013 article by the Brookings Institution (“H-1B Visas and the STEM Shortage”) that stated that “H-1B workers are paid more than U.S. native-born workers with a bachelor’s degree generally (\$76,356 versus \$67,301 in 2010) and even within the same occupation and industry for workers with similar experience.” Do you agree with the conclusions in that Brookings article?
- The employment projections made by the Bureau of Labor Statistics are often used to predict shortfalls in the future domestic supply of STEM workers. Could you explain whether these projections show a shortfall?

QUESTIONS SUBMITTED TO PROF. HIRA AND PROF. SALZMAN BY SENATOR SESSIONS

Senator Jeff Sessions
Questions for the Record
“Immigration Reforms Needed to Protect Skilled American Workers”
Professor Ron Hira and Professor Hal Salzman

1. Based on publicly available information, please provide the following statistics as they pertain to H-1B recipients:
 - a. The percentage of H-1B recipients who have a PhD, or equivalent.
 - b. The percentage of H-1B recipients who have a Master’s Degree, or equivalent.
 - c. The percentage of H-1B recipients who have a Bachelor’s Degree, or equivalent.
 - d. The percentage of H-1B recipients who have less than a Bachelor’s Degree.
2. Based on publicly available information, please provide the average age of an H-1B recipient.
3. Based on publicly available information, please provide the average number of years an H-1B recipient has been employed in the field prior to coming to the United States.
4. The Department of Labor’s official Labor Force Participation Rate shows a steady decline in the number of Americans participating in the workforce over the last two decades. What impact, if any, has the H-1B program had on the Labor Force Participation Rate in the United States?
5. Can H-1B recipients start new businesses in the United States while in H-1B status?
6. Do the top H-1B employers generate large numbers of patents and new technologies?
7. Although testimony at the hearing indicates that the total number of H-1B recipients in the United States is unknown, can you please provide your best estimate as to how many H-1B recipients are currently in the United States?
8. How does the H-1B program affect the racial and gender diversity of the STEM workforce?
9. How would “stapling a green card” to the diploma of every foreign STEM student who graduates from a U.S. university affect the domestic workforce and student population?

QUESTIONS SUBMITTED TO MR. MIANO BY SENATOR SESSIONS

Senator Jeff Sessions
Questions for the Record
“Immigration Reforms Needed to Protect Skilled American Workers”
John Miano

1. What specific enforcement problems exist relative to the H-1B program?
2. How is it legal for employers to use the H-1B program to replace American workers with foreign labor?
3. What specific things must an employer do in terms of recruiting from the domestic workforce before making use of the H-1B program to bring in new workers to the United States?
4. What protections exist for American workers in S. 153, the Immigration Innovation Act of 2015?
5. Please explain how S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act, would have affected American workers in general, and specifically, the impacts of the bill’s provisions dealing with the H-1B program.
6. What data should the Department of Homeland Security (DHS) collect regarding OPT participants to ensure that the public has access to information on the specifics of the program?
7. Can you please provide additional information as to why aliens who participate in the OPT program are cheaper to employ than Americans?

QUESTIONS SUBMITTED TO MR. PALMER BY SENATOR SESSIONS

Senator Jeff Sessions
Questions for the Record
“Immigration Reforms Needed to Protect Skilled American Workers”
Jack B. Palmer

1. Does the law adequately protect American workers like you from retaliation or retribution from employers for whistleblowing activities related to the H-1B program?
2. Can you please elaborate upon how the requirement that employees sign non-disparagement agreements hurts American workers who lose their jobs to H-1B recipients?
3. At the hearing, you explained that the technology industry had blackballed you because of your previous whistleblowing activities. Can you please elaborate on some of your experiences?

QUESTIONS SUBMITTED TO MR. BILLHARDT AND MR. JOHNSON BY SENATOR VITTER

U.S. Senator David Vitter

Questions for the Record

“Immigration Reforms Needed To Protect Skilled American Workers”

March 17th, 2015

Bjorn Billhardt

- (1) You mostly discussed your experiences with the H1-B visa program, but there are many other programs that were discussed during the hearing. What is your opinion of some of these other programs, such as the Optional Practical Training program and the “B in lieu of H” program, that have an even greater potential for exploitation by large companies due to the lack of regulations in place regarding the granting of these visas?
 - a. Would you personally use these programs if the opportunity presented itself?
- (2) Hypothetically, if you were to select a foreign worker with a visa to replace an American worker, would you have the American worker train the worker that would replace him before making the replacement?
 - a. Is that part of the American dream you discussed? Is that an ethical practice?
- (3) What is your opinion of companies like Google, knowing that they use consulting companies like Infosys to exploit these visa programs, which gave you so much opportunity, by taking advantage of cheap foreign labor and funnel temporary workers in and out of the country that have no intention of obtaining a green card?

Benjamin Johnson

- (4) You said that foreign workers positively impact the wages and employment opportunities of native-born workers across our economy in your opening statement, but the rising number of unemployed recent college graduates and the firsthand account of Infosys’s desire to bring in cheap labor through these various programs tell a different story. How do you reconcile your views with the reality of large companies abusing the programs?
- (5) You also referred to these foreign workers on visas as “skilled” in a blanket manner, yet there are quite a few immigrants using the program that are not skilled as evidenced through testimony and other information submitted into the record. Will you continue to use that term in such a broad manner after hearing and reading the information presented during the hearing?
- (6) In your testimony, you praised the Optional Training Program for foreign students, despite it being used to circumvent the H-1B program and supply large corporations with cheap foreign labor because there are no requirement that the OPT workers be paid the locally prevailing wage or even

the actual wage being paid to similarly qualified employees. Are you willing to concede that this program needs to be better regulated with wage requirements and policing measures?

- (7) Do you agree that the "B in lieu of H" visa, AKA B-1 Business Visitor Visa, is another problem that, at the very least, needs fixing through the development of guidelines clarifying the scope of activities permissible given that immigrants with this classification are typically employees of foreign IT consulting companies who are being sent to the U.S. to perform services for a U.S. client company?
 - a. Doesn't this fact seem to fly in the face of the intended purpose of the program?

Question for The Panel*Would transparency help?*

Two witnesses at this hearing pointed in their testimony to a lack of publicly available information on nonimmigrant worker programs. In fact, some of the analysis discussed at the hearing involved data that was available only through FOIA, a process I know can be slow, difficult, and expensive.

The hearing discussed a number of incidents of apparent abuse of nonimmigrant visa programs for high-skilled workers. These abuses raise the obvious question of whether the American people are seeing an indication of systemic problems or a small number of unscrupulous companies abusing fundamentally sound programs. And it is worth pointing out that the potential for abuse goes beyond visa programs targeted at high-skilled workers. If anything, visa programs that allow employers to bring in workers without significant skills lend themselves even more to abuse.

Whether your goal is reforming nonimmigrant visa programs or simply rebuilding Americans' confidence in these programs, increased transparency could be an important part of the solution.

a. In your view, would it help to make more information regarding nonimmigrant worker visa programs available to the public without the need to rely on the FOIA process?

Yes

b. Can you talk about what kinds of data should be made available and how such data could be used?

I think it would be helpful to have data on the total number of individual H-1B workers in the U.S. at any time, the number of former F-1 visa holders who obtain H-1B status, and the number of former F-1 visa holders who are sponsored for green cards.

RESPONSES OF MR. BILLHARDT TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY

Senator Chuck Grassley
Questions for the Record
U.S. Senate Committee on the Judiciary
“Immigration Reforms Needed to Protect Skilled American Workers”

1. TO MR. BENJAMIN E. JOHNSON

- Do you believe that the replacement of Southern California Edison workers by H-1B workers discussed at the hearing is allowed under the H-1B laws, and if so, do you believe it should continue to be legal?
- In your written testimony you state that “skilled immigrant workers do not take American jobs, but complement American workers.” How is this an accurate statement in light of the layoffs that happened at Southern California Edison, Northeast Utilities, and other companies around the country?

2. TO MR. BJORN BILLHARDT

- Should the law give priority for visas to any specific categories of H-1B workers, and if so, which categories? I don't think it makes sense to restrict the nature of the H1-B visa program by category of employment. It should be up to employers to offer jobs – at fair wages – to the people they feel they need to grow their businesses. The next Henry Kissinger, Albert Einstein, or Cary Grant may have a degree in literature or graphic design and any government bureaucracy that tries to define which employment backgrounds are worthier than others to contribute to the American Dream will likely do more harm than good.
- During the hearing you said that “there are clearly some abuses of the system and they're clearly committed by companies that have a certain profile.” What are the abuses you are aware of and what is the company profile you had in mind? I was reacting to testimony of the other witnesses – I do not have personal knowledge of any abuses. In general, ensuring that the H1-B program is used only for legitimate purposes of augmenting the US workforce with highly skilled – and fairly compensated – foreign talent is a goal I wholeheartedly support.
- Do you believe that what Southern California Edison did is an “abuse” of the H-1B program? I do not know enough about Southern California Edison to comment on this specific case.

3. TO PROFESSOR RON HIRA

- Do you believe that the replacement of Southern California Edison workers by H-1B workers discussed at the hearing is allowed under the H-1B laws, and if so, do you believe it should continue to be legal?
- Should the law give priority for visas to any specific categories of H-1B workers, and if so, which categories?
- We frequently hear that the majority of the students in graduate schools in engineering and computer sciences are international, and their education is often subsidized by the US government. Mr. Billhardt provided one such example in his testimony. Is the H-1B program being used primarily to retain these students?
- Could you explain the ways by which you understand firms use the H-1B and L-1 programs to facilitate the offshoring of US jobs and describe the impacts on the US workforce and economy of such offshoring?
- During the hearing we heard about an American Enterprise Institute study (Madeline Zovodny, "Immigration and American Jobs") that concludes that each H-1B creates 1.83 additional jobs for Americans. There was also reference to a 2008 National Foundation for American Policy study that concluded that each H-1B worker creates 5 new jobs (see <http://www.nfap.com/pdf/080311h1b.pdf>). Are you familiar with the studies in question? Do you agree with the studies' conclusions?
 - Does the AEI study or any other similar study you know of measure the job-creating powers of *American* workers?
- During the hearing there was discussion of a 2013 article by the Brookings Institution ("H-1B Visas and the STEM Shortage") that stated that "H-1B workers are paid more than U.S. native-born workers with a bachelor's degree generally (\$76,356 versus \$67,301 in 2010) and even within the same occupation and industry for workers with similar experience." Do you agree with the conclusions in that Brookings article?
- If the minimum wage for exempting H-1B Dependent employers from recruitment and non-displacement were raised from \$60,000 to \$95,000, would this solve the problems in the H-1B program?
- Do the top H-1B employers generate large numbers of patents?
- How does the H-1B program impact the racial and gender diversity of STEM workforce?
- What is the "B-1 in lieu of H" visa category provided for in the State Department's Foreign Affairs Manual? What is your understanding of the way in which this visa category is used to bring foreign workers to the U.S. outside of the H-1B and L-1 programs?

4. TO MR. JOHN MIANO

- How should the OPT program be reformed to better protect U.S. workers?
- Does S.744 or the “I Squared” bill solve the problems associated with the OPT program?
- Could you explain the ways by which you understand firms use the H-1B and L-1 programs to facilitate the offshoring of U.S. jobs and describe the impacts on the U.S. workforce and economy of such offshoring?
- What is the “B-1 in lieu of H” visa category provided for in the State Department’s Foreign Affairs Manual? What is your understanding of the way in which this visa category is used to bring foreign workers to the U.S. outside of the H-1B and L-1 programs?
- How does the H-1B program impact the racial and gender diversity of STEM workforce?
- On February 24, 2015 USCIS announced the publication of a final rule granting employment authorization to tens of thousands of H-4 spouses of H-1B workers. What is your understanding of the legal authority upon which USCIS is basing this regulation? Is it the same employment authorization authority that DHS asserts underlies the OPT program? DACA?

5. TO MR. JAY PALMER

- Could you please expand on the type of work that you saw was being done by foreign workers in B-1 business visitor status at U.S. client company worksites?

6. TO PROFESSOR HAL SALZMAN

- April 1 is the opening day of the Fiscal Year 2016 H-1B filing season. Many believe that all 85,000 cap-subject H-1B visa slots will be allocated within days of the opening day of the H-1B filing season and that such demand for H-1B visa numbers means that the U.S. suffers from a shortage of tech workers able to fill those jobs. During the hearing you remarked that this phenomenon does not indicate a shortage of U.S. workers for those jobs so much as a shortage of *discounted* labor. Could you please expand on your answer?
- According to a 2012 publication by the U.S. Chamber of Commerce, the unemployment rate among petroleum engineers is 0.1 percent. Is the appropriate response to a low unemployment rate in a particular STEM field necessarily to increase levels of H-1B visas?

- According to the testimony provided by Mr. Johnson, the unemployment rates for some STEM occupations appear low. Do low unemployment rates indicate full employment in these fields?
- Could you explain the ways by which you understand firms use the H-1B and L-1 programs to facilitate the offshoring of US jobs and describe the impacts on the U.S. workforce and economy of such offshoring?
- During the hearing we heard about an American Enterprise Institute study (Madeline Zovodny, "Immigration and American Jobs") that concludes that each H-1B creates 1.83 additional jobs for Americans. There was also reference to a 2008 National Foundation for American Policy study that concluded that each H-1B worker creates 5 new jobs (see <http://www.nfap.com/pdf/080311h1b.pdf>). Are you familiar with the studies in question? Do you agree with the studies' conclusions?
 - Does the AEI study or any other similar study you know of measure the job-creating powers of *American* workers?
- During the hearing there was discussion of a 2013 article by the Brookings Institution ("H-1B Visas and the STEM Shortage") that stated that "H-1B workers are paid more than U.S. native-born workers with a bachelor's degree generally (\$76,356 versus \$67,301 in 2010) and even within the same occupation and industry for workers with similar experience." Do you agree with the conclusions in that Brookings article?
- The employment projections made by the Bureau of Labor Statistics are often used to predict shortfalls in the future domestic supply of STEM workers. Could you explain whether these projections show a shortfall?

RESPONSES OF MR. BILLHARDT TO QUESTIONS SUBMITTED BY SENATOR VITTER

U.S. Senator David Vitter

Questions for the Record

“Immigration Reforms Needed To Protect Skilled American Workers”

March 17th, 2015

Bjorn Billhardt

- (1) You mostly discussed your experiences with the H1-B visa program, but there are many other programs that were discussed during the hearing. What is your opinion of some of these other programs, such as the Optional Practical Training program and the “B in lieu of H” program, that have an even greater potential for exploitation by large companies due to the lack of regulations in place regarding the granting of these visas?

a. Would you personally use these programs if the opportunity presented itself?

Thank you for this thoughtful question. I, in fact, did use the OPT. This one-year study extension program allowed me to stay in the US after I completed my business studies. It was essential for me to be able to stay one year without having to prove to a federal bureaucracy that I have extraordinary abilities or enter the lengthy and uncertain process of filing the H1-B while still in school. More importantly, I know many immigrants for whom the OPT was an essential stepping stone without which they would have needed to return to their home country within weeks of completing their studies.

I don't see how many abuses can happen under the OPT – to my knowledge, this program is not open to workers from abroad but geared to US students, most of whom have been studying in the US funded by US taxpayers. Discontinuing this program would most certainly make more of them leave rather than allowing them to find the right job here in the US and contribute to our economy.

I know less about the B program, but it seems like an essential tool for multinational businesses like Daimler or Toyota that want to open manufacturing facilities in the US and create US jobs. I did not use the B program, but if I had started my career in Germany, I could very much see myself having used it to transfer to a US facility to continue my career in the US.

- (2) Hypothetically, if you were to select a foreign worker with a visa to replace an American worker, would you have the American worker train the worker that would replace him before making the replacement?

a. Is that part of the American dream you discussed? Is that an ethical practice?

I think this question is conflating two issues. In a free market economy, employers need to be free to replace employees using ethical and legal employment practices to improve the operation of their business. At times, when one employee is replaced with another for legitimate business reasons, the transfer of knowledge is essential to the smooth operation of the business. This process is never easy and

often heart-breaking (and full of risks) for all sides involved yet an economy that does not allow business owners and managers to make these tough decisions is not truly a free market economy.

The practice of transferring knowledge from one worker to another, however, is in my mind not related to the question of whether America should continue to provide opportunities for people from other countries to join the American Dream or, alternatively, close its doors to the outside world and shut down a process that was instrumental in founding this country and making it the greatest nation on earth.

- (3) What is your opinion of companies like Google, knowing that they use consulting companies like Infosys to exploit these visa programs, which gave you so much opportunity, by taking advantage of cheap foreign labor and funnel temporary workers in and out of the country that have no intention of obtaining a green card?

I think that there are many easy ways in which true abuses of the system can be curbed without changing the basic nature of the very successful temporary H1-B program. Not everyone that comes on an H1-B visa wants to or will obtain a green card and stay. Many Americans enjoy being able to work abroad for a few years, and many people from other countries find value in living and contributing their skills here for a few years. Coming to the US on a temporary basis without intention of staying is not an abuse of the system by itself. Ensuring that the H1-B program is used only for legitimate purposes of augmenting the US workforce with highly skilled – and fairly compensated – foreign talent is a goal I wholeheartedly support.

Benjamin Johnson

- (4) You said that foreign workers positively impact the wages and employment opportunities of native-born workers across our economy in your opening statement, but the rising number of unemployed recent college graduates and the firsthand account of Infosys's desire to bring in cheap labor through these various programs tell a different story. How do you reconcile your views with the reality of large companies abusing the programs?
- (5) You also referred to these foreign workers on visas as "skilled" in a blanket manner, yet there are quite a few immigrants using the program that are not skilled as evidenced through testimony and other information submitted into the record. Will you continue to use that term in such a broad manner after hearing and reading the information presented during the hearing?
- (6) In your testimony, you praised the Optical Training Program for foreign students, despite it being used to circumvent the H-1B program and supply large corporations with cheap foreign labor because there are no requirements that the OPT workers be paid the locally prevailing wage or even the actual wage being paid to similarly qualified employees. Are you willing to concede that this program needs to be better regulated with wage requirements and policing measures?
- (7) Do you agree that the "B in lieu of H" visa, AKA B-1 Business Visitor Visa, is another problem that, at the very least, needs fixing through the development of guidelines clarifying the scope of activities permissible given that immigrants with this classification are typically employees of

foreign IT consulting companies who are being sent to the U.S. to perform services for a U.S. client company?

- a. Doesn't this fact seem to fly in the face of the intended purpose of the program?

**Questions for the Record (QFRs) Responses by Ronil Hira to Senator
Blumenthal for March 17th 2015 Senate Judiciary Committee Hearing on
Immigration Reforms Needed to Protect Skilled American Workers**

Question for The Panel

Would transparency help?

Two witnesses at this hearing pointed in their testimony to a lack of publicly available information on nonimmigrant worker programs. In fact, some of the analysis discussed at the hearing involved data that was available only through FOIA, a process I know can be slow, difficult, and expensive.

The hearing discussed a number of incidents of apparent abuse of nonimmigrant visa programs for high-skilled workers. These abuses raise the obvious question of whether the American people are seeing an indication of systemic problems or a small number of unscrupulous companies abusing fundamentally sound programs. And it is worth pointing out that the potential for abuse goes beyond visa programs targeted at high-skilled workers. If anything, visa programs that allow employers to bring in workers without significant skills lend themselves even more to abuse.

Whether your goal is reforming nonimmigrant visa programs or simply rebuilding Americans' confidence in these programs, increased transparency could be an important part of the solution.

- a. In your view, would it help to make more information regarding nonimmigrant worker visa programs available to the public without the need to rely on the FOIA process?**
- b. Can you talk about what kinds of data should be made available and how such data could be used?**

We already have sufficient data and information to tell us that the abuse of the H-1B and L-1 programs is widespread and systemic. It is not simply a case of a few unscrupulous employers or isolated incidents. Most of the top H-1B employers use the program to replace Americans with cheaper foreign guestworkers. We know in Connecticut alone of two recent cases of major employers, Pfizer and Northeast Utilities, forcing their American workers to train their foreign replacements on H-1Bs. Both cases have been reported by the press and I have spoken to workers who have been replaced. I am sure that those workers could tell you how humiliating an experience this was and that the practice didn't just affect them but also hundreds of their co-workers. How will those workers benefit from getting more data about their replacement? The abusive practice of H-1B and L-1s has been in use in Connecticut and throughout the country for more than a decade. The insurance industry in Hartford has outsourced much of its IT work to the major H-1B employers. This is why Senator Christopher Dodd and Representative Nancy Johnson had introduced H-1B and L-1 visa reform bills in earlier Congresses.

More data can help us identify the extent of the abuse and would be especially welcome to us who research the issues. But it can only harm good policymaking if it is considered a substitute or prerequisite for actual reform. In some cases transparency can act like sunlight as a disinfectant, but in this case we already have plenty of sunlight on the widespread abusive practice of using H-1B and L-1 workers to replace American workers - Southern California Edison, Harley Davidson, Disney, Home Depot, AC Nielsen, Bank of America, Wells Fargo, Northeast Utilities, Pfizer, and many others have been reported by the press. Yet, this knowledge of abuse hasn't acted as a disinfectant to impede the practice. It's very clear that employers, even our most lionized, can't be shamed into changing their behavior with more transparency. Only Congress and the Executive Branch can change the behavior by changing policies.

Only when coupled with serious reforms of the programs can transparency help.

All H-1B and L-1 records should be released to the public in real-time, with redactions limited only to protect actual privacy concerns. I have successfully received H-1B data through a FOIA request but USCIS redacted certain fields, like age and gender, for no good reason. No one knows the work locations of any of these workers, contrary to what's been claimed by some researchers cited by proponents of H-1B expansion. H-1B occupation identifiers are woefully outdated making it difficult to make apples-to-apples comparisons with American workers on wages and other characteristics. Further, the LCA data that DOL collects should be linked to the release of the I-129 petition data so that anyone can verify that they match up. LCAs are required to be posted prominently in workplaces where H-1Bs are to be hired so there is no reason why these two databases shouldn't be linked.

We do know that the L-1 visa program is being abused and is used extensively by the offshoring firms to replace American workers. But we know very little about how the L-1 visa program is used in statistical terms. We have no idea how many L-1 workers each employer is receiving, and what those workers are doing. The blanket petitions create a veil that no one can peek past. Given the loose criteria of L-1 visas - no education requirement, no wage floor, and they pay no US payroll taxes - we should be very concerned about how the program is being used. Congress and the Executive Branch cannot make any significant judgments about the program since policymakers, and even experts who study the program, have no idea how the program is operating. This should be particularly concerning since the best estimates are that there are 300,000 or so L visas in stock and the Obama Administration has recently announced policy guidance on specialized knowledge (L-1B) that will make it even easier for employers to access L-1 visas.

Congress has also seriously hamstrung active enforcement of the H-1B programs by restricting the ability of DOL and DHS to share information with each other about H-1B program use. This restriction makes little sense unless the purpose is to avoid uncovering problems in the program.

RESPONSES OF PROF. HIRA TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY

**Senator Chuck Grassley
Questions for the Record
U.S. Senate Committee on the Judiciary
“Immigration Reforms Needed to Protect Skilled American Workers”**

Responses by Ronil Hira

TO PROFESSOR RON HIRA

- Do you believe that the replacement of Southern California Edison workers by H-1B workers discussed at the hearing is allowed under the H-1B laws, and if so, do you believe it should continue to be legal?

The Secretary of Labor has the authority to investigate whether the employers in the SCE case violated any of the H-1B regulations. Until and unless the Secretary of Labor completes an investigation we will not know whether the employers are willful violators or have committed fraud.

I believe that the employers in this case, and in many other cases where Americans have trained their H-1B replacements, have clearly and willfully violated the attestations they made on the Labor Condition Application submitted to the Department of Labor. Those employers have clearly adversely affected the wages and working conditions of similarly employed U.S. workers. This is also a violation of DOL's interpretation of the INA. DOL states the following on its website, "The Immigration & Nationality Act (INA) requires that the hiring of a foreign worker will not adversely affect the wages and working conditions of U.S. workers comparably employed."

- Should the law give priority for visas to any specific categories of H-1B workers, and if so, which categories?

The law should give priority to foreign workers with truly specialized skills. Those skills should be measured by wages that are significantly higher than the average wages of Americans who are in similar positions.

Right now, H-1B workers can, and are, paid below the average wages. Most H-1B workers have no more than ordinary skills at best. This is exemplified by the Southern California Edison case, where the H-1B workers were being paid between 40%-50% than the American workers they replaced. The SCE case is large, impacting 500 American workers, and it is not unique. The typical H-1B worker has no more than ordinary skills.

- We frequently hear that the majority of the students in graduate schools in engineering and computer sciences are international, and their education is often subsidized by the US government. Mr. Billhardt provided one such example in his testimony. Is the H-1B program being used primarily to retain these students?

The surprising answer is no. Employer demand for foreign workers with advanced degrees from U.S. universities is low. In FY2012, only 25,746 of the H-1B employers hired workers who held Masters or higher degrees from U.S. universities. This is surprisingly low considering that the 20,000 visas are *set-aside* for these workers. That means the overwhelming number of workers hired under the 65,000 base cap do not hold advanced degrees from U.S. universities. This would indicate that H-1B employers are not primarily seeking international students who trained here.

These hiring preferences are true of many of the top H-1B employers. We know, for example, that almost none of the H-1B hires made by outsourcing firms like Tata and Infosys are graduates of U.S. universities. Only 1-in-206 of Infosys' H-1B workers held an advanced degree from a U.S. university, and even less of Tata's H-1B workers did, just 1-in-222.

Many might be surprised to know that many major U.S. based technology firms also demonstrate these hiring preferences. The example Mr. Billhardt provided is far less common than what is widely believed. Google, Microsoft, and Facebook - firms that have lobbied heavily for more H-1Bs, often armed with examples such as Mr. Billhardt's - only fill about one-fifth of their H-1B positions with foreign workers holding advanced degrees from U.S. universities. Mr. Billhardt, who was representing FWD.US at the hearing, holds an advanced degree from a U.S. university, yet he himself is not representative of the hiring practices of Facebook, Microsoft and Google, all backers of FWD.US.

Company	FY13 New H-1Bs	H-1Bs With US Advanced Degrees	% With US Advanced Degrees
Google	744	164	22%
Microsoft	1039	212	20%
Facebook	320	62	19%

Brad Smith, chief counsel of Microsoft, told Congress that his firm had little interest in expanding the cap for advanced degree holders from the U.S. in testimony about S.744, the comprehensive immigration reform bill that passed the U.S. Senate. In the excerpt below, you see that the Microsoft's primary legislative goal with the H-1B program is to target increases in the base cap, not the cap for the advanced degree holders from US universities. In S.744 the base cap increased by 45,000 immediately while the cap for the advanced degree holders only increased by 5,000. And the base cap was set to increase an addition 70,000 in subsequent years.

Why was Microsoft interested in expanding the base cap rather than the advanced degree cap? Approximately 62% of Microsoft's H-1B workers hold no more than a Bachelor's degree.

<http://www.judiciary.senate.gov/imo/media/doc/04-22-13BradSmithTestimony.pdf>

The Base Cap and the STEM Exemption

The bill's sponsors wisely included an increase to the base H-1B cap to 110,000 per year, with a new exemption for an additional 25,000 U.S. advanced STEM degree holders. Even these increases could be quickly exhausted in a strong economy, but it is a healthy increase and a very positive step. We also commend the focus on addressing our serious skills gap in STEM fields.

While advanced degree workers are particularly critical, those with Bachelor's degrees in highly technical fields for which there are acute shortages are also the type of crucial high skilled talent that can drive forward our country's economy and capacity for innovation. H-1B visas are reserved for "specialty occupation" jobs that require the theoretical and practical application of a body of highly specialized knowledge, requiring completion of a specific course of higher education—typically at least a bachelor's degree. These jobs—whether for biophysicists, geneticists, artificial intelligence researchers or software engineers—require highly educated and skilled workers at all career stages and levels of experience.

If it is desirable to prioritize those foreign graduates of U.S. universities, the law doesn't need to be changed. A simple fix to the ways in which DHS counts its H-1B petitions would accomplish this.

Simple Administrative Fix Would Prioritize Foreign Graduates of American Universities

Some have argued that foreign students with advanced degrees from American universities should have a priority with the H-1B program but DHS could easily do more to fulfill this goal. The quota for new H-1B workers is 85,000 per year with 20,000 of those set aside for advanced degree graduates of U.S. universities. The 20,000 additional visas were created specifically to provide prioritization for advanced degree graduates of U.S. universities. But the way in which DHS counts advanced degree holders towards the cap severely hampers its effectiveness. DHS fills the 20,000 cap with applications from advanced degree graduates before counting them against the 65,000. If DHS instead counted them against base cap of 65,000 first it would free up more than enough spaces for advanced degree holders.

- Could you explain the ways by which you understand firms use the H-1B and L-1 programs to facilitate the offshoring of US jobs and describe the impacts on the US workforce and economy of such offshoring?

The top H-1b employers are offshore outsourcing firms. Their principal business goal is to offshore as much work as possible to their workforces in low-cost countries like India and the Philippines. The reason is simple. The net profit margins of the work done overseas is much larger than even the large margins for their "onsite" H-1B and L-1 workforces.

The Southern California Edison case provides a window into this process. The goal of the SCE and the outsourcers was to offshore the majority of the IT work currently being done in the U.S. The H-1B workers were brought in to be trained by the incumbent American workers. The training process could take up to 18 months or even longer in some cases. The nature of the tasks and work varies, though. The work that is geographically sticky (i.e., requiring someone with physical presence in the U.S.) require H-1B workers will stay on to continue this work. Other work, which isn't so geographically sticky, is offshored to workers who had never been in the U.S. Some work and tasks are completed H-1B workers staying on to act as the liaison between customer and the offshore team. And still other H-1Bs would return offshore to do the work from the low cost country, at home country wages. Please note that I refer to all of the workers as H-1Bs for brevity sake. In many cases an L-1 visa is used by the employer to conduct the exact same offshoring process.

The upshot of all of this is that the loopholes in the H-1B and L-1 visa programs are aiding and abetting to the offshoring and destruction of hundreds of thousands of high-wage middle class American jobs.

- During the hearing we heard about an American Enterprise Institute study (Madeline Zovodny, "Immigration and American Jobs") that concludes that each H-1B creates 1.83 additional jobs for Americans. There was also reference to a 2008 National Foundation for American Policy study that concluded that each H-1B worker creates 5 new jobs (see <http://www.nfap.com/pdf/080311h1b.pdf>). Are you familiar with the studies in question? Do you agree with the studies' conclusions?

The Zovodny study does not find that H-1B workers "create" jobs for Americans because it is impossible for her to come to such a conclusion. The study claims that there are 1.83 additional jobs "associated" with each H-1B visa. Dr. Zovodny is identifying a correlation, not causation. This is a significant difference and distinction. So, those who are making claims about job "creation" are misreading the study.

Further, the study's conclusions about data "association" are questionable because of methodological flaws. First, Dr. Zovodny principally relies on the Labor Condition Application (LCA) data to identify the number of H-1B workers and their work location. The LCA data is wholly unreliable and very noisy. The reason is simple. While employers must have an LCA certified before they file an I-129 petition for an H-1B worker, most LCAs go completely unused. And there is no way for Dr. Zovodny to know which LCAs are actually used and those that are unused.

The LCA costs employers nothing and is very simple to fill out. No worker needs to be identified for an LCA. Further, employers can apply for many workers on a single LCA. Given these lax constraints on the LCAs, it should surprise no one that large numbers of LCAs are filed and certified every year whether an employer plans on filing a petition for an H-1B worker or not. I-129 petitions, which represent actual H-1B workers, cost money and require a worker to be identified.

Dr. Zavodny has no way of knowing where the H-1B workers are located because she is relying on the LCA data to tell her the work location. She also doesn't know the occupations of those workers. And she has no idea which of those LCAs were actually exercised into petitions.

The upshot is that the quality of the data Dr. Zavodny are poor and unreliable. Further, the study cannot isolate and control the many different factors - performance of the economy, stock market, business cycle, taxes, technological disruptions, etc. - that play important roles in job creation. By omitting these factors, she is attributing too much of the correlation to H-1Bs. Further, there isn't a clear causal theory at the micro level to support the correlation findings. In fact, there are empirical facts that showing that H-1Bs substitute for American workers. As we know *most* H-1B workers are employed by offshore outsourcing firms that directly replace American workers and substitute for them. Those firms do not seek American workers first. The Southern California Edison case clearly demonstrates that many H-1B workers are replacing Americans, not creating jobs for them. Dr. Zavodny completely ignores this common usage of the program.

Turning to the National Foundation for American Policy report, "H-1B Visas and Job Creation." The study examined the global employment levels of a subsample of S&P 500 firms.

There are numerous weaknesses in the study's methodologies. I will highlight just a few of the major ones. By selecting the sample in the way he did, the study's author excludes the most of the top H-1B employers, thus skewing, or biasing, the results. As a result, the sample does not represent typical H-1B use. Further, the study compares H-1B applications, which are jobs located in America but held by foreign workers, against the worldwide employment levels of these firms. It did not compare H-1B employment levels against U.S.-based employment levels for these firms.

So, for example, a firm might apply for 100 H-1Bs and increase its headcount in India by 500, and the firm would meet the study's claim. Given the rapid expansion of offshoring by major S&P 500 companies, like IBM, it should be no surprise that some of these numbers look very high. But they don't measure *American* job creation.

Remarking on its dubious theory in a 2009 Wall Street Journal article, Harvard University economist Richard Freeman said the NFAP study, "...has all the scientific sense of cold fusion, ... though of course it could be we have discovered the perpetual employment expansion elixir."

Based on my own research of the H-1B program I have concluded on balance that it does more harm than good to the American labor market and for American workers. On the positive side, some employers do indeed use the H-1B program to bring in truly specialized and rare skills, and these workers complement the American workforce. Further, some H-1B holders, who become permanent residents, and later citizens, turn into entrepreneurs who create new technologies and jobs for American workers. However, the typical H-1B worker merely has ordinary skills, skills that are no better than American workers who are currently unemployed or underemployed. And the firms that get the most H-1Bs are using the program to facilitate the offshoring of American jobs and work. In the worst cases American workers are being forced to train their foreign replacements as a condition of severance and eligibility for unemployment insurance.

- Does the AEI study or any other similar study you know of measure the job-creating powers of *American* workers?

I know of no such study. And I am not sure how one could construct such a study.

- During the hearing there was discussion of a 2013 article by the Brookings Institution (“H-1B Visas and the STEM Shortage”) that stated that “H-1B workers are paid more than U.S. native-born workers with a bachelor’s degree generally (\$76,356 versus \$67,301 in 2010) and even within the same occupation and industry for workers with similar experience.” Do you agree with the conclusions in that Brookings article?

There are significant problems with the Brookings Institution report. The primary one is that the authors cannot make clear apples-to-apples comparisons between H-1B and U.S. workers' wages.

In identifying the H-1B workers' wages, the Brookings report cannot identify the work location of the H-1B worker. While they attempt to identify the location, the method they used, counting LCAs, simply doesn't work. They don't know which LCAs have been exercised as I-129 petitions. Therefore, they cannot control for geography.

What they should be able to do is estimate wages for U.S. workers but here their estimates are clearly far too low. No one in the industry would agree that IT worker wage estimates that Brookings uses of \$67,301 as being close to the market wages in IT. I suspect that the authors are averaging in many low wage computer occupations like computer support specialists (an occupation with large numbers of worker but don't require a degree) in order to bias the wages lower. H-1Bs require a Bachelor's degree or equivalent experience, so comparing those workers to U.S. workers in occupations that don't require a degree is making an apples-to-oranges comparison.

The Southern California Edison case shows how wildly off the Brookings Institution is in estimating U.S. market wages. Before being replaced by H-1Bs, the 500 American IT workers being were paid on average \$110,000 per year. That's 64% more than what Brookings has estimated. There's a yawning gap between Brookings estimate that the American IT workers are paid \$67,301 versus the actual wages paid to the SCE American IT workers of \$110,000.

- If the minimum wage for exempting H-1B Dependent employers from recruitment and non-displacement were raised from \$60,000 to \$95,000, would this solve the problems in the H-1B program?

H-1B abuse, including using it for outsourcing by IBM and Accenture, is widespread even outside of H-1B Dependent employers. Targeting only H-1B Dependent firms badly misses the mark. An alternative proposal that would have some positive effect would be to raise the wage floor for *all* H-1B employers to \$95,000 and eliminate any educational exemptions. Many in the IT industry have suggested that the true wage floor should be \$100,000 or more. Microsoft's Bill

Gates has publicly claimed that its H-1B workers are paid more than \$100,000, so this seems like a reasonable floor.

- Do the top H-1B employers generate large numbers of patents?

Most top H-1B employers do not patent much at all. The table below shows the number of U.S. patents, from FY10-12, for the top 20 H-1B employers. These are patents from *all* of the employees of the firm, American, permanent resident, foreign, and temporary workers.

As you can see most of the top H-1B employers patent very little. This is due to a number of factors. First, patenting is driven by the industry sector of the employer. Most of the top H-1B employers are in the IT Services sector, a sector that re-sells labor, and does not patent very much. For example, the top H-1B employer for FY12 was Cognizant. It received more than 9,000 workers yet received ZERO U.S. patents for the three years FY10-12.

Firms like Intel and Qualcomm are in sectors, semiconductor design and fabrication, where employers patent heavily. It should be noted that we don't know how much their H-1B workers contributed to patenting.

The case of IBM is interesting. IBM has traditionally been the leading receiver of patents but almost all of its patenting comes from its Software Products and Semiconductor business lines; whereas, most of its H-1B workers are in its IT Services and Outsourcing business lines. So, it is almost certain that the H-1Bs IBM hires have little to do with its divisions that patent.

Some, like Bill Kerr from Harvard University, have claimed that raising the H-1B cap would spur patenting and thus innovation. But if this recommendation were adopted it would be terribly ineffective given that more than half the H-1Bs go to employers that hardly patent at all. Giving Cognizant more H-1Bs, which is what would happen with an increase in the cap, would contribute zero to patenting. If Kerr's goal for the H-1B program is to spur patenting then a more sensible approach would be to change the H-1B eligibility criteria to favor industries and heavily patent like semiconductors and automotive and occupations like mechanical engineering and electronics engineering. The current H-1B system brings in mostly ordinary IT workers who fill positions as Computer Systems Analysts, implementing IT systems in the back offices of banks and insurance companies. Those occupations aren't involved in product development and certainly not in patenting.

FY12 H-1B Rank	Company	# New H-1Bs Received in FY12	Total U.S. Patents for ALL Employees 2010-2012
1	Cognizant	9,280	0
2	Tata	7,485	17
3	Infosys	5,600	56
4	Wipro	4,304	28
5	Accenture	4,035	340
6	HCL America	2,131	0
7	Tech Mahindra/SATYAM	1,963	15
8	IBM	1,846	18,463
9	Larsen & Toubro	1,829	5
10	Deloitte	1,668	6
11	Microsoft	1,496	8,713
12	Patni	1,260	0
13	Syntel	1,161	0
14	Intel	811	4,287
15	Amazon.com	775	46
16	Qualcomm	729	3,293
17	Google	646	1,879
18	PricewaterhouseCoopers	597	3
19	Synechron	571	0
20	Mphasis	567	0
Sources:	USPTO patents by firm and year http://patft.uspto.gov/		
	H-1B Top 20 from ComputerWorld list - USCIS original source		

- How does the H-1B program impact the racial and gender diversity of STEM workforce?

The H-1B program has negative impacts on the racial and gender diversity in STEM. Current H-1B policies are working at cross-purposes to the very large investments being made by government to increase the diversity of American STEM workers and students. The adverse impacts of the H-1B program on diversity in the STEM workforce are both direct and indirect. In very public ways, the technology industry has recently acknowledged that it needs to do much more to improve its racial and gender diversity. Yet, the H-1B program undermines these private sector proclamations and efforts.

First, according the USCIS Characteristics of Specialty Occupations reports (<http://www.uscis.gov/tools/reports-studies/reports-and-studies>), a large majority, 70%, of H-1B

workers in FY14 come from a single source country, India. And this concentration has been increasing over the years. Just ten years earlier, in FY04 the figure stood at 43%. The reason is simple – the rise of the offshore outsourcing industry and its increasing use of the H-1B program over the past decade. Nearly all the H-1B workers the offshore outsourcing firms hire are from India. For Wipro, 98.4% of its H-1B workers come from India, and for Tata it is 99.9% and 97.4% for Infosys.

It should be noted that this preference for H-1Bs from India has nothing to do with international student enrollments. The number of Chinese students at U.S. universities far outnumber Indian students: 274,000 Chinese to 103,000 Indian in 2013/14 according to the Institute of International Education.

(<http://www.iie.org/EN/Services/Project-Atlas/United-States/International-Students-In-US>)

Yet, the number of Chinese H-1B worker share *decreased* from 9.1% in FY04 to 8.4% in FY14.

So, the H-1B program directly skews the STEM workforce significantly towards workers of Indian origin, a group that is already overrepresented in the America's STEM workforce.

Though USCIS hasn't released gender information on H-1B workers, industry experts have said that the H-1B workers at outsourcing firms are overwhelmingly male. This again directly contributes negatively towards diversity in the STEM workforce, particularly in computer occupations.

There are also significant indirect impacts of the H-1B program on STEM diversity in America. Employers can tap cheaper H-1B and L-1 workers so they have little incentive to help prime and create pipelines of women and under-represented minority talent. They have little reason to invest in universities and educational organizations that broaden the pool of American STEM talent. While it is often sub-conscious, incumbent pools of workers tend to prefer workers that are similar to themselves.

The programs also contribute to rampant age discrimination in the industry.

- What is the "B-1 in lieu of H" visa category provided for in the State Department's Foreign Affairs Manual? What is your understanding of the way in which this visa category is used to bring foreign workers to the U.S. outside of the H-1B and L-1 programs?

My knowledge of this program is limited. I know that employers believe that the rules allow them to have their B-1 visa holders perform work. The B-1 is supposed to allow foreigner to make business visits but prohibits them from working. Employers have exploited what they perceive to be vagueness in the law to have B-1 visa holders work. We know that outsourcing companies like IBM have advertised *work* positions for B-1 visa holders, and have paid modest fines when caught. The government could and should do more to enforce the B-1 rules. Abuse of

the B-1 rules were at the heart of the record Infosys \$34 million fine. It is very likely that many companies are using the B-1 visa program for work when they should not.

RESPONSES OF PROF. HIRA TO QUESTIONS SUBMITTED BY SENATOR SESSIONS

**Senator Jeff Sessions
Questions for the Record
“Immigration Reforms Needed to Protect Skilled American Workers”
Professor Ron Hira and Professor Hal Salzman**

Responses by Ronil Hira

1. Based on publicly available information, please provide the following statistics as they pertain to H-1B recipients:

The following responses are sourced from the FY14 Characteristics of Specialty Occupations report issued by USCIS.
<http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/H-1B/h-1B-characteristics-report-14.pdf>

- a. The percentage of H-1B recipients who have a PhD, or equivalent.
8%
- b. The percentage of H-1B recipients who have a Master’s Degree, or equivalent.
43%
- c. The percentage of H-1B recipients who have a Bachelor’s Degree, or equivalent.
45%
- d. The percentage of H-1B recipients who have less than a Bachelor’s Degree.
1%

4% of H-1Bs in FY14 held a Professional Degree such as a Law degree.

As one can see from the data, H-1B workers most commonly hold no more than a Bachelors degree. The above data show educational levels for all H-1B recipients in FY14, including those H-1B workers whose petitions are capped and those who are not.

USCIS doesn’t report disaggregate the data for the capped petitions, data that have significant policy implications. If we looked at the 65,000 base cap, one would find that the share of Bachelors degrees is much higher than for all petitions. Based on my analysis of the data I estimate that roughly 70% of the base cap is filled by H-1B workers who hold no more than a Bachelors degree.

Some of the leading H-1B employers have very a high share of Bachelors degree H-1B workers. For Infosys, 85% of its H-1B workers hold no more than a Bachelors degree, and for Tata, it is 78%.

This tells us that the employers using the H-1B base cap are not very selective in their H-1B workers.

2. Based on publicly available information, please provide the average age of an H-1B recipient.

The following responses are sourced from the FY14 Characteristics of Specialty Occupations report issued by USCIS.
<http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/H-1B/h-1B-characteristics-report-14.pdf>

USCIS does not report the average age of an H-1B recipient but it provides the age distribution. For FY14, forty-two percent of H-1B workers are between the ages of 25-29 and nine percent between ages 20-24. That means more than half, 51%, of H-1B workers are under the age of 30.

Hiring young foreign workers feeds the rampant age discrimination practiced in the technology industry. Further, many young American workers, who are unemployed and underemployed, are directly competing with these H-1B workers.

3. Based on publicly available information, please provide the average number of years an H-1B recipient has been employed in the field prior to coming to the United States.

We do not have data on experience and I do not believe that USCIS collects such data. But given that more than half of H-1B workers are very young (<30 years old), by definition they have limited years of experience.

4. The Department of Labor's official Labor Force Participation Rate shows a steady decline in the number of Americans participating in the workforce over the last two decades. What impact, if any, has the H-1B program had on the Labor Force Participation Rate in the United States?

This is a difficult question to answer statistically. We do know that many Americans have dropped out of the labor force because of persistently anemic labor demand. Further, we know that some American workers take "voluntary retirement" packages rather than train their foreign H-1B replacement. In the Southern California Edison case, 100 of the 500 American IT workers took a voluntary retirement package. Many of those 100 have likely dropped out of the labor force prematurely.

Some H-1B workers are complementary to American workers, creating more labor demand for American workers' services. But too many of H-1Bs are substituting for American workers. The key is fixing the policies to encourage H-1B workers who complement the American workforce, not substitute for it.

5. Can H-1B recipients start new businesses in the United States while in H-1B status?

H-1B workers are expressly forbidden to work for themselves. They cannot start their own companies. They must work for an existing employer.

6. Do the top H-1B employers generate large numbers of patents and new technologies?

Most top H-1B employers do not patent much at all. The table below shows the number of U.S. patents, from FY10-12, for the top 20 H-1B employers. These are patents from *all* of the employees of the firm, American, permanent resident, foreign, and temporary workers.

TABLE: Most Top H-1B Employers Do Little Patenting			
FY12 H-1B Rank	Company	# New H-1Bs Received in FY12	Total U.S. Patents for ALL Employees 2010-2012
1	Cognizant	9,280	0
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18	PricewaterhouseCoopers	597	3
19	Synechron	571	0
20	Mphasis	567	0
Sources:	USPTO patents by firm and year http://patft.uspto.gov/		
	H-1B Top 20 from ComputerWorld list - USCIS original source		

As you can see most of the top H-1B employers patent very little. This is due to a number of factors. First, patenting is driven by the industry sector of the employer. Most of the top H-1B employers are in the IT Services sector, a sector that re-sells labor, and does not patent very much. For example, the top H-

IB employer for FY12 was Cognizant. It received more than 9,000 workers yet received ZERO U.S. patents for the three years FY10-12.

Firms like Intel and Qualcomm are in sectors, semiconductor design and fabrication, where employers patent heavily. It should be noted that we don't know how much their H-1B workers contributed to patenting.

The case of IBM is interesting. IBM has traditionally been the leading receiver of patents but almost all of its patenting comes from its Software Products and Semiconductor business lines; whereas, most of its H-1B workers are in its IT Services and Outsourcing business lines. So, it is almost certain that the H-1B IBM hires have little to do with its divisions that patent.

Some, like Bill Kerr from Harvard University, have claimed that raising the H-1B cap would spur patenting and thus innovation. But if this recommendation were adopted it would be terribly ineffective given that more than half the H-1Bs go to employers that hardly patent at all. Giving Cognizant more H-1Bs, which is what would happen with an increase in the cap, would contribute zero to patenting. If Kerr's goal for the H-1B program is to spur patenting then a more sensible approach would be to change the H-1B eligibility criteria to favor industries and heavily patent like semiconductors and automotive and occupations like mechanical engineering and electronics engineering. The current H-1B system brings in mostly ordinary IT workers who fill positions as Computer Systems Analysts, implementing IT systems in the back offices of banks and insurance companies. Those occupations aren't involved in product development and certainly not in patenting.

7. Although testimony at the hearing indicates that the total number of H-1B recipients in the United States is unknown, can you please provide your best estimate as to how many H-1B recipients are currently in the United States?

My best estimate pegs the number of H-1Bs at 600,000.

8. How does the H-1B program affect the racial and gender diversity of the STEM workforce?

The H-1B program has negative impacts on the racial and gender diversity in STEM. Current H-1B policies are working at cross-purposes to the very large investments being made by government to increase the diversity of American STEM workers and students. The adverse impacts of the H-1B program on diversity in the STEM workforce are both direct and indirect. In very public ways, the technology industry has recently acknowledged that it needs to do much more to improve its racial and gender diversity. Yet, the H-1B program undermines these private sector proclamations and efforts.

First, according the USCIS Characteristics of Specialty Occupations reports (<http://www.uscis.gov/tools/reports-studies/reports-and-studies>), a large majority, 70%, of H-1B workers in FY14 come from a single source country, India. And this concentration has been increasing over the years. Just ten years earlier, in FY04 the figure stood at 43%. The reason is simple – the rise of the offshore outsourcing industry and its increasing use of the H-1B program over the past decade. Nearly all

the H-1B workers the offshore outsourcing firms hire are from India. For Wipro, 98.4% of its H-1B workers come from India, and for Tata it is 99.9% and 97.4% for Infosys.

It should be noted that this preference for H-1Bs from India has nothing to do with international student enrollments. The number of Chinese students at U.S. universities far outnumber Indian students: 274,000 Chinese to 103,000 Indian in 2013/14 according to the Institute of International Education.

(<http://www.iie.org/EN/Services/Project-Atlas/United-States/International-Students-In-US>)

In spite of the very large number of Chinese students, the Chinese H-1B worker share *decreased* from 9.1% in FY04 to 8.4% in FY14.

The H-1B program directly skews the STEM workforce significantly towards workers of Indian origin, a group that is already overrepresented in the America's STEM workforce.

Though USCIS hasn't released gender information on H-1B workers, industry experts have said that the H-1B workers at outsourcing firms are overwhelmingly male. This again directly contributes negatively towards diversity in the STEM workforce, particularly in computer occupations.

There are also significant indirect impacts of the H-1B program on STEM diversity in America. Employers can tap cheaper H-1B and L-1 workers so they have little incentive to help prime and create pipelines of women and under-represented minority talent. They have little reason to invest in universities and educational organizations that broaden the pool of American STEM talent. While it is often subconscious, incumbent pools of workers tend to prefer workers that are similar to themselves.

The programs also contribute to rampant age discrimination in the industry.

9. How would "stapling a green card" to the diploma of every foreign STEM student who graduates from a U.S. university affect the domestic workforce and student population?

Any bill that eliminates labor certification for all STEM graduate students and eliminates the cap to their numbers will create perverse incentives in both the labor and educational markets. Employers will be incentivized to replace their older incumbent workers with cheaper fresh graduates, fueling age discrimination.

Universities will be placed in a conflict of interest position by becoming the sole gatekeeper for issuing greencards and at the same time making money from issuing those greencards. **Universities will be put in the position of selling greencards to foreign students.** And it will be a bonanza for those universities. Given that Masters degrees are short in duration (as little as 12 months), and have little oversight from outside bodies (no specialized accreditation process for most), this provision will make it inexpensive for foreigners to purchase greencards from a variety of universities. We will see a flood of foreign student applications, crowding out American students from the STEM fields. Those foreign students will in turn flood the labor market in the STEM fields, depressing wages, and further steering American students from studying these fields. Foreign students are much less sensitive to wages and working conditions than their American counterparts because they are starting from lower expectations in the home countries and

obtaining a greencard is a very valuable commodity. Foreign students will see paying the educational bills as a small price for a greencard.

Congress, not universities, should be deciding who immigrates to the country. The country should not begin selling large numbers of greencards, and certainly not at fire-sale prices.

There is no justification for the "stapling a greencard to the diploma." It is solving a problem that does not exist. All objective studies find that there are no systemic shortages in the STEM labor markets, and there is no justification for such a provision. Further, it is guaranteed to create very negative consequences for American workers, American students, and America's national innovation system.

RESPONSES OF MR. JOHNSON TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY

Post-Hearing Questions for the Record

Benjamin Johnson
Executive Director
American Immigration Council

Before the
Committee on the Judiciary
United States Senate
March 17, 2015

By letter dated March 24, 2015, the Chairman of the Committee, Senator Charles E. Grassley, requested responses to the questions from three members of the Committee. Below, are my responses.

Response to Questions from Senator Charles E. Grassley

- **Do you believe that the replacement of Southern California Edison workers by H-1B workers discussed at the hearing is allowed under the H-1B laws, and if so, do you believe it should continue to be legal?**
- **In your written testimony you state that “skilled immigrant workers do not take American jobs, but complement American workers.” How is this an accurate statement in light of the layoffs that happened at Southern California Edison, Northeast Utilities, and other companies around the country?**

I don't know the facts and details of the Southern California Edison case beyond what I have read or heard on the news, so I can't comment on or characterize that situation. If I have learned anything in my 17 years in Washington working on immigration it is that drawing conclusions about complex issues based on news reports is almost never a good idea.

What I do know as a general matter is that with any government program and policy there are examples of abuse or misuse. The question is how to respond, in a way that gets at problems without interrupting the policy goals. Immigration law is already incredibly complex and has created bureaucracies in government agencies and within the private sector to attempt to sort through the complex rules and procedures. Adding more complexity to that system often creates less clarity for the people trying to use the system and the government agencies who are responsible for overseeing it.

Congress has created mechanisms to address nondisplacement and related concerns surrounding the protection of American workers, and the first effort should be to ensure that the laws are followed and where needed updated. Creating complex rules for all businesses that use H-1B workers based on the abuses committed by a few bad actors is

RESPONSES OF MR. JOHNSON TO QUESTIONS SUBMITTED BY SENATOR VITTER

short-sighted. As described in my written testimony, there is abundant evidence that, over all, immigrant workers complement native-born workers—they do not generally substitute for native-born workers. Furthermore, the skills which H-1B workers bring with them increase the productivity of native-born workers, which serves to boost their wages and the revenue of the companies in which they are employed.

Response to Questions from Senator David Vitter

4. You said that foreign workers positively impact the wages and employment opportunities of native-born workers across our economy in you opening statement, but the rising number of unemployed recent college graduates and the firsthand account of Infosys's desire to bring in cheap labor through these various programs tell a different story. How do you reconcile your views with the reality of large companies abusing the programs?

Anecdotes are no substitute for evidence. The available evidence shows that H-1B workers do not drive down wages for native-born workers and they do not “steal” jobs from the native-born. In fact, workers on H-1B visas earn higher wages than employed U.S.-born workers with bachelor’s degrees. Moreover, from 2009 to 2011, wage growth for U.S.-born workers with at least a bachelor’s degree was nominal, but wage growth for workers in occupations with large numbers of H-1B petitions was substantially higher.¹ Moreover, unemployment rates are low for occupations that employ large numbers of H-1B workers. Many STEM occupations in particular have very low unemployment compared to the overall national unemployment rate.² These low unemployment rates signal a demand for labor that exceeds the supply.

Just because a small number of businesses may have misused the H-1B program does not mean that it is a bad program—or that all H-1B employers are dishonest. All of the available evidence indicates that the H-1B visa plays a critical role in filling gaps in our labor market in a way that is faster and more efficient than the much longer process that exists for issuing permanent visas. The current program has mechanisms in place to ensure that employers are following the rules. Before simply adding more bureaucracy our first approach must be to ensure that the current rules are enforced and that the agency enforcing the rules has the tools and resources needed to do the job well. Moreover, in light of the compelling evidence of a shortage of workers in the high-use H-1B occupations, it would make no sense to ignore the need for expanding the cap simply because there are allegations of abuse by some users.

5. You also referred to these foreign workers on visas as “skilled” in a blanket manner, yet there are quite a few immigrants using the program that are not skilled as evidenced through

¹ Jonathan T. Rothwell and Neil G. Ruiz, “H-1B Visas and the Stem Shortage: A Research Brief” (Washington, DC: The Brookings Institution, 2013), pp. 8-9.

² Information Technology Industry Council, the Partnership for a New American Economy, and the U.S. Chamber of Commerce, *Help Wanted: The Role of Foreign Workers in the Innovation Economy* (Washington, DC: December 2012), pp. 2-3.

RESPONSES OF MR. JOHNSON TO QUESTIONS SUBMITTED BY SENATOR BLUMENTHAL

testimony and other information submitted into the record. Will you continue to use that term in such a broad manner after hearing and reading the information presented during the hearing?

The Immigration and Nationality Act (INA) sets forth strict requirements for skilled workers who want to participate in the H-1B program. They must be employed in a specialty occupation and they must have a bachelor's degree or equivalent. And 20,000 additional H-1B visas are allocated for professionals with graduate degrees from U.S. universities.

6. In your testimony, you praised the Optional Training Program for foreign students, despite it being used to circumvent the H-1B program and supply large corporations with cheap foreign labor because there are no requirement that the OPT workers be paid the locally prevailing wage or even the actual wage being paid to similarly qualified employees. Are you willing to concede that this program needs to be better regulated with wage requirements and policing measures?

I am not aware of widespread misuse of OPT. OPT has a very different purpose than the H-1B program; it is part of completing a degree to gain practical experience directly related to the field of study. There are time and subject-matter restrictions that limit the program. To the extent reforms are needed, they should be implemented while keeping in mind what the rest of the developed world does concerning foreign student talent at universities. We also must recognize our interest in retaining the talent of those we invested in and educated. One smart fix would be to allow "dual intent," so that talented foreign students are not blocked from the green card process. If we are serious in saying that it makes no sense to educate bright young minds and then send them abroad to compete with us, then we shouldn't make them promise to leave as a condition of getting their visa.

7. Do you agree that the "B in lieu of H" visa, AKA B-1 Business Visitor Visa, is another problem that, at the very least, needs fixing through the development of guidelines clarifying the scope of activities permissible given that immigrants with this classification are typically employees of foreign IT consulting companies who are being sent to the U.S. to perform services for a U.S. client company?

Doesn't this fact seem to fly in the face of the intended purpose of the program?

A miniscule subset of B-1 visas are issued for admission as "B in lieu of H," so it is not clear to me that there is a problem. Moreover, consular posts and U.S. Customs and Border Protection have procedures in place to combat against potential abuse.

Response to Questions from Senator Richard Blumenthal

Would transparency help?

Two witnesses at this hearing pointed in their testimony to a lack of publicly available information on nonimmigrant worker programs. In fact, some of the analysis discussed at the hearing involved data that was available only through FOIA, a process I know can be slow, difficult, and expensive.

The hearing discussed a number of incidents of apparent abuse of nonimmigrant visa programs for high-skilled workers. These abuses raise the obvious question of whether the American people are seeing an indication of systemic problems or a small number of unscrupulous companies abusing fundamentally sound programs. And it is worth pointing out that the potential for abuse goes beyond visa programs targeted at high-skilled workers. If anything, visa programs that allow employers to bring in workers without significant skills lend themselves even more to abuse.

Whether your goal is reforming nonimmigrant visa programs or simply rebuilding Americans' confidence in these programs, increased transparency could be an important part of the solution.

- a. In your view, would it help to make more information regarding nonimmigrant worker visa programs available to the public without the need to rely on the FOIA process?
- b. Can you talk about what kinds of data should be made available and how such data could be used?

I would certainly welcome greater transparency with respect to government-provided data about nonimmigrant worker visa programs—provided that the privacy concerns of workers are fully protected, that the government does not impose intrusive individual data requests (as they have initiated and had to retract in the recent past), and that no data about individual employers and employees are publicly disclosed.

I would counsel against instituting new reporting requirements without Congress having undertaken a serious analysis of the information already available, and the specific purposes additional information is designed to serve. It would be helpful to obtain data regarding the geographic location of H-1B petitioning companies and H-1B visa recipients; information about the degree earned, including whether the degree was awarded by a U.S. university; and data regarding the industries for which H-1B petitioners are seeking workers. When pooled together, the aggregate data about geography, educational profiles, and industries would help us to better understand the demand for skilled labor throughout the United States and whether or not the actual H-1B visas awarded are adequately meeting that geography of demand for skills.

Response to Questions
from the
Senate Judiciary Committee
John M. Miano, J.D.
representing the
Washington Alliance of Technology Workers,
Local 37083 of the Communication Workers of America,
the AFL-CIO ("WashTech"),
before the
Senate Committee on the Judiciary
March 17, 2015

Questions from Senator Blumenthal

1. In your view, would it help to make more information regarding nonimmigrant worker visa programs available to the public without the need to rely on the FOIA process?

Yes, making such data available would eliminate any doubt about the nature of H-1B and other guest worker programs.

This information should be organized in a standard format and be made available on the Internet.

2. Can you talk about what kinds of data should be made available and how such data could be used?

All data from DHS's I-129 petitions except personal identifying information should be available. The corresponding data for all work authorizations not covered by I-129 should be available as well (e.g., work authorizations under student visas).

Examples of the type of information that would help monitor these programs include:

- Data for measuring diversity:
 - a) Age
 - b) Gender

RESPONSES OF MR. MIANO TO QUESTIONS SUBMITTED BY SENATOR SESSIONS

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- c) Country of Origin
- Education
 - a) Degrees
 - b) Institutions Granting the Degrees
- Economic Impact
 - a) Occupation Code
 - b) Wage
 - c) Identifier of any Labor Condition Application(s) or Labor Certification
 - d) Work Location
 - e) Employer Name and Address
 - f) Attorney Name and Address
- System Flow Data
 - a) Application Dates
 - b) Prior immigration status
 - c) Any change in immigration status

Currently, there is very little data available about any other guest worker programs. For example, there is no way to even estimate the geographic distribution of workers on L-1 visas.

Questions from Senator Sessions

1. What specific enforcement problems exist relative to the H-1B program?

The Department of Labor's Inspector General's Semianual Reports highlight the general problem of enforcement in the H-1B program:

The Department's administration of the foreign labor certification process, which permits U.S. businesses access to foreign workers to meet their workforce needs while protecting the jobs and wages of U.S. workers, has been an ongoing concern to the OIG since the mid-1990s. Among our concerns is that DOL is statutorily required to certify H-1B applications unless it deter-

mines them to be “incomplete or obviously inaccurate.” Given this fact, it is not surprising that OIG investigations have shown the H-1B program to be susceptible to significant fraud and abuse, particularly by immigration attorneys, labor brokers, dishonest employers, and organized criminal enterprises. Our investigations have revealed schemes in which fraudulent applications were filed with DOL on behalf of fictitious companies, individuals, and unscrupulous businesses seeking to acquire foreign workers.¹

A. Problems with the LCA approval process.

The first step in making an H-1B visa petition is that the employer files a Labor Condition Application (“LCA”) with the Department of Labor. The LCA is where the employer certifies that it will comply with all the labor protection provisions of the H-1B program.

As the Inspector General pointed out, § 1182(n) limits the review of LCAs. The Department of Labor, “shall review such an application only for completeness and obvious inaccuracies.” This requires Department of Labor to approve all LCAs within 7 days unless “the application is incomplete or obviously inaccurate.” The employer knows that it can put anything down on the LCA and that it will be approved as long as the form is filled out correctly.

The Department of Labor is explicitly prohibited from reviewing LCAs after they are approved.² This means the entire LCA process is a giant paper shuffling exercise.

A number of bills (including S.744, 113th Congress) address the restriction on LCA approval by rewording the text with no change in effect.

The solution to this enforcement problem is to merely delete the following text in 8 U.S.C. § 1182(n)(1):

¹ Office of Inspector General for the U.S. Department of Labor, Semiannual Report to Congress, Apr. 1–Sept. 30, 2014, p. 4

² 8 U.S.C. § 1182(n)(2)(G)(v)

~~The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary finds that the application is incomplete or obviously inaccurate, the Secretary shall provide the certification described in section 1101 (a)(15)(H)(i)(b) of this title within 7 days of the date of the filing of the application.~~

Another problem is that employers can file an LCA without having any specific worker identified. This makes enforcement of many LCA provisions impossible. At the approval time, the Department of Labor has no way to know how the LCA will actually be use. For example, the employer can certify on the LCA that it is not displacing Americans then use that LCA months later when it actually does displace Americans. LCA should be filed for a specific, identified worker.

B. Problems with enforcing the prevailing wage requirement.

8 U.S.C. § 1182(n)(1) requires the employer to pay H-1B aliens the greater of the prevailing wage for the occupation and location or “the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question.” That would appear to set the prevailing wage as the floor for H-1B wages.

However, 8 U.S.C. § 1182(p) throws two twists into the prevailing wage calculation. First, § 1182(p)(1) specifies that for universities, the prevailing wage should only take into account university wages in the same location and occupation. That means, in most cases, the prevailing wage for a university job is what the university pays.

The second twist is that § 1182(p)(4) requires the Department of Labor to provide “4 levels of wages commensurate with experience, education, and the level of super-

vision.” There has never been a skill-based wage survey because *skill* is so subjective that it could never be measured. The same provision directs the Department of Labor, “Where an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3, the difference between the 2 levels offered, adding the quotient thus obtained to the first level and subtracting that quotient from the second level.”

The Department of Labor had a 2-level wage survey when the provision was enacted. The Department of Labor took its existing survey, as required, and created four levels from it. The result of this statutory requirement is that the H-1B wage levels are the 17th, 34th, 50th (the prevailing wage), and 67th percentiles.³

While Congress requires the Department of Labor to provide four skill-based prevailing wages, there is no requirement that the H-1B worker be paid according to his actual skill. Even if there were such a requirement, it would be unenforceable because skill is a subjective measurement.

The prevailing wage rules under § 1182(p) make it impossible to enforce the prevailing wage requirement of § 1182(n)(1).

The solution to this specific problem is to delete 8 U.S.C. § 1182(p)(1) and (4).

C. Problems with enforcement.

The next problem is that § 1182(n)(2)(G) spells out the specific circumstances when the Department of Labor can (and cannot) enforce the H-1B program. For example, the personal approval of the Secretary of Labor is required before suspicious patterns can be investigated.

This problem can be solved by replacing § 1182(n)(2)(F) and (G) with “The Secretary of Labor has authority to en-

³ 79 Fed. Reg. 14,451

force the provisions of this section.”

D. Allowing the subcontracting of H-1B workers hinders enforcement.

The volume of H-1B abuse cases involving employers that contract out H-1B labor overwhelms the Wage and Hour Division. For example, Upani Consultants obtained between 25 and 99 fraudulent H-1B visas. Rather than actually employing foreign workers, the company charged them to remain on the books.⁴

The user of the H-1B program to provide contract labor is incompatible with the stated premise of the program: to supply labor where United States workers are unavailable. Allowing employers to farm out H-1B workers anywhere in the country makes compliance verification extremely difficult.

If Congress has any resolve to end H-1B abuse, it will abolish the practice of using H-1B for contract labor.

E. No recourse for American workers.

There is no legal cause of action for Americans who are adversely affected by H-1B program abuse.

F. The H-1B statutes are overly long, deceptive, convoluted.

The fundamental problem with the H-1B statutes is that they have been carefully crafted to allow an employer to abuse the system with impunity—as long as you have a guide who understands the tangle. The H-1B program should be rewritten in no more than three pages of printed text.

⁴ Michael Matza, *Chesco case highlights H-1B immigration scams*, Philadelphia Enquirer, Mar. 19, 2015

2. How is it legal for employers to use the H-1B program to replace American workers with foreign labor?

The H-1B statutes are overly long, deceptive, and complicated. The provisions governing the replacement of Americans (8 U.S.C. § 1182(n)(1)(E) and (F)) provide excellent examples of convoluted statute writing.

Subsection (E) superficially restricts the direct replacement of Americans. However, piece together the two levels of indirection and one finds that it is legal to directly replace an American with an H-1B worker unless:

1. The H-1B worker is paid less than \$60,000; AND
2. The H-1B worker does not have a graduate degree; AND
3. The employer has more than 15% of its workers on H-1B visas (not counting those earning more than \$60,000 or having a graduate degree) or has been found to be a willful violator within 5 years; AND
4. The replacement takes place within 90 days of making the visa petition.

That protects effectively no one because those four conditions are unlikely to ever occur. To illustrate, H-1B petitions are usually filed in April for visas beginning in October. The recipient of such a visa (petition made more than 90 days in advance) can replace an American.

Subsection (F) applies to indirect replacements of Americans. That is where one company fires its American workers and uses another company supply H-1B replacements. Again, piecing together the levels of indirection, one finds that an American can be replaced indirectly at will unless:

1. The H-1B worker is paid less than \$60,000; AND
2. The H-1B worker does not have a graduate degree; AND

3. The employer has more than 15% of its workers on H-1B visas (not counting those earning more than \$60,000 or having a graduate degree); AND
4. The H-1B employer has not inquired of the U.S. worker's employer as to whether within the period beginning 90 days before and ending 90 days after the date of the placement of the H-1B worker with the U.S. worker's employer, the U.S. worker's employer has displaced or intends to displace a United States worker; AND
5. The H-1B employer has knowledge that within the period beginning 90 days before and ending 90 days after the date of the placement of the H-1B worker with the U.S. worker's employer, the U.S. worker's employer has displaced or intends to displace a United States worker.

Note that the LCA may be filed in advance of having any identified candidate for the H-1B visa. Even if, the Department of Labor were not restricted to checking the form is filled out correctly, there would be insufficient information (*i.e.*, the worker's education) to validate the correctness of the LCA.

The authors of these provisions have taken great care to ensure that employers can use H-1B workers to replace Americans nearly at will.

3. What specific things must an employer do in terms of recruiting from the domestic workforce before making use of the H-1B program to bring in new workers to the United States?

An employer has no recruitment requirements unless:

1. The H-1B worker is paid less than \$60,000; AND
2. The H-1B worker does not have a graduate degree; AND
3. The employer has more than 15% of its workers on H-1B visas (not counting those earning more than \$60,000 or having a graduate degree) or has been found to be a willful violator within 5 years.

If all three conditions apply, the employer must attest to this statement—

Recruitment and Hiring: Prior to filing any petition for an H-1B nonimmigrant pursuant to this application, the employer took or will take good faith steps meeting industry-wide standards to recruit U.S. workers for the job for which the nonimmigrant is sought, offering compensation at least as great as required to be offered to the H-1B nonimmigrant. The employer will (has) offer(ed) the job to any U.S. worker who (has) applied and is equally or better qualified than the H-1B nonimmigrant

—by checking this box on this LCA form:

<small>I have read and agree to Additional Employer Labor Condition Statements A, B, and C above and as fully explained in Sections 1 and 2 of the Labor Condition Application - General Instructions Form ETA 9050CP §</small>	<input type="radio"/> Yes	<input type="radio"/> No
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4. What protections exist for American workers in S. 153, the Immigration Innovation Act of 2015?

There are none.

5. Please explain how S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act, would have affected American workers in general, and specifically, the impacts of the bill's provisions dealing with the H-1B program.

S.744 would have been devastating to the American middle and working classes because it would have created a flood of foreign labor without any real protections for domestic workers.

S.744 was excessively complex. The Immigration Act of 1952, creating the current immigration system, was about 15,000 words. S.744 was about 180,000 words. Reform of the immigration system does not require a bill 12 times as long as the bill that created the system in the first place. When you read S.744, you can see that the excess length

was deliberate and unnecessary.

The major change of S.744 is that it would have made the immigration system significantly more complex. One of the interpretation problems in S.744 is the large number of drafting errors. For example, the H-1B provisions appear to create two different texts for 8 U.S.C. § 1182(n)(3)(B).

Due to the size of S.744 I limit the rest of the discussion to its potential effect on the H-1B program.

A. S.744 would have made the H-1B program even more complex.

One of the reasons the current H-1B program is dysfunctional is that there are separate rules that apply when:

- The employer is H-1B dependent
- The employer is an academic institution
- The employee is an exempt H-1B non-immigrant⁵
- The employee has a graduate degree from a U.S. institution

S.744 would have added to that separate rules for:

- Intending Immigrants—those for whom a green card labor certification or petition has been filed.
- H-1B Skilled Worker Dependent Employers—Employers with more than 15% of their employees on H-1B visas in job categories that require either extensive or considerable preparation.

Real reform would have eliminated these separate categories and have one set of rules that applied to all workers and employers.

⁵ The exempt non-immigrant category would remain under S.744 but all the references to it would have been deleted.

B. S.744 would have greatly increased the number of H-1B visas and added great complexity for determining the H-1B quota.

Section 4101 of S.744 would have defined the H-1B quota using six pages of statute. Under this system the H-1B quota per year would range from 155,000 to 220,000. When employers use more visas, the quota automatically goes up. When employers use fewer visas, the quota goes down. While described as “Market Based” the caps would not be tied to any market other than the market for visas.

Such a system would provide no benefit. Effectively, the same result could have been obtained simply by setting the quota to 220,000.

This absurdly long definition of the H-1B quota follows the general pattern in S.744 of making everything more convoluted and long winded. One gets the sense that this was done deliberately to keep people from reading the bill and understanding what it would have done.

C. Large H-1B employers would have to avoid the H-1B Dependent Employer classification.

S.744 includes two restrictions on larger users of H-1B visas. First, it would have banned H-1B Dependent Employers from contracting out their employees. Second, by 2016, it would have limited the percentage of H-1B (and L-1) workers (not counting Intending Immigrants) to 50%.

S.744 provides an escape route for such employers. Its definition of *H-1B Dependent Employer* treats the new category of *Intending Immigrants* as United States workers. An employer can make an H-1B worker an Intending Immigrant by filing a Labor Certification towards permanent residency (but does not have to file the permanent residency petition). These petitions just have to be filed; no approved.

S.744 actually contains an incentive for employers to hire large numbers of H-1B worker. Companies with 30-

to 50-percent of their workers on H-1B visas have to pay a \$5,000 fee. Having more than 50% of workers on H-1B visas avoids that fee (allowable when the H-1B workers are Intending Immigrants).

The apparent purpose of this aspect of S.744 is to drive legal fees. Employers would have been faced with the choice of paying a \$5,000 fee to the government or pay a legal fee for filing a labor certification. Note that the labor certification would only have to be filed to get the Intending Immigrant exception. The certification would not have to be approved nor would the employer have to act further if it be approved.

D. The H-1B prevailing wage system.

Section 4211 of S.744 would have changed the prevailing wage system under 8 U.S.C. § 1182(p). Instead of the current four levels (17th, 34th, 50th, and 67th percentiles) to three levels (33rd, 50th, and 66th percentiles) with the lowest wage group no lower than 80% of the mean. This would allow employers to pay H-1B workers up to 20% less than the actual prevailing wage.

E. S.744's non-displacement requirements are nonsensical.

Section 4101 of S.744 would have rewritten the restrictions on displacing Americans. However, these restrictions are nonsensical due to drafting errors.

F. Enforcement

Currently, the Department of Labor is required to approve all H-1B Labor Condition Applications within 7 days where the form is filled out correctly. S.744 devotes a page to reword the restriction. The revised text would have required the Department of Labor to approve all H-1B labor condition applications within 14 days as long as the form is filled out correctly. This essentially is an en-

tire page of the bill devoted to doing absolutely nothing.

6. What data should the Department of Homeland Security (DHS) collect regarding OPT participants to ensure that the public has access to information on the specifics of the program?

I generalize this question to include all work programs operating under student visas. In addition to personal identifying information, DHS should know:

- Diversity Information
 - a) Age
 - b) Gender
 - c) Nationality
- Educational Information
 - a) Degrees
 - b) The alien's course of study
 - c) Granting Institutions
- Economic Impact
 - a) Job classification
 - b) Work Location
 - c) Employer
- Purpose Information
 - a) The contact information for the school
 - b) The educational justification for the work
 - c) The date of graduation and the termination data of OPT.
 - d) The data of termination of employment.
 - e) Any changes in immigration status.

7. Can you please provide additional information as to why aliens who participate in the OPT program are cheaper to employ than Americans?

Under the current tax laws, an employer must pay an amount equal to 6.2% of the employee's wages for Social Security tax and an additional 1.45% for Medicare Tax. Workers must pay the same amount deducted from their

wages. Aliens on student visas and their employers are exempt from these taxes. Therefore, the employer can offer the same take home pay to OPT workers while paying 15.3% (2 x (6.2%+1.45%)) less in taxes and wages.

In addition, the employer does not have to pay OPT workers at all. In the contract labor industry there are times when the employer will not have billable work for the employees. For OPT (and not H-1B) the employer can simply not pay the worker during periods of idleness.

When workers on OPT are actually being paid, the employer can pay as little as the minimum wage. Workers on OPT require employment to remain in the United States. In particular, they require the employer to sponsor them for an H-1B visa if they want to move through the immigration process. This allows employers to offer taxpayer-provided immigration benefits as a fringe benefit to OPT workers. Such benefits are routinely promoted in job advertisements seeking OPT workers.

Questions from Senator Sessions

1. How should the OPT program be reformed to better protect U.S. workers?

The Optional Practical Training Program ("OPT") should be abolished because it is in direct conflict with the requirements for F-1 student visas.

F-1 student visa status is defined as:

8 U.S.C. § 1101(a)(15)(F)(i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study ... at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution ..., which institution or place of study shall have agreed

to report to the Attorney General the termination of attendance of each nonimmigrant student

That reflects the normal definition of a *student* as one who attends school. Allowing aliens to work on student visas after graduation is in direct, irreconcilable conflict with the definition of F-1 student status.

It would not be practicable to implement a rational student visa program that supports both study and work because it would require the enforcement overhead for ensure legitimate student status as well as the overhead for ensuring proper guest worker status.

A rationally functioning student visa should be for study only; not for work and not for immigration. In the past Congress has been clear on the point. However, there are an increasing number of misguided bills that would attempt to transform student visas from a non-immigrant educational program into a stepping-stone for immigration.

2. Does S.744 or the “I Squared” bill solve the problems associated with the OPT program?

The I-Squared bill does not address OPT.

3. Could you explain the ways by which you understand firms use the H-1B and L-1 programs to facilitate the offshoring of U.S. jobs and describe the impacts on the U.S. workforce and economy of such offshoring?

The large users of H-1B visas employ what is known in the industry as an *offshore/onshore model*. In this model these companies place a relatively small number of visa workers on the client site to provide direct support and to acquire business knowledge.

The per person-per hour cost of the on site workers (generally H-1B) charged to the customer tends to be slightly higher than the cost of a United States worker,

while those of the offshore workers is much less. This pricing structure is designed to drive as much work as possible overseas where the profit margins are higher and to make the foreign companies better trained to take on larger projects in the future. On projected I worked on, we used at least six offshore workers for each H-1B worker on site.

In the case of Southern California Edison, media reports say that 80% of the work is being moved to India and 20% of the jobs will remain in the United States with H-1B workers.

At SCE, each H-1B worker here represents 5 American jobs lost.

4. What is the “B-1 in lieu of H” visa category provided for in the State Department’s Foreign Affairs Manual? What is your understanding of the way in which this visa category is used to bring foreign workers to the U.S. outside of the H-1B and L-1 programs?

The Foreign Affairs Manual defines “B-1 in lieu of H” as

There are cases in which aliens who qualify for H-1 or H-3 visas may more appropriately be classified as B-1 visa applicants in certain circumstances; e.g., a qualified H-1 or H-3 visa applicant coming to the United States to perform H-1 services or to participate in a training program.⁶

That definition is innocent. If an alien needs to come to the United States to—

- Attend a four-week product training program; or
- Negotiate a contract

⁶ 9 FAM 41.31 N11

- Spend two weeks diagnosing a problem with the employer's product

—it would make no sense to require him to get a guest-worker visa to activities of such short duration.

However, the definition gets expanded around the world. This is how the Chennai Consulate defines *B1 in Lieu of H*:

Individuals may apply for a B1 or B1/B2 visa to perform H-1B work in the United States as long as they fulfill the following criteria:

- Hold the equivalent of a U.S. bachelor's degree
- Plan to perform H-1B-caliber work or training
- Will be paid only by their foreign employer, except reimbursement of incidental travel costs such as housing and per diem. The employee must not receive any salary from a U.S. source.
- The task can be accomplished in a short period of time.⁷

That definition is significantly different from that of the Foreign Affairs Manual because it describes a substitute for an H-1B visa of some indefinite “short” duration.

B visas should not require “H-1B-caliber work”. A B visa would be perfectly appropriate for an automobile assembly line worker coming to the United States for two weeks of training. The consulate is describing a substitute for H-1B visas, not a visitor visa.

I have seen first hand B visas being used as a substitute for H-1B and L visas. The operating mechanism is that the worker either gets the B visa in his home country or enters under a visa waiver. The alien leaves the coun-

⁷ http://chennai.usconsulate.gov/types_of_visas/temporary-employment-holp/b1-in-lieu-of-h2.html

try then returns at regular intervals. I have seen cases where the State Department catches such visa chaining. The foreign worker returns home to India to get his visa renewed then never comes back.

I have seen two motivations for using B visas in lieu of H-1B visas. One is to circumvent the restrictions on H-1B visas (quotas, prevailing wage). The other is to assist the alien to avoid paying income taxes.⁸

5. How does the H-1B program impact the racial and gender diversity of STEM workforce?

This is the starting point in the industry. 1% of Google's workforce is African-American; 2% are Hispanic (compared to 38% of the California workforce); 83% are male.⁹

According to the Bureau of Labor Statistics, between 2013 and 2014, employment in computer related occupations grew from 3,573,120 to 3,834,180 (+261,060). In 2013, there were 79,870 H-1B visas for computer workers—roughly 30% of the job growth. With 70% of H-1B workers coming from India and China alone, the H-1B program itself imports few workers that would be classified as disadvantaged minorities.

That means women and disadvantaged minorities in the U.S. are do not even have the ability to compete for about 1/3rd of the new jobs in the computer industry.

⁸ The United States does not expect B holders to pay income tax. The alien's home country's tax authorities assume the alien is paying taxes in the United States.

⁹ Elizabeth Weise, "Tech: Where the women and minorities aren't," USA Today, Aug. 15, 2014

6. On February 24, 2015 USCIS announced the publication of a final rule granting employment authorization to tens of thousands of H-4 spouses of H-1B workers. What is your understanding of the legal authority upon which USCIS is basing this regulation? Is it the same employment authorization authority that DHS asserts underlies the OPT program? DACA?

Under the Immigration Reform and Control Act of 1986 ("IRCA"), Congress introduced penalties for hiring "unauthorized aliens" and provided for the legalization of certain illegal aliens already in the country. IRCA contained seven specific directives for the attorney general to authorize aliens in the legalization process to work.

IRCA defined those who it was unlawful to hire as:

8 U.S.C. § 1324a(H)(3) DEFINITION OF UNAUTHORIZED ALIEN.—As used in this section, the term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney General

By excluding all others, that definition permits employers to hire (1) permanent residents; (2) those admitted on work visas; and (3) those IRCA directed the Attorney General to provide with work authorizations during the legalization process.¹⁰

DHS has recently adopted a novel interpretation of 8 U.S.C. § 1324a(H)(3)(B). Under this interpretation, the phrase "authorized to be so employed by this Act or by the Attorney General" means Congress granted DHS "unfettered" authority to authorize aliens to work in the United

¹⁰ See, S. Rep. 99-132, p. 48

States.¹¹ DHS has made that claim in the context of authorizing aliens to work on H-4 visas; reversing the policy in place for 25 years.¹² It has made the same claim for work on student visas (“since 1986, Congress has expressly delegated to the Secretary broad discretion to determine when noncitizens may work in the United States”).¹³ DHS has made this claim to justify DACA.¹⁴ DHS has made the same claim of authority to justify DAPA.¹⁵

The claim that § 1324a(h)(3)(B) confers such authority on DHS is preposterous on its face—taking a provision banning the hiring of authorized aliens and asserting it grants unfettered authority to DHS to allow aliens to work. It undermines the entire structure of the immigration system (there is no point in Congress specifying which visas allow aliens to work when DHS can allow any alien to work). It is in direct conflict with other, later statutes (*e.g.*, 8 U.S.C. § 1182(a)(5)(A) that bars the admission of “any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor” unless the Secretary of Labor—not DHS—has “determined and certified” that such employment will not adversely affect the employment, wages or working conditions of similarly employed U.S. workers). It is in Conflict with nearly all court interpretation of 8 U.S.C. § 1324a. It also conflicts with the legislative history of the Immigration Reform and Control Act.

DHS has taken an obscure clause from a definition and used it to claim its authority to set immigration policy ex-

¹¹ 80 Fed. Reg. 10,294

¹² *Id.*

¹³ *Washington Alliance of Technology Workers v. U.S. Department of Homeland Security*, Defendant’s Memorandum of Law in Support of Its Motion for Summary Judgment, p. 19 (Citing § 101 of IRCA).

¹⁴ *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1062 (9th Cir. 2014)

¹⁵ *Texas v. United States*, 2015 U.S. Dist. LEXIS 18551 (S.D. Tex. Feb. 16, 2015)

ceeds that of Congress. If Congress refuses to step in to block this interpretation, it will become irrelevant in immigration policy.

RESPONSES OF MR. PALMER TO QUESTIONS SUBMITTED BY SENATOR BLUMENTHAL

Question for The Panel

Would transparency help?

Two witnesses at this hearing pointed in their testimony to a lack of publicly available information on nonimmigrant worker programs. In fact, some of the analysis discussed at the hearing involved data that was available only through FOIA, a process I know can be slow, difficult, and expensive.

The hearing discussed a number of incidents of apparent abuse of nonimmigrant visa programs for high-skilled workers. These abuses raise the obvious question of whether the American people are seeing an indication of systemic problems or a small number of unscrupulous companies abusing fundamentally sound programs. And it is worth pointing out that the potential for abuse goes beyond visa programs targeted at high-skilled workers. If anything, visa programs that allow employers to bring in workers without significant skills lend themselves even more to abuse.

Whether your goal is reforming nonimmigrant visa programs or simply rebuilding Americans' confidence in these programs, increased transparency could be an important part of the solution.

- a. In your view, would it help to make more information regarding nonimmigrant worker visa programs available to the public without the need to rely on the FOIA process? The FIOA process is long and**

is NOT transparent. The public has a right to see this information in a raw format- meaning – as it comes to the Gov.

b. Can you talk about what kinds of data should be made available and how such data could be used?

Data should include but not limited too- Total visa applications for the past 5 years. Total number of visas granted and if they displaced an American Worker. Also educational credentials not to mention where the workers are and the salaries

Senator Chuck Grassley
Questions for the Record
U.S. Senate Committee on the Judiciary
“Immigration Reforms Needed to Protect Skilled American Workers”

1. TO MR. BENJAMIN E. JOHNSON

- Do you believe that the replacement of Southern California Edison workers by H-1B workers discussed at the hearing is allowed under the H-1B laws, and if so, do you believe it should continue to be legal?
- In your written testimony you state that “skilled immigrant workers do not take American jobs, but complement American workers.” How is this an accurate statement in light of the layoffs that happened at Southern California Edison, Northeast Utilities, and other companies around the country?

2. TO MR. BJORN BILLHARDT

- Should the law give priority for visas to any specific categories of H-1B workers, and if so, which categories?
- During the hearing you said that “there are clearly some abuses of the system and they're clearly committed by companies that have a certain profile.” What are the abuses you are aware of and what is the company profile you had in mind?
- Do you believe that what Southern California Edison did is an “abuse” of the H-1B program?

3. TO PROFESSOR RON HIRA

- Do you believe that the replacement of Southern California Edison workers by H-1B workers discussed at the hearing is allowed under the H-1B laws, and if so, do you believe it should continue to be legal?
- Should the law give priority for visas to any specific categories of H-1B workers, and if so, which categories?
- We frequently hear that the majority of the students in graduate schools in engineering and computer sciences are international, and their education is often subsidized by the US government. Mr. Billhardt provided one such example in his testimony. Is the H-1B program being used primarily to retain these students?

- Could you explain the ways by which you understand firms use the H-1B and L-1 programs to facilitate the offshoring of US jobs and describe the impacts on the US workforce and economy of such offshoring?
 - During the hearing we heard about an American Enterprise Institute study (Madeline Zovodny, “Immigration and American Jobs”) that concludes that each H-1B creates 1.83 additional jobs for Americans. There was also reference to a 2008 National Foundation for American Policy study that concluded that each H-1B worker creates 5 new jobs (see <http://www.nfap.com/pdf/080311h1b.pdf>). Are you familiar with the studies in question? Do you agree with the studies’ conclusions?
 - Does the AEI study or any other similar study you know of measure the job-creating powers of *American* workers?
 - During the hearing there was discussion of a 2013 article by the Brookings Institution (“H-1B Visas and the STEM Shortage”) that stated that “H-1B workers are paid more than U.S. native-born workers with a bachelor’s degree generally (\$76,356 versus \$67,301 in 2010) and even within the same occupation and industry for workers with similar experience.” Do you agree with the conclusions in that Brookings article?
 - If the minimum wage for exempting H-1B Dependent employers from recruitment and non-displacement were raised from \$60,000 to \$95,000, would this solve the problems in the H-1B program?
 - Do the top H-1B employers generate large numbers of patents?
 - How does the H-1B program impact the racial and gender diversity of STEM workforce?
 - What is the “B-1 in lieu of H” visa category provided for in the State Department’s Foreign Affairs Manual? What is your understanding of the way in which this visa category is used to bring foreign workers to the U.S. outside of the H-1B and L-1 programs?
4. TO MR. JOHN MIANO
- How should the OPT program be reformed to better protect U.S. workers?
 - Does S.744 or the “I Squared” bill solve the problems associated with the OPT program?
 - Could you explain the ways by which you understand firms use the H-1B and L-1 programs to facilitate the offshoring of U.S. jobs and describe the impacts on the U.S. workforce and economy of such offshoring?

RESPONSES OF MR. PALMER TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY

- What is the “B-1 in lieu of H” visa category provided for in the State Department’s Foreign Affairs Manual? What is your understanding of the way in which this visa category is used to bring foreign workers to the U.S. outside of the H-1B and L-1 programs?
- How does the H-1B program impact the racial and gender diversity of STEM workforce?
- On February 24, 2015 USCIS announced the publication of a final rule granting employment authorization to tens of thousands of H-4 spouses of H-1B workers. What is your understanding of the legal authority upon which USCIS is basing this regulation? Is it the same employment authorization authority that DHS asserts underlies the OPT program? DACA?

5. TO MR. JAY PALMER

- Could you please expand on the type of work that you saw was being done by foreign workers in B-1 business visitor status at U.S. client company worksites?

I witnessed B1 workers performing the below task

- Coding software for clients
- Writing test scripts
- Coding Test scripts
- Trouble shooting problems for software issues
- Fixing the issues they found with software
- Testing software for problems
- Physically installing software on to the clients machines

All this while the client was paying Infosys and the worker was being paid in India and not paying US Taxes

6. TO PROFESSOR HAL SALZMAN

- April 1 is the opening day of the Fiscal Year 2016 H-1B filing season. Many believe that all 85,000 cap-subject H-1B visa slots will be allocated within days of the opening day of the H-1B filing season and that such demand for H-1B visa numbers means that the U.S. suffers from a shortage of tech workers able to fill those jobs. During the hearing you remarked that this phenomenon does not indicate a shortage of U.S. workers for those jobs so much as a shortage of *discounted* labor. Could you please expand on your answer?

- According to a 2012 publication by the U.S. Chamber of Commerce, the unemployment rate among petroleum engineers is 0.1 percent. Is the appropriate response to a low unemployment rate in a particular STEM field necessarily to increase levels of H-1B visas?
- According to the testimony provided by Mr. Johnson, the unemployment rates for some STEM occupations appear low. Do low unemployment rates indicate full employment in these fields?
- Could you explain the ways by which you understand firms use the H-1B and L-1 programs to facilitate the offshoring of US jobs and describe the impacts on the U.S. workforce and economy of such offshoring?
- During the hearing we heard about an American Enterprise Institute study (Madeline Zovodny, “Immigration and American Jobs”) that concludes that each H-1B creates 1.83 additional jobs for Americans. There was also reference to a 2008 National Foundation for American Policy study that concluded that each H-1B worker creates 5 new jobs (see <http://www.nfap.com/pdf/080311h1b.pdf>). Are you familiar with the studies in question? Do you agree with the studies’ conclusions?
 - Does the AEI study or any other similar study you know of measure the job-creating powers of *American* workers?
- During the hearing there was discussion of a 2013 article by the Brookings Institution (“H-1B Visas and the STEM Shortage”) that stated that “H-1B workers are paid more than U.S. native-born workers with a bachelor’s degree generally (\$76,356 versus \$67,301 in 2010) and even within the same occupation and industry for workers with similar experience.” Do you agree with the conclusions in that Brookings article?
- The employment projections made by the Bureau of Labor Statistics are often used to predict shortfalls in the future domestic supply of STEM workers. Could you explain whether these projections show a shortfall?

RESPONSES OF MR. PALMER TO QUESTIONS SUBMITTED BY SENATOR SESSIONS

**Senator Jeff Sessions
Questions for the Record
“Immigration Reforms Needed to Protect Skilled American Workers”
Jack B. Palmer**

1. Does the law adequately protect American workers like you from retaliation or retribution from employers for whistleblowing activities related to the H-1B program?
Yes and No- The law is extremely cumbersome for a whistleblower. The law has good provisions; however the DOJ and others FAIL to enforce the law. I received death threats and was treated horribly and nothing was done. Why? Very hard for me to speak highly about how the program is handled. Factually I was told by DOJ AUSA investigator Ann Williams in Dallas that I shouldn't have blown the whistle if I can't handle the pressure. It was embarrassing how DOJ did not want to reward me with the appropriate amount and they didn't. Then they negotiated my job away as part as the CRIMINAL Settlement. This is all in emails from the AUSA to Infosys Attorneys and the AUSA.
2. Can you please elaborate upon how the requirement that employees sign non-disparagement agreements hurts American workers who lose their jobs to H-1B recipients?
Very simple- Most Americans work pay check to pay check. If these employees do not sign the agreement they are fired for cause and they do not receive a severance package or benefits.
3. At the hearing, you explained that the technology industry had blackballed you because of your previous whistleblowing activities. Can you please elaborate on some of your experiences?
No one will hire me- Once you do the right thing you are labeled a trouble maker. Most companies in my area are “cheating” or pushing the envelope. They are not following the spirit of the law.

Question for The Panel*Would transparency help?*

Two witnesses at this hearing pointed in their testimony to a lack of publicly available information on nonimmigrant worker programs. In fact, some of the analysis discussed at the hearing involved data that was available only through FOIA, a process I know can be slow, difficult, and expensive.

The hearing discussed a number of incidents of apparent abuse of nonimmigrant visa programs for high-skilled workers. These abuses raise the obvious question of whether the American people are seeing an indication of systemic problems or a small number of unscrupulous companies abusing fundamentally sound programs. And it is worth pointing out that the potential for abuse goes beyond visa programs targeted at high-skilled workers. If anything, visa programs that allow employers to bring in workers without significant skills lend themselves even more to abuse.

Whether your goal is reforming nonimmigrant visa programs or simply rebuilding Americans' confidence in these programs, increased transparency could be an important part of the solution.

- a. In your view, would it help to make more information regarding nonimmigrant worker visa programs available to the public without the need to rely on the FOIA process?**

b. Can you talk about what kinds of data should be made available and how such data could be used?

A good database is the first requirement for any reasonable analysis which, in turn, is important for policy. In this area, which is fundamentally about labor market impact, it is striking that we lack the types of information that has become the sine qua non of labor market analysis of the U.S. workforce, of vital information for all manner of policy. It is peculiar that data readily available on the U.S. workforce is not available for the guestworker labor force.

In this regard, it would seem a minimum to have the same data available for the H1B, L, OPT, and other guestworker programs that is standard labor market information typically provided by Census/BLS. This would include:

- (1) demographic information – gender, age, race/ethnicity;
- (2) education – degrees, school awarding the degree, field of degrees
- (3) employment – occupation, industry, years of work experience in occupation; tenure at current employer, salary, hours and weeks worked, usual work week, date of first employment for current employer; date of first employment in U.S. in current visa; previous employment history
- (4) establishment – employer/firm, establishment of employment (standard UI record information), industrial classification of establishment

It is further important that these data be collected because at the moment we have no actual employment data on many, if any, of workers in the different visa programs (H1B, L, OPT). The only data available is *prospective* employment data reported by the employer to the Labor Department in the labor condition application before employment begins. In fact, we do not even know if the person on the approved application was actually employed/actually came to the U.S. The State Department and the Department of Homeland Security collect large amounts of valuable data on (1) through (4) listed above, but they are not made available to the public. Even when members of the public are able to access some of those data through a successful FOIA, we find that the information is missing key elements which are collected. In part, this is because data collected by USCIS is collected in paper format, and then only some of those data (selected by USCIS) are transferred and stored in an electronic format. Whatever is not stored electronically is then impossible to obtain even via FOIA, because the information is literally on pieces of paper in boxes stored by USCIS. For example, FOIA's of L-1 data do not have the wages employers promise to pay their L-1 workers, nor is detailed occupational information available. USCIS also uses an outdated coding system for occupations, which thwarts efforts to assess the labor market impact of some guestworker programs. Rather than using the Standard Occupational Classification system that the Labor Department uses for labor condition applications and labor certifications, USCIS uses outdated DOT codes, the "Directory of Occupational Titles," which groups diverse occupations into overly broad groupings. In its recent report on the H-2A and H-2B programs, the GAO highlighted these exact problems in the lower-skilled temporary foreign worker programs:

While DHS's USCIS petition data are more accurate than DOL data in terms of the number of workers requested, information about the type of occupations those workers are requested to fill is not coded and maintained electronically using a standard occupational classification system. Specifically, when USCIS officers enter information

into their database (CLAIMS 3) to approve the final number of H-2 workers they do not denote in CLAIMS 3 the SOC information provided on the DOL certification, which is submitted with the petition. Instead, they recode the job title from the employer's petition using an occupational classification system with 15 broad categories. These categories may be further divided into 1 to 12 occupational codes for a total of 83 detailed occupations, as opposed to DOL's 840 detailed occupations... Officials said USCIS's current occupational system predates DOL's use of the SOC system to classify occupations on labor applications. However, the broad and overlapping categories within USCIS's occupational classification system make it difficult to distinguish the occupations filled by H-2A workers versus H-2B workers even though these programs are targeted to fill occupations in different sectors of the economy.¹

If, as some have suggested, a non-trivial share of H1B approved applications are never filled/the worker is never employed in the U.S., better data from the Departments of State and Homeland Security would provide the information needed to adjust policies to better meet demand.

Employment information more generally, such as wages and better occupation and industry detail, would also provide the necessary information to understand labor market dynamics such as whether guestworkers are replacing or complementing the existing workforce; the nature of jobs filled by guestworkers, and the impact on wages and employment. Therefore these data—much of which the government already collects in one of three federal agencies—should be published on an annual basis for all of the major visa classifications that authorize employment for nonimmigrants, including B-1, H-2A, H-2B, H-1B, L-1A, L-1B, O-1, P-1, E-2, F-1 OPT, as well for the employment-based (EB) green card preferences.

¹ U.S. Government Accountability Office, *H-2A AND H-2B VISA PROGRAMS: Increased Protections Needed for Foreign Workers*, GAO-15-154, (March 2015), at 22.

RESPONSES OF PROF. SALZMAN TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY

**Senator Chuck Grassley
Questions for the Record
U.S. Senate Committee on the Judiciary
“Immigration Reforms Needed to Protect Skilled American Workers”**

6. TO PROFESSOR HAL SALZMAN [NB: The first 1-2 paragraphs of each response provide the summary/overview, with additional detail and data following]

- **April 1 is the opening day of the Fiscal Year 2016 H-1B filing season. Many believe that all 85,000 cap-subject H-1B visa slots will be allocated within days of the opening day of the H-1B filing season and that such demand for H-1B visa numbers means that the U.S. suffers from a shortage of tech workers able to fill those jobs. During the hearing you remarked that this phenomenon does not indicate a shortage of U.S. workers for those jobs so much as a shortage of *discounted* labor. Could you please expand on your answer?**

For the IT industry, the evidence is overwhelming that the H-1B program provides labor at a lower cost than companies would have to pay if hiring domestically. Matloff has shown H-1B workers earn less; my early research for the National Research Council (in 1999/2000) found firms were using the H-1B to lower labor costs (both directly and by the “chilling effect” on current workers who saw that H-1B labor supply could be increased (via Congress) to levels that allowed them to be replaced; and our current analysis finds that in IT occupations, the average H-1B wage is lower than the U.S. worker wage in the same occupations (see table below). Perhaps most compellingly, firms state this quite directly (see Testimony, p.13ff for full quotes and citations)—in 10-K and 20-F statements, firms state that if they are unable to obtain sufficient H-1B visas, the effect will be: “...to replace existing offshore resources with local resources, or hire additional local resources, potentially at higher wages.”... “...cost of doing business would increase”....

Interestingly, none of the companies state that they would not be able to find a sufficient number of U.S. workers, just that it would increase costs.

The evidence suggests that the primary use of H-1B program is by offshoring companies and they would be limited in conducting work offshore without sufficient numbers of H-1B workers because of increased costs; the second use of H-1B and other guestworkers is for lower cost labor onshore. Both of these uses have the combined impact of constraining U.S. IT wages; as all studies have shown (even the Brookings study; see below), IT wages have stagnated since the dot-com bust, at about late 1990s levels. Thus the supply of H-1B workers is a direct need for offshore work and lower cost labor, and an additional effect of having a large supply of young, entry-level and early-career workers to replace domestic workers, older workers, and generally signal that positions can be easily filled and, through this labor market distortion, hold down average wages (i.e., by paying lower wages, replacing exiting workers directly and through moving the work offshore, and by replacing older workers with younger workers).

Table 1: U.S. and H-1B wages and workforce

	% Masters	Annual Average Salary	Number of Workers		
Domestic Workforce					
Computer scientists and systems analysts	25%	\$79,895	234,239		
Computer programmers	21%	\$79,185	225,292		
Average (combined occupations)	23%	\$79,547	459,531		
H-1B workforce					
			1st & 3rd Year Approvals	Estimated 6 Year Population	Est. Percent of Domestic IT Workforce
Computer Sci/Systems Analyst & Programmers (combined)	45%	\$75,873	78,113	195,283	42.5%

Source: DHS H-1B data; calculations by authors (Lowell and Salzman, forthcoming).

- **According to a 2012 publication by the U.S. Chamber of Commerce, the unemployment rate among petroleum engineers is 0.1 percent. Is the appropriate response to a low unemployment rate in a particular STEM field necessarily to increase levels of H-1B visas?**

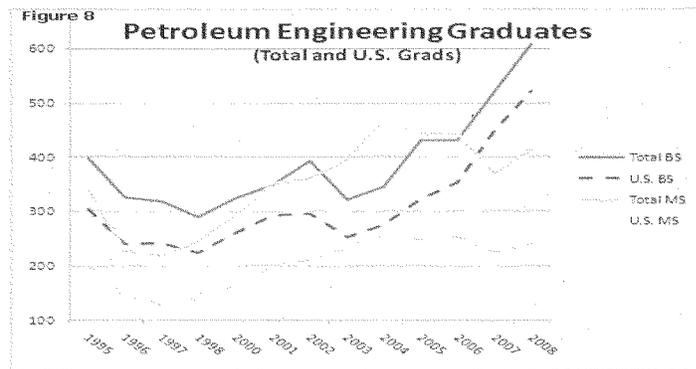
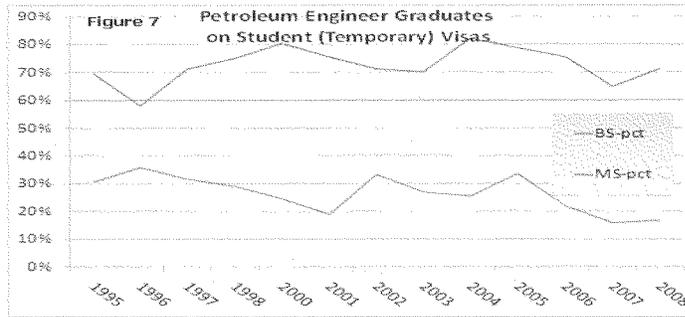
The case of petroleum engineers is, in fact, a case that shows effective market functioning and how it can adjust *without* a guestworker program; the case of petroleum engineers, showing the overwhelming response to increased salaries by U.S. students, suggests that the H-1B program is undermining the normal, and effective market functioning in other areas (where stated demand by employers has not led to wage increase but, instead, worsening job conditions—declines in salary, career stability, full time employment). Detail and analysis of petroleum engineers, below, is excerpted from our forthcoming book chapter, “Dynamics of Engineering Labor Markets: Petroleum Engineering Demand and Responsive Supply” (Lynn, Salzman, Kuehn, 2015).¹ Again, the “lessons learned” from the recent history of petroleum engineering demand is that wage increases lead to immediate and large increases in the supply of workers/college graduates without the need to supplement the workforce with guestworkers. In fact, the domestic student response—to enter petroleum engineering—has been so strong that many petroleum engineering programs are now concerned about a glut of graduates (see below).

The increased hiring demand for petroleum engineers resulted from the confluence of several factors: (1) the “great crew change” of an older workforce reaching retirement age, and an industry in which there had not been much hiring for decades—a workforce where half of all geophysicists and engineers are expected to retire by 2018; (2) sharp increase in oil prices that made previously uneconomical exploration now profitable and thus additional engineers needed to explore and develop those oil fields; (3) technological advances that made previously inaccessible or uneconomical oil feasible to extract (e.g., tar sands).

In response to this and other market signals the number of new petroleum engineering degrees awarded by U.S. universities more than tripled (Rubin, 2010). In just the period from 2007-2008 to 2010-2011, U.S. university petroleum engineering departments increased the number of bachelor of science graduates from 444 to 891 and the number of doctoral graduates from 39 to 95. Texas A&M and Colorado School of Mines more than tripled their output of new graduates from 42 to 128 and 32 to 100, respectively. Reports from some petroleum engineering programs indicate an even greater increase in demand in subsequent years (TTU, 2010). As shown in the figures below (labeled Figures 7&8), the dramatic increase in petroleum engineering followed the steep rise in starting salaries, which in turn reflected an observable increase in industry demand. This would seem to be a clear textbook case of efficient and responsive market functioning. It suggests that normal market mechanisms, namely wage increases, can dramatically and quickly increase supply.

¹ *Forthcoming in:* Freeman, R. and H. Salzman (eds.) *Engineering in a Global Economy* (forthcoming, 2015) NBER and University of Chicago Press.

Importantly, the increase in supply came from the domestic pool of students and not from foreign students (which declined as a share of the total number of graduates).



The following "Industry Alert" from the Society of Petroleum Engineers in 2010 summarizes some key trends [emphasis added]:

Environmental and remediation companies of all sizes have a real opportunity to take steps in 2010 to address that shortage of engineering talent expected in the next decade, especially in the United States and Europe...*An increase in the number of graduates in petroleum engineering programs is creating the largest pool in 20 years of young engineers seeking entry into the oil and gas industry.*

Interestingly, this industry newsletter called on companies to continue hiring (in anticipation of future retirements and growth) even if they were meeting their immediate employment needs because “Scaling back on new graduate recruiting in 2010 could lead to a permanent loss of this talent from the industry, and chill the interest of future engineering students in pursuing careers in the oil and gas industry.”

This strongly suggests that even in a peak demand year there was no serious shortage in the availability of new petroleum engineering graduates and that, indeed, there was some concern of future generations being turned away from the field if companies did not proactively hire more new graduates than were immediately needed.

The potential downside of large increases in the supply of engineers is suggested in a guest editorial written by the current department chair and a former department chair of the Petroleum Engineering Department at Texas A&M University. These authors note:

Between fall 2011 and fall 2012, the number of freshmen in petroleum engineering programs in the United States grew from 1,388 to 2,153, a 55 percent increase in one year. The enrollment pressure we are experiencing at Texas A&M suggests that there will be another increase in freshman enrollment in 2013. We are rapidly heading toward having more than 2,000 bachelor of science degree petroleum engineering graduates per year in the United States. So far, essentially all of our graduates have been receiving job offers, *but there is concern that the job market may not grow as fast as enrollment and graduation rates.*

These authors note similarities with an earlier ramping up of the number of petroleum engineering students in the 1980s. They fear a potential collapse of the job market and suggest that more universities should manage “the unbounded growth in enrollment that is currently occurring.” They note that the two departments that have historically been the largest in the United States, Texas A&M University and University of Texas at Austin, have indeed controlled their growth, but other departments have not, and have passed the two Texas schools in size of enrollments.

So is there an impending crisis demanding special measures to increase the number of graduating engineers in petroleum engineering? Employers continue to voice alarm, but some suggest that in the past such warnings were overstated. What then, does the case of petroleum engineers suggest about other fields of engineering? First, in petroleum engineering there seemed to be no serious difficulty in getting qualified students once students had a strong incentive to enter this field of engineering. The three chairs of leading petroleum engineering departments who responded to an e-mail survey sent out in March 2015 (surveys were sent to 10) indicated they had experienced no difficulty in recruiting students. Second, while the department chairs who responded to our survey complained of difficulties in recruiting as many qualified faculty as they would have liked, they were able to meet the increases in demand for qualified students, with no lowering of standards. U.S. universities seem to have been remarkably flexible. Indeed, two of the three department chairs expressed concern that universities had overbuilt their capacity in petroleum engineering, saying this was already happening. The other chair expressed confidence that the demand for petroleum engineers would continue growing so the increased capacity would be needed. Third, it is not clear nonmarket signals such as projections of demand by experts (U.S. Department of

Labor) or industry spokespeople (who may, after all, have a vested interest in talking up prospects for demand), have done any better in their predictions than the market.

As oil prices sharply declined in 2014 and early 2015 there were increasing reports of job cuts, either those that had already occurred or those that were feared. In February 2015 Reuters stated that more than 100,000 layoffs worldwide had been reported in the oil industry. Halliburton had announced cuts of 8 percent of its global workforce and Schlumberger was planning to eliminate 7 percent of its workforce (Kemp 2015). Bloomberg (Shauk 2015) reported concerns of new petroleum engineering graduates about their job prospects commenting, "Six months ago, a degree in petroleum engineering was a ticket to a job with a six-figure salary. Now it's looking like a path to the unemployment office." The director of undergraduate advising for Texas A&M's Petroleum Engineering Department indicated that student were expressing "definite concern" about the job market.

- **According to the testimony provided by Mr. Johnson, the unemployment rates for some STEM occupations appear low. Do low unemployment rates indicate full employment in these fields?**

The unemployment rates are misleading because they do not indicate whether they are employed in their field (for those who sought employment in their field), or just employed in any job; further, the statistics cited often do not indicate whether they are employed full time or whether part time and/or contingent (contract, temporary) employment. All one can conclude is that STEM graduates are able to find some type of employment more successfully than the 83% of college graduates who are not STEM graduates, and more successful than the 90-92% of the overall workforce who are not STEM graduates. Moreover, at the highest levels of science, Ph.D. level scientists, employment prospects are very dismal, to the extent that the National Institutes of Health finds science careers have become “unattractive.”² One news report finds: “A [new report](#) issued by the National Academy of Sciences and other groups recommend that universities and other institutions address it by reducing the number of postdocs they produce... The document also calls on universities to tell their graduate students about the state of the job market and help them train for, and enter, alternative careers in such areas as science writing, science policy and consulting.”

The Federal Reserve of NY analyzed recent college graduate employment (for those with a four-year degree, ages 22-27) and found the employment status noted in the figure below, by degree field. Of recent engineering graduates, for example, 20 percent were in a job that did not require a bachelor’s degree; the 75 percent employed in a job that required a bachelor’s degree but they did not analyze whether it was an engineering job; for math and computers, 22% were in a job not requiring a bachelor’s degree; in the sciences, 43% were in a job not requiring a bachelor’s degree. Further analysis shows those who are “underemployed” working part time.

Another analysis that I conducted with colleagues was of one cohort of recent graduates in which they were asked whether they were employed in their field of study (this was restricted to just those employed). Figure below (and in my written testimony). Our analysis of a large, nationally representative survey of a recent college cohort by the National Center for Educational Statistics finds that only two-thirds of computer science graduates went into IT jobs in 2009 (that would include all IT jobs, not just those for formally defined “computer occupations”). Of those not landing an IT job, half said they found a better job elsewhere. Fully one-third reported there were no IT jobs available (although this was the year

² One recent news report says: “Despite all the seeming demand for experts in the sciences, cuts in research spending and belt-tightening at universities mean that only one in five Ph.D.s in science, engineering and health end up with faculty teaching or research positions within five years of completing their degrees, [according to the National Science Foundation](#). ...In the case of biology Ph.D.s like McDowell, only 1 in 10 will snag an academic job. Many of the rest are drifting into other fields. And critics say the squeeze may be affecting the quality of scientific research and the nation’s international economic competitiveness....Biomedical postdocs — according to the National Institutes of Health, there may be as many as 68,000 of them — are clogging a job market that almost certainly can’t absorb them all.”
<http://www.npr.org/blogs/ed/2015/02/27/388443923/a-glut-of-ph-d-s-means-long-odds-of-getting-jobs>

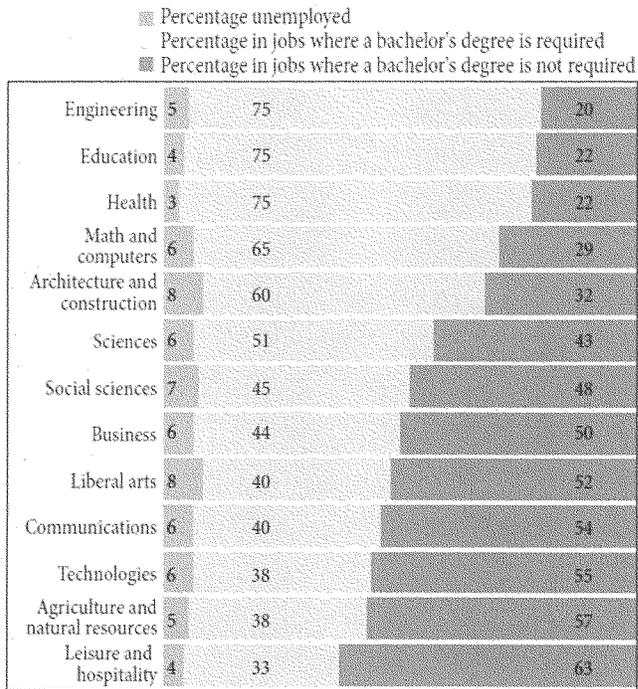
after the start of the Great Recession, this is only slightly lower than the historical trend; Salzman, et al., 2013).

What these analyses suggest is that those who get a STEM degree do better in the job market than those who do not have STEM degrees, but does not indicate anything whatsoever about demand for STEM workers by the STEM industries. Further, and importantly, the selectivity of STEM degree holders further limits any inferences about STEM worker demand. STEM graduates are approximately 17% of current college graduates and have a more demanding program of study than many other fields. Comparisons of a selective group of 17% of the college graduate population could just reflect that selectivity rather than characteristics of a STEM degree, per se.

In the workforce, STEM workers are approximately 5% to 8% of the workforce and comparisons of this select group, mostly college educated, with the other 95% of the workforce (which includes Wal-mart and other low-paid workers), of whom approximately only 35% have a college degree, overwhelmingly reflects selectivity.

Chart 7

Employment Outcomes for Recent College Graduates by Major, 2009-11



Sources: U.S. Census Bureau, American Community Survey; U.S. Department of Labor, O*NET.

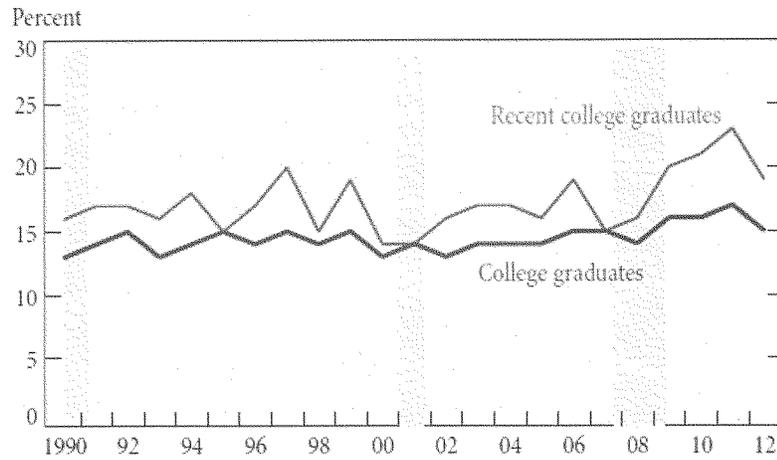
Notes: *Recent college graduates* are those aged 22 to 27 with a bachelor's degree or higher. All figures exclude those currently enrolled in school. Because of rounding, figures in each bar may not sum to 100.

FROM: "Are Recent College Graduates Finding Good Jobs?"

Jaison R. Abel, Richard Deitz, and Yaqin Su

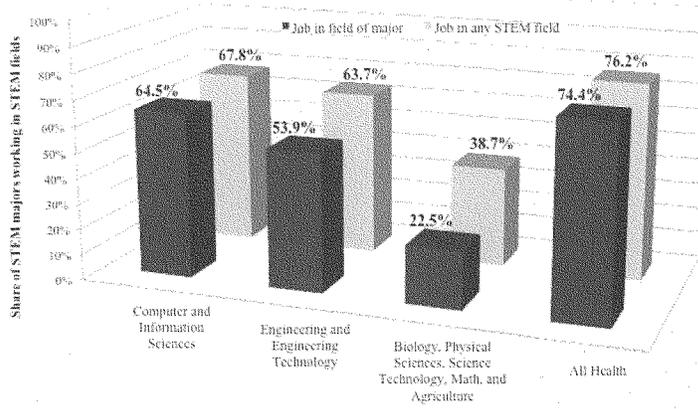
Federal Reserve Bank of New York, *Current Issues in Economics and Finance* v.20:1, 2014

Chart 6
Share of Underemployed Graduates Working Part-Time



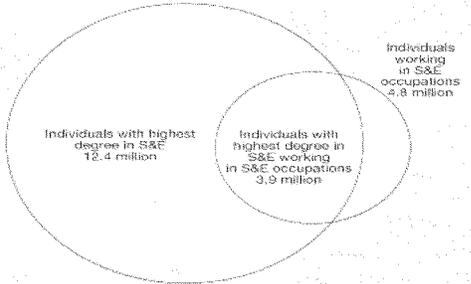
Sources: U.S. Census Bureau and U.S. Bureau of Labor Statistics, Current Population Survey, March Supplement; U.S. Department of Labor, O*NET.

Notes: *College graduates* are those aged 22 to 65 with a bachelor's degree or higher; *recent college graduates* are those aged 22 to 27 with a bachelor's degree or higher. All figures exclude those currently enrolled in school. Shaded areas indicate periods designated recessions by the National Bureau of Economic Research. Shaded areas indicate periods designated recessions by the National Bureau of Economic Research.



Source: National Center for Education Statistics. (2013). 2003–2004 Baccalaureate and Beyond Survey (B&B) [Restricted data file]. Washington, DC: U.S. Department of Education; tabulations by authors.

Figure 3-10
Intersection of highest degree in S&E and S&E occupation: 2006



SOURCE: National Science Foundation, Division of Science Resources Statistics, Scientists and Engineers Statistical Data System (SESTAT) (2006), <http://sestat.nsf.gov>.

Science and Engineering Indicators 2010

- **Could you explain the ways by which you understand firms use the H-1B and L-1 programs to facilitate the offshoring of US jobs and describe the impacts on the U.S. workforce and economy of such offshoring?**

The use of guestworkers is required to support offshore IT development because a portion of the project team (often estimated as about one-third of the entire project team) is dedicated to managing the customer account in the United States, to do requirements analysis, quality assurance, implementation, and liaise with the offshore team. Without this onshore team, it would be nearly impossible for a company to do offshore development. It is thus not the case, as often asserted, that without guestworkers firms would move their work offshore. It is, in fact, quite the opposite: without guestworkers, conducting work offshore would be much more difficult and the cost savings would be substantially reduced. This finding is based partly on fieldwork (Salzman, 2000; Salzman and Biswas, 2001), but also comes directly from the statements of offshoring companies in their U.S. Security and Exchange Commission (SEC) filings (10-K and 20-F forms) (see Testimony, p.13ff for discussion and quotes).

The effect on the U.S. workforce is evident in both wage levels (as noted above) and reduction in the number of jobs available to U.S. workers, and particularly in its impact on workers over the age of 35 who, it appears, are more susceptible to being replaced. The firms themselves state these impacts by noting that reductions in guestworkers would require them to hire more U.S. workers—conversely, the availability of guestworkers reduces the demand for U.S. workers.

The offshoring firms (both U.S. and Indian) are quite explicit about the need for H-1B and L-1 guestworkers to conduct offshore software development. From the firm's 10-K and 20-F SEC filings about impact of reductions in the supply of guestworkers: "Any restriction on ability to deploy trained offshore resources at client locations may require Infosys *to replace existing offshore resources with local resources*, or hire additional local resources, potentially *at higher wages.*" [emphasis added] the "...majority of professionals in the U.S. hold H-1B visas or L-1 visas; *ability of our technology professionals to engage in work-related activity abroad depends on ability to obtain the visas and permits.*"[emphasis added]; another states: it would affect their "...ability to compete for and provide services to clients in U.S." because they might not be able to "...continue to be able to obtain any or a sufficient number of H-1B and L-1 visas for our onsite employees on the same timeframe as we currently maintain." Accenture states that if it is "...unable to deploy needed talent because of increased regulation of immigration or work visas, including limitations placed on number of visas granted, limitations on type of work performed or location in which work can be performed, and new or higher minimum salary requirements, could be more difficult to staff employees on client engagements and increase costs." Worth noting is that the problem appears to be one of costs and difficulty in offshore staff working in the U.S., but not a potential "shortage" of workers. Cognizant states that any reduction in guestworkers would have the effect that the "...*cost of doing business in the U.S. would increase...[and would]... impair ability to staff projects with professionals who are not citizens of the country where the work is to be performed.*"

- **During the hearing we heard about an American Enterprise Institute study (Madeline Zovodny, “Immigration and American Jobs”) that concludes that each H-1B creates 1.83 additional jobs for Americans. There was also reference to a 2008 National Foundation for American Policy study that concluded that each H-1B worker creates 5 new jobs (see <http://www.nfap.com/pdf/080311h1b.pdf>). Are you familiar with the studies in question? Do you agree with the studies’ conclusions?**
 - **Does the AEI study or any other similar study you know of measure the job-creating powers of *American* workers?**

First, the paper assumes that temporary migrant workers are somehow more productive than other workers, but it provides no empirical facts to back that up. We know, for example, that foreign workers are not more likely to patent than natives (Hunt, Matloff); and that recently hired H-1Bs earn less than natives (Lowell, Matloff). The facts on entrepreneurship are also controversial and, regardless, apply to a sliver of the potential foreign-born population and even fewer H-1Bs (Hart). There really is no agreed-upon or compelling evidence of greater individual productivity so no causal mechanism for Zavodny’s finding (Matloff). Along these lines, see this analysis using good data and statistics that supports the contention of no H-1B advantage:

<http://www.aei.org/publication/high-skill-immigrants-without-advanced-degree-actually-create-jobs/>

<http://www.nber.org/papers/w20668>

Second, the paper is internally inconsistent in a couple of ways. Along the lines of differential productivity, it finds that H-2B migrants in low-wage industries generate the greatest employment boost (p.4, 464 vs 162 jobs). How is it possible that a tiny number of (65k) low-wage seasonal workers in a handful of states generate the biggest effect? If its true then, rather than H-1Bs, it would suggest increases of H-2Bs would be better for the U.S. economy (or require H-1Bs to be certified for seasonal jobs). Along the lines of missing variables, the paper finds a positive employment boost in pre-recession (2000-2007) but not when including post great recession (2000-2010) years. As the paper argues, it’s plausible that native employment gains waned during the great recession, but why would the foreign born effect zero out? For policymakers, the putative evidence clearly indicates that admitting increased number of foreign workers during a recession is not supported by this analysis.

- **During the hearing there was discussion of a 2013 article by the Brookings Institution (“H-1B Visas and the STEM Shortage”) that stated that “H-1B workers are paid more than U.S. native-born workers with a bachelor’s degree generally (\$76,356 versus \$67,301 in 2010) and even within the same occupation and industry for workers with similar experience.” Do you agree with the conclusions in that Brookings article?**

The Brookings data when read carefully (a) supports our (Salzman, Kuehn, Lowell, 2013) and other analyzes of trends showing IT wages have been flat and no evidence of labor shortages, and (b) the Brookings analysis of H-1B earnings is flawed and appropriate comparisons of H-1Bs vs full-time year-round domestic workers finds no H-1B earning advantage and, in fact, in IT the average H-1B workers earns \$3,674, or 5 percent, *less* per year than a U.S. worker in the same occupation. A careful reading of the Brookings analysis and corrected analyses of their data do not support their conclusions.

That is, *the Brookings paper shows that wages are essentially flat since the industry recovery following the dot-com crash*; a finding consistent with our findings and those of nearly every study of wage trends in the IT sector (see my written testimony, and Salzman, et al., 2013, for additional salary analyses by occupation, by industry, by region).

The Brookings paper also notes that “Even among H-1B visas requests, many require only an Associate’s degree, meaning that the current U.S. workforce could be trained to do these jobs at relatively little cost” (p.2), and that these workers are not supplied by the H-1B or most other high-skill guestworker programs. We would point out that each year there are 64,341 students who earn an associate degree or certificate in IT in 2012, far exceeding the expected growth of 44,600 new IT workers with less than a bachelor’s degree for work in the computer occupations (many of whom do not require an associate degree or certificate). Importantly, the Brookings analysis about the nature of the demand – for less than bachelor’s degree level -- also supports our analysis that the “talent” demand for highly skilled and educated workers is far less than overall net hiring needs, about a quarter of overall demand is for those holding a computer science degree.

THUS, the Brookings paper findings would appear to make a strong case that the IT industry—the dominant industry supplied by the H-1B and other guestworker programs—exhibit low levels of demand as indicated by the flat wages that are still below their early 2000s peak and that demand for high-skill is a small fraction of the overall hiring needs.

The Brookings study is deeply flawed. Beyond the basic errors, such as those in their regression, among others (see Matloff critique; Matloff and Hira have discussed these errors), there are two serious errors that undermine any analytic value the analysis might have.

First, let me point out two findings in the Brookings study:

(1) Wage changes in the “computer and mathematical occupations” –which includes the occupation with the highest concentration of H-1B workers (computer occupations; unclear why they didn’t limit their analysis to just computer occupations since the mathematical occupations are for actuaries and operations research analysts, among other non-IT occupations)), are the occupations of most relevance (as discussed in my testimony and in Salzman, et al., 2013).

As noted in my written testimony, and Salzman, et al., (2013), the “great crew change” in IT occurred during the recovery after the dot-com crash; it was in this period, 2004-2006, that there appeared to be significant substitution of guestworkers for U.S. workers, in part because of increased offshoring (see answer above about function of guestworkers for offshoring).

THUS, the key question is: *What occurred in wage growth in the occupations with the highest concentration of guestworkers when the IT industry recovered from the dot-com crash?*

--No other industry (at least not yet) is asking for guestworker supply equal to 65% to 150% of their stated net hiring needs. No one is arguing that demand for high-skill talent is zero; only that any conceivable skill demand is modest compared to the supply available in the U.S. and thus, unless there is compelling evidence to the contrary, high-skill guestworker flows should be minor in any given industry. In industries with minor guestworker supply –as appears to be the case in many if not most industries— the impact of guestworkers on wages would also be expected to be correspondingly small.

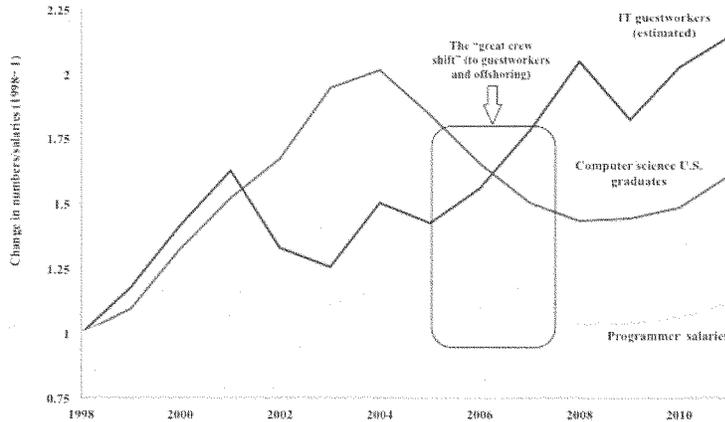
THUS, the specific industry and occupations of interest are the computer occupations in the IT industry which account for the predominant share of guestworker demand and supply.

In terms of the IT industry, then, the Brookings study shows the same salary outcomes as our and other studies. The Brookings paper, page 8/Figure 2, shows that “computer and math occupations” salaries rise steadily leading to the peak of the dot-com bubble then show either stasis, or perhaps secular decline, with small annual variation of 1 to 2 percent—in 6 of the 8 years following the peak in 2003, annual salaries were below the 2003 peak.³

If we examine programmer salaries – the occupational group in which guestworkers are most concentrated and for which we have a long time series (the combined “computer occupations and mathematical occupations” was created in 2002 and, as far as we know from our discussions with BLS, there is no way to construct a comparable occupational group before 2002), salaries have remained at, or below, their late 1990s level except for the brief dot-com boom period.

Figure 1: Change in Programmer Salaries and in Numbers of U.S. STEM-related Graduates and IT Guestworkers, 1998-2011

³ All the year-to-year salary variance is within two percentage points (note the scale on the left –it’s between about 1.06 and 1.085) between the crash and today. (We don’t know how Brookings authors did their analysis prior to 2002 since, as far as we know, that occupational grouping wasn’t available before 2002, as we note in our paper). Fluctuations of 1-2%, given the extent to which it bounces up/down, are essentially flat (given margin of error, unlikely the 1% change in a given year is meaningful).



That is, *the Brookings paper shows that wages are essentially flat since the industry recovery following the dot-com crash*; a finding consistent with our findings and those of nearly every study of wage trends in the IT sector (see above Figure 1; my written testimony, and Salzman, et al., 2013, for additional salary analyses by occupation, by industry, by region).

(2) The Brookings paper also notes that “Even among H-1B visas requests, many require only an Associate’s degree, meaning that the current U.S. workforce could be trained to do these jobs at relatively little cost” (p.2), and that these workers are not supplied by the H-1B or most other high-skill guestworker programs. We would point out that each year there are 64,341 students who earn an associate degree or certificate in IT in 2012, far exceeding the expected growth of 44,600 new IT workers with less than a bachelor’s degree for work in the computer occupations (many of whom do not require an associate degree or certificate). *Importantly*, the Brookings analysis about the nature of the demand – for less than bachelor’s degree level – also supports our analysis that the “talent” demand for highly skilled and educated workers is far less than overall net hiring needs, about a quarter of overall demand is for those holding a computer science degree.

THUS, the Brookings paper findings would appear to make a strong case that the IT industry—the dominant industry supplied by the H-1B and other guestworker programs—exhibits low levels of demand as indicated by the flat wages that are still below their early 2000s peak and that demand for high-skill is a small fraction of the overall hiring needs.

In terms of the analysis of H-1B wages in the Brookings paper, there are two fundamental flaws: sample definition in defining a comparison group and the construction of their datasets.

(1) Comparison groups: “Native” as compared to H-1B worker. The relevant analysis is one that examines the real world characteristics of the labor market and hiring decisions of employers, and of course the legal regulations that divide the labor market into two segments, domestic/U.S. vs. guestworker (there is no legal or practical IT labor market distinction between immigrant and native). In the IT market in particular, employers are not differentiating between “native” and immigrant (among other reasons, many tech managers are immigrants themselves) but, rather, between hiring from the domestic labor pool and the guestworker labor pool; the latter is a labor force that is available, and for whom conditions of work are quite different from the domestic labor force (requiring a work visa, etc.).

The relevant comparison groups are the domestic laborforce (citizen and permanent resident; native and immigrant) and guestworkers. Findings about natives vs. guestworkers might be relevant for some theoretical or academic exercise but not relevant to the policy question of the relationship of guestworker wages and domestic workforce wages and employment.

(2) The most serious of the analytic flaws in the Brookings study is how they constructed the two datasets for comparison.

What are the relevant data?

The data source for analysis of the H-1B workforce is the DHS dataset of approved petitions. These are the *prospective, employer-reported* annual wages the employer intended to offer a worker hired on an H-1B visa. That is, the wages listed in the data base are what the employer reports as the *intend wage* they will offer a worker hired on an H-1B visa should DHS approve the visa petition. Importantly, these are not necessarily the actual annual wages that are paid to a worker; there is no *ex post* verification of the reported wages and, it is estimated, perhaps 20 percent of the approved petitions are never filled with an actual hire. Also important to note is that the law exempts any labor attestation if the salary is above \$60,000.

The comparison group, of native U.S. workers, is constructed from the American Community Survey. These data are from a survey of households and thus are the reported wages of individual *workers* for the *preceding* year. That is, these data reflect the *actual wages* that an individual worker reports having received for the prior year. These are subject to reporting biases and other limitations, but are clearly a very different data source from the employer-reported, prospective wages for an intended hire.

Reanalysis of H-1B and U.S. Worker Wage levels

In a current analysis (Lowell and Salzman), we first constructed two datasets that addressed the biases and anomalies to the extent possible (e.g., an inherent limitation that can not be addressed with these data are that H-1B data are prospective, employer reported wages –i.e., of what employers report to DHS on an application as the wage they intend to pay a worker whereas the U.S. worker data are individual workers reporting the actual income they received for the prior year). We correct for apparent errors in the Brookings analysis and construct both data sets to be comparable.

When comparing the two groups, as shown in Table below, the average H-1B workers earns \$3,674, or 5 percent, less per year than a U.S. worker in the same occupations. There is substantial average wage savings gain by using H-1B workers, which we estimate now comprise over 40 percent of the current, total workforce in these occupations (the data on the U.S. workforce provides detailed occupational

breakouts but the H-1B data combine these two computer occupations). What is remarkable is that these workforce averages, which are for *all* workers in these occupations with a bachelor's degree or higher, are lower for the H-1B workforce yet the H-1B workforce is a workforce comprised of nearly twice the proportion of workers with a master's degree. *That is*, despite a workforce composed of a substantially greater number of workers with a postgraduate degree (nearly twice the proportion of the domestic workforce), their average wages are *lower*. In a preliminary analysis of wages and education, Lowell and Salzman (in preparation) find that, as would be expected in the labor market, U.S. workers with a master's degree receive higher wages than those with a bachelor's degree, and it is a wage premium that increases among older workers with a master's degree. However, in the H-1B workforce there is, on average, no wage premium for a master's degree. That is, for most H-1B workers with a master's degree, they do not earn more than an H-1B worker with a bachelor's degree.

Table 1: U.S. and H-1B wages and workforce

	% Masters	Annual Average Salary	Number of Workers		
Domestic Workforce					
Computer scientists and systems analysts	25%	\$79,895	234,239		
Computer programmers	21%	\$79,185	225,292		
Average (combined occupations)	23%	\$79,547	459,531		
H-1B workforce					
			1st & 3rd Year Approvals	Estimated 6 Year Population	Est. Percent of Domestic IT Workforce
Computer Sci/Systems Analyst & Programmers (combined)	45%	\$75,873	78,113	195,283	42.5%

Source: DHS H-1B data; calculations by authors (Lowell and Salzman, forthcoming).

- **The employment projections made by the Bureau of Labor Statistics are often used to predict shortfalls in the future domestic supply of STEM workers. Could you explain whether these projections show a shortfall?**

The BLS states that its projections of demand do not address the issue of supply. In general, the presumption is that the labor market will respond to demand and, in fact, that is one use of the BLS projections by career counselors, educators and students to identify areas of future employment opportunity. Presumably the goal of such projections is to support a market response to demand that does not require extraordinary government intervention.

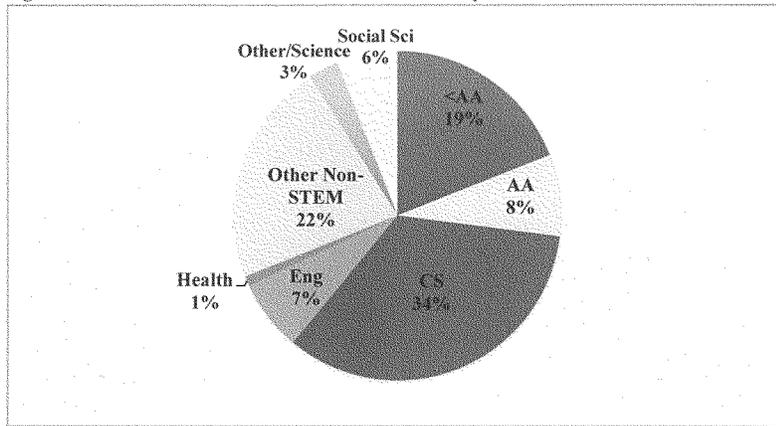
Current graduation rates indicate that projected employment demand specifically for computer science (CS) graduates can be met by about half of the current supply of 65,000 to 70,000 CS graduates (with at least a bachelor's degree) each year, and the balance of demand can be met by those graduating with a range of other degrees, as is the historical pattern. Outside of IT, study after study of science careers consistently finds there is a glut of Ph.D. life scientists resulting in poor employment prospects for new graduates and postdoctoral scientists (e.g., Teitelbaum 2008, 2014; Stephan, 2012; Freeman, 2004; NIH, 2012). The National Institutes of Health (NIH) has developed a program to help new biomedical Ph.D.s find alternative careers in the face of "unattractive" job prospects in the field, where less than a quarter of Ph.D. graduates will find a career research and teaching position (NIH, 2012). Overall, in the science fields, there are twice as many university graduates at the bachelor's degree level than the number who enter into a science occupation every year. Similarly, engineering schools graduate 50 percent more graduates than find jobs in engineering each year; the one engineering area where there has been a shortage, petroleum engineering, is the exception that proves the rule (see discussion of petroleum engineers).

As to whether the BLS projections indicate a shortfall -- According to the Bureau of Labor Statistics (BLS) projections for IT job growth, which is comprised of replacements (for those leaving the workforce because of retirements and job separations—layoffs and quits) and growth of the workforce, the IT industry needs approximately 124,000 new workers each year. Daniel Costa conducted a detailed study of these computer science shortage claims by Microsoft and other companies and shows the evidence does not support these claims because, among other reasons, "[i]t is a well-known fact that computer science graduates are not the only source of new hires in computing...less than one-fourth to less than one-half of workers in computing occupations have a computer science degree" (Costa, 2012). In fact, of those currently in computer occupations, only 14 percent hold a computer science degree and another 4 percent have electrical engineering degrees. Since that reflects the education level of the entire current IT workforce of all ages, it could understate the current cohort education levels.

Examining recent cohorts of all new entrants into IT occupations who have a postsecondary education, we find 34 percent have a bachelor's or master's computer science degree (See Figure below); of just the

pool of four-year college graduates entering computer occupations, 46 percent have a computer science degree. About 36 percent of entrants into computer occupations do not have any four-year degree. Thus, we estimate that demand for new workers in computer occupations with a computer science degree as approximately 29 percent of the BLS projection of total demand for new workers (64% of new workforce entrants in computer occupations have a four-year degree and 46% of those have a degree in computer science, or 29% of all new workforce entrants). Using the actual educational composition of the computer occupations as an estimate of hiring demand by education and degree, the supply of computer science graduates needed to meet industry demand would be approximately 36,500 computer science graduates each year (based on the BLS projection of 124,000 new jobs; see U.S. Bureau of Labor Statistics, 2014). Figure 2 shows the historical graduation numbers of computer science graduates.

Figure 2: Education of IT Workforce with Postsecondary Education

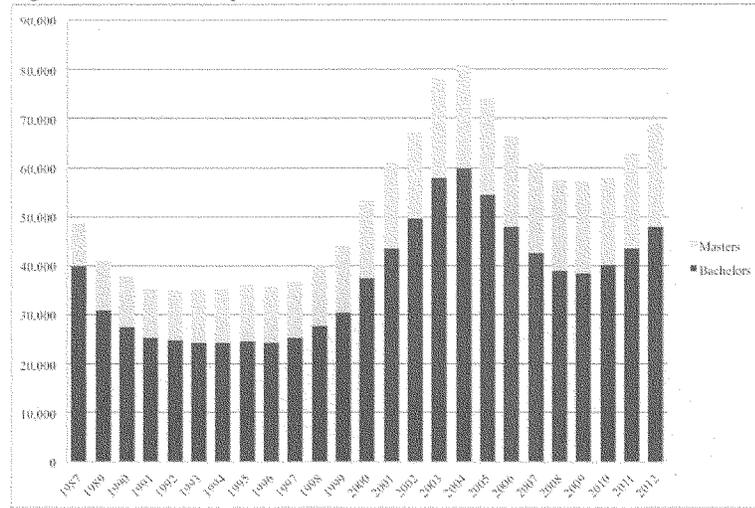


Source: National Center for Education Statistics. (2013). 2003–2004 Beginning Postsecondary Students Longitudinal Study (BPS) [Restricted data file]. Washington, DC: U.S. Department of Education; tabulations by authors.

Current graduation rates indicate that projected employment demand specifically for computer science (CS) graduates can be met by about half of the current supply of 65,000 to 70,000 CS graduates (with at least a bachelor's degree) each year, and the balance of demand can be met by those graduating with a range of other degrees, as is the historical pattern. Even if current industry hiring is for a much greater level of computer scientists than historical hiring patterns, the current pool of graduates would provide sufficient numbers of computer scientists to meet industry demand. Our analysis of a large, nationally representative survey of a recent college cohort by the National Center for Educational Statistics finds that only two-thirds of computer science graduates went into IT jobs in 2009 (that would include all IT jobs, not just those for formally defined "computer occupations"). Of those not landing an IT job, half

said they found a better job elsewhere. Fully one-third reported there were no IT jobs available (although this was the year after the start of the Great Recession, this is only slightly lower than the historical trend; Salzman, et al., 2013). Also worth noting is that an additional 64,341 students earned an associate degree or certificate in IT in 2012, also far exceeding the expected growth of 44,600 new IT workers with less than a bachelor's degree for work in the computer occupations (many of whom do not require an associate degree or certificate).

Figure 3: Number of Computer Science Graduates Annually



Source: National Center for Education Statistics, Higher Education, General Information Survey and Integrated Postsecondary Education Data, 1987–2012; tabulations by Daniel Kuehn, American University; David Hersh and Hal Salzman, Rutgers University.

RESPONSES OF PROF. SALZMAN TO QUESTIONS SUBMITTED BY SENATOR SESSIONS

Senator Jeff Sessions
Questions for the Record
“Immigration Reforms Needed to Protect Skilled American Workers”
Professor Ron Hira and Professor Hal Salzman

--For q's 1-4, I've provided the summary of education and age that we have from our analyses; we haven't done analysis at the detail requested.

1. Based on publicly available information, please provide the following statistics as they pertain to H-1B recipients:
 - a. The percentage of H-1B recipients who have a PhD, or equivalent.
 - b. The percentage of H-1B recipients who have a Master's Degree, or equivalent.
 - c. The percentage of H-1B recipients who have a Bachelor's Degree, or equivalent.
 - d. The percentage of H-1B recipients who have less than a Bachelor's Degree.

The population of IT workers with a college degree (bachelor's and above) who started their jobs during 2011 is 483,692. Of these, the 160,755 guestworkers represent approximately a third of all new IT jobs (specifically, we estimate the number of guestworkers to range from a low of 28 percent to a high of 47 percent of the number of all IT jobs in 2011 that were filled by a college graduate hired in that year). One-third (34.3 percent) of workers who began their IT jobs in 2011 were under the age of 30; among guestworkers approved for H-1B visas for initial employment in 2011, the under-30 share was 57 percent (DHS 2012). An even higher share of F-1/OPT guestworkers are likely to be under the age of 30, since it is a benefit extended to recent college graduates. A more detailed analysis of the age distributions of U.S. workers beginning their IT jobs during 2011 and H-1B guestworkers approved for initial employment shows striking differences: more than half (52 percent) of new U.S. IT hires were over the age of 35, compared to only 18 percent of H-1B new workers. If we examine IT new hires and IT guestworkers under the age of 30—the population of entry-level and early-career workers—we find that the number of new guestworkers in 2012 was equal to nearly two-thirds (64%) the number of *all* new hires under age 30 in the United States (Figure 7).

2. Based on publicly available information, please provide the average age of an H-1B recipient.
3. Based on publicly available information, please provide the average number of years an H-1B recipient has been employed in the field prior to coming to the United States.
4. The Department of Labor's official Labor Force Participation Rate shows a steady decline in the number of Americans participating in the workforce over the last two decades. What impact, if any, has the H-1B program had on the Labor Force Participation Rate in the United States?
5. Can H-1B recipients start new businesses in the United States while in H-1B status?

No, they are not permitted to be self-employed (so the argument that they start jobs is, obviously, not relevant for H-1B workers; and thus the studies making that argument re:

entrepreneurship, reference immigrants not guestworkers). Also see David Hart study that found:

“About 16% of the companies in the sample, for instance, number at least one immigrant entrepreneur among their founding teams, while about 77% of the immigrant entrepreneurs are U.S. citizens. Three multivariate analyses are carried out that compare high-impact, high-tech firms that count at least one immigrant in their founding teams with those that were founded by native-born entrepreneurs. It is found that the two groups of firms are similar with respect to economic and technological performance. Immigrant-founded firms are more likely to report that they have a strategic relationship with a foreign firm.”

<http://edq.sagepub.com/content/25/2/116.abstract>

And, important to note, that the “immigrant-founded” firms are defined as those with at least one immigrant founder but may also have non-immigrant founders.

Additionally, they describe their findings:

http://www.brookings.edu/~media/research/files/papers/2011/2/immigration-hart-acs.02_immigration_hart_acs

The vast majority of the immigrant entrepreneurs in our sample are strongly rooted in the U.S. The average duration of their stay in this country is more than twenty-five years. Only about 25 percent were reported to have been in the U.S. for less than fifteen years. About 77 percent are U.S. citizens. They came to the U.S. from all over the world. Fifty-five countries of origin are represented in the sample. India tops the list, accounting for about 16 percent of the founders. (See Table 1.)

The immigrant entrepreneurs are well-educated. Roughly 55 percent of them hold a masters degree or doctorate. Immigrant founders are more than twice as likely as native-born founders to hold a doctorate and are much more likely to hold a masters degree as well. One important reason for this difference is that many of the immigrant founders came to the U.S. for graduate education. Two-thirds of them received their highest degree in this country.

Like most successful entrepreneurs, the immigrant entrepreneurs in our sample had significant work experience. More than half of them had been in the U.S. at least ten years before founding their companies.

It is clear that the guestworker labor force is a very different profile from those who are immigrant entrepreneurs. Applying findings from these studies to guestworker programs is inaccurate.

6. Do the top H-1B employers generate large numbers of patents and new technologies?

The best evidence on this (on H-1B rather than on “immigrants”) has been conducted by Norm Matloff who finds that

7. Although testimony at the hearing indicates that the total number of H-1B recipients in the United States is unknown, can you please provide your best estimate as to how many H-1B recipients are currently in the United States?

Our calculations of the H-1B workforce in the key IT occupations is they comprise about 42% of the computer systems analyst and programmer workforce.

Table 1: U.S. and H-1B wages and workforce

	% Masters	Annual Average Salary	Number of Workers		
Domestic Workforce					
Computer scientists and systems analysts	25%	\$79,895	234,239		
Computer programmers	21%	\$79,185	225,292		
Average (combined occupations)	23%	\$79,547	459,531		
H-1B workforce					
			1st & 3rd Year Approvals	Estimated 6 Year Population	Est. Percent of Domestic IT Workforce
Computer Sci/Systems Analyst & Programmers (combined)	45%	\$75,873	78,113	195,283	42.5%

Source: DHS H-1B data; calculations by authors (Lowell and Salzman, forthcoming).

8. How does the H-1B program affect the racial and gender diversity of the STEM workforce?

Although we have not studied the impact, it would be reasonable to conclude that if a large share of the workforce and new hires are guestworkers it is reducing the opportunities for US workers and would particularly disadvantage those workers who are already struggling to enter this industry, namely women and underrepresented minorities (e.g., African-Americans, Latinos).

Importantly, a large supply of lower-cost workers, and offshoring of work, reduce the incentives for firms to devote the effort and potential cost to recruit and train workers who are outside of their typical hiring pool.

9. How would “stapling a green card” to the diploma of every foreign STEM student who graduates from a U.S. university affect the domestic workforce and student population?

Any expansion of foreign student entry into the U.S. labor market in IT is likely to exacerbate rather than remediate the current, negative impacts of large guestworker flows on the labor market. Further, and very importantly, it is likely to exacerbate what appears to be growth of a college and university business model of providing entry into the U.S. labor market that would otherwise be difficult to obtain; the provisions of the I-Squared legislation could expand the numbers of master’s degree programs that are primarily offering degrees as the cost of obtaining a green card, easy entry into the U.S. labor market, and perhaps a moderate level of skill and education. The evidence suggests the impact would be depressing wages, as is currently reflected by the lack of a wage premium for H-1B master’s degree holders and growth of degree programs that exclude U.S. students, either indirectly (as evident in the colleges with high concentration of F-visa graduates) or directly, as in the case of California State University-East Bay,

which stopped admitting state residents into its graduate programs and admitted almost exclusively international students into its computer science program (which is about 90 percent international students; Jaschik, 2012, Matloff, 2012). This was the University's explicitly stated strategy to increase revenue to make up for budget deficits by excluding state residents who would pay lower tuition rates than out-of-state and international students. As the chart above suggests, this appears to be a "global services" business model pursued by a number of colleges and universities across the country.

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RESPONSES OF MR. TRUMKA TO QUESTIONS SUBMITTED BY SENATOR BLUMENTHAL

Question for The Panel

Would transparency help?

Two witnesses at this hearing pointed in their testimony to a lack of publicly available information on nonimmigrant worker programs. In fact, some of the analysis discussed at the hearing involved data that was available only through FOIA, a process I know can be slow, difficult, and expensive.

The hearing discussed a number of incidents of apparent abuse of nonimmigrant visa programs for high-skilled workers. These abuses raise the obvious question of whether the American people are seeing an indication of systemic problems or a small number of unscrupulous companies abusing fundamentally sound programs. And it is worth pointing out that the potential for abuse goes beyond visa programs targeted at high-skilled workers. If anything, visa programs that allow employers to bring in workers without significant skills lend themselves even more to abuse.

Whether your goal is reforming nonimmigrant visa programs or simply rebuilding Americans' confidence in these programs, increased transparency could be an important part of the solution.

- a. **In your view, would it help to make more information regarding nonimmigrant worker visa programs available to the public without the need to rely on the FOIA process?**
- b. **Can you talk about what kinds of data should be made available and how such data could be used?**

It is vitally important that such data be made publicly available. Nonimmigrant visa programs are rife with waste, fraud and abuse, including violations of wage and anti-discrimination laws by employers. In order to improve oversight and understanding of the legal immigration system, agencies should annually publish online information in the form of a summary report divided by visa category and subcategory with the underlying raw data gathered from the I-129s, I-797s, 9142s, and other immigration forms as to the gender, age, wages, employer, place of origin, principal recruiter (when collected), and agents or sub-recruiters of persons who are on visas defined in subparagraphs of section 1101(a)(15) of the INA that permit employment in the United States under any circumstances, including training or business activities that result in receiving any form of compensation, including a stipend, from any source. Agencies should publicly disclose employers and foreign and domestic labor recruiters and information regarding their compliance records and practices.

Advocates will be better able to assess hiring trends and assist workers when such information is readily available. However, we should by no means limit our assessment of data transparency needs to retrospective reporting.

When unions and advocates are approached by U.S. workers alleging discrimination, it is difficult to find information about the employers and their hiring practices. Similarly, when workers with employment-based visas report abuses such as wage theft, it can be difficult to locate the job order and other information about the employer. These challenges are compounded by the fact that positions that are being offered to workers on nonimmigrant visas

are not adequately advertised. U.S. workers are unaware of the positions, and visa-contingent workers have difficulty leaving an abusive employment situation and finding a new employer.

The creation of a publicly available and searchable job database would greatly enhance the ability of interested parties to monitor and respond to employer intentions to hire visa-contingent workers. However, such a system will only be effective in protecting workers if it allows for access to employer information at the initial registration phase, and also creates an active mechanism for public objection and comment that will be taken into consideration by those certifying employer registrations. Providing an efficient and open process for unions and other parties familiar with local industries to provide input will enhance the integrity of these programs and prevent fraud and abuse.



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Statement for the Record

By the

American Federation of State, County and Municipal

Employees (AFSCME)

For the Hearing on

“Immigration Reforms Needed to Protect Skilled

American Workers”

Before the

Committee on the Judiciary

United States Senate

March 17, 2015

American Federation of State, County and Municipal Employees, AFL-CIO
 TEL (202) 429-1000 FAX (202) 429-1293 TDD (202) 659-0446 WEB www.afscme.org 1625 L Street, NW, Washington, DC 20036-5687

Statement for the Record
By the
American Federation of State, County and Municipal Employees (AFSCME)
For the Hearing on
“Immigration Reforms Needed to Protect Skilled American Workers”
Before the
Committee on the Judiciary
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March 17, 2015

On behalf of the 1.6 million members of the American Federation of State, County and Municipal Employees (AFSCME), I want to take this opportunity to reiterate our union’s continuing commitment to achieving comprehensive immigration reform. AFSCME strongly supported S. 744, which passed the Senate overwhelmingly in June 2013 and would have finally put our country on a path to rational reform. AFSCME was particularly supportive of the provisions that established a roadmap to citizenship for the 11 million who are still living in the shadows, and a new “W” employment visa program – developed by and agreed to by the AFL-CIO and the U.S. Chamber of Commerce – that AFSCME believes should serve as a model for low-skilled and high-skilled employment visa programs. Unfortunately, the leadership of the U.S. House of Representatives in the 113th Congress refused to hold a vote on S. 744 or any comprehensive reform legislation, so the opportunity to finally fix our broken immigration system was lost.

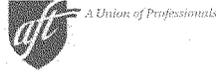
As with any comprehensive legislation, S. 744 represented a compromise among senators and stakeholders. AFSCME was most disappointed with and strongly opposed the provision that continued and expanded the deeply flawed H-1B guest worker program. Rather than making needed reforms, it increased its size while diluting protections for U.S. workers from losing their jobs to H-1B workers, failed to require employers to recruit U.S. workers first, continued to allow employers to pay H-1B workers just a fraction of prevailing wages, and did not allow H-1B workers themselves, not just their employers, to petition for green cards.

Similarly, the I-Squared Act of 2015 (S. 153) fails to fix the problems in the H-1B program. It abolishes the program’s annual cap by allowing employers to receive H-1B visas for an infinite number of workers with graduate degrees. It does not strengthen anti-displacement protections for U.S. workers *who are already performing the work*. And, it allows employers to continue to choose a wage tier that is below the prevailing wage in an occupation, thus denigrating middle-class wages in STEM fields. Moreover, it puts employers who are doing the right thing by employing qualified U.S. workers and paying them the prevailing wage at a competitive disadvantage with employers who are importing lower-paid workers. At the same time that policymakers are strongly encouraging young people – especially women and minorities – to acquire education and training to break into a STEM field, the H-1B program is crowding out these graduates, who are often left with large student loans but no STEM job. We urge all members of this committee to reject I-Squared and any other legislation that promotes an economic model that is shrinking rather than growing the middle class in this country.

Several hundred AFSCME members had first-hand experience with the failures of the H-1B program. Between 2008 and 2011, New York City contracted out to private companies the

work of hundreds of Information Technology workers across several city departments. The AFSCME-member municipal employees had to train their replacements, lost their jobs, and over one-half reported to the union that they were unable to find another job and were still receiving unemployment benefits a year later. The companies that received contracts staffed their operations with H-1B workers who unscrupulous employers brought into the U.S. to do work that was already being performed by workers being paid union-negotiated wages and benefits. Our members did everything right by investing in education and training in a STEM field, finding employment in that field, and performing the work. This did not protect them, however, from the degradation of the STEM labor market that the flawed H-1B program promotes. This is just one example of the American Dream snatched away from workers who played by the rules.

I thank you for this opportunity to offer AFSCME's views on immigration reforms that are needed to protect skilled American workers, and caution this committee against proposed reforms that would inflict additional harm on both U.S. and H-1B workers.



March 16, 2015

The Honorable Charles E. Grassley
 Chairman
 Committee on the Judiciary
 United States Senate
 224 Dirksen Senate Office Building
 Washington, DC 20510

The Honorable Patrick J. Leahy
 Ranking Member
 Committee on the Judiciary
 United States Senate
 224 Dirksen Senate Office Building
 Washington, DC 20510

Re: Immigration Reforms Needed to Protect Skilled American Workers

Dear Chairman Grassley and Ranking Member Leahy:

The AFT represents 1.5 million pre-K through 12th-grade teachers; paraprofessionals and other school-related personnel; higher education faculty and professional staff; federal, state and local government employees; nurses and healthcare workers; and early childhood educators.

Our members include tens of thousands of highly skilled immigrants and the AFT is proud of the value that these workers bring to our colleges and universities, our hospitals, and our public schools. They provide high quality services and enrich the fabric of our communities and our union. However, far too many of our visa-contingent members face serious challenges within the H-1B program.

Since 2001, many public school districts --particularly urban districts--have recruited overseas-trained teachers as part of their staffing plans. As a result of federal policy, school districts sought and found in the overseas labor market, teachers who could meet the highly qualified teacher standards in certain subjects. These international teachers primarily filled subjects for which there are shortages of domestically-trained teachers: math, science, special education and bilingual education. School districts typically use H-1B visas to employ international teachers.

Abusive Recruitment Practices in H-1B Program

In November 2009, AFT released "Importing Educators: Causes and Consequences of International Teacher Recruitment" a report that documented the trend of international recruiters who help school districts in the United States acquire work

The American Federation of Teachers is a union of professionals that champions fairness, democracy, economic opportunity, and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.

American Federation of Teachers, AFL-CIO

AFT Teachers
 AFT PSRP
 AFT Higher Education
 AFT Public Employees
 AFT Nurses and Health Professionals

555 New Jersey Ave. N.W.
 Washington, DC 20001
 202-878-3400
 www.aft.org

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visas and hire overseas teachers. The AFT report included case studies involving school districts and recruiters throughout the United States that demonstrate that abuses of overseas-trained teachers are widespread and egregious. These abuses committed here and elsewhere include:

- Recruiters using fees charged to teachers to pay for school district officials' airfare and lodging in luxury hotels at overseas job fairs;
- forced housing contracts;
- misrepresentations about salaries and benefits;
- charging teachers exorbitant "placement" fees; and
- threats of job loss or deportation if any of these abuses are reported.

AFT's interest in this problem is based not only on case studies but its own experience.

In 2009, AFT learned that over 350 Filipino were recruited to work in Louisiana public schools on H-1B visas by a single international labor recruiter. Universal Placement International, Inc., whose owner was a convicted felon, advertised that its services to the school districts were free, failing to disclose that all fees associated with obtaining a visa, credential evaluations, travel and legal fees (approximately \$6,600.00 per teacher), would be collected from the international teachers. The recruiter then required the teachers to pay a "placement" fee, amounting to twenty percent (20%) of their first year's annual gross income. Before leaving the Philippines each teacher had paid approximately \$15,000.00 to the recruiter. Once the teachers arrived in the United States, the abuse continued: teachers were required to live in apartments for which recruiter had previously executed leases; the recruiter continued to demand a portion of the teachers' salaries; and the recruiter threatened those who complained with loss of their jobs and frivolous lawsuits.

In December 2012, a federal jury ordered the recruiter Universal Placement International of Los Angeles to pay \$4.5 million to 350 Filipino teachers exploited in the process of their recruitment to fill positions in Louisiana public schools. The case established important legal precedent as the teachers were the first plaintiff class ever to be certified under the U.S. Trafficking Victims Protection Act. In allowing the class action suit to proceed to trial, the judge also ruled that "serious

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harm" under the TVPA was not limited to physical coercion, but also includes financial harm.

The process through which workers are recruited from abroad should be fair and transparent. AFT recommends the following:

- International labor recruiters should be considered employers for purposes of investigatory and law enforcement functions, administrative and enforcement proceedings, and remedies in 20 C.F.R. Part 655 and 29 C.F.R. Part 503;
- Ban recruitment fees (broadly defined) as an expense that can be passed on to employees;
- Make employer applications for internationally recruited workers publicly available online permanently and searchable so that information on employers' international labor recruiters is available; and
- International labor recruiters and the companies that use them should be required to register with the U.S. government and be subject to ethical recruitment standards.

H-1B Employers Should Demonstrate Shortage

Thousands of AFT members are H-1B visa holders and have been teaching in U.S. public schools for 5-7 years in long-term shortage positions. In Houston, educators from Central America teach bi-lingual education; in Baltimore and Baton Rouge, educators from the Philippines teach in the critical shortage areas of math, science and special education; in New York City, teachers from Jamaica and other Caribbean countries fill these critical shortage positions. Despite the fact that these shortages are well-documented and persistent and despite the fact that many overseas-trained teachers have taught in their current positions for five or more years, federal immigration law and the PERM process are presenting significant barriers to their retention by public schools. The primary problem is the ill-timed labor market test required for PERM applications.

For example, several years ago Baltimore City Public Schools (BCPS) began recruiting and employing teachers from the Philippines to fill teacher shortages in critical subjects such as math, science and special education. At its peak, BCPS employed over 300 Filipino teachers who were working on H-1B visas for non-immigrant workers with specialized skills. The district filed green card petitions,

/Page 4

however, BCPS is currently being audited by DOL and the process cannot be completed before the teachers' visas expire. The district has lost dozens of teachers and many more who will shortly exhaust eligibility for an H-1B visa. These teachers are being forced to leave their long-term positions and return to the Philippines, despite the fact that they wish to continue teaching and were sponsored for a green card by BCPS.

Employers employing nonimmigrant workers on the H-1B visa should be required to perform the same labor market test as is mandated by 20 C.F.R. § 656.17 for PERM applications. Currently, employers who apply for an H-1B nonimmigrant visa merely "attest" to a shortage of qualified U.S. applicants, but have no burden to demonstrate that they attempted to recruit U.S. workers. Even an employer that is "H-1B dependent" or a "willful violator" of the H-1B program are only required to attest that it has conducted "good faith efforts" to recruit U.S. workers but have found none whose qualifications were equal or better than the H1B employee. 20 C.F.R. § 655.739. These standards fall far short of protecting either U.S. workers or temporary foreign workers.

Mandating the labor market test for H-1B visas will help ensure that local workers have a chance to apply for jobs in specialty occupations and limit the chances that foreign workers will be hired by employers with questionable motives. Furthermore, it does not make sense that an employer converting an H-1B employee to PERM status, after several years of employment, must then conduct a labor market test and accept U.S. applicants who meet the minimum qualifications for the job. The ill-timed labor market test causes U.S. employers to lose experienced employees and requires them to recruit, train and invest resources in a new hire. In public schools, displacing experienced H-1B teachers because of the labor market tests upsets continuity and is a disruption to the educational environment.

Conclusion

During the recent legislative debate on comprehensive immigration reform, the AFT called for three core reforms to the H-1B system: (1) workers should be hired from abroad only when there is a documented shortage in the U.S.; (2) the process through which workers are recruited from abroad should be fair and transparent; and (3) H-1B workers should have the same rights and benefits as any worker in the same job, including a realistic path to permanence.

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Reforming our immigration system makes sense, whether motivated by the realization that a nation made great by immigrants has a moral imperative to live up to our American values of democracy and opportunity, or because it's sound economic policy, or because it's just the right thing to do for hardworking families. The challenge before us is to develop a set of comprehensive reforms that fix what is broken now and lay out a more thoughtful and constructive approach for moving forward. By any measure, determining how highly skilled immigrants will enter our workforce is a critical piece of that equation.

Thank you for considering the AFT's views on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Cowan', written over a horizontal line.

Kristor W. Cowan
Director of Lobbying and Outreach, Government Relations

March 16, 2015

The Honorable Charles Grassley
Chairman
Senate Judiciary Committee
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member
Senate Judiciary Committee
Washington, DC 20510

Re: For the hearing record, concerning the March 17, 2015 hearing on:
Immigration Reforms Needed to Protect Skilled American Workers

Dear Chairman Grassley and Ranking Member Leahy:

The undersigned leading associations believe that immigration and immigrants help to create and sustain economic growth in the United States, benefiting all Americans. Economists, researchers at leading think tanks, and experts at top universities, along with the majority of Americans, overwhelmingly agree that legal immigration is good for our economy and essential to remaining competitive in a global marketplace.

We write to jointly submit for the hearing record a statement rebutting some of the flawed studies and non-representative anecdotes used to create myths that suggest immigration harms America and American workers. We look forward to continuing to work with you and the Committee to shape legislation that would support building a 21st century U.S. workforce that can compete in an increasingly interconnected world.

Respectfully submitted,

American Immigration Lawyers Association
BSA | The Software Alliance
Compete America Coalition
Computer & Communications Industry Association
Consumer Electronics Association
Council for Global Immigration
FWD.us
HR Policy Association
Information Technology Industry Council
National Association of Home Builders
National Association of Manufacturers
National Venture Capital Association
Partnership for a New American Economy
Society for Human Resource Management
Semiconductor Industry Association
Silicon Valley Leadership Group
Tech CEO Council
TechNet
U.S. Chamber of Commerce

cc: Members of the Committee on the Judiciary



DEBUNKING THE MYTH THAT IMMIGRATION HARMS AMERICA

Economists, researchers at leading think tanks, and experts at top universities, along with the majority of Americans, overwhelmingly agree that legal immigration is good for our economy and essential to remaining competitive in a global marketplace. Yet immigration restrictionists continue to rely on flawed studies and non-representative anecdotes to argue that immigration harms America and American workers. As a large group of multi-industry associations, representing business leaders and millions of employers across the country, we join together to debunk several of the most common immigration myths.

A FEW OF THE MOST COMMON IMMIGRATION MYTHS, AS COMPARED TO THE REAL FACTS:

- **MYTH:** Lowering the number of immigrants would free up jobs for American workers.
FACT: Immigration helps create jobs for American workers.
- **MYTH:** Foreign workers displace American workers in the science, technology, engineering, and math (STEM) fields.
FACT: Employment data show that there are not enough native-born STEM workers to fill available STEM jobs and foreign STEM workers are not displacing their native-born counterparts.
- **MYTH:** STEM professional wages are stagnant and immigrants in STEM professional jobs are not needed.
FACT: Wages are increasing for STEM professionals and U.S. companies have hard-to-fill positions that require STEM degrees with specific skills.
- **MYTH:** Foreign workers take one in five jobs in America.
FACT: Americans fill more than 91 percent of all jobs in America.
- **MYTH:** Lesser-skilled immigrants take jobs away from Americans without college degrees.
FACT: The data show that immigration does not negatively impact American workers without college degrees. In fact, lesser-skilled immigrants create jobs for Americans and grow crucial sectors of our economy.

MYTH : LOWERING THE NUMBER OF IMMIGRANTS WOULD FREE UP JOBS FOR AMERICAN WORKERS**FACT : IMMIGRATION CREATES JOBS FOR AMERICAN WORKERS**

Economic studies overwhelmingly find that immigration promotes economic growth and creates American jobs.

- > Economists have used U.S. Applied General Equilibrium (USAGE) modeling, to examine job creation resulting from immigration. "With increases in low-skilled immigration, the U.S. economy would expand, creating more jobs in higher-skilled areas," concluded the CATO Institute. CATO found that, over time, increases in immigration would foster the ability of some workers now in low-paying jobs to move up the occupational ladder into different and sometimes newly created jobs.
- > Researchers looking at the impact of foreign-born high-skilled professionals working in the U.S. have found that foreign-born STEM workers coming to the U.S. "may explain between 10 and 25 percent of the aggregate productivity growth that took place in the U.S. between 1990 and 2010."
- > Immigrants also build and sustain new communities, which in turn produces economic growth for the country as a whole. A study by the National Association of Home Builders (NAHB) found that under a baseline scenario of 1.2 million annual net immigration, such a population, after ten years, will occupy two million multifamily residences and 1.2 million single-family homes. Of these households, more than 900,000 will become homeowners. In addition to the taxes paid by these properties and the consumption generated by these households, the construction of these communities will also have direct economic benefits. According to a separate NAHB study, every 1,000 single-family homes built generates enough economic activity to sustain for a year 2,970 jobs, while every 1,000 multifamily units sustains 1,130 jobs.

The American Enterprise Institute concluded that "policymakers could create jobs by making available more temporary visas for both skilled and less-skilled workers."

 **4.64 MORE JOBS** are created for U.S.-born workers with the admission to the United States of each less-skilled, legal, non-agricultural temporary foreign worker

 **1.83 MORE JOBS** are created for U.S.-born workers with each approved H-1B high-skilled, legal, professional worker.

 **2.62 MORE JOBS** are created for U.S.-born workers for each foreign-born worker in the U.S. with a U.S. STEM graduate degree.

The Center for Immigration Studies has attempted to compare immigration totals to new job creation numbers¹ to draw conclusions about the appropriate level of legal immigration in the United States. But the labor market is not a zero sum game where a job either goes to an immigrant or an American. A meaningful analysis of the economic impact that immigrants have on the U.S. economy would require:

- Understanding that jobs filled in the economy are not just newly created jobs but existing jobs that open up as older workers retire.
- Modeling the extent to which immigrants do not always compete with Americans for the same jobs.
- Explaining the various factors that impact movement in native unemployment since native unemployment often decreases even as immigration increases.
- Accounting for the large number of immigrants who enter the country with no intent to look for work but can support themselves (such as retired parents of U.S. citizens).
- Excluding naturalized American citizens from the immigrant count in such an analysis - they are not taking jobs from Americans since they are Americans.

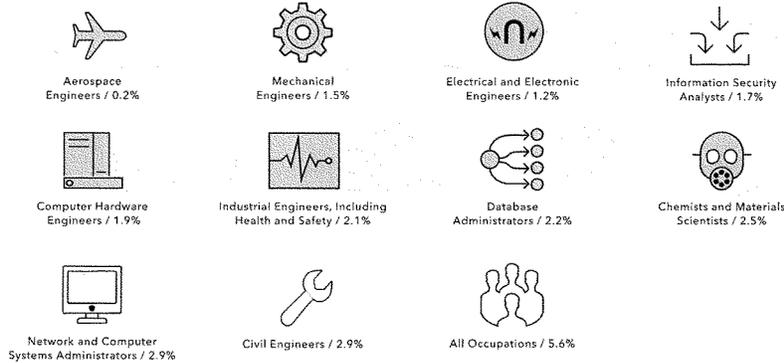
MYTH : FOREIGN STEM WORKERS DISPLACE AMERICAN STEM WORKERS**FACT : EMPLOYMENT DATA SHOW THAT THERE ARE NOT ENOUGH NATIVE-BORN STEM WORKERS TO FILL AVAILABLE STEM JOBS AND FOREIGN STEM WORKERS ARE NOT DISPLACING THEIR NATIVE-BORN COUNTERPARTS**

Studies have repeatedly shown that there are not enough U.S.-born, college-educated STEM professionals to fill the jobs available here. In 2012, a research report produced by Change the Equation, a nonpartisan education advocacy organization, found that from 2009 to 2011, during a time of depressed employment, 1.91 STEM jobs were posted online for every one unemployed STEM worker looking for work in the United States.² In 2011, while the national

unemployment rate hovered at about 8 percent nationwide, U.S. citizens with PhDs in STEM had an unemployment rate of 3.15 percent. Those with Master's level degrees in STEM fields had one of 3.4 percent.⁹ Importantly, studies have shown that there is no correlation between the STEM fields where foreign workers are more prevalent and native-born unemployment in those fields.¹⁰

In many STEM fields, there is, statistically, no native-born unemployment at all.

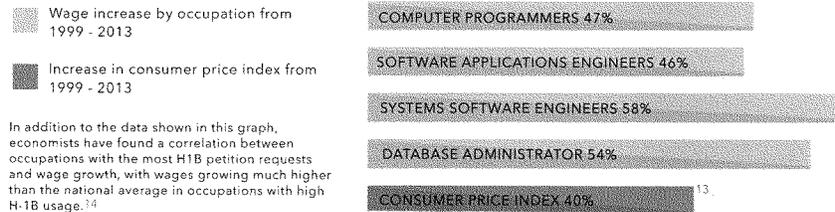
U.S.-BORN 2014 UNEMPLOYMENT RATES IN STEM OCCUPATIONS¹¹



MYTH: STEM PROFESSIONAL WAGES ARE STAGNANT, A SIGN THAT THERE IS NO WORKER SHORTAGE, AND IMMIGRANTS IN STEM PROFESSIONAL JOBS ARE NOT NEEDED

FACT: WAGES ARE INCREASING FOR STEM PROFESSIONALS AND U.S. COMPANIES HAVE HARD-TO-FILL POSITIONS THAT REQUIRE STEM DEGREES WITH SPECIFIC SKILLS

Data shows that wages are increasing in STEM jobs requiring higher education, with wage increases an accepted indicator that the number of qualified Americans is insufficient to fill jobs being created. As the General Accountability Office concluded in 2014, "STEM occupations had more wage growth on average and lower unemployment rates than non-STEM occupations."¹² Longer-term trends suggest a similar point, with wage increases over time in fields like computer programming and software engineering.



In addition to the data shown in this graph, economists have found a correlation between occupations with the most H1B petition requests and wage growth, with wages growing much higher than the national average in occupations with high H-1B usage.¹⁴

Labor market experts interpret a job opening of longer than a month as another indicator that qualified candidates are hard to find, another indication of a shortfall in qualified and interested labor. Brookings Institution researchers found that jobs requiring STEM knowledge take significantly longer than one-month to fill. They concluded that 43 percent of job vacancies nationally for STEM occupations with H-1B requests are still posted after one month of advertising. This compared to 38 percent of vacancies in non-STEM occupations requiring a bachelor's degree that remain unfilled after one month and 32 percent of job postings for all non-STEM occupations.¹⁵

While it has been suggested anecdotally that wages for STEM professionals are stagnant because of the very presence of H1B workers, no studies show this to be the case. In what appears to be the only study to date specifically examining the impact of H1B workers on wages for American workers, the American Institute for Economic Research concluded in a 2014 analysis that no difference in wages can be attributed to H-1B visa status.¹⁶ Another 2014 study concluded that for every 1 percent increase in H1B numbers there is a corresponding at least-7 percent increase in wages for American STEM workers.¹⁷

MYTH : FOREIGN WORKERS TAKE ONE IN FIVE JOBS IN AMERICA.

FACT : AMERICANS FILL MORE THAN 91 PERCENT OF ALL JOBS IN AMERICA.



The latest data from the Bureau of Labor Statistics and the Census Bureau¹⁸ show that 91.4 percent of the U.S. workforce in December 2014 was made up of American citizens.¹⁹ Only around one-in-twelve jobs or 8.6 percent of jobs in the United States are filled by workers who are not American citizens.

MYTH : LESSER-SKILLED IMMIGRANTS TAKE JOBS AWAY FROM AMERICANS WITHOUT COLLEGE DEGREES.

FACT : THE DATA SHOW THAT IMMIGRATION DOES NOT NEGATIVELY IMPACT AMERICAN WORKERS WITHOUT COLLEGE DEGREES. IN FACT, LESSER-SKILLED IMMIGRANTS CREATE JOBS FOR AMERICANS AND GROW CRUCIAL SECTORS OF OUR ECONOMY.

Cities experiencing the highest levels of immigration tend to have relatively low or average unemployment rates for those Americans that are lesser-educated. A 2012 analysis of census data by economist Jack Strauss, now of the University of Denver, found that cities with greater lesser-skilled immigration experience lower unemployment rates, lower poverty rates, and higher wages for lesser-educated Americans—they are not simply substitutes for one another.²⁰

Some economists have presumed they would find a sizeable negative effect on wages and employment of those Americans without a college education as a result of immigration, but the data do not support this finding. For example, Gerald D. Jaynes, professor of Economics and African American Studies at Yale, launched a large-scale statistical analysis on this very subject but never found the expected results.²⁴



Every once in a while opportunities have presented themselves to conduct real-world experiments on the impact of immigration on lesser-educated native workers. When 125,000 Cubans arrived in South Florida within a six-month time frame following the 1980 Mariel Boatlift, it was widely assumed that newly-arrived Cuban immigrants would take jobs away from Americans who did not possess post-secondary degrees. About half of the "Marielitos" settled permanently in the Miami area, joining an already-sizeable Cuban community and immediately boosting the city's labor force by about 7 percent. In 1989, economist David Card from the University of California at Berkeley completed a detailed analysis on the impact of this 1980 influx of largely lesser-skilled and less-educated immigrant workers on the Miami labor market as compared to other comparison cities.²¹ Card documented that the wages of lesser-skilled and less-educated workers in Miami actually fared better than in the control cities.²² In 1981, the year after the boatlift, wages among lesser-skilled workers in Miami were slightly higher than they were in 1979.²³

- > In fact, the employment projections for 2012-2022 by the Bureau of Labor Statistics show that two of the four major occupational groups that are projected to grow more than 20 percent - nearly double the overall growth - are lesser-skilled occupational groups that do not require post-secondary education: construction and extraction occupations (21.4 percent), and personal care and service occupations (20.9 percent). Indeed, some sectors have seen rising labor shortages, presenting significant industry challenges. For example, the number of open construction sector jobs as of December 2014 (147,000) stands at post-recession highs, and the job open rate exceeds that prior to the housing boom.²⁶
- > Lesser-skilled immigrants help to fill labor shortages in these industries, creating jobs for Americans and helping those industries grow. As Americans become more educated, there are a declining number of young people willing and able to work lesser-skilled jobs, yet the demand for these jobs is growing. Between 1990 and 2010, the number of young, U.S.-born, lesser-skilled individuals declined by almost 12.3 million.²⁷ Meanwhile, sectors like healthcare are seeing increased demand for lesser-skilled jobs like home health aids, with not enough American workers to meet that need. Employment for Personal Care Aides and Home Health Aides is expected to grow by 48.8 percent and 48.5 percent, respectively, by 2022, while current unemployment for U.S.-born U.S. citizens is 2.9 percent in these human services assistant occupations, suggesting near full-employment.²⁸ Immigrants are helping to fill these gaps. For example, immigrants are twice as likely to be home health aids than the U.S.-born.²⁹ And, immigrants help job growth in many sectors.



IN AGRICULTURE, AN INDUSTRY UNABLE TO FILL ITS LABOR FORCE NEEDS WITHOUT IMMIGRANTS, THE U.S. DEPARTMENT OF AGRICULTURE HAS STATED THAT EACH FARM WORKER CREATES 3.1 UPSTREAM JOBS FOR AMERICANS IN PACKAGING, SHIPPING, MARKETING, AND INSURANCE FOR AGRICULTURE PRODUCTS.³⁰

NATIONAL AND EVEN STATE ECONOMIES ARE MUCH MORE DYNAMIC THAN SIMPLE THEORIES THAT IMMIGRATION TENDS TO COMPLEMENT NATIVE SKILL LEVELS - AN OVER INSTITUTION

¹ Madeline Zavodny, "Immigration and American Jobs" (American Enterprise Institute, December 14, 2011) https://www.aei.org/wp-content/uploads/2011/12/immigration-and-american-jobs_144002688962.pdf at p.11, 14.

² Peter B. Dixon and Maureen T. Rimmer, "Restriction or Legalization? Measuring The Economic Benefits of Immigration Reform" (Cato Institute, April 13, 2009) <http://www.cato.org/pubs/tpa/tpa-040.pdf>.

³ Giovanni Peri, Kevin Shih, and Chad Sparber, "STEM Workers, H-1B Visas and Productivity in U.S. Cities," Norface Migration Discussion Paper No. 2013-09 (Norface Research Programme on Migration, February 2013), http://www.norface-migration.org/publ_uploads/NDP_09_13.pdf

⁴ Natalia Siniavskaja, "Immigrants and Housing Demand" (National Association of Home Builders, Aug. 3, 2012) <http://www.nahb.org/generic.aspx?sectionID=734&genericContentID=186289&channelID=311>

⁵ Paul Emrath, "Impact of Home Building and Remodeling on the U.S. Economy" (National Association of Home Builders, May 1, 2014) <http://www.nahb.org/generic.aspx?sectionID=734&genericContentID=227858&channelID=311>.

⁶ <http://cis.org/sites/cis.org/files/camarota-immigration-twice-job-growth.pdf>.

⁷ There is plenty of research and reporting that does carefully analyze economic and statistical factors. Such research almost universally finds that immigration improves employment gains in the United States in a variety of ways including immigrant contributions to neighborhood revitalization and state and local economic growth. For example: Neighborhood Revitalization - immigration promotes neighborhood revitalization around the country since immigrants account for 28 percent of the nation's Main Street businesses, as described by in "Bringing Vitality to Main Street: How Immigrant Small Businesses Help Local Economies Grow" (Fiscal Policy Institute and Americas Society/Council of The Americas, by David Dysegaard Kallick, January 2015) <http://fiscalpolicy.org/wp-content/uploads/2015/01/Bringing-Vitality-to-Main-Street.pdf>. State and Local Economies - there are many state-level reports on the positive impact of immigration on state economies, such as "Immigrant Contributions to Minnesota's Economy" (Minnesota Business Immigration Coalition, Americas Society Council of the Americas, and the Partnership for a New American Economy, October 2014) <http://www.renewoureconomy.org/wp-content/uploads/2014/11/MN-Final-Brief.pdf>, and similarly many reports on the local positive impacts of immigration, such as an analysis of the positive impact of foreign STEM workers on the average American worker, by Giovanni Peri, Kevin Shih, and Chad Sparber in "Closing Economic Windows: How H-1B Denials Cost U.S.-Born Tech Workers Jobs and Wages During the Great Recession" (Partnership for a New American Economy, June 2014) http://www.renewoureconomy.org/wp-content/uploads/2014/06/omae_h1b.pdf. For an excellent bibliography on the economic impacts of immigration in the United States, with over 60 references covering all viewpoints (left, right, business, union, immigration restrictionist, and free market) as well as government data from the Bureau of Labor Statistics and other agencies and a summary review of how immigration benefits all Americans look at a Manhattan Institute issue brief issued in December 2014 from its E21 project (Economic Policies for the 21st Century), which also rebuts the flawed analytical approach of the Center for Immigration Studies (at p. 6-8) http://www.manhattan-institute.org/pdf/e21_02.pdf

⁸ "STEM Help Wanted: Demand for STEM Weathers the Storm" (May 2012) http://changetheequation.org/sites/default/files/CTEq_VitalSigns_Supply%20%282%29.pdf

- ⁹ Information Technology Industry Council, Partnership for a New American Economy, and U.S. Chamber of Commerce, "Help Wanted: The Role of Foreign Workers in the Innovation Economy" (Nov. 20, 2012). Available here: <http://www.renewoureconomy.org/wp-content/uploads/2013/07/stem-report.pdf>.
- ¹⁰ Information Technology Industry Council, Partnership for a New American Economy, and U.S. Chamber of Commerce, "Help Wanted: The Role of Foreign Workers in the Innovation Economy" (Nov. 20, 2012). Available here: <http://www.renewoureconomy.org/wp-content/uploads/2013/07/stem-report.pdf>.
- ¹¹ Compiled from Current Population Survey, a project of the Bureau of Labor Statistics and the Census Bureau. The data set is pooled monthly CPS samples for 12 months – December 2013 through November 2014. Observations do not include any of the social sciences and were weighted using the BLS composite monthly weight variable. Monthly weights were divided by 12, so totals are estimates of average monthly employment over the year. The 12 months of observations are the most recent 12 months available as of January 12, 2015.
- ¹² "Science, Technology, Engineering, and Mathematics Education: Assessing the Relationship between Education and the Workforce" (GAO-14-374, General Accountability Office, May 2014) at p. 15.
- ¹³ See Bureau of Labor Statistics, 2013 Wage Estimates http://www.bls.gov/oes/current/oes_nat.htm. 15-year wage changes tabulated December 19, 2014.
- ¹⁴ Jonathan T. Rothwell and Neil G. Ruiz, "H-1B Visas and the STEM Shortage: A Research Brief" (Brookings Institution, May 2013) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2262872 and <http://www.brookings.edu/research/papers/2013/05/10-h1b-visas-stem-rothwell-ruiz>.
- ¹⁵ Id. The Brookings analysis reviewed over 50,000 job openings, and found that those requiring STEM knowledge take significantly longer to fill, even controlling for requirements for education, experience, training, and managerial knowledge, as well as wage rates and metropolitan area location. The most commonly requested H-1B occupations in each metropolitan area also take longer to fill.
- ¹⁶ Nicole Kreisberg, "H-1B Visas: No Impact on Wages" (AIER issue brief, October 9, 2014) <https://www.aier.org/research/h-1b-visas-no-impact-wages>. The AIER issue brief incorrectly substitutes Labor Condition Applications (LCAs) filed at the Department of Labor for "H-1B Visas Requested" (in Table 1). While LCAs could be a substitute proxy to indicate H-1B demand (when labeled and explained), there is no direct correlation between the number of positions noted on LCAs and either H-1B petitions filed or H-1B visas requested.
- ¹⁷ See, Giovanni Peri, Kevin Shih, and Chad Sparber, "STEM Workers, H-1B Visas and Productivity in U.S. Cities," Norface Migration Discussion Paper No. 2013-09 (Norface Research Programme on Migration, February 2013), http://www.norface-migration.org/publ_uploads/NDF_09_13.pdf; Giovanni Peri, Kevin Shih, and Chad Sparber, "Foreign STEM Workers and Native Wages and Employment in U.S. Cities" (National Bureau of Economic Research (NBER) Working Paper No. 20093, May 2014) at Table 9.
- ¹⁸ The Current Population Survey (CPS) is the source of data comparing native-born workers to foreign-born workers. CPS is a joint project of the Bureau of Labor Statistics (BLS) and Census Bureau, with much of the data being published by BLS. Much of the data is also republished by the Federal Reserve Economic Data system (FRED) where excellent interactive graphs are available on the number of native-born and foreign-born workers employed 2007 to the present (<http://bit.ly/1Bz0Kf1>) and the total number of foreign-born and foreign born in the civilian workforce (<http://bit.ly/1Ch3fXp>).
- ¹⁹ The CPS data published by BLS and the Census Bureau for December 2014 show that 83.55% of the civilian workforce is native-born American citizens and that 7.85% of the civilian workforce is naturalized American citizens, so that 91.4% of the civilian workforce is American citizens. The same data show that 83.45% of employed workers as of December 2014 are native-born American citizens and that 7.96% of employed workers are naturalized American citizens, again totaling the same 91.4% of the nation's economy as American workers. Some references to "workers" can be ambiguous, as to whether identifying those employed or those both employed and unemployed (i.e. workforce) so both breakdowns are provided here.
- ²⁰ Jack Strauss, Miller Chair of Applied Economics, University of Denver, "Does Immigration, Particularly Increases in Latinos, Affect African American Wages, Unemployment and Incarceration Rates?" (Social Science Research Network, December 8, 2012), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2186978.
- ²¹ David Card, "The Impact of the Mariel Boatlift on the Miami Labor Market," National Bureau of Economic Research (Aug. 1989) at 2,7.
- ²² Id. at 10-11, 13-15.
- ²³ Id. at 10-11, 13-15.
- ²⁴ Gerald D. Jaynes, "A Conversation about the Economic Effects of Immigration on African Americans," Immigration Policy Center (July 2009). <http://www.immigrationpolicy.org/sites/default/files/docs/Gerald%20Jaynes%20071409.pdf>.
- ²⁵ www.bls.gov/news.release/pdf/ecopro.pdf.
- ²⁶ Robert Dietz, "Construction Labor Market: Quits Jump, Hiring and Job Openings Rise" (National Association of Home Builders, February 10, 2015) http://eyeonhousing.org/2015/02/dec_jobs/.
- ²⁷ Frank Bean, "A Crucial Piece of the Puzzle," (Partnership for a New American Economy, March 27, 2014), <http://www.renewoureconomy.org/wp-content/uploads/2014/03/less-skilled-final.pdf>.
- ²⁸ Many parts of the U.S. economy are suffering from unfilled jobs that employers wish to fill. As of December 2014, data from the U.S. Bureau of Labor Statistics Job Openings and Labor Turnover Survey (JOLTS) indicated that total unfilled, non-farm job openings in the U.S. stood at more than 5 million positions, the highest in the last decade. The job openings rate (3.5%), which is job openings as a percent of total employment, was also at a series high. It was 2.8% a year ago.
- ²⁹ Audrey Singer, "Immigrant Workers in the U.S. Labor Force," (Partnership for a New American Economy and Brookings Institution, March 15, 2012) http://www.brookings.edu/~media/research/files/papers/2012/3/15%20immigrant%20workers%20singer/0315_immigrant_workers_singer.pdf.
- ³⁰ See, e.g., Hearing to Review the Labor Needs of American Agriculture, before the House Committee on Agriculture, October 4, 2007. <http://www.gpo.gov/fdsys/pkg/CHRG-110hrhg48999/html/CHRG-110hrhg48999.htm>.
- ³¹ Tim Kane, Hoover Institution, "The Economic Effect of Immigration" (February 17, 2015) <http://www.hoover.org/research/economic-effect-immigration>.



DIRECTOR OF NATIONAL AND
LEGISLATIVE AFFAIRS
Richard T. Foltin

OFFICE OF GOVERNMENT
AND INTERNATIONAL AFFAIRS
1156 15th Street, NW
Washington, DC 20005
T 202.785.5463
F 202.659.9896
E foltinr@ajc.org
W ajc.org

**Statement of
Richard T. Foltin
Director of National and Legislative Affairs
Office of Government and International Affairs
American Jewish Committee (AJC)**

**Submitted on behalf of AJC to
The Senate Committee on the Judiciary**

**Hearing on
“Immigration Reforms Needed to
Protect Skilled American Workers”**

March 17, 2015

**T: (202) 785-5463, foltinr@ajc.org
www.ajc.org**

Since its founding in 1906, the American Jewish Committee (AJC) has been a strong voice in support of fair and generous treatment of immigrants, participating actively in many of the major immigration debates of our time: opposing reductions in the flow of legal immigrants and supporting increased quotas for high and low-skilled nonimmigrant worker visas; supporting increased "family unification" immigration; supporting efforts to reduce the flow of illegal immigration and enforce immigration laws within the context of due process and humane treatment; supporting policies that assure that the U.S. fulfills its role as a haven for refugees fleeing persecution; supporting access to public benefits for legal immigrants on the same basis as citizens; and supporting programs designed to educate and integrate new citizens.

AJC advocates for these policies because we firmly believe that fair and generous immigration policies are fundamentally good for the United States economy, as well as consistent with Jewish values. History has demonstrated that immigrants enrich this nation economically and culturally, and that immigration remains a central ingredient in retaining America's economic strength and its proud tradition of democratic pluralism.

Among the steps that we firmly believe should be taken to better meet our country's economic needs is an increase in the numerical limit of nonimmigrant visas for high-skilled workers—accompanied by reforms to the immigration system directed at establishing a more fair and sensible pathway to permanent legal status for qualified workers and their families.

Nonimmigrant temporary workers seeking employment in the United States are generally classified in the "H" visa category. The largest number of H visas are issued to temporary workers in specialty occupations, known as H-1B nonimmigrants. The U.S. Department of Labor (DOL), through a comprehensive process, is responsible for ensuring that foreign workers do not displace or adversely affect wages or working conditions of U.S. workers. If DOL concludes that a prospective H-1B nonimmigrant worker is in demand and there are no U.S. workers available or qualified for the intended job, that nonimmigrant must then demonstrate that he or she has the requisite education and work experience for the posted position. Only after satisfying these steps, and all other immigration requirements, may the petition for the H-1B nonimmigrant visa be approved.¹

The current nonimmigrant worker visa program is problematic because it fails to meet our nation's needs—as reflected by the fact that there are regularly many more visa applications than available visas—and because the visa holders are allowed to live and work in the U.S. only temporarily and under very restrictive circumstances. Because it is difficult for these workers to transition to permanent resident status, many of the best and brightest workers are unable to remain, or are dissuaded from remaining, in America.

¹ CRS Memorandum, "H-1B Visas: Legislative History, Trends over Time, and Pathways to Permanent Residence," by Ruth Ellen Wasem, Mar. 2006.

Taken together, the flaws in the H-1B visa system result in a huge loss of human ingenuity, talent and skills from the United States economy—as well as create a system where some employers take advantage of the cheaper temporary worker labor, undermining the integrity of the labor market and placing workers in precarious positions that invite exploitation and insecurity. Skilled immigration reform is also critically important to the U.S. maintaining and expanding economic growth. Providing employers with adequate numbers of skilled workers is one of the best resources for companies to increase capital investment, create new jobs, and compete in a global economy.

For these reasons, AJC recognizes the benefits of increasing the number of H-1B visas and creating a more accessible pathway for these workers to transition to legal permanent resident status over time. Taking these steps will strengthen the United States economy by creating incentives for skilled and in-demand foreign workers to remain in America; reduce the likelihood of worker exploitation by employers; and strengthen our communities by allowing these immigrant families to establish roots in America. Such reforms are in the best interest of our country's economy and the well-being of local communities.

We therefore commend Senator Orrin Hatch (R-UT), along with original co-sponsors, Senators Amy Klobuchar (D-MN), Marco Rubio (R-FL), Chris Coons (D-DE), Jeff Flake (R-AZ) and Richard Blumenthal (D-CT), for introduction of S.153, the Immigration Innovation Act (the "I-Squared" Act)—legislation that seeks to put in place much-needed reforms for this aspect of our broken immigration system.

In sum, and in accord with our support for fair and generous treatment of immigrants, AJC urges the members of this committee to support immigration policies that increase the numerical limit of nonimmigrant visas for high-skilled workers in proportion to United States economic demands, and that establish a more fair and sensible pathway to permanent legal status for qualified workers and their families.

AJC appreciates the opportunity to submit this statement and welcomes your questions and comments.

Hearing on “Immigration Reforms Needed to Protect Skilled American Workers”

**Statement of Donna Conroy
Director, Bright Future Jobs**U.S. Senate Committee on the Judiciary
Tuesday, March 17, 2015

This testimony describes Bright Future Jobs’ knowledge that qualified and even better qualified U.S. workers are being denied the chance to compete for employment due to a lack of U.S worker protections under the H1-b, L-1b, E-3, and the J-1 visa programs, in addition to the OPT work permit program for foreign students (F-1 holders). All of these programs allow employers to hire a foreign national even when an American wants the job and employers can displace Americans from their jobs with these foreign nationals. Highly skilled white-collar workers should have the same U.S. worker protections Congress has already given to blue-collar American workers.

Statutory Requirement to Recruit & Hire Americans First Should be Added to H1-b, L-1b, E-3, J-1 and OPT work permit: *All employers—not just H1-b dependent or willful violators—* must be required to recruit and hire any equally or better qualified U.S. worker who applies before recruiting foreign nationals on these visas and work permits. *Current exemptions allow even H1-b dependent and willful violators to legally hire an H1-b worker even when an American wants the job* when the H1-b is paid \$60,000 or more or has a Masters related to the job’s tasks. This exemption should be removed.

Statutory Ban on Direct and Secondary Displacement Should be Added to H1-b, L-1b, E-3, J-1 and OPT work permit: All employers—not just *H1-b dependent or willful violators—* must be banned from displacing Americans from their jobs for 12 months. *Current exemptions allow even H1-b dependent and willful violators to legally displace Americans from their jobs* when the H1-b is paid \$60,000 or more or has a Masters related to the job’s tasks. This exemption should be removed.

Ban Employers from Visa Programs for 1 Year Who Post Discriminatory “Help Wanted” Ads Which Call for H1-bs, H-4s, L-1bs, L-2s, B-1s, E-3s, J-1s and OPTs; Impose Stiff Fines for Job Portals that Publish Such Ads: U.S. workers face “No Americans Need Apply Jobs Ads” across U.S job portals, excluding millions of Americans for jobs that don’t start for 6 to 18 months in the future. Ads with visa or work permit terms must be prohibited. Stiff penalties must be levied upon the companies that post these ads. In addition, U.S. job portals must be penalized for publishing such ads. (See Appendix A for currently running discriminatory job ads and recruitment efforts that exclude millions of U.S. technical workers and new graduates.)

Mr. Chairman,

This statement is submitted on behalf of Bright Future Jobs's (BFJ) more than 1,000 information technology (IT) professionals. *BFJ is a tech advocacy group dedicated to busting the myth that Americans can't cut it in science and technology.* We seek to fix corporate visa programs that allow companies to discriminate against and displace US talent.

White-Collar American Workers Face “No Americans Need Apply” Job Ads Due to the Lack of U.S. Worker Protections

We have an overabundance of experienced, highly skilled American IT professionals and new science and technology grads—whom we've paid dearly to educate—but companies can legally discriminate against us using visa programs.

Hidden from Congress and even from U.S. media are help wanted ads excluding millions of Americans from high-paying jobs in the tech sector. Despite being a well-kept secret, staffing agencies and recruiters are well aware they can avoid hiring Americans—and do so brazenly on Internet job portals.

Even IBM was caught by the Department of Justice posting such ads¹. The job ad on the right was posted on IBM's own job site and also on Monster.com, requiring “Indian work authorization” for a job in Boise, Idaho.

No Americans Need Apply

This IBM Help Wanted ad Excluded over 100,000 Equally or Better Qualified U.S. Workers and up to 10,000 U.S. Workers Who Have Exposure to SAP's APO Supply Chain Management System.*

This ad was posted in its job opening in Boise, Idaho in 2012. It was published on both Monster.com and IBM's own job site.

Jobs at IBM

Job search

Job ID	025-210726	Job type	Full-time Regular
Work country	USA	Work visa	21-Aug-2012
Work city	Boise, Idaho, United States	Job area	IT & Telecommunications
Travel	Up to 10% a week, home on weekends based on client requirements.	Job category	Consultant
Business unit	ITC	Job role	Package Solution Consultant
		Job role skillset	SAP ECV APO DP

Select your language option

Lead Specialist - SAP APO DP (Landed) - GBS

Comprehensive Table: No selective jobs only

Job description:
The GBS LEAD Leadership, Excellence, and Accelerated Development Program is a GIC initiative to develop technical leaders to work for clients around the world. As an IBM India employee, the GBS LEAD Specialist will have an Assigned Development and Maintenance role in the United States on the first GIC assignment. IBM India is committed to supporting work of the GBS LEAD university graduates (ie global technical leaders who speak technical English and the local language).

GBS LEAD Specialists must have relevant experience in Information Technology services or consulting in the following areas:

- Hands-on in Demand Planning Building Blocks - Planning object structure, Planning area, Planning area settings, Storage function, vendor logs
- Good exposure to APO/BI objects, key job design, transportation, DTP, MRP/Supply, SAP process. The person should be able to handle these objects on his own.
- Strong client focus to support APO objects and BI objects. Need to know various object/fields during migration of BI & APO objects
- Should have hands-on exp of training, especially web/micro-charge
- Should have hands-on experience in process change and the different processes used in a process plant
- Should have worked on various other demand planning functionalities like Re-optimized process, Copy-replan, Alert monitor
- Should have good knowledge in forecasting and various strategies for forecasting
- Excellent communication skills and an analytical mind with good project delivery skills

Mandatory Job Requirements:

- At least one year of professional experience in IT programming or skill relevant education/development
- Graduate with at least a Master's Degree or a DVM degree program (Science, Technology, Engineering, or Information) from a US university
- Flexible to travel or relocate anywhere within the US, based on project requirements
- Should have a valid DPT work permit for legal work authorization in the US
- Must possess valid work authorization

WORK Location:
Boise, IDAHO

Required:

- Bachelor's Degree
- English "fluent"

IBM is committed to creating a diverse workforce and is proud to be an equal opportunity employer. All qualified applicants will receive consideration for employment without regard to race, color, religion, gender, gender identity or expression, sexual orientation, national origin, genetics, disability, age, or veteran status.

*SAP technology is over 25 years old, SAP's APO module is over 10 years old.

Addressing the 25 year old H-1b program, the Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices, included comments in the GAO report released in January 2011 (GAO-11-26). They recommended “before seeking to hire an H1-b visa holder, all employers should be required to “test” the labor market to determine whether

¹ Department of Justice, “Justice Department Settles Citizenship Status Discrimination Claim Against IBM”, September 27, 2013, retrieved at < <http://www.justice.gov/opa/pr/justice-department-settles-citizenship-status-discrimination-claim-against-ibm>>

qualified US worker are available and to **hire any equally or better qualified US workers** who apply.”

Now is the time to implement the DOJ recommendation across *all white-collar visa programs and foreign student work permits*. Congress must protect our freedom to compete for jobs on U.S. soil in the same manner that they have *already* protected blue-collar Americans for 25 years under the H2-b program:

- The employer must publish the job requirements, wage and how to apply for the job. Staffing firms must disclose the client name in the job ad. The Department of Labor (DOL) posts the job ad on-line for 21 days on the State Workforce Agency and the DOL's icert Public Jobs Registry.
- The DOL verifies the employer's "good faith" recruitment of U.S workers. The DOL must verify that no U.S. workers are available, not the employer.
- The employer must hire any qualified U.S who applies and wants the job. Employers must also recruit former employees. DOL can require employer to take additional steps such as contacting a public or private organization focused on employment.

Most Congressmen believe the nature of the tech industry is so fast-paced that staffing projections cannot be adequately foreseen in the same manner as blue-collar industries. However, a series of Manpower ads excluding hundreds of thousands of U.S. workers also illustrates that Manpower, along with other U.S. tech employers, use extensive long-range planning to determine their future staffing needs 14 to 20 months ahead of time. As Manpower's ads reveal, they started recruiting for only foreign nationals *first* for their U.S. job openings¹—1 to 1.5 years in the future.² But Manpower never gave U.S. workers a chance to compete for these jobs; despite the fact that all the technology skills required were 5 to 20 years old and all were "Made in America".

Tech companies actually have a greater ability to forecast staffing requirements than blue-collar industries, and thus, have more time to work with the DOL to ensure that U.S. workers are hired first, before foreign nationals.

White-collar visa programs have broken our nation's promise—that we would make a better life by working hard and playing by the rules. *Simply put, employment discrimination will never put Americans in jobs they are qualified to do. Discrimination always results in unemployment and underemployment. Only hiring can produce a shortage.*

Women, Minorities, and Our School Children Are Being Unfairly Blamed

Talented American students, who enrich the nation by working in science and technology jobs and fueling innovation in their chosen fields here in the United States must have the freedom to compete for job openings across the nation, and right in their own home towns. *But their U. S. compatriots must also be able to recognize them.*

Tragically, a successful effort to cover up the lack of U.S worker recruitment requirements has led Americans to falsely accuse women and minorities for tech's employment discrimination. According to an IT industry group that is now disbanded, before 1996 women made up 41% of the overall IT

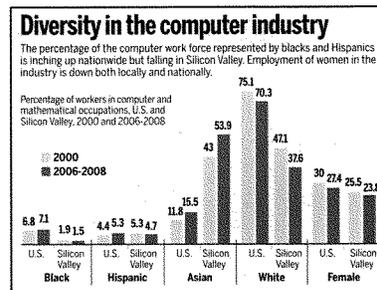
¹ Bright Future Jobs, "Hidden Abroad: Manpower's Want Ads Reveal 'No Americans Need Apply' For Upcoming Jobs In Fiscal Year 2015", May 28, 2014, retrieved at <http://www.brightfuturejobs.com/professional_labor_boycott_against_manpower_ibm_and_infosys>

workforce; African-Americans made up 9.1%. Asian American accounted for only 8.9% of the overall IT work force.³

When employment discrimination was not as ferocious, women gravitated to computer science. In 1987, women received 37% of the Computer Science degrees awarded.

African-American employment in computer occupations has been declining between 2003 and 2012, despite the fact that both the National Society of Black Engineers and the Department for Professional Employees, AFL-CIO report that African-Americans have flocked to these majors and are now *earning more computer-related degrees than Asians or Hispanics:*

1. Black Computer Science graduates essentially reached parity in 2006; no longer can they be dismissed as an "under-represented minority".⁴
2. In 2010, 4,565 Bachelor's degrees were awarded to African Americans in computer and information science. African Americans earned *1,193 more Bachelor's degrees than Asians and 1,623 more than Hispanics*. 1,324 Master's degrees in computer and information sciences were awarded to African-American graduates in the same year.⁵



Whites have not escaped this employment discrimination. According to the San Jose Mercury News, whites were 70.3% of the nation's technical workforce but only 37.6% of Silicon Valley's workforce between 2006-2008.⁶

The lack of U.S. worker recruitment and displacement has eliminated talented American professionals in a manner that is reminiscent of the displacement and discrimination faced by the Tuskegee Airmen and women WACs after WWII. We are turning our backs on American ingenuity, talent and dedication.

Americans are now unable to recognize the talent we are surrounded by, unable to reward or even recognize a gifted generation of Americans who single-handedly created the Digital Age, transforming both our nation and the rest of the world. This is not just a shame, but a strong indication we are facing a moral and cultural collapse as well.

³ The Information Technology Association of America (ITAA), "New ITAA Data Show Decline in Women, Minorities in High Tech Workforce", May 5, 2003, <https://web.archive.org/web/20040219135805/http://www.ita.org/workforce/index.cfm>

⁴ "Blacks Break through in Computer Science" by Theresa Sullivan Barger and Eric Addison, NSBE Magazine/Career Engineer, 2008, National Society of Black Engineers

⁵ Impact of Guest Worker Visas on African American STEM Professionals, February 2014, retrieved at < <http://dpeaflcio.org/programs-publications/issue-fact-sheets/impact-of-guest-worker-visas-on-african-american-stem-workers/>>

⁶ San Jose Mercury News, "Blacks, Latinos and women lose ground at Silicon Valley tech companies", February 13, 2010, retrieved at < http://www.mercurynews.com/ci_14383730>

Americans, assuming that white-collar guest worker programs require employers to seek Americans first, blame our children and our public schools. Nothing could be further from the truth. Most U.S. employers recruit Indian workers first on these visas, despite the fact that African-American 15-year-olds score nearly 30% higher than their Indian counterparts. According to Hemali Chhappia, writing in the Times of India, "In math, considered India's strong point, the states finished second and third last, beating only Kyrgyzstan."⁷

African Americans Scored Nearly 30% Higher			
	Math	Science	Reading
African American	443	439	421
Indian	345	337	327

India's results put them last of next-to-last out of 74 countries tested.
Data courtesy of International Student Assessment Unit

Tech Employment Discrimination Threatens the Anti-Discrimination Provisions of the Civil Rights Act

Jesse Jackson has called tech hiring "the next Civil Rights step." This could not be truer. By taking a page from the pre-Civil Rights era playbook, tech Human Resources personnel are digitally re-mastering the "Whites Only" Help Wanted ads. This has placed our nation into a crisis moment where we either expand employment discrimination in proposed legislation such as the I-Squared Act or strengthen the anti-discrimination provisions of the Civil Rights Act by adding U.S. worker recruitment provisions to all visa programs and foreign student work permits.

American technical workers who have been denied employment and displaced from their jobs due to their national origin are vindicating their rights. A class action suit against Infosys, a multinational IT services company with headquarters in India, has alleged that Infosys discriminates against workers of American or non-South Asian national origin, in violation of Title VII law.

It alleges, "Infosys has engaged in a pattern and practice of discriminating against individuals who are American-born or not of South Asian national origin by: (a) filling a disproportionately large percentage of its work force with individuals of South Asian national origin who are brought to the United States on either H-1B or B-1 visas even when there are qualified individuals available in the United States and (b) knowingly and intentionally favoring individuals who are of South Asian national origin even in "local" hiring."

According to Infosys's own EEO-1 reports, 90% of their 15,000 jobs across America are filled with Asians. According to Computerworld's Patrick Thibodeau, the lawsuit alleges that Samuel Marrero, a former Infosys recruiter reported that he "and other recruiters "frequently complained" to higher-ups at Infosys during these weekly calls that many of the highly qualified American candidates they had presented were being rejected in favor of Indian prospects."⁸

It is likely that more such anti-discrimination suits will be filed in the coming years.

⁷ Times of India, "India chickens out of international students assessment programme again", June 1, 2013, <http://timesofindia.indiatimes.com/home/education/news/India-chickens-out-of-international-students-assessment-programme-again/articleshow/20375670.cms>

⁸ Computerworld, "Former Infosys recruiter says he was told not to hire U.S. workers", October 6, 2014, retrieved at <<http://www.computerworld.com/article/2692372/former-infosys-recruiter-says-he-was-told-not-to-hire-us-workers.html>>

Appendix A: A Window into Recruitment Efforts Excluding Millions of U.S. Workers and New College Grads

All of these ads are recruiting to fill job openings for FY 2016 that will start 6 to 12 months in the future, between October 2015 thru October 2016.

H1B

PRISM IT Jacksonville, FL 3 Weeks Ago Apply Now

Full Time, Contract Corp-To-Corp, Contract Independent, Contract W2, C2H Corp-To-Corp, C2H Independent, C2H W2, Part Time Depends On Experience

Java, Net, Selenium, Service Now, Service Now, Unix, Linux, Oracle, DB2, AngularJS, Kofax, J2EE

Job Description

We are growing much faster speed than we anticipated.

Working with multiple clients on different software projects development.

Looking for H1B . GC, EAD candidates for our projects as well as work at client place on our project implementations.

If needed we can sponsor H1B in 2015 for eligible candidates only.

Considering only below cases.

H4 to H1B

L1 to H1B

F1 to H1B

If it is H1B filing applicant please contact as soon as possible as we do not have much time to consolidate applications and get ready for April filing.

reach us at [kan\[at\]prism-it\[dot\]com](mailto:kan[at]prism-it[dot]com)

visit us at [www\[dot\]prism-it\[dot\]com](http://www[dot]prism-it[dot]com)

This ad was posted on Dice, a U.S. tech job portal with the title “H1B” in late February 2015.⁹ Prism IT, the company recruiting is located in Jacksonville, FL and Alpharetta, GA. This company can legally hire a foreign national over a qualified or better qualified American even when the U.S. worker wants the job, either because it is an H1-b nondependent employer or because Prism IT is paying the H1-b holder \$60,000 or more or the H1-b has a Masters related to the job tasks.

No technical requirements were listed; only visa requirements were. H-4 is a spouse of a current H1-b holder. L-1 is a foreign employee who has been transferred into a U.S. job and an F-1 is a foreign student.

⁹ Dice, retrieved on March 12, 2015 <<https://www.dice.com/jobs/detail/H1B-Prism-IT-Corp-Jacksonville-FL-32246/10490765/912622>>

Ab Initio Developer - H1B Sponsorship Provided Apply Now

 New York, NY

17 Hours Ago

Full Time, Contract Corp-To-Corp As per Market

Java, .NET, Hadoop, Salesforce, Unix Admin, Oracle DBA, SQL Server, Datawarehousing, ETL, Ab Initio

Job Description

******H1B Sponsorship Provided******

******Candidates seeking new H1B sponsorship are highly encouraged ******

Job Title: Ab Initio Developer

Minimum Experience Required: 5 years Bachelors degree or equivalent

5 years of DataWareHousing experience, specifically:

- Assist in executing the successful deployment and integration of the Metadata Hub repository as a Federation across all consumer lines of business.
- Assisting with design, build and testing of the metadata federation
- Provide technical development and support through the entire SDLC
- Become a trainer that can execute internal training programs for employees
- Partner with the Technology Infrastructure team to design and deliver the physical environment for standing up of test and production Metadata Hubs
- Develop enhancements and customizations

Company Profile:

Secureapp Technologies has been in the business of providing both commercial and custom product development services, including, Information Security, Software Development, Consulting and IT Audit. Secureapp Technologies implements highly critical and time -sensitive projects for their Fortune 500 clients located across the country.

Secureapp Technologies, located in New York City, posted this ad on Dice on March 11, 2015 with the phrase, “Candidates seeking new H1-b sponsorship are highly encouraged.”¹⁰ This company can legally hire a foreign national over a qualified or better qualified American even when the U.S. worker wants the job, either because it is an H1-b nondependent employer or because Secureapp is paying the H1-b holder \$60,000 or more or the H1-b has a Masters related to the job tasks.

The technology skills required were all “Made in America”. Ab Initio was first released 20 years ago. All other technologies are as old or older with the exception of Salesforce and Hadoop, first released 9 years ago.

¹⁰ Dice, retrieved on March 12, 2015 at <<https://www.dice.com/jobs/detail/Ab-Initio-Developer-%26%20H1B-Sponsorship-Provided-SECUREAPP-New-York-NY-10038/10506429/810096>>

**Walk-in-Interviews On 26th February, 2015
To 1st March, 2015 Between 2 PM To 7 PM
IST.**

Apply Now



Hyderabad 2 Weeks Ago

Full Time Depends On Experience

US IT Recruiters , Sr Bench Sales and Freshers , OPT Recruiters

Job Description

Vistados is a USA based IT-Consulting company looking for the following positions Immediately

Walk-in-Interviews on 26th, 27th February 2015 between 2 PM and 10 PM IST. 28th Feb and 1st March will be between 2 pm and 7 pm IST

Bench Sales Executive (BDE / BDM): 10 Positions

Qlf:

- Min 6 months to 2 Years Experience in Bench Sales
- Strong Experience in marketing OPT/CPT/EAD/H1B Consultants.
- Self Motivated, Self Directed and Ability to work independently.
- Good understanding of Various domains and Technologies, Good Communication Skills

IT Recruiter and Sr. IT Recruiters : 10 Positions

Qly:

- Min 2 to 5 Years Experience in US IT recruiting.
- Strong experience in OPT/CPT/EAD/H1B lead generation.
- Knowledge in posting advertisements in university sites and various job portals
- Sourcing the resumes from all Major USA job portals to Bench
- Should be well versed with various tax terms (W2, C2c and 1099)

Trainers : We are looking for online trainers in all Software Technologies (Ex: Java, .net, SQL, Networking etc..)

This ad posted on Dice reveals that Vistados, located in Iselin, NJ, has extensive Human Resources facilities in India to both sell the services of temporarily unemployed visa workers, termed “Bench” and to target foreign students by “posting advertisement in university sites.” Vistados can legally hire a foreign student over a qualified or better-qualified American, even when the U.S. worker wants the job.¹¹

¹¹ Retrieved on March 12, 2015 at
<https://www.dice.com/jobs/detail/Walk%26%2345in%26%2345Interviews-on--26th-February%2C-2015-to-1st-March%2C2015-between-2-PM-to-7-PM-IST.-Vistados-Hyderabad--/90752951/933880?q=H1-b%202015%20GSA&l=>

Excerpts from LinkedIn: *Two Employees of Uniwaysoft, Inc, located In Hatfield, PA Reveal Fraud and Discrimination*

One demands \$5,000 for an H1-b visa; the other engages college & university personnel in their discriminatory hiring.

Kranthi Bheemanadam, working for Uniwaysoft but located in India, explained the H1B processing terms and conditions in January, 2015:

Fresh H1B (2015-16) Sponsorship - Transfer, Cap exempt and GC processing for OPT, CPT, EAD, L1A, L1B, L2 and outside US

Dear prospective consultant, Good day..

Salary terms: 70-30 percentages for the first year and then 80-20 percentage. We file GC after one-year service with the company. GC filing charges will be borne from the consultant salary; we will deduct the amount in monthly installments from the consultant salary.

General terms and conditions: No location constraint for the first project or first 6 months on payroll. Consultant should relocate as per client requirement

Benefits:

We process green card after 1-year service with the company.
We provide health insurance. We provide job within 2 weeks*. We provide Industry Standard Salaries.

Eligibility: We are looking for Microsoft technology developers (.net developers Java developers), Database administrators, Database developers, iOS and Andriod mobile developers and testers, Selenium testers.

We prefer consultants with L1, L2, H4 and also consultants from outside US with valid B1. Note: Currently we don't have openings for functional consultants(manual and automation QA, PM, BA, SAP functional).

Before proceeding further, **please confirm that you are aware of processing charges of H1B is \$5000. We are unable to sponsor H1B neither free nor partial amount.** Out of \$5000, \$4325 is USCIS fee (www.tinyurl.com/h1b-fee) \$675 is for background verification, drug test(not mandatory), applicable taxes, processing fee, paperwork charges and courier charges.

Payment Terms: Total processing fee is \$5000. \$4000 will be refunded if the petition didn't select in the lottery. (if lottery system). No refund, if rejected after generating petition number (if selected in lottery or general process) If selected and approved, \$2500 will be refunded after one year payroll service with the company.

Note: You can pay \$1000 immediately in advance to start your paperwork and can pay remaining \$4000 by end of February 2015

Payment should be made within two weeks. In January, we will separate all the profiles as per projects. We file LCA in February first week. H1B will be filed in first week on April. If there is lottery system, then we will get the update from the USCIS before end of June (90 days from first week of April). Resume marketing starts from August second week. Tentative Project start date is October 1st 2015

Company details: Uniwaysoft Inc. www.uniwaysoft.com Check here: www.corporations.state.pa.us/corp/soskb/csearch.asp (Official State of PA govt site) My official id: kranthi@uniwaysoft.com
FB group: www.facebook.com/groups/1399565503649692/
FB page: www.facebook.com/benchfolksjobs

Thanks and regards

Kranthi Bheemanadam, H1B@beedam.com, Cell: 267-820-9559

Retrieved on March 14, 2015 at < <https://www.linkedin.com/groups/H1B-processing-terms-conditions-5096068.S.5959004781166018561>>

Because there are no U.S. worker recruitment requirements under the OPT program, colleges and universities are unwittingly helping to discriminate against new U.S. graduates.

Geetha Vasireddy working for Uniwaysoft but located in India explains in her profile that she must "build and develop relationship with career development advisers/officers schools, Colleges and Universities" and "Fetch resumes from university resume database with support from career services coordinator."

Talent Acquisition & H1B Filing

H1-B visa filing

Working on New H1b filing and H1b transfers including but not limited to H1B exemption cap
Sourcing good candidates on almost all technologies
Involved complete Visa paperwork
Building rapport with consultants to have good relationship as well as network growth

Bench Sales & Recruitment

Resume preparation
Distributing the resume to particular vendors.
Screening the profiles, short listing candidates, coordinating interviews and ensuring that resource needs for various projects are met within stipulated time frame.
Shortlisting the candidates as per the requirements of various parameters like education, experience, technical skills, communication skills, compensation etc.
Conducting various screening procedures. Maintaining a database on various skill sets.
Meeting Team targets in time and ensuring smooth recruitment process.
Submitting timely and accurate qualified candidates to clients.

OPT Hiring:

Responsible for sourcing talented candidates according to the job description of the client through internal databases, group referrals, job portals like Monster and Dice.
Sourcing candidates using job portals, social networking, **University blog postings.**
Posting the job ad on different job portals and university career sites.
Fetch resumes from university resume database with support from career services coordinator.
Good experience in cold calling and convincing the candidate.
Conducting preliminary interview and schedule the technical interview
Follow up with consultants
Maintaining database & follow up with OPT's.
Build and develop relationship with career development advisers/officers schools, Colleges and Universities
Knowledge on recruiting IT related skilled personnel in the US staffing process
Very good knowledge on OPT Hiring Process - Posting - Sourcing - Screening - work permits in US.
Thinking out of box and be able to research for better ways to source prospects.

Background Summary

- Almost 2 years of extensive international online marketing experience.
- Over three year experience in IT bench sales marketing and Talent Acquisition. (Business 2 business and Business to Customer)
- Good negotiation skills on Tax Terms (W2, 1099, C2C)
- Experienced as an IT sales recruiter, resume preparation, bench resume sales and marketing.

- Complete knowledge on recruiting full life cycle: Resume preparation, resume marketing, interview scheduling, placement, follow up for timesheets.
- Techniques include but not limited to database maintenance, internet search, group postings and social networking.
- Strong negotiations skills
- Expert in cold calling.
- Strong leadership, negotiation, problem solving and team building skills as well as confident marketing techniques.
- Excellent interpersonal and customer relationship management skills.
- Good knowledge about H1-B process can work alone for H1-B filing
- **Hiring F1/OPT/CPT/EAD candidates and scheduling the training program.**
- Having hands on experience in hiring OPT, CPT, L2, TN, EAD, and Green Card candidates for training as well as on W-2.
- Extensive knowledge working on US Tax terms and Visa Excellent interpersonal
- Explaining Negotiation compensation packages, assessing relevant experience, education, skills, qualification to determine pay type/rate, relocation benefits for the consultants.
- **Posting the ads for OPT, CPT, H1, L2, TN, EAD, and Green Card candidates for IT Training and W2 Hiring.** Placements and H1 transfers, GC Processing covered and H1B Processing (if required)
- H1B sponsorship from India

Retrieved on March 14, 2015 at <www.linkedin.com/in/vasireddygeetha/en>



March 16, 2015

The Honorable Charles Grassley
Chairman
Senate Judiciary Committee
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member
Senate Judiciary Committee
Washington, DC 20510

Re: For the hearing record, regarding the March 17, 2015, hearing on: Immigration Reforms Needed to Protect Skilled American Workers

Dear Chairman Grassley and Ranking Member Leahy,

Thank you for the opportunity for our associations to submit a statement for the record as the committee considers, "Immigration Reforms Needed to Protect Skilled American Workers." Our associations represent U.S. employers and human resource professionals in every sector of the American economy. For many years, our associations have worked with Congress and the Administration to advance policies that promote a well-educated, flexible, diverse and inclusive workforce so vital to growing our economy. Our recent efforts have focused on the employment of returning veterans, the disabled, promoting flexible and effective workplaces and closing the skills gap. Immigration reform is another of our priorities.

The problems with our immigration system are widespread and well documented – and employers are frustrated. Our recent survey¹ of 335 employers reveals that while 86 percent of employers reported that the ability to obtain visas in a timely, predictable and flexible manner is critical to their business objectives, access to visas is more difficult in the United States than elsewhere around the world. The U.S. immigration process is inefficient, costly and time-consuming, with the average employer spending over \$140,000 on U.S. government fees and over \$210,000 on outside legal assistance for immigration petitions in 2013. The abundance and complexity of regulations require employers to spend 13 hours preparing each H-1B petition, 11 hours for each L-1A petition, 6 hours per L-1B petition and 21 hours for a labor certification. Reforms, such as those in Senator Hatch's *Immigration Innovation Act of 2015*, would enhance the predictability and efficiency of our immigration system while ensuring opportunities for American workers.

There are a number of reasons U.S. employers require access to foreign talent ranging from building global business operations, to critical skills gaps in math and science education, to the

¹ Council for Global Immigration, "Employer Immigration Metrics: 2014 Survey Results," November 2014, <http://www.councilforglobalimmigration.org>.

global competition for science, technology, engineering and math (STEM) talent, to simple shortages of workers in particular locales. Detailed information about these challenges and our recommended solutions, including employer support for ensuring Americans are prepared for the jobs of today, and tomorrow, can be accessed at employerimmigrationsolutions.org. Today, however, we would like to draw your attention to two of the visas which are most critical to our economic success but are increasingly difficult for employers to access – the H-1B and the L-1 visas.

The H-1B Visa. In a few weeks we will engage in what has become one of the more ridiculed immigration processes – the H-1B lottery. Last year 172,500 applications were filed for 85,000 visas. These visas are often the only way that an American employer can hire talented foreign nationals graduating from our colleges and universities. Because demand far outstrips supply, who gets to stay is determined not by economic value but by a random lottery. Each year, many Society for Human Resource Management (SHRM) and Council for Global Immigration (CFGI) members are faced with the prospect of terminating employees who lose the lottery or moving the project overseas if possible. Many professionals holding advanced STEM degrees from U.S. universities have been forced to leave after losing the lottery three years in a row. This turmoil jeopardizes research and development plans and damages client relationships. As the economy improves, it is expected demand for fiscal year 2016 H-1B visas will be even greater with more than half the employers filing applications facing disappointment and disrupted business plans. We can and we must do better.

The H-1B cap of 65,000 visas was established in 1990 – 25 years ago. A decade later, Congress temporarily increased the cap to account for a growing economy but then let the increase sunset with only a small adjustment to provide 20,000 additional visas for advanced degree graduates of U.S. universities. These caps remain frozen in time – even though America's gross domestic product grew from approximately \$5.98 trillion in 1990 to around \$17.42 trillion in 2014.² While H-1B demand has fluctuated with the economy, the fact remains that the cap has been reached every fiscal year since 2004.

Debate over the H-1B visa is not new. Congress has previously ensured that H-1B professionals receive the same wages and working conditions as U.S. workers, and there are special attestation requirements for employers who previously committed willful violations of the law or have been deemed to be H-1B dependent. Further, employers have paid more than \$3 billion to fund scholarships and training for Americans and more than \$1 billion to fund government anti-fraud efforts. It can cost an employer more than \$9,000 in legal and government fees just to make an initial H-1B hire and well over an additional \$7,000 to transition an H-1B holder to a green card.³ The fact that employers are willing to undertake these expenses demonstrates the value of the H-1B workers' contributions to our economy. We caution that some of the reforms that have previously been proposed to the H-1B visa would seriously hamper the ability of law-abiding employers to use this visa.

² U.S. Bureau of Economic Analysis, "Table 1.1.5, Gross Domestic Product," <http://www.bea.gov/Tables/Tables.cfm?ReqID=98&step=1#reqid=9&step=3&isurl=1&900=5> (accessed March 15, 2015).

³ Data regarding attorney fees reflects a majority of Council for Global Immigration member respondents surveyed in September and October 2014. <http://www.councilforglobalimmigration.org>.

With unemployment at its lowest rate since the recession began and private employment gains over the past 12 months of 3.2 million (the largest 12-month increase since 1998),⁴ there are multiple signs the U.S. labor market is heating up. Inability to access H-1B visas could slow this growth. Numerous studies have shown the incredible value H-1B professionals bring to the U.S. workforce. U.S. Citizenship and Immigration Services (USCIS) data show more than 50 percent of approved H-1B visa holders have a master's degree, Ph.D. or professional degree.⁵ H-1B visa holders complement U.S. workers with different skill sets and education levels, and they help grow the U.S. workforce.⁶ It was estimated during the 113th Congress that if the Senate bill S. 744 had become law, H-1B expansion would have increased U.S. employment by 227,000 jobs in 2014, with a net increase of 1.3 million jobs by 2045.⁷ It is time to increase the cap.

The L-1 Visa. The L-1 visa is an essential tool U.S. employers use to transfer key international employees to the United States for temporary assignments. Our fast-paced and interconnected global economy requires that employers have timely access to these professionals to remain competitive. Unfortunately, it has become extremely difficult for U.S. employers to reliably and efficiently transfer their employees from abroad to the United States. The United States must do better to remain competitive in the global market.

Once a world-class system for intracompany transfers, L visa adjudication has become plagued by inconsistencies and delays at a time when the speed of business has accelerated. Employers continue to experience unprecedented numbers of requests for evidence (RFEs) on L-1 visas, particularly for L-1B "specialized knowledge" visas. The 2014 Citizenship and Immigration Services Ombudsman's Annual Report states that high RFE rates coupled with high approval rates on H-1B and L-1 visas indicates that USCIS needs to better articulate evidentiary requirements. For more than three years, USCIS has been promising guidance on the definition of specialized knowledge, but such guidance has not been forthcoming. Although the vast majority of cases that receive RFEs are ultimately approved, these processing delays impose unnecessary uncertainty and expense on employers, once again interfering with the efficient flow of commerce.⁸ Proposals in the 113th Congress to restrict L-1B visa use would similarly have imposed new hurdles to international trade in services.

As with H-1B visas, it is imperative that Congress carefully balance efforts to catch those who might abuse the system with the potential burdens on legitimate employers. Since 2005, all L-1 employers have been required to pay a \$500 anti-fraud fee with each new petition. It is estimated that U.S. employers have paid more than \$1 billion in fees to fund government anti-fraud efforts in relation to H-1B and L-1 visas.⁹ This money has been used to increase the number of onsite investigations and audits of employers and, in fiscal years 2010 and 2011, USCIS

⁴ White House, Council of Economic Advisers, "The Employment Situation in February," March 2015, <https://www.whitehouse.gov/blog/2015/03/06/employment-situation-february>.

⁵ U.S. Citizenship and Immigration Services, "Characteristics of H-1B Specialty Occupation Workers," Fiscal Year 2012 Annual Report to Congress, October 1, 2011 – September 2012, <http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/H-1B/fy12-characteristics.pdf>.

⁶ Competitive Enterprise Institute, "H-1B Visas: A Case for Open Immigration of Highly Skilled Foreign Workers," October 2010, <http://cei.org/sites/default/files/Alex%20Nowrasteh%20-%20H-1B%20Visas.pdf>.

⁷ Regional Economic Models Inc., "Key Components of Immigration Reform: An Analysis of Economic Effects of Creating Pathway to Legal Status, Expanding High Skilled Visas & Reforming Lesser Skilled Visas," July 17, 2013, <http://blog.ric.org/blog/badgeimg-congress-on-the-economic-urgency-of-immigration-reform>.

⁸ Citizenship and Immigration Services Ombudsman, "Annual Report 2014," June 27, 2014, <http://www.dhs.gov/sites/default/files/publications/cisomb-annual-report-2014-508c-compliant.pdf>.

⁹ National Foundation for American Policy, "H-1B Visas Essential to Attracting and Retaining Talent In America," May 2013, <http://www.nfap.com/pdf/NFAP%20Policy%20Brief%20-%20H-1B%20Visas%20May%202013.pdf>.

conducted approximately 30,000 total onsite audits of employers. Employers cooperate with these investigations and, in fiscal year 2010, just 1 percent of the site visits resulted in referrals for fraud investigations.¹⁰ Nonetheless, CFGI members report receiving numerous site visits even when there is no suspicion of a violation.¹¹ The government should focus its time on employers who are not complying with our country's immigration laws and recognize those employers that have demonstrated compliance over a period of time.

In conclusion, we wish to emphasize that H-1B and L-1 professionals are an invaluable asset to U.S. employers and America. Not only are they highly educated, but they have also proven to help create U.S. jobs, complement the domestic workforce and innovate for our members, all of which contribute to America's economic growth. We encourage Congress to reform our employment-based immigration system this session, and we believe the *Immigration Innovation Act of 2015* (S.153) is an important component of this reform. CFGI and SHRM stand ready to work with Congress to ensure U.S. employers have access to the talent required to compete in today's rapidly growing world market. We also stand ready to work with members of Congress on other important immigration issues.

Sincerely,



Lynn Shotwell
Executive Director
Council for Global Immigration



Mike Aitken
Vice President of Government Affairs
Society for Human Resource Management

¹⁰ Stuart Anderson, Congressional testimony, May 8, 2013, <http://d31h2lnk6di2h5.cloudfront.net/20130509/3e/c7/c0/f9/b3b0450e440b73d1dc470f23/5wP6ZSyf.pdf>.
¹¹ Council for Global Immigration, "Question of the Week: FDNS Site Visits," January 30, 2014, <http://www.councilforglobalimmigration.org>.



Department for Professional Employees, AFL-CIO

March 16, 2015

The Honorable Charles E. Grassley
 Chairman
 Committee on the Judiciary
 United States Senate
 224 Dirksen Senate Office Building
 Washington, DC 20510

The Honorable Patrick J. Leahy
 Ranking Member
 Committee on the Judiciary
 United States Senate
 224 Dirksen Senate Office Building
 Washington, DC 20510

Re: Immigration Reforms Needed to Protect Skilled American Workers

Dear Chairman Grassley and Ranking Member Leahy:

On behalf of the 22 national and international unions in the Department for Professional Employees, AFL-CIO (DPE), I strongly urge reform of our skilled guest worker visa programs, including the H-1B, L-1, B-1 in lieu of H-1B, and OPT. Misuse of these programs occurs particularly in computer and engineering occupations where the majority of skilled guest workers are employed. Reforms are badly needed to ensure protection of U.S. workers as well as for the temporary guest workers.

The U.S. should be supporting policies that protect the investment our country has made in its skilled workforce and ensure that opportunities are available for the young adults we have urged to enter science, technology, engineering, and mathematics (STEM) professions. Our guest worker programs have virtually no mechanisms to ensure that employers are not using guest workers as cheap alternatives to U.S. workers. Virtually all other advanced countries provide this protection to their native professionals.¹ Reform of all skilled guest worker programs is the only way to end the abuse and exploitation of domestic and foreign workers.

H-1B Visas are Crippling America's STEM Workforce

Nearly 130,000 H-1B visas were approved for initial employment and another 159,000 were approved for continuing employment in FY 2013. Computer and engineering occupations accounted for 69 percent of all H-1B visas in FY 2013. H-1B visas are issued regardless of stagnant wages, high unemployment, and robust college graduation rates in relevant fields. This is simply bad public policy.

¹ U.S. guest worker programs are an outlier among advanced countries. Australia, Canada, and the European Union, for example, require evidence of labor shortages before visas are granted for skilled workers. See: <http://www.loc.gov/law/help/guestworker/index.php>

Immigration Reforms Needed to Protect Skilled American Workers

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Employer abuse of the H-1B visa program is well documented and usually boils down to employers seeking to cut costs at the expense of current and future U.S. workers. Generally, there are three ways this can be done: 1) Hire a temporary guest worker, which will save the employer 20-25 percent in wages²; 2) Contract out work previously performed by U.S. workers to H-1B visa beneficiaries; and 3) Facilitate the transfer of in-house professional and technical jobs to a lower-cost foreign country as documented in the Southern California Edison³ and Disney World⁴ cases.

The Immigration Innovation Act (S. 153), sponsored by Senator Orrin Hatch (R - UT) and others, if passed, would further devastate America's STEM workforce. I urge opposition to any changes to the H-1B program without the reforms suggested below.

L-1 Visa Reforms are needed to Curb Abuse

The L-1 visa allows multinational employers to bring employees of a foreign subsidiary to work in the U.S. In FY 2013, the U.S. Department of State, Bureau of Consular Affairs reported issuing nearly 67,000 L-1 visas. The L-1 visa has no prevailing wage requirement and employers are not required to determine if qualified Americans are available.

Essentially, the L-1 visa allows employers to legally pay well below the market wage, offshore work, and replace U.S. workers. Employers only suffer consequences when they fail to meet the lowest of labor standards. In late 2013, Electronics for Imaging, was fined by the U.S. Department of Labor and ordered to pay back wages to guest workers who were paid just \$1.21 per hour to install computer systems.⁵ The employees were likely on L-1 visas. Since there is no prevailing wage requirement, Electronics for Imaging was only required to pay its foreign employees the U.S. minimum wage. The L-1 visa clearly creates an incentive to favor temporary guest workers over U.S. workers.

Like the H-1B, the L-1 visa is used to facilitate the transfer of work in the U.S. offshore. Offshore outsourcing firms send workers from their foreign offices to the U.S. to be trained by the U.S. worker they are replacing. The foreign worker, then takes his newly acquired knowledge and the work with him offshore. U.S. law should not facilitate the loss of jobs for U.S. workers so multinational corporations can maximize their profits.

OPT and B-1 Visa Provisions need Reforms and Transparency Requirements

In 2013, over 100,000 current or former students were granted employment authorization through the Optional Practical Training (OPT) program. OPT does not have a wage requirement

² Sean McLain and Dhanya Ann Thoppil, "U.S. Visa Bill 'Very Tough' for Indian IT," *The Wall Street Journal*, April 18, 2013; Ron Hira and Anil Hira, "Outsourcing America." New York. *Amacom*, 2005. Print. 87-88.

³ Michael Hiltzik, "A loophole in immigration law is costing thousands of American jobs," *L.A. Times*, February 20, 2015.

⁴ Greg Fox, "Walt Disney World information technology workers laid off," *WESH Orlando*, January 30, 2015.

⁵ George Avalos, "Workers paid \$1.21 an hour to install Fremont tech company's computers," *San Jose Mercury News*, October 22, 2014.

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and employers are generally not required to pay Medicare or Social Security taxes for OPT beneficiaries. The OPT program does not require that employers test the labor market before hiring an OPT beneficiary. The OPT program allows students to work for 12 months after graduation and students with a degree in a STEM field to work another 17 months for a total of 29 months.

In FY 2013, a little over 100,000 foreign graduates received post-graduation OPT work authorization and another 25,000 graduates received work authorization through the OPT STEM extension program. The number of OPT STEM extension approvals doubled from 2011 to 2013. In 2013, according to the American Community Survey, there were 1.25 million U.S. citizens with a STEM bachelor's degree under the age of 26 in the U.S. workforce. Among those 1.25 million recent graduates, nearly 115,000 were looking for work. Over 360,000 U.S. citizens and permanent residents graduated with a bachelor's degree or higher in a STEM field in the 2012-13 school year.⁶ We need honor the investment we have made in our students and create as many pathways to employment as possible. The OPT program, left unchecked will force new graduates to leave STEM professions and dissuade new students from entering.

Finally, the B-1 visa in lieu of H-1B is a guest worker program often utilized by employers when H-1B visas are not available. This visa must also be reformed to prevent its misuse. Further, no data exists on where OPT or B-1 in lieu of H-1B beneficiaries work or their earnings, making thoughtful analysis of the OPT and B-1 in lieu of H-1B programs impossible.

Conclusion

Our high-skilled guest worker visa programs are clearly broken and must be reformed. The current system is easily manipulated by employers, which harms workers across industries and national boundaries.

DPE supports the following six reforms be made to all skilled guest worker programs (H-1B, L-1, B in lieu of H-1B, and OPT), which would ensure that skilled guest workers are used to complement, rather than displace U.S. workers. If there is a shortage of qualified U.S. workers and employers are already paying market wages as many claim, then employers should not fear these reforms. DPE recommends:

- 1) Evidence of a labor shortage before employers are authorized to seek guest workers;
- 2) Requiring all employers to advertise and offer jobs to U.S. workers who are equally or better qualified than the temporary guest worker sought;
- 3) An increase in the prevailing wage standard for guest workers to the 75th percentile of the prevailing U.S. wage, so that employers do not have an incentive to hire temporary guest workers. This would also create an incentive for employers to invest in training U.S. workers;
- 4) Establishment of reasonable caps for all guest worker visa programs;

⁶ National Center for Education Statistics, *Digest of Education Statistics*, Table 318.45, 2014 Tables and Figures.

Immigration Reforms Needed to Protect Skilled American Workers

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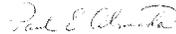
March 16, 2015

- 5) Allowing guest workers to self-petition for green cards after two years of employment; and
- 6) Regular audits of top skilled guest worker visa users to ensure compliance with the above provisions.

Finally, the lack of data on these guest worker programs allows employers to evade scrutiny. The public should be provided with all available data, including how many guest workers are in the country, occupation and employer information, and how much they are actually being paid.

With thanks for your time and consideration –

Sincerely,



Paul E. Almeida
President



ECONOMIC POLICY INSTITUTE
 1333 H STREET, NW • SUITE 300, EAST TOWER • WASHINGTON, DC 20005
 PHONE: 202.775.8810 • FAX: 202.775.0819

Statement for the Record by

Daniel Costa
Director of Immigration Law and Policy Research
Economic Policy Institute, Washington DC

For the Hearing:

“Immigration Reforms Needed to Protect Skilled American Workers”

Before the Committee on the Judiciary
 United States Senate

March 17, 2015

Chairman Grassley, Ranking Member Leahy, and other members of the Senate Judiciary Committee:

I thank you for the opportunity to submit this statement for the record. The Economic Policy Institute believes this is an important and timely hearing, given the events which have been widely reported at Southern California Edison (SCE), where hundreds of workers were replaced by temporary foreign workers in the H-1B program.¹ These actions were facilitated by SCE’s contracting with information technology outsourcing firms Infosys and Tata Consultancy Services—respectively the first and second-largest users of the H-1B visa program²—in order to reduce costs at the expense of the jobs, wages, and benefits of SCE’s employees who were employed as information technology (IT) specialists.

As a result, EPI has called on Secretary of Labor Tom Perez and Wage and Hour Administrator David Weil to investigate whether SCE, Infosys, and/or Tata violated any of the immigration or labor laws which govern the H-1B program. To the best of my knowledge, the U.S. Department of Labor (DOL) has not yet investigated the matter. We believe that section 212(n) of the immigration and Nationality Act (INA) provides DOL ample legal authority to investigate whether use of the H-1B by SCE, Infosys, and Tata has “adversely affect[ed] the working conditions of workers similarly employed.” If Secretary Perez has decided not to investigate because he believes DOL lacks the requisite legal authority to investigate, then we disagree with his interpretation of section of INA § 212(n), but nevertheless call on Congress to provide clarity on DOL’s investigative authority with respect to the H-1B program

¹ Patrick Thibodeau, “Southern California Edison IT workers ‘beyond furious’ over H-1B replacements,” *Computerworld* (Feb. 4, 2015), <http://www.computerworld.com/article/2879083/southern-california-edison-it-workers-beyond-furious-over-h-1b-replacements.html>.

² Ron Hira, “New Data Show How Firms Like Infosys and Tata Abuse the H-1B Program,” *Economic Policy Institute* (Feb. 19, 2015), <http://www.epi.org/blog/new-data-infosys-tata-abuse-h-1b-program/>.

**THE SECRETARY OF LABOR HAS STATUTORY AUTHORITY TO INVESTIGATE H-1B
ABUSES AT SOUTHERN CALIFORNIA EDISON**

Based on the reports of the events at SCE, there can be no denying that U.S. workers employed by SCE were displaced. The U.S. workers employed by SCE were forced to train their own H-1B replacements, and then laid off and replaced by H-1B workers employed by Infosys and Tata who are performing the same duties and functions as the laid off U.S. workers (and SCE has not denied these allegations). This is what is considered by DOL to be “secondary” displacement, since the primary employer (SCE) is using another employer’s H-1B workers (Infosys and Tata) to displace the employees of the primary employer. Secondary displacement is described in INA § 212(n)(2)(E) and H-1B dependent employers are prohibited in that section from allowing their H-1B employees from being used to displace U.S. workers employed by another employer.

Displacement is prohibited in the Immigration and Nationality Act but a massive loophole exists

DOL’s Fact Sheet #62A explains in plain English that since enactment of the H-1B Visa Reform Act of 2004, H-1B dependent employers—like Infosys and Tata—must attest on the DOL’s labor condition application that they will:³

- Not displace any similarly employed U.S. worker within the period beginning 90 days before and ending 90 days after the date of petition filing;
- Not place any H-1B worker with any other employer or at another employer’s worksite unless first making a good faith inquiry of the employer at the secondary worksite and obtaining assurances that the other employer will not displace a U.S. worker within 90 days before or after placement of the H-1B worker;
- Take good faith steps to recruit a U.S. worker for the position for which the H-1B worker is sought; and to offer the job to any U.S. worker who applies for the job and is equally or better qualified.

However, there is a massive loophole that goes unmentioned in the fact sheet which permits H-1B dependent employers to circumvent these requirements. H-1B dependent employers are exempt from these requirements if they hire “exempt” H-1B nonimmigrants, meaning that the H-1B worker:

- receives wages (including cash bonuses and similar compensation) at an annual rate equal to at least \$60,000;⁴ or
- has attained a master’s or higher degree (or its equivalent) in a specialty related to the intended employment⁵

Since federal filings show that all or nearly all of Infosys and Tata’s H-1B employees make at least \$60,000, it is likely that those assigned to work on the project at SCE are considered “exempt H-1B nonimmigrants” under INA § 212(n)(3)(B)(i). Therefore, Infosys and Tata are likely exempt from the displacement prohibitions in the INA.

³ Wage and Hour Division, U.S. Department of Labor, “Fact Sheet #62A: Changes made by the H-1B Visa Reform Act of 2004” (revised July 2008), <http://www.dol.gov/whd/regs/compliance/FactSheet62/whdfs62a.htm>.

⁴ INA § 212(n)(3)(B)(i)(I) [1182(n)(3)(B)(i)(I)].

⁵ INA § 212(n)(3)(B)(i)(II) [1182(n)(3)(B)(i)(II)].

This is an unfortunate aspect of the INA which ties the hands of federal government when egregious abuses occur. As a result, Congress should act to amend the statute to prohibit all forms of displacement of U.S. workers by all H-1B employers and by employers who contract with H-1B employers.

INA § 212(n)(1)(A)(ii) grants the Secretary of Labor legal authority to investigate whether the hiring of H-1B workers caused adverse affects on the working conditions of the SCE workers who were similarly employed, and therefore Secretary Perez should investigate immediately

Despite the aforementioned exemptions for H-1B dependent employers who displace U.S. workers, Secretary of Labor Tom Perez has independent legal authority derived from another section in the INA to investigate the replacement of U.S. workers with H-1B workers at SCE. The INA provides no exemption from the prevailing wage requirement in § 212(n)(1)(A)(i) or from attesting that the H-1B employer “will provide working conditions for such a nonimmigrant that will not adversely affect the working conditions of workers similarly employed,” as required in § 212(n)(1)(A)(ii).

The language in INA § 212(n)(1)(A)(ii) regarding what it means to “adversely affect the working conditions of workers similarly employed” is broad. A common sense definition of what it means for a U.S. worker to have his or her working conditions adversely affected reasonably includes the loss of employment, wages, and benefits—the SCE employees employed as IT specialists were adversely affected when they were laid off after being forced to train their own H-1B replacements. The Code of Federal Regulations at 20 CFR § 655.732(a) provides additional context, and defines how an employer satisfies the working conditions requirement in INA § 212(n)(1)(A)(ii):

when the employer affords working conditions to its H-1B nonimmigrant employees on the same basis and in accordance with the same criteria as it affords to its U.S. worker employees who are similarly employed, and without adverse effect upon the working conditions of such U.S. worker employees. Working conditions include matters such as hours, shifts, vacation periods, and benefits such as seniority-based preferences for training programs and work schedules.

It does not matter that the H-1B employers were not employed directly by SCE. They are de facto employees who—while technically employed by Infosys and Tata—are performing work that ultimately benefits SCE. The fact that Infosys and Tata pay their H-1B workers far below the market rate for IT specialists in the Los Angeles area, and far less than the actual wage rates that were being paid to the SCE IT specialists, and likely fewer benefits based on their lower base pay, shows that Infosys and Tata were providing working conditions for their H-1B nonimmigrants that adversely affected the working conditions of workers similarly employed (i.e., the SCE employees who were previously employed in the same positions taken over by Infosys and Tata’s H-1B workers).

The laid off SCE workers are unlikely to complain to DOL about their plight because their severance packages and access to unemployment insurance require them to keep quiet about SCE’s actions.⁶ But the information that already exists in the public domain about this scandal should be enough to convince the Secretary of Labor to investigate whether any adverse affects on the working conditions of

⁶ Michael Hiltzik, “A loophole in immigration law is costing thousands of American jobs,” Los Angeles Times (Feb. 20, 2015), <http://www.latimes.com/business/hiltzik/la-fi-hiltzik-20150222-column.html#page=1>.

the SCE workers were caused by SCE's contracting to replace them with H-1B workers employed by Infosys and Tata. Under *Alden Management Servs. v. Chao*, it is clear that Secretary does not need to wait for a complaint from an aggrieved party.⁷

In addition, under INA § 212(n)(2)(A), "Complaints may be filed by any aggrieved person or organization (including bargaining representatives)." The regulation at 20 CFR § 655.715 further defines an "aggrieved party" broadly as "a person or entity whose operations or interests are adversely affected by the employer's alleged non-compliance with the labor condition application" and examples are listed in subsections 1-4.

If they have not done so already, the bargaining representatives for the members of the International Brotherhood of Electrical Workers (IBEW) who are employed at SCE should file a formal complaint over this matter with the Secretary of Labor, asking Secretary Perez to investigate because of the adverse affects suffered by their fellow employees in the workplace at SCE, who were "similarly employed" vis-à-vis the H-1B workers who are replacing them. While the laid off employees were not IBEW members themselves, the IBEW bargaining representatives for employees at SCE clearly qualify as aggrieved parties under the broad definitions at INA § 212(n)(2)(A) and 20 CFR § 655.715 because their "interests"—i.e. their interest in keeping wages and working conditions from being degraded in their workplace—have been adversely affected by the replacement of their IT specialist colleagues with H-1B workers employed by Infosys and Tata.

⁷ *Alden Management Servs. v. Chao*, 532 F.3d 578, 580-81 (7th Cir. 2008).



**INTERNATIONAL
BROTHERHOOD
OF ELECTRICAL
WORKERS**

900 Seventh Street, NW
Washington, DC 20001
202.833.7000
www.ibew.org

EDWIN D. HILL
International President

SAM J. CHILIA
International
Secretary-Treasurer

March 16, 2015

Statement of IBEW President Edwin D. Hill regarding H-1B Visa Replacement Workers at Southern California Edison

As president of a union representing skilled professionals in the electrical industry, I have seen firsthand how the H-1B visa program is being abused by companies which use it to replace skilled American workers with lower-paid, foreign nationals.

In August of 2014, Southern California Edison (SCE), a utility company with approximately 14 million customers and \$13.2 billion in annual revenues began firing its domestic information technology (IT) workforce in order to replace them with outsourced workers from India.¹ The outsourced workers are being brought to the United States under a temporary visa program for high-skilled personnel known as H-1B. Due to a gaping hole in immigration law SCE is able to get away with this reprehensible action by outsourcing these American jobs to Infosys and Tata Consultancy Services. The replacement workers are employees of Infosys and Tata, not SCE.²

As employees of Infosys and Tata, the H-1B workers will be paid considerably less than the Americans they replaced. The two Indian outsourcing firms pay their recruits an average of about \$65,000 to \$71,000 annually according to federal filings.³ Compare that with SCE's domestic IT workers who previously earned \$80,000 to \$160,000 a year, according to records submitted to the California Public Utilities Commission.

By the time the transition is complete SCE will have outsourced the work of 500 American IT employees, 400 of whom are being laid-off and 100 of whom are leaving voluntarily. Approximately 70 percent of the IT work will shift overseas; about 20 percent of the jobs that remain in the U.S. will be done by foreigners holding H-1B visas.⁴

Adding insult to injury, many of the Americans slated to be laid off are being forced to train their H-1B replacements. If the American IT employees refuse or publicly protest they lose their severance packages or worse, as many were compelled to sign non-disparagement and confidentiality agreements.⁵ These requirements are much like forcing a condemned prisoner to dig his own grave before execution.

In addition, SCE IT workers slated for dismissal have been denied the opportunity for other work within the company.

Clearly, the H-1B visa system is broken, and in a big way. SCE is not alone. Many other so-called "American" companies have exploited this loophole, replacing their existing IT staffs with H-1B workers from overseas. Such action, particularly following the worst recession since the Great Depression, is outrageous. Absent substantial reform, it's time to end the H-1B program.

¹ Ron Hira, "Congress and President Obama Cannot Sit Idly By While Companies Use H-1B Guestworkers to Replace American Workers," *EPI Blog*, Feb. 10, 2015, <http://www.epi.org/blog/congress-and-president-obama-cannot-sit-idly-by-while-companies-use-h-1b-guestworkers-to-replace-american-workers/>.

² *Id.*

³ Michael Hiltzik, "A loophole in immigration law is costing thousands of American jobs," *The Los Angeles Times* [Los Angeles, CA] Feb. 20, 2015.

⁴ "End H-1B visa program's abuse," *The Los Angeles Times* [Los Angeles, CA] Feb. 17, 2015.

⁵ Patrick Thibodeau, "Southern California Edison IT workers 'beyond furious' over H-1B replacements," *Computerworld*, Feb. 4, 2015, <http://www.computerworld.com/article/2879083/southern-california-edison-it-workers-beyond-furious-over-h-1b-replacements.html>



**Statement for the Record on the Senate Judiciary Committee Hearing:
Immigration Reforms Needed to Protect Skilled American Workers**

James Jefferies, President

IEEE-USA

(The Institute of Electrical & Electronics Engineers – United States of America)

March 17, 2015

Chairman Grassley and Ranking Minority Leader Leahy,

On behalf of the more than 200,000 electrical and electronics engineers who make up the IEEE-USA, the largest organization of high tech workers in America, I want to thank the Senate Judiciary Committee for this important hearing.

The IEEE was founded by Alexander Graham Bell, who was an immigrant, and Thomas Edison, who was not. So from the very beginning we have represented the balance of America's national interest in leading the world not just in technology, but also in the development of a skilled American workforce and the economic progress that technology drives.

We know that America needs to attract and retain the world's best technology talent. That's how Alexander Graham Bell came to America, where he founded us.

But there's a right way and a wrong way to attract talent. America welcomed Bell as a new American. If America had required Dr. Bell to be an indentured servant for a decade, he might well have gone to Canada – or back to Scotland – to invent the telephone.

I know the Committee has heard a lot about how necessary the H-1B program is to enable American employers to recruit the world's best talent. I assure you, it isn't.

This is the true face of the H-1B program: 500 Americans fired from their jobs at Southern California Edison after being required to train their replacements. You will hear that H-1Bs are needed because they fill jobs Americans are not qualified to do. Yet Americans in California were doing these jobs – the H-1Bs employed by the contractor who replaced them did not know how. Southern California Edison has been candid about their motive for hiring a contractor who uses H-1B workers: they're cheaper. It's not about skills.

We've seen this in Minnesota – Cargill and Best Buy. We've seen it in New England – Pfizer and Northeast Utilities. We've seen it in Florida – Disney and Nielsen. And these are just the companies we know of.

But that's not the worst of it.

As we saw with Nielsen in Tampa, the H-1B is a job-exporting machine. The employer won incentives from the community on the promise to create well-paying American jobs. They hired Americans at good wages. Then they fired those Americans, replacing them with a lower-priced contractor. But that's not an example of a free market, because the workers were recruited outside the United States and brought here to undercut US wages: the American government is supplying temporary foreign workers to replace Americans. Those workers were trained by the Americans they replaced.

And when they had been trained, the jobs themselves were offshored for even lower wages and worse working conditions.

More than half of H-1B visas go to outsourcing companies. All of the top users of the H-1B program are outsourcers. This is what the H-1B visa is used for.

So how can companies hire the world's most talented workers? The answer is green cards, not guest worker visas.

The IEEE-USA represents the people who actually invented the Internet, who run the electrical grid and write the standards for cell phones and WiFi. We don't take a back seat to anybody in wanting the best talent to be educated in American STEM programs, to stay here and to become Americans - creating and keeping good jobs in America. We strongly supported S. 744's provisions to provide unlimited green cards to foreign advanced STEM degree graduates of American schools, provided as soon as they are hired. We also supported S. 744's restrictions on H-1B outsourcing.

Why would Senators retreat from those bipartisan provisions, which passed the Senate?

The answer to America's high needs isn't more outsourcing and indenturement. It's new Americans.

It's green cards, not guest worker visas.



INTERNATIONAL FEDERATION OF
PROFESSIONAL & TECHNICAL ENGINEERS
AFL-CIO & CLC

501 3rd Street, NW, Suite 701, Washington, DC 20001
202-239-4880 • FAX 202-239-4881 • www.ifpte.org

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Scott Travers
CANADIAN

Andrew W Jeremy
CANADIAN

March 16, 2015

Hon. Chuck Grassley, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley,

As President of the International Federation of Professional and Technical Engineers (IFPTE), I respectfully request that the below comments be made a part of the official record for the hearing entitled, *Immigration Reforms Needed to Protect Skilled American Workers*, scheduled for Tuesday, March 17th at 10am.

Thank you for your leadership on this very important issue.

IFPTE is a labor union representing upwards of 90,000 workers, most employed in Science, Technology, Engineering and Math (STEM) industries. Our union has long been opposed to the H-1B program because it leads to the displacement of American STEM workers, makes it extremely difficult for American STEM students seeking employment to find STEM jobs, and allows for legalized indentured servitude of the H-1B workers themselves. Unfortunately S. 153, the so-called Immigration Innovation (I-Squared) Act, sponsored by Senators Orrin Hatch (R, UT), Amy Klobuchar (D, MN) and Chris Coons (D, DE), among others, will add fuel to the fire in vastly expanding this very damaging program. S. 153 will undermine our nation's American and permanent resident workforce by distorting the high-tech labor market, driving down wages for current high-tech workers, and have a dramatic negative impact on American students who are considering pursuing (STEM) areas of study in college. IFPTE continues to urge all Senators to oppose this bill.

The H-1B program should be reformed, not expanded. For example, the H-1B visa puts the foreign worker in a precarious employment relationship, and gives no meaningful worker protections to domestic STEM graduates seeking employment. Appropriate reforms include wage requirements consistent with the STEM labor market; a good faith effort by employers to recruit American workers before hiring an H-1B worker; protections for current workers against being displaced by an H-1B worker; the ability for H-1B workers to self-petition for visas and green cards; an objective metric for measuring labor shortages in STEM occupations, and; job portability for H-1B workers so they are not tied to one employer.

- Continued-

Instead, S. 153 will double down on this already abusive visa program, which allows for most H-1B workers to be paid below market, while requiring them to remain tied to a single employer for as long as six years in the hopes that the employer will eventually sponsor them for a green card. (Unfortunately, and sadly, only about 11% of H-1B workers ever get sponsored by their employer for a green card.)

Supporters of expanding the H-1B program will argue that the high-tech industry cannot find American STEM workers to fill job openings. You will often hear high-tech executives and some lawmakers argue that American workers are not the 'best and brightest'. However, the facts do not support these claims. For example, the Center for Immigration Studies (CIS) released a report last May finding that, "the country has more than twice as many workers with STEM degrees as there are STEM jobs." The report, which analyzed Census Bureau data, also found, "only modest levels of wage growth for such workers for more than a decade," concluding that, "both employment and wage data indicate there is no shortage of STEM workers in the United States." Indeed, basic fundamentals of supply and demand economics would show upward pressure on wages to adequately meet increased demand for STEM workers. Yet, the CIS study concluded that, "wage data from multiple sources show little growth over the last 12 years."

So, with all of these problems within the H-1B program how do employers actually treat H-1B workers? Here again, the data is clear. The overwhelming majority of H-1B workers are paid well below the market wage that an American worker with the same qualifications would garner. This is because employers are given the flexibility to decide to pay H-1B workers at one of four prevailing wage levels, ranging from Level 1 for entry level positions to Level 4 for jobs that require many years of experience in the occupation. According to their latest study on the H-1B program, the Government Accountability Office (GAO) found that the majority of H-1B workers are paid at the Level 1 "entry level" tier. GAO concluded in their 2011 report that a whopping 54% of H-1B workers were paid at Level 1, for entry level workers. GAO also noted that only 6% of H-1B workers were being paid at the highest wage tier, Level 4. If these foreign temporary workers are the best and brightest, they are underpaid. If they are appropriately classified, then that job does not require exceptional ability and thousands of qualified local workers are available.

Likewise, when you look at the actual numbers of H-1B visa holders who get sponsored for green cards the numbers are even more staggering. In dissecting the 2014 Department of Labor H-1B data, we found that PERM applications certified in 2014 for H-1B beneficiaries were 51,716. Of course, not all of these guest workers are going to get a green card, for various reasons—they may decide to leave the country, change employers, or the employer may discontinue sponsorship. So, the 51,716 is likely inflated, but for the purposes of these comments we will use that number. In 2014, there were 447,609 Labor Condition Applications (LCA) certified. Again, not all of these guest workers were able to get an H-1B visa. But if you divide 51,716 by 447,609 you get approximately 11% of H-1B visa holders who are lucky enough to have their employers sponsor them for green cards. Indeed, a very low number for what are referred to as, 'the best and the brightest.' Sadly the I-Squared bill, if enacted, will allow for even more of this type of abuse to continue.

- Continued-

Pa. 3 – Immigration Reforms Needed to Protect Skilled American Workers (3/16/2015)

Instead of addressing any of the fixes needed for the H-1B program, the I-Squared bill calls for a massive increase in the numbers of H-1B visas annually with no reforms at all. The bill will increase the initial H-1B cap from 65,000 annually to 195,000. It will also completely lift the cap on the H-1B visas for Masters and PHD students graduating from U.S. universities and colleges with STEM degrees. There are no reforms to the wage requirements; no requirement to ensure that American workers are not fired and replaced with an H-1B worker, and; no requirement for employers to first recruit American workers before hiring an H-1B worker. What we are left with is a bill that completely lifts the cap altogether on the annual allotment of H-1B visas.

It is IFPTE's view that any increase in the H-1B visa program should be directly tied to occupation specific unemployment. The H-1B increase in S.153 is not connected to any objective measure of the labor market. It is simply an open door for foreign workers, driven solely by employer petitions. Furthermore, there is no mechanism for reversing the enormous H-1B Visa increase called for in this bill, no rationale for the complete lifting of the cap on H-1B visas for STEM post-graduates from U.S. universities, nor is the STEM funding account linked to an eventual reduction in Visas either.

S.153 sends a negative market signal to students considering STEM careers, and to families making the investment of a lifetime in education for their children. STEM graduates, with the burden of student loans, already compete for entry level STEM jobs with roughly 800,000 H-1B workers already in their labor market. Further flooding that labor market with additional H-1B workers would make a STEM career unacceptably risky for most students.

At the end of the day S.153 fails to achieve the most fundamental goal that any guest-worker program should include - a commission to make future flow decisions based on current labor market data. This mechanism works successfully in Canada, Australia and the UK. Putting such a metric in place here would go a long way to meeting the legitimate needs of employers while protecting career prospects for workers.

S. 153 may be great for a high tech industry in search of cheap labor, but it is a betrayal of American workers. It falls far short of achieving a guest worker policy that both protects our current STEM workforce from race to the bottom practices, while also encouraging American students to seek out STEM degrees. It also allows for widespread worker abuses of H-1B recipients.

IFPTE believes that this bill is so damaging to American workers that the Judiciary Committee should refuse to consider it, or any other bills like it. Instead, the Committee should move legislation aimed at reforming the H-1B program so it is fair to both American and foreign workers, as well as addresses the legitimate needs of employers.

Thank You.



Gregory J. Junemann,
President



1616 P Street NW, Suite 150 | Washington, DC 20036
 tel: 202.393.1044 | fax: 202.822.2168 | www.jwj.org

March 19, 2015

Hon. Chuck Grassley, Chairman
 Committee on the Judiciary
 United States Senate
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Chairman Grassley,

On behalf of Jobs With Justice, I respectfully request that the brief comments below and the attached editorial, written by our senior policy analyst Michael Wasser and published by *The Hill* on March 16, 2015, be made a part of the official record for the Senate Judiciary Committee hearing entitled, *Immigration Reforms Needed to Protect Skilled American Workers*, that was held on Tuesday, March 17, 2015 at 10 a.m.

Thank you for your leadership on this issue.

Jobs With Justice is an independent nonprofit organization dedicated to promoting workers' rights and fighting for an economy that benefits all workers. We bring together labor, community, faith and student voices at the national and local levels through a network of local coalitions across the country to create innovative solutions to the problems all workers face today utilizing research, analysis, organizing and public advocacy.

Through this work we have gained knowledge about issues affecting workers at the intersection of immigration and labor policy. This includes research intended to better understand how employer use of temporary nonimmigrant employment visa programs impacts workers, graduates, and the U.S. labor market. It is with that insight that we offer our comments today.

Jobs With Justice strongly supported S. 744, which passed the Senate on a bipartisan basis in June 2013 and would have provided a permanent solution for our broken immigration system. It notably would have offered a long-awaited road map to citizenship for the 11 million undocumented members of our communities and secured stronger labor protections for all workers. S. 744 also would have established a new "W" employment visa program, developed through substantial negotiations between business and labor. The W visa serves as a model for how employment visa programs can be designed to meet their true function of offering access to foreign workers on a temporary basis when U.S. workers are unavailable, while also offering real safeguards for workers.

That notwithstanding, Jobs With Justice opposed the provision of S. 744 that expanded the H-1B program while allowing employers to bypass equally or better qualified U.S. workers. This provision also reduced protections for U.S. workers who may lose their jobs due to H-1B hiring, allowed employers to continue paying below the average local wage, and denied H-1B workers the opportunity to self-petition for green cards. In effect, this section of S. 744 enhanced the H-1B visa program as a tool for employers looking to lower wages and drive down standards across our economy. It sold out U.S. workers and future graduates in STEM fields.

The recently reintroduced I-Squared Act of 2015 (S. 153) also exacerbates the problems associated with the H-1B visa program. If passed into law, it would dramatically expand the program without providing meaningful worker protections, including strengthened protections for displaced U.S. workers. We know from new research that H-1B hiring leads to the loss of employment for workers at the same firm.¹ I-Squared also continues to allow employers the ability to pay H-1B workers below the average local wage for an occupation. Its effect, therefore, would be to drive down employment standards, put workers at risk of losing family-supporting jobs, and diminish opportunities for graduates to enter middle-class careers.

Jobs With Justice urges the committee to oppose I-Squared for these reasons. Indeed we urge opposition to any legislation that similarly does not contribute toward building an economy that works for all.

Thank you for the opportunity to briefly offer Jobs With Justice's views on immigration reforms that are needed to protect skilled American workers. We hope the committee will continue to put workers first as it conducts business in this Congress.

Sincerely,

A handwritten signature in black ink that reads "Sarita Gupta". The signature is written in a cursive, flowing style.

Sarita Gupta
Executive Director, Jobs With Justice

¹ Wasser, M. (2015, Mar. 16). "Unchecked expansion of the H-1B program won't build better economy." *The Hill*. Retrieved from <http://thehill.com/blogs/congress-blog/labor/235711-unchecked-expansion-of-the-h-1b-program-wont-build-better-economy>.

THE HILL

Unchecked expansion of the H-1B program won't build better economy

Michael Wasser

March 16, 2015

When the Senate Judiciary Committee meets on Tuesday to hold a hearing on the effects of select temporary visa programs on America's workers, it must look beyond the debate over who should or should not enter the country and recognize that unchecked expansion of guestworker programs is not the way to broad-based prosperity and expanded economic opportunity. There is a role for employment-based migration in the U.S. economy, but it is not as a tool for upending labor market standards.

The H-1B visa program, which the committee will discuss, proves instructive. This visa is **intended** for employers to use for hiring foreign workers in higher skilled jobs on a temporary basis when U.S. workers are not available.

In a National Bureau of Economic Research **working paper**, economists from the University of Notre Dame, the University of California-Berkeley, and the U.S. Department of Treasury found that "...on average H-1B workers at least partially replace other workers in the same firm, with estimates typically indicating substantial crowding out of other workers."

To be clear, H-1B workers are not responsible for the loss of U.S. jobs or lowering of labor standards. That responsibility rests solely with employers who use the H-1B program's inherently coercive conditions to drive down labor costs, even if that means replacing American workers.

H-1B workers (like virtually all workers on temporary employment visas) have no real way to influence even their own work standards. Employers retain control over the visas. Speaking up about low pay, excessive hours, or other workplace abuse is very **risky** for H-1B workers – they can be fired and immediately lose the right to legally work in the United States. Many workers on temporary employment visas are **often in debt** to recruiters and other **middlemen** who charge significant fees to help arrange job opportunities. H-1B workers also **cannot easily change jobs** on their own; walking away is thus not a real option for them. And so they are left with no leverage to confront a low road employer.

Employers, however, gain a great deal from the H-1B program. Hiring H-1B workers can mean a workforce paid **below** the average local wage per occupation. It **does not require** sponsoring the workers for citizenship. And, by controlling the visas, there is little risk to employers that these workers can push for higher pay, speak up about long hours, or leave for a better job.

The current H-1B program can therefore create quite a competitive advantage for businesses that pump up their profits by bidding low on contracts while keeping down costs. But that competitive advantage can come at a real cost for workers, as has become all too clear at **Walt Disney World** and **Southern California Edison**. Approximately 500 IT professionals at each company recently lost their jobs after their employers decided to outsource their work to contractors with H-1B workforces.

Not surprisingly, **nine of the 10 companies** recently receiving the most H-1B petition approvals – including Infosys and Tata Consultancy Services, both hired by Southern California Edison, and HCL America, hired by Walt Disney World – are in the business of offshoring and outsourcing.

These companies' business models illustrate why unchecked expansion of the H-1B program will likely exacerbate the **fissuring of work**. This term, coined by U.S. Department of Labor Wage and Hour Division Administrator Dr. David Weil, describes the reorganization of work through arrangements that allow a company to divest itself of employment responsibility for workers carrying out tasks primarily for its own benefit.

In doing so, a business can create contractual relationships with subordinate entities, like subcontractors, franchisees and even independent contractors, that perform specific functions previously done by the primary business's own employees. Through these contracts, the primary business can dictate exacting standards and establish intricate monitoring and compliance systems to ensure the integrity and quality of the services rendered by their subordinate entities. The primary business thus reduces its labor costs and avoids responsibility under workplace laws for workers it effectively controls.

In the case of Southern California Edison, it will likely **save** as much as \$40,000 to \$45,000 per worker per year by contracting with Infosys and Tata. These firms are not being charitable. Southern California Edison is taking advantage of the fact that Infosys and Tata pays their H-1B workers, on average, below the local average wage for a computer systems analyst.

For workers, fissured work often means downward pressure on wages, lowered standards, and less secure jobs. Just ask Southern California Edison's IT workers, some of who might have planned for a career with the utility, but instead have spent their last days on the job training the H-1B workers employed by Infosys and Tata who will soon take over for them.

If this country is to build an economy that works for all, Congress should be wary of expanding the H-1B program without meaningful worker protections – which is what is proposed in the recently re-introduced "**I-Squared**" **Act**. Doing so will further enhance the H-1B visa as a tool for employers to continue to get ahead at the expense of higher wages, family-supporting benefits, and good jobs.

*Wasser is a senior policy analyst at **Jobs With Justice**, a union rights organization.*

Public Comments of
David F. Leach
President
The Partnership Machine, Inc.
Hearing on the
"Immigration Reforms Needed to Protect Skilled American Workers"

Concerning the
Senate Judiciary Committee hearing
March 17, 2015

The lesson of the Senate Judiciary Subcommittee discussion March 17 of the economic impact of H1B workers is that if economists are selected to testify at future hearings, they will make future hearings less confusing and enable greater consensus, at least regarding basic economic facts.

The seven Undocumented Economists [who testified as experts on the economic impact of current H1B caps even though they had no economics credentials; I list their credentials at the end of this report] could not agree on whether or not the U.S. has a shortage of IT workers or the opposite: a glut of workers that is driving down wages. That is a profoundly basic economic fact not to be able to agree on. If senators can't even find out if we need more IT workers or fewer, how can senators figure out how to write laws that will keep a glut of H1B workers from coming here to take jobs from citizens, without allowing so few that IT companies have to move operations to India to find help, which will cause a lot *more* American workers to lose their jobs?

The other really elementary economic factor they couldn't agree on is whether H1B workers are paid more, or less, than their U.S. citizen counterparts. If a fact that elementary eludes consensus, how can senators intelligently debate an appropriate response? If H1B workers are in fact paid a lot less, then it is reasonable to worry that U.S. citizens are being displaced only to save companies money, and measures to require employers to pay H1B workers more, and to document that they are doing so, may be appropriate. But if H1B workers are already being paid a lot more, not even counting the thousands of dollars of application and legal fees per worker, then requiring more documentation from employers is only pushing our companies overseas a little faster, and the focus of the Senate should be on the 51st in the world ranking of our primary and secondary education in math and our 7th in the world ranking for our higher education, which is resulting in employers willing to pay more for better trained H1B workers.

Neither the witnesses nor the Senators could agree on these two elementary questions. Five of the witnesses took one side, two the other. Senator Sessions thought the evidence made it obvious to anyone that there is no shortage at all of computer workers; Senator Hatch was incredulous that anyone would insist upon the opposite of what he had heard "from everyone I talk to."

These are profoundly unsettling things not to establish, especially if, as one of the witnesses testified, S744, in 2013, was essentially an H1B program dressed up with a few other minor issues. Can over 1,000 pages of laws stand on the foundation of two premises which two years later still enjoy no consensus? When these premises are such elementary, basic economic factors? I pray this Judiciary Committee will not repeat the mistake of the Committee then, when of 39 expert witnesses across 5 hearings on S744, only one had economics credentials.

The first 2 and a half hours of the hearing consisted of the UE's stating their opposite versions of the job statistics without authority. That is, without citing any research that might establish their versions as correct. Presumably their lack of familiarity with specific economics sources is because of their lack of formal training in the discipline. Trained economists, by contrast, spend their days not only studying those reports but double checking those calculus equations. Economists should prove very helpful by citing not only one but several reports on a topic, putting the data in understandable context, and explaining the complexities and apparent contradictions in them.

At about two hours and 39 minutes into the video posted by the Senate committee, Benjamin Johnson, for the American Immigration Council, cited a study. A Brookings Institute report which is posted at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2262872. Johnson said "I want to challenge the notion that H1B workers are paid less. A Brookings Institute report said they are paid more....I think all the evidence will show there is no correlation between the presence of immigrants in a field and wage depression."

\$9,000 more, is how much more the report said H1B workers are paid than citizens with the same education, being a bachelor's degree; however, the H1B workers are "ten years younger and slightly more educated." (Page 5.) If this is true, this destroys the argument that H1B visas need to be restricted because U.S. employers are using them to get cheaper foreign labor. Witness Jay Palmer had argued that the problem would be solved if the law will require businesses to pay H1B workers as much as they had paid the U.S. citizens they will be replacing. But according to the Brookings Institute they are already receiving \$9,000 more per year per worker. That doesn't count the application fees which range up to over \$4,000 per worker, and if I read page 2 correctly, there are "legal costs" on top of that!

UE Miano (about 2:40:36 on the video) accused the Brookings report of "two mathematical tricks. First, it excludes geographic regions as a factor, ie the higher wages in California than elsewhere; the Brookings report acknowledges the workers it studies are concentrated in high wage states and yet it does not take that into account. It also does not properly compare age groups." (Miano did not explain why that is a factor or how Brookings skewed its findings because of it.)

Johnson responded, "Brookings has good answers to both those objections. But this is the kind of analysis of studies and statistics that ought to be brought more into the immigration debate. "

Exactly! This is the kind of examination of actual research that economists would have brought at the beginning of the debate without waiting until it was almost over. And even at this late point it would have been helpful to be given time to look at those "good answers" so the panel could analyze how good they were, this being the closest to anything documented or solid that the hearing had come across in its quest to learn whether there is an IT shortage, and whether H1B workers are paid more or less than citizens.

Salzman criticized Johnson by quoting from the Brookings report (about 2:41:45) " **It is likely that the supply of foreign born workers does bring downward pressure on the wages of incumbent workers, as research suggests.**" That's from the same Brookings report that Mr. Johnson cited."

Salzman's implication was that Johnson was lying; the report didn't say what Johnson said it said, at all. But if the report really did say what Johnson said it did, *and* what Salzman said it did, did the report itself contain fundamental contradictions? Is the report flawed? That possibility was not pursued during the hearing.

Salzman took his quote way out of context, the kind of mistake less likely to be repeated in future hearings with multiple economists present. Both the clause introducing Salzman's quote, and the sentence following, which you can read in the Brookings report, indicate a meaning almost opposite what Salzman indicated. Here is the quote in its context, with Salzman's quote in boldface:

“From a theoretical standpoint, it is likely that the supply of foreign born workers does bring downward pressure on the wages of incumbent workers, as research suggests. Yet, it appears that demand is so strong relative to supply that even the inflow of H-1B workers is not enough to meet the demand of U.S. companies and push wage growth down to normal levels. Moreover, even if the high wages of well-paid workers are lower than they would be in the absence of immigration, the broader economy is likely to be much richer as a result of increased competition and greater efficiency.”

In other words, the report is saying the shortage is so profound that the wages of all IT workers is driven to ridiculous levels; so “theoretically”, bringing in a few H1B workers to make the shortage less desperate lessens this wage inflation, although this remains an undocumented theory. But U.S. IT workers are still getting more than if there were no shortage; while the entire U.S. economy benefits from allowing our industries to get all the IT workers they need so American businesses can be more efficient and competitive.

I wonder if it is possible that part of Salzman’s misuse of the Brookings report is that the Brookings report is critical of Salzman? On page one we read a characterization of the position which the Brookings report refutes: “On the other hand, some analysts have argued that there are plenty of U.S. native-born workers who can do these jobs.” There is a footnote to: “4. Hal Salzman, Daniel Kuehn, and B. Lindsay Lowell, “Guestworkers in the High-Skill U.S. Labor Market: An analysis of supply, employment, and wage trends,” (Washington: Economic Policy Institute, 2013).

The report also says “This suggests that H-1B workers do have specialized skills that are not readily found in the labor market; moreover, it is unlikely that the program substantially lowers U.S. native-born earnings since these workers are not outcompeting U.S. native-born workers on pay. One suspects that they are, instead, outcompeting native-born workers on skill—at least as perceived by the companies hiring them.” (Page 5.)

That is the really frightening finding which I pray the senators will address: that foreign universities are producing STEM graduates who outperform ours. Our higher education ranks only 7th in the world, behind (in order) Finland, Singapore, Netherlands, Switzerland, Belgium, and United Arab Emirates. This is according to the [Global Competitiveness Report](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf), the chart pp. 18-19. (http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf)

The same Global Competitiveness Report (pp. 378-379) lists 4 more important government-caused problems I pray the Senate will address so American businesses can better compete globally. An “inadequately educated workforce” is only the 7th of the “most problematic factors in doing business” according to executives. 6th is a “poor work ethic in national labor force”, which can’t be blamed on government but is where citizens are way behind immigrants – which perhaps may be blamed on those who encourage the unemployed to regard themselves as “victims” of immigrants as an alternative to out-working immigrants; 5th is “restrictive labor regulations; 4th is “access to financing”, not government’s responsibility; 3rd is “inefficient government bureaucracy”, second is “tax regulations”, and the top “most problematic factor in doing business” is “tax rates”.

Why doesn’t the Senate invite the authors of the Brookings research to testify? Neil Ruiz has a Ph.D. in political economy from the Massachusetts Institute of Technology, a M.Sc. in economic history from Oxford University, and a B.A. in political science (High Honors and Phi Beta Kappa) from the University of California, Berkeley. Jonathan Rothwell B.S. from Penn State, a M.A. in economics from the New School, and a Ph.D. in policy from Princeton University. It is hard to imagine the senators would have remained confused for long, with those two present. Johnson certainly did a “yoeman’s job” of presenting the findings of economists, but his statement that this is what the hearing should have focused on tells me he would have appreciated, as much as I, the help of expert witnesses with actual credentials in the subject of their testimony.

If you will invite economist David Roodman, he will be able to explain more complexities of economic reality unmentioned by the UE's in the room March 17. His survey of research by several other economists is posted at <http://davidroodman.com/blog/2014/09/03/the-domestic-economic-impacts-of-immigration/>

His research suggests, for example, that two things can be done to reduce job competition: first, let the flow of legal immigrants bring a mix of talents in the same proportion as in the general population. He explains, "a migrant inflow that mirrors the receiving population in skills mix is likely to have the most benign effects."

Second, replace our jobs lottery, the personification of uncertainty, with a system that has "flexibility, predictability, and consistency" as witness Benjamin Johnson put it. Because it is when immigration is unpredictable that wages can drop for citizens, because it takes time for investors to build the tools and factories needed to put the new migrants to work. Roodman writes, "The accepted rule of thumb... is that a sudden, unexpected 10% rise in labor supply reduces pay by 3% in the short term... But in the long run... the US labor pool has doubled many times since 1776, and [investment] capital has more than kept up."

Here are some important quotes from the Brookings study:

3. H-1B workers are paid more than non-H-1B workers generally and even within the same occupation for workers with similar experience.

Critics of the H-1B program have argued that foreign workers are paid less than natives, providing a

strong incentive for American companies to import lower cost labor. Proponents argue that the program brings in highly specialized workers that are difficult to find domestically, which should result in higher wages. Unfortunately, most analyses have not examined the actual wages of H-1B workers and have instead used proxies like foreign-born status.

Only one study, that the authors are aware of, has compared the actual earnings of H-1B workers, as

provided by employers, to U.S. native-born residents.¹⁶ Using 2009 Census data, Lofstrom and Hayes found that H-1B workers earn higher than average earnings relative to U.S. born native-born, but they are also more highly educated, working in more remunerative occupations, and younger. Adjusting for these characteristics, they find that H-1B workers earn significantly higher earnings than native-born workers with bachelor's degrees or more education. This suggests that H-1B workers do have specialized skills that are not readily found in the labor market; moreover, **it is unlikely that the program substantially lowers U.S. native-born earnings since these workers are not outcompeting U.S. native-born workers on pay.** One suspects that they are, instead, **outcompeting native-born workers on skill**—at least as perceived by the company's hiring them. ...H-1B workers earn higher earnings than employed U.S. born residents with Bachelor's degrees (\$76,356 versus \$67,301), but are ten years younger and slightly more educated. Comparing workers of the same age cohort and occupation, H-1B workers earn higher wages. (Page 5)

If the H-1B program is not well-aligned to workforce demand or is greatly suppressing the wages of workers by bringing in comparatively cheap foreign labor then one would expect to see slow wage growth in these industries. In fact, wage growth in this industry has been much larger than the national average since 1990 and 2009 (ending in 2012) with 5.5 and 7 percent annual growth, compared to 0.8 percent and 1.6 percent annual wage growth across all industries.²¹ (Page 8, after Salzman's quote

Here are the education credentials of your seven witnesses that I have been able to find:

Richard Trumka, President, AFL-CIO, Washington, D.C. *Bachelor of Science degree from Pennsylvania State University, 1971; law degree from Villanova University, 1974.*

Ron Hira, Associate Professor of Public Policy, Howard University, Washington, D.C. *Ph.D. in Public Policy, George Mason University, 2002. B.S. in Electrical Engineering, Carnegie-Mellon University, 1988.*

Bjorn Billhardt, Founder and President, Enspire, Austin, TX. *MBA from Harvard Business School and a dual B.A./B.B.A. in Liberal Arts Honors from the University of Texas, where he is a graduate of the Plan II and the Business Honors Program.*

Jay Palmer, whistleblower. *University of Alabama and RIT graduate, according to his statement at 59:00 of the video. I could find nothing online about whether he attended college.*

Benjamin E. Johnson, Executive Director, American Immigration Council, Washington, D.C. *J.D. (law) from the University of San Diego School of Law, International and Comparative Law at Kings College in London.*

John Miano, Washington Alliance of Technology Workers, Bellevue, WA. *McGeorge School of Law, University of the Pacific.*

Hal Salzman, Professor, School of Public Policy & Heldrich Center for Workforce Development, Rutgers University, New Brunswick, NJ. *Ph.D. in Sociology, Brandeis University, 1986; M.A. in Sociology, 1984, Brandeis. B.A. in Psychology, with concentrations in political economy and political sociology, University of California, Santa Cruz, 1977. Japan Field Study in psychology and Japanese culture and language; 1974. Bell & Howell Postdoctoral Fellow 1987-1988 (for studies in technology and policy).* [According to the University of California website, the emphasis of an economics major is on macroeconomics, microeconomics, and calculus. The emphasis of a psychology major is on general psychology and statistics.]

Senate Judiciary Hearing
Immigration Reforms Needed to Protect
Skilled American Workers

Norman Matloff
Professor of Computer Science
University of California, Davis
<http://heather.cs.ucdavis.edu/matloff.html>
(letter to committee for the hearing)

March 17, 2015

I have been writing about foreign tech workers for more than 20 years. Combining my background both as a computer science (and formerly statistics) professor, and as a former Silicon Valley software developer,¹ I believe I bring a unique perspective to the issue of immigration of foreign tech workers. Indeed, my views may differ slightly from those who testify at the hearing.

I will focus on the title of the hearing, “...Reforms Need to Protect Skilled American Workers.” I don’t advocate protectionism, and strongly support bringing in “the best and the brightest” from around the world. But the vast majority of H-1Bs — *including* those hired as foreign students at U.S. universities — are ordinary people doing ordinary work. I find that **the foreign worker programs cause Americans (U.S. citizen and permanent residents) to lose job opportunities and earn lower wages.**

Here I will state my views of what should, and also should NOT, be done to protect American workers, both from the point of view of the H-1B work visa and also, just as important, employer-sponsored green cards.

Problems That Need to be Solved:

Currently, employers find hiring H-1Bs attractive for three main reasons:

- Many employers give hiring preference to H-1Bs over Americans because the foreign workers are cheaper, especially in the sense that young H-1Bs cost less than older (age 35+) Americans. A GAO report found that 78% of the H-1Bs are under 35.
- The foreign workers are immobile if they are sponsored for a green card, thus making foreign workers more attractive than Americans to employers.
- It is convenient for employers to recruit workers among foreign students at U.S. universities, rather than more extensive searches to find Americans no longer in school.

In all three cases above, **well-qualified American tech workers lose.**

What Should NOT Be Done:

Many recent proposals in Congress would create special work visa and green card categories for foreign students pursuing Master’s and PhD degrees in STEM at U.S. universities. This would be unwarranted and harmful. **I urge Congress to NOT enact such legislation.**

¹See bio, <http://heather.cs.ucdavis.edu/matloff.html>

I'll use "the Intels" to refer to the firms whose H-1Bs are primarily hired from among foreign students at U.S. universities, and refer to the IT services companies that hire directly from India as the "Infosyses." They key point is that **the visa/green card programs are abused just as widely by the "Intels" as by the "Infosyses."**²

Consider:

- The "Intels" often give hiring preference to foreign students over Americans. A vivid example of this is the Web site <http://hiref-1students.com>, in which **immigration attorney David Swaim blatantly extols giving hiring preference to foreign students**, due to their immobility during the long years of the green card process. Swaim's other Web page notes that he was the original architect of Texas Instruments' immigration policy.³ TI, as you know, is one of the most strident voices on the Hill in terms of promoting the H-1B work visa.

- The foreign students not only serve as immobile *de facto* indentured servants, but they are also attractive to employers because they are YOUNG. Employers thus save in wage costs even if the foreign workers are paid the same as their young American peers, because young workers are cheaper.

In addition, as noted, hiring foreign students offers the employers CONVENIENCE, "one-stop shopping," as opposed having to do extensive searches for qualified Americans, especially older ones.

Thus the "Intels" tend to focus their recruitment efforts on new graduates.⁴ When they run out of domestic new graduates, they turn to foreign new graduates, in order to avoid the older Americans.

- In the infamous "TubeGate" incident, a prominent immigration law firm was caught saying, concerning the green card process, "Remember, our goal is to NOT find a qualified American for the job."⁵ Another video in the same series shows how to legally underpay foreign workers. Since the "Infosyses" only rarely sponsor their foreign workers for green cards, one can see that **abuse such as above is an "Intels" kind of abuse, not practiced by the "Infosyses."**

- According to the National Association of Colleges and Employers, starting salaries for new graduates in computer science are falling, NACE projects a 9% decline this year at the Bachelor's degree level.

Recall that many proposals in Congress include special provisions for the foreign graduate students. In that light, consider the NACE figures for the Master's level: Down slightly this year from 2013, which in turn was down 8.7% from 2012.⁶ In other words, **Master's degree wages are declining, contradicting the industry claim that there is a shortage at that level.**

(Data for PhDs is not available, but it should be noted that only a very small percentage of H-1Bs hired by the "Intels" have a PhD. That percentage was 1.6% in 1999,⁷ and industry people indicate to me that it is similar today.)

- Back in 1989, an internal paper at the National Science Foundation advocated giving special green cards to foreign STEM students, just as being proposed now.⁸ The paper conceded that the resulting foreign influx would cause PhD wages in STEM to stagnate, which in turn would drive American students away from pursuing doctoral study. The green card proposal was not adopted, but the following year

²The "Intels" do tend to hire a higher class of foreign worker, say with a Master's degree from a U.S. university rather than a Bachelor's degree from a school in India. But both types of firms are paying below-market rates for their respective worker classes.

³<http://tsalaw.com/why-hire-us/>

⁴See for example, The Corporate Perspective: Intels Approach to H-1Bs, Dawn Kawamoto, Dice.com, May 17, 2013.

⁵YouTube Video On Avoiding U.S. Job Applicants Angers Programmers: IT Professionals Criticize a Law Firm's Video Play-by-Play Description on How to Circumvent the PERM [green card] Process in Favor of H-1B Visas, Mary Hayes Weier, *InformationWeek*, June 18, 2007.

⁶See for instance <http://seriousjobseeker.blogspot.com/2013/11/salary-report-2013-national-association.html> and <https://www.naceweb.org/uploadedFiles/Content/static-assets/downloads/executive-summary/2015-january-salary-survey-executive-summary.pdf>

⁷See On the Need for Reform of the H-1B Nonimmigrant Work Visa in Computer-Related Occupations, UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM, Fall 2003, Vol. 36, Issue 4, 815-914, N. Matloff.

⁸See Eric Weinstein, *How and Why Government, Universities, and Industry Create Domestic Labor Shortages of Scientists and High-Tech Workers*, NBER, Harvard University, 1998.

Congress did enact H-1B, and just as forecast by the NSF, foreign students have come to dominate STEM graduate programs, especially in computer science.

We really don't need so many PhDs in computer science, but clearly the special green card programs now being proposed for foreign graduate students would have the same effect at the Master's level — **causing wages to stagnate and thus driving Americans away from pursuing MS degrees.**

- It is now common for PhDs in computer science to take post-doc positions, clearly indicating a **surplus of PhDs**. Cisco Vice President for Research Douglas Comer has stated, “...a Ph.D. in computer science is probably a financial loser in both the short and long terms.”⁹ The 2003 National Research Council report, commissioned by Congress, came to the same conclusion.¹⁰
- Because of the wage dynamics described by the NSF due to the influx of foreign STEM workers, it is now much more lucrative for an American student with a Bachelor's degree in STEM to pursue a professional degree in law, business or medicine than to attend STEM graduate school. As noted by Georgetown University's Anthony Carnevale, an expert on college education and careers, “**If you're a high math student in America, from a purely economic point of view, it's crazy to go into STEM.**”¹¹
- For most jobs in the computer field, completion of a graduate degree is typically not particularly useful. As we all know, Bill Gates, Steve Jobs, Mark Zuckerberg, Larry Ellison and so on never even finished their Bachelor's degrees. Nathan Myhrvold, Microsoft's former chief of research, has no computer science degree at all (his background is physics). Thus **immigration legislation based on graduate degrees does not make sense.**
- The harmful impact on American engineers arising from the hiring of foreign students in the electronics industry was described by UC Berkeley researchers as far back as 1998, and noted again in a 2009 book.¹² The 1998 paper stated (emphasis added),

...high-tech engineers and managers have experienced lower wage growth than their counterparts nationally. *Why hasn't the growth of high-tech wages kept up? Foreign students are an important part of the story. Approximately one-half of engineering Ph.D.s and one-third of engineering MSs were granted to foreign-born students in the mid-1990s.*

The authors also describe the industry's emphasis on hiring young new graduates.¹³

- Research conducted by myself and (independently) by various NBER members¹⁴ has shown that the average talent level of the foreign graduate students is lower than that of the Americans: They have lower per-capita patenting rates; they are less likely to work in R&D; they attend less prestigious universities; and so on. Since the foreign students have displaced the Americans, as predicted by the NSF, that means that on average, we have been replacing more talented STEM workers by less-talented ones — **a net loss to the American economy and well-being.**
- As can be seen above, the foreign influx, especially among those who first come here as students, reduces wages and job opportunities for Americans, thus **discouraging our own best and brightest from pursuing STEM careers.** This might be justified if the foreign workers were more talented than the

⁹ *Science Careers*, April 11, 2008.

¹⁰ National Research Council, *BUILDING A WORKFORCE FOR THE INFORMATION ECONOMY*, National Academies Press, 2001.

¹¹ Jordan Weissmann blog, *How Good Are the Job Prospects for Science Ph.D.s?*, *Slate*, August 5, 2014.

¹² Clair Brown, Ben Campbell, and Greg Pinsonneault, *The Perceived Shortage of High-Tech Workers*. Working paper. University of California, Berkeley, 1998; Clair Brown, and Greg Linden. 2009. *Chips and Change: How Crisis Reshapes the Semiconductor Industry*, Cambridge, Mass.: MIT Press, 2009 p.132.

¹³ The industry lobbyists claim that only the young new graduates know the newest technologies. But that is contradicted by the fact that they learn those new technologies from old professors like me.

¹⁴ *Are Foreign Students the Best and Brightest? Data and Implications for Immigration Policy*, Norman Matloff, February 28, 2013. Bound, John, Sarah Turner, and Patrick Walsh. Internationalization of U.S. Doctorate Education, in R. Freeman and D. Goroff, eds., *The Science and Engineering Workforce in the United States*. National Bureau of Economic Research/University of Chicago Press, 2009; Jennifer Hunt. 2009. *Which Immigrants Are Most Innovative and Entrepreneurial?*, Working Paper #14920. National Bureau of Economic Research, 2009.

Americans, but we saw that that is not the case. It should be clear, then, that **a policy of giving immigration breaks to foreign students would be counterproductive**. None of our competitor nations would adopt such a policy.

What SHOULD Be Done:

I advocate a “mend it, don’t end it” approach. The problems can actually be solved quite easily.

- Current law requires employers to pay H-1Bs at least an amount known as the *prevailing wage*. In spite of the name, it is typically well below the true market value of the worker. For instance, it does not take into account “hot” skills; an employer can hire an Android programmer for the price of a generic one — and be in full compliance with the law.
Taking skill sets into account might be difficult to implement on a skill-by-skill basis, but the wage floor could be defined to be, say, the 75th percentile for the given occupation. Employers say that they hire H-1Bs for rare skill sets or unusual talent levels, so they should pay more.
- In order to deal with the problem of employers hiring young, cheap H-1Bs instead of older, more expensive Americans, we need to disband the current four-tiered system for determining prevailing wage, broken down by four experience levels.
- Current policy is to hold a lottery to award H-1B visas to employers. Instead, one could prioritize according to worker wage: The applications would be ranked by wage, and awarded in that order. This would solve the problem of employers using the H-1B program for cheap labor.
- It is important to take green cards out of the hands of the employers, who as mentioned use this to render their foreign workers immobile. I have proposed a longevity-based approach: If the worker can stay employed by one more more employers — at or above that 75th percentile level — for a certain number of years, he/she would be granted a green card.
- I have always strongly supported bringing in “the best and the brightest” from around the globe. As mentioned above, rather few of the foreign workers are in that league, but for the truly talented we should facilitate their immigration. The current EB-1 and National Interest Waiver green card categories should be liberalized somewhat.
- As discussed above, giving special treatment to new foreign graduates of American universities is unwarranted. Some would argue, though, that this would at least address the immobility problem. However, since the vast majority of those new foreign graduates would be young, it would exacerbate the rampant age discrimination problem in the tech field, i.e. again harm American workers.

Microsoft:

A good way to quickly understand the H-1B/green card issue with respect to the “Intels” category of employers is to look at Microsoft, the largest user of H-1Bs among the “Intels.” Consider:

- Microsoft Senior Vice-President and Chief Technical Officer David Vaskevitch admitted that Microsoft hires very few older workers, and doesn’t have many jobs suitable for them.¹⁵
- Microsoft claims that it hires foreign workers because insufficiently many Americans have the necessary training. It opened a facility in Vancouver, Canada, ostensibly because of the “shortage” of H-1B visas. Yet it turned out that Microsoft was TRAINING its foreign software engineers there, something it had somehow not been doing in the U.S.¹⁶ Subsequently Microsoft got the Canadian government to exempt them from a requirement that a firm may hire foreign workers only if it demonstrates insufficient

¹⁵*Businessweek*, January 15, 2008.

¹⁶Vancouver, the New Tech Hub, Karen Weisc, *Bloomberg Businessweek*, May 22, 2014.

numbers of qualified Canadians are available for the jobs.¹⁷ The American H-1B visa does not have this requirement for general employers, and the industry lobbyists got such a provision removed from the Senate's Comprehensive Reform Bill in the last Congress.

- Similarly, at the same time Microsoft was claiming it needed more H-1Bs, with the grand-sounding goal to "keep jobs in the U.S.," internally it was urging its employees to "Pick something to offshore today."¹⁸
- In fact, Microsoft has a long track record of incorrect claims regarding H-1B. For instance, the firm claimed that it pays its H-1Bs "over \$100,000 to start," a figure the firm later admitted was incorrect.¹⁹
- An EPI study found that Microsoft has a 93% acceptance rate for the job offers it extends, again contradicting Microsoft's claims that it can't hire people.²⁰
- Microsoft has funded academic studies of pro-H-1B researchers and research organizations, notably Professor Giovanni Peri and the Brookings Institution. The Obama White House relied almost exclusively on Prof. Peri for its 2014 executive actions regarding both H-1B and unauthorized immigration, so blatantly that even the pro-immigration *Financial Times* raised an eyebrow.²¹ Brookings, a major advocate of H-1B, has been accused of a "research for sale" policy.²² Microsoft and the Bill and Melinda Gates Foundation have been among the most generous donors to Brookings, according to the latter's annual reports.
- Microsoft announced a mega-layoff of 15,000 workers in 2014. Granted, not all of those workers are engineers, and some engineering jobs are very specialized, but it remains true that many of those who were laid off could have done the jobs filled with H-1Bs by the firm.

Some Final Points

- Beware of plausible-sounding but quite misleading arguments concerning H-1B.
- One such argument is that employers can't be using H-1B for cheap labor, due to the legal fees they must pay. Yet the amounts employers save in wages over the 6+ years of the visa are far larger than the legal fees.
- Another such argument is to cite low unemployment rates for tech workers. The fallacy here is that the figures don't count the Americans who were forced out. The former engineer now working as a sales clerk at Radio Shack counts in government data as employed, but he/she is UNDERemployed.
- As mentioned, the "Intels" are just as culpable as the "Infosyses." Beware of arguments focusing on the latter, which though true are irrelevant. Yes, such firms do offshoring (though so do the "Intels"); yes, they are among the biggest users of the H-1B program; no, they don't often sponsor their workers for green cards. But all that is not germane to the issue of jobs for Americans.
For instance, one argument is that such firms do a lot of offshoring. True but irrelevant — whether a job is filled by an H-1B in the U.S. or shipped overseas, either way it is a job not available to Americans. The impact on American workers — the theme of this hearing — is all that really counts, and *both* the "Intels" and the "Infosyses" are abusing the system, with serious adverse impacts on Americans.
- As noted, many pro-H-1B academic researchers are funded by the industry and lobbying groups, such as Microsoft and PNAE.

¹⁷ Foreign workers: Microsoft Gets Green Light from Ottawa for Foreign Trainees; Tech giant exempted from new rules for finding Canadians to fill jobs, Louise Elliott, *CBCNews*, December 13, 2014.

¹⁸ Roberta L. Wilson, Deep Throat Move Over: Disgruntled IT Employees Expose All *WashTech News*, July 28, 2005.

¹⁹ Microsoft Push for Worker Visas Raises Concerns, Exposes Loopholes, Kyung M. Song, *Seattle Times*, November 24, 2012.

²⁰ *STEM Labor Shortages? Microsoft Report Distorts Reality about Computing Occupations*, Daniel Costa, November 19, 2012.

²¹ The Economic Effects of the Obama Immigration Order, *FT Alphaville*, Cardiff Garcia, November 21, 2014.

²² At Fast-Growing Brookings, Donors May Have an Impact on Research Agenda, Tom Hamburger and Alexander Becker, October 30, 2014.



**Statement for the Record on the Senate Judiciary Committee Hearing:
Immigration Reforms Needed to Protect Skilled American Workers**

**Karen Panetta, Ph.D.
Vice President, Communications and Public Awareness
IEEE-USA**

(The Institute of Electrical & Electronics Engineers – United States of America)

Gender Bias

March 17, 2015

Chairman Grassley and Ranking Minority Leader Leahy:

Almost exactly two years ago, I testified to this Committee about how immigration reform should address the needs of women and families. I emphasized to Senators the huge disincentive the H-1B program creates for high tech employers to hire Americans, particularly women.

The reason is simple: the H-1B is a preferred path to new hires for many tech companies. Most H-1Bs go to outsourcing companies, whose business model is to undercut American wages and ship jobs overseas. In many cases, laid-off American workers have to train their cheaper, government-supplied replacements. This is having a catastrophic effect on driving talented STEM skilled American women away from high tech careers. Working for an H1-B high tech company that fosters a disposable culture for employees creates a horrendous work environment. American women choose to take lower paying, emotionally satisfying careers rather than be enslaved to the stressful environments bolstered by the misuse of the H-1B.

I am an engineer. Engineers are data driven, meaning we use data to assess and evaluate situations and ultimately, make intelligent decisions to solve problems. Two years ago, IEEE-USA made a simple request to DHS: How many women get H-1B visas? To this date, we still do not have an answer.

The I-129 Form used to issue every H-1B visa has a box identifying the visa holder's gender. It's fundamental to identifying the individual qualified to work in the United States. So not only USCIS, but the State Department has this data. Why don't we have an official answer?

I testified that I-94 data suggests that more than 70% of those entering the United States on H-1B visas are men. That would be bad enough. But it understates the problem, because this isn't the correct metric to measure the enormous obstacles to American women in STEM fields erected by high tech employers' reliance on the H-1B. The appropriate measure would count the percentage of men who are issued new H-1B visas. The Administration won't tell us. They apparently can't find Item 4 on the I-129 Form, which is at the bottom of Page 2.

But I have sources in the outsourcing industry, since I teach students in these fields. They tell me that 85% of H-1Bs working for outsourcers are men.

After 20 years, that kind of accumulating bias against American women adds up. It is one of the most quantifiably fixable problems in attracting and retaining American women in STEM fields.

The H-1B has had left another population of affected victims in its wake. Many foreign students receive graduate degrees in the U.S., funded in part by American tax dollars through the NSF and NIH, with the hopes that they will stay here after graduation and keep jobs in the United States. The H-1B has forced a top tier of educated stem workers to be subjected to years of incarceration in a caste system with low pay and excessive hours of work, while being constantly reminded of how expensive it is for the company to support their visa.

When someone gets married and then gets a green card through their employer, both spouses get green cards. That is a good thing. But when the green card comes before the marriage, the minimum wait for the new spouse to get their green card is more than two years, and has been more than 7.

So the contrasting treatment of families in the H-1B program compared to green cards actually mocks our values: it forces skilled STEM graduates who want to get married to remain temporary workers, since it punishes those who make a commitment to the United States before they are married.

No, allowing H-1B spouses to work is not a substitute for green cards delivered promptly. When a STEM graduate who is married gets a green card, so does their spouse. Green cards mean both have independent permission to work. And it means that they compete fairly with American workers.

No, increasing H-1Bs will not eliminate barriers to American women in STEM fields. Ask the women that I teach about the discrimination they face as American women in fields dominated by H-1Bs who are either outsourcers or indentured, and nearly all male.

No, increasing the outsourcing visa will not create and keep jobs in the United States.

No, the H-1B program is not about "immigration".

American taxpayers make a massive investment in our schools' excellent STEM programs, which are the finest in the world. But that investment is only worthwhile for America if we are investing in making Americans.

The IEEE-USA – the largest organization representing American high tech workers – takes the unequivocally pro-immigration position: green cards, not guest worker visas.

That's how to serve America's national interest in high skilled immigration – including American women and especially new Americans.



Written testimony submitted by Stan Sorscher,
Labor Representative
Society of Professional Engineering Employees in Aerospace

Submitted to the Senate Judiciary Committee hearing on *Immigration Reforms Needed to Protect Skilled American Workers*.
Tuesday, March 17

I would like to thank the Chairman and members of the Senate Judiciary Committee for taking testimony on this important topic.

The Society of Professional Engineering Employees in Aerospace is a labor union representing over 20,000 engineers, scientists, pilots, technical and professional employees in the aerospace industry. We take pride in our education, experience and our professional efforts to make our products perform to high standards and succeed in the marketplace.

SPEEA members all chose careers in science technology engineering and math (STEM). We are actively engaged with business, educators and public officials to encourage students to chose STEM fields of study.

When we encourage our own children, nieces and nephews to pursue STEM degrees, we are making a personal decision. However, when SPEEA makes that recommendation as an institution, we take on an additional responsibility that comes with policy-making. Families will make the investment of the lifetime in the education of their children. STEM graduates leave school with historically high levels of student debt. We owe families and students a commitment that graduates will find good jobs that justify the financial and career risks they take when choosing STEM careers.

We look very carefully at the transition from education to employment. Surveys of all engineering schools in the US show total graduations are approaching 150,000 per year. These graduates will be looking for entry-level jobs in computing, engineering, and science occupations.

The H-1B non-immigrant visa program provides temporary work visas for 130-150 thousand foreign temporary high-tech workers each year – about the same number as the total graduations from all US engineering programs. Most H-1B workers take positions in level 1 and level 2 – entry level and early career levels of experience.

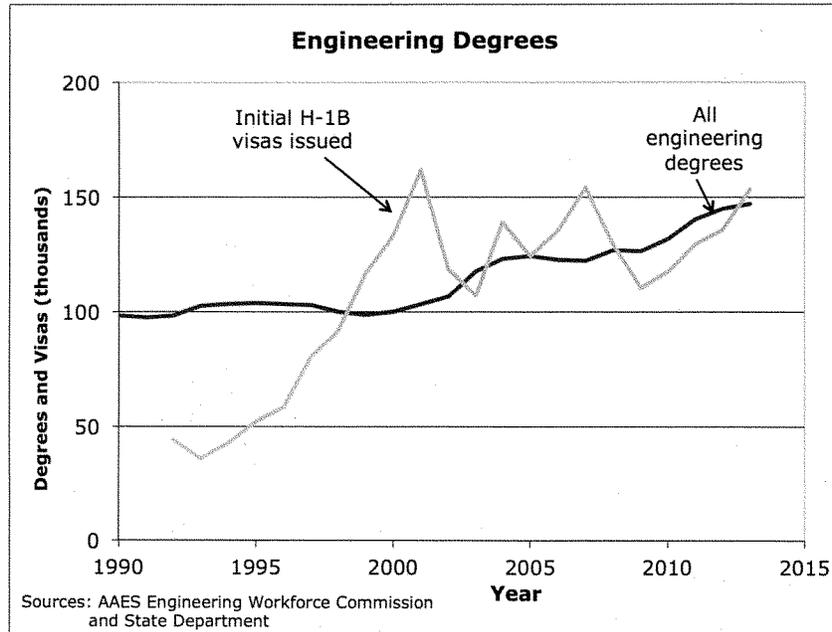


Figure 1. The number of new H-1B visas issued is about the same as total graduations from US engineering programs.

This puts recent graduates in direct competition with H-1B temporary workers for entry level and early career positions.

Young STEM workers have very little bargaining power in their labor markets. Foreign temporary H-1B workers are bound to their employers by conditions of the visa. H-1B workers are not likely to seek a raise or negotiate for better assignments.

For example, H-1B co-workers in our work areas are members of our union. We called one H-1B worker to offer assistance in seeking an upgrade to a higher classification, with a raise in pay typically \$8,000 or more. We explained that the employer encourages employees to make this step, and the worker's supervisor would act as his champion through this process. The H-1B worker declined, saying he worried about rocking the boat. Layoffs might be coming. He did not want to risk being laid off and losing his opportunity for citizenship.

US workers compete directly with about 800,000 H-1B temporary workers who are in the workforce. Thousands more foreign workers are in the Optional Practical Training Program (OPT), and additional thousands of spouses will be eligible to work. Both spouses and those in OPT have fewer worker protections and less bargaining power in the labor market than H-1B workers.

A US worker or even an entire department of US workers can be asked to train their H-1B replacements as a condition for receiving severance, as recently happened at Southern California Edison. This makes every worker feel more precarious, more at risk, and more contingent.

STEM careers have become less secure. Employers invest less in lifelong learning, and rely more on contractors and temporary workers. Mid-career employees are more likely to be laid off, then replaced by younger workers with less experience. Laid off mid-career workers are often unable to find comparable work, particularly those in computing occupations.

These labor market conditions send negative market signals to students and families considering STEM careers.

We should revisit the public purpose of the H-1B program. It has been in effect since the early 90's – for an entire generation of workers. In every year of its existence, employers have complained of labor shortage. The H-1B program has grown steadily to the point where its size distorts the labor market for STEM workers. If the H-1B program were meant to resolve a perceived labor shortage, it has failed categorically, and should be reformed significantly.

Educating our children is a fundamental public responsibility, with costs shared by government, families and students. We have a strong public consensus for encouraging students to pursue STEM education, learn critical thinking and problem-solving skills, and find productive careers in STEM occupations.

Our immigration and education policies should be coherent - working toward the same goal - rather than working at cross-purposes as they do now.

SPEEA strongly supports collecting better workforce occupation data, so labor economists can track the transition from education to employment more thoroughly. These data would support informed policy-making based on experience in the labor market, rather than relying as we do now, on assertions and anecdotes.



**Statement for the Record on the Senate Judiciary Committee Hearing:
Immigration Reforms Needed to Protect Skilled American Workers**

Thomas Tierney, Ph.D.

IEEE-USA

(The Institute of Electrical & Electronics Engineers – United States of America)

March 17, 2015

Chairman Grassley and Ranking Minority Leader Leahy,

I am a physicist in Los Alamos, New Mexico and the Vice President for Government Relations at IEEE-USA. I commend the Senate Judiciary Committee for this hearing on what is necessary to protect skilled workers from abuse of our non-immigrant H-1B visa system– but I'd like to add a point about how protecting America's technological edge will also protect our national security.

Our enemies know that attacking America's military – our ships and aircraft -- is not the most effective way to damage our country. That is why 9/11 was primarily a terrorist attack on soft targets: unarmed airliners, office buildings.

America has other large, soft targets, like our electronic infrastructure, which we generally think of as the Internet. But underlying it all is our electrical grid, which is simply an enormous distributed yet interdependent network of electricity providers, users and power lines. It functions primarily through the flow of information – supply here to meet demand there, everything flowing where it's needed.

Outsourcing critical information technology functions of our electrical grid so that it depends on cheap, temporary foreign labor to function, whether those workers are in the United States or, even worse, located in other countries, is an extremely bad idea.

Yet that is what our shortsighted electrical utilities want to do, from the Atlantic to the Pacific. It is unlikely that much of the savings will be passed on to ratepayers.

But it does risk serious disruption or worse in our vital electrical grid. It wouldn't have to be malevolence or terrorism, although that is clearly an increased vulnerability. Temporary foreign workers simply do not have the stake in America that legal permanent residents – new Americans – and US citizens do. They undercut the wages and working conditions of US workers – that is why employers seek them out, after all. The H-1B program is not about skills, and not about new Americans: those are arguments for green cards.

We should welcome new Americans, especially those with the advanced skills we need to create and keep the best jobs of the 21st century in this country. But we must not try to pretend that the H-1B program is the way to do that.

For over 200 years, Americans have made a deal with immigrants. The deal is this: immigrants get to become Americans, not just in name, but as full co-partners in our nation, equal in every way to those who came before them. In return, Americans expected those immigrants to give their primary loyalty to their new country. Over the decades and centuries this has proven to be one of the greatest deals of all time – for both parties.

It is important for Congress to understand that we have not made this deal with H-1B workers. America has not offered them anything. H-1B workers are not immigrants and most will never become immigrants. They are, in fact, foreign nationals whose primary loyalty ought to be to their home country, just as we expect Americans living abroad to be loyal to America.

This is not to say that H-1B workers are dishonest. They are no more or less honest than any other workers. But when we start giving H-1B workers responsibility over critical parts of our infrastructure, we are courting trouble.

Especially since doing so is completely unnecessary. Utilities like Southern California Edison, which laid-off 500 American workers last month to replace them with H-1b workers, should be required to employ Americans when Americans are available. When they are not, companies should be given green cards with which they can make skilled workers Americans.

Let's not hollow out America's critical national security infrastructure with H-1B contractors, with outsourcers and exploited indentured servants. Let's not clog the green card system with "temporary" workers who want green cards: there was no backlog for employment-based green cards, particularly from India, before the last time Congress doubled H-1Bs instead of delivering more green cards faster.

Our high skilled immigration system will protect not only American workers, but America itself when it is based on green cards, not guest worker visas.



Statement of the U.S. Chamber of Commerce

**ON: "IMMIGRATION REFORMS NEEDED TO PROTECT
SKILLED AMERICAN WORKERS"**

TO: SENATE COMMITTEE ON THE JUDICIARY

DATE: MARCH 17, 2015

1615 H Street NW | Washington, DC | 20062

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

Statement for the Hearing Record
before United States Senate Committee on the Judiciary
Tuesday, March 17, 2015

Hearing on
Immigration Reforms Needed to Protect Skilled American Workers

Statement of
U.S. Chamber of Commerce

On September 7, 2001, U.S. Chamber of Commerce President and CEO Tom Donohue testified before the Senate Immigration Subcommittee regarding immigration reform. The expectation of many in the Senate hearing room was that immigration legislation would soon be voted on in the Senate and quickly moved to the House. That timetable of course changed after September 11th, and properly so, while the Congress created a new Department of Homeland Security and the nation grappled with pressing national security concerns. But over the ensuing years the Congress has continued to be unable to pass commonsense immigration reform. There are many reasons and much finger-pointing.

Underpinning this gridlock are misconceptions about the role of immigrants in the United States. The Chamber addressed many of these misconceptions in its earlier publication [Immigration Myths and Facts](#), to provide a summary of the macroeconomic studies that rebut the contention that immigrants are a burden on federal, state, and local tax rolls and take away jobs from native-born Americans. In our more recent publication [Open for Business: Spurring Local Economic Growth by Welcoming Immigrants](#), we summarize some of the latest experiences of state and local governments, working with partners in the private sector, in recruiting immigrants into their communities to revitalize their economies. This revitalization in many communities recognizes both that immigrants create businesses as entrepreneurs and fill gaps in the local labor force, the former phenomenon addressed in an earlier study we completed, [Immigrant Entrepreneurs: Creating Jobs and Strengthening the Economy](#).

Most Americans and most members of Congress, of all political stripes, appreciate that immigration is a key aspect of our nation's heritage.¹ As a board member of an immigration restrictionist group has said, "Of course I admire and respect immigrants, as we all should because every American is either an immigrant or the descendent of ancestors who came here from somewhere else."² While there is near universal devotion to our nation's immigrant heritage, that is not enough to drive a problem-solving commitment on immigration; instead it just means that all are passionate about the subject.

¹ Illustrating the point, from the conservative view: "Every one of us—whether it's us, or our parents, or our grandparents or our great-grandparents—we all are the children of those who fled oppression seeking freedom. I think that's the most fundamental DNA of what it means to be an American." (Sen. Ted Cruz – R-TX); "Immigration is a vital component that helped found our country and continues to make it great." (Sen. Mike Lee – R-UT); "America's freedoms and opportunities draw people from every nation." (Rep. Raúl Labrador – R-ID). And by way of example from the liberal perspective: "The United States is a proud nation of immigrants." (Rep. Luis Gutiérrez – D-IL); "The rich tapestry of our country came together through immigration." (Sen. Elizabeth Warren – D-MA).

² Professor Jan Ting, member of the board of the Center for Immigration Studies, an immigration restrictionist organization, testifying before the Senate's Immigration Subcommittee, December 10, 2014.

But it is time to move past passion, to problem solving. Members of Congress and the president are elected to work together to solve our country's problems – thus, not finalizing meaningful, passable pieces of legislation that can be signed into law to address the dysfunction of our immigration system should not be an option. This goal does not dictate any set legislative path. In the last Congress, the Senate passed a comprehensive bill but that is only one possible approach. Other routes can be taken, while being fully responsive to the reality that many aspects of reform are interlocking.

The Chamber supports immigration because immigrants have always been a key to the success of our economy. Thus, we will continue to champion commonsense immigration reform, of which skilled immigration – the topic of this hearing – is one key component.

Although our statement is lengthy, its major points can be summarized as follows:

- First, there is a clear need to develop and educate more U.S. workers in the STEM (Science, Technology, Engineering, Math hereafter referred to as “STEM”) fields. The Chamber and its members are undertaking many activities to meet this goal.
- Second, however, there currently are insufficient numbers of qualified and available American workers in the STEM fields which undermines the ability of U.S. employers to compete, and therefore remain viable in the global marketplace. In fact, studies demonstrate the beneficial impact of H-1B workers and skilled immigration (and immigration generally). Those who argue otherwise distort the data, confuse the types of STEM occupations for which employers are recruiting under the H-1B visa program, and fail to understand that unemployment rates vary widely depending on occupation and region, irrespective of the national unemployment rate.
- Third, Congress has enacted labor market protections for the H-1B category, while balancing the need to ensure the government does not interfere in the hiring decisions of private employers. Perhaps the predicates for worker safeguards need to be updated, but a wholesale disruption is not needed in the balance between these safeguards and ensuring skilled jobs get filled here at home. And, enforcement regarding H-1B compliance has already been ramped up – under this Administration there are now over 15,000 site visits annually to H-1B employers to confirm compliance.
- Fourth, it cannot be seriously argued that our existing caps under the H-1B program or for permanent high skilled immigration are realistic in today's economy. These caps were set in 1990, and our economy has grown since then.
- Fifth, the bipartisan Immigration Innovation Act should be actively considered, because it would address the concerns of the business community while stepping up education and training in STEM.

THE ECONOMIC IMPERATIVE: A MODERNIZED HIGH-SKILLED IMMIGRATION SYSTEM COUPLED WITH REFORMS TO DEVELOP AND PROTECT AMERICAN HIGH-SKILLED WORKERS

There has been sharp disagreement about the extent to which our nation can assimilate new skilled immigrants and the extent to which Congress should revise U.S. immigration laws to both reflect the realities of the global economy and protect our domestic workforce.

A. EDUCATION AND TRAINING

Of course, first and foremost the United States must expand domestic sources of talent, and the Chamber, and our member companies and associations, is strongly committed to dedicating resources toward improving education and specifically promoting education and training for skilled positions in the science, technology, engineering, and math fields in the United States.³ These are the very fields driving innovation and much job growth, and the fields where employers sponsor foreign-born high-skilled workers to be hired in the United States.

Many member companies and associations of the Chamber have their own education support programs in order to address skill gaps on their own.⁴ For example, one large diversified manufacturing company has taken the following steps: While the company typically recruits only graduate students for its professional jobs, it also has created a program where it seeks out highly qualified candidates with undergraduate degrees who the company puts through a two-year corporate professional management program for recruited university graduates in the fields of engineering, manufacturing, finance, and other business specializations to expose participants to rotational assignments throughout the organization to develop both technical and management skills and create a diverse, knowledgeable global talent pool. Additionally, the company is a major contributor to U.S. colleges and universities and academic research projects.

The U.S. Chamber of Commerce Foundation has its own educational arm, the Center for Education and Workforce, which promotes the rigorous educational standards and effective job training systems needed to preserve the strength of America's greatest economic resource, its workforce. The Chamber Foundation's Center for Education and Workforce has released reports addressing what kind of business involvement it would take to truly make a difference in K-12 schooling. For example, *Partnership is a Two-Way Street: What it Takes for Business to Help Drive School Reform*,⁵ *Business Education Partnership*,⁶ and *Breaking Through: A Guide for Business Engagement in Education*⁷ explain and analyze how business can function as a critical customer, a partner, or a policy advocate in primary and secondary education. Using examples in Texas, Tennessee, Massachusetts, and Oklahoma, among others, these reports show how the Center fosters businesses adopting important roles to step up to make a big difference in K-12 schooling. In each case, business leaders talked seriously and bluntly with educators. They recruited respected experts to lead the reform efforts. They built sustainable structures, brought top-level executives to

³ For example, the U.S. Chamber Foundation's Center for Education and Workforce does extensive work on getting more businesses, universities, and students to interface and coordinate on this important subject, and has developed checklists on the subject for employers, educational institutions, and potential workers receiving education and training http://www.uschamberfoundation.org/sites/default/files/media-uploads/checklists_FINAL.pdf.

⁴ See the Compete America coalition website for a summary of what some of the nation's largest high tech companies are doing to support education and workforce development <http://www.competeamerica.org/workforce/american-workforce>.

⁵ <http://bit.ly/1As10jG> (June 2011).

⁶ <http://www.uschamberfoundation.org/sites/default/files/publication/edu/Business%20Education%20Partnership.pdf> (April 2013).

⁷ <http://www.uschamberfoundation.org/publication/breaking-through-guide-business-engagement-education> (January 2014).

the table, and stayed engaged. They tackled tough questions, understood that some steps would be political and unpopular, and took the heat when there was pushback. The Foundation's Center also looks specifically at STEM education, such as its report on *The Case for Being Bold: A New Agenda for Business in Improving STEM Education*,⁸ and often finds that STEM education issues arise as the focus of interest and conversation among participants in the Center's talent management activities.

Among its other ongoing work, the Chamber Foundation's Center for Education and Workforce conducts regional training for local and state chamber and business leaders, to create a leadership network in as many states as possible focused on the role business can play in improving education and workforce training. Also, the Center for Education and Workforce conducts an ongoing assessment of K-12 education in all 50 states and the District of Columbia through its annual *Leaders and Laggards*⁹ report.

Recently, in response to a growing skills gap that threatens the ability of companies to grow and compete in today's economy, the Center for Education and Workforce released its *Managing the Talent Pipeline: A New Approach to Closing the Skills Gap*¹⁰ report. Through this latest initiative, the Center is engaging employers and their partners across the country in developing a demand-driven approach to employer-led education and workforce partnerships. By extending lessons learned from innovations in supply chain management, this initiative calls for employers to play a new and expanded leadership role as "end-customers" of their education and workforce partnerships. From there, employers can proactively organize and manage talent supply chain partnerships with measures and incentives tied to performance. Benefits for employers include a reduced skills gap and a better prepared workforce as well as higher returns on education and workforce investments for policymakers. Over the next year, the Center will organize a network of leading practitioners and change agents that seek to accelerate talent supply chain practices in their communities all across America.

Another focus of the Center for Education and Workforce is higher education, recognizing that the U.S. higher education system has long been one of the country's crown jewels and that with the right leadership and policy choices, it will remain so. For example, in *Transforming Higher Education through Greater Innovation and Smarter Regulation*,¹¹ the Center looks at how academic programs and institutions must be transformed to serve the changing educational needs of a knowledge economy. Increasing international competition, a decline in government funding, changing demographics, and an increasingly mobile population are just some of the factors threatening the status quo. If innovation in higher education is discouraged through funding that fails to reward quality and outcomes, or simply thwarted by complacency within traditional institutions, then the U.S. might lose its edge to faster moving international competitors.

B. ENSURING JOBS IN THE UNITED STATES REQUIRING HIGH-SKILLED PROFESSIONALS ARE FILLED

At the heart of skilled immigration reform should be recognition that without sufficient numbers of highly skilled, highly educated workers to fill the technology-related jobs growing in the U.S. economy, the U.S. risks its leadership as the global leader in innovation. Globalization of

⁸ <http://www.uschamberfoundation.org/publication/STEM> (April 2011).

⁹ <http://www.uschamberfoundation.org/sites/default/files/Leaders%20%26%20Laggards%202014.pdf> (September 2014).

¹⁰ <http://www.uschamberfoundation.org/sites/default/files/Managing%20the%20Talent%20Pipeline.pdf> (November 2014).

¹¹ <http://bit.ly/18PYad9> (May 2011).

the workforce, especially in the science and engineering fields, is expanding, not contracting. The multi-disciplinary dynamics of geography, education and mobility mean that much high-skilled work can be located and performed beyond the borders of where the employer's business is based, due not only to increasing numbers of individuals with science and engineering skills in developing nations but also because of increasing international mobility. The result is a trend where talented people cross borders in search of interesting and lucrative work, employers recruit and move people internationally, and businesses invest and capitalize research and development beyond national borders.¹² In other words, as reiterated by the Federal Reserve Bank of Dallas, since U.S. companies can often employ their workers here or overseas "the U.S. has a lot to gain from rewriting U.S. immigration policy to focus more on high-skilled and employment-based immigration."¹³

H-1B Program for High-Skilled Professionals

Science, Technology, Engineering, and Math (STEM) jobs are some of the occupations predicted by the Bureau of Labor Statistics to continue to be fastest growing through 2022.¹⁴ STEM jobs include a broad-range of positions requiring quantitative skills, but in the immigration policy context STEM jobs refers particularly to jobs requiring a Bachelor's degree or above primarily, although not exclusively, in a physical, life, or computer science field or in engineering. It is not surprising, therefore, that STEM professionals holding positions requiring a Bachelors or higher are the beneficiaries of the majority of H-1B visa petitions.¹⁵

Naturally, there is wide agreement that the first focus should be on developing a pipeline of American workers qualified to fill such STEM jobs.¹⁶ But leaving jobs unfilled doesn't help businesses trying to create and retain jobs in the U.S. economy. Labor market experts interpret a job opening of longer than a month as an indicator that qualified candidates are hard to find. Such an interpretation of vacancy survey data is empirically grounded in both historical and many contemporary labor market surveys from private firms and state governments. In fact, in 2013 researchers found that "H-1B occupations in STEM fields are particularly difficult to fill: 43 percent of new vacancies for STEM occupations with H-1B requests go unfilled after a month."¹⁷

Increasing H-1B numbers to ensure these types of jobs are filled itself helps American workers since wages for American workers increase at least 7 percent for every 1 percent increase

¹² National Science Foundation, "Science and Engineering Indicators 2014" <http://www.nsf.gov/statistics/seind14/index.cfm#chapter-3/c3h.htm>. The majority, 84.1 percent, of research and development (R&D) by U.S. multi-national companies is still performed in the U.S., with most non-U.S. R&D by these companies being performed in Europe although there is an increasing share by these companies' Asian affiliates (Chapter 4 conclusions on R&D). But countries with the most significant growth in the last 20 years in researchers – defined by NSF as workers engaged in the creation and development of new knowledge, products, and processes – have been China and South Korea (Chapter 3 conclusions on Global Workforce).

¹³ Pia Orrenius and Madeline Zavodny, "From Brawn to Brains: How Immigration Works for America," 2010 Annual Report (Federal Reserve Bank of Dallas, 2010) at p.14.

¹⁴ See, the employment projections for 2012-2022 by the Bureau of Labor Statistics www.bls.gov/news.release/pdf/ocopro.pdf.

¹⁵ The H-1B visa category is reserved for jobs requiring a Bachelor's degree or above and is primarily used to hire foreign STEM professionals. See USCIS Characteristics of H-1B Specialty Occupation Workers for FY2012 (latest report available) [http://www.uscis.gov/sites/default/files/USCIS Resources/Reports%20and%20Studies/H-1B/h1b-fy-12-characteristics.pdf](http://www.uscis.gov/sites/default/files/USCIS%20Resources/Reports%20and%20Studies/H-1B/h1b-fy-12-characteristics.pdf), Tables 8A, 8B, 9A, and 9B.

¹⁶ See, e.g., Title IV of the Immigration Innovation Act (S. 153).

¹⁷ Jonathan T. Rothwell and Neil G. Ruiz "H-1B Visas and the STEM Shortage: A Research Brief" (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2262872, May 2013) at p.3. When Brookings researchers looked at job openings data for the 100 largest metropolitan areas, they concluded that H-1B STEM job vacancies are harder-to-fill than other job openings as evidenced by the fact that STEM occupations with H-1B requests had 7 percent more vacancies left unfilled for more than one month than other jobs (43 percent of H-1B STEM jobs as compared to 36 percent of other job openings were unfilled for more than one month).

in H-1B numbers.¹⁸ Economists also estimate that if the H-1B program was expanded, employment will increase by 227,000 jobs in the first year after such expansion and will continue to expand with a net increase of 1.3 million jobs over the first 30 years after H-1B program expansion. Using the same modeling, the Gross Domestic Product is estimated to expand by \$22 billion if the H-1B program is expanded, with more than \$158 billion expansion over 30 years. Employment and gross state product is estimated to increase for all states and in each of the first 30 years as a result of H-1B program expansion.¹⁹

Nevertheless, some advocates argue for the position that there is no shortfall of native-born Americans for open positions in the natural sciences, engineering, and computer science and thus no need for foreign-born high-skilled H-1B workers.²⁰ Three critical facts, among several others, belie this approach.

First, this argument ignores the fact that over 35 percent of positions classified as STEM jobs in the United States economy are those that require less than a Bachelor's degree (none of which can be filled by H-1B workers who must have a university degree and work in a job requiring such a degree), while immigration reform efforts target occupations filled by individuals with a Bachelor's and above, including the approximately 20 percent of STEM jobs that require a master's degree or higher.²¹

Second, this approach misreads much of the data on unemployment for "STEM" degree holders and "STEM" degree holders finding employment in non-STEM jobs. STEM is a term often used to include the social sciences – and, yes, there are very different employment outcomes for Americans with degrees in anthropology as compared to engineering. And, individuals who use their quantitative skills and STEM degree to work in business or finance or as a physician are counted as STEM grads working outside of STEM – even though they are employed in high paying jobs.²²

Third, employment growth in positions requiring graduate level STEM training is exploding, far out-pacing the American STEM training pipeline of native-born students. During the period between the 2002-2003 academic year and the 2011-2012 academic year, 23 percent of graduate degrees earned by foreign students were in the core STEM fields of life and physical sciences, engineering, computer science, and math compared to 2 percent of graduate degrees earned by U.S.

¹⁸ Giovanni Peri, Kevin Shih, and Chad Sparber, "Foreign STEM Workers and Native Wages and Employment in U.S. Cities" (National Bureau of Economic Research (NBER) Working Paper No. 20093, May 2014).

¹⁹ Frederick R. Treyz, Corey Stottlemeyer, and Rod Motamedi, "Key Components of Immigration Reform: An Analysis of the Economic Effects" (Regional Economic Models, Inc., July 2013 <http://www.remi.com/immigration-report>).

²⁰ For example, see the comments of Jesse Jackson and the AFL-CIO. "We need to get rid of H-1B workers. There are Americans who can do that work." Jesse Jackson speaking in Silicon Valley in December 2014 <http://fortune.com/2014/12/20/jesse-jackson-talks-diversity-in-silicon-valley/>. "The continued employer demand for more [H-1B] guest worker visas says more about what is wrong with our economy than about the most urgent problems with our immigration system." AFL-CIO Legislative Alert letter sent to Senators about high skilled immigration reform (in opposition to the Immigration Innovation Act, S. 153), January 20, 2015.

²¹ For breakdown of STEM jobs by educational requirement (below Bachelors, Bachelors, Masters and above) look to data from BLS and the American Community Survey from the Census Bureau, e.g., David Neumark, Hans P. Johnson, Marisol Cuellar Mejia, "Future Skill Shortages in the U.S. Economy?" (National Bureau of Economic Research (NBER) Working Paper No. 17213, July 2011), Tables 4 and 5.

²² See, e.g., National Science Foundation annual report, "Science and Engineering Indicators 2014" <http://www.nsf.gov/statistics/scind14/index.cfm/chapter-3/c3h.htm> (Figures on Occupational Classifications, Figure 3-11), showing that STEM occupations include social sciences, physical sciences, life sciences (except medicine), engineering, and computer and mathematical sciences, and do not include individuals with training in those fields working in other occupations. See also, Senate Joint Economic Committee (April 2012) http://www.jec.senate.gov/public/index.cfm?a=Files.Serve&File_id=6aaa7e1f-9586-47bc-82e7-326f47658320 ("We do not include medical sciences in our definition of STEM.")

citizens and green card holders.²³ Currently, the number of American students pursuing STEM fields is growing at less than one percent per year, and by 2018 there will be more than 230,000 advanced degree STEM jobs that will not be filled.²⁴

Green Card²⁵ Policy for Skilled Immigrants

Among other deficiencies, current green card law leads to unfairly different per-country outcomes and also fails to prioritize foreign-born students trained in the United States if those students are offered jobs for which there are insufficient numbers of qualified and available U.S. workers.

A professional worker born in India with a U.S. master's degree must wait nearly a decade for a green card to be available after a sponsoring employer documents that U.S. workers are not available in sufficient numbers.²⁶ During the many-year wait, this worker cannot be promoted until green card processing is completed. This cumbersome system is not fair to the immigrants, or the employers who want to treat these individuals as the high potential contributors they were hired to be. When there is an enormous disparity in demand among sending countries, maintaining an equal per-country share can result in much longer waits for certain nationalities, and thus when the U.S. selects immigrants based on their skill sets Congress should reconsider whether any per-country caps apply.

Foreign students completing degrees here in the United States are especially likely to be successful Lawful Permanent Residents (LPRs) in that they speak English and have already developed familiarity with our culture, business and research practices, and entrepreneurial spirit through their training and research at America's universities. Creating green card categories targeted to allow these individuals to remain should be a priority, if they have a job offer for which there are insufficient numbers of Americans to fill or can show funding for their own business. Analysis in a longitudinal study of new immigrants that tracked immigrants for several years²⁷ strongly reinforced the finding that where highly skilled immigrants received their education—in the United States versus abroad—made a big difference in how they fared in the U.S. labor market, with U.S. educated immigrants being employed and employed in their field at much higher rates than other immigrants.²⁸

L-1 Program for Intracompany Transfers

Some visa programs do not carry numerical caps. For over forty years, for example, a cornerstone of business operations for those that do business both in the United States and abroad

²³ "Science, Technology, Engineering, and Mathematics Education: Assessing the Relationship between Education and the Workforce" (GAO-14-374, General Accountability Office, May 2014) at p. 11. <http://www.gao.gov/assets/670/663079.pdf>.

²⁴ See, e.g., McKinsey Global Institute, "An Economy that Works: Job Creation and America's Future," (June 2011) http://www.mckinsey.com/Insights/MGI/Research/Labor_Markets/An_economy_that_works_for_U.S._job_creation.

²⁵ Lawful Permanent Resident (LPR) status is evidenced by a Permanent Resident card, commonly called a "green card."

²⁶ The Visa Bulletin identifies visa availability for green cards and is issued monthly by the Department of State's Immigrant Visa Control and Reporting Division <http://travel.state.gov/content/visas/english/law-and-policy/bulletin.html> (see Second Preference Employment-Based availability for the example of a native of India with a U.S. graduate degree).

²⁷ A "New Immigrant Study" was conducted in 2003 by RAND, Princeton, Yale and New York University tracking extensive information for newly minted LPRs <http://nis.princeton.edu/project.html> resulting in over 40 publications, technical reports, and working papers, most of which are linked on the NIS-Princeton website <http://nis.princeton.edu/papers.html>.

²⁸ See, "Uneven Progress: The Employment Pathways of Skilled Immigrants in the United States" (Migration Policy Institute, October 2008), at Figure 3 (p.27) and Figure 4 (p.29) <http://www.migrationpolicy.org/research/uneven-progress-employment-pathways-skilled-immigrants-united-states>.

has been the ability to transfer managers, executives, and specialized knowledge personnel across national boundaries in order to harmonize operations, expand markets, service clients, and share knowledge. Such transfers are for skilled personnel only, and are accomplished through L-1A visas for managers and executives and L-1B visas for specialized knowledge employees. Specialized knowledge may be best summarized as an advanced expertise about something a company values in its ability to do business. L-1B visas for specialized knowledge staff are an important tool in allowing companies to manage their workforce and intracompany talent pool without regard to borders.

Controversy has sometimes surrounded the use of the L-1 program and especially the L-1B category, but appropriate use of the L-1B classification by careful and responsible employers plays a direct role in supporting job creation and job retention in the United States, as well as expanding advanced manufacturing, increasing exports, and encouraging foreign direct investment.

No intracompany transfer visa should be approved without eligibility under the controlling statute and regulations. Likewise, when visas for key staff already employed within an organization are inexplicably delayed or denied, it appears that agency resources are being spent inappropriately. Such delays or denials do not enhance compliance or enforcement and do nothing except disrupt carefully-laid business plans and create significant costs to the company and the American economy. The L-1 visa program should not be dismantled or restricted. A strong economy that can continue to grow, innovate, and create jobs is in our nation's interest, and in the 21st century economy, intracompany transfers are an inherent part of promoting job growth and innovation here in the United States.

C. PROTECTING THE INTEGRITY OF THE SKILLED IMMIGRATION SYSTEM

Congress has embedded safeguards into U.S. immigration law to protect U.S. workers in a variety of ways when it comes to both temporary worker programs and the grant of Lawful Permanent Resident (LPR) status.²⁹ The Chamber has vocally supported reforms in the past that ensure American workers are not being displaced, that wages paid to foreign-born workers are the greater of actual internal wages paid to an employer's similar American workers or prevailing wages in the area of employment for similar workers, and that proper recruitment practices are in place. What the U.S. Chamber will not support are broad-brush changes in the name of "reform" that make the skilled immigration system impossible to use by employers engaging in regular and ongoing on-campus recruitment at American universities and competitive recruitment of American workers.

When Congress created in 1990 the Labor Condition Application, the idea was to impose, for the first time, an obligation on H-1B employers to attest to wages and working conditions for H-1B professionals, in a public record subject to scrutiny. Prior to 1990, H-1B employers had no labor market protection obligations. In 1990, Congress was looking to balance this new mandate and obligation for employers with clarity that the government would not be interfering in an employer's hiring decisions. Over the last 25 years, a variety of changes have been made to recalibrate how much government oversight, by either the agencies or Congress, is necessary to ensure employers do in fact pay appropriate wages, give notice of its H-1B filings, and offer the same terms and conditions to H-1B workers as Americans. For example, in 1998 Congress passed legislation requiring separate regulation of dependent employers. The prerequisite for the new

²⁹ With regard to high-skilled immigrants see, e.g., §§212(a)(5), 212(n), 212(p) of the Immigration and Nationality Act.

duties was that the sponsored H-1B worker not be a highly compensated or highly educated individual compared to the H-1B pool generally – at the time Congress determined this would be individuals earning more than \$60,000 annually or in possession of a master’s degree or above. While the predicates to the intended obligations established by this legislation might need to be modernized, the agencies have already promulgated detailed provisions that, if applicable, lay out firm parameters for recruitment, layoff, and secondary displacement responsibilities.

In 2008, as various Senators have repeatedly pointed out, U.S. Citizenship and Immigration Services (USCIS) issued a compliance assessment report regarding the H-1B category.³⁰ This 2008 assessment from USCIS, following on the heels of the 2007 initial introduction of “Durbin-Grassley” anti-fraud legislation,³¹ identifies various indicators of possible H-1B abuse, and has been acted upon. In fact, many of the concerns identified by Senators Durbin and Grassley have been the subject of changed agency procedures and agency enforcement since the legislation was initially presented for consideration in the Senate. USCIS’s Fraud Detection and National Security (FDNS) directorate, for example, has increased from under 10 staff to over 900 auditors that now conducts over 15,000 annual site visits on H-1B employers to address the issues that certain Senators set up as the problem with the H-1B program. In each and every H-1B site visit, FDNS asks about LCA (Labor Condition Application) compliance. The site visits are conducted randomly, without notice, and thus no employer can prepare. This administrative review occurs for all large users of the H-1B program, both dependent and non-dependent.

D. OUTDATED AND FIXED NUMERICAL LIMITATIONS

In an embarrassing display of dysfunction, instead of fostering the job creation and retention that occurs by ensuring high-skilled jobs filled, the H-1B caps ensure that U.S. employers large and small are unable to fill their needs with the appropriate individuals. In the first 5 business days of April 2014 all of the 85,000 H-1B visa numbers for foreign professional hires for the government’s entire fiscal year 2015 were assigned,³² 6 months before the start of the fiscal year. This meant that as of April 2014 no other business could hire a single new H-1B professional until October 1, 2015 (when the government’s next fiscal year begins). The same dynamic occurred in April 2013, as well as April 2008 and April 2009, and is expected to happen in April 2015. In every year since 1997 the H-1B cap has been met prior to the end of the fiscal year – except the three-year period where the cap was set at 195,000, when H-1B numbers utilized were 163,600, 79,100, and 78,000, showing that employers filed based on market needs and that the 85,000 figure is generally too low except when the market is slumping.³³ And, in nine of the years since 1997, the cap was met prior to the beginning of the fiscal year, including four years when the cap was met in the first week that petitions could be filed.³⁴

³⁰ U.S. Citizenship and Immigration Services, “H-1B Benefit Fraud & Compliance Assessment” <http://bit.ly/18PQ703> (September 2008).

³¹ S. 1035 in the 110th Congress. First introduced in 2007 this legislation has been reintroduced in every Congress since then.

³² See USCIS, April 7, 2014 <http://www.uscis.gov/news/uscis-reaches-fy-2015-h-1b-cap>. There is a 65,000 cap in general plus 20,000 for individuals who have earned a U.S. graduate degree.

³³ Demand for the H-1B program is not driven by the cap, instead demand for this program is based on employer new hiring needs and inability to find qualified American workers in sufficient numbers. See, e.g., Jill H. Wilson, “Immigration Facts: Temporary Foreign Workers” (Brookings Institution, June 2013) <http://www.brookings.edu/research/reports/2013/06/18-temporary-workers-wilson>, and Stuart Anderson, “H-1B Visas Essential to Attracting and Retaining Talent in America” (National Foundation for American Policy, May 2013) <http://www.nfap.com/pdf/NFAP%20Policy%20Brief%2011-1B%20Visas%20May%202013.pdf>, at p. 6-7.

³⁴ See, summary assembled of H-1B cap dates FY92-FY15 based on USCIS data http://immigration.uschamber.com/uploads/sites/400/U.S.CC_USCIS_H1B_petition_data_and_cap_dates_FY92_FY15.pdf.

It should be emphasized that caps on green cards and temporary worker programs with caps have fixed numerical limits set in 1990. These 1990 numerical limits fail to recognize that demand for immigrant staff fluctuates with the condition of the U.S. economy—rising when times are good and falling when they are bad. The caps, meanwhile, are held at a constant. This should change.

Furthermore, U.S. temporary worker program numerical limits fail to recognize that there is global competition across much of the economy. American companies are in a global competition for human talent and human capital. Take heavy equipment manufacturing, for example. In the 1980s, leading American manufacturers of heavy equipment had little or no Chinese competition but today have competition from dozens of Chinese manufacturers producing equipment specifically for the Asian markets. Significantly, while such U.S. manufacturers typically pursue the great majority of their research and development (R&D) efforts in the United States, most of heavy equipment sales globally are now outside the United States. Without access to sufficient numbers of H-1B visas, these American companies cannot complement their hires of American engineers with the foreign-born engineers selected, most commonly through regular on-campus recruiting activities at American universities. This story plays out across the U.S. economy, in businesses large and small and across sectors and industries looking to hire highly skilled professionals.

Perhaps most critically, the unchanging limits on temporary worker programs provide no space to be responsive to changing needs in various sectors. Whatever the unemployment rate for the United States as a whole at any given time, the demand for specific kinds of workers in various sectors of the economy and in various locales can be high.³⁵ For instance, today there are remarkably low unemployment rates for native-born American citizens in certain jobs that do not require a college education,³⁶ such as Social and Human Service Assistants (2.9 percent unemployment), Phlebotomists (1.4 percent unemployment), Valve Repairers (3.0% unemployment), and Industrial Machinery Mechanics (2.8% unemployment), as well as some very low unemployment rates for certain highly skilled professionals like Electrical and Electronic Engineers (1.2% unemployment), Financial Analysts (2.2% unemployment), Computer Programmers (2.4% unemployment), Software Developers (2.9% unemployment), and Accountants (3.0% unemployment).³⁷ These data compare to national unemployment of 5.6% as of January 2015.³⁸ Under these circumstances, the U.S. economy would benefit from channels of legal immigration that are flexible enough to respond to employer demand to immediately hire individuals in particular occupations at a particular time and place. Temporary worker programs, if constructed correctly, provide just the sort of flexibility that is required in many industries.³⁹

Immigrants are one solution to insufficient numbers of qualified and available American workers that will inevitably exist at any given time in different sectors of an economy as diverse as

³⁵ Darrell M. West, "The Paradox of Worker Shortages at a Time of High National Unemployment" (Brookings Institution, April 2013) http://www.brookings.edu/~media/research/files/papers/2013/04/10%20worker%20shortage%20immigration%20west/west_paradox%20of%20worker%20shortages.pdf#page=2 at p.2.

³⁶ Such positions that do not require a college education would not be eligible for H-1B classification, and in fact would have no existing visa category through which legal sponsorship in a temporary worker program would be possible absent a showing that the position is seasonal or a one-time, peakload, or intermittent need (which would then qualify for the position for the H-2B program).

³⁷ Compiled as of January 12, 2015 from Current Population Survey, a project of the Bureau of Labor Statistics and the Census Bureau. The data set is pooled monthly CPS samples for 12 months --December 2013 through November 2014. Observations were weighted using the BLS composite monthly weight variable. Monthly weights were divided by 12, so totals are estimates of average monthly employment over the year.

³⁸ *Id.*

³⁹ Alexander Nowrasteh, "How to Make Guestworker Visas Work" (Cato Institute, 2013) http://object.cato.org/sites/cato.org/files/pubs/pdf/pa719_1.pdf.

our country's. However, less than 7 percent⁴⁰ of the approximately 1 million new lawful permanent residents (green card holders) we welcome each year are workers, selected based on their skill sets and jobs they will perform in the United States.⁴¹

Meanwhile, fixed numerical limits established in 1990 have resulted in green card backlogs exponentially expanding in the last decade for employment-based immigrants. In June 2004, immigrant visas for advanced degree professionals born in India or China, for example, were current and available, once all prerequisite labor market tests and immigrant petitioning processing requirements were completed for employment-based immigrants (the employer must first obtain approval of a Labor Certification request and I-140 Immigrant Visa Petition), whereas in January 2015 at the start of this Congress there was a ten year wait for advanced degree professionals born in India and a wait of just under five years for advanced degree professionals that are China natives.⁴²

Relative to our population, we admit lawful permanent residents annually totaling about .0034 of our population (one-third of one percent). Meanwhile, Canada annually admits new legal immigrants today equating to about .0075 of its total population (three-quarters of one percent), while Australia's annual legal immigration pool is about .0056 (a little more than one-half of one percent) of its population. There is no need to match the experiences of Australia and Canada, that have very different needs and much smaller economies than the United States, but a very small, incremental, and guided increase in skilled immigration should be considered. In Canada, a country with 10% of our population, twice the number of skilled employment-related immigrants gains entry each year to reside permanently there as compared to the United States.

Continuing to single-mindedly hold out a specific, never fluctuating number of immigrants, set in 1990, as the centerpiece of our immigration policy will not position our country to gain access to the human capital our nation needs in a changing and global economy. Since 1990, the U.S. economy has expanded. Gross Domestic Product for the country is 2.8 times larger today than in 1990 (\$16.768 trillion as compared to \$5.979 trillion). The population of the United States is 1.3 times as large (316 million people now as compared to 250 million in 1990). Similarly, the Gross Domestic Product per capita has expanded 2.2 times since 1990 (GDP per person is now \$53,259 each year as compared to \$23,934 annually in 1990). Total immigrant numbers do not need to double to satisfy economic needs, but they can expand slightly, in a targeted way.

⁴⁰ Often the total number of "employment-based" immigrants (lawful permanent residents or LPRs), selected on skills, and economic-based immigrants, like investors and special immigrants, are combined and identified as totaling about 15-16 percent of the annual green cards issued, but this includes spouses and minor children (as well as investors, special immigrant juveniles, former NATO employees and various others in the special immigrant category). Each year only about 6 percent to 7 percent of new LPRs are actual workers, coming to the U.S. because of their skills and the jobs they will perform in the United States.

⁴¹ See DHS Office of Immigration Statistics, Statistical Yearbook, Table 7 <http://www.dhs.gov/yearbook-immigration-statistics-2013-lawful-permanent-residents>. Based on the Table 7 data, a breakdown was assembled by the U.S. Chamber showing how many workers, dependents, and the other categories of individuals were issued green cards in the most recent fiscal year for which data is available – highlighting the paltry allocation for workers needed by employers in the economy http://immigration.uschamber.com/uploads/sites/400/U.S.CC_DHS_LPR_FY13.pdf.

⁴² For a table explaining the changing landscape regarding employment-based (worker) green card backlogs, go to http://immigration.uschamber.com/uploads/sites/400/U.S.CC_DOS_historical_green_card_cut_off_dates.pdf. This table compares green card availability for Second Preference advanced degree holders and Third Preference professionals in 2004 (when policy discussions were underway that led to the crafting of immigration bills for the 105th Congress), 2007 (when the Senate vote for cloture failed on consideration of a broad immigration reform bill in the 107th), 2013 (when bipartisan development of what became S. 744 was underway in the 113th), and in 2015 (the beginning of the 114th Congress).

IMMIGRATION INNOVATION ACT (I-SQUARED)

One piece of legislation that attempts to update and modernize U.S. immigration law provisions on both numerical limits for skilled immigration and the funding of education and training efforts appropriately concentrated on skilled employment is the Immigration Innovation Act (S. 153). This legislation would directly address the needs of the business community to create and retain jobs in the United States for Americans. By having the ability to fill some positions with highly skilled foreign talent in those circumstances where sufficient numbers of qualified U.S. workers are not available, Americans are not harmed and instead are helped. This bill would also make a significant investment in expanding the pipeline of American workers by imposing new fees on employers who sponsor foreign workers for H-1B status or for employer-sponsored permanent resident status to be used in educating and training U.S. workers in targeted programs for the high-skilled occupations being filled by foreign-born workers.

The Chamber strongly supports the Immigration Innovation Act because it would tackle several critical issues that must be addressed as part of immigration reform. Perhaps most importantly, this bill would provide more H-1B and green card numbers for high skilled professionals – but it would also undertake to resolve a number of related questions. For example, this legislation would deal with existing backlogs for employment-based immigrants, ensure that foreign professionals have worker mobility, and establish for the first time that the H-1B visa cap increases and decreases determined by market-based factors.

This legislation would transform the high skilled immigration system in our country, and we thank the co-sponsors, Senators Ayotte, Blumenthal, Coons, Flake, Gardner, Hatch, Heller, Klobuchar, McCain, McCaskill and Rubio, for working together on a bipartisan basis to address these vital issues.

CONCLUSION

As this Committee is undoubtedly aware, the Chamber has long advocated for workable visa programs for skilled immigrants, and other key features of an effective immigration system, each of which play a role in the vitality of our country.

As conservative, pro-growth economists have said “immigration reform is a great economic policy opportunity.”⁴³ The Chamber stands ready to work with members of Congress on both sides of the aisle who likewise believe that moving forward with responsible reforms to our immigration system is an opportunity to improve our economy,⁴⁴ and join those answering “yes” when asked “is immigration good for America?”⁴⁵

Thank you for permitting the Chamber to share its views.

⁴³ Former CBO Director Douglas Holtz-Eakin, quoted in *The Atlantic* (March 6, 2015) <http://theatlantic.com/1weefm8>.

⁴⁴ There are also many reasons to believe that immigration reform, properly structured, will improve the national security of our country.

⁴⁵ See, e.g., compendium of articles in “Is Immigration Good for America?” (Cato Institute report, February 2012) <http://www.cato.org/cato-journal/winter-2012>.



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EDWIN D. HILL
International President

SAM J. CHILIA
International
Secretary-Treasurer

March 23, 2015

The Honorable
U.S. Senate
U.S. Senate Office Buildings
Washington, DC 20515

Dear Senator:

On behalf of the approximately 750,000 active members and retirees of the International Brotherhood of Electrical Workers (IBEW), I urge you to oppose and not cosponsor the Immigration Innovation Act of 2015 (S. 153), also known as "I-Squared." Passage of this bill will drive-down the wages of high-skilled American and legal immigrant workers by increasing the annual H-1B cap from its current 65,000 up to 300,000 using a "market-based" escalator.¹ Such a flood of foreign workers will decrease employment opportunities for today's university students who are studying for a degree in the science, technical, engineering, or mathematics (STEM) disciplines.

Contrary to myths advanced by the purveyors of the H-1B program, there is no shortage of STEM workers in the United States. Evidence of a shortage would be found in rising wages. However, from 2000 to 2011, the average hourly wage for workers possessing at least a Bachelor's degree in computer and math occupations rose less than half a percent a year.² The high-tech industry is no stranger to claims of labor shortages. The industry claimed there was a labor shortage in the 1980's and 90's, but these claims were based on the monitoring of job openings rather than true economic indicators. This methodology was criticized by the U.S. Government Accountability Office, but business continues to misrepresent claims of a labor shortage.³

The H-1B program was envisioned as way for companies to fill temporary shortages of high skilled workers when they could not find enough Americans to perform the work. Unfortunately, it has devolved into a scheme to replace American workers and facilitate the offshoring of high wage jobs. For instance:

Southern California Edison (SCE) is outsourcing the work of 500 American information technology (IT) employees, 400 of whom are being laid-off and 100 of whom are leaving voluntarily. Approximately 70 percent of the IT work will shift overseas; about 20 percent of the jobs that remain in the U.S. will be done by foreigners holding H-1B visas.⁴ Adding insult to injury, many of the Americans slated to be laid-off are being forced to train their H-1B replacements. If American IT employees refuse or publicly protest they lose their severance packages or worse, as many were compelled to sign non-disparagement and confidentiality agreements. These requirements are like forcing a condemned prisoner to dig his own grave before execution.



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March 23, 2015
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Clearly, the H-1B program is broken, and in a big way. SCE is not alone. Many other so-called "American" companies have replaced their existing IT staffs with H-1B workers. The last thing Congress should consider, as the nation continues to recover from the worst recession since the Great Depression, is expanding the H-1B program. I urge you to oppose and not cosponsor the Immigration Innovation Act (S. 153). Our government should not reward the bad behavior of rogue employers.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Edwin D. Hill".

Edwin D. Hill
International President

EDH:lgd

¹ America's Unions. *Citizenship Now. Reforming High-Skilled Visa Programs.*

² Almedia. Paul. Letter to Senator Amy Klobuchar, Feb. 2, 2013.

³ *Id.*

⁴ "End H-1B visa program's abuse." *The Los Angeles Times* [Los Angeles, CA] Feb. 17, 2015.



March 17, 2015

The Honorable Charles Grassley
Chairman
Senate Judiciary Committee
Washington DC 20515

The Honorable Patrick Leahy
Ranking Member
Senate Judiciary Committee
Washington DC 20515

Re: For the hearing record, concerning the March 17, 2015 hearing on:
Immigration Reform Needed to Protect Skilled American Workers

Dear Chairman Grassley and Ranking Member Leahy:

On behalf of the Partnership for a New American Economy, we write to you today to make the case for a genuine re-examination of America's immigration system, particularly in regard to highly skilled foreign workers. The Partnership applauds the Committee for holding this hearing on a topic with direct impact to our nation's economy and requests that this letter be included in the hearing record.

The Partnership for a New American Economy (PNAE) is a growing coalition of more than 500 Republican, Democratic, and Independent political and business leaders who are united in making the economic case for rationalizing and streamlining the nation's immigration system.

We believe that a significant part of America's future economic prosperity lies in the country's ability to welcome enough foreign skilled labor to meet the needs of the American economy, particularly in industries related to science, technology, engineering, and mathematics (STEM). Not only have these industries been among the fastest growing over the last two decades, but they are also projected to grow and create jobs faster than any other sector of the economy. We need to improve the U.S. STEM pipeline, and we believe that recruiting foreign talent should be a complement to that.

The potential job-creating effects of H-1B visas are enormous. Studies overwhelmingly show that H-1B workers create American jobs, with estimates ranging from 1.8 to 7.5 American jobs created for each H-1B. Without meaningful legislation, like Senator Hatch's ***Immigration Innovation Act of 2015***, to widen the pathway for much-needed skilled and innovative manpower, the United States faces the loss of its competitive edge to countries that have already recognized the vital role these workers play in a technologically advanced economy.

The evidence is robust and clear: high-skilled visas create jobs for American workers, facilitate the growth of American businesses, and help America maintain its status as the global leader in innovation. The following studies illustrate the many ways that high-skilled visas benefit America and American workers.

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March 17, 2015

H-1B Visas Create Jobs for American Workers:

- The Partnership for a New American Economy and the American Enterprise Institute found that states with greater numbers of H-1B workers had higher rates of employment among U.S. natives. Specifically, the data shows that adding 100 H-1B workers results in an additional 183 jobs among U.S. natives in the state where the H-1B workers are hired.¹
- A 2014 study published in the *Journal of Labor Economics* examined the effects on the hiring behavior of firms who recently hired young (under-40) skilled immigrant workers. This study found that the hiring of one young skilled immigrant worker was associated with the hiring of an additional 3.5 workers over the following 14 years.²
- For smaller businesses, studies have found the job-creating effects of hiring H-1B workers to be even more pronounced: The National Foundation for American Policy found that for each H-1B worker hired, firms with fewer than 5,000 employees added an additional 7.5 additional workers.³

The Current H-1B Lottery System Results in Lost Jobs and Lower Wages for American Workers:

- A 2014 PNAE study by labor economist Giovanni Peri found that the U.S. tech industry would have grown substantially faster in the years immediately after the recession if not for the large number of visas that did not make it through the 2007 and 2008 H-1B visa lotteries. Specifically, the denial of 178,000 H-1B visas for computer science-related workers in the 2007 and 2008 H-1B visa lotteries cost up to 231,224 tech jobs for U.S.-born workers in the two years that followed.⁴
- The same study found that the wages of U.S.-born workers were also hurt by these denied H-1B applications. From 2005 to 2010, wages for college-educated, U.S.-born workers with computer-related jobs could have grown 3.2 percent more than they did were it not for the application denials in the H-1B lotteries.⁵

H-1B Workers are Complementing, Not Competing With U.S. Workers:

- A joint report by the U.S. Chamber of Commerce, the Informational Technology Industry Council, and PNAE found that foreign-born workers in STEM fields are complementing – not displacing – their American counterparts, and furthermore, the American economy will face a shortage of more than 230,000 STEM workers within the next three years.⁶
- This is evidenced by the fact that STEM fields with high percentages of foreign-born workers have low unemployment rates for U.S. workers, often significantly lower than the overall unemployment rate for U.S. workers. For example, in 2012, although nearly 25 percent of medical scientists were foreign-born, U.S.-born medical scientists had an

¹ Zavodny, Madeline (2011).² Kerr et al. (2014). "Skilled Immigration and the Employment Structures of U.S. Firms," *Journal of Labor Economics*, September 2014.³ National Foundation for American Policy (2008), "NFAP Policy Brief: H-1B Visas and Job Creation."⁴ Peri, Giovanni et al. (2014), "Closing Economic Windows: How H-1B Denials Cost U.S.-Born Tech Workers Jobs and Wages During the Great Recession." Partnership for a New American Economy. Accessible at: http://www.renewoureconomy.org/wp-content/uploads/2014/06/pnae_h1b.pdf⁵ Ibid.⁶ The Partnership for a New American Economy, Informational Technology Industry Council, and the U.S. Chamber of Commerce, (2012). "Help Wanted: The Role of Foreign Workers in the Innovation Economy." Accessible at: <http://www.renewoureconomy.org/wp-content/uploads/2013/07/stem-report.pdf>

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unemployment rate of just 3.4 percent, five percentage points lower than the non-STEM unemployment rate of 8.4 percent.⁷

- The same study found that unemployment across all STEM occupations is just 4.3 percent, and the unemployment rate is actually lower than that average in 10 of the 11 STEM occupations with the largest proportion of foreign-born workers.⁸
- A report by the Congressional Research Service also found that specific STEM occupations have even lower unemployment rates: Workers in mathematics-related fields had an unemployment rate of 1.3 percent in 2012, while life-science workers had an unemployment rate of 2.9 percent.⁹
- A 2010 briefing from the Federal Reserve Bank of San Francisco found no evidence that immigrants crowd out U.S.-born workers in either the short or long run. In fact, long-run positive effects on wages were seen for all U.S.-born workers: From 1990 to 2007, immigration to the United States was associated with a 6.6 percent to 9.9 percent increase in real income per worker.¹⁰
- Even during the worst years of the Great Recession, there were more STEM jobs open than unemployed U.S. STEM workers. A report by Change the Equation, a nonpartisan education advocacy organization, found that between 2009 and 2011, 1.91 STEM jobs were posted online for every one unemployed STEM worker in the United States.¹¹

Given this evidence, we at the Partnership welcome a genuine, vigorous debate about the reform of the skilled immigrant visa process and about the immigration system as a whole. We look forward to working with you toward smart, sensible immigration reform that is good for our economy and good for our country.

Sincerely,



John Feinblatt
Chairman

⁷ The Partnership for a New American Economy, Informational Technology Industry Council, and the U.S. Chamber of Commerce. (2012). "Help Wanted: The Role of Foreign Workers in the Innovation Economy." Accessible at: <http://www.renewoureconomy.org/wp-content/uploads/2013/07/stem-report.pdf>

⁸ The Partnership for a New American Economy et al. (2012).

⁹ Sargent, John F. (2014) "The U.S. Science and Engineering Workforce: Recent, Current, and Projected Employment, Wages and Unemployment" Congressional Research Service, February 19, 2014. Available at: <http://fas.org/sgp/crs/mise/R43061.pdf>

¹⁰ Peri, Giovanni (2010) "The Effect of Immigrants on U.S. Employment and Productivity," Economic Letter 2010-26, Federal Reserve Bank of San Francisco. Accessible at: <http://www.frbsf.org/economic-research/publications/economic-letter/2010/august/effect-immigrants-us-employment-productivity/>

¹¹ "STEM Help Wanted: Demand for STEM Weathers the Storm" (May 2012)

http://changetheequation.org/sites/default/files/CTEq_VitalSigns_Supply%20%2B2%29.pdf