

Hearing Transcript

Senate Judiciary Subcommittee on Immigration and the National Interest Hearing on H-2B Temporary Foreign Worker Program

Wednesday, June 8, 2016

SESSIONS:

Thank you all for being here. So, I want everyone present to be able to watch the hearing without obstruction. If people stand up and block the view of those behind them or speak out of turn it's not fair or considerate to others and officers will remove those individuals from the room.

Before we begin with opening statements I want to explain how we're going to proceed today. We have one panel of witnesses. I will make an opening statement. Normally, we would have an opening statement from the ranking member but due to scheduling conflicts it's my understanding that we can proceed at this time without an opening statement from them today.

After a brief introduction each witness will have five minutes for an opening statement following their statements we will begin the first round of questions in which each senator will have five minutes. After the first round if any senator wishes to continue with questions we will have a second round of questions. And so with that, I'll go to my opening statement.

Today's hearing is a continuation of a series of hearings that this subcommittee is held over the last few months about the effects of our current immigration programs on working Americans.

As many of you will remember we held a hearing earlier this year that highlighted the damage done to the wages and job opportunities of Americans and the highly skilled segment of our economy. We also held a hearing early -- earlier this year that established that our current high levels of immigration both legal and illegal are having a negative impact on wages and job opportunities for American workers as a whole.

In fact, I think very few dispute that the current large flow of labor into the country is suppressing American wages. Today we're here to examine the effects of the H-2B nonimmigrant visa program on the wages and job opportunities of American workers in the so-called, lesser skilled segment of the labor market, a visa program that issues 66,000 new work visas every year to temporary low skilled foreign labor.

These are the jobs that some people say Americans are not willing to do, construction, seafood processing, landscaping, truck driving jobs across the hospitality industry and others. It's important to note however that the H-2B program does not provide jobs for the agricultural section that's in the agricultural program and is not included in what we're talking about today.

Not only have we been told that Americans are not willing to do jobs at H-2B workers often fill but also that employee -- employers simply cannot find anyone to do them. Some say they just cannot find anyone is willing to drive a truck or build houses or commercial buildings, wait tables push a lawnmower, work in the landscaping or clean hotels.

And yet as we will hear today with few exceptions this is not the case not only are there willing Americans but they are not in short supply. According to data from the U.S. Department of Labor the total labor force participation rate in the United States last month was approx -- was approximately 62.6 percent. For those with a high school diploma only or the equivalent it was approximately 57 percent only for those with less than a high school diploma it was approximately 44 percent.

So this is a historic low. The workforce participation rate is a disaster for Americans. We have more and more people in the labor force and fewer and fewer people working. These statistics make clear that there is simply not a shortage of American workers rather there is a shortage of Americans with jobs to work. Too few have jobs but the impact of the H-2B program is not just on the available job opportunities for American workers it also affects the wages of American workers who actually managed to find a job in these fields.

Yet despite all the evidence the 66,000 foreign H-2B workers available under the law are not enough for special interests who demand more. They have an insatiable demand it seems for foreign labor which is easy to exploit, much easier to replace than American workers and often pays substantially less wages. They do not feel and maybe strictly speaking they have no loyalty to the other American workers.

Their loyalty I suppose is their bottom line and their stockholders but somebody needs to be concerned about America -- what's happening to our people, our country, our economy, how many people on welfare, how many people need to be working instead of being on welfare, how many people's retirement is being compromised because their out of work for extended periods of time and wouldn't they like to have a pay raise every now and then instead of having flat wages for the last 20 years.

But instead of having an open and honest debate about increasing the actual number of visas (ph) -- visas available under the cap, these special interests have found it easier to allow what amounts to an accounting trick, the so-called returning worker exemption which simply does not count against the cap. Any worker who counted against the cap in the last three fiscal years.

Onto the returning worker exemption as a matter of simple math if different workers were present in each of these three years up to 198,000 additional workers could come to the United States under the H-2B program as an addition to the 66,000 who would be allowed to come under the current cap. In reality that number will not be so high but it will be significant.

Now some of these workers have been present in multiple years others have completely absconded from their jobs and others never return home and would not be eligible to participate in future years. So perhaps a number will not reach a 198,000 and indeed it won't but historical evidence

shows that if this provision went into effect for a full fiscal year we would likely see at least a doubling of the number of H-2B workers in the country probably more.

Indeed in fiscal year 2007 the last year the returning worker provision was in effect the Department of State issued a total of a 129,000 visas to H-2B workers -- twice what the current cap calls for. The fiscal -- in fiscal year 2006 it was 122,000. Notably this returning worker provision found its way into the Omnibus Appropriation Bill back in December.

The Congressional Budget Office did an analysis as Speaker Rise (ph) request and predicted that the inclusion of this provision would result in only about 8,000 additional workers in fiscal year - - this fiscal year. Due to the fact that it took place late in the year in December among other things.

But as of May 12 U.S. citizenship and immigration services has already received enough petitions for the H-2B program to fill all of the 66,000 positions under the cap this fiscal year. And as of May 13th U.S. citizenship and immigration service has already approved 11,000 returning worker petitions with another 1,000 pending approval.

Therefore as of last month a CBO analysis was already roughly 50 percent off his prediction of the effect of the returning worker provision this year. In fact, by the end of the year when we know more will be approved it will probably double the program -- double the predictions but if the special interest managed to get it included in any appropriation bill that becomes the law for next fiscal year will see a further increase.

Moreover as a simple fact that the annual cap of 66,000 visas does not represent the total number of H-2B workers present in the United States at any given time. According to an analysis published by the U.S. Department of Homeland Security in the Federal Register last year due to extensions granted to H-2B workers already here there are approximately 115,000 H-2B workers employed at any given time now on -- in the United States.

And that was before the returning worker exemption took effect. That number will undoubtedly become higher if the returning worker provision were to become permanent. In addition to the fact that we simply do not need more H-2B workers what we need is to get American unemployed into these jobs. The program has many other flaws, many of these workers come to the United States and of Scott and add to the ranks of the current illegal population.

According to data that my subcommittee recently obtained official data at least 15,854 of these individuals have absconded since fiscal year 2009. We do not know how many of these in individuals actually go home. In other words, these people who absconded from the employer at the worksite. And what we don't know if we do not know how many people actually left the country when their employment ended.

Indeed we have no record of that because we have no entry-exit visa in this country. And so, there are many problems with the H-2B program but the simple fact of the matter is that the H-2B program like so many of our immigration programs is not serving the national interest, the people's interest, our need -- our focus needs to be on getting Americans back to work, not on seeing how many foreign workers we can bring to the United States.

So with that I would conclude my remarks. I'm pleased that Chairman Grassley has joined U.S. and -- chairman, it's always a pleasure to have you with U.S. and for your leadership on these issues and we'll give you any time you have now to make a statement.

GRASSLEY:

Oh, you'd give me time and appreciate it. But I'm going to put my statement on records so you can get to the witnesses.

SESSIONS:

All right.

GRASSLEY:

Sometimes our statements take too much time.

SESSIONS:

OK. Yes. Our (ph) Democratic colleagues I think they may be coming later but at this point we don't have them. Let's see. And I'll start with our witnesses and we'll introduce you one at a time.

Mr. Cunningham, Mr. Michael Cunningham, is the Executive Director and Secretary-Treasurer of the Texas Building and Construction Trades Council. He followed his father's footsteps into the heat and frost insulators and asbestos workers local number 113 in Corpus Christi, Texas back in 1972 as an apprentice insulator.

He has over four decades of experience and has served in a variety of positions. In addition to his other responsibilities he has worked on issues related to guest worker visas since 2006 fighting to -- in fraud and abuses in that multiple yet and in that guest worker program.

Mr. Cunningham, we'd be glad to hear from you.

But before I do let me ask all of you to all rise and take this oath and raise your right hand.

Will you please stand and do you affirm that the testimony you're about to give before this committee would be the truth, the whole truth and nothing but the truth. So help you God.

Please have a seat.

Mr. Cunningham, you can start off.

CUNNINGHAM:

Thank you, Mr. Chairman. Thank you for scheduling this hearing today on the H-2B guest worker visa program and your opening remarks. I agree with the majority of everything you said in your statement.

I was so excited when I was contacted to ask me to consider being a witness at this hearing and I sit here today. As much time over the last eight years trying to bring attention on the fraud and abuse in the H-2B visa program committed by employer to seek foreign work guest workers.

And other -- so many industry that used H-2B visa workers but my focus on the abuse of fraud being committed by companies and their registered agents in the construction industry. I found that the public isn't really aware of how the H-2B visa programs work and how to tell that the company is really trying to bring in foreign workers.

I found that the public isn't really aware, I'm sorry, since 2007 I bought together workshops for unions, building trades, council and some are international to make them aware of this process. My mission is to teach everyone how to detect and react to these job postings for the related work in their geographical jurisdiction and provide them all the tools they need to help them research the H-2B job postings.

The most important task is to check out the company and determine if they really are a construction company or a labor broker. You'll be surprised what we have found over the years. Many of our unions are reacting to this H-2B postings especially union construction trades that perform welding by applying for the job.

We'll see many companies that were advertising with the intent of bringing H-2B workers in but never files their final H-2B application after union members applied for the job. They didn't hire any union members but I guess they were able to find enough American workers to do the work.

I want to focus on my time and go a little deeper on the welding occupations as it relates to construction projects. This is where we found the biggest problem and wage disparities with the office of foreign labor certification issues H-2B wage determinations. The majority of H-2B application we see come as applying for welders are used on a production job family as welders, cutter solders and bracers (ph).

On a construction project -- this creates a problem by classifying all the trades that perform welding other production welder with one prevailing wage being issued. The biggest scopes of welding on construction projects have performed by pipefitters, iron workers and boilermakers.

Each one of these graphs have their own SOC code and job descriptions and own that family for construction instruction that includes performing welding. Each of these union trades at well have registered apprenticeship program that teach welding for the specialized type of welding incidental to their trade in the construction industry.

I haven't come across any registered production company, apprenticeship program to teach welding for construction projects especially job shops. We have a large number of major industrial construction projects along the Gulf Coast in Texas that have H-2B workers working today that

have been certified as production welders at a lower rate of pay. There really is no limit on what type of welding these production welders can perform when they are lumped into one category.

If these companies were signed in H-2B prevailing wages in the proper construction trades then the wages would have been greater for American workers and guest workers in most cases and the wage will be included in the right datasets when keeping up to the current wage rates on an annual basis.

Here are some pay example for major construction projects right down in Harris County. The production welders \$20.78 an hour, a pipefitter that does welding is \$23.05 an hour and iron workers \$20.37 an hour, and a boiler maker is \$26.28 an hour. Two of those crafts would require higher wages.

One of the companies in Harris county just last week was partially certified for construction pipefitters at \$23.05 an hour and the production welder for \$20.78. They originally applied for 400 pipefitters and 200 production welders. These production welders have been classified -- should have been classified as pipefitter welders with a rate pay of \$23.05, not \$20.78.

This company is working on the same construction project for the same general contractor for both occupations is not uncommon. We just had another posted yesterday for another hundred production workers in Harris County area. These H-2B certification would be an issue for the use of production welders working on construction projects are just wrong.

These H-2B certification should have to use the proper construction occupation when applying for the welders. I want to make you aware of the welding certification companies are required to have. On all major construction projects that require welding each county must have a welding program and ask a welding staff that require welders to take and past well tests specific to the type of welding being performed.

This is also true with the marine industry where there is a large number of H2 production welders. These companies are really job shops and they don't have ASME stamps. They are just supplying labor to general contractors and other construction companies that has as ASME welding stamp. That means they are supplying the production welder for their clients basically being a payroll administrator.

There are specific requirements for job shops under the H-2B program. These shop aren't just welding as they supply -- apply for many other construction occupations. We don't think these companies can meet the litmus test of the temporary need under 8CFR214 that it was applied to them and they just checked the job counter (ph) box on the 9142 application form.

Due to all of our concerns, we continue to discover the -- in the construction industry with these job shops, I'm greatly disturbed that returning workers have been here under H-2B for the last three years are not counted against the annual 66,000 cap or making it worse for American workers.

I'm even more concerned that there is an effort to expand the cap further. The program is broken in many areas and needs major overhaul to protect American workers job opportunities in local

community white standards. Expanding the cap is only going to make things worse if the system isn't fix and more enforcement is provided.

I do hope this information not provided helpful when you look to making changes of the program and my last statement is, I'm a skilled construction worker like millions of other skilled construction workers and it's almost an insult to us to be considered a low skilled occupation and we think that we are definitely should not be in the H- 2B classifications of -- for guest worker programs.

Thank you. And I'm available for any questions.

SESSIONS:

Pipe welder -- or boilermaker is classified as an H- 2B?

CUNNINGHAM:

We haven't seen any of those but if you look in the owner (ph) occupational category where they decide -- describe the skill levels and the ownet (ph) -- bridge all those trades if you scroll down and you'll find that they also do welding. And these are overlapping occupations that's been used to just create a one-stop shop welder.

SESSION:

All right. Ms. Stewart -- Meredith Stewart, she served as a staff attorney for the Southern Poverty Law Center, immigrant justice project since 2011. She has represented a hundreds of H-2B guest workers and J1 student guest workers in hospitality, seafood, landscaping and forest industries lawsuits. Agency complaints and other advocacy regarding violations of federal law and regulations.

She is a graduate of Smith College and the University of Memphis Cecil C. Humphreys School of Law. Give my best to Mr. Morris Dees next time you see him. I'm an admirer of his and we'll be glad to hear your statement.

STEWART:

Thank you, Chairman Sessions, Ranking Member Schumer and other distinguished members of the subcommittee for the opportunity to speak about the H-2B guest worker program.

The Southern Poverty Law Center has represented tens of thousands of H2A and H-2B guest workers and lawsuits related to their pay and working conditions. We also published a report in 2013 about H2 guest worker programs in the United States titled, Close to Slavery, which is a combination of interviews with thousands of guest workers and legal experts.

As the report reflects, H-2B guest workers are systematically exploited because the very structure of the program places them at the mercy of a single employer for their job and continued presence in United States. That is guest workers cannot change jobs if they are mistreated.

As results, the program is rife with abuse. The abuses typically start long before workers have arrived in the United States when they are often forced to pay enormous sums of money to recruiters to obtain the job. Because most workers who seek H2 jobs are indigent, they typically have to borrow money to pay the fees. In addition to incurring debt, guest workers are often misled by recruiters as to the terms of their employment.

Last year, H-2B workers from India won a \$14 million jury verdict against their employer Signal International and its labor recruiters for human trafficking scheme that lured the workers into paying thousands in recruitment fees in exchange for the false promise of green cards.

Once H-2B workers arrive in the United States, they labor in a system akin to indentured servitude because they are permitted to work only for the employer that's tied to their visa. They can't change jobs. If the employment situation is abusive, the workers only lawful recourse is to return to his or her country. But because most workers arrive in debt, they are effectively forced to remain and work for employers even when they are subjected to shameful abuse.

And these abuses abound. For example guest workers routinely receive less pay than the law requires. These are not federal violations of the law but the wholesale cheating of workers. Already this year needs H-2B workers represented by the SPLC have won nearly \$2.5 million in back wages and other damages.

Other workplace abuses are also common. For example, employers often bring in more guest workers than they need. This means workers can wait weeks or even months in the U.S. with no income before they are offered the hours they were promised. The 2015 H-2B regulations partially address this problem with the provision that guarantees H-2B workers a minimum of three fourths of the days of work they were promised.

But unfortunately the Department of Labor's enforcement of this regulation was defunded by a rider in the 2016 Appropriations Act. Fear of retaliation is another deeply rooted problem in guest worker programs and one that is wholly warranted because recruiters and employers hold such inordinate power over workers jobs and visa status. It is my experience that when guest workers stand up for their rights they are almost always subject to some form of retaliation.

The abuses suffered by H-2B workers have an impact beyond that experience by the guest workers they put profound downward pressure on the wages and working conditions of U.S. workers. Since 2004, SPLC has represented guest workers in obtaining settlements and judgments of nearly \$50 million.

There can be no doubt that the impact of such pervasive wage and hour violations is to depress wages in those industries. The H-2B programs also undercuts employer's incentive to hire U.S. workers or to make jobs more appealing to domestic workers by improving wages and working conditions.

A 2015 case filed by the SPLC against Mississippi landscaping company, Culpeper Enterprises illustrate this point. Culpeper was certified for H-2B workers in 2014 by promising the government it would pay them \$11.11 per hour and would first recruit U.S. workers at that same rate. But once the H-2B workers arrived, the company only pay the \$7.25 an hour, not \$11.

The company representative testified in a deposition their U.S. workers they hired didn't stick around. The U.S. workers who applied for and expected an 11 hour per hour -- \$11 per hour job cannot be expected to stay on when they learned their actual pay is almost \$4 dollars per hour less.

Culpeper's H-2B workers, on the other hand, whose legal status was tied to their employer did not have the ability to move on to another job.

Employers also have powerful financial reasons to prefer H-2B workers to U.S. workers. During the jury trial last year against Signal International, a financial expert testified that Signal potentially stood to save over \$22 million by virtue of its plan to fill nearly 500 welder jobs with H-2B workers for two to three years instead of hiring U.S. workers.

So U.S recruitment is a serious problem in this program. A rider in the 2016 Appropriations Act blocked the Department of Labor's ability to enforce critical protections for U.S. workers. In sum, we as Americans have a moral obligation to ensure the individuals who come to our country to work are treated with dignity.

Under the current structure of the H-2B program we are far from meeting that obligation. If this program experts permitted to continue all it should not be expanded but rather should be substantially reformed to address the vast disparity in power between guest workers and their employers.

Thank you and I welcome your questions.

SESSIONS:

Thank you very much. Next we have Mr. Daniel Costa. Director of Immigration Law in Policy Research at the Economic Policy Institute. And he is also a visiting scholar at the University of California, Merced. Costa is an attorney. And his current areas of research include a wide range of labor migration issues including the management of temporary foreign worker programs. He holds degrees from UC Berkeley Syracuse and Georgetown. Mr. Costa?

COSTA:

Thank you Chairman Sessions, Ranking Member Schumer and other distinguished member of the subcommittee for allowing me to testify at this hearing on the H-2B temporary foreign worker program.

I work for Economic Policy Institute, a think tank dedicated to advancing policies that ensure broadly shared prosperity and fairness in the labor market. I'm especially honored to be before the

subcommittee on immigration because I'm the son of two immigrants to the United States, each of whom came from a different country and who met in the great and I believe successful melting pot that is my home state of California.

My parents and I the direct beneficiaries of the American immigration system and the three of U.S. can ever repay the debt that we owe this country for the opportunities it is presented to us. While I believe that immigration greatly benefits the United States economically and culturally, the American immigration system needs many urgent reforms getting the immigration system right to maximize the benefits and reduce the cost is an important but complicated task that lawmakers face and they have no time to waste.

When it comes to the American temporary foreign worker programs these are the guest worker or nonimmigrant visa programs they are not functioning as they should. We should not be surprised by that fact. Work programs that tie workers to a single employer and that permit employers to legally underpay their bonded migrant workers are recipe for disaster.

Around the world I believe there's a growing global consensus among immigrants' rights activists and worker advocates the temporary foreign worker programs are in fact but the very nature indentured worker programs. In other words they're close to slavery. For these reasons I believe Congress should seriously consider whether temporary foreign worker programs should exist here at all.

The H-2B program is used mainly to hire workers and landscaping enforcer jobs, as well as amusement parks and hospitality fish processing, construction and restaurants. Is created to allow U.S. employers to hire migrant workers when American or otherwise authorized U.S. workers were unavailable, statutory language creating H-2B makes this clear.

In other words, the program is intended to help employers who are experiencing a labor shortage when employers can't find U.S. workers to hire for lesser skilled jobs.

Lobbying groups like the Essential Worker Immigration Coalition, the U.S. Chamber of Commerce and Immigration Works USA who claimed for years that there exists a dire shortage of willing qualified U.S. workers available to fill lesser and unskilled jobs. They lobby Congress to deregulate and vastly expand the number of H-2B workers and to create new similar temporary reform worker programs to fill low-wage jobs.

However despite such claims from industry groups other than employer anecdotes no credible independent data or labor market metrics have been presented to prove the existence of labor shortages in H-2B occupations. In fact, the available evidence suggests the opposite. Wages in the top H-2B occupations have been flat or declining for over a decade while unemployment rates in those occupations have been sky-high, many at or hovering around double digits. Those are not the indicators of national level labor shortages.

This doesn't mean that no labor shortages exist anywhere it's entirely possible that shortages exist in some states or localities but the persistently high national unemployment rates in H-2B occupations suggest that even the employer is experiencing local labor shortage might find

available U.S. workers if they recruited outside their city, region or state and if they offered more attractive wages and benefits including paying for transportation and housing.

If the H-2B programs is to continue to exist despite the lack of evidence that it's necessary at all, there should be strong and enforceable rules requiring employers to first recruit and hire any available U.S. workers and to pay their H-2B workers no less than the local average wage. While some advocates argue that employers are ready required to recruit U.S. workers and pay the prevailing wage, it is obvious to any rational and disinterested person that the rules requiring that employers recruit U.S. workers are inadequate and at present not even enforced at all.

When it comes to prevailing wage rules my own research plus findings published by the Labor Department as well as evidence revealed in federal litigation offered that employers find ways to pay less the local average wages. One of the ways employers have done this is through the use of private wage surveys which are far less credible and scientific way to set H-2B wage rates than BLS survey data.

That's why in 2014 while the H-2B wage rules required employers to pay the average wage in the top occupation of landscaping the average certified H-2B wages more than \$2.50 less an hour than the average wage for landscapers in the United States. The FY 2016 H-2B appropriations rather than expand the use of H-2B private wage surveys in which is being considered for 2017 is a way to ensure that wages stay low in H-2B occupations. The use of private wage surveys should be abolished altogether.

In conclusion, it is obvious to me that the H-2B programs harming migrant and American workers. I urge the subcommittee to see the problem for what it is though, it is not the case of migrants coming to the United States to quote, unquote "steal jobs from Americans." H-2B workers were recruited and hired by U.S. employers. Migrant workers also cannot be blamed for keeping wages low in H-2B jobs but the low and stagnant wages in H-2B occupations are not the result of benign abstract economic forces either.

There was like (ph) conscious policy choices by lawmakers influenced by powerful corporate lobby groups who have use their influence to water-down protections that migrants and American workers should enjoy as a matter of course. In other words, migrant guess workers are not the ones keeping wages down and conditions deplorable and lower skilled H-2B occupations it's their employers.

H-2B employers can and should be held to a higher standard but Congress has to decide require it of them. Thank you.

SESSIONS:

Thank you, Mr. Costa. Next, we have Dr. Stephen Bronars, Labor Economist and partner at Edgewood Economics.

He previously led the Department of Economics and served as Leroy G. Dunham Regents Professor of economics at the University of Texas and held faculty positions at Georgetown

University, University of Pennsylvania, University of California Santa Barbara, Yale University and Texas A&M University.

Dr. Bronars has written extensively on economics of labor and employment practices. He received his PhD in Economics 1983 from the University of Chicago.

Dr. Bronars, we're glad to have you.

BRONARS:

Thank you very much Chairman Sessions and thank you for inviting me to testify about the labor market impact of the H-2B visa program. Labor economists often disagree about the economic impact of immigration but there should be little disagreement about the impact of the H-2B visa program on U.S. workers.

This program allows nonagricultural U.S. employers to alleviate some seasonal labor shortages in some geographic areas by hiring foreign-born temporary workers. In my opinion the H-2B program benefits small businesses, workers and consumers in the U.S. and does not harm U.S. workers. Scaling back the H-2B program will have a negative effect on the revenue, the employment and wages in some seasonal industries.

In contrast, an increase in the number of H-2B visas would benefit workers consumers and small businesses in these seasonal industries. Foreign workers entering the U.S. for the H-2B program will not depress the wages of similar U.S. workers for several important reasons.

First employers authorize the higher H-2B workers was demonstrated they were unable to successfully hire domestic workers to fill these positions establishing that they are no directly competing U.S. workers.

The second, H-2B employers are required to pay prevailing wage or more. And the wage is set by the Department of Labor. The 2015 final rule sets a prevailing wage equal to the mean wage in the area of intended employment in order to protect domestic workers. This wages was always higher than the wages paid to majority workers in the same occupation and area. If employers are also able to find domestic workers to take the same kind of positions as a foreign born H-2B workers, the domestic workers must also be paid this prevailing wage.

Third, the H-2B program is small when compared to the size of the U.S. labor market, whether we compare the 66,000 visas being issued to the number of workers and the occupations are most likely be filled by these workers or whether we compare the size of the program to the number of adults in the labor force with a high school degree or less which is the skill group most likely to be directly affected by this program.

The inflow of H-2B workers is a fraction of 1 percent. So even without the other protections the relatively small inflow of H-2B workers would have a negligible impact on domestic wages. And H-2B workers are also here temporarily. 66,000 visas each year does not accumulate after a decade to becomes 660,000 because in each year 66,000 workers arrive and then leave later in the year.

The program is to simply too small and the guest workers are not here long enough to have a lasting and measurable impact on the wages and employment opportunities of U.S. workers overall. So, so far, I have told you about what the program does not do, now let me explain what I think the program can accomplish.

Each H-2B visa recipient does not displace a domestic worker but instead fills a position that otherwise would have remained vacant. When a seasonal job vacancy is filled by a foreign-born worker the business benefits because it's better able to increase output during peak seasons.

In addition the permanent U.S. employees who are complementary to seasonal workers benefit from the program because a reliable supply of temporary workers increases their job security in their income opportunities. For example in the many landscaping businesses want to increase the number of crews that they can send out in the spring and summer when more lawn work needs to be done and the work needs to be done more frequently. If these businesses are unable to find enough U.S. workers to send out more crews the H-2B program could be helpful.

In the permanent U.S. employees of the small business the managers and the supervisors, the mechanics who fix the equipment, the bookkeepers and even the full year groundskeeping workers will have more job security and higher expected income because the landscaping company will now be better able to out more crews and expand operations during the months of peak demand. And if we deny H-2B visas to these companies if they have these temporary labor needs it hurts not only the owners of the small business but the permanent employees of the small business and the customers of the company as well.

So in conclusion the H-2B visa program provides several layers of protections for U.S. workers. The prevailing wage in the labor market test make the annual cap of 66,000 visas per year somewhat redundant. The H-2B program can benefit U.S. workers by helping their employers adjust to seasonal fluctuations by hiring foreign temporary workers to help meet peak seasonal demand.

There are many cost employers are participating in H-2B program including transportation costs, the hiring of agents and attorneys in the uncertainty of whether the requested H-2B visas will be granted. These costs and the fact that the H-2B prevailing wage is almost always higher than the wage paid to a majority of similar workers means that H-2B workers are a labor supply of last resort for businesses facing shortages of temporary workers.

Because of the work protections in the program, H-2B visas will not adversely affect U.S. workers even if the annual cap on visas was doubled or tripled. Thank you.

SESSIONS:

Thank you. Now, next we have a -- Dr. Camarota. Almost lost your bio but I should know it. He is the Director of Research for the Center for Immigration Studies. He's done considerable research on all these issues. Testified before Congress perhaps more than any other nongovernment expert on the economic and fiscal impact of immigration.

Dr. Camarota's research has been featured on the front pages of the New York Times, the Washington Post, USA Today as well as numerous other media outlets and published in a variety of journals. He received his Master's degree in Political Science from the University of Pennsylvania and a Doctorate degree from the University of Virginia in Public Policy Analysis.

Dr. Camarota, thank you.

CAMAROTA:

Well, first, I'd like to thank the subcommittee and Senator Sessions for inviting me to testify. My testimony is not focused on the H-2B program per se. I will focus on the bigger issue of whether the program is even needed in the first place.

The entire justification for the program is that the supply of domestic workers willing and able to do seasonal low skilled work in nonagricultural jobs is inadequate. In my view this argument is ridiculous on its face. All of the data the government collects shows that there is an abundant supply of such workers in the United States. The only piece of evidence that workers are in short supply is testimonials from owners of business looking to import more foreign labor.

Now, we can debate what the research shows about the impact of immigration on the wages or the employment of native-born Americans but there is widespread agreement that wages have stagnated and declined for lower skilled and less educated Americans.

Now the vast majority of H-2B petitions are for low-wage jobs that require very little education and skills. Data from the first half of this year shows if we look at the petitions that two thirds of H-2B jobs said that they didn't require experience and 95 percent said there was no education requirements. Some of the top occupations are landscaper made, amusement park attendant, construction labor, cooks, movers, production helpers, waiters, waitresses, dishwashers.

These are not jobs requiring high skills that no American or even legal immigrant already here can fill. In fact the majority of workers in these occupations right now were born in the United States. The idea that these are jobs Americans don't do is absurd. Just to give you a couple quick examples data from 2004. The Census Bureau shows 95,000 -- 950,000 -- almost a million -- native-born Americans who are landscapers and they comprise three fourths of the occupation. 51 percent of maids are U.S. born in the United States and there are almost 900,000 of them.

Two thirds of construction laborers are US-born and there's over a million of them. There's 1.8 million cooks in the United States and they make up 70 percent of the cooks. The overwhelming majority of people doing the kinds of jobs done by H-2B visa workers are less educated native-born Americans. So how have the less educated done? The answer quite simply is terrible.

Real wages adjusted for inflation for workers with no more than a high school education are down 10 percent, 20 percent since the 1970s and even recent trends show no recovery. If there really was a labor shortage, wages should be rising rapidly as employers drive up wages and bid them up in

a desperate attempt to retrain -- to retain and attract new workers but it's the opposite that's generally happening.

Wages and H-2B occupations show no indication also of a labor shortage. In most of the occupations between 2007 and 2014 based on Census Bureau data show a decline. For example there was a 10 percent decline for food preparation and service workers and forest and conservation workers. These are two of the biggest H-2B categories. Wages have declined for 5 percent for ticket takers -- or more than 5 percent I should say -- for ticket takers, resort desk clerks and security guards.

Now, in addition to the wage data, the employment data for the less educated also looks abysmal. Just 42 percent of native-born Americans 18 to 65 without a high school education worked in the first quarter of this year. Even for people with a high school education it was only 65 percent. These represent dramatic declines from the historical averages.

Right now there are 30 million native-born Americans and immigrants already here who have no education beyond high school and are not working even if only half of these individuals want to work and can do so it still represents a huge supply of potential less educated or unskilled labor.

Some of the biggest declines in work have been among the young. This last summer only about one third of teenagers worked. 20 years ago it was more than half. This is actually very disconcerting because is a growing body of research showing those who do not work when they are young, especially those you don't go on the college often have trouble finding and retaining work throughout their lives. It seems you have to certain learn the skills necessary to function in the labor market when you're on -- young.

Now, the evidence is clear, there is no shortage of less educated workers to fill unskilled jobs now of course employers may have to pay more and treat workers better and develop new means of recruiting workers if the supply of immigrant labor is reduced. But in my view higher wages and employment rates for the least educated and poorest Americans should be seen as a positive thing not something that we try to stop through our immigration policies.

Thank you.

SESSIONS:

Well, thank you Dr. Camarota, I appreciate that. And I believe we in Congress should be our goal to create circumstances that do allow wages to at least keep up with inflation and actually grow faster. I mean, that's when you got a healthy economy and I do believe that this wage stagnation and even decline is for the angst that American people are feeling today.

Briefly, Mr. Cunningham I think I'm so -- the production welder is considered a job under the H-2B program. The production welder?

CUNNINGHAM:

Yes, sir. It is a classification.

(CROSSTALK)

SESSIONS:

So your -- one of your complaints is that their hired as production welder but actually taking jobs from boilermakers and pipe welders and higher category that are not part of the H-2B program.

CUNNINGHAM:

Yes, sir. If you look at those graphs, there have been H-2s on those crafts out there that are just not including the welding in those crafts. And that a basic format of all the trades at weld. If you look at the wage determinations that are use under the Davis-Bacon Act. If you look at that every trade that is on that list where they make a wage determination, at the very end of the wages there's a statement "welders rates are incidental to the trade performing the work."

So there was a federal job and that had federal dollars in it they would have to classify those guys for doing welding as a boilermaker, iron worker or things like that. So we have the Department of Labor in one instance regulating the Davis-Bacon Act and then turn around and using a different standard for the H-2B guest worker welders.

SESSIONS:

Thank you. I understand Mr. Costa and Dr. Camarota that you are both familiar with the analysis conducted by the Congressional Budget Office on the effects of the returning worker provision in this year's Omnibus Appropriations Bill, in which it predicted that the provision would result in only about 8,000 additional workers as CBO predicted which was pretty clearly wrong when it was issued to me.

As I mentioned in my opening statement not only has U.S. citizenship and immigration service already received enough petitions to take all 66,000 slots but as of last week it approved petitions for 12,000 additional returning workers category as approved by that law with another 1,171 pending approval which would total about 14,000 well above the 8,000.

And now, ordinarily the approved petitions do not match up one for one with the number of visas issued and the number of workers admitted. But given that these workers were here before isn't it likely the numbers will be relatively close?

COSTA:

Well, my sense -- our sense at the center is that absolutely, there's no way it's going to be 8,000. It's clearly going to be more and previous experience with this kind of regulation changes suggested they always get it wrong it turns out to be higher than was anticipated and that's what we've seen.

SESSIONS:

With regard to pay -- some of the temporary jobs at peak summer is part of that time is it not Dr. Camarota?

CAMAROTA:

Yes.

(CROSSTALK)

SESSION:

Where they said that has the most peak (ph) demand...

(CROSSTALK)

CAMAROTA:

Like seasonal employment is highest in summer.

SESSION:

Well, I do think it's something unusual at college students and even high school graduates aren't working on much in the summers today. I'm not sure that's a healthy thing. Work was good for me, our construction two summers and wasn't anything but good for me.

CAMAROTA:

Yes. Let me just add, the research shows that especially if you're someone not going on to college it's really important for you to work when you're a teenager. It turns out it's very hard to learn how to function in the world of labor if you try to learn it when you're 27 rather than say your 17, like showing up on time and not telling your boss he's an idiot even if he really is.

You got to learn these things and what happens to these people who don't work when they're young is they often struggle to find and retain jobs throughout their lives or at least into their 30s and 40s which is how long they've been tracked.

SESSIONS:

Well, you learn things on the job that helps you repairs at home and save the family money some time. Mr. Costa, if the number -- going back to my original question -- if the numbers closely aligned and appears through the CBO that though the CBO underestimated the number of returning workers by September 30th we're talking about 14,000 now either approved or in the pipeline -- there would be even more between now and September 30th were they not?

COSTA:

It seems so and that you have better data that is unavailable I've been trying to find out how many returning workers are coming through now.

(CROSSTALK)

SESSIONS:

As of last month, that was a month ago.

COSTA:

OK. So, yes. 8,000 seems to little bit (ph) of my hunch is that the number won't be as high as it could be in part because the exemption didn't go to force until after the first quarter of 2016. But the fact of the matter is that employers didn't have time to plan and seek out returning workers...

(CROSSTALK)

SESSIONS:

...stayed in effect with employers being able to understand and have an opportunity to do, use the program or the numbers would be even higher.

COSTA:

I think that the real impact, I think there will be some impact in 2016. I think the real impact will be 2017 when employers have time to go out and seek former workers and to bring them in as returning workers.

SESSIONS:

And Dr. Camarota, just briefly although we have in effect a cap of 66,000 workers were told, as I mentioned in my opening statement, we see on visas that can be extended and that the numbers totaled 129,000 in 2000 -- 2007 and 122,000 in 2006, this on the returning worker problem.

If this returning work provision is included, would you agree also with Mr. Costa that numbers would go up?

CAMAROTA:

Absolutely. There are a lot of people who stay long if -- there's this old saying that well a lot of seasonal job last more than a year and that's why we grant these exemptions. And so that's why you have a lot more people than just the formal cap. And so if you change the cap, you get even more people.

SESSIONS:

And from Homeland Security Analysis that appeared in the Federal Register last year, there are already approximately 115,000 H-2B workers in the United States at any given time due to extensions provided to workers that do not count against the cap, is that correct, Mr. Costa?

COSTA:

Right. That's correct and there are extensions and even though you -- H-2B job should be certified for less than a year it can be certified in what's called a one-time occurrence or peak load for up to three years.

SESSIONS:

Senator Tillis, great to have you and thank you for your good attention to these issues in your good participation in this committee on a whole host of issues and this one particularly.

TILLIS:

Thank you, Mr. Chair. I like this committee particularly this subcommittee because it's a lot of times just you and me so I could ask a lot of questions. You know, I come at this from an interesting perspective. I'm a senator from North Carolina but sometimes when I hear these discussions I feel like I live on an island nation.

The island of North Carolina and I wanted try get some things and hopefully Mr. Chair, with your indulgence I will stick around for a second round if I may. But in North Carolina, I was Speaker of the House. In 2011 we came in and did a lot of reform measures up to and including E-Verify, a number of things to deal with illegal worker population, but we also focused on unemployment reform.

And in 2011 North Carolina had the fourth highest unemployment in the nation it was 10.4 percent. After we implement an unemployment reform the -- over five quarters, the unemployment rate went down to 6.4 percent, the most precipitous drop of any state in the nation over that period of time, the then national average. Now, is still trending to the national average.

We had a lot of American workers who were on unemployment go back to work. But I still hear from people who rely on the temporary worker program that they don't have adequate people to fill the jobs. So I come at it from this perspective of some data that I really encourage researchers and others to look at to see where people migrated back to work.

But Mr. Costa, I wanted to start in your opening comment you talked about how maybe some of these temporary jobs could be filled if employers spend more recruiting outside of their geographic area -- if their geographic area didn't have the job skills that perhaps you could drive (ph) out on transportation and perhaps, you would have to increase the wages.

Many of these jobs are competing on a global basis and so at what point does the cost of using that path really reach a point towards where it's cost prohibitive to provide a product or service that a many other American workers and I use seafood processing because it's something that I spent a fair amount of time with.

I spent time with the commercial fishermen they're not the employers of the H-2B workers. They are American-born folk going out into the sounds (ph) and then into the estuaries outside the estuaries and bringing in shrimp and crab and fish. If they can't find workers at a reasonable price point we already compete substantially with imported shrimp to a lesser extent crab a number of other fish products.

So I'm not really sure I can understand how if you say will you simply pay more for recruiting pay maybe for transportation pay for wages then you can get more workers but at what point does have become an artificial objective because to do it to the level that you would need to, to get an adequate reliable supply on a seasonal basis would simply make a seafood packer tell the commercial fishermen the American drivers, the distributors and the people selling the seafood produce in North Carolina that they simply can no longer do that.

COSTA:

I would say a couple of things first is that the H-2B statute requires it workers not be hired unless they're not unemployed workers in this country that can take the job.

TILLIS:

Yes. We work very closely with a -- within C-Works (ph) which is our employment security division to make absolutely certain they vetted anyone from the Office of Jurisdiction to make sure they're not American workers available for the job.

COSTA:

Right. But the statute says in this country which means nationwide recruiting and so to me...

(CROSSTALK)

TILLIS:

So then, I go back to the other point. Let's say that we got a good base of people in California and I've got to go to North Carolina for the seafood season which starts in, whenever the crabs start moving so let's say sometime in May until they stop moving sometime later in the summer. How do you do that? I'm thinking about the economics.

You're talking to a business owner -- pretend that I'm a business owner how do I make this economics work?

COSTA:

It would seem to me that it would be cheaper to offer California workers housing and transportation to come to come and work in North Carolina and that they declined it and you could H-2B workers but if they didn't decline it, is it going to be more expensive or cheaper than having to recruit a worker from Mexico or Bolivia that's probably a tossup there I would think.

TILLIS:

Well, I think in the case of North Carolina for about 40 or I should say about 35 seafood processors, the decision was they could no longer stay in business that's why we're down from about 45 or 46 to nine major seafood processing or -- so I have no doubt in my mind and Mr. Camarota I'm glad to hear you back not only do I love your sense of humor but you produce some great information.

I think Mr. Costa you've been before the -- have you been before the committee before?

COSTA:

I have not.

TILLIS:

Well, you have a stunt double that looked it, looked like here. And actually it was -- I had a very similar philosophy but the problem is and Ms. Stewart, with respect to worker conditions if you all know of a single example of some of the conditions that you're talking about in North Carolina or more examples I want to know about them because in North Carolina we passed laws at the state level to address any issues of migrant workers that's something that I want to talk with you about.

I don't have any doubt that there is fraud in this process and I want to track down the fraudulent actors to make them obey the law or have them suffer penalties, fines or jail, whatever the terms may be. But if we continue to think in my case in the state of North Carolina that these jobs will be filled I think we run into an economics problem.

Mr. Bronars in the next set of questions, I'll ask you to where we will simply decide to exit markets and as a result of that we will impact American workers if we don't get this right. Sorry, I went over my time, Mr. Chair.

SESSIONS:

Thank you. Well done. Mr. Cunningham...

(CROSSTALK)

SESSIONS:

Yes. I didn't see you there. Excuse me, next Mr. Blumenthal.

BLUMENTHAL:

Thank you, Mr. Chair.

SESSIONS:

I recognize you. You slipped in quietly.

BLUMENTHAL:

Thank you, Mr. Chairman.

SESSIONS:

Thank you for your active participation in the committee and your interest in these issues.

BLUMENTHAL:

Thank you. I want to begin where Senator Tillis ended with the apparent lack of enforcement. The problems in this program have been persistent and prevalent. The abuses seem to be rife. The evidence is overwhelming.

I want to ask to be inserted in the record couple of documents one from the international labor recruiting working group, the coalition of anti-trafficking labor and civil rights groups which have submitted a letter and the AFL-CIO asked that these letters be included in the record, if there's no objection.

SESSIONS:

It will be included.

BLUMENTHAL:

Thank you. The evidence shows that some employers swear falsely that they've attempted to recruit American workers for these positions, others actively attempt to prevent hiring Americans at all costs so others commit wage and hour violations and subject foreign workers to inhumane conditions to all of these abuses fly in the face of what the H-2B program was intended to do which is to bring workers into the country that will help their businesses grow and thrive when there's no American to do the job.

I lead a letter to the Obama administration cosigned by seven of my colleagues that would improve the program and help it serve its intended purpose. The Obama administration has been thwarted by opposition in the Senate and those rules have failed to have the full impact that they should so there's a really monumental problem with enforcement.

Let me begin by asking you Ms. Stuart because you detail very graphically and powerfully in your testimony a serious problem, H-2B debt that results in vulnerable workers being exploited workers contact with bad actor recruiters who charge exorbitant fees to connect workers with typically low-paying jobs in the United States.

And then they work in essence to pay off their debt and when they discover their job is not what was it promised they are in fact shackled to that job because of their obligations to pay off the debt.

So are the protections currently contained in the H-2B regulation sufficiently strong to prevent this kind of abuse and if not, what can be do -- what can be done to strengthen enforcement?

STEWART:

Thank you for your question, Senator. And thank you, I know you've been a champion on these issues in terms of getting fair labor recruitment measures and we appreciate that. You're correct it's our experience that it is very difficult to hold international recruiters liable for recruitment abuse that tends to send workers so deeply in debt once they are here in the United States. And though the 2015 H-2B regulations do substantially improve on existing protections against recruitment abuse, they don't go far enough.

We think that Congress needs to more carefully and vigorously regulate international recruiters so that there's more transparency in the recruitment process and more accountability. We think there needs to be written disclosures given to workers about the terms of their employment. We think there needs to be a public registry of recruiters who have to post a bond to ensure that they can be included in their registry.

And we think employers should be held liable for the bad acts of the recruiters who are essentially their agents in foreign countries and those are the types of protections that we really need in order to protect foreign workers, H-2B workers who come to the country and are deeply in debt. Thank you.

BLUMENTHAL:

If employers were held accountable for the tactics and abuses of their agents, the foreign recruiters who have with their implicit knowledge and even if they don't act with explicit instruction they are still agents for all purposes. And if they were held at gate it would have a significant effect, wouldn't it?

STEWART:

Yes, absolutely. I think that would place a larger burden on employers to ensure they're not using fly-by-night unscrupulous recruiters in other countries.

BLUMENTHAL:

Thank you.

SESSIONS:

Any other members of the panel want to comment on that question?

BLUMENTHAL:

Thank you, Mr. Chairman.

SESSIONS:

Senator Klobuchar.

KLOBUCHAR:

Well, thank you very much Senator Sessions. Thank you all. We did have another hearing with the transportation secretary in commerce, so I'm sorry I missed your testimony. I'll have to read up on it but I did -- I read some of it and I want to first say the H-2B program in my state we have a big tourism industry in northern Minnesota.

We often have time (ph) in the summer, have trouble getting workers -- a lot of workers that come down from Canada, students, younger people and so the local resorts rely on H-2B visas.

And I appreciate the chairman having this hearing obviously we need protections in place to ensure that we are protect U.S. workers and my focus so today is going to be what would happen if we scaled back the H-2B program and the effect it would have on local businesses seasonal industries for example Madden's Resort on Gull Lake in Minnesota one of her most popular vacation spots - - I'll suggest you visit there -- has around 500 employees including about 85 who are international.

And could you elaborate on Dr. Bronars on how scaling back the program would be harmful to small businesses like Madden's that are in an area right near the Canadian border.

BRONARS:

Thank you very much. Before I answer that question we've had some testimony about the fact that wages are stagnant and there's not enough economic growth and not enough jobs and this program is very small but narrow tailored programs. It's not going to solve all these problems but what it can help solve are places like northern Minnesota, upper Peninsula Michigan, Cape Cod resorts that compete with resorts all over the place and they're trying to bring in for the high season workers...

(CROSSTALK)

KLOBUCHAR:

And they are competing directly with Canadian resorts.

BRONARS:

Yes, exactly. And there aren't enough people in the town to fill all those positions. So the 66,000 visa limit is so tiny compared to the size of the U.S. economy you're not going to see the shortages in the aggregate data that this program can help fix.

This program can help fix shortages that are very localized, very specific and if these businesses cannot during the peak season ramp up their production of their services or whether it's seafood or whether it's in hospitality.

What's going to happen is it would be like saying to a retailer you're not going to be able to take full advantage of the holiday season that's when you make your money that protects U.S. workers and small business owners that are in the same businesses. So...

(CROSSTALK)

KLOBUCHAR:

Yes. Unlike Senator Tillis and Senator Sessions states in the winter we might not have quite as much tourism as we do in Minnesota. So we have a big -- lot of tourism in the summer. We have some in the winter with our ice fishing and our snowmobiling but we have less of it and so that's the issue we have this demand at one time.

You noted in your testimony that the H-2B workers are labor supply of last resort for businesses facing shortages of temporary workers what efforts are business owners required to undertake to try to hire domestic workers before they are even allowed to petition for an H-2B visa?

BRONARS:

Well, they have to advertise for these positions and make an attempt to try to hire U.S. workers for these jobs. If they can find U.S. workers for the jobs that our advertiser going to have to pay the prevailing wage the same whether it's a U.S. worker that they're able to take the job or the H-2B worker.

So that is part of the rule and I think that should be enforced and I know there's been a question about how well these things are enforced but the way the rules written that's what they should have to do.

KLOBUCHAR:

Last question, last year I wrote a letter to the Department of Labor and the Department of Homeland Security emphasizing the importance of rapid inconsistent processing of H-2B visas after the processing's other visas had been temporarily halted. What are some of the negative consequences Dr. Bronars of a delay or stoppage in visa processing in terms of the operation of a small business?

BRONARS:

Because what we're talking about before the -- that for a lot of these jobs you need the workers to be there at this particular point in time otherwise you're not...

(CROSSTALK)

KLOBUCHAR:

When the ice melts in Minnesota.

(CROSSTALK)

BRONARS:

That's correct. And so the delays that could happen in the processing can be very costly to the businesses that cannot be able to get the workers in to these positions when their services are needed during these peak seasons.

KLOBUCHAR:

Thank you very much, I appreciate it. And we invite you to Madden's Resort and every other place in northern Minnesota.

SESSIONS:

Thank you.

BRONARS:

Mr. Chair just in case Senator Klobuchar has to leave, I did want to point out that we actually had a snow fall season before last in North Carolina.

KLOBUCHAR:

Can we correct the record Mr. Chairman? I'm pleased. Thank you.

SESSIONS:

There were number of over the years for many years I know people my age that in the summer we're going to work at resorts in the great West and spend the summer and have fun memories of doing that and won't even found their husband in one of the resorts.

So Dr. Camarota, all in all it is better for America is it not that jobs where possible can be filled by Americans. Many of them if they're not working would be receiving benefits of some form or another from the government.

CAMAROTA:

Right. I mean, look, we have a huge supply, be with not a lot of skills and not a lot of education working those numbers are enormous historically unprecedented. Now it would be great if we could retrain them all to be computer programmers or what have you but the fact is the kinds of jobs that they can do are exactly the kinds of jobs that people are being allowed to bring in foreign workers for.

So if you ever have any hope of bringing those people back into the labor market and getting rates of work or labor force participation anything like they were even as recently as 2,000 you're going to have to put them in these kinds of jobs. For the most part some people will retrain.

The other big question is when employers say I can't find anyone to the next question should always be how much of you increased wages. Have they gone up 10 percent, 20 percent. We have shortages in the United States but the data show very large wage increases, you know, and so if there really is a shortage there should be wage increases.

You know, and so if there really is a shortage, there should be a wage increase in the absence of that evidence then it really seems like what the employer wants to do is keep wages down, perfectly understandable the question is should this Congress be complicit in that desire.

SESSIONS:

Well, I do think our free-market experience need to recognize that on, there is a marketing labor and wages too and when wages aren't going up you don't have much of a shortage it would appear to me.

Mr. Cunningham, just briefly in your opinion based on your experience are there currently H-2B workers in the construction industry filling jobs that Americans would do?

CUNNINGHAM:

Definitely are especially if the jobs that are advertised what we filled with advertising the right wage more American workers with a higher wage might apply for those jobs. If you're -- example if your about unemployed due to pipefitter and optimal I am a pipe, welder not going to unemployment center and I apply for that job and I see well the job postings and their loss, here's the job, it's paying a little bit more but there's only two to three weeks.

I'll probably take that one to go see this other job over to production welder is too much long and it's a lot lower wage, maybe several dollars an hour lower. I'm not going to apply for that job for the simple fact is this is not what I'm used to working for my standard of living so it's the wrong

wages and it is advertising light pipefitter welder job them I looked at it the right way that might look at that way to say, I'm not going to take that job.

SESSIONS:

Mr. Costa, you detail some problems with advertising and wage rates and aren't really accurate are done properly, provide opportunities for American workers. And it seems to me that one of the questions we need to wrestle with is something North Carolina did a great job I think in dealing with which is incentivizing people to not be on benefits but to go to work and I think that was a helpful trend.

Is it possible that second most Americans would like a permanent job and not a short-term job. There's no doubt about that. So if you got a choice to take a job is going to be a year, 10 years as opposed to one where construction project is going on six months you'd rather take the permanent job. It seems to me that short-term job should pay more if they expect to get workers to work on a short-term basis.

But Mr. Camarota could you is it possible that we can use the incentive on the welfare reform have welfare reform that can make it on incentivize people to work at a job that might last just six months even though they prefer a permanent job and could that experience helped him find a permanent job in the future?

CAMAROTA:

Right. Look, it's perfectly reasonable to argue that our welfare system is not set up ideally to incentivize work. So I would point out a large people use a fraction of people using welfare of various kinds actually do work but they also collect benefits but if you want that as your goal higher wages is one of the best ways to get to that goal.

And as you correctly point out we know that once people start working it tends to build on themselves just in the way that once people don't work that tends to build on itself and create problems for them down the road. People don't like to hire someone who hasn't worked in a while people don't like to hire someone who doesn't have much experience. And a seasonal or a part-time job can be just that leg into the labor market.

SESSIONS:

And Dr. Bronars, I think that question primarily is driven by the fact of a rather significant increase planned increase in this program even though Dr. Camarota is opined that we do as well without it. At this point there is no plan to eliminate the program were talking about our weather should be increased and actually probably more than double.

Mr. Tillis.

TILLIS:

Thank you. Mr. Bronars, the -- I've got a lot of questions for you. But I'd like to start with the concept of all we have to do is spend more money to create a broader labor force. Now, it varies, you know, hospitality is very different from say again seafood packing have you been exposed to or seen any research on was just hypothetically increase wages by 50 percent for certain industries to compete globally. Is there any research out there that says really you simply get to a point where the American product will not be competitive?

BRONARS:

It depends on how I've been seeing research specifically on that but it depends on how labor-intensive the industry is. It's going to raise your thought...

(CROSSTALK)

TILLIS:

Where it's a major input to the products.

BRONARS:

Major inputs is going to razor cost for -- closing razor prices and then you're going to have a much harder time competing in open world market that's it's one of the things that businesses are facing whether it's in seafood or agriculture and so that's going to be put real limits on the small businesses they can just dictate the prices to find marketplace.

TILLIS:

If you use seafood's an example, I love Carolina shrimp almost never buy a foreign import if it's available and I'm willing to fortunately be able to pay a little bit of a premium for it but we all know you reach a point to where the Argentinian red shrimp will beat the Carolina white shrimp because people just can't pay for the whole trip that night.

So it just seems to me that we can't in certain categories and again I think everyone of you might about way my father was an ironworker. I think in every case you can find fraud and abuse you can find examples were maybe the wages are not consistent with what the prevailing wage should be. But this discussion about ending the H-2B program needs to be couched in the -- if you're willing to kill American jobs because I absolutely think that it will happen.

And all we have to do is have people prevail, mostly it happen. Mostly people probably people in this room today go out of business I've no doubt maybe that's what we needed to prove the point hopefully we get those American jobs back. But also want talk about does something Mr. Camarota you said, look I really I believe that that at least in North Carolina unlike Minnesota where they have two seasons we have four of them.

So if we got a program where somebody's able to find a seasons more than 12 months that looks to me as an area that we need to look to either improve enforcement or reform the law because that

doesn't make sense to me there may be a temporary status that we should look at separately but the seasonal factors that drive certain industries are real.

If you're talking about seafood processing in Alaska for example I was talking with Senator McGill -- Murkowski who say they have about a seven week fishing season there for seafood processing. Who's going to go to the outreaches of Alaska where no one lives for seven weeks of income and consider that a lifestyle.

And so Mr. Bronars, a question I have for you also has to do with do we see any differences where legitimately seasonal factors drive employment practices and what I think about North Carolina really diverse state we have the mountains where it snows a lot. But it also has a very vibrant spring and summer tourism season.

Have we looked at any regions where they were the prospects of the American worker to have a 12 month job makes it more likely to Mr. Camarota you can opine on this too, makes it more likely that a higher percentage of those jobs be filled by American workers because they can get a 12 month job versus Eastern North Carolina the Outer Banks and elsewhere where you don't have the population base of the year- round population base and you need some temporary workers that may only working five or six months or four or five or three or four months if you're in the seafood industry.

BRONARS:

Let me fill first that you follow up. First of all, the industries that we see using H-2B program very seasonal the states were bringing workers have this kind of seasonal patterns. They also tend to be more out-of-the-way places right. So when we're talking about how well do we measure wages and employment people are out of work for the difference between where the population centers are and where some of these jobs which is one of the issues that we've been talking about here.

So you not only have where you have seasons you have certain industries and occupations and I think Dr. Camarota said that, you know, most of the jobs that are in these occupations are held by workers here in the U.S. we're talking about a fraction of a percent

TILLIS:

Yes. And by the way, if you ever been in the outer banks, you'll know it's out there. I mean, it's a part of North Carolina but that takes seven hours for us to drive from the Outer Banks to a Charlotte and it happens to be in one of the least populated most said -- then I should say banked by one of the least populated most rural areas of the state. So you don't have then you get back Mr. Costa to the problem that we discussed if you have to go further out to secure those resources that I think that you do run into you run and economic problems run a business.

BRONARS:

But let me just say one other thing that if you're one of the businesses it's very important to you it's a small part of the total of the U.S. economy but it's vital to certain businesses in certain locations.

TILLIS:

And Mr. Jerry (ph) go on around the questions. OK. Then, I'll hold my question for Mr. Camarota in the next room.

SESSIONS:

Well, I think Senator Tillis (ph) makes a very good point. We tend to think in terms of a global marketplace and there is a global competitive marketplace out there. But I am or the American people worried the wages aren't going up they are basically going down flat and corporate interest in pretty well. Growth didn't much but they continue to use of various abilities and contain costs and maintain some profit but an average guy having a hard time, that's just a fact.

But a lot of these businesses like landscaping I'm watching my hometown, I'm watching it very closely now. People I see that are working on landscaping are not all for the most part I believe immigrants or at least owners. The restaurants, things like construction work on those big part of the jobs that I think got to be carefully watched to make sure that we are not interfering with the national rise of wages that should occur on in America that hasn't been occurring that's the only thing I would say but what we do need to be careful about it not think this project program has some validity to it and probably management but it's hard to manage it.

Mr. Camarota, with regard to the people we know since 2009 I believe we've had some 15,000 reported as absconding by their employers other words, they came to take a job and got into the country with other visa and they basin and they went their own way and didn't complete their work.

Do we even know the people who complete their years of months of work if they actually leave the country since we don't have an entry exit visa program?

COSTA:

Now, as you know the general estimates are that about 4 million or 5 million, 40 percent of the illegal immigrants in the states are visa over stays some of them who come in under work visas oh I have never seen an estimate for this occupation of this particular program but we would expect that over time thousands of people will overstay and we won't know because that's how lax the system is. We don't track departures.

SESSIONS:

Well, I think that's a problem CBO pointed that out and predicted an increasing percentage of all people would enter the country lawfully initially on a visa but not return. I think as our recent numbers and half a million overstay their visa last year.

Ms. Stewart, on your evaluation could the government do a better job of enforcing the laws that we have to protect the work on American workers, is at feasibility you're been doing it for the lawsuit private sector way is there -- are there any suggestions you have maintained more integrity in the system?

STEWART:

Sure. Thank you for that question senator. I think the Department of Labor has attempted over the years to implement more robust protections for U.S. workers and H-2B workers and those protections each year or each time they enact them have been rolled back or enjoined either by the employer driven litigation or appropriations measures, not all of them but some of the key protections.

So I think the first step would be to start making changes to the program through appropriations measures like Department of Labor to implement and enforce the protections that exist for workers. We also think there should be more protections to make sure that workers aren't subject to the abuse that we have seen over the years in this program. We would recommend certainly better oversight and more funding to the Department of Labor's they can do their job to enforce the protections that exist.

We think Congress should regulate recruitment of internationally recruited workers to make sure they are not subject to false promises and extreme debt. We think there should be better whistleblower protections for H-2B workers and U.S. workers so that they -- when they complain about unfair working conditions and depressed wages they aren't retaliated against it. There is a chilling effect on their right to defend their rights.

And we also think H-2B workers should have better access to the courts by making them eligible for federally funded legal services. Finally, we think it would certainly help to overhaul the structure of the program which has workers tied to a single employer. As long as that structure exists the program is going to lead to exploitation of H-2B workers and also make H-2B workers preferable to employers than U.S. workers.

SESSIONS:

Thank you. Senator Tillis.

TILLIS:

Thank you, Mr. Chair. Mr. Cunningham, I want to come back to and just square up with some North Carolina specifics of. I mentioned my father was an ironworker in Miami and Indiana he did that probably until he was in his mid-30s. But one of the things we had to focus on when I was in the legislature was the shortage of trade skills in North Carolina.

We spent a lot of money in our work programs we got a great community college system in North Carolina we do a lot of collaboration with businesses trying to train people on government certified

and trades. Why am I having to spend money on doing that if there is a dearth of resources available for these jobs?

CUNNINGHAM:

Thank you senator for the question.

TILLIS:

And by that, I do mean in one year it was a \$10 million appropriation to try to track people to these traits.

CUNNINGHAM:

It's really all about training and training workers for these jobs which were seen in this country that most companies do not want to invest in training and recruit workers into a good middle- class living.

TILLIS:

But I'm referring to the comments I think in your testimony which was that we already have available train resources that are just being displaced. In other words there's a dearth of available resources as a matter of matching them to the jobs versus the next step which is trying my experiences we need training because at least in North Carolina we do not appear to have the labor supply that they need so were spending taxpayer dollars to infuse work training programs in our community college system to bring the people that others are saying that there's a dearth of available people willing to work already. I'm just trying to square that with just again North Carolina.

CUNNINGHAM:

Senator, you know, construction is not a permanent job. They are up and down, you know, you work a job you laid off for another job...

(CROSSTALK)

TILLIS:

That's why my dad was in Miami and Indiana. Yes.

CUNNINGHAM:

I spent many years of my career travelling all this country because of work not available in our area. I will say that the unions are probably the biggest network of trained skilled workforce the ready to go and travel to an area where they need workers. If the unions have those jobs, they are

going to go, they don't take care of their families they don't keep benefits going and like I said, that's what we do as construction workers.

But we need more investment in training like some other models in other country, we tapped a global economy and journey in Europe that have mandatory apprenticeship program.

TILLIS:

Would that then suggest that there is a lease those skills gap somewhere that we would need to make that and I'm assuming either businesses are taxpayer dollars to the skill of the resources so we have a qualified we have a more consistent flow of workers to fill these jobs at right now their work visas. And for full disclosure is not an area of the program of focus mainly on the seafood and hospitality industry but I was just curious if it's an outlier at least in North Carolina.

CUNNINGHAM:

Like I said, you know, it depends on the part of the country were the unemployment at and what you need. What we found is we've had workers apply for these H-2B and they've been denied for qualified. This company really don't or hire American workers. I'm mostly in the construction industry. I'm not speaking for all the other -- so I'm really involved in what.

But when you have workers -- qualified workers to reach out there and apply for these job and these companies go out there and the registered agents they interview is either don't return your call or they lie on the recruiting reports we got people available to all those jobs but that's why we need more enforcement, that's why in my statement a while ago if you go back and look is this companies out there in construction should be part of this process.

We've got enough people, unemployed people in this country to train to do construction work. So we've have so many other issues where we find these contractors that they do bring in the visa workers, they are not working in the intended areas of employment. If you look at my statement for the record, I'll give you a lot of issues on jobs.

TILLIS:

And incidentally, that's an area -- I mean, I think even though the chair and I may have some differences on the margins I think when it comes to fraud when it comes to any demonstrable areas of work conditions those sorts of things we need to find out about it, tighten up the legislation if that's necessary but I'll tell you I went out in eastern North Carolina courting my staff has been out there with me a couple times and I wonder why somebody generally speaking I guess probably the enrollment papers in the application probably about that many pages to hire on American worker for a job.

And that involves you don't have an HR person because these small businesses are the HR person that involves the manager or the owner processing as handful of paperwork and getting it done. When you have to hire a visa worker the paperwork stack is about that thick. And you have to

become an expert in dealing with consulates, you have to have an expert in dealing with private wage surveys.

You have to have an expert and weapon the Department of Labor to actually do their job where they say they have a shortage resources why any sane person would prefer to go through this process including the variability of it in the inability to plan from season to season tells me that if they really just want to hire a temporary worker when there's a resource may have to pay a dollar more an hour.

Then there not a sane person and so if there are people out there to see guys out one American worker I want to go to the house and deal with the federal government then seek medical attention because it doesn't make sense. What I wanted to do, I'm a very process oriented person systematic person I want to find bad actors and stop them but to assume -- and we're only talking about H-2B, we're not talking about H1, we're not talking about all the other things that have their own pluses and minuses and impact on American worker opportunities.

On this temporary program I thought I really appreciate Mr. Chair you spend in the amount of time that you have. We need to peel back these layers and have a more data-driven hands-on approach.

I don't know -- I suspect some of y'all have but I have spent days out of the state in North Carolina touring facility, touring ones after we passed legislation was stored in North Carolina work conditions particularly in agriculture industry to get a ground -- I mean, a bird's eye view of the situation and with respect it runs counter and with the regulatory reform the work we did in North Carolina there runs counter to some of your experiences some of it may be a little be explained by regional differences.

But I hope that we'll continue this discussion and really get things in the final that address some legitimate concerns have been expressed here but also address what I think is a legitimate concern that we can have an economic impact that could put American business out of business and put American workers out of work. And then if you want to stagnation and again, with a relatively small percentage of the population I think that many people have a disproportionate view of the number of people that are coming in on this program I'm only talking about this program.

We've got a situation with the illegals that are really causing a big public pressure on good actors for the HB2 program because they are competing illegally that's got to get fix. That is a major problem but I think that we need to be very methodical and how we go about this and recognize you cancel his H-2B program to be H-2B program and you will cancel American jobs.

Thank you, Mr. Chair.

SESSIONS:

Well, I don't think we don't need to increase it. That's what I think and I'm going to resist that steadfastly and I do worry that we've got 94 million people in this country outside the workforce.

Mr. Camarota, is it true that from 2000 to 2014 we had an increase in native born population substantially at what percentage of the jobs that were created during that time went to our immigrant legal or illegal, I guess.

CAMAROTA:

Yes. So roughly speaking if we look at the working age 16 to 65 year olds, all the job growth went to immigrants between 2000 and 2014 even though the native-born accounted for more than 60 percent of population growth in that working age population. You would've guessed they were gotten around 60 percent of the judge increase employment it didn't turn out that way that it's a net figure so.

SESSIONS:

Well, I guess I'm worried about it. I think some trends out there are troubling that our government needs to understand that perhaps we can do better. We had to plan to come in the Mobile that needed 4,000 workers shipyard short order. The state moved in with their job-training program and then some advertisement we met the challenge.

That was really word this company might be disappointed in the whole investment you can get the workers out readily available at be trained and putting them at the wages and all attracted them they came in big numbers and never happy with their workforce.

So I do think it does appear to me that businesses are more demanding that when they expand the align form out the door of people preferably ready to take the job that day. And that didn't used to be the case but with a good job-training program, if we spent more money we're more smart about it. I think we could get more people ready to take jobs when they're needed and some people want move and I understand and respect that some people will move if the financially worth it.

One European executive told me that he thought of American people were most mobile workers in the world is one of the great strengths of America's and you can set up a plan people would come from around the country if they had a good job and they moved a lot of people in Europe apparently likes stay right where they've always been right.

So it's a strength of American vitality all and end so you end up with a situation where we at 38,000 jobs last month increased all where we expected 150 and Mr. Camarota, is it based on population growth? Is it about 200,000 a month and need to be created and maintained level employment right?

CAMAROTA:

Right. In terms of the employment rate of course its way down from where it has been historically but you would need about 200,000 jobs a year just to keep it at the current level given the level of immigration remember a hundred thousand immigrants come in more and more each month. So you need a lot of jobs just for that absorption. But if you assume the current level immigration and natural population increased the need about 200,000 jobs a month.

SESSIONS:

All right well anything else Senator?

TILLIS:

Just Dr. Camarota, I wanted to tell your ask you if your point about the trend of younger people not working and potentially fill in some of these jobs I made my first payment to Social Security when I was 12 years old in 1973. I haven't missed a year every cents. I've had a full time job since I was 16 years old I don't see culturally where that's an option I wish that it was.

But I mean if you have any specific suggestions on how we bus -- buttress some of this work I'm sure that we'd love to have any suggestions for things as a matter of public policy to look at to see how we create that sort of culture.

But outside of that I didn't question on returning workers will be my last question, Mr. Chair, I promise. One thing that I've just ask, I'm pleading ignorance here.

But it seems to me that returning workers demonstrate the most reliable users of the H-2B program which is to say they come, they work, they go home, they return. And it's my understanding that some of these returning workers tend to make because their skill sets and the reliability or such tend to make pretty good.

Some of them get into supervisory positions. Have you done any work on that or have any opinion on that?

CAMAROTA:

I've only looked at what they're offering the job since \$12.50 an hour, \$12.40 an hours.

TILLIS:

Yes. It's my understanding if you particularly, again, you're taking a look at a returning work whether they're coming back in the business enterprise and they are custom to they typically know the lay of the land they can be supervised -- supervisors or trainers for the people that maybe coming in for the first time.

So it just seems to me in some ways that these are people who were following the system there on working on a seasonal basis they have very clear pattern so they have very clear connectivity because we all know you got to work with the consulate and there have to be life patterns and demonstrate that they do go back to their country so I think say sometimes we get in the discussion about returning workers and it just seems to me that in some ways there are the best most reliable resources for using the program.

And Mr. Bronars, I'll let you have the final comment and I'll honor my promise not to ask another question, I could be here all day.

BRONAR:

I actually think it's a smart way to effectively increase the cap because we've heard about the abuses but if people are coming back at what must've been a good experience both for the worker and for the employer.

So I understand there needs to better enforcement all of the employers uses port program and play by the rules even kind of painting with a broad brush singer all these abuses and people are misrepresenting this and that and there a lot of people use a program in their using it according to the rules whether written and if the workers are coming back I think that's not always reliable worker but it must've been a two-way experience is beneficial for both sides.

TILLIS:

Yes. Again I would beat them is stored on how you feel about a number and ask another question but I may follow up with a note because it seems to me if somebody's coming back I want to go to the same employer maybe there examples are outliers but it would be more likely that they would've had a better work experience.

Mr. Chair I just want to thank you for your time and your focus on this issue in your leadership I really do enjoy this committee. Thank you.

SESSIONS:

Thank you very much for your participation and valuable contributions. Mr. Camarota, I don't know if you're familiar with this but the Obama administration policies on deportation any by the guns into the country that overstay their visa is probably never going to be deported is that right?

CAMAROTA:

Well, interior to -- enforcement, the visa overstay her for the person who successfully slips across the border those people as you know is are you had testimony on this before by Ministry officials they have almost a zero chance of ever being deported.

SESSIONS:

And as -- Secretary Clinton said that nobody should be deported unless they are convicted of a violent crime.

CAMAROTA:

Yes. It's essentially an open borders on position...

(CROSSTALK)

SESSIONS:

That's just a fact we need to keep in mind as we wrestle with these issues. So I'd like to offer into the record statements that have been received from the AFL-CIO, North American building trades unions, labor workers international Union of North America, unite here in addition to documents submitted by Mr. Cunningham, thank you provided to the subcommittee.

If there's nothing else we will stand adjourned. Thank you very much.