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H-2B PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

OF THE

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HOUSE OF REPRESENTATIVES

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OFFICIAL HEARING RECORD

MATERIAL SUBMITTED FOR THE HEARING RECORD BUT NOT PRINTED

The Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law received many letters of support for the H-2B Nonagricultural Temporary Worker Program. Because of the voluminous amount of this correspondence, all of the letters received are not printed in this hearing but are on file at the Subcommittee.

H-2B PROGRAM

WEDNESDAY, APRIL 16, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,
REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:25 p.m., in Room 2141, Rayburn House Office Building, the Honorable Zoe Lofgren (Chairwoman of the Subcommittee) presiding.

Present: Representatives Lofgren, Jackson Lee, Delahunt, Gutierrez, King, Goodlatte, and Gohmert.

Also present: Representatives Conyers, Scott, and Smith.

Staff present: David Shahoulian, Majority Counsel; Ur Mendoza Jaddou, Majority Chief Counsel; Andres Jimenez, Majority Professional Staff Member; and George Fishman, Minority Counsel.

Ms. LOFGREN. We are going to ask that the hearing come to order, and I understand that the Ranking Member is on his way. This is a hearing of the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, and without objection the Chair is authorized to declare a recess of the hearing at any time.

I want to welcome everyone to our first in a new series of hearings on issues related to immigration. These hearings are being held by this Committee in conjunction with other House Committees to examine a number of immigration-related issues that require our attention, as well as to clear up certain misconceptions.

There are a number of misconceptions being promoted in the halls of Congress and in the press. Some have stated that Congress has done nothing to secure our borders, yet nothing could be further from the truth. Last year alone, this Congress appropriated $3 billion in additional emergency funding for border security, more than has ever been appropriated for such purposes.

This Congress also passed legislation adding 370 additional miles of border fencing, 3,000 more border patrol agents, 29 more ICE fugitive operation teams, and 4,500 additional detention beds. There were new criminal divisions for alien smuggling and trafficking, funding increases to strengthen programs to check employment eligibility, track on visitors, and identify incarcerated non-citizens, as well as numerous other measures to secure our borders.

This Congress has done more to secure our border than any of its predecessors, and as the Department of Homeland Security itself admits, we have demanded more progress on the border than

the agency can actually keep up with. I bring this up not simply to take stock of what we have accomplished, but to reflect on the fact that this Congress has acted quite a bit on border security and interior immigration enforcement, but has not yet acted much in the area of addressing immigration problems and fixes.

For those who seek an enforcement for its policy on immigration, let there be no doubt, this Congress has not shied away from many proposals to significantly increase border security and immigration enforcement. But as this new series of hearings will demonstrate, there are still many pressing immigration issues beyond enforcement only that require our attention.

Today we focus on one of those issues: the H-2B Nonagricultural Temporary Worker Program. This program is used by certain industries to secure workers for seasonal or other temporary needs, and it is primarily used in the landscaping, construction, forestry, tourism, hotel, and fishing industries.

The program is capped at 66,000 workers per year, but over the last several years, a returning worker exemption in the law allowed returning H-2B workers to come to the United States outside the cap so long as they had counted against the cap in one of the preceding 3 years. At the program's height, this exemption basically doubled the size of the program, allowing some 120,000 H-2B workers to temporarily work in the United States.

This exemption expired at the end of 2007, again capping the H-2B program at 66,000. Since then, most of us can attest to the outcry we have heard from businesses all over the country. Every Member in this room can speak to the screams of H-2B employers that have coursed through these halls over the last few months on behalf of the returning worker exemption.

Today, we will hear from Members of Congress and H-2B employers about the resulting lack of H-2B workers and the effect this has had on certain industries. We will hear about the harm to businesses that rely on H-2B workers, as well as the harm to U.S. workers who rely on the viability and robustness of those businesses. According to them, reauthorizing the returning worker exemption is essential.

But we will also hear about how a lack of protection in the H-2B program has allowed some businesses to exploit and abuse H-2B workers. Members, human rights advocates, and labor advocates will tell us that a lack of enforcement and insufficient protection in the law for H-2B workers have permitted some unscrupulous employers and labor recruiters to abuse the program.

Due to such concern, they believe that any reauthorization of the returning worker exemption should be accompanied by new safeguards to ensure that H-2B workers are protected from exploitation, and that such exploitation does not undermine the working conditions of U.S. workers. Due to time limitations, we only have time to hear from eight witnesses today at our hearing, and I look forward to hearing from them.

However, there are many others who have been important voices in the H-2B issue, and without objection their statements and letters will be placed in the record. They include Congressman George Miller, who was scheduled to be a witness today but who is actually in a markup in another Committee right now, so we will put

his statement in the record. Also, statements from Congressman Ron Klein, Congresswoman Shea-Porter, Congressman Dennis Moore, Congressman Mark Udall, Congressman Bobby Scott, John Sweeney, the President of AFL-CIO, the H-2B Workforce Coalition, Hank Lavery, the President of Save Small Business, the American Hotel and Lodging Association, the Chesapeake Bay Seafood Industry Association, the National Ski Areas Association, the California Ski Industry Association, the International Association of Fairs and Expositions, Robert Johnson, the President of the Outdoor Amusement Business Association, the National Independent Confessionaries Association, and numerous other associations and businesses. We appreciate all their statements and letters.

Now, we are obviously going to have to go for four votes, but before we do, perhaps we can get the Ranking Member's opening statement in, and then we will return immediately after our votes for the hearing.

I recognize the Ranking Member.

Mr. KING. Thank you, Madam Chair.

H-2B visas are temporary work visas that are generally used for low-skilled work. The unique feature of the H-2B visa is that the existence of the job itself must be temporary. A job must cease to exist within about a year, or must be seasonal.

The annual quota of H-2B visas is 66,000. In recent years, the cap started to be reached. Almost immediately, the restaurant, tourism, landscaping and construction and other similar industries began lobbying for an increase in the cap.

Members of Congress are currently under heavy pressure from these industries to increase the number of H-2B visas. Unlike such businesses, Members of Congress owe a duty to Americans to protect their jobs and wages, and not merely to provide a source of cheap labor for industry.

The number of immigrants, legal and illegal, living in the U.S. is growing at an unprecedented rate. The U.S. Census Bureau data indicates that 1.6 million legal and illegal aliens settle in the country every year.

There are roughly 12 million to 20 million illegal aliens currently residing in the United States. It is significant in our discussion today to note that almost half of all illegal immigration results from visa overstay.

Poor, low-skilled American workers have borne the heaviest impact of immigration through reduced wages. The National Academy of Science has estimated that 40 to 50 percent of wage loss among low-skilled Americans is due to the immigration of low-skilled workers. Hourly wages for men with less than a high school education grew just 1.9 percent—not adjusted for inflation—between 2000 and 2007, and hourly wages for men with only a high school education declined by 0.2 percent between that same period of time.

The magnitude of the number of immigrants with relatively little education also reduces job prospects for low-skilled Americans. Between the year 2000 and 2005, the number of jobless natives with no education beyond a high school degree increased by over 2 million, to 23 million, according to the current population survey. And

during the same period, the number of less-educated immigrants—legal and illegal—holding a job grew by 1.5 million.

Native-born African-Americans and Hispanic-Americans are particularly hit hardest by immigration. Harvard professor Dr. George Borjas reported that by increasing the supply of labor, immigration between 1980 and 2000 caused a 4.5 to 5 percent wage reduction for African-Americans and Hispanic-Americans, as compared with the 3.5 percent wage loss felt by native-born White Americans.

For these reasons, the U.S. Commission on Immigration Reform, Chaired by the late Barbara Jordan, concluded that present immigration numbers are a source of economic injustice in our society. Since 1970, immigration has increased the number of unskilled job applicants faster than the number of skilled job applicants.

First-year economics predicts that increasing the relative number of unskilled workers will depress their wages, because employers will not need to raise wages to attract applicants for unskilled jobs. Nonetheless, those who favor an expansive immigration policy often deny that the increase in the number of unskilled job applicants depresses wages for unskilled work, arguing that unskilled immigrants take jobs that natives do not want.

This is sometimes true, but we still have to ask why natives don't want these jobs. The reason is not that natives reject demeaning or dangerous work. Almost every job that immigrants do in Los Angeles or New York is done by natives in Detroit and Philadelphia.

When natives turn down such jobs in New York or Los Angeles, the reason is that by local standards, the wages are abysmal. Far from proving that immigrants have no impact on natives, the fact that American-born workers sometimes reject jobs that immigrants accept reinforces the claim that immigration has depressed wages for unskilled work.

Not only do low—and an example would be a doctor driving a taxicab in Havana. Not only do low-skilled workers—Americans—suffer because of higher levels of low-skilled immigration, we all do. Each year, families and individuals pay taxes to the government and receive back a wide variety of services and benefits.

Robert Rector, of the Heritage Foundation, reported that in fiscal year 2004, the average low-skilled household—that is a household headed by persons with a high school degree—received $32,138 per household in immediate benefits and services from Federal, State, and local governments; however, the low-skilled household paid $9,689 in taxes. They do pay taxes, but the net average loss per household is $22,449. That burden falls on the rest of society.

So while the annual costs to each low household are high, the costs over the lifetime of each household are far higher. The average net lifetime cost—benefit minus taxes—is to the taxpayer of household headed by persons with a high school degree, that would be $1.1 million over the lifetime of that household.

Immigrants represent a substantial share of poorly educated persons in the U.S. While 9 percent of native-born adults lack a high school degree, the figure is 34 percent for legal immigrants, and roughly 60 percent for illegal aliens.

Nearly a third of all immigrant households are headed by persons without a high school degree. Policies that would substantially

increase the number of low-skilled immigrants entering the U.S. would significantly raise costs on the U.S. taxpayer.

Because of all these reasons and the fact that there are currently 69 million working-age Americans currently not working in the United States—they are simply not in the workforce, according to the U.S. Bureau of Labor Statistics—I oppose expanding H-2B visa programs. Speaker Pelosi and many Democrats are advocating extending unemployment benefits because the job market is so bad.

How can Democrats argue at the same time that Americans don't have enough jobs, but that we need more foreign workers? I am looking forward to the answers to these questions during our hearing today, along with the testimony of the witnesses.

I thank you, Madam Chair, and I yield back the balance of my remaining time.

Ms. LOFGREN. Thank you.

I understand that the Chairman of the full Committee, Mr. Conyers, has an opening statement which we will hear, and the Ranking Member of the full Committee is going to waive his opening statement. Then we will go to votes and then return.

Mr. Conyers?

Mr. CONYERS. Thank you, Madam Chair.

I begin our discussion today by commending you for breaking the logjam and getting us started. And I always listen to our Ranking Member very carefully because he wants us to; he leaves a few questions that he is waiting to find the answers to, and I want to find the answers with him, just so that we all move down this path with as much agreement on the fact portion as we can.

It is agreed that foreign workers should not displace U.S. workers. But that may not be the question in this instance here, H-2B. The question is, how can we design a program to fill business needs while protecting American workers at the same time?

And I come to this hearing and I make—this is a declaration of my good broker bona fide: I am not on the Schuler bill, the Stupak bill, the Clyburn bill, the Gutierrez bill, and I don't have a bill. So let's begin this with as much dispassionate conviction as we can.

I have not been thrilled by the fact that—my report says that labor hasn't negotiated and won't negotiate. That is difficult in a legislative body like this. We can toss rhetoric around until the cows come home, but I agree with the Chairwoman. Let's start moving this ball down the line.

I am thrilled by the fact that some are still talking about a comprehensive reform. If I can figure out how that is going to happen before we start breaking this thing down, I will be a devout and dedicated student to whoever is really still arguing that. We are focusing on H-2B, and so there is a shortage, there are big problems.

I think that there may be a way with this Committee, which is now pretty well known for its ability to cooperate and work out difficult questions—Judiciary Committee doesn't have too many easy questions anyway. So let's put our best feelings, and let's attack this problem as professionally and as scientifically as we can. If we do that, there is a solution that will bring us all together.

And I just want you to know, Madam Chairwoman, that that is my attitude as we begin these very important hearings. I thank you so much.

Ms. LOFGREN. Thank you, Mr. Chairman.

We have 3 minutes left on the votes, so the Members will go over and vote with apologies to everyone who is here to hear the hearing. We will come back directly after the last vote; we have four votes, so that will be in about 20 minutes, for people who might want to go get a cup of coffee.

[Recess.]

Ms. LOFGREN. The hearing is back in session. Let me apologize to all of you. It seems to never fail that whenever we start a hearing the bells go off, votes are called, and we are stuck on the floor for always a longer time than we expect.

So I do appreciate the patience of our next panel of witnesses and all of the members of the public who are here to participate in this hearing. I know that other Members are on their way over, but in view of the extended period of time and in the interest of proceeding to our witnesses, I would ask that other Members submit their opening statements for the record.

We have with us one of the Members who is going to testify, and I think maybe what we could do is begin in the hopes that the other two Members of Congress will soon be here. We have two distinguished panels of witnesses, and the first, of course, is Members of Congress.

As noted earlier, Chairman George Miller was scheduled to testify, but he is unable to make it. In fact, he is on the floor right now managing another matter.

We also are pleased to have Congressman Bart Stupak, who has represented the first congressional district of Michigan since 1993. Representative Stupak worked to create the H-2B program's returning worker exemption in 2005, and has introduced bipartisan legislation this Congress to make the exemption permanent. He also serves as Co-Chairman of the Congressional Northern Border and Law Enforcement caucuses, and is a valued Member of our Congress.

Our next witness, Mr. Bishop, who I hope is on his way over, has represented New York's first congressional district since 2003. Congressman Bishop was born and raised in South Hampton, NY. He studied history at Holy Cross College in Worcester, MA, and earned a master's degree in public administration at Long Island University.

He later went on to serve South Hampton College for 29 years, leaving the position of provost in 2002 to run for Congress. Representative Bishop has been working closely with Representative Stupak to extend the returning worker exemption.

And finally, we have Congressman Wayne Gilchrest, who has represented the first congressional district of Maryland since 1991. Representative Gilchrest serves as senior Member of the Committee on Natural Resources and the Committee on Transportation and Infrastructure.

Born in Rahway, New Jersey, he served as a Marine in the Vietnam War and was decorated with a Purple Heart, Bronze Star, and Navy Commendation Medal. Prior to joining Congress, he also taught American history, government, and civics in New Jersey, Vermont, and Kent County High School on the eastern shore of Maryland, where he lives today.

As you know, colleagues, your full statement will be made part of the written record, and we would invite you now to deliver your testimony to us so that we may have some questions.

And we will start with you, Congressman Stupak.

TESTIMONY OF THE HONORABLE BART STUPAK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. STUPAK. Thank you, Madam Chair, and Ranking Member King, for allowing me to testify before the Subcommittee on the importance of the H-2B program. My legislation, Save Our Small and Seasonal Businesses Act of 2007, was referred to this Subcommittee on April 20, 2007. That was nearly a year ago.

After 3 successful years, the H-2B returning worker program expired on September 30, 2007. This program, with the grandfather clause, was authored by Mr. Gilchrest, myself, and others. The delay in acting on my legislation has hurt small and seasonal businesses in Michigan and throughout our Nation.

Without the returning worker program, thousands of small businesses with seasonal needs were locked out of the visa process. In my district, restaurants, hotels, and resorts in Mackinaw City, on Mackinaw Island, and in the surrounding areas, use H-2B workers to help supplement their fulltime and seasonal American workers.

This year, without the benefit of the returning worker program, the majority of the seasonal businesses in my district did not obtain the H-2B workers they will need this summer. Of the more than 70 businesses in northern Michigan, only one business in Mackinaw City and two on Mackinaw Island received H-2B visas this year.

I thank the Subcommittee for inviting Mr. Dan Musser of the Grand Hotel, which has employed foreign workers for the last 35 years when they could not find enough American workers to fill all the jobs available, to share his story with this Committee. These foreign workers offer short-term temporary help. H-2B workers cannot and do not stay in the United States.

Unfortunately, it is often difficult for employers to recruit American workers who are willing to work a temporary fulltime job for only 5 or 6 months out of the year. As a result of Congress' inaction, small and seasonal businesses are facing significant labor shortages this year that will result in forced downsizing, decreased services, economic hardship, and even bankruptcy. Many businesses have already scaled back their operations and laid off U.S. workers.

By not extending the H-2B returning worker program, Congress is endangering U.S. businesses and U.S. jobs that depend on these returning workers. I urge the Subcommittee to act on my legislation, the Save Our Small and Seasonal Businesses Act, H.R. 1843, or approve an extension of the H-2B visa returning worker program as soon as possible to preserve small businesses' access to seasonal workers.

I ask unanimous consent that along with my statement I have the following attachment: my full statement, first district business testimonials—the Save Our Small Business Testimony—as part of my full statement.

Ms. LOFGREN. Without objection, that will be made a part of the record.

Mr. STUPAK. All right. I will yield back the balance of my time.

[The prepared statement of Mr. Stupak follows:]

PREPARED STATEMENT OF THE HONORABLE BART STUPAK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

STATEMENT OF BART STUPAK
MEMBER OF CONGRESS
BEFORE THE
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW
APRIL 16, 2008

Thank you, Chairwoman Lofgren and Ranking Member King, for allowing me to testify before the Subcommittee on the importance of the H-2B program.

While I welcome today's hearing, I am disappointed we didn't act to address the expiration of the H-2B returning worker program eight months ago. My legislation, the Save Our Small and Seasonal Businesses Act of 2007, was referred to this Subcommittee on April 20, 2007. That was nearly a year ago. I have written the Chairwoman twice and worked with colleagues on both sides of the aisle since July to extend the H-2B returning worker program, to no avail. The delay in acting on my legislation has hurt small and seasonal businesses in Michigan and throughout the nation.

The H-2B visa program was created to provide access to non-immigrant, temporary workers for seasonal and peak load needs when no American workers can be found. Foreign workers offer small and seasonal businesses short-term help and return to their home country at the end of the season. H-2B visas are capped at 66,000 visas per year. Even with 66,000 visas a year, it still does not meet the labor needs of seasonal businesses!

To help fill these additional needs, Congress established the H-2B returning worker program in 2005 by enacting the Save Our Small and Seasonal Businesses Act of 2005 (P.L. 109-13). This program exempts returning workers who have received an H-2B visa in 1 of the 3 previous fiscal years from counting against the 66,000 cap. The two-year pilot program was extended for an additional year in the National Defense Authorization Act of 2007 (P.L. 109-364).

After three successful years, the returning worker program expired on September 30, 2007. The H-2B returning worker program has been expired for six and a half months and yet Congress still has not enacted legislation to extend it.

On September 27 of last year, the U.S. Citizenship and Immigration Services had already received enough visa petitions to exceed the cap for H-2B visas for the first half of Fiscal Year 2008. The first cap was reached four days before the start of the new fiscal year! The cap for the second half of Fiscal Year 2008 was also reached quickly on January 2, 2008.

Without the returning worker program, thousands of small businesses with seasonal needs were locked out of the visa process. As a result, many landscaping businesses, resorts, restaurants, carnivals, seafood processing, and other seasonal businesses are facing significant labor shortages this year.

In my district, restaurants, hotels, and resorts in Mackinaw City, on Mackinac Island, and in the surrounding areas use H-2B workers to help supplement their full-time and seasonal American

workers. These businesses are truly seasonal in nature. Businesses on Mackinac Island have an operating season that generally runs from May through October, and are entirely closed during the winter months.

I thank the Subcommittee for inviting Mr. Daniel Musser of the Grand Hotel, which is a nationally and internationally known summer hotel on Mackinac Island, to testify. The Grand Hotel is an important icon in Michigan and has employed foreign workers for the last 35 years when they could not find enough Americans to fill all the available jobs. The Grand Hotel hires hundreds of Americans for seasonal jobs, but the number of positions needed surpasses the number of Americans who are ready, willing, and able to fill them.

This year, without the benefit of the returning worker program, the majority of the seasonal businesses in my district did not obtain the H-2B workers they will need this summer. Of the more than 70 businesses in northern Michigan, only one business in Mackinaw City and two on Mackinac Island received H-2B visas this year.

Not having H-2B workers will significantly affect the businesses within my district and their ability to keep a professional, trained, and dependable work force and provide the service and experience their customers expect. On a national scale, this will hurt tourist destinations throughout the United States. As a result of Congress' inaction, many businesses already scaled back their operations and laid off U.S. workers, while others report that they are on the brink of bankruptcy. By not extending the H-2B returning worker program, we are endangering the U.S. businesses and U.S. jobs that depend on these returning workers.

These foreign workers offer short-term, temporary help. H-2B workers cannot and do not stay in the United States. H-2B workers must return home at the end of their season. More importantly, the H-2B program contains strong provisions to ensure that American workers have the first right to work. Employers must vigorously recruit U.S. workers and must demonstrate to the Department of Labor that there are no U.S. workers available to fill seasonal vacancies before they can fill these vacancies with H-2B visa workers.

I'm often asked why Michigan businesses hire foreign workers considering Michigan's high employment rate. However, during the summer months, the unemployment rate drops significantly in northern Michigan. Statistics from the Michigan Department of Labor & Economic Growth show that unemployment drops from around 20 percent in the winter to less than 4 percent in the summer months in Mackinac County.

It is also important to keep in mind that the H-2B program is specifically designed for peak-season needs. It is difficult for employers to recruit American workers who are willing to work a temporary, full-time job for only five or six months out of the year. While businesses do hire some college students, the season is longer than their summer breaks, keeping them from possibly working during the entire May through October season. In addition, more and more college students are moving away from traditional summer jobs to take part in office internships and related programs.

In recent months, the H-2B program has been attacked by organizations like the Southern Poverty Law Center, AFL-CIO, and SEIU. These organizations firmly believe that the H-2B program is rife with abuse and bad employers who treat foreign workers like modern day slaves. I do not disagree that the H-2B program, like any other program, includes a few bad apples that violate the law. We have some isolated cases in the Gulf Coast region. However, this does not mean that the H-2B program is fundamentally flawed and does not provide proper protections for foreign workers.

Under current law, H-2B workers receive the same worker protections as their U.S. counterparts. An H-2B worker is guaranteed wage protections under the federal Fair Labor Standards Act; a safe and healthy worksite mandated by the Occupational Safety and Health Act; protection for occupational injuries and fatalities under state workers' compensation programs; federal whistleblower protections; right to join a union; and protections under five federal civil rights statutes which prohibit discrimination on the basis of race, color, religion, gender, citizenship, national origin, age, or disability.

H-2B workers are also provided additional protections which were established under the Save Our Small and Seasonal Businesses Act of 2005 (P.L. 109-13). This legislation, which originally established the returning worker program, made sure that government agencies processing H-2B visas have the resources they need to detect and prevent fraud and to protect American workers. These resources come from a special government-imposed fee of $150 that businesses pay for each H-2B petition they file. The legislation established fines of up to $10,000 per violation if a business breaks the employment conditions promised to the H-2B worker. In addition, it provided the Department of Labor with the authority to deny a business' H-2B applications for up to five years for bad behavior.

Some changes could be made to the H-2B program to help both the businesses using the program and the foreign workers coming to the United States. It is important that the Department of Labor have the authority to enforce the labor protections already in place.

In addition, Congress should address the issue of foreign labor recruiters. Because H-2B visas are so limited, foreign labor recruiters have been able to exploit this for a profit. There are reports of some foreign labor recruiters who charge foreign workers excessive fees and misrepresent the terms of employment and the terms of the H-2B visa. Such recruiters are also reportedly snatching up H-2B visas and then take advantage of the businesses that depend on these workers by auctioning them off to the highest bidder. This is unacceptable. Visas should go directly to the businesses that need them, and recruiters should be held accountable for the information they provide to foreign workers. By delaying an extension of the returning worker program, Congress is compounding the foreign recruiter problem that the unions and workers rights groups are trying to prevent. I hope to continue my dialogue with the Subcommittee and Chairman George Miller on these matters.

Now, however, America's small and seasonal businesses need Congress to act immediately to extend the H-2B returning worker program. Small and seasonal businesses in Michigan and throughout the country are facing significant labor shortages this year that will result in forced downsizing, decreased services, economic hardship or even bankruptcy. If small businesses lose

their ability to hire seasonal, non-immigrant labor, full-time American jobs and U.S. businesses are at stake and may be lost.

I urge the Subcommittee to act on my legislation, the Save Our Small and Seasonal Businesses Act (H.R. 1843), or approve an extension of the H-2B visa returning worker program as soon as possible, to preserve small businesses' access to seasonal workers.

Thank you.

Ms. LOFGREN. Thank you, Congressman Stupak.

We turn now to Congressman Bishop.

TESTIMONY OF THE HONORABLE TIMOTHY H. BISHOP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. BISHOP. Thank you very much, Madam Chairwoman and Members of the Subcommittee. I appreciate the opportunity to testify——

Ms. LOFGREN. I don't think your microphone is on. There, much better.

Mr. BISHOP. Thank you. I appreciate the opportunity to testify before you on the matter of H-2B visas, an important issue affecting my district. I particularly want to thank my colleague from Michigan, Congressman Stupak, for introducing H.R. 1843, and for all of his work and dedication in finding a solution for our small businesses.

I represent New York's first congressional district, which encompasses the eastern half of Long Island, a set of coastal communities collectively referred to as the Hamptons, that experience an enormous seasonal influx of summer vacationers and second-home residents. Businesses in my district rely on H-2B visas to keep them afloat during the busy summer season.

For many businesses, their actual season begins as early as March and ends well after Labor Day, even into October. This means that hiring a student under the J1 visa program is not an option, as the work period lasts much longer than a traditional summer.

These small businesses welcome the same seasonal workers back year after year; in fact, some have had the same workers return for the past 15 years. The vast majority of these trusted and well-trained workers faithfully return to their home country after their visa expires, and then return the following season.

Employers who benefit from the H-2B visa program range from hotels and restaurants to employers such as landscapers, retail shops, sports and recreation facilities, transportation services, and estate management. In fact, most jobs in my district relating to the summer industry involve H-2B visas.

On just the second day in 2008, the annual cap on H-2B immigration visas for migrant and seasonal workers was reached. Consequently, many family-owned small businesses that depend on such employees will be without the workforce they need to stay in business. Small businesses in my district are now exploring—but largely unsuccessfully—every possible option to cope with the shortage of summer labor that they are now presented with.

While the lack of H-2B visas directly affects the small businesses that receive these workers, it also affects the local economy where these businesses reside. Year-round employees also suffer because their employers are forced to scale back their hours and wages due to the lack of workers to keep their businesses running properly.

Without a returning worker exemption this year, many businesses in my district will be forced to dramatically scale back their activity, and as a result our communities will suffer. Like many of my colleagues who recognize the importance of H-2B visas to our

economy, I support raising the cap permanently and incorporating this change into broader comprehensive immigration reform.

Regrettably, partisanship and political obstacles to broaden reform were made evident when the Senate debated it last year. Therefore, in my view, we must resolve to enact those smaller-scale remedies we can agree upon today in order to alleviate the burden our broken immigration system imposes upon our businesses as we continue to address the security, economic, and political challenges required to enact broader reform.

While we seek such a consensus, I respectfully ask that this Committee join Mr. Stupak, myself, and nearly 150 co-sponsors of his bill, H.R. 1843. We can all agree upon the merits of this legislation, that we must find a solution to the crisis affecting our small businesses. We cannot allow their interests and livelihood to be held captive to the continuing impasse over immigration reform.

We can also agree that helping small businesses retain their temporary workforces can alleviate one major strain on our economy. Stimulating growth and returning our economy to prosperity cannot occur without delivering such relief to America's small businesses.

Madam Chairwoman, I thank you again for the opportunity to speak today about this important issue, and I would be happy to answer questions.

[The prepared statement of Mr. Bishop follows:]

PREPARED STATEMENT OF THE HONORABLE TIMOTHY H. BISHOP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Madame Chairwoman and Members of the Subcommittee, thank you for the opportunity to testify on H-2B visas, an important issue affecting my district. I also want to thank my colleague from Michigan, Representative Stupak for introducing H.R.1843, the "Save our Small Businesses Act," and for all of his work and dedication to finding a solution for our small businesses.

I represent New York's First Congressional district, which encompasses the eastern half of Long Island—a coastal community that experiences an enormous seasonal influx of summer vacationers and second home residents.

Businesses in my district rely on H-2B visas to keep them afloat during the busy summer season. For many businesses, their actual "season" begins as early as March and ends well after Labor Day—even into October. This means that hiring a student under the J-1 Visa Program is not an option, as the work period lasts much longer than a traditional summer. These small businesses welcome the same seasonal workers back year after year. In fact, some have had the same workers return for the past 15 years. The vast majority of these trusted and well-trained workers faithfully return to their home country after their visa expires and come back the following season.

Employers who benefit from the H-2B visa program range from hotels and restaurants to less obvious employers like landscapers, retail shops, sports and recreation, transportation services and ground keepers. In fact, most jobs having to do with the summer industry involve H-2B visas in my district.

On just the second day of 2008, the annual cap on H-2B immigration visas for migrant and seasonal workers was reached. Consequently, many family-owned small businesses that depend on such employees will be without the workforce they need to stay in business. Small businesses in my district have exhausted every possible option to cope with the shortage of summer labor that the H-2B program has created.

While the lack of H-2B visas directly affects the small businesses that receive these workers, it also affects the local economy where these businesses reside. Year-round employees also suffer because their employers are forced to close or dramatically scale back their hours and wages due to the lack of workers to keep their businesses running properly.

Without a returning worker exemption this year, businesses in my district will be forced to close and my community will suffer. Like many of my colleagues who

recognize the importance of H-2B visas to our economy, I support raising the cap permanently and incorporating this change into broader immigration reform. Regrettably, partisanship and political obstacles to broader reform were made evident when the Senate debated it last year.

Therefore, we must resolve to enact those smaller-scale remedies we can agree upon today—in order to alleviate the burden our broken immigration system imposes upon our businesses—as we continue addressing the security and economic challenges required to enact broader reform.

In the absence of such a consensus, I respectfully ask this committee to join Mr. Stupak, myself and nearly 150 cosponsors of his bill, H.R. 1843, the "Save Our Small and Seasonal Businesses Act." We can all agree upon the merits of this legislation and that we must find a solution to the crisis affecting our small businesses. We cannot allow their interests and livelihoods to be held captive to the continuing impasse over immigration reform.

We can also agree that helping small businesses retain their temporary workforces can alleviate one major strain on our economy. Stimulating growth and returning our economy to prosperity cannot occur without delivering such relief to America's small businesses. Raising the cap on H-2B visas and adding stability to this important program will help us achieve those goals. We cannot leave small businesses who want to do the right thing with the unacceptable choice of going out of business or hiring illegal workers.

Madame Chairwoman, thank you again for the opportunity to speak today about this important issue and I am happy to answer any questions.

Ms. LOFGREN. Thank you very much, Congressman.

And our last witness is Congressman Gilchrest.

Welcome.

TESTIMONY OF THE HONORABLE WAYNE T. GILCHREST, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. GILCHREST. Thank you very much, Madam Chairwoman.

And I want to thank Mr. Stupak and Mr. Bishop for their work over the last many months to deal with this issue essentially as a separate entity, a separate piece of legislation, a separate, very important, vital issue for the Nation's small businesses, seafood industry, tourism industry, agriculture. This is a slice of the pie that has its own niche, unfortunately, in a broader, more comprehensive immigration legislation that is tied up in any one of a number of ways.

But this particular issue has been successful for many, many decades, and across the Nation. Especially, you see—and I know I am a border State, so I am not up north like the two gentlemen to my right—but as Mr. Bishop said, the cap of 66,000 H-2B workers was reached January 2. Well, there is no harvest to be—there are no crops to be harvested in agriculture in any one of our States in January, or February, or March, or April.

And the seafood processing industry, the tourism industry—this starts months and months later, and in years past, the Congress always found a way to appropriately vote for an exemption for those workers who were here the previous year. And that has not been done, because this whole issue is tied up with the broader, more comprehensive issue of immigration as a whole.

Now, I would just like to make a couple of points, and I would like to ask unanimous consent that my full statement be submitted for the record.

Ms. LOFGREN. Without objection, it will be——

[The prepared statement of Mr. Gilchrest follows:]

PREPARED STATEMENT OF THE HONORABLE WAYNE T. GILCHREST, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Congress of the United States
House of Representatives

WAYNE T. GILCHREST
1st District, Maryland

April 15, 2008

The Honorable Zoe Lofgren
Chairwoman
Subcommittee on Immigration, Citizenship,
Refugees, Border Security and International Law
Committee on the Judiciary
House of Representatives
517 Cannon House Office Building
Washington, DC 20515

The Honorable Steve King
Ranking Member
Subcommittee on Immigration, Citizenship,
Refugees, Border Security and International Law
Committee on the Judiciary
House of Representatives
517 Cannon House Office Building
Washington, DC 20515

Dear Chairman Lofgren and Ranking Member King:

I testify today in support of the H-2B program and the H-2B Returning Worker Exemption. As many of you know, seasonal businesses across the nation – including Maryland's First Congressional District – depend on temporary H-2B workers to fulfill seasonal labor needs. This program is vital to the seafood, cannery and numerous other seasonal industries on Maryland's Eastern Shore and it has worked for over a decade with results that have benefited both small business and the Americans who work for them. This is not a new program. It deals only with temporary seasonal workers who come to the US to perform seasonal work and then return home at the end of the season.

Local economies across the United States are facing an immediate labor crisis. Seasonal jobs that have been filled for years by temporary H-2B workers are vacant. The H-2B visa program provides the small and seasonal businesses that drive many of our nation's regional economies with legal, seasonal workers. The FY 2008 cap of 66,000 H-2B workers was met this year on January 2. In past years, Congress acted responsibly and allowed certain returning workers to be exempt from the H-2B cap in order to help meet the needs of the many seasonal businesses that rely on these workers. Unfortunately, Congress allowed the returning worker provision to expire last year, and thousands of small businesses nationwide face critical job shortages. Prospects for renewing the extension are stalled in the partisan debate over illegal immigration. While it is responsible to have a debate on the need to reform and strengthen this program, it is irresponsible to hold small seasonal businesses hostage to a prolonged partisan political game – especially without any form of relief or reliable labor forecast.

By summarizing the story told by seasonal H2-B businesses in my district, I will explain to the committee why demand for the program has risen and why Congress must strengthen and expand this vital program:

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☐ 315 HIGH STREET, SUITE 105
CHESTERTOWN, MD 21620
PHONE: (410) 778-9407
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Seafood processing started on Maryland's Eastern Shore in the mid 1800's and has continued until today. It is a significant industry that has defined the State of Maryland, particularly the Eastern Shore. The seafood industry has built and sustained many small towns and villages. The seafood industry is a way of life in these communities. Unfortunately, this way of life is being jeopardized by the continuing absence of available Americans who are willing and able to perform seasonal work.

In the past, these small family owned crabmeat processing plants relied on the family members of watermen for their workforce. The watermen and their families would wake daily at about 3 am. Their families helped watermen prepare for work on the Chesapeake, and then they would go to the crab factory to pick crabs that had been harvested the previous day.

In the 1970's many of the family members left the seafood processing industry, attracted to new industries in the community that provided steady, year-round employment and more conventional work hours. This was the first major labor challenge presented to the industry. In response, a crab picking machine was invented and used to reduce the dependence on seasonal workers. While it did help some, the machine still required 40 people to operate in what has developed to be an even shorter season. Staffing challenges grew worse every year as industry and services continued proliferate throughout the Eastern Shore.

The 1980's ushered in an even more improved economic situation to our region, including more year round employment opportunities for our traditional workers. This in turn greatly increased the strain to provide workers for small seasonal businesses. The seafood industry businesses began to look for the first time at potential workers in different places and outside of our immediate neighborhoods. Some of the efforts to hire and retain local workers include:

- Working with state employment agencies
- Recruiting from local and regional and state detention centers for work release programs
- Increasing advertising in local and regional newspapers
- Working to hire mentally and physically handicapped folks through different organizations
- Working with private industry councils
- Sending a bus daily to Baltimore (80 miles one way) to bring in workers from depressed inner-city neighborhoods.
- Working with religious organizations to set up job fairs in the metropolitan areas of Washington to solicit legal workers to come to the shore to work

Again, with so many more year round employment opportunities available, none of these efforts met with success. The situation continues today.

In the early 1990's Maryland's seafood business were at the "breaking point" – after significant downsizing, if employees could not be hired to pick the crabs the entire seafood business would have begun to collapse. One or two companies began using the H-2B program to survive. Soon nearly all of these small seasonal businesses began supplementing their local workers with temporary seasonal foreign workers.

In the mid 1990's the industry began facing stiff competition (largely as a result of what we believe was illegal dumping of huge amounts of cheap imported crabmeat coming in to the U.S. markets) from

processors in Asia. While they used a completely-different species of crab, these foreign companies still marketed their processed product as "Blue Crab". This cheap imitation of our domestically-processed blue crab caused confusion at the market place, and began to take away tremendous market share because of the significantly cheaper cost. This supply of "cheap" imported crabmeat continued to increase into the late 90's to the point many crabmeat businesses from Texas to Maryland went out of business. The remaining crab companies had to restructure their marketing to get away from large accounts such as chain stores and move towards niche markets where consumers demanded and would pay a little extra for "real Chesapeake crabmeat". The surviving crab businesses have been able to stay in business by buying, cooking, picking, processing and marketing their authentic "Grown in the USA" domestic crabmeat. In recent years the market has continued to evolve and change and now China and Venezuela ship literally tons and tons of cheap crabmeat into the United States.

For many reasons – some specific to my district and others across America – strengthening and expanding this program has drawn bipartisan support in past years. The Save Our Small and Seasonal Businesses Act, signed into law by President Bush in May 2005, made significant changes to the federal H2-B (non-skilled seasonal worker) visa program. Among the changes, it exempted returning seasonal workers from counting against the national cap of 66,000 people, created new anti-fraud provisions, and ensured a fair allocation of H2-B visas among spring and summer employees. The cap exemption provided significant relief to Maryland's seafood and cannery industry that often hires the same dependable workers every year.

The only word to describe the situation today is "desperation."

Where we are today: seafood processors continue to provide significant benefit to our region's economy. In fact, the University of Maryland has conducted extensive economic studies in our region, including detailed evaluations of the impact of Maryland's crab industry. Using scientifically-collected data, University economists have determined that for each H-2B worker in our industry, 2.5 local American jobs have been retained or created. With these foreign temporary workers industry and year-round American workforce are able to survive. Without them, businesses would fail and Americans would lose their jobs.

The closure of so many seafood processing plants around the country in the face of cheap foreign imports has placed additional responsibility on surviving companies. At various times of the year, the volume of raw seafood product outstrips the ability of local plants to process it. This has meant that raw product must be shipped across state borders to plants where the season has not peaked. While this has resulted in increased transportation costs, it has also lengthened the period of time our companies operate. This has in turn placed additional pressure on the need to find available seasonal workers.

In my district, the companies that apply for H-2B workers follow rigorous guidelines for approval before any foreign seasonal worker can be hired. They conduct extensive recruitment campaigns by advertising in local papers to recruit available Americans. They also participate in local job fairs, and even recruit released former convicts, among the activities they pursue. They pay well above the minimum wage – they pay the "prevailing wage."

I can say without hesitation that these temporary H-2B workers play a key role in preserving a way of life for the Eastern Shore of Maryland. Without these workers, the seafood processing industry will

disappear in a very short timeframe. Generational family businesses will close. The trickle down support industries will suffer or close. Fishing communities will disappear. There will be higher unemployment for the American workers laid off because of the business closures. Families will be split up and no longer working together. Small businesses, the backbone of our country (as it is often said) will suffer and decline. More people will be dependent on government services to survive since many manufacturing jobs have been moved out of our communities, state and country.

Hundreds of industries nationwide are currently affected by the lapse of the H2-B Visa returning worker provision, including those of my constituents that have traveled here today. While an honest and open debate is necessary on the reforms needed to better this program, we cannot hold these small and family businesses hostage to political gamesmanship and partisan demagoguery.

Thank you for your taking our needs into consideration.

Sincerely yours,

Wayne T. Gilchrest
Member of Congress

Mr. GILCHREST. And I am going to be a little colloquial here. I come from a district that is still carpeted with farms and dotted with fishing villages. It is a beautiful place, and people love to go there and look at the cornfields, and see the crab boats, and see the fishing boats, and see how they are still put from the fishing boats to the dock in baskets, or in some other way that has been done for 100 or more years.

These industries still wake up at 3 o'clock in the morning—whether it is the tourist industry, the seafood industry, the agriculture industry—the families, for generations, would get up at 3 or 4 o'clock in the morning. But the landscape has slowly changed over the decades, especially the last 50 years.

In mid-19th century, when they began to process seafood in a new and fascinating way, everybody on the Delmarva Peninsula had a job in that seasonal workforce. The agriculture industry was the same way. Both those industries faced changes, though, especially in the last 50 years.

In the last 50 years there were more permanent jobs across the Delmarva Peninsula, so people didn't rely on these seasonal jobs, first working for a seafood processor, then working for a vegetable company that canned vegetables—and by the way, canning came in in the early part of the 20th century, and one agricultural processing plant in my district, called Reels, right on Route 50—60 or 70 years ago, they had 1,000 people working for them; then, as new technology came in, they are down to about 200. And out of that 200 people workforce, only 60 are H-2B, but they can't find other workers to take their place.

Another example is, my sister-in-law, when she got out of high school, went and picked crabs for a living. There is no way that my sister-in-law wants her daughter, who is now nearly 30, to have done the same kind of thing. There are more permanent jobs; there are other opportunities.

So the H-2Bs is filling a niche—a vital niche—of economic viability in rural America. This has nothing to do with illegal aliens. These provisions, these workers, come within a structure that is easily seen, easily identifiable.

Now, the other issue I want to bring up here is, H-2Bs do not take away from American jobs, because the seafood industry, the agriculture industry, the tourism industry, they still go through the following things: they work with the State's unemployment agency to find workers on a regular basis, they recruit local and regional people from the State detention centers—from State and local prisons—to come work as seasonal workers, they increasingly advertise in paper, they now hire mentally and physically disabled people to do the work that they can do, they work with private industry councils, they send daily buses from the eastern shore—in some cases a 3-hour drive—to Baltimore City to get people to work in these seasonal places that otherwise would not have jobs, they work with all kinds of religious organizations to locate people, they run the gamut to get their families to work in the business, to get local people to work in the business. This is not replacing any local employment. And they pay good wages.

The point is that you don't find too many people with college degrees, who are thinking they want to go to college, that are going

to spend too much time in a chicken house from 12 o'clock at night to 5 o'clock in the morning picking up, by hand, 40,000 chickens. You are just not going to find it. Or 8 or 12 hours a day picking crab meat, or canning vegetables.

So, while still a good portion of the local population works in these facilities, not enough do it to make it economically viable. And the H-2B program, which is a successful program, needs a little fine-tuning right here to keep the rural landscape in place, in the Delmarva Peninsula—my district—so that we can continue to have this place carpeted with farms and dotted with fishing villages.

And Madam Chairman, thank you very much for the time.

Ms. LOFGREN. Thank you very much, Mr. Gilchrest. [Applause.]

We are going to allow that applause for Mr. Gilchrest, but we do ask that displays of emotion be kept under control in the hearing.

This is a time now where we have, as a Committee, an opportunity to pose questions. And I understand that we are delayed, so if any of you have another obligation that you have to attend to we would understand that, but we hope that you could stay for a few questions at least. And I see no one is leaving, so I am going to begin.

I am sure that you have all seen the newspaper articles about allegations of abuse of H-2B visa-holders where there was a serious concern raised. Do you believe that if we were to move forward on some resolution on this returning worker issue, that putting in some protections to avoid unscrupulous employers doing something that is harmful to employees should be included?

Mr. STUPAK. Madam Chair, as you know, we have adopted many of those in the piece of legislation we worked on very closely over the last few months. But I would suggest that it may not necessarily be the employers that are the unscrupulous people here, but some of the agents——

Ms. LOFGREN. The recruiters.

Mr. STUPAK [continuing]. From other countries, the recruiters, that make false hopes and mislead people. So again, we don't disagree there may have been some problems down in the Gulf after Hurricane Katrina, but don't destroy the whole program because of a few bad apples. This program has been going on for a long, long time, and Wayne has pointed out how important it is to his district; it is just as important to my district.

We have businesses not opening. Now, is that what we want, especially in a time of tough economic times, that businesses do not open because we deny a program that works, where people come in legally and leave?

It doesn't make a lot of sense. Don't paint everybody with a broad brush. There are some problems; let's work on them.

Ms. LOFGREN. Okay.

Mr. BISHOP. I certainly would support protection for employees, and I am happy to say that in my district, if there are abuses they are very much the exception——

Ms. LOFGREN. I have not heard of any in any of your districts.

Mr. BISHOP. I am not aware of any, and I absolutely would support employee protection.

Ms. LOFGREN. Mr. Gilchrest?

Mr. GILCHREST. I would be in favor to make sure that the unscrupulous element in this program be apprehended and duly punished. We do see those things in an array of foreign workers coming into this country. I think the program, as it now sits, with the proper oversight, as the way it now exists and functions in our districts—I know that where I live there is oversight. They look at people that are unscrupulous; they look for fraud; they look for some type of organized illegal activity.

So the program as it now is situated, I think, functions quite well. What will happen though, and what we want to avoid is, a lot of these businesses do not want to go out of work; they do not want to go out of business.

So a lack of fine-tuning this H-2B program, you are going to see as a matter of human nature, as a matter of the way it works in this world, you are going to see more criminal activity; you will see more coyotes; you will see more people bringing in workers that aren't documented, that are brought in illegally, that have false documents. We have tracked it years ago from Guatemala—a certain village in Guatemala—to a certain place in Texas, to a certain place in North Carolina where they got their papers, right up to our district.

We cleaned it up. We ensured that people were appropriately brought into this country. And if this H-2B problem is not solved, we are going to exacerbate the problem of illegal activity.

Ms. LOFGREN. Let me ask one final question to each of the three of you. As you are aware, I think, I was very much a supporter—and still am—of comprehensive immigration reform, and I was very disappointed when the Senate was unable to proceed, and I still have very strong hope that we will be able to enact comprehensive immigration reform.

Some are concerned that if we take action on elements of what would be in comprehensive immigration reform, that we would impair the ability to actually achieve a broader solution to the problem. What is your answer to that? I mean, would you work on comprehensive immigration reform if there were a resolution made to this——

Mr. STUPAK. Well, as the Chair knows, Mr. Gutierrez and Mr. Delahunt and a number of us have been working for the last several months to actually take the first step toward comprehensive reform on all aspects of immigration, legal and illegal. And we were within a few votes of it until the rug got pulled out just before Easter. Otherwise, this would have been resolved.

Those discussions, I think, have set a basis in this House of Representatives, where real discussion can occur, and hopefully we can keep the politics out and get those last 14 to 15 votes we need to do a comprehensive reform that makes sense, that is legal, that secures our border, that secures our jobs, and secures our future in this country.

Mr. BISHOP. I very much support comprehensive reform. In fact, I am a co-sponsor of Mr. Gutierrez's bill, and I also worked closely with and supported the efforts of Mr. Gutierrez and Mr. Stupak to come up with sort of a somewhat truncated version of comprehensive reform that we thought we might be able to use to move H-2B visa. And I, too, am sorry that it didn't work.

But I believe that the H-2B visa problem that we currently have is an example of why comprehensive reform is such a requirement, and I certainly understand the efforts to use H-2B as the means to move us closer to comprehensive reform, and I support it.

Ms. LOFGREN. Mr. Gilchrest?

Mr. GILCHREST. I am in favor of comprehensive reform. However, at this point comprehensive reform—I will make a statement even though I am a part-time Methodist since the Pope is in town—comprehensive reform, to this Congress, is a Hail Mary. And it is just not something that we think—to me, that means a long pass; I don't know what it means to the Catholic Church. [Laughter.]

To me it means a long pass.

Mr. GILCHREST. But anyway, I think the short pass, right here, is going to set us up for the goal line. And I think H-2B sets a positive precedent that people can get around, separated from all the other complicated issues of comprehensive immigration reform.

This is a vital, urgent piece of legislation that is positive; we can all get behind it. And I think this positive gesture—passing—will ease the angst and the anxiety and the apprehension out there in the small business world, and we can move forward with comprehensive reform after this pass.

Ms. LOFGREN. Thank you.

My time is expired, so I turn now to the Ranking Member for his questions.

Mr. KING. Thank you, Madam Chair.

Gentlemen, I appreciate your testimony, and I can't help but reflect back upon an event that I recall taking place, many of them in the White House in fairly intense discussions about how to put together the comprehensive immigration reform. And it lists you quite a list of organizations, many of which are supporting this H-2B bill, that signed onto that in promoting the comprehensive immigration reform

And the pact, as I understand it, was that everyone who wanted to make an amendment to their particular visa category, whether it is H-2Bs, 1Bs, H-2As, J1s, whatever they might be, that it would stick together and follow one comprehensive plan, and not break from the herd, so to speak, and go ask for a single amendment to a particular category, in which case we are talking H-2Bs here.

I saw that coalition stick together all the way through the debacle in the Senate when the switchboards got shut down twice. And I want to make sure that the record reflects my view on that, and that is that although I appreciate the arguments of all the parties involved, when you put it together comprehensively, the bargain was this: the bargain was that enforcement of our existing laws was not going to come unless this policy, which I will call a hostage to enforcement, was comprehensive immigration reform. In other words, a right to enforcement was held hostage to an ultimatum that we would pass comprehensive immigration reform.

Now, that coalition apparently has broken up, and I am seeing entity after entity come here on this Hill and ask for their piece of immigration reform. I see this as one of those pieces; I just lay that backdrop for my questions which I expect to ask.

And then I would turn first to Mr. Gilchrest, whom I met a lady on a plane the other day that said she had never voted before, but

she voted for you because she liked your name. So I will pass that along in the record.

Mr. GILCHREST. I didn't hear you.

Mr. KING. I met a lady on the airplane the other day, way into the Midwest, that said she had never voted in her lifetime—she was in her mid-50's—but she had just voted in the past primary because she liked your name. So that is my compliment, Mr. Gilchrest.

Mr. GILCHREST. Was she Scottish?

Mr. KING. I am not sure what she was; I didn't profile her. But in any case, she voted for you and was quite proud to do so, and I remarked how unusual that would be to meet somebody in the Midwest in that fashion. So that is my pat on the back to my friend from Maryland, and I appreciate your testimony.

A gentleman sat in that same Chair as you some months back and testified that the recruitment lines for employment into the Delmarva Peninsula were stronger to Poland than they are to the Potomac. In other words, there is a fairly high degree of unemployment and people who are not in the workforce here, especially in the district, and the short ride that it is up the coastline to go to work in those facilities that you mentioned seems to not be where the recruiting helped. The recruiting helped from Poland rather than the Potomac River.

And so my question is, do you agree or disagree with Mr. Roy Beck, who made that statement and supported that statement statistically?

Mr. GILCHREST. Who made the statement?

Mr. KING. Roy Beck, the——

Mr. GILCHREST. I would like to see Roy Beck's statistics. I know there are some Polish people that work in Ocean City, if you find a Greek diner or some gang on the boardwalk in Ocean City or some other places, but I can tell you, Mr. King, that I have never seen—and it is fine. If someone from Poland wants to work in a crab house or pick up chickens——

Mr. KING. If they are legal, I am fine.

Mr. GILCHREST [continuing]. Or work picking tomatoes to put in a can, that is fine, if that local business cannot find that help.

Mr. KING. I think that I—my clock is ticking, and I——

Mr. GILCHREST. But I am not sure where he got his statistics from, but I sure would like to see them——

Mr. KING. They are part of the record, and I will see to it that you do get those statistics, and I appreciate your viewpoint.

I would just like to ask a broader question, and first, I think my time is going to be such that I am going to be more specific instead, and turn to Mr. Stupak, and ask you, this bill proposes an increase of 66,000 a year for the duration of the authorization, which theoretically could take us to 462,000. Now, I understand that there are assurances that there aren't American workers that are being displaced, but there is policy out there in existing visa programs that allows for an American worker to show up on the job if they are qualified, and the employer then, as they have certified that they tried to hire Americans as required in the first half of the contract, to hire Americans.

Would you entertain such a policy to allow American workers to be able to step up on the jobsites and take a job that they claim they may be displaced from?

Mr. STUPAK. The legislation that I have written does not increase the cap; it stays at 66,000. We grandfather in those who have worked in previous years to go back to that same employer. So we do not increase the cap in our legislation; it remains at 66,000. As far as the——

Mr. KING. Is it not cumulative?

Mr. STUPAK. Pardon?

Mr. KING. Isn't your bill cumulative?

Mr. STUPAK. Pardon?

Mr. KING. Isn't your bill drafted so that it is cumulative: an additional 66,000 each year unless it is not met?

Mr. STUPAK. Sixty-six thousand each year, period. What we have is a grandfather. If I worked 1 of 3 years at the Grand Hotel at Mackinaw Island, I can go back to the Grand Hotel at Mackinaw Island and my employment in the next year does not count toward the 66,000 cap.

Mr. KING. Then would you, into the record, let us know what is the maximum number that might be——

Mr. STUPAK. I believe the most ever is right around 130,000.

Mr. KING. But under your bill, what would be the largest number we could have?

Mr. STUPAK. The most ever is 66,000. Then you have to figure out how many are grandfathered in.

Mr. KING. How many would you expect? Have you calculated that?

Mr. STUPAK. Again, the most we have ever had has been, with the 66,000, you had about another 60,000. So it is about 130,000 is the most we have ever had.

Mr. KING. So I guess what you are saying is that your bill just refreshes previous policy with regard to H-2B numbers.

Mr. STUPAK. Yes. It is an extension of the Gilchrest bill that Mr. Gilchrest and I wrote back in 2005 to afford problems he pointed out were livid then. We put it in then; it worked out very well for 3 years.

Mr. KING. I will take another look at that language, and I just ask in deference for an additional question, and that is that, as in my statement with regard to my questions, I noted that there are a number of things that the growth of our legal immigration—it is about 1.3 million a year. And would you entertain finding offsets for this proposal so that we could reduce another visa category in proportion to the increase for H-2Bs so we don't end up with 2 million or 3 million legal immigrants in the country in a year?

I mean, is the priority high enough to do that? And I would suggest, perhaps, the 50,000 visa lottery program is just simply a grab-bag lottery without any merit base.

Mr. STUPAK. Well I hope, Mr. King, that when the other witnesses, especially the employers who come forward and testify after us, you listen to their stories. It is not simply a matter of finding someone to replace a job. You train them, you do all this, and you like to have them come back year after year. Like at the Grand Hotel, some of them come back with 20, 25, 30 years.

How do you replace an employee, whether it is an American employee or an employee who is a foreign worker who has been there for 20, 25 years, knows your business, knows your customers, gives you that extra little sense? I don't think we should require every employer to every year have to retrain new employees for a new job.

Mr. KING. Mr. Stupak, with full respect, though, the question on offsets—would you look and see if this expansion to perhaps 123,000, that number of 63,000 or 66,000 additional, would you be willing to look and see if you could find some way to offset those numbers, perhaps from another visa category, so we didn't increase the overall total? Would you be in favor of that?

Mr. STUPAK. I am willing to look at anything to help out legal immigration. If there is an offset that has to be taking place, I am willing to take a look at it. But this bill has been the same ever since this program has been created at 66,000.

Ms. LOFGREN. The gentleman's time has expired and we have gone over, and we have, for some reason, a motion that the Committee rise. So I would suggest maybe we can get in a few more questions before we rush over on that pressing matter.

I recognize, now, Mr. Gutierrez for his questions.

Mr. GUTIERREZ. I thank the gentlelady very much.

First I want to say to Bart Stupak and Tim Bishop, it is wonderful working with both of you.

And I want to say to my good friend Wayne Gilchrest, it is good to see you. We see each other frequently very early in the morning; maybe not as much during working hours. We should do more to get together during working hours.

And to say to the gentlemen that there is absolutely no doubt in my mind that we need to renew guest worker programs in the United States of America, and that H-2B—I mean, it is my position it is going to be approved by the Congress of the United States, there is going to be an extension of it in the Congress of the United States. That truly is not the question that we have before us.

The true question that I think we have before us is, what are we going to do about the larger, most exploitive guest worker program we have in the United States of America? And that is the 12 million, the 14 million undocumented workers that each and every day work in the most exploitive conditions here in this country.

And if the Congress of the United States is going to respond to a well organized, well financed industry sections of this country, or is it going to respond to those that don't have as well organized and as well financed advocates here in the Congress of the United States—the undocumented worker that works so hard here in this country?

I think the real question for us is, as we build a coalition to get and to make sure that industries which need immigrant labor in order to be sustained, to survive, and indeed to prosper, whether or not we are going to make sure that Eduardo and Mildred Gonzalez—American citizen Eduardo, petty officer, white, in Iraq, whose wife, Mildred, is being deported from the United States—are we going to have the same energy and applause and passion to make sure that Petty Officer Gonzalez, within our broken immigra-

tion system, is going to be asked to come back after his third term in Iraq defending this Nation to his wife and to his children?

And not only Petty Officer Gonzalez, but we have Angel and Adair Rodriguez. We have a U.S. sailor from Massachusetts asking, "Don't deport my wife." We have a widow whose husband died in Iraq, who is being deported and being asked to leave the United States of America. We have a father of a U.S.-born soldier killed in Iraq who is being deported after his son died in the Iraq defense, being deported from the United States of America.

You know, we have these situations going on each and every day. We have an Arkansas woman, left in a cell for 4 days with no food and no water by ICE agents, because we are rapidly expanding our deportation and targeting, and saying what is I think a very racist symbol, "Return to sender." It is dehumanizing, as though they were a parcel, something that isn't human of flesh and blood, with a soul.

Four days, being held in a detention center in Arkansas, the rapid death—we are doing a great job in the United States of America, Madam Chairwoman. And we are proud that this Congress, this democratic Congress, has done more to do enforcement.

To do enforcement? The fact is that workers are getting killed less, being hurt less in the job force, unless your last name happens to be Gonzalez or Rodriguez. That is just the facts.

And if you are undocumented, you are twice as likely to be Latino and to die. Last year alone, 632 immigrants died working. Three hundred and five—not one of them should have died.

But the fact is, we know that this exploited class of undocumented worker, the largest, I suggest to everybody, guest worker program that we already have to contend with, must be responded by the Congress of the United States of America. The true question before us isn't whether H-1B or H-2B, or whether, you know, Microsoft or Bill Gates are going to be tickled pink, or whether the lawns in front of the house that I live at are going to be nice and green this spring and this summer; that is going to get done.

That is going to get done. I think we all know that. Let's not fool ourselves about what the true debate is really about here in the Congress of the United States. And it is whether or not this Congress is going to have the courage to not only resolve the very necessary issues that the gentlemen have brought before us, which I think are necessary issues that we need to embrace and to make sure, but whether or not those workers under the H-2B program are going to be fully protected.

I have got to say in closing, Madam Chairwoman, that I have to take a step back when we begin these hearings by chastising the AFL-CIO, and when we begin by giving ourselves a stamp of approval and a stamp of pride by saying, "We have done more to enforce the laws than any Republican Congress." I thought we were elected here to do comprehensive immigration reform and to protect workers here; that is certainly going to be my focus.

In ending, I would just like to say, yes, we need to pass the ball. We need to get a touchdown, too.

You know, when women were fighting for the right to vote in this country, I don't think they wanted a pass; they wanted a touchdown. They wanted to be able to vote. They didn't want some more

pots and pans and another, you know, apron to be sent back to the kitchen.

When Black people in this country protested for their civil rights, they didn't want a pass; they wanted a touchdown. They didn't want just a new bus for the Black people and, you know, separate but equal. They wanted to be integrated fully into our society and our economy.

When workers wanted a 40-hour work, and they wanted minimum wage, and they wanted certain standards, they didn't want you to say, "Okay, you get Sunday every other week, but you are still going to get hurt, and you are still going to be underpaid."

We can do more as a country. Those immigrant workers that have been testified about here today in the H-2B are critical and essential to our economy. Let's begin to deal with this in a much more comprehensive manner so that we can all really feel that we have done our duty and our job.

Thank you.

Ms. LOFGREN. Thank you.

Mr. GUTIERREZ. And I thank the gentlelady and the Chairwoman for indulging me, because I know the clock ran out about 60 seconds ago.

Ms. LOFGREN. That is all right.

We will turn now to Mr. Delahunt for his 5 minutes, more or less.

Mr. DELAHUNT. Well, I will thank the Chair, and I do hope that the gentleman from Illinois' prediction that the H-2B program will be extended actually materializes into a reality. I can assure him—and I think I speak for the three gentlemen at the desk—that we share the outrage that he has passionately articulated, particularly when we have members of our armed forces who are out demonstrating their commitment to this country and return home to find that their family members are subject to deportation.

I think you know that, Mr. Gutierrez, that we stand with you on that. And I can also assure you that protection of workers is a priority for myself, and I know for Messrs. Stupak and Bishop and Gilchrest. I am proud of the Commonwealth of Massachusetts and the statutory scheme of labor protection it does provide, because we would never countenance the kind of abuses that appear to have been, or allegedly have been, perpetrated elsewhere.

But at the same time, we want to ensure that those foreign workers that come to my district, Cape Cod and the islands, not only are well protected, but are there to contribute to our regional economy and also to ensure that jobs for American citizens are not eliminated, because that is what we are looking at on the Cape and the islands. I can assure you that story after story that come to me and to my office that speaks about this issue, that says that without the H-2B visa extension, I am going to have to close my business, that this is not an issue of displacement of American workers.

If this occurs, this will develop into the elimination of jobs for Americans. It is really that simple.

You know, on the Cape and the islands, we need, because of the spike in the season, somewhere between 5,000 and 6,000 H-2B workers. This year, 15. That was the number according to the Cape

Cod Chamber of Commerce, and a friend of mine, Bill Zammer, is here to testify about that.

And this translates, by the way, into a real high-risk issue for us, because our communities are impacted. The tourism business in the Commonwealth of Massachusetts generates local and State revenues in about almost $1 billion.

And you are right about protecting workers. We face a fiscal crisis in Massachusetts, and this kind of damage to our retail economy can mean layoffs for teachers, and firefighters, and police officers, and other members of organized labor. So that is why we are here fighting for hard.

I appreciate the great work that you have all done, and I appreciate the prediction of my good friend from Illinois.

Mr. GUTIERREZ. Will the gentleman yield?

Mr. DELAHUNT. I yield, of course.

Mr. GUTIERREZ. Thank you.

Number one, I thank the gentleman for his help, his support, and his commitment. And I know what Massachusetts represents in terms of the entire delegation, and the gentleman specifically.

And now, I would like to ask a unanimous consent request of the——

I yield back to the——

Ms. LOFGREN. Okay. Are the three of you able to return after this one vote?

Mr. STUPAK. I am in a markup; I might have to run back and forth, but I will return.

Mr. GUTIERREZ. Madam Chairwoman? Madam Chairwoman?

Ms. LOFGREN. Yes?

Mr. GUTIERREZ. May I ask for unanimous consent that "Close to Slavery, Guestworker Programs in the United States," a report by the Southern Poverty Law Center,[1] be included in the record?

Ms. LOFGREN. Of course. Without objection.

Mr. GOHMERT. Madam Chair?

Ms. LOFGREN. Yes?

Mr. GOHMERT. Yes. Mike Conaway has a constituent who had offered to come up here and testify. He asked if I would offer his testimony in writing for the record——

Ms. LOFGREN. Without objection, that will be included in the record.

Ms. JACKSON LEE. Madam Chair, may I just make—I have to be—on the floor; I will not be able to return. May I just make one or two statements in my——

Ms. LOFGREN. If you could very quickly.

Ms. JACKSON LEE. I will. I will.

Let me first recognize the Members and thank them very much for this thoughtful legislation. I will not be able to ask questions, but I do think the telling point is to ensure that we are protecting American jobs while we are balancing the business interests.

And just for the record, Madam Chair, I just want to indicate that in my district today, ICE raided a Shipley's Donut place, and

[1] The report by the Southern Poverty Law Center entitled *Close to Slavery,* submitted by Mr. Gutierrez is not reprinted in this hearing but is on file at the Subcommittee and can be accessed at www.splcenter.org/pdf/static/SPLCguestworker.pdf.

of course took undocumented individuals in, at least allegedly so. Picketing is going on in front of my Federal building.

I would just suggest that we have a crisis and we cannot do immigration reform through ICE raids of individuals who may or may not be undocumented, but may have a Spanish surname. I frankly hope that the President and this Congress, with your leadership—and you have been a leader—that we can work together for what is right: comprehensive immigration reform, protecting American jobs, and doing it the right way.

With that, I yield back.

Ms. LOFGREN. Thank you.

We have—actually, only 131 members have voted. I wonder, Mr. Scott, would you like to say something now and then these members won't have to come back?

Mr. SCOTT. Well, Madam Chair, I am not a Member of the Committee, but I did—I think you had—by unanimous consent you entered letters from my governor——

Ms. LOFGREN. Yes.

Mr. SCOTT [continuing]. Seafood Council, and other businesses pointing to the urgency of action as soon as possible, and I thank you for the opportunity to——

Ms. LOFGREN. Without objection.

Mr. SCOTT [continuing]. Those into the record.

Ms. LOFGREN. They will be. Without objection, they will be added to the record.

And I think, then, we can excuse this panel and come back to the second panel at the conclusion of these votes, which I hope will be a lot quicker than the last set. We are in recess until after the votes.

[Recess.]

Ms. LOFGREN. The Subcommittee hearing will resume, at least temporarily, until we have our next set of votes. We will now hear from our second panel of distinguished witnesses, and I would ask that as we transition that our guests take their seats. I see they have.

I am pleased to welcome Daniel Musser, III, President of the Grand Hotel, a historic 385-room hotel built in 1887 on Michigan's Mackinac Island.

Mr. Musser represents the third generation of Mussers who have owned and operated the Grand Hotel. Active in the hotel industry, he was appointed to the Michigan Travel Commission in 1988 and is a former alderman for the city of Mackinac Island.

He has a bachelor's degree from Albion College in Albion, Michigan. He lives on Mackinac Island during the season, and in Petoskey, Michigan, during the remainder of the year with his wife and three children.

Next, I would like to introduce Mary Bauer, director of the Immigrant Justice Project at the Southern Poverty Law Center in Montgomery, Alabama. She has a bachelor's degree from the College of William and Mary, and graduated from the University of Virginia School of Law in 1990.

As an attorney, she has spent her career representing low-wage immigrant workers in employment and civil rights cases. Prior to joining the Southern Poverty Law Center, she was the legal direc-

tor of the Virginia Justice Center for Farm and Immigrant Workers and the legal director of the Virginia ACLU.

Our next witness is William Zammer, who operates four high-volume restaurants in Cape Cod, Massachusetts: the Coonamesset—I may be mispronouncing it—Inn, The Flying Bridge restaurant, the Tugboats restaurant, and the Pine Hills Golf Course. He also operates the Cape Cod Catering Company.

Heavily involved in education and workforce issues in the region, he sits on the executive board of the Cape Cod Chamber of Commerce, the Massachusetts Restaurant Association, and the Workforce Investment Board of the Commonwealth of Massachusetts. He is also presently on the advisory board of directors for Johnson and Wales University, Cape Cod Community College, and the Upper Cape Regional Technical High School. He has received numerous awards for his generosity to the community, and enjoys time with his six grandchildren.

Our next witness is Ross Eisenbrey, Vice President at the Economic Policy Institute, where he focuses on labor and employment law. He is an attorney and former commissioner of the U.S. Occupational Safety and Health Review Commission.

Prior to joining the Economic Policy Institute in 2002, he worked for many years as a staff attorney in the House of Representatives, as legislator director for Representative William Ford, and as Committee Council for the U.S. Senate. He also served as policy director of the Occupational Safety and Health Administration from 1999 until 2001. He has a bachelor's degree from Middlebury College, and a law degree from the University of Michigan Law School.

And our final witness is Steven A. Camarota, director of research at the Center for Immigration Studies in Washington, D.C. He has published articles on a variety of immigration issues at the Center for Immigration Studies, and he frequently appears on television news shows. He holds a Ph.D. from the University of Virginia in public policy analysis, and a master's degree in political science from the University of Pennsylvania.

As you have heard from the bells, we have been called for another vote on the floor, but I wonder if we might at least get Mr. Musser's testimony given, and then we will have to go and vote and come back. And I do, once again, apologize for the disruptive nature of this voting, but that is the nature of Congress.

So Mr. Musser, if you could give us your oral statement of about 5 minutes, and for the record, your full written testimony will be made part of the record of this hearing.

So, Mr. Musser?

TESTIMONY OF R. DANIEL MUSSER, III, PRESIDENT, GRAND HOTEL

Mr. MUSSER. Thank you, Madam Chair, and Members of the Subcommittee. I appreciate your invitation today to testify about the critical need for foreign, temporary, seasonal H-2B workers for the Grand Hotel and other seasonal businesses throughout the U.S.

My name is Dan Musser. I am the President of the Grand Hotel on Mackinaw Island, MI. I am the third generation in my family to own and operate this historic, seasonal, 385 summer resort.

We are known nationally and internationally as the world's largest summer hotel. We are known for the beauty of our location, our dramatic 660-foot front porch, but more importantly and most importantly, it is for our friendly and unique hospitality.

Our exceptional service is widely recognized by many national rating guides. For example, the April edition of National Geographic Traveler selected us as one of 150 properties in the U.S., Canada, Mexico, and the Caribbean region with location-inspired architecture, ambience, and the amenities and eco-stewardship, and an ethic of giving back to the community.

The Grand Hotel is the largest employer of U.S. workers on Mackinaw Island; for many decades, the Grand Hotel's entire staff was U.S. workers. However, increasing opportunities for year-round hospitality workers has made it impossible to fill all of our positions with ready, willing, and able American workers.

Without the H-2B seasonal and temporary workers, we eventually would not be in business. We are only open 6 months a year. We are in an isolated location, 300 miles north of Detroit. Operating year-round is not an option.

As Chairman Conyers and also Representative Stupak can tell you, there is no good way to get to our island in the winter, and very little to do there if you are able to get across the frozen lake. We are and always have been committed to staffing the Grand Hotel with U.S. workers.

Each year, we take a number of steps to recruit U.S. workers to the Grand Hotel, including running ads in major papers in Michigan, the Great Lakes region, advertising in seasonal resort areas that dovetail with ours, attending many job fairs, and visiting culinary institutions around the country. We are able to hire some college students, but increased numbers of enrichment opportunities and the extended school year of many colleges preclude them from remaining with us for the entire season.

We have tried, also, several innovative programs, including a service academy, for which we worked with the State of Michigan and the Educational Institute of American Hotel and Lodging Association, where we hired unemployed Michigan citizens, guaranteed them a job the next summer, provided them college-level hospitality courses throughout the summer.

We found that after helping them find jobs at resorts in another part of the country in the winter, they did not return. While these programs have not provided us the workforce we need, we will continue and do everything in our power to find, recruit, and maintain an American labor force.

About 35 years ago, the Grand Hotel began to look to foreign workers to fill these positions that we were finding no U.S. citizens were available for. Many of our H-2B workers, for example those from Jamaica, hold seasonal hospitality jobs in their home country. Some return year after year to the Grand Hotel because of the pay and working conditions we offer to all of our staff.

Most of the subsidized housing we provide to all of our staff are single rooms. We are proud of the condition of our employee housing. We have, this year alone, spent an excess of $300,000 in improvements.

We are one of 70 northern Michigan resorts and hotels that utilize temporary, seasonal, foreign workers on the H-2B visa for specific jobs. Our workforce during the summer is made of approximately 600 employees—250 American citizens, and 300 H-2B workers. Our American jobs depend on our H-2B workers. It would be extremely difficult, if not impossible, for us to continue and to operate successfully without these H-2B workers; they are the lifeblood of our seasonal business.

Clearly, our H-2B workers do not wish to immigrate to the U.S., or they would not have returned home each year at the end of our season. Clearly they feel they are treated well, because most of them return to us year after year. Clearly they are not a security risk. Clearly they are a critical part of what makes the Grand Hotel so successful.

The potential closure of the Grand Hotel would have a devastating impact on Mackinaw Island and northern Michigan, and the tourism industry in general. For example, in the past 15 years we have spent $75 million on capital and general repairs that have created jobs for hundreds of Michigan workers.

The Grand Hotel is not so much different from thousands of small and seasonal businesses throughout the U.S. who have been forced to turn to the H-2B program as a result of a lack of available Americans that are willing and able to do these temporary seasonal jobs. We need you to act immediately to extend the returning worker exemption from the annual cap on H-2B visas.

[The prepared statement of Mr. Musser follows:]

PREPARED STATEMENT OF R. DANIEL MUSSER, III.

STATEMENT OF R. DANIEL MUSSER III,
PRESIDENT, GRAND HOTEL, MACKINAC ISLAND, MI
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES,
BORDER SECURITY, AND INTERNATIONAL LAW
APRIL 16, 2008

Madam Chair and Members of the Subcommittee, I appreciate your invitation to testify today about the critical need for foreign temporary, seasonal H-2B workers for Grand Hotel and other seasonal businesses throughout the U.S. My name is Dan Musser. I am President of Grand Hotel on Mackinac Island, Michigan. I am the third generation of my family to own and operate this historic, seasonal, 385-room summer resort. This is the 75th year that the hotel has been under our stewardship.

Grand Hotel is known nationally and internationally as the world's largest summer hotel. We are known for the beauty of our location on Mackinac Island, for our dramatic 660-foot front porch and, more importantly, for our friendly and unique hospitality.

Our exceptional service is widely recognized by many national rating guides; I have attached a brief listing of recent awards that reflect our commitment to quality.

To give just a few examples:

- The April 2008 issue of *National Geographic Traveler* selected us as one of 150 properties in the U.S., Canada, Mexico and the Caribbean Region with location-inspired architecture, ambiance, and amenities, eco-stewardship, and an ethic of giving back to the community.

- *Travel & Leisure* magazine annually lists us as one of the 500 best hotels in the world.

- *Condé Nast Traveler* rates us as one of the "World's Best Places to Stay."

Grand Hotel is the largest employer of U.S. workers on Mackinac Island. We employ 250 U.S. workers annually. For many decades, Grand Hotel's entire staff was U.S. workers. Increasing opportunities for year-round hospitality workers and other factors have made it impossible to fill all of our positions with ready, willing, and able American workers. Without the H-2B seasonal temporary workers we employ to supplement our U.S. work force, we eventually would not be in business.

The September 30, 2007 expiration of the returning worker exemption to the annual cap on H-2B visas has been costly to Grand Hotel and the Mackinac Island economy. Resources that would have been available for capital improvements that create U.S. jobs have been diverted to a costly scramble to find qualified H-2B workers at winter resorts who are willing to forego returning to their families and home countries and legally transfer to Grand Hotel for the summer season. This is only a temporary fix for this year.

Since Grand Hotel first opened in 1887, it has been a continuing challenge to find a stable, dependable work force to fill the 600 jobs required to maintain the high level of service for which we are known. The fact we are open only six months, our isolated location 300 miles north of Detroit, and other factors make it difficult to develop a work force needed to provide Grand Hotel level hospitality.

Operating year round is not an option. We are a seasonal summer hotel. As Chairman Conyers can tell you, there is no good way to get to our island in the winter and very little to do there if you were able to get across the frozen lake.

We are and always have been committed to staffing Grand Hotel with U.S. workers. Each year we take a number of steps to recruit U.S. workers for Grand Hotel.

- We run ads in major papers in Michigan and the Great Lakes region.
- We advertise in seasonal resort areas that dovetail with ours such as ski resorts in Colorado and Utah and warm weather resorts such as Florida and Arizona.
- We attend as many job fairs in as many colleges and universities in Michigan and the Great Lakes region as we can.
- We visit culinary institutions around the country.
- We attend Michigan Works job fairs.
- We list jobs on major Internet sites.
- We promote on major media outlets in Michigan (radio, print, electronics)

We are able to hire some college students, but increased opportunities for summer educational and enrichment activities for college students has reduced the pool of available students. Further, most college students' school schedules preclude them from remaining with us for the entire season, which runs from May through October.

We have also tried several innovative programs. We created a service academy through which we worked with the Michigan Employment Security Commission to find unemployed Michigan citizens who expressed an interest in the hospitality field. We provided employment for the summer and rotated them through different departments in the Hotel during the course of the season. They also received college level classroom instruction provided by the Educational Institute of the American Hotel and Lodging Association.

At the end of the season they received accreditation from the Institute, a guaranteed job the next summer with us, and with the State's assistance found winter jobs at various resorts in Colorado, Utah, Arizona and Florida. Unfortunately for us, those resorts offered year-round employment. We found that after we had provided them an education and

experience in the hospitality industry and then found positions for them with other resorts in other parts of the country that offered year-round employment, we had virtually no returning graduates.

We even tried a program where we recruited workers from homeless shelters in metropolitan areas in southern Michigan. That was not successful.

We had a somewhat successful program with the State with individuals with certain limited physical and mental disabilities. We hired a qualified full-time supervisor specially trained to work with and live with these individuals to ensure integration to our working community. In recent years, the State's role has diminished in this regard and, therefore, our program as well. I am pleased to say that our program enabled six of these individuals to become capable of living on their own and several worked with us for over 20 years.

While these programs have not provided us with the work force we need, we continue and will continue to do everything in our power to find, recruit and retain as many U.S. workers as possible. In the meantime, the quality of service we provide requires that we supplement our professional, trained and dependable U.S. work force.

For many years, we recruited workers from Florida. But as Florida turned into a year round vacation destination, those workers no longer were available. The situation was particularly critical in the hotel dining room, which is a key part of hotel operations.

About 35 years ago, Grand Hotel began to look to foreign workers to fill positions for which we could not, despite extensive efforts, find U.S. workers. Our H-2B workers come from several different countries. Many of these workers hold seasonal hospitality jobs in their home countries. For example, the Jamaican tourist season dovetails perfectly with ours and Jamaica is an important source of H-2B workers for us. Some of them return year after year to Grand Hotel because of the pay and working conditions we offer to all staff, both domestic and foreign.

Under federal law our wage rates are approved by both the Michigan Employment Security Commission and the U.S. Department of Labor. Our wage rates are based on Detroit-area wages.

We provide a variety of housing in communities on the island that we subsidize for our all staff. Most are single rooms; some with private baths; some with shared baths with one other room and some dormitory style. We are proud of the condition of our employee housing. We have, this year alone, spent in excess of $300,000 on improvements. Our goal is to have a single room for all staff members in the next three years. In addition to housing, we also provide three meals a day in our employee cafeteria.

It is important to note that our H-2B workers enjoy workers compensation, just as our American workers. We also assist our U.S. and H-2B workers through our community foundation. Further, all employees that complete the season also receive a $500 bonus.

We are one of 70 northern Michigan resorts and hotels that utilize temporary, seasonal foreign workers on H-2B visas for specific jobs. Our workforce during the summer is made up of approximately 600 employees – 250 American citizens and 350 or so H-2B workers. Our American jobs depend on our H-2B workers. It would be extremely difficult, if not impossible, for us to continue to operate successfully without H-2B workers - they are the lifeblood of our seasonal business.

The potential closure of Grand Hotel would have a devastating impact on Mackinac Islaud, Northern Michigan and the tourist industry in general.

Some relevant facts to consider are:

- The Grand Hotel has reinvested in excess of $50 million in the past 15 years on capital expenditures. All construction was performed by Michigan contractors.
- During the past 15 years an additional $25 million was spent on normal and major repairs to the Hotel's properties.
- On average 600 individuals are employed at the Hotel each year, with an annual payroll in excess of $12 million.
- Grand Hotel spends in excess of $1 million annually for State and Federal unemployment and FICA taxes.
- The Hotel spends in excess of $1 million annually in Michigan for professional services such as advertising, accounting and other outside services.

The Grand Hotel is not much different from the thousands of small and seasonal businesses throughout the U.S. who have been forced to turn to the H-2B program as a result of a lack of available Americans willing and able to work in temporary seasonal positions. And it is not just the hotel and resort industry that needs these workers.

Nearly every corner of the country is affected by the shortage of seasonal temporary workers. The industries include:

- Seafood processors, shrimpers, crabbers, and fishermen throughout the Gulf, Carolinas, Alaska, Northwest and Mid-Atlantic states;
- Hotels, restaurants, ski resorts and other important tourist destinations throughout New England, the Mid-West and the Rockies;
- Quarries from New England to Colorado;
- National Parks, including Grand Canyon, Sequoia, Yosemite and others;

- Forest industry in New England and the Southeast;
- Theme parks and swimming pools in virtually every state; and
- Landscapers and landscape contractors across America.

Each year these employers go through great expense and trouble to follow the law. The H-2B process consists of applications to four separate Government agencies (State Workforce Agency, U.S. Department of Labor, U.S. Department of Homeland Security and US Department of State), legal fees, Government filing fees and many other expenses. Employers pay wages at levels that have been certified by the U.S. Government to be high enough so that they will not adversely affect the wages of similarly-employed Americans. Employers are obligated to pay the return transportation of workers they let go early, and they must comply with the myriad rules and regulations that govern the worksite of U.S. and foreign workers alike.

For seasonal employers, the H-2B returning worker exemption has worked well. Employers still willingly search high and low for every American they can find. But when they cannot find Americans, the fact that they can turn to workers who have worked for them in the past ensured that they could stay in business. Most importantly, since returning workers have already undergone extensive background security checks (and have to undergo similar checks each time they apply to enter the U.S.), employers can feel confident that they have helped protect the security of our homeland. Moreover, in deciding to return to work with the same seasonal employer, these H-2B workers have signaled that they have been pleased with their working conditions and the wages they have been paid. The returning worker exemption has been one of those rare "win-win-win-win" situations: a win for workers (American and foreign); a win for employers; a win for the United States of America; and a win for the communities we serve.

We need Congress to act immediately to extend the returning worker exemption from the annual cap on H-2B visas.

Grand Hotel
Recent Awards

AAA Four Diamond Rating

Rated by a AAA field inspector as an excellent property displaying a high level of service and hospitality.

The Greatest Hotels in the World

***Travel & Leisure Magazine, January 2008* – The annual guide to the 500 best hotels in the world. The list contains the hotels that received the highest rating in the Travel & Leisure reader survey along with opinions and advice of its editors and reporters.**

Stay List

***National Geographic Traveler, April 2008* – Nominated by travel experts and seasoned travelers and then selected as one of 150 properties in the U.S., Canada, Mexico and the Caribbean Region with location-inspired architecture, ambience, and amenities, eco-stewardship, and an ethic of giving back to the community.**

Gold List

***Condé Nast Traveler* - Rated as one of the "World's Best Places to Stay" by the more than 20,000 subscribers that completed the Readers' Choice poll.**

56 Hotels We Love

***National Geographic Traveler, September 2004* - Named one of the American hotels that deliver a unique experience and a lasting impression.**

Best of MidAmerica

***Meetings MidAmerica, September 2006* - Selected by readers of Meetings MidAmerica magazine as one of the top 45 properties in the Midwestern United States.**

T+L Family 50

***Travel & Leisure Family Magazine, September 2007* - Selected by readers as one of the 50 best family-friendly resorts in the United States, Canada, Caribbean, and Mexico.**

Award of Excellence

***Corporate & Incentive Travel, November 2006* - Recognized by subscribers as a resort that has superior staff service, excellence in accommodations and meeting facilities, trouble-free food and beverage functions, smooth set-ups and arrangements for social functions, exceptional ambiance, and convenient and accessible location.**

Inner Circle Award

Association Meetings Magazine - Voted by readers as one of the top hotels in the country for meetings.

Planners' Choice Award

Meeting News Magazine - Recognized as one of the best in the industry by conference and convention planners based on the quality of facilities and services provided.

Pinnacle Award

Successful Meetings Magazine - Voted by readers as a property that provides the most professional service in the industry.

Excellence in the East Award

Meetings East Magazine - Chosen by readers as one of the top 56 properties in the Eastern and Midwestern United States and Canada. The properties were selected based on the quality of meeting space, guest rooms, staff, service, food and beverage, amenities, activities, and value from properties that they have used within the last two years.

Best of Award of Excellence

Wine Spectator - Recommended as a restaurant where a fascinating wine experience is part of the dining experience. Wine lists are judged by the number of selections, quality of wines chosen, depth of vintages, compatibility with the restaurant menu, inventory, and how easy the lists are to use.

Playful Travel Award

Nick Jr. Magazine - Chosen by top family travel experts and editors from Nick Jr. Magazine as well as two Nickjr.com online surveys as a hotel that offers the best facilities and products to suit the needs and tastes of Nick Jr. families. It is accessible, affordable, and accommodating and offers unique features that make kids feel special and make parents feel cared for and comfortable.

Best of the Midwest

Midwest Living Magazine - Featured as one of the top 37 Midwest resorts selected by the editors of Midwest Living in the Best of the Midwest 2006 edition.

Gold Key Award

Meetings & Conventions Magazine, November 2007 - Selected by readers of M&C who based their votes on overall professionalism and quality of property. Experienced meeting planners selected their winning properties based on strict industry criteria including staff attitude, quality of meeting rooms, quality of guest service, food and beverage service, and recreational facilities.

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Ms. LOFGREN. Thank you very much.

At this point, we are going to recess. Mr. King and I will run over to vote; we have a little more than 5 minutes left on the clock. And we have another vote right after that, so we will be back, I hope, in about 10 to 15 minutes at the maximum.

And so we are in recess until that time.

[Recess.]

Ms. LOFGREN. The Committee will come back into order. Luckily, those were our last votes of the day, so we will not be interrupted again. And before turning to Ms. Bauer, I would like to recognize, briefly, Mr. Delahunt because I know he has another obligation and wants to say something.

Mr. DELAHUNT. Yes. I am going to be very brief, and I am not going to hold up the testimony except, obviously, my opening statement, which was in the form of a question to our colleagues. I think it expresses not just my concern and my position, but that of both workers and employers on the Cape and the islands.

Now, I know many across the country see Cape Cod and Nantucket and Martha's Vineyard as the home of the affluent. Well, let me assure you that is not the case, and that those who visit us during the tourist season tend to be affluent, and we hope that they continue to come and enjoy the pristine beauty of my district and that of Massachusetts.

I also want to note that Bill Zammer is here. He is a friend; he is a small business entrepreneur on the Cape. What he says reflects my opinion along with that of the rest of the Massachusetts delegation, and the need to have H-2B extension authorized.

And with that, I yield back. I have to Chair another Committee in another place, and I am sure this is very revealing to some of our witnesses who are not accustomed to being here in Washington. But I can assure you, we are working.

And I thank the gentlelady.

Ms. LOFGREN. Thank you, Mr. Delahunt.

We will turn now to Ms. Bauer.

TESTIMONY OF MARY BAUER, DIRECTOR, IMMIGRANT JUSTICE PROJECT

Ms. BAUER. Thank you, Madam Chairwoman, and Members of this Committee, for inviting me to speak about what we have seen in the H-2B program.

I work for the Southern Poverty Law Center. I have personally spoken with thousands of H-2B workers over the course of my legal career, which has been the last couple decades. The Southern Poverty Law Center is currently representing H-2B workers in six class-action lawsuits in a variety of States. We also published a report last year about the H-2 program entitled "Close to Slavery," which is based upon our interviews with thousands of workers.

What we have seen in this program in the real world is that it is highly abusive; workers have few rights, and those rights are rarely enforced. The abuses of these programs are too common to blame on a few bad apple employers. They are the foreseeable outcome of a system that treats foreign workers as commodities to be imported without affording them legal safeguards.

It is the very structure of this program, as it exists, that lends itself to abuse. I am not saying that the employers here or that every employer in the program is bad. Instead, what I am saying is that the program is structurally flawed.

The abuses that workers experience often start long before they get to the United States, and continue through and even after their employment. When they are recruited to work in their home countries, workers are often forced to pay enormous sums of money—we have seen up to $20,000—borrowed at very high interest rates to obtain the right to be employed at a low-wage, short-term job.

Because most workers are indigents, they have to borrow that money from loan sharks in their home countries, and then they have to make payments on those loans while they are in the United States. Many workers we have talked to are required to leave collateral—often the deed to their home—in exchange for the chance to obtain an H-2 visa.

H-2 workers lack the most basic rights that workers in the United States have: the right to walk away. H-2 workers can work only for the employer who petitioned for them.

The employer decides if he can come, the employer decides how long he can stay, and the employer holds all of the power over the most important aspects of the worker's life. If the worker finds that the employment situation is not what he expected or is less than ideal, he cannot work elsewhere, and he likely cannot go home because he is desperately in debt.

We receive calls from H-2B workers in my office routinely, and here is what we see in this program in the real world: we see rampant violations of the prevailing wage rates, and sometimes, often, even the Federal minimum wage. We see rampant violation of the contractual rights of workers.

Workers are brought in too early and then provided no work at all. Because they cannot work elsewhere and they likely have this substantial debt, the failure to work can be devastating. We have seen squalid housing, often at exorbitant prices.

The most common complaint we receive is that an employer or a recruiter has taken a worker's identity document—their passport or other document—so that the worker cannot leave. We also have received calls that employers have threatened to call immigration and customs enforcement if the worker does not somehow comply with the contract.

Increasingly, we see a problem with subcontractors and middlemen who are obtaining certification, although they lack jobs in any real sense, and they essentially, then, sell or rent the workers to other companies, which exacerbates abuses. Under this system, workers lack the ability to combat this exploitation.

The DOL does very few investigations of H-2 employers, and workers have very few chances of enforcing those rights on their own. The DOL even contends that it lacks the authority to enforce the prevailing wage rates, as to H-2B workers.

None of the significant protections that exist, at least on paper, for H-2A workers exist in the context of H-2B workers. DOL has never promulgated substantive labor protection for these workers.

There is no requirement for free housing; there is no requirement that the housing be inspected; there is no requirement that the

housing even be decent. When they are abused on the job, H-2B workers are not even eligible for federally funded legal services.

So what can be done? In our written comments, we have laid out specific suggestions for reforms that could be taken to make this program less abusive in practice. And we certainly hope that as this Committee discusses expanding this program, essentially, by allowing returning workers, that is discusses seriously the very compelling need for labor protections in this program.

Thank you.

[The prepared statement of Ms. Bauer follows:]

PREPARED STATEMENT OF MARY BAUER

Testimony of Mary Bauer
Director, Immigrant Justice Project
Southern Poverty Law Center
before the
House Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law
U.S. House of Representatives
April 16, 2008

The H-2B Program in the United States

Thank you for the opportunity to speak about the abuse of guestworkers who come to the United States as part of the H-2 program administered by the U.S. Department of Labor (DOL).

My name is Mary Bauer. I am the Director of the Immigrant Justice Project of the Southern Poverty Law Center. Founded in 1971, the Southern Poverty Law Center is a civil rights organization dedicated to advancing and protecting the rights of minorities, the poor, and victims of injustice in significant civil rights and social justice matters. Our Immigrant Justice Project represents low-income immigrant workers in litigation across the Southeast.

During my legal career, I have represented and spoken with literally thousands of H-2B workers in many states. Currently, the Southern Poverty Law Center is representing workers in eight class action lawsuits on behalf of H-2A and H-2B guestworkers. We also published a report in 2007 about guestworker programs in the United States entitled "Close to Slavery," which I have attached to these comments as part of my written testimony.

The report discusses in much further detail the abuses suffered by guestworkers and is based upon thousands of interviews with workers as well as a review of the research related to guestworkers and the experiences of legal experts from around the country. As the report reflects, H-2B guestworkers are systematically exploited because the very structure of the program places them at the mercy of a single employer and provides no realistic means for workers to exercise the few rights they have.

The H-2B (non-agriculture) guestworker program permits U.S. employers to import human beings on a temporary basis from other nations to perform work when the employer certifies that "qualified persons in the United States are not available and .... the terms of employment will not adversely affect the wages and working conditions of workers in the U.S. similarly employed."[1] Those workers generally cannot bring with them their immediate family members, and their status provides them no route to permanent residency in the U.S.

[1] U.S.C. §1188(a)(1): 1101(a)(15)(H)(ii); 20 CFR Part 655.

In practice, the program is rife with abuses. The abuses typically start long before the worker has arrived in the United States and continue through and even after his or her employment here. Unlike U.S. citizens, guestworkers do not enjoy the most fundamental protection of a competitive labor market—the ability to change jobs if they are mistreated. If guestworkers complain about abuses, they face deportation, blacklisting or other retaliation.

Because H-2B guestworkers are tied to a single employer and have little or no ability to enforce their rights, they are routinely exploited. The guestworker program should not be expanded or used as a model for immigration reform. If this program is permitted to continue at all, it should be reformed.

Guestworker Programs Are Inherently Abusive

When recruited to work in their home countries, workers are often forced to pay enormous sums of money to obtain the right to be employed at the low-wage jobs they seek in the U.S. It is not unusual, for example, for a Guatemalan worker to pay more than $5,000 in fees to obtain a job that will, even over time, pay less than that sum. Workers from other countries may be required to pay substantially more than that. Asian workers have been known to pay as much as $20,000 for a short-term job under the program. Because, generally, only indigent workers are willing to go to such extreme lengths to obtain these jobs, workers typically have to borrow the money at high interest rates. Guatemalan workers routinely tell us that they have had to pay approximately 20% interest *per month* in order to raise the needed sums. In addition, many workers have reported that they have been required to leave collateral—often the deed to a vehicle or a home—in exchange for the opportunity to obtain an H-2 visa. These requirements leave workers incredibly vulnerable once they arrive in the U.S.

Guestworkers under our current system live in a system akin to indentured servitude. Because they are permitted to work only for the employer who petitioned the government for them, they are extremely susceptible to being exploited. If the employment situation is less than ideal, the worker's sole lawful recourse is to return to his or her country. Because most workers take out significant loans to travel to the U.S. for these jobs, as a practical matter they are forced to remain and work for employers even when they are subjected to shameful abuse.

Guestworkers routinely receive less pay than the law requires. In some industries that rely upon guestworkers for the bulk of their workforce—seafood processing and forestry, for example—wage-and-hour violations are the norm, rather than the exception. These are not subtle violations of the law but the wholesale cheating of workers. We have seen crews paid as little as $2 per hour, each worker cheated out of hundreds of dollars per week. Because of their vulnerability, guestworkers are unlikely to complain about these violations, and public wage-and-hour enforcement has minimal practical impact.

Even when workers earn the minimum wage and overtime, they are often subject to contractual violations that leave them in an equally bad situation. Workers report again and again that they are simply lied to at the time they are recruited in their home countries. Another common problem workers face is that they are brought into the U.S. too early, when little work is available. Similarly, employers often bring in far too many workers, gambling that they may have more work to offer than they actually do. Because the employers are not generally paying the costs of recruitment, visas, and travel, they have little incentive to avoid overstating their labor needs. Thus, in many circumstances, workers can wait weeks or even months before they are offered the full-time work they were promised. Given that workers bring a heavy load of debt, that many must pay for their housing, and that they cannot lawfully seek work elsewhere to supplement their pay, they are often left in a desperate situation.

Guestworkers who are injured on the job face significant obstacles in accessing the benefits to which they are entitled. First, employers routinely discourage workers from filing workers' compensation claims. Because those employers control whether the workers can remain in or return to the U.S., workers feel enormous pressure not to file such claims. Second, workers' compensation is an *ad hoc,* state-by-state system that is typically ill-prepared to deal with transnational workers who are required to return to their home countries at the conclusion of their visa period. As a practical matter, then, many guestworkers suffer serious injuries without any effective recourse.

The guestworker program appears to permit the systematic discrimination of workers based on age, gender and national origin. At least one court has found that age discrimination that takes place during the selection of workers outside the country is not actionable under U.S. laws.[2] Thus, according to that court, employers may evade the clear intent of Congress that they not discriminate in hiring by simply shipping their hiring operations outside the U.S.—even though all of the work will be performed in the U.S. Many foreign recruiters have very clear rules based on age and gender for workers they will hire. One major Mexican recruiter openly declares that they will not hire anyone over the age of 40. Many other recruiters refuse to hire women for field work. Employers can shop for specific types of guestworkers over the Internet at websites such as www.get-a-worker.com, www.labormex.com, www.landscapeworker.com or www.mexican-workers.com. One website advertises its Mexican recruits like human commodities, touting Mexican guestworkers as "happy, agreeable people who we like a lot."

We have received repeated complaints of sexual harassment by women guestworkers. Again, because workers are dependent upon their employer to remain in,

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[2] *Reyes-Gaona v. NCGA,* 250 F.3d 861 (4th Cir. 2001). For a discussion of this case, see Ruhe C. Wadud, *Note: Allowing Employers to Discriminate in the Hiring Process Under the Age Discrimination in Employment Act: The Case of Reyes-Gaona*, 27 N.C.J. Int'l Law & Com. Reg. 335 (2001).

and return to, the United States, they are extremely reluctant to complain even when confronted with serious abuse.

In order to guarantee that workers remain in their employ, many employers refuse to provide workers access to their own identity documents, such as passports and Social Security cards. This leaves workers feeling both trapped and fearful. We have received multiple reports of even more serious document abuses: employers threatening to destroy passports, employers actually ripping the visas from passports, and employers threatening to report workers to the Immigration and Customs Enforcement agency if those workers do not remain in their employment.

Even when employers do not overtly threaten deportation, workers live in constant fear that any bad act or complaint on their part will result in their being sent home or not being rehired. Fear of retaliation is a deeply rooted problem in guestworker programs. It is also a wholly warranted fear, since recruiters and employers hold such inordinate power over workers, deciding whether a worker can continue working in the U.S. and whether he or she can return.

When the petitioner for workers is a labor recruiter or broker, rather than the true employer, workers are often even more vulnerable to abuse. These brokers typically have no assets. In fact, they have no real "jobs" available, since they generally only supply labor to employers. When these brokers are able to apply for and obtain permission to import workers, it permits the few rights that workers have to be vitiated in practice.

A lawsuit filed in March 2008 by workers represented by the Southern Poverty Law Center illustrates many of the abuses H-2B workers face. In that case, hundreds of guestworkers from India, lured by false promises of permanent U.S. residency, paid tens of thousands of dollars each to obtain temporary jobs at Gulf Coast shipyards only to find themselves subjected to forced labor and living in overcrowded, guarded labor camps. When the workers attempted to assert their federally protected rights, the employer forcibly detained them and tried to have them deported to India. I have attached a copy of the complaint in that case, *David, et al v. Signal International LLC, et al.*[3] as part of my written testimony.

Virtually No Legal Protections Exist for H-2B Workers

Although this hearing is to focus on the H-2B program in the U.S., it is important to understand that the few existing legal protections for nonprofessional guestworkers are applicable to H-2A (agricultural) workers, but not to H-2B workers.[4] There is no rational

[3] U.S. District Court for the E.D.La., No. 08-1220, filed March 7, 2008.

[4] The Department of Labor and the Department of Homeland Security have proposed changes to the regulations to eviscerate many of the protections that exist for H-2A workers. The Southern Poverty Law Center strongly believes that these efforts are misguided and should fail. Guestworkers require more protections, not fewer.

basis for this disparity.

The H-2A Program

The H-2A program provides some legal protections for foreign farmworkers. Unfortunately, far too many of the protections exist only on paper.

H-2A workers must be paid wages that are the highest of: (a) the local labor market's "prevailing wage" for a particular crop, as determined by the DOL and state agencies; (b) the state or federal minimum wage; or (c) the "adverse effect wage rate."[5]

H-2A workers also are legally entitled to:

- Receive at least three-fourths of the total hours promised in the contract, which states the period of employment promised. (This is called the "three-quarters guarantee.")
- Receive free housing in good condition for the period of the contract.
- Receive workers' compensation benefits for medical costs and payment for lost time from work and for any permanent injury.
- Be reimbursed for the cost of travel from the worker's home to the job as soon as the worker finishes 50 percent of the contract period. The expenses include the cost of an airline or bus ticket and food during the trip. If the guestworker stays on the job until the end of the contract the employer must pay transportation home.
- Be protected by the same health and safety regulations as other workers.
- Be eligible for federally funded legal services for matters related to their employment as H-2A workers.[6]

To protect U.S. workers in competition with H-2A workers, employers must abide by what is known as the "fifty percent rule." This rule specifies that an H-2A employer must hire any qualified U.S. worker who applies for a job prior to the beginning of the second half of the season for which foreign workers are hired.

The H-2B Program

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[5] 20 C.F.R. § 655.102(b)(9).

[6] 45 C.F.R. § 1626.11.

The basic legal protections afforded to H-2A workers do not apply to guestworkers under the H-2B program.

Though the H-2B program was created two decades ago by the Immigration Reform and Control Act (IRCA) of 1986, the DOL has never promulgated regulations enacting substantive labor protections for these workers.[7]

Unlike the H-2A program, the procedures governing certification for an H-2B visa were established by internal DOL memoranda (General Administrative Letter 1-95), rather than regulation. An employer need only state the nature, wage and working conditions of the job and assure the DOL that the wage and other terms meet prevailing conditions in the industry.[8] Because the H-2B wage requirement is set forth by administrative directive and not by regulation, the DOL takes the position that it lacks legal authority to enforce the H-2B prevailing wage.

While the employer is obligated to offer full-time employment that pays at least the prevailing wage rate, none of the other substantive regulatory protections of the H-2A program apply to H-2B workers. There is no free housing. There is no access to legal services. There is no "three-quarters guarantee." And the H-2B regulations do not require an employer to pay the workers' transportation to the United States.

Guestworkers Cannot Enforce the Few Rights They Do Have

The legal rights of guestworkers can be enforced in several ways: through actions taken by government agencies, mainly the DOL, or through litigation. Neither method has proven effective at protecting workers from ongoing abuse.

Although abuses of guestworkers are routine, the government has not committed substantial resources to addressing these abuses. In general, wage and hour enforcement by the Department of Labor has decreased relative to the number of workers in the job market. The major agencies that might protect these vulnerable workers—the Department of Labor, the Occupational Safety and Health Administration, and state workers' compensation divisions—simply do not have sufficient resources or political will to do the job.

The DOL also takes the position that it cannot enforce the contractual rights of H-2B workers, and it has declined to take action against employers who confiscate passports and visas.

Government enforcement has proven largely ineffective. The DOL targets for investigation, at least in theory, H-2A employers. It does not do so with H-2B

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[7] *See Martinez v. Reich*, 934 F. Supp. 232 (D. Tex. 1996).

[8] GAL No. 1-95 (IV)(D) (H-2B); *See* DOL ETA Form 750.

employers. In 2004 the DOL conducted 89 investigations into H-2A employers.[9] In a recent year, there were about 6,700 businesses certified to employ H-2A workers.

In a recent year, there were about 8,900 employers certified to hire H-2B workers, but there do not appear to be any available data on how many investigations the DOL conducted of these employers. Our experience suggests it is far fewer than the number of H-2A employers investigated, something that is predictable, given the DOL's stance that it is not empowered to enforce the terms of an H-2B worker's contract.

Though violations of federal regulations or individual contracts are common, DOL rarely instigates enforcement actions. And when employers do violate the legal rights of workers, the DOL takes no action to stop them from importing more workers. Because of the lack of government enforcement, it generally falls to the workers to take action to protect themselves from abuses. Unfortunately, filing lawsuits against abusive employers is not a realistic option in most cases. Even if guestworkers know their rights —and most do not—and even if private attorneys would take their cases—and most will not—guestworkers risk blacklisting and other forms of retaliation against themselves or their families if they sue to protect their rights. In one lawsuit filed by the Southern Poverty Law Center, a labor recruiter threatened to burn down a worker's village in Guatemala if he did not drop his case.[10]

Although H-2B workers are in the U.S. legally, they are ineligible for federally funded legal services because of their visa status. As a result, most H-2B workers have no access to lawyers or information about their legal rights at all. Because most do not speak English and are extremely isolated, it is unrealistic to expect that they would be able to take action to enforce their own legal rights.

Typically, workers will make complaints only once their work is finished or if they are so severely injured that they can no longer work. They quite rationally weigh the costs of reporting contract violations or dangerous working conditions against the potential benefits.

Historically, low-wage workers have benefited greatly by organizing unions to engage in collective bargaining, but guestworkers' fears of retaliation present an overwhelming obstacle to organizing unions in occupations where guestworkers are dominant.

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[9] Lornett Turnbull, "New State Import: Thai Farmworkers," *The Seattle Times*, February 20, 2005. *See also* Andrew J. Elmore, *Egalitarianism and Exclusion: U.S. Guest Workers Programs and a Non-Subordination Approach to the Labor-based Admission of Nonprofessional Foreign Nationals*: Georgetown Immigration Law Journal, Summer 2007.

[10] *Recinos-Recinos v. Express Forestry, Inc.*, 2006 U.S. Dist. LEXIS 2510 (E.D.La. 2006).

As a result of these enormous obstacles to enforcing workers' rights, far too many workers who are lured to the United States by false promises find that they have no recourse.

Substantial Changes Are Necessary to Reform this Program

The SPLC report "Close to Slavery" offers detailed proposals for reform of the current H-2 guestworker programs. The recurring themes of those recommendations are that: (1) federal laws and regulations protecting guestworkers from abuse must be strengthened; (2) federal rules governing guestworkers must be enforced more vigorously by federal agencies; and (3) Congress must provide guestworkers with meaningful access to the courts.

Specifically,

- Congress must provide meaningful, substantive labor protections for H-2B workers. The Department of Labor has never promulgated substantive labor protections for these workers. Congress should demand that it do so promptly. At the very least, the minimal protections that have long existed for H-2A workers, such as the three quarters guarantee and the requirement that employers provide free and decent housing, should be applicable to H-2B workers.

- Workers should not be legally tied to one employer. Many of the worst abuses in the program flow from workers' inability to change jobs and from workers' dependence upon one employer for their immigration status in the U.S.

- Congress should strengthen H-2B workers' ability to enforce their legal rights. Penalties for employers who break the rules must be sufficient to deter bad behavior. This enforcement should include a private right of action to enforce workers' rights under the H-2B contract. Enforcement by the Department of Labor is, historically, inadequate.

- Congress should address the common problem of employers or persons who confiscate guestworker documents in order to hold workers hostage.

- Congress should enact strong protections to regulate the recruitment of workers in other countries for employment in the U.S. Congress should regulate travel, recruitment, and processing costs of H-2B workers. Congress should also make employers clearly legally responsible for the actions of their recruiters. Holding employer responsible for their agents' actions is not unfair. If those hires were made in the U.S., there is no doubt that the employers would be legally responsible for their recruiters' promises and actions. We should insist that the rules be the same for those who recruit workers in other countries. In addition, Congress should make clear that the systematic discrimination entrenched in this program is unlawful.

- Congress should make H-2B workers eligible for federally funded legal services. There is simply no reason that these workers—who come to the U.S. under the auspices of this government-sponsored plan—should be excluded from eligibility.

- Congress should enact provisions allowing workers to remain in the United States, when necessary, to enforce their legal rights.

- Congress should demand that the DOL deny H-2B applications from labor brokers and subcontractors.

- Congress should provide strong oversight of these programs. Congress should hold hearings specifically related to guestworker program administration. A review of available evidence would amply demonstrate that these programs have led to the shameful abuse of workers. Congress must not allow that abuse to continue.

Conclusion

H-2B workers lack even the most basic labor protections. These vulnerable workers desperately need Congress to take the lead in demanding reform.

Thank you again for the opportunity to testify. I welcome your questions.

The report by the Southern Poverty Law Center entitled *Close to Slavery,* submitted by this witness is not reprinted in this hearing but is on file at the Subcommittee and can be accessed at www.splcenter.org/pdf/static/SPLCguestworker.pdf. See Appendix for additional material submitted by this witness.

Ms. LOFGREN. Thank you very much.

Mr. Zammer, we would be pleased to hear from you.

TESTIMONY OF WILLIAM ZAMMER, PRESIDENT, CAPE COD RESTAURANTS, INC.

Mr. ZAMMER. Madam Chair, Mr. King, and Members of the Subcommittee, my name is William Zammer.

First of all, I would just like to say that Congressman Gutierrez, my heart goes out to you. I absolutely agree with many of the statements you made, and I wish I could be of more help, but Bill won't let me run for Congress.

I have the privilege of living and working on Cape Cod in Massachusetts, one of the Nation's premier visitor destinations. And thank you for the opportunity to testify before your Committee today on the importance of the H-2B visa program as well as the extension of the H-2R program.

I would like to take this opportunity to acknowledge and thank one of your key Members, my Congressman, Bill Delahunt, who has labored long and hard on behalf of his district to secure a strong and stable economy. I ask that my full written statement be submitted for the record, and be permitted to summarize at this time, whatever that means.

Ms. LOFGREN. Without objection.

[The prepared statement of Mr. Zammer follows:]

PREPARED STATEMENT OF WILLIAM ZAMMER

INTRODUCTION

I am Bill Zammer, owner of Cape Cod Restaurants on Cape Cod, Massachusetts for the past twenty years. We operate four high volume restaurants employing 100 year round employees and 200 seasonal employees, half of whom work under the H-2B visa program. We have utilized the H-2B visa for at least eight years, as a response to the documented lack of temporary, seasonal workers on Cape Cod. My experience is common to most Cape Cod employers and I am here today to urge you, better yet beg you, to continue the H-2B/H-2R program as it has existed for the past twenty years. While the program may need refinement, it is still the best program we have for small businesses to fill the needs of seasonal employers in this country.

On Cape Cod, our cost of living, housing prices and significantly older resident population lead to the scarcity of seasonal workers. Since colonial settlement, Cape Cod has survived by entrepreneurial pursuits. From farming and fishing we transitioned to tourism as a way to make a living nearly 100 years ago. At one time Cape Codders would take seasonal jobs and survive on unemployment insurance to carry them through the winter. This is no longer the case—the high cost of living makes it impossible. With virtually full employment on Cape Cod and in the Commonwealth of Massachusetts, our year round residents have found work in jobs that pay 12-month wages. This works against us when trying to fill the peak seasonal need generated by our 4 million visitors each year. In the highest point of the season our year round population of 230,000 swells to nearly 750,000.

We have a much-studied mismatch between jobs available for the highly educated, well-skilled resident of Massachusetts and our seasonal needs as a world class tourism destination. As a member of the Massachusetts Workforce Investment Board, I've joined in the work to improve the mix of jobs for the residents of Massachusetts. But we are here to talk about seasonal employment jobs—the types of jobs that H-2B visa workers fill that are not a match with our more skilled residents.

CONDITIONS THAT HAVE LED TO AN INADEQUATE WORKFORCE ON CAPE COD

We began to see real evidence of a seasonal workforce shortage in 2000. Our regional planning and regulatory agency, the Cape Cod Commission, issued a report researched by The Center for Policy Analysis at University of Massachusetts, Dartmouth entitled "Help Wanted! Cape Cod's Seasonal Workforce." The conclusion was that the hospitality industry still continued to experience peaks and valleys, even

in the face of aggressive means to build the shoulder seasons. What was once a two-month peak visitor cycle has now grown to an active season from Easter to Thanksgiving. Known for our beautiful coastline and beaches, it is understandable that we are highly appealing in the warm weather months. But the cold winter months continue to challenge our Cape Cod Chamber & Convention & Visitors' Bureau as a time to attract leisure travelers, business meetings or weddings to the Cape. Small businesses serving visitors, retirees and second homeowners comprise ⅔ of our economy, generating in excess of $1.3 billion in direct spending on Cape Cod. And the bulk of this spending takes place in a nine month period—not evenly throughout the year.

Cape Cod has been experiencing a labor shortage for the peak visitor season, when our economy employs an additional 23,800 workers, for the past eight years. At a meeting in January, 2008 with the Commonwealth of Massachusetts, Division of Employment & Training's chief economist, it was confirmed that at least 23,800 additional workers are added to our year round employment base of 91,000 for a total peak summer employment of 114,800. Other demographers estimate even higher counts. H-2B workers have typically made up an estimated 5,000 of that peak season employment number. Aside from a robust tourism economy, our shortages are being increased by population shifts. Cape Cod is the oldest county in New England.

Here are the issues we face as a region that have helped to create a shortage. The following demographic information is from Peter Francese, Director Demographic Forecasts for the New England Economic Partnership:

1. Growth in year-round Cape Cod residents (2600 from 2000–06) has virtually ceased.
2. More year-round residents are now moving away from Cape Cod than to here.
3. Cape Cod has high negative natural increase: 5,000 more deaths than births 2000–06.
4. This is a big change from when Cape towns (all but 3) grew over 1% per year.
5. Cape Cod is losing working age adults 35–44 and their children PLUS early retirees.
6. Nearly 1 in 4 residents are age 65+
7. The Cape median age is 45.7 (men: 44 women: 47) one of the highest in the nation.
8. The Cape is losing children at a faster rate than elsewhere in Massachusetts.

Cape Cod's housing prices, which are ironically stable compared to off-Cape areas even in today's falling real estate market, have been driven higher by the ability of those who earn their livings elsewhere to invest in a second home or investment property. This has placed housing out of the reach of the average Cape Cod wage earner. And just recently our newspapers reported that Cape Cod has the highest electricity rates in the continental U.S. These are part of the facts behind our population drain.

The "graying" of Cape Cod has been well documented. Frankly, many of our retirees choose not to work. However many do and they are actively recruited. Unfortunately many are not seeking the type of jobs filled by the H-2B workers, which involve physical aspects such as lifting heavy trays or spending hours on their feet.

Our hard work to expand our season beyond just the summer months, combined with the changing schedules of the nation's colleges, make dependence on college students for many of the jobs impossible. They leave at the height of our season.

While I can only speak to Cape Cod's experience, I understand that other parts of the country, where business is derived from cold skiing conditions or warm beach weather, are also experiencing shortages in the types of positions that H2B workers fill.

OUR EFFORTS TO RECRUIT AND RETAIN AN ADEQUATE WORKFORCE.

Here on Cape Cod, we do not wring our hands over our labor scarcity. We roll up our sleeves and get to work. I am a board member of our active Cape & Islands Workforce Investment Board, Vice Chair of the Cape Cod Chamber of Commerce and recent chair of the Chamber's Workforce Training and Development Committee. Many small employers, including myself, have provided safe, decent housing with costs typically subsidized. Some offer daily transportation to work from urban centers. We have scoured culinary schools for employees. I personally have traveled to Florida, Pennsylvania, New Hampshire New York & Vermont seeking employees

and I know many other employers have as well. We have asked the state to help promote job fairs and have participated in events held this month on Cape Cod and in neighboring counties, targeting areas of higher unemployment. We have worked with ministers in urban poverty areas. We continually advertise in newspapers, on the internet and with employment agencies in Boston.

In 2004, I led a contingent of Cape employers along with our Congressional representative William Delahunt to investigate joint training and employment programs with the U.S. Virgin Islands & U.S. Department of Labor Region One. We were not able to generate enthusiasm in the Islands for sending employees up. We have worked to develop partnerships with opposite-season resorts in Florida and ski resorts. Our regional Chamber and local Workforce Investment Board have instituted a 55+ employment program, educating business owners on the benefits of older workers and how to accommodate their needs. This program is being heavily marketed this spring.

I have worked with local schools (including Cape Cod Community College, Johnson & Wales University, Upper Cape Cod Technical High School, and Cape Cod Technical High School) to develop training curriculum for restaurant and hospitality positions, which will have a future payoff but not fill immediate needs. College students are utilized, but again, they typically head back to school in early or mid August, when our season is at its zenith.

I have served as President of the Massachusetts Restaurant Educational Foundation raising funds to train thousands of Massachusetts high school students in ProStart. Some High school students are hired, but child labor laws restrict youth working in certain restaurant positions or at certain parts of the day. They also return to school before our peak season concludes.

In 2005, Hurricane Katrina refugees were housed at Massachusetts Military Reservation on Cape Cod and we worked to secure employment for these people while in transition. My wife, Linda Zammer, has served as President of the Mashpee High School Fund creating and distributing scholarships in the hospitality industry. She has volunteered in Falmouth public schools working on hospitality programs. I sit on the hospitality advisory board for Cape Cod Community College and have funded the establishment of the Hospitality Institute at Cape Cod Community College with $250,000 in my own direct donations as well as solicited additional donors for the program. Many of these programs are targeted to putting American workers in year round supervisory positions in the industry.

Through the Cape Cod Chamber of Commerce and in partnership with the Massachusetts Restaurant Association, we have hosted annual workshops featuring Matthew Lee, a nationally recognized immigration lawyer and former INS prosecutor, along with enforcement officials from the U.S. Department of Labor Wage and Hour Division and Massachusetts' Attorney General's office, to keep local businesses up-to-date on compliance issues. Additionally, along with Cape Cod Healthcare, our regional health care provider, the Chamber has researched and promoted health insurance products (known as S.H.I.P.) for temporary seasonal workers which many employers have utilized. We work hard as a community to keep our seasonal workers healthy, happy, and productive. They are, in fact, the face of our businesses. They are critical to our success, and therefore we treat them with dignity.

EFFECTS OF AN INADEQUATE WORKFORCE ON MY BUSINESS & THE COMMUNITY:

Without strong peak season business local companies like mine cannot sustain year round employees. Only those who can do an adequate business from Easter to Thanksgiving will make it through the winter months, with revenue to support year round jobs for our year round US residents. Many small seasonal businesses struggle to generate enough revenue to cover the mortgage, rent or utilities in the winter, let alone the wages and benefits of year round employees. Removing a viable seasonal workforce source from them will make this struggle even greater.

For my company, we need an adequate number of staff to properly host the weddings, meetings and golf outings that comprise our core business. Fewer employees mean fewer groups can be served. Just one less wedding has a trickle down effect to the hairdresser, the wedding cake baker, the photographer, the tuxedo shop, the dressmaker and tailor, the florist, the limo company, the printer, the musicians, even the news stand selling guests papers. Just one less wedding means a decline in the number of charitable events we host at heavily discounted rates for charities such as Falmouth Hospital, Boys & Girls Club, the Heart Association and scores of other groups doing good work in our community. Just one less wedding reduces the amount of cash donations. A labor shortage doesn't affect only my business; it has a domino effect on the local economy and American jobs.

MYTHS

Myth: The H2B program is a way for employers to pay workers less money.

- I exceed prevailing wage rates that are set by the Federal & state government for my workers.
- My average temporary seasonal worker will earn approximately $25,000 to $30,000 in 9 months. From these wages are paid Social Security Taxes, Federal Income Tax, State income tax, Unemployment insurance, workers' compensation insurance.
- I pay my H-2B visa workers air fare, their visa application ($200 per person). It is expensive for me to use this program due to legal fees, government application fees, visa fees.
- I don't rely on third-party recruiters. We travel to Jamaica ourselves to interview candidates when needed. Workers are also referred by current H-2B employees, who certainly wouldn't recruit their neighbors if they were being mistreated.
- I have purchased and rehabbed housing for 125 workers and subsidize the cost of this housing for them.
- We provide travelers insurance to cover their healthcare costs while in the U.S.

Myth: The workers are mistreated.

- We treat our H-2B workers no differently than our American workers. They are our front-line ambassadors to our customers and their level of job satisfaction is reflected to our customers. When employees are happy, customers are happy.
- My H-2B workers come back because of how we care for them. Recently we paid for a worker to return home mid-season to tend to an ill family member.
- My workers have a good relationship with our country because of their experiences here and with our company.
- My workers are worried about losing their jobs here this year and that they may not find a job in another country. The money they earn supports them and their family at a middle class level in their home country.

Myth: This is an immigration issue:

- This is a jobs issue, especially for tourism destinations dependant upon seasonal characteristics like weather.
- The jobs my H-2B workers fill are only available 6 to 9 months. My workers are happy to return home to their families when the work is over.

Myth: These workers take American jobs.

- The residents here are seeking 12-month jobs.
- We advertise all year 'round for local candidates before we fill positions with any H-2B worker.
- We will and do hire any American.

Myth: These workers contribute to wage suppression for American workers.

- The Cape & Islands Workforce Investment Board and the Commonwealth of Massachusetts Workforce Investment Board commissioned a recent study on our wages in certain positions as compared to other parts of our state, and found that Cape Cod is paying higher wages than Boston—a major U.S. Metropolitan Statistical Area—due to the scarcity of labor on Cape Cod. We have to pay more to attract all our workers, Americans as well as H2B workers.

In my view, the 2007 Southern Poverty Law Center report on foreign workers in the US seriously misrepresents worker protection and wage protections contained in the H-2B temporary seasonal nonimmigrant worker program.

- Good Actor/Bad Actor—The report cites some anecdotal accounts, ironically mostly from Forest Service employees, but does not present any evidence that there is "chronic" abuse within the system aside from a few examples. This report ignores that most of the small employers using the H-2B program are good actor employers that follow the rules and are trying their best to comply with immigration laws and hire legal workers.
- Enforce Current Law—Clear violations such as those in the report need to be addressed through existing enforcement authority. Under current law, the Secretary of Homeland Security may impose fines and penalties and US De-

partment of Labor, Wage and Hour, investigates wage abuses for H2B workers as they do for US workers.

- Excessive Regulation Renders Program Worthless—We welcome any new regulation that makes the program more user friendly for small business as well as those that protect both the US and H2-B worker.
- Legal Recourse—While SPLC claims there is no legal recourse for workers, there is actually extensive legal recourse—as exemplified by the court cases in which SPLC were involved. Some of their cases were settled or won, proving that there is some mechanism in place for redress against abuse. In any event, enforcement by DOL of its authority in this area will provide redress for the great majority of issues related to worker protection.
- Rate of Return to Employer—An estimated 80% of H-2B workers willingly returned to work for their previous employer during 2006. This incredibly high rate of return indicates that most workers do not experience chronic abuses, and in fact like using the program. I can't speak to the workers who might be unhappy returning to their farm that the report talks about. I can say that an unhappy worker in the tourism industry directly impacts on business. I keep my workers happy, and they come back year after year.
- Dependent Spouses and Children—Spouses and dependents are permitted to come with H-2 workers under an H-4 visa, despite SPLC claims that H-2B workers are forced to be separated from their families while they come to the US to work. Further, the choice to work in the US is voluntary, and presents clear economic advantages. The fact that many of these workers have families in their home countries is often a motivating factor in them returning home after the completion of their seasonal work. Again, this is not an immigration issue.
- Portability—All nonimmigrant worker programs admit workers for very specific job opportunities. H-2B workers are currently able to transfer to work for another employer under the H-2B program so long as the second employer's petition has been approved by the Department of Homeland Security (DHS). This step is important in assuring that the new employer has met the dual test of offering wages and working conditions approved by DOL and has preferentially hired US workers who want the job first. H-2B workers have substantially the same rights as any US worker: if they are unhappy with their current position, they can transfer to another approved H-2B employer, or they can return home.
- Workers' Compensation—US workers and H-2B workers already have the same access to workers' compensation, and this is how it should remain. The SPLC report says that guest workers do not have access to workers' compensation, but virtually every state requires employers to provide workers' compensation for all of their employees, including H-2B temporary non-agricultural workers.
- Reporting and Retention Requirements—Congress should not impose extra burdens on an employer using the H-2B program, such as reporting requirements, retaining paperwork for long periods of time, etc. The program is currently a big success. It provides significant safeguards to ensure that H-2B temporary workers do not displace American workers. The more regulatory hurdles that are placed on the program, the more small US employers will go out of business, and small business is the backbone of our economy.
- Withholding Documents—The SPLC report claims that some employers unlawfully seize H-2B workers' documents. This is already illegal under current law. Current law provides for enforcement against these types of violations. Remember, the report talks about some employers. Should all employers be cast in the same light? I don't do this, my colleagues in Massachusetts don't do this, again, we are looking at some bad actors.

CONCLUSION:

The H-2B program works for the hospitality industry on Cape Cod and in this country. The anecdotal information from the Southern Poverty Law Center does not apply on Cape Cod. We would be fools to abuse these employees who have become the mainstay of our business and our communities. We support the need for comprehensive immigration reform, but in the process, do not want to destroy the H-2B program which has successfully filled the needs of seasonal businesses across the country for decades.

Mr. ZAMMER. I come before you today as the owner of a group of Cape Cod restaurants for the past 20 years. I am Vice Chairman of the Massachusetts Restaurant Association, Vice Chairman of the Cape Cod Chamber of Commerce, and an active member of a number of State and local and workforce development boards.

My story is similar to those of many businesses on Cape Cod. It is a story about genuine economic needs in our region, about vital jobs, and how the visiting workers help our small businesses.

My message to you is very simple: Please retain the H-2B program and extend the H-2R program returning worker exemption. They are essential to the needs of the seasonal employers across Cape Cod and the country. Fix what needs fixing, but please don't discard it.

If these programs are eliminated, it will force small businesses out of business, laying off fulltime American workers. American workers will not be able to survive if the seasonal businesses aren't able to make their profits throughout the summer in order to stay open in the winter, which is the case on Cape Cod and other geographically challenged areas.

On Cape Cod, the scarcity of workers is due to the high housing prices, and significantly older resident population. We simply do not have enough workers without migration of young people.

In mid-summer, when our population triples, there are simply not enough people to cook, serve meals, make the beds, and drive the buses. To say we are geographically challenged is putting it mildly.

I own a restaurant in Boston, for example, which is 75 miles from Cape Cod. I don't have any problems in Boston. There are people living there, whether it is the college students who go to school there or the people living there that may come to work, and it is not a problem. But it is also a fulltime job.

Cape Cod employers need an additional 23,800 workers between Easter and Thanksgiving. We hire approximately 5,000 H-2B workers or H-2R returning workers to fill our needs. It is not easy to find 23,000 workers.

We advertise nationally. We offer paid housing and transportation. We host job fairs. We have partnered with church leaders in urban poverty areas to attract workers, and reached out as far as the U.S. Virgin Islands, St. Croix. Delahunt led a delegation there with myself and other leaders of the Cape, as well as the leaders of the congressional Congress—the congresswoman from there as well as the governor of the islands. We couldn't find folks who wanted to move up with us.

On my own accord, I have organized and initiated and financed a culinary hospitality training school at the local community college, since I happen to believe in—to build a workforce for the future. But I don't want to depend on doing what we have been doing; I am trying to do something about it.

I have spent a $250,000 of my own money training workers for my industry. I am not looking for pats on the back; I am just telling you what I did. I have heard stories about the H-2B program abuses. Nothing is perfect.

But we do not pay workers lower wages. In fact, all my workers earn better than the government-mandated prevailing wage. On

average, a seasonal worker in my company will earn $25,000 to $30,000 over 9 months. They pay their fair share of taxes, Social Security and insurance fees. We have offered them health insurance.

This program does not displace American workers. It keeps my American workers working year-round because I carry them through the winter, even though I lose money, and keeps small business viable. And many employers on the Cape do that, particularly the retailers.

We do not mistreat H-2B workers as was stated. In fact, the reason our visiting workers return every year is because they love us. Year after year they come back, and we treat them with dignity and respect, and they are able to support their families on the 9 months of wages they make here and back in their own countries. And unlike other countries, the people of Jamaica speak highly of America.

But this is not an immigration issue. It is about seasonal jobs and the survival of thousands of small businesses that make their living in tourism. Our workers go home at the end of the season; they do not want to be here illegally.

Would you rather live in New England in the winter, or would you rather go back to Jamaica for 3 months, January, February, March? [Laughter.]

I mean, think about it. We have dramatically improved their standard of living.

In conclusion, please hear my message. The H-2B and H-2R programs work for the hospitality industry on Cape Cod and elsewhere in these geographically challenged parts of the country. We would be foolish to take advantage of employees, both American or visiting workers.

I belong to many national associations, chambers of commerce, that are on your side of the immigration reform. We are your friends. Please do not hurt the businesses that are the backbone of our Nation, and do not destroy the H-2B, H-2 job programs that have worked so well across the country for decades. We are not taking jobs from American workers.

Thank you. I will be pleased to answer any questions.

Ms. LOFGREN. Thank you very much, Mr. Zammer.

Mr. Eisenbrey?

TESTIMONY OF ROSS EISENBREY, VICE PRESIDENT, ECONOMIC POLICY INSTITUTE

Mr. EISENBREY. Thank you, Madam Chairman. Can you hear me?

Ms. LOFGREN. Yes.

Mr. EISENBREY. I would like to begin by acknowledging the help of Art Read, who is the general counsel of Friends of Farmworkers, in preparing my testimony. He was very helpful in helping me understand how this program works in practice, as opposed to what, for example, the statute says—and I recommend him to you, as someone who has worked on this program for about 20 years, if you are looking for additional advice.

I have four main points. The first is that the program hurts U.S. workers by driving down wages, and that this is especially prob-

lematic at a time when the economy is slowing rapidly, we are losing large numbers of jobs, and we have experienced 7 years of downward pressure on wages that leaves the median wage lower than it was in 2000.

The entire premise of the H-2B program—that local labor shortage is defined as an inability to easily find willing workers at a locally prevailing wage—that shortages should be answered with the importation of foreign workers, who have no right to change jobs or bargain for better wages, is harmful for U.S. workers, and especially for those without a college education. There is no shortage of U.S. workers; 70 percent of the U.S. workforce does not have a college education. And insofar as there are local shortages, extraordinary efforts including higher than normal wages, like Mr. Zammer has said he pays, ought to be offered.

The program, as run by DOL, is a catch-22 for U.S. workers, designed to exclude them from job opportunities. It sets the prevailing wage too low, and it permits such minimal recruiting as to be almost a joke. In particular, denying job opportunities to U.S. workers because they do not reply to an add that runs for 3 days, 4 to 6 months before the job begins, is unfair and makes no sense. That is not real recruitment.

There are sensible reforms that could be made to the program that would make it less harmful. To expand a little bit, just so you are perfectly clear, the economy is crashing right now. The labor market is crashing.

Payrolls have been cut by 230,000 people in the last 3 months; unemployment by the end of this year will be at 6 percent in all likelihood, and next year it will rise to about 6.5 percent. Nine million people will be unemployed in addition to the millions of people who are already underemployed. Wages, as I say, have been stagnant for 7 years; they are declining in these occupations that are most used by H-2Bs.

As my testimony points out, in the ones that are most subject to H-2B, wages have fallen, they are behind the economy as a whole, and unemployment in those occupations is higher than in the economy as a whole. Given that wages have not gone up for the median, Congress should be looking for ways to improve their wages, not to help hold them down.

Yet, the effect of the H-2B program is to short-circuit the normal labor market mechanism for obtaining higher wages. When an employer can't find a worker at $8 an hour, the market should compel him to offer more, even if that is the locally prevailing wage, the wage that other employers have decided to offer. It is obviously not enough, and a greater inducement is needed before we resort to workers abroad, which is what the H-2B permits.

It is far too easy to establish a labor shortage and resort to H-2B. U.S. DOL requires a 10-day job listing with the State workforce agency, and a 3-day advertisement—that is it—months and months before the job begins. That is a crazy way to recruit U.S. workers. The people who need the job are the people who are unemployed 3 weeks, a month before the job is open.

So in summary, I have a few recommendations. One is that workers must be recruited beyond the local area and beyond the local State.

There should be requirements for listing on Internet sites, on the National Job Bank. Much more should be required than is. And a U.S. worker who comes to answer a job ad and comes to an employer who is looking for H-2B workers should have a right to that job up to the point at which—at least at which—an enforceable contract has been entered into with a foreign worker, and that worker has left.

Finally, the labor market test really has to include a higher than prevailing wage, as determined under our current mechanisms. You have heard from Mr. Zammer; he offers a higher wage. That is laudable; that is not required by the law now. Senator Bernie Sanders' bill, S. 2094, has a requirement for the 67th percentile of the OEF. I think that is better.

[The prepared statement of Mr. Eisenbrey follows:]

PREPARED STATEMENT OF ROSS EISENBREY

Madame Chairman, I am Ross Eisenbrey, Vice President of the Economic Policy Institute, a non-partisan research institute and think tank dedicated to advancing policies to ensure broadly shared prosperity. Thank you for inviting me to testify today.

The H-2B non-agricultural guest worker program has been the fastest growing and most problematic immigration program in our recent history. In FY 1993, fewer than 10,000 H-2B visas were issued; nearly 130,000 were issued in FY2007. This expansion is alarming because the H-2B program undermines the wages and working conditions of U.S. workers; creates dependencies among businesses for docile foreign workers with no voice, no bargaining power and few rights; and allows abuses that most Americans would denounce if they were aware of them.

If our nation is to have a guest worker program for unskilled occupations – and it is far from clear that such a program is necessary or desirable – it must be reformed in significant ways, including at least the following reforms:

1. The right of U.S. workers to learn about, apply for, and take jobs offered to H-2B workers must be strengthened and enforced.
2. The wages and benefits offered or paid to U.S. workers by employers petitioning for H-2B workers, or the wages and benefits paid to H-2B workers themselves, must never be less than the prevailing wages and benefits, and never less than 150% of the federal minimum wage, even if it would not apply to U.S. workers.
3. H-2B workers must be allowed to organize unions and bargain collectively.
4. H-2B workers must have enforceable contract rights, access to legal representation, access to an effective administrative complaint process or to the federal courts, and protection against retaliation.

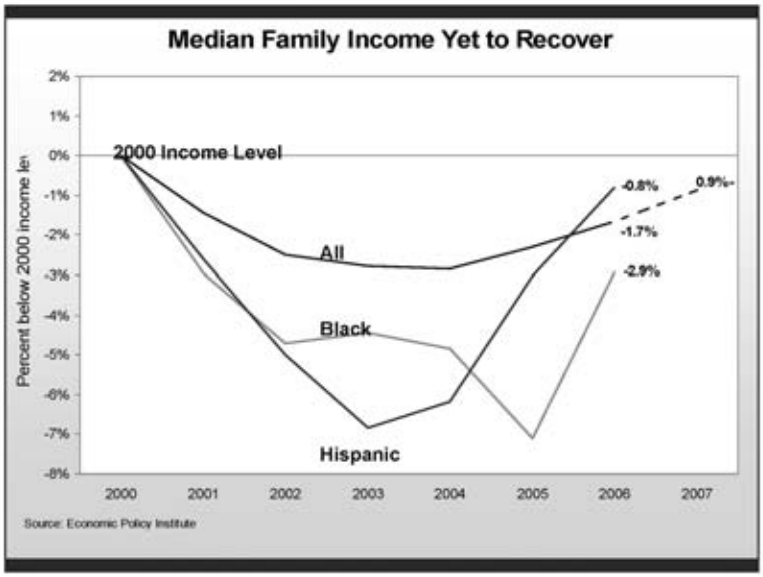
Without these reforms, the H-2B program should be capped far below its current level of 66,000 visas a year, or eliminated. Such reforms or elimination are particularly germane as the current downturn takes hold in the job market. Employment is down 230,000 so far this year, unemployment is rising, and most workers wages are consistently falling behind inflation. In other words, as is common in recession-like conditions, labor supply is surpassing labor demand. The idea of further increasing labor supply through fiat is clearly a policy mistake in this context. To the contrary, as the economy falters, U.S. workers need help from Congress in protecting or improving their wages; without reform, an expansion of the H-2B program would further damage their prospects.

The Economic Context for Consideration of H-2B Reform

As you consider reform of the H-2B program, the economy is sliding into a recession that will have terrible consequences for millions of American families. Unemployment is rising fast as employers stop hiring and reduce payrolls. The unemployment rate is likely to reach 6% by the end of the year, even taking into account the effect of the stimulus package Congress enacted and the Federal Reserve's rate-cutting efforts. More than 9 million Americans will be jobless but still seeking work, and millions more are already

underemployed – wanting full-time work but forced to work part-time. EPI's Jared Bernstein and Lawrence Mishel estimate that the weakening labor market will depress wages and shorten work hours enough to cost the average family $750-$1000 in lower earnings this year.

This is on top of the fact that the most recent economic expansion has been the weakest since World War II, with median household incomes never even recovering their 2001 peak. It is no wonder that, as the Pew Foundation reports, most Americans feel they are either just hanging on or are falling behind economically. They are right.

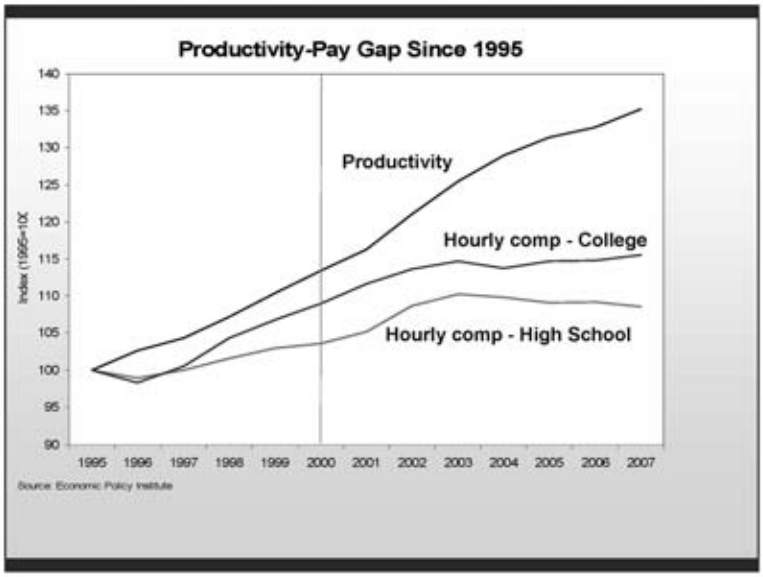


That most families are so squeezed and have gained so little is not new. For almost 30 years, the inflation-adjusted wages of the typical American male have stagnated -- even as productivity has soared and as average wages have risen, driven by gains at the top. The fruits of this productivity growth have instead gone to corporate profits and higher

earnings for those in the top 20% of the income distribution, especially those at the very top. As a result, income inequality has returned to levels unseen since just before the Great Depression, with the share of national income going to the top 1% of Americans more than doubling since 1979.

Source: Piketty and Saez (2006)

During the last five or six years in particular, most Americans have worked hard and been productive, but they haven't shared in our rising national prosperity. This is clear in the following chart, which shows that regardless of educational level, the hourly compensation of U.S. workers has stagnated since 2002, while productivity has continued to rise at a strong pace:



The goal of Congress and this subcommittee should be raising wages and incomes of working families, reducing income inequality, and strengthening the institutions that protect and improve labor standards and working conditions. Expanding the H-2B program or weakening its worker protections would undermine these goals, especially as we enter into a recession.

Labor Shortages

It is a fundamental principle that U.S. citizens and legal residents should be preferred over foreign workers for jobs in the United States, and that the use of guest workers should be a last resort. Our national economic policy is not that employers should be

able to hire workers at whatever wage they choose to offer, even if that means recruiting from abroad. If there is no shortage of U.S. workers, there should be no guest workers.

Establishing the existence of a shortage is therefore of fundamental importance. True shortages are rare and should be temporary because markets are self-correcting. If not impeded, the market will provide a willing worker once the price (the wage) is high enough. The so-called 'shortages' that have justified increasing numbers of H-2B workers, on the other hand, persist for years and years and the market never self-corrects.

A basic principle of economics is that in market economies, shortages signal adjustments that need to take place to move the economy from one equilibrium to another. Thus, if workers in a particular region or occupation are in short supply, compensation will rise as employers need to attract workers. This will entice new workers to move to that region or enter that occupation, and encourage existing workers to transfer from sectors that are stagnant or contracting.

To jam market signals by resorting to a visa program for special types of workers has the potential to prevent the optimal allocation of labor, leading to market distortions. One such distortion is the dampening of wage gains that should accompany a growing economy.

EPI researchers Jin Dai and Jared Bernstein examined key labor market indicators for seven jobs that constitute more than 60% of H-2B employment.[1] The data show no evidence of a labor shortage: unemployment for these occupational groups is actually higher than average *and rising*, and real wages have been flat. Economic theory is quite clear on this point: if labor supply were truly scarce for these jobs, unemployment would be lower than average and falling, and real wage rates would be rising.

Using data from the nationally representative Current Population Survey, we compared these indicators for the relevant occupations for 2000/01 and 2006/07 (we combine two years of data to get adequate sample sizes). Unemployment in these occupations was 6.9% in 2000/01 and 7.4% in 2006/07, compared to the national rates of 4.4% and 4.6% over those years. Average real wages in these occupations increased only slightly over these years, by six-tenths of one percent , compared to the economy-wide real average wage increase of 4%. This finding belies any claim that labor demand is outpacing labor supply in these occupations.

In short, national data provide no support for expanding the number of H-2B visas.

[1] Food prep related services; lodging related services; construction; motor freight; packing and material handling; extraction occupations; and grounds maintenance workers.

Recruitment as a test of labor shortage

Isn't it possible, however, that even though there is a pool of unemployed or underemployed workers across the nation, available, for example, to do housekeeping work at resorts and hotels, there are shortages in particular areas, such as Northern Michigan and Stowe, Vermont? It is certainly possible that given the seasonal nature of the work, the schedules demanded by the employers, and the low pay offered, that few local residents can be found to fill those jobs.

Would-be H-2B employers are supposed to demonstrate that they have not been able to recruit local workers for these jobs, but why should recruitment be limited to a local area if employers are willing to seek workers as far away as Asia, South America and Europe, and to pay their transportation costs? Before hiring foreign workers, why shouldn't employers be required to recruit more broadly within the United States? Shouldn't American citizens in Detroit and Syracuse have a chance to learn about and apply for such jobs before they are given to workers a continent away? Shouldn't they be offered the same transportation and housing arrangements as foreign workers?

It is instructive how employers in areas like Cape Cod with longstanding labor "shortages" are beginning to deal with the loss of their expected H-2B workforce because the 66,000-visa cap has been reinstituted. Some are raising wages, some are holding job fairs and inviting applicants from neighboring towns and cities, and some have turned to their state governments for help in recruiting more broadly. Providing transportation to low-wage workers seems to be an essential element of the solution. The net result is that U.S. workers are now being recruited and hired who, if not for the visa cap, would never have had a chance at these jobs.

Recommendation: *Before H-2B workers are recruited from outside the country, every State Workforce Agency not just the agency in the state where the work will be performed -- should get 30 days notice of the job vacancy and terms and conditions of employment, transportation, and housing, in order to offer the position to unemployed U.S. workers.*

In addition, it is usually the case under the H-2B program that employers advertise four or five months before the jobs become available. This virtually guarantees that no U.S. workers will be hired, because U.S. workers seeking employment in low-wage jobs normally need a job right away. So if, for example, a ski resort advertises for tow rope operators in June or July and fails to receive any applicants, it is no test of the availability of U.S. workers in December, when the work will be performed.

The H-2A program—for farm workers—deals with this problem by giving U.S. workers the right to have a job with an H-2A employer until the contract period is 50% completed. Similar protections should be extended to U.S. workers in the H-2B program.

Recommendation: *U.S. workers should have a right to take any job offered to an H-2B worker until such time as the H-2B has an enforceable, written contract with the employer and has left his country of origin for the U.S.*

Moreover, it is not enough that U.S. workers be offered the job at wages the employer and its peers deem adequate. If, for example, most hotels in Southern Vermont pay housekeepers $8 an hour but insufficient local workers can be found to fill the jobs, the market solution is to raise wages to attract workers from other areas or sectors, not to look for workers abroad. By allowing employers to pay foreign workers only the prevailing $8 wage, the H-2B program prevents the labor market from self-correcting, putting a thumb on the scale to tip the balance in favor of employers and their desire to keep wages low at the expense of U.S. workers.

If Congress wants to combat falling wages and incomes, it should not provide employers a convenient way to escape pressure to raise wages and benefits (or provide housing and transportation) in order to attract U.S. workers . Ideally, Congress should require that the wage offered by H-2B employers be *greater* than the prevailing wage. The U.S. Department of Labor has moved in the opposite direction, removing long-standing requirements that H-2B employers pay not just the prevailing wage, but the higher of the prevailing wage or the applicable Davis-Bacon Act or Service Contract Act wage. According to recent analyses by Gerald Mayer of the Congressional Research Service, the result has been a general lowering of the wage that must be offered to U.S. workers and paid to H-2B workers.

Recommendation: *The labor market test should include:*
1) a requirement that before resorting to foreign H-2B workers, employers offer the prevailing wage to U.S. workers, as determined by the Davis-Bacon Act, the Service Contract Act, or the 67th percentile wage for the occupation under the most recent BLS Occupational Employment Statistics Survey, whichever is highest;
2) a requirement that the minimum pay offered to U.S. workers be at least 150% of the U.S. minimum wage, regardless of the prevailing wage.[2]

H-2B and Other Guest Worker Programs Undermine U.S. Workers

As former Secretary of Labor Ray Marshall has written, "Experience in the United States and Europe shows that the short-run economic benefits of guest worker programs are more than offset by long-run social, political and economic problems. It is not good policy for a democracy to admit large numbers of workers with limited civil and employment rights."[3] The presence of workers with second-class status reduces the

[2] It is surprising that H-2B workers may, under current law, legally work in the United States for less than the federal minimum wage. In 2005, for example, the Department of Labor certified an H-2B application for more than 1000 "circus laborers" at $250 per week, effectively less than $3.00 per hour for a 90-hour work week, at a time when the minimum wage was $5.15 per hour..

[3] Marshall, Ray, "Getting Immigration Right," Economic Policy Institute, March 13, 2007, p.7.

ability of other workers to improve their own compensation and working conditions and can actually worsen them.

The second class employment status of H-2B and other guest workers is undeniable: they cannot change employers – a fundamental right; they cannot bargain over the terms and conditions of their employment; they do not have enforceable remedies for contract violations and other abuses; and they are subject to deportation and banishment from the program if they complain.

When one group of employers employs captive H-2Bguest workers who have no ability to raise their wages, it makes it difficult for workers at competing employers to improve their own wages and working conditions, since to do so might give the H-2B employer a cost advantage. If Hotel X can pay its foreign housekeepers $8 an hour with no fear of agitation or organizing, Hotel Y will have more reason to resist its U.S. employees' demands for a raise.

What happens when guest worker visas aren't available? The bargaining power of U.S. workers increases immediately. The landscape and gardening business has become a major employer of H-2B workers in recent years, and it is no surprise that in inflation-adjusted terms, the pay of landscape laborers is lower today than it was in 2000. Now, however, the unexpected loss of the additional H-2B workforce is eliciting howls of protest as employers find themselves having to offer a better deal to U.S. workers. *Lawn and Landscape* magazine reports that Ohio landscape business owner Steve Pattie had expected 30 H-2Bs: "If I lose 30 workers, somehow I'm going to try to get a workforce," he says. "I'll raise my wages and try to get workers from other companies. It's going to affect everyone."

That kind of wage competition is precisely what U.S. workers need.

Ms. LOFGREN. Thank you. Your time is expired. We appreciate your testimony.

And now we will turn to Mr. Camarota.

TESTIMONY OF STEVEN A. CAMAROTA, DIRECTOR OF RESEARCH, CENTER FOR IMMIGRATION STUDIES

Mr. CAMAROTA. First I would like to thank the Subcommittee for inviting me to testify on the H-2B visa program.

Now, seasonal work of the kind done mostly by H-2B workers is generally done either by adults with a high school degree or less. Sometimes, also, by college students, and sometimes by high school students. But these groups have generally not fared well in the labor market, indicating that this type of labor is not in short supply. If there was, wages, benefits, and employment rates should all be increasing fast; but the opposite has actually been happening.

Consider wages. Hourly wages for men with less than a high school education grew less than 2 percent, in real terms, in the last 7 years. Hourly wages for men who have only a high school degree and no additional schooling actually declined in the last 7 years.

The share of adult natives, say 18 to 64, without a high school degree, holding a job at any one time has been declining in the last 7 years. The share of natives with only a high school degree has also declined. The share of teenagers, 15 to 17, holding a job has also fallen in the last 7 years.

Declining employment rates and stagnant or declining wages are entirely inconsistent with the argument, "Workers are in short supply." And these figures are before the downturn began in 2007.

Now, if these type of workers were in short supply, wages, benefits, and employment rates should all be increasing fast, as employers try desperately to attract and retain the relatively few workers available. But this is not what has been happening. There is now a huge supply of potential less-educated workers.

In 2007, there were more than 22 million native-born Americans, 18 to 64, with no education beyond high school, who were either unemployed or told the survey that they weren't even looking for work; so they don't show up in unemployment. There are another 10 million teenagers, 15 to 17, who are either unemployed or not in the labor market. There is an additional 4 million college students unemployed or not in the labor market.

Of course, not every person without a job wishes to work. But the huge pool of potential workers indicates there are plenty of people who could do seasonal work if wages, working conditions, and recruitment methods were improved.

It is simply incorrect to say that Americans don't do the kinds of work covered by the H-2B visa program. The overwhelming majority of maids, housekeepers, construction laborers, groundskeepers, landscapers, food service and food processing workers in America are U.S.-born. Usually, typically, two-thirds to three-fourths are U.S.-born.

While the data does not support the idea that we are short of workers, some employers remain convinced there are no Americans for these jobs. Now, part of the reason I have already mentioned. Employers have become accustomed to paying very low wages, and they structure their businesses accordingly, sometimes failing to in-

vest in new labor-saving devices and techniques. Some employers even have convinced themselves that wages don't matter when recruiting.

But there are other issues as well, that go beyond simply paying more or the failure of employers to adopt the latest technology. The increasing reliance on foreign workers, legal and illegal, has caused the social network and recruitment practices once used to attract native-born workers to atrophy, creating the impression on employers that there are no workers.

One of the primary ways by which people have traditionally found jobs, especially lower-skilled seasonal and entry-level jobs, is through friends and family. As employers have come to rely more and more on immigrant workers for some of these types of jobs, it occurs to native-born Americans in some parts of the country less and less that this is a job they should apply for.

For Americans in some parts of the country, it is often the case that no one they know has ever worked at a particular job in what is now an immigrant-heavy occupation. There is also no friend or family member to make them aware of the job opening, or to put a good word in with the person doing the hiring.

These facts, coupled with low and stagnant wages, make it extremely unlikely that a native-born American would think in terms of doing some of these jobs no matter how many ads are placed in the local newspaper or listed at the unemployment office.

Now, if there was less immigration coming into the United States, there is every reason to believe that over time the old social networks would reemerge. Of course, there would be some painful transitions for employers. But drawing more less-educated Americans who are young into the labor force would be very good for the country.

It is as a young person that we learn the values necessary to function in the world of work. Research shows that if you are only intermittently attached to the labor market as a young person, that trend, unfortunately, follows you throughout the rest of your life.

In short, if properly paid, treated, and recruited, there is an enormous pool of potential workers from which to replace workers currently brought in under the H-2B visa program.

[The prepared statement of Mr. Camarota follows:]

PREPARED STATEMENT OF STEVEN A. CAMAROTA

OVERVIEW:

- There is no evidence of a labor shortage, especially at the bottom end of the labor market. If there was, wages, benefits, and employment should all be increasing fast, the opposite of what has been happening.
- Seasonal work is generally done either by adults (18 to 64) with a high school degree or less, or by college and high school students. These groups have generally not fared well in the labor market, indicating this type of labor is not in short supply.
- Data shows stagnation or a decline in wages.
  - Hourly wages for men with less than a high school education grew just 1.9 percent between 2000 and 2007.
  - Hourly wages for men with only a high school degree actually declined by 0.2 percent between 2000 and 2007.
  - The share of employers providing health insurance has also declined.

- The share of adult natives (18 to 64) without a high school degree holding a job fell from 53 to 48 percent between 2000 and 2007. For those with only a high school education, it fell from 74 to 71 percent. The share of teenagers (15 to 17) holding a job feel from 25 percent to 18 percent.
- There is a huge supply of potential less-educated native workers:
  - 22 million adult natives (18 to 64) with a high school degree or less are unemployed or not in the labor force.
  - 10 million teenagers (15 to 17) are unemployed or not in the labor force.
  - 4 million college students are unemployed or not in the labor force.
- Of course, not every person without a job wishes to work. But the huge pool of potential workers indicates there are plenty of people who could do seasonal work if wages, working conditions and recruitment methods were improved.
- There is a good deal of research showing that immigration has contributed to the decline in employment and wages for less-educated natives.
- Possible explanations why employers still feel there are not enough workers:
  - Employers become accustomed to paying low wages and structure their businesses accordingly. Raising wages seems out of the question, even convincing themselves that wages actually don't matter when recruiting.
  - The increasing reliance on foreign workers (legal and illegal) has caused the social networks and recruitment practices once used to attract native-born Americans to atrophy creating the impression there are no workers.
  - Immigration lowers the social status of a job, making it less attractive.

As in the past, immigration has sparked an intense debate over the costs and benefits admitting such a large number of people. A review of all the costs and benefits of immigration would, of course, fill volumes. I will devote my testimony only to the less-educated labor market and the perceived need for more workers to be allowed into the country through the H-2B visa program to fill seasonal jobs. The first part of my testimony will show that the available data provides no evidence that workers of this kind are in short supply. The second part of my testimony will report that a large share of workers who do this kind of work are native-born Americans and there is little evidence that these are jobs only ones that immigrants do. The third part of my testimony will focus on why, despite so much data to the contrary, employers sincerely perceive a labor shortage.

It is very common to hear those who own or operate a business argue that there are not enough workers to fill all the positions they have. Although I will focus my comments on seasonal employment, the perceived need for workers is a common view among businesses that employ computer programmers to those that hire mostly workers with very little education. Seasonal employers are not alone in feeling there is a worker shortage. But is this perception correct?

Most H-2B visa workers can be found in such jobs as food processing, hospitality, construction, landscaping and building and maintenance occupations.[1] In general, non-supervisory workers who do these kinds of jobs are overwhelmingly men and women who have either only a high school degree and no additional education or they are individuals who failed to graduate high school. College and high school students also sometimes do this kind of work as well. If these types of workers were in short supply workers, wages, benefits, and employment should all be increasing fast as employers try desperately to attract and retain the relatively few workers available. But, in general these types of workers have not fared well in the labor market. Wages have stagnated or declined and the share holding a job has fallen. This is an indication that the number of workers is at least adequate and there may in fact be an oversupply of these kinds of workers.

WAGE TRENDS

Consider recent trends in wages. Hourly wages for men with less than a high school education grew just 1.9 percent in real terms between 2000 and 2007. This is far less than half a percent a year on average and not the kind of growth we would expect if such workers were scarce. The long-term trend is much worse. Real hourly wages for men without a high school education are 22 percent lower today than in 1979. If we look at male workers with only a high school degree their real wages have actually declined 0.2 percent since 2000. Since 1979, men with only a

[1] *Foreign Labor Certification: International Talent Helping Meet Employer Demand.* Performance Report, March 28, 2005-September 30, 2006. US Department of Labor. Employment and Training Administration.

high school degree have seen their hourly wages decline 10 percent.[2] The share of employers providing health insurance has also declined. No doubt there are employers who pay less-educated workers much more than they used to, but the overall trend in wages and benefits, which has to be the basis of a public policy such as immigration, do not support the argument that there is a shortage of less-educated workers.

EMPLOYMENT TRENDS

Employment data look as bad or even worse than wage data. The share of adult natives (18 to 64) without a high school degree holding a job fell from 53 to 48 percent between 2000 and 2007. For those with only a high school education, the share holding a job it fell from 74 to 71 percent. The share of teenagers (15 to 17) holding a job fell from 25 percent to 18 percent. Again, this is actually the opposite of the trend we would expect if there was a tight labor market. The pool of potential less-educated native-born workers is now enormous. There are 22 million adult natives (18 to 64) with a high school degree or less who are unemployed or not in the labor force. In addition, there are 10 million native-born teenagers (15 to 17) and 4 million college students who are unemployed or not in the labor force.[3]

Of course, not every person without a job wishes to work. Aggregate figures of this kind do not make such a distinction. But given these numbers, it would seem clear that if wages and working conditions are improved, and if businesses adopted better recruitment methods, they could meet their need for workers. The cap on the H2-B visa program is currently 65,000, though with the exceptions it is double or triple with amount. The millions of adult native-born Americans with relatively little education who are not working, along with college and high school students, would seem to provide sufficient pool of potential workers to fill seasonal jobs.

JOBS AMERICANS DON'T DO?

There is some difficulty matching the job descriptions of persons given H-2B visas with the job categories used by the Census Bureau. Nonetheless, it is possible to examine the immigrant share of occupations that use H-2B visas.[4] In this way, we can test the idea that immigrants only do jobs that Americans do not want. There should be jobs that are mostly or entirely filled by immigrants if this is the case. Detailed Census Bureau data collected in 2003–2004 for the kinds of jobs for which most H-2B visa are given out shows the following: there were 1.2 million native-born persons who were "maids and housekeepers" and they comprised 62 percent of persons in this job category; there were 1.1 million native-born Americans who were "grounds maintenance workers," and they comprised 71 percent of all persons in this occupation; there were 1.3 million native-born Americans employed as "construction laborers" and they comprised 70 percent of workers doing this type of job. There were nearly 300,000 native born Americans in food processing occupations such as "food batch makers," "cooking machine operators" and "butchers and other meat and poultry workers" between 69 and 75 percent of workers were native-born. The jobs "food preparation worker" and "cook" employed 2.5 million native-born Americans and they comprised about three-fourths of all workers in these jobs. These figures are based on a detailed analysis of all 473 jobs as defined by the Census Bureau.[5]

There are virtually no occupations that majority immigrant, let alone jobs that are entirely immigrant. It is simply incorrect to say there are jobs Americans do not do, when the overwhelming majority of almost any job one can name is done by native-born Americans. This is clearly true for the kinds of jobs which H-2B visa holders do.

WHY CAN'T EMPLOYERS FIND WORKERS?

While the economic data shows no labor shortage, a significant number of employers remain convinced that finding workers in other countries is the only way they

[2] These figures were provided to me by Jared Bernstein an economist at the Economic Policy Institute in Washington DC.

[3] These figures come from my analysis of the March 2000 and 2007 Current Population Survey.

[4] Most research indicates that some 90 percent of illegal immigrants respond to Census Bureau surveys. Thus the foreign-born shares reported here included illegal immigrants.

[5] These figures are based on a combined sample of the 2003 and 2004 American Community Survey and can be found in Table D of *Dropping Out: Immigrant Entry and Native Exit from the Labor Market, 2000–2005* published by the Center for Immigration Studies.

can secure an adequate labor supply. So why does this perception that is so out of line with all the data the government collects continue to exist.

Given the low pay and lack of significant wage growth among less-educated workers, it seems clear that part of the problem for employers looking for workers could be solved by raising pay, benefits and even working conditions. Because immigration continually increases the supply of workers, some employers have become so accustomed to paying low wages, that raising wages seems out of the question, even convincing themselves that wages actually don't matter when recruiting. They have also structured their businesses to use labor intensive methods rather than capital intensive methods. So for example, rather than investing in machines and other new technologies that would reduce the need for workers, some employers lobby for more foreign workers. Put simply, higher pay and increased productivity could solve some of recruiting problems of employers. There are other issues as well that go beyond simply paying more or adopting the latest technology.

The increasing reliance on foreign workers (legal and illegal) has caused the social networks and recruitment practices that were once used to attract native-born Americans to atrophy, creating the impression there are no workers. One of the primary means by which people have traditionally found jobs, especially lower-skilled, seasonal and entry-level jobs, is through friends and family. As employers have come to rely more and more on immigrants for types of jobs, it occurs to native-born Americans less and less that this is a job they should apply for. For an American in some parts of the country it is often the case that no one they know works at or has ever done what is now an immigrant heavy occupation. There is no one to make them aware of a job opening or to put a good word in the with the person doing the hiring. If most everyone doing a particular job is immigrant, it also tends to lower the social status of the occupation in the eyes of native-born Americans, making it even less desirable regardless of the pay or working conditions. These facts coupled with the low pay and lack of wage growth means many of these jobs are simply not on the radar screen of American workers, regardless of how the job is advertised by an employer.

Although I seldom use anecdotes in my research, my own experience with seasonal agricultural work may be illustrative. When I did seasonal work on a farm one summer in New Jersey as a teenager, I heard about the job from a fellow football player who was doing the same work. It paid $7.50, which would be roughly $17.00 a hour today, adjusted for inflation. This was great money for a high school kid who was big enough and strong enough to do that kind of work. But the two key points is that I only heard about the job through a friend who was doing the job himself and the pay made it desirable. Today many fewer high school kids do this type of work. Jobs of this kind pay less and a very large share of those who now do this work are foreign. This makes it extremely unlikely that a native-born American would even think in terms of doing the job, no matter how many ads are placed in the local newspaper or listed at the unemployment office.

This does not mean natives would never do this relatively difficult job. Rather it means that looking for workers through the unemployment office is not going to yield many good and reliable workers. As discussed above, these jobs were generally not filled this way in the past. They were often filled through personal relationships and the perception that the job was something a worker should consider doing. The same is true today, except that the social networks in some parts of the country are mostly comprised foreign-born workers because of a permissive immigration policy. Employers have learned to navigate the bureaucracy so they can get their H-2B workers and the ways they used to reach native-born American workers has atrophied. They have come to rely on immigrant social networks to find workers, whereas at one time employers were in touch with clergymen, youth leaders, teachers and a host of others who they used to help them find good seasonal workers. The workers recruited in this way would also feel some obligation to do a good job because they had been recommended by a friend of the family or other respected individuals. Immigration has curtailed recruitment practices of this kind. If there was less immigration there is every reason to believe that over time these practices would reemerge.

The recruitment of workers for seasonal work has always been characterized by informal processes dominated by personal relationships. Employers have grown used to the idea of looking abroad for workers and relying on immigrant social networks. This will continue to be true until immigration policy is changed and they begin to use domestic workers. This will take some effort on their part. It will not happen overnight and there will be some painful transitions for some employers. But drawing more young native-born Americans and those who do not have a lot of education into the labor force would be good for the country. It is as a young person that we learn the skills necessary to function in the world of work, such as showing up on

time, and following directions from a boss we may not like. There is a lot of sociological evidence indicating that those who are only intermittingly attached to the labor market at a young age often exhibit this problem through their lives. High levels of immigration, of which the H-2B visa program is a small part, is contributing to significantly social problems such as low wages at the bottom of the labor market and the raise of non-work.

CONCLUSION

The available data does not support the argument that there are not enough people to fill seasonal jobs done primarily by less-educated workers. The share of less-educated adults, as well as teenagers, holding a job has declined significant in recent years. Their wages have also stagnated or declined. If such workers were in short supply wages and employment rates should all be rising, but they are not.

The perception of a labor shortage by employers in some parts of the country is partly do to the fact that many have become accustomed to paying low wages and they structure their businesses accordingly. Rather than investing in new technologies that would reduce the need for workers, they employ labor intensive means and clamor for more foreign workers. The increasing reliance on foreign workers (legal and illegal) has caused the social networks and recruitment practices that were once used to attract native-born Americans to atrophy, contributing to the impression there are no workers. Also as occupations have become increasingly immigrant dominated in some cities and towns, it tends to lower the job's social status, making it even less attractive to natives. If immigration was reduced and programs like the H-2B visa program were eliminated, wages would rise, working conditions would improve, new labor saving devices would be adopted, and better recruitment practices would again emerge. Markets work, we just have to allow them to do so. Currently, 22 million native-born American adults with no education beyond high school are not working, another 10 million teenagers are not working and 4 million college students do not work. If properly paid, treated and recruited, there is an enormous pool of workers from which to replace the 65,000 seasonal workers currently allowed into the country under the H-2B program.

Ms. LOFGREN. Thank you, Mr. Camarota.

Now is the time when we are having an opportunity to ask questions, each of us, and I will begin. Mr. Zammer just heard the comments made by Mr. Camarota and Mr. Eisenbrey, and I am wondering if you can tell us whether the suggestion to structure your business so it is less labor-intensive would solve the worker shortage that you face.

Mr. ZAMMER. Madam Chairman, let me just state, if unemployment goes that high—and you were talking about 6.5 percent unemployment—we are not going to need as many visiting workers because in fact, as we advertise, they will be coming in.

And the second part, Mr. Eisenbrey, you said that the—you are assuming that the other employees don't have the opportunity to come do the job. The fact is, we are not hiring all of our staff; I still have 200 other people to find. So I am trying to just fill a portion of the gap to do that.

In answer to your question, Madam Chairman, the labor-saving devices that I know if in a restaurant business are—you know, we have tried to automate, but you still need people. I really don't know—we have got little computers running around, and we have done that—there are no robots changing beds that I know of.

But it is really a situation—I don't know what I could do; I wish there were other things. We have attempted to do things, but I think that if——

The other point: the 15 to 17-year-olds are—Mr. Eisenbrey and I were discussing this prior to—that young person, because of the child labor laws today, it is very difficult for hotels or restaurants to hire the individual. They can't touch liquor glasses, and most of

the machinery they can't touch, there are numerous restrictions on the hours they are allowed to work. I was 12 when I started working. But now days, particularly in the Commonwealth of Massachusetts, the child labor laws are very strictly enforced——

Ms. LOFGREN. If I may, as a parent I wouldn't allow my 15-year-old to go off to some strange place for the summer to work—but let me ask Ms. Bauer a question.

The testimony you have given is very important, as well as the reports that you have delivered, and I want to ask about the enforcement issues. The Department of Labor, I think, has really dropped the ball completely, and one of the suggestions made is, if we do anything here—and we don't know whether we will or not—that if there were reforms made in this program, there has to be some other mechanism for enforcement in addition to the oversight.

One of the suggestions is that H-2B visa holders should have access to legal aid so that they might enforce their own rights. Do you think that is a good idea?

Ms. BAUER. That is one of the specific suggestions that we made, that not only should workers have the ability to enforce their own rights because they can't rely on DOL, we think it is very important that labor protections include a private right of action to enforce that contract and to make it clear that workers have a real ability to enforce their rights. The situation we have right now is that, you know, workers are theoretically entitled to a prevailing wage, but really no recourse if that wage is not paid.

Ms. LOFGREN. Let me ask Mr. Musser: One of the things that has become apparent in the testimony is that there may be abuses, not necessarily by employers, but by labor recruiters who go out and make various commitments and are treating H—I am not suggesting that has happened in your case, or any of the witnesses cases, but I think it has happened, certainly, in Mississippi and maybe other parts of the country.

Do you use labor recruiters? How do you select them? And would it relieve your mind to know that there was some regulatory system to make sure that the labor recruiters were honest and fair?

Mr. MUSSER. Well, I think that is a great question, and the—yes. I mean, obviously it would. We do not use foreign labor recruiters. We think that the $150 we pay per petition should be used—that goes to DOL—should be used to enforce all types of—any of these grievous things that have happened. I mean, you know—but I think it is important to note on this whole issue is that, you know, our goal is to have all American workers.

And short of that, what we are talking about here is a very small part of it, and they are the returning workers. In our case, we had 100 with us last season that had been with us for more than 10 years. Now, those people are not security risks.

They are not the problem in any way. So I hope that we don't lose sight of the overall picture here, that this is a very special group of people that are not part of all that.

Ms. LOFGREN. My time is expired, so I will turn now to other Members. I don't know whether Mr. Conyers wishes to ask questions at this point.

Mr. CONYERS. Thank you, Madam Chairman.

We have got on the H-2B, we have got a Stupak bill, Thelma Drake bill, Tim Bishop, anybody else?

Ms. LOFGREN. I don't think on the House side there is any other bill.

Mr. CONYERS. So we could have, you know, four or five hearings on this, but who is for or against any one of these three bills? Yes, sir?

Mr. EISENBREY. I am opposed to any of these bills that doesn't deal with these structural problems in recruitment that allows, in Michigan, as the Detroit Free Press reported, one landscape service to hire people at the minimum wage, to bring people from overseas at the minimum wage, even though the national average wage for landscape workers is—I have it here—is $11 an hour. I mean, that is completely unacceptable, that instead of recruiting either locally or throughout the State at $11 or more—$12, $13, $14 an hour—that that landscape company is allowed to bring somebody in at minimum wage.

If the bills don't deal with that, if they don't require real recruitment, if they don't provide the right to legal services for these workers, then the program shouldn't be expanded. People got along until 1997 with 20,000 H-2B visas. Suddenly 130,000 is needed or we are in a crisis.

I don't believe it. I think that——

Mr. CONYERS. Well, what if——

Mr. EISENBREY [continuing]. The appetite has grown for this program.

Mr. CONYERS. I see. So what if Musser goes out of business following your theory?

Mr. EISENBREY. I don't believe he will go out of business.

Mr. CONYERS. Okay.

Mr. EISENBREY. I believe that he is doing the kind of recruiting that I am talking about—you have two panelists who are far different from the average person who is using this program, or wages wouldn't be declining.

Ms. LOFGREN. We are going to have order in the hearing room, please.

Mr. CONYERS. What two people you have mentioned?

Mr. EISENBREY. The two witnesses here today have——

Mr. CONYERS. Which ones?

Mr. EISENBREY [continuing]. Mr. Musser and Mr. Zammer have made extraordinary efforts and paid wages that are higher than the prevailing wage.

Mr. CONYERS. Which ones?

Mr. EISENBREY. I am sorry. Mr. Musser and Mr. Zammer.

Mr. CONYERS. Okay. Is that right?

Mr. MUSSER. Yes, Mr. Chairman. You know, we—but I don't agree with your premise that we are not representative of other operators around the country. I mean, the Broadmoor in Colorado Springs, the Breakers in Palm Beach, there are some other—many other resorts that do similar efforts that we do and continue to do and will continue to do.

And so I just fully—I realize there are some problems with the system, but again, to get back to my point, and certainly we are all for correcting these problems with proper resources to the DOL

or however it is done. But, you know, we are talking about, in our case, these 100 workers that have been with us more than 10 years, that obviously if we weren't paying good wages, didn't have good housing, wouldn't be coming back, that aren't a threat to our national security anyway.

Mr. CONYERS. Are you saying, Mr. Eisenbrey, that both of these gentlemen, the two witnesses, they could stay in business without us doing anything or creating a bill that adds on these important additional increments that you suggest?

Mr. EISENBREY. I am saying that if you add these increments, they are in no danger of going out of business because they claim to be doing these things already.

Mr. MUSSER. And we will continue to do them, but they don't provide the numbers that we need. Our newest program this year was the Gerald R. Ford Job Corps in Grand Rapids; it has produced 10 young individuals who seem great, and we are hopeful that they make the season, that we might even be able to expand that problem. But we need 600 jobs, not 10.

And our program with Michigan citizens with limited physical and mental disabilities has been a wonderful program, but, you know, we have five individuals that fit under that program. And we are going to keep trying all these things, but they do not fill our need, nor do they fill the need of the other people in our industries.

Mr. CONYERS. Mr. Zammer? Can you make it, as is suggested by the person sitting to your left?

Mr. ZAMMER. I think, in all due respect to Mr. Eisenbrey, the great economist, my problem is, I have two restaurants which are seasonal; the other two are year-round. I bring, when these two seasonal restaurants close, I bring my American workers back into the other ones to keep them working. This kind of a bill—I can't bring people back.

This year, for example—this instant—I am opening the restaurants now. I may have to close them early, I have contracted the size of our menus, I am going to have to reduce the amount of people I bring in on a daily basis, which is going to reduce the amount of money that I earn.

I am not hurting myself, but it will cause me to look at the fact that I do keep a number of American workers working year-round. I am going to look at that at the end of the year and say, "I have got 100 people I am trying to keep fed and take care of their families." That is because I am a nice guy. But the fact is, at some point I stop doing that.

So I understand your confusion—not your confusion; that is not the right word. I don't represent these people behind me, but I don't think I am the exception by any stretch of the imagination. We do not abuse employees——

I heard this thing in Mississippi. It is heartbreaking. And those people ought to be shot. But the fact of the matter is that the majority of employers that I know of—in the Massachusetts Restaurant Association, the National Restaurant Association, the very large hotels—we are not abusing employees.

Mr. CONYERS. Could I get a little more time?

Ms. LOFGREN. Without objection.

Mr. CONYERS. Let me just ask you, have you seen Ms. Bauer's document? Have you seen the document?

Mr. ZAMMER. Yes. And it is an insult to me to have—to use that word "slavery" to me or my fellow employers.

Mr. CONYERS. Do you think it is inaccurate?

Mr. ZAMMER. It may be true; I don't have firsthand knowledge of it. But I know the majority of employers I have talked to are not abusing employees. It may have happened; I don't have firsthand knowledge of it.

But if I may go back to your point, yes, the Stupak bill, which allows the visiting worker to return, is very important. The ability to police this should be put in place. We pay a fee—to the government for enforcement of the laws they are talking about.

I don't make the laws. I follow them. The Commonwealth of Massachusetts, by the way——

Mr. CONYERS. Well, you are helping us make them this evening, sir.

Mr. ZAMMER. I am sorry?

Mr. CONYERS. You are helping us make the laws. That is what we are doing here.

Mr. ZAMMER. I hope so.

Mr. CONYERS. Let me ask you, Mr. Camarota, we have been looking at some of your statements. Slightly astounding in other contexts. But what is your solution? We have got three bills before us that I know of, and we say we need more protection built in. What do you think about all this? What are we to do besides meet here in the evening?

Mr. CAMAROTA. Yes. The problem I have is, why can't we find any evidence of a labor shortage with all the government data they collect? They spend all this money looking at wage rates, employment rates, share of employees offered benefits, all of it at the bottom end of the labor market for things like landscapers, nannies, maids, busboys, food processing workers.

All of it shows very little or zero wage growth. It just doesn't support the contention that we have a labor shortage in the United States.

I guess what I would say is, let's let wages rise for a few years. Let's let the poorest American workers make some more money, and then come back and talk to me about, you know, increasing the supply of workers through immigration.

Mr. CONYERS. Ms. Bauer, would you help us out here in this discussion?

Ms. BAUER. Well, I think that it would be fair to say that based on our fairly extensive experience, that the efforts described by the two employers here today are fairly extraordinary. We do not see employers routinely paying more than the prevailing wage rate.

We routinely see workers receiving substantially less than the prevailing wage rate, and then having really very little recourse when that happens. We are not getting a call once or twice a year; we are getting calls every week.

And it is not just about this terrible situation in Mississippi, which is, you know, a case we are involved in. It is cases in many, many States. We are currently involved in six class-action lawsuits; we could be involved in dozens more, frankly, if we had the staff.

Ms. LOFGREN. Could you say what States?

Ms. BAUER. The cases are filed in Georgia, Tennessee, several in Louisiana, Arkansas, and one other State that I——

Ms. LOFGREN. All southern States.

Ms. BAUER. Our States are the South. We work in the South. I do not think the circumstances that we describe are limited specifically to situations in the South.

I mean, we get calls across industries and across our region, and it really—they are very similar stories. They are people cheated out of wages who have their identity documents confiscated, people who have paid enormous sums of money.

So we are seeing the same kinds of abuses over and over and over again across industries, and that says to us that it is a product of the structure of this program. And that is what we are really calling upon for change.

Mr. CONYERS. Thank you, Madam Chair.

Ms. LOFGREN. Thank you.

We turn now to our colleague, Mr. Gutierrez.

Mr. GUTIERREZ. Yes. I thank all of the panel this—and I think you really can't have a conversation about this outside of the context of comprehensive immigration reform. And I think that, I think, causes—because, you see, Ms. Bauer and Mr. Eisenbrey are absolutely correct; we need to make changes.

We need to make changes in the program where abuses exist. And then we have very great, elegant gentlemen that have come here today who run fine industries. The problem is that they both need to be fixed. They need the workers.

I hear Mr. Camarota say, "Well, there is no evidence that we need workers." A recent report said most Americans want to retire by the age of 64. Well, if we actually do that, that means in 20 years—no, wait a minute, 19 years—over half of our workforce will either be retired or want to be retired. Half of our workforce that we have today.

You know, they passed laws in Arizona—very stringent laws against immigrants in Arizona—and the next thing out of the government offices in Arizona is, we want a guest worker program for Arizona to bring workers in. They passed stringent laws in Colorado. What is the very next thing they do in Colorado? They go to jail cells, to inmates, and say, "Can't you please come out and fix our crops?"

What evidence more do we need than that? We have failing industries in America, which are failing because they do not have. Everybody talks about economics.

The fact is, when I was born only 4 out of 10 workers in the United States of America had a high school diploma. Today, 9 out of 10 of them have a high school diploma. We are creating a better-educated, better-trained workforce which is demanding higher wages and has higher expectations than the generation before.

The U.S. Department of Labor tells us, Mr. Camarota, that every year we create over 350,000 low-skilled, low-wage jobs. But we have 5,000 visas for low-skilled, low-wage workers. Look, there is common ground here, because absolutely the workers need to be protected, their wages need to be protected, their right to organize into unions needs to be protected.

But I am going to tell you something. You know, what is happening today is certainly not—my dad didn't send me when I was 15 years old to go work at Golden Nugget, but it was bad. It was bad. When they told me I was going to make $75 a week—this is great. I mean, this is 1969—$75 a week.

They didn't tell me it was 90 hours a week. You know, they didn't tell me that I was going to have to wash the dishes and do just about every other job over at the nice Golden Nugget restaurant. But you know what? That is all that was afforded to me when I was 15 years old, so I went and I did it.

And I learned a few things about the culinary industry, but it wasn't right to put me, that 15-year-old—or any other 15-year-old—in that kind of situation. So the abuses do continue.

I go and—you know, I know it is anecdotal information—but I go, and I decided that I am going to plant a—I love planting trees—and I go back, and I go back to the same landscaping company—not company, but where they have all the trees, the nursery—and just about everybody that works there, you know, Gonzalez, Martinez—the reality—and I go there, and I always like it because they treat me so well—treat me so well.

And they always get the best tree, the healthiest tree, and they tell me what—how to plant it and everything, and I just go home and I plant it. I was so surprised, because I have seen these workers year in and year out, when the last time I visited them last summer when I went to go back I said, "How is everything going in the Congress of the United States? Are you guys moving on comprehensive immigration reform? Our families really need it."

I said, "Well, I am going to help those—." They said, "No, no. We need it." They are so interwoven into the fabric of our society that we cannot distinguish between those that are here undocumented and documented; except they know it.

They live in that fear. And their employers many times exploit—with all deference to the ones that we have here today—exploit that very fear that they have. We need to fix this, as I said earlier.

We have the largest, already, guest worker program the United States has ever seen. There are 12 million to 14 million of them.

The Department of Agriculture says, and the Department of Labor says over two-thirds of our agricultural workers are undocumented. The Federal Government knows it, and they are not going to deport them because it would cause a collapse of the agricultural industry in the United States of America. And there are many industries that would collapse.

So let's just face it: You have a problem. I suggest—400,000 visas with worker protection—with worker protection. That if you come to the United States that visa is portable to other employers so that they can come and do this job.

And you know something? I want to continue the fine great American tradition, that people that come here who work hard, who sweat, and who toil, whether they come under a guest worker program or any other program, if they are good for our economy, if we welcome them here and they are good workers—and I know the employers want good workers to stay—why don't we allow them the opportunity to stay in America and build the kinds of roots?

It is the very fabric and foundation of our country that we are talking about here, in terms of how we debate this issue. So I would say—you know, I hear things from the panelists today, and I thank the work that you are doing down in the South, Ms. Bauer; I thank Mr. Eisenbrey for what he does.

And I commend Mr. Zammer, because I know employers just like you and Mr. Musser who treat their workers very well, who indeed have come to my office and with the—I had the CEO of Barnes and Noble come to my office from New Jersey because he got no match letter for his employee.

Now, Barnes and Noble's never been on the record as being an exploiter of workers, and he says, "Luis, I don't want to have to fire them. Can we find a solution? I have got these notes—their Social Security numbers—and I have to take action against them."

We found a solution for him. But you want to know something? There are employers who want to keep their immigrant workers; there are also employers that we have to keep in check because they will exploit those very vulnerable workers at the end of the day.

So let's have a conversation about how we deal with this. I think we need to keep programs so that our industries are strong. But I also say to Mr. Zammer and to Mr. Musser, please help us. Please help us in the totality of the problem.

When I go back home to my district, it is not in Michigan; you know, it is not in Cape Cod. And I have a constituency of people who I want to respect me, and I want to earn and deserve their respect. And if I don't speak for those most vulnerable among us, I don't think I should return to the Congress of the United States.

So I thank you all for your testimony.

Mr. CONYERS. Madam Chairman?

Ms. LOFGREN. Yes, Mr. Chairman?

Mr. CONYERS. Can I be recognized to continue the discussion started by the distinguished gentleman of Illinois?

Ms. LOFGREN. Of course.

Mr. CONYERS. You see, we are dealing with a couple of problems here that maybe this panel can help us untangle. We have got Musser and I think Zammer talking about an immediate problem. We have got the distinguished gentleman from Illinois talking about a comprehensive reform problem.

Now, the Strive Act had a hearing here in the Committee; the Strive Act had hearings in the Senate. Me, I want the Strive Act, and I want to help the gentlemen that are before me. And what is clear is that since the Strive Act has failed in both bodies—and I support the Strive Act—and we have got an immediate crisis here with the H-2B.

What has one got to do with the other? I mean, what are we—we are not magicians. You have got to get some action, I presume, right away. Am I right?

Mr. Zammer? [Applause.]

Mr. ZAMMER. And you know, Mr. Chairman, you graciously identify the two of use, but there are also 300 other employers here that pay prevailing or better wages—or above prevailing wages—that follow the rules, that are, you know, honest, honorable busi-

ness people that are in the risk of losing their businesses because of this. We need your help.

And again, this is help of bringing back these workers that have demonstrated they are not a threat in any way to our security. You know, they are not—if all of us weren't treating them well, paying them good wages, they would not be returning for so long.

Mr. CONYERS. Sure. Well, now, I want to take Mr. Eisenbrey's recommendation and Ms. Bauer's very effective study and build up a bill and get this thing on the road, but I know the problems we have with the makeup of the House and the Senate. I know what is going to happen to the Strive Act. I mean, and I am undiminished in my commitment and faith that we can get it through.

But, I mean, that is not going to go down very well since we want to help people in an immediately precarious situation. Why—and I will throw in Mr. Camarota and Eisenbrey and Bauer—let's bring to this Committee the things that we can build into the one measure that might be able to get through here. Of course, nobody predicts what will happen in the other body, but we have got to do what we can do.

I wish Bart Stupak were here because that is how we move. I mean, the legislative process is a matter of us bargaining and compromising and getting advice from experts like yourselves to guide us in what we do.

Ms. BAUER. I will respond to that if that is appropriate. We have made a list of very specific recommendations about what should be done to this program in our view to make it less abusive in practice. And, you know, I could certainly go through those. I mean, number one—the number one recommendation that we made was to have some system where a worker is not legally tied to only one employer, because that——

Mr. ZAMMER. Excuse me, your honor. That is not true. An H-2B person coming into this country has portability with anyone else who has a labor cert under H-2B. That person working for me, doesn't like what they are doing, they can walk down the street to another person who happens to have an H-2B certification. And they all know that.

Mr. CONYERS. Mr. Zammer—— [Applause.]

Ms. LOFGREN. There is portability, but there also needs to be the labor action proceeding, so that is——

Ms. BAUER. I differ with the characterization of this as a program which is portable, but putting that aside for a moment, the other sort of ongoing theme of the, you know, complaints that we get relates to the enormous sums of money that people pay in their home countries and the abuses that go on there.

And what we see in practice is employers who really deny any association with that process. And so we have said it is—a regulation can't just be some proposal that we, you know, regulate people in Mexico. There has to be an employer——

Ms. LOFGREN. Can I interrupt? Because, Mr. Chairman, we put together a labor recruitment recruiter reform package as part of the Wilberforce Anti-Human Trafficking measure that I think is pretty tough. Are you familiar with that?

Ms. BAUER. I am not familiar with those particular provisions.

Ms. LOFGREN. Okay.

Ms. BAUER. I am familiar with the provisions of the Miller bill that had been introduced, the Indentured Servitude Abolition Act of 2007, and that certainly—a lot of that is in the bill now. That hasn't passed through the Senate. But, you know, I think there was general consensus in the human rights activist community that that measure went, you know, probably would get the job done in terms of curbing abusive practices. I thank the Chairman for allowing me to interrupt.

Mr. GUTIERREZ. Madam Chairman, may I have a second turn then?

Ms. LOFGREN. When the Chairman is through.

Mr. GUTIERREZ. I am sorry. I thought he was through.

Mr. CONYERS. No, I am through for now.

Mr. GUTIERREZ. Forgive me.

Mr. CONYERS. Oh, that is okay. I am through for now.

Mr. GUTIERREZ. I know I am already putting in jeopardy being able to come back to this Committee next year in the next Congress, that is, if I get reelected. I thought maybe today I would still get a chance to speak again.

Let me just suggest the following, and that is that I thank the Chairman and the gentleman from Michigan for his support on comprehensive immigration reform. I have been here, not this year nor last year, nor 5 years nor 6 years ago, but indeed 12 years ago, introducing comprehensive immigration reform language to fix the kinds of problems.

And indeed, we have been responsive to what the H-2B industry wanted not yesterday, but many years ago, indeed, a decade ago. And had people not said, "We can't do it"—they have been telling me for 10 years they can't do it, and we hear again this year, "We can't do it."

So the question then becomes, when can we do it? Because the crisis that you are confronting is not a new crisis; it is, indeed, an old crisis which continues to come and haunt the Congress of the United States.

So all I am saying is the following: Let's get it done, and let's get it done right. I am not trying to hold anybody hostage. I want to make it absolutely clear to everybody, there are millions of people in Houston, in L.A., in Chicago, in Detroit, in New York, and across this Nation—million of people—who march for comprehensive immigration reform.

The Congress and the new majority, which I am a Member of, the democratic Congress, has a set of principles to guide us—democratic Congress—set of principles on immigration. And they said one of those principles was comprehensive immigration reform as defined by unifying families and keeping them together, reforming the very program we are discussing here today, making sure that the long waits that families suffer, making sure that those that are serving in our armed forces don't have their husbands and spouses deported while they are serving in our Nation, and bringing out——

I had a—it felt like such a great moment when I watched the Kodak Theater and I saw history being made because I saw a woman and an African-American, and I said, "One of those two is

going to be the nominee of the democratic party, and may indeed be the next President of the United States." And they both stated, unlike any other debate that I have ever heard since I arrived in Congress in 1993, "We are going to have comprehensive immigration reform under our Administration that brings the undocumented out of the shadows of darkness, allows them the pathway to citizenship, we secure our borders." I want to do all of those things.

I represent a community of people that marched and made a claim, and said, "I don't believe that the halls of justice in Washington, D.C. are empty and bankrupt." And they are coming here with a check. And they want that check honored.

They are working hard; they are sweating and they are toiling. And they expect this Congress to respond in a manner which is filled with justice for their work—hard work—and their honest claims to fairness in our immigration system. So that is what I am trying to do.

So when I raise the issue, I raise the issue because if not I, no one else will. No one else will, within the debate.

I started earlier by stating to everybody, and I think given the Chairman's words earlier, that I said, "H-2B? Oh, that has the votes here. The Congress is working on that mightily." I know that everywhere I go, whether it is senators or congressmen, or different people, and they have told me, "Luis, we can only do a little bit; maybe just a little bit for the undocumented. We can only bring just a little; just a little justice for those veterans that are out there fighting. We can only do a little bit for the 5 million—5 million—American citizen children whose parents are under threat of deportation."

Fifteen thousand, we read reports of last month, babies are taken away from its very mother. Babies—American citizen's child, baby taken away from its mother, and only think about what the trauma. That trauma is occurring day in and day out.

So while I feel sympathetic and understand the plight of H-2B, I always look at it in the context of a greater context, of our immigrant community. I may be chastised for looking at it that way; people may be critical of me for looking at it that way, but that is the way I look at it. And I think it is a very fair and appropriate avenue to take.

We should build alliances that allow you—as I say to you today, I understand your problem. That is, the industry's problem. And I expect to share with you my issues so that we can build the kind of coalition which will, in the end, allow us to have the political power, strength, currency to bring justice for all immigrants.

I don't think any of the panelists want anything less. I don't think anybody in America wants anything less. So that is what I am trying to arrive at.

So I am not Johnny Come Lately to the issue. I remember when I introduced the Strive Act, there were people who came to me in positions of authority in this Congress, and said to me, "Luis, that doesn't go far enough."

Now they are telling me we can't even reach that. So I am sorry if I feel like I am in a quandary in my democratic party, when in the beginning they said it didn't go far enough and they were crit-

ical of it, and today they say it goes too far. Those are the quandaries that we find ourselves here in the Congress; that is politics.

But I will tell you, I want to support it, but I cannot support the H-2B program or its continuation unless it has changes in its labor standards and labor protections, and unless we do something for the most vulnerable of immigrants, and that is the undocumented, the soldiers, the children who are losing their parents. That is my only point, and forgive me for raising it if it seems unduly welcome or somehow not specific to the case that we are discussing here today.

Ms. LOFGREN. The gentleman's time has expired. The Chairman will have the last word——

Mr. CONYERS. Will the gentlelady yield?

You are talking and sitting next to a Member that supports the Strive Act and is a co-sponsor of the Strive Act. The people that are here today are trying to get one part of the bill ready, dealing with this H-2B problem, and all I see is, how do we accommodate both?

I mean, I am for working the Strive Act. I authorized the Chairperson to hold hearings on the Strive Act. So I have always admired and supported the work that you have done.

Mr. GUTIERREZ. Thank you.

Mr. CONYERS. Your experiences are unique in this area that cannot be compared with anybody. So we will close down this hearing saying, "Sorry, all you folks with H-2B problems."

And we have gotten some good recommendations how to probably make this part of immigration law very much improved, but we are saying, "I hope you can hang on until next year after we get a new Administration, because I think we can go back up the Hill." You and I notwithstanding, our strongest efforts were able to save the Strive Act in the other body.

That doesn't mean we have given up on it. It took me 15 years to pass the Martin Luther King Holiday bill, Congress after Congress after Congress. I don't think we need to wait 15 years for this problem, but what I am saying is, I don't—and I would like to get some comments from the five of you before we close down—I don't think we need to wait until we figure out to pass the Strive Act in both bodies and get it before a President whose hostility to intelligent immigration reform is well-known.

So the question is, what do we do tonight? We have had a great hearing, the witnesses have been complimented, everything is great, but what?

The fact still remains that the intransigent other body in the Congress and the legislative process doesn't have a Luis Gutierrez over there. And what do we do now?

Ms. Bauer?

Ms. BAUER. Our office certainly supports comprehensive immigration reform. We think that is, I mean—Mr. Gutierrez, you know, I am moved by all of what you said. But when it comes to this program, we feel very strongly that this should not be a model for either immigration reform, and that it should not be expanded as it currently exists.

We hear the employers sitting here saying that there is a crisis, but the workers who call our office every week, who feel like they

can't leave an employer because the employer has taken their passport, and they are being held effectively hostage—for them, that is a crisis, too. And so I urge you to look at that. They are not here with us today——

Ms. LOFGREN. You are speaking for them.

Ms. BAUER. I am doing my best. But we get calls each and every week from workers who perceive their own sort of crisis.

Mr. CONYERS. You are telling me what not to do. What do we do?

Ms. BAUER. I wouldn't extend this program. I mean, if you are asking me what I would do, I would not extend this program.

Mr. CONYERS. The question isn't what we shouldn't do. The question is, what is it that we do? I mean, we are holding hearings not to agree on what not to do.

If you don't like this, what do you suggest we do tonight? Tomorrow is Thursday, April 17. So what do we do? We wake up in the morning and we have had a great, candid discussion. Now what?

Ms. BAUER. Well, in answer to that question, I would pass significant labor protections for this program, call for real enforcement, and see if this program can exist in a way that is not abusive when it really is subject to serious inquiry. But I think it is not sufficient to have employers who come and say, "This is a great program; people are really happy."

That is not really a serious inquiry about whether, in fact, the program, in practice, is really working well. I think that any kind of inquiry in terms of talking to workers in the field would lead to the conclusion that it is not working well.

Mr. ZAMMER. Mr. Conyers, I agree with Mr. Gutierrez. Something needs to be done—you are out there sending—and I am going to be very blunt—you are out there sending stimulus checks out for the economy. I have got employers behind me about to go bankrupt.

They are not going to make it—you are hurting the same people we all want to help. By the way, we are the folks, in my industry, we are probably hiring the folks you are talking about.

And I know the National Restaurant Association—I can speak a bit for them—are really working to help you out any way we can. We want enforcement. I don't want to have—if I saw one of my neighbors doing something wrong—businesses—I want to stop them. I am not going to let it happen.

But I think, to answer your question, Congressman Conyers, we need relief now, the H-2R passed. Let us go clear—this is an election year; there is nobody going to (INAUDIBLE) immigration.

No one is going to touch anything between now and the end of the Presidential election. Give us the ability now to just pass—get another year under our belts. We are not going to do anything to hurt anyone.

Ms. Bauer, they have abuses. I could go to the department of labor in any State and find abuses. I mean, every State has abuses, because there are some bad employers out there. But I don't think you should blame this on just H-2B or H-2R employers.

So my response is, please pass that bill. Give us the year, Mr. Gutierrez. We will work with you in any way we possibly can to help you—I happen to belong to (INAUDIBLE). We are working for you. You are hurting your friends right now.

Mr. CONYERS. Yes, sir, I will. Let me just ask you this, though. Suppose we take Bauer and Eisenbrey's recommendations, we really get this H-2B thing together, now, will you help us pass the Strive Act immediately thereafter? The comprehensive reform that Chairman Gutierrez has talked about?

Mr. MUSSER. Yes.

Mr. CONYERS. Now, this isn't the, "I promise you, Honey, but tomorrow I may not know your name"—— [Laughter.]

Well, we have been around here a little while, here. How do we know—how can he go home confidently and say, "Well, this is it. I have got tens of thousands of people working with me on comprehensive reform. They promised to get this H-2B through, and they will be with us forever."

You know what would happen to him in Chicago if he went back and reported that everything is okay and then——

Ms. LOFGREN. Would the gentleman yield? Because I think what—and I am not taking a position on what we should do, but I would note that what is being suggested is a 1-year extension, so this group of individuals is going to be right back here should the Congress do that—and we don't know if they will—next year with a problem that is persistent.

And I thank the gentleman for yielding.

Mr. GUTIERREZ. I thank the Chairman for yielding.

Number one, I think it would be, well, just not factual to say that I haven't been working with the H-2B industry on resolving this issue. That is just unfactual. I have been speaking for Mr. Stupak now for 2 months, and we have been in intensive negotiations during those 2 months.

In every legislative process, there is a give and take to those legislation processes. There is something that Mr. Stupak wants, there is an industry that he represents that is very well represented by Mr. Bishop and others also. And so we are talking. And to say otherwise, I just don't think it is factual.

Now, there are things we want; things that we are demanding in exchange for our support. That is the legislative process that we have here. I understand that we have many friends and allies out in this room who aren't here today petitioning.

And I—as I shared with Mr. Stupak, I said, "You know, I wish we would have all organized together the first round. We might have been more successful in the Senate."

The fact is that, from a historical point of view, we have a President that wants comprehensive immigration reform, but has absolutely no political capital to bring it about. We have a Congress where 85 percent of the Democrats want comprehensive immigration reform, and we can't build a partnership with 20 percent of the minority to get it done. Those are just realities that we are dealing with.

So do I know we need to build a bipartisan effort to get comprehensive immigration reform? Well, I would not be faithful to my cause if I did not realize how it is to get 218 votes. Absolutely. We need to build a bipartisan approach.

My only point, Mr. Chairman, and I will end with this, is—and I thank the Chairman for his support, for his unwavering support on the issue of comprehensive immigration reform and the specific

Strive Act bill, which the last Congress, Nancy Pelosi was—speaker. You know, we have grown. When I got here, there weren't many people for comprehensive anything when it came to immigrants. We are growing. We are getting closer there; so I understand we are getting closer there.

My only point is, I think we can do better. I think we can do better. And I know that I would be remiss if I didn't try to do better than simply dealing with this, because I really believe that the Congress of the United States is willing to do more than H-2B. I believe that.

If I don't test those waters, if I don't test that market, then I don't believe I am fulfilling my responsibility in terms of what I believe, and where it is. I believe the democratic party and the democratic caucus of the Congress of the United States can garner votes that will both give you a sense of, you know, your 1-year, your 2-year extension, but at the same time respond to a greater community of people that is out there. That is just my belief.

I also believe, as I said at the very beginning, the H-2B—how would I say?—interests in the Congress of the United States are very well taken care of. They have strong, forceful, energetic, well-organized and well-financed advocates for it. I am just trying to be an advocate for those that aren't as well organized, and not as well—and try to build a coalition with you.

So I thank you all, and I thank the Chairman of the Subcommittee and Chairman Conyers for allowing me——

Mr. CONYERS. Mr. Goodlatte has arrived.

Ms. LOFGREN. And we would turn to him——

Mr. CONYERS. Yes.

Ms. LOFGREN [continuing]. For his 5 minutes of question.

Mr. GOODLATTE. Well, thank you, Madam Chairman. I very much appreciate your holding this hearing, and I very much appreciate the comments of the Chairman of the full Committee, Mr. Conyers, as well.

Chairman Lofgren will confirm that I have been advocating for a long time that while comprehensive immigration reform is an important goal, it is encountered very serious difficulties. The stumble that it took in the United States Senate was a major stumble. The Senate received more communications from people opposed to that legislation than any other bill in the history of the United States Senate, and that is a pretty dramatic thing.

So there is a long pathway that I think has to go, and I am not sure a change of Administration—this Administration was advocating for that legislation. I am not sure that simply that will cover it. I have very strong concern about the amnesty provisions that were in that bill; a lot of other people do as well.

I definitely think there are a lot of things that need to be done in immigration reform, and I have advocated that we can accomplish a lot of things, certainly not limited to H-2B workers, but a lot of things—if we will take them up in pieces. And that includes not only this, but what the fate of people who are illegally in the country is, and the issue of border security and interior enforcement.

All of those things do not have to be rolled into one large bill. There is the opportunity to address many pieces of them, and I

think there would be bipartisan support for addressing many pieces of them.

There is certainly strong bipartisan support for addressing the problem with H-2B workers. We have recognized that for a long time, due to the fact that we had a provision—the H-2R workers who had previously been here and wanted to return to the same employer—and I think it was unfortunate that that expired in December, and we need to get that back on track.

So however we do that, I think it is well worth undertaking. And I also want to say that employers who take the time to comply with the rules of the legal H-2B program must compete against other employers who blatantly circumvent U.S. law by hiring those who are not legally—— [Applause.]

And it is not right for Congress to abandon the employers who play by the rules. Unfortunately, that is exactly what Congress did when it refused to extend the exemption for returning H-2B workers this past year.

So I support efforts to ensure that employers who have relied on H-2B workers in the past continue to have access to willing returning workers in the future, so that they are no worse off in the future. Otherwise, we are placing legitimate employers in the very tough position of being forced to find a way to compete legally with other companies who take the cheap and illegal way out. I believe we must rigorously enforce our current immigration laws against lawbreakers while protecting those who play by the rules.

So in that regard, if I might, Madam Chairman, I would like to ask a couple of questions.

Ms. LOFGREN. Yes.

Mr. GOODLATTE. To Ms. Bauer, in your testimony—and I am aware of your booklet as well—you mentioned that H-2B workers cannot switch employers if one employer is abusive. Can they switch employers between authorized work periods?

Ms. BAUER. I am not sure I understand your question.

Mr. GOODLATTE. Well, if they come into the United States for a period of time and then they come back again next time, if they qualify for an H-2B visa with another employer, they can do that, can they not?

Ms. BAUER. They can come back and work for another employer, yes——

Mr. GOODLATTE. Correct.

Ms. BAUER [continuing]. If they locate an employer—if they are able to locate an employer and secure that employment arrangement.

Mr. GOODLATTE. Sure. Well, in the current environment, it doesn't seem that that would be too difficult if the visas were available.

Is there a high rate of return to the same employers?

Ms. BAUER. Well, I think it is interesting what data the Department of Labor is keeping. I mean, we have some data from the, you know, period when the H-2R program was—when the H-2R workers were coming as H-2Rs, but there is very little data, frankly, that the Department of Labor is keeping in general about this.

So we certainly know that there are workers who are returning. What I think——

Mr. GOODLATTE. In fact, the genesis of this hearing is that there are workers who want to return but cannot, because the program that allowed them to be grandfathered in has expired as of December. Is that not right?

Ms. BAUER. That is correct.

Mr. GOODLATTE. I think the point I want to make here is, why would foreign workers return to employers who abuse or mistreat them if they have the opportunity to switch to another employer with similar labor needs? [Applause.]

Madam Chairman, I would say to those in the audience, I appreciate the response, but it is not appropriate.

Ms. LOFGREN. The audience has been cautioned in the past to not engage in displays.

Mr. GOODLATTE. Thank you, Madam Chairman.

The other question that I have, and I would direct it to Mr. Zammer, it sounds like the biggest contributors to the problem that Ms. Bauer has mentioned in her testimony are the opportunistic labor recruiters in foreign countries who extract money and collateral in exchange for awarding H-2B work. Would you say that is correct?

Mr. ZAMMER. I believe there are some brokers out there who probably are doing something like that. I don't deal with them; I know Dan doesn't, and I know most of the folks on Cape Cod don't.

It is a ridiculous expense, because they are charging the employer or the employee, and we have all done away with it because with the returning workers, we don't need a broker because they simply come back to you. And they are referring their friends back. Those folks are actually going out of business.

Mr. GOODLATTE. Well, I wonder—and this is directed to those of you who are working with this—I wonder if we might address that somehow by requiring more transparency in the foreign recruiting process, or asking U.S. employers to be more directly involved in the process. I think that would——

Mr. ZAMMER. It should be employee to employer.

Mr. GOODLATTE. I think that would address some of the concerns that Ms. Bauer has had, because that disconnect, I think, creates some circumstances where there is not that same need to treat employees in such a way that they want to come back next year. I think there are plenty of employees who are treated well by their employers and who do want to come back; they are well represented here today. And that is my vision of how the H-2B worker program should work.

But if we were to, I think, create a greater connection there between the employer and the employee, we would be starting to weed out employers who didn't treat them well and who today can take advantage of a recruitment process where they don't have to have their reputation on the line because they are not the ones directly recruiting the employees.

I know Mr. Eisenbrey had a comment about that.

Mr. EISENBREY. There is so much concern here about the employers who have workers, they have had them in the past, they want them to return. I just don't understand, at the most basic level, why we need additional visas then. If that is the crisis that people

want to address, why do we need a program that has built an expansion?

The Stupak bill would lead to, you know, pretty quickly, a couple of hundred thousand visas. We have never had that many before. This is a program where a few years back we only had 20,000 visas.

So, I mean, if there is a crisis—and I don't believe that there is—but if there is a crisis for these employers, why is any solution being proposed that would expand this program beyond the employers who have returning people now?

Mr. GOODLATTE. I thank you for that comment, because I share that concern. We need to make sure that we are getting the workers that we need, and we are getting the return workers that we need, but we also need to make sure that we are not doing something that will put the United States citizens in a situation where they are competing with a growing workforce—particularly right now, where unemployment rates are rising—so that we have a rapidly expanding number.

I, quite frankly, believe that these things should be much more tailored to receding economic conditions; there should be a more close monitoring of how many workers we need, and maybe even have a way to review that on a year-to-year basis and relate it to actual need, rather than an arbitrarily expanding program. So, I am not a co-sponsor of that particular piece of legislation, but I am a strong advocate for fixing the problems we have with H-2Bs, including making sure that people who have had good, reliable workers in the past can get them back again.

Madam Chairman, I know I have used more time than——

Ms. LOFGREN. No.

Mr. GOODLATTE [continuing]. Is ordinarily allowed, and I thank you very much for that.

Ms. LOFGREN. That is fine.

I would just note that Mr. Goodlatte and I are, to my knowledge, the only former immigration lawyers currently serving in the House of Representatives, so we do get down in the weeds on some of the details of these laws.

I think at this point we have had a very good hearing. I would just note that although we don't know what our next step is, you know, there is a parable about describing the elephant while blindfolded, and some people think it is all ears, and some people think it is all tail.

And I think every witness here gave us their best information from where they sit, and I certainly—Ms. Bauer, you are hearing people that have been abused. And I don't doubt that that is happening. Mr. Zammer is not abusing his employees, so he feels, you know, he is seeing a different thing, just the same as Mr. Musser and other employers.

I am just mindful that to the extent there are abuses going on—and clearly there are some parts of the country and some industries where that is happening. If we don't do anything—there are 66,000 visas a year, and if there are unscrupulous employers that are proceeding, I think we have an obligation to do some kind of reform here. That is my personal view, and I am hopeful that we can come to some consensus so that we can make progress not only

in this area, but in a whole variety of areas where the immigration law really doesn't make a lot of sense.

Mr. Gutierrez mentioned the situation of soldiers' families; it is just outrageous that, you know, if you are an American citizen and you apply for your spouse, who was born in another country, and then you get sent to Iraq and you get killed, your widow is deportable. Now, that is not what we want in this country.

So I think we can make some progress if we work together in a collaborative spirit, and I really do appreciate your being here and being so patient. A lot of people don't realize that the witnesses who come here are volunteers, helping us to become better informed so that we can do a better job building the laws and making the changes that are necessary. So, your service here today is enormously important, and we appreciate it very much.

I would like to thank you all, and without objection note that Members have 5 legislative days to submit additional written questions for you. Now, if we get additional questions we will forward them to you, and we ask that you respond promptly if you are able so that we can make your answers part of the written record. And without objection, the record will remain open for 5 legislative days for the submission of any other additional material.

And again, thank you very, very much. And this hearing is adjourned.

[Whereupon, at 6:45 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE ZOE LOFGREN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRWOMAN, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

Welcome everyone to our first in a *new* series of hearings on issues related to immigration. These hearings are being held, by this committee in conjunction with other House committees, to examine a number of immigration-related issues that require our attention, as well as to clear up certain misconceptions.

There are a number of misconceptions being promoted in the halls of Congress and in the press. Some have stated that the Congress has done nothing to secure our borders. Yet nothing could be further from the truth.

Last year alone this Congress appropriated $3 *billion*—that's *billion* with a *b*—in additional emergency funding for border security, more than has ever been appropriated for such purposes. This Congress also passed legislation adding:

- 370 additional miles of border fencing;
- 3,000 more Border Patrol Agents;
- 29 more ICE Fugitive Operations Teams;
- 4,500 additional detention beds;
- new criminal provisions for alien smuggling and trafficking;
- funding increases to strengthen programs to check employment eligibility, track foreign visitors, and identify incarcerated non-citizens;
- as well as numerous other measures to secure our border.

This Congress has done more to secure our border than any of its predecessors. As the Department of Homeland Security itself admits, we have demanded more progress on the border than the agency can actually keep up with.

I bring this up not simply to take stock of what we've accomplished, but to reflect on the fact that this Congress has acted quite a bit on border security and interior immigration enforcement, but has not yet acted much in the area of addressing immigration policy fixes.

For those who seek an "enforcement-first" policy on immigration, let there be no doubt that this Congress has not shied away from many proposals to significantly increase border security and immigration enforcement, in many cases stretching the capacity of the Department of Homeland Security to actually implement what we have legislated.

As this new series of hearings will demonstrate, there are still many pressing immigration issues beyond "enforcement-only" that require our attention.

Today, we focus on one of those issues—the H-2B non-agricultural temporary worker program. The program is used by certain industries to secure workers for seasonal or other temporary needs, and it is primarily used in the landscaping, construction, forestry, tourism, hotel, and fishing industries.

The program is capped at 66,000 workers per year. But over the last several years, a "returning worker exemption" in the law allowed returning H-2B workers to come to the U.S. outside the cap, so long as they had counted against the cap in one of the preceding 3 years. At the program's height, this exemption basically doubled the size of the program—allowing some 120,000 H-2B workers to temporarily work in the U.S.

This exemption expired at the end of FY 2007, again capping the H-2B program at 66,000. Since then, most of us can attest to the outcry we have heard from businesses from all over the country. Every Member in this room can speak to the

streams of H-2B employers that have coursed through these halls over the last few months on behalf of the returning worker exemption.

Today, we will hear from Members of Congress and H-2B employers about the resulting lack of H-2B workers and the effect this has had on certain industries. We will hear about the harm to businesses that rely on H-2B workers, as well as the harm to U.S. workers who rely on the viability and robustness of those businesses. According to them, reauthorizing the returning worker exemption is essential.

We will also hear how a lack of protections in the H-2B program has allowed some businesses to exploit and abuse H-2B workers. Members, human rights advocates, and labor advocates will tell us that a lack of enforcement and insufficient protections in the law for H-2B workers have permitted unscrupulous employers and labor recruiters to abuse the program.

Due to such concerns, they believe that any reauthorization of the returning worker exemption should be accompanied by new safeguards to ensure that H-2B workers are protected from exploitation and that such exploitation does not undermine the working conditions of U.S. workers.

Due to time limitations, we only have time to hear from *nine* witnesses today at our hearing, and I look forward to hearing from them. However, there are others who have been important voices in the H-2B issue and without objection their statements will be placed in the record.

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

There seem to be a lot of controversy about immigration these days, with claims of amnesty being used to justify inaction. I propose that we all agree on the fact that America deserves an immigration system that is *controlled, orderly,* and *fair*.

> We need a system that puts an end to worker exploitation and does not drive down wages. That unites families and meets the needs of legitimate businesses. A system where border crossings are orderly and enforcement is vigorous, yet fair and humane.

It is my hope that as a result of today's hearing and others that Congress will hold in the coming weeks, we will be able to break some of the logjams on immigration and move toward attainable goals that can assist real people in the real world.

Today we're focusing on the long-established H2B program.

> It allows employers to bring in temporary workers for certain jobs in many seasonal industries, including in the landscaping, construction, hotel, tourism, restaurant, forestry, crabbing, and fishing industries, if qualified unemployed U.S. workers cannot be found.
>
> The H2B program has had a positive economic effect on communities around the country, as the industries that use seasonal workers are often business incubators in their areas.

But there is now a shortage of visas for legitimate businesses who try to fill their seasonal work through legal means instead of turning to the underground economy of illegal immigration. The "returning worker" provision expired last fall without being renewed. This has hurt businesses and the year-round American workers who they support. We need to get that problem resolved.

> One business owner who has seen the consequences of a gridlocked immigration system is my friend Dan Musser, the president of the one of Michigan's national historic landmarks—the Grand Hotel.
>
> We should not lose sight of the fact that workers have rights, no matter where they come from. If there are areas in which labor protections could be improved, we need to hear about them.
>
> Of particular note is the work of the Southern Poverty Law Center.
>
> Many of us know them as a familiar voice against racial violence and police brutality. It is good to see them engaging against slavery and worker exploitation.
>
> Their recent report calls for meaningful protections against worker exploitation, including mistreatment that can rise even to the level of involuntary servitude.

Again, I welcome the panelists, and look forward to today's discussion.

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

Chairwoman Lofgren, and ranking member King, thank you for convening today's very important hearing on the "H-2B Program." The hearing will explore several issues related to the H-2B program, including concerns that the program fails to meet the needs of U.S. employers and lacks effective labor protections. The hearing will specifically analyze the need to reauthorize the "returning worker exemption," which expired at the end of FY2007 and has decreased the number of H-2B workers available to U.S. businesses. The hearing will also investigate the abuses of H-2B worker and the issue of adding labor protections to existing H-2B legislation. I welcome today's distinguished panelists and I look forward to hearing their insightful testimony.

The debate surrounding a guest worker program is not a new one. The issue of a guest worker program has resurfaced since many businesses are presently in dire need of employees.

To get a clear understanding of the issues presented before us today, we need to examine it in its historical context. In 1986, the Immigration Reform and Control Act divided the H-2 temporary or guest worker program into the H2-A agricultural program and the H-2B non-agricultural program. These are the two principal programs for temporarily importing low-skilled workers into the United States.

The H2-A program allows for the temporary admission of foreign workers to perform *agricultural* work of a seasonal or temporary nature. The H2-B program covers foreign workers performing temporary *non-agricultural* work. It is the H2-B program that is the subject of this hearing.

Simply put, the H-2B program provides for the admission of guest workers to perform temporary non-agricultural work, if unemployed U.S. workers cannot be found. The program is used for seasonal, intermittent, one-time, and peak-load needs in various industries, like landscaping, construction, hotel, tourism, restaurant, forestry, crabbing, and fishing industries. An H-2B visa is valid for an initial period of up to one year. An individual's total period of stay, however, cannot exceed three consecutive months.

The H-2B program is subject to a statutory limit of 66,000 guest workers. H-2B employers can petition for current H-2B workers to extend their stay, change their terms of employment, or change or add employers without affecting this cap. Recently, foreign workers reached the limit early in the fiscal year. As a consequence many workers were prevented from coming to the United States under this program and many industries and companies suffered.

This returning worker provision has been renewed several times; however, it has finally expired without renewal on September 30, 2007. Many industries have suffered harm because they relied upon the workers in their businesses.

In April 2007, Representative Bart Stupak introduced a bill, H.R. 1843 the Save Our Small and Seasonal Business Act of 2007, which would permanently reauthorize the guest worker exemption. Bills to extend the provision temporarily have also been offered. This hearing allows us to hear from the experts in the field so we can make recommendations to the proposal which are currently being formulated.

I would like to note that our top priority should be legalization of undocumented workers. Bringing more workers into the United States is only a temporary solution to our current problem. This is no real solution. Permanent reauthorization without more comprehensive immigration reform would not address labor rights abuses and foreign worker safety concerns. There would be no assurance that employers would not exploit these guest workers or that these workers would be guaranteed basic labor rights.

As I have advocated in the past, what we should be focusing upon is legalizing the undocumented population and making legality the prevailing norm.

Legalization will address the abuse by the employer and the employees. Legalization will make people feel safe to work. Legalization measures will allow employers to enjoy a more stable workforce. Families will remain united and individuals will be able to secure social protections such as the ability to join a labor union, have access to a driver's license, obtain a social security number, etc. Legalization will allow immigrants to fully incorporate into and participate in their communities.

After instituting a legalization program, if it is then determined that there is a need for guest workers, we would not oppose a short term guest worker program. Any guest worker program which is instituted should allow for a decrease in the amount of time it takes to process an application, portability, full worker protections

which can be enforced, extension of work authorization to spouses, access to social and health protections, and reasonable mechanisms for securing permanent residence for migrants who qualify for it and choose to do so.

Again, I look forward to hearing our distinguished group of panelists. I yield the balance of my time.

PREPARED STATEMENT OF THE HONORABLE MADELEINE Z. BORDALLO, A REPRESENTATIVE IN CONGRESS FROM GUAM

Chairwoman Lofgren and Ranking Member King, thank you for this opportunity to submit this testimony for the record on the variety of issues surrounding the H-2B visa program. The United States Congress has established an annual numerical cap of 66,000 workers. As you know, the intent of the H-2B visa program was initially developed to address worker shortages during times of war. Since the 1950s the program has expanded to provide temporary services. H-2B visa workers have become a critical component to our economy and future legislation should be able to realize this changing paradigm of their contributions to our economy.

The current numerical cap of 66,000 workers annually has placed considerable strain on many small businesses particularly in the construction and tourism trades. In fact, the numerical cap which is set twice annually at 33,000 is normally reached within days of applications being made available. The current demand for H-2B visa workers exceeds the current supply and legislative relief is needed to increase the cap.

The H-2B visa cap is particularly important for employers on Guam. Guam is preparing to receive upwards of 30,000 additional personnel as a result of major military realignments in the Asia-Pacific region. The realignment of military forces is the by-product of renewed bilateral agreements with the Government of Japan. The agreement with the Japanese calls for all military realignments to be completed by 2014. The most prominent of these realignments is the moving of 8,000 Marines and 9,000 of their family members from Okinawa, Japan to Guam. The Department of Defense anticipates spending over $10 billion dollars through 2014 to accommodate this realignment.

The current capacity on Guam for construction work is estimated at $400 million dollars. The historical highest capacity on Guam, which was reached in the 1980s during the hotel construction boom, is approximately $800 million of construction spending per year. To put this into perspective, the Department of Defense anticipates nearly $2.5 billion alone in Fiscal Year 2010. In order to meet the demands of a compressed timeline the Department of Defense anticipates significant construction spending over the next five years.

Moreover, relief from the numerical cap is needed for the corresponding civilian construction projects on Guam and which will parallel the military construction. Considerable work needs to be performed on Guam's infrastructure including its wastewater, electrical, water and transportation networks. This considerable civilian commitment will also need access to H-2B visa workers. Without relief from the cap it is likely that the military construction projects would take precedence over the civilian infrastructure projects which are necessary to support the increase in personnel coming to Guam, including contractors and military dependants. In order to meet this timeline goal and to facilitate greater construction capacity on Guam, relief from the numerical H-2B limitations is a priority.

However, even if Guam was to receive relief from the H-2B visa numerical limitations it is important to provide these workers with appropriate benefits such as housing and transportation. I also want to ensure the employers provide H-2B visa workers with health care. Moreover, I strongly believe that H-2B visa workers should be paid prevailing wage rates for the geographic location where they are working. I fundamentally believe that these are basic rights that should be extended to all workers across this country including H-2B visa workers. I hope that Congress will address these issues as we consider national legislation to reform the H-2B program.

I want to thank Representative Bart Stupak from Michigan for his continued leadership on issues surrounding H-2B visa workers. And, I thank you Madam Chairwoman for your efforts to oversee the H-2B visa worker program and hope that there will be a renewed effort to look into relief of the numerical caps all the while requiring H-2B employers to provide health insurance and pay a prevailing wage.

PREPARED STATEMENT OF THE HONORABLE JAMES E. CLYBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Thank you, Chairwoman Lofgren, Ranking Member King and Members of the Immigration Subcommittee, for holding this hearing today and for all the hard work you have done throughout the 110th Congress to examine the important and complicated issues surrounding immigration.

Last year, newly elected Democratic majorities in the House and Senate were committed to working with the President and Republicans to find a comprehensive solution to the immigration problems plaguing our nation. Regrettably, partisan politics and anti-immigrant rhetoric overshadowed this effort and Senate Republicans blocked action on a comprehensive reform package. The American people are now paying a terrible price. The Democratic Congress remains committed to addressing this issue. In the coming months, various House committees will work together to hold a comprehensive series of hearings to examine immigration concerns and legislation.

I am grateful to the Subcommittee for holding the first in this new series of hearings on the H-2B visa program, an issue of vital importance to my home state of South Carolina. The H-2B visa program allows employers to secure workers to perform short-term non-agricultural work, if qualified unemployed American workers cannot be found. Seasonal workers are important to the economy in South Carolina, where tourism ranks as the number one industry. Many resorts, hotels, restaurants, and businesses in the coastal regions of South Carolina use the H-2B program to supplement their year-round domestic workforce during the peak summer season. Without these workers, many of these local industries will not have the resources they need to serve the many tourists and visitors coming into our state.

While the H-2B program is capped at 66,000 workers per year, Congress established a "returning worker exemption" to help meet the additional labor needs of seasonal businesses across the country. The exemption allowed returning H-2B workers to come to the U.S. outside the cap, as long as they had counted against the cap in one of the preceding 3 years. In 2006, Congress included a one year extension of this exemption in the National Defense Authorization Act for FY2007 (P.L. 109–364). The H-2B returning worker exemption expired on September 30, 2007, and to date has not been extended. Without the exemption in place, the 66,000-visa cap on the program does not allow for a sufficient number of seasonal employees to sustain the many industries that rely on this source of labor.

While I support a temporary extension of the returning worker exemption to provide immediate relief in this time of economic instability, I will continue to work on a bipartisan basis towards a comprehensive solution. Our immigration system needs to honor the promise of America and recognize the enormous contributions that immigrants make to our nation. But it must do so in a way that makes our nation safer, protects all workers, and respects the rule of law.

PREPARED STATEMENT OF THE HONORABLE RON KLEIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Thank you, Chairwoman Lofgren and Ranking Member King, for holding this important hearing on the H-2B visa program, and for the distinguished Members of this subcommittee for your continued interest in the many challenges facing America's immigration system.

My concern with the H-2B visa program and my support for Mr. Stupak's bill, H.R. 1843, the "Save Our Small and Seasonal Businesses Act of 2007," stems directly from my conversations with small business owners in Florida who rely on foreign workers with H-2B visas to supplant the jobs that local U.S. workers cannot fill.

In my Congressional district, which encompasses over seventy-five miles of coastline in South Florida, we rely heavily on dollars brought in through travel, tourism, and recreational activities. And the 22nd Congressional District is not alone in this regard. In 2006, nearly 84 million people visited Florida from all over the world, generating $65 billion in economic activity, and helping to employ nearly one million workers. Whether it's the southernmost point in the Florida Keys or the beautiful beaches and resort towns along the panhandle, Florida and tourism go hand-in-hand.

Paramount to sustaining Florida's economy is the help that H-2B workers provide to Florida businesses during the peak winter and spring months. Unfortunately,

this legal stream of temporary, nonagricultural foreign workers has become ensnared in the broader immigration debate.

Madame Chairwoman, reasonable people can disagree over the ways to deal with the millions of illegal aliens currently in this country or coming over the border. Personally, I have joined many of my colleagues from both sides of the aisles by supporting legislation that makes securing the border a priority. But I recognize that other colleagues could reasonably argue for the need to stabilize the Mexican economy so that the forces that "push" illegal immigrants over the border can be alleviated.

The H-2B visa program, however, should not be included in this broader immigration debate because it involves temporary, legal, nonimmigrant workers. That is, these foreign workers have followed the rules, waited patiently in line, and have come to this country without the intention of staying. After their visas have expired, they will return to their home countries. If they want to return the next year, they must begin the process anew.

Moreover, prospective H-2B employers must demonstrate to the Department of Labor (DOL) that no American workers are willing to take the job. For example, according to the DOL, employers are required to "advertise the job opportunity in a newspaper of general circulation or in a readily available professional, trade or ethnic publication, whichever the State Workforce Agency (SWA) determines is the most appropriate for the occupation and most likely to bring responses from U.S. workers." [1]

So in essence, the H-2B visa program isn't about immigration at all; rather, it's about our economic sustainability for industries like tourism, seafood processors, landscapers, resorts, and pool companies that rely on these workers during peak or seasonal periods. As we inch ever closer toward recession, I strongly believe that we in Congress must do what is necessary to help stimulate these businesses by allowing for certain exemptions for returning H-2B workers. Otherwise, they may be forced to lose contracts, scale back operations, or shut down, which would ultimately hurt full-time, American workers.

This is not an academic argument. I have heard from countless restaurant, hotel, and business owners throughout my district who have told me that their businesses are suffering because they cannot obtain enough workers to meet customer demand. As I mentioned before, my district and Florida as a whole rely heavily on the revenue that these businesses generate, and the ripple effect from their losses will be felt in other businesses sectors and in the wallets of regular Floridians.

These business owners would not have these problems, however, if the exemption for returning workers had not expired on September 30, 2007. As the subcommittee well knows, the FY2005 Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief included a two-year pilot program, exempting returning H-2B workers from the annual cap if they had been counted previously during any one of the three prior fiscal years. The John Warner National Defense Authorization Act for FY2007 extended this exemption until September 30, 2007. Unfortunately, the Congress failed to act again on this issue, and the exemption expired, leaving small and seasonal business owners without an important economic relief.

The 110th Congress could act to save seasonal and small businesses by passing H.R. 1843, a bill introduced by Mr. Stupak of Michigan that would permanently extend the pilot program for returning H-2B workers. As a cosponsor, I support this legislation and urge the Judiciary Committee to report the bill to the full House as soon as possible.

Thank you again, Chairwoman Lofgren and Ranking Member King, for holding this hearing and for allowing me the opportunity to address this distinguished subcommittee.

PREPARED STATEMENT OF THE HONORABLE CAROL SHEA-PORTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW HAMPSHIRE

Thank you, Chairwoman Lofgren, Ranking Member King and Members of the Subcommittee for holding this hearing today. As a Member of the Committee on Education and Labor and as the Representative of the First District of New Hampshire, I am pleased to submit this statement on behalf of my constituents and the small businesses that I represent.

[1] Department of Labor, "H-2B FAQs—Round II," December 17, 2007, http://www.foreignlaborcert.doleta.gov/pdf/h2b_faqs_round2.pdf., (accessed April, 15 2008)

In our Seacoast towns, northern mountain resorts, and across the state, the tourism industry thrives in New Hampshire. Because of the seasonal nature of our businesses such as ski resorts, summer landscaping, restaurants and hotels, many employers have trouble filling vital staff positions. This is due partly to the temporary nature of the work, the long commutes that may be required and, in some cases, the lack of a labor pool. The H-2B program plays a large part in providing the workforce that sustains these businesses. That is why it is vitally important that this hearing be held today and that we work quickly to relieve the current strains that small businesses, like many in New Hampshire, are enduring.

It is also important that, as we consider the H-2B program, we take into consideration some of the testimony that we received on the Education and Labor Committee in a June 7, 2007 hearing on the H-2 programs entitled, "Protecting U.S. and Guest Workers: the Recruitment and Employment of Temporary Foreign Labor." During that hearing, we heard about a March 12, 2007 report from the Southern Poverty Law Center, criticizing the program for reported abuses of guest workers, accusing employers of abuse and exploitation.

While these accounts must be considered and the well-being of workers enrolled in these programs protected, I have met and spoken with many of the business owners in New Hampshire who use the H-2B program to find seasonal workers. They are good employers who care about their staff. I have also heard from guest workers, who have only good things to say about their employers and their work experiences. So, as the larger issue of immigration reform is debated, it is important that we extend the exemptions to the cap on the H-2B program.

Without the exemption in place, the 66,000-visa cap on the program does not allow for a sufficient number of seasonal employees to sustain the many industries that rely on this source of labor. In New Hampshire alone, we see over 1,000 applicants a year for H-2B workers. For 2008, we have already had 640 applicants. Last year, with the exemption in place, an additional 69,000 workers were granted permits to work in this country. Without similar relief this year, many businesses may be forced to have their year-round, full-time staff take on additional responsibilities, putting extra strain on employees and distracting them from essential duties. In short, our small seasonal businesses will suffer. Some may have to scale back the services they offer to guests and customers, and some may even have to close their doors.

It is incredibly important to the New Hampshire economy that we act quickly to resolve this issue. Thank you again for holding this hearing, and I look forward to working with all of you on this issue.

PREPARED STATEMENT OF THE HONORABLE CHARLES W. BOUSTANY, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Madam Chairwoman, today thousands of small businesses around the country are at risk. Our small seasonal businesses lack the seasonal workforce they have come to depend on year after year. Without these temporary workers, seasonal businesses are unable to meet the peak demand they must to survive. Without these temporary workers, permanent American jobs are at risk as these businesses are forced to close their doors.

Today, this subcommittee will hear testimony about immigration and labor concerns, but the "Save Our Small and Seasonal Businesses Act" is about promoting American jobs and local economies with the necessary, temporary, legal workforce that has been available previously. The stubbornness of a small group of my colleagues stands in the way of this important legislation and our local small businesses. Around south Louisiana, sugar cane is not being processed, rice crops can't be sorted or bagged, and crawfish and crabs are being turned away by processors who simply don't have the workers to clean and pick the fishermen's catch. In my remarks, I will outline the safeguards currently in place to protect American jobs and temporary, seasonal workers as well as address the dire need to reauthorize this important program to keep our economy from stalling.

Louisiana's sugar cane mills have long-standing relations with Central and South American personnel whose unique expertise is crucial to the sugar crystallization process. Those with this skill save the mills a great deal of time and money by ensuring the crystallization is done properly. Failure to manage the crystallization process properly requires the whole process be started all over again, wasting valuable man hours and increasing costs during the hectic grinding season. No advanced degree is offered for this expertise, otherwise these workers could utilize "highly skilled" provisions similar to software companies and others, but these professionals

are just as valuable, in their niche, as tech-industry workers with graduate degrees. Typically, these experts travel from their home countries, where they perform this function for their local mills and to the US to fill the same niche in the U.S. sugarcane industry. Because our mills need the H-2B workers in place immediately prior to grinding season in the late summer and early fall, the arbitrary quota is typically filled long before our mills can begin the process. Similar problems are being reported by my District's rice mills. With this year's shortage of H-2B visas, these mills don't have the necessary, seasonal workers to bag and process this year's crop efficiently.

The Louisiana alligator industry also depends heavily on seasonal workers. Each September my state conducts an intensive annual harvest of over 30,000 wild alligators and during the early summer alligator farmers collect 300,000–500,000 wild alligator eggs. Overall, Louisiana alligator farmers harvest over 250,000 alligators from July through February, but the exact timing of each farm's harvest varies depending on their production strategy. In general, alligator farmers use H-2A workers to the extent possible for egg harvesting and crop production and harvesting. However, anyone in the industry that processes alligator skins or meat that do not come from their own farm must use H-2B workers. This includes processors, dealers, trappers and farmers processing alligators produced on farms or from the wild harvest. Alligator meat production alone contributes approximately $6 million annually to the $60 million alligator industry in Louisiana.

My office receives calls daily from struggling crawfish and seafood processors. We are now in the peak of crawfish season. While Congress plays politics with the workers these businesses need, these local businesses are forced to close. Businesses they support, rice farmers, restaurants, and local grocery stores will also suffer. There will be a loss of 75% of the normal peeling capacity of Louisiana crawfish processors due to the lack of H-2B legal returning labor. If there is no peeling, the ponds will over populate, and the crawfish destined for the live market will be stunted. These ponds will then take several years to recover their productivity. We also expect aggressive action by the Chinese crawfish industry, Americas largest competitor, to step in to meet demand. While these competitors without regulation look for opportunities to invade the American crawfish market, we are dropping our businesses in their laps.

Some of our colleagues raise specific concerns about the intentions of these employers. Many insist the H-2B program is a way for employers to exploit cheap labor. I have spoken with numerous employers who pay well above the minimum wage, pay overtime for any hours over 40 per week, provide housing for their workers and provide transportation at no cost to their workers. To say these employers are merely exploiting cheap labor is both naïve and unfair to these hardworking business owners who endure extra costs to run their businesses.

Many will also share their concern that the problem lies in ensuring these workers are returning to their country after the visa has expired. Fortunately, the returning worker provision offers a critical incentive for each worker to return home. Without returning home, the worker cannot apply for the cap extension. The returning worker program allows America's businesses to regulate the need for temporary workers, providing an essential safeguard against under-employment. We are offering a benefit to those workers who choose to follow the rules and abide by the terms of their visas as well as their employers.

Louisiana is only one of many states affected by this crisis, whether ski resorts in the west, tourist destinations on the Upper Peninsula of Michigan or Cape Cod, or seafood processing in Virginia and Maryland, thousands of communities around the nation are struggling to stay afloat. As Americans talk about economic crisis and Congress prepares multiple packages for economic stimulus, we must look at what drives our economy—our nation's small businesses. While the government pumps economic stimulus money into our economy, Americans are losing jobs and closing businesses they worked their entire lives to support. With a simple, legal, and responsible provision proven to work, we can support these small businesses. I encourage my colleagues to carefully look at the H-2B program and understand the great responsibility we have to these American small business owners.

PREPARED STATEMENT OF THE HONORABLE TIM MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Today thousands of small businesses around the country are at risk. Our small seasonal businesses lack the seasonal workforce they have come to depend on year after year. Without these temporary workers, seasonal businesses are unable to

meet the peak demand they must to survive. Without these temporary workers, permanent American jobs are at risk as these businesses are forced to close their doors.

The "Save Our Small and Seasonal Businesses Act" focuses on promoting American jobs and local economies with the necessary, temporary, legal workforce that has been available previously. In Southwestern Pennsylvania many local businesses, specifically landscapers and nursery owners rely on a temporary workforce for their businesses to thrive. At a time when our economy is already declining, there is a dire need to include the returning worker exemption in the H-2B visa program.

My office receives calls on a regular basis from struggling landscaping, nursery and other business owners. Some of the businesses affected in the Pittsburgh area are the following:

Valley Brook Country Club, of McMurray, PA
The Landscape Center, Inc., of Bethel Park, PA
Justin Beall's Landscape Service, of Pittsburgh, PA
Butler Landscaping, of Pittsburgh, PA
Evanovich Landscaping, of Pittsburgh, PA
The Club at Nevillewood, of Nevillewood, PA
Inches Nursery, of Moon Township PA
Friendship Farms, of Pleasant Unity, PA
PSH & Associates, of McKees Rocks, PA
Eichenlaub Inc, of Pittsburgh, PA
Mike's Landscaping, of Sewickley, PA
Schmidt Landscaping Inc., of McDonald, PA
Englert Nursery, Bethel Park, PA
Kasper Landscaping, Bethel Park, PA
Hess Landscape Nursery, Clairton, PA
Ed Bayer Landscapes, of North Hills, PA
Federouch Landscape Supplies, of McMurray, PA
Jerry's Lawn Care, of Penn Hills, PA
Sugar Run Nursery, of McMurray, PA
A&S Landscaping, of Cannonsburg, PA

According to the U.S. Small Business Administration's Office of Advocacy, about half of all private sector employees are employed by small businesses and ninety night point nine percent of all U.S. businesses have fewer than 500 employees. Over the last decade, this group of entrepreneurs has created roughly sixty percent of the new jobs in our economy. These are the same businesses that are now being threatened by the cap on H-2B visas for returning workers. While the government pumps economic stimulus money into our economy, Americans are losing jobs and closing businesses they worked their entire lives to support.

With a simple, legal, and responsible provision proven to work, Congress can support these small businesses. I support the extension of the returning worker provision for the H-2B visa program and understand the great responsibility I have to these American small business owners.

PREPARED STATEMENT OF THE HONORABLE JOE WILSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

I would like to begin by thanking the committee for holding this hearing. I think it is fair to say that this is a topic that has a number of different consequences—all of which should be addressed at the Federal and State level.

Congress has been debating immigration reform for quite some time now, and the debate has been contentious. There are individuals of good faith on every side of this issue. So, it is not with precipitous haste that we should make any final decision regarding the overall reform of our immigration policy in this country.

There are areas, however, that should be addressed in the immediate future. In particular, I am referring to the topic of today's hearing: the H-2B visa program. This is a program that has been very successful in boosting the tourism, restaurant, and hotel industries in the state of South Carolina and in communities all around the country. It is a lawful and orderly way to provide a temporary workforce. So, with many communities relying heavily on these types of industries, we should reauthorize the returning-worker provision of the H-2B visa program, a legislative fix previously passed by Congress, even while we debate larger reforms to our nation's immigration policy.

Despite what some have said, an extension of the returning-worker provision is not an unchecked expansion of our immigration policy nor is it a reckless opening

of the flood gates for greater and greater numbers of immigrants. It is not a new program. This is an extension of an existing program which expired a few months ago. It is not an amnesty program. It is, in fact, exactly the type of immigration reform we should be focusing on: a lawful and fair framework for those seeking to work temporarily within the United States on a mutually beneficial basis within our communities. The users of these visas work seasonal jobs, complementing a full-time workforce, and must return to their home countries every year. These users and their employers must follow careful procedures ensuring they do not take jobs away from Americans and must follow strict immigration laws that are currently in place.

It has become clear that the temporary extensions authorized in years past will force us to have this same debate each year. Meanwhile, a program such as this that has a proven record of positive, legal support to our economy will be constantly in jeopardy. Small businesses that benefit immensely from the H-2B program will be unable to rely on or plan for their seasonal employment. That is why I and several of my colleagues have called for a permanent extension of the returning-worker provision. American small businesses, the foundation of our nation's economy, benefit most when they can plan for their future. When they are successful, our nation's economy grows stronger.

I have actively worked with my colleagues in Congress to bring a clean extension of the H-2B returning-worker provision to a vote. I am troubled that this extension has been held up. The tourism, restaurant, and hotel industries in South Carolina—particularly in the Lowcountry—benefit immensely from a temporary and legal workforce that these visas provide. To let the extension provision stay expired without action ignores the needs of our nation's business community, its employees, and damages our economy.

PREPARED STATEMENT OF THE HONORABLE GEORGE MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Testimony of Representative George Miller,
Chairman of the Education and Labor Committee
before the
Judiciary Committee's Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

April 16, 2008

Good afternoon. Thank you, Madam Chairwoman, for inviting me to testify today at this hearing examining the H-2B guest worker program.

Hundreds of thousands of guest workers come to the United States each year under various existing guest worker programs. For years, these programs have been allowed to operate with little oversight. I am proud to say that this Congress has begun the work of examining these programs with a critical eye. The recent calls from various industries to expand the H-2B program in particular have presented an opportunity to carefully assess that program, including its impact on both U.S. and foreign workers, and to press for a number of reforms.

I believe Congress should not pass any new guest worker legislation, including expansions of existing programs, unless it is combined with strong, common-sense labor protections.

I would like to cover three broad areas of H-2B labor reform today – (1) strengthening the recruitment of U.S. workers, (2) protecting U.S. workers' wages and working conditions, and (3) stopping abusive foreign labor recruiting practices.

First, recruiting U.S. workers.

We need to strengthen the requirement that employers recruit U.S. workers before turning to guest workers. Employers should only be permitted to use H-2B workers when they have established that qualified U.S. workers are truly unavailable.

This reform is particularly timely given the state of the U.S. economy. As we know, in recent months, more and more Americans are looking for work.

- The unemployment rate rose from 4.8 to 5.1 percent in March of this year.
- Among the weakest spots in the March jobs report was the construction industry – which is hemorrhaging jobs – and yet construction employers are increasingly relying on the H-2B program.
- While H-2B workers are often used for summer seasonal work, a recent report by the Center for Labor Market Studies at Northeastern University found: "The summer 2008 job outlook for teens looks particularly bleak." Indeed, summer

2008 is projected to be an historical low point for teen employment in this country, due to fewer job opportunities.

- A recent survey by an hourly job website found that nearly half of managers of hourly establishments like restaurants and retail say they have no plans to hire seasonal workers this summer. Thirty-one percent of those managers said they simply did not have the budget to add summer workers. While half do not expect to hire at all, 93% of the surveyed managers said they expected to receive more or the same number of applications for jobs as last year.

At the same time that unemployment is rising, many businesses claim they cannot find workers. Within any guest worker program, including H-2B, we need to ensure that the employers, the Department of Labor, and state workforce agencies are making every effort to match able and willing American workers with available jobs before turning elsewhere.

Second, protecting U.S. workers' wages and working conditions.

The H-2B program needs to be reformed to protect U.S. workers from a race to the bottom. In recent years, for example, the Bush Administration weakened prevailing wage requirements in the H-2B program. Weakened prevailing wage requirements mean that U.S. workers have less access to these jobs. It also means the wages of U.S. workers are driven downward. We need a real and clear prevailing wage requirement in the H-2B program that ensures the employment of guest workers will not adversely affect U.S. workers' wages and working conditions.

Additionally, when it comes to protecting wages and working conditions, guest worker programs suffer an inherent structural problem. These workers are not free to quit and take a job just anywhere else. It is not exactly a free labor market. They are tied to their sponsoring employer. Consequently, these guest workers are susceptible to exploitation. We need to improve these workers' ability to challenge unlawful employment practices as well as their access to legal representation.

Once guest workers have arrived in this country, we must ensure that they receive basic labor protections and adequate legal safeguards. Yet, to my disappointment, the U.S. Department of Labor maintains that it does not currently have the legal authority to enforce the labor contracts between H-2B guest workers and their employers. Therefore, Congress must make clear the Secretary's authority to investigate and enforce the terms of H-2B contracts where an H-2B employer refuses to abide by the legal promises it made to its guest workers. The Department of Labor must also have the authority to impose fines as part of a strong system of enforcement.

We should also be mindful – especially after our experience in the past seven years – that the U.S. Department of Labor will not always have the political will to enforce basic rights for U.S. workers or foreign guest workers. In those cases, guest workers must have access to our court system to enforce their rights. However, most guest workers do not

speak English well and are extremely isolated, and therefore we cannot realistically expect that they would be able to take action on their own to enforce their legal rights. Congress has made this situation even worse by making H-2B guest workers ineligible for assistance from all nonprofit lawyers receiving funding from the federal Legal Services Corporation. This must change. We took a small step in the right direction last December when we made H-2B forestry workers eligible for legal services through a provision attached to the omnibus appropriations bill. We must now take the next logical step and grant the same legal protections to the H-2B workers in all industries.

Third, stopping abusive foreign labor recruiting practices.

We must ensure that foreign workers are not recruited into the H-2B program under false promises or coercive conditions. Too often, unscrupulous foreign labor recruiters lure workers to the United States by making false promises about pay and working conditions. But in far too many cases, the workers arrive here only to find out they were cruelly deceived. These recruiters will charge 5,000, 10,000, and even 20,000 dollars per worker, many of whom live in poverty in their home countries and have to sell their land or take out high interest loans so that they can afford the recruiters' fees. These fees have trapped many guest workers into a cycle of debt, afraid to speak up for fear of losing their jobs.

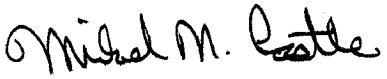
To address the issue of unscrupulous foreign recruiters, last year I introduced the Indentured Servitude Abolition Act (H.R. 1763), which would require clear and accurate disclosure of terms of employment to recruited workers. It would also outlaw charging workers recruitment fees. And it includes effective enforcement provisions. I believe the major provisions of my recruiter bill should be attached, along with other H-2B labor reforms, to any legislative action Congress takes with respect to the H-2B program.

Let me conclude by noting the growing support for adding labor protections to the H-2B program. The calls for reform began years ago by human rights and labor advocates. But recently, U.S. businesses that use the H-2B program have also begun to understand the need for change. The Small Business Workforce Alliance, composed of H-2B employers, has offered its support for a number of reasonable labor reforms, such as prevailing wage requirements and stronger DOL enforcement. Another large H-2B employer, the Signal International shipyard in Mississippi, confronted with revelations of outrageous recruitment abuses, has recently called on Congress to stop foreign labor recruiter abuses.

Any guest worker legislation should include these common-sense reforms. They are needed to protect U.S. workers' wages, working conditions, and employment opportunities, as well as to ensure guest workers are only utilized to satisfy real and legitimate labor shortages and not treated simply as a cheap, easily-exploited source of labor.

Thank you very much for the opportunity to testify today.

PREPARED STATEMENT OF THE HONORABLE MICHAEL N. CASTLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF DELAWARE



Statement of Congressman Michael N. Castle
Judiciary Subcommittee Hearing on Seasonal Worker Visas
April 16, 2008

MR. CASTLE. I would like to thank Chairwoman Lofgren and Ranking Member King for holding this important and timely hearing before the Immigration, Citizenship, Refugees, Border Security, and International Law Subcommittee.

Immigration and border enforcement policies have been among my top priorities and I believe it is critical that we do everything possible to improve security in this country. A key part of this effort requires that we put in place programs to ensure small businesses in the United States have a legal means of filling temporary and seasonal positions when American workers are not available.

In my home state of Delaware, the H-2B visa program has proven effective in meeting the seasonal needs of local entrepreneurs, including those involved in landscaping, tourism, and other small and seasonal businesses. Under this program, temporary workers go through security screening, pay taxes, and return to their home countries at the culmination of the season. As small businesses across the country contend with instability in the marketplace, the H-2B visa program serves as an example of how we can ensure security while also strengthening our local economies.

For this reason, I have consistently supported legislation to expand the cap on H-2B visas. In the 110th Congress I am a proud cosponsor of H.R. 1843, legislation offered by Congressman Bart Stupak to ensure that small businesses have a legal means of hiring workers. Unfortunately, this proposal has, to this point, been blocked from consideration on the House floor.

I believe strongly that we must improve security, enforce effective workplace standards, and expand access to employment for all Americans. Furthermore, when U.S. workers are not available, it is critical that we have a legal and secure means of providing small businesses with temporary workers. The H-2B visa program meets these needs and deserves to be extended.

PREPARED STATEMENT OF THE HONORABLE BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

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Statement
The Honorable Barbara Cubin
Representative for All Wyoming

House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law
Oversight Hearing on: The H-2B Visa Program
April 16, 2008

Madam Chairman,

I appreciate this opportunity to voice my support for expeditious reforms to the H-2B Visa Program. As the only Representative from Wyoming, my constituency includes federal holdings such as Yellowstone National Park, Grand Teton National Park, Devil's Tower National Monument, and numerous other summer tourist destinations throughout the state. The restaurant, lodging and resort industries that service thousands of visitors to these and other sites face a labor crisis. This crisis can, and should be alleviated by an exemption from the statutory cap for returning workers in the short term, and broader immigration reform in the long term.

It is no secret that I have long supported tough immigration reform policies. As a member of the House Immigration Reform Caucus, I have advocated for strong border enforcement and for ending the practice of employing illegal immigrants. However, I have also consistently argued that a distinction must be made between illegal immigration – which tears at the fabric of our nation – and legal immigration. Legal immigration, like that envisioned by the H-2B program, helps support our economy and rewards immigrants who follow the law. It is for this reason that I support H.R. 1843, the Save Our Small and Seasonal Business Act of 2007 introduced by Representative Bart Stupak.

As the summer tourist season begins in America, I have heard from restaurant and hotel owners all across my state. I know my colleagues from around the country have been hearing from their constituents as well. They have been asking two questions, "Will I be able to get my returning workers?" and, if not, "What am I going to do to run my business?" Make no mistake; in Wyoming, these are not giant conglomerates seeking cheap labor. Rather, a great many of these businesses are small, family owned enterprises that simply cannot meet the labor demand in the busy season.

Some have argued that the current H-2B Visa cap should remain in place because businesses have not tried hard enough to recruit American workers. On the contrary, Wyoming has spent considerable time and expense attempting to recruit laid off workers from other states. In fact, employers have been successful in convincing hundreds of Detroit auto-workers to relocate to Wyoming to work in our booming energy industry. Despite this, Wyoming's most current unemployment rate was still 2.7 percent, indicating that anyone who was actively seeking a job in the state could find one.

As I have over multiple Congresses, I will continue to argue for immigration reform that begins with strong border enforcement. However, in the absence of political will to tackle this issue, we simply cannot punish small businesses by holding them and their legal workers hostage to our stalemate. I urge this subcommittee to take every necessary step to alleviate the labor shortage facing the country this summer.

Prepared Statement of the Honorable Dennis Moore, a Representative in Congress from the State of Kansas

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STATEMENT OF REPRESENTATIVE DENNIS MOORE [KS-03]

BEFORE THE SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY AND INTERNATIONAL LAW

REGARDING THE H-2B VISA PROGRAM

APRIL 16, 2008

Madam Chairwoman Lofgren, Ranking Member King and Members of the Immigration Subcommittee, I would like to commend your subcommittee for the hard work you have done in the 110th Congress to carefully consider various aspects of immigration policy, both in terms of pending legislation and oversight of government agencies charged with executing our immigration laws.

As your committee examines the H-2B visa program, I wish to express my strong support for the H-2B visa program, which many small businesses in my district utilize to great effect. I would also urge your committee to promptly consider H.R. 1843, the Save Our Small and Seasonal Businesses Act of 2007 sponsored by Rep. Bart Stupak and of which I am an original cosponsor. The bill has garnered the strong, bipartisan support of over 145 Members, and I continue to receive the urgent pleas of countless small business owners who fear without an immediate renewal of the H-2B returning worker exemption, they will not be able to keep up with consumer demand. In some cases, some small businesses have seriously considered closing their operations if they do not have access to the labor they require to lawfully keep up with demand.

As you are aware, the H-2B visa program is capped at 66,000 visas per year. Even with 66,000 visas a year, the available allotment clearly does not meet the labor needs of seasonal businesses. To help meet the additional needs for these seasonal businesses, Congress established an exemption for returning H-2B workers. These workers who receive an H-2B visa in one of the previous three fiscal years would not be counted against the 66,000 H-2B visa cap. In 2006, Congress included a one year extension of this returning worker exemption in the National Defense Authorization Act, but unfortunately, this provision expired on September 30, 2007, and to date has not been extended.

There are estimated to be 11 to 12 million illegal immigrants in our country today, with millions of those individuals working in an unauthorized capacity. In some cases, the employer is well aware of the illegal hiring in contravention to current law. On the other hand, there are a number of seasonal and small businesses who try to hire American workers but are unable to find any, and in full accordance with U.S. law, first apply to the Department of Labor for a certification that U.S. workers capable of performing the work are not available and that the employment of alien workers

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will not adversely affect the wages and working conditions of similarly employed U.S. workers. H-2B employers must pay their workers at least the prevailing wage rate. A key limitation of the H-2B visa concerns the requirement that the work be temporary. Under the applicable immigration regulations, work is considered to be temporary if the employer's need for the duties to be performed by the worker is a one-time occurrence, seasonal need, peakload need, or intermittent need.

I am a firm believer that the United States government must do everything it can to ensure that American workers have first priority for jobs before hiring foreign workers. But in the event that no American workers can be found, it is important that we be able to connect willing foreign employees with willing employers in order to sustain critical seasonal industries. Furthermore, if we do not provide a realistic pathway for employers to fill their positions through legal means, I worry that it will only further encourage the practice of hiring illegal immigrants, which provides an unfair advantage for certain businesses over law-abiding businesses and increases the likelihood that these undocumented workers are exploited.

These small businesses utilizing the H-2B visa program offer a wide variety of services to our communities such as landscaping, roofing and painting, and their business contributes to how well or poorly our economy performs at both a local and national level. In a time of countless acts of illegal employment, the federal government should not punish those employers that carefully follow the letter and spirit of our laws. In a time of escalating economic anxiety and unpredictability, *now* is the time for Congress to temporarily extend the H-2B returning worker exemption that has proved effective and helpful to these law abiding business owners.

Thank you again for holding this hearing on this important visa program, and I look forward to working with Chairwoman Lofgren, Ranking Member King and Members of the subcommittee to provide immediate relief for H-2B visa employers that abide by our nation's laws as expeditiously as possible.

PREPARED STATEMENT OF THE HONORABLE PAUL HODES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW HAMPSHIRE

PAUL W. HODES
2ND DISTRICT, NEW HAMPSHIRE

COMMITTEES:
FINANCIAL SERVICES

OVERSIGHT AND
GOVERNMENT REFORM

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-2902

Testimony of Congressman Paul Hodes
House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law
April 16, 2008 Oversight Hearing on the H-2B Program

Dear Chairwoman Lofgren:

Thank you for the opportunity to submit for the record testimony regarding your April 16, 2008 hearing on the H-2B visa program.

In New Hampshire, small seasonal businesses such as restaurants, hotels and skyways are vital to our state's economy. These industries depend on the H-2B temporary visa program. The annual cap exemption for returning workers under the H-2B program expired last fall. Since then, business owners in my district have told me about how important returning workers have been to their businesses, and about the revenue they are losing without this labor source. Returning H-2B workers have followed the rules, and have proven themselves to be valuable to New Hampshire's economy. That is why I co-sponsored H.R. 1843, to extend the exemption for returning H-2B workers.

I am submitting for the record written correspondence I have received from business owners in my district. I believe their descriptions of the H-2B visa shortage make a strong case for this program, and for continuing to exempt returning workers who have legally contributed to the economy in my district. Again, thank you for the Committee's consideration of this testimony.

Sincerely,

Paul Hodes
Member of Congress

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MORIN'S *More than Great Landscapes!*

April 16, 2008

The Honorable Paul Hodes
U.S. House of Representatives
506 Canon House Office Building
Washington, DC 20515-2902

Dear Congressman Hodes:

We are again writing with regard to the H2B program and the strain our company is under due to the sharply reduced availability of seasonal workers. Because the H2B visa cap was met earlier this year than in the past and the exemption for returning workers has not been renewed our company is facing many hardships going into our season. We applied for 55 visas and received none.

LABOR FACTS:

- **We spend a tremendous amount of time and effort to recruit American workers only to be disappointed.**
- Very few applicants
- Seasonal positions are not attractive to Americans who need a steady paycheck
- When hired, they don't last long.

AMERICAN WORKERS WILL NOT DO THE WORK WE NEED TO HAVE DONE.

HARDSHIP FACTS 2008:

- We are forced to turn down work.
- We have cancelled orders from our many of our vendors to reduce inventory
- Our staff is working 7 days per weeks trying to get the work done

IF THERE IS NO RELIEF SOON:

- Deterioration of our client base
- Further cutbacks in inventories and orders from vendors
- Staff burnout
- Business decline...layoffs.

Our H2B workers do the jobs that American workers will not. Now this resource is being eliminated...How is this good for American businesses and the economy?

NEW HAMPSHIRE'S SEASONAL BUSINESSES NEEd H2B TO SURVIVE

Sincerely,

Thomas J Morin
President

Ps: Our H2B workers start at $10 per hour plus overtime at 1.5 times their regular rate. Two of them earned in excess of $27,000 in 2007 for 8 months work.

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April 17, 2008

To Whom It May Concern:

I am the Vice President and Human Resources Manager of Triad Associates, Inc. of Haverhill, Massachusetts and we have been in business since 1986. We are in dire need for the Congress to pass the bill HR1843, "Save Our Small and Seasonal Business Act of 2007".

Triad Associates, Inc. is a specialty construction company which designs and installs decorative hardscape surfaces for exterior decking and patios, pools, landscaping and driveways. With our highly skilled workforce which includes many H2-B Visa employees, we have grown an average of 6% annually for the past three years.

We hire as many workers as we can in the U.S. but there are nowhere near enough available to fill our needs. We have suffered greatly from a lack of sufficient labor in our area to fill these seasonal positions so the vast majority of the H-2B employees have been with Triad Associates for many years. To receive permission to bring immigrant workers into the U.S., we have to advertise in various newspapers to prove there are not sufficient U.S. workers available. For example, in the most recent round of advertising in 2007, we received only 2 (two) applicants for 60 seasonal positions. We are required to pay at or above the "prevailing wage" that U.S. workers in the same field make. We treat our workers very well not only with excellent pay and benefits, but we also provide very nice apartments and utilities. Again, the problem is there are not enough U.S. workers available.

Without these immigrant workers, we are facing a huge financial loss to our company. Triad Associates was expecting approximately 60 workers and if they cannot come into the country, it will force us to cancel millions of dollars worth of installation jobs. This will have a gross negative impact not only on our company but also for the U.S. workers in our organization. We have U.S. workers who are managers, warehouse personnel, office staff, supervisors in the field and other installers, all of whom will be negatively impacted. **Without sufficient workers, we will have no other option but to lay off the majority of our U.S. workers. This will affect 25 people in New Hampshire and 65 people in Massachusetts. Since installations are the heart of our business, it is a strong possibility that Triad Associates, Inc. will go out of business entirely.**

It is imperative that Congress passes the HR1843 bill, "Save Our Small and Seasonal Business Act of 2007". Thank you for your support!

Sincerely,

Susan Merck
Vice President

Claire Gruenfelder, Human Resource Director
Mount Washington Resort

We very much rely upon the seasonal work of our H2B's. We are a year round resort with two defined seasons; summer and winter. In both seasons our workforce spikes significantly, as do our business levels and we depend on our H2B workforce to assist us through those two seasons. We manage to hire highly skilled individuals on the H2B visa, many whom have been in U.S prior working on a J-1 visa. The employees we have on the H2B visa possess exceptional English abilities, which have an impact on the exceptional level of service we provide to our guests.

We pay our H2B workers the prevailing wage, as determined by our state. Many of our H2B workers are in positions where they receive cash tips as well as their hourly wage, which contribute greatly to their incomes. We provide housing at very low cost to our H2B workers, offer three meals a day in our cafeteria, organize trips to local towns so our H2B workers can do their banking, shopping and participate in other recreational activities. Our H2B workers have the opportunity to receive the same benefits as our U.S workers, including complimentary access to all the activities and amenities we have at our resort, including free ski passes, golfing privileges, horse riding, swimming, tennis, full gym facilities, racquetball, mountain biking, hiking, and much more.

Some of our H2B workers live in housing we provide, others choose to move off property, opting to purchase their own vehicles for more independence. Our housing is separated by gender and most employees who live in our housing have a room to themselves, in larger rooms some share with one or two other employees.

We have many H2B workers that we have come back to us seasonally we welcome their return to us. We offer our H2B workers a great place to work, good incomes, and the opportunity to advance themselves as we have promoted several of our H2B workers. Our H2B workers are treated the same as our native workforce, just last month one of our food service professionals was awarded the Golden Star of the Month Award for March 2008 for her exceptional service. For that award, that H2B worker received an overnight stay at another hotel in New Hampshire and $100 in spending money.

Without our H2B workforce two repercussions would happen; we would either have to reduce our operations, forced to close certain services on our property or we would be forced to back fill the seasonal positions that our H2B workers fill with far less skilled workers which would ultimately affect the guest experience we highly pride ourselves on.

Testimony from Terry O'Brien, Owner and Manager of Red Parka Steakhouse and Pub

I wish I could use H2B visa workers. Unfortunately, I cannot guarantee a 40 hour week or housing. I have to rely on the J1 student visa workers. The thing that I object to is the fact that the regulations for the H2B visas prohibit these workers from working more than one job. I can't tell you how many I have had apply (and I could definitely use them!!), but it is illegal for me to hire them. Most of these workers want to work as much as possible, but are not allowed to. Is there something that can be done about that?

I do know that many of the businesses up here - particularly the attractions and hotels - will be in dire straits if they cannot get the H2B workers. And if they are hurting for help, then we will all be in an employment contest for those residents and the J1 visas.

Terry O'Brien
Owner/Manager
Red Parka Steakhouse & Pub
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PREPARED STATEMENT OF THE HONORABLE CHARLIE MELANCON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Congressman Charlie Melancon
Testimony before the Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law
Committee on the Judiciary
April 16, 2008

Thank you, Congresswoman Lofgren, for holding this hearing today.

Like many Members of Congress, I have been in contact with business owners in my district about extending the H-2B returning worker exemption for well over a year. However, since crawfish and shrimp harvesting seasons are upon us, the calls from my district have reached a fevered pitch. There message is simple: without the H-2B workforce that they've relied on for the last two years, they will be forced to reduce services or, worse, close their doors.

According to one industry report, businesses in south Louisiana employed 1,968 H-2B workers last year, almost 600 in my district alone. These businesses employ about 13,000 American workers. Without H-2B workers to work along side our homegrown workforce, these businesses stand to suffer. Businesses that close their doors will undoubtedly lay off American-born workers.

The effect of reduced services, particularly in the crawfish and shrimp industries, will ripple throughout the south Louisiana economy. Take crawfish, for example: if crawfish processors reduce their production, they buy fewer crawfish, so farmers cannot empty their ponds. When these ponds become overcrowded, the crawfish stop growing. It is a cycle that has turned and turned and turned for as long as I've been on this earth. It's not just part of the culture in south Louisiana it's a way of life for many hard working families. Without immediate action, we're about to see this cycle come to a screeching halt.

This dilemma is by no means unique to the Deep South. I know my colleagues from Maryland have heard from their constituents in the crab industry and my friends out west have heard from their winter sports companies. We have a serious labor problem in this country. Fixing it will take years. We ought to have that debate, but let's not shun a short term patch that will save thousands of businesses and countless American jobs.

I recognize there are problems with the H-2B visa program. I encourage the Committee to address these flaws and I will work collaboratively to fix them. However, as we move toward reform, I urge this Committee to consider a short-term H-2B worker exemption extension.

Thank you for allowing me to testify. I would also like to include a spreadsheet of H-2B data provided by the shrimp and crawfish industries in my testimony.

Louisiana H2B Statistical Information

	Statistical Code	Type of Industry	Annual Sales $ (Million)	Total Number of Workers H2B & US	Number of US Workers	Number of H2B Workers	Previous # H2B workers allowed	# H2B Requested	Status of I-129 Request	% of production that will be affected with shortfall of workers	Will your plant close without H2B workers?	# of LA farmers that you buy/sell product to/from	Parish of Operation	Farm or Wild	Comments
1	A	Seafood plant	1,658,554	105	5	100	75	100	Reject/cap	75%	Yes	35	St. Landry	Both	
2	B	Crab/crawfish	1,800,000	45	12	33	50	30	Reject/cap	75%	Yes	15	EBR	Both	We service the White House!
3	C	Whls cermic distributor	1,300,000	14	9	5	5	10	Reject/cap	50%	Unknown	N/A	Jeff Davis	N/A	This is scary, we actively solicit US workers
4	D	Alligator processor	23,000,000	27	16	11	11	12		17%			Vermilion	Both	
5	E	Seafood Market	1,766,212	74	38	36	36	50	Reject/cap	83%	Possible	72	Lafayette	Both	
6	F	Alligator processor	400,000	60	30	30	30	50	Reject/cap	50%	No	30	St. Landry	Both	
7	G	Alligator, crawfish	3,800,000				50	50	Reject/cap	40%	Possible			Both	
8	H	Alligator/ crawfish	2,000,000			31	50	50	Reject/cap	50%	Possible		St. Landry	Both	
9	I	Crawfish processor	1,134,548	79	55	24	24	40	Reject/cap	67%	Possible	35		Both	Have been in business 45 years - labor getting harder to obtain every year. Grocery truckroute
10	J	Meat market	354,289	20	12	8	8	8	Season end	50%	Possible	N/A	Jeff Davis	N/A	
11	K	Crawfish processor	600,000	55	20	35	35	50	Reject/cap	90%	Possible	45	St. Martin	Both	Loss of production to fishermen would be 85-95% - We supply to Sams & Walmart.
12	L	Crawfish processor	925,000	62	2	60	60				Yes	15	Jeff Davis	Both	[redacted]
13	M	Crawfish processor													
14	N	Bait plant & crawfish processor	3,215,325	45	10	35	35	35	Approved	50%	Yes	6	Iberville	Both	No peeling/farmers cannot fish
15	O	Candy manufacturer	25,000,000	280	160	120	120	175	Reject/cap	30%	Possible	N/A	Tangipahoa	N/A	A minimum of 30% production will have a much larger impact on sales
16	P	Deer processor	2,100,000	16	13	3	3	6	Mid season	70%	Probably	4	West Feliciana	Both	If we lose H2B employees we will layoff a minimum of 3-5 US positions in addition to closing process plant
17	Q	Chicken plant	9,600,000	114	34	80	80	80	Mid season	75%	Probably	18	Calcasieu	Wild	Workers are harder to find that are willing to perform this type of labor.
18	R	Fisherman, health industry													
19	S	Road construction													
20	T	Rice drier & mill	1,262,000	30	10	20	20	20	Pending	50%	Probably	35	Evangeline	N/A	We are a rice mill & drier
21	U	Trap manufacturer	800,000	21	6	15	15	15	Season end	80%	Close	300	Vermilion	Both	Plant will close
22	V	Crop duster													
23	W	Shrimp plant	15,900,000	126	46	80	80	80	Applying	65%	Most likely	55	Terrebonne	Wild	The turnover of NON H2B workers is over 150% yearly.
24	X	Crop duster	753,108	7	3	4	4	4	Reject/cap	100%	Probable	63	Vermilion	N/A	We serve the Ag community
25	Y	Specialty chickens	3,800,000	22	16	6	6	6	Too early	25%	Possible	12	Vermilion	Both	In addition we buy 10,000 # of crawfish meat from peeling plant
26	Z	Pool manufacturing	1,500,000	72	42	30	40	34	Pending	50%	Likely close	75	St. Martin	N/A	We service wholesale dealers
27	AA	Meat market retail	4,347,824	25	10	15	15	0	None available	50%	Unknown	10	St. Landry	Farm	
28	BB	Shrimp plant	5,535,103	88	23	65	70	70	Reject/cap	75%	Likely close	50 plus	Iberia	Both	
29	CC	Crawfish/crab/oyster	1,500,000	9	9	0	40	50	Reject/cap	70%	Possible	65	Vermilion	Wild	05' no H2B til May. In 06' H2B workers were on time - doubled + income & taxes. Now approved for oyster also, have no workers available - cannot grow company loss of US jobs & revenue

Louisiana H2B Statistical Information

	Statistical Code	Type of Industry	Annual Sales $ (Million)	Total Number of Workers H2B & US	Number of US Workers	Number of H2B Workers	Previous # H2B workers allowed	# H2B Requested	Status of I-129 Request	% of production that will be affected with shortfall of workers	Will your plant close without H2B workers?	# of LA farmers that you buy/sell product to/from	Parish of Operation	Farm or Wild	Comments
30	DD	Crawfish & Gator	4,000,000			87	87		Apr/1st cap	okay	Possible			Both	
31	EE	Shrimp plant	30,000,000				93	93	Reject/cap	100%				Wild	
32	FF	Catfish	30,000,000				70	70	Reject/cap	50%				Farm	We have farm raised catfish
33	GG	Crab/Crawfish	2,000,000				40	40	Apr/2nd cap	30%					
34	HH	Crawfish/crab	3,400,000				50	50	Reject/cap	70%					
35	II	Hospitality	15,000,000	220	170	0	50	50	Reject/cap	25%	Will cut services		Ascension		
36	JJ	Food service	30,000,000	150	100	0	50	50	Reject/cap	20%	Will cut services		Orleans		
37	KK	Asbestos abatement	6,000,000	60	30	0	30	30	Reject/cap	50%	Will cut services		Orleans		
38	LL	Glaziers	10,000,000	70	50	0	20	20	Reject/cap	55%	Will cut services		Ascension		
39	MM	Janitorial services	3,000,000	98	23	0	75	75	Reject/cap	25%	Will cut services		EBRP		
40	NN	Steel Manfacturers	20,000,000	35	20	0	15	15	Reject/cap	10%	Will cut services		Tangiphoa		
41	OO	Metal Bldg Manf	10,000,000	75	40	0	35	35	Reject/cap	20%	Will cut services		Jefferson		
42	PP	Rental	6,000,000	25	14	0	11	11	Reject/cap	25%	Will cut services		Orleans		
43	QQ	Paint Contractors	8,000,000	15	10	0	5	5	Reject/cap	30%	Will cut services		Calcasieu		
44	RR	Landscape	10,000,000	100	40	0	60	60	Reject/cap	40%	Will cut services		EBRP		
45	SS	Landscape	1,000,000	18	10	0	8	8	Reject/cap	45%	Will cut services		EBRP		
46	TT	Roofing	6,000,000	50	20	0	30	30	Reject/cap	60%	Will cut services		EBRP		
47	UU	Environmental	10,000,000	42	30	0	12	12	Reject/cap	25%	Will cut services		Orleans		
48	VV	Sugarcane Mills	650,000,000	12265	12000	265	265	265	Season ending	100%	Close	650	24 Sugar Parishes		**Without H2B sugarbollers the whole sugar industry in Louisiana will shut down 100%. Total economic impact would be 2 billion dollars**
49		**Total**	**968,451,763**		13139		**1968**	**1944**							

PREPARED STATEMENT OF THE HONORABLE THELMA D. DRAKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Statement of Congresswoman Thelma Drake
Hearing on the H-2B Visa Program
Committee on the Judiciary
Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law
2141 Rayburn House Office Building
Wednesday, April 16, 2008
2:00 P.M.

Chairwoman Lofgren, Ranking Member King, and members of the Subcommittee:

Thank you for the opportunity to provide comment on the importance of the H-2B visa program, which has been essential to many small and seasonal businesses in Virginia's Second District.

As you may know, the H-2B seasonal worker program allows businesses across the nation access to the temporary workforce they need during peak business seasons. For instance, businesses in my district are heavily reliant upon a summer workforce for the busy tourist season. The program had an original cap of 66,000 workers, though a provision enacted in the fiscal year 2005 Emergency Supplemental Appropriations Act (P.L. 109-13) allowed returning workers to be exempt from the visa cap if they had already been counted against the cap in the previous three fiscal years. This returning worker provision was later extended through fiscal year 2007, and it was allowed to expire this past September.

The expansion of the H-2B program through the returning worker provision was designed to address an increasing need by small businesses whose domestic outlets for workers had been exhausted. I believe it is important to point out that employers who look to the H-2B program for workers must first prove that they are not able to find American workers for the job. Additionally, employers must pay their H-2B temporary workers a prevailing wage, and employers must adhere to strict workforce standards. This is not an unfair labor program by any means – it is truly a legal and beneficial program.

What is unfair, however, is that the returning worker provision – which could be extended with a simple and unobtrusive piece of legislation – has yet to be extended, while other programs have. For instance, a simple bill to extend the Religious Worker Visa Program passed the House of Representatives by voice vote on April 15, 2008. As you know, in March of last year, Mr. Stupak introduced H.R. 1843, the Save Our Small and Seasonal Businesses Act of 2007, which makes the H-2B returning worker provision permanent. Early this February, I introduced H.R. 5233, the Giving Relief to Our Small Businesses Act, which provides a two-year extension of the returning worker provision. Later in February, Mr. Gerlach introduced H.R. 5495, the Relief for America's Small and Seasonal Businesses Act, which provides a one-year extension of the provision.

As you can see, the variety is there from which to choose, however, not one of these bills has been considered by this subcommittee. This is astonishing, especially given that Mr. Stupak's bill has wide, bipartisan support with 149 cosponsors. This leads me to the conclusion that the H-2B program is being held hostage by those who would wish to pass a far more radical immigration policy.

While the H-2B visa program undoubtedly falls under the purview of this subcommittee, I would argue that H-2B is also a labor issue – using our immigration system to solve the workforce issues facing our small nation's businesses. The shortage of H-2B visas will certainly affect the fishing, landscape, food service, hospitality, and tourism industries in my district – to name just a few. According to the Department of Labor, in Fiscal Year 2006, the businesses in the Commonwealth of Virginia applied for 480 H-2B workers, 391 of which were certified. In FY07, the number of requested workers went up to 515, though the number of applications certified went down to 368. While these numbers may not seem large to many, it is all the difference to small businesses in my district that may face closing their businesses due to lack of a workforce. Additionally, in not renewing the returning worker provision, our country is shutting down a legal and efficient means for immigrants to enter our country and be a part of the workforce. By not renewing the returning worker provision, legal immigrants will now be faced with choosing between remaining in their country, or breaking our laws to enter illegally.

In closing, I would ask the Subcommittee to consider these three pieces of legislation in a prompt manner. As I have said before, the small business community is an invaluable engine that drives the U.S. economy. Small businesses represent 99.7 percent of all employer firms, employ half of all private sector employees, pay more than 45 percent of the total U.S. private payroll, and have generated from 60 to 80 percent of net new jobs annually over the last decade. Many of these small businesses rely on temporary workers during key times of the year. It is essential that we address their workforce needs. I have included with this statement supplemental materials from several municipalities, the Governor of Virginia, and other business interests that are affected by the H-2B program.

City Manager

January 18, 2008

The Honorable Thelma Drake
Congresswoman (2nd District)
4772 Euclid Road, Suite E
Virginia Beach, VA 23462

Dear Congresswoman Drake:

I write to express the City of Hampton's support for Senator Mikulski's H2B, a critical provision of The Save Our Small and Seasonal Businesses Act, signed into law by President Bush in May 2005.

This Act has made significant changes to the federal H2B (non-skilled seasonal worker) visa program. Among the changes, it exempted returning seasonal workers from counting against the national cap of 66,000 people, created new anti-fraud provisions, and ensured a fair allocation of H2B visas among spring and summer employees. The cap exemption provides significant relief to Virginia's, and the City of Hampton's, seafood industry, which often hires the same dependable workers every year.

Senator Mikulski's H2B extension, which is in the Senator Judiciary Committee, keeps small and seasonal businesses open by guaranteeing the labor supply needed during their peak seasons when they can't find American workers to take the jobs. I am hopeful that you will support this provision when and if it is before you for your consideration.

Should you have any questions or need additional information about the City of Hampton's position on this matter, please do not hesitate to contact me.

Sincerely,

Jesse T. Wallace, Jr.
City Manager

cc: Senator John Warner
Senator Jim Webb
Congressman Robert C. Scott
Congressman Robert Wittman

CITY OF HAMPTON (757) 727-6392 FAX (757) 728-3037
22 LINCOLN STREET, HAMPTON, VIRGINIA 23669

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CITY OF POQUOSON

500 CITY HALL AVENUE, POQUOSON, VIRGINIA 23662-1996
(757) 868-3000 FAX (757) 868-3101

Office of the Mayor

January 22, 2008

Congresswoman Thelma Drake
1208 Longworth HOB
Washington, DC 20515-4602

Dear Congresswoman Drake:

As the Mayor of a small coastal city situated along the Chesapeake Bay, I write to you regarding a most urgent issue on behalf of many of our citizens. The community of Poquoson is home for many individuals who make their livings harvesting the seafood from the coastal waters of Virginia. Unfortunately at this time, their livelihood and in reality their lives and the welfare of their families are in jeopardy. In jeopardy not because there is a lack of seafood to he harvested and brought to market, rather in jeopardy due to the inability of the seafood processing industry to be able to do their part. At the core of the problem is the lack of available domestic labor to perform the seafood processing function. The only solution to keeping these processing operations in business and in so doing sustaining the livelihood of the waterman, is through the authorization of additional workers under the H-2B program of the Save Our Small and Seasonal Business Act of 2005 (SOS Act).

I thank you in advance on behalf of our community and specifically the watermen of our community for your swift consideration and support of the authorization of additional workers under H-2B program or the authorization by Congress of the "returning worker" provision of the SOS Act for FY 2008.

Sincerely,

Gordon C. Helsel, Jr.
Mayor

FROM : FAX NO. :804-529-7374 Apr. 15 2008 09:06AM P4
MAR-20-2008 12:14 From:BEVANS OYSTER CO. 804 472 4575 To:804 529 7374 P.1/1

COMMONWEALTH OF VIRGINIA
Office of the Governor

Timothy M. Kaine
Governor

The Honorable James Webb
United States Senate
Russell Senate Office Building, Room 144
Washington, DC 20510

Dear Senator Webb:

I am writing in support of extending the exemption of returning H-2B workers, temporary non-agricultural seasonal workers, from counting against the national cap of 66,000. One such bill that seeks to accomplish this goal is H.R. 1843, the "Save our Small Seasonal Businesses Act." This bill would provide small businesses across the Commonwealth with the vital temporary seasonal workers they rely upon for sustaining their companies.

In 2005, President Bush signed into law the original, "Save Our Small and Seasonal Business Act" which made significant changes to the federal H-2B visa program for non-skilled seasonal workers. An important aspect of this bill included the temporary exemption of returning seasonal workers from counting against the national cap 66,000. In 2007, Congress allowed this exemption to expire, adversely impacting small business across Virginia.

The H-2B visa program has offered significant assistance to Virginia's small businesses, such as seafood processing, landscaping, construction, and resort/hospitality services who simply cannot hire enough American workers for peak seasonal employment. During FY 2007, Virginia's employers filed 545 applications for a total of 12,235 H-2B workers offering short-term help and then returned to their home countries at the end of the season.

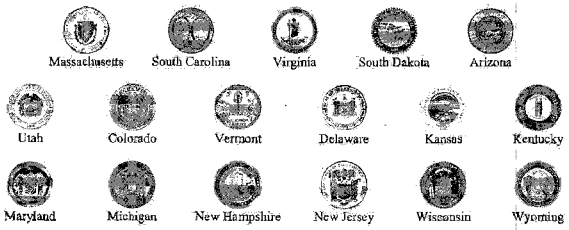
The middle of March is the peak of oyster season and is a time that companies in Virginia traditionally rely upon H-2B workers. As businesses cannot apply for H-2B workers more than 120 days before the date of need and at least 90 days in advance of the time the worker will begin working, Virginia businesses filed their requests in November and December of 2007, to apply for workers. However, the H-2B cap for FY 2008 was reached on January 3, 2008, leaving Virginia seafood businesses bereft of the vital labor they have come to depend on, endangering the future of their businesses.

Virginia is in dire need of the seasonal labor that H-2B workers provide. Passing H.R. 1843, or some variation thereof, which includes extending the returning worker provision, will provide relief to Virginia's seafood processing industry and other Virginia employers who have been participating in the H-2B program and who rely on returning foreign workers. In many cases, these foreign workers have worked at their respective Virginia businesses year after year. Without a swift reauthorization of the program, small businesses throughout Virginia and the nation will be significantly hurt.

Thank you in advance for your help.

Sincerely,

Timothy M. Kaine



April 28, 2008

The Honorable Harry M. Reid
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Boehner
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Leader Reid, Minority Leader McConnell, Speaker Pelosi and Minority Leader Boehner,

Time is running out for small businesses across the country which depend on the H-2B visa program to meet their hiring needs during peak seasons. As Governors, we urge Congress to immediately pass a one-year stand alone extension of the H-2B returning worker program.

The 33,000 cap on H-2B visas for seasonal workers for the second half of FY2008 was reached on January 2, 2008, however, the labor needs of seasonal businesses across the country have not been addressed. In the past, the 'returning worker' provision of the H-2B visa program provided much needed flexibility for businesses to meet the additional seasonal labor demands they face. Under this provision, returning H-2B workers were not counted against the numerical limit. Unfortunately, for the first time since 2005, this 'returning worker' provision was not extended.

Across the country businesses that depend on H-2B workers are facing a severe shortage headed into the busy summer months. Each day Congress fails to act adds to the tremendous uncertainty faced by our seasonal businesses. The economic impact of a further delay on these businesses and our states cannot be over-stated.

While we understand that long-term reform of the H-2B program must be discussed in the context of broad-based comprehensive immigration reform, due to the immediate need for action, we urge you to act to pass a stand alone one-year extension of the H-2B returning worker program. We believe that this approach is the most effective means of securing immediate relief.

Thank you for your consideration.

Sincerely,

Governor Deval L. Patrick
Massachusetts

Governor Mark Sanford
South Carolina

Governor Timothy M. Kaine
Virginia

Governor M. Michael Rounds
South Dakota

Governor Janet Napolitano
Arizona

Governor Jon Huntsman, Jr.
Utah

Governor Bill Ritter, Jr.
Colorado

Governor James H. Douglas
Vermont

Governor Ruth Ann Minner
Delaware

Governor Kathleen Sebelius
Kansas

Governor Steven L. Beshear
Kentucky

Governor Martin O'Malley
Maryland

Governor Jennifer M. Granholm
Michigan

Governor John H. Lynch
New Hampshire

Governor Jon S. Corzine
New Jersey

Governor Jim Doyle
Wisconsin

Governor Dave Freudenthal
Wyoming

cc: Members of Congress

VIRGINIA AGRIBUSINESS COUNCIL
701 East Franklin Street, Suite 503
P. O. Box 718, Richmond, VA 23218-0718
(804) 643-3555 Fax (804) 643-3556
va.agribusiness@att.net; www.va-agribusiness.org

We Represent Virginia Agribusiness with a Unified Voice

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Sonny Meyerhoeffer,
Double M Farms
Brian Mosier,
Mecklenburg Electric Coop.
Douglas R. Phillips,
Phillips & Turner Tree Farms
Deborah B. Roberts,
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Stan Rogers,
Southern States Cooperative
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Saunders Farms
Larry E. Saunders, Sr.,
Md. & Va. Milk Producers Coop.
Daniel K. Shreckhise,
Shreckhise Nurseries
Leslie V. Smith,
Old Dominion Grain, Division of
Monogal Milling Co. of Va., Inc.
O. Brian Tolliferro, Jr.,
Montague Farms, Inc.

STAFF
Donna Pugh Johnson,
President
Katie K. Frazier
Assistant Vice President-
Public Affairs

April 11, 2008

The Honorable Thelma Drake
United States House of Representatives
Washington, DC 20515

Dear Ms. Drake:

On behalf of the Virginia Agribusiness Council, we ask for your continued support and prompt action on legislation to amend the H-2B program cap. Next week, the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law will hold a hearing on the H-2B worker program. As discussions continue about the future of this program, we remind you that many Virginia agribusinesses such as landscapers, golf courses, timber companies, and aquaculture operations use the H-2B visa program to ensure their workers are legally documented.

The H-2B program provides a vital and legal source of seasonal labor for the landscape, timber, and other industries that cannot fill their labor needs with American citizens. As such, the members of the Virginia Agribusiness Council urge you to support efforts to eliminate the program cap on the number of workers entering the United States under the H-2B program. If eliminating the cap is not preferable, at a minimum, Congress must continue the exemption of certain repeat workers from being counted in the H-2B program cap, a provision that expired in 2007.

The program's congressionally mandated cap of 66,000 (33,000 for the first half of the fiscal year and 33,000 for the second half of the year) is inadequate to meet the seasonal needs of landscape contractors, golf courses, and other small employers. The cap for the first half of the fiscal year has already been reached, leaving many employers without the necessary labor force in 2008.

Limits on the number of workers allowed into the United States under this highly regulated, legal guest worker program has resulted in difficultly planning for the future for many of these businesses. Without the advance knowledge of an available workforce, it is difficult to negotiate customer contracts and plan for equipment and supply purchases.

The Virginia Agribusiness Council represents farmers, foresters and other agricultural-product producers, marketers and processors, industry suppliers and commodity and industry associations as the unified voice for Virginia agribusinesses.

Again, thank you for your consideration of this important issue. Please do not hesitate to contact us if the Council can provide you with additional information.

Sincerely,

Katie K. Frazier
Assistant Vice President- Public Affairs

FROM : FAX NO. :804-529-7374 Apr. 15 2008 09:06AM P2
APR-11-08 11:41 AM VA. SEAFOOD COUNCIL 7575968771 P.02

VSC
VIRGINIA SEAFOOD COUNCIL • 76 Raleigh Rd. • Newport News, VA 23601 • (757) 595-6603 • Fax (757) 596-8771

April 11, 2008

The Honorable Zoe Lofgren
Chairwoman
Subcommittee on Immigration
102 Cannon House Office Building
Washington, D. C. 20515

Dear Congresswoman Lofgren:

Virginia Seafood Council is pleased that HB 1843 -- Save Small and Seasonal Businesses -- is coming to your committee on Wednesday for action. The H-2B guest worker visa program is of critical importance to the Virginia seafood industry and to many small businesses across the State of Virginia and the nation. Small businesses nationwide are counting on Congress for leadership and action with the reauthorization of the H-2B returning worker program.

HB 1843 is a returning worker bill, which has worked effectively for the past three years by permitting returning workers to be exempted from the 66,000 cap. Returning workers are defined as ones who have received temporary visas in one of the past three years.

H-2B is a nonimmigration program, as clearly stated on the I-129 Petition for Nonimmigrant Workers; it provides employers access to temporary workers for seasonal/peak load needs when no American workers can be found for the jobs. H-2B visas are issued for a maximum of ten months, some are shorter depending on the work to be done.

Virginia Seafood Council is a trade association, non-profit and incorporated, composed of processors, packers, harvesters, and aquaculturists of Virginia seafood. The seafood industry contributes over a half billion dollars annually to the economy. Thirty-two Virginia seafood companies contracted for 1,058 H-2B workers in 2007. The prevailing wage, as required by federal regulations, was at least $6.71 per hour (depending on the specific job) and they were paid an average of $7.17 per hour. These workers contribute to federal tax programs (from which they will never collect benefits), shop in our stores and contribute to perpetuating a rich seafood tradition in Virginia.

Absence of temporary foreign labor will force the closure of some businesses in our industry and in other seasonal industries. Americans with full time jobs will subsequently lose jobs, economic multipliers will be impacted in the billions of dollars and more foreign product will come into the United States. It is clear to us that the absence of returning workers will have great economic impact on an already struggling economy.

Our future is in your hands, our livelihoods are at stake. Please reward small business for following the law and participating in a legal H-2B guest worker program to improve our productivity and save small businesses and American jobs.

Thank you for your assistance with this matter. If Virginia Seafood Council can be of service to you, please contact us.

Sincerely,

Frances W. Porter

Frances W. Porter
Executive Director

H-2B WORKFORCE COALITION

PROMOTING A STABLE AND RELIABLE SEASONAL WORKFORCE

Michael R. Shutley, Co-Chair
National Restaurant Association

Shawn McBurney, Co-Chair
American Hotel & Lodging Association

Executive Committee:

Asian American Hotel Owners Association

American Horse Council

American Immigration Lawyers Association

American Nursery & Landscape Association

American Rental Association

American Trucking Associations

Associated Builders and Contractors

Associated General Contractors of America

Essential Worker Immigration Coalition

Federation of Employers and Workers of America

International Franchise Association

National Club Association

National Federation of Independent Business

National Roofing Contractors Association

National Ski Areas Association

Professional Landcare Network

Tree Care Industry Association

U.S. Chamber of Commerce

October 5, 2007

Dear Representative:

As representatives of tens of thousands of seasonal employers throughout the country, we urge you to support H.R. 1843, the "Save Our Small and Seasonal Business Act of 2007."

This bipartisan bill would simply renew the highly successful relief provision for the H-2B visa program that was initially approved by the Senate by 94-6 in 2005. This provision recognizes the reliability and trustworthiness of past participants in the H-2B program by exempting those temporary seasonal workers who have participated in the H-2B visa program and have completely followed the law during the past three fiscal years from counting toward the statutory cap.

The congressionally mandated 66,000 annual cap on the number of workers allowed to participate in the program that was established in 1990 does not reflect current economic realities or meet the needs of the seasonal businesses that rely on these workers.

Before employers can hire temporary seasonal workers under the program, they must advertise their job openings, work with local unemployment offices to identify potential American workers and offer the positions to any qualified domestic applicants. The jobs these guest workers fill do not take jobs away from Americans. It is not until employers have carried out this time consuming and expensive due diligence in trying to hire American workers that they are allowed to petition the federal government for a labor certification and ultimately bring in temporary workers – their final option to run their seasonal businesses.

In fiscal year 2004, the statutory cap was reached on March 9 – only six months into the fiscal year and before many summer employers had an opportunity to apply for seasonal workers. As a result, many of these businesses had to cancel events, operate at partial capacity, not open parts of their businesses, or have their full-time staff work overtime to the point of burnout.

Each subsequent year, the cap has been reached sooner as a result of the increased need for seasonal workers and an increasing labor shortage. The cap for the first half of fiscal year 2008 was reached on September 27 – 3 days before the fiscal year even began.

Without immediate action by Congress, widespread economic consequences will severely impact diverse economic sectors throughout the country including lodging, restaurants, landscaping, clubs, amusement parks, ski resorts, food processing, stone, travel and tourism, horse sports, construction, entertainment, hospitality, recreation and many other seasonal industries.

On behalf of thousands of small businesses and seasonal employers throughout the country, we urge you to support H.R. 1843 and secure its immediate passage.

Sincerely,

(continued)

National Organizations

American Horse Council
American Hotel & Lodging Association
American Immigration Lawyers Association
American Nursery and Landscape Association
American Trucking Associations
Asian American Hotel Owners Association
Associated Builders and Contractors
Associated General Contractors of America
Federation of Employers and Workers of America
International Association of Amusement Parks and Attractions
National Club Association
National Federation of Independent Business
National Restaurant Association
National Roofing Contractors Association
National Ski Areas Association
Tree Care Industry Association
U.S. Chamber of Commerce

State and Regional Organizations

Arizona Hotel & Lodging Association
Arizona Landscape Contractors Association
Associated Landscape Contractors of Colorado
California Hotel & Lodging Association
Chesapeake Bay Seafood Industries Association
Colorado Association of Lawn Care Professionals
Colorado Hotel & Lodging Association
Colorado Restaurant Association
Commercial Flower Growers of Wisconsin
Delaware Restaurant Association
Florida Restaurant and Lodging Association
Gulf Oyster Industry Council
Hospitality Association of South Carolina
Idaho Nursery & Landscape Association
Indiana Hotel & Lodging Association
Illinois Hotel and Lodging Association
Illinois Landscape Contractors Association
International Franchise Association
Iowa Restaurant Association
Kentucky Hotel & Lodging Association
Kentucky Nursery & Landscape Association
Kentucky Restaurant Association
Kentucky Turfgrass Council
Landscape Contractors Association MD-DC-VA
Lawns of Wisconsin Network
Maine Innkeepers Association
Maine Merchants Association
Maine Tourism Association
Massachusetts Lodging Association
Massachusetts Nursery & Landscape Association
Massachusetts Restaurant Association
Metro Atlanta Landscape & Turf Association
Michigan Green Industry Association
Michigan Hotel, Motel & Resort Association
Michigan Nursery & Landscape Association
Michigan Restaurant Association
Mid-America Green Industry Council
Minnesota Nursery & Landscape Association
Minnesota Restaurant Association
Nevada Hotel & Lodging Association
Nevada Landscape Association
New Jersey Green Industry Council
New Jersey Hotel & Lodging Association
New Jersey Nursery & Landscape Association
New York State Lawn Care Association
New York State Restaurant Association
New York State Turf & Landscape Association
North Carolina Nursery & Landscape Association
North Carolina Restaurant and Lodging Association
Ohio Hotel & Lodging Association
Ohio Landscape Association
Ohio Nursery & Landscape Association
Ohio Restaurant Association
Oklahoma Greenhouse Growers Association
Oklahoma Hotel and Lodging Association
Oklahoma Nursery & Landscape Association
Oklahoma Restaurant Association
Oregon Landscape Contractors Association
Oregon Restaurant Association
Pennsylvania Landscape & Nursery Association
Pennsylvania Restaurant Association
Pennsylvania Tourism & Lodging Association
Professional Landcare Network
Restaurant Association of Maryland
Southern Innkeepers Association
Tennessee Hotel & Lodging Association
Texas Hotel & Lodging Association
Texas Nursery & Landscape Association
Texas Restaurant Association
Utah Hotel & Lodging Association
Virginia Green Industry Council
Virginia Hospitality and Travel Association
Virginia Nursery & Landscape Association
Washington State Hotel & Lodging Association
West Virginia Hospitality & Travel Association
Wisconsin Green Industry Federation
Wisconsin Innkeepers Association
Wisconsin Landscape Contractors Association
Wisconsin Nursery Association
Wisconsin Restaurant Association
Wisconsin Sod Producers Association
Wyoming Lodging and Restaurant Association

Businesses

A & A Construction Company, Texas
A.E. Phillips & Son, Maryland
A & M Underground Irrigation Systems, South Dakota
A Perfect Landscape, Colorado
A Yard & A Half Landscaping, Massachusetts
A - 1 Chipseal Co., Colorado
Abernethy & Spencer Greenhouses, Virginia
Absolute Landscaping Inc. New Jersey
Acacia Digging & Transplanting Services, Texas
Academy Sports Turf, Colorado
Affordable Lawn Sprinklers & Lighting, Virginia
All Around Concrete Cutting, Louisiana
All Around Concrete Demolition, Louisiana
Almeda Wholesale Nursery, Colorado
Amberscapes, Texas
Amelia Island Plantation, Florida
Aplin Masonry of Telluride, Colorado
Apgar Turf Farm, Delaware
Aqua-Lawn, Connecticut
Arapahoe Acres Nursery & Landscaping, Colorado
Arapahoe Horticulture, Colorado
Architectural Paving Systems, Oklahoma

Armstrong Landscape & Design Group, Texas
Arteka Companies, Minnesota
Aspen Skiing Company, Colorado
Atlantic Plants, New Jersey
Auxiliary Service & Hardware Supply Co., New Jersey
B. Rushing Lawn and Landscaping, Virginia
Bachman's Inc, Minnesota
Barrientos Inc, Colorado
Basin Harbor Club, Vermont
Beachmere Inn, Maine
Bauer Lawn Maintenance, Ohio
Becker Landscape Contractors, Indiana
Bee-Line Sprinkler, Colorado
Belmire Sprinkler and Landscaping, Colorado
Benson Enterprises of New York
Best Western Kelly Inn Billings, Montana
Best Western Grand Canyon Squire Inn, Arizona
Big Sky Resort, Montana
Bill Horn Ornamental Landscaping, Illinois
Black Diamond Paving, California
Blades Inc, Maryland
Bland Landscaping Co., North Carolina
Blue Skies Landscape, Louisiana
Bob's Lawn & Landscaping, Minnesota
Borst Landscape & Design, New Jersey
Boschco LLC, Texas
Boxelder Nurseries, Colorado
Boyne Highlands Resort, Michigan
Boyne Mountain Resort, Michigan
Boyne USA Resorts
Bradbury Landscape, New Jersey
The Breakers Palm Beach, Florida
Breezy Hill Nursery, Wisconsin
Brian's Lawn & Landscape, Texas
Bristol's Garden Center, New York
The Broadmoor, Colorado
C.M. Jones, Inc., Pennsylvania
C & C Mowing Contractors, Texas
C & G Turf Management, Tennessee
Calvillo Landscape, Texas
Camilla Worden Garden Design, Connecticut
Campania International, Pennsylvania
The Canine Fence Co., Connecticut
Capt. Phips Seafood Inc., Maryland
Capitol Landscape, Idaho
Caribou Chalet Comfort Inn, Colorado
Carmine Labriola Contracting Corporation, New York
Cedar Fence Company, Utah
Center Greenhouse, Colorado
Cerruti Landscaping, Pennsylvania
Champlain Stone Ltd, New York
Chas H. Parks & Co., Maryland
Chateau on the Lake Resort & Spa, Missouri
Cheyenne Mountain Resort, Colorado
Chi Balance Center, Pennsylvania
Chris Orser Landscaping, Pennsylvania
Christmas Decor by Cowley's, New Jersey
Clarion Hotel at the Palace, Missouri
Classic Paving, Texas
Clean Cut, Inc., Colorado
The Cliff House, Maine
Clubhouse Inn Billings, Montana
Clubhouse Inn West Yellowstone, Montana
Collier Enterprises, Florida
Colorado Custom Log & Timber, Colorado
Colorado Snow & Ice Management, Colorado
Commercial Lawn Service, Texas
Complete Landcare, Florida
Condominium Landscape Maintenance, New Hampshire
Connors Drilling, Nevada
Connors Drilling, Colorado
Copper Canyon Landscape, Utah
The Corsair & Cross Rip Oceanfront Resort, Massachusetts
Country Acres Landscaping, New Jersey
Country Gentleman LLC, Maryland
Country Green Landscape, New Jersey
Cousin's Lawn Service, Texas
Cowboy Road Construction, Texas
Crea, Inc., New Jersey
Creativexteriors, Colorado
Cruz Masonry, Colorado
Crystal Lake Landscaping, New Jersey
Crystal Mountain, Washington
CTM Inc, Colorado
CTM Services, Rhode Island
Cut Rate Lawn Service, Colorado
D & I Wood Products, Texas
D A Hoerr & Sons, Illinois
Dan & Jerry's Greenhouses, Minnesota
David R. Rykbost Corp., Massachusetts
Dawson Lawn Service, Tennessee
Deboer Brothers Landscaping, New Jersey
The Denver Country Club, Colorado
Derrick Smith Construction, Louisiana
Derstine Landscaping, Pennsylvania
Designs By Sundown, Colorado
Diagnostic Exterior Solutions, North Carolina
Dinneen Landscaping, Massachusetts
DMB-Highlands Group LLC, California
Doctor's Inc., Kansas
Doctors "At the Lake" Inc, Kansas
Dominguez Racing Stables, New Mexico
Double A Contracting, Texas
Double JJ Concrete, Colorado
Dusty Lout Agri Service, Texas
E.L. Irrigation & Landscaping, Texas
Eagle Crest Nursery, Colorado
Eco-Cutters, Colorado
ECO Specialty Systems, Missouri
Edmundson Inc, Colorado
El Jarrito Restaurants, Texas
Elite Lawn & Landscape, Ohio
Elite Professional Lawn & Landscaping, Texas
Ellis Cement Contracting, Ohio
The Enchantment Resort & Spa, Arizona
Equibrand Products Group, Texas
Estate Landscape & Irrigation, California
Evening Shade Lawn Care, New Jersey
Evergreen Gene's, Maryland
Executive Moving Systems, Virginia
F. Espinoza Landscaping, Illinois
Fairfax Golf, Oklahoma
The Fairmont Hotel, Texas
Farmside Landscape & Design, New Jersey
Felipe's Lawncare, Oklahoma
Florida Lawns, Florida
Frank's Used Tank & Heaters, Texas
Frank Sharum Landscape Design, Arkansas
Franzen Farms, Texas
Fred Adams Paving Co, North Carolina

Front Range Snow & Ice, Colorado
Fullmer's Landscaping, Ohio
G.W. Hall & Son, Maryland
Gachina Landscape Management, California
Gallegos Corporation, Colorado
Gangemi Landscaping, New Jersey
The Garden Greenhouse & Nursery, New Jersey
The Garden of Gethsemane Nursery & Landscaping, Texas
Garden State Irrigation, New Jersey
Gardens Beautiful Garden Centers, Wisconsin
Gatlinburg Sky Lift, Tennessee
GDK Leasing Inc., Florida
Geissler Tree Farms, Pennsylvania
GEL Inc, Utah
Genesis Lawn & Landscape Management, Arkansas
Gentle Giant Moving Co., Massachusetts
Giambrocco Greenhouses, Colorado
Ginkgo Landscape Group, Illinois
GLV Construction, New York
The Good Earth Construction, Arkansas
Good Labor, Alabama
GPS Enterprises, Texas
Graham & Rollins, Virginia
Grand Hotel, Michigan
Grand Marais Hotel Company, Minnesota
Grand Oaks Hotel, Missouri
Grandview Landscape-Irrigation, Colorado
Grass Plus, Utah
Great Oaks Landscaping, Illinois
Great Western Landscape, Utah
Green Acres Lawn Care, Virginia
Green Acres Services, South Carolina
Green Hills Landscaping & Construction, Texas
Green Horizons, Minnesota
Green Thumb Grounds Care, California
Green Valley Ranch Golf Club, Colorado
Green Valley Turf Co, Colorado
Green Village Garden Center, New Jersey
Greenlawn Landscaping Maintenance Company, Michigan
Greenleaf Lawn & Landscape, New Jersey
Greenscape, California
Greg Touliatos & Associates, Tennessee
GroundMasters Landscape Services, Colorado
Grounds Management, Michigan
Grounds Masters of Arkansas
Gurney's Inn Resort, Spa & Conference Center, New York
H.E. Smith Inc, Pennsylvania
H & R Landscaping, Pennsylvania
Hahira Nursery, Georgia
Hamlin Nursery & Co, Texas
The Hermitage Hotel, Tennessee
Hershey Resorts, Pennsylvania
High Hampton Inn & Country Club, North Carolina
Hillside Landscape Construction, Idaho
Hilton Oceanfront Resort, South Carolina
Hilton Woodcliff Lake, New Jersey
Hittle Landscaping, Indiana
Hoerst Property Management, New Jersey
Hohlfelder Landscaping, Illinois
Home Growers Nurseries, Texas
Homestead Resort, Utah
Honor Tree Service, New Jersey
Horizon Landscape Co., New Jersey
Horizon Lawn & Landscape, Oklahoma
Hotel Grand Victorian, Missouri
Hudson Landscaping Co., New Jersey
The Inn at Bay Harbor, Michigan
Intercoastal Salvage, Texas
Irish Landscape Designs, New Jersey
JFJ Delgado's Landscaping, New Jersey
J.M. Clayton Company, Maryland
J & L Lawns and Landscaping, New Jersey
J & W Seafood, Virginia
Jacobsen Landscape Design & Construction, New Jersey
James Landscaping, Texas
Jean's Lawn Service, Tennessee
Jim Dunphy's Landscaping, New Jersey
Jim McArdle Excavating, New Jersey
Jim's Pride Landscaping & Maintenance, Colorado
Johansen Masonry, California
Johnie's Garden, Colorado
Jose Gandara's General Contracting, Colorado
JR Land, New Jersey
Kahnke Brothers, Inc., Minnesota
Keesen Enterprises, Colorado
Keeven Bros, Missouri
Keith's Professional Landscape Services, Utah
Kelly Inn Billings, Montana
Kelly Inn West Yellowstone, Montana
Ken's Tree Care, New Jersey
Kiawah Island Golf Resort, South Carolina
Kingstowne Lawn & Landscape, Virginia
Kodiak Landscape Design, New Jersey
L & L Landscape, Texas
L B Forcellati & Sons, New Jersey
L Garcia Tile & Stone, Texas
Lafayette Hotels, Maine
Lahontan Golf Club, California
Land Art, Maryland
The Land Crew, Pennsylvania
Land Design, Arkansas
LanDesign, New Jersey
Landscape Art, Texas
Landscape Concepts Management, Illinois
Landscape Concepts Management, Indiana
Landscape Concepts Management, Michigan
Landscape Concepts Management, Minnesota
Landscape Design Group, Pennsylvania
Landscape Management Company, Georgia
Landscapes By Leonard, New York
Landscapes By Maple Leaf, New Jersey
Landscapes Etc, New Jersey
Larchmont Nurseries, New York
Larco Industries, Texas
The Lawn Crew, Maryland
The Lawn Ranger, Virginia
Lawnscapes LLC, Connecticut
Lawn Seasons, Missouri
Lawns Unlimited, Michigan
Lawntech Enterprises, Colorado
Leahy Landscaping, Massachusetts
Ledden Palimeno Landscaping & Maintenance Co., New Jersey
Legends Club Grill, Minnesota
Lehmann Pools & Spas, New Jersey
Lewis Landscaping & Nursery, Ohio
Lighthouse Inn, Massachusetts
Lindy's Seafood Inc., Maryland
The Little Nell, Colorado
Live Oak Landscape Contractors, New Jersey

LMI Landscapes, Colorado
LMI Landscapes, Florida
LMI Landscapes, Texas
Loews Ventana Canyon Resort, Arizona
Longhorn Landscape Lighting & Holiday Décor, Texas
Loon Mountain, New Hampshire
LT Rental Services, New York
Lyons Sandstone, Colorado
M. Atkins Inc, Colorado
M & M Mowing, Colorado
Magma Industrial Co, Georgia
Magnolia Landscaping, New Jersey
Mainscape, North Carolina
Mandoki Hospitality Group, Alabama
Mark Kuppe & Associates, Michigan
Martin Property Maintenance, Texas
Massengale Grounds Management, Louisiana
Mauer Landscapes, Ohio
McFall & Berry Landscape Mgt, Maryland
McKenna Construction, New York
Metco Landscape, Colorado
Midwest Landscapes, Minnesota
Milberger's Landscaping, Texas
Mission Point Resort, Michigan
Mohonk Mountain House, New York
Molenaar Greenhouse, Pennsylvania
Montana Innkeepers Association
Moon Nurseries of Maryland
Moon Site Management, Pennsylvania
Morin's Landscaping & Lawn Maintenance, New Hampshire
Morin's Landscaping, New Hampshire
Mortellaro's Nursery, Texas
Motivatit Seafoods, Louisiana
MPS LLC, Louisiana
Mount Washington Resort, New Hampshire
Naples Beach Hotel & Golf Club, Florida
Nature View Landscape, New Jersey
Nature Works Landscapes, Massachusetts
NB Enterprises, Texas
Neave Landscaping, New York
New Castle Hotels & Resorts
Newcon Inc, North Carolina
The Newport Harbor Hotel & Marina, Rhode Island
Newport Village Homeowners Association, Oklahoma
Newton Construction, Texas
Newtown Rental Center, Pennsylvania
Nonantum Resort, Maine
Noriega and Noriega, Texas
Norling's Lake Minnetonka Landscape, Minnesota
North Arrow Landscape Contractors, New Jersey
Northeastern Irrigation Landscape, Oklahoma
Northstar Masonry, New York
Notable Plantings, Colorado
O'Connor Landscaping, New Jersey
Oak Tree Golf Club, Oklahoma
Oak Tree Landscaping, Maryland
Oakridge Landscaping, Ohio
Oasis Horticultural Service, Louisiana
Ocean Properties, Maine
Oceana Resorts, South Carolina
Olcese Construction, Nevada
Olympic Moving, Massachusetts
Outlaw Coach, Texas
Outlaw Conversions, Texas
Painter Landscape Co., Utah
Pamlico Packing Co., North Carolina
Paragon Contractors, Oklahoma
Paramount Landscaping Co., New York
Pas-Kel Painting, New Jersey
Pastorek Landscaping, Pennsylvania
Paulino Gardens, Colorado
Peach Tree, Tennessee
Perennial Nursery, California
Perez Construction, Pennsylvania
Phase One Landscapes, Colorado
The Phoenician, Arizona
Phillips Seafood Restaurants
Pinehurst Resort & Country Club, North Carolina
Piney Forest Products, Texas
Pioneer Maintenance, California
Pitzer's Lawn Management, Oklahoma
PLI Systems, Oregon
Priced-Rite Landscape, New York
Pro Landscape, Oregon
Procon, Virginia
Progressive Interest, Texas
Q.L.C. Inc, Virginia
Quality Crab Co., North Carolina
R B Stout Inc, Ohio
Racine Marriott, Wisconsin
Ralph Hodge Construction, North Carolina
Ralph Iasiello Lawncare, Oklahoma
Ramblewood Landscaping, New Jersey
Rancho Encino, Texas
Randolph Lawn Maintenance, Texas
Red Jacket Resorts
Redstick Golf Club, Florida
Rehbein Enterprises, Minnesota
Reliable Forms, Rhode Island
Renaissance Scottsdale Resort, Arizona
Ridgewood Landscaping, Texas
Rippons Bros. Seafood, Inc., Maryland
Robert Bradley Landscaping, New Jersey
Robertson Lawn Sprinkler, Colorado
Robinson Land Improvement, Colorado
Roche Harbor Resort, Washington
Rock & Rose, California
Rocky Mountain Hardscapes, Colorado
Rocky Mountain Lazy J Bar S Ranch, Colorado
Rocky Mountain Native Plants, Colorado
Ron Koch Landscaping, Colorado
Rosenfeld Equipment, Colorado
Roth Landscape & Design, Utah
The RTR Group, Tennessee
Russell Hall Seafood, Maryland
Russell Richter Enterprises, Texas
Sabell's Enterprises, Colorado
The Sagamore, New York
Sal Gonzalez Racing Stables, New Mexico
Samoset Resort, Maine
Sanctuary Inc, Colorado
San Juan Lawn Care, Texas
Santa Fe Snow Removal, Colorado
SB Enterprises, Texas
Scaffold Gulch Ranch, Colorado
Schultz & Co Landscapes, Texas
Schutz's Landscape & Design, New Jersey
Scott Tyson Builders Landscape, Texas
Sea Safari Seafood Co., North Carolina
Seafood Sam's Falmouth, Massachusetts

Seafood Sam's Sandwich, Massachusetts
Sebasco Harbor Resort, Maine
Sebasco Estates, Maine
Sedco Snow Company, Pennsylvania
SEMA Environmental, Colorado
Seven Oaks Landscapes-Hardscapes, Virginia
Shearon Environmental Design of New Jersey
Sheraton Steamboat Resort, Colorado
Shooter and Lindsey, Texas
Showcase Landscaping, Colorado
Signature Landscape, Utah
Silver Creek Landscaping, New Jersey
Simental Stone Yard, Texas
Simmons Chesapeake Bay Seafood Co., Maryland
Simonfay Landscape Services, New Jersey
Simpson Landscape Maintenance, Texas
Singing Hills Landscape, Colorado
Six Flags, Inc.
SKB Industries, Georgia
Skytop Lodge, Pennsylvania
Snowmass Club, Colorado
Sod By Sherry, Oklahoma
Solarium Landscape Services, New Jersey
Sonesta Coconut Grove, Florida
South Creek Gardens, Colorado
Southern Botanical, Texas
Southern Oak Services, Texas
Southern Sun Landscape Contractors, Florida
Southview Design & Construction, Minnesota
Spanchek Landscape Associates, New Jersey
Speedy Sprinkler Service, Rhode Island
Splitrock Landscaping & Nursery, South Dakota
Spring Creek Ranch, Wyoming
Star Engineering & Landscape, Utah
Stein Eriksen Lodge, Utah
Stockel's Lawn & Landscaping, New Jersey
Sugarloaf/USA, Maine
The Summit at Snoqualmie, Washington
Summit Metal Works, Colorado
Summit Roofing, Colorado
Sunbelt Landscape Services, South Carolina
Sunday River Resort, Maine
Systems Painters & Drywall, Texas
Tagawa Greenhouse Enterprises, Colorado
Tahoe Tree Company, California
TCI Roofing, Texas
Terracare, New Jersey
Terrapin Fish Co., Maryland
TGL Management, New Jersey
Thigpen Construction Company, Louisiana
Three C's Landscaping, Michigan
Tides Inn, Virginia
Tighe Enterprises, Colorado
TLC Total Lawn Care, Florida
TNM Corporation, Texas
TNT Crab Company, Maryland
TNT Lawn & Landscape Management, Oklahoma
Tocco & Mannino Landscaping, Michigan
Tri-County Sprinklers, Texas
Triangle Turf Company, Texas
Troy Burne Golf Club, Wisconsin
Troy Clogg Landscape Associates, Michigan
Tumbleweed Pottery, North Carolina
Turf Enterprises, Florida
Turf Specialties, Texas
Turning Leaf, Pennsylvania
Ultimate Services Professional Grounds Management, Connecticut
United Golf, Oklahoma
Urban Farmer, Colorado
US Lawns of N Tampa, Florida
Valley Garden Center, Texas
Valley Landscaping, Virginia
Vargas Property Services, Colorado
Village Green Lawn Care, New Jersey
Virginia Irrigation, Virginia
Vizcaino, Texas
Vizmeg Landscape, Ohio
W.T. Ruark & Co., Maryland
Wadsworth Golf Construction, Arizona
Walt Demrovsky Landscape Construction, Ohio
Waterville Landscaping, Ohio
Waterville Valley Ski Resort, New Hampshire
Wayside Garden Center, New York
Weed Man, Georgia
West Slope Construction, New Jersey
Western Lawns, Oklahoma
Westin La Paloma Resort & Spa, Arizona
The Westin Kierland Resort & Spa, Arizona
The Westin Tabor Center, Colorado
Wet Lawn, Oklahoma
Willoway Nurseries, Ohio
WKB Landscape & Maintenance, Utah
Wood Landscapes, New Jersey
Wood's Edge Flora, Pennsylvania
Woodstock Inn and Resort, Vermont

PREPARED STATEMENT OF THE HONORABLE C.A. DUTCH RUPPERSBERGER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

C.A. DUTCH RUPPERSBERGER
2ND DISTRICT, MARYLAND

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEES:
COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
FINANCIAL SERVICES AND GENERAL GOVERNMENT
LEGISLATIVE BRANCH

PERMANENT SELECT COMMITTEE ON INTELLIGENCE
SUBCOMMITTEES:
TECHNICAL AND TACTICAL INTELLIGENCE
CHAIRMAN
TERRORISM, HUMAN INTELLIGENCE, ANALYSIS, AND COUNTERINTELLIGENCE
OVERSIGHT AND INVESTIGATIONS

Congress of the United States
House of Representatives
Washington, DC 20515–2002

REPLY TO:
1730 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3061
FAX: (202) 225-3094

THE ATRIUM
375 WEST PIKESVILLE ROAD, SUITE 200
TIMONIUM, MD 21093
(410) 628-2701
FAX: (410) 628-2708

www.dutch.house.gov

April 16, 2008

The Honorable Zoe Lofgren
102 Cannon HOB
Washington, D.C. 20515

Dear Chairwoman Lofgren:

I would like to express my support of the H-2B visa program, especially the H-2B Returning Worker Exemption. The fiscal year 2008 cap of 66,000 H-2B workers was met this year on January 2nd. In past years, the Returning Worker Exemption allowed returning workers to be exempt from the H-2B cap. This significantly improved the ability of businesses to meet their seasonal worker needs. The seasonal worker program has worked for businesses and for workers for over a decade.

The H-2B program is not only important for the country, but also for the state of Maryland and the Chesapeake Bay seafood industry. Our local, seasonal businesses are part of the rich and successful economic culture of Maryland. The H-2B guest worker visa cap is consistently reached early in the year. This leaves Maryland seafood businesses, which operate primarily in the summer months, unable to apply for H-2B guest workers in sufficient time to meet their needs. Many small businesses will be unable to remain open without guest worker labor.

I support the principle of H.R. 1843, the Save Our Small and Seasonal Businesses Act, and the extension of the annual cap exemption for temporary non-agricultural workers returning on H-2B visas. I would be happy to answer any questions about the need for the exemption and how H-2B visas impact Maryland's Second Congressional District.

Sincerely,

C.A. Dutch Ruppersberger

C.A. Dutch Ruppersberger
Member of Congress

CADR:ART

PREPARED STATEMENT OF THE HONORABLE MARK UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

COMMITTEE ON THE JUDICIARY
Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

Statement of
REPRESENTATIVE MARK UDALL
For
Hearing on the H-2B Program
April 16, 2008

Thank you, Madam Chairwoman, for conducting this hearing. I regret that a scheduling conflict renders me unable to testify in person and particularly to express my support for the Save Our Small and Seasonal Businesses Act of 2007, but I am grateful for the opportunity to explain to the committee how important this legislation is to my state and my district.

This issue affects the State of Colorado directly and profoundly. From our high mountain ski resorts to the landscaping industry in the metro Denver area, the H-2B visa program provides Colorado businesses with a means of satisfying their seasonal labor needs in markets that are otherwise difficult to manage. Industries that conduct the bulk of their business either during the summer or winter months are heavily reliant on temporary foreign workers, and the H-2B visa program provides an effective means of filling seasonal labor shortages.

As I mentioned, Colorado has a lot at stake in this debate. The U.S. Department of Labor reported that Colorado was the third-highest user of H-2B visas, employing 14,173 foreign laborers in Fiscal Year 2006. Without access to this labor pool, our economy will suffer. The ski industry—which, by virtue of being a seasonal industry, has a great deal to lose if H.R. 1843 does not pass—is a vital economic engine for our state, drawing in tourism dollars for small businesses and creating permanent jobs in small towns throughout Colorado. If this industry cannot fill its demand for labor, our entire state will feel the economic consequences.

H.R. 1843 is a responsible means of ensuring continued access to a reliable labor pool. It provides that some workers who have already been certified by the U.S. Department of Labor to work in H-2B jobs will be exempt from the 66,000-person limit, helping to relieve the pressure that businesses feel in planning for their seasonal labor needs. It rewards business-owners that strive to comply with our employment laws, and it ensures that some of our most important industries can continue to grow in a troubled economy. Enactment of this bill would be good for my district, my state, and the entire country and I strongly support it.

Madam Chairwoman, thank you again for conducting this hearing. For the committee's use I have included three of the many letters I receive from businesses in my state on this issue, and I would ask that they be entered into the record. I look forward to working with my colleagues to pass the Save Our Small and Seasonal Businesses Act of 2007.

Save Our Small and Seasonal Businesses Act of 2007

THE Gallegos CORPORATION

Building Solutions for Distinctive Projects

VAIL
Aspen
Denver
Sun Valley
Tahoe

The Gallegos Corporation is a family owned and operated specialty subcontractor employing over 700 employees during our peak building season. In January of 2007, working with the Department of Labor, The Gallegos Corporation advertised for 175 masonry laborers to work in various parts of the State of Colorado beginning in March of 2007. These advertisements ran in sixteen different daily newspapers across the state and ran for three consecutive days, including the Sunday edition. The wage offered for these positions was $12.00 - $14.00 per hour. No experience was required. The advertising cost The Gallegos Corporation over four thousand dollars ($4,000).

We received four applicants, two of whom were incarcerated at the time. We offered the positions to the two who were available and both turned down the offer because they had found other employment.

Unable to fill these 175 positions with any willing and able American or other legal workers, The Gallegos Corporation will bring in 150 Mexican Nationals on H2B visas to insure that we are able to meet our contractual obligations for 2007. We also will bring another 75 H2B workers to fill similar empty positions in California, Idaho and Montana.

Not only do we pay our H2B workers the prevailing wage (and most make more), but we also find and subsidize fully furnished employee housing for each H2B worker. Next, we transport these workers to and from the jobsites each day. We also provide our H2B workers with bus passes and transportation to shop and spend time in the communities in which they work and live. Finally, we offer company paid English classes to those H2B workers who wish to learn. All of this adds approximately five dollars per hour ($5.00) to each H2B worker's cost to The Gallegos Corporation.

It would be much more cost effective, and thus a better business practice, to hire American or other legal workers that we do not have to house and transport. **Those workers do not exit or we would hire them.** We could fill some of those open positions with illegal workers, but since its humble beginnings 37 years ago the owners of the company have been committed to building, maintaining, and growing their business with a legal workforce. This continues to become more and more of a challenge and makes The Gallegos Corporation less competitive in the marketplace.

Since 2004, the demand by employers for legal H2B workers has greatly outstripped the 66,000 visas Congress makes available each year. In 2005, Congress passed the H2B Returning Worker Exemption which helped companies stay alive, however demand continues to surpass the available visas. On September 30, 2007, the H2B Returning Worker Exemption will expire. Unless Congress acts, employers like The Gallegos Corporation will not have the legal workers they need to fulfill work already under contract. **We believe this will be true even if a guest worker program is approved this year as part of Comprehensive Immigration Reform, as any new program will take at least a few years to get up and running smoothly.**

We strongly urge our Senators and Members of Congress to help us, and other similar small and medium sized business, to maintain the ability to run our companies with a legal workforce. In order to do so, we need the Returning Workers Exemption extended for several years, if not permanently. We also need for Congress to increase the numbers of new visas available each year to more closely meet the demand for seasonal workers.

Post Office Box 821
Vail, Colorado 81658
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970-926-1717 fax
www.gallegoscorp.com

Stone • Masonry • Stucco • Plaster • Concrete • Marble • Granite • Art Rock

INTRAWEST

March 26th, 2008

The Honorable Mark Udall
100 Cannon House Office Building
Washington, DC 20515-0602

Dear Congressman Udall,

I am writing to you on behalf of our company as a personal plea for your help and strong voice supporting Congressman Stupak's Bill H.R. 1843 that would extend the returning worker (H2B) exemption for five years.

As you may be aware, Intrawest owns and operates a number of ski/sun resorts and lodging services across the U.S (CO, WV, VT, NJ, FL, CA). Within the state of Colorado, we operate Steamboat, Copper and Winter Park.

Intrawest ULC

Suite 800
200 Burrard Street
Vancouver, BC
Canada V6C 3L6

tel. 604.669.9777
fax. 604.669.0614

It is our understanding that movement on H.R. 1843 is held up by ongoing discussions on broader immigration policy and possible legislation. It is also our understanding that Congressman Shuler's "SAVE" Act, which concerns immigration enforcement is in the discussion mix.

We believe that H.R. 1843 is not an immigration bill and extension of the returning worker exemption for H2B visas is not an immigration issue. These are non-immigrant visas, with no path in law to citizenship. We feel strongly that it should not be lumped in or packaged with larger issues of immigration policy. We certainly appreciate the broad bipartisan support for H.R. 1843 and we hope it will be allowed to move forward quickly.

Intrawest employs over 22,000 people during our peak season. We pride ourselves in being a very strong domestic employer and local community advocate. We also support and appreciate the diversity and experience that our international seasonal workers bring to our operations and overall guest satisfaction. We rely heavily on the H2B work program to staff housekeeping, guest services, ski & ride schools, ski patrol, lift operations, rental and food & beverage operations. This past season, we employed approximately 1,000 seasonal workers under the H2B program and our needs continue to grow as our business grows. Because of the timing of our seasonal workforce needs, we may not secure any H2B visas for the 2008-2009 season unless Congress acts soon to approve the returning worker exemption.

We are asking for your help, not just in voicing your support for H.R. 1843, but approaching your Congressional leadership and asking them to let the Bill move forward without delay. We are asking you to go directly to Speaker Pelosi and explain to her the importance to Colorado of moving forward H.R. 1843 without mixing it in with broader immigration policy issues.

Please let us know if there is anything else we can do to help move the H2B returning worker exemption forward. Thank you for your attention to this issue.

Respectfully yours,

Mara Pagotto
Chief People Officer
INTRAWEST
221 Corporate Circle, Ste Q
Golden, CO 80401

Larisa LaBrant, LEED AP
Executive Director
Rocky Mountain Masonry Institute
686 Mariposa St
Denver CO 80204

April 2008

U.S. Rep. Mark Udall,

As you consider legislation to relieve the potential recession, please keep in mind the economic impacts of H2B. Many construction companies will have to fire employees in the next few months as their companies are forced to downsize because they do not get the H2B workers they require to continue to operate or operate at full capacity.

The work is here, but if small businesses like those owned by our members in Colorado are going to be 200 or more workers short, they will have to cut back their workload and layoff many American workers because they cannot staff projects. The H2B workers who are not coming back, because H2B legislation was allowed to expire, are a necessary, contributing part of our workforce. Please do not penalize small businesses legally using immigrant labor.

Please get us the help we need to continue to keep American's employed along side of LEGAL workers. This simply can't be put on the back burner any longer. Our membership has not seen much in the way of vigorous support of legal immigration measures. They feel betrayed and forgotten at this point.

Sincerely,

Larisa LaBrant, LEED AP
Executive Director
Rocky Mountain Masonry Institute

686 Mariposa Street
Denver, CO 80204
303-893-3838
fax 303-893-3839
www.rmmi.org

PREPARED STATEMENT OF THE HONORABLE ROBERT J. WITTMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Statement of Representative Robert J. Wittman
Oversight Hearing: H-2B Program
Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law
April 16,2008

Chairwoman Lofgren and Ranking Member King:

Thank you for your leadership and I appreciate your Subcommittee holding an oversight hearing on H-2B visas. As a cosponsor of H.R. 1843, the Save our Small and Seasonal Business Act, I look forward to continuing to work with my colleges to address this important issue.

Without prompt action by Congress to extend H-2B visa cap relief, employers who rely on temporary and seasonal employees face severe worker shortages and the looming possibility of business closures in 2008.

Workers with H-2B visas provide necessary labor for the seafood, tourism, hospitality, and landscape industries, as well as many other temporary and non-agricultural jobs in this country. Due to the seasonal nature of the work and the structure of the cap, employers often face uncertainty and employment shortages during their busiest season.

As you know, an emergency cap exemption expired on September 30, 2007, and the U.S. Citizenship and Immigration Services announced on January 3, 2008, that the cap for the second half of 2008 has already been reached. Congress must act quickly to extend the cap exemption and alleviate the pressure on small and seasonal business.

As the U.S. economy slows, it would be unfortunate to further exacerbate the situation by making it harder for these businesses to operate. I urge you to take action to quickly pass legislation that would address this important issue impacting many businesses in my district and across the country. Your leadership in this matter is critical in assuring that small and seasonal business will be able to successfully navigate the challenging times facing our economy.

Thank you for your time and consideration of this matter.

FROM : FAX NO. :804-529-7374 Apr. 15 2008 09:06AM P4
MAR-20-2008 12:14 From:BEVANS OYSTER CO. 804 472 4575 To:804 529 7374 P.1/1

COMMONWEALTH OF VIRGINIA
Office of the Governor

Timothy M. Kaine
Governor

The Honorable James Webb
United States Senate
Russell Senate Office Building, Room 144
Washington, DC 20510

Dear Senator Webb:

I am writing in support of extending the exemption of returning H-2B workers, temporary non-agricultural seasonal workers, from counting against the national cap of 66,000. One such bill that seeks to accomplish this goal is H.R. 1843, the "Save our Small Seasonal Businesses Act." This bill would provide small businesses across the Commonwealth with the vital temporary seasonal workers they rely upon for sustaining their companies.

In 2005, President Bush signed into law the original, "Save Our Small and Seasonal Business Act" which made significant changes to the federal H-2B visa program for non-skilled seasonal workers. An important aspect of this bill included the temporary exemption of returning seasonal workers from counting against the national cap 66,000. In 2007, Congress allowed this exemption to expire, adversely impacting small business across Virginia.

The H-2B visa program has offered significant assistance to Virginia's small businesses, such as seafood processing, landscaping, construction, and resort/hospitality services who simply cannot hire enough American workers for peak seasonal employment. During FY 2007, Virginia's employers filed 545 applications for a total of 12,235 H-2B workers offering short-term help and then returned to their home countries at the end of the season.

The middle of March is the peak of oyster season and is a time that companies in Virginia traditionally rely upon H-2B workers. As businesses cannot apply for H-2B workers more than 120 days before the date of need and at least 60 days in advance of the time the worker will begin working, Virginia businesses filed their requests in November and December of 2007, to apply for workers. However, the H-2B cap for FY 2008 was reached on January 3, 2008, leaving Virginia seafood businesses bereft of the vital labor they have come to depend on, endangering the future of their businesses.

Virginia is in dire need of the seasonal labor that H-2B workers provide. Passing H.R. 1843, or some variation thereof, which includes extending the returning worker provision, will provide relief to Virginia's seafood processing industry and other Virginia employers who have been participating in the H-2B program and who rely on returning foreign workers. In many cases, these foreign workers have worked at their respective Virginia businesses year after year. Without a swift reauthorization of the program, small businesses throughout Virginia and the nation will be significantly hurt.

Thank you in advance for your help.

Sincerely,

Timothy M. Kaine

VIRGINIA AGRIBUSINESS COUNCIL
701 East Franklin Street, Suite 503
P. O. Box 718, Richmond, VA 23218-0718
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Sandridge Nurseries
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Monsanto Farms, Inc.

STAFF
Walter Pugh Johnson,
President
Katie K. Frazier,
Assistant Vice President-
Public Affairs

April 11, 2008

The Honorable John Warner
United States Senate
Washington, DC 20510

Dear Senator Warner:

On behalf of the Virginia Agribusiness Council, we ask for your continued support and prompt action on legislation to amend the H-2B program cap. Next week, the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law will hold a hearing on the H-2B worker program. As discussions continue about the future of this program, we remind you that many Virginia agribusinesses such as landscapers, golf courses, timber companies, and aquaculture operations use the H-2B visa program to ensure their workers are legally documented.

The H-2B program provides a vital and legal source of seasonal labor for the landscape, timber, and other industries that cannot fill their labor needs with American citizens. As such, the members of the Virginia Agribusiness Council urge you to support efforts to eliminate the program cap on the number of workers entering the United States under the H-2B program. If eliminating the cap is not preferable, at a minimum, Congress must continue the exemption of certain repeat workers from being counted in the H-2B program cap, a provision that expired in 2007.

The program's congressionally mandated cap of 66,000 (33,000 for the first half of the fiscal year and 33,000 for the second half of the year) is inadequate to meet the seasonal needs of landscape contractors, golf courses, and other small employers. The cap for the first half of the fiscal year has already been reached, leaving many employers without the necessary labor force in 2008.

Limits on the number of workers allowed into the United States under this highly regulated, legal guest worker program has resulted in difficultly planning for the future for many of these businesses. Without the advance knowledge of an available workforce, it is difficult to negotiate customer contracts and plan for equipment and supply purchases.

The Virginia Agribusiness Council represents farmers, foresters and other agricultural-product producers, marketers and processors, industry suppliers and commodity and industry associations as the unified voice for Virginia agribusinesses.

Again, thank you for your consideration of this important issue. Please do not hesitate to contact us if the Council can provide you with additional information.

Sincerely,

Katie K. Frazier
Assistant Vice President- Public Affairs

FROM : FAX NO. :804-529-7374 Apr. 15 2008 09:06AM P2
APR-11-08 11:41 AM VA. SEAFOOD COUNCIL 7579658771 P.02

VSC
VIRGINIA SEAFOOD COUNCIL • 76 Raleigh Rd. • Newport News, VA 23601 • (757) 593-6603 • Fax (757) 596-8771

April 11, 2008

The Honorable Zoe Lofgren
Chairwoman
Subcommittee on Immigration
102 Cannon House Office Building
Washington, D. C. 20515

Dear Congresswoman Lofgren:

Virginia Seafood Council is pleased that HB 1843 -- Save Small and Seasonal Businesses -- is coming to your committee on Wednesday for action. The H-2B guest worker visa program is of critical importance to the Virginia seafood industry and to many small businesses across the State of Virginia and the nation. Small businesses nationwide are counting on Congress for leadership and action with the reauthorization of the H-2B returning worker program.

HB 1843 is a returning worker bill, which has worked effectively for the past three years by permitting returning workers to be exempted from the 66,000 cap. Returning workers are defined as ones who have received temporary visas in one of the past three years.

H-2B is a nonimmigration program, as clearly stated on the I-129 Petition for Nonimmigrant Workers; it provides employers access to temporary workers for seasonal/peak load needs when no American workers can be found for the jobs. H-2B visas are issued for a maximum of ten months, some are shorter depending on the work to be done.

Virginia Seafood Council is a trade association, non-profit and incorporated, composed of processors, packers, harvesters, and aquaculturists of Virginia seafood. The seafood industry contributes over a half billion dollars annually to the economy. Thirty-two Virginia seafood companies contracted for 1,058 H-2B workers in 2007. The prevailing wage, as required by federal regulations, was at least $6.71 per hour (depending on the specific job) and they were paid an average of $7.17 per hour. These workers contribute to federal tax programs (from which they will never collect benefits), shop in our stores and contribute to perpetuating a rich seafood tradition in Virginia.

Absence of temporary foreign labor will force the closure of some businesses in our industry and in other seasonal industries. Americans with full time jobs will subsequently lose jobs, economic multipliers will be impacted in the billions of dollars and more foreign product will come into the United States. It is clear to us that the absence of returning workers will have great economic impact on an already struggling economy.

Our future is in your hands, our livelihoods are at stake. Please reward small business for following the law and participating in a legal H-2B guest worker program to improve our productivity and save small businesses and American jobs.

Thank you for your assistance with this matter. If Virginia Seafood Council can be of service to you, please contact us.

Sincerely,

Frances W. Porter

Frances W. Porter
Executive Director

Purcell's Seafood, Inc.

P.O. Box 7
88- Shipping Point Drive
Burgess, Va. 22432
804-453-3303
804-453-4092-Fax

April 14, 2008

Congressman Robert Wittman
1123 Longworth HOB
Washington, D.C. 20515

Congressman Wittman:

I employ foreign workers through the federal H-2B program. I write with great concern and to protest the recent lack of any decision by the House and Senate on the H-2B program for new and returning workers.

I use the H-2B program to meet my seasonal labor needs for several reasons.

Until I decided to use the H-2B program I found it difficult, bordering on impossible, to find sufficient legal seasonal workers. I can find competent legal people to work year-round, but what local U.S. seasonal workers I can find simply will not stay with the company. Our seasonal jobs are manual, repetitive tasks – unskilled labor. We pay relatively well, significantly above the U.S. minimum wage, but we have found U.S. workers to be unavailable and unreliable. We sometimes had a 300-400% annual turnover of workers in these jobs before using the H-2B program.

We believe in obeying our laws. I have refused to hire illegal workers. We have tried to instill in our legal workers to always obey the laws so they can keep coming back here to work. Now they say me do everything legal and me punished. What do you say then? Illegal workers who do not go through the proper channels will be rewarded and you will be punished. I believe by putting a cap on legal workers and not allowing the returning worker program you are only inviting more people here in our country illegally. The concept behind the H-2B program is that workers come to work here in our country and before their visa expires the must go home. This program allows them to earn money and return home which is where they really want to be.

The H-2B program matches seasonal employers such as us with legally documented foreign workers. We value those willing H-2B workers. They are reliable, hard-working, decent people who return to our company year after year in order to support their families. We count on being able to hire these workers and built our company's future growth plans around the expectations of access to the H-2B program.

We are oyster farmers, harvesters and packers. Our family business future plans have included raising aquaculture working with the State of Virginia and the Virginia Seafood Council to help revive our bay and clean our waterways. Oysters are a great filter for our waterways and this takes a lot of labor, time and expense. Without our H-2B workers we would not be able to accomplish this. Our efforts are not just for us but also for the future of our bay.

Hiring H-2B workers permits us to keep our year round local workers employed, pay taxes and contribute to the local, state and national economics. Hiring H-2B workers has also allowed us to hire part-time High School students so they can earn money for college. Students that we try to help achieve independence, responsibility, self worth, respect for others and respect for rules and regulations. These young men and women are our future generation. Some of these young people have gone on to become lawyers, teachers, policeman, engineers, marine biologist, nurses and etc. What do we say to them when we can not hire them anymore? We can not hire you any more because our government is forcing us to close our doors.

Without the support of the H-2B program our local workers full and part time and our family seafood business would cease to exist.

Your help is needed for our survival, survival of other businesses and the survival of our country. I encourage you and other Members to please allow the returning worker program to continue and to consider raising the cap.

<u>Our Country needs the H-2B workers.</u>

Thank you for all your help.

Sincerely,
Pat Harding
Pat Harding-Secretary

Purcell's Seafood, Inc.

LETTER FROM THE HONORABLE ROBERT C. "BOBBY" SCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA, TO THE HONORABLE ZOE LOFGREN, CHAIRWOMAN, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

ROBERT C. "BOBBY" SCOTT
3rd District, Virginia

COMMITTEE ON THE JUDICIARY
Chairman, Subcommittee on Crime, Terrorism and Homeland Security
Subcommittee on the Constitution, Civil Rights and Civil Liberties

COMMITTEE ON EDUCATION AND LABOR
Subcommittee on Early Childhood, Elementary and Secondary Education
Subcommittee on Higher Education, Lifelong Learning and Competitiveness

COMMITTEE ON THE BUDGET

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Washington, DC 20515–4603

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(804) 644–4845

www.house.gov/scott

April 16, 2008

The Honorable Zoe Lofgren
Chairwoman
Subcommittee on Immigration
Committee on the Judiciary
517 Cannon House Office Building
Washington, DC 20515

Dear Chairwoman Lofgren:

I ask to have the following letters from Virginia Governor Tim Kaine, Virginia Seafood Council, Graham & Rollins, Inc., and Virginia Agribusiness Council submitted into the record for the hearing on H.R. 1843, "Save Our Small and Seasonal Businesses Act," which has been noticed for April 16, 2008. These letters clearly outline the dire consequences that may occur if we fail to take action in the near future in order to allow returning H-2B workers to re-enter the U.S. without counting towards the H-2B cap.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Member of Congress

cc: Hon. Tim Kaine, Governor of Virginia
Kate Frazier, Virginia Agribusiness Council
John B. Graham, Graham & Rollins, Inc.
Frances W. Porter, Virginia Seafood Council
A.J. Erskine, Virginia Seafood Council

PRINTED ON RECYCLED PAPER

COMMONWEALTH OF VIRGINIA
Office of the Governor

Timothy M. Kaine
Governor

March 20, 2008

The Honorable Bobby Scott
United States House of Representatives
Longworth House Office Building, Room 1201
Washington, DC 20515

Dear Congressman Scott:

I am writing in support of extending the exemption of returning H-2B workers, temporary non-agricultural seasonal workers, from counting against the national cap of 66,000. One such bill that seeks to accomplish this goal is H.R. 1843, the "Save our Small Seasonal Businesses Act." This bill would provide small businesses across the Commonwealth with the vital temporary seasonal workers they rely upon for sustaining their companies.

In 2005, President Bush signed into law the original, "Save Our Small and Seasonal Business Act" which made significant changes to the federal H-2B visa program for non-skilled seasonal workers. An important aspect of this bill included the temporary exemption of returning seasonal workers from counting against the national cap 66,000. In 2007, Congress allowed this exemption to expire, adversely impacting small business across Virginia.

The H-2B visa program has offered significant assistance to Virginia's small businesses, such as seafood processing, landscaping, construction, and resort/hospitality services who simply cannot hire enough American workers for peak seasonal employment. During FY 2007, Virginia's employers filed 545 applications for a total of 12,235 H-2B workers offering short-term help and then returned to their home countries at the end of the season.

The middle of March is a time that companies in Virginia traditionally rely upon H-2B workers. As businesses cannot apply for H-2B workers more than 120 days before the date of need and at least 90 days in advance of the time the worker will begin working, Virginia businesses filed their requests in November and December of 2007, to apply for workers. However, the H-2B cap for FY 2008 was reached on January 3, 2008, leaving Virginia businesses bereft of the vital labor they have come to depend on, endangering the future of their businesses.

Virginia is in dire need of the seasonal labor that H-2B workers provide. Passing H.R. 1843, or some variation thereof, which includes extending the returning worker provision, will provide relief to Virginia employers who have been participating in the H-2B program and who rely on returning foreign workers. In many cases, these foreign workers have worked at their respective Virginia businesses year after year. Without a swift reauthorization of the program, small businesses throughout Virginia and the nation will be significantly hurt.

Thank you in advance for your help.

Sincerely,

Timothy M. Kaine

VIRGINIA SEAFOOD COUNCIL • 76 Raleigh Rd. • Newport News, VA 23601 • (757) 595-6603 • Fax (757) 596-8771

March 8, 2008

The Honorable Nancy Pelosi
Speaker of the House
United States Congress
Washington, D. C.

Dear Speaker Pelosi:

The Virginia seafood industry employed 1,058 H-2B seasonal workers in 32 companies in 2007. None of those workers are able to return to Virginia this spring due to the inaction of the Congress on House Bill 1843. This is a critical issue for these small businesses; some processing plants will have to cease operation without their legal foreign workers, leaving all of their American workers without jobs. Closing of these plants will also invite more foreign seafood imports into our country.

The H-2B **non-immigration** guest worker program has been very successful for our industry at a time when American workers are not available for these jobs. You know that we pay a federally defined prevailing wage and that in most cases the workers are able to earn far more than that basic wage by rapid production, ie. pounds crabmeat picked, gallons oysters shucked, etc. In turn, they pay taxes, Social Security, purchase cars, computers, televisions and other consumer goods in our country before returning to their native countries.

Virginia Seafood Council is a trade association, non-profit and incorporated, composed of processors, packers, harvesters, and aquaculturists of Virginia seafood. The Virginia seafood industry contributes over a half billion dollars a year to the economy. There is significant impact of boat, gasoline, packaging containers, refrigeration, equipment sales and transportation across the nation. H-2B workers contribute significantly to the success of our industry.

While we represent only the Virginia seafood industry, it is important to note that many, many industries across the nation are being critically impacted by the absence of returning H-2B workers. There are worker shortages in landscaping, hotel and tourism, carnivals, amusement parks,

ski resorts, and the swimming pool industry. The economic multipliers of this will undoubtedly result in the loss of tens of billions of dollars annually in the United States at a time when the economy is already struggling.

Please affirm employers who are obeying the law and participating in the legal H-2B guest worker program. Don't force them to employ illegal workers in order to keep their business operational.

We respectfully request that you take the leadership to bring House Bill 1843 to the floor for debate and passage.

Thank you for your assistance with this issue. If Virginia Seafood Council can be of service to you in any way, please contact us.

Sincerely,

Frances W. Porter

Frances W. Porter
Executive Director

A. J. Erskine
President

VIRGINIA SEAFOOD COUNCIL • 76 Raleigh Rd. • Newport News, VA 23601 • (757) 595-6603 • Fax (757) 596-8771

April 11, 2008

The Honorable Zoe Lofgren
Chairwoman
Subcommittee on Immigration
102 Cannon House Office Building
Washington, D. C. 20515

Dear Congresswoman Lofgren:

Virginia Seafood Council is pleased that HB 1843 -- Save Small and Seasonal Businesses -- is coming to your committee on Wednesday for action. The H-2B guest worker visa program is of critical importance to the Virginia seafood industry and to many small businesses across the State of Virginia and the nation. Small businesses nationwide are counting on Congress for leadership and action with the reauthorization of the H-2B returning worker program.

HB 1843 is a returning worker bill, which has worked effectively for the past three years by permitting returning workers to be exempted from the 66,000 cap. Returning workers are defined as ones who have received temporary visas in one of the past three years.

H-2B is a nonimmigration program, as clearly stated on the I-129 Petition for Nonimmigrant Workers; it provides employers access to temporary workers for seasonal/peak load needs when no American workers can be found for the jobs. H-2B visas are issued for a maximum of ten months, some are shorter depending on the work to be done.

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Absence of temporary foreign labor will force the closure of some businesses in our industry and in other seasonal industries. Americans with full time jobs will subsequently lose jobs, economic multipliers will be impacted in the billions of dollars and more foreign product will come into the United States. It is clear to us that the absence of returning workers will have great economic impact on an already struggling economy.

Our future is in your hands, our livelihoods are at stake. Please reward small business for following the law and participating in a legal H-2B guest worker program to improve our productivity and save small businesses and American jobs.

Thank you for your assistance with this matter. If Virginia Seafood Council can be of service to you, please contact us.

Sincerely,

Frances W. Porter

Frances W. Porter
Executive Director

JAN 29 2008

GRAHAM & ROLLINS, INC.
Crabmeat Processing Since 1942

January 15, 2008

Congressman Robert C. Scott
1201 Longworth House Office Building
Washington, DC 20515

Dear Congressman Scott:

The purpose of this letter is to convey how essential the H2-B worker program is to the survival of my family business Graham & Rollins, Inc. located in Hampton, VA.

Graham & Rollins has been processing blue crab meat since 1942. Our family business is seasonal and subject to state mandated regulations and catch limits as well as weather and climatic influences. Retaining the skilled work force required for our business has become impossible. Ten years ago we were forced to recruit Mexican H2-B workers to augment our workforce. Since that time we have become totally dependent upon the H2-B worker program as our number of domestic workers have continued to decline. We have had a maximum of 12 American workers since 2006. Our H2-B petitions requests 120 Mexican workers each year. The company's domestic production capability has diminished to a level where we can no longer exist without the H2-B seasonal workers.

As mentioned, we have been participating in the H2-B program for nine consecutive years. During this time span, my company has recruited, trained, and staffed our operation with these Mexican laborers. We have a vested interest in these people: many are families of three or more, who return year after year. There exists a mutual dependency respective of both parties in continuing this established employment relationship predicated by the H2-B program.

On January 2nd, 2008 USCIS made an announcement that the second half quota of 33,000 H2-B temporary work visas had been exhausted. My company, as well as countless others, did not make the cutoff simply because our date of need keeps us from ever having a chance at these visas. This is not right! If the cap of 66,000 visas is not increased or the returning worker exemption is not reinstituted many companies will not be in business in 2008.

The H2-B guest worker program is not an immigration issue. It is program which has a host of protocols which must be met before visas can be granted. Upon completion of the temporary work, these non-immigrants return home to their families as they want to be in good standing to return legally each year.

It is imperative that Virginia's elected delegation embrace the concerns of the small businesses regarding labor issues. Please do not allow another year to pass without giving prudent consideration to this serious situation. Our businesses need immediate relief or for many of us there will be no next year. As a steward of the commonwealth, we implore your attention to this matter. We strongly urge you to address the cap issues on H2-B visas so that our businesses can operate at full capacity and continue to contribute to our local, state and national economies.

Respectfully Yours,

John B. Graham III

John B. Graham III

19 Rudd Lane • Hampton, Virginia 23669
(757) 723-3831 • 1 800 CRABS2U • (800) 272-2728 • Fax (757) 722-3762

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Linda V. Smith,
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Monroe Milling Co. of Va., Inc.
O. Bryan Tolliver, Jr.,
Montagna Farms, Inc.

STAFF
Dorothy Pugh Johnson,
President
Katie K. Frazier
Assistant Vice President-
Public Affairs

April 11, 2008

The Honorable Bobby Scott
United States House of Representatives
Washington, DC 20515

Dear Mr. Scott:

On behalf of the Virginia Agribusiness Council, we ask for your support and prompt action on legislation to amend the H-2B program cap. Next week, the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law will hold a hearing on the H-2B worker program. As discussions continue about the future of this program, we remind you that many Virginia agribusinesses such as landscapers, golf courses, timber companies, and aquaculture operations use the H-2B visa program to ensure their workers are legally documented.

The H-2B program provides a vital and legal source of seasonal labor for the landscape, timber, and other industries that cannot fill their labor needs with American citizens. As such, the members of the Virginia Agribusiness Council urge you to support efforts to eliminate the program cap on the number of workers entering the United States under the H-2B program. If eliminating the cap is not preferable, at a minimum, Congress must continue the exemption of certain repeat workers from being counted in the H-2B program cap, a provision that expired in 2007.

The program's congressionally mandated cap of 66,000 (33,000 for the first half of the fiscal year and 33,000 for the second half of the year) is inadequate to meet the seasonal needs of landscape contractors, golf courses, and other small employers. The cap for the first half of the fiscal year has already been reached, leaving many employers without the necessary labor force in 2008.

Limits on the number of workers allowed into the United States under this highly regulated, legal guest worker program has resulted in difficultly planning for the future for many of these businesses. Without the advance knowledge of an available workforce, it is difficult to negotiate customer contracts and plan for equipment and supply purchases.

The Virginia Agribusiness Council represents farmers, foresters and other agricultural-product producers, marketers and processors, industry suppliers and commodity and industry associations as the unified voice for Virginia agribusinesses.

Again, thank you for your consideration of this important issue. Please do not hesitate to contact us if the Council can provide you with additional information.

Sincerely,

Katie K. Frazier
Assistant Vice President- Public Affairs

LEGAL COMPLAINT SUBMITTED BY MARY BAUER, DIRECTOR,
IMMIGRANT JUSTICE PROJECT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

KURIAN DAVID, SONY VASUDEVAN SULEKHA, PALANYANDI THANGAMANI, MARUGANANTHAM KANDHASAMY, HEMANT KHUTTAN, ANDREWS ISSAC PADAVEETTIYL, and DHANANJAYA KECHURU, on behalf of other similarly situated individuals, and SABULAL VIJAYAN, KRISHAN KUMAR, JACOB JOSEPH KADDAKKARAPPALLY, KULDEEP SINGH, AND THANASEKAR CHELLAPPAN, individually, Plaintiffs,	)	Civ. No.
v.	)	
SIGNAL INTERNATIONAL LLC, MALVERN C. BURNETT, GULF COAST IMMIGRATION LAW CENTER, L.L.C., LAW OFFICES OF MALVERN C. BURNETT, A.P.C., INDO-AMERI SOFT L.L.C., KURELLA RAO, J & M ASSOCIATES, INC. OF MISSISSIPPI, GLOBAL RESOURCES, INC., MICHAEL POL, SACHIN DEWAN, and DEWAN CONSULTANTS PVT. LTD. (a/k/a MEDTECH CONSULTANTS).	)	Complaint -- Class Action and Collective Action
Defendants.		

COMPLAINT

1. In the aftermath of Hurricane Katrina, Plaintiff class members, over 500 Indian men, were trafficked into the United States through the federal government's H-2B guestworker

program to provide labor and services to Defendant Signal International LLC ("Signal"). Plaintiffs were subjected to forced labor as welders, pipefitters, shipfitters, and other marine fabrication workers at Signal operations in Pascagoula, Mississippi and Orange, Texas.

2. Plaintiffs, individually and on behalf of similarly situated workers, bring this action to recover for damages inflicted by Signal and Signal's recruiters and agents operating in India, the United Arab Emirates, and the United States. Defendants have exploited and defrauded Plaintiffs and other class members by fraudulently recruiting them to work in the United States and effectuating a broad scheme of psychological coercion, threats of serious harm and physical restraint, and threatened abuse of the legal process to maintain control over Plaintiffs and other class members.

3. Lured by Defendants' fraudulent promises of legal and permanent work-based immigration to the United States for themselves and their families, Plaintiffs and other class members plunged their families into debt. Plaintiffs and other class members incurred substantial debt, liquidated their life savings, and sold their family homes to pay mandatory recruitment, immigration processing, and travel fees charged by Defendants totaling as much as $20,000 per worker. Trusting in the immigration and work benefits promised by Defendants, Plaintiffs and other class members further surrendered stable employment opportunities in India and as guestworkers in the Persian Gulf.

4. Defendants' main recruiting agents in India and the United Arab Emirates held Plaintiffs' and other class members' passports and visas and threatened, coerced, and defrauded Plaintiffs and other class members into paying extraordinary fees for recruitment, immigration processing and travel. Defendants further caused Plaintiffs and other class members to believe that if they did not work for Signal under the auspices of temporary and Signal-restricted H-2B

guestworker visas, they would suffer abuse or threatened abuse of the legal process, physical restraint, and/or other serious harms.

5. Upon Plaintiffs' and other class members' arrival in the United States, Signal required them to live in guarded, overcrowded, and isolated labor camps. Signal further deceived Plaintiffs and other class members regarding their visa status, threatened Plaintiffs and other class members with loss of immigration status and deportation, and generally perpetrated a campaign of psychological abuse, coercion, and fraud designed to render Plaintiffs and other class members afraid, intimidated, and unable to leave Signal's employ.

6. On March 9, 2007, Signal, in coordination with Defendant Sachin Dewan ("Dewan") and private security guards, attempted to forcibly and unlawfully deport Plaintiffs Sabulal Vijayan and Jacob Joseph Kadakkarappally in retaliation for speaking out against discriminatory conditions in Signal's labor camp in Pascagoula, Mississippi. Signal similarly attempted to forcibly and unlawfully deport Plaintiffs Kuldeep Singh, Thanasekar Chellappan, and Krishan Kumar.

7. Terrified by the threat of imminent deportation and the security guards pursuing him, Plaintiff Vijayan attempted suicide and had to be taken to a local hospital. Amidst the chaos, Plaintiff Singh hid and escaped the Signal labor camp. Signal personnel and security guards successfully forced Plaintiffs Kadakkarappally, Chellappan, and Kumar into a locked and guarded room. There, Signal detained Plaintiffs Kadakkarappally, Chellappan, and Kumar for several hours, refusing their pleas for water and access to the bathroom.

8. Witnessing and/or hearing of the events of March 9, 2007, the remaining Plaintiffs and other class members at Signal's operations in Mississippi and Texas reasonably feared that they would suffer harm or physical restraint if they left employment with Signal. Deeply

fearful, isolated, disoriented, and unfamiliar with their rights under United States law, these workers felt compelled to continue working for Signal.

9. Plaintiffs assert class action claims against Defendants arising from violations of their rights under the Victims of Trafficking and Violence Protection Act ("TVPA"); the Racketeer Influenced and Corrupt Organizations Act ("RICO"); the Civil Rights Act of 1866 (42 U.S.C. § 1981); the Ku Klux Klan Act of 1871 (42 U.S.C. § 1985); collective action claims under the Fair Labor Standards Act (FLSA); and claims for damages arising from fraud/negligent misrepresentation and breach of contract. Plaintiffs Sabulal Vijayan, Jacob Joseph Kadakkarappally, Kuldeep Singh, Krishan Kumar, and Thanasekar Chellappan also bring individual claims arising from the retaliation in violations of the Civil Rights Act of 1866 (42 U.S.C. § 1981); the Ku Klux Klan Act of 1871 (42 U.S.C. § 1985), false imprisonment, assault, battery, intentional infliction of emotional distress and/or negligent infliction of emotional distress.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), 18 U.S.C. § 1595(a) (civil trafficking), 18 U.S.C. § 1964(c) (RICO), 28 U.S.C. § 1343 (civil rights), and 29 U.S.C. § 216(b) (FLSA).

11. This Court has supplemental jurisdiction over causes of action based on state law pursuant to 28 U.S.C. § 1367(a), as the state law claims arise out of the same nucleus of facts which support the federal claims.

12. Venue in the Eastern District of Louisiana is proper under 18 U.S.C. § 1965 and 28 U.S.C. § 1391 in that various Defendants and/or agents of Defendants, including Malvern C. Burnett, the Law Offices of Malvern C. Burnett, A.P.C., Gulf Coast Immigration Law Center

L.L.C., Kurella Rao, and Indo-Amerisoft, L.L.C., reside and/or may be found in New Orleans and a substantial portion of the communications, transactions, events or omissions underlying Plaintiffs' claims occurred in and around the New Orleans area.

13. Declaratory and injunctive relief are sought under 28 U.S.C. § 2201 *et seq.*

PARTIES

Plaintiffs

14. Plaintiffs are Indian nationals and former or current H-2B guestworkers who were recruited from India and/or the United Arab Emirates by Defendants at various points between 2003 and 2007.

15. Plaintiffs are of South Asian Indian descent.

16. At all relevant times, Plaintiffs were "persons" within the meaning of that term as defined by RICO, 18 U.S.C. § 1961(3).

17. At all relevant times, Plaintiffs were employed by Signal as defined by the FLSA, 29 U.S.C. § 203(g).

18. At all relevant times, Plaintiffs were engaged in commerce and/or in the production of goods for sale in interstate commerce.

The Group I Plaintiffs

19. Class representative Plaintiff Dhananjaya Kechuru was recruited in 2003 from the United Arab Emirates and India for work in the United States. After arriving in the United States in 2007, Kechuru worked at Signal's Orange, Texas facility.

20. Class representative Plaintiff Andrews Issac Padaveettiyl was recruited in 2004 from the United Arab Emirates and India for work in the United States. After arriving in the United States in 2006, Andrews worked at Signal's Pascagoula, Mississippi facility.

21. Throughout this Complaint, Plaintiffs refer to Plaintiffs Padaveettiyl and Kechuru as the "Group I Plaintiffs."

The Group II Plaintiffs

22. Class representative Plaintiff Kurian David was recruited in 2006 from the United Arab Emirates and India for work in the United States. After arriving in the United States in 2007, David worked at Signal's Orange, Texas facility.

23. Class representative Plaintiff Sony Vasudevan Sulekha was recruited in 2006 from India for work in the United States. After arriving in the United States in 2006, Sulekha worked at Signal's Pascagoula, Mississippi facility.

24. Class representative Plaintiff Maruganantham Kandhasamy was recruited in 2006 from India for work in the United States. After arriving in the United States in 2007, Kandhasamy worked at Signal's Orange, Texas facility.

25. Class representative Plaintiff Palanyandi Thangamani was recruited in 2006 from India for work in the United States. After arriving in the United States in 2006, Thangamani worked at Signal's Pascagoula, Mississippi facility.

26. Class representative Plaintiff Hemant Khuttan was recruited in 2006 from India for work in the United States. After arriving in the United States in 2007, Khuttan worked at Signal's Pascagoula, Mississippi facility.

27. Throughout this Complaint, Plaintiffs refer to Plaintiffs David, Sulekha, Kandhasamy, Thangamani, and Khuttan as the "Group II Plaintiffs."

Individual Plaintiffs

28. Individual Plaintiff Sabulal Vijayan was recruited beginning in late 2003 from the United Arab Emirates and India for work in the United States. Vijayan worked for Defendant Signal in Pascagoula, Mississippi from late 2006 until Signal terminated him on March 9, 2007.

29. Individual Plaintiff Jacob Joseph Kaddakkarappally was recruited beginning in late 2003 from the United Arab Emirates and India for work in the United States. Kaddakkarappally worked for Defendant Signal in Pascagoula, Mississippi from late 2006 until Signal terminated him on March 9, 2007.

30. Individual Plaintiff Thanasekar Chellappan was recruited beginning in 2006 from India for work in the United States. Chellappan worked for Defendant Signal in Pascagoula, Mississippi from early 2007 until Signal terminated him on March 9, 2007.

31. Individual Plaintiff Kuldeep Singh was recruited beginning in 2006 from India for work in the United States. Singh worked for Defendant Signal in Pascagoula, Mississippi from early 2007 until Signal terminated him on March 9, 2007.

32. Individual Plaintiff Krishan Kumar was recruited beginning in 2006 from India for work in the United States. Kumar worked for Defendant Signal in Pascagoula, Mississippi from early 2007 until Signal terminated him on March 9, 2007.

Defendants

The Employer Defendant

33. Defendant Signal International, LLC is a corporation organized under the laws of Delaware, is a provider of marine and fabrication services in the Gulf Coast region, with operations in Orange, Texas, and Pascagoula, Mississippi.

The Recruiter Defendants

34. Defendant Global Resources, Inc. ("Global") is a corporation organized under the laws of Mississippi and is engaged in the business of recruiting workers from India for employment in the United States. Global has substantial business contacts with New Orleans, Louisiana.

35. Defendant Michael Pol ("Pol"), the President of Global Resources, Inc., resides in Mississippi, and has substantial business contacts with New Orleans, Louisiana.

36. Defendant Dewan Consultants Pvt. Ltd. (a/k/a Medtech Consultants) ("Dewan Consultants") is a private limited liability company organized under the laws of India, which maintains offices in Mumbai (Bombay), India, and Dubai, United Arab Emirates. Defendant Dewan Consultants has substantial business contacts with New Orleans, Louisiana.

37. Defendant Sachin Dewan ("Dewan") is the Director of Dewan Consultants, resides in India, and has substantial business contacts with New Orleans, Louisiana.

38. Upon information and belief, Defendants Dewan and Dewan Consultants authorize and use Defendants Pol and Global as their United States-based branch of operations and/or agents.

39. Upon information and belief, Defendants Pol and Global authorize and use Defendants Dewan and Dewan Consultants to act as their India and United Arab Emirates-based branch of operations and/or agents.

40. Upon information and belief, Defendants Dewan, Dewan Consultants, Pol, and Global acted as a joint venture with respect to the recruitment, contracting, and provision of Plaintiffs for labor or services.

41. Defendants Pol and Global Resources utilize Defendants Dewan and Dewan Consultants to conduct and carry out their shared business interests and activities in India and

the United Arab Emirates. Among other things, Defendants Pol and Global Resources share offices with Defendants Dewan and Dewan Consultants in India and the United Arab Emirates.

42. Upon information and belief, Defendants Dewan and Dewan Consultants utilize Defendants Pol and Global Resources to conduct and effectuate their shared business interests and activities in the United States.

43. Throughout this Complaint, Plaintiffs refer to Defendants Dewan, Dewan Consultants, Pol, and Global collectively as "the Recruiter Defendants."

The Legal Facilitator Defendants

44. Defendant Malvern C. Burnett ("Burnett") is an attorney who resides in and maintains offices in New Orleans, Louisiana.

45. Defendant Gulf Coast Immigration Law Center L.L.C. ("GCILC") is a limited liability corporation organized under the laws of Louisiana and located in New Orleans, Louisiana. Upon information and belief, Defendant Burnett serves as its sole registered agent, member, and/or corporate officer.

46. Defendant Law Offices of Malvern C. Burnett, A.P.C. ("Burnett Law Offices") is a professional law corporation organized under the laws of and located in New Orleans, Louisiana. Upon information and belief, Defendant Burnett serves as its sole registered agent, member, and/or corporate officer.

47. Upon information and belief, Defendants Burnett, GCILC, and Burnett Law Offices are engaged in a joint venture and/or are alter egos in that all entities have the same corporate mailing address, intermingle business assets, fail to operate at arms' length, and Defendant Burnett serves as the registered agent and sole member and/or corporate officers for GCLIC and Burnett Law Offices.

48. Upon information and belief, Defendant Burnett, GCILC, and the Burnett Law Offices have the same business objectives and Defendant Burnett uses GCILC and the Burnett Law Offices to conduct and effectuate shared business objectives.

49. Throughout this Complaint, Plaintiffs refer to Defendants Burnett, GCILC, and Burnett Law Offices collectively as "The Legal Facilitator Defendants."

The Labor Broker Defendants

50. Defendant Indo-Amerisoft, L.L.C, a corporation organized under the laws of Louisiana and headquartered in New Orleans, Louisiana, is engaged in the business of recruiting and providing Indian laborers to United States companies and selling opportunities for United States immigration and employment to such laborers.

51. Defendant Kurella Rao, the Chairman and Director of Indo-Amerisoft, LLC, maintains offices in the New Orleans, Louisiana metropolitan area and has substantial business contacts there.

52. Defendant J & M Associates of Mississippi, Inc. ("J & M"), a corporation organized under the laws of Mississippi with substantial business contacts in New Orleans, is engaged in the business of recruiting and providing Indian laborers to United States companies and selling opportunities for United States immigration and employment to such laborers.

53. Throughout this Complaint, Plaintiffs refer to Defendants Indo-Amerisoft, Rao, and J & M collectively as "the Labor Broker Defendants."

All Defendants

54. At all relevant times, Defendants Dewan, Dewan Consultants, Pol, Global, Burnett, Burnett Law Offices and GCILC acted as agents of Defendants Signal, J & M, Indo-Amerisoft

and Rao for the purposes of recruiting, obtaining, contracting, transportation and/or providing Plaintiffs for labor or services.

55. Individually and through their agents, associates, attorneys, and/or employees, all Defendants have significant contacts with New Orleans, Louisiana.

56. At all relevant times, Defendants were "persons" within that term as defined by RICO, 18 U.S.C. § 1961(3).

57. Upon information and belief, Defendants have been engaged in and will continue to engage in ongoing contacts with Plaintiffs and/or class members, including recruiting, obtaining, labor contracting, providing immigration-related services to, transporting, harboring, providing and/or employing of Plaintiffs and/or other class members.

58. At all relevant times, Defendants operated enterprises engaged in commerce or in the production of goods for commerce.

59. At all relevant times, Defendant Signal employed Plaintiffs for the purposes of the FLSA, 29 U.S.C. § 203.

CLASS AND COLLECTIVE ACTION ALLEGATIONS

60. Claims for damages, injunctive and declaratory relief under the TVPA, 42 U.S.C. §§ 1981 and 1985, for damages and declaratory relief under RICO, and for damages based on state law fraud and breach of contract (the First through Seventh Claims for Relief) are brought by the Class Representative Plaintiffs on behalf of themselves and all similarly situated persons pursuant to Rule 23.

61. All claims for damages under the FLSA are brought by the Class Representative Plaintiffs as a collective action pursuant to 29 U.S.C. § 216(b).

Rule 23 Class Allegations

62. Class claims for injunctive relief are brought pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2). For the purposes of injunctive relief, the class consists of all Indian H-2B guestworkers who were recruited by Defendants from 2003 on and who traveled and/or were transported to the United States at any under the auspices of H-2B visas assigned to Defendant Signal International.

63. Class claims for actual, punitive and treble damages are brought pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3). For the purposes of actual, punitive and treble damages, the class consists of all Indian H-2B guestworkers who were recruited by Defendants and who traveled and/or were transported to the United States at any time from 2006 to the present under the auspices of H-2B visas assigned to Defendant Signal International.

Rule 23(a)

64. The precise number of individuals in the class is known only to Defendants, but the class is believed to include over 500 individuals. Because of the number of class members and because class members are foreign nationals and migrant workers, joinder of all class members is impracticable.

65. This action involves questions of law common to the class, including:

a. Whether Defendant Signal and the Recruiter Defendants' conduct as set out in the First and Second Claims for Relief violated the forced labor and trafficking provisions of the TVPA (18 U.S.C. §§ 1589 and 1590);

b. Whether all Defendants' conduct as set out below in the Third Claim for Relief violated RICO Sections 1962(c) and 1962(d);

c. Whether Defendant Signal's conduct as set out below in the Fourth Claim for Relief violated 42 U.S.C. § 1981;

d. Whether Defendant Signal's conduct as set out below in the Fifth Claim for Relief violated 42 U.S.C. § 1985(3);

e. Whether Defendants' conduct as set out below in the Sixth Claim for Relief constituted fraud and/or negligent misrepresentation for which they are legally liable;

f. How terms of Plaintiffs' and other class members' contracts with Defendants should be interpreted and whether Defendants breached contracts with Plaintiffs and other class members as set out in the Seventh Claim for Relief below;

g. The nature of damages available to Plaintiffs and other class members, including the applicability of treble, compensatory and/or punitive damages; and

h. Whether and what kinds of injunctive relief are appropriate.

66. This action involves questions of fact common to the class, including:

    a. Whether Defendant Signal and the Labor Recruiter Defendants used and/or threatened Plaintiffs and other class members with physical restraint, serious harm, and/or abuse of the legal process in order to obtain Plaintiffs' and other class members' labor or services;

    b. Whether Defendant Signal and the Labor Recruiter Defendants recruited, harbored, transported, obtained and/or provided Plaintiffs and other class members for the purpose of subjecting them to forced labor and/or involuntary servitude;

    c. Whether Defendants conducted one or more enterprises through a pattern of racketeering activity;

d. Whether Defendants conspired to conduct one or more enterprises through a pattern of racketeering activity;

e. Whether Defendants committed or agreed to commit the predicate racketeering acts identified in the Third Claim for Relief, inter alia, mail fraud, wire fraud, visa fraud, Travel Act violations, forced labor, trafficking, and unlawful document-related activities in furtherance of trafficking;

f. Whether Defendant Signal subjected Plaintiffs and other class members to differential and discriminatory terms and conditions of employment and created a hostile work environment;

g. Whether Defendant Signal conspired with other actors for the purpose of depriving Plaintiffs and other class members of their right to be free from involuntary servitude and/or forced labor;

h. Whether Defendants made promises and/or representations to Plaintiffs and other class members through the mail and wires that were fraudulent;

i. Whether such promises were made willfully or negligently;

j. Whether Plaintiffs and other class members reasonably relied on Defendants' fraudulent promises;

k. Whether Defendant Signal subjected Plaintiffs and other class members to differential and/or adverse terms and conditions of employment on the basis of their race and/or alien status;

l. Whether Defendant Signal conspired with other parties for the purposes of depriving Plaintiffs and other class members of their rights to be free of forced labor and involuntary servitude;

m. Whether Defendants in fact failed to comply with the terms of their contracts with Plaintiffs and other class members and, if so, which terms were breached; and

n. The source and amount of Plaintiffs' and other class members' damages.

67. The claims of the Class Representative Plaintiffs asserted in the First through Seventh Claims for Relief are typical of the claims of the class.

68. The Class Representative Plaintiffs will fairly and adequately protect the interests of the class.

69. Plaintiffs' counsel are experienced in handling class action litigation on behalf of guestworkers and migrant workers like Plaintiffs and are prepared to advance costs necessary to vigorously litigate this action.

Rule 23(b)(2)

70. Defendants have acted and/or have refused to act on grounds generally applicable to the class with respect to the claims set forth in the Fourth and Fifth Claims for Relief thereby making final injunctive relief applicable to the class appropriate under Fed. R. Civ. P. 23(b)(2), by, inter alia:

a. Engaging in and refusing to desist from engaging in unlawful discriminatory practices, such as requiring Plaintiffs and other class members to live in substandard segregated housing in Signal-owned labor camps;

b. Engaging in and refusing to desist from engaging in a common illegal scheme, plan, and/or pattern of fraudulent recruitment and immigration processing activities which attempted to force and forces Plaintiffs and other class members

to provide labor or services to Defendant Signal and which injured Plaintiffs and other class members in their business and/or property;

c. Engaging in and refusing to desist from engaging in a common scheme, plan and/or pattern designed to cause Plaintiffs and other class members believe that they would suffer serious harm, abuse of the legal process and/or physical restraint if they did not provide labor or services to Defendant Signal; and

d. Engaging in and refusing to desist from engaging in actions that constitute illegal labor trafficking; and

e. Upon information and belief, Defendants' continuing involvement in similar recruitment and labor practices

71. Upon information and belief, Defendants continue to conduct and engage in unlawful recruitment and labor practices, threatening current and future violations of Plaintiffs' and other class members' rights.

Rule 23(b)(3)

72. Common questions of law and fact relevant to the First through Seventh Claims for Relief, as identified above, predominate over any pertinent questions involving only individual members.

73. A class action is superior to other available methods of adjudicating the claims set forth in the First through Seventh Claims for Relief because, inter alia:

a. Common issues of law and fact, as identified in part above, substantially diminish the interest of class members in individually controlling the prosecution of separate actions;

b. The class members are foreign nationals and migrant workers who are heavily in debt and lack the means and/or resources to secure individual legal assistance and who are particularly likely to be unaware of their rights to prosecute these claims;

c. No member of the class has already commenced litigation to determine the questions presented; and

d. A class action can be managed with efficiency and without undue difficulty because Defendants have systematically and regularly committed the violations complained of herein and have used standardized recruitment, record-keeping, and employment practices.

FLSA Collective Action Allegations

74. All claims set forth in the Eighth Claim for Relief are brought against Defendant Signal by the Class Representative Plaintiffs on behalf of themselves and all other similarly situated persons pursuant to the collective action provisions of 29 U.S.C. § 216(b) of the FLSA.

75. The Class Representative Plaintiffs seek to represent a FLSA class consisting of all Indian H-2B workers employed by Defendant Signal at its Orange, Texas and Pascagoula, Mississippi facilities at any time from October 1, 2006 through the present.

76. The proposed FLSA class members are similarly situated in that they have been subject to uniform practices by Defendant Signal which violated the FLSA, including:

a. Signal's systematic unlawful payroll deductions for room and board and work-related tools; and

b. Signal's workforce-wide failure to reimburse class members for travel, immigration processing, visa, recruitment, and other immigration-related expenses to the extent

necessary to ensure that class members earned the required minimum and overtime wages during their first workweek.

STATEMENT OF FACTS

The Recruitment Process

Recruitment of the Group I Plaintiffs

77. Beginning in late 2003 and continuing through at least 2004, the Recruiter Defendants (Defendants Dewan, Dewan Consultants, Pol, and Global) placed ads in various newspapers across India and the United Arab Emirates, seeking welders, fitters, and other marine fabricators on behalf of various U.S.-based companies and individuals, including the Labor Broker Defendants (Defendants Indo-Amerisoft, Rao, and J & M).

78. Upon information and belief, the Recruiter Defendants placed such ads in coordination and agreement with the Legal Facilitator Defendants (Defendants Burnett, GCILC, and Burnett Law Offices), and the Labor Broker Defendants.

79. Upon information and belief, since at least December 2003 through at least mid-2004, the Legal Facilitator Defendants and the Labor Broker Defendants communicated and consulted frequently via mail, fax, e-mail and/or telephone communications to coordinate and direct the Recruiter Defendants' activities, including advertising efforts on behalf of the Labor Broker Defendants.

80. The advertisements placed by the Recruiter Defendants promised that qualified candidates could obtain legal permanent residence (green cards) and thereby legally and permanently immigrate to the United States with their families.

81. At various points throughout late 2003 through approximately mid-2004, Class Representative Plaintiffs Dhananjaya Kechuru and Plaintiff Andrews Issac Padaveettiyl and

others similarly situated (hereinafter "the Group I Plaintiffs") responded to the advertisements placed by the Recruiter Defendants.

82. Specifically, the Group I Plaintiffs contacted the Recruiter Defendants by telephone, and/or attended meetings and testing sessions organized by the Recruiter Defendants, the Legal Facilitator Defendants, and the Labor Broker Defendants and their agents, employees and/or representatives at several locations throughout India and the United Arab Emirates.

83. Upon information and belief, prior to attending these meetings and testing sessions, the Labor Broker Defendants, Recruiter Defendants, and Legal Facilitator Defendants conferred in and around the months of February, March, and April 2004 by phone, mail, fax and or e-mail to organize, plan, and coordinate the logistics and substantive content of these meetings and testing sessions.

84. The U.S.-based Recruiter Defendants (Pol and Global), the Labor Broker Defendants, and the Legal Facilitator Defendants traveled across state and international lines to attend meetings with Group I Plaintiffs in India and the United Arab Emirates.

85. In telephone communications, in-person meetings, faxes, contracts, and other written documents transmitted by mail and/or wire in the first half of 2004, the Recruiter Defendants personally and through employees, agents and/or associates, told the Group I Plaintiffs that if the Group I Plaintiffs passed skills tests administered in the United Arab Emirates or India and paid fees totaling approximately 5 to 8 lakh rupees (approximately $12,000 to $20,000), they would be able to apply for permanent resident (green card) status in the United States with the Labor Broker Defendants.

86. In these communications occurring during the first half of 2004, the Recruiter Defendants and Legal Facilitator Defendants further explained that the installment payments

would be divided among the Recruiter Defendants, the Legal Facilitator Defendants, and one of the two Labor Broker Defendants.

87. In telephone communications, in-person meetings, faxes, written contracts, and/or other written communications, transmitted, upon information and belief, by mail and/or wire in the first half of 2004, the Recruiter Defendants, the Legal Facilitator Defendants, and the Labor Broker Defendants instructed the Group I Plaintiffs that the total fees would be paid in a series of approximately three to four installments.

88. In these conversations in the first half of 2004, the Group I Plaintiffs were informed on multiple occasions by the Recruiter Defendants and/or the Legal Facilitator Defendants that in exchange for an additional fee of approximately $1,500 per family member, Plaintiffs would be able to obtain legal permanent residence for their spouses and children.

89. The Recruiter Defendants, the Legal Facilitator Defendants, and Defendants Indo-Amerisoft and Rao, personally and/or through their agents, representatives, and/or employees, made representations to Class Representative Kechuru that the Labor Broker Defendants would obtain a work-authorized green card for him on numerous occasions, including:

a. In or around December 2003 in an advertisement in the Gulf News, a newspaper based in Dubai, United Arab Emirates. Upon information and belief, in the weeks leading up to the appearance of the advertisement, the Legal Facilitator Defendants, the Recruiter Defendants, and the Labor Broker Defendants communicated and consulted frequently via mail, fax, e-mail and/or telephone communications regarding its content and placement;

b. In or around December 2003 at the Recruiter Defendants' Dubai offices by an employee of the Recruiter Defendants believed to be named Disha; and

c. In or around January 2004 in a meeting at the Recruiter Defendants' Dubai offices attended by the Legal Facilitators and Defendants Rao and Indo-Amerisoft. Upon information and belief, in the weeks leading up to the January 2004, the Legal Facilitator Defendants, the Recruiter Defendants, and the Labor Broker Defendants communicated and consulted frequently via mail, fax, e-mail and/or telephone communications regarding the issues to be discussed at the meeting.

90. The Recruiter Defendants, the Legal Facilitator Defendants, and Defendant J & M, personally and/or through their agents, representatives, and/or employees, made representations to Class Representative Plaintiff Padaveettiyl that the Labor Broker Defendants would obtain a work-authorized green card for him on numerous occasions, including a meeting at the Recruiter Defendants' Dubai offices in or around April 2004. This meeting was attended by the Legal Facilitator Defendants and the Recruiter Defendants.

91. Upon information and belief, in the weeks leading up to these 2004 meetings attended by Plaintiff Padaveettiyl, the Legal Facilitator Defendants, the Recruiter Defendants, and the Labor Broker Defendants communicated and consulted frequently via mail, fax, e-mail and/or telephone communications regarding the issues to be discussed at the meetings.

92. At informational meetings and in telephone conversations, faxes, contracts, and other written documents transmitted in late 2003 through approximately mid-2004, the Recruiter Defendants, the Legal Facilitator Defendants, and the Labor Broker Defendants, personally and/or through their agents, representatives, and/or employees, represented to the Group I Plaintiffs that the Labor Broker Defendants were stable and reputable U.S. companies offering lawful and ample employment opportunities, and that Labor Broker Defendants would

obtain for the Group I Plaintiffs work-authorized green cards enabling the Group I Plaintiffs to permanently and legally immigrate to United States with their families.

93. At informational meetings and in telephone conversations, faxes, contracts, and other written documents transmitted in late 2003 through approximately mid-2004, the Recruiter Defendants, Legal Facilitator Defendants, and Labor Broker Defendants, personally and/or through their agents, employees and/or representatives, told the Group I Plaintiffs that the green card process, once commenced, would be completed within 18 to 24 months.

94. In such communications with Plaintiffs, the Recruiter Defendants, Legal Facilitator Defendants, and Labor Broker Defendants further promised to act diligently and do everything necessary to obtain green cards for the Group I Plaintiffs in the timelines stipulated.

95. Based on these and other contractually-binding promises made to them regarding green cards and work opportunities in the United States, the Group I Plaintiffs signed contracts (hereinafter "the green card contracts") at various points in early to mid-2004 with the Recruiter Defendants, Legal Facilitator Defendants, and Labor Broker Defendants.

96. Contracts signed by Plaintiffs and other documents provided to the Group I Plaintiffs by the Legal Facilitator Defendants, the Recruiter Defendants, and Labor Broker Defendants through the use of mail and/or wire transmissions in and around early to mid-2004, further promised that the Group I Plaintiffs would promptly receive a refund of all or nearly all of their payments if these Defendants did not succeed in securing green cards for the Group I Plaintiffs as promised.

97. The Legal Facilitator Defendants, the Recruiter Defendants, and the Labor Broker Defendants knew or should have known, however, that they would not refund the Group I Plaintiffs' money as promised in the contracts and other documents.

98. The Legal Facilitator Defendants, the Recruiter Defendants and the Labor Broker Defendants induced the Group I Plaintiffs to enter the green card contracts without intent to diligently pursue the Group I Plaintiffs' applications and knowingly without any basis whatsoever for representing, inter alia, that the companies and/or entities purportedly sponsoring the Group I Plaintiffs' applications were financially solvent and had reliable and stable employment opportunities to provide the Group I Plaintiffs; that green card applications sponsored by such companies would be valid and bona fide under U.S. immigration law; and that such applications were likely to be successfully completed and approved within the promised timelines.

99. In reasonable reliance on the Legal Facilitator Defendants, the Recruiter Defendants and the Labor Broker Defendants' explicit and repeated promises regarding green cards and employment opportunities in the United States, the Group I Plaintiffs undertook considerable personal and familial sacrifices to amass the funds necessary to initiate the green card process.

100. The Group I Plaintiffs gathered their life savings and borrowed staggering sums of money from family members, friends, banks, and loan sharks, often at high interest rates, in order to make the payments required by Defendants and their agents. Many of the Group I Plaintiffs mortgaged or sold their homes and/or land belonging to them or their families. Some of the Group I Plaintiffs cashed in life insurance policies and/or sold prized family possessions such as their wives' wedding jewelry.

101. In reasonable reliance on Defendants' explicit and repeated promises regarding green cards and employment opportunities in the United States, Class Representative Plaintiff Kechuru paid 6 lakh rupees (approximately $15,000) total to the Recruiter Defendants, Legal

Facilitator Defendants, and Defendants Indo-Amerisoft and Kurella Rao. Plaintiff Kechuru had to rely on loans to obtain this money, including an interest-bearing bank loan.

102. In reasonable reliance on Defendants' explicit and repeated promises regarding green cards and employment opportunities in the United States, Class Representative Plaintiff Padaveettiyl paid the Recruiter Defendants, Legal Facilitator Defendants and Defendant J & M over 5.5 lakh rupees (approximately $12,500). To pay these fees, Plaintiff Padaveettiyl had to liquidate his life savings and sell property.

103. The Group I Plaintiffs signed contracts with the Recruiter Defendants, Legal Facilitator Defendants, and the Labor Broker Defendants and made the first round of installment payments required by these contracts.

104. Despite having signed contracts with the Recruiter Defendants, the Legal Facilitator Defendants, and the Labor Broker Defendants, and having paid the first installment payments required by the contracts, these Defendants failed to provide the Group I Plaintiffs with updates regarding the progress of their green card applications for extended periods of time.

105. When the Group I Plaintiffs contacted the Recruiter Defendants, the Legal Facilitator Defendants, and/or the Labor Broker Defendants by phone, mail, and/or email at various points from approximately the last half of 2004 through approximately mid-2006 to check on the progress of their applications, these Defendants assured them that the process was going forward.

106. While awaiting the processing of their green cards, the Group I Plaintiffs continued to accrue substantial interest on moneys they had borrowed in order to make the first installment payment to these Defendants.

107. In or around January 2006, the Recruiter Defendants, the Legal Facilitator Defendants and the Labor Broker Defendants, personally and/or through their agents, employees and/or representatives notified the Group I Plaintiffs via wire and/or mail communications that the labor certification required for their green card applications had been approved by the U.S. government.

108. After this notification, the Recruiter Defendants, the Legal Facilitator Defendants and the Labor Broker Defendants used wire and/or mail communications to effectuate collection of the second and/or third installment payments from the Group I Plaintiffs.

109. By spring of 2006, after the 18 to 24 month period promised by the Recruiter Defendants, the Legal Facilitator Defendants, and the Labor Broker Defendants had elapsed, the Group I Plaintiffs had still not received their green cards as promised.

110. By spring of 2006, the Recruiter Defendants, the Legal Facilitator Defendants, and the Labor Broker Defendants had yet to refund the Group I Plaintiffs' payments as promised by Plaintiffs' green card contracts.

111. While awaiting the processing of their green cards, the Group I Plaintiffs continued to accrue substantial interest on moneys they had borrowed in order to make the required payments to the Recruiter Defendants, the Legal Facilitator Defendants, and the Labor Broker Defendants.

112. In late May and early June of 2006, Defendant Signal filed with the Mississippi Department of Employment Security, the Texas Workforce Commission, and the United States Department of Labor by mail and/or fax completed forms ETA 750 and attachments seeking permission to import and hire 590 foreign guestworkers under the auspices of 8 U.S.C. § 1101(a)(15)(H)(ii)(b), attendant regulations 8 C.F.R. § 214.2(h)(6) and 20 C.F.R. § 655.3, and

associated administrative letters and/or guidance (commonly known as "the H-2B guestworker program").

113. Defendant Signal sought these workers to perform various jobs essential to its marine fabrication services business, including welding and fitting.

114. The H-2B guestworker program permits U.S. employers to import foreign workers on short-term temporary visas to meet labor needs when employers attest that they cannot find U.S. workers to perform the available jobs.

115. H-2B visas are non-immigrant visas, are only valid for work with the specific employer listed on the visa, and do not provide portable and/or transferable employment authorization for the visa bearer.

116. Defendant Signal further stated in the ETA 750 forms that its need for H-2B guestworkers was "peak load and a one-time occurrence" and that "the temporary workers will work for the length of the prescribed dates of need, will be paid in accordance with the prevailing wage, and will return to their home country at the end of employment."

117. In the ETA 750 forms, Defendant Signal named the Legal Facilitator Defendants as its agents for the purposes of preparing and submitting these applications to import H-2B guestworkers.

118. Upon information and belief, Defendant Signal, at or around the time it filed the ETA 750 forms seeking permission to import H-2B guestworkers in May and June 2006, repeatedly contacted the Legal Facilitator Defendants and the Labor Broker Defendants by telephone, mail, e-mail, and/or fax to direct and coordinate recruitment of Indian workers to fill the anticipated H-2B guestworker jobs.

119. Upon information and belief, in the course of telephone, fax, email and/or mail communications occurring in or around May or June 2006, Defendant Signal authorized the Recruiter Defendants to act as their agents in India and the United Arab Emirates for the purposes of recruiting Indian welders and fitters to fill the anticipated H-2B guestworker jobs at Signal operations.

120. Upon information and belief, in the course of these communications, Defendant Signal further authorized the Recruiter Defendants to represent that Signal would assume sponsorship of the pending and as-yet-unsuccessful green card applications on behalf of the Group I Plaintiffs and apply for at least two to three H-2B visa extensions on behalf of all Plaintiffs to allow them to remain in the United States working for Signal while the Group I Plaintiffs' green card applications were being processed.

121. Defendant Signal authorized these representations even through it knew or had reason to know that such visa extensions and green card applications would not be bona fide and valid under United States immigration law and even though it did not intend to apply for and in fact knew it could not legally apply for such visa extensions and/or green cards on behalf of the Group I Plaintiffs.

122. In spring and summer of 2006, the Group I Plaintiffs who had initiated the green card process spoke with the Recruiter Defendants over the phone and in person regarding their long-pending green card applications.

123. In these communications, the Recruiter Defendants offered the Group I Plaintiffs the opportunity to pursue their green cards under the sponsorship of Defendant Signal. For an additional sum of approximately 35,000 to 45,000 rupees ($800 to $1,100), Plaintiffs were told

they could quickly obtain H-2B visas to go to the United States for work at Defendant Signal's operations.

124. In these communications, the Recruiter Defendants falsely assured the Group I Plaintiffs that Defendant Signal would seek at least two extensions for the temporary H-2B visa with which Plaintiffs would gain admittance to the United States, and that Plaintiffs' H-2B visas would thereafter lead to immediate and permanent green cards.

125. The Recruiter Defendants personally and through their agents, representatives and employees, made representations to Class Representative Plaintiff Kechuru that Defendant Signal would obtain a work-authorized green card and H-2B visa extensions for him on numerous occasions, including in or about November or December of 2006 during a phone conversation with employees in the Recruiter Defendants' offices in Dubai, United Arab Emirates.

126. Upon information and belief, in the weeks leading up to the phone conversation with Plaintiff Kechuru, the Legal Facilitator Defendants, the Recruiter Defendants, and the Labor Broker Defendants communicated and consulted frequently via mail, fax, e-mail and/or telephone communications regarding the contents of the green card and H-2B visa offers being made to Plaintiffs.

127. The Recruiter Defendants, personally and/or through their agents, representatives and/or employees, made representations to the Class Representative Padaveettiyl that Defendant Signal would obtain a work-authorized green card and H-2B visa extensions for him on numerous occasions, including a meeting at the Recruiter Defendants' offices in Dubai in or around February 2006.

128. Upon information and belief, in the weeks leading up to this February 2006 meeting, the Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal communicated and consulted frequently via mail, fax, e-mail and/or telephone communications regarding the issues to be discussed at the meeting.

129. In these communications, the Recruiter Defendants further failed to disclose material facts regarding the H-2B visa, including the fact that H-2B visas confer only a temporary non-immigrant status which does not allow the bearer to adjust to permanent residency status and the fact that applying for H-2B visas is fundamentally incompatible with applying for green cards.

130. The Group I Plaintiffs, unaware of U.S. immigration law and the temporary, non-immigrant character of H-2B visas, agreed, in reliance on the representations of the Recruiter Defendants, to transfer their green card applications to Defendant Signal's sponsorship and further agreed to work for Defendant Signal under H-2B visas pursuant to the terms explained by the Recruiter Defendants.

131. In reliance on the representations of the Recruiter Defendants, the Legal Facilitator Defendants and Defendant Signal, Class Representative Plaintiff Kechuru entered the United States on an H-2B guestworker visa in December 2003 and worked for Signal at its facility in Orange, Texas.

132. In reliance on the representations of the Recruiter Defendants, the Legal Facilitator Defendants and Defendant Signal, Class Representative Plaintiff Padaveettiyl entered the United States on an H-2B guestworker visa in October 2006 and worked for Signal at its Pascagoula, Mississippi facility.

133. The Group I Plaintiffs would not have paid the extraordinary fees charged by the Recruiter Defendants and Legal Facilitator Defendants for travel, green cards, visas, and work opportunities had they known that these Defendants' promises and representations were false.

134. The Group I Plaintiffs would not have paid the extraordinary fees charged by the Recruiter Defendants and Legal Facilitator Defendants for travel, green cards, visas, and employment opportunities had they known that these Defendants had failed to disclose material facts concerning the nature and terms and conditions of the immigration and work opportunities offered.

Recruitment of the Group II Plaintiffs

135. Acting as Defendant Signal's recruiting agent for the purposes of facilitating the recruitment of Indian workers for employment at Signal, the Recruiter Defendants placed advertisements in newspapers throughout India and the United Arab Emirates in spring, summer, and fall of 2006 offering opportunities for welders and fitters to immigrate permanently to the United States under the auspices of Defendant Signal, "a leading marine and fabrication company in Mississippi and Texas."

136. In response to the advertisements posted by the Recruiter Defendants, Plaintiffs Plaintiffs Kurian David, Sony Vasudevan Sulekha, Maruganantham Kandhasamy, Palanyandi Thangamani, Hemant Khuttan, and all those similarly situated (hereinafter "the Group II Plaintiffs") contacted the Recruiter Defendants in spring, summer and fall of 2006 via telephone and in-person meetings.

137. The Recruiter Defendants' advertisements and other recruiting efforts were undertaken on behalf of, at the direction of, and/or in coordination and consultation with Defendant Signal.

138. Upon information and belief, Defendant Signal's direction of and coordination of the Recruiter Defendants' recruitment efforts was effectuated by the use of numerous telephone, fax, email, and/or mail communications occurring from spring of 2006 through at least January 2007.

139. Upon information and belief, in these communications Defendant Signal authorized the Recruiter Defendants to act as their agents in India and the United Arab Emirates for the purposes of recruiting Indian welders and fitters to fill anticipated H-2B guestworker jobs at Signal operations.

140. Upon information and belief, in these communications, Defendant Signal further authorized the Recruiter Defendants to represent that Signal would agree to sponsor bona fide green card applications for the Group II Plaintiffs and obtain at least two H-2B visa extensions on behalf the Group II Plaintiffs to allow them to remain in the United States working for Signal while all their green card applications were being processed.

141. Defendant Signal authorized these representations even through it knew or had reason to know that such visa extensions and green card applications would not be bona fide and valid under United States immigration law and even though Signal did not intend to apply for and in fact knew that it could not legally apply for such visa extensions and/or green cards on behalf of the Group II Plaintiffs.

142. In spring, summer, and fall of 2006, the Group II Plaintiffs attended meetings at which the Recruiter Defendants and the Legal Facilitator Defendants, acting on Signal's behalf, informed the Group II Plaintiffs of the opportunity to work for Defendant Signal on H-2B visas which would lead to permanent resident (green card) status.

143. Upon information and belief, prior to attending these meetings and testing sessions, Defendant Signal, Recruiter Defendants, and Legal Facilitator Defendants conferred in and spring, summer, and fall 2006 by phone, mail, fax and or e-mail to organize, plan, and coordinate the logistics and substantive content of these meetings.

144. The United States-based Recruiter Defendants (Pol and Global) and the Legal Facilitator Defendants traveled across state and international lines to attend meetings with Group II Plaintiffs in India and the United Arab Emirates in spring, summer, and fall of 2006.

145. According the statements made at these meetings and in communications effected by wire and mail during this time period, Defendant Signal would sponsor the Group II Plaintiffs' green card applications and extend their H-2B visas multiple times to enable the Group II Plaintiffs to work in the United States while their green card applications were pending. In exchange, the Group II Plaintiffs would have to pay fees totaling approximately 8 lakhs ($20,000) each in a series of approximately three installments.

146. The Group II Plaintiffs were further informed by the Recruiter Defendants and/or the Legal Facilitator Defendants that in exchange for an additional fee of approximately $1,500 per family member, Plaintiffs would be able to obtain legal permanent residence for their spouses and children.

147. At informational meetings and in telephone conversations, faxes, contracts, and other written documents transmitted through the use of mail and wire communications occurring during the spring and summer of 2006, the Recruiter Defendants, the Legal Facilitator Defendants, and the Labor Broker Defendants, personally and/or through their agents, representatives, and/or employees, represented to the Group II Plaintiffs that Signal would provide lawful, stable, and ample employment opportunities, that working under an H-

2B visa for Signal was not inconsistent with applying for permanent immigration status sponsored by Signal, and that Signal would obtain for the Group II Plaintiffs work-authorized green cards enabling the Group II Plaintiffs to permanently and legally immigrate to United States with their families.

148. In such communications with Plaintiffs, the Recruiter Defendants and Legal Facilitator Defendants further promised to act diligently and do everything necessary to obtain green cards for the Group II Plaintiffs within 24 months.

149. The Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal personally and/or through their agents, representatives, and/or employees, made representations to Class Representative Plaintiff Kandhasamy that Signal would obtain a work-authorized green card and H-2B visa extensions for him on numerous occasions, including:

a. In or about May 2006 in an advertisement in the Daily Thanthi, an Indian newspaper. Upon information and belief, in the weeks to the appearance of the May 2006 advertisement, the Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal communicated and consulted frequently via mail, fax, e-mail and/or telephone communications regarding its content and placement;

b. In or about May 2006 at a meeting in Chennai (Madras) attended by the Recruiter Defendants and Defendant Signal. Upon information and belief, in the weeks leading up to May 2006 meeting, the Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal communicated and consulted frequently via mail, fax, e-mail and/or telephone communications regarding the issues to be discussed at the meeting; and

c. In or about August or September 2006 at a meeting in Chennai attended by the Recruiter Defendants, Defendant Signal, and the Legal Facilitator Defendants. Upon

information and belief, in the weeks leading up to September 2006 meeting, the Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal communicated and consulted frequently via mail, fax, e-mail and/or telephone communications regarding the issues to be discussed at the meeting;

150. The Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal personally and/or through their agents, representatives, and/or employees, made representations to Class Representative Plaintiff Thangamani that Signal would obtain a work-authorized green card and H-2B visa extensions for him on numerous occasions, including:

a. In or about March or April 2006 in advertisements published in Malayalam and Tamil newspapers in India. Upon information and belief, in the weeks to the appearance of the April 2006 advertisement, the Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal communicated and consulted frequently via mail, fax, e-mail and/or telephone communications regarding its content and placement;

b. In or about May 2006 at a meeting in Chennai attended by the Recruiter Defendants and Defendant Signal. Upon information and belief, in the weeks leading up to May 2006 meeting, the Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal communicated and consulted frequently via mail, fax, e-mail and/or telephone communications regarding the issues to be discussed at the meeting; and

c. In August or September 2006 in a meeting in Chennai attended by the Recruiter Defendants, the Legal Facilitator Defendants, and Defendant Signal. Upon information and belief, in the weeks leading up to September 2006 meeting,

the Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal communicated and consulted frequently via mail, fax, e-mail and/or telephone communications regarding the issues to be discussed at the meeting.

151. The Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal personally and/or through their agents, representatives, and/or employees, made representations to Class Representative Plaintiff Khuttan that Signal would obtain a work-authorized green card and H-2B visa extensions for him on numerous occasions, including:

a. In or about September 2006 in an advertisement in the Times of India. Upon information and belief, in the weeks to the appearance of the September 2006 advertisement, the Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal communicated and consulted frequently via mail, fax, e-mail and/or telephone communications regarding its content and placement;;

b. In or about September 2006 during a phone call with staff at the Recruiter Defendants' office; and

c. In October 2006 by employees in the Recruiter Defendants' Mumbai office. Upon information and belief, in the weeks leading up to October 2006 meeting, the Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal communicated and consulted frequently via mail, fax, e-mail and/or telephone communications regarding the issues to be discussed at the meeting.

152. The Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal personally and/or through their agents, representatives, and/or employees, made representations to Class Representative Plaintiff David that Signal would obtain a work-authorized green card and H-2B visa extensions for him on numerous occasions, including:

a. In or around March 2006 in an advertisement in the Gulf News, a newspaper based in Dubai, United Arab Emirates. Upon information and belief, in the weeks to the appearance of the March 2006 advertisement, the Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal communicated and consulted frequently via mail, fax, e-mail and/or telephone communications regarding its content and placement;

b. In or around March 2006 in at a meeting in a hotel at Abu Dhabi, United Arab Emirates attended by the Recruiter Defendants. Upon information and belief, in the weeks leading up to March 2006 meeting, the Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal communicated and consulted frequently via mail, fax, e-mail and/or telephone communications regarding the issues to be discussed at the meeting; and

c. In or about April 2006 at a meeting in Dubai, United Arab Emirates attended by the Recruiter Defendants and Legal Facilitator Defendants. Upon information and belief, in the weeks leading up to April 2006 meeting, the Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal communicated and consulted frequently via mail, fax, e-mail and/or telephone communications regarding the issues to be discussed at the meeting.

153. The Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal personally and/or through their agents, representatives, and/or employees, made representations to Class Representative Plaintiff Vasudevan that Signal would obtain a work-authorized green card and H-2B visa extensions for him on numerous occasions, including:

a. In or about April 2006 in an advertisement in an Indian newspaper. Upon information and belief, in the weeks to the appearance of the April 2006 advertisement, the Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal communicated and consulted frequently via mail, fax, e-mail and/or telephone communications regarding its content and placement; and

b. On or about May 1, 2 or 3, 2006, at a meeting at the Hilton Hotel in Cochin attended by the Recruiter Defendants and Legal Facilitator Defendants at which a video discussing opportunities at Defendant Signal was shown to workers in attendance. Upon information and belief, in the weeks leading up to May 2006 meeting, the Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal communicated and consulted frequently via mail, fax, e-mail and/or telephone communications regarding the issues to be discussed at the meeting.

154. Reasonably relying on these and other contractually-binding promises made to them regarding green cards and work opportunities in the United States, the Group II Plaintiffs signed green card contracts at various points from mid-2006 and late 2007 with the Recruiter Defendants and Legal Facilitator Defendants in which they promised to pay the fees charged by these Defendants.

155. Contracts signed by Plaintiffs and other documents provided to the Group II Plaintiffs by the Legal Facilitator Defendants and Recruiter Defendants through the use of mail and/or wire transmissions in and around mid 2006 through at least early 2007, further promised that the Group II Plaintiffs would promptly receive a refund of all or nearly all of their payments if these Defendants did not succeed in securing green cards for the Group II Plaintiffs as promised.

156. The Legal Facilitator Defendants and the Recruiter Defendants knew or should have known, however, that they would not refund the Group II Plaintiffs' money as promised in the contracts and other documents.

157. The Legal Facilitator Defendants and Recruiter Defendants induced the Group II Plaintiffs to enter the green card contracts without intent to diligently pursue the Group II Plaintiffs' applications and without any basis whatsoever for representing, inter alia, that Defendant Signal had lawful long-term employment opportunities to provide the Group II Plaintiffs; that Defendant Signal could legally apply for numerous H-2B visa extensions to maintain the Group II Plaintiffs' presence in the United States; that working under an H-2B visa for Signal was not inconsistent with applying for permanent immigration status sponsored by Signal; that green card applications sponsored by Defendant Signal would be valid and bona fide under U.S. immigration law; and that such applications were likely to be successfully completed and approved within the promised timelines.

158. In reasonable reliance on the Recruiter Defendants and Legal Facilitators' explicit and repeated promises regarding green cards and employment opportunities in the United States, the Group II Plaintiffs undertook considerable personal and familial sacrifices to amass the funds necessary to initiate the green card process with Defendant Signal.

159. The Group II Plaintiffs gathered their life savings and borrowed staggering sums of money from family members, friends, banks, and loan sharks, often at high interest rates, in order to make the payments required by Defendants and their agents. Many Group II Plaintiffs mortgaged or sold their homes and/or land belonging to them or their families. Some Group II Plaintiffs cashed in life insurance policies and/or sold prized family possessions such as their wives' wedding jewelry.

160. In reasonable reliance on the explicit and repeated promises of the Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal regarding green cards, H-2B visas, and employment opportunities in the United States, Class Representative Kandhasamy paid the Recruiter Defendants and Legal Facilitator Defendants over 6 lakh rupees (approximately $15,000), which he collected by selling his wife's jewelry and taking out an interest-bearing bank loan.

161. In reasonable reliance on the explicit and repeated promises of the Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal regarding green cards, H-2B visas, and employment opportunities in the United States, Class Representative Thangamani paid the Recruiter Defendants and Legal Facilitator Defendants over 6 lakh rupees (approximately $15,000), which he collected by selling his relatives' and his wife's jewelry, taking out an interest-bearing bank loan from a finance company, and selling land that he owned.

162. In reasonable reliance on the explicit and repeated promises of the Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal regarding green cards, H-2B visas, and employment opportunities in the United States, Class Representative Khuttan paid the Recruiter Defendants and Legal Facilitator Defendants approximately 8.5 lakh rupees (approximately $21,000), which he collected by taking out an interest-bearing bank loan, and borrowing from his father's retirement account.

163. In reasonable reliance on the explicit and repeated promises of the Recruiter Defendants, Legal Facilitator Defendants, and Defendant Signal regarding green cards, H-2B visas, and employment opportunities in the United States, Class Representative David paid the

Recruiter Defendants and Legal Facilitator Defendants approximately $18,000, which he collected by taking out an interest-bearing bank loan and selling his house.

164. In reasonable reliance the explicit and repeated promises of the Recruiter Defendants, the Legal Facilitator Defendants, and Defendant Signal regarding green cards and employment opportunities in the United States, Class Representative Plaintiff Vasudevan paid 6 lakh rupees (approximately $15,000) to the Recruiter Defendants and Legal Facilitator Defendants, which he collected by taking out an interest-bearing bank loan and selling land owned in his wife's name.

165. In reasonable reliance on the promises of the Recruiter Defendants and Legal Facilitator Defendants, the Group II Plaintiffs signed contracts with these Defendants and made payments required by these contracts.

166. The Group II Plaintiffs would not have paid the extraordinary fees charged by the Recruiter Defendants and Legal Facilitator Defendants for green cards, visas, and employment opportunities had they known that these Defendants' promises and representations were false.

167. The Group II Plaintiffs would not have paid the extraordinary fees charged by the Recruiter Defendants and Legal Facilitator Defendants for green cards, visas, and employment opportunities had they known that these Defendants had failed to disclose material facts concerning the nature and terms and conditions of the immigration and work opportunities offered.

Preparations and Departure for Signal Operations in the United States (All Plaintiffs)

168. At various points during the spring, summer, and fall of 2006, Defendant Signal's personnel traveled to various locations in India and the United Arab Emirates and tested

Plaintiffs' and other class members' welding and fitting skills in anticipation of employing them in the United States.

169. Plaintiffs and other class members paid costs necessary to travel to the cities where these tests were held.

170. Plaintiffs and other class members paid admission fees charged to take these tests.

171. Plaintiffs and other class members attended and passed these tests, which were overseen and graded by Defendant Signal's agents, employees, and/or representatives.

172. Upon information and belief, prior to attending these meetings and testing sessions, Defendant Signal, Recruiter Defendants, and Legal Facilitator Defendants conferred in and spring, summer, and fall 2006 by phone, mail, fax and or e-mail to organize, plan, and coordinate the logistics and substantive content of these testing sessions.

173. The Defendant Signal's personnel, the United States-based Recruiter Defendants (Pol and Global) and the Legal Facilitator Defendants traveled across state and international lines to these testing sessions in spring, summer, and fall of 2006.

174. On or around July 20, 2006 and August 17, 2006, the United States Department of Labor approved Signal's applications for 590 H-2B workers for the period of October 1, 2006 through July 31, 2007.

175. Around the time of this approval, Plaintiffs and other class members made necessary preparations in order to travel to the United States on H-2B visas to work for Signal, including: paying to obtain necessary travel and legal documents; making payments for mandatory H-2B visa and consular processing fees to the United States consulate, the Recruiter Defendants and the Legal Facilitator Defendants; attending H-2B visa interviews; and paying for travel arrangements through the Recruiter Defendants.

176. In order to secure H-2B visas to work for Signal, Plaintiffs and other class members were required to be interviewed by United States Consular offices in Indian cities.

177. These consular interviews necessitated that Plaintiffs and other class members pay the costs of travel from their homes and/or current places of employment to various large Indian cities including Chennai (Madras) and Mumbai (Bombay).

178. The Recruiter Defendants and/or the Legal Facilitator Defendants, acting as Defendant Signal's agents, required that Plaintiffs and other class members meet with the Recruiter Defendants and/or the Legal Facilitator Defendants in these Indian cities prior to attending their consular interviews.

179. At these pre-interview meetings, the Recruiter Defendants and the Legal Facilitator Defendants ensured that Plaintiffs and other class members were up-to-date on paying installments required by their green card contracts.

180. Defendants further required that Plaintiffs and other class members pay an additional 35,000 to 45,000 rupees ($800 to $1,100) fee for H-2B visa processing.

181. The Recruiter Defendants required Plaintiffs and other class members to sign documents permitting Defendant Sachin Dewan to receive their visa-stamped passports from the Consulate on Plaintiffs' and other class members' behalves.

182. The Recruiter Defendants also coached the Plaintiffs and other class members to ensure that the interviews would go well.

183. The Recruiter Defendants told Plaintiffs and other class members that if they did not follow the Recruiter Defendants' instructions regarding the interviews, Plaintiffs and other class members would not receive their visas and would forfeit the all moneys they had

previously paid to Defendants, in addition to losing their opportunity to permanently immigrate to the United States.

184. During Plaintiffs' and other class members' consular interviews, the consular officials took Plaintiffs' and other class members' passports from them.

185. Once Plaintiffs' and other class members' visas were approved, consular officials sent their passports, with H-2B visas affixed, directly to Defendant Dewan.

186. After receiving word that Plaintiffs' visas were approved, the Recruiter Defendants made travel arrangements for Plaintiffs' and other class members' departures to the United States.

187. Before Plaintiffs and other class members could leave for the United States, however, Plaintiffs and other class members were required to attend final meetings in the Recruiter Defendants' Mumbai (Bombay) office.

188. Such meetings typically took place mere hours before Plaintiffs' and other class members' scheduled departures to the United States, when the Recruiter Defendants' office was teeming with anxious fellow Signal workers awaiting departure to the United States.

189. At these meetings, the Recruiter Defendants collected installment payments required by Plaintiffs' and other class members' green card contracts, which amounted to approximately $4,000 per worker.

190. The Recruiter Defendants also required that Plaintiffs and other class members, most of whom do not proficiently read or speak English, rapidly sign English language documents.

191. The Recruiter Defendants refused to return Plaintiffs' and other class members' passports -- which had been in Defendant Sachin Dewan's possession since after Plaintiffs' H-

2B visas were approved by Consular Officials -- until after Plaintiffs and other class members had paid the final installments and signed the mandatory paperwork.

192. The Recruiter Defendants' staff yelled at Plaintiffs and other class members to hurriedly sign the mandatory documents, lest they miss the flights to the United States which the Recruiter Defendants had scheduled for them.

193. Without possession of their passports and within this rushed and tense atmosphere, Plaintiffs and other class members had no reasonable opportunity to review, negotiate, and/or make any changes to the documents presented them.

194. On occasions when workers who appeared at the Mumbai office failed to come up with funds to pay the final installment required by the green card contracts, Defendant Dewan and his associates threatened to destroy and/or deface these workers' passports.

195. Such threats were uttered in the presence of other workers, causing these workers to reasonably believe that they had no choice but to pay the final installments in full.

196. Based on the Recruiter Defendants' threatening and coercive behavior during these pre-departure meetings in Mumbai and the extraordinary and increasing levels of debt they had incurred to pay the Recruiter Defendants and Legal Facilitator Defendants for green card and H-2B visa arrangements, Plaintiffs and other class members reasonably believed that they had no choice but to make the payments required by the Recruiter Defendants and to travel to the United States to work for Defendant Signal.

197. Plaintiffs and approximately 500 class members traveled from Mumbai to Defendant Signal's operations in the U.S. at various points from November 2006 to January 2007 on tickets arranged by the Recruiter Defendants.

198. Pursuant to Defendant Signal's instructions and arrangements, approximately 300 workers were sent to Signal's Pascagoula, Mississippi facility and approximately 200 workers were sent to Signal's Orange, Texas facility after arrival in the United States.

Conditions at the Signal Facilities in Pascagoula and Orange

199. Upon arrival at Defendant Signal's facilities in Pascagoula and Orange, Plaintiffs and other class members were shocked to discover that they were expected to live in isolated, overcrowded labor camps comprised of trailer-like bunkhouses.

200. Defendant Signal's labor camps were located in isolated, industrial areas miles removed from shopping areas, places of worship, and residential communities. The camps were enclosed by fences and accessible only by a single guarded entrance.

201. The labor camp gates were constantly monitored by Defendant Signal's security guards.

202. Signal guards monitored Plaintiffs' and other class members' comings and goings by: requiring them to show their employee identification badges and recording when Plaintiffs and other class members entered and exited the camps. Signal guards also searched Plaintiffs' and other class members' packages and bags when they entered the camps.

203. Except on rare occasions, Plaintiffs and other class members were not permitted to receive visitors in the labor camps.

204. In Signal's labor camps, up to twenty-four men were housed in each bunkhouse and made to sleep in two-tiered bunk beds. The bunk beds were so tightly packed in the bunkhouses that it was difficult for workers to move about in the narrow passageways between bunks.

205. The Signal labor camp bunkhouses had insufficient toileting and bathing facilities for twenty-four men, resulting in long lines around the bathrooms before and after work shifts.

206. Privacy was non-existent, and Plaintiffs and other class members often experienced extreme difficulty sleeping due to the constant noise resulting from the close quarters and the comings and goings of workers who worked on different shifts.

207. Defendant Signal's personnel conducted surprise searches of the dormitory areas of the bunkhouses, including searches of workers' personal belongings.

208. Plaintiffs and other class members took their meals in Defendant Signal's mess halls, which were only open during limited hours. Due to unhygienic kitchen conditions, Plaintiffs and other class members frequently became ill, sometimes requiring hospitalization.

209. Defendant Signal deducted approximately $35/per day ($245 per week, or approximately $1,050 per month) from Plaintiffs' and other class members' paychecks for these substandard accommodations and meals.

210. When Plaintiffs and other class members complained and asked to live outside the labor camps, Defendant Signal at first refused and subsequently told workers that if they tried to live outside the camps it would still deduct the approximately $35/day charge from Plaintiffs' and other class members' weekly wages. Plaintiffs and other class members reasonably felt that they had no choice but to continue living in the Signal camps.

211. Defendant Signal only housed Indian H-2B workers such as Plaintiffs in its labor camps. Upon information and belief, workers of non-Indian descent and workers who were U.S. citizens were not required to live in and/or pay for accommodations in Defendant Signal's labor camps.

212. Defendant Signal subjected Plaintiffs and other class members to skills testing and re-testing, on-the-job discipline, layoffs, periods without work, lack of safety precautions, unfavorable job assignments, evaluation processes, and other adverse employment actions to which non-Indian and U.S. citizen workers were not similarly subjected.

213. In addition, Signal camp personnel and supervisors frequently used offensive language in speaking with and/or referring to Plaintiffs and other Indian H-2B workers and regularly insulted Plaintiffs and other Indian H-2B workers on the basis of their race and/or alien status.

214. During the first week of employing Plaintiffs and other class members in the United States, Defendant Signal did not reimburse Plaintiffs and other class members for any of the expenses that they were required to incur as a pre-condition of seeking employment with Signal.

215. During the first two weeks of employing Plaintiffs and other class members in the United States, Defendant Signal deducted approximately $100 to $200 each week from Plaintiffs' and other class members' checks for job-related tool kits which they were required to purchase from Defendant Signal.

216. Signal personnel and management regularly threatened Plaintiffs and other class members that if they did not continue working for Signal, or did not work to Signal's specifications, Plaintiffs and other class members would be deported to India.

217. In the isolated and guarded atmosphere of the labor camps and grappling with the crushing debts Plaintiffs and other class members had incurred to come to the United States, Plaintiffs and other class members reasonably felt that Signal's statements were threatening and felt forced to continue working for Signal despite terrible working and living conditions.

218. At regular meetings and in one-on-one or small group conversations with Signal camp personnel and management, some workers, including Plaintiffs Vijayan and Kadakkarappally, voiced complaints regarding the discriminatory treatment to which Indian H-2B workers were subject.

219. Plaintiffs Vijayan and Kadakkarappally took leading roles in gathering and voicing others' complaints to Defendant Signal's personnel in camp meetings.

220. When Indian workers, including Vijayan and Kadakkarappally, voiced grievances regarding housing, food, and wages, Defendant Signal's personnel warned them to stop complaining.

221. When Signal took no action in response to workers' complaints, numerous Indian H-2B workers living at the Pascagoula labor camp, including Plaintiffs Vijayan and Kadakkarappally, began meeting collectively to discuss how to persuade Signal to improve conditions in its labor camps.

222. Defendant Signal became aware of these meetings and the leadership and organizing roles taken by Plaintiffs Vijayan and Kadakkarappally.

223. Defendant Signal, through its employees and/or agents, contacted the Recruiter Defendants to express its concerns about worker organizing efforts at its operations and the specific involvement of Plaintiffs Vijayan and Kadakkarappally.

224. Upon information and belief, during these conversations the Labor Recruiter Defendants and Signal reached an agreement regarding steps that the Labor Recruiter Defendants and Signal would take to discourage further worker organizing and to ensure that the majority of the H-2B workforce continued to work at Signal.

225. Upon information and belief, Signal management and camp personnel conferred and planned internally and with the private Swetman security firm to respond to workers' organizing activities and to take actions to ensure that the majority of the H-2B workforce continued to work at Signal.

226. On or about March 7, 2007, Defendant Sachin Dewan called Plaintiff Vijayan's wife at her home in India and warned her that Plaintiff Vijayan must stop making trouble at Signal.

227. Plaintiff Vijayan's wife informed Vijayan of this call, and Vijayan called Defendant Dewan on or about March 8, 2007. During that conversation, Dewan told Plaintiff Vijayan that Defendant Dewan had learned from Signal that Vijayan was organizing the workers and making trouble. Defendant Dewan told Plaintiff Vijayan that if the organizing continued, all the workers would be sent back to India.

228. Vijayan informed other Indian workers about the calls he and his wife had received from Defendant Dewan, and word spread quickly through the Pascagoula and Orange camps regarding the threats against Vijayan.

229. News about the calls between Dewan, Vijayan and Vijayan's wife substantially heightened the reasonable fears of Plaintiffs and other class members in the Pascagoula and Orange camps that if they complained about or tried to leave the discriminatory and substandard working and living conditions at Signal, the Recruiter Defendants and Signal would retaliate against them or their families with acts of violence or by arranging for Plaintiffs' and other class members' deportation to India.

230. Defendant Signal called a workforce-wide meeting on March 8, 2007 in the Pascagoula camp, attended by Signal management and Defendant Burnett.

231. At this meeting, Signal management told Plaintiffs and other class members that Signal would fight back against organizing efforts by the workers.

232. Signal management further threatened that Signal would not extend Plaintiffs' and other class members' H-2B visas if the workers brought an action against Signal. At that same meeting Defendant Burnett told the workers that they were ineligible for other kinds of immigration relief and could depend only on Signal to maintain their H-2B immigration status and pursue their green card applications.

233. Early the next morning, March 9, 2007, Signal locked the gate to its Pascagoula labor camp, thereby obstructing the sole means of direct entry to and exit from the camp.

234. Around this same time, Signal camp coordinator Darrell Snyder, and approximately five security guards, some obtained through the private Swetman Security firm, swept through the bunkhouses carrying pictures of Plaintiffs Vijayan, Kadakkarappally, Singh, Kumar, and Chellappan.

235. Security guards began accosting workers to determine whether they were the individuals shown in the pictures.

236. Plaintiffs and other class members became increasingly frightened and confused by these activities, particularly when word spread that Signal had locked the gate that served as the sole exit from the labor camp.

237. Around 5:15 AM that morning, Plaintiff Vijayan was walking towards the dining area. A security guard and Snyder accosted Vijayan and instructed him that he was in their custody.

238. Based on the threats made at the meeting on March 8, 2007 and Plaintiff Vijayan's recent phone call with Sachin Dewan, Vijayan feared what Defendant Signal might do to them.

239. When Plaintiff Vijayan attempted to go towards the bathroom to wash his hands, Snyder and several security guards chased after him, shouting.

240. Plaintiff Vijayan began to panic, thinking of the enormous quantity of money he had spent to come to the United States and the massive debts he owed in India. Vijayan knew that he would not be able to repay such debts if he were deported and no longer employed by Signal.

241. These feelings, combined with Plaintiff Vijayan's reasonable fear that Snyder and the security guards might physically hurt him, drove Vijayan to attempt suicide. Vijayan then had to be transported from the labor camp to a local hospital for immediate medical attention.

242. While attempting to assist Plaintiff Vijayan in obtaining medical attention, Plaintiff Jacob Joseph Kadakkarappally ("Kadakkarappally") was grabbed by Snyder.

243. Snyder took Plaintiff Kadakkarappally forcefully by the arm and marched him into a communal room in the labor camp referred to by workers as "the TV room."

244. In the TV room, Snyder informed Plaintiff Kadakkarappally that he was fired and demanded that Plaintiff Kadakkarappally stay inside the TV room. Kadakkarappally was prevented from leaving the TV room by several security guards. Upon arriving in the TV room, Kadakkarrappally found two workers already locked inside.

245. Earlier that morning, Snyder and the security guards had grabbed Plaintiff Thanasekar Chellappan ("Chellappan") in the communal eating area and Plaintiff Krishnan Kumar ("Kumar") in his bunkhouse and forced both of them into the locked TV room.

246. Plaintiff Kuldeep Singh, upon realizing Snyder and the security guards were looking for him and intended to apprehend and detain him, hid himself and later fled the camp via an adjacent work area.

247. After passing surreptitiously through the work area, Plaintiff Singh was able to locate an exit at the end of the work area and thereby secretly escape from Signal property.

248. At around 6 AM, Snyder locked Plaintiffs Kadakkarappally, Kumar and Chellappan in the TV room and detained them there for several hours.

249. At least three security guards watched over Plaintiffs Kadakkarappally, Kumar and Chellappan while they were detained. Over the course of several hours, security guards denied Kadakkarappally, Kumar, and Chellappan's repeated requests to be let out of the TV room, to get something to drink, and to use the bathroom.

250. When Plaintiff Kadakkarappally, Kumar, and Chellappan's co-workers attempted to come into the TV room to talk to the three that were locked inside, the security guards pushed them back.

251. Confused and frightened, workers assembled outside the TV room to protest the treatment of Plaintiffs Kadakkarappally, Kumar, and Chellappan.

252. At around 10 AM, Signal camp personnel finally permitted Plaintiffs Kadakkarappally, Kumar, and Chellappan to use the bathroom accompanied by security guards, one at a time.

253. Around noon, Snyder and a Pascagoula police officer entered the TV room and the officer questioned why Plaintiffs Kadakkarappally, Kumar, and Chellappan were there. Snyder said that these workers had been fired and would be sent back to India.

254. Around 2 p.m., Snyder and the Pascagoula police officer returned to the TV room where Plaintiffs Kadakkarappally, Kumar and Chellappan were still being held. Around this time, Signal management appeared on the scene and informed Plaintiffs Kadakkarappally that he had been terminated and was being sent back to India.

255. By this time, local media, religious advocates, and other concerned individuals had gathered outside the camp gate to express their concern over the continued detention of Kadakkarappally, Kumar, and Chellappan. In addition, the Indian H-2B workers remained assembled around the TV room, demanding that their co-workers be released.

256. Faced with growing protests by community members and Signal employees, Defendant Signal finally released Kadakkarappally, Kumar, and Chellappan from the TV room and allowed them to leave the Pascagoula labor camp.

257. Plaintiffs and other class members working at Signal's Orange facilities rapidly learned of the events at the Pascagoula labor camp on March 9, 2007.

258. Within a few days of Plaintiffs' and other class members' arrival at its labor camps in late 2006 and early 2007, Signal personnel had conducted meetings at the labor camps between Plaintiffs and representatives from specific banks. In Pascagoula, these meetings were with representatives from M & M Bank.

259. At the instruction of Defendant Signal, Plaintiffs and other class members at these respective locations had opened accounts with the designated banks and agreed to directly deposit their wages in these accounts. Defendant Signal's establishment of Plaintiffs' and other class members' accounts with these banks gave it unique access to and control over Plaintiffs' and other class members' funds.

260. At some point before April 10, 2007, after some class members had fled Signal's Pascagoula camp, M & M Bank denied these departed workers access to their bank accounts and invalidated their ATM cards.

261. Upon information and belief, M & M Bank refused the departed workers access to their own bank accounts at Defendant Signal's behest.

262. Workers still working at Signal labor camps heard about the difficulty departed Signal workers had in accessing their funds through Signal-established bank accounts and reasonably believed that similar action might be taken against them should they try to leave Defendant Signal's employ.

263. The information about workers' inability to access their money, combined with other factors described herein, contributed to the remaining Plaintiffs' and other class members' reasonable beliefs that if they tried to leave the employ of Defendant Signal they would face serious harm and/or threatened or actual abuse of the legal process.

264. Defendant Signal's actions on and after March 9, 2007 significantly intensified the reasonable fears of the remaining Plaintiffs and other class members in the Pascagoula and Orange camps that if they tried to leave Signal's employ or oppose unlawful and coercive employment conditions at Signal, they faced physical restraint, detention, forced deportation, or other serious harms and/or abuses of the legal process.

265. Throughout the spring and summer of 2007, Signal personnel in the Mississippi and Texas camps held various meetings with the remaining Plaintiffs and other class members to discuss the status of Plaintiffs' and other class members' H-2B visas and green card applications.

266. Upon information and belief, during spring and summer 2007 Signal personnel conferred amongst themselves and with the Recruiter Defendants and the Legal Facilitator Defendants via phone and/or email to reach agreement on what should be said to workers attending the meetings.

267. Soon after March 9, 2007, Defendant Signal held a camp-wide meeting in Pascagoula. Signal personnel told the workers that Signal would sponsor their green cards if they stayed at Signal and obeyed Signal's rules, and warned that if workers held any meetings against Signal's interests, they would be terminated.

268. In that same time period, Defendants Sachin Dewan and Burnett came to the Signal camp and again promised, in the presence of Signal personnel, that Signal, through its attorney Defendant Burnett, would make bona fide applications for green cards and obtain several H-2B visa extensions for Plaintiffs and other class members. Plaintiffs and other class members reasonably believed these promises.

269. In meetings and conversations in spring and summer 2007, Defendant Signal, through its agents and employees at the Pascagoula and Orange facilities, continued to promise that Signal would arrange for the H-2B visa extensions and green cards originally promised Plaintiffs and other class members when they were recruited in India and the United Arab Emirates.

270. Plaintiffs' and other class members' continuing dependence on Defendant Signal for their present and future immigration status, their continuing high levels of indebtedness, as well as other factors reasonably led Plaintiffs and other class members to fear serious harm and/or abuse of the legal process if they left Signal's employ.

271. Under such circumstances, Plaintiffs and other class members reasonably felt like they had no choice but to continue working for Signal.

272. On July 31, 2007, despite Signal's prior assurances that it would apply for H-2B visa extensions for Plaintiffs and other class members, Plaintiffs' and other class members' H-2B visas expired.

273. Since July 31, 2007, Defendant Signal has refused to confirm whether valid H-2B visa extensions have in fact been obtained for Plaintiffs and other class members, coercing Plaintiffs and other class members to continue working for Signal in the hope that Signal will finally resolve their uncertain immigration status.

274. Since first contracting with Defendants in India and the United Arab Emirates, Plaintiffs and other class members have yet to receive the green cards Defendants promised them. Despite this and despite clear contractual provisions requiring them to do so, the Recruiter Defendants, the Legal Facilitator Defendants, and the Labor Broker Defendants have refused to refund any of the moneys Plaintiffs and other class members paid to them for green card and visa processing.

275. Since first contracting with Defendants in India and the United Arab Emirates, Plaintiffs and other class members have had to seek other legal counsel to assist them in pursuing green card applications and other immigration relief, thereby incurring thousands of dollars in additional legal fees and costs which have not been reimbursed by Defendants.

FIRST CLAIM FOR RELIEF
THE TRAFFICKING VICTIMS PROTECTION ACT OF 2003
Forced Labor, 18 U.S.C. § 1589
Defendants Signal International LLC and the Recruiter Defendants (Michael Pol, Global Resources, Sachin Dewan, and Dewan Consultants)

276. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

277. The Class Representative Plaintiffs bring this claim on behalf of themselves and all other similarly situated workers against Defendant Signal, and the Recruiter Defendants.

278. Plaintiffs are authorized to bring these civil claims against Defendants pursuant to the civil remedies provision of the Trafficking Victims Protection Reauthorization Act of 2003 (TVPA), 18 U.S.C. § 1595.

279. Defendants attempted to and did subject Plaintiffs and other class members to forced labor in violation of 18 U.S.C. § 1589.

280. Defendants knowingly attempted to and did physically restrain and/or threaten Plaintiffs and other class members with serious harm in order to obtain the labor and services of Plaintiffs in violation of 18 U.S.C. § 1589(1).

281. Defendants knowingly attempted to and did obtain the labor and services of Plaintiffs and other class members using a scheme, plan, or pattern which, in the totality of the circumstances, was intended to coerce and did coerce Plaintiffs and other class members to believe that they would suffer serious harm if they were to leave the employ of Defendants in violation of 18 U.S.C.§ 1589(2).

282. Defendants' scheme to isolate Plaintiffs and other class members, to force them to live in conditions causing psychological harm, and to limit their outside contacts, including unlawful discrimination in violation of 42 U.S.C. § 1981, was designed to coerce Plaintiffs and other class members into believing that they would suffer serious harm if they were to leave the employ of Defendants.

283. Defendants threatened Plaintiffs and other class members with deportation and deceived Plaintiffs and other class members about the terms of their visas in a manner that constitutes an abuse of the legal process under 18 U.S.C. § 1589(3).

284. Plaintiffs and other class members suffered injury as a proximate result of these actions.

285. Plaintiffs and other class members are entitled to compensatory and punitive damages in an amount to be determined at trial and any other relief deemed appropriate, including attorneys fees.

SECOND CLAIM FOR RELIEF

THE TRAFFICKING VICTIMS PROTECTION ACT OF 2003

Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor, 18 U.S.C. § 1590

Defendants Signal International LLC and the Recruiter Defendants (Global Resources, Michael Pol, Sachin Dewan, and Dewan Consultants)

286. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

287. The Class Representative Plaintiffs bring this claim on behalf of themselves and all others similarly situated against Defendant Signal and the Recruiter Defendants.

288. Defendant Signal and the Recruiter Defendants knowingly recruited, transported and harbored the Plaintiffs and other class members for labor or services in violation of laws prohibiting peonage, slavery, involuntary servitude, and forced labor within the meaning of the provisions of the Trafficking Victims Protection Act, 18 U.S.C. § 1590 (TVPA).

289. Specifically, in violation of 18 U.S.C. § 1590, and in addition to the violations of 18 U.S.C. § 1589 set forth in the First Claim for Relief, Defendant Signal and the Recruiter Defendants knowingly recruited, transported and/or harbored the Plaintiffs and other class

members for labor or services in furtherance of these Defendants' violations of the following provisions of Title 18, Chapter 77 of the U.S. Code:

a. enticing, persuading, or inducing Plaintiffs and other class members to go on board a vessel or to any other place with the intent that Plaintiffs and other class members may be made or held in involuntary servitude and/or slavery, violating 18 U.S.C. § 1583;

b. knowingly and willfully holding Plaintiffs to involuntary servitude, as defined by the TVPA, 22 U.S.C. §7102(5)(a) and (b), violating 18 U.S.C. § 1584;

c. removing, confiscating, or possessing Plaintiffs' and other class members' passports and other immigration documents in the course of, or with the intent to violate 18 U.S.C. §§ 1583, 1584, 1589, and 1590, violating 18 U.S.C. § 1592(a); and

d. attempting to violate 18 U.S.C. §§ 1583, 1584, 1589, and 1590, violating 18 U.S.C. § 1594(a).

290. Plaintiffs and other class members are authorized to bring these civil claims against Defendants pursuant to the civil remedies provision of the TVPA, 18 U.S.C. § 1595.

291. As a proximate result of the conduct of Defendant Signal and the Recruiter Defendants, Plaintiffs and other class members have suffered damages.

292. Plaintiffs and other class members are entitled to recover compensatory and punitive damages in an amount to be proven at trial, including attorneys' fees.

THIRD CLAIM FOR RELIEF
RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT
18 U.S.C.§ 1962(c) and 18 U.S.C.§ 1962(d)
All Defendants

293. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

294. Plaintiffs' and other class members' claims under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 ("RICO"), are brought against all Defendants.

295. Plaintiffs and other class members are "persons" with standing to sue within the meaning of 18 U.S.C. § 1964(c).

296. Each of the Defendants is a "RICO person" within the meaning of 18 U.S.C. § 1963(1).

297. All Defendants and the United States Consular officers in India constitute an association-in-fact, and therefore an enterprise (the "RICO Enterprise I"), within the meaning of 18 U.S.C. § 1964(4).

298. The Recruiter Defendants, the Legal Facilitator Defendants, and Signal are an association-in-fact, and therefore an enterprise (the "RICO Enterprise II"), within the meaning of 18 U.S.C. § 1964(4).

299. The Recruiter Defendants, Signal, the Legal Facilitators, Swetman Security, and M & M Bank are an association-in-fact, and therefore an enterprise (the "RICO Enterprise III") within the meaning of 18 U.S.C. § 1964(4).

The RICO Enterprises

RICO Enterprise I

300. RICO Enterprise I is an ongoing business relationship between all Defendants, and the United States Consular officers in India, with the common purpose of recruiting, transporting, providing, processing, and obtaining foreign workers to work on shipyards in the United States, including on Signal's operations in Texas and Mississippi.

301. RICO Enterprise I is engaged in interstate commerce in that its activities and transactions relating to the international and interstate movement of workers affect interstate commerce and frequently require travel and communications across state and international lines.

302. The members of RICO Enterprise I function as a continuing unit with a structure for decision-making.

303. Defendants conducted or participated in, and/or conspired to conduct or participate in the affairs of RICO Enterprise I through a pattern of numerous acts of racketeering activity in violation of 18 U.S.C. § 1962(c) and 18 U.S.C. § 1962(d), related by their common goal to recruit, obtain, transport, process, and provide workers through the use of fraudulent promises, exorbitant fees, forced labor, and trafficking.

304. Specifically, Defendants conducted or participated in and/or conspired to conduct the affairs of RICO Enterprise I by engaging in the following predicate acts of racketeering activity under 18 U.S.C. § 1961(1):

a. Forced labor in violation of 18 U.S.C. § 1589;

b. Trafficking persons for the purpose of forced labor and involuntary servitude in violation of 18 U.S.C § 1590;

c. Unlawful document-related practices in furtherance of trafficking in violation of 18 U.S.C § 1592(a);

d. Mail fraud to further their unlawful scheme in violation of 18 U.S.C. § 1341;

e. Wire fraud to further their unlawful scheme in violation of 18 U.S.C. § 1343;

f. Immigration document fraud in violation of 18 U.S.C. § 1546; and

g. Interstate and foreign travel to further their unlawful scheme in violation of 18 U.S.C. § 1952.

RICO Enterprise II

305. RICO Enterprise II is an ongoing business relationship between the Recruiter Defendants, the Legal Facilitator Defendants, and Defendant Signal with the common purpose of selling United States green cards and work opportunities to Indian workers to convince such workers to pay high fees and to travel to the United States to work for companies including Signal.

306. The members of RICO Enterprise II operate as a continuing unit.

307. RICO Enterprise II is engaged in interstate commerce in that its activities and transactions relating to the sale of United States green card and job opportunities affect interstate commerce and frequently require travel and communications across state and international lines.

308. The Recruiter Defendants, the Legal Facilitator Defendants, and Defendant Signal conducted or participated in and/or conspired to conduct or participate in, the affairs of RICO Enterprise II through a pattern of numerous acts of racketeering activity in violation of 18 U.S.C. § 1962(c) and 18 U.S.C. § 1962(d), related by their common goal to sell United States green cards and work opportunities to Indian workers for the purposes of collecting large fees and furnishing such workers for employment at Signal's operations.

309. Specifically, the Recruiter Defendants, the Legal Facilitator Defendants, and Defendant Signal conducted or participated in the affairs of RICO Enterprise II by engaging in the following predicate acts of racketeering activity under 18 U.S.C. § 1961(1):

a. Forced labor in violation of 18 U.S.C. § 1589;

b. Trafficking persons for the purpose of forced labor and involuntary servitude in violation of 18 U.S.C § 1590;

c. Unlawful document-related practices in furtherance of trafficking in violation of 18 U.S.C § 1592(a);

d. Mail fraud in violation of 18 U.S.C. § 1341;

e. Wire fraud in violation of 18 U.S.C. § 1343;

f. Immigration document fraud in violation of 18 U.S.C. § 1546; and

g. Interstate and foreign travel to further unlawful acts in violation of 18 U.S.C. § 1952.

RICO Enterprise III

310. RICO Enterprise III is an ongoing business relationship between the Recruiter Defendants, the Legal Facilitator Defendants, Defendant Signal, Swetman Security, and M&M Bank with the common purpose of providing and maintaining a consistent and acquiescent Indian worker labor force at Signal operations.

311. RICO Enterprise III is engaged in interstate commerce in that its activities and transactions relating to the maintaining and providing a consistent Indian worker labor force at Signal occurred across state and international lines, involve wages and working conditions at an employer engaged in interstate commerce (Signal).

312. The members of RICO Enterprise III function as a continuing unit.

313. The Recruiter Defendants, the Legal Facilitator Defendants, and Defendant Signal conducted, or participated in, and/or conspired to conduct or participate in, the affairs of RICO Enterprise III through a pattern of numerous acts of racketeering activity in violation of 18

U.S.C. § 1962(c) and 18 U.S.C. § 1962(d), related by their common goal to maintain a consistent and acquiescent H-2B Indian labor force at Signal through the use of fraudulent promises, forced labor, and trafficking.

314. conducted, or participated in, and/or conspired to conduct or participate in, the affairs of RICO Enterprise III by engaging in the following predicate acts of racketeering activity under 18 U.S.C. § 1961(1):

a. Forced labor in violation of 18 U.S.C. § 1589;

b. Trafficking persons for the purpose of forced labor and involuntary servitude in violation of 18 U.S.C § 1590;

c. Unlawful document-related practices in furtherance of trafficking in violation of 18 U.S.C § 1592(a);

d. Mail fraud to further their unlawful scheme in violation of 18 U.S.C. § 1341;

e. Wire fraud to further their unlawful scheme in violation of 18 U.S.C. § 1343;

f. Immigration document fraud in violation of 18 U.S.C. § 1546;

g. Interstate and foreign travel to further unlawful acts in violation of 18 U.S.C. § 1952.

Predicate Acts

Forced Labor: 18 U.S.C. § 1589

315. Defendants in RICO Enterprises I, II, and III willfully, knowingly, and intentionally committed and/or conspired to commit multiple predicate acts of forced labor in violation of 18 U.S.C. § 1589 as discussed in Plaintiffs' First Claim for Relief.

316. These predicate acts of forced labor furthered the unlawful scheme of RICO Enterprises I, II, and III to profit from the recruiting, obtaining and provision of foreign workers

for work in the United States through fraudulent promises, charging exorbitant payments for recruitment and immigration services, and engaging in exploitative and coercive recruitment and labor practices.

Trafficking for the Purposes of Forced Labor and/or Involuntary Servitude: 18 U.S.C. § 1590

317. As set forth in the preceding paragraphs, Defendants in RICO Enterprises I, III, and III willfully, knowingly, and intentionally committed and/or conspired to commit multiple predicate acts of trafficking for the purposes of forced labor and/or involuntary servitude in violation of 18 U.S.C. § 1590 as discussed in Plaintiffs' Second Claim for Relief.

318. These predicate acts of forced labor and/or involuntary servitude furthered the unlawful scheme of RICO Enterprises I, II, and III to profit by recruiting, obtaining and providing foreign workers for work in the United States based on fraudulent promises, exorbitant payments for recruitment and immigration services, and exploitative and coercive practices.

Mail Fraud: 18 U.S.C. § 1341

319. As set forth in the preceding paragraphs, Defendants in RICO Enterprises I, II, and III made and/or conspired to make false promises regarding green cards and other benefits in a scheme calculated to defraud Plaintiffs out of large sums of money.

320. As set forth in the preceding paragraphs, Defendants in RICO Enterprises I, II, III, and IV used the mails on numerous occasions to further this fraudulent scheme.

321. These willful, knowing, and intentional acts constitute mail fraud in violation of 18 U.S.C. § 1341.

Wire Fraud: U.S.C. § 1343

322. As set forth in the preceding paragraphs, Defendants in RICO Enterprises I, II, and III made and/or conspired to make false promises regarding green cards and other benefits in a scheme calculated to defraud Plaintiffs out of large sums of money.

323. As set forth fully in the preceding paragraphs, Defendants in RICO Enterprises I, II, and III used wire communications via telephone, fax, and/or email on numerous occasions to further this scheme.

324. These willful, knowing, and intentional acts constitute wire fraud in violation of 18 U.S.C. § 1343.

Immigration Document Fraud: 18 U.S.C. § 1546(a)

325. As set forth in the preceding paragraphs, Defendants in RICO Enterprises I, II, and III fraudulently sold and/or conspired to sell H-2B visa extensions and green cards to Plaintiffs despite these Defendants' awareness that applications for such immigration relief were not bona fide under United States immigration law.

326. These willful, knowing, and intentional acts constitute immigration document fraud in violation of 18 U.S.C. § 1546(a).

Unlawful Acts In Support of Racketeering Enterprises Through Interstate and Foreign Travel: 18 U.S.C.

327. As set forth in the preceding paragraphs, Defendants in RICO Enterprises I, II and III regularly engaged in and/or conspired to engage in interstate and foreign travel to carry on their unlawful activities.

328. Defendants in RICO Enterprises I, II, and III frequently engaged in interstate and/or foreign travel to effectuate the fraudulent schemes discussed above.

329. These willful, knowing and intentional acts violated 18 U.S.C. § 1952.

Pattern of Related Racketeering Acts

330. Defendants have engaged in the racketeering activity described in this Claim repeatedly since 2003 through the present with respect to approximately 500 Indian workers.

331. Upon information and belief, the RICO enterprises discussed above are currently seeking new Indian H-2B workers for employment at Signal who may be subject to similar racketeering activities.

332. The racketeering activity committed by Defendants continues presently. Defendants remain engaged in activities to fraudulently recruit workers in India and exploit them in the United States.

333. Defendants rely on the racketeering acts described in this Complaint conduct their regular business activities.

334. Defendants' racketeering acts have similar purposes: to profit from the fraudulent recruitment and forced labor of Plaintiffs and other class members, and to recruit, obtain, provide and maintain a consistent and uncomplaining Indian H-2B guestworker labor force at Signal's operations.

335. Defendants' acts have yielded similar results and caused similar injuries to Plaintiffs and other class members, including payment of high fees, assumption of significant interest bearing debt, loss of real and personal property, lost work opportunities, lost or unpaid wages and additional legal fees.

336. As set forth in the preceding paragraphs, the racketeering acts have similar participants: the Recruiter Defendants, the Legal Facilitator Defendants, the Labor Broker Defendants, and Signal.

337. As set forth in the preceding paragraphs, Defendants directed their racketeering activities at similar victims: Indian workers who contacted the Recruiter Defendants in search of green cards and stable employment in the United States.

338. Defendants' acts have similar methods of commission, such as common recruitment tactics, relatively consistent practices with respect to collecting payments from Plaintiffs and other class members, and use of similar employment practices and policies with respect to Plaintiffs and other class members.

Injury

339. As a direct and proximate result of Defendants' willful, knowing, and intentional acts discussed in this section, Plaintiffs have suffered injuries to their property and/or business, including but not limited to: exorbitant fees paid by Plaintiffs for green cards, visas and other immigration and recruitment-related services; interest on debts assumed by Plaintiffs to pay such fees; losses of personal and real property incurred in reliance on Defendants' fraudulent acts; lost and unpaid wages, lost employment opportunities, and other pecuniary and/or losses to real or personal property.

340. Plaintiffs are entitled to an award of damages in an amount to be determined at trial, including treble damages and attorneys' fees and costs associated with this action.

FOURTH CLAIM FOR RELIEF
VIOLATIONS OF THE CIVIL RIGHTS ACT OF 1866
42 U.S.C. § 1981
Defendant Signal International LLC

341. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

342. The Class Representative Plaintiffs, on behalf of themselves and all others similarly situated, assert this claim pursuant to 42 U.S.C. § 1981 for injunctive relief, declaratory relief, and damages against Defendant Signal.

343. The actions of Defendant Signal, as set forth herein, violated Plaintiffs' and class members' rights to receive full and equal benefit of all laws guaranteed by 42 U.S.C. § 1981, including Plaintiffs' and class members' rights to enjoy and benefit from non-discriminatory employment relationships with Defendant Signal.

344. Specifically, Defendant Signal subjected Plaintiffs and class members to discriminatory and offensive mandatory room and board arrangements at Signal labor camps.

345. Defendant Signal did not subject its non-Indian and/or U.S. citizen employees to the same or similar room and board arrangements.

346. As set forth in the preceding paragraphs, Defendant Signal also imposed discriminatory job-related requirements and terms and conditions of employment to which non-Indian and/or U.S. citizen employees were not similarly subject.

347. As set forth in the preceding paragraphs, through the actions and statements of its personnel referring to and/or directed at Plaintiffs and other class members, Defendant Signal maintained an objectively hostile and abusive work environment on account of Plaintiffs' and other class members' race and/or alien status.

348. As set forth in the preceding paragraphs, Defendant Signal's discriminatory and offensive treatment of Plaintiffs and other class members was sufficiently severe that it created a hostile work environment in violation of 42 U.S.C. § 1981.

349. Plaintiffs and other class members reasonably perceived their work environment to be hostile, abusive, and discriminatory on the basis of their race and/or alien status.

350. Defendant Signal's hostile, abusive, and discriminatory treatment of Plaintiffs and other class members was unwelcome.

351. Defendant Signal knowingly, willfully, maliciously, intentionally, and without justification acted to deprive Plaintiffs and other class members of their rights.

352. As a result of Defendant Signal's unlawful acts, Plaintiffs and other class members have suffered injury to their property and/or persons.

353. Plaintiffs seek all appropriate relief, including declaratory and injunctive relief, attorneys' fees, costs of this action, and damages, including compensatory and punitive damages, in an amount to be determined at trial.

FIFTH CLAIM FOR RELIEF
VIOLATIONS OF THE KU KLUX KLAN ACT OF 1871
42 U.S.C. § 1985 and the Thirteenth Amendment
Defendants Signal International LLC and the Recruiter Defendants (Michael Pol, Global Resources, Inc., Sachin Dewan and Dewan Consultants)

354. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

355. The Class Representative Plaintiffs, on behalf of themselves and all others similarly situated, assert this claim pursuant to 42 U.S.C. § 1985(3) for injunctive relief, declaratory relief, and damages against Defendant Signal and the Recruiter Defendants.

356. As set forth in the preceding paragraphs and Plaintiffs' First and Second Claims for Relief, Defendant Signal and the Recruiter Defendants, along with non-defendants, including the Swetman Security firm and M & M Bank, conspired, agreed, planned and coordinated for the purpose of depriving Plaintiffs and other class members of equal protection of their rights under the Thirteenth Amendment to the United States Constitution and its

implementing and enforcing statutes (inter alia, 18 U.S.C. §§ 1589, 1590) to be free from forced labor, involuntary servitude, and trafficking in persons.

357. Defendant Signal and the Recruiter Defendants were motivated by racial and/or anti-alien animus when they conspired to deprive Plaintiffs and other class members of their rights and/or acted in furtherance of a conspiracy to deprive Plaintiffs and other class members of their rights.

358. Defendant Signal and the Recruiter Defendants knowingly, willfully, maliciously, intentionally, and without justification planned and acted to deprive Plaintiffs and other class members of their rights.

359. As a result of the unlawful acts of Defendant Signal and the Recruiter Defendants, Plaintiffs and other class members have suffered damages.

360. Plaintiffs seek all appropriate relief, including declaratory and injunctive relief, attorneys' fees, costs of this action, and damages, including compensatory and punitive damages, in an amount to be determined at trial.

SIXTH CLAIM FOR RELIEF
FRAUD AND NEGLIGENT MISREPRESENTATION
All Defendants

361. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs.

362. As set forth in the preceding paragraphs, Defendants, individually and through their agents, employees, and/or representatives, knowingly and/or negligently made materially false and untrue statements and representations to Plaintiffs and other class members regarding the nature and terms and conditions of applications and opportunities for immigration status and employment in the United States.

363. As set forth in the preceding paragraphs, Defendants knowingly or negligently failed to disclose material facts to Plaintiffs and other class members regarding the nature and terms and conditions of applications and opportunities for immigration status and employment in the United States.

364. Defendants intended that the false statements made by Defendants and/or their agents, employees, and/or representatives would induce Plaintiffs and other class members to pay the large fees requested by the Labor Brokers, Recruiter Defendants, and/or Legal Facilitator Defendants.

365. Defendants intended that the false statements made by Defendants and/or their agents, employees, and/or representatives would persuade Plaintiffs and other class members to leave their homes and jobs in India and the United Arab Emirates and travel to the United States to work for the Labor Brokers and/or Defendant Signal.

366. Plaintiffs and other class members reasonably relied on the representations of Defendants and their agents, employees and/or representatives and had no reason to believe that these representations were false.

367. Plaintiffs and other class members were entitled to rely on Defendants' representations.

368. As a direct and proximate result of Defendants' knowing, willing, intentional, and/or negligent actions, Plaintiffs and other class members have been injured.

369. In reasonable reliance on Defendants' false and/or negligent representations regarding green cards and employment opportunities, Plaintiffs and other class members paid large sums of money to Defendants.

370. In reasonable reliance on Defendants' false and/or negligent representations regarding green cards and employment opportunities, Plaintiffs and other class members incurred substantial interest-bearing debts in order to pay recruitment, immigration-related, and travel fees charged by Defendants and their agents, employees and/or representatives.

371. In reasonable reliance on Defendants' false and/or negligent representations regarding green cards and employment opportunities, Plaintiffs and other class members sold personal and real property and surrendered employment opportunities in India and the United Arab Emirates.

372. Plaintiffs and other class members are entitled to recover compensatory and punitive damages in an amount to be proven at trial.

SEVENTH CLAIM FOR RELIEF
BREACH OF CONTRACT
All Defendants

373. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

374. As set forth in the preceding paragraphs, Defendants, individually and through their agents, employees and/or representatives, offered to obtain permanent residence and immigration status for Plaintiffs and other class members in the United States under certain terms and conditions, in exchange for Plaintiffs' and other class members' payment of fees to Defendants and their employees, agents and/or representatives.

375. Plaintiffs and other class members accepted Defendants' offers and paid the agreed-upon fees.

376. Defendants failed to comply with their obligations under the contractually-binding agreements entered into with Plaintiffs and other class members.

377. In reasonable reliance on these agreements, Plaintiffs and other class members paid large sums of money and entered into substantial debts, surrendered other employment opportunities, and incurred other financial losses.

378. As a direct result of Defendants' breach, Plaintiffs and other class members have suffered damages.

379. Plaintiffs and other class members are entitled to recover compensatory damages in an amount to be proven at trial.

EIGHTH CLAIM FOR RELIEF
FAIR LABOR STANDARDS ACT ("FLSA")
COLLECTIVE ACTION
Defendant Signal International L.L.C.

380. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

381. The named Plaintiffs assert this claim for damages and declaratory relief pursuant to the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 et seq.

382. Pursuant to 29 U.S.C. § 216(b), the named Plaintiffs have consented in writing to be

party Plaintiffs in this FLSA action. Their written consents are attached to this complaint as composite Exhibit 1.

383. Defendant Signal violated 29 U.S.C. § 206 by failing to pay Plaintiffs and others similarly situated the applicable minimum wage for every compensable hour of labor they performed.

384. Defendant Signal violated 29 U.S.C. § 207 by failing to pay Plaintiffs and others similarly situated the applicable overtime wage for every compensable hour of labor they performed.

385. The violations of the FLSA set out above resulted from Defendant Signal's unlawful deductions from the wages of Plaintiffs and other similarly situated including, inter alia, expenses for point-of-hire travel, visa, recruitment, tools, and housing expenses.

386. Defendant Signal's failure to pay Plaintiffs and others similarly situated their federally mandated minimum and overtime wages were willful violations of the FLSA within the meaning of 29 U.S.C. § 255(a).

387. As a consequence of Defendant Signal's violations of the FLSA, Plaintiffs and others similarly situated are entitled to recover their unpaid minimum and overtime wages, plus an additional equal amount in liquidated damages, costs of suit, and reasonable attorneys' fees pursuant to 29 U.S.C. § 216(b).

NINTH CLAIM FOR RELIEF
VIOLATIONS OF THE CIVIL RIGHTS ACT OF 1866
42 U.S.C. § 1981 (Retaliation)
Individual Plaintiffs Vijayan and Kadakkarappally Against Defendant Signal International, L.L.C.

388. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

389. Individual Plaintiffs Vijayan and Kadakkarappally assert this claim pursuant to 42 U.S.C. § 1981 for injunctive relief, declaratory relief, and damages.

390. The actions of Defendant Signal violated Plaintiffs Vijayan's and Kadakkarappally rights to receive full and equal benefit of all laws guaranteed by 42 U.S.C. § 1981, by, inter alia, threatening, assaulting, battering, falsely imprisoning, causing emotional

distress to, and terminating the employment of Plaintiffs Vijayan and Kadakkarappally as a direct response to and in retaliation for their legally protected opposition to Defendant Signal's discriminatory practices.

391. Defendant Signal knowingly, willfully, maliciously, intentionally, and without justification acted to deprive Plaintiffs Vijayan and Kadakkarappally of their rights.

392. As a result of Defendant Signal's unlawful acts, Plaintiffs Vijayan and Kadakkarappally have suffered injury.

393. Plaintiffs Vijayan and Kadakkarappally seek all appropriate relief, including declaratory and injunctive relief, attorneys' fees, costs of this action, and damages, including compensatory and punitive damages, in an amount to be determined at trial.

TENTH CLAIM FOR RELIEF
VIOLATIONS OF THE KLU KLUX KLAN ACT OF 1871
(42 U.S.C. § 1985) (Thirteenth Amendment and Constitutional Right to Travel)
Individual Plaintiffs Vijayan, Kadakkarappally, Singh, Kumar and Chellappan Against Defendant Signal International, LLC. and the Recruiter Defendants (Michael Pol, Global Resources, Inc., Sachin Dewan, and Dewan Consultants)

394. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

395. Individual Plaintiffs Vijayan, Kadakkarappally, Singh, Kumar and Chellappan assert this claim pursuant to 42 U.S.C. § 1985(3) for injunctive relief, declaratory relief, and damages by the Individual Plaintiffs against Defendant Signal and the Recruiter Defendants.

396. As set forth in the preceding paragraphs and the First and Second Claims for Relief, Defendant Signal, the Recruiter Defendants, and the Swetman Security firm conspired, agreed, planned, and coordinated for the purpose of depriving the Individual Plaintiffs equal protection of their rights under the Thirteenth Amendment to the United States Constitution and

its implementing and enforcing statutes (inter alia 18 U.S.C. §§ 1589, 1590) to be free from forced labor and trafficking in persons and to exercise their Constitutional right to travel.

397. As set forth above the preceding paragraphs and the First and Second Claims for Relief, Defendant Signal and the Recruiter Defendants, along with the Swetman Security firm, acted in furtherance of their conspiracy for the purpose of depriving the Individual Plaintiffs of equal protection of their rights under the Thirteenth Amendment to the United States Constitution and its implementing and enforcing statutes (inter alia 18 U.S.C. §§ 1589, 1590) to be free from trafficking in persons and to exercise their Constitutional right to travel.

398. Defendant Signal and the Recruiter Defendants were motivated by racial and/or anti-alien animus when they conspired to deprive the Individual Plaintiffs of their rights and/or acted in furtherance of a conspiracy to deprive the Individual Plaintiffs of their rights.

399. Defendant Signal and the Recruiter Defendants knowingly, willfully, maliciously, intentionally, and without justification planned and acted to deprive the Individual Plaintiffs of their rights.

400. As a result of Defendant Signal's unlawful acts, the Individual Plaintiffs have suffered injury.

401. The Individual Plaintiffs seek all appropriate relief, including declaratory and injunctive relief, attorneys' fees, costs of this action, and damages, including compensatory and punitive damages, in an amount to be determined at trial.

ELEVENTH CLAIM FOR RELIEF
FALSE IMPRISONMENT
Plaintiffs Vijayan, Kadakkarappally, Singh, Kumar, and Chellappan Against Defendant Signal International LLC.

402. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

403. Individual Plaintiffs Vijayan, Kadakkarappally, Singh, Kumar, and Chellappan bring this claim for damages resulting from their false imprisonment by Defendant Signal.

404. Defendant Signal acted to unlawfully and unreasonably detain the Individual Plaintiffs Vijayan, Kadakkarappally, Singh, Kumar, and Chellappan against their will and consent.

405. Defendant Signal acted with malice, gross negligence, and/or reckless disregard.

406. Individual Plaintiffs Vijayan, Kadakkarappally, Singh, Kumar, and Chellappan suffered injury as a result of Defendant Signal's actions.

407. Defendant Signal is liable to the Individual Plaintiffs for damages, including compensatory and punitive damages.

TWELFTH CLAIM FOR RELIEF
ASSAULT AND BATTERY
Plaintiffs Vijayan, Kadakkarappally, Kumar, Singh and Chellappan against Defendant Signal International LLC.

408. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

409. Individual Plaintiffs Vijayan, Kadakkarappally, Kumar, Singh and Chellappan assert this claim for damages resulting from their assault and battery by Defendant Signal.

410. Defendant Signal intentionally acted with intent to cause harmful or offensive contact with Individual Plaintiffs Vijayan, Kadakkarappally, Kumar, Singh, and Chellappan.

411. Defendant Signal intentionally placed Individual Plaintiffs Vijayan, Kadakkarappally, Kumar, Singh, and Chellappan in apprehension of imminent harmful or offensive contact.

412. Defendant Signal's actions resulted in harmful or offensive contact with Individual Plaintiffs Vijayan, Kadakkarappally, Kumar, Singh, and Chellappan.

413. Defendant Signal acted with malice, gross negligence, and/or reckless disregard.

414. Individual Plaintiffs Vijayan, Kadakkarappally, Kumar, and Chellappan suffered injury as a result of Defendant Signal's actions.

415. Defendant Signal is liable to the Individual Plaintiffs for damages, including compensatory and punitive damages.

THIRTEENTH CLAIM FOR RELIEF
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
Plaintiffs Vijayan, Kadakkarappally, Singh, Kumar, and Chellappan against Defendant Signal International L.L.C.

416. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

417. Individual Plaintiffs Vijayan, Kadakkarappally, Singh, Kumar, and Chellappan bring this claim for damages resulting from Defendant Signal's intentional infliction of emotional distress.

418. Defendant Signal's actions to assault, batter, and falsely imprison Individual Plaintiffs Vijayan, Kadakkarappally, Singh, Kumar, and Chellappan were extreme and outrageous.

419. Defendant Signal undertook this conduct with the intent to cause, or with disregard of, the reasonable forseeability of causing severe emotional distress.

420. Defendant Signal's conduct was intentional, willful, wanton, and/or grossly negligent.

421. Individual Plaintiffs Vijayan, Kadakkarappally, Singh, Kumar, and Chellappan suffered severe emotional distress and injury including anxiety, worry, anger, frustration, indignity, and embarrassment as a result of Defendant Signal's actions.

422. Defendant Signal is liable to the Individual Plaintiffs for damages, including compensatory and punitive damages.

FOURTEENTH CLAIM FOR RELIEF
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
Individual Plaintiffs Vijayan, Kadakkarappally, Singh, Kumar, and Chellappan Against Defendant Signal International, L.L.C.

423. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

424. Individual Plaintiffs Vijayan, Kadakkarappally, Singh, Kumar, and Chellappan bring this claim for damages resulting from Defendant Signal's negligent infliction of emotional distress.

425. Defendant Signal's actions to assault, batter, and falsely imprison Individual Plaintiffs Vijayan, Kadakkarappally, Singh, Kumar, and Chellappan were negligent.

426. The emotional distress suffered by Individual Plaintiffs Vijayan, Kadakkarappally, Singh, Kumar, and Chellappan was a reasonably foreseeable result of Defendant Signal's conduct.

427. Individual Plaintiffs Vijayan, Kadakkarappally, Singh, Kumar, and Chellappan suffered injury as a result of Defendant Signal's actions.

428. Defendant Signal is liable to Individual Plaintiffs Vijayan, Kadakkarappally, Singh, Kumar, and Chellappan for damages, including compensatory and punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

a. Certifying Plaintiffs' First through Seventh Claims for Relief in this action as class claims pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure;

b. Designating the Class Representative Plaintiffs as class representatives pursuant to Federal Rule of Civil Procedure 23, and designating counsel for Plaintiffs as counsel for the Class;

c. Preliminarily certifying the claims set forth in Plaintiffs' Eighth Claim for Relief as a collective action pursuant to 29 U.S.C. § 216(b).

d. Declaratory and injunctive relief;

e. Compensatory damages;

f. Punitive damages;

g. Treble damages as authorized by RICO, 18 U.S.C. § 1964(c)

h. Liquidated damages as authorized by the FLSA, 29 U.S.C. § 216;

i. An award of prevailing party costs, including attorney fees; and

j. Such other relief as the Court deems just and appropriate.

Respectfully submitted,

_____

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