

1 THE IMPACT OF HIGH-SKILLED IMMIGRATION ON U.S. WORKERS

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3 THURSDAY, FEBRUARY 25, 2016

4 United States Senate,  
5 Subcommittee on Immigration and the National Interest,  
6 Committee on the Judiciary,  
7 Washington, D.C.

8 The Subcommittee met, pursuant to notice, at 2:38 p.m.,  
9 in room SD-226, Dirksen Senate Office Building, Hon. Jeff  
10 Sessions, Chairman of the Subcommittee, presiding.

11 Present: Senators Sessions, Tillis, Grassley, Schumer,  
12 Durbin, Klobuchar, and Blumenthal.

13 OPENING STATEMENT OF HON. JEFF SESSIONS, A U.S.

14 SENATOR FROM THE STATE OF ALABAMA

15 Chairman Sessions. Good afternoon, everyone. Thank  
16 you all for being here. Preliminarily, I want to say I want  
17 everyone present to be able to watch the hearing without  
18 obstruction. If people stand up and block the view of those  
19 behind them or speak out of turn, it is not fair or  
20 considerate to others, and officers will remove those  
21 individuals from the room.

22 Before we begin with opening statements, I want to  
23 explain how we will proceed today. We have one panel of  
24 witnesses today. I will make an opening statement, followed  
25 by the opening statement from Senator Durbin. Each witness

1 will then have 5 minutes for an opening statement.

2 Following their statements, we will begin with the  
3 first round of questions in which each Senator will have 5  
4 minutes. After the first round, if any Senator wishes to  
5 continue to ask questions, we will have a second round of  
6 questions.

7 With that, I will turn to my opening statement. I want  
8 to thank all of you for being here and thank my colleague  
9 Senator Durbin for his leadership. We have had considerable  
10 agreement on this issue, and I cosponsor a bill with him and  
11 Senator Grassley that will deal positively with this  
12 subject.

13 The hearing will focus on the impact of high-skilled  
14 immigration on U.S. workers. Last month, Barron's reported  
15 that a financial analyst had done a study, and they expect  
16 that information technology companies will cut at least  
17 330,000 jobs this year--news that has become all too  
18 familiar in recent years. Yet CEOs and those aligned to  
19 promote legislation continue to perpetuate the myth that  
20 there is a shortage of talented workers to fill positions in  
21 technology and other high-skilled employment sectors.

22 Indeed, a letter sent to President Obama and  
23 congressional leaders in 2013 by a number of tech companies  
24 made the assertion that, "One of the biggest economic  
25 challenges facing our Nation is the need for more qualified,

1 highly skilled professionals, domestic and foreign, who can  
2 create jobs and immediately contribute to our economy."

3 But many of those same companies had just cut thousands  
4 of American jobs, and they have continued to cut thousands  
5 of jobs since. Nevertheless, the claims of a shortage of  
6 workers continues. As a lobbyist for Qualcomm claimed last  
7 year, "Although our industry and other high-tech industries  
8 have grown exponentially, our immigration system has failed  
9 to keep pace."

10 After a few weeks later, Qualcomm announced it would  
11 cut its workforce by 15 percent, roughly 5,000 jobs. And  
12 earlier this month, it was reported that Yahoo is cutting  
13 approximately 1,500 jobs. And they are doing what  
14 businesses do. We recognize that. The question is: What  
15 about our immigration policy?

16 And these corporations have spent hundreds of millions,  
17 if not billions, of dollars lobbying for bills that would  
18 bring even more foreign workers into the United States such  
19 as the Gang of Eight bill, and the push for high-skilled  
20 workers is being promoted by other legislation.

21 So today we will hear the facts. The data shows that  
22 there is no shortage of highly qualified working American  
23 professionals, nor is there a shortage of American STEM  
24 college graduates every year--science, technology,  
25 engineering, and mathematics. I used to think there was. I

1 took it as a given we had a shortage. We will have expert  
2 testimony today that I think is supported by a plethora of  
3 evidence that we do not have a shortage.

4 The sad reality is that not only is there not a  
5 shortage of exceptionally qualified U.S. workers, but across  
6 the country thousands of U.S. workers are being replaced by  
7 foreign labor. The picture next to me is from Northeast  
8 Utilities, a company based in Connecticut that announced it  
9 was going to lay off employees in its IT department and to  
10 hire outside companies that used H-1B employees from abroad  
11 to provide their IT services. These U.S. workers were  
12 forced to train their foreign replacements. They were not  
13 unqualified. They had to train their replacements. And  
14 this was all done apparently according to current law.

15 According to one of these workers who contacted my  
16 staff and requested to remain anonymous for fear of  
17 retaliation, "The only way we can make a statement was by  
18 placing small American flags outside our cubicles and  
19 aisles. Gradually, as we got replaced by the H-1Bs, the  
20 flags disappeared, just as we did."

21 So the fight for changes in the law that serve the  
22 interests of the American people has begun in the Senate. I  
23 am a cosponsor of S. 2266, the H-1B and L-1 Visa Reform Act  
24 of 2015, which has been introduced by Senators Grassley and  
25 Durbin, who have worked to reform these programs. In

1 December, I joined Senator Cruz in introducing S. 2394, the  
2 American Jobs First Act of 2015, a bill that would stop the  
3 abuses we are seeing in our immigration system and protect  
4 the interests of American workers. And I have also joined  
5 with my colleague Democratic Senator Bill Nelson from  
6 Florida in introducing S. 2365, the Protecting American Jobs  
7 Act, which would also, I think, fix the problem.

8 So, with that, I will turn to our Ranking Member,  
9 Senator Durbin, for his opening statement.

10 OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S.  
11 SENATOR FROM THE STATE OF ILLINOIS

12 Senator Durbin. Thank you, Mr. Chairman. We disagree  
13 on many issues, particularly in this area of immigration.  
14 But I believe that Senator Sessions and I are seeking and we  
15 may find common ground on this issue about H-1B visas. On  
16 those rare occasions when that occurs, we have been able to  
17 enact some good law, and I hope that this is another one of  
18 those occasions.

19 At the outset, let me point out the title of today's  
20 hearing is not accurate. The H-1B Visa Program is not a  
21 high-skilled immigration program. In fact, the H-1B Program  
22 is a non-immigrant visa. It allows an employer to hire a  
23 temporary guest worker. Guest workers are not immigrants.  
24 Their ability to stay in the country completely depends on  
25 their employer, and, therefore, they can be forced to accept

1 low wages and bad working conditions. That is bad for guest  
2 workers, and it is bad for American workers.

3 If a company cannot find a qualified American worker  
4 for a particular job and they wish to import foreign talent,  
5 the immigrant worker should have a green card. When  
6 employees have lawful permanent residence, an employer does  
7 not have the same leverage over them that they do when they  
8 have this temporary non-immigrant work on H-1B status.

9 I look around the hearing room today, and I have a  
10 strong feeling of deja-vu. The Committee held a similar  
11 hearing a year ago. In fact, three of today's witnesses  
12 were here. The reality is that Congress has been debating  
13 H-1B reform for a long time, but we have not done anything.  
14 For many years, we have known and identified the problems,  
15 but we have not fixed them.

16 When most people think of H-1B visas, they think of big  
17 tech companies--Microsoft and Google--hiring top-notch  
18 computer engineers and paying them top dollar. But the  
19 reality is extremely different.

20 In fact, the top recipients of H-1B visas are foreign  
21 outsourcing companies that use loopholes in the law to  
22 displace qualified American workers and offshore American  
23 jobs. Congress intended the H-1B Program to allow an  
24 employer to hire a skilled foreign worker in a specialized  
25 occupation when the employer could not find an American

1 worker with needed skills and abilities. We did not intend  
2 for foreign outsourcing firms to exploit the program, to  
3 bring foreign workers to our country, to be trained by  
4 talented American workers, as Senator Sessions has alluded,  
5 in order to ship ultimately American jobs overseas.

6 Senator Grassley and I first introduced legislation to  
7 reform the H-1B visa almost a decade ago, 2007. That same  
8 year, I worked to include many of our reforms in  
9 comprehensive immigration reform legislation. That bill was  
10 filibustered.

11 In 2013, I was part of the Gang of Eight, Democrats and  
12 Republicans who sat down and wrote the comprehensive  
13 immigration reform bill. One member of the Gang of Eight, a  
14 junior Senator from Florida, fought hard to keep H-1B  
15 reforms out of the bill. Nonetheless, we made several  
16 important changes in the program. I offered the provision  
17 in the bill to prevent large outsourcing companies from  
18 hiring additional foreign workers. It would have prohibited  
19 companies from hiring additional H-1B and L-visa holders if  
20 they employed more than 50 people and more than 50 percent  
21 of their employees were H-1B or L workers. Under current  
22 law, employers are permitted to pay H-1B visa holders  
23 substandard wages, which creates an incentive to hire  
24 foreign workers and discourages Americans from taking the  
25 job.

1           The vice president of Tata, an Indian corporation and  
2 one of the leading foreign outsourcing firms, acknowledged  
3 this, and here is what he said about using H-1Bs to undercut  
4 American workers: "Our wage per employee is 20 to 25  
5 percent less than U.S. wages for a similar employee. The  
6 issue is that of getting workers in the U.S. on wages far  
7 lower than the local wages."

8           I wrote a provision in the comprehensive immigration  
9 reform bill that would have discouraged companies from  
10 hiring foreign workers as a source of cheap labor by  
11 doubling the minimum wage for H-1B employees from the 17th  
12 to the 33rd percentile. And employers of large numbers of  
13 H-1B visa holders would have been required to pay at a  
14 minimum the average wage paid to workers in that occupation.  
15 That is why the chief executive of Tata, when he read my  
16 provision, said this bill was very tough on outsourcing  
17 companies. It was supposed to be. The Senate passed our  
18 bill on a bipartisan vote, 68-32. The House never took it  
19 up.

20           Since then, the problem of H-1B abuse has only grown  
21 worse. In the most recent year where data is available,  
22 foreign outsourcing companies receive the majority of new H-  
23 1B visas. Follow what I am saying here. This is not  
24 Microsoft or Google looking for that top-notch engineer. It  
25 is a major overseas company that swallows up the H-1B visas

1 and then hires the workers at a fee, sends them over here to  
2 work at lower than the average wage, and then brings them  
3 back to compete with American companies. That is never what  
4 this program was designed to do.

5 Last April, I joined in a bipartisan letter with  
6 Senator Sessions and eight other Senators to the Departments  
7 of Justice, Labor, and Homeland Security asking for an  
8 investigation of the replacement of American workers by H-1B  
9 workers. But, unfortunately, because of loopholes in the  
10 existing law, this broken law, it is very difficult for  
11 these agencies to punish.

12 Now, two of the leading Republican Presidential  
13 candidates, Mr. Trump and the junior Senator from Texas,  
14 have jumped on the bandwagon and say they want H-1B reform  
15 as well. I welcome them to the debate. Their track records  
16 raise some questions. Mr. Trump owns companies that have  
17 sought to import at least 1,000 temporary guest workers  
18 while turning away hundreds of American workers. And in  
19 2013, when the Committee considered the comprehensive  
20 immigration reform bill, the junior Senator from Texas  
21 offered an amendment to increase the annual cap of H-1B  
22 visas to an astronomical 325,000 per year.

23 Last November, Chairman Grassley and I reintroduced our  
24 H-1B and L-1 Visa Reform Act to end these abuses. Mr.  
25 Chairman, I thank you for cosponsoring that bill.

1           Let me make one final point before my voices goes  
2 completely. Ending H-1B abuse is not the only reform that  
3 is needed to fix our broken immigration system. We have  
4 millions of undocumented immigrants in our workforce.  
5 Because they do not have legal status, they are paid below-  
6 market wages, and they work in unsafe conditions. This is  
7 bad for immigrant workers, but it is bad for those workers,  
8 American workers, who compete with them. We need a path to  
9 citizenship and legal status so that these workers will be  
10 paid at the prevailing wage and so that American workers are  
11 then not undercut in terms of their own wages.

12           I think this is a fair outcome. The Senator who is  
13 chairing I am sure disagrees. But that is something that we  
14 will hold for another discussion.

15           So let us say about this one we must reform the H-1B  
16 Visa Program and fix other parts of our broken immigration  
17 system. I hope this hearing is a kickoff for that effort.

18           Chairman Sessions. Thank you, Senator Durbin. I think  
19 you have summed up many of the problems with this  
20 legislation very well, and I would add that I conclude that  
21 just by the numbers themselves of foreign workers brought  
22 into the country, that is impacting adversely American  
23 workers. When you look at the fact that since 2000 every  
24 job in the country, mathematically speaking, has been taken  
25 by a foreign worker. There has been no increase in

1 Americans working since 2000. So we will have to wrestle  
2 with those issues another day.

3 Senator Blumenthal, I know you had an opening comment,  
4 and I would be pleased to hear from you now.

5 Senator Durbin. If I could ask to put Senator Leahy's  
6 statement in the record, too.

7 Chairman Sessions. We will make it a part of the  
8 record.

9 [The prepared statement of Senator Leahy follows:]

10 / SUBCOMMITTEE INSERT

1 OPENING STATEMENT OF HON. RICHARD BLUMENTHAL, A U.S.

2 SENATOR FROM THE STATE OF CONNECTICUT

3 Senator Blumenthal. I really appreciate, Mr. Chairman,  
4 the courtesy of making a few brief opening comments, and I  
5 want to thank you for having this hearing and also  
6 mentioning the Northeast Utilities situation, which is a  
7 Connecticut situation and is extraordinarily troubling for  
8 all the reasons that you have mentioned and others. And I  
9 want to thank Senator Durbin for his remarks. I am a  
10 cosponsor of his bill along with Senator Grassley, and I am  
11 also a sponsor of the I-squared bill, because I believe  
12 there should be the availability of more H-1B visas, but I  
13 think there has to be stronger enforcement and an overhaul  
14 of the program to prevent the kinds of abuses that both of  
15 you have highlighted today. And I know as a former United  
16 States Attorney, you share my interest in strong and  
17 effective enforcement to prevent exactly these kinds of  
18 abuses.

19 The Eversource situation that you mentioned--  
20 Eversource, in effect, took over Northeast Utilities--came  
21 to my attention because of an article in a magazine called  
22 "Computer World," and the reason that it was through that  
23 means was that a gag order was placed on the employees who  
24 were replaced by H-1B visa workers. Only because of their  
25 discussion with that reporter--anonymously because they were

1 under that gag order as a condition of their receiving  
2 severance--did that kind of abuse come to my attention, and  
3 I found it shocking. I wrote to the company. I have asked  
4 for additional information. I ask, Mr. Chairman, that my  
5 letter and their response be included in the record.

6 Chairman Sessions. We will make it part of the record.

7 Senator Blumenthal. Thank you.

8 [The information follows:]

9 / SUBCOMMITTEE INSERT

1           Senator Blumenthal. I am going to enter into the  
2 record longer remarks. I know we want to get on to a full  
3 schedule of witnesses that we have before us. But let me  
4 just say that these programs are useful if they are used  
5 legally and legitimately. If they are, on the other hand,  
6 abused to import cheap labor and export good American jobs,  
7 I think we have a very strong, bipartisan consensus that  
8 they need to be enforced more stringently and effectively so  
9 that American workers are protected. And right now there  
10 are indications that this system is failing to fairly  
11 protect our workers in the way that it should.

12           So thank you, Mr. Chairman.

13           [The prepared statement of Senator Blumenthal follows:]

14           / SUBCOMMITTEE INSERT

1 Chairman Sessions. Thank you.

2 Will our panel please stand and I will administer the  
3 oath? If you would raise your right hands. Do you affirm  
4 that the testimony you are about to give before this  
5 Committee will be the truth, the whole truth, and nothing  
6 but the truth, so help you God?

7 Mr. Perrero. I do.

8 Mr. Miano. I do.

9 Mr. O'Neill. I do.

10 Mr. Hira. I do.

11 Mr. Sparber. I do.

12 Mr. Salzman. I do.

13 Chairman Sessions. Thank you very much.

14 I will briefly introduce each witness before each  
15 provide a statement to us. For reference their full  
16 biographies are available on the Committee website.

17 First we have Mr. Leo Perrero, former Disney IT  
18 engineer. Mr. Perrero is an IT engineer. He has had a  
19 long, successful career in the information technology field,  
20 having been employed by some of the largest Fortune 500  
21 companies. As indicated already, he was laid off by Disney  
22 and forced to train his foreign guest worker replacement.

23 Mr. Perrero?

1 STATEMENT OF LEO PERRERO, FORMER DISNEY IT  
2 ENGINEER, LONGWOOD, FLORIDA

3 Mr. Perrero. I made a change in the direction of my  
4 career because January 31, 2015, was my last day in the  
5 technology field. That day, 20 years of hard work, a  
6 bachelor's degree in information technology, and an IT job  
7 for Disney were all over when my team, along with hundreds  
8 of others, were displaced by a less skilled foreign work  
9 force imported into our country using the H-1B Visa Program.  
10 The former Disney employees with far superior skills and  
11 knowledge were the trainers, and the guest workers just  
12 entering the technology field were the trainees. This  
13 situation is far from the original intent of this program  
14 and is shocking to everybody that hears it.

15 I worked at Disney in Orlando in some capacity for well  
16 over 10 years and received the very highest employment  
17 performance review. Quotes included, "Leo continues to  
18 provide value to our team," "This year Leo was  
19 instrumental," "Leo saved the company over \$10,000," and,  
20 finally, "I look forward to another great year of having Leo  
21 on our team."

22 During the holiday season of 2014, I was sent a meeting  
23 invitation by a prominent Disney executive. With an  
24 excellent review in hand along with company announcements of  
25 record profits, my mind buzzed with thoughts of a promotion

1 or a bonus.

2 I walked into a small conference room with about two  
3 dozen highly respected fellow IT workers. The Disney  
4 executive made a harsh announcement to us all: All of you  
5 in this room will be losing your jobs in the next 90 days.  
6 Your jobs have been given over to a foreign workforce. In  
7 the meantime, you will be training your replacements until  
8 your jobs are 100 percent transferred over to them; and if  
9 you do not cooperate, you will not receive any severance  
10 pay.

11 The only glimmer of hope during that meeting was the  
12 announcement that new, more exciting jobs would be opening  
13 soon; however, we found out that only four people would be  
14 directly rehired by Disney of the hundreds that were lost.

15 I was completely silent during this meeting thinking  
16 how this was going to affect my co-workers. How was I going  
17 to break the news to my family and pay all of our expenses?  
18 I would soon be living on unemployment.

19 Later that same day, I clearly remember going to the  
20 local church pumpkin sale and having to tell the kids that  
21 we could not buy any that year because my job was being  
22 turned over to a foreign worker.

23 I started to think what kind of American I was  
24 becoming. Was I going to become part of ruining our country  
25 by taking severance pay in exchange for training my foreign

1 replacement? How many other American families would be  
2 affected by the same foreign worker that I trained?

3 The first part of the 90-day period was focused on  
4 capturing all that we did with our jobs. We all felt  
5 extremely humiliated when the foreign workers sat next to us  
6 and watched everything that we did.

7 The final period of the 90 days was the most  
8 disgraceful and demoralizing as we had to watch the foreign  
9 workers completely take over our jobs, and we came to grips  
10 that the upcoming jobs Disney promised did not exist. Then,  
11 finally, on January 31, 2015, we were ordered to turn in our  
12 company badges, laptops, and then ushered out the door.

13 How can it be that everybody that hears these stories  
14 about Disney and the like, from the barbers to the bankers,  
15 are completely shocked? Yet our lawmakers continue to evade  
16 the topic and take no action.

17 The reason that more affected IT workers do not come  
18 out into the public is twofold, and that is why lawmakers  
19 mostly hear from the tech giants and very rarely hear from  
20 the displaced American workers who will disclose themselves  
21 publicly.

22 The first reason is they are scared of finding their  
23 next IT job. After being displaced when that job pool is  
24 shrinking for Americans, if they speak out, they will  
25 certainly not improve their prospects of landing the next

1 job. But this could permanently bar them from the field  
2 when the large portion of large technology companies are  
3 exploiting these visa programs. One of my former peers who  
4 is now working for a consulting company decided to speak up  
5 publicly. He was told he had to stop immediately since most  
6 of his clientele were large Fortune 500 companies, and they  
7 used the H-1B Program extensively.

8 The second reason that more or them do not speak out is  
9 for legal intimidation reasons. From gag orders signed when  
10 American workers sign severance package agreements, the  
11 American IT worker feels they are legally bound to keep that  
12 situation quiet and, at most, speak anonymously.

13 I am appearing today because I am one of the few  
14 workers to speak out in public because I made the decision  
15 to walk away from technology. This abuse of the H-1B Visa  
16 Program is not about the lack of talent here in the U.S. If  
17 our own pool of IT professionals were so incompetent, then  
18 why would companies like Disney and many others have us  
19 spend months training our replacements? And, also, why  
20 would such a low ratio of U.S. STEM graduates land a STEM  
21 job?

22 The situation at Disney is not an anomaly. This same  
23 abuse is happening nationwide.

24 Some quotes from IT workers that I have worked with:

25 "I know that jobs like mine are scarce because they are

1 filled with H-1B employees." Jeff, current Disney employee.

2 "The big tech giants say they do not have enough  
3 skilled workers, which is false. This will become a self-  
4 fulfilling prophecy as we have more students opt out of  
5 technology as they continue to recruit from developing  
6 countries." Matt, former Disney employee.

7 "Unemployment hurts. I ran out of benefits, and I have  
8 to pay for full COBRA insurance, which is over \$3,000 per  
9 month, because my young daughter suffers from anxiety.  
10 Besides that, I have a mortgage, utilities, schooling, and  
11 job searching to pay for. As my young daughter outgrows her  
12 clothes, that is even more money." Former IBM worker.

13 That is all I have to say this afternoon. Thank you  
14 for listening.

15 [The prepared statement of Mr. Perrero follows:]

1 Chairman Sessions. Thank you, Mr. Perrero, for that  
2 moving testimony.

3 Mr. John Miano is an attorney for the Washington  
4 Alliance of Technology Workers. He is an attorney who  
5 specializes in representing Americans who have been injured  
6 by the immigration system. Prior to becoming an attorney,  
7 he was a computer programmer. He is the recent author of a  
8 book with Michelle Malkin about abuses in H-1B and other  
9 visa programs.

10 Mr. Miano?

1                   STATEMENT OF JOHN M. MIANO, ATTORNEY, WASHINGTON  
2                   ALLIANCE OF TECHNOLOGY WORKERS, SUMMIT, NEW JERSEY

3           Mr. Miano. Thank you, Chairman Sessions and members of  
4 the Committee. As Senator Durbin pointed out, we were here  
5 a year ago after Southern California Edison and Disney had  
6 replaced their Americans with H-1B workers. So now nearly a  
7 year has passed, and we can add to the growing list of  
8 companies that have H-1-booted Americans to include Toys R  
9 Us, New York Life, Citizens Bank, Caterpillar, Catalina  
10 Marketing, SunTrust, Fossil, and others where Americans are  
11 afraid to come forward. And, in fact, just yesterday we  
12 learned--and the Senator might be interested--that Abbott  
13 Labs in the Chicago area yesterday announced to its  
14 employees that it was canning 180 Americans and replacing  
15 them with H-1B workers.

16           So I worked in the computer industry for over 20 years,  
17 and I saw the same kinds of things that Mr. Perrero  
18 described. I will not repeat the same or similar story.  
19 Rather, I would like to focus on why the H-1B disaster is  
20 happening from a legal perspective.

21           There are several factors at work, and I will start  
22 with the two biggest.

23           First, in 1998, Congress made it explicitly legal to  
24 replace Americans with H-1B workers. Under the law enacted  
25 that year, it is legal to replace an American at will with

1 an H-1B worker unless three things happen: one, the H-1B  
2 worker is paid less than \$60,000 a year; two, the H-1B  
3 worker does not have a graduate degree; and, three, the  
4 employer has 15 percent of its total workforce on H-1B visas  
5 not counting those making \$60,000 a year or having graduate  
6 degrees. Unless all three of those conditions are met, it  
7 is perfectly legal to replace an American with an H-1B  
8 worker.

9 The law governing H-1B is so convoluted that you have  
10 to follow several levels of indirection in the code to  
11 figure this out. The person who wrote the 1998 bill went to  
12 a lot of effort to ensure that it was legal to replace  
13 Americans. So what happened at Disney is not an accident.  
14 It was clear statutory design.

15 The second issue is that in 2004 Congress changed the  
16 H-1B prevailing wage system to allow employers to pay these  
17 workers extremely low wages. Normally, prevailing wage is  
18 the median wage, the 50th percentile. However, under the H-  
19 1B prevailing wage system, the normal prevailing wage is the  
20 17th percentile. And so in most locations, an employer can  
21 legally pay an H-1B computer programmer about \$20,000 a year  
22 less than the true prevailing wage for the area. And in  
23 high-wage locations like Silicon Valley, it is even higher.  
24 In Silicon Valley it is about \$40,000 a year difference for  
25 using H-1B.

1           So when you combine the two, giving the employer the  
2           ability to pay really low wages to foreign workers with the  
3           ability to replace the American workers they already have,  
4           you get the predictable result of what we have seen at  
5           Southern California Edison, Disney, and the other places.

6           As I have hinted at here, the major structural problem  
7           with the H-1B Program is it is needlessly complicated. No  
8           one should need a lawyer to make a guest worker visa  
9           petition, but it is not an exaggeration to say that it  
10          literally takes a lawyer to determine what the fee is for an  
11          H-1B visa in any given circumstance. And this complexity  
12          seriously hinders enforcement. Rather than giving the  
13          Department of Labor the authority to enforce the H-1B  
14          Program, the statutes spell out when the Department of Labor  
15          can enforce the law and when the Department of Labor cannot  
16          enforce the law. And the Department of Labor Inspector  
17          General has reported to Congress every 6 month for the past  
18          20 years that this system leaves the H-1B Program open to  
19          abuse.

20          On Tuesday, talking about this hearing, I spoke with a  
21          woman who was replaced by H-1B in 1994, and she expressed  
22          the frustration that it seems that all we have accomplished  
23          by hearings over the years is to publicize the fact to  
24          employers that they can replace their Americans with H-1B  
25          workers and get away with it.

1           And, finally, I would point out that I was on the train  
2           coming down here today, and I spoke with a--I was having an  
3           email exchange with a person who is very well known in the  
4           industry, and he urged me to point out to you that it seems  
5           that the growing consensus among tech workers at this point  
6           is that the only way that this is going to get fixed is by  
7           an Executive order by President Trump.

8           And I would conclude here that it should not be legal  
9           to replace Americans with foreign workers ever, and that the  
10          change is long overdue.

11          Thank you.

12          [The prepared statement of Mr. Miano follows:]

1 Chairman Sessions. Thank you.

2 Next we have Mr. Mark O'Neill, chief technology officer  
3 for JackThreads. Prior to his time at JackThreads, Mr.  
4 O'Neill spent 8 years as a CTO for Thrillist Media and got  
5 his start in the tech industry doing custom search engine  
6 work back in the late 1990s.

7 Mr. O'Neill?

1                   STATEMENT OF MARK O'NEILL, CHIEF TECHNOLOGY  
2                   OFFICER, JACKTHREADS, NEW YORK, NEW YORK

3           Mr. O'Neill. Good afternoon. Senator Sessions,  
4 members of the Committee, thank you for the opportunity to  
5 address you today.

6           My name is Mark O'Neill. I am currently employed as  
7 the chief technology officer for JackThreads, an online  
8 ecommerce retailer selling clothing to men. I have worked  
9 at startups in the tech sector since 1999, as a developer  
10 and in management roles. In that time I have been able to  
11 observe opportunities and challenges of our immigration  
12 system firsthand.

13           One of the challenges of the tech sector today is the  
14 extreme difficulty of attracting qualified candidates to  
15 fill open roles. Put simply, there seem not to be enough  
16 capable developers to keep up with the pace of innovation.  
17 Competition is so fierce that my developer starting salaries  
18 have risen by over 50 percent in the last 8 year, and senior  
19 positions command compensation that meets or even exceeds  
20 that of United States Senators.

21           Companies must compete globally for the best talent,  
22 finding it wherever they can. CTOs like me must spend a  
23 huge amount of their time recruiting employees, and a large  
24 industry of recruiters has sprung up to--for a hefty price--  
25 find and poach workers. Coding schools like General

1 Assembly and Flatiron School, to name just two in New York  
2 City alone, crank out new developers every 6 weeks and still  
3 jobs go unfilled.

4 In my role, I try to shake every tree to find skilled  
5 employees. I have traveled to college career fairs and  
6 meetups, used in- and out-of-house recruiters, hired remote  
7 workers, relocated workers from across the country, and also  
8 hired through the H-1B Visa Program.

9 In my personal experience, the use of foreign workers  
10 has directly contributed to the health of my company and to  
11 our ability to offer additional jobs to Americans. One  
12 example: As with all online businesses today, JackThreads'  
13 consumers are increasingly not at their desks, but  
14 interacting on phones and tablets. Creating a quality  
15 experience that allows a user to easily shop or read on a 4-  
16 inch screen is incredibly difficult and requires deep  
17 technical expertise and constant refinement.

18 Over 2 years ago, though, we could not find developers  
19 to keep our iPhone app up to date. Finally, a posting  
20 through a recruiting service connected us with a developer  
21 in Spain, Eduardo. After he succeeded in our interviews, we  
22 began the visa process, and months later he started work  
23 with us in New York. We continued recruiting through an  
24 expensive third-party recruiter who showed us a number of  
25 candidates in the United States. The best qualified was a

1 Chinese citizen, Meng, whom we also hired.

2 JackThreads is proud that today 53 percent of our  
3 revenue comes from mobile devices. This is exceptional in  
4 our industry, as many companies still see lots of mobile  
5 traffic but are unable to get those mobile users to  
6 purchase. Eduardo and Meng's work has in this way directly  
7 contributed to the growth of our revenue, which has allowed  
8 us to grow faster and hire more.

9 Because of their contributions, we employ more American  
10 workers than we otherwise would have. Yet the system treats  
11 these workers unfairly. They live under the constant threat  
12 that their lives could be uprooted. The system is full of  
13 uncertainty and requires a confusing renewal process.  
14 Because their visa is tied to their employer, if they lose  
15 their jobs, even through no fault of their own, they have 30  
16 days to find a new one or leave the country. This makes it  
17 harder for them to leave bad jobs and gives them less  
18 leverage in salary negotiations, not to mention adding  
19 tremendous stress to their lives. A far fairer system would  
20 allow a worker to stay until the end of his visa, even if  
21 his employment is terminated.

22 That said, despite the H-1B's disadvantages, foreign  
23 workers demand competitive wages. I have heard fears that  
24 immigrant workers drive down wages by accepting the same  
25 jobs at a lower wage. This has not been my experience.

1 Information workers can get competitive pay working remotely  
2 from anywhere on the planet. If I want to attract a  
3 developer from abroad, I must pay him fairly for his work,  
4 or he will go to the competition. Indeed, I have poached H-  
5 1B workers from other employers and have seen sponsored  
6 employees hired away from my company for employment  
7 elsewhere. I have one team, and I pay them fairly. The  
8 suggestion that I would have my employees sit together yet  
9 pay someone differently because of where he was born  
10 bespeaks a misunderstanding of how the modern information  
11 economy functions. It is just not how we operate. Creating  
12 second-tier pay for certain workers would be  
13 counterproductive. Neither U.S.- nor foreign-born workers  
14 would stand for it.

15 Now, let me address how the system appears to small  
16 business employers. F1, J-1, H1-B, OPT, visa lotteries--I  
17 knew about none of this alphabet soup when I started. My  
18 company has been fortunate in that we have had enough  
19 success to grow to the point where we can afford the lawyers  
20 to help us navigate the H-1B process. It is expensive and  
21 it takes too long, but it is a lifeline for American  
22 companies that allows employers to augment the pool of labor  
23 available in the U.S., filling jobs that would otherwise  
24 linger unfilled. Still, every dollar paid to the visa  
25 process is a dollar I cannot spend on more workers to build

1 the software that powers our growth.

2 And early-stage startups cannot afford lawyers and  
3 cannot wait the months for an employee's visa to be worked  
4 out. So the expense, complexities, and delays effectively  
5 lock small businesses out of this visa program. This  
6 amounts to a regressive tax on small enterprises and hurts  
7 small businesses that are creating jobs through innovation.  
8 It also puts American companies at a disadvantage with their  
9 global competitors.

10 I can say with confidence that for each of the foreign-  
11 born immigrant developers that I have had the good fortune  
12 to work alongside during my career, the United States  
13 economy is stronger and better off with these workers than  
14 without them. Far better for the United States to employ  
15 these talented, ambitious people than to compete against  
16 them. Let them stay, build lives here, build companies  
17 here, create jobs here.

18 Thank you.

19 [The prepared statement of Mr. O'Neill follows:]

1 Chairman Sessions. Thank you. Thank you for your  
2 thoughts, Mr. O'Neill.

3 Dr. Ron Hira is associate professor of public policy at  
4 Howard University, formerly a research associate with  
5 Economic Policy Institute and an associate professor at  
6 Rochester Institute of Technology. He has written  
7 extensively on offshoring, high-skilled immigration,  
8 innovation, and the decline of the middle class.

9 Dr. Hira?

1           STATEMENT OF RONIL HIRA, PH.D., ASSOCIATE  
2           PROFESSOR OF PUBLIC POLICY, HOWARD UNIVERSITY,  
3           WASHINGTON, D.C.

4           Mr. Hira. Thank you. Let me apologize at the  
5 beginning by saying that my throat is a little scratchy  
6 today.

7           I want to thank Chairman Sessions, Ranking Member  
8 Schumer, and the other distinguished members of this  
9 Committee for inviting me to testify today.

10          I also want to acknowledge the leadership of Senators  
11 Sessions, Durbin, Grassley, Blumenthal, Cruz, and Nelson for  
12 shedding light on the abuse of the H-1B, L-1, and OPT visa  
13 programs and for offering sensible solutions to improve the  
14 programs.

15          Last March, the full Committee held a hearing that  
16 spurred much-needed attention to these issues. That hearing  
17 was held in the wake of news reports of the Southern  
18 California Edison scandal. More than 300 American workers  
19 were not only replaced by H-1B workers, the American workers  
20 had to train their replacements. Why did Edison replace its  
21 American workers with H-1Bs? The reason was simple: The H-  
22 1B workers were cheaper. The cost savings were \$40,000 to  
23 \$50,000 or 40 to 50 percent per worker.

24          The full story could not be told because the displaced  
25 workers were under a gag order from Edison and were not

1 allowed to speak publicly to this Committee.

2 Over the past year, in addition to the Southern  
3 California Edison case, a number of other cases--including  
4 Disney, Northeast Utilities, The Fossil Group, Catalina  
5 Marketing, New York Life, Hertz, Toys R Us, and I could keep  
6 going on--were highlighted by the press. But these are only  
7 the proverbial tip of the iceberg. There are many more  
8 cases out there.

9 Following the hearing, ten Senators, many of whom are  
10 here, requested that the Departments of Labor and Homeland  
11 Security investigate whether Edison's use of cheaper H-1Bs  
12 is a violation of the law and regulations. The Labor  
13 Department refused to investigate without a complaint from  
14 an aggrieved worker. In the face of the intimidation from  
15 gag orders and the threat of being blackballed from the  
16 industry, some brave workers stepped forward to file  
17 complaints, and the Department began investigating.

18 The Labor Department recently concluded that  
19 investigation, finding that no H-1B violations occurred. I  
20 think there are some important conclusions to draw from  
21 this. The Labor Department has affirmed the following:

22 First, American workers can legally be replaced by an  
23 H-1B worker.

24 Second, H-1B workers can legally be paid much less than  
25 American workers. In the Edison case, it was 40 to 50

1 percent less.

2 I also want to say further we also know: one, it is  
3 extraordinarily easy to pay an H-1B worker much less than an  
4 American worker; two, it is extraordinarily profitable to  
5 replace American workers with H-1Bs.

6 Third, hiring H-1B workers because they are cheaper  
7 than Americans is a routine and commonplace practice.  
8 Southern California Edison and Northeast Utilities are well-  
9 known regulated utilities, and Disney and Toys R Us are  
10 household names. And the contractors that hired the H-1Bs  
11 are Tata, Infosys, HCL, and Cognizant. While they may not  
12 be known to the average American, they are leading H-1B  
13 employers. Over the past 10 years, those four firms alone  
14 brought in nearly 100,000 H-1B workers. These firms  
15 specialize in offshore outsourcing. When they get work from  
16 customers like Disney, the goal is to ship as much of the  
17 work offshore to India and other locations as possible.  
18 Those offshore jobs are lost forever.

19 News stories play an important role in the public's  
20 understanding, but they are no substitute for statutory and  
21 regulatory changes. First, most H-1B abuses are never  
22 reported. Why? Because companies gag American workers, and  
23 if workers do speak, reporters do not want to tell the same  
24 story over and over again.

25 Second, news stories and public shaming do nothing to

1 alter the business models and the lure of cheap H-1B  
2 workers. The Disney story received much attention, but the  
3 workers still lost their jobs. While it was displacing its  
4 American workers, Disney earned record profits; its stock  
5 price reached record levels; its CEO, Bob Iger, received  
6 compensation of more than \$40 million.

7 Further, Disney is a firm that meticulously guards its  
8 public image. If a company like Disney will exploit the H-  
9 1B Program while under the spotlight, which company is not  
10 exploiting that and which company will not exploit those  
11 loopholes?

12 While I have focused on the H-1B, cheap labor is a  
13 feature and attraction of two other large guest worker  
14 programs: the L-1 and OPT. Both are being similarly  
15 exploited and need substantial changes. The L-1 has no wage  
16 rules and is routinely used by the same offshore outsourcing  
17 firms--the Tatas, the Infosyses, the Wipros--that exploit  
18 the H-1B Program.

19 The Obama administration recently proposed rules on the  
20 OPT that are downright scary: a 3-year unregulated work  
21 authorization with no wage rules whatsoever. OPT workers  
22 can be legally paid zero wages, and that is not an anomaly.  
23 That actually happens.

24 Last summer, DHS Secretary Jeh Johnson was asked at a  
25 House hearing about Disney. He said that Congress needs to

1 change the law because his agency "does not have enough  
2 tools legally to deal with that kind of situation"--the  
3 Disney situation.

4 With April 1st and the next H-1B lottery season just  
5 weeks away, it is urgent that Congress and the  
6 administration act together immediately to fix the program.  
7 We know exactly what will happen if your fail to act: Tens  
8 of thousands more American workers will be training their  
9 cheaper guest worker replacements.

10 Thank you.

11 [The prepared statement of Mr. Hira follows:]

1 Chairman Sessions. Thank you very much, Professor  
2 Hira.

3 Next we will have Dr. Chad Sparber, an associate  
4 professor and chair of the economics department at Colgate  
5 University. He directs a program on economic freedom for  
6 Colgate's Center for Freedom and Western Civilization, an  
7 organization promoting intellectual diversity and discourse  
8 on campus. Professor Sparber joined Colgate in 2006 and has  
9 been an external fellow at the Center for Research and  
10 Analysis of Migration at University College, London, since  
11 2009.

12 Dr. Sparber?

1           STATEMENT OF CHAD SPARBER, PH.D., ASSOCIATE  
2           PROFESSOR OF ECONOMICS, COLGATE UNIVERSITY,  
3           HAMILTON, NEW YORK

4           Mr. Sparber. I want to thank Chairman Sessions,  
5 Ranking Member Schumer, and the members of the Subcommittee  
6 for inviting me to testify here today. My name is Chad  
7 Sparber. I am an associate professor and chair of the  
8 economics department at Colgate University. The economics  
9 of immigration has been my sole field of inquiry since  
10 arriving at to Colgate 10 years ago.

11           A tremendous amount of economics literature has found  
12 that, on average, highly educated immigrants increase  
13 American wages, employment, and productivity. There are at  
14 least two reasons for this effect:

15           First, among highly educated workers, immigrants have a  
16 comparative advantage in STEM work. Even within science  
17 fields, immigrants are more likely to earn a degree in  
18 engineering, computer science, and mathematics; whereas,  
19 native-born Americans are more likely to major in life  
20 sciences and psychology. What this means is that, A,  
21 Immigrants and native-born Americans do not directly compete  
22 with each other for jobs in the same way that a lot of  
23 people might imagine; and, B, when foreign-born STEM workers  
24 enter the U.S. labor force, it creates an opportunity for  
25 native-born Americans to respond by doing other types of

1 work including managerial occupations that often--though not  
2 always--pay higher wages.

3       Second, immigrants specialize in science and  
4 engineering work. Scientists and engineers are responsible  
5 for most of the technological progress in recent decades.  
6 Technology creates gains that spill over to many sectors of  
7 the economy and is the key to generating long-term,  
8 sustained economic growth. If you accept that chain of  
9 logic--and most economists do--then you can see that  
10 immigrants are vital to American economic growth.  
11 Quantitatively, immigrants were responsible for two-thirds  
12 of the growth of the STEM workforce between 1990 and 2010  
13 and about one-third of the productivity growth of the  
14 American economy over the same period.

15       What this comes down to in terms of wage effects that  
16 my co-authors and I have estimated is that the rise in  
17 foreign STEM employment between 1990 and 2010 increased the  
18 inflation-adjusted wage growth rate of college-educated  
19 natives by about 3.7 percentage points above what it  
20 otherwise would have been. For context, that is equivalent  
21 to about one-third of the college-educated wage growth  
22 during that period.

23       I think that these figures alone attest to the problems  
24 associated with our current limits to high-skilled  
25 immigration, but there are other reasons to be concerned as

1 well:

2 One, we know that immigrants who come to the U.S. are  
3 very entrepreneurial and innovative. A lot of that has to  
4 do with selection bias, but even after controlling for  
5 educational attainment, immigrants are more likely than  
6 natives to start a company with more than 10 workers.  
7 Twenty-five percent of high-tech companies founded between  
8 1995 and 2005 had at least one immigrant founder. And over  
9 40 percent of companies in the Fortune 500 in 2010 were  
10 founded by an immigrant or the child of an immigrant.

11 Number two, we know that H-1B workers increase  
12 patenting activity without crowding out natives. One way to  
13 think about it is this: A firm might have a project  
14 planned, and if they do not get the foreign workers that  
15 they want, they might choose to scrap the project  
16 altogether, resulting in native employment and patenting  
17 activity losses.

18 Three, H-1B reductions may have reduced immigrant  
19 quality as well. This has happened at the college level--  
20 the highest-ability foreign students have been deterred from  
21 seeking U.S. education because U.S. labor markets are closed  
22 to them after graduation. This is a problem because  
23 whatever immigration policy we put in place should be  
24 designed to bring the best and brightest into the country.

25 Four, if you believe that foreign workers are competing

1 with Americans within our country's borders, they are  
2 certainly competing from abroad. Many countries have  
3 immigration policies favoring skilled workers. Simply put,  
4 if those workers do not produce goods and services here,  
5 they will do so in competing countries.

6 Now, importantly, while our work finds economic gains  
7 for the average worker and the economy as a whole, I do not  
8 mean to imply that immigration is a cost-free proposition.  
9 There is an important parallel here in the case of  
10 technology. We know that in recent years technology has  
11 contributed to growing wage inequality. It boosts the wages  
12 of highly educated workers, but has hurt or even replaced  
13 medium- to low-skilled workers.

14 Technological development has distributional  
15 consequences. Yet very few people would advocate an end to  
16 technological progress. Instead, we try to think about ways  
17 to redistribute money or to invoke job retraining programs  
18 to help those displaced workers. We can think of  
19 immigration in much the same way: If some groups are  
20 negatively affected, we should develop ways to assist them.  
21 Reduced immigration is a counterproductive non-solution  
22 because it harms the country on average.

23 The bottom line is that the H-1B story is inseparable  
24 from a technology story, and there are only three broad  
25 policy alternatives: allow H-1B workers into the country to

1 produce technology here, keep skilled workers out of the  
2 country and import technology from abroad, or close our  
3 borders to both skilled workers and technology.

4 Thank you again for the invitation to testify here  
5 today, and I look forward to answering your questions.

6 [The prepared statement of Mr. Sparber follows:]

1 Chairman Sessions. Thank you.

2 Next we have Dr. Hal Salzman, a professor at the Edward  
3 J. Bloustein School of Planning and Public Policy and senior  
4 faculty fellow at the John J. Heldrich Center for Workforce  
5 Development at Rutgers University. His research focuses on  
6 science and engineering, labor markets, workplace  
7 restructuring, skill requirements, and globalization of  
8 innovation, engineering and technology design. Recently, he  
9 has been writing on the science and technology policy  
10 implications of his research.

11 Dr. Salzman?

1           STATEMENT OF HAL SALZMAN, PH.D., PROFESSOR, EDWARD  
2           J. BLOUSTEIN SCHOOL OF PLANNING AND PUBLIC POLICY,  
3           AND SENIOR FACULTY FELLOW, JOHN J. HELDRICH CENTER  
4           FOR WORKFORCE DEVELOPMENT, RUTGERS UNIVERSITY, NEW  
5           BRUNSWICK, NEW JERSEY

6           Mr. Salzman. Thank you. Mr. Chairman, members of the  
7           Committee, thank you for inviting me to speak today on high-  
8           skill labor demand and guest worker policy.

9           Since the hearing last March, we have seen the chasm  
10          between evidence and policy grow wider and deeper. STEM  
11          careers are being eroded by a shortsighted IT industry  
12          exploiting guest worker programs.

13          Instead of developing a globally competitive and  
14          internationally integrated workforce, all evidence and  
15          events suggest the substitution of guest workers for U.S.  
16          workers is accelerating.

17          Current programs allow firms to subvert the free market  
18          in setting wage rates, and policies deny U.S. workers--  
19          whether native or immigrant--the careers and compensation  
20          they should expect given their education and skills.

21          Instead of using the market, firms turn to the huge  
22          congressionally created lower priced labor pool of guest  
23          workers to staff the vast majority of IT openings.

24          The evidence in brief: Our colleges graduate twice the  
25          number of STEM graduates as find a job each year. Of the

1 entire workforce, only a third of those with STEM degrees  
2 are employed in STEM jobs. The glut of scientists at the  
3 doctorate level is so great, the National Institutes of  
4 Health has an \$11 million alternative jobs program for the  
5 30 to 50 percent of recent Ph.D.s who cannot find career  
6 science employment.

7 Engineers are graduating in sufficient numbers for  
8 nearly all hiring needs, and the exception that proves the  
9 rule is petroleum engineering, where graduates were in short  
10 supply until industry raised wages and then the number of  
11 graduates quickly tripled, far more than needed.

12 And that leaves the "T" of STEM, tech workers, only a  
13 third of whom have STEM degrees, another third without any  
14 4-year degree, and most are in jobs that do not require  
15 bachelor's level technology degrees.

16 So of all the STEM fields, it is only the tech firms  
17 that seem unable to find U.S. workers and seem unable or  
18 perhaps just unwilling to use the free market to recruit  
19 them. Despite claims of unmet demand, this past year IT  
20 firms offered new graduates the same salaries as in previous  
21 years, keeping average wage levels at their 1990s level.

22 IT firms have a level of exclusion in hiring seldom  
23 seen in the past half-century. Some firms are over 90  
24 percent one demographic group, discriminating against nearly  
25 all U.S. workers, excluding alike those who are American by

1 birth or by choice.

2 Making room for these guest workers, firms announce  
3 layoffs of more workers than the total number of H-1Bs  
4 provided to the industry with a layoff rate four times the  
5 size of its share of overall employment.

6 Any new legislation that echoes the recent I-Squared or  
7 Skills Act will expand the supply of guest workers to levels  
8 greater than the total number of new technology jobs, that  
9 is, providing enough guest workers to fill every new IT job  
10 with a reserve large enough for firms to legally substitute  
11 young guest workers for their incumbent workforce.

12 It would increase work visas for those with a degree in  
13 anything from psycho-linguistics to air conditioning to  
14 petroleum technician, with little consideration of whether  
15 there is a demand for or a glut of U.S. graduates. No doubt  
16 we will be told all that these firms want is the best talent  
17 available. They just cannot find it here. But that is not  
18 what the firms say in SEC statements in which firms are  
19 required by law to be truthful.

20 Accenture states that restrictions on guest worker  
21 supply would result in "new or higher minimum salary  
22 requirements and increase costs."

23 Another firm says they would have to "replace existing  
24 offshore resources with local resources, namely U.S.  
25 workers, at higher wages."

1           That is, without the congressional discount for guest  
2 workers, the highly profitable IT industry would have to  
3 hire more U.S. workers and pay them more than guest workers.

4           The most rigorous study of H-1B workers based on actual  
5 wage records finds H-1Bs substantially crowd out employment  
6 of other workers and lead to lower average employee wages  
7 while raising firm profits.

8           So what has happened in the past year? There has been  
9 a rising chorus of industry claims of unmet demand, echoed  
10 by policymakers on both sides of the aisle from here to the  
11 White House. At the same time, STEM workers are available  
12 in ample numbers, incumbent workers are laid off by the tens  
13 of thousands, and even our brightest young doctoral-level  
14 scientists struggle to find employment in the sciences, much  
15 less careers and wages that will allow them to pay off  
16 staggering educational loans.

17           Yet the IT industry says that unlike all other STEM  
18 fields, it alone cannot find workers, that our colleges do  
19 not produce enough graduates, that searching the globe for  
20 the best talent leads to finding only one specific  
21 demographic group of very young workers. These are claims  
22 from an industry that keeps average wages at levels from the  
23 last century, fires more people in a year than H-1B guest  
24 workers it hires, and is allowed to discriminate at hiring  
25 at levels unprecedented in half a century--all by one of the

1 most profitable industries on the planet.

2           Meanwhile, the tech industry spends \$15 million a month  
3 in Washington, and perhaps this is the level of lobbying  
4 necessary to drive the wedge separating policy from  
5 evidence. But, ever optimistic, I hope evidence prevails.

6           Thank you.

7           [The prepared statement of Mr. Salzman follows:]

1 Chairman Sessions. Thank you, Dr. Salzman. I know you  
2 have spent a career looking at these facts, and I believe  
3 what you say is essentially accurate.

4 I also have received a number of written statements  
5 from other workers like Mr. Perrero who are afraid to come  
6 forward. They worry about reprisal. They worry about  
7 having to sign an agreement or they could not get a  
8 severance package. And I will offer those statements for  
9 the record, without objection.

10 [The statements follow:]

11 / SUBCOMMITTEE INSERT

1 Chairman Sessions. I understand that Senator Cruz and  
2 other members of the Committee will be offering statements  
3 for the record also.

4 [The statements follow:]

5 / SUBCOMMITTEE INSERT

1 Chairman Sessions. I will just say, Mr. O'Neill, I see  
2 no need to end this program, but surely you would understand  
3 that people who come for a limited period of time just to  
4 take a job who will work for less are quite a different  
5 situation than an immigrant who wanted to come and start a  
6 company. And we need to work on a legal system that would  
7 favor the most highly qualified. One way to do that is by  
8 salary. If you are paying the salary of a United States  
9 Senator, I think you can get a lot of workers unless you are  
10 in a very expensive neighborhood. I got to tell you, we are  
11 blessed by the salaries that we are paid. But I suspect you  
12 do not get as many vacation days as we do, Government  
13 workers.

14 Mr. Perrero, thank you for your very powerful  
15 testimony. It is truly saddening and heartbreaking what you  
16 and others have suffered. You noted you were one of the  
17 most respected employees in your division. Would you say  
18 that the majority of the workers whose jobs were outsourced  
19 were similar to yours in that they were quality employees  
20 and fully able to do the job that was being required of  
21 them? And does it require genius-level people to fill those  
22 jobs that only can be obtained somewhere around the globe?

23 Mr. Perrero. Well, we were very experienced. We were  
24 at the top of our field. These were top-notch people. They  
25 had the top honors that the company offered to us and

1 recognized us as such. And that is why it was such a shock  
2 to us to be pulled into this room and be told that we had 90  
3 days to train our replacements.

4 Chairman Sessions. Well, thank you.

5 Professor Salzman, you note that we have a--you look  
6 with a jaundiced eye toward the situation of more  
7 technically skilled workers than we have jobs. I have been  
8 shocked at the report that was published in Barrons that we  
9 would have as many as 330,000 IT workers laid off this year.  
10 Is that consistent with your studies? And are we seeing  
11 this rise in demand for IT workers? Or has it flattened out  
12 or even declining?

13 Mr. Salzman. I think you are right. The layoff  
14 announcements I have heard were 80,000 most recently from  
15 Challenger and Gray of announced layoffs, and we know that  
16 they often appear in the hundreds and tens of thousands. So  
17 we see these layoffs while they are talking for the need for  
18 more guest workers, and more work is being shipped offshore.  
19 So I do not think there is any indication that the demand is  
20 increasing anywhere near what you would expect from what  
21 industry is saying. But the hiring does not reflect that.

22 Chairman Sessions. Professor Hira, on the college  
23 campuses, if wages are not going up--they have not increased  
24 since the late 1990s--and if jobs may actually be declining,  
25 could this put us in a situation in which talented young

1 people would not go into these fields and creating another  
2 cycle of decline in American-produced technological  
3 graduates?

4 Mr. Hira. Yes, so we have seen these sort of typical  
5 boom-and-bust cycles, and Professor Salzman talked about  
6 petroleum engineering where there are not a lot of H-1B  
7 workers, but where we had a boom in oil prices, there was a  
8 large increase in salaries for petroleum engineers, and the  
9 market reacted, the education market, students reacted by  
10 going into petroleum engineering. Now, with the oil prices  
11 plummeted, there are not those kinds of opportunities, and  
12 what you will see is students and engineers will move out of  
13 those fields. This is the normal functioning of the market.

14 When you intervene with guest worker programs, you are  
15 intervening in that normal labor market to education market  
16 signal, and that signal, that pricing signal, is very, very  
17 important. People will, students will vote with their feet.  
18 They are going to move into fields that they believe are  
19 going to be good careers. And so I think that we should be  
20 very concerned about that.

21 Secondly, there is another set of workers that is  
22 really important that is often overlooked, and that is the  
23 incumbent workers. When a company can go to a cheaper H-1B  
24 worker, they are going to be less likely to invest in  
25 workforce development of their current workers. They are

1 not going to retrain their current workers.

2 Chairman Sessions. Do they get an advantage--if Mr.  
3 O'Neill brings an H-1B worker in, he does not have to worry  
4 about carrying that person through a career, which includes  
5 retirement and health care and certain benefits and salary  
6 promotions. Is that a factor in what is happening ?

7 Mr. Hira. Absolutely. There are definitely  
8 calculations going on in terms of age, and age plays a role  
9 in terms of benefit costs to the company, as well as  
10 mobility. A young person in their 20s can be moved from  
11 client to client all around the country much more easily  
12 than somebody in their 40s. And so what you see is that  
13 even these wages that we are talking about in terms of the  
14 wage differentials, they actually understate how much  
15 cheaper the H-1B workers are to the employer.

16 Also, those H-1B workers are captive in a lot of ways  
17 to that employer, so they are indentured in a lot of ways.  
18 They do not have the same kind of job mobility and  
19 bargaining power than an American worker would have.

20 Chairman Sessions. Senator Durbin.

21 Senator Durbin. Thanks, Senator Sessions.

22 We start most conversations about immigration by  
23 talking about our broken immigration system. Exhibit A, you  
24 have just heard it right here. When they do this auction on  
25 H-1B visas, like to occur as you said, Dr. Hira, in a few

1 weeks, if it goes according to past history, two companies  
2 will get more than half of the H-1B visas for the United  
3 States. Well, which American companies are they? No, they  
4 are two Indian companies: Infosys and Tata, outsourcing  
5 companies. They flood the market when it comes to applying  
6 for H-1B visas, and they end up with over half of them.

7 Well, what do they do with all those visas? They  
8 outsource those visas to companies in the United States.  
9 They send in, as the vice president of Tata acknowledged,  
10 workers with certain skills accepting lower wages than what  
11 Americans are going to be paid, and that creates the  
12 economic advantage Dr. Salzman talked about so that a  
13 company could take in the H-1B visas and cut their costs at  
14 the expense of American workers.

15 Mr. O'Neill, first let me say, "Nice suit."

16 The second thing I would like to ask you is this: How  
17 many employees do you have in your business?

18 Mr. O'Neill. We have about 100 employees right now.

19 Senator Durbin. Okay. And what percentage are H-1B  
20 workers?

21 Mr. O'Neill. Two.

22 Senator Durbin. Two. So you clearly would not fit  
23 into the exclusions we have created in the Grassley-Sessions  
24 bill: more than 50 workers, more than 50 percent H-1B. And  
25 assuming that you did not displace an American worker to

1 hire the two, and assuming that you are paying market wages,  
2 then frankly you are not going to be disadvantaged by any of  
3 the reforms we are talking about.

4 Mr. O'Neill. Right. The only thing that concerns me  
5 when we talk about proving that we are not displacing an  
6 American worker is just the ability to do that. You know,  
7 in principle, that sounds wonderful. My concern is that in  
8 practice, you know, the existing visa regime can already be  
9 a challenge for us to operate.

10 Senator Durbin. But would you not concede that to your  
11 right Mr. Perrero made a pretty convincing case about being  
12 displaced for an H-1B?

13 Mr. O'Neill. Absolutely. And, I mean, the situation  
14 that you are describing sounds, you know, like an incredible  
15 misuse of the program, and it seems very unfortunate that  
16 this has been allowed to happen to--

17 Senator Durbin. So let me just--

18 Mr. O'Neill. My understanding is that you have  
19 introduced legislation that would go a long way towards  
20 addressing many of the issues that caused that to happen.

21 Senator Durbin. So let me go back to Mr. Perrero, and  
22 thank you for your testimony. I know it was not easy, and  
23 Mr. Miano in similar circumstances. I think this gag order  
24 is what is hurting us dramatically. Dr. Hira talked about a  
25 letter that ten of us signed, a wide array. Imagine if you

1 could get on the same letter not only my friend Senator  
2 Sessions and Senator Durbin but Bernie Sanders. I mean, we  
3 are all on this letter saying what has happened here at  
4 Southern California is just plain wrong. And it came back  
5 to us, Dr. Hira, and they said, "We have not had anybody  
6 complain." You explained why no one complained. They were  
7 under gag orders. If they wanted to get a severance check,  
8 they had to sign a legal agreement and could be sued if they  
9 violated the gag order.

10 Dr. Hira, is that what we are facing here in many  
11 instances?

12 Mr. Hira. Yes, so I think it actually goes beyond  
13 that. The gag order makes people very reluctant to file  
14 complaints. But even after they file a complaint, the Labor  
15 Department said what happened in Southern California Edison  
16 was absolutely legal and fine. You can replace American  
17 workers with cheaper H-1Bs. So why would any American  
18 worker ever complain?

19 Senator Durbin. So what we have done in the proposed  
20 reforms is to say flat out, Mr. Ferrero, what happened to  
21 you cannot happen legally. You cannot displace an American  
22 worker with an H-1B worker. You cannot put you through this  
23 embarrassing and insulting experience of training your H-1B  
24 foreign worker replacement flat out.

25 This law, as it is currently written, is so loaded and

1 riddled with loopholes and exceptions, I cannot even tell  
2 you--and I asked my chief attorney here, what is the number  
3 of H-1Bs coming in each year? He said it starts at 65,000.  
4 Then there is an additional 20,000. But then you can renew.  
5 We cannot even give you an exact number. Perhaps at the end  
6 of the year you can, but you cannot give an exact number of  
7 the workers that are coming in here.

8         So there is no accountability, as far as I am  
9 concerned, no protection of American workers when they are  
10 available to work.

11         Dr. Sparber, let me close by saying first generation  
12 American, my mother was an immigrant. I stand up for  
13 immigration. I believe it is part of our country, and I  
14 could not cheer you on more when you talk about what  
15 immigrants bring to this country in terms of entrepreneurial  
16 spirit, determination to work at whatever the dirty job is  
17 to make a go of it. This is not the case here. We are  
18 talking about temporary guest workers who basically work at  
19 the mercy of an employer and hope that at the end of 3 years  
20 maybe they will be renewed. It is not the same thing. It  
21 is a different thing. And I hope we do not put the two  
22 together.

23         Would you like to comment? Please do.

24         Mr. Sparber. This is not only a topic that I study,  
25 but it is something that I deal with firsthand in the sense

1 that I teach a lot of very, very gifted undergraduate  
2 students who go under immense levels of stress every year  
3 when it comes to job market season. They know that they are  
4 talented enough, hardworking enough to get jobs. What they  
5 do not know is whether or not they are going to be able to  
6 legally work here.

7 So I have students who I am very close with, one got a  
8 job a couple of years ago at a big firm in Boston, and after  
9 1 year of working there, lost the H-1B. And so--

10 Senator Durbin. What was the degree? What degree did  
11 this student have?

12 Mr. Sparber. I believe it was economics--mathematical  
13 economics. Mathematical economics.

14 Senator Durbin. The comprehensive immigration reform  
15 bill, which I helped to write and voted for, said if you  
16 have an advanced degree in a STEM subject and you have a job  
17 offer, you get a green card. So we give an incentive for  
18 those who come to U.S. universities, get educated and  
19 skilled, to stay here and use their skills to help build the  
20 economy. But it only applied to advanced STEM degrees. So  
21 I want to give that caution. But I understand what you are  
22 saying. But we are also trying to make sure we take care of  
23 American graduates and American workers first. I think that  
24 is our obligation.

25 Mr. Sparber. I understand your position. I think I

1 want to go back to the data suggesting that, despite the  
2 abuses, the program is successful in generating American  
3 jobs, American employment, American wages, and American  
4 productivity.

5 Senator Durbin. H-1B?

6 Mr. Sparber. The H-1B and skilled workers. And what I  
7 would encourage us to think a little bit more about is the  
8 distributional aspects. Let me give you an alternative  
9 story, another anecdote, if you will.

10 Somebody very close to me was working at a grocery  
11 store for multiple decades in California. That company  
12 decided to restructure and lay off the cutters. Cutters are  
13 the people who put new products on the shelves, and so you  
14 are taking stock off the shelves, restocking the shelves and  
15 so forth. And the reason that the company restructured was  
16 because they realized that they could contract with a third  
17 party that would work for lower wages and without benefits.  
18 So it was much cheaper for the company to outsource that  
19 work.

20 But, of course, those are jobs that are happening  
21 within America, right? So those are not outsourced to  
22 foreign workers. Those are jobs--cost-cutting measures,  
23 right?

24 And so I think a lot of what you are talking about and  
25 a lot of these stories are really about job protection

1 across the board, not just for jobs that might have been  
2 displaced due to immigration, but other kinds of policies as  
3 well. And, frankly, that is a topic on which I might have  
4 strong opinions. They might even be reasonably well  
5 informed, but it is not an area in which I am an expert in  
6 any way. And, instead, I would say that I am an expert on  
7 immigration issues and where I say that this program--

8 Senator Durbin. I hate to interrupt you, but I have to  
9 draw it to a close. We have gone beyond time here. My job,  
10 I think, is to encourage a growing economy in this country,  
11 but to do it in a fair way. Taking Mr. Perrero's job away  
12 so a foreign worker can come in at lower wages for a 3-year  
13 period of time I do not believe is consistent with fair  
14 economic growth. We ought to have a conscience in this  
15 country, too, about the kind of economy we want to generate.  
16 We do not want to drive it to the bottom with low wages and  
17 foreign workers who are here on a temporary basis. When we  
18 need them and they help to grow our economy, I am for it,  
19 but not at the cost of American workers' jobs, and not when  
20 we see half of these visas going to two Indian companies.  
21 There is something wrong with this picture.

22 Chairman Sessions. Thank you, Senator Durbin.

23 Senator Tillis?

24 Senator Tillis. Thank you, Mr. Chairman, and thank  
25 you, gentlemen, for being here.

1           Mr. Chairman, as we go through, as I think we should,  
2           some work on reforms, I think it is going to be critically  
3           important for us to dig below to really understand the  
4           complexity of the subject, particularly as it relates to  
5           information technology. To date myself, I started in  
6           technology back when a simpler language was still very  
7           popular and COBOL was emerging, and I was a COBOL  
8           programmer. That is how I got started. And now if you take  
9           a look at where we are today, you cannot--just because this  
10          person says they are an IT person, it does not necessarily  
11          mean that they are qualified for the IT job, particularly  
12          with the highly specialized nature of the industry today.  
13          The tools that are available, the hot skills--I came up, I  
14          was a partner responsible for an IT architecture definition  
15          and deployment practice at Pricewaterhouse back in the  
16          1990s. I actually was tasked with creating a diversity  
17          recruiting practice within Pricewaterhouse to do everything  
18          that we could possibly do to find people coming out of  
19          school that had the kinds of skills that we needed to do  
20          implementation work.

21          The last thing honestly I ever wanted to do was to have  
22          to go through the visa process if I could avoid it. I know  
23          in Mr. O'Neill's case, if you are smaller business, it is  
24          very difficult. You worry about whether or not you are  
25          dotting all the I's and crossing all the T's and dealing

1 with all the complexities, not the least of which is dealing  
2 with the Federal Government and going through that process.

3       So I think as we go through this process, it is  
4 critically--there are a lot of other sorts of disruptive  
5 things that have occurred over the last 10 or 12 years. You  
6 know, back when I had a position at IBM, I was a practice  
7 leader at IBM. A lot of companies were moving to pure play  
8 outsource models. They were literally eliminating IT jobs  
9 and sending them overseas. A lot of the jobs that they were  
10 sending overseas were a part of the IT skill set that had  
11 largely become commoditized. It was a relatively--in the  
12 world of IT, it was a relatively low-skilled position, and  
13 it was very difficult given the large base of people that  
14 you need to make the numbers work economically, and that is  
15 why outsourcing occurred.

16       Then you saw some onshoring and some hybrid models  
17 because you reached a point to where it made more sense to  
18 have the people back in the U.S., and different models have  
19 occurred.

20       Industries have also had to come to these variable  
21 price models for their IT shop to be able to deal with  
22 economic fluctuations, in other words, get to a position  
23 where they can expand or contract their workforce to deal  
24 with the economic realities that the businesses may be  
25 facing.

1           Now, there are very clearly some bad practices out in  
2 the industry, and I think we have to with these reforms  
3 figure out how we get better transparency into those  
4 practices where people are exploiting opportunities to pay  
5 somebody for less than they should. I can tell you, in my  
6 10 years in dealing with this issue on the other side, I  
7 never saw an issue or ever heard a discussion that said go  
8 hire a visa worker because we can pay them less. In fact,  
9 in many instances we paid them more because they happened to  
10 have a hot skill in an area and enterprise resource  
11 planning, various tools and modeling, that you actually had  
12 to pay a premium because the market demanded that there was  
13 a fairly limited number of resources.

14           So I think if we are going to do this right, doing it  
15 right means that the instances that were described by the  
16 gentlemen here, that we have transparency and we make those  
17 bad actions not occur. I live in Charlotte, which is a  
18 financial services hub and an IT hub. We have had Wells  
19 Fargo acquire Wachovia, and jobs were eliminated, right? So  
20 one would naturally expect that any person, any IT job that  
21 is in the Charlotte area would be filled because we have a  
22 large supply of people. Two years ago, we had 1,000  
23 unfilled positions in the Charlotte-Mecklenburg area for IT  
24 skills because there was a mismatch between the requirements  
25 of the job and the skills that the person brought to the

1 table.

2 And so when we go through this process, it is just  
3 critically important to understand that we have got to drill  
4 down and understand the real content of the jobs, the  
5 evolutionary nature of the needs, and the reality is that in  
6 an IT world 3 years is a fairly long time to work on any one  
7 thing. In my business, if you have been doing it for more  
8 than 3 years, you are probably over budget and over  
9 schedule, the nature of a lot of these large-scale projects.

10 So we just need to make sure as we go through this, Mr.  
11 Chair--I am talking more than I am asking questions--that  
12 this is something that is incredibly complicated. It is  
13 something that even if we get it right--and we should always  
14 bias the opportunities to the American worker. We should.  
15 And I think that most businesses would want to do that  
16 because of the complexity and a number of other factors that  
17 come in with having a large base that may come through a  
18 visa program. But if we do not really understand--and I am  
19 speaking for IT. We could speak for other maybe non-STEM-  
20 related jobs. If we do not understand this, then what we  
21 could potentially do is create a disruption to a workforce  
22 that could ultimately be the single greatest impediment to  
23 economic growth once this economy starts recovering again.  
24 Mr. Chair, if you do not mind, I do have one question  
25 for Mr. O'Neill.

1           Mr. O'Neill, you said that you have 100 workers. Two  
2 of them, can you give me an idea of what led you to hiring  
3 them in terms of skill sets or what factors made you decide  
4 that that is the direction you had to go?

5           Mr. O'Neill. Absolutely. I was specifically looking  
6 to--we were looking for developers who had experience  
7 working on the iOS platform. That is the Apple platform, so  
8 it is iPhone, iPad.

9           Senator Tillis. Yes.

10          Mr. O'Neill. Many of us carry them. And so we were  
11 looking for developers that had that experience. I think  
12 the assumption--in some of the conversations that I am  
13 hearing, you know, there is the implication that companies  
14 are going and searching in some place where foreign workers  
15 exist and trying to get foreign workers from that particular  
16 window. The fact of the matter is that the foreign workers  
17 that we employ are found in all of the same places. They  
18 are in American universities. They are on the job boards  
19 that we are looking for. We are finding them in all the  
20 same places. So it is this global pool of talent that we  
21 are looking to find. And so we are looking to fill a  
22 particular skill set and, you know, we were looking--we were  
23 looking all over for a long time, and personally I was under  
24 significant pressure to find someone that could fill this  
25 role, so I was very happy when we found one, and then

1 another.

2           Make no mistake. H-1Bs, as far as I am concerned,  
3 engaging with the system, H-1Bs cost more to an employer  
4 because of the visa program, because there is a competitive  
5 wage. But no one wants to see American workers displaced  
6 like Mr. Ferrero.

7           Senator Tillis. No, and that is why I think we need a  
8 balanced approach, because in a doomsday scenario--if we get  
9 this wrong, I think back to a point that Dr. Sparber  
10 mentioned--then you could see some of the application  
11 portfolio where the numbers may be right to hire workers and  
12 do it in the United States, move somewhere else. You know,  
13 unless you eliminate--my guess is this Internet thing is  
14 going to take off.

15           [Laughter.]

16           Senator Tillis. And so the virtual nature of the IT  
17 economy is here to stay. And if we think that we can  
18 artificially stop--you know, if we overreach in our reforms,  
19 and reforms that I think that we need to move forward with,  
20 then what you actually could see, because of the underlying  
21 cost and complexity and the limitations on the supply  
22 workforces that will drive up demand and drive up costs, you  
23 could see another migration to lower-cost jurisdictions and  
24 a net loss of American job opportunities. That is why it is  
25 so important to get this right.

1           We have recovered from what looked to be an unstoppable  
2 trend towards offshoring. There was a time when I was in IT  
3 shops when everybody said there will not be any IT workers  
4 in American 10 years from now, they will all be in the  
5 Philippines or in Bangalore and Mumbai and China and the  
6 other emerging markets as those become more competitive and  
7 cost drives you to another territory.

8           We could, if we get this wrong, create the stimulus to  
9 cause that migration to occur again, and technology is  
10 becoming easier and easier to facilitate that, so the  
11 barriers are going down at a time that we may be creating an  
12 incentive if we do not get it right. And I think we have  
13 got an opportunity to get it right.

14           Chairman Sessions. Well, I hope so. The program is  
15 within limits. Immigration policy should serve the  
16 legitimate interests of the American people. It is not an  
17 interest of some special group who would like to make  
18 different--pay lower wages.

19           Dr. Salzman, these examples you talked about, they were  
20 designed--they were motivated by a desire to reduce wages,  
21 weren't they?

22           Mr. Salzman. No question. I think one thing to  
23 clarify this conversation a little bit is there is--maybe 15  
24 percent of the demand is for, you know, the talent. You  
25 talk about 2 out of 100. You are talking about a few here.

1 And you are right--

2 Chairman Sessions. When you say "talent," you are  
3 referring to really special--

4 Mr. Salzman. Exactly.

5 Chairman Sessions. --highly bright people who could  
6 make a--

7 Mr. Salzman. Correct, and those are really tough to  
8 find, and there is some percentage of that. And you are  
9 right, we want to bring that in. But something like two-  
10 thirds of H-1Bs are paid between \$60,000 to \$67,000. Most  
11 of them are going to outsourcing firms. I am sorry, you  
12 know, I may have been in the industry for a while, but that  
13 ship left long ago. Most of the IT outsourcing is already  
14 offshore, and the teams here are to support the offshoring.  
15 You know, maybe we will bring some of that back, and I think  
16 Professor Hira can speak to that. But that has moved out,  
17 and it has moved out because of the H-1B program.

18 So we are talking about the bulk of the program, not  
19 the 2 percent, not the 10 percent. We are talking about the  
20 primary function of the H-1B, the L, the OPT program is to  
21 support offshoring, low-cost labor. I do not think you can  
22 get around it with, you know, a few examples here and there.  
23 It is the hundreds of thousands of jobs that have been lost  
24 that Mr. Perrero has talked about. They are gone.

25 Chairman Sessions. Yes. I think, you know, there are

1 some things we can do. We have the 50,000 a year diversity  
2 lottery, which is an unusual idea. They got slipped into  
3 there. But what if we made that an Einstein-like policy, so  
4 people who really had exceptional talent could be admitted  
5 into the country. Is that something, Dr. Hira, you would  
6 suggest we focus on?

7 Mr. Hira. I definitely think what we should--when we  
8 are picking H-1Bs as well as green card applicants, we  
9 should be much more selective.

10 Chairman Sessions. And so the statute that we would  
11 draft for something like H-1B or what replaces it should  
12 give priority to people who bring exceptional talents, not  
13 just a 500-person unit at California Edison and everybody is  
14 replaced.

15 Mr. Hira. The vast majority of H-1Bs who are coming in  
16 have no more than ordinary IT skills. In fact, as we have  
17 seen in the Disney case and Southern California Edison, it  
18 is actually the American workers who are training their  
19 replacements.

20 In terms of offshoring, firms are trying to offshore as  
21 much as they can. The jobs that are still here in America  
22 are the ones that are geographically sticky. Those are the  
23 jobs that are difficult to offshore. And these offshoring  
24 companies that are using the H-1B Program, they have every  
25 incentive to move as much work offshore--you are

1 facilitating the offshoring of the work. So I think the H-  
2 1B Program overwhelmingly is working in the opposite  
3 direction of what you described. Certainly there are cases-  
4 -and we have to look at balance. You definitely do not want  
5 to cut off the program altogether. But, overwhelmingly,  
6 right now the H-1B Program is working to speed up the  
7 offshoring rather than keep it here in the U.S.

8 Chairman Sessions. Mr. Perrero, Mr. Sparber in his  
9 written testimony says, "when foreign-born STEM workers  
10 enter the U.S. labor force, it creates an opportunity for  
11 native-born workers to respond by doing other types of work  
12 including managerial occupations that often--though not  
13 always--pay higher wages." How many of those who lost jobs  
14 got managerial jobs?

15 Mr. Perrero. Well, none. There were 300 people that  
16 were let go from Disney. Four that we are aware of got new  
17 jobs. None of them were managerial. Managerial folks,  
18 maybe one out of five people are cut out to be managerial,  
19 so what happens to the other four that you have lost there?  
20 And STEM jobs are typically the highest-paying jobs in our  
21 economy as well. What other fields do they go to, the four  
22 that lost their jobs and the one that became a manager?

23 Chairman Sessions. Well, I will tell you what is  
24 dramatic to me. I mean, this idea of we are going to  
25 transform our economy, you know, Senator Tillis, steel mills

1 closed and textile mills closed, but do not worry, we are  
2 all going to get IT jobs, we are going to all run computers.  
3 I happen to know that Facebook has 7,000 people only. And  
4 now we are laying off 330,000 perhaps this year in the IT  
5 field? We are not going to replace American workers, all of  
6 them are going to be computer geniuses. And then so the  
7 question is: How many should we bring in abroad to take  
8 routine work that our people need to be doing, or else they  
9 are going to be on welfare, they are going to be depressed?  
10 What are they going to do with their lives? I got to say,  
11 the Atlantic had an article this summer, "The End of Work in  
12 America," like the end of jobs in America.

13 We have a declining job--robotics, computers,  
14 technology making us be more productive, which in the long  
15 run should be good, and I do not intend to try to stop. But  
16 this is the reality we are dealing with.

17 Mr. Miano, can we write statutes--you have looked, I  
18 suppose, at the bills that have been proposed. Can we do  
19 something that would put us back on the path of doing what  
20 people thought this H-1B Program was doing anyway?

21 Mr. Miano. Well, I think you have two very good bills.  
22 You have done a very good job. Senator Grassley has done a  
23 good job as well. But, you know, if I were given my  
24 druthers, I would just start from scratch, and I have given  
25 some people on the Hill copies of my bill of completely

1 rewriting the entire H-1B Program, and mine is 3 pages  
2 compared to the 20 or 30 pages you get when you print it out  
3 now.

4 Chairman Sessions. And this bill, as it is currently  
5 written, among other things, is exceedingly complex.

6 Mr. Miano. Which bill?

7 Chairman Sessions. The current H-1B law is complex.

8 Mr. Miano. The current H-1B Program is just absolutely  
9 bizarre in complexity compared to what it does. It is like  
10 some Rube Goldberg contraption that all it does is flip a  
11 light switch.

12 Chairman Sessions. Thank you.

13 Senator Schumer, thank you for joining us, our  
14 distinguished Ranking Member.

15 Senator Schumer. Thank you, and I thank you, Chairman,  
16 for having the hearing. I want to welcome all of our  
17 panelists, but particularly two New Yorkers: Mark O'Neill  
18 from a great New York Company, JackThreads, and--we have  
19 upstate and downstate representation--Dr. Chad Sparber of  
20 Colgate University of Hamilton, New York. Hamilton  
21 University is in the same county, but not in Hamilton, New  
22 York. It is always perplexing to people. It is in Clinton,  
23 New York. And we have a Clinton County, so there you go.  
24 Anyway, not close to as confusing as some people find the H-  
25 1B program. I do not.

1           Okay. I want to thank you for coming, and I would like  
2 to point out the Chairman has had several hearings that  
3 point out the many improvements we could make to our  
4 immigration system. In fact, the Gang of Eight passed a  
5 bill in 2013, and that is the basis for this.

6           But when you consider these hearings, they demonstrate  
7 with distinct clarity the need for our immigration bill. In  
8 a rapidly changing economy that continues to generate high  
9 demand for high-skilled labor, especially in tech, companies  
10 need the flexibility to hire the best person for the job.  
11 That is what the H-1B Program was intended to provide, and  
12 every day there are companies who use the program exactly as  
13 intended.

14           But it must be carefully calibrated, of course, to make  
15 sure the H-1Bs are not abused to the detriment of American  
16 workers. We have all seen and heard--today as well--too  
17 many examples of foreign corporations abusing loopholes in  
18 the law to outsource jobs and undercut American workers. I  
19 find that outrageous. And that is why in the bill we passed  
20 we tightened these things up. Many of the companies that  
21 prey on H-1B would not be able to do so under our  
22 legislation. What we sought to do is encourage the best and  
23 brightest individuals to come to America to create new  
24 technologies and discourage businesses from using our  
25 immigration laws to replace capable American workers with

1 temporary and less expensive foreign labor.

2 Today's hearing is not an indictment of immigration  
3 reform. It is an indictment of doing nothing, which, in all  
4 fairness, my colleagues on the other side of the aisle, they  
5 rail against this bill, but they do not have any  
6 replacement. They are for the status quo. Until we see a  
7 comprehensive bill on the other side of the aisle, we will  
8 be able to say that.

9 Chairman Sessions. We have three bipartisan bills  
10 pending.

11 Senator Schumer. Yeah, but they are not comprehensive.  
12 They are little tiny--

13 Chairman Sessions. Well, if you mean comprehensive, we  
14 double the lawful flow of immigration across the board, or--  
15 excuse me.

16 Senator Schumer. It is okay.

17 [Laughter.]

18 Senator Schumer. We see each other in the gym on  
19 bicycles every morning, so we can talk to each other like  
20 this.

21 Chairman Sessions. I should be--

22 Senator Schumer. I am making him a little more  
23 Brooklyn. I do not know if he is making me a little more  
24 Alabama.

25 But, in any case, our bill passed, as everyone knows,

1 with 68 bipartisan votes. We cracked down on outsourcing,  
2 something I know you care about, Mr. Chairman, something we  
3 have heard about today, something that I care about, while  
4 increasing protections for the workers. So I am hopeful we  
5 can get that.

6 Now, what did our bill do? We doubled the fees on H-1B  
7 and L-1 abusers, and I know I am not supposed to say this,  
8 but many of these companies from India are not in the spirit  
9 of H-1B. Now I will get a call from the Indian Ambassador.  
10 So be it. American jobs come first to me. And they abuse  
11 it. And I want to--when we did H-1B, I wanted to increase  
12 the number of legitimate H-1B, but go after these abuses.  
13 And that is what we did.

14 But, unfortunately, Department of Justice and Homeland  
15 Security tell us they need new legal authority, just the  
16 kind we provided in immigration reform, because the truth is  
17 that while there may be some illegal activity here, the  
18 basic practice of replacing an American worker with a high-  
19 skilled visa holder is not illegal right now.

20 So we need comprehensive reform both to increase the  
21 number of H-1Bs and to get after the abusers. We want to  
22 help the middle class, Democrats do. We want to create  
23 jobs, get wages rising. That is what CBO said about our  
24 bill. They are nonpartisan. They said our bill would grow  
25 GDP by 3.5 percent, more than any Democratic spending

1 program or Republican tax cut.

2 At the same time, it would reduce the deficit. It is  
3 hard to believe that this bill was turned down. Seriously.  
4 We have the support of business. We have the support of  
5 labor. We have the support of religious community,  
6 including the evangelicals. Dr. Land testified in favor of  
7 our bill. And it is bad for America that the bill went  
8 down. It is bad for American workers, is my judgment.

9 Immigrants raise wages for America. And lest people  
10 think there is not a shortage, I go to companies throughout  
11 New York State, downstate like Mr. O'Neill, but upstate,  
12 too. What is their biggest problem? One of the top three  
13 always is they cannot get the labor they need, particularly  
14 engineers.

15 And, look, we have RPI in Albany. We have RIT--the  
16 president was just here visiting me--in Rochester. Big  
17 engineering schools. We have big engineering schools in New  
18 York City. We still have a shortage of engineers. And  
19 everybody you talk to tells you that. Business people,  
20 Republicans, they tell me that. And I do not hold it  
21 against them that they are Republicans or that they are  
22 business people.

23 But in any case, so we need them. We need them. And  
24 Congress has to play this important role. It simply does  
25 not make sense to have an "immigrants need not apply" policy

1 when we have so many help wanted signs in our high-tech,  
2 manufacturing, health care, agriculture, and research  
3 sectors.

4 Let us pass comprehensive immigration reform. that is  
5 what is needed. The bill that the Gang of Eight--and I will  
6 name the people. Senator Durbin, Senator Menendez, Senator  
7 Bennet, and myself on the Democratic side; Senator McCain,  
8 Senator Flake, Senator Graham, and Senator Rubio on the  
9 Republican side worked to pass--I had fun doing that--worked  
10 to pass this legislation.

11 Can I ask a question, Mr. Chair?

12 Chairman Sessions. Your time is up.

13 Senator Schumer. Sorry. Then I will not--okay.

14 First, for Mark O'Neill, just tell us how you recruit  
15 talent. How have the H-1B and other high-skilled visa  
16 helped you? How could the programs be improved to help  
17 small businesses like yours in our innovation economy? Just  
18 give us some personal experience in addition to what you  
19 told us in your testimony.

20 Mr. O'Neill. The personal experience is what I come  
21 armed with today. First of all, I just want to thank you  
22 and other members of the Senate for advancing comprehensive  
23 immigration reform. You know, it is my understanding that a  
24 lot of the horror stories that we have been hearing from  
25 other members of--others who are testifying today would have

1 been avoided if we had passed that bill. So I think that  
2 would make a lot of sense. You know, Dr. Salzman describes  
3 an industry that I do not recognize.

4 For people on my team, you know, wages are high. We do  
5 not have a budget for lobbying in Congress, incidentally.  
6 But we still have difficulty in attracting people. And so  
7 the method that we use, you know, I am going to meetups, I  
8 am traveling the country to go to different college career  
9 fairs--

10 Senator Schumer. What are these skills that you are  
11 short of in your business?

12 Mr. O'Neill. So the skills that I am looking for, I am  
13 looking for talented developers who know JavaScript, who  
14 know PHP, who know Ruby, who can code on the Apple or the  
15 Android platform. Those are the primary platforms that  
16 generate all of our revenue at JackThreads. We have no  
17 physical store, and so the only store that we have is what  
18 we build electronically. And so it is very important that  
19 we handle our clients' money correctly and that the right  
20 pants get in the right box and get to the right house. And  
21 all of that is complicated.

22 So we are seeking engineers who have those skills and  
23 are able to come on and join our team.

24 Senator Schumer. And you have a rough time finding  
25 them?

1           Mr. O'Neill. We have an extremely difficult time  
2 finding them. We have had roles sit open for months at a  
3 stretch. I know--

4           Senator Schumer. Any reason an American engineer who  
5 wanted a job would not walk in and talk to you?

6           Mr. O'Neill. None that I can think of. I have been  
7 criticized occasionally for my personality, but, no, I  
8 think--

9           Senator Schumer. You are not from New York originally.  
10 I can tell by your accent, but--

11          Mr. O'Neill. Yes, very good.

12          Senator Schumer. What?

13          Mr. O'Neill. Very good. Yes, I am a Boston Fifth  
14 Amendment.

15          Senator Schumer. Uh-oh, wait a minute, Mr. Chairman.

16          [Laughter.]

17          Senator Schumer. No, we in New York welcome all these  
18 great entrepreneurs who come here and open up businesses and  
19 create jobs.

20          Okay. My time is up. I just wanted to make one more  
21 point to Mr. Perrero, and that is this: If our bill had  
22 passed, you would not be in the pickle you are in.

23          Chairman Sessions. Well, the Gang of Eight bill did  
24 double the number of H-1B workers and made very little  
25 reform in the process. Maybe we will ask about that in a

1 minute.

2 Senator Tillis?

3 Senator Tillis. Yes, actually I was thinking, first,  
4 Dr. Hira and Dr. Salzman, I actually agree with your points  
5 on outsourcing. And, actually, if you have studied it, you  
6 have probably gone in more depth than me. Then you will  
7 know that when the first wave of outsourcing occurred, a lot  
8 of businesses got out in front of their blockers. They put  
9 a lot offshore. They had a lot of problems with  
10 implementations, which is what gave rise to this reverse  
11 migration that we are talking about today.

12 The reality, however, is that they are becoming more  
13 sophisticated, and if we do not get this right, then we are--  
14 --we talk about tax inversions here. We talk about, you  
15 know, companies reorganizing and going offshore because of  
16 the complex and onerous Tax Code that we have in the United  
17 States. If we get these changes wrong, you can see a labor  
18 inversion. You could see a net reduction in IT--I will  
19 speak for the IT industry. You could see a net reduction in  
20 jobs if we do not get this right.

21 The fact that I can sympathize with the folks--I have  
22 many colleagues who could share stories similar to those  
23 that were shared earlier, and that I can agree to a point on  
24 everything that you are saying and you are coming at this  
25 from different perspectives suggests the complexity of the

1 issue and the need to be thoughtful and get it right.

2 More than anything, I would love to see a copy of your  
3 three-page bill--Mr. Miano?

4 Mr. Miano. Yes, Senator.

5 Senator Tillis. Because the only thing--you know,  
6 working with the Federal Government is a very difficult  
7 task. As a U.S. Senator--for a constituent. So you all  
8 work, say, with the Department of Labor. It is a nightmare  
9 for me. It is scarier than the flying monkeys in "The  
10 Wizard of Oz" for me to have to go pick up the DOL and try  
11 and figure out their immigration processes. They are  
12 absolutely broken.

13 So as we do reform, we need to simplify, and we need to  
14 work on--I mean, this is a multifaceted, highly complex  
15 issue. And if we are not careful, then what we could end up  
16 finding is that Mr. O'Neill will not get the resources that  
17 he needs; the jobs right now that are at least generating  
18 some revenue, to the extent they are employed in the United  
19 States and paying taxes associated with it, another  
20 migration if we do not get this right.

21 So I wanted to speak less about the specific policy in  
22 the bill and speak more to the several facets that we have  
23 to look at to get it right and along the way provide the  
24 kinds of protections we should for the American worker.

25 Mr. Hira. If I may, I agree with everything that you

1 are saying here. In fact, I wrote a book called  
2 "Outsourcing America" 11 years ago now that described what  
3 was going on and what was likely to come, particularly in  
4 terms of IT outsourcing.

5 A couple of things. IT companies have every incentive  
6 to offshore as much work as possible right now. Although  
7 their billing rates out of India, which is where most of the  
8 work goes, of about \$35 an hour, are much lower than the  
9 billing rates in the U.S., the margins are much higher.  
10 Just to give you an example, my cousins in India, you know,  
11 are typically getting about \$6,000 or \$8,000 a year, which  
12 is about \$3 or \$4 an hour in India. So it is cheaper for  
13 them and more profitable to offshore as much work as  
14 possible.

15 The work that is remaining here is geographically  
16 sticky, and those jobs should go to Americans, except when  
17 Americans are not easily found. Now, how do you determine  
18 whether someone is easily found or not I think is where you  
19 are going in terms of the balance.

20 Senator Tillis. Exactly.

21 Mr. Hira. And I think the easiest way to do that is to  
22 raise wage floors very significantly so that H-1B workers  
23 are not hired for cheaper labor. As I said in my opening  
24 statement, right now it is extraordinarily easy to bring in  
25 H-1Bs at much lower salaries. Mr. O'Neill's company may not

1 do it, and he may not be aware of it, but just to give you  
2 an example, he said he has two H-1B workers. You know,  
3 Cognizant probably has 25,000 H-1B workers here and hardly  
4 any Americans. They have another 200,000 in India.

5 So we are talking about apples and oranges in terms of  
6 the scale of what the H-1B is doing, in terms of speeding up  
7 offshoring as opposed to keeping and creating jobs in the  
8 U.S. And so it is that kind of balance that--there is no  
9 balance right now, is what I would say. It is all balanced  
10 towards cheap labor.

11 Mr. O'Neill. If I can just offer one example about the  
12 existing system, when you talk about the danger of getting  
13 it wrong, you know, I have seen--I have a good friend, Manav  
14 Krishna, who graduated from Columbia University here in the  
15 United States. He got his degree here in the United States,  
16 and he began working on H-1B for a local company. But he  
17 founded a business here, a company called Bahan that was  
18 teaching English to non-English speakers. And,  
19 unfortunately, the way the current system is set up, he was  
20 not able to have his own company and sponsor his own visa,  
21 and so for that reason, he was not able to remain and had to  
22 go back to India and took five more jobs with him.

23 One of the dangers of getting it wrong, as you say, is  
24 that we create this incentive to create information hubs,  
25 and we sort of push expertise--we essentially create areas

1 that are competing directly with us outside of the United  
2 States.

3 Senator Tillis. Thank you.

4 Senator Sessions. All right. Thank you.

5 Well, I will start with you, Dr. Salzman, but maybe Dr.  
6 Hira would answer it. With regard to the Gang of Eight bill  
7 and the H-1B reforms, my understanding was that the bill  
8 essentially doubled the number of H-1B people that would be  
9 admitted into the United States for the simple purpose of  
10 taking jobs. They do not come to become a citizen or an  
11 entrepreneur. They come to fill a specific job. And there  
12 was very little reform in the bill. Senator Durbin  
13 suggested some reforms, but indicated they were not  
14 approved. And I think that is, as I remember it, exactly  
15 what happened.

16 Dr. Hira, you seem to--do you remember that?

17 Mr. Hira. Yes.

18 Chairman Sessions. Mr. Miano?

19 Mr. Miano. I probably could answer that because--and I  
20 do not want to turn this into a book promotion, but one of  
21 the things I did was go through the entire tangle in the  
22 1,198 pages of the bill, pulled out all the H-1B provisions,  
23 and added them to the code. And they are in the book sold  
24 out, spelling out exactly what the bill would have done.

25 I think one of the things, for example, is it turned

1 the--talk about length. It turned the H-1B quota from being  
2 basically a paragraph to two pages of typed text that only a  
3 lawyer could understand. And even then, it is a tough,  
4 tough bit. So I did not--I am kind of upset that Senator  
5 Schumer is not here to say that, but if anyone wants a copy,  
6 I will get them a copy so you can see exactly what the bill  
7 does.

8 Chairman Sessions. Exactly. Did you want to follow  
9 up, Dr. Hira?

10 Mr. Hira. Yes, I would like to follow up. There  
11 certainly were some positive provisions, H-1B provisions, in  
12 S. 744, the comprehensive immigration reform. But, on net,  
13 it would have been much worse for American workers than the  
14 status quo.

15 Chairman Sessions. Well, I just want to say I have  
16 been through this battle. We have been through it a lot.  
17 You cannot rely on the talking points. They may have agreed  
18 to the bill, and they may have had the Chamber of Commerce  
19 agree and La Raza agree and politicians agree and other  
20 people. But the law enforcement officers were not in the  
21 room to explain what the loopholes were and how they were  
22 not being closed. And neither did the American people  
23 agree, and that is why it did not pass.

24 Mr. Hira. And could I just add that in the case of--  
25 Mr. Schumer, Senator Schumer, said that Mr. Perrero's job

1 would not have been lost if the bill had passed. In fact,  
2 his job would have been lost. Instead of being lost to HCL,  
3 the company that brought in the H-1B worker for Disney, it  
4 would have been lost to Accenture or to IBM, which would  
5 have imported an H-1B or an L-1 worker and replaced him at a  
6 lower rate.

7 Mr. Miano. Senator, may I just make a point to  
8 illustrate?

9 Chairman Sessions. Yes.

10 Mr. Miano. The entire immigration system was created  
11 in 1952 in 120 pages. It went through the most radical  
12 change ever in 1965 and 12 pages. But reforming that system  
13 created in 120 pages apparently requires 1,198 pages. It is  
14 kind of puzzling how we reached that level of statutory  
15 proliferation.

16 Chairman Sessions. Oh, what a tangled web we create  
17 when we first practice to regulate. There is always another  
18 loophole that has to be closed, and another one.

19 But I think I hear what you are saying. This is an  
20 important subject. I do believe the United States can  
21 benefit from immigration. We absolutely need to look for  
22 our most talented, creative people. We do not need to have  
23 a system in which somebody is capable of reaching an  
24 exceedingly high level and they cannot get in the country.  
25 But I also would say to you that I am a little bit uneasy--

1 more than a little bit uneasy. I oppose firmly the idea  
2 that if anybody from the world comes to America and manages  
3 to get a degree from some college they should automatically  
4 be given citizenship or permanent legal status. I mean,  
5 that cannot be. A nation has to establish an immigration  
6 system that serves its interests over the long term. We  
7 admit a million people a year to permanent residence and a  
8 guaranteed pathway to citizenship every year. No nation  
9 admits that many on a consistent basis. And I think we need  
10 to understand that.

11 We have 500,000 students, and many of them are able to  
12 work while they are here. And we have 700,000 guest  
13 workers. Is that about right, Dr. Salzman or Dr. Hira?

14 Mr. Hira. It is closer to a million.

15 Chairman Sessions. A million?

16 Mr. Hira. Yes. We do not know because DHS does not  
17 keep track of people.

18 Chairman Sessions. And those people came for one  
19 purpose, the guest workers, basically, and that is, to work.  
20 Now, some of these are seasonal workers, and they are in  
21 areas of the country where they come and work for a period  
22 of time and go home. But a lot are taking truck driver  
23 jobs, construction jobs, landscaping jobs that I see in my  
24 neighborhood are native-born Americans every day doing that  
25 work. It is not that these are jobs Americans will not do.

1 They do it every day.

2 So I think the country has to be careful as we bring in  
3 a large flow and ask ourselves: Are Mr. Perrero and people  
4 like him being laid off? Are he and his colleagues finding  
5 their wages going down or not going up? And what is the  
6 right amount?

7 So we have this big bill that came up, and to my  
8 knowledge--Dr. Salzman and Dr. Hira--Mr. Sparber, you might  
9 have--and Mr. Miano, were any of you asked to come and bring  
10 your expertise to these people who met in secret for several  
11 months to write this bill?

12 Mr. Miano. Not at all, Senator.

13 Chairman Sessions. Were you, Dr. Hira?

14 Mr. Hira. No.

15 Chairman Sessions. Dr. Salzman?

16 Mr. Salzman. No.

17 Chairman Sessions. Well, very few of a contrary view,  
18 I think, were involved in that process.

19 So, look, thank you all. This is an intense subject.  
20 We want to get it right. We are not against immigration.  
21 We need a policy that effectively allows a flow that serves  
22 the interests of the United States, strengthens America, and  
23 gives people an opportunity to come here.

24 If there are no other questions or comments, we are  
25 adjourned.

1           [Whereupon, at 4:25 p.m., the Subcommittee was  
2 adjourned.]

C O N T E N T S

STATEMENT OF:	PAGE
Leo Perrero, Former Disney IT Engineer, Longwood, Florida	16
John M. Miano, Attorney, Washington Alliance of Technology Workers, Summit, New Jersey	22
Mark O'Neill, Chief Technology Officer, JackThreads, New York, New York	27
Ronil Hira, Ph.D., Associate Professor of Public Policy, Howard University, Washington, D.C.	33
Chad Sparber, Ph.D., Associate Professor of Economics, Colgate University, Hamilton, New York	39
Hal Salzman, Ph.D., Professor, Edward J. Bloustein School of Planning and Public Policy, and Senior Faculty Fellow, John J. Heldrich Center for Workforce Develop- ment, Rutgers University, New Brunswick, New Jersey	45